EXHIBIT 6

Meet Mike

A uniquely qualified Candidate

- Retired 24 year USAF Colonel & combat tested fighter pilot
- Second career as a for-profit hospital CEO
- Made SH his retirement home six years ago- understands the good and bad
- Currently serving his third year on the Christopher Communities HOA Board
- Served as a director on many civic, non-profit, and for-profit boards
- Not looking for community exposure to advance a business interest
- Committed to listening to owners and providing the transparency now lacking

Count on Mike to keep our community the premier place to live in Southern Nevada

To learn more go to
www.mikekosor.com

Issues

- End developer control of our HOA
- Bring HOA fees down
- End HOA payments for "Public" parks
- Make security of homeowners and families a
- End SCHA's absence/blind eye when HOA's interests are threatened
- Address the failed commitments around our sports park

To learn more go to
www.mikekosor.com

Vote
Mike Kosor

Southern Highlands
HOA

The Homeowner's Candidate

www.mikekosor.com

Dear Southern Highlands Neighbor,

I would like to be your representative on Southern Highlands Community Association (SHCA) Board. I ask for your vote in the association's upcoming annual election where one of our only two independent Board Directors (three directors are selected and employed by the developer) will be selected.

First and foremost, I will work to end the Developer's control of our HOA Board. Currently, three of our 5-person SHCA Board of Directors are appointed and employed by the Developer. With Olympia Management owned by the Developer, the potential for conflicts of interest, loss of board autonomy, and failed fiduciary oversight are clear. As I note below, I believe this has cost our community millions of dollars. All SHCA Board members should be owner elected and loyal only to homeowners.

Second, we can significantly lower expenses, get assessments under control, and do so without sacrificing quality. I have demonstrated this during my three years on the Board of the Christopher Communities HOA. We need to:

- immediately work with and if needed fight the County to remove the more than $1.2M in annual expenses (almost half of the HOA's total landscape, maintenance and utilities expenses and comprising 25% of your total assessment) paid by SHCA for "public parks" that should/could otherwise be paid by the County,
- competitively bid our very pricy contract with the Developer's management company, Olympia Management (another $1.4M/yr)
- refrain from wasteful legal costs ($1.4M in 2016, far more than typically incurred by HOAs of similar size).

Third, a community needs to be seen as a secure place to live. While I currently believe SH is one of the safest place to live in Southern Nevada, we are growing rapidly and crime is increasing. This needs to be large focus of our Association going forward.

Fourth, our Board has repeatedly failed to act in the best interest of homeowners with government agencies, defaulting to the interests of the Developer. Recently, the Board failed to oppose a massive change, approved by the Clark County Commission, to our long overdue "Sports Park". Despite being promised by the County and Developer since 2005, the following was eliminated from the Park:

- A 4 plex lighted baseball complex with covered stands and concession.
- Two practice baseball fields, one soccer field, two basketball courts, all lighted.
- A second entrance with associated parking, plus more.

These massive cuts, saved the Developer millions of dollars. In return, our community received absolutely nothing. Adding to this inexplicable action, the County approved twelve million dollars ($12M) in public money to build a 4x baseball complex in Mountain's Edge.

This would not have happened had our Board, as did Mountain's Edge Board (where directors are all owner elected), defended owner interests. Our Board turned a blind eye, not even telling owners of the pending change while the Developer worked changes to its agreement. Was the Board's failure to act in opposition to the change and the interests of the Developer a result of three Directors being employed by the Developer? As your board representative, not beholden to the Developer, I will work to reverse the above and ensure something like this never happens again.

The SHCA Board must not be allowed to run huge deficits as it did in 2016. Owner assessments need to be spent to maintain our community not pay our Developer owned management company high fees, pay for Clark County public parks that should be publicly funded, and subsidize a plethora of lawyers.

If democracy is to work in Southern Highlands it requires your participation. The above demonstrates what happens when democracy and owner voices are restricted. This can be fixed but you must vote. Do not assume others will. I ask you to vote and vote for me.

Respectfully,

Mike Kosor

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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC a Nevada limited liability company; GARRY V. GOETT, a Nevada Resident, Plaintiff, vs. MICHAEL KOSOR, JR., a Nevada resident; DOES I through X, inclusive, Defendants.	Case No: A-17-765257-C Dept. No: XII **DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF COURT'S MARCH 20, 2018 ORDER**

Defendant MICHAEL KOSOR, JR., by and through his attorneys, BARRON & PRUITT, LLP, hereby submits his *Reply in Support of Motion for Reconsideration of the Court's March 20, 2018 Order* denying Defendant's Motion to Dismiss Pursuant to NRS 41.660. Defendant's Reply is supported by the attached memorandum of points and authorities, the pleadings and papers on file herein, and other evidence as permitted by the Court at the hearing of this Motion.

DATED this 29th day of May 2018.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. PREFATORY STATEMENT

In their Opposition, Plaintiffs strain to discredit the defense's arguments in favor of reconsideration. In short, Plaintiffs' Opposition offers spin and distraction from key legal considerations, and fails to demonstrate evidence of a sustainable prima facie claims.

In contrast, Defendant Kosor brought the instant Motion in an effort to secure the certification of the Court's inclination to grant the Motion for Reconsideration in the interest of avoiding manifest injustice. In support of his Motion, Defendant Kosor relies on (1) the Plaintiffs' improper use of out-of-context statement fragment in alleging defamation; (2) relevant case authorities that were not considered in the original special motion to dismiss; (3) the necessity of analyzing the alleged defamatory statements under the public interest guiding factors adopted by the Nevada Supreme Court; and (4) that the challenged statements fall within the protections of Nevada's anti-SLAPP statutes.

Based on the arguments and authorities set forth in Defendant Kosor's Motion and Reply, Defendant requests that the Court certify its inclination to grant the Motion for Reconsideration.

II. Plaintiff's Opposition Ignores Nevada Case Authorities that Allow This Court to Certify Its Inclination to Grant the Motion for Reconsideration, Even Though It Has Been Divested of Jurisdiction.

Defendant's Motion correctly asserts that "[a]lthough an [interlocutory] appeal has been filed, this Court retains the authority *to certify its inclination to grant a motion for reconsideration.*" *See* Mot. 3:25-4:2; *see also Huneycutt v. Huneycutt*, 94 Nev. 79, 80-81, 75 P.2d 585, 585-86 (1978); *Mack-Manley v. Manley*, 122 Nev. 849, 855-56, 138 P.3d 525, 529-30 (2006). The instant Motion for Reconsideration was timely brought, and Plaintiffs' Opposition fails to raise a valid argument to the contrary—or otherwise sufficient to preempt application of the *Huneycutt* procedure. *See Foster v. Dingwall*, 126 Nev. Adv. Op. 5, 228 P.3d 453, 457 n.4 (2010).

In Nevada, if a party to an appeal believes a basis exists to alter, vacate, or otherwise modify or change an order challenged on appeal after an appeal from the order has been perfected in the Nevada Supreme Court, the party can seek to have the district court certify its intent to grant the requested relief, and *thereafter the party may move the Nevada Supreme Court to remand the matter,*

to re-vest the district court with jurisdiction to grant the motion for reconsideration. Huneycutt, 94 Nev. at 80-81, 75 P.2d at 585-86; *Mack-Manley*, 122 Nev. at 855-56, 138 P.3d at 529-30 (emphasis added). The remand may be partial or it may completely dispose of the appeal, depending on the scope of relief that the district court intends to grant. *Mack-Manley*, 122 Nev. at 856, 138 P.3d at 530. Thus, "despite our general rule that the perfection of an appeal divests the district court of jurisdiction to act except with regard to matters collateral to or independent from the appealed order, *the district court nevertheless retains a limited jurisdiction to review motions made in accordance with this procedure*." *Foster v. Dingwall*, 126 Nev. 49, 52, 228 P.3d 453, 455 (2010) (describing *Huneycutt* procedure) (emphasis added).

Although no *Huneycutt* remand is necessary for the district court to deny the motion for reconsideration, the Court is empowered to recommend remand and re-vestment of jurisdiction to correct a manifestly unjust ruling. *Foster*, 126 Nev. at 53, 228 P.3d at 455. Here, Defendant contends that review is appropriate because the prior ruling (1) appeared to rely upon out-of-context sentence fragments as the basis for the defamation claim; (2) did not have the benefit of considering highly relevant case authorities that support Defendant Kosor's Motion; (3) did not appear to apply the guiding principles for a "public interest" determination adopted by the Nevada Supreme Court; and (4) constituted an abuse of discretion, as the challenged statements were within the protections of Nevada's anti-SLAPP statutes.

A. Defendant Kosor Satisfied His Burden for NRS 41.660 Protection Under Two Categories of Protected Communications.

Under the anti-SLAPP statutory framework, Defendant's burden, as the moving party, is to first establish by a mere preponderance of the evidence that the subject lawsuit challenges a good-faith "communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.660(3)(a). NRS 41.637 defines "good faith communications" as those communications made "in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" which are "truthful or...made without knowledge of...falsehood." Nevada's anti-SLAPP law provides protection for four categories of "good faith communications," including communication "aimed at procuring any governmental **or electoral action, result or outcome**," *see* NRS 41.637(1), and communication made "in direct

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connection with **an issue of public interest** in a place open to the public or in a public forum," *see* NRS 41.637(4) (emphasis added). In this case, the challenged statements of Defendant Kosor are subject to protection under the foregoing categories of good faith communications.

1. Nevada's Anti-SLAPP Law Protects Communications Aimed at Procuring Any Governmental or Electoral Action, Result, or Outcome, Including the Challenged Statements of Defendant Kosor.

Absent a single supportive authority, Plaintiffs' Opposition merely asserts that "a HOA board election . . . is not what was contemplated by allowing protections for communications aimed at procuring electoral action." Opp. 16:27-17:1. Plaintiff's argument fails for at least two reasons.

First, there is no limitation to the plain meaning of the statutory language "governmental **or electoral action**, result or outcome" such as to require a governmental election for application of the statute. Indeed, no such limiting or qualifying language is written into the statute. Moreover, Plaintiffs offer no authority indicating otherwise—because there are unable to do so—as none exists. Accordingly, Plaintiffs improperly seek the Court's limitation or restriction on the application of the statute, where the Nevada Legislature clearly declined to impose such limitation.

Second, even if governmental elections only were contemplated by the statute (which they were not), California jurisprudence is instructive on the issue of whether a homeowner's association election is akin to a governmental election. California courts have repeatedly held in the context of an anti-SLAPP motion, that board meetings of a homeowners association "serve[] a function similar to that of a governmental body. As [the California] Supreme Court has recognized, owners of planned development units '"comprise a little democratic subsociety."'...A homeowners' association board is in effect 'a quasi-government entity paralleling in almost every case the powers, duties, and responsibilities of a municipal government.'" *See Lee v. Silveira*, 211 Cal. Rptr. 3d 705, 714-15 (Cal. Ct. App. 2016). Thus, Defendant Kosor's communication made in the context of a campaign for a homeowner's association election is entitled to protection as communication "aimed at procuring any . . . electoral action, result or outcome" as provided by Nevada law.

Furthermore, the Nevada Supreme Court has determined that "in 2013 the Legislature amended portions of Nevada's anti-SLAPP statutes in order to clarify that, under NRS 41.637, the scope of the anti-SLAPP protections is *not limited to a communication made directly to a*

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governmental agency." *Adelson v. Harris*, 133 Nev. Adv. Op. 67, 402 P.3d 665, 670 (2017) (citing prior holding that discussed the legislative history of NRS 41.637(1)) (emphasis added). Thus, "communications with either the government or the public that are intended to influence an electoral result potentially fall under NRS 41.637(1)." *Id.* at 671; *cf. Macias v. Hartwell*, 64 Cal. Rptr. 2d 222, 224 (1997) (holding that California's anti-SLAPP statute "applies to suits involving statements made during a political campaign" and specifically finding that "campaign statements made in a union [leadership] election" fit within the California anti-SLAPP statute and fell squarely within constitutional protections of the right of free speech). Accordingly, no leap of faith is necessary to surmise that NRS 41.637(1) was intended to protect political speech from being chilled—and in this case, an election for the SHCA board of directors (the governing body for that community) fits the aim of such an intent consistent with the protection of the First Amendment.

Defendant Kosor has clearly demonstrated that at least two of the four sets of the allegedly defamatory statements were made in the context of his campaign for election to the SCHA board of directors—one set occurred within his campaign website and the other within his mailed campaign pamphlet. Defendant Kosor's home site on his campaign website (www.mikekosor.com) conspicuously read: "A Uniquely Qualified Candidate for Southern Highlands Community Association (SHCA) Board of Directors." Similarly, the front cover of his campaign pamphlet conspicuously read: "Vote Mike Kosor," "Southern Highlands HOA," and "The Homeowner's Candidate," and directed readers to his campaign website (www.mikekosor.com). Both communications included nearly identical letters from Candidate Kosor addressed to "Dear Southern Highlands Neighbor" and state that "As your board representative, not beholden to the Developer, I will work to reverse the above [list of grievances] and ensure that something like this never happens again."

In response Defendant's campaign, Plaintiff's improperly exercised their power by filing litigation to chill Defendant's speech, including statements made in the election campaign aimed at changing the board. However, Defendant Kosor's campaign statements are entitled to anti-SLAPP protection under Nevada law. Based on the foregoing, Defendant Kosor requests that this Honorable Court find that he has met his burden under NRS 41.660 to entitle his campaign communications to anti-SLAPP protection and for the Court to certify its willingness to amend its Order accordingly.

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2. Nevada's Anti-SLAPP Law Protects Communications That Are Made in Direct Connection with an Issue of Public Interest in a Place Open to the Public or in a Public Forum.

a. Defendant Kosor's Communications Were Made in Direct Connection with Issues of Public Concern and Were Subject to Anti-SLAPP Protection.

As noted above, one of the four categories of "good faith communication" protected by Nevada's anti-SLAPP statutes is communication made "in direct connection with **an issue of public interest** in a place open to the public or in a public forum." NRS 41.637(4). California's anti-SLAPP law is instructive on this matter, as it protects a virtually identical category of communications as NRS 41.637(4). *See* Cal. Civ. Proc. Code. § 425.16(e)(4) ("in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.")

It is further noted that the Nevada Supreme Court has adopted "guiding principles" from California jurisprudence to determine whether an issue is a "**public interest**." *Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, 268 (2017) (adopting principles set forth in *Piping Rock Partners, Inv. v. David Lerner Assocs., Inc.*, 946 F.Supp.2d 957, 968 (N.D. Cal. 2013) and reversing and remanding in part for the lower court's failure to consider these factors). Those guiding principles are specifically:

(1) "public interest" does not equate with mere curiosity;
(2) a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest;
(3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;
(4) the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and
(5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.

Under California anti-SLAPP jurisprudence regarding Cal. Civ. Proc. Code. § 425.16(e)(4), the meaning of "public interest" has been repeatedly and "broadly defined" to include, in addition to government matters both, "**private conduct that impacts a broad segment of society and/or that affects a community in a manner similar to that of a governmental entity.**" *E.g., Colyear v.*

Rolling Hills Cmty. Ass'n of Rancho Palos Verdes, 214 Cal. Rptr. 3d 767, 776 (Cal. Ct. App. 2017) (internal citations omitted) (emphasis added), *as modified on denial of reh'g* (Mar. 23, 2017), *review denied* (June 14, 2017); *see Shapiro*, 389 P.3d at 268 ("Because this court has recognized that California's and Nevada's anti-SLAPP statutes are similar in purpose and language, we look to California law for guidance [in determining what constitutes an issue of public interest].") California courts have routinely found that speech offered within the context of a homeowners' association dispute is protected as a matter of public interest. *Colyear*, 214 Cal. Rptr. 3d at 776-77.

i. Governance of the SHCA is an Issue of Public Concern.

Plaintiffs' Opposition takes the very flawed position that governance of the SHCA is not an issue of public concern. In fact, California courts have repeatedly found that issues concerning the manner in which an HOA group is governed are inherently political questions and issues of public interest.

In the seminal case *Damon v. Ocean Hills Journalism Club*, 102 Cal. Rptr. 2d 205, 212-13 (Cal. Ct. App. 2000), an appellate court affirmed a lower court's ruling that statements concerning the decision of whether to continue to be self-governed as a homeowners' association were protected by anti-SLAPP law as they "pertained to issues of public interest within the [HOA community]." *Id.* at 212. In its determination, the court noted that the statements "**concerned the very manner in which this group of [occupants of approximately 1,633 homes] would be governed—an inherently political question of vital importance to each individual and to the community as a whole.**" *Id.* at 212-13 (citing *Chantiles v. Lake Forest II Master Homeowners Assn.*, 45 Cal. Rptr. 2d 1, 4-5 (Cal. Ct. App. 1995)) (bolding added).

Similarly, in *Ruiz v. Harbor View Community Assn.*, 37 Cal. Rptr. 3d 133, 133 (Cal. Ct. App. 2005), a homeowner sued his homeowners' association alleging letters written by association counsel defamed him. The appellate court concluded that the letters fell within Cal. Civ. Proc. Code. § 425.16(e)(4) (compare to NRS 41.637(4)), noting that the dispute was of interest to a definable portion of the public, i.e., residents of 523 lots, because they "**would be affected by the outcome of these disputes and would have a stake in [association] governance.**" *Id.* (emphasis added).

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Also instructive is *Lee v. Silveira*, 211 Cal. Rptr. 3d 705, 715-20 (Cal. Ct. App. 2016), wherein a lower court's denial of an anti-SLAPP motion was reversed and the appellate court determined that alleged wrongful voting by certain board members of a homeowners' association (sued by other board members) concerned a matter of public interest subject to anti-SLAPP protection. That court held that the director defendants' "decision making process and debate in approving the roofing project, which affected multiple buildings in [the 440 unit community], and the . . . management contract, which management entity was responsible for the day-to-day operations of [the homeowners' association and its community], **impacted a broad segment, if not all, of [the homeowners' association] members" and thus concerned a matter of public interest protected by anti-SLAPP law**. *Id.* at 716 (emphasis added). The appellate court made its determination over the plaintiffs/respondents' argument that the holding in *Talega Maintenance Corp. v. Standard Pacific Corp.*[1] preempted any application of the anti-SLAPP statute pursuant to Cal. Civ. Proc. Code. § 425.16(e)(3).

In each of these case authorities, issues concerning governance of an HOA were found to be matters of public interest. Yet, Plaintiffs summarily dismiss these holdings while failing to even address the same. Also, in their Opposition, Plaintiffs offer no authorities supportive of their baseless argument. Instead, Plaintiffs merely continue to seek their self-serving outcome—to allow their chilling lawsuit to proceed, contrary to the protection offered under NRS 41.660 to private homeowners such as Defendant Kosor to publically impact their community's governance.

ii. Maintenance Costs of Southern Highlands Parks are Issues of Public Concern.

Again, Plaintiffs' Opposition offers an unsupported and flawed position—this time that the maintenance costs of Southern Highlands Parks are not issues of public concern. Once again, multiple California case authorities are instructive on this issue in the absence of Nevada case authorities.

For example, in a brief opinion, in *Foothills Townhome Ass'n. v. Christiansen*,[2] a California appellate court stated that an action by a homeowner's association to collect a special assessment of

[1] 170 Cal. Rptr. 3d 453 (Cal. Ct. App. 2014) (denying defendants' anti-SLAPP motion on grounds the subject acts were not "written or oral statements" covered by § 425.16(e)(3) and that the remaining fraud claim was not based on a statement in connection with an issue of public interest).

[2] 76 Cal. Rptr. 2d 516, 520 (Cal. Ct. App. 1998), *disapproved of on other grounds by Fid. Nat. Home Warranty Co. v. Am. Home Shield of California, Inc.*, D038181, 2002 WL 373077 (Cal. Ct. App. Mar. 8, 2002), *disapproved of on other grounds by Equilon Enterprises v. Consumer Cause, Inc.*, 29 Cal. 4th 53 (2002), *abrogated on other grounds by Navellier v. Sletten*, 29 Cal. 4th 82 (2002).

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$1,300 "***involved matters of public interest*** made in a sufficiently public forum to involve the protection of section 425.16."

Moreover, in a particularly instructive holding, a California appellate court in *Country Side Villas Homeowners Assn v. Ivie*, 123 Cal. Rptr. 3d 251, 257-58 (Cal. Ct. App. 2011), affirmed a lower court's decision that critical statements by a homeowner concerning members of an HOA board and property management, on matters that affected all members of the association, were public interest matters and subject to anti-SLAPP protection. *Id.* at 258. Specifically, that homeowner defendant complained about the HOA's "new decision that the association, not individual homeowners, was responsible for the maintenance expenses associated with . . . balcony and shingle siding repair." *Id.* The court concluded that the new decision by the HOA, "**impacted all members of the association, whether or not their homes had balconies or were in need of siding repair, because the expenses would now be borne by all**" while determining that the criticisms leveled concerned a matter of public interest protected by anti-SLAPP law. *Id.* (emphasis added).

Multiple factual similarities exist in the matter at hand and the *Ivie* decsion. In both cases, community maintenance costs were imposed upon homeowners. Because of the transfer of obligations to the SCHA to maintain parks, all Southern Highlands homeowners bear the burden of funding the maintenance and upkeep of the parks (as well as a roving patrol) whether or not they ever use the parks. *See* SCHA website's FAQ available at http://southernhighlandshoa.com/faq#com2 ("All Owners are required to pay assessments to fund the maintenance and upkeep of the parks and other landscaped areas, as well as the roving courtesy patrol.") In 2016 alone, SHCA spent $675,643.00 to maintain these parks. These expenses necessarily impact all of the SHCA members, whether or not they were even aware of the SCHA's acceptance of the obligation, because the cost will be borne by them via future assessments.

Because the transfer of the parks to the SHCA and maintenance costs associated with said parks are matters of public interest and concern, the statements of Defendant Kosor concerning such issues are entitled to anti-SLAPP protection form the strong arm tactics engaged in by the Plaintiffs to chill Defendant Kosor's speech.

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iii. The Southern Highlands Sports Park is an Issue of Public Concern.

Next, Plaintiffs' Opposition disingenuously asserts that "Kosor argues that the Sports Park issue is of public concern simply because a single newspaper article was published on the subject." Opp. 12:3-4. In truth, the issue of the Sports Park delay (and reduction in size) was a matter of considerable public concern to the Clark County Commission and their constituents over the course of multiple community conversations, neighborhood meetings, Clark County commission public meetings, commenting periods, etc. *See, e.g.,* Statements by Clark County Commissioner Brager on Agenda Items #50-51 at 2:14:072:14:55, 2:31:14-2:31:33 (Feb. 8, 2017) ("We have had many conversations with the homeowners and we have had neighborhood meetings…and it has been a very big challenge…This has been really answering tons of questions, going to meetings, bleeding blood with staff, to figure out, everything that we can and/or should have done [to resolve the delayed construction and reduced size].") available at http://clark.granicus.com/MediaPlayer.php?view_id=17&clip_id=5166; *see also* Michael Scott Davidson, "Clark County still waiting for sports park at Southern Highlands," Las Vegas Review-Journal (Sept. 2, 2017), *available at* https://www.reviewjournal.com/news/politics-and-government/clark-county/clark-county-still-waiting-for-sports-park-at-southern-highlands/ (describing impact on Clark County at large of Plaintiff Olympia's delay in constructing a highly anticipated sports park after dealings with Clark County Commission and the costly impact on the Southern Highlands homeowners for the transfer of the "public parks").

The foregoing evidence more than sufficiently demonstrates, by a preponderance of the evidence, that this was a matter of public concern. Nevertheless, Plaintiffs further contend that merely because Defendant Kosor was quoted in the news article, this was relegated to an issue affecting only a small sliver of the community. Once again, Plaintiff's self-serving characterization ignores the reality of the public concern. Such was evidenced in multiple statements by Clark County Commissioners during the Board of County Commissioners Zoning Meeting on February 8, 2017, wherein multiple members of the community—not merely Mr. Kosor—were involved in commenting on this contested matter.

Defendant Kosor's campaign even folded this issue into his platform, as evidenced by his campaign website. Ultimately, whether Plaintiffs acknowledge it or not, the Clark County

Commission's protracted engagement in the community concerning this matter clearly demostrates that this is a matter of public concern, sufficient to satisfy the preponderance of the evidence standard. The newspaper coverage provides further support of the public concern over this matter.

b. Defendant's Statements Were Communicated via Public Forums, thus Subject to Anti-SLAPP Protection.

As previously noted, Nevada's anti-SLAPP statutes provide protection for "good faith communications" including communication made "in direct connection with an issue of public interest **in a place open to the public or in a public forum**." NRS 41.637(4). In this case, the challenged statements were communicated via the following four forums: (1) Christopher Communities Association ("CCA") board meeting open to the public, (2) social media post via www.nextdoor.com, (3) election campaign website, and (4) election campaign flyer. As discussed below, each meets the requirements of a public forum subject to anti-SLAPP protection.

i. **CCA Open Board Meeting (Dec. 17, 2015)**:

Open board meetings of the SHCA and the sub-board CCA, are traditionally public forums for purposes of Nevada's anti-SLAPP statute. *See Chocolate Magic Las Vegas LLC v. Ford*, No. 217CV00690APGNJK, 2018 WL 475418, at *3 (D. Nev. Jan. 17, 2018) (citing to *Damon v. Ocean Hills Journalism Club*, 102 Cal. Rptr. 2d 205 (2000) (holding that televised and open board meetings of a homeowner's association constituted a public forum for purposes of California's anti-SLAPP statute)); *see also Lee v. Silveira*, 211 Cal. Rptr. 3d 705, 715 (Cal. Ct. App. 2016) (explaining that homeowners elect a board and delegate it powers, creating "a quasi-government entity paralleling in almost every case the powers, duties, and responsibilities of municipal government.")

In their Opposition, Plaintiffs misplace their reliance in *Talega Maintenance Corp. v. Standard Pacific Corp.*, 170 Cal.Rptr.3d 453, 461 (Cal. Ct. App. 2014), which indicated that a homeowner's association meeting does not fit within the scope of "other official proceeding[s]" for purposes of Cal.C.C.P. 425.16(e)(1). However, nowhere in Cal. C.C.P. 215.16(e)(1) is the term "public forum" used.

In contrast, in the subsequent California case of *Lee v. Silveira*, 211 Cal. Rptr. 3d 705, 715 (Cal. Ct. App. 2016) the court expressly found that a meeting of the board of directors of a homeowner's association "constituted a public forum within the meaning of [Cal.C.C.P.

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425.16(e)(3)]" which statute does used the term "public forum" like Nevada's statute. Accordingly, there is no Nevada or California case law indicating that open homeowners association board meetings are anything other than public forums consistent with the language of NRS 41.637(4) (using the term "public forum") or Cal. C.C.P. § 425.16(e)(3).

Because the subject CCA board meeting was an open meeting, Defendant Kosor's December 17, 2015 statements at the CCA board meeting are entitled to protection under NRS 41.660.

ii. Social Medial Platform Nextdoor Post (Sept. 11, 2017):

Websites accessible to the public are public forums for purposes of SLAPP litigation. *See Kronemyer v. Internet Movie Data Base, Inc.*, 59 Cal. Rptr. 3d 48, 55 (2007) (recognizing that websites accessible to the public are "public forums" for the purposes of the California anti-SLAPP statute and finding that statements on a website "accessible to anyone who chooses to visit the site . . . 'hardly could be more public.'"); *see also Daniel v. Wayans*, 213 Cal.Rptr.3d 865, 882 (Ct. App. 2017) (citing *Nygard, Inc. v. Usui-Kerttula*, 72 Cal.Rptr.3d 210 (2008) and finding postings to social media site Twitter are made to a public forum).

The social media site used by Defendant to post on September 11, 2017 is accessible to any Southern Highlands resident—except for any registered sex offenders, much like other popular social media sites such as Facebook. *See* https://nextdoor.com/member_agreement/; *cf.* Facebook Terms of Service, "3. Your Commitments to Facebook and Our Community" *available at* https://www.facebook.com/legal/terms (stating that Facebook is not available to children under 13 yrs. old, convicted sex offenders, previous violators of terms or policies who have been removed, and persons prohibited by law from receiving Facebook products, services, or software). The Nextdoor Member Agreement makes clear accessibility is intended, "we hope that neighbors everywhere will use the Nextdoor platform to build stronger and safer neighborhoods around the world." *Id.* (underlining added). Additionally, Nextdoor expressly offers "personal accounts to individual residential members," and "special, restricted-functionality accounts to government agencies . . . and to businesses, nonprofits, news media, and other organizations." *Id.* Much like Twitter, which places limitations on the type of content and behavior that it allows (and occasionally suspends accounts), and other similar social media sites, the ability of the public to simply create an

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account and gain access to postings, renders Network a public forum precisely because it is so publically accessible.

iii. Defendant Kosor's Campaign Website:

Websites accessible to the public are public forums for purposes of SLAPP litigation. *See Kronemyer v. Internet Movie Data Base, Inc.*, 59 Cal. Rptr. 3d 48, 55 (Cal. 2007). California courts have routinely construed the "public forum" requirement under the anti-SLAPP statute broadly. Multiple courts have included publications with a single viewpoint, such as a homeowners association newsletter, union campaign flyers, magazines, and television broadcasts within the definition of "public forum," because they served public communicative purposes promoting open discussion in the community. *E.g.,* 102 Cal. Rptr. 2d at 209-12 (compiling cases). Additionally, statements "published in [a] Web site on the internet, meaning they are accessible to anyone who chooses to visit [the] Web site . . . could hardly be more public." *See Wilbanks v. Wolk*, 17 Cal. Rptr. 3d 497, 503-05 (Cal. Ct. App. 2004) (relying on *Damon*, 102 Cal. Rptr. 2d at 205); *see also Kronemyer*, 50 Cal. Rptr. 3d at 55. As the *Wilbanks* court noted in its opinion regarding whether a website controlled by its creator was a public forum, "[i]n a sense, the Web, as a whole, can be analogized to a public bulletin board...while [a person] controls her Web site, she does not control the Web. Others can create their own Web sites ... through the same medium." *Id.* at 505.

Based on the foregoing authorities, the website used by Defendant Kosor's campaign constituted a public forum.

iv. Defendant Kosor's Campaign Pamphlet:

Communication or "[s]peech by mail, i.e., the mailing of a campaign flyer, is a recognized public forum under California's SLAPP statute." *Macias v. Hartwell*, 64 Cal. Rptr. 2d 222, 225 (1997) (holding campaign flyer mailed to union members in connection with an election for the office of union president to be a public forum for purposes of SLAPP litigation); *cf. Damon v. Ocean Hills Journalism Club*, 102 Cal. Rptr. 2d 205, 210-12 (2000) (holding that a newsletter intended to "communicate information of interest and/or concern to the residents" of a homeowners association was a public forum for purposes of California's anti-SLAPP statute over argument that "it was essentially a mouthpiece for a small group of homeowners.") Moreover, election campaign materials are political and by their very nature public.

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The November 17, 2017 campaign pamphlet at issue qualifies as a public forum. Said pamphlet contained statements sent to Southern Highlands homeowners in connection with an upcoming election for the SHCA board. The campaign flyer expressly read, in part, in large bold text: "Vote Mike Kosor," "Southern Highlands HOA," "The Homeowner's Candidate," and pointed to "www.mikekosor.com."

Although Plaintiffs contend that the pamphlet was not a public forum because it was not sent to six different counties, Plaintiff's ignore the fact that in Clark County alone, there are numerous elections which are relegated to one-county campaigns. It is simply not a credible positon to take that a campaign flyer was not a public forum merely because it was limited in scope to a community that did not spill into multiple counties. Accordingly, Plaintiffs' attempt to distinguish the instant matter from relevant case law is without any logical merit.

The real issue is whether the campaign flyer was distributed to the community that had an interest in the qualifications and performance of its governing officials and whether the flyer was published in furtherance of the author's right of free speech under the United States of Nevada Constitutions. What else could the subject flyer be—but a public forum for the relevant community? Because Candidate Kosor's flyer was sent to thousands of homeowners in Southern Highlands, who had an interest in the campaign for the board of directors, the flyer was a public forum.

3. Defendant Kosor's Statements Were Either Truthful or Not Made with Knowledge of Their Falsity.

In addition to fitting within the categories of communications outlined in NRS 41.637(1) or (4), Defendant Kosor's communications were layman's opinions and were believed to have been truthful when offered. Nevertheless, to the extent any such statements were false, they were made without knowledge of their falsity.

Not until January 8, 2018, long after Defendant Kosor's statements were made and the Plaintiffs had filed their Complaint, did Defendant Kosor receive correspondence from the Nevada Department of Business and Industry Real Estate Division Common-Interest Communities and Condominium Hotels Program and an accompanying memorandum from the Office of the Attorney General, explaining the existence of a statute of limitations and its potential effect on the validity of the 2005 amendment to the CC&Rs for Southern Highlands. Said correspondence explained that a

statute of limitations had lapsed, making the 2005 amendment "legally sufficient and binding." Moreover, said correspondence was made in response to a complaint filed earlier by Defendant Kosor, under the belief that the 2005 amendment (to increase the number of units in the planned community beyond the number stated in the original declaration) was invalid as a matter of law pursuant to NRS 116.2122. The validity of the opinion of the Office of the Attorney General has not been addressed by any court.

If, however, the 2005 amendment to the Southern Highlands CC&Rs was invalid (as Defendant Kosor reasonably believed), then in October 2014, under the CC&Rs, Plaintiff Olympia was obligated to transfer its remaining control of the SHCA to the homeowners. Most of Defendant Kosor's statements focused on this issue.

Defendant also correctly asserted that the homeowners of Southern Highlands were not given the opportunity to vote on whether the SCHA should acquire any title and accompanying maintenance obligation in any of the "public parks" located within Southern Highlands. Defendant Kosor has also relied upon his understanding (as a layman) of certain statutes (e.g., NRS 116.087 and NRS 116.3112), which indicated to him that the transfer of title to the SHCA was not valid. This understanding is plainly evident to a preponderance of the evidence. Specifically, Defendant Kosor sent a 5-page letter to the SHCA Board of Directors on September 18, 2017 detailing his beliefs and encouraging them to take specific actions. After the Board did not undertake the requested actions, Defendant Kosor ran for election to the Board, in an effort to correct the perceived errors.

Finally, Defendant Kosor's statements regarding the decade delayed sports park are accurate, as evidenced by the investigative journalism of the Review Journal. *See also* Michael Scott Davidson, "Clark County still waiting for sports park at Southern Highlands," Las Vegas Review-Journal (Sept. 2, 2017), *available at* https://www.reviewjournal.com/news/politics-and-government/clark-county/clark-county-still-waiting-for-sports-park-at-southern-highlands/.

Furthermore, Plaintiffs cannot demonstrate that Defendant's communications were made with knowledge of their falsehood. Nor can Plaintiffs demonstrate that such statements were, in fact, false. Accordingly, Defendant Kosor is entitled to relief under NRS 41.660.

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4. Plaintiffs Cannot Satisfy Their Burden Sufficient to Bring Defamation/Defamation Per Se Actions Against Defendant Kosor.

After Defendant shows by a preponderance of the evidence a likelihood that the anti-SLAPP statute applies, Plaintiffs must be show prima facie evidence of prevailing on their claims.[3] In Nevada, "[a]n action for defamation requires the plaintiff to prove four elements: (1) a false and defamatory statement ...; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages." *Clark County Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009). "[I]f the defamatory communication imputes a 'person's lack of fitness for trade, business, or profession, or tends to injure the plaintiff in his or her business, it is deemed defamation per se and damages are presumed." *Id.* (internal citations omitted).

"In reviewing an allegedly defamatory statement, the words must be viewed in their entirety and in context to determine whether they are susceptible of a defamatory meaning." *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422, 425 (2001) (internal quotations omitted); *see also Pacquiao v. Mayweather*, 803 F. Supp. 2d 1208, 1211 (D. Nev. 2011).

As a general rule, "statements of opinion as opposed to statements of fact are not actionable . . . there is no such thing as a false idea, and the societal value of robust debate militates against a restriction of the expression of ideas and opinions." *Nevada Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 410, 664 P.2d 337, 341-42 (1983); *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002). "The rule for making the determination [between factual statement and opinion] is . . . whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact." *Id.* "In cases involving political comment, there is a strong inclination to determine the remarks to be opinion rather than fact." *Id.* "Although ordinarily the fact/opinion issue is a question of law for the court, where the statement is ambiguous, the issue must be left to the jury's determination." *Id.* The Nevada Supreme Court has also embraced the fact/opinion analysis set forth in Restatement (Second) of Torts § 566 (1977). *Id.* at 411, 664 P.2d at 342.

[3] Plaintiffs' Opposition makes an issue of the fact that it requires only a prima facie evidence showing and not a probability of prevailing by clear and convincing evidence. Regardless, Plaintiffs fails either burden because Plaintiffs are not able to establish an actionable claim.

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In their Opposition, Plaintiffs rely on a select few cases to contend that Defendant Kosor's statements were actionable, even as opinions. However, not one of Plaintiffs' cited case authorities involve statements made in the context of an election, as is the case here. And, Nevada law (including one of the cases cited by Plaintiffs) maintains that a strong inclination exists to determine that remarks involving political comment are opinion rather than fact. *Pegasus*, 118 Nev. at 714, 57 P.3d at 87.

a. CCA Board Meeting Statements (Dec. 17, 2015):

Defendant made two statements on December 17, 2015 at issue and both were clearly opinions—one expressly qualified itself as "my opinion" and the other was made using the opinion implying qualifier "probably." Statements of opinion cannot be defamatory, nor are they actionable. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002). And, "in cases involving political comment, there is a strong inclination to determine the remarks to be opinion rather than fact." *Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 410, 664 P.2d 337, 341 (1983).

First, Defendant Kosor stated in a rhetorical discussion regarding whether the SHCA could bring a lawsuit against the declarant, "he is basically lining his own pockets, in my opinion, at the expense of the owners in Southern Highlands. . . I want to know what political shenanigans were going on when they approved that park. I've got a whole list of things that I'm going to talk to [Commissioner Brager] about. This has been going on for about eight years." *See* Original Mot. Ex. G at 1:18:40-1:19:33. This discussion uses just the kind of rhetorical hyperbole and figurative statements that are nonactionable.

Second, Defendant stated, "The audit report was quickly glossed over and the Country Commission was worried about, they [the Country Commission] were apologizing to the Developer, Goett, who was there, about the conduct of the audit committee and all the audit committee did was do their job. But they were, he was upset and angry and probably got the Commissioner aside in a dark room or someplace and read them the riot act . . . that's why I'm going to go at 3 o'clock, I've gotta ask what's going on here because I'm really upset with what's going on here . . . I want the board run by owners." *See* Original Mot. Ex. G at 1:20:00-1:21:24. Furthermore, the statements on their face are not defamatory, as the colloquialism "read them the riot act" hardly conveys a defamatory meaning or context. And, while making these statements, Defendant Kosor repeatedly indicated that he did not possess undisclosed facts upon which his opinions were based—rather he emphasized that

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he was seeking more information. Accordingly, the statements from the board meeting are opinion and are not actionable.

b. Social Medial Platform Nextdoor.com Post (Sept. 11, 2017):

In his September 11, 2017 social media statements, Defendant Kosor expressed frustration over the Southern Highlands' obligation to maintain public parks in the community and the lack of accountability. Defendant's statement read in part, "to obtain a lucrative agreement with the County the Developer committed to constructing the above Sports Park using private money…[but] the County would in the fall of 2015 inexplicably relieving [sic] the developer of its original commitment only to then approve spending $7M in public tax dollars for a similar complex in Mountain's Edge."

The statements reflected the opinions of Defendant Kosor and are not defamatory on their face, nor are most of the statements even directed at either Plaintiff. Furthermore, Plaintiffs have failed to demonstrate that the challenged statements were false. As such, the statements are not actionable.

Although Plaintiffs repeatedly allege that challenged statements were defamatory on grounds that they implied Plaintiffs acted wrongly financially—including the "lucrative agreement" statement, "to charge a breach of ethics [or much less, to charge that a person entered a profitable agreement] is not to charge a breach of the law." *Beilenson v. Superior Court*, 52 Cal. Rptr. 2d 357, 363 (Cal. Ct. App. 1996) (finding that motion to dismiss should have been granted where political campaign flyer accused opponent of committing a "rip-off). Moreover, Defendant's use of "inexplicably" expresses that he still did not possess facts as to just why the County relieved the developer of its commitment when he offered that opinion.

c. Defendant Kosor's Campaign Website and Pamphlet:

On November 16 and 17, 2017, Defendant launched a website and pamphlet as part of his campaign seeking election to the SHCA board. The website and pamphlet outlined his platform, concerns and recommendations for improving the Southern Highlands community.

Despite its use in an election campaign, Plaintiffs challenged Candidate Kosor's website statement where he opines that he does not like "the idea" of the community in which he now lives

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denying him the right to vote on issues that will affect the community.[4] In addition to having been offered as an opinion and political commentary within an election, the statement is not defamatory on its face, nor was it directed at either Plaintiff. The statement never mentioned either Plaintiff, only "the community." And, as the U.S. Supreme Court has determined, "Under the First Amendment there is no such thing as a false idea." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974). Accordingly, Plaintiffs cannot satisfy their burden.

Plaintiffs also challenge Candidate Kosor's use of the website statements "massive sweetheart deal"[5] and that the Country and Developer coordinated an agreement that would permanently and wrongly obligate the SHCA to maintain the public parks in our community. The foregoing statements were offered within the context of a campaign and pending election. As political commentary, the statements at issue are opinion, as opposed to fact, and are not defamatory on their face. Furthermore, the statements do not name either Plaintiff (instead naming three non-parties: "SHCA Board," "County and State") and are not actionable.

Plaintiffs also challenge Candidate Kosor's reference to a "technical loophole"[6] and his "Dear Southern Highlands Neighbor" letter—both on his campaign website and pamphlet—referencing the "**potential** for our Board to experience conflicts of interest . . . and failed fiduciary oversight"[7] and his belief that such failures have cost the community millions of dollars. Once again, the foregoing statements were made in an electoral campaign, and as political commentary, constitute the opinions

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[4] "I lived in foreign countries where citizens did not have this right [the right to vote] and saw firsthand [sic] the negative implications. I do not like the idea the community I now look to spend my retirement [with] has denied me this central and important right."

[5] "The SHCA Board's recurring failure to engage on behalf of homeowners . . . our SHCA Board has repeatedly failed to oppose and in many cases failed to even inform owners of damaging efforts by the County and State – for example: a massive sweetheart deal for our Developer that significantly changed and reduced our long overdue 'Sports Park';] Cark County's 'cost shifting' of park maintenance expenses to our HOA[; and] County and Developer coordinated [an] agreement that would permanently and wrongly obligate the HOA to maintain the 'public parks' in our community...If elected I will keep owners informed and insist our Association engages to advance and defend owner interests on both the County and State level."

[6] "My objections to the Agreement are . . . 3. Our Board's approval to execute this Agreement was done without satisfying necessary owner acceptance provision in the statutes. A technical "loophole" allows it to do so. However, per NRS 16.3112 par. 4. '...the contract is not enforceable against the association until approved pursuant to subsections 1, 2, and 3'"

[7] "My objectives if elected are: First and foremost, I will work to end the Developer's control of our HOA Board. Currently, three of our 5-person SHCA Board of Directors are appointed and employed by the Developer. With Olympia Management owned by the Developer, the potential for our Board to experience conflicts of interest, loss of board-autonomy, and failed fiduciary oversight are clear. As I note below, I believe this has cost our community millions of dollars .... Fourth, our board has repeatedly failed to act in the best interests of homeowners with government agencies."

of Candidate Kosor. This is further evidenced by Candidate Kosor's use of qualifying language such as "potential and belief." As opinions, the challenged statements are not actionable, nor are they even defamatory on their face.

