IN THE SUPREME COURT OF THE STATE OF NEVADA

SILVERWING DEVELOPMENT, a Nevada corporation; and J CARTER WITT, III, an individual, Appellants, vs. NEVADA STATE CONTRACTORS BOARD, Respondent.	**Supreme Court No. 79134**

APPEAL

From the Second Judicial District Court
The Honorable Elliott Sattler, District Judge
District Court Case No. CV18-00128

BRIEF OF AMICI CURIAE THE BUILDERS ASSOCIATION OF NORTHERN NEVADA, THE NEVADA BUILDERS ALLIANCE, AND THE RENO+SPARKS CHAMBER OF COMMERCE

(Brief Supports Appellants and Reversal)

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NRAP 26.1 DISCLOSURE

Pursuant to Nevada Rule of Appellate Procedure ("NRAP") 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

1. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock:

a. The Builders Association of Northern Nevada is a Nevada non-profit professional corporation and has no parent corporation or publicly held-corporation owning 10% or more of its stock.

b. Nevada Builders Alliance is a non-profit organization with no parent corporations, and no publicly held corporation owns 10% or more of its stock.

c. The Reno+Sparks Chamber of Commerce is a non-profit organization with no parent corporations, and no publicly held corporation owns 10% or more of its stock.

2. Names of all law firms whose attorneys have appeared for the party or amici in this case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court:

HUTCHISON & STEFFEN, PLLC

THE ALLISON LAW FIRM CHTD.

MCDONALD CARANO LLP

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3. If a litigant is using a pseudonym, the litigant's true name: N/A.

Dated this 26th day of November, 2019.

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/s/ Holly S. Parker

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INTEREST OF THE AMICI CURIAE

The Builders Association of Northern Nevada ("BANN") is a non-profit organization affiliated with the National Association of Home Builders. BANN is committed to educating, and representing its membership and the building industry. BANN believes this is achieved through a collaborative effort between its membership and the local community to create a better quality of life, housing for Nevada's citizens, and economic prosperity. One of BANN's major goals is to enhance the new home building climate in Northern Nevada, a primary factor in housing affordability. To facilitate BANN's ability to educate those who regulate the building industry, BANN maintains an ongoing dialogue with decision-makers and legislators at the local, state, and national levels.

BANN represents the collective interests of the construction industry in Northern Nevada. BANN offers programs of information, training, and education to all construction professionals. BANN is the primary administrative vehicle for affiliated organizations and sub-organizations that have been established to meet targeted member needs. These affiliated organizations include BANN-PAC, Build-PAC, the Sales and Marketing Council, and the Remodeler's Council. Committees within BANN exist to foster and enhance programs designed by the association to benefit its members and include the coordination and implementation of membership functions, publications and public information,

government affairs, and special events that are held under the auspices of BANN and its affiliated organizations.

BANN has 573 primary company members in Northern Nevada; its members include many general contractors, subcontractors, trade professionals, and others related to the construction industry.[1] The vast majority of BANN's members stand to be impacted by statutes governing what work contractors can complete within their license limits under NRS 624.220(2). Under the Administrative Law Judge's ("ALJ") interpretation of NRS 624.220(2) in the proceedings below, BANN's members could conceivably be subject to discipline for performing work in excess of their license limits under circumstances that are unfair, unreasonable, and contrary to principles of statutory construction. As such, BANN has an interest in protecting its members to ensure that the plain language of NRS 624.220(2) is applied in a common-sense manner that its members can easily understand.

The Nevada Builders Alliance ("NBA") is a non-profit organization that represents more than 800 member companies in the Nevada construction industry statewide, including, small, medium, and large contractors and subcontractors. The vast majority of NBA's members stand to be impacted by statutes governing what work contractors can complete within their license limits under NRS

[1] Appellants Silverwing and Mr. Witt are not members of BANN and NBA. Silverwing is a member of The Reno+Sparks Chamber of Commerce.

