

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

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APPELLANTS' APPENDIX VOLUME IX

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<u>Document</u>	<u>Pages</u>
Respondents' Answering Brief	0609-0631
Petitioners' Reply to Respondents' Answering Brief	0632-0645
Notice of Entry of Decision and Order Granting Partial Relief	0646-0652
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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.

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

22 Respondents.

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

23 **RESPONDENTS' ANSWERING BRIEF**

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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.

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III.

ARGUMENT

A. JURISDICTIONAL STATEMENT

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

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

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

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

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

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

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-weighing 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 send 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
20 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
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16 Attorneys for CITY RESPONDENTS

14 CERTIFICATE OF SERVICE

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

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26 AN EMPLOYEE OF THE CITY OF LAS VEGAS
27
28



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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
DEVELOPMENT, LLC, a California Limited
Liability Company

14 Petitioners,

15 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
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 1 through
X,

23 Respondents.

Case No.: A-19-806797-W
Dept. No.: XXIV

PETITIONERS' REPLY TO
RESPONDENTS' ANSWERING BRIEF

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I. STATEMENT OF FACTS

This matter is not about the fact that the Subject Properties (233 S. 6th St., 615 E. Carson Ave., and 232 S. 7th St.), like so many other old downtown properties, were vacant and attracted vagrants. Petitioners did their best to try to keep vagrants out by having Mr. Mann patrolling the property, removing graffiti, and doing his best to secure the Subject Properties. Neither the Petitioners nor the Respondents wanted anyone to be hurt, but like Petitioners, the City also could not keep vagrants out of the Subject Properties. *See, e.g.* Code Enforcement Report ROR000240 (Feb 22, 2019 – Squatters were already returning as the building was being boarded up to keep them out.)

Instead, this matter is about Petitioners' due process rights being violated when the City did not provide evidence of compliance with notice requirements before or at the hearing. Even though the City never provided the evidence of required notice, the Designee went out of his way to improperly rely on them by subsequently adding the evidence of required notice to the record after the hearing was terminated but before his decision. *See, e.g.,* Amended Decision Cases 195540, 195118, 19519 Abatement Hearing and Lien Approval Decision (the "Decision"), pg. 2 ¶ 2 (Copies of the Notices and Orders are included in the Binder A *as supplemented by the City after the hearing.*"), emphasis added. In fact, the Designee understood that the City had a problem by not providing Petitioners the full record at the time of the hearing when he stated the following:

652 And, uh, certainly if there's deficiencies, those are the issues that I'm gonna
653 take into consideration. And I understand that you may have been misled
654 because of the absence of this information, but still it exists and the point is
655 did the City comply with the rules. That's what's most important. So, if we
656 can give you copies of these materials, then maybe you want to, uh, abandon
657 those type of arguments and go onto something else. I think you're entitled to
658 know, you know, when Notices were sent out, what expenses were incurred,
659 and how the, uh, penalties were calculated.

Hearing Transcript, pg. ROR000157:652-59.

1 He then followed it up stating that to correct the failure of the City to provide proof of the
2 required notice that the City could give Petitioners another hearing date and asked the City
3 representative, the representative for the City, Ms. Ozuna, to confirm.

4 706 you're saying you didn't get everything. Um, and so, we're
5 707 gonna supply that to you. And we can give you another hearing date so that
6 708 we don't do this piecemeal. We can give it to you, all of 'em, I as- assume. Is
709 that correct, Vicki?

7 *Id.* at ROR000158:706-709. However, Ms. Ozuna did not agree to provide a continuance, or even
8 offer one. Instead, she argued that it is not her fault that Ms. Lau decided to have so many attorneys
9 and ultimately stating that if the matter gets continued, then so be it.

10 711 Correct. Um, but let me - let me point out, um, this is the third lawyer Ms.
11 712 (Lao) has had...
12 716 ...in this - in this case. Um, up until they contacted me a couple weeks ago,
13 717 um, I was still dealing with (An-) uh, the previous lawyer, (Andrew Paswick)
14 718 who had been provided a lot of this information. He had been provided emails
15 719 and discussions about how things were proceeding and going on. So, the fact
16 720 that Ms. (Lao) changes lawyers, um, so often is - is not my problem. That's...
17 724 ...that's their problem.(...)
18 728 Let me - let me finish. Thank you. So, I had scheduled this hearing originally,
729 um, in July. (Andrew Paswick) asked for an extension. I provided that
730 extension. And then, Ms. (Lao) changed lawyers. So, um, it's my duty to get
731 these things going and get them lien'd as soon as possible on the property.(...)
735 And if it ends up getting, uh, reset, that - that's fine. I've - I've just done what
736 the Division needs to do, so.

19 *Id.* at ROR000158:711-20, ROR000159:724-36, interruptions excluded.

20 Mr. Flangas stated the following:

21 740 Okay. And so, in response, it's - it has nothin' to do with - Mr. (Lao) has - Ms.
22 741 (Lao) has a right to have any lawyer she wants. It - it's not an excuse that
23 742 because we got on that we don't have this stuff. We went through everything
24 743 her previous lawyer had and we were actually surprised, because all the dates
744 were incor- not all the dates. Some of the dates were...
748 ...incorrect.

25 *Id.* at ROR000159:741-48, interruptions excluded.
26
27
28

1 The record is clear that the City failed to provide evidence of notice as required by law before or at
2 the hearing, failed to request a continuance and the Designee after the hearing improperly fixed the
3 blatant violation of LVMC 9.04.050 by adding these documents into the record on appeal. In fact,
4 Petitioners are contemporaneously filing a motion to strike these documents from the record.

