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

SAVE WILDCREEK, LLC, a Nevada limited-
liability company,

Plaintiff,

Case No. CV18-00493

vs.

Dept. No. 15

WASHOE COUNTY SCHOOL DISTRICT
BOARD OF TRUSTEES, a political
subdivision of the State of Nevada, et al.

Defendants.

ORDER GRANTING MOTIONS TO DISMISS

Pending before this Court are the following opposed motions: (1) the Motion to Dismiss filed by Defendant Washoe County School District ("WCSD") and its individual Trustees, Defendants Katy Simon Holland, Malena Raymond, John R. Mayer, Scott Kelley, Debra Feemster, Angela D. Taylor, and Veronica Frenkel ("WCSD Motion"); (2) the Motion to Dismiss filed by Defendant Reno Sparks Convention and Visitors Authority ("RSCVA") and its individual Board Members, Defendants Bob Lucey, Hillary Schieve, Nat Carasali, Bill Wood, Rick Murdock, Vick Wowo, Lee Dillard, and Mark Sterbens on ("RSCVA Motion"); and (3) the Motion to Dismiss filed by Defendant Washoe County and its individual Commissioners, Marsha Berkgigler, Bob Lucey, Kitty Jung, and Jeanne Herman ("Washoe County Motion").

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I. BACKGROUND

Plaintiff Save Wildcreek, LLC brought this action seeking injunctive and declaratory relief to challenge the construction of a new Washoe County high school on what is currently Wildcreek Golf Course ("Wildcreek"). Plaintiff alleges it is a Nevada limited liability company "comprised of members who are residents of Washoe County and Sparks, Nevada who will be directly and adversely affected by the construction of a high school . . . as many of the members live next to or near the Wildcreek Golf Course." Amended Complaint at ¶1.

Plaintiff requests injunctive relief barring the proposed sale of Wildcreek by RSCVA and Washoe County to WCSD alleging: (1) NRS 244A.619(5) prohibits RSCVA from selling or transferring property unless it is to be maintained and operated as a public project and recreational facility; (2) Washoe County has failed to adopt a resolution that the sale of the property to WCSD will be in the best interest of Washoe County; (3) the proposed construction of a high school on the property violates the Truckee Meadows Regional Plan; and (4) RSCVA is required to operate the property as a golf course pursuant to an alleged contract with Joseph and Sally Conforte ("the Confortes").

In their Motions to Dismiss, Defendants argue Plaintiff's claims should be dismissed with prejudice because: (1) Plaintiff lacks standing; (2) Plaintiff's claims are not ripe; (3) the relief sought by Plaintiff would violate the separation of powers doctrine; (4) the individual Defendants are immune from liability; (5) Plaintiff fails to state a claim for a breach of contract between RSCVA and the Confortes; (6) the Truckee Meadows Regional Plan does not govern the transfer of property between local governments and cannot serve as the basis for Plaintiff's claims; and (7) the amended complaint fails to state a claim for declaratory or injunctive relief.

II. LEGAL STANDARD

When considering a NRCF 12(b)(5) motion to dismiss, the court construes all factual allegations in the complaint as true and draws all inferences in favor of the non-moving party. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672

1 (2008). A complaint will only be dismissed if it appears beyond doubt that the Plaintiff
2 can prove no set of facts which, if true, would entitle it to relief. Id. A motion to dismiss
3 therefore is properly granted where the allegations in the complaint, taken at “‘face
4 value,’ . . . [and] construed favorably in the [plaintiff’s] behalf,” fail to state a cognizable
5 claim for relief. Morris v. Bank of America Nevada, 110 Nev. 1274, 886 P.2d 454, 456
6 (1994). A NRCP 12(b)(5) motion to dismiss is also proper when a plaintiff lacks standing.
7 See Linthicum v. Rudi, 122 Nev. 1452, 1454, 148 P.3d 746, 748 (2006).

8 III. DISCUSSION

9 A. Plaintiff lacks standing to challenge the transfer of Wildcreek to WCSD

10 “Standing is the legal right to set judicial machinery in motion.” Heller v.
11 Legislature of State of Nev., 120 Nev. 456, 460, 93 P.3d 746, 749 (2004) (quotation marks
12 omitted). Nevada requires “an actual justiciable controversy as a predicate to judicial
13 relief.” Stockmeier v. State Dep’t. of Corrections, 122 Nev. 385, 393, 135 P.3d 220, 225-26
14 (2006), abrogated on other grounds by Buzz Stew, 124 Nev. at 228, 181 P.3d at 672; see also
15 Doe v. Bryan, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986).

