

**BEFORE THE NEVADA STATE LABOR COMMISSIONER**  
**CARSON CITY, NEVADA**

IN THE MATTER OF:

NLC-20-000115

LABORERS INTERNATIONAL UNION OF  
NORTH AMERICA, LOCAL 169,

Complainant,

V.

## FINAL DECISION AND ORDER

THE REDEVELOPMENT AGENCY OF THE  
CITY OF SPARKS,

Respondent.

# Sparks Town Center 2000 Amended Redevelopment Plan

APN 032-193-19

Project: approximately 0.9642± Acres,  
955 C Street, Sparks, Nevada

## I. PROCEDURAL HISTORY

The Office of the Labor Commissioner/Labor Commissioner (OLC/LC) is responsible for the enforcement of the laws and regulations governing public works projects and the payment of the prevailing wage pursuant to Nevada Revised Statutes (NRS) sections 338.010 through 338.090, inclusive, and Nevada Administrative Code (NAC) sections 338.005 through 338.125, inclusive. The Office of the Labor Commissioner is also responsible for enforcing the “powers and duties” of the Office of the Labor Commissioner/Labor Commissioner pursuant to NRS and NAC section 607, and for the enforcement of “wage and hour laws” pursuant to NRS and NAC section 608.

On January 7, 2020, the Laborers International Union of North America, Local 169 (Laborers Local 169), filed a complaint pursuant to NAC sections 338.107 and

1 607.200, against The Redevelopment Agency of the City of Sparks (Sparks RDA) for  
2 alleged violations of NRS section 279.500 and NRS sections 338.010 to 338.090.  
3 The complaint was submitted "on behalf of all persons employed to perform  
4 construction work for any employer, from the start of the renovation of the existing  
5 parking garage and new high-density apartment building, located on C Street in  
6 Sparks Nevada, and currently referred to as The Deco."

7 Laborers Local 169 alleges that the Sparks RDA provided/sold property to  
8 SWD Partners, LLC (SWD)<sup>1</sup> and did not comply with the prevailing wage requirements  
9 set forth in NRS section 279.500. The prevailing wage requirements set forth in NRS  
10 338.010 to 338.090 were not included as a requirement in the Disposition and  
11 Development Agreement (DDA) that was executed between Sparks RDA and SWD.

12 On January 22, 2020, the Sparks RDA filed an answer asserting that they  
13 complied with the provisions of NRS section 279.500 and that Laborers Local 169  
14 complaint was barred by laches and the statute of limitations. The Sparks RDA also  
15 asserted that Laborers Local 169 did not have standing to file the complaint.

16 SWD and/or Silverwing Development were not named as a party in and/or to  
17 the complaint and had no duty or requirement to file an answer to the complaint.

18 On January 27, 2020, the OLC/LC requested additional responses and  
19 information from Laborers Local 169 based on the Sparks RDA answer. On February  
20 3, 2020, Laborers Local 169 provided the requested responses.

21 The matter was set for hearing on April 1, 2020. The hearing could not be held  
22 due to the COVID-19 public health emergency, and the Governor of Nevada's  
23 Declaration of Emergency Directive 006, section 1, issued on March 22, 2020, which  
24 suspended certain requirements of Nevada' Open Meeting Law.

25 ///

26  
27 <sup>1</sup> J Carter Witt III is the Manager of SWD Partners, LLC. J Carter Witt III is also the President of  
28 Silverwing Development, which is licensed by the Nevada State Contractor's Board as a B General  
Building licensed contractor (License Number 0044017). There are references to Silverwing  
Development in some of the documents prepared by the Sparks RDA. SWD Partners, LLC executed  
the Disposition and Development Agreement.

1 On May 18, 2020, the OLC/LC issued the following preliminary findings denying  
2 certain affirmative defenses raised by the Sparks RDA: (1) The OLC/LC has  
3 jurisdiction over the enforcement of public works and prevailing wage laws pursuant to  
4 NRS sections 338.010 to 338.090; (2) The complaint was not barred by the statute of  
5 limitations; (3) The complaint was not barred by laches; and (4) Laborers Local 169  
6 has/had standing to file the complaint.