624.220(2). Under the Administrative Law Judge's ("ALJ") interpretation of NRS 624.220(2) in the proceedings below, NBA's members could conceivably be subject to discipline for performing work in excess of their license limits under circumstances that are unfair, unreasonable, and contrary to principles of statutory construction. As such, NBA has an interest in protecting its members to ensure that the plain language of NRS 624.220(2) is applied in a common-sense manner that its members can easily understand.

The Reno+Sparks Chamber of Commerce ("the Chamber") is a 501c6 non-profit organization with close to 2,000 member companies that employ 85,000 Nevadans. It promotes, informs, and advocates on behalf of its members with local, state, and federal officials on public policy matters that may dampen free enterprise or place undue restrictions on businesses' abilities to grow and prosper. It is funded solely by member dues.

The Chamber fully supports public policy that provides developers and contractors with a more level playing field to help create more robust growth and economic development in the community. Nevadans pride themselves on fostering a community where small businesses can prosper. The Chamber believes that the Nevada State Contractors Board's position in this case creates an absurd result that only benefits large contractors with unlimited bid amounts. For these reasons, the Chamber has an interest in the issues outlined in this brief.

BANN, NBA, and the Chamber have obtained the written permission of the other parties to this appeal to file this brief, so they are authorized to file this brief under Nevada Rule of Appellate Procedure ("NRAP") 29.

I. SUMMARY OF THE ARGUMENT

The ALJ's replacement of the terms "subdivision site" in NRS 624.220(2) with the definition of "subdivision" under NRS 278.320(1) is unreasonable, contrary to principles of statutory construction, and would produce absurd results such that the members of BANN, NBA, and the Chamber could be working in excess of their license limits under circumstances that the Nevada Legislature never intended. The language "single construction site or subdivision site" of NRS 624.220(2) patently means a smaller part of a whole subdivision such that applying the broad definition of a whole "subdivision" under NRS 278.320(1) defies common sense. This approach would nullify the terms "single" and "site" set forth in NRS 624.220(2).

BANN, NBA, and the Chamber offer an interpretation of NRS 624.220(2) that gives meaning to the plain language of the statute and every word in the statute; license limits are set by the maximum contract value for a "single construction site or subdivision site . . . ." Under rules of common grammar, the word "single" applies to "subdivision site" such that the only logical conclusion is

that the Nevada Legislature intended a smaller piece than an entire subdivision. Consistent with this understanding and as an example of how the statute can be applied based on its plain language, many contractors, including Appellants in this action, apply a permit-by-permit approach so that they can measure the work on a single construction "site" or subdivision "site." This comports with the general practice in Nevada of applying for a permit for a particular site location. This interpretation is measurable and provides certainty for the members of BANN, NBA, and the Chamber.

II. ARGUMENT

A. The ALJ's incorporation of the definition of "subdivision" set forth in NRS 278.320(1) into NRS 624.220(2) is unreasonable, contrary to principles of statutory construction, and will produce absurd results.

NRS 624.220(2) provides:

> The Board shall limit the field and scope of the operations of a licensed contractor by establishing a monetary limit on a contractor's license, and the limit must be the maximum contract a licensed contractor may undertake on one or more construction contracts on a single construction site or subdivision site for a single client . . . .

NRS 624.3015(3) further provides that "[k]nowingly bidding to contract or entering into a contract with a contractor for work in excess of his or her limit or beyond the scope of his or her license" warrants disciplinary action. In the proceedings below, Appellants Silverwing Development ("Silverwing") and J. Carter Witt III ("Mr. Witt") were disciplined for entering into contracts with subcontractors in excess of their license limits under NRS 624.220(2). The ALJ's interpretation of NRS 624.220(2) offered in support of the discipline imposed, however, is contrary to principles of statutory construction and would produce absurd results for the members of BANN, NBA, and the Chamber.

