

COMMISSION ON JUDICIAL SELECTION APPLICATION

EIGHTH JUDICIAL DISTRICT
DEPARTMENT XXVII

By

(Steven Morris)



Personal Information

1.	Full Name	
2.	Have you ever used or been known by any other legal name (including a maiden name)? If so, state name and reason for the name change and years used.	N/A
3.	How long have you been a continuous resident of Nevada?	50 years
4.	City and county of residence	Boulder City, Clark
5.	Age	52

Employment History

6. Please start with your current employment or most recent employment, self-employment, and periods of unemployment for the last 20 years preceding the filing of this Application.

Current or Last Employer	Steven L. Morris, Ltd.
Phone	702-336-9607
Physical Address & Website	885 Shirley Lane Boulder City, NV 89005
Date(s) of Employment	2011-Present
Supervisor's Name and Title	Self Employed
Your Title	President
Describe Your Key Duties	I am a sole practitioner responsible for all aspects of my business and practice.
Reason for Leaving	N/A

Previous Employer	City of Boulder City
Phone	702-293-9208
Address & Website	401 California Ave., Boulder City, NV 89005, BCNV.org
Date(s) of Employment	2018-2020
Supervisor's Name and Title	Boulder City Council
Your Title	City Attorney

Describe Your Key Duties	Legal advisor to the city council, appointed officials, departments, commissions, and boards. Enforced city codes and prosecuted misdemeanor criminal offenses.
Reason for Leaving	Wrongfully terminated

Previous Employer	Woodbury, Morris & Brown
Phone	N/A
Address & Website	N/A
Date(s) of Employment	2003-2011
Supervisor's Name and Title	Self
Your Title	Founding Partner
Describe Your Key Duties	Managed staff and associates while practicing law primarily in the area of construction litigation.
Reason for Leaving	Dissolved partnership

Previous Employer	Peel Brimley
Phone	702-990-7272
Address & Website	3333 E Serene Ave., Suite 200, Henderson, NV 89074
Date(s) of Employment	2000-2003
Supervisor's Name and Title	Richard Peel and Michael Brimley
Your Title	Associate
Describe Your Key Duties	Case management for all phases of litigation in District Court and administrative proceedings before the NV Contractors Board.
Reason for Leaving	Started my own firm.

Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.

Boulder City High School – Boulder City, NV, 1985-1989, Diploma

Brigham Young University – Provo, UT 1990-1994, Bachelor of Arts (International Relations)

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

Senior class President 1988-89, “Y” Leadership scholarship recipient 1990.

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

Gonzaga University School of Law, Spokane WA, JD 2000, top 1/3 of class.

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment. See attached resume.
11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, and extracurricular activities. See attached resume.

Law Practice

12. State the year you were admitted to the Nevada Bar. 2000
13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission. N/A
14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations.
No
15. Estimate what percentage of your work over the last five years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 16-20 for the five years directly preceding your appointment or election to the bench.
16. Estimate percentage of time spent on:

Legal Discipline	Percentage of Practice
Domestic/family	0
Juvenile matters	0
Trial court civil	96
Appellate civil	2
Trial court criminal	0
Appellate criminal	0
Administrative litigation	2
Other: Please describe	

17. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials? 80% non-jury and 20% jury trials.

18. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period. Approximately 3 jury cases were tried and resolved prior to trial, and approximately 13 non-jury cases were tried and resolved prior to trial, all with me as lead counsel.
19. List courts and counties in any state where you have practiced in the past five years. Municipal, Justice, District, and the Supreme Court of Nevada, and while practicing in Clark County.
20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), complete the following tables:

Case 1
Case name and date: UNLV Plumbing vs. Mannelta Lane, Inc. (A404622)
Court and presiding judge and all counsel: Dept 18, Brian Berman, Esq. Eric Daly, Esq. Bruce Alverson, Esq.
Importance of the case to you and the case's impact on you: This was my first case taken to trial and prevailed, and then up on appeal and affirmed.
Your role in the case: Lead counsel.

