IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, Appellant, vs. 180 LAND CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; AND FORE STARS, LTD., A NEVADA LIMITED-LIABILITY COMPANY, Respondents.	No. 84345
180 LAND CO., LLC, A NEVADA LIMITED-LIABILITY COMPANY; AND FORE STARS, LTD., A NEVADA LIMITED-LIABILITY COMPANY, Appellants/Cross-Respondents, vs. CITY OF LAS VEGAS, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, Respondent/Cross-Appellant.	No. 84640 **AMENDED JOINT APPENDIX VOLUME 17, PART 2 OF 4 (Nos. 3112–3195)**

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

APEN
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 COMPANY, LLC, a Nevada limited liability company and FORE STARS, Ltd., DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, vs. CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendants.	CASE NO.: A-17-758528-J DEPT. NO.: XVI **APPENDIX OF EXHIBITS TO REPLY IN SUPPORT OF PLAINTIFF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST"** **VOLUME 1**

Plaintiffs LANDOWNERS hereby submit their Appendix of Exhibits to Reply in Support of Landowners' Motion to Determine "Property Interest."

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Exhibit	Exhibit Description	Vol.	Bates No.
17	January 5, 2019, Nunc Pro Tunc Order	1	0001-0003
18	May 15, 2019, Order	1	0004-0027
19	May 7, 2019, Order	1	0028-0040
20	Portion of Brief to Judge Crockett	1	0041-0043
21	Land Use Hierarchy	1	0044
22	City Opposition filed in Moccasin & 95 v. City of Las Vegas	1	0045-0049
23	City Attorney Affidavits	1	0050-0053
24	Assessor Summary Valuation	1	0054-0055
25	Assessor Valuation Analysis	1	0056-0061
25a	Assessor Summary Page	1	0062-0063
26	Assessor Stipulation	1	0064
27	June 13, 2017, PC Transcript (partial)	1	0065-0068
28	June 21, 2017, City Council Transcript	1	0069-0078
29	Dec. 7, 2016, letter from Jimmerson to Jerbic	1	0079-0087
30	Ordinance 3636	1	0088-0096
31	1984 AGO 84-6	1	0097-0103
32	August 2, 2017, Transcript (partial)	1	0104-0106
33	Tom Perrigo Deposition	1	0107-0115
34	Badlands Homeowners Meetion 11.1.16 (partial)	1	0116-0124
35	Clyde Spitze Deposition (partial)	1	0125-0135
36	Actual Land Use V. PRMP	1	0136
37	QR CCRs and Final Map for Peccole West (portions)	1	0137-0140
38	Clark County Assessor Summary Showing Peccole West	1	0141-0145
39	Supreme Court Case No. 72455, Order of Affirmance	1	0146-0150

40	January 1, 2018, City Council Transcript (partial)	1	0151-0153
41	Answering Brief on Appeal (partial)	1	0154-0170
42	Declaration of James J. Leavitt	1	0171-0172

Dated this 9th day of September, 2020.

LAW OFFICES OF KERMITT L. WATERS

By: /s/ *Kermitt L. Waters*
KERMITT L. WATERS, ESQ.
Nevada Bar No. 2571
JAMES J. LEAVITT, ESQ.
Nevada Bar No. 6032
MICHAEL SCHNEIDER, ESQ.
Nevada Bar No. 8887
AUTUMN WATERS, ESQ.
Nevada Bar No. 8917

Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 9th day of September, 2020, pursuant to NRCP 5(b) and EDCR 8.05(f), a true and correct copy of the **APPENDIX OF EXHIBITS TO REPLY IN SUPPORT OF LANDOWNERS' MOTION TO DETERMINE "PROPERTY INTEREST", VOLUME 1** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to, the following:

MCDONALD CARANO LLP
George F. Ogilvie III, Esq.
Amanda C. Yen, Esq.
Christopher Molina, Esq.
2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
ayen@mcdonaldcarano.com
cmolina@mcdonaldcarano.com

LAS VEGAS CITY ATTORNEY'S OFFICE
Bradford Jerbic, City Attorney
Philip R. Byrnes, Esq.
Seth T. Floyd, Esq.
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
pbynes@lasvegasnevada.gov
Sfloyd@lasvegasnevada.gov

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

/s/ Evelyn Washington
Evelyn Washington, an Employee of the
Law Offices of Kermitt L. Waters

Exhibit 17

ONPT
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

HUTCHISON & STEFFEN, PLLC
Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Matthew K. Schriever (10745)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Telephone: 702-385-2500
Facsimile: 702-385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com
mschriever@hutchlegal.com

Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

180 LAND COMPANY, LLC, a Nevada limited liability company, DOE INDIVIDUALS I through X, DOE CORPORATIONS I through X, and DOE LIMITED LIABILITY COMPANIES I through X, Plaintiffs, *vs.* CITY OF LAS VEGAS, political subdivision of the State of Nevada, ROE government entities I through X, ROE CORPORATIONS I through X, ROE INDIVIDUALS I through X, ROE LIMITED LIABILITY COMPANIES I through X, ROE quasi-governmental entities I through X, Defendant.	Case No.: A-17-758528-J Dept. No.: XVI **ORDER *NUNC PRO TUNC* Regarding Findings of Fact and Conclusion of Law Entered November 21, 2018** Hearing Date: January 17, 2019 Hearing Time: 9:00 a.m.

ORDER *NUNC PRO TUNC*
Regarding Findings of Fact and Conclusions of Law Entered November 21, 2018

Plaintiff, 180 LAND COMPANY, LLC ("Plaintiff" and/or "Landowner") Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims and the City of Las Vegas' Motion to Strike Plaintiffs' Motion for Summary Judgment on Liability For the Landowners' Inverse Condemnation Claims On Order Shortening Time and the Intervenors' Joinder thereto having come for hearing on January 17, 2019 at 9:00 a.m. in Department XVI of the Eighth Judicial District Court, Kermitt L. Waters, Esq., James J. Leavitt, Esq., and Mark Hutchison, Esq., appearing for and on behalf of the Plaintiff, George F. Ogilvie III Esq., and Debbie Leonard, Esq., appearing for and on behalf of Defendant, the City of Las Vegas, and Dustun H. Holmes, Esq., appearing for and on behalf of Intervenors. The Court having read all the papers filed by the parties and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Plaintiff Landowners' Request for Rehearing/Reconsideration of Order/Judgment Dismissing Inverse Condemnation Claims filed on December 11, 2018, is GRANTED, as this Court had no intention of making any findings of fact, conclusions of law or orders regarding the Landowners' severed inverse condemnation claims as part of the Findings of Fact and Conclusions of Law entered on November 21, 2018, ("FFCL"). Accordingly, as stated at the hearing on January 17, 2019, the findings, conclusions and order set forth at page 23:4-20 and page 24:4-5 of the FFCL are hereby removed *nunc pro tunc*.

IT IS HEREBY FURTHER ORDERED, ADJUDGED and DECREED that Defendant, City of Las Vegas' Motion to Strike Plaintiffs' Motion for Summary Judgment on Liability For the Landowners' Inverse Condemnation Claims On Order Shortening Time filed on December 21, 2018, and the Joinder thereto is DENIED AS MOOT.

IT IS SO ORDERED.

DATED this 5th day of February, 2019.

DISTRICT COURT JUDGE

TCW

Respectfully Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: _____

KERMITT L. WATERS, ESQ., NBN 2571
JAMES JACK LEAVITT, ESQ., NBN 6032
MICHAEL A. SCHNEIDER. ESQ., NBN 8887
AUTUMN WATERS, ESQ., NBN 8917
704 S. 9th Street
Las Vegas, NV 89101

Attorneys for Plaintiff

Reviewed and Approved By:

McDonald Carano LLP

By: *Declined to Sign*

George F. Ogilvie III, Esq., NBN 3552
Debbie Leonard, Esq., NBN 8260
Amanda C. Yen, Esq., NBN 9726
2300 W. Sahara Ave, Suite 1200
Las Vegas, NV 89102

Attorneys for Defendant, City of Las Vegas

PISANELLI BICE PLLC

By: *None Responsive*

Todd L. Bice, Esq., NBN 4534
Dustun H. Holmes, Esq., NBN 12776
Kirill V. Mikhaylov, Esq., NBN 13538
400 South 7th Street, Suite 300
Las Vegas, NV 89101

Attorneys for Intervenors

Exhibit 18

ORD

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

HUTCHISON & STEFFEN, PLLC
Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
Matthew K. Schriever (10745)
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
Telephone: 702-385-2500
Facsimile: 702-385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com
mschriever@hutchlegal.com

Attorneys for Plaintiff Landowners

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendant.

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

ORDER GRANTING The Landowners' Countermotion to Amend/Supplement the Pleadings; DENYING The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; and DENYING the Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims

Hearing Date: March 22, 2019
Hearing Time: 1:30 p.m.

ORDER GRANTING The Landowners' Countermotion to Amend/Supplement the Pleadings; DENYING The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; and DENYING the Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims

The City of Las Vegas's (The City") Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims; Plaintiff, 180 LAND COMPANY, LLC's ("Landowner") Opposition to City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims and Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims and Countermotion to Supplement/amend the Pleadings, if Required; and Plaintiff Landowners' Motion to Estop the City's Private Attorney from Making the Major Modification Argument or for an Order to Show Cause Why the Argument May Proceed in this Matter on Order Shortening Time along with the City's and the Intervenors' (from the Petition for Judicial Review[1]) Oppositions and the Landowners Replies[2] to the same having come for hearing on March 22, 2019 at 1:30 p.m. in Department XVI of the Eighth Judicial District Court, Kermitt L. Waters, Esq., James J. Leavitt, Esq., Mark Hutchison, Esq., and Autumn Waters, Esq., appearing for and on behalf of the Landowners, George F. Ogilvie III Esq., and Debbie Leonard, Esq., appearing for and on behalf of the City, and Todd Bice, Esq., and Dustun H. Holmes, Esq., appearing for and on behalf of Intervenors (from the Petition for Judicial Review). The Court having read the briefings, conducted a hearing and after considering the writings and oral arguments presented and being fully informed in the premise makes the following findings of facts and conclusions of law:

I. The Landowners' Countermotion to Supplement/Amend the Pleadings

The Landowners moved this Court to supplement/amend their pleadings. The Landowners attached a copy of their proposed amended/supplemental complaint to their request pursuant to NRCP Rule 15. This matter is in its early stages, as discovery has yet to commence so no prejudice

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[1] The Intervenors have not moved nor been granted entry into this case dealing with the Landowners' inverse condemnation claims, they have moved and been granted entry into the severed petition for judicial review.

[2] The Landowners withdrew this Motion to Estop the City's Private Attorney from Making the Major Modification Argument or for an Order to Show Cause Why the Argument May Proceed in this Matter on Order Shortening Time, accordingly, no arguments were taken nor rulings issued.

or delay will result in allowing the amendment. The City argues that permitting the amendment would result in impermissible claim splitting as the Landowners currently have other litigation pending which also address the City action complained of in the amended/supplemental complaint. However, those other pending cases deal with other property also allegedly affected by the City action and do not seek relief for the property at issue in this case.

Leave to amend should be freely given when justice so requires. NRCP Rule 15(a)(2); Adamson v. Bowker, 85 Nev. 115, 121 (1969). Absent undue delay, bad faith or dilatory motive on the part of the movant, leave to amend should be freely given. Stephens v. Southern Nev. Music Co., 89 Nev. 104 (1973). Justice requires leave to amend under the facts of this case and there has been no showing of bad faith or dilatory motive on the part of the Landowners.

Accordingly, IT IS HEREBY ORDERED that the Landowners' Countermotion to Supplement/Amend the Pleadings is **GRANTED**. The Landowners may file the amended / supplemental complaint in this matter.

II. The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims

The City moved this Court for judgment on the pleadings on the Landowners' inverse condemnation claims pursuant to NRCP 12(c). Only under rare circumstances is dismissal proper, such as where plaintiff can prove no set of facts entitling him to relief. Williams v. Gerber Prod., 552 F.3d 934, 939 (9th Cir. 2008). The Nevada Supreme Court has held that a motion to dismiss "is subject to a rigorous standard of review on appeal," that it will recognize all factual allegations as true, and draw all inferences in favor of the plaintiff. Buzz Stew, LLC v. City of North Las Vegas, 181 P.3d 670, 672 (2008). The Nevada Supreme Court rejected the reasonable doubt standard and held that a complaint should be dismissed only where it appears beyond a doubt that the plaintiff could prove no set of facts, which, if true, would entitle the plaintiff to relief. Id., *see also* fn. 6. Additionally, Nevada is a notice pleading state. NRCP Rule 8; Liston v. Las Vegas Metropolitan Police Dep't, 111 Nev. 1575 (1995) (referring to an amended complaint, deposition testimony, interrogatory responses and pretrial demand statement as a basis to provide notice of facts that support a claim). Moreover, the Nevada Supreme Court has adopted the "policy of this state that

cases be heard on the merits, whenever possible." Schulman v. Bongberg-Whitney Elec., Inc., 98 Nev. 226, 228 (1982).

A. The Landowners' Inverse Condemnation Claims

The Landowners have asserted five (5) separate inverse condemnation claims for relief, a Categorical Taking, a Penn Central Regulatory Taking, a Regulatory Per Se Taking, a Non-regulatory Taking and, finally, a Temporary Taking. Each of these claims is a valid claim in the State of Nevada:

Categorical Taking - "Categorical [taking] rules apply when a government regulation either (1) requires an owner to suffer a permanent physical invasion of her property or (2) completely deprives an owner of all economical use of her property." McCarran Intern. Airport v. Sisolak, 122 Nev. 645, 663, 137 P. 3d 1110, 1122 (2006).

Penn Central Regulatory Taking - A Penn Central taking analysis examines three guideposts: the regulations economic impact on the property owner; the regulations interference with investment backed expectations; and, the character of the government action. Sisolak, supra, at 663.

Regulatory Per Se Taking - A Per Se Regulatory Taking occurs where government action "preserves" property for future use by the government. Sisolak, supra, at 731.

Non-regulatory Taking / De Facto Taking - A non-regulatory/de facto taking occurs where the government has "taken steps that directly and substantially interfere with [an] owner's property rights to the extent of rendering the property unusable or valueless to the owner." State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41, 351 P.3d 736 (2015). "To constitute a taking under the Fifth Amendment it is not necessary that property be absolutely 'taken' in the narrow sense of that word to come within the protection of this constitutional provision; it is sufficient if the action by the government involves a direct interference with or disturbance of property rights." Richmond Elks Hall Assoc. v. Richmond Red. Agency, 561 F.2d 1327, 1330 (9th Cir. Ct. App. 1977).

Temporary Taking - "[T]emporary deprivations of use are compensable under the Taking Clause." Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1011-12 (1992); Arkansas Game & Fish Comm's v. United States, 568 U.S. 23, 133 S.Ct. 511 (2012).

Here, the Landowners have alleged facts and provided documents sufficient to sustain these inverse condemnation claims as further set forth herein, which is sufficient to defeat the City's motion for judgment on the pleadings.

B. The Landowners' Property Interest

"An individual must have a property interest in order to support a takings claim....The term 'property' includes all rights inherent in ownership, including the right to possess, use, and enjoy the property." McCarran v. Sisolak, 122 Nev. 645, 137 P.3d 1110, 1119 (2006). "It is well established that an individual's real property interest in land supports a takings claim." ASAP Storage, Inc. v. City of Sparks, 123 Nev. 639, 645, 173 P.3d 734, 738 (2007) *citing to* Sisolak and Clark County v. Alper, 100 Nev. 382 (1984). Meaning a landowner merely need allege an ownership interest in the land at issue to support a takings claim and defeat a judgment on the pleadings. The Landowners have made such an allegation.

