

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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1 give the best decision I can give. It's going to be relatively
2 quick. It's my recollection I didn't sit on the last decision;
3 maybe, what, four or five days, a week at most, and that's what
4 I'm going to do.

5 But why does it matter -- I see the case -- what it
6 says here was -- and we can focus on that. It says, "While the
7 statutory rate should be used if unchallenged, once competent
8 evidence is presented supporting another rate of interest" --
9 right, that's what the case says -- "as being more appropriate,
10 the district court must determine which rate would permit the
11 most reasonable interest rate." And that's what the case says.

12 And then we have a scenario where there's interest
13 rates being offered by the plaintiff from an expert
14 perspective. I understand there's been argument, but as it
15 pertains to the methodology and those things, they really
16 haven't been challenged with another report. Right?

17 Anything you want to add to that, Mr. Leavitt? I
18 think you're frozen right now.

19 MR. LEAVITT: I'm on, Your Honor.

20 THE COURT: Okay.

21 MR. LEAVITT: No, Your Honor. And it's absolutely
22 correct that the evidence is unchallenged at this point in
23 time. So, again, we submit based upon the pleadings and based
24 upon the argument.

25 THE COURT: I understand. And I won't -- I think the

1 last time I got it done -- in fact, I think all the important
2 decisions I've gotten done pretty quick historically, like
3 within a week or so. I'm going to do the same thing. I just
4 want to go through it. It's a lot of money, but at the end of
5 the day I have to make a decision and I won't sit on it. It
6 will be done quickly.

7 MR. LEAVITT: Thank you.

8 THE COURT: All right. So we have one other matter
9 regarding attorney's fees.

10 And, Mr. Leavitt, you've got the floor, sir.

11 MR. LEAVITT: Yes, Your Honor. Thank you. Your
12 Honor, in our opening motion we listed three different sources
13 for recovery of attorney's fees in an inverse condemnation
14 case. I will address just two of those sources during my
15 argument today.

16 The first source is the Nevada Constitution. The
17 Nevada Constitution was amended in 2008 and it added a
18 provision, Article 1, Section 22, subclause 4, which states
19 what just compensation includes. And it says, "Just
20 compensation shall include but is not limited to interest and
21 all reasonable costs and expenses actually incurred in the
22 action."

23 So, Your Honor, the Nevada Constitution is abundantly
24 clear that a landowner recovers costs, and we've already done
25 that part of this case, and all expenses that that landowner

1 must incur in an eminent domain action or has incurred in an
2 eminent domain case. Those expenses clearly include attorney's
3 fees. The City has not even challenged the language that the
4 Constitution -- the provision of expenses includes attorney's
5 fees. Therefore, Your Honor, we would respectfully request
6 that attorney's fees be granted under that provision of the
7 Constitution.

8 But I do want to note one thing because when this
9 constitutional provision was placed on the ballot in 2006 and
10 2008, it was made very clear to the voters by the opponents of
11 the ballot question that this provision would require the
12 government to pay attorney's fees. We've laid that out in our
13 brief. And the voters of the State of Nevada passed this
14 constitutional provision in 2006 with almost 70 percent of the
15 voters. And, Your Honor, I don't know of many ballot questions
16 or elected officials that get 70 percent of the vote. Not only
17 in 2006 but in 2008, once again 70 percent of the electorate
18 voted to pass this section of the Nevada Constitution so that
19 landowners in these eminent domain cases would be reimbursed
20 for their attorney's fees. So, Your Honor, that's the first
21 section that allows for reimbursement of attorney's fees.

22 The second provision that allows for attorney's fees
23 arises out of the Sisolak and Hsu cases. Again, you're very
24 familiar with the Sisolak case. You're very familiar with the
25 Hsu case. Both of those cases cite to the Federal Relocation

1 Act and both of them say that once a landowner prevails in an
2 inverse condemnation case, that landowner is entitled to their
3 attorney's fees.

4 There's two provisions that the Nevada Supreme Court
5 cites to. 42 U.S.C. 4654, that's cited in the *Sisolak* case.
6 It's right on point. It says if a landowner prevails in an
7 inverse case, the government shall pay those attorney's fees.
8 49 CFR, Section 24.107 says the owner of real property shall be
9 reimbursed their attorney's fees if a judgment in inverse
10 condemnation is rendered in their favor. So these are
11 provisions that are cited by the Nevada Supreme Court in both
12 the *Sisolak* case and the *Hsu* case that where a landowner
13 prevails in an inverse condemnation case they're entitled to
14 their attorney's fees. And that's without exception, Your
15 Honor. The *Hsu* case, or the *Sisolak* case said very
16 succinctly -- here's what it said. "Because *Sisolak* is a
17 property owner who was successful in his inverse condemnation
18 case, the plain terms of the Act allowed the district court to
19 award reasonable attorney's fees." In the *Hsu* case the same
20 exact language is repeated. So we have two different avenues
21 to award attorney's fees.

22 Number one, the Constitution says just compensation
23 shall include reimbursement of all costs and expenses. All
24 costs and expenses clearly contemplates attorney's fees. And
25 then the *Hsu* and *Sisolak* rule, which state that in the State of

1 Nevada if a landowner prevails in an inverse condemnation
2 action they're entitled to reimbursement of their attorney's
3 fees.

