

CLARK COUNTY BOARD OF COMMISSIONERS
ZONING / SUBDIVISIONS / LAND USE
AGENDA ITEM

Petitioner: Steven B. Wolfson, District Attorney

Recommendation: AG-24-900562: Approve the Settlement Agreement in the case LV Judson LP v. Clark County, District Court Case No. A-23-869800-J and Supreme Court Case No. 88450, authorize the Chair to sign the Agreement; and consider other matters properly related thereto. TS/sr (For possible action)

FISCAL IMPACT:

None by this action.

BACKGROUND:

BACKGROUND:

LV Judson LP, which does business as Hopewell Development ("Hopewell") submitted a land use application, WS-22-0147 ("Application") requesting approval of a design review and waivers for a warehouse facility on property located on the northwest corner of Lamb Boulevard and Judson Avenue within Sunrise Manor. The Board of County Commissioners ("BCC") denied the application on March 22, 2023. Hopewell filed a Petition for Judicial Review challenging the decision in State District Court. On January 23, 2024, a hearing was held by the Honorable Michael A. Cherry, Senior Judge. At the conclusion of the hearing, Judge Cherry reversed the BCC's decision. A Findings of Fact and Conclusions of Law was entered on March 13, 2024. Clark County filed a Notice of Appeal on April 3, 2024, challenging the Court's decision.

The matter is currently pending in the Supreme Court Settlement Program. The Parties attended a settlement conference on May 30, 2024, where the Parties arrived at a settlement in which the County agrees to approve the Application subject to multiple conditions agreed to by Hopewell that are designed to mitigate impacts of the development on neighboring properties. The Settlement Agreement is also intended to resolve all disputed issues between the Parties and releases all claims each Party may have relating to denial of the application.

The District Attorney's office recommends approval and to authorize the Chair to sign the Settlement Agreement.

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (the "Settlement Agreement") is entered into and made effective on September 4, 2024 by and between the following LV JUDSON LP, a Delaware limited partnership, which does business as Hopewell Development ("Hopewell"), and CLARK COUNTY, a political subdivision of the State of Nevada ("County"), collectively referred to as the "Parties" and each individually a "Party."

RECITALS

WHEREAS, this Agreement is a compromise between the Parties to resolve Hopewell's claims in the Eighth Judicial District Court for Clark County, Nevada, Case No. A-23-869800-J (the "Lawsuit") alleging, among other things, that the County abused its discretion when it denied Hopewell's Application and the County's appeal to the Nevada Supreme Court, Case No. 88450 (the "Appeal"), all relating to and arising out of the denial of Hopewell's application to obtain land use approvals on approximately 9.26 acres located at northwest corner of N. Lamb Boulevard and W. Judson Avenue, more particularly described as Assessor's Parcel Number 140-19-504-010 (hereinafter the "Property") within the Sunrise Manor Township in unincorporated Clark County, Nevada.

WHEREAS, in 2022, Hopewell submitted a land use application (WS-22-0147) to Clark County requesting approval of a design review and waivers of certain development standards to develop the Property as an office/warehouse facility. On March 22, 2023, the Clark County Board of County Commissioners ("BCC") unanimously voted to deny Hopewell's application (WS-22-0147) without prejudice.

WHEREAS, on April 28, 2023, Hopewell filed its Petition for Judicial Review ("Petition"). Respondent Clark County answered the Petition on June 28, 2023. The Court, after having considered the evidence presented and arguments of counsel, found that the BCC's decision to deny Hopewell's application was an abuse of discretion because substantial evidence did not support the denial. A Findings of Fact and Conclusions of Law was entered granting Hopewell's Petition and reversing the BCC's decision to deny Hopewell's application. On March 13, 2024, a written notice of entry of judgment was served on the County.

WHEREAS, on April 3, 2024, the County filed a notice of appeal. The matter was assigned to the Nevada Supreme Court Settlement Program.

WHEREAS, a settlement conference was held on May 30, 2024 with Settlement Judge Thomas Tanksley where the Parties arrived at the following settlement which is contingent upon approval by the BCC.