Also, statements like the foregoing are among the type of political rhetoric, figurative statements, and hyperbole that are common to political campaigns. *E.g., Rosenaur v. Scherer*, 105 Cal. Rptr. 2d 74 (2001) (calling opponent "thief" and "liar" during political campaign was hyperbole). In *Silk v. Feldman*, 145 Cal. Rptr. 484 (Cal. Ct. App. 2012), a California appellate court affirmed a lower court's denial of an anti-SLAPP motion on grounds that the plaintiff/respondent had demonstrated the probability of prevailing on her claim—and the defendant did not even point to any evidence that might defeat the plaintiff/respondent's evidence that the defamatory statements were falsehoods. However, the challenged statements were made in the context of a board election and implied that incumbent board members had engaged in self-dealing. Although the parties to the lawsuit were homeowners and candidates for board seats for a 136 unit community, the court expressly noted that "if an official of a city government engaged in the conflict of interest alleged in [the statement], it would be a matter of public interest . . . [and] treating a homeowners association in the same manners as a municipal government could reasonably lead to the conclusion that [the statement] constituted free speech in connection with an issue of public interest." *Id.* at 489.

5. The Court Should Not Award Plaintiffs Expenses, Including Attorney's Fees, as Defendant's Motion for Reconsideration was Brought in Good Faith.

Even if the Court were to conclude that it should not certify its willingness to vacate and change its Order, Plaintiffs should not be awarded any expenses, including attorney's fees. Defendant's Motion for Reconsideration was brought in good faith. As evidenced by this brief, Defendant has identified multiple case authorities supportive of his position that statements made within the context of a homeowners' association election are entitled to protection, that issues involving homeowners' associations governance and assessments are matters of public interest, and that the posting of his statements on his website and pamphlet constituted the use of public forums for purposes of anti-SLAPP protection. Defendant's brief also offered analysis under the guiding factors adopted by the Nevada Supreme Court for determination as to whether the topics at issue were matters of public

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concern. Defendant also introduced case authority that clarified and distinguished holdings in many of the cases heavily relied upon by Plaintiffs.

Furthermore, Defendant's brief provided whole statements, as opposed to fragments and added context to the challenged statements—as required by law for determinations of whether a statement was susceptible of a defamatory meaning. *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422, 425 (2001) (internal quotations omitted). As the Court was not provided all of this information initially by either party, Defendant's made such effort in the interest of justice. Moreover, this matter is on appeal and, unless re-vested in this Court, it is entirely possible that the Supreme Court of Nevada will find that the appeal was substantially justified and meritorious. Because of the good faith nature of Defendant Kosor's Motion, Plaintiffs should be required to bear their own attorney's fees and costs.

Finally, it cannot be overstated that a disparity of power exists in this unusual matter—with Plaintiffs' holding the greater portion of control and influence in juxtaposition to the individual homeowner Defendant, whom they have attempted to silence.

III. CONCLUSION

Based on the foregoing arguments, evidence and authorities, Defendant Kosor respectfully requests the Court grant his Motion for Reconsideration and certify its intent to vacate its Order denying his Motion to Dismiss Pursuant to NRS 41.660.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of May, 2018, I served the foregoing **DEFENDANT'S REPLY IN SUPPORT OF MOTION FOR RECONSIDERATION OF COURT'S MARCH 20, 2018 ORDER** as follows:

☐ US MAIL: by placing the document(s) listed above in a sealed envelope, postage prepaid, in the United States Mail at Las Vegas, Nevada, addressed to the following:

☐ BY FAX: by transmitting the document(s) listed above via facsimile transmission to the fax number(s) set forth below.

☐ BY HAND-DELIVERY: by hand-delivering the document(s) listed above to the address(es) set forth below.

☐ BY EMAIL: by emailing the document(s) listed above to the email address(es) set forth below.

☒ BY ELECTRONIC SERVICE: by electronically serving the document(s) listed above with the Eighth Judicial District Court's WizNet system upon the following:

J. Randall Jones, Esq.
KEMP, JONES & COULTHARD, LLP
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Attorney for Plaintiffs

/s/ MaryAnn Dillard
An Employee of BARRON & PRUITT, LLP

Clark County still waiting for sports park at Southern Highlands

Soccer Season Crowds Southern Highlands Parks Player (Michael Scott Davidson/Las Vegas Review-Journal)

SIMILAR STORIES

By Michael Scott Davidson Las Vegas Review-Journal
September 2, 2017 - 11:45 pm

Kickoff for the Southern Highlands United youth soccer fall season isn't until next Sunday, but coaches have spent two weeks competing — for space, not goals — in Inzalaco Park.

Before these teams meet in an official match, they vie until sunset twice a week for space to practice on the 5-acre park's unlighted lawn. Every Monday and Thursday for the next three months, parents will face a similar struggle to obtain one of 30 parking spots. Some will resort to leaving their vehicles on the street.

The area is so cramped that coach Dave Whitaker moved spring practices for the Southern Highlands Dragons to the nearby community of Mountain's Edge.

He's come back, for now.

"Because of road construction, some of the parents were saying it was taking them 30 minutes to get out there," he said. "I know we aren't the only team from Southern Highlands that practices out there."

The long wait

Families in this community of approximately 7,300 homes have waited more than a decade for a promised public sports park with ample parking and lighted soccer fields.

Southern Highlands has a clear need for such a facility, and Olympia

Companies, the developer behind the master-planned community, agreed with Clark County in January 2006 to build a sports park within two years.

But the proposed park site southeast of Evelyn Stuckey Elementary School remains a field of dirt. Construction was repeatedly pushed back while Olympia Companies accumulated enough money through sluggish land sales to fund construction.

The company has a deal with the county to build all the community's parks in exchange for not paying a special construction tax of up to $1,000 a home.

"Ultimately it's less expensive, and for the most part it's done quicker than if the county had to do it," said Nancy Amundsen, the county's director of comprehensive planning. "The developer is geared up (to build). They've got their grading equipment. They're putting in their infrastructure."

From 1999 through 2007, Olympia Companies built seven parks and one paseo in Southern Highlands. The sports park is the last park promised in its development agreement with the county.

County records show that the company spent about $7 million to build the paseo and the four largest parks and that it has received about $5.2 million in tax credits. About $1 million of those tax credits remains.

All the parks are open to the public, but that could change because the county never implemented an important part of its deal with Southern Highlands Development.

Southern Highlands was awarded tax credits without obtaining irrevocable contracts guaranteeing the parks would be public forever. Such a contract was obtained for only one park in Southern Highlands: a grassy water detention basin that has no parking lot and is subject to flash floods.

A 2011 county audit determined that without the contracts, the other six parks could be privatized after the development agreement expires.

"Without Public Access Easement agreements and land use restrictions in place, the general public interests for the life of the park are not protected once the development agreement expires on November 18, 2023," audit director Angela Darragh wrote.

Fast-forward to 2017 and county spokesman Dan Kulin says the development agreement, expired or not, is enough to immortalize public access to the parks, but the county is still seeking the public access easements.

They have remained elusive, however.

Southern Highlands Development granted ownership of the parks to the community's homeowners association years ago. The move has shifted the annual burden of more than $1 million to maintain the parks onto homeowners but has also given them control of the parks.

Olympia Companies vice president of planning Chris Armstrong said he expects the HOA board to approve the easements at its meeting this month. He blamed the yearslong delay on difficulties drafting a contract pleasing to all parties.

"The intent was always to have the easements recorded," he said. "It should all be buttoned down shortly."

County's leverage questioned

Construction on the sports park will begin this month, Armstrong said.

If the park isn't open by June, county commissioners say they will stop issuing building permits for homes in Southern Highlands. If permits are

issuing building permits for homes in Southern Highlands. If permits are frozen, Armstrong said, Olympia Companies will violate several of its contracts with homebuilders.

"So we don't really have any option," he said. "We want to build the park."

The county reports that a grading permit has been issued for the park and that plans for shade structures, walls and lighting are being reviewed by the building department. County commissioners are scheduled to receive an update on the park's construction at their Wednesday zoning meeting.

Mike Kosor, who has lived in Southern Highlands since 2011, has little faith commissioners will halt the developer if the project falls behind schedule. The county stopped issuing permits after a similar deadline passed 2012, but commissioners reversed the decision within two weeks.

The completion date has since been pushed back multiple times without a stoppage in the issuance of building permits. As of July, three-fourths of the available permits had been issued.

"The county has demonstrated repeatedly that it won't hold up its end in stopping permits, which is the only leverage it has," Kosor said. "And that leverage is rapidly running out."

Kosor said a better protection would be to have the Olympia Companies post a bond for the project, like it has when building other parks. The county could call the bond if construction stopped and finish the park itself.

Armstrong said his company had no plans to post a bond, which county spokesman Erik Pappa said came as a surprise.

"We remain confident the project will be completed," Pappa wrote in an email. "Some permits have been issued and work is already underway."

Amenities eliminated

As the sports park's opening date has receded further from its initial January 2008 deadline, its amenities and size have been diminished. Gone are plans to build shaded spectator seating, a second parking lot and a lighted baseball fourplex complemented by two practice diamonds.

Jenny Pelcher, a Southern Highlands resident and former Silverado Little League board member, said it was disappointing news for league families. They have to travel to Silverado Ranch to practice and play games.

Last month, county commissioners pledged $6.6 million in public money to build a similar fourplex in Mountain's Edge. While those fields will be closer, Little League rules forbid Southern Highlands teams from using them, Pelcher said.

"You might as well build a wall at Mountain's Edge," she said. "That's not in our boundary, and we can only practice in our boundaries."

Armstrong said the sports park's amenities changes after the recession hurt land sales planned to fund its development and construction. He said the park will still be a "first-class" facility with three lighted soccer fields, a basketball court, a playground and a splash pad.

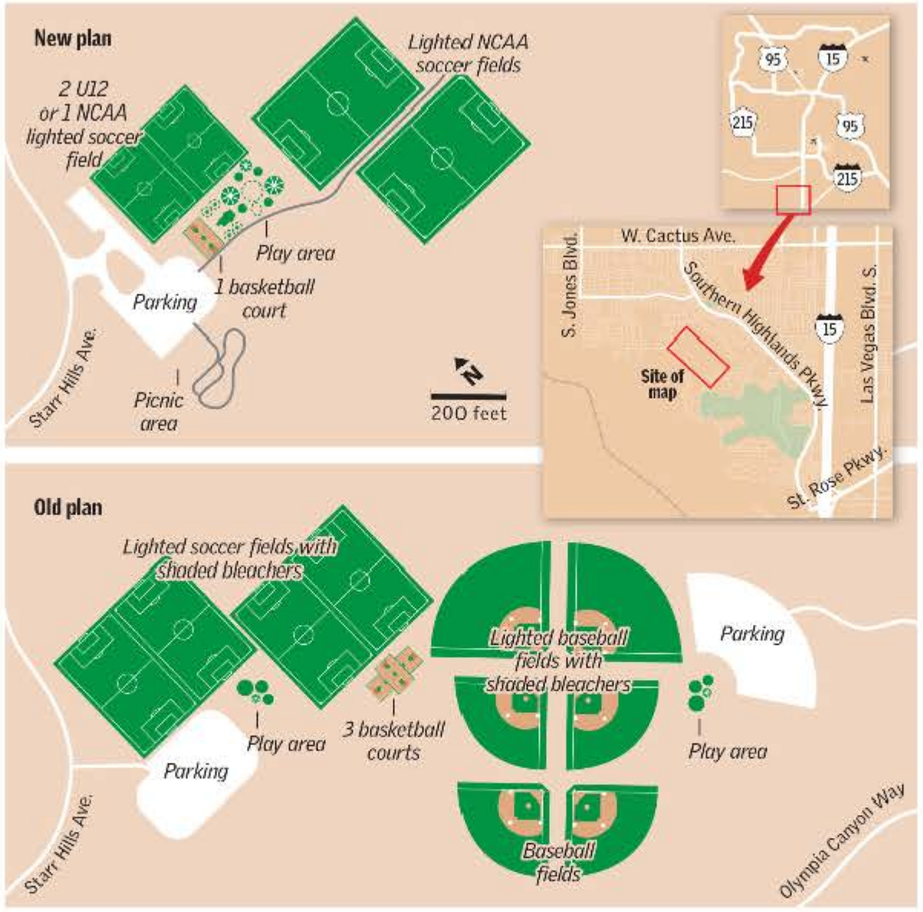
"I think it will be the jewel of Southern Highlands," he said.

Contact Michael Scott Davidson at sdavidson@reviewjournal.com or 702-477-3861. Follow @davidsonlvrj on Twitter.

Park plans

Olympia Companies has promised to build and open a long-awaited sports park in the Southern Highlands community by next July, more than a decade after the project's original target completion date.

Over the past 10 years the developer has shrunk the park and eliminated some of its planned amenities, blaming the lasting effect of the Great Recession.



Wes Rand Las Vegas Review-Journal

Southern Highlands parks confuse county staff

Clark County has had a difficult time keeping track of parks in Southern Highlands.

An amendment to its development agreement with Olympia Companies in October 2015 stated that contracts guaranteeing public access to seven existing parks were recorded. A year later, after scrutiny by community resident Mike Kosor, county attorney Robert Warhola acknowledged that "an error was made" and no such agreements were recorded for any park.

"an error was made" and no such agreements were recorded for any park.

Until late August, staff believed that Olympia Companies would post a bond to construct Southern Highlands' long-promised sports park. It wasn't until a Review-Journal reporter spoke with the company and learned they had plans to post a bond that the county found out.

The county also missed the mark on how much tax credit Olympia Companies had remaining.

Earlier this year it reported that the company ran used its last credit sometime between July 1 and Sept. 30, 2016. This week, the county reported that its previous calculation was wrong and Olympia Companies still had close to $1 million in tax credits remaining.

News




EXHIBIT 4

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Nextdoor is the private social network for your neighborhood.

Nextdoor is the best way to stay informed about what's going on in your neighborhood—whether it's finding a last-minute babysitter, planning a local event, or sharing safety tips. There are so many ways our neighbors can help us, we just need an easier way to connect with them.

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The easiest way to keep up with everything in your neighborhood.

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A community built by you and your neighbors.

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Made by your neighbors in San Francisco.

Community Guidelines

Our mission is to provide a trusted platform where neighbors work together to build stronger, safer, happier communities, all over the world.

We want all neighbors to feel welcome, safe, and respected when using Nextdoor. For that reason, we've developed a set of Community Guidelines describing what behaviors are – and are not – allowed on Nextdoor. The crux of our Guidelines can be boiled down to one simple statement: **Everyone here is your neighbor. Please treat each other with respect.**

We rely on you, the neighbors who make up the Nextdoor community, to report content that violates these Guidelines. Violating the Community Guidelines has consequences, which may include removal of content, suspension of posting privileges, or even a permanent ban from Nextdoor. Because of the diversity of people in any neighborhood, please keep in mind that while something may be disagreeable to you, it may not violate our Community Guidelines.

Learn more about Nextdoor's moderation systems (https://help.nextdoor.com/customer/en/portal/articles/2909190-how-does-moderation-work-?b_id=98) for enforcing the Community Guidelines.

Be helpful, not hurtful

The heart and soul of Nextdoor are the helpful conversations that happen between neighbors. When conversations turn disagreeable, everyone on Nextdoor suffers. Our Guidelines prohibit posts and replies that discriminate against, attack, insult, shame, bully, or belittle others. See more detail about this guideline (https://help.nextdoor.com/customer/en/portal/articles/2467402).

- Disagreements and conflict (https://help.nextdoor.com/customer/en/portal/articles/2467402#Disagreements)
- Public shaming (https://help.nextdoor.com/customer/en/portal/articles/2467402#shaming)
- Personal disputes and grievances (https://help.nextdoor.com/customer/en/portal/articles/2467402#Disputes)
- Discrimination and hate speech (https://help.nextdoor.com/customer/en/portal/articles/2467402#Discrimination)
- Crime and suspicious activity (https://help.nextdoor.com/customer/en/portal/articles/2467402#Crime)

Don't use Nextdoor as a soapbox

Nextdoor is a communication platform that allows neighbors to mobilize and get stuff done like never before. However, favorite causes that are pushed too hard, political campaigning, and personal views on controversial issues will inevitably rub one's neighbors the wrong way. We rely on our members to report those who are over-posting, campaigning, and posting or ranting about controversial, non-local issues. See more detail about this guideline (https://help.nextdoor.com/customer/en/portal/articles/2467434).

- Ranting (https://help.nextdoor.com/customer/en/portal/articles/2467434#soapboxing)
- Over-posting (https://help.nextdoor.com/customer/en/portal/articles/2467434#overposting)
- Dominating or hijacking conversations (https://help.nextdoor.com/customer/en/portal/articles/2467434#hijacking)
- Controversial issues (https://help.nextdoor.com/customer/en/portal/articles/2467434#controversial)
- Politics and campaigning (https://help.nextdoor.com/customer/en/portal/articles/2467434#campaigning)

Promote local businesses and commerce the right way

On Nextdoor, we support local businesses and encourage neighbors to share helpful information about their favorite businesses and services. We also encourage neighbors to buy, sell, and give things away. Nextdoor is actively working on solutions for local businesses to participate in their Nextdoor neighborhood. See more detail about this guideline (https://help.nextdoor.com/customer/en/portal/articles/2467454).

To find and claim your business page, click here (https://nextdoor.com/create-business).

- Promoting your business or offering services (https://help.nextdoor.com/customer/en/portal/articles/2467454#business)
- For Sale and Free (https://help.nextdoor.com/customer/en/portal/articles/2467454#classifieds)
- Fundraising (https://help.nextdoor.com/customer/en/portal/articles/2467454#fundraising)
- Conflicts of interest (https://help.nextdoor.com/customer/en/portal/articles/2467454#coi)

Use your true identity

Nextdoor is a network for you and the people who live in your local community. To that end, using your true identity and honestly representing yourself are key parts of being a Nextdoor member. See more detail about this guideline (https://help.nextdoor.com/customer/en/portal/articles/2467471).

- Real names (https://help.nextdoor.com/customer/en/portal/articles/2467471#name)
- Your profile and photo (https://help.nextdoor.com/customer/en/portal/articles/2467471#profile)
- Joining as a couple (https://help.nextdoor.com/customer/en/portal/articles/2467471#couple)
- Business or service provider accounts (https://help.nextdoor.com/customer/en/portal/articles/2467471#business)
- Public agency accounts (https://help.nextdoor.com/customer/en/portal/articles/2467471#agency)

Keep it clean and legal

Keep all content and activity family-friendly and legal, and adhere to our rules about regulated goods and services. See more detail about this guideline (https://help.nextdoor.com/customer/en/portal/articles/2467486).

- Illegal and regulated goods and services (https://help.nextdoor.com/customer/en/portal/articles/2467486#illegal)
- Violations of privacy (https://help.nextdoor.com/customer/en/portal/articles/2467486#privacy)
- Threats to the safety of others (https://help.nextdoor.com/customer/en/portal/articles/2467486#safety)
- Profanity (https://help.nextdoor.com/customer/en/portal/articles/2467486#profanity)
- Fraud and spam (https://help.nextdoor.com/customer/en/portal/articles/2467486#spam)

Additional policy resources

Member Agreement (https://nextdoor.com/member_agreement/)
Privacy Policy (https://nextdoor.com/privacy_policy/)
Content moderation and the role of Leads (https://help.nextdoor.com/customer/en/portal/articles/968839)

Helpful? Yes (https://help.nextdoor.com/customer/en/portal/articles/2446947/rate?rating=1) No (https://help.nextdoor.com/customer/en/portal/articles/2446947/rate?rating=0)

Last Updated: Dec 07, 2017 05:06PM PST

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EXHIBIT 5

kosor

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Mike Kosor

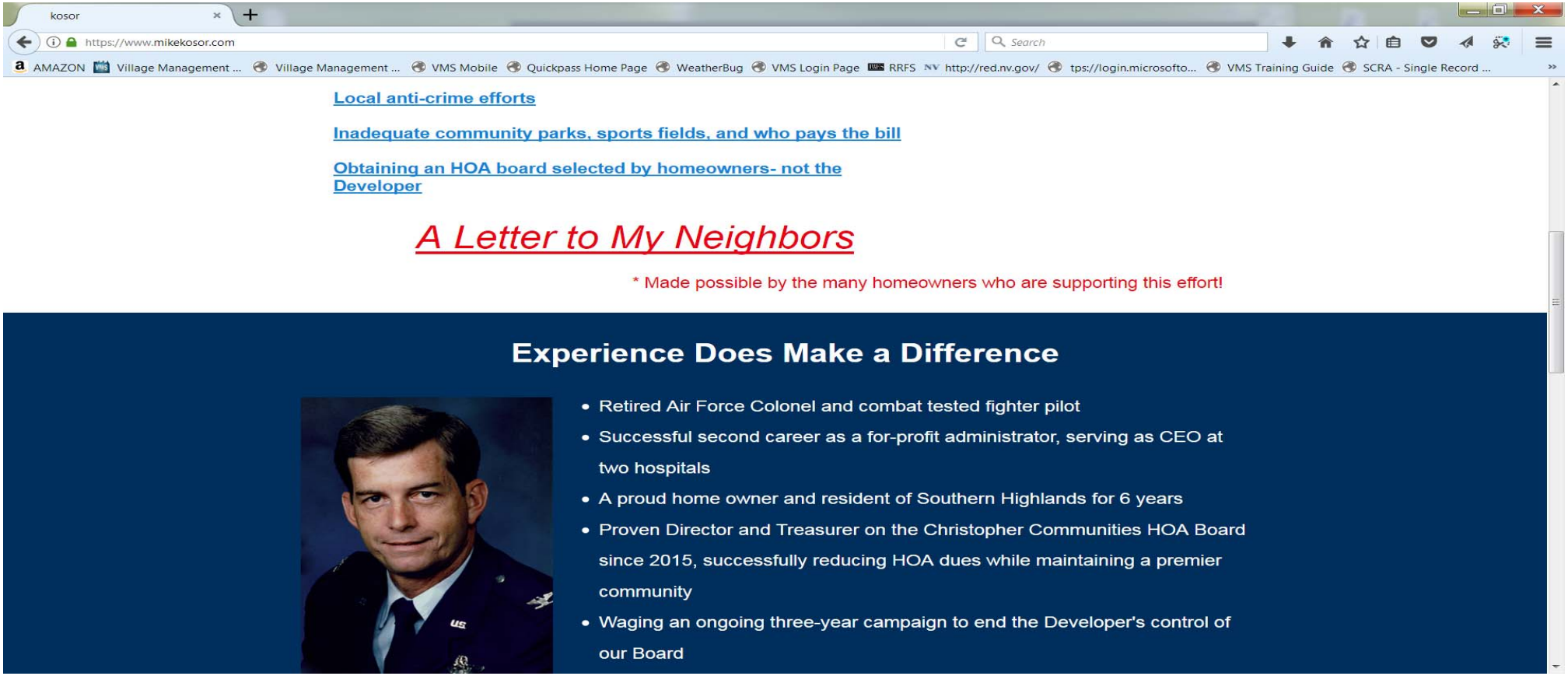
*A UNIQUELY QUALIFIED CANDIDATE **

for

Southern Highlands Community Association (SHCA) Board of Directors

These are the issues I will fight to improve

- Unnecessarily high homeowners HOA fees
- Local anti-crime efforts
- Inadequate community parks, sports fields, and who pays the bill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Local anti-crime efforts
Inadequate community parks, sports fields, and who pays the bill
Obtaining an HOA board selected by homeowners- not the Developer
A Letter to My Neighbors
* Made possible by the many homeowners who are supporting this effort!
Experience Does Make a Difference
Retired Air Force Colonel and combat tested fighter pilot
Successful second career as a for-profit administrator, serving as CEO at two hospitals
A proud home owner and resident of Southern Highlands for 6 years
Proven Director and Treasurer on the Christopher Communities HOA Board since 2015, successfully reducing HOA dues while maintaining a premier community
Waging an ongoing three-year campaign to end the Developer's control of our Board

kosor

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- Waging an ongoing three-year campaign to end the Developer's control of our Board
- Personally challenged the County Commission following their persistent failure to disclose matters impacting our community, in particular its failure to take appropriate actions on issues related to our community's parks

Learn More About me

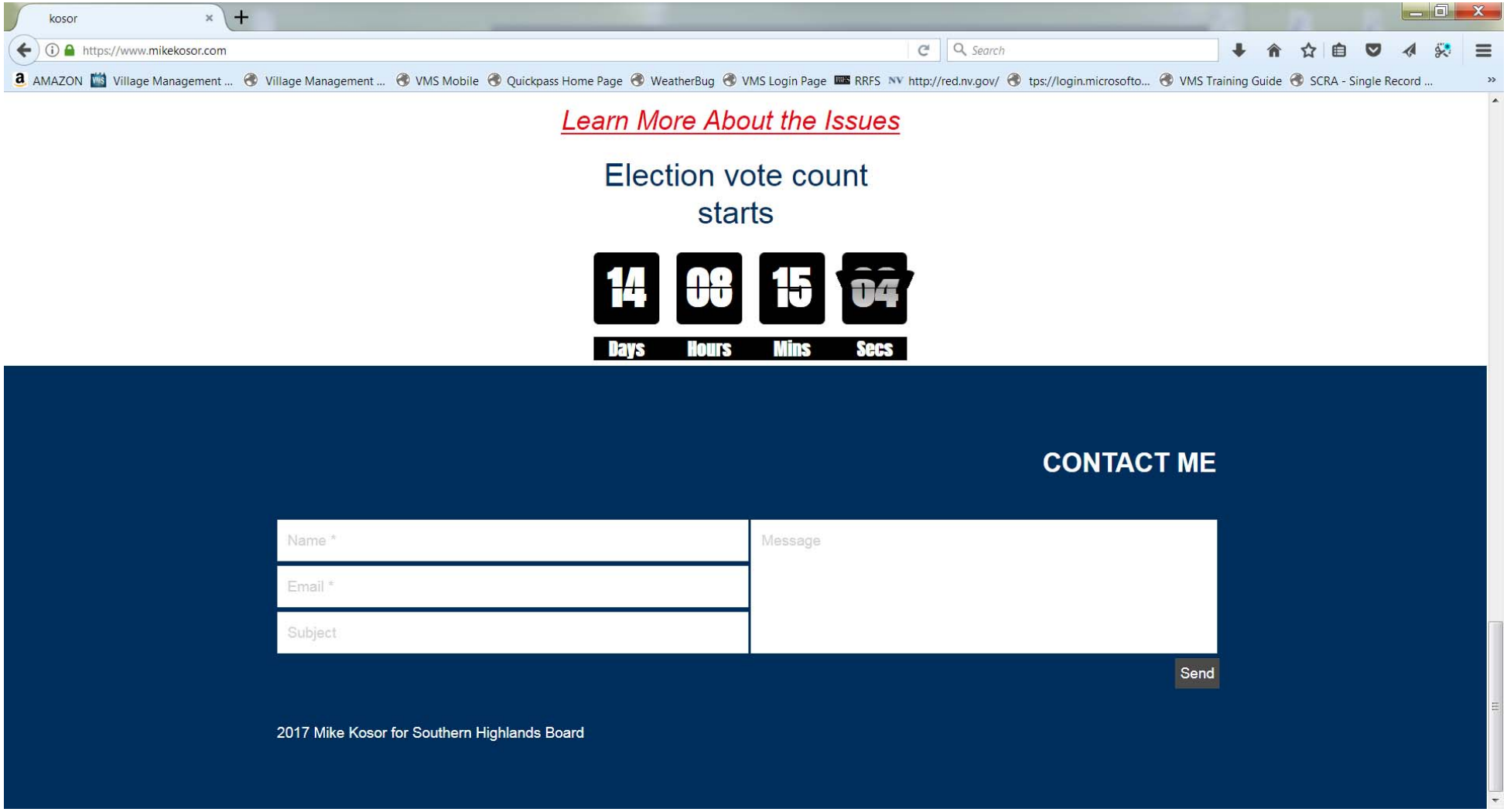
My Pledge To You

My pledge to Southern Highland homeowners is to work hard to preserve our quality community. I will demand the SHCA Board be fully transparent, maintain strict control on costs, while truly listening to and always placing owner's interests first. Scheduling most meetings to a time easier for owners to attend would be a necessary first effort.

Be assured I have no alternative objectives in serving on the Board. I am not looking for community exposure to further a business and/or career ambitions. I am happily retired from any and all business pursuits.

If democracy is to work in Southern Highlands it requires your participation in our November Board election. I hope my experience and priorities for our community going forward is deserving of your confidence and vote. But regardless of your choice of candidates please cast a vote for one who is willing and capable to fight for homeowners.

Learn More About the Issues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MEET Mike

Mike Kosor was born into a military family moving across much of America as a child. He inherited a strong sense of service from his father, a retired Air Force Chief Master Sergeant.

After attending college on an AFROTC scholarship, Mike would spend twenty-four years in the United States Air Force. There he was a combat tested fighter pilot in the first Gulf War, commanded an F-15 fighter squadron, attended the USAF War College, appointed to serve as a senior military advisor in the Middle East, and finished his military career in Washington DC directing the efforts of the Air Forces' largest foreign military sales regional.

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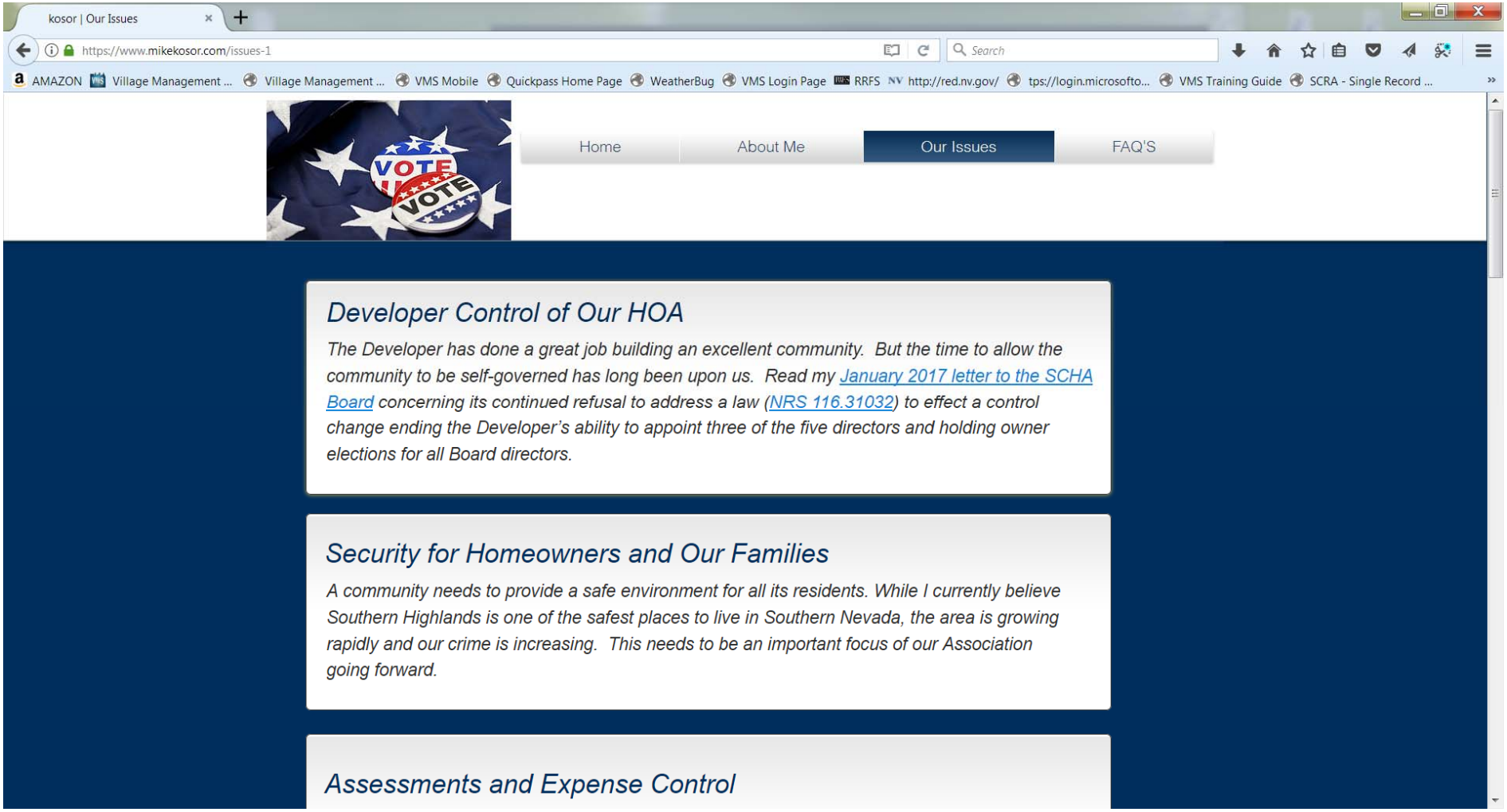
Retiring as a Colonel, Mike would have a second successful career in hospital administration, where he would eventually serve as a CEO for a major for-profit hospital operator. Retiring a second time, in large part to assist with the care of this parents, Mike moved his family and parents to Las Vegas and eventually Southern Highlands in 2011.

Mike has an undergraduate degree in Accounting and a Master's Degree in Public Administration. He holds a commercial airline transport pilot certificate and held a Realtor license in two different states.

Mike will fight for owner interests, not those of the Developer or other typically influential parties. He has spent the past three years impacting local issues such as developer control of HOAs, Clark County's unfilled community park commitments, and the general failure of our Association Board to advance the interest of Southern Highlands homeowners.

Mike now wants to use his time, experience, and energy to strengthen our HOA's financial position, engage on issues adversely impacting Southern Highlands, and upholding our community's reputation as a premier place to live, much as he has done as a board member of the Christopher Communities HOA since 2015.

Mike has proven success leading multiple large organizations. He can successfully lead our community.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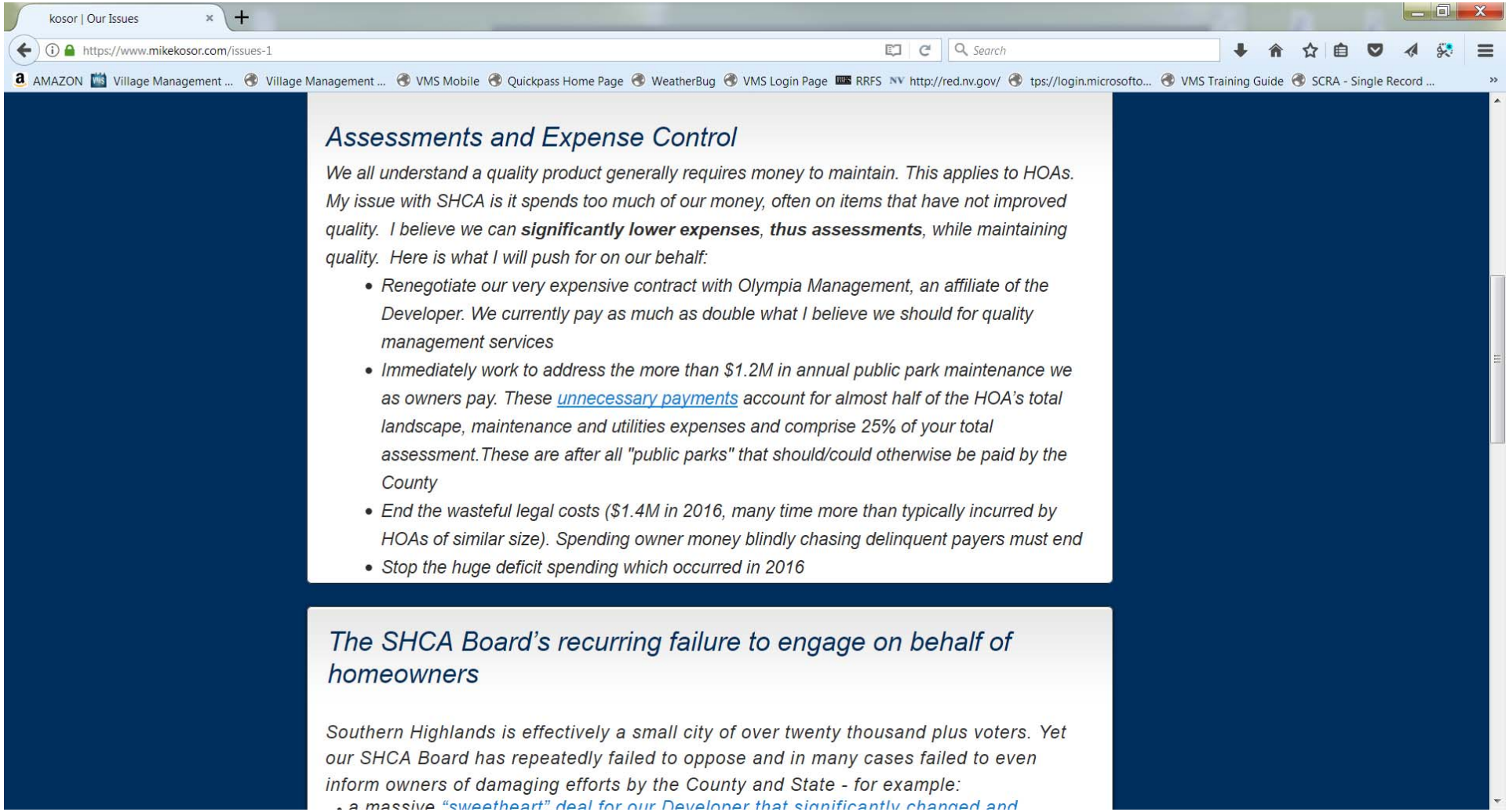
Developer Control of Our HOA
The Developer has done a great job building an excellent community. But the time to allow the community to be self-governed has long been upon us. Read my January 2017 letter to the SCHA Board concerning its continued refusal to address a law (NRS 116.31032) to effect a control change ending the Developer's ability to appoint three of the five directors and holding owner elections for all Board directors.
Security for Homeowners and Our Families
A community needs to provide a safe environment for all its residents. While I currently believe Southern Highlands is one of the safest places to live in Southern Nevada, the area is growing rapidly and our crime is increasing. This needs to be an important focus of our Association going forward.
Assessments and Expense Control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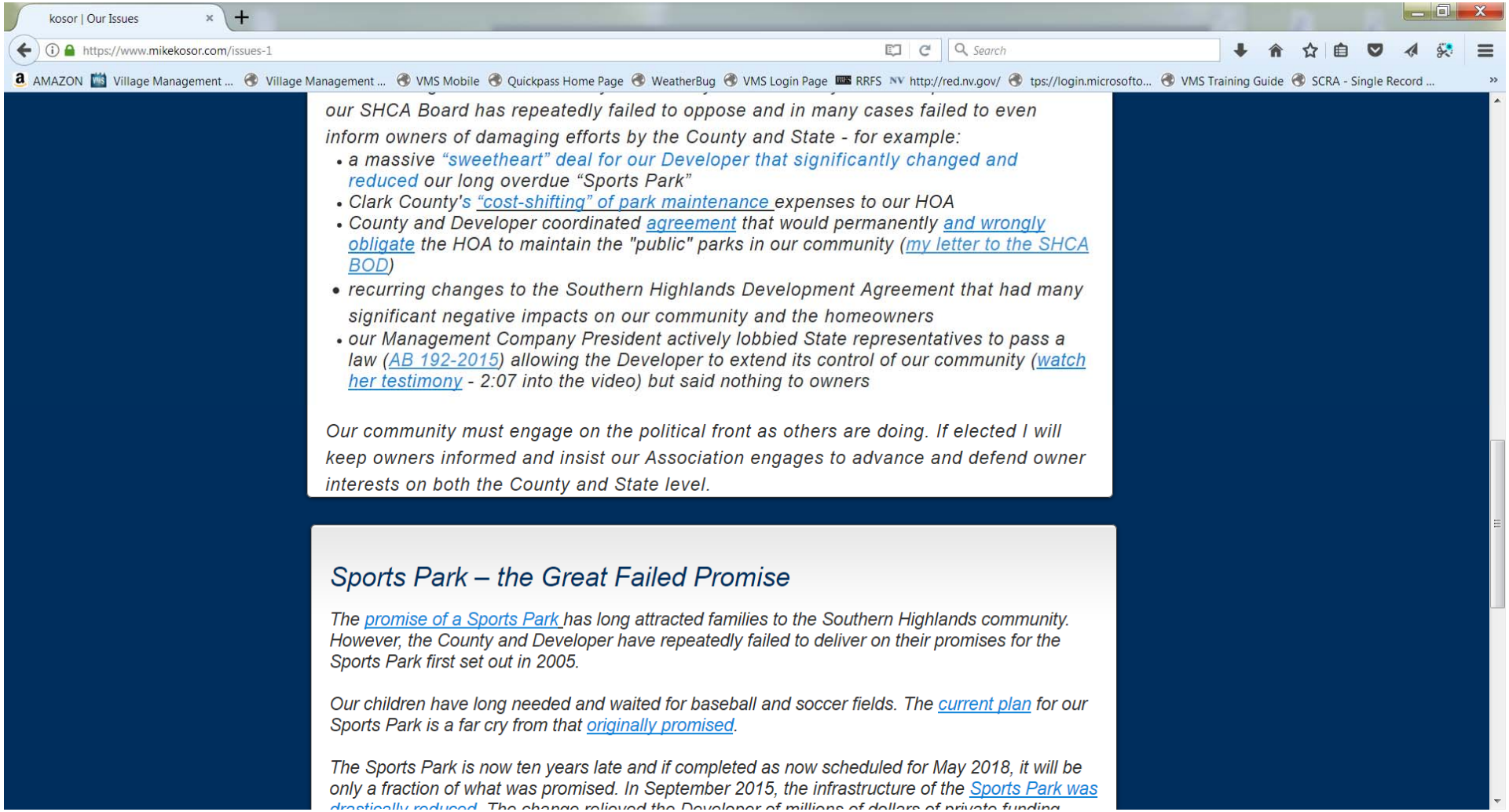
Assessments and Expense Control
We all understand a quality product generally requires money to maintain. This applies to HOAs. My issue with SHCA is it spends too much of our money, often on items that have not improved quality. I believe we can significantly lower expenses, thus assessments, while maintaining quality. Here is what I will push for on our behalf:
Renegotiate our very expensive contract with Olympia Management, an affiliate of the Developer. We currently pay as much as double what I believe we should for quality management services
Immediately work to address the more than $1.2M in annual public park maintenance we as owners pay. These unnecessary payments account for almost half of the HOA's total landscape, maintenance and utilities expenses and comprise 25% of your total assessment.These are after all "public parks" that should/could otherwise be paid by the County
End the wasteful legal costs ($1.4M in 2016, many time more than typically incurred by HOAs of similar size). Spending owner money blindly chasing delinquent payers must end
Stop the huge deficit spending which occurred in 2016
The SHCA Board's recurring failure to engage on behalf of homeowners
Southern Highlands is effectively a small city of over twenty thousand plus voters. Yet our SHCA Board has repeatedly failed to oppose and in many cases failed to even inform owners of damaging efforts by the County and State - for example:
a massive "sweetheart" deal for our Developer that significantly changed and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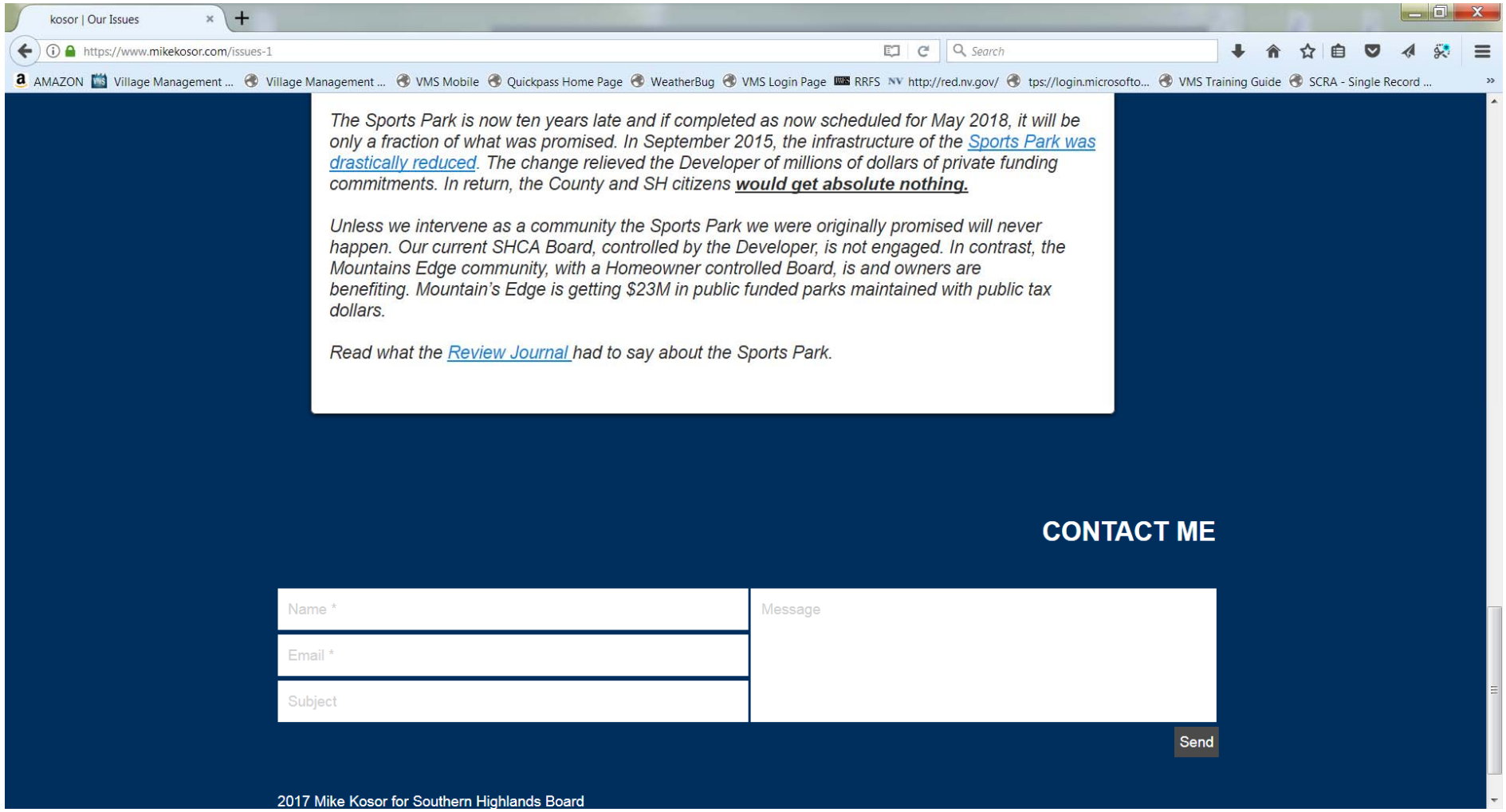
our SHCA Board has repeatedly failed to oppose and in many cases failed to even inform owners of damaging efforts by the County and State - for example:
a massive "sweetheart" deal for our Developer that significantly changed and reduced our long overdue "Sports Park"
Clark County's "cost-shifting" of park maintenance expenses to our HOA
County and Developer coordinated agreement that would permanently and wrongly obligate the HOA to maintain the "public" parks in our community (my letter to the SHCA BOD)
recurring changes to the Southern Highlands Development Agreement that had many significant negative impacts on our community and the homeowners
our Management Company President actively lobbied State representatives to pass a law (AB 192-2015) allowing the Developer to extend its control of our community (watch her testimony - 2:07 into the video) but said nothing to owners
Our community must engage on the political front as others are doing. If elected I will keep owners informed and insist our Association engages to advance and defend owner interests on both the County and State level.
Sports Park – the Great Failed Promise
The promise of a Sports Park has long attracted families to the Southern Highlands community. However, the County and Developer have repeatedly failed to deliver on their promises for the Sports Park first set out in 2005.
Our children have long needed and waited for baseball and soccer fields. The current plan for our Sports Park is a far cry from that originally promised.
The Sports Park is now ten years late and if completed as now scheduled for May 2018, it will be only a fraction of what was promised. In September 2015, the infrastructure of the Sports Park was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The Sports Park is now ten years late and if completed as now scheduled for May 2018, it will be only a fraction of what was promised. In September 2015, the infrastructure of the Sports Park was drastically reduced. The change relieved the Developer of millions of dollars of private funding commitments. In return, the County and SH citizens would get absolute nothing.
Unless we intervene as a community the Sports Park we were originally promised will never happen. Our current SHCA Board, controlled by the Developer, is not engaged. In contrast, the Mountains Edge community, with a Homeowner controlled Board, is and owners are benefiting. Mountain's Edge is getting $23M in public funded parks maintained with public tax dollars.
Read what the Review Journal had to say about the Sports Park.
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Q- Why are you doing this- running for a non-paying position on an HOA ?