5 In addition, the Petitioners due process rights were violated when the Designee based his
6 decision on the inappropriate application of the law by stating that a business entity is required to be
7 registered with the Nevada Secretary of State to defend an action in Nevada. Decision, pg. 1, ¶ 4.
8 Given the City's lack of response to this issue, it appears that the City has now acquiesced to this issue.
9

10 Finally, the City imposed fines and abatement fees were clearly not reasonable and violated
11 Petitioners' due process rights. Here, the abatement fee invoice for \$20,000 without any backup or
12 notation of what was done to abate "emergency" at 615 East Carson¹ and the invoice from CGI that
13 charged \$105 per sheet of plywood used to abate the "emergency" at El Cid and the Annex² show that
14 the City did not care what the Petitioners were charged. They just passed it on, and added 15% on top
15 of it.
16

17 This that the City relies on an "ends justify the means" approach to validate its failure to follow
18 its own municipal code in imposing these fines and fees when there is no indication in the record of
19 the City Council that fines and fees were ever discussed in front of the City Council. (The February
20 20, 2019, City Council meeting minutes item #54 discuss demolition of the El Cid and the Annex only
21 and not fines and fees. It is also the date that the City Council declared the El Cid and the Annex to be
22 imminent hazards.)
23

24 ///

26 ¹ Abatement Hearing and Lien Approval Decision for Case # 195540 – 615 E. Carson. Junkman Invoice Dated 2/28/19,
27 pg. ROR000039.

28 ² Abatement Hearing and Lien Approval Decision for Case # 195118 – 233 S. 6th St. The CGI invoice dated 12/26/18 is
found at pg. ROR000001 and Petitioners further objected to the cost for plywood during the hearing on Transcript pg.
ROR000162:884.

II. ARGUMENT

A. The City Violated Petitioners' Due Process Rights.

The United States and Nevada Constitutions provide that no person shall be deprived of liberty without due process of law. U.S. Const. amend. XIV, § 1; Nev. Const. art. 1, § 8(5). "The Due Process Clause requires notice and an opportunity to be heard before the government deprives a person of his or her property." *Maiola v. State*, 120 Nev. 671, 675, 99 P.3d 227, 229 (2004).

1. The fines and fees were imposed without regard to Las Vegas Municipal Code 9.04.050.

Las Vegas Municipal Code 9.04.050 states the following:

A notice of violation may be served in any of the following ways:

- (1) By personal service thereof upon the owner or responsible party;
- (2) By mailing the notice by certified mail, return receipt requested to the owner or responsible party at the last known address; or
- (3) 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.

Las Vegas Mun. Code § 9.04.050(B).

The Nevada Supreme Court in *Swartz v. Adams* found that posting near a property to be condemned was a violation of due process. *Swartz v. Adams*, 93 Nev. 240, 244, 563 P.2d 74, 76 (1977). The decision cited the U.S. Supreme Court Case *Walker v. City of Hutchinson* (352 U.S. 112 (1956)) that held that notice by publication of the condemnation of property was a denial of due process where the name of the owner, a resident of the state, was known to the condemning party. *Swartz*, 93 Nev. at 244. It further cited *Schroeder v. City of New York*, 371 U.S. 208 (1962), in which publication and posting near the property being condemned were held to be a denial of due process. *Swartz*, 93 Nev. at 244.

Here, the City's Response Brief essentially ignored Petitioners' due process argument regarding notice, even though the City provided no evidence that it mailed notice in accordance with LVMC 9.04.050 to the property owner Petitioners until *after the hearing*. The Petitioners, without notice of the mailings, were unfairly disadvantaged in the administrative hearing before the Designee. Nonetheless, the Designee ignored the legal requirements for notice as provided in LVMC 9.04.050 and improperly relied on evidence

1 not presented at the hearing in making the award for the City. Accordingly, and despite the fact that the
2 City states that it used its emergency powers pursuant to LVMC 9.04.080, NRS 268.4122, and NRS
3 332.112, the Designee's decision must be reversed for the City's failure to comply with LVMC 9.04.050
4 and the due process violation Petitioners suffered because of that failure.

5 **2. The City Failed to Present Evidence that they complied with LVMC 9.04.050 at the**
6 **Hearing.**

7 As stated above, "The Due Process Clause requires notice and an opportunity to be heard before
8 the government deprives a person of his or her property." *Maiola v. State*, 120 Nev. 671, 675, 99 P.3d 227,
9 229 (2004). In *Scarbo v. Eighth Judicial Dist. Court*, the Nevada Supreme Court found that the petitioner
10 was denied due process when his attorney submitted a request to receive full and complete reports
11 regarding the petitioner prior to a hearing, but the request was denied. *Scarbo v. Eighth Judicial Dist.*
12 *Court*, 125 Nev. 118, 125, 206 P.3d 975, 979 (2009). These withheld reports were then used by the Court
13 to justify its decision at the hearing. *Id.* Of course, the Nevada Supreme Court reversed this decision based
14 upon the withholding of evidence. *Id.*

15
16 In this case, Petitioners did in fact request all the City's documents in preparation for the hearing.
17 Ostensibly the City did provide them, but Petitioners found out at the hearing that they had not received
18 the crucial certified mail receipts for the notices. Although *Scarbo* dealt with a competency hearing and
19 the entire competency examination report, the situation here is the same; the City denied Petitioners a fair
20 opportunity at hearing by withholding the crucial documents upon which the City would be relying and
21 which the Designee used to make his Decision.

22 The Designee realized this problem and attempted to fix the City's error by prompting Ms. Ozuna
23 to offer a continuance in order to provide the documents. However, a thorough review of the transcript
24 reveals that neither Ms. Ozuna nor the Designee offered a continuance to the Petitioners. Hearing
25 Transcript pgs. ROR000158:706-709; ROR000158:711-20, ROR000159:724-36, interruptions
26 excluded. Instead, the Designee "fixed" or allowed the City to "fix" the issue on the back end by
27 supplementing the record after the hearing. Decision pg. 2 ¶ 2. This is akin to a judge, who is presiding
28

1 over a trial and states on the record that deficiencies presented by a party exists, then allows that party
2 to add the required evidence after the trial in order for that judge to then rule in that party's favor.

3 By allowing the City to supplement the record after the conclusion of the hearing, the Designee clearly
4 understood the City failure to present the required notice at the hearing pursuant to LVMC 9.04.050
5 meant that the Designee had to rule in favor of Petitioner. The Designee's Decision must be reversed
6 because the City violated the Petitioner's due process rights.