WHEREAS, the Parties intend that this Agreement shall resolve all disputed issues relating to the Application, the Petition, and the Appeal and release any of the Parties' past, present, or future claims or causes of action in any way relating to the Application, the Petition, and the Appeal as well as their Released Parties (as defined below). It is also the Parties' intent that the Released Parties shall be entitled to all of the benefits of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of these recitals, which are incorporated herein by this reference, the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Settlement.** The Parties agree to settle their dispute over matters about, related or concerning the Application, the Petition, and the Appeal and each party, on its or his behalf, and on behalf of its or his past, present or future subsidiaries, divisions, business units, and affiliates, and their officers, officials, employees, directors, stockholders, managers, partners, owners, representatives, agents, insurers, attorneys, customers, vendors, successors and assigns, and such party's heirs, spouse, family, agents, attorneys, executors, administrators, trustees, legal representatives and assigns or any person or entity acting by or through any of them (collectively, "Releasor"), hereby forever waives, releases, and discharges any and all known and unknown claims, actions, suits, demands, disputes, liabilities, penalties, damages, dues, costs, attorney fees, complaints, or other causes of action, whether legal, equitable or otherwise of any nature, suspected or unsuspected (collectively, "Claims") that such party has, may have, in the future may have or could have, against the other party and its or his past, present or future subsidiaries, divisions, business units, and affiliates, and their officers, officials, employees, directors, stockholders, managers, partners, owners, representatives, agents, insurers, attorneys, customers, vendors, successors and assigns, and such party's heirs, spouse, family, agents, attorneys, executors, administrators, trustees, legal representatives and assigns or any person or entity acting by or through any of them (collectively, "Released Parties") arising out of or related to the Application, the Petition, and the Appeal subject to the terms and conditions set forth in this Settlement Agreement.

2. **Settlement Terms.** The County shall approve Plan 1 of Hopewell's Application, a copy of which is attached as Exhibit A and incorporated here by reference, with the following conditions:

- (a) The buildings shall be one story only with a maximum height of 35 feet;
- (b) The building faces shall be constructed with enhanced articulation;
- (c) The top of any windows facing west on the buildings shall not be placed above 12 feet in height;
- (d) Lighting on the buildings shall not be placed more than 10 feet in height;
- (e) Wall signs on the buildings shall not be illuminated;
- (f) Monument signage only on N. Lamb Boulevard and Judson Avenue with a maximum height of 8 feet;

- (g) No large truck access onto Judson Avenue – customer and employee vehicle access only. For purposes of this Agreement, a large truck is defined as a truck having a gross vehicle weight rating (GVWR) of over 10,000 pounds;
- (h) Add signage to prohibit large truck access onto Judson Avenue;
- (i) No large truck access onto Moonlite Drive;
- (j) Rural standards on Moonlite Drive, meaning no curb, gutter, sidewalk, or streetlight installation;
- (k) A 10-foot-high wall shall be constructed on the north and west sides of the Property where it is zoned Industrial Park (IP);
- (l) Intense landscaping shall be installed along the west property line inside the 10-foot- high wall of the development where it is zoned IP with 24 inch box trees spaced 30 feet apart;
- (m) Enhance the landscaping along N. Lamb Boulevard by adding 24-inch box trees every 30-feet;
- (n) A double row of evergreen trees 24-inch box staggered/ offset from one another planted 20 feet apart on center (per Clark County Code § 30.04.02C2) shall be installed on the northwest corner of the Property where it is zoned IP adjacent to APN 140-19-504-009; and
- (o) The residential lots shown on Plan 1 located on the west side of the property adjacent to Moonlite Drive shall be deed restricted as, and maintained as, Residential Single-Family 20 (RS20) lots and single-story homes to serve as a buffer to the RNP homes to the west.

3. Mutual Release and Discharge.

- 3.1 As consideration for this Settlement Agreement, each Releasor hereby completely releases and forever discharges the Released Parties from any and all Claims which Releasor now has, or which may hereafter accrue or acquire, against the Released Parties or any of them on account of, or may in any way grow out of, or which are the subject of the Application, the Petition, and the Appeal.
- 3.2 The Parties agree that this Settlement Agreement shall fully and finally dispose of all Claims as between the Parties concerning the Petition and the Application and release any of the Parties' past, present, or future claims or causes of action in any way relating to the Application, the Petition, and the Appeal.

3.3 The Parties acknowledge and agree that the release and discharge set forth above is a general release. The Parties further agree that this Settlement Agreement is a complete compromise of matters involving disputed issues of law and fact relating to the Application, the Petition, and the Appeal, except as to the interpretation of this Settlement Agreement.

