

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84345

Electronically Filed
Sep 30 2022 10:41 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

No. 84640

**AMENDED
JOINT APPENDIX
VOLUME 126, PART 5**

LAW OFFICES OF KERMITT L. WATERS

Kermitt L. Waters, Esq.

Nevada Bar No. 2571

kermitt@kermittwaters.com

James J. Leavitt, Esq.

Nevada Bar No. 6032

jim@kermittwaters.com

Michael A. Schneider, Esq.

Nevada Bar No. 8887

michael@kermittwaters.com

Autumn L. Waters, Esq.

Nevada Bar No. 8917

autumn@kermittwaters.com

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

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

LAS VEGAS CITY ATTORNEY'S OFFICE

Bryan K. Scott, Esq.

Nevada Bar No. 4381

bscott@lasvegasnevada.gov

Philip R. Byrnes, Esq.

pbyrnes@lasvegasnevada.gov

Nevada Bar No. 166

Rebecca Wolfson, Esq.

rwolfson@lasvegasnevada.gov

Nevada Bar No. 14132

495 S. Main Street, 6th Floor

Las Vegas, Nevada 89101

Telephone: (702) 229-6629

Attorneys for City of Las Vegas

CLAGGETT & SYKES LAW FIRM

Micah S. Echols, Esq.

Nevada Bar No. 8437

micah@claggettlaw.com

4101 Meadows Lane, Suite 100

Las Vegas, Nevada 89107

(702) 655-2346 – Telephone

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

McDONALD CARANO LLP

George F. Ogilvie III, Esq.

Nevada Bar No. 3552

gogilvie@mcdonaldcarano.com

Amanda C. Yen, Esq.

ayen@mcdonaldcarano.com

Nevada Bar No. 9726

Christopher Molina, Esq.

cmolina@mcdonaldcarano.com

Nevada Bar No. 14092

2300 W. Sahara Ave., Ste. 1200

Las Vegas, Nevada 89102

Telephone: (702) 873-4100

LEONARD LAW, PC

Debbie Leonard, Esq.

debbie@leonardlawpc.com

Nevada Bar No. 8260

955 S. Virginia Street Ste. 220

Reno, Nevada 89502

Telephone: (775) 964.4656

SHUTE, MIHALY & WEINBERGER, LLP

Andrew W. Schwartz, Esq.

schwartz@smwlaw.com

California Bar No. 87699

(admitted pro hac vice)

Lauren M. Tarpey, Esq.

ltarpey@smwlaw.com

California Bar No. 321775

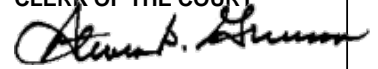
(admitted pro hac vice)

396 Hayes Street

San Francisco, California 94102

Telephone: (415) 552-7272

Attorneys for City of Las Vegas



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

Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

NOTICE OF ENTRY OF:

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

Hearing Date: January 19, 2022

Hearing Time: 10:00 a.m.

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

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A copy of the Order is attached hereto.
DATED this 17th day of February, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and
3 that on the 17th day of February, 2022, pursuant to NRCP 5(b), a true and correct copy of the
4 foregoing: **NOTICE OF ENTRY OF: ORDER GRANTING PLAINTIFFS LANDOWNERS'**
5 **MOTION FOR REIMBURSEMENT OF PROPERTY TAXES** was served on the below via
6 the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage
7 prepaid and addressed to, the following:

8 **McDONALD CARANO LLP**

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

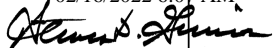
12 **LAS VEGAS CITY ATTORNEY'S OFFICE**

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

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

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

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


CLERK OF THE COURT

ORDR

LAW OFFICES OF KERMITT L. WATERS

Kermitt L. Waters, Esq., Bar No. 2571

kermitt@kermittwaters.com

James J. Leavitt, Esq., Bar No. 6032

jim@kermittwaters.com

Michael A. Schneider, Esq., Bar No. 8887

michael@kermittwaters.com

Autumn L. Waters, Esq., Bar No. 8917

autumn@kermittwaters.com

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

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

Date of Hearing: January 19, 2022

Time of Hearing: 10:00 a.m.