7
8 **3. The Designee based the Decision on a False Conclusion of Law when he Stated that
Petitioners did not have Standing to Defend Against the City's Actions.**

9 The City's Answering Brief did not address this clear error in the Decision. Under NRS 80.055,
10 "The failure of a corporation to comply with the provisions of NRS 80.010 to 80.040, inclusive, does not
11 impair the validity of any contract or act of the corporation, or prevent the corporation from defending any
12 action, suit or proceeding..." Nev. Rev. Stat. Ann. § 80.055(6). Even before this statute was enacted, the
13 Nevada Supreme Court recognized that it would be improper to commence an action against a foreign
14 entity's real property and then not allow that entity to defend on the basis that it was not authorized to do
15 business in the state. *Scott v. Day-Bristol Consol. Mining Co.*, 37 Nev. 299, 142 P. 625 (1914).
16

17 By basing the Decision on that erroneous conclusion of law, the City denied Petitioners' due
18 process rights. When City failed to respond, they acquiesced and the Court must order the fine be
19 voided.
20

21 **B. The Designee Abused his Discretion in Reaching the Decision.**

22 **1. The Fines were Unreasonable given Petitioners Substantially Complied with the
23 Demolition Notice and Order and Requested a Hearing on the Fines.**

24 At the hearing, Petitioners stated, and Ms. Ozuna agreed that the four items to be complied with in
25 the demolition notice were to 1) remove trees from around El Cid and the Annex; 2) hire a licensed security
26 firm to provide 24-hour security to prevent access into El Cid and the Annex; 3) fence the entire perimeter
27 of the El Cid and Annex with security fencing to prevent access into the building; and 4) contact City Code
28 Enforcement and propose and agree upon an action plan and timeframe acceptable to City to hire a Nevada

1 licensed contractor to obtain all required demolition permits no later than 60 days from the date of this
2 notice, demolish the building and pool, and remove all demolition debris, refuse, and waste.

3 Ms. Ozuna further agreed that the trees were removed from El Cid and the Annex within the
4 applicable time frame. However, Ms. Ozuna disagreed that Petitioners complied with the requirement to
5 have 24 hour security because she insisted that the security firm be onsite 24 hours a day, despite the fact
6 that the demolition notice and order only states that Petitioners “hire a licensed security firm to provide 24
7 hour security to prevent access into the substandard/dangerous building” (Demolition Notice and Order
8 pgs. ROR0000007, ROR000014) and Petitioners did in fact engage a security firm to provide 24 hour
9 security on the Subject Properties within the applicable time frame. (See Contract with Custom Security
10 Guard and Patrol, pg. ROR000017.) However, when Ms. Ozuna informed Ms. Lau that security was to be
11 *on-site* 24 hours a day, 7 days a week, Ms. Lau engaged a new security company to comply with that
12 request – even though it was not in the Demolition Notice and Order and Petitioners had no notice that
13 security was to be on site instead of 24 hour security patrols.

14 Ms. Ozuna also would not agree to the fact that Ms. Lau had been in contact with her to propose a
15 plan for demolition that was acceptable to the City. However, the record is clear that Ms. Lau and Ms.
16 Ozuna had discussed the matter (see, e.g. Transcript pg. ROR00000; Email between Lau and Ozuna dated
17 DATE, pg. ROR000000) and that the City did in fact find the proposal acceptable (City Council Meeting
18 dated Feb. 2, 2019, agenda item 54). Even without the City Council meeting, the City approved the
19 proposal when it allowed Petitioners to engage CGI of their own volition instead of the City hiring a
20 contractor to perform the demolition of the Subject Properties. Because the only portion of the Demolition
21 Notice and Order that was not complied with was the fencing component, it is unreasonable that the
22 Designee would impose the full *discretionary* penalty of \$1000 a day against Petitioners pursuant to LVMC
23 9.04.040. *See* Las Vegas. Mun. Code § 9.04.040 (stating “[t]he [daily] amount of liability that may be
24
25
26
27
28

1 imposed *may not exceed*...one thousand dollars in the case of liability imposed against an owner of
2 commercial property.”) emphasis added³.

3 Due to Petitioners’ compliance, the Decision to impose the full amount of the daily penalties
4 against them is a clear abuse of discretion. Petitioners did what the City demanded of them and demolished
5 the Subject Properties (and all of the other properties they owned on the block), therefore, the fine amount
6 must be reduced accordingly. In this case, the Court must allow no more than 25% of the maximum
7 allowable fines to be imposed (\$250 a day).

8 **2. The Abatement Fees Imposed upon Petitioners are Unreasonable, Imposed *Before* the**
9 **City met Necessary Preconditions, not Supported by Backup or Proof of Payment by the**
10 **City, and, therefore, the 15% administrative fee is Unreasonable.**

11 LVMC 9.04.080 allows for emergency abatement of imminent hazards in section D. This requires
12 that the City Manager *and* at least one other public agency official (e.g. Fire and Metro) concur with or
13 request the designation of imminent hazard. Las Vegas Mun. Code 9.04.080(D). Here, . the first abatement
14 invoice the City assessed upon Petitioners was dated December 26, 2018, from CGI in the amount of
15 \$18,698 for work performed between December 17 and December 20, 2020, (CGI invoice ROR000001)
16 following a fire at the El Cid property. Notwithstanding the fact that the City had already requested quotes
17 for abatement, which bids were closed before the “emergency,” the record does not indicate that the City
18 had declared El Cid an imminent hazard before, or concurrent with, the “emergency” abatement. Instead
19 the record clearly indicates that the City Manager did not declare El Cid and the Annex imminent hazards
20 until January 31, 2019 (Agenda Summary Page, pg. ROR000032). Petitioners admit that Code
21 Enforcement Case Report (ROR000067) states that “Fire and Metro have deemed the property is (sic) an
22 imminent hazard,” on December 17, 2018, but there is no indication that there was a request or concurrence
23 until January 31, 2020 (ROR000032). Given this, there could be no passing on the costs to Petitioners for
24
25

26
27 ³ It should be noted that, despite the City’s contention in the Response Brief that Petitioners essentially had to be aware of
28 the dates that the city imposed the fines against the Subject Properties, there is no document in the record evidencing those
dates, nor was it discussed at the February 20, 2019 City Council meeting, which was the day that the City states the fines
stopped accruing against El Cid and the Annex.

1 work performed between December 17 and 20, 2019 without first providing notice to Petitioners. Or
2 course, without that emergency abatement cost, the City is unable to pass on the 15% administrative fee to
3 Petitioners. The Court must void this abatement fee and administrative fee because the City failed to
4 comply with LVMC 9.04.080(D).