Statutes should be interpreted "in a reasonable manner, that is, '[t]he words of the statute should be construed in light of the policy and spirit of the law, and the interpretation made should avoid absurd results.'" *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 509, 217 P.3d 546, 551 (2009) (quoting *Desert Valley Water Co. v. State, Engineer*, 104 Nev. 718, 720, 766 P.2d 886, 886–87

(1988)). A statute "'should be given [its] plain meaning and must be construed as a whole and not be read in a way that would render words or phrases superfluous or make a provision nugatory." *Id*. (quoting *Mangarella v. State*, 117 Nev. 130, 133, 17 P.3d 989, 991 (2001)).

"[W]ords within a statute must not be read in isolation, and statutes must be construed to give meaning to all of their parts and language within the context of the purpose of the legislation." *Banegas v. State Indus. Ins. Sys.*, 117 Nev. 222, 229, 19 P.3d 245, 250 (2001). See also *Public Employees' Benefits Program v. Las Vegas Metropolitan Police Dept.*, 124 Nev. 138, 147, 179 P. 3d 542, 548 (2008) (A statute should be construed so that no part is rendered meaningless).

A factual overview of the underlying dispute illustrates problems that will likely arise for the members of BANN, NBA, and the Chamber if the ALJ's interpretation is upheld. Mr. Witt owned four properties he intended to develop, and he was the President of Silverwing. (1 Appellant's Appendix ("AA") 40, 3 AA 682-88; 4 AA 915:22-916:4.) Silverwing acted as the general contractor to direct construction on the four properties/projects. (4 AA 915:22-916:4.) Each project was made up of multiple, separate buildings, each of which required a separate submittal with unique municipal and building department fees, plan checks, permits, inspections (city and private), and certificates of occupancy. (3 AA 538-41, 677-80; 4 AA 942-45.) Silverwing contracted with various

subcontractors to work on the projects and the subcontractors worked on multiple buildings/sites within one project over a long period of time. The contracts contained a schedule of values that would determine how much work a particular subcontractor would perform on each permitted building within each project. (4 AA 921-22.) Consistent with the belief of many contractors and the plain language of NRS 624.220(2), Silverwing and Mr. Witt believed that each separately permitted and inspected site was a separate construction or subdivision site. (4 AA 943:23-945:9.)

The ALJ, however, determined that each of the four properties/projects Mr. Witt owned constituted a "subdivision site" under NRS 624.220(2). (4 AA 767-76.) The ALJ concluded the four projects were "subdivision sites" by borrowing the broad definition of "subdivision" from NRS 278.320(1) and defining the site as "the physical location where a specified subdivision exists." (4 AA 767-76.) The ALJ further determined that the aggregated work of the subcontractors on different buildings/permitted sites on each of the four larger properties/projects over time counted towards the license limits of the subcontractors such that Silverwing and Mr. Witt violated NRS 624.3015(3) by knowingly contracting with the subcontractors on a "subdivision site" in excess of their license limits. (4 AA 767-76.)

On remand from the District Court, the ALJ explained that the definition of the word "site" to mean the geographical location of the overall subdivision described in 278.320(1) was based on evidence presented during the hearing on September 28, 2017; Compliance Officer Jeff Gore testified regarding his understanding of the importance of geographical location in the determination of whether a project was a single "subdivision site."[2] (6 AA 1255-57, 1281-87.)

Contrary to principles of statutory construction, the ALJ's interpretation renders the words "single" and "site" superfluous and ignores the temporal limitations apparent from the face of NRS 624.220(2). NRS 278.320(1) provides that:

> 'Subdivision' means any land, vacant or improved, which is divided or proposed to be divided into five or more lots, parcels, **sites**, units or plots, for the purpose of any transfer or development, or any proposed transfer or development . . . .

