

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

SOPHIE LAU, an individual; JEFFREY LAU, an individual;
GOOD EARTH ENTERPRISES, INC., a California
Corporation; and LIG LAND DEVELOPMENT, LLC, a
California Limited Liability Company,
Appellants/Cross-Respondents,

vs.

CITY OF LAS VEGAS, a political subdivision of the State of
Nevada; CAROLYN GOODMAN, as Mayor of the City of Las
Vegas; CITY OF LAS VEGAS DEPARTMENT OF
BUILDING & SAFETY, CODE ENFORCEMENT DIVISION,
a department of the City of Las Vegas; VICKI OZUNA, Code
Enforcement Manager; EMILY WETZSTEIN, Code
Enforcement Assistant; KEVIN McOSKER, Director, Building
and Safety Department; JOHN BOYER, as City Council
Designee,

Respondents/Cross-Appellants.

No. 82720

Electronically Filed
Apr 20 2021 12:24 p.m.
Elizabeth A. Brown

DOCKETING STATEMENT
CIVIL APPEALS
(CROSS APPEAL)

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

Revised December 2015

1. Judicial District Eighth Department VIII
County Clark Judge Jessica Peterson
District Ct. Case No. A-19-806797-W

2. Attorney filing this docketing statement:

Attorney David E. Bailey Telephone 702-229-6201
Firm Las Vegas City Attorney's Office
Address 100 East Clark Avenue, Third Floor
Las Vegas, NV 89101

Client(s) City of Las Vegas, Carolyn Goodman, Vicki Ozuna, Emily Wetzstein, Kevin McOsker, John Boyer

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing ^{Cross-}respondents(s):

Attorney Andrew H. Pastwick Telephone 702-866-9978
Firm Law Office of Andrew H. Pastwick, LLC
Address 1810 East Sahara Avenue, #120
Las Vegas, NV 89104

Client(s) Sophie Lau, Jeffrey Lau, Good Earth Enterprises, Inc., LIG Land Development, LLC

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input checked="" type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following? N/A

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal: N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition: N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

Appellant filed a Petition for Judicial Review in District Court to challenge the City Council Designee's written Decision (follow a hearing) that approved code enforcement costs, fees, and penalties against the properties at issue.

The District Court affirmed the costs and fees, but reduced the penalties by 75%.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Did the District Court improperly substitute its opinion for the Designee's and conclude that the Designee abused his discretion by not reducing the amount of daily civil penalties by 75% based upon the Court's decision that Petitioner complied with 75% of City's abatement requirements?

Did the District Court exceed its powers on review by ordering a reduction in the amount of penalties by 75%?

Did the District Court improperly order a change in the amount of penalties instead of remanding the case to the Designee for further proceedings?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised: N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

Existing case law could be clearer on the power and authority of the District Court when hearing a matter on petition for judicial review that is not brought under NRS 233B (Nevada's Administrative Procedures Act), specifically review of a City Council Designee's Decision pursuant to City Code that was adopted per NRS 268.4122.

The District Court, after deciding that the Designee abused his discretion by not reducing penalties as the District Court thought warranted upon reviewing the history, substituted its decision for that of the Designee and ordered a reduction in the penalties and did not remand to the Designee.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The matter appears to be properly presumptively retained by the Supreme Court per NRAP 17(a)(11) -- matters raising as a principal issue a question of first impression involving common law.

Existing case law could be clearer on the power and authority of the District Court when hearing a matter on petition for judicial review that is not brought under NRS 233B (Nevada's Administrative Procedures Act), specifically review of a City Council Designee's Decision pursuant to the City Code that was adopted per NRS 268.4122.

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from March 2, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served March 3, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed March 29, 2021, cross appeal March 31, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Sophie Lau, et al. filed an appeal on March 29, 2021

City of Las Vegas, et al. filed a cross appeal on March 31, 2021

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The District Court entered a final order in this matter which was commenced in the District Court via Petition for Judicial Review.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Petitioners: Sophie Lau, Jeffrey Lau, Good Earth Enterprises, Inc., and LIG Land Development , LLC

Respondents: City of Las Vegas, Carolyn Goodman, Vicki Ozuna, Emily Wetzstein, Kevin McOsker, and John Boyer

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Appellants challenged the Designee's Decision re code enforcement costs and penalties. District Court Disposition
Date: March 2, 2021

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

1. Petitioners' Petition for Judicial Review
2. Respondents' Answering Brief
3. Decision and Order Granting Partial Relief
4. Notice of Entry of Decision and Order Granting Partial Relief

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

City of Las Vegas, Carolyn Goodman, Vicki Ozuna,
Emily Wetzstein, Kevin McOsker, John Boyer

Name of appellant (cross appellants)

David E. Bailey

Name of counsel of record

April 20, 2021

Date

/s/ David E. Bailey

Signature of counsel of record

Nevada, Clark

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 20th day of April, 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Andrew H. Pastwick, Esq.
LAW OFFICE OF ANDREW H. PASTWICK, LLC
1810 East Sahara Avenue, #120
Las Vegas, NV 89104

Stephen E. Haberfeld, Settlement Judge
8224 Blackburn Avenue, #100
Los Angeles, CA 90048

Dated this 20th day of April, 2021

/s/ Cindy Kelly

Signature

EXHIBIT 1

EXHIBIT 1

RECEIVED
CITY CLERK

Steven D. Grierson

FLANGAS & BARNABI, LLC
LEO P FLANGAS, ESQ.
Nevada Bar No. 5637
BENJAMIN LA LUZERNE
Nevada Bar No.: 12801
375 E. Warm Springs Rd. #104
Las Vegas, Nevada 89109
Telephone: (702) 475-8903
Facsimile: (702) 966-3718
Email: leo@flangasbarnabi.com
Email: ben@flangasbarnabi.com
Attorney for Petitioners

2020 FEB 24 A 9:27

CASE NO: A-19-806797-W
Department 24

RECEIVED
FEB 24 2020

DISTRICT COURT

BY:

CLARK COUNTY, NEVADA

SOPHIE LAU, an individual; JEFFREY LAU,
an individual; GOOD EARTH
ENTERPRISES, INC., a California
Corporation; and LIG LAND
DEVELOPMENT, LLC, a California Limited
Liability Company

Case No.:

Dept. No.:

Petitioners,

**PETITION FOR JUDICIAL REVIEW
AND/OR WRITS OF CERTIORARI,
MANDAMUS, AND EQUITABLE
RELIEF**

vs.

Exempt from Arbitration NAR 3(A), 5

- Action Seeking Judicial Review of Administrative Decisions
- Action for Declaratory Relief
- Action Presenting a Significant Issue of Public Policy
- Action Seeking Equitable or Extraordinary Relief

CITY OF LAS VEGAS, a political subdivision
of the State of Nevada; CAROLYN
GOODMAN, as Mayor of the City of Las
Vegas; CITY OF LAS VEGAS
DEPARTMENT OF BUILDING & SAFETY,
CODE ENFORCEMENT DIVISION, a
department of the city of Las Vegas; VICKI
OZUNA, Code Enforcement Manager; EMILY
WETZSTEIN, Code Enforcement Assistant;
KEVIN MCOSKER, director, Building and
Safety department; JOHN BOYER, as City
Council Designee; DOES 1 through X,

Respondents.

COMES NOW, Petitioners SOPHIE LAU, JEFFREY LAU, GOOD EARTH ENTERPRISES,
INC. ("Good Earth"), and LIG LAND DEVELOPMENT, LLC ("LIG") (collectively, "Petitioners"),
by and through their counsel of record, Benjamin La Luzerne, Esq. of Flangas Barnabi and hereby
petitions this Court for judicial review of the Decision and Order of the City Council Designee/

1 Hearing Officer, John Boyer (the "Designee" or "Mr. Boyer"), dated November, 11, 2019, a copy of
2 which is attached hereto as Exhibit 1, as follows:

3 **I. PARTIES AND JURISDICTION**

4 1. Petitioners, Sophie and Jeffrey Lau, are individuals residing in the state of California
5 that own that certain real property commonly known as 203 S. 6th Street, Las Vegas, NV 89101, 617
6 & 631 E. Carson Avenue, Las Vegas, NV 89101 and 206 & 210 & 216 & 222 S. 7th Street, Las Vegas,
7 NV 89101,
8

9 2. Petitioner Good Earth Enterprises, Inc., is a California corporation that owns that
10 certain real property commonly known as 215 & 233 S. 6th Street, Las Vegas, NV 89101, 220 & 232
11 S. 7th Street, Las Vegas, NV 89101

12 3. Petitioner LIG Land Development, LLC, is a California Limited Liability Company
13 that owns that certain real property commonly known as 615 E. Carson Avenue, Las Vegas, NV 89101,
14

15 4. The City of Las Vegas is a political subdivision of the State of Nevada.

16 5. Carolyn Goodman, as Mayor of the City of Las Vegas, is an individual residing in Clark
17 County, Nevada.

18 6. The City of Las Vegas Department of Building and Safety – Code Enforcement
19 Division is a Department of the City of Las Vegas, Nevada.

20 7. Kevin McOsker, as director of the City of Las Vegas, Building and Safety Department,
21 is an individual residing in Clark County, Nevada.

22 8. Vicki Ozuna, as Manager of the Code Enforcement Division, is an individual residing
23 in Clark County, Nevada.

24 9. Emily Wetzstein, as Assistant to the Manager of the Code Enforcement Division, is an
25 individual residing in Clark County, Nevada.

26 10. John Boyer, as City Council Designee, is an individual residing in Clark County,
27 Nevada.
28

11. The true names and capacities, whether individual, corporate, associate or otherwise, of Respondents herein designated as DOES I through X, inclusive are unknown to the Petitioners at this time, who therefore sues said Respondents by such fictitious names. Petitioners are informed and believe and therefore allege that each of said Respondents is responsible in some manner for the events and happenings and proximately caused the injuries and damages herein alleged. Petitioners will seek leave to amend this Complaint to allege their true names and capacities as they are ascertained.

12. The court has jurisdiction under Article 6, Section 4 of the Nevada Constitution, Las Vegas Municipal Code Section 9.04.100(C)¹, NRS 268.4122 and NRS 34.160 and EJDRC 2.15.

13. Venue is proper because the acts and actions set forth herein occurred in Clark County Nevada.

II. FACTS

14. Petitioners are the owners of those certain pieces of real property located between 6th and 7th Streets and Carson Street and Bridger Street in Las Vegas, Nevada.

15. Petitioners have owned these parcels for decades.

16. The City initiated Code Enforcement proceedings against Petitioners regarding these properties, beginning in December 2018.

17. Case Number CE-195118 (the "El Cid Matter") contained allegations pertaining to 233 S. 6th Street ("El Cid"); Case Number CE-195119 (the "Annex Matter") contained allegations pertaining to 232 S. 7th Street (the El Cid "Annex"); and Case Number CE-195540 (the "MI Matter") contained allegations pertaining to 615 E. Carson ("MI").

¹ The Section states:

Pursuant to NRS 268.4122, the City Council or designee may order that civil penalties assessed under this Chapter be made part of an assessment lien authorized by this Section, but any action to do shall be subject to the limitations contained in NRS 268.4122. In the case of action taken by a designee, an appeal of that decision may be taken to a court of competent jurisdiction.

1 18. In the El Cid Matter, the case report indicates that the property was inspected on
2 December 6, 2018, requests for quotes went out to contractors on December 10, 2018, and quotes were
3 received by the city on December 17, 2018.

4 19. On December 17, 2018, there was a fire at El Cid that the City attempts to use to justify
5 its decision that emergency abatement was necessary.

6 20. Abatement for El Cid was completed by contractor CGI on December 20, 2018.

7 21. At no time did the City provide notice to Petitioners regarding inspection or abatement
8 as required under LVMC 9.04.050(B).
9

10 22. Ms. Lau, on behalf of Petitioners previously hired attorney Andrew Pastwick in April
11 2019 to communicate with the City and attempt to resolve the issues regarding the Petitioners.

12 23. On or about August 30, 2019, Ms. Lau, on behalf of Petitioners engaged Flangas Law
13 Firm, LTD, to represent Petitioners in the Administrative Hearing.

14 24. From December 2018 until the time Ms. Lau hired Flangas Law Firm, the City had not
15 provided backup to support their invoices related to abatement of Petitioners' properties to Ms. Lau,
16 Mr. Pastwick, or any of the Petitioners, despite their requests. See email from S. Lau to V. Ozuna
17 dated January 22, 2019 attached hereto as Exhibit 2
18

19 25. On or about September 17, 2019, Mr. Flangas and Mr. La Luzerne requested all of the
20 evidence that the City planned to rely upon at the September 25, 2019 hearing. They also requested
21 that the hearing be continued during the call with Ms. Ozuna, which Ms. Ozuna declined.

