IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

No. 84345

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84640

LANDOWNERS' OPPOSITION TO CITY OF LAS VEGAS' MOTION TO STRIKE LANDOWNERS' APPENDIX AND ANSWERING BRIEF AND LANDOWNERS' REQUEST FOR JUDICIAL NOTICE

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

CLAGGETT & SYKES LAW FIRM
Micah S. Echols, Esq.
Nevada Bar No. 8437
micah@claggettlaw.com
4101 Meadows Lane, Suite 100
Las Vegas, Nevada 89107
(702) 655-2346 – Telephone
(702) 655-3763 – Facsimile

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

INTRODUCTION

The City of Las Vegas ("City") asks this Court to strike all references and supporting public records to the other two inverse condemnation actions Landowners filed against the City in the Clark County Nevada, District Court Case No. A-18-773268-C and Case No. A-18-780184-C.[1] All the documents the City seeks to strike from the Landowners' answering brief and appendix are responsive to the City's arguments in its opening brief and undeniably refute factual statements in the City's opening brief. The City's attempt to strike portions of the brief and remove court orders that disprove the City's version of facts is an attempt to perpetuate a false narrative without opposition. Contrary to the City's contentions, the Landowners' appendix not only supports the district courts' rulings but are offered to disprove the City's narration of facts surrounding those matters. Indeed, it is the City that raised, argued and "opened the door" to the very information it now seeks to suppress from this Court's consideration. Such gamesmanship must not be allowed as these cases are of the highest constitutional magnitude and

[1] This is one of four inverse condemnation cases involving 10 parcels of land that make up 250 acres referred to as the 35 Acre Property/Case, the 17 Acre Property/Case, the 65 Acre Property/Case, and the 133 Acre Property/Case.

must be fully considered for adjudication. Thus, it is imperative that this Court have the factual and procedural background as the City has placed these facts at issue and informing this Court otherwise is a violation of the Rules of Professional Conduct. Indeed, if the Court were to strike any portion of Landowners' brief or appendix, the Court would necessarily have to strike the corresponding portions of the City's opening brief. Nevertheless, striking these references and exhibits at this time would require this Court to have an understanding of the documents and associated arguments forcing a meritorious decision of the appeal which is not appropriate in a motion. *Taylor v. Barringer,* 75 Nev. 409, 344 P.2d 676 (1959) (motion is not an appropriate vehicle to decide the merits of an appeal).

Regarding Landowners' request to take judicial notice found in the body of Landowners' answering brief, the City's assertion is form over substance[2] and refiling a separate motion would only create further delay

[2] There is no requirement that a request for judicial notice be provided by separate motion. *See* NRS 47.130 and 47.140. But, to the extent this Court agrees a separate motion is necessary, then Landowners through this opposition hereby make the request for judicial notice. In an unrelated matter, this Court previously approved exactly what Landowners have done here—provided documents in the appendix that are responsive to arguments in the opening brief that are "judicially noticeable." *See Clark County Office of the Coroner/Medical Examiner v.*

on a matter that has been pending far too long, prompting this Court to recognize the need for an expedited appeal. *See Order Regarding Motions, filed June 20, 2022, at 2.* For all these reasons, the City's motion should be denied.

LEGAL ARGUMENT

NRS 47.130(2)(b) allows this Court to take judicial notice of matters of fact. In *Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009), this Court held, "[W]e may take judicial notice of facts that are '[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute." Though generally the Court does not take judicial notice of court records in different cases, "under some circumstances, [it] will invoke judicial notice to take cognizance of the record in another case." *Mack,* 125 Nev. at 91, 206 P.3d at 106. Judicial notice is warranted when "the closeness of the relationship between the two cases" justifies taking judicial notice of documents filed in the other case. *Id.*; *Occhiuto v. Occhiuto,* 97 Nev. 143, 145, 625 P.2d 568, 569 (1981). All of the documents in the Landowners' appendix are court records and public

---

Las Vegas Review-Journal, *Order*, Docket No. 76436 (Mar. 15, 2019) (unpublished), attached **Exhibit 1**.

records under NRS 47.130 and NRS 52.085 and provide information about the related inverse condemnation cases, including the 17 and 65 Acre cases. Indeed, the City references the 17 Acre Case through its entire opening brief and specifically addresses the 65 Acre Case on pages 36-37 of its brief. The Landowners have an obligation under NRAP 28(c) to respond to the City's arguments and provide this Court with publicly available documents that refute the City's false narrative about the facts of these two cases. NRAP 31(d)(2); *Polk v. State*, 126 Nev. 180, 185-186, 233 P.3d 357, 360-361 (2010); *Bates v. Chronister,* 100 Nev. 675, 681-682, 691 P.2d 865, 870 (1984). Indeed, if Landowners did not respond to such arguments, the City would argue confession of error in its reply brief. NRAP 30(b)(4) also permits a respondent's appendix to include "those documents necessary to rebut appellant's position on appeal which were not already included in appellant's appendix." All of the documents and references are necessary to rebut the City's false narrative and other arguments it presented on appeal and, thus, the Court should take judicial notice of Landowners' appendix and deny the City's motion to strike.