A- Several year ago, as a new Southern Highlands owner, I attended a number of Association Board meetings. I was very disappointed for a number of reasons. To start, meeting times (typically 10 am) made attendance by most owners impossible. Strangely, the sessions appeared controlled by Angela Rock, the President of Olympia Management, who does not hold a position on the Board. I saw little real discussion on issues. Actions taken on significant issues appeared "pre-agreed", as if other private meetings/workshops were held. Transparency was clearly lacking.

I began looking into a number of issues. The Board repeatedly refused to release, among other items, draft annual budgets despite being on the agenda for approval. I also felt the Board had side-stepped my formal complaint related to Developer control change - control I feel should have been terminated many years ago (now under investigation by the Nevada Real Estate Division).

It was clear any improvement would have to start from the inside. Encouraged by my neighbors and other SH owners that love our community, I made the commitment to run for our HOA Board as your owner representative.

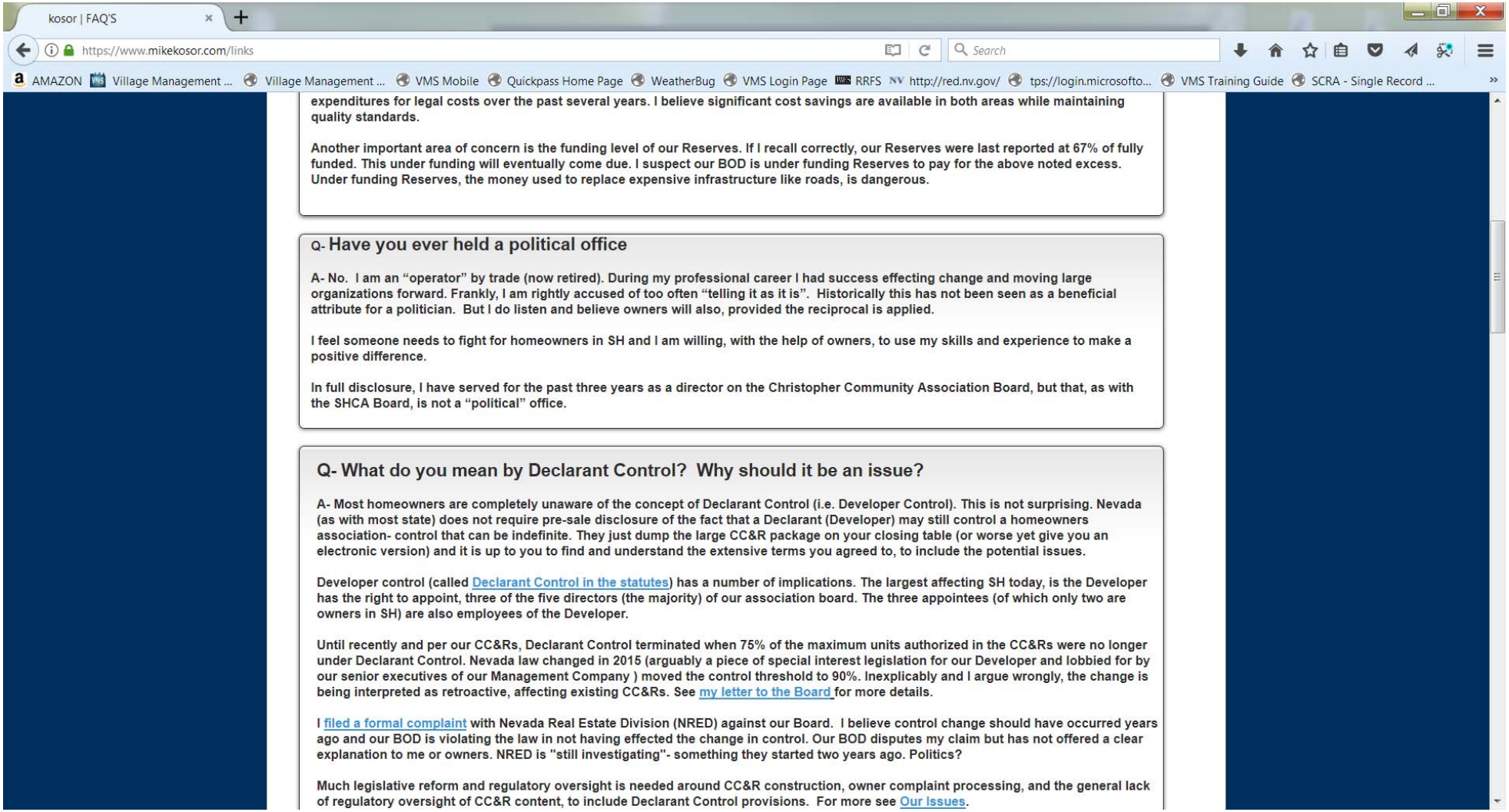
Q- Why are our assessments so much higher than Mountain's Edge?

A- The Master Plan fee at Mountain's Edge (ME) is $31/mo while Southern Highlands residents pay $67- more than double. Not having ME's financials (I am not a resident) and with the limited information SH provides, the exact answer is hard to determine. It is however a very good question for our BODs to answer. It is certainly one I will immediately look into if elected with full access to association financials.

Based on what I have been able to researched, a number of areas are at the root of our high fees. First, the management contract with Olympia is very expensive. Second, we pay a significant amount (20-25%) of our assessment to maintain what I believe should be publicly maintained parks (see more on this below). Most all public parks in ME are maintained by the County using public dollars- as they should be.

Two other major expenses need to be evaluated- (1) our landscape contract and ancillary expenses with Par 3 and (2) the huge expenditures for legal costs over the past several years. I believe significant cost savings are available in both areas while maintaining quality standards.

Another important area of concern is the funding level of our Reserves. If I recall correctly, our Reserves were last reported at 67% of fully



expenditures for legal costs over the past several years. I believe significant cost savings are available in both areas while maintaining quality standards.

Another important area of concern is the funding level of our Reserves. If I recall correctly, our Reserves were last reported at 67% of fully funded. This under funding will eventually come due. I suspect our BOD is under funding Reserves to pay for the above noted excess. Under funding Reserves, the money used to replace expensive infrastructure like roads, is dangerous.

Q- Have you ever held a political office

A- No. I am an "operator" by trade (now retired). During my professional career I had success effecting change and moving large organizations forward. Frankly, I am rightly accused of too often "telling it as it is". Historically this has not been seen as a beneficial attribute for a politician. But I do listen and believe owners will also, provided the reciprocal is applied.

I feel someone needs to fight for homeowners in SH and I am willing, with the help of owners, to use my skills and experience to make a positive difference.

In full disclosure, I have served for the past three years as a director on the Christopher Community Association Board, but that, as with the SHCA Board, is not a "political" office.

Q- What do you mean by Declarant Control? Why should it be an issue?

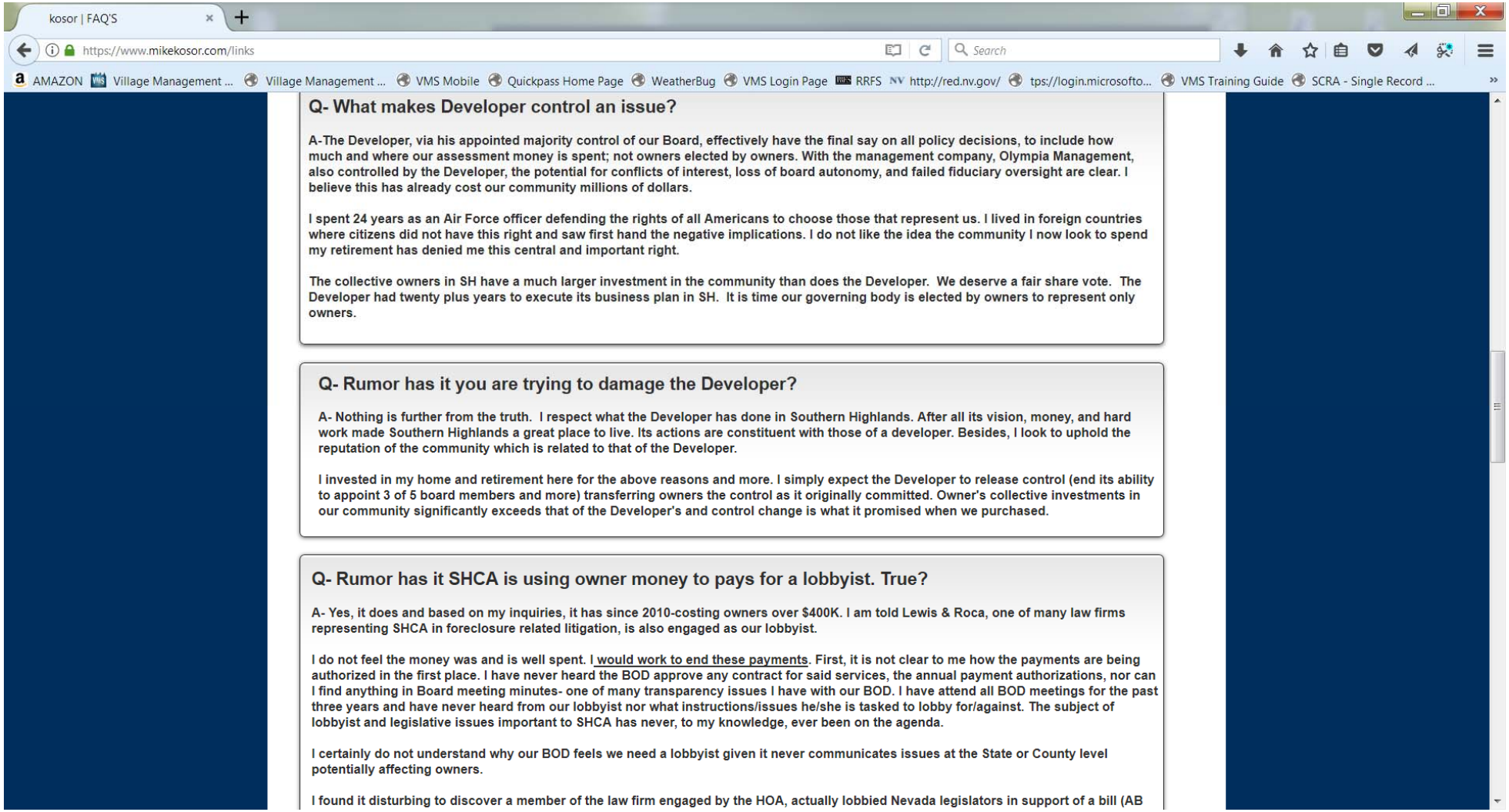
A- Most homeowners are completely unaware of the concept of Declarant Control (i.e. Developer Control). This is not surprising. Nevada (as with most state) does not require pre-sale disclosure of the fact that a Declarant (Developer) may still control a homeowners association- control that can be indefinite. They just dump the large CC&R package on your closing table (or worse yet give you an electronic version) and it is up to you to find and understand the extensive terms you agreed to, to include the potential issues.

Developer control (called Declarant Control in the statutes) has a number of implications. The largest affecting SH today, is the Developer has the right to appoint, three of the five directors (the majority) of our association board. The three appointees (of which only two are owners in SH) are also employees of the Developer.

Until recently and per our CC&Rs, Declarant Control terminated when 75% of the maximum units authorized in the CC&Rs were no longer under Declarant Control. Nevada law changed in 2015 (arguably a piece of special interest legislation for our Developer and lobbied for by our senior executives of our Management Company) moved the control threshold to 90%. Inexplicably and I argue wrongly, the change is being interpreted as retroactive, affecting existing CC&Rs. See my letter to the Board for more details.

I filed a formal complaint with Nevada Real Estate Division (NRED) against our Board. I believe control change should have occurred years ago and our BOD is violating the law in not having effected the change in control. Our BOD disputes my claim but has not offered a clear explanation to me or owners. NRED is "still investigating"- something they started two years ago. Politics?

Much legislative reform and regulatory oversight is needed around CC&R construction, owner complaint processing, and the general lack of regulatory oversight of CC&R content, to include Declarant Control provisions. For more see Our Issues.



Q- What makes Developer control an issue?

A-The Developer, via his appointed majority control of our Board, effectively have the final say on all policy decisions, to include how much and where our assessment money is spent; not owners elected by owners. With the management company, Olympia Management, also controlled by the Developer, the potential for conflicts of interest, loss of board autonomy, and failed fiduciary oversight are clear. I believe this has already cost our community millions of dollars.

I spent 24 years as an Air Force officer defending the rights of all Americans to choose those that represent us. I lived in foreign countries where citizens did not have this right and saw first hand the negative implications. I do not like the idea the community I now look to spend my retirement has denied me this central and important right.

The collective owners in SH have a much larger investment in the community than does the Developer. We deserve a fair share vote. The Developer had twenty plus years to execute its business plan in SH. It is time our governing body is elected by owners to represent only owners.

Q- Rumor has it you are trying to damage the Developer?

A- Nothing is further from the truth. I respect what the Developer has done in Southern Highlands. After all its vision, money, and hard work made Southern Highlands a great place to live. Its actions are constituent with those of a developer. Besides, I look to uphold the reputation of the community which is related to that of the Developer.

I invested in my home and retirement here for the above reasons and more. I simply expect the Developer to release control (end its ability to appoint 3 of 5 board members and more) transferring owners the control as it originally committed. Owner's collective investments in our community significantly exceeds that of the Developer's and control change is what it promised when we purchased.

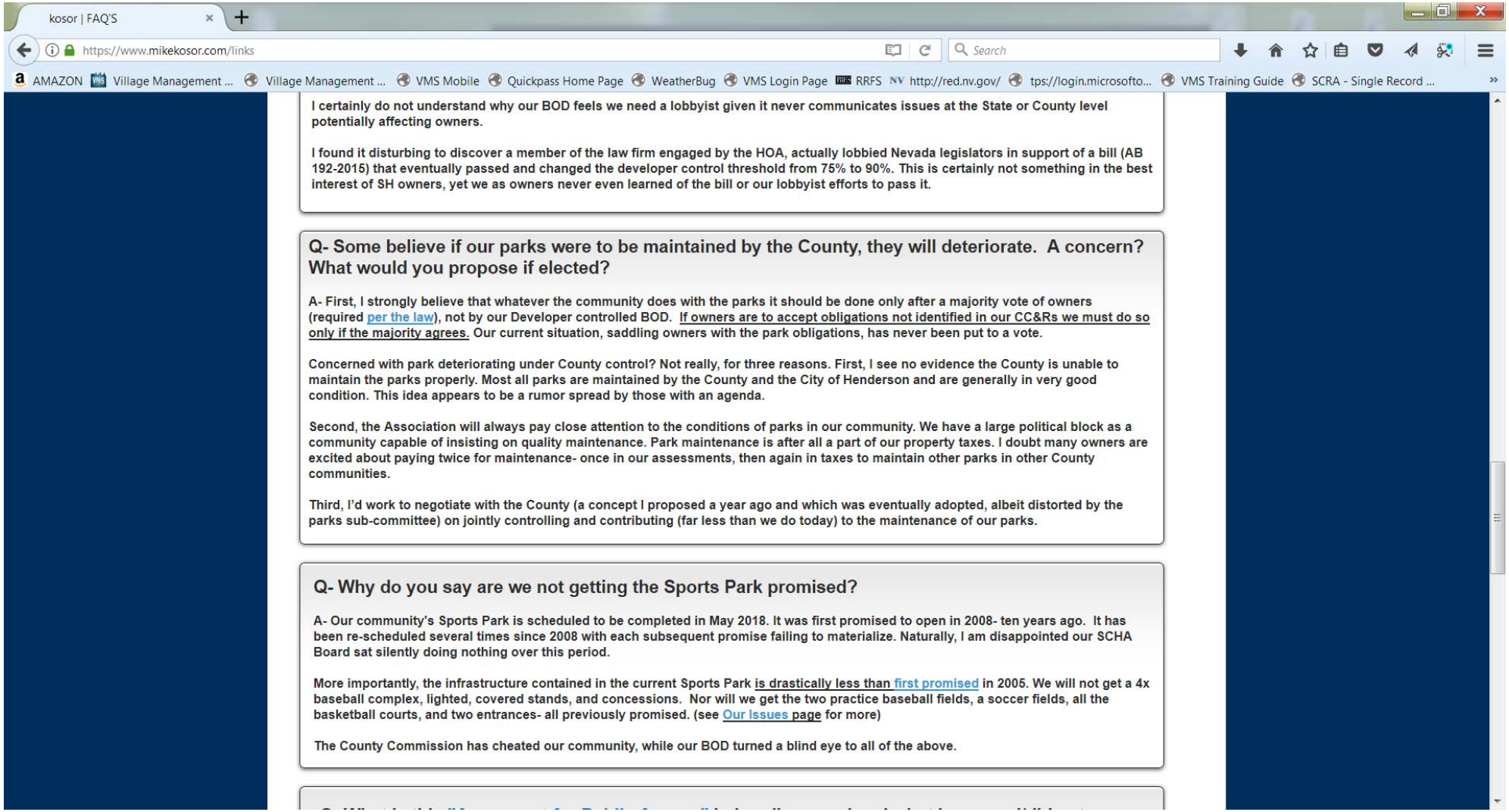
Q- Rumor has it SHCA is using owner money to pays for a lobbyist. True?

A- Yes, it does and based on my inquiries, it has since 2010-costing owners over $400K. I am told Lewis & Roca, one of many law firms representing SHCA in foreclosure related litigation, is also engaged as our lobbyist.

I do not feel the money was and is well spent. I would work to end these payments. First, it is not clear to me how the payments are being authorized in the first place. I have never heard the BOD approve any contract for said services, the annual payment authorizations, nor can I find anything in Board meeting minutes- one of many transparency issues I have with our BOD. I have attend all BOD meetings for the past three years and have never heard from our lobbyist nor what instructions/issues he/she is tasked to lobby for/against. The subject of lobbyist and legislative issues important to SHCA has never, to my knowledge, ever been on the agenda.

I certainly do not understand why our BOD feels we need a lobbyist given it never communicates issues at the State or County level potentially affecting owners.

I found it disturbing to discover a member of the law firm engaged by the HOA, actually lobbied Nevada legislators in support of a bill (AB



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I found it disturbing to discover a member of the law firm engaged by the HOA, actually lobbied Nevada legislators in support of a bill (AB 192-2015) that eventually passed and changed the developer control threshold from 75% to 90%. This is certainly not something in the best interest of SH owners, yet we as owners never even learned of the bill or our lobbyist efforts to pass it.

Q- Some believe if our parks were to be maintained by the County, they will deteriorate. A concern? What would you propose if elected?

A- First, I strongly believe that whatever the community does with the parks it should be done only after a majority vote of owners (required per the law), not by our Developer controlled BOD. If owners are to accept obligations not identified in our CC&Rs we must do so only if the majority agrees. Our current situation, saddling owners with the park obligations, has never been put to a vote.

Concerned with park deteriorating under County control? Not really, for three reasons. First, I see no evidence the County is unable to maintain the parks properly. Most all parks are maintained by the County and the City of Henderson and are generally in very good condition. This idea appears to be a rumor spread by those with an agenda.

Second, the Association will always pay close attention to the conditions of parks in our community. We have a large political block as a community capable of insisting on quality maintenance. Park maintenance is after all a part of our property taxes. I doubt many owners are excited about paying twice for maintenance- once in our assessments, then again in taxes to maintain other parks in other County communities.

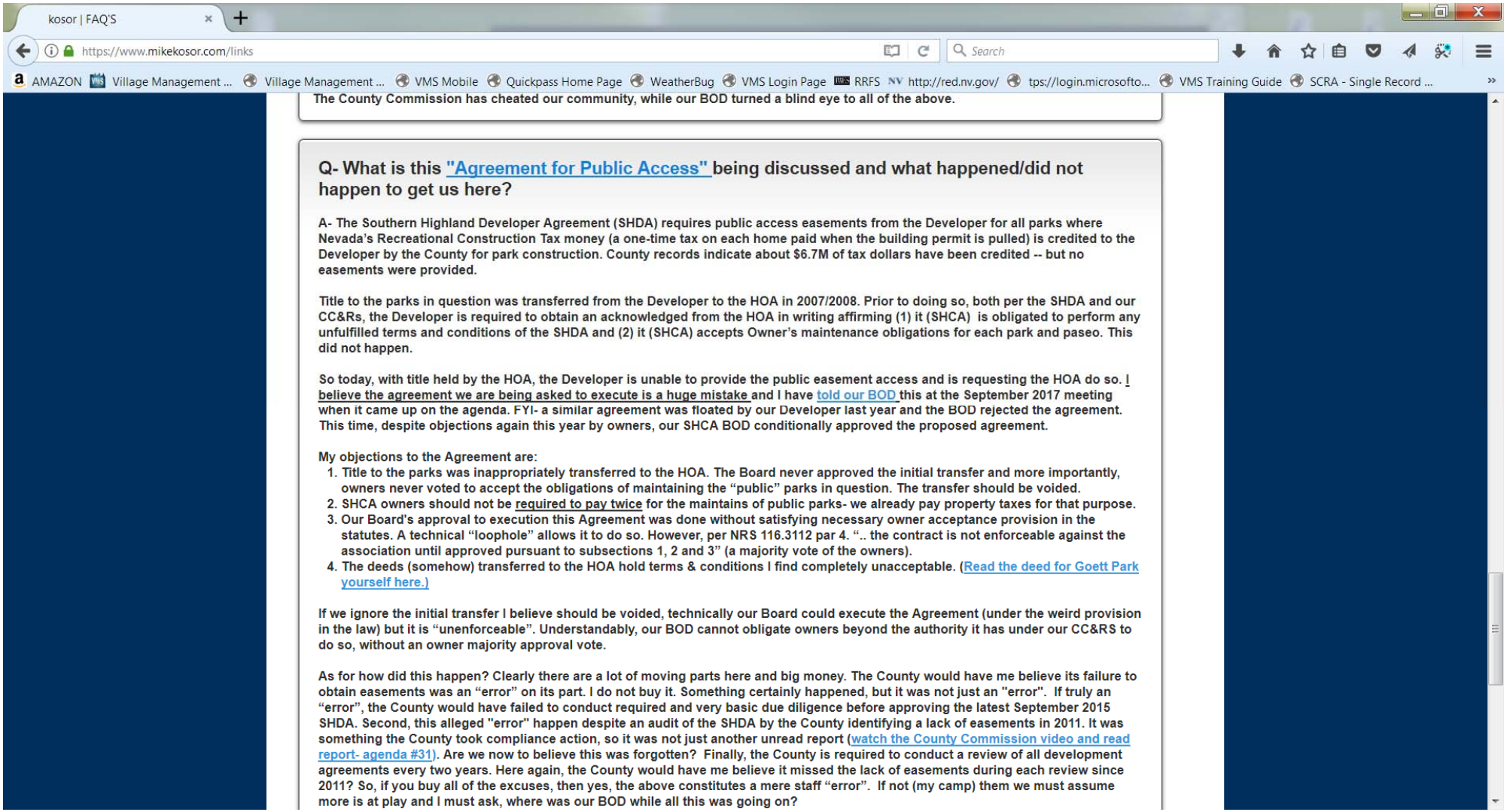
Third, I'd work to negotiate with the County (a concept I proposed a year ago and which was eventually adopted, albeit distorted by the parks sub-committee) on jointly controlling and contributing (far less than we do today) to the maintenance of our parks.

Q- Why do you say are we not getting the Sports Park promised?

A- Our community's Sports Park is scheduled to be completed in May 2018. It was first promised to open in 2008- ten years ago. It has been re-scheduled several times since 2008 with each subsequent promise failing to materialize. Naturally, I am disappointed our SCHA Board sat silently doing nothing over this period.

More importantly, the infrastructure contained in the current Sports Park is drastically less than first promised in 2005. We will not get a 4x baseball complex, lighted, covered stands, and concessions. Nor will we get the two practice baseball fields, a soccer fields, all the basketball courts, and two entrances- all previously promised. (see Our Issues page for more)

The County Commission has cheated our community, while our BOD turned a blind eye to all of the above.



The County Commission has cheated our community, while our BOD turned a blind eye to all of the above.

Q- What is this "Agreement for Public Access" being discussed and what happened/did not happen to get us here?

A- The Southern Highland Developer Agreement (SHDA) requires public access easements from the Developer for all parks where Nevada's Recreational Construction Tax money (a one-time tax on each home paid when the building permit is pulled) is credited to the Developer by the County for park construction. County records indicate about $6.7M of tax dollars have been credited -- but no easements were provided.

Title to the parks in question was transferred from the Developer to the HOA in 2007/2008. Prior to doing so, both per the SHDA and our CC&Rs, the Developer is required to obtain an acknowledged from the HOA in writing affirming (1) it (SHCA) is obligated to perform any unfulfilled terms and conditions of the SHDA and (2) it (SHCA) accepts Owner's maintenance obligations for each park and paseo. This did not happen.

So today, with title held by the HOA, the Developer is unable to provide the public easement access and is requesting the HOA do so. I believe the agreement we are being asked to execute is a huge mistake and I have told our BOD this at the September 2017 meeting when it came up on the agenda. FYI- a similar agreement was floated by our Developer last year and the BOD rejected the agreement. This time, despite objections again this year by owners, our SHCA BOD conditionally approved the proposed agreement.

My objections to the Agreement are:

1. **Title to the parks was inappropriately transferred to the HOA. The Board never approved the initial transfer and more importantly, owners never voted to accept the obligations of maintaining the "public" parks in question. The transfer should be voided.**
2. **SHCA owners should not be required to pay twice for the maintains of public parks- we already pay property taxes for that purpose.**
3. **Our Board's approval to execution this Agreement was done without satisfying necessary owner acceptance provision in the statutes. A technical "loophole" allows it to do so. However, per NRS 116.3112 par 4. ".. the contract is not enforceable against the association until approved pursuant to subsections 1, 2 and 3" (a majority vote of the owners).**
4. **The deeds (somehow) transferred to the HOA hold terms & conditions I find completely unacceptable. (Read the deed for Goett Park yourself here.)**

If we ignore the initial transfer I believe should be voided, technically our Board could execute the Agreement (under the weird provision in the law) but it is "unenforceable". Understandably, our BOD cannot obligate owners beyond the authority it has under our CC&RS to do so, without an owner majority approval vote.

As for how did this happen? Clearly there are a lot of moving parts here and big money. The County would have me believe its failure to obtain easements was an "error" on its part. I do not buy it. Something certainly happened, but it was not just an "error". If truly an "error", the County would have failed to conduct required and very basic due diligence before approving the latest September 2015 SHDA. Second, this alleged "error" happen despite an audit of the SHDA by the County identifying a lack of easements in 2011. It was something the County took compliance action, so it was not just another unread report (watch the County Commission video and read report- agenda #31). Are we now to believe this was forgotten? Finally, the County is required to conduct a review of all development agreements every two years. Here again, the County would have me believe it missed the lack of easements during each review since 2011? So, if you buy all of the excuses, then yes, the above constitutes a mere staff "error". If not (my camp) them we must assume more is at play and I must ask, where was our BOD while all this was going on?

EXHIBIT 6

then have three Olympia employees appointed to those seats. So if you live in that community, you can vote for two seats, but the other three seats will always be under the control of the developer. Nevada law has statutes in place which allow for the control to go from the developer to the homeowners, and which Mr. Kosor's argued in detail with -- in my motion here is also with the Nevada Real Estate Division that that change should have taken place a couple years ago. Now, he's made statements --

THE COURT: Pursuant to the CCRs?

MR. SMITH: Yes, CC&Rs and Nevada Revised Statute 116.2122 that's -- I'm sorry, by CC&Rs, as well as -- there's been a change in the Nevada Revised Statutes recently. But once over 75 percent of the units were no longer owner controlled, the homeowners would take over. And he's made that point very clear in the pleadings and his arguments to the Nevada Real Estate Division.

The second issue related to parks. The parks issue when this area was planned to be developed per the Southern Highlands Development agreement, 26.9 acres of parks were to be developed by the Olympia Company. That's never happened, okay. Also, there's going to be a 20-acre sports park that's going to be developed. That's not happened, either. And in going through the process the parks were to be developed by Olympia, built, and then turned over to the County to be

maintained, is part of our motion. They've now been assigned to the HOA, which spends over a million dollars a year maintaining these parks between maintenance and water.

THE COURT: It's about 600,000; right?

MR. SMITH: Your Honor, but when you look at the budget, you actually look at the water cost every year, it's $400,000 in water costs --

THE COURT: Oh.

MR. SMITH: -- on top of --

THE COURT: Plus the 600,000?

MR. SMITH: Plus the maintenance, yes. So it's over a million dollars. The other part of this --

THE COURT: Are those water costs only for the parks?

MR. SMITH: The parks only, Your Honor. I can show it in the budget, if you'd like to see that.

THE COURT: No. I trust you.

MR. SMITH: It says parks, water, and -- it's got that on there.

The other part of this is Olympia Company, the management company, is paid $1.4 million a year by the board to operate the community, which is Mr. Kosor here believes that the board should be turned over to the homeowners, the homeowners will elect their board members, and then the board members will decide who to hire to manage their community.

Well, at this point it's -- $1.4 million a year is paid to Olympia Management, a company that Mr. Goett's directly involved with, and Olympia, just by name. And then you've got the parks issue where there's 2. -- what is it, $2.8 million here. The total budget in 2017 which approximately $7 million. So half the budget is being spent on things that Mr. Kosor doesn't believe the community should be responsible for. And you see in our motion that he's laid that out pretty thoroughly and why he believes that.

In bringing our motion, Your Honor, the statute allows for us to bring this if we prove by a preponderance of the evidence that his communications are made in good faith, in furtherance of his right to petition or free speech, and that issue of public concern that ideally this complaint will be dismissed, because it was simply filed to keep him quiet, which, honestly, it hasn't kept him quiet, because there's been decisions made since the filing of the motion where he now has another appeal with the Nevada Real Estate Division. But he's taken a very methodical and detailed approach to, you know, addressing his concerns with first the HOA, which didn't address them in the manner which he felt was appropriate. He then went to the Nevada Real Estate Division.

THE COURT: What happened with them?

MR. SMITH: To who?

THE COURT: The Nevada Real Estate Division. What

did they say?

MR. SMITH: The most recent statement says that -- which I don't do real estate -- I've been in front of you a lot of times, Your Honor.

THE COURT: Sure.

MR. SMITH: It's mostly personal injury. We do some construction work. I'm beginning to almost relate to Mr. Kosor's frustration in dealing with the Nevada Real Estate Division, because there's -- he lays out a very thorough analysis. There's three issues we'd like you to address. They'll address one and then dismiss it. That's what happened the most recent time. There's an opinion issued January 5th of 2018.

THE COURT: And they only address one issue?

MR. SMITH: One issue, correct.

THE COURT: Which issue did they address? I'm just curious.

MR. SMITH: They basically -- okay. To have the change with the declare and control issue, Your Honor --

THE COURT: Right.

MR. SMITH: -- there's -- we'll start way back here. Originally the CC&Rs said 9,000 homes could be developed in this community. The developer unilaterally changed that number to 10,400. NRS 116.2122 says they may not do that, they may not amend that number ever. But there's a means for

the homeowners association to amend that number, which in this particular case that's never happened. We filed as an exhibit to --

THE COURT: Who amended it? They amended it sua sponte?

MR. SMITH: Yes.

THE COURT: Okay.

MR. SMITH: And the Statute 116.217 states that if the HOA by homeowner vote or homeowner approval adopts this, then it's appropriate.

THE COURT: Did they adopt it?

MR. SMITH: They never did. And if they did, I'm sure Mr. Kosor would have provided a copy of that document, which he never has.

I need some water, Your Honor.

THE COURT: That's okay.

MR. SMITH: What the Nevada Real Estate Division did was they looked at part of 116.217 that says if it's not opposed within a year it stands.

THE COURT: Oh.

MR. SMITH: Well, the problem with that analysis is it shows up to be a valid adopted amendment. There's no documentation that it's ever been adopted or that it's valid, because the law says they cannot do that. Olympia cannot unilaterally make a change in the number of homes to be -- or

units to be developed in the community. They can't do that. They did that. The Nevada Real Estate Division failed to go back that far and look at the original amendment. They simply said, well, it was adopted and recorded here, no one opposed it by 2006, it's valid.

THE COURT: It was adopted by whom?

MR. SMITH: That's --

THE COURT: Because you said adopted and recorded.

MR. SMITH: Thank you, Your Honor. And that is our position, it was never adopted. If you look at the recorded document signed by -- Gary Goett signed, who's the attorney for the Olympia Company. It's not signed by the president of the HOA or anyone on the HOA, no one there. So that's I think sort of the [inaudible] why Mr. Kosor has association. And he's gone about addressing these concerns with the Real Estate Division. He is a board member on one of the subcommunities in the neighborhood, so he also expressed these concerns with his subcommittee, because --

THE COURT: So Southern Highlands is like a big one, and --

MR. SMITH: Yes.

THE COURT: -- then he's on one of the sub -- I guess they're --

MR. SMITH: He's in the Christopher Homes community.

THE COURT: Okay. Different homes.

MR. SMITH: Yeah. But as a homeowner and as a board member of the community he has concerns that he's tried to address with the board. And as I'd mention earlier, the board is controlled by three employees of the defendants here. So -- and our position and our belief is that any time there's a dispute between the homeowner issue that the developer may not agree with, the homeowners will always lose, because it's a three-to-two vote on every issue that'll come up. And Mr. Kosor's tried to address that.

THE COURT: I guess if you assume that they're going to always vote in favor of the developer --

MR. SMITH: And if you look at it, they are employees of the developer.

THE COURT: The developer owns Olympia, too?

MR. SMITH: Yes.

THE COURT: Okay.

MR. SMITH: Yes. Mr. Goett is the owner of the Olympia Development Company. The Olympia Management Company is also another Goett company that manages the community. They're on -- as we pointed out in our reply, Your Honor, there's several times in here where they accuse my client of defamatory statements of the HOA, which shows that line is very much blurred here, the misuse of attorney funds, the $1.4 million number they made a big issue about here, that's how the HOA spends their money. We didn't say that Olympia

was spending this money or Mr. Goett was, but they want to accuse our client of defamimg a non party in this litigation, which I don't know how you do that. If they -- we defamed them, they would be here, or at least in theory they could be here. So that's sort of a background here, Your Honor, where we're at.

You know, what Mr. Kosor attempted to do was go through the avenues that are available to him to address these things. His subcommittee, which we actually attached the recorded statement from -- which is allegedly defamatory, which shows in my opinion and I believe the Website that he set up when he ran for elected office in the community, the pamphlet that was attached to his Website, and then statements on a Website called nextdoor.com, which in their opposition I think it actually helps us, because it shows that he posted a statement and there was conversation about that statement that went forward regarding those issues where people could communicate.

THE COURT: And that's in a form that's very limited in scope. You have to be -- there's editorial --

MR. SMITH: There is --

THE COURT: -- I guess editorial supervision, you have to be a homeowner within the development. I don't know how they check that, how they can tell whether someone posting from a computer -- I thought that was interesting.

MR. SMITH: It was. But once again, Your Honor, if you live in Southern Highlands, there's 8,000 units so far that have been sold. And if you -- I think Clark County it's 2.2 on average residents, and that's sixteen, 18,000 members. That's a lot of people that have access to that Website that have the same concerns that -- maybe not the same concerns, but have the use of how their money's being used by the HOA, as it's a concern everyone shares, and the control of the community they live in has an issue with that control, as well.

Which led us to -- that's about where we're at today in filing this motion that we believe that it's just simply the position of Olympia that they want him to be quiet. Because if they have to develop their parks per the plan, it's going to cost millions of dollars. A similar-size project in a different part of Nevada was $12 million the County agreed to pay to build these parks. So if they're required to go back and build the parks as per the original agreement, it's going to cost them millions of dollars. If they're no longer allowed to control the board, they can't decide that their management company's going to make a fee managing for $1.4 million a year.

There's some significant financial interests here on the part of Olympia in bringing this lawsuit and keeping Mr. Kosor quiet. That's sort of the background here, Your Honor.

To get to the statute there, we believe that if you go through these that by a preponderance of the evidence that these are good-faith statements. They're not statements that are irrational or -- if you look at defamation cases, Your Honor, the one we saw, the Adelson case, a recent case that came out, it accuses him of advocating prostitution in his hotels. This is not that case. These are I believe, my opinion, there's a potential for there's a breach of fiduciary duty; these are the statements that my clients have made. It's not these overt, these crazy, these outlandish statements accusing Olympia of doing anything -- it wasn't racketeering, bribery, which were in the opposition, Your Honor. There's nothing in there that supports those allegations. What he's done is gone through the various venues that are available to him and made arguments that he believes are appropriate, and doing so has led to him being now sued, you know, once he notified the builder he's going to run for one of the seats on the board that it controls.

If you like, I can go through each of the statements that you went to go through next as to public interest, public forum.

THE COURT: I think this is an issue of public interest.

MR. SMITH: And I think this is --

THE COURT: I mean, this seems very limited. It is

clearly -- I know you want to expand it to everybody in Clark County because of the parks issue, but this does appear to be limited to just the people in Southern Highlands.

MR. SMITH: And, Your Honor, in our reply we address that specifically. There's not a lot of Nevada caselaw on point here. As you saw in our motion and in their opposition, it's California caselaw. We cited Messias and we've cited Damon v. Ocean Hills. They're both California cases involving relatively small numbers of people. The Damon one involved 3,000 homeowners. Small -- much smaller than this. The Messias one had to do with an election in a union, 10,000 members. So I don't think the number is that big. What are looking at is the -- if you've got 3,000, this is far larger than that. It's far larger than 10,000, because there's sixteen, 17,000 people that live in this neighborhood. So I don't -- the public interest I think is there. I think that's -- that's at least my position, Your Honor. You may differ, Your Honor. But that's where were at with that. It's a substantial community here that doesn't have control over their HOA and doesn't even control how their money's used. They all pay, you know, hefty assessments. Any of us that live in an HOA community, we all pay monthly assessments, and we'd like to know that money's being used in the best way possible. And I think that's a big enough issue for the 18,000 people that are still living there.

And we cited the California caselaw. I'd love to have cited some Nevada caselaw, Your Honor, but there isn't any.

THE COURT: Well, you cited the one that relies on California caselaw.

MR. SMITH: Yeah. There's the one, yeah. But that isn't -- and I think that helps us in the -- I think that's the Weldon case, Your Honor. So that's where I think it's the public interest. And in the public forum, as we've gone through in detail with our motion, Your Honor, is that HOA meetings -- once again relying on California law, HOAs are quasi governments. They're called -- I think they're phrased, what is it, little democratic societies is how they refer to it in the case there, which is what's going on here. You've got a community, they elect a board ideally, and they run the community. They pay for parks, they pay for attorneys, they pay for whatever goes on in the community. I think -- once again, there's no Nevada caselaw on that, so we cited the California caselaw, which Nevada [unintelligible] over occasions that these are little communities and HOA meetings are small communities, which would make this a public forum for people who reside in the community.

I know plaintiff -- or the opposition, they want to go, well, in that case it says because it was on TV for everybody to watch or because statute required these to be

open. Nowhere in the holding of these cases that they cited does it say that it has to be on TV for people to watch, or nowhere in this case that says that it has to be per statute. It just simply said, many democratic societies are public forums, and statements made advocating positions to make them public forum or public interest.

The political pamphlet, I think that was a little more straightforward there, Your Honor. There's a case cited -- what's the name -- I think it may be the Damon case for passing out these pamphlets. It's open forum. You're giving it out to all your neighbors, you're -- this is my election platform. And in Damon they said that was appropriate. In that case they tried to distinguish and say, well, it was given to a local restaurant or local business so that made it public forum. That's not part of the holding, Your Honor. And they kind of deviate off in here that, well, there's this fact which makes it different, or, that's part of the holding, which is not the case here. They simply said that this pamphlet distributed to the homeowners is a public forum. It's given to everybody in the community to, in Mr. Kosor's case, look at his election platform, his campaign points, and then move forward.

The audio recording, that's the HOA. I've got the pamphlet. And then there's the two different Website posts, Your Honor, the other two that we think are public forums. HE

has a Website that he put together with his election campaign which had his email attached where people could communicate with him if they wanted to, and it laid out his position there.

