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**IN THE SECOND JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF WASHOE**

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STAN LUCAS, an individual, and D. FRED  
ALTMANN,

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Petitioners,

Case No.: CV20-00253

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vs.

Dept. No: 1

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CITY OF RENO, a political subdivision of the  
State of Nevada,

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Respondent.

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**ORDER GRANTING PETITION FOR JUDICIAL REVIEW**

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Currently before the Court is a *Petition for Judicial Review Pursuant to NRS 278.0233 and Declaratory Relief* (“Pet.”) filed by Stan Lucas (“Petitioner” or “Lucas”) on February 10, 2020. Petitioner filed his *Opening Brief in Support of Petition for Judicial Review Pursuant to NRS 278.0233* on April 27, 2020. On May 28, 2020, this Court granted Petitioner’s motion to join D. Fred Altmann (“Altmann”) to this judicial review proceeding, and dismissed Petitioner’s claim for declaratory relief. Respondent City of Reno (“City”) filed its *Answering Brief* on June 10, 2020. On June 23, 2020, Lucas and Altmann (together, “Petitioners”) filed their *Reply Brief of Stan Lucas and D. Fred Altmann in Support of Petition for Judicial Review Pursuant to NRS 278.0233*. This Court heard oral argument on August 17, 2020.

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Upon careful review of the record, written briefs, and oral argument, the Court finds good cause to grant the Petition, vacate the City Council’s decision to uphold the Planning

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1 Commission’s denial of Lucas’ land use applications, and remand the matter to the City Council  
2 for further consideration consistent with this Order.

3 **I. FINDINGS OF FACT**

4 This is a petition for judicial review that challenges whether substantial evidence existed  
5 for the Planning Commission and City Council to deny land use applications (the “Application”)  
6 for property owned by Mr. Stan Lucas (the “Lucas Property”). Pet. ¶¶ 2, 39. The Application  
7 requested approval of a proposed residential subdivision comprised of 676 new homes on  
8 approximately 955 acres of land in west Reno. R0019, R1353.<sup>1</sup> The Lucas Property is located  
9 north of U.S. Highway 40 West and to the west of Del Webb Parkway in Somerset. R0019. The  
10 Application included a request for approval of a tentative map to subdivide and develop the  
11 property, as well as associated special use permits (“SUPs”) for grading (“cuts and fills”), hillside  
12 development, and disturbance of major drainageways. R0019, R1353, R1346.

13 **A. Mortensen-Garson Overlay District (“MGOD”)**

14 The Lucas Property, along with a number of other properties, was originally annexed into  
15 the City in 2001, as result of a Settlement Agreement signed by a number of parties, including the  
16 City, in Case No. CV02-03469 on November 8, 2002. R1138; R2257.<sup>2</sup> According to the  
17 document, the parties agreed to “recognize the annexation” of certain properties in the City.  
18 R2251. The owners of those properties, in turn, indicated they intended to “seek and objectively  
19 justify an increase in zoning” through a “zoning amendment or other applicable application.”  
20 R2251. The “maximum density and density distribution [to be] eligible for consideration during  
21 the term of [the Settlement Agreement]” would include “[u]p to 3,000 residential units.” R2251.

22 The criteria used to determine “appropriate density and density distribution” would include  
23 consideration of “natural constraints in slopes,” “availability of water resources and water delivery  
24 systems,” “impacts on traffic [and] congestion on existing Verdi community,” “delivery of  
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26 <sup>1</sup> The citations to the record refer to the Bates-stamped pages filed herein on April 15, 2020. *Notice of Transmission*  
27 *of Record on Appeal* (April 15, 2020) (“*Notice of Record*”).

28 <sup>2</sup> A copy of the 2002 Settlement Agreement is included in Exhibit 1 to the Petition, as well as in additional documents  
compiled by the City at the request of Petitioners. R2248-R2257. The document, however, is not part of the  
administrative record in this case. *See Notice of Record*. Furthermore, this Court’s decision only relies on the  
administrative record in this case.