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

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

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

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

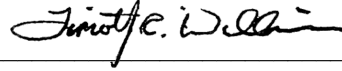
23 The Landowners presented uncontested evidence that they paid property taxes from August
24 2, 2017, up to the date of the hearing in this matter in the amount of \$976,889.38.
25

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

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

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

Dated this 16th day of February, 2022



MH

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

Submitted By:

Content Reviewed and Approved by:

LAW OFFICES OF KERMIT L. WATERS

McDONALD CARANO LLP

By: /s/ James J. Leavitt

Kermitt L. Waters (NV Bar No. 2571)
James J. Leavitt (NV Bar No. 6032)
Michael A. Schneider (NV Bar No. 8887)
Autumn L. Waters (NV Bar No. 8917)
704 South Ninth Street
Las Vegas, Nevada 89101

By: Did not respond

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

EHB COMPANIES

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

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

Attorneys for Plaintiffs Landowners

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

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

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

Hi George,

Attached for your review are the following proposed orders:

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

ORDER GRANTING PLAINTIFFS LANDOWNERS' MOTION FOR REIMBURSEMENT OF PROPERTY
TAXES

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

Thank you and have a great weekend.

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

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you have received this e-mail in error, please immediately notify me at (702) 733-8877 and
permanently delete the original and any copy of any e-mail and any printout thereof.

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

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: 2/16/2022

16 Jeffry Dorocak

jdorocak@lasvegasnevada.gov

17 Leah Jennings

ljennings@mcdonaldcarano.com

18 Philip Byrnes

pbyrnes@lasvegasnevada.gov

19 Todd Bice

tlb@pisanellibice.com

20 Dustun Holmes

dhh@pisanellibice.com

21 Jeffrey Andrews

jandrews@lasvegasnevada.gov

22 Robert McCoy

rmccoy@kcnvlaw.com

23 Stephanie Allen

sallen@kcnvlaw.com

24 Christopher Kaempfer

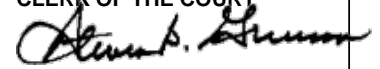
ckaempfer@kcnvlaw.com

25 Adar Bagus

abagus@kcnvlaw.com

1	Michael Wall	mwall@hutchlegal.com
2	Maddy Carnate-Peralta	mcarnate@hutchlegal.com
3	Autumn Waters	autumn@kermittwaters.com
4	Michael Schneider	michael@kermittwaters.com
5	James Leavitt	jim@kermittwaters.com
6	Kermitt Waters	kermitt@kermittwaters.com
7	Elizabeth Ham	EHam@ehbcompanies.com
8	Jelena Jovanovic	jjovanovic@mcdonaldcarano.com
9	Amanda Yen	ayen@mcdonaldcarano.com
10	George Ogilvie III	gogilvie@Mcdonaldcarano.com
11	Karen Surowiec	ksurowiec@Mcdonaldcarano.com
12	Christopher Molina	cmolina@mcdonaldcarano.com
13	Jennifer Knighton	jknighton@ehbcompanies.com
14	CluAynne Corwin	ccorwin@lasvegasnevada.gov
15	Evelyn Washington	evelyn@kermittwaters.com
16	Stacy Sykora	stacy@kermittwaters.com
17	Desiree Staggs	dstaggs@kcnvlaw.com
18	Shannon Dinkel	sd@pisanellibice.com
19	Debbie Leonard	debbie@leonardlawpc.com
20	Andrew Schwartz	Schwartz@smwlaw.com
21	Lauren Tarpey	LTarpey@smwlaw.com
22	David Weibel	weibel@smwlaw.com
23	Sandy Guerra	sandy@kermittwaters.com
24		
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26		
27		
28		

1	Jennifer Knighton	jknighton@ehbcompanies.com
2		
3	Elizabeth Ham	EHam@ehbcompanies.com
4	Rebecca Wolfson	rwolfson@lasvegasnevada.gov
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**NOE
LAW OFFICES OF KERMITT L. WATERS**

Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com

James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com

Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com

Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com

704 South Ninth Street
Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

NOTICE OF ENTRY OF:

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

Hearing Date: January 19, 2022

Hearing Time: 10:00 a.m.

