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IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

SCENIC NEVADA, INC., Petitioner, vs. CITY OF RENO, a political subdivision of the State of Nevada, and the CITY COUNCIL thereof; RENO REAL ESTATE DEVELOPMENT, LLC; RENO PROPERTY MANAGER, LLC, Respondents.	Case No. CV21-02086 Department No.: 4

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S SECOND AMENDED PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

On November 19, 2021, Plaintiff Scenic Nevada, Inc's ("Scenic"), by and through its attorney Mark Wray, Esq., filed a *Petition for Judicial Review, or Alternatively, Complaint for Declaratory Relief*. On December 20, 2021, Defendant City of Reno ("the City"), by and through its attorney, Reno City Attorney Karl S. Hall, Esq. and Deputy City Attorney William J. McKean, Esq., filed *City of Reno's Motion to Dismiss*. In response, on January 9, 2022, Scenic filed an *Amended Petition for Judicial Review, or Alternatively, for Writ of Mandamus and/or Prohibition, or Alternatively, for Declaratory Relief* (*Jan. 9, 2022*).

On January 11, 2022, *City of Reno's Motion to Sever Petition for Judicial Review* was filed. On March 10, 2022, the Court entered it *Order Granting City of Reno's Motion to Sever Petition for Judicial Review*.

On February 3, 2022, Defendant's Reno Real Estate Development, LLC and Reno Property Manager, LLC (collectively "Developers"), by and through their attorneys, Darren J. Lemieux, Esq., Michael W. Cabrera, Esq. and Cassin T. Brown, Esq. of Lewis, Roca Rothgerber, Christie, LLP, filed *Reno Real Estate Development, LLC and Reno Property Manager, LLC's Motion to Dismiss*. On June 9, 2022, the Court entered its *Order Denying Defendants' February 3, 2022, Motion to Dismiss* ("*Order Denying MTD*").

On July 7, 2022, *Defendants Reno Real Estate Development, LLC and Reno Property Manager, LLC's Answer to Complaint* was filed. On August 9, 2022, *City of Reno's Answer to Amended Petition for Writ of Mandamus and/or Prohibition, or Alternatively for Declaratory Relief* was filed.

On October 27, 2022, Scenic filed its *Second Amended Petition for Writ of Mandamus and/or Prohibition* ("*Scenic's Second Amended Petition*"). On November 2, 2022, *City of Reno's Answer to Second Amended Petition for Writ of Mandamus and/or Prohibition* was filed. On November 2, 2022, *Defendants Reno Real Estate Development, LLC and Reno Property Manager, LLC's Answer to Second Amended Petition for Writ of Mandamus and/or Prohibition* was filed. On November 29, 2022, Scenic filed its *Errata to Second Amended Petition for Writ of Mandamus and/or Prohibition* ("*Errata*"). On April 11, 2023, *City of Reno's Opposition to Petitioner's Second Amended Petition for Writ of Mandamus and/or Prohibition* was filed ("*City of Reno's Opposition*"). On April 11, 2023, *Reno Real Estate Development, LLC and Reno Property Manager, LLC's Answering Brief to Petition for Writ of Mandamus and/or Prohibition* was filed ("*Developer's Reply*"). On May 6, 2023, Scenic filed its *Reply in Support of Scenic Nevada's Petition for Writ of Mandamus* ("*Scenic's Reply*"). On June 22, 2023, the Court heard oral arguments in the instant matter ("*Oral Arguments*"). Thereafter, the matter was submitted for the Court's consideration.

In October 2021, the City approved an agreement with the Developers setting forth various terms and conditions for the enactment of Reno's Neon Line District, a new entertainment district in Reno, Nevada ("Development Agreement"). *Developer's Reply* at 8. On October 13, 2021, the Reno City Council held a public hearing and provided initial approval of

the Development Agreement. Id. at 9. Scenic submitted a letter in opposition to the Development Agreement. Id. On October 25, 2021, Scenic submitted a second letter to the City Council, the City Clerk, the City Attorney and the City Manager setting forth Scenic Nevada's objections to the Development Agreement. *Scenic's Second Amended Petition* at 7. In this letter, Scenic claimed that the Development Agreement violated NRS 278.0201(1). Id. On October 27, 2021, the Reno City Council held a second reading and ordinance adoption on the Development Agreement, where Mark Wray (Scenic's counsel) spoke on behalf of Scenic in opposition. *Developer's Reply* at 9. Specifically, Mark Wray objected to Section 3.02(e) of the Development Agreement which proposes three (3) signs that the Developers and the City labeled as "Area Identification Signs". Id. On October 27, 2021, the City adopted the Development Agreement by Ordinance No. 6610. Id.