1 services, including fire,” and the “impact of future development in the requested densities on  
2 adjacent communities.” R2252. In “conjunction with any [such] zoning increase,” the property  
3 owners would process a Development Standards Handbook” to be “recorded and run with the  
4 land” (“Handbook”). R2252-R2253. Thereafter, the property owners could “submit applications”  
5 to the City to “develop their respective properties consistent with the [Handbook] (i.e., tentative  
6 maps, special use permits, etc.).” R2253. The Settlement Agreement states it “will terminate ten  
7 years from the date it takes effect . . . .” R2256. Once recorded, the Handbook would “run with  
8 the land for the term of the [Settlement Agreement].” R2252-R2253.

9 In 2004, the City amended its zoning code to adopt the Mortenson-Garson Overlay District  
10 (“MGOD”). R0240. The provisions of that zoning code amendment are codified at RMC §  
11 18.08.406(i). The MGOD defines three separate planning areas (Planning Areas 1, 2 & 3). RMC  
12 § 18.08.406(i)(1). The Lucas Property is in Planning Area 1, which has a “residential development  
13 potential” of “676 units.” *Id.* at Table 18.08-46 (Parcel Data), Figure 18.08-44 (Vicinity Map),  
14 Table 18.08.48 (Residential Development Potential by Planning Area).<sup>3</sup> Planning Area 1 depicts  
15 areas zoned as SF-6 (Yellow) and OS (Green). *Id.* at Figure 1-2 (Land Use Plan); R0020. SF-6  
16 zoning allows for one single-family unit on a 6,000 square foot lot. RMC § 18.08.101(a), Table  
17 18.08-1 (Base Zoning District Names and Abbreviations). OS zoning signifies “permanent open  
18 space” restricted to uses “directly related to the open space function of the land, are necessary to  
19 provide community services, or are necessary for the health, safety or welfare of the public.” §  
20 18.08.406(e)(1).

21 **B. Reno Planning Commission Hearing**

22 Prior to the Planning Commission hearing, on December 18, 2019, Reno Community  
23 Development Staff issued its Planning Commission Staff Report (“Staff Report”) recommending  
24 approval of the Application with Recommended Conditions 1-22. R1134-54. The Staff Report  
25 explained that

26 the Mortensen-Garson Overlay District was adopted into City policy and  
27 code through the MGOD standards and corresponding base zoning. As such,  
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<sup>3</sup> According to Petitioners, the Handbook was also approved in March 2004. *Opening Br.* at 3:10-15.

1 this project is subject to certain additional requirements discussed throughout  
2 this report, referred to as the Mortensen-Garson Overlay District. In areas  
3 where the MGOD is unclear, the Development Standards Handbook is  
referred to for background history and intent.

4 R1138. For example, with respect to the zoning boundaries, i.e., SF-6 and OS, the Staff Report  
5 detailed as follows:

6 Based on a review of historical documents, including the expired Handbook,  
7 staff has determined that RMC 18.08.406(i)(15)  
8 (Administration/amendments) allows the specific zoning boundaries within  
9 the MDOG to be modified at the time of the tentative map, special use permit  
10 or parcel map to reflect design refinements consistent with MGOD standards.  
The zoning boundaries are proposed to be modified through this tentative  
map/special use permit application and include an overall reduction in SF6  
zoning and an increase in Open Space zoning of 27 acres.

11 R1139. The Planning Commission considered the Application on December 18, 2019, and  
12 unanimously denied the Application. R1122; Transcript of Dec. 18, 2019 Planning Commission  
13 Meeting (“Tr. 12/18/2019”) at 3. A review of the transcript reveals that the Planning Commission  
14 members took issue with the MGOD and the Handbook. First, Commissioner Gower, while  
15 discussing the MGOD master plan and zoning stated:

16 I’m saying my opinion that as I think that as a city we should take the extra  
17 step to go through the process of a master plan and a zoning map amendment,  
18 and the rationale behind that is that it’s an additional public facing process  
19 with a different set of findings. The findings are different for a zoning map  
20 and a master plan amendment than they are for a tentative map and an SUP.  
21 So they have different considerations, and I think that as part of the discussion  
22 for a zoning map amendment and a master plan amendment we would be able  
23 to have some of these discussions related to, you know, should this part of  
24 the proposed development on a hillside be included or should it not. That’s  
the kind of discussion that we have as part of a zoning map amendment and  
that’s the reason we go through that process. So at the highest level I’m  
concerned that we’ve – we’ve jumped – we’ve leapfrogged just ahead a little  
bit of where we need to go.