5 The second abatement invoice the City provided is from Junkman for the amount of \$20,000
6 (Junkman Invoice Dated 2/28/19, pg. ROR000039) for abatement at the Mission Inn at 615 E. Carson
7 (the "MI"). Although Petitioners understand there was a fire behind the MI on or about February 21,
8 2019, there is no indication in the record provided by the City – either before or after the hearing –
9 that MI was ever declared an imminent hazard that would relieve the City from having to notify
10 Petitioners before abatement, nor is there any indication in the City Council public records that such a
11 declaration was made. Contrast this to the Agenda Summary Page, pg. ROR000032 and the City
12 Council meeting minutes dated February 2, 2019, that each detail when El Cid and the Annex were
13 declared imminent hazards. Because there is no declaration of imminent hazard, the invoice cannot be
14 passed onto Petitioners, and the City cannot pass on the 15% administrative fee to Petitioners. Without
15 the City complying with LVMC 9.04.080(D), the Court must void this abatement fee and related
16 administrative fee.
17

18 Even if the City could pass on the costs to Petitioners, and they cannot because the work was
19 performed before the Subject Properties were declared imminent hazards, the amounts passed to Petitioners
20 are unreasonable and unsubstantiated. Ms. Ozuna indicated that she had no ability to negotiate the price
21 contractors charged (Transcript, pg. ROR000166:1037), but this leads to an absurd result. A contractor
22 could charge the city whatever it wants, or the City would benefit from an inflated invoice so that the City
23 could receive more in administrative fees (the City adds a 15% administrative charge to any abatement
24 fees).
25

26 Here, the two invoices supplied – from CGI and Junkman – do not have a basis in reality. The CGI
27 invoice shows 138 sheets of ¾" plywood costing \$105 each, which is unheard of. The Junkman invoice is
28

1 a flat \$20,000 and does not list the labor or materials costs, or even how much time it took or what materials
2 were used. No accounts payable department should be paying these invoices that do not have backup.
3 Further, the City did not provide backup that these invoices were ever paid during the administrative
4 hearing, yet the Designee somehow found these amounts to be proper. This abuse of discretion cannot
5 stand and must be overturned.

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

10 III. CONCLUSION

11 Petitioners ask this Court to overturn the erroneous Decision from the City Council Designee
12 because it violates Petitioners due process rights. It must also be overturned because given the documentary
13 evidence in the record, neither the fees nor the fines imposed against Petitioners are supported by evidence
14 in the record. Therefore, Petitioners request that the abatement fees and related administrative fees be
15 removed in their entirety. Finally, to the extent this Court finds no other due process violations that would
16 require the fines imposed against Petitioners to be voided in their entirety, Petitioners request a reduction
17 of at least 75% the daily fines imposed against El Cid and the Annex due to Petitioners compliance with
18 the Demolition Notices and Orders.

19 DATED this 24th day of August, 2020.

20
21 **FLANGAS LAW FIRM, LTD.**

22
23 By: /s/ Benjamin La Luzerne
24 LEO P FLANGAS, ESQ.
25 Nevada Bar No. 5637
26 BENJAMIN LA LUZERNE, ESQ.
27 Nevada Bar No.: 12801
28 600 South Third Street
Las Vegas, Nevada 89101
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of August 2020, I served a copy of the foregoing
Petitioners' Reply to Respondents' Answering Brief upon each of the persons listed in the Odyssey E-
Filing System pursuant to NRCP 5(b)(2)(D) and EDCR 8.05.

/s/ Benjamin La Luzerne
FOR THE FIRM



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

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

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

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


28 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:

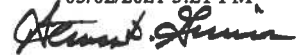

8 JOHN A. GURTAS
9 Deputy City Attorney
10 Nevada Bar No. 1841
11 495 South Main Street, Sixth Floor
12 Las Vegas, NV 89101
13 Attorneys for CITY OF LAS VEGAS

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 AN EMPLOYEE OF THE CITY OF LAS VEGAS
27
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

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

The Petition for Judicial Review and/or Writs of Certiorari, Mandamus, and Equitable Relief having come on for hearing February 2, 2021, Petitioners appearing through Leo P. Flangas, Esq., of the FLANGAS LAW OFFICE, Respondents appearing through John A. Curtas, 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 and any attachments are UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, and disposed of in accordance with the policies and procedures of the Department of Justice, Office of the Inspector General. Do not disseminate this information outside the Department of Justice, Office of the Inspector General.

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

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17 CluAynne Corwin

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18 Natasha Smith

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21 John Curtas

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22 Ben La Luzerne

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23
24
25
26
27
28



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 SOPHIE LAU,

8 Plaintiff,

9 vs.

10 CITY OF LAS VEGAS
11 DEPARTMENT OF BUILDING
12 AND SAFETY, CODE
13 ENFORCEMENT DIVISION,

14 Defendant.

15 CASE NO: A-19-806797-W
16 DEPT. VIII

17 BEFORE THE HONORABLE JESSICA K. PETERSON,
18 DISTRICT COURT JUDGE
19 TUESDAY, FEBRUARY 2, 2021

20 **RECORDER'S TRANSCRIPT OF HEARING RE:**
21 **REQUEST FOR HEARING ON PETITION FOR JUDICIAL REVIEW**
22 **AND/OR WRITS OF CERTIORARI, MANDAMUS, AND EQUITABLE**
23 **RELIEF VIA BLUE JEANS**

24 APPEARANCES:

25 For the Plaintiff:

LEONIDAS P. FLANGAS, ESQ.

For the Defendant:

JOHN A. CURTAS, ESQ.

RECORDED BY: NANCY MALDONADO, COURT RECORDER

1 **Las Vegas, Nevada; Tuesday, February 2, 2021**

2 [Proceeding commenced at 9:01 a.m.]

3 THE COURT: Cousins to my former boss. I don't -- I think I

4 can be fair to both of you, but if you want somebody else to decide this

5 matter, let me know now and we'll -- I'll recuse myself.

6 MR. FLANGAS: Judge, I'm fine with you hearing the matter.

7 This is Leo Flangas.

8 THE COURT: Okay.

9 Mr. Curtas? Mr. Curtas, if you're on your phone you're going

10 to need to push star four to unmute yourself.