4 Now, the argument that the City is going to make
5 about the *Sisolak* and *Hsu* case is they're going to say that,
6 Judge, the landowners in *Sisolak* and *Hsu* were only entitled to
7 attorney's fees because they showed that there were federal
8 funds involved in the taking. And they're going to say that
9 you have to show some type of connection or nexus between the
10 taking and the federal funds.

11 There's two reasons that's not true. Number one,
12 Your Honor, in an inverse condemnation case there are no funds.
13 The government doesn't allocate funds to acquire the property.
14 The government is denying the taking. Therefore, you can't
15 have a direct nexus between the federal funds that the
16 government receives and the taking of the property. All there
17 has to be is some kind of general nexus between the
18 government's program or the government itself and receiving
19 federal funds. So we see this all the time, Your Honor.

20 What the Federal Government will do is they'll say
21 we'll give you federal funds if you do certain things. And in
22 this case the Federal Government says we will give you federal
23 funds as long as you, the City, follow our Act, and if you take
24 property by inverse condemnation you have to reimburse a
25 landowner all of their attorney's fees. This is an absolute

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1 requirement to the City of Las Vegas receiving federal funds.
2 In fact, if the City contests the attorney's fees here, it
3 would be jeopardizing receiving federal funds because it would
4 be contrary to the Federal Relocation Act.

5 Having said that, Your Honor, we have presented to
6 the Court -- they're all before the Court, Exhibit Number 12,
7 Exhibit Number 13 and Exhibit Number 14, which show the City
8 receives federal funds. The City receives federal funds
9 generally for all of its operations, and then Exhibits Number
10 13 and 14 show that the City receives federal funds
11 specifically for parks and open space under what's called
12 Southern Nevada Public Lands Management Act. It's known as
13 SNPLMA. Under SNPLMA, the City of Las Vegas receives federal
14 funds from the federal government to acquire properties and to
15 build properties for parks and open space.

16 That's the purpose for which the property has been
17 taken here, Your Honor. So insofar as there is some type of
18 nexus required to show federal funds between the property
19 that's being taken and -- or, I'm sorry, a nexus between the
20 property being taken and the federal funds that the City of Las
21 Vegas receives, that's set forth in Exhibits Number 12, 13 and
22 14. So, Your Honor, according to those two provisions, the
23 landowners are clearly entitled to reimbursement of their
24 attorney's fees.

25 So the final question, Your Honor, if they're

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1 entitled to reimbursement of attorney's fees, would be how much
2 should that be? The Nevada Supreme Court provided a specific
3 formula for calculating attorney's fees in inverse condemnation
4 cases, and it's unique to inverse condemnation cases in the
5 *County of Clark v. Tien Fu Hsu* case. In that case we litigated
6 on behalf of Mr. Hsu for 14 years, and at the end of that case
7 the Nevada Supreme Court said you're going to get your
8 attorney's fees and here's how they have to be calculated in
9 two steps.

10 Number one, the Lodestar. This Court knows the
11 Lodestar. I'm not going to go through it. You look at the
12 hours and you multiply it by a reasonable rate. The hours we
13 provided to this Court are based upon the affidavits of all of
14 the counsel. Pursuant to NRCPC 54, we've laid out those hours.
15 We've stated in our affidavits for every attorney that copious
16 records were given or kept.

17 On the hourly rate, those hourly rates were done down
18 to the tenth degree, so that, for example, if an individual
19 worked one hour and seven minutes that's 1.1 hours that was
20 recorded. Those were all added up solely and specifically for
21 this 35-acre case, meaning that none of the hours that we are
22 seeking to recover for attorney's fees in this case were spent
23 in the 65, 133 or 17-acre case. That's set forth clearly in
24 our affidavit. And, Your Honor, the rate that we have provided
25 to you was \$450 up to June 1, 2019, and after that it was \$675.

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1 So pursuant to that first step, Your Honor, we've
2 given the Court the total hours worked. It's set forth in the
3 documents. I can provide that to the Court. But the total
4 hours that are worked we've given to the Court and the rate
5 that has been provided of \$450 and \$675 for attorneys and then
6 \$50 for legal assistance, Your Honor, is absolutely reasonable.
7 That was the actual rate that was charged to the client. And
8 so it's the actual rate multiplied by the hours worked that the
9 client has incurred in this case.

10 So the next step, Your Honor, after the actual rate
11 has been determined and the amount is given, is a twelve factor
12 analysis. And, Judge, I'm not going to go through all twelve
13 factors. But the twelve factors are set forth in the Hsu case.
14 We've laid them out in detail in our brief. And I believe --
15 and they're factors that this Court weighs. I believe eleven
16 of the twelve factors were clearly met in this case.

17 I'll address just a few of them, Your Honor.
18 Factors 3 and 9 to consider for whether the rate should be
19 enhanced looks at the skill and experience of the attorneys.
20 Your Honor, eminent domain is a very, very specialized area.
21 The Law Office of Kermitt L. Waters is the only firm that
22 specializes solely in eminent domain in the entire state of
23 Nevada. There's 110 years of combined experience which focuses
24 solely -- or wherein the attorneys for those 110 years have
25 focused exclusively on eminent domain work. The Owners'

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1 Council of America chooses one firm out of every state to be a
2 part of that council. They chose the Law Office of Kermitt
3 Waters.

