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11
12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
13
14 IN AND FOR THE COUNTY OF WASHOE

15 SCENIC NEVADA, INC.,

16 Petitioner and Plaintiff,

Case No. CV21-02086

17 vs.

Dept. 4

18 CITY OF RENO, a political subdivision
19 of the State of Nevada, and the CITY
20 COUNCIL thereof; RENO REAL ESTATE
21 DEVELOPMENT, LLC; RENO
22 PROPERTY MANAGER, LLC,

23 Respondents and Defendants.
24 _____ /

25 **AMENDED PETITION FOR JUDICIAL REVIEW, OR ALTERNATIVELY, FOR**
26 **WRIT OF MANDAMUS AND/OR PROHIBITION, OR ALTERNATIVELY, FOR**
27 **DECLARATORY RELIEF**

28 COMES NOW Petitioner and Plaintiff Scenic Nevada, Inc., by its undersigned
counsel, and for its Amended Petition for Judicial Review, or alternatively, for Writ of
Mandamus and/or Prohibition against Respondent City of Reno and the City Council
thereof (“City”), or alternatively, for Declaratory Relief against the City and Defendants

1 Reno Real Estate Development, LLC and Reno Property Manager, LLC (“Developers”),
2 alleges as follows:

3 4 INTRODUCTION

5 1. A development agreement between a city and a developer is authorized by
6 NRS 278.0201. In order to be valid and lawful, the development agreement must satisfy
7 the requirements of NRS 278.0201. The statute provides that "a governing body may,
8 upon application of any person having *a legal or equitable interest in land*, enter into an
9 agreement with that person concerning the development of *that land*." NRS 278.0201(1)
10 (emphasis added). The statute makes explicit the common-sense requirement that a
11 developer must have a legal or equitable interest in the land to be developed in order for a
12 city to enter into a valid and lawful development agreement for that land. This case
13 presents a situation in which the City and Developers entered into a 36-page
14 Development Agreement¹. The agreement violated NRS 278.0201 by including parcels
15 in which the Developers had no legal or equitable interest. The agreement further
16 purports to approve large signs violating Reno sign code standards on parcels in which
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22 ¹ See Exhibit 1, attached. As this action is being filed, Scenic Nevada does not have
23 access to a recorded, final version of the agreement. Scenic Nevada must rely upon the
24 draft approved by the City Council at its Oct. 27, 2021 hearing. Per §7.12, p. 18, the
25 agreement was to be recorded “promptly” after approval, but Scenic Nevada made
26 inquiries and learned that the agreement has not been recorded yet. Scenic Nevada also
27 tried to obtain a final, signed copy of the Development Agreement through a public
28 records request on November 8, 2021. The City responded by saying additional time was
needed and the release of the public record -- which should have been completed in five
days -- is still “in progress.” Then on November 29th, the City emailed: “The requested
signed ordinance has been attached. The development agreement has not been executed
at this time as City staff is finalizing the exhibits with the developer. Upon completion of
the exhibits, staff will forward for execution by all parties.”

1 the Developers have no legal or equitable interest. The instant petition and complaint
2 seek to set aside the ordinance approving the unlawful development agreement and to
3 have the agreement declared null and void for violation of state law and municipal
4 ordinances.
5

6 **JURISDICTIONAL STATEMENT**

7
8 2. This Court has jurisdiction of this action pursuant to Art. 6, §6 of the
9 Nevada Constitution, which provides that district courts have original jurisdiction of all
10 actions excluded by law from the original jurisdiction of the justice courts. Jurisdiction
11 exists in this Court pursuant to NRS 278.3195(4), which authorizes petitions for judicial
12 review of land use decisions by local agencies to be filed with district courts.
13

14 Alternatively, jurisdiction exists in this Court under NRS 34.160, which authorizes this
15 Court to issue a writ of mandamus to compel the performance of an act which the law
16 especially enjoins as a duty resulting from an office. Alternatively, jurisdiction exists in
17 this Court under NRS 34.330, which authorizes this Court to issue a writ of prohibition in
18 all cases where there is not a plain, speedy and adequate remedy in the ordinary course of
19 law. Alternatively, jurisdiction exists in this Court under NRS 4.370, which limits
20 jurisdiction of the justice courts to proceedings identified therein, and which omits to
21 provide for justice court jurisdiction over actions for declaratory relief, and NRS 30.030,
22 which empowers this Court to issue declaratory relief.
23
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25

26 **PARTIES**

27 3. Petitioner and Plaintiff Scenic Nevada, Inc. is a non-profit Nevada
28 corporation with a principal place of business in Reno, Washoe County, Nevada that

1 sponsored the successful ballot initiative in 2000 in which Reno citizens voted
2 overwhelmingly to ban new billboard construction within the city limits. Scenic
3 Nevada's principal activity is to educate the general public on the economic, social, and
4 cultural benefits of scenic preservation by means of encouraging billboard and sign
5 control, among other issues.
6

7
8 4. Respondent and Defendant City of Reno ("City") is a political subdivision
9 of the State of Nevada located in the County of Washoe whose governing body is the
10 Reno City Council.