The Landowners assert that they have a property interest and vested property rights in the Subject Property for the following reasons:

1) The Landowners assert that they own approximately 250 acres of real property generally located south of Alta Drive, east of Hualapai Way and north of Charleston Boulevard within the City of Las Vegas, Nevada; all of which acreage is more particularly described as Assessor's Parcel Numbers 138-31-702-003, 138-31-601-008, 138-31-702-004; 138-31-201-005; 138-31-801-002; 138-31-801-003; 138-32-301-007; 138-32-301-005; 138-32-210-008; and 138-32-202-001 ("250 Acre Residential Zoned Land"). This action deals specifically and only with Assessor Parcel Number 138-31-201-005 (the "35 Acre Property" and/or "35 Acres" and/or "Landowners' Property" or "Property").

2) The Landowners assert that they had a property interest in the 35 Acre Property; that they had the vested right to use and develop the 35 Acre Property; that the hard zoning on the 35 Acre Property has always been for a residential use, including R-PD7 (Residential Planned Development District – 7.49 Units per Acre). The City does not contest that the hard zoning on the Landowners' Property has always been R-PD7.

3) The Landowners assert that they had the vested right to use and develop the 35 Acre Property up to a density of 7.49 residential units per acre as long as the development is comparable and compatible with the existing adjacent and nearby residential development. The Landowners' property interest and vested property rights in the 35 Acre Property are recognized under the United States and Nevada Constitutions, Nevada case law, and the Nevada Revised Statutes.

4) The Landowners assert that their property interest and vested right to use and develop the 35 Acre Property is further confirmed by the following:

a) On March 26, 1986, a letter was submitted to the City Planning Commission requesting zoning on the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property) and the zoning that was sought was R-PD7 as it allows the developer flexibility and shows that developing the 35 Acre Property for a residential use has always been the intent of the City and all prior owners.

b) The City has confirmed the Landowners' property interest and vested right to use and develop the 35 Acre Property residentially in writing and orally in, without limitation, 1996, 2001, 2014, 2016, and 2018.

c) The City adopted Zoning Bill No. Z-2001, Ordinance 5353, which specifically and further demonstrates that the R-PD7 Zoning was codified and incorporated into the City of Las Vegas' Amended Zoning Atlas in 2001. As part of this action, the City "repealed" any prior City actions that could conflict with this R-PD7 hard zoning adopting: "SECTION 4: All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in conflict herewith are hereby repealed."

d) At a November 16, 2016, City Council hearing, Tom Perrigo, the City Planning Director, confirmed the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

e) Long time City Attorney, Brad Jerbic, has also confirmed the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

f) The City Planning Staff has also confirmed the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

g) The City's own 2020 master plan confirms the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is hard zoned R-PD7, which allows up to 7.49 residential units per acre.

h) The City issued two formal Zoning Verification Letters dated December 20, 2014, confirming the R-PD7 zoning on the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property).

i) The City confirmed the Landowners' vested right to use and develop the 35 Acres prior to the Landowners' acquisition of the 35 Acres and the Landowners materially relied upon the City's confirmation regarding the Subject Property's vested zoning rights.

j) The City has approved development on approximately 26 projects and over 1,000 units in the area of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) on properties that are similarly situated to the 35 Acre Property further establishing the Landowners' property interest and vested right to use and develop the 35 Acre Property.

k) The City has never denied an application to develop in the area of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) on properties that are similarly situated to the 35 Acre Property further establishing the Landowners' property interest and vested right to use and develop the 35 Acre Property.

l) There has been a judicial finding that the Landowners have the "right to develop" the 35 Acre Property.

m) The Landowners' property interest and vested right to use and develop the entire 250 Acre Residential Zoned Land (which includes the 35 Acre Property) is so widely accepted that even the Clark County tax Assessor has assessed the property as residential for a value of approximately $88 Million and the current Clark County website identifies the 35 Acre Property "zoned" R-PD7.

n) There have been no other officially and properly adopted plans or maps or other recorded document(s) that nullify, replace, and/or trump the Landowners' property interest and vested right to use and develop the 35 Acre Property.

o) Although certain City of Las Vegas planning documents show a general plan designation of PR-OS (Parks/Recreation/Open Space) on the 35 Acre Property, that designation was placed on the Property by the City without the City having followed its own proper notice requirements or procedures. Therefore, any alleged PR-OS on any City planning document is being shown on the 35 Acre Property in error. The City's Attorney confirmed the City cannot determine how the PR-OS designation was placed on the Subject Property.

p) The 35 Acre Property has always been zoned and land use planned for a residential use. The City has argued that the Peccole Concept Plan applies to the Landowners' 35 Acre Property and that plan has always identified the specific 35 Acre Property in this case for a residential use. The land use designation where the 35 Acre Property is located is identified for a residential use under the Peccole Concept Plan and no major modification of Mr. Peccole's Plan would be needed in this specific case to use the 35 Acre Property for a residential use.

Any determination of whether the Landowners have a "property interest" or the vested right to use the 35 Acre Property must be based on eminent domain law, rather than the land use law. The Nevada Supreme Court in both the Sisolak and Schwartz v. State, 111 Nev. 998, fn 6 (1995)

decisions held that all property owners in Nevada, including the Landowners in this case, have the vested right to use their property, even if that property is vacant, undeveloped, and without City approvals. The City can apply "valid" zoning regulations to the property to regulate the use of the property, but if those zoning regulations "rise to a taking," Sisolak at fn 25, then the City is liable for the taking and must pay just compensation.

Here, the Landowners have alleged facts and provided documents sufficient to show they have a property interest in and a vested right to use the 35 Acre Property for a residential use, which is sufficient to defeat the City's motion for judgment on the pleadings.

C. City Actions the Landowners Claim Amount to A Taking

In determining whether a taking has occurred, Courts must look at the aggregate of all of the government actions because "the form, intensity, and the deliberateness of the government actions toward the property must be examined … All actions by the [government], in the aggregate, must be analyzed." Merkur v. City of Detroit, 680 N.W.2d 485, 496 (Mich.Ct.App. 2004). *See also* State v. Eighth Jud. Dist. Ct., 351 P.3d 736 (Nev. 2015) (*citing* Arkansas Game & Fish Comm's v. United States, 568 U.S. --- (2012)) (there is no "magic formula" in every case for determining whether particular government interference constitutes a taking under the U.S. Constitution; there are "nearly infinite variety of ways in which government actions or regulations can effect property interests." Id., at 741); City of Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687 (1999) (inverse condemnation action is an "ad hoc" proceeding that requires "complex factual assessments." Id., at 720.); Lehigh-Northampton Airport Auth. v. WBF Assoc., L.P., 728 A.2d 981 (Comm. Ct. Penn. 1999) ("There is no bright line test to determine when government action shall be deemed a de facto taking; instead, each case must be examined and decided on its own facts." Id., at 985-86).

The City has argued that the Court is limited to the record before the City Council in considering the Landowners' applications and cannot consider all the other City action towards the Subject Property, however, the City cites the standard for petitions for judicial review, not inverse condemnation claims. A petition for judicial review is one of legislative grace and limits a court's review to the record before the administrative body, unlike an inverse condemnation, which is of

constitutional magnitude and requires all government actions against the property at issue to be considered.

The Landowners assert that the following City actions individually and/or cumulatively amount to a taking of their Property:

1. City Denial of the 35 Acre Property Applications.

The Landowners submitted complete applications to develop the 35 Acre Property for a residential use consistent with the R-PD7 hard zoning. *Exhibit 22:App LO 00000932-949.* The City Planning Staff determined that the proposed residential development was consistent with the R-PD7 hard zoning, that it met all requirements in the Nevada Revised Statutes, and in the City's Unified Development Code (Title 19), and appropriately recommended approval. *Exhibit 22: 4 App LO 00000932-949 and Exhibit 23: 4 App LO 00000950-976.* Tom Perrigo, the City Planning Director, stated at the hearing on the Landowners' applications that the proposed development met all City requirements and should be approved. *Exhibit 5: 2 App LO 00000376 line 566 - 377 line 587.* The City Council denied the 35 Acre Property applications, stating as the sole basis for denial that the City did not want piecemeal development and instead wanted to see the entire 250 Acre Residential Zoned Land developed under one Master Development Agreement ("MDA").

2. City Action #2: Denial of the Master Development Agreement (MDA).

To comply with the City demand to have one unified development, for over two years (between July, 2015, and August 2, 2017), the Landowners worked with the City on an MDA that would allow development on the 35 Acre Property along with all other parcels that made up the 250 Acre Residential Zoned Land. *Exhibit 25: 5 App LO 00001132-1179.* The Landowners complied with each and every City demand, making more concessions than any developer that has ever appeared before this City Council. A non-exhaustive list of the Landowners' concessions, as part of the MDA, include: 1) donation of approximately 100 acres as landscape, park equestrian facility, and recreation areas (*Exhibit 29: 8 App LO 00001836; Exhibit 24: 4 App LO 00000998 lines 599-601; Exhibit 30: 8 App LO 00001837*); 2) building two new parks, one with a vineyard; (Id.) and, 3) reducing the number of units, increasing the minimum acreage lot size, and reducing the number and height of towers. *Exhibit 5: 2 App LO 00000431 lines 2060-2070; Exhibit 29: 8 App LO*

00001836; and Exhibit 30: 8 App LO 00001837. In total, the City required at least 16 new and revised versions of the MDA. *Exhibit 28: 5-7 App LO 00001188-00001835.* The City's own Planning Staff, who participated at every step in preparing the MDA, recommended approval, stating the MDA "is in conformance with the requirements of the Nevada Revised Statutes 278" and "the goals, objectives, and policies of the Las Vegas 2020 Master Plan" and "[a]s such, staff [the City Planning Department] is in support of the development Agreement." *Exhibit 24: 4 App LO 00000985 line 236 – 00000986 line 245; LO 00001071-00001073; and Exhibit 40: 9 App LO 00002047-2072.* And, as will be explained below, the MDA also met and exceeded any and all major modification procedures and standards that are set forth in the City Code.

On August 2, 2017, the MDA was presented to the City Council and the City denied the MDA. *Exhibit 24: 5 App LO 00001128-112.* The City did not ask the Landowners to make more concessions, like increasing the setbacks or reducing the units per acre, it simply and plainly denied the MDA altogether. *Id.* As the 35 Acre Property is vacant, this meant that the property would remain vacant.

3. City Action #3: Adoption of the Yohan Lowie Bills.

After denial of the MDA, the City adopted two Bills that solely target the 250 Acre Residential Zoned Land and preserve the Landowners' Property for public use. City Bill No. 2018-5 and Bill No. 2018-24 (now City Ordinances LVMC 19.16.105) not only target solely the Landowners' Property (no other golf course in the City is privately owned with residential zoning and no deed restrictions); but also requires the Landowners to preserve their Property for public use (LVMC 19.16.105 (E)(1)(d), (G)(1)(d)), provide ongoing public access to their Property (LVMC 19.16.105(G)(1)(d)), and provides that failure to comply with the Ordinances will result in a misdemeanor crime punishable by imprisonment and $1,000 per day fine. (LVMC 19.16.105 (E)(1)(d), (G)(5)(b)&(c)). The Ordinance requires the Landowners to perform an extensive list of requirement, beyond any other development requirements in the City for residential development, before development applications will be accepted by the City. LVMC 19.16.105.

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4. City Action #4: Denial of an Over the Counter, Routine Access Request.

The Landowners have sufficiently alleged that in August of 2017, the Landowners filed with the City a routine over the counter request (specifically excluded from City Council review - LVMC 19.16.100(f)(2)(a) and 19.16.100(f)(2)(a)(iii)) for three access points to streets the 250 Acre Residential Zoned Land abuts – one on Rampart Blvd. and two on Hualapai Way. *Exhibit 58: 10 App LO 00002359-2364.* The City denied the access applications citing as the sole basis for the denial, "the various public hearings and subsequent debates concerning the development on the subject site." *Exhibit 59: 10 App LO 00002365.* The City required that the matter be presented to the City Council through a "Major Review." The City has required that this extraordinary standard apply only to the Landowners to gain access to their property.

The Nevada Supreme Court has held that a landowner cannot be denied access to abutting roadways, because all property that abuts a public highway has a special right of easement to the public road for access purposes and this is a recognized property right in Nevada. Schwartz v. State, 111 Nev. 998 (1995). The Court held that this right exists "despite the fact that the Landowner had not yet developed access."Id., at 1003.

5. City Action #5: Denial of an Over the Counter, Routine Fence Request.

The Landowners have sufficiently alleged that in August, 2017, the Landowners filed with the City a routine request to install chain link fencing to enclose two water features/ponds that are located on the 250 Acre Residential Zoned Land. *Exhibit 55: 10 App LO 00002345-2352.* The City Code expressly states that this application is similar to a building permit review that is granted over the counter and not subject to City Council review. LVMC 19.16.100(f)(2)(a) and 19.16.100(f)(2)(a)(iii). The City denied the application, citing as the sole basis for denial, "the various public hearings and subsequent debates concerning the development on the subject site." *Exhibit 56: 10 App LO 2343.* The City then required that the matter be presented to the City Council through a "Major Review" pursuant to LVMC 19.16.100(G)(1)(b) which states that "the Director determines that the proposed development could significantly impact the land uses on the site or on surrounding properties." *Exhibit 57: 10 App LO 00002354-2358.*

The Major Review Process contained in LVMC 19.16.100 is substantial. It requires a pre-application conference, plans submittal, circulation to interested City departments for comments/recommendation/requirements, and publicly noticed Planning Commission and City Council hearings. The City has required that this extraordinary standard apply despite the fact that LVMC 19.16.100 F(3) specifically prohibits review by the City Council, "[t]he Provisions of this Paragraph (3) shall not apply to *building permit level reviews* described in Paragraph 2(a) of this Subsection (F). Enumerated in Paragraph 2(a) as only requiring a "building level review" are "onsite signs, walls and fences."

6. City Action #6: Denial of a Drainage Study.

The Landowners have sufficiently alleged that in an attempt to clear the property, replace drainage facilities, etc., the Landowners submitted an application for a technical drainage study, which should have been routine, because the City and the Landowners already executed an On-Site Drainage Improvements Maintenance Agreement that allows the Landowners to remove and replace the flood control facilities on their property. *Exhibit 78: 12 App LO 00002936-2947.* Additionally, the two new City Ordinances referenced in City Action #3 require a technical drainage study. However, the City has refused to accept an application for a technical drainage study from the Landowners claiming the Landowners must first obtain entitlements, however, the new City Ordinances will not provide entitlements until a drainage study is received.

7. City Action #7: The City's Refusal to Even Consider the 133 Acre Property Applications.

The Landowners have sufficiently alleged that as part of the numerous development applications filed by the Landowners over the past three years to develop all or portions of the 250 Acre Residential Zoned Land, in October and November 2017, the necessary applications were filed to develop residential units on the 133 Acre Property (part of the 250 Acre Residential Zoned Land) consistent with the R-PD7 hard zoning. *Exhibit 47: 9 App LO 00002119-10 App LO 2256. Exhibit 49: 10 App LO 00002271-2273.* The City Planning Staff determined that the proposed residential development was consistent with the R-PD7 hard zoning, that it met all requirements in the Nevada Revised Statutes, the City Planning Department, and the Unified Development Code (Title 19), and recommended approval. *Exhibit 51: 10 App. LO 00002308-2321.* Instead of approving the

development, the City Council delayed the hearing for several months until May 16, 2018 - the same day it was considering the Yohan Lowie Bill (now LVMC 19.16.105), referenced above in City Action #3. *Exhibit 50: 10 App LO 00002285-2287.* The City put the Yohan Lowie Bill on the morning agenda and the 133 Acre Property applications on the afternoon agenda. The City then approved the Yohan Lowie Bill in the morning session. Thereafter, Councilman Seroka asserted that the Yohan Lowie Bill applied to deny development on the 133 Acre Property and moved to strike all of the applications for the 133 Acre Property filed by the Landowners. *Exhibit 6: 2 App LO 00000490 lines 206-207.* The City then refused to allow the Landowners to be heard on their applications for the 133 Acre Property and voted to strike the applications. *Exhibit 51: 10 App LO 00002308-2321 and Exhibit 53: 10 App LO 00002327-2336.*

8. City Action #8: The City Announces It Will Never Allow Development on the 35 Acre Property, Because the City Wants the Property for a City Park and Wants to Pay Pennies on the Dollar for it.