4 So, Your Honor -- and I'll just address this. The
5 constitutional provisions that we've been discussing in this
6 case, Article 1, Section 8, were drafted by the Law Office of
7 Kermitt L. Waters. The actual case that we're discussing to
8 determine attorney's fees, *County of Clark v. Tien Fu Hsu*, was
9 taken up to the Nevada -- litigated for 14 years and taken up
10 to the Nevada Supreme Court twice by the Law Office of Kermitt
11 L. Waters. So, Your Honor, the skill and experience of the
12 attorneys are clearly met to justify an enhanced fee.

13 Factor Number 5, Your Honor, is what's the customary
14 fee for specialized eminent domain cases. And, Your Honor, we
15 have that here. This is one of the cases where we don't have
16 to go look at what other attorneys charge. We don't have to
17 look at what other people in other specialties get because the
18 Nevada Supreme Court decided the fee for an eminent domain
19 attorney in an inverse condemnation case in *Sisolak*. The
20 Nevada Supreme Court awarded a fee of \$1,392 per hour times
21 1,400 hours. And, Your Honor, that was fifteen years ago.

22 So the one specific issue that really is before you
23 here today that the City really contests is the rate. Again,
24 the last issue was the rate of return on interest; here it's
25 the attorney rate. We ask that the Court follow that *Sisolak*

1 decision and provide a rate, an attorney hourly rate similar to
2 what was awarded in *Sisolak*. What was awarded in *Sisolak* was
3 \$1,392 per hour. That's the same attorney fee that should be
4 awarded in this case.

5 So, and then the final factor, Your Honor, Factor 12
6 was awards in similar cases. So in the *Sisolak* case,
7 Mr. Sisolak got almost \$500,000 less than his appraisal. In
8 this case the landowners, 180 Land, obtained the exact amount
9 of their appraisal report. And in *Sisolak* the Court awarded
10 \$1,392 as the hourly rate. So the award in *Sisolak*, Your
11 Honor, or the comparison of the award in *Sisolak* with the award
12 here, in addition to the actual hourly rate that was awarded in
13 *Sisolak*, we request that the Court multiply the hours worked in
14 this case by a rate similar to what was given in the *Sisolak*
15 case.

16 And, Your Honor, we've set that forth in our reply.
17 And just briefly, with the Court's indulgence, just very
18 quickly I'll get that for the Court. We set it forth in the
19 reply and we also set it forth in our opening motion. For
20 Mr. Waters, a rate of \$1,500 per hour. For James Leavitt, a
21 rate of \$1,300 per hour, which is \$92 less than what the
22 specialized eminent domain counsel received in *Sisolak*
23 fifteen years ago.

24 And for Ms. Waters and Mr. Schneider, \$800 an hour,
25 which is \$500 an hour less than what the specialized eminent

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1 domain counsel was awarded in Sisolak.

2 So, Your Honor, with that said, number one, we
3 respectfully request that the Court award attorney's fees and
4 that the attorney's fees be calculated based upon those rates
5 that I just set forth based upon the Hsu factors.

6 THE COURT: Okay. Thank you, sir.

7 And we'll hear the opposition.

8 MR. MOLINA: Thank you, Your Honor. Personally and
9 for the City I'll be handling this opposition. So I think that
10 we agree with the developer on probably one thing, and that's
11 that there are two steps in this analysis. First, you have a
12 basis for awarding attorney's fees; and second, if there is a
13 basis, what is a reasonable fee. And as Mr. Leavitt stated,
14 there are three bases that the developer is attempting to
15 recover attorney's fees under. The first one is the Uniform
16 Relocation Assistance and Real Property Acquisition Policies
17 Act of 1970. That's -- we'll refer to that as the Uniform
18 Relocation Act. The second basis is Article 1, Section 22,
19 subsection 4 of the Nevada Constitution. And then also in
20 their motion they've also argued that they should be entitled
21 to attorney's fees under NRS 18.010, subsection 2(b).

22 I'll start with the Uniform Relocation Act because I
23 think that that's probably the most complicated one to get
24 through. Now, the developer has cited Title 49 of the Code of
25 Federal Regulations, Section 24.107, for the proposition that

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1 the Court must award attorney's fees in inverse condemnation
2 actions, and we have directed the Court in our briefing to the
3 applicability section of that regulation. That's
4 Section 24.101. And what this says is that the Uniform
5 Relocation Act applies to two different types of programs or
6 projects.

7 The first one is a direct federal program or project,
8 and that means that there's a direct federal program and it's
9 an acquisition of real property for a direct federal program or
10 project.

11 The second type is a program or project receiving
12 federal financial assistance, and this is under subsection (b)
13 of that regulation. And it says, "The requirements of this
14 subpart apply to any acquisition of real property for programs
15 and projects where there is federal financial assistance in any
16 part of the project costs."

17 And where I'm going with this is that the City has no
18 project planned for the 35-acre property. The City has no
19 federal funding that they are going to receive for this
20 hypothetical project that does not exist. And so this section
21 plainly on its face does not apply.