11
12 5. On information and belief, Defendants Reno Real Estate Development,
13 LLC and Reno Property Manager, LLC ("Developers") are Delaware limited liability
14 companies which at all relevant times were doing business as foreign limited liability
15 companies in Reno, Washoe County, Nevada.
16

17 **PROCEDURAL AND FACTUAL BACKGROUND**

18 6. Jacobs Entertainment, Inc. is an enterprise controlled by Jeff Jacobs that is
19 affiliated in some manner with the Developers. Mr. Jacobs has branded the western half
20 of downtown Reno as his "Neon Line District." The area comprising the "Neon Line
21 District" is bounded by Interstate 80 on the north and West Second Street on the south,
22 extending from West Street on the east to Keystone Avenue on the west. *See* Ex. 1, p. 29
23 (District Map). According to the Development Agreement, 78 parcels are "Jacobs
24 Entertainment Owned and Controlled Properties," and all but one of them - the cemetery
25 parcel -- are within the area that Mr. Jacobs claims as his "Neon Line District." *See* Ex. 1,
26 p. 22, Exhibit A-1 (Property Description).
27
28

1 7. However, Jacobs Entertainment and Mr. Jacobs do not own or have rights
2 with respect to the 78 parcels. Furthermore, Mr. Jacobs and his Jacobs Entertainment
3 entity are not parties to the Development Agreement. The parties are the City and the
4 Defendant Developers: Reno Real Estate Development, LLC and Reno Property
5 Manager, LLC.
6

7 8. It is the Developers' "legal or equitable interest in land" that is relevant
8 under NRS 278.0201(1). When the Development Agreement came before the City
9 Council for approval, the Developers also did not have a "legal or equitable interest" in
10 each of the 78 parcels that are identified in the Development Agreement. The Court is
11 requested to take judicial notice pursuant to NRS 47.130 of the records of the Washoe
12 County Recorder's and Washoe County Assessor's Offices showing the actual ownership
13 of the 78 parcels. A summary spreadsheet of the record of ownership is attached as
14 Exhibit 3.
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18 9. In hearings before the City Council on the Development Agreement, Scenic
19 Nevada and others pointed out that parcels owned by third parties are included in the
20 "Neon Line District" boundaries or are listed as the Developers' properties in the
21 Development Agreement. *See* Ex. 1, p. 23 (Property Map).
22

23 10. Included in the Development Agreement are provisions for three large signs
24 that the Development Agreement labels "area identification" signs. *See* Ex. 1, §3.02(e),
25 pp. 7-8. The three proposed signs are designated AC-1 (archway sign), PY-1B (cemetery
26 sign), and PY-1 (gas station sign). *See* Ex. 1, p. 36, Area Identification Sign Location
27 Map, Ex. H.
28

1 11. As proposed, the archway sign would be erected in a location that is
2 designated “Mixed-Use” under the Reno zoning code. The sign will stand 27 feet tall and
3 span 102 feet over Fourth Street, a public roadway. The north pylon would be anchored
4 in a public right-of-way, which obviously is not owned by the Developers. The sign also
5 violates the Reno sign code, which prohibits signs in the right-of-way. Though labeled
6 by the City as an "area identification" sign, the archway sign would only be a few paces
7 away from the "area identification" sign proposed for the gas station at the corner of
8 Fourth Street and Keystone Avenue.
9
10

11 12. The cemetery sign would be on cemetery land (APN 006-152-01) facing
12 Interstate 80, almost three-quarters of a mile away from the entrance to the proposed
13 "Neon Line District," making it impossible to understand why the City would call this an
14 "area identification" sign. *See Ex. 4, Map, attached.* As Scenic Nevada pointed out to the
15 City Council, the Developers had no legal or equitable interest in the cemetery when the
16 Development Agreement came before the Council for hearing. The cemetery parcel is
17 owned by Reno Lodge 13 F/M.
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21 13. The gas station sign, PY-1, at Fourth Street and Keystone (APN 006-224-
22 07), would be on land owned by an entity identified as Kokee & Neelam LLC. The gas
23 station sign is proposed to be 25 feet tall. Under the Reno Municipal Code, an on-
24 premise sign in this location, on a less-than-one-acre parcel in a Mixed-Use zone, is
25 limited to eight feet in height. Accordingly, the 25-foot sign the City and the Developers
26 agreed to erect in this location violates the Reno sign code.
27
28