22 26. Ms. Ozuna indicated that she would provide the evidence, but indicated that because
23 the hearing had been outstanding since February 2019, she was not inclined to continue it again.
24

25 27. The request for documents was formalized in a letter to Ms. Ozuna following the
26 September 17, 2019 call. See letter from B. La Luzerne to V. Ozuna dated September 17, 2019 attached
27 hereto as Exhibit 3.
28

1 28. In response, on September 18, 2019, Ms. Wetzstein provided documents via email that
2 purportedly reflected the entire realm of documents regarding the Petitioners.

3 29. Prior to the Hearing (as defined herein) the Petitioners had demolished not only El Cid,
4 the Annex, and MI, but every other building they owned on the block, at their sole expense.

5 30. Prior to the Hearing, in accordance with the procedure set forth in the Hearing notice,
6 Petitioners submitted their objections to the City's allegations in regard to Case #CE-195118, Case
7 #CE-195119, and Case #CE-195540.

8 31. The Petitioners objections are based on lack of notice, excessive fees and fines, and
9 improper procedure for imposing such fees and fines, among other things.

10 32. On September 25, 2019, an administrative hearing was held on the 6th Floor of 333 N.
11 Rancho Dr., Las Vegas NV, 89106, regarding the fines and assessments the City sought to impose on
12 Petitioners (the "Hearing").

13 33. Petitioners were present and represented by Leo Flangas and Benjamin La Luzerne of
14 Flangas Law Firm, LTD.

15 34. Robert Mann appeared as a witness for Petitioners.

16 35. The City of Las Vegas Department of Building and Safety, Code Enforcement Division
17 was present and Represented by Vicki Ozuna, Code Enforcement Manager, and Emily Wetzstein,
18 Assistant to Ms. Ozuna.

19 36. Mr. John Boyer attended and presided over the hearing as the City Council's Designee.

20 37. On October 14, 2019, Petitioners received an email from Ms. Ozuna that Mr. Boyer
21 had sent to an invalid email address. In that email, Mr. Boyer asked Petitioners to provide their position
22 to his assertion that Petitioners lacked standing to defend themselves at the Hearing (the "Email").

23 38. On October 15, 2019, after receiving and analyzing the Email, Petitioners responded
24 that such a position by the City would lead to an absurd result. See email from B. La Luzerne to J.
25 Boyer dated October 15, 2019 attached hereto as Exhibit 4.

1 39. Nonetheless, in his final decision dated November 18, 2019 (the "Decision"), Mr.
2 Boyer relies on the clearly erroneous assertion that Petitioners lack standing.

3 40. Furthermore, Mr. Boyer states in the Decision that "Copies of the Notices and Orders
4 are included in the Binder A *as supplemented by the City after the hearing.*" (Emphasis added.)

5 41. The Decision further relies on evidence not in the record or provided to Petitioners
6 before the Hearing.

7
8 **FIRST CAUSE OF ACTION**
(Petition for Judicial Review)

9 42. Petitioners repeat and reallege all prior paragraphs as fully set forth herein.

10 43. Petitioners are aggrieved by the Decision to impose fines and penalties upon the
11 Petitioners without substantial evidence in an arbitrary and capricious manner.

12
13 44. Accordingly, Petitioners petition this Court for Judicial review of the record on which
14 the Department's Decision was based, including but not limited to:

15 a. The Decision was in violation of constitutional, statutory, and municipal code
16 provisions.

17 b. The Decision was in excess of the statutory and code authority of the Respondents.

18 c. The Decision was made upon unlawful procedure.

19 d. The Decision was affected by errors of law.

20 e. The Decision was clearly erroneous in view of the reliable, probative and substantial
21 evidence on the whole record.

22 f. The Decision was arbitrary, capricious, or characterized by a abuse of discretion.

23 g. The Decision is void *ab initio* for non-compliance with the notice requirements in the
24 municipal code and other state laws.

25 h. The Decision should be reversed, set aside, or remanded for all of the above reasons
26 and any others that this Court may deem appropriate.
27
28

1 45. As the action of the Department necessitated that Petitioners hire counsel and incur fees
2 and costs to bring this action, Petitioners are also entitled to attorneys' fees and costs of suit.

3 **SECOND CAUSE OF ACTION**
4 **(Petition for Writ of Mandamus)**

5 46. Petitioners repeat and reallege all prior paragraphs as fully set forth herein.

6 47. A Writ of Mandamus will lie to compel the performance of an act which the requires
7 as a duty resulting from an office, trust, or station, or to control arbitrary and capricious exercise of
8 discretion.

9 48. A Writ is appropriate as the Petitioners have no plain, speedy, and adequate remedy at
10 law, other than to petition this Court.

11 49. When a governmental body fails to perform an act that "that the law requires" or acts
12 in an arbitrary or capricious manner, a writ of mandamus shall issue to correct the action. Nev. Rev.
13 Stat. § 34.160.

14 50. The Respondents failed to perform various acts that the law requires including
15 arbitrarily and capriciously imposing fines and penalties upon Petitioners.

16 51. Respondents acted arbitrarily and capriciously in the imposition of fines and penalties
17 upon Petitioners because, *inter alia*:

18 a. The Respondents failed to follow the required notice procedure for taking action to
19 abate nuisances on private property.

20 b. The Respondents Decision was based on inadmissible and unreliable evidence.

21 c. The evidence that Respondents base their decision upon was not provided to Petitioners
22 before the Hearing in violation of Petitioners' due process rights.

23 d. The Respondents imposed fines and penalties upon Petitioners based on the influence
24 of other parties with ulterior and improper motives.

25 e. The Respondents acted in violation of constitutional or statutory provisions.
26
27
28

1 f. The Respondents acted in excess of the statutory authority of the Department.

2 g. The Respondents completely disregarded evidence which a "reasonable mind" would
3 "accept as adequate to support" a contrary finding.

4 52. Respondents' violations of their duties were arbitrary and capricious actions that
5 compel this Court to issue a Writ of Mandamus directing the Respondents to vacate the Decision.

6 53. As a result of Respondents' unlawful, arbitrary, and capricious actions, Petitioners have
7 been forced to retain legal counsel to prosecute this action and is therefore also entitled to its damages,
8 costs in this action, and an award of attorneys' fees pursuant to NRS 34.270.
9

10 **THIRD CAUSE OF ACTION**
11 **(Petition for Writ of Certiorari)**

12 54. Petitioners repeat and reallege all prior paragraphs as fully set forth herein.

13 55. A Writ of Certiorari will lie when an inferior tribunal has exceeded its jurisdiction and
14 no means of appeal exists.

15 56. A Writ of Certiorari is appropriate as the Petitioners have no plain, speedy, and
16 adequate remedy at law, other than to petition this Court.

17 57. The Respondents, including the Designee, exceeded their jurisdiction and by their
18 actions left the Petitioners without the ability to appeal and with no plain, speedy, and adequate remedy
19 at law.
20

21 58. Respondents acted arbitrarily and capriciously in the imposition of fines and penalties
22 upon Petitioners because, *inter alia*:

23 a. The Respondents failed to follow the required notice procedure for taking action to
24 abate nuisances on private property.

25 b. The Respondents Decision was based on inadmissible and unreliable evidence.

26 c. The evidence that Respondents base their decision upon was not provided to Petitioners
27 before the Hearing in violation of Petitioners' due process rights.
28

1 d. The Respondents imposed fines and penalties upon Petitioners based on the influence
2 of other parties with ulterior and improper motives.

3 e. The Respondents acted in violation of constitutional or statutory provisions.

4 f. The Respondents acted in excess of the statutory authority of the Department.

5 g. The Respondents completely disregarded evidence which a "reasonable mind" would
6 "accept as adequate to support" a contrary finding.

7
8 59. Respondents' violations of their duties were arbitrary and capricious actions that
9 compel this Court to issue a Writ of Certiorari directing the Respondents to vacate the Decision.

10 60. As a result of Respondents' unlawful, arbitrary, and capricious actions, Petitioners have
11 been forced to retain legal counsel to prosecute this action and is therefore also entitled to its damages,
12 costs in this action, and an award of attorneys' fees pursuant to NRS 34.270.

13 ///

14 ///

15 ///

PRAYER FOR RELIEF

WHEREFORE, the Petitioners pray for the following relief:

1. For the issuance of a Writ of Mandamus directing the Respondents to vacate the Decision;
2. For the issuance of a Writ of Certiorari directing the Respondents to vacate the Decision;
3. For judicial review of the record and history on which the fines and penalties were based;
4. For attorneys' fees and costs of suit; and
5. For all other remedies and relief that this Court deems appropriate.

Dated this 11th day of December, 2019.

FLANGAS & BARNABI, LLC

/s/ Benjamin La Luzerne, Esq.
BENJAMIN LA LUZERNE
NV Bar #12801
Nevada Bar No.: 12801
375 E. Warm Springs Rd. #104
Las Vegas, Nevada 89109
Attorney for Petitioners


EXHIBIT 1

Hearing decision El Cid/MI

Emily Wetzstein <ewetzstein@LasVegasNevada.GOV>

Mon 11/18/2019 7:33 AM

To: Ben La Luzerne <ben@flangaslawfirm.com>

 1 attachments (1 MB)

195118 195119 195540 Abatement Hearing and Lien Approval Decision.pdf;

Attached is Mr Boyer's signed hearing decision for the El Cid and MI properties.

Emily Wetzstein

Administrative Support Assistant

Department of Planning | Code Enforcement Division

(702) 229-6615 phone | (702)382-4341 fax

333 N Rancho Dr. Las Vegas, NV 89106



lasvegasnevada.gov

Code Enforcement



Your opinion is important! Click [here](#) to take a short survey.

This e-mail transmission, and any documents, files, or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is prohibited. If you have received this transmission in error, please immediately notify us by reply e-mail, by forwarding this to sender and destroy the original transmission and its attachments without reading or saving them in any manner. Thank you.



City of Las Vegas
Department of Building & Safety
Code Enforcement Division
333 N. Rancho Dr. 2nd Floor
Las Vegas, NV 89106

ABATEMENT HEARING AND LIEN APPROVAL DECISION

CASE#: 195118 SCHEDULED DATE OF HEARING: September 25, 2019

TIME SCHEDULED: 9:30 am

PROPERTY OWNER'S NAME: GOOD EARTH ENTERPRISES INC

ADDRESS: 233 S 6TH ST

APN #: 139-34-611-037

I certify that on the date set forth below, I heard the above matter as Hearing Officer for the City of Las Vegas, Clark County, Nevada, pursuant to Las Vegas Municipal Code, Title 9 Nuisances.

After hearing/consideration, the decision is entered as follows:

- ☒ Approved lien for all out-of-pocket costs in the amount of \$ 22,624.70
- ☒ Approved lien for proposed daily civil penalties in the amount of \$ 32,000
- ☐ Approved lien for reduced daily civil penalties in the amount of \$

Property Owner: ☒ Appeared ☐ Failed to appear after being duly notified.

Shawn B...
City Council Designee

11-11-19
Date

Comments:



City of Las Vegas
Department of Building & Safety
Code Enforcement Division
333 N. Rancho Dr. 2nd Floor
Las Vegas, NV 89106

ABATEMENT HEARING AND LIEN APPROVAL DECISION

CASE#: 195119

SCHEDULED DATE OF HEARING: September 25, 2019

TIME SCHEDULED: 9:30 am

PROPERTY OWNER'S NAME: GOOD EARTH ENTERPRISES INC

ADDRESS: 232 S 7TH ST

APN #: 139-34-611-036

I certify that on the date set forth below, I heard the above matter as Hearing Officer for the City of Las Vegas, Clark County, Nevada, pursuant to Las Vegas Municipal Code, Title 9 Nuisances.

After hearing/consideration, the decision is entered as follows:

- ☒ Approved lien for all out-of-pocket costs in the amount of \$ 924.00
- ☒ Approved lien for proposed daily civil penalties in the amount of \$ 30,000
- ☐ Approved lien for reduced daily civil penalties in the amount of \$

Property Owner: ☒ Appeared ☐ Failed to appear after being duly notified.

[Signature]
City Council Designee

11-11-19
Date

Comments:

see attached decision



City of Las Vegas
Department of Building & Safety
Code Enforcement Division
333 N. Rancho Dr. 2nd Floor
Las Vegas, NV 89106

ABATEMENT HEARING AND LIEN APPROVAL DECISION

CASE#: 195540

SCHEDULED DATE OF HEARING: September 25, 2019

TIME SCHEDULED: 9:30 am

PROPERTY OWNER'S NAME: LIG LAND DEVELOPMENTS LLC

ADDRESS: 615 E CARSON

APN #: 139-34-611-041

I certify that on the date set forth below, I heard the above matter as Hearing Officer for the City of Las Vegas, Clark County, Nevada, pursuant to Las Vegas Municipal Code, Title 9 Nuisances.