Scenic asserts that the Development Agreement "violated NRS 278.0201 by including parcels in which the Developers had no legal or equitable interest". *Scenic's Second Amended Petition* at 2. Scenic further asserts that the Development Agreement "purports to approve large signs violating Reno sign code standards on parcels in which the Developers have no legal or equitable interest". Id. Scenic also asserts that the City and the Developers "purport to allow the Developers to erect the archway and cemetery sign – which are nothing more than off-premises advertising displays – without surrendering banked receipts, which is the subject of the Supreme Court settlement agreement with [Scenic]".[1] ("2017 Supreme Court Settlement Agreement"). Id. at 13. Scenic's Petition for Writ of Mandamus and/or Prohibition "seeks to set aside the ordinance approving the unlawful development agreement for violation of state law and municipal ordinances and/or to prohibit the City from issuing building permits pursuant to the Development Agreement and from performing the Settlement Agreement". Id. at 2.

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[1] The 2017 Supreme Court Settlement Agreement was entered into between Scenic, the City, and Lamar Central Outdoor LLC. The 2017 Supreme Court Settlement Agreement stated that "[h]olders of banked receipts can rely on. And present to the City in satisfaction of RMC § 18.16.908(c)(1) (presently titled RMC § 18.05.207) . . .which shall be maintained and updated by the City as banked receipts expire and/or are redeemed." *Errata, Exhibit 8*.

The Developers assert that "[Scenic] lacks standing to bring the Petition to invalidate the Development Agreement because [Scenic] is not an aggrieved party". *Developer's Reply* at 5. Also, the Developers assert that "[Scenic] cannot establish that it has representational standing to bring this petition under a newly announced Nevada Supreme Court decision". Id. The Developers also assert that they "have demonstrated that they unequivocally own or control all 78 parcels, including the 3 parcels where the proposed Area Identification Signs would be located". Id. at 6. Furthermore, Developers assert that the proposed signs are "Area Identification Signs" and are "not regulated as billboards, on-premise signs, or off-premise signs and the City can, and did agree to modify the applicable sign codes, standards, and requirements by approving the Development Agreement". Id.

The City independently asserts that "[Scenic] lacks standing on its own and as an organization representing its members to bring the instant petition because NRS 278.0201 through 278.0207 solely authorize the parties to the Development Agreement to contest it". *City's Opposition* at 3. The City further asserts ". . . . the [Developer] owns or controls the [78] parcels". *Id*. The City further asserts that ". . . . area identification signs are not regulated as on – or – off premise signs under the Code, and development agreements permit the parties to deviate from the Code". *Id*.

A writ of mandamus and a writ of prohibition are "counterparts in that mandamus compels a government body or official to perform a legally mandated act, whereas prohibition compels a government body or official to cease performing acts beyond its legal authority". Ashokan v. State, Dep't of Ins., 109 Nev. 662, 665 (1993). "A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control a manifest abuse of discretion or an arbitrary or capricious exercise of discretion". Sims v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark, 125 Nev. 126, 129 (2009). A writ of mandamus is an extraordinary remedy. Smith v. Eighth Judicial Dist. Court In & For County of Clark, 107 Nev. 674, 679 (1991). The petitioner has the burden of proof to demonstrate that extraordinary relief is necessary. Pan v. Eighth Judicial Dist. Court ex rel. County of Clark, 120 Nev. 222, 228 (2004).

Scenic argues that they have "a personal right that is adversely and substantially affected by the Development Agreement and Ordinance 6610". *Scenic Second Amended Petition* at 15. Scenic further argues that Scenic has a "direct and substantial interest that falls within the zone of interests to be protected . . . . namely, the legal duty to approve Development Agreements in compliance with state law combined with the legal duty to honor the 2017 Supreme Court settlement agreement and the legal duty to enforce sign codes". Id.

NRS 278. 3195(4) states:

> [a]ny person who: (a) [h]as appealed a decision to the governing body in accordance with an ordinance adopted pursuant to subsection 1; and (b) [i]s aggrieved by the decision of the governing body, may appeal that decision to the district court of the proper county by filing a petition for judicial review within 25 days after the date of filing of notice of the decision with the clerk or secretary of the governing body, as set forth in NRS 278.0235.

Additionally, RMC §18.09 Art. 4 defines an "aggrieved" party as one "whose personal right or right of property is adversely and substantially affected by the action of a discretionary body".[2]

The Court agrees that Scenic is not an aggrieved party pursuant to RMC §18.09 Art. 4. However, in the instant matter, the legislature has not provided a right to petition for judicial review for planning decisions first enacted by the Reno City Council. As such, Scenic is unable to bring a petition for judicial review.[3] Scenic's only course of action is to seek writ relief. "[A] mandamus petition is only appropriate if no adequate and speedy legal remedy exists". Kay v. Nunez, 122 Nev. 1100, 1104 (2006).

