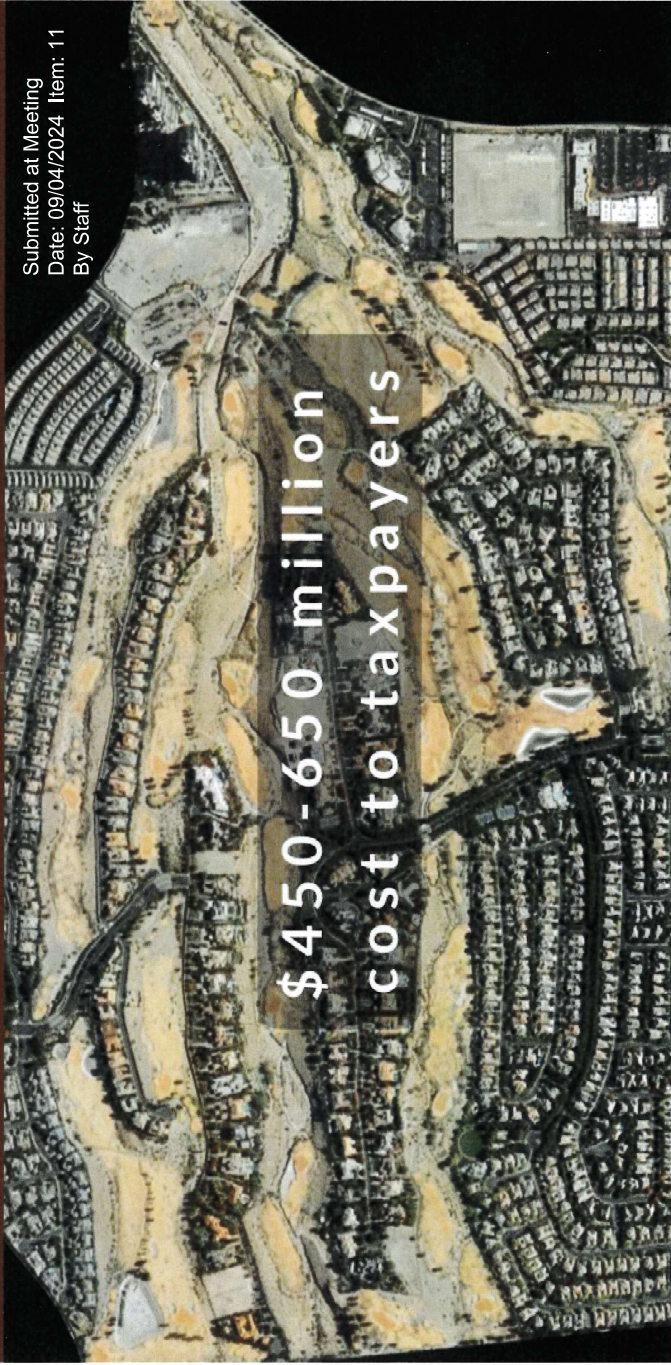


An aerial photograph showing a golf course with several green fairways and sand traps. To the right of the golf course is a large, rectangular building, likely the clubhouse. The surrounding area includes some residential or commercial buildings and parking lots.

\$7.5 million golf course & clubhouse  
paid by developer in March 2015

Submitted at Meeting  
Date: 09/04/2024 Item: 11  
By Staff

An aerial photograph showing a golf course with several green fairways and sand traps. To the right of the golf course is a large, rectangular building, likely the clubhouse. The surrounding area includes some residential or commercial buildings and parking lots.

\$450-650 million  
cost to taxpayers



From: [REDACTED]  
Location: 495 S. Main Street/7th Floor/Councilman Seroka's Office  
Importance: Normal  
Subject: Accepted: FW: [Confidential] Meeting with Craig Billings @ Wed Sep 26, 2018 09:00 - 10:00 (PDT) (Steven Seroka)  
Start Date/Time: Wed 9/26/2018 4:00:00 PM  
End Date/Time: Wed 9/26/2018 5:00:00 PM  
[invite.ics](#)

\*\*\*\*\*  
Craig Billings has accepted this invitation.

**FW: [Confidential] Meeting with Craig Billings**

When Wed Sep 26, 2018 09:00 – 10:00 Pacific Time - Los Angeles

Where 495 S. Main Street/7th Floor/Councilman Seroka's Office ([map](#))

Calendar Steven Seroka

Who

- Steven Seroka - organizer
- Craig Billings - creator

-----Original Appointment-----

From: jvolmar@LasVegasNevada.GOV > On Behalf Of Steven Seroka  
Sent: Monday, September 24, 2018 4:31 PM  
To: Steven Seroka; Billings, Craig; Jerry Walker; Joseph Volmar; Marco Henry  
Subject: Meeting with Craig Billings  
When: Wednesday, September 26, 2018 09:00 AM-10:00 AM (UTC-08:00) Pacific Time (US & Canada).  
Where: 495 S. Main Street/7th Floor/Councilman Seroka's Office

--Note that (jvolmar@LasVegasNevada.GOV) is an external email. Forward unfamiliar emails to WE Protect.--

Councilman

Thank you so much for taking the time to meet last night. I look forward to meeting with the City Engineer regarding grate coverage for the wash tunnels. In the interim, I will speak to a highly regarded civil engineering firm that we use here at Wynn to understand what technologies other cities with similar issues are using. I will also be socializing the broader plan for the tunnels with my fellow Aventura residents at a HOA meeting next Tuesday.

As discussed, I will call Frank Schrek this morning to better understand (and then likely support) your proposal regarding the acquisition and re-zoning of green space land. Please can you tell me, to what email address should I direct my support?

Lastly, who do I need to bug in order to make sure that the park on Hualapai is closed on time, the bollards put up and the bathroom locked? As the Captain mentioned, I don't think it's in anyone's interest to have prostitution, drug use and overall mischief happening in that park at night. I actually stopped by the park just now on my way to the gym and spoke to Jason, a city employee responsible for opening the park. He told me that this morning was the first time he has ever see the car barriers closed upon his arrival and that he regularly sees cars in the park all early morning and day with people living out of their cars... that's right, living out of their cars... a major (and unacceptable) crime risk.

I look forward to seeing you again soon and have a great weekend!

Craig

Craig S. Billings  
CFO  
Wynn Resorts  
[craig.billings@wynnresorts.com](mailto:craig.billings@wynnresorts.com)

Submitted at City Council

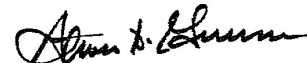
Date 9/4/24 Item 11  
By: Johan Louie

Invitation from: [Google Calendar](#)

You are receiving this courtesy email at the account sseroka@lasvegasnevada.gov because you are an attendee of this event.

CLV000009





CLERK OF THE COURT

1 DECL

James J. Jimmerson, Esq.

2 Nevada State Bar No. 00264

**JIMMERSON LAW FIRM, P.C.**

3 415 South 6th Street, Suite 100

Las Vegas, Nevada 89101

4 Telephone: (702) 388-7171

Facsimile: (702) 380-6422

5 Email: [jjj@jimmersonlawfirm.com](mailto:jjj@jimmersonlawfirm.com)

*Attorneys for Fore Stars, Ltd.,*

6 *180 Land Co., LLC and*

*Seventy Acres, LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

7  
8  
9 JACK B. BINION, an individual; DUNCAN R.  
and IRENE LEE, individuals and Trustees of the  
10 LEE FAMILY TRUST; FRANK A. SCHRECK,  
an individual; TURNER INVESTMENTS,  
11 LTD., a Nevada Limited Liability Company;  
ROGER P. and CAROL YN G. WAGNER,  
12 individuals and Trustees of the WAGNER  
FAMILY TRUST; BETTY ENGLESTAD AS  
13 TRUSTEE OF THE BETTY ENGLESTAD  
TRUST; PYRAMID LAKE HOLDINGS, LLC.;  
14 JASON AND SHEREEN AWAD AS  
TRUSTEES OF THE AWAD ASSET  
15 PROTECTION TRUST; THOMAS LOVE AS  
TRUSTEE OF THE ZENA TRUST; STEVE  
16 AND KAREN THOMAS AS TRUSTEES OF  
THE STEVE AND KAREN THOMAS TRUST;  
17 SUSAN SULLIVAN AS TRUSTEE OF THE  
KENNETH J.SULLIVAN FAMILY TRUST,  
18 AND DR. GREGORY BIGLER AND SALLY  
BIGLER

Plaintiffs,

19 vs.

20 FORE STARS, LTD., a Nevada Limited  
Liability Company; 180 LAND CO., LLC, a  
21 Nevada Limited Liability Company; SEVENTY  
ACRES, LLC, a Nevada Limited Liability  
22 Company; and THE CITY OF LAS VEGAS,

23 Defendants.  
24  
25  
26  
27  
28

CASE NO. A-15-729053-B

DEPT. NO. XXVII

Courtroom #3A

**DECLARATION OF VICKIE DEHART**



**DECLARATION OF VICKIE DEHART**

STATE OF NEVADA       )  
  ) ss:  
COUNTY OF CLARK       )

VICKIE DEHART, declares, alleges and states as follows:

1. I am one of the Managers of Defendants in this matter. I have personal knowledge of all matters contained herein, and am competent to testify thereto, except for those matter stated on information and belief, and to those matters, I believe them to be true. I make this Declaration in support of Defendants' DEFENDANTS FORE STARS, LTD., 180 LAND CO., LLC AND SEVENTY ACRES, LLC'S REPLY in support of MOTION TO DISMISS FIRST AMENDED COMPLAINT and OPPOSITION TO COUNTERMOTION UNDER NRCP 56(f).

2. On or about December 29, 2015, Mr. Schreck bragged that his group is "politically connected" and could stop the development plans for the Land from moving forward. Mr. Schreck accused us of having "colluded" with the City, threatened to go to the newspaper, and declared that we needed to understand how powerful Schreck's group is. It was then that Mr. Schreck openly revealed that he wanted 180 acres, with valuable water rights deeded to him and his group, and only then would they "allow" us to develop the remainder of the Land. When Mr. Schreck was asked what he wanted to pay for the 180 acres and water rights, Schreck said "not a penny." This attempt at extortion was promptly reported to the FBI.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

  
VICKIE DEHART

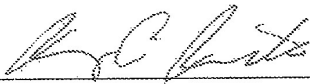


1  
2  
3  
4 **CERTIFICATE OF SERVICE**

5 Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a  
6 true and correct copy of the foregoing *Declaration of Vickie Dehart* to be filed and e-served via the  
7 Court's Wiznet E-Filing system on the parties listed below. The date and time of the electronic proof  
8 of service is in place of the date and place of deposit in the mail.

9  
10 Todd L. Bice, Esq.  
11 Dustun H. Holmes, Esq.  
12 Pisanelli Bice, PLLC  
13 400 South 7th Street, Suite 300  
14 Las Vegas, NV 89101  
15 *Counsel for Plaintiffs*

16  
17 Bradford R. Jerbic, Esq.  
18 Jeffry M. Dorocak, Esq.  
19 495 South Main Street  
20 Sixth Floor  
21 Las Vegas, Nevada 89101  
22 *Attorneys for the City of Las Vegas*

23  
24  
25  
26  
27  
28  
  
AN EMPLOYEE OF THE JIMMERSON LAW FIRM, P.C.



## DECLARATION OF YOHAN LOWIE

I, Yohan Lowie, declare under penalty of perjury that the foregoing is true and correct:

1. I Make this Declaration in support of Plaintiff Landowners' Motion for a New Trial and to Amend Related to: Judge Herndon's Findings of Fact and Conclusions of Law Granting City of Las Vegas Motion for Summary Judgment, Entered on December 30, 2020. This Declaration supplements my previous Declaration submitted in this matter, dated November 23, 2020, and identified as Exhibit 22.
2. The consideration for the acquisition of the membership interest of Fore Stars Ltd comprised of all the assets and liabilities which included five parcels of land amounting to approximately 250 acres of residentially zoned land "250 Acre Residential Zoned Land" or "Land" which was being leased by a third party golf course operator at the time. This acquisition was significant and included : 1) approximately 15 years of work, resources, sacrifice and effort; 2) entering into an approximately \$100 million deal with Peccole (the original owner of the Land) and a third party that involved complex land transactions related to large tracts of land, including Tivoli Village, the Queensridge Towers, Hualapai Commons (at Sahara and Hualapai Way), and Fore Stars Ltd, to obtain the right to acquire the 250 Acre Residential Zoned Land. Within this complex deal, \$45 million was directly allocated to the acquisition of Fore Stars which included the 250 Acre Residential Zoned Land.
3. Additionally, the acquisition of Fore Stars Ltd., which owned the 250 Acre Residential Zoned Land, comprised all of its assets and liabilities, which included the Land, which the golf course was operating on at a substantial loss; the post-closing obligation to resolve a lot line dispute wherein the Queensridge Towers were constructed on part of the 250 Acre Residential Zoned Land; any liabilities of Fore Stars, Ltd.; all existing contracts with suppliers and vendors; and, all leases and agreements associated with any equipment on the land.
4. In all my years of dealings with the Peccoles and with the surrounding properties (since 1996 to the present) that involved a multitude of real estate transactions, the Peccole Ranch Master Plan north of Charleston Blvd. was never mentioned; it never appeared on any document, never appeared on any title to land, never in any CC&Rs, never on any entitlement package, and never on any lenders document. The Peccole Ranch Master Plan was then later used by the



*Steven D. Grierson*

1 **NOAS**  
Jeff Dorocak (NSBN 13109)  
2 **CITY ATTORNEY'S OFFICE**  
495 S. Main Street, 6th Floor  
3 Las Vegas, NV 89101  
Phone: 702.229.6629  
4 Fax: 702.386.1749  
jdorocak@lasvegsnevada.com

5 *Attorneys for Defendant City of Las Vegas*

6 **DISTRICT COURT**  
7  
8 **CLARK COUNTY, NEVADA**

9 **FORE STARS, LTD, SEVENTY ACRES,**  
LLC, a Nevada limited liability company,  
10 **DOE INDIVIDUALS I through X, DOE**  
CORPORATIONS I through X, DOE  
11 **LIMITED LIABILITY COMPANIES I**  
through X,

12 **Plaintiffs,**

13 **v.**

14 **CITY OF LAS VEGAS, political subdivision**  
of the State of Nevada, **THE EIGHTH**  
15 **JUDICIAL DISTRICT COURT, County of**  
Clark, State of Nevada, **DEPARTMENT 24**  
16 **(the HONORABLE JIM CROCKETT,**  
DISTRICT COURT JUDGE IN HIS  
17 **OFFICIAL CAPACITY), ROE government**  
entities I through X, ROE Corporations I  
18 through X, ROE Individuals I through X, ROE  
19 **LIMITED LIABILITY COMPANIES I**  
through X, ROE quasi-governmental entities I  
20 through X,

21 **Defendants.**

Case No. A-18-773268-C

Dept. No.: 17

**CITY OF LAS VEGAS'**  
**NOTICE OF APPEAL**

22  
23 Notice is hereby given that Defendant CITY OF LAS VEGAS appeals to the Supreme Court  
24 of Nevada from:

- 25 1) Findings of Fact and Conclusions of Law: Granting the Landowners' Motion for  
26 Summary Judgment on the Value of the Subject Property and Denying the City's  
27 Countermotion for Summary Judgment on Just Compensation filed on January 4,  
2023, notice of entry of which was entered on January 6, 2023, attached as **Exhibit**  
28 **A**, and all decisions, rulings and interlocutory orders made appealable by the  
foregoing, including, but not limited to, Findings of Fact and Conclusions of Law

Submitted at City Council

Date 9/4/24 Item 11

By Vickie Dehant

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 filed October 27, 2022;

- 2) Findings of Fact and Conclusions of Law Granting in Part and Denying in Part Plaintiff Landowners' EDCR Rule 2.24 Motion to Clarify or Reconsider Ruling on Summary Judgment on Value and NRCP Rule 52, 59, and 60 Request to Amend on Order Shortening Time filed on August 1, 2024, notice of entry of which was entered on August 1, 2024, attached as **Exhibit B**;
- 3) Findings of Fact and Conclusions of Law Granting Plaintiff Landowners' Motion for Reimbursement of Property Taxes filed on August 1, 2024, notice of entry of which was entered on August 1, 2024, attached as **Exhibit C**;
- 4) Findings of Fact and Conclusions of Law Granting Plaintiff Landowners' Motion to Determine Prejudgment Interest filed on August 1, 2024, notice of entry of which was entered on August 1, 2024, attached as **Exhibit D**;
- 5) Order Granting in Part and Denying in Part the City of Las Vegas' Motion to Retax Memorandum of Costs filed on August 1, 2024, notice of entry of which was entered on August 1, 2024, attached as **Exhibit E**; and
- 6) Findings of Fact and Conclusions of Law Granting in Part and Denying in Part Plaintiff Landowners' Motion for Attorney Fees filed on August 5, 2024, notice of entry of which was entered on August 6, 2024, attached as **Exhibit F**.



