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12 *And City Council*

13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

14 IN AND FOR THE COUNTY OF WASHOE

15 SCENIC NEVADA, INC.,

Case No.: CV17-00361

16 Petitioner,

Dept. No.: 9

17 vs.

18 CITY OF RENO, a political subdivision
19 Of the State of Nevada, and the CITY
20 COUNCIL thereof,

21 Respondents.
22 _____/

23 **OPPOSITION TO PETITION FOR WRIT OF MANDATE**

24 COMES NOW Respondents the City of Reno ('City') and the City Council (collectively
25 referred to as 'Respondents'), by and through their attorneys, Reno City Attorney Karl S. Hall and
26 Deputy City Attorney Chandeni K. Sendall, and hereby move this Court for an order denying
27 Petitioner Scenic Nevada's Petition For Writ of Mandate ('Petition'). The Respondents submit their
28 Opposition to the Petition For Writ of Mandate ('Opposition') on the grounds that the relief
Petitioner seeks is not requested in the proper procedural manner, the relief sought fails to
include indispensable parties, and Petitioner failed to timely request judicial determination
regarding the validity and use of banked receipts and therefore, its claim is barred under statute

1 of limitations, claim preclusion, and (as applicable) the doctrine of laches. This Opposition is
2 made and based upon the attached Memorandum of Points and Authorities, the record before the
3 Court, and any additional arguments, submission or evidence the Court deems just and proper.

4 MEMORANDUM OF POINTS AND AUTHORITIES

5 **I. INTRODUCTION**

6 Petitioner's request for a writ of mandate directing Respondents to be enjoined from
7 accepting and allowing the use of those banked receipts issued from November 14, 2000 to
8 October 24, 2012, is woefully misplaced. Petitioner poses the following issue before this Court:

9 [A]re the bank receipts that were issued in the 12-year period
10 between the date of enactment of the citizens' initiative banning
11 new billboards (Nov. 14, 2000) and the date of the Council's
12 adoption of the digital billboard ordinance (Oct. 24, 2012), null
and void and therefore unable to be used by billboard companies to
construct new billboards?

13 *See* Petition, p. 18:17-21. Respondents submit that those banked receipts issued by the City from
14 November 14, 2000 to October 24, 2012, are not null and void as Petitioner suggests.
15 Furthermore, Petitioner cannot at this time challenge the validity of such banked receipts because
16 its Petition before this Court is not only procedurally flawed in the manner in which it is
17 presented—as a writ of mandate, but also, Petitioner fails to include indispensable parties to this
18 matter, and, has failed to timely request judicial determination regarding the validity and use of
19 the banked receipts. Accordingly, Petitioner's claim should be denied for failing to include
20 indispensable parties and as time barred. Even more glaringly, Petitioner's claim should be
21 denied under the doctrine of claim preclusion. *See Five Star*, 124 Nev. at 1054, 194 P.3d at 713;
22 *see also Scenic Nevada*, 373 P.3d at 875. Should this Court determine Petitioner presents a valid
23 request for writ relief, the doctrine of laches also denies consideration of such request for writ
24 relief by Petitioner in this matter. Accordingly, Respondents submit that Petitioner's request for
25 writ relief should be denied.

26 **II. FACTS**

27 The Respondents generally agree with Petitioner's inordinately long recitation of the
28 historical facts associated with the City of Reno's regulation of off-premises advertising displays

1 (also commonly referred to as “billboards”) over the period of 2000 to 2017. For the purpose of
2 this Opposition, Respondents provide a brief factual history of the most pertinent facts as they
3 relate to the matter at hand:

4 **2000 Voter Initiative**

5 In 2000, the registered voters of Reno proposed Ballot Question R-1 which read, “[t]he
6 construction of new off-premises advertising displays/billboards is prohibited, and the of Reno
7 may not issue permits for their construction.” On November 14, 2000, the initiative became
8 effective upon certification by the City Council. See NRS 295.220. The initiative is codified as
9 Reno Municipal Code (“RMC”) Section 18.16.902(a) (the “Voter Initiative”). See **Exhibit 1**,
10 RMC Article II: Off-Premise Advertising Displays, Section 18.16.902(a).

11 **2002 Conforming Billboard Ordinance**

12 On January 22, 2002, the City Council enacted Ordinance No. 5295, titled “An ordinance
13 amending Chapter 18.06 of Title 18 of the Municipal Code entitled ‘Zoning’ by adding language
14 to and deleting language from Sections 18.06.910-18.06.985 which govern how Off-Premises
15 Advertising Displays will be regulated; together with other matters properly related thereto” (the
16 “Conforming Ordinance”). See **Exhibit 2**, Conforming Ordinance.