16 The question of standing overlaps with whether a party is a real party in interest;
17 both questions “focus[] on the party seeking adjudication rather than on the issues sought
18 to be adjudicated.” Szilagyi v. Testa, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983); see also
19 Arguello v. Sunset Station, Inc., 127 Nev. 365, 368, 252 P.3d 206, 208 (2011). A real party in
20 interest must possess the right to enforce a claim and have “a significant interest in the
21 litigation.” Szilagyi, 99 Nev. at 838, 673 P.2d at 498; see also NRCP 17(a); Painter v.
22 Anderson, 96 Nev. 941, 943, 620 P.2d 1254, 1255-56 (1980) (citing Virginia Electric & Power
23 Co. v. Westinghouse Elect. Corp., 485 F.2d 78, 83 (4th Cir. 1973), cert. denied, 415 U.S. 935,
24 94 S.Ct. 1450, 39 L.Ed.2d 493 (1974)). Additionally, to obtain declaratory relief, a plaintiff
25 must meet increased jurisdictional standing requirements. Stockmeier, 122 Nev. at 393,
26 135 P.2d at 225-26 (citing Doe v. Bryan, 102 Nev. at 525-26, 728 P.2d at 444-45). Standing
27 exists only if there is a “personal injury and not merely a general interest that is common
28 to all members of the public.” Schwartz v. Lopez, 132 Nev. Adv. Op. 73, 382 P.3d 886, 894

1 (2016) (citing Blanding v. City of Las Vegas, 52 Nev. 52, 69, 280 P. 644, 648 (1929) (requiring
2 property owner to show he would suffer a special or peculiar injury different from that
3 sustained by the general public in order to maintain complaint for injunctive relief).

4 Company members being “residents of Washoe County and Sparks Nevada who
5 will be directly and adversely affected” because they “live near or around Wildcreek Golf
6 Course” is not sufficient to confer standing on Plaintiff or any of its members. Amended
7 Complaint, ¶1. Nothing else is alleged about the business, property, or activities of
8 Plaintiff.¹ Further, Plaintiff fails to allege an “injury in fact” to itself or its members.
9 Rather the allegations state a possible adverse effect should the property be transferred
10 and a school built due to members’ residential proximity. Forming a company does not
11 confer standing where it would not otherwise exist.

12 Plaintiff’s allegation that WCSD Defendants breached an undefined fiduciary duty
13 to Plaintiff by “spending an exorbitant amount of money just for one school” likewise fails
14 to identify a personal cognizable injury. Amended Complaint at ¶¶ 16, 17, 24, 26.

15 Plaintiff’s attempted use of its members’ status as taxpayers in Washoe County as a basis
16 for standing merely emphasizes the lack of specific injury because it shows any injury to
17 Plaintiff is the same as that sustained by the general taxpaying citizens. Neither the
18 United States Supreme Court nor the Supreme Court of Nevada recognize taxpayer
19 standing to challenge government spending absent some statutory authority. Lujan v.
20 Def. of Wildlife, 504 U.S. 555, 564 (1992) (holding that a plaintiff raising only a generally
21 available grievance about government – claiming only harm to his and every citizen’s
22 interest in proper application of the Constitution and laws, and seeking relief that no more
23 directly and tangibly benefits him than it does the public at large – does not state an
24 Article III case or controversy); Fairchild v. Hughes, 258 U.S. 126, 129-130 (1922)
25 (dismissing suit because plaintiff only asserted the right, possessed by every citizen, to
26 require the Government be administered according to law and that public moneys not be
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¹ This Court is concerned Plaintiff was formed for the apparent purpose of bringing this action.

1 wasted); Massachusetts v. Mellon, 262 U.S. 447 (1923) (dismissing for lack of Article III
2 standing a taxpayer suit challenging the propriety of federal expenditures); Blanding v.
3 City of Las Vegas, 52 Nev. 52, 280 P. 644, 650 (1929) (“It is contended that appellants as
4 taxpayers may join and maintain this action without showing special injury. This
5 contention is untenable. The Amended Complaint does not present a case conferring on a
6 taxpayer the right to sue.”). In particular, as the Court in Blanding famously explained, a
7 taxpayer cannot maintain a suit “where he has not sustained or is not threatened with any
8 injury peculiar to himself as distinguished from the public generally.” Id.

