

Case No. _____

IN THE SUPREME COURT OF
THE STATE OF NEVADA

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Elizabeth A. Brown
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CITY OF HENDERSON, a Political Subdivision of the State of Nevada

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the
County of Clark, and the Honorable Timothy C. Williams, District Court Judge

and

SOLID STATE PROPERTIES, LLC., a Nevada Limited Liability Company,

Real Party in Interest

District Court Case No. A-19-788817-B
Eighth Judicial District Court of Nevada

PETITION FOR WRIT OF MANDAMUS

HENDERSON CITY
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July 16, 2020

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal.

1. The City of Henderson is a political subdivision of the State of Nevada and has no corporate affiliation.
2. The City is represented in the District Court and this Court by the Henderson City Attorney's Office.

DATED this 16th day of July, 2020.

CITY OF HENDERSON

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I. INTRODUCTION

This writ addresses a straightforward, but important issue: whether a party can file a petition for judicial review, a new case, within an already existing, unrelated business court case? This Court should answer no and further clarify that petitions for judicial review are separate cases that generally should not be heard with other types of cases. The Court could also take the opportunity to clarify the proper contents of a petition for judicial review.

In February of 2019, Solid State Properties, LLC (“Solid State”) filed a complaint against the City of Henderson (“City”), in business court, (Case No. A-19-788817-B. (“Enforcement Case”) seeking damages, attorney fees, and an injunction against the City. The Enforcement Case concerned the City’s enforcement of a conditional use permit (the “Coral Academy CUP”) the City had awarded Solid State’s neighbor, Eastgate, LLC (“Eastgate”) in 2017. In March of 2019, Solid State Moved for, but failed to obtain, a preliminary injunction in the Enforcement Case.

On August 6, 2019, the Henderson City Council (“Council”) reviewed the status of the conditions of approval related to the Coral Academy CUP. On September 3, 2019, despite having never filed any petition for judicial review against the City anywhere, Solid State filed a document in the Enforcement Case titled “Amended Petition for Judicial Review” (“Amended Petition”). This was improper because:

1. Solid State filed a petition for judicial review, a new case, in an already existing, unrelated matter.

2. Solid State did not pay a filing fee for the new case initiated by the Amended Petition.
3. Solid State did not comply with NRCP 4 in serving the Amended Petition on the City.
4. The Amended Petition was not randomly assigned as required under EDCR 1.60(a) or EDCR 1.62(a).
5. The Amended Petition asked the district court that was presiding over the Enforcement Case (which Solid State had filed as a business court matter) to determine that the award of the Coral Academy CUP was invalid (even though that was not the subject of the Council meeting related to its Amended Petition), a matter clearly identified under EDCR 1.61(b)(18) as a matter that *is not* a business court matter.
6. The Amended Petition included eight pages of legal argument, more than 140 pages of exhibits that were not part of the record before the Council in amending the conditions of approval related Coral Academy CUP, and in improper request for a hearing.

The City filed a motion asking the district court to strike the Amended Petition or alternatively, its improper parts (the “Motion”). The district court denied the Motion. Respectfully, the district court’s decision was an abuse of discretion.

The City asks this Court to issue a writ of mandamus directing the district court to strike the Amended Petition and clarify that a petition for judicial review is a separate case for which a filing fee must be paid, which must be served in compliance with NRCP 4, and which must be randomly assigned pursuant to EDCR 1.60(a) and 1.62(a).

Moreover, the Council, like other municipal bodies, has considerable discretion in resolving the matters before it. Judges reviewing decisions of municipal bodies sit in a quasi-appellate roll and must give deference to the municipal body’s decisions. The

reviewing judges are limited to the record before the municipal body and the standard the judge must apply to the body's decision is substantial deference.

