

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84345

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**LANDOWNERS' APPENDIX
VOLUME 1
(Nos. 1–134)**

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INDEX TO LANDOWNERS' APPENDIX

DATE	DOCUMENT DESCRIPTION	LOCATION
09/16/2021	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest" from Clark County Nevada, District Court in <i>Fore Stars Ltd, v. City of Las Vegas</i> , Case No. A-18-773268-C	Vol. 1, 1–20
08/03/2022	Summary of August 3, 2022 City Council Meeting Regarding Agenda Item No. 28	Vol. 1, 21–22
08/03/2022	City Council Minutes of August 3, 2022 Meeting	Vol. 1, 23–41
10/27/2022	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Landowners' Motion to Determine Take and for Summary Judgment on Third and Fifth Claims for Relief: Granting Summary Judgment on Landowners' Fifth Claim for Relief and Denying Summary Judgment on Landowners' Third Claim for Relief from Clark County Nevada, District Court in <i>Fore Stars Ltd, v. City of Las Vegas</i> , Case No. A-18-773268-C	Vol. 1, 42–84

DATE	DOCUMENT DESCRIPTION	LOCATION
10/31/2022	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Landowners' Evidentiary Hearing Brief#1: Memorandum of Points and Authorities Regarding Landowners' Property Interest from Clark County Nevada, District Court in <i>180 Land Co., v. City of Las Vegas</i> , Case No. A-18-780184-C	Vol. 1, 85–102
10/31/2022	Notice of Entry of Findings of Fact and Conclusions of Law Regarding Landowners' Evidentiary Hearing Brief#2: Memorandum of Points and Authorities Regarding City's Actions Which Have Resulted in a Taking of Landowners Property from Clark County Nevada, District Court in <i>180 Land Co., v. City of Las Vegas</i> , Case No. A-18-780184-C	Vol. 1, 103–127
12/12/2022	Notice of Entry of Order Denying Landowners' Countermotion to Approve Entitlements and End Take; and City's Motion to Strike Countermotion to Approve Entitlements and End Take from Clark County Nevada, District Court in <i>Fore Stars Ltd, v. City of Las Vegas</i> , Case No. A-18-773268-C	Vol. 1, 128–134

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **LANDOWNERS' APPENDIX VOLUME 1 (Nos. 1–134)** with the Supreme Court of Nevada on the 11th day of January 2023. I will electronically serve the foregoing document in accordance with the Master Service List as follows:

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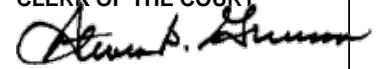
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9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 FORE STARS, LTD; SEVENTY ACRES LLC,
12 a Nevada liability company; DOE
13 INDIVIDUALS I through X, DOE
14 CORPORATIONS I through X, and DOE
15 LIMITED LIABILITIES COMPANIES I
16 through X,

15 Plaintiffs,

16 vs.

17 CITY OF LAS VEGAS, a political subdivision
18 of the State of Nevada; ROE government
19 entities I though X, ROE LIMITED
20 LIABILITY COMPANIES I though X, ROE
21 quasi-governmental I through X,

20 Defendants.

21 ///

22 ///

23 ///

Case No.: A-18-773268-C

Dept No.: XXIX

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

Hearing Date: August 13, 2021

Hearing Time: 8:30 a.m.

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

DATED this 16th day of September, 2021.

LAW OFFICES OF KERMITT L. WATERS

BY: /s/ Autumn Waters
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Attorneys for Plaintiffs Landowners

1 **CERTIFICATE OF SERVICE**

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

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9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 FORE STARS, LTD; SEVENTY ACRES LLC,
12 a Nevada liability company; DOE
13 INDIVIDUALS I through X, DOE
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18 vs.

19 CITY OF LAS VEGAS, a political subdivision
20 of the State of Nevada; ROE government
21 entities I though X, ROE LIMITED
22 LIABILITY COMPANIES I though X, ROE
23 quasi-governmental I through X,
24

Defendants.

Case No.: A-18-773268-C

Dept No.: XXIX

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

Hearing Date: August 13, 2021

Hearing Time: 8:30 a.m.

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

12 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

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

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

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

3 4. The Landowners filed a motion requesting that this Court enter a finding on the
4 first sub-inquiry to determine the property interest / “bundle of property sticks” they had in their
5 17 Acre Property prior to any alleged City interference with the use of the 17 Acre Property and
6 prior to the filing of the Complaint in this matter. Specifically, the Landowners request a finding
7 that the 17 Acre Property was hard zoned R-PD7 and re-zoned to R-3 and that the legally
8 permissible uses of the 17 Acre Property, pursuant to the R-PD7 and R-3 zoning, were single-
9 family and multi-family residential uses.

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

12 **The R-PD7 Zoning and the Landowners’ Due Diligence**

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

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

19 8. Landowners’ Exhibit 31, Bates numbers 000481 – 482, is evidence that on April 4,
20 1990, the City Council, at a public hearing, confirmed the R-PD7 zoning on the 17 Acre Property.

21 9. Landowners’ Exhibit 8, Bates numbers 000104 – 185 is evidence that on August
22 15, 2001, the City Council, at a public hearing, adopted Ordinance 5353 that confirmed the R-PD7
23 zoning on the 17 Acre Property and states “All ordinances or parts of ordinances or sections,
24

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

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

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

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

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1 **The R-3 Zoning**

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

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

7 **The Nevada Supreme Court**

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

10 15. In the inverse condemnation case of McCarran Intl. Airport v. Sisolak, 122 Nev.
11 645 (2006), the Nevada Supreme Court, in the section entitled “The Property,” determined Mr.
12 Sisolak’s property rights, relying on zoning: “During the 1980’s, Sisolak bought three adjacent
13 parcels of land for investment purposes, which were each zoned for the development of a hotel, a
14 casino, or apartments.” Sisolak, at 651. Zoning was also used to determine the compensation due
15 Mr. Sisolak. Sisolak, at 672.

16 16. In the inverse condemnation case of Clark County v. Alper, 100 Nev. 382, 390
17 (1984), the Nevada Supreme Court held, “when determining the market value of a parcel of land
18 at its highest and best use, due consideration should be given to those zoning ordinances that would
19 be taken into account by a prudent and willing buyer.”

20 17. In the eminent domain case of City of Las Vegas v. C. Bustos, 119 Nev. 360, 362
21 (2003), the Nevada Supreme Court affirmed a district court, concluding “the district court properly
22 considered the current zoning of the property, as well as the likelihood of a zoning change.” *See*
23 *also* County of Clark v. Buckwalter, 974 P.2d 1162, 59 (Nev. 1999); Alper v. State. Dept. of
24 Highways, 603 P.2d 1085 (Nev. 1979), on reh’g sub nom. Alper v. State, 621 P.2d 492, 878 (Nev.
1980); Andrews v. Kingsbury Gen. Imp. Dist. No. 2, 436 P.2d 813, 814 (Nev. 1968).

1 18. The Court relies on both inverse condemnation and direct eminent domain cases,
2 because the Nevada Supreme court has held, “inverse condemnation proceedings are the
3 constitutional equivalent to eminent domain actions and are governed by the same rules and
4 principles applied to formal condemnation proceedings.” County of Clark v. Alper, 100 Nev. 382,
5 391 (1984).

6 **The Nevada Legislature**

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

10 **The Nevada Executive Branch**

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

16 **Three City Departments**

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

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

1 23. The City Attorney's Office confirmed that zoning is of the highest order. Veteran
2 City Attorney Brad Jerbic stated, in speaking directly about this property, "the rule is the hard
3 zoning, in my opinion, does trump the General Plan [Master Plan] designation. Exhibit 17, p.
4 000227:1787-1789. Veteran deputy City attorney Phil Byrnes and Brad Jerbic submitted pleadings
5 to the Eighth Judicial District, which state: 1) "in the hierarchy, the land use designation [master
6 plan] is subordinate to the zoning designation;" 2) "zoning designations specifically define
7 allowable uses and contain the design and development guidelines for those intended uses;" and,
8 3) a master plan is a "planning document" and a land use designation on a master plan "was a
9 routine planning activity that had no legal effect on the use and development" of affected property.
10 Exhibit 24, 000253:8-12; Exhibit 26, 000282-283.

11 24. The City Tax Assessor's department confirmed that zoning is of the highest order.
12 After the Landowners acquired the 17 Acre Property, the Clark County Tax Assessor, who is "ex
13 officio, the City Assessor of the City" (City Charter Sec. 3.120), was required to determine the
14 "full cash value" of the 17 Acre Property by "considering the uses to which it may lawfully be
15 put" and "any legal or physical restrictions" pursuant to NRS 361.227(1). The assessor determined
16 the use of the 17 Acre Property to be "residential" based on the "zoning designation: R-PD7,"
17 placed a value of \$88 million on the entire 250 Acre Property, and has been taxing the Landowners
18 approximately \$1 million per year based on this lawful "residential" use. The City does not contest
19 this tax evidence. See Exhibit 40 (LO Appx. Ex. 49, Bates number 001164-001179); Exhibit 41
20 (LO Appx. Ex. 52, Bates number 001184-001189, specifically, 001185); Exhibit 53 (LO Appx.
21 Ex. 151, Bates number 004831-4836); Exhibit 53 (LO Appx. Ex. 152, Bates number 004837-
22 4861).

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1 25. Evidence was also presented at the evidentiary hearing that the City's 2050 Master
2 Plan states that zoning is "the law" and the Master Plan is a "policy." Exhibit 44, Bates number
3 000595.

4 26. Finally, the Court finds persuasive that in litigation involving adjoining
5 landowners, who were trying to stop residential development on the 17 Acre Property, the District
6 Court held "the zoning on the GC Land [250 Acre Property] dictates its use and Defendants
7 [Landowners] rights to develop their land. Exhibit 55 (LO Appx. Ex. 173, Bates number 005123-
8 5167, specifically 0005142:11-12).

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

13 28. As the evidence is undisputed that the 17 Acre Property had R-PD7 zoning since
14 1981 and was re-zoned to R-3 on February 15, 2017, the Court turns to the RPD-7 and R-3 zoning
15 to determine the property rights issue.

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

17 **General Zoning Standards**

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

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

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

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

9 **R-PD7 Zoning**

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

15 34. The City Attorney at the time, Brad Jerbic, further stated in regards to the R-PD7
16 zoning on the 17 Acre Property that the City “Council gave hard zoning to this golf course, R-
17 PD7, which allows somebody to come in and develop.” Landowners’ Exhibit 16, Transcript,
18 10.18.16 Special Planning Comm. Meeting, 000225:3444-3445.

19 **R-3 Zoning**

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

1 36. Accordingly, the R-PD7 and R-3 zoning on the 17 Acre Property provide the
2 Landowners the right to use the 17 Acre Property for single family residential and multi-family
3 residential uses. In fact, the City conceded this issue when it re-zoned the 17 Acre Property to R-
4 3 and granted the 435 residential units on February 15, 2017, prior to the filing of the complaint in
5 this matter. *See* Exhibit 3, 000015:8-9.

6 **The Judge Williams Order in the 35 Acre Case**

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

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

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

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

24 ///

Petition for Judicial Review Law

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

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

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

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

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

17 **The Herndon Order**

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

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

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

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

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

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

1 49. Third, Landowners' Exhibit 30, specifically Bates numbers 000443-448, and
2 Exhibit 42 (LO Appx. Ex. 6, specifically Bates numbers 000051 and 000069) are evidence that the
3 first City Master Plan designation for the 17 Acre Property was MED and ML, which is the land
4 use designation for a residential use for 6-12 residential units per acre and which is consistent with
5 the R-PD7 zoning that legally permits up to 7 residential units per acre. And, the City has failed
6 to present the evidence showing that this original MED and ML City Master Plan land use
7 designation was ever legally changed from MED and ML to PR-OS, pursuant to the legal
8 requirements set forth in NRS Chapter 278 and LVMC 19.16.030. *See* Exhibit 56 (LO Appx. Exs.
9 177 and 178), listing the requirements to make a parcel specific amendment to the City's Master
10 Plan.

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

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

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

4 **The "Condition" Issue**

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

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

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

18 **The Purchase Price Issue**

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

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

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

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

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

- 12 1) The determination of the property interest in this inverse condemnation action must
13 be based on inverse condemnation and eminent domain law;
- 14 2) Nevada inverse condemnation and eminent domain law provides that zoning must
15 be relied upon to determine the Landowners' property interest prior to any alleged
16 City interference with that property interest;
- 17 3) The 17 Acre Property has been hard zoned R-PD7 since 1981 and was re-zoned to
18 R-3 prior to the filing of the Complaint in this matter;
- 19 4) The Las Vegas Municipal Code lists single-family and multi-family residential as
20 legally permissible uses on R-PD7 and R-3 zoned properties by right;
- 21 5) The legally permitted uses by right of the 17 Acre Property are single-family and
22 multi-family residential; and

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

A handwritten signature, possibly "James Jack Leavitt", is written over a horizontal line. To the right of the signature, the date "9/15/21" is handwritten.

RESPECTFULLY SUBMITTED BY:

LAW OFFICES OF KERMIT L. WATERS

/s/ James Jack Leavitt

KERMIT L. WATERS, ESQ., NBN.2571

JAMES J. LEAVITT, ESQ., 6032

MICHAEL SCHNEIDER, ESQ., 8887

AUTUMN WATERS, ESQ., NBN 8917

Attorneys for Plaintiff Landowners

Carolyn G. Goodman, Mayor (At-Large)
Stavros S. Anthony, Mayor Pro Tem (Ward 4)
Brian Knudsen (Ward 1)
Victoria Seaman (Ward 2)
Olivia Diaz (Ward 3)
Cedric Crear (Ward 5)
Michele Fiore (Ward 6)



City Manager Jorge Cervantes
City Attorney Bryan K. Scott
City Clerk LuAnn D. Holmes

City Council Agenda

Council Chambers · 495 South Main Street · Phone 702-229-6011
City of Las Vegas Internet Address: www.lasvegasnevada.gov

August 3, 2022
9:00 AM

28. Discussion for possible action regarding settlement of the following litigation: 180 Land Company, LLC v. City of Las Vegas, 8JDC Case No. A-17-758528-J, NSC Case Nos. 84345, 84640; 180 Land Company, LLC, et al. v. City of Las Vegas, 8JDC Case No. A-18-780184-C; Fore Stars, Ltd., et al. v. City of Las Vegas, et al., 8JDC Case No. A-18-773268-C; and 180 Land Company, LLC v. City of Las Vegas, 8JDC Case No. A-18-775804-J (\$64,000,000 - Various Funds)



AGENDA SUMMARY PAGE
City Council
Meeting of: August 3, 2022

Agenda Item No.:
28

DEPARTMENT: City Manager
DIRECTOR: Jorge Cervantes

DISCUSSION

SUBJECT:
ADMINISTRATIVE:

Discussion for possible action regarding settlement of the following litigation: 180 Land Company, LLC v. City of Las Vegas, 8JDC Case No. A-17-758528-J, NSC Case Nos. 84345, 84640; 180 Land Company, LLC, et al. v. City of Las Vegas, 8JDC Case No. A-18-780184-C; Fore Stars, Ltd., et al. v. City of Las Vegas, et al., 8JDC Case No. A-18-773268-C; and 180 Land Company, LLC v. City of Las Vegas, 8JDC Case No. A-18-775804-J (\$64,000,000 - Various Funds)

FISCAL IMPACT:
Budget Funds Available
Amount: \$64,000,000
Funding Source: Various
Dept./Division: City Manager

PURPOSE/BACKGROUND:
This item is brought at the request of Councilwoman Victoria Seaman. For the past several years, the City of Las Vegas has been involved in several matters involving the former Badlands Golf Course. There are presently four active cases each dealing with a separate portion of the larger parcel. In one matter, a judgment in the amount of approximately \$49,000,000 has been entered in favor of the landowner. This matter is currently on appeal to the Nevada Supreme Court. The remaining three matters are currently pending in the Eighth Judicial District Court. Councilwoman Seaman has engaged in discussions with representatives of the landowners and has a potential resolution to present to the Council. The landowners are willing to accept payment of \$49,000,000, and construction of drainage facilities on the property at a cost not to exceed \$15,000,000 to resolve the litigation. The settlement is contingent on the City Council's consideration and approval of certain land use entitlements for the property. Upon payment of the settlement funds and approval of the land use entitlements, the pending cases will be dismissed with prejudice and the City will receive a full release of liability.

RECOMMENDATION:
None

BACKUP DOCUMENTATION:
None

Carolyn G. Goodman, Mayor (At-Large)
Stavros S. Anthony, Mayor Pro Tem (Ward 4)
Brian Knudsen (Ward 1)
Victoria Seaman (Ward 2)
Olivia Diaz (Ward 3)
Cedric Crear (Ward 5)
Michele Fiore (Ward 6)



City Manager Jorge Cervantes
City Attorney Bryan K. Scott
City Clerk LuAnn D. Holmes

City Council Minutes

Council Chambers · 495 South Main Street · Phone 702-229-6011
City of Las Vegas Internet Address: www.lasvegasnevada.gov

August 3, 2022
9:00 AM

CEREMONIAL MATTERS

1. Call to Order

Minutes:

MAYOR GOODMAN called the meeting to order at 9:00 a.m.

PRESENT: MAYOR GOODMAN and COUNCILMEMBERS ANTHONY, FIORE, CREAR (excused until 9:05 a.m.), KNUDSEN, SEAMAN (excused at 11:42 a.m.) and DIAZ

ALSO PRESENT: CITY MANAGER JORGE CERVANTES, CITY ATTORNEY BRYAN SCOTT, ASSISTANT CITY ATTORNEY JEFF DOROCAL and CITY CLERK LUANN D. HOLMES

2. Announcement Regarding: Compliance with Open Meeting Law

Minutes:

ANNOUNCEMENT MADE: This meeting has been properly noticed and posted at the following locations in accordance with the noticing standards as outlined in NRS 241.020: City Hall, 495 South Main Street, 1st Floor; The City of Las Vegas website – www.lasvegasnevada.gov; and The Nevada Public Notice website – notice.nv.gov

3. Invocation - Reverend Sean Taylor, Victory Missionary Baptist Church

Minutes:

REVEREND MARY BREDLAU, Clark County Coroner's Office, gave the invocation.

4. Pledge of Allegiance

Minutes:

MAYOR GOODMAN led the audience in the Pledge of Allegiance.

5. Recognition of the Citizens of the Month

Minutes:

MAYOR GOODMAN mourned the passing of VIN SCULLY, former Sportscaster for the Los Angeles Dodgers. She noted the San Diego Padres have a new uniform that is designed to unite the cultures of Mexico and the United States.

COUNCILWOMAN DIAZ said she has family in Tijuana and felt proud to represent them. She expressed

concern regarding rainfall and flooding, and she reported about a dozen homes were flooded in the Mayfair community. She noted an upcoming community cleanup effort and projects to alleviate storm drain issues.

The Councilwoman recognized SALVADOR MUNOZ and OSCAR CABRERA as the August 2022 Citizens of the Month for their leadership and engagement in the Mayfair community. She invited MR. MUNOZ to the podium, and noted MR. CABRERA was unable to make it to the City Council meeting. She first met with MR. MUNOZ and MR. CABRERA after they reported concerns regarding activities at Mayfair Place Park. They helped COUNCILWOMAN DIAZ host a neighborhood meeting to address public safety, and that helped lead to the park being designated a children's only park. Further, there was a park and community cleanup and tree planting event at Mayfair in the spring. The Councilwoman said MR. MUNOZ and MR. CABRERA consistently report safety concerns to City Marshals, squatting issues to Metro COPS (Community Oriented Policing Services) and also keep her office informed. She felt thankful for their volunteering efforts and dedication to the community, and she presented MR. MUNOZ with the Certificate for Citizens of the Month, a copy of which was submitted for the record.

MR. MUNOZ advised they work with the City to curb drug activities at Mayfair Place Park, and they want families to come back and feel safe at the park. He thanked the Councilwoman, City Marshals and ANASTACIO DEL REAL, Special Assistant to Council, for working with them on their initiative to make the park a safe and vibrant place for all the residents to enjoy.

MAYOR GOODMAN believed everyone's personal commitment to the community made Las Vegas uniquely special.

6. Recognition of Tom Warden

Minutes:

MAYOR GOODMAN reported that TOM WARDEN was retiring from the Howard Hughes Corporation after 23 years, and she explained he played a key role in developing the 25,000-acre Summerlin master plan community in its 32nd year of development. MR. WARDEN came to Las Vegas in 1989 to work as an investigative reporter and news anchor for KLAS-TV Channel 8, and he earned an Emmy award during that time. He spent three years with Clark County as the Director of Public Communications, before joining the Howard Hughes Corporation in 1999. MR. WARDEN managed government affairs as the Senior Vice President of Community and Government Relations for Summerlin, and he helped Summerlin be consistently ranked Nevada's best-selling master plan community. MAYOR GOODMAN listed several boards, committees and commissions that he serves on, and noted he received a lifetime achievement award from the Southern Nevada Home Builders Association in 2021. Further, at one point he was a board member for 20 non-profit organizations. MR. WARDEN spearheaded many desert cleanups within and around Summerlin and he facilitated trailer marker signage throughout the Red Rock Canyon National Conservation Area. MAYOR GOODMAN thanked him for his years of service to the Las Vegas community, and she presented him with a Proclamation and declared August 3, 2022 as Tom Warden Day.

MR. WARDEN felt privileged to work for the Howard Hughes Corporation and with the City of Las Vegas. He noted MAYOR GOODMAN played a role in constructing The Meadows School, which was the first structure built in Summerlin. He advised that there were thousands of acres available for development in Summerlin West in Ward 2, and he congratulated COUNCILWOMAN SEAMAN for winning her recent reelection to City Council. He expressed appreciation for various City staff members, and he advised that he started working for the Howard Hughes Corporation the same year that DAVID RIGGLEMAN started at the City. MR. WARDEN said the best part of working for the Howard Hughes Corporation was the people, and he felt gratified that so many of them came to the City Council meeting. He advised that his wife was also in attendance and retired a few years ago, and he reported that today was his birthday. MAYOR GOODMAN wished him a happy birthday and said he was one-of-a-kind.

MR. WARDEN introduced several members of the Howard Hughes Corporation and explained their roles in the company.

BUSINESS ITEMS - 9:30 A.M. SESSION

PUBLIC COMMENT

7. Public comment during this portion of the Agenda must be limited to matters on the Agenda for action. If you wish to be heard, come to the podium and give your name for the record. The amount of discussion, as well as the amount of time any single speaker is allowed, may be limited.

Minutes:

VICKIE DEHART, Principal at EHB Companies, spoke in regards to Agenda Item 28, and she noted it was being pulled from the agenda. They received a settlement agreement e-mail from the City on July 22, 2022 and they accepted the terms. The major points of the agreement were payment of a reduced judgement, a dollar amount for drainage improvements and staff proposed entitlements. She said the City attempted to change these terms on Monday. She explained the proposed change would allow the City to approve the settlement agreement and deny the entitlements later. MAYOR GOODMAN advised that they needed to stay on schedule. MS. DEHART said the proposed change wasn't the intent of the agreement, and she wished the item came forward so they could hear where the Council stood. The Mayor clarified with ASSISTANT CITY ATTORNEY JEFF DOROCK that MS. DEHART could submit a written statement for the record, and MS. DEHART declined submitting her script.

Former Councilman BOB COFFIN reported that the lawsuit filed by EHB Companies against him had been dismissed. He listed the various courts that considered the lawsuit, and he noted they missed the deadline to ask for certiorari at the Supreme Court. He believed he was called anti-Semitic for not supporting their proposal, and he opined that the lawsuit was a SLAPP suit (Strategic Lawsuit Against Public Participation). MR. COFFIN was glad the item was going to be stricken, and he did not believe they applied for rights.