4. **Dismissal of Action.** Upon execution of this Agreement and Hopewell receiving formal approval to proceed with its development according to Section 2 above, the Parties will dismiss all claims in the Petition and the Appeal with prejudice by executing a stipulation to dismiss the Appeal attached at Exhibit B to this Settlement Agreement.

5. **Further Cooperation.** The Parties agree to cooperate fully in executing any and all supplementary documents necessary to accomplish the settlement and/or the dismissal contemplated by this Settlement Agreement.

6. **Default.** In the event of any noncompliance with any provision of this Settlement Agreement, the Party alleging such noncompliance shall deliver to the other by certified mail or hand delivery a five-day notice of default and opportunity to cure. The time of notice shall be measured from the date of receipt of the notice. The notice of noncompliance shall specify the nature of the alleged noncompliance and the manner in which it may be satisfactorily corrected, during which the five-day period the Party alleged to be in noncompliance shall not be considered in default for the purposes of termination or institution of legal proceedings.

If the noncompliance cannot reasonably be cured within the five-day cure period, the non-compliant Party may timely cure the noncompliance for purposes of this Section if it commences the appropriate remedial action with the five-day cure period and thereafter diligently prosecutes such action to completion within a period of time acceptable to the non-breaching Party. If no agreement between the Parties is reached regarding the appropriate timeframe for remedial action, the cure period shall not be longer than 30 days from the date the five-day notice of noncompliance and opportunity to cure was mailed by the non-compliant Party.

If the noncompliance is corrected, then no default shall exist and the noticing Party shall take no further action. If the noncompliance is not corrected within the relevant cure period, the non-complaint Party is in default, and the Party alleging non-compliance may declare the breaching Party in default and may pursue all remedies available to it at law or in equity, including but not limited to specific performance.

Any default notice under this section shall be delivered to:

To County: CLARK COUNTY
Department of Comprehensive Planning
Clark County Government Center
500 South Grand Central Parkway, 3rd Floor
Las Vegas, Nevada 89155
Attn: Director

With a Copy to: CLARK COUNTY
Office of the District Attorney-Civil Division
Clark County Government Center
500 South Grand Central Parkway, 5th Floor
Las Vegas, Nevada 89155-2215

To Hopewell: LV JUDSON LP
Attn: Don Larke
2020 4th Street SW, Suite 410
Calgary, AB T2S 1W3, Canada

With a Copy to: KAEMPFER CROWELL
Attn: Brittney Lehtinen
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135

7. **No Admissions.** Nothing contained in this Settlement Agreement is to be construed or deemed an admission of liability, culpability, negligence or wrongdoing on the part of any Party. The Parties deny any liability therefor, and that this Settlement Agreement has been entered into with the intention to avoid further dispute and litigation with its attendant inconvenience and expense. This Settlement Agreement is a settlement document and, pursuant to Rule 408 of the Federal Rules of Evidence and NRS 48.105, shall not be admissible in evidence in any proceeding, except in an action or proceeding to approve, interpret or enforce this Settlement Agreement and its terms.

8. **Attorney Fees.** The Parties shall bear their own attorney fees and costs with respect to the Petition, Appeal, and this Settlement Agreement, except in the event of an enforcement action as described in Section 9 below.

9. **Enforcement Actions.** In the event that one of the Parties to the Settlement Agreement institutes any legal action to enforce the provisions of this Settlement Agreement or to declare the rights and/or obligations under this Settlement Agreement, the prevailing Party shall be entitled to recover from the opposing Party reasonable attorney fees, and, upon the discretion of the court, other reasonable costs and expenses.

10. **Construction and Interpretation.** The Parties agree that the terms and conditions of this Settlement Agreement are the result of negotiations between the Parties, and that this Settlement Agreement shall not be construed for or against any Party by reason of the extent to which either they or their counsel participated in the drafting of this Settlement Agreement. It is not intended by any of the provisions of this Agreement to create for the public, or any member thereof, a third-party beneficiary right or remedy, or to authorize a third-party to maintain a suit for any reason or claims pursuant to the provisions of this Agreement.

11. **Choice of Law.** The Settlement Agreement, and the rights, remedies or obligations provided for in it, shall be construed and enforced in accordance with Nevada law.

12. **Integration Clause.** This Settlement Agreement contains the entire agreement between the Parties relating to the settlement of their disputes concerning the Petition, and all prior agreements, understandings, representations and statements, whether oral or written, pertaining to the subject matter of this Settlement Agreement are merged herein.