In contrast, issues raised in civil complaints are not subject to the limitations for petitions for judicial review. The process for gathering evidence is governed by the rules of civil procedure. The standard for most cases is not substantial evidence, and evidence is applied by a finder of fact, normally a jury, but sometimes a judge sitting as a fact finder. Because the process for determining a petition for judicial review is significantly distinct from normal cases, determining petitions with other cases is inappropriate. Thus beyond this specific case, alternatively, or additionally, the Court should make that clear that petitions for judicial review and complaints seeking other relief should not be heard in the same case.

At a minimum the Court should order the district court to strike the irrelevant and superfluous legal arguments and exhibits in the Amended Petition to help clarify the proper contents and procedure for the determination of a petition for judicial review.

II. ROUTING STATEMENT

The process for determining petitions for judicial review is quasi-appellate, and essential to a court's limited review. Clarifying that petitions for judicial review must be heard separately from unrelated cases, as well as the proper contents of such petitions and the process for resolving them is a matter of statewide public importance for every municipality, its citizens, and those with business before municipal bodies.

Further, this matter originated (improperly) as a business court matter. Thus, Pursuant to NRAP 17(a)(9) and (12), the Nevada Supreme Court should retain, and entertain, this writ petition.

III. ISSUES PRESENTED

1. Whether the district court abused its discretion when it denied the City's Motion to strike a petition for judicial review—a new case—concerning the review of conditions related to a permit—that was filed in an unrelated business court case that had already been pending for more than 7 months?
2. Alternatively or additionally, whether a petition for judicial review should be heard separately from other types of cases.
3. Whether the district court abused its discretion in failing to strike superfluous and irrelevant legal arguments, legal standards, facts, and exhibits that were allegedly the record of proceedings, as well as a request for hearing prior to the time set forth in EDCR 2.15(d) that were included as part of the Amended Petition?

IV. PERTINENT FACTS

Solid State shares an adjoining lot with Eastgate. Eastgate leases a building on its lot to Coral Academy of Science, Las Vegas (“Coral Academy”)—a charter school. Solid State and Eastgate have fought since 2017 over various issues relating to their properties, including whether and how Coral Academy can operate on Eastgate's lot.

On February 4, 2019, Solid State filed a complaint against the City in the Eighth Judicial District Court, in business court Case No. A-19-788817-B, commencing the

Enforcement Case. (*See* JA1 001 – JA1 034) The complaint in the Enforcement Case alleged that the City had abused its discretion in enforcing (or not enforcing) a conditional use permit (“Coral Academy CUP”) that the City granted Coral Academy to operate a charter school on Eastgate’s lot. (*Id.* at 013-014.) The Enforcement Case sought injunctive and other relief compelling the City to enforce the Coral Academy CUP to Solid State’s satisfaction or that the court revoke it. (*Id.* at 013-015.)

On March 5, 2019, Solid State brought a motion for preliminary injunction on shortened time seeking revocation of the Coral Academy CUP for non-compliance with the CUP conditions or an order from the district court demanding that the City enforce the CUP conditions to Solid State’s satisfaction. (*See* JA2 264 – JA2 265). The district court denied Solid State’s request for a preliminary injunction by minute order on April 4, 2019, and a final order was entered on June 5, 2019. (*See* JA2 264).

Nearly 3 months passed without Solid State taking any action on in the Enforcement Case.¹ (*See* JA2 264 – JA2 265). Then, on September 3, 2019, after a review of the conditions for the Coral Academy CUP on August 6, 2019, by the Council, Solid State filed a document, titled “Amended Petition for Judicial Review” in the already pending Enforcement Case. (*See* JA1 035 – JA1 198). To be clear, Solid State had not previously filed any petition for judicial review against the City, in any case—so the term “Amended Petition” was either a typographical error or an incorrectly named

¹ As of the filing of this petition, Solid State still has not attempted to amend its Complaint pursuant to an agreement of the parties.

document. (*See* JA1 264 – JA1 265).