After hearing/consideration, the decision is entered as follows:

- ☒ Approved lien for all out-of-pocket costs in the amount of \$ 23,330.00
- ☐ Approved lien for proposed daily civil penalties in the amount of \$ 150.00
- ☒ Approved lien for reduced daily civil penalties in the amount of \$150.00

Property Owner:



Appeared



Failed to appear after being duly notified.

10/11/19
City Council Designee

11-11-19
Date

Comments:

see attached decision

AMENDED DECISION CASES 195540, 195118, 19519 ABATEMENT HEARING AND
LIEN APPROVAL DECISION

This Decision applies to the above-cited consolidated cases heard on September 25, 2019. The operative facts are common to all three cases and the law applicable is the same. The real properties involved are 233 S. Sixth Street and 232 S. Seventh Street owned by Good Earth Enterprises, Inc. and 615 East Carson Street (the Annex to El Cid) owned by LIG Land Development, LLC.

Present at the hearing for the City of Las Vegas were Vicki Ozuna, Code Enforcement Manager and Emily Wetstein, Assistant to Ms. Ozuna. Present for the putative property owners were Sophie Lau, and Robert Mann employee and representative for the owners. Counsel for the owners present were Leo Flangas, Esq. and Benjamin Luzerne, Esq.

The hearing was recorded. Documents were submitted in evidence by both sides and are incorporated herein by reference in a binder marked Binder A.

In order for any person or entity to appear and contest an abatement and lien at the City of Las Vegas they must have standing and ownership of the property subject to abatement proceedings. In these hearings I have found that Good Earth Enterprises, Inc. had it's foreign corporation status permanently revoked in 1984. I have found LIG Land Developments LLC has never had a registration in the State of Nevada. There is currently no evidence either of these entities exist anywhere. I also find both of these entities if they exist at all have conducted business in the State of Nevada which is beyond the mere ownership of property. They have at a minimum employed Mr. Mann to oversee the properties in which he was a resident and maintained it as an office for the entities and retained Nevada contractors to perform work on both properties. The entities, if they exist at all, have by admission spent thousands of dollars doing business of maintaining and operating the properties in this state.

Until such time as both entities prove their existence, and comply with the registration requirements, they and their putative representative, Sophie Lau will not be allowed to appear in these proceedings as a representative.

Notwithstanding the above-cited determination, I find the opposition presented against the imposition of full amount sought by the City against all three properties to be insufficient.

The properties were formerly used as a hotel called the El Cid Hotel until 2006 after which time the use was discontinued. The parties do not dispute since closing 233 South Sixth and was subject to seven cases of nuisance with the City for being open and accessible and 232 S. Seventh Street was subject to 13 cases for open and accessible. They became magnets for the homeless to break and enter causing

damages to the properties subjecting them to crime and fire issues. They collectively became a blight and danger to the community requiring intervention by police and fire departments. The Case Notes of the City amply document the problems with each of the properties showing all of the actionable nuisance issues and the owner's lack of adequate responses. Ultimately, as reflected in the records, there was a serious fire at the El Cid December 17, 2018. This precipitated emergency action by the City to declare all three properties as an imminent hazard. This relieved the City of requiring formal notice and order prior to abatement under LVMC 9.04.080 (D). The records and testimony confirm all of the properties were an imminent hazard which was confirmed by the City Manager and the Fire Department. This was later affirmed by the City Council March 20, 2019. At that point the penalties ceased accruing.

After the emergency board up in December 2018 Notice and Order were posted and sent for 233 S. Sixth Street on starting with posting on January 10, 2019. This posting was received and seen by the owner's representative on that date and Ms. Lau knew of the notice and order by January 10, 2019. Notice and Order for 232 S. Seventh was posted at the same time and also mailed to the owner. The Notice and Order for 615 E. Carson was not issued until March 21, 2019. As a result of the delivery of this notice after the declaration of imminent hazard March 20, 2019 the penalty of \$150 will not be allowed but all of the costs will be allowed. Ms. Lau acknowledged she actually received the notice through Mr. Mann. These Notices and Orders are the predicate for the penalties imposed on these properties as set forth in the City request for imposition of costs and penalties in the evidence. Copies of the Notices and Orders are included in the Binder A as supplemented by the City after the hearing. The owner was offered a continuance to review this record but was declined.

After the Notices and Orders were posted the City incurred costs for abatement which were \$23,330 for 615 E. Carson; \$22,624.70 for 233 S. Sixth Street; and \$924.00 for 232S. Seventh Street.

On February 20, 2019 City Counsel declared an imminent hazard for 233 S. Sixth and 232 S. Seventh Streets. This is the date when the daily civil penalties ceased accruing.

I find that the costs incurred by the City of Las Vegas were all reasonable under the circumstances and proper procedures were followed and notices were sent as required.. The owners have argued the costs for plywood for the board up of the El Cid Hotel. This was an emergency board up. I do not find them unreasonable under the circumstances where the board up was to prevent homeless from entering the property again and cause further fires pending declaration of imminent hazard. The emergency board up was after there were several fires at the El Cid Hotel during which time the owners were ineffective of preventing homeless person intrusions at the coldest time of year.

The City will be granted the relief it requested in full except for the penalty on 615 E. Carson.


JOHN W. BOYER, City Council designee

EXHIBIT 2

From: Laus Investment Group <lausinvestment@yahoo.com>
Sent: Tuesday, January 22, 2019 11:20 PM
To: Emily Wetzstein <ewetzstein@LasVegasNevada.GOV>; Vicki Ozuna <vozuna@LasVegasNevada.GOV>
Cc: Tom Perrigo <tperrigo@LasVegasNevada.GOV>; Kennan Lau <kennan.lau@gmail.com>; lausinvetment@yahoo.com
Subject: Re: Notice of Code Enforcement hearing - invoice # 195118HN-90209

Hi Emily & Vicki,

We have three general contractors in my family, my late father & my two brothers, I am very familiar & fully awarded the operation & the standard contractor's practice, normally markup & profit are within 15 to 20% is considered reasonable & fair. Apparently some will get away in billing sky high price for City job and that's the reason why I have originally asked to communicate & asked to bill us direct from the contractor, I would've gotten much lower price and I am not understanding why this request was denied.

After reviewing the attached invoice, we are totally shocked & disagreed. It was overly exaggerated & totally incorrect from the fact, please see our disputing items and the areas of description of the board-up job as follow; (will provide pictures upon request)

1. Front Building - 1st floor, used **16 pcs** boarded the entire front incl. 2 windows (all size 58 x 68)
2. Building facing Bridger St. - 1st floor, boarded 6 windows & 6 windows on 2nd floor total **24 pcs**.
3. Back of the building (alleyway) - 1st floor, used **10 pcs** for the back area & entrance way. 2nd floor used total **6 pcs**. for the two bigger windows.
4. Building facing parking lot - 1st floor, boarded 6 windows & 6 windows on 2nd floor total **24 pcs**.
5. We calculated & including all windows (size 58 x 68 - 2 pcs each), with two bigger windows 2nd floor facing the alley (6 pcs) and covered front building & back area with generous allowance, the maximum plywood used would be **80 pcs**. We are unable to account for the additional 58 pcs at the job site, which the statement was mistakenly **billed** 138 sheets for this building.
6. Every day price from Home Depot or Lowes for 3/4" plywood are between \$33 to \$35 per piece, for contractor's discount, they would have paid less, it is outrageous & unconscionable to charge customer \$105 per piece which exceed 300%. Fair charges for each plywood would be \$40 (\$34 x 80 = **\$3,200**)
7. It's impossible have used the amount of screws & bolts costed \$400 for the Job described above. **\$150** is a very generous amount.
8. The maximum height to the 2nd floor is about 22' to 25' feet, they could easily work on the 30' boom lift instead a 60' boom lift. We checked with Ahern Rentals, the two days rental fee/delivered/pick up/fuel would be approximately \$925 for 30' lift & about \$1,300 for 60', as mentioned the 30' would work perfectly. No justification on the \$2,000 charge.
9. The contractor you hired bet my guy (who was instructed by us to do the job) by 30 min. started the work in the morning of 12/18, was not working in the evening or middle of the night, no grounds for emergency charge.

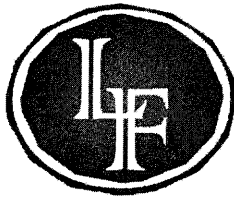
10. Workers all left after finished the job (16 hours), so the extra 8 hours supervision was incorrect (**\$448 + \$640**).

We respectfully disagree with the charges & wish to dispute at the hearing date, if unable resolve early. However, base on our fair evaluation, we like to propose a reasonable offer of **\$6,436** which includes 20% for both markup & profit ($\$3,200 + \$150 + \$925 + \$448 + \$640 = \$5,363 + \$1,073 - 20\%$ profit) to the contractor and since we never got a break down on the admin. fee, we are offering **\$1,402.35** (50%) for the total of **\$7,838.35**. Please advise at your earliest & thanks for your assistance in this matter.

Best regards,

Sophie Lau

EXHIBIT 3



FLANGAS LAW FIRM, LTD.

LEO P. FLANGAS, ESQ.

September 17, 2019

VIA EMAIL: vozuna@LasVegasNevada.GOV

City of Las Vegas
Department of Planning
Code Enforcement Division
Attn: Vicki Ozuna, Code Enforcement Section Manager
333 N. Rancho Dr.
Las Vegas, NV 89106

**Re: September 25, 2019 Hearing – Good Earth Enterprises, LIG Land
Development, Sophie and Jeffrey Lau
Case Nos. CE-195540; CE-195118; CE-195119**

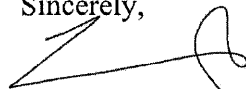
Dear Ms. Ozuna,

As we discussed, this firm will be representing Mr. and Mrs. Lau and their respective businesses for the purposes of this administrative hearing regarding code violations at the real properties located between S. 6th St. and S. 7th St. and E. Carson Ave. and E. Bridger Ave (the "Properties").

At this time, we have received the file from the client's former attorney, but it appears that we have not received the records that he requested from your office. Therefore, as we discussed, please send over the following documents:

1. Receipts from CGI to justify the cost of installing plywood at 233 S. 6th Street ("El Cid"). We have the invoice, but not the backup.
2. Any documentation evidencing the determination that the El Cid abatement was an "emergency."
3. Any and all outstanding invoices related to the Properties owned by the Laus and/or their companies.
4. Any and all outstanding liens related to the Properties owned by the Laus and/or their companies.
5. The entire file you have regarding this case.

Sincerely,



Ben La Luzerne, Esq.

EXHIBIT 4

Re: City of Las Vegas Code Enforcement Cases 195119, 195118 and 195540

Ben La Luzerne

Tue 10/15/2019 2:54 PM

To: Leo P. Flangas <leo@flangaslawfirm.com>

Mr. Boyer,

Ms. Ozuna forwarded me the email that was sent to an invalid email address on September 26. We disagree with your assertion that a business entity must be registered in a state to appear to defend itself in a proceeding. Specifically NRS 80.015(1)(a) and (i) state , respectively, that defending or settling any proceeding; and owning real or personal property does not constitute doing business in this State.

Also, such a requirement would lead to the nonsensical position that a city government can "take" property without due process, as long as it is owned by a foreign business entity.

We await your holding on the matters noted above.

Thank you.

Ben

From: john boyer <boyeresq@yahoo.com>

Sent: Thursday, September 26, 2019 9:14 AM

To: ben.laluzerne@laluzernelaw.com; natasha@flangaslawfirm.com; Vicki Ozuna <vozuna@LasVegasNevada.GOV>

Subject: City of Las Vegas Code Enforcement Cases 195119, 195118 and 195540

EXTERNAL EMAIL: This email originated from outside the organization, do not click links or open attachments unless you recognize the sender and know the content is safe.

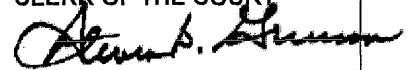
Dear Mr. La Luzerne and Flangas:

My research indicates that Good Earth Enterprises, Inc. had its' charter revoked in Nevada in 1984 and that LIG Land Developments, LLC has never been registered in the State of Nevada at the Secretary of State. Under Nevada law they cannot do business in the State of Nevada.

This would include appearing to contest the City of Las Vegas proceedings. Please let me know by the end of Friday if there is an error and the entities are compliant. John Boyer, City of Las Vegas Council Designee.

EXHIBIT 2

EXHIBIT 2



1 RAB
2 BRYAN K. SCOTT
3 City Attorney
4 Nevada Bar No. 4381
5 By: JOHN A. CURTAS
6 Deputy City Attorney
7 Nevada Bar No. 1841
8 495 South Main Street, Sixth Floor
9 Las Vegas, NV 89101
10 (702) 229-6629 (office)
11 (702) 386-1749 (fax)
12 Email: jacurtas@lasvegasnevada.gov
13 Attorneys for CITY RESPONDENTS

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 SOPHIE LAU, an individual; JEFFREY LAU,
11 an individual; GOOD EARTH
12 ENTERPRISES, INC., a California
13 Corporation; and LIG LAND
14 DEVELOPMENT, LLC, a California Limited
15 Liability Company,

13 Petitioners,

14 vs.

