

1 INST

2 Attorney for
3

4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 COUNTY OF CLARK, a political subdivision)
8 of the State of Nevada,)
9 Plaintiff,)
10 vs.)
11)
12 Defendant.)

Case No.
Dept. No.

13 DEFENDANT'S PROPOSED JURY INSTRUCTIONS
14 and Verdict Form

15 Defendant _____ submits the following jury instructions for the court's consideration.
16 References to Nevada Pattern Jury Instructions, Civil (NEV. J.I.), the Eighth Judicial District Court Civil Jury
17 Instructions (EJDC CJI), and California Jury Instructions Civil by Charles A. Loring (7th ed. 1986) (BAJI),
18 are abbreviated as indicated.

19 Dated this ____ day of _____, 2001.

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1 INSTRUCTION NO. _____

Duty of Judge and Jury

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LADIES AND GENTLEMEN OF THE JURY:

It is my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the court.

NEV. J.I. 1.00

EJDC CJI

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INSTRUCTION NO. _____

Use of Instructions

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

NEV. J.I. 1.01

EJDC CJI

1 INSTRUCTION NO. _____

What is and what is not evidence

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The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it applies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the Court and any evidence ordered stricken by the Court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

NEV J.I. 1.03

EJDC CJI

1 INSTRUCTION NO. _____

Independent investigation

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3 You must decide all questions of fact in this case from the evidence received in this trial and not from
4 any other source. You must not make any independent investigation of the facts or the law.

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INSTRUCTION NO. _____

Common sense

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

NEV. J.I. 1.05

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INSTRUCTION NO. _____

Impartiality of the Court

If, during this trial, I have said or done anything which as suggested to you that I am inclined to favor the claims or position of any party, you will not be influenced by any such suggestion.

I have not expressed, nor intended to express, nor have I intended to intimate, any opinion as to which witnesses are or are not worthy of belief, what facts are or are not established, or what inference should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

NEV. J.I. 1.08

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The credibility or believability of witnesses should be determined by their manner upon the stand, their relationship to the parties, their fears, motives, interests or feelings, their opportunity to have observed the matter to which he or she testified, the reasonableness of their statements and the strength or weakness of their recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of that testimony which is not proved by other evidence.

NEV. J.I. 2.07

EJDC CJI

1 INSTRUCTION NO. _____

Depositions

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3 Certain testimony has been read into evidence from a deposition. A deposition is testimony taken
4 under oath before the trial and preserved in writing. You are to consider that testimony as if it had been given
5 in court.

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22 NEV J.I. 2.03

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1 INSTRUCTION NO. _____

Eminent domain

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Under the Constitution and laws of this state, all private property is subject to the right of eminent domain which is the right of public entities to take private property for a public use upon payment of just compensation.

This right is exercised through proceedings such as this action which is commonly called a condemnation action.

The plaintiff herein is authorized by law to take the property here under consideration for the purpose of constructing what is commonly referred to as the Las Vegas beltway.

As jurors, it will be your duty to determine the amount of just compensation to be paid by the plaintiff to the defendants.

BAJI 11.70 and 11.71

1 INSTRUCTION NO. _____

Date of value

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3 The just compensation to which the property owner is entitled is the fair market value of the property
4 being taken plus severance damages, if any.

5 You must determine such just compensation as of the date of valuation which is today, the date of
6 this trial, September 14, 1999.

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1 INSTRUCTION NO. _____

Fair market value

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The fair market value of property is the most probable price on the date of valuation that would be agreed to by a seller who is willing to sell but who is under no particular or urgent necessity for so doing and who is not obligated to sell, and a buyer who is ready, willing, and able to buy, but who is under no particular necessity for so doing, each dealing with each other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

You must determine fair market value in cash.

BAJI 11.73.
Wheeler v. State Department of Transportation, 105 Nev.217, 773 P.2d 728 (1989).
City of Elko v. Zillich, 100 Nev. 366, 683 P.2d 5 (1984).

1 INSTRUCTION NO. _____

Highest and best use

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The fair market value of the property to be taken must be based upon factors affecting market value including the highest and best use for which the property is geographically and economically adaptable. The term, "highest and best use," means the most profitable use.

In this connection, the highest and best use is a factor to be considered to the extent that the prospect of such use affects the market value of the land.

Factors affecting values which are possible but not reasonably probable, should not be considered.