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

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A copy of the Order is attached hereto.
DATED this 17th day of February, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/ James J. Leavitt
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

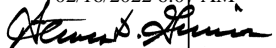
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McDONALD CARANO LLP

LAS VEGAS CITY ATTORNEY'S OFFICE

SHUTE, MIHALY & WEINBERGER, LLP

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


CLERK OF THE COURT

ORDR

LAW OFFICES OF KERMITT L. WATERS

Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
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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

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

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

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

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

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

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

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

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

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

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

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

THEREFORE, IT IS HEREBY ORDERED THAT the City pay to the Landowners costs in the amount of **\$274,445.16**.

IT IS FURTHER ORDERED THAT the judgment that is entered in this matter shall include this **\$274,445.16** to be paid by the City to the Landowners.

Dated this 16th day of February, 2022

Timothy C. Williams

MH

51A C54 4F89 7CD2
Timothy C. Williams
District Court Judge

Submitted By:

Content Reviewed and Approved by:

LAW OFFICES OF KERMITT L. WATERS

McDONALD CARANO LLP

By: /s/ James J. Leavitt

By: Did Not Respond

Kermitt L. Waters (NV Bar No. 2571)
James J. Leavitt (NV Bar No. 6032)
Michael A. Schneider (NV Bar No. 8887)
Autumn L. Waters (NV Bar No. 8917)
704 South Ninth Street
Las Vegas, Nevada 89101

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

EHB COMPANIES

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

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

Attorneys for Plaintiffs Landowners

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

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

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

Hi George,

Attached for your review are the following proposed orders:

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

ORDER GRANTING PLAINTIFFS LANDOWNERS' MOTION FOR REIMBURSEMENT OF PROPERTY
TAXES

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

Thank you and have a great weekend.

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

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23044

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:

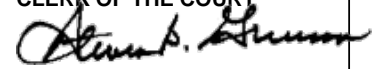
15 Service Date: 2/16/2022

16 Jeffry Dorocak	jdorocak@lasvegasnevada.gov
17 Leah Jennings	ljennings@mcdonaldcarano.com
18 Philip Byrnes	pbyrnes@lasvegasnevada.gov
19 Todd Bice	tlb@pisanellibice.com
20 Dustun Holmes	dhh@pisanellibice.com
21 Jeffrey Andrews	jandrews@lasvegasnevada.gov
22 Robert McCoy	rmccoy@kcnvlaw.com
23 Stephanie Allen	sallen@kcnvlaw.com
24 Christopher Kaempfer	ckaempfer@kcnvlaw.com
25 Adar Bagus	abagus@kcnvlaw.com