1 14. The City designated the ordinance to approve the Development Agreement
2 as Ordinance 6610. A first reading of Ordinance 6610 was scheduled for the October 13,
3 2021 Reno City Council meeting. The proposed Development Agreement was included
4 in the advance packet provided to Council members and posted online on or about
5 October 8, 2021. The online posting of the Development Agreement referred to an
6 “Exhibit H” that supposedly was part of the agreement. “Exhibit H” was to provide
7 renderings, dimensions and locations for the archway, cemetery and gas station signs.
8 However, "Exhibit H" was not included in the City Council packet nor posted online until
9 October 12, one day before the meeting. This afforded inadequate notice and time for the
10 public or Scenic Nevada to examine "Exhibit H."
11
12

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14 15. Having never seen the information that was supposed to be disclosed in
15 “Exhibit H,” Scenic Nevada submitted a letter to the City Council on October 11, 2021,
16 objecting to the signs based on the description within the proposed Development
17 Agreement and noting that the Development Agreement was not ready for approval given
18 that all the exhibits were not made available to the public. A true copy of the letter is
19 attached as Exhibit 5.
20
21

22 16. On October 13, 2021, over Scenic Nevada's written objections and
23 opposition by other citizens, the City Council majority voted to adopt the first reading of
24 Ordinance 6610 approving the Development Agreement.
25

26 17. Prior to the second reading of Ordinance 6610, on October 25, 2021, Scenic
27 Nevada submitted a second letter to the City Council, the City Clerk, the City Attorney
28 and the City Manager setting forth Scenic Nevada's objections to the Development

1 Agreement. In this letter, Scenic Nevada pointed out that pursuant to NRS 278.0201(1),
2 a development agreement is not authorized unless the developer has a legal or equitable
3 interest in the land that is the subject of the agreement, and the Development Agreement
4 violated Section 278.0201(1). A true copy of the second letter is attached as Exhibit 6.
5

6 18. The Reno City Clerk received 130 letters in opposition to the archway sign,
7 and none in favor, by the 4 p.m. deadline October 26, 2021. Twenty more letters in
8 opposition were received in the days following.
9

10 19. On October 27, 2021, Scenic Nevada appeared, through its attorney, at the
11 second reading of Ordinance 6610, to bring the Council's attention to Scenic Nevada's
12 written objection and to request that the Development Agreement be rejected. During the
13 October 27th hearing, a deputy city attorney advised the Council that by adopting
14 ordinance approving the Development Agreement, the City would be agreeing to what
15 the "area identification" signs will say, and to the locations and designs, including height
16 and width, all as shown in "Exhibit H". The Council voted 6-1 to adopt Ordinance 6610
17 approving the Development Agreement.
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21 **STANDING**

22 20. Frustrated by the refusal of the City Council to enact legislation preventing
23 the proliferation of billboard blight, in 2000, a volunteer organization called "Citizens for
24 a Scenic Reno" sponsored an initiative petition and gathered the necessary signatures to
25 place on the ballot a proposed ordinance to ban new billboards in the City of Reno.
26
27
28

1 Despite heavy opposition by billboard interests, the citizens' group succeeded, and the
2 billboard ban was adopted by a healthy majority of the voters in the November 2000
3 election.
4

5 21. In 2001, "Citizens for a Scenic Reno" changed its name to Scenic Nevada
6 and filed articles of incorporation as a Nevada non-profit corporation.
7

8 22. Scenic Nevada has been defending the citizens' initiative since 2002,
9 starting with *Eller Media Co. v. City of Reno*, 118 Nev. 767, 772, 59 P.3d 437, 440
10 (2002) (Scenic Nevada participating as amicus to uphold the order of the Hon. Jerome
11 Polaha, District Judge, which rejected the billboard company's petition to keep the
12 citizens' initiative to ban new billboards off the 2000 ballot).
13

14 23. Despite a clear result in a democratic election, the Reno City Council was
15 not fully behind the people's vote to ban new billboard construction. In 2002 and 2003,
16 less than three years after the ban on new billboards was passed by voters, the Council
17 sought to subvert the vote. The Council enacted ordinances, including Ordinance 5295,
18 to allow billboard owners to take down billboards in one location and erect them in new
19 locations with new permits issued by the city. If a new location was unavailable, the city
20 adopted Ordinance 5461 to allow the sign owners to "bank" the permit until a suitable
21 site was found. The sign owner could then exchange the banked permit or "receipt" for a
22 new permit to erect a new billboard. In adopting these ordinances, the Council altered
23 and subverted the citizens' initiative banning construction of new billboards.
24
25
26