Case 2
Case name and date: Daniel And Joann Emry Revocable Trust, Daniel Emry, et al vs Darlene Ferrara, Dave Ferrara, et al. (A483957)
Court and presiding judge and all counsel: Dept 6, Lance Earl, Esq., James Christensen, Esq.
Importance of the case to you and the case's impact on you: This case taught me the injunctive power of the Court and its practical impact on a case.
Your role in the case: Lead counsel.

Case 3
Case name and date: Daniel Jensen vs. City of Boulder City. (A702551)
Court and presiding judge and all counsel: Dept. 11, Linda Strickland, Esq., Tracy Strickland, Esq.

Importance of the case to you and the case's impact on you: This case was my introduction to SLAPP actions, which would come back to haunt me in later years. I was tasked with defending the City after the Supreme Court found the City had violated the SLAPP statute when naming individual citizens who formed a ballot initiative committee.
Your role in the case: Lead counsel.

Case 4
Case name and date: JSD Properties LLC vs. Grant Morris Dodds, (A-15-715974-C)
Court and presiding judge and all counsel: Dept 11, Vincent Romeo, Esq.
Importance of the case to you and the case's impact on you: This was the first time I was named as a party to an action as a result of my professional services. It taught me the importance of client communication, maintaining records and avoiding even the potential of conflicts. I am grateful it was resolved without the need for trial.
Your role in the case: Lead counsel.

Case 5
Case name and date: Steven Morris vs. The City of Boulder City (A-22-862038-C)
Court and presiding judge and all counsel: Judge Crockett and Peterson, Richard Gordon, Esq., Denise Kennedy, Esq.,
Importance of the case to you and the case's impact on you: This was the first time I had sought legal remedies through a civil action, and I gained an appreciation for what it feels like to be in that situation. I have much greater empathy for my clients, and for that matter anyone with no option but to pursue legal rights and remedies in court. I am thrilled that it was resolved without the need for trial.
Your role in the case: Party

21. Do you now serve, or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.

No

22. Describe any pro bono or public interest work as an attorney. I am commonly asked to provide pro bono legal services through my associations and with my volunteer service in my church.

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation. N/A
24. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past five years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? See attached transcript. Yes, I am in compliance with the continuing legal education requirements.
25. Do you have Professional Liability Insurance or do you work for a governmental agency? No.

Business & Occupational Experience

26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

Realtor, Mortgage Loan Officer and Escrow Officer, from 2021 to the Present

27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:
- a. the nature of the business - Law Practice
 - b. the nature of your duties - President
 - c. the extent of your involvement in the administration or management of the business – 100%
 - d. the terms of your service - Since 2011 to the present.
 - e. the percentage of your ownership – 100%
28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership. N/A

Civic Professional & Community Involvement

29. Have you ever held an elective or appointive public office in this or any other state?

No

Have you been a candidate for such an office?

No

If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

30. State significant activities in which you have taken part, giving dates and offices or leadership positions. N/A
31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences. N/A
32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions. I have served as a missionary in Mexico (1990-1992), Bishop (2009-2015), and Stake President (2017-Present) for my church.
33. List honors, prizes, awards, or other forms of recognition.
Selected as "Rising Star" in the area of construction litigation in 2009 by Mountain States Super Lawyers in 2009.
Selected as "Legal Elite" top 100 attorneys in 2011 by Nevada Business Journal.
34. Have you at any time in the last 12 months belonged to, or do you currently belong to, any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.
No
35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates. N/A
36. During the past ten years, have you been registered to vote?
Yes

Have you voted in the general elections held in those years?
Yes
37. List avocational interests and hobbies. Construction and renovation of homes, traveling, skiing.

Conduct

38. Have you read the Nevada Code of Judicial Conduct and are you able to comply if appointed?
Yes

39. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges, and dispositions.

No

40. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to the corresponding question in the confidential section.

No

41. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.

No

42. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.

No

43. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.

No

44. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?

No

45. Are you aware of anything that may require you to recuse or disqualify yourself from hearing a case if you are appointed to serve as a member of the judiciary? If so, please describe the circumstances where you may be required to recuse or disqualify yourself.