26
27
28

1	Michael Wall	mwall@hutchlegal.com
2	Maddy Carnate-Peralta	mcarnate@hutchlegal.com
3	Autumn Waters	autumn@kermittwaters.com
4	Michael Schneider	michael@kermittwaters.com
5	James Leavitt	jim@kermittwaters.com
6	Kermitt Waters	kermitt@kermittwaters.com
7	Elizabeth Ham	EHam@ehbcompanies.com
8	Jelena Jovanovic	jjovanovic@mcdonaldcarano.com
9	Amanda Yen	ayen@mcdonaldcarano.com
10	George Ogilvie III	gogilvie@Mcdonaldcarano.com
11	Karen Surowiec	ksurowiec@Mcdonaldcarano.com
12	Christopher Molina	cmolina@mcdonaldcarano.com
13	Jennifer Knighton	jknighton@ehbcompanies.com
14	CluAynne Corwin	ccorwin@lasvegasnevada.gov
15	Evelyn Washington	evelyn@kermittwaters.com
16	Stacy Sykora	stacy@kermittwaters.com
17	Desiree Staggs	dstaggs@kcnvlaw.com
18	Shannon Dinkel	sd@pisanellibice.com
19	Debbie Leonard	debbie@leonardlawpc.com
20	Andrew Schwartz	Schwartz@smwlaw.com
21	Lauren Tarpey	LTarpey@smwlaw.com
22	David Weibel	weibel@smwlaw.com
23	Sandy Guerra	sandy@kermittwaters.com
24		
25		
26		
27		
28		

1	Jennifer Knighton	jknighton@ehbcompanies.com
2		
3	Elizabeth Ham	EHam@ehbcompanies.com
4	Rebecca Wolfson	rwolfson@lasvegasnevada.gov
5		
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**NOE
LAW OFFICES OF KERMITT L. WATERS**

Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com

James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com

Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com

Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com

704 South Ninth Street
Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

NOTICE OF ENTRY OF:

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

Hearing Date: February 3, 2022

Hearing Time: 1:30 p.m.

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

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A copy of the Order is attached hereto.
DATED this 22nd day of February, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/Autumn L. Waters
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiffs Landowners

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and
3 that on the 22nd day of February, 2022, pursuant to NRCP 5(b), a true and correct copy of the
4 foregoing: **NOTICE OF ENTRY OF: ORDER GRANTING PLAINTIFF LANDOWNERS'**
5 **MOTION FOR ATTORNEY FEES IN PART AND DENYING IN PART** was served on the
6 below via the Court's electronic filing/service system and/or deposited for mailing in the U.S.
7 Mail, postage prepaid and addressed to, the following:

8 **McDONALD CARANO LLP**

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

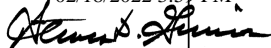
12 **LAS VEGAS CITY ATTORNEY'S OFFICE**

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

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

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

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


CLERK OF THE COURT

ORDR

LAW OFFICES OF KERMITT L. WATERS

Kermitt L. Waters, Esq., Bar No. 2571

kermitt@kermittwaters.com

James J. Leavitt, Esq., Bar No. 6032

jim@kermittwaters.com

Michael A. Schneider, Esq., Bar No. 8887

michael@kermittwaters.com

Autumn L. Waters, Esq., Bar No. 8917

autumn@kermittwaters.com

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

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

Date of Hearing: February 3, 2022

Time of Hearing: 1:30 p.m.

Plaintiff Landowners' Motion for Attorney Fees, having come before the Court on
February 3, 2022, James J. Leavitt, Esq. of the Law Offices of Kermitt L Waters and Plaintiff

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

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

7 The Landowners moved for an award of attorney fees pursuant to the Uniform Relocation
8 Assistance and Real Property Acquisition Act (“Relocation Act”) which Nevada has adopted in its
9 entirety pursuant to NRS 342.105; *see also McCarran Int’l Airport v. Sisolak*, 122 Nev. 645, 673
10 (2006) and *Tien Fu Hsu v. County of Clark*, 123 Nev. 625, 637 (2007); 2) the Nevada Constitution
11 Article 1, Section 22 (4); and, 3) NRS 18.010(2)(b).

