IN THE SUPREME COURT OF THE STATE OF 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,

Appellants,

v.

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 of Las Vegas Council Designee; DOES I through X.

Respondents.

CASE NO.: 82720

(EIGHTH JUDICIAL DISTRICT

COURT Case No. A-19-801970-W)

APPELLANTS' FIRST AMENDED OPENING BRIEF

ANDREW H. PASTWICK, ESQ.
Nevada Bar No. 09146
Law Office of Andrew H. Pastwick, LLC
1810 E. Sahara Avenue, Suite 120
Las Vegas, Nevada 89104
(702)866-9978

NRCP Rule 26.1 Disclosure

The Undersigned counsel of record certifies that the following are persons and entitles as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal. Appellants Sophie Lau, Jeffrey Lau, Good Earth Enterprises, Inc., and LIG Land Development, LLC have no parent corporations, no stock, no corporate affiliation, and are present under their true names. They are represented by Andrew H. Pastwick, Esq. and were represented by Leo P. Flangas, Esq. and Benjamin La Luzerne, Esq, and expects to be represented by no other counsel in this matter.

Dated this 20 day of July, 2021.

Law Office of Andrew H. Pastwick L.L.C.

By: _____

Andrew H. Pastwick, Esq.
Nevada Bar No. 009146
1810 E. Sahara Avenue, Suite 120
Las Vegas, Nevada 89104

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Case:

Statute:

I. JURISDICTIONAL STATEMENT

This Action involves an appeal from a Petition for Judicial Review relating to the fines and penalties imposed against Appellants SOPHIE LAU, JEFFREY LAU, GOOD EARTH ENTERPRISES, INC. ("Good Earth") and LIG LAND DEVELOPMENT, LLC ("LIG") (collectively referred to as "Appellants") by Respondents CITY OF LAS VEGAS, CAROLYN GOODMAN, CITY OF LAS VEGAS DEPARTMENT OF BUILDING & SAFETY CODE ENFORCEMENT DIVISION, VICKI OZUNA, EMILY WETZSTEIN, KEVIN MCOSKER and JOHN BOYER (collectively referred to as "Respondents").

On November 18, 2019, the Respondents issued a Decision (the "Administrative Decision") providing that Appellants were responsible for paying approximately $110,000 for abatement fees, fines, and administrative costs in the following cases: 1. Case Number CE-195118 (the "El Cid Case"), pertaining to the property located 233 S. 6th Street, Las Vegas, Nevada 89101(APN 139-34-611-037) ("El Cid"), 2. Case Number CE-195119 (the "Annex Case"), pertaining to the property located 232 S. 7th Street, Las Vegas, Nevada 98101 (APN 139-34-611-036) (the "El Cid Annex"), and 3. Case Number CE-195540 (the "MI Matter") pertaining to the properties located at 615 E. Carson, Las Vegas, Nevada 89101 (139-34-611-041) (referred to as the "MI Property"). (Vol. I 0086-0091). On December 11, 2019, Appellants filed a Petitioner for Judicial Review and/or Writs of Certiorari,

3. Whether the District Court abused its discretion in determining that a portion of the Respondents' imposed fees for abatement were reasonable and necessary.

4. Whether the District Court abused its discretion in determining that the imposed fines and fees against the Appellants were reasonable and in accordance with applicable law.

IV. STATEMENT OF THE CASE

This Appeal arises from a District Court's review of an administrative decision by the Respondents to impose abatement fees and fines against the Appellants. The abatement fees and fines were related to several buildings that Appellants owned in downtown Las Vegas, Nevada. Due to vagrancy and fires, the Respondents requested that Appellants demolish these buildings. (Vol. I 0086-0091). The underlying administrative hearing was brought by Respondents to recover fees incurred in securing these properties and fine the Appellants for failure to abide by certain notices that Respondents gave to Appellants. (Vol. I 0086-0091).

At the conclusion of the Administrative Hearing, the Designee issued an Order granting the relief that the Respondents had requested. (Vol. I 0086-0091). Per the Order, the Designee fined the Appellants the following:

Revised Demolition Notice and Order to Comply. (Vol. IX 0015-0021). More specifically, the District Court modified the fines as follows:

Property	Lien for Out of Pocket Costs	Lien for Civil Penalties
El Cid	$22,624.70	$7,750.00
Annex Case	$924.00	$7,000.00
MI Properties	$23,330.00	$150.00

On March 29, 2021, Appellants filed their Notice of Appeal.

V. STATEMENT OF FACTS

1. History of Properties

Appellants SOPHIE LAU and JEFFREY LAU are the owners of LIG and GOOD EARTH, which own the Subject Properties. (Vol. I 0058-0063, Vol. IV 0294-0299, Vol. V 0327-0332). Until 2006, 233 S. 6th Street was the location of the El Cid Hotel and 232 S. 7th Street was the El Cid Annex. (Vol. II 0120-0132). 615 E. Carson Ave. was known as MI. (Vol. III 0178). From 2006 until 2109, these buildings were vacant. While these buildings were vacant, the Appellants hired Robert Mann to serve as the caretaker for these buildings. In February 2019, the Respondents notified Appellants that Mr. Mann could no longer be on the properties. (Vol. III 0197).