9 Finally, Plaintiff does not have statutory standing to bring a claim for an alleged
10 violation of NRS 244A.619 by the RSCVA. An express private cause of action to enforce a
11 statute only exists if it is explicitly provided for in said statute. See Baldonado v. Wynn Las
12 Vegas, LLC, 124 Nev. 951, 958-59, 194 P.3d 96, 100-101 (2008). NRS 244A.619(5) contains
13 no express language providing for a private right of action to enforce its provisions. Id.
14 Indeed, there is no express private cause of action to enforce the entirety of the Chapter
15 governing County Fair and Recreation Boards, NRS 244A.597 – NRS 244A.655.

16 As there is no express right of action, this Court must determine if a private cause of
17 action is implied. Baldonado at 958-59, 194 P.3d at 101. In making such a determination,
18 Nevada courts are guided by “the entire statutory scheme, reason, and public policy,” Id.
19 at 958, 194 P.3d at 101. This translates into three factors: (1) whether the plaintiffs are of
20 the class for whose special benefit the statute was enacted; (2) whether the legislative
21 history indicates any intention to create or to deny a private remedy; and (3) whether
22 implying such a remedy is consistent with the underlying purposes of the legislative
23 scheme. Id. at 958-59, 194 P.3d at 101 (citing Cort v. Ash, 422 U.S. 66, 78, 95 S.Ct. 2080, 45
24 L.Ed.2d 26 (1975)).

25 As an initial matter, there is no indication Plaintiff is a member of any class for
26 whose protection NRS 244A.619 was enacted. NRS 244A.619 does not contain any
27 language empowering or protecting private parties; it only regulates and empowers
28 RSCVA. Moreover, “the absence of an express provision providing for a private cause of

1 action to enforce a statutory right strongly suggests that the Legislature did not intend to
2 create a privately enforceable judicial remedy." Baldonado, 124 Nev. at 959, 194 P.3d at
3 101.

4 The legislative history of NRS Chapter 244A also shows there was no legislative
5 intent to create a private right of action. The Nevada Legislature declined to provide
6 citizens with a private right to sue and instead placed the transaction under the
7 supervision of Washoe County. Further, the legislative history of Chapter 244A indicates
8 the Nevada Legislature did not intend NRS 244A.619(5) to impose restrictions on the
9 RSCVA's ability to transfer property, including Wildcreek, to a third party, including
10 another government entity.² The only restriction on RSCVA's ability to transfer property
11 is requiring Washoe County approval.

12 This Court presumes the Legislature amended NRS 244A.627 "with full knowledge
13 of existing statutes relating to the same subject." See NAIW v. Nevada Self-Insurers Ass'n,
14 126 Nev. 74, 84, 225 P.3d 1265, 1271 (2010) (citing State, Div. of Insurance v. State Farm, 116
15 Nev. 290, 295, 995 P.2d 482, 485 (2000)). Reading NRS 244A.619 in the context of the entire
16 Chapter, including NRS 244A.627, reinforces this Court's finding that the Legislature did
17 not intend to create any private right of action.

18 Finally, implying a private cause of action is inconsistent with the underlying
19 purpose of NRS Chapter 244A. The Chapter grants the RSCVA broad authority to acquire
20 and manage real and personal property for recreational purposes and sell or transfer such
21 property to third parties as necessary. See NRS 244A.597; NRS 244A.621. Plaintiff has
22 failed "to overcome the presumption that no private cause of action was intended" to
23 enforce NRS 244A.619(5), and has "no right to obtain relief" in this Court based thereon.
24 Baldonado, 124 Nev. at 964, 194 P.3d at 104.

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26
27 ² The Nevada Legislature was presented, in two separate Legislative Sessions, with the possibility of a
28 proposed transfer of the Wildcreek parcel by RSCVA. See S.B. 302, 73rd Leg (not passed.); see also 2009 Nev.
Stat., ch. 414, § 1.5, at 2266. Two separate bills were drafted, debated, and amended with that proposed
transfer in mind. Rather than stating a statutory restriction on any transfer of property, the Legislature chose
to continue to require RSCVA to obtain Washoe County's prior approval pursuant to NRS 244A.627.