I am not aware of any circumstance at this point that would require my recusal or disqualification.

Other

46. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

N/A

47. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what education, experience, personality or character traits you possess, or have acquired, that you feel qualify you as a supreme court justice. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

48. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

49. Attach a sample of no more than ten pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

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Boulder City, Nevada 89005
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QUALIFICATIONS SUMMARY:

Skilled litigation and transactional attorney with extensive experience in state and federal courts and administrative commissions, with expertise in diverse areas of the law, including the representation of public entities. Extensive experience in contract law, public law and business litigation, including complex construction litigation of both public and private projects. Excellent research and writing skills which have led to a high level of success in prosecuting cases. Strong advocacy and communication skills which have resulted in favorable settlements, thereby avoiding costly litigation. Proven ability to manage and collaborate with clients, witnesses, experts, associates, paralegals, law clerks and legal secretaries in day to day legal matters and in complex litigation. Licensed to practice law in all courts in Nevada since 2000.

KEY ACCOMPLISHMENTS:

- Selected as “Legal Elite” top 100 attorneys in 2011 by Nevada Business Journal.
- Selected as “Rising Star” in the area of construction litigation in 2009 by Mountain States Super Lawyers.
- Successfully prosecuted and defended actions in arbitration, Municipal Court, Justice Court, Nevada District Court, the Nevada Supreme Court, Federal District Court, and the Ninth Circuit Court of Appeals.
- Represented defendants in criminal proceedings as a practicing intern with the conflict panel for the City of San Bernardino, CA. Assisted with the management and assignment of cases to conflict panel attorneys.
- Client Counseling Competition winner at Gonzaga University.
- Selected to be Keynote Speaker by fellow agents for class 323 of the U.S. Border Patrol Academy in Charleston, SC.
- “Y” Leadership Scholarship recipient at Brigham Young University.

EDUCATION:

Juris Doctor - Gonzaga University School of Law, Spokane, WA (2000)
Bachelor of Arts in International Relations - Brigham Young University, Provo, UT (1994)

PROFESSIONAL EXPERIENCE:

City Attorney – City of Boulder City	2018 to 2020
Assistant City Attorney – City of Boulder City, NV	2012 to 2018
Steven L. Morris, Ltd. Attorney at Law, Henderson, NV	2011 to Present
Founding Partner – Woodbury, Morris & Brown, Henderson, NV	2003 to 2011
Litigation Associate – Peel Brimley, Henderson, NV	2000 to 2003
Practicing Intern – Earl Carter & Associates, San Bernardino, CA	1999 to 2000
Law Clerk – David H. Ricks & Associates, Rancho Cucamonga, CA	1998-1999
Special Agent – INS, Imperial Beach, CA (Read, write and speak Spanish fluently)	1996-1997

IN THE SUPREME COURT OF NEVADA

DEBBIE PIETROWSKI, an individual

Appellant,

v.

STEPHEN HAMPTON, an individual;
VICTORIA HAMPTON, an individual;
LAKE MEAD VIEW ESTATES
OWNERS ASSOCIATION; and DOES
I through X,

Respondents.

Supreme Court No.: 85722

District Court Case No.: A853978

On Appeal from the Eighth Judicial Court for the County of Clark in Nevada

District Court Case No.: A-22-853978-C

Honorable Adriana Escobar

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following is a person or entity as described in Nevada Rules of Appellate Procedure (“NRAP”) Rule 26.1 that must be disclosed. These representations are made in order that the justices of this Court may evaluate possible disqualification or recusal.

Appellant Debbie Pietrowski is an individual residing in Clark County, Nevada.

In district court, Debbie Pietrowski was represented by Steven L. Morris of the law firm Steven L. Morris Ltd.

Dated: June 12, 2023

/s/ Steven L. Morris

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JURISDICTIONAL STATEMENT

The district court issued its order on October 20, 2022, granting the Defendants' motions for summary judgment. (V JA001046-001051). Notice of entry of summary judgment was likewise entered on October 20, 2022, making the aforementioned order a final order as defined by Nevada Rule of Appellate Procedure ("NRAP") 3A(b)(1). (V JA001052-JA001061). Appellant filed a timely notice of appeal on November 16, 2022. See also NRAP 4(a)(1). (V JA001062-JA001063). Accordingly, this Court has jurisdiction over this matter.

