

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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

Appellants/Cross-Respondents,

vs.

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

Respondent/Cross-Appellant.

No. 84345

Electronically Filed
Feb 17 2023 04:01 PM
Elizabeth A. Brown
Clerk of Supreme Court

No. 84640

**LANDOWNERS'
OPPOSITION TO CITY'S
MOTION FOR EXTENSION
OF TIME TO FILE REPLY
BRIEF ON APPEAL AND
ANSWERING BRIEF ON
CROSS-APPEAL**

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**LANDOWNERS' OPPOSITION TO
CITY'S MOTION FOR EXTENSION OF TIME TO FILE
REPLY BRIEF ON APPEAL AND
ANSWERING BRIEF ON CROSS-APPEAL**

In its motion, the City asks for an extension of 30 days after this Court resolves the City's pending motion to strike to file its combined reply on appeal and answering brief on cross-appeal. However, the City's position presumes that it cannot work on the draft of its combined brief while the Court decides the motion to strike. Yet, the City should not be permitted to stand still during this interim, particularly because the Court expedited this appeal. *See Exhibit 1.*

The Landowners acquired the land that is the subject of this dispute *eight years ago*. As stated in the answering brief, the City delayed the Landowners for over 2½ years before finally foreclosing all development of their land. During the litigation, the City has intentionally delayed these cases by, among other things, removing all cases to federal court (long after the removal window closed), filing multiple and repeated motions to dismiss, filing motions to reconsider, and continually arguing issues already decided by the several district courts, causing every case to be up against the five-year rule of NRCP 41(e). Justice delayed is justice denied has become a reality to the Landowners for matters that

are supposed to be brought to trial by the government within two years. *See County of Clark v. Alper*, 100 Nev. 382, 391, 685 P.2d 943, 949 (1984) (it is the government's affirmative duty to move an inverse condemnation action to trial within two years of the commencement of the action).

Importantly, the City's pending motion to strike was designed to delay the briefing in this appeal because all the documents that the City claimed were "outside the record" were court orders and City documents necessary to rebut specific arguments that the City raised in its opening brief. As reflected in the attached District Court order (*see Exhibit 2*, at 4-5), the City has intentionally delayed these matters. Therefore, the Landowners request that this Court deny the City's request for an extension of 30 days and expedite its ruling on the City's motion to strike. Alternatively, the Court should limit the extension for the City's combined brief following the Court's resolution of the pending motion to strike to no more than 15 days, which is reasonable since the City should have already begun drafting its combined brief and has three law firms working on this appeal (along with the City's own attorneys).

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///

Fifteen days is more than an adequate amount of time for the City to adjust its combined brief, given the vast resources that it has dedicated to this appeal.

Dated this 17th day of February 2023.

CLAGGETT & SYKES LAW FIRM

/s/ Micah S. Echols

Micah S. Echols, Esq.

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EXHIBIT 1

EXHIBIT 1

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.,

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

FILED

JUN 20 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

No. 84640

ORDER REGARDING MOTIONS

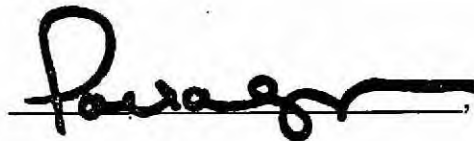
City of Las Vegas, appellant in Docket No. 84345 and respondent/cross-appellant in Docket No. 84640 has filed a motion to consolidate these appeals and cross-appeal on the ground that they arise from the same district court litigation and involve the same factual and procedural background and the same parties and issues. NRAP 3(b)(2). Cause appearing, the motion is granted, and these appeals and cross-appeal shall be consolidated for all appellate purposes.

Respondents and appellants/cross-respondents 180 Land Co. LLC, and Fore Stars Ltd. (collectively, Landowners) have filed a response to the motion to consolidate in which they agree to consolidation but move

to expedite the briefing based on financial pressures devolving from the imposition of the stay. The motion is opposed, and the Landowners have filed a reply.

The motion to expedite is granted to the following extent. City of Las Vegas shall have until August 16, 2022, to file and serve an opening brief in Docket No. 84345. Landowners shall likewise have until August 16, 2022, to file an opening brief on appeal in Docket No. 84640. Thereafter, briefing shall proceed in accordance with NRAP 28.1.

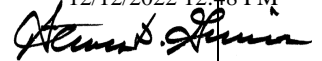
It is so ORDERED.