The Landowners have sufficiently alleged that in documents obtained from the City it was discovered that the City has already allocated $15 million to acquire the Landowners' private property - "$15 Million-Purchase Badlands and operate." *Exhibit 35: 8 App LO 00001922.* In this same connection, Councilman Seroka issued a statement during his campaign entitled "The Seroka Badlands Solution" which provides the intent to convert the Landowners' private property into a "fitness park." *Exhibit 34: 8 App LO 00001915.* In an interview with KNPR Seroka stated that he would "turn [the Landowners' private property] over to the City." *Id. at LO 00001917.* Councilman Coffin agreed, stating his intent referenced in an email as follows: "I think your third way is the only quick solution...Sell off the balance to be a golf course with water rights (key). Keep the bulk of Queensridge green." *Exhibit 54: 10 App LO 00002344.* Councilman Coffin and Seroka also exchanged emails wherein they state they will not compromise one inch and that they "need an approach to accomplish the desired outcome," which, as explained, is to prevent all development on the Landowners' Property so the City can take it for the City's park and only pay $15 Million. *Exhibit 54: 10 App LO 00002340.* In furtherance of the City's preservation for public use, the City has announced that it will never allow any development on the 35 Acre Property or any other part of the 250 Acre Residential Zoned Land.

As it is universally understood that tax assessed value is well below market value, to "Purchase Badlands and operate" for "$15 Million," (which equates to less than 6% of the tax assessed value and likely less than 1% of the fair market value) shocks the conscience. And, this shows that the City's actions are in furtherance of a City scheme to specifically target the Landowners' Property to have it remain in a vacant condition to be "turned over to the City" for a "fitness park" for 1% of its fair market value. *Exhibit 34: 8 App LO 00001915 and Exhibit 35: 8 App LO 00001922.*

9. City Action #9: The City Shows an Unprecedented Level of Aggression To Deny All Use of the 250 Acre Residential Zoned Land.

The Landowners have sufficiently alleged that the City has gone to unprecedented lengths to interfere with the use and enjoyment of the Landowners's Property. Council members sought "intel" against one of the Landowners so that the "intel" could, presumably, be used to deny any development on the 250 Acre Residential Zoned Land (including the 35 Acre Property). In a text message to an unknown recipient, Councilman Coffin stated:

> Any word on your PI enquiry about badlands [250 Acre Residential Zoned Land] guy?
> While you are waiting to hear **is there a fair amount of intel on the scum** behind [sic] the badlands [250 Acre Residential Zoned Land] takeover? **Dirt will be handy if I need to get rough.** *Exhibit 81: 12 App LO 00002969. (emphasis supplied).*

Instructions were then given by Council Members on how to hide communications regarding the 250 Acre Residential Zoned Land from the Courts. Councilman Coffin, after being issued a documents subpoena, wrote:

> "Also, his team has filed an official request for all txt msg, email, anything at all on my personal phone and computer under an erroneous supreme court opinion…So everything is subject to being turned over so, for example, your letter to the c[i]ty email is now public and this response might become public (to Yohan). I am considering only using the phone but awaiting clarity from court. **Please pass word to all your neighbors. In any event tell them to NOT use the city email address but call or write to our personal addresses. For now…PS. Same crap applies to Steve [Seroka]** as he is also being individually sued i[n] Fed Court and also his personal stuff being sought. This is no secret so let all your neighbors know." *Exhibit 54: 10 App LO 00002343. (Emphasis added).*

Councilman Coffin advised Queensridge residents on how to circumvent the legal process and the Nevada Public Records Act *NRS 239.001(4)* by instructing them on how not to trigger any of the search terms being used in the subpoenas. "Also, please pass the word for everyone to not use B…l..nds in title or text of comms. That is how search works." Councilman Seroka testified at the

Planning Commission (during his campaign) that it would be "over his dead body" before the Landowners could use their private property for which they have a vested right to develop. *Exhibit 21: 4 App LO 00000930-931.* And, In reference to development on the Landowners' Property, Councilman Coffin stated firmly "I am voting against the whole thing," (*Exhibit 54: 10 App LO 00002341*)

10. City Action #10: the City Reverses the Past Approval on the 17 Acre Property.

The Landowners have sufficiently alleged that in approving the 17 Acre Property applications the City agreed the Landowners had the vested right to develop without a Major Modification, now the City is arguing in other documents that: 1) the Landowners have no property rights; and, 2) the approval on the 17 Acre Property was erroneous, because no major modification was filed:

> "[T]he Developer must still apply for a major modification of the Master Plan before a takings claim can be considered..." *Exhibit 37: 8 App LO 00001943 lines 18-20*;
>
> "Moreover, because the Developer has not sought a major modification of the Master Plan, the Court cannot determine if or to what extent a taking has occurred." *Id. at LO 00001944 lines 4-5*;
>
> "According to the Council's decision, the Developer need only file an application for a major modification to the Peccole Ranch Master Development Plan ...to have its Applications considered." *Exhibit 39: 9 App LO 00002028 lines 11-15*;
>
> "Here, the Council's action to strike the Applications as incomplete in the absence of a major modification application does not foreclose development on the Property or preclude the City from ultimately approving the Applications or other development applications that the Developer may subsequently submit. It simply held that the City would not consider the Applications without the Developer first submitting a major modification application." *Id. at LO 00002032 lines 18-22.*

The reason the City changed its position is the City is seeking to deny the Landowners their constitutional property rights so the Landowners' Property will remain in a vacant condition to be "turned over to the City" for a "fitness park" for 1% of its fair market value. *Exhibit 34: 8 App LO 00001915 and Exhibit 35: 8 App LO 00001922.*

11. City Action #11: The City Retains Private Counsel to Advance an Open Space Designation on the 35 Acre Property.

The Landowners have sufficiently alleged that the City has retained and authorized private counsel to advance an "open space" designation/major modification argument in this case to prevent any and all development on the 35 Acre Property. This is a contrary position from that taken by the

City over the past 32 years on at least 1,067 development units in the Peccole Concept Plan area. *Exhibit 105.* As explained above, over 1,000 units have been developed over the past 32 years in the Peccole Concept Plan area and not once did the City apply the "open space"/major modification argument it is now advancing, even though those +1,000 units were developed contrary to the land use designation on the Peccole Concept Plan. The City has specifically targeted the Landowners and their Property and is treating them differently than it has treated all other properties and owners in the area (+1,000 other units in the area) for the purpose of forcing the Landowners' Property to remain in a vacant condition to be "turned over to the City" for a "fitness park" for 1% of its fair market value. *Exhibit 34: 8 App LO 00001915 and Exhibit 35: 8 App LO 00001922.*

Here, the Landowners have alleged facts and provided documents sufficient to show their Property has been taken by inverse condemnation, which is sufficient to defeat the City's motion for judgment on the pleadings.

D. The City's Argument that the Landowners have No Vested Property Right

The City contends that the Landowners do not have a vested right to use their property for anything other than open space or a golf course. As set forth above, the Landowners have alleged facts and provided documents sufficient to show they have a property interest in and a vested right to use the 35 Acre Property for a residential use, which is sufficient to defeat the City's motion for judgment on the pleadings.

E. The City's Argument that the Landowners' Taking Claims are Not Ripe

The City contends that the Landowners's taking claims are not ripe, because they have not filed a major modification application, which the City contends is a precondition to any development on the Landowners' Property. This City argument is closely related to the City's vested rights argument as the City also contends the Landowners have no vested right to use their property for anything other than a golf course until such time as they submit a major modification application. The Landowners have alleged that a ripeness/exhaustion of administrative remedies analysis does not apply to the four inverse condemnation claims for which the Landowners' are requesting a judicial finding of a taking - regulatory per se, non-regulatory/de facto, categorical, or temporary

taking of property[4] and, therefore, the City's ripeness/exhaustion of administrative remedies argument has no application to these four inverse condemnation claims. The Landowners further allege that the ripeness analysis only applies to the Landowners' inverse condemnation Penn Central Regulatory Takings Claim and, if the Court applies the ripeness analysis, all claims are ripe,[5] including the Penn Central claim.

1. The Landowners Allege Facts Sufficient to Show They Made At Least One Meaningful Application and It Would be Futile to Seek Any Further Approvals From the City.

"While a landowner must give a land-use authority an opportunity to exercise its discretion, once [...] the permissible uses of the property are known to a reasonable degree of certainty, a [regulatory] taking claim [Penn Central claim] is likely to have ripened."[6] The purpose of this rule is to understand what the land use authority will and will not allow to be developed on the property at issue. But, "[g]overnment authorities, of course, may not burden property by imposition of repetitive or unfair land-use procedures in order to avoid a final decision."[7] "[W]hen exhausting available remedies, including the filing of a land-use permit application, is futile, a matter is deemed ripe for review."[8]

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[4] Hsu v. County of Clark, supra, ("[d]ue to the "per se" nature of this taking, we further conclude that the landowners were not required to apply for a variance or otherwise exhaust their administrative remedies prior to bringing suit." Id., at 732); McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 137 P.3d 1110 (2006) ("Sisolak was not required to exhaust administrative remedies or obtain a final decision from the Clark County Commission by applying for a variance before bringing his inverse condemnation action based on a regulatory per se taking of his private property." Id. at 664).

[5] The Nevada Supreme Court has stated regulatory takings claims are generally "not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41 (2015) (*quoting* Williamson County Reg'l Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 186, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985)).

[6] Palazzolo v. Rhode Island, 533 U.S. 606, 620, (2001) ("The central question in resolving the ripeness issue, under *Williamson County* and other relevant decisions, is whether petitioner obtained a final decision from the Council determining the permitted use for the land." *Id.*, at 618.).

[7] Palazzolo, at 621. *Citing to* Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 698, 119 S.Ct. 1624, 143 L.Ed. 2d 882 (1999).

[8] State v. Eighth Judicial Dist. Court of Nev., 351 P.3d 736, 742 (Nev. 2015). For example, in Monterey v. Del Monte Dunes at Monterey, Ltd., 526 U.S. 687, 698, 119 S.Ct. 1624,

In City of Monterey v. Del Monte Dunes 526 U.S. 687, 119 S.Ct. 1624 (1999) the United States Supreme Court held that a taking claim was ripe where the City of Monterey required 19 changes to a development application and then asked the landowner to make even more changes. Finally, the landowner filed inverse condemnation claims. Similar to the City argument in this case, the City of Monterey asserted the landowners' inverse condemnation claims were not ripe for review. The City of Monterey asserted that the City's decision was not final and the landowners' claim was not ripe, because, if the landowner had worked longer with the City of Monterey or filed a different type of application with the City of Monterey, the City of Monterey may have approved development on the landowner's property. The United States Supreme Court approved the Ninth Circuit opinion as follows: "to require additional proposals would implicate the concerns about repetitive and unfair procedures" and "the city's decision was sufficiently final to render [the landowner's] claim ripe for review." Del Monte Dunes, at 698. The United States Supreme Court re-affirmed this rule in the Palazzolo v. Rhode Island, 533 U.S. 606, 121 S.Ct. 2448 (2001) holding the "Ripeness Doctrine does not require a landowner to submit applications for their own sake. Petitioner is required to explore development opportunities on his upland parcel only if there is uncertainty as to the land's permitted uses." Id at 622.

As set forth above, the Landowners have alleged facts and provided documents sufficient to show they submitted the necessary applications to develop the 35 Acre Property, that the City denied every attempt at development, and that it would be futile to seek any further development

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143 L.Ed. 2d 882 (1999) "[a]fter five years, five formal decisions, and 19 different site plans, [internal citation omitted] Del Monte Dunes decided the city would not permit development of the property under any circumstances." Id., at 698. "After reviewing at some length the history of attempts to develop the property, the court found that to require additional proposals would implicate the concerns about repetitive and unfair procedures expressed in MacDonld, Commer & Frates v. Yolo County, 477 U.S. 340, 350 n. 7, (1986) [*citing* Stevens concurring in judgment from Williamson Planning Comm'n v. Hamilton Bank, 473 U.S. 172 at 205-206, 105 S.Ct. 3108 at 3126 (1985)] and that the city's decision was sufficiently final to render Del Monte Dunes' claim ripe for review." Del Monte Dunes, at 698. The "Ripeness Doctrine does not require a landowner to submit applications for their own sake. Petitioner is required to explore development opportunities on his upland parcel only if there is uncertainty as to the land's permitted uses." Palazzolo v. Rhode Island, at 622.

applications from the City, which is sufficient to defeat the City's motion for judgment on the pleadings.

2. The Landowners Allege Facts Sufficient to Show That a Major Modification Application Was Not Required To Ripen Their Inverse Condemnation Claims

The Landowners further allege that no major modification of the Peccole Concept Plan was necessary to develop the 35 Acre Property, because the Landowners were seeking to develop the 35 Acre Property residentially and the land use designation on the Peccole Concept Plan for the 35 Acre Property is a residential use. *Exhibit 107.* Therefore, there was no need to "modify" the Peccole Concept Plan to develop the 35 Acre Property residentially.

The Landowners have also alleged that the City has never required a major modification application to develop properties included in the area of the Peccole Concept Plan. The Landowners allege the City has approved development for approximately 26 projects and over 1,000 units in the area of the 250 Acre Residential Zoned Land (which includes the 35 Acre Property) on properties that were developed with a use contrary to the Peccole Concept Plan and not once did the City require a major modification application.

Here, the Landowners have alleged facts and provided documents sufficient to show that a major modification was not required to ripen their inverse condemnation claims, which is sufficient to defeat the City's motion for judgment on the pleadings.

3. The Landowners Allege Facts Sufficient to Show That, Even if a Major Modification Application was Necessary to Ripen Their Inverse Condemnation Claims, They Met this Requirement

Specific to the City's assertion that a major modification application is necessary to ripen the Landowners' inverse condemnation claims, the Landowners allege that even if a major modification application is required, the MDA the Landowners worked on with the City for over two years, referenced above, included and far exceeded all of the requirements of a major modification application. Exhibit 28. Moreover, the Landowners have cited to a statement by the City Attorney wherein he stated on the City Council record as follows: "Let me state something for the record just to make sure we're absolutely accurate on this. There was a request for a major modification that

accompanied the development agreement [MDA], that was voted down by Council. So that the modification, major mod was also voted down." Exhibit 61, City Council Meeting of January 3, 2018 Verbatim Transcript – Item 78, Page 80 of 83, lines 2353-2361. Additionally, the Landowners allege that they also submitted an application referred to as a General Plan Amendment (GPA), which includes and far exceeds the requirements of the City's major modification application and the City denied the GPA as part of its denial of any use of the 35 Acre Property. Exhibit 5.

Here, the Landowners have alleged facts and provided documents sufficient to show that, even if a major modification application is required to ripen their inverse condemnation claims, they met these requirements, which is sufficient to defeat the City's motion for judgment on the pleadings.

F. The City's Argument that the Statute of Limitation has Run on the Landowners Inverse Condemnation Claims

The City contends that, if there was a taking, it resulted from the City action related to adoption of the City's Master Plan and the City's Master Plan was adopted more than 15 years ago and, therefore, the statute of limitations has run on the Landowners' inverse condemnation claims. The Landowners contend that a City Plan cannot result in a taking, that the City must take action to implement the Plan on a specific property to make the City liable for a taking.

