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**IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

SCENIC NEVADA, INC.,

Plaintiff,

vs.

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

Defendants.

Case No. CV21-02086

Department No.: 4

ORDER DENYING DEFENDANTS' FEBRUARY 3, 2022, MOTION TO DISMISS

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

On January 11, 2022, *City of Reno's Motion to Sever Petition for Judicial Review* was filed. On January 24, 2022, Scenic filed its *Response to Motion to Sever*. On January 28, 2022, *City of Reno's Reply in Support of Motion to Sever* was filed. On March 10, 2022, the Court entered its *Order Granting City of Reno's Motion to Sever Petition for Judicial Review*.

1 On February 3, 2022, Defendant’s Reno Real Estate Development, LLC’s and Reno
2 Property Manager, LLC’s (collectively “Developers”), by and through their attorney, Darren J.
3 Lemieux, Esq., Michael W. Cabrera, Esq. and Cassin T. Brown, Esq. of Lewis, Roca Rothgerber,
4 Christie, LLP, filed *Reno Real Estate Development, LLC and Reno Property Manager, LLC’s*
5 *Motion to Dismiss* (“Feb. 3, 2022, MTD”). On February 17, 2022, Scenic filed its *Opposition to*
6 *Reno Real Estate Development, LLC and Reno Property Manager, LLC’s Motion to Dismiss*
7 *(Feb. 17, 2022, Opposition)*. On February 24, 2022, Developers filed their *Reply in Support of*
8 *Reno Real Estate Development, LLC, and Reno Property Manager, LLC’s Motion to Dismiss*
9 *(Feb. 24, 2022, Reply)*. Thereafter, the matter was submitted for the Court’s consideration.

10 **I. BACKGROUND AND SUMMARY OF ARGUMENTS**

11 Developers assert that they are developing an area within downtown Reno which they
12 intend to call the Neon Line District. *Feb. 3, 2022, MTD* at 3—4. Developers allege that on
13 October 13, 2021, the “Reno City Council held a public hearing and approved [a development
14 agreement] between the City [of Reno] and the Developers. . . .” *Feb. 3, 2022, MTD* at 4.
15 Developers assert that Scenic “submitted a letter in opposition to the [d]evelopment [a]greement,
16 but otherwise did not participate in [the] proceeding.” *Id.*; *see also Jan. 9, 2022, Amended*
17 *Petition* at Exhibit 5. On October 27, 2021, through Ordinance 6610, the Reno City Council
18 adopted a development agreement between Developers and the City of Reno. *Jan. 9, 2022,*
19 *Amended Petition* at Exhibit 2. Developers allege that during the October 27, 2021, meeting of
20 the Reno City Council, Scenic objected to Section 3.02(e) of the development agreement. *Feb. 3,*
21 *2022, MTD* at 4. On November 19, 2021, Scenic filed this instant action for judicial review.

22 Developers argue that, under NRS 278.3195, Scenic does not have standing to seek
23 judicial review. *Feb. 3, 2022, MTD* at 6. Developers assert that Scenic “is not a party to the
24 [d]evelopment [a]greement, and does not own any of the parcels described in the agreement.” *Id.*
25 at 5. Furthermore, Developers assert that Scenic “does not allege that [Scenic] has any legal or
26 equitable interest in any other real or personal property in the City of Reno.” *Id.* Developers also
27 assert that Scenic is statutorily barred from bringing the instant action because Scenic failed to
28 appeal the Reno City Council’s decision prior to filing a petition for judicial review. *Id.* at 6—7.

1 Further, Developers argue that Scenic is not aggrieved by the City of Reno’s decision to
2 approve the development agreement. *Id.* at 7. Developers assert that Scenic “fails to demonstrate
3 that [Scenic] has any ‘personal right or right of property’ at stake in this case because no such
4 right exists.” *Id.* at 8.