BUSINESS ITEMS - 9:30 A.M. Session

8. For Possible Action - Any items from the 9:30 a.m. session that the Council, staff and/or the applicant wish to be stricken, tabled, withdrawn or held in abeyance to a future meeting may be brought forward and acted upon at this time.

Minutes:

COUNCILWOMAN SEAMAN stated that resolving the Badlands situation has been her top priority since she began campaigning for the Ward 2 Council seat. She said the Badlands developer and the City had been working on a possible settlement agreement, and she thought the foundation of a deal seemed ready to be considered by the Council. The agreement would end all litigation and begin the process of developing Badlands into something beautiful and productive for the community. The Councilwoman expressed disappointment they would not move forward with the settlement. She regretted that the matter would continue to work through the courts, and she expected that to continue unless both sides found common ground.

Subsequent to COUNCILWOMAN SEAMAN'S statement, COUNCILMAN ANTHONY stated that Items 31 and 32 were announced to be stricken at the request of COUNCILWOMAN FIORE. However, the agenda showed the items were located within Ward 2, and he confirmed with COUNCILWOMAN SEAMAN that she made the request to strike the items.

Motion made by Stavros Anthony to Strike Items 28, 31, 32, 33 and 39 and Hold in Abeyance Item 29 to 8/17/2022

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

CONSENT AGENDA

Matters listed on the Consent Agenda are considered to be routine and have been recommended for approval by the Submitting Departments. All items on the Consent Agenda may be approved in a single motion. However, if a Council Member so requests, any consent item may be moved to the discussion portion of the agenda and other action, including postponement or denial of the item, may take place.

CITY ATTORNEY - CONSENT

9. For possible action to approve a business impact statement regarding a proposed ordinance to update LVMC 14.04.030 and 14.04.210 to implement increases in sewer service charges and sewer connection fees, including subsequent four percent annual fee increases and annual Consumer Price Index increases through calendar year 2032 (This item is related to Bill No. 2022-20, which appears later on this agenda under New Bills)

Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None

NOTE: Assistant City Attorney Jeff Dorocak advised that the Certificate Disclosure of Ownership Principals was not included for Item 12 when it was placed on the agenda. This document is on file with the Clerk's Office and everything is in order.

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

COMMUNICATIONS - CONSENT

10. For possible action to approve an Interlocal Agreement between the City of Las Vegas and Regional Flood Control District for television production services and social media segments - All Wards

Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

ECONOMIC AND URBAN DEVELOPMENT - CONSENT

11. For possible action to approve the Exclusive Negotiation Agreement between the City of Las Vegas and Tru Development, LLC for Cashman Center, located at 850 North Las Vegas Boulevard (APN 139-27-709-001 and 139-26-301-004) - Ward 5 (Crear)

Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

12. For possible action to approve the Parking Spaces Easement Agreement between the City of Las Vegas and JSC / Symphony Park Hotel, LLC (Developer) for the purposes of securing designated parking in the City of Las Vegas Garage, located at 355 Promenade Place (APN 139-33-610-033) - Ward 5 (Crear)

Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None

NOTE: Assistant City Attorney Jeff Dorocak advised that the Certificate Disclosure of Ownership Principals was not included for Item 12 when it was placed on the agenda. This document is on file with the Clerk's Office and everything is in order.

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

13. For possible action to approve the Grant of Easement Agreement between the City of Las Vegas (Grantor) and City Parkway V, Inc. (Grantee) for the purposes of vehicular ingress and egress over the easement for service

vehicles, related improvements and maintenance of utilities as needed for a parcel (APN 139-33-610-033), located at 355 Promenade Place - Ward 5 (Crear)

Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

14. For possible action to approve the Second Amendment to Parking Lease Agreement between POB Las Vegas, LLC and the City of Las Vegas (City) to extend the term through and including July 31, 2023 of the Parking Lease Agreement regarding the management and operation of a parking lot, located at the southeast corner of Stewart Avenue and North Casino Center Boulevard (a portion of APN 139-34-501-023) - Ward 5 (Crear)

Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

15. For possible action to approve the Amendment to Parking Lease Agreement between Siena XII Holding Limited Partnership (Landlord) and the City of Las Vegas (City) to incorporate forty-eight (48) additional parking spaces, located at 1405 South Casino Center Boulevard (APN 162-03-201-050) with the terms of the lease payments described in the original agreement (Not-to-Exceed \$50,000 - Parking Enterprise Fund) - Ward 3 (Diaz)

Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

16. For possible action to approve a Memorandum of Understanding (MOU) between the City of Las Vegas and Vertical Harvest, Inc. for a site to be determined on a northern portion of James Gay Park starting at the north end corner between Harrison Avenue and B Street (APN 139-27-101-002) to explore the development of a vertical urban farm and potential affordable housing - Ward 5 (Crear)

Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

FINANCE - PURCHASING AND CONTRACTS - CONSENT

17. For possible action to approve award of Bid No. 21.MWA400.C-JH, Jackson Avenue H Street to C Street, to the lowest responsive and responsible bidder (for road rehabilitation improvements) - Department of Public Works - Award recommended to: UNICON, LLC (\$6,505,911.89 - Road and Flood Capital Projects Fund) - Ward 5 (Crear)

Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

18. For possible action to approve award of Contract No. 22.MWA245.D2-JH, Prime Design Services for Sewer Rehabilitation Group K - Arville Street Relief Sewer (30% to Final Design) - Department of Public Works - Award recommended to: GCW, INC. (\$365,227.20 - Sanitation Enterprise Fund) - Ward 1 (Knudsen)
- Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None
- Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0
- For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;
19. For possible action to approve award of Amendment No. 1 to Contract No. 210193-JH (Federal Project No. 07-79-07620), Prime Design Services for Westside Education and Training Center, located at Jefferson Avenue and D Street - Department of Public Works - Award recommended to: CARPENTER SELLERS DEL GATTO ARCHITECTS (\$354,285 - City Facilities Capital Projects Fund) - Ward 5 (Crear)
- Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None
- Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0
- For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

OPERATIONS AND MAINTENANCE - CONSENT

20. For possible action to approve the First Amendment to Lease and Operating Agreement between the City of Las Vegas and Acelero Learning Clark County to add an option to extend the lease at 1617 Alta Drive through August 14, 2023 - Ward 1 (Knudsen)
- Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None
- Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0
- For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;
21. For possible action to authorize staff to acquire real property and improvements located at 715 Bell Drive (APN 139-27-811-015); 721 Bell Drive (APN 139-27-811-016); 808 G Street (APN 139-27-310-023); 604 Kasper Avenue (APN 139-22-310-027); and 1021 F Street (APN 139-27-210-070) for future strategic land acquisitions in the Historic Westside and Cashman Districts (\$791,585 - General Capital Projects Fund) - Ward 5 (Crear)
- Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None
- Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0
- For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

PUBLIC WORKS - CONSENT

22. For possible action to approve Interlocal Agreement No. 137228-A between the City of Las Vegas (CLV) and the Las Vegas Valley Water District (LVVWD) for water commitment services in conjunction with the CLV's Casino Center Complete Streets Project generally located on South Casino Center Boulevard between Oakey Boulevard and East Colorado Avenue (\$18,926 - Road and Flood Capital Project Fund [CPF]) - Ward 3 (Diaz)
- Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None
- Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0
- For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

23. For possible action to approve the following supplemental interlocal contracts: Interlocal Contract (IL) 462 - Supplemental No. (S No.) 9; IL 843 - S No. 4; IL 959 - S No. 4; IL 988 - S No. 1; IL 1096 - S No. 3; IL 1153 - S No. 1; IL 1154 - S No. 2, which are for capital improvement projects funded by the Regional Transportation Commission of Southern Nevada (RTC), and require supplements to extend the contract expiration date from June 30, 2022 to June 30, 2027 - All Wards

Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

24. For possible action to approve Interlocal Contract 918 - Supplemental No. 6 and Interlocal Contract 1002 - Supplemental No. 1, which are for capital improvement projects funded by the Regional Transportation Commission of Southern Nevada (RTC), and require supplement contracts to modify funding source from Motor Vehicle Fuel Tax (MVFT) funds to Fuel Revenue Indexing (FRI) funds - Wards 3 and 5 (Diaz and Crear)

Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

RESOLUTIONS - CONSENT

25. R-36-2022 - For possible action to approve a Resolution to seek approval from the Clark County Debt Management Commission to issue general obligation bonds (additionally secured by pledged revenues) in an amount not to exceed \$70,000,000 to construct a new Civic Center Building and Plaza (City Facilities Capital Project Fund) - Ward 3 (Diaz)

Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

26. R-37-2022 - For possible action to approve a Resolution directing the State Department of Business and Industry to transfer \$17,473,558 in 2022 State Private Activity Bond Volume Cap to Affordable Housing Programs, Inc. for the rehabilitation of 200 units of affordable senior housing at James Down Towers, located at 5000 Alta Drive - Ward 1 (Knudsen)

Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

27. R-38-2022 - For possible action to approve a Resolution directing the State Department of Business and Industry to transfer \$17,875,000 in 2022 State Private Activity Bond Volume Cap to Coordinated Living of Southern Nevada, Inc. for the construction of Decatur and Rome Family Apartments, which will consist of 276 units of affordable family housing, located at 6635 North Decatur Boulevard - Ward 6 (Fiore)

Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

DISCUSSION/ACTION ITEMS

ADMINISTRATIVE - DISCUSSION

28. Discussion for possible action regarding settlement of the following litigation: 180 Land Company, LLC v. City of Las Vegas, 8JDC Case No. A-17-758528-J, NSC Case Nos. 84345, 84640; 180 Land Company, LLC, et al. v. City of Las Vegas, 8JDC Case No. A-18-780184-C; Fore Stars, Ltd., et al. v. City of Las Vegas, et al., 8JDC Case No. A-18-773268-C; and 180 Land Company, LLC v. City of Las Vegas, 8JDC Case No. A-18-775804-J (\$64,000,000 - Various Funds)

Minutes:

See Items 7 and 8 for related discussion.

Motion made by Stavros Anthony to Strike Items 28, 31, 32, 33 and 39 and Hold in Abeyance Item 29 to 8/17/2022

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

OFFICE OF GOVERNMENT AND COMMUNITY AFFAIRS - DISCUSSION

29. Discussion for possible action on the proposed bill draft requests to be submitted to the Legislative Counsel Bureau on behalf of the City of Las Vegas for the 82nd Session of the Nevada Legislature (2023 Session) - All Wards

Motion made by Stavros Anthony to Strike Items 28, 31, 32, 33 and 39 and Hold in Abeyance Item 29 to 8/17/2022

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

RESOLUTIONS - DISCUSSION

30. R-39-2022 - Discussion for possible action regarding a Resolution approving an Interlocal Library Development Agreement between the City of Las Vegas (City) and the Las Vegas Clark County Library District (District) for the purchase of the West Las Vegas Library improvements located at 955 West Lake Mead Boulevard (APN's 139-21-703-019 and -020) and the development of a new Library Branch in Las Vegas Enterprise Park (APN's 139-21-313-014, -028 and a portion of -019) (Not-to-Exceed \$3,500,000 - RDA Special Revenue Fund) - Ward 5 (Crear) [NOTE: This item is related to RDA Item 4]

Minutes:

See Item 46 for related discussion.

RYAN SMITH, Director of Economic and Urban Development, advised that this item was related to RDA (Redevelopment Agency) agenda Item 4, which involved funding improvements of the current library. He explained this item was for the Council to approve the Interlocal Agreement (Interlocal Library Development Agreement) with the Library (Las Vegas Clark County Library District).

Motion made by Cedric Crear to Approve the Interlocal Library Development Agreement and strike any reference to Resolution R-39-2022

NOTE: Subsequent to Councilman Crear's motion, Assistant City Attorney Jeff Dorocak requested the motion

be amended to Approve the Interlocal Library Development Agreement and strike any reference to Resolution R-39-2022 since there is no such resolution.

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

31. RESCIND - R-35-2022 - Discussion for possible action regarding a Resolution finding the Disposition and Development Agreement between the City of Las Vegas (City) and Panther Acquisitions LLC (Developer) for the purchase and sale of the property, and development of medical office facilities located east of the northeast corner of Alta Drive and South Hualapai Way (APN 138-31-101-004) - Ward 2 (Seaman)

Minutes:

See Item 8 for related discussion.

Motion made by Stavros Anthony to Strike Items 28, 31, 32, 33 and 39 and Hold in Abeyance Item 29 to 8/17/2022

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

32. REHEAR - R-35-2022 - Discussion for possible action regarding a Resolution finding the Disposition and Development Agreement between the City of Las Vegas (City) and Panther Acquisitions LLC (Developer) for the purchase and sale of the property, and development of medical office facilities located east of the northeast corner of Alta Drive and South Hualapai Way (APN 138-31-101-004) - Ward 2 (Seaman)

Minutes:

See Item 8 for related discussion.

Motion made by Stavros Anthony to Strike Items 28, 31, 32, 33 and 39 and Hold in Abeyance Item 29 to 8/17/2022

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

RECOMMENDING COMMITTEE REPORT - DISCUSSION

BILLS ELIGIBLE FOR ADOPTION AT THIS MEETING

33. Bill No. 2022-19 - For possible action - Amends LVMC Title 10 to add a new chapter establishing a curfew applicable to persons under the age of twenty-one and pertaining to the area bounded by Ogden Avenue on the north, 8th Street on the east, Carson Avenue on the south, and Main Street on the west. Sponsored by: Mayor Carolyn G. Goodman

Motion made by Stavros Anthony to Strike Items 28, 31, 32, 33 and 39 and Hold in Abeyance Item 29 to 8/17/2022

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

BILLS ELIGIBLE FOR ADOPTION AT A LATER MEETING

There is no public comment on these items and no action will be taken by the Council at this meeting, except those items which may be stricken or tabled. Public testimony takes place at the Recommending Committee Meeting held for that purpose.

34. Bill No. 2022-16 - Amends various sections of LVMC Chapter 6.75, pertaining to short-term residential rentals, to conform to and incorporate various recently-adopted provisions of State law, and amends other provisions of LVMC Titles 4, 6 and 19 to make corresponding changes. Proposed by: Seth T. Floyd, Director of Community Development

Minutes:

Recommendation noted.

8/17/2022 Council Agenda

35. Bill No. 2022-17 - Amends LVMC 19.18.020 to expand the definition of "regional mall" for purposes of distance requirements. Sponsored by: Councilwoman Michele Fiore

Minutes:

Recommendation noted.

8/17/2022 Council Agenda

36. Bill No. 2022-18 - Amends various provisions of the Municipal Code to reflect changes in the names of several departments and divisions within City government; delete references to departments that are to be eliminated or combined with other departments; reflect the names of departments or functions that will succeed to duties and responsibilities of departments that have been eliminated; and update references to departments and divisions whose names have been changed over time. Proposed by: Tom Perrigo, Chief Operations and Development Officer

Minutes:

Recommendation noted.

8/17/2022 Council Agenda

NEW BILLS

There is no public comment on these items and no action will be taken by the Council at this meeting, except those items which may be stricken or tabled. Public testimony takes place at the Recommending Committee Meeting held for that purpose.

37. Bill No. 2022-20 - Updates LVMC 14.04.030 and 14.04.210 to implement increases in sewer service charges and sewer connection fees, including subsequent four percent annual fee increases and annual Consumer Price Index increases through calendar year 2032. Proposed by: Jorge Cervantes, City Manager

Minutes:

First Reading - Referred - COUNCILMEMBERS ANTHONY, FIORE and KNUDSEN

8/15/2022 Recommending Committee

8/17/2022 Council Agenda

38. Bill No. 2022-21 - Adopts the 2021 International Wildland-Urban Interface Code, together with amendments thereto. Proposed by: Kevin McOsker, Director of Building and Safety

Minutes:

First Reading - Referred - COUNCILMEMBERS ANTHONY, FIORE and KNUDSEN

8/15/2022 Recommending Committee

8/17/2022 Council Agenda

CLOSED SESSION

39. Closed Session - A closed meeting is called in accordance with NRS 241.015(3)(b)(2) to receive information from the City Attorney about potential and existing litigation

Motion made by Stavros Anthony to Strike Items 28, 31, 32, 33 and 39 and Hold in Abeyance Item 29 to 8/17/2022

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

PLANNING

The items listed below, where appropriate, have been reviewed by the various City departments relative to the requirements for storm drainage and flood control, connection to sanitary sewer, traffic circulation, and Building and Fire regulations. Their comments and/or requirements have been incorporated into the action.

PLANNING - CONSENT

All items listed on the Consent Agenda are considered to be routine and have been recommended "for approval". All items on the consent agenda may be approved in a single motion. However, if a Council Member so requests, any consent item may be moved to the Discussion portion of the agenda and other action, including postponement or denial of the item, may take place.

40. 22-0275 - APPLICANT/OWNER: KARDIA PROPERTIES, LLC - For possible action on the following Land Use Entitlement project requests on 1.69 acres located on the south side of Harris Avenue between Lilly Lane and Effinger Street (APN 139-25-410-046), R-4 (High Density Residential) Zone, Ward 3 (Diaz). Staff recommends APPROVAL on the entire Land Use Entitlement project.

Minutes:

See Items 40a and 40b for related backup.

- 40a. 22-0275-EOT1 - EXTENSION OF TIME - SITE DEVELOPMENT PLAN REVIEW - First Extension of Time of a previously approved Site Development Plan Review (SDR-78417) FOR A PROPOSED THREE STORY, 53-UNIT MULTI-FAMILY RESIDENTIAL DEVELOPMENT WITH A WAIVER OF THE PERIMETER LANDSCAPE BUFFER REQUIREMENTS

Minutes:

See Items 40-40b for related backup.

Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

- 40b. 22-0275-EOT2 - EXTENSION OF TIME - VARIANCE - First Extension of Time of a previously approved Variance (VAR-78416) TO ALLOW 68 PARKING SPACES WHERE 95 PARKING SPACES ARE REQUIRED

Minutes:

See Items 40-40b for related backup.

Motion made by Stavros Anthony to Approve the Consent Agenda except Item(s) None

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

PLANNING - DISCUSSION

41. 22-0059-SDR1 - ABEYANCE ITEM - SITE DEVELOPMENT PLAN REVIEW - PUBLIC HEARING - APPLICANT: AJB GENERAL CONTRACTOR - OWNER: 3250 SPRING MOUNTAIN TRUST - For possible action on a Land Use Entitlement request for a Major Amendment to a previously approved Site Development Plan Review (SDR-67942) FOR A PROPOSED SINGLE-STORY, 3,900 SQUARE-FOOT GENERAL RETAIL BUILDING WITH A WAIVER OF APPENDIX F INTERIM DOWNTOWN LAS VEGAS ARCHITECTURAL DEVELOPMENT STANDARDS on 1.04 acres at the northeast corner of Park Paseo and Las Vegas Boulevard (APN 162-03-112-021), C-2 (General Commercial) Zone, Ward 3 (Diaz). The Planning Commission (6-0 vote) and Staff recommend APPROVAL.

Minutes:

MAYOR GOODMAN declared the Public Hearing open.

ALAN JESKEY thanked COUNCILWOMAN DIAZ for meeting with them on the project.

PETER LOWENSTEIN, Deputy Director of Planning, reported that staff found the proposed commercial building and use of the structures is consistent with the previously approved plans for the subject site. In addition, staff found that the requested Waiver of architectural development standards will have minimal negative impact to the surrounding commercial developments in the surrounding area; therefore, staff recommended approval subject to conditions.

COUNCILWOMAN DIAZ noted the proposal was commercial space for three small businesses or commercial tenants, and she felt it would add spots to frequent for visitors of the city. She confirmed with MR. JESKEY that there would be no drive-through component.

The Councilwoman asked MR. LOWENSTEIN to articulate the conditions of approval. He advised that they were standard conditions and included conformance to date stamp plans. He clarified that there were no added or amended conditions of approval.

MAYOR GOODMAN declared the Public Hearing closed.

Motion made by Olivia Diaz to Approve subject to condition(s)

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

42. 22-0207-SUP1 - ABEYANCE ITEM - SPECIAL USE PERMIT - PUBLIC HEARING - APPLICANT: CASH AMERICA WEST, INC. DBA SUPERPAWN - OWNER: C EAGLE SPIRIT, LLC - For possible action on a Land Use Entitlement project request FOR A PROPOSED PAWN SHOP USE WITH WAIVERS TO ALLOW A ZERO-FOOT DISTANCE SEPARATION FROM A PARCEL ZONED FOR RESIDENTIAL USE WHERE 200 FEET IS REQUIRED AND TO ALLOW A ZERO-FOOT DISTANCE SEPARATION FROM AN EXISTING SIMILAR USE WHERE 1,000 FEET IS REQUIRED at 2300 East Bonanza Road (APN 139-35-501-001), C-1 (Limited Commercial) Zone, Ward 3 (Diaz). Staff recommends DENIAL. The Planning Commission (5-1 vote) recommends APPROVAL.

Minutes:

MAYOR GOODMAN declared the Public Hearing open.

BILL CURRAN, attorney, and JOE DAGHER, associate, Ballard Spahr, appeared on behalf of the applicant. MR. CURRAN advised that the applicant has 2,700 stores around the country and has been in Las Vegas for about 30 years without any complaints or regulatory issues. The applicant won the lottery conducted by City

Council, and they paid \$1.9 million to the City for the extra license. They currently have 10 stores in Clark County and 23 stores in Southern Nevada, and MR. CURRAN opined that the neighborhoods have a fortunate relationship with all locations. He noted the property has been vacant for over a year, and the only other potential property renter was a marijuana business. He reported that the property owner built the center in 1968, and the applicant rented the location from the mid-90s until 2005 or 2006.

MR. DAGHER described the site and the surrounding area, and he noted the stand-alone building is part of an 8.77-acre shopping center that is zoned C-1 (Limited Commercial). He explained that Special Use Permit 0121-97 was approved for pawn shop use for Koster's Financial Loan Center in 1998, and the applicant was requesting the same use. He advised that the vacant building has been subject to vandalism, and the applicant would renovate the building prior to operation. He noted the applicant was willing to install concrete and landscaping around the building. MR. DAGHER explained that the prior use was a financial institution and it would require the same distance separation waiver from a similar use. Further, the applicant would be about 988 square feet away from the closest pawn shop. They would only offer non-recourse loans and not provide services offered by Check City or Western Union such as check cashing, deferred deposits and auto title loans.

MR. DAGHER said they canvassed a large majority of the neighborhood, the shopping center and SuperPawn employees within Ward 3, and they received support from nearly all of them. He opined that the community welcomed the pawn shop use since it will create jobs and refurbish the area. Further, he believed they would be an excellent neighbor and partner to Las Vegas.

PETER LOWENSTEIN, Deputy Director of Planning, reported that the proposed land use cannot be conducted in a manner that is harmonious and compatible with existing surrounding land uses, as the proposed use fails to meet the required separation from an existing pawn shop and residential uses; as such, staff recommended denial of the requested Special Use Permit.

MAYOR GOODMAN clarified with MR. LOWENSTEIN that a financial institute would require waivers if they were to be established. He provided a summary of the previous land use applications, which included limitations to hours of operation and no drive-through use in 1997 by City Council, a Special Use Permit for financial institutes specified in 2004 by City Council, and an auto title loan in 2011 by the Planning Commission and City Council. He noted it did not have certain distance separation requirements in 2004. Further, the business license in 2004 was issued in March, 2022 for the financial institutes specified.

SHYANNE BROADHEAD, Shop Manager at SuperPawn, said her favorite part of her job is helping people, and she listed the services that are provided. She explained that they work with the local police department to track and return stolen goods, and help prosecute those that bring harm to the community. She opined that the new shop would bring growth and new career opportunities.

MATT CONNOLLY, Manager of the Bonanza Square Shopping Center, advised that a majority of the shopping center tenants support the use, and he believed it would create more retail interaction in the area than the previous tenant. He noted the property has been vacant for over 18 months, and he expressed concern that the property would remain vacant if the applicant's use was denied.

