Case No. 84345

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, a political subdivision of the State of Nevada,

Appellant,

v.

180 LAND CO, LLC, a Nevada limited-liability company, and FORE STARS LTD., a Nevada limited-liability company,

Respondents.

Eighth Judicial District Court, Clark County, Nevada
Case No. A-17-758528-J
Honorable Timothy C. Williams, Department 16

OPPOSITION TO APPELLANT'S MOTION TO STAY

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

Respondents 180 LAND CO, LLC ("180 Land"), a Nevada limited liability company, and FORE STARS, Ltd. ("Fore Stars"), a Nevada limited liability company, (collectively "Landowners"), are not publicly traded companies, nor do Landowners have more than 10% of stock owned by a publicly traded company. These companies are effectively owned by two sets of principals, 50% by principals Paul and Vickie DeHart and 50% by principals Yohan and Merav Lowie, through various entities and family partnerships.

Landowners were represented in the District Court by the Law Offices of Kermitt L. Waters and are represented in this Court by the same.

DATED this 18th day of March, 2022.

LAW OFFICES OF KERMITT L. WATERS

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I. INTRODUCTION

The City of Las Vegas (hereinafter "City") inappropriately seeks a stay of its constitutional and statutory obligation to pay the Landowners' just compensation award. Virtually identical to its writ petition in Case No. 84221, the City's motion is a delay tactic and another improper government action at taxpayers' expense so pervasive in this case. The Landowners were forced to initiate the underlying inverse condemnation action after the City took their property without just compensation. Since then, the City has unduly delayed the case *for years* to avoid paying anything, and even worked with adjacent property owners to do so, all of which has had an oppressive effect on the Landowners and nearly destroying their livelihood. Now that the Landowners are finally awarded a $34 million judgment for the taking, the City is again delaying to postpose indefinitely just compensation. For several reasons, the City is not entitled to a stay and thus, the motion should be denied.

Specifically, the district court properly concluded that the mandatory provisions of NRS Chapter 37 and this Court's precedent apply to compel the City to promptly pay the just compensation award. The district court applied NRS 37.140 (damages *must* be paid within 30 days after judgment), NRS 37.170 (government must pay eminent domain award when in possession pending appeal), and *State v. Second Jud. Dist. Ct.,* 75 Nev. 200 (1959) (government must pay a just compensation award as a precondition to appeal). Otherwise, the City would have the power not

only to take another's property, "but also to postpose indefinitely the payment of just compensation for it," a power which this Court has recognized "may well have an oppressive effect." *Id.* at 205. And, despite the City's erroneous contention otherwise, it is well established in Nevada that these mandatory provisions of NRS Chapter 37 apply to both direct condemnation and inverse condemnation cases – as both are governed by the same rules and principles. *See County of Clark v. Alper,* 100 Nev. 382, 391 (1984) (applying NRS Chapter 37 in inverse condemnation proceedings); *Argier v. Nevada Power Co.,* 114 Nev. 137, 140 n. 2 (1998) ("[T]his court has held that the same rules that govern direct condemnation actions apply in inverse condemnation actions as well.").

Additionally, specific statutes take precedence whenever any conflicts cannot be harmonized. *See Doe v. La Fuente, Inc.,* 2021 WL 772878, at *24-25 (Feb. 25, 2021) (unpublished disposition) ("the more specific statute will take precedence, and is construed as an exception to the more general statute") (citation omitted); *Int'l Game Tech., Inc. v. Second Judicial Dist. Court,* 124 Nev. 193, 200-01 (2008) ("a statute's provisions should be read as a whole . . . and, when possible, any conflict is harmonized"). Thus, the provisions of NRS Chapter 37 mandating payment of the just compensation award take precedence over NRCP 62 and NRAP 8. The district court therefore properly denied the City's request for a stay.

Even if NRAP 8 is applied, a stay is not warranted. The object of the appeal will not be defeated simply because the possibility exists that the City may have to seek to get the just compensation award back. Nor does such a possibility constitute irreparable harm. *See State v. Second Jud. Dist. Ct.,* 75 Nev. at 205 (seeking to get back eminent domain award is not an unjust burden on government entities). By contrast, to postpone indefinitely the payment of just compensation constitutes irreparable harm to the Landowners. *See id.* (recognizing oppressive effect of undue delay in payment of just compensation). Similarly, the City's doomsday assertion that it will be forced to approve every future development application in the absence of a stay is nothing more than unsubstantiated hyperbole. Finally, the fact and law support the district court's decisions so the City is not likely to prevail on appeal. In particular, the following evidence (and lack thereof on behalf of the City) was critical to the district court's decision: (1) the 35 Acre Property residential zoning is utilized to determine property rights, not a master plan designation; (2) The City denied two applications to develop the land; (3) the City denied an application to fence the land and an application to allow the Landowners access to their property for one reason only, "the impact to surrounding neighbors"; (4) The City adopted a bill that targets only the Landowners' property, makes it impossible to develop, and authorizes the public to use it; (5) the aggregate of the City's actions met all three of Nevada's "invariable" taking rules; and, (6) the City provided no evidence to the contrary.

That the district court denied the Landowners' petition for judicial review ("PJR") but also concluded that the City's actions constitute a taking is not the irreconcilable contradiction the City claims. Although the government action in this case is abhorrent, it is well settled that takings can occur from even the proper exercise of government discretion seeking to promote legitimate public interests. *Loretto v. Teleprompter Manhattan CATV Corp.*, 102 S. Ct. 3164 (1982) "a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve." *Id.* At 3171). As such, the district court's decision on the PJR does not demonstrate that the City is likely to prevail on appeal. The City's motion for stay should be denied accordingly.

II. NRS CHAPTER 37 APPLIES AND COMPELS PROMPT PAYMENT OF THE JUST COMPENSATION AWARD

Despite the City's erroneous contention otherwise, it is well established in Nevada that inverse condemnation proceedings are the constitutional equivalent of eminent domain actions and are governed by the same rules and principles that are applied to formal condemnation proceedings. *See County of Clark v. Alper,* 100 Nev. at 391, (applying NRS Chapter 37 to inverse condemnation action); *see also Argier v. Nevada Power Co.,* 114 Nev. at 140 n. 2 (1998) ("this court has held that the same rules that govern direct condemnation actions apply in inverse condemnation actions as well."). Therefore, NRS 37.140 and NRS 37.170 indisputably apply here despite the City's improper attempt to limit *Alper* (and the well-established Nevada law set

forth therein) to a small set of cases. *See McCarran Int'l Airport v. Sisolak*, 122 Nev. 645 (2006) (Nevada enjoys a rich history of protecting private property owners against takings and provides broader protection than federal counterparts).

Moreover, the statutory language is mandatory. Indeed, NRS 37.140 and NRS 37.170 expressly state that the City *must* promptly pay the just compensation award within 30 days after judgment and as a precondition to an appeal, without exceptions. Because these statutes are mandatory, the district court was compelled to deny the City's request to stay payment of the just compensation award in this case.

Additionally, *State v. Second Jud. Dist. Ct.* makes clear that the City must pay the amount of the just compensation award as a condition to its right to appeal. *See id.,* 75 Nev. at 205. That the case involved eminent domain rather than inverse condemnation is inconsequential because eminent domain and inverse condemnation cases are the constitutional equivalent, so the same rules and principles apply. *See Alper,* 100 Nev. at 391.

Arguably, compelling payment of just compensation awards as a condition of appeal is even more important in inverse condemnation cases such as this since they necessarily involve a finding of government liability before the question of just compensation is addressed. In other words, the government's possession of the property has already been established upon entry of judgment in inverse condemnation cases whereas the government may not yet have taken possession in

eminent domain cases. Indeed, the Nevada legislature enacted NRS 37.170 to prevent the government from postponing indefinitely the payment of just compensation when it is already in possession of the property. Adopting the City's construction of the statute subverts this legislative intent as the City has been in possession of *both* the Landowners' property and their just compensation for nearly five years already. The Court should reject it accordingly.

Important public policy considerations also compel the Court to reject the City's construction of NRS Chapter 37. *First,* it would be impossible to adopt one body of law that applies to inverse condemnation cases and another to direct condemnation cases. Indeed, neither this Court nor the Legislature has ever attempted such a task. *Second,* the underlying principles for a direct and inverse condemnation are the same – the government takes property and the constitution mandates payment for that taking. *Third,* once the distirct court determines that property has been taken, the constitutional protection of "just compensation" become "automatic,"[1] meaning, for all intents and purposes, at that time, there is no difference between a direct condemantion and an inverse condemnation case – property has been taken and "just compensation" is constitutionally mandated. *Fourth,* the governmnent deserves no favor in an inverse condemnation action

[1] *Knick v Township of Scott, Pennsylvania,* 139 S.Ct. 2162 (2019) (holding once there is a taking just compensation is mandated and no subsequent action by the governnent can eliminate that mandate).

because the landowner is forced to bring the action against the government for an unconstitutional taking, creating more costs, fees and delay than the traditional direct condemnation action where the government admits the taking but may not yet have taken possession of the property. Accordingly, public policy dictates that the City be bound by the provision of NRS Chapter 37 in this inverse condemnation case.