12
13
14 **A. The Relocation Act Provides for the Reimbursement of Attorney Fees**

15 The Relocation Act provides that an owner shall be “reimbursed for any reasonable
16 expenses, including reasonable attorney...fees, which the owner actually incurred because of a
17 condemnation proceeding” when, “[t]he court having jurisdiction renders a judgment in favor of
18 the owner in an inverse condemnation proceeding” 49 CFR § 24.107(c)(2020); NRS 342.105. The
19 Nevada Supreme Court has held that “[t]he Relocation Act requires that a state government entity
20 receiving federal funds institute formal condemnation proceedings to acquire any interest in real
21 property by exercising the power of eminent domain” and, if not, Nevada landowners may bring
22 inverse condemnation claims and “may recover attorney fees and costs if they succeed in an
23 inverse condemnation claim against the government.” *Sisolak*, at 673. Here, the Landowners have
24 established that the City inversely condemned their property and therefore may recover their
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reasonable attorney fees actually incurred pursuant to the Relocation Act, NRS 342.105 and *Sisolak*.

The City argued that the Landowners had to establish a nexus between federal funds and the project which took the Landowners' Property to recover attorney fees under the Relocation Act. Insofar as a Nevada landowner may be required to show that the taking agency receives federal funds to recover attorney fees under the Relocation Act or that the taking program receives federal funds to recover attorney fees under the Relocation Act, the Landowners have established both. The City receives federal funds generally and the City receives federal funds for its parks, recreation and open space program, the program for which the City took the Landowners' Property. *See Landowners' Mot. at Exhibits 12-16. Exhibit 12, screenshot of the City's Website stating the City receives federal funds; Exhibit 13, the City's 2050 Master Plan where the City details how it receives federal funds, specifically for parks and open space, see ATTY FEE MOT 0226; Exhibit 14, the City's SNPLMA Projects (SNPLMA is a federal grant program where federal dollars are given to the City for Parks and Open Space); Exhibit 15, the City's 2017 Budget detailing federal dollars received; Exhibit 16, City's 2021 Budget detailing federal dollars received.* The Landowners are entitled to reimbursement of their reasonable attorney fees under the Relocation Act.

B. Article 1, Section 22 Provides for the Reimbursement of Attorney Fees

The Landowners also moved for attorney fees under the Nevada Constitution Article 1, Section 22 (4). The Nevada constitution provides, “[i]n all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never

1 been taken.” Nev. Const. Art I § 22(4).¹ The Constitution further provides that “Just compensation
2 shall include, but is not limited to, compounded interest and all reasonable costs and expenses
3 actually incurred.” Nev. Const. Art I § 22(4) (emphasis added). Attorney fees are expenses
4 actually incurred. When interpreting constitutional provisions, the normal and ordinary meaning
5 of words **must** be utilized. *Strickland v. Waymire*, 126 Nev. 230, 234 (2010). The normal and
6 ordinary meaning of the word “*expense*,” include “the amount of money that is needed to pay for
7 or buy something” and “something on which money is spent.” [http://www.merriam-](http://www.merriam-webster.com/dictionary/expense)
8 [webster.com/dictionary/expense](http://www.merriam-webster.com/dictionary/expense). These normal and ordinary meanings of “*expense*” includes the
9 amount of money needed to pay for legal counsel. To the extent there is any question about the
10 normal and ordinary meaning of the language in an initiative petition, the Argument Opposing
11 Passage in the Sample Ballot specifically informed Nevada Voters in 2006 and 2008 that “Further,
12 we believe **taxpayers may have to pay all lawyers fees** and court expenses for any legal actions
13 brought by private parties on eminent domain!” (Bold added, “!” in original text). *See*
14 *Landowners’ Motion Exhibit 9*, p. 11 and *Exhibit 10*, p. 7. The Landowners are entitled to their
15 attorney fees actually incurred pursuant to Article 1 Section 22(4).
16
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19 **C. NRS 18.010(2)(b) Provides of Attorney Fees to the Prevailing Party**

20 The Landowners also moved for attorney fees under NRS 18.010(2)(b) which also provides
21 for the award of attorney fees to the prevailing party “when the court finds that the claim,
22 counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought
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26 ¹ Consistent with long standing Nevada law, in *Nevadans for the Prot. Of Prop. Rights v. Heller*,
27 122 Nev. 894, 908, 141 P.3d 1235, 1244-1245 (2006), the Nevada Supreme Court acknowledged
28 that Article 1 § 22 would apply to inverse condemnation actions. *See also Clark County v. Alper*,
100 Nev. 382, 395 (1984); *Argier v. Nevada Power Co.*, 114 Nev. 137, fn 2, 952 P.2d 1390 (1998).