The statute of limitations for an inverse condemnation action in Nevada is 15 years. White Pine Limber v. City of Reno, 106 Nev. 778 (1990). Nevada law holds that merely writing a land use designation over a parcel of property on a City land use plan is "insufficient to constitute a taking for which an inverse condemnation action will lie." Sproul Homes of Nev. v. State ex rel. Dept of Highways, 96 Nev. 441, 443 (1980) *citing to* Selby Realty Co. v. City of San Buenaventura, 169 Cal.Rptr. 799, 514 P.2d 111, 116 (1973) (Inverse claims could not be maintained from a City's "General Plan" showing public use of private land). *See also* State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41, 351 P.3d 736 (2015) (City's amendment to its master plan to allow for a road widening project on private land did not amount to a regulatory taking). This rule and its policy are set forth by the Nevada Supreme Court as follows:

> If a governmental entity and its responsible officials were held subject to a claim for inverse condemnation merely because a parcel of land was designated for potential

> public use on one of the several authorized plans, the process of community planning would either grind to a halt, or deteriorate to publication of vacuous generalizations regarding the future use of land. We indulge in no hyperbole to suggest that if every landowner whose property might be affected at some vague and distant future time by any of these legislatively permissible plans was entitled to bring an action in declaratory relief to obtain a judicial declaration as to the validity and potential effect of the plan upon his land, the courts of this state would be inundated with futile litigation. Sproul Homes, supra, at 444.

Accordingly, the date that would trigger the statute of limitations would not be the master plan or necessarily the designation of the Property as PR-OS, but it will be the acts of the City of Las Vegas / City Council that would control.

Here, the Landowners have alleged facts and provided documents sufficient to show their property has been taken by inverse condemnation based upon the acts of the City of Las Vegas / City Council that occurred less than 15 years ago. Therefore, the City's statute of limitations argument is denied.

G. The City's Argument that the Court Should Apply Its Holding in the Petition For Judicial Review to the Landowners Inverse Condemnation Claims

The City contends that the Court's holding in the Landowners' petition for judicial review should control in this inverse condemnation action. However, both the facts and the law are different between the petition for judicial review and the inverse condemnation claims. The City itself made this argument when it moved to have the Landowners' inverse condemnation claims dismissed from the petition for judicial review earlier in this litigation. Calling them "two disparate sets of claims" the City argued that:

> "The procedural and structural limitations imposed by petitions for judicial review and complaints, however, are such that they cannot afford either party ample opportunity to litigate, in a single lawsuit, all claims arising from the transaction. For instance, Petitioner's claim for judicial review will be "limited to the record below," and "[t]he central inquiry is whether substantial evidence supports the agency's decision." United Exposition Service Company v. State Industrial Insurance System, 109 Nev. 421,424, 851 P.2d 423,425 (1993). On the other hand, Petitioner's inverse condemnation claims initiate a new a civil action requiring discovery (not limited to the record below), and the central inquiry is whether Petitioner (as plaintiff) can establish its claims by a preponderance of the evidence. Thus, allowing Petitioner's four "alternative" inverse condemnation claims (i.e., the complaint) to remain on the Petition will create an impractical situation for the Court and parties, and may allow Petitioner to confuse the record for judicial review by attempting to augment it with discovery obtained in the inverse condemnation action." (October 30, 2017, City of Las Vegas Motion to Dismiss at 8:2)

The evidence and burden of proof are significantly different in a petition for judicial review than in civil litigation. And, as further recognized by the City, there will be additional facts in the inverse condemnation case that must be considered which were not permitted to be considered in the petition for judicial review. This is true, as only City Action #1 above was considered in the petition for judicial review, not City Actions #2-11. And, as stated above, this Court must consider all city actions in the aggregate in this inverse condemnation proceeding.

As an example, if the Court determined in a petition for judicial review that there was substantial evidence in the record to support the findings of a workers' compensation hearing officer's decision, that would certainly not be grounds to dismiss a civil tort action brought by the alleged injured individual, as there are different fact, different legal standards and different burdens of proof.

Furthermore, the law is also very different in an inverse condemnation case than in a petition for judicial review. Under inverse condemnation law, if the City exercises discretion to render a property valueless or useless, there is a taking. Tien Fu Hsu v. County of Clark, 173 P.3d 724 (Nev. 2007), McCarran Int'l Airport v. Sisolak, 122 Nev. 645, 137 P.3d 1110 (Nev. 2006), City of Monterey v. Del Monte Dunes, 526 U.S. 687, 119 S.Ct. 1624 (1999), Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992). In an inverse condemnation case, every landowner in the state of Nevada has the vested right to possess, use, and enjoy their property and if this right is taken, just compensation must be paid. Sisolak. And, the Court must consider the "aggregate" of all government action and the evidence considered is not limited to the record before the City Council. Merkur v. City of Detroit, 680 N.W.2d 485 (Mich.Ct.App. 2004), State v. Eighth Jud. Dist. Ct., 131 Nev. Adv. Op. 41, 351 P.3d 736 (2015), Arkansas Game & Fish Comm's v. United States, 568 U.S. 23, 133 S.Ct. 511 (2012). On the other hand, in petitions for judicial review, the City has discretion to deny a land use application as long as valid zoning laws are applied, there is no vested right to have a land use application granted, and the record is limited to the record before the City Council. Stratosphere Gaming Corp., v. City of Las Vegas, 120 Nev. 523, 96 P.3d 756 (2004).

The Court has previously entered a Nunc Pro Tunc Order in this case recognizing the petition for judicial review matter is different from the inverse condemnation matter:

> "this Court had no intention of making any findings, conclusions of law or orders regarding the Landowners' severed inverse condemnation claims as a part of the Findings of Fact and Conclusions of Law entered on November 21, 2018, ("FFCL"). Accordingly, as stated at the hearing on January 17, 2019, the findings, conclusions and order set forth at page 23:4-20 and page 24:4-5 of the FFCL are hereby removed nunc pro tunc." (Order filed February 6, 2019).

For these reasons, it would be improper to apply the Court's ruling from the Landowners' petition for judicial review to the Landowners' inverse condemnation claims.

H. Conclusion on The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims

The City moved the Court for judgment on the pleadings pursuant to NRCP 12(c). The rule is designed to provide a means of disposing of cases when material facts are not in dispute, and a judgment on the merits can be achieved by focusing on the contents of the pleadings. It has utility only when all material allegations of facts are admitted in the pleadings and only questions of law remain.

This Court reviewed extensive briefings and entertained three and a half to four hours of oral arguments which contained factual disputes and argument throughout the entire hearing. The Court cannot say as a matter of law that the Landowners have no case, there are still factual disputes that must be resolved. Moreover, the court finds that this case can be heard on the merits as that policy is provided in Schulman v. Bongberg-Whitney Elec., Inc., 98 Nev. 226, 228 (1982).

Accordingly, IT IS HEREBY ORDERED that The City's Motion for Judgment on the Pleadings on Developer's Inverse Condemnation Claims is **DENIED**.

III. The Landowners Rule 56 Motion for Summary Judgment on Liability for the Landowners Inverse Condemnation Claims

The Landowners countermoved this Court for summary judgment on the Landowners' inverse condemnation claims. Discovery has not commenced nor as of the date of the hearing have the parties had a NRCP 16.1 case conference. The Court finds it would be error to consider a Rule 56 motion at this time.

Accordingly, IT IS HEREBY ORDERED that the Landowners' Countermotion for Judicial Determination of Liability on the Landowners' Inverse Condemnation Claims is **DENIED** without prejudice.

IT IS SO ORDERED.

DATED this ~~4th~~ day of ~~April~~, 2019. CH
May 14,

DISTRICT COURT JUDGE

Respectfully Submitted By:
LAW OFFICES OF KERMITT L. WATERS

By: _____

Kermitt L. Waters, ESQ., NBN 2571
James Jack Leavitt, ESQ., NBN 6032
Michael A. Schneider. ESQ., NBN 8887
Autumn Waters, ESQ., NBN 8917
704 S. 9th Street
Las Vegas, NV 89101
Attorneys for Plaintiff Landowners

Exhibit 19

FFCO
HUTCHISON & STEFFEN, PLLC
Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Telephone: (702) 385-2500
Facsimile: (702) 385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com

LAW OFFICES OF KERMITT L. WATERS
Kermit L. Waters (2571)
James J. Leavitt (6032)
Michael Schneider (8887)
Autumn L. Waters (8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

Attorneys for 180 Land Company, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: A-17-758528-J

DEPT. NO.: XVI

~~[PROPOSED]~~ FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF'S MOTION FOR A NEW TRIAL, MOTION TO ALTER OR AMEND AND/OR RECONSIDER THE FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND MOTION TO STAY PENDING NEVADA SUPREME COURT DIRECTIVES

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A. SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER P. and CAROLYN G. WAGNER, individuals and Trustees of the WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC.; JASON AND SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE AND KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST, AND DR. GREGORY BIGLER AND SALLY BIGLER,

Intervenors.

Currently before the Court is Plaintiff 180 Land Co, LLC's Motion For A New Trial Pursuant To NRCP 59(e) And Motion To Alter Or Amend Pursuant To NRCP 52(b) And/Or Reconsider The Findings Of Fact And Conclusions Of Law And Motion To Stay Pending Nevada Supreme Court Directives ("the Motion") filed on December 13, 2018. The alternative relief sought by the Developer is a stay of the proceedings until the Nevada Supreme Court decides an appeal from the judgment entered March 5, 2018 by the Honorable James Crockett in Case No. A-17-752344-J ("Judge Crockett's Order"). The City filed an opposition, to which the Intervenors joined, and the Plaintiff filed a reply. The Court held oral argument on the Motion on January 22, 2019.

Having considered the record on file, the written and oral arguments presented, and being fully informed in the premises, the Court makes the following findings of facts and conclusions of law:

I. FINDINGS OF FACT

1. Plaintiff 180 Land Co, LLC ("the Developer") filed a Petition for Judicial Review (the "Petition") challenging the Las Vegas City Council's June 21, 2017 decision to deny its four land use applications ("the 35-Acre Applications") to develop its 34.07 acres of R-PD7 zoned property (the "35-Acre Property").

2. On November 21, 2018, this Court entered Findings of Fact and Conclusions of Law on Petition for Judicial Review ("FFCL") that denied the Petition and dismissed the alternative claims for inverse condemnation. The Court concluded that the Las Vegas City Council properly exercised its discretion to deny the 35-Acre Applications and that substantial evidence supported the City Council's June 21, 2017 decision. The Court further concluded that the Developer had no vested rights to have the 35-Acre Applications approved.

3. On February 6, 2019, the Court entered an Order Nunc Pro Tunc that removed those portions of the FFCL that dismissed the inverse condemnation claims. Specifically, the Order *Nunc Pro Tunc* removed FFCL page 23:4-20 and page 24:4-5 but left all findings of fact and all other conclusions of law intact.

4. The Developer seeks a new trial: however, because this matter is a petition for judicial review, no trial occurred.

5. While the Developer has raised new facts, substantially different evidence and new issues of law, none of these new matters warrant rehearing or reconsideration, as discussed infra.

6. The Developer identifies claimed errors in the Court's previous findings of fact in the FFCL and disagrees with the Court's interpretation of law.

7. The Developer has failed to show that the Court's previous findings that the City Council did not abuse its discretion or that sufficient privity exists to bar Plaintiff's Petition under issue preclusion were clearly erroneous.

8. The Developer repeats its arguments that it raised previously in support of its petition for judicial review; namely, that public opposition, the desire for a comprehensive and cohesive development proposal to amend the General Plan's open space designation, and the City

Council's choice not to follow Staff's recommendation purportedly were not ample grounds to affirm the City Council's June 21, 2017 decision.

9. The Developer also reasserts its contentions that: (a) NRS 278.349 gives it vested rights to have the 35-Acre Applications approved; (b) the Queensridge homeowners have no rights in the golf course; (c) no major modification is required; (d) Judge Crockett's Order should be disregarded; and (e) the County Assessor changed the assessed value of the property after the Developer stopped using it as a golf course. The Developer made each of these arguments in the briefs submitted by the Developer in support of the Petition. *See* Pet. Memo. of P&A in support of Second Amended PJR at 5:17-20, 6:3, 7:4-10, 10:4-14:17, 17:8-18:7, 22-42, 26:10-17, 29:10-30:24, n.6, n.37, n.42, n.45, n.79, n.112; Post Hearing Reply Br. at 2:2-4, 2:19-4:3, 7:18-13:14, 13-16, 26:16-29:15, n.79.

10. The Motion also cites to and attaches documents that were not part of the record on review at the time the City Council rendered its June 21, 2017 decision to deny the 35-Acre Applications. *See* Motion at 2:14-3:23, 8:1-21; n.2, n.3, n.18, n.20, n. 21, n.22, citing Exs. 1-6 to the Motion.

11. The transcripts and minutes from the August 2, 2017 and March 21, 2018 City Council meetings on which the Developer relies (Exs. 1 and 6 to the Motion) post-dated the City Council's June 21, 2017 decision to deny the 35-Acre Applications and are, therefore, not part of the record on review.

12. Similarly, the Developer's attacks on Councilmember Seroka are beyond the record on review because he was not on the City Council on June 21, 2017 when the City Council voted to deny the 35-Acre Applications.

13. The Supreme Court's order of affirmance and order denying rehearing related to Judge Smith's orders (Exs. 4 and 5 to the Motion) were entered on October 17, 2018 and November 27, 2018, respectively, after the City Council denied the 35-Acre Applications and, therefore, are not part of the record on review.

14. The Developer previously cited to Judge Smith's underlying orders before the Nevada Supreme Court's actions both before the City Council and before this Court. *See* Pet.'s

P&A at 9:5-10:10, 17:1-2; *see also* 6.29.18 Hrg. Trans. at 109:6-110:13, attached as Exhibit B to City Opp.

15. The Motion relies not only on the aforestated orders, but also the Nevada Supreme Court's decision affirming the orders Judge Smith issued in that case.

16. Judge Smith's orders interpreted the rights of the Queensridge homeowners under the Queensridge CC&Rs, which in the Court's view, have no relevance to the issues in this case or the reasons supporting the Court's denial of the Petition.

17. Judge Smith described the matter before him as the Queensridge homeowners' claims that ***their*** "vested rights" in the CC&Rs were violated. *See* 11.30.16 Smith FFCL at ¶¶2, 7, 29, 108, Ex. 2 to the Motion.

18. Whether the Developer had vested rights to have its development applications approved was not precisely at issue in the matter before Judge Smith. *See id.*

19. Indeed, Judge Smith confirmed that, notwithstanding the zoning designation for the golf course property, the Developer is nonetheless "subject to City of Las Vegas requirements" and that the City is not obligated to make any particular decision on the Developer's applications. 1.31.17 FFCL ¶¶9, 16-17, 71.

20. The Supreme Court's affirmance of Judge Smith's orders has no impact on this Court's denial of the Developer's Petition for Judicial Review.

21. In the Motion, the Developer challenges the Court's application of issue preclusion to Judge Crockett's Order. The Developer reargues its attacks on the substance of Judge Crockett's Order (Motion at 17:21-20:7) and also reargues the application of issue preclusion to Judge Crockett's Order.

22. The Court finds no conflict between Judge Crockett's Order and Judge Smith's orders and therefore rejects the Developer's argument that such orders are "irreconcilable."

23. In its Motion, the Developer argues that this Court's factual findings are incorrect and need amendment. Two findings from the FFCL the Developer argues are incorrect are ¶¶12-13, which the Developer contends are different than Judge Smith's findings. Motion at 20, n.67.

24. As stated supra in finding No. 17, Judge Smith's orders are irrelevant to this Petition for Judicial Review. Thus, the Court finds no cause exists to alter or amend the findings in the FFCL.

II. CONCLUSIONS OF LAW

A. The Court May Not Consider Matters Outside The Record On Review

1. The scope of the Court's review is limited to the record made before the administrative tribunal. *Bd. of Cty. Comm'rs of Clark Cty. v. C.A.G., Inc.*, 98 Nev. 497, 500, 654 P.2d 531, 533 (1982). That scope cannot be expanded with a motion for reconsideration of the Court's denial of a petition for judicial review. *See id.*

2. The Developer's Motion cites to matters that post-dated the City Council's June 21, 2017 Decision and that are otherwise outside the record on review.

3. Because the Court's review is limited to the record before the City Council on June 21, 2017, the Court may not consider the documents that post-date the City Council's June 21, 2017 decision submitted by the Developer. *See Bd. of Cty. Comm'rs of Clark Cty. v. C.A.G., Inc.*, 98 Nev. 497, 500, 654 P.2d 531, 533 (1982).