7 The hearing was rescheduled for July 15, 2020, and the OLC/LC requested  
8 additional information from the parties. Both parties responded to the request for  
9 additional information in a timely manner and the hearing was continued again. The  
10 parties agreed to continue the hearing to a later date to have an in-person hearing.

11 The OLC/LC requested potential settlement proposals from the parties. The  
12 parties were unable to resolve the matter through settlement.

13 A hearing was held on February 10, 2021, and all parties attended the hearing  
14 online to comply with the Governor of Nevada's Declaration of Emergency Directive  
15 006, section 1, issued on March 22, 2020, which suspended certain requirements of  
16 Nevada's Open Meeting Law. The parties presented evidence, exhibits, and testimony  
17 at the hearing and exhibits 1 through 9b were admitted into evidence upon agreement  
18 of the parties. The matter was submitted to the OLC/LC for a Final Decision and  
19 Order.

## 20 II. APPLICABLE LAWS AND REGULATIONS

### 21 **NRS 279.500 Applicability of provisions governing payment of prevailing wage for 22 public works projects.**

23 1. The provisions of [NRS 338.013](#) to [338.090](#), inclusive, apply to any contract for new  
24 construction, repair or reconstruction which is awarded on or after October 1, 1991, by an  
25 agency for work to be done in a project.

26 2. If an agency:

27 (a) Provides property for development at less than the fair market value of the property.

28 (b) Provides a loan to a small business pursuant to [NRS 279.700](#) to [279.730](#), inclusive; or

(c) Provides financial incentives to a developer with a value of more than \$100,000,

È regardless of whether the project is publicly or privately owned, the agency must provide in  
the loan agreement with the small business or the agreement with the developer, as  
applicable, that the development project is subject to the provisions of [NRS](#)  
[338.013](#) to [338.090](#), inclusive, to the same extent as if the agency had awarded the contract  
for the project. The agency, the small business or the developer, as applicable, any contractor  
who is awarded the contract or enters into the agreement to perform the project, and any



1 subcontractor who performs any portion of the project shall comply with the provisions of [NRS](#)  
2 [338.013](#) to [338.090](#), inclusive, in the same manner as if the agency had undertaken the project  
3 or had awarded the contract. This subsection applies only to the project covered by the loan  
4 agreement between the agency and the small business or the agreement between the agency  
5 and the developer, as applicable. This subsection does not apply to future development of the  
6 property unless an additional loan, or additional financial incentives with a value of more than  
7 \$100,000, are provided to the small business or developer, as applicable.

(Added to NRS by [1959, 656](#); A [1991, 2345](#); [2013, 799](#); [2019, 711](#))

**NAC 338.107 Complaint of violation: Filing with Labor Commissioner; contents; service.** ([NRS 338.012](#), [338.015](#))

1. A person filing a complaint with the Labor Commissioner alleging that a violation of a provision of [NRS 338.010](#) to [338.090](#), inclusive, or [NAC 338.005](#) to [338.125](#), inclusive, has occurred with respect to the person shall follow the procedures for filing a complaint set forth in [chapter 607](#) of NAC.

2. A person filing a complaint with the Labor Commissioner alleging that a violation of a provision of [NRS 338.010](#) to [338.090](#), inclusive, or [NAC 338.005](#) to [338.125](#), inclusive, has occurred with respect to a person other than the person filing the complaint shall:

(a) Provide in writing to the Labor Commissioner:

- (1) The full name and address of the person filing the complaint;
- (2) The full name and address of the person alleged to have committed the violation;
- (3) A clear and concise statement of facts sufficient to establish that an alleged violation of a provision of [NRS 338.010](#) to [338.090](#), inclusive, or [NAC 338.005](#) to [338.125](#), inclusive, has occurred, including, without limitation, the date, time and place of the alleged violation and the name of each person involved;
- (4) A citation to the specific statute or regulation alleged to have been violated;
- (5) The relief requested by the person filing the complaint;
- (6) A certification by the person filing the complaint that the facts alleged in the complaint are true to the best knowledge and belief of the person filing the complaint; and
- (7) The signature of the person filing the complaint.

(b) Submit an original and one copy of the complaint to the Labor Commissioner with a certificate of service attached.

(c) Serve a copy of the complaint upon the person alleged to have committed the violation by:

- (1) Personal service; or
- (2) Regular mail.