It is well settled that specific statutes take precedence whenever any conflicts cannot be harmonized. *See Doe v. La Fuente, Inc.,* 2021 WL 772878, at *24-25 (the general/specific canon instructs that when two statutes conflict, "the more specific statute will take precedence, and is construed as an exception to the more general statute") (citation omitted); *Int'l Game Tech., Inc.,* 124 Nev. at 200-01 (noting that "a statute's provisions should be read as a whole . . . and, when possible, any conflict is harmonized"). Thus, the provisions of NRS Chapter 37 take precedence over NRCP 62, and the City is not entitled to an automatic stay without paying the award. *See* NRS 37.170 (prompt payment of just compensation award); *cf.* NRCP 62(e) (stay without bond on appeal for government entity).

For the same reason, NRAP 8 is likewise inapplicable here. Again, the statutes specifically applicable to inverse condemnation cases such as this (NRS 37.140 and 37.170) take precedence over a rule that applies only generally to the issuance of a stay (NRAP 8). *See Doe v. La Fuente, Inc.,* 2021 WL 772878, at *24-25; *see also City of Sparks v. Reno Newspapers, Inc.,* 133 Nev. 398, 400-01 (2017)

("[I]t is an accepted rule of statutory construction that a provision which specifically applies to a given situation will take precedence over one that applies only generally."). The City's request for a stay should therefore be summarily denied without consideration of the factors in NRAP 8(c).

In its reply in support of extraordinary relief in Case No. 84221, the City cites *State v. Second Jud. Dist. Ct.*, 116 Nev. 953 (2000), for the erroneous contention that this Court's rules of procedure (NRAP 8) prevail over NRS 37.170. *See* Reply WP at p. 13-14. However, *State v. Second Jud. Dist. Ct.* merely stands for the proposition that court rules of procedure take precedence over procedural statutes. *See id.,* 116 Nev. at 961-63. Because NRS 37.170 is indisputably a substantive statute, *State v. Second Jud. Dist. Ct.* is inapposite. Accordingly, NRS 37.170 prevails over NRCP 62 and NRAP 8 and compels the City to pay the just compensation award pending appeal.

Finally, in an attempt to avoid application of NRS 37.140 and NRS 37.170, the City claims it has not taken "possession" of the 35 Acre Property and even states "[t]he district court did not award damages for a physical invasion." The record however, belies the City's representation. The district court held, "the Landowners have been dispossessed of the Subject Property by the City and the City is in possession of the Subject Property for a public use." VI AA 1128-1139, specifically, VI AA 1134:6-7. *See also* FFCL Re: Take, V AA 0884:21-0885:23 (neighbors are

using the 250 Acres), V AA 0898:16-17 (finding the City "per se" took the 35 Acre Property and a "per se taking is a taking in and of itself and there is no defense to the taking.") and FFCL Re: Just Compensation, V AA 0941:11-12 ("the City's actions have taken all value from the property."), V AA 09:7-10 (ordering just compensation due to "the City's unlawful taking."). The reason for these findings is the City's taking actions, which are more fully set forth below.

III. EVEN IF NRAP 8 APPLIES, WHICH IT DOES NOT, THE CITY IS NOT ENTITLED TO A STAY

As more fully set forth below, even if NRAP 8 applies, which it does not, the City cannot succeed on appeal, the object of the appeal is not defeated if a stay is denied nor will the City suffer irreparable or serious injury if the stay is denied. Rather, it is the Landowners that have and will continue to suffer irreparable or serious injury if the stay is granted and thus, the City's motion should be denied.

A. The City Will Not Prevail on Appeal.

This Court has adopted the mandatory "two-step analysis" for resolving inverse condemnation cases set forth in *Karuk Tribe of California v. Ammon*, 209 F.3d 1366 (2000). *See McCarran Int'l Airport v. Sisolak,* 122 Nev. 645, 658 (2006). "First, a court determines whether the plaintiff possesses a valid interest in the property affected by the governmental action, i.e., whether the plaintiff possesses a 'stick in the bundle of property rights.'" *Karuk Tribe,* at 1374. "If a plaintiff possesses a compensable property right, a court proceeds to the second step. Under

that second step, a court determines whether the governmental action at issue constituted a taking of that 'stick.'" *Id.* The district court properly followed this two-step analysis finding that the Landowners possess a property interest in the zoning of R-PD7 and that the government actions took that interest. As discussed in detail below, the law and overwhelming, uncontested evidence supports those findings. Accordingly, the City will not succeed on appeal.

1. Zoning is Utilized to Determine Property Interest.

The City's primary argument is that the district court erred because the Landowners never had the property right to use the 35 Acre Property. Remarkably, the City argues that zoning is not used to define property rights rather, it is the City's master plan that determines those rights and that master plan designation is parks, recreation, and open space ("PR-OS") prohibiting residential development (the City's PR-OS argument"). City Motion 7-9, 21-23. The City's position is contrary to well-established and unanimous Nevada eminent domain law, the City's **own** ordinances and policies, and the uncontested evidence in this case.

a. All Three Branches of Nevada Government Find Zoning Determines Property Rights.

(i) The Supreme Court of Nevada

Nearly twenty years ago, this Court decided the very argument the City presents here, i.e. whether zoning or the master plan is utilized when determining the property interest, holding that the district court *must rely on the zoning*.

In *City of Las Vegas v. C. Bustos*, 119 Nev. 360, 361 (2003), the City of Las Vegas argued, as it does here, that the court should rely on the City's master plan, not zoning. To support its position in *Bustos*, the City relied on land use and PJR law, just as it does here. *Id at* fns. 1 and 2. This recycled argument by the City was rejected in *Bustos* which held that the district court correctly disregarded the City's master plan and "properly considered the current zoning of the property." *Id.*, 119 Nev. at 363. This Court cited 12 authorities to support its position. *See Id., fn. 10.*

This is the law for all takings cases whether it be by direct or inverse condemnation. *See McCarran Int'l Airport v. Sisolak*, 122 Nev. 645 (2006) (inverse condemnation case where Mr. Sisolak's property rights defined based on H-1 zoning that is "for the development of a hotel, a casino, or apartments." Id., at 651); *County of Clark v. Alper*, 100 Nev. 382 (1984) (inverse condemnation case where Mr. Alper's property rights are based on "those zoning ordinances that would be taken into account by a prudent and willing buyer." Id., at 390); *Alper v. State*, 95 Nev. 876 (1979), *on reh'g sub nom. Alper v. State*, 96 Nev. 925 (1980) (inverse condemnation case where this Court cited verbatim the "uses permitted" in the H-2 zoning to define the landowner's property rights. Id., at 878-79); *County of Clark v. Buckwalter*, 115 Nev. 58 (1999) (direct condemnation case where this Court held that, even though the property was actually being used for apartments, "it was zoned for commercial use, to include retail, food and beverage, or gaming facilities." *Id*.,

at 59); *Andrews v. Kingsbury Gen. Imp. Dist. No. 2*, 84 Nev. 88 (1968) (direct condemnation case using zoning for "single family residences" and the "regulations" for this zoning category to decide the property right. *Id.*, at 89).

(ii) The Legislative Branch

The Nevada Revised Statutes for Planning and Development (NRS chapter 278) is in conformance, providing that a governing body shall consider conformity between zoning and a master plan, however, "if any existing zoning ordinance is inconsistent with the master plan, ***the zoning ordinance takes precedence***." NRS 278.349(3)(e). Emphasis added.

(iii) The Executive Branch

Nevada's Executive Branch even confirmed this long-standing Nevada law. Attorney General Opinion 84-06 states, "[i]n 1977 the Nevada Legislature expressly declared its intention that zoning ordinances take precedence over provisions contained in a master plan. [citation omitted]. This recent enactment buttresses our conclusion that ***the Nevada Legislature has always intended local zoning ordinances to control over general statements or provisions of a master plan.***" (emphasis added)16 RA 03574-03581, specifically, 3577-3578.

b. All Three Relevant City Departments Declare That Zoning Determines Property Rights as Zoning is Superior to Any Inconsistent Master Plan.

Contrary to the City's current argument to this Court, the City Attorney's Office, the City Planning Department and the City tax assessor uniformly agree that the 35 Acre Property has at all times been zoned R-PD7 providing the Landowners the right to develop 7 residential units per acre while confirming that zoning takes precedence over any master plan designation. Moreover, the uncontradicted evidence reveals that there has never been a legal PR-OS master plan land use designation on the property, as currently alleged by the City.

(i) City Attorney's Office

The City Attorney's Office publicly rejected the City's PR-OS master plan argument provided here. During a public hearing at City Hall, Veteran City Attorney Brad Jerbic stated, "Council gave hard zoning to this golf course [250 Acres], R-PD7, which allows somebody to come in and develop" (5 AA 0866:19-22) and "[t]he rule is the hard zoning, in my opinion, does trump the General Plan [Master Plan] designation" (5 AA 0868:5-7). Mr. Jerbic and Deputy City Attorney Phil Byrnes submitted a pleading under Rule 11, arguing in relation to another parcel comprising the 250 Acres, "In the hierarchy, *the land use designation [master plan] is* ***subordinate*** *to the zoning designation. . ."* 5 RA 00942:4-12.