I. JURISDICTIONAL STATEMENT

This Action involves an appeal from a Petition for Judicial Review relating to the fines and penalties imposed against Appellants SOPHIE LAU, JEFFREY LAU, GOOD EARTH ENTERPRISES, INC. ("Good Earth") and LIG LAND DEVELOPMENT, LLC ("LIG") (collectively referred to as "Appellants") by Respondents CITY OF LAS VEGAS, CAROLYN GOODMAN, CITY OF LAS VEGAS DEPARTMENT OF BUILDING & SAFETY CODE ENFORCEMENT DIVISION, VICKI OZUNA, EMILY WETZSTEIN, KEVIN MCOSKER and JOHN BOYER (collectively referred to as "Respondents").

On November 18, 2019, the Respondents issued a Decision (the "Administrative Decision") providing that Appellants were responsible for paying approximately $110,000 for abatement fees, fines, and administrative costs in the following cases: 1. Case Number CE-195118 (the "El Cid Case"), pertaining to the property located 233 S. 6th Street, Las Vegas, Nevada 89101(APN 139-34-611-037) ("El Cid"), 2. Case Number CE-195119 (the "Annex Case"), pertaining to the property located 232 S. 7th Street, Las Vegas, Nevada 98101 (APN 139-34-611-036) (the "El Cid Annex"), and 3. Case Number CE-195540 (the "MI Matter") pertaining to the properties located at 615 E. Carson, Las Vegas, Nevada 89101 (139-34-611-041) (referred to as the "MI Property"). (Vol. I 0086-0091). On December 11, 2019, Appellants filed a Petitioner for Judicial Review and/or Writs of Certiorari,

Mandamus and Equitable Relief in the Eighth Judicial District. (Vol. 1 0001-0025). On February 2, 2020, the Honorable Judge Peterson heard Petitioners' Petition for Judicial Review and on March 2, 2021 issued a Decision and Order Granting Partial Relief (the "District Court Order") in which the fines were reduced but not eliminated. (Vol. IX 0001-0021). On March 29, 2021, Appellants filed the Notice of Appeal. This appeal is from a final order.

II. ROUTING STATEMENT

The matter appears to be properly presumptively retained by the Nevada Supreme Court per Nevada Rules of Appellate Procedure ("NRAP") 17(a)(11) for matters raising as a principal issue of question of first impression involving what procedures a governmental administrative agency must abide by during an administrative hearing.

III. STATEMENT OF ISSUES FOR REVIEW

Appellants respectfully submits the following Statement of Issue for Review:

1. Whether the District Court abused its discretion in determining that the Respondents did not act arbitrarily and capriciously and without substantial evidence in finding against Appellants and issuing fines and fees.

2. Whether the District Court abused its discretion in determining that the Respondents did not violate Appellants' due process rights.

3. Whether the District Court abused its discretion in determining that a portion of the Respondents' imposed fees for abatement were reasonable and necessary.

4. Whether the District Court abused its discretion in determining that the imposed fines and fees against the Appellants were reasonable and in accordance with applicable law.

IV. STATEMENT OF THE CASE

This Appeal arises from a District Court's review of an administrative decision by the Respondents to impose abatement fees and fines against the Appellants. The abatement fees and fines were related to several buildings that Appellants owned in downtown Las Vegas, Nevada. Due to vagrancy and fires, the Respondents requested that Appellants demolish these buildings. (Vol. I 0086-0091). The underlying administrative hearing was brought by Respondents to recover fees incurred in securing these properties and fine the Appellants for failure to abide by certain notices that Respondents gave to Appellants. (Vol. I 0086-0091).

At the conclusion of the Administrative Hearing, the Designee issued an Order granting the relief that the Respondents had requested. (Vol. I 0086-0091). Per the Order, the Designee fined the Appellants the following:

Property	Lien for Out of Pocket Costs	Lien for Civil Penalties
El Cid	$22,624.70	$32,000.00
Annex Case	$924.00	$30,000.00
MI Properties	$23,330.00	$150.00

In reaching the decision, the Designee committed an abuse of discretion by not taking into consideration that Appellants had complied with three of the four requirements. Furthermore, the Designee made several incorrect legal presumptions regarding Appellants standing to appear at the proceeding and took into consideration evidence presented by the Respondents after the Administrative Hearing was concluded. Subsequently, the Appellants filed a Petition for Review with the Eighth Judicial District Court based on the argument that the Designee committed an abuse of discretion.

On February 2, 2021, the District Court heard Appellants' Request for Hearing on Petition for Judgment Review for Hearing on Petition for Judicial Review and/or Writs of Certiorari, Mandamus and Equitable Relief. (Vol. IX 0022—0041). On March 2, 2021, the District Court issued a Decision and Order Granting Partial Relief. (Vol. IX 0015-0021). The District Court reduced the fines and penalties against Appellants to $61,628.70 finding that Appellants had substantially complied with the conditions imposed on the City of Las Vegas'

Revised Demolition Notice and Order to Comply. (Vol. IX 0015-0021). More specifically, the District Court modified the fines as follows:

Property	Lien for Out of Pocket Costs	Lien for Civil Penalties
El Cid	$22,624.70	$7,750.00
Annex Case	$924.00	$7,000.00
MI Properties	$23,330.00	$150.00

On March 29, 2021, Appellants filed their Notice of Appeal.