Once again they try to take the position that, well, if there's not an exchange or if there's not -- there's editorial control, that's some dicta in a couple of the cases, but it's not the caselaw. And I've actually cited the case that says that they actually refuted that, where it says that's not required. But what we do in oppositions we find it's helpful.

But here, Your Honor, I think it's public interest, public forum each of statements. And I think we've proven through our motion, hopefully it's supported by my argument here this morning, that we've met that preponderance here of the evidence to show that this is public interest and a public forum. And the basis for these -- these aren't things that are untrue or he disbelieves. He's laid out for NRED, the Southern Highlands Community Association and for Your Honor in our attachments that he's very methodically gone through the statutes and recorded documents. He's not just making things up. He's got a reasonable good-faith belief that these things are true. And based upon that we think we've met that first part of the statute, where the preponderance has been met that these are good-faith statements made in free speech of issues

of public concern, and I think that's step one of the statute.

I'm not sure how you want us to proceed, Your Honor, because if we meet that, then the second stage here is allowing the plaintiff to come and talk about why they have a prima facie showing here. So I don't know if you want me to stop here and --

THE COURT: It's up to you.

MR. SMITH: Well, Your Honor, that's our first part of this. And then if you go forward with that, we laid out very thoroughly here that each of the statements, if you look at them in context, they're simply not defamatory. If you look at these, it's my opinion, I believe. These are not defamatory statements. Nevada caselaw is very clear it's a reasonable person standard. A reasonable person reading these statements in context -- which is also Nevada caselaw, you've got to put them in context, you can't just pull a word out -- if you read them in context, these aren't defamatory. In my opinion I believe this. I think there's a potential fiduciary breach can occur here. These are all not statements of fact, they're statements of opinion.

I think the one that I found most interesting in the opposition was the dark room, read him the riot act, which now equates to racketeering, bribery. They take sort of these jumps from reality to what the worst-case scenario would be. A reasonable person reading, I read somebody the act, is you

kind of gave him a stern talking to. That's not bribing them or forcing them to act in a certain way.

THE COURT: You want me to read it in context; correct?

MR. SMITH: Oh. And that's what I --

THE COURT: You're talking about County commissioners. Dark rooms?

MR. SMITH: Yeah.

THE COURT: Hmmm.

MR. SMITH: Yeah. "I read them the riot act. I didn't force them to do anything, I didn't bribe them, there's no extortion going on here. But that's the statement that -- and then, I believe and I have an opinion, most of the statements you go through, and a reasonable person reading those is not going to jump to the conclusions that are concluded in the opposition.

And if you like, I can go through each of these, Your Honor. We can go that way. Okay. And I think we've already talked about the dark room comments, Your Honor. When you read them in context, "Dark room, read them the riot act." It didn't accuse them of bribery or forcing or extorting them in any way. Just simply he read them the riot act, which, you know, it's my belief is that a reasonable person reading that is not going to believe that that equates to a variety of crimes took place in that back room.

"Lining its pockets," once again, that's a statement, in my opinion I believe -- my opinion. It's fairly clear, straightforward. Opinions are not defamatory per se. There's the caselaw abundance that we cited in our motion for Your Honor. "Lucrative deals and sweetheart deals." I don't know how lucrative deals -- every business owner in the world wants to engage in a lucrative deal or a beneficial deal. That's not defamatory per se. And here there's been some sort of arrangement made between the developer and the County, because the developer didn't build the parks it was required to build. Some sort of arrangement's gone on here. We've attached to our motion the document from the County to them saying, hey, you've granted us this easement and we'll give these parks back to you, the developer to the County at some point, and we'll maintain them. Well, that hasn't happened. And there's got to be some sort of arrangement between the County and developer for why that hasn't. Why Kosor has brought this up, Mr. Kosor, is simply because now the HOA is paying, as I mentioned earlier, $1.1 or .2 million a year to maintain these parks that part of the original Southern Highlands Development agreement didn't require that.

And the next step in that is that can happen if the HOA adopts it, we're going to take -- we'll own this. That hasn't happened, either. So these are not untruthful statements, nor are they defamatory.

And the foreign government one we're looking at, Your Honor, that's just simply Mr. Kosor -- I don't think that's defamatory -- says, I don't like the idea of living in a community like this. And then two is he cannot elect the five members that represent his community. That's a fact. They can't dispute that. He can elect two people. The other three are appointed by the developer. So I don't believe it's defamatory. It's a truthful statement. He's not allowed to elect -- he's allowed to run for one of those seats, which he did recently, but he's not allowed to elect the people that actually represent him and his community. I don't think it's an untrue statement. And if it's truthful or, you know, no basis to believe it's not, it's not defamatory.

Statutory violations, Your Honor. This reference to failure to disclose budgets, to have a timely meeting, once again, those are issues that go to the homeowner association. They're not a party to this lawsuit. And that's part of Mr. Kosor's concern, is there's this burring of where does the board end and where does Olympia start. And we don't know that, because Olympia appoints three of the board members.

And in their opposition they actually cross those lines themselves saying these statements about how the HOA has managed the community are defamatory when they're not a party. And I think for our position it just simply goes to the fourth position that they're not sure where that line ends and where

it starts. And I think that's specific. There was a lot of argument in the opposition regarding the budget and how Mr. Kosor was aware of that number or the attorneys' fees was complete and accurate. The use of HOA fees for moneys for attorneys' fees, that's a decision made by the board, not made by Olympia, not made by Mr. Goett, okay. They want to bring a lawsuit and say it's defamatory, they can do that. But they haven't done that, and we'd request that issue just be stricken. There's several -- I think there are two of those in here where, one, the issue with the attorney's fees; two, there's some statements that I didn't even find in the complaint that they were claiming were defamatory. So it's kind of hard to defend those when I didn't know they were in there originally.

And as we go -- and I think rest of this -- there's part of this that -- statute language they cite in their opposition is just what the language is. And then lastly we argued that we are entitled to attorneys' fees for having to bring this, which is simply a motion to keep Mr. Kosor, who is a very vocal homeowner in that community, quiet. And I think that's the sole reason for this.

And the timing of it is important, Your Honor. When you look at early November, he files the notice that he's going to run for elected seat. Within three weeks this lawsuit's then filed. Many of these statements were made two,

two and a half years before the actual complaint was filed. So if their concern was back in 2015, they would have brought this lawsuit, or 2016. But here he's once again putting himself in a position that maybe not only a vocal homeowner, but now a board member homeowner that could be problematic. And in doing so they filed this lawsuit in an attempt to -- and the letter to him basically stated that, you need to recant all of these or we've got this complaint filed and we're suing you. And the only resolution to this would be a complete and total -- "recanting" is not the right word, but that's the intention, Your Honor, retract everything you said, was included with the complaint that was filed against my client.

So I think here the communications directly to my client prior to our retention and the complaint itself, the sole motive there is just to have him take back statements he said or to just keep him quiet, not for any other purpose than to keep him now busy in litigation for the next year and a half or two years if today our motion is not granted.

I think -- I normally don't give you that much background, Your Honor. It's most of the motions we've filed. But I think the background here is really important regarding first Mr. Kosor as the person he is, and then, two, why he's been such a aggressive, a very, you know, direct advocate for his positions on behalf of the HOA. Mr. Kosor's retired. He

bought a home in 2011 in the community. He's got no motive, no financial benefit to this at all. It's just simply doing what he believes is the right thing. And in doing so he's now found himself in this courtroom in front of you, Your Honor, a party to a lawsuit. Which is not what his intent was. He was trying to go through every other venue possible, and now with this we'll maybe address some other venues for him to try to get some clarification as to some of the statutory language in place in Nevada which we talked to you about regarding the declare and control issue, specifically NRS 116.2122 as to whether or not the developer can unilaterally change the number of homes in the community that can be developed.

Your Honor, with that I've taken up a bite of your morning here. I will rest and have an opportunity to rebut here shortly.

THE COURT: Thank you very much.

Good morning.

MR. JONES: Good morning, Your Honor.

Well, first of all, Your Honor, I guess I would start by asking you if there's any particular issue or point that you had a question about that I could address. If not, I'd be happy to go ahead.

THE COURT: Go ahead.

MR. JONES: All right. Your Honor, here's the problem. Mr. Kosor has every right to speak his mind, and

nobody would -- certainly least of all me, as a lawyer, would want to deny him the opportunity to speak his mind. What he doesn't have a right to do is to defame, slander, and libel. You know, I've finally gotten to the point in my career where I can say I've been doing this a long time. I think I brought two, maybe three defamation cases in my career, and I've done -- as you may know, I've done quite a number of tort-type cases over the years, and those cases to me are the unusual circumstance. You don't typically do this.

You know, one of the comments Counsel was making about some of these allegations go back a couple years actually is a point that we think is significant here, but for a completely different reason than Mr. Kosor suggests. My client has been incredibly -- my clients have been incredibly patient with Mr. Kosor. They've tried to avoid this for a long time and tried to have discussions with Mr. Kosor, tried to allow Mr. Kosor to understand what they're doing and why they're doing it.

There's a suggestion here brought up repeatedly about all the bad things that the HOA is doing and Olympia. But, see, here's the interesting point. They accuse us of blurring the lines between the association and the developer. Actually, it's Mr. Kosor who blurs those lines, because Mr. Kosor apparently -- in fact, I thought it was interesting about some of the history here about -- talking about a combat

pilot. Mr. Kosor is a control freak. He is a guy who is used to command. He's a hospital administrator. He's the boss. And he cannot stand that things don't go the way he wants them to go. This issue about NRED, which they brought up, which is interesting, has nothing to do with this issue. They put it in the context of a history. Only to this extent is it relevant. It shows that Mr. Kosor is on a mission. He is on a quixotic mission to try to destroy the developer out there. He is -- if you want to use a more inflammatory term, I'll just say he is bent on trying to show that he's in control out there and he's going to be the guy deciding what's going to happen in the neighborhood. He and a group of about three people, Judge, are the ones that want to run this HOA.

This whole NRED thing, that -- I've been involved in that, Judge. That went to NRED. It went to the Attorney General's Office. And consistent with my understanding of the law, the Attorney General -- and I know Mr. Kosor doesn't agree with this. He got -- he got a copy of a memo from the AG's Office that I got. I got -- it came to my client, too, because we responded to it. There's nothing there. Now, he has his own take. I don't know where he went to law school, but he has his own take on what that means. And he got shut down. And, again, it's another thing he can't stand, I say there's too many units out there and you can't do that. The AG and NRED looked at his complaint and said, you're wrong.

And so that's another thing that informs his decision to say, I'm not going to stand for this, I'm going to show you who's boss.

And these elections. He has a remedy here. You know, it's interesting I almost thought that when I was listening to Counsel argue Mr. Kosor I thought was the plaintiff, all these complaints he has. There's an ombudsman that is allowed under Nevada statutes, that if he believes he's been wronged and has some rights that have been infringed, he can do something about it. Instead what he does, he goes on his Websites, he goes on other Websites and he says defamatory things. And you can't do that. We're not trying to stop him from voicing his feelings about things, but we are not going to continue for more than two years, by their own admission, to put up with defamatory statements. We've given him every opportunity to retract the defamatory stuff. You can get up there and you can complain, you can come to the board meetings.

With respect to the board, it's three members of the board is still the developer pursuant to Nevada Revised Statutes and the CC&Rs that Mr. Kosor signed and acknowledged and agreed to live under when he'd moved into that neighborhood. So that's the circumstance he's living under. He clearly doesn't like it. He hates my client, he hates Mr. Goett personally, and he hates the development company. And

he's not going to stand for it and he's going to try to do whatever he can to get everybody else in the neighborhood as upset as he seems to be about these issues. And there's no groundswell of support out there for Mr. Kosor. I've been to the HOA meetings.

So let's go now -- let's talk about the law. Again, what are we dealing with here in NRS 41.660? They have to show -- to invoke the anti-SLAPP statute -- they have the burden when invoking the anti-SLAPP statute. So if you're going to live by the statute, you're also going to die by the statute. If they don't meet the standards within the statute, then we don't dismiss the case. And as this Court knows, you don't dismiss a case unless the Court feels very comfortable that that's the appropriate approach. And the very first thing the statute talks about is you have to demonstrate good faith, good faith. Well, what is good faith? Good faith, Your Honor, by its very nature and by definition involves questions of fact, interpretations of conduct. That's what we talk about we have good faith. I deal with good faith all the time in all kinds of different settings, in tort settings, in settings -- good faith and fair dealing both from a contractual standpoint and a tort standpoint. And I have found that whether I'm on the plaintiff's side -- and I do a significant amount of defense work. If I'm on the defense side, I have a very heavy burden of trying to demonstrate

there's no question of fact when good faith is involved in the transaction or the circumstance. So they have to demonstrate good faith, a preponderance of the evidence that he acted within good faith. By nature that invokes a question that I believe needs to be decided by a jury.

Then they have to show by prima facie evidence a probability of prevailing on the merits at this stage of the proceedings. Assuming they get past the good faith part, they have to show a probability, more likely than not that they will prevail.

THE COURT: That's your burden.

MR. SMITH: That's your burden.

MR. JONES: I'm sorry. That's when the burden shifts. Thank you. I got ahead of myself.

THE COURT: That's okay.

MR. JONES: Thank you, though.

So let's just talk about some of the things that Counsel -- I didn't hear him talk -- he did address a couple of them, so I will give him that. But these are things that we're talking about. "Plaintiff spoke to the County commissioners in a dark room," and "Olympia pays for back room deals with politicians." Now, it's -- the HOA, they're not talking about the non Olympia board members that are talking to the politicians in a dark room. Now, Your Honor, I would submit to you that it is an impossibility to meet the standard

just by that statement alone, because there you're talking about a question of fact. What does that mean by suggesting that my clients meet in dark rooms with politicians? Now, they could argue that there's nothing untoward about that, that that was actually just meaning, well, the room happened to have the lights on. And if they want to run with that explanation in front of a jury, then I'd be happy to address that issue with a jury. But to suggest that there's not another reasonable --

THE COURT: Well, you really believe a jury is supposed to determine whether the anti-SLAPP statute is invoked?

MR. JONES: No, Your Honor.

THE COURT: Okay.

MR. JONES: What I'm saying -- what I'm saying is that if we get past -- my point is simply this. This is a question of whether -- what was intended by "meeting in a dark room" with my clients? I'm saying that they could argue to you, I guess in prima facie evidence, that meeting in a dark room simply meant the room was dark, had no lights on. My point is the innuendo there is clear. In our culture, in our society meeting in a dark room with politicians has a known meaning, and it is not a good one. It is a defamatory meaning of -- meaning that there's -- something is untoward, criminal, or at a minimum improper going on with the politicians when

you're meeting them in a dark room. That right there seems to me to settle the issue on that point alone.

Second, my clients are "lining their pockets." Now, the HOA's not lining its pockets. It's not the HOA that's lining its pockets, it's the developer that's lining their pockets, according to Mr. Kosor, because they don't want to develop the park. We just heard Counsel argue, they don't want to build this park. Mr. Kosor has a right to say the HOA and the developer should build the park. I would have no basis to sue him for that. But when you say, you're lining your pockets because you're not doing things that you're supposed to do, "lining your pockets" has -- again, it has meaning. These are not just words in a vacuum. Lining your pockets means you're doing something, again, improper, untoward, arguably even criminal by lining your pockets.

"Plaintiff has obtained a lucrative agreement with the County." This goes to this NRED thing. Well, what does that mean, a lucrative agreement? That's an implication that there was some kind of collusion, improper conspiracy, improper conduct or action between my clients and the County with respect to these so-called lucrative agreements.

"Olympia and its employees act like a foreign government and deprive people of their essential rights." A foreign government -- certainly if he said it acts like the Government of the United States, I don't know that I have --

some people might argue in this day and age that that's a very derogatory thing. But when you suggest it's a foreign government that has connotations here of improper, illicit conduct, a foreign government, a government that is beyond the law, that acts extrajudicially, those kind of points.

Mr. Kosor's Website and his pamphlet. "The County and the developer coordinated an agreement that would permanently and wrongfully obligate the HOA to maintain the public parks in Southern Highland Community."

"The Olympia Management, also controlled by the developer, had potential conflicts of interest --"

THE COURT: Let me ask you a question. Do you believe they met their burden to invoke the statute so that the burden shifts to you?

MR. JONES: No.

THE COURT: Because I'm going to tell you my concern is still whether it's free speech and direct connection with an issue of public concern.

MR. JONES: I'm sorry. Say that again.

THE COURT: My belief is the issue is still whether they invoke the statute is whether this is an issue of public concern.

MR. JONES: All right. Then I will go right to the public concern. And, you know, there's interesting caselaw going back and forth here. Unfortunately, Nevada, which is

not, as you know, unusual here, where you don't have the specific case right on point, and maybe this will become the case so that you and I and other lawyers and judges will have some direction in the future. But as it stands now we have to look outside Nevada. Both sides have looked at California. And I believe the Telega case is -- first of all, that case is 2014, much more on point, and it goes to -- and it even mentions the Damon case. It even mentions it. Page 7 of the Damon case, it invokes the Damon case where it says, "We note that although no cases directly address this issue, multiple cases have addressed anti-SLAPP motions arising from statements at homeowners association board meetings, and all such cases have analyzed the case under the rubric of Subdivision E3 or 4." And then it says, "See Silk, Damon versus Ocean Hills Journalism. That's the case that they're talking about.

And what does the Telega case say? It says, "The homeowners association is not performing or assisting in the performance of the actual government duties, as is the case of Keebler and Fontana." There's -- and California has a little bit different section. It talks about "official actions," which we don't have. But clearly an HOA is not performing government duties, actual government duties. An election that they talk about is not an election of a government official like the County commissioner. This is a --

THE COURT: It's a private community and a private HOA.

MR. JONES: Exactly. And this is what else Telega says. "However, in cases --" this is at page 8. "However, in cases where --" the printout we did -- "-- in cases where --" this is a quote, "...in cases where the issue is not of interest to the public at large, but rather to a limited but definable portion of the public (a private group, organization, or community), the constitutionally protected activity must at a minimum occur in a context of an ongoing controversy, dispute, or discussion such that it warrants protection by a statute that embodies the public policy of encouraging participation in matters of public significance."

And here that's the issue. The problem is where we cite the Weinberg case, where it says, "Public interest does not equate with mere curiosity." Goes on to say, "...should be something of concern to a substantial number of people, a matter of concern to the speaker, and a relatively small specific audience is not a matter of public interest."

Your Honor, while Mr. Kosor may want this to be the biggest issue Clark County being an issue that's addressed and discussed now, the reason this is an issue is primarily because Mr. Kosor thinks it's an issue and he wants -- it's such an issue to him that he is willing to across the line and defame my clients to press his agenda. This is not even -- I

would -- I wish the Court could go these homeowners association meetings and see how many people -- you know, you would never want to do that. There are a few people there that are concerned about these issues. If this -- and assuming that would even make a difference that there was a groundswell out there and a whole bunch of people were upset.

You know, here's the point. You have a right to express your views. You don't have a right to defame. That's what this all comes down to. And if there's an interpretation of his statements, then I believe they have not met their burden. If you can interpret his statements one of two ways, then they lose on this motion.

Kosor's statements are all concerned with issues of, quote, "interest to only a limited but definable portion of the public," end quote. That's the Hailstone case. Now, again citing Telega, "The issue is whether the homeowners association or the developer should be required to pay for neighborhood trails." The court in Telega found that, quote, "Given the absence of any controversy, dispute, or discussion, the issue was of interest to only a narrow sliver of society and thus not an issue of public concern." That, Your Honor, I believe should end the inquiry right there with respect to this issue.

And then whether this is -- these statements were made in a public forum, if Your Honor -- I get from both

questions you asked me and Counsel that this was the primary concern you have. I think the caselaw certainly, if not overwhelmingly, favors our position on this.

THE COURT: I agree that bringing a motion like this should be difficult, okay. Because you're asking the Court to dismiss it right at the -- I mean, at the very, very beginning. And I think this may be the third one in over 15 years. They don't get -- and the second one was just recent, if you can believe it. And the first one was many years ago. So it's not -- I mean, it's not a statute that's supposed to be easily invoked.

MR. JONES: And certainly, Your Honor, that's my belief about this. And I've brought defamation actions and have been faced with anti-SLAPP motions. To get rid of them before there's been any discovery I think is -- it's like this is a special statute, but just as a motion to dismiss in general I think the courts, I think whether it's relevant or not, need to be cautious about doing that. My client doesn't want to sue Mr. Kosor. Doesn't want to do it. That's why we asked him to retract the defamatory stuff. He has every right to state his opinions and complain about things he doesn't like, but he can't go on and suggest criminal conduct on the part of my client. That's the problem here. And that's what he's done.

Again, I would just revert back to the very first

comment Counsel made about some of this has gone on for two and a half years. That doesn't support his position, it supports the point I've told you that my client has been incredibly patient with Mr. Kosor. They don't want to sue. The optics of that, Your Honor, of suing a --

THE COURT: I know. I agree. The optics are not good if the developer's suing the homeowner.

MR. JONES: They don't want to do it. But they don't want to be defamed via suggestions that they're conspiring criminally with the County Commission. That's inappropriate. And this is an issue -- this is Mr. Kosor's crusade, it is not the association. And this goes to this issue of a public forum and whether this is a dispute or controversy. This is Mr. Kosor's dispute or controversy. You cannot invoke the anti-SLAPP statute and say, well, this is a matter of public concern and controversy because I say so. That's the point, Judge. If that were true, you could never get past a motion to dismiss under the anti-SLAPP statute, because the defendant would always say, it's a great concern to me and so -- and I've put it out there into the community, I published it on the Internet to suggest -- this is his Website, by the way, and I don't want to digress and get into that. But we've addressed those points about his -- the limited nature of where he published these things and who got to see them. So this is not as if he is getting up and

speaking in an election context and saying, you know, I'm running for County Commission and these are things that I think are appropriate or should be -- or of public interest to the greater community. That is not what we're dealing with here.

And so just because Mr. Kosor thinks they're of great public concern and interest to him doesn't make it so and does not trigger NRS, what is it, 41.660 and its related statutes, so --

Your Honor, unless you have any other questions, I think I'm at this point probably just repeating myself.

THE COURT: Thank you.

MR. JONES: Thank you, Your Honor.

THE COURT: Thank you very much.

Counsel, you look like you want to respond.

MR. SMITH: Just a little bit, Your Honor.

41.637, which is -- if 41.660 is the anti-SLAPP statute and then 41.637 says good-faith communications. Number (3) there specifically states, which we put in our reply, "Written or oral statement made in direct connection with an issue under consideration by a legislative executive or judicial body or by any other official proceeding authorized by law." Here all these issues were under review by NRED. That is a State entity. These were under review. He made comments about these things that were under review.

His complaint with NRED was filed in 2016, the first one.

THE COURT: I'm going to tell you I would like you maybe to focus on this public interest, because that's where I really am having -- that's where I really think the issue is, is whether the statute even gets invoked and whether the burden shifts. Because this does appear to be -- even if all the homeowners think this issue is important, but it appears to be an issue specific to this homeowner, which, I mean, that's great. I think it's great that he's involved, that he's concerned, that he's reading these statutes and the CC&Rs and holding people accountable. But I'm not sure that this is a situation when this statute is supposed to be hard to invoke, because it does -- it says you don't even get to proceed. I mean, you get dismissed. And not only that, you have to pay my attorneys' fees, and the Court can award damages.

Let me just tell you the other two contexts, they're easy. The other two contexts in which I've had these motions, one was a -- it was either a City Council or a County Commission meeting. So easy. I mean, it's so easy. That's, you know, a problem forum. You know, they talk about things that are of public interest. And the second one was court proceedings, you know, that are very easy for you to look at that and say, well, yeah, of course, anything that goes on in a courtroom, they're public courtrooms, it's a concern to the

public at large. But you want me to take, you know, this issue, these issues with the developer, the homeowners association and say this is an issue of public interest, you know.

MR. SMITH: And I think --

THE COURT: And the factors -- I mean, the only case that we do have is where the Supreme Court recently and they adopted those five factors and you have to consider those five factors in determining whether this is an issue of public interest.

MR. SMITH: And that's part of why I started off my argument here, was in evaluating what Nevada meant by good-faith communications they cited the California law.

THE COURT: Sure.

MR. SMITH: And the statute says, "Any statements made in relation to an ongoing investigation or review --" I just read that into the record, Your Honor. "Written or oral statement made in direct connection with an issue under consideration by a legislative executive, judicial body, or any other official proceeding authorized by law." Nevada Real Estate Division, State entity, these issues were all on review by Mr. Kosor. He filed originally the complaint in 2016 with the Attorneys General, who then referred him back to NRED and eventually got back to the Attorney General's Office, and the issue was finally, we don't believe appropriately, resolved in

January of this year. So these were all under review by a State legislative entity here. They were State appointed and traded. So I think that goes into the protections that are authorized by statute here.

The public forum is -- the Telega case, they cited that that -- and in our reply, Your Honor --

THE COURT: Okay. Wait, wait. I just want to see if I follow you.

MR. SMITH: Sure.

THE COURT: You contend that by taking his issue in front of the Real Estate Board he then turns it into an issue of public interest?

MR. SMITH: I'm simply reading, Your Honor. Well, the good-faith communications part of that is the first step. So these things were there. The public interest part goes to this, Your Honor. The Telega case that they cite, in that case there was no dispute. To have an issue, public forum, public interest there has to be a dispute. In Telega they actually said, there's no dispute so it's not a public interest or public forum, who cares. And that case is completely off point. That's what they cited. I mentioned that in my reply, Your Honor. If there's no dispute, why are we -- no statements, doesn't matter. But here we have a dispute. There's a clear dispute between Mr. Kosor and on the nextdoor.com is at least three or four other homeowners and

their exhibits they attach that have the same concerns, appreciated what Mike was doing. So it wasn't just him. There are other homeowners involved.

And what you're talking about here is, Your Honor, at least from the annual basis for money spent by the HOA, $1.4 million to pay Olympia Management, $1.1 or .2 million to cover the cost of the park. That's two and a half -- $2.5 million, not including the amount of parks that they were never provided. There's a community. They're supposed to be provided 20 acres of a sports park. Never happened. That's -- if you have kids in the community, it's probably something you're concerned about. You may not be aware of it, because I live in an HOA, I get letters from the HOA, I get -- I often don't read them, honestly, Your Honor. Mr. Kosor does. And because he does, he brings these issues up to the other homeowners in the community. Maybe I should start reading the things in my HOA, but my position here, Your Honor, this is a very large sum of money at issue for the homeowners. That is a public interest, how their money's being spent by the HOA. We cite the two California cases that talk about -- one of them 3,000 was enough to make it public interest. The other one was a 10,000-person number. This is much bigger than both those numbers. There's caselaw on point to what I'm arguing, Your Honor. And I don't -- I know they want some of the other cases to say it's not of a public interest, but there are

clear cases on point that say that it if affects 3,000 people, public interest; 10,000 people, public interest. And I think there's enough caselaw cited in our brief here, Your Honor, the one in California, which we have to do.

The other -- couple other items that I just want to mention, the prior statute before 2015, this statute actually had our burden, and it was clear and convincing evidence that they had to produce. Somebody got an ear of the legislature to change that burden on their side considerably. It used to be clear and convincing evidence that they had to prove that had a likelihood of prevailing, which I don't know who's involved with that, I'm assuming people that wanted to be able to bring these suits and not have an incredibly high burden.

The other thing here that we talked about, the declare and control issue, just context here. AB 192 was passed a couple years ago, and it's 116.2122, which made it even more difficult for homeowners to be in control of their HOA board because it was 75 percent. Now it's 90 percent of the units in the community to be owned by homeowner other than developer. Mr. Kosor was involved with that. He spoke with local legislators. He was involved when they tried to repeal that statute two years ago. He testified. So he's taken the appropriate avenues to try to address this. That he's a control freak I think is out of line. That's the phrase that was used, Your Honor. But what he tries to do is go down

appropriate venues. I think he's testifying tomorrow with the CIC board. He's doing what he's supposed to do to address his concerns. I don't think the statements that he made here are defamatory or, even if we don't get there, they're protected by the statute, and we think the case should be dismissed and we should all move forward and hopefully without addressing issues of the HOA. Your Honor, I think that's all I have for you.

THE COURT: Thank you.

Okay. At this time the Court's going to deny the motion, make a finding that they haven't met their burden to invoke the statute.

And, Counsel, you can prepare the order.

MR. JONES: Okay.

THE COURT: Thank you.

MR. JONES: We'll run it by Counsel, Your Honor.

THE COURT: Thank you.

THE PROCEEDINGS CONCLUDED AT 10:48 A.M.

* * * * *

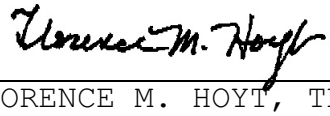
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

5/3/18

DATE

EXHIBIT 2

Mike Kosor, Southern Highlands

SH community is not getting its long-promised Sports Park- WHY?

In 2005 SH residents were promised a 20-acer intense use Sports Park, to be available in 2008. It was to have a 4-plex baseball complex, lighted, concession, and shaded stands, 2 baseball practice fields, multiple lighted soccer fields, and more. Yet that has not and potentially will never happen- WHY? See RJ article https://www.reviewjournal.com/news/politics-and-government/clark-county/clark-county-still-waiting-for-sports-park-at-southern-highlands/ To obtain a lucrative agreement with the County the developer committed to constructing the above Sports Park using private money. Despite multiple failures by the developer to deliver on those commitments, the County would in the fall of 2015 inexplicably relieving the developer of its original commitment only to then approve spending $7M in public tax dollars for a similar complex in Mountain's Edge. - WHY? The County also coordinated with the developer to cost-shift, over $1M/year to maintain the limited public parks to our HOA, without owner approval.- WHY? The SH HOA Board, still (and inexplicably) controlled by the developer, has done nothing to protect the Sports Park first promised our community. – WHY? A small handful of concerned residents have been asking the County and Commissioners these questions and others for almost two years. Yet despite promises of transparency from the County we have received no good answers- often no answer at all. - WHY? If you can answer the questions above, let the community know. Otherwise, write/email/call our Commissioners and ask – WHY? Then join us at Wednesday's Clark County Commission meeting and lets all ask – WHY? If we do not stand up and demand accountability for what I believe are inexplicable actions, your County, the Commissioners, and your HOA Board have made it clear they will continue to ignore these questions while continuing to make SH home owners bear more than their fair share.

Clark County still waiting for sports park at Southern Highlands

Kickoff for the Southern Highlands United youth soccer fall season isn't until next Sunday, but coaches have spent two weeks competing — for space, not goals — in Inzalaco Park.

reviewjournal.com

5 Sep · Southern Highlands in General
Thank
Reply

.

Larry Mc, Southern Highlands·6 Sep
I, for one, think the original sports park plan should not only be adhered to, but major pressure should also be put on the Commissioners to reallocate to Southern Highlands a portion of the millions it has allocated to parks & improvements. You should know Southern Highlands is NOTICEABLY absent from the list of intended beneficiaries of those allocated millions and it is, in my opinion, an outrage! One vital question we, as a community, need to answer with finality is: Does Southern Highlands want public or private parks? I present this question because I have long suspected there are strong currents both for and against making our parks public. I think it would be best to have our community decide this question by a vote on a resolution to that effect presented at our next annual meeting. A public referendum will settle the question openly AND WITH FINALITY. What do you think, neighbors? Whether you are in favor of public or private parks, this is an opportunity for all of us to be heard and to decide AS A COMMUNITY the direction we want our governing board to take about our parks. Think about it, but more importantly, make it happen!
Thank

Teresa Larkin, Southern Highlands·6 Sep
Thanks Mike for all your efforts. This is a very important issue and I think the home owners should know what the advantages and dis-advantages of both options are including the costs to each homeowner. What I understand is we as homeowners aren't even getting a say in this matter, the City Commissioners and Developer are the ones deciding what we will get and what we as homeowners will have to pay for. Excellent article in the Review Journal, we should all read it
Thank
Mike Kosor, Southern Highlands·6 Sep
Teresa- Not only are we not getting a say, County Commissioners are turning a blind eye to the developer's violations of their development agreement- the one sighted as authority for the cost-shifting of park maintenance. The transfer failed to meet required criteria- essentially obtaining HOA acknowledgement/acceptance. I see no HOA advantage in paying the entire park maintenance costs- currently $1.3M/year almost 1/3 of total HOA assessments. These are public parks, open to all citizens, having been constructed using state tax credits provided to the developer under an agreement the HOA is not a party. The County does a good job with maintenance (contrary to rumors). It should pay maintenance costs and carry the liability of the parks using tax dollars, as it does for most all other parks. Today, marked the ninth consecutive month I and a few concerned owners appealed to Commissioners at the bi-weekly Zoning Meeting to act on the cost shifting and to restore the 6x ball fields, covered stands, and much more removed from our 10 years over-due Sports Park. But they continue to refuse, providing little transparency, while recently authorizing $7M in public money for 4x baseballs fields in Mountains Edge. WOW- talking about sticking it to SH. Know our HOA Board has never engaged nor even worked to inform owners in a joint engagement of Commissioners to protect us from the above. Didn't we elect board members to represent our interest? Oh- sorry, most are not elected but appointed by the developer. In that case should we believe the developer's control

of our HOA Board is at play? Or maybe, it is the massive and inexplicable sweet heart deal the Commissioners gave our developer related to the yet to be delivered Sports Park, that is at play?
Thank

Stephanie Hodges, Southern Highlands·7 Sep
Perhaps we should engage with a news channel to look into this? Seems like back door deals and special treatment is going on at our expense.
Thank
Rahul Harkawat, Southern Highlands·7 Sep
Thanks Mike for your yeoman service and doggedness. Without your efforts none of this detail would have bubbled up to the knowledge of the residents. I wish more of the residents review the details to understand how the association fees is being used and respond accordingly

EXHIBIT 3

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of April, 2018, I served the foregoing **CASE APPEAL STATEMENT** as follows:

☐ US MAIL: by placing the document(s) listed above in a sealed envelope, postage prepaid, in the United States Mail at Las Vegas, Nevada, addressed to the following:

☐ BY FAX: by transmitting the document(s) listed above via facsimile transmission to the fax number(s) set forth below.

☐ BY HAND-DELIVERY: by hand-delivering the document(s) listed above to the address(es) set forth below.

☐ BY EMAIL: by emailing the document(s) listed above to the email address(es) set forth below.

☒ BY ELECTRONIC SERVICE: by electronically serving the document(s) listed above with the Eighth Judicial District Court's WizNet system upon the following:

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/s/ MaryAnn Dillard
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Michael Kosor, Jr.

DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC a Nevada limited liability company; GARRY V. GOETT, a Nevada Resident, Plaintiff, vs. MICHAEL KOSOR, JR., a Nevada resident; DOES I through X, inclusive, Defendants.	Case No: A-17-765257-C Dept. No: XII **DEFENDANT'S MOTION FOR RECONSIDERATION OF COURT'S MARCH 20, 2018 ORDER**

Defendant MICHAEL KOSOR, JR., by and through his attorneys, BARRON & PRUITT, LLP, hereby submits his *Motion for Reconsideration of the Court's March 20, 2018 Order* denying Defendant's Motion to Dismiss Pursuant to NRS 41.660. This Motion is supported by the attached memorandum of points and authorities, the pleadings and papers on file herein, and other evidence and oral argument as permitted by the Court at the hearing of this Motion.

DATED this 23rd day of April 2018.

BARRON & PRUITT, LLP

/s/ William H. Pruitt

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NOTICE OF MOTION

TO: All interested parties; and

TO: Their respective counsel of record

YOU WILL PLEASE TAKE NOTICE that Defendant will bring his **MOTION FOR RECONSIDERATION OF COURT'S MARCH 20, 2018 ORDER** on for hearing in Department XII of the above-entitled court on the 4 day of June, 2018 at the hour of 9:30 a.m. or as soon thereafter as counsel can be heard.

BARRON & PRUITT, LLP

/s/ William H. Pruitt

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MEMORANDUM OF POINTS AND AUTHORITIES

I. PREFATORY STATEMENT

Defendant Michael Kosor, a retired Air Force officer, became a homeowner at Southern Highlands in Las Vegas, Nevada in 2011. From 2014 to 2017, Defendant was active in impacting various issues of public interest that affected the Southern Highlands Community, most particularly issues involving the control of the Southern Highlands Community Association (SHCA) and its assumption of the obligation to manage community parks.

In addressing such interests, Defendant Kosor made statements that expressed the following concerns: (1) that a 2005 amendment to the CC&Rs for Southern Highlands was invalid under statutory law (NRS 116.2122) and that by 2014, the sale of a sufficient amount of Southern Highlands units under the un-amended CC&Rs required a transfer of control from the Plaintiff Olympia Companies, LLC to the homeowners—which transfer never occurred; (2) that titles for "public parks," along with the costly performance obligation to maintain them and the rights to control them (and potentially their accessibility by the general public), were transferred by Plaintiff Olympia Companies, LLC (as developer) to the SHCA absent a majority approval by the SHCA members—potentially voiding said transfer under statutory law (NRS 116.3112); and (3) Plaintiff Olympia Companies, LLC

delayed completion of a highly anticipated large public sports park in Southern Highlands for more than a decade, after receiving the benefit of a December 2005 agreement it entered into with Clark County to construct said sports park in exchange for special construction tax credits; and it so delayed without virtually any consequence (including stoppage of the issuance of building permits).

Concerned that he and other homeowners (as well as other Clark County citizens) were being denied due control, access, and related benefits, as a direct result of the 2005 amendment, the titles and performance obligation transfer, and the free-from consequence construction delay, Defendant Kosor and other homeowners endeavored to marshal greater public support regarding the matters and Defendant Kosor even ran for election to the SHCA board. On November 29, 2017, Plaintiffs undertook the unusual and improper act of initiating a lawsuit against Defendant Kosor alleging defamation and defamation per se arising out of some of Defendant Kosor's aforementioned efforts on behalf of the community.

Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660 was filed on January 29, 2018 in an effort to end Plaintiff's strategic lawsuit against public participation ("SLAPP"). Plaintiffs responded by filing their *Opposition to Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660* on February 16, 2018. Thereafter, *Defendant's Reply to Plaintiff's Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660* was filed on February 26, 2018.

Defendant's Motion came on for hearing on March 5, 2018. Thereafter, on March 20, 2018, the Court entered an Order denying Defendant's Motion in full. A copy of the Court's March 20, 2018 Order is attached hereto as **Exhibit A**.

On April 6, 2018, Defendant substituted his attorney of record. And, on April 6, 2018, counsel for Plaintiffs and Defendant signed a stipulation reflecting an agreement to extend the time for the newly substituted defense counsel to prepare the instant *Motion for Reconsideration of Defendant's Motion to Dismiss Pursuant to NRS 41.660*. Thereafter, to avoid creating a jurisdictional defect to his right to an interlocutory appeal pursuant to NRS 41.670(5), Defendant timely filed a *Notice of Appeal* on April 19, 2018. Although an appeal has been filed, this Court retains the authority to certify its inclination to grant a motion for reconsideration. See *Huneycutt v. Huneycutt*, 94 Nev. 79, 80-81, 575 P.2d 585, 585-86 (1978); *Mack-Manley v. Manley*, 122 Nev. 849, 855-56, 138 P.3d 525, 529-30

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(2006) (a district court divested of jurisdiction can certify its inclination to grant a motion for reconsideration in part or whole to aid in remand by the appellate court).

Accordingly, Defendant Kosor respectfully requests reconsideration of this Honorable Court's Order dated March 20, 2018 denying Defendant's Motion to Dismiss Pursuant to NRS 41.660. In seeking reconsideration, Defendant is requesting that the Court certify its inclination to grant the Motion for Reconsideration in the interest of avoiding manifest injustice. Such relief is appropriate, as a careful review of the *Plaintiffs' Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.660* and the exhibits to *Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660* reveals that Plaintiffs' Opposition not only took Defendant's statements out of context—even offering partial quotes, ostensibly to better fit Plaintiffs' allegations, but also failed to cite to highly relevant case authorities. Additionally, the requested relief is appropriate, as this Honorable Court's Order failed to explain whether at least some of Defendant's statements met their burden under NRS 41.660, and whether the Court had analyzed the statements under the public interest guiding factors expressly adopted by the Nevada Supreme Court. Accordingly, Defendant Kosor respectfully requests reconsideration of the Court's prior Order.

II. LEGAL ARGUMENTS

A. Legal Standard for Reconsideration.

A court has the inherent authority to reconsider its prior orders. *Barry v. Lindner*, 119 Nev. 661, 670, 81 P.3d 537, 543 (2003) (NRCP 54(b) permits district court to revise orders any time before entry of final judgment); *see also Gibbs v. Giles*, 96 Nev. 243, 245, 607 P.2d 118, 119 (1980). A motion for reconsideration is appropriate if the court (1) is presented with newly discovered evidence, (2) committed clear error or the decision was manifestly unjust, or (3) if there has been a change in the controlling law. *Wright v. Watkins and Shepard Trucking*, 968 F. Supp. 2d 1092, 1096 (D. Nev.. 2013); *see also Moore v. City of Las Vegas*, 92 Nev. 402, 405 (1976) (Motion for reconsideration is appropriate when new issues of fact or law are raised that support a ruling that is contrary to a prior ruling of the court).

In seeking reconsideration, Defendant is requesting that the Court vacate its Order in the interest of avoiding manifest injustice and find that Defendant has met his burden to invoke NRS 41.660.

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B. Plaintiffs' Suit Against Defendant Kosor Must be Dismissed Under Nevada's Anti-SLAPP Law.

"SLAPP lawsuits abuse the judicial process by chilling, intimidating, and punishing individuals for their involvement in public affairs." *John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 752, 219 P.3d 1276, 1281 (2009), superseded by statute on other grounds as stated in *Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, 266 (2017). To curb these abusive lawsuits, Nevada adopted anti-SLAPP laws that immunize protected speakers from suit.

Nevada's anti-SLAPP statutes (NRS 41.660 et seq.) allow a defendant to bring a special motion to dismiss an action "brought against a person based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.660(1)(a). The Nevada Supreme Court has clarified the parties' burdens when litigating a special motion to dismiss under Nevada's anti-SLAPP statute in *Delucchi v. Songer* , 396 P.3d 826 (Nev. 2017). More specifically, the moving party must first establish by a preponderance of the evidence that the lawsuit challenges a good-faith "communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." *Delucchi* , 396 P.3d at 831 (quoting NRS 41.660(3)(a)). Thus, the standard for dismissal is much lower under the anti-SLAPP statutes than required for an NRCP 12(b)(5) motion.

The burden then shifts to the plaintiff to establish "by clear and convincing [prima facie] evidence a probability of prevailing of the claim." *Id*. (quoting NRS 41.660(3)(b)). "If the district court determines that the plaintiff has shown by clear and convincing evidence a likelihood of succeeding on the merits, the determination on the special motion has no effect on the remainder of the proceedings." *Id*. (quoting NRS 41.660(3)(c)(1)-(2)). But if the court grants the special motion to dismiss, "the dismissal operates as an adjudication upon the merits." NRS 41.660(5).

1. Plaintiffs' Multiple Claims Improperly Challenge Good-Faith Communications Made in Furtherance of the Right to Free Speech in Direct Connection with Issues of Public Concern—the Governance of the SHCA, the Validity of the Transfer of "Public Park" Titles and Maintenance Obligations to the SHCA, and the Accessibility of a Highly Anticipated Public Sports Park.

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Plaintiff's Complaint alleges, in a manner considerably less than "simple, concise, and direct" as required by NRCP 8(e), that:

> Going as far back as December of 2015, Kosor has made various specious defamatory statements against Olympia and Mr. Goett…that Olympia and Mr. Goett spoke with Clark County Commissioners in a 'dark room' and coerced them to act or vote in a certain manner; and that Olympia is 'lining its pockets' to the detriment of the Southern Highlands homeowners…[that Kosor] has continued to speak at the meetings of the Southern Highlands Community Association and has stated that Olympia and its employees have violated the law and breached their fiduciary duty to the owners of the community…posted a statement on a social media [sic] accusing Olympia of obtaining a 'lucrative agreement' with Clark County by cost-shifting expenses for the maintenance of public parks to the Southern Highlands owners…launched a website under his own name, accusing Olympia and its employees of, among other things, acting like a foreign government that deprives people of essential rights…continues to reference sweetheart deals, statutory violations, breaches of fiduciary duty, and improper cost shifting of 'missions of dollars' …[published a written pamphlet stating] that Olympia/Developer breached its fiduciary duties to the Southern Highlands community and Developers actions have 'already cost the homeowners millions[.]'

