

NEVADA STATE BOARD OF
ARCHITECTURE, INTERIOR DESIGN
AND RESIDENTIAL DESIGN,

VS.

and

Real Parties in Interest.

Real Parties in Interest’s Brief in Opposition to Petitioner’s Motion to File Reply Brief

1 **REAL PARTIES IN INTEREST’S OPPOSITION TO PETITIONER’S**
2 **MOTION FOR LEAVE TO FILE REPLY BRIEF**

3 NOW COME Real Parties in Interest (“Rusk”), and herewith oppose the
4 motion of the Petitioner (“Board”) for leave to file a reply brief. This Opposition is
5 based on the papers on file to date.
6

7 **I. ANALYSIS**

8 The Board comes before this Court seeking to further delay the proceedings
9 at issue. This matter was heard in the District Court on February 14, 2018, over
10 eight months ago. The pressing nature of the completion of this matter warrants
11 denial as the issues are well briefed to this point, and are before this Court in their
12 entirety. Moreover, the Board already had its opportunity to present its full
13 analysis, and there exists no reasonable basis upon which to grant the relief at
14 issue. In short, the Board is arguing that it allegedly failed to present a full analysis
15 in its Petition, and should be granted a further opportunity to expound on its
16 position. Nonetheless, the full briefing in the Court below is before this Court in
17 the Board’s Supplemental Appendix, together with the current Petition, and there is
18 no reason to further expand and delay these proceedings. Finally, in the context of
19 the Board’s request, it now allegedly wants to raise new analysis without giving
20 Rusk an opportunity to respond, and new matters cannot be raised in a Reply.
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26 For example, the first issue raised is the concept of alleged “premature
27 petitions for judicial review.” Board’s Motion, p. 2. This was fully addressed by
28

1 the Board in its Petition for Judicial Review, pp. 15-19 (note that the Board
2 expressly uses the words premature or prematurely at least twice in its analysis).
3 Clearly, the argument was raised and briefed, and invited a response which was
4 provided, and which is all that is allowed under NRAP 21(b)(1).

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6 As to the Board's arguments, the Board is being disingenuous with the
7 Court. At p. 2 of its Brief, the Board maintains that the issue from Windsor Hall,
8 was never reviewed below. The issues, nonetheless, were fully briefed. Board's
9 Supplemental Appendix, pp. 30-33. Also, undisclosed by the Board is that at oral
10 argument the precise issue of the effectiveness of an oral ruling demanding a
11 Petition of Judicial Review within thirty days of the oral ruling was extensively
12 discussed and authority was provided, but the Board has failed to include a copy of
13 that argument in any appendix.¹

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15 The Board next complains that Rusk does not address a case never raised in
16 the Board's Petition. Board's Brief, p. 3. If it was not part of the Board's Petition,
17 and did not even appear in the appendix contemporaneously filed by the Board,
18 Rusk could not address an argument made off of this case. With this motion, the
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25 ¹ At oral argument during the February 14, 2018 hearing Rusk presented a case
26 from another jurisdiction showing that when an oral decision is authorized by
27 statute, a late filed request for review is absolutely abandoned. A copy of this case
28 was provided to the Court and to opposing counsel at this hearing. The copy given
to opposing counsel was Rusk's counsels copy, and no copy was retained. Rusk
has ordered a DVD of the hearing (due to be provided Monday) which should
disclose this case, and Rusk will seek to supply the case in a supplement hereto.

1 Board is again attempting to put new matters before the Court in a reply, a strictly
2 prohibited procedure. Holcomb v. Georgia Pacific, LLC, 128 Nev. 614, 289 P.3d
3 188, n. 12 (2012)(“[A] party may not raise a new issue for the first time in a reply
4 brief.”); Browning v. State, 120 Nev. 347, 368, 91 P.3d 39, 54, n. 54 (2004).

6 Clearly, if there is any real relevance to the analysis, the case would have been
7 argued in the Board’s Petition. It was not, and to subject Rusk to this prohibited
8 activity requested by the Board would be inappropriate.
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10 **II. CONCLUSION**

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12 For the reasons set forth above, Rusk requests that the Board’s request for
13 supplemental briefing be denied.

14 DATED this 29th day of October, 2018.

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27 **PROOF OF SERVICE**

28 I hereby certify that on October 29th, 2018, I caused to be served the above

Nonetheless, for the Board to argue that the issues evident from Windsor Hall were
not raised below is false.

1 Real Parties in Interest's Opposition to Petitioner's Motion to File a Reply Brief
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3 through the electronic filing system maintained by this court upon the following
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