11 MR. CURTAS: Can you hear me?

12 THE COURT: Now I can.

13 MR. CURTAS: Wow. Well, I had a mute button, unmuted

14 that, but it's some -- I must have gotten muted again, who knew.

15 THE COURT: No.

16 MR. CURTAS: Okay.

17 THE COURT: If you're on your phone, it's star four.

18 MR. CURTAS: Oh, okay. All right. I get it. Okay. Thank

19 you.

20 THE COURT: You're welcome.

21 MR. CURTAS: Thank you. That's interesting. Okay. Well,

22 again, I'm fine with -- I'm fine Judge with you hearing it.

23 Leo, I know we all -- you know, we've all been around a while

24 and, but we think -- we're happy, we're -- congratulations by the way and

25 --

1 THE COURT: Thank you.

2 MR. CURTAS: -- we'd like to proceed.

3 THE COURT: Okay.

4 MR. CURTAS: Yes.

5 THE COURT: I just wanted -- you guys are going to be a little

6 bit later, but I just wanted to get that out of the way first, in case I could

7 send you on your way. But as long as you're fine with it, then I'll go

8 forward on that as well.

9 Okay.

10 MR. CURTAS: That's fine. Thank you.

11 THE COURT: You're welcome.

12 [Proceeding trailed at 9:02 a.m.]

13 [Proceeding resumed at 9:25 a.m.]

14 THE CLERK: 797, Sophie Lau versus City of Las Vegas.

15 THE COURT: I want to trail this one.

16 THE CLERK: Trail?

17 THE COURT: Yup. This one's going to be right before we do

18 Dixon.

19 THE CLERK: Okay.

20 MR. CURTAS: Did I hear you say you're going to trail it, Your

21 Honor?

22 THE COURT: I am.

23 MR. CURTAS: All right. Very good. Thank you.

24 THE COURT: Thank you.

25 MR. CURTAS: Thank you very much.

1 [Proceeding trailed at 9:25 a.m.]
2 [Proceeding resumed at 11:16 a.m.]
3 THE CLERK: Page 13, A806797 –
4 MR. CURTAS: Okay.
5 THE CLERK: -- Sophie Lau versus City of Las Vegas.
6 MR. CURTAS: Your Honor, can you hear me? This is Deputy
7 City Attorney, John Curtas.
8 THE COURT: I can hear you, Mr. Curtas.
9 Mr. Flangas, are you there?
10 MR. CURTAS: Thank you.
11 MR. FLANGAS: Yes, good Morning, Your Honor.
12 THE COURT: Good Morning.
13 MR. FLANGAS: I was laughing when you talk about – it's not
14 as tough as going up and down the stairs. I just tried to juggle two
15 hearings, but you can only get on one Blue Jeans at a time --
16 THE COURT: Oh.
17 MR. FLANGAS: -- on my computer.
18 THE COURT: Oh. Well –
19 MR. FLANGAS: -- so.
20 THE COURT: -- good to know. Thank you, Counsel, for
21 informing me –
22 MR. FLANGAS: Yeah, so –
23 THE COURT: -- of that.
24 MR. FLANGAS: Yeah, so they wanted to make it tough for us
25 anyway. [Laughs].

1 THE COURT: Well, but we all have phones these days, so
2 you could get on on your computer and on your phone, I suppose.

3 MR. FLANGAS: That's where I did what I did.

4 THE COURT: All right. So, okay. We have a Petition for --
5 this is Sophie Lau's Petition for Judicial Review, Petition for Writ of
6 Mandamus. What else did you title this as, Mr. Flangas?

7 MR. FLANGAS: I believe that's it, Judge.

8 THE COURT: Okay. I have read everything. I actually went
9 back and looked at the entire history of this case. So go ahead and
10 make your argument, Mr. Flangas.

11 MR. FLANGAS: Okay, Judge. And, you know, I'm not going
12 to repeat the arguments, you know, in the brief. I just want to sum up
13 and highlight a couple points.

14 THE COURT: Sure.

15 MR. FLANGAS: You know, why are we here, Judge? We're
16 here -- and it comes down to an old saying that I use once in a while is:
17 Where did the 800-pound gorilla sit? And the answer is: Anywhere it
18 wants. And in this case, what has happened or what happened in this
19 case is, we are the City, and they tried to enforce, or they did enforce
20 their will. And -- with no due process and excessive fines, and where
21 the little guy, the property owner, has rights.

22 And you can't just have the City to say, "You know what, we're
23 going to enforce the \$1,000 a day, and we don't care, and it's going to
24 be for this amount." And, you know, we needed to file a Petition to have
25 the Court review all this, and to look at the rights of the property owner.

1 And this --

2 THE COURT: Mr. Flangas --

3 MR. FLANGAS: -- and, you know, I read through the City's
4 brief and I -- there's -- look, there's no question that these were problem
5 properties. You know, the Lau family has owned these properties for
6 almost 30 years -- 25 years or more and they were problem properties.
7 But to give this Court some perspective, even when the City took it over
8 and boarded up some of these properties, they had problems keeping
9 the vagrants out.

10 And so, it's not that you had an absentee property owner, and
11 I just want to give a little backdrop, absentee property owner who didn't
12 care. She did hire someone, a maintenance guy, every day, to work on
13 it, do stuff. But even the City, the mighty City, the 800-pound gorilla City,
14 had problems too. So, what do we have here?

15 And what I highlighted, Judge, is -- I got on the case, and
16 about a week before the hearing I asked Ms. Ozuna for a continuance
17 and she said, "No," and she said, "Look, it's been continued many
18 times," and I understood that answer. And what I did said, "Okay, send
19 us everything in the file." And I send a letter to her requesting that and
20 she says, "Done, I'll send you everything."

21 And we went to the hearing, and the first thing I want to
22 highlight is, Ms. Ozuna did not have personal knowledge on a lot of this
23 stuff, she was just reading the script. But more importantly, and so you
24 have a ton of hearsay evidence coming in from the City. But more
25 importantly, you did not have the proof of the notice requirements that

1 were required by the City and that is evident not only -- well first of all,
2 it's evident, and at the hearing we kept on making objections.