22 Well, why did it apply in *Sisolak*? Well, it's pretty
23 clear why it applied in *Sisolak*, and the court made it quite
24 clear and I'll just quote from it. It says,

25 "Here, the Relocation Act entitles Sisolak

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1 to an award of attorney's fees because the
2 County received federal funding for numerous
3 improvements at McCarran Airport, including
4 runway construction and land acquisition. The
5 County was eligible to receive the federal
6 funding specifically because it made assurances
7 that it took steps by enacting ordinances to
8 protect the airspace needed for aerial
9 approaches to the airport and to prevent future
10 construction in that airspace."

11 So what you have in *Sisolak* and what you also have in
12 the Hsu case is a federal project, a federal -- a program or
13 project that receives federal funding, and we don't have that
14 here. What Mr. Leavitt has argued is that, well, the City
15 receives federal funds generally and they receive federal funds
16 through the Southern Nevada Lands Public Management Act, and
17 therefore, you know, this is enough to make the Uniform
18 Relocation Act apply, and that's -- it's simply false.

19 What he does is he focuses on this language in
20 *Sisolak* where the *Sisolak* court rejected the County's argument
21 that there must be a specific nexus. The *Sisolak* court never
22 held that there can be no nexus; as long as you receive federal
23 funds the Uniform Relocation Act applies. That's not what they
24 said. What they said was there doesn't need to be a specific
25 nexus. And so there has to be a nexus and that's just sort of

1 the bottom line here is that there's no program or project
2 that's going to receive any federal funding here. The City is
3 certainly not going to get any money from the federal
4 government to pay the just compensation award or any other sums
5 that are awarded against the City. And there's simply no
6 project and there's no nexus.

7 And what's telling here is that you have two other
8 Nevada Supreme Court cases, one that predates *Sisolak* and the
9 other one is post *Sisolak*. The one that predates *Sisolak* is
10 *Alper* and *Alper* was not overruled by *Sisolak*. In *Alper*, the
11 Court made it quite clear that -- and I'll just go ahead and
12 read from it. It says,

13 "Since the Alpers did not produce any
14 evidence that federal funds had been received by
15 the County to acquire or widen that portion of
16 Flamingo Road which is subject to the present
17 inverse condemnation proceeding, NRS 342.320(2)
18 does not apply."

19 And that statute that the court cited there was the
20 State equivalent of the Uniform Properties Act -- Uniform
21 Relocation Act, and it simply just says that when it applies to
22 an agency the policies must be followed. That's all that that
23 says, so it's essentially the same rule. And as I've already
24 explained, it just simply doesn't apply.

25 So before *Sisolak* you have the Nevada Supreme Court

1 saying if you don't show that there's any evidence that there
2 was federal funds received for this project -- there was
3 actually a project there, a street widening project -- then
4 this doesn't apply. And after *Sisolak* we have another case.
5 We have *Buzz Stew*. And in *Buzz Stew v. City of North Las Vegas*
6 the court kind of tangentially rejected expert evidence of the
7 Uniform Relocation Act. And what they said there was,

8 "Any additional testimony regarding the
9 Relocation Act, the district court did not err
10 in excluding this evidence, as *Buzz Stew* failed
11 to show that federal funds were used for the
12 project."

13 The project. No evidence showing that federal funds
14 were used for the project. And again, you have a project there
15 and here we do not. There's no project. What is the project?
16 It does not exist. So you have case law before and after
17 *Sisolak* that explains that there has to be a nexus.

18 There doesn't have to be a specific nexus, but it's
19 got to be a nexus. You can't just say that, oh, every city in
20 the country, basically, receives federal funding. And if that
21 were enough to trigger the statute, then we wouldn't have this
22 conversation right now. It would be completely clear based on
23 the case law and the Nevada Supreme Court certainly wouldn't
24 have rejected that argument in *Buzz Stew*.

25 So, and I'll also say one more thing about *Buzz Stew*

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1 because the Nevada Supreme Court cited two cases, one from the
2 Seventh Circuit and one from Colorado. In the Seventh Circuit
3 decision, *Rhodes v. City of Chicago for Use of Schools*, the
4 Seventh Circuit held Section 4655, which is the statute that
5 gives rise to the regulations that I was discussing before,

6 "Section 4655 is applicable only when
7 federal financial assistance is used in or
8 directly supports the property acquisition."

9 And then the Seventh Circuit went on to say,

10 "While substantial sums of federal money
11 are channeled into the Chicago public school
12 system, there is no evidence that federal funds
13 are used for the acquisition of property by the
14 Chicago Board of Education."

15 So again, there's got to be some kind of a nexus and
16 there's got to be a project. The other case that the Nevada
17 Supreme Court cited to in *Buzz Stew is Regional Transportation*
18 *District v. Outdoor Systems, Inc.* That was a Colorado
19 decision. And there -- that is an en banc Colorado decision.
20 And there the court stated that the regulations under the
21 Uniform Relocation Act,

22 "make clear that not every acquisition made
23 by a state agency that ultimately wins federal
24 funding falls within the Act's ambit. The
25 phrasing of the regulation implies that it

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1 covers situations where an agency identifies a
2 parcel of land needed for a particular project
3 and then sets out to obtain it."