The Amended Petition included roughly thirteen pages of “Factual Statement” and eight pages of what appeared to be a memorandum of points and authority in support of the Amended Petition that consisted of a “Standard of Review”, and “Legal Argument” challenging the Henderson City Council’s review of the Coral Academy CUP conditions—specifically Solid State argued the City lacked substantial evidence concerning the placement of a median in a public road way. (*See* JA1 035 – JA1 198). Solid State attached more than 140 pages of exhibits to the Amended Petition, which Solid State would later argue was the record of the Henderson City Council’s proceedings on August 6, 2016. (*See* JA1 035 – JA2 198).

Because Solid State filed the Amended Petition within the Enforcement Case, it did not pay a separate filing fee and did not separately serve the Amended Petition on the City. (*See* JA2 264 – JA2 265). The matter was not randomly assigned. (*See* JA2 264 – JA2 265). Additionally, Solid State’s Amended Petition included a request for hearing. (*See* JA1 035 – JA1 198).

The City filed a motion to strike the Amended Petition (“Motion”) because Solid State filed it, in an already existing, unrelated, business court matter and alternatively requested that the district court strike the improper legal arguments, exhibits (that Solid State asserted was the record), and request for hearing in the Amended Petition, all of which were inconsistent with EDCR 2.15. (*See* JA1 199 – JA1 226, JA2 239 – JA2 259 and JA2 266 – JA2 295).

Solid State opposed (“Opposition”) the City’s Motion. (JA1 27 – JA238). Solid State did not explain why filing an unrelated petition for judicial review in an already existing case was proper, but instead focused on what the Amended Petition was not—an amended pleading. (*See* JA1 231 – JA1 232) Solid State argued that the Amended Petition was not a rogue document because it was not an amended pleading and specifically argued “Solid State’s Petition *complies with none of the rules for an amended pleading* as it was not refiled, was not preceded by any motion to amend, and does not denote ‘whether it is the first, second, third, etc. amended pleading.’” (*See* JA1 231 – JA1 232) (emphasis added).

Solid State also argued that its 140 pages of exhibits were proper because they “are not irrelevant to the issuance of the Coral Academy CUP”, which in Solid State’s opinion spanned two years and four City Council meetings. (*See* JA1 235).

Solid State further defended the Amended Petition and its exhibits arguing that under EDCR 2.15 it, not the City, could determine what the record of proceedings was, and simultaneously file it along with a factual statement, standard of review, and legal argument – essentially a memorandum of points and authorities (*See* JA1 236). Solid State’s memorandum of points and authorities indisputably did not comply with NRAP 28, as EDCR 2.15(e)’s requirements. Moreover, Solid State’s exhibits, which it contended were the record, did not include the agenda item, back up, or transcript or video from the August 6, 2019, meeting where the Henderson City Council made the decision for which Solid State was seeking judicial review. (*See* JA1 035 – JA1 198).

After Solid State's Opposition clarified that the Amended Petition was not an amended pleading, but was apparently a newly filed petition for judicial review, the City filed its Reply demonstrating the impropriety of filing the Amended Petition in the Enforcement Case. The Reply set forth that petitions for judicial review are separate cases and that filing a separate case in an already existing case was improper. (*See* JA2 239 – JA2 259). The City also set out that filing a new action in the form of a petition for judicial review seeking revocation of a permit was inconsistent with EDCR 1.61(b)18. (*Id.* at 244). The City further detailed the many ways in which Solid State's Amended Petition, which Solid State contended included the record of proceedings and its memorandum of points and authority in support thereof, did not comply with EDCR 2.15. (*Id.* at 244 - 245).

At the hearing on the City's Motion, despite the fact that Solid State's Opposition specifically argued that the Amended Petition was not an amended pleading and did not comply with any of the rules for an amended pleading, Solid State's counsel argued to the district court that the Amended Petition was an amendment that replaced the Enforcement Case Complaint:

MR. WHITAKER: . . . But their question is "Wow, this is not the appropriate forum for a petition because it replaced a Complaint." Well, it's an Amended, and the fact is they challenged the original filing, claiming that it was not a proper format for a petition.

