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/Cross-Respondents, 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 Council Designee, Respondents/Cross-Appellants.	Electronically Filed Nov 16 2021 03:27 p.m. Elizabeth A. Brown Clerk of Supreme Court CASE No. 82720 DC CASE No. A-19-806797-W

RESPONDENTS/CROSS-APPELLANTS' REPLY BRIEF TO APPELLANTS' RESPONSE ON CROSS-APPEAL

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RESPONDENTS/CROSS-APPELLANTS 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; and JOHN BOYER, as City Council Designee (collectively referred to hereinafter as "**City Respondents**"), through their attorneys of record, BRYAN K. SCOTT, City Attorney, by DAVID E. BAILEY, Deputy City Attorney, file their REPLY BRIEF TO APPELLANTS' RESPONSE ON CROSS-APPEAL as follows:

I.

ARGUMENT

Most of the arguments made by Appellants/Cross Respondents (hereinafter "**property owners**") in their Reply Brief in Support of their Opening Brief and Response Brief to Respondents' Cross-Appeal Brief are identical or substantially similar to the arguments in their Opening Brief. Therefore, City Respondents will endeavor to not repeat their prior responsive arguments as set forth in City's Combined Answering Brief and Opening Brief on Cross-Appeal (hereinafter "**City's**

Combined Brief"). Instead, City Respondents limit their reply to property owners' new arguments.

A. PROPERTY OWNERS' NEW ARGUMENT REGARDING THE PROSPECTIVE NATURE OF DESIGNEE'S RULING CONCERNING STANDING SHOULD BE DISREGARDED BECAUSE IT IS BASED UPON ALLEGED FACTS NOT IN THE RECORD AND IT IS INACCURATE.

Property owners improperly argue in their Reply Brief (page 3) that Designee's statement about property owners' standing could not concern future proceedings before him because it was a "one-time proceeding with no additional proceedings that would involve the parties and this Designee." This new argument assumes that there could not be another proceeding before property owners and Designee, which is not a fact in the record. Therefore, the argument should be disregarded.

Should the Court find to the contrary, property owners' argument still fails because it is inaccurate. LVMC 9.04.100(D) provides a hearing mechanism before the Designee for parties such as property owners to seek a waiver or reduction in costs and penalties previously assessed by Designee. So, contrary to property owners' assertion, there is the potential for another proceeding before Designee. As a result, the prospective nature of Designee's statement in his Decision regarding standing was realistic and does not demonstrate that Designee factored in standing in his eventual assessment of costs and penalties.

B. DESIGNEE DID NOT ABUSE HIS DISCRETION BY RECEIVING THREE (3) PAGES OF PROOFS OF MAILING AFTER THE HEARING BECAUSE THE EVIDENCE WAS TESTIFIED TO AT THE HEARING AND PROPERTY OWNERS WAIVED ANY OBJECTION BY DECLINING DESIGNEE'S OFFER TO CONTINUE THE HEARING.

1. The Supplemented Evidence Consisted of the Three Proof of Mailing Pages--not Notices and Orders.

To clarify an issue regarding supplemental evidence raised by property owners, property owners included in their Reply Brief (§ 2 near the bottom of page 6) a portion of the City Council Designee's (hereafter "**Designee**") decision. It stated that the "Notices and Orders" that were "the predicate" for the penalties assessed were "included in the Binder A as supplemented by the City after the hearing." Property owners seem to mistakenly allege that the actual Notices and Orders were the evidence that was supplemented. That is not the case. Rather, as set forth in City's Combined Brief, the supplement was merely three (3) pages of proof of mailing documents—not Notices and Orders--which were testified to at the hearing. (Volume III, 0183, lines 324-335; 0189, lines 616-626).

2. City Respondents Testified about the Supplemented Evidence at the Designee Hearing so Property Owners were Aware of the Evidence.

For property owners to assert in their Reply Brief (page 7) that they were blindsided at the Designee hearing because the supplemented documents were not produced before or **during the hearing** is disingenuous. As set forth in City's

Combined Brief, property owners heard testimony about the three (3) pages of proof of mailing documents at the hearing. (Volume III, 0183, lines 324-335; 0189, lines 616-626). And, proof of mailing information was admitted into evidence at the hearing. So, property owners could not have been surprised by the contents of the supplemented three (3) pages of proof of mailings.

3. The Three (3) Pages of Proof of Mailings Were not Central to Designee's Determination.

Property owners' other claim that the proof of mailing pages themselves were central to the Designee's determination to fine property owners is simply wrong and not supported by the record. As property owners pointed out in their Response Brief on page 6, the Notices and Orders were the predicate for the penalties—not mere proofs of service documents regarding documents which property owners have never denied receiving nor denied being aware of.

4. Property Owners Waived any Objection to the Supplemented Evidence.

Property owners also gloss over their own waiver of the opportunity to have the hearing continued so they could review the proof of mailing documents. They attempt to distract from their waiver by referring to a pre-hearing letter from prior counsel which requested copies of documents. The fact remains that at the hearing property owners and their counsel waived the opportunity to continue the hearing

because of the three (3) proof of mailing pages at issue. (Volume III, 0184, lines 384-389; 0190-0191, lines 655-708; 0191-0193; and Volume I, 0090).

Once again, it is disingenuous of property owners to waive the continuance opportunity provided by the Designee but then argue to this Court that he erred by proceeding pursuant to property owners' waiver.

C. DESIGNEE'S DETERMINATION OF PENALTIES WAS SUPPORTED BY SUBSTANTIAL EVIDENCE AND WAS THEREFORE NOT AN ABUSE OF DISCRETION.