17 Under the Conforming Ordinance, the City Council clarified and interpreted the “no new
18 billboards” language in the Initiative to mean that no **additional** billboards could be built in the
19 City of Reno, thus effectively capping the number of billboards in the City to the number that
20 existed on November 14, 2000. See *id.*, RMC Section 18.06.902(a) and RMC Section 18.06.950.
21 So long as the number of billboards did not increase, existing billboards could be maintained,
22 repaired, replaced or relocated. *Id.*, RMC Section 18.06.950. Specifically, the Conforming
23 Ordinance stated that

- 24 (a) The construction of new off-premise advertising
25 displays/billboards is prohibited, and the City of Reno may
26 not issue permits for their construction. [. . .]
- 27 (b) In no event shall the number of off-premise advertising
28 displays exceed the number of existing off-premise
advertising displays located within the City on November
14, 2000. This number shall include all applications for
off-premises advertising displays approved in final action

1 by the City on or before November 14, 2000 but unbuilt as
2 well as those applications approved by a court of competent
jurisdiction. [. . .]

3 **Exhibit 2**, Conforming Ordinance, RMC Sec. 18.06.920. Any legally-established, permanent
4 off-premises advertising display that existed on November 14, 2000 is a non-conforming use
5 under City Code. A non-conforming use may continue until it is removed or abandoned under
6 certain specific conditions, but survival of the use is not encouraged. *See* RMC Section
7 18.08.501 (2000).

8 **2003 Banking Ordinance**

9 On June 11, 2003, the City Council enacted Ordinance No. 5461 authorizing the banking
10 and relocation of previously existing, legally-established, permanent off-premises advertising
11 displays (the “Banking Ordinance”). *See Exhibit 3*, Banking Ordinance. The Banking
12 Ordinance allows a billboard owner to remove a billboard, while retaining the legal right to erect
13 that billboard at another location on a future date provided the reconstruction is in compliance
14 with applicable laws. *Id.*

15 Since the adoption of the Conforming Ordinance and the Banking Ordinance, the
16 billboard industry has banked and relocated a number of billboards in reliance on the Banking
17 Ordinance, specifically, RMC Section 18.06.950(E)(3). *See id.* Currently the City has 82 signs
18 in the “bank” on record, which represent billboards that were in existence at the time of the
19 passage of the Voter Initiative and that were subsequently removed and have not yet been
20 replaced or relocated. The most recent request to utilize a banked receipt occurred September 28,
21 2015. *See Exhibit 4*, Community Development Department Memorandum – Billboard Inventory
22 (“Billboard Memorandum”). From the enactment of the Voter Initiative to the adoption of the
23 Digital Billboard Ordinance, the period of November 14, 2000 to October 24, 2012, the City of
24 Reno records reflect sixty-six (66) banked receipts of the eighty-two (82) total on record with the
25 City for Reno were issued. *Id.* From the passage of the 2002 Conforming Ordinance and 2003
26 Banking Ordinance to the adoption of the 2012 Digital Billboard Ordinance, Scenic Nevada took
27 no legal action to challenge the constitutionality of the Conforming Ordinance or the Banking
28 Ordinance; and more specifically, those banked receipts created within the time period.

1 **2012 Digital Ordinance**

2 On October 24, 2012, the City Council enacted Ordinance No. 6258, entitled “Digital
3 Off-Premises Advertising Displays, including Light-Emitting Diode (LED)” (the “Digital
4 Billboard Ordinance”). *See Exhibit 5*, Digital Billboard Ordinance. The adoption of the Digital
5 Billboard Ordinance began in 2007. The record is voluminous. The City conducted numerous
6 workshops, committee meetings, and public hearings before the Planning Commission and the
7 City Council. Scenic Nevada, together with representatives of the billboard industry, City staff
8 and legal counsel were actively involved in the process. Under the Digital Billboard Ordinance,
9 two permits are required prior to relocation or banking of an existing, legally established,
10 permanent off-premises advertising display—one permit to remove, and one permit to relocate or
11 bank the previously existing, legally-established, permanent off-premises advertising display.
12 *See id.*, RMC Section 18.16.908(b).

13 The Digital Billboard Ordinance’s stated effective date was January 24, 2013. *Id.* at p.
14 20-21. Prior to that date, on November 16, 2012, Scenic Nevada filed a Petition for Judicial
15 Review to invalidate the Digital Billboard Ordinance. Scenic Nevada argued that the Digital
16 Billboard Ordinance violated the Nevada Constitution, the Federal Highway Beautification Act
17 of 1965, 23 U.S.C. § 131(a) (2002), and the Reno Municipal Code (RMC).