25 *Id.* at 177:20-178:14. Thereafter, Commissioner Olivas stated that “I guess looking at the map  
26 with the overlay with the maps and the bubbles of zoning, and I get what we’ve been dealt, and  
27 it’s – it’s not what we like.” *Id.* at 179:28-180:2. Commissioner Olivas goes on to state that he  
28 cannot make Finding (e) of NRS 278.349(3), nor find conformity with the zoning ordinances and

1 master plan. *Id.* at 180:8-24. Next, Commissioner Marshall confines his comment to the invalidity  
2 of the MGOD and how he feels the MGOD must be amended by Master Plan and Zoning  
3 Amendment because it does not comply with “our standard practice.” *Id.* at 181:8-:187:21. He  
4 also states, “So the question is if we want it there we need to amend Chapter 18 and put it in rather  
5 than deviate from our standard process or just follow the standard process like everyone else does.”  
6 *Id.* at 182:21-25.

7 Next, Chairman Johnson discusses the PUDs in relation to the tentative map and special  
8 use permits and seems to say the MGOD should really have been a PUD. *Id.* at 188:3-189:12.  
9 There was an extended question and answer discussion between Planning Staff and the members  
10 of the Planning Commission, Angela Fuss, Arlo Stockham, and City Attorney McKean. *See id.* at  
11 82:10-104:1. In this section of the transcript, the Planning Staff and City Attorney made it clear  
12 that the interpretation of the Handbook and MGOD by Applicants and Staff was correct and no  
13 master plan amendment or zone change was required. *Id.* In fact, City Attorney McKean was  
14 very direct in his comments regarding the finality of the zoning locations, in stating that

15 when you look at the handbook you see that that was actually expressly  
16 contemplated, and it’s kind of rare when you actually have legislative history  
17 that’s right on point that says this will be finalized or these locations will be  
made exact at the time of the tentative map.

18 *Id.* at 100:2-8.

19 In addition, a review of the Planning Commission members’ findings, *see id.* at 191:10-  
20 195:4, depict that the first comment by Commissioner Gower is a request for a zoning map  
21 amendment of MGOD, *see id.* at 192:4-10. Commissioner Marshall also stated, “I just want to  
22 clarify that also my vote is also based on the fact that we can’t entertain this tentative map without  
23 a zone change application and processing.” *Id.* at 194:13-16. Thereafter, the Commission  
24 members state they cannot make findings pursuant to NRS 278.349(3) to approve the Application.  
25 *Id.* at 193:15-194:8.

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1 **C. Reno City Council Appeal Hearing**

2 On January 22, 2020, the City Council considered the appeal filed by Altmann, and  
3 unanimously denied the same. Tr. 1/22/2020 at 94. At that hearing, Angela Fuss, Planning  
4 Manager, explained the following regarding the history of the Lucas Property:

5 This entire area, everything in gray was initially annexed into the city  
6 back in 2001. At that time there was a lawsuit between Washoe County and  
7 the City of Reno and through that process a settlement agreement came  
8 forward. That settlement agreement basically outlined how this whole area,  
9 again everything in gray, was to be developed and it put limits on total  
10 number of residential unites that could come forward and total acreage of  
11 non-residential development.

12 As part of that there was a handbook, again not a planned unit  
13 development, but a separate document that is referred to as the Mortensen-  
14 Garson Development Handbook. That document was part of the settlement  
15 agreement and the Court decided that a settlement agreement and this  
16 handbook would be in effect until 2012, basically it was a ten-year window.  
17 At that time that handbook document would expire, that settlement document  
18 would expire, and the city would have to come up with a text amendment or  
19 an overlay zoning district, which they did.

20 So what we have before us now is an overlay district, and that is what  
21 we look at and it sets the limits of where development can go and it talks  
22 about how we develop on ridgelines specific to this area. These are standards  
23 that are really more specific than code, typical zoning code, and so this is the  
24 first piece of information we look at as planners where we're looking at  
25 development in this area. So I just wanted to kind of put that information out  
26 there.

27 One of the challenges we have, and this is part of the discussion with the  
28 text amendment that Councilwoman Jordan brought up at the last council  
meeting, is there is a lot of gray area in that overlay district, and the problem  
we have is that we had this handbook, but the handbook wasn't translated  
word for word into this overlay district. So there's areas that were included  
specifically in the handbook that were not included in the overlay district. So  
when we get to areas that they're vague or don't make sense, we have  
questions as to well, let's go back and look at the legislative history. We go  
back and look at the settlement agreement and we go back and we look at that  
handbook for informational purposes. We don't use that as the guiding  
document, but we look at it for informational purposes and where there's  
questions or ambiguity in that we would look to that to give us direction on  
how to move forward. So that's a little bit of history that I think is very  
relevant to this project.