1 For the foregoing reasons, Plaintiff lacks standing to bring the claims in the
2 Amended Complaint.

3 B. RSCVA's proposed transfer of Wildcreek to WCSD does not violate
4 NRS 244A.619(5)

5 Plaintiff's alleges "[p]ursuant to the provisions of NRS 244A.619(5), the RSCVA
6 cannot sell or transfer property unless it is to be maintained and operated as a public
7 project and a recreational facility." Amended Complaint at ¶9; see also ¶¶24 and 26.
8 NRS 244A.619 defines the powers and duties of county fair and recreation boards,
9 including RSCVA. The plain language of NRS 244A.619(5) compels the maintenance and
10 operation of property for recreational purposes while owned by RSCVA. It does not
11 restrict transfer or sale to a third party or subsequent use by said third-party. This is
12 particularly clear when NRS 244A.619(5) is read in the context of the entire chapter
13 governing only the actions of county fair and recreation boards. Further, such a restriction
14 is contradicted by jurisprudence of statutory construction and the legislative history
15 detailed above, and would compel a result that is against public policy.

16 "In interpreting a statute, this court looks to the plain language of the statute and, if
17 that language is clear, this court does not go beyond it." Valenti v. State Dep't of Motor
18 Vehicles, 131 Nev. Adv. Op. 87, 362 P.3d 83, 85 (2015) (citing Branch Banking & Tr. Co. v.
19 Windhaven & Tollway, LLC, 131 Nev. Adv. Op. 20, 347 P.3d 1038, 1040 (2015)). "Further, it
20 is the duty of [the] court, when possible, to interpret provisions within a common
21 statutory scheme 'harmoniously with one another in accordance with the general purpose
22 of those statutes and to avoid unreasonable or absurd results, thereby giving effect to the
23 Legislature's intent." Southern Nev. Homebuilders v. Clark County, 121 Nev. 446, 449, 117
24 P.3d 171, 173 (2005) (citing Washington v. State, 117 Nev. 735, 739, 30 P.3d 1134, 1136
25 (2001)); see also Leven v. Frey, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007) ("in interpreting
26 a statute, this court considers the statute's multiple legislative provisions as a whole.")
27 (citation omitted).

28 NRS 244A.619(1) "authorizes and empowers" the RSCVA:

1 To establish, construct, purchase, lease, enter into a lease purchase
2 agreement respecting, rent, acquire by gift, grant, bequest, devise, or
3 otherwise acquire, reconstruct, improve, extend, better, alter, repair,
4 equip, furnish, regulate, maintain, operate and manage recreational
5 facilities, including personal property, real property, lands,
6 improvements and fixtures thereon, property of any nature
7 appurtenant thereto or used in connection therewith, and every estate,
8 interest and right, legal or equitable, therein, including terms for
9 years.

10 Once the RSCVA has acquired such real or personal property, NRS 244A.619(5)
11 grants the RSCVA authority to dispose of any such property, allowing RSCVA:

12 To sell, lease, exchange, transfer, assign or otherwise dispose of any
13 real or personal property, or any interest therein acquired for the
14 purpose of NRS 244A.597 to 244A.655, inclusive, including the lease of
15 any recreational facility acquired by the county under the provisions
16 of NRS 244A.597 to 244A.655, inclusive, which is to be operated and
17 maintained as a public project and recreational facility.

18 This Court does not interpret NRS 244A.619(5) to preclude the RSCVA from ever
19 disposing of real or personal property unless that property is to be maintained and
20 operated as a public project and a recreational facility. First, the phrase found at the end of
21 NRS 244A.619 is a continuation of the statutory identification of the type of property
22 RSCVA is permitted to own. When interpreting the Nevada Revised Statutes, "referential
23 and qualifying phrases generally apply to the last antecedent, meaning the last word to
24 which the phrase can apply without impairing the sentence's meaning." Public Agency
25 Compensation Trust v. Blake, 127 Nev. 863, 867-68, 265 P.3d 694, 697 (2011) (citing 2A
26 Norman J. Singer and J.D. Shambie Singer, Sutherland Statutory Construction § 47:33 (7th
27 ed. 2007)); see also Thompson v. Hancock, 49 Nev. 336, 341, 245 P.941, 942 (1926) ("It is a
28 rule of construction that relative and qualifying words and phrases, grammatically and
legally, where no contrary intention appears, refer solely to the last antecedent.").
Application of this construction to NRS 244A.619(5) compels this Court to find the
concluding phrase of NRS 244A.619 does not operate to restrict RSCVA's ability to dispose
of real and personal property, but rather describes the function of property owned by
RSCVA.