B. No "Retrial" Is Appropriate For A Petition For Judicial Review

4. Under NRCP 59(a), the Court may grant a new trial on some or all issues based upon certain grounds specifically enumerated in that rule.

5. Where a petition for judicial review is limited to the record and does not involve the Court's consideration of new evidence, a motion for a new trial is not the appropriate mechanism to seek reconsideration of the denial of a petition for judicial review.

6. "Retrial" presupposes that a trial occurred in the first instance, but no trial occurred here or is allowed for a petition for judicial review because the Court's role is limited to reviewing the record below for substantial evidence to support the City Council's decision. *See City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 271, 236 P. 3d 10, 15-16 (2010) (citing *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006)).

7. Moreover, a motion for a new trial under NRCP 59(a), which is the authority cited by the Developer (at 16:22-23), may only be granted based upon specific enumerated grounds

cited in the rule, none of which is invoked by the Developer. As a result, no "retrial" may be granted.

C. The Developer's Repetition of its Previous Arguments is Not Grounds for Reconsideration

8. Pursuant to EDCR 2.24(a), no motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court.

9. "Although Rule 59(e) permits a district court to reconsider and amend a previous order, the rule offers an 'extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.'" *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000), quoting 12 Moore's Federal Practice §59.30[4] (3d ed. 2000) (discussing the federal corollary of NRCP 59(e)).

10. A Rule 59(e) motion may not be used "to relitigate old matters." 11 Fed. Prac. & Proc. Civ. §2810.1 (3d ed.); *accord Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 n.5 (2008).

11. "Rehearings are not granted as a matter of right and are not allowed for the purpose of re-argument, unless there is a reasonable probability that the court may have arrived at an erroneous conclusion." *Geller v. McCowan*, 64 Nev. 106, 108, 178 P.2d 380, 381 (1947) (citations omitted) (discussing petition for rehearing of appellate decision).

12. Because the Developer has not raised sufficient new facts, substantially different evidence or new issues of law for rehearing or reconsideration showing an erroneous conclusion, the Court rejects the Developer's repetitive arguments.

D. NRCP 52(b) Does Not Apply Where the Developer Does Not Identify Any of the Court's Findings of Fact That Warrant Amendment

13. Although it brings its motion to alter or amend pursuant to NRCP 52(b), that rule is directed only at amendment of factual "findings," not legal conclusions. *See id.* "Rule 52(b) merely provides a method for amplifying and expanding the lower court's findings, and is not intended as a vehicle for securing a re-hearing on the merits." *Matter of Estate of Herrmann*, 100 Nev. 1, 21 n.16, 677 P.2d 594, 607 n.16 (1984).

14. The only findings mentioned in the Motion (at ¶¶12-13) are supported by the portion of the record cited by the Court, namely, the Peccole Ranch Master Development Plan. Judge Smith's findings in support of his interpretation of the Queensridge CC&Rs do not alter the Court's findings.

15. Because the Developer has not identified any findings that should be amended under NRCP 52(b), the Court declines to amend any of its findings.

E. The Developer May Not Present Arguments and Materials it Could Have Presented Earlier But Did Not

16. The Developer's Motion cannot be granted based upon arguments the Developer could have raised earlier but chose not to.

17. "A Rule 59(e) motion may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Kona Enters.*, 229 F.3d at 890.

18. "Points or contentions not raised in the original hearing cannot be maintained or considered on rehearing." *Achrem v. Expressway Plaza Ltd. P'ship*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996).

19. Contrary to the Developer's assertion (Motion at 16:1-2), the Court considered all of the arguments in its Petition related to Judge Smith's orders. The Court simply rejected them because Judge Smith's interpretation of the Queensridge CC&R's does not affect the City Council's discretion under NRS Chapter 278 and the City's Unified Development Code to deny the 35-Acre Applications.

F. The Supreme Court's Affirmance of Judge Smith's Orders Has No Impact on this Court's Denial of the Developer's Petition for Judicial Review

20. The fact that the Supreme Court affirmed Judge Smith's orders is not grounds for reconsideration because Judge Smith's orders interpreted the Queensridge homeowners' rights under the CC&R's, not the City Council's discretion to deny re-development applications.

21. As a result, the Developer's assertion (at 3:4-5) that Judge Smith's Orders are "irreconcilable" with Judge Crockett's Decision does not accurately reflect the scope of the matter before Judge Smith.

22. This Court correctly concluded that the Developer does not have vested rights to have the 35-Acre Applications approved, and neither Judge Smith's orders, nor the Supreme Court's orders of affirmance, alter that conclusion.

G. The Court Correctly Determined That Judge Crockett's Order Has Preclusive Effect Here

23. The Developer has failed to show that the Court's conclusion that sufficient privity exists to bar the Developer's petition under the doctrine of issue preclusion was clearly erroneous.

24. The Court correctly determined that Judge Crockett's Order has preclusive effect here and, as a result, the Developer must obtain the City Council's approval of a major modification to the Peccole Ranch Master Developer Plan before it may develop the 35-Acre Property.

25. The Court's conclusion that the City Council's decision was supported by substantial evidence was independent of its determination that Judge Crockett's Order has preclusive effect here. Judge Crockett's Order was only a "further" (i.e., not exclusive) reason to deny the Developer's petition for judicial review.

H. The Developer Does Not Identify Any Clear Error That Warrants Reconsideration

26. The sole legal grounds for reconsideration asserted by the Developer is purported "clear error."

27. The only legal conclusions in the FFCL with which the Developer takes issue are the Court's determinations that public opposition constitutes substantial evidence for denial of the 35-Acre Applications and that the City Council properly exercised its discretion to insist on comprehensive and orderly development for the entirety of the property of which the 35-Acre Property was a part. Motion at 20:8-24:7. In making these arguments, however, the Developer never contends that the Court incorrectly interpreted the law cited in the FFCL. *See id.* It therefore

cannot satisfy its burden of showing "clear error." The Developer has failed to show that the Court's previous conclusion that the City Council did not abuse its discretion was clearly erroneous.

28. The Court's analysis of these issues was correct. The *Stratosphere* and *C.A.G.* cases hold that public opposition from neighbors, even if rebutted by a developer, constitutes substantial evidence to support denial of development applications. *See Stratosphere Gaming*, 120 Nev. at 529, 96 P.3d at 760; *C.A.G.*, 98 Nev. at 500-01, 654 P.2d at 533. The Developer's Motion is silent as to this point.

29. Citing NRS 278.349(3)(e), the Developer contests the Court's reliance on *Nova Horizon* and *Cold Springs* that zoning must substantially conform to the master plan and that the master plan presumptively governs a municipality's land use decisions. *Nova Horizon*, 105 Nev. at 97, 769 P.2d at 724; *Citizens for Cold Springs*, 126 Nev. at 266, 236 P.3d at 12. The Developer's discussion fails to discredit the *Nova Horizon* decision given NRS 278.349(3)(a) and does not address the *Cold Springs* case.

30. Having failed to demonstrate any clear error in the Court's decision, the Developer fails to satisfy its burden for reconsideration.

31. Nothing presented in the Motion alters the Court's conclusion that the City Council properly exercised its discretion to deny the 35-Acre Applications and the June 21, 2017 decision was supported by substantial evidence. *See City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 271, 236 P.3d 10, 15-16 (2010) (*citing Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006)); *Cty. of Clark v. Doumani*, 114 Nev. 46, 53, 952 P.2d 13, 17 (1998), *superseded by statute on other grounds*; *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 528, 96 P.3d 756, 760 (2004).

32. As the Court correctly concluded, its job was to evaluate whether substantial evidence supports the City Council's decision, not whether there is substantial evidence to support a contrary decision. *Nevada Power Co. v. Pub. Utilities Comm'n of Nevada*, 122 Nev. 821, 836 n.36, 138 P.3d 486, 497 (2006).

33. This is because the administrative body alone, not a reviewing court, is entitled to weigh the evidence for and against a project. *Liquor & Gaming Licensing Bd.*, 106 Nev. at 99, 787 P.2d at 784.

I. The Developer Failed to Advance Any Argument to Justify a Stay

34. The Motion lacks any argument or citation whatsoever related to its request for a stay.

35. "A party filing a motion must also serve and file with it a memorandum of points and authorities in support of each ground thereof. The absence of such memorandum may be construed as an admission that the motion is not meritorious, as cause for its denial or as a waiver of all grounds not so supported." EDCR 2.20(c) (emphasis added).

36. Because the Developer provides no points and authorities in support of its motion for stay, the motion for stay must be denied.

J. Effect On The Developer's Inverse Condemnation Claims

37. The Developer's petition for judicial review and its inverse condemnation claims involve different evidentiary standards.

38. Relative to the petition for judicial review, the Developer had to demonstrate that the City Council abused its discretion in that the June 21, 2017 decision was not supported by substantial evidence; whereas, relative to its inverse condemnation claims, the Developer must prove its claims by a preponderance of the evidence.

39. Because of these different evidentiary standards, the Court concludes that its conclusions of law regarding the petition for judicial review do not control its consideration of the Developer's inverse condemnation claims.

ORDER

Accordingly, IT IS HEREBY ORDERED, ADJUDGED and DECREED that the Motion For A New Trial Pursuant To NRCP 59(e) And Motion To Alter Or Amend Pursuant To NRCP 52(b) And/Or Reconsider The Findings Of Fact And Conclusions Of Law And Motion To Stay Pending Nevada Supreme Court Directives is DENIED.

IT IS FURTHER ORDERED THAT the Court's conclusions of law regarding the petition for judicial review do not control its consideration of the Developer's inverse condemnation claims, which will be subject to further action by the Court.

DATED: April 6th, 2019.

TIMOTHY C. WILLIAMS
District Court Judge

CB + TCW

Submitted By:

HUTCHISON & STEFFEN, PLLC

Mark A. Hutchison (4639)
Joseph S. Kistler (3458)
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
Telephone: (702) 385-2500
Facsimile: (702) 385-2086
mhutchison@hutchlegal.com
jkistler@hutchlegal.com

LAW OFFICES OF KERMITT L. WATERS
Kermit L. Waters (2571)
James J. Leavitt (6032)
Michael Schneider (8887)
Autumn L. Waters (8917)
704 South Ninth Street
Las Vegas, Nevada 89101
Telephone: (702) 733-8877
Facsimile: (702) 731-1964

Attorneys for 180 Land Company, LLC

Competing Order Submitted By:

MCDONALD CARANO LLP
George F. Ogilvie, III
Debbie Leonard
Amanda C. Yen
2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
gogilvie@mcdonaldcarano.com
dleonard@mcdonaldcarano.com
ayen@mcdonaldcarano.com

and

Las Vegas City Attorney's Office
Brad Jerbic
Philip R. Byrnes
Seth T. Floyd
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101
pbyrnes@lasvegasnevada.gov
sfloyd@lasvegasnevada.gov

Attorneys for the City of Las Vegas

Exhibit 20

RAB
BRADFORD R. JERBIC
City Attorney
Nevada Bar No. 1056
By: PHILIP R. BYRNES
Senior Litigation Counsel
Nevada Bar No. 166
By: ELIAS P. GEORGE
Deputy City Attorney
Nevada Bar No. 12379
495 South Main Street, Sixth Floor
Las Vegas, NV 89101
(702) 229-6629 (office)
(702) 386-1749 (fax)
Email: pbyrnes@lasvegasnevada.gov
Email: egeorge@lasvegasnevada.gov
Attorneys for CITY OF LAS VEGAS

DISTRICT COURT

CLARK COUNTY, NEVADA

JACK B. BINION, an individual; DUNCAN R. and IRENE LEE, individuals and Trustees of the LEE FAMILY TRUST; FRANK A SCHRECK, an individual; TURNER INVESTMENTS, LTD., a Nevada Limited Liability Company; ROGER P. and CAROLYN G. WAGNER, individuals and Trustees of the WAGNER FAMILY TRUST; BETTY ENGLESTAD AS TRUSTEE OF THE BETTY ENGLESTAD TRUST; PYRAMID LAKE HOLDINGS, LLC.; JASON AND SHEREEN AWAD AS TRUSTEES OF THE AWAD ASSET PROTECTION TRUST; THOMAS LOVE AS TRUSTEE OF THE ZENA TRUST; STEVE AND KAREN THOMAS AS TRUSTEES OF THE STEVE AND KAREN THOMAS TRUST; SUSAN SULLIVAN AS TRUSTEE OF THE KENNETH J. SULLIVAN FAMILY TRUST, AND DR. GREGORY BIGLOR AND SALLY BIGLER,

Petitioners,

vs.

THE CITY OF LAS VEGAS; and SEVENTY ACRES, LLC, a Nevada Limited Liability Company,

Respondents.

CASE NO. A-17-752344-J
DEPT. NO. XXIV

RESPONDENT CITY OF LAS VEGAS' ANSWERING BRIEF

September 6, 2000.[1] The City of Las Vegas ("City") subsequently adopted the Land Use & Neighborhoods Preservation Element of the Las Vegas 2020 Master Plan on September 2, 2009.[2] Ordinance #6056; revised with Ordinance #6152 on May 8, 2012.

The Land Use & Neighborhoods Preservation Element is significant, *inter alia*, because it plainly establishes the City's land use hierarchy. The land use hierarchy progresses in the following ascending order: 2020 Master Plan; Land Use Element; Master Plan Land Use Designation; Master Development Plan Areas; and Zoning Designation. (Land Use & Neighborhoods Preservation Element at 19.) In the hierarchy, the land use designation is subordinate to the zoning designation, for example, because land use designations indicate the intended use and development density for a particular area, while zoning designations specifically define allowable uses and contain the design and development guidelines for those intended uses.

The City's decision to approve Seventy Acres, LLC's applications conformed to the zoning and land use designations of Peccole Ranch, which did not require the approval of a Major Modification, and—thus—warrants deference from the Court. The Nevada Supreme Court has previously noted that

> it is not the business of courts to decide zoning issues. *Coronet Homes, Inc. v. McKenzie*, 84 Nev. 250, 256, 439 P.2d 219, 223 (1968). Because of [a governing body's] particular expertise in zoning, courts must defer to and not interfere with the [governing body's] discretion if this discretion is not abused. *City Council, Reno*, 100 Nev. at 439, 683 P.2d at 962.

Nevada Contractors v. Washoe County, 106 Nev. 310, 314, 792 P.2d 31, 33 (1990).

The City acted within its discretionary powers and properly approved the three applications without a Major Modification. A Major Modification is similar to a General Plan Amendment. While a General Plan Amendment changes the land use designation within a

---

[1] The City of Las Vegas 2020 Master Plan is available at https://www.lasvegasnevada.gov/cs/groups/public/documents/document/dhn0/mday/~edisp/tst002661.pdf.

[2] The City of Las Vegas Land Use & Neighborhoods Preservation Element is available at https://www.lasvegasnevada.gov/cs/groups/public/documents/document/dhn0/mday/~edisp/tst002656.pdf.

> Simon & Tucker argues that the court was presented with evidence to the contrary, which showed that granting the gaming licenses would in fact be beneficial to the public interest. However, just because there was conflicting evidence does not compel interference with the Board's decision so long as the decision was supported by substantial evidence. *O'Donnell v. Buhl*, 75 Idaho 34, 266 P.2d 668, 669 (1954). It is not the place of the court to substitute its judgment for that of the Board as to the weight of the evidence. *Gandy v. State ex rel. Div. Investigation*, 96 Nev. 281, 282, 607 P.2d 581, 582–583 (1980).

As in *Simon & Tucker*, the City Council received conflicting evidence supporting and opposing the applications. Their approval, however, was supported by substantial evidence. The Court may not reweigh the evidence or substitute its judgment for that of the Council's. Instead, it must affirm the decision of the City Council.

DATED this 23RD day of October, 2017.