The determination of highest and best use is not necessarily limited to current zoning or land use restrictions imposed upon the property. The property owner is entitled to show a reasonable probability of a zoning or other change in the near future and thus establish such use as the highest and best use of the property. The property owner has the burden of proving by a preponderance of the evidence that there is a reasonable probability of a change in the restrictions on the property.

BAII 11.74

1 INSTRUCTION NO. _____

Master plan

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3 A local government, such as Clark County, must adopt zoning regulations that are in substantial
4 agreement with approved master plans. The Spring Valley Land Use Guide is such an approved master plan.
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18 *County of Clark v. Doumani*, 114 Nev. Adv. Op. 6, p. 7 (1998) (“[T]he master plan is entitled to deference.”);
19 *Enterprise Citizens v. Clark Co. Comm’rs*, 112 Nev. 649, 918 P.2d 305 (1996); *American West Dev.*
20 *v. City of Henderson*, 111 Nev. 804, 807, 898 P.2d 110 (1995) (“Nevada’s statutory scheme mandates
21 that municipalities adopt zoning regulations that are in substantial agreement with approved master plans.”);
22 *Nova Horizon v. City Council, Reno*, 105 Nev. 92, 96, 769 P.2d 721 (1989) (“Master plans are to be
23 accorded substantial compliance under Nevada’s statutory scheme.”); *Sorenson v. State ex rel. Dep’t of*
24 *Hwys.*, 92 Nev. 445, 446, 552 P.2d 487 (1976) (“Neither did the state’s expert consider unchallenged
25 evidence that in the Las Vegas Master Plan the Sorenson property is zoned industrial.”); *County of Clark*
26 *v. Alper*, 100 Nev. 382, 387, 685 P.2d 943 (1984) (a court may properly refuse to permit the condemnor
27 to introduce zoning restrictions that are not in conformance with the master plan)
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1 INSTRUCTION NO. _____

Value to the parties

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3 You may not value the property with reference to what it was worth to the defendant for speculation
4 or merely for possible uses, nor what the defendant claims it was worth to him; nor what it may be worth to
5 the plaintiff for the purpose for which it is being acquired.

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1 INSTRUCTION NO. _____

Extraneous factors/Project influence

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3 In determining the fair market value of the property, you may not include any change caused by the
4 proposed improvement, that is, the use which the plaintiff is to make of the property.

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1 INSTRUCTION NO. _____

Severance damages

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3 Where the property being taken is only a part of a larger parcel of property, in addition to
4 compensation for the property being taken, the defendants are entitled to recover compensation called
5 "severance damages," for the damage, if any, to the remainder.

6 Damage to the remainder is the damage, if any, caused to the remainder by either or both of the
7 following:

8 (a) The severance of the remainder from the part taken.

9 (b) The construction and use of the project for which the property is taken in the manner
10 proposed by the plaintiff whether or not the damage is caused by a portion of the project
11 located on the part taken.

12 Severance damages are determined by ascertaining the market value of the remainder as of the date
13 of valuation and by deducting therefrom the market value of the remainder after the severance of the part being
14 taken and the construction of the project in the manner proposed by the plaintiff.

15 Compensation for injury to the remainder shall be based on the project as proposed.

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18 BAJI 11.85

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1 INSTRUCTION NO. _____

Opinions of witnesses as to value

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3 You must determine the fair market value of the subject property and the severance damage, if any,
4 only from the opinions of the witnesses who have testified.

5 You may not find the market value of property or severance damage, if any, to be less than or more
6 than that testified to by any witness.

7 While owners and expert witnesses may express opinions on the issue of value, those opinions are
8 worth no more than the reasons and factual data upon which they are based.

9 Evidence which has been received from witnesses of the reasons for their opinions of value, and all
10 other evidence concerning the subject property and other properties, is to be considered only for the limited
11 purpose of enabling you to understand and weigh the opinions of the witnesses regarding market value and
12 severance damage, if any.

13 You must resolve any conflict in the testimony of the witnesses by weighing each opinion against the
14 others, the reasons given for each opinion, the facts relied upon and the credibility and qualifications of each
15 witness.