16 CITY OF LAS VEGAS, a political subdivision
17 of the State of Nevada; CAROLYN
18 GOODMAN, as Mayor of the City of Las
19 Vegas; CITY OF LAS VEGAS
20 DEPARTMENT OF BUILDING & SAFETY,
21 CODE ENFORCEMENT DIVISION, a
22 department of the city of Las Vegas; VICKI
23 OZUNA, Code Enforcement Manager; EMILY
24 WETZSTEIN, Code Enforcement Assistant;
25 KEVIN MCOSKER, director, Building and
26 Safety department; JOHN BOYER, as City
27 Council Designee; DOES 1 through X,

22 Respondents.

CASE NO. A-19-806797-W
DEPT. NO. XXIV

23 **RESPONDENTS' ANSWERING BRIEF**

24 BRYAN K. SCOTT
25 City Attorney
26 Nevada Bar No. 4381
27 By: JOHN A. CURTAS
28 Deputy City Attorney
Nevada Bar No. 1841
495 South Main Street, Sixth Floor
Las Vegas, NV 89101
Attorneys for CITY RESPONDENTS

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
I. ISSUES PRESENTED FOR REVIEW	1
II. STATEMENT OF FACTS	1
233 SOUTH SIXTH STREET (EL CID HOTEL)	2
232 SOUTH SEVENTH STREET (EL CID ANNEX)	6
615 EAST CARSON STREET (M.I. RESIDENTIAL HOTEL)	6
NOTICES TO PETITIONERS	7
III. ARGUMENT	9
A. JURISDICTIONAL STATEMENT	9
B. STANDARD OF REVIEW	10
1. REVIEW LIMITED TO THE RECORD BELOW	10
2. SCOPE OF REVIEW	10
C. THE DESIGNEE'S DECISION SHOULD BE UPHELD BECAUSE IT WAS SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD AND THEREFORE WAS NOT AN ABUSE OF DISCRETION	12
IV. CONCLUSION	20
CERTIFICATE OF SERVICE	20

TABLE OF AUTHORITIES

	<u>Page</u>
 <u>Cases</u>	
<i>Boulder City v. Cinnamon Hills Associates</i> , 110 Nev. 238, 247, 871 P.2d 320, 326 (1994).....	18
<i>Brocas v. Mirage Hotel & Casino</i> , 109 Nev. 579, 582-83, 854 P.2d 862, 864 (1993).....	11
<i>City Council of City of Reno v. Irvine</i> , 102 Nev. 277, 279-80, 721 P.2d 371, 372-73 (1986)	11, 12, 19
<i>City of Las Vegas v. Laughlin</i> , 111 Nev. 557, 558, 893 P.2d 383, 384 (1995).....	10, 12
<i>Clark County Board of Commissioners v. Taggart Construction Co., Inc.</i> , 96 Nev. 732, 734, 615 P.2d 965, 967 (1980).....	10, 19
<i>Clark County Liquor & Gaming Licensing Board v. Clark</i> , 102 Nev. 654, 658, 730 P.2d 443, 446.....	9
<i>Clark County Liquor & Gaming Licensing Board v. Simon & Tucker, Inc.</i> , 106 Nev. 96, 98, 787 P.2d 782, 782 (1990).....	11, 18
<i>Eldorado Hills, LLC v. Clark County Board of Commissioners</i> , 386 P.3d 999 (Nev. 2016).....	11, 12
<i>Enterprise Citizens Action Committee v. Clark County Board of Commissioners</i> , 112 Nev. 649, 653, 918 P.2d 305, 308 (1996).....	19
<i>McKenzie v. Shelly</i> , 77 Nev. 237, 242, 362.....	11, 12, 18, 19
<i>Stratosphere Gaming Corporation v. City of Las Vegas</i> , 120 Nev. 523, 528, 96 P.3d 756, 760 (2004).....	10, 11, 12
<i>United Exposition Service Company v. State Industrial Insurance System</i> , 109 Nev. 421, 423, 851 P.2d 423, 424 (1993).....	18, 19
 <u>Statutes</u>	
NRS 233B.020	9
NRS 268.4122.....	1, 9, 10
NRS 268.4124.....	9, 10
NRS 268.4126.....	9, 10
NRS 332.112.....	1
 <u>Other Authorities</u>	
EDCR 2.15	9
LVMC 9.04.010	1
LVMC 9.04.050	13
LVMC 9.04.060	5
LVMC 9.04.080(D)	1, 3, 15

I.

ISSUES PRESENTED FOR REVIEW

The City concedes that the Petitioners have standing to contest these issues. What they do not have is any proof or law to support their legal arguments. The only issues for review are:

1. Is there enough evidence in the record to support the abatement hearing and lien approval decision?

2. Did the City Council Designee abuse his discretion in finding that the Petitioners received proper notice and that the City's assessments were reasonable under the circumstances?

These are heavy burdens to bear and the Petitioners' arguments do not reach the threshold of overcoming them.

II.

STATEMENT OF FACTS

This case is more straightforward than the Petitioners, their counsel, and their brief would have you believe. It concerns three dilapidated buildings in downtown Las Vegas – two of which the Petitioners had owned since 1993 – none of which had been occupied or maintained in over ten years. All have now been demolished after they were declared imminent hazards by the City of Las Vegas, pursuant to Las Vegas Municipal Code (LVMC) 9.04.080(D).

Over the course of decades, they allowed these structures to decay and become safety and fire hazards - abandoned urban blight attractive only to vagrants, criminals, drug users, and the homeless.

Things reached a breaking point in December 2018 when two separate fires broke out at the El Cid Hotel and its annex at 232 South Seventh Street. Using its emergency powers granted to it by LVMC 9.04.080(D), NRS 268.4122 and NRS 332.112, the City initiated a boarding up of these structures to protect the health, safety and welfare of the community. It then gave the Petitioners notice, in January 2019, that they were operating these structures as a public nuisance that must be immediately remedied pursuant LVMC 9.04.010. The Petitioners failed to do so under the public nuisance law, resulting in 30 days of civil penalties, as well as the costs and fees

....

1 incurred for the emergency nuisance abatement (boarding up), being assessed against the
2 properties.

3 An Abatement and Lien Approval hearing was held by the City Council Designee on
4 September 25, 2019. The Petitioners appeared with counsel. Counsel for the Petitioners
5 admitted at the hearing that the buildings were an attractive nuisance. Record on Review (ROR)
6 000173.

7 After considering the mountain of evidence about the properties -- consisting of their
8 tortured history of neglect and disrepair and the imminent hazards caused thereby, as well as by
9 the fires in December 2018 and February 2019, the boarding up, the safety issues, and eventual
10 demolition -- the Designee found that the Petitioners received proper notice of all nuisance
11 abatement proceedings, and that the fees, penalties, and costs were all proper and reasonable
12 under the circumstances. ROR 000053-58.

13 **233 SOUTH SIXTH STREET (EL CID HOTEL)**

14 The El Cid Hotel was located at 233 South Sixth Street. It was purchased by the
15 Petitioners on February 5, 1993. Adjacent to this property is the hotel annex, located at
16 232 South Seventh Street, which the Petitioners also bought on February 5, 1993.
17 Immediately north of these properties, was another residential hotel, fronting Sixth Street, known
18 as the M.I. Residential Hotel at 615 East Carson Avenue. It was purchased by the Petitioners on
19 November 17, 2008. Good Earth Enterprises Inc., a California corporation, owns the El Cid and
20 South Seventh properties, while LIG Land Development LLC, a California limited liability
21 company, owns 615 East Carson Avenue. Petitioners Sophie and Jeffrey Lau own and/or control
22 these companies, and for purposes of this action, are the responsible parties for these properties.
23 ROR 000261-267.

24 On December 5, 2018, the City of Las Vegas inspected and found numerous building and
25 safety violations at the El Cid and Seventh Street (El Cid Annex) properties. The refuse and
26 upkeep issues were extreme, and homeless persons were using the properties for shelter. On
27 December 6, 2018, these issues were brought to the attention of Robert Mann, the on-premises
28 representative/manager for the Petitioners. ROR 000066.

1 On December 17, 2018, a fire occurred on the upper floor of the El Cid Hotel, and the
2 Las Vegas Metropolitan Police Department, Las Vegas Fire and Rescue, and the City declared
3 the property to be an imminent hazard pursuant to LVMC 9.04.080(D). ROR 000285.

4 As Vicki Ozuna – Chief Code Enforcement Officer – testified at the lien hearing on
5 September 25, 2019 (in describing the situation):

6 We ended up declaring it - the City Council - or City Manager
7 declared it February 20, two-thousand and nine, uh, 2019, but this
8 process started in December. Um, at the concurrence of Fire and
9 Metro and due to the activity, we - we declared - Code
10 Enforcement declared that we needed to do the emergency
11 boarding. And I had concurrence from two Departments which is
12 more than what we're required to have. So, based off the fire
13 activity and the, uh, number of - the number of homeless people.
14 There were 40 to 50 homeless people were jumping out the
15 windows. Somebody broke their ankle at - when, uh, the fire
16 occurred on December 17th. This is not just a couple of people
17 hangin' out. This is a very large number of people. When you
18 would walk through the bottom floor of the building, there were
19 mattresses in each and every room. It looked - it appeared like
20 somebody may have been taking rental money or allowing the
21 people to stay there. So, there was a lot of - there was a lot of
22 issues and we were extremely concerned about what was occurring
23 in this building.

24 ROR 000172, lines 1319-1332.

25 Within two days, the City procured a contractor to begin boarding up the hotel. In the
26 process of doing so, it was discovered approximately fifteen homeless people living there.

27 ROR000067.

28 Even after the boarding up of the El Cid, homeless continued to live there, a fact known
to Robert Mann, the manager of the property for the Laus. ROR 000068.

On January 7, 2019, a Revised Demolition Notice and Order to Comply was sent to Good
Earth Enterprises, 785 Columbus Avenue, San Francisco, CA 94133-2732, and Sophie Lau,
201 South Sixth Street, Las Vegas, NV 89101. ROR 00002-9. In that Order, Petitioners were
given ten days (until January 18, 2019) to secure the property and arrange for its demolition.
The Petitioners' failure to do so resulted in penalties of \$1,000/day being assessed against the
property until the City Council ratified the Declaration of Imminent Hazard on February 20,
2019. ROR 000032.

1 On January 8, 2019, a Notice and Order of Nuisance Abatement was placed on the front
2 building boarded by the City. Robert Mann, the manager for the Laus, was fully aware of this
3 Notice and Order as of that date. ROR 000068.

4 Between January 7 and January 16, 2019, Petitioner Sophie Lau and Vicki Ozuna – Code
5 Enforcement Section Manager for the City of Las Vegas – traded multiple e-mails regarding the
6 status of the Demolition Notice and Orders on both 233 South Sixth Street and 232 South
7 Seventh Street. ROR 000020-24.

8 The following e-mails demonstrate the Petitioners had actual notice of all actions being
9 taken by the City against the subject properties.

10 **On January 8, 2019, Sophie Lau e-mailed Vicki Ozuna:**

11 Thanks for your email and Notice from Dept. of Planning
12 dated 1/7/18, we realize the urgency of this important issue, we are
13 currently getting bids from contractors also seeking for assistance
14 from City to complete this task asap.

15 We will be aggressively working on demand Item 1 from
16 the Notice & would like to ask for your understanding to hold off
17 Item 2 & Item 3, as we need to reserve the funds for Item 4 for
18 building demolition which will cost astronomically.

19 Our property watcher, Bob has agreed to patrol properties
20 5 times a day and keeping records for later review.

21 We'd like to ask for your patience and need your
22 understanding on board with us to accomplish this project if we
23 need extra days.

24 ROR 000022.

25 **On January 16, 2019, Sophie Lau e-mailed Vicki Ozuna:**

26 Hi Vicki,

27 Please review the following status report on issues per
28 Notice of Orders dated 1/7/19 and 1/10/19;

1. All palm trees around both buildings El Cid Hotel
(233 S. 6th) & the Annex (232 S.7th) have been completely
removed including stumps.

2. We will sign contract with the professional security
service by Friday or sooner

....

1 3. & 4. Currently we are aggressively seeking asbestos
2 removal specialist and demo. Contractor to remove all buildings to
3 complete the whole project asap. We been advised by the
4 demolition contractors, they will install fence before demo. & the
5 fence may remain on site after job completed.

6 5. We have received the invoice # 195118HN-90209 for the
7 amount of \$21,622.70 for abatement and admin fee. Please give
8 instruction on how to dispute this invoice.

9 We are totally exhausted from this ongoing repeating
10 break-in problems caused by the vagrants. Unfortunately, with no
11 other option but to take down all of our buildings.