1 *Id.* at 48:6-50:8. Thereafter, Altmann’s land development consultant, Derick Wilson, presented  
2 the Applicant’s case. *Id.* at 53. Mr. Wilson noted that the “zoning of the site is governed by the  
3 overlay district” that is “included in the city’s zoning code.” *Id.* at 54:5-12.

4 The members of the City Council then proceeded to their questioning and deliberation.  
5 Councilmembers immediately questioned Staff regarding the MGOD validity and why there was  
6 no application for Master Plan amendment and zone change. *See id.* at 64. Staff confirmed that  
7 the land at issue in the Application was located within the MGOD boundary, *id.* at 63:20-21. Then,  
8 Councilmember Brekhaus asked “why was the decision to validate the application as complete  
9 without a zoning map amendment made and we have precedent for other zoning map amendments  
10 in this area?” *Id.* at 64:5-8. Staff responded that in those cases “[i]t wasn’t an issue of trying to  
11 define the boundaries of those zoning categories. It was completely changing those zoning  
12 categories.” *Id.* at 64:14-16.

13 At the conclusion of their questioning, Councilmembers summarized their positions.  
14 Councilmember Reese summarized his position as follows:

15 [W]ith regard to the tentative map findings I cannot make findings sufficient  
16 for tentative map finding D, which is availability and access of public services; G,  
17 which is the effect on existing public streets; J, which is the availability and access  
of fire protection.

18 With regard to the SUP findings there are two different categories for me  
19 that are concerning. So with regard to the general findings I cannot make findings  
20 sufficient on item C, which is again sort of overlaps with some of the other ones,  
but it’s adequate services and infrastructure for the project; D, which is the  
21 mitigation of traffic impacts; E, which is that the proposed site location is  
appropriate for the area. \* \* \* [W]ith regard specifically to the SUP for hillside  
22 development . . . I cannot make findings for A, which has to do with slope  
degradation; B, which are the grading practices, those cuts and fills; and then E,  
23 which is mitigation again of visual impacts near prominent ridgelines.

24 *Id.* at 85:10-86:8. Councilmember Jardon stated that in addition to the findings cited by the  
25 planning commission, she was unable to make the following findings:

26 I cannot make finding E of the tentative map—tentative map, which is  
27 conformity with the zoning ordinances master plan and elements thereof except that  
if any existing zoning ordinance is inconsistent with the master plan, the zoning  
28 ordinance takes precedent.

1 I also cannot make item—finding E of the special use permit. The proposed  
2 site location and scale intensity, density, height, layout, setbacks and architectural  
3 and overall design of the development and the use proposed is inappropriate to the  
4 area in which it’s located.

4 And the special use permits for hillside developments, I cannot make  
5 finding B, D or E. Item B is that the proposed project utilizes grading practices that  
6 are, in my opinion, not appropriate for the hillsides and designed to minimize the  
7 visibility of unsightly scarring.

7 Item D, the proposed project adheres—does not adhere, in my opinion, to  
8 the applicable hillside development design standards; and item E, finding E, the  
9 proposed project site layout and design feature don’t adequately mitigate potential  
10 visual impacts.

10 *Id.* at 92:6-93:4. Councilmember Jardon, seconded by Councilmember Reese, moved to affirm  
11 the Planning Commission’s decision; the City Council unanimously voted to uphold the Planning  
12 Commission denial. *Id.* at 94:13-14.

## 13 II. STANDARD OF REVIEW

14 NRS 278.3195(1) entitles a person who is aggrieved by a decision of the Planning  
15 Commission to appeal that decision to the City Council; NRS 278.3195(4) permits a person to  
16 challenge the decision of the City Council by “filing a petition for judicial review” in the district  
17 court. In evaluating such a petition for judicial review, the district court must determine whether,  
18 based on the record made before the City Council, substantial evidence supports the decision. *Kay*  
19 *v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006). “Substantial evidence is that which a  
20 reasonable mind could accept as sufficient to support a conclusion[,]” and a reviewing court “will  
21 not substitute its judgment for that of a municipal entity if substantial evidence supports the entity’s  
22 action.” *City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 271, 236 P.3d 10, 15-16 (2010).