ROUTING STATEMENT

This case is presumptively retained by the Supreme Court because it is not a matter which would be presumptively assigned to the Court of Appeals under NRAP 17(b). Moreover, this Court should retain jurisdiction over this appeal because it does involve an issue of public policy with the respect to the factual findings of the acts and/or omissions of a homeowner's association with respect to the interpretation and enforcement of the covenants, conditions and restrictions of a common-interest community, especially with respect to view protections.

ISSUES PRESENTED FOR REVIEW

Did the district court err in granting defendants' motions for summary judgment by improperly accepting facts in a light most favorable to the moving party, the Respondents; accepting the moving parties alleged facts as true; and

concluding that there were no genuine issues of material fact for the jury to consider by granting summary judgment in Respondents' favor as a matter of law.

STATEMENT OF THE CASE

This is a case about the Respondents failure, neglect and breach with respect to the interpretation and enforcement of the Covenants, Conditions, and Restrictions of the Lake Mead View Estates ("CC&Rs") (IV JA000706 – JA000794), and especially as those CC&Rs pertain to new construction and the protection of the views of Lake Mead. As a result of Respondents actions and/or omissions, Appellant was forced to file her complaint seeking relief by way of the following causes of action: Breach of the CC&Rs/Contract, Injunctive Relief, Breach of Fiduciary Duty, Negligence, Negligence Per Se, and Statutory Damages. (I JA000001 – JA000009).

It is undisputed that the CC&Rs are a binding contract between the parties and that the Lake Mead View Estates Homeowners Association ("HOA") has a fiduciary duty to its members. (V JA001064-JA001070). Likewise, it is undisputed that the stated purpose of the development of the Lake Mead View Estates and its CC&Rs is the protection of the "magnificent views of Lake Mead" which, "enhance each lot's economic value, creating a premier community for the benefit of all Association members." (IV JA000786). Finally, it is undisputed that

the Hamptons proposed detached RV garage will completely obscure Appellants protected view of Lake Mead. (IV JA000700 – JA000704).

The Respondents’ argument is any new construction that fits within the “envelope” required by the CC&Rs is immune from any action for the impact or obstruction of another owners’ view of Lake Mead. This argument is clearly erroneous because it is contrary to Section VIII of the CC&Rs. If the Respondents’ argument was valid, Section VIII of the CC&Rs would not exist, but it does exist and SHALL be complied with. The mandatory language of Section VIII of the CC&Rs is a “catch all” to ensure that even if a structure complies with the setback and height requirements that it does not infringe upon the view corridor from another owners’ view of Lake Mead. (II JA000294).

Contrary to the ruling of the district court, the Appellant’s view is protected by the CC&Rs and the HOA did NOT consider the structures impact as required by the CC&Rs Section VIII. (IV JA000736 – JA000737). Ultimately, the question of whether or not the HOA complied with the CC&Rs is a factual consideration which in this case is reserved for the finder of fact, the jury.

STATEMENT OF FACTS

Appellant is the owner of the real property and improvements thereon, located at 113 Stone Canyon Road, Boulder City, Nevada 89005 (the “Pietrowski

Property”). The Pietrowski Property was the first residence built on the street in 1992.

The property directly adjacent to the Pietrowski Property, located at 111 Stone Canyon Road, Boulder City, Nevada 89005 (the “Hampton Property”), is owned by Respondents STEPHEN HAMPTON and VICTORIA HAMPTON (Collectively the “Hamptons”), and construction commenced on the Hampton Property in April of 2022. The Hampton Property is one of the last to be built on the street.

The Pietrowski Property and the Hampton Property are within a common-interest community known as the Lake Mead View Estates, and said properties are subject to that certain Declaration of Covenants, Conditions, and Restrictions as recorded in the Official Records of the Recorder of Clark County, Nevada (the “CC&Rs”) and the jurisdiction of Lake Mead View Estates Owners Association and/or its Architectural Control Committee (collectively the “HOA”).