MAYOR GOODMAN confirmed with MR. DAGHER that there would be no drive-through use.

COUNCILWOMAN DIAZ expressed concern regarding the existing pawn shop adjacent to the community and having to grant waivers. She advised that she took a tour of the location on Nellis Boulevard, and she acknowledged that it would be a great career opportunity for residents in the area. The Councilwoman confirmed with MR. CURRAN that they spoke with six of the seven Councilmembers regarding a potential location for this pawn shop in their ward. He explained that in a previous conversation, the seventh Councilmember was not adverse to it, but MR. CURRAN advised there needed to be the right demographic of working people in the neighborhood. He noted one of the three locations they applied for was adjacent to a Walgreens Pharmacy, but there is a provision in Walgreens Pharmacy's lease that does not allow second-hand merchandise to be sold within the same shopping center.

COUNCILWOMAN DIAZ understood that the applicant assists people that need money, but she said the

socioeconomic point that MR. CURRAN made was one of her concerns. She asked what the applicant would do to address safety and security concerns. MR. CURRAN explained that the applicant has 30 years of experience and a long-standing record of being good neighbors. He personally walked the neighborhood and received 23 signatures in support of the proposal.

COUNCILWOMAN DIAZ confirmed with JIM BENNETT, Division Vice President of First Cash Financial Services, that the store's hours of operation would be 9:00 a.m. to 7:00 p.m., Monday through Friday, 9:00 a.m. to 5:00 p.m. on Saturday and closed on Sunday.

COUNCILMAN ANTHONY reported that pawn shops caused crime in the area and had stolen goods in 1980 when he joined the police department. Further, the police department later rolled out a pawn detail. He opined that pawn shops today are just retail stores with criminal activity that is no different than other retail stores. The Councilman did not believe any pawn shops cause problems in their neighborhood.

COUNCILWOMAN DIAZ advised that she has been a victim of two home break-ins, and she understood that lost property may be found in pawn shops.

MAYOR GOODMAN noted she has also been burglarized twice. She said the applicant's buildings are well-kept and they have courteous employees. She believed the store would encourage growth and be an attractive addition to the shopping center, and she expressed appreciation for MS. BROADHEAD'S comments.

COUNCILWOMAN DIAZ clarified with MR. DAGHER that the applicant works closely with the Las Vegas Metropolitan Police Department, and the location would have approximately 15 to 20 interior and exterior cameras. Further, the location will have shop alarms monitored by a national vendor and SuperPawn's command center, and there will be panic buttons throughout the shop. MR. DAGHER said they were willing to add additional security measures. The Councilwoman asked if there would be lighting in the back of the building. MR. BENNETT advised that the building would be lit all night, and he clarified that they work with police departments nationally. COUNCILWOMAN DIAZ wanted upgraded exterior lighting to be a Condition of Approval, and she believed it would be helpful to law enforcement.

COUNCILWOMAN DIAZ confirmed with MR. LOWENSTEIN which added conditions of approval she wanted, and he read them into the record. He clarified with MR. DAGHER the hours of operation for the store. Following the recommendation of MAYOR GOODMAN, MR. LOWENSTEIN amended the lighting condition to pertain to all sides of the building.

MAYOR GOODMAN confirmed with MR. DAGHER and MR. CURRAN that they agreed to all conditions. MR. CURRAN advised that lighting at the back of the building would be down-lighting, so as to not protrude into residents' backyards.

After the motion, MAYOR GOODMAN asked for the construction timeline. MR. BENNETT expected construction to be complete within six to nine months, but he noted there were materials on backorder. The Mayor confirmed with MR. BENNETT that the foundation and exterior of the building would be used.

MR. CURRAN thanked COUNCILWOMAN DIAZ for coming out to inspect one of their stores and familiarizing herself with their business.

MAYOR GOODMAN declared the Public Hearing closed.

Motion made by Olivia Diaz to Approve subject to condition(s) and adding the following conditions as read for the record:

- A. Weapons, including but not limited to firearms and knives, shall not be sold at this location.
- B. The hours of operation for this business shall be limited to 9:00 a.m. through 7:00 p.m Monday through Friday, 9:00 a.m. through 5:00 p.m. on Saturday and the business shall be closed on Sundays.
- C. The applicant shall submit a landscape plan to the Department of Planning prior to the issuance of a business license depicting improved landscaping within the commercial center.

- D. The applicant shall provide appropriate security lighting on the exterior of all of the building.
- E. An Administrative Required review shall be conducted one year from the date of business license issuance.

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

43. 22-0228-SDR1 - ABEYANCE ITEM - SITE DEVELOPMENT PLAN REVIEW - PUBLIC HEARING - APPLICANT/OWNER: STEWART PLAZA, LLC - For possible action on a Land Use Entitlement project request FOR A PROPOSED THREE-STORY MIXED-USE DEVELOPMENT WITH 69 MULTI-FAMILY RESIDENTIAL UNITS AND 2,601 SQUARE FEET OF COMMERCIAL FLOOR AREA IN CONJUNCTION WITH AN EXISTING 4,025 SQUARE-FOOT CONVENIENCE STORE WITH FUEL PUMPS, CANOPY AND CAR WASH WITH WAIVERS OF THE PERIMETER LANDSCAPE BUFFER REQUIREMENTS on 2.78 acres at the northwest corner of Stewart Avenue and Mojave Road (APN 139-36-603-001), C-1 (Limited Commercial) Zone, Ward 3 (Diaz). The Planning Commission (6-0 vote) and Staff recommend APPROVAL.

Minutes:

MAYOR GOODMAN declared the Public Hearing open.

KEN KRAEMER, Hauntec Engineering, appeared representing the owner/developer, and he noted an owner/developer and architect were present. He concurred with staff recommendations.

PETER LOWENSTEIN, Deputy Director of Planning, reported that the proposed mixed-use development provides infill development in this area, and the location is appropriate near other multi-family residential uses, the I-515 freeway and various civic uses. The development is generally consistent with Title 19 and is compatible with the adjacent commercial use on the site; therefore, staff recommended approval of the request. He noted there was a possible added condition of approval.

COUNCILWOMAN DIAZ appreciated that the applicant met with her to explain their vision, and she noted they had not met when the C-store came into the neighborhood. She received a thorough vetting of the proposal, and she was appreciative that no Waivers were requested. She expressed concerns regarding the proposal's adjacency to the jail, point of entry accessibility and exterior lighting. The Councilwoman confirmed with AMAR PANOU that a management company would be hired and they would adhere to the Las Vegas Metropolitan Police Department's Crime Free Multi-Housing Program. She believed the applicant represented the "American dream".

MR. LOWENSTEIN read the added condition into the record and MR. PANOU confirmed for the Mayor that they agreed.

MAYOR GOODMAN declared the Public Hearing closed.

Motion made by Olivia Diaz to Approve subject to condition(s) and adding the following condition as read for the record:

A. The property owner shall participate, and require its affiliates and/or property management to participate, in the three-phase Crime Free Multi-Housing Program facilitated by the Las Vegas Metropolitan Police Department.

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

44. 22-0327-HPC1 - CERTIFICATE OF APPROPRIATENESS - PUBLIC HEARING - APPLICANT/OWNER: TURLEY JOSEPH & VANESSA - For possible action on an Appeal of the Denial by the Historic Preservation Commission on a request for a Certificate of Appropriateness Application for the installation of a sunken hot tub and an outdoor shower with surrounding privacy screening, as well as a conversion of the garage into a casita,

and approval of the design of an existing wooden fence on property located at 700 Park Paseo (APN 162-03-515-014), R-1 (Single Family Residential) Zone - Ward 3 (Diaz). The Historic Preservation Commission recommends DENIAL. Staff recommends APPROVAL.

Minutes:

MAYOR GOODMAN declared the Public Hearing open.

DR. DIANE SIEBRANDT, Historic Preservation Officer, advised that she manages the Historic Preservation Commission (HPC), and she utilized a PowerPoint presentation, which was included in the backup. She explained that the property is located within the John S. Park Historic District, and that the historic district is guided by Municipal Ordinance Title 19 Historic Overlay. She displayed photos of the property from when it was accepted into the historic district in 2002, and she noted 51 percent of the neighborhood had to consent for the historic listing. A Certificate of Appropriateness application must be submitted to the HPC if the property owner wants to make a change to the exterior of a property that can be seen from the public right-of-way. The HPC decides if the change contributes to the historic character of the neighborhood, and approval is required before the applicant can acquire a building permit.

DR. SIEBRANDT explained that the applicant did not submit a building permit, and they learned about construction through a complaint. She noted e-mail and phone conversations with the homeowners and construction managers starting on June 3, 2020 that explained the application and permitting process, and Code Enforcement issued a similar advisement on November 22, 2021. The applicant completed much of the construction prior to appearing before the HPC or submitting any building permit. DR. SIEBRANDT displayed photos of the fence in various levels of construction, and she explained the primary concern was that the fence blocked bystanders from seeing the house. The applicants submitted their Certificate of Appropriateness application and appeared before the HPC at the April 22, 2022 meeting. The application included four proposed changes for a hot tub installation, outdoor shower, conversion of the garage, and the fencing. The HPC denied the application since they did not feel the fence contributed to the historic character of the neighborhood, and they required that the fence height be reduced from seven feet to five feet and be comprised of one continuous form of material. DR. SIEBRANDT listed HPC requirements for each of the four proposed changes, and she said the applicant agreed to all of the conditions except for the fence height reduction. A new fence design with slats was presented at the June 22, 2022 HPC meeting. The Commission felt the fence height obstructed the view of the house, and the materials did not give a uniform look to the property or contribute to the historic character of the neighborhood. DR. SIEBRANDT concluded her presentation by showing the house as it looked when it was added to the historic district and how the house currently looks.

VANESSA TURLEY, applicant, appeared with LARRY SANCHEZ, Civil Architectural Engineer, and explained that the property was purchased in March 2020. She displayed various photos of her property, which were not submitted for the record, and she noted two gate-related encounters with Code Enforcement. The first encounter related to the fence on the northwest portion of the property. She was advised that the fence needed to comply with front of the house rules or be removed, and she chose to remove the fence. The second encounter involved the fence being discussed, and she clarified that MR. SANCHEZ was hired as a consultant after construction began in November 2021. MS. TURLEY confirmed that she agreed to the first three conditions presented at the April 22, 2022 HPC meeting, and she read the fourth condition regarding the fence, which included height reduction and matching the manner of other corner properties. She noted productive conversation with the HPC regarding an alternate fence design to better see the house, and she displayed survey photos of other properties in the area, which were not submitted for the record, to show fences and walls that were taller than five feet and comprised of varying materials. MS. TURLEY noted no changes were made to the exterior of the house except new paint, and the front yard is completely original except for patches to the wrought iron fence. The alternate fence design was presented to the HPC, and she expressed concern that the fence condition changed between the two HPC meetings. She read the new condition into the record, which required an unobstructed view of the house and did not include anything regarding other corner lots.

MS. TURLEY said her concerns were safety, security and privacy, and she noted two incidents of car break-ins and several incidents of stolen property. Further, she has found identification cards on her property belonging to people released from CCDC (Clark County Detention Center). She reported being tasked to meet with her neighbors after meeting with COUNCILWOMAN DIAZ, and she presented a support petition, a copy of which was submitted for the record, with 30 signatures from people within the historic district.

MAYOR GOODMAN confirmed with PETER LOWENSTEIN, Deputy Director of Planning, that he had nothing to add.

JEANNE ASMUSSEN advised that she has lived next door to applicant's property since 1982. She had discussed privacy concerns with the applicant and they agreed to raise the lattice fencing. She later noticed construction of a bathroom and confirmed with the applicant that they did not have a permit. She explained that the front of her and the applicant's properties are aligned with Park Paseo. MS. ASMUSSEN displayed photos of the applicant's fences, which were not submitted for the record, showing a solid wood fence and a fence comprised of four different materials. She presented a protest petition from 2021, which was not submitted for the record, and expressed concern over the validity of MS. TURLEY'S support petition.

BRANDY ORTIZ expressed support for the item.

COUNCILMAN CREAR confirmed with MS. TURLEY that she knew her home was part of the historic district when it was purchased. MS. TURLEY advised that she began conversations with DR. SIEBRANDT within the first few months of purchasing the home. She expressed concern regarding the pandemic, not being able to apply for permits and personal security. The Councilman confirmed with MAYOR GOODMAN that the Business Development offices were still open during the pandemic, and MS. TURLEY advised that Code Enforcement told her she did not need a permit for the fence. COUNCILMAN CREAR reviewed the communication and notice timeline presented by DR. SIEBRANDT.

COUNCILWOMAN FIORE expressed concern regarding personal property rights for people living within a historic district, and she opined that the fence facing MS. ASMUSSEN'S home should be fixed immediately. She believed MS. TURLEY'S support petition was more valid than MS. ASMUSSEN'S protest petition since it was newer, and she advised that she would follow COUNCILWOMAN DIAZ'S recommendation.

MR. SANCHEZ reported that he could not locate a definition for historical preservation within the historical preservation guidelines. He noted neighbors' fences were made of various materials, and he expressed concern regarding the condition changes between HPC meetings.

MAYOR GOODMAN confirmed with MR. LOWENSTEIN that this item was not heard at the Planning Commission. She felt that the applicant's security concerns were valid, but she believed the applicant needed to be in compliance with the HPC before starting construction.

DR. SIEBRANDT clarified that the design guidelines state "exterior materials shall be maintained as originally constructed", and she said the applicant should have submitted the design to the HPC before beginning construction.

COUNCILWOMAN FIORE confirmed with DR. SIEBRANDT that the corner lot properties MS. TURLEY displayed may have been constructed without HPC approval. The Councilwoman opined that many houses were not historically preserved, and she did not believe that was fair to the applicant.

COUNCILWOMAN SEAMAN believed the applicant needed to be in compliance and advised that she would follow DR. SIEBRANDT'S recommendation.

COUNCILWOMAN DIAZ stated that she had not seen the support petition shown by MS. TURLEY, and she wanted to hold the item in abeyance in order to vet the petition and seek a win/win situation.

MAYOR GOODMAN declared the Public Hearing closed.

Motion made by Olivia Diaz to Hold in Abeyance to 9/7/2022

Passed For: 7; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

For-Victoria Seaman, Cedric Crear, Stavros Anthony, Carolyn Goodman, Michele Fiore, Brian Knudsen, Olivia Diaz;

SET DATE

45. Set date on any appeals filed or required public hearings from the City Planning Commission Meetings and Dangerous Building or Nuisance/Litter Abatements.

Minutes:

MAYOR GOODMAN advised the City Clerk, LUANN D. HOLMES, to set the date for all applicable items.

CITIZENS PARTICIPATION

46. Citizens Participation: Public comment during this portion of the agenda must be limited to matters within the jurisdiction of the City Council. No subject may be acted upon by the City Council unless that subject is on the agenda and is scheduled for action. If you wish to be heard, come to the podium and give your name for the record. The amount of discussion on any single subject, as well as the amount of time any single speaker is allowed, may be limited.

Minutes:

TaSHIKA LAWSON, Historic Westside Revitalization Group, spoke in regards to agenda Item 30. She asked that the property being conveyed is maintained as a cultural corridor and campus for the historic black community. She asked that the community and neighborhood associations be included in redevelopment discussions.

COUNCIL EMERGING ISSUES

Comments made by Council members during this portion of the agenda must refer solely to proposals for future agenda item topics to be brought before the Council for consideration and action at a later date. Any discussion must be limited to whether or not such proposed items shall be placed on a future agenda and no discussion regarding the substance of any such proposed topic shall occur. No action shall be taken.

47. Discussion regarding potential items for future City Council agendas - All Wards

Minutes:

None.

COUNCIL MEMBER RECOGNITION

48. Council Member Recognition: Comments made by individual City Council Members during this portion of the agenda will not be acted upon by the City Council unless that subject is on the agenda and scheduled for action.

Minutes:

COUNCILMEMBERS DIAZ, SEAMAN, FIORE, CREAR, KNUDSEN, and ANTHONY announced the various events taking place in their wards on various dates throughout the months of July and August. Some of the Councilmembers submitted flyers, which are attached as backup, regarding their events and points of interest.

Prior to presenting his flyers, COUNCILMAN KNUDSEN announced that he held a breakfast for teachers at Edythe & Lloyd Katz Elementary School to welcome them back to school.

MAYOR GOODMAN announced that First Friday would be held on Friday, and she expressed appreciation for JERRY WALKER, Director of Operations and Maintenance, who was retiring. She welcomed FERNANDO GRAY, Director of Las Vegas Fire and Rescue, and JASON POTTS, Director of the Department of Public Safety, to the City. The Mayor advised that the next City Council meeting would be held on August 17th and thanked various City staff members and departments.

The meeting was recessed from 9:30 a.m. to 9:43 a.m. and adjourned at 11:49 a.m.

Respectfully submitted:

Brian Carroll, Deputy City Clerk

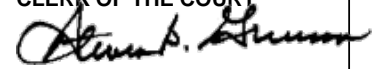
LuAnn D. Holmes, MMC, City Clerk

THIS MEETING WAS PROPERLY NOTICED AND POSTED AT THE FOLLOWING LOCATIONS
IN ACCORDANCE WITH THE NOTICING STANDARDS AS OUTLINED IN NRS 241.020:

The City of Las Vegas website – www.lasvegasnevada.gov

The Nevada Public Notice website – notice.nv.gov

City Hall, 495 South Main Street, 1st Floor



1 **NOE**
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15 ***Attorneys for Plaintiff Landowners***

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 FORE STARS, LTD; SEVENTY ACRES LLC,
12 a Nevada liability company; DOE
13 INDIVIDUALS I through X, DOE
14 CORPORATIONS I through X, and DOE
15 LIMITED LIABILITIES COMPANIES I
16 through X,

15 Plaintiffs,

16 vs.

17 CITY OF LAS VEGAS, a political subdivision
18 of the State of Nevada; ROE government
19 entities I though X, ROE LIMITED
20 LIABILITY COMPANIES I though X, ROE
21 quasi-governmental I through X,

20 Defendants.

Case No.: A-18-773268-C

Dept No.: XXIX

**NOTICE OF ENTRY OF FINDINGS OF
FACT AND CONCLUSIONS OF LAW
REGARDING PLAINTIFF
LANDOWNERS' MOTION TO
DETERMINE TAKE AND FOR
SUMMARY JUDGMENT ON THE THIRD
AND FIFTH CLAIMS FOR RELIEF:**

**GRANTING SUMMARY JUDGMENT ON
THE LANDOWNERS' FIFTH CLAIM
FOR RELIEF AND DENYING
SUMMARY JUDGMENT ON THE
LANDOWNERS' THIRD CLAIM FOR
RELIEF**

21 ///

22 ///

23 ///

PLEASE TAKE NOTICE that on the 27th day of October, 2022, the Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine Take and for Summary Judgment on the Third and Fifth Claims for Relief: Granting Summary Judgment on the Landowners' Fifth Claim for Relief and Denying Summary Judgment on the Landowners' Third Claim for Relief was entered in the above-captioned case, a copy of which is attached hereto.

DATED this 27th day of October, 2022.

LAW OFFICES OF KERMIT L. WATERS

BY: /s/ James J. Leavitt
 KERMIT 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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 27th day of October, 2022, pursuant to NRCp (5)(b) a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER OF FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' MOTION TO DETERMINE TAKE AND FOR SUMMARY JUDGMENT ON THE THIRD AND FIFTH CLAIMS FOR RELIEF: GRANTING SUMMARY JUDGMENT ON THE LANDOWNERS' FIFTH CLAIM FOR RELIEF AND DENYING SUMMARY JUDGMENT ON THE LANDOWNERS' THIRD CLAIM FOR RELIEF** was made by electronic means, to be electronically served through the Eighth Judicial District Court's filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail and addressed to each of the following:

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/s/ Evelyn Washington

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14 Facsimile: (702) 731-1964
15 ***Attorneys for Plaintiffs Landowners***

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 FORE STARS, LTD; SEVENTY ACRES LLC,
12 a Nevada liability company; DOE
13 INDIVIDUALS I through X, DOE
14 CORPORATIONS I through X, and DOE
15 LIMITED LIABILITIES COMPANIES I
16 through X,

17 Plaintiffs,

18 vs.

19 CITY OF LAS VEGAS, a political subdivision
20 of the State of Nevada; ROE government
21 entities I though X, ROE LIMITED
22 LIABILITY COMPANIES I though X, ROE
23 quasi-governmental I through X,

24 Defendants.

Case No.: A-18-773268-C

Dept No.: XXIX

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
PLAINTIFF LANDOWNERS' MOTION
TO DETERMINE TAKE AND FOR
SUMMARY JUDGMENT ON THE THIRD
AND FIFTH CLAIMS FOR RELIEF:**

**GRANTING SUMMARY JUDGMENT ON
THE LANDOWNERS' FIFTH CLAIM
FOR RELIEF AND DENYING
SUMMARY JUDGMENT ON THE
LANDOWNERS THIRD CLAIM FOR
RELIEF**

Hearing Date: September 19, 2022

Hearing Time: 8:30 a.m.

22 Plaintiffs, FORE STARS, LTD. and SEVENTY ACRES LLC, a Nevada Limited Liability
23 Company (hereinafter "Landowners"), brought Plaintiff Landowners' Motion to Determine Take
24 and For Summary Judgment on the Third and Fifth Claims for Relief before the Court on

1 September 19, 2022, with Kermitt L. Waters, Esq., and James Jack Leavitt, Esq. of the Law Offices
2 of Kermitt L. Waters, appearing for and on behalf of the Landowners along with the Landowners'
3 in-house counsel, Elizabeth Ghanem, Esq., and George F. Ogilvie III, Esq. and Christopher J.
4 Molina, Esq., of McDonald Carano, and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq. with
5 the City Attorney's Office, appearing on behalf of Defendant City of Las Vegas (hereinafter
6 "City"). Having reviewed all pleadings and attached exhibits filed in this matter, and having heard
7 extensive oral arguments, the Court enters, based on the evidence presented, the following
8 Findings of Fact and Conclusions of Law:

9 **I. INVERSE CONDEMANATION PROCEDURE AND POSTURE OF THE CASE**

10 1. On September 16, 2021, this Court held that a district court judge must decide two
11 distinct issues in an inverse condemnation case – the property interest issue and the take issue:

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

20 *See* Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to
21 Determine "Property Interest," ("FFCL Re: Property Interest")

22 2. In its FFCL Re: Property Interest this Court determined the property interest issue.
23 This Court first held: "The Landowners are the owner of an approximately 17.49 Acre parcel of
24 property generally located near the southwest corner of Rampart Blvd and Alta Drive within the
geographic boundaries of the City of Las Vegas, more particularly described as Clark County
Assessor Parcel number 138-32-301-005 (hereinafter "17 Acre Property")." *Id.*

1 3. Through separate entities the Landowners' have control of an additional 233 acres
2 adjoining the 17 Acre Property. (hereinafter jointly referred to as "250 Acres"). Exhibit 140.

3 4. This Court further held in its FFCL Re: Property Interest that the property interest
4 or "bundle of sticks" the Landowners owned in the 17 Acre Property prior to any alleged taking
5 actions by the City was as follows:

- 6 a) The determination of the property interest in this inverse condemnation
7 action must be based on inverse condemnation and eminent domain law;
- 8 b) Nevada inverse condemnation and eminent domain law provides that
9 zoning must be relied upon to determine the Landowners' property interest
10 prior to any alleged City interference with that property interest;
- 11 c) The 17 Acre Property has been hard zoned R-PD7 since 1981 and was re-
12 zoned to R-3 prior to the filing of the Complaint in this matter;
- 13 d) The Las Vegas Municipal Code lists single-family and multi-family
14 residential as legally permissible uses on R-PD7 and R-3 zoned properties
15 by right;¹
- 16 e) The legally permitted uses by right of the 17 Acre Property are single-family
17 and multi-family residential; and
- 18 f) The 17 Acre Property has at all times since 1981 been designated as "M"
19 (residential) on the City's master land use plan.