1 Second, the final phrase cannot be read to so restrict subsequent use by the
2 transferee. NRS Chapter 244A.597 et seq. governs "County Fair and Recreation Boards."
3 A substantially similar version of this statute has been in place since 1955. See 1955 Nev.
4 Stat., ch. 383, § 8(5) at 722. It is unreasonable to conclude: (1) the legislature intended a
5 county fair and recreation board to be legally restricted from selling real or personal
6 property if the property will be subsequently used for any purpose aside from recreation;
7 and (2) a county fair and recreation board or its successors in interest must continue to
8 operate such property in perpetuity regardless of budgetary issues or changed
9 circumstances. Likewise, this interpretation ignores basic tenants of real property law, as
10 it would restrict the future uses of property in perpetuity without recordation in public
11 real property records.

12 The Nevada Legislature recognized as communities grow their needs change, and
13 placed the sale of Wildcreek under the supervision of Washoe County by implementing
14 NRS 244A.627. This Court finds NRS 244A.619(5) does not preclude RSCVA from
15 transferring Wildcreek to WCSD for construction of a high school.

16 **C. Plaintiff's claims are barred by the separation of powers doctrine**

17 This Court has no ability to intervene in the non-justiciable political decision to
18 transfer Wildcreek to WCSD. Nevada's separation of powers doctrine, contained in
19 Article 3, Section 1, of the Nevada Constitution, provides "no persons charged with the
20 exercise of powers properly belonging to [another branch] shall exercise any functions,
21 appertaining to either of the others." The Nevada Supreme Court, quoting the United
22 States Supreme Court, outlined the characteristics of controversies rendered non-
23 justiciable by that doctrine:

24 "... a textually demonstrable commitment of the issue to a coordinate
25 political department; or a lack of judicially discoverable and
26 manageable standards for resolving it; or the impossibility of deciding
27 without an initial policy determination of a kind clearly for
28 nonjudicial discretion; or the impossibility of a court's undertaking
independent resolution without expressing lack of the respect due
coordinate branches of government; or an unusual need for
unquestioning adherence to a political decision already made; or the

1 potentiality of embarrassment from multifarious pronouncements by
2 various departments on one question.

3 N. Lake Tahoe Fire v. Washoe Cnty. Comm'rs, 129 Nev. 682, 688, 310 P.3d 583, 587
4 (2013) (quoting Baker v. Carr, 369 U.S. 186, 217 (1962)). The Court first adopted these
5 factors, then held “[a] determination that any one of these factors has been met necessitates
6 dismissal based on the political question doctrine.” Id.

7 The foregoing factors require dismissal of Plaintiff’s Amended Complaint. There
8 are no statutory or contractual directives violated by the proposed transfer. Further, a
9 local government “has the power to budget, spend, and levy and collect property taxes”
10 and “do and perform all such other acts and things as may be lawful and strictly necessary
11 to the full discharge” of their responsibilities. N. Lake Tahoe Fire, 129 Nev. at 690 (“[t]he
12 executive power also includes the general power to, among other things, administer
13 appropriate funds, so long as doing so does not conflict with legislative purpose.”)

14 The Legislature has granted the WCSD Board of Trustees broad authority and
15 “such reasonable and necessary powers, not conflicting with the Constitution and the laws
16 of the State of Nevada, as may be requisite to attain the ends for which the public schools
17 . . . are established and to promote the welfare of school children, including the
18 establishment and operation of schools and classes deemed necessary and desirable.”
19 NRS 386.350. The Court is not in a position to override the Board’s financial and
20 discretionary decisions regarding the location of a high school. Further, the multifarious
21 political, practical, and economic considerations underlying the decisions of local
22 governments to convey public property to each other for public purposes are beyond the
23 realm of judicial review absent a violation of the law. This Court finds no such legal
24 violation which would render judicial review appropriate.