That's all been revised and amended now, and it's been timely submitted to this Court as a petition.

THE COURT: The Amendment was filed September 3rd, right?

MR. WHITAKER: That is correct.

(*See* JA2 279, ln. 22 – JA2 280, ln. 6).

Solid State’s counsel’s contradictory argument further confused the issue by asserting that the Amended Petition superseded the prior pleading, the complaint in the Enforcement Case .

MR. WHITAKER: . . . And this is, if you look at the rules under the Eighth Judicial District Court rules, if you file an amended pleading in the same case, it supersedes the prior document. There is no Complaint pending. The only thing pending before you right now would be this petition.

(*See* JA2 292, lns. 8 - 13).

It is unclear whether the district court judge adopted Solid State’s contradictory and unsupportable position that the Amended Petition was an amended pleading that replaced the Complaint, but in any event, the judge denied the City’s Motion:

THE COURT: . . . My concern is this: It’s an amended pleading and controlling right now. You’re asking me to strike it.

MR. KEMBLE: Well, I’ll turn to their opposition where they spend pages stating that this is not an amended pleading, and they give you all the reasons that it doesn’t comply as an amended pleading.

THE COURT: Well, it says it’s an amended pleading; right?

MR. WHITAKER: And if you get into the caption, the captions don’t matter either, per rule or by case law.

MR. KEMBLE: Or apparently not the arguments in the opposition, where they say “This is not an amended pleading,” and they set forth all the reasons why this does not qualify as an amended pleading, and there is an operative Complaint in this case.

THE COURT: I don't disagree with you on that. I'm not disagreeing. So anyway –

MR. KEMBLE: Thanks, Judge.

THE COURT: All right. This is what I'm going to do, and it's fairly straightforward. As far as the Motion to Strike Plaintiff Solid State Property LLC's Amended Petition for Judicial Review, I'm going to deny that. And I think we've made a pretty good record as to why.

(*See* JA2 292, ln. 22 – JA2 293, ln. 24). Neither the hearing nor the ultimate order clarified what the Amended Petition was, but the transcript confirms that both documents are operative.

Solid State's counsel also contradicted Solid State's Opposition by stating that the legal argument and exhibits included in the Amended Petition were not the memorandum of points and authorities in support of the Amended Petition and the 140 pages of exhibits were not the record, despite spending pages of its Opposition arguing that they were:

THE COURT: This isn't a time and manner issue. This is a form and content. And so what courts -- what the courts have done under those circumstances is this, they say: Look, if it's a form and content versus time and manner, all you need is substantial compliance, and so from a pure legal analysis perspective, I say to myself: Okay. If it's not exactly like NRAP 28, still file; right? It's a memorandum.

MR. WHITAKER: It's the petition. What they're taking is that the form of the petition is where they take exception. We are not stating that the city has, under the law, the requirement both by the state statute and by the Eighth Judicial District Court rule, an obligation to present this court with a full municipal record addressing the –

THE COURT: I understand that. I do.

MR. WHITAKER: That hasn't happened yet. So there will be briefing following the submission of that record to the Court. There will be a full brief from us, from them, as it would be an appellate process; and thereafter, after that process completed, only then can we request that this Court order a hearing. Only when that process is completed. That's under the Eighth Judicial District Court rule.

(See JA2 275, ln. 5 – JA2 276, ln. 5).

The district court's order did not set forth the facts or law underlying its determination, but instead simply denied the City's Motion and gave the option to file a motion with the Chief Judge for potential reassignment (See JA2 260 – JA2 263). Unfortunately, because of the contradictions between Solid State's Opposition and its counsel's argument at hearing, the City could not determine the basis for the district court's order. But the order is clear that the City's Motion seeking to strike the Amended Petition was denied.