4 So we've got, you know, very recent or fairly recent
5 Nevada Supreme Court authority in *Buzz Stew* citing to both of
6 these cases and they reached the same conclusion that the City
7 is arguing here that unless you have a project and unless you
8 can show that there's funding that's at least related to that
9 project, then the Uniform Relocation Act doesn't apply. So we
10 would submit that that's pretty -- that should be a pretty
11 simple issue, Your Honor. We don't think that there's really
12 any legitimate basis to claim that the Uniform Relocation Act
13 applies.

14 The next basis that the developer is relying on to
15 claim attorney's fees is Article 1, Section 22, subsection 4 of
16 the Nevada Constitution. And as Mr. Leavitt noted, this is
17 something that Mr. Waters had participated in. And nowhere in
18 this section is the word inverse condemnation mentioned at all.
19 And that is pretty telling.

20 And for the same reason that -- I'll get back to this
21 in a second, but in *Buzz Stew* what happened is that the City of
22 North Las Vegas actually prevailed in that action, and what
23 they said was -- the developer, the property owner there had
24 argued that the Nevada Constitution protected against an award
25 of costs. And the court said, well, in eminent domain

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1 actions -- this is the *Buzz Stew* court -- they said in eminent
2 domain actions such costs are curtailed. And they cited to
3 Nevada Constitution Article 1, Section 22, subsection 7. And
4 then they went on to say,

5 "The present case was an unsuccessful
6 action for pre-condemnation damages wherein the
7 City prevailed on its defense. Therefore, we
8 cannot say that under the facts of this case the
9 district court clearly erred."

10 And what the court just did there is they
11 distinguished an action for pre-condemnation damages from an
12 action based in eminent domain. And they held that it doesn't
13 apply to an action for pre-condemnation damages because the
14 constitutional provision at issue here on its face only refers
15 to eminent domain proceedings. It's qualified and limited to
16 eminent domain proceedings.

17 And the other key thing here is that in reaching that
18 conclusion the Nevada Supreme Court cited to a California case,
19 *Locklin v. City of LaFayette*, that held that an inverse
20 condemnation plaintiff who did not prevail in a takings claim
21 was not entitled to be shielded by the law against awarding
22 costs in eminent domain actions. So not only did the Nevada
23 Supreme Court distinguish the *Buzz Stew* case from the
24 constitutional provision that allows for -- that shields
25 landowners from having to pay the government their costs, it

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1 also distinguished inverse condemnation from eminent domain in
2 citing to this *Locklin v. City of Lafayette* case. And this is
3 very recent, Your Honor. This is a 2015 decision basically
4 distinguishing that.

5 And so it's clear, then, that this is -- there is a
6 distinction that's important here for purposes of construing
7 the Nevada Constitution, and that distinction is that these
8 provisions, these protective provisions that were adopted by
9 the voters in 2008, they only apply to eminent domain actions,
10 and that's pretty clear.

11 I'll respond to one thing that Mr. Leavitt pointed
12 out about the ballot initiative. They made this argument in
13 their motion that because the Nevada voters, you know, were
14 given the information about the Act that said that, you know,
15 the government would have to pay attorney's fees in every
16 eminent domain case, therefore the Nevada voters knew that
17 attorney's were going to have to be paid in inverse
18 condemnation cases. Well, I mean, there's very clear law in
19 Nevada that those ballot explanations are not proper for
20 purposes of ascertaining legislative intent. That's now how
21 you construe a ballot proposition.

22 So for those reasons, we would argue that Article 1,
23 Section 22 of the Nevada Constitution does not apply to an
24 inverse condemnation action and it does not apply to this case.

25 And, Your Honor, I'll just briefly address the last

1 basis. I don't think that Mr. Leavitt spent much time on this
2 but, you know, they also claimed attorney's fees in their
3 motion under NRS. 18.010 2(b). And, you know, that provision,
4 as I know the Court is aware, it applies when, you know,
5 somebody makes a claim or a counterclaim or interposes some
6 kind of a defense for the purpose of harassing the other side,
7 being vexatious, frivolous arguments, things of that nature.
8 And we would submit that all of the arguments that we've made
9 in this case have been based on well-established law.

10 Everything that we've argued here has been supported
11 by ample law. And certainly there has been no effort on the
12 City's part to try to harass the developer in making any
13 arguments. That's just simply not true.

14 So, really we should not even get into the second
15 step of the analysis, which is what is a reasonable fee,
16 because we don't have a basis for awarding attorney's fees
17 here. The Uniform Relocation Act doesn't apply. The Nevada
18 Constitution provisions, the PISTOL amendments do not apply to
19 inverse condemnation cases. And we just don't have a grounds
20 here for applying NRS 18.010 2(b). But obviously I have to
21 respond to those and of course we can get -- these fees are
22 just outrageous.

23 The interesting thing here is that the developer
24 incurred 2.1 million dollars in attorney's fees, according to
25 their motion, and they're requesting 3.4 million dollars in

1 attorney's fees based on this argument that they should be
2 entitled to an enhanced fee under *Hsu*. Now, *Hsu* doesn't say
3 that the court can award an enhanced fee. What it says is that
4 you can make an appropriate adjustment.