**NAC 607.105 Limitation on acceptance of claim or complaint.** ([NRS 233B.050](#), [607.160](#))

Except as otherwise provided by specific statute, the Commissioner will not accept any claim or complaint based on an act or omission that occurred more than 24 months before the date on which the claim or complaint is filed with the Commissioner.

**NAC 607.040 Deviation from provisions.** ([NRS 233B.050](#), [607.160](#)) Notwithstanding any provision of this chapter to the contrary, in special cases, upon a showing of good cause or the Commissioner's own motion, the Commissioner may permit deviation from the provisions of this chapter with regard to a matter if:

1. The Commissioner determines that:

- (a) Compliance with those provisions is impractical or unnecessary; or
- (b) Deviation from those provisions would not adversely affect the substantial interests of the parties to the matter; and

2. Except when the requested deviation from those provisions is based upon the motion of the Commissioner, the person requesting the deviation provides to the Commissioner a specific reference to each provision of this chapter from which he is requesting deviation.



1           **III.     FINDINGS OF FACT**

2           On or around December 4, 2017, the Sparks RDA entered into a Disposition  
3 and Development Agreement (DDA) with SWD. All parties to the DDA signed and  
4 executed the DDA. The DDA defined the Project Property as follows: Project Property  
5 is the following parcel of land, as improved with a public parking garage, owned by the  
6 Agency: APN 032-193-19, approximately 0.9642± Acres, 955 C Street, Sparks, NV  
7 89431. (Exhibit 2a) The Project Property consisted of four floors containing 402 parking  
8 spaces that offered free public parking to the public at no charge.

9           The proposed sale and DDA were noticed for a Public Hearing on December  
10 11, 2017, in the Reno Gazette Journal. (Exhibit 2a.6) A staff report was prepared for  
11 the public hearing to approve the DDA on December 11, 2017, (Exhibit 2b) and it  
12 states:

13           "The Project Property is located within the Town Center Redevelopment  
14 Area and the Downtown/Victoria Square Mixed Use (zoning) district.  
15 "Over the last 20 plus years, the City and Agency (Sparks RDA) have  
16 caused to be developed in Victorian Square a 14-screen movie theater  
17 complex, a 700-space public parking structure, a public plaza, the  
Fountainhouse at Victorian Square residential project, an the  
Fountainhouse and the Bridges mixed use project."

18 In the staff report, it describes the project as follows:

19           "The Project Property has an appraised value of \$950,000. As  
20 compensation for the Project Property, the Developer will provide the  
21 entire first level of the parking garage (90 +/- parking spaces, after  
22 restriping) as public parking for a period of 50 years. Developer will bear  
23 all costs associated with the development of the project and all costs for  
the maintenance of the dedicated public parking. As established by  
appraisals, the value of the public parking exceeds the value of the  
Project Property.

24           As proposed, the Deco project will provide a minimum of 175 and a  
25 maximum of 212 apartment units plus administrative offices,  
26 maintenance facility, lobby, clubhouse/gym, and swimming pool. All  
27 parking for project residents will be located on levels 2 to 4 of the parking  
28 garage."

1 "Sale of the Project Property for the proposed Project would be  
2 consistent with the City of Sparks Comprehensive Plan."<sup>2</sup>

3 Armando Ornelas, the Assistant Community Services Director-Development,  
4 City of Sparks/Sparks RDA, testified that he was personally involved in the discussions  
5 between SWD, also referenced as "the Developer," and Sparks RDA regarding the  
6 negotiation and eventual execution of the DDA. Mr. Ornelas testified that SWD  
7 through J Carter Witt III, approached Sparks RDA about buying the parking garage to  
8 build an apartment building, now known as "The Deco." Mr. Ornelas testified that  
9 Sparks RDA had done previous deals with Mr. Witt. Mr. Ornelas testified those  
10 previous deals were money/cash transactions.

11 Mr. Ornelas testified that loss of public parking was a concern so discussions  
12 and meetings with SWD involved a potential deal where public parking would be  
13 maintained in exchange for the Project Property being transferred to SWD. Mr.  
14 Ornelas did reference Title 20 of the Municipal Code concerning parking requirements  
15 but did not testify that the Sparks RDA, the City, or the City of Sparks were required to  
16 keep the 90 +/- parking spaces that were at/in the parking garage/Project Property. Mr.  
17 Ornelas testified that the parking garage/Project Property did not generate revenue  
18 and that the parking garage had an estimated 5-to-10-year projection based on its  
19 condition, which was described as "fair condition" in the Appraisal Report(s). (Exhibits  
20 2a.2 to 2a.4).