3 And we said, "There's no proof of certified mailing, there's no
4 proof of this notice, there's no proof of that notice." And this is a material
5 fact that is undisputed. The City is not disputing this. And you could
6 look at the designee, the City designee. I like to call it the Judge or the
7 Arbitrator. But you can look at the designee's decision. And in the
8 decision, he states, "Copies of the notices and orders -- this is a quote
9 Judge -- are included in the binder A as supplemented by the City after
10 the hearing."

11 That -- why, you know, the whole point of why the Judge down
12 below or the designee had to supplement is because the record was not
13 enough.

14 THE COURT: Mr. Flangas --

15 MR. FLANGAS: The City went --

16 THE COURT: Mr. Flangas --

17 MR. FLANGAS: -- and -- Yes, Judge.

18 THE COURT: I'm going to interject right here though. Only
19 because I don't want you to spend a lot of time on the notice issue,
20 because in reviewing everything, it appears like your client had notice. I
21 mean, there were emails that were going back and forth between,
22 between the parties. She was acknowledging the fact that there was
23 problems that were going on.

24 So, to the extent of the notice that was received in -- that I
25 believe was dated January the 10th, she knew about it. So address that

1 with me. I mean, isn't she actually on notice?

2 MR. FLANGAS: You know, Judge, in January, yes, she was
3 going back and forth. I'll address it two ways. One is, just because she
4 eventually found out does not mean that the City does not have the
5 required burden of presenting proof at the hearing that they did the
6 certified mailings. But, you know, this comes down to -- and it comes
7 down to a lot of the excessive fines which [indiscernible] 60, \$70,000,
8 Judge, is -- as for her timing and responding and everything else.

9 And so, you know, the City can't have the cake and eat too.
10 So we're all here to prove that she's responding, but guess what, we
11 were dinging her a thousand dollars a day, because she -- we started at
12 point X, whatever it was.

13 In addition, there's a lot of notice issues that occurred in
14 December that they did not present. And so, I will admit and not contest.
15 In January she was back and forth with the City. And you know, Judge,
16 that's interesting. I'll tell you, when you talk about the back and forth, the
17 reason they were fining her then, and they stated was, removing the
18 trees, this 24-hour 7-day a week security, the fence, and they contacted
19 City regarding demolishing. Okay.

20 And guess what? She -- we got them to admit she did remove
21 the trees --

22 THE COURT: Uh-huh.

23 MR. FLANGAS: -- okay. And we got them to -- they did use
24 her demolition plans. The City did use her demolition plans --

25 THE COURT: Uh-huh.

1 MR. FLANGAS: -- on -- that she presented which was one of
2 the requirements. And the main requirement that the City Officer was
3 complaining about and why she needed to fine Mrs. Lau, was the 24-
4 hour 7-day a week security. And she -- here's what it came down to
5 Judge. She said, "Yeah, well he wanted 24-hour 7-days a week, a
6 person on -- present there at the site. My client didn't understand that at
7 the beginning, and she hired a 24-hour 7-day a week security firm that
8 did paroles -- I mean patrols of the site.

9 So they would go every hour, every couple hours and patrol
10 the site, but it wasn't a person sitting in a chair right on the site. And the
11 City would not give in and said, "No, this is what we meant by it." And
12 that's not what my client understood by it. And that's what racked up all
13 the fines. That's -- well was their excuse for racking up all the fines was
14 the whole security issue.

15 THE COURT: Uh-huh.

16 MR. FLANGAS: And when my client found out and there was
17 emails back and forth, she finally hired a 24/7 person who was there all
18 the time. But, you know, by that time she racked up tens of thousands
19 but not more. And I'll go through it, sixty thousand plus worth of fines.
20 And so, and --

21 THE COURT: Wasn't it sixty --

22 MR. FLANGAS: -- to back track --

23 THE COURT: Wasn't it 62,000? Thirty thousand on one and
24 32,000 on another?

25 MR. FLANGAS: That's correct, Judge.

1 THE COURT: Okay.

2 MR. FLANGAS: Thirty-two thousand on one and 30,000 on
3 another, and then there was a small \$150 one.

4 So, Judge, you know, at a very minimum, you know, that --
5 you know, I mean, obviously I'm asking the Court and I -- the City had to
6 be prepared to show all the proof of notices. There's a statute in place.
7 We came to the hearing; they did not do it. Period. Undisputed. They
8 did not prove their case, and that's why it's abuse of discretion.

9 That's why this Court should grant our Petition and deny them
10 the fines and the costs that they want to pass on to my client, period;
11 because it's black letter law. The City's Response to this Judge is:
12 "Well, Mr. Flangas had an opportunity to continue the hearing; right?
13 And that's so -- therefore, no harm, no foul."

14 And Judge, I don't have to continue the hearing because the
15 City did not come prepared. This is after I teed them up, sent a letter,
16 asked to, give me everything. I show up at the hearing and they still
17 didn't -- they not only didn't give me everything; they didn't have
18 everything to prove pursuant to statute to prove their case at the
19 hearing.

20 And I'll tell you, Judge, also: It wasn't my responsibility to
21 continue, the City could have continued it. They could have asked -- Ms.
22 Ozuna could have asked, "I want a continuance," but she didn't. She
23 wanted to go through with the hearing. And so, the burden is not on me
24 to continue so the City could have enough time and do what they were
25 supposed to do to prove their case. The burden is on the City to ask for

1 a continuance.

2 And I'll tell you -- I'll submit that that designee would have
3 granted anything that City wanted, and so, I'll submit to that. And so, did
4 the City prove what they needed to prove at the hearing? The answer
5 is, "No." How do we know that? Because the designee had the support.
6 I never -- ha ha. You know, it's pretty remarkable Judge.

7 How do you like it to try a whole jury trial and at the end of the
8 jury trial you close your case and there are, judge trial, and then the
9 Judge says: Well, you know what, we're going to let Plaintiff or we're
10 going to let Defendant add some more evidence in, and then I'll make a
11 decision. That's what happened, equally akin to this situation, and that's
12 why this Court needs to grant our Petition and deny all the fines,
13 penalties and costs that were assessed. And at a very minimum, at
14 least deny the excessive fines of \$62,000.