12 You have our utmost attention to resolve these stressful
13 issues. Kindly advise at your earliest, if any grants available to
14 assist this costly project will be greatly appreciated.

15 Thanks for your kind understanding & assistance in this
16 matter.

17 Best regards,

18 Sophie Lau

19 ROR 000020.

20 Per LVMC 9.04.060, the civil penalties for noncompliance did not start to run until ten
21 days after the posting, i.e., January 19, 2019, and continued to accrue for thirty days afterwards
22 at \$1,000/day until the Emergency Declaration was approved by the City Council on
23 February 20, 2019. ROR 000168, lines 1158-1192.

24 The City spent \$18,698 hiring a contractor (CGI) to board up the imminent hazard that
25 was the El Cid Hotel. This boarding up and securing of the property occurred between
26 December 17, 2018 through December 20, 2018. ROR 00001, ROR 000069, ROR 000268.

27 As of January 28, 2019, the hazards and nuisances of the El Cid Hotel and the other
28 properties remained, and continued to remain a blight and a hazard until fencing and demolition
of the properties began on March 11, 2019. ROR 000070.

On February 20, 2019, the City Council approved the City Manager's Declaration of
Imminent Hazard at EL Cid a/k/a 233 South Sixth Street and 232 South Seventh Street. ROR
000032.

....

....

1 Based upon the nuisance abatement fees expended to board up the hazardous property
2 (\$18,698), plus administrative costs and daily civil penalties incurred, the City Council Designee
3 assessed the sum of \$54, 624.70 to the City as a lien against the subject property. ROR 000057.

4 **232 SOUTH SEVENTH STREET (EL CID ANNEX)**

5 Since 2006, the Code Enforcement history for 232 South Seventh Street showed 13 cases
6 for Open and Accessible Building against the subject property and 7 cases for Open and
7 Accessible Vacant Building against 233 South Sixth Street. ROR 000284.

8 A fire occurred at 232 South Seventh Street on December 8, 2018, resulting in Las Vegas
9 Fire and Rescue temporarily boarding up the structure. ROR 000285. It was given a Demolition
10 Notice and Order to Comply on January 10, 2019, and given ten days to fence and secure the
11 building, and demolish it within 60 days. ROR 000010-16. The owners (Petitioners herein)
12 failed to comply with any of these orders by January 22, 2019, resulting in the assessment of
13 \$30,000 in daily civil penalties, pursuant to NRS 9.04.040.

14 Said penalties accrued between January 20, 2019, and the City Council ratifying the City
15 Manager's declaration of the property as an imminent hazard and public nuisance on
16 February 20, 2019, at which time the penalties stopped accruing. ROR 000032, ROR 000292-
17 348.

18 **615 EAST CARSON STREET (M.I. RESIDENTIAL HOTEL)**

19 Another fire occurred on February 21, 2019, at the structure at 615 East Carson Street.
20 Five squatters/homeless were rescued from this building at the time. ROR 000080.

21 After this fire, and after consultation with the Las Vegas Fire and Rescue regarding it, the
22 homeless residing in the property, and the continuing danger posed to both the squatters and the
23 firefighters at the property, the City invoked its emergency powers and declared the property an
24 imminent hazard. ROR 000121.

25 Between February 22, 2019 and February 25, 2019, Vicki Ozuna and Sophie Lau
26 exchanged multiple e-mails about the fire and the need to take emergency action to properly
27 secure the premises. ROR 000033-38.

28

1 On February 25, 2019, the property failed an inspection, due to continued signs of
2 vagrant activity, it being a continuing imminent hazard, and inadequate boarding/security of the
3 premises. ROR 000080. The City then hired a contractor to board up the structure, which was
4 accomplished by March 11, 2019. ROR 000081-82.

5 The Dangerous Building Notice and Order to Comply was issued on this property on
6 March 18, 2019. ROR 000040-47.

7 The City paid its contractor \$20,000 for these emergency services (ROR 000039), and
8 was awarded this sum (for the emergency boarding of up of 615 East Carson Avenue), by the
9 City Council Designee, along with \$2,624 in fees and costs. ROR 000057, ROR 000291.

10 NOTICES TO PETITIONERS

11 Throughout their Opening Brief, Petitioners repeatedly argue that they somehow did not
12 receive proper notice of the violations, emergency measures, fees, costs, and penalties invoked
13 against the subject properties. To clarify, what follows are a list of notices given to Petitioners
14 between December 2018 and August 2019, resulting in the assessments now being challenged:

- 15 • December 17, 2018: "Man named Bob (Robert Mann) identified himself as
16 property manager" to City inspectors after fire at 233 South Sixth Street. ROR
17 000067.
- 18 • Notice and Order(s) for 233 South Sixth and 232 South Seventh Streets (the El
19 Cid Hotel and El Cid Annex) were sent to Good Earth Enterprises Inc. and Sophie
20 Lau at 785 Columbus Avenue, San Francisco, CA 94133-2732 and 201 South
21 Sixth Street, Las Vegas, NV 89101 on January 7 and 10, 2019 (respectively).
22 ROR 000002-9, and ROR 000010-16.
- 23 • A Return Receipt Requested was received from the United States Postal Service,
24 showing they were delivered to the Petitioners on January 16, 2019. ROR
25 000371.
- 26 • Sophie Lau acknowledges receipt of these notices in e-mails with Vicki Ozuna.
27 ROR 000020-24.

28

- 1 • Sophie Lau acknowledges notice of City's emergency action re fire at 615 East
2 Carson in e-mails with Vicki Ozuna, February 22, 2019-February 25, 2019. ROR
3 000033-38.
- 4 • Dangerous Building Notice and Order to Comply, re building fire at 615 East
5 Carson, mailed to LIG Land Development LLC and Sophie Lau at 785 Columbus
6 Avenue, San Francisco, CA 94133-2732 and 201 South Sixth Street, Las Vegas,
7 NV 89101, on March 18, 2019. ROR 000040-47.
- 8 • A Return Receipt was received from the United States Postal Service, showing
9 they were delivered to the Petitioners on March 25, 2019. ROR 000369.
- 10 • Notifications of all fines, costs, fees, penalties and assessments being sought
11 against the subject properties mailed by both regular mail and certified mail to the
12 property owners on August 8, 2019. ROR 000048-52.
- 13 • January 8, 2019: Notice and Order posted on front building board of 233 South
14 Sixth Street. City inspectors spoke with Bob (Robert Mann) about boarding up
15 and ongoing security problems. ROR 000068.
- 16 • January 14, 2019: Revised Notice and Order posted at El Cid Hotel.
17 ROR 000069.
- 18 • February 25, 2019: Tim Elson – a lawyer for the Petitioners – speaks with City
19 inspectors regarding the fire at 615 East Carson which had occurred three days
20 earlier. He is informed of emergency boarding up of building is underway due to
21 the fire. ROR 000081.
- 22 • March 21, 2019: Notice and Order posted at 615 East Carson. ROR 000040-47,
23 ROR 000081.
- 24 • Counsel for Petitioners admitted in the Hearing that they received notice of the
25 violations were posted on the El Cid and Annex properties. ROR 000178.
- 26 • August 8, 2019: Abatement Hearing Notice, Civil Penalty Assessment, and
27 backup documentation for 232 South Seventh Street sent by certified and regular
28 mail to Good Earth Enterprises, Inc. ROR 000084-99.

1 III.

2 ARGUMENT

3 A. JURISDICTIONAL STATEMENT

4 Appeals of City Council Designee decisions are properly reviewed via a petition for
5 judicial review per NRS 268.4122, .4124, or .4126, and EDCR 2.15 provides the procedures to
6 follow.

7 Petitioners' early reliance upon NRS 233B is misguided as NRS 233B (Nevada's
8 Administrative Procedure Act) is not applicable to actions of local governments. NRS 233B
9 applies only to "agencies of the Executive Department of the State Government." NRS
10 233B.020.

11 The decisions of local governmental agencies are therefore not subject to this Chapter.
12 In NRS 233B.020, the Nevada Legislature described the intended scope of the Administrative
13 Procedure Act:

14 1. By this chapter, the legislature intends to establish
15 minimum procedural requirements for the regulation-making and
16 adjudication procedure of all agencies of the executive department
17 of the state government and for judicial review of both functions,
18 except those agencies expressly exempted pursuant to the
19 provisions of this chapter. This chapter confers no additional
20 regulation-making authority upon any agency except to the extent
21 provided in subsection 1 of NRS 233B.050.

22 2. The provisions of this chapter are intended to supplement
23 statutes applicable to specific agencies. This chapter does not
24 abrogate or limit additional requirements imposed on such
25 agencies by statute or otherwise recognized by law.

26 Again, the Chapter does not apply to the decisions of local governments. The Nevada
27 Supreme Court applied NRS 233B.020 and stated:

28 We recognize the Administrative Procedure Act does not apply to
review of county board actions. *Washington v. Clark County*, 100
Nev. 425, 428, 683 P.2d 31, 33 (1984). Review of local agency
action is by extraordinary writ.

Clark County Liquor & Gaming Licensing Board v. Clark, 102 Nev. 654, 658, 730 P.2d 443, 446
(1986).

....

1 Based upon the above, NRS 233B is not applicable and instead the "appeal" of a City
2 Council Designee decision is properly reviewed via a petition for judicial review per NRS
3 268.4122, .4124, or .4126.

4 **B. STANDARD OF REVIEW**

5 The Nevada Supreme Court has established standards for the review of government
6 agencies' administrative decisions.

7 **1. REVIEW LIMITED TO THE RECORD BELOW**

8 The Court's review of Designee's decision "is **limited to the record** made before the
9 City." *City of Las Vegas v. Laughlin*, 111 Nev. 557, 558, 893 P.2d 383, 384 (1995) (emphasis
10 added). Therefore, no additional purported evidence should be considered by the Court and the
11 Court should only consider the record before the City Council Designee--the **Court may not**
12 **conduct a de novo review** of the administrative action. The Nevada Supreme Court so held in
13 *Clark County Board of Commissioners v. Taggart Construction Co., Inc.*, 96 Nev. 732, 734, 615
14 P.2d 965, 967 (1980):

15 The district court conducted the equivalent of a trial de
16 novo. It made an independent determination that the breadth of the
17 variance included an asphalt mixing plant and a maintenance
18 building. The court erred in doing so. **Its province was confined**
19 **to a review of the record of evidence** presented to the Clark
20 County Board of Commissioners and the Planning Department,
21 with its primary focus on the variance itself. [Emphasis added.]

22 **2. SCOPE OF REVIEW**

23 "[T]he scope of review is usually limited to a determination of whether the agency or
24 municipality which made the decision appealed from committed an **abuse of discretion**."
25 *Stratosphere Gaming Corporation v. City of Las Vegas*, 120 Nev. 523, 528, 96 P.3d 756, 760
26 (2004) (emphasis added). If the City's "discretionary act is supported by **substantial evidence**,
27 there is no abuse of discretion. Substantial evidence is that which 'a reasonable mind might
28 accept as **adequate to support a conclusion**.'" *Laughlin*, 111 Nev. at 558, 893 P.2d at 384
(emphasis added; internal citation omitted). A valid basis for the City's decision leads to the
conclusion that the decision was based upon substantial evidence and was not a manifest abuse
of discretion. *Id.* at 560.

1 The Court cannot substitute its judgment for that of the City as to the weight of the
2 evidence despite the existence of conflicting evidence. *Stratosphere*, 120 Nev. at 530.

3 "[J]ust because there was conflicting evidence does not compel interference with the Board's
4 decision so long as the decision was supported by substantial evidence." *Clark County Liquor*
5 *& Error! Bookmark not defined.*

6 *Gaming Licensing Board v. Simon & Tucker, Inc.*, 106 Nev. 96, 98, 787 P.2d 782, 783 (1990).

7 The Court "will not substitute the Board's judgment with its own and will not reweigh the
8 evidence when reviewing the decision." *Eldorado Hills, LLC v. Clark County Board of*
9 *Commissioners*, 386 P.3d 999 (Nev. 2016).

10 Similarly, in *Brocas v. Mirage Hotel & Casino*, 109 Nev. 579, 582-83, 854 P.2d 862, 864
11 (1993), the Court stated:

12 This court's role in reviewing an administrative decision is
13 identical to that of the district court: **to review the evidence**
14 **presented to the agency in order to determine whether the**
15 **agency's decision was arbitrary or capricious and was thus an**
16 **abuse of the agency's discretion.** *United Exposition Service Co. v.*
17 *SIIS*, 109 Nev. 421, 851 P.2d 423 (1993); *Titanium Metals Corp. v.*
18 *Clark County*, 99 Nev. 397, 399, 663 P.2d 355, 357 (1983). This
19 standard of review is codified in NRS 233B.135. It is well
20 recognized that this court, in reviewing an administrative agency
21 decision, will not substitute its judgment of the evidence for that of
22 the administrative agency. *State Dep't of Mtr. Vehicles v. Becksted*,
23 107 Nev. 456, 458, 813 P.2d 995, 996 (1991). This court is limited
24 to the record below and to a determination of whether the
25 administrative body acted arbitrarily or capriciously. *State Emp.*
26 *Sec. Dep't v. Weber*, 100 Nev. 121, 124, 676 P.2d 1318, 1320
27 (1984). The central inquiry is whether substantial evidence in the
28 record supports the agency decision. *SIIS v. Christensen*, 106 Nev.
85, 87-88, 787 P.2d 408, 409 (1990). Substantial evidence is that
which a reasonable mind might accept as adequate to support a
conclusion. [Emphasis added.]