20 5. Having resolved the property interest issue, this Court now moves to the take issue.

21 6. To resolve the take issue, the Landowners filed a motion to determine the second
22 sub inquiry, entitled Plaintiff Landowners' Motion to Determine Take and For Summary Judgment
23 on the Third and Fifth Claims for Relief, filed on August 10, 2022, (Landowners' Motion to
24 Determine Take").

¹ On December 20, 2021, after entertaining the City of Las Vegas' Motion to Reconsider FFCL Re: Property Interest, this Court concluded "The property in question was zoned either RPD-7 or RPD-8 as of the "zone change" Z-34-81, which took place on or about May 20, 1981. . . . "The property in question maintained its zoning classification." *See* Order Granting in Part and Denying in Part Defendant City of Las Vegas' Motion for Reconsideration and/or Clarification of Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine "Property Interest". Exhibit 202.

1 7. This Court held an evidentiary hearing and entertained extensive argument on the
2 Landowners' Motion to Determine Take on September 19, 2022. The narrow issue before the
3 Court at the September 19, 2022, hearing is whether the City engaged in actions to take the
4 Landowners' 17 Acre Property where "the legally permitted uses by right of the 17 Acre Property
5 are single-family and multi-family residential."

6 8. After considering all of the pleadings filed, the exhibits submitted, and the
7 extensive argument at the September 19, 2022, evidentiary hearing, this Court grants the
8 Landowners' request for summary judgment on the Landowners fifth claim for relief (per se
9 regulatory taking claim) and denies the request for summary judgment on the Landowners' third
10 claim for relief (per se categorical taking claim) for the reasons set forth herein.

11 **II. FINDINGS OF FACT ON THE CITY'S TAKING**

12 **The City's Initial Approval of Development on the 17 Acre Property**

13 9. In 2015, the Landowners filed applications to develop the 17 Acre Property and, on
14 February 15, 2017, the City of Las Vegas City Council ("City Council") approved the development
15 of 435 multi-family residential units on the 17 Acre Property (hereinafter "Initial Approvals") in
16 a 4-3 vote, with three councilmembers strongly opposed to the approval. Exhibit 218, p. 6943;
17 Exhibit SSS.

18 **The Change in the City Council**

19 10. On June 13, 2017, just four months after the Initial Approvals, Steve Seroka
20 (Seroka) defeated Councilman Bob Beers (Beers) and replaced him as the City Councilman for
21 Ward 2.

22 11. This change on the City Council is relevant because the 250 Acres is located in
23 Ward 2, Beers favored allowing development consistent with the City code and zoning while
24 Seroka strongly opposed any development of the 250 Acres. Seroka publicly announced his

1 position at City Hall on the 17 Acre entitlements Planning Commission hearing stating “over my
2 dead body” will development occur on the 17 Acre Property. Seroka also appeared at the February
3 15, 2017, City Council hearing on the 17 Acre entitlements to state, “I am against this project” ...
4 “I stand with the neighbors.” Exhibit 124, p. 4236; Exhibit 131; pp. 04327:1626-1627.

5 12. Once Seroka took office on June 13, 2017, the vote count on the City Council
6 shifted from a 4-3 vote in favor of development on the 17 Acre Property to a 4-3 vote against any
7 development on the 17 Acre Property.

8 13. The following facts show that during Seroka’s term and since June 13, 2017, the
9 City denied 100% of all applications to use any part of the 250 Acres and created insurmountable
10 barriers to prohibit any development of the 17 Acre Property, despite the Initial Approvals.

11 **The Surrounding Neighbors Oppose any Development**

12 14. It is undisputed and has been established through CC&Rs and a district court order
13 affirmed on appeal that the 17 Acre Property is “not a part” of the Queensridge Common Interest
14 Community (“Queensridge CIC”) that partially surrounds the 17 Acre Property. Therefore, the
15 Queensridge CIC has no ownership interest in or legal control over the use of the 17 Acre Property.
16 Exhibit 34, p. 734, paras 4-5; Exhibit 36, pp. 761, 762, 875; Exhibit 37, p. 896; Exhibit 38, pp.
17 900, 907; Exhibit 39, pp. 908, 909, 911; Exhibits 26-29.

18 15. Although the governing documents provide that the 250 Acres is not a part of the
19 Queensridge CIC, a handful of the Queensridge residents adamantly opposed any development.
20 (“Queensridge Opponents”).

21 16. Vickie DeHart, one of the Landowners’ principals, provided uncontested testimony
22 that a representative for the Queensridge Opponents met with her and delivered an ultimatum to
23 the Landowners: hand over 180 acres of the 250 Acres that is owned by the Landowners along
24 with valuable water rights for free or else his group, which is “powerful” and “politically

1 connected,” would use their influence with the City to shut down all development of the entire 250
2 Acres, including the 17 Acre Property. Exhibit 94, p. 2836.

3 17. This same representative of the Queensridge Opponents would later write in an
4 email, “we have done a pretty good job of prolonging the developer’s [Landowners] agony.”
5 Exhibit 143, p. 4588.

6 18. Shortly after the meeting with Ms. DeHart, one City Councilman reiterated the
7 Queensridge Opponents demand telling another principal for the Landowners, Yohan Lowie, that
8 no development was to occur on the 180 acres, but that he would “allow” Mr. Lowie to build on
9 the remaining 70 acres, if the Landowners handed over the 180 acre to the “politically connected”
10 neighbors with the water rights for free. Exhibit 35, p. 741, ¶ 5. This demand was repeated several
11 months later, in April 2016, when this same City Councilman told the Landowners they would
12 have to “hand over” the 180 acres, and associated water rights for free, if the Landowners wanted
13 to use their remaining 70 Acres. Id., at 714, ¶ 6.

14 19. Beers testified that, prior to being replaced by Seroka on the City Council, he was
15 contacted by a representative of the surrounding neighbors and asked “to get in the way of the
16 landowners’ rights” suggesting that if he did not, there would be a campaign against him. Exhibit
17 142, pp. 4586-4587.

18 20. The following facts show that, despite the Initial Approvals, the City engaged in
19 actions to authorize the public to use the 17 Acre Property and preserve the 17 Acre Property for
20 use by the public.

21 **Six City Taking Actions**

22 **Taking Action #1 – Denial of the Global 2017 Master Development Agreement (MDA)**

23 21. At the February 15, 2017, hearing for the Initial Approvals for the 17 Acre Property,
24 the City Council made it clear that, although the Initial Approvals were granted, the 17 Acre

1 Property would have to be integrated into a larger “global” development plan for the entire 250
2 Acres (hereinafter “Master Development Agreement” or “2017 MDA”). Exhibit 131, pp.
3 4388:3380-3381; 4374:2996-2998; 4294:656-657; 4295:687-688; 4296:716-717; 4361:2625-
4 2626; 4362:2629, 2640-2641, 2650-2651; 4374:2959-2962, 2969-2971; 4299:803-808; 4300:816;
5 4370: 2861-2864; 4366:2744-2746.

6 22. The Landowners retained veteran land use attorney Christopher L. Kaempfer to
7 represent them on the applications to the City Council. At the February 15, 2017, City Council
8 meeting Mr. Kaempfer recognized that the City was requiring a development agreement for the
9 entire 250 Acres, “[n]o matter what development plan comes up, that corner [17 Acre Property] is
10 going to be developed as part of this [global] plan.” Exhibit 131, p. 4361; 4373:2985-2987.

11 23. The Landowners had been working on this required development agreement for
12 nearly two years and, as a result of City delays in preparing the global plan, the City Planning
13 Department directed the Landowners on development of the 35 Acre Property as a stand-alone
14 parcel. The Landowners submitted those applications to the City Planning Department who issued
15 a Staff Report recommending approval of development of the 35 Acre Property. Exhibit 34, p.
16 738, ¶ 23; Exhibits 62-72. These applications would have allowed the 35 Acre Property to be
17 developed as a singular parcel.

18 24. Even though the 35 Acre applications met all City Code requirements as they were
19 “so far inside the existing lines [of the City Code]” and the City Planning Department along with
20 the City Planning Commission recommended approval, the City Council at a June 21, 2017, City
21 Council hearing denied the 35 Acre stand-alone applications, because, as stated at the February
22 15, 2017 hearing for the Initial Approvals, they demanded the “global” plan to develop the entire
23 250 Acres. Exhibits 74; Exhibit 53, p. 1286:2588-2590, 1211-1212:566-587. At the June 21,
24 2017, hearing the City Council members stated: 1) “I have to oppose this, because it’s piecemeal

1 approach (Councilman Coffin);” 2) “I don’t like this piecemeal stuff. I don’t think it works
2 (Councilwoman Tarkanian); and, 3) “I made a commitment that I didn’t want piecemeal,” there is
3 a need to move forward, “but not on a piecemeal level. I said that from the onset,” “Out of total
4 respect, I did say that I did not want to move forward piecemeal.” (Mayor Goodman). Exhibit 93;
5 Exhibit 53, p. 1298:2906-2911; Exhibit 53, pp. 1287:2618; 001293:2781-2782; 001307:3161;
6 001237:1304-1305; 001281:2460-2461.

7 25. Mr. Kaempfer further confirmed the City demanded the global plan that includes
8 the 17 Acre Property, testifying that he had no less than 17 meetings with the City Planning
9 Department and was advised, “[the Landowners] either get an approved [global plan] for the
10 entirety of the Badlands or we get nothing.” Exhibit 48, pp. 001161-1162, ¶¶ 11-13. Stephanie
11 Allen, a land use attorney working with Mr. Kaempfer on behalf of the Landowners, also
12 confirmed the City demanded the global plan, testifying that she attended more than 25 meetings
13 and “it was made clear by the City of Las Vegas employees, councilpersons, and the Mayor that
14 the City would accept only one type of application to develop the 250 acre property – an MDA ”
15 and that the City “did not want and would not approve any” individual applications. Exhibit 195,
16 ¶¶ 8-9. Finally, the Landowners representative, Mr. Lowie, confirmed the City demanded the
17 global plan that would incorporate the 17 Acre Property into that plan, testifying, “the City
18 continued to make it clear to [the Landowners] that it would not allow development of individual
19 parcels, but demanded that development only occur by way of the MDA.” Exhibit 34, p. 000538,
20 ¶ 19, p. 000539, ¶ 24:25-27.

21 26. The Landowners worked with the City to draft the 2017 MDA [global plan] for 2.5
22 years, with the Mayor stating on the record that the City Staff dedicated “an excess of hundreds of
23 hours beyond the full day” working on the MDA. Exhibit 54, 8.2.17 City Council Meeting, p.
24 001343:697-701.

1 27. The uncontested testimony of Yohan Lowie provides that the 2017 MDA was
2 drafted almost entirely by the City of Las Vegas and included all of the City demands. Exhibit
3 34, p. 000738, para 22.

4 28. The City dictated exactly how the 250 Acres, including the 17 Acre Property, would
5 be developed under the 2017 MDA, resulting in nearly 700 changes and 16 new and revised
6 versions of the MDA. Exhibit 34, pp. 737-738, ¶¶ 19-21; Exhibits 56, 57, 58, 61.

7 29. The uncontested evidence showed that the Landowners agreed to every City
8 requirement in the 2017 MDA, spending an additional \$1 million in extra costs. Exhibit 34, p.
9 000737, ¶ 20-21; Exhibit 55; Exhibit 56.

10 30. During a City Council hearing the Mayor publicly responded to the Landowner
11 stating, “you did bend so much. And I know you are a developer, and developers are not in it to
12 donate property. And you have been donating and putting back . . . And it’s costing you money
13 every single day it delays.” Exhibit 53, 6.21.17 City Council Meeting, p. 1281:2462-2465. City
14 Councilwoman Tarkanian also commented publicly at that same City Council hearing that she had
15 never seen anybody give as many concessions as the Landowners as part of the 2017 MDA stating,
16 “I’ve never seen that much given before.” Exhibit 53, p. 1293:2785-2787; p. 1294:2810-2811.

17 31. Consistent with the City Council demand for one global plan, the completed 2017
18 MDA, required the inclusion of the 17 Acre Property: 1) the 2017 MDA stated the property
19 governed by the 2017 MDA is “250.92 acres;” 2) the 2017 MDA contains “four (4) development
20 areas” one of which is the 17 Acre Property; 3) the roadways, landscaping, parks, recreation areas,
21 and utilities and drainage are intertwined through the entire 250 Acres, including the 17 Acre
22 Property; 4) the 2017 MDA expressly states the 17 Acre Property “shall be developed ... in
23 accordance with this Development Agreement;” and, 5) the 2017 MDA expressly excludes 2.13

1 acres of other land owned by the Landowners, but does not exclude the 17 Acre Property. Exhibit
2 81, pp. 2656, 2703, 2710, 2718, 2721-2723, 2726-2727, 2742.

3 32. The City Planning Staff report for the 2017 MDA confirmed the 17 Acre Property
4 was incorporated into the 2017 MDA: 1) the MDA governs “250.92-acre” property that includes
5 the 17 Acre Property; 2) the 2017 MDA “includes this area [17 Acre Property] for consistency
6 with proposed development and the Master Studies;” 3) “[n]ew development within the
7 Development Areas 1 through 3 [the 17 Acre Property is Area 1] will require a Site Development
8 Plan Review;” and, 4) the MDA dictates how the 17 Acre Property will be developed. Exhibit 77,
9 pp. 2653, 2654, 2658, 2661.

10 33. The Landowners produced a map of the 2017 MDA, which demonstrates how the
11 250 Acres, including the 17 Acre Property, would be developed with the integrated roadways,
12 easements, utilities, and drainage. Exhibit 79, p. 2689.

13 34. The City presented no evidence to contest that the City Council required the 2017
14 MDA global plan to develop the entire 250 Acres, despite the Initial Approvals.

15 35. The 2017 MDA not only set forth how the 17 Acre Property would be developed,
16 but it also resolved a Petition for Judicial Review lawsuit brought by the surrounding neighbors.
17 That PJR lawsuit alleged the Initial Approvals of February 15, 2017, were deficient, because they
18 did not include a “major modification” approval. The 2017 MDA included all of the “major
19 modification” requirements, as stated by City Attorney Brad Jerbic - “Let me state something for
20 the record just to make sure we’re absolutely accurate on this. There was a request for a major
21 modification that accompanied the development agreement (2017 MDA).” Exhibit 208,
22 6667:2353-2362. *See also* Exhibit 61, pp. 2165, 2205, referring to the “major modification” in the
23 MDA. It is undisputed the MDA far exceeded the major modification requirements. *See* Exhibits
24 81 and 83.

1 36. On August 2, 2017, the 2017 MDA application was presented to the City Council
2 for approval. Exhibits 79-87. This MDA application: 1) would resolve the surrounding neighbors'
3 PJR lawsuit as it included the major modification requirements; and, 2) included all of the City's
4 development requirements, including the incorporation of the 17 Acre Property – all of which
5 would have allowed immediate development of the 17 Acre Property. The City Planning
6 Department issued a detailed Staff Report to the City Council at the August 2, 2017, City Council
7 hearing, stating: the 2017 MDA met all NRS and City Code requirements; the MDA was consistent
8 with the zoning and the City's master plan; the development under the MDA was compatible with
9 the surrounding developments; and, the MDA should be approved to allow immediate
10 development:

11 The proposed Development Agreement conforms to the requirements of NRS 278
12 regarding the content of development agreements. The proposed density and
13 intensity of development conforms to the existing zoning district requirements for
14 each specified development area. Through additional development and design
15 controls, the proposed development demonstrates sensitivity to and compatibility
16 with the existing single-family uses on the adjacent parcels. Furthermore, the
17 development as proposed would be consistent with goals, objectives and policies
18 of the Las Vegas 2020 Master Plan that call for walkable communities, access to
19 transit options, access to recreational opportunities and dense urban hubs at the
20 intersection of primary roads. Staff therefore recommends approval of the proposed
21 Development Agreement. Exhibit 77, p. 2671.

18 37. At the August 2, 2017, City Council hearing, the City Council voted to deny the
19 2017 MDA altogether. Exhibit 78; Exhibit 54, p. 1466:4154-4156, p. 1470:4273-4275.

20 38. Mr. Lowie testified that the City did not ask the Landowners to make more
21 concessions, like increasing setbacks or reducing units per acre, it simply denied the MDA. Exhibit
22 34, p. 739:7-9; Exhibit 78. The minutes from the August 2, 2017, hearing on the 2017 MDA and
23 the MDA denial letter further confirm that the City did not ask for more concessions, but rather,
24 the City simply denied the MDA. Exhibit 78; Exhibit 54, pp. 001466:4154-4156; 001470:4273-
4275.

1 39. Therefore, the “global” plan the City Council members demanded as part of the
2 Initial Approvals to develop the 17 Acre Property at the February 15, 2017, hearing, was denied
3 six months later on August 2, 2017.

4 40. This August 2, 2017, denial occurred seven weeks after Seroka took office on June
5 13, 2017.

6 41. The City presented no evidence to contest any of these facts.

7 **Taking Action #2 – the Access Denial**

8 42. On June 28, 2017, the Landowners submitted a routine over-the-counter ministerial
9 application to the City for access to the 250 Acres from Hualapai Way and Rampart Blvd. Exhibit
10 88, p. 2810. The 17 Acre Property abuts Rampart Blvd. and approval of the access from Rampart
11 Blvd. would allow direct access to the 17 Acre Property.

12 43. The access application explained “[t]he access point for Rampart Blvd. is necessary
13 for the service operations and ingress/egress of, but not limited to, the trucks and equipment
14 required for the tree and plant cutting, removal of related debris and soil testing equipment” and
15 further explained that this was the only available access to the 17 Acre Property, because “the
16 bridge from the clubhouse access will not support the weight of the trucks and equipment
17 required.” Exhibit 88, p. 2810. Additionally, the access application included a map showing that
18 this access from Rampart Blvd. is the only direct access to a roadway from the 17 Acre Property.
19 Exhibit 88, p. 2811.

20 44. The access application also included detailed plans showing the requested access
21 was at the same location where access was granted as part of the Initial Approvals on February 15,
22 2017. Exhibit 88, p. 2812 and Exhibit HHHHH-5.

23 45. During discovery in the 35 Acre Case, the City confirmed, “[t]he Badlands [250
24 Acres] had general legal access to public roadways along Hualapai Way, Alta Drive, and Rampart

1 Blvd.” City Third Supplement to Interrogatory Answers, electronically served, June 9, 2021, 10:4-
2 5.

3 46. On August 24, 2017, 22 days after the City denied the 2017 MDA the City sent the
4 Landowners a letter that “denied” the access request. Exhibit 89, p. 2816. In the access denial
5 letter the City stated “[t]hrough the various public hearings and subsequent debates . . .that any
6 development on this site [250 Acres] has the potential to have significant impact on the
7 surrounding properties and as such may require a Major Review . . . [Building Permit Level
8 Review] is denied and an application for a major review will be required.” Id. This “Major
9 Review” application is discussed further below.

10 **Taking Action #3 – the Fence Denial**

11 47. On August 10, 2017, the Landowners also submitted a routine over-the-counter
12 ministerial application to the City to fence the ponds on the 250 Acres and the entire perimeter of
13 the 250 Acres, including the 17Acre Property, in order to exclude others from entering onto their
14 privately owned property and also for life and safety concerns. Exhibit 91, p. 2822.

15 48. On August 24, 2017, 22 days after the City denial of the 2017 MDA the City sent
16 the Landowners a letter that “denied” the fence application. Exhibit 89, p. 2816. In the fence
17 denial letter the City stated “[t]hrough the various public hearings and subsequent debates . . . any
18 development on this site [250 Acres] has the potential to have significant impact on the
19 surrounding properties and as such may require a Major Review” and “an application for a major
20 review will be required.” Id.

21 49. Upon questioning by the district court judge in the 35 Acre Case, the City’s attorney
22 admitted that the City succumbed to “political pressure” in denying the Landowners’ application
23 to fence the entire 250 Acres and the ponds therein. Exhibit 209, p. 6673.

1 50. The Landowners also produced a calendar item, dated August 21, 2017, wherein it
2 is stated – “Follow up with CM Seroka regarding the Badlands fence permit. Want to take action
3 on the Monday after find out cm’s conversations went over the weekend regarding the permit.”
4 Exhibit 217. The City’s access and fence denial letters were sent on August 24, 2017, just three
5 days after this calendar item. Exhibits 89 and 92.

6 51. The facts do not support the City’s contention that it denied the access and fence
7 applications in order to have the Landowners file what the City deems the correct applications – a
8 “major review.” First, Las Vegas Municipal Code (LVMC) 19.16.100 (2) and (3) provide that
9 “on-site signs, walls and fences” and “alterations which do not affect the external dimensions of
10 an existing building or structure,” such as an access to an adjoining road, are expressly exempt
11 from the “major review” process. Second, LVMC 19.16.100(3)(b) states to require a “major
12 review” the City must provide a finding that a “proposed development could significantly impact
13 the land uses on the site or on surrounding properties.” Neither the access nor fence applications
14 included “proposed development” and the City provided no evidence in the access and fence denial
15 letters or at the September 19, 2022, hearing of how a fence or access may “significantly impact”
16 surrounding properties. Third, the access and fence denial letters were sent just three days after
17 the calendar entry states Seroka, the opponent to all development on the 250 Acres, had
18 “conversations ... over the weekend regarding the permit.” Exhibit 217. Finally, LVMC
19 19.16.100 (F)(3) specifically prohibits Major Review of building permit level reviews.

20 **Taking Action #4 – Adoption of Ordinances 6617 and 6650**

21 52. In 2018, the City adopted two City Ordinances that directly impact the 17 Acre
22 Property – Ordinances 6617 and 6650. Exhibits 107 and 108.

23 53. The uncontested evidence presented showed the Ordinances targeted only the
24 Landowners’ 250 Acres.

1 54. City Councilwoman Fiore stated on the record, “[f]or the past two years, the Las
2 Vegas Council has been broiled in controversy over Badlands [250 Acres], and this [Ordinances
3 6617 and 6650] is the latest shot in a salvo against one developer” and “This [Ordinance] is for
4 one development and one development only. This [Ordinance] is only about the Badlands Golf
5 Course [250 Acres]” and “I call it the Yohan Lowie Bill.” Exhibit 114, pp. 3848-3849; Exhibit
6 115, p. 3868; Exhibit 116, pp. 003879, 003910.

7 55. Stephanie Allen, the Landowners’ land use attorney stated that she worked with the
8 City Planning Department and, “we did the analysis ... Out of the 292 parcels that the City
9 provided [that the Ordinances could apply to], two properties remain. One of them is the former
10 Badlands Golf Course [250 Acres], and if I could direct your attention to the overhead, the other
11 is actually, interestingly, in Peccole Ranch. It’s this little pink area here. It’s a wash.” Exhibit
12 110, p. 3370.

13 56. The Landowners submitted the analysis performed by Ms. Allen establishing that
14 Ordinances 6617 and 6650 target only the Landowners’ Property. Exhibits 111 and 112.

15 57. The City presented no evidence to contest that City Ordinances 6617 and 6650
16 target only the Landowners’ 250 Acres.

17 58. The uncontested evidence presented also showed the City Ordinances made it
18 impracticable and impossible to develop any part of the 250 Acres, including the 17 Acre Property.