5 Scenic argues that the development agreement entered into between Developers and the
6 City of Reno “violate . . . Scenic[’s] [] previous Supreme Court settlement agreement with the
7 City [of Reno], which are matters of special interest to Scenic [].” *Feb. 17, 2022, Opposition* at
8 2. Scenic asserts “that the proposed [d]evelopment [a]greement was not presented before the
9 Reno Planning Commission or in any hearing before any other [Reno] City official prior to being
10 presented for approval at the hearing before the [Reno] City Council on October 13, 2021.” *Id.* at
11 4. Scenic further asserts that “there was no opportunity to appeal to the [Reno] City Council from
12 a decision of the Planning Commission or any other [Reno] City official, which is the
13 administrative procedure contemplated by NRS 278.3195(4).” *Id.*

14 Scenic asserts that on October 11, 2021, Scenic submitted a letter to the Reno City
15 Council objecting to the proposed signage that was part of the proposed development agreement.
16 *Id.* at 5; *see Jan. 9, 2022, Amended Petition* at Exhibit 5. Scenic asserts that, on October 27,
17 2021, “[Scenic] appeared and objected, through its counsel, at the second reading of Ordinance
18 6610.” *Feb. 17, 2022, Opposition* at 5. Scenic further asserts that the development agreement at
19 issue “was heard in the first instance by the [Reno] City Council[, and] [a]n appeal to the [Reno]
20 City Council was never possible.” *Id.* at 7. Scenic argues that “a petition for judicial review of a
21 land use decision is proper where the decision originates with the City Council in the first
22 instance, and thus, administrative remedies contemplated by NRS 278.3195(4) do not exist.” *Id.*
23 at 9.

24 Scenic asserts that it is aggrieved because it “is a non-profit Nevada corporation whose
25 personal rights are adversely and substantially affected by the approval of the [d]evelopment
26 [a]greement. *Id.* at 10. Scenic asserts, among other reasons, that the development agreement
27 between the City of Reno and the Developers “purports to approve the erection of ‘Area
28 Identification Signs[,]’ which are nothing more than billboards,” without the Developers’ need to

1 surrender banked receipts.¹ *Id.* at 11—12. Scenic also asserts that they are aggrieved and have a
2 personal right to seek judicial review because Scenic is the “author and defender of the ordinance
3 banning new billboard permits and construction[,]” because of Scenic’s “role in enforcing the
4 people’s vote, through all manner of administrative and legal proceedings[,]” and because Scenic
5 has a “personal right in the Supreme Court settlement agreement which the City is now
6 breaching by approving the [d]evelopment [a]greement and the three off-premise signs approved
7 therein.” *Id.* at 12. Furthermore, Scenic asserts that they are a “non-profit Nevada corporation
8 with a principal place of business in Reno, Washoe County, Nevada. . . .” *Jan. 9, 2022, Amended*
9 *Petition* at ¶ 3.

10 II. LEGAL STANDARD

11 NRCP 8(a)(2) requires “a short and plain statement of the claim showing that the pleader
12 is entitled to relief. . . .” Pursuant to NRCP 12(b)(5), a claim may be dismissed for failure to state
13 a claim upon which relief can be granted. “A complaint will not be dismissed for failure to state
14 a claim ‘unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if
15 accepted by the trier of fact, would entitle him to relief.” Breliant v. Preferred Equities Corp.,
16 109 Nev. 842, 858 (1993) (citations omitted). Factual “[a]llegations in the complaint must be
17 accepted as true.” See Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228 (2008);
18 Capital Mortgage Holding v. Hahn, 101 Nev. 314, 315 (1985). In deciding a Motion to Dismiss
19 pursuant to NRCP 12(b)(5), the Court “must construe the pleading liberally and draw every fair
20 intendment in favor of the [non-moving party].” Vacation Village, Inc. v. Hitachi America, Ltd.,
21 110 Nev. 481,484 (1994) (citations omitted). A pleading party “must set forth sufficient facts to
22 establish all necessary elements of a claim” against the opposing party. Hay v. Hay, 100 Nev.
23 196, 198 (1984) (citing Johnson v. Travelers Ins. Co., 89 Nev. 467, 472 (1973)). “The test to
24 determine whether the allegations of a cause of action are sufficient to assert a claim for relief is
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27 ¹In summary, owners of signs within Reno could take down a sign and the owners would then receive a “banked
28 receipt” from the City of Reno. The owner could then, at some later date, submit this banked receipt in consideration
for being allowed to install a new sign within Reno. See RMC 18.05.201 et seq.

1 whether the allegations give fair notice of the nature and basis of the claim and the relief
2 requested.” Ravera v. City of Reno, 100 Nev. 68, 70 (1984).