There was absolutely no evidence presented by the Respondents that the required consideration of the impact of the height and location of the Hamptons’ RV garage would have on the view from the Pietrowski Property was conducted. Indeed, the evidence presented established that the HOA was oblivious to the impact of the Hamptons’ proposed RV garage until it was pointed out to them by Scott Hoffman, the prior owner of 113 Stone Canyon Road, and even then, the

Respondents attempted to divert all responsibility for the enforcement of the CC&Rs by stating that there is no protected view within the CC&Rs. (I JC000119 – JC000250). (II JC000251-JA000375).

Section VIII of the CC&Rs states in relevant part: “The Committee SHALL consider the impact of the proposed height of any improvements upon the view from any other Lot and SHALL have the right to disapprove plans and specifications by reason of such impact or suitability of plans for the area in which it is to be located.” (IV JA000736 – JA000737, emphasis added). This language is not a mere suggestion for consideration of how any improvements would affect the view from any other lot. It is MANDATORY and a “catch all” requirement for the HOA after they have verified that the minimum setbacks and height requirements have been complied with. (IV JA000700 – JA000704).

While the Respondents presented evidence that the HOA reviewed the Hamptons plans for conformance with setback and height requirements, it is undisputed that the ACC never checked the Hamptons’ plans for conformance with the CC&Rs Section VIII, (IV JA000862 – JA000866). The Respondents firmly believe, and have stated numerous times, that they are only required to consider setback and height requirements, without considering whether a structure’s height will still impact the view from any other lot. This belief is absolutely and unequivocally contrary to the plain language of the CC&Rs.

It is undisputed that the height and current location of the Hamptons' proposed RV garage will completely obstruct all views of Lake Mead from the Pietrowski residence view corridor, even with the Defendants unilaterally moving the RV garage ten (10 feet). (IV JA000901 – JA000902). (See also II JA000371 – JA000372). This reality is contrary to the stated purpose of the development of the Lake Mead View Estates and the protection of the “magnificent views of Lake Mead” which, “enhance each lot’s economic value, creating a premier community for the benefit of all Association members.” (II JA000353).

Despite the argument that the Hampton’s intended improvements are all located within the mandatory “envelop” or setbacks, it is undisputed that the Defendants have many options to locate a detached RV garage within the required setbacks on the Hampton Property that would not adversely impact the Lake Mead view from the Pietrowski Property. Plaintiff does not dispute that the CC&Rs do not prevent the construction of the detached RV garage within the “envelope” of required setbacks. However, compliance with these required setbacks within the CC&Rs does not guarantee that the structure can be built without adversely impacting a members view of Lake Mead from their lot. It would have cost the Defendants next to nothing to simply move the proposed RV garage towards the front setback of the Hampton Property.

According to Section VIII of the CC&Rs the Committee SHALL, meaning they are absolutely obligated to, consider the impact of the proposed height of any improvement upon the view from any other lot, and the HOA admits that this never occurred in conjunction with the plans check. (IV JA000736 – JA000737). (See also IV JA000862 – JA000866). The HOA simply approved the Hamptons plans because they appeared to satisfy setback requirements without considering the impact of the view because of the location or placement of the improvement. (IV JA000862 – JA000866).

While the district court correctly ruled that the loss of a protected view constitutes irreparable harm under Nevada law, the district court completely ignored Section VIII of the CC&Rs in order to find that Appellant was unlikely to succeed on the merits by finding that as long as the new construction complied with the minimum setbacks that there was no view protection. (V JA001082 – JA001087).

STANDARD OF REVIEW

This Court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); see also *Costello v. Casler*, 127 Nev. 436, 439, 254 P.3d 631, 634 (2011). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine issue of material fact exists and that the moving party is entitled to

judgment as a matter of law. *Wood*, 121 Nev. at 729, 121 P.3d at 1029. When deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Id.* See also NRCP 56.

ARGUMENT

A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party. *Valley Bank v. Marble*, 105 Nev. 366, 367, 775 P.2d 1278, 1279-80 (1989). See also *Dermody v. City of Reno*, 113 Nev. 207, 931 P.2d 1354 (Nev. 1997).