A. The City Did Not Even Attempt To Analyze The Documents In Landowners' Appendix.

Landowners' appendix contains the following seven documents:

Notice of Entry of Findings of Fact and Conclusions of Law re Plaintiff Landowners' Motion to Determine Property Interest in *Fore Stars Ltd, v. City of Las Vegas,* Case No. A-18-773268-C
Notice of Entry of Findings and Conclusions of Law re Landowners' Motion to Determine Take and for Summary Judgment in *Fore Stars Ltd. v. City of Las Vegas,* Case No. A-18-773268-C
Notice of Entry of Findings of Fact and Conclusions of Law re Landowners' Property Interest in *180 Land Co. v. City of Las Vegas,* Case No. A-18-780184-C
Notice of Entry of Findings of Fact and Conclusions of Law re City's Actions Which Have Resulted in a Taking of Landowners' Property in *180 Land Co. v. City of Las Vegas,* Case No. A-18-780184-C
Summary of August 3, 2022 City Council Meeting Regarding Agenda Item No. 28
City Council Minutes of August 3, 2022 Meeting
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 in *Fore Stars Ltd. v. City of Las Vegas,* Case No. A-18-773268-C

Five of these documents are court orders pursuant to NRS 47.130 and the other two are City public records (City Council Minutes & Agenda) pursuant to NRS 52.085, which are easily verified and accessible on the City's website. Pursuant to NRS 52.085 and NRS 47.130(2)(a), these documents are self-authenticating and whose accuracy cannot reasonably be questioned and, as such, are easily verified and appropriate subject matter for judicial notice. *See* 21B Wright & Miller, *Fed. Prac. & Proc. Evid.* § 5106.4 (stating that judicial records are a source of "reasonably indisputable accuracy" and "may sometimes be

properly noticed to show the acts of the parties…."). These self-authenticating documents are necessary to rebut the City's account of what took place in the other cases and invalidate the City's repeated accusation that the Landowners refused to build and are attempting to fleece the taxpayers.

B. The FFCLs Are Court Records That Disprove The City's Statements.

The Findings of Facts and Conclusions of Law ("FFCLs") in the 17 Acre Case and the 65 Acre Case are relevant to the Landowners' arguments regarding their takings claims and are necessary to rebut the City's contrary assertions as outlined in Landowners' answering brief.

These FFCLs, among other important findings and conclusions detrimental to the City's arguments, contest the City's assertions that 1) the City approved development of the 17 Acres; 2) the Landowners refuse to build on the 17 Acre Property despite the approvals; and 3) the Landowners did not file an application for development of the 65 Acres. Not only does the City elaborate on the 17 Acre and 65 Acre Cases throughout its opening brief,[3] but it concludes that the facts and circumstances surrounding those matters support the City's contention

[3] The City references the 17 Acre property or the "435-Unit Project" more than **50 times** throughout its opening brief.

that there has been no taking[4] and instead the City has conferred "enormous profits" to the Landowners. (AOB at 38-40). In response, the Landowners submitted actual court orders, determined after extensive briefings and hearings which comprehensively provide the relevant facts in each case that: 1) the City took aggressive and systematic actions to preclude all development on the 17 Acre Property, despite the initial approvals; and, 2) the Landowners filed all of the applications the City demanded to develop the 65 Acre Property, but the City denied the applications.[5] These public records belie the City's narrative and inform this Court of the true facts surrounding these matters and, as such, are a part of the public record specific to the instant appeal. Therefore, the Court should take judicial notice of these filed documents and related arguments and deny the City's motion to strike.

---

[4] For example, the City claims that because it approved 435 units on the 17 Acre Property, it can force the remaining 233 acres, including this 35 Acre Property, to remain as open space. (AOB 23-27). Thus, the FFCL in the 17 Acre case concluding that the City prevented development is assuredly relevant here when the City has claimed otherwise.