"In the context of a petition for a writ of mandamus, the question whether a party has a legally recognized interest is essentially a question of whether the party has a beneficial interest in obtaining writ relief". Mesagate Homeowners' Ass'n v. City of Fernley, 124 Nev. 1092, 1097 (2008). "A "beneficial interest" is a "'direct and substantial interest that falls within the zone of interests to be protected by the legal duty asserted.'" Id. (quoting Heller v. Legislature of State of

[2] City of N. Las Vegas v. Dist. Ct., 122 Nev. 1197, 1206, (2006) (explaining local codes apply to define an "aggrieved person" because "the Legislature chose not to define 'aggrieved' for appeals in counties with populations of less than [700,000]").

[3] This Court previously found that "NRS 278.3195 does not bestow upon Scenic the right to seek judicial review of the Reno City Council's adoption of Ordinance No. 6610". *Order Denying MTD* at 6.

Nev., 120 Nev. 456, 461 (2004)). Private individuals have an interest in challenging a governing bodies' land use decisions. See Hantges v. City of Henderson, 121 Nev. 319, 323 (2005)(finding that a private citizen having standing to challenge an agency's findings in connection with a redevelopment plan "is consistent with our prior rulings that citizens have standing to challenge land-use decisions".).

The enforcement of a settlement agreement to which Scenic is a party falls within Scenic's "zone of interests". Additionally, Scenic, on behalf of the citizens of Reno, has a beneficial interest in challenging new entertainment districts located within Reno. The citizens of Reno have a beneficial interest in land-use decisions by the Reno City Council. Further, the Nevada legislature implicitly recognizes that citizens should have standing to challenge governing body's land use decisions in a wide array of circumstances.[4] The Court finds that Scenic has a "direct and substantial interest that falls within [Scenic's] zone of interests. . . ."

The City argues:

> [t]he purpose of NRS 278.0201 is to allow property owners to enter into a development agreement regarding their properties in order to obtain flexibility and assurance during development. NRS 278.0201(3) contemplates that the parties to the agreement may agree to development rights or constraints that do not necessarily comply with existing ordinances, regulations or resolutions regarding development applicable to that land. But unlike NRS 268.668, which expressly authorizes citizens challenges to annexations, NRS Chapter 278.590, which expressly authorizes challenges to planned unit developments, and NRS 279.609, which contemplates challenges regarding redevelopment area decisions, there is no public interest enforcement mechanism in NRS 278.0201 through NRS 278.0207 that would allow [Scenic] to sue on behalf of the general public.[5]

"The Court will exercise its discretion to consider petitions for extraordinary writs 'only when there is no plain, speedy and adequate remedy in the ordinary course of law or there are either urgent circumstances or important legal issues that need clarification in order to promote judicial economy and administration.'" State v. Eighth Jud. Dist. Ct. (Logan D.), 129 Nev. 492, 497 (2013) (quoting Cheung v. Eighth Judicial Dist. Court, 121 Nev. 867, 869 (2005)).

Scenic has no other grounds to challenge Ordinance No. 6610 and the underlying Development Agreement, except by a petition for an extraordinary writ. The Reno City Council

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[4] See e.g., NRS 268.668, NRS 278.590, NRS 279.609.
[5] *City's Opposition* at 5.

did not make it possible for Scenic to utilize NRS 278.3195(4) to seek judicial relief. Further, even though NRS 278.0201 does not contain a public interest enforcement mechanism, the instant matter nonetheless warrants the Court's discretion to entertain Scenic's writ challenge.

The Developers argue that "Petitioner cannot point to any language in the [d]evelopment [a]greement that indicates any sign has been approved because it is undisputed that no signs have been finally approved… [h]ence, even if Petitioner's personal or property rights were being affected …, [Petitioner] still lacks standing because it is challenging something that has not even occurred yet".

A case is ripe for review when "the degree to which the harm alleged by the party seeking review is sufficiently concrete, rather than remote or hypothetical, [and] yield[s] a justiciable controversy". Cote H. v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark, 124 Nev. 36, 38 n.1 (2008) (internal quotation marks omitted).

While the proposed signs have yet to be formally approved, they are enveloped within the ratified Development Agreement. The Development Agreement succinctly describes all aspects of the development of the Neon Line District. Further, even though the proposed signs have yet to be approved, neither the City nor the Developers at any point have indicated that they will not move forward and attempt to obtain all requisite approvals to implement the signs. The Reno City Council's adoption of Ordinance No. 6610 is ripe for review.

Whether a court lacks subject matter jurisdiction "can be raised by the parties at any time, or sua sponte by a court of review, and cannot be conferred by the parties". Landreth v. Malik, 127 Nev. 175, 179 (2011) (quoting Swan v. Swan, 106 Nev. 464, 469 (1990)). Since questions surrounding a court's lack of subject matter jurisdiction can be raised by the parties at any time, and the City and Developers challenge Scenic's standing on new grounds, the Court will review Scenic's standing.