V. STATEMENT OF FACTS

1. History of Properties

Appellants SOPHIE LAU and JEFFREY LAU are the owners of LIG and GOOD EARTH, which own the Subject Properties. (Vol. I 0058-0063, Vol. IV 0294-0299, Vol. V 0327-0332). Until 2006, 233 S. 6th Street was the location of the El Cid Hotel and 232 S. 7th Street was the El Cid Annex. (Vol. II 0120-0132). 615 E. Carson Ave. was known as MI. (Vol. III 0178). From 2006 until 2109, these buildings were vacant. While these buildings were vacant, the Appellants hired Robert Mann to serve as the caretaker for these buildings. In February 2019, the Respondents notified Appellants that Mr. Mann could no longer be on the properties. (Vol. III 0197).

On or about December 6, 2018, the Respondents inspected El Cid and then sent requests for abatement quotes to contractors on December 10, 2018, which were due December 17, 2018. (Vol. I 0099-0100 - Vol. II 0101-0105). However, there is no evidence in the record that notice of abatement was sent to Appellants pursuant to LVMC § 9.04.050(B). Instead, the El Cid Case Report indicates that someone gave verbal notice to Mr. Mann on or about December 6, 2018.

Unfortunately, on December 17, 2018, there was a fire at El Cid and the Annex properties. (Vol. I 0099-0100 - Vol. II 0101-0105). Respondents hired contractor CGI to begin abatement on or about December 19, 2018 and the abatement was completed on or about December 20, 2018. (Vol. I 0099-0100 - Vol. II 0101-0105).

On January 8, 2019, the El Cid Case Report states that "44" posted Notice and Order on "front building board." (Vol. I 0099-0100 - Vol. II 0101-0105). This is not adequate notice under Las Vegas Municipal Code ("LVMC") § 9.04.050 (B), which specifically states "A notice of violation may be served ... by posting the notice in a conspicuous place on the property; provided however, that service by posting shall only be used when the authorized official cannot determine the last known address of the owner or responsible party." The addresses for Good Earth Enterprises, Inc. is in San Francisco, California and the ownership has not changed

in many years. (Vol. I 0058-0063, Vol. IV 0294-0299, Vol. V 0327-0332). Any proper notice needed to be sent to Good Earth Enterprise, Inc.

The Case Report also indicates that on January 8, "44" spoke to Bob Mann (the owner representative) and obtained Mr. Mann's address. (Vol. I 0099-0100 - Vol. II 0101-0105). Ostensibly, Mr. Mann as owner representative, whose address was known at least as of January 8, 2019, could have been considered a responsible party to whom notice was appropriate. (Vol. I 0099-0100 - Vol. II 0101-0105).

The Respondents state in their "Staff Report," that it provided notice to Owner on January 10, 2019, for the El Cid Annes Property. (Vol. VII 0112-0119). However, it makes no mention of how the Respondents provided notice to Owner. The Staff Report is silent on that subject, and there is no evidence of notice being sent certified mail with return receipt requested, or personally served.

From the notices provided by the Respondents, there is no indication which dates incurred penalties. It was until the Administrative Hearing that Appellants learned from Respondents that fines were assessed at $1,000 a day from January 18, 2019 to February 20, 2019 for El Cid ($32,000) and from January 20, 2019 to February 20, 2019 for the Annex ($30,000). (Vol. III 0201-0202, discussing that penalties started on the 11th day after the Notice and Order until the City Council Meeting on February 20, 2019).

The limited documentation that the Respondents provided for the Administrative Hearing is even more limited for the MI Property. All that exists is a case report (Vol. VI 0056), an almost illegible invoice from Junkman for $20,000 that does not have any breakdown of costs or work performed (Vol. V 0324), and Notice of Hearing Dated August 8, 2019. (Vol. VI 0058). Based upon the documents submitted, no notice was ever provided to Owner.

After the fire occurred at the MI property, on or about February 22, 2019, the Respondents found the owner of record through the California Secretary of State's website, but never tendered notice to Owner. (Vol. VII 0062-0064). Instead, Respondents proceeded with an alleged "Emergency Board Up" on February 25, 2019. (Vol. VII 0062-0064). There is no evidence whatsoever that the Respondents posted Notice of Hearing at the MI Property, personally served it, or sent it to anyone via certified mail, return receipt requested under LVMC § 9.04.050.

2. Prior to the Administrative Hearing

On or about September 17, 2019, during a telephone call with Respondent OZUNA, then-counsel for Appellants requested all of the documentary evidence that the Respondents planned to introduce at the Administrative Hearing and requested the hearing be continued to allow for the exchange of documents that the parties intended to use. Respondent OZUNA indicated that she had already continued the

Administrative Hearing for approximately seven months and was not inclined to continue the hearing again. Appellants' request for documents was also made in writing via e-amil dated September 17, 2019. (Vol. VI 0038). On September 18, 2019 between 4:58 and 5:00 p.m., Respondents' office provided Appellants' counsel with six separate e-mails that contained all of the written evidence that the Respondents planned ot introduce at the Hearing. (Vol. VI 0038-0060- Vol. VII 0061-0140- Vol. VIII 0141-0201).

3. Administrative Hearing

The Administrative Hearing was held on September 25, 2019 and was overseen by City Council designee John Boyer ("Designee" or "Mr. Boyer"). For the Respondents, Respondents VICKI OZUNA, Code Enforcement Section Manager and EMILY WETZSTEIN, Administrative Support Assistant appeared, and Appellants were represented by Leo Flangas and Ben La Luzerne; SOPHIE LAU appeared as owner of Appellants LIG LAND DEVELOPMENT and GOOD EARTH ENTERPRISES, INC., and Robert Mann appeared as a witness for Appellants. (Vol. III 0176).