19 59. Ordinances 6617 and 6650 included the following requirements before an
20 application could be submitted to develop the 250 Acres: a master plan (showing areas proposed
21 to remain open space, recreational amenities, wildlife habitat, areas proposed for residential use,
22 including acreage, density, unit numbers and type, areas proposed for commercial, including
23 acreage, density and type, a density or intensity), a full and complete development agreement, an
24 environmental assessment (showing the project’s impact on wildlife, water, drainage, and

ecology), a phase I environmental assessment report, a master drainage study, a master traffic study, a master sanitary sewer study with total land uses proposes, connecting points, identification of all connection points, a 3D model of the project with accurate topography to show visual impacts as well as an edge condition cross section with improvements callouts and maintenance responsibility, analysis and report of alternatives for development, rationale for development, a mitigation report, CC&Rs for the development area, and a closure maintenance plan showing how the property will continue to be maintained as it has in the past (providing security and monitoring). Exhibits 107 and 108, ad passim.

60. The Ordinances also included vague requirements, such as development review to assure the development complies with “other” City policies and standards, and a requirement for anything else “the [City Planning] Department may determine are necessary.” Exhibit 108, p. 3212:12-13.

61. It was uncontested that Ordinance 6650 mandated that any development on any part of the 250 Acres, including the 17 Acre Property, could only occur through a “development agreement” and, at the time Ordinances 6617 and 6650 were passed, the City had already denied a development agreement (the 2017 MDA) for the entire 250 Acres. Exhibit 78 (2017 MDA denied on August 2, 2017); Exhibit 108, pp. 3206-3207 (Ordinance 6650 passed on November 7, 2018).

62. The City presented no evidence to contest that Ordinances 6617 and 6650 made it impracticable and impossible to develop the 250 Acres.

63. The evidence presented showed the Ordinances preserved the 250 Acres for use by the public and authorized the public to use the 250 Acres, including the 17 Acre Property.

64. City Councilman Seroka was a vocal opponent to the Landowners’ use of the 250 Acres.

1 65. Councilman Seroka presented to the surrounding property owners at a
2 homeowner's association meeting that they had the right to use the Landowners' 250 Acres as
3 recreation and open space.

4 “So when they built over there off of Hualapai and Sierra –Sahara –this land [250 Acres]
5 is the open space. Every time that was built along Hualapai and Sahara, this [250 Acres]
6 is the open space. Every community that was built around here, that [250 Acres] is the
7 open space. The development across the street, across Rampart, that [250 Acres] is the
8 open space....it is also documented as part recreation, open space...That is part recreation
9 and open space...” Exhibit 136, pp. 4498:23-4499:15.

10 “Now that we have the documentation clear, that is open space for this part of our
11 community. It is the recreation space for this part of it. It is not me, it is what the law
12 says. It is what the contracts say between the city and the community, and that is what
13 you all are living on right now.” Exhibit 136, pp. 4501:23-4502:3.

14 66. Ordinance 6650 was “Sponsored by: Councilman Steven G. Seroka,” the vocal
15 opponent to the Landowners' use of the 250 Acres. Exhibit 108, p. 3202.

16 67. Ordinance 6650 states under section “G. 2. Maintenance Plan Requirements,” that
17 “the maintenance plan must, at a minimum and with respect to the property . . . d. Provide
18 documentation regarding *ongoing public access . . . and plans to ensure that such access is*
19 *maintained.*” Exhibit 108, pp. 3211-3212. Emphasis added.

20 68. The section “A. General” to Ordinance 6650 states that any proposal to repurpose
21 the 250 Acres from a golf course “is subject to ... the requirements pertaining to ... the Closure
22 Maintenance Plan set forth in Subsections (E) and (G), inclusive,” which is where the requirement
23 to provide “ongoing public” access is mandated in Ordinance 6650. Exhibit 108, pp. 3202-3203.

24 69. The Landowners presented uncontested evidence that the neighbors are using the
250 Acres. Exhibit 150 and pictures attached thereto.

 70. Don Richards, the superintendent for the 250 Acres, testified that those that entered
onto the 250 Acres advised him that they were told that “it is our open space.” Exhibit 150, p.
4669, ¶¶ 6-7.

1 71. Section 7 of Ordinance 6650 states that the Landowners failure to comply with the
2 provisions therein, including the provision authorizing the public to use the entire 250 Acres, “shall
3 constitute a misdemeanor and upon conviction thereof, shall be punished by a fine of not more
4 than \$1,000.00 or by imprisonment for a term of not more than six months, or by any combination
5 of such fine and imprisonment.” Exhibit 108, p. 3213. The \$1,000.00 fine is cumulative for every
6 day the Landowners do not comply. Id.

7 72. The effect of Ordinances 6617 and 6650 was to: 1) target only the Landowners’
8 250 Acres; 2) make it impracticable or impossible to develop the 250 Acres; and 3) preserve the
9 250 Acres for use by the public and authorize the public to use the 250 Acres. And, if the
10 Landowners did not comply, they would be fined \$1,000.00 a day and subject to imprisonment.

11 **Taking Action #5 – the City’s Refusal to Remove the PR-OS from the City Maps in 2016**

12 73. Beginning in 2016, the Landowners requested that the City take all action to remove
13 from the 250 Acres on the City’s Master Plan the land use designation of parks, recreation and
14 open space as this designation had never been properly adopted on the 250 Acres. Exhibit 180.

15 74. City Attorney Brad Jerbic recognized both publicly and in a meeting with the
16 Landowners that the PR-OS land use designation was never properly adopted on the City’s Master
17 Plan maps and it appeared a City employee had merely colored the Landowners’ property green
18 (the designation for PR-OS) without any authorization to do so. Exhibit 180, p. 5200.

19 75. This Court entertained briefing twice on this PR-OS issue and held twice the PR-
20 OS land use designation was never properly adopted on the City’s Master Plan maps on the 17
21 Acre Property. Exhibit 199, p. 6627:1-10; Exhibit 202. Numerous other Nevada courts have
22 agreed the PR-OS was improper. Exhibit 206.

23 76. The City, against the advice of its own City Attorney, refused to remove the
24 improper PR-OS and this improper PR-OS was used as a catalyst by the surrounding neighbors in

1 their attempts to stop or significantly delay any and all development of the 250 Acres, including
2 the 17 Acre Property. See Exhibits 26 and 27, specifically Exhibit 27, pp. 520-521; Exhibits 28
3 and 29; Exhibit 22, p. 454:13-15; Exhibits 23-25.

4 **Taking Action #6 – The City Prohibited the Drainage Infrastructure Necessary to Develop**
5 **the 17 Acre Property**

6 77. Although the Initial Approvals to develop the 17 Acre Property were granted on
7 February 15, 2017, it was intended to be incorporated into a larger global development for the
8 entire 250 Acres.

9 78. This global development included the construction of drainage infrastructure
10 through the 250 Acres (made up of the 17, 35, 65, and 133 Acre Properties controlled by the
11 Landowners). The drainage on the 250 Acres flows west to east through the 133 and 65 Acre
12 Properties and converges at the 17 Acre Property. Exhibit 225, p. 7075. The drainage does not
13 pass through the 35 Acre Property.

14 79. Thus, when the Initial Approvals were granted on February 15, 2017, the City
15 imposed condition number 21 that expressly requires construction of the drainage infrastructure
16 for the 250 Acres, through the 133 and 65 Acre Properties and converging at the 17 Acre Property,
17 “concurrent” with any construction on the 17 Acre Property. Condition number 21 states, in part,
18 “[t]he developer of this site [17 Acre Property] shall be responsible to construct such neighborhood
19 or local drainage facility improvements as are recommended by the City of Las Vegas
20 Neighborhood Drainage Studies and approved Drainage Plan/Study **concurrent with**
21 **development of the site.**” Exhibit SSS, p. 51224. Emphasis added.

22 80. Two additional documents impose this same requirement to construct the drainage
23 infrastructure on the 250 Acres through the 133 and 65 Acre Properties prior to or concurrent with
24 construction on the 17 Acre Property.

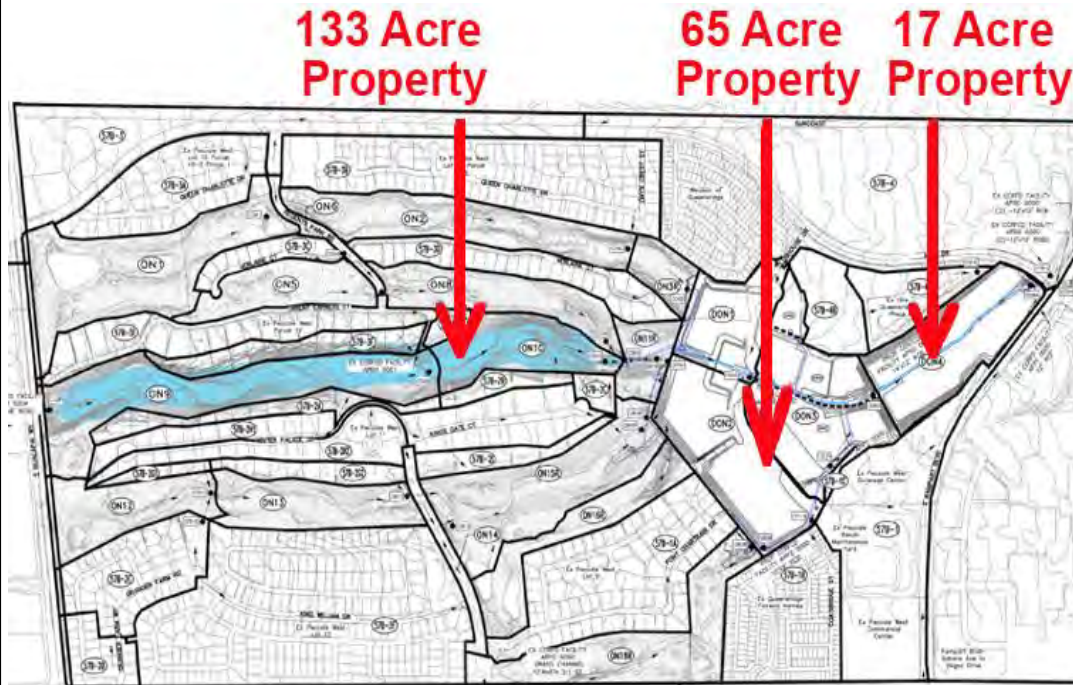
1 81. First, The Drainage Improvement Agreement between the City and the Landowners
2 includes a map as Exhibit B that depicts the drainage flow of water west to east through the 133
3 and 65 Acre Properties and converging on the 17 Acre Property and provides the Landowners
4 “shall” maintain the drainage improvements “until such time as alternate or replacement drainage
5 facilities have been approved and completed.” Exhibit 225, p. 7065, 7075.

6 82. Second, the required Technical Drainage Study (TDS) submitted with the
7 applications to develop the 17 Acres depicts the drainage facilities proposed to convey the flows
8 from Charleston Boulevard. and Hualapai Way on the 250 Acres through the 65 and 133 Acre
9 Properties converging at the 17 Acre Property and flowing through to the existing drainage facility
10 at Rampart Boulevard. Exhibit 228, p. 7096. The drainage infrastructure necessary to collect the
11 flow at the 17 Acre Property is depicted on several maps in the TDS and shows the necessary
12 infrastructure constructed on and through the 133 and 65 Acre Properties, including, among other
13 things, reinforced concrete boxes and reinforced concrete pipes constructed on and through the
14 133 and 65 Acre Properties. Exhibit 228, pp. 7114, 7116, 7118, 7120 and 7130.

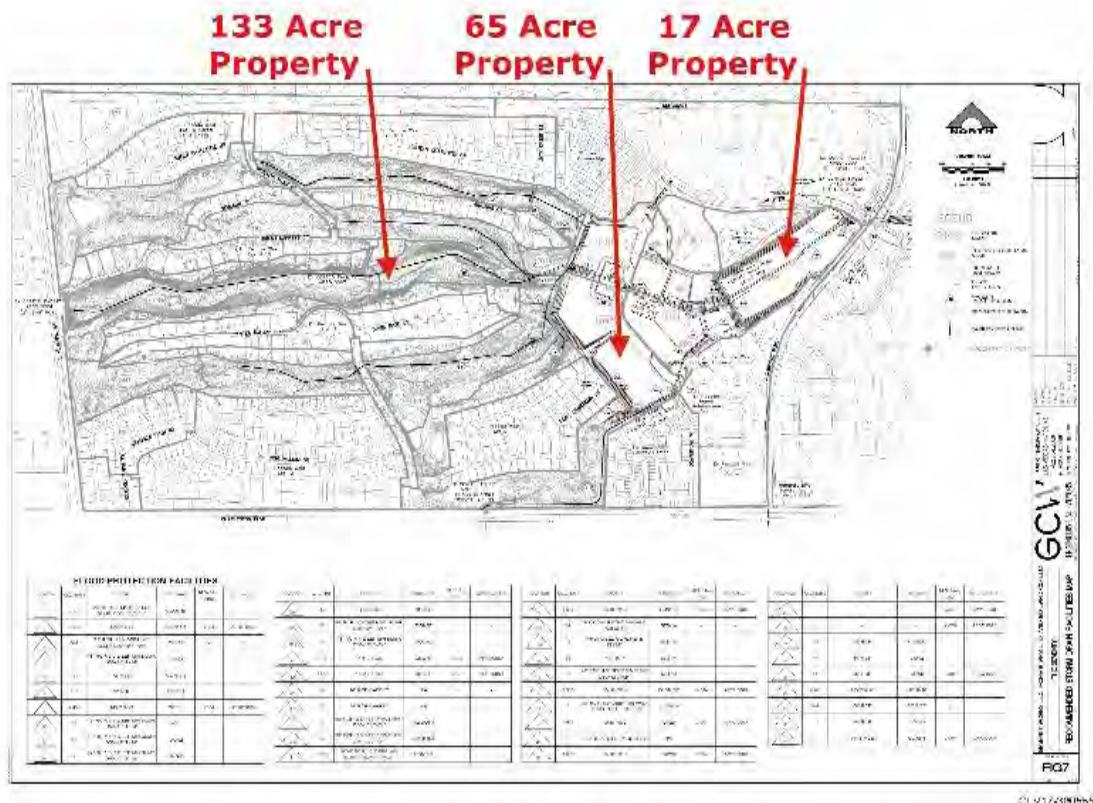
15 83. The TDS depicts the drainage infrastructure through the 133 and 65 Acre Properties
16 at two different locations through underground reinforced concrete culvert boxes and pipes to
17 converge at one location at the 17 Acre Property to flow into one underground concrete box culvert
18 through the 17 Acre Property and connecting with the box culvert that flows through the 17 Acre
19 Property and under Rampart Blvd. Exhibit 228. This drainage infrastructure in the TDS meets
20 condition number 21, referenced above, and allows the construction of the 435 residential multi-
21 family units as depicted on the approved Site Development Review and design plan approved by
22 the City as part of the Initial Approvals. Exhibits Z, HHHHH-5. The 435 multi-family residential
23 development was approved based on this proposed drainage and could not be built without the
24 drainage infrastructure constructed throughout the 250 Acres, specifically the 65 and 133 Acre

Properties. Therefore, Without approval of this TDS, the 435 multi-family units as approved could not be built. Id.

84. The following two maps from the TDS were presented at the September 19, 2022, summary judgment hearing and depict the location of the referenced drainage infrastructure through the 133 and 65 Acre Properties (Exhibit 228, pp. 7114 and 7118):



///



85. Further evidence of this necessary drainage construction through the 133 and 65 Acre Properties is the 2017 MDA. As detailed above, although the Initial Approvals were given on February 15, 2017, the City Council mandated the 17 Acre Property be incorporated into a global plan - the 2017 MDA. That 2017 MDA specifically stated that the Landowners must “design and substantially complete” the “Master Drainage Study” for the drainage flowing through the entire 250 Acres “prior to the issuance of any permits.” Exhibit 81, pp. 2711, 2721, 2716-2718, 2744.

86. Further, Ordinance 6650 enacted by the City to apply only to the Landowners’ 250 Acres mandated the Landowners submit, among other things, a “Master Drainage Study” for the entire 250 Acres as a condition to any development. Exhibit 108, p. 3210:18-20.

1 87. To obtain the final approvals necessary for this drainage infrastructure, the
2 Landowners began work on the TDS in March, 2016, and continued their efforts to obtain City
3 approval for well over two years. Exhibit 228 (TDS with a March, 2016 date) and Exhibit 117
4 (the “Design Workshop” meeting minutes for the TDS, with a July 26, 2018 date).

5 88. The uncontested evidence shows that, after Seroka took office on June 13, 2017,
6 the City engaged in actions to prohibit the construction of the necessary drainage infrastructure
7 through the 133 and 65 Acre Properties.

8 89. First, on August 2, 2017, the City denied the 2017 MDA, which denied the
9 entitlements for the entire 250 Acres, including the 133 and 65 Acre Properties. Then, on July,
10 2018, after two years of working on the TDS, the City rejected the Landowners TDS, because the
11 City would not approve a TDS on properties that did not have entitlements: “Rules state when
12 processing a Technical Drainage Study (TDS) through the CLV, that zoning/planning approval of
13 the entitlements on a property are required to be approved prior to conditional approval can be
14 given on a TDS. CLV staff discussed that due to the ongoing litigation standing on the entitlements
15 for the property, that direction from the City Manager’s office was the City Staff is not authorized
16 to provide conditional approval on this TDS.” Exhibit 117, p. 3914.

17 90. Further, when the City denied the 2017 MDA, it also denied the “Master Drainage
18 Study” for the 250 Acres.

19 91. Additionally, a district court judge for the 65 Acre Property case has held that the
20 City engaged in a series of actions that resulted in the taking by inverse condemnation of the 65
21 Acre Property. Thus, the Landowners no longer own the 65 Acre Property to construct the
22 necessary drainage infrastructure through that property. Order Granting Plaintiff Landowners’
23 Motion to Apply Issue Preclusion to the Property Interest Issue and the Take Issue, filed August
24 24, 2022, Case No. A-18-780184-C.

1 92. The City’s actions have prohibited the construction of the drainage infrastructure
2 through the 133 and 65 Acre Properties necessary to build the 435 residential multi-family units
3 that were approved on June 15, 2017.

4 **Additional City Communications and Actions**

5 93. The Landowners also presented evidence of communications and other actions
6 taken by the City demonstrating the City’s intent to prohibit development of the entire 250 Acres,
7 after the Landowners acquired the 250 Acres.

8 94. The City identified \$15 million of potential City funds to purchase the 250 Acres
9 (even though the Land was not for sale). Exhibit 144.

10 95. The City identified a “proposal regarding the acquisition and re-zoning of green
11 space land [250 Acres].” Exhibit 128.

12 96. The City proposed/discussed a Bill to force “Open Space” on the 250 Acres,
13 contrary to its legal zoning. Exhibit 121.

14 97. The City Councilmembers proposed a solution to “Sell off the balance [of the 250
15 Acres] to be a golf course with water rights (key). Keep the bulk of Queensridge green.” Exhibit
16 122.

17 98. The City engaged a golf course architect to “repurpose” the 250 Acres. Exhibit
18 145.

19 99. One City Councilman referred to the Landowners’ proposal to build large estate
20 homes on the residentially zoned 250 Acres as the same as “Bibi Netanyahu’s insertion of the
21 concreted settlements in the West Bank neighborhoods.” Exhibit 123.

22 100. Seroka issued a statement during his campaign entitled “The Seroka Badlands
23 Solution” which provides the intent to convert the Landowners’ private property into a “fitness
24

1 park,” and in an interview with KNPR, he stated that he would “turn [the Landowners’ private
2 property] over to the City.” Exhibit 125.

3 101. In reference to development on the 250 Acres, another councilman stated firmly “I
4 am voting against the whole thing,” and “a majority is standing in his [Landowners] path [to
5 development] (Exhibits 122 and 126) before the applications were finalized and presented to the
6 City Council.² This councilman refers to the Landowners’ representative as a “sonofab[...],”
7 “A[...]hole,” “scum,” “motherf[...]er,” “greedy developer,” “dirtball,” “clown,” and Narciss[ist]”
8 with a “mental disorder,” (Exhibit 121) and seeks “intel” against the Landowner through a private
9 investigator in case he needs to “get rough” with the Landowners (Exhibit 127).

10 102. Seroka exchanged emails with another councilman wherein they stated they will
11 not compromise one inch and that they “need an approach to accomplish the desired outcome” -
12 prevent development on the 250 Acres. Exhibit 122.

13 103. An interoffice City email further singled out the Landowners and states, “If any one
14 sees a permit for a grading or clear and grub at the *Badlands* Golf Course [250 Acres], please see
15 Kevin, Rod, or me. Do Not Permit without approval from one of these three.” Exhibit 130, June
16 27, 2017, City email. Italics in original.

17 104. City emails were presented that evidenced City Council members discussing a
18 strategy to not disclose information related to actions toward the 250 Acres, with instruction given,
19 in violation of the Nevada Public Records Act,³ on how to avoid the search terms being used in
20
21

22 ² This statement was made by email on April 6, 2017, and the applications were not presented to
23 the City Council until June 21 and August 2 of 2017.

24 ³ See NRS 239.001(4) (use of private entities in the provision of public services must not deprive
members of the public access to inspect and copy books and records relating to the provision of
those services)

1 the subpoenas:

2 “Also, please pass the word for everyone to not use B...l..nds in title or text of
3 comms. That is how search works.” And

4 “I am considering only using the phone but awaiting clarity from court. Please pass
5 word to all your neighbors. In any event tell them to NOT use the city email address
6 but call or write to our personal addresses. For now...PS. Same crap applies to
7 Steve [Seroka] as he is also being individually sued i[n] Fed Court and also his
8 personal stuff being sought. This is no secret so let all your neighbors know.”
9 Exhibit 122, p. 4232.

10 **The 2022 Master Development Agreement Entitlement Packages**

11 105. The Landowners presented evidence that in 2022 the City’s Planning Department
12 gave its approval for an entitlement package for the entire 250 Acres that would: 1) provide land
13 use entitlements to develop the entire 250 Acres; and, 2) in turn, allow construction of the
14 necessary drainage infrastructure on the 17, 65 and 133 Acre Properties as provided in the TDS
15 (“2022 Master Development Agreement – 2022 MDA”). An Agenda Item was prepared to present
16 the matter for approval by the City Council at the August 3, 2022, City Council hearing. Exhibit
17 226. It is uncontested that the City struck the agenda item from the August 3, 2022, City Council
18 hearing at the eleventh hour. The City has not put the 2022 MDA back on the City Council agenda.

19 106. The City stated at the September 19, 2022, hearing that one reason the 2022 MDA
20 was struck from the City Council agenda was due to the cash payment.

21 107. The Landowners filed a countermotion to the City’s contemporaneously filed
22 motion for summary judgment to request that the 2022 MDA be re-submitted to the City Council
23 for approval – with the entitlements to build, but without the cash payment provisions. See
24 Countermotion to Approve Entitlements and End Take, filed August 25, 2022. This would allow
comprehensive development of the 250 Acres, including the drainage infrastructure on the 17, 65
and 133 Acre Properties and development of the 17 Acre Property. Id.

108. The City responded to the Landowners’ countermotion by filing a motion to strike
the countermotion and requesting that the entitlement package not be submitted to the City Council

1 for approval. *See* City of Las Vegas’ Motion to Strike Countermotion to Approve Entitlements
2 and End Take on Order Shortening Time, filed September 14, 2022.

3 **The City Letters**

4 109. The City asserts as a defense to its actions that it sent the Landowners’ four letters,
5 inviting the Landowners to submit additional “ministerial” applications and requests for building
6 permits on the 17 Acre Property.

7 110. These City letters are not a defense to the City’s taking actions, because: 1) the
8 letters do not erase the extensive City actions toward the 17 Acre Property, set forth above; 2) the
9 City had already denied “ministerial” applications to access and fence the 17 Acre Property; and,
10 3) the letters provide no avenue for constructing the necessary drainage infrastructure through the
11 133 and 65 Acre Properties where the City had already denied entitlements on those properties and
12 there is a finding by a district court judge that the City has taken by inverse condemnation the 65
13 Acre Property. *See* Landowners’ response to the City’s letters, Exhibit 223.