Nevada has adopted the federal approach outlined in Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333, 343 (1977), with respect to representational standing requirements. See Nat'l Ass'n of Mut. Ins. Companies v. Dep't of Bus. & Indus., Div. of Ins., 139 Nev. Adv. Op. 3 at 7 (2023). An association has standing to sue on behalf of its members if it can

establish "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit". Id. at 12 (quoting Hunt, 432 U.S. at 343).[6]

Scenic "is a non-profit Nevada Corporation with a principal place of business in Reno, Washoe County, Nevada". *Scenic's Second Amended Petition* at 3. Scenic's "principal activity is to educate the general public on the economic, social, and cultural benefits of scenic preservation by means of encouraging billboard and sign control, among other issues". Id. Scenic disputing the erection of signs it claims are billboards falls squarely within its purpose.

There are questions of whether Scenic contesting the entirety of Ordinance No. 6610 and the underlying Development Agreement is germane to its purpose. However, dismissing Scenic's challenge against the entirety of the Ordinance No. 6610 and the underlying Development Agreement would be against the interests of judicial economy. Individuals could assert a claim against the City and the Developers for violating NRS 278.0201, which would have the effect of unnecessarily delaying this issue. Allowing for the instant matter to proceed at this juncture is judicially efficient. See NRCP 1.

All the individual members of Scenic seek the same thing, the repeal of Ordinance No. 6610 and the underlying Development Agreement. None of the individual members have any specialized grievances or claims they are asserting. The sought after writ relief does not require the participation of individual members of Scenic.

Overall, Scenic meets the Hunt test for representational standing.

Additionally, the 2017 Supreme Court Settlement Agreement provides Scenic with an another source of standing. "A settlement agreement is a contract. . . .". May v. Anderson, 121 Nev. 668, 672 1257 (2005). "[A]n implied covenant of good faith and fair dealing exists in all contracts". A.C. Shaw Const., Inc. v. Washoe Cnty., 105 Nev. 913, 914 (1989). If the City entered into an agreement allowing for the erection of billboards without implementing the

[6] A discussion of the first prong of the Hunt test is not warranted. Due to the citizens of Reno's beneficial interest in challenging Ordinance 6610 (as discussed above) the individual members of Scenic would have standing to sue in their own right.

appropriate banked receipts requirements, then the City could be in violation of their implied covenant of good faith and fair dealing regarding the 2017 Supreme Court Settlement Agreement. Scenic has standing to challenge the Development Agreement on grounds of a possible violation of the 2017 Supreme Court Settlement Agreement.

Scenic asserts that "the Development Agreement was unlawfully approved by the City Council on October 27, 2021, because the Developers did not have legal or equitable interests in 33 of the 78 parcels of land covered by the agreement". *Scenic's Reply in Support* at 7. Developers assert that they "directly or indirectly (through their affiliates) owned 20 of the 33 challenged properties on October 27, 2021". *Developers Reply* at 19. Developers assert that "the other 13 challenged parcels, as of October 27, 2021, they were subject to Options to Purchase (which have been exercised), Purchase and Sale Agreements (which have been fully performed), or other possessory agreements (such as leases or easement agreements)." Id. Further, Developers assert "since October 27, 2021, Master Developers and/or their affiliates have obtained title to 9 additional properties subject to the Development Agreement". Id. Overall, Developers assert that they "meet the threshold to hold legal or equitable interests in all parcels subject to the Development Agreement. To hold otherwise, would be to adopt an extremely narrow reading of NRS 278.0201(1) and stifle development in Nevada". Id.

In response, Scenic asserts that the Developer's affiliates owning 20 of the 33 parcels did not establish that the Developer's themselves had an equitable interest in these 20 parcels. *Scenic's Reply* at 11. Citing to NRS 86.311(1), Scenic asserts that "[t]he limited liability company itself, not its members, possess the legal or equitable interest in land held by the company". *Id*. at 10. Additionally. Scenic asserts that the Developer did not have an equitable interest in any parcels where the Developers had an Option to Purchase because it is necessary to exercise an option to purchase in order to create an interest in the property. Id. at 13.

The relevant portion of NRS 278.0201 in the instant matter is NRS 278.0201(1). NRS 278.0201(1) reads as follows: "[i]n the manner prescribed by ordinance, a governing body may, upon application of any person having a legal or equitable interest in land, enter into an agreement with that person concerning the development of that land".

Further, RMC § 18.08.805(b) specifies that any development agreement coming before the Reno City Council for approval must conform to NRS 278.0201. RMC § 18.08.805(b), in pertinent part, reads as follows: "[p]ursuant to the provisions of NRS 278.0201 through 278.0207, the City Council may enter into development agreements to regulate the development of land within the City. The agreements and the procedures applicable thereto shall be governed by and must conform to NRS 278.0201 through NRS 278.0207 . . . ."