3 When ruling on a motion to dismiss, if the district court considers evidence outside of the
4 pleadings, it must normally convert the 12(b) motion into a Rule 56 motion for summary
5 judgment and give the nonmoving party a chance to respond. NRCP 12(b). “[H]owever, [the
6 court may] consider certain materials—documents attached to the complaint, documents
7 incorporated by reference in the complaint, or matters of judicial notice—without converting the
8 motion to dismiss into a motion for summary judgment.” US v. Ritchie, 342 F.3d 903, 908 (9th
9 Cir. 2003); see also Breliant, 109 Nev. at 847. “Summary judgment is appropriate when there is
10 no genuine issue of material fact, and thus, the moving party is entitled to judgment as a matter
11 of law. When reviewing a motion for summary judgment, the evidence, and any reasonable
12 inferences drawn from it, must be viewed in a light most favorable to the nonmoving party.”
13 Cowan v. Errico, 128 Nev. 890 (2012) (internal citations and quotation marks omitted).

14 “Generally, courts have no inherent appellate jurisdiction over official acts of
15 administrative agencies except where the legislature has made some statutory provision for
16 judicial review. Thus, when the legislature creates a specific procedure for review of
17 administrative agency decisions, such procedure is controlling.” Washoe Cnty. v. Otto, 128 Nev.
18 424, 431 (2012) (internal quotations marks and corrections omitted).

19 III. DISCUSSION

20 a. The Reno City Council’s Adoption of Ordinance No. 6610 is Ripe for 21 Review

22 Developers argue that “the [d]evelopment [a]greement does not approve any signs, much
23 less billboards. Rather, it describes that area identification signs, which are legally distinct from
24 billboards under RMC, *will be proposed* by the Developers at some time in the future.” *Feb. 24,*
25 *2022, Reply* at 6 and n.1 (emphasis added). However, the development agreement states that
26 “[o]ne sign *is proposed* as an archway sign located on West Fourth Street between Keystone
27 Avenue to the west and Vine Street to the east, with support structures located on APN 006-224-
28 06 and in the public right of way (the ‘[Archway Sign]’). *The location and proposed design* for

1 the Archway Sign are shown with more particularity on [Exhibit ‘H’] as ‘AC-1.’” *Jan. 9, 2022,*
2 *Amended Petition* at Exhibit 1, pg. 7 (emphasis added). Further, the development agreement
3 states that “[t]he other proposed locations and designs of the Area Identification Signs, and
4 additional signs not described in this Agreement, shall be subject to applicable standards in place
5 at the time of application.” *Id.* at 8. However, the development agreement states that “[a]rea
6 identification sign applications shall be subject to applicable standards in place at the time of
7 application, *as modified by this Development Agreement.*” *Id.* (emphasis added). The
8 Development Agreement modifies the applicable standards in place at the time of application.

9 Since the development agreement modifies the applicable standards to be used when the
10 Area Identification Sign applications are filed, and the Archway Sign is described with
11 particularity, including design renderings and locations, which indicates that the Archway Sign
12 has already been proposed, the Court finds that Scenic’s request for review is ripe.

13 **b. Scenic Has Standing to Petition for an Extraordinary Writ**

14 Scenic argues that “[a]n appeal to the [Reno] City Council was never possible” because
15 “the [d]evelopment [a]greement was heard in the first instance by the [Reno] City Council.”
16 *Feb. 17, 2022, Opposition* at 7. Developers argue that “the [Nevada] Legislature never intended
17 approval of development agreements to first be considered by a planning commission” and for
18 this reason neither Scenic, nor anyone else, can comply with the statutory requirements of NRS
19 278.3195. *Feb. 24, 2022, Reply* at 3—4. Developers assert that Scenic’s inability “to comply
20 with the statutory requirement[s] [of NRS 278.3195] deprives this Court of jurisdiction to hear a
21 petition for judicial review.” *Id.* at 4.

22 The Court agrees that NRS 278.3195 does not bestow upon Scenic the right to seek
23 judicial review of the Reno City Council’s adoption of Ordinance No. 6610. However, this does
24 not preclude the Court from entertaining an extraordinary writ from Scenic. The Court finds that
25 Scenic has standing to seek review of the City Council’s October 27, 2021, approval of
26 Ordinance No. 6610.

1 Using NRS 278.3195 as guidance, Scenic could prove that on October 11, 2021, Scenic
2 timely filed a written objection prior to the Reno City Council’s first hearing on October 13,
3 2021, regarding the approval of the development agreement in question. Also, Scenic could
4 prove that on October 27, 2021, Scenic appeared in-person and objected at the Reno City
5 Council’s second hearing in regard to the approval of the development agreement in question.
6 Furthermore, Scenic filed this instant action less than twenty-five days after the Reno City
7 Council approved Ordinance No. 6610.