Also, in an unrelated inverse condemnation case, the City Attorney's Office submitted a pleading under Rule 11 that the City Master Plan, "was a routine planning activity that had *no legal effect* on the use and development" of properties,

providing two City attorney affidavits that "the Office of the City Attorney has consistently advised the City Council and the City staff that the City's Master Plan *is a planning document only*" and doesn't influence development. 5 AA 0868:8-12, 16 RA 03583-03589, 5 AA 0868:13-15, 16 RA 03589:10-13, 16 RA 03592:10-13.

(ii) City Planning Department

The City Planning Department also rejected the City's PR-OS master plan argument being made to this Court. Top planning official Robert Genzer confirmed the 250 Acres is zoned R-PD7 for residential development and there are no restrictions to development. 5 AA 0865:22-24. Two other top City planning officials, Tom Perrigo (City Planning Director) and Peter Lowenstein (Deputy Director) performed a three-week study and confirmed the entire 250 Acres is zoned R-PD7 for residential development, zoning trumps everything, and the owner of the property can develop under the R-PD7 zoning. 5 AA 0866:1-6. Peter Lowenstein testified that, "a zone district gives a property owner property rights." 5 AA 0866:23-24. Tom Perrigo testified that, "if the land use [Master Plan] and the zoning aren't in conformance, then the zoning would be the higher order entitlement." 5 AA 0868:16-18. Importantly, the City confirmed all of this by providing the Landowners, prior to acquisition of the 250 Acres, a Zoning Verification Letter, that the 250 Acres is zoned R-PD7 for development of up to 7 units per acre. 5 AA 0866:7-14, 15 RA 03319. Even the City's own master plan states if zoning and a

master plan land use designation are inconsistent, zoning takes precedence; is "the law." 17 RA 03670, 16 RA 03396.

Finally, as is explained below, when the Landowners presented their applications to the City Council for approval the City planning departments confirmed that the proposed residential development "conforms to the existing zoning district requirements" (5 AA 0867:5-6) and that residential development is "in conformance with [] Title 19 [City Zoning Code]" (5 AA 0867:7-12).

(iii) City Tax Assessor

The City Tax Assessor rejects the City's PR-OS master plan argument. The City Tax Assessor is required, under NRS 361.227(1) to determine the "lawful" use of property and then impose a real estate tax based on that "lawful" use. Here, the City Tax Assessor based the "lawful" use of the entire 250 Acres on the residential "Zoning Designation … R-PD7" and has taxed the Landowners over $200,000 per year on the 35 Acre Property, alone, based on this residential zoning and "lawful use." 5 AA 0867:13-0868:2.

Consistent with the City Attorney's Office, Planning Department, and Tax Department, buyers and sellers of property, title companies, investors, real estate brokers, appraisers, and banks all uniformly rely on zoning, not a master plan. This is confirmed by veteran land use attorney, Stephanie Allen, who testified, "During my 17 years of work in the area of land use, it has always been the practice that

zoning governs the determination of how land may be used. The master plan land use designation has always been considered a general plan document. I do not recall any government agency or employee ever making the argument that a master plan land use designation trumps zoning." 5 AA 0868:19-24, 17 RA 03817-03823. *See Sisolak*, supra, (relying on what a reasonable businessman would consider when purchasing. *Id*., at 671).

c. The PR-OS Land Use Designation was Never Legally Adopted.

Moreover, the City was unable to prove that the PR-OS designation was ever legally adopted on the City's master plan. In fact, the City could not even determine how the PR-OS designation came to be.

At trial, in support of its position, the City presented illustrative maps shading the entire 250 Acres green with a corresponding legend indicating a parks, recreation and open space designation. *See e.g.* II AA 0274-0275. These maps, clearly state they are prepared "only to meet the needs of the City" and are "for reference only," meaning they have no legal effect. Id. Importantly, NRS 278.150, provides in pertient part that notice must be given to a property owner if the City changes the master plan land use designation on its property and must "refer expressly to the maps, descriptive matter and other matter intended by the commission to constitutethe plan or any amendment." *See, Statutory Addendum, at xiv*. Accordingly, PR-OS was never legally adopted.

This was established by City Attorney Brad Jerbic who confirmed that the City never properly designated the 35 Acre Property PR-OS on its master plan:

> "If I can jump in too and just say that everything Tom [Tom Perrigo – Director of City Planning] said is absolutely accurate. The R-PD7 preceded the change in the General Plan to PR-OS. ***There is absolutely no document that we could find that really explains why anybody thought it should be changed to PR-OS*****,** except maybe somebody looked at a map one day and said, hey look, it's all golf course. It should be PR-OS. I don't know." 3 RA 00582, 2 RA 00407:16-20.

As explained, however, regardless of a master plan land use designation, proper or improper, zoning takes precedence and thus, the City will not prevail on this argument.

d. The PJR Order Has No Bearing On Eminent Domain.

The City's citation to the district court judicial review (PJR) order is not determinative in this inverse condemnation action as the district court explained ad nauseum. *See* 5 AA 0902-0904. The district court was clear – this is an eminend domain case, not a judicial review case, therefore, eminent domain law applies. Moreover, this Court recently confirmed that PJR law has no application in other civil cases such as this. *City of Henderson v. Eighth Judicial District Court*, 137 Nev. ___, 489 P.3d 908, 912 (2021) (PJR and other civil cases should not be mixed; they are "[l]ike water and oil, the two will not mix. Standards more quotes etc").

Furthermore, the City's contention that the PJR order determines this inverse condermnation case entirely eliminates property rights in Nevada because, according

to the City, governments have absolute discretion to deny all use of property with no impact to the landowner. This is not the law in Nevada. Rather, this Court has held that Nevada landowners have the "***inalienable right*** to possess, ***use,*** and enjoy the property." *See ASAP Storage, supra, at 646).* The City can apply 'valid' zoning regulations to that use of the property, but ***if those zoning regulations 'rise to a taking,' then the City is liable for the taking and must pay just compensation***. *See Sisolak,* 122 Nev. at 657, 660 and fn. 25.

Accordingly, eminent domain law applies here and thus, the City cannot succeed with this argument.

e. The Permitted Uses in R-PD7 are Residential.

To determine the permitted uses under the R-PD7 zoning, the district court properly turned to the City of Las Vegas Unified Development Code (UDC). 2 RA00458 - 3 RA00461. Indeed, the Zoning Verification Letter, which the City gave the Landowners prior to acquiring the 35 Acre Property, states the 35 Acre Property is zoned R-PD7 and the legally permitted uses of property zoned R-PD7 are in the City's UDC Title 19. 15 RA 03318-03319.

Generally, UDC 19.18.020 defines Zoning District as, "An area designated on the Official Zoning Map in which certain uses are permitted and certain others are not permitted, all in accordance with this Title" and UDC 19.16.090 (O) states that once zoning is in place, "[s]uch approval authorizes the applicant to proceed with

the process to develop and/or use the property in accordance with the development and design standards and procedures of all City departments and in conformance with all requirements and provisions of the City of Las Vegas Municipal Code."

Specifically, UDC 19.10.050 (A) defines the "intent" of R-PD7 zoning as "residential development." UDC 19.10.050 (C) then lists the "Permitted Land Uses" for R-PD7 zoning as "single family and multi-family residential." "Permitted uses" is defined in UDC 19.18.020 as, "Any use allowed in a zoning district ***as a matter of right*** if it is conducted in accordance with the restrictions applicable to that district." Emphasis added. Therefore, it is indisputable that R-PD7 zoning confers the right to use the 35 Acre Property for single family and multi-family residential.

f. The Property Interest is its Zoning of R-PD7.

The district court properly held that eminent domain law requires zoning be used to determine the property rights, finding the zoning on the 35 Acre Property to be R-PD7. 2 RA 00460 – 3 RA 00461, V AA 0864-0871. Furthermore, the district court properly held the permitted uses of the R-PD7 zoned 35 Acre Property are single family and multi-family residential. Id. Reversing the district court's decision would require overturning decades of legal precedent causing conflict with legislative intent and statutory laws while rendering property rights meaningless and derogating the City's own policies and ordinances. Thus, the City has does not have a realistic possibility of success on appeal let alone a likelihood.

2. Uncontested, Overwhelming Evidence Supports The District Court's Finding that the City Took the Land.

The district court properly followed this Court's precedent and held that the aggregate of the City's actions must be considered when deciding the taking issue. 5 AA 0891:10-0892:2. The district court also properly followed this Court's precedent that there are "nearly infinite variety of ways in which government actions or regulations can effect property interests," but that there are a few "invariable rules" where this Court will *always* find a taking. 5 AA 0891:14-17; 0892:3-8. As is more fully discussed below, the aggregate of each of the City's actions are shocking and amount to a taking.

a. The Development Application Denials.

Upon acquisition of the R-PD7 zoned 250 Acres the Landowners began the development process including hosting neighborhood meetings. Within months, in or around December of 2015, a representative of the surrounding Queensridge properties demanded that the Landowners relinquish 180 acres plus water rights in exchange for the ability to use their remaining 70 acres. 12 RA 02634, 5 AA 0871:11-0872:3. The representative threatened that if the Landowners refused to give up the land, they would prevent <u>all</u> development of the 250 Acres through "political connections" with the City. Id. These threats were repeated by the City through the Councilmembers and others over the next four years. 4 RA 00723; Para

5-6, 4 RA 00723; Para 7. These facts were undisputed as were the following subsequent actions by the City.