23 The actions of an administrative agency are presumed to be valid and are not subject to
24 judicial review unless they are an abuse of discretion. *McKenzie v. Shelly*, 77 Nev. 237, 242, 362
25 P.2d 268, 270 (1961). In *City Council of City of Reno v. Irvine*, 102 Nev. 277, 279-80, 721 P.2d
26 371, 372-73 (1986), the Court described Appellant's burden to prove the type of abuse of
27 discretion necessary to overturn the administrative acts of a municipality:

28

1 A city board acts arbitrarily and capriciously when it denies
2 a license without any reason for doing so. In previous cases, e.g.
3 *Henderson*, we have spoken in terms of there being a 'lack of
4 substantial evidence before the council'; but the essence of the
5 abuse of discretion, of the **arbitrariness or capriciousness** of
6 governmental action in denying a license application, is most often
7 found in an **apparent absence of any grounds or reason for the**
8 **decision. "We did it just because we did it."** [Emphasis added;
9 internal citation omitted.]

6 The case further states:

7 If one seeking such a privilege can show that the city board
8 . . . acted in a manner that was arbitrary (baseless, despotic) or
9 capricious (caprice: 'a sudden turn of mind without apparent
10 motive; a freak, whim, mere fancy'), then the board is said to be
11 abusing its discretion.

10 *Id.* at 278-79.

11 These cases do not stand for the proposition that the board must
12 "explain" its decision or even that it must make formal findings or
13 conclusions.

13 *Id.* at 280.

14 **C. THE DESIGNEE'S DECISION SHOULD BE UPHELD BECAUSE IT WAS**
15 **SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD AND**
16 **THEREFORE WAS NOT AN ABUSE OF DISCRETION**

16 As the case law cited above sets forth, Petitioners' burden is to demonstrate that the
17 Designee's decision, when viewed in consideration of solely the evidence in the record and not
18 any other purported evidence, was an abuse of discretion. The Designee's decision must stand if
19 it is **supported by substantial evidence, which means there was a valid basis** for Designee's
20 decision. *Laughlin*, 111 Nev. at 558, 893 P.2d at 384. In addition, Petitioners must also
21 overcome the **presumption that the Designee's decision was valid**. *McKenzie*, 77 Nev. at 242,
22 362 P.2d at 270. Furthermore, the review is not to be a re-weighting of the evidence--it is to be
23 done merely to confirm whether or not substantial evidence supports the decision. *Eldorado*
24 *Hills, LLC*, 386 P.3d at 999. Moreover, that the Court **cannot substitute its judgment** for that
25 of the City as to the weight of the evidence despite the existence of conflicting evidence,
26 *Stratosphere*, 120 Nev. at 530.

27 Petitioners go to great lengths to argue they were not properly put on notice of the
28 proceedings against the property. As disjointed as they are, these contentions can best be

1 summarized by the Statement of Issues on Appeal that somehow Petitioners did not receive
2 proper due process of law. (Petitioner's Opening Brief at p. 5.)

3 They next assert that the Designee's findings were arbitrary, capricious, and not
4 supported by substantial evidence. *Id.*

5 Finally, they contend the amounts of the fines and penalties were not reasonable and
6 necessary. *Id.*

7 The first "due process" argument is easily disposed of because it is so absurd. The City
8 was in constant contact with both the owners themselves and their on-site manager from early
9 December 6, 2018, through the Declaration of Imminent Hazard by the Las Vegas City Council
10 on February 20, 2019. (*See* Timeline in Petitioner's Brief, pp. 9-10.) The actual notices
11 provided to Petitioners, cited above, were thoroughly reviewed by the City Council Designee,
12 and he found unequivocally that:

13 After the emergency board up in December 2018 Notice
14 and Order were posted and sent for 233 S. Sixth Street on starting
15 with posting on January 10, 2019. This posting was received and
16 seen by the owner's representative on that date and Ms. Lau knew
17 of the notice and order by January 10, 2019. Notice and Order for
18 232 S. Seventh was posted at the same time and also mailed to the
19 owner.... Ms. Lau acknowledged she actually received the notice
through Mr. Mann. These Notices and Orders are the predicate for
the penalties imposed on these properties as set forth in the City
request for imposition of costs and penalties in the evidence.
Copies of the Notices and Orders are included in the Binder A as
supplemented by the City after the hearing. The owner was offered
a continuance to review this record but was (sic) declined.

20 ROR 000057.

21 In order to prevail on its Petition, the Petitioners must show that there was no substantial
22 evidence to support this conclusion, and that the finding of proper notice to them (by the
23 Designee) was an abuse of discretion.

24 Without belaboring the point, the record is overflowing with actual and proper notice to
25 Petitioners – notices they acknowledged through conversations, certified mailings, postings on
26 property, e-mails and numerous admissions – not to mention the City's compliance with LVMC
27 9.04.050. ROR 000144-145, ROR 000149-150 (*see also* pp. 7-8 above). Claiming now that
28 Petitioners were somehow surprised by the abject disrepair, neglect, fire hazards, and the blights

1 their properties had become (not to mention the emergency steps taken by the City) is
2 disingenuous at best and borderline misleading of this Court.

3 The “due process” games Petitioners are playing here are manifest from their attempt, on
4 page 7 of their Opening Brief, to couch their rejection of a continuance as something prejudicial
5 towards them. There, they admit, “The City offered to continue the hearing (to let them review
6 documents they claim they had not seen) ... However, because Ms. Lau and Mr. Mann are
7 elderly, and had traveled from San Francisco to Las Vegas, the Designee did not continue the
8 hearing.” (See p. 7 of Opening Brief.) Thus, in two short sentences do Petitioners recast their
9 desire *not to continue* the hearing as something prejudicial that was done to them.

10 Here is the actual exchange from the hearing:

11 Q (the City Council Designee): So, at this point, you know,
12 I thinking that we need to perhaps stop these proceedings, because
13 you’re you know, reading the record here and you don’t have all
14 the record. And so, some of your arguments may not be, un,
supported by what the City has. Un, and so, you know, if-if you
want those records, it may be more effective that you see the entire
file, so that you know what happened.

15 ROR 000151, lines 384-389.

16 A2 (Petitioner Attorney Ben Lalazern): And so I said,
17 “Send us everything you got and we won’t continue the hearing.”
18 My clients came out here from San Francisco...And we want to
press forward on the hearing.

19 ROR 00151, lines 397-402.

20 Later during the hearing, the Petitioners (through the third set of lawyers they used on
21 this case) are once again given the opportunity to continue the hearing. Again, they declined.

22 ROR 000158, ROR 000160.

23 Petitioners are thus taking positions in their Opening Brief exactly contrary to facts they
24 know to be true. They were offered a continuance and declined one. Just as they knew about
25 every action being taken by the City from early December 2018 right through the final
26 Abatement Hearing Notice and backup documentation sent to them on August 8, 2019.

27 Petitioners also claim, without support, that the emergency notices that went out on
28 December 19, 2018 (due to a fire at the El Cid and Annex) were somehow invalid, even though

1 said actions of the City were fully authorized under LVMC 9.04.080(D). This provision allows
2 for emergency measures to be taken, without notice, as follows:

3 If, in the opinion of the City Manager, or a duly
4 authorized representative, the condition of a property constitutes
5 an imminent hazard, the City Manager or representative may
6 order immediate abatement of the hazard without notice. The
7 abatement work shall be limited to the minimum work necessary
8 to remove the hazard. Before ordering abatement under this
9 Section, the City Manager or representative shall first obtain the
10 concurrence of at least one other City or public agency official.
11 City and public agency officials that may concur with or request a
12 designation of imminent hazard pursuant to this Section include,
13 without limitation, the City Manager; the Las Vegas Metropolitan
14 Police Department; the Southern Nevada Health District; and the
15 Departments of Fire and Rescue, Public Works, Planning, Public
16 Safety, and Parks and Recreation. The City shall pay the initial
17 cost and expense of any emergency abatement from any
18 appropriation made available for that purpose. Any costs and
19 expenses incurred, and any fees imposed, in connection with the
20 removal of an imminent hazard may be assessed against the
21 property or the owner in accordance with the procedure described
22 in Section 9.04.100.

23 Once again, it bears repeating that the City, through Vicki Ozuna, obtained the
24 concurrence of both the Las Vegas Metropolitan Police Department and Las Vegas Fire and
25 Rescue, before commencing the emergency abatement procedures, and LVMC 9.04.080(D)
26 permits these emergency measures to be invoked **without notice**. ROR 000144, lines 48-54.
27 The same analysis applies to the fire which took place at 615 East Carson Avenue on
28 February 22, 2019.

Petitioners conveniently omit that the City was in contact with their attorney within
days of the fire, and that notice was lawfully posted on the premises. ROR 000040-47,
ROR 000081.

They toss around terms like “....without any notice to Petitioners” (Petitioner’s Brief at
p. 11), “no notice was ever provided to the Owner” (*Id.* at p. 12), and “There is no evidence
whatsoever that the City posted Notice of Hearing at the 615 property” (*Id.* at p. 12) -- as if the
constant communication with their representatives, the back and forth e-mails, postings on the
property, and certified mailings to their business addresses never happened.

....

1 Indeed, Petitioner's counsel goes so far as to admit their representative was in constant
2 contact with the City from December 6, 2018 forward. ROR 000160.

3 In the biggest misrepresentation of them all, they make the following statement on p. 12
4 of their Brief: "It was not until the Hearing that Petitioners learned from Ms. Ozuna that fines
5 were assessed at \$1,000 a day." They say this with a straight face, even though the Demolition
6 Notice and Orders of January 7 and 10, 2019, plainly lay out all violations, fines, fees and
7 costs relating thereto. This is the same notice, followed by a similar one on 615 East Carson
8 Avenue, which was mailed to the office address of their local representative, posted on the
9 property itself, and sent by certified mail to the Laus' San Francisco address. ROR 000002-9,
10 ROR 000010-16, ROR 000040-47, ROR 000156, ROR 000369-371.

11 The Petitioner's argument is the ultimate elevation of form over substance – by
12 constantly harping on "notice" the Petitioners hope to deflect attention from their own neglect,
13 obstreperousness and malfeasance. They knew all about the problems with these properties
14 from December 6, 2018 forward. They certainly knew about all three Demolition Notices that
15 were sent out and posted in accordance with the Las Vegas Municipal Code – the same ones
16 Sophie Lau sent e-mails to the City arguing about.

17 Now, with little else to rely upon, they beat the "improper notice" drum *ad nauseum* in
18 hopes to avoid their responsibilities to maintain their investment properties in a safe condition.
19 The City Council Designee saw right through these ruses and determined, based upon
20 overwhelming proof, that the Petitioners were given proper notice of all actions being taken by
21 the City with respect to these three properties. There was no abuse of discretion in these
22 findings, and his decision should be upheld by this Court.

23 Finally, this Court should spend a moment looking at all the things the Petitioners do
24 not contest as part of their writ:

- 25 • All three properties were vacant and abandoned, and had been so for years.
- 26 • All three properties had become a mecca for the homeless, vagrants, and criminals.
- 27 • The Petitioners had done little or nothing to keep up the properties for over a decade.

28

- 1 • There was a long list of building and fire code violations on all three properties going
- 2 back over a decade.
- 3 • Three separate fires occurred on these properties between December 2018 and February
- 4 2019.
- 5 • After the fires, because of the hazards and the homeless, the properties needed to be
- 6 boarded up immediately.
- 7 • At the time of the December 17, 2018 fire, between 40-50 homeless people were living
- 8 at the El Cid Hotel. They were living there because the Petitioners were doing little or
- 9 nothing to keep them out.
- 10 • The fire department took measures to board up the 615 East Carson Avenue
- 11 (M.I. Hotel) property after the fire there on February 21, 2019. As it was being boarded
- 12 up, squatters were already returning. ROR 000121.
- 13 • There had been 46 calls for service from Metro between October 2018 and December
- 14 2018, as well as calls for service for the Fire department on these properties.
- 15 • The City conferred with both the police and fire departments on multiple occasions
- 16 regarding the hazardous conditions at all properties. ROR 000172.
- 17 • There was a severe homeless problem in all properties. ROR 000172.
- 18 • The existence of these buildings constituted a continuing hazard to the citizens of Las
- 19 Vegas, its fire and police departments, and the individuals illegally residing there.
- 20 • The Laus had a history of being unresponsive to the City when it came to maintaining
- 21 their property.
- 22 • The Designee said at the hearing that these were the most violations he had never seen
- 23 on any property. ROR 000176.