21 On or around May 22, 2017, an Appraisal Report was prepared by Reese  
22 Perkins, Johnson, Perkins, Griffin, Real Estate Appraisers and Consultants, that  
23 documented that the Project Property had an appraised value of \$950,000. (Exhibit  
24 2a.2)

25 On May 23, 2017, a Supplemental Analysis by Mr. Perkins, was prepared for  
26 Mr. Ornelas to value the public's right to use approximately 100 parking spaces within  
27 the proposed parking garage/apartment complex to be located and constructed on the

28 <sup>2</sup> The City of Sparks Comprehensive Plan outlines a plan for the City of Sparks through 2030.



1 Project Property. The Supplemental Analysis/cost-benefit analysis utilized certain  
2 assumptions relating to private parking garages and a cost per space for parking over  
3 a term of 50-years to arrive at a valuation of the parking that equaled or exceeded the  
4 appraised value of \$950,000. (Exhibit 2a.3) The overall amount of the parking spaces  
5 that are referenced in the DDA is 90 +/- spaces plus some motorcycle spots.

6 On July 28, 2017, a Parking Analysis that was conducted by Traffic Works LLC,  
7 was presented to the City Engineer of the City of Sparks. (Exhibit 2a.5) The Parking  
8 Analysis documented the following on page 13:

9 "With the addition of the Silverwing apartments (225 units, Victorian  
10 Square will have an approximate peak parking demand of 1,318 spaces  
11 on a Friday evening. At this peak time, Victorian Square would likely  
have a surplus of only 31 spaces."

12 On or around October 23, 2017, the Sparks City Council approved the transfer  
13 of the Project Property to the Sparks RDA for the express purpose of providing the  
14 Agency/Sparks RDA greater flexibility to structure an agreement for the prospective  
15 sale of the Project Property to SWD/Developer for redevelopment purposes. (Exhibit  
16 2b)

17 On November 7, 2017, an Appraisal Report and Supplemental/Updated  
18 Analysis/cost-benefit analysis was presented to Mr. Ornelas documenting the previous  
19 \$950,000 appraised value and which included information about the value of the 90 +/-  
20 parking spaces. (Exhibit 2a.2) The appraisal and supplemental cost-benefit analysis  
21 estimated the following that was included in the DDA:

22 Section 2.6 of the DDA: "A supplemental cost-benefit analysis, also  
23 prepared Reese Perkins, dated May 25, 2017 and updated November 7,  
24 2017, calculates the value of the public's right to use the Public Parking.  
The analysis concludes that that the right to use the Public Parking, as  
25 proposed, results in a public benefit of \$60,000 per year (i.e., \$600 per  
26 space per year). This equates to \$54,000 a year for 90+/- parking  
spaces that the Developer and City staff estimate will be available on the  
first level after restriping."

27 On November 8, 2017, a review of the Appraisal Report and Supplemental  
28 Analysis/cost-benefit analysis was prepared by William G. Kimmel, Real Estate

1 Appraiser & Consultant, William G. Kimmel & Associates. Mr. Kimmel noted that the  
2 value indication of \$950,000 appears reasonable. Mr. Kimmel addressed the  
3 Supplemental Analysis/cost-benefit analysis relating to the 90-100 parking spaces and  
4 noted that in Mr. Perkins analysis, and particularly on the 2<sup>nd</sup> and 3<sup>rd</sup> page, that the  
5 garage has been basically under-utilized, and generally less than 25% occupied,  
6 except for special events. Mr. Kimmel referenced page 3 of the analysis that showed  
7 that the free parking was an estimated loss of \$82,934 per year. (Exhibit 2.a.4)