The City advised the Landowners that, *unequivocally and without exception,* the City would accept *only* one application to develop the entire 250 acres. 4 RA 00718:12-18, 5 RA 00979-980, para. 13, 5 AA 0872:21-0873:15. Over the Landowners objections, the City required submission of a Master Development Agreement for the entire 250 Acres (the "MDA"). Id. The Landowners acquiesced and worked tirelessly on the MDA for over two years (Spring 2015-Summer 2017). 4 RA 00718-00720, 5 RA 00979, para. 11, 5 AA 0879:1-3. The City primarily drafted the MDA, imposing outrageous conditions and costs on the Landowners in excess of $1 million above those typically imposed for an MDA application. Id. 5 AA 0873:22-0876:6. The Landowners paid *all* costs and conceded *all* conditions. Id. 5 AA 0879:4-5.

Recognizing, that the City had created a never-ending MDA process, the Landowners applied to develop the 35 Acre Property with 61 residential units, less than 2 units per acre (the R-PD7 zoning allows up to 7 units per acre). 4 RA 00719:13-28, 5 AA 0876:7-11. The 35 Acre Property applications were submitted to the City Council for approval on June 21, 2017, with the City Planning Department's recommendation for approval that all statutory and code requirements and were consistent with the City's zoning code. 5 AA 0876:12-0877:23. At the

hearing, a councilmember stated the proposed development was "so far inside the existing lines." 5 AA 0877:20-24. The City Council, however, contrary to its own code and planning recommendation, *denied* the application for only two reasons, the City Council would *only* consider an MDA and the purported impact to "surrounding residents" (those claiming to be "politically connected"). 5 AA 0878:1-19.

On August 2, 2017, the MDA application was finally considered by City Council. The City Attorney's office and Planning Department both confirmed that the City-prepared MDA application met all City requirements and the proposed development under the MDA *was consistent with the zoning code and the City's master plan*. 5 AA 0879:6-18. However, the City *denied* the MDA, without equivocation and without asking for additional conditions or amendments, the City simply denied it. 5 AA 0879:19-0880:10. In other words, the City denied the stand-alone application to develop the 35 Acre Property because it was not the MDA and then denied the MDA. Denial of these two applications alone constitute a taking.

b. The Fence Denials.

The Landowners then applied for fencing around the permitter of the 250 Acres and the interior large ponds to exclude others and protect the health, safety, and welfare of the public. 5 AA 0880:11-0881:19, 12 RA 02616-02626. A fence application is an over-the-counter application, subject to a "minor review" and excluded from a major review. Id. In violation of its own code, the City *denied* the

fence application due to "impact on the surrounding properties" and required a "major review" – the process for a hotel/casino submittal. Id. *See UDC 19.16.100(G)(1)(b).* At the district court hearing on the taking, the City provided only one justification for the fence denial – "political pressure." 22 RA 04777:2-6. Accordingly, the City prohibited the Landowners from excluding others from their property, a clear per se taking.

c. The Access Denials.

The Landowners submitted an over-the-counter application to access different parcels of the property in order to maintain it and other uses consistent with their ownership. 12 RA 02607-02615, 5 AA 0881:20-0882:17. Incredibly, the City *denied* the access applications due to impact to "surrounding properties." Id. Accordingly, the Landowners lost possession and use of their property to the surrounding neighbors due to City's actions. Denial of access to the property constitutes a taking.

d. Adoption of City Bills to Stop All Development so the Surrounding Neighbors Could Use the Landowners' Property.

The City then took aggressive actions against the Landowners announcing publicly to the surrounding neighbors that the privately-owned 250 Acres was available for the surrounding owners' recreational use. 15 RA 03338:23-03339:15, 03341:23-03342:3, 5 AA 0885:1-10. The City then drafted two bills to legislate the public's recreational use of the Landowners' property. 5 AA 0882:18-0886:6, 13 RA

02711-02737. One councilmember described these bills as follows: "[f]or the past two years, the Las Vegas Council has been embroiled in controversy over Badlands [250 acres], and this [Bill 2018-24] is the latest shot in a ***salvo against one developer***" and "[t]his bill is for one development and one development only. This bill is only about the Badlands Golf Course [250 Acres]" and "I call it the Yohan Lowie Bill." 15 RA 03223:57-03224:60, 15 RA 03238:487, 5 AA 0882:24-0883:5. Emphasis added. An uncontested expert report confirmed these bills targeted only the Landowners' property. 13 RA 02768-15 RA 03220, 5 AA 0883:6-15. The bills made it impossible to develop or use any part of the 250 Acres and forced the Landowners to allow others to access their privately-owned 250 Acres for recreation and open space purposes. 5 AA 0883:16-0885:20. The City adopted these bills over the Landowners' strenuous objection and the uncontested evidence shows that the surrounding neighbors are using the 250 Acres, which includes the 35 Acre Property at issue.[2] 5 AA 0885:21-0886:3, 16 RA 03412-03573.

e. Additional City Communications and Actions.

The Landowners obtained numerous documents through public records requests that revealed shocking facts, including a City scheme to purchase the 250

[2] Although the City provides the affidavit of Donald Richards that addresses this use, it leaves out the photos showing the public using the property, without noting such redaction in the record. *See* City Exhibit 2 AA 0308-0309 which redacts the photos and Landowners' *and* 16 RA 03412-03573 which includes the photos.

Acres for just $15 million (after the City devalues the property) and rezone it for the surrounding neighbors. 5 AA 0887:16-0889:16. They also reveal disturbing government conduct, such as retaining a private investigator to get "dirt" on the Landowners in case the City needs to "get rough" and a plan to speak in code through emails to avoid further public records requests. Id.

f. Expert Opinion.

The Landowners retained MAI appraiser, Tio DiFederico ("DiFederico") who prepared a detailed expert report. 17 RA 03679-03814, 5 AA 0889:17-0890:12, 5 AA 0935:1-0941:19. That report states the 35 Acre residentially zoned property, prior to any City interference, was worth $34,135,000, but as a result of the City's above-described actions, the property is valueless resulting in "catastrophic damages to this property." 17 RA 03779, 5 AA 0941:10-12. This evidence of damages was undisputed as the City never produced an expert report, did not challenge the evidence presented by the Landowners, and in fact did not object to the appraisal report stating "the City has no evidence to admit in rebuttal to the evaluation report . . ." 24 RA 05257:1-3, 24 RA 05258:13-14.

g. Take Facts Summary.

The City's taking actions were not only egregious, they were predatory and the City's claim that this is a "regulatory takings" case where the City merely denied one development application is patently false. Unquestionably, the City denied two

applications to develop the 35 Acre Property for residential use, including the MDA it demanded; denied the Landowners' application to fence their property; ousted the Landowners from their property by denying access; passed two bills that targeted only the 250 Acres, made it impossible to use the property, and preserved the 250 Acres for use by surrounding owners for "recreation" and open space. The aggregate of City actions rendered the Landowners' $34,135,000 property valueless.[3]

h. The Landowners' Tireless Efforts to Develop.

The City's false assertion that the Landowners are greedy and never intended development is particularly outrageous given all they endured including spending millions at the City's behest. 5 AA 0872-0882. Ultimately, the City denied all attempts, adopting bills that targeted the Landowners, prohibited all use of their property, and authorized the public to use it. 5 AA 0872-0886. As the district court concluded, this clearly constitutes a taking and once a taking occurs, just compensation is automatically mandated. *See Knick v Township of Scott, Pennsylvania,* 139 S.Ct. 2162, 2172 (2019) ("a property owner acquires an irrevocable right to just compensation immediately upon a taking" . . . "[a] bank robber might give the loot back, but he still robbed the bank."). Thus, the City's self-

[3] Notably, the denials were not based on the City's argument here that a "PR-OS" master plan designation prevents the use of the property thereby further showing that the City's baseless PR-OS master plan argument as nothing more than an invented litigation defense.

serving, after-the-fact letters to the Landowners inviting them to re-submit applications to develop, *for a fifth time* sent *after* the City had already taken the property and *after* the City repeatedly lost at the district court level is nothing but litigation fodder. *See* City Motion, p. 6.

i. The Aggregate of City Actions Meet All Three of Nevada's Invariable Taking Rules.

(i) Per Se Categorical Taking

A per se categorical taking occurs where government action "completely deprives an owner of all economical beneficial use of her property," and, in these circumstances, just compensation is automatically warranted, meaning there is no defense to the taking. *Sisolak*, 122 Nev. at 662. The district court held this standard is met because the City denied any and all applications to use the 35 Acre Property, adopted bills that target only the Landowners' property, made it impossible to develop, and forced the Landowners to allow the public to use their property. 5 AA 0893:1-7. This is a denial of all economic use of the property. The district court also considered DiFederico's uncontested expert report that concluded the City's actions rendered the 35 Acre Property valueless. 5 AA 0893:8-13. As *all these facts were uncontested* there can be no other result and the City cannot succeed on appeal.