Scenic is requesting that the Court use its equitable powers to rescind Ordinance 6610 and the underlying development agreement. "The trial court has full discretion to fashion equitable remedies that are complete and fair to all parties involved." Bedore v. Familian, 122 Nev. 5, 12 (2006) (quoting Hammes v. Frank, 579 N.E.2d 1348, 1355 (Ind.Ct.App.1991)). An ancient maxim of equity states that "'[e]quity regards the substance and not the form'. . . . venerable, and cherished not alone because of its maturity, but also by reason of its proven value as an instrumentality contributing to the accomplishment of real justice and equity, unhampered by too great adherence to technicality". Reno Club v. Young Inv. Co., 64 Nev. 312, 336 (1947).

A "legal interest" is commonly defined as "[a]n interest that has its origin in the principles, standards, and rules developed by courts of law as opposed to courts of chancery [or] [a]n interest recognized by law, such as legal title." *Legal Interest*, BLACK'S LAW DICTIONARY (11th ed. 2019). An "equitable interest" is commonly defined as "[a]n interest held by virtue of an equitable title, or claimed on equitable grounds, such as the interest held by a trust beneficiary". *Equitable Interest*, BLACK'S LAW DICTIONARY (11th ed. 2019).

Regarding the 20 parcels where the Developer's affiliates held an interest, Scenic does not contest that the Developer's control these affiliates. *See Opposition* at 10. There is a clear link between the 20 parcels of land and the Developers. While the title resides with the Developer's affiliates, the Developer's decision-making and ongoing involvement with their affiliates is what led to their affiliates obtaining title in the 20 parcels of land. Also, without the Developer's decision-making, the 20 parcels of land would not have been entered into the Development Agreement. The Developers have, in substance, invested in the 20 parcels of land and managed these parcels for their economic benefit. All this points to the Developer's

equitable interest in these 20 parcels. The Court finds that the Developers had an equitable interest in the 20 parcels of land held by their affiliates.

Regarding the parcels that the Developer's had options to purchase at the time of entering the Development Agreement, Scenic argues that "[i]t is necessary to exercise an option in order to create an interest in the real property". *Scenic's Reply* at 13. In McCall v. Carlson, the Court found:

> . . . an option is merely unilateral. Only the optionor is bound, and merely to the extent to which he has agreed, by the precise terms of the agreement, to be bound. The optionee has no interest in the property which the optionor has agreed to sell to him, and can only acquire such interest by complying with the terms and conditions of the agreement.[7]

The facts in the instant matter differ from the situation described in McCall. In the instant matter, the Developers entered land, where the Developer's maintained an option to purchase, into the Development Agreement. Applying McCall to the instant matter would mean that the Developers entered land into a development agreement in which they had no interest in whatsoever. However, in the instant matter, none of the landowners contested the Developers entering their land into the Development Agreement. Clearly, the landowners had a desire for their land to become part of the Neon Line District. McCall cannot apply to the instant matter because doing so would provide for an absurd result. Due to the clear relationship between the Developers and the land, and the lack of protest by any of the landowners, the Court finds that the Developers had an equitable interest in the parcels of land sufficient to satisfy a finding of an equitable interest in the parcels where they maintained an option to purchase at the time they entered into the Development Agreement to allow the parcels to be included in the Development Agreement.[8]

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[7] McCall v. Carlson, 63 Nev. 390, 407–08 (1946)

[8] It is also important to note that the Developers have subsequently exercised the majority of their options to purchase. Granting Scenic's request to rescind Ordinance 6610 and the underlying Development Agreement would result in the Developers and the City restarting the process of entering the Development Agreement. Scenic would no longer be able to argue that the Developers don't have an interest in the land because the Developers have exercised their options to purchase. As such, the Neon Line District would still be erected. The Court notes that granting Scenic's request would provide for an inequitable result.

The Developers possess a "Lease and Reciprocal Access and Parking and Drainage Easement Agreement" on 3 of the challenged parcels.[9] "Easements may be created by express agreement, by prescription or by implication." Alrich v. Bailey, 97 Nev. 342, 344 (1981). In the instant matter, the Developers entered into an express agreement with the landowners; thereby, creating an easement by express agreement. State ex rel. Nevada Dep't of Transp. v. Las Vegas Bldg. Materials, Inc., 104 Nev. 479, 486 (1988).

NRS 278.0201(1) requires that a party have "a legal or equitable interest in land". NRS 278.0201 does not require that a party have a legal or equitable interest in the entirety of the land. By having obtained an express easement in the 3 parcels, the Developers obtained an interest in the land. The Court finds that the Developers obtained an appropriate interest in the 3 parcels of land to satisfy NRS 278.0201(1).