24 With nothing left to argue about, the Petitioners are reduced to complaining about the
25 cost of the boarding up of the premises. They don't contest that the work was done, or that the
26 contractors weren't legitimate. Indeed, they make no argument at all about the statutory fees
27 and costs assessed. Of course, they do not like the \$1,000/day penalties, but they did not
28 comply with the Notices and Orders issued, after years of fighting the City and ignoring the

1 dangerous nuisances they had created. All they can argue about is the expense, and all they
2 can summon are arguments of counsel that these expenses were somehow “excessive.”

3 No law or facts are marshalled by Petitioners to prove the Designee’s decision was
4 capricious, only dicta and flimsy, factually inaccurate rationalizations. A close reading of their
5 brief reveals that they have never maintained that they did not have actual notice of everything
6 happening with their properties. They admit they knew; the record is clear that they received
7 proper notice multiple ways. They now just want to argue *ex post facto* about whether the “Ts”
8 were crossed. They produced no evidence at the original hearing, only the feeble justifications
9 of counsel. This inadequacy has continued right through the briefing of this matter, and
10 without more, they cannot overcome their burden to prove a manifest abuse of discretion.

11 When the City, much like here, acts in a discretionary fashion in the application of its
12 laws that it is charged to enforce, long-established precedent in this district allows great latitude
13 to a government body. The Nevada Supreme Court in *Boulder City v. Cinnamon Hills*
14 *Associates*, 110 Nev. 238, 247, 871 P.2d 320, 326 (1994), definitively held that a governmental
15 entity is afforded great discretion in interpreting statutes it is charged with enforcing. The
16 Court’s holding in *Cinnamon Hills* reflects a body of law going back half a century wherein it
17 has been repeatedly affirmed that an action taken by a city council in its administrative capacity,
18 upon the matter properly before it, would not warrant inference by a trial court except where
19 there has been a manifest abuse of discretion. *McKenzie*, 362 P.2d at 270, 77 Nev. at 242 (“A trial
20 court should uphold discretionary action of a municipal body to the same extent as an appellate
21 court upholds the discretionary action of a trial court.”).

22 It has long been recognized in this state that district courts, “in reviewing an
23 administrative agency decision, will not substitute its judgment of the evidence for that of the
24 administrative agency.” *United Exposition Service Company v. State Industrial Insurance*
25 *System*, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993). The mere presence of conflicting
26 evidence—even if found in the record—does not give the court the power to reweigh the
27 evidence supporting or opposing the City’s decision. *Simon & Tucker, Inc.*, 106 Nev. at 987, 87
28 P.2d at 783. “The courts, as a general rule, have no business telling a city board who should or

1 who should not be [cited under the code] and which [citations] would [or would] not be contrary
2 to the public welfare”—that remains the exclusive province of the municipality. *Irvine*, 102
3 Nev. at 280, 721 P.2d at 372-73.

4 The province of the court, however, is confined to a review of the record of evidence
5 presented to the City, *Taggart*, 96 Nev. at 734, 615 P.2d at 967, and is confined to only
6 determining if the City’s discretionary act was supported by substantial evidence: that there
7 exists a rational basis for the exercise of discretion or that the act complained of is purely
8 arbitrary and therefore, an abuse of discretion. *Enterprise Citizens Action Committee v. Clark*
9 *County Board of Commissioners*, 112 Nev. 649, 653, 918 P.2d 305, 308 (1996); *United*
10 *Exposition*, 109 Nev. at 424, 851 P.2d at 424 (“Substantial evidence is that which a reasonable
11 mind might accept as adequate to support a conclusion.”).

12 Simply put, an act is arbitrary if it is taken without sound basis in reason or regard to the
13 facts. In short, the actions of the administrative agency are presumed to be valid and are not
14 subject to judicial review unless there is an abuse of discretion. *McKenzie*, 77 Nev. at 237, 362
15 P.2d at 268.

16 There was nothing arbitrary or capricious about the City taking emergency measures to
17 board up dangerous buildings and protecting the lives of its citizens. An avalanche of evidence
18 (some of which comes from the Petitioners’ own mouths) was presented that they were fully
19 and properly notified of everything the City did, under its Municipal Code, to deal with the
20 mess they had created. The City spent \$20,000 with one contractor, and \$18,698 with another,
21 to fix problems that were years in the making by the Petitioners. They spent years ignoring
22 their properties and letting them fester until the dangers, homelessness and blight was out of
23 control. The Petitioners have no one but themselves to blame for the assessments they now
24 owe. They have produced nothing but misrepresentations, prevarications, and the unsupported
25 arguments of counsel to try to worm out of paying for their transgressions. The decision of the
26 Designee is founded upon numerous facts and documentation, and the proper application of the
27 law. It should be upheld, and the Petition dismissed.

28

1 IV.


2 CONCLUSION

3 The only issue before this Court is whether the Petitioners have met their heavy burden of
4 proving there is insufficient evidence, in the record, to support the City Council Designee's
5 findings. Because Petitioners cannot show a clear abuse of discretion by the Designee, the
6 Petition must fail.

7 DATED this 6 day of August, 2020.

8 BRYAN K. SCOTT
9 City Attorney

10 By:


11 JOHN A. CURTAS
12 Deputy City Attorney
13 Nevada Bar No. 1841
14 495 South Main Street, Sixth Floor
15 Las Vegas, NV 89101
16 Attorneys for CITY RESPONDENTS

17 CERTIFICATE OF SERVICE

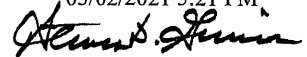
18 I hereby certify that on August 6 2020, I served a true and correct copy of the
19 foregoing RESPONDENTS' ANSWERING BRIEF through the electronic filing system of the
20 Eighth Judicial District Court of the State of Nevada, pursuant to Nevada Electronic Filing and
21 Conversion Rules, (or, if necessary, by United States Mail at Las Vegas, Nevada, postage fully
22 prepaid) upon the following:

23 Leo P. Flangas, Esq.
24 Benjamin La Luzerne, Esq.
25 FLANGAS LAW OFFICE
26 600 South Third Street
27 Las Vegas, NV 89101
28 Attorneys for Petitioners


AN EMPLOYEE OF THE CITY OF LAS VEGAS

EXHIBIT 3

EXHIBIT 3


CLERK OF THE COURT

1 DAO
2 BRYAN K. SCOTT
3 City Attorney
4 Nevada Bar No. 4381
5 By: JOHN A. CURTAS
6 Deputy City Attorney
7 Nevada Bar No. 1841
8 495 South Main Street, Sixth Floor
9 Las Vegas, NV 89101
10 (702) 229-6629 (office)
11 (702) 386-1749 (fax)
12 Email: jacurtas@lasvegasnevada.gov
13 Attorneys for CITY RESPONDENTS

DISTRICT COURT

CLARK COUNTY, NEVADA

10 SOPHIE LAU, an individual; JEFFREY
11 LAU, an individual; GOOD EARTH
12 ENTERPRISES, INC., a California
13 Corporation; and LIG LAND
14 DEVELOPMENT, LLC, a California
15 Limited Liability Company,

Petitioners,

vs.

16 CITY OF LAS VEGAS, a political
17 subdivision of the State of Nevada;
18 CAROLYN GOODMAN, as Mayor of the
19 City of Las Vegas; CITY OF LAS VEGAS
20 DEPARTMENT OF BUILDING &
21 SAFETY, CODE ENFORCEMENT
22 DIVISION, a department of the city of Las
23 Vegas; VICKI OZUNA, Code Enforcement
24 Manager; EMILY WETZSTEIN, Code
25 Enforcement Assistant; KEVIN MCOSKER,
26 director, Building and Safety department;
27 JOHN BOYER, as City Council Designee;
28 DOES 1 through X,

Respondents.

CASE NO. A-19-806797-W
DEPT. NO. VIII

DECISION AND ORDER GRANTING PARTIAL RELIEF

25 The Petition for Judicial Review and/or Writs of Certiorari, Mandamus, and Equitable
26 Relief having come on for hearing February 2, 2021, Petitioners appearing through Leo P.
27 Flangas, Esq., of the FLANGAS LAW OFFICE, Respondents appearing through John A. Curtas,
28 Deputy City Attorney, of the LAS VEGAS CITY ATTORNEY'S OFFICE, the Court having reviewed

1 the pleadings and papers on file herein and having heard the arguments of counsel, this Court
2 hereby finds as follows:

3 As to the property located at 233 South Sixth Street (APN 139-34-611-037): The City of
4 Las Vegas properly imposed a lien for its out-of-pocket costs incurred during the nuisance
5 abatement in the amount of \$22,624.70, and the City Council Designee's findings as to this
6 assessment are hereby upheld as being supported by substantial evidence.

7 As to the property located at 232 South Seventh Street (APN 139-34-611-036): The City
8 of Las Vegas properly imposed a lien for its out-of-pocket costs incurred during the nuisance
9 abatement in the amount of \$924, and the City Council Designee's findings as to this assessment
10 are hereby upheld as being supported by substantial evidence.

11 As to the property located at 615 East Carson Avenue (139-34-611-041): The City of
12 Las Vegas properly imposed a lien for its out-of-pocket costs incurred during the nuisance
13 abatement in the amount of \$23,330, and the City Council Designee's findings as to this
14 assessment are hereby upheld as being supported by substantial evidence.

15 The Court further finds that the Petitioners substantially complied with three of the four
16 conditions imposed by the City of Las Vegas's Revised Demolition Notice and Order to Comply
17 for the property known as 233 South Sixth Street (APN 139-34-611-037), for the period
18 January 19, 2019 – February 20, 2019. Due to this partial compliance, it was an abuse of
19 discretion for the City Council Designee to approve and impose the maximum daily civil penalty
20 of \$32,000.

21 The Court further finds that the Petitioners substantially complied with three of the four
22 conditions imposed on the City of Las Vegas's Revised Demolition Notice and Order to Comply
23 against the subject property known as 232 South Seventh Street (APN 139-34-611-036), for the
24 period January 22, 2019 – February 20, 2019. Due to this partial compliance, it was an abuse of
25 discretion for the City Council Designee to approve and impose the maximum daily civil penalty
26 of \$30,000.

27

28

1 Accordingly, the Court grants to Petitioners the following relief:

2 The fine assessed against the subject property known as 233 South Sixth Street (APN
3 139-34-611-037) is hereby reduced to \$250/day for violations of the City of Las Vegas' Revised
4 Demolition Notice and Order to Comply for the period January 19, 2019 – February 20, 2019,
5 for a total fine of \$7,750.

6 The fine assessed against the subject property known as 232 South Seventh Street (APN
7 139-34-611-036)) is hereby reduced to \$250/day for violations of the City of Las Vegas'
8 Revised Demolition Notice and Order to Comply for the period January 22, 2019 – February 20,
9 2019, for a total fine of \$7,000.

10 DATED this ____ day of March, 2021.

Dated this 2nd day of March, 2021

11

12

13


DISTRICT COURT JUDGE

14

SUBMITTED BY:

15


BRYAN K. SCOTT
City Attorney

3EB C98 E0DE 0A46
Jessica K. Peterson
District Court Judge

16

17

By:


JOHN A. CURTAS
Deputy City Attorney
Nevada Bar No. 1841
495 South Main Street, Sixth Floor
Las Vegas, NV 89101
Attorneys for CITY RESPONDENTS

18

19

20

21

APPROVED AS TO FORM AND CONTENT:

22

FLANGAS LAW OFFICE

23

24

By:

/s/ Leo P. Flangas
LEO P. FLANGAS, ESQ.
Nevada Bar No. 5637
BENJAMIN LA LUZERNE, ESQ.
Nevada Bar No. 12801
600 South Third Street
Las Vegas, NV 89101
Attorneys for Petitioners

25

26

27

28

Cindy Kelly

From: Leo Flangas <leo@flangaslawfirm.com>
Sent: Monday, March 1, 2021 2:52 PM
To: Cindy Kelly
Cc: John A. Curtas
Subject: RE: Proposed Order re Sophie Lau, et al. v. City of Las Vegas, et al.

CAUTION: This email originated from an External Source. Please use caution before opening attachments, clicking links, or responding to this email. Do not sign in with your City of Las Vegas account credentials.

Cindy-

The order is acceptable, you can affix my signature on the order and submit to the court.

Thanks, Leo

From: Cindy Kelly <CKelly@LasVegasNevada.GOV>
Sent: Thursday, February 18, 2021 12:21 PM
To: Leo Flangas <leo@flangaslawfirm.com>
Cc: John A. Curtas <jacurtas@LasVegasNevada.GOV>
Subject: Proposed Order re Sophie Lau, et al. v. City of Las Vegas, et al.