8 The OLC/LC accepts that the Appraisal Report(s), Supplemental Analysis,  
9 Parking Analysis, cost-benefit analysis, and the supporting documents in Exhibits 2a.2  
10 to 2a.5 set forth the figures and amounts that the Sparks RDA relied upon in entering  
11 and executing the DDA. The Supplemental Analysis/cost-benefit analysis that is  
12 referenced in the DDA and the Appraisal Report(s) also document that a 50-year  
13 period was used to evaluate the value of the public's right to use the Public Parking  
14 based on a cost of \$50.00 per month as compared to other private parking garages  
15 and other garages that charged for public parking. (Exhibit 2a.3) The Supplemental  
16 Analysis/cost-benefit analysis based the comparison and analysis on the assumption  
17 that the Project Property was in private ownership and 100 spaces were not made  
18 available to the public for parking. (Exhibit 2a.3) The Supplemental Analysis/cost-  
19 benefit analysis estimated that it cost the Sparks RDA, the City, City of Sparks \$45,625  
20 per year, including, insurance, repair and maintenance, utilities, and management to  
21 operate the four-story parking garage and 402 spaces. (Exhibit 2a.3)

22 The DDA (Exhibit 2a) specifically states that prevailing wage requirements do  
23 not apply based on how the "compensation" from "the Buyer" will be provided.

24 Section 4.2.1 of the DDA states: "Compensation. Seller agrees to  
25 convey and the Buyer agrees to acquire the Project Property. As  
26 compensation for the Project Property, the Buyer shall provide the City  
27 use of the entire first level (90 +/- parking spaces) of the parking garage  
28 (i.e., the Public Parking) for a period of fifty (50) years for use by the  
general public, subject to any temporary limits imposed by the City. The  
public's right to use the Public Parking shall be secured by a deed  
restriction running in favor of the City and recorded against the title to the



1 Project Property at close of escrow. Maintenance shall be the  
2 Developer's responsibility and at their expense.

3 The DDA does not require the payment of prevailing wage.

4 Section 2.8 of the DDA states: "As provided for in this Agreement, the 90  
5 +/- parking spaces on the first level of the parking garage will remain  
6 Public Parking for a minimum of fifty (50) years. The cost-benefit  
7 analysis established that that the value of the public benefit of the public's  
8 right to use the Public Parking would equal or exceed the \$950,000 value  
9 of the Project Property before the expiration of the public's right to use  
10 the Public Parking. As a result, the Project is exempt from the prevailing  
11 wage requirements of NRS 279.500."

12 Section 5.1.2 Prevailing Wages – "Compliance Not Required. The  
13 compensation specified in Section 4.2 for the Project Property represents  
14 the fair market value for the property, as established by appraisals  
15 commissioned by the City and therefore construction of the project is not  
16 subject to the prevailing wage requirements of NRS 279.500."

17 On or around December 11, 2017, the Agency Board (Sparks RDA)/City/City  
18 of Sparks moved to approve the DDA with SWD Partners, LLC. SWD did not pay any  
19 money to the Sparks RDA, the City, or the City of Sparks to acquire the Project  
20 Property.

21 Mark Meranda, Building Official, City of Sparks, stated in an Affidavit (Exhibit  
22 8c), admitted into the record as evidence and testimony, that:

23 "Silverwing Development submitted a building permit application  
24 (SBLD18-21076) on April 11, 2018, for demolition and retrofit work at the  
25 old parking garage. It was approved by the City on May 29, 2018. Mr.  
26 Meranda further stated that: "The work at the old parking garage began  
27 with the demolition of the elevators, stairway, and miscellaneous spaces  
28 on the first floor that had previously been used for storage. After the  
demolition work, the garage's footings, columns, and sheer walls were  
retrofitted to add structural strength to the parking structure to allow it to  
support the planned residential units to be built on the top of the parking  
garage. The old ground level slab was removed to allow access to install  
a large, continuous grade beam footing for exterior and interior sheer  
walls. The slab was then replaced with a new thicker, stronger slab.  
Finally, a podium slab was placed on top of the parking garage that  
serves as the connection and support foundation for the residential units  
above. Silverwing Development is performing work on the residential  
units under a different building permit."

1 The May 19, 2018, Building Permit lists a valuation of \$600,000.00 and  
2 describes the work as, "Demo perimeter of parking garage. Retrofit garage footing.  
3 Install primary utilities to building lines (stub up) – the Deco." (Exhibit 8a)

4 Mr. Ornelas testified that construction is still ongoing at "The Deco" and the  
5 parking garage along with the perimeter of the structure are closed to the public for  
6 safety reasons. It is unclear when the public will be able to access the first-floor  
7 parking garage.