23 While the decision to grant or deny a use permit is a discretionary act, which should be  
24 upheld if supported by substantial evidence, *see id.*, an abuse of discretion can occur where a  
25 discretionary decision disregards controlling law, *see MB Am., Inc. v. Alaska Pac. Leasing*, 132  
26 Nev. 78, 88, 367 P.3d 1286, 1292 (2016). And “questions of law are reviewed *de novo*.” *Bullock*  
27 *v. Pinnacle Risk Mgmt.*, 113 Nev. 1385, 1388, 951 P.2d 1036, 1038 (1997).

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1 **III. CONCLUSIONS OF LAW AND ANALYSIS**

2 Petitioners contend that the record does not contain substantial evidence to support a  
3 decision that the Application “fail[ed] to meet the requirements of the MGOD.” *Reply Br.* at 2.  
4 Specifically, Petitioners maintain that the City only has discretion to determine whether, under  
5 NRS 278.349, the Application complied with the design standards set forth in the MGOD. *See*  
6 *Transcript of Aug. 17, 2020 Hearing on Petition (Tr. of Hr’g on Pet.)* at 16:9-12; *see also id.* at  
7 13:11-17 (“Now, under NRS 278.349, which is the Nevada Revised Statutes criteria for judging  
8 whether a subdivision map or tentative map is appropriate, that really has nothing to do with the  
9 design of the subdivision. That just sets forth the finding that the approving body has to make in  
10 order to determine that a tentative map is approved.”).

11 The City contends that the discretionary decision to deny the Application is supported by  
12 substantial evidence in the record. *Answering Br.* at 14-18. However, even the City acknowledged  
13 that from the record, at a minimum, it is unclear whether the Planning Commission and City  
14 Counsel evaluated the Application under the provisions of the MGOD. *Tr. of H’rg on Pet* at 50:9-  
15 53:20.

16 The record before this Court, as detailed above, demonstrates both the Planning  
17 Commission’s and City Council’s animosity toward the MGOD, and the refusal to evaluate the  
18 Application in accordance with the MGOD, as recommended in the Staff Report. This was error,  
19 such that this Court must conclude that the decision to deny the Application was an abuse of  
20 discretion. *See Kay*, 122 Nev. at 1105, 146 P.3d at 805. Because neither the Planning Commission  
21 nor the City Council set forth findings relating to the Application’s compliance with MGOD, this  
22 Court declines to make that determination in the first instance. Therefore, this Court vacates the  
23 City Council’s decision to uphold the Planning Commission’s denial the Application, and  
24 remands the matter to the City Council for further consideration consistent with the following  
25 conditions:

- 26 1. The Applications must be reviewed, processed, and considered under the MGOD  
27 Ordinance, RMC §18.08.406(i)(1-15), as it existed at the time the Application was filed.

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2. To the extent the MGOD is determined to be unclear or ambiguous, as recommended in the Staff Report, the Planning Commission and the City Council should refer to the Handbook for background history and intent.

3. The Planning Commission and the City Council's findings pursuant to NRS 278.349(3) or RMC §18.06.405(e)(1), whether or not in support of the Application, must be in compliance with the requirements of the MGOD ordinance and must be supported by substantial evidence.

Accordingly, and good cause appearing,

**IT IS HEREBY ORDERED AND ADJUDGED** that the Petition for Judicial review is **GRANTED** consistent with this Order.

DATED this 9<sup>th</sup> day of November, 2020.

  
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KATHLEEN M. DRAKULICH  
DISTRICT JUDGE

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**CERTIFICATE OF SERVICE**

CASE NO. CV20-00253

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 9<sup>th</sup> day of November, 2020, I electronically filed the **ORDER GRANTING PETITION FOR JUDICIAL REVIEW** with the Clerk of the Court by using the ECF system.


I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

**Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:**

STEPHEN MOLLATH, ESQ. for STAN LUCAS, AN INDIVIDUAL et al

WILLIAM MCKEAN, ESQ. for CITY OF RENO, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA

**Deposited to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States Postal Service in Reno, Nevada: [NONE]**

  
Danielle Redmond  
Department 1 Judicial Assistant