(ii) Per Se Regulatory Taking

A per se regulatory taking occurs where government action "authorizes" the public to use private property or "preserves" private property for public use and, in

these circumstances, just compensation is automatically warranted, meaning there is no defense to the taking. *Sisolak*, 122 Nev. at 662; *Tien Fu Hsu v. County of Clark,* 123 Nev. 625 (2007) (height restriction 1221 authorized the public to use Mr. Hsu's property); *Cedar Point Nursery v. Hassid*, 141 S.Ct. 2063 (2021) (a California statute that authorized labor unions to enter onto private farms is a per se taking). The district court held this standard is met based on the City's bills that specifically authorized the public to enter onto the Landowners' property and preserved the property for the surrounding properties/public's use. 5 AA 0894:17-0895:3. The district court also cited to the City's refusal to allow the Landowners to fence or access their own property because both would impact the surrounding neighbors use of the Landowners' property as further evidence the City was acting to authorize the public's use of the Landowners' 35 Acre Property. 5 AA 0895:4-0896:19. "The right to exclude is 'one of the most treasured' rights of property ownership" and "is 'one of the most essential sticks in the bundle of rights that are commonly characterized as property.'" *Cedar Point Nursery v. Hassid*, 141 S.Ct. at 2072. A property owner "has a special right of easement in a public road for access purposes" and "[t]his is a property right of easement which cannot be damaged or taken from the owner without due compensation." *Schwartz v. State*, 111 Nev. 998, 1001 (1995). As the public was clearly authorized to use the 35 Acre Property through the City's actions, the City cannot succeed on appeal.

(iii) Non-Regulatory / De Facto Taking

A non-regulatory/de facto taking occurs where government action renders property unusable or valueless to the owner or substantially impairs or extinguishes some right directly connected to the property. *State v. Eighth Judicial District Court*, 131 Nev. 411, 421 (2015) (citing *Richmond Elks Hall Assoc. v. Richmond Red. Agency*, 561 F.2d 1327, 1330 (9th Cir. 1977) ("To constitute a taking under the Fifth Amendment it is not necessary that property be absolutely 'taken' in the narrow sense of that word to come within the protection of this constitutional provision; it is sufficient if the action by the government involves a direct interference with or disturbance of property rights.")); *Sloat v. Turner*, 93 Nev. 263 (1977); *Schwartz v. State*, 111 Nev. 998 (1995). The district court held that the aggregate of City actions "substantially interfered with the use and enjoyment of the Landowners' 35 Acre Property, rendering the 35 Acre Property unusable or valueless to the Landowners." 5 AA 00898:7-9.

In summary, the City's actions were so egregious that all three Nevada "invariable rules" for a taking are met, accordingly City cannot succeed on appeal.

3. The District Court Properly Decided Just Compensation.

On October 27, 2021, the parties appeared for a jury trial on just compensation, but since the City failed to produce an appraisal report the parties

agreed to a bench trial, and the Landowners' appraisal report was submitted to the district court for a determination of just compensation. 5 AA 0934:1-6. Without any competing evidence, the district court properly adopted DiFederico's valuation of $34,135,000 as just compensation. 5 AA 0935-0945. As such, substantial evidence supports the award. See *County of Clark v. Alper*, 100 Nev. at 391 (affirming just compensation award in inverse condemnation case). The district court subsequently awarded the Landowners attorney fees, costs, reimbursement of taxes, and interest.

4. Ripeness Does Not Apply.

The City's ripeness / futility argument is also without merit. Contrary to the City's assertion, the district court properly followed this Court's holdings in *Sisolak* and *Hsu* that a ripeness / futility analysis does not apply to the "per se" takings, because the government actions that meet this standard are a taking in and of themselves. *See* 5 AA 0898:12-0899:3, *Sisolak*, 122 Nev. at 664, 684 and *Hsu,* 123 Nev. at 635. *See also Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (June 2021) ("[t]he essential question is not…whether the government has physically taken property for itself or someone else—by whatever means…Whenever a regulation results in a physical appropriation of property, a *per se* taking has occurred, and *Penn Central* [ripeness/futility] has no place." *Id., at 2072, internal citations omitted.*). Furthermore, the district court properly held this Court has never imposed

the ripeness / futility analysis as a precondition to a non-regulatory/de facto taking. *See* 5AA 0899:4-7, *State v. Eighth Judicial District, Sloat* and *Schwartz*, *supra.*

Finally, the district court held, even if a ripeness analysis applies, it is met, because the City denied all *four* applications to use the 35 Acre Property and passed legislation making use of the property impossible while authorizing others to use the property. 5 AA 0905:21-0906:9.

5. Segmentation Does Not Apply.

As a last-ditch defense, the City argues that the alleged approvals on the 17 Acre Property negate damages on the 35 Acre property – a separate taxed and owned parcel. Such a conclusion would allow the City to take all economic value from and preserve for public use all other legally independent parcels that make up the 250 Acres without just compensation. The district court properly rejected this baseless argument citing this Court's precedent that the 35 Acre Property must be considered as a separate and independent parcel in this inverse condemnation case:

> "A question often arises as to how to determine what areas are portions of the parcel being condemned, and what areas constitute separate and independent parcels? Typically, the legal units into which land has been legally divided control the issue. That is, each legal unit (typically a tax parcel) is treated as a separate parcel...." City of North Las Vegas v. Eighth Judicial Dist. Court, 133 Nev. 995, *2, 401 P.3d 211 (table)(May 17, 2017) 2017 WL 2210130 (unpublished disposition), *citing Nichols on Eminent Domain* § 14B.01 (3d ed. 2016). See V AA 0899:17-0901:10.

It is undisputed that the 35 Acre Property has a separate Clark County Assessor Parcel Number (138-31-201-005) and a different independent legal

owner (180 Land Co., LLC) than the 17 Acre Property. V AA 0900:5-8. The district court properly held it is wrong to hold Owner A is not damaged because the government approved development on Owner B's parcel. V AA 0900:9-12.

The district court also found there is evidence that the City clawed back the 17 Acre approvals, which negates any segmentation argument. **After** the original 17 Acre approvals, the City denied the MDA (which expressly included the 17 Acre Property), denied the fence and access applications (which both applied to the 17 Acre Property), and adopted an ordinance targeting the 250 Acres (including the 17 Acres), preventing development and authorizing public use of the property. V AA 0900:13-19, 0871-890. The City also sent the Landowners an email that the 17 Acre approvals were "vacated, set aside and shall be void." 17 RA 03816.

Finally, the district court cited NRS 37.039 rejecting the City's segmentation argument as designating property open space requires just compensation. V AA 0900:20-23. Accordingly, the City will not succeed on appeal.

B. The Object of The Appeal Is Not Defeated by Payment.

The object of the appeal will not be defeated simply because the possibility exists that the City may have to seek to get back the award. This exact argument was rejected by this Court in the eminent domain case of *State v. Second Jud. Dist. Ct.,* 75 Nev. 200 (1959), with this Court stating payment of the funds pending appeal is a condition to a government maintaining an appeal when it has taken possession of

another's property. *Id.* "It is not an acceptance of the judgment rendered but is the meeting of a condition by which that judgment may be disputed." *Id.*

C. There Is No Irreparable Harm to The City.

The very unlikely possibility that the City may prevail on appeal and have to recover the just compensation award from the Landowners does not constitute irreparable harm either. *See State v. Second Jud. Dist. Ct.,* 75 Nev. at 205 (seeking to get back that which a landowner has been paid is not an unjust burden on government entities). Additionally, the City's unfounded, *the sky is falling,* argument that it will suffer irreparable harm because it will need to approve every application that comes before it based on the district court orders, is nothing more than unsubstantiated hyperbole as the district court orders don't even remotely imply this result. Rather, the district court properly followed Nevada law that zoning is used to decide property rights in inverse condemnation cases, decided the Landowners' property rights based on the Landowners' R-PD7 residential zoning, and held that the City engaged in an aggregate of actions (including authorizing and preserving the Landowners' Property for public use) that took the Landowners' 35 Acre Property. Nothing suggests the City must approve all land use applications.

D. Irreparable Harm to The Landowners.

Contrary to the City's contention, postponement of just compensation constitutes irreparable harm to the Landowners. *See State v. Second Jud. Dist. Ct.,*

75 Nev. at 205 (recognizing oppressive effect of undue delay in payment of just compensation). That the Landowners will earn interest on the delayed funds does not remedy that harm as the City mistakenly asserts. *State v. Second Jud. Dist. Ct.* considered and rejected this argument, holding "the assurance of ultimate payment plus interest may not be sufficient to meet the immediate needs of a condemnee either to his property or to its cash equivalent. The power not only to take possession of another's property, but also to postpone indefinitely the payment of just compensation for it, is a power which may well have an oppressive effect. It might well, through duress of circumstances, compel the acceptance by a condemnee of compensation felt not to be just." *Id.,* at 205.