 C.J.

cc: McDonald Carano LLP/Las Vegas
Shute, Mihaly & Weinberger, LLP
Las Vegas City Attorney
Leonard Law, PC
Law Offices of Kermitt L. Waters
EHB Companies, LLC

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

ORDR

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Attorneys for Plaintiffs Landowners

DISTRICT COURT

CLARK COUNTY, NEVADA

FORE STARS, LTD; SEVENTY ACRES LLC,
a Nevada liability company; DOE
INDIVIDUALS I through X, DOE
CORPORATIONS I through X, and DOE
LIMITED LIABILITIES COMPANIES I
through X,

Plaintiffs,

vs.

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

Defendants.

Case No.: A-18-773268-C

Dept. No.: XXIX

ORDER GRANTING

**PLAINTIFF LANDOWNERS' MOTION
TO DETERMINE DATE OF VALUE
PURSUANT TO NRS 37.120**

Date of Hearing: November 15, 2022

Time of Hearing: 9:00 a.m.

Plaintiff Landowners' Motion To Determine Date of Value Pursuant to NRS 37.120,
having come before the Court on November 15, 2022, with James J. Leavitt, Esq., Kermitt L.
Waters, Esq., and Autumn Waters, Esq., of the Law Offices of Kermitt L Waters and Plaintiff's

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

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

- 8 1. This Court previously held: 1) “the legally permitted uses by right of the 17 Acre Property
9 [at issue in this matter] are single-family and multi-family residential;” 2) “that the City
10 engaged in actions to authorize the public to enter onto the 17 Acre Property and preserve
11 the 17 Acre Property for use by the public and surrounding neighbors meeting Nevada’s
12 standard for a per se regulatory taking thereby resulting in the taking of the entire 17 Acre
13 Property by inverse condemnation;” 3) “[w]hen the government engages in per se
14 regulatory taking actions, just compensation is automatically warranted, meaning there is
15 no defense to the taking;” and, 4) “[a] jury trial is scheduled for December 5, 2022, wherein
16 a jury will determine the fair market value of the 17 Acre Property **as of the applicable**
17 **date of valuation.**” *See Findings of Fact and Conclusions of Law Regarding Plaintiff*
18 *Landowners’ Motion to Determine “Property Interest.” Filed September 16, 2021, p. 16;*
19 *Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners’ Motion to*
20 *Determine Take and for Summary Judgment on the Third and Fifth Claims for Relief:*
21 *Granting Summary Judgment on the Landowners’ Fifth Claim for Relief and Denying*
22 *Summary Judgment on the Landowners Third Claim for Relief, filed October 27, 2022,*
23 *findings 147, 127, and conclusion (“FFCL Re: Take”).* Emphasis supplied.

- 1 2. To determine the “applicable date of valuation,” the Landowners’ brought before this Court
2 Plaintiff Landowners’ Motion To Determine Date of Value Pursuant to NRS 37.120.
- 3 3. The Landowners’ motion requested that this Court find the date of valuation in this case to
4 be October 10, 2022, pursuant to NRS 37.120. October 10, 2022 is the date this matter
5 was first set for trial, but the trial was continued to December 5, 2022, to accommodate the
6 City’s counsel’s sabbatical.
- 7 4. The City opposed the Landowners’ motion, arguing that NRS 37.120 does not apply to
8 inverse condemnation actions, like the pending action, and the date of valuation should be
9 the “date of taking.”
- 10 5. Having reviewed Landowners’ Motion To Determine Date of Value Pursuant to NRS
11 37.120 and the related briefings and oral arguments on the matter, this Court hereby
12 GRANTS Plaintiff Landowners’ motion. The Court is persuaded as to the controlling
13 language in *County of Clark v. Alper*, 100 Nev. 382, 391, 685 P. 2d 943, 949 (1984) and
14 *McCarran Int’l. Airport v. Sisolak*, 122 Nev. 645, 137 P.3d 1110, 1126-1127 (2006), as it
15 applies to the issue set forth by the Landowners’ motion.
- 16 6. In the *Alper* case, the Nevada Supreme Court held NRS 37.120 applies to set the date of
17 valuation in inverse condemnation cases. The Court held “NRS 37.120(1)(b) places the
18 burden on the government to move the case to trial within two years after the case is
19 commenced” and “[i]f it does not, and the delay is not primarily caused by the actions of
20 the landowner, the government must account for the increased value of the property.”
21 *Alper*, at 391.
- 22 7. NRS 37.120 was also applied to determine the date of valuation in *Sisolak*, which was an
23 inverse condemnation case.
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1 8. Therefore, this Court will apply NRS 37.120 to set the date of valuation in this inverse
2 condemnation case.