25 D. Plaintiff’s claims regarding NRS 244.281 and the alleged prohibition
26 imposed by the Truckee Meadows Regional Plan are not ripe for review

27 Citing NRS 244.281, Plaintiff asserts the Washoe County Board of County
28 Commissioners’ failure to adopt a resolution approving the transfer of a portion of
Wildcreek is a violation of state law. This claim is premature because only the sale or lease

1 of property triggers the need for the "best interest of the county" resolution under
2 NRS 244.281. Thus far, Defendants have decided to cooperate in planning, which may
3 eventually lead to a transfer of property, but this transfer has not yet occurred. The duty
4 of the Board of County Commissioners to adopt a resolution under NRS 244.281 has not
5 yet arisen and the Plaintiff's claims in that regard are not ripe. See Reno v. Catholic Soc.
6 Servs., Inc., 509 U.S. 43, 57 n. 18 (1993) (At its core, the ripeness doctrine "is drawn both
7 from Article III limitations on judicial power and from prudential reasons for refusing to
8 exercise jurisdiction.") The ripeness doctrine protects the courts from having to adjudicate
9 matters rooted in hypothesis. See Herbst Gaming, Inc. v. Heller, 122 Nev. 877, 887, 141
10 P.3d 1224, 1231 (2006) ("A primary focus in [ripeness cases] has been the degree to which
11 the harm alleged by the party seeking review is sufficiently concrete, rather than remote or
12 hypothetical, to yield a justiciable controversy.") (citing In re T.R., 119 Nev. 646, 651, 80
13 P.3d 1276, 1279 (2003)).

14 Plaintiff's assertion that the Regional Planning Law (NRS 278.026 through
15 NRS 278.029) or the Truckee Meadows Regional Plan prevents the potential transfer of
16 Wildcreek property to the WCSD at this juncture is also based on speculation. Plaintiff
17 claims the new high school will eliminate bodies of water, open space, greenways, natural
18 resources, habitat for wildlife and vegetation, including wildlife migration paths and flood
19 plans, and change the character of an established neighborhood. Even if those predictions
20 are accepted as true, the Regional Plan and the Regional Planning laws do not provide
21 Plaintiff with a remedy.

22 Generally, administrative process must be exhausted before an issue becomes ripe
23 for judicial review. Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 572, 170 P.2d 989, 994 (2007).
24 Regional planning in Washoe County is a process which "ensures that comprehensive
25 planning will be carried out with respect to population, conservation, land use and
26 transportation, public facilities and services, annexation and intergovernmental
27 coordination." NRS 278.0261. "[E]ach local government and affected entity shall exercise
28 its powers and duties in a manner that is in harmony with the powers and duties exercised

1 by other local governments and affected entities to enhance the long-term health and
2 welfare of the county and all its residents.” *Id.* Local governments, including Washoe
3 County, must submit their master plans to the regional planning authorities for a finding
4 of conformance to the regional plan. NRS 278.028. Amendments to a local master plan
5 cannot be adopted unless the regional planning commission determines the amendment is
6 in conformance with the comprehensive regional plan. NRS 278.0282. In addition, actions
7 of local governments relating to development, zoning, the subdivision of land, or capital
8 improvements must conform to the master plan of the local government. NRS 278.0284.
9 Thus, planning and development actions of local governments are kept in harmony with
10 other local governments by the regional planning authorities policing local master plans.
11 Because the plan for the proposed transfer of property has not yet been reviewed as
12 described above, it is too early to speculate as to whether a violation may occur. Thus, this
13 issue is not yet ripe.

14 **E. Plaintiff fails to state a claim for breach of the alleged contract between**
15 **RSCVA and the Confortes**

16 To obtain third party beneficiary status, Plaintiff must show: (1) clear promissory
17 intent between the parties to the contract to benefit the third party; and (2) that the third
18 party's reliance thereon was foreseeable. *Lipshie v. Tracy Investment Co.*, 93 Nev. 370, 379
19 (1977) (citing *Olson v. Iacometti*, 91 Nev. 241, 533 P.2d 1360 (1975) and *Learv v. Bishop*, 86
20 Nev. 709, 476 P.2d 18 (1970)). Plaintiff has the burden of making this showing. *Olson*, 91
21 Nev. at 245, 533 P.2d at 1363-64.

22 Attached as exhibit 5 to its Opposition to RSCVA’s Motion to Dismiss, Plaintiff
23 presents an “excerpt” of the escrow instructions which negates Plaintiff’s allegations of a
24 contract, breach, or third party status. Plaintiff alleges that “[o]n or about October 3, 1974,
25 [the Confortes] deeded the subject property to [Washoe County] acting through RSCVA
26 with the agreement that a public golf course was to be constructed on the property which
27 became known as Wildcreek Golf Course on behalf of the residents of [Washoe County]
28 and SPARKS as third party beneficiaries, which includes Plaintiff and its individual

1 members." Amended Complaint at ¶6. Plaintiff further alleges the transfer of the
2 Wildcreek parcel to WCSD to construct a school is a "breach of the agreement with the
3 Confortes to maintain a golf course." *Id.* at ¶24-26. While Plaintiff does not attach a copy
4 of the alleged contract, the allegations are sufficient to support a claim for breach of
5 contract. However, for the reasons outlined previously,³ Plaintiff's members' residence in
6 Sparks and Washoe County alone does not confer upon them third-party beneficiary
7 status and standing.