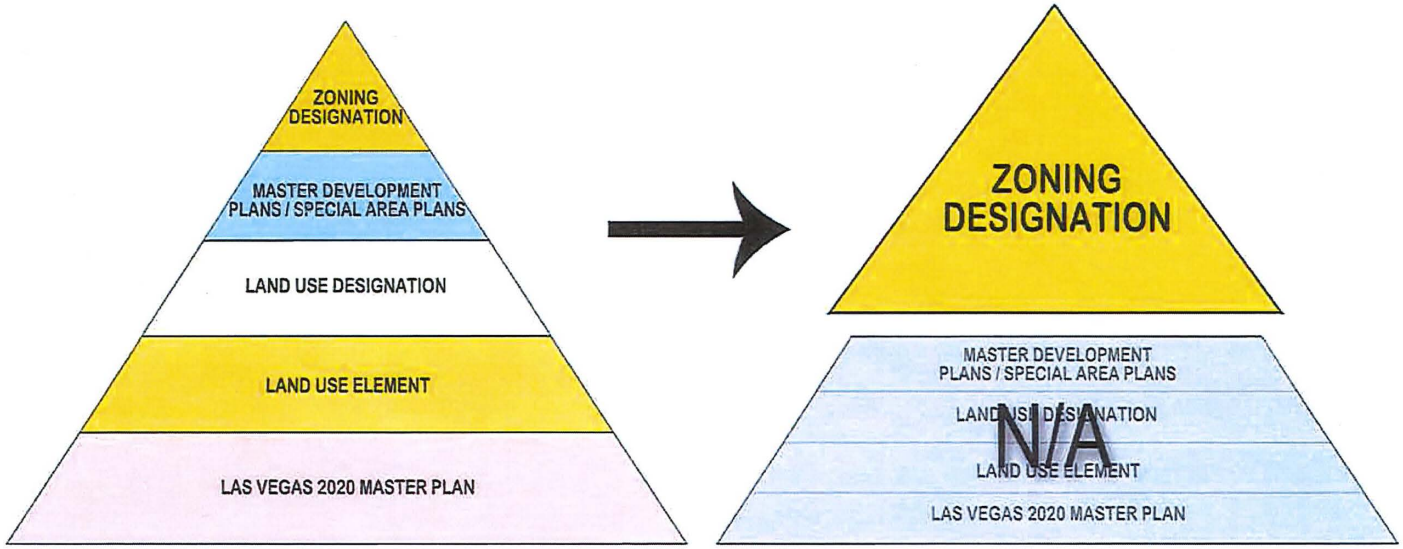
BRADFORD R. JERBIC
City Attorney

By: _____

PHILIP R. BYRNES
Senior Litigation Counsel
Nevada Bar No. 166
ELIAS P. GEORGE
Deputy City Attorney
Nevada Bar No. 12379
495 South Main Street, Sixth Floor
Las Vegas, NV 89101
Attorneys for CITY OF LAS VEGAS

Exhibit 21

LAND USE HIERARCHY*



PRE-ZONING

POST-ZONING

ACP:ATTORNEY CLIENT PRIVILEGE

*REFER TO PAGE 19 OF LAND USE & RURAL NEIGHBORHOODS PRESERVATION ELEMENT (LAS VEGAS 2020 MASTER PLAN)

Exhibit 22

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CLERK OF THE COURT

OPPM
BRADFORD R. JERBIC
City Attorney
Nevada Bar No. 1056
By: PHILIP R. BYRNES
Deputy City Attorney
Nevada Bar No. 166
400 Stewart Avenue, Ninth Floor
Las Vegas, NV 89101
(702) 229-6629
(702) 386-1749 (fax)
Email: pbyrnes@lasvegasnevada.gov
Attorneys for CITY OF LAS VEGAS
and REGIONAL TRANSPORTATION COMMISSION

DISTRICT COURT

CLARK COUNTY, NEVADA

MOCCASIN & 95 LLC, a Nevada Limited Liability Company; DOE INDIVIDUALS I through XXX; DOE CORPORATIONS I through XXX; DOE LIMITED LIABILITY COMPANIES I through XXX,

Plaintiffs,

vs.

CITY OF LAS VEGAS, a political subdivision of the State of Nevada; THE REGIONAL TRANSPORTATION COMMISSION OF SOUTHERN NEVADA; ROE government entities I through XXX; ROE CORPORATIONS I through XXX; ROE INDIVIDUALS I through XXX; ROE LIMITED LIABILITY COMPANIES I through XXX, ROE quasi-governmental entities I through XXX,

Defendants.

CASE NO. A-10-627506-C
DEPT. NO. XXVI

OPPOSITION TO PLAINTIFF LANDOWNER'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON LIABILITY FOR A TAKING

Defendants CITY OF LAS VEGAS and REGIONAL TRANSPORTATION COMMISSION OF SOUTHERN NEVADA, though their attorneys BRADFORD R. JERBIC, City Attorney, by PHILIP R. BYRNES, Deputy City Attorney, files the following points and

> approval. If denied, the proposed changes could not be made to the Master Plan of Streets and Highways and the Las Vegas 2020 Master Plan, and the approved Sheep Mountain Parkway and master planned streets would remain in their current alignments.

Id.

III.

THE SUMMARY JUDGMENT STANDARD

In *Butler ex rel. Biller v. Bayer*, 123 Nev. 450, 457-58, 168 P.3d 1055, 1061 (2007), the Nevada Supreme Court described the standards for granting a motion for summary judgment:

> This court reviews a summary judgment order de novo. We have previously explained that "[s]ummary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions, and affidavits on file show that there exists no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." A genuine issue of material fact exists if, based on the evidence presented, a reasonable jury could return a verdict for the nonmoving party.

The party requesting summary judgment bears the burden of establishing that no triable issues remain. *Butler v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d 662, 663 (1985). All reasonable inferences must be made in favor of the opposing party and the Court may not weigh the credibility of the evidence. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002).

IV.

THE PLACEMENT OF THE NORTH ALIGNMENT ON THE CITY'S MASTER PLAN OF STREETS AND HIGHWAYS DID NOT CONSTITUTE A TAKING OF THE SUBJECT PROPERTY

The City's Master Plan of Streets and Highways is a planning document. Nevada law clearly provides that planning activities do not constitute a taking. In an effort to circumvent this clearly established law, Plaintiff argues that the setback requirements of Las Vegas Municipal Code (LVMC) 13.12.150 preclude all development of the subject property under the unique circumstances of this case. The setback requirements of LVMC 13.12.150 do not even apply to the subject property since the City Council never adopted an ordinance establishing a center line for the North Alignment. The placement of the North Alignment on the City's Master Plan of

Streets and Highways was a routine planning activity that had no legal effect on the use and development of the subject property. The amendment did not constitute taking of the subject property.

The Master Plan of Streets and Highways is part of the City's Master Plan. LVMC 13.12.020. NRS 278.230(1)(a) describes the purpose of the Master Plan:

> A pattern and guide for that kind of orderly physical growth and development of the city or county which will cause the least amount of natural resource impairment and will conform to the adopted population plan, where required, and ensure an adequate supply of housing, including affordable housing . . . .

The purpose of the City's Master Plan of Streets and Highways is described in LVMC 13.12.010:

> The Master Plan of Streets and Highways has been prepared by the City Planning Commission to promote the orderly development of land which an increasing population will require, to eliminate existing congestion and facilitate rapid traffic movement, and to make provisions for anticipated future traffic needs.

The Master Plan of Streets and Highways is a planning document and the placement of a potential roadway on the Plan does not constitute a taking of private property.

In *Sproul Homes of Nevada v. State ex rel. Department of Highways*, 96 Nev. 441, 444, 611 P.2d 620, 621 (1980), the Nevada Supreme Court found that inclusion of a street on a master plan does not constitute a taking:

> It is well-established that the mere planning of a project is insufficient to constitute a taking for which an inverse condemnation action will lie.

The Court adopted the reasoning of a California court in *Selby Realty Company v. City of San Buenaventura*, 514 P.2d 111 (Cal. 1973):

> On appeal, the court stated: "In order to state a cause of action for inverse condemnation, there must be an invasion or an appropriation of some valuable property right which the landowner possesses and the invasion or appropriation must directly and specially affect the landowner to his injury." *Id.* at 117. The court continued:
>
> > If a governmental entity and its responsible officials were held subject to a claim for inverse condemnation merely because a parcel of land was designated for potential public use on one of the several authorized plans, the process of community planning would

Las Vegas City Attorney
400 E. Stewart Ave., 9th Floor
Las Vegas, Nevada 89101
702-229-6629

> either grind to a halt, or deteriorate to publication of vacuous generalizations regarding the future use of land. We indulge in no hyperbole to suggest that if every landowner whose property might be affected at some vague and distant future time by any of these legislatively permissible plans was entitled to bring an action in declaratory relief to obtain a judicial declaration as to the validity and potential effect of the plan upon his land, the courts of this state would be inundated with futile litigation.
>
> *Id.* at 117-18 (emphasis added). We agree with this reasoning.

96 Nev. at 444, 514 P.2d at 621-22.

In an effort to avoid the clear reasoning of *Sproul Homes*, Plaintiff argues that the amendment of the Master Plan of Streets and Highways in conjunction with the setback requirements of LVMC 13.12.150 constitutes a taking. LVMC 13.12.150 provides:

> All buildings or structures to be built along any major street or highway embraced by the Master Plan shall be set back from the centerline of any existing or proposed major street or highway a distance equal to one-half the proposed right-of way width, plus the distance required by the particular zone in which the property is located, unless an ordinance is adopted to establish a distance other than one-half the proposed right-of-way width. With respect to any building or structure located at any intersection described in Section 13.12.100, the foregoing setback requirements shall be increased to conform to the property line radius specified in that Section.

A setback requirement is a legitimate exercise of the city's police power and does not amount to a per se taking. *Echevarrieta v. City of Rancho Palos Verdes*, 103 Cal. Rptr. 2d 165, 171 (Cal. App. 2001), the Court stated:

> Here, while the City has imposed limitations on the height of pre-existing foliage, it is a legitimate exercise of police power which does not rise to the level of a taking. **Contrary to "per se" takings, "traditional land-use regulations" such as the imposition of minimal building setbacks, parking and lighting conditions, landscaping requirements, and other design conditions "have long been held to be valid exercises of the city's traditional police power, and do not amount to a taking merely because they might incidentally restrict a use, diminish the value, or impose a cost in connection with the property.** [Citations.]" (*Ehrlich v. City of Culver City, supra*, 12 Cal. 4th at p. 886, 50 Cal. Rptr. 2d 242, 911 P.2d 429; *HFH, Ltd. v. Superior Court* (1975) 15 Cal. 3d 508, 518, 125 Cal. Rptr. 365, 542 P.2d 237 ["[A] zoning action which merely decreases the market value of property does not violate the constitutional provisions forbidding uncompensated taking or damaging. . . ."].) "The denial of the highest and best use does not constitute an unconstitutional

> taking of property. [Citation.] 'Even where there is a very substantial diminution in the value of land, there is no taking . . . .' [Emphasis added.]

See also R & Y, Inc. v. Municipality of Anchorage, 34 P.3d 289, 296-97 (Alaska 2001).

In the case of the subject property, the setback requirements of LVMC 13.12.150 are not even applicable since the City Council did not adopt an ordinance establishing a centerline for the North Alignment. LVMC 13.12.130 provides:

> With respect to any major street or highway located on a section line, the section line shall be the centerline unless the Board of Commissioners adopts an ordinance which establishes a different centerline. **With respect to any proposed or existing major street or highway which does not follow a predetermined line, the location of the centerline in each case shall be described by ordinance.** [Emphasis added.]

Since the setback requirements of LVMC 13.12.150 are measured from the centerline of the roadway and the City Council did not establish a centerline by ordinance, the setback requirements of LVMC 13.12.150 could not be enforced in any land use application regarding the subject property.[2] *See* Exhibit A; Affidavit of Bryan K. Scott, attached as Exhibit K; Affidavit of James B. Lewis, attached as Exhibit L.

The placement of the North Alignment on the Master Plan of Streets and Highways was a planning activity that did not legally effect Plaintiff's ability to use or develop the subject property. This amendment did not constitute a taking of the subject property.

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[2] In *Boulder City v. Cinnamon Hills Associates*, 110 Nev. 238, 247, 871 P.2d 320, 326 (1994), the Nevada Supreme Court noted that a city's "interpretation of its own land use laws is cloaked with a presumption of validity and will not be disturbed absent a manifest abuse of discretion."

Exhibit 23

AFFIDAVIT OF BRYAN K. SCOTT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

BRYAN K. SCOTT, being first duly sworn, deposes and says:

1. I am employed by the City of Las Vegas as an Assistant City Attorney. I have personal knowledge of the matters stated herein; and, if called upon, I am competent to testify thereto.

2. I have been assigned as counsel for the City regarding land use and planning matters for more than eleven years.

3. During my tenure with the City, the Office of the City Attorney has consistently advised the City Council and the City staff that the City's Master Plan of Streets and Highways is a planning document only and that the placement of a roadway on the Master Plan cannot be used to restrict or impair the development of adjoining parcels.

4. I am aware of the setback requirements of LVMC 13.12.150. I cannot recall any situation in my tenure when those setback requirements have been enforced against any proposed project on a parcel abutting a roadway placed on the Master Plan.

5. The proposals for the Sheep Mountain Parkway do not follow a predetermined section line. LVMC 13.12.130 requires the City Council to describe the centerline of the roadway by ordinance. The City Council did not adopt an ordinance describing the centerline of the North Alignment of the Sheep Mountain Parkway.

6. The setback requirements of LVMC 13.12.150 are calculated from the centerline of a roadway placed on the Master Plan of Streets and Highways. Since the City Council did not describe the centerline of the North Alignment of the Sheep Mountain Parkway by ordinance, the

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Las Vegas City Attorney
400 E. Stewart Ave., 9th Floor
Las Vegas, Nevada 89101
702-229-6629

setback requirements of LVMC 13.12.150 could not be applied to parcels abutting the North Alignment.

DATED this 13th day of December, 2011.

BRYAN K. SCOTT

SUBSCRIBED and SWORN to before me this 13th day of December, 2011.

NOTARY PUBLIC

CINDY KELLY
Notary Public State of Nevada
No. 93-0530-1
My appt. exp. Aug. 4, 2013

Las Vegas City Attorney
400 E. Stewart Ave., 9th Floor
Las Vegas, Nevada 89101
702-229-6629

AFFIDAVIT OF JAMES B. LEWIS

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

JAMES B. LEWIS, being first duly sworn, deposes and says:

1. I am employed by the City of Las Vegas as a Deputy City Attorney. I have personal knowledge of the matters stated herein; and, if called upon, I am competent to testify thereto.

2. I have been assigned as counsel for the City regarding land use and planning matters for more than six years.

3. During my tenure with the City, the Office of the City Attorney has consistently advised the City Council and the City staff that the City's Master Plan of Streets and Highways is a planning document only and that the placement of a roadway on the Master Plan cannot be used to restrict or impair the development of adjoining parcels.

4. I am aware of the setback requirements of LVMC 13.12.150. I cannot recall any situation in my tenure when those setback requirements have been enforced against any proposed project on a parcel abutting a roadway placed on the Master Plan.

5. The proposals for the Sheep Mountain Parkway do not follow a predetermined section line. LVMC 13.12.130 requires the City Council to describe the centerline of the roadway by ordinance. The City Council did not adopt an ordinance describing the centerline of the North Alignment of the Sheep Mountain Parkway.

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Las Vegas City Attorney
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Las Vegas, Nevada 89101
702-229-6629

setback requirements of LVMC 13.12.150 could not be applied to parcels abutting the North Alignment.

DATED this 13th day of December, 2011.

JAMES B. LEWIS

SUBSCRIBED and SWORN to before me this 13th day of December, 2011.