1 Dated this 30th day of August, 2024

2 McDONALD CARANO LLP

3  
4 By /s/ George F. Ogilvie III

5 George F. Ogilvie III (NSBN 3552)  
6 J. Christopher Molina (NSBN 14092)  
7 2300 West Sahara Avenue, Suite 1200  
8 Las Vegas, Nevada 89102

9 LAS VEGAS CITY ATTORNEY'S OFFICE  
10 Jeff Dorocak (NSBN 13109)  
11 495 South Main Street, 6<sup>th</sup> Floor  
12 Las Vegas, Nevada 89101

13 SHUTE, MIHALY & WEINBERGER, LLP  
14 Andrew W. Schwartz (CA Bar No. 87699)  
15 (Admitted *pro hac vice*)  
16 Lauren M. Tarpey (CA Bar No. 321775)  
17 (Admitted *pro hac vice*)  
18 396 Hayes Street  
19 San Francisco, California 94102

20 *Attorneys for Defendant City of Las Vegas*

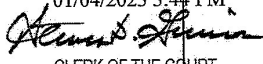
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 30th day of August, 2024, a true and correct copy of the foregoing **CITY OF LAS VEGAS' NOTICE OF APPEAL** was electronically submitted to the Clerk of the Court via the Clark County District Court Electronic Filing Program which will serve copies to all counsel of record registered to receive such electronic notification.

By Jelena Jovanovic  
Jelena Jovanovic, an Employee of McDonald  
Carano LLP

# **EXHIBIT “A”**



  
CLERK OF THE COURT

1 **FFCL**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

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

11  
12 Plaintiffs,

13 vs.

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

19  
20 Defendants.

Case No.: A-18-773268-C

Dept. No.: XXIX

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW: GRANTING  
THE LANDOWNERS' MOTION FOR  
SUMMARY JUDGMENT ON THE  
VALUE OF THE SUBJECT PROPERTY  
AND DENYING THE CITY'S  
COUNTERMOTION FOR SUMMARY  
JUDGMENT ON JUST COMPENSATION**

Date of Hearing: November 30, 2022

Time of Hearing: 9:00 a.m.

21 Plaintiff Landowners' Motion for Summary Judgment on the Value of the Subject Property  
22 and Defendant City of Las Vegas' Countermotion for Summary Judgment on Just Compensation,  
23 having come before the Court on November 30, 2022, with James J. Leavitt, Esq., Kermitt L.  
24 Waters, Esq., Autumn Waters, Esq., and Michael Schneider of the Law Offices of Kermitt L  
25 Waters and Plaintiff's in-house counsel Elizabeth Ghanem, Esq. appearing on behalf of Plaintiff  
26 Landowners Fore Stars Ltd and Seventy Acres, LLC ("Landowners"), and George F. Ogilvie III,  
27 Esq. and Christopher Molina, Esq., of McDonald Carano LLP, Andrew W. Schwartz, Esq., of  
28 Shute, Mihaly & Weinberger, LLP, and Rebecca Wolfson of the City Attorney's Office, appearing  
on behalf of the City of Las Vegas ("City").

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

3 **FINDINGS OF FACT AND CONCLUSIONS OF LAW RELEVANT TO:**  
4 **THE LANDOWNERS' MOTION FOR SUMMARY JUDGMENT ON VALUE**

5 **FINDINGS OF FACT**

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

24 2. This Court further held the date upon which the fair market value of the 17 Acre  
25 Property must be valued is October 10, 2022. *See Order Granting Plaintiff Landowners' Motion*  
26 *to Determine Date of Value Pursuant to NRS 37.120, filed December 12, 2022.*

1           3.       The Landowners timely disclosed during discovery, Tio DiFederico as a valuation  
2 expert. Mr. DiFederico is an MAI appraiser, who's expert appraisal report determines the fair  
3 market value of the 17 Acre Property, exclusive of water rights,<sup>1</sup> as of October 10, 2022, at  
4 \$47,990,000, using the comparable sales method of valuation.

5           4.       The City did not produce at any time in this matter an appraisal report or any other  
6 type of expert report that provides a valuation of the 17 Acre Property as of October 10, 2022, or  
7 any other date. Counsel for the City represented at the November 30, 2022, hearing that the City  
8 did not have evidence of the fair market value of the 17 Acre Property as of October 10, 2022, to  
9 present at the December 5, 2022, jury trial.

10           5.       Therefore, the only evidence of the fair market value of the 17 Acre Property,  
11 exclusive of water rights, as of the relevant October 10, 2022, date of valuation that has been  
12 produced during discovery, or otherwise, is the appraisal report by Tio DiFederico, disclosed by  
13 the Landowners.

14  
15  
16  
17  
18 **CONCLUSIONS OF LAW**

19           6.       The only relevant evidence for the December 5, 2022, jury trial is the fair market  
20 value of the Landowners' 17 Acre Property as of October 10, 2022.

21           7.       The jury at the December 5, 2022, trial would be required to determine the fair  
22 market value of the 17 Acre Property as of October 10 2022, based on the range of testimony  
23 provided by the City and the Landowners' experts. *City of Sparks v. Armstrong*, 103 Nev. 619  
24

25  
26  
27 <sup>1</sup> Water rights were not part of the taking alleged, not part of the property taken by the City of  
28 Las Vegas, and not valued in this case, therefore, the City is not responsible for any just  
compensation for the taking of water rights.

(1987) (eminent domain valuation is a field dominated by expert opinion); *Nevada Power Co. v. 3 Kids, LLC*, 129 Nev. 436 (2013) (eminent domain verdict affirmed as it was “within the range provided by the experts.” *Id.*, at 442); *State v. Tacchino*, 92 Nev. 286 (1976) (eminent domain case upholding the jury verdict “[s]ince the jury awards fall within the range of the expert testimony.” *Id.*, at 287), citing *Dep’t of Highways v. Campbell*, 80 Nev. 23 (1964) (eminent domain case), *State ex. rel. Dept. Highways v. Olsen*, 76 Nev. 176 (1960) (eminent domain case); *Aetna Life and Casualty v. City of Los Angeles*, 170 Cal.App.3d (Ct. App. 2<sup>nd</sup> Dist. 1985) (jury in eminent domain action must return a verdict within the range of expert testimony.)

8. The City has no value evidence, therefore the only relevant evidence of the fair market value of the 17 Acre Property, exclusive of water rights, as of October 10, 2022, that may be presented at the December 5, 2022, jury trial is the valuation evidence produced by the Landowners during discovery – the expert appraisal opinion by appraiser Tio DiFederico, which is \$47,990,000.

9. Therefore, the court enters summary judgment on the value of the 17 Acre Property, exclusive of water rights, as of October 10, 2022, in the amount of \$47,990,000.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW RELEVANT TO:  
THE CITY’S COUNTERMOTION FOR SUMMARY JUDGMENT ON JUST  
COMPENSATION**

10. The City’s countermotion for summary judgment on just compensation requests that this Court reconsider its FFCL Re: Property and FFCL Re: Take, referenced above, and enter a finding that the 17 Acre Property was not taken by inverse condemnation.

11. The City has not timely requested a motion to reconsider and it has provided no new facts or law to support this Court reconsidering its FFCL Re: Property and FFCL Re: Take.



1           12.     The Court finds no good reason to reverse its findings of fact and conclusions of  
2 law set forth in the FFCL Re: Property and FFCL Re: Take.

3           13.     Therefore, the Court denies the City's counter-motion for summary judgment on  
4 just compensation.

5           **IT IS HEREBY ORDERED** that because the Landowners have chosen not to prosecute  
6 their third and fourth claims for relief as the court found a per se regulatory taking, the  
7 Landowner's third claim for relief for a categorical taking and fourth claim for relief for a *Penn*  
8 *Central* taking have been abandoned.

9           **IT IS HEREBY FURTHER ORDERED** that Plaintiff Landowners' Motion for  
10 Summary Judgment on the Value of the Subject Property is **GRANTED** and the City's  
11 Counter-motion for Summary Judgment on Just Compensation is **DENIED**. Based upon the  
12 uncontested evidence presented to the Court, the fair market value of the 17 Acre Property as of  
13 December 5, 2022, exclusive of water rights, is \$47,990,000. Accordingly, the jury trial scheduled  
14 for December 5, 2022, is hereby vacated.  
15  
16

Dated this 4th day of January, 2023

17  
18  
19  


20           B8A 2CA 7BBF 9B37  
21           David M Jones  
22           District Court Judge  
23  
24  
25  
26  
27  
28

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 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: 1/4/2023

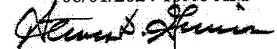
15 Philip Byrnes	pbyrnes@lasvegasnevada.gov
16 Autumn Waters	autumn@kermittwaters.com
17 Michael Schneider	michael@kermittwaters.com
18 James Leavitt	jim@kermittwaters.com
19 Kermitt Waters	kermitt@kermittwaters.com
20 George Ogilvie III	gogilvie@mcdonaldcarano.com
21 Amanda Yen	ayen@mcdonaldcarano.com
22 Jelena Jovanovic	jjovanovic@mcdonaldcarano.com
23 Christopher Molina	cmolina@mcdonaldcarano.com
24 Leah Jennings	ljennings@mcdonaldcarano.com
25 Elizabeth Ham	EHam@ehbcompanies.com

26  
27  
28

1	Elizabeth Ham	EHam@ehbcompanies.com
2	Todd Bice	tlb@pisanellibice.com
3	Jennifer Knighton	jknighton@ehbcompanies.com
4	Evelyn Washington	evelyn@kermittwaters.com
5	Stacy Sykora	stacy@kermittwaters.com
6	ChuAynne Corwin	ccorwin@lasvegasnevada.gov
7	Craig Newby	cnewby@ag.nv.gov
8	Debbie Leonard	debbie@leonardlawpc.com
9	Karen Surowiec	ksurowiec@mcdonaldcarano.com
10	Andrew Schwartz	Schwartz@smwlaw.com
11	Lauren Tarpey	LTarpey@smwlaw.com
12	David Weibel	weibel@smwlaw.com
13	Jeffrey Galliher	jgalliher@lasvegasnevada.gov
14	Rebecca Wolfson	rwolfson@lasvegasnevada.gov
15	Mary Pizzariello	MPizzariello@ag.nv.gov
16	Ivette Garcia	ivette@kermittwaters.com
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

# **EXHIBIT “B”**



  
CLERK OF THE COURT

**FFCL  
LAW OFFICES OF KERMITT L. WATERS**

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

*Attorneys for Plaintiffs Landowners*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FORE STARS, LTD; SEVENTY ACRES LLC,  
a Nevada liability company; et al.,

Plaintiffs,

vs.

CITY OF LAS VEGAS, a political subdivision of  
the State of Nevada; et al.,

Defendants.

Case No.: A-18-773268-C  
Dept. No.: 17

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW GRANTING  
IN PART AND DENYING IN PART  
PLAINTIFF LANDOWNERS' EDCR  
RULE 2.24 MOTION TO CLARIFY  
OR RECONSIDER RULING ON  
SUMMARY JUDGMENT ON VALUE  
AND  
NRCP RULE 52, 59, AND 60 REQUEST  
TO AMEND ON ORDER  
SHORTENING TIME**

**Hearing Date:** June 10, 2024  
**Hearing Time:** 1:00 p.m.

1 Plaintiffs Landowners, FORE STARS, LTD and SEVENTY ACRES LLC  
2 (“Landowners”) brought Plaintiff Landowners’ EDCR Rule 2.24 Motion to Clarify or  
3 Reconsider Ruling on Summary Judgment on Value and NRCP Rule 52, 59, and 60 Request to  
4 Amend on Order Shortening Time before the Court on June 10, 2024, at 1:00 p.m., with James  
5 J. Leavitt, Esq., Kermitt L. Waters, Esq., Autumn Waters, Esq, and Michael A. Schneider, Esq.  
6 of the Law Offices of Kermitt L. Waters appearing on behalf of Landowners, and George F.  
7 Ogilvie III, Esq. of McDonald Carano LLP, and Andrew W. Schwartz, Esq., of Shute, Mihaly &  
8 Weinberger, LLP, appearing on behalf of the City of Las Vegas (“City”).  
9

10  
11 The Court having reviewed all of the pleadings on file, including the submitted exhibits,  
12 heard argument of counsel, and for good cause appearing hereby enters the following findings of  
13 fact and conclusions of law:

14 **I.**

15 **FINDINGS OF FACT**

16  
17 1. This is an inverse condemnation case filed by the Landowners for the taking of their  
18 17.49 acre property located near the intersection of Rampart Blvd. and Alta Dr. in Las Vegas,  
19 Nevada, Clark County Assessor Parcel Number 138-32-301-005 (hereinafter “17 Acre Property”).

20 2. On September 16, 2021, this Court held this inverse condemnation case must be  
21 resolved through a two-step process. *See Findings of Fact and Conclusions of Law Regarding*  
22 *Plaintiff Landowners’ Motion to Determine “Property Interest,” filed September 16, 2021, pp. 2-*  
23

24 3. First, the district court must determine the property interest the Landowners have in their 17  
25 Acre Property. *Id.* Second, the district court must determine whether the City engaged in actions  
26 that constitute a taking of the 17 Acre Property. *Id.*  
27

3. This two-step process was affirmed by the Nevada Supreme Court on April 18, 2024, in the related 35 Acre Case. *See City of Las Vegas v. 180 Land Co*, 140 Nev., Adv. Op. 29, at 15-16 (April 18, 2024)

4. Therefore, this Court first resolved the property interest issue and, after extensive briefing and an extensive hearing, held, “the legally permitted uses by right of the 17 Acre Property are single-family and multi-family residential.” *Id.*, p. 16:21-22.

5. Thereafter, the Landowners filed pleadings asking this Court to resolve the second step - whether the City engaged in actions to take the Landowners' 17 Acre Property which had the legal right of single-family and multi-family residential use.

6. Because the district court decides this second step, on August 10, 2022, August 25, 2022, and September 12, 2022, the Landowners filed their summary judgment pleadings, requesting that this Court enter a finding that the City engaged in actions that meet three Nevada taking standards: 1) a per se categorical taking (third claim for relief); 2) a *Penn Central* taking (fourth claim for relief); and, 3) a per se regulatory taking (fifth claim for relief). Hereinafter “Landowners’ Summary Judgment Pleadings.”

7. Landowners' Summary Judgment Pleadings set forth the individual standards for a per se categorical, *Penn Central*, and per se regulatory taking and the facts that meet each of these individual taking standards specific to the 17 Acre Property at issue in this case.

8. Landowners' Summary Judgment Pleadings further specifically requested that this Court enter findings of fact and conclusions of law that the facts of this case demonstrate that the City engaged in actions that meet all three takings standards for a per se categorical taking, *Penn Central* taking, and per se regulatory taking and requested that the Court enter findings that the City took by inverse condemnation the 17 Acre Property under all three of these standards.

1           9.     On September 19, 2022, this Court held an extensive evidentiary hearing to  
2 consider the facts and law as to whether the City engaged in actions that meet all three takings  
3 standards for a per se categorical taking, *Penn Central* taking, and per se regulatory taking as pled  
4 in the Landowners' complaint.