This oppressive effect on the Landowners is precisely why the district court denied the City's request for a stay. The City has been in possession of the Landowners' property for nearly five years, *without payment,* while the Landowners are paying all carrying costs, taxes, maintenance and other expenses[4] for their vacant unfenced property to which they do not even have access. And, at nearly every stage, the City has worked with the surrounding neighbors to delay, resulting in an

[4] While the City delays the matter, it is continuing to collect real estate taxes from the Landowners in excess of $200,000 per year (just for the 35 Acre Property) based on the R-PD7 residential use. 5 AA 0867:13-0868:2.

oppressive effect on the Landowners[5]– filing three motions to dismiss (losing all), delaying the hearing on the take, and improperly removing the case to federal court (resulting in a remand order because removal was improper). 24 RA 05280:8-05281:21, 1 RA 00015-00031. The City knows the Landowners cannot continue to carry this oppressive burden and further delay may delay the Landowners out of the property. 5 AA 0876:4-6. The Landowners will suffer irreparable harm if a stay is granted and the City is not compelled to promptly pay the just compensation award.

IV. CONCLUSION

The district court followed Nevada law to find a taking and award "just compensation," meaning the mandatory NRS Chapter 37 payment requirements apply. Even if this Court were to analyze the NRAP 8 stay requirements, they are not met. Therefore, the City's stay request should be denied in its entirety.

DATED this 18th day of March, 2022.

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[5] The evidence provides an email from a representative for the surrounding properties bragging, "*we have done a pretty good job of prolonging the developer's agony from Sept 2015 to now."* 16 RA 03402.

CERTIFICATE OF COMPLIANCE

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 2019 in 14-point Times New Roman font.

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 either:

☐ proportionally spaced, has a typeface of 14 points or more, and contains _____ words; or

☒ does not exceed 35 pages, as ordered by the Court.

Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page 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 18th day of March, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OPPOSITION TO APPELLANT'S MOTION TO STAY** was filed electronically with the Nevada Supreme Court on the 18th day of March, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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STATUTORY ADDENDUM PER NRAP 28(f)

NRS Chapter 278, applicable as of 1992

ASSEMBLY BILL NO. 182–COMMITTEE ON GOVERNMENT AFFAIRS

FEBRUARY 19, 2001

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to process of land use planning in certain counties and revises provisions regarding members of town advisory boards in certain counties. (BDR 22-57)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to land use planning; expanding the subjects that must be addressed in a master plan in certain counties; limiting the number of annual amendments to the land use plan of the master plan or portions thereof in certain circumstances; revising provisions governing applications for changes in the boundaries of zoning districts and special use permits with regard to property located within certain unincorporated towns; requiring members of a town advisory board to receive certain training; authorizing the election of and providing limitations on the terms of members of town advisory boards in certain counties; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 278.150 is hereby amended to read as follows:

278.150 1. The planning commission shall prepare and adopt a comprehensive, long-term general plan for the physical development of the city, county or region which in the commission's judgment bears relation to the planning thereof.

2. The plan must be known as the master plan, and must be so prepared that all or portions thereof, except as ***otherwise*** provided in [~~subsection 3,~~] ***subsections 3 and 4,*** may be adopted by the governing body, as provided in NRS 278.010 to 278.630, inclusive, as a basis for the development of the city, county or region for such reasonable period of time next ensuing after the adoption thereof as may practically be covered thereby.

3. In counties whose population is 100,000 or more [~~,~~] ***but less than 400,000,*** if the governing body of the city or county adopts only a portion of the master plan, it shall include in that portion a conservation plan, a housing plan and a population plan as provided in NRS 278.160.

4. In counties whose population is 400,000 or more, the governing body of the city or county shall adopt a master plan for all of the city or county that must address each of the subjects set forth in subsection 1 of NRS 278.160.

Sec. 2. NRS 278.160 is hereby amended to read as follows:

278.160 1. ~~[The]~~ ***Except as otherwise provided in subsection 4 of NRS 278.150 and subsection 3 of NRS 278.170, the*** master plan, with the accompanying charts, drawings, diagrams, schedules and reports, may include such of the following subject matter or portions thereof as are appropriate to the city, county or region, and as may be made the basis for the physical development thereof:

(a) Community design. Standards and principles governing the subdivision of land and suggestive patterns for community design and development.

(b) Conservation plan. For the conservation, development and utilization of natural resources, including, without limitation, water and its hydraulic force, underground water, water supply, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals and other natural resources. The plan must also cover the reclamation of land and waters, flood control, prevention and control of the pollution of streams and other waters, regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan, prevention, control and correction of the erosion of soils through proper clearing, grading and landscaping, beaches and shores, and protection of watersheds. The plan must also indicate the maximum tolerable level of air pollution.

(c) Economic plan. Showing recommended schedules for the allocation and expenditure of public money in order to provide for the economical and timely execution of the various components of the plan.

(d) Historical properties preservation plan. An inventory of significant historical, archaeological and architectural properties as defined by a city, county or region, and a statement of methods to encourage the preservation of those properties.

(e) Housing plan. The housing plan must include, without limitation:

(1) An inventory of housing conditions, needs and plans and procedures for improving housing standards and for providing adequate housing.

(2) An inventory of affordable housing in the community.

(3) An analysis of the demographic characteristics of the community.

(4) A determination of the present and prospective need for affordable housing in the community.

(5) An analysis of any impediments to the development of affordable housing and the development of policies to mitigate those impediments.

(6) An analysis of the characteristics of the land that is the most appropriate for the construction of affordable housing.

(7) An analysis of the needs and appropriate methods for the construction of affordable housing or the conversion or rehabilitation of existing housing to affordable housing.

(8) A plan for maintaining and developing affordable housing to meet the housing needs of the community.

(f) Land use plan. An inventory and classification of types of natural land and of existing land cover and uses, and comprehensive plans for the most desirable utilization of land. The land use plan may include a provision concerning the acquisition and use of land that is under federal management within the city, county or region, including, without limitation, a plan or statement of policy prepared pursuant to NRS 321.7355.

(g) Population plan. An estimate of the total population which the natural resources of the city, county or region will support on a continuing basis without unreasonable impairment.

(h) Public buildings. Showing locations and arrangement of civic centers and all other public buildings, including the architecture thereof and the landscape treatment of the grounds thereof.

(i) Public services and facilities. Showing general plans for sewage, drainage and utilities, and rights of way, easements and facilities therefor, including, without limitation, any utility projects required to be reported pursuant to NRS 278.145.

(j) Recreation plan. Showing a comprehensive system of recreation areas, including, without limitation, natural reservations, parks, parkways, trails, reserved riverbank strips, beaches, playgrounds and other recreation areas, including, when practicable, the locations and proposed development thereof.

(k) Rural neighborhoods preservation plan. In any county whose population is 400,000 or more, showing general plans to preserve the character and density of rural neighborhoods.

(l) Safety plan. In any county whose population is 400,000 or more, identifying potential types of natural and man-made hazards, including, without limitation, hazards from floods, landslides or fires, or resulting from the manufacture, storage, transfer or use of bulk quantities of hazardous materials. The plan may set forth policies for avoiding or minimizing the risks from those hazards.

(m) School facilities plan. Showing the general locations of current and future school facilities based upon information furnished by the appropriate local school district.

(n) Seismic safety plan. Consisting of an identification and appraisal of seismic hazards such as susceptibility to surface ruptures from faulting, to ground shaking or to ground failures.

(o) Solid waste disposal plan. Showing general plans for the disposal of solid waste.

(p) Streets and highways plan. Showing the general locations and widths of a comprehensive system of major traffic thoroughfares and other traffic ways and of streets and the recommended treatment thereof, building line setbacks, and a system of naming or numbering streets and numbering houses, with recommendations concerning proposed changes.

(q) Transit plan. Showing a proposed ***multimodal*** system of transit lines, including ~~[rapid]~~ ***mass*** transit, streetcar, motorcoach and trolley coach lines ***, paths for bicycles and pedestrians,*** and related facilities.

(r) Transportation plan. Showing a comprehensive transportation system, including, without limitation, locations of rights of way, terminals,

viaducts and grade separations. The plan may also include port, harbor, aviation and related facilities.

2. The commission may prepare and adopt, as part of the master plan, other and additional plans and reports dealing with such other subjects as may in its judgment relate to the physical development of the city, county or region, and nothing contained in NRS 278.010 to 278.630, inclusive, prohibits the preparation and adoption of any such subject as a part of the master plan.

Sec. 3. NRS 278.170 is hereby amended to read as follows:

278.170 1. ~~[The]~~ ***Except as otherwise provided in subsections 2 and 3, the*** commission may prepare and adopt all or any part of the master plan or any subject thereof ~~[, except as provided in subsection 2,]~~ for all or any part of the city, county or region. Master regional plans must be coordinated with similar plans of adjoining regions, and master county and city plans within each region must be coordinated so as to fit properly into the master plan for the region.

2. In counties whose population is 100,000 or more ~~[,]~~ ***but less than 400,000,*** if the commission prepares and adopts less than all subjects of the master plan, as outlined in NRS 278.160, it shall include, in its preparation and adoption, the conservation, housing and population plans described in that section.

3. In counties whose population is 400,000 or more, the commission shall prepare and adopt a master plan for all of the city or county that must address each of the subjects set forth in subsection 1 of NRS 278.160.

Sec. 4. NRS 278.210 is hereby amended to read as follows:

278.210 1. Before adopting the master plan or any part of it ~~[,]~~ ***in accordance with NRS 278.170,*** or any substantial amendment thereof, the commission shall hold at least one public hearing thereon, notice of the time and place of which ~~[shall]~~ ***must*** be given at least by one publication in a newspaper of general circulation in the city or county, or in the case of a regional planning commission, by one publication in a newspaper in each county within the regional district, at least 10 days before the day of the hearing.