14 **Expert Opinions**

15 111. The Landowners introduced an appraisal report of the 17 Acre Property by
16 appraiser Tio DiFederico. Exhibit 207.

17 112. Mr. DiFederico has the M.A.I. designation, the highest designation for an appraiser.
18 Exhibit 207, p. 6565.

19 113. Mr. DiFederico appraised the “before value” of the 17 Acre Property, which is the
20 value of the 17 Acre Property as if it were available for residential development in compliance
21 with this Court’s FFCL Re: Property Interest and the City did not engage in the above actions. Mr.
22 DiFederico concluded that the “before value” is \$25,795,000 (as of the May 2018, date of service
23 of summons) or \$44,185,000 (as of the October 10, 2022, date of trial). Exhibit 207, p. 6556.

1 114. Mr. DiFederico then appraised the “after value” of the 17 Acre Property, which is
2 the value of the 17 Acre Property considering the City actions set forth above. Mr. DiFederico
3 opines as follows in regard to the “after value” of the 17 Acre Property:

4 Opinion #1:

5 Based on these facts, it appears that the City is treating this landowner differently
6 than it has treated all other units in the area and all other landowners in the area for
7 the purpose of denying the landowner’s property rights so that the subject property
will remain in a vacant condition to be used by the surrounding neighbors as
recreation, open space and a viewshed. Exhibit 207, p. 6553.

8 Opinion #2:

9 Due to the effect of the government’s actions, I concluded there is no market to sell
10 this property with public use and these development restrictions along with high
11 annual expenses. You would be paying for a property with no economic benefit
that has annual expenses in excess of \$65,000 for real estate taxes, in addition to
insurance for a property used by the public in an uncontrolled way. Id.

12 115. Mr. DiFederico concludes that, “[b]ased on my analysis of the property in the after
13 condition, the City’s actions result in catastrophic damages to this property” and “[d]ue to the
14 government’s actions, it is my opinion that there would be no interest for the subject property in
15 the after condition.” Exhibit 207, pp. 6553, 6554.

16 116. The City did not exchange an initial expert report.

17 117. The City did exchange a rebuttal report however, the City’s attorney directed its
18 appraiser to not provide a value of the 17 Acre Property: “Your assignment in the 17-Acre case
19 will not be to determine the fair market value of the 17-Acre Property or any part of the Badlands.”
20 Exhibit GGGGG, p. 4418. Therefore, that rebuttal report does not provide a “before value” nor
21 an “after value” of the 17 Acre Property. The rebuttal report also does not consider all of the above
22 City actions to determine whether or how these City actions impacted the 17 Acre Property.
23 Exhibit GGGGG.

1 **III. CONCLUSION OF LAW REGARDING THE LANDOWNERS' THIRD AND**
2 **FIFTH TAKINGS CLAIMS**

3 **Standard of Review**

4 118. NRCP 56(c) provides that summary judgment “shall be rendered forthwith if the
5 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
6 affidavits, if any, show that there is no genuine issue as to any material fact and that the moving
7 party is entitled to a judgment as a matter of law.” Further, “summary judgment ... may be rendered
8 on the issue of liability alone although there is a genuine issue as to the amount of damages.”
9 NRCP 56(c). In *Wood v. Safeway, Inc.*, 121 Nev. 724 (2005), the Nevada Supreme Court
10 eliminated the “slightest doubt standard,” holding that “[w]hile the pleadings and other proof must
11 be construed in a light most favorable to the nonmoving party, that party bears the burden to do
12 more than simply show that there is some ‘metaphysical doubt’ as to the operative facts in order
13 to avoid summary judgment being entered in the moving party's favor” and that “[t]he nonmoving
14 party “ ‘is not entitled to build a case on the gossamer threads of whimsy, speculation, and
15 conjecture.’”

16 119. The Nevada Supreme Court has held that this Court decides, as a matter of law,
17 whether a taking has occurred. *McCarran Int’l Airport v. Sisolak*, 122 Nev. 645 (2006) (“whether
18 the Government has inversely condemned private property is a question of law that we review de
19 novo.” *Id.*, at 658). *See also, Moldon v. County of Clark*, 124 Nev. 507, 511 (2008) (“whether a
20 taking has occurred is a question of law...”).

21 120. In determining whether a taking has occurred, “the form, intensity, and the
22 deliberateness of the government actions toward the property must be examined ... All actions by
23 the [government], in the aggregate, must be analyzed.” *Merkur v. City of Detroit*, 680 N.W.2d
24 485, 496 (Mich.Ct.App. 2004). In support of this rule, the Nevada Supreme Court holds there is
no “magic formula” in every case for determining whether particular government interference

1 constitutes a taking under the U.S. Constitution; there are “nearly infinite variety of ways in which
2 government actions or regulations can effect property interests.” *State v. Eighth Jud. Dist. Ct.*,
3 131 Nev. 411, 419 (2015) (citing *Arkansas Game & Fish Comm’s v. United States*, 568 U.S. ---
4 (2012)).

5 121. The Nevada Supreme Court also holds “there are several invariable rules applicable
6 to specific circumstances.” *State v. Eighth Judicial District Court*, 131 Nev. 411, 419 (2015).

7 122. This Court will address two of those “invariable rules” for a taking in Nevada – a
8 per se regulatory taking claim (Landowners’ fifth claim for relief) and a per se categorical taking
9 (Landowners’ third claim for relief).

10 **The Court Grants the Landowners Summary Judgment on Their Fifth Claim for Relief – a**
11 **Per Se Regulatory Taking**

12 123. The Nevada Supreme Court holds that a per se regulatory taking occurs where
13 government action “authorizes” the public to use private property or “preserves” private property
14 for public use. *Sisolak*, supra. See also *Tien Fu Hsu v. County of Clark*, 123 Nev. 625 (2007).
15 The *Sisolak* and *Hsu* Courts held that the adoption of height restriction ordinance 1221 was a taking
16 by inverse condemnation, because it preserved the privately-owned airspace for use by the public
17 and authorized the public to use the privately-owned airspace.

18 124. The United States Supreme Court adopted the same rule in a very recent case,
19 wherein the Court held that a government authorized invasion of private property is a taking.
20 *Cedar Point Nursery v. Hassid*, 141 S.Ct. 2063 (June 23, 2021). The *Cedar Point Nursery* Court
21 considered whether a California statute was a per se regulatory taking where the statute authorized
22 labor unions to enter onto private farms as follows: 1) for up to 120 days a year; 2) upon proper
23 notice to the Labor Board and the property owner; 3) for one hour prior to work, one hour during
24 lunch, and one hour after work; and, 4) only two union organizers per crew were permitted to enter
onto the property. *Id.*, at 2069. The United States Supreme Court held since the California statute

1 gave the two union organizers the “right to invade” private property, this constituted a per se
2 regulatory taking. *Id.*, at 2072.

3 125. Both the *Sisolak* and *Cedar Point Nursery* Courts held that the act of passing the
4 ordinance or statute was the taking; that an actual physical invasion of property is not a necessary
5 element to a per se regulatory taking claim. *See Dvorchak v. McCarran Int’l Airport*, 126 Nev.
6 707 (2010), unpublished (“Under *Sisolak*, the enactment of Ordinance 1221 in itself effectuated
7 the taking.”); *Johnson v. McCarran Int’l Airport*, Case No. 53677, unpublished (when planes
8 began using the airspace was “inconsequential” to determine the date of take in *Sisolak*). Exhibit
9 216, p. 2; Exhibit 95, p. 6. *See also Cedar Point Nursery* (the passage of the California statute that
10 authorized the entry was a taking, even though the union workers never actually entered onto one
11 of the properties.).

12 126. Both the *Sisolak* and *Cedar Point Nursery* Courts also held that a *Penn Central*
13 regulatory takings analysis does not apply to a per se regulatory taking claim. *Sisolak, supra* (“the
14 *Penn Central*-type takings analysis does not govern this action [per se regulatory taking].” *Id.*, at
15 1130); *Cedar Point Nursery, supra* (“regulations in the first two categories constitute *per se* takings
16 [per se categorical and per se regulatory]” and are not subject to a *Penn Central* analysis. *Id.*, at
17 2070).

18 127. When the government engages in per se regulatory taking actions, just
19 compensation is automatically warranted, meaning there is no defense to the taking. *Knick v.*
20 *Township of Scott, Pennsylvania*, 139 S.Ct. 2162 (2019) (“right to full compensation arises at the
21 time of the taking, regardless of post-taking remedies that may be available to the property owner;”
22 “a property owner acquires an irrevocable right to just compensation immediately upon a taking;”
23 “[a] bank robber might give the loot back, but he still robbed the bank.” *Id.*, at 2170, 2172).

1 128. Here, the aggregate of the City actions set forth above authorized the public to use
2 the 17 Acre Property and preserved the 17 Acre Property for use by the public resulting in a per se
3 regulatory taking of the entire 17 Acre Property.

4 **Ordinances 6617 and 6650**

5 129. As detailed above, the City adopted Ordinances 6617 and 6650 that: 1) target only
6 the Landowners' 250 Acres; 2) make it impracticable or impossible to develop the 250 Acres; and
7 3) preserve the 250 Acres for use by the public and authorize the public to use the 250 Acres. And,
8 if the Landowners did not comply, they would be fined \$1,000.00 a day and subject to
9 imprisonment.

10 130. The adoption of these City Ordinances are similar to the actions taken by the
11 County in the *Sisolak* and the *Hsu* cases and the actions taken by the State of California in the
12 *Cedar Point Nursery* case.

13 131. The sponsor of the Ordinances additionally encouraged the public to use the
14 Landowners property but informing the public that the 17 Acre Property was in fact the public's
15 to use and their own recreation and open space.

16 132. Additionally, the effect of City Ordinances 6617 and 6650 is to authorize an
17 unlimited number of the public to enter onto any part of the 17 Acre Property at any time without
18 notice, whereas the height restriction in *Sisolak* only authorized the public to use Mr. Sisolak's
19 airspace and the California ordinance in *Cedar Point Nursery* only authorized two union workers
20 to enter onto the farm properties for limited periods of time upon proper notice.

21 133. Because Ordinances 6617 and 6650 authorize the public to use the 17 Acre Property
22 and preserve the use of the 17 Acre Property for use by the public by making it impossible or
23 impracticable to build on the 17 Acre Property, the adoption of these City Ordinances alone is a
24 per se regulatory taking of the 17 Acre Property.

1 **The Drainage Infrastructure**

2 134. The City's actions to authorize the public to enter onto the 17 Acre Property and
3 preserve the property for use by the public (including the surrounding neighbors) is further
4 evidenced in the City's actions to preclude the drainage infrastructure necessary to develop the 17
5 Acre Property, set forth in detail above.

6 135. The City's actions in regard to the drainage made it impossible to develop the 17
7 Acre Property as set forth in the Initial Approvals, thereby preserving the 17 Acre Property in a
8 vacant and unused state, which further allowed the public to enter onto the property at will and
9 preserved the property for the public's use, which alone is a per se regulatory taking.

10 **The 2017 MDA Denial**

11 136. As detailed above, despite the Initial Approvals on February 15, 2017, the City
12 required the 17 Acre Property development be included in one global plan – the 2017 MDA.

13 137. Even though the City Planning Department, the City Planning Commission and
14 City Attorneys' Office recommended approval of the MDA as it complied with all City and State
15 requirements and would allow development of the entire 250 Acres, including the 17 Acre
16 Property, the City Council denied the MDA on August 2, 2017. This denial was less than six
17 months after the Initial Approvals and less than two months after Seroka took office whereafter
18 the vote on the City Council shifted from 4-3 in favor of development to 4-3 against development.

19 138. This 2017 MDA denial supports the position the City was preserving the 17 Acre
20 Property for use by the public, which meets the standard for a per se regulatory taking.

21 **The Access and Fence Denials**

22 139. The City's actions to authorize the public to enter onto the 17 Acre Property and
23 preserve the property for use by the public (including the surrounding neighbors) is further
24 evidenced in the City's fence denial and access denial letters wherein the City states as a basis for

1 the denials, the potential to have significant impact on the “surrounding properties.” Exhibit 92,
2 p. 2830; Exhibit 89, p. 2816.

3 140. As stated by the United States Supreme Court, “[t]he right to exclude is ‘one of the
4 most treasured’ rights of property ownership” and “is ‘one of the most essential sticks in the bundle
5 of rights that are commonly characterized as property’” and the City denied the Landowners the
6 right to exclude others from the 17 Acre Property by denying the Landowners’ fence application
7 so the public could continue to enter onto the entire 17 Acre Property, which is a taking in and of
8 itself and further supports a finding of a per se regulatory taking. *Cedar Point Nursery v. Hassid*,
9 141 S.Ct. 2063, 2072 (June 23, 2021).

10 141. Under Nevada law an owner of property that abuts a public road “has a special right
11 of easement in a public road for access purposes” and “[t]his is a property right of easement which
12 cannot be damaged or taken from the owner without due compensation” and the City denied the
13 Landowners access to the 17 Acre Property by denying the Landowners’ access application in
14 furtherance of preserving the entire 17 Acre Property for use by the public, which is a taking in
15 and of itself and further supports a finding of a per se regulatory taking. *Schwartz v. State*, 111
16 Nev. 998 (1999).

17 **Further Corroborating Evidence**

18 142. There is significant corroborating evidence that the City engaged in actions to
19 authorize the public to enter onto the 17 Acre Property and preserve the 17 Acre Property for use
20 by the public.

21 143. The uncontested Declaration of Don Richards, supported by photographic
22 evidence, confirms that the public was using the 17 Acre Property with the authorization and
23 direction of the City. Exhibit 150, p. 4669, ¶ 7.

1 144. The uncontested Declaration of Mr. Kaempfer, the Landowners' land use attorney,
2 further confirms the City's intent to preserve the 250 Acre for use by the surrounding public - "it
3 became clear that despite our best efforts, and despite the merits of our applications(s), no
4 Development Agreement [2017 MDA] was going to be approved by the City of Las Vegas unless
5 virtually all of the Badlands neighborhood supported such a Development Agreement; and it was
6 equally clear that this neighborhood support was not going to be achieved because, as the leader
7 of the neighborhood opposition exclaimed to me and others, "I would rather see the golf course a
8 desert than a single home built on it." Exhibit 48, p. 1161, ¶ 12.

9 145. The evidence showed Seroka was a strong opponent to any development on any
10 part of the 250 Acres and, after Seroka took office on June 13, 2017, every application to use,
11 access, or secure any part of the 250 Acres were denied.

12 146. The City identified \$15 million to acquire the 250 Acres, publicly criticized the
13 Landowners' principals for seeking to develop any part of the 250 Acres, and discussed obtaining
14 a private investigator to get intel, in case they need to get rough with the Landowners.

15 **Conclusion on the Per Se Regulatory Taking Claim**

16 147. This Court finds that the City engaged in actions to authorize the public to enter
17 onto the 17 Acre Property and preserve the 17 Acre Property for use by the public and surrounding
18 neighbors meeting Nevada's standard for a per se regulatory taking thereby resulting in the taking
19 of the entire 17 Acre Property by inverse condemnation.

20 148. Therefore, summary judgment on the Landowners' fifth claim for relief (per se
21 regulatory taking claim) is granted.

22 **The Court Denies the Landowners' Summary Judgment on Their Third Claim for Relief –**
23 **a Per Se Categorical Taking**

24 149. The Landowners' third claim for relief is an alternative inverse condemnation
claim, entitled a per se categorical taking claim.

1 150. The Court finds that having determined the City's actions meet the standard for a
2 per se regulatory taking, the court need not address the Landowners' per se categorical taking
3 claim. Therefore, the Court denies the Landowners' request for summary judgment on this third
4 claim for relief. Consistently, this Court has also denied the City's request for summary judgment
5 on this third claim for relief. This Court has declined to rule on the Landowners' fourth claim for
6 relief (*Penn Central*), as "whenever a regulation results in a physical appropriation of property, a
7 per se taking has occurred and *Penn Central* has no place." Cedar Point Nursery v. Hassid, 141
8 S. Ct. 2063, 2072 (2021).

9 **IV. CONCLUSION**

10 **IT IS HEREBY ORDERED THAT** Summary Judgment is granted in favor of the
11 Landowners on the Landowners' fifth claim for relief (per se regulatory taking) and denied as to
12 the Landowners third claim for relief (per se categorical taking) for the reasons set forth herein. A
13 jury trial is scheduled for December 5, 2022, wherein a jury will determine the fair market value
14 of the 17 Acre Property as of the applicable date of valuation.

15 Dated this 27th day of October, 2022

16 
17

18 539 6FD 86F2 5FD5
19 David M Jones
20 District Court Judge
21
22
23
24

1 RESPECTFULLY SUBMITTED BY:

2 **LAW OFFICES OF KERMIT L. WATERS**

3 /s/ James Jack Leavitt

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Attorneys for City of Las Vegas

From: [Ivette Garcia](#)
To: [Ivette Garcia](#)
Subject: RE: FFCL Re Take Granting SJMT Fifth Claim For Relief - 17 Acre Case
Date: Monday, October 17, 2022 9:39:56 AM

From: James Leavitt
Sent: Wednesday, October 12, 2022 8:16 AM
To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christopher Molina <cmolina@mcdonaldcarano.com>
Cc: Autumn Waters <autumn@kermittwaters.com>
Subject: FFCL Re Take Granting SJMT Fifth Claim For Relief - 17 Acre Case

George:

Good morning, I hope you are well today.

Attached is the Landowners' proposed Findings of Fact and Conclusions of Law granting summary judgment on the Landowners' fifth claim for relief and denying summary judgment on the Landowners' third claim for relief in the 17 Acre Case.

Please let me know if we may affix your signature. We intend to submit this FFCL to Judge Jones on Friday, October 14, 2022.

Thank you,

Jim

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
704 South Ninth Street
Las Vegas Nevada 89101
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This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me at (702) 733-8877 and permanently delete the original and any copy of any e-mail and any printout thereof. Further information about the firm will be provided upon request.

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Fore Stars Ltd, Plaintiff(s) CASE NO: A-18-773268-C
7 vs. DEPT. NO. Department 29
8 City of Las Vegas, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

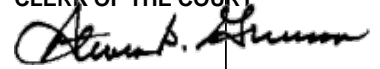
11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 10/27/2022

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Attorneys for Plaintiff Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

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

//

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PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Evidentiary Hearing Brief #1: Memorandum of Points and Authorities Regarding the Landowners' Property Interest was entered on October 27, 2022. A copy of the Order is attached hereto.

LAW OFFICES OF KERMITT L. WATERS

/s/ James Jack Leavitt

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Attorneys for Plaintiff Landowners

CERTIFICATE OF SERVICE

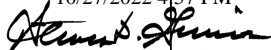
I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 31st day of October, 2022, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' EVIDENTIARY HEARING BRIEF #1: MEMORANDUM OF POINTS AND AUTHORITIES REGARDING THE LANDOWNERS' PROPERTY INTEREST** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to the following:

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CLERK OF THE COURT

FFCL

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CLARK COUNTY, NEVADA

180 LAND CO LLC, a Nevada limited liability
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DOE INDIVIDUALS I through X, DOE
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Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-780184-C

Dept. No.: III

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

Hearing Dates:

May 27, June 30, and July 2, 2021.

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1 Plaintiffs, 180 LAND COMPANY, LLC, a Nevada Limited Liability Company,
2 SEVENTY ACRES, LLC, a Nevada Limited Liability Company, and FORE STARS, Ltd.
3 (hereinafter Landowners), brought Plaintiff Landowners' Evidentiary Hearing Brief #1,
4 Memorandum of Points and Authorities Regarding the Landowners' Property Interest before the
5 Court at an evidentiary hearing on May 27, June 30, and July 2, 2021 with Kermitt L. Waters,
6 Esq., Autumn Waters, Esq., and James Jack Leavitt, Esq. of the Law Offices of Kermitt L. Waters,
7 appearing for and on behalf of the Landowners along with the Landowners' in-house counsel,
8 Elizabeth Ghanem Ham, Esq., and George F. Ogilvie III, Esq. and Christopher J. Molina, Esq.,
9 of McDonald Carano, Andrew Schwartz, Esq. and Lauren M. Tarpey, Esq. of Shute, Mihaly &
10 Weinberger, LLP, and Philip R. Byrnes, Esq. and Rebecca Wolfson, Esq. with the City
11 Attorney's Office, appearing on behalf of Defendant City of Las Vegas (hereinafter "City").
12 Having reviewed all pleadings and attached exhibits filed in this matter, and having heard
13 extensive oral arguments over a three-day evidentiary hearing, the Court enters, based on the
14 evidence presented, the following Findings of Fact and Conclusions of Law:
15
16

17 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

18
19 1. The Landowners are the owner of an approximately 65 Acre parcel of property
20 generally located near the southeast corner of Hualapai Way and Alta Drive within the
21 geographic boundaries of the City of Las Vegas, more particularly described as Clark County
22 Assessor Parcels 138-31-801-002, 138-31-801-003, and 138-32-301-007 (hereinafter "65 Acre
23 Property").
24

25 2. Generally, the Landowners Brief to determine property interest requests that this
26 Court enter an order that, prior to any alleged City interference with the use of the 65 Acre
27 Property, the 65 Acre Property was hard zoned R-PD7 at all relevant times and that the legally
28

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

3 **The R-PD7 Zoning**

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

5 4. Landowner Exhibit 5, bate numbers 000019 – 000050, particularly the zoning
6 map on bate number 000032, is evidence that on May 20, 1981, the City of Las Vegas City
7 Commission (now the City Council), at a public hearing, zoned the 65 Acre Property for a
8 residential use (R-PD7).
9

10 5. Landowners' Exhibit 154, Bates numbers 004865 – 004921, particularly the City
11 action description on Bates number 004916, is evidence that on April 4, 1990, the City Council,
12 at a public hearing, confirmed the R-PD7 zoning on the 65 Acre Property and removed any
13 indication of a C-V (Civic) zoning on any part of the property owned by the Landowners'
14 predecessor, William Peccole (Peccole).
15

16 6. Landowners' Exhibit 43, Bates numbers 001019 – 001100, particularly Bates
17 number 001030, is evidence that on August 15, 2001, the City Council, at a public hearing,
18 adopted Ordinance 5353 that confirmed the R-PD7 zoning on the 65 Acre Property and states
19 "All ordinances or parts of ordinances or sections, subsections, phrases, sentences, clauses or
20 paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada, 1983 Edition, in
21 conflict herewith are hereby repealed" (*See* Bates number 001020).
22

23 7. Landowners' Exhibit 134, Bates number 004406, is evidence that on December
24 30, 2014, in response to the Landowners' inquiry regarding zoning (prior to acquiring the 65
25 Acre Property), the City of Las Vegas Planning Department provided the Landowners an official
26 Zoning Verification Letter, stating, in part: 1) the 65 Acre Property is "zoned R-PD7 (Residential
27 Planned Development District - 7 units per acre);" 2) "the R-PD District is intended to provide
28

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

6
7 **Legally Permitted Development on the R-PD7 Zoned 65 Acre Property**

8 8. As stated in the City Zoning Verification Letter provided to the Landowners on
9 December 30, 2014, Exhibit 134, the legally permitted uses of property zoned R-PD7 are include
10 in the Las Vegas Municipal Code (hereinafter “LVMC”), Title 19. Therefore, the Court looks to
11 the LVMC for guidance on the legally permitted uses of property zoned R-PD7.
12

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

16 10. LVMC 19.18.020 (Words and Terms Defined) defines Permitted Uses as “Any
17 use allowed in a zoning district as a matter of right if it is conducted in accordance with the
18 restrictions applicable to that district. Permitted uses are designated in the Land Use Table by
19 the Letter ‘P.’”
20

21 11. LVMC 19.16.090 is entitled “Rezoning” and section (O) states that once zoning
22 is in place, “[s]uch approval authorizes the applicant to proceed with the process to develop
23 and/or use the property in accordance with the development and design standards and procedures
24 of all City departments and in conformance with all requirements and provisions of the City of
25 Las Vegas Municipal Code.” *See* Landowner Exhibit 167.
26

