

Case No. _____

IN THE SUPREME COURT OF
THE STATE OF NEVADA

Electronically Filed
Jul 16 2020 06:36 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

JOINT APPENDIX VOLUME II

HENDERSON CITY
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July 16, 2020

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II	Notice of Entry of Order Denying Motion to Strike	01/30/2020	JA 260 – JA 263
II	Docket	07/09/2020	JA 264 – JA 265
II	Hearing Transcript re: Defendant City of Henderson's Motion to Strike Plaintiff Solid State Properties, LLC's Amended Petition	12/18/2019	JA 266 – JA 295

DATED this 16th day of July, 2020.

CITY OF HENDERSON

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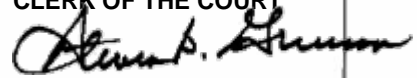
CERTIFICATE OF SERVICE

I certify that I am an employee of the Henderson City Attorney's Office and that on this July 16, 2020, the Joint Appendix Volume II was filed electronically with the Clerk of the Nevada Supreme Court and a CD-ROM containing a true and correct copy was placed in the U.S. mail, first-class postage affixed, and addressed as follows:

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DISTRICT COURT
CLARK COUNTY, NEVADA

Solid State Properties LLC, a Nevada Limited
Liability Company,

Plaintiff,

v.

CITY OF HENDERSON, a Municipality,

Defendant.

CASE NO.: A-19-788817-B

DEPT NO.: XVI

DATE OF HEARING: November 13, 2019

TIME OF HEARING: 9:00 a.m.

DEFENDANT CITY OF HENDERSON'S REPLY IN SUPPORT OF MOTION TO
STRIKE PLAINTIFF SOLID STATE PROPERTIES, LLC'S
AMENDED PETITION FOR JUDICIAL REVIEW

Defendant City of Henderson ("City") through its counsel Brandon P. Kemble, Assistant City Attorney, submits its Reply in Support of Motion to Strike Plaintiff Solid State Properties, LLC's ("Solid State") Amended Petition for Judicial Review.

I. INTRODUCTION

Solid State's Opposition raises, or ignores, more questions than it answers about its improper Amended Petition for Judicial Review ("Amended (sic) Petition"). Solid State claims this is a simple



1 matter of mistitling but never definitively explains how the Amended (sic) Petition is mistitled.
2 However, based on its arguments, it appears Solid State's mistitling is the word "Amended", and that
3 Solid State is attempting to file an original petition for judicial review. A petition initiates a new action
4 and Solid State can no more file that new action in this Court than it could a separate complaint. That
5 being the case, this Court's decision is straight-forward. A petition for judicial review is a new and
6 separate action from the one Solid State initiated through its Complaint in this Court (probably
7 improperly), and the Court should immediately strike the entire Amended (sic) Petition and its exhibits
8 as improperly filed. The City has engaged in strenuous mental gymnastics to determine the other
9 possible mistitling errors and anxiously waited for Solid State to explain its mistitling, but Solid State
10 did not. This is likely because the only explanation for Solid State's filing is that it was an attempt to
11 skirt the rules, avoid filing fees, and have a petition for judicial review heard in the Court where various
12 actions concerning Solid State's litigation opponents are pending.

13
14
15 Solid State's Opposition clarifies some things. To the extent it was ever in question, it is now
16 clear that: (1) Solid State does not understand, or is trying to circumvent, the scope and process for
17 judicial review; (2) Solid State does not understand the limited record this Court may review in
18 determining a petition for judicial review; and (3) Solid State will not comply with the Nevada Rules
19 of Civil Procedure ("NRCP") or the Eighth Judicial District Court Rules ("EDCR") unless this Court
20 tells them that the rules apply to them.

21
22 In defense of its Amended (sic) Petition, Solid State makes the following non-persuasive
23 arguments:

- 24 1. Solid State's Amended (sic) Petition is not an amended pleading, therefore it is a valid
25 petition for judicial review, properly filed before this Court (Pl.'s Opp. 5-7);
- 26 2. Even though the NRCP, EDCR, and the Nevada Electronic Filing and Conversion Rules
27 ("NEFCR") explain how actions begin and the filing procedures for them, they do not
28 directly state that a party may not combine multiple, distinct matters in one action, which

1 Solid State takes as approval to combine its Complaint and its Amended (sic) Petition (Pl.'s
2 Opp. 11, n. 2);

3 3. The EDCR do not expressly limit the contents of the record for a petition for judicial review
4 or who may file it, so Solid State may submit many matters outside the scope of judicial
5 review and call it the record, while simultaneously failing to submit the documents that
6 comprise the record this Court is limited to reviewing on a petition for judicial review (Pl.'s
7 Opp. 10);