5  
6           10.    On ' October 27, 2022, this Court entered specific findings of fact and conclusions  
7 of law on all three taking standards - a per se categorical taking, *Penn Central* taking, and per se  
8 regulatory taking. *Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners*  
9 *Motion to Determine Take and for Summary Judgment on the Third and Fifth Claims for Relief:*  
10 *Granting Summary Judgment on the Landowners' Fifth Claim for Relief and Denying Summary*  
11 *Judgment on the Landowners Third Claim for Relief, filed October 27, 2022 (hereinafter "17 Acre*  
12 *FFCL Re: Take").*

13  
14           11.    Per Se Regulatory Taking - In regard to the Landowners' fifth claim for relief for a  
15 per se regulatory taking , this Court's 17 Acre FFCL Re: Take held the City engaged in actions  
16 that resulted in a per se regulatory taking of the "entire" 17 Acre Property: "the City engaged in  
17 actions to authorize the public to enter onto the 17 Acre Property and preserve the 17 Acre Property  
18 for use by the public and surrounding neighbors meeting Nevada's standard for a per se regulatory  
19 taking thereby resulting in the taking of the entire 17 Acre Property by inverse condemnation."  
20 *See 17 Acre FFCL Re: Take, p. 35:16-19, finding 147.*

21  
22           12.    Per Se Categorical Taking - In regard to the Landowners' third claim for relief for  
23 a per se categorical taking, this Court's 17 Acre FFCL Re: Take held this Court did not need to  
24 address this claim, because it already found the City's actions meet Nevada's per se regulatory  
25 taking standard: "[t]he Court finds that having determined the City's actions meet the standard for  
26 a per se regulatory taking, the court need not address the Landowners' per se categorical taking  
27  
28

1 claim. Therefore, the Court denies the Landowners' request for summary judgment on this third  
2 claim for relief. Consistently, this Court has also denied the City's request for summary judgment  
3 on this third claim for relief." *See 17 Acre FFCL Re: Take, p. 36:1-5, finding 150.*

4  
5 13. *Penn Central* Taking - In regard to the Landowners' fourth claim for relief for a  
6 *Penn Central* taking, this Court's 17 Acre FFCL Re: Take held, having found the City's actions  
7 meet the per se regulatory taking standard, the *Penn Central* taking claim did not apply: "[t]his  
8 Court has declined to rule on the Landowners' fourth claim for relief (*Penn Central*), as 'whenever  
9 a regulation results in a physical appropriation of property, a per se taking has occurred and *Penn*  
10 *Central* has no place. Cedar Point Nursery v. Hassid, 141 S. Ct. 2063, 2072 (2021).'" *See 17 Acre*  
11 *FFCL Re: Take, p. 36:5-8, finding 150.*

12  
13 14. Once this Court held the City's actions resulted in the taking of the "entire" 17 Acre  
14 Property for public use, the next issue to address was the value of the 17 Acre Property taken by  
15 the City.

16  
17 15. Therefore, this Court's 17 Acre FFLC Re: Take, then held, "[a] jury trial is  
18 scheduled for December 5, 2022, wherein a jury will determine the fair market value of the 17  
19 Acre Property as of the applicable date of valuation." *See 17 Acre FFCL Re: Take, p. 36:12-14.*

20  
21 16. During discovery the Landowners produced an appraisal report prepared by an  
22 expert MAI appraiser valuing the taken 17 Acre Property at \$47,990,000.00.

23  
24 17. The City never produced an appraisal report to value the 17 Acre Property or to  
25 contest the \$47,990,000.00 value.

26  
27 18. Therefore, the Landowners moved for summary judgment on the value of the taken  
28 17 Acre Property and, on January 4, 2023, this Court granted the Landowners' motion for summary  
judgment, holding the value of the taken 17 Acre Property is \$47,990,000.00 – the value of the



1 property as determined by the expert appraiser retained by the Landowners. *See Findings of Fact*  
2 *and Conclusions of Law: Granting the Landowners' Motion for Summary Judgment on the Value*  
3 *of the Subject Property and Denying the City's Countermotion for Summary Judgment on Just*  
4 *Compensation (hereinafter "17 Acre FFCL Re: Value").*

5  
6 19. At the City's request, the 17 Acre FFCL Re: Value included a finding that the  
7 Landowners had "abandoned" their third (per se categorical) and fourth (*Penn Central*) taking  
8 claims for relief: "because the Landowners have chosen not to prosecute their third and fourth  
9 claims for relief as the court found a per se regulatory taking, the Landowner's third claim for  
10 relief for a categorical taking and fourth claim for relief for a Penn Central taking have been  
11 abandoned." *17 Acre FFCL Re: Value, p. 5:5-9.*

12  
13 20. On January 6, 2023, notice of entry of the 17 Acre FFCL Re: Value was entered.

14 21. On January 10, 2023, the Landowners filed Plaintiff Landowners' EDCR Rule 2.24  
15 Motion to Clarify or Reconsider Ruling on Summary Judgment on Value and NRCP Rule 52, 59,  
16 and 60 Request to Amend on Order Shortening Time (*hereinafter "Landowners' Motion to*  
17 *Amend"*).

18  
19 22. The Landowners Motion to Amend maintained the language in the 17 Acre FFCL  
20 Re: Value that holds the Landowners "abandoned" their third (per se categorical) and fourth (*Penn*  
21 *Central*) taking claims for relief is entirely inconsistent with the law of the case, namely, the  
22 Court's 17 Acre FFCL Re: Take that holds, "the court need not address" the Landowners' third  
23 claim for relief, because it already held there is a per se regulatory taking and "this Court has  
24 declined to rule on" the Landowners' fourth claim for relief, because once a per se taking is found  
25 the fourth claim for relief 'has no place.'" *See 17 Acre FFCL Re: Take, p. 36:1-8, finding 150.*

1           23.     The Landowners' Motion to Amend further maintained the language in the 17 Acre  
2 FFCL Re: Value that holds the Landowners "abandoned" their third (per se categorical) and fourth  
3 (*Penn Central*) taking claims for relief is entirely inconsistent with the facts of the case, because  
4 the Landowners prosecuted their third (per se categorical) and fourth (*Penn Central*) taking claims  
5 for relief by presenting them to the district court for adjudication by way of summary judgment as  
6 required by the Nevada Supreme Court. *City of Las Vegas v. 180 Land Co*, 140 Nev., Adv. Op.  
7 29, at 14 (April 18, 2024) ("Whether the government has inversely condemned private property is  
8 a question of law that we review de novo") citing *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645,  
9 661 (2006).  
10

11  
12           24.     The Landowners also maintained in their Motion to Amend that this Court entered  
13 findings specific to their third (per se categorical) and fourth (*Penn Central*) taking claims for  
14 relief and, therefore, the claims were not "abandoned."

15           25.     The record also shows the Landowners advised the Court several times during  
16 hearings that: 1) this Court followed the proper procedures in adjudicating the taking claims; and,  
17 2) the Landowners never waived or abandoned, nor intended to waive or abandon, their third (per  
18 se categorical) and fourth (*Penn Central*) taking claims for relief. *See Reporter's Transcript of*  
19 *Hearing on motions in limine. October 4, 2022, pp. 62-63.*  
20

21           26.     The record further shows that there was no briefing, hearing, or oral argument on  
22 the specific issue of abandonment or waiver of the Landowners' third (per se categorical) and  
23 fourth (*Penn Central*) taking claims for relief and, therefore, there was no notice of whether these  
24 claims would be adjudicated abandoned or waived.  
25  
26  
27  
28

1           27.     The City argued that the abandonment finding was proper, because the City asked  
2 the Court to submit the liability issue on the third (per se categorical) and fourth (*Penn Central*)  
3 taking claims to the jury and the Landowners opposed this request.

4           28.     The record shows the Landowners opposed the City's request to submit liability on  
5 the third (per se categorical) and fourth (*Penn Central*) taking claims for relief to the jury, because  
6 the Landowners had already submitted these claims to this Court for adjudication by way of  
7 summary judgment and an evidentiary hearing and Nevada law clearly states liability for a taking  
8 must be decided by the district court judge, not the jury, and the district court had already entered  
9 its findings of fact and conclusions of law on the third (per se categorical) and fourth (*Penn*  
10 *Central*) taking claims for relief. *See City of Las Vegas v. 180 Land Co*, 140 Nev., Adv. Op. 29,  
11 at 14 (April 18, 2024) ("Whether the government has inversely condemned private property is a  
12 question of law that we review de novo") *citing McCarran Int'l Airport v. Sisolak*, 122 Nev. 645,  
13 661 (2006).

14           29.     Based on the above arguments, the Landowners' Motion to Amend requests two  
15 remedies.

16           30.     First, the Landowners' Motion to Amend requests a finding that the following  
17 abandonment language is factually and legally improper and should be stricken from the 17 Acre  
18 FFCL Re: Value: **"IT IS FURTHER ORDERED** that because the Landowners have chosen not  
19 to prosecute their third and fourth claims for relief as the court found a per se regulatory taking,  
20 the Landowner's third claim for relief for a categorical taking and fourth claim for relief for a Penn  
21 Central taking have been abandoned." *See 17 Acre FFCL Re: Value*, p. 5:5-9.

22           31.     Second, the Landowners' Motion to Amend requests that this Court amend the 17  
23 Acre FFCL Re: Take to enter specific findings of fact and conclusions of law on the Landowners'

1 third (per se categorical) and fourth (*Penn Central*) taking claims for relief based on the already-  
2 decided facts in the case to assure there is no indication whatsoever that the Landowners  
3 abandoned or waived these taking claims.

4 32. The Landowners maintained that this second request was not necessary as this  
5 Court already entered a finding that there was a per se regulatory taking, however, out of an  
6 abundance of caution to confirm the Landowners' third (per se categorical) and fourth (*Penn*  
7 *Central*) taking claims for relief were not abandoned nor waived, the Landowners, again, requested  
8 findings of fact and conclusions of law on these claims.  
9

10 33. Therefore, the record shows that the Landowners twice followed the proper  
11 procedure for adjudicating their third (per se categorical) and fourth (*Penn Central*) taking claims  
12 for relief by presenting the claims to this district court and asking this Court to adjudicate these  
13 two claims as a matter of law in conformance with Nevada law.  
14

15 34. Accordingly, this Court finds that the Landowners did not abandon or waive their  
16 third (per se categorical) and fourth (*Penn Central*) taking claims for relief.  
17

18 35. As a result, the following language should be stricken from the 17 Acre FFCL Re:  
19 Value: "**IT IS FURTHER ORDERED** that because the Landowners have chosen not to prosecute  
20 their third and fourth claims for relief as the court found a per se regulatory taking, the  
21 Landowner's third claim for relief for a categorical taking and fourth claim for relief for a Penn  
22 Central taking have been abandoned." See 17 Acre FFCL Re: Value, p. 5:5-9.  
23

## 24 II.

### 25 CONCLUSIONS OF LAW

26 36. NRCP Rule 2.24 provides a party may file a motion to reconsider within 14 days  
27 after service of written notice of the order or judgment.  
28

1        37.    NRCF Rule 52 provides a party may question the sufficiency of the evidence  
2 supporting a finding and request that a court amend findings or make additional findings in an  
3 order or judgment within 28 days after service of written notice of entry of the order or judgment.

4        38.    NRCF Rule 59 provides the court may grant a new trial on all or some of the issues  
5 adjudicated where there is irregularity in any order of the court or an error of law and the court  
6 may open the judgment if one has been entered, take additional testimony, amend findings of fact  
7 and conclusions of law or make new findings and conclusions or grant a new trial upon motion  
8 filed within 28 days after service of written notice of entry of the order or judgment.  
9

10        39.    NRCF Rule 60 provides a party may seek relief from a judgment or order of the  
11 court for mistake, surprise, or any reason that justifies relief upon the filing of a motion within a  
12 reasonable time and no more than 6 months after service of written notice of entry of the order or  
13 judgment.  
14

15        40.    The Landowners timely filed Landowners' Motion to Amend.

16        41.    Notice of entry of the 17 Acre FFCL Re: Value, which includes the "abandonment"  
17 finding, was given on January 6, 2023, and the Landowners' Motion to Amend was filed only four  
18 days thereafter, on January 10, 2023.  
19

20        42.    This Court finds cause to amend the 17 Acre FFCL Re: Value as provided in NRCF  
21 Rules 52, 59, and 60 in order to strike the "abandonment" language from the 17 Acre FFCL Re:  
22 Value.  
23

24        43.    First, this Court finds that the following findings which were initially set forth in  
25 this Court's 17 Acre FFCL Re: Take are legally correct:

26        "[t]he Court finds that having determined the City's actions meet the standard for  
27 a per se regulatory taking, the court need not address the Landowners' per se  
28 categorical taking claim. Therefore, the Court denies the Landowners' request for

1 summary judgment on this third claim for relief. Consistently, this Court has also  
2 denied the City's request for summary judgment on this third claim for relief." *See*  
3 *17 Acre FFCL Re: Take*, p. 36:1-5, *finding 150*.

4 And,

5 "[t]his Court has declined to rule on the Landowners' fourth claim for relief (*Penn*  
6 *Central*), as 'whenever a regulation results in a physical appropriation of property,  
7 a per se taking has occurred and Penn Central has no place. *Cedar Point Nursery*  
8 *v. Hassid*, 141 S. Ct. 2063, 2072 (2021).'" *See 17 Acre FFCL Re: Take*, p. 36:5-8,  
9 *finding 150*.

10 44. The above findings in the 17 Acre FFCL Re: Take are consistent with the law  
11 adopted by the Nevada Supreme Court opinion recently issued in the related 35 Acre Case.

12 45. On April 18, 2024, the Nevada Supreme Court entered a detailed and  
13 comprehensive, en banc, and unanimous (7-0) opinion in the related 35 Acre Case, wherein the  
14 Court held: "[b]ecause we ultimately conclude that a per se regulatory taking occurred, we need  
15 not address the three other theories." *City of Las Vegas v. 180 Land Co*, 140 Nev. Adv. Op. 29, at  
16 p. 15 (April 18, 2024).

17 46. Therefore, once this Court held in the 17 Acre FFCL Re: Take that the City engaged  
18 in actions that meet Nevada's standard for a per se regulatory taking resulting in the taking of the  
19 "entire 17 Acre Property by inverse condemnation," the Court "need not address the [] other  
20 theories."

21 47. Accordingly, once this Court held the City's actions met Nevada's standard for a  
22 per se regulatory taking and that the City took the entire 17 Acre Property in the 17 Acre FFCL  
23 Re: Take, this Court properly held that it "need not address" the Landowners' third claim for relief  
24 (per se categorical) and "declined to rule on" the Landowners' fourth claim for relief (*Penn*  
25 *Central*).  
26  
27  
28



48. Therefore, the Landowners did not “abandon” nor waive their third (per se categorical) or fourth (*Penn Central*) taking claims for relief.

49. Indeed, this Court specifically held this Court need not address the third (per se categorical) or fourth (*Penn Central*) taking claims for relief. Which is consistent with the Nevada Supreme Court holding in the related 35 Acre Case that, “[b]ecause we ultimately conclude that a per se regulatory taking occurred, we need not address the three other theories.” *City of Las Vegas v. 180 Land Co*, 140 Nev. Adv. Op. 29, at p. 15 (April 18, 2024).

50. This Court further finds the abandonment or waiver of constitutional claims, such as the Landowners' third (per se categorical) or fourth (*Penn Central*) taking claims, requires an intentional relinquishment of a known right or privilege that is voluntary, knowing, and intelligent and the party claiming abandonment or waiver of the claim must establish by clear and convincing evidence the abandonment or waiver, and the court "must indulge every reasonable presumption against waiver." *See Pope v. County of San Diego*, 2024 U.S. Dist. Lexis 36770 \_\_\_\_ F.Supp. \_\_\_\_ (March 1, 2024), citing United States and Ninth Circuit precedent.

51. There is nothing in the record to show the Landowners made a voluntary and intentional relinquishment of the Landowners' third (per se categorical) or fourth (*Penn Central*) taking claims.

52. Instead, the record shows the Landowners did not intend to abandon or waive the Landowners' third (per se categorical) or fourth (*Penn Central*) taking claims.

53. First, the Landowners prosecuted the third (per se categorical) or fourth (*Penn Central*) taking claims by bringing the claims before the district court by way of summary judgment and asking the district court to adjudicate the claims.