13. **Counterparts and Digital Signatures.** This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same agreement, and any signature may be made electronically (including pdf or any electronic signature complying with the United States federal ESIGN Act of 2000, e.g., www.docusign.com, or NRS 719 Uniform Electronic Transactions Act), and any such electronic signature shall be deemed to be valid and effective for all purposes.

14. **Authority to Execute.** Each individual executing this Agreement represents that he or she is duly authorized to sign and deliver this Settlement Agreement on behalf of the Party indicated and that this Settlement Agreement is binding on such Party in accordance with its terms.

LV JUDSON LP, a Delaware limited partnership

Signed by:
By: Don Larke
Name: Don Larke
Title: Authorized Signatory for LV Judson LP

CLARK COUNTY, a political subdivision of the State of Nevada

ATTEST:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPROVED BY COUNSEL FOR PETITIONER:
KAEMPFER CROWELL

By: [Signature]
Robert McCoy, No. 9121
Brittney Lehtinen, No. 15949
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135
Attorneys for Petitioner
LV Judson LP

APPROVED BY COUNSEL FOR RESPONDENT:
STEVEN B. WOLFSON
DISTRICT ATTORNEY

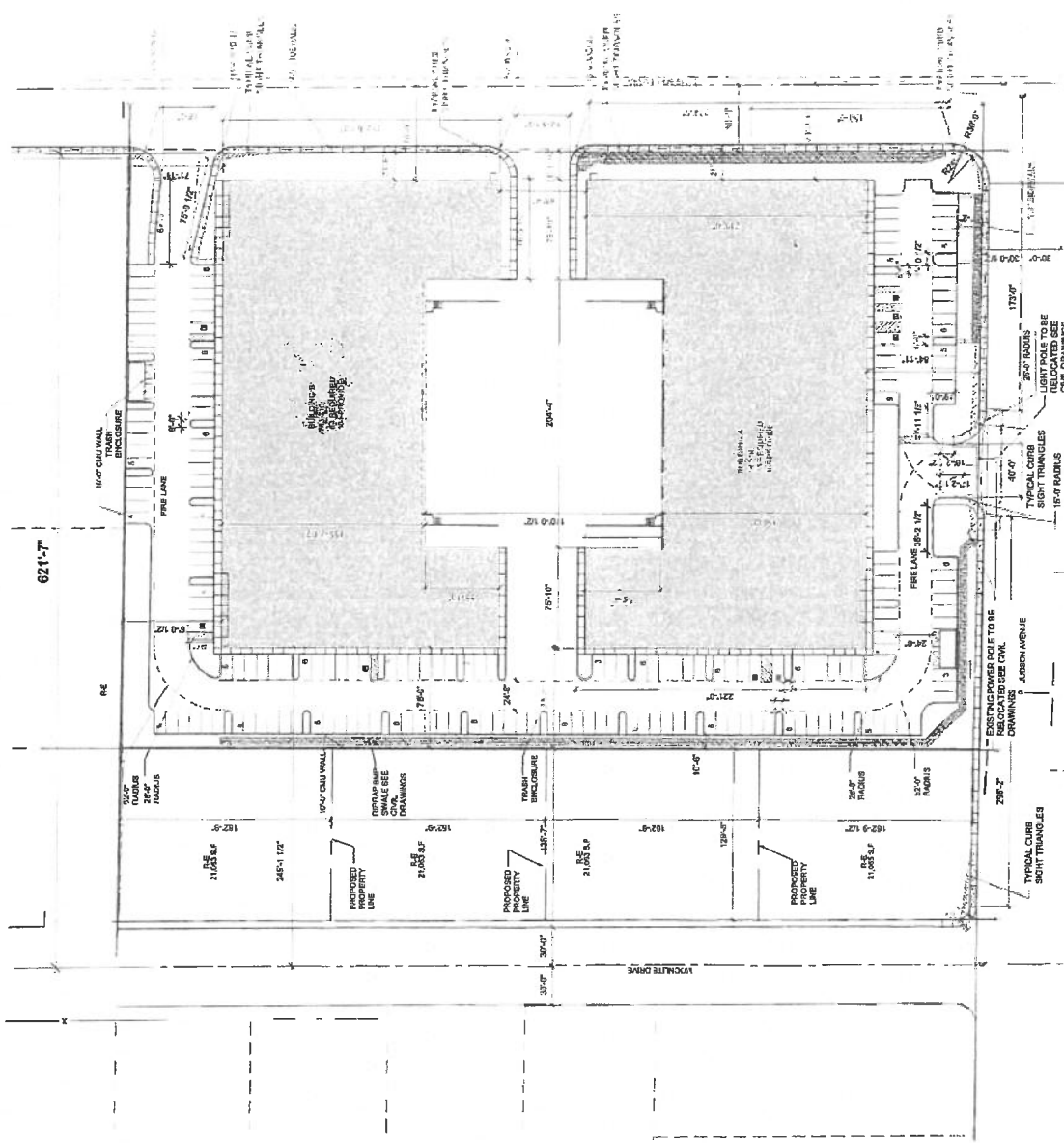
By: [Signature]
Robert T. Warhola, No. 4410
Chief Deputy District Attorney
500 S. Grand Central Pkwy, Suite 5075
Las Vegas, Nevada 89155
Attorneys for Respondent
Clark County

