

July 17, 2018

Via Email and Hand Delivery
bjerbic@lasvegasnevada.gov

Bradford R. Jerbic
Las Vegas City Attorney
495 S. Main Street, 6th Floor
Las Vegas, Nevada 89101

Re: Agenda Item Number 86—July 18, 2018 City Council Meeting

Dear Mr. Jerbic:

We write to you as co-counsel of the property owners to the various parcels of property comprising 253.92 acres ("Property") formerly known as the Badlands Golf Course. We write in reference to Agenda Item Number 86 for the City Council Meeting scheduled for July 18, 2018, and its attempted applicability to the Property. The City's proposed Bill No. 2018-24 (the "Proposed Bill") intends to establish new guidelines, which include criminal penalties for noncompliance, for golf course owners who cease operation of an established golf course regardless of whether they apply to develop property.

The Property is neither a golf course, nor open space. As you are fully aware the Property has been zoned RPD -7 for many years. Additionally, as further confirmed by the Clark County Assessor and the State Board of Equalization, the Property is residential and taxed as such under the "Vacant Single Family Residential" use classification. Our clients have paid millions of dollars in taxes based on this use classification. However, we understand that it is the intent of some members of the City Council to apply this Proposed Bill to the Property and its owners and for the reasons articulated below, this would be a clear violation of their constitutional rights that could be met with legal action including an action pursuant to 42 U.S.C. §1983.

Violation of the Ex Post Facto Clause and Equal Protection Clause

Any attempted application of the Proposed Bill to 180 Land Co., LLC, Seventy Acres, LLC, and/or Fore Stars, Ltd., would violate the *ex post facto* clause of the United States and Nevada Constitutions. Both the federal and state constitutions prohibit the passage of *ex post facto* laws. *U.S. Const. art. I, § 10; Nev. Const. art. I, § 15*. This prohibition forbids the passage of laws that impose punishments for acts that were not punishable at the time they were committed. *See Weaver v. Graham*, 450 U.S. 24, 28, 101 S.Ct. 960, 67 L.Ed.2d 17 (1981).

Submitted at City Council

Date 7/18/18 Item 86

By: ELIZABETH HAM

We trust that you are aware of the prohibition on retroactive application of this agenda item; however, we request express confirmation that the City does not intend to apply the Proposed Bill to the Property or any of its owners.

Moreover, if applied to our clients, this new ordinance would violate the Equal Protection Clause of both the United States and Nevada Constitutions. The ordinance creates a class of one—the Property. In doing so, the City is acting arbitrarily and capriciously. This ordinance is reminiscent of Clark County's "big box" ordinance years ago that targeted Walmart (but not Target or Smith's) superstores and was held to be unconstitutional by the federal court.

With Badlands no longer in existence there are now 13 golf courses in the City. They are all either owned by the City or by the Homeowners Association or have restrictive covenants that prevent conversion of the golf course without certain actions taking place including homeowner approval. If Badlands Golf Course still existed, it would be the only property that the Proposed Bill applies to. The Property was clearly the only target of the ordinance. *See Village of Willowbrook v. Olech*, 528 U.S. 562 (2000) (holding Equal Protection Clause violated when law essentially creates a class of one by intentionally treating someone differently than others similarly situated). No one need pretend otherwise. In fact, it was named the "Yohan Lowie Ordinance" by a member of the City Council. The Equal Protection Clause requires government to treat citizens in the same manner in similar circumstances. The Proposed Bill is in direct conflict with the Equal Protection Clause.

Taking by Eminent Domain

It is clear that the Proposed Bill is one more of many other actions by the City of Las Vegas to take the landowners' property without payment of just compensation in violation of the United States and Nevada Constitutions and the Nevada Revised Statutes. The Proposed Bill singles out and targets the Property in an attempt to prevent any economical use of the Property. The Proposed Bill is further action by the City that continues to render the Property unusable and valueless to our clients.

The landowners have filed several complaints in inverse condemnation maintaining that the past actions by the City of Las Vegas have resulted in a taking of the Property. This Proposed Bill is action by the City that further confirms this taking. With this Proposed Bill, the City is acknowledging that it has and will continue to take any and all action to prevent the development of the Property. The City should expressly concede that it has inversely condemned the Property. The taking would be a permanent taking if our clients are entirely prevented from ever developing the Property or a temporary taking if the Court later orders the City to allow development on the Property.

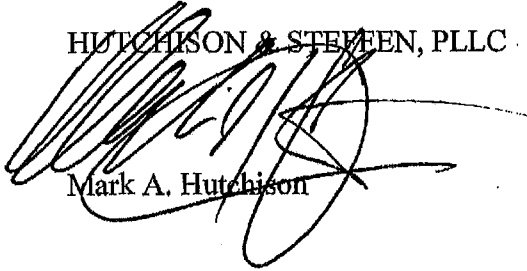
In short, to the extent that the City intends to adopt and apply this Proposed Bill to the Property, our clients will continue to vigorously fight for their constitutionally guaranteed rights. The City will face more lawsuits and judicial intervention. Even more tax payers dollars will be at risk for the City's unlawful and unconstitutional actions. These actions are motivated by and intended to curry favor with and appease a small group of wealthy and politically connected individuals who oppose development of any kind on the Property despite the ruling of a district court judge to the

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contrary, their own CC&Rs and purchase documents placing them on notice that the Property could be developed, and applications for permissible and compatible use consistent with the long-time "hard zoning" as the City Attorney and Planning Staff have repeatedly and publically confirmed.

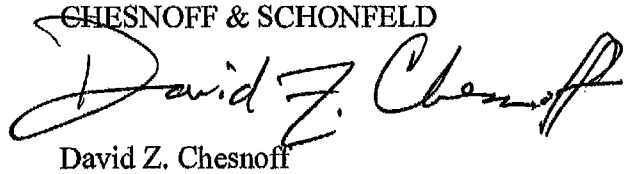
Please include this letter as a submission in the record and in the packet of materials provided to the City Council concerning Agenda Item Number 86 for the July 18, 2018 meeting and any other meeting of the City Council or the Planning Commission considering this Proposed Bill. Thank you.

HUTCHISON & STEELEN, PLLC



Mark A. Hutchison

CHESNOFF & SCHONFELD



David Z. Chesnoff