1           54.     This Court finds the Landowners followed the proper procedure to prosecute their  
2 third (per se categorical) and fourth (*Penn Central*) taking claims by bringing the claims before  
3 this Court by way of summary judgment and asking the Court to adjudicate liability for each of  
4 the claims. *See City of Las Vegas v. 180 Land Co*, 140 Nev., Adv. Op. 29, at 14 (April 18, 2024)  
5 (“Whether the government has inversely condemned private property is a question of law that we  
6 review de novo”) citing *McCarran Int’l Airport v. Sisolak*, 122 Nev. 645, 661 (2006).

8           55.     Second, the record shows the Landowners maintained they had properly prosecuted  
9 their third (per se categorical) and fourth (*Penn Central*) taking claims throughout these  
10 proceedings and stated on the record that they were not abandoning nor waiving these taking  
11 claims. *See Reporter’s Transcript of Hearing on motions in limine. October 4, 2022, pp. 62-63.*

13           56.     Third, the record shows the Landowners presented their third (per se categorical)  
14 and fourth (*Penn Central*) taking claims to this Court, this Court considered the claims, and this  
15 Court held it did not need to address the claims, which is consistent with the Nevada Supreme  
16 Court case law. *City of Las Vegas v. 180 Land Co*, 140 Nev. Adv. Op. 29, at p. 15 (“[b]ecause we  
17 ultimately conclude that a per se regulatory taking occurred, we need not address the three other  
18 theories.”).

20           57.     The abandonment language in the 17 Acre FFCL Re: Value causes “irregularity”  
21 in the Court’s orders as the abandonment language is inconsistent with this Court’s findings on the  
22 per se Categorical and *Penn Central* regulatory taking claims in the previously entered FFCL Re:  
23 Take where the issues were presented and litigated to the Court. *See 17 Acre FFCL Re: Take, p.*  
24 *36:1-8.*

26           58.     The abandonment language also violates the Landowners’ due process rights.

59. There is nothing in the record showing the Landowners were given notice of a hearing where the abandonment or waiver of their third (per se categorical) and fourth (*Penn Central*) taking claims was being considered.

60. The abandonment issue was not raised in the Landowners' motion or reply or the City's opposition related to the valuation issue that resulted in the 17 Acre FFCL Re: Value and there is no other briefing, set hearing, or specific scheduled oral argument on the abandonment or waiver issue in the record.

61. It would be manifestly unjust to find the Landowners' abandoned their third (per se categorical) and fourth (*Penn Central*) taking claims under the facts of this case and where there was no specific notice provided and no hearing, briefing, or oral argument on the abandonment issue.

62. As stated above, abandonment of a constitutional claim requires an intentional relinquishment of a known right or privilege that is voluntary, knowing, and intelligent and the party claiming abandonment or waiver of the claim must establish by clear and convincing evidence the abandonment or waiver, and the court “must indulge every reasonable presumption against waiver.” *See Pope v. County of San Diego*, 2024 U.S. Dist. Lexis 36770 \_\_\_\_ F.Supp. (March 1, 2024), citing United States and Ninth Circuit precedent.

63. This Court finds that the Landowners' third (per se categorical) and fourth (*Penn Central*) claims for relief are constitutional taking claims, meaning, any order that the Landowners abandoned these claims must set forth specific findings of fact and conclusions of law detailing the facts and law for how these claims were abandoned.

1           64.     There are no findings of fact and conclusions of law in the 17 Acre FFCL Re: Value  
2 detailing by clear and convincing evidence how the Landowners intentionally relinquished their  
3 known constitutional per se categorical and *Penn Central* taking claims.

4           65.     There are also no specific findings of fact and conclusions of law in the 17 Acre  
5 FFCL Re: Value detailing by clear and convincing evidence how the Landowners voluntarily,  
6 knowingly, and intelligently relinquished their known constitutional per se categorical and *Penn*  
7 *Central* taking claims.

8           66.     There are also no specific findings of fact and conclusions of law in the 17 Acre  
9 FFCL Re: Value showing how the abandonment finding indulged every reasonable presumption  
10 against abandonment or waiver of the Landowners' constitutional per se categorical and *Penn*  
11 *Central* taking claims.

12           67.     There are also no conclusions of law setting forth the legal standard for  
13 abandonment of constitutional claims and how the facts meet this legal standard for abandonment  
14 of the Landowners' constitutional per se categorical and *Penn Central* taking claims.

15           68.     Therefore, the finding that the Landowners abandoned their constitutional per se  
16 categorical and *Penn Central* taking claims is conclusory and without factual or legal basis.

17           69.     Therefore, this Court finds the following languages must be **STRICKEN** from the  
18 17 Acre FFCL Re: Value: "**IT IS FURTHER ORDERED** that because the Landowners have  
19 chosen not to prosecute their third and fourth claims for relief as the court found a per se regulatory  
20 taking, the Landowner's third claim for relief for a categorical taking and fourth claim for relief  
21 for a *Penn Central* taking have been abandoned." *See 17 Acre FFCL Re: Value, p. 5:5-9.*

22           70.     Out of an abundance of caution and to refute any notion the Landowners abandoned  
23 or waived their constitutional per se categorical and *Penn Central* taking claims, the Landowners  
24

1 made a second request, as part of their moving papers, that this Court adjudicate their third (per se  
2 categorical) and fourth (*Penn Central*) taking claims and, based on the already determined facts in  
3 this case, enter specific findings that the City actions also meet these two taking standards.

4  
5 71. This Court denies the Landowners' request, based on the opinion entered by the  
6 Nevada Supreme Court on April 18, 2024, in the related 35 Acre Case. *City of Las Vegas v. 180*  
7 *Land Co*, 140 Nev. Adv. Op. 29, at p. 15 (April 18, 2024) ("[b]ecause we ultimately conclude that  
8 a per se regulatory taking occurred, we need not address the three other theories.").

9  
10 72. This Court finds that this Court's first findings of fact and conclusions of law in the  
11 17 Acre FFCL Re: Take were proper, because once this Court decided the City engaged in actions  
12 that meet Nevada's standard for a per se regulatory taking resulting in the taking of the "entire 17  
13 Acre Property by inverse condemnation," the Court "need not address" the Landowners' third  
14 claim for relief (per se categorical taking) and properly "declined to rule on" the Landowners'  
15 fourth claim for relief (a *Penn Central* taking), which is consistent with the above cited law from  
16 the *180 Land Co* Opinion.

17  
18 73. Having litigated and prosecuted the Landowners' third (per se categorical) and  
19 fourth (*Penn Central*) taking claims for relief via summary judgment motions, this Court need not  
20 revisit these claims and further amendment to the pleadings is unnecessary.

21  
22 Therefore, **IT IS HEREBY ORDERED** that Plaintiff Landowners' EDCR Rule 2.24  
23 Motion to Clarify or Reconsider Ruling on Summary Judgment on Value and NRCP Rule 52, 59,  
24 and 60 Request to Amend on Order Shortening Time is **GRANTED** in part and **DENIED** in part.

25 **IT IS FURTHER ORDERED** that the Landowners' Motion to Amend was timely filed  
26 under NRCP Rules 2.24, 52, 59, and 60.

**IT IS FURTHER ORDERED** that, based on the findings and conclusions above, there is irregularity in the findings of fact and conclusions of law and manifest injustice warranting amendment of the language in the 17 Acre FFCL Re: Value under NRCP Rules 52, 59, and 60.

**IT IS FURTHER ORDERED** that the following language is **STRICKEN** from the 17 Acre FFCL Re: Value: **“IT IS FURTHER ORDERED** that because the Landowners have chosen not to prosecute their third and fourth claims for relief as the court found a per se regulatory taking, the Landowner’s third claim for relief for a categorical taking and fourth claim for relief for a Penn Central taking have been abandoned.” *See 17 Acre FFCL Re: Value, p. 5:5-9.*

**IT IS FURTHER ORDERED** that the Landowners' request that this Court rule on the merits of their third (per se categorical) and fourth (*Penn Central*) taking claims and enter specific findings that the City of Las Vegas' actions also meet these two taking standards, based on the already decided facts in this case, is **DENIED** on the basis that this Court properly held the City engaged in actions that meet Nevada's standard for a per se regulatory taking resulting in the taking of the "entire 17 Acre Property by inverse condemnation" and, therefore, the Court "need not address" the Landowners' third claim for relief (a per se categorical taking) and properly "declined to rule on" the Landowners' fourth claim for relief (a *Penn Central* taking).

Dated this 1st day of August, 2024

Illegible signature

967 CD5 78A0 EC47  
Jennifer Schwartz  
District Court Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Submitted By:	Content Reviewed and Approved By:
LAW OFFICES OF KERMITT L. WATERS	MCDONALD CARANO LLP
By: <u>//s//: James J. Leavitt</u>	By: <u>No Response</u>
Kermitt L. Waters, Esq. (NSB 2571)	George F. Ogilvie III (NSB 3552)
James J. Leavitt, Esq. (NSB 6032)	Christopher Molina (NSB 14092)
Michael A. Schneider, Esq. (NSB 8887)	2300 W. Sahara Avenue, Suite 1200
Autumn L. Waters, Esq. (NSB 8917)	Las Vegas, Nevada 89102
704 South Ninth Street	
Las Vegas, Nevada 89101	LAS VEGAS CITY ATTORNEY'S OFFICE
Telephone: (702) 733-8877	Jeff Dorocak (NSB 13109)
Facsimile: (702) 731-1964	495 South Main Street, 6th Floor
	Las Vegas, Nevada 89101
<i>Attorneys for Plaintiff Landowners</i>	
	SHUTE, MIHALY & WEINBERGER, LLP
	Andrew W. Schwartz (CA Bar No. 87699)
	(Admitted pro hac vice)
	Lauren M. Tarpey (CA Bar No. 321775)
	(Admitted pro hac vice)
	396 Hayes Street
	San Francisco, California 94102
	<i>Attorneys for City of Las Vegas</i>

**From:** [Autumn Waters](#)  
**To:** [George F. Ogilvie III](#); [Christopher Molina](#)  
**Cc:** [James Leavitt](#); [Michael Schneider](#); [Monica Villanueva](#)  
**Subject:** 17 Acre Proposed Orders  
**Date:** Monday, July 29, 2024 9:45:44 AM  
**Attachments:** [FFCL Re Attorney Fees.docx](#)  
[FFCL On Prejudgment Interest.docx](#)  
[FFCL Re Motion to Amend Order on FMV.docx](#)  
[FFCL Re Motion Reimbursement Taxes.docx](#)  
[Order Re Costs.docx](#)

---

Hi George,

I hope you had a nice weekend.

Please see the following and attached proposed findings of fact and conclusions of law / orders (FFCLs / Orders) related to the post-appeal motions in Fore Start v. City of Las Vegas (17-acre case).

FFCL Re: Attorney fees;  
FFCL on Prejudgment Interest;  
FFCL Re Motion to Amend Order on FMV;  
FFCL Re Motion Reimburse Taxes; and,  
Order Re Costs

We intend to submit the proposed FFCLs / Orders to the Court on Wednesday, July 31, at 1:00 pm. Please let us know of any proposed revisions prior to that time.

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

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 17

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  
14 case as listed below:

Service Date: 8/1/2024

15 Jeffry Dorocak jdorocak@lasvegasnevada.gov

16 Jeffrey Andrews jandrews@lasvegasnevada.gov

17 Cindy Kelly ckelly@lasvegasnevada.gov

18 Kelli Hansen khansen@lasvegasnevada.gov

19 Autumn Waters autumn@kermittwaters.com

20 Michael Schneider michael@kermittwaters.com

21 George Ogilvie III gogilvie@mcdonaldcarano.com

22 Amanda Yen ayen@mcdonaldcarano.com

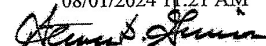
23 Jelena Jovanovic jjovanovic@mcdonaldcarano.com

24 Christopher Molina cmolina@mcdonaldcarano.com

25 Todd Bice tlb@pisanellibice.com  
26  
27  
28

1	Renee Carreau	rcarreau@ag.nv.gov
2	James Leavitt	jim@kermittwaters.com
3	Kermitt Waters	kermitt@kermittwaters.com
4	Stacy Sykora	stacy@kermittwaters.com
5	Jennifer Knighton	jknighton@ehbcompanies.com
6	Evelyn Washington	evelyn@kermittwaters.com
7	CluAynne Corwin	ccorwin@lasvegasnevada.gov
8	Craig Newby	cnewby@ag.nv.gov
9	Debbie Leonard	debbie@leonardlawpc.com
10	Karen Surowiec	ksurowiec@mcdonaldcarano.com
11	Andrew Schwartz	Schwartz@smwlaw.com
12	Lauren Tarpey	LTarpey@smwlaw.com
13	David Weibel	weibel@smwlaw.com
14	Ryann Milton	rmilton@lasvegasnevada.gov
15	Timothy Geswein	tgeswein@lasvegasnevada.gov
16	Monica Villanueva	monica@kermittwaters.com
17	Nechole Garcia	ngarcia@lasvegasnevada.gov
18	M Pizzariello	mpizzariello@ag.nv.gov
19	James Lewis	jblewis@lasvegasnevada.gov
20		
21		
22		
23		
24		
25		
26		
27		
28		

# **EXHIBIT “C”**

  
CLERK OF THE COURT

**FFCL  
LAW OFFICES OF KERMITT L. WATERS**

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

*Attorneys for Plaintiffs Landowners*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FORE STARS, LTD; SEVENTY ACRES LLC,  
a Nevada liability company; et al.,

Plaintiffs,

vs.

CITY OF LAS VEGAS, a political subdivision of  
the State of Nevada; et al.,

Defendants.

Case No.: A-18-773268-C  
Dept. No.: 17

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW GRANTING  
PLAINTIFF LANDOWNERS'  
MOTION FOR REIMBURSEMENT  
OF PROPERTY TAXES**

**Hearing Date:** June 10, 2024  
**Hearing Time:** 1:00 p.m.

Plaintiffs Landowners, FORE STARS, LTD and SEVENTY ACRES LLC  
("Landowners") brought Plaintiff Landowners' Motion for Reimbursement of Property Taxes  
before the Court on June 10, 2024, at 1:00 p.m., with James J. Leavitt, Esq., Kermitt L. Waters,  
Esq., Autumn Waters, Esq. and Michael A. Schneider, Esq. of the Law Offices of Kermitt L.

1 Waters appearing on behalf of Landowners, and George F. Ogilvie III, Esq. of McDonald Carano  
2 LLP, and Andrew W. Schwartz, Esq., of Shute, Mihaly & Weinberger, LLP, appearing on behalf  
3 of the City of Las Vegas ("City").  
4

5 The Court having reviewed all of the pleadings on file, including the submitted exhibits,  
6 heard argument of counsel, and for good cause appearing hereby enters the following findings of  
7 fact and conclusions of law:

8 **I.**

9 **FINDINGS OF FACT**

10  
11 1. This is an inverse condemnation case filed by the Landowners for the taking of  
12 their 17.49 acre property located near the intersection of Rampart Blvd. and Alta Dr. in Las  
13 Vegas, Nevada, Clark County Assessor Parcel Number 138-32-301-005 (hereinafter "17 Acre  
14 Property").

15 2. There are four related pending cases that involve the 17, 35, 65, and 133 acre  
16 properties. The properties at issue in the four related cases have jointly been referred to as the  
17 250 Acre Property.  
18

19 3. On October 27, 2022, this Court entered findings of fact and conclusions of law  
20 that the City took the 17 Acre Property by inverse condemnation. *Findings of Fact and*  
21 *Conclusions of Law Regarding Plaintiff Landowners' Motion to Determine Take and for*  
22 *Summary Judgment on the Third and Fifth Claims for Relief: Granting Summary Judgment on*  
23 *the Landowners' Fifth Claim for Relief and Denying Summary Judgment on the Landowners*  
24 *Third Claim for Relief, filed October 27, 2022 (hereinafter "17 Acre FFCL Re: Take").*  
25

26 4. In regard to the Landowners' fifth claim for relief for a per se regulatory taking  
27 claim, this Court's 17 Acre FFCL Re: Take held the City engaged in actions that resulted in a per  
28

1 se regulatory taking of the 17 Acre Property: “the City engaged in actions to authorize the public  
2 to enter onto the 17 Acre Property and preserve the 17 Acre Property for use by the public and  
3 surrounding neighbors meeting Nevada’s standard for a per se regulatory taking thereby resulting  
4 in the taking of the entire 17 Acre Property by inverse condemnation.” *See 17 Acre FFCL Re:*  
5  
6 *Take, p. 35:16-19, finding 147.*

7 5. On January 27, 2023, the Landowners filed Plaintiff Landowners’ Motion for  
8 Reimbursement of Property Taxes in reliance on *Clark County v. Alper*, 100 Nev. 382 (1984).