15 Judge, I'm just going through my notes right here. I wanted to
16 also just address -- oh, you know what, I wanted just to cite to Ms.
17 Ozuna's testimony where she's quoted. She said, "Generally, we don't
18 provide everything. What I do is provide to you is whatever we're using
19 for the hearing." And then I cited to some quotes in my Reply where
20 that's stated.

21 So it's undisputed they did not have all the evidence at the
22 hearing. And I understand it might seem like a tough decision for the
23 City, but you know what, they're -- they were the Plaintiffs at the -- and
24 they had the obligation to provide everything at the time. They can't just
25 supplement the record after the whole trial's done.

1 One last thing I just want to highlight to the Court, which is the,
2 on the M.I. property, they assessed \$20,000, and it's just a blanket fee.
3 And they never provided any proof of what that's even for. You know, at
4 least on the other properties they said, "Okay, it's -- they gave a itemized
5 billing. This is for the plywood, the labor, and they itemized it all. They
6 just did a \$20,000 figure and that in and of itself is not sufficient evidence
7 to show whether it was reasonable or not.

8 Thank you, Your Honor.

9 THE COURT: Thank you, Counsel.

10 MR. CURTAS: Your Honor, John Curtas, for the Deputy City
11 Attorney. May I proceed?

12 THE COURT: You may proceed, Mr. Curtas.

13 MR. CURTAS: Thank you. Thanks, Judge.

14 I think we need to refocus the Court's attention here a little bit.
15 As much as Mr. Flangas wants to relitigate the issues of reasonableness
16 of the fine and notice and what have you, that is not this Court's
17 mandate in these Petitions for Judicial Review. This is not a De Novo
18 Review.

19 And it -- this is a Review on a Writ of Mandamus to determine
20 whether the underlying decision of the City Council or its designee -- in
21 this case, the designee, was supported by substantial evidence. Absent
22 an abuse of discretion and with any substantial evidence supporting the
23 decision, the Court must affirm that decision. I think what my opponent
24 is trying to do here -- it's sad where we're only asked to make the
25 arguments he's making.

1 But he's trying to get this Court to relitigate whether there was
2 the -- whether there was -- the fines were reasonable. Whether the
3 notices were reasonable. Whether his clients got all their rights
4 vindicated or not is what we're hearing. That's not what -- that's not the
5 charge of this Court in these matters.

6 The Supreme Court of Nevada is clear, and I cite pages of
7 well-established law, that all this Court has to do is decide whether the
8 underlying decision was supported by substantial evidence or if it -- or if
9 it was not, if it was arbitrary and capricious.

10 I submit to this Court that what we have provided in pages and
11 pages of notifications of Mrs. Lau, including her own words saying, "I got
12 notice of this," including the notices themselves which are supported in
13 the record as having been sent by certified mail, as having them posted
14 on the properties themselves, as having been reviewed with the property
15 manager that she hired. The notices, I think, is a non-starter.

16 And I won't waste the Court's time with that, because I think
17 there was plenty of notice here. Then once the notification is there and
18 the Court finds -- the Court must find -- this Court must find that the City
19 Council designee had substantial evidence to find that proper notice was
20 given, and I think he had more than substantial evidence. Not a scintilla
21 here, but an avalanche of evidence about the notice having been given.

22 THE COURT: As he --

23 MR. CURTAS: With that out of the way --

24 THE COURT: Mr. Curtas --

25 MR. CURTAS: -- this, excuse me, Your Honor. I'm sorry.

1 THE COURT: -- as I indicated to Mr. Flangas --
2 MR. CURTAS: Yeah.
3 THE COURT: -- the notice is not an issue for me. I -- I'm --
4 MR. CURTAS: Okay.
5 THE COURT: -- so, I need both of you not to -- not to worry
6 about the merits. I think that --
7 MR. CURTAS: All right. I'm done with that, Your Honor,
8 sorry.
9 THE COURT: Yeah.
10 MR. CURTAS: Thank you.
11 THE COURT: That's okay. Go ahead.
12 MR. CURTAS: Okay. Sorry. It was, it was 10 pages of my
13 brief, but I think I did my job.
14 THE COURT: You did.
15 MR. CURTAS: Thank you, Judge. Okay. [Laughs]. Oh.
16 Well, once that's out of the way, the only thing Mr. Flangas and the
17 Petitioner is left with is arguing that there was no substantial evidence to
18 support the impositions of the fines and the penalties. The fines are
19 statutory, and they were -- they were done pursuant to Las Vegas
20 Municipal Code 9.04. They went for 30-days. They were -- notice was
21 given. And these are valid legitimate fine -- penalties for failure to
22 comply with the notice of the City.
23 So those penalties add on to the actual hard cost which are
24 also -- were also found to be just and reasonable by the hearing
25 designee, and absent any kind of contrary evidence that the City didn't

1 spend this money, and the City most assuredly spent \$38,000 boarding
2 up one property and \$20,000 of the other and has the receipts to prove
3 it. This is more than substantial evidence to support a finding against
4 the Lau's.

5 After that's established, we're back to the penalties
6 themselves, which are statutory, and were applied for 30-days because
7 the Lau's did not do what they were commanded to do, what they were
8 obligated to do under City law. And they didn't do it -- they don't even
9 argue that they didn't -- that they did do it. They just want to talk about
10 reasonableness. This is not the forum to argue the reasonableness of
11 these fines.

12 All this forum is for is to determine whether the designee has
13 substantial evidence to support its decision. And between the out-of-
14 pocket costs and the statutory fines and no contradiction of the Lau's not
15 doing what they were supposed to do -- which they don't even contest at
16 this point. This Court has no option but to sustain the findings of -- well,
17 of the City Council designee and dismiss the Petition. Thank you.

18 THE COURT: Thank you, Mr. Curtas.

19 Mr. Flangas, final word.

20 MR. FLANGAS: Yeah, thank you, Judge. And I understand
21 that their notice issue is not -- I mean they're saying it's not a factor, but
22 I'll tell you, everything the record regarding the notice issues that the City
23 presented was not -- was not presented at the hearing. And they cannot
24 supplement the trial after the trial's done. Closing arguments were
25 already given. And just like you have a judge trial -- I have a judge trial

1 in front of you, we get done and then five days later the other side says,
2 "Oh, by the way, we want to give you more exhibits. And that's what
3 we're talking about here. So I ask the Court to please reconsider that,
4 look at that. All the notices --

5 THE COURT: Mr. Flangas.

6 MR. FLANGAS: -- that were -- yeah.

7 THE COURT: I'm not saying that the notice issue is not an
8 issue because of the fact that they supplemented the record. I'm saying
9 that the notice issue is not an issue because of your client's own emails
10 to the City indicating that she had actual knowledge of this issue. That's
11 why I'm saying its not -- the notice issue is a non-starter for me.