At the hearing, Appellants argued that the fees and fines for abatement necessarily must be predicated upon proper notice under LVMC § 9.04.050 and that the Respondents had failed to show that it followed the requirements for such

notices. When Appellants raised such deficiencies, the Respondents acknowledged that they had not provided Appellants with all of the documents related to this dispute and offered to continue the Hearing to another date. (Vol. III 0191). However, because Appellant SOPHIE LAU is elderly and had traveled from San Francisco to Las Vegas to attend this hearing in person, the Appellants requested that the Administrative Hearing proceed as scheduled. (Vol. III 0193). After the conclusion of the hearing, Respondents provided supplemental exbibits to the Designee. (Vol. I 0090).

The Administrative Hearing focused on two notices. The January 7, 2019 Notice and Order for the El Sid Property and the January 10, 2019 Notice and Order for the El Cid Annex Property and whether Appellants complied with these Notices. (Vol. V 0341-0355). The January 7, 2019 Notice and Order required compliance by January 18, 2019 and the January 10, 2019 Notice and Order required compliance by January 22, 2019. (Vol. V 0341-0355). Both notices required the following items to be completed:

1. Remove all palm tree landscaping from the property to prevent access into the building.
2. Hire a licensed security firm to provide 24 hour security to prevent access into the substandard/dangerous building.
3. Fence the entire perimeter of the Property with security fencing to prevent access into the building.

4. Contact City Code Enforcement and propose and agree upon an action plan and timeframe acceptable to City for you to hire a Nevada licensed contractor to **obtain all required demolition permits no later than sixty (60) days from the date of this Notice, demolish the building, and remove all demolition debris, refuse and waste** from the Property.

During the Administrative Hearing, Appellants testified that they had attempted to comply with all four requirements contained in the notices. For purposes of simplicity, the four requirement are separated as follows: (1) removal of palm trees, (2) 24-hour security, (3) Perimeter Fence and (4) Demolition.

Palm Tree Removal

The parties agreed during that the palm trees were timely removed before January 18, 2019. (Vol. III 0216: 1803-1839).

24- hour Security

During the administration hearing there was a disagreement on whether the notice required that security be onsite for 24 hours a day. Appellants testified that initially they were under the impression that they initially only had to hire security to periodically inspect the property. However, once Appellants were advised that the Respondents wanted onsite security, Appellants hired 24-hour onsite security. (Vol. III 0216:1841- 0223:2137).

Perimeter Fence

The parties agreed that the perimeter fencing was not installed until February 21, 2019 when the properties were being prepared for demolition. (Vol. III 0224:2202).

Demolition

During the Administrative Hearing, the parties disagreed on whether the notices required that Appellants provide Respondents notice of their intent to demolish the properties without ten days of receiving the notice and whether the notice required that the buildings be demolished within sixty days or whether Appellants merely had to have started the process of demolishing the buildings within sixty days. (Vol. III 0225:209-0231:2514).

Appellants testified that within 10 days of receiving the Notices they advised the Respondents that they were in process of entering into a contract with a contractor to demolish the buildings and had hired a contractor to begin the demolition within sixty days of receiving the Notice. (Vol. III 0225:209-0231:2514).

After the Hearing, the Designee contacted Appellants to inquire as to the business entities' standing with the Nevada Secretary of State. (Vol VIII 0203-0204). Appellants responded by admitting that the business entities were not in good

standing however good standing was not a prerequisite to defending an action to impose a lien against real property. (Vol II 0203-0204).

4. Abatement Hearing and Lien Approval Decision (the "Designee's Decision")

On November 11, 2019, the Designee issued his Amended Decision Cases 1955410, 195118, 19519 Abatement Hearing and Lien Approval Decision ("Administrative Order"). (Vol. I 0086-0091). Per the Order, the Designee fined the Appellants the following:

Property	Lien for Out of Pocket Costs	Lien for Civil Penalties
El Cid	$22,624.70	$32,000.00
Annex Case	$924.00	$30,000.00
MI Properties	$23,330.00	$150.00

As part of this Administrative Order, the Designee held that Appellant LAU was not allowed to appear in the proceedings as a representative. (Vol. I 0089). Furthermore, the Designee acknowledges that he considered evidence presented to him after the conclusion of the hearing. (Vol. I 0090).

5. District Court Case

On December 11, 2019, Appellants filed a Petition for Review with the Eighth Judicial District Court. (Vol. I 0001-0025). On February 2, 2021, the Honorable Judge Peterson heard Appellants' Request for Hearing on Petition for Judgment

Review for Hearing on Petition for Judicial Review and/or Writs of Certiorari, Mandamus and Equitable Relief. (Vol. IX 0022-0041). After hearing arguments from both sides, Judge Peterson stated:

> And one of the biggest questions that I had, which was finally answered when I went back and looked at the transcript of the proceedings and was a question that Mr. Luzerne had during the hearing himself, was when was – when were these fines started? And when were they – when did they go to?
>
> **And based on the hearing transcript, they began to assess them – the first one began on January the 19th and stopped on February the 20th, which was the date of the hearing. And the other one started on January 22nd . They basically said that they took them from the time was for compliance underneath the notices. And the time for compliance on one was January the 19th. The time for compliance on the other was January the 22nd**. Based on both of those notices, there were four things that needed to be done.
>
> The palm trees needed to be removed. They needed to hire a licensed security firm. Then needed to fence off the perimeter of the property, and they needed to obtain all the demolition permits within 60-days from the date of the notice, so by March the 22nd.
>
> Mr. Curtin is correct that I am required, under the statute and under the cases cited, to affirm the decision if there is substantial evidence. **And I'm only allowed to change the Petition, or change the decision if the decision by the designee was arbitrary or capricious. An act is arbitrary and capricious if it's taken without regard to the facts.**
>
> In this case, I find as follows: there were four things that needed to be done: Removal of the palm trees, hire a licensed security firm, fence off the perimeter of the property and obtain all demolition permits within 60-days from the date of notice. Ms. Lau did, in fact, remove all the palm trees. She did, in fact, hire a licensed security firm. That was evident by the contract that was entered into on January the 16th. She did, in fact, obtain all the demolition permits 60-days from the date of the notice.