27 24. On February 13, 2008, the City Council initiated the process toward
28 adopting a new ordinance to allow the construction and permitting of new digital

1 billboards (electronic, variable message, computer-controlled LED signs). Scenic
2 Nevada opposed the digital billboard legislation through four years of planning
3 commission and City Council hearings. Scenic Nevada's standing to oppose the digital
4 billboard ordinance was not challenged during the four-year administrative process.
5

6 25. In 2011, the owners of the Wild Orchid exotic dance club on South Virginia
7 Street obtained a permit to convert a static sign to a digital display. The conversion was
8 in violation of City code. When Scenic Nevada appealed the issuance of the permit, the
9 administrative law judge, Richard Lagarza, dismissed the appeal for alleged lack of
10 standing. Scenic Nevada appealed Mr. Lagarza's ruling to the City Council, which
11 reversed, declaring that Scenic Nevada had standing and its appeal was to be considered
12 timely. While the City Council ultimately voted 4-3 to allow the Wild Orchid sign, the
13 principle that Scenic Nevada had standing to appeal was decided in Scenic Nevada's
14 favor.
15
16
17

18 26. On October 24, 2012, over Scenic Nevada's objection, the Reno City
19 Council disregarded the billboard ban adopted by the voters and adopted an ordinance
20 allowing digital billboards. On November 16, 2012, Scenic Nevada sued the City in
21 district court to invalidate the digital billboard ordinance. Scenic Nevada's standing to
22 object to this ordinance was never challenged by the City in the lawsuit. After a day-long
23 trial, the Hon. Patrick Flanagan, District Judge, upheld the digital billboard ordinance.
24 Scenic Nevada promptly appealed to the Nevada Supreme Court.
25
26

27 27. On June 30, 2016, in an en banc opinion in *Scenic Nev., Inc. v. City of*
28 *Reno*, 373 P.3d 873 (Nev. 2016), the court partially upheld Judge Flanagan's judgment

1 in favor of the City in the digital billboards case, though on different grounds than Judge
2 Flanagan had cited, and the court reversed Judge Flanagan’s ruling that the City could
3 repeal a voter initiative immediately after the initiative is passed. The Supreme Court
4 ruled that the 2002 and 2003 banking and relocation ordinances altered the meaning of
5 the 2000 ballot initiative within three years of the passage of the initiative, and therefore,
6 were unconstitutional and void *ab initio* from the time they were adopted until the City
7 passed the new digital billboard ordinance in 2012. This ruling made the banked receipts
8 issued from 2002 to 2012 (the period of “interim invalidity”) unconstitutional and void.
9

10
11 28. On February 11, 2015, Scenic Nevada appeared in opposition to a sign
12 special use permit applied for by Summit Sierra mall, on grounds that the proposed sign
13 violated multiple City ordinances. Scenic Nevada’s standing to oppose Summit Sierra’s
14 application for the unlawful sign permit was challenged by John Frankovich, the attorney
15 for Summit Sierra. In a unanimous vote the City Council acknowledged again Scenic
16 Nevada’s standing, and in fact, City Attorney Karl Hall issued a memo Feb. 2, 2015
17 confirming Scenic Nevada’s standing, stating in pertinent part:
18
19

20
21 ***“All citizens in Reno have a stake in aesthetics and safety and to say that only***
22 ***neighbors with a specific property interest being damaged can appeal a special***
23 ***use permit of this significance would defeat the purpose of NRS 278.3195.”***
24

25 See Ex. 7, attached. The City Council ultimately denied the permit.

26 29. On Dec. 10, 2016, a Reno City Council composed of entirely new members
27 voted to begin the process of repealing the digital billboard ordinance and rewriting the
28 city’s billboard law to enforce the people’s initiative in 2000 banning new billboards.

1 However, the Council continued to allow sign owners the use of the left-over banked
2 receipts to build new billboards, to which Scenic Nevada objected, in public hearings
3 before the planning commission and City Council. Scenic Nevada’s standing to object
4 was not challenged.
5

6 30. Convinced that the City Council’s decision to continue honoring banked
7 receipts issued during the period of “interim invalidity” was a plain violation of the
8 Supreme Court decision in *Scenic Nevada, Inc. v. City of Reno*, on February 21, 2017,
9 Scenic Nevada sued the City in Second Judicial District Court Case No. CV17-00361.
10 The petition for writ of mandamus asked the court to specially enjoin the City from
11 allowing the use of banked receipts to construct new billboards. Lamar Central Outdoor,
12 LLC, which owned most of the existing billboards and banked receipts inventory in
13 Reno, intervened. The City did not challenge Scenic Nevada’s standing to bring this suit.
14
15