(Emphasis supplied.) The term "subdivision" is broad and is comprised of several sites. Incorporation of this definition of "subdivision" as a whole (which contemplates and is defined as containing multiple sites) into NRS 624.220(2)

[2] The District Court ultimately concluded that the ALJ's interpretation of subdivision site and incorporating the definition of NRS 278.320(1) was reasonable. (6 AA 1281-87.) The District Court, however, was provided with no interpretation of NRS 624.220(2) that gives meaning to the plain language of every word in the statute.

completely fails to give meaning to the terms "[single] subdivision site" in 624.220(2).[3]

Stated another way, a subdivision under 278.320(1), which is land divided into "five or more . . . sites," cannot be the same as a "subdivision site," which is expressly described as a "single" piece that is smaller than a whole subdivision. It makes no sense to define a "subdivision site" as a "subdivision" consisting of multiple "sites." This interpretation completely nullifies the terms "single subdivision site," which on their face mean a single, discrete site.

The ALJ's interpretation is also contrary to other principles of statutory construction. NRS Chapter 624 makes no reference to NRS Chapter 278. NRS Chapter 278 governs planning and zoning in general, and its purpose is not to govern oversight or licensing of contractors like NRS Chapter 624.

The Nevada Legislature's stated purpose for enacting NRS Chapter 624 regarding "the discipline of [contractor] licensees" is "to promote public confidence and trust in the competence and integrity of licensees and to protect the health, safety and welfare of the public." NRS 624.005. NRS Chapter 278, by contrast, was enacted to assist with providing strategies for planning and

[3] As discussed in detail below, the adjective "single" in NRS 624.220(2) that precedes "construction site" also describes and modifies the noun "subdivision site."

development that address demands of urbanization, the need to protect environmentally sensitive areas, and related goals. See NRS 278.02521.

NRS Chapter 624 contains no reference to NRS Chapter 278. The use of a broad definition of "subdivision" from a completely unrelated statutory scheme is unreasonable, especially when doing so renders the plain meaning of other words in NRS 624.220(2) meaningless. See *Public Employees' Benefits Program*, 124 Nev. at 147, 179 P. 3d at 548 (no part of a statute should be rendered meaningless); *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 295, 995 P.2d 482, 486 (2000) (A statute should be interpreted in harmony with other statutes relating to the *same* subject).

The ALJ's approach of aggregating the different single potential "sites" that fall within a broader "subdivision" as defined by NRS 278.320(1) is inconsistent with other provisions of NRS Chapter 624. NRS 624.264(2)(b), for example, provides that before the Nevada State Contractors Board issues a contractor's license for certain types of applicants, the Board must determine whether, based on the financial information of the licensee, it would be in the public interest to "[e]stablish an **aggregate** monetary limit on the contractor's license, which must be the maximum combined monetary limit on all contracts that the licensee may undertake or perform as a licensed contractor at any one time, regardless of the number of contracts, construction **sites**, subdivision **sites** or clients . . . ."

(Emphasis supplied.) The reference to an aggregation of multiple construction sites and subdivision sites is contrary to the reference to a single construction site or subdivision site set forth in NRS 624.220(2).

Stated another way, the Nevada Legislature has already considered special circumstances under which the Contractors Board may aggregate the monetary limit for all or multiple construction sites and subdivision sites, so the Legislature's use of the word "single" in NRS 624.220(2) demonstrates a clear intent to prevent aggregation of multiple sites in that statute. Use of the broad definition of "subdivision" under NRS 278.320(1), which references multiple sites (i.e. an aggregate), therefore, is contrary to the plain language of a "single . . . site" in NRS 624.220(2) and the statutory construction principle of reading NRS 624.220(2) in harmony with other statutes addressing licensing of contractors in NRS Chapter 624. See *State v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. at 295, 995 P.2d at 486.