8 The OLC/LC does not currently have knowledge of wage claims/complaints  
9 being filed with the OLC/LC related to work on the Project Property/The Deco. The  
10 OLC/LC would review any potential claims/complaints.

11 The OLC/LC does not have jurisdiction over the alleged lost real estate tax  
12 revenue and/or tax revenue calculations in the Supplemental Analysis or as alleged by  
13 Laborers Local 169. (Exhibit 2a.3)

#### 14 **IV. CONCLUSIONS OF LAW**

##### 15 **A. The Complaint was Filed Within the Statute of Limitations**

16 The complaint submitted by Laborers Local 169 is within the statute of  
17 limitations under NAC 607.105 because, the act or omission occurred when  
18 construction started on the first-floor parking garage, which was on or after May 29,  
19 2018, when the building permit was issued. The DDA did not include language  
20 requiring the payment of the prevailing wage. However, the applicable prevailing  
21 wages could have still been paid once work commenced on the first-floor parking  
22 garage, which is intended to still be in use by the public and for the public benefit. The  
23 failure to pay prevailing wages would trigger the act or omission. It is not uncommon  
24 for awarding/public bodies, contractors, and subcontractors, to pay prevailing wages  
25 on projects even if not technically required by law or in a contract or agreement. In  
26 addition, if the OLC/LC made a finding that compliance with NRS 279.500 was not  
27 followed by the Sparks RDA, the OLC/LC would look to the date the work subject to  
28 prevailing wage was actually performed to investigate.



1 The OLC/LC on its own motion, also finds that good cause exists to deviate  
2 from any potential statute of limitation defenses pursuant to NAC 607.040 subdivision  
3 1(b), deviation from those provisions would not adversely affect the substantial  
4 interests of the parties to the matter. The matter has been going on for over 1-year  
5 and construction on The Deco has not stopped and the Sparks RDA, City, City of  
6 Sparks have not been requested to take any actions and/or provide any requested  
7 relief based on the allegations in the complaint.

8 **B. The Doctrine of Laches Does Not Apply**

9 The doctrine of laches does not apply because the complaint was submitted  
10 timely under NAC 607.105. In addition, the Sparks RDA has not been prejudiced by  
11 any delay.

12 The Deco has been under construction since on or after May 29, 2018, and the  
13 first-floor parking garage along with the perimeter of the structure are closed to the  
14 public for safety reasons. It is unclear when the public will be able to access the first-  
15 floor parking garage.

16 **C. Laborers Local 169 Has Standing to File the Complaint**

17 Laborers Local 169 has standing to file the complaint. NAC 338.107 subdivision  
18 2 specifically allows a person to file a complaint with respect to, or on behalf of a  
19 person other than the person filing the complaint. Laborers Local 169 complied with  
20 this provision and filed the complaint in accordance with NAC 338.107(2).

21 **D. Sparks RDA Did Not Comply with NRS 279.500**

22 The OLC/LC fully acknowledges and respects the ability of a public body, such  
23 as the Sparks RDA to pursue and develop redevelopment projects. In this case, the  
24 Sparks RDA did not meet the intent of NRS 279.500 or the requirements of NRS  
25 279.500 to not require prevailing wage on the work on the first-floor parking garage.

26 Based on the evidence and testimony submitted into the record and the  
27 applicable laws and regulations, the OLC/LC finds that the Sparks RDA did not comply  
28 with the provisions of NRS 279.500. The Sparks RDA had no legal requirement to

1 execute a DDA that required 90 +/- parking spaces to be kept in exchange for no  
2 money/cash being paid to the Sparks RDA for the full Project Property. The Parking  
3 Analysis demonstrated that there was surplus parking and the Supplemental  
4 Analysis/cost-benefit analysis documented that the parking garage was "under-  
5 utilized." (Exhibit 2a.2 to 2a.5) The testimony also indicated that previous transactions  
6 with SWD/Developer were money/cash transactions.