Additionally, the Developers possess a lease agreement in parcel 78. The lease agreement contained the following language:

> Tenant is in the process of seeking approval from the City of Reno for a development agreement (the "Development Agreement"), which will provide for the placement and construction of the AIS and the Parties agree and acknowledge that the effectiveness of this Lease is contingent on the approval of the Development Agreement and all necessary approvals for the AIS.[10]

The Developers and the landowners specifically entered into the lease for the purposes of the land being included in the Neon Line District. The fact that the landowners specifically provided the Developers a lease in parcel 78 for the purpose of entering the land into the Development Agreement illustrates that the Developers had an interest in the land on equitable grounds. The Court finds that the Developers had an equitable interest in parcel 78.

Scenic challenges the three (3) proposed signs found in the Development Agreement: (1) the "Cemetery Sign" (APN 006-152-01); (2) the "Archway Sign" (APN 006-224-06); and (3) the "Gas Station Sign" (APN 006-224-07). *Scenic's Second Amended Petition* at 5. The Developers argue that the three (3) proposed signs are Area Identification Signs and that the City and the Developers are "within their legal rights to modify certain requirements related to the

[9] Parcels 58, 59. and 60. *Developer's Reply*, *Exhibit 9*.
[10] *Developer's Reply*, *Exhibit 9*.

construction of the Area Identification Signs". *Developer's Reply* at 21. The Developers assert that "Area Identification Signs are not controlled by the on-premise or off-premise sign restrictions and are not considered 'billboards' under the Reno Municipal Code". *Developer's Reply* at 21. Scenic argues that the proposed Area Identification Signs are actually Off-Premises Advertising Displays ("Billboards") and that the proposed signs violate a number of municipal codes. *Second Amended Petition* at 17-18. Further, Scenic argues that the proposed Area Identification Signs violate the 2017 Supreme Court Settlement Agreement.

RMC § 18.09 defines Area Identification Signs as the following: "[a] permanent, decorative sign used to identify a neighborhood, subdivision, commercial or office complex, industrial district or similar distinct area of the community". RMC § 18.09 defines Off-Premises Advertising Displays ("Billboard") as the following:

> Any arrangement of material, words, symbols or any other display erected, constructed, carved, painted, shaped or otherwise created for the purpose of advertising or promoting the commercial interests of any person, persons, firm, corporation or other entity, located in view of the general public, which is not principally sold, available or otherwise provided on the premises on which the display is located**.** An off-premises advertising display includes its structure. Off-premises advertising displays are commonly called billboards.

RMC § 18.09 defines On-Premise Signs as the following:

> Any arrangement of material, words, symbols or any other display erected, constructed, carved, painted, shaped or otherwise created for the purpose of advertising or promoting the commercial interests of any person, persons, firm, corporation or other entity, located in view of the general public, which is principally sold, available or otherwise provided on the premises on which the display is located.

The Court will first assess whether the Cemetery Sign constitutes an Area Identification Sign. The Cemetery sign is located on cemetery land, facing Interstate 80. *Errata*, *Exhibit 1*. Additionally, the sign is almost three-quarters of a mile from the entrance on the Neon Line District. Id. The proposed Cemetery Sign's positioning relative to the Neon Line District aligns more closely with the attributes of Billboards, which typically serve as platforms for advertising to a broader audience. The positioning of the Cemetery Sign is likely to entice individuals passing by the cemetery or driving down I-80 to visit the Neon Line District. In turn, the Cemetery Sign will advertise and promote the commercial interests of the Neon Line District and

the business located within it. The Court finds that the Cemetery Sign's promotional function is more akin to a Billboard, as opposed to an Area Identification Sign. Therefore, the Court finds that the proposed Cemetery Sign is a Billboard.

The Court finds that the Cemetery Sign violates the 2017 Supreme Court Settlement Agreement and RMC § 18.05.207(c)(1),[11] as the Development Agreement did not require the Developers to redeem unexpired banked receipts in order erect a Billboard.

Next, the Court will assess whether the Archway Sign constitutes an Area Identification Sign. The only language found on the Archway sign is "Reno's Neon Line District". Id. This language does not seek to advertise or promote the commercial interests of the Neon Line District. Rather, this language allows individuals to know they are located within the Neon Line District. Additionally, the Archway Sign is located on the property of the Neon Line District. Id. The Archway Sign serves as an entry way to the Neon Line District, allowing individuals to know that they are now entering into the Neon Line District. Thus, the Court finds that the Archway Sign is an Area Identification sign.