To illustrate the absurd outcomes that could result under the ALJ's interpretation of "subdivision site," consider the following hypothetical. At one time, all of Damonte Ranch in Reno or Anthem in Henderson as a whole could have constituted a "subdivision" under NRS 278.320(1) because it was a property intended to be subdivided into five or more parcels.[4] Specifically with reference to

[4] Any map showing a division of land with five or more parts would match the broad definition of a "subdivision" under NRS 278.320(1). Under this approach, at

the Damonte Ranch example, over decades, multiple developments were constructed in Damonte Ranch. Under the ALJ's approach, if the various developments were owned by a single owner, a contractor could not exceed its license limit under NRS 624.220(2) for work performed in all of Damonte Ranch. For example, a plumber with a bid limit of $15,000 that performed work on two residential buildings in Damonte Ranch in 2002 for a total of $7,500 per home would be precluded from doing any further work for the same owner/developer in perpetuity in the future.[5] Under this interpretation, only contractors and subcontractors with unlimited license limits (which comprise very few contractors in Nevada) would be permitted to continue work on the subdivision of Damonte Ranch.

Moreover, as in Silverwing and Mr. Witt's case, any owner or contractor contracting with that plumber would be violating NRS 624.3015(3) by knowingly contracting with a subcontractor in excess of its license limits. The implications of

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a certain point in time, the whole City of Reno could have qualified as a "subdivision" or "subdivision site" as interpreted by the ALJ.

[5] A one-time license limit increase under NRS 624.220(3) and NAC 624.670 is an insufficient method to address this absurd result because a contractor would have to continually reapply to perform work on multiple permit sites or buildings in the same expansive subdivision over a long period of time.

this hypothetical for the members of BANN, NBA, and the Chamber are concerning, and the ALJ's interpretation cannot stand.[6]

The ALJ's interpretation cannot be the result the Nevada Legislature intended; it fails to protect the public and only serves to unreasonably deprive contractors of work and subject them to discipline for separate projects. NRS 624.220(2) cannot incorporate the definition of "subdivision" set forth in NRS 278.320(1). The words set forth in NRS 624.220 must be given their plain meaning.

B. BANN, NBA, and the Chamber urge the Court to apply the common-sense and straightforward interpretation of NRS 624.220(2) that gives effect to the plain language of the statute and all of the words in the statute.

A common-sense and straightforward interpretation of NRS 624.220(2) exists that will give effect to all of the words "single construction site or subdivision site." Under the plain meaning rule, the Court presumes that the plain and ordinary meaning of the statutory language reflects the Legislature's intent. *Villanueva v. State*, 117 Nev. 664, 669, 27 P.3d 443, 446 (2001). As a general rule of statutory construction, when the words in a statute are not defined, "[they] should be given their plain meaning unless this violates the spirit of the act."

[6] As another example of an absurd result under this interpretation, a developer could avoid license limit issues by drafting subdivision maps with less than five lots. If less than five lots, then the statutory definition of "subdivision" under 278.320(1) would never apply.

McKay v. Bd. of Sup'rs of Carson City, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986) (internal citations omitted).

To arrive at the plain meaning of statutory language, a reviewing court usually relies upon dictionary definitions because those definitions reflect the plain and ordinary meanings that are commonly ascribed to those words and terms. See *Cunningham v. State*, 109 Nev. 569, 571, 855 P.2d 125, 126 (1993). Black's Law Dictionary defines the term "site" as "a place or location; esp., a piece of property set aside for a specific use." Black's Law Dictionary (11th ed. 2019). The plain meaning of the word "site" in NRS 624.220(2), therefore, is a *piece* (i.e. something less than a whole subdivision) of property set aside for a specific use.