18 **Moratorium on Digital Billboard Ordinance**

19 Upon passage of the Digital Billboard Ordinance on October 24, 2012, and the filing of
20 Scenic Nevada’s Complaint on November 16, 2012, the City Council passed a resolution on
21 December 12, 2012, temporarily halting the acceptance of digital billboard applications to alter any
22 off-premises advertising display, whether existing or banked. *See Exhibit 6*, Resolution No. 7802.

23 On February 13, 2013, the City Council formally adopted Ordinance No. 6276, adding RMC
24 18.16.1500 entitled “Moratorium on Conversion of Static Billboards to Digital Billboards” to
25 temporarily halt the City of Reno from accepting applications for the conversion of banked or static
26 billboards to digital billboards in accordance with the Digital Billboard Ordinance. *See Exhibit 7*,
27 Resolution No. 6276. The moratorium ordinance provided no restriction on the use of banked
28 receipts for the relocation and erection of static billboards. *Id.* Specifically, the Ordinance states that

1 “the city shall not file nor accept any applications nor issue permits to allow static billboards to be
2 converted to digital billboards.” *Id.*

3 The Ordinance further states that all extensions to the moratorium are to be made by
4 resolution. *Id.* Two one-year extensions were made by Resolution No. 7936 (**Exhibit 8**) on January
5 29, 2014, and Resolution No. 8042 (**Exhibit 9**) on January 28, 2015; and, one additional extension by
6 Resolution No. 8152 (**Exhibit 10**) was made by City Council on February 24, 2016, until February 1,
7 2017. Throughout the time period of all the moratoriums, the ability to utilize a banked receipt for the
8 relocation and erection of a static billboard was permitted. *See Exhibits 6-10.*

9 The moratoriums only specifically limited the use of banked receipts for the creation of
10 digital billboards; thus, the ability to utilize any banked receipt for the relocation and erection of a
11 static billboard has always existed in first created under the 2002 Conforming Ordinance—until
12 recently upon passage of the City of Reno’s pending moratorium on January 11, 2017, halting the use
13 of banked receipts for relocation of any billboard until the passage of the final moratorium on
14 February 8, 2017, which lifted the ban on the use of banked receipts for the relocation of static
15 billboards. *See Petitioner’s Exhibits 2 & 5.* Petitioner states explicitly that “[s]tandard, so-called
16 ‘static’ billboards were not affected by the moratorium on digitals. Since 2000 and to this day, new
17 static billboards continue to be erected using banked receipts.” Petition, p. 10:12-14. And yet,
18 Petitioner has failed to raise any concern with the validity and use of those banked receipts issued
19 from November 14, 2000 to October 24, 2012, any time prior to the filing of this Petition.

20 **Prior Litigation - Scenic Nevada, Inc. v. City of Reno**

21 Returning to the status of the Petition for Judicial Review filed by Scenic Nevada against the
22 City of Reno on November 16, 2012, on March 27, 2014, the Honorable Patrick Flanagan entered
23 a judgment in favor of the City against Scenic Nevada, upholding the Digital Billboard
24 Ordinance. *See Exhibit 11*, Order, p. 26. Scenic Nevada appealed to the Nevada Supreme Court.
25 *Id.* at p.12:16-17.

26 In *Scenic Nevada, Inc. v. City of Reno*, the Nevada Supreme Court held that when the
27 City Council enacted the 2012 Digital Ordinance, it reenacted and validated both the Conforming
28 and Banking Ordinances, whose constitutionality were challenged by Scenic Nevada. 132 Nev.

1 Adv. Op. 48, 373 P.3d 873, 877-78 (2016). The Court reasoned that the City Council had the
2 statutory authority to treat the Voter Initiative “in the same manner as ordinances of the same
3 kind adopted by the council,” (*see* NRS 295.220), and the Nevada Constitution did not prohibit
4 further amendment as the three-year legislative moratorium had expired. *Id.*, 373 P.3d at 877.
5 Further, the Court stated that “the 2012 Digital Ordinance was enacted with full constitutional
6 and statutory authority. Thus, upon reenactment, the constitutional defects in the Conforming
7 and Banking Ordinances were cured.” *Id.*

8 The Court recognized that the lawsuit brought forward by Scenic Nevada only sought to
9 invalidate the 2012 Digital Billboard Ordinance based on the constitutional defects in the 2002
10 Conforming Ordinance and 2003 Banking Ordinance, and did not on appeal seek to disturb any
11 ostensibly vested rights arising under the 2002 Conforming Ordinance and 2003 Banking
12 Ordinance. *Id.*, 373 P.3d at 875. As a result, the case did not address the interim invalidity of
13 the 2002 Conforming Ordinance and 2003 Banking Ordinance, and the rights of persons who
14 banked billboards in reliance on those ordinances, although Scenic Nevada was essentially
15 raising issue with the constitutional defects in the 2002 Conforming Ordinance and 2003
16 Banking Ordinance. *Id.*, 373 P.3d at 877–78. The Court observed:

17 In its reply brief, Scenic Nevada states as follows: “The vested
18 rights of those holders of banked billboard receipts to relocate
19 static billboards shall not be affected by anything decided in this
20 appeal. Scenic Nevada has never asked for those vested rights as to
21 static billboards to be taken away, either. This case always has
22 aimed solely at invalidating the 2012 digital billboard ordinance.”

23 *Id.*, 373 P.3d at 875, n. 1. Arguably, Scenic Nevada should have raised any issues regarding the
24 validity of the banked receipts issued between November 14, 2000 to October 24, 2012, at the
25 same time it argued the validity of the Digital Billboard Ordinance because it was arguing the
26 same inherent lack of constitutionality in the enactment of the 2002 Conforming Ordinance and
27 2003 Banking Ordinance. However, they failed to do so (raising a multitude of legal defenses not
28 limited to claim preclusion, doctrine of laches, and statute of limitations). Furthermore, Scenic
Nevada failed to raise the issue after it was brought to their attention by the Nevada Supreme
Court’s published opinion on June 30, 2016. *See id., generally.* Essentially, the issue proposed

1 before this Court now—questioning the validity of those banked receipts issued by the City of
2 Reno between November 14, 2000 to October 24, 2012—has never been raised since the creation
3 and issuance of banked receipts first began 15 years ago. *See Exhibit 4*, Billboard Memorandum.
4 Petitioners are woefully overdue in litigating this legal issue. And those holders of the 66 banked
5 receipts issued during the questioned time period (and the community at-large) have arguably
6 relied on the legitimacy and validity of the City of Reno’s ordinances during the entire time
7 period.

8 **III. ARGUMENT IN OPPOSITION TO THE PETITION FOR WRIT OF MANDATE**

9 No Nevada caselaw exists to legally support Petitioner’s claims. Petitioners simply cut
10 and paste portions of case holdings from other jurisdictions in its defunct legal argument section
11 of its Petition. *See* Petition, p. 20-23. Respondents contend that the relief Petitioner seeks is not
12 requested in the proper procedural manner, in addition, the relief sought fails to include
13 indispensable parties, and Petitioner has failed to timely request judicial determination regarding
14 the validity and use of banked receipts and therefore, its claim its brings before this Court now is
15 barred under statute of limitations, claim preclusion, and (as applicable) the doctrine of laches.

16 ***a. Petitioner’s Filing of a Writ of Mandate is Not the Proper Mechanism to***
17 ***Challenge a Reno City Council Zoning and Land Use Planning-Related***
18 ***Decision***

19 In *Kay v. Nunez*, 122 Nev. 1100, 146 P.3d 801 (2006), the appellant filed petitions in
20 district court for a writ of mandamus and judicial review to contest a local government’s zoning
21 and land-use decision. *Id.* at 1103, 146 P.3d at 804. The Nevada Supreme Court concluded in
22 *Kay* that a petition for judicial review was the proper mechanism for seeking review of a local
23 government’s zoning and planning decision in district court. *Id.* at 1104–06, 146 P.3d at 804–05.
24 The court arrived at this conclusion based on the express language in NRS 278.3195(4)¹, which

25
26

¹NRS 278.3195(4) states that

27 Any person who: (a) Has appealed a decision to the governing body in accordance with an
28 ordinance adopted pursuant to subsection 1; and (b) Is 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.

1 sets forth that a person who administratively appeals a zoning decision under the applicable
2 ordinance to the governing body and is aggrieved by the body's decision may appeal by timely
3 filing a petition for judicial review in district court. *Id.* at 1104–05, 146 P.3d at 804–05.

4 Most importantly in *Kay*, the Nevada Supreme Court specifically recognized that “[a]s a
5 mandamus petition is only appropriate if no adequate and speedy legal remedy exists, and the
6 Legislature has created the right to petition for judicial review, which constitutes an adequate and
7 speedy legal remedy, mandamus petitions are generally no longer appropriate to challenge the
8 [City]’s final decision.” *Id.* at 1104–05, 146 P.3d at 805.

9 Here, Petitioner clearly states that the issue at hand relates to “a law related to zoning and
10 land use.” *See* Petition, p. 20:14-15. Petitioner attempts to tie the need for writ relief to the recent
11 February 8, 2017, City Council adoption of Resolution No. 8293 (*see* **Petitioner’s Exhibit 5**),
12 arguing that “Scenic Nevada *has no right to appeal* the Respondents’ February 8, 2017
13 resolution, and thus there is not a plain, speedy and adequate remedy in the ordinary course of
14 law. *See* Petition, p. 24:2-4 (emphasis added). Further, Petitioner recites all Nevada Revised
15 Statute authority under Chapter 34 regarding writs of mandate, and in a conclusory fashion,
16 states that a writ of mandate is the appropriate vehicle in which Petitioner should claim relief in
17 this matter. *See* Petition, p. 23-25. Specifically, the only rationale provided by Petitioner is that
18 “[t]his Petition shows that as their duty resulting from office, Respondents should be compelled
19 to act by not allowing the use of banked permits for the construction of new billboards in Reno.”
20 *Id.*, at p. 23:25-27.

21 However, considering Petitioner’s reasoning for seeking writ relief in this matter, it
22 neglects to explain why a Petition for Judicial Review under NRS 278.3195 is not the
23 appropriate manner in which to seek remedy, how Scenic Nevada is precluded from seeking such
24 relief, and why Scenic Nevada feels it “has no right to appeal the Respondents’ February 8, 2017
25 resolution.” *See* NRS 278.3195(4) (“Any person who . . . [i]s aggrieved by the decision of the
26 governing body, may appeal that decision to the district court of the proper county by filing a
27 petition for judicial review.”); *see also Kay*, 122 Nev. at 1104-05, 146 P.3d at 805 (“[a]s a
28

1 mandamus petition is only appropriate if no adequate and speedy legal remedy exists, and the
2 Legislature has created the right to petition for judicial review, which constitutes an adequate and
3 speedy legal remedy, mandamus petitions are generally no longer appropriate to challenge the
4 City's final decision."

5 Last, Respondents would like to highlight the fact that it finds Scenic Nevada's attempt to
6 state that it is now seeking relief by appealing Resolution No. 8293 adopted by City Council on
7 February 8, 2017, to be disingenuous. Scenic Nevada has been well aware of the creation and
8 ability to use banked receipts for more than 15 years. Adoption of Resolution No. 8293 has not
9 changed the ability (minus a short one-month period in early 2017) to use banked receipts to
10 relocate static billboards. *See* Petitioner's **Exhibit 2**, Resolution No. 8280.

11 Accordingly, Respondents submit that Petitioner's request for writ relief should be denied
12 for failure to seek relief in an appropriate manner as mandated under NRS 278.3195(4) and
13 Nevada caselaw. *See Kay*, 122 Nev. at 1104-05, 146 P.3d at 805.

14
15 ***b. Petitioner has Failed to Join Necessary and Indispensable Parties, the Holders
of the Banked Receipts***

16 An indispensable party is a party who is "necessary" to an action but who, for some
17 reason, cannot be made a party to that action. *Potts v. Vokits*, 101 Nev. 90, 92, 692 P.2d 1304,
18 1306 (1985). If a necessary party is found to be unavailable, the court must decide whether in
19 equity and good conscience the action should proceed. *Id.* If in equity and good conscience the
20 action cannot proceed without the necessary party that party is "indispensable" and the case must
21 be dismissed. NRCP 19(b). The failure to join indispensable parties invalidates the judgment.
22 *Schwob v. Hemsath*, 98 Nev. 293, 294, 646 P.2d 1212, 1212 (1982) ("Failure to join an
23 indispensable party is fatal to a judgment."); *Johnson v. Johnson*, 93 Nev. 655, 659, 572 P.2d
24 925, 927 (1977) (relief granted in an indispensable party's absence is essentially nugatory).

25 Here, Petitioner fails to include the holders of the 66 banked receipts issued from
26 November 14, 2000 to October 24, 2012. *See Exhibit 4*, Billboard Memorandum. There is no
27 reason the holders of the banked receipts cannot be made party to this action, and accordingly,
28 they should be. *See Potts*, 101 Nev. at 92, 692 P.2d at 1306. The City's records reflect there are

1 potentially seven or more entities that hold banked receipts that were issued from November 14,
2 2000 to October 24, 2012. *See Exhibit 4*, Billboard Memorandum. Should this Court direct
3 Respondents to identify who those specific entities are, Respondents will conduct an in-depth
4 review and analysis to determine the specific holders/owners of those 66 banked receipts issued
5 during that twelve year time period. Petitioner appears to have made no attempt to notify the
6 holders of the questioned banked receipts of this litigation. The holders of those questioned
7 banked receipts have relied on and used as recently as September 28, 2015, a banked receipt. *Id.*
8 If this Court is to issue final judgment on the status of those banked receipts issued from
9 November 14, 2000 to October 24, 2012, in equity and good conscience, this matter must include
10 those indispensable parties. Because those parties have not been made privy to this matter, the
11 case must be dismissed. NRCP 19(b).

12 Accordingly, Respondents submit that Petitioner's request for writ relief be denied for
13 failure to include necessary and indispensable parties in this matter.

14
15 ***c. Scenic Nevada is Time Barred from Challenging the Validity of the Banked
Receipts Issued from November 14, 2000 to October 24, 2012***

16 Regardless of which statute of limitations applies, Scenic Nevada is beyond the
17 applicable period of limitations for challenging the validity of those banked receipts issued from
18 November 14, 2000 to October 24, 2012. *See, e.g.*, NRS 278.0235 (25 days)²; NRS 11.190(3)(a)
19 (three years); NRS 11.220 (four years).

20 A cause of action challenging the validity of the banked receipts issued from November
21 14, 2000 to October 24, 2012, has already accrued and expired, at the absolute latest, four years³
22 after the last banked receipt was issued prior to October 24, 2012. The date of the last issued
23

24
25 ²The City Council adopted the Conforming Ordinance, the Banking Ordinance, and the Digital Billboard Ordinance
26 pursuant to NRS 278.020. NRS 278.020 states that "[f]or the purpose of promoting health, safety, morals, or the
27 general welfare of the community, the governing bodies of cities and counties are authorized and empowered to
regulate and restrict the improvement of land and to control the location and soundness of structures". The short
limitation period of NRS 278.0235 is important in connection with municipal actions because both the City and the
general public need to be able to rely upon the validity and long-term legitimacy of ordinances adopted.

28 ³Four years assumes the Court applies the longest available and potentially applicable statute of limitations. *See*
NRS 11.220 (four-year limitation period). However, Respondents contend that the applicable time limitation is 25
days from the last issued banked receipt. *See* NRS 278.0235.

1 banked receipt was April 26, 2012. *See Exhibit 4*, Billboard Memorandum. The 25-day appeal
2 limitation period provided under NRS 278.0235 applies because as previously noted by
3 Petitioner, the issue at hand relates to “a law related to zoning and land use.” *See* Petition, p.
4 20:14-15. Therefore, the short 25-day period provided by NRS 278.0235 applies as to any cause
5 of action related to the creation and issuance of those banked receipts from November 14, 2000
6 to October 24, 2012, because those rights precipitate from ordinance adopted under NRS
7 278.020.

8 Accordingly, Respondents submit that Petitioner’s request for writ relief be denied
9 because Petitioner’s alleged cause of action is time barred.

10 ***d. Should this Court Consider the Petition for Writ of Mandate to be the***
11 ***Appropriate Avenue to Seek Relief in this Matter, Such Extraordinary Relief is***
12 ***Subject to the Doctrine of Laches and Precludes Consideration of the Petition***
for Writ of Mandate in this Matter

13 Laches is an equitable doctrine which may be invoked when delay by one party works to
14 the disadvantage of the other, causing a change of circumstances which would make the grant of
15 relief to the delaying party inequitable. *Erickson v. One Thirty-Three, Inc.*, 104 Nev. 755, 766
16 P.2d 898 (1988). Thus, laches is more than a mere delay in seeking to enforce one’s rights; it is
17 a delay that works to the disadvantage of another. *Home Savings v. Bigelow*, 105 Nev. 494, 496,
18 779 P.2d 85, 86 (1989). “The condition of the party asserting laches must become so changed
19 that the party cannot be restored to its former state.” *Id.*, 779 P.2d at 86. Applicability of the
20 laches doctrine depends upon the particular facts of each case. *Id.*

21 As an extraordinary remedy, a writ of mandamus is subject to the doctrine of laches.
22 *Buckholt v. District Court*, 94 Nev. 631, 584 P.2d 672 (1978). In deciding whether the doctrine
23 should be applied to preclude consideration of a petition for a writ of mandamus, a court must
24 determine: (1) whether there was an inexcusable delay in seeking the petition, (2) whether an
25 implied waiver arose from petitioner’s knowing acquiescence in existing conditions, and (3)
26 whether there were circumstances causing prejudice to the respondent. *Id.* at 633, 584 P.2d at
27 673–674.

28

1 Here, the doctrine of laches applies and precludes consideration of Petitioner's Writ of
2 Mandate. Petitioner's attempt to challenge the validity of those banked receipts issued from
3 November 14, 2000 to October 24, 2012, is beyond delayed. As Respondents have stated in Part
4 III, subsection (c) of this Opposition, this matter is time barred under all potentially applicable
5 statute of limitations, and accordingly, the first factor is most certainly met.

6 Second, Petitioner has impliedly waived its right to challenge the validity of the banked
7 receipts issued from November 14, 2000 to October 24, 2012, because it has since the very
8 beginning known about the creation of and banking of receipts (2002 Conforming Billboard
9 Ordinance, 2003 Banking Ordinance, and more recently 2012 Digital Billboard Ordinance), and
10 has failed to take any legal action regarding the validity of the banked receipts issued.
11 Furthermore, Scenic Nevada actually did take action after the adoption of the 2012 Digital
12 Billboard Ordinance, but it failed to raise this particular issue before this court and the Nevada
13 Supreme Court. *See Exhibit 11*, Order; *Scenic Nevada, Inc. v. City of Reno*, 132 Nev. Adv. Op.
14 48, 373 P.3d 873, 877-78 (2016) (The Nevada Supreme Court held that when the City Council
15 enacted the 2012 Digital Ordinance, it reenacted and validated both the Conforming Ordinance
16 and Banking Ordinance, whose constitutionality were challenged by Scenic Nevada.). The Court
17 specifically highlighted this point in stating that

18 In its reply brief, Scenic Nevada states as follows: "The vested
19 rights of those holders of banked billboard receipts to relocate
20 static billboards shall not be affected by anything decided in this
21 appeal. Scenic Nevada has never asked for those vested rights as to
static billboards to be taken away, either. This case always has
aimed solely at invalidating the 2012 digital billboard ordinance."

22 *Id.*, 373 P.3d at 875, n. 1. Scenic Nevada should have raised any issue regarding the validity of
23 the banked receipts issued from November 14, 2000 to October 24, 2012, at the same time it
24 argued the validity of the Digital Billboard Ordinance because it was arguing the same inherent
25 lack of constitutionality in the enactment of the 2002 Conforming Ordinance and 2003 Banking
26 Ordinance. However, they failed to do so. Therefore, the second factor is also met.

27 Last, since the adoption of the 2002 Conforming Ordinance and 2003 Banking
28 Ordinance, the City has allowed relocated billboards to be constructed and banked. For the last

1 15 years, billboard companies have removed and “banked” billboards in reliance on the rights
2 granted under the Conforming Ordinance and Banking Ordinance to subsequently relocate that
3 billboard. It is disingenuous and unreasonable for Scenic Nevada to claim 15 years after this
4 process first began that the banking provisions in the two ordinances are invalid and therefore,
5 the billboard industry loses the right to construct and relocate the banked billboards. Thus, the
6 last factor in determining whether the doctrine of laches applies is also met. *See Buckholt*, 94
7 Nev. at 633, 584 P.2d at 673-74.

8 Accordingly, to the extent this Court finds a writ of mandate is an appropriate request for
9 relief in this matter, Respondents assert that the doctrine of laches applies and therefore,
10 Petitioner’s request for writ relief should not be considered and denied.

11
12 ***e. Claim Preclusion Denies Petitioner’s Request for Relief in this Matter***

13 Broadly speaking, claim preclusion bars parties and their privies from litigating claims
14 that were or could have been brought in a prior action concerning the same controversy. *Five*
15 *Star Capital Corp., v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 712–13 (2008). This doctrine
16 is designed to preserve scarce judicial resources and to prevent vexation and undue expense to
17 parties. *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994). It is
18 premised on fairness to the defendant and sound judicial administration by acknowledging that
19 litigation over a specific controversy must come to an end, even “‘if the plaintiff has failed to
20 avail himself of opportunities to pursue his remedies in the first proceeding.’” *Five Star*, 124
21 Nev. at 1058, 194 P.3d at 715 (quoting Restatement (Second) of Judgments § 19 cmt. a (1982)).

22 Claim preclusion applies if (1) the same parties or their privies are involved in both cases,
23 (2) a valid final judgment has been entered, and (3) “the subsequent action is based on the same
24 claims or any part of them that were or could have been brought in the first case.” *Five Star*, 124
25 Nev. at 1054, 194 P.3d at 713.

26 Here, Petitioner is precluded from bringing its claim forward because: (1) both Scenic
27 Nevada and the City of Reno were involved in the earlier case, *Scenic Nevada, Inc. v. City of*
28 *Reno*, 132 Nev. Adv. Op. 48, 373 P.3d 873, 877-78 (2016); (2) a valid final judgment was
entered in that matter; and (3) the claim Scenic Nevada now raises in this action is based on the

1 same part of the claim raised in the first matter—the constitutionality and validity of the 2002
2 Conforming Ordinance and the 2003 Banking Ordinance. *Five Star*, 124 Nev. at 1054, 194 P.3d
3 at 713; *see also Scenic Nevada*, 373 P.3d at 875 (Scenic Nevada only sought to invalidate the
4 2012 Digital Billboard Ordinance based on the constitutional defects in the 2002 Conforming
5 Ordinance and 2003 Banking Ordinance, and did not on appeal seek to disturb any ostensibly
6 vested rights arising under the 2002 Conforming Ordinance and 2003 Banking Ordinance). As a
7 result of Scenic Nevada’s failure to raise any issue with the interim validity of those banked
8 receipts issued in reliance on the 2002 Conforming Ordinance and 2003 Banking Ordinance, the
9 Nevada Supreme Court did not decide the issue. *Id.*, 373 P.3d at 877–78. However, the Court
10 did highlight Scenic Nevada’s decision not to raise the issue and observed:

11 In its reply brief, Scenic Nevada states as follows: “The vested
12 ***rights of those holders of banked billboard receipts to relocate***
13 ***static billboards shall not be affected by anything decided in this***
14 ***appeal. Scenic Nevada has never asked for those vested rights as***
15 ***to static billboards to be taken away, either.*** This case always has
16 aimed solely at invalidating the 2012 digital billboard ordinance.”

17 *Id.*, 373 P.3d at 875, n. 1 (emphasis added). It is extremely disingenuous for Scenic Nevada to
18 now litigate an issue that five years ago it acknowledged it was aware of and further stated it was
19 not a concern to Scenic Nevada. Seemingly, Scenic Nevada was only really concerned with the
20 validity of the Digital Billboard Ordinance and the creation and erection of digital billboards, and
21 not the validity of those banked receipts issued from November 14, 2000 to October 24, 2012—
22 having no concern whether such banked receipts were used for the relocation of static billboards.

23 Accordingly, Respondents submit that claim preclusion applies because Petitioner failed
24 to challenge the validity of the banked receipts when a similar claim was litigated between the
25 same parties and the opportunity arose; therefore, this Court should deny Petitioner’s request for
26 writ relief. *See Five Star*, 124 Nev. at 1054, 194 P.3d at 713; *see also Scenic Nevada*, 373 P.3d
27 at 875.

28 **IV. Conclusion**

Respondents submit that those banked receipts issued by the City from November 14,
2000 to October 24, 2012, are not null and void as Petitioner suggests. Furthermore, Petitioner

1 cannot at this time challenge the validity of such banked receipts because its Petition before this
2 Court is not only procedurally flawed in the manner in which it is presented—as a writ of
3 mandate, but also, Petitioner fails to include indispensable parties to this matter, and, has failed to
4 timely request judicial determination regarding the validity and use of the banked receipts.
5 Accordingly, Petitioner’s claim should be denied for failing to include indispensable parties and
6 as time barred. Even more glaringly, Petitioner’s claim should be denied under the doctrine of
7 claim preclusion. *See Five Star*, 124 Nev. at 1054, 194 P.3d at 713; *see also Scenic Nevada*, 373
8 P.3d at 875. Should this Court determine Petitioner presents a valid request for writ relief, the
9 doctrine of laches also denies consideration of such request for writ relief by Petitioner in this
10 matter. Accordingly, Respondents submit that Petitioner’s request for writ relief should be
11 denied.

12 Accordingly, Respondents request the Court to

- 13 (1) Deny Petitioner’s request for the issuance of a Writ of Mandate;
14 (2) Deny Petitioner’s request for costs and attorney’s fees; and
15 (3) All other relief which the court deems just and proper.

16 **AFFIRMATION**

17 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding
18 document does not contain the social security number of any person.

19 Respectfully submitted this 31st day of March, 2017.

21 KARL S. HALL
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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of the RENO CITY ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s)

OPPOSITION TO PETITION FOR WRIT OF MANDATE

on the party(s) set forth below by:

- ☐ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices or;
- ☐ Personal hand delivery.
- ☒ CM/ECF electronic filing service.
- ☐ Email
- ☐ Facsimile (FAX).
- ☐ Federal Express or other overnight delivery.
- ☐ Reno/Carson Messenger Service.

addressed as follows:

Mark Wray, Esq.
608 Lander Street
Reno, NV 89509

DATED this 31st day of March, 2017.

/s/ Terri Strickland
Terri Strickland
Legal Assistant

Index of Exhibits

Exhibit No.	Document Name	Number of Pages
1	Article II: Off-Premise Advertising Displays	17
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