16 31. On August 2, 2017, the Hon. Scott Freeman, District Judge, granted Scenic
17 Nevada’s petition for writ of mandamus, finding the banked receipts issued during the
18 period of “interim invalidity” to be unconstitutional under the Supreme Court’s 2016 *en*
19 *banc* decision and ordering the City “to cease and desist from allowing the construction
20 of billboards based on permits obtained from any and all bank receipts issued prior to
21 Oct. 24, 2012.”
22
23

24 32. On September 15, 2017, the city council adopted an amended billboard
25 ordinance to enforce the people’s billboard ban, repeal the banking and relocation system
26 -- leaving in place existing banked receipts -- and prohibit digital billboard conversions.
27
28

1 33. Meanwhile, the City and Lamar had appealed Judge Freeman’s ruling
2 (Supreme Court Docket No. 73845). On November 15, 2017, as part of the Supreme
3 Court settlement program, Scenic Nevada, the City and Lamar entered into a written
4 settlement agreement. Lamar dismissed its claims challenging the repeal of the digital
5 billboard ordinance and the City and Lamar dismissed their appeals of Judge Freeman’s
6 ruling. In a compromise to reach that settlement, Scenic Nevada gave up its victory in
7 the district court that the banked receipts issued to Lamar were unconstitutional and void,
8 in exchange for Lamar dropping its challenge to the City’s digital billboard ban.
9

10
11 34. As a direct result of the Supreme Court settlement agreement, a billboard
12 (which the City refers to as an “off-premises advertising display”) can still be erected in
13 Reno, so long as the sign company properly surrenders the necessary banked receipt and
14 satisfies all the other requirements for a new billboard under RMC 18.05.201 *et seq.* In
15 the instant case, however, the Development Agreement between the City and the
16 Developers purports to allow the Developers to erect the archway and cemetery signs –
17 which are nothing more than off-premises advertising displays (billboards) – without
18 surrendering banked receipts, which is the subject of the Supreme Court settlement
19 agreement with Scenic Nevada. Furthermore, by not requiring the Developers to present
20 banked receipts or comply in any manner with Reno Municipal Code for erecting
21 billboards, the City has dealt unfairly and in bad faith with Scenic Nevada as a party to
22 the Supreme Court settlement agreement with the City.
23

24
25 35. On or about October 31, 2018, using two of its banked receipts, Lamar
26 applied to the City for a permit to construct a billboard at Herz Blvd. in south Reno.
27
28

1 Initially, the City denied the application, but Scenic Nevada had no notice of the
2 application and was unaware a permit had been applied for and denied. The City then
3 reversed itself and issued the permit on December 21, 2021. Scenic Nevada could not
4 appeal the issuance of the permit within five days, as required by City code, and when
5 Scenic Nevada tried to file an appeal at the City Clerk’s Office, the City rejected the
6 appeal as untimely. Scenic Nevada appeared twice before the Reno Planning
7 Commission on May 1 and 15, 2019, pointing out the permit for Herz Boulevard was
8 issued in error, but its appeal was not allowed to be filed. On May 22, 2019, the Reno
9 city attorney’s office notified Scenic Nevada:

10
11
12
13 ***“It is our opinion that the deadline for filing appeals is jurisdictional so***
14 ***the inability of the City Clerk to accept your belated appeal is not a***
15 ***discretionary decision which would be subject to appeal to the City***
16 ***Council. The proper remedy in this case would be an application to***
17 ***District Court for a Writ of Prohibition or Mandamus.”***

18
19 36. On July 30, 2019, Scenic Nevada sued the City. The *Petition for Writ of*
20 *Mandamus and Declaratory Relief* (Second Judicial District Case No. CV19-01499)
21 asked the Court to cancel the building permit and to require removal of the Herz
22 Boulevard on grounds that the permit was issued, and the billboard erected, in violation
23 of multiple City codes. Notwithstanding the City Attorney’s notice to Scenic Nevada that
24 mandamus was the appropriate remedy, the City responded to the lawsuit by asserting
25 that mandamus relief was improper in a land use case and that the proper procedure under
26 *Kay v. Nunez*, 122 Nev. 1100, 146 P.3d 801 (2006) and *Mesagate HOA v. City of*
27
28

1 *Fernley*, 124 Nev. 1092, 194 P.3d 1248 (2008) was a petition for judicial review. The
2 City further asserted that because Scenic Nevada had not exhausted its administrative
3 remedies with a timely appeal, Scenic Nevada could not pursue a petition for judicial
4 review. The Hon. Egan Walker, District Judge, agreed that a petition for judicial review
5 was the proper procedure. He denied Scenic Nevada's petition for mandamus and
6 dismissed the case for failure to exhaust administrative remedies.
7