Under common grammar rules, the adjective "single" preceding the terms "construction site" also applies to the terms "subdivision site." *Lewis v. Jackson Energy Co-op. Corp.*, 189 S.W.3d 87, 92 (Ky. 2005) ("It is also widely accepted that an adjective at the beginning of a conjunctive phrase applies equally to each object within the phrase. In other words, the first adjective in a series of nouns or phrases modifies each noun or phrase in the following series unless another adjective appears."); *Roberson v. Phillips Cty. Election Comm'n*, 2014 Ark. 480, 10–13, 449 S.W.3d 694, 699–701 (2014).[7] For example, if we say "Santa leaves

[7] In *Roberson*, the dissent discussed in detail:

"Under generally accepted rules of syntax, an initial modifier 'will tend to govern all elements in the series unless it is repeated for each element.' ...; *see United States Fid. & Guar. Co. v. Fireman's Fund Ins. Co.,* 896 F.2d 200, 203 (6th Cir.1990) (per curiam)(holding that the reasonable construction of the phrase 'negligent act, error, or omission' is that the policy covers only negligent and not intentional conduct); *Ward Gen. Ins. Servs., Inc. v. Emp'rs Fire Ins. Co.,* 114 Cal.App.4th 548, 7 Cal.Rptr.3d 844 (2003) (stating that '[m]ost readers expect the first adjective in a series of nouns or phrases to modify each noun or phrase in the following series unless another adjective appears'); *Lewis v. Jackson Energy Coop. Corp.,* 189 S.W.3d 87, 92 (Ky.2005) (stating that it is 'widely accepted that an adjective at the beginning of a conjunctive phrase applies equally to each object within the phrase. In other words, the first adjective in a series of nouns or phrases modifies each noun or phrase in the following series *11 unless another adjective appears.')." *Wash. Educ. Ass'n v. Nat'l Right to Work Legal Defense Found., Inc.,* 187 Fed.Appx. 681 (9th Cir.2006). Where several things are referred to in the statute, they are presumed to be of the same class when connected by a copulative conjunction unless a contrary intent is manifest. *Carson & Co. v. Shelton,* 128 Ky. 248, 107 S.W. 793 (Ct.App.1908). Further, "[i]t is also widely accepted that an adjective at the beginning of a conjunctive phrase applies equally to each object within the phrase. In other words, the first adjective in a series of nouns or phrases modifies each noun or phrase in the following series unless another adjective appears." *Lewis v. Jackson Energy Coop. Corp.,* 189 S.W.3d 87, 92 (Ky.2005); *see also Ryder v. USAA Gen. Indem. Co.,* 938 A.2d 4, 7–8 (Me.2007) (noting "standard grammatical rule that when an adjective modifies the first of a series of nouns, a reader will expect the adjective to modify the rest of the series as well (i.e. 'bodily injury, [bodily] sickness, or [bodily] disease' ")) . . . . Additionally, in *People v. Lovato,* No. 11CA1227, —– P.3d ——, ——, 2014 WL 4458944, at *4 (Colo.App. Sept. 11, 2014), the Colorado Court of Appeals recently interpreted a criminal statute that involved a series of terms and explained When there is a series of words or a phrase with an adjective at the beginning,[m]ost readers expect the first adjective in a series of nouns or phrases to modify each noun or phrase in the following series unless another adjective appears. For example, if a writer were to say, "The orphanage relies on donors in the community to supply the children with used shirts, pants, dresses, and shoes," the reader expects the adjective "used" to modify each element in the series of nouns, "shirts," "pants," "dresses," and "shoes." The reader does not expect the writer to

gifts for all good boys and girls," it is clear that the word "good" applies to both boys and girls because it is implicit that Santa would not leave gifts for misbehaving children. It also makes sense that the word "single" preceding the phrase "construction site or subdivision site" was intended to apply to both terms. Any contrary interpretation would cause absurd results as discussed above.