> Therefore, the only think that was not done in accordance with the requirements was to fence off the perimeter of the property. Everything else was done prior to that January 19th date and that January 22nd date. I, therefore find that the act of the designee was, in fact, arbitrary as it related the fines, because the actions were, in fact, taken other than fencing off the perimeter of the property. To the extent that it's a thousand dollar fine if – per day if things are not done, and there were four actions here, I can change those fines. I do have the right to do that.
>
> **Therefore, I'm going to impose the fine at $250 per day and reduce the fines. Those fires are going to go from January the 22nd to February the 20th. So that would be 28 days at $250. And the other one will go from January the 19th to February the 20th, so that would be 31 days at $250**.
>
> All of the assessments, as far as what the City had to do to board up are supported, because these were emergency actions, and therefore, could be taken without notice. And so, that is my decision. (emphases added). (Vol. IX 0038:17-0040:13).

The Court did not address the issues regarding whether Appellants had standing to appear at the Administrative Hearing or whether Appellants' due process rights were violated by the Respondents' failure to provide their documents to Appellants prior to the Administration Hearing.

6. District Court order

On March 2, 2021, the District Court issued a Decision and Order Granting Partial Relief. The District Court reduced the fines and penalties against Appellants to $61,778.70, finding that Appellants had substantially complied with the conditions imposed on the City of Las Vegas's Revised Demolition Notice and Order to Comply. (Vol. IX 0017-0021).

VI. THE STATEMENT OF THE STANDARD OF REVIEW

1. THE REVIEW OF A GOVERNMENTAL AGENCIES DECISION IS LIMITED TO THE RECORD.

The court's review of an administrative decision is " 'limited to a determination of whether the agency or municipality ... committed an abuse of discretion.'" Stratosphere Gaming Corp. v. Las Vegas, 120 Nev. 523, 528, 96 P.3d 756, 760 (2004) (*quoting* City of Reno v. Harris, 111 Nev. 672, 677, 895 P.2d 663, 666 (1995)). In making this determination, the Court is "limited to the record made before the City" and must uphold a discretionary act that is supported by substantial evidence. City of Las Vegas v. Laughlin, 111 Nev. 557, 558, 893 P.2d 383, 384 (1995) (defining substantial evidence as that which "a reasonable mind might accept as adequate to support a conclusion" (internal quotations omitted) Nev. Power Co. v. City of Henderson, 381 P.3d 645(Table) (Nev. 2012).

2. IN REVIEWING THE DECISION FROM THE ADMINISTRATIVE HEARING, THE COURT'S SCOPE OF REVIEW IS TO DETERMINE WHETHER THE AGENCY COMMITTED AN ABUSE OF DISCRETION.

The Court's standard for review of an administrative hearing is whether the agency committed an abuse of discretion. The court's role in reviewing an administrative decision is identical to that of the district court." Nevada State Bd. of Nursing v. Merkley, 113 Nev. 659, 664, 940 P.2d 144, 147 (1997). When a district court has reviewed an agency decision without taking additional evidence and the

decision is appealed to this court, the scope of review is usually limited to a determination of whether the agency or municipality which made the decision appealed from committed an abuse of discretion. *See* Stratosphere Gaming Corp. v. Las Vegas, 120 Nev. 523, 96 P.3d 756, (2004). A decision that lacks support in the form of substantial evidence is arbitrary or capricious and is an abuse of discretion. Tighe v. Las Vegas Metro. Police Dep't., 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994).

The Court has defined "substantial evidence" as "that which "`a reasonable mind might accept as adequate to support a conclusion. State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986) (*quoting* Richardson v. Perales, 402 U.S. 389, 401, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971). The question thus becomes whether the agency's decision was based on substantial evidence; if based on substantial evidence neither this court, nor the district court, may substitute its judgment for the administrator's determination. Leeson v. Basic Refractories, 101 Nev. 384, 705 P.2d 137, 138 (1985). Yet in spite of this standard, this court is free to examine purely legal questions decided at the administrative level." Redmer v. Barbary Coast Hotel & Casino, 110 Nev. 374, 378, 872 P.2d 341 (1994).

No presumption of validity attaches to the decision of a district court that does not hear additional evidence in reviewing a decision made by a municipality. City of Reno v. Harris, 111 Nev. 672, 895 P.2d 663 (1995). However, where the district

court takes additional evidence, the scope of review is limited to a determination of whether the district court committed an abuse of discretion or made an error of law. Id.