[5] There are additional findings such as these parcels are separate and individual parcels which debunk the City's contention that all ten parcels that make up the 250 Acres must be considered as one parcel or "a parcel as a whole" as advanced by the City throughout its opening brief.

C. The City Council Meeting And Minutes Are Public Records That Disprove the City's Statements.

The City has repeatedly claimed that Landowners do not want to develop and instead, "filed lawsuits to extort millions of dollars from the public treasury and avoid the typical risks of real estate development, all premised on a false narrative that it has been victimized by the City." (AOB at 37). This serious allegation requires a response especially in light of the Landowners' *multiple attempts to develop over the past eight years*. Thus, the Landowners provided public records as recently as 2022 showing the Landowners' attempts on two different occasions to submit entitlement packages that would have allowed development on the 250 Acres. Both entitlement packages were approved by the City's own Planning Department, and both are proven by public records – the City's own hearing minutes. These City hearing minutes prove the City struck the Landowners' first entitlement package from the City Agenda and, on the second entitlement package, the City asked the Court to strike it from the Court's consideration.[6] Here, too, these public records undoubtedly

[6] One of the City's litigation tactics employed in every case is to move to strike Landowners' responses or development attempts as it did in the 133 Acre case and to later argue that the courts are without jurisdiction to consider it because it was "stricken" from consideration. (AOB at 36-37).

belie the City's contention that the Landowners do not want to build and instead want to extort the public. Therefore, the Court should take judicial notice of these public records and references and deny the City's motion to strike as they are clearly "necessary to rebut appellant's position on appeal."

D. There Is No Legal Authority To "Strike" The Appendix Or Reference To Those Public Records.

No legal authority is presented that would allow the Court to strike the Landowners appendix or portions of the answering brief. *Edwards v. Emperor's Garden Rest.,* 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (appellate courts need not consider issues that are not cogently argued). Instead, the City's citations focus on whether documents are presumptively part of the record on appeal and whether this Court should consider those documents. As provided, the Court should consider the documents and related arguments as they are responsive to the City's assertions in its opening brief. Additionally, the appropriate time to consider the relevance and validity of the documents in the Landowners' appendix is when the Court reads and considers the appellate briefs in their entirety. At that time, this Court will have a full and complete understanding of all facts and the relevance of the Landowners' appendix to the pending issues. Thus, even if the Landowner's appendix and

related arguments did not fall under the rules allowing for judicial notice (which they do), there is no need to strike at this time. Moreover, requiring the Landowners to refile the answering brief (as well as the City's opening brief) would cause undue delay and unnecessary effort on a matter delayed for far too long.

E. Sanctions Are Not Warranted.

The Landowners and their counsel are clearly within the appellate rules and statutes that allow for judicial notice especially in circumstances where the City introduced a position, and these documents and related arguments are necessary for rebuttal. In this case, the City flagrantly misrepresented the facts and circumstances surrounding the 17 and 65 Acre Cases making unfounded, serious accusations against the Landowners. The City seeks to hide the truth from the Court so that its position can go unopposed and requests sanctions claiming that such an experienced appellate lawyer intentionally violated the rules. In reality, the City has presented a false narrative that has not only been rejected by other courts but is the law in those cases. Indeed, failure to inform the Court of these rulings, arguing the opposite, and attempting to hide the true facts from this Court, is the sanctionable action that this Court should not tolerate.

CONCLUSION

The City's motion to strike is not an appropriate vehicle to delve into the merits of this case, such that this Court should deny the motion. This Court should take judicial notice of the documents in the Landowners' appendix because they directly rebut the City's assertions in its opening brief. Regardless, striking is not justified as the Court can decide for itself whether those documents and related arguments are pertinent at the time it fully considers all submitted briefs. Finally, should the Court consider sanctions, it should be against the City for presenting a false narrative to the Court in its opening brief, not informing this Court of pertinent facts, and filing this motion seeking to keep those facts from the Court's consideration.

Dated this 14th day of February 2023.

CLAGGETT & SYKES LAW FIRM

/s/ Micah S. Echols

Micah S. Echols, Esq.