2. The adoption of the master plan, or of any amendment, extension or addition thereof, ~~[shall]~~ ***must*** be by resolution of the commission carried by the affirmative votes of not less than two-thirds of the total membership of the commission. The resolution ~~[shall]~~ ***must*** refer expressly to the maps, descriptive matter and other matter intended by the commission to constitute the plan or any amendment, addition or extension thereof, and the action taken ~~[shall]~~ ***must*** be recorded on the map and plan and descriptive matter by the identifying signatures of the secretary and chairman of the commission.

3. No plan or map, hereafter, ~~[shall]~~ ***may*** have indicated thereon that it is a part of the master plan until it ~~[shall have]~~ ***has*** been adopted as part of the master plan by the commission as herein provided for the adoption thereof, whenever changed conditions or further studies by the commission require such amendments, extension, or addition.

4. ***Except as otherwise provided in this subsection, the commission shall not amend the land use plan of the master plan set forth in paragraph (f) of subsection 1 of NRS 278.160, or any portion of such a land use plan, more than four times in a calendar year. The provisions of this subsection do not apply to a change in the land use designated for a particular area if the change does not affect more than 25 percent of the area.***

5. An attested copy of any part, amendment, extension of or addition to the master plan adopted by the planning commission of any city, county or region ~~[shall]~~ ***in accordance with NRS 278.170 must*** be certified to the governing body of ~~[such]~~ ***the*** city, county or region.

~~[5.]~~ ***6.*** An attested copy of any part, amendment, extension of or addition to the master plan adopted by any regional planning commission ~~[shall]~~ ***must*** be certified to the county planning commission and to the board of county commissioners of each county within the regional district.

Sec. 5. NRS 278.220 is hereby amended to read as follows:

278.220 ***Except as otherwise provided in subsection 4 of NRS 278.150:***

1. Upon receipt of a certified copy of the master plan, or of any part thereof, as adopted by the planning commission, the governing body may adopt such parts thereof as may practicably be applied to the development of the city, county or region for a reasonable period of time next ensuing.

2. The parts ~~[shall]~~ ***must*** thereupon be endorsed and certified as master plans thus adopted for the territory covered, and are hereby declared to be established to conserve and promote the public health, safety and general welfare.

3. Before adopting any plan or part thereof, the governing body shall hold at least one public hearing thereon, notice of the time and place of which ~~[shall]~~ ***must*** be published at least once in a newspaper of general circulation in the city or counties at least 10 days before the day of hearing.

4. No change in or addition to the master plan or any part thereof, as adopted by the planning commission, ~~[shall]~~ ***may*** be made by the governing body in adopting the same until the proposed change or addition ~~[shall have]~~ ***has*** been referred to the planning commission for a report thereon and an attested copy of the report ~~[shall have]~~ ***has*** been filed with the governing body. Failure of the planning commission so to report within 40 days, or such longer period as may be designated by the governing body, after such reference shall be deemed to be approval of the proposed change or addition.

Sec. 6. NRS 278.230 is hereby amended to read as follows:

278.230 1. ~~[Whenever]~~ ***Except as otherwise provided in subsection 4 of NRS 278.150, whenever*** the governing body of any city or county has adopted a master plan or part thereof for the city or county, or for any major section or district thereof, the governing body shall, upon recommendation of the planning commission, determine upon reasonable and practical means for putting into effect the master plan or part thereof, in order that the same will serve as:

(a) A pattern and guide for that kind of orderly physical growth and development of the city or county which will cause the least amount of

natural resource impairment and will conform to the adopted population plan, where required, and ensure an adequate supply of housing, including affordable housing; and

(b) A basis for the efficient expenditure of funds thereof relating to the subjects of the master plan.

2. The governing body may adopt and use such procedure as may be necessary for this purpose.

Sec. 7. NRS 278.260 is hereby amended to read as follows:

278.260 1. The governing body shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts are determined, established, enforced and amended.

2. A zoning regulation, restriction or boundary ***or an amendment thereto*** must not become effective until after ***transmittal of a copy of the relevant application to the town board, citizens' advisory council or town advisory board pursuant to subsection 5, if applicable, and after*** a public hearing at which parties in interest and other persons have an opportunity to be heard. The governing body shall cause notice of the time and place of the hearing to be:

(a) Published in an official newspaper, or a newspaper of general circulation, in the city, county or region; and

(b) Mailed to each tenant of a mobile home park if that park is located within 300 feet of the property in question,

at least 10 days before the hearing.

3. If ~~[the]~~ ***a*** proposed amendment involves a change in the boundary of a zoning district in a county whose population is less than 400,000, the governing body shall, to the extent this notice does not duplicate the notice required by subsection 2, cause a notice to be sent at least 10 days before the hearing to:

(a) The applicant;

(b) Each owner, as listed on the county assessor's records, of real property located within 300 feet of the portion of the boundary being changed;

(c) Each ~~[owner,]~~ ***of the owners,*** as listed on the county assessor's records, of at least ***the*** 30 parcels nearest to the portion of the boundary being changed, to the extent this notice does not duplicate the notice given pursuant to paragraph (b); and

(d) Any advisory board which has been established for the affected area by the governing body.

The notice must be sent by mail or, if requested by a party to whom notice must be provided pursuant to paragraphs (a) to (d), inclusive, by electronic means if receipt of such an electronic notice can be verified, and be written in language which is easy to understand. The notice must set forth the time, place and purpose of the hearing and a physical description of, or a map detailing, the proposed change, must indicate the existing zoning designation, and the proposed zoning designation, of the property in question, and must contain a brief summary of the intent of the proposed change. If the proposed amendment involves a change in the boundary of the zoning district that would reduce the density or intensity with which a parcel of land may be used, the notice must include a section that an owner

of property may complete and return to the governing body to indicate his approval of or opposition to the proposed amendment.

4. If ~~[the]~~ ***a*** proposed amendment involves a change in the boundary of a zoning district in a county whose population is 400,000 or more, the governing body shall, to the extent this notice does not duplicate the notice required by subsection 2, cause a notice to be sent at least 10 days before the hearing to:

(a) The applicant;

(b) Each owner, as listed on the county assessor's records, of real property located within 500 feet ~~[from]~~ ***of*** the portion of the boundary being changed;

(c) Each ~~[owner,]~~ ***of the owners,*** as listed on the county assessor's records, of at least ***the*** 30 parcels nearest to the portion of the boundary being changed, to the extent this notice does not duplicate the notice given pursuant to paragraph (b); and

(d) Any advisory board which has been established for the affected area by the governing body.

The notice must be sent by mail or, if requested by a party to whom notice must be provided pursuant to paragraphs (a) to (d), inclusive, by electronic means if receipt of such an electronic notice can be verified, and be written in language which is easy to understand. The notice must set forth the time, place and purpose of the hearing and a physical description of, or a map detailing, the proposed change, must indicate the existing zoning designation, and the proposed zoning designation, of the property in question, and must contain a brief summary of the intent of the proposed change. If the proposed amendment involves a change in the boundary of the zoning district that would reduce the density or intensity with which a parcel of land may be used, the notice must include a section that an owner of property may complete and return to the governing body to indicate his approval of or opposition to the proposed amendment.

5. If an application is filed with the governing body and the application involves a change in the boundary of a zoning district within an unincorporated town that is located more than 10 miles from an incorporated city, the governing body shall, at least 10 days before the hearing on the application is held pursuant to subsection 2, transmit a copy of any information pertinent to the application to the town board, citizens advisory council or town advisory board, whichever is applicable, of the unincorporated town. The town board, citizens' advisory council or town advisory board may make recommendations regarding the application and submit its recommendations before the hearing on the application is held pursuant to subsection 2. The governing body or other authorized person or entity conducting the hearing shall consider any recommendations submitted by the town board, citizens' advisory council or town advisory board regarding the application and, within 10 days after making its decision on the application, transmit a copy of its decision to the town board, citizens' advisory council or town advisory board.

6. If a notice is required to be sent pursuant to subsection 4:

(a) The exterior of a notice sent by mail; or

(b) The cover sheet, heading or subject line of a notice sent by electronic means,
must bear a statement in at least 10-point bold type or font in substantially the following form:

OFFICIAL NOTICE OF PUBLIC HEARING

~~[6.]~~ ***7.*** In addition to sending the notice required pursuant to subsection 4, in a county whose population is 400,000 or more, the governing body shall, not later than 10 days before the hearing, erect or cause to be erected on the property, at least one sign not less than 2 feet high and 2 feet wide. The sign must be made of material reasonably calculated to withstand the elements for 40 days. The governing body must be consistent in its use of colors for the background and lettering of the sign. The sign must include the following information:

(a) The existing zoning designation of the property in question;

(b) The proposed zoning designation of the property in question;

(c) The date, time and place of the public hearing;

(d) A telephone number which may be used by interested persons to obtain additional information; and

(e) A statement which indicates whether the proposed zoning designation of the property in question complies with the requirements of the master plan of the city or county in which the property is located.