V. ARGUMENT

A. Legal Standard for Issuance of a Writ

While this Court has made clear that an appeal is ordinarily an adequate remedy, this Court has not hesitated to entertain writs where “an important issue of law needs clarification and considerations of sound judicial economy are served.” *Helpstein v. Eighth Jud. Dist. Ct.*, 362 P.3d 91, 94, 131 Nev. 909, 912 (2015). This Court has entertained writs challenging the erroneous denial of dispositive motions pursuant to NRCP 12 (granting in part writ petition challenging district court denial of motion to dismiss); *Smith v. Eighth Judicial Dist. Court In and For County of Clark*, 950 P.2d 280, 283, 113 Nev.

1343, 1348 (1997) (granting writ and compelling court to dismiss for failure to comply writ NRCP 4). This Court grants such writs when there are no disputed factual issues and where a statute or rule compels the district court to act. *Id.*

Here, both bases exist for this Court to entertain the City's writ petition. First, this Court can clarify the proper procedure and form for challenging decisions of municipal bodies via petitions for judicial review. The people of the state and their municipal bodies would both benefit from understanding whether petitions for judicial review are separate cases that should be heard separately from other matters.

B. Standard of Review for Denial of a Motion to Strike Pursuant to NRCP 12(f).

This Court reviews district court orders for an arbitrary or capricious abuse of discretion. *Helstein*, 362 P.3d at 94, 131 Nev. at 913. This Court reviews questions of law de novo. *Id.* In this case, the district court order may be subject to either standard because this Court could, and should, decide that as a matter of law that a petition for judicial review is a new case, that may not be filed in an unrelated, already pending case for any reason and that a petition for judicial review initiates a new case that must be randomly assigned, served, and that requires payment of a separate filing fee.

The Court may also decide that it was an abuse of discretion for the district court not to strike the entire Amended Petition or the superfluous and irrelevant memorandum of points and authorities, including the legal argument, legal standard, facts, and exhibits that Solid State contended was the record before the Council.

C. The District Court Erred in Failing to Strike Solid State's Amended Petition for Judicial Review and Allowing It to Be Filed in an Already Existing, Unrelated Matter.

In its Opposition filed in the district court, Solid State vehemently argued that its Amended Petition was not a properly amended pleading. (*See* JA1 231 – JA1 232). From this argument Solid State offered the logical fallacy that because its Amended Petition was not an amended complaint it was a properly filed petition for judicial review. Incorrect, and Solid State's arguments to the district court, that the Amended Petition was an amended pleading were immediately defeated by Solid State's own arguments that the Amended Petition did not comply with any of the proper procedures for filing an amended pleading. (*See* JA1 231, ln. 8 – JA1 233, ln. 7)

A petition for judicial review is a document that initiates an action. (*See* JA2 251, lns. 16 – 19) (Administrative Order 19-05 at 2 (identifying a petition as one of the documents that commences a case)). A petition must be served pursuant to NRCP 4 and may not simply be served through the electronic filing system. *See* NEFCR 9(a). The filing fee for a petition for judicial review is at least \$270.00. *See* Ex. B, Official Fees for the Eighth Judicial District Court at p. 4.

Not only is a petition for judicial review a separate filing that initiates a new case, courts examining the issue have determined that petitions for judicial review should not be combined or otherwise joined with lawsuits. *Cobbley v. City of Challis*, 139 P.3d 732, 735, 143 Idaho 130, 133 (2006) (“a petition for judicial review of a road-validation decision of a local governing board is a distinct form of proceeding and cannot be

brought as a pleading or motion within an underlying civil lawsuit”); *Rail N Ranch Corp. v. Hassell*, 868 P.2d 1070, 1076, 177 Ariz. 487, 493 (Ariz. App. Div. 1, 1994) (finding that review of a Board of Land Appeals could not be combined with a private cause of action); *State ex rel. Byram v. City of Brentwood*, 833 S.W.2d 500, 502 (Tenn. App. 1991) (affirming dismissal of developer’s combined mandamus action and damages action arising from city planning commission’s land use decision); *Batch v. Town of Chapel Hill*, 387 S.E.2d 655, 661–62, 326 N.C. 1, 11 (N.C. 1990) (reversing intermediate appellate court and determining that lower court erred in allowing review of town council’s land use decision to be combined with cause of action alleging constitutional violations and seeking damages).