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

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

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

14 14. The City Attorney at the time, Brad Jerbic, further stated in regards to the R-PD7
15 zoning on the 65 Acre Property that the City “Council gave hard zoning to this golf course, R-
16 PD7, which allows somebody to come in and develop.” Landowners’ Exhibit 163, Transcript,
17 10.18.16 Special Planning Comm. Meeting, p. 117 at lines 3444-3445, 005023.
18

19 15. In a matter involving the entire 250 Acre Property brought by an adjoining
20 property owner in the Queensridge Community against the Landowners, the district court entered
21 detailed findings that the property was zoned R-PD7 and that “the zoning on the GC Land [250
22 Acres] dictates its use and [the Landowners] rights to develop their land.” Landowners’ Exhibit
23 172, Bates number 005115:3-8; Exhibit 173, Bates number 005142:11-12. The Nevada Supreme
24 Court affirmed. Landowners’ Exhibits 174 and 175.
25
26
27
28

///

**Zoning Governs the Property Interest Determination in Nevada
Inverse Condemnation Cases**

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

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

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

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

Petition for Judicial Review Law

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

1 804 (1995). This is an inverse condemnation case, not a petition for judicial review case, and the
2 Nevada Supreme Court inverse condemnation cases, cited above, set forth the rule for deciding
3 the property interest in this inverse condemnation case. Moreover, the facts and law are different
4 between a petition for judicial review and inverse condemnation case and the evidence and
5 burden of proof are significantly different between the two cases.
6

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

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

10 22. First, as stated above, Nevada Supreme Court precedent relies on zoning to
11 determine the property interest in inverse condemnation and eminent domain proceedings, not a
12 master plan land use designation.
13

14 23. Second, even if there was a PR-OS designation on the City's Master Plan, zoning
15 would still apply to determine the property interest issue, because NRS 278.349(3)(e) provides
16 if "any existing zoning ordinance is inconsistent with the master plan, the zoning takes
17 precedence."
18

19 24. Third, Landowners' Exhibit 5, specifically Bates numbers 00013 and 00018, and
20 Landowners' Exhibit 6, specifically Bates numbers 000051 and 000069, are evidence that the
21 first City Master Plan designation for the 65 Acre Property was M/ML, which is the land use
22 designation for a residential use for 6-12 residential units per acre and which is consistent with
23 the R-PD7 zoning that legally permits up to 7 residential units per acre. And, the City has
24 presented no evidence that the original M/ML City Master Plan land use designation was ever
25 changed from M/ML to PR-OS, pursuant to the legal requirements set forth in NRS Chapter 278
26 (See Landowner Exhibit 177) and LVMC 19.16.030 (Landowners' Exhibit 178).
27
28

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

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

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

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

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

4 **The “Condition” Issue**

5 30. The Court also declines the City’s request to find that City Exhibits E, G, and H
6 impose a condition that the 65 Acre Property remain a golf course and open space into perpetuity.
7 Although Exhibits E, G, and H include certain historical actions taken by the City and do
8 reference numerous “conditions,” none of these conditions identify the 65 Acre Property and
9 none of them impose a condition that any property remain a golf course or open space into
10 perpetuity.
11

12 31. Also, Landowners’ Exhibit 130, Bates number 004264, is evidence that the City’s
13 Planning Department searched for an ordinance imposing conditions on the 65 Acre Property
14 and concluded, “[t]here are no conditions mentioned that pertain to the maintenance of the open
15 space/golf course area.”
16

17 32. Additionally, Landowners’ Exhibit 186, Bates number 005356:11-13, is evidence
18 that City Attorney Brad Jerbic confirmed, “We [the City Attorney Office] have looked for a very
19 long time, and we can find no restrictions that require that this [250 acre property] stay a golf
20 course.”
21

22 33. Moreover, the CC&Rs Peccole drafted for the adjacent Queensridge Community
23 demonstrate there was no intent to impose a condition that the 250 Acre Property remain a golf
24 course or open space, instead, stating, “[t]he existing 18-hole golf course commonly known as
25 the “Badlands Golf Course” [250 Acre Property] is not a part of the Property or the Annexable
26 Property [Queensridge Community] and the Queensridge Community “is not required to[]
27
28

1 include ... a golf course, parks, recreational areas, open space.” Landowners’ Exhibit 36, Bates
2 numbers 000761-000762.

3 34. The Custom Lot Design Guidelines section of the Queensridge CC&Rs also
4 shows the 250 Acre Property available for “future development.” Landowners’ Exhibit 37, Bates
5 number 000896.

6
7 35. Also, the Lot Purchase Agreements for properties in the surrounding Queensridge
8 Community disclose: a) the “Special Benefits Area Amenities” for the surrounding Queensridge
9 Community does not include a golf course or open space; b) they “shall not acquire any rights,
10 privileges, interest, or membership” in the 250 Acre Property; c) there are no representations or
11 warranties “concerning the preservation or permanence of any view;” and, d) “adjacent or nearby
12 residential dwellings or other structures ... could potentially be constructed or modified in a
13 manner that could block or impair all of part of the view from the Lot and/or diminish the location
14 advantages of the Lot.” Landowners’ Exhibit 38, Bates numbers 000900 (para. 13); 000907 (para.
15 7) and Landowners’ Exhibit 39, Bates numbers 000908-000909, 000911.

16
17 36. There is no evidence of any alleged condition sufficient to meet Nevada’s
18 standard that “a grantee can only be bound by what he had notice of, not the secret intentions of
19 the grantor.” Diaz v. Ferne, 120 Nev. 70, 75 (2004). *See also In re Champlain Oil Co.*
20 Conditional Use Application, 93 A.3d 139 (Vt. 2014) (“land use regulations are in derogation of
21 private property rights and must be construed narrowly in favor of the landowner.” Id., at 141);
22 Hoffmann v. Gunther, 666 N.Y.S.2d 685, 687 (S.Ct. App. Div. 2nd Dept. N.Y. 1997) (not every
23 item discussed at a hearing becomes a “condition” to development, rather the local land use board
24 has a duty to “clearly state” the conditions within the approval ordinance without reference to the
25 minutes of a proceeding. Id., at 687). Diaz v. Ferne, 120 Nev. 70, 75, 84 P.3d 664, 667 (2004)
26 (landowners cannot be bound by “secret intentions” and documents not noticed).
27
28

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

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

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

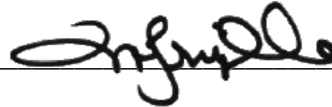
3) The 65 Acre Property has been hard zoned R-PD7 at all relevant times herein;

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

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

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

Dated this 27th day of October, 2022



749 40A F977 99E5
Monica Trujillo
District Court Judge

RESPECTFULLY SUBMITTED BY:

LAW OFFICES OF KERMIT L. WATERS

By: /s/ James Jack Leavitt
KERMIT L. WATERS, ESQ., NBN.2571
JAMES J. LEAVITT, ESQ., 6032
MICHAEL SCHNEIDER, ESQ., 8887
AUTUMN WATERS, ESQ., NBN 8917
Attorneys for Plaintiff Landowners

From: [Autumn Waters](#)
To: [George F. Ogilvie III](#); [James Leavitt](#); [Christopher Molina](#)
Cc: [Elizabeth Ham](#); [Jennifer Miller \(EHB Companies\)](#); [No Scrub](#); [Sandy Guerra](#)
Subject: RE: 7.22.22 Hearing Proposed Order - Issue Preclusion, 65 Acre Case
Date: Thursday, August 4, 2022 8:24:37 AM

Hi George,

It is clear from the City's edits that we will not be able to come to an agreement on this order. We will be submitting our proposed order to the Court today.

Thank you,

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

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From: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Sent: Tuesday, August 02, 2022 2:11 PM
To: James Leavitt <jim@kermittwaters.com>; Christopher Molina <cmolina@mcdonaldcarano.com>
Cc: Elizabeth Ham <EHam@ehbcompanies.com>; Jennifer Miller (EHB Companies) <jmiller@ehbcompanies.com>; Autumn Waters <autumn@kermittwaters.com>; No Scrub <NoScrub@mcdonaldcarano.com>
Subject: RE: 7.22.22 Hearing Proposed Order - Issue Preclusion, 65 Acre Case

Attached are the City's edits to the Developer's proposed Order.

George F. Ogilvie III | Partner



P: 702.873.4100 | **E:** gogilvie@mcdonaldcarano.com

From: James Leavitt <jim@kermittwaters.com>

Sent: Tuesday, July 26, 2022 4:06 PM

To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christopher Molina <cmolina@mcdonaldcarano.com>

Cc: Elizabeth Ham <EHam@ehbcompanies.com>; Jennifer Miller (EHB Companies) <jmiller@ehbcompanies.com>; Autumn Waters <autumn@kermittwaters.com>

Subject: 7.22.22 Hearing Proposed Order - Issue Preclusion, 65 Acre Case

George:

I hope you are well today.

Attached is the proposed order from the July 22, 2022, issue preclusion hearing in the 65 Acre Case.

Could you please let me know by Thursday if we have your permission to affix your electronic signature.

Thank you,

Jim

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

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 180 Land Company, LLC,
Plaintiff(s)

CASE NO: A-18-780184-C

7 vs.

DEPT. NO. Department 3

8
9 Las Vegas City of, Defendant(s)

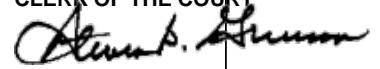
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11 **AUTOMATED CERTIFICATE OF SERVICE**

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

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

**NOTICE OF ENTRY OF
FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
PLAINTIFF LANDOWNERS'
EVIDENTIARY HEARING BRIEF #2:
MEMORANDUM OF POINTS AND
AUTHORITIES REGARDING THE
CITY'S ACTIONS WHICH HAVE
RESULTED IN A TAKING OF THE
LANDOWNERS PROPERTY**

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PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Evidentiary Hearing Brief #2: Memorandum of Points and Authorities Regarding the City's Actions Which Have Resulted in a Taking of the Landowners Property was entered on October 27, 2022. A copy of the Order is attached hereto.

LAW OFFICES OF KERMITT L. WATERS

/s/ James Jack Leavitt

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CERTIFICATE OF SERVICE

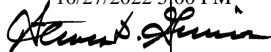
I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 31st day of October, 2022, pursuant to NRCP 5(b), a true and correct copy of the foregoing: **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING PLAINTIFF LANDOWNERS' EVIDENTIARY HEARING BRIEF #2: MEMORANDUM OF POINTS AND AUTHORITIES REGARDING THE CITY'S ACTIONS WHICH HAVE RESULTED IN A TAKING OF THE LANDOWNERS PROPERTY** was served on the below via the Court's electronic filing/service system and/or deposited for mailing in the U.S. Mail, postage prepaid and addressed to the following:

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CLERK OF THE COURT

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DISTRICT COURT

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180 LAND CO LLC, a Nevada limited liability
company; SEVENTY ACRES LLC, a Nevada
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DOE INDIVIDUALS I through X, DOE
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CITY OF LAS VEGAS, political subdivision of
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I through X, ROE INDIVIDUALS I through X,
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through X,

Defendants.

Case No.: A-18-780184-C

Dept. No.: III

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
PLAINTIFF LANDOWNERS'
EVIDENTIARY HEARING BRIEF #2:
MEMORANDUM OF POINTS AND
AUTHORITIES REGARDING THE
CITY'S ACTIONS WHICH HAVE
RESULTED IN A TAKING OF THE
LANDOWNERS PROPERTY**

Hearing Dates:

May 27, June 30, and July 2, 2021.

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1 Plaintiffs, 180 LAND COMPANY, LLC, a Nevada Limited Liability Company,
2 SEVENTY ACRES, LLC, a Nevada Limited Liability Company, and FORE STARS, Ltd.
3 (hereinafter “Landowners”), brought Plaintiff Landowners’ Evidentiary Hearing Brief #2,
4 Memorandum of Points and Authorities Regarding the City’s Actions Which have Resulted in a
5 Taking of the Landowners’ Property before the Court at an evidentiary hearing on hearing dates:
6 May 27, June 30, and July 2, 2021, with Kermitt L. Waters, Esq., Autumn Waters, Esq., and
7 James Jack Leavitt, Esq. of the Law Offices of Kermitt L. Waters, appearing for and on behalf
8 of the Landowners along with the Landowners’ in-house counsel, Elizabeth Ghanem Ham, Esq.,
9 and George F. Ogilvie III, Esq. and Christopher J. Molina, Esq., of McDonald Carano, Andrew
10 Schwartz, Esq. and Lauren M. Tarpey, Esq. of Shute, Mihaly & Weinberger, LLP, and Philip R.
11 Byrnes, Esq. and Rebecca Wolfson, Esq. with the City Attorney’s Office, appearing on behalf of
12 Defendant City of Las Vegas (hereinafter “City”). Having reviewed all pleadings and attached
13 exhibits filed in this matter, and having heard extensive oral arguments over a three-day
14 evidentiary hearing, the Court enters, based on the evidence presented, the following Findings of
15 Fact and Conclusions of Law:
16
17

18 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

19
20 1. The Landowners are the owners of an approximately 65 Acre parcel of property
21 generally located near the southeast corner of Hualapai Way and Alta Drive within the
22 geographic boundaries of the City of Las Vegas, more particularly described as Clark County
23 Assessor Parcels 138-31-801-002, 138-31-801-003, and 138-32-301-007 (hereinafter “65 Acre
24 Property”). As of the evidentiary hearing of this matter, the 65 Acre Property was vacant.
25

26 2. Generally, the Landowners’ Brief which details the City’s actions and relevant
27 legal standards requests that this Court enter an order that the City has engaged in actions that
28 have resulted in the taking of their 65 Acre Property.

1 3. The Nevada Supreme Court has held that, when analyzing an inverse
2 condemnation claim, the court must “undertake two distinct sub-inquiries: “the court must first
3 determine” the property rights “before proceeding to determine whether the governmental action
4 constituted a taking.” ASAP Storage v. City of Sparks, 123 Nev. 639, 642 (Nev. 2008); McCarran
5 International Airport v. Sisolak, 122 Nev. 645, 658 (Nev. 2006). This court has previously
6 determined the Landowners’ property rights and will now turn to the second sub-inquiry of
7 whether the City’s actions constituted a taking of those property rights.
8

9 **The Court’s Jurisdiction to Decide the Landowners’ Taking Claims**

10 4. The Landowners requested summary judgment on three of their taking claims:
11 Third Claim for Relief – Categorical Taking; Fifth Claim for Relief – Per Se Regulatory Taking;
12 and Sixth Claim for Relief – Non-regulatory De Facto Taking.
13

14 5. The Nevada Supreme Court has held that “whether the Government has inversely
15 condemned private property is a question of law that we review de novo.” Sisolak, at 661.
16 Therefore, this Court will decide the taking issue.
17

18 6. This Court will resolve the Landowners’ three taking claims under Nevada
19 Supreme Court inverse condemnation and eminent domain precedent. *See* County of Clark v.
20 Alper, 100 Nev. 382 (1984) (“[I]nverse condemnation proceedings are the constitutional
21 equivalent to eminent domain actions and are governed by the same rules and principles that are
22 applied to formal condemnation proceedings.” *Id.*, at 391).
23

24 **Nevada Inverse Condemnation Taking Standards**

25 7. The Nevada Supreme Court recognizes that “[g]iven ‘the nearly infinite variety
26 of ways in which government actions or regulations can affect property interests,’ no ‘magic
27 formula’ exists in every case for determining whether particular government interference
28 constitutes a taking under the U.S. Constitution,” but “there are several invariable rules applicable

1 to specific circumstances.” State v. Eighth Jud. Dist. Ct., 131 Nev. 411, 419 (2015), citing
2 Arkansas Game & Fish Comm’s v. United States, 568 U.S. _____, _____, 133 S.Ct. 511, 518,
3 184 L.Ed.2d 417 (2012).

4 8. Nevada recognizes three invariable taking standards that apply to the specific
5 circumstances of this case.

6
7 9. Per Se Regulatory Taking - Nevada law finds a per se regulatory taking where the
8 government engages in actions to preserve private property for use by the public or authorizes
9 the public to use private property. Sisolak, supra, at 665-667; Tien Fu Hsu v. County of Clark,
10 123 Nev. 625, 634-635 (2007). *See also* Cedar Point Nursery v. Hassid, 2021 WL 2557070, ---
11 S.Ct. --- (June 23, 2021); Knick v. Township of Scott, Pennsylvania, 139 S.Ct. 2162 (2019).

12
13 10. Per Se Categorical Taking – Nevada law finds a per se categorical taking where
14 the government engages in actions that “completely deprives an owner of all economical
15 beneficial use of her property.” Sisolak, supra, at 662

16
17 11. Non-regulatory / De Facto Taking – Nevada law finds a non-regulatory / de facto
18 taking where the government has “taken steps that directly and substantially interfere [] with
19 [an] owner's property rights to the extent of rendering the property unusable or valueless to the
20 owner.” State v. Eighth Judicial District Court, 131 Nev. 411, 421 (2015). For this rule, the
21 Court relied on Richmond Elks Hall Assoc. v. Richmond Red. Agency, 561 F.2d 1327, 1330 (9th
22 Cir. 1977), where the Ninth Circuit held that “[t]o constitute a taking under the Fifth Amendment
23 it is not necessary that property be absolutely ‘taken’ in the narrow sense of that word to come
24 within the protection of this constitutional provision; it is sufficient if the action by the
25 government involves a direct interference with or disturbance of property rights.” In this same
26 connection, the Nevada Supreme Court has held a taking occurs where there is “some derogation
27 of a right appurtenant to that property which is compensable” or “if some property right which is
28

1 directly connected to the ownership or use of the property is substantially impaired or
2 extinguished.” Sloat v. Turner, 93 Nev. 263, 269 (1977). Nichols on Eminent Domain
3 summarily describes this non-regulatory / de facto taking claim as follows: “[c]ontrary to
4 prevalent earlier views, it is now clear that a de facto taking does not require a physical invasion
5 or appropriation of property. Rather, a substantial deprivation of a property owner’s use and
6 enjoyment of his property may, in appropriate circumstances, be found to constitute a ‘taking’ of
7 that property or of a compensable interest in the property...” 3A Nichols on Eminent Domain
8 §6.05[2], 6-65 (3rd rev. ed. 2002). The Nevada Supreme Court has relied on Nichols on Eminent
9 Domain for authority on numerous occasions.

11 12. None of these taking standards require a finding of a physical invasion as a pre-
12 condition to finding a taking.

14 **Evidence of the City’s Actions**

15 13. This Court finds that the following actions by the City, many of which were
16 uncontested meet all three of the Nevada’s taking standards, set forth above.

18 **Denial of The Master Development Agreement (“MDA”)**

19 14. The evidence presented showed that the City would accept only one application
20 to develop the 65 Acre Property – a Master Development Agreement (“MDA”). The Landowner
21 presented a declaration that “Mayor Goodman informed [the Landowners during a December 16,
22 2015, meeting] that due to neighbors’ concerns the City would not allow ‘piecemeal development’
23 of the Land and that one application for the entirety of the 250 Acre Residential Zoned Land
24 [which includes the 65 Acres] was necessary by way of a Master Development Agreement
25 (“MDA”)” and that during the MDA process, “the City continued to make it clear to [the
26 Landowners] that it would not allow development of individual parcels, but demanded that
27 development only occur by way of the MDA.” Exhibit 34, at 00538, para. 19, at 00539, para.
28

1 24:25-27. The Landowners also presented a declaration by their land use attorney, Chris
2 Kaempfer, which states: 1) that he had “no less than seventeen (17) meetings with the [City]
3 Planning Department” regarding the “creation of a Development Agreement” which were
4 necessitated by “public and private comments made to me by both elected and non-elected
5 officials that they wanted to see a plan – via a Development Agreement – for the development of
6 the entire Badlands and not just portions of it;” and, 2) the City advised him that “[the
7 Landowners] either get an approved Development Agreement for the entirety of the Badlands or
8 we get nothing.” Exhibit 48, paras. 11-13. Moreover, when the Landowners presented an
9 application to develop the 35 Acre Property as a stand-alone parcel, the City Council stated as
10 follows: 1) “I have to oppose this, because it’s piecemeal approach (Councilman Coffin);” 2) “I
11 don’t like this piecemeal stuff. I don’t think it works (Councilwoman Tarkanian); and, 3) “I
12 made a commitment that I didn’t want piecemeal,” there is a need to move forward, “but not on
13 a piecemeal level. I said that from the onset,” “Out of total respect, I did say that I did not want
14 to move forward piecemeal.” (Mayor Goodman). Exhibit 53, Transcr. June 21, 2017 City
15 Council meeting, p. 98:2618; 104:2781-2782; 118:3161; 49:1304-1305; 92:2460-2461. The City
16 presented no evidence to contest that the only application it would accept to develop the 65 Acre
17 Property was the MDA.
18
19

20
21 15. The evidence presented showed that the MDA process lasted about 2.5 years, that
22 it took “an excess of hundreds of hours beyond the full [work] day” and that the City Planning
23 Department and City Attorney’s Office almost entirely drafted the MDA. Exhibit 54, Bates
24 001343:697-701.
25

26 16. The evidence presented showed that the City required (and the Landowners
27 acquiesced) that the following be provided before the MDA could be submitted for approval:
28 detailed architectural drawings including 3D digital models for topography, elevations, etc.,

1 regional traffic studies, complete civil engineering packages, master detailed sewer studies,
2 drainage studies, school district studies. Exhibit 34, Lowie Declaration, p. 6, para 21.

3 17. The evidence presented also showed that the City required (and the Landowners
4 acquiesced), the following concessions as part of the MDA: 1) donation of approximately 100
5 acres as landscape, park equestrian facility, and recreation areas; 2) building brand new
6 driveways, security gates and gate houses for Queensridge; 3) building two new parks, one with
7 a vineyard and another for equestrian facilities for Queensridge; and, 4) reducing the number of
8 units, increasing the minimum acreage lot size, and reducing the number and height of the towers.
9 Exhibit 60, Bates 00001836-37; Exhibit 55; Exhibit 54, Bates 001339:599-601; Exhibit 53, Bates
10 001266:2060-2070.
11

12
13 18. The evidence presented further showed that the City required 16 new and revised
14 versions of the MDA and at least 700 changes over the 2.5 years the City and the Landowners
15 worked on the MDA. Exhibits 58 and 59, final page of exhibits show the over 700 changes.
16 Exhibit 61 shows the 16 versions of the MDA generated from January, 2016 to July, 2017.
17

18 19. Mayor Goodman acknowledged the excessive nature of the MDA application,
19 stating, "you did bend so much. And I know you are a developer, and developers are not in it to
20 donate property. And you have been donating and putting back... And it's costing you money
21 every single day it delays." Exhibit 53, Bates 001281:2462-2465. Councilwoman Tarkanian
22 also commented that she had never seen anybody give as many concessions as the Landowners
23 as part of the MDA stating, "I've never seen that much given before." Exhibit 53, Bates 001293-
24 001294:2785-2787; 2810-2811.
25

26
27
28 ///

1 20. Landowner representative, Yohan Lowie, further testified that the City demands,
2 which were part of the MDA, cost the Landowners more than \$1 million over and above the
3 normal costs for a development application of this type. Exhibit 34, Bates 000738, para. 21:4-6.

4 21. Once the MDA was complete, the City Planning Department provided a “Staff
5 Report,” which confirmed as follows:

6 The proposed Development Agreement conforms to the requirements of NRS
7 278 regarding the content of development agreements. The proposed density
8 and intensity of development conforms to the existing zoning district
9 requirements for each specified development area. Through additional
10 development and design controls, the proposed development demonstrates
11 sensitivity to and compatibility with the existing single-family uses on the
12 adjacent parcels. Furthermore, the development as proposed would be
13 consistent with goals, objectives and policies of the Las Vegas 2020 Master
14 Plan that call for walkable communities, access to transit options, access to
 recreational opportunities and dense urban hubs at the intersection of primary
 roads. Staff therefore recommends approval of the proposed Development
 Agreement. Exhibit 77, Bates 002671.