12 MR. FLANGAS: Well, I -- Judge, that's in January. Okay, I
13 got it. That's in January --

14 THE COURT: Right.

15 MR. FLANGAS: -- and for the City to trigger all those fines,
16 we're talking about what occurred in December and then the file in -- fire
17 in December.

18 THE COURT: I think once you hear my decision on this, I
19 think you're going to understand --

20 MR. FLANGAS: Okay.

21 THE COURT: -- why I'm saying what I'm saying, so --

22 MR. FLANGAS: Okay.

23 THE COURT: Okay.

24 MR. FLANGAS: Just one last thing, Judge. I just want to --
25 the -- on the thousand dollars a day fines, it came down to the 24-hours

1 7 days a week security is why the City official dug her spurs in on why
2 she kept on assessing it. We got her to admit that the palm trees were
3 removed timely, that the -- that they did approve Sophie's demolition
4 plan, and it came down to the 24-hour 7 days a week. My client did hire
5 a 24-hour 7 days a week. There's a patrol. And if you look at that
6 request made by the City, it didn't say the person needs to be on-site all
7 the time.

8 And when she threw the emails down, that about it, she
9 rectified it. And so, at a very minimum I, you know, we would talk about
10 all those fines. Thank you.

11 THE COURT: You're welcome.

12 Okay, Counsel, so this was Ms. Lau's Petition. The City has
13 filed an Opposition. I've read everything. I went back and I looked at
14 the entire history. I looked at all of the exhibits. I looked at the decision.
15 I looked at the transcript of the proceedings. I've heard the arguments of
16 Counsel.

17 And one of the biggest questions that I had, which was finally
18 answered when I went back and looked at the transcript of the
19 proceedings and was a question that Mr. Luzerne had during the hearing
20 himself, was when was -- when were these fines started? And when
21 were they - when did they go to?

22 And based on the hearing transcript, they began to assess
23 them -- the first one began on January the 19th and stopped on February
24 the 20th, which was the date of the hearing. And the other one started
25 on January the 22nd. They basically said that they took them from the

1 time was for compliance underneath the notices. And the time for
2 compliance on one was January the 19th. The time for compliance on
3 the other was January the 22nd. Based on both of those notices, there
4 were four things that needed to be done.

5 The palm trees needed to be removed. They needed to hire a
6 licensed security firm. They needed to fence off the perimeter of the
7 property, and they needed to obtain all the demolition permits within 60-
8 days from the date of the notice, so by March the 22nd.

9 Mr. Curtas is correct that I am required, under the statute and
10 under the cases cited, to affirm the decision if there is substantial
11 evidence. And I'm only allowed to change the Petition, or change the
12 decision if the decision by the designee was arbitrary or capricious. An
13 act is arbitrary and capricious if it's taken without regard to the facts.

14 In this case, I find as follows: There were four things that
15 needed to be done: Removal of the palm trees, hire a licensed security
16 firm, fence off the perimeter of the property and obtain all demolition
17 permits within 60-days from the date of notice. Ms. Lau did, in fact,
18 remove all the palm trees. She did, in fact, hire a licensed security firm.
19 That was evidenced by the contract that was entered into on January the
20 16th. She did, in fact, obtain all the demolition permits 60-days from the
21 date of the notice.

22 Therefore, the only thing that was not done in accordance with
23 the requirements was to fence off the perimeter of the property.
24 Everything else was done prior to that January 19th date and that
25 January 22nd date. I, therefore find that the act of the designee was, in

1 fact, arbitrary as it relates to the fines, because the actions were, in fact,
2 taken other than fencing off the perimeter of the property. To the extent
3 that it's a thousand dollar fine if -- per day if things are not done, and
4 there were four actions here, I can change those fines. I do have the
5 right to do that.

6 Therefore, I'm going to impose the fine at \$250 per day and
7 reduce the fines. Those fines are going to go from January the 22nd to
8 February the 20th. So that would be 28 days at \$250. And the other one
9 will go from January the 19th to February the 20th, so that would be 31
10 days at \$250.

11 All of the assessments, as far as what the City had to do to
12 board up are supported, because these were emergency actions, and
13 therefore, could be taken without notice. And so, that is my decision.

14 MR. CURTAS: All right. So -- or should we just do the
15 arithmetic, Your Honor, and then put it in the Order; would that be fine?

16 THE COURT: Let's see here. We can do some quick math.
17 Anybody have a phone?

18 MR. CURTAS: [Laughs]. Excuse me.

19 THE COURT: Hold on one second. I should have done that
20 for you. 250 at 31 and 250 at 28.

21 MR. CURTAS: 7,750 and 7,000.

22 THE COURT: Okay. So that's --

23 MR CURTAS: According to Ms. Ozuna.

24 THE COURT: So --

25 MR. CURTAS: 7,750 and 7,000.

1 THE COURT: And so, the fines are reduced from the 32 and
2 the 30 to those amounts.
3 MR. CURTAS: All right.
4 Shall I prepare the Order, Your Honor?
5 THE COURT: Yes, please, Mr. Curtas.
6 MR. CURTAS: I will do so.
7 THE COURT: Thank you, very much.
8 MR. FLANGAS: Okay, thank you.
9 THE COURT: Thank you.
10 MR. FLANGAS: Thank you, Judge.
11 MR. CURTAS: Last name is Flangas.
12 Thank you, Your Honor.
13 THE COURT: Thank you.
14 MR. FLANGAS: I'll see you, John.
15 MR. CURTAS: Bye-bye.

16 [Proceeding concluded at 11:43 a.m.]

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20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video proceedings in the above-entitled case to the best of my ability.

23
24 
25 Nancy Maldonado
Court Recorder/Transcriber