8 Further, even assuming the excerpt provided by Plaintiffs constituted a contract, it
9 was not breached. The propounded "excerpt" of the escrow instructions provides:

10 If within five (5) years from the date of purchase, buyer, its successors,
11 assigns, grantees or permittees shall not have in good faith
12 commenced construction of an 18 hole public golf course on said
13 lands, and, if buyer commences a sale of said land or a part thereof
14 pursuant to NRS 244.281, sellers, their heirs or assignees, shall have
the right to meet or better the terms of any bid on said land submitted
by any third party at any such sale.

15 Opp'n at Exhibit 5. This excerpt shows a five-year contingent buy-back option, which was
16 never triggered because Wildcreek Golf Course was constructed within five years of
17 transfer of the property at issue. Finally, the excerpt is enforceable only by the Confortes
18 and their heirs or assignees, who had a right of first refusal for any proposed sale of
19 Wildcreek only if RSCVA failed to commence construction of a golf course within five
20 years and sought to sell the land or a part thereof. There is no mention of any intended
21 third-party beneficiary who could enforce the excerpt provisions.

22 Plaintiff also cannot meet the second required prong set forth in Lipshie: reasonable
23 reliance. Plaintiff failed to allege it or its members reasonably relied on the provisions of
24 the purported contract. Plaintiff was not in existence when the alleged contract was
25 executed and could not have relied on it. Plaintiff merely alleges that many of its members
26

27 ³ Standing requires a "[P]ersonal injury and not merely a general interest that is common to all members of
28 the public." Schwartz v. Lopez, 132 Nev. Adv. Op. 73, 382 P.3d 886, 894 (2016) (citing Blanding v. City of Las Vegas, 52 Nev. 52, 69, 280 P. 644, 648 (1929) (requiring property owner to show that he would suffer a special or peculiar injury different from that sustained by the general public in order to maintain complaint for injunctive relief).

1 "live next to or near" Wildcreek. Plaintiff alleges no action or inaction taken by it or its
2 members in relation to the purported contract, much less reasonable reliance.

3 In sum, if the contract exists as described by Plaintiff, it was not breached. Further,
4 Plaintiff has failed to sufficiently allege reasonable reliance, and lacks standing as it has no
5 third-party beneficiary status.

6 F. **Plaintiff's claims against all of the individual defendants are barred**
7 **by NRS 41.032**

8 NRS 41.032(2), provides:

9 Except as provided in NRS 278.0233, no action may be brought under
10 NRS 41.031 or against an immune contractor or an officer or employee
11 of the State or any of its agencies or political subdivisions which
12 is . . . Based upon the exercise or performance or the failure to exercise
13 or perform a discretionary function or duty on the part of the State or
14 any of its agencies or political subdivisions or of any officer, employee
or immune contractor of any of these, whether or not the discretion
involved is abused.

15 In addressing the discretionary-function exception outlined in NRS 41.032, the
16 Nevada Supreme Court applied a two-part test for determining whether discretionary-
17 function immunity shields a defendant from liability. Clark Cty. Sch. Dist. v. Payo, 133
18 Nev. Adv. Op. 79, 403 P.3d 1270, 1276 (2017) (citing Martinez v. Maruszczak, 123 Nev. 433,
19 445-47, 168 P.3d 720, 728-29 (2007)). Under the two-part test, a government defendant is
20 not liable for an allegedly negligent decision if the decision (1) involves an "element of
21 individual judgment or choice;" and (2) is "based on considerations of social, economic, or
22 political policy." Id.

23 All of the individual defendants have only been named in their capacities as
24 Washoe County Commissioners, RSCVA Board Members, and WCSD Trustees, and thus
25 qualify for discretionary immunity. See NRS 241.015. Plaintiff's only allegations against
26 the individual defendants are that they are in breach of their fiduciary duties by failing to
27 obtain fair and equitable compensation for [Wildcreek]" and "spending an exorbitant
28 amount of money just for one school." Amended Complaint at ¶24. These decisions are
based upon the exercise of a discretionary function on the part of the individual

1 defendants. Whether to transfer or purchase real property, how to spend school district
2 funds, the location of potential schools, and the design of schools are questions that
3 involve numerous decisions and possible approaches which are inherently discretionary in
4 nature. See Martinez, 123 Nev. at 445, 168 P.3d at 728 (policy decisions involving the
5 consideration of competing economic, social, and political factors are subject to
6 discretionary immunity).