5 And I'll just -- actually, to be careful here, I'll
6 read the language verbatim. What *Hsu* said was, "Following
7 determination of the lodestar amount, we leave it to the sound
8 discretion of the district court to adjust this fee based
9 upon" -- twelve factors. It doesn't say enhanced fee. That is
10 something that the developer completely made up. If you search
11 that decision for the word enhanced or enhance or increase or
12 upward adjustment, none of those things come up. It's an
13 adjustment based on these factors and it's basically to make
14 the fee reasonable.

15 And so all that *Hsu* said was that you multiply the
16 number of hours spent by a reasonable rate and then you adjust
17 it based on these factors. It doesn't say that they get an
18 enhanced fee. And an enhanced fee of 1.3 million dollars, Your
19 Honor, is pretty steep.

20 What the developer doesn't talk about in his motion
21 is all of the law that we have in Nevada about what's a
22 reasonable fee. It's pretty clear that when a court determines
23 what a reasonable fee is, it looks at the relevant
24 jurisdiction, and the relevant jurisdiction here is the Las
25 Vegas market.

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1 So what we did is we went out and we got this Real
2 Rate Report from Wolters Kluwer and they published that report
3 specifically for these types of motions so that the court can
4 see what -- you know, what is the market charging, you know,
5 from year to year and that can be used as a basis to determine
6 reasonableness of a fee. So what we showed in the rate report
7 was that in 2017 the average rate charged was \$410 for partners
8 and \$264 for associates in the Las Vegas market. And that was
9 pretty steady. In 2018 it was \$444 for partners and \$279 for
10 associates. In 2019 it actually went down a little bit. For
11 partners it went down to \$438 for partners and \$281 for
12 associates.

13 So that just puts a little bit of context here on
14 what the developer is requesting, which is \$1,500 an hour for
15 Kermitt Waters; \$1,300 per hour for Mr. Leavitt; \$800 per hour
16 for Autumn Waters; and \$800 per hour for Mr. Schneider. All of
17 those rates are at least twice the amount of the average rates
18 that are charged in the Las Vegas submarket.

19 And with respect to the rates that Mr. Waters and Mr.
20 Leavitt are requesting, it's almost three times or almost four
21 times the amount of the average rate, which was around \$438 for
22 partners in 2019.

23 So, Your Honor, we think that these are grossly, you
24 know, disproportionate to what's reasonable in the Las Vegas
25 market. But once again, we don't think that we even get to

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1 this step in the analysis because there's just no basis for
2 awarding attorney's fees in this case.

3 THE COURT: And, sir, I just have one question. What
4 about the references made to the *Sisolak* case and the hourly
5 rate that was awarded in that matter?

6 MR. MOLINA: Sure. So in the *Sisolak* case the
7 counsel for Sisolak, Laura Rehfeldt, she took that case on a
8 contingency fee. And I believe that we actually attached to
9 our opposition the lower court's analysis of, you know, how he
10 arrived at that amount. And essentially, you know, what he did
11 was he looked at this as a contingency case and compensated her
12 for taking on the risk of, you know, litigating that case all
13 the way up to the Nevada Supreme Court and back and not having
14 been paid at all during that time. And so a higher amount for
15 that case was appropriate, given the fact that she had taken on
16 that risk and, you know, she deserved to be compensated for it.

17 In this case the developer actually got paid. They
18 got paid, according to their motion, 2.1 million dollars in
19 fees already. So it wasn't a contingency fee, and so it's not
20 appropriate to use what was awarded in *Sisolak* as a benchmark
21 for what's appropriate and reasonable in this case.

22 THE COURT: All right, sir. Thank you.

23 MR. MOLINA: Thank you.

24 THE COURT: And, Mr. Leavitt?

25 MR. LEAVITT: Yes, Your Honor. Again, James J.

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1 Leavitt on behalf of the plaintiff, 180 Land, landowner. Your
2 Honor, I'll start where we ended there on the Sisolak hourly
3 rate. It's true that Ms. Fitzsimmons handled the Sisolak case
4 on a contingency fee basis; however, the court never once
5 stated that it was awarding that attorney fee of \$1,392 based
6 on a contingency fee. That's nowhere in the decision. Nowhere
7 in the decision does the court say, hey, because you had such
8 great risk that you might not get paid, we're going to pay --
9 we're going to affirm a \$1,392 award. The court expressly
10 stated that she was awarded the amount of the fee, which was
11 \$1,392 times 1,400 hours, Your Honor. There was no caveat.
12 Therefore, that's the only case that we have in Nevada that
13 provides a reasonable rate for an attorney who specializes in
14 an eminent domain case.

15 The government has tried to attach this Real Rate
16 Report, which is a general rate report, which are general fees
17 for general attorneys. There's nothing in there about the rate
18 that attorneys charge in a specialized area or a rate that
19 attorneys are entitled to in a specialized area.

20 Secondly, the rate that's in that Real Rate Report
21 that counsel brought to you is less than the attorney fee rate
22 that Mr. Ogilvie's office is charging, Your Honor. And that's
23 a government rate. We laid out in our report that government
24 rates are typically lower. So, Your Honor, that Real Rate
25 Report is -- it has no basis in Nevada law, number one. It's

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1 not cited in any Nevada case, number two. And number three,
2 it's contrary to the *Sisolak* decision.