8
9 37. On appeal (Supreme Court Docket No. 80644) the Supreme Court affirmed
10 in an unpublished holding that a petition for judicial review was the proper procedure in a
11 land use case and that Scenic Nevada had not exhausted its administrative remedies.
12

13 38. In October 2021, the City Council approved the Development Agreement
14 for the Neon Line District, over Scenic Nevada's opposition. Because this was a land use
15 decision by the City, and in a land use case, a petition for judicial review is deemed to be
16 the correct remedy, Scenic Nevada commenced the instant action by filing a petition for
17 judicial review, or in the alternative, for declaratory relief. The City responded with a
18 motion to dismiss under NRCP 12(b)(5) asserting that a petition for judicial review is not
19 the proper procedure for this land use case and that Scenic Nevada lacks standing to seek
20 declaratory relief because it is not a party to the Development Agreement.
21

22
23 39. After authoring and sponsoring the citizens' ballot initiative of 2000, and
24 qualifying the initiative for the ballot, Scenic Nevada has been defending the citizens'
25 vote for the past 21 years. Scenic Nevada has standing as an aggrieved party to challenge
26 City ordinances and City Council actions that subvert the citizens' initiative of 2000, City
27 sign codes and the Supreme Court settlement agreement of 2017.
28

1 44. The petition for judicial review filed by Scenic Nevada was timely under
2 NRS 278.0235.

3
4 45. Before filing this action challenging the validity of the Development
5 Agreement, Scenic Nevada as an aggrieved party exhausted its administrative remedies
6 before the City Council by filing objections to the approval of the agreement and by
7 appearing before the City Council in a public hearing to assert those objections.
8

9 46. RMC 18.08.805(b) states:

10 “Pursuant to the provisions of NRS 278.0201 through 278.0207, the
11 City Council may enter into development agreements to regulate the
12 development of land within the City. The agreements and the procedures
13 applicable thereto shall be governed by and *must conform to NRS*
14 *278.0201 through NRS 278.0207* and the provisions of this Chapter.”
15
16

17 (emphasis added).

18 47. Furthermore, RMC 18.08.805(e)(4) provides that the City may enter into a
19 development agreement only when it can make a findings that "*[t]he development*
20 *agreement is consistent with the provisions of NRS Chapter 278.*" (emphasis added).
21

22 48. Under NRS 278.0201(1), a development agreement is unlawful unless it
23 concerns the development of land in which the developer has a legal or equitable interest.
24 The statute is clear and unambiguous, it's meaning clear and unmistakable. *State Farm*
25 *Mut. Auto. Ins. Co. v. Comm'r of Ins.*, 114 Nev. 535, 540-41, 958 P.2d 733, 736 (1998). It
26 should be applied as written. *Id.*
27
28

1 49. The proposed archway sign is not located on a gaming property. It is partly
2 on public property and stretches over a public roadway.

3
4 50. The cemetery sign is not an on-premises area identification sign but a
5 billboard, advertising the "Neon Line District" to motorists on Interstate 80.

6 51. The gas station sign would be 25 feet tall in a zoning district that only
7 allows signs up to eight feet tall and therefore does not conform to code.

8
9 52. All three signs are located on property not owned by the Developers and
10 therefore cannot be the subject of a Development Agreement between the City and the
11 Developers under state law.

12
13 53. Furthermore, the agreement approving off-premises advertising displays for
14 these Developers violates the rights of Scenic Nevada under the 2017 Supreme Court
15 settlement agreement.

16
17 54. Among the City ordinances violated by the proposed signs would be, at a
18 minimum, the following:

19 (a) RMC 18.05.109 (f) (prohibiting signs in public right of ways);

20
21 (b) RMC 18.08.805 (e)(2)(a)(5) (requiring that a development agreement shall
22 "[s]pecify the laws, ordinances, codes, resolutions, regulations, design and improvement
23 standards by name and date of adoption applicable to the development of the land for
24 which the applicant intends to establish a vested private development right.");

25 (c) RMC 18.05.101 (on-premise signs);

26 (d) RMC 18.05.113 and Table 5-1 (limiting on-premise signs in the mixed-use
27 zoning districts to eight feet for under-one-acre parcels);
28