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Comparable sales

Witnesses who have expressed opinions of fair market value and of severance damage, if any, have testified as to the prices and terms and circumstances of sales or contracts to sell and purchase properties which they consider as shedding light on the value of the defendants' property. Generally, the more similar one property is to another, the closer the value of the one may be expected to approach the value of the other. Thus, in weighing the opinion of a witness as to the value of the subject property based on his reliance on sales or contracts to sell and purchase you should consider whether said sales or contracts to sell were freely made in good faith; how much should the sale price on terms be discounted to reflect its equivalent in cash; how near September 14, 1999, the date of valuation is to the date of the sale; how the size of the other property compares to the size of defendants' property; how similar are their physical features, and the uses to which they are or may be put; how far away the other property is; and how similar are the neighborhoods in which the properties being compared are located.

BAJI 11.81

1 INSTRUCTION NO. _____

All elements of value

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3 In determining fair market value, you may consider all factors as would be considered by a prudent
4 businessperson before purchasing the defendants' property.

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19 *County of Clark v. Alper*, 100 Nev. 382, 387, 685 P.2d 943 (1984) ("Every factor which affects the value
20 of the property and which would influence a prudent purchaser should be considered."); *Clark Co. School
21 Dist. v. Mueller*, 76 Nev. 11, 19, 348 P.2d 164 (1960) ("[E]lements that can fairly enter into the question
22 of value and which an ordinarily prudent business man would consider before forming judgment in making a
23 purchase" are to be considered.); *Skyland Water v. Tahoe Douglas Dist.*, 95 Nev. 289, 291, 593 P.2d
24 1066 (1979) ("In determining this value, the finder of fact may consider such factors as would be considered
25 by a prudent businessperson before purchasing such property."); *City of Elko v. Zillich*, 100 Nev. 366, 370,
26 683 P.2d 5 (1984) ("The court and jury may consider 'other elements that can fairly enter into the question
27 of value and which an ordinarily prudent businessman would consider before forming judgment in making a
28 purchase.'")

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INSTRUCTION NO. _____

Burden/Preponderance

In this condemnation case the defendants have the burden of proving, by a preponderance of the evidence, the market value of the property to be acquired and the amount of damages, if any, that the taking of this land may have caused to their remaining property.

A preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true. In other words, to establish a claim by a “preponderance of the evidence” merely means to prove that the claim is more likely so than not so.

EJDC CJI with adaptations
State ex rel. Department of Highways v. Pinson, 66 Nev. 227, 236-238, 207 P.2d 1105.

1 INSTRUCTION NO. _____

Determine separately

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3 You shall determine separately each of the following:

4 a. Compensation for the property being taken.

5 b. Severance damages, if any.

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INSTRUCTION NO. _____

Deliberations

It is your duty as jurors to consult with one another and to deliberate with a view toward reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of other jurors. Whatever your verdict is, it must be the product of a careful and impartial consideration of all the evidence in the case under the rules of law as given you by the court.

NEV. J.I. 11.01

EJDC CJI

1 INSTRUCTION NO. _____

Arguments of counsel

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Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberations by the evidence, as you understand it and remember it to be, and by the law as given you in these instructions, and return a verdict which, according to your reason and candid judgment, is just and proper.

NEV. J.I. 11.03

EJDC CJI

1 INSTRUCTION NO. _____

Jury questions

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If, during your deliberations, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreman. The officer will then return you to court where the information sought will be given you in the presence of the parties or their attorneys.

Readbacks of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a readback, you must carefully describe the testimony to be read back so that the court reporter's notes can be arranged. Remember, the court is not at liberty to supplement the evidence.

EJDC CJI

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INSTRUCTION NO. _____

Foreman/Verdict

When you retire to consider your verdict, you must select one of your number to act as foreman, who will preside over your deliberations and will be your spokesman here in court.

During your deliberations, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

In civil actions, three-fourths of the total number of jurors may find and return a verdict. This is a civil action. As soon as six or more of you have agreed upon a verdict, you must have it signed and dated by your foreman, and then return with it to this room.

NEV. J.I. 11.04

EJDC CJI

1 PROPOSED JURY VERDICT FORM

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DISTRICT COURT
CLARK COUNTY, NEVADA

COUNTY OF CLARK, a political subdivision)
of the State of Nevada,)
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Plaintiff,)
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vs.)
)
)
Defendants.)
_____)

Case No. A378167
Dept. No. IV

VERDICT

We, the jury in the above-entitled matter, and not less than 6 of us, find as follows:

Value of the land taken \$ _____

Severance Damages \$ _____

Total Just Compensation \$ _____

FOREMAN

Date: _____