7 The use of a 50-year analysis on the cost of the parking and/or 90 +/-parking  
8 spaces to support an amount equal to or above the appraised amount of \$950,000 is  
9 also not reasonable. The parking garage was paid for with public funds and projected  
10 to function for another 5 to 10 years. While it may be an overall loss to the City, City of  
11 Sparks, Sparks RDA, it was still real property that had an appraised value of \$950,000.  
12 The yearly loss to the City, City of Sparks, Sparks RDA, and/or the yearly gain for not  
13 having to take care of the parking garage would take years, if not decades, to equal  
14 what could have been a \$950,000 cash sale that would have relieved the City, City of  
15 Sparks, Sparks RDA from having any potential risks and/or association with any public  
16 parking at the Project Property.

17 A 50-year agreement for SWD to provide and maintain the 90 +/- parking  
18 spaces of the first floor of the Project Property, while legally recorded, that may  
19 eventually equal the \$950,000 appraised value after decades, goes beyond even the  
20 City of Sparks Comprehensive Plan, which goes through 2030.

21 The OLC/LC accepts that the Sparks RDA relied upon the appraisals to arrive at  
22 the \$950,000 value of the property. This does not end the analysis for compliance with  
23 NRS 279.500(2). The question then becomes, was a financial incentive of \$100,000 or  
24 more provided?

25 Black's Law Dictionary/Law Dictionary (online version) 2<sup>nd</sup> Edition defines a  
26 financial incentive as follows: What is financial incentive? "A benefit given to  
27 customers or companies to get them to do something they normally wouldn't. It is  
28 money offered to get them to try something new offered. The event might not have  
happened without the incentive."



1 Like a no-interest loan for a car for a period of months or a no-down payment  
2 purchase of a house, the Sparks RDA and the DDA offered a new proposal to SWD to  
3 provide and maintain 90 +/- parking spaces at the Project Property in exchange for no  
4 money/cash payment of \$950,000 for the appraised value of the Project Property.  
5 Instead, SWD agreed to provide 50-years or the decades that would equal \$950,000 of  
6 free public parking and the maintenance for that free public parking.

7 At a minimum, the Sparks RDA provided a financial incentive to SWD/Developer  
8 worth more than \$100,000 (NRS 279.500 subdivision 2(c)) because they did not  
9 require SWD/Developer to pay any money/cash for the Project Property even though  
10 SWD/Developer was allowed to acquire and take possession of the Project Property  
11 and begin construction of The Deco. Future compensation, and it must be considered  
12 future compensation, in the form of use of 90 +/- parking spaces on the first floor that  
13 may or may not occur through 50-years, does not meet the intent or language of NRS  
14 279.500(2) to eliminate the prevailing wage requirement. The work that was performed  
15 on the first floor of the parking garage that is strictly related to the 90 +/- public parking  
16 spaces for the benefit of the public should have been subject to the prevailing wage  
17 based on the financial incentive of \$100,000 or more, or non-payment of \$950,000 to  
18 acquire and possess the Project Property.

19 The 90 +/- spaces on the first floor of the Project Property may at some point be  
20 in use again by the public and for the benefit of the public. This could occur this year, it  
21 could occur next year, or sometime after that. However, since construction began on  
22 The Deco/Project Property, there is no indication that the public has had the right to  
23 utilize free public parking at the Project Property, which is what they had before, and  
24 what the DDA compensation was based on. The evidence also establishes that the  
25 public parking was not needed or required.

26 This is equal to a financial incentive of \$100,000 or more to SWD/Developer  
27 because SWD/Developer took full possession of the Project Property appraised at  
28 \$950,000 without paying any money/cash for the Project Property.

1 The OLC/LC does not find that SWD sought to or attempted to circumvent  
2 prevailing wage laws. The OLC/LC also does not find that prevailing wage would apply  
3 to any other construction of The Deco/Project Property outside of the first-floor parking  
4 garage, which is intended for use by the public and for the public benefit. If anything,  
5 the evidence documents that SWD/Developer wanted to purchase the Project Property  
6 for money/cash, like the previous transactions with the Sparks RDA.