9 6. *Alper* holds that a landowner whose property is taken by inverse condemnation is  
10 entitled to reimbursement of real property taxes paid after the property is taken / the landowner  
11 is dispossessed of the property.  
12

13 7. The Landowners’ motion for reimbursement of taxes details the facts that  
14 demonstrate they were dispossessed of their 17 Acre Property and the 17 Acre Property was taken  
15 on August 2, 2017, when the City denied the Master Development Agreement for the entire 250  
16 Acre Property (of which the 17, 35, 65, and 133 Acre Properties are a part).  
17

18 8. In the recent Nevada Supreme Court case of *City of Las Vegas v. 180 Land Co.*,  
19 140 Nev. Adv. Op. 29, at 29-30 (April 18, 2024), the Nevada Supreme Court held that the  
20 Landowners were dispossessed of their 35 Acre Property when the City denied the Master  
21 Development Agreement for the entire 250 Acre Property (which includes the 17, 35, 65, and  
22 133 Acre Properties) on August 2, 2017.  
23

24 9. The *180 Land Co* Opinion further holds that the Landowners must be reimbursed  
25 their property taxes paid on the 35 Acre Property from the August 2, 2017, date of taking and  
26 dispossession pursuant to the *Alper* case. *180 Land Co*, at 30.  
27  
28

10. In its opposing papers filed in this 17 Acre Case, the City did not oppose August 2, 2017, as the date of take or date of dispossession, but generally argued the 17 Acre Property has never been taken.

11. The 17 Acre FFCL Re: Take details the actions by the City that resulted in a taking of the Landowners' 17 Acre Property, with the first date of compensable injury being August 2, 2017 -- the date the City denied the Master Development Agreement for the Landowners' entire 250 acres ("2017 MDA") which expressly included the 17 Acre Property. *See 17 Acre FFCL Re: Take, pp. 6-28, see specifically findings 21-41 re: denial of 2017 MDA.*

12. This finding in the 17 Acre FFCL Re: Take is the same finding entered in the 35 Acre Case, which was affirmed on appeal, namely, that the date of take / date of dispossession is August 2, 2017. *See 180 Land Co.*, at 30-31.

13. The Court finds the City's actions which resulted in a taking of the 17 Acre Property for public use physically and legally dispossessed the Landowners from the 17 Acre Property as of August 2, 2017.

14. The Landowners presented uncontested evidence that they paid all assessed property taxes on the 17 Acre Property from August 2, 2017, up to January 2, 2024, in the amount of **\$335,684.40**.

## II.

## CONCLUSIONS OF LAW

1. Nevada law provides that “[a]n owner who is dispossessed from [their] land when it is taken for public use is no longer obligated to pay taxes.” *City of Las Vegas v. 180 Land Co.*, 140 Nev. Adv. Op. 29 at 30 (Apr. 18, 2024), citing to, *Alper*, 100 Nev. at 395, 685 P.2d at 951.

1           2.     Nevada law hold that inverse condemnation and eminent domain proceedings are  
2 “constitutional equivalents.” *Id.*

3           3.     The date of August 2, 2017, as the date of taking in this matter is reasonable and  
4 supported by uncontested evidence and the City provides no alternative date of take or  
5 dispossession.  
6

7           Therefore, **IT IS HEREBY ORDERED** that Plaintiff Landowners’ Motion For  
8 Reimbursement of Property Taxes is **GRANTED** in its entirety and the City shall reimburse the  
9 Landowners for the taxes paid on the 17 Acre Property from August 2, 2017, forward in the  
10 amount of \$335,684.40.  
11

12           **IT IS FURTHER ORDERED** that the judgment that is entered in this matter shall  
13 include this \$335,684.40 to be paid by the City to the Landowners, forthwith.

14           **IT IS FURTHER ORDERED** that interest on reimbursement of taxes will be calculated  
15 consistent with Nevada law.  
16

17           **IT IS FURTHER ORDERED** that the Landowners are not liable for any outstanding real  
18 property taxes that have accrued on the 17 Acre Property (APN: 138-32-301-005) after August 2,  
19 2017, or any future real property taxes that may be assessed or accrue on the 17 Acre Property  
20 (APN: 138-32-301-005) from August 2, 2017 forward.  
21  
22

23                           Dated this 1st day of August, 2024

24                           

25                           B4A C32 467C BA45  
26 Jennifer Schwartz  
27 District Court Judge  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Submitted By:	Content Reviewed and Approved By:
LAW OFFICES OF KERMIT L. WATERS	McDONALD CARANO LLP
By: <u>//s//: James J. Leavitt</u> Kermit L. Waters, Esq. (NSB 2571) James J. Leavitt, Esq. (NSB 6032) Michael A. Schneider, Esq. (NSB 8887) Autumn L. Waters, Esq. (NSB 8917) 704 South Ninth Street Las Vegas, Nevada 89101 Telephone: (702) 733-8877 Facsimile: (702) 731-1964  <i>Attorneys for Plaintiff Landowners</i>	By: <u>No Response</u> George F. Ogilvie III (NSB 3552) Christopher Molina (NSB 14092) 2300 W. Sahara Avenue, Suite 1200 Las Vegas, Nevada 89102  LAS VEGAS CITY ATTORNEY'S OFFICE Jeff Dorocak (NSB 13109) 495 South Main Street, 6th Floor Las Vegas, Nevada 89101  SHUTE, MIHALY & WEINBERGER, LLP Andrew W. Schwartz (CA Bar No. 87699) (Admitted pro hac vice) Lauren M. Tarpey (CA Bar No. 321775) (Admitted pro hac vice) 396 Hayes Street San Francisco, California 94102  <i>Attorneys for City of Las Vegas</i>

**From:** [Autumn Waters](#)  
**To:** [George F. Ogilvie III](#); [Christopher Molina](#)  
**Cc:** [James Leavitt](#); [Michael Schneider](#); [Monica Villanueva](#)  
**Subject:** 17 Acre Proposed Orders  
**Date:** Monday, July 29, 2024 9:45:44 AM  
**Attachments:** [FFCL Re Attorney Fees.docx](#)  
[FFCL On Prejudgment Interest.docx](#)  
[FFCL Re Motion to Amend Order on FMV.docx](#)  
[FFCL Re Motion Reimbursement Taxes.docx](#)  
[Order Re Costs.docx](#)

---

Hi George,

I hope you had a nice weekend.

Please see the following and attached proposed findings of fact and conclusions of law / orders (FFCLs / Orders) related to the post-appeal motions in Fore Start v. City of Las Vegas (17-acre case).

FFCL Re: Attorney fees;  
FFCL on Prejudgment Interest;  
FFCL Re Motion to Amend Order on FMV;  
FFCL Re Motion Reimburse Taxes; and,  
Order Re Costs

We intend to submit the proposed FFCLs / Orders to the Court on Wednesday, July 31, at 1:00 pm. Please let us know of any proposed revisions prior to that time.

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

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 17

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  
14 case as listed below:

Service Date: 8/1/2024

15 Jeffry Dorocak jdorocak@lasvegasnevada.gov

16 Jeffrey Andrews jandrews@lasvegasnevada.gov

17 Cindy Kelly ckelly@lasvegasnevada.gov

18 Kelli Hansen khansen@lasvegasnevada.gov

19 Autumn Waters autumn@kermittwaters.com

20 Michael Schneider michael@kermittwaters.com

21 James Leavitt jim@kermittwaters.com

22 George Ogilvie III gogilvie@mcdonaldcarano.com

23 Amanda Yen ayen@mcdonaldcarano.com

24 Jelena Jovanovic jjovanovic@mcdonaldcarano.com

25 Christopher Molina cmolina@mcdonaldcarano.com  
26  
27  
28

1	Todd Bice	tlb@pisanellibice.com
2	Jennifer Knighton	jknighton@ehbcompanies.com
3		
4	Evelyn Washington	evelyn@kermittwaters.com
5	Stacy Sykora	stacy@kermittwaters.com
6	Renee Carreau	rcarreau@ag.nv.gov
7	Kermitt Waters	kermitt@kermittwaters.com
8	CluAynne Corwin	ccorwin@lasvegasnevada.gov
9	Craig Newby	cnewby@ag.nv.gov
10	Debbie Leonard	debbie@leonardlawpc.com
11	Karen Surowiec	ksurowiec@mcdonaldcarano.com
12		
13	Andrew Schwartz	Schwartz@smwlaw.com
14	Lauren Tarpey	LTarpey@smwlaw.com
15	David Weibel	weibel@smwlaw.com
16	Ryann Milton	rmilton@lasvegasnevada.gov
17	Timothy Geswein	tgeswein@lasvegasnevada.gov
18		
19	Monica Villanueva	monica@kermittwaters.com
20	Nechole Garcia	ngarcia@lasvegasnevada.gov
21	M Pizzariello	mpizzariello@ag.nv.gov
22	James Lewis	jblewis@lasvegasnevada.gov
23		
24		
25		
26		
27		
28		

# **EXHIBIT “D”**

1 **FFCL**  
2 **LAW OFFICES OF KERMITT L. WATERS**  
3 Kermitt L. Waters, Esq., Bar No. 2571  
4 kermitt@kermittwaters.com  
5 James J. Leavitt, Esq., Bar No. 6032  
6 jim@kermittwaters.com  
7 Michael A. Schneider, Esq., Bar No. 8887  
8 michael@kermittwaters.com  
9 Autumn L. Waters, Esq., Bar No. 8917  
10 autumn@kermittwaters.com  
11 704 South Ninth Street  
12 Las Vegas, Nevada 89101  
13 Telephone: (702) 733-8877  
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; et al.,

13 Plaintiffs,

14 vs.

15 CITY OF LAS VEGAS, a political subdivision of  
16 the State of Nevada; et al.,

17 Defendants.

Case No.: A-18-773268-C  
Dept. No.: XVII

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW GRANTING  
PLAINTIFF LANDOWNERS'  
MOTION TO DETERMINE  
PREJUDGMENT INTEREST**

**Hearing Date:** June 10, 2024  
**Hearing Time:** 1:00 p.m.

19 Plaintiffs Landowners, FORE STARS, LTD and SEVENTY ACRES LLC  
20 ("Landowners") brought Plaintiff Landowners' Motion to Determine Prejudgment Interest  
21 before the Court on June 10, 2024, at 1:00 p.m., with James J. Leavitt, Esq., Kermitt L. Waters,  
22 Esq., Autumn Waters, Esq., and Michael A. Schneider, Esq. of the Law Offices of Kermitt L.  
23 Waters appearing on behalf of Landowners, and George F. Ogilvie III, Esq. of McDonald Carano  
24

1 LLP, and Andrew W. Schwartz, Esq., of Shute, Mihaly & Weinberger, LLP, appearing on behalf  
2 of the City of Las Vegas ("City").

3 Having reviewed and considered the evidence presented, the file and other matters  
4 referenced herein, the Court hereby enters the following Findings of Fact and Conclusions of Law:

5 **I. PROCEDURE TO DETERMINE PREJUDGMENT INTEREST**

6 1. On January 4, 2023, this Court entered summary judgment in the amount of  
7 FORTY-SEVEN MILLION NINE HUNDRED NINETY THOUSAND DOLLARS AND NO  
8 CENTS (\$47,990,000.00) in favor of the Plaintiff, Fore Stars Ltd and Seventy Acres LLC  
9 ("Landowners") and against the City of Las Vegas ("City").

10 2. This amount of money represents the fair market value of the Landowners' 17 Acre  
11 Property at issue in this case as of the NRS 37.120 trial date of value. *See December 12, 2022*  
12 *Order Granting Plaintiff Landowners' Motion to Determine Date of Value Pursuant to NRS*  
13 *37.120.*

14 3. Article 1 Section 22 of the Nevada Constitution provides that "Just compensation  
15 shall include, but is not limited to, compounded interest..."

16 4. NRS 37.175 provides that this Court must decide three issues when determining  
17 the interest award in this inverse condemnation case: 1) the date interest commences; 2) the rate  
18 of interest; and, 3) whether the interest will be compounded:

19 "The court shall determine, in a posttrial hearing, the award of interest and award  
20 as interest the amount of money which will put the person from whom the property  
21 is taken in as good a position monetarily as if the property had not been taken. The  
22 district court shall enter an order concerning:

- 23 a) The date on which the computation of interest will commence;  
24 b) The rate of interest to be used to compute the award of interest, which  
must not be less than the prime rate of interest plus 2 percent; and  
25 c) Whether the interest will be compounded annually."

26 NRS 37.175 (4).

1           5.       Therefore, this Court will decide these three issues to determine the interest in this  
2 case.

3 **II.     FINDINGS OF FACT AND CONCLUSIONS OF LAW**

4       **A.     Findings of Fact Relevant to Issue #1 - The Date Upon Which the Computation of**  
5               **Interest Will Commence**

6           6.       The Landowners presented evidence that the prejudgment interest must commence  
7 on August 2, 2017.

8           7.       The Landowners argued that this Court's Findings of Fact and Conclusions of Law  
9 Regarding Plaintiff Landowners' Motion to Determine Take, filed October 27, 2022 ("FFCL Re:  
10 Take") provides the findings necessary to support that prejudgment interest must commence on  
11 August 2, 2017.

12           8.       This Court's FFCL Re: Take finds on February 15, 2017, the City initially approved  
13 applications to allow development on the stand-alone 17 Acre Property. *Exhibit 1, FFCL Re:*  
14 *Take, LA PJI 0004:13-17.* That approval, however, required that the 17 Acre Property development  
15 be integrated into the development of the entire 250 Acre Property: "At the February 15, 2017,  
16 hearing for the Initial Approvals for the 17 Acre Property, the City Council made it clear that,  
17 although the Initial Approvals were granted, the 17 Acre Property would have to be integrated into  
18 a larger 'global' development plan for the entire 250 Acres (hereinafter 'Master Development  
19 Agreement' or '2017 MDA')." *Exhibit 1, FFCL Re: Take, LA PJI 0006:23 - 0007:5.* On June 13,  
20 2017, the makeup of the City Council changed with the election of a new councilmember and the  
21 vote count changed from 4-3 to allow development on the 17 Acre Property to 4-3 against any  
22 development and thereafter the City denied 100% of all applications to use the 17 Acre Property  
23 and created unsurmountable barriers to prohibit the development. *Exhibit 1, FFCL Re: Take, LA*  
24 *PJI 0004:18 - 0005:10.*



1           9.       The Landowners complied with the City Council’s mandate to incorporate the 17  
2 Acre Property into a “global” MDA, the Landowners complied with all City demands for the  
3 MDA, the MDA application was completed after nearly 3 years of work, the MDA would have  
4 allowed development on the 17 Acre Property consistent with the Initial Approvals, the City’s  
5 Planning Department recommended approval of the MDA as it complied with all City and State  
6 standards, and the City denied the MDA in its entirety on **August 2, 2017**. *Exhibit 1, FFCL Re: Take,*  
7 *LA PJI 0006-0012*.

8           10.      “Therefore, the ‘global’ plan the City Council members demanded as part of the Initial  
9 Approvals to develop the 17 Acre Property at the February 15, 2017, hearing, was denied six months  
10 later on August 2, 2017.” *Exhibit 1, FFCL Re: Take, LA PJI 0012:1-3*.

11           11.      This Court’s FFCL Re: Take then lists five additional specific actions the City engaged  
12 in that resulted in the taking of the entire 17 Acre Property by inverse condemnation. *Exhibit 1, FFCL*  
13 *Re: Take, LA PJI 0006-0024*.

14           12.      Therefore, the Landowners argued that the first date of injury is at least **August 2,**  
15 **2017**, the date of the MDA denial and, accordingly, the Landowners recommended that this date  
16 be used as “[t]he date on which the computation of interest will commence” under NRS 37.175(4).

17           13.      The City did not present evidence to challenge the proposed August 2, 2017, date  
18 as “[t]he date on which the computation of interest will commence” under NRS 37.175(4). Instead,  
19 the City proposed alternative dates such as November 7, 2018 and October 10, 2022. However,  
20 the City provided no legal authority to support using its alternative dates.