In City Council of City of Reno v. Irvine, (cited *supra*) the Court tried to sum up the arduous burden that an Appellant has in overturning an administration action, stating:

> Expressions like "lack of substantial evidence," "arbitrary and capricious," "sufficient reason," and "abuse of discretion" recur throughout these cases at the administrative, district court and appellate levels. They are useful in describing the need for local governmental decision to be made on a rational basis. City charters grant a very broad discretion to city boards in granting or denying licenses and permits; but this discretion is not totally without limits. City boards may not, for example, deny an application for no reason at all (arbitrarily) or for an improper reason (discriminatory, e.g.). When they do, they are said to have "abused" their discretion. Thus, when an applicant can persuade the district court that there is "no substantial evidence" to support a denial decision or simply that there is no reason for the denial, the district court may order the license or permit to be issued (there being no reason why it should not) or may remand to the city authority for further proceedings. Given the foregoing, given the presumption of propriety of the governmental action, and given the heavy burden placed upon a disappointed applicant, there is no legal requirement that a city board "explain" a denial or that it expressly state or enumerate "grounds" in the administrative record. The more, however, that the city board can set forth, in its record, straightforward reasons and grounds for the decision, the less likely is a court to interfere with the normal course of city business.

City Council of City of Reno v. Irvine, 102 Nev. 277, 279, 721 P.2d 371, 372 (1986) fn. 4

VII. SUMMARY OF THE ARGUMENT

In this dispute, the Administrative Decision against the Appellants was arbitrary and capricious. The Designee's decision was flawed for three reasons. The Designee incorrectly ruled that the Appellants did not have standing to contest the proceedings. The Designee took into consideration evidence that was submitted by the Respondents after the hearing. Finally, the Designee failed to take into consideration that the Appellants had timely completed three of the four requirements that the Respondents had requested. Based on these errors, the Appellants respectfully request that this Court determines that the Administrative Decision must be overturned.

VIII. ARGUMENT

1. APPELLANTS HAVE STANDING TO APPEAR IN THESE PROCEEDINGS

Appellants have standing to appear in these proceedings. Under NRS 80.055(6), a foreign corporation can defend themselves from litigation in Nevada. More specifically Nevada Revised Statutes ("NRS") 80.055(6) states:

> **NRS 80.055 Penalty for failure to comply with requirements for qualification; enforcement; regulations.**
>
> ***
>
> 6. The **failure** of a corporation to comply with the provisions of NRS 80.010 to 80.040, inclusive, does not impair the validity of any contract or act of the corporation, **or prevent the corporation from defending**

> any action, suit or proceeding in any court of this State. (emphases added)

This Court has held that it is elementary that the legislature is without power to take from an owner or claimant of property the right to defend an action where it is sought, as in this case, to obtain a decree adjudging defendant to be without title to or right in property claimed by it as owner. Scott v. Day-Bristol Consol. Mining Co, 37 Nev. 299, 142 P. 625 (1914).

The Court in Scott further held:

> To permit a plaintiff, however, to sue a corporation, bring it into court under process commanding it to answer, then to permit such plaintiff to strike the answer and take judgment by default, cannot be tolerated, especially in a case where the plaintiff is invoking the equitable powers of a court to quiet an alleged title to property. To seek equitable relief in a court and then question the right of the other party to be heard, does not comport with the principles of equity.

Scott v. Day-Bristol Consol. Mining Co, 37 Nev. 299, 304, 142 P. 625 (1914).

After the administration hearing, the Designee raised for the first time whether Appellants had standing to appear and contest an abatement and lien. This issue was not raised during the hearing by the parties and was raised by the Designee on his volition. While it is unclear the amount of weight that the Designee placed on this incorrect legal assumption in reaching his decision, it is evident that the Designee's decision was influenced by this assumption. Appellants respectfully request that this Court determines that the Designee committed an abuse of discretion and reveres the fines and fees against the Appellants.

2. THE DESIGNEE CONSIDERED EVIDENCE THAT WAS NOT PRESENTED DURING THE ADMINISTRATION HEARING.

The designee abused his discretion by considering evidence that was not presented during the administration hearing. The Due Process Clause requires notice and an opportunity to be heard before the government deprives a person of his or her liberty. Maiola v. State, 120 Nev. 671, 675, 99 P.3d 227, 229 (2004). While whether to accept additional evidence after the conclusion of a hearing is a matter first impression for Nevada, this Court can look at how other courts handle evidence submitted after a hearing. Whether to reopen the record to receive additional evidence is a matter within the discretion of the trial court. Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 331 (1971). New evidence may be added to the record through a motion to reopen with the agency. Fisher v. INS, 79 F.3d 955, 963 (9th Cir. 1996) (en banc). To allow a party to produce additional evidence after the conclusion of an administrative hearing below would set in motion a never-ending process of confrontation and cross-examination, rebuttal and surrebuttal evidence. Miami Jewish Home and Hospital for Aged, Inc. v. Agency for Health Care Admin., 710 So.2d 77 (Fla. App. 1998)

In Scarba v. Eighth Judicial Dist. Court, (cited *supra*) this Court found that the petitioner was denied due process when his attorney submitted a request to receive full and complete reports regarding the petitioner prior to a hearing, but the request was denied. Scarbo v. Eighth Judicial Dist. Court, 125 Nev. 118, 125, 206

P.3d 975, 979 (2009). These withheld reports were then used by the Court to justify its decision at the hearing. Id. The Nevada Supreme Court reversed this decision based upon the withholding of evidence. Id.