Dated: 8/13/2024

Dated: _____

EXHIBIT A

21031_JUDSON & LAMB WAREHOUSE



1 OVERALL SITE PLAN
SCALE: 1" = 40'

PROJECT DATA

EXERCISES: PRELIMINARY PLANS FOR THE PROPOSED CONSTRUCTION OF A 21031 JUDSON & LAMB WAREHOUSE. THE PROPOSED CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF JUDSON & LAMB ORDINANCES AND THE CITY ENGINEER'S APPROVAL.

DATE: 02.10.2022

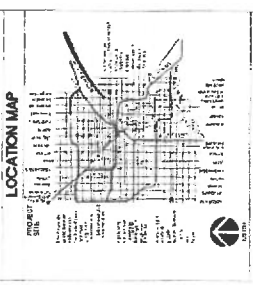
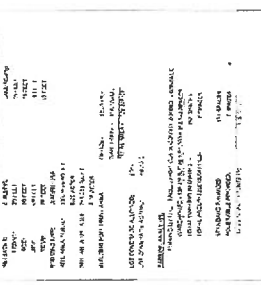
PROJECT NO.: 21031

CLIENT: JUDSON & LAMB

DESIGNER: W. JUDSON & LAMB CONSTRUCTION

SCALE: 1" = 40'

DATE: 02.10.2022



3

W. JUDSON & LAMB

CONSTRUCTION



DATE: RESUBMITTAL 02.10.2022

The designer hereby certifies that the plans and specifications are true and correct in all respects and that the same conform to all applicable laws, ordinances, rules and regulations of the City of Judson & Lamb, and that the same have been prepared by the designer or under the direct supervision of the designer. The designer shall be held responsible for the accuracy of the information provided on these plans and specifications. The designer shall be held responsible for the accuracy of the information provided on these plans and specifications. The designer shall be held responsible for the accuracy of the information provided on these plans and specifications.

EXHIBIT B

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 CLARK COUNTY, a political subdivision of)
4 the State of Nevada,)
5 Appellant,)
6 vs.)
7 LV JUDSON LP, a foreign limited partnership,)
8 Respondent.)
9

Supreme Court Case No: 88450
District Court Case No: A-23-869800-J

10 STIPULATION TO DISMISS APPEAL

11 Appellant CLARK COUNTY, and Respondent LV JUDSON LP in the above-
12 referenced case by their attorneys, hereby stipulate and agree that this appeal shall be
13 dismissed pursuant to Nevada Rule of Appellate Procedure 42(b). Each party shall bear their
14 own costs and attorney fees.

15 Dated this __ day of August, 2024.

Dated this __ day of August, 2024.

16 KAEMPFER CROWELL

STEVEN B. WOLFSON
DISTRICT ATTORNEY

17 By: _____
18 Robert McCoy
19 State Bar No. 9121
20 Brittney Lehtinen
21 State Bar No. 15949
22 1980 Festival Plaza Drive, Suite 650
23 Las Vegas, Nevada 89135
24 Attorneys for Respondent
25 LV Judson LP

By: _____
ROBERT T. WARHOLA
Deputy District Attorney
State Bar No. 004410
500 South Grand Central Pkwy. 5th Flr.
Las Vegas, Nevada 89155-2215
Attorney for Appellant
County of Clark