8
9 4. Because the Court previously determined that Solid State might bring a timely and proper
10 petition for judicial review concerning future final actions, Solid State is entitled to bring
11 an untimely petition for judicial review challenging all of the City's past actions dating as
12 far back as November 2017; (Pl.'s Opp. 7-8)

13 5. The City's request that Solid State play by the rules set forth in the NRCP rather than the
14 ones Solid State has chosen to play by somehow means that Solid State must be right about
15 its baseless factual arguments and meritless legal arguments (Pl.'s Opp. 2); and

16
17 6. Even though Solid State's exhibits do not comply with the EDCR, Solid State can easily
18 correct that error by refileing the exhibits properly—but it will not unless the Court
19 specifically orders them to comply (Pl.'s Opp. 7-8).

20 This Court should not spend its valuable time and resources trying to decipher and correct Solid
21 State's deficient Amended (sic) Petition or provide Solid State with an advisory opinion on how and
22 where to file it. This Court is not the self-help center. It is also clear that Solid State has no intention
23 to limit its complaints to the record that was before the City Council on August 6, 2019; therefore, the
24 City's alternative request for relief that the Court limit the scope of any petition and set a schedule for
25 proceedings will likely be ineffective. As a result, this Court should simply strike Solid State's
26 Amended (sic) Petition.
27
28

II. LEGAL ARGUMENT

a. Solid State's Amended (sic) Petition is Not a Valid Petition Simply Because It is Not an Amended Complaint.

Solid State's Opposition makes one thing clear—the Amended (sic) Petition is not a properly amended Complaint. (Pl.'s Opp. 5). From this determination Solid State offers the logical fallacy that because its Amended (sic) Petition is not an amended Complaint it is a properly filed petition for judicial review. Incorrect.

The fact that Solid State's Amended (sic) Petition is not an amended pleading does not help Solid State advance the validity of its filing in this Court. In fact, it undermines it. The City will accept that Solid State's Amended (sic) Petition is an attempt to file a petition for judicial review. A petition for judicial review is a document that initiates an action. See Ex. A, 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 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)

1 (reversing intermediate appellate court and determining that lower court erred in allowing review of
2 town council's land use decision to be combined with cause of action alleging constitutional violations
3 and seeking damages).

4 It makes sense that petitions for judicial review and other causes of action should proceed
5 separately from other types of actions. A court hearing complaints for damages or other relief sits as
6 a trial court with all its power and discretion as a trial court, but a court hearing a petition for judicial
7 review sits as a limited appellate court bound by the record in front of the agency or government body
8 when it made its decision and bound to apply a deferential substantial evidence standard. Black v.
9 University of Iowa, 362 N.W.2d 459, 462 (Iowa 1985); Goodwin v. Metropolitan Bd. of Health, 656
10 S.W.2d 383, 386 (Tenn. App. 1983). The Court in Goodwin explained, and "heartily condemned", the
11 problem Solid State is attempting to create:
12

13 Before considering the first issue, we wish to heartily condemn that which appears to us to
14 be a growing practice, i.e., the joinder of an appeal with an original action and the
15 simultaneous consideration of both at the trial level. This Court is of the firm opinion that
16 such procedure is inimical to a proper review in the lower certiorari Court and creates even
17 greater difficulties in the Court of Appeals. The necessity of a separation of appellate
18 review of a matter and trial of another matter ought to be self-evident. In the lower Court
19 one is reviewed under appropriate Appellate rules and the other is tried under trial rules. In
20 this Court our scope of review is dependent upon the nature of a proceeding. In this case
21 one matter would be limited by rules of certiorari review and the other would be reviewed
22 under 13(d), Tennessee Rules of Appellate Procedure. Like water and oil, the two will not
23 mix.

24 Goodwin, 656 S.W.2d at 386. Solid State has admitted its Amended(sic) Petition is not an amended
25 complaint—it is an attempt at filing a petition for judicial review. NRCP, NEFCR, the law, and
26 common sense make clear that the petition for juridical review may not be filed as a simple motion and
27 may not properly be combined with its current complaint seeking damages and injunctive relief for the
28 City's alleged abuses of discretion. As a result, the Court should strike Solid State's Amended (sic)
Petition.