It makes sense that petitions for judicial review should proceed separately from other types of cases. A court hearing complaints for damages or other relief sits as a trial court (often with a jury) with all its power and discretion as a trial court, but a court hearing a petition for judicial review sits in a limited, appellate role bound by the record in front of the agency or government body when it made its decision, and the court is bound to apply a deferential substantial evidence standard. *Black v. University of Iowa*, 362 N.W.2d 459, 462 (Iowa 1985); *Goodwin v. Metropolitan Bd. of Health*, 656 S.W.2d 383, 386 (Tenn. App. 1983). The Court in Goodwin explained, and “heartily condemned”, the problem the Amended Petition creates:

Before considering the first issue, we wish to heartily condemn that which appears to us to be a growing practice, *i.e.*, the joinder of an appeal with an original action and the simultaneous consideration of both at the trial

level. This Court is of the firm opinion that such procedure is inimical to a proper review in the lower certiorari Court and creates even greater difficulties in the Court of Appeals. The necessity of a separation of appellate review of a matter and trial of another matter ought to be self-evident. In the lower Court one is reviewed under appropriate Appellate rules and the other is tried under trial rules. In this Court our scope of review is dependent upon the nature of a proceeding. In this case one matter would be limited by rules of certiorari review and the other would be reviewed under 13(d), Tennessee Rules of Appellate Procedure. Like water and oil, the two will not mix.

Goodwin, 656 S.W.2d at 386.

In its Opposition, Solid State strenuously argued that its Amended Petition was not an amended pleading in the Enforcement Case and based that argument on its own explanation as to why the Amended Petition did not comply with any of the procedures for filing an amended complaint:

Here, Solid State's Petition ***complies with none of the rules for an amended pleading***, as it was not refiled, was not preceded by any motion to amend, and does not denote "whether it is the first, second, third, etc., amended pleading." EDCR 5.208(d). Moreover, the document does include a title, which title informs both the City and the Court Clerk of the nature of the relief sought, pursuant to EDCR 7.20(c)(5). (emphasis added).

(See JA1 231, ln. 8 – JA1 233, ln. 7) Thus the Amended Petition was not an amended pleading, it was an attempt to file a new case—a petition for judicial review, but within an already existing case. NRCP, NEFCR, the law, and common sense make clear that the petition for juridical review may not be filed as a simple motion and may not properly be combined with the Enforcement Case which sought damages and injunctive relief for the City's alleged abuses of discretion in enforcing a CUP that had

already been approved.

All of this leads to the conclusion that the Amended Petition was a fugitive document, and the proper response to a fugitive document is to strike it. Nevada Trial Courts have used NRCP 12(f) and Federal Courts have used FRCP 12(f) (the federal counterpart to NRCP 12)² to strike fugitive or unauthorized filings. *See Peccole v Peccole Nevada, Corp.*, No. 16A739654, 2017 WL 1103860, at *1 (Nev. Dist. Ct. Clark County Jan. 31, 2017) (striking untimely opposition); *Turner v. High Desert State Prison*, No. 2:13-cv-1740-JAD-VCF, 2015 WL 668912, at *2 (D. Nev. Feb. 13, 2015) (striking improperly filed and unauthorized supplement); *Picozzi v. Clark County Detention Center*, 2018 WL 3866399, at *1 (D. Nev., 2018) (quoting *Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir. 2010)) (“It is well established that district courts have inherent power to control their docket’ This includes the power to strike improperly filed items from the docket.”); *Adobe Sys. Inc. v. Christenson*, 891 F.Supp.2d 1194, 1201 (D. Nev. 2012) (authority to strike unsanctioned documents is essential to the court’s ability to enforce its orders, manage its docket, and regulate insubordinate conduct).