Thus, the common-sense interpretation of NRS 624.220(2) is that a contractor cannot exceed its license limit on a single construction site or a single subdivision site. Further, when read together with the plain meaning of the terms "subdivision site" (i.e. a piece of property that is part of a bigger subdivision),

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> have meant that donors supply "used shirts," but supply "new" articles of the other types of clothing. *Ward Gen. Ins. Servs., Inc. v. Emp'rs Fire Ins. Co.*, 114 Cal.App.4th 548, 7 Cal.Rptr.3d 844, 849 (2003); *see also Lewis v. Jackson Energy Coop. Corp.*, 189 S.W.3d 87, 92 (Ky.2005) ("[A]n adjective at the beginning of a conjunctive phrase applies equally to each object within the phrase. In other words, the first adjective in a series of nouns or phrases modifies each noun or phrase in the following series unless another adjective appears."); *In re Estate of Pawlik*, 845 N.W.2d 249, 252 (Minn.Ct.App.2014) (Under the series-qualifier canon of statutory construction, " 'when several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all.' " (*quoting* *12 *Porto Rico Ry., Light & Power Co. v. Mor*, 253 U.S. 345, 348, 40 S.Ct. 516, 64 L.Ed. 944 (1920))); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 147 (2012) ("When there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series.").

2014 Ark. 480 at 10–12, 449 S.W.3d at 699–701. Under this detailed analysis, the adjective "single" clearly applies to the terms "subdivision site" in NRS 624.220(2).

there is an obvious and common-sense limitation on a contractor's license limits. Simply put, a contractor cannot exceed its license limits on contracts for construction related to a single construction site or a single subdivision site within a larger subdivision.

As an example of how this plain reading of the statute is consistent with how many contractors, including Mr. Witt and Silverwing, have interpreted these terms, consider the terms "subdivision site" on a permit-by-permit basis. Under this common sense approach, the word "site" is analogous to a single permit. When Mr. Witt and Silverwing entered into contracts with various subcontractors, for example, it was with respect to different buildings or permit sites in the four projects. (4 AA 921-22.) Each building required separate permits, separate certificates of occupancy, and the payment of separate fees. (3 AA 538-41, 677-80; 4 AA 942-45.)

To further demonstrate why this interpretation is consistent with the plain language of NRS 624.220(2), a review of the use of the term "site" in the custom and trade in Washoe County makes it is clear that "site" encompasses a single assessor parcel number (i.e. is a single site that could be located in a larger subdivision). Washoe County has a Planning and Building Division that provides general information on the Washoe County website for contractors -

washoecounty.us/building.[8] This website provides contractors with information regarding permit applications and submittal checklists demonstrating the appropriate manner in which a permit may be obtained. Id. There are also examples, instructions, and documents available demonstrating how to apply for a permit. Id. From the requirements specified therein, it is clear that for purposes of building a single family dwelling that the Washoe County Planning and Building Division defines "site" under NRS 624 (reference is made to the statutory scheme on the website for purposes of explaining only contractors may obtain building permits) as a single parcel of land, containing a single family dwelling. Id.

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[8] The information from Washoe County's governmental website is appropriate for judicial notice. Pursuant to NRS 47.130(2), a judicially noticed fact must be "(a) Generally known within the territorial jurisdiction of the trial court; or (b) Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute." Documents available on government websites are appropriate for judicial notice. See *Daniels–Hall v. National Education Association*, 629 F.3d 992, 999 (9th Cir.2010) (taking judicial notice of information on the websites of two school districts because they were government entities); *Paralyzed Veterans of Am. v. McPherson*, No. C 06–4670, 2008 WL 4183981, *5 (N.D.Cal. Sept. 8, 2008) ("Information on government agency websites has often been treated as properly subject to judicial notice"). See also *Honig v. San Francisco Planning Dep't*, 127 Cal. App. 4th 520, 524, 25 Cal. Rptr. 3d 649, 651, n3 (2005) ("This court has previously granted requests for judicial notice of section 4.106 of article 4 of the San Francisco Charter (Charter), section 14 of article 1 of the San Francisco Business and Tax Regulation Code, section 305 of the San Francisco Planning Code (Planning Code), the building permit for the subject property approved in February 2003, and the July 2002 variance decision.")

