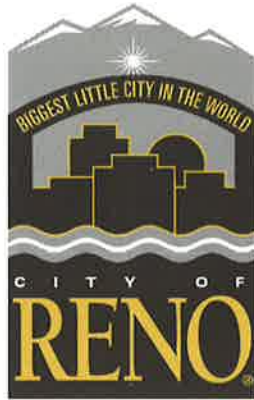


Jenny Brekhus
Councilmember

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*"The most livable of Nevada cities;
the focus of culture, commerce and
tourism in Northern Nevada."*

November 9, 2017

Dear Ms. Jardon:

As you know the on November 15, 2017 the Reno City Council will consider development requests for Master Plan Amendment and PUD Zoning Map Amendment from the Heinz Ranch Land Company ("Developer") on a 1,737 acre site ("StoneGate"). This letter is written to respond to questions raised about your ability to participate in StoneGate proceedings.

At the October 11, 2017 Reno City Council meeting during Item E.1, you invited Mr. Don Pattalock a StoneGate Developer representative to the podium to make an announcement. Mr. Pattalock announced that the Developer will be making a minimum \$50,000 cash contribution and other technical assistance to a non-profit organization "Project Believe". Prior to Mr. Pattalock's announcement, you had described your instrumental role in organizing this nascent entity. Mr. Pattalock discussed his involvement in the planning efforts as well.

I applaud you for your organizational contributions to Project Believe as a model tiny home housing solution to our community's needs. I am also appreciative to Mr. Pattalock for his philanthropic gesture toward the initiative.

However, as you know the Nevada Ethics Commission has held that "public officials must vigilantly search for reasonably ascertainable potential conflicts of interest..." Nevada Ethics Commission Opinion 16-40C. Additionally, NRS 281A.420 prohibits a public officer from voting upon or advocating the passage or failure of any matter "with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected" by the public officer's commitments in a private capacity.

Respectfully, the independent judgment of a reasonable person would necessarily be materially affected in this circumstance given your personal and substantial interest in the initiative and organizing entity (Project Believe) that is the recipient of the Developer largesse. When you called Mr. Pattalock to the podium to make the announcement of the contribution, you obviously had advanced notice that the contribution had been either solicited or offered. In fact, two local media outlets in objectively reporting on Item E1 at the October 11, 2017 meeting noted the Developer's significant contribution while the StoneGate project approval is pending. (Reno Gazette Journal, Anjeanette Damon "Tiny house village for Reno homeless in the works", October 11, 2017 and This is Reno, Bob Conrad "Tiny Homes Project Heralded at City Hall", October 12, 2017).

While it could be argued that in considering StoneGate, the City Council is sitting in a legislative or a quasi-judicial capacity, it is important to the integrity of our body that due process rights be provided to both those in support and opposing a land use request. The very appearance that a quid pro quo arrangement of a significant monetary commitment, even to a worthwhile civic cause, in return for a public official's support for a development request is not acceptable. I am confident that this is a position shared by the Developer. In fact, some of the very concerns, logic and analysis contained in this correspondence derive from the attached August 17, 2017 letter prepared on behalf of the Developer raising concerns about the impartiality of a Reno Planning Commissioner.

In summary, while Nevada legal ethics obligations are an individual matter as a co-participant in the StoneGate proceeding with a vested interest in the integrity of the proceeding, I respectfully request that you recuse from participation in StoneGate matters. I appreciate your consideration of this request.

Sincerely,



Jenny Brekhus

cc:

City Manager Newby
City Attorney Hall
Reno Planning Commission
Members of the Reno City Council
Office of the Reno Clerk

McDONALD

CARANO

Michael A.T. Pagni
mpagni@mcdonaldcarano.com

Reply to: Reno

RECEIVED

AUG 23 2017

CITY OF RENO
Community Development Dept.

August 17, 2017

Via Email johnladuemarshall@gmail.com
Commissioner John Marshall
Reno Planning Commission

Re: Stonegate Master Plan Amendment and PUD Zoning Map Amendment
LDC17-00008 & LDC17-00009
Recusal Request

Dear Commissioner Marshall:

Our firm represents Heinz Ranch Land Company, LLC ("Developer") in connection with the application for a Master Plan Amendment and a PUD Zoning Map Amendment on a 1,737 acre site ("StoneGate Property") located in the City of Reno west of the U.S. 395/White Lake Parkway interchange. This letter is written to respond to questions raised regarding your ability to participate in hearings involving the StoneGate Property.

Prior to your appointment to the Planning Commission, you were lead attorney in extensive litigation against the owners of the StoneGate Property and the City of Reno specifically opposing the annexation and development of the StoneGate Property in an action entitled *Citizens for Cold Springs v. City of Reno, et. al.* The *Cold Springs* case involved over eight years of litigation before the Second Judicial District Court and Nevada Supreme Court, in which you represented a group of Cold Springs property owners and zealously opposed development of the StoneGate Property. During that litigation, you argued that residential development of the StoneGate Property "will, among other things, diminish the rural character of the Cold Springs Valley, increase traffic, noise, lighting, adversely affect water supplies and sewer capacity, remove open space and crowd schools" and that citizens' "interests in the scenic beauty of the Cold Springs valley will be adversely affected" by such development. You further argued that development of the StoneGate Property "does not represent an orderly development of the City", and that development of the StoneGate Property "represents exactly what the City's Master Plan and the Regional Plan sought to avoid: the sprawl of urban development beyond the existing urban footprint." The action involved questions of annexation, but many of the issues raised and objections you argued in that case are at issue in the pending StoneGate applications.

mcdonaldcarano.com

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 **MERITAS**

While the litigation was ultimately unsuccessful, and while your right to make these and other arguments in your private capacity is unquestioned, unfortunately they create conflicts of interest with respect to your ability as a public officer to impartially adjudicate applications to develop the same StoneGate Property which was the subject of that litigation.