Hi Mr. Flangas:

Attached for your review is our proposed Decision and Order Granting Partial Relief in the referenced matter. Please advise if you have changes or whether we can affix your electronic signature to this document. Thank you.

Cindy Kelly

Legal Secretary
City Attorney's Office | Civil Litigation
702-229-2265
495 South Main Street, Sixth Floor | Las Vegas, NV 89101



lasvegasnevada.gov



This e-mail transmission, and any documents, files, or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is prohibited. If you have received this transmission in error, please immediately notify us by reply e-mail, by forwarding this to sender, or by telephone at (702) 229-6629, and destroy the original transmission and its attachments without reading or saving them in any manner. Thank you.

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Sophie Lau, Plaintiff(s)

CASE NO: A-19-806797-W

7 vs.

DEPT. NO. Department 8

8 City of Las Vegas, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Decision and Order was served via the court's electronic eFile system
13 to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/2/2021

15 John Curtas

jacurtas@lasvegasnevada.gov

16 Jeffrey Andrews

jandrews@lasvegasnevada.gov

17 CluAynne Corwin

ccorwin@lasvegasnevada.gov

18 Natasha Smith

natasha@flangaslawfirm.com

19 Leo Flangas

leo@flangaslawfirm.com

20 Flangas Documents

documents@flangaslawfirm.com

21 John Curtas

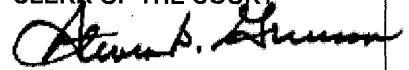
jacurtas@LasVegasNevada.GOV

22 Ben La Luzerne

ben@flangaslawfirm.com
23
24
25
26
27
28

EXHIBIT 4

EXHIBIT 4



1 NEOJ
2 BRYAN K. SCOTT
3 City Attorney
4 Nevada Bar No. 4381
5 By: JOHN A. CURTAS
6 Deputy City Attorney
7 Nevada Bar No. 1841
8 495 South Main Street, Sixth Floor
9 Las Vegas, NV 89101
10 (702) 229-6629 (office)
11 (702) 386-1749 (fax)
12 Email: jacurtas@lasvegasnevada.gov
13 Attorneys for CITY RESPONDENTS

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 SOPHIE LAU, an individual; JEFFREY
17 LAU, an individual; GOOD EARTH
18 ENTERPRISES, INC., a California
19 Corporation; and LIG LAND
20 DEVELOPMENT, LLC, a California
21 Limited Liability Company,

22 Petitioners,

23 vs.

24 CITY OF LAS VEGAS, a political
25 subdivision of the State of Nevada;
26 CAROLYN GOODMAN, as Mayor of the
27 City of Las Vegas; CITY OF LAS VEGAS
28 DEPARTMENT OF BUILDING &
SAFETY, CODE ENFORCEMENT
DIVISION, a department of the city of Las
Vegas; VICKI OZUNA, Code Enforcement
Manager; EMILY WETZSTEIN, Code
Enforcement Assistant; KEVIN MCOSKER,
director, Building and Safety department;
JOHN BOYER, as City Council Designee;
DOES 1 through X,

Respondents.

CASE NO. A-19-806797-W
DEPT. NO. VIII

**NOTICE OF ENTRY OF DECISION
AND ORDER GRANTING PARTIAL RELIEF**

TO: SOPHIE LAU, JEFFREY LAU, GOOD EARTH ENTERPRISES, INC., and LIG LAND
DEVELOPMENT, LLC, Petitioners, and


TO: LEO P. FLANGAS, ESQ., and BENJAMIN LA LUZERNE, ESQ., their attorneys:

1 PLEASE TAKE NOTICE that a DECISION AND ORDER GRANTING PARTIAL
2 RELIEF was entered in the above-entitled matter on March 2, 2021, a copy of which is attached
3 hereto.

4 DATED this 3 day of March, 2021.

5 BRYAN K. SCOTT
6 City Attorney

7 By:

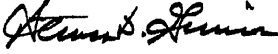

8 JOHN A. CURTAS
9 Deputy City Attorney
10 Nevada Bar No. 1841
11 495 South Main Street, Sixth Floor
12 Las Vegas, NV 89101
13 Attorneys for CITY OF LAS VEGAS

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on March 3, 2021, I served a true and correct copy of the foregoing
16 NOTICE OF ENTRY OF DECISION AND ORDER GRANTING PARTIAL RELIEF through
17 the electronic filing system of the Eighth Judicial District Court of the State of Nevada, pursuant
18 to Nevada Electronic Filing and Conversion Rules, (or, if necessary, by United States Mail at Las
19 Vegas, Nevada, postage fully prepaid) upon the following:

20 Leo P. Flangas, Esq.
21 Benjamin La Luzerne, Esq.
22 FLANGAS LAW OFFICE
23 600 South Third Street
24 Las Vegas, NV 89101
25 Attorneys for Petitioners

26 
27 AN EMPLOYEE OF THE CITY OF LAS VEGAS
28


CLERK OF THE COURT

1 DAO
2 BRYAN K. SCOTT
3 City Attorney
4 Nevada Bar No. 4381
5 By: JOHN A. CURTAS
6 Deputy City Attorney
7 Nevada Bar No. 1841
8 495 South Main Street, Sixth Floor
9 Las Vegas, NV 89101
10 (702) 229-6629 (office)
11 (702) 386-1749 (fax)
12 Email: jacurtas@lasvegasnevada.gov
13 Attorneys for CITY RESPONDENTS

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 SOPHIE LAU, an individual; JEFFREY
11 LAU, an individual; GOOD EARTH
12 ENTERPRISES, INC., a California
13 Corporation; and LIG LAND
14 DEVELOPMENT, LLC, a California
15 Limited Liability Company,

16 Petitioners,

17 vs.

18 CITY OF LAS VEGAS, a political
19 subdivision of the State of Nevada;
20 CAROLYN GOODMAN, as Mayor of the
21 City of Las Vegas; CITY OF LAS VEGAS
22 DEPARTMENT OF BUILDING &
23 SAFETY, CODE ENFORCEMENT
24 DIVISION, a department of the city of Las
25 Vegas; VICKI OZUNA, Code Enforcement
26 Manager; EMILY WETZSTEIN, Code
27 Enforcement Assistant; KEVIN MCOSKER,
28 director, Building and Safety department;
JOHN BOYER, as City Council Designee;
DOES 1 through X,

Respondents.

CASE NO. A-19-806797-W
DEPT. NO. VIII

DECISION AND ORDER GRANTING PARTIAL RELIEF

25 The Petition for Judicial Review and/or Writs of Certiorari, Mandamus, and Equitable
26 Relief having come on for hearing February 2, 2021, Petitioners appearing through Leo P.
27 Flangas, Esq., of the FLANGAS LAW OFFICE, Respondents appearing through John A. Curtas,
28 Deputy City Attorney, of the LAS VEGAS CITY ATTORNEY'S OFFICE, the Court having reviewed

1 the pleadings and papers on file herein and having heard the arguments of counsel, this Court
2 hereby finds as follows:

3 As to the property located at 233 South Sixth Street (APN 139-34-611-037): The City of
4 Las Vegas properly imposed a lien for its out-of-pocket costs incurred during the nuisance
5 abatement in the amount of \$22,624.70, and the City Council Designee's findings as to this
6 assessment are hereby upheld as being supported by substantial evidence.

7 As to the property located at 232 South Seventh Street (APN 139-34-611-036): The City
8 of Las Vegas properly imposed a lien for its out-of-pocket costs incurred during the nuisance
9 abatement in the amount of \$924, and the City Council Designee's findings as to this assessment
10 are hereby upheld as being supported by substantial evidence.

11 As to the property located at 615 East Carson Avenue (139-34-611-041): The City of
12 Las Vegas properly imposed a lien for its out-of-pocket costs incurred during the nuisance
13 abatement in the amount of \$23,330, and the City Council Designee's findings as to this
14 assessment are hereby upheld as being supported by substantial evidence.

15 The Court further finds that the Petitioners substantially complied with three of the four
16 conditions imposed by the City of Las Vegas's Revised Demolition Notice and Order to Comply
17 for the property known as 233 South Sixth Street (APN 139-34-611-037), for the period
18 January 19, 2019 – February 20, 2019. Due to this partial compliance, it was an abuse of
19 discretion for the City Council Designee to approve and impose the maximum daily civil penalty
20 of \$32,000.

21 The Court further finds that the Petitioners substantially complied with three of the four
22 conditions imposed on the City of Las Vegas's Revised Demolition Notice and Order to Comply
23 against the subject property known as 232 South Seventh Street (APN 139-34-611-036), for the
24 period January 22, 2019 – February 20, 2019. Due to this partial compliance, it was an abuse of
25 discretion for the City Council Designee to approve and impose the maximum daily civil penalty
26 of \$30,000.

27

28

1 Accordingly, the Court grants to Petitioners the following relief:

2 The fine assessed against the subject property known as 233 South Sixth Street (APN
3 139-34-611-037) is hereby reduced to \$250/day for violations of the City of Las Vegas' Revised
4 Demolition Notice and Order to Comply for the period January 19, 2019 – February 20, 2019,
5 for a total fine of \$7,750.

6 The fine assessed against the subject property known as 232 South Seventh Street (APN
7 139-34-611-036)) is hereby reduced to \$250/day for violations of the City of Las Vegas'
8 Revised Demolition Notice and Order to Comply for the period January 22, 2019 – February 20,
9 2019, for a total fine of \$7,000.

10 DATED this ____ day of March, 2021.


Dated this 2nd day of March, 2021

11
12 
13 DISTRICT COURT JUDGE

14 SUBMITTED BY:

15 BRYAN K. SCOTT
16 City Attorney

3EB C98 E0DE 0A46
Jessica K. Peterson
District Court Judge

17 By: 
18 JOHN A. CURTAS
19 Deputy City Attorney
20 Nevada Bar No. 1841
495 South Main Street, Sixth Floor
Las Vegas, NV 89101
Attorneys for CITY RESPONDENTS

21 APPROVED AS TO FORM AND CONTENT:

22 FLANGAS LAW OFFICE

23
24 By: /s/ Leo P. Flangas
25 LEO P. FLANGAS, ESQ.
26 Nevada Bar No. 5637
27 BENJAMIN LA LUZERNE, ESQ.
28 Nevada Bar No. 12801
600 South Third Street
Las Vegas, NV 89101
Attorneys for Petitioners

Cindy Kelly

From: Leo Flangas <leo@flangaslawfirm.com>
Sent: Monday, March 1, 2021 2:52 PM
To: Cindy Kelly
Cc: John A. Curtas
Subject: RE: Proposed Order re Sophie Lau, et al. v. City of Las Vegas, et al.

CAUTION: This email originated from an External Source. Please use caution before opening attachments, clicking links, or responding to this email. Do not sign-in with your City of Las Vegas account credentials.

Cindy-

The order is acceptable, you can affix my signature on the order and submit to the court.

Thanks, Leo

From: Cindy Kelly <CKelly@LasVegasNevada.GOV>
Sent: Thursday, February 18, 2021 12:21 PM
To: Leo Flangas <leo@flangaslawfirm.com>
Cc: John A. Curtas <jacurtas@LasVegasNevada.GOV>
Subject: Proposed Order re Sophie Lau, et al. v. City of Las Vegas, et al.

Hi Mr. Flangas:

Attached for your review is our proposed Decision and Order Granting Partial Relief in the referenced matter. Please advise if you have changes or whether we can affix your electronic signature to this document. Thank you.

Cindy Kelly

Legal Secretary
City Attorney's Office | Civil Litigation
702-229-2265
495 South Main Street, Sixth Floor | Las Vegas, NV 89101



lasvegasnevada.gov



This e-mail transmission, and any documents, files, or previous e-mail messages attached to it may contain confidential information that is legally privileged. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is prohibited. If you have received this transmission in error, please immediately notify us by reply e-mail, by forwarding this to sender, or by telephone at (702) 229-6629, and destroy the original transmission and its attachments without reading or saving them in any manner. Thank you.

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Sophie Lau, Plaintiff(s)

CASE NO: A-19-806797-W

7 vs.

DEPT. NO. Department 8

8 City of Las Vegas, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Decision and Order was served via the court's electronic eFile system
13 to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 3/2/2021

15 John Curtas

jacurtas@lasvegasnevada.gov

16 Jeffrey Andrews

jandrews@lasvegasnevada.gov

17 CluAynne Corwin

ccorwin@lasvegasnevada.gov

18 Natasha Smith

natasha@flangaslawfirm.com

19 Leo Flangas

leo@flangaslawfirm.com

20 Flangas Documents

documents@flangaslawfirm.com

21 John Curtas

jacurtas@LasVegasNevada.GOV

22 Ben La Luzerne

ben@flangaslawfirm.com
23
24
25
26
27
28