Crucially, as discussed in greater detail below, Plaintiffs' Complaint offers snippet quotations, extracted mid-sentence and out of context. However, Plaintiffs' goal is clear—to use the judicial process to punish, intimidate, and stop Defendant Kosor (and others supportive of his cause) from speaking out critically regarding the large and powerful Olympia Companies, LLC and its self-serving dealings with the Clark County Commission and the SCHA—some of which dealings have attracted local news coverage because of their substantial impact in Clark County. *See* Michael Scott Davidson, "Clark County still waiting for sports park at Southern Highlands," Las Vegas Review-Journal (Sept. 2, 2017), *available at* https://www.reviewjournal.com/news/politics-and-government/clark-county/clark-county-still-waiting-for-sports-park-at-southern-highlands/ (describing impact on Clark County at large of Plaintiff Olympia's delay in constructing a highly anticipated sports park after dealings with Clark County Commission). Undeniably, Plaintiffs' have financially benefitted from the 2005 amendment to the Southern Highlands CC&Rs, their transfer of public park titles and obligations to the SHCA, and probably their delay in constructing the sports park (and modification of its amenities from those originally planned) as well.

Ultimately, for this Court to determine that Defendant has satisfied his burden by a preponderance of the evidence, it must find that the statements by Defendant Kosor, alleged to be defamatory, each fits within one of four enumerated categories of "good faith communication in furtherance of the right to petition or the right to free speech in direct connection with the issue of

public concern" set forth in NRS 41.637 and '[is] truthful or [is] made without knowledge of its falsehood.'" *Delucchi* , 396 P.3d at 833 (citations omitted). In this case, Defendant Kosor has satisfied his burden of proof for each the statements alleged to be actionable by the Plaintiff.

a. Defendant Kosor's Communications Were Made in Direct Connection with an Issue of Public Interest in a Place Open to the Public or in a Public Forum and Thus Are Entitled to Protection.

"Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" expressly includes "[c]ommunication made in direct connection with an issue of public interest in a place open to the public or in a public forum[.]" NRS 41.637(4).

The Nevada Supreme Court has approved reliance on California jurisprudence regarding what constitutes "an issue of public interest" under NRS 41.637(4) and specifically adopted California's "guiding principles" for purposes of an NRS 41.660 special motion on such basis. *See Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, 268 (2017). Those guiding principles are specifically:

> (1) "public interest" does not equate with mere curiosity;
> (2) a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest;
> (3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;
> (4) the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and
> (5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.

Id. (*citing Piping Rock Partners, Inv. v. David Lerner Assocs., Inc.*, 946 F.Supp.2d 957, 968 (N.D. Cal. 2013)). In putting such guiding principles into practice, California's anti-SLAPP jurisprudence has determined that "[t]he term 'public interest' is [to be] construed broadly in the anti-SLAPP context," *see Daniel v. Wayans*, 213 Cal.Rptr.3d 865, 881 (Ct. App. 2017). So much so, that an issue of "public interest" includes, "any issue in which the public is interested," and "need not be 'significant' to be covered by the anti-SLAPP statute." *E.g., id*. If a court determines the issue concerned is of public interest, it must next determine whether the communication was made "in a place open to the public or in a public forum." *Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, 268 (2017); NRS 41.637.

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i. The Statements Made by Defendant Kosor in the December 17, 2015 Christopher Communities Association ("CCA") Board Meeting Concerned Issues of Public Interest.

Defendant made two statements on December 17, 2015 at issue, and each regarded Mr. Goett. Neither constituted mere curiosity, although they were clearly opinions—one expressly qualified itself as "my opinion" and the other was made using the limiting qualifier "probably." And, although not precisely the basis for the underlying motion, statements of opinion cannot be defamatory, nor are they actionable, and "in cases involving political comment, there is a strong inclination to determine the remarks to be opinion rather than fact." *Nevada Indep. Broad. Corp. v. Allen*, 99 Nev. 404, 410, 664 P.2d 337, 341 (1983).

First, Defendant stated, "[Mr. Goett, President of Olympia Companies, LLC,] is basically lining his own pockets, in my opinion, at the expense of the owners in Southern Highlands." Second, Defendant stated, "The audit report was quickly glossed over and the Country Commission was worried about, they [the Country Commission] were apologizing to the Developer, Goett, who was there, about the conduct of the audit committee and all the audit committee did was do their job. But they were, he was upset and angry and probably got the Commissioner aside in a dark room or someplace and read them the riot act." Not only does this isolated latter statement use the limited qualifier "probably," but uses the colloquialism "read them the riot act," which is generally not accepted as meaning to induce to criminal activity.

In addition to the statements not being defamatory on their face, the statements satisfy the *Piping Rock Partners* guidelines set forth above for establishing an issue of public interest, as both statements concerned a substantial number of people—namely the nearly eight thousand homeowners of Southern Highlands and all of the Clark County citizens entitled to use or benefit from access to "public parks" located within Southern Highlands. Indeed, in 2016 alone, SHCA spent $675,643.00 to maintain "public parks." *See* Michael Scott Davidson, "Clark County still waiting for sports park at Southern Highlands," Las Vegas Review-Journal (Sept. 2, 2017), *available at* https://www.reviewjournal.com/news/politics-and-government/clark-county/clark-county-still-waiting-for-sports-park-at-southern-highlands/ ("A 2011 county audit determined that without the contracts, the other six parks could be privatized after the development agreement expires…Southern

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Highlands Development granted ownership of the parks to the community's homeowner's association years ago…The move has shifted the annual burden of more than $1 million to maintain the parks onto homeowners but has also given them control of the parks.") Such financial burden might have otherwise been shouldered by the Southern Highlands developer, Clark County or some other third party, as previously contemplated, had SHCA board control involved homeowners more directly—which is precisely the cause for which Defendant sought to marshal support. *Cf. Damon v. Ocean Hills Journalism Club*, 102 Cal. Rptr. 2d 205 (2000) (affirming application of California's anti-SLAPP statute where the statements at issue concerned the manner in which more than three thousand homeowners would be governed).

A high degree of closeness also exists between the challenged statements and the public interest at issue in Defendant's statements. Specifically, the statements opine that Mr. Goett basically benefited at the expense of the owners in Southern Highlands, by negotiating a self-serving deal with the Clark County Commission. Said deal altered the Southern Highlands CC&Rs, causing the developer to maintain control (a majority of seats) on the SHCA board and the SCHA to take on maintenance obligations for public parks, which were originally planned as a future transfer to Clark County for maintenance obligations under the Southern Highland Development Agreement.

Likewise, the focus of the communication at issue was the self-serving deal, which altered the CC&Rs, and to this day Clark County and Mr. Goett have left the Southern Highlands owners with the obligation to maintain public parks. Nothing in the record would make this issue a private controversy. And, there is also no question that the speech at issue was not otherwise private information that was turned public simply by communicating it to a large number of people. Thus, the Defendant's statements each fit squarely under each of the guiding principles for a matter of public interest adopted by the Nevada Supreme Court for purposes of invoking the protection of NRS 41.660.

ii. The December 17, 2015 Christopher Communities Association ("CCA") Board Meeting Was a Public Forum

Open board meetings such as the meetings of SHCA sub-board, CCA, are public forums for purposes of Nevada's anti-SLAPP statute. *See Chocolate Magic Las Vegas LLC v. Ford*, No. 217CV00690APGNJK, 2018 WL 475418, at *3 (D. Nev. Jan. 17, 2018) (citing to *Damon v. Ocean Hills Journalism Club*, 102 Cal. Rptr. 2d 205 (2000) (holding that televised and open board meetings

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of a homeowner's association constituted a public forum for purposes of California's anti-SLAPP statute)); *see also Lee v. Silveira*, 211 Cal. Rptr. 3d 705, 715 (Ct. App. 2016) (explaining that homeowners elect a board and delegate it powers, creating "a quasi-government entity paralleling in almost every case the powers, duties, and responsibilities of municipal government."). Although California jurisprudence holds that a homeowner's association meeting does not fit within the scope of "other official proceeding[s]" for purposes of Cal.C.C.P. 425.16(e)(1), *see Talega Maintenance Corp. v. Standard Pacific Corp.*, 170 Cal.Rptr.3d 453, 461 (2014), there is no Nevada or California case law indicating that open homeowner's association board meetings are anything other than public forums consistent with the language of NRS 41.637(4). Accordingly, the Defendant's December 17, 2015 statements at the CCA board meeting are entitled to protection under NRS 41.660.

iii. The September 11, 2017 Social Medial Statement Concerned Issues of Public Interest.

On September 11, 2017, Defendant posted to a social media site Nextdoor (https://nextdoor.com) a statement expressing frustration regarding the Southern Highlands obligation to maintain public parks in the community and the lack of accountability he personally sensed on this matter. His statement specifically referred to a sports park that developer Olympia Companies had agreed with Clark County in January 2006 to build within two years—but was delayed for more than a decade, virtually without consequence, until Clark County altered the obligation in 2015. *See* Michael Scott Davidson, "Clark County still waiting for sports park at Southern Highlands," Las Vegas Review-Journal (Sept. 2, 2017), *available at* https://www.reviewjournal.com/news/politics-and-government/clark-county/clark-county-still-waiting-for-sports-park-at-southern-highlands/ (describing impact of subject planned sports park on Clark County at large—but also specifically to the Southern Highlands homeowners, locals anticipating public access to the park, contractors whose dealings with Olympia Companies, LLC might be impacted if Clark County freezes permit issuances, etc.) Defendant's statement read in part, "to obtain a lucrative agreement with the County the Developer committed to constructing the above Sports Park using private money…[but] the County would in the fall of 2015 inexplicably

relieving [sic] the developer of its original commitment only to then approve spending $7M in public tax dollars for a similar complex in Mountain's Edge."

As with the earlier statements, this statement was also more than a mere curiosity. Instead of a mere curiosity, the statement is directed at an issue of significant concern involving the County, the developer and the Southern Highlands Community. The statement is detailed in its content and the tone of the statement reflects the community's frustration with the lack of accountability for and accessibility to the highly anticipated sports park, rather than a mere curiosity. Indeed, the sports park was highly-anticipated and affected the community, not merely a handful of residents. This was the focus of Defendant's posting.

During a multiplicity of town hall meetings conducted by Clark County Commissioner Susan Brager, the topic of the sports park was repeatedly raised. *See, e.g.*, Statement by Commissioner Sisolak opening public comment on Agenda Item #50 (periodic review of Southern Highlands sports park) on Feb. 8, 2017 ("I have got a bunch of cards, like I said comments will be limited to three minutes."), at 1:59:00; *see also* Statements by Commissioner Brager ("We have had many conversations with the homeowners and we have had neighborhood meetings . . . and it has been a very big challenge . . . and I agree—we have looked at this before and had this up before . . . to determining if it is in compliance."), at 2:14:07-dated Feb. 8, 2017 Agenda Item #50, at 2:14:18, 3:34:34. See excerpts attached as **Exhibit A**. In fact, the sports park was of such interest that the Clark County Commission received recurring public progress updates.

Indeed, local news coverage of the issue expressly referred to "Clark County" as "still waiting" for the aforementioned public sports park. *See also* Michael Scott Davidson, "Clark County still waiting for sports park at Southern Highlands," Las Vegas Review-Journal (Sept. 2, 2017), *available at* https://www.reviewjournal.com/news/politics-and-government/clark-county/clark-county-still-waiting-for-sports-park-at-southern-highlands/. Moreover, the multi-million dollar commitment(s) of Olympia Companies to Clark County (and the nearly 8,000 residents of Southern Highlands) by its very nature constituted a matter of public interest and concern to a substantial number of people.

Again, the closeness between the Defendant's statement and the asserted public interest is of a high degree, since Defendant Kosor offered the statement to draw attention to the public issue in

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direct furtherance of the right to petition or the right to free speech on the matter. Clearly, the communication at issue is not reflective of a private controversy—nor is it merely in furtherance of a private controversy. Instead, the communication is reflective of an effort to marshal accountability of elected officials, specifically the Clark County Commission and the SHCA board, to their voters. As such, the statement included the following invitation, "Then join us at Wednesday's Clark County Commission meeting . . . If we do not stand up and demand accountability for what I believe are inexplicable actions, your County, the Commissions, and your HOA Board have made it clear that they will continue to ignore these questions while continuing to make [Southern Highlands] home owners bear more than their fair share." *See* Nextdoor.com Statement, attached as **Exhibit B**. Accordingly, this was not some errant effort to flyer the town with information about a private dispute between two parties in an effort to qualify as a "public interest." Based on the foregoing, Defendant's September 11, 2017 statement should be recognized for what it was, a statement made in direct relation to a public concern, sufficient to invoke NRS 41.660.

iv. The September 11, 2017 Social Medial Statement was Made Via a Public Forum

The allegedly offensive social media posting was a communication made in a place open to the public or a public forum. Websites accessible to the public are public forums for purposes of SLAPP litigation. *See Kronemyer v. Internet Movie Data Base, Inc.*, 59 Cal. Rptr. 3d 48, 55 (2007) (recognizing that websites accessible to the public are "public forums" for the purposes of the California anti-SLAPP statute and finding that statements on a website "accessible to anyone who chooses to visit the site . . . 'hardly could be more public.'"); *see also Daniel v. Wayans*, 213 Cal.Rptr.3d 865, 882 (Ct. App. 2017) (citing *Nygard, Inc. v. Usui-Kerttula*, 72 Cal.Rptr.3d 210 (2008) and finding postings to social media site Twitter to be a public forum).

Here, the social media site used by Defendant to post on September 11, 2017 is accessible to any Southern Highlands resident—except for any registered sex offenders and members of their households. *See* https://nextdoor.com/member_agreement/. Nextdoor brands itself as a private social networking service because it requires users verify their address and use their real name; however, broad account eligibility guidelines render it highly accessible by the local public. In fact,

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the Nextdoor Member Agreement makes clear accessibility is intended, "we hope that neighbors everywhere will use the Nextdoor platform to build stronger and safer neighborhoods around the world." *Id*. (underlining added). Additionally, Nextdoor offers "personal accounts to individual residential members," and "special, restricted-functionality accounts to government agencies . . . and to businesses, nonprofits, news media, and other organizations." *Id*. Much like Twitter and other social media sites, the ability of the public to simply create an account and gain access to postings, renders Network a public forum precisely because it is so publically accessible.

v. The November 16, 2017 Website Statements Concerned Issues of Public Interest.

On November 16, 2017, Defendant launched a website (http://www.mikekosor.com) using the free website builder Wix (www.wix.com), as part of his campaign seeking election to the SHCA board. The website outlined his platform, concerns and recommendations for improving the Southern Highlands community. His website made a statement regarding "the community" and the manner in which SHCA board members were determined, which reads as follows: "I lived in foreign countries where citizens did not have this right [the right to vote] and saw firsthand [sic] the negative implications. I do not like the idea the community I now look to spend my retirement [with] has denied me this central and important right." *See* Campaign Website, p. 8, **Exhibit C** [underlining added]. The Defendant's statement referred to the power retained by Plaintiff Olympia to unilaterally appoint a majority of the SHCA board seats (three out of the five), following the 2005 amendment to the Southern Highlands CC&Rs, and despite sufficient sales of units by 2014 to require a transfer of declarant control to the homeowners.

Once again, this matter was not a mere curiosity, rather it involved the process for selecting the SHCA board, which governs the rights of nearly eight thousand homeowners in the Southern Highlands. *Cf. Damon v. Ocean Hills Journalism Club*, 102 Cal. Rptr. 2d 205 (2000) (affirming application of California's anti-SLAPP statute where the statements concerned the manner in which more than three thousand homeowners would be governed). Not only do the decisions of this board affect approximately eight thousand homeowners and their families, but they also affect users of public parks and forums, governed by or located within the Southern Highlands since the transfer of their titles, rights to control, and maintenance obligations.

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Defendant's campaign website pointed to what he felt was "The SHCA Board's recurring failure to engage on behalf of homeowners," specifically stating:

> our SHCA Board has repeatedly failed to oppose and in many cases failed to even inform owners of damaging efforts by the County and State – for example: a massive sweetheart deal for our Developer that significantly changed and reduced our long overdue 'Sports Park'[;] Cark County's 'cost shifting' of park maintenance expenses to our HOA[; and] County and Developer coordinated [an] agreement that would permanently and wrongly obligate the HOA to maintain the 'public parks' in our community…If elected I will keep owners informed and insist our Association engages to advance and defend owner interests on both the County and State level.

See Campaign Website, pp. 5-6, **Exhibit C** [underlining added]. Plaintiffs apparently allege defamation through Defendant's use of the phrase "massive sweetheart deal" within the context of a campaign and pending election. A closer reading of the statement reveals that the phrase was used in specifically criticizing three non-parties: "SHCA Board," "County and State." Indeed, only one of Defendant's statements indirectly criticizes developer Olympia Companies, LLC. Defendant's statement that "County *and Developer* coordinated [an] agreement that would permanently and wrongly obligate the HOA to maintain the 'public parks' in our community." Nothing in this statement specifically alleges that anyone violated law—only that the County and Developer "wrongly obligate[d] the HOA to maintain the 'public parks.'"

This statement concerned a matter beyond a mere curiosity—the shifting of the maintenance obligation to SHCA for "public parks" in the Southern Highlands community, in direct contrast to the original plans. Instead of a mere curiosity, Defendant's statement was made in furtherance of the right to petition and free speech on an issue directly affecting the SHCA assessments, budget, expenses, and quality of park maintenance. As such, the matter at issue directly affects nearly eight thousand homeowners in the Southern Highlands, as well as citizens of Clark County, anticipating use of the public parks and forums governed by or located within the Southern Highlands. Again, the statement also concerns the highly anticipated sports park which was delayed by more than a decade, and the threat that "public" parks may eventually become private (due to the transfer of control).

Once again, there exists a high degree of closeness between the challenged statements and the asserted public interest—Defendant was seeking to marshal voters and support to facilitate righting the shifted burden of the parks and the delay for the highly anticipated sports park. Nothing about this

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matter could be considered private—as it was raised in a public campaign to champion a public cause, affecting a large portion of the Clark County community.

Defendant's website further provides a series of frequently asked questions regarding the SHCA board election and relevant issues. One of these questions states "What is this 'Agreement for Public Access' being discussed and what happened/did not happen to get us here?" The answer given on the website explains that Olympia asked SHCA to provide a public easement access for all of its parks to satisfy a requirement under the Southern Highlands Developer Agreement and that the SHCA had previously rejected such a request one year prior. Defendant's statement then opines that:

> My objections to the Agreement are . . . 3. Our Board's approval to execute this Agreement was done without satisfying necessary owner acceptance provision in the statutes. A technical "loophole" allows it to do so. However, per NRS 16.3112 par 4. ".. the contract is not enforceable against the association until approved pursuant to subsections 1, 2, and 3" (a majority vote of the owners).

See Campaign Website, pp. 8-9, **Exhibit C** [underlining added].

Defendant's website further stated that Defendant Kosor "has spent the last three years impacting local issues such as developer control of HOAs, Clark County's unfilled community park commitments, and the general failure of our Association Board to advance the interest of Southern Highland homeowners." *See* Campaign Website, pp. 4, **Exhibit C**. Importantly, this passage never specified which specific "interest of Southern Highland homeowners" the SHCA board failed to advance, only that Defendant Kosor impacted that "local issue." Nevertheless, the context of the statement indicates that Defendant Kosor was communicating concern that the board was not in compliance statutory law requiring a majority vote by the SHCA members. Certainly, it is of public concern whether the governance of a powerful homeowner's board, with nearly eighth thousand members (and their families), is performed in compliance with applicable law.

Defendant's website also featured a letter addressed "Dear Southern Highland Neighbor," which stated his objectives if elected and campaigned that "As your board representative, not beholden to the Developer, I will work to reverse [a list of campaign issues outlined in Defendant's objections including]":

> My objectives if elected are: First and foremost, I will work to end the Developer's control of our HOA Board. Currently, three of our 5-person SHCA Board of Directors are appointed and employed by the Developer. With Olympia Management owned by the Developer, the potential for our Board to experience conflicts of interest, loss of board autonomy, and failed fiduciary

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> oversight are clear. As I note below, I believe this has cost our community millions of dollars.
> ….
> Fourth, our board has repeatedly failed to act in the best interests of homeowners with government agencies. This must change.

See Campaign Website, p. 10, **Exhibit C** [underlining added]. As the quote denotes, Defendant merely declared his (layman) opinion that potential exists for conflicts of interest, loss of board autonomy, and failed fiduciary oversight because the SHCA Board of Directors are appointed and employed by the Developer. A careful read of the statement reveals that Defendant did not accuse Plaintiff Olympia of actually breaching its fiduciary duties, rather of the potential for a future breach existing—unless the board appointment process were to change. Nevertheless, this statement concerned governance of a homeowner's association with nearly eight thousand homeowner members—satisfying the second and third public interest guidelines. Moreover, it was based, in part, on concern that the 2005 amendment to the Southern Highlands CC&Rs was invalid and that the Developer had failed to timely transfer control to the homeowners. Defendant's statement also argues that the Developer has cost the community millions of dollars—because it transferred ownership of "public parks" along with a costly annual obligation to maintain said parks, without the SHCA first obtaining the majority consent of the SHCA homeowners.

Since Defendant's statements overtime have repeatedly focused on three matters concerning the Southern Highlands, these statements, in context, fit well within those public concerns. Nothing about these statements indicate that they were made simply to gather ammunition for another round of private controversy. In fact, the Defendant's statements were offered specifically as part of an election campaign focused on these same three concerns. Defendant was not merely turning something from private to public by communicating it to a large number of people—it was of public concern because it dealt with the governance of a homeowner's association.

vi. Defendant Kosor's Campaign Website Was a Public Forum

The allegedly offensive website posting was a communication made in a place open to the public or a public forum. Websites accessible to the public are public forums for purposes of SLAPP litigation. *See Kronemyer v. Internet Movie Data Base, Inc.*, 59 Cal. Rptr. 3d 48, 55 (2007) (recognizing that websites accessible to the public are "public forums" for the purposes of the California anti-SLAPP statute and finding that statements on a website "accessible to anyone who

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chooses to visit the site . . . 'hardly could be more public.'"); *see also Daniel v. Wayans*, 213 Cal.Rptr.3d 865, 882 (Ct. App. 2017) (citing *Nygard, Inc. v. Usui-Kerttula*, 72 Cal.Rptr.3d 210 (2008) and finding postings to social media site Twitter to be a public forum). Accordingly, Defendant's statements should be protected under NRS 41.660.

vii. November 17, 2017 Written Pamphlet Statements Were Protected Speech

On November 17, 2017, Defendant promulgated a campaign pamphlet, one side of which contained a slightly edited copy of his website letter addressed "Dear Southern Highland Neighbor." Using nearly identical language to the website letter, the campaign pamphlet letter reads:

> First and foremost, I will work to end the Developer's control of our HOA Board. Currently, three of our 5-person SHCA Board of Directors are appointed and employed by the Developer. With Olympia Management owned by the Developer, the potential for conflicts of interest, loss of board autonomy, and failed fiduciary oversight are clear. As I note below, I believe this has cost our community millions of dollars.
> ….
> Fourth, our Board has repeatedly failed to act in the best interest of homeowners with government agencies, defaulting to the interest of the Developer.

See Campaign Pamphlet, **Exhibit D** [underlining added].

Again, the concern at issue was virtually identical to that on the campaign website. And, for the same reasons as stated above that the passage from the "Dear Southern Highland Neighbor" correspondence on the campaign website, Defendant's statement on his written pamphlet concerns a public interest and is entitled to protection under NRS 41.660. This statement, like the correspondence statement, outlines the Defendant's campaign goals as a candidate and points to "the potential" (not the certainty) for conflicts of interest, loss of board autonomy, and failed fiduciary oversight. Importantly, these opinion statements were made not only in furtherance of a public concern, but with belief that the board was already not complying with the law by acquiring a performance obligation (for public parks), which relieved the Developer and Clark County of such obligation, without first obtaining the consent of the majority of the homeowners.

viii. The November 17, 2017 Written Pamphlet Was a Public Forum

Communication or "[s]peech by mail, i.e., the mailing of a campaign flyer, is a recognized public forum under California's SLAPP statute." *Macias v. Hartwell*, 64 Cal. Rptr. 2d 222, 225 (1997) (holding campaign flyer mailed to union members in connection with an election for the office of

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union president to be a public forum for purposes of SLAPP litigation); *cf. Damon v. Ocean Hills Journalism Club*, 102 Cal. Rptr. 2d 205, 210-12 (2000) (holding that a newsletter intended to "communicate information of interest and/or concern to the residents" of a homeowners association was a public forum for purposes of California's anti-SLAPP statute over argument that "it was essentially a mouthpiece for a small group of homeowners.") The Nevada Supreme Court has affirmed that Nevada and California anti-SLAPP statutes are similar in purpose and language. *Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, 268 (2017). Accordingly, there is no reason for Nevada courts to depart from California jurisprudence, which recognizes a campaign flyer as a public forum for purposes of anti-SLAPP litigation.

Therefore, the November 17, 2017 campaign pamphlet at issue should qualify as a public forum. Said pamphlet contained statements sent to Southern Highlands homeowners in connection with an upcoming election for the SHCA board. The campaign flyer expressly read, in part, in large bold text: "Vote Mike Kosor," "Southern Highlands HOA," "The Homeowner's Candidate," and pointed to "www.mikekosor.com."

b. Defendant Kosor's Communications Were Aimed at Procuring an Electoral Action, Result, or Outcome.

"Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" also expressly includes "[c]ommunication that is aimed at procuring any . . . electoral action, result or outcome[.]" NRS 41.637(1).

The Nevada Supreme Court has repeatedly acknowledged that application of Nevada's anti-SLAPP statute is not limited to communication addressed to a government agency, but includes speech 'aimed at procuring <u>any</u> governmental <u>or election action</u>.'" *See Adelson v. Harris*, 133 Nev. Adv. Op. 67, 402 P.3d 665, 666, 670 (Nev. 2017) (*citing Delucchi v. Songer*, 133 Nev.----, 396 P.3d 826, 830 (2017). It is well established that communication aimed at procuring non-governmental election results or outcomes, such as those for union leadership qualify for protection under NRS 41.660. *Cf. Macias v. Hartwell*, 64 Cal. Rptr. 2d 222, 224 (1997) (holding that California's anti-SLAPP statutes "applies to suits involving statements made during a political campaign" and specifically finding that "campaign statements made in a union election" fit within the California anti-SLAPP statute and fell squarely within constitutional protections of the right of free speech).

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There can be no dispute that Defendant's November 16 and November 17 statements via campaign websites and campaign pamphlets were communications aimed at procuring an "electoral action, result or outcome." Defendant sought a seat on the SHCA board in furtherance of his aim to correct multiple matters of public concern. Accordingly, such communications are protected under the statute, and Defendant Kosor is entitled to dismissal of the claims based upon such statements.

2. Even if His Statements Were Not Truthful (which they were), Defendant Kosor Made Such Statements in Good Faith with No Actual Knowledge of Any Falsity. Accordingly, Defendant Is Entitled to Protection under NRS 41.660.

Nevada anti-SLAPP law protects good faith communications that are truthful or made without knowledge of their falsehood. NRS 41.637. Here, Defendant's communications were layman's opinion and were believed to have been truthful. Nevertheless, to the extent any such statements were false, they were made without knowledge of their falsity.

Not until January 8, 2018, months after the Plaintiffs filed their Complaint, did Defendant received correspondence from the Nevada Department of Business and Industry Real Estate Division Common-Interest Communities and Condominium Hotels Program and an accompanying memorandum from the Office of the Attorney General, explaining the existence of a statute of limitations and its potential effect on the validity of the 2005 amendment to the CC&Rs for Southern Highlands. Said correspondence explained that a statute of limitations had lapsed, making the 2005 amendment "legally sufficient and binding." Moreover, said correspondence was made in regards to a complaint filed earlier by Defendant Kosor, under the belief that the 2005 amendment (to increase the number of units in the planned community beyond the number stated in the original declaration) was invalid as a matter of law pursuant to NRS 116.2122.

The significance of this confusing issue in relation to the Defendant's statements is that, if the 2005 amendment to the Southern Highlands CC&Rs was invalid (as Defendant Kosor reasonably believed), then in October 2014, under the CC&Rs, Plaintiff Olympia was obligated to transfer its remaining control of the SHCA to the homeowners. Virtually every single one of Defendant's statements focused on this issue.

Defendant correctly asserted that the homeowners of Southern Highlands were not given the opportunity to vote on whether the SCHA should acquire any title and accompanying maintenance

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obligation in any of the "public parks" located within Southern Highlands. To date, Defendant Kosor, a layman, does not possess actual knowledge as to whether the SCHA Board's acquisition of such titles and maintenance obligations were lawfully accomplished. Rather, he has relied upon his understanding of certain statutes (e.g., NRS 116.087 and NRS 116.3112), which indicated to him that the transfer is not enforceable and void. This perspective is plainly evident to a preponderance of the evidence. Specifically, Defendant Kosor sent a 5-page letter to the SHCA Board of Directors on September 18, 2017 detailing his beliefs and encouraging them to take specific actions. After the Board did not undertake these actions, Defendant Kosor ran for election to the Board, in an effort to correct the perceived errors.

Finally, Defendant's statements regarding the decade delayed sports park are accurate, as evidenced by the investigative journalism of the Review Journal. *See also* Michael Scott Davidson, "Clark County still waiting for sports park at Southern Highlands," Las Vegas Review-Journal (Sept. 2, 2017), *available at* https://www.reviewjournal.com/news/politics-and-government/clark-county/clark-county-still-waiting-for-sports-park-at-southern-highlands/.

Furthermore, Plaintiffs cannot demonstrate by clear and convincing evidence that Defendant's communications were made with knowledge of their falsehood. Nor can Plaintiff's demonstrate that such statements were, in fact, false. Accordingly, Defendant Kosor is entitled to relief, whether in whole or in part, under NRS 41.660.

Based on the foregoing facts, arguments and authorities, it is apparent that denial of Defendant's Special Motion was manifestly unjust. If the denial were upheld, it would allow a large corporation to use the judicial process to punish, intimidate, and stop Defendant Kosor (and others supportive of the same public causes) from offering opinions against self-serving deals that are potentially harmful to the community. Thus, the instant Motion for Reconsideration is appropriate and warranted. Because manifest injustice will result if the prior decision of the Court is not vacated or otherwise amended, the Defendant's Motion for Reconsideration should be granted.

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III. CONCLUSION

Based on the foregoing arguments, evidence and authorities, Defendant Kosor respectfully requests the Court grant his Motion for Reconsideration and vacate its Order denying his Motion to Dismiss Pursuant to NRS 41.660.

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/s/ William H. Pruitt

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of April, 2018, I served the foregoing **DEFENDANT'S MOTION FOR RECONSIDERATION OF COURT'S MARCH 20, 2018 ORDER** as follows:

☐ US MAIL: by placing the document(s) listed above in a sealed envelope, postage prepaid, in the United States Mail at Las Vegas, Nevada, addressed to the following:

☐ BY FAX: by transmitting the document(s) listed above via facsimile transmission to the fax number(s) set forth below.

☐ BY HAND-DELIVERY: by hand-delivering the document(s) listed above to the address(es) set forth below.

☐ BY EMAIL: by emailing the document(s) listed above to the email address(es) set forth below.

☒ BY ELECTRONIC SERVICE: by electronically serving the document(s) listed above with the Eighth Judicial District Court's WizNet system upon the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC a Nevada limited liability company; GARRY V. GOETT, a Nevada Resident, Plaintiff, vs. MICHAEL KOSOR, JR., a Nevada resident; DOES I through X, inclusive, Defendants.	Case No: A-17-765257-C Dept. No: XII **ERRATA TO DEFENDANT'S MOTION FOR RECONSIDERATION OF COURT'S MARCH 20, 2018 ORDER**

MEMORANDUM OF POINTS AND AUTHORITIES

On April 23, 2018, Defendant filed his *Motion for Reconsideration of Court's March 20, 2018 Order*. Subsection "ii" of Defendant's Motion included a sentence that read as follows:

> Said deal **altered the Southern Highlands CC&Rs, causing the developer to maintain control (a majority of the seats) on the SHCA board and the SCHA to take on maintenance obligations for public parks, which were originally planned as a future transfer to Clark County for maintenance obligations under the Southern Highland Developer Agreement.**

See Defendant's Motion at 9:12-15 (emphasis added only for the purpose of showing the requested change from Defendant through this Errata). Defendant respectfully requests the foregoing sentence be stricken from the record, and replaced with the following sentence:

> Said deal **benefited the developer by furthering efforts to shift costly maintenance obligations onto the SHCA and relieving the developer of substantial infrastructure obligations. More specifically, the self-serving deal resulted in the SCHA taking on maintenance obligations for public parks, to the financial detriment of Southern Highlands homeowners.**

This correction is necessary because, as originally written, this language suggests that the Southern Highlands Developer Agreement originally planned the transfer of the maintenance obligations for public parks to Clark County, when in fact, it provided two options—of which land transfers to Clark County was only one available option.

Subsection "iii" of Defendant's Motion included an evidentiary citation that read as follows:

> *see also* Statements by Commissioner Brager **... , at 2:14:07-dated Feb 8, 2017 Agenda Item #50, at 2:14:18, 3:34:34. See as excerpts attached as Exhibits A.**

See Defendant's Motion at 11:13-18 (emphasis added only for the purpose of showing the requested change from Defendant through this Errata). Defendant respectfully requests the foregoing citation be stricken from the record, and replaced with the following fuller citation:

> *see also* **Statements by Commissioner Brager on Agenda Item #50 at 2:14:07-2:14:55, 2:31:14- 2:31:33 (Feb. 8, 2017) ("We have had many conversations with the homeowners and we have had neighborhood meetings . . . and it has been a very big challenge . . . and I agree—we have looked at this before and had this up before . . . to determining [sic] if it is in compliance. . . This has been really—answering tons of questions, going to meetings, bleeding blood with staff, to figure out, everything that we can and/or should have done."); Statements by Commissioner Brager on Agenda Item #51 (whether an extension of time should be granted for building of the Southern Highlands Sports Park) at 2:48:18 (Feb. 8, 2017) ("I will say I will agree that Mr. Kosor has more than done his homework and I've had staff reach out to him...because he brought some valid points that needed to be addressed, that needed to be looked at...I believe that there is 60% review in comments right now on that park, which still needs to get to 100...")** ***available at*** **http://clark.granicus.com/MediaPlayer.php?view_id=17&clip_id=5166.**

This correction is necessary because, as originally written, this citation omitted relevant language and also failed to provide the hyperlink through which the recordings of the statements are publically accessible. Defendant is not currently in possession of a transcript or recording of the subject proceeding.

Subsection "v" of Defendant's Motion included three sentences for which Defendant requests changes. The first read as follows:

> The Defendant's statement referred to the power retained by Plaintiff Olympia to unilaterally appoint a majority of the SHCA board seats (three out of the five), **following the 2005 amendment to the Southern Highlands CC&Rs, and despite sufficient sales of units by 2014 to require a transfer of declarant control to the homeowners.**

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See Defendant's Motion at 13:17-20 (emphasis added only for the purpose of showing the requested change from Defendant through this Errata). Defendant respectfully requests the foregoing sentence be stricken from the record, and replaced with the following sentence:

> The Defendant's statement referred to the power retained by Plaintiff Olympia to unilaterally appoint a majority of the SHCA board seats (three out of the five, **all of which are Olympia employees) and to use Olympia's wholly owned management company (Olympia Management). Accordingly, Defendant believes that Olympia should have turned over board control as early as 2014, regardless of the 2015 legislation, as it retroactively impacted the Southern Highlands CC&Rs.**

This correction is necessary because, as originally written, this language omitted the employment of the Plaintiff appointed SHCA board members as well as reference to the power of the Plaintiff to force the SHCA to use Plaintiff's own management company. Also, this correction provides information about the timeline of the enactment of certain legislation that Defendant's statements followed.

The second read as follows:

> **Not only do the decisions of this board affect approximately eight thousand homeowners and their families, but they also affect users of public parks and forums, governed by or located within the Southern Highlands since the transfer of their titles, rights to control, and maintenance obligations.**

See Defendant's Motion at 13:25-28 (emphasis added only for the purpose of showing the requested change from Defendant through this Errata). Defendant respectfully requests the foregoing sentence be stricken from the record, and replaced with the following sentence:

> **In fact, because it involves the process for selecting an HOA board, it could potentially impact all existing Nevada HOA homeowners that have yet to achieve declarant control change and every future Nevada HOA homeowner.**

This correction is necessary because, as originally written, this language does not address the full scale of public interest in the subject matter—extending beyond merely the Southern Highlands homeowners and users of public parks and forums in Southern Highlands.

The third read as follows:

> **This statement concerned a matter beyond a mere curiosity—the shifting of the maintenance obligation to SHCA for "public parks" in Southern Highlands community, in direct contrast to the original plans.**

See Defendant's Motion at 14:16-18 (emphasis added only for the purpose of showing the requested change from Defendant through this Errata). Defendant respectfully requests the foregoing sentence simply be stricken from the record because as originally written, this

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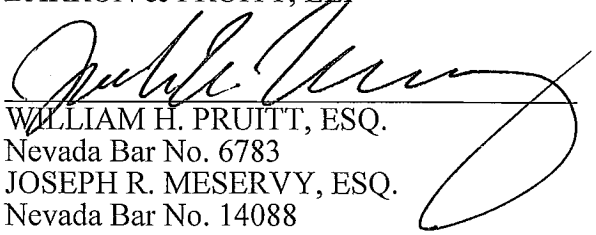
language suggests that the Southern Highlands Developer Agreement originally planned the transfer of the maintenance obligations for public parks to Clark County, when in fact, it provided two options—of which land transfers to Clark County was only one available option.

Based upon the foregoing, Defendant respectfully requests the foregoing (Defendant's Motion at 9:12-15; 11:13-18; 13:17-20, 25-28; 14:16-18) be stricken and replaced with the language set forth herein.

DATED this 25th day of April, 2018.

BARRON & PRUITT, LLP



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of April, 2018, I served the foregoing **ERRATA TO DEFENDANT'S MOTION FOR RECONSIDERATION OF COURT'S MARCH 20, 2018 ORDER** as follows:

☐ US MAIL: by placing the document(s) listed above in a sealed envelope, postage prepaid, in the United States Mail at Las Vegas, Nevada, addressed to the following:

☐ BY FAX: by transmitting the document(s) listed above via facsimile transmission to the fax number(s) set forth below.

☐ BY HAND-DELIVERY: by hand-delivering the document(s) listed above to the address(es) set forth below.

☐ BY EMAIL: by emailing the document(s) listed above to the email address(es) set forth below.

☒ BY ELECTRONIC SERVICE: by electronically serving the document(s) listed above with the Eighth Judicial District Court's WizNet system upon the following:

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/s/ MaryAnn Dillard
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Attorneys for Defendant
Michael Kosor, Jr.

DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC a Nevada limited liability company; GARRY V. GOETT, a Nevada Resident,

Plaintiff,

vs.

MICHAEL KOSOR, JR., a Nevada resident; DOES I through X, inclusive,

Defendants.

Case No: A-17-765257-C

Dept. No: 12

EXHIBITS TO DEFENDANT'S MOTION FOR RECONSIDERATION OF COURT'S MARCH 20, 2018 ORDER

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Las Vegas, Nevada 89169
Attorney for Plaintiffs

/s/ MaryAnn Dillard
An Employee of BARRON & PRUITT, LLP

EXHIBIT A

EXHIBIT A

EXHIBIT A

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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada limited liability company; GARRY V. GOETT, a Nevada resident Plaintiffs, vs. MICHAEL KOSOR, JR., a Nevada resident; and DOES I through X, inclusive Defendants.	Case No.: A-17-765257-C Dept. No.: XII **ORDER DENYING DEFENDANT MICHAEL KOSOR'S MOTION TO DISMISS PURSUANT TO NRS 41.660** Hearing Date: March 5, 2018 Hearing Time: 9:30 a.m.

THIS MATTER having come before the Court on March 5, 2018, with J. Randall Jones, Esq. and Cara D. Brumfield, Esq. of Kemp, Jones & Coulthard, LLP appearing on behalf of Plaintiffs and Robert B. Smith, Esq. of Lauria, Tokunaga, Gates & Linn, LLP appearing on behalf of Defendant on Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660. The Court having reviewed and considered the Motion and the related opposition and reply; and having heard the arguments of counsel, with good cause appearing, enters the following Findings, Conclusions, and Order:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660 is DENIED because the Court finds that Defendant has failed to meet its burden to invoke NRS 41.660.

DATED: March 19, 2018.

Judge Michelle Leavitt

Submitted by:

KEMP, JONES & COULTHARD

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EXHIBIT B

EXHIBIT B

EXHIBIT B

Mike Kosor, Southern Highlands

SH community is not getting its long-promised Sports Park- WHY?

In 2005 SH residents were promised a 20-acer intense use Sports Park, to be available in 2008. It was to have a 4-plex baseball complex, lighted, concession, and shaded stands, 2 baseball practice fields, multiple lighted soccer fields, and more. Yet that has not and potentially will never happen- WHY? See RJ article https://www.reviewjournal.com/news/politics-and-government/clark-county/clark-county-still-waiting-for-sports-park-at-southern-highlands/ To obtain a lucrative agreement with the County the developer committed to constructing the above Sports Park using private money. Despite multiple failures by the developer to deliver on those commitments, the County would in the fall of 2015 inexplicably relieving the developer of its original commitment only to then approve spending $7M in public tax dollars for a similar complex in Mountain's Edge. - WHY? The County also coordinated with the developer to cost-shift, over $1M/year to maintain the limited public parks to our HOA, without owner approval.- WHY? The SH HOA Board, still (and inexplicably) controlled by the developer, has done nothing to protect the Sports Park first promised our community. – WHY? A small handful of concerned residents have been asking the County and Commissioners these questions and others for almost two years. Yet despite promises of transparency from the County we have received no good answers- often no answer at all. - WHY? If you can answer the questions above, let the community know. Otherwise, write/email/call our Commissioners and ask – WHY? Then join us at Wednesday's Clark County Commission meeting and lets all ask – WHY? If we do not stand up and demand accountability for what I believe are inexplicable actions, your County, the Commissioners, and your HOA Board have made it clear they will continue to ignore these questions while continuing to make SH home owners bear more than their fair share.