NOTARY PUBLIC

CINDY KELLY
Notary Public State of Nevada
No. 93-0530-1
My appt. exp. Aug. 4, 2013

Las Vegas City Attorney
400 E. Stewart Ave., 9th Floor
Las Vegas, Nevada 89101
702-229-6629

Exhibit 24

OWNER(S)/MAIL TO	SITUS	138-31-201-005	Printed: 8/15/2017
180 LAND CO L L C %V DEHART 1215 S FORT APACHE RD #120 LAS VEGAS NV, 89117 NV	LAS VEGAS PARCEL STATUS: A Active - Locally Assessed Parcel NEIGHBORHOOD: 1351.73 Summerlin East PRIMARY USE: 12.000 Vacant - Single Family Residential		Page: 1 of 2 2017/18

LAND ACRES	34.07	LAND SQUARE FEET	1,484,089

LEGAL DESCRIPTION	FISCAL YEAR	SUMMARY OF TAXABLE VALUES 2013-14	2014-15	2015-16	2016-17	WORKING 2017-18
PARCEL MAP FILE 121 PAGE 100 LOT 1	VALUE TYPE					BLCM
	LAND					$17,886,750
	SUBDIVISION DISCOUNT					
	NET LAND					$17,886,750
	IMPROVEMENTS					
	SUPPLEMENTAL					
	COMMON ELEMENT					
	TOTAL IMPROVEMENT					
	SECURED PERSONAL PROP					
	PARCEL TOTAL					$17,886,750
	EXEMPTION TOTAL					

SALES HISTORY

TYPE	SALE DATE	SALE PRICE	DEED BOOK	PAGE	GRANTOR	GRANTEE

LAND APPRAISAL

#	CODE	LAND CATEGORY	ZONING	UNIT TYPE	FF	DEPTH	UNITS	UNIT PRICE	TOTAL ADJ	ADJ UNIT PRICE	ADJ VALUE	OVERD VALUE	NOTES
1	1R01	Residential		AC			34.07	$525,000.00	[+] 1.0000	$525,000.00	$17,886,750		

CODE	ADJUSTMENT	TYPE	ADJ %	ADJ VALUE	ADJ NOTE	CODE	ADJUSTMENT	TYPE	ADJ %	ADJ VALUE	ADJ NOTE

LAND - GOLF COURSE/AG/OPEN SPACE

CLASSIFIED AG/GOLF COURSE

#	CODE	LAND CATEGORY	TYPE	UNITS	UNIT PRICE	ADJ	ADJ UNIT PRICE	ADJ VALUE

CODE	ADJUSTMENT	TYPE	ADJ %	ADJ VALUE	ADJ NOTE

MARKET AG/GOLF COURSE

#	CODE	LAND CATEGORY	TYPE	UNITS	UNIT PRICE	ADJ	ADJ UNIT PRICE	ADJ VALUE

CODE	ADJUSTMENT	TYPE	ADJ %	ADJ VALUE	ADJ NOTE

IMPROVEMENTS

PROJECT NAME: | BUILDING COUNT | SECTION COUNT

TYPE	BLDG	BUILDING TYPE	CL/Q	RNK	AYB	EYB	STY	HGT	UNITS	BSMT	MEZZ	SPRK	%CMP	SQFT	TOTAL RCNLD

PERMITS

TYPE	DESCRIPTION	COUNT	STATUS

ACCOUNT FLAGS

CAT	TYPE	VAL
PAR	Parcel Land Use	12.000
CONV	Capacity	0

OWNER(S)/MAIL TO	SITUS	138-31-201-005	Printed: 8/15/2017
180 LAND CO L L C %V DEHART 1215 S FORT APACHE RD #120 LAS VEGAS NV, 89117 NV	LAS VEGAS PARCEL STATUS: A Active - Locally Assessed Parcel NEIGHBORHOOD: 1351.73 Summerlin East PRIMARY USE: 12.000 Vacant - Single Family Residential BUILDING(S): No Buildings		Page: 2 of 2 2017/18

BLDG./SECTION							NOTES
PROJECT NAME							
OCCUPANCY							
CLASS / RANK							
YR BLT / EFF YR BLT							
% COMPLETE							
BUILDING SF							
PERIMETER							
WALL HEIGHT							
# STORIES							
# UNITS							
EXT. WALL							
HEATING/COOLING	/						
HEATING/COOLING	/						
HEATING/COOLING	/						
HEATING/COOLING	/						
SPRINKLERS							
ELEVATORS							
BALCONY							
FINISHED BSMT.							
UNIFIN. BSMT.							
SEMI FIN. BSMT.							
BSMT. PARKING							
OFFICE MEZZ							
STORAGE MEZZ							
OPEN MEZZ							
							TOTALS
RCN $ PER SF							RCN
RCN							
DEPR STATUTORY/TOT	/						
BLDG. RCNLD							RCNLD
BLDG. OVERRIDE							
EXTRA FEATURES							Extra Features
TOTAL RCNLD							IMPS VALUE

CODE	DESCRIPTION	BLDG	UNITS	UNIT PRICE	FAC	ADJ UNIT PR	AYB	EYB	RCN	DEPR%	RCNLD	NOTES	PI	PPID

0055

3178

Exhibit 25

STATE
BOARD OF EQUALIZATION

ASSESSOR VALUATION

Cases: 17- 175, 176, 177

0056

3180

CASE #	17-176	SUBJECT PARCEL INFORMATION	FISCAL YEAR	2017/2018

APN	138-31-801-002 et all	Location	Charleston and Rampart	Zoning Designation	R-PD7	Vacant	Yes
Size (acres)	178.27 Gross	178.27 Net	Size (sq ft) 7,765,441	Probable Use	RESIDENTIAL	Offsites	Partial
General Description	This appeal includes the following parcels that are active for the 17-18 tax year: 138-31-801-002, 138-31-201-005, 138-31-601-008, 138-31-702-003, 138-31-702-004. Approx 26.4% of the gross acreage is in wash. Parcels are located within the former Badlands Golf Course ner the corner of Charleston and Rampart					Density	7 DU/AC

COMPARABLE LAND SALES GRID

Sale No.	1	2	3	4	5	6	7	8
Parcel #	137-27-717-001	175-01-510-001	176-06-310-001	176-06-814-001	138-19-419-009	164-02-510-003	163-19-111-002	163-19-402-007
Buyer	RYLAND HOMES NEVADA	Pardee Homes	RICHMOND AMERICAN H	PARDEE HOMES NEVADA	A L F LAND CO L L C	CHARLESTON 215 L L	C R P CALIDA FLAMIN	GRAND CANYON TROPIC
Seller	HUGHES HOWARD COMP	HUGHES HOWARD COMP	HUGHES HOWARD COMP	HUGHES HOWARD COMP	Crossing Business C	S A V W C L III L L	BURBANK L L C	SOROOSH FARHANG REV
Date of Sale	5/20/2016	6/7/2016	9/9/2016	10/7/2016	7/13/2016	2/1/2016	3/25/2016	10/7/2016
Sale Price	$10,115,200	$16,872,000	$15,000,000	$14,855,550	$2,212,500	$16,650,000	$11,690,000	$6,100,000
Cross Streets	Far Hills / Fox Hill	Hualapai / Sunset	Warm Sprin / Ft. Apache	Fort Apach / Warm Sprin	Summerlin / Town Cente	Charleston / Hughes Par	Flamingo / Hualapai	Tropicana / Hualapai
Acres	18.56	33.44	30.86	30.63	3.53	31.46	11.69	9.22
$/Acre	545,000	504,545	486,066	485,000	626,771	529,243	1,000,000	661,605
Time/Market/Other Adj.*								
Adjusted $/Acre	**545,000**	**504,545**	**486,066**	**485,000**	**626,771**	**529,243**	**1,000,000**	**661,605**
Location	Summerlin West	Summerlin South +	Summerlin South +	Summerlin South +	Summerlin East	Summerlin South	Southwest	Southwest
Zoning/Probable Use	P-C	R2/RH	R-E/MDP	R-E/MDP	P-C	R-U/RM	C-2/CG	R-E/ROI R-5
Density (maximum)	5.6-12 du/acre	5.6-12 du/acre	5.6-12 du/acre	5.6-12 du/acre	26 du/acre	25 du/acre	25 du/acre	50 du/acre
Size	18.56 Acres	33.44 Acres	30.86 Acres	30.63 Acres	3.53 Acres	31.46 Acres	11.69 Acres	9.22 Acres
Shape	Regular	Irregular	Regular	Regular	Regular	Irregular	Regular	Regular
Topography	Level -	Undulating -	Level -	Level -	Level -	Undulating -	Level -	Level -
Access	Typical	Typical	Typical	Typical	Typical	Typical	Typical	Typical
Offsites	Full	Partial	Partial	Partial	Partial	Partial	Partial	Partial
Overall Comparison to Subject	SUPERIOR	SIMILAR	SIMILAR	SIMILAR	SUPERIOR	SUPERIOR	SUPERIOR	SUPERIOR

* Analysis of Market Conditions Adjustment attached.

RECONCILIATION

INDICATED VALUE RANGE OF COMPARABLES	485,000	TO	1,000,000	PER ACRE	
CURRENT TAXABLE VALUE OF SUBJECT	386,143	PER ACRE		TOTAL TXBL LAND VALUE	68,837,790
RECOMMEND	386,143	PER ACRE		TOTAL TXBL LAND VALUE	NO CHANGE

RECONCILIATION COMMENTS

This appeal consists of 5 total parcels with gross acreages of: 11.28, 34.07, 22.19, 76.93, 33.80. For a total of 178.27 acres. Approx. 26.4% of these parcels or about 47.15 acres lie in washes and are not valued, approx. 24% of these parcels lie within the FEMA flood zone. Gross acreage value for these parcels is approx. $386,143 per acre. Comps 1 thru 4 have similar zoning to the subject's PD-7 with 1 being most similar in location. Comps 5 thru 8 have higher zoning similar to the R-3 zoning approved by the Las Vegas City Council on parcel 138-32-301-005. Based on the information provided recommend no change in value.

Clark County Assessor's Office

Case #: 17176
180 LAND CO L L C

Subject(s):
S. 138-31-201-005
S2. 138-31-601-008
S3. 138-31-702-003
S4. 138-31-702-004
S5. 138-31-801-002

1:10,000
Date: 8/1/2017

Legend
Subject
Comparable

Aerial Map (NearMap 08/02/2016)

0058

3182

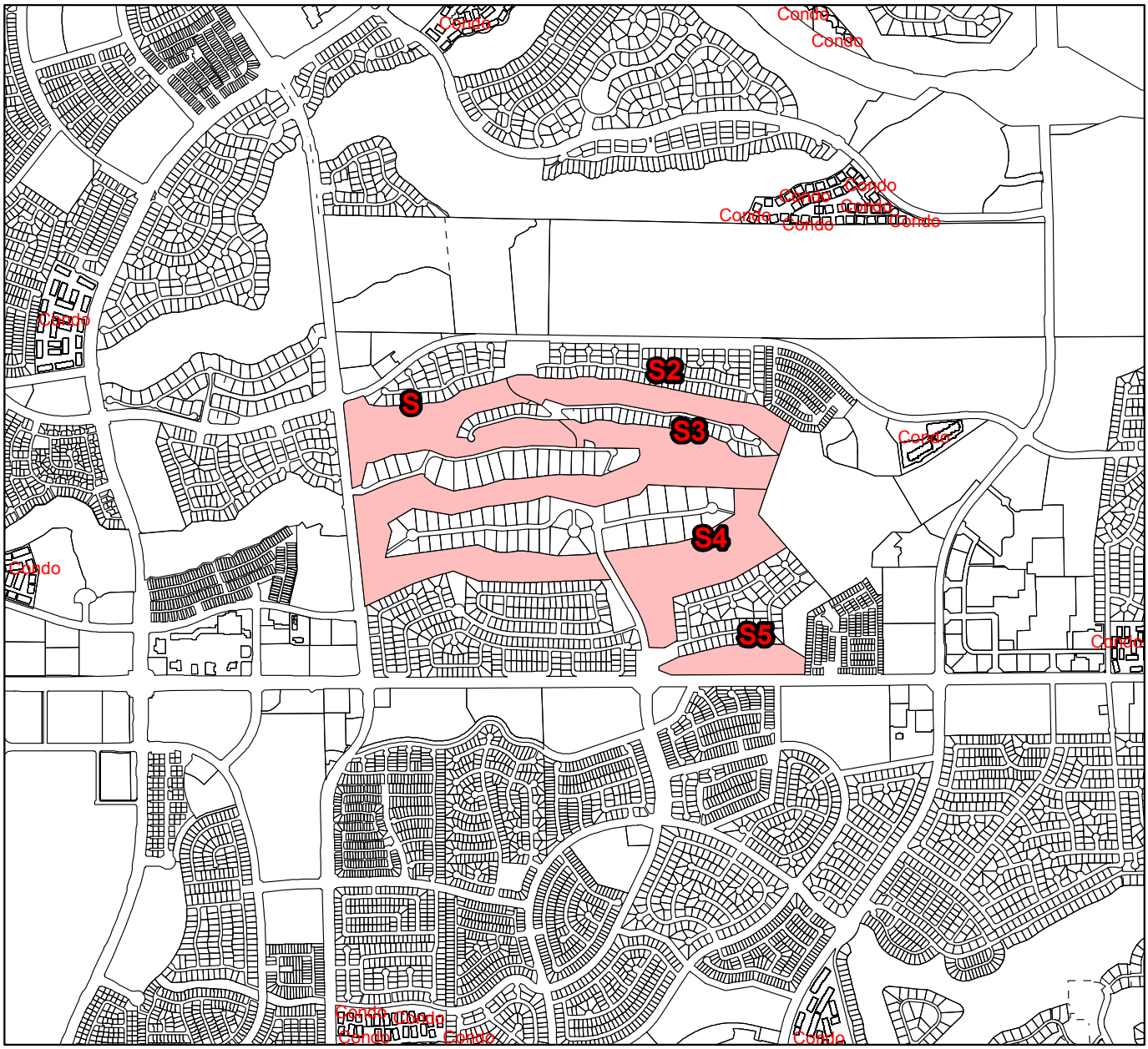
Clark County Assessor's Office

Case #: 17176
180 LAND CO L L C

Subject(s):
S. 138-31-201-005
S2. 138-31-601-008
S3. 138-31-702-003
S4. 138-31-702-004
S5. 138-31-801-002