21           14.      In *City of Las Vegas v. 180 Land Co*, 140 Nev. Adv Op. 29 (April 18, 2024)  
22 (hereinafter: “*180 Land Co Opinion*.”) the Nevada Supreme Court affirmed the use of August 2,  
23 2017, as the date the Landowners were dispossessed of their property and also affirmed the district  
24 court’s determination of August 2, 2017, as the date upon which interest should commence. *180*  
*Land Co Opinion* at 29 and 32.

1       **B.       Conclusions of Law Relevant to Issue #1 - The Date Upon Which the Computation**  
2       **of Interest Will Commence**

3       15.     In an eminent domain and inverse condemnation case, where the market value is  
4       not paid contemporaneously with the taking, “the owner is entitled to interest for the delay in the  
5       payment from the date of the taking until the date of the payment.” Clark County v. Alper, 100  
6       Nev. 382, 392 (1984). *See also* McCarran Int’l Airport v. Sisolak, 122 Nev. 645 (2006) (affirming  
7       award of prejudgment interest in an inverse condemnation proceeding from the date of taking until  
8       the date of payment). “The purpose of awarding interest is to compensate the landowner for the  
9       delay in the monetary payment that occurred after the property had been taken.” 180 Land Co  
10      Opinion at 32 *citing* Clark County v Alper, 100 Nev 382, 392 (1984).

11      16.     Unlike some cases where there is one specific act that results in the taking, here,  
12      the City engaged in numerous actions toward the Landowners’ 17 Acre Property to prohibit all use  
13      of the property so that the surrounding public could use the Landowners’ Property. *See* FFCL Re:  
14      Take. Under these circumstances, the Court looks to the first date of compensable injury resulting  
15      from the government’s conduct. City of North Las Vegas v. 5<sup>th</sup> & Centennial, LLC., 130 Nev. 619  
16      (2014) (relying on eminent domain statutes and law to commence interest in a precondemnation  
17      damages case on the first date of compensable injury).

18      17.     In this case, the evidence presented establishes August 2, 2017, as the first date of  
19      compensable injury for purposes of calculating interest.

20      18.     Therefore, the Court finds that August 2, 2017, is the first date of compensable  
21      injury and will use that August 2, 2017, date as “[t]he date on which the computation of interest  
22      will commence” under NRS 37.175(4).

23      19.     The Court further finds that August 2, 2017, is the date the City dispossessed the  
24      Landowners of their 17 Acre Property, meaning this is the date of taking, further establishing

1 August 2, 2017, as the proper date to commence interest. *See Sisolak, supra, at 674 (interest on*  
2 *an inverse condemnation verdict commences from the date of take.).*

3 **C. Findings of Fact Relevant to Issue #2 - The Rate of Interest to be Used to Compute**  
4 **the Award of Interest**

5 20. To support their requested rate of return, the Landowners provided three sources:  
6 1) a declaration by the Landowners' principal, real estate developer Vickie DeHart; 2) an analysis  
7 by expert real estate appraiser Tio DiFederico, and 3) the Landowners supplemented their  
8 pleadings and presented evidence that the City of Las Vegas charges 15% interest when it has not  
9 received payment for property taxes and other City levied charges. See Exhibits 3, 4, 10 and 11  
10 respectively.

11 21. Mr. DiFederico concluded after reviewing market data that a real estate investor  
12 that invested in land similar to the 17 Acre Property would receive a 20% rate of return.

13 22. Ms. DeHart, testified that the Landowners would have reinvested in real estate.

14 23. The Landowners argued, based on this evidence, that a proper rate of return (interest  
15 rate) to apply in the context of this inverse condemnation case is either 15% or 20%, to be  
16 compounded annually.

17 24. The City advanced that no interest should be awarded in this case, but conceded  
18 that prime rate of interest plus 2 percent is supported by Nevada caselaw.

19 25. The City made three principle arguments to support its position: 1) no interest  
20 should be awarded to the Landowners in this case as a trial date of value was ordered; 2) no Nevada  
21 Court has awarded prejudgment interest higher than prime plus two percent; and, 3) the  
22 Landowners do not seek interest on the judgment, but rather a windfall profit from a speculative  
23 investment.

24 **D. Conclusions of Law Relevant to Issue #2 – The Rate of Interest to Be Used to**  
**Compute the Award of Interest**

1           26.     In the *180 Land Co* Opinion the Nevada Supreme Court held as follows:

2           “The district court did not abuse its discretion in setting the prejudgment interest  
3           rate at prime plus 2 percent. “The purpose of awarding interest is to compensate the  
4           landowner for the delay in the monetary payment that occurred after the property  
5           had been taken.” *Alper*, 100 Nev. at 392, 685 P.2d at 950 (citing *Refining Co. v.*  
6           *Dir. of Pub. Works*, 244 A.2d 853, 855 (R.I. 1968)). And “[t]he statutory interest  
7           rate establishes at least a *prima facie* basis for determining a fair rate.” *Id.* at 394,  
8           685 P.2d at 951.” *180 Land Co.* at 32.

9           27.     This Court rejects the City’s argument that valuing property in an inverse  
10          condemnation case as of the date of trial alleviates the City’s obligation to pay interest, because  
11          the Nevada Supreme Court in *County of Clark v. Alper*, 100 Nev. at 392, 685 P.2d at 960 (1984),  
12          specifically rejects the City argument that a trial date of value alleviates the City’s obligation to  
13          pay interest.

14          28.     After considering all of the evidence, this Court finds that the rate of prime plus  
15          two percent set forth in NRS 37.175(4), adjusted every January 1 and July 1, satisfies the standard  
16          of “just compensation” and puts the Landowners back in “as good position pecuniarily as [they]  
17          would have been if [their] property had not been taken.” *See Barsy* and *180 Land Co* Opinion.

18          29.     Therefore, the rate of return to determine the interest in this case shall be prime plus  
19          two percent, adjusted every January 1 and July 1, for the relevant periods.

20          30.     The rate of prime plus two percent, adjusted every January 1 and July 1, for the  
21          relevant periods (August 2, 2017 to August 2, 2024) is as follows:

22                   Aug. 2, 2017-December 31, 2017 (151 days)-6.25  
23                   January 1, 2018-June 30, 2018 (182 days)-6.50  
24                   July 1, 2018-December 31, 2018 (183 days)-7.00  
                    January 1, 2019-June 30, 2019-(182 days) 7.50  
                    July 1, 2019-December 31, 2019-(183 days) 7.50  
                    January 1, 2020-June 30, 2020-(183 days) 6.75  
                    July 1, 2020-December 31, 2020 (183 days) 5.25

1 January 1, 2021-June 30, 2021-(182 days) 5.25  
2 July 1, 2021-December 31, 2021-(183 days) 5.25  
3 January 1, 2022-June 30, 2022-(182 days) 5.25  
4 July 1, 2022 – December 31, 2022 (183 days) 6.75  
5 January 1, 2023 – June 30, 2023-(182 days) 9.50  
6 July 1, 2023-December 31, 2023 (183 days) 10.25  
7 January 1, 2024-June 30, 2024-(183 days) 10.50  
8 July 1, 2024-August 2, 2024-(32 days) 10.50

8 **E. Findings of Fact Relevant to Issue #3 – Whether Interest Will Be Compounded**

9 31. The Landowners argued that there are several ways to compound interest –  
10 annually, quarterly, monthly, weekly, daily, etc.

11 32. The Landowners maintained that experts Tio DiFederico opined that, if the rate of  
12 return on land is used, then the rate should be compounded annually. *Exhibits 4.*

13 33. On this basis, the Landowners argued that, applying the rate of return on land,  
14 requires that this rate be compounded annually.

15 34. The City contests that interest should be compounded by arguing that Article 1, §  
16 22(4) does not apply because this is an inverse condemnation case.

17 35. In the *180 Land Co.* Opinion the Nevada Supreme Court affirmed the district  
18 court's order compounding interest annually.

19 36. In the *180 Land Co.* Opinion the Nevada Supreme Court rejected the City's  
20 argument that eminent domain rules and procedure are not applicable in this inverse condemnation  
21 case and reaffirmed the application of *Clark County v. Alper*, 100 Nev. 382, 391, 685 P.2d 943,  
22 949 (1984) holding, "Inverse condemnation proceedings are the constitutional equivalent to  
23 eminent domain actions and are governed by the same rules and principles that are applied to  
24 formal condemnation proceedings." *180 Land Co.* at 27, 28, 29, 30.

1       **F. Conclusions of Law Relevant to Issue #3 - Whether Interest Will Be Compounded**

2           37.     The Nevada Constitution, article 1, section 22 (4), states "Just Compensation shall  
3 include ... compounded interest."

4           38.     In the *180 Land Co.* Opinion the Nevada Supreme Court affirmed the district  
5 court's order compounding interest annually. *Id* at 31-32.

6           39.     In the *180 Land Co.* Opinion the Nevada Supreme Court rejected the City's  
7 argument that eminent domain rules and procedure are not applicable in this inverse condemnation  
8 case and reaffirmed the application of *Clark County v. Alper*, 100 Nev. 382, 391, 685 P.2d 943,  
9 949 (1984) holding, "Inverse condemnation proceedings are the constitutional equivalent to  
10 eminent domain actions and are governed by the same rules and principles that are applied to  
11 formal condemnation proceedings." *180 Land Co.* at 27, 28, 29, 30.

12          40.     Therefore, this Court finds that, for purposes of calculating interest in this case, the  
13 interest rate must be compounded annually.

14       **G. Calculation of Prejudgment Interest Owed the Landowners**

15          41.     Based on the foregoing, the prejudgment interest on the \$47,990,000.00 award, will  
16 be calculated as follows: 1) the prejudgment interest will commence on August 2, 2017, and run  
17 until the judgment is satisfied by the City; 2) the rate of return to calculate prejudgment interest is  
18 the statutory rate of prime plus two percent, adjusted every January 1 and July 1; and, 3) the interest  
19 will be compounded annually.

20          42.     The City has not paid the \$47,990,000.00 and, therefore, interest will be calculated  
21 from August 2, 2017, to August 2, 2024, which amounts to:

22           Aug. 2, 2017-December 31, 2017 (151 days)-6.25	\$47,990,000	\$1,240,837.97
23           January 1, 2018-June 30, 2018 (182 days)-6.50	\$49,230,837.97	\$1,595,619.48
24           July 1, 2018-December 31, 2018 (183 days)-7.00	\$49,230,837.97	\$1,727,799.99

1	January 1, 2019-June 30, 2019-(182 days) 7.50	\$52,554,257.44	\$ same rate
2	July 1, 2019-December 31, 2019-(183 days) 7.50	\$52,554,257.44	\$3,941,569.30
3	January 1, 2020-June 30, 2020-(183 days) 6.75	\$56,495,826.74	\$1,911,958.38
4	July 1, 2020-December 31, 2020 -(183 days) 5.25	\$56,495,826.74	\$1,487,078.13
5	January 1, 2021-June 30, 2021-(182 days) 5.25	\$59,894,863.25	\$ same rate
6	July 1, 2021-December 31, 2021-(183 days) 5.25	\$59,894,863.25	\$3,144,478.65
7	January 1, 2022-June 30, 2022-(182 days) 5.25	\$63,039,341.90	\$1,650,248.60
8	July 1, 2022 - December 31, 2022 -(183 days) 6.75	\$63,039,341.90	\$2,133,406.68
9	January 1, 2023 - June 30, 2023-(182 days) 9.50	\$66,822,997.18	\$3,165,396.78
10	July 1, 2023-December 31, 2023 -(183 days) 10.25	\$66,822,997.18	\$3,434,060.88
11	January 1, 2024-June 30, 2024-(183 days) 10.50	\$73,422,454.84	\$3,865,239.99
12	July 1, 2024-August 2, 2024-(32 days) 10.50	\$73,422,454.84	\$675,888.96

11                   **Total Interest Award** **\$29,973,583.79**

12                   *Daily Interest After August 2, 2024 (up to December 31, 2024):* *\$21,121.53*

13 See attached interest calculation sheets for each period, with the compounded amount entered for  
14 each January to account for annual compounded interest.

15                   Therefore, **IT IS HEREBY ORDERED** that the Landowners motion to determine  
16 prejudgment interest is **GRANTED**, as to the date of commencement and as to interest being  
17 compounded annually, and **DENIED**, as to the rate, as set forth herein.

18                   It is **FUTHER ORDERED** that the City shall pay prejudgment interest from August 2,  
19 2017, up to August 2, 2024, in the amount of \$29,973,583.79.

20                   It is **FURTHER ORDERED** that the City shall pay prejudgment interest for any periods  
21 after August 2, 2024, in the daily amount of \$21,121.53 up to December 31, 2024, until the City  
22 satisfies the \$47,990,000 judgment.

23                   It is **FURTHER ORDERED** that, in the event the City has not satisfied the judgment by  
24 December 31, 2024, the City shall pay prejudgment interest for any periods after December 31,

1 2024, calculated and determined consistent with the findings in this FFCL, based on prime plus  
2 two percent, adjusted every January 1 and July 1, and compounded annually.

3 Dated this 1st day of August, 2024

4   
5

6 **6F2 BF7 AE39 1748**  
**Jennifer Schwartz**  
**District Court Judge**

7 Respectfully Submitted By:

Content Reviewed and Approved By:

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

**MCDONALD CARANO LLP**

9 /s/ James J. Leavitt

No Response

10 Kermitt L. Waters, Esq. (NV Bar No. 2571)  
11 James J. Leavitt, Esq. (NV Bar No. 6032)  
12 Michael A. Schneider, Esq. (NV Bar No. 8887)  
13 Autumn L. Waters, Esq. (NV Bar No. 8917)  
14 704 South Ninth Street  
15 Las Vegas, Nevada 89101  
16 Telephone: (702) 733-8877  
17 Facsimile: (702) 731-1964  
18 *Attorneys for Plaintiff Landowners*

George F. Ogilvie III, Esq. (NV Bar No. 3552)  
Christopher Molina, Esq. (NV Bar No. 14092)  
2300 W. Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE  
Jeff Dorocak (NV Bar No. 13109)  
495 South Main Street, 6th Floor  
Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER, LLP  
Andrew W. Schwartz, Esq. (CA Bar No. 87699)  
(Admitted *pro hac vice*)  
Lauren M. Tarpey, Esq. (CA Bar No. 321775)  
(Admitted *pro hac vice*)  
396 Hayes Street  
San Francisco, California 94102  
*Attorneys for City of Las Vegas*



**From:** [Autumn Waters](#)  
**To:** [George F. Ogilvie III](#); [Christopher Molina](#)  
**Cc:** [James Leavitt](#); [Michael Schneider](#); [Monica Villanueva](#)  
**Subject:** 17 Acre Proposed Orders  
**Date:** Monday, July 29, 2024 9:45:44 AM  
**Attachments:** [FFCL Re Attorney Fees.docx](#)  
[FFCL On Prejudgment Interest.docx](#)  
[FFCL Re Motion to Amend Order on FMV.docx](#)  
[FFCL Re Motion Reimbursement Taxes.docx](#)  
[Order Re Costs.docx](#)

---

Hi George,

I hope you had a nice weekend.

Please see the following and attached proposed findings of fact and conclusions of law / orders (FFCLs / Orders) related to the post-appeal motions in Fore Start v. City of Las Vegas (17-acre case).

FFCL Re: Attorney fees;  
FFCL on Prejudgment Interest;  
FFCL Re Motion to Amend Order on FMV;  
FFCL Re Motion Reimburse Taxes; and,  
Order Re Costs

We intend to submit the proposed FFCLs / Orders to the Court on Wednesday, July 31, at 1:00 pm. Please let us know of any proposed revisions prior to that time.