Clark County still waiting for sports park at Southern Highlands

Kickoff for the Southern Highlands United youth soccer fall season isn't until next Sunday, but coaches have spent two weeks competing — for space, not goals — in Inzalaco Park.

reviewjournal.com

5 Sep · Southern Highlands in General
Thank
Reply

Larry Mc, Southern Highlands·6 Sep
I, for one, think the original sports park plan should not only be adhered to, but major pressure should also be put on the Commissioners to reallocate to Southern Highlands a portion of the millions it has allocated to parks & improvements. You should know Southern Highlands is NOTICEABLY absent from the list of intended beneficiaries of those allocated millions and it is, in my opinion, an outrage! One vital question we, as a community, need to answer with finality is: Does Southern Highlands want public or private parks? I present this question because I have long suspected there are strong currents both for and against making our parks public. I think it would be best to have our community decide this question by a vote on a resolution to that effect presented at our next annual meeting. A public referendum will settle the question openly AND WITH FINALITY. What do you think, neighbors? Whether you are in favor of public or private parks, this is an opportunity for all of us to be heard and to decide AS A COMMUNITY the direction we want our governing board to take about our parks. Think about it, but more importantly, make it happen!
Thank

Teresa Larkin, Southern Highlands·6 Sep
Thanks Mike for all your efforts. This is a very important issue and I think the home owners should know what the advantages and dis-advantages of both options are including the costs to each homeowner. What I understand is we as homeowners aren't even getting a say in this matter, the City Commissioners and Developer are the ones deciding what we will get and what we as homeowners will have to pay for. Excellent article in the Review Journal, we should all read it
Thank
Mike Kosor, Southern Highlands·6 Sep
Teresa- Not only are we not getting a say, County Commissioners are turning a blind eye to the developer's violations of their development agreement- the one sighted as authority for the cost-shifting of park maintenance. The transfer failed to meet required criteria- essentially obtaining HOA acknowledgement/acceptance. I see no HOA advantage in paying the entire park maintenance costs- currently $1.3M/year almost 1/3 of total HOA assessments. These are public parks, open to all citizens, having been constructed using state tax credits provided to the developer under an agreement the HOA is not a party. The County does a good job with maintenance (contrary to rumors). It should pay maintenance costs and carry the liability of the parks using tax dollars, as it does for most all other parks. Today, marked the ninth consecutive month I and a few concerned owners appealed to Commissioners at the bi-weekly Zoning Meeting to act on the cost shifting and to restore the 6x ball fields, covered stands, and much more removed from our 10 years over-due Sports Park. But they continue to refuse, providing little transparency, while recently authorizing $7M in public money for 4x baseballs fields in Mountains Edge. WOW- talking about sticking it to SH. Know our HOA Board has never engaged nor even worked to inform owners in a joint engagement of Commissioners to protect us from the above. Didn't we elect board members to represent our interest? Oh- sorry, most are not elected but appointed by the developer. In that case should we believe the developer's control

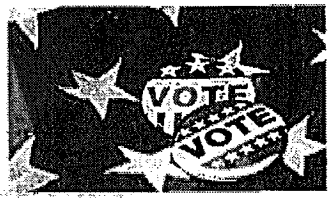
of our HOA Board is at play? Or maybe, it is the massive and inexplicable sweet heart deal the Commissioners gave our developer related to the yet to be delivered Sports Park, that is at play?
Thank

Stephanie Hodges, Southern Highlands·7 Sep
Perhaps we should engage with a news channel to look into this? Seems like back door deals and special treatment is going on at our expense.
Thank
Rahul Harkawat, Southern Highlands·7 Sep
Thanks Mike for your yeoman service and doggedness. Without your efforts none of this detail would have bubbled up to the knowledge of the residents. I wish more of the residents review the details to understand how the association fees is being used and respond accordingly

EXHIBIT C

EXHIBIT C

EXHIBIT C



Mike Kosor

*A UNIQUELY QUALIFIED CANDIDATE **
for
Southern Highlands Community Association
(SHCA) Board of Directors

These are the issues I will fight to improve

Unnecessarily high homeowners HOA fees

Local anti-crime efforts

Inadequate community parks, sports fields, and who pays the bill

Obtaining an HOA board selected by homeowners- not the Developer

A Letter to My Neighbors

* Made possible by the many homeowners who are supporting this effort!

Experience Does Make a Difference

- [illegible] and committed fighter for [illegible]
- [illegible] CEO at [illegible]
- A proud home owner and resident of Southern Highlands for [illegible] years
- Proven Director and Treasurer on the Christopher Communities HOA Board since 2015 successfully reducing HOA dues while maintaining a premier community
- Waging an aggressive three-year campaign to end the Developers control of our Board
- Personally challenged the County Commission on following their persistent failure to [illegible] their responsibilities impacting our community, in particular its failure to

take appropriate actions on issues related to our community's parks

Learn More About me

My Pledge To You

My pledge to Southern Highland homeowners is to work hard to preserve our quality community. I will demand the SHCA Board be fully transparent, maintain strict control on costs, while truly listening to and always placing owner's interests first. Scheduling most meetings to a time easier for owners to attend would be a necessary first effort.

Be assured I have no alternative objectives in serving on the Board. I am not looking for community exposure to further a business and/or career ambitions. I am happily retired from any and all business pursuits.

If democracy is to work in Southern Highlands it requires your participation in our November Board election. I hope my experience and priorities for our community going forward is deserving of your confidence and vote. But regardless of your choice of candidates please cast a vote for one who is willing and capable to fight for homeowners.

Learn More About the Issues

Election vote count starts?

On the [illegible] 11/21/17 that [illegible] candidate will [illegible] an update and new [illegible]."

How or even if the community is to be informed was not addressed.

The election of election ballots was originally [illegible] for NLT 11/15/17 with a vote count on November 30th. When I hear more, I will update this site and the count down clock.

CONTACT ME

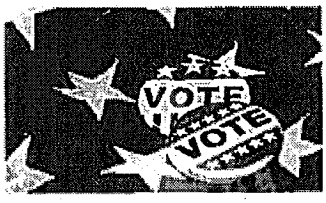
Name *

Email *

Subject

Message

[illegible]



MEET Mike

Mike Kosor was born into a military family moving across much of America as a child. He inherited a strong sense of service from his father, a retired Air Force Chief Master Sergeant.

After attending college on an AFROTC scholarship, Mike would spend twenty-four years in the United States Air Force. There he was a combat tested fighter pilot in the first Gulf War, commanded an F-15 fighter squadron, attended the USAF War College, appointed to serve as a senior military advisor in the Middle East, and finished his military career in Washington DC directing the efforts of the Air Forces' largest foreign military sales regional.

Retiring as a Colonel, Mike would have a second successful career in hospital administration, where he would eventually serve as a CEO for a major for-profit hospital operator. Retiring a second time, in large part to assist with the care of this parents, Mike moved his family and parents to Las Vegas and eventually Southern Highlands in 2011.

Mike has an undergraduate degree in Accounting and a Master's Degree in Public Administration. He holds a commercial airline transport pilot certificate and held a Realtor license in two different states.

Mike will fight for owner interests, not those of the Developer or other typically influential parties. He has spent the past three years impacting local issues such as developer control of HOAs, Clark County's unfilled

community park commitments, and the general failure of our Association Board to advance the interest of Southern Highlands homeowners.

Mike now wants to use his time, experience, and energy to strengthen our HOA's financial position, engage on issues adversely impacting Southern Highlands, and upholding our community's reputation as a premier place to live, much as he has done as a board member of the Christopher Communities HOA since 2015.

Mike has proven success leading multiple large organizations. He can successfully lead our community.

CONTACT ME

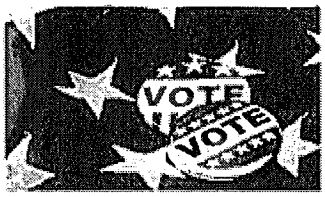
Name *

Email *

Subject

Message

Send



Developer Control of Our HOA

The Developer has done a great job building an excellent community. But the time to allow the community to be self-governed has long been upon us. Read my January 2017 letter to the SCHA Board concerning its continued refusal to address a law (NRS 116.31032) to effect a control change ending the Developer's ability to appoint three of the five directors and holding owner elections for all Board directors.

Security for Homeowners and Our Families

A community needs to provide a safe environment for all its residents While I currently believe Southern Highlands is one of the safest places to live in Southern Nevada, the area is growing rapidly and our crime is increasing. This needs to be an important focus of our Association going forward.

Assessments and Expense Control

We all understand a quality product generally requires money to maintain. This applies to HOAs. My issue with SHCA is it spends too much of our money, often on items that have not improved quality. I believe we can ***significantly lower expenses, thus assessments,*** *while maintaining quality. Here is what I will push for on our behalf:*

- *Renegotiate our very expensive contract with Olympia Management, an affiliate of the Developer. We currently pay as much as double what I believe we should for quality management services*
- *Immediately work to address the more than $1.2M in annual public park maintenance we as owners pay. These unnecessary payments account for almost half of the HOA's total landscape, maintenance and utilities expenses and comprise 25% of your total assessment.These are after all "public parks" that should/could otherwise be paid by the County*
- *End the wasteful legal costs ($1.4M in 2016, many time more than typically incurred by HOAs of similar size). Spending owner money blindly chasing delinquent payers must end*
- *Stop the huge deficit spending which occurred in 2016*

The SHCA Board's recurring failure to engage on behalf of homeowners

Southern Highlands is effectively a small city of over twenty thousand plus voters. Yet our SHCA Board has repeatedly failed to oppose and in many cases failed to even inform owners of damaging efforts by the County and State - for example:

- *a massive "sweetheart" deal for our Developer that significantly changed and reduced our long overdue "Sports Park"*
- *Clark County's "cost-shifting" of park maintenance expenses to our HOA*
- *County and Developer coordinated agreement that would permanently and wrongly obligate the HOA to maintain the "public" parks in our community (my letter to the SHCA*

BOD)

- *recurring changes to the Southern Highlands Development Agreement that had many significant negative impacts on our community and the homeowners*
- *our Management Company President actively lobbied State representatives to pass a law (AB 192-2015) allowing the Developer to extend its control of our community (watch her testimony - 2:07 into the video) but said nothing to owners*

Our community must engage on the political front as others are doing. If elected I will keep owners informed and insist our Association engages to advance and defend owner interests on both the County and State level.

Sports Park – the Great Failed Promise

The promise of a Sports Park has long attracted families to the Southern Highlands community. However, the County and Developer have repeatedly failed to deliver on their promises for the Sports Park, first set out in 2005.

Our children have long needed and waited for baseball and soccer fields. The current plan for our Sports Park is a far cry from that originally promised.

The Sports Park is now ten years late and if completed, as now scheduled for May 2018, it will be only a fraction of what was promised. In September 2015, the infrastructure of the Sports Park was drastically reduced The change relieved the Developer of millions of dollars of private funding commitments. In return, the County and SH citizens would get absolute nothing.

Unless we intervene as a community the Sports Park we were originally promised will never happen. Our current SHCA Board, controlled by the Developer, is not engaged. In contrast, the Mountains Edge community, with a Homeowner controlled Board, is and owners are benefiting. Mountain's Edge is getting $23M in public funded parks maintained with public tax dollars.

Read what the Review Journal had to say about the Sports Park.

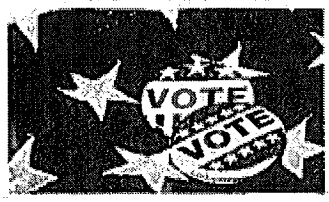
CONTACT ME

Name *

Email *

Subject

Message



Q- Why are you doing this- running for a non-paying position on an HOA ?

A- Several year ago, as a new Southern Highlands owner, I attended a number of Association Board meetings. I was very disappointed for a number of reasons. To start, meeting times (typically 10 am) made attendance by most owners impossible. Strangely, the sessions appeared controlled by Angela Rock, the President of Olympia Management, who does not hold a position on the Board. I saw little real discussion on issues. Actions taken on significant issues appeared "pre-agreed", as if other private meetings/workshops were held. Transparency was clearly lacking.

I began looking into a number of issues. The Board repeatedly refused to release, among other items, draft annual budgets despite being on the agenda for approval. I also felt the Board had side-stepped my formal complaint related to Developer control change - control I feel should have been terminated many years ago (now under investigation by the Nevada Real Estate Division).

It was clear any improvement would have to start from the inside. Encouraged by my neighbors and other SH owners that love our community, I made the commitment to run for our HOA Board as your owner representative.

Q- Why are our assessments so much higher than Mountain's Edge?

A- The Master Plan fee at Mountain's Edge (ME) is $31/mo while Southern Highlands residents pay $67- more than double. Not having ME's financials (I am not a resident) and with the limited information SH provides, the exact answer is hard to determine. It is however a very good question for our BODs to answer. It is certainly one I will immediately look into if elected with full access to association financials.

Based on what I have been able to researched, a number of areas are at the root of our high fees. First, the management contract with Olympia is very expensive. Second, we pay a significant amount (20-25%) of our assessment to maintain what I believe should be publicly maintained parks (see more on this below). Most all public parks in ME are maintained by the County using public dollars- as they should be.

Two other major expenses need to be evaluated- (1) our landscape contract and ancillary expenses with Par 3 and (2) the huge expenditures for legal costs over the past several years. I believe significant cost savings are available in both areas while maintaining quality standards.

Another important area of concern is the funding level of our Reserves. If I recall correctly, our Reserves were last reported at 67% of fully funded. This under funding will eventually come due. I suspect our BOD is under funding Reserves to pay for the above noted excess. Under funding Reserves, the money used to replace expensive infrastructure like roads, is dangerous.

Q- Have you ever held a political office

A- No. I am an "operator" by trade (now retired). During my professional career I had success affecting change and moving large organizations forward. Frankly, I am rightly accused of too often "telling it as it is". Historically this has not been seen as a beneficial attribute for a politician. But I do listen and believe owners will also, provided the reciprocal is applied.

I feel someone needs to fight for homeowners in SH and I am willing, with the help of owners, to use my skills and experience to make a positive difference.

In full disclosure, I have served for the past three years as a director on the Christopher Community Association Board, but that, as with the SHCA Board, is not a "political" office.

Q- What do you mean by Declarant Control? Why should it be an issue?

A- Most homeowners are completely unaware of the concept of Declarant Control (i.e. Developer Control). This is not surprising. Nevada (as with most state) does not require pre-sale disclosure of the fact that a Declarant (Developer) may still control a homeowners association- control that can be indefinite. They just dump the large CC&R package on your closing table (or worse yet give you an electronic version) and it is up to you to find and understand the extensive terms you agreed to, to include the potential issues.

Developer control (called Declarant Control in the statutes) has a number of implications. The largest affecting SH today, is the Developer has the right to appoint, three of the five directors (the majority) of our association board. The three appointees (of which only two are owners in SH) are also employees of the Developer.

Until recently and per our CC&Rs, Declarant Control terminated when 75% of the maximum units authorized in the CC&Rs were no longer under Declarant Control. Nevada law changed in 2015 (arguably a piece of special interest legislation for our Developer and lobbied for by our senior executives of our Management Company) moved the control threshold to 90%. Inexplicably and I argue wrongly, the change is being interpreted as retroactive, affecting existing CC&Rs. See my letter to the Board for more details.

I filed a formal complaint with Nevada Real Estate Division (NRED) against our Board. I believe control change should have occurred years ago and our BOD is violating the law in not having effected the change in control. Our BOD disputes my claim but has not offered a clear explanation to me or owners. NRED is "still investigating"- something they started two years ago. Politics?

Much legislative reform and regulatory oversight is needed around CC&R construction, owner complaint processing, and the general lack of regulatory oversight of CC&R content, to include Declarant Control provisions. For more see Our Issues.

Q- What makes Developer control an issue?

A-The Developer, via his appointed majority control of our Board, effectively have the final say on all policy decisions, to include how much and where our assessment money is spent; not owners elected by owners. With the management company, Olympia Management, also controlled by the Developer, the potential for conflicts of interest, loss of board autonomy, and failed fiduciary oversight are clear. I believe this has already cost our community millions of dollars.

I spent 24 years as an Air Force officer defending the rights of all Americans to choose those that represent us. I lived in foreign countries where citizens did not have this right and saw first hand the negative implications. I do not like the idea the community I now look to spend my retirement has denied me this central and important right.

The collective owners in SH have a much larger investment in the community than does the Developer. We deserve a fair share vote. The Developer had twenty plus years to execute its business plan in SH. It is time our governing body is elected by owners to represent only owners.

Q- Rumor has it you are trying to damage the Developer?

A- Nothing is further from the truth. I respect what the Developer has done in Southern Highlands. After all its vision, money, and hard work made Southern Highlands a great place to live. Its actions are constituent with those of a developer. Besides, I look to uphold the reputation of the community which is related to that of the Developer.

I invested in my home and retirement here for the above reasons and more. I simply expect the Developer to release control (and its ability to appoint 3 of 5 board members and more) transferring owners the control as it originally committed. Owner's collective investments in our community significantly exceeds that of the Developer's and control change is what it promised when we purchased.

Q- Rumor has it SHCA is using owner money to pays for a lobbyist. True?

A- Yes, it does and based on my inquiries, it has since 2010-costing owners over $400K. I am told Lewis & Roca, one of many law firms representing SHCA in foreclosure related litigation, is also engaged as our lobbyist.

I do not feel the money was and is well spent. I would work to end these payments. First, it is not clear to me how the payments are being authorized in the first place. I have never heard the BOD approve any contract for said services, the annual payment authorizations, nor can I find anything in Board meeting minutes- one of many transparency issues I have with our BOD. I have attend all BOD meetings for the past three years and have never heard from our lobbyist nor what instructions/issues he/she is tasked to lobby for/against. The subject of lobbyist and legislative issues important to SHCA has never, to my knowledge, ever been on the agenda.

I certainly do not understand why our BOD feels we need a lobbyist given it never communicates issues at the State or County level potentially affecting owners.

I found it disturbing to discover a member of the law firm engaged by the HOA, actually lobbied Nevada legislators in support of a bill (AB 192-2015) that eventually passed and changed the developer control threshold from 75% to 90%. This is certainly not something in the best interest of SH owners, yet we as owners never even learned of the bill or our lobbyist efforts to pass it.

Q- Some believe if our parks were to be maintained by the County, they will deteriorate. A concern? What would you propose if elected?

A- First, I strongly believe that whatever the community does with the parks it should be done only after a majority vote of owners (required per the law), not by our Developer controlled BOD. If owners are to accept obligations not identified in our CC&Rs we must do so only if the majority agrees. Our current situation, saddling owners with the park obligations, has never been put to a vote.

Concerned with park deteriorating under County control? Not really, for three reasons. First, I see no evidence the County is unable to maintain the parks properly. Most all parks are maintained by the County and the City of Henderson and are generally in very good condition. This idea appears to be a rumor spread by those with an agenda.

Second, the Association will always pay close attention to the conditions of parks in our community. We have a large political block as a community capable of insisting on quality maintenance. Park maintenance is after all a part of our property taxes. I doubt many owners are excited about paying twice for maintenance- once in our assessments, then again in taxes to maintain other parks in other County communities.

Third, I'd work to negotiate with the County (a concept I proposed a year ago and which was eventually adopted, albeit distorted by the parks sub-committee) on jointly controlling and contributing (far less than we do today) to the maintenance of our parks.

Q- Why do you say are we not getting the Sports Park promised?

A- Our community's Sports Park is scheduled to be completed in May 2018. It was first promised to open in 2008- ten years ago. It has been re-scheduled several times since 2008 with each subsequent promise failing to materialize. Naturally, I am disappointed our SCHA Board sat silently doing nothing over this period.

More importantly, the infrastructure contained in the current Sports Park is drastically less than first promised in 2005. We will not get a 4x baseball complex, lighted, covered stands, and concessions. Nor will we get the two practice baseball fields, a soccer fields, all the basketball courts, and two entrances- all previously promised. (see Our Issues page for more)

The County Commission has cheated our community, while our BOD turned a blind eye to all of the above.

Q- What is this "Agreement for Public Access" being discussed and what happened/did not happen to get us here?

A- The Southern Highland Developer Agreement (SHDA) requires public access easements from the Developer for all parks where Nevada's Recreational Construction Tax money (a one-time tax on each home paid when the building permit is pulled) is credited to the Developer by the County for park construction. County records indicate about $8.7M of tax dollars have been credited -- but no easements were provided.

Title to the parks in question was transferred from the Developer to the HOA in 2007/2008. Prior to doing so, both per the SHDA and our CC&Rs, the Developer is required to obtain an acknowledged from the HOA in writing affirming (1) it (SHCA) is obligated to perform any unfulfilled terms and conditions of the SHDA and (2) it (SHCA) accepts Owner's maintenance obligations for each park and paseo. This did not happen.

So today, with title held by the HOA, the Developer is unable to provide the public easement access and is requesting the HOA do so. I believe the agreement we are being asked to execute is a huge mistake and I have told our BOD this at the September 2017 meeting when it came up on the agenda. FYI- a similar agreement was floated by our Developer last year and the BOD rejected the agreement. This time, despite objections again this year by owners, our SHCA BOD conditionally approved the proposed agreement.

My objections to the Agreement are: .

1. Title to the parks was inappropriately transferred to the HOA. The Board never approved the initial transfer and more importantly, owners never voted to accept the obligations of maintaining the "public" parks in question. The transfer should be voided.
2. SHCA owners should not be required to pay twice for the maintains of public parks- we already pay property taxes for that purpose.
3. Our Board's approval to execute this Agreement was done without satisfying necessary owner acceptance provision in the statutes. A technical "loophole" allows it to do so. However, per NRS 116.3112 par 4. ".. the contract is not enforceable against the association until approved pursuant to subsections 1, 2 and 3" (a majority vote of the owners).
4. The deeds (somehow) transferred to the HOA hold terms & conditions I find completely unacceptable. (Read the deed for Goett Park yourself here.)

If we ignore the initial transfer I believe should be voided, technically our Board could execute the Agreement (under the weird provision in the law) but it is "unenforceable". Understandably, our BOD cannot obligate owners beyond the authority it has under our CC&RS to do so, without an owner majority approval vote.

As for how did this happen? Clearly there are a lot of moving parts here and big money. The County would have me believe its failure to obtain easements was an "error" on its part. I do not buy it. Something certainly happened, but it was not just an "error". If truly an "error", then we must assume the County failed to conduct required and very basic due diligence before approving the latest September 2015 SHDA. Second, this alleged "error" happen despite an audit of the SHDA by the County identifying a lack of easements in 2011. It was something the County took compliance action, so it was not just another unread report (watch the County Commission video and read report- agenda #31). Are we now to believe this was forgotten? Finally, the County is required to conduct a review of all development agreements every two years. Here again, the County would have me believe it missed the lack of easements during each review since 2011? So, if you buy all of the excuses, then yes, the above constitutes a mere staff "error". If not (my camp) them we must assume more is at play. I also ask, where was our BOD while all this was going on?

CONTACT ME

Name *

Email *

Subject

Message

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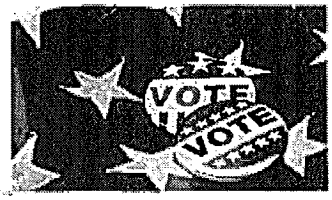

A Letter to My Neighbors

Dear Southern Highland Neighbor,

I would like to be your representative on the Southern Highlands Community Association (SHCA) Board. I ask for your vote in the association's upcoming annual election where one of only two independent/owner Board Directors will be selected (three directors are selected and employed by the developer).

I am a retired United States Air Force Colonel, combat tested fighter pilot, and former for-profit hospital CEO who made SH home six years ago. I have served as a director on many civic, non-profit, and for-profit boards, to include currently serving on the HOA Board of my sub-association. With a demonstrated ability to serve, proven integrity, large organization operational and financial experience, and years fighting the establishment for all SH owners, you can count on me to keep our community the premier place to live in Southern Nevada.

My objectives if elected are:
First and foremost, I will work to end the Developer's control of our HOA Board. Currently, three of our 5-person SHCA Board of Directors are appointed and employed by the Developer. With our management company, Olympia Management, owned by the Developer, the potential for conflicts of interest, loss of board autonomy, and failed fiduciary oversight are clear. As I note below, I believe this has cost our community millions of dollars. **All SHCA Board members should be owner elected and loyal only to the homeowners that elected them.**

Second, we can **significantly lower expenses**, get assessments under control, and do so without sacrificing quality. I have demonstrated this during my three years on the Board of the Christopher Communities HOA. We need to:

- immediately work with and if needed fight the County to remove the more than $1.2M in annual expenses (almost half of the HOA's total landscape, maintenance and utilities expenses and comprising 25% of your total assessment) paid by SHCA for "public parks" that should/could otherwise be paid by the County,
- competitively bid our very pricey contract with the Developer's management company, Olympia Management (another $1.4M/yr) and;
- refrain from wasteful legal costs ($1.4M in 2016, far more than that typically incurred by HOAs of similar size).

The SHCA Board must not be allowed to run huge deficits as it did in 2016. Owner assessments need to be spent to maintain our community not pay our Developer owned management company high fees, pay for Clark County public parks that should be publicly funded, and subsidize a plethora of lawyers.

Third, a community needs to be seen as a **secure place to live**. While I currently believe SH is one of the safest places to live in Southern Nevada, we are growing rapidly and crime is increasing. This needs to be a large focus of our Association going forward.

Fourth, our Board has repeatedly failed to **act in the best inserts of homeowners** with government agencies. This must change. Recently, our Board failed to oppose a massive change, approved by the Clark County Commission, affecting our long overdue "Sports Park". Despite being promised by the County and our Developer since 2005, the following was eliminated from the Park:

- A 4 plex lighted baseball complex with covered stands and concession
- Two practice baseball fields, one soccer field, two basketball courts, all lighted
- A second entrance with associated parking, plus more

What currently remains of the Sports Park is a far cry from that originally promised. These massive cuts saved the Developer millions of dollars. In return, our **community received absolutely nothing.** Adding to this inexplicable action, the County would at roughly the same time, approve twelve million dollars ($12M) in public money to build a four field baseball complex in Mountain's Edge.

This would not have happened had our Board, as did the Board of Mountain's Edge (where directors are all owner elected), been engaged in the defense of owner interests. Our Board turned a blind eye, not even telling owners of the pending changes proposed to the long awaited Sports Park. Was the Board's failure to act in opposition to the changes, a result of three Directors being employed by the Developer? As your board representative, not beholden to the Developer, I will work to reverse the above and ensure something like this never happens again.

If democracy is to work in Southern Highlands it requires your participation. The above demonstrates what happens when democracy and owner voices are restricted. This can be fixed but **you must vote.** Do not assume others will. I ask you to vote and vote for me.

Respectfully,

Mike Kosor

CONTACT ME

Name *

Email *

Subject

Message

Send

EXHIBIT D

EXHIBIT D

EXHIBIT D

Meet Mike

A uniquely qualified Candidate

- Retired 24 year USAF Colonel & combat tested fighter pilot
- Second career as a for-profit hospital CEO
- Made SH his retirement home six years ago- understands the good and bad
- Currently serving his third year on the Christopher Communities HOA Board
- Served as a director on many civic, non-profit, and for-profit boards
- Not looking for community exposure to advance a business interest
- Committed to listening to owners and providing the transparency now lacking

Count on Mike to keep our community the premier place to live in Southern Nevada

To learn more go to
www.mikekosor.com

JA 0343

Issues

- End developer control of our HOA
- Bring HOA fees down
- End HOA payments for "Public" parks
- Make security of homeowners and families a
- End SCHA's absence/blind eye when HOA's interests are threatened
- Address the failed commitments around our sports park

To learn more go to
www.mikekosor.com

Vote
Mike Kosor

Southern Highlands
HOA

The Homeowner's Candidate

www.mikekosor.com

Dear Southern Highlands Neighbor,

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First and foremost, I will work to end the Developer's control of our HOA Board. Currently, three of our 5-person SHCA Board of Directors are appointed and employed by the Developer. With Olympia Management owned by the Developer, the potential for conflicts of interest, loss of board autonomy, and failed fiduciary oversight are clear. As I note below, I believe this has cost our community millions of dollars. **All SHCA Board members should be owner elected** and loyal only to homeowners.

Second, **we can significantly lower expenses**, get assessments under control, and do so without sacrificing quality. I have demonstrated this during my three years on the Board of the Christopher Communities HOA. We need to:

- immediately work with and if needed fight the County to remove the more than $1.2M in annual expenses (almost half of the HOA's total landscape, maintenance and utilities expenses and comprising 25% of your total assessment) paid by SHCA for "public parks" that should/could otherwise be paid by the County,
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Third, a community needs to be seen as **a secure place to live**. While I currently believe SH is one of the safest place to live in Southern Nevada, we are growing rapidly and crime is increasing. This needs to be large focus of our Association going forward.

Fourth, our Board has repeatedly failed to **act in the best interest of homeowners** with government agencies, defaulting to the interests of the Developer. Recently, the Board failed to oppose a massive change, approved by the Clark County Commission, to our long overdue "Sports Park". Despite being promised by the County and Developer since 2005, the following was eliminated from the Park:

- A 4 plex lighted baseball complex with covered stands and concession.
- Two practice baseball fields, one soccer field, two basketball courts, all lighted.
- A second entrance with associated parking, plus more.

These massive cuts, saved the Developer millions of dollars. In return, our community received absolutely nothing. Adding to this inexplicable action, the County approved twelve million dollars ($12M) in public money to build a 4x baseball complex in Mountain's Edge.

This would not have happened had our Board, as did Mountain's Edge Board (where directors are all owner elected), defended owner interests. Our Board turned a blind eye, not even telling owners of the pending change while the Developer worked changes to its agreement. Was the Board's failure to act in opposition to the change and the interests of the Developer a result of three Directors being employed by the Developer? As your board representative, not beholden to the Developer, I will work to reverse the above and ensure something like this never happens again.

The SHCA Board must not be allowed to run huge deficits as it did in 2016. Owner assessments need to be spent to maintain our community not pay our Developer owned management company high fees, pay for Clark County public parks that should be publicly funded, and subsidize a plethora of lawyers.

If democracy is to work in Southern Highlands it requires your participation. The above demonstrates what happens when democracy and owner voices are restricted. This can be fixed but you must vote. Do not assume others will. I ask you to vote and vote for me.

Respectfully,

Mike Kosor

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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada limited liability company; GARRY V. GOETT, a Nevada resident Plaintiff, vs. MICHAEL KOSOR, JR., a Nevada resident; and DOES I through X, inclusive Defendants.	Case No.: A-17-765257-C Dept. No.: XII **PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR RECONSIDERATION OF COURT'S MARCH 20, 2018 ORDER**

Plaintiffs, by and through their attorneys of record, hereby submit their Opposition to Defendant's Motion for Reconsideration of Court's March 20, 2018 Order.

This Opposition is made and based upon the following Points and Authorities, any exhibits attached hereto, the pleadings and papers on file herein, the oral argument of counsel, and such other

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or further information as this Honorable Court may request.

Dated this 10th day of May 2018.

KEMP, JONES & COULTHARD, LLP

/s/ Nathanael Rulis

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

Introduction

In what has become a theme, Mr. Kosor failed to obtain a desired result, so he tenaciously pursues the same objective time and time again, pointing fingers at everyone but himself for his shortcomings. After extensive briefing and a lengthy hearing on the subject, this Court denied Mr. Kosor's Motion to Dismiss Pursuant to NRS 41.660, specifically finding that he had failed to meet his burden to invoke the protections of Nevada's anti-SLAPP statute. Kosor thereafter retained new counsel and timely filed an appeal of this Court's Order with the Nevada Supreme Court, divesting this Court of jurisdiction over the case. The Nevada Supreme Court has already referred the matter to its settlement program, yet Kosor simultaneously petitions this Court for yet another opportunity to air his grievances against Plaintiffs.

Kosor's Motion for Reconsideration accuses Plaintiffs and even this Court of committing errors which caused a "manifestly unjust" result to Kosor, again attempting to paint himself as a victim when it is Mr. Kosor's words and conduct which have harmed Plaintiffs. Kosor's Motion for Reconsideration adds nothing new to his prior argument, nor does he provide a sufficient basis for this Court to grant his motion and reverse its prior ruling. This Court previously considered and rejected each of Kosor's arguments and should again exercise its discretion to deny Kosor's Motion for Reconsideration so that the matter may proceed before the Nevada Supreme Court.

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II.

Statement of Relevant Facts and Procedural History

After enduring several years of Mr. Kosor's criticisms, Plaintiffs filed a Complaint for defamation and defamation per se against Kosor on November 29, 2017. *See* Complaint, filed on November 29, 2017. Plaintiffs' Complaint outlined several of Mr. Kosor's critical statements regarding either Plaintiff Olympia Companies, LLC ("Olympia"), Plaintiff Garry V. Goett ("Goett"), or both, which Plaintiffs contend constitute defamation or defamation per se. Specifically, Plaintiffs complained of the following statements:

- At the December 17, 2015, Christopher Communities Association ("CCA") board meeting, Kosor "made comments that Olympia and Mr. Goett spoke with Clark County Commissioners in a "dark room" and coerced them to act or vote in a certain manner." Compl. at ¶ 6.
- At the December 17, 2015, Christopher Communities Association ("CCA") board meeting, Kosor "made comments that . . . Olympia is "lining its pockets" to the detriment of the Southern Highlands homeowners." *Id.*
- "On or about September 11, 2017, Mr. Kosor posted a statement on the Nextdoor.com website accusing Olympia of obtaining a "lucrative agreement" with Clark County by cost-shifting expenses for the maintenance of public parks to the Southern Highlands owners." *Id.* at ¶ 9.
- "On or about November 16, 2017, Mr. Kosor launched a website under his own name, accusing Olympia and its employees of, among other things, acting like a foreign government that deprives people of essential rights." *Id.* at ¶ 10.
- In other parts of his website, Mr. Kosor continues to reference "massive sweetheart deals", statutory violations, breaches of fiduciary duties, and improper cost shifting of "millions of dollars". *Id.*.
- "On or about November 17, 2017, homeowners throughout the Southern Highlands community received a written pamphlet from Kosor" which included a "statement that Olympia/Developer breached its fiduciary duties to the Southern Highlands community." *Id.* at ¶ 11.
- Mr. Kosor's pamphlet also claims that the "Developer's actions have "already cost the homeowners millions." *Id.*

- Both Mr. Kosor's pamphlet and his website "grossly overstate[] the Southern Highlands Community Association's 2016 legal expenses." *Id.*

On January 29, 2018, Kosor filed a special motion to dismiss, seeking to dismiss Plaintiffs' Complaint pursuant to Nevada's anti-SLAPP statute. *See* Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660, filed on January 29, 2018 ("Motion to Dismiss"). Plaintiffs filed their opposition on February 16, 2018, *see* Plaintiffs' Opposition to Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660 filed on February 16, 2018 ("Opposition"), and Kosor filed his reply on February 26, 2018. *See* Defendant's Reply to Plaintiff's Opposition to Defendant's Motion to Dismiss Pursuant to NRS 41.600 field on February 26, 2018 ("Reply"). After a hearing on Kosor's Motion to Dismiss on March 5, 2018, this Court entered an order denying Kosor's Motion to Dismiss, finding that "Defendant has failed to meet its burden to invoke NRS 41.660." *See* Notice of Entry of Order Denying Kosor's Motion to Dismiss Pursuant to NRS 41.660 filed on March 21, 2018 ("Order"). Importantly, at the hearing on Kosor's Motion to Dismiss, this Court questioned whether Mr. Kosor could turn his concerns into issues of public interest by merely taking those issues in front of the Real Estate Board. *See* Hearing Transcript, attached hereto as Exhibit 1, at 42:10–12.

Thereafter, Kosor retained new counsel and, on April 6, 2018, Kosor filed a Substitution of Attorneys. *See* Substitution of Attorneys filed on April 6, 2018. As a courtesy to new counsel, counsel for Plaintiffs signed a Stipulation permitting an extension of time to seek reconsideration of this Court's prior ruling. *See* Stipulation and Order to Enlarge the Time for Defendant Michael Kosor to Seek Reconsideration of His Motion to Dismiss Pursuant to NRS 41.660 filed on April 20, 2018.

On April 19, 2018, Kosor, through his new counsel of record, timely filed a Notice of Appeal, appealing this Court's Order to the Nevada Supreme Court[1], and divesting this Court of jurisdiction over the case. *See* Notice of Appeal filed on April 19, 2018. Finally, on April 23, 2018, Kosor filed a motion before this Court, seeking reconsideration of its Order. *See* Defendant's Motion for Reconsideration of Court's March 20, 2018 Order filed on April 23, 2018 ("Motion for Reconsideration"). Kosor subsequently filed an Errata correcting several of the statements within his Motion for Reconsideration. *See* Errata to Defendant's Motion for Reconsideration of Court's March 20, 2018 Order, filed on April 25, 2018 ("Kosor's Errata").

/ / /

[1] Per NRAP 4(a)(1), Kosor had thirty (30) days from the date of entry of the Court's Order to file an appeal with the Nevada Supreme Court, or until April 20, 2018.

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III.

Legal Argument

A. This Court Lacks Jurisdiction to Grant Kosor's Motion for Reconsideration Because Kosor Has Already Filed an Appeal of This Court's Order with the Nevada Supreme Court.

The Nevada Supreme Court "has repeatedly held that the timely filing of a notice of appeal 'divests the district court of jurisdiction to act'. *Foster v. Dingwall*, 126 Nev. Adv. Op. 5, 228 P.3d 453, 454–55 (2010) (quoting *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006)). Kosor acknowledges that he timely filed an appeal of this Court's Order which explicitly stated that Kosor had *failed* to meet his burden to invoke the protections of NRS 41.660, yet he neglects to explain why this Court should grant such extraordinary relief when he has already properly exercised his right to appeal.[2] Instead, Kosor boldly asks this Court to "certify its inclination to grant [his] Motion for Reconsideration" with only a cursory citation to the procedure set forth in *Huneycutt v. Huneycutt*, 94 Nev 79, 575 P.2d 585 (1978).

Foster explains that the district court may retain limited jurisdiction to direct briefing and hold a hearing on a motion for relief from an appealed order. 228 P.3d at 455. While the district court may not grant the requested motion for relief without the moving party obtaining the Nevada Supreme Court's permission, the district court may enter an order denying the requested motion for relief. *Id.* at 455–56. Therefore, while this Court lacks jurisdiction to *grant* Kosor's Motion as requested, this Court does have limited jurisdiction to *deny* Kosor's request, and, as set forth below, should do so in its entirety.

B. This Court Should Deny Kosor's Motion for Reconsideration Because Kosor Has Failed to Point to Any New Facts or Law, Nor Has Kosor Demonstrated That This Court's Order Was Erroneous in Any Way.

Under Nevada law, "[o]nly in ***very rare instances*** in which ***new issues of fact or law*** are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted."

[2] A denial of a special motion to dismiss pursuant to NRS 41.660 is immediately appealable. *See* NRS 41.670(4).

Moore v. City of Las Vegas, 551 P.2d 244, 246 (Nev. 1976) (holding that the district court abused its discretion in entertaining a motion for reconsideration that "raised no new issues of law and made reference to no new or additional facts."). New issues of fact only arise when "substantially different evidence is subsequently introduced…." *Masonry and Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 941 P.2d 486, 489 (Nev. 1997).

Dissatisfaction with a prior ruling does not provide a basis for reconsideration, necessitating more attorney's fees and public resources simply because an unhappy litigant wanted a different outcome. *See Achrem v. Expressway Plaza Ltd. P'ship*, 917 P.2d 447, 450 (Nev. 1996) (holding that the district court properly refused to consider points, authorities, and evidence that could have been raised during the previous hearing but were not). A party cannot obtain reconsideration by simply rearguing matters previously considered and rejected by the Court. *In re Ross*, 668 P.2d 1089, 1091 (Nev. 1983) (holding that a motion for reconsideration is not intended to be "utilized as a vehicle to reargue matters considered and decided in the court's initial opinion."). Yet, in this case, that is all Kosor does.

In his Motion for Reconsideration, Kosor cries that Plaintiffs "failed to cite to highly relevant case authorities", that this Court's Order "failed to explain whether at least some of Defendant's statements met their burden under NRS 41.660, questioning whether the Court had analyzed the statements under the public interest guiding factors expressly adopted by the Nevada Supreme Court", and urges this Court to vacate its prior order "in the interest of avoiding manifest injustice." *See* Motion for Reconsideration at 4:9–13, 26–27. Rather than point to any such "highly relevant case authorities," Kosor reargues his prior position, parroting the same factual and legal assertions as before. There has been no intervening change in the law or newly-discovered evidence presented. Kosor is simply dissatisfied with this Court's Order and is seeking a proverbial "second bite at the apple" now that he has new counsel. Just because Kosor did not get his way does not make this Court's Order "manifestly unjust." The Court made it very clear that Kosor failed to meet his burden to invoke NRS 41.660 and allowed this case to proceed. As the Nevada Supreme Court has repeatedly held, Mr. Kosor's desire for a different outcome is not a valid basis for reconsideration.

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C. Mr. Kosor Failed to Meet His Burden to Invoke the Protections of NRS 41.660 Because He Failed to Establish That the Complained-of Statements were Good-Faith Communications in Direct Connection with Issues of Public Concern.

Nevada's anti-Strategic Lawsuits Against Public Participation ("anti-SLAPP") statute, NRS 41.660, protects a person from civil liability for privileged good faith communications. *See John v. Douglas County School District*, 125 Nev. 746, 749, 219 P.3d 1276, 1279 (2009). Nevada's anti-SLAPP statute permits a defendant to file a special motion to dismiss when a case is filed against him in order to "chill [his] exercise of his . . . First Amendment free speech rights." *Stubbs v. Strickland*, 129 Nev. Adv. Op. 15, 297 P.3d 326, 329 (2013) (citing to *John v. Douglas County School District*); *see also* NRS 41.660(a)(1).

Once a special motion to dismiss pursuant to NRS 41.660(a)(1) is filed, the court must first determine whether the moving party has established, by a preponderance of the evidence, that the subject communications fall within the anti-SLAPP statute's protections, i.e., "that the claim is based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.660(3)(a). If the court determines that the communications are protected by the anti-SLAPP statute, the burden shifts to the plaintiff to demonstrate that he has a "probability of prevailing on the claim." NRS 41.660(3)(c).[3]

1. This Court Did Not Err in Its Order Because Kosor's Issues Are Not Issues of Public Concern.

NRS 41.637 defines "good faith communications" as those made "in furtherance of the right to petition or the right to free speech **in direct connection with an issue of public concern**." *Id.* (emphasis added). Nevada's anti-SLAPP statute provides protection for four categories of "good faith communications." The first category involves communications aimed at procuring governmental or electoral action. NRS 41.637(1). The second and third categories concern communications directed to government representatives regarding matters of public concern. NRS 41.637(2)–(3). Finally, the

[3] Kosor's Motion for Reconsideration cites to the prior version of NRS 41.660 which required the plaintiff to demonstrate a probability of prevailing by clear and convincing evidence. The current version of NRS 41.660, which has been in effect since 2015, only requires a showing of prima facie evidence. Kosor's counsel even commented on the change in this standard at the hearing on Kosor's Motion to Dismiss. *See* Hearing Transcript, attached hereto as Exhibit 1, at 44:5–13.

fourth category applies to statements made in a public forum "in direct connection with an issue of public interest." NRS 41.637(4). Even if the statements fit within these narrow categories, the statements are only protected if they are "truthful or . . . made without knowledge of . . . falsehood." NRS 41.637.

All of Mr. Kosor's statements at issue here were made regarding three primary issues: 1) the governance of the Southern Highlands Community Association ("SHCA"); 2) the maintenance costs of Southern Highlands parks; and 3) the Southern Highlands Sports Park. Each of these three issues are "of interest to only a limited but definable portion of the public": Southern Highlands homeowners. *Hailstone v. Martinez*, 169 Cal.App.4th 728, 737, 87 Cal.Rptr.3d 347, 353 (2008).

Indeed, Kosor has failed to establish any of the *Piping Rock* "guiding principles" to determine a public interest. *See Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, 268 (2017) (adopting the principles set forth in *Piping Rock Partners, Inv. v. David Lerner Assocs., Inc.*, 946 F.Supp.2d 957, 968 (N.D. Cal. 2013)):

> (1) "public interest" does not equate with mere curiosity;
>
> (2) a matter of public interest should be something of concern to a substantial number of people; a matter of concern to a speaker and a relatively small specific audience is not a matter of public interest;
>
> (3) there should be some degree of closeness between the challenged statements and the asserted public interest—the assertion of a broad and amorphous public interest is not sufficient;
>
> (4) the focus of the speaker's conduct should be the public interest rather than a mere effort to gather ammunition for another round of private controversy; and
>
> (5) a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people.
>
> *Shapiro*, 389 P.3d at 268.

While Mr. Kosor's issues may have the *potential* to concern a substantial number of people, they appear only to be of concern to Mr. Kosor and a relatively small specific audience. As this Court

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observed, "even if all the homeowners think this issue is important," Mr. Kosor's issues "appear to be . . . specific to this homeowner." *See* Hearing Transcript, attached hereto as Exhibit 1, at 40:6–8. It is well-settled that "a person cannot turn otherwise private information into a matter of public interest simply by communicating it to a large number of people." *Shapiro*, 389 P.3d at 268. Mr. Kosor has done just that: attempted to create a matter of public interest by communicating it to a large number of people. This Court even questioned whether Mr. Kosor could turn his concerns into issues of public interest by merely taking those issues in front of the Real Estate Board. *See* Hearing Transcript, attached hereto as Exhibit 1, at 42:10–12. Simply put, Mr. Kosor has attempted to create matters of public concern by publishing his defamatory statements about Plaintiffs to a large number of people but has failed to show that a substantial number of other people are more than merely curious about these issues. Mr. Kosor has not presented any new evidence or law on this issue and simply disagrees with the Court's ruling, but that's not an actual basis for reconsideration. This Court did not err in its previous finding that Mr. Kosor's issues are not issues of public concern and has not been presented with any newly discovered-evidence or changes in the law that warrant this Court reconsidering its previous ruling.

i. The governance of the SHCA is not an issue of public concern.