7 The OLC/LC finds that Sparks RDA should have required the payment of  
8 prevailing wage on the work for the first-floor parking garage because the developer  
9 received a financial incentive of \$100,000 or more for the Project Property pursuant to  
10 NRS section 279.500(2)(c), by being able to acquire and take control of the property  
11 and construct private apartments on the Project Property that could be rented on the  
12 private market this year or next year, without paying any money/cash to the Sparks  
13 RDA. The appraised value was \$950,000 for the Project Property. That \$950,000 will  
14 not technically be recouped until free public parking for 50-years (decades at minimum)  
15 is provided pursuant to the DDA. The OLC/LC cannot speculate on what costs  
16 SWD/Developer may have already put into the first-floor parking garage (building  
17 permit lists \$600,000) at the Project Property or what it will put into the Project  
18 Property/The Deco in the future, or what the potential rental earnings may be from The  
19 Deco. The fact remains that the appraised value of the property was not paid to the  
20 Sparks RDA, despite a transfer of the Project Property to SWD to begin construction of  
21 The Deco. This is a financial incentive of \$100,000 or more that requires compliance  
22 with NRS 279.500 and the prevailing wage laws in NRS 338.010 to 338.090.

#### 22 **V. INVESTIGATIVE COSTS AND POTENTIAL CLAIMS/COMPLAINTS**

23 The OLC/LC does not have knowledge of any claims/complaints being filed  
24 alleging failure to pay the prevailing wage for the work performed on the first-floor  
25 parking garage or at The Deco. Silverwing Development is a licensed contractor and  
26 could have performed the work themselves or they could have contracted it out  
27 through a subcontractor. SWD and Silverwing Development are also not parties to this  
28 matter and the evidence does not suggest that they intended to avoid paying prevailing



1 wage. SWD executed a DDA with the Sparks RDA that did not have prevailing wage  
2 requirements.

3 The OLC/LC does have the authority to impose administrative penalties  
4 pursuant to NRS sections 338.015 and 338.017 for potential violations of public works  
5 and prevailing wage laws as set forth in NRS 338.010 to 338.090. The DDA was  
6 signed off on and approved by the City Attorney, Sparks RDA, and the Board at the  
7 Public Hearing on December 11, 2017.

8 The OLC/LC finds that \$5000.00 in investigative costs to be paid by the Sparks  
9 RDA/the City/City of Sparks to the OLC/LC is justified based on NRS section  
10 338.090(2)(b).

11 If any potential claims/complaints involving work on the first-floor parking  
12 garage at the Project Property are received by the OLC/LC, they will be evaluated to  
13 determine if they are within the statute of limitations and require further investigation.

14 The Sparks RDA should also consult with the OLC/LC on future DDA's that  
15 may involve different compensation arrangements that are outside of a traditional  
16 cash/loan purchase of property based on the appraised fair market value.

17 Therefore, IT IS HEREBY ORDERED that:

- 18 1. Sparks RDA shall pay \$5000.00 in investigative costs to the OLC/LC  
19 within 15-days of the date of this Final Decision and Order.
- 20 2. The OLC/LC will evaluate any potential wage claims/complaints that  
21 may be filed involving work on the first-floor parking garage at the  
22 Project Property to determine if they are within the statute of limitations  
23 and require further investigation.

24  
25 Dated this 26<sup>th</sup> day of February 2021.

26  
27   
28 Shannon M. Chambers  
Labor Commissioner  
State of Nevada

1 **CERTIFICATE OF MAILING**

2 I, Trystin Dennis, do hereby certify that I mailed a true and correct copy of the  
3 foregoing **FINAL DECISION AND ORDER**, via the United States Postal Service,  
4 Carson City, Nevada, in a postage-prepaid envelope to the following:

5  
6 Michael Langton, Esq.  
7 801 Riverside Drive  
8 Reno, NV 89503  
9 [mlangton@sbcglobal.net](mailto:mlangton@sbcglobal.net)  
10 [ceciliavohl@yahoo.com](mailto:ceciliavohl@yahoo.com)

11 Chester H. Adams, Sparks City Attorney  
12 Brandon C. Sendall, Sparks Asst. City Attorney  
13 P. O. Box 857  
14 Sparks, Nevada 89432-0857  
15 [cadams@cityofsparks.us](mailto:cadams@cityofsparks.us)  
16 [bsendall@cityofsparks.us](mailto:bsendall@cityofsparks.us)

17 Dated this 26th day of February 2021.

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Trystin Dennis, an employee of the  
Nevada State Labor Commissioner