

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 84345

and

Case No. 84640

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Elizabeth A. Brown

Clerk of Supreme Court

CITY OF LAS VEGAS, a political subdivision of the State of Nevada

Appellant

v.

180 LAND CO, LLC, a Nevada limited-liability company, FORE STARS LTD.,
a Nevada limited liability company,

Respondents

District Court Case No.: A-17-758528-J
Eighth Judicial District Court of Nevada

**CITY OF LAS VEGAS' REPLY IN SUPPORT OF
MOTION TO STRIKE IMPROPER PORTIONS OF
REPLY BRIEF ON CROSS APPEAL**

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Attorneys for City of Las Vegas

POINTS AND AUTHORITIES

A. The Developer's Opposition Underscores Its Disregard For The Rules

Proving precisely the points made in the City's Motion to Strike, the Developer's Opposition doubles down on its rule violations by making **additional** arguments regarding the appeal that are far outside the scope of the cross-appeal or even the Motion to Strike. The Developer cannot justify its abuses with the same pretextual excuses (at 2-4) it offered in its reply brief on cross-appeal. Because neither side disputes that abuse of discretion is the standard of review for the cross-appeal, the Developer's ongoing discussion regarding the applicability of the substantial evidence standard in the appeal further violates NRAP 28.1(c) and the parties' stipulation. Had the Developer wanted to emphasize the standard of review for the appeal or provide argument regarding that standard, the time to do so was in its answering brief on appeal, not the reply brief on cross-appeal. *See* NRAP 28.1(c)(4).

B. The City Is Not Improperly Limiting The Facts, Law, And Arguments Before The Court; The Developer Is Improperly Expanding The Matters On Appeal Beyond What It Presented To The District Court In This Case

The Developer had every opportunity to present evidence and argument to the district court in this case to support its position. The fact that the Developer omitted evidence or arguments below on which it now wants to rely to shore up the faulty

Judgment is a situation of its own making. The Developer's omissions do not justify its rule violations.

To the contrary, the law on this topic is clear: Because an appellate court "cannot consider matters not properly appearing in the record on appeal," a party cannot make extra-record arguments on appeal. *Tabish v. State*, 119 Nev. 293, 312, 72 P.3d 584, 596 (2003). The reviewing court must "examine the district court's decision based on the state of affairs at the time of that decision." *R.R. St. & Co. Inc. v. Transp. Ins. Co.*, 656 F.3d 966, 974 (9th Cir. 2011). There are no special exceptions regarding the scope of review in inverse condemnation appeals, as the Developer contends (at 5). With its motions to strike, the City is simply taking proper steps to respectfully ensure the Court follows these basic tenets of appellate review; it is not, as Developer argues (at 4), "improperly limit[ing]" the information to be considered.

C. The Requirement That A Party Comply With The Rules Is Not Limited To A Showing Of Harm Or Prejudice To The Opposing Party, But Even If It Were, The Developer's Rules Violations Prejudice The City

The Rules of Appellate Procedure may only be suspended by the Court, not unilaterally by a party. NRAP 2. The purpose of the Rules is "to secure the proper and efficient administration of the business and affairs of the courts and to promote and facilitate the administration of justice by the courts." NRAP 1(c). Nothing in

NRAP 28.1(c)(4) restricts the Rule's applicability to situations in which a party demonstrates prejudice.

Rather, the plain language of the Rule indicates – without exception – that a reply brief on cross-appeal “must be limited to the issues presented by the cross-appeal.” *Id.* This hard-and-fast rule is designed to prevent a litany of motions to strike and requests to file sur-reply briefs that would naturally ensue absent a clear line of demarcation for the scope of what can be included in each brief and the point at which briefing ends. As a result, the City's Motion to Strike does not turn on whether it can demonstrate harm arising from the Developer's rule violations.

Even if it did, the Developer's disregard for the Rules *does* prejudice the City. The four-brief schedule in NRAP 28.1 is designed to provide the appellant with the last word in its appeal and to prevent the cross-appellant from gaining an unfair advantage. It also puts appropriate limits on the scope of briefing to avoid the very situation the Developer's improper conduct caused here. The City is challenging a \$34.1-million Judgment and \$14 million in additional sums with huge stakes for the public treasury, the City's discretion over land use decisions, and Nevada's entire system of land use regulation. The Developer's gamesmanship hamstringing the City's case and requires the City to engage in motion practice outside the briefs to ask the Court to enforce the Rules. The Rules are designed to prevent this type of harm.

D. An Irrelevant Supreme Court Decision Cannot Serve As Post-Hoc Rationalization For The Developer's Rules Violation

Highlighting its utter disregard for the Rules, the Developer's Opposition contains *even more* improper argument relating to the appeal than the Developer included in the reply brief on cross-appeal by discussing *Tyler v. Hennepin County*, No. 22-166, 2023 WL 3632754, 143 S. Ct. 644 (U.S. May 25, 2023). NRAP 31(e) contains a specific procedure to bring new authorities to the Court's attention after briefing is completed, and the Developer separately availed itself of that procedure. A notice of supplemental authorities must "state concisely **and without argument** the legal proposition for which each supplemental authority is cited. The notice **may not raise any new points or issues.**" *Id.* (emphases added). The Developer's Opposition improperly provides argument regarding the *Hennepin County* case on new points and issues in violation of the Rule. The Developer cannot use its opposition to the Motion to Strike to circumvent the restrictions of NRAP 31(e).

Even if that were allowed, *Hennepin County* has no bearing on the Motion to Strike or the City's appeal. *Hennepin County* stands for the proposition that a property interest is determined from "state law," "traditional property law principles," "historical practice," and Supreme Court precedent. *Id.* at *4. As is clear from the City's Opening and Reply Briefs on appeal, all of these sources confirm: (1) the Developer had no property interest in a zoning designation that allowed it to

build any housing development so long as the density did not exceed the zoning limit; (2) the City Council had discretion to deny the Developer's application to convert open space into housing; and (3) the City's exercise of that discretion was not a taking. As a result, not only is the Developer's argument regarding *Hennepin County* improper, but it is also irrelevant.

CONCLUSION

Because the Developer has and continues to violate the Rules to gain an unfair advantage in the appeal, the City requests that the Court grant its Motion to Strike.

AFFIRMATION

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 6th day of June, 2023.

BY: /s/ Debbie Leonard

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Leonard Law, PC, and that on this date a copy of the foregoing document was electronically filed with the Clerk of the Court for the Nevada Supreme Court on today's date by using the Nevada Supreme Court's E-Filing system (E-Flex). Participants in the case who are registered with E-Flex as users will be served by the E-Flex system. All others will be served by U.S. mail.

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Dated: June 6, 2023

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