Kosor's own words concede that the issue of the governance of the SHCA is only of issue to Southern Highlands homeowners, though he urges that the number of homeowners within Southern Highlands makes this "public." *See* Motion to Dismiss at 21:20–23; 24:5–6; 25:4–11 ("[a]ll of the issues raised in the pamphlet are of concern to the homeowners in the Southern Highlands, as they related to the use of funds raised through homeowner assessments."). Kosor even claimed that this is an issue to "the estimate [sic] 40% of [Clark County] citizens that reside in homeowner associations." *Id.* at 13:24–26.

Kosor's Motion for Reconsideration goes further, urging that the issue "could ***potentially*** impact all existing Nevada HOA homeowners that have yet to achieve declarant control change and every future Nevada HOA homeowner." Motion for Reconsideration at 13:25–28 (as amended by Kosor's Errata) (emphasis added). Despite this bold proclamation, Mr. Kosor fails to produce any newly-discovered evidence demonstrating that there is a public interest in this issue, or even a widespread interest within

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the relatively small community of Southern Highlands homeowners. Kosor claims that the issue is "not a mere curiosity" but admits that it is only *potentially* of interest to the general public.

Kosor's statement comparing Plaintiffs to a foreign government which deprives its citizens of the right to vote goes beyond "seeking to marshal voters and support." *See* Motion for Reconsideration at 14:26. In many ways, Kosor has appropriately exercised his right to attempt to influence board decisions, by being an involved homeowner who actively participates at board meetings, and by running for a position on the board on multiple occasions. However, Kosor's behavior has, on many occasions, caused other community residents to become wary of him. While Kosor admittedly has demonstrated that he has some followers, his repeated failed attempts to secure a spot on the HOA board demonstrates that his causes are not as widely-supported as he would like.

Kosor's statement accuses Plaintiffs of being dictators and "excite[s] derogatory opinions about" Plaintiffs. *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1191, 866 P.2d 274, 281 (1993). When viewing the whole of Kosor's statements, they appear to be nothing more than "a mere effort to gather ammunition for another round of private controversy" against Plaintiffs due to his personal disagreement with Plaintiffs' decisions and his inability to secure a SHCA board member position. As this Court has no newly-discovered evidence of an *actual* public concern with the manner in which SHCA board members are elected, there is no proper basis for this Court to reconsider its previous finding that this is not an issue of public concern.

ii. The maintenance costs of Southern Highlands parks is not an issue of public concern.

Kosor's Motion to Dismiss urged that his statements regarding the Southern Highlands park maintenance costs were regarding a public concern because the issue "concerned the nearly eight thousand homeowners in Southern Highlands, all of Clark County, and the estimate [sic] 40% of citizens that reside in homeowner associations. . .." *See* Motion to Dismiss at 13:23–14:1. Kosor's own words emphasized that the issue was limited to only Southern Highlands homeowners, as his argument focused on the use of Southern Highlands homeowner funds to pay for "public parks." *See id.* at 14:1–2, 19–26; 17:23–18:6; 21:20–23; 25:2–4 ("the issue of the SHCA and its homeowners paying for the maintenance of the public parks").

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Although Kosor is required to demonstrate "some degree of closeness between [his] challenged statements and the asserted public interest," he instead only has asserted "a broad and amorphous public interest" by claiming that his issues concern all citizens in Clark County. For example, Kosor claims that the "public park funding" issue is of concern to "all of the Clark County citizens entitled to use or benefit from access to 'public parks' located within Southern Highlands" yet focused only on the financial burden *of Southern Highlands homeowners* for the maintenance of these parks which may become open to the public in the future. *See* Motion for Reconsideration at 8:21–24.

Kosor's attempt to re-characterize his statements as only directly criticizing non-parties is similarly ineffective. *See* Motion for Reconsideration at 14:1–15. The bottom line is that Kosor's statements accuse Plaintiffs of obtaining a "massive sweetheart deal" with Clark County and Nevada officials, not that Plaintiffs passively became the beneficiaries of the improper dealings of others. Kosor admits as much in his Motion for Reconsideration:

> the statements opine that ***Mr. Goett*** basically benefited at the expense of ***the owners in Southern Highlands***, by negotiating a self-serving deal with the Clark County Commission.

Motion for Reconsideration at 9:10–12 (emphasis added).

Simply put, Kosor failed to provide any evidence, new or otherwise, that any person outside of the relatively small group of Southern Highlands homeowners is concerned about the funding for parks to which they do not enjoy access. As Mr. Kosor's issue regarding the maintenance costs for Southern Highlands parks is only of interest to Mr. Kosor "and a relatively small specific audience" – some select Southern Highlands homeowners – this Court did not err in finding that this was not an issue of public concern and should deny Kosor's motion on this point.

iii. The Southern Highlands Sports Park is not an issue of public concern.

While Kosor's Motion to Dismiss did not address the issue of the Southern Highlands Sports Park, Plaintiffs' Opposition did bring this issue to the Court's attention. *See* Opposition at 4:1–10. Additionally, Kosor's counsel brought this issue to the Court's attention at the hearing on Kosor's Motion to Dismiss. *See* Hearing Transcript, attached hereto as Exhibit 1, at 5:18–23, 43:9–10. In truth, Kosor's sole statement directed at the issue of the Southern Highlands Sports Park was the statement

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on the Nextdoor.com website accusing Plaintiffs of obtaining a "lucrative agreement" with Clark County to fund the "Sports Park using private money." *See* Kosor's post, attached hereto as Exhibit 2.

Now, in Kosor's Motion for Reconsideration, Kosor argues that the Sports Park issue is of public concern simply because a single newspaper article was published on the subject. *See* Motion for Reconsideration at 6:15–21; 8:24–9:3; 10:16–25; 11:19–23. Kosor argues that the Plaintiffs' "dealings have attracted local news coverage because of their substantial impact in Clark County", pointing to an article which largely consists of statements from Southern Highlands homeowners, *many of which are from Mr. Kosor*. *See* Las Vegas Review-Journal article, attached hereto as Exhibit 3.

There's nothing new about this article, however. It was available to Kosor and his prior counsel when he filed his Motion to Dismiss[4] and can hardly be considered to be "newly discovered evidence," as the article was published in September 2017, and Mr. Kosor was clearly aware of its existence, having been a major contributor to the article's content. Even should this Court consider this article as "new evidence," it does not provide evidence of a public concern, as it only mentions three Southern Highlands residents, one of which is Kosor. *See* Las Vegas Review-Journal article, attached hereto as Exhibit 3. Furthermore, a single newspaper article can hardly serve as the basis for establishing that the sports park issue is of concern to the general public.

Kosor also cites to new authority, *Daniel v. Wayans*, asserting that a public interest "need not be 'significant' to be covered by the anti-SLAPP statute." *Daniel v. Wayans*, 213 Cal.Rptr.3d 865, 881 (2017). However, while the interest itself may not need to be significant, it is still clear that the issue must be of public interest. For example, the *Daniel* court discussed the *Hecimovich v. Encinal School Parent Teacher Organization*, 2013 Cal.App.4th 450, 464, 137 Cal.Rptr.3d 455 (2012) case, in which the appellate court found that while the issue involved a dispute between only two parties, it also involved more overarching concerns and issues, such as the overall safety of children in sports. *Id.* Here, Kosor has presented no such overarching theme. He has only presented evidence of his (and two other Southern Highlands homeowners') complaints about a park which is set to be used only by

[4] "[A] motion for reconsideration is "an improper vehicle to introduce evidence previously available. . .." *United States v. Chen Chaing Liu*, No. 2:07-CR-170-JCM-LRL, 2011 WL 4479461, at *1 (D. Nev. Sept. 26, 2011) quoting *Christie v. Iopa*, 176 F.3d 1231, 1239 n. 5 (9th Cir.1999).).

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Southern Highlands homeowners. As Kosor has failed to present any newly-discovered evidence that the Southern Highlands sports park is of interest to more than the "relatively small specific audience" of Southern Highlands homeowners, Kosor has presented insufficient cause for this Court to reconsider its previous Order.

Each of Mr. Kosor's defamatory statements about Plaintiffs concern issues of interest to "a limited, but definable portion of the public (a private group, organization, ***or community***);" Southern Highlands homeowners. *Talega Maintenance Corp. v. Standard Pacific Corp.*, 225 Cal.App.4th 722, 734, 170 Cal.Rptr.3d 453, 462 (2014) (citing *Du Charme v. International Brotherhood of Electrical Workers*, 110 Cal.App.4th 107, 109, 1 Cal.Rptr.3d 501 (2003)) (emphasis added). Not only did Mr. Kosor fail to demonstrate that these issues are of concern to the general public as he claims, but he also failed to provide evidence that these issues are of concern to a substantial number of Southern Highlands homeowners. Mr. Kosor failed to present any newly-discovered evidence or new law. Neither did he provide this Court with evidence that its prior Order was erroneous or manifestly unjust. As such, this Court should deny Kosor's motion in its entirety and allow the matter to proceed before the Nevada Supreme Court.

2. This Court Did Not Err in Its Order Because Kosor's Statements Were Not Made in Public Forums.

Kosor claims that each of his statements were made in public forums, yet each of his chosen methods of communication had selective access and thus do not qualify as public forums. *See Weinberg v. Feisel*, 110 Cal.App.4th 1122, 1130, 2 Cal.Rptr.3d 385, 391 (2003) ("[m]eans of communication where access is selective . . . are not public forums."). A 'public forum' is traditionally defined as a place that is open to the public "**where information is freely exchanged**." *ComputerXpress, Inc. v. Jackson*, 93 Cal.App.4th 993, 1006, 113 Cal.Rptr.2d 625, 638 (2001) (citations omitted) (emphasis added). This generally means websites and online message boards and forums "that are accessible free of charge to any member of the public where members of the public may read the views and information posted, **and post their own opinions**." *Piping Rock*, 946 F.Supp.2d at 975 (2013) (citing *Ampex Corp. v. Cargle*, 128 Cal.App.4th 1569, 1576, 27 Cal.Rptr.3d 863 (2005)) (emphasis added).

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i. The CCA board meeting is not a public forum.

Kosor's first forum was the CCA board meeting. As this Court acknowledged, this is "a private community and a private HOA." *See* Hearing Transcript, attached hereto as Exhibit 1, at 35:1–2.

Kosor claims in both his Motion to Dismiss and his Motion for Reconsideration that the CCA board meeting was a public forum, pointing to *Damon v. Ocean Hills Journalism Club*, 102 Cal.Rptr.2d 205 (2000) and *Lee v. Silveira*, 211 Cal.Rptr.3d 705 (Ct.App. 2016). *Compare* Motion to Dismiss at 15:2–22 *with* Motion for Reconsideration at 9:25–10:4. While the California court in *Damon* did find that the HOA meeting at issue in that case was a public forum, subsequent California case law held that not all HOA meetings constitute public forums. *See Talega Maintenance Corp. v. Standard Pacific Corp.*, 225 Cal.App.4th 722, 732, 170 Cal.Rptr.3d 453, 461 (2014) (finding that the subject HOA meeting was not a public forum because it did not perform or assist in the performance of *actual* government duties). While this is not a well-settled area of law in Nevada, it is clear that the CCA board meeting is distinguishable from the HOA meeting at issue in *Damon* in several respects[5], thus this Court should find that the CCA board meeting was not a public forum for purposes of Nevada's anti-SLAPP statute.

ii. The social media website Nextdoor.com is not a public forum.

Kosor's second forum was a limited-access website known as Nextdoor.com. *See* Kosor's post, attached hereto as Exhibit 2. While Nextdoor.com is a publicly-accessible website, the 'neighborhood' group in which Kosor posted his defamatory statements about Plaintiffs has access restrictions. Kosor even admits that there are restrictions on which members of the public, and even of the Southern Highlands community, may participate in this section of Nextdoor.com. *See* Motion for Reconsideration at 12:23–25 (acknowledging that registered sex offenders and members of their households may not use Nextdoor.com). Furthermore, unlike the many websites which courts have found to be "classical forum communications," the subject Nextdoor.com neighborhood group had

[5] In *Damon*, the subject HOA involved residents "split into two camps" regarding the subject of the dispute, yet there is no such "split" present here. *See* Opposition at 10:10–17. Furthermore, the meeting in *Damon* was broadcast over the television, but the CCA board meeting was not. *Id.* at 12:25–13:1.

editorial control over the content posted on the website. *See* Nextdoor's Community Guidelines, attached hereto as Exhibit 4. Kosor's Motion for Reconsideration only parrots his prior argument that Nextdoor.com is a public forum merely because it is a website. *Compare* Motion for Reconsideration at 12:15–13:7 *with* Motion to Dismiss at 18:8–19:9. Therefore, due to the restricted nature of both membership and content on Nextdoor.com, it is clearly not a "public forum."

iii. Kosor's website is not a public forum.

Kosor's third forum was his personal website. *See* Kosor website, attached hereto as Exhibit 5. While Kosor's website may not have had restricted access, it was not a place where information could be "freely exchanged" because Kosor was the only person with the ability to make any postings. *See ComputerXpress*, 93 Cal.App.4th at 1006. Kosor had complete and unlimited editorial control over his own website and did not permit anything but his own viewpoints to be represented.

Furthermore, not all content on Kosor's website was geared towards his campaign for a place on the SHCA Board of Directors. While Kosor's may have labeled one part of his website 'public issues', "that does not mean that every post on the website is . . . about a 'public issue.'" *Young v. Handshoe*, 171 So.3d 381, 389 (La.App. 5 Cir. 2016). One of the goals of Kosor's website was clearly to impugn Plaintiffs' integrity and their fitness for their trade, business, or profession and to impede their ability to perform their business operations. For Kosor's statements to be protected good faith communications, they must not only be made in a public forum, but also be made in direct connection with an issue of public interest. The statements from Kosor's website listed in Plaintiffs' Complaint plainly do not meet either of these criteria.

iv. Kosor's campaign pamphlet is not a public forum.

Kosor's fourth forum was a pamphlet which Kosor mailed to residents of Southern Highlands. *See* Kosor pamphlet, attached hereto as Exhibit 6. In Kosor's Motion to Dismiss, he only urged that the pamphlet was protected because it was distributed in conjunction with his campaign to secure a seat on the SHCA board, not that the pamphlet was a public forum. *See* Motion to Dismiss at 24:22–26. In his Motion for Reconsideration, Kosor now claims that the pamphlet was a public forum, citing to *Macias v. Hartwell*, 55 Cal.App.4th 669, 674 (1997) and *Damon*, 102 Cal.Rptr.2d at 210–12. *See*

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Motion for Reconsideration at 17:26–18:5. However, Kosor's pamphlet is clearly distinguishable from the mailed communications at issue in both of those cases.

In *Macias*, the challenged campaign flyer was sent to approximately 10,000 individuals ***in 6 different counties***. *Macias*, 55 Cal.App.4th at 674 (emphasis added). This is a substantially-larger number of recipients encompassing a much larger geographic range than Kosor's pamphlet. The newsletter at issue in *Damon* was sent not only to neighborhood residents, but also to local businesses. *Damon*, 85 Cal.App.4th at 476. In contrast, Kosor's pamphlet was only sent to residents of Southern Highlands. Thus, while other forms of written communication may constitute public forums, the limited nature of both the purpose and distribution of Kosor's pamphlet make it a private publication.

Kosor's arguments in his Motion for Reconsideration provide this Court with no new law or newly-discovered evidence, thus he has failed to provide this Court with a sufficient basis to reconsider its prior Order. Even should this Court find that any of Kosor's chosen forums are public forums, which they are not, Kosor has still failed to demonstrate that each of his defamatory statements about Plaintiffs were regarding issues of public concern. As Kosor's statements fail to meet both criteria for them to be protected "good faith communications," there has been no showing that this Court's Order was erroneous or manifestly unjust. As such, this Court should deny Kosor's motion in its entirety and allow the matter to proceed before the Nevada Supreme Court.

3. This Court Did Not Err in Its Order Because Kosor's Statements Were Not Aimed at Procuring the Type of Electoral Action Contemplated by Nevada's Anti-SLAPP Statute.

While it is true that some of Kosor's statements were distributed to Southern Highlands homeowners in connection with his campaign for a spot on the SHCA board, not every communication aimed at procuring electoral action is automatically subject to the protections of Nevada's anti-SLAPP statute. The 2013 amendments to Nevada's anti-SLAPP statute only expanded the scope of its protections to confirm that a statement did not have to be made to a government agency in order to be protected. *See Delucci v. Songer*, 396 P.3d 826, 829–30 (Nev. 2017).

Surely a HOA board election, which only affects a small subsection of the community, is not what was contemplated by allowing protections for communications aimed at procuring electoral

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action. Were the statute to truly apply to *any* electoral action, it could be extended to provide protections for elections as small as an election for an elementary school class president – hardly an election that the general public would be concerned with. Indeed, the foremost Nevada case discussing the scope of Nevada's revised anti-SLAPP statute, *Adelson v. Harris*, 133 Nev. Adv. Op. 67, 402 P.3d 665 (2017), did not even decide whether communications made in connection with the election of the United States President fell under the statute's protections. Kosor seeking a position on a HOA board impacting a relatively small number of Nevada households can hardly be considered to be on-par with the nationwide election of a U.S. President or any other such high-profile election.

To allow the statute's protections to be available to *any* electoral action or result would go beyond the clear scope the Legislature intended. Kosor's website and pamphlet statements addressed the SHCA Board election, a non-governmental election which was "of interest to only a narrow sliver of society." *Talega, supra*, 225 Cal.App.4th at 734, 170 Cal.Rptr.3d at 463. This is not the type of electoral action the Legislature intended to be covered by Nevada's anti-SLAPP statute. Even if this Court is inclined to broaden the "electoral result" exception to this extent, which it should not, as explained *supra*, none of Kosor's statements were directly connected to an issue of public concern and are not subject to the protections of Nevada's anti-SLAPP statute.

D. Even Though Mr. Kosor Failed to Meet his Burden to Invoke NRS 41.660, Plaintiffs Have Also Established a Probability of Prevailing on Their Claims.

When this Court previously considered Mr. Kosor's Motion to Dismiss, it found that Kosor had not met his burden to invoke the statute. *See* Hearing Transcript, attached hereto as Exhibit 1, at 45:10–12. Therefore, the burden did not shift to Plaintiffs to demonstrate a probability of prevailing on their claims. However, Plaintiffs prior Opposition set forth more than sufficient prima facie evidence that they have a probability of prevailing on their claims.

Plaintiffs' Complaint alleges claims for defamation and defamation *per se*. Defamation is "a publication of a false statement of fact." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 87 (2002) (quoting *Posadas v. City of Reno*, 109 Nev. 448, 453, 851 P.2d 438, 442 (1993).) "An action for defamation requires the plaintiff to prove four elements: '(1) a false and defamatory

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statement ...; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages.'" *Clark County School Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009) (quoting *Pope v. Motel 6*, 121 Nev. 307, 315, 114 P.3d 277, 282 (2005).). "However, if the defamatory communication imputes a crime, imputes a "person's lack of fitness for trade, business, or profession," or tends to injure the plaintiff in his or her business, it is deemed defamation per se and damages are presumed." *K-Mart*, *supra*, 109 Nev. at 1192, 866 P.2d at 282.; *see also Clark County Sch. Dist. v. Virtual Educ. Software, Inc.*, 125 Nev. 374, 385, 213 P.3d 496, 503 (2009) (citations omitted).

While generally statements of opinion are not defamatory, even "expressions of opinion may suggest that the speaker knows certain facts to be true or may imply that facts exist which will be sufficient to render the message defamatory if false." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 714, 57 P.3d 82, 88 (2002) (quoting *K-Mart Corp.*, 109 Nev. at 1192, 866 P.2d at 282 (internal citation omitted)). That is, expressions of opinion do not enjoy blanket constitutional protection. *See Franklin v. Dynamic Details, Inc.*, 116 Cal.App.4th 375, 384, 10 Cal.Rptr.3d 429 (2004). An opinion loses its constitutional protection and becomes actionable when it is "based on implied, undisclosed facts" and "the speaker has no factual basis for the opinion." *Ruiz v. Harbor View Community Association*, 134 Cal.App.4th 1456, 1471, 37 Cal.Rptr.3d 133 (2005).

Kosor continues to insist that his statements were truthful or that they were "layman's opinion and were believed to have been truthful." *See* Motion for Reconsideration at 19:10–11. Plaintiff previously outlined in great detail why each of Mr. Kosor's statements are defamatory or constitute defamation per se in their Opposition to Kosor's Motion to Dismiss. *See* Opposition at 17:15–27:2. In the interest of judicial economy, and because Plaintiffs believe that Defendant Kosor has failed to demonstrate either a proper basis for this Court to reconsider its prior Order or that each of his statements were made in a public forum and in direct connection to an issue of public concern, Plaintiffs will only briefly respond to those arguments made in Kosor's Motion for Reconsideration.

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1. Kosor's statement comparing Plaintiffs to a "foreign government" constitutes defamation per se.

Kosor first urges that, prior to his receipt of the January 8, 2018, letter from the State of Nevada and the Attorney General's Office, he believed that Plaintiffs' 2005 Amendment to the Southern Highlands CC&Rs was invalid and that Plaintiffs were "obligated to transfer its remaining control of the SHCA to the homeowners." *See* Motion for Reconsideration at 19:12–26. What Kosor fails to address is the fact that, while he may have believed that Plaintiffs should have turned over SHCA control to the homeowners, his statements regarding this issue went far beyond merely stating his opinion. Kosor's statement regarding the declarant control issue was the statement on his website in which he accused Olympia and its employees of, among other things, acting like a foreign government that deprives people of essential rights. *See* Complaint at ¶ 10. Specifically, Kosor's website boldly proclaimed that he "spent 24 years as an Air Force officer defending the rights of all Americans to choose those that represent us. I lived in **foreign countries where citizens did not have this right** and saw first-hand the negative implications. I do not like the idea **the community** I now look to spend my retirement **has denied me this central and important right**." *See* Kosor website, attached hereto as Exhibit 5 (emphasis added). By accusing Plaintiffs of denying him and other homeowners of the "central and important right" to vote, Kosor is essentially accusing Plaintiffs of being dictators. Such an accusation is the very embodiment of a defamatory statement which would "tend to lower [Plaintiffs] in the estimation of the community, [and] excite derogatory opinions about [Plaintiffs]". *K-Mart, supra,* 109 Nev. at 1191, 866 P.2d at 281.

2. Kosor's statement accusing Plaintiffs of statutory violations constitutes defamation per se.

Next, Kosor asserts that he is correct in asserting that Southern Highlands homeowners were "not given the opportunity to vote on" the issue of the SHCA paying for the "public parks" within Southern Highlands and that he still does not know whether the SHCA board's agreement to fund the parks was "lawfully accomplished." *See* Motion for Reconsideration at 19:27–20:3. Again, Kosor's statements which directly address the "public park" issue plainly accuse Plaintiffs of engaging in

improper arrangements with Clark County officials and of failing "to advance the interests of Southern Highlands homeowners" and of contravening Nevada law. *See* Kosor website, attached hereto as Exhibit 5. Kosor's statements clearly suggest that Plaintiffs are improperly expending homeowner funds and, as such, are not fit for their trade or business. *See K-Mart, supra,* 109 Nev. at 1192, 866 P.2d at 282 (a defamatory statement that imputes a "person's lack of fitness for trade, business, or profession" or tends to injure the plaintiff in his business is defamation per se); *see also Silk v. Feldman*, 208 Cal.App.4th 547, 555–56, 145 Cal.Rptr.3d 484, 490 (2012) (accusing a person "of a serious breach of fiduciary duty . . . is libelous per se"). As previously demonstrated in Plaintiff's Opposition to Mr. Kosor's Motion to Dismiss, Kosor's statements regarding the "public park" issue clearly all constitute defamation per se, as they suggest that Plaintiffs have broken the law, breached various duties to Southern Highlands homeowners, and are unfit to operate their business.

3. Kosor's statement accusing Plaintiffs of obtaining a "lucrative agreement" with Clark County officials constitutes defamation per se.

Finally, Kosor claims that he is correct about the "decade delayed sports park," again citing to the same newspaper article discussing the delay in opening the sports park with comments from Kosor about his lack of faith about the eventual completion of the sports park. *See* Motion for Reconsideration at 20:9–13; *see also* Las Vegas Review-Journal article, attached hereto as Exhibit 3. Again, it may be true that the sports park was initially set to open several years ago, but Kosor fails to demonstrate why his statement accusing Plaintiffs of obtaining a "lucrative agreement" with Clark County to fund the "Sports Park using private money" is true. *See* Kosor's post, attached hereto as Exhibit 2. This is yet another of Kosor's statements which constitutes defamation per se, as it accuses Plaintiffs of breaking the law or improperly influencing Clark County officials. *See K-Mart, supra,* 109 Nev. at 1192, 866 P.2d at 282 (statements are per se defamatory if they impute a crime or impute a person's lack of fitness for their profession).

Kosor's stubbornness apparently knows no bounds. Plaintiffs' previous Opposition outlined how each of his statements constituted defamation or defamation per se, and even pointed out how Kosor was provided with evidence of the falsity of some of these statements *before* he published the

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statements to third parties. *See, e.g.*, Opposition at 23:10–24:7 (outlining how Kosor was informed of the true amount of the SHCA's legal expenses *nearly a year* prior to Kosor's pamphlet and website presenting a grossly overstated figure as a fact to Southern Highlands homeowners). While Plaintiffs still contend that none of Kosor's statements were directly connected with issues of public concern or communicated in a public forum, should the Court be inclined to re-examine Kosor's statements in relation to Plaintiffs' claims, it is clear that each statement constitutes defamation or defamation per se and Plaintiff has established a probability of prevailing on their claims against Defendant Kosor.

E. The Court Should Award Plaintiffs Attorney's Fees for Having to Unnecessarily Incur Expenses in Responding to Mr. Kosor's Motion That Is Not Supported by Any New Law or Evidence and Is Not Justified.

In addition, the Court should also award to Plaintiffs the reasonable expenses, including attorney's fees, incurred in opposing Kosor's Motion for Reconsideration. Just as courts have awarded expenses incurred on appeal from a motion that was not substantially justified, see, e.g., *Rickels v. City of South Bend*, 33 F.3d 785, 788 (7th Cir. 1994), *Tamari v. Bache & Co.*, 729 F.2d 469, 475 (7th Cir. 1984), so too should this Court award expenses incurred on a motion for reconsideration of such a motion. *See Doe v. Howe Military School*, No. 3:95-CV-206RM, 1996 WL 939352 at *5 (N.D. Ind. Oct. 16, 1996) (holding that "plaintiffs may recover their reasonable expenses, including attorney's fees, incurred in opposing ... [a] motion to reconsider."). The rationale of fee-shifting rules is that the "victor should be made whole -- should be as well off as if the opponent had respected his legal rights in the first place." *Rickels*, 33 F.3d at 787.

IV.

Conclusion

The Court's Order Denying Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660 was neither erroneous or manifestly unjust, and Kosor has failed to present this Court with any newly discovered evidence or a change in the law. Kosor's regurgitated arguments fail to demonstrate how this is one of the rare cases in which reconsideration is appropriate. Accordingly, and for all of

the forgoing reasons, Defendant's Motion for Reconsideration of March 20, 2018 Order should be denied and Defendant Kosor should be required to reimburse Plaintiffs for their reasonable attorney's fees and expenses in opposing this motion.

DATED this 10th day of May, 2018.

KEMP, JONES & COULTHARD, LLP

/s/ Nathanael Rulis

J. Randall Jones, Esq. (#1927)
Nathanael R. Rulis, Esq. (#11259)
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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May 2018, the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR RECONSIDERATION OF COURT'S MARCH 20, 2018 ORDER** was served on all parties currently on the electronic service list via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2.

/s/ Ali Augustine
An employee of Kemp, Jones & Coulthard

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EXHIBIT 1

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

OLYMPIA COMPANIES LLC, et. al.	.	
	.	
Plaintiffs	.	CASE NO. A-17-765257
	.	
vs.	.	
	.	DEPT. NO. XII
MICHAEL KOSOR, JR.	.	
	.	**Transcript of**
Defendant	.	**Proceedings**
. . . . .	.	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

DEFENDANT'S MOTION TO DISMISS

MONDAY, MARCH 5, 2018

APPEARANCES:

FOR THE PLAINTIFFS:	JON RANDALL JONES, ESQ. CARA D. BRUMFEILD, ESQ.
FOR THE DEFENDANT:	ROBERT B. SMITH, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
KRISTINE SANTI District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

LAS VEGAS, NEVADA, MONDAY, MARCH 5, 2018, 9:53 A.M.

(Court was called to order)

THE COURT: Olympia Companies, page 15, versus Michael Kosor, Case A-765257.

MR. JONES: Good morning, Your Honor.

MR. SMITH: Good morning, Your Honor.

THE COURT: Good morning.

MR. SMITH: Robert Smith on behalf of the defense. This is my client, Michael Kosor.

THE COURT: Good morning. Did you make your appearances yet?

MR. JONES: I have not, Your Honor. Good morning. Randall Jones and --

MS. BRUMFIELD: Cara Brumfield, Your Honor.

THE COURT: Thank you.

Okay. It's your motion.

MR. SMITH: Your Honor, can I use the podium?

THE COURT: Sure.

MR. SMITH: Thank you, Your Honor.

THE COURT: Absolutely.

MR. SMITH: The way this is laid out there's kind of three different arguments, Your Honor. So I -- do you want us to start first and then we'll have the opposition and then go to the second. So I'll proceed, and you can let me know how you'd like to after that.

THE COURT: Thank you.

MR. SMITH: As you're aware, Your Honor, we filed a motion pursuant to NRS 41.660 to dismiss the complaint under Nevada's anti-SLAPP statute. It's the position of my client and myself that the sole reason for the filing of this complaint was to chill Mr. Kosar's speech.

The timing of this is I think very important for the Court to be aware of, that Mr. Kosor in November of 2017 filed a notice that he'd be running for elected office to the board in his community. Complaint was then filed three weeks later, the lawsuit suing him claiming defamation and defamation per se based upon some statements he had made, some of the two and a half years ago. So it seems to me and his position in part timing's kind of unique here where he was going to seek position on a board, which would at least in all likelihood not be the benefit of the defendants in this case.

THE COURT: He wasn't elected; correct?

MR. SMITH: He was not. Which at the time the complaint was filed, no one knew that.

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MR. SMITH: We didn't find out -- the election actually took place two days after Christmas, which is another unique factor --

THE COURT: I saw that.

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[unintelligible] from that as being the sort of ranting former military gentleman who's making all these slanderous or defamatory complaints. Well, this is a 24-year Air Force officer, combat pilot. He retired from the Air Force. He's worked as a hospital administrator for a number of years and retired again. He's not a gentleman that's screaming and yelling at the top of his lungs, causing problems.

As you go through our pleadings you'll actually see, Your Honor, our attachments that he's very methodically gone through Nevada Revised Statutes, recorded documents laying out his positions why he's challenging certain actions of the board. And as you see in our motion, his issues are more with the board, not with Olympia Company, not with Mr. Goett. They're with the board and the board's actions, which seems to make that -- the board's not involved in this case at all. The board hasn't brought suit. They're not suing him for defamatory statements. It's the developer and the owner of the building company, which is unique here.

As we go through this, there are two particular issues we laid out in there. There's the declare and control issue, which is one of the early on and primary issues here. He lives in Southern Highlands, which is a very nice community south of town here, and the board is made up of five members. Three of those members are appointed by the Olympia Management Company. It's a company owned by Olympia. Those three seats

IN THE SUPREME COURT OF

THE STATE OF NEVADA

*****

MICHAEL KOSOR JR., A NEVADA RESIDENT, Appellant, vs. OLYMPIA COMPANIES, LLC, A NEVADA LIMITED LIABILITY COMPANY; AND GARRY V. GOETT, A NEVADA RESIDENT, Respondents.	**Supreme Court No. 75669** District Court Case No. A-17-765259-C

JOINT APPENDIX

VOLUME II

On Appeal from Judgment of the Eighth Judicial District Court, Clark County, Nevada

The Honorable Michelle Leavitt

WILLIAM H. PRUITT, ESQ.
Nevada Bar No. 6783
JOSEPH R. MESERVY, ESQ.
Nevada Bar No. 14088
BARRON & PRUITT, LLP
3890 West Ann Road
North Las Vegas, Nevada 89031
Attorneys for Appellant
Michael Kosor, Jr.

J. RANDALL JONES, ESQ.
Nevada Bar No. 1927
NATHANAEL R. RULIS, ESQ.
Nevada Bar No. 11259
KEMP, JONES & COULTHARD
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Las Vegas, Nevada 89169
Attorneys for Respondents

INDEX TO JOINT APPENDIX
ALPHABETICAL

DESCRIPTION	DATE	VOL	PAGES
Notice of Entry of Order Denying Defendant's Motion for Reconsideration of Court's March 20, 2018 Order	06/25/2018	III	489-492
Order Denying Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660	03/20/2018	II	274-275
Order Denying Defendant's Motion for Reconsideration of Court's March 20, 2018 Order	06/22/2018	III	487-488
Plaintiff's Opposition to Defendant's Motion for Reconsideration of Court's March 20, 2018 Order	05/10/2018	II	345-453
Plaintiffs' Opposition to Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660	02/16/2018	I	139-200
Substitution of Attorneys	04/06/2018	II	280-282
Summons and Affidavit of Service	11/30/2017	I	6-8
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Exhibits to Defendant's Motion for Reconsideration of Court's March 20, 2018 Order	04/25/2018	II	321-344
Plaintiff's Opposition to Defendant's Motion for Reconsideration of Court's March 20, 2018 Order	05/10/2018	II	345-453
Defendant's Reply in Support of Motion for Reconsideration of Court's March 20, 2018 Order	05/29/2018	II	454-475
Transcript of June 11, 2018 Hearing on Defendant's Motion for Reconsideration of Court's March 20, 2018 Order	06/11/2018	III	476-486
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TRAN

DISTRICT COURT
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* * * * *

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	.	
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then have three Olympia employees appointed to those seats. So if you live in that community, you can vote for two seats, but the other three seats will always be under the control of the developer. Nevada law has statutes in place which allow for the control to go from the developer to the homeowners, and which Mr. Kosor's argued in detail with -- in my motion here is also with the Nevada Real Estate Division that that change should have taken place a couple years ago. Now, he's made statements --

THE COURT: Pursuant to the CCRs?

MR. SMITH: Yes, CC&Rs and Nevada Revised Statute 116.2122 that's -- I'm sorry, by CC&Rs, as well as -- there's been a change in the Nevada Revised Statutes recently. But once over 75 percent of the units were no longer owner controlled, the homeowners would take over. And he's made that point very clear in the pleadings and his arguments to the Nevada Real Estate Division.

The second issue related to parks. The parks issue when this area was planned to be developed per the Southern Highlands Development agreement, 26.9 acres of parks were to be developed by the Olympia Company. That's never happened, okay. Also, there's going to be a 20-acre sports park that's going to be developed. That's not happened, either. And in going through the process the parks were to be developed by Olympia, built, and then turned over to the County to be

maintained, is part of our motion. They've now been assigned to the HOA, which spends over a million dollars a year maintaining these parks between maintenance and water.

THE COURT: It's about 600,000; right?

MR. SMITH: Your Honor, but when you look at the budget, you actually look at the water cost every year, it's $400,000 in water costs --

THE COURT: Oh.

MR. SMITH: -- on top of --

THE COURT: Plus the 600,000?

MR. SMITH: Plus the maintenance, yes. So it's over a million dollars. The other part of this --

THE COURT: Are those water costs only for the parks?

MR. SMITH: The parks only, Your Honor. I can show it in the budget, if you'd like to see that.

THE COURT: No. I trust you.

MR. SMITH: It says parks, water, and -- it's got that on there.

The other part of this is Olympia Company, the management company, is paid $1.4 million a year by the board to operate the community, which is Mr. Kosor here believes that the board should be turned over to the homeowners, the homeowners will elect their board members, and then the board members will decide who to hire to manage their community.

Well, at this point it's -- $1.4 million a year is paid to Olympia Management, a company that Mr. Goett's directly involved with, and Olympia, just by name. And then you've got the parks issue where there's 2. -- what is it, $2.8 million here. The total budget in 2017 which approximately $7 million. So half the budget is being spent on things that Mr. Kosor doesn't believe the community should be responsible for. And you see in our motion that he's laid that out pretty thoroughly and why he believes that.

In bringing our motion, Your Honor, the statute allows for us to bring this if we prove by a preponderance of the evidence that his communications are made in good faith, in furtherance of his right to petition or free speech, and that issue of public concern that ideally this complaint will be dismissed, because it was simply filed to keep him quiet, which, honestly, it hasn't kept him quiet, because there's been decisions made since the filing of the motion where he now has another appeal with the Nevada Real Estate Division. But he's taken a very methodical and detailed approach to, you know, addressing his concerns with first the HOA, which didn't address them in the manner which he felt was appropriate. He then went to the Nevada Real Estate Division.

THE COURT: What happened with them?

MR. SMITH: To who?

THE COURT: The Nevada Real Estate Division. What

did they say?

MR. SMITH: The most recent statement says that -- which I don't do real estate -- I've been in front of you a lot of times, Your Honor.

THE COURT: Sure.

MR. SMITH: It's mostly personal injury. We do some construction work. I'm beginning to almost relate to Mr. Kosor's frustration in dealing with the Nevada Real Estate Division, because there's -- he lays out a very thorough analysis. There's three issues we'd like you to address. They'll address one and then dismiss it. That's what happened the most recent time. There's an opinion issued January 5th of 2018.

THE COURT: And they only address one issue?

MR. SMITH: One issue, correct.

THE COURT: Which issue did they address? I'm just curious.

MR. SMITH: They basically -- okay. To have the change with the declare and control issue, Your Honor --

THE COURT: Right.

MR. SMITH: -- there's -- we'll start way back here. Originally the CC&Rs said 9,000 homes could be developed in this community. The developer unilaterally changed that number to 10,400. NRS 116.2122 says they may not do that, they may not amend that number ever. But there's a means for

the homeowners association to amend that number, which in this particular case that's never happened. We filed as an exhibit to --

THE COURT: Who amended it? They amended it sua sponte?

MR. SMITH: Yes.

THE COURT: Okay.

MR. SMITH: And the Statute 116.217 states that if the HOA by homeowner vote or homeowner approval adopts this, then it's appropriate.

THE COURT: Did they adopt it?

MR. SMITH: They never did. And if they did, I'm sure Mr. Kosor would have provided a copy of that document, which he never has.

I need some water, Your Honor.

THE COURT: That's okay.

MR. SMITH: What the Nevada Real Estate Division did was they looked at part of 116.217 that says if it's not opposed within a year it stands.

THE COURT: Oh.

MR. SMITH: Well, the problem with that analysis is it shows up to be a valid adopted amendment. There's no documentation that it's ever been adopted or that it's valid, because the law says they cannot do that. Olympia cannot unilaterally make a change in the number of homes to be -- or

units to be developed in the community. They can't do that. They did that. The Nevada Real Estate Division failed to go back that far and look at the original amendment. They simply said, well, it was adopted and recorded here, no one opposed it by 2006, it's valid.

THE COURT: It was adopted by whom?

MR. SMITH: That's --

THE COURT: Because you said adopted and recorded.

MR. SMITH: Thank you, Your Honor. And that is our position, it was never adopted. If you look at the recorded document signed by -- Gary Goett signed, who's the attorney for the Olympia Company. It's not signed by the president of the HOA or anyone on the HOA, no one there. So that's I think sort of the [inaudible] why Mr. Kosor has association. And he's gone about addressing these concerns with the Real Estate Division. He is a board member on one of the subcommunities in the neighborhood, so he also expressed these concerns with his subcommittee, because --

THE COURT: So Southern Highlands is like a big one, and --

MR. SMITH: Yes.

THE COURT: -- then he's on one of the sub -- I guess they're --

MR. SMITH: He's in the Christopher Homes community.

THE COURT: Okay. Different homes.

MR. SMITH: Yeah. But as a homeowner and as a board member of the community he has concerns that he's tried to address with the board. And as I'd mention earlier, the board is controlled by three employees of the defendants here. So -- and our position and our belief is that any time there's a dispute between the homeowner issue that the developer may not agree with, the homeowners will always lose, because it's a three-to-two vote on every issue that'll come up. And Mr. Kosor's tried to address that.

THE COURT: I guess if you assume that they're going to always vote in favor of the developer --

MR. SMITH: And if you look at it, they are employees of the developer.

THE COURT: The developer owns Olympia, too?

MR. SMITH: Yes.

THE COURT: Okay.

MR. SMITH: Yes. Mr. Goett is the owner of the Olympia Development Company. The Olympia Management Company is also another Goett company that manages the community. They're on -- as we pointed out in our reply, Your Honor, there's several times in here where they accuse my client of defamatory statements of the HOA, which shows that line is very much blurred here, the misuse of attorney funds, the $1.4 million number they made a big issue about here, that's how the HOA spends their money. We didn't say that Olympia

was spending this money or Mr. Goett was, but they want to accuse our client of defamimg a non party in this litigation, which I don't know how you do that. If they -- we defamed them, they would be here, or at least in theory they could be here. So that's sort of a background here, Your Honor, where we're at.

You know, what Mr. Kosor attempted to do was go through the avenues that are available to him to address these things. His subcommittee, which we actually attached the recorded statement from -- which is allegedly defamatory, which shows in my opinion and I believe the Website that he set up when he ran for elected office in the community, the pamphlet that was attached to his Website, and then statements on a Website called nextdoor.com, which in their opposition I think it actually helps us, because it shows that he posted a statement and there was conversation about that statement that went forward regarding those issues where people could communicate.

THE COURT: And that's in a form that's very limited in scope. You have to be -- there's editorial --

MR. SMITH: There is --

THE COURT: -- I guess editorial supervision, you have to be a homeowner within the development. I don't know how they check that, how they can tell whether someone posting from a computer -- I thought that was interesting.

MR. SMITH: It was. But once again, Your Honor, if you live in Southern Highlands, there's 8,000 units so far that have been sold. And if you -- I think Clark County it's 2.2 on average residents, and that's sixteen, 18,000 members. That's a lot of people that have access to that Website that have the same concerns that -- maybe not the same concerns, but have the use of how their money's being used by the HOA, as it's a concern everyone shares, and the control of the community they live in has an issue with that control, as well.

Which led us to -- that's about where we're at today in filing this motion that we believe that it's just simply the position of Olympia that they want him to be quiet. Because if they have to develop their parks per the plan, it's going to cost millions of dollars. A similar-size project in a different part of Nevada was $12 million the County agreed to pay to build these parks. So if they're required to go back and build the parks as per the original agreement, it's going to cost them millions of dollars. If they're no longer allowed to control the board, they can't decide that their management company's going to make a fee managing for $1.4 million a year.

There's some significant financial interests here on the part of Olympia in bringing this lawsuit and keeping Mr. Kosor quiet. That's sort of the background here, Your Honor.

To get to the statute there, we believe that if you go through these that by a preponderance of the evidence that these are good-faith statements. They're not statements that are irrational or -- if you look at defamation cases, Your Honor, the one we saw, the Adelson case, a recent case that came out, it accuses him of advocating prostitution in his hotels. This is not that case. These are I believe, my opinion, there's a potential for there's a breach of fiduciary duty; these are the statements that my clients have made. It's not these overt, these crazy, these outlandish statements accusing Olympia of doing anything -- it wasn't racketeering, bribery, which were in the opposition, Your Honor. There's nothing in there that supports those allegations. What he's done is gone through the various venues that are available to him and made arguments that he believes are appropriate, and doing so has led to him being now sued, you know, once he notified the builder he's going to run for one of the seats on the board that it controls.

If you like, I can go through each of the statements that you went to go through next as to public interest, public forum.

THE COURT: I think this is an issue of public interest.

MR. SMITH: And I think this is --

THE COURT: I mean, this seems very limited. It is

clearly -- I know you want to expand it to everybody in Clark County because of the parks issue, but this does appear to be limited to just the people in Southern Highlands.