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

4 **D. Calculation of Attorney Fees**

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

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

20 The Court further finds that the rates of \$450 and \$675 per hour are reasonable based on
21 the specialized nature of this action, the skill and expertise of Landowners’ counsel, the rate in the
22 community (i.e. the City’s counsel charged the City \$550 per hour *Exhibit 17*, which the City did
23 not contest is a government rate known to be lower than the normal rate charged), the level of
24 difficulty and difficult nature of the case, the importance of the matters litigated, the large spread
25 in the damage calculation between the parties, the work performed and time needed to perform the
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1 work, as well as the success of Landowners' counsel in this case. *See Landowners' motion for*
2 *attorney fees pp. 11-26.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

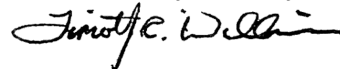
21 22.3 at \$50 = \$1,115.00

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

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

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

Dated this 18th day of February, 2022



MH

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

Submitted By:

Content Reviewed and Approved by:

LAW OFFICES OF KERMIT L. WATERS

McDONALD CARANO LLP

By: /s/ Autumn L. Waters

By: Did not respond

Kermitt L. Waters (NV Bar No. 2571)
James J. Leavitt (NV Bar No. 6032)
Michael A. Schneider (NV Bar No. 8887)
Autumn L. Waters (NV Bar No. 8917)
704 South Ninth Street
Las Vegas, Nevada 89101

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

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Elizabeth Ghanem Ham, Esq. (NV Bar 6987)
1215 S. Fort Apache Road, Suite 120
Las Vegas, NV 89117
Attorneys for Plaintiffs Landowners

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

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

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

Hi George,

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

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

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2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

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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
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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: 2/18/2022

16 Jeffry Dorocak

jdorocak@lasvegasnevada.gov

17 Leah Jennings

ljennings@mcdonaldcarano.com

18 Philip Byrnes

pbyrnes@lasvegasnevada.gov

19 Todd Bice

tlb@pisanellibice.com

20 Dustun Holmes

dhh@pisanellibice.com

21 Jeffrey Andrews

jandrews@lasvegasnevada.gov

22 Robert McCoy

rmccoy@kcnvlaw.com

23 Stephanie Allen

sallen@kcnvlaw.com

24 Christopher Kaempfer

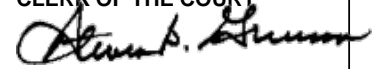
ckaempfer@kcnvlaw.com

25 Adar Bagus

abagus@kcnvlaw.com

1	Michael Wall	mwall@hutchlegal.com
2	Maddy Carnate-Peralta	mcarnate@hutchlegal.com
3	Autumn Waters	autumn@kermittwaters.com
4	Michael Schneider	michael@kermittwaters.com
5	James Leavitt	jim@kermittwaters.com
6	Kermitt Waters	kermitt@kermittwaters.com
7	Elizabeth Ham	EHam@ehbcompanies.com
8	Jelena Jovanovic	jjovanovic@mcdonaldcarano.com
9	Amanda Yen	ayen@mcdonaldcarano.com
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11	Karen Surowiec	ksurowiec@Mcdonaldcarano.com
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14	CluAynne Corwin	ccorwin@lasvegasnevada.gov
15	Evelyn Washington	evelyn@kermittwaters.com
16	Stacy Sykora	stacy@kermittwaters.com
17	Desiree Staggs	dstaggs@kcnvlaw.com
18	Shannon Dinkel	sd@pisanellibice.com
19	Debbie Leonard	debbie@leonardlawpc.com
20	Andrew Schwartz	Schwartz@smwlaw.com
21	Lauren Tarpey	LTarpey@smwlaw.com
22	David Weibel	weibel@smwlaw.com
23	Sandy Guerra	sandy@kermittwaters.com
24		
25		
26		
27		
28		