LAW OFFICES OF KERMITT L. WATERS
Kermitt L. Waters, Esq.
James J. Leavitt, Esq.
Michael A. Schneider, Esq.
Autumn L. Waters, Esq.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **LANDOWNERS' OPPOSITION TO CITY OF LAS VEGAS' MOTION TO STRIKE LANDOWNERS' APPENDIX AND ANSWERING BRIEF AND LANDOWNERS' REQUEST FOR JUDICIAL NOTICE** with the Supreme Court of Nevada on the 14th day of February 2023. I will electronically serve the foregoing document in accordance with the Master Service List as follows:

Brandon P. Kemble, Esq.
brandon.kemble@cityofhenderson.com
Amanda B. Kern, Esq.
amanda.kern@cityofhenderson.com
Nicholas G. Vaskov, Esq.
nicholas.vaskov@cityofhenderson.com
CITY OF HENDERSON
240 Water Street, MSC #144, Henderson, Nevada 89009
(702) 267-1200 – Telephone
Attorney for Amicus Curiae Henderson City Attorney

Karl Schleigh Hall, Esq.
RENO CITY ATTORNEY'S OFFICE
P.O. Box 1900, Reno, Nevada 89505
(775) 334-2050 – Telephone
Attorney for Amicus Curiae City of North Las Vegas, City of Reno, and *International Municipal Lawyers Association*

Micaela C. Rustia Moore, Esq.
moorem@cityofnorthlasvegas.com
CITY OF NORTH LAS VEGAS
2250 Las Vegas Blvd., N., Ste. 810, North Las Vegas, Nevada 89030
(702) 633-1057 – Telephone
Attorney for Amicus Curiae City of North Las Vegas, City of Reno, and *International Municipal Lawyers Association*

Steven M. Silva, Esq.
ssilva@nossaman.com
NOSSAMAN, LLP
895 Pinebrook Road, Reno, Nevada 89509
(775) 895-3036 – Telephone
Attorney for Amicus Curiae City of North Las Vegas, City of Reno, and *International Municipal Lawyers Association*

Matthew Leo Cahoon, Esq.
attorney@cityofelynv.gov
501 Mill Street, Ely, Nevada 89301
(775) 289-2430 – Telephone
Attorney for Amicus Curiae Nevada League of Cities

Robert D. Sweetin, Esq.
rds@dvclaw.com
DAVISON VAN CLEVE, PC
4675 West Teco Avenue, Ste. 230, Las Vegas, Nevada 89118
(725) 735-1715 – Telephone
Attorney for Amicus Curiae Nevada League of Cities

George F. Ogilvie III, Esq.
gogilvie@mcdonaldcarano.com
John Christopher Molina, Esq.
cmolina@mcdonaldcarano.com
Amanda C. Yen, Esq.
ayen@mcdonaldcarano.com
MCDONALD CARANO, LLP
2300 West Sahara Avenue, Ste., 1200 Las Vegas, Nevada 89102
(702) 873-4100 – Telephone
Attorneys for City of Las Vegas

Bryan K. Scott, Esq.
bscott@lasvegasnevada.gov
Philip R. Byrnes, Esq.
pbyrnes@lasvegasnevada.gov
Rebecca L. Wolfson, Esq.
rwolfson@lasvegasnevada.gov
Jeffrey L. Galliher, Esq.
jgalliher@LasVegasNevada.gov
OFFICE OF THE CITY ATTORNEY
495 South Main Street, 6th Floor, Las Vegas, Nevada 89101
(702) 229-6629 – Telephone
Attorneys for City of Las Vegas

Debbie A. Leonard, Esq.
debbie@leonardlawpc.com
LEONARD LAW, PC
955 South Virginia Street, Ste. 220, Reno, Nevada 89502
(775) 964-4656 – Telephone
Attorney for City of Las Vegas

Andrew W. Schwartz (pro hac vice)
schwartz@smwlaw.com
Lauren M. Tarpey (pro hac vice)
ltarpey@smwlaw.com
396 Hayes Street San Francisco, California 94102
SHUTE, MIHALY & WEINBERGER, LLP
(415) 552-7272 – Telephone
Attorney for City of Las Vegas

Kermitt L. Waters, Esq.
kermitt@kermittwaters.com
James J. Leavitt, Esq.,
jim@kermittwaters.com
Michael Schneider, Esq.
michael@kermittwaters.com
Autumn L. Waters, Esq.
autumn@kermittwaters.com
LAW OFFICES OF KERMITT L. WATERS
704 South 9th Street, Las Vegas, Nevada 89101
(702) 733-8877 – Telephone
Attorneys for 180 Land Co., LLC and Fore Stars Ltd.

Elizabeth Ghanem, Esq.
eham@ehbcompanies.com
EHB COMPANIES, LLC
1215 South Fort Apache Road, Ste. 120, Las Vegas, Nevada 89117
(702) 940-6930 – Telephone
Attorneys for 180 Land Co., LLC and Fore Stars Ltd.

/s/ Anna Gresl

Anna Gresl, an employee of
CLAGGETT & SYKES LAW FIRM