Because Solid State’s Amended Petition would improperly create a new case within an existing case and did not comply with EDCR’s requirements for the random assignment of new cases, the district court abused its discretion when it determined not

² Courts may consult the interpretation of a federal counterpart to a Nevada Rule of Civil Procedure as persuasive authority *Humphries v. Eighth Jud. Dist. Ct.*, 312 P.3d 484, 488, 129 Nev. 788, 794 (2013) (citing *Coury v. Robison*, 115 Nev. 84, 91 n. 4, 976 P.2d 518, 522 n. 4 (1999)).

to strike the Amended Petition as a rogue document.

D. A Petition for Judicial Review Challenging the City Council's Decision Concerning the Coral Academy CUP Is Expressly NOT a Business Court Matter.

Solid State's Amended Petition was further flawed because it attempted to initiate a non-business court case within a case being heard business court matter. EDCR 1.61(b) sets forth examples of cases that are not business matters. Pursuant to EDCR 1.61(b)(18): "The granting, denying, or withholding of governmental approvals, permits, licenses, variances, registrations, or findings of suitability" is not a business court matter. Solid State's Amended Petition states that: "The CUP finally approved by The City on August 6, 2019, must be overturned and rejected..." (Pl's. Pet. 21). There is no question that the Amended Petition concerns the granting of a government approval and permit—the Coral Academy CUP; thus, there is no question this Court, which is hearing Solid State's Enforcement Case as a business court matter, should not consider the Amended Petition.

The Enforcement Case was being heard as a business court matter, but the EDCRs make clear that the Amended Petition is not a business court matter, further supporting that the Amended Petition was improperly filed in the Enforcement Case that was being heard as a business court matter. The district court thus erred when it determined not to strike the Amended Petition.

E. Solid State's Amended Petition Does Not Comply with the Process or Scope of Judicial Review.

Assuming *arguendo*, that the Amended Petition was a properly filed new case within the already existing Enforcement Case, the district court still should have granted the City's Motion to strike the improper parts that failed to comply with EDCR 2.15.

There are two competing understandings of the scope and process of judicial review. On the one hand, is the City's vision that rests on the following law and procedural rules:

1. A petition initiates an action for judicial review and must be filed within 25 days after the date of filing of a notice of the decision with the clerk of the governing body. See NRS 278.3195(2)(b).
2. A petition for judicial review is an appeal of the governing body's decision. *See id.*
3. In hearing the appeal, the district court reviews the record to determine whether the board or governing body's decision is supported by substantial evidence. *Kay v. Nunez*, 146 P.3d 801, 805, 122 Nev. 1100, 1105 (2006).
4. The district court's review is limited to the record made before the governing body, in this case, the Council ("City Council"). *City Council of City of Reno v. Travelers Hotel, Ltd.*, 683 P.2d 960, 962, 100 Nev. 436, 439 (1984).
5. The opening brief for a petition for judicial review is based on the record and is served within 21 days after the record of the proceeding under review is submitted. EDCR 2.15(a).
6. Briefs in support of or opposition to must be in the form provided by the Nevada Rules of Appellate Procedure. EDCR 2.15(e).
7. After briefing is complete either of the parties may submit a request for a hearing. EDCR 2.15.