1	Jennifer Knighton	jknighton@ehbcompanies.com
2		
3	Elizabeth Ham	EHam@ehbcompanies.com
4	Rebecca Wolfson	rwolfson@lasvegasnevada.gov
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**NOE
LAW OFFICES OF KERMITT L. WATERS**

Kermitt L. Waters, Esq., Bar No. 2571
kermitt@kermittwaters.com
James J. Leavitt, Esq., Bar No. 6032
jim@kermittwaters.com
Michael A. Schneider, Esq., Bar No. 8887
michael@kermittwaters.com
Autumn L. Waters, Esq., Bar No. 8917
autumn@kermittwaters.com
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

NOTICE OF ENTRY OF:

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

Hearing Date: February 11, 2022

Hearing Time: 1:15 p.m.

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

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A copy of the Order is attached hereto.
DATED this 28th day of February, 2022.

LAW OFFICES OF KERMITT L. WATERS

/s/Autumn L. Waters
Kermitt L. Waters, Esq. (NSB 2571)
James J. Leavitt, Esq. (NSB 6032)
Michael A. Schneider, Esq. (NSB 8887)
Autumn L. Waters, Esq. (NSB 8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964
Attorneys for Plaintiff Landowners

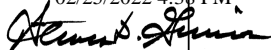
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McDONALD CARANO LLP

LAS VEGAS CITY ATTORNEY'S OFFICE

SHUTE, MIHALY & WEINBERGER, LLP

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


CLERK OF THE COURT

ORDR

LAW OFFICES OF KERMITT L. WATERS

Kermitt L. Waters, Esq., Bar No. 2571

kermitt@kermittwaters.com

James J. Leavitt, Esq., Bar No. 6032

jim@kermittwaters.com

Michael A. Schneider, Esq., Bar No. 8887

michael@kermittwaters.com

Autumn L. Waters, Esq., Bar No. 8917

autumn@kermittwaters.com

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

Case No.: A-17-758528-J

Dept. No.: XVI

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

Date of Hearing: February 11, 2022

Time of Hearing: 1:15 p.m.

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

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

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

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

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

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

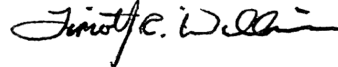
21 NRS 37.160 provides the procedure for passing title to the City of Las Vegas through a final
22 order of condemnation once the sums assessed against the City are paid to the Landowners.
23 Therefore, once the City pays the sums assessed in this matter to the Landowners, this Court will
24 enter a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

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

6
7 Based on the foregoing, **IT IS HEREBY ORDERED THAT** the City of Las Vegas Motion
8 to Amend Judgement (Rules 59(e) and 60(b)) and Stay of Execution is **DENIED** and, once the City
9 pays the sums assessed in this matter to the Landowners, the Court will enter a final order of
10 condemnation as provided herein.

11 Dated this 25th day of February, 2022

12 

13
14 338 491 34BF 1C81
15 Timothy C. Williams
16 District Court Judge

17 MH

1 Submitted By:
2 LAW OFFICES OF KERMIT L. WATERS

3 By: /s/ James J. Leavitt, Esq.
4 Kermitt L. Waters (NV Bar No. 2571)
5 James J. Leavitt (NV Bar No. 6032)
6 Michael A. Schneider (NV Bar No. 8887)
7 Autumn L. Waters (NV Bar No. 8917)
8 704 South Ninth Street
9 Las Vegas, Nevada 89101

10 EHB COMPANIES
11 Elizabeth Ghanem Ham, Esq. (NV Bar 6987)
12 1215 S. Fort Apache Road, Suite 120
13 Las Vegas, NV 89117