- 1 (e) RMC 18.05.201 et seq. (relating to off-premise signs, aka billboards);
2 (f) RMC 18.09, Article 4, p. 9-65/66 (defining an off-premise sign);
3
4 (g) RMC 18.05.113 and Table 5-1, note 11 (sign standards for a Gaming
5 Overlay District cannot be applied to a non-gaming property in a mixed-use zone); and
6 (h) RMC 18.05.207/the 2017 Supreme Court Settlement Agreement
7 (prohibiting billboard construction in Reno unless the applicant has a pre-existing, unused
8 billboard permit known as a "banked receipt").
9

10 55. "By statute, an aggrieved party's challenge to zoning and planning
11 decisions must now be presented by a petition for judicial review, rather than by a
12 petition for a writ of mandamus." *Kay v. Nunez*, 122 Nev. 1100, 1102, 146 P.3d 801, 803
13 (2006).
14

15 56. Consistent with the statute, Scenic Nevada requests that upon review, the
16 Court set aside Ordinance 6610 and void the Development Agreement.
17

18 **COUNT TWO**

19 **Writ of Mandamus and/or Prohibition as to Respondent City Only**

20
21 57. Scenic Nevada incorporates the allegations of the preceding paragraphs of
22 this petition by reference herein as though set forth in full at this point.

23 58. RMC 14.03.080(c) provides that a person aggrieved by a decision regarding
24 a billboard may appeal under the provisions set forth in Chapter 14.16. RMC 14.16.865.
25 provides that judicial review may be sought "in accordance with NRS Chapter 34," which
26 is petitions for mandamus or prohibition.
27
28

1 59. A writ of mandamus is proper “to compel the performance of an act which
2 the law especially enjoins as a duty resulting from an office.” NRS 34.160; *Int’l Fid. Ins.*
3 *Co. ex rel. Blackjack Bonding, Inc. v. State*, 122 Nev. 39, 42, 126 P.3d 1133, 1134 (2006)
4 (“A writ of mandamus is available to compel the performance of an act that the law
5 requires or to control a manifest abuse of discretion.”)
6

7 60. The City Council members and support staff are holders of offices. This
8 Court can compel city officials to follow the rule of law. *See, e.g., Nova Horizon, Inc. v.*
9 *City Council of Reno*, 105 Nev. 92, 98, 769 P.2d 721, 724-725 (granting writ requiring
10 the city council to approve an application for a zone change); *City of Reno v. Nev. First*
11 *Thrift*, 100 Nev. 483, 486, 686 P.2d 231, 233 (1984) (writ issued requiring city to issue a
12 business license and a certificate of occupancy); *City of Reno v. Citizens for Cold*
13 *Springs*, 126 Nev. 263, 271, 236 P.3d 10, 15-16 (2010) (writ granted in challenge to
14 procedural actions of the city council in enacting zoning amendments).
15
16
17

18 61. Consistent with these authorities, RMC 14.16.865 directs that judicial
19 review of the City’s actions concerning signage is to be sought via petition for writ of
20 mandamus or prohibition under NRS Chapter 34.
21

22 62. As to writs of mandamus, “[t]his writ shall be issued in all cases where
23 there is not a plain, speedy and adequate remedy in the ordinary course of law.” NRS
24 34.170.
25

26 63. In its motion to dismiss the original petition filed in this action, the City
27 asserts that a petition for judicial review is not an available remedy for Scenic Nevada in
28 this land use case because the Development Agreement was not appealed to the City

1 Council, and the City further asserts that in the absence of such an appeal, a citizen
2 cannot petition for judicial review under NRS 278.3195(4).
3

4 64. The Development Agreement was not appealed to the City Council because
5 the Development Agreement was presented in the first instance to the City Council for
6 approval; there was no prior action by an administrative official, a hearing officer or the
7 Reno Planning Commission, and thus no opportunity to appeal to the City Council. The
8 only administrative remedy that Scenic Nevada could exhaust was opposing the
9 Development Agreement in hearings before the City Council.
10

11 65. Per NRS 278.3195 and Nevada Supreme Court decisions, review of land
12 use decisions by local governments is intended to be via a petition for judicial review.
13

14 66. By initiating this land use decision with the City Council, the City believes
15 it has circumvented NRS 278.3195 and the opportunity for a citizen to petition for
16 judicial review.
17

18 67. In its motion to dismiss, the City also asserts, incorrectly, that Scenic
19 Nevada cannot seek declaratory relief due to lack of standing because it is not a party to
20 the Development Agreement.
21

22 68. If the City's ploy succeeds, Scenic Nevada is left without a remedy by way
23 of a petition for judicial review or for declaratory relief.
24

25 69. Scenic Nevada has demonstrated unless a petition for judicial review or for
26 declaratory relief is allowed, Scenic Nevada has no plain, speedy or adequate remedy in
27 the ordinary course of law and that writ relief should issue.
28