MR. SMITH: And, Your Honor, in our reply we address that specifically. There's not a lot of Nevada caselaw on point here. As you saw in our motion and in their opposition, it's California caselaw. We cited Messias and we've cited Damon v. Ocean Hills. They're both California cases involving relatively small numbers of people. The Damon one involved 3,000 homeowners. Small -- much smaller than this. The Messias one had to do with an election in a union, 10,000 members. So I don't think the number is that big. What are looking at is the -- if you've got 3,000, this is far larger than that. It's far larger than 10,000, because there's sixteen, 17,000 people that live in this neighborhood. So I don't -- the public interest I think is there. I think that's -- that's at least my position, Your Honor. You may differ, Your Honor. But that's where were at with that. It's a substantial community here that doesn't have control over their HOA and doesn't even control how their money's used. They all pay, you know, hefty assessments. Any of us that live in an HOA community, we all pay monthly assessments, and we'd like to know that money's being used in the best way possible. And I think that's a big enough issue for the 18,000 people that are still living there.

And we cited the California caselaw. I'd love to have cited some Nevada caselaw, Your Honor, but there isn't any.

THE COURT: Well, you cited the one that relies on California caselaw.

MR. SMITH: Yeah. There's the one, yeah. But that isn't -- and I think that helps us in the -- I think that's the Weldon case, Your Honor. So that's where I think it's the public interest. And in the public forum, as we've gone through in detail with our motion, Your Honor, is that HOA meetings -- once again relying on California law, HOAs are quasi governments. They're called -- I think they're phrased, what is it, little democratic societies is how they refer to it in the case there, which is what's going on here. You've got a community, they elect a board ideally, and they run the community. They pay for parks, they pay for attorneys, they pay for whatever goes on in the community. I think -- once again, there's no Nevada caselaw on that, so we cited the California caselaw, which Nevada [unintelligible] over occasions that these are little communities and HOA meetings are small communities, which would make this a public forum for people who reside in the community.

I know plaintiff -- or the opposition, they want to go, well, in that case it says because it was on TV for everybody to watch or because statute required these to be

open. Nowhere in the holding of these cases that they cited does it say that it has to be on TV for people to watch, or nowhere in this case that says that it has to be per statute. It just simply said, many democratic societies are public forums, and statements made advocating positions to make them public forum or public interest.

The political pamphlet, I think that was a little more straightforward there, Your Honor. There's a case cited -- what's the name -- I think it may be the Damon case for passing out these pamphlets. It's open forum. You're giving it out to all your neighbors, you're -- this is my election platform. And in Damon they said that was appropriate. In that case they tried to distinguish and say, well, it was given to a local restaurant or local business so that made it public forum. That's not part of the holding, Your Honor. And they kind of deviate off in here that, well, there's this fact which makes it different, or, that's part of the holding, which is not the case here. They simply said that this pamphlet distributed to the homeowners is a public forum. It's given to everybody in the community to, in Mr. Kosor's case, look at his election platform, his campaign points, and then move forward.

The audio recording, that's the HOA. I've got the pamphlet. And then there's the two different Website posts, Your Honor, the other two that we think are public forums. HE

has a Website that he put together with his election campaign which had his email attached where people could communicate with him if they wanted to, and it laid out his position there.

Once again they try to take the position that, well, if there's not an exchange or if there's not -- there's editorial control, that's some dicta in a couple of the cases, but it's not the caselaw. And I've actually cited the case that says that they actually refuted that, where it says that's not required. But what we do in oppositions we find it's helpful.

But here, Your Honor, I think it's public interest, public forum each of statements. And I think we've proven through our motion, hopefully it's supported by my argument here this morning, that we've met that preponderance here of the evidence to show that this is public interest and a public forum. And the basis for these -- these aren't things that are untrue or he disbelieves. He's laid out for NRED, the Southern Highlands Community Association and for Your Honor in our attachments that he's very methodically gone through the statutes and recorded documents. He's not just making things up. He's got a reasonable good-faith belief that these things are true. And based upon that we think we've met that first part of the statute, where the preponderance has been met that these are good-faith statements made in free speech of issues

of public concern, and I think that's step one of the statute.

I'm not sure how you want us to proceed, Your Honor, because if we meet that, then the second stage here is allowing the plaintiff to come and talk about why they have a prima facie showing here. So I don't know if you want me to stop here and --

THE COURT: It's up to you.

MR. SMITH: Well, Your Honor, that's our first part of this. And then if you go forward with that, we laid out very thoroughly here that each of the statements, if you look at them in context, they're simply not defamatory. If you look at these, it's my opinion, I believe. These are not defamatory statements. Nevada caselaw is very clear it's a reasonable person standard. A reasonable person reading these statements in context -- which is also Nevada caselaw, you've got to put them in context, you can't just pull a word out -- if you read them in context, these aren't defamatory. In my opinion I believe this. I think there's a potential fiduciary breach can occur here. These are all not statements of fact, they're statements of opinion.

I think the one that I found most interesting in the opposition was the dark room, read him the riot act, which now equates to racketeering, bribery. They take sort of these jumps from reality to what the worst-case scenario would be. A reasonable person reading, I read somebody the act, is you

kind of gave him a stern talking to. That's not bribing them or forcing them to act in a certain way.

THE COURT: You want me to read it in context; correct?

MR. SMITH: Oh. And that's what I --

THE COURT: You're talking about County commissioners. Dark rooms?

MR. SMITH: Yeah.

THE COURT: Hmmm.

MR. SMITH: Yeah. "I read them the riot act. I didn't force them to do anything, I didn't bribe them, there's no extortion going on here. But that's the statement that -- and then, I believe and I have an opinion, most of the statements you go through, and a reasonable person reading those is not going to jump to the conclusions that are concluded in the opposition.

And if you like, I can go through each of these, Your Honor. We can go that way. Okay. And I think we've already talked about the dark room comments, Your Honor. When you read them in context, "Dark room, read them the riot act." It didn't accuse them of bribery or forcing or extorting them in any way. Just simply he read them the riot act, which, you know, it's my belief is that a reasonable person reading that is not going to believe that that equates to a variety of crimes took place in that back room.

"Lining its pockets," once again, that's a statement, in my opinion I believe -- my opinion. It's fairly clear, straightforward. Opinions are not defamatory per se. There's the caselaw abundance that we cited in our motion for Your Honor. "Lucrative deals and sweetheart deals." I don't know how lucrative deals -- every business owner in the world wants to engage in a lucrative deal or a beneficial deal. That's not defamatory per se. And here there's been some sort of arrangement made between the developer and the County, because the developer didn't build the parks it was required to build. Some sort of arrangement's gone on here. We've attached to our motion the document from the County to them saying, hey, you've granted us this easement and we'll give these parks back to you, the developer to the County at some point, and we'll maintain them. Well, that hasn't happened. And there's got to be some sort of arrangement between the County and developer for why that hasn't. Why Kosor has brought this up, Mr. Kosor, is simply because now the HOA is paying, as I mentioned earlier, $1.1 or .2 million a year to maintain these parks that part of the original Southern Highlands Development agreement didn't require that.

And the next step in that is that can happen if the HOA adopts it, we're going to take -- we'll own this. That hasn't happened, either. So these are not untruthful statements, nor are they defamatory.

And the foreign government one we're looking at, Your Honor, that's just simply Mr. Kosor -- I don't think that's defamatory -- says, I don't like the idea of living in a community like this. And then two is he cannot elect the five members that represent his community. That's a fact. They can't dispute that. He can elect two people. The other three are appointed by the developer. So I don't believe it's defamatory. It's a truthful statement. He's not allowed to elect -- he's allowed to run for one of those seats, which he did recently, but he's not allowed to elect the people that actually represent him and his community. I don't think it's an untrue statement. And if it's truthful or, you know, no basis to believe it's not, it's not defamatory.

Statutory violations, Your Honor. This reference to failure to disclose budgets, to have a timely meeting, once again, those are issues that go to the homeowner association. They're not a party to this lawsuit. And that's part of Mr. Kosor's concern, is there's this burring of where does the board end and where does Olympia start. And we don't know that, because Olympia appoints three of the board members.

And in their opposition they actually cross those lines themselves saying these statements about how the HOA has managed the community are defamatory when they're not a party. And I think for our position it just simply goes to the fourth position that they're not sure where that line ends and where

it starts. And I think that's specific. There was a lot of argument in the opposition regarding the budget and how Mr. Kosor was aware of that number or the attorneys' fees was complete and accurate. The use of HOA fees for moneys for attorneys' fees, that's a decision made by the board, not made by Olympia, not made by Mr. Goett, okay. They want to bring a lawsuit and say it's defamatory, they can do that. But they haven't done that, and we'd request that issue just be stricken. There's several -- I think there are two of those in here where, one, the issue with the attorney's fees; two, there's some statements that I didn't even find in the complaint that they were claiming were defamatory. So it's kind of hard to defend those when I didn't know they were in there originally.

And as we go -- and I think rest of this -- there's part of this that -- statute language they cite in their opposition is just what the language is. And then lastly we argued that we are entitled to attorneys' fees for having to bring this, which is simply a motion to keep Mr. Kosor, who is a very vocal homeowner in that community, quiet. And I think that's the sole reason for this.

And the timing of it is important, Your Honor. When you look at early November, he files the notice that he's going to run for elected seat. Within three weeks this lawsuit's then filed. Many of these statements were made two,

two and a half years before the actual complaint was filed. So if their concern was back in 2015, they would have brought this lawsuit, or 2016. But here he's once again putting himself in a position that maybe not only a vocal homeowner, but now a board member homeowner that could be problematic. And in doing so they filed this lawsuit in an attempt to -- and the letter to him basically stated that, you need to recant all of these or we've got this complaint filed and we're suing you. And the only resolution to this would be a complete and total -- "recanting" is not the right word, but that's the intention, Your Honor, retract everything you said, was included with the complaint that was filed against my client.

So I think here the communications directly to my client prior to our retention and the complaint itself, the sole motive there is just to have him take back statements he said or to just keep him quiet, not for any other purpose than to keep him now busy in litigation for the next year and a half or two years if today our motion is not granted.

I think -- I normally don't give you that much background, Your Honor. It's most of the motions we've filed. But I think the background here is really important regarding first Mr. Kosor as the person he is, and then, two, why he's been such a aggressive, a very, you know, direct advocate for his positions on behalf of the HOA. Mr. Kosor's retired. He

bought a home in 2011 in the community. He's got no motive, no financial benefit to this at all. It's just simply doing what he believes is the right thing. And in doing so he's now found himself in this courtroom in front of you, Your Honor, a party to a lawsuit. Which is not what his intent was. He was trying to go through every other venue possible, and now with this we'll maybe address some other venues for him to try to get some clarification as to some of the statutory language in place in Nevada which we talked to you about regarding the declare and control issue, specifically NRS 116.2122 as to whether or not the developer can unilaterally change the number of homes in the community that can be developed.

Your Honor, with that I've taken up a bite of your morning here. I will rest and have an opportunity to rebut here shortly.

THE COURT: Thank you very much.

Good morning.

MR. JONES: Good morning, Your Honor.

Well, first of all, Your Honor, I guess I would start by asking you if there's any particular issue or point that you had a question about that I could address. If not, I'd be happy to go ahead.

THE COURT: Go ahead.

MR. JONES: All right. Your Honor, here's the problem. Mr. Kosor has every right to speak his mind, and

nobody would -- certainly least of all me, as a lawyer, would want to deny him the opportunity to speak his mind. What he doesn't have a right to do is to defame, slander, and libel. You know, I've finally gotten to the point in my career where I can say I've been doing this a long time. I think I brought two, maybe three defamation cases in my career, and I've done -- as you may know, I've done quite a number of tort-type cases over the years, and those cases to me are the unusual circumstance. You don't typically do this.

You know, one of the comments Counsel was making about some of these allegations go back a couple years actually is a point that we think is significant here, but for a completely different reason than Mr. Kosor suggests. My client has been incredibly -- my clients have been incredibly patient with Mr. Kosor. They've tried to avoid this for a long time and tried to have discussions with Mr. Kosor, tried to allow Mr. Kosor to understand what they're doing and why they're doing it.

There's a suggestion here brought up repeatedly about all the bad things that the HOA is doing and Olympia. But, see, here's the interesting point. They accuse us of blurring the lines between the association and the developer. Actually, it's Mr. Kosor who blurs those lines, because Mr. Kosor apparently -- in fact, I thought it was interesting about some of the history here about -- talking about a combat

pilot. Mr. Kosor is a control freak. He is a guy who is used to command. He's a hospital administrator. He's the boss. And he cannot stand that things don't go the way he wants them to go. This issue about NRED, which they brought up, which is interesting, has nothing to do with this issue. They put it in the context of a history. Only to this extent is it relevant. It shows that Mr. Kosor is on a mission. He is on a quixotic mission to try to destroy the developer out there. He is -- if you want to use a more inflammatory term, I'll just say he is bent on trying to show that he's in control out there and he's going to be the guy deciding what's going to happen in the neighborhood. He and a group of about three people, Judge, are the ones that want to run this HOA.

This whole NRED thing, that -- I've been involved in that, Judge. That went to NRED. It went to the Attorney General's Office. And consistent with my understanding of the law, the Attorney General -- and I know Mr. Kosor doesn't agree with this. He got -- he got a copy of a memo from the AG's Office that I got. I got -- it came to my client, too, because we responded to it. There's nothing there. Now, he has his own take. I don't know where he went to law school, but he has his own take on what that means. And he got shut down. And, again, it's another thing he can't stand, I say there's too many units out there and you can't do that. The AG and NRED looked at his complaint and said, you're wrong.

And so that's another thing that informs his decision to say, I'm not going to stand for this, I'm going to show you who's boss.

And these elections. He has a remedy here. You know, it's interesting I almost thought that when I was listening to Counsel argue Mr. Kosor I thought was the plaintiff, all these complaints he has. There's an ombudsman that is allowed under Nevada statutes, that if he believes he's been wronged and has some rights that have been infringed, he can do something about it. Instead what he does, he goes on his Websites, he goes on other Websites and he says defamatory things. And you can't do that. We're not trying to stop him from voicing his feelings about things, but we are not going to continue for more than two years, by their own admission, to put up with defamatory statements. We've given him every opportunity to retract the defamatory stuff. You can get up there and you can complain, you can come to the board meetings.

With respect to the board, it's three members of the board is still the developer pursuant to Nevada Revised Statutes and the CC&Rs that Mr. Kosor signed and acknowledged and agreed to live under when he'd moved into that neighborhood. So that's the circumstance he's living under. He clearly doesn't like it. He hates my client, he hates Mr. Goett personally, and he hates the development company. And

he's not going to stand for it and he's going to try to do whatever he can to get everybody else in the neighborhood as upset as he seems to be about these issues. And there's no groundswell of support out there for Mr. Kosor. I've been to the HOA meetings.

So let's go now -- let's talk about the law. Again, what are we dealing with here in NRS 41.660? They have to show -- to invoke the anti-SLAPP statute -- they have the burden when invoking the anti-SLAPP statute. So if you're going to live by the statute, you're also going to die by the statute. If they don't meet the standards within the statute, then we don't dismiss the case. And as this Court knows, you don't dismiss a case unless the Court feels very comfortable that that's the appropriate approach. And the very first thing the statute talks about is you have to demonstrate good faith, good faith. Well, what is good faith? Good faith, Your Honor, by its very nature and by definition involves questions of fact, interpretations of conduct. That's what we talk about we have good faith. I deal with good faith all the time in all kinds of different settings, in tort settings, in settings -- good faith and fair dealing both from a contractual standpoint and a tort standpoint. And I have found that whether I'm on the plaintiff's side -- and I do a significant amount of defense work. If I'm on the defense side, I have a very heavy burden of trying to demonstrate

there's no question of fact when good faith is involved in the transaction or the circumstance. So they have to demonstrate good faith, a preponderance of the evidence that he acted within good faith. By nature that invokes a question that I believe needs to be decided by a jury.

Then they have to show by prima facie evidence a probability of prevailing on the merits at this stage of the proceedings. Assuming they get past the good faith part, they have to show a probability, more likely than not that they will prevail.

THE COURT: That's your burden.

MR. SMITH: That's your burden.

MR. JONES: I'm sorry. That's when the burden shifts. Thank you. I got ahead of myself.

THE COURT: That's okay.

MR. JONES: Thank you, though.

So let's just talk about some of the things that Counsel -- I didn't hear him talk -- he did address a couple of them, so I will give him that. But these are things that we're talking about. "Plaintiff spoke to the County commissioners in a dark room," and "Olympia pays for back room deals with politicians." Now, it's -- the HOA, they're not talking about the non Olympia board members that are talking to the politicians in a dark room. Now, Your Honor, I would submit to you that it is an impossibility to meet the standard

just by that statement alone, because there you're talking about a question of fact. What does that mean by suggesting that my clients meet in dark rooms with politicians? Now, they could argue that there's nothing untoward about that, that that was actually just meaning, well, the room happened to have the lights on. And if they want to run with that explanation in front of a jury, then I'd be happy to address that issue with a jury. But to suggest that there's not another reasonable --

THE COURT: Well, you really believe a jury is supposed to determine whether the anti-SLAPP statute is invoked?

MR. JONES: No, Your Honor.

THE COURT: Okay.

MR. JONES: What I'm saying -- what I'm saying is that if we get past -- my point is simply this. This is a question of whether -- what was intended by "meeting in a dark room" with my clients? I'm saying that they could argue to you, I guess in prima facie evidence, that meeting in a dark room simply meant the room was dark, had no lights on. My point is the innuendo there is clear. In our culture, in our society meeting in a dark room with politicians has a known meaning, and it is not a good one. It is a defamatory meaning of -- meaning that there's -- something is untoward, criminal, or at a minimum improper going on with the politicians when

you're meeting them in a dark room. That right there seems to me to settle the issue on that point alone.

Second, my clients are "lining their pockets." Now, the HOA's not lining its pockets. It's not the HOA that's lining its pockets, it's the developer that's lining their pockets, according to Mr. Kosor, because they don't want to develop the park. We just heard Counsel argue, they don't want to build this park. Mr. Kosor has a right to say the HOA and the developer should build the park. I would have no basis to sue him for that. But when you say, you're lining your pockets because you're not doing things that you're supposed to do, "lining your pockets" has -- again, it has meaning. These are not just words in a vacuum. Lining your pockets means you're doing something, again, improper, untoward, arguably even criminal by lining your pockets.

"Plaintiff has obtained a lucrative agreement with the County." This goes to this NRED thing. Well, what does that mean, a lucrative agreement? That's an implication that there was some kind of collusion, improper conspiracy, improper conduct or action between my clients and the County with respect to these so-called lucrative agreements.

"Olympia and its employees act like a foreign government and deprive people of their essential rights." A foreign government -- certainly if he said it acts like the Government of the United States, I don't know that I have --

some people might argue in this day and age that that's a very derogatory thing. But when you suggest it's a foreign government that has connotations here of improper, illicit conduct, a foreign government, a government that is beyond the law, that acts extrajudicially, those kind of points.

Mr. Kosor's Website and his pamphlet. "The County and the developer coordinated an agreement that would permanently and wrongfully obligate the HOA to maintain the public parks in Southern Highland Community."

"The Olympia Management, also controlled by the developer, had potential conflicts of interest --"

THE COURT: Let me ask you a question. Do you believe they met their burden to invoke the statute so that the burden shifts to you?

MR. JONES: No.

THE COURT: Because I'm going to tell you my concern is still whether it's free speech and direct connection with an issue of public concern.

MR. JONES: I'm sorry. Say that again.

THE COURT: My belief is the issue is still whether they invoke the statute is whether this is an issue of public concern.

MR. JONES: All right. Then I will go right to the public concern. And, you know, there's interesting caselaw going back and forth here. Unfortunately, Nevada, which is

not, as you know, unusual here, where you don't have the specific case right on point, and maybe this will become the case so that you and I and other lawyers and judges will have some direction in the future. But as it stands now we have to look outside Nevada. Both sides have looked at California. And I believe the Telega case is -- first of all, that case is 2014, much more on point, and it goes to -- and it even mentions the Damon case. It even mentions it. Page 7 of the Damon case, it invokes the Damon case where it says, "We note that although no cases directly address this issue, multiple cases have addressed anti-SLAPP motions arising from statements at homeowners association board meetings, and all such cases have analyzed the case under the rubric of Subdivision E3 or 4." And then it says, "See Silk, Damon versus Ocean Hills Journalism. That's the case that they're talking about.

And what does the Telega case say? It says, "The homeowners association is not performing or assisting in the performance of the actual government duties, as is the case of Keebler and Fontana." There's -- and California has a little bit different section. It talks about "official actions," which we don't have. But clearly an HOA is not performing government duties, actual government duties. An election that they talk about is not an election of a government official like the County commissioner. This is a --

THE COURT: It's a private community and a private HOA.

MR. JONES: Exactly. And this is what else Telega says. "However, in cases --" this is at page 8. "However, in cases where --" the printout we did -- "-- in cases where --" this is a quote, "...in cases where the issue is not of interest to the public at large, but rather to a limited but definable portion of the public (a private group, organization, or community), the constitutionally protected activity must at a minimum occur in a context of an ongoing controversy, dispute, or discussion such that it warrants protection by a statute that embodies the public policy of encouraging participation in matters of public significance."

And here that's the issue. The problem is where we cite the Weinberg case, where it says, "Public interest does not equate with mere curiosity." Goes on to say, "...should be something of concern to a substantial number of people, a matter of concern to the speaker, and a relatively small specific audience is not a matter of public interest."

Your Honor, while Mr. Kosor may want this to be the biggest issue Clark County being an issue that's addressed and discussed now, the reason this is an issue is primarily because Mr. Kosor thinks it's an issue and he wants -- it's such an issue to him that he is willing to across the line and defame my clients to press his agenda. This is not even -- I

would -- I wish the Court could go these homeowners association meetings and see how many people -- you know, you would never want to do that. There are a few people there that are concerned about these issues. If this -- and assuming that would even make a difference that there was a groundswell out there and a whole bunch of people were upset.

You know, here's the point. You have a right to express your views. You don't have a right to defame. That's what this all comes down to. And if there's an interpretation of his statements, then I believe they have not met their burden. If you can interpret his statements one of two ways, then they lose on this motion.

Kosor's statements are all concerned with issues of, quote, "interest to only a limited but definable portion of the public," end quote. That's the Hailstone case. Now, again citing Telega, "The issue is whether the homeowners association or the developer should be required to pay for neighborhood trails." The court in Telega found that, quote, "Given the absence of any controversy, dispute, or discussion, the issue was of interest to only a narrow sliver of society and thus not an issue of public concern." That, Your Honor, I believe should end the inquiry right there with respect to this issue.

And then whether this is -- these statements were made in a public forum, if Your Honor -- I get from both

questions you asked me and Counsel that this was the primary concern you have. I think the caselaw certainly, if not overwhelmingly, favors our position on this.

THE COURT: I agree that bringing a motion like this should be difficult, okay. Because you're asking the Court to dismiss it right at the -- I mean, at the very, very beginning. And I think this may be the third one in over 15 years. They don't get -- and the second one was just recent, if you can believe it. And the first one was many years ago. So it's not -- I mean, it's not a statute that's supposed to be easily invoked.

MR. JONES: And certainly, Your Honor, that's my belief about this. And I've brought defamation actions and have been faced with anti-SLAPP motions. To get rid of them before there's been any discovery I think is -- it's like this is a special statute, but just as a motion to dismiss in general I think the courts, I think whether it's relevant or not, need to be cautious about doing that. My client doesn't want to sue Mr. Kosor. Doesn't want to do it. That's why we asked him to retract the defamatory stuff. He has every right to state his opinions and complain about things he doesn't like, but he can't go on and suggest criminal conduct on the part of my client. That's the problem here. And that's what he's done.

Again, I would just revert back to the very first

comment Counsel made about some of this has gone on for two and a half years. That doesn't support his position, it supports the point I've told you that my client has been incredibly patient with Mr. Kosor. They don't want to sue. The optics of that, Your Honor, of suing a --

THE COURT: I know. I agree. The optics are not good if the developer's suing the homeowner.

MR. JONES: They don't want to do it. But they don't want to be defamed via suggestions that they're conspiring criminally with the County Commission. That's inappropriate. And this is an issue -- this is Mr. Kosor's crusade, it is not the association. And this goes to this issue of a public forum and whether this is a dispute or controversy. This is Mr. Kosor's dispute or controversy. You cannot invoke the anti-SLAPP statute and say, well, this is a matter of public concern and controversy because I say so. That's the point, Judge. If that were true, you could never get past a motion to dismiss under the anti-SLAPP statute, because the defendant would always say, it's a great concern to me and so -- and I've put it out there into the community, I published it on the Internet to suggest -- this is his Website, by the way, and I don't want to digress and get into that. But we've addressed those points about his -- the limited nature of where he published these things and who got to see them. So this is not as if he is getting up and

speaking in an election context and saying, you know, I'm running for County Commission and these are things that I think are appropriate or should be -- or of public interest to the greater community. That is not what we're dealing with here.

And so just because Mr. Kosor thinks they're of great public concern and interest to him doesn't make it so and does not trigger NRS, what is it, 41.660 and its related statutes, so --

Your Honor, unless you have any other questions, I think I'm at this point probably just repeating myself.

THE COURT: Thank you.

MR. JONES: Thank you, Your Honor.

THE COURT: Thank you very much.

Counsel, you look like you want to respond.

MR. SMITH: Just a little bit, Your Honor.

41.637, which is -- if 41.660 is the anti-SLAPP statute and then 41.637 says good-faith communications. Number (3) there specifically states, which we put in our reply, "Written or oral statement made in direct connection with an issue under consideration by a legislative executive or judicial body or by any other official proceeding authorized by law." Here all these issues were under review by NRED. That is a State entity. These were under review. He made comments about these things that were under review.

His complaint with NRED was filed in 2016, the first one.

THE COURT: I'm going to tell you I would like you maybe to focus on this public interest, because that's where I really am having -- that's where I really think the issue is, is whether the statute even gets invoked and whether the burden shifts. Because this does appear to be -- even if all the homeowners think this issue is important, but it appears to be an issue specific to this homeowner, which, I mean, that's great. I think it's great that he's involved, that he's concerned, that he's reading these statutes and the CC&Rs and holding people accountable. But I'm not sure that this is a situation when this statute is supposed to be hard to invoke, because it does -- it says you don't even get to proceed. I mean, you get dismissed. And not only that, you have to pay my attorneys' fees, and the Court can award damages.

Let me just tell you the other two contexts, they're easy. The other two contexts in which I've had these motions, one was a -- it was either a City Council or a County Commission meeting. So easy. I mean, it's so easy. That's, you know, a problem forum. You know, they talk about things that are of public interest. And the second one was court proceedings, you know, that are very easy for you to look at that and say, well, yeah, of course, anything that goes on in a courtroom, they're public courtrooms, it's a concern to the

public at large. But you want me to take, you know, this issue, these issues with the developer, the homeowners association and say this is an issue of public interest, you know.

MR. SMITH: And I think --

THE COURT: And the factors -- I mean, the only case that we do have is where the Supreme Court recently and they adopted those five factors and you have to consider those five factors in determining whether this is an issue of public interest.

MR. SMITH: And that's part of why I started off my argument here, was in evaluating what Nevada meant by good-faith communications they cited the California law.

THE COURT: Sure.

MR. SMITH: And the statute says, "Any statements made in relation to an ongoing investigation or review --" I just read that into the record, Your Honor. "Written or oral statement made in direct connection with an issue under consideration by a legislative executive, judicial body, or any other official proceeding authorized by law." Nevada Real Estate Division, State entity, these issues were all on review by Mr. Kosor. He filed originally the complaint in 2016 with the Attorneys General, who then referred him back to NRED and eventually got back to the Attorney General's Office, and the issue was finally, we don't believe appropriately, resolved in

January of this year. So these were all under review by a State legislative entity here. They were State appointed and traded. So I think that goes into the protections that are authorized by statute here.

The public forum is -- the Telega case, they cited that that -- and in our reply, Your Honor --

THE COURT: Okay. Wait, wait. I just want to see if I follow you.

MR. SMITH: Sure.

THE COURT: You contend that by taking his issue in front of the Real Estate Board he then turns it into an issue of public interest?

MR. SMITH: I'm simply reading, Your Honor. Well, the good-faith communications part of that is the first step. So these things were there. The public interest part goes to this, Your Honor. The Telega case that they cite, in that case there was no dispute. To have an issue, public forum, public interest there has to be a dispute. In Telega they actually said, there's no dispute so it's not a public interest or public forum, who cares. And that case is completely off point. That's what they cited. I mentioned that in my reply, Your Honor. If there's no dispute, why are we -- no statements, doesn't matter. But here we have a dispute. There's a clear dispute between Mr. Kosor and on the nextdoor.com is at least three or four other homeowners and

their exhibits they attach that have the same concerns, appreciated what Mike was doing. So it wasn't just him. There are other homeowners involved.

And what you're talking about here is, Your Honor, at least from the annual basis for money spent by the HOA, $1.4 million to pay Olympia Management, $1.1 or .2 million to cover the cost of the park. That's two and a half -- $2.5 million, not including the amount of parks that they were never provided. There's a community. They're supposed to be provided 20 acres of a sports park. Never happened. That's -- if you have kids in the community, it's probably something you're concerned about. You may not be aware of it, because I live in an HOA, I get letters from the HOA, I get -- I often don't read them, honestly, Your Honor. Mr. Kosor does. And because he does, he brings these issues up to the other homeowners in the community. Maybe I should start reading the things in my HOA, but my position here, Your Honor, this is a very large sum of money at issue for the homeowners. That is a public interest, how their money's being spent by the HOA. We cite the two California cases that talk about -- one of them 3,000 was enough to make it public interest. The other one was a 10,000-person number. This is much bigger than both those numbers. There's caselaw on point to what I'm arguing, Your Honor. And I don't -- I know they want some of the other cases to say it's not of a public interest, but there are

clear cases on point that say that it if affects 3,000 people, public interest; 10,000 people, public interest. And I think there's enough caselaw cited in our brief here, Your Honor, the one in California, which we have to do.

The other -- couple other items that I just want to mention, the prior statute before 2015, this statute actually had our burden, and it was clear and convincing evidence that they had to produce. Somebody got an ear of the legislature to change that burden on their side considerably. It used to be clear and convincing evidence that they had to prove that had a likelihood of prevailing, which I don't know who's involved with that, I'm assuming people that wanted to be able to bring these suits and not have an incredibly high burden.

The other thing here that we talked about, the declare and control issue, just context here. AB 192 was passed a couple years ago, and it's 116.2122, which made it even more difficult for homeowners to be in control of their HOA board because it was 75 percent. Now it's 90 percent of the units in the community to be owned by homeowner other than developer. Mr. Kosor was involved with that. He spoke with local legislators. He was involved when they tried to repeal that statute two years ago. He testified. So he's taken the appropriate avenues to try to address this. That he's a control freak I think is out of line. That's the phrase that was used, Your Honor. But what he tries to do is go down

appropriate venues. I think he's testifying tomorrow with the CIC board. He's doing what he's supposed to do to address his concerns. I don't think the statements that he made here are defamatory or, even if we don't get there, they're protected by the statute, and we think the case should be dismissed and we should all move forward and hopefully without addressing issues of the HOA. Your Honor, I think that's all I have for you.

THE COURT: Thank you.

Okay. At this time the Court's going to deny the motion, make a finding that they haven't met their burden to invoke the statute.

And, Counsel, you can prepare the order.

MR. JONES: Okay.

THE COURT: Thank you.

MR. JONES: We'll run it by Counsel, Your Honor.

THE COURT: Thank you.

THE PROCEEDINGS CONCLUDED AT 10:48 A.M.

* * * * *

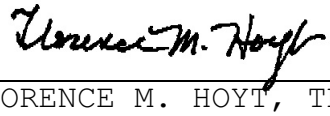
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

5/3/18

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada limited liability company; GARRY V. GOETT, a Nevada resident Plaintiffs, vs. MICHAEL KOSOR, JR., a Nevada resident; and DOES I through X, inclusive Defendants.	Case No.: A-17-765257-C Dept. No.: XII **ORDER DENYING DEFENDANT MICHAEL KOSOR'S MOTION TO DISMISS PURSUANT TO NRS 41.660** Hearing Date: March 5, 2018 Hearing Time: 9:30 a.m.

THIS MATTER having come before the Court on March 5, 2018, with J. Randall Jones, Esq. and Cara D. Brumfield, Esq. of Kemp, Jones & Coulthard, LLP appearing on behalf of Plaintiffs and Robert B. Smith, Esq. of Lauria, Tokunaga, Gates & Linn, LLP appearing on behalf of Defendant on Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660. The Court having reviewed and considered the Motion and the related opposition and reply; and having heard the arguments of counsel, with good cause appearing, enters the following Findings, Conclusions, and Order:

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kjc@kempjones.com

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660 is DENIED because the Court finds that Defendant has failed to meet its burden to invoke NRS 41.660.

DATED: March 19, 2018.

Judge Michelle Leavitt

Submitted by:

KEMP, JONES & COULTHARD

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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada limited liability company; GARRY V. GOETT, a Nevada resident Plaintiffs, vs. MICHAEL KOSOR, JR., a Nevada resident; and DOES I through X, inclusive Defendants.	Case No.: A-17-765257-C Dept. No.: XII **NOTICE OF ENTRY OF ORDER DENYING DEFENDANT MICHAEL KOSOR'S MOTION TO DISMISS PURSUANT TO NRS 41.660**

TO: Defendants; and,

TO: Their respective counsel:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that on March 20, 2018, an Order Denying Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660 was entered in

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the above case. A copy of said Order is attached hereto.

Dated this 21st day of March 2018.

KEMP, JONES & COULTHARD, LLP

/s/ Nathanael Rulis
J. RANDALL JONES, ESQ. (#1927)
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of March, 2018, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANT MICHAEL KOSOR'S MOTION TO DISMISS PURSUANT TO NRS 41.660** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Alison Augustine
An Employee of KEMP, JONES & COULTHARD, LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada limited liability company; GARRY V. GOETT, a Nevada resident Plaintiffs, vs. MICHAEL KOSOR, JR., a Nevada resident; and DOES I through X, inclusive Defendants.	Case No.: A-17-765257-C Dept. No.: XII **ORDER DENYING DEFENDANT MICHAEL KOSOR'S MOTION TO DISMISS PURSUANT TO NRS 41.660** Hearing Date: March 5, 2018 Hearing Time: 9:30 a.m.

THIS MATTER having come before the Court on March 5, 2018, with J. Randall Jones, Esq. and Cara D. Brumfield, Esq. of Kemp, Jones & Coulthard, LLP appearing on behalf of Plaintiffs and Robert B. Smith, Esq. of Lauria, Tokunaga, Gates & Linn, LLP appearing on behalf of Defendant on Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660. The Court having reviewed and considered the Motion and the related opposition and reply; and having heard the arguments of counsel, with good cause appearing, enters the following Findings, Conclusions, and Order:

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660 is DENIED because the Court finds that Defendant has failed to meet its burden to invoke NRS 41.660.

DATED: March 19, 2018.

Judge Michelle Leavitt

Submitted by:

KEMP, JONES & COULTHARD

J. Randall Jones, Esq. (#1927)
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Attorneys for Defendant
Michael Kosor, Jr.

DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC a Nevada limited liability company; GARRY V. GOETT, a Nevada Resident, Plaintiff, vs. MICHAEL KOSOR, JR., a Nevada resident; DOES I through X, inclusive, Defendants.	Case No: A-17-765257-C Dept. No: 12 **SUBSTITUTION OF ATTORNEYS**

Defendant Michael Kosor, Jr. hereby substitutes William H. Pruitt, Esq. of the law firm of Barron & Pruitt, LLP as his attorney of record in place and instead of Raymond R. Gates, Esq., of the law firm of Lauria Tokunaga Gates & Linn, LLP in the above-captioned matter.

DATED this 5 day of April, 2018.

MICHAEL KOSOR, JR.

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The law firm of Lauria Tokunaga Gates & Linn, LLP hereby agrees and consents to the substitution of the law offices of Barron & Pruitt, LLP as the attorneys of record for Defendant Michael Kosor, Jr. in the above-captioned matter.

DATED this _____ day of April, 2018.

LAURIA TOKUNAGA GATES & LINN, LLP

Raymond R. Gates, Esq.
Nevada Bar No. 5320
Robert B. Smith, Esq.
Nevada Bar No. 9396
601 S. Seventh Street
Las Vegas, Nevada 89101

The law offices of Barron & Pruitt, LLP hereby accept substitution as attorney of record for Defendant Michael Kosor, Jr. in the above-captioned matter.

DATED this 5th day of April, 2018.

BARRON & PRUITT, LLP

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JOSEPH R. MESERVY, ESQ.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of April, 2018, I served the foregoing **SUBSTITUTION OF ATTORNEYS** as follows:

☐ US MAIL: by placing the document(s) listed above in a sealed envelope, postage prepaid, in the United States Mail at Las Vegas, Nevada, addressed to the following:

☐ BY FAX: by transmitting the document(s) listed above via facsimile transmission to the fax number(s) set forth below.

☐ BY HAND-DELIVERY: by hand-delivering the document(s) listed above to the address(es) set forth below.

☐ BY EMAIL: by emailing the document(s) listed above to the email address(es) set forth below.

☒ BY ELECTRONIC SERVICE: by electronically serving the document(s) listed above with the Eighth Judicial District Court's WizNet system upon the following:

J. Randall Jones, Esq.
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3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorney for Plaintiffs

/s/ MaryAnn Dillard
An Employee of BARRON & PRUITT, LLP

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Attorneys for Defendant
Michael Kosor, Jr.

DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC a Nevada limited liability company; GARRY V. GOETT, a Nevada resident, Plaintiffs, vs. MICHAEL KOSOR, JR., a Nevada resident; DOES I through X, inclusive, Defendants.	Case No: A-17-765257-C Dept. No: 12 **NOTICE OF APPEAL**

Notice is hereby given that MICHAEL KOSOR, JR. ("Defendant"), by and through his attorney, William H. Pruitt, Esq. of the law firm of BARRON & PRUITT, LLP, hereby appeals to the Supreme Court of Nevada from the Order Denying Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660 entered on March 20, 2018. *See* Order, attached as **Exhibit A**. Defendant MICHAEL KOSOR, JR. also appeals from all other rulings and orders made appealable by the foregoing.

DATED this 19th day of April 2018.

BARRON & PRUITT, LLP

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3890 West Ann Road
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of April, 2018, I served the foregoing **NOTICE OF APPEAL** as follows:

☐ US MAIL: by placing the document(s) listed above in a sealed envelope, postage prepaid, in the United States Mail at Las Vegas, Nevada, addressed to the following:

☐ BY FAX: by transmitting the document(s) listed above via facsimile transmission to the fax number(s) set forth below.

☐ BY HAND-DELIVERY: by hand-delivering the document(s) listed above to the address(es) set forth below.

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J. Randall Jones, Esq.
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3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Attorney for Plaintiffs

/s/ MaryAnn Dillard
An Employee of BARRON & PRUITT, LLP

EXHIBIT A

EXHIBIT A

EXHIBIT A

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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada limited liability company; GARRY V. GOETT, a Nevada resident Plaintiffs, vs. MICHAEL KOSOR, JR., a Nevada resident; and DOES I through X, inclusive Defendants.	Case No.: A-17-765257-C Dept. No.: XII **NOTICE OF ENTRY OF ORDER DENYING DEFENDANT MICHAEL KOSOR'S MOTION TO DISMISS PURSUANT TO NRS 41.660**

TO: Defendants; and,

TO: Their respective counsel:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that on March 20, 2018, an Order Denying Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660 was entered in

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the above case. A copy of said Order is attached hereto.

Dated this 21st day of March 2018.

KEMP, JONES & COULTHARD, LLP

/s/ Nathanael Rulis
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NATHANAEL R. RULIS, ESQ. (#11259)
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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of March, 2018, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANT MICHAEL KOSOR'S MOTION TO DISMISS PURSUANT TO NRS 41.660** via the Court's electronic filing system only, pursuant to the Nevada Electronic Filing and Conversion Rules, Administrative Order 14-2, to all parties currently on the electronic service list.

/s/ Alison Augustine
An Employee of KEMP, JONES & COULTHARD, LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC, a Nevada limited liability company; GARRY V. GOETT, a Nevada resident Plaintiffs, vs. MICHAEL KOSOR, JR., a Nevada resident; and DOES I through X, inclusive Defendants.	Case No.: A-17-765257-C Dept. No.: XII **ORDER DENYING DEFENDANT MICHAEL KOSOR'S MOTION TO DISMISS PURSUANT TO NRS 41.660** Hearing Date: March 5, 2018 Hearing Time: 9:30 a.m.

THIS MATTER having come before the Court on March 5, 2018, with J. Randall Jones, Esq. and Cara D. Brumfield, Esq. of Kemp, Jones & Coulthard, LLP appearing on behalf of Plaintiffs and Robert B. Smith, Esq. of Lauria, Tokunaga, Gates & Linn, LLP appearing on behalf of Defendant on Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660. The Court having reviewed and considered the Motion and the related opposition and reply; and having heard the arguments of counsel, with good cause appearing, enters the following Findings, Conclusions, and Order:

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660 is DENIED because the Court finds that Defendant has failed to meet its burden to invoke NRS 41.660.

DATED: March 19, 2018.

Judge Michelle Leavitt

Submitted by:

KEMP, JONES & COULTHARD

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DISTRICT COURT

CLARK COUNTY, NEVADA

OLYMPIA COMPANIES, LLC a Nevada limited liability company; GARRY V. GOETT, a Nevada resident, Plaintiffs, vs. MICHAEL KOSOR, JR., a Nevada resident; DOES I through X, inclusive, Defendants.	Case No: A-17-765257-C Dept. No: 12 **CASE APPEAL STATEMENT**

CASE APPEAL STATEMENT

Defendant/Appellant MICHAEL KOSOR, JR. by and through his attorneys, BARRON & PRUITT, LLP, hereby submits the following Case Appeal Statement:

A. The district court case number and caption showing the names of all parties to the proceedings below:

1) Case No. A-17-765257-C

2) Olympia Companies, LLC, a Nevada limited liability company; Garry V. Goett, a Nevada resident, Plaintiffs, Michael Kosor, Jr., a Nevada resident; Does I through X, inclusive, Defendants.

B. The name of the judge who entered the order or judgment being appealed:

1) Honorable Michelle Leavitt
Eighth Judicial District Court
Department 12

///

C. The name of each appellant and the name and address of counsel for each appellant:

1) Appellant Michael Kosor, Jr.

2) William H. Pruitt, Esq.
Barron & Pruitt, LLP
3890 West Ann Road
North Las Vegas, Nevada 89031

D. The name of each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is not known, then the name and address of that respondent's trial counsel):

1) Respondents Olympia Companies, LLC and Garry V. Goett

2) J. Randall Jones, Esq.
KEMP, JONES & COULTHARD, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

E. Whether an attorney identified in response to subparagraph D is not licensed to practice law in Nevada, and if so, whether the district court granted the attorney permission to appear under SCR 42, including a copy of any district court order granting that permission:

1) No.

F. Whether the appellant was represented by appointed counsel in the district court, and whether the appellant is represented by appointed counsel on appeal:

1) Counsel for Appellant Michael Kosor, Jr. was not appointed, but was retained by Appellant Michael Kosor, Jr. to represent his interests in the district court action as well as on appeal.

G. Whether the district court granted the appellant leave to proceed in forma pauperis, and if so, the date of the district court's order granting that leave:

1) N/A

H. The date that the proceedings commenced in the district court:

1) The Complaint was filed on November 29, 2017.

I. A brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

1) This action arises from statements made by the Defendant which Plaintiffs have alleged were defamatory. The Defendant Michael Kosor's (anti-SLAPP) Special Motion to Dismiss Pursuant to NRS 41.660 was denied by the District Court, and it is from the District Court's Order Denying Defendant Michael Kosor's Motion to Dismiss Pursuant to NRS 41.660 filed on March 20, 2018, that the instant interlocutory appeal is made.

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J. Whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court or Court of Appeals and, if so, the caption and docket number of the prior proceeding:

1) No.

K. Whether the appeal involves child custody or visitation:

1) No.

L. In civil cases, whether the appeal involves the possibility of settlement:

1) Yes.

DATED this 19th day of April 2018.

BARRON & PRUITT, LLP

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