In regard to the Archway Sign, Scenic further asserts that RMC § 18.05.109(f) prohibits signs in public right of ways. However, RMC § 18.05.109 is labeled "On-Premises Signs Prohibited". "When construing a specific portion of a statute, the statute should be read as a whole, and, where possible, the statute should be read to give meaning to all of its parts". Bldg. & Const. Trades Council of N. Nevada v. State ex rel. Pub. Works Bd., 108 Nev. 605, 610 (1992). "Courts must construe ordinances in a manner that gives meaning to all of the terms and language". City of Reno v. Citizens for Cold Springs, 126 Nev. 263, 274 (2010). Given that RMC § 18.05.109(f) is a part of a broader statutory scheme concerned with On-Premises Signs, the Court finds that the restrictions of 18.05.109(f) only apply to On-Premises Signs. Since the Archway Sign is an Area Identification Sign, the Court finds that the restrictions of RMC §

[11] "The Holder of an unexpired and valid banked receipt may submit a sign permit application to the City to construct a permanent off-premises advertising display".

18.05.109 do not preclude the City from allowing the sign to be placed in a public right-of-way.[12]

Next, the Court will assess whether the Gas Station Sign is an Area Identification Sign. The Gas Station Identification Sign is 25 feet tall. *Errata, Exhibit 1*. The Gas Station Sign contains the following language "LEFT ON W. 4TH". Id. This language is present to entice individuals to enter into the Neon Line District. Additionally, the close proximity to the Archway Sign presents problems for the sign being an Area Identification Sign. Individuals do not need two signs to identify the Neon Line District. As such, the Gas Station Sign serves the purpose of promoting or advertising the commercial interests of the Reno Neon Line District. However, unlike the Cemetery Sign, the Gas Station Sign is squarely on the premise of the Neon Line District. As such, the Court finds that the Gas Station sign is an On-Premise Sign, as opposed to a Billboard.

Overall, the Court finds that the Gas Station sign violates RMC § 18.05.113, limiting On-Premise signs in the Mixed-Use District to 8 fee tall. [13]

Next, the City asserts that:

> even if the area identification signs could be construed as off-premises signs, NRS 278.0201 allows parties to a development agreement to deviate from existing code. NRS 278.0201 specifically provides: 'Unless the agreement otherwise provides and except as otherwise provided in subsection 7, the ordinances, resolutions or regulations applicable to that land and governing the permitted uses of that land, density and standards for design, improvements and construction are those in effect at the time the agreement is made.' (Emphasis added.) The language of the statute demonstrates that deviations from existing code were contemplated and authorized by the Legislature.[14]

The City further asserts:

> [c]onsistent with the statute, RMC § 18.08.805(e)(5)(a) states that '[w]here specified in the development agreement, the laws, ordinances, codes, resolutions, regulations, design, and improvement standards listed by name and date of adoption apply to the development of the land. Unless specified in the agreement

[12] Section 3.2(e) of Development Agreement states that "[t]he Archway Sign location and design shall be generally consistent with design standards for on-premises signs in the Gaming Overlay District". *Errata, Exhibit 1.* The City is free to set these standards on the Archway Sign as the Court finds it to be an Area Identification Sign. The normal restrictions found in RMC § 18.05 governing Billboards and On-Premise signs do not apply to the Archway Sign.

[13] Section 3.01 of the Development Agreement states that "[t]he Property is located within the current boundaries of the Mixed-Use Downtown Northwest Quadrant ("MD-NWQ") and Mixed-Use Downtown Entertainment ("MD-ED") Zoning Districts. *Eratta, Exhibit 1*.

[14] *City's Opposition* at 11.

> or unless directly in conflict with what is specified in the agreement, the laws, ordinances, codes, resolutions, rules, regulations, and design and improvement standards adopted by the city council and in effect at the time of issuance of any required construction or building permit shall apply.[15]

The plain language of NRS 278.0201 does not give the City the authority to deviate from the existing code when entering into a development agreement.[16] The plain language of NRS 278.0201 states that the "ordinances, resolutions or regulations applicable to that land" are to serve as placeholders if a development agreement does not address pertinent regulations. The "ordinances, resolutions or regulations applicable to that land" serve as the ceiling for what the development agreement may agree to. The development agreement is free to set regulations that are more restrictive than the "ordinances, resolutions or regulations applicable to that land". However, these regulations may not be less restrictive. The Court finds NRS 278.0201, and RMC § 18.08.805(e)(5)(a) do not give the Developers and the City the authority to disregard pertinent statutes and ordinances.

Additionally, Scenic asserts that Section 3.02 of the Development Agreement violates RMC § 18.08.805(e)(2)(a)(5). *Oral Arguments* at 62. RMC § 18.08.805(e)(2)(a)(5) requires a development agreement to "specify the laws, ordinances, codes, resolutions, regulations, design and improvement standards by name and date of adoption applicable to the development of the land for which the applicant intends to establish a vested private development right". The City asserts "[t]he parties to the Agreement in this case met the requirement by citing the relevant ordinances that govern the specific land use entitlements sought and subsequently specified how the parties intend to deviate from the ordinance". *City's Opposition* at 12 – 13.