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

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 17

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: 8/1/2024

15 Jeffry Dorocak jdorocak@lasvegasnevada.gov

16 Jeffrey Andrews jandrews@lasvegasnevada.gov

17 Cindy Kelly ckelly@lasvegasnevada.gov

18 Kelli Hansen khansen@lasvegasnevada.gov

19 Autumn Waters autumn@kermittwaters.com

20 Michael Schneider michael@kermittwaters.com

21 George Ogilvie III gogilvie@mcdonaldcarano.com

22 Amanda Yen ayen@mcdonaldcarano.com

23 Jelena Jovanovic jjovanovic@mcdonaldcarano.com

24 Christopher Molina cmolina@mcdonaldcarano.com

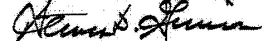
25 Todd Bice tlb@pisanellibice.com  
26  
27  
28

1	Jennifer Knighton	jknighton@ehbcompanies.com
2	Evelyn Washington	evelyn@kermittwaters.com
3	Stacy Sykora	stacy@kermittwaters.com
4	Renee Carreau	rcarreau@ag.nv.gov
5	James Leavitt	jim@kermittwaters.com
6	Kermitt Waters	kermitt@kermittwaters.com
7	CluAynne Corwin	ccorwin@lasvegasnevada.gov
8	Craig Newby	cnewby@ag.nv.gov
9	Debbie Leonard	debbie@leonardlawpc.com
10	Karen Surowiec	ksurowiec@mcdonaldcarano.com
11	Andrew Schwartz	Schwartz@smwlaw.com
12	Lauren Tarpey	LTarpey@smwlaw.com
13	David Weibel	weibel@smwlaw.com
14	Ryann Milton	rmilton@lasvegasnevada.gov
15	Timothy Geswein	tgeswein@lasvegasnevada.gov
16	Monica Villanueva	monica@kermittwaters.com
17	Nechole Garcia	ngarcia@lasvegasnevada.gov
18	M Pizzariello	mpizzariello@ag.nv.gov
19	James Lewis	jblewis@lasvegasnevada.gov

# **EXHIBIT “E”**

ELECTRONICALLY SERVED  
8/1/2024 11:23 AM

Electronically Filed  
08/01/2024 11:22 AM

  
CLERK OF THE COURT

**ORDR**

**LAW OFFICES OF KERMITT L. WATERS**

Kermitt L. Waters, Esq., Bar No. 2571

kermitt@kermittwaters.com

James J. Leavitt, Esq., Bar No. 6032

jim@kermittwaters.com

Michael A. Schneider, Esq., Bar No. 8887

michael@kermittwaters.com

Autumn L. Waters, Esq., Bar No. 8917

autumn@kermittwaters.com

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

*Attorneys for Plaintiffs Landowners*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FORE STARS, LTD; SEVENTY ACRES LLC,  
a Nevada liability company; et al.,

Plaintiffs,

vs.

CITY OF LAS VEGAS, a political subdivision of  
the State of Nevada; et al.,

Defendants.

Case No.: A-18-773268-C

Dept. No.: 17

**ORDER GRANTING IN PART AND  
DENYING IN PART THE CITY OF  
LAS VEGAS' MOTION TO RETAX  
MEMORANDUM OF COSTS**

**Hearing Date:** June 10, 2024

**Hearing Time:** 1:00 p.m.

Defendant City of Las Vegas' Motion to Retax Memorandum of Costs, having come before the Court on June 10, 2024, at 1:00 p.m., with James J. Leavitt, Esq., Kermitt L. Waters, Esq., Autumn Waters, Esq., and Michael A. Schneider, Esq. of the Law Offices of Kermitt L. Waters appearing on behalf of Plaintiffs, FORE STARS, LTD and SEVENTY ACRES LLC (hereinafter: "Landowners"), and George F. Ogilvie III, Esq. of McDonald Carano LLP, and

JD Court Reporting	\$1,037.40
Kristen Lunwitz	\$160.32
LGM Transcript Service	\$206.40
Oasis Reporting	\$2,125.90
Litigation Service	\$1,311.00
Verbatim Digital Reporting	\$1,101.54
Chris Hwang	\$178.60
Legal Wings	\$1,825.00

The Court further finds the following costs to be reasonable and actually incurred in this matter after January 9, 2023:

Westlaw	\$6,220.21
395 color copies @ .25 per pg.	\$98.75
450 b/w copies @ .15 per pg.	\$67.50
Lexbe Inc.	\$1,331.25
<b>TOTAL AWARDED COSTS</b>	<b>\$132,947.99</b>

The Court further finds, and **GRANTS** in accordance with the City's request to retax, as well as Plaintiff's concession, that the following costs are not reimbursable in this matter as they were awarded in case no. A-758528-J and are improper here:

GGA Advisors	\$2,189.47
--------------	------------

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

The Court further finds, that the following costs are not reimbursable in this matter:

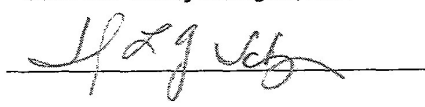
Peremptory Challenge	\$1,401.00
8 <sup>th</sup> Judicial District Court (E-File) after January 9, 2023	\$125.50
<b>TOTAL UNAWARDED COSTS</b>	<b>\$3,715.97</b>

Therefore, **IT IS HEREBY ORDERED THAT** the City pay to the Landowners costs in the amount of \$132,947.99.

**IT IS FURTHER ORDERED THAT** the judgment that is entered in this matter shall include this \$132,947.99 to be paid by the City to the Landowners, forthwith.

**IT IS FURTHER ORDERED** that interest on costs will be calculated consistent with Nevada law.

Dated this 1st day of August, 2024



**E53 820 404B B343  
Jennifer Schwartz  
District Court Judge**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Submitted By:

LAW OFFICES OF KERMITT L. WATERS

By: /s/ James J. Leavitt

Kermitt L. Waters, Esq. (NSB 2571)

James J. Leavitt, Esq. (NSB 6032)

Michael A. Schneider, Esq. (NSB 8887)

Autumn L. Waters, Esq. (NSB 8917)

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

*Attorneys for Plaintiff Landowners*

Content Reviewed and Approved By:

McDONALD CARANO LLP

By: No Response

George F. Ogilvie III (NSB 3552)

Christopher Molina (NSB 14092)

2300 W. Sahara Avenue, Suite 1200

Las Vegas, Nevada 89102

LAS VEGAS CITY ATTORNEY'S OFFICE

Jeff Dorocak (NSB 13109)

495 South Main Street, 6th Floor

Las Vegas, Nevada 89101

SHUTE, MIHALY & WEINBERGER, LLP

Andrew W. Schwartz (CA Bar No. 87699)

(Admitted pro hac vice)

Lauren M. Tarpey (CA Bar No. 321775)

(Admitted pro hac vice)

396 Hayes Street

San Francisco, California 94102

*Attorneys for City of Las Vegas*



**From:** [Autumn Waters](#)  
**To:** [George F. Ogilvie III](#); [Christopher Molina](#)  
**Cc:** [James Leavitt](#); [Michael Schneider](#); [Monica Villanueva](#)  
**Subject:** 17 Acre Proposed Orders  
**Date:** Monday, July 29, 2024 9:45:44 AM  
**Attachments:** [FFCL Re Attorney Fees.docx](#)  
[FFCL On Prejudgment Interest.docx](#)  
[FFCL Re Motion to Amend Order on FMV.docx](#)  
[FFCL Re Motion Reimbursement Taxes.docx](#)  
[Order Re Costs.docx](#)

---

Hi George,

I hope you had a nice weekend.

Please see the following and attached proposed findings of fact and conclusions of law / orders (FFCLs / Orders) related to the post-appeal motions in Fore Start v. City of Las Vegas (17-acre case).

FFCL Re: Attorney fees;  
FFCL on Prejudgment Interest;  
FFCL Re Motion to Amend Order on FMV;  
FFCL Re Motion Reimburse Taxes; and,  
Order Re Costs

We intend to submit the proposed FFCLs / Orders to the Court on Wednesday, July 31, at 1:00 pm. Please let us know of any proposed revisions prior to that time.

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

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 17

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: 8/1/2024

15 Jeffry Dorocak jdorocak@lasvegasnevada.gov

16 Jeffrey Andrews jandrews@lasvegasnevada.gov

17 Cindy Kelly ckelly@lasvegasnevada.gov

18 Kelli Hansen khansen@lasvegasnevada.gov

19 Autumn Waters autumn@kermittwaters.com

20 Michael Schneider michael@kermittwaters.com

21 James Leavitt jim@kermittwaters.com

22 George Ogilvie III gogilvie@mcdonaldcarano.com

23 Amanda Yen ayen@mcdonaldcarano.com

24 Jelena Jovanovic jjovanovic@mcdonaldcarano.com

25 Christopher Molina cmolina@mcdonaldcarano.com  
26  
27  
28

1	Todd Bice	tlb@pisanellibice.com
2	Jennifer Knighton	jknighton@ehbcompanies.com
3	Evelyn Washington	evelyn@kermittwaters.com
4	Stacy Sykora	stacy@kermittwaters.com
5	Renee Carreau	rcarreau@ag.nv.gov
6	Kermitt Waters	kermitt@kermittwaters.com
7	CluAynne Corwin	ccorwin@lasvegasnevada.gov
8	Craig Newby	cnewby@ag.nv.gov
9	Debbie Leonard	debbie@leonardlawpc.com
10	Karen Surowiec	ksurowiec@mcdonaldcarano.com
11	Andrew Schwartz	Schwartz@smwlaw.com
12	Lauren Tarpey	LTarpey@smwlaw.com
13	David Weibel	weibel@smwlaw.com
14	Ryann Milton	rmilton@lasvegasnevada.gov
15	Timothy Geswein	tgeswein@lasvegasnevada.gov
16	Monica Villanueva	monica@kermittwaters.com
17	Nehole Garcia	ngarcia@lasvegasnevada.gov
18	M Pizzariello	mpizzariello@ag.nv.gov
19	James Lewis	jblewis@lasvegasnevada.gov
20		
21		
22		
23		
24		
25		
26		
27		
28		

# **EXHIBIT “F”**

  
CLERK OF THE COURT

**FFCL  
LAW OFFICES OF KERMITT L. WATERS**

Kermitt L. Waters, Esq., Bar No. 2571

kermitt@kermittwaters.com

James J. Leavitt, Esq., Bar No. 6032

jim@kermittwaters.com

Michael A. Schneider, Esq., Bar No. 8887

michael@kermittwaters.com

Autumn L. Waters, Esq., Bar No. 8917

autumn@kermittwaters.com

704 South Ninth Street

Las Vegas, Nevada 89101

Telephone: (702) 733-8877

Facsimile: (702) 731-1964

***Attorneys for Plaintiffs Landowners***

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FORE STARS, LTD; SEVENTY ACRES LLC,  
a Nevada liability company; et al.,

Plaintiffs,

vs.

CITY OF LAS VEGAS, a political subdivision of  
the State of Nevada; et al.,

Defendants.

Case No.: A-18-773268-C

Dept. No.: 17

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW GRANTING  
IN PART AND DENYING IN PART  
PLAINTIFF LANDOWNERS'  
MOTION FOR ATTORNEY FEES**

**Hearing Date:** June 10, 2024

**Hearing Time:** 1:00 p.m.

Plaintiffs Landowners, FORE STARS, LTD and SEVENTY ACRES LLC  
("Landowners") brought Plaintiff Landowners' Motion for Attorney Fees before the Court on  
June 10, 2024, at 1:00 p.m., with James J. Leavitt, Esq., Kermitt L. Waters, Esq., Autumn Waters,

1 Esq, and Michael A. Schneider, Esq. of the Law Offices of Kermitt L. Waters appearing on behalf  
2 of Landowners, and George F. Ogilvie III, Esq. of McDonald Carano LLP, and Andrew W.  
3 Schwartz, Esq., of Shute, Mihaly & Weinberger, LLP, appearing on behalf of the City of Las  
4 Vegas ("City").  
5

6 The Court having reviewed all of the pleadings on file, including the submitted exhibits,  
7 heard argument of counsel, and for good cause appearing hereby enters the following findings of  
8 fact and conclusions of law:  
9

10 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

11 1. This is an inverse condemnation case filed by the Landowners for the taking of  
12 their 17.49 acre property located near the intersection of Rampart Blvd. and Alta Dr. in Las  
13 Vegas, Nevada, Clark County Assessor Parcel Number 138-32-301-005 (hereinafter "17 Acre  
14 Property").  
15

16 2. On August 10, 2022, August 25, 2022 and September 12, 2022 the Landowners  
17 filed their summary judgment pleadings, requesting that the Court enter a finding that the City  
18 engaged in actions that meet three different Nevada taking standards: 1) a per se categorical  
19 taking (third claim for relief); 2) a *Penn Central* taking (fourth claim for relief); and, 3) a per se  
20 regulatory taking (fifth claim for relief). Hereinafter "Landowners Summary Judgment  
21 Pleadings."  
22

23 3. On October 27, 2022, this Court entered findings of fact and conclusions of law  
24 that the City engaged in actions that resulted in the taking of the Landowners' "entire" 17 Acre  
25 Property. *Findings of Fact and Conclusions of Law Regarding Plaintiff Landowners' Motion to*  
26 *Determine Take and for Summary Judgment on the Third and Fifth Claims for Relief: Granting*  
27 *Summary Judgment on the Landowners' Fifth Claim for Relief and Denying Summary Judgment*  
28

1 on the Landowners Third Claim for Relief, filed October 27, 2022 (hereinafter “17 Acre FFCL  
2 Re: Take”).

3 4. Thereafter, the Landowners moved for summary judgment on the value of the  
4 taken 17 Acre Property and, on January 4, 2023, this Court granted the Landowners’ motion for  
5 summary judgment, holding the value of the taken 17 Acre Property is \$47,990,000.00 – the  
6 value of the property as determined by the expert appraiser retained by the Landowners. See  
7 *Findings of Fact and Conclusions of Law: Granting the Landowners’ Motion for Summary*  
8 *Judgment on the Value of the Subject Property and Denying the City’s Countermotion for*  
9 *Summary Judgment on Just Compensation (hereinafter “17 Acre FFCL Re: Value”).*  
10

11 5. The Landowners timely filed a post-trial motion requesting attorney fees.  
12

13 6. The Landowners moved for an award of attorney fees pursuant to the Uniform  
14 Relocation Assistance and Real Property Acquisition Act (“Relocation Act”) which Nevada has  
15 adopted in its entirety pursuant to NRS 342.105; see also *McCarran Int’l Airport v. Sisolak*, 122  
16 Nev. 645, 673 (2006) and *Tien Fu Hsu v. County of Clark*, 123 Nev. 625, 637 (2007); 2) the  
17 Nevada Constitution Article 1, Section 22(4); and, 3) NRS 18.010(2)(b).  
18

19 **Law Supporting the Landowners’ Request for Attorney Fees**

20 The Relocation Act

21 7. In the related 35 Acre Case, the Nevada Supreme Court affirmed the district court  
22 award of attorney fees, holding as follows: “[w]e conclude that an award [of attorney fees] was  
23 proper under NRS 342.105” and “we have already held that the Relocation Act’s ‘plain terms’  
24 support such an award when ‘a property owner . . . was successful in [their] inverse condemnation  
25 action.’” *City of Las Vegas v. 180 Land Co.*, 140 Nev. Adv Op. 29, at p. 31 (April 18, 2024)  
26 (hereinafter: “180 Land Co Opinion.”)  
27  
28

1           8.     The Relocation Act provides that an owner shall be “reimbursed for any  
2 reasonable expenses, including reasonable attorney...fees, which the owner actually incurred  
3 because of a condemnation proceeding” when, “[t]he court having jurisdiction renders a  
4 judgment in favor of the owner in an inverse condemnation proceeding” 49 CFR §  
5 24.107(c)(2020); NRS 342.105. The Nevada Supreme Court held in the *Sisolak* case that, “[t]he  
6 Relocation Act requires that a state government entity receiving federal funds institute formal  
7 condemnation proceedings to acquire any interest in real property by exercising the power of  
8 eminent domain” and, if not, Nevada landowners may bring inverse condemnation claims and  
9 “may recover attorney fees and costs if they succeed in an inverse condemnation claim against  
10 the government.” *Sisolak*, at 673.  
11

12  
13           9.     The City of Las Vegas receives federal funds generally and also receives federal  
14 funds for its parks and open space.