8 Additionally, NRS 279.609 supports a Court’s decision to exercise discretion to entertain
9 Scenic’s extraordinary writ.² NRS 279.609 “provides for actions questioning the validity of an
10 agency’s findings or determinations in connection with a redevelopment plan.” Hantges v. City
11 of Henderson, 121 Nev. 319, 322-23 (2005) (“[W]e conclude that the statute confers standing on
12 citizens to challenge [an agency’s] findings. . . . This conclusion is consistent with our prior
13 rulings that citizens have standing to challenge land-use decisions.”). NRS 279.609 states:

14 Any action questioning the validity of:

- 15 1. Any redevelopment plan or amendment to a redevelopment plan;
- 16 2. The adoption or approval of that plan or amendment; or
- 17 3. Any of the findings or determinations of the agency or the legislative
body in connection with that plan,

may only be brought after the adoption of the plan or amendment or within 90
days after the date of adoption of the ordinance adopting or amending the plan.

18 NRS 279.396 defines legislative body as “the *city council*, board of county
19 commissioners or other legislative body of a community.” (emphasis added). NRS 279.386
20 defines agency as a “redevelopment agency created pursuant to this chapter or a *legislative body*
21 *which has elected to exercise the powers granted to an agency pursuant to this chapter.*
22 (emphasis added). NRS 279.410 defines redevelopment area as “an area of a community whose
23 redevelopment is necessary to effectuate the public purposes declared in this chapter.” NRS
24 279.412 defines a redevelopment project as “any undertaking of an agency pursuant to this
25 chapter.”

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28 ² NRS 279 et seq. is in regard to redevelopment plans, however, the Court finds this language persuasive in its
determination to entertain Scenic’s extraordinary writ.

1 The Court is persuaded by the statutory language contained in NRS 278A.590:

- 2 1. Any decision of the city or county under this chapter granting or denying
3 tentative or final approval of the plan or authorizing or refusing to
4 authorize a modification in a plan is a final administrative decision and is
5 subject to judicial review in properly presented cases.
6 2. No action or proceeding may be commenced for the purpose of seeking
7 judicial relief or review from or with respect to any final action, decision
8 or order of any city, county or other governing body authorized by this
9 chapter unless the action or proceeding is commenced within 25 days after
10 the date of filing of notice of the final action, decision or order with the
11 clerk or secretary of the governing body.

8 Therefore, in the instant matter, Scenic has standing because Scenic could prove that
9 Scenic is an entity with a primary place of business in Reno, Nevada, that Scenic represents the
10 citizens of Reno, Nevada, and because Scenic lodged objections with the Reno City Council
11 prior to the October 13, 2021, hearing and during the October 27, 2021, hearing. Further, Scenic
12 filed this instant action less than twenty-five days after the City Council approved Ordinance
13 6610. “[A] mandamus petition is only appropriate if no adequate and speedy legal remedy exists.
14 . . .” Kay v. Nunez, 122 Nev. 1100 at 1104—05. In regard to the instant action, the legislature
15 has not provided a right to petition for judicial review for planning decisions first enacted by a
16 City Council. As such, an extraordinary writ is the only means Scenic has to seek review of the
17 Reno City Council’s decision. Scenic’s extraordinary writ is the appropriate means for Scenic to
18 seek an adequate and speedy remedy.

19 Based on the foregoing and good cause appearing,

20 **IT IS HEREBY ORDERED** that *Reno Real Estate Development, LLC and Reno*
21 *Property Manager, LLC’s Motion to Dismiss* is **DENIED**.

22 DATED this 9 day of June, 2022.

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25 _____
DISTRICT JUDGE

1 **CERTIFICATE OF SERVICE**

2 CASE NO. CV21-02086

3 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the
4 STATE OF NEVADA, COUNTY OF WASHOE; that on the 9 day of June, 2022, I
5 electronically filed the **ORDER DENYING DEFENDANTS' FEBRUARY 3, 2022 MOTION**
6 **TO DISMISS** with the Clerk of the Court by using the ECF system.

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

9 **Personal delivery to the following: [NONE]**

10
11 **Electronically filed with the Clerk of the Court by using the ECF system which will send a**
12 **notice of electronic filing to the following:**

13 MICHAEL CABRERA, ESQ for RENO REAL ESTATE DEVELOPMENT LLC, RENO
14 PROPERTY MANAGER LLC

15 JONATHAN SHIPMAN, ESQ. for CITY OF RENO

16 MARK WRAY, ESQ. for SCENIC NEVADA, INC.

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

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

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

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