Section 3.02 of the Development agreement states, in pertinent part:

> The Master Developer intends to propose three (3) area identification signs to identify the District as shown on Exhibit "H" (the "Area Identification Signs"). Area identification sign applications shall be subject to applicable standards in place at the time of application, as modified by this Development Agreement. One sign is proposed as an archway sign located on West Fourth Street between Keystone Avenue to the west and Vine Street to the east, with support structures located on APN 006-224-06 and in the public right of way (the "Archway Sign"). The location

[15] Id.
[16] Due to the similar language to NRS 278.0201, the analysis for RMC § 18.08.805(e)(5)(a) is the same.

> and proposed design for the Archway Sign are shown with more particularity on Exhibit "H" as "AC-1".
>
> The Archway Sign location and design shall be generally consistent with design standards for on-premises signs in the Gaming Overlay District. The City may provide design flexibility to the extent that on-premises design standards would be unfeasible or undesirable for the Archway Sign. Sign design and roadway clearances shall be coordinated and approved by the City Engineer and Regional Transportation Commission staff [17]

The Developers labeled the three (3) signs as Area Identification Signs. Since Area Identification signs are not regulated in the same manner as On-Premise signs and Billboards, the City was not required to discuss the applicable ordinances governing On-Premise signs and Billboards. The Developer was incorrect in labeling the Cemetery Sign and the Gas Station as Area Identification Signs.

"An 'ordinance' means a local law prescribing a general and permanent rule". State v. White, 36 Nev. 334, 339 (1913) (Talbot, C.J., concurring). "When invalid provisions of a municipal ordinance are severable without defeating the objectives of the ordinance, we sustain and give effect to valid portions of the ordinance". City of Las Vegas v. Nevada Indus., Inc., 105 Nev. 174, 179 (1989).

Section 1 of Ordinance 6610 reads as follows:

> The Development Agreement, ... within the area that the Developer is calling the Reno Neon Line District. . . . is hereby approved and the Mayor of the City is authorized and directed to execute the Development Agreement.[18]

In effect, Ordinance 6610 makes the terms of the Development Agreement the law, in that the City and Developers are required to follow the Development Agreement in the development of the Reno Neon's Line District. If the City and Developers were free to disregard the terms of the Development Agreement, then Ordinance No. 6610 would be effectively powerless. As such, the Court has the power to severe portions of the Development Agreement from the adopted whole.

///

[17] *Errata, Exhibit 2*.
[18] Id.

Severing any language allowing for the Cemetery Sign and the Gas Station Sign would not defeat the objectives of the ordinance. The objective of the ordinance is to establish the Neon Line District. The Neon Line District can be established and function without the Cemetery Sign and the Gas Station Sign. The Court will order the proposed Cemetery Sign and Gas Station sign severed from the Development Agreement; however, for the reasons discussed above the rest of the Development Agreement will function as the underlying basis to City of Reno Ordinance No. 6610.

Based on the foregoing and good cause appearing,

IT IS HEREBY ORDERED that Scenic Nevada Inc.'s Second Amended Petition for Writ of Mandamus and/or Prohibition is GRANTED IN PART as to Scenic Nevada Inc's claims regarding the proposed Cemetery Sign and Gas Station Sign and DENIED IN PART as to Scenic' Nevada Inc.'s claims regarding the remainder of Ordinance No. 6610 and the underlying Development Agreement.

IT IS HEREBY FURTHER ORDERED that the City of Reno is prohibited from issuing building permits to Reno Real Estate Development, LLC and/or Reno Property Manager, LLC pursuant to the Development Agreement to erect the Cemetery Sign and/or the Gas Station Sign as described in the Development Agreement.

Further, Reno Real Estate Development, LLC and/or Reno Property Manager, LLC is prohibited from erecting the Cemetery Sign and/or the Gas Station Sign as described in the Development Agreement.

DATED this 21 day of September, 2023.

Connie J. Steinheimer

DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE NO. CV21-02086

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 22 day of September 2023, I electronically filed the **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S SECOND AMENDNED PEITION FOR WRIT OF MANDAMUS AND/OR PROHIBITON** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Personal delivery to the following: [NONE]

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

MARK WRAY, ESQ. for SCENIC NEVADA, INC.

DARREN LEMIEUX, ESQ. for RENO REAL ESTATE DEVELOPMENT LLC, RENO PROPERTY MANAGER LLC

CASSIN BROWN, ESQ. for RENO REAL ESTATE DEVELOPMENT LLC, RENO PROPERTY MANAGER LLC

JASMINE MEHTA, ESQ. for CITY OF RENO

CHANDENI SENDALL, ESQ. for CITY OF RENO

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada: