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9 SCENIC NEVADA, INC.

10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11
12 IN AND FOR THE COUNTY OF WASHOE

13 SCENIC NEVADA, INC.,

14 Petitioner,

Case No. CV17-00361

15 vs.

Dept. 9

16 CITY OF RENO, a political subdivision
17 of the State of Nevada, and the CITY
18 COUNCIL thereof,

Respondent.

19 _____ /
20 **SCENIC NEVADA'S REPLY IN SUPPORT OF PETITION FOR WRIT OF**
21 **MANDATE**

22 At its essence, Scenic Nevada's petition is about vindicating the rights of Reno
23 voters who are trying to make their community a better place to live by banning
24 construction of new billboards within Reno city limits. To help achieve what the citizens
25 voted for, the banked receipts issued unconstitutionally by the City cannot be used to
26 erect new billboards.

27 The billboard receipts issued prior to October 24, 2012 are invalid because they
28 were issued in violation of the citizens' ballot initiative and the Nevada Constitution.

1 This conclusion goes virtually unchallenged in the City's Opposition. Also unchallenged
2 is Scenic Nevada's position that the City's 2012 digital billboard ordinance did not
3 retroactively validate banked receipts that were void when they were issued.

4 The City's Opposition is concerned with objections that are procedural, not
5 substantive. The procedural arguments are that the petition should be for judicial review
6 rather than mandamus; the petition should name additional parties; the petition is time-
7 barred; or the petition is barred by claim preclusion. None of these procedural objections
8 reaches the merits. The Court need only find that these procedural objections are
9 incorrect or insubstantial, and Scenic Nevada's petition may then be granted.

10 Respectfully, the petition deserves to be granted because the City's procedural objections
11 lack merit and Scenic Nevada is right on the merits.

12 **1. The Appropriate Procedure Is a Petition for Writ of Mandate Rather**
13 **than a Petition for Judicial Review**

14 The City's first procedural objection is that Scenic Nevada should have filed a
15 petition for judicial review pursuant to NRS 278.3195(4) instead of a petition for writ of
16 mandate pursuant to NRS 34.160.

17 Scenic Nevada respectfully disagrees. The statute upon which the City relies, NRS
18 278.3195(4), states: "Any person who has appealed a decision to the governing body in
19 accordance with an ordinance adopted pursuant to subsection 1 . . . may appeal that
20 decision to the district court . . . by filing a petition for judicial review . . ."

21 NRS 278.3195(4) refers to "an ordinance adopted to subsection 1," and subsection
22 (1) of NRS 278.3195 states:

23 1. Except as otherwise provided in NRS 278.310, each governing body shall
24 adopt an ordinance providing that any person who is aggrieved by a decision of:

25 (a) The planning commission, if the governing body has created a planning
26 commission pursuant to NRS 278.030;

27 (b) The board of adjustment, if the governing body has created a board of
28 adjustment pursuant to NRS 278.270;

1 (c) A hearing examiner, if the governing body has appointed a hearing examiner
2 pursuant to NRS 278.262; or

3 (d) Any other person appointed or employed by the governing body who is
4 authorized to make administrative decisions regarding the use of land,

5 A court has a duty to construe statutes as a whole, so that all provisions are
6 considered together. *Orion Portfolio Servs. 2, LLC v. Cty. Of Clark ex rel. Univ. Med.*
7 *Ctr.*, 126 Nev. 397, 403, 245 P.3d 527, 531 (2010). A court will not render any part of
8 the statute meaningless. *Id.* Additionally, an unambiguous statute is to be construed
9 according to its plain meaning. *MGM Mirage v. Nev. Ins. Guar. Ass'n*, 125 Nev. 223,
10 228, 209 P.3d 766, 769 (2009).

11 Applying these rules of statutory interpretation, NRS 278.3195(4) unambiguously
12 sets forth the limited circumstances in which a petition for judicial review is appropriate.
13 Read together, subsections (1) and (4) state that in order for NRS 278.3195(4) to apply,
14 the party objecting to an action of a local governing body must be appealing to the local
15 governing body, which in this case means appealing to the Reno City Council. The party
16 also must be appealing pursuant to the City of Reno ordinance that governs appeals from
17 a planning commission, board of adjustment, hearing examiner, or person authorized to
18 make administrative decisions. Thus, by its express terms, the petition for judicial review
19 procedure authorized under NRS 278.3195(4) is for land use decisions that initially
20 involve decisions by the Reno Planning Commission or other City officers or tribunals,
21 which are then appealed to the Reno City Council per Reno Municipal Code. Such
22 situations might include, for example, applications for approvals of a tentative map, a
23 variance, a special use permit, or some similar developmental approval that originates at
24 the level of the Planning Commission.

25 The City is trying to force this case into a framework that does not fit. Simply by
26 reading NRS 278.3195(1) and (4), one can see why this case does not fit under the
27 statute. The statute applies when an application was denied by the Planning Commission
28

1 and then denied on appeal to the City Council. No such events transpired in the instant
2 case.

3 There is no ambiguity in NRS 278.3195(4). It is not some catch-all statute
4 covering all manners of seeking judicial review from decisions of local governing bodies.
5 The statute is limited to review of administrative appeals of Chapter 278 cases. The court
6 made this clear in *Mesagate Homeowners' Ass'n v. City of Fernley*, 124 Nev. 1092, 1100-
7 01, 194 P.3d 1248, 1253-54 (2008), in which the court stated:

8 Under NRS 278.3195's new procedure, a right of review has been created in the
9 district court--and that right only comes into existence *after* the governing board's
10 decision has been properly challenged through, and reviewed by, the governing
11 board's internal appellate procedure. In light of NRS 278.3195, we conclude that
12 there cannot be a "final action"--as that phrase is used in NRS 278.0235--until
13 after the governing body has reviewed and rejected an administrative appeal.

14 (*Italics* in original).

15 The City's Opposition cites case law that only confirms why NRS 278.3195(4)
16 does not apply in the instant case. In *Kay v. Nunez*, 122 Nev. 1100, 146 P.3d 801 (2006),
17 the Clark County Planning Commission approved a development project and Kay
18 appealed the decision of the Planning Commission to the Board of County
19 Commissioners. Applying NRS 278.3195(4) in those circumstances, the court held: "A
20 party who has administratively appealed to the Board, under the local ordinance, may
21 challenge the Board's decision by filing a [timely] petition for judicial review." *Kay*, at
22 1104, 146 P.3d at 805. *Kay* fits into the mold of a petition for judicial review under NRS
23 278.3195(4) because the applicant was denied an application for a project by the Planning
24 Commission, which led to an administrative appeal to the local governing body.

25 *Kay* is readily distinguishable from the instant case. Scenic Nevada was not an
26 applicant seeking approval for a project before the Planning Commission. This case
27 involves no Planning Commission action, nor any appeal from the Planning Commission.
28 Rather than arising from an administrative appeal of a land use or zoning decision, the
instant petition raises purely the legal issue of whether the Reno City Council's resolution
of February 8, 2017 should be vacated and the City should be compelled to treat all

1 banked receipts issued before October 24, 2012 as null and void pursuant to the Supreme
2 Court's decision in *Scenic Nevada, Inc. v. City of Reno*, 373 P.3d 873 (Nev. 2016). *See*
3 NRS 34.160.

4 Under the circumstances in this case, the appropriate remedy is mandamus, and
5 numerous cases so hold. *Nev. Yellow Cab Corp. v. Eighth Judicial Dist. Court*, 383 P.3d
6 246, 247 (Nev. 2016) (mandamus to challenge the constitutionality of retroactive versus
7 prospective application of the Minimum Wage Amendment to the Nevada Constitution);
8 *We the People Nev. v. Miller*, 124 Nev. 874, 879-80, 192 P.3d 1166, 1170 (2008)
9 (mandamus is appropriate to challenge the constitutionality of the Secretary of State's
10 actions related to the submission deadline dates for citizens' ballot initiatives); *Jungo*
11 *Land & Invs., Inc. v. Humboldt Cty. Bd. of Cty. Comm'rs*, 2011 U.S. Dist. LEXIS 141638
12 (D. Nev. Dec. 7, 2011) (mandamus is the correct procedure to challenge a local
13 governing body's jurisdictional authority to hear an appeal of a land use decision); *Las*
14 *Vegas Taxpayer Accountability v. City Council of Las Vegas*, 125 Nev. 165, 171, 208
15 P.3d 429, 433 (2009) (mandamus is appropriate to challenge the City Clerk's refusal to
16 place an initiative on the ballot); *Clark Cty. v. S. Nev. Health Dist.*, 128 Nev. 651, 661-
17 62, 289 P.3d 212, 218-19 (2012) (mandamus is the appropriate vehicle for compelling a
18 local governing body to continue to comply with direct funding requirements).

19 In fact, in 2000, when the billboard companies claimed the ballot initiative was
20 unconstitutional and sued the City of Reno to try to keep it off the ballot, the billboard
21 companies filed a petition for writ of mandamus, because that is the appropriate
22 procedure. *Eller Media Co. v. City of Reno*, 118 Nev. 767, 769, 59 P.3d 437, 438 (2002).

23 Notwithstanding the fact that there is no legal remedy and that the correct
24 procedure is a petition for writ of mandamus, if for any reason the Court is inclined to
25 require Scenic Nevada to proceed by way of petition for judicial review rather than by
26 mandamus, Scenic Nevada should be granted leave to amend its petition. In writ
27 proceedings, the provisions of the Nevada Rules of Civil Procedure apply. *See* NRS
28 34.300. Under NRCP 15(a), leave to amend a pleading is to be freely granted. This is an

1 early stage of the proceedings. There is no unfair prejudice to opposing parties. A
2 petition for mandamus contains virtually the same allegations as a petition for judicial
3 review. The amendment would be ministerial; primarily a change in the title of the
4 pleading and minor edits to the body of the petition. Accordingly, even if the Court were
5 to find that a petition for judicial review is appropriate, it would also be appropriate to
6 grant Scenic Nevada leave to amend.

7 **2. Scenic Nevada Is Not Suing the Billboard Companies**

8 The second procedural objection is that indispensable parties have not been joined
9 pursuant to NRCP 19(b). The Opposition's argument appears to be that the "seven or
10 more entities that hold banked receipts" issued prior to October 24, 2012 are necessary
11 and indispensable parties, and that the petition should be dismissed because they were not
12 named as parties.

13 Whether the "seven or more entities" are necessary or indispensable parties under
14 Rule 19(b) requires a consideration of factors that are not before the Court. There are no
15 facts and analysis in the Opposition as to why any entity allegedly is a necessary or
16 indispensable party. Among the factors to be considered would be whether complete
17 relief can be afforded between Scenic Nevada and the City or whether an entity claims an
18 interest in the action and is so situated that disposition of the action in the absence of the
19 entity may impair or impede its ability to protect that interest or create a substantial risk
20 of incurring double, multiple, or otherwise inconsistent obligations. These factors cannot
21 be analyzed without additional information, which is not before the Court.

22 Be that as it may, this action challenges the February 8, 2017 resolution of the City
23 Council. It is a legal challenge to the Council resolution based on the decision in *Scenic*
24 *Nevada, Inc. v. City of Reno*, 373 P.3d 873 (Nev. 2016). The issue is between Scenic
25 Nevada and the City. The City is the appropriate responding party to defend its actions,
26 just as the City was the appropriate party to defend the *Scenic Nevada* case. Scenic
27 Nevada has no intention of naming as parties to this proceeding any of the "seven or
28 more entities" who have held banked receipts over the years.

1 Before the Court is a motion to intervene in this case filed by Lamar Central
2 Outdoor, LLC pursuant to NRCP 24(a)(2) and (b)(2). The procedure of Rule 24 is
3 appropriate and should be followed to determine whether Lamar or any other entity
4 should be an additional party to this action. Based on the representation in the City's
5 Opposition that 66 banked receipts were issued prior to October 24, 2017, and based on
6 the representation in Lamar's motion that Lamar owns 61 of those receipts, it appears that
7 Lamar has almost all of the banked receipts, and Lamar has already moved to intervene.
8 Lamar's motion largely renders moot the City's argument that additional entities should
9 be named as parties under Rule 19(b). Furthermore, the City makes a completely
10 inadequate showing as to how "seven or more entities" are allegedly necessary and
11 indispensable parties to this case under Rule 19(b). The City's claim that the instant
12 petition should be dismissed for failing to name these parties is unreasonable and without
13 basis and should be denied.

14 **3. Mandamus Is Not Barred by Any Alleged Statute of Limitations**

15 The third procedural objection is that the petition is allegedly time-barred by the
16 25-day filing deadline of NRS 278.0235, or a three-year statute of limitations under NRS
17 11.190(3)(a) (action for liability on a statute) or a four-year limitations period under NRS
18 11.220 (action for relief not otherwise provided for).

19 The City's argument that three different statutes of limitations could possibly
20 apply indicates that the City is grasping for procedural straws, rather than defending its
21 actions on the merits. After the Supreme Court's decision in *Scenic Nevada, Inc. v. City*
22 *of Reno*, 373 P.3d 873 (Nev. 2016), the City can no longer even debate the fact that it
23 unconstitutionally amended the meaning of the ballot initiative. The City therefore is
24 looking for procedural loopholes to try to avoid a reckoning, and the Opposition casts
25 about for any statute of limitations that could apply.

26 The Opposition argues that the proper limitation period is 25 days. "The short
27 limitation period of NRS 278.0235 is important in connection with municipal actions
28 because both the City and the general public need to be able to rely upon the validity and

1 long-term legitimacy of ordinances adopted.” *Opposition*, p. 11, fn. 2.¹ It is somewhat
2 presumptuous, however, to assume that every “municipal action,” taken by the City is
3 valid and deserves long-term legitimacy. The best example of this point is that in 2016,
4 the Supreme Court had no problem declaring unconstitutional and void *ab initio* two
5 “municipal actions” -- the City’s banking and relocation ordinances – that were enacted
6 14 years earlier. *Scenic Nevada, Inc. v. City of Reno*, 373 P.3d 873 (Nev. 2016).

7 In *Scenic Nevada*, the City argued that Scenic Nevada’s case was time-barred
8 because Scenic Nevada had failed to bring a civil action within three or four years after
9 passage of the unconstitutional ordinances. The Supreme Court disregarded that
10 argument entirely, and properly so. A statute of limitations cannot insulate continued
11 enforcement of an unconstitutional law merely because no one challenges it within so
12 many years of its enactment. *Virginia Hosp. Ass’n v. Baliles*, 868 F.2d 653, 663 (4th Cir.
13 1989); *Kuhnle Bros. v. County of Geauga*, 103 F.3d 516, 522 (6th Cir. 1997). If a statute
14 of limitations immunized unconstitutional laws, decisions like *Brown v. Board of*
15 *Education*, 347 U.S. 483, 98 L.Ed. 873, 74 S.Ct. 686 (1954) would not have been
16 possible and “separate but equal” would still be the law of the land.

17 In this case, there is no statute of limitations issue, but for discussion purposes,
18 any statute of limitations that could have applied would run from the date of the
19 government action being challenged. That date was February 8, 2017. Eight months
20 earlier, the court in *Scenic Nevada, Inc. v. City of Reno*, 373 P.3d 873 (Nev. 2016) had
21 held that the banking and relocation ordinances were unconstitutional, until they were
22 reenacted as part of the digital billboard ordinance on October 24, 2012. In its *en banc*
23 opinion, the court expressly left for another day the issue of the interim validity of the
24

25 ¹ The City’s *Opposition* expresses concern over “validity” and “long-term legitimacy” of
26 laws that created banked receipts for billboard companies, even though the Supreme
27 Court found those laws to be unconstitutional. At the same time, the City does not appear
28 to be concerned about validity and long-term legitimacy of the law banning construction
of new billboards, even though the law was upheld in two Supreme Court opinions: *Eller*
Media Co. v. City of Reno, 118 Nev. 767, 59 P.3d 437 (2002) and *Scenic Nevada, Inc. v.*
City of Reno, 373 P.3d 873 (Nev. 2016).

1 banked receipts. After the *Scenic Nevada* decision, it appeared as though the City
2 Council had developed new-found respect for the voters' initiative. These hopes were
3 dashed on February 8, 2017. In the face of a Supreme Court decision that the banked
4 receipts were issued under unconstitutional ordinances, the Council majority, relying on
5 guidance from the Reno City Attorney's Office, voted to allow banked receipts to be used
6 to construct new billboards. Scenic Nevada's petition is a legal challenge to that action.
7 If there was any applicable limitation period, it would therefore begin to run on February
8 8, 2017. Scenic Nevada's petition was filed only 13 days after the resolution passed.
9 The attempt to create a statute of limitations argument is fruitless, because even if the
10 shortest limitation period applied, Scenic Nevada's petition is not time-barred.

11 **4. Scenic Nevada's Petition Is Not Barred by Laches**

12 The fourth procedural objection is that the petition is barred by laches.

13 Scenic Nevada filed its petition only 13 days after the Reno City Council adopted
14 the offending resolution, so attempting to raise a laches defense is spurious.

15 The Opposition attempts to turn the issue around by claiming that Scenic Nevada's
16 petition should be barred by laches because Scenic Nevada neglected to file a lawsuit
17 challenging the constitutionality of the banking and relocation ordinances after they were
18 first adopted in 2002 and 2003. Of course, in 2012, Scenic Nevada *did* file a lawsuit
19 asserting that the banking and relocation ordinances were unconstitutional. Had Scenic
20 Nevada not raised the issue, the Supreme Court never would have had the opportunity to
21 declare the ordinances unconstitutional in *Scenic Nevada, Inc. v. City of Reno*, 373 P.3d
22 873 (Nev. 2016). And when Scenic Nevada raised the constitutionality of these
23 ordinances in 2012, neither the District Court nor the Supreme Court found any merit to
24 the City's argument that Scenic Nevada's lawsuit should be time-barred.

25 The impression created by the Opposition is that Scenic Nevada sat on its hands
26 doing nothing as the years passed, lulling others into believing that the banked receipts
27 were unchallenged. In fact, during the years after the passage of the ballot initiative,
28 Scenic Nevada fought tirelessly, through the internal administrative processes of the City,

1 against the banking and relocation ordinances. The evidence is in the City's own files.
2 On May 8, 2003, the Reno City Attorney's Office prepared an internal memo discussing
3 the legality of the banking and relocation ordinances.² In the analysis in the memo, the
4 Reno City Attorney's Office states that Doug Smith, Scenic Nevada's founder, has
5 "adamantly insisted that relocation of existing billboards is prohibited under the initiative,
6 and that it was never the intent of the drafters of the initiative to merely place a cap on the
7 number of billboards. See letter from Doug Smith dated January 8, 2003 (Exhibit A)."
8 *See Exhibit 1, attached, p. 3.*

9 In the ensuing years, Scenic Nevada's all-volunteer membership continued to
10 battle against the billboard companies, city staff, Planning Commission and City Council
11 to protect the citizens' ballot initiative. This history is related from paragraphs 5 through
12 60 of Scenic Nevada's petition for writ of mandate. The Opposition dismisses this
13 history as "inordinately long," but the history is relevant. It shows Scenic Nevada
14 standing up for the ballot initiative against the City Council, its staff and the billboard
15 companies, through years of the administrative process.

16 Petitioners for writs of mandate are required to exhaust their administrative
17 remedies, or else their petitions will be denied. *Mesagate Homeowners' Ass'n v. City of*
18 *Fernley*, 124 Nev. 1092, 1101, 194 P.3d 1248, 1254 (2008). Scenic Nevada's petition
19 shows that Scenic Nevada spent years exhausting its administrative remedies. This
20 includes five years appealing through the administrative process and arguing that the
21 proposed digital billboard ordinance violated the citizens' ballot initiative. *See Petition,*
22 *Paragraphs 21-47.* At one point, on November 2, 2011, the Planning Commission even
23 voted on whether to scrap the proposed digital billboard ordinance, based on the ballot
24 initiative, but the motion failed on a 2-3 vote. *See Exhibit 2, SN 546-557, attached.* The
25 opponents during these years of administrative hearings included the Reno City Council,
26 its administrative staff, and the billboard companies. *See, e.g., Petition, Paragraphs 21,*
27

28 ² The internal memo became Scenic Nevada Exhibit 220, admitted at the trial in the
2012 case.

1 24, 26, 28, 39 and 42. Thus, all stakeholders and interested parties had knowledge of
2 Scenic Nevada's position during the hearings and the administrative process.

3 This history also is relevant because when the defense of laches is raised in
4 response to a petition for writ of mandamus, the considerations are: (1) whether there was
5 an inexcusable delay in seeking the petition, (2) whether an implied waiver arose from
6 the petitioner's knowing acquiescence in existing conditions, and (3) whether there were
7 circumstances causing prejudice to the respondent." *Bldg. & Constr. Trades v. Pub.*
8 *Works*, 108 Nev. 605, 610-11, 836 P.2d 633, 636-37 (1992). As to the first two of these
9 factors, Scenic Nevada's petition shows that there was no delay on Scenic Nevada's part,
10 and clearly, no "knowing acquiescence in the existing conditions." On the contrary, the
11 record shows that Scenic Nevada fought the City's billboard policies through workshops,
12 hearings and appeals over many years, first in the administrative process, and then in
13 litigation, until 2016, when the Supreme Court declared the banking and relocation
14 ordinances unconstitutional.

15 As to the third factor, prejudice to the respondent, the respondent is the City. The
16 City's Opposition fails to articulate any circumstances causing prejudice to the City.
17 Instead, the City's argument appears to be that the *billboard companies* allegedly were
18 prejudiced by their alleged reliance on the banked receipts. However, the City has not
19 presented any facts to show that any billboard company at any time relied on the
20 availability of a banked receipts as the reason for taking down a billboard. A billboard
21 might be taken down for a multitude of reasons: loss of a lease, poor location, low
22 advertising revenue, undue cost of repair or redevelopment of the property. In fact,
23 reason dictates that it would be foolish to take down a billboard that is making money for
24 its owner, just because of the availability of a banked receipt.

25 Even if it were assumed that a billboard company allegedly "relied" in some way
26 on a banked receipt, the case law cited in Scenic Nevada's petition establishes that
27 development rights are not acquired when there is reliance on a permit that was void *ab*
28

1 *initio*.³ *Perrotta v. New York*, 107 A.D.2d 320, 325, 486 N.Y.S.2d 941, 945 (App. Div.
2 1985), citing *Matter of Natchev v. Klein*, 41 NY2d 833; *Corey Outdoor Advert., Inc. v.*
3 *Bd. of Zoning Adjustments*, 254 Ga. 221, 227-28, 327 S.E.2d 178, 184-85 (1985);
4 *Hampton v. Briscoe*, 207 Ga. App. 501, 504, 428 S.E.2d 411, 412 (1993). The reasoning
5 was perfectly explained by the court in *Pettit v. City of Fresno*, 34 Cal. App. 3d 813
6 (1973): “To hold that the City can be estopped [from revoking void permits] would not
7 punish the City but it would assuredly injure the area residents, who in no way can be
8 held responsible for the City's mistake. Thus, permitting the violation to continue gives
9 no consideration to the interest of the public in the area nor to the strong public policy in
10 favor of eliminating nonconforming uses and against expansion of such uses.”

11 The reasoning of the court in *Pettit v. City of Fresno* was right on the mark. The
12 residents of Reno voted to ban new billboards. Their interests deserve to be protected as
13 much as the interests of any billboard company. The citizens should not be punished for
14 the City’s unconstitutional act of issuing banked receipts to billboard companies by
15 having more new billboards erected to blight the community. The citizens of Reno
16 deserve at least as much protection for their constitutional rights as the residents of
17 Fresno.

18 The laches defense should be rejected because the facts do not support it.

19 **5. Claim Preclusion Does Not Bar Scenic Nevada’s Petition for**
20 **Mandamus**

21 The final procedural objection is that Scenic Nevada’s petition is barred by the
22 doctrine of claim preclusion. The City contends that the issue raised in the instant
23 petition “is based on the same part of the claim raised in the first matter – the
24 constitutionality and validity” of the banking and relocation ordinances. *See Opposition*,

26 ³ At p. 8, lines 9-10, the City’s Opposition states Scenic Nevada’s petition “simply cut
27 and paste[d] portions of case holdings from other jurisdictions,” which Scenic Nevada
28 freely admits. Scenic Nevada cut and pasted into its petition the law that is available on
the subject. While criticizing Scenic Nevada’s petition for reproducing this law, the
City’s Opposition offers no law from any jurisdiction to dispute it.

1 p. 14, line 28 – p. 15, line 1, citing *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048,
2 1054-1055, 194 P.3d 709, 713 (2008).

3 The City’s argument that the instant petition is “based on the same claims or any
4 part of them” is not true. In the 2012 action, the claim was that the digital billboard
5 ordinance was unconstitutional because it incorporated two unconstitutional banking and
6 relocation ordinances. In contrast, the instant petition challenges the validity of a City
7 Council resolution regarding banked receipts. The present issue arose after the court in
8 *Scenic Nevada* held that the digital billboard ordinance was constitutional, but the
9 banking and relocation ordinances were not, and the court reserved for future
10 consideration the effect of the period of “interim invalidity” of the banking and relocation
11 ordinances. The City Council majority then voted to allow the banked receipts to be used
12 to construct new billboards. This is not the same claim, or even part of the same claim,
13 that was before the court in the 2012 case. In fact, the court in *Scenic Nevada, Inc. v.*
14 *City of Reno*, 393 P.3d 873 (Nev. 2016) held that “no question arises as to the impact the
15 interim invalidity of the 2002 and 2003 Conforming and Banking Ordinances may have
16 on persons who relied on those ordinances.” Clearly, therefore, the issue presently before
17 this Court is not the same claim, or part of the same claim, addressed by the Supreme
18 Court in the 2012 case. Accordingly, the City’s argument with respect to claim
19 preclusion should be rejected.

20 **6. Conclusion**

21 The Opposition’s procedural objections to *Scenic Nevada*’s petition lack merit and
22 should be overruled. It is respectfully requested that the Court grant the relief requested
23 in the petition and order all other appropriate relief.

24
25 / / /

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1 *The undersigned certifies that the foregoing document does not contain the Social*
2 *Security number of any person.*

3 DATED: April 13, 2017

LAW OFFICES OF MARK WRAY

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5 By 

6 MARK WRAY
7 Attorney for Petitioner
8 SCENIC NEVADA, INC.
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INDEX OF EXHIBITS

Exhibit 1- May 8, 2003, Internal Memo from Reno City Attorney

Exhibit 2- November 2, 2011, Minutes from Reno City Planning Commission
Meeting