3 9. NRS 37.120(1) provides in pertinent part:

4 “To assess compensation and damages as provided in NRS 37.110, the date of the first
5 service of the summons is the date of valuation, except that, if the action is not tried within
6 2 years after the date of the first service of the summons, and the court makes a written
7 finding that the delay is caused primarily by the [government] or is caused by congestion
8 or backlog in the calendar of the court, the date of valuation is the date of the actual
9 commencement of the trial.”
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11 10. Applying NRS 37.120, the date of valuation is the date of trial.
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13 11. The date of first service of summons in this case was May 17, 2018, and the date this case
14 was set for trial was October 10, 2022. Thus, there has been more than a 2 year delay
15 from the date of the first service of summons to the date of trial.

16 12. As set forth in Landowners’ moving papers, the delay (from the date of service of summons
17 to the date of trial) is 1,663 days and the City is attributed with, at least, 1,488 days of this
18 delay, because the City filed three motions to dismiss, removed the matter to federal court
19 (remand order back to State court was 1 year later). The City did not file an Answer to the
20 Inverse Condemnation Complaint until March 18, 2021, nearly three years after service of
21 summons.
22

23 13. The City did not contest in its opposition or at oral argument that the delay in bringing this
24 matter to trial is attributed to the City or that the delay in bringing this matter to trial was
25 caused primarily by the City.
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1 14. Based upon the record, this Court finds that this matter was not tried within 2 years after
2 the date of the first service of the summons, and hereby enters a written finding that the
3 delay in bringing this matter to trial within 2 years was caused primarily by the City and,
4 therefore, the date of valuation is the date of trial.

5 15. The date of valuation shall be October 10, 2022, even though this matter is currently set
6 for a December 5, 2022, trial, because the City caused a continuance of the trial date (to
7 accommodate the City's counsel's sabbatical) after discovery closed. Given that the
8 Landowners' appraiser used the October 10, 2022, date to determine the fair market value
9 of the 17 Acre Property during discovery and because October 10, 2022, is commensurate
10 to the actual trial date of December 5, 2022, the Court will maintain October 10, 2022 as
11 the date of valuation.
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14 16. Therefore, the sole issue that will be presented to and decided by the jury at the December
15 5, 2022, trial, is "the fair market value of the 17 Acre Property as of the applicable date of
16 valuation" - October 10, 2022. *See FFCL Re: Take, conclusion.*
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1 **IT IS HEREBY ORDERED** that Plaintiff Landowners' Motion To Determine Date of
2 Value Pursuant to NRS 37.120 is **GRANTED** and the sole issue to be presented to and decided
3 by the jury at the December 5, 2022, trial, is "the fair market value of the 17 Acre Property as of
4 the applicable date of valuation" - October 10, 2022.

5 Dated this 12th day of December, 2022

6 
7 _____

8 **DBB 1AF 40F6 AA6E**
9 **David M Jones**
 District Court Judge

10 Submitted By:

11 LAW OFFICES OF KERMITT L. WATERS

12 By: /s/ James J. Leavitt
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14 James J. Leavitt (NV Bar No. 6032)
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16 Autumn L. Waters (NV Bar No. 8917)
17 704 South Ninth Street
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19 **EHB COMPANIES**
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23 ***Attorneys for Plaintiffs Landowners***

Content Reviewed and Approved by:

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By: Declined to Sign
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From: [James Leavitt](#)
To: [George F. Ogilvie III](#); [Christopher Molina](#)
Cc: [Autumn Waters](#)
Subject: Landowners' Proposed Orders on DOV and the Pretrial Conference Request - 17 Acre Case
Date: Monday, November 21, 2022 1:46:00 PM
Attachments: [Order Granting DOV Motion.docx](#)
[Order Holding Moot LO Motion for Pretrial Conference.docx](#)

George:

I hope you had a good weekend.

Attached are the following Landowners' proposed orders relevant to the matters before Judge Jones at the November 15, 2022, hearing:

Order Granting Plaintiff Landowners' Motion to Determine Date of Value Pursuant to NRS 37.120;
and,
Order Re: Plaintiff Landowners' Motion for NRCP 16 Pretrial Conference on Order Shortening Time.

Please let me know if we have your authority to affix your signature to these two orders. We intend to submit both Orders to Judge Jones Wednesday afternoon.

Thank you and have a great Thanksgiving.

Jim

Jim Leavitt, Esq.
Law Offices of Kermitt L. Waters
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1 **CSERV**

2
3 DISTRICT COURT
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 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:

14 Service Date: 12/12/2022

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **LANDOWNERS' OPPOSITION TO CITY'S MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF ON APPEAL AND ANSWERING BRIEF ON CROSS-APPEAL** with the Supreme Court of Nevada on the 17th day of February 2023. I will electronically serve the foregoing document in accordance with the Master Service List as follows:

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