~~[7.]~~ ***8.*** A sign required pursuant to subsection ~~[6]~~ *7* is for informational purposes only, and must be erected regardless of any local ordinance regarding the size, placement or composition of signs to the contrary.

~~[8.]~~ ***9.*** A governing body may charge an additional fee for each application to amend an existing zoning regulation, restriction or boundary to cover the actual costs resulting from the mailed notice required by this section and the erection of not more than one of the signs required by subsection ~~[6,]~~ *7,* if any. The additional fee is not subject to the limitation imposed by NRS 354.5989.

~~[9.]~~ ***10.*** The governing body shall remove or cause to be removed any sign required by subsection ~~[6]~~ *7* within 5 days after the final hearing for the application for which the sign was erected. There must be no additional charge to the applicant for such removal.

~~[10.]~~ ***11.*** If a proposed amendment involves a change in the boundary of a zoning district in a county whose population is 400,000 or more that would reduce the density or intensity with which a parcel of land may be used and at least 20 percent of the property owners to whom notices were sent pursuant to ~~[subsections 3 and]~~ ***subsection*** 4 indicate in their responses opposition to the proposed amendment, the governing body shall not approve the proposed amendment unless the governing body:

(a) Considers separately the merits of each aspect of the proposed amendment to which the owners expressed opposition; and

(b) Makes a written finding that the public interest and necessity will be promoted by approval of the proposed amendment.

~~[11.]~~ *12.* The governing body of a county whose population is 400,000 or more shall not approve a zoning regulation, restriction or boundary, or ~~[the]~~ ***an*** amendment thereof, that affects any unincorporated area of the county that is surrounded completely by the territory of an incorporated city without sending a notice to the governing body of the city. The governing body of the city, or its designee, must submit any recommendations to the governing body of the county within 15 days after receiving the notice. The governing body of the county shall consider any such recommendations. If the governing body of the county does not accept a recommendation, the governing body of the county, or its authorized agent, shall specify for the record the reasons for its action.

Sec. 8. NRS 278.315 is hereby amended to read as follows:

278.315 1. The governing body may provide by ordinance for the granting of variances, special use permits, conditional use permits or other special exceptions by the board of adjustment, the planning commission or a hearing examiner appointed pursuant to NRS 278.262. The governing body may impose this duty entirely on the board, commission or examiner, respectively, or provide for the granting of enumerated categories of variances, special use permits, conditional use permits or special exceptions by the board, commission or examiner.

2. A hearing to consider an application for the granting of a variance, special use permit, conditional use permit or special exception must be held before the board of adjustment, planning commission or hearing examiner within 65 days after the filing of the application, unless a longer time or a different process of review is provided in an agreement entered into pursuant to NRS 278.0201. A notice setting forth the time, place and purpose of the hearing must be sent by mail at least 10 days before the hearing to:

(a) The applicant;

(b) Each owner of real property located within 300 feet of the property in question;

(c) If a mobile home park is located within 300 feet of the property in question, each tenant of that mobile home park; and

(d) Any advisory board which has been established for the affected area by the governing body.

The notice must be sent by mail or, if requested by a party to whom notice must be provided pursuant to paragraphs (a) to (d), inclusive, by electronic means if receipt of such an electronic notice can be verified, and be written in language which is easy to understand. The notice must set forth the time, place and purpose of the hearing and a physical description or map of the property in question.

3. If the application is for the issuance of a special use permit in a county whose population is 100,000 or more, the governing body shall, to the extent this notice does not duplicate the notice required by subsection 2, cause a notice to be sent at least 10 days before the hearing to each ~~[owner,]~~ ***of the owners,*** as listed on the county assessor's records, of at least ***the*** 30 parcels nearest to the property in question. The notice must be sent by mail or, if requested by an owner to whom notice must be provided, by electronic means if receipt of such an electronic notice can be verified,

and be written in language which is easy to understand. The notice must set forth the time, place and purpose of the hearing and a physical description or map of the property in question.

4. ***If an application is filed with the governing body for the issuance of a special use permit with regard to property situated within an unincorporated town that is located more than 10 miles from an incorporated city, the governing body shall, at least 10 days before the hearing on the application is held pursuant to subsection 2, transmit a copy of any information pertinent to the application to the town board, citizens' advisory council or town advisory board, whichever is applicable, of the unincorporated town. The town board, citizens' advisory council or town advisory board may make recommendations regarding the application and submit its recommendations before the hearing on the application is held pursuant to subsection 2. The governing body or other authorized person or entity conducting the hearing shall consider any recommendations submitted by the town board, citizens' advisory council or town advisory board regarding the application and, within 10 days after making its decision on the application, transmit a copy of its decision to the town board, citizens' advisory council or town advisory board.***

5. An ordinance adopted pursuant to this section must provide an opportunity for the applicant or a protestant to appeal from a decision of the board of adjustment, planning commission or hearing examiner to the governing body.

~~[5.]~~ ***6.*** In a county whose population is 400,000 or more, if the application is for the issuance of a special use permit for an establishment which serves alcoholic beverages for consumption on or off of the premises as its primary business in a district which is not a gaming enterprise district as defined in NRS 463.0158, the governing body shall, in addition to sending the notice required pursuant to subsection 3, not later than 10 days before the hearing, erect or cause to be erected on the property, at least one sign not less than 2 feet high and 2 feet wide. The sign must be made of material reasonably calculated to withstand the elements for 40 days. The governing body must be consistent in its use of colors for the background and lettering of the sign. The sign must include the following information:

(a) The existing permitted use and zoning designation of the property in question;

(b) The proposed permitted use of the property in question;

(c) The date, time and place of the public hearing; and

(d) A telephone number which may be used by interested persons to obtain additional information.

~~[6.]~~ ***7.*** A sign required pursuant to subsection ~~[5]~~ ***6*** is ~~for~~ informational purposes only, and must be erected regardless of any local ordinance regarding the size, placement or composition of signs to the contrary.

~~[7.]~~ ***8.*** A governing body may charge an additional fee for each application for a special use permit to cover the actual costs resulting from the erection of not more than one sign required by subsection ~~[5,]~~ ***6,*** if any.

The additional fee is not subject to the limitation imposed by NRS 354.5989.

~~[8.]~~ ***9.*** The governing body shall remove or cause to be removed any sign required by subsection ~~[5]~~ ***6*** within 5 days after the final hearing for the application for which the sign was erected. There must be no additional charge to the applicant for such removal.

~~[9.]~~ ***10.*** The provisions of this section do not apply to an application for ***a*** conditional use permit filed pursuant to NRS 278.147.

Sec. 9. Chapter 269 of NRS is hereby amended by adding thereto a new section to read as follows:

Each member of a town advisory board shall, at least once during the first year of his initial term of office and at least once during every subsequent year that he serves in office, attend training relating to:

1. State statutes and regulations and local ordinances, resolutions and regulations concerning land use planning, development and any other subject matter that the board of county commissioners deems necessary; and

2. The provisions of chapter 241 of NRS.

Sec. 10. NRS 269.500 is hereby amended to read as follows:

269.500 NRS 269.500 to 269.625, inclusive, ***and section 9 of this act*** may be cited as the Unincorporated Town Government Law.

Sec. 11. NRS 269.576 is hereby amended to read as follows:

269.576 1. Except as appointment may be deferred pursuant to NRS 269.563, the board of county commissioners of any county whose population is 400,000 or more shall, in each ordinance which establishes an unincorporated town pursuant to NRS 269.500 to 269.625, inclusive, provide for:

(a) Appointment by the board of county commissioners ***or the election by the registered voters of the unincorporated town*** of three or five qualified electors who are residents of the unincorporated town to serve as the town advisory board. ***If the ordinance provides for appointment by the board of county commissioners, in making such appointments, the board of county commissioners shall consider:***

(1) The results of any poll conducted by the town advisory board; and

(2) Any application submitted to the board of county commissioners by persons who desire to be appointed to the town advisory board in response to an announcement made by the town advisory board.

(b) ~~[Terms]~~ ***A term of 4 years*** for members of the town advisory board, which must ***be staggered and must*** expire on the first Monday in January of ~~[each]~~ ***an*** odd-numbered year. ***No person who has served for a term as a member of a town advisory board is eligible for reappointment until 2 years after the expiration of his term.***

(c) Removal of a member of the town advisory board if the board of county commissioners finds that his removal is in the best interest of the residents of the unincorporated town, and for appointment of a member to serve the unexpired term of the member so removed.

2. ***The board of county commissioners shall provide notice of any vacancy on a town advisory board to the residents of the unincorporated***

town by mail, newsletter or newspaper at least 90 days before filling the vacancy.

3. The duties of the town advisory board are to:

(a) Assist the board of county commissioners in governing the unincorporated town by acting as liaison between the residents of the town and the board of county commissioners; and

(b) Advise the board of county commissioners on matters of importance to the unincorporated town and its residents.

~~[3.]~~ *4.* The board of county commissioners may provide by ordinance for compensation for the members of the town advisory board.

Sec. 12. 1. This section and sections 1, 2, 3, 5 to 8, inclusive, 10 and 11 of this act become effective on October 1, 2001.

2. Sections 4 and 9 of this act become effective on January 1, 2002.