Designee's Decision to assess daily civil penalties was not an abuse of discretion because it was supported by substantial evidence. The substantial evidence determination is what this Court's role is on judicial review, as detailed in City's Combined Brief. But, in their Reply Brief, just as they did in their Opening Brief, property owners improperly urge this Court to essentially re-analyze and re-weigh the evidence de novo as if this Court was the Designee making the initial ruling rather than a reviewing court determining whether Designee's decision was supported by substantial evidence. The latter is this Court's role, as this Court has clearly and repeatedly set forth via established case law cited in City's Combined Brief (See, Stratosphere Gaming Corp. v. City of Las Vegas, 120 Nev. 523, 528, 96 P.3d 756, 760 (2004).

Specifically, property owners improperly argue that this Court, as the reviewing court, should eliminate all of the assessed fine and penalties because of

alleged substantial compliance with three (3) of the four (4) requirements set forth in City's Notice and Orders. **Property owners should address the standard of review and whether Designee's decision was supported by substantial evidence**. Presumably knowing that they have a weak argument for that and a high burden, property owners instead urge this Court to essentially not act as a reviewing court-- as it should in this case-- but instead to improperly substitute its judgment for that of the Designee in direct contradiction to this Court's ruling in Stratosphere.

The Designee decided there was a basis for the fees and penalties which he assessed because of property owners' history of non-compliance among other factors. This Court's role is not to determine what it would have done with the case had it been the Designee and it is not to determine what it would do upon hearing the evidence. This Court's role is to determine if substantial evidence supported Designee's decision. And, as City set forth in detail in City's Combined Brief, Designee's decision is supported by substantial evidence and should not be overturned.

Furthermore, property owners argue that alleged "substantial compliance" (which City vigorously denies property owner accomplished in a timely fashion) is a reason for this Court to improperly re-analyze the evidence. Property owners cited no law that such a concept has any applicability to the issues in this case. As a result, that argument fails.

D. PROPERTY OWNERS' ARGUMENT THAT CITY IS AT FAULT FOR THE CONDITION OF PROPERTY OWNERS' PROPERTY IS IRRELEVANT AND WRONG.

Surprisingly, property owners argue on page 10 of their Response Brief that somehow City should be responsible for property owners allowing their buildings to devolve into blight, become and remain harbors for criminal activity, and remain continuing public nuisances. Property owners support this ridiculous claim by adding that City was "allowing criminals, drug users and vagrants to loiter across the street from Las Vegas High School."

While the relevance of such a claim is very suspect, the irony of such a claim is perplexing. By issuing several orders to abate to property owners over a period of years, City attempted to cause property owners to clean up and remediate public nuisances occurring on their property. Property owners chose not to do so until demolition was the only solution. Yet, property owners ironically now assert that City did not do enough, while at the same time arguing that City went too far and improperly assessed fines and penalties against them. In the end, property owners' irrelevant argument is unconvincing.

And, property owners allege that City did not take responsibility for crime across the street from the properties at issue and for somehow allowing it to occur. The Las Vegas Metropolitan Police Department is responsible for arresting and citing for crimes, not the City. City's powers include issuing Notice and Orders to

abate public nuisances and assessing fines and penalties for non-compliance, just as it did in this case.

E. DESIGNEE'S ASSESSMENTS FOR EMERGENCY BOARDING CONTRACTOR FEES AND ADMINISTRATIVE FEES WERE PROPER AND BASED UPON PROPER IMMINENT HAZARD DECLARATIONS.

1. El Cid Property

Despite City Respondents clarifying in City's Combined Brief concerning the El Cid that two (2) separate imminent hazard declarations existed (one by City Respondents and the second by the City Council at a later date and concerning a different matter (See City's Combined Brief pgs. 42-44), property owners continue to ignore or are confused that there was a first declaration that was timely obtained. In doing so, property owners pretend that City incurred abatement expenses before obtaining another public agency official concurrence as required by LVMC 9.04.080(D) so as to have what appears to be a valid argument. But, the first declaration by City Respondents--which property owners ignore--completely guts their argument because it proves that City complied with LVMC 9.04.080(D) and had another agency concur in the imminent hazard declaration before incurring emergency abatement expenses as set forth in City's Combined Brief.

Property owners continue to cite the second imminent hazard declaration ratification made at the City Council meeting as if it was the one and only

declaration. But, as stated in the City's Combined Brief, City Respondents fully complied with LVMC 9.04.080(D) and declared the imminent hazard and obtained Fire Department and Las Vegas Metropolitan Police Department concurrence on December 17, 2018, and then incurred the emergency abatement costs thereafter. The subsequent declaration of imminent hazard by the City Council on January 31, 2019, was to require demolition and was entirely separate from the first declaration which was in response to the prior fire at the property.

2. MI Property

Regarding the MI Property, property owners again disregard information in the record which does not support their narrative. They argue that the property was not declared an imminent hazard when the evidence in the record as cited in City's Combined Brief demonstrated that it was. (See City's Combined Brief, pgs. 44-46).

And, property owners admit on page 14 of their Reply Brief that they did not address this issue during the Designee Hearing (as argued in City's Combined Brief). Therefore, property owners waived their argument that the fees and penalties should be voided for lack of an imminent hazard declaration.

DATED this 16th day of November, 2021.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in Times New Roman 14 point font size.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 2,712 words.

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

DATED this 16th day of November, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on November 16, 2021, I served a true and correct copy of the foregoing RESPONDENTS/CROSS-APPELLANTS' REPLY BRIEF TO APPELLANTS' RESPONSE ON CROSS-APPEAL through the electronic filing system of the Nevada Supreme Court, (or, if necessary, by United States Mail at Las Vegas, Nevada, postage fully prepaid) upon the following:

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