3 Again, we have a case right on point which is
4 fifteen years old. Your Honor, we didn't go into the *Sisolak*
5 case and say, listen, \$1,392 was awarded in *Sisolak* and we want
6 you to adjust that up for fifteen years. We didn't do that.
7 My rate that I'm asking for is \$92 an hour less than *Sisolak's*
8 rate or the attorney in *Sisolak's* rate fifteen years ago. It's
9 a little bit higher for Mr. Waters for obvious reasons.
10 Mr. Waters has been described as the preeminent eminent domain
11 attorney on the entire west coast. He's known as that for the
12 west coast. There's another attorney for the east coast. So
13 an hourly rate in this specialized area that we've requested is
14 consistent not only with *Sisolak* but consistent with the
15 experience and the reputation of 110 years of specializing in
16 the area of eminent domain.

17 Now, counsel also brought up the *Hsu* decision. If
18 the *Hsu* case -- if in the *Hsu* case the Nevada Supreme Court did
19 not want the court to consider the twelve factors for an
20 enhanced rate, all the court would have had to have done is say
21 determine -- under the Lodestar analysis determine a reasonable
22 rate and then multiply it by the hours, and the analysis would
23 end there. It would entirely end there.

24 But the Nevada Supreme Court understood the nature of
25 an inverse condemnation case and said that after the court

1 determines the reasonable hourly rate, after the court -- or
2 times that by the number of hours worked, the court must then
3 consider these twelve factors. And every one of those twelve
4 factors are targeted towards enhancing a fee. Why would the
5 court want you to consider the reputation and skill of the
6 attorney if it was going to reduce the fee? Why would the
7 court want you to consider the outcome if it was going to
8 reduce the fee? So, Your Honor, it's clear that those factors
9 were provided to ask the court to look at the rate that was
10 charged, actually charged in the case and then enhance it
11 upward, exactly as was done in the *Sisolak* case, other than the
12 contingency fee was the starting point.

13 And, Your Honor, I will add one thing here.
14 Typically in an inverse condemnation case the contingency fee
15 is 30 percent. That fee would be more than 10 million dollars
16 in this case. So the fee which we're asking for here, which is
17 based upon \$1,392, that counsel says is outrageous based on
18 3.4 million dollars, is less than one-third of the typical
19 contingency fee that we would have charged in an inverse
20 condemnation case such as this.

21 I'll turn to the Constitution. The City of Las Vegas
22 concedes that attorney's fees under the Constitution are part
23 of a just compensation award. But what the City says is they
24 say, well, that's just part of the just compensation award in
25 an eminent domain case, you don't get attorney's fees in an

1 inverse condemnation case. Your Honor, this Court has entered
2 findings of fact and conclusions of law. The Nevada Supreme
3 Court has entered a holding in *Alper*. The Nevada Supreme Court
4 has entered a holding in *Argier* and about five other cases that
5 stated that eminent domain cases are the constitutional
6 equivalent of inverse condemnation cases and are governed by
7 the same rules and principles. So therefore, if a landowner is
8 entitled to recover their attorney's fees in an eminent domain
9 case, they're entitled to recover their fees in an inverse
10 condemnation case.

11 That not only is long-standing precedent in the state
12 of Nevada that the two cases are the constitutional equivalent,
13 but it's the law of this case now. So to argue that -- or to
14 try and split hairs between an inverse condemnation case and an
15 eminent domain case at this point in the case is simply
16 unreasonable, Your Honor, since it's already been adjudicated
17 fully in this case and by the Nevada Supreme Court.

18 Secondly, it makes no sense whatsoever to grant
19 attorney's fees under the Constitution in a direct eminent
20 domain case but not an inverse condemnation case. Let me read
21 to you the policy that comes out of the *Sisolak* case. So in
22 the *Sisolak* case the Nevada Supreme Court awarded attorney's
23 fees in an inverse condemnation case and here's what the court
24 held. It is inevitable that a landowner in an inverse
25 condemnation case will be forced to pay greater litigation

1 expenses than would have been necessary than if the City had
2 properly performed its function and condemned the property.

3 What the Nevada Supreme Court is saying there is that
4 when a landowner brings an inverse condemnation case they have
5 to incur greater fees and costs and expenses. Therefore,
6 they're entitled to their attorney's fees. Counsel is trying
7 to wear that policy exactly backwards and say, well, if the
8 government acts properly, as it should have done in this case,
9 but if the government acts properly and files an eminent domain
10 case and you go through the eminent domain process, the
11 landowner is entitled to attorney's fees under the
12 Constitution. But if the government doesn't act properly and
13 it tries to take that property without paying for it and the
14 landowners have to sue the government in inverse condemnation,
15 the landowner doesn't get attorney's fees. It makes absolutely
16 no sense whatsoever. It's contrary to the public policy that's
17 set forth in the *Sisolak* decision and it's contrary to the law
18 of this case and Nevada Supreme Court precedent that inverse
19 condemnation cases deserve the same protection as eminent
20 domain cases.

21 Actually, Your Honor, the Nevada Supreme Court has
22 been very clear that landowners in inverse condemnation cases
23 get greater protections than landowners in direct eminent
24 domain cases because in an inverse condemnation case the
25 government has acted improperly and tried to take the property

1 without paying for it, which is a violation of the landowner's
2 constitutional right. And because the government violates that
3 constitutional right, the government has to pay the landowner's
4 attorney's fees.