In this dispute, Appellants requested prior to the administrative hearing, that Respondents provide all relevant documents that they intended to rely on. The Respondents did provide Appellants some documents, but Appellants found out at the hearing that they had not received the crucial certified mail receipts for the notices. Although Scarbo dealt with a competency hearing and the entire competency examination report, the situation here is the same, the Respondents denied the Appellants due process and a fair opportunity at the hearing by withholding the crucial documents upon which the Respondents would be relying and which the Designee used to make his decision.

In order to resolve the Respondents' oversight of not producing all of the relevant documents during the administration hearing, the Designee allowed the Respondents to submit evidence after the conclusion of the hearing without having the matter reopened. By allowing the Respondents to submit evidence after the hearing, the Designee denied Appellants due process and an opportunity to examine the Respondents on these documents. As specifically stated in the Designee's order, the Respondents were allowed to submit evidence after the hearing that the Designee relied upon in drafting his order. More specifically the order states: "Copies of the

Notice and Orders are included in the Binder A as supplemented by the City **after the hearing**." (emphases added) (Vol. I 0090). This is similar to a judge allowing a party to cure their deficiencies in their case-in-chief after they have rested and the jury has retired to deliberate.

The Designee's conduct in allowing the Respondents to supplement their evidence after the administrative hearing was concluded is clearly arbitrary and capricious. The Respondents should not be allowed a mulligan to submit evidence that it should have submitted into the record during the Administrative Hearing. The Designee's decision must be reversed because the Respondents violated the Appellants' due process rights.

3. THE DESIGNEE ABUSED HIS DISCRETION IN REACHING THE ADMINISTRATIVE DECISION.

During the administrative hearing there were four items discussed that Appellants needed to complete: 1) removal of palm trees from around El Cid and the Annex, 2) hire a licensed security firm to provide 24- hour security to prevent access into El Cid and the Annex; 3) fence the entire perimeter of the El Cid and Annex with security fencing to prevent access into the building; and 4) contact City Code Enforcement and propose and agree upon an action plan and timeframe acceptable to the Respondents to hire a Nevada licensed contractor to obtain all required demolition permits no later than 60 days from the date of these notices.

As the Appellants testified at the Administrative Hearing, they complied with three of the four requirements within the specified time and had completed all four requirements within six weeks from the notices.

i. Removal of trees from around El Cid and the Annex:

At the Administrative Hearing, the parties agreed that the palm trees had been removed within the timeframe. (Vol. III 0216: 1803-1839).

ii. Hire a licensed security firm to provide 24-hour security to prevent access:

Appellants complied with the security requirement. The Respondents' notices did not specifically state that security had to be onsite 24 hours a day. Once the Respondents clarified that it wanted security onsite 24 hours a day rather than have security provide routine inspections throughout the day, Appellants immediately hired 24-hour onsite security. (Vol. III 0216:1841- 0223:2137).

iii. Fencing

The parties acknowledge that Appellants did not install perimeter fencing until February 21, 2019. (Vol. III 0224:2202).

iv. Demolition plans

At the Administrative Hearing, the parties disagreed on specific time frames required in the notice. The Respondents argued that the Appellants had to have

communicated a plan to the Respondents within 10 days regarding demolishing the buildings that the demolition had to occur within sixty days and the Appellants argued that the notice required that the Appellants provide the Respondents a plan within sixty days and there was no specific time frame to complete the demolition of the properties. (Vol. III 0225:209-0231:2514).

Appellants testified during the Administrative Hearing, that they were in communications with Respondents regarding the demolition of the properties. The Appellants communicated their plan to Respondents via emails and telephone conversations prior to the 10 day deadline. (Vol. I 0055-0056). Furthermore, Appellants substantially complied with the 60-day requirement to begin demolishing El Cid and the Annex when they hired CGI to do the demolition on February 14, 2019 (Contract between Laus Investment Group and CGI, Vol. IV 0248-0250). The Case Report for El Cid and the Annex also indicates that on March 11, 2019, workers were clearing asbestos. (Vol. II 0103). Such clearing would not have taken place without permits, which indicates that Appellants had complied with the Destruction Orders' 60-day time frame for obtaining permits (Vol. II 0103).

LVMC § 9.04.040 states the maximum penalty for a violation may not exceed One Thousand Dollars ($1,000.00) but does not mandate it to be One Thousand Dollars ($1,000.00) LVMC § 9.04.040(A). In this dispute, Appellants complied with three of the four requirements within the ten day period imposed by the

Respondents and had completed all four requirements within six weeks. The Designee abused his discretion by failing to take into consideration that Appellants worked in good faith to comply with the Notices. The Designee's fines of One Thousand Dollars ($1,000) a day were excessive, arbitrary and capricious and should be reversed.

4. THE ABATEMENT FEES IMPOSED UPON APPELLANTS WERE UNREASONABLE, IMPOSED BEFORE RESPONDENTS MET NECESSARY PRECONDITIONS, NOT SUPPORTED BY BACKUP OR PROOF OF PAYMENT BY RESPONDENTS, THEREFORE THE 15% ADMINISTRATIVE FEE IS UNREASONABLE.

The Designee abused his discretion by imposing upon the Appellants a 15% administrative fee under LVMC § 9.04.080. LVMC § 9.04.080(D) allows for emergency abatement of imminent hazards. This requires that the City Manager and at least one other public agency official (e.g. Fire and Metro) concur with or request the designation of imminent hazard.