15           10.    The Landowners have succeeded in their inverse condemnation claim against the  
16 City and, therefore, are entitled to recover their reasonable attorney fees actually incurred in this  
17 17 Acre Case pursuant to the Relocation Act, NRS 342.105 and *Sisolak*.  
18

19           The Nevada Constitution

20           11.    The Nevada Constitution Article 1, Section 22(4) provides, “[i]n all eminent  
21 domain actions, just compensation shall be defined as that sum of money, necessary to place the  
22 property owner back in the same position, monetarily, without any governmental offsets, as if  
23 the property had never been taken.” Nev. Const. Art. I, § 22(4).  
24

25           12.    The Constitution further provides that “Just compensation shall include, but is not  
26 limited to, compounded interest and all reasonable costs and expenses actually incurred.” Nev.  
27 Const. Art. I, § 22(4) (emphasis added).  
28



- 1           13.     Attorney fees are expenses actually incurred.
- 2           14.     When interpreting constitutional provisions, the normal and ordinary meaning of
- 3 words must be utilized. *Strickland v. Waymire*, 126 Nev. 230, 234 (2010).
- 4
- 5           15.     The normal and ordinary meaning of the word “*expense*,” include “the amount of
- 6 money that is needed to pay for or buy something” and “something on which money is spent.”
- 7 <http://www.merriam-webster.com/dictionary/expense>.
- 8           16.     These normal and ordinary meanings of “*expense*” includes the amount of money
- 9 needed to pay for legal counsel.
- 10
- 11           17.     To the extent there is any question about the normal and ordinary meaning of the
- 12 language in an initiative petition through which Nev. Const. Art. I, § 22(4) was presented and
- 13 passed, the Argument Opposing Passage in the Sample Ballot informed Nevada Voters in 2006
- 14 and 2008 that “Further, we believe **taxpayers may have to pay all lawyers’ fees** and court
- 15 expenses for any legal actions brought by private parties on eminent domain!” (Bold added, “!”
- 16 in original text). See Landowners’ Motion, *Exhibit 9*, p. 11 and *Exhibit 10*, p. 7.
- 17
- 18           18.     Therefore, the Landowners are entitled to an award of their reasonable attorney
- 19 fees actually incurred in this 17 Acre Case pursuant to Nev. Const. Art. I, § 22(4).
- 20           19.     The Court will follow this language in Nev. Const. Art. I, § 22(4) with respect to
- 21 attorney fees actually incurred.
- 22
- 23           NRS 18.010(2)(b)
- 24           20.     NRS 18.010(2)(b) provides for the award of attorney fees to the prevailing party
- 25 “when the court finds that the claim, counterclaim, cross-claim or third-party complaint or
- 26 defense of the opposing party was brought or maintained without reasonable ground or to harass
- 27 the prevailing party.”
- 28

1       21.     The Court finds that, given the record of this case, it is also appropriate to award  
2 attorney fees pursuant to NRS 18.010(2)(b).

3       22.     The Court further finds that, under NRS 18.010(2)(b), the Landowners are the  
4 prevailing party in this case as they prevailed on liability and achieved the \$47,990,000 fair  
5 market value they sought for the taking of their property.  
6

7       **Calculation of Attorney Fees**

8       23.     The Nevada Supreme Court case of *Tien Fu Hsu v. County of Clark*, 123 Nev.  
9 625 (2007), mandates a two-step process for calculating attorney fees for a successful owner in  
10 an inverse condemnation case. First, the district court “must” apply the Lodestar method to  
11 ‘multiply the number of hours reasonably spent on the case by a reasonable hourly rate.’ *Hsu*,  
12 at 637. Second, “[f]ollowing determination of this ‘Lodestar’ amount, we leave it to the sound  
13 discretion of the district court to adjust this fee award based upon: (1) the time and work required;  
14 (2) the difficulty of the issues; (3) the skill required to perform the service; (4) the amount of time  
15 taken away from other work; (5) the customary fee; (6) whether the fee is fixed or contingent;  
16 (7) the time limitations imposed on the attorney by the case; (8) the amount of money involved  
17 and the results obtained; (9) the reputation, experience, and ability of the attorney; (10) the lack  
18 of desirability of the case; (11) the length of acquaintanceship with the client; and, (12) awards  
19 in similar cases.” *Id.*  
20  
21

22       The Lodestar Analysis  
23

24       24.     The Landowners’ counsel provided declarations pursuant to NRCP Rule  
25 54(d)(2)(B)(v)(a) swearing that the fees set forth in the declarations were actually and necessarily  
26 incurred in and for this 17 Acre Case and were reasonable.  
27  
28



1           29.     Therefore, the total attorney fees and legal staff fees the Landowners have actually  
2 incurred in this 17 Acre Case alone, from August, 2017 – June 10, 2024, supported by  
3 declarations, is **\$1,703,295.93** (\$1,666,999.68 + \$36,296.25).  
4

5           30.     This Court finds the hourly rate charged is reasonable.

6           31.     In the *180 Land Co* case the Nevada Supreme Court affirmed the attorney fee  
7 award by Judge Timothy C. Williams in the 35 Acre Case based on the same \$450 and \$675  
8 hourly rates Landowners' counsel sets forth in their declarations and requests in this case. *See*  
9 *180 Land Co*, at 30-31.  
10

11           32.     This Court also finds the hours worked are reasonable and necessarily incurred in  
12 this 17 Acre Case in compliance with the standard set forth in Nev. Const. Art. I, § 22(4) and the  
13 Relocation Act.

14           33.     The hours the Landowners' counsel and legal assistants worked on this case are  
15 supported by declarations as required under NRCP Rule 54(d)(2)(B)(v)(a). These declarations  
16 affirm contemporaneous time sheets were kept to the tenth hour for all work performed; that the  
17 hours worked were specifically identified for only this 17 Acre Case; that the hours submitted  
18 were for work solely done in this 17 Acre Case; that these hours were actually spent working on  
19 this 17 Acre Case; and, that all work performed was reasonable and necessary.  
20

21           34.     The Court further finds and concludes the hours worked on this 17 Acre Case by  
22 Landowners' counsel are reasonable based on the evidence presented of the hours the City's  
23 private attorneys have worked on the four related cases (17, 35, 65, and 133 Acre Cases). The  
24 Landowners submitted as *Exhibits 48* and *49* to its pleadings in support of attorney fees evidence  
25 showing the hours the City's private attorneys have billed the City in the related four cases (17,  
26 35, 65, and 133 Acre Cases) and *Exhibits 28-33* and *44-49* demonstrate the City's private counsel  
27  
28

1 have billed the City nearly 1000 more hours than the Landowners' counsel, the Law Offices of  
2 Kermitt L. Waters, and the City's private counsel have worked on the cases about one year less  
3 than the Law Offices of Kermitt L. Waters.

4  
5 35. The City did not deny that it had been billed for and had paid its private attorneys  
6 nearly 1,000 more hours than those submitted by the Landowners' counsel.

7 36. The Court denies the City's request to order the Landowners produce their  
8 attorney engagement agreement and actual billing invoices from the Law Offices of Kermitt L.  
9 Waters.

10  
11 37. The City's private counsel has billed more hours than the Landowners' counsel,  
12 Law Offices of Kermitt L. Waters, accordingly, there can be no question that the hours worked  
13 by the Landowners' counsel are reasonable. This is especially true since Exhibits 28-33 and 44-  
14 49, referenced above, demonstrate the City's private counsel has billed the City nearly 1000 more  
15 hours in the four related cases than the Law Offices of Kermitt L. Waters and the City's private  
16 counsel has worked on the four related cases about one year less.

17  
18 38. Furthermore, well settled United States Supreme Court precedent rejects the  
19 City's request for the engagement agreement and billing invoices. In the case of *Goodyear Tire*  
20 *& Rubber Co. v. Haeger*, 581 U.S. 101, 110 (2017), the Court held that: 1) "trial courts  
21 undertaking that task [to determine attorney fees] 'need not, and indeed should not, become  
22 green-eyeshade accountants;'" 2) "'The essential goal' in shifting fees is 'to do rough justice, not  
23 to achieve auditing perfection;'" 3) "a district court 'may take into account [its] overall sense of  
24 a suit, and may use estimates in calculating and allocating an attorney's time;'" and, 4) the trial  
25 court's judgment on attorney fees "in light of the trial court's 'superior understanding of the  
26 litigation,' are entitled to substantial deference on appeal."  
27  
28

1           39. Finally, case law states this Court should defer to winning counsel's professional  
2 judgment on work performed and the non-prevailing party is prohibited from "second-guessing"  
3 how the winning party chose to litigate their case. *Moreno v. City of Sacramento*, 534 F.3d 1106,  
4 1112 (9th Cir. 2008) ("[b]y and large, the court should defer to the winning lawyer's professional  
5 judgment as to how much time he was required to spend on the case; after all, he won, and might  
6 not have, had he been more of a slacker."); *Bray v. Maxwell & Morgan Profl Corp.*, No. CV-17-  
7 00486-PHX-DGC, 2017 U.S. Dist. LEXIS 194119, at \*10 (D. Ariz. 2017) ("[p]laintiff's counsel  
8 successfully litigated this case to achieve the maximum relief [p]laintiff was seeking.  
9 Defendants cannot second guess the reasonable strategies counsel adopted in order to achieve  
10 these results."); *First Fed. Sav. & Loan Ass'n v. U.S.*, 88 Fed. Cl. 572, 585 (2009) (This Court "is  
11 reluctant to second-guess counsel's time allocation for what has proved to be a winning case." ...  
12 "How experienced trial counsel staffs his or her case reflects counsel's professional judgment as  
13 to which the Court recognizes substantial leeway."); *Wesselius v. Berryhill*, No. 2:16-cv-00171-  
14 TLF, 2017 U.S. Dist. LEXIS 132484, at \*5-6 (W.D. Wash. Aug. 17, 2017) (courts "objectively  
15 consider[] attorney fee applications on a case-by-case basis and will not second-guess the  
16 winning attorney's appellate strategy decisions."); *Blackwell v. Foley*, 724 F. Supp. 2d 1068,  
17 1077 (N.D. Cal. 2010) ("[w]here plaintiff has obtained 'excellent results,' his or  
18 her attorney should recover a fully compensatory fee.").

19  
20  
21  
22           40. Based on these facts and case law, the Court finds the Landowners' engagement  
23 agreement and actual billing records are not required and not needed to make the determination  
24 that the hours worked on this case by Landowners' counsel are reasonable and were actually  
25 incurred in this matter.  
26  
27  
28

1           41.     Based on the foregoing, the Landowners' request for attorney fees under the  
2 Lodestar analysis is granted and the Landowners are awarded attorney fees in the total amount  
3 of **\$1,703,295.93**.  
4

5     **Upward Adjustment**

6           42.     The Landowners also request that the Court provide an upward adjustment of the  
7 attorney fees.

8           43.     This Court denies the Landowners request for an upward adjustment at this time.

9           Therefore, **IT IS HEREBY ORDERED** that Plaintiff Landowners' Motion for Attorney  
10 Fees is **GRANTED IN PART** and **DENIED IN PART**.  
11

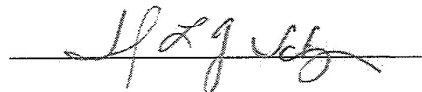
12           **IT IS FURTHER ORDERED** that the Landowners are entitled to reasonable attorney  
13 fees actually incurred in this 17 Acre Case in the amount of **\$1,703,295.93**.  
14

15           **IT IS FURTHER ORDERED** that the judgment that is entered in this matter shall  
16 include this **\$1,703,295.93** to be paid by the City to the Landowners, forthwith.

17           **IT IS FURTHER ORDERED** that the Landowners request for an upward adjustment to  
18 the attorney fees is denied at this time.

19           **IT IS FURTHER ORDERED** that interest on attorney fees will be calculated consistent  
20 with Nevada law.  
21

22  
23                             Dated this 5th day of August, 2024

24                             

25  
26                             **0D7 B4A 014F 024B**  
27                             **Jennifer Schwartz**  
28                             **District Court Judge**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Submitted By:	Content Reviewed and Approved By:
LAW OFFICES OF KERMITT L. WATERS	McDONALD CARANO LLP
By: <u>/s/ James J. Leavitt</u>	By: <u>No Response</u>
Kermitt L. Waters, Esq. (NSB 2571)	George F. Ogilvie III (NSB 3552)
James J. Leavitt, Esq. (NSB 6032)	Christopher Molina (NSB 14092)
Michael A. Schneider, Esq. (NSB 8887)	2300 W. Sahara Avenue, Suite 1200
Autumn L. Waters, Esq. (NSB 8917)	Las Vegas, Nevada 89102
704 South Ninth Street	
Las Vegas, Nevada 89101	LAS VEGAS CITY ATTORNEY'S OFFICE
Telephone: (702) 733-8877	Jeff Dorocak (NSB 13109)
Facsimile: (702) 731-1964	495 South Main Street, 6th Floor
	Las Vegas, Nevada 89101
<i>Attorneys for Plaintiff Landowners</i>	
	SHUTE, MIHALY & WEINBERGER, LLP
	Andrew W. Schwartz (CA Bar No. 87699)
	(Admitted pro hac vice)
	Lauren M. Tarpey (CA Bar No. 321775)
	(Admitted pro hac vice)
	396 Hayes Street
	San Francisco, California 94102
	<i>Attorneys for City of Las Vegas</i>



**From:** [Autumn Waters](#)  
**To:** [George F. Ogilvie III](#); [Christopher Molina](#)  
**Cc:** [James Leavitt](#); [Michael Schneider](#); [Monica Villanueva](#)  
**Subject:** 17 Acre Proposed Orders  
**Date:** Monday, July 29, 2024 9:45:44 AM  
**Attachments:** [FFCL Re Attorney Fees.docx](#)  
[FFCL On Prejudgment Interest.docx](#)  
[FFCL Re Motion to Amend Order on FMV.docx](#)  
[FFCL Re Motion Reimbursement Taxes.docx](#)  
[Order Re Costs.docx](#)

---

Hi George,

I hope you had a nice weekend.

Please see the following and attached proposed findings of fact and conclusions of law / orders (FFCLs / Orders) related to the post-appeal motions in Fore Start v. City of Las Vegas (17-acre case).

FFCL Re: Attorney fees;  
FFCL on Prejudgment Interest;  
FFCL Re Motion to Amend Order on FMV;  
FFCL Re Motion Reimburse Taxes; and,  
Order Re Costs

We intend to submit the proposed FFCLs / Orders to the Court on Wednesday, July 31, at 1:00 pm. Please let us know of any proposed revisions prior to that time.

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

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 17

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: 8/5/2024

15 Jeffry Dorocak jdorocak@lasvegasnevada.gov

16 Jeffrey Andrews jandrews@lasvegasnevada.gov

17 Cindy Kelly ckelly@lasvegasnevada.gov

18 Kelli Hansen khansen@lasvegasnevada.gov

19 Autumn Waters autumn@kermittwaters.com

20 George Ogilvie III gogilvie@mcdonaldcarano.com

21 Amanda Yen ayen@mcdonaldcarano.com

22 Jelena Jovanovic jjovanovic@mcdonaldcarano.com

23 Christopher Molina cmolina@mcdonaldcarano.com

24 Todd Bice tlb@pisanellibice.com

25 Jennifer Knighton jknighton@ehbcompanies.com  
26  
27  
28

1	Renee Carreau	rcarreau@ag.nv.gov
2	James Leavitt	jim@kermittwaters.com
3	Michael Schneider	michael@kermittwaters.com
4	Kermitt Waters	kermitt@kermittwaters.com
5	Stacy Sykora	stacy@kermittwaters.com
6	Evelyn Washington	evelyn@kermittwaters.com
7	CluAynne Corwin	ccorwin@lasvegasnevada.gov
8	Craig Newby	cnewby@ag.nv.gov
9	Debbie Leonard	debbie@leonardlawpc.com
10	Karen Surowiec	ksurowiec@mcdonaldcarano.com
11	Andrew Schwartz	Schwartz@smwlaw.com
12	Lauren Tarpey	LTarpey@smwlaw.com
13	David Weibel	weibel@smwlaw.com
14	Ryann Milton	rmilton@lasvegasnevada.gov
15	Timothy Geswein	tgeswein@lasvegasnevada.gov
16	Monica Villanueva	monica@kermittwaters.com
17	Nehole Garcia	ngarcia@lasvegasnevada.gov
18	M Pizzariello	mpizzariello@ag.nv.gov
19	James Lewis	jblewis@lasvegasnevada.gov
20		
21		
22		
23		
24		
25		
26		
27		
28		