14 ***Attorneys for Plaintiffs Landowners***

Content Reviewed and Approved by:

McDONALD CARANO LLP

By: Did not respond
George F. Ogilvie III (NV Bar No. 3552)
Christopher Molina (NV Bar No. 14092)
2300 W. Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

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

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

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

George:

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

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

Thank you and have a good weekend,
Jim

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

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

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: 2/25/2022

16 Jeffry Dorocak	jdorocak@lasvegasnevada.gov
17 Leah Jennings	ljennings@mcdonaldcarano.com
18 Philip Byrnes	pbyrnes@lasvegasnevada.gov
19 Todd Bice	tlb@pisanellibice.com
20 Dustun Holmes	dhh@pisanellibice.com
21 Jeffrey Andrews	jandrews@lasvegasnevada.gov
22 Robert McCoy	rmccoy@kcnvlaw.com
23 Stephanie Allen	sallen@kcnvlaw.com
24 Christopher Kaempfer	ckaempfer@kcnvlaw.com
25 Adar Bagus	abagus@kcnvlaw.com
26	
27	
28	

1	Michael Wall	mwall@hutchlegal.com
2	Maddy Carnate-Peralta	mcarnate@hutchlegal.com
3	Autumn Waters	autumn@kermittwaters.com
4	Michael Schneider	michael@kermittwaters.com
5	James Leavitt	jim@kermittwaters.com
6	Kermitt Waters	kermitt@kermittwaters.com
7	Elizabeth Ham	EHam@ehbcompanies.com
8	Jelena Jovanovic	jjovanovic@mcdonaldcarano.com
9	Amanda Yen	ayen@mcdonaldcarano.com
10	George Ogilvie III	gogilvie@Mcdonaldcarano.com
11	Karen Surowiec	ksurowiec@Mcdonaldcarano.com
12	Christopher Molina	cmolina@mcdonaldcarano.com
13	Jennifer Knighton	jknighton@ehbcompanies.com
14	CluAynne Corwin	ccorwin@lasvegasnevada.gov
15	Evelyn Washington	evelyn@kermittwaters.com
16	Stacy Sykora	stacy@kermittwaters.com
17	Desiree Staggs	dstaggs@kcnvlaw.com
18	Shannon Dinkel	sd@pisanellibice.com
19	Debbie Leonard	debbie@leonardlawpc.com
20	Andrew Schwartz	Schwartz@smwlaw.com
21	Lauren Tarpey	LTarpey@smwlaw.com
22	David Weibel	weibel@smwlaw.com
23	Sandy Guerra	sandy@kermittwaters.com
24		
25		
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28		

1	Jennifer Knighton	jknighton@ehbcompanies.com
2		
3	Elizabeth Ham	EHam@ehbcompanies.com
4	Rebecca Wolfson	rwolfson@lasvegasnevada.gov
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Judicial Review/Appeal

COURT MINUTES

February 28, 2022

A-17-758528-J 180 Land Company LLC, Petitioner(s)
vs.
Las Vegas City of, Respondent(s)

February 28, 2022 3:00 AM Minute Order

HEARD BY: Williams, Timothy C. **COURTROOM:** Chambers

COURT CLERK: Christopher Darling

JOURNAL ENTRIES

After review and consideration of the points and authorities on file herein and oral argument of counsel, the Court determined as follows:

Plaintiff's Motion for Pre-Judgment Interest shall be GRANTED. However, the interest calculation shall be based on the statutory rate, pursuant to NRS 37.175, of prime rate plus 2% interest.

Counsel on behalf of Defendant City of Las Vegas shall prepare a detailed Order, Findings of Facts, and Conclusions of Law, based not only on the foregoing Minute Order but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections prior to submitting to the Court for review and signature.

CLERK'S NOTE: A copy of this Minute Order has been electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

PRINT DATE: 02/28/2022

Page 1 of 1

Minutes Date: February 28, 2022

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