7 Because the individual defendants are being sued only in their official capacity
8 regarding their exercise of discretionary duties, they are immune pursuant to NRS 41.032.
9 As such, Plaintiff's claims against the individual defendants are barred and dismissed with
10 prejudice.

11 **G. Declaratory and injunctive relief are not proper**

12 For this Court to issue a declaratory judgment, the following conditions must be
13 met: (1) there must exist a justiciable controversy; (2) the controversy must be between
14 persons whose interests are adverse; (3) the party seeking declaratory relief must have a
15 legal interest in the controversy; and (4) the issue involved in the controversy must be ripe
16 for judicial determination. Kress v. Corey, 65 Nev. 1, 26, 189 P.2d 352, 364 (1948).

17 As previously detailed, there is no justiciable controversy because Plaintiff lacks
18 standing, and there are no legal interests or duties between Plaintiff and the Defendants to
19 warrant a declaratory judgment. Accordingly, declaratory judgment is improper.

20 A preliminary injunction is an extraordinary remedy, the entitlement to which the
21 plaintiff bears the burden of proving by clear and convincing evidence. See Weinberger v.
22 Romero-Barcelo, 456 U.S. 305, 312 (1982) (holding that injunctive relief is "not a remedy
23 which issues as of course," or "to restrain an act the injurious consequences of which are
24 merely trifling.") (internal citations omitted). An injunction should only issue where the
25 intervention of a court of equity is essential in order to protect property rights against
26 otherwise irreparable injuries. Id. Injunctive relief is not available in the absence of
27 actual threatened injury, loss, or damage. Berryman v. Int'l Bhd. Elec. Workers, 82 Nev.
28 277, 280, 416 P.2d 387, 389 (1966). In addition, the applicant must show a likelihood of

1 success on the merits and a reasonable probability the non-moving party's conduct, if
2 allowed to continue, will cause irreparable harm for which compensatory damage is an
3 inadequate remedy. Clark County School District v. Buchanan, 112 Nev. 1146, 924 P.2d
4 716 (1996); Pickett v. Comanche Constr. Inc., 108 Nev. 422, 426, 836 P.2d 42 (1992);
5 Berryman v. Int'l Bhd. Elec. Workers, 82 Nev. 277, 280, 416 P.2d 387, 389 (1966). This Court
6 may also balance the harm to the movant if the injunction is denied, the harm to the
7 defendant if it is granted, and the public's interest. Buchanan, 112 Nev. at 1150, 924 P.2d at
8 717. Traditionally an applicant is required to demonstrate the balance of the hardships is
9 in its favor.

10 Injunctive relief is not appropriate here. As previously detailed, no actual harm has
11 been alleged and the predicted harm is based on speculation. Further, Plaintiff has not
12 shown why monetary damages would be inadequate to address the potential harms. In
13 addition, Plaintiff lacks standing under their taxpayer, community member, or third-party
14 beneficiary status. The individual defendants are entitled to immunity. A judicial
15 determination would violate the separation of powers doctrine. All these deficiencies
16 indicate Plaintiff is unlikely to be successful on the merits. Finally, even if this Court were
17 to balance hardships, weighing in public interests, the balance would not weigh in
18 Plaintiff's favor. The requested injunction would halt potential plans, development, and
19 construction of a new high school needed to alleviate overcrowding for current and future
20 students and their families.

21 In sum, the requested injunction is not warranted under the circumstances.

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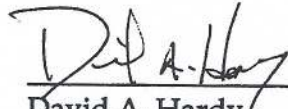
IV. CONCLUSION

This Court, having considered each party's briefings, and being otherwise fully advised, and good cause appearing, orders that:

- A. The WCSD Motion to Dismiss is GRANTED;
- B. The RSCVA Motion to Dismiss is GRANTED;
- C. The Washoe County Motion to Dismiss is GRANTED; and
- D. Plaintiff's Amended Complaint is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

Dated: October 10, 2018.



David A. Hardy
District Court Judge