5 Your Honor, I'll address the last -- a couple last
6 issues on the Relocation Act. Your Honor, counsel is making
7 the same argument that the County of Clark made in *Hsu* and in
8 *Sisolak* because there has to be a direct nexus between the
9 federal funds received and the project for which the property
10 is being taken. Your Honor, in an inverse condemnation case
11 there is no project for which the property is being taken.
12 That's the issue. The government tries to take the property
13 without paying for it without a project, and that was the case
14 in the *Sisolak* case, or that was the situation in the *Sisolak*
15 case.

16 In the *Sisolak* case, the airport received federal
17 funds, but Mr. Sisolak's property was one mile away from the
18 airport. It wasn't part of some project at the airport, as
19 counsel stated. There was no project and no funds for that
20 project. The reason Mr. Sisolak was able to recover attorney's
21 fees is because he presented evidence to the district court
22 that the airport receives federal funds and is therefore bound
23 by the Federal Relocation Act.

24 Here, we've provided that same evidence; not only
25 that the City of Las Vegas generally receives federal funds,

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1 but the City of Las Vegas receives federal funds for the
2 specific taking that happened in this case. Under the Southern
3 Nevada Public Lands Management Act, the City gets federal funds
4 for parks and open space. They apply for it. They get it.
5 Not only is that a general nexus, Your Honor, that's a specific
6 nexus directly tied to the purpose for which this property was
7 taken. And you remember well, Your Honor, and I'm not going to
8 go back through the facts of how this property was taken for a
9 public park and open space. Therefore, Your Honor, the
10 landowners are entitled to reimbursement of attorney's fees
11 under the Constitution, the constitutional provision which
12 applies to eminent domain and inverse condemnation cases, and
13 they're entitled to reimbursement of their attorney's fees
14 under the plain language of the *Sisolak* case. And we'd ask
15 this Court that it apply that enhanced fee, very similar to
16 what was given to the specialized eminent domain counsel in
17 *Sisolak* fifteen years ago.

18 I'll address one last issue, the *Buzz Stew* case.
19 Counsel cites the *Buzz Stew* case as apparently some type of
20 grounds to deny attorney's fees. In *Buzz Stew*, number one, it
21 was a pre-condemnation damage case, and number two, the
22 landowner lost. He didn't win. This is an inverse
23 condemnation case and the landowners won. Therefore, *Buzz Stew*
24 has absolutely no application here. When a landowner prevails
25 in an inverse condemnation case in the state of Nevada, they

1 are entitled to their attorney's fees, not only under the
2 constitutional provision, but also under *Sisolak* and *Hsu*.

3 And I'll just say one last thing, Your Honor. The
4 Constitution was not unclear. The Constitution says just
5 compensation shall include. What was this case about? This
6 case was about just compensation. So just compensation shall
7 include those costs and those expenses actually incurred. That
8 means what we're talking about (video interference) that they
9 be awarded.

10 THE COURT: We lost you at the very end there, sir.

11 MR. LEAVITT: What's that, Your Honor?

12 THE COURT: We lost you at the very end there, the
13 last 10 seconds or so. And then when you're done, I have a
14 question for you.

15 MR. LEAVITT: Sure. Your Honor, my only statement is
16 that Article 1, Section 22 of the Nevada Constitution states
17 that just compensation shall include -- and then it goes on to
18 describe what's included. And, Your Honor, clearly attorney's
19 fees were part of that. Therefore, just compensation includes
20 payment of attorney's fees in this case.

21 And then I'll entertain your question, Your Honor.

22 THE COURT: And here's my question. I'm looking at,
23 I think it's page 10 of the motion, and it itemizes the actual
24 amount of fees that were paid, I think. And this would start
25 at line 1. It says, "The following shows the total attorney's

1 fees using these rates." And would that have been -- and I
2 guess it totals up, \$2,165,359.50. And plus it has a certain
3 number for legal assistants at a \$50 rate and that total was
4 \$44,912.50. Would that be the actual fees incurred in this
5 case?

6 MR. LEAVITT: Yes, Your Honor. Those are the actual
7 fees incurred. However, subsequent to the filing of the motion
8 additional attorney's fees were incurred, and those additional
9 attorney's fees are on page 9 of the reply.

10 THE COURT: Okay.

11 MR. LEAVITT: And I can give you those numbers if
12 you'd like, but you can see them on page 9.

13 THE COURT: Yeah. I have everything right in front
14 of me.

15 MR. LEAVITT: Yeah. On page 9, line 6. And the
16 additional legal assistant hours worked are page 9, line 9. So
17 adding -- so on line 6, adding the \$211,000 to the -- rounding
18 out the -- sorry, the two hundred -- or, I'm sorry, the
19 2.1 million and change, that's the actual fees incurred up to
20 January 25th.

21 THE COURT: Okay. And here's my question, Mr.
22 Leavitt. And I do agree that -- with your argument regarding
23 the award of fees pursuant to the Uniform Relocation Act,
24 pursuant to the Nevada Constitution, and also I understand your
25 position as it relates to the application of NRS 18.010. But