As you know, the Nevada Ethics Commission has held that "public officials must vigilantly search for reasonably ascertainable potential conflicts of interest . . . and responds to potential ethical conflicts. *Nevada Ethics Commission Opinion 16-40C*. NRS 281A.020 requires a public officer to "commit himself or herself to avoid conflicts between the private interests of the public officer . . . and those of the general public whom the public officer serves." NRS 281A.420 prohibits a public officer from voting upon or advocating the passage or failure of any matter "with respect to which the independence of judgment of a reasonable person in the public officer's situation would be materially affected" by the public officer's commitments in a private capacity. Attorney-client relationships present unique and substantial business relationships for purposes of establishing a commitment in a private capacity to the interests of others. *Nevada Ethics Commission Opinion 16-40C*.

Respectfully, we believe the independent judgment of a reasonable person would necessarily be materially affected in this circumstance given your personal and substantial involvement in extensive litigation opposing residential development of the specific property which is the subject of the pending applications. While we recognize the litigation has concluded, the similarity of findings and issues presented in the present applications to those at issue in the litigation (traffic, density, rural v. urban development, orderly growth patterns, compatibility, etc.) puts you in a position of having personal knowledge of facts that are in dispute and having publicly expressed opinions concerning the merits of development of the subject property, such that we believe the independent judgment of a reasonable person in your situation would be materially affected. *See generally*, Code of Judicial Conduct, Rule 2.11 (A); *Turner v. State*, 114 Nev. 682 (1998) (recusal is mandatory in cases where judge, prior to taking bench, acted as an attorney in the case).

Your role as attorney imposes independent ethical obligations, including duties owed to former clients, which are also relevant to the "private capacity" inquiry under NRS 281A. Rule 1.11 of the Nevada Rules of Professional Conduct provides that a lawyer serving as a public officer shall not participate in a matter in which the lawyer participated personally and substantially while in private practice unless the government agency gives its informed consent in writing. This rule is to protect both the attorney in terms of fiduciary obligations to former clients as well as the integrity of the process in which the lawyer serves as a public officer. Courts have recognized the inherent conflicts created by a former attorney serving as a public officer, and have reached the same conclusion that recusal is appropriate to avoid any potential issues. *See Rissler v. Jefferson County Bd. Of Zoning Appeals*, 693 S.E.2d 321

(W.Va. 2010)(former attorney of developer was required to recuse from sitting on zoning board because former representation gave right to appearance of impropriety). The Nevada Attorney General has reached similar conclusions, opining that an attorney was required to recuse himself from sitting on the Public Service Commission where he participated personally and substantially while in private practice on the matter or where his impartiality might reasonably be questioned, recognizing that a lawyer may not oppose his former client in a matter substantially related to the matter in which he had previously represented the client. *See Nev.Atty.Gen. Op. 95-19.*

In addition, land use decisions require not only avoidance of actual conflicts, but avoidance of the *appearance* of bias or lack of impartiality in order to protect due process rights. As the Court recently held in a decision against the City of Reno,

in the context of land use decisions councilmembers sit not as politicians or legislators guided solely by ethics regulations in NRS 281A. Rather, they sit in a quasi-judicial capacity, and as such must be cognizant not just of actual ethics conflicts under NRS Chapter 281A but of the appearance of bias or lack of impartiality critical to preserving due process which may, at times, impose more stringent limitations on participation. When sitting in a quasi-judicial capacity councilmembers should act in a manner that promotes public confidence in the fairness, independence and impartiality of the governing body and avoid both actual impropriety and the appearance of impropriety.

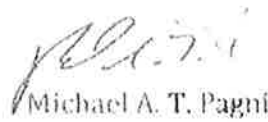
See C4 Equity v. City of Reno. Even with the most honorable current intentions, your substantial involvement in adversarial litigation opposing the development of the StoneGate Property creates an irreconcilable due process issue that should simply be avoided to protect the process for the benefit of all parties, both those in support and any in opposition.

As we stated, it was wholly appropriate for you, in your private capacity, to represent clients on land use related matters, and nothing in this letter is intended to or should be construed as an attack on you personally, your capabilities as a Commissioner, or your integrity, nor are we suggesting that general arguments made as an attorney on unrelated matters are necessarily disqualifying. The primary concern here is personal and substantial involvement in litigation over the development of the exact same property which is the subject of the pending development applications. Whether an attorney represents a client in support or opposition of development, the integrity of the process compels that the public officer recuse himself from hearing a matter if he personally and substantially was involved in that matter or a substantially related matter while in private practice, or if his impartiality might reasonably be questioned. The result here would be the same if you had represented the owners of the StoneGate Property and argued to support development, rather than

oppose it. The process is paramount, and should always remain fair, impartial and free from both actual conflicts of interest and the appearance of bias.

For these reasons, we respectfully request you recuse from participation in the pending matters involving the StoneGate Property. Please consult with Mr. Hall on these matters and advise us of your decision on participation prior to the August 30th hearing. We appreciate your consideration of this request.

Sincerely,



Michael A. T. Pagni

MATP:ma
4815-8724-8971
cc: Client
Chairman Gower
Karl Hall, Esq.