Here, the first abatement invoice Respondents assessed upon Appellants was dated December 26, 2018, from CGI in the amount of $18,698 for work performed between December 17 and December 20, 2018 following a fire at the El Cid Property. (Vol. I 0034). Notwithstanding the fact that Respondents had already requested quotes for abatement, which bids were closed before the "emergency," the record does not indicate that Respondents had declared El Cid an imminent hazard before, or concurrent with the "emergency" abatement. Instead the record clearly

indicates that the City Manager did not declare El Cid and the Annex imminent hazards until January 31, 2019. (Vol. I 0065).

Appellants admit that the Code Enforcement Report states that "Fire and Metro" have deemed the property is (sic) an imminent hazard," on December 17, 2018, but there is no indication that there was a request or concurrence until January 31, 2019. (Vol. I 0065, 0100). Given this, there could be no passing on the costs to Appellants for work performed between December 17 and 20, 2018 without first providing notice to Appellants. Of course, without that emergency abatement cost, Respondents are unable to pass on the 15% administrative fee to Appellants. The abatement fee and administrative fee must be voided because Respondents failed to comply with LVMC § 9.04.080(D).

The second abatement invoice Respondents provided is from Junkman for the amount of Twenty Thousand Dollars ($20,000.00) for abatement for the MI Property. (Vol. I 0072). Although Appellants understand there was a fire behind the MI Property on or about February 21, 2021, there is no indication in the records provided by Respondents during the Administrative Hearing or afterwards in their exhibit binder that the MI Property was ever declared an imminent hazard that would relieve Respondents from having to notify Appellants before abatement, nor is there any indication in the City Council public records that such a declaration was made. Contrast this to the Agenda Summary Page and the City Council meeting minutes

dated February 20, 2019, that each detail when El Cid and the Annex were declared imminent hazards. (Vol. I 0065, Vol. IV 0123-0124). Because there is no declaration of imminent hazard, the invoice cannot be passed onto Appellants and Respondents cannot pass on the 15% administrative fee to Appellants. Without Respondents complying with LVMC § 9.04.080(D), the Court must void this abatement fee and related administrative fee.

Furthermore, the amounts that Respondents are seeking are unreasonable and unsubstantiated. Prior to Respondents hiring a contractor, the Fire Department had boarded up the buildings; however Respondents was not satisfied with how the Fire Department had boarded up the buildings and re-boarded the properties. (Vol. III 0199:1044-1075).

In this dispute, the two invoices supplied, from CGI and Junkman are unsubstantiated. The CGI invoice shows 138 sheets of ¾" plywood costing $105 each, which is substantially higher than market rate. (Vol. VII 0094). The invoice from Junkman is a flat Twenty Thousand Dollars ($20,000.00) and does not list the labor or materials costs, or even how much time it took or what materials were used. (Vol. I 0072). No accounts payable department would ever pay these involves without backup. Further, Respondents did not provide backup that these invoices were ever paid during the administrative hearing, yet the Designee somehow found

these amounts to be justified. This abuse of discretion cannot stand and must be overturned.

Accordingly, this Court must void the abatement fees and related administrative fees imposed against Appellants because Respondents did not comply with the requirements of LVMC § 9.04.080(D). Even if they had complied, the abatement fees and related administrative fees are not based on any reasonable figure.

IX. CONCLUSION

Appellants respectfully request that this Court determines that the Administrative Decision was unsupported by the record and that the Designee abused his discretion in granting Respondents the relief that it requested. The Designee violated the Appellants due process rights by considering evidence that was presented to the Designee after the hearing. Furthermore the Designee made an incorrect legal assumption regarding Appellants standing in the matter and failed to consider that Appellants significantly fulfilled their four obligations under the Notice. Appellants respectfully requests that this Court overturn the Administrative Decision.

ATTORNEY'S CERTIFICATE OF COMPLIANCE

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

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it is proportionately spaced, has a typeface of 14 points or more, and contains 6520 words.

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

Dated this 10 day of July, 2021.

Law Office of Andrew H. Pastwick L.L.C.

By: And H. Pastwick

Andrew H. Pastwick, Esq.
Nevada Bar No. 009146
1810 E. Sahara Avenue, Suite 120
Las Vegas, Nevada 89104
Telephone: (702) 866-9978
Facsimile: (702) 369-1290
apastwick@pastwicklaw.com

VERIFICATION

I, ANDREW H. PASTWICK, declare as follows:

1. I am an attorney at the Law Office of Andrew H. Pastwick and represent Appellants in this matter.

2. I verify that I have read this Appellant's Opening Brief, and that it is true to the best of my own knowledge, except for those matters therein stated on information and belief, and, for those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Date this 20 day of July, 2021.

Andrew H. Pastwick, Esq.
Nevada Bar No. 009146
1810 E. Sahara Avenue, Suite 120
Las Vegas, Nevada 89104
Telephone: (702) 866-9978
Facsimile: (702) 369-1290
apastwick@pastwicklaw.com

CERTIFICATE OF SERVICE

I certify that on the 27th day of July, 2021, a true and correct copy of the foregoing Appellant's Opening Brief, was electronically filed with the Nevada Supreme Court by using the Nevada Supreme Court E-Filing system.

I further certify that the following participants in this case are registered with the Nevada Supreme Court of Nevada E-Filing System, and that the service of the Opening Brief has been accomplished to the following individuals via electronic service.

Bryan Scott
John Curtas
Attorneys for Respondents

An Employee of Law Office of Andrew H. Pastwick L.L.C.