This conclusion is reached upon review of the documents required to obtain a permit in Washoe County. The Washoe County Building Permit Application requires a parcel number.[9] Each Site Plan requires that same parcel number be provided.[10] Further, the Division provides a Sample "Site" Plan demonstrating a single parcel with a singular proposed structure thereon.[11] Thus, for Washoe County it follows that each parcel is on its own separate "site," which in the case of a "subdivision," is part of the larger subdivision. Contractors logically understand their license limits applicable to a "[single] subdivision site" are synonymous with a permit site with its own unique parcel number. The plain language of NRS 624.220(2) is consistent with this everyday practice and interpretation by those in the construction trade.

This common-sense interpretation allows a measurable and clear way for contractors and the members of BANN, NBA, and the Chamber to determine the license limit applicable to a specific "[single] subdivision site."[12] This is an

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[9] https://www.washoecounty.us/building/Files/Files/Handouts/2016%20Single%20Family%20Dwelling%20Handout.pdf

[10] See Single Family Dwelling Permit Guidelines available through link entitled "Single Family Residence" at https://www.washoecounty.us/building/Forms-Handouts.php.

[11] Id.

[12] BANN, NBA, and the Chamber do not disagree that the Nevada Contractor's Board has an important purpose to protect the public from unlicensed or insolvent

interpretation based on the clear and unambiguous language of the statute that allows for an ordinary person of common intelligence in the construction industry to apply the statute in an easily understandable way to ensure compliance and to avoid discipline. This interpretation avoids absurd results. See *Nevada Mining Ass'n v. Erdoes*, 117 Nev. 531, 539-42, 26 P.3d 753, 758-60 (2001) (when a court is faced with two possible interpretations and one of those interpretations would produce results that are unreasonable or absurd in light of the purpose of the statutory provision, the court will reject the unreasonable or absurd interpretation).

There is no way the Nevada Legislature intended for BANN's, NBA's, and the Chamber's members to incorporate the definition of subdivision set forth in NRS 278 into NRS 624.220(2), which already has a plain meaning of a single subdivision site as described above. The Court should reject the ALJ's interpretation and follow the plain language of the statute.

III. CONCLUSION

For all of the reasons set forth above, BANN, NBA, and the Chamber urge the Court to reverse the ALJ's interpretation of NRS 624.220.

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contractors. BANN, NBA, and the Chamber just desire to protect their membership by ensuring there is an easily understandable way for its members to comply with NRS 624.220(2). The ALJ's interpretation does nothing to further the purpose of protecting the public, and it would just put contractors out of work. The plain language of the statute supports the interpretation that a contractor's license limits apply to a single subdivision site or permit site (with its own parcel number) within the larger subdivision.

Dated this 26th day of November, 2019.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 35(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman and 14 point font size.

I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C) it is proportionally spaced, has a typeface of 14 points or more, and 5,225 words.

Finally, I certify, pursuant to NRAP 28.2 that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the

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Nevada Rules of Appellate Procedure.

DATED this 26th day of November, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of November, 2019, I filed the foregoing *BRIEF OF AMICI CURIAE THE BUILDERS ASSOCIATION OF NORTHERN NEVADA, THE NEVADA BUILDERS ALLIANCE, AND THE RENO+SPARKS CHAMBER OF COMMERCE (Brief Supports Appellants and Reversal)* with the Nevada Supreme Court Clerk this via electronic service addressed to the following:

☐ (BY MAIL) by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At the Law Offices of Laxalt & Nomura, mail placed in that designated area is given the correct amount of postage and is deposited that same date in the ordinary course of business, in a United States mailbox in the City of Reno, County of Washoe, Nevada to:

☒ By electronic service by filing the foregoing with the Clerk of Court using the Tyler Technologies E-filing system, which will electronically mail the filing to the below listed individuals registered on the Court's E-Service Master List.

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