Therefore, an issue of fact is “genuine” for summary judgment purposes if it could allow a jury to return a verdict in favor of the non-moving party, and an issue of fact is “material” if it could have any bearing on the outcome of the case under the applicable law. If the evidence raises any issue of material fact, if it is conflicting, if it will permit different reasonable inferences, or if it tends to prove the issues, it should be submitted to the jury as a question of fact to be determined by it.

Granting summary judgment involves evaluating the presence or absence of admissible evidence and whether it establishes genuine issues of material fact. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). Furthermore, when deciding a summary judgment motion, all evidence must be viewed in a light most favorable to the nonmoving party. *Wood*, 121 Nev.

at 729, 121 P.3d at 1029. Here, the district court's evaluation was incomplete, as it failed to resolve the admissibility of the evidence and information on which it relied for its determination. The district court erred by concluding that a genuine issue of material fact did not exist.

Under the circumstances a reasonable jury could have concluded that the HOA failed and or neglected its duty under the CC&Rs, when it allowed a detached RV garage, that would only be seasonally occupied, to be constructed in such a way as to completely obscure the Lake Mead view from within the Pietrowski Property. Furthermore, a reasonable jury could likewise have concluded that a detached RV garage should not encroach any further on another property owners' view of Lake Mead than the residence being constructed adjacent to it by the Hamptons.

Indeed, the evidence in this action established a factual determination by the HOA of the offending structures encroachment on the Appellant's view when Respondents unilaterally decided to move the offending structure ten (10) feet from the rear setback. (II JA000371). Moreover, the Respondents have failed and refused to account for their presumed finding that the Hamptons' the RV garage cannot be moved even further from the rear setback, and still within the building "envelope", but outside of the Pietrowski Property view corridor, thereby preserving at least a portion of Plaintiff's view of Lake Mead.

The Respondents unilateral decision to amend the plans took place between the Respondents in a closed meeting, without any deliberation or due process being afforded to the Appellant, and without any explanation as to why the HOA deemed it acceptable that the Hamptons RV garage would still completely obscure the view of Lake Mead from the Pietrowski Property, thereby causing irreparable damages and diminution of the value of the Pietrowski Property. Again, a reasonable jury could conclude that the HOA acted arbitrarily, capriciously, and/or even erroneously in its failure to restrict the Hamptons' plans as required by the CC&Rs.

Finally, summary judgment is a drastic remedy, therefore, all evidence favorable to the party against whom such summary judgment was rendered will be accepted as true, and all favorable inferences will be drawn in favor of the party who lost on the summary judgment. *Zuni Constr. Co. v. Great Am. Ins. Co.*, 86 Nev. 364, 366, 468 P.2d 980, 981 (1970). Notwithstanding, the district court erred when it assumed facts in a light most favorable to the moving party, accepting the moving parties alleged facts as true, and concluding that there were no genuine issues of material fact for the jury to consider by granting summary judgment in Respondents favor.

CONCLUSION

The district court improperly assumed facts in a light most favorable to the moving party, the Respondents; accepted the moving parties alleged facts as true;

and erroneously concluded that there were no genuine issues of material fact for the jury to consider by granting summary judgment in Respondents favor as a matter of law.

For these reasons, this Court should vacate the district court's orders granting the Respondents motions to dismiss or in the alternative Motions for Summary Judgment and remand this matter to the district court for further proceedings.

Dated: June 12, 2023

/s/ Steven L. Morris

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CERTIFICATE OF COMPLIANCE

Pursuant to NRAP 28.2, I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because the Appellants' Opening Brief has been prepared in a proportionally spaced typeface (14-point Times New Roman font).

I further certify that this Appellants' Opening Brief complies with the type-volume limitation of NRAP 32(a)(7)(ii) because it contains 3046 words.

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

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: June 12, 2023

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPELLANT'S OPENING BRIEF was filed electronically with the Nevada Supreme Court on June 12, 2023. Electronic service of the foregoing shall be made in accordance with the Master Service List as follows:

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