1 another adequate remedy does not preclude a declaratory judgment that is otherwise
2 appropriate.” *See Am. W. Dev. v. City of Henderson*, 111 Nev. 804, 806, 898 P.2d 110,
3 111-12 (1995) (petition for mandamus and declaratory relief combined in one action).
4

5 76. Declaratory relief is available when “(1) a justiciable controversy exists
6 between persons with adverse interests, (2) the party seeking declaratory relief has a
7 legally protectable interest in the controversy, and (3) the issue is ripe for judicial
8 determination.” *Cnt. of Clark v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754, 756 (1998).
9

10 77. In this action, a justiciable controversy exists between parties with adverse
11 interests. Scenic Nevada asserts the Ordinance 6610 and the Development Agreement
12 are unlawful and void, and the City and Developers contend the Development Agreement
13 is lawful and enforceable.
14

15 78. Second, Scenic Nevada has a legally protectible interest in the controversy.
16 Scenic Nevada is a non-profit Nevada corporation whose mission is to educate the
17 general public on the economic, social and cultural benefits of scenic preservation by
18 means of encouraging billboard and sign control, among other measures. Scenic Nevada
19 members are Reno residents who are harmed by approvals of unlawful signage. Scenic
20 Nevada authored and sponsored the 2000 ballot initiative. Scenic Nevada prosecuted an
21 action to have the 2012 digital billboard ordinance invalidated and to have the banking
22 and relocation ordinances declared unconstitutional. Scenic Nevada prosecuted the 2017
23 petition for writ of mandate in which the banked receipts held by billboard companies
24 were held to be unconstitutional and void *ab initio*. Scenic Nevada was instrumental in a
25 three-way settlement with the City and Lamar in 2017 governing the approval of new
26
27
28

1 billboards. For all these reasons, Scenic Nevada has a legally protectable interest in
2 opposition to an agreement allowing the erection of signs in violation of City code, state
3 law, and the settlement agreement.
4

5 79. Third, the issue is ripe for determination. “Although the question of
6 ripeness closely resembles the question of standing, ripeness focuses on the timing of the
7 action rather than on the party bringing the action. . . The factors to be weighed in
8 deciding whether a case is ripe for judicial review include: (1) the hardship to the parties
9 of withholding judicial review, and (2) the suitability of the issues for review.” *Herbst*
10 *Gaming, Inc. v. Heller*, 122 Nev. 877, 887, 141 P.3d 1224, 1230-31 (2006). As to the
11 hardship of withholding review, the Developers would be able to enforce development
12 rights granted by the City under an unlawful Development Agreement, including erection
13 of unlawful signage, unless this Court accepts review. As to the suitability of the issues
14 for review, Ordinance 6610 approves a Development Agreement that includes signage for
15 the “Neon Line District” that violate state law and the 2017 settlement agreement. The
16 issue of the lawfulness of the Development Agreement is ripe for review because the
17 agreement has been finally approved by Ordinance 6610.
18
19
20
21

22 80. Scenic Nevada requests declaratory relief, on grounds that an actual
23 controversy exists between Scenic Nevada and the Defendants, in that Scenic Nevada
24 contends, and the Defendants dispute, that the Development Agreement should be set
25 aside for violation of applicable state law, including NRS 278.0201, applicable City
26 ordinances and the 2017 settlement agreement.
27
28

1 81. A judicial declaration of the respective rights and liabilities of the parties is
2 necessary and appropriate.

3 WHEREFORE, Scenic Nevada prays:
4

5 1. That the City be ordered to prepare, index and produce to Scenic Nevada
6 the complete administrative record of all papers, photographs, recordings,
7 communications, notes, emails, letters, faxes, memos, files and other documents and
8 evidence maintained, collected or compiled by any and all public officials and their
9 agents relating to the Development Agreement, for submission to this Court;
10

11 2. That upon receipt of the administrative record, that the Court set a briefing
12 schedule;
13

14 3. That the Court grant judicial review and set aside the October 27, 2021,
15 vote of the City Council adopting Ordinance No. 6610 entitled "Ordinance to approve a
16 Development Agreement with Reno Real Estate Development, LLC and Reno Property
17 Manager, LLC regarding financial incentives and development standards for the area the
18 developer is calling the Reno Neon Line District" and the accompanying Development
19 Agreement as unlawful, void, and of no force and effect;
20
21

22 4. That as an alternative to judicial review, that the Court enter an order for
23 the Clerk to issue a writ of mandamus and or prohibition for the relief requested
24 hereinabove;
25

26 5. That as an alternative to judicial review or mandamus/prohibition, that the
27 Court issue a declaratory judgment setting aside Ordinance 6610 and voiding the
28 Development Agreement as aforesaid;