1:20,000
Date: 8/1/2017

Legend
Subject
Comparable



Subject Map

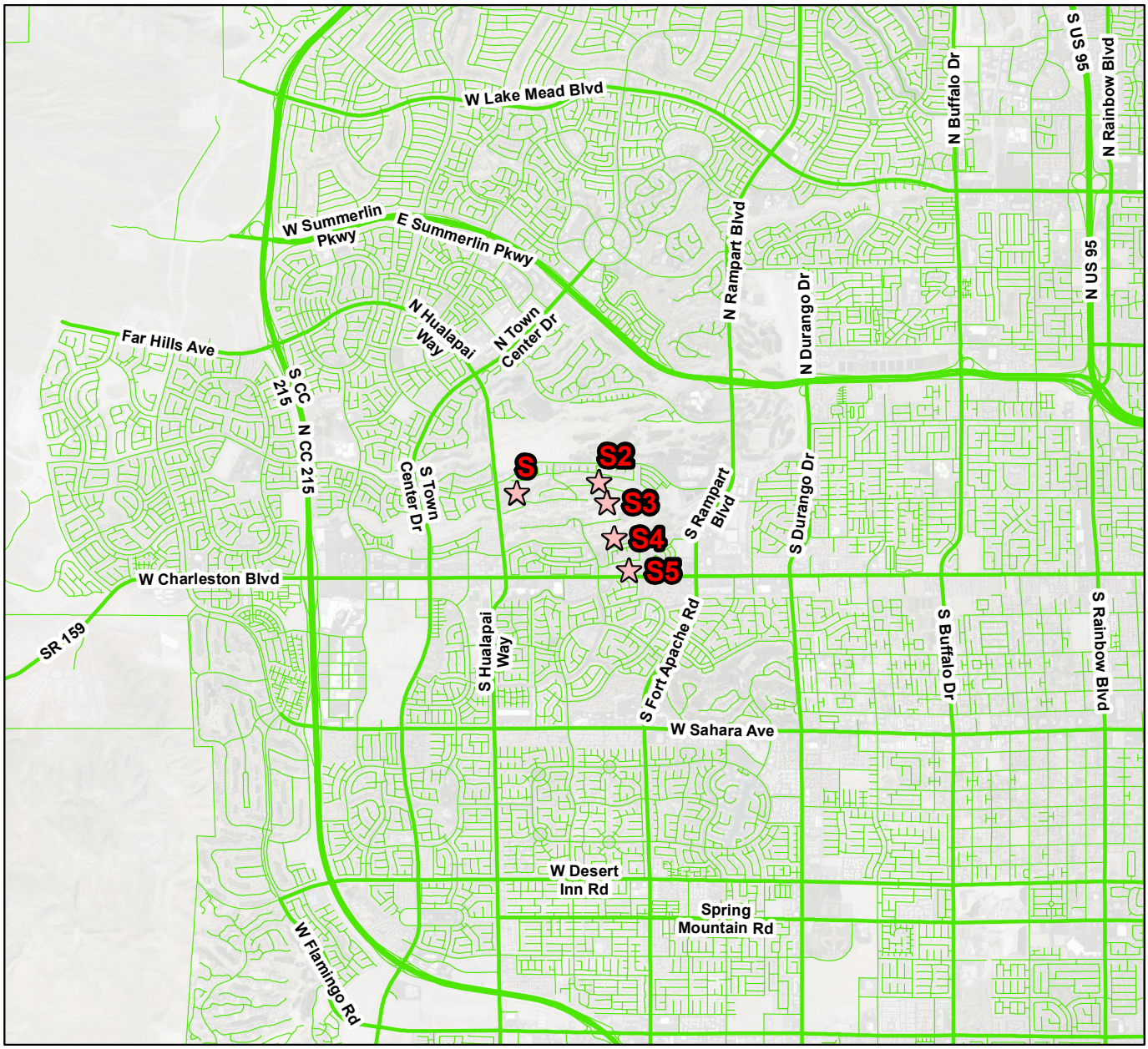
Clark County Assessor's Office

Case #: 17176
180 LAND CO L L C

Subject(s):
S. 138-31-201-005
S2. 138-31-601-008
S3. 138-31-702-003
S4. 138-31-702-004
S5. 138-31-801-002

1:60,000
Date: 8/1/2017

Legend
Subject
Comparable



Vicinity Map

Clark County Assessor's Office

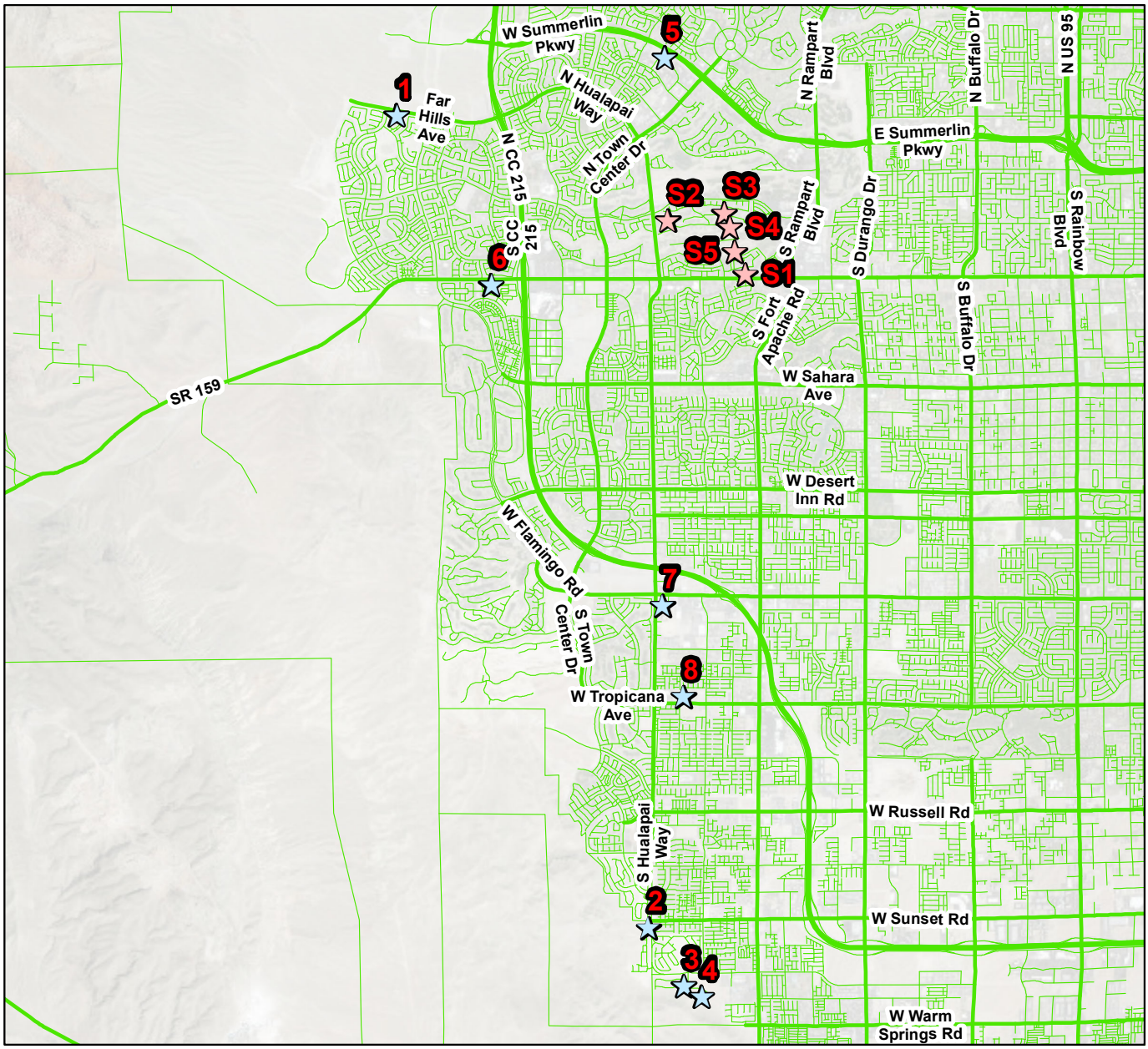
Case #: 17176
180 LAND CO L L C

Subject(s):
S1. 138-31-801-002
S2. 138-31-201-005
S3. 138-31-601-008
S4. 138-31-702-003
S5. 138-31-702-004

Comparable(s):
1. 137-27-717-002
2. 175-01-512-001
3. 176-06-311-001
4. 176-06-312-001
5. 138-19-419-009
6. 164-02-510-007
7. 163-19-111-002
8. 163-19-402-007

1:86,158
Date: 9/5/2017

Legend
Subject
Comparable



Vicinity Map

0061

3185

Exhibit 25a

Property Account Inquiry - Summary Screen

New Search | Recorder | Treasurer | Assessor | Clark County Home

Parcel ID	138-31-201-005	Tax Year	2021	District	200	Rate	3.2782

Situs Address:	UNASSIGNED SITUS LAS VEGAS
Legal Description:	ASSESSOR DESCRIPTION: PARCEL MAP FILE 121 PAGE 100 LOT 1

Status:
Active
Taxable

Property Characteristics	
Tax Cap Increase Pct.	6.7
Tax Cap Limit Amount	218977.44
Tax Cap Reduction	0.00
Land Use	0-00 Vacant - Single Family Re
Cap Type	OTHER
Acreage	34.0700
Exemption Amount	0.00

Property Values	
Land	6260363
Total Assessed Value	6260363
Net Assessed Value	6260363
Exemption Value New Construction	0
New Construction - Supp Value	0

Property Documents	
2015111600238	11/16/2015

Role	Name	Address	Since	To
Owner	180 LAND CO L L C	C/O V DEHART 1215 S FORT APACHE RD #120 , LAS VEGAS, NV 89117 UNITED STATES	6/14/2019	Current

Summary

Item	Amount
Taxes as Assessed	$205,227.22
Less Cap Reduction	$0.00
Net Taxes	$205,227.22

PAST AND CURRENT CHARGES DUE TODAY

Tax Year	Charge Category	Amount Due Today
THERE IS NO PAST OR CURRENT AMOUNT DUE as of 9/2/2020		$0.00

NEXT INSTALLMENT AMOUNTS

Tax Year	Charge Category	Installment Amount Due
2021	Property Tax Principal	$51,306.81
NEXT INSTALLMENT DUE AMOUNT due on 10/5/2020		$51,306.81

TOTAL AMOUNTS DUE FOR ENTIRE TAX YEAR

Tax Year	Charge Category	Remaining Balance Due
2021	Property Tax Principal	$153,920.43
2021	Las Vegas Artesian Basin	$0.00
TAX YEAR TOTAL AMOUNTS DUE as of 9/2/2020		$153,920.43

PAYMENT HISTORY

Last Payment Amount	$51,309.21
Last Payment Date	8/19/2020

Fiscal Tax Year Payments	$51,309.21
Prior Calendar Year Payments	$205,228.96
Current Calendar Year Payments	$153,922.83

Exhibit 26

MICHELE W. SHAFE
Clark County Assessor
APPRAISAL DIVISION
500 S. Grand Central Pkwy, PO Box 561401, Las Vegas NV 89155-1401
Telephone 702-455-4997
www.ClarkCountyNV.gov/assessor

Stipulation for the State Board of Equalization

September 21, 2017

180 Land Co LLC ("Taxpayer")
1215 S Fort Apache Road #120
Las Vegas, Nevada 89117

RE: Appeal No. 17-176
Parcel No(s). 138-31-801-002; 138-31-201-005; 138-31-601-008;
138-31-702-003; 138-31-702-004; 138-31-712-004 (collectively "Land")

The Appraisal Division of the Clark County Assessor's Office ("Assessor," and together with Taxpayer, the "Parties") has completed the review of the above referenced parcels and the Assessor has determined as follows ("Assessor Determinations"):

(1) The Land was used as a golf course and therefore, under NRS 361A.170, designated and classified as open-space real property and assessed as an open-space use.

(2) The Land ceased to be used as a golf course, as defined in NRS 361A.0315, on December 1, 2016. Therefore, the Land no longer falls within the definition of open-space real property, as defined in NRS 361A.040, and is no longer deemed to be used as an open-space use under NRS 361A.050. In accordance with NRS 361A.230, the Land has been disqualified for open-space use assessment.

(3) The Land has been converted to a higher use in accordance with NRS 361A.031. Therefore, the deferred taxes are owed as provided in NRS 361A.280.

Taxpayer stipulates to and accepts the Assessor Determinations. Notwithstanding the foregoing, the Parties agree that the Petitioner reserves its right to appeal the 2017/2018 tax year valuation of the applicable parcels identified above, in accordance with NRS 361.310.

By signing below, Taxpayer agrees to the above stipulation.

DATE: 9-25-17
Jeff Payson
Appraisal Division

DATE: 9/25/17
Vickie De Hart, as Manager of
EHB Companies LLC, its Manager
Taxpayer: 180 Land Co LLC.

Exhibit 27

ITEM 82 – DIRECTOR'S BUSINESS – NOTE: NOT TO BE HEARD BEFORE 9:00PM - DIR-70539 - DIRECTOR'S BUSINESS - PUBLIC HEARING - APPLICANT/OWNER: 180 LAND CO, LLC, ET AL - For possible action on a request for a Development Agreement between 180 Land Co, LLC, et al. and the City of Las Vegas on 250.92 acres at the southwest corner of Alta Drive and Rampart Boulevard (APNs 138-31-201-005; 138-31-601-008; 138-31-702-003 and 004; 138-31-801-002 and 003; 138-32-202-001; and 138-32-301-005 and 007), Ward 2 (Beers) [PRJ-70542]. Staff recommends APPROVAL.

Appearance List:

TRINITY HAVEN SCHLOTTMAN, Planning Commission Chair
PETER LOWENSTEIN, Planning Section Manager, City of Las Vegas
TODD L. MOODY, Planning Commissioner
BRAD JERBIC, City Attorney, City of Las Vegas
CHRIS KAEMPFER, Legal Counsel for the Applicant
STEPHANIE ALLEN, Legal Counsel for the Applicant
SHAUNA HUGHES, Legal Counsel for Queensridge Homeowners Association
UNIDENTIFIED SPEAKER
TODD BICE, Legal Counsel for the Queensridge Homeowners
GEORGE GARCIA, GC Garcia, Inc., 1055 Whitney Ranch Drive, Henderson
DOUG RANKIN, GC Garcia, Inc., 1055 Whitney Ranch Drive, Henderson
MICHAEL BUCKLEY, Representative for the Frank and Jill Fertitta Family Trust
FRANK SCHRECK, Queensridge Resident
RON IVERSEN, Board Treasurer, Queensridge Homeowners Association
ANNE SMITH, Queensridge Resident
EVAN THOMAS, Queensridge Resident

CERTIFIED AS A TRUE COPY
LuAnn D. Holmes, City Clerk
City of Las Vegas 7/19/17
83 pgs.

Appearance List continued:

DEBRA KANER, Queensridge Resident
JERRY ENGEL, Queensridge Resident
JOHNNY (last name not provided), Queensridge Resident
LARRY SADOFF, Queensridge Resident
TERRY HOLDEN, Queensridge Resident
HERMAN AHLERS, Queensridge Resident
FRANK PANKRATZ, Applicant/Owner
JAMES JIMMERSON, Legal Counsel for the Applicant
VICKI QUINN, Planning Commissioner
GLENN TROWBRIDGE, Planning Commissioner
SAM CHERRY, Planning Commissioner
MARK FAKLER, GCW Inc., 1555 South Rainbow Boulevard
YOHAN LOWIE, Applicant/Owner
BART ANDERSON, Engineering Project Manager, Public Works, City of Las Vegas
DONNA TOUSSAINT, Planning Commissioner
CEDRIC CREAR, Planning Commissioner
TOM PERRIGO, Director of Planning, City of Las Vegas

(2 hours, 42.5 minutes) [5:06:24 – 7:48:53]
Typed by: Speechpad.com
Proofed by: Arlene Coleman

TOM PERRIGO

The zoning for this property, R-PD7 was in existence prior to the change in the General Plan. The General Plan was a staff-initiated change that I believe came in about 2005. The applicant has a right to that zoning. And there is a requirement that the land use will be amended at some future date in order to make it consistent. But even if that action didn't come forward, it doesn't take away the rights that the applicant has to the zoning. The previous, the application for the project across the street that requires a GPA, or is it a major mod? I forget now.

COMMISSIONER CREAR

Well, there's a major mod. It was the –

TOM PERRIGO

It's major mod because that did substantially change what was planned for that site. Previously, when this application came forward and it was significantly more units, we did feel that it was significantly outside of the, that original plan. This proposal is within the existing density of the zoning and is not completely outside of the unit count for the plan. So, at this time, we felt that the development agreement could be the mechanism to exercise the R-PD zoning.

BRAD JERBIC

If I can jump in too and just say that everything Tom said is absolutely accurate. The R-PD7 preceded the change in the General Plan to PR-OS. There is absolutely no document that we could find that really explains why anybody thought it should be changed to PR-OS, except maybe somebody looked at a map one day and said, hey look, it's all golf course. It should be PR-OS. I don't know.

But either way, there will be an attempt in the future, because we don't do general plan amendments monthly or weekly. We do them quarterly. And at that appropriate time, you will be able to consider a general plan amendment. If you vote for it, great, they're synchronized. If you don't vote for it, it doesn't change a darn thing. The zoning is still hard and in place.

PETER LOWENSTEIN

Mr. Chairman, Item 82 will be heard at City Council on June 21st, 2017.

STEPHANIE ALLEN

Thank you very, very much.

CHRIS KAEMPFER

Thank you very much.

STEPHANIE ALLEN

We appreciate all your time and lots of deliberation.

CHRIS KAEMPFER

And a good morning.

STEPHANIE ALLEN

And thank you very much. Appreciate it.

CHRIS KAEMPFER

Thank you all, and thank the neighbors for coming as well. Thank you.

(END OF DISCUSSION)

/ac