15 22. The MDA was presented to the City Council on August 2, 2017, and the City
16 Council denied the MDA. Exhibit 78. Exhibit 54.

17 23. Landowner representative, Yohan Lowie, testified that the “City did not ask us to
18 make more concessions, like increasing the setbacks or reducing the units per acre, it just simply
19 rejected the MDA altogether.” Exhibit 34, Bates 000739, para 26.

20 24. The City has provided no evidence to contest any of these facts regarding the
21 MDA.

22 **Denial of the Access and Fence Applications**

23 25. On June 28, 2016, the Landowners submitted to the City of Las Vegas a request
24 for access to their property from the adjoining roadways - Hualapai Way and Rampart Blvd.
25 Exhibit 88. The stated reason for the access was to allow tree and plant cutting, removal of debris,
26 and soil testing. Id.

1 26. The case of State v. Schwartz, 111 Nev. 998, 1003, (1995), holds that “a property
2 owner abutting a public highway has a special right of easement in a public road for access
3 purposes, which is a property right of the class protected by NRS 37.110(3). Such property right
4 may not be substantially impaired without the payment of damages to the affected property
5 owner.”

6
7 27. On August 24, 2017, the City denied the Landowners access request stating as the
8 reason for denial “the potential to have significant impact on the surrounding properties.” Exhibit
9 89.

10 28. On that same day, August, 24, 2017, the City also denied the Landowners request
11 to place fencing around two ponds on the 65 Acre Property for safety purposes, stating the same
12 reason for the denial - “the potential to have significant impact on the surrounding properties.”
13 Exhibit 29. The City proffered a Declaration of Peter Lowenstein stating that the City did not
14 deny the Landowners access requests because the Landowners never filed a Major Review. Yet
15 the plan language in Exhibit 89 and 92 states that access applications were denied. The Court
16 further finds that to require a Major Review for these items which appear administerial in nature
17 is unreasonable.
18
19

20 29. This evidence shows that the City took actions to preserve the 65 Acre Property
21 for the “surrounding properties” and the City has provided no evidence to contest these facts.

22 **City Bill Nos. 2018-5 and 2018-24**

23 30. In 2018, the City adopted two Bills – Bill No. 2018-5 and Bill No. 2018-24.
24 Exhibits 107 and 108.
25

26 31. The Landowners presented evidence that these two City Bills targeted and applied
27 only to the Landowners’ 250 acres, which includes the 65 Acre Property in this case. The City’s
28 own councilperson stated that “[t]his bill is for one development and one development only. This

1 bill is only about the Badlands Golf Course [250 acres].” Exhibit 114, Bates 003848-003849,
2 Exhibit 115, Bates 003868, Exhibit 116, Bates 003879:149-151. This Councilperson also stated
3 that the Bill “is the latest shot in the salvo against one developer.” Id. Landowners’ land use
4 attorney, Stephanie Allen also confirmed that a 365-page analysis was completed, which
5 confirmed the Bills only applied to the Landowners’ 250 acres . Exhibit 110, Bates 003370 and
6 Exhibits 111 and 112.
7

8 32. The evidence presented showed that Bill Nos. 2018-5 and 2018-24 imposed
9 impossible barriers to development, including the following, which was required to be done prior
10 to submitting an application to develop: A **master plan** (showing areas proposed to remain open
11 space, recreational amenities, wildlife habitat, areas proposed for residential use, including
12 acreage, density, unit numbers and type, areas proposed for commercial, including acreage,
13 density and type, a density or intensity), a **full and complete development agreement**, an
14 **environmental assessment** (showing the project’s impact on wildlife, water, drainage, and
15 ecology), a **phase I environmental assessment report**, a master drainage study, a master traffic
16 study, a master sanitary sewer study with total land uses proposes, connecting points,
17 identification of all connection points, a **3D model of the project with accurate topography** to
18 show visual impacts as well as an edge condition cross section with improvements callouts and
19 maintenance responsibility, analysis and **report of alternatives for development**, rationale for
20 development, a mitigation report, **CC&Rs** for the development area, a **closure maintenance**
21 **plan** showing how the property will continue to be maintained as it has in the past (providing
22 security and monitoring), development review to assure the development complies with “other”
23 City policies and standards. Exhibits 107 and 108. The City had already rejected the required
24 development agreement by denying the MDA, meaning such requirements could not be met.
25
26
27
28

1 33. Bill No. 2018-24 further states that, as a precondition to developing, the
2 Landowners must also submit anything else “the [City Planning] Department may determine are
3 necessary.” Exhibit 108, Bates 003212.

4 34. Bill No. 2018-24 further states that the Landowners must “[p]rovide
5 documentation regarding “ongoing public access,” access to utility easements, and plans to
6 ensure that such access is maintained.” Exhibit 108, Bates 003212. The Court declines the City’s
7 request to find that this provision was not yet enforced against the Landowners as this provision
8 is included in the section entitled “G. Closure Maintenance Plan” and the first provision of Bill
9 No. 2018-24 (section “A. General”) states that any proposal to use the property “is subject to ...
10 the Closure Maintenance Plan set forth in Subsections (E) to (G), inclusive.” Exhibit 108, Bates
11 003202-03203. Section 5(b) also states that “[f]ailure to comply with the provisions of this
12 Subsection (G) or with the terms of an approved maintenance plan...[i]s unlawful.” (Exhibit 108
13 at 003213). Further, lack of enforcement as a defense to a taking has been rejected by the United
14 States Supreme Court. See Knick v. Township of Scott, Pennsylvania, 139 S.Ct. 2162 (2019).
15
16

17 35. The City presented no evidence to contest these facts related to Bill Nos. 2018-5
18 and 2018-24.
19

20 **The 35 Acre Applications**

21 36. The Landowners also submitted applications to develop the 35 Acre Property [part
22 of the 250 acres] and the City’s Planning Department confirmed the applications were consistent
23 with the R-PD7 hard zoning, met all requirements in the Nevada Revised Statutes and the City’s
24 Unified Development Code (Title 19), and recommended approval to allow the Landowners to
25 develop the 35 Acre Property. Exhibits 62-72 and Exhibit 73.
26

27 37. At the City Council hearing on the 35 Acre Property applications, Tom Perrigo,
28 the City’s Planning Director stated the applications met all City requirements and should be

1 approved (Exhibit 53, Bates 001211-001212:566-587) and one City Council member stated the
2 proposed development on the 35 Acre Property was “so far inside the existing lines [the Las
3 Vegas Code requirements]” (Exhibit 53, Bates 001286:2588-2590).

4 38. On June 21, 2017, the City Council denied the 35 Acre applications. Exhibit 93.

5 39. Although not directly applicable to the 65 Acre Property, this denial shows the
6 City’s intent to preserve the Landowners’ property for use by the public, and confirms that the
7 MDA was the only application which would be considered by the City.
8

9 **The 133 Acre Applications**

10 40. The Landowners also submitted applications to develop the 133 Acre Property
11 and the City’s Planning Department confirmed the applications were consistent with the R-PD7
12 hard zoning, met all requirements in the Nevada Revised Statutes and the City’s Unified
13 Development Code (Title 19), and recommended approval to allow the Landowners to develop
14 the 133 Acre Property. Exhibits 97-98 and Exhibit 99-103.
15

16 41. The City mandated that the Landowners file a “GPA” application and the
17 Landowners opposed the GPA application, but agreed to file the application “under protest.”
18 Exhibit 129.
19

20 42. The 133 Acre applications, including the GPA application were then submitted to
21 the City Council on May 5, 2018. Exhibit 106.

22 43. The City struck all of the 133 Acre applications, including the GPA, in part,
23 because, according to the City Council, the GPA application was improperly submitted: “Mayor,
24 I’d like to call the question at this time. I believe we have established that the GPA is duplicitous
25 and the GPA should not have been accepted.” Exhibit 106, Bates 003183:1852-1853.
26
27
28

1 44. Although not directly applicable to the 65 Acre Property, this denial shows the
2 City's intent to preserve the Landowners' property for use by the public, and confirms that the
3 MDA was the only application which would be considered by the City.

4 **Other City Actions and Statements**

5 45. The Landowners presented evidence of further City actions and statements against
6 the development of the 250-acre property.
7

8 46. On February 14, 2017, just prior to being elected to the City Council, one
9 councilmember stated "over my dead body" will the 250-acre property be developed. Exhibit
10 124.

11 47. On March 27, 2017, one City Councilmember described his dislike of the
12 Landowners' attempts to develop their property as "Bibi Netanyahu's insertion of the concreted
13 settlements in the West Bank neighborhoods." Exhibit 123.

14 48. On May 1, 2017, one Councilmember stated "I am voting against the whole thing"
15 in reference to development on the 250-acre property. Exhibit 122.
16

17 49. On January 9, 2018, the City identified \$15 million do purchase the Landowners
18 250 acre property. Exhibit 144.
19

20 50. On September 26, 2018, an email was sent wherein a "proposal regarding
21 acquisition and re-zoning of green space land [250 acres]" was discussed. Exhibit 128.

22 51. Finally, one councilmember stated "a majority is standing in his [Landowners]
23 path" to development. Exhibit 126.
24

25 **Evidence the Landowners Were Singled Out and Targeted by the City**

26 52. Vicki DeHart, a Landowner representative, testified that, "[o]n or about December
27 29, 2015, Mr. Schreck bragged that his group is 'politically connected' and could stop the
28 development plans for the Land from moving forward. Mr Schreck accused us of having

1 ‘colluded’ with the City, threatened to go to the newspaper, and declared that we needed to
2 understand how powerful Schreck’s group [Queensridge owners] is. It was then that Mr. Schreck
3 openly revealed that he wanted 180 acres [out of the 250-acres], with valuable water rights
4 deeded to him and his group [Queensridge owners], and only then would they ‘allow’ us to
5 develop the remainder of the Land. When Mr. Schreck was asked what he wanted to pay for the
6 180 acres and water rights, Schreck said ‘not a penny.’” Exhibit 94, para. 2.

8 53. Stephanie Allen, the Landowners’ land use attorney, testified that she has
9 presented “thousands of applications,” like the Landowners’ applications that were submitted to
10 the City, and “I cannot recall an application that I have handled being denied when the
11 development proposal was allowed as a matter of right under the existing zoning.” Declaration
12 of Stephanie Allen, filed May 24, 2021, p. 3, para. 12. Ms. Allen further testified that she has
13 presented “approximately ten development agreements,” like the Landowner MDA that was
14 submitted to the City, and “I cannot recall a development agreement application being denied
15 when the proposed written agreement had been negotiated and agreed upon in good faith between
16 the parties.” Id., para 15.

18 54. Further, as set forth above, the evidence showed that the City adopted Bill Nos.
19 2018-5 and 2018-24 to solely apply to the Landowners’ 250-acre property.

21 **The Per Se Regulatory Taking Standard is Met**

22 55. The City actions above amount to a per se regulatory taking. The City has taken
23 action to preserve the 65 Acre Property for use by the public and has authorized the public to use
24 the 65 Acre Property. The City denied the only application it would accept to develop the 65
25 Acre Property – the MDA. The City denied the access applications and the fence applications,
26 stating the approval may impact the “surrounding properties.” And, the City adopted Bill Nos.
27 2018-5 and 2018-24 to apply only to the Landowners’ property and force the Landowners to
28

1 allow “ongoing public access” to the property. One councilman even told the surrounding
2 owners that the Landowners’ property is for their use as open space and recreation (Exhibit 136,
3 Bates 004498:23-004499:15; 004501:23-004502:3) and the public is actually using the property
4 for that purpose (Exhibit 150).

5 56. Thus, based on the evidence presented, the Court concludes as a matter of law,
6 that the City has taken the 65 Acre Property under Nevada’s per se regulatory taking standard.
7

8 **The Per Se Categorical Taking Standard is Met**

9 57. The City actions above amount to a per se categorical taking. The City has taken
10 action that deprives the Landowners of all economic value of the 65 Acre Property. This Court’s
11 property interest order determines that the 65 Acre Property had R-PD7 zoning and this zoning
12 provides the legally permissible uses of the 65 Acre Property are single-family and multi-family
13 uses. The City provided that the only means to use the 65 Acre Property was through the MDA
14 and then denied the MDA application. The City has denied all other applications, including the
15 access and fence applications. And, the City adopted Bill Nos. 2018-5 and 2018-24 that impose
16 barriers to the use of the 65 Acre Property which were impossible to overcome. As a result, the
17 65 Acre Property lies vacant, without any economic value. To compound this impact to the 65
18 Acre Property, the City Assessor is taxing, and the Landowners are paying, real estate taxes in
19 the amount of \$206,590.93 / year based on a residential use of the 65 Acre Property. Exhibit 153.
20
21 *See also* Exhibits 120, 151, and 152.
22

23 58. Thus, based on the evidence presented, the Court concludes as a matter of law,
24 that the City has taken the 65 Acre Property under Nevada’s per se categorical taking standard.
25

26 **The Non-regulatory / De Facto Taking Standard is Met**

27 59. The City actions above amount to a non-regulatory / de facto taking. The City
28 has taken action that has substantially interfered with the use of the 65 Acre Property and has

1 rendered the 65 Acre Property valueless and useless to the Landowners. The City has denied all
2 applications to use the 65 Acre Property, adopted Bills that target only the 65 Acre Property,
3 make it impossible to develop, and force the Landowners to allow “ongoing public access” to the
4 property, advised the public that it may use the Landowners’ 65 Acre Property and the evidence
5 shows the public is using the property at the direction of the City, and engaged in other aggressive
6 and systematic actions, described above to interfere with the Landowners’ lawful use of the 65
7 Acre Property.
8

9 60. Thus, based on the evidence presented, the Court concludes as a matter of law,
10 that the City has taken the 65 Acre Property under Nevada’s standard for a non-regulatory/de
11 facto taking.
12

13 **The City’s Ripeness Argument**

14 61. The Court declines the City’s request to apply the ripeness doctrine to the
15 Landowners’ inverse condemnation claims.

16 62. First, the Nevada Supreme Court has been clear that a ripeness analysis does not
17 apply to a per se regulatory taking claim, a per se categorical taking claim, and a non-regulatory
18 taking claim. *See State v. Eighth Jud. Dist. Ct.*, 131 Nev. 411 (2015); *Tien Fu Hsu v. County of*
19 *Clark*, 123 Nev. 625 (2007); *McCarran International Airport v. Sisolak*, 122 Nev 645 (Nev.
20 2006).
21

22 63. Second, the Nevada Supreme Court addressed the ripeness standard in its *Penn*
23 *Central* analysis (the Landowners’ Penn Central claim is not currently before the Court) in the
24 inverse condemnation cases of *State v. Eighth Jud. Dist. Ct.*, 131 Nev. 411, 419-420 (2015),
25 recognizing “when exhausting available remedies, including the filing of a land-use application,
26 is futile, a matter is deemed ripe for review.” Here, the City dictated the only application it would
27 accept for development of the 65 Acre Property (the MDA), the City and the Landowners worked
28

1 on the MDA for over 2.5 years, the City's Planning Department recommended approval of the
2 MDA as it met all NRS and City requirements and was in compliance with the R-PD7 zoning
3 and the City's master plan, and the City denied the MDA altogether. Moreover, as detailed above,
4 the City denied and/or rejected other applications for singular development of the 35 Acre
5 Property and the 133 Acre Property along with denial of access and fencing applications.
6 Therefore, even if the ripeness standard were to apply the submittal and denial of the MDA meets
7 this standard and the evidence clearly shows that any further application would be futile.
8

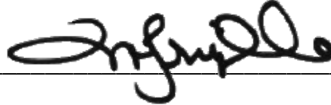
9 64. The Court has considered all other City arguments and found them to be
10 unavailing or inapplicable in this matter.
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1 Therefore, the Landowners' request that the Court determine the 65 Acre Property has
2 been taken by inverse condemnation is **GRANTED** and it is hereby **ORDERED** that:

3 1) The City has engaged in actions that result in a per se regulatory taking, a per se
4 categorical taking, and a non-regulatory de facto taking of the Landowners' 65 Acre Property.
5

6 Dated this 27th day of October, 2022

7 
8

9 8B9 116 0F33 BD43
10 Monica Trujillo
11 District Court Judge

12 RESPECTFULLY SUBMITTED BY:

13 **LAW OFFICES OF KERMIT L. WATERS**

14 By: /s/ James Jack Leavitt
15 KERMIT L. WATERS, ESQ., NBN.2571
16 JAMES J. LEAVITT, ESQ., 6032
17 MICHAEL SCHNEIDER, ESQ., 8887
18 AUTUMN WATERS, ESQ., NBN 8917
19 *Attorneys for Plaintiff Landowners*
20
21
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From: [Autumn Waters](#)
To: [George F. Ogilvie III](#); [James Leavitt](#); [Christopher Molina](#)
Cc: [Elizabeth Ham](#); [Jennifer Miller \(EHB Companies\)](#); [No Scrub](#); [Sandy Guerra](#)
Subject: RE: 7.22.22 Hearing Proposed Order - Issue Preclusion, 65 Acre Case
Date: Thursday, August 4, 2022 8:24:37 AM

Hi George,

It is clear from the City's edits that we will not be able to come to an agreement on this order. We will be submitting our proposed order to the Court today.

Thank you,

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

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From: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>
Sent: Tuesday, August 02, 2022 2:11 PM
To: James Leavitt <jim@kermittwaters.com>; Christopher Molina <cmolina@mcdonaldcarano.com>
Cc: Elizabeth Ham <EHam@ehbcompanies.com>; Jennifer Miller (EHB Companies) <jmiller@ehbcompanies.com>; Autumn Waters <autumn@kermittwaters.com>; No Scrub <NoScrub@mcdonaldcarano.com>
Subject: RE: 7.22.22 Hearing Proposed Order - Issue Preclusion, 65 Acre Case

Attached are the City's edits to the Developer's proposed Order.

George F. Ogilvie III | Partner



P: 702.873.4100 | E: gogilvie@mcdonaldcarano.com

From: James Leavitt <jim@kermittwaters.com>

Sent: Tuesday, July 26, 2022 4:06 PM

To: George F. Ogilvie III <gogilvie@Mcdonaldcarano.com>; Christopher Molina <cmolina@mcdonaldcarano.com>

Cc: Elizabeth Ham <EHam@ehbcompanies.com>; Jennifer Miller (EHB Companies) <jmiller@ehbcompanies.com>; Autumn Waters <autumn@kermittwaters.com>

Subject: 7.22.22 Hearing Proposed Order - Issue Preclusion, 65 Acre Case

George:

I hope you are well today.

Attached is the proposed order from the July 22, 2022, issue preclusion hearing in the 65 Acre Case.

Could you please let me know by Thursday if we have your permission to affix your electronic signature.

Thank you,

Jim

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

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 180 Land Company, LLC,
Plaintiff(s)

CASE NO: A-18-780184-C

7 vs.

DEPT. NO. Department 3

8
9 Las Vegas City of, Defendant(s)

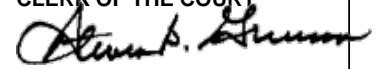
10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 10/27/2022

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14 Facsimile: (702) 731-1964
15 ***Attorneys for Plaintiff Landowners***

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 FORE STARS, LTD; SEVENTY ACRES LLC,
12 a Nevada liability company; DOE
13 INDIVIDUALS I through X, DOE
14 CORPORATIONS I through X, and DOE
15 LIMITED LIABILITIES COMPANIES I
16 through X,

15 Plaintiffs,

16 vs.

17 CITY OF LAS VEGAS, a political subdivision
18 of the State of Nevada; ROE government
19 entities I though X, ROE LIMITED
20 LIABILITY COMPANIES I though X, ROE
21 quasi-governmental I through X,

20 Defendants.

Case No.: A-18-773268-C

Dept No.: XXIX

**NOTICE OF ENTRY OF ORDER
DENYING:**

**(1) PLAINTIFF LANDOWNERS'
COUNTERMOTION TO APPROVE
ENTITLEMENTS AND END TAKE; and
(2) DEFENDANT CITY OF LAS VEGAS'
MOTION TO STRIKE
COUNTERMOTION TO APPROVE
ENTITLEMENTS AND END TAKE**

21 ///

22 ///

23 ///

PLEASE TAKE NOTICE that on the 28th day of November, 2022, an Order Denying: (1) Plaintiff Landowners' Countermotion to Approve Entitlements and End Take; and (2) Defendant City of Las Vegas' Motion to Strike Countermotion to Approve Entitlements and End Take was entered in the above-captioned case, a copy of which is attached hereto.

DATED this 12th day of December, 2022.

LAW OFFICES OF KERMITT L. WATERS

BY: /s/ James J. Leavitt
 KERMIT 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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Law Offices of Kermitt L. Waters, and that on the 12th day of December, 2022, pursuant to NRCP (5)(b) a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING: (1) PLAINTIFF LANDOWNERS' COUNTERMOTION TO APPROVE ENTITLEMENTS AND END TAKE; and (2) DEFENDANT CITY OF LAS VEGAS' MOTION TO STRIKE COUNTERMOTION TO APPROVE ENTITLEMENTS AND END TAKE** was made by electronic means, to be electronically served through the Eighth Judicial District Court's filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail and addressed to each of the following:

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cmolina@mcdonaldcarano.com

LAS VEGAS CITY ATTORNEY'S OFFICE

Bryan Scott, Esq., City Attorney

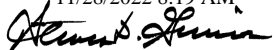
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/s/ Evelyn Washington

an employee of the Law Offices of Kermitt L. Waters


CLERK OF THE COURT

1 **ORDR**

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4
5
6 FORE STARS, LTD; SEVENTY ACRES LLC, a
7 Nevada liability company; DOE INDIVIDUALS I
8 through X, DOE CORPORATIONS I through X,
9 and DOE LIMITED LIABILITY COMPANIES I
10 through X,

11 Plaintiffs,

12 v.

13 CITY OF LAS VEGAS, a political subdivision of
14 the State of Nevada; ROE government entities I
15 through X, ROE LIMITED LIABILITY
16 COMPANIES I through X, and ROE quasi-
17 governmental I through X,

18 Defendants.

Case No.: A-18-773268-C

Dept. No.: XXIX

ORDER DENYING:

- (1) **PLAINTIFF LANDOWNERS'**
COUNTERMOTION TO
APPROVE ENTITLEMENTS AND
END TAKE; and
(2) **DEFENDANT CITY OF LAS**
VEGAS' MOTION TO STRIKE
COUNTERMOTION TO
APPROVE ENTITLEMENTS AND
END TAKE

19 **ORDER**

20 Plaintiff Landowners' Countermotion to Approve Entitlements and End Take filed on August
21 25, 2022, and Defendant City of Las Vegas' Motion to Strike Countermotion to Approve Entitlements
22 and End Take on Order Shortening Time filed on September 14, 2022 were heard on October 4, 2022
23 at 10:00 a.m., before the Honorable David M. Jones. James J. Leavitt, Esq. and Kermitt L. Waters,
24 Esq., of the Law Offices of Kermitt L Waters and Plaintiff's in-house counsel Elizabeth Ghanem, Esq.
25 appeared on behalf of Plaintiff.. George F. Ogilvie III appeared for defendant City of Las Vegas. After
26 reviewing the Motions and the pleadings and exhibits filed in support of and in opposition to the
27 Motions and hearing oral argument, and good cause appearing, the Court orders as follows:
28

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5	Fore Stars Ltd, Plaintiff(s)	CASE NO: A-18-773268-C
6	vs.	DEPT. NO. Department 29
7	City of Las Vegas, Defendant(s)	

8

9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

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