Solid State's vision, set forth in its Opposition (but completely contradicted at the hearing), is vastly different from the City's and is not supported by the law or rules of procedure. Solid States vision rests on the principle that because the rules do not expressly prohibit how and where their Amended Petition should be filed (which the rules actually do), then Solid State can:

1. File a petition for judicial review concerning a series of final actions dating back to November 2017 without filing a petition for judicial review within 25 days of any of the notices (except one) (*See* JA1 233 – JA1 234) (no support in law or procedural rules).
2. Invite the invalidation of the City Council's decision for reasons other than a lack of substantial evidence (see *id.*) (*See* JA1 041 – JA1 055).
3. Invite the invalidation of the City's Council's decision based on letters, emails, and other materials that were not before the City Council, and without providing the actual record before the City Council, including the transcript, agenda item, and back-up (*See* JA1 035 – JA1 198) (no support in law or procedural rules).
4. Submit what amounts to an opening brief, including legal arguments and irrelevant exhibits, before an actual record is filed (or simultaneously with a sham record) and presumably reserve an opportunity to submit a second opening brief (*See id.*) (no support in law or procedural rules).
5. Submit its opening brief and its own version of the record without complying with NRAP 28 (*See id.*) (no support in law or procedural rules).
6. Request a hearing on its Amended Petition prior to the completion of briefing (*See id.*) (no support in law or procedural rules).

The NRCP matter. The EDCR matter. The NEFCR matter. And when a district court sits as appellate body, appellate rules matter. This Court has dismissed

cases, and expressly confirmed that dismissal is appropriate, where a party has failed to comply with the rules of Nevada Rules of Appellate Procedure. *Huckabay Props. v. NC Auto Parts*, 322 P.3d 429, 434, 130 Nev. 196, 203 (2014) (“a party cannot rely on the preference for deciding cases on the merits to the exclusion of all other policy considerations, and when an appellant fails to adhere to Nevada’s appellate procedure rules, which embody judicial administration and fairness concerns, or fails to comply with court directives or orders, that appellant does so at the risk of forfeiting appellate relief.”).

Even if the Amended Petition were properly before the district court, the document itself, and the process Solid State attempted to advance through it, failed to comply with process and rules that govern the determination of petitions for judicial review. A plea to the district court’s sympathy from pro se litigants unfamiliar with the rules or how to find them might be warranted, but such a plea from a sophisticated, ably represented party in business court should not. As a result, the district court erred in failing to strike the portions of the Amended Petition that did not comply with EDCR 2.15.

VI. CONCLUSION

Solid State filed the Enforcement Case seeking injunctive and other relief regarding the City’s enforcement of the Coral Academy CUP. Solid State then attempted to commence a new case within the Enforcement Case—a petition for judicial review concerning the City Council’s decision regarding the placement of a

median on a road bordering solid State's property and other issues concerning the review of conditions of approval related to the Coral Academy CUP, but ultimately asking the Court to find the City. A party may not file a new case within an existing case and the appropriate remedy was to strike the Amended Petition. The district court erred in not doing so, and this Court should issue a writ of mandamus instructing the district court to strike Solid State's Amended Petition.

If Solid State's Amended Petition is permitted to stand within the already existing Enforcement Case, the Court should take the opportunity to clarify the proper contents and the proper process for a determining a petition for judicial review, which the Court can do by issuing a writ of mandamus directing the district court to strike the improper exhibits, legal arguments, hearing request and any other impertinent parts of the Amended Petition.

DATED this 16th day of July, 2020.

CITY OF HENDERSON

BY: /s/ Brandon P. Kemble
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VERIFICATION

1. I verify that the facts stated in this writ petition are true and correct to the best of my own knowledge or based on information and belief. I make this verification because the relevant facts are largely procedural and within my knowledge as an Assistant City Attorney for the City of Henderson.

2. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 16th day of July, 2020.

/s/ Brandon P. Kemble
Brandon P. Kemble (#11175)

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point font, Garamond style. I further certify that this brief complies with the type-volume limitation of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 5683 words.

Pursuant to NRAP 28.2, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I

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may be subject to sanctions in the event that this brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 16th day of July, 2020.

CITY OF HENDERSON

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Henderson City Attorney's Office, and that on the 16th day of July, 2020, a copy of the foregoing **PETITION FOR WRIT OF MANDAMUS** was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (E-Flex). Participants in the case who are registered with E-Flex as users will be served by the E-Flex system and others not registered will be served via U.S. mail as follows:

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