1 ***b. A Petition for Judicial Review Challenging the City Council's Decision Concerning***
2 ***the Coral Academy CUP is Expressly NOT a Business Court Matter.***

3 EDCR 1.61(b) sets forth examples of cases that are not business matters. Pursuant to EDCR
4 1.61(b)(18) "The granting, denying, or withholding of governmental approvals, permits, licenses,
5 variances, registrations, or findings of suitability" is not a business court matter.¹ Solid State's
6 Amended (sic) Petition states that: "The CUP finally approved by The City on August 6, 2019, must
7 be overturned and rejected..." (Pl's. Pet. 21). There is no question that the Amended (sic) Petition
8 concerns the granting of a government approval and permit—the Coral Academy CUP; thus, there is
9 no question this Court, which is presiding over Solid State's original Complaint as a business court
10 matter, should not consider the Amended (sic) Petition. The Court should strike Solid State's Amended
11 (sic) Petition.

12 ***c. Solid State's Amended Petition Does Not Comply with the Process or Scope of***
13 ***Judicial Review.***

14 There are two competing understandings of the scope and process of judicial review. On the
15 one hand, is the City's vision that rests on the following law and procedural rules:
16

- 17 1. A petition initiates an action for judicial review and must be filed within 25 days after the
18 date of filing of a notice of the decision with the clerk of the governing body. See NRS
19 278.3195(2)(b).
- 20 2. A petition for judicial review is an appeal of the governing body's decision. See id.
- 21 3. In hearing the appeal, the district court reviews the record to determine whether the board
22 or governing body's decision is supported by substantial evidence. Kay v. Nunez, 146 P.3d
23 801, 805, 122 Nev. 1100, 1105 (2006).
- 24 4. The district court's review is limited to the record made before the governing body, in this
25 case, the Henderson City Council ("City Council"). City Council of City of Reno v.
26 Travelers Hotel, Ltd., 683 P.2d 960, 962, 100 Nev. 436, 439 (1984).
- 27 5. The opening brief for a petition for judicial review is based on the record and is served

28 ¹ The City and Solid State are under an agreement concerning the filing of an amended
Complaint, which caused some of the confusion concerning Solid State's current filing. Under that
agreement the City held off on filing a response to Solid State's original Complaint until Solid stat
filed an amended pleading. However, prior to the agreement, the City was preparing, and if Solid State
files any amended complaint with claims similar to those in its current Complaint may file, a motion
to dismiss arguing among other things that Solid State's pleading is not a proper business court matter
under EDCR 1.61.



- 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 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 and when they have filed their Amended (sic) Petition (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) (Pl.'s Opp. 7-8) (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.) (Pl.'s Pet. 15-21).
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 (Pl.'s Pet.) (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 (Pl.'s Pet.) (no support in law or procedural rules).
5. Submit its opening brief and its own version of the record without complying with NRAP 28 (Pl.'s Pet.) (no support in law or procedural rules).
6. Request a hearing on its Amended (sic) Petition prior to the completion of briefing (Pl.'s Pet.) (no support in law or procedural rules).

Faced with the fact that its vision is impaired, Solid State resorts to another logical fallacy—suggesting that the City is afraid to face the merits of Solid State's case. (Pl.'s. Opp. at 2, Ins. 10-18.). Nonsense. The City has already essentially prevailed on the merits. But that is not the point. The NRCP matter. The EDCR matter. The NEFCR matter. And when this Court, or any other court, sits as appellate body, appellate rules matter. In fact, the Nevada Supreme 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

1 exclusion of all other policy considerations, and when an appellant fails to adhere to Nevada's appellate
2 procedure rules, which embody judicial administration and fairness concerns, or fails to comply with
3 court directives or orders, that appellant does so at the risk of forfeiting appellate relief.'").

4 Even if the Amended (sic) Petition were properly before this Court, the document itself, and
5 the process Solid State is advancing through it, fail to comply with process and rules that govern the
6 determination of petitions for judicial review. A plea to this Court's sympathy from pro se litigants
7 unfamiliar with the rules or how to find them might be warranted, but such a plea from a sophisticated,
8 ably represented party in business court should not. The Court should strike the Amended (sic)
9 Petition.
10

11 ***d. The Fact That This Court Recognized that A Petition for Judicial Review was/is the***
12 ***Proper Procedure for Challenging Certain City Council's Decisions Does Not Make***
13 ***Solid State's Amended (sic) Petition Proper.***

14 It is not yet settled what portions of this Court's June 5, 2019, Findings of Fact, Conclusions of
15 Law and Order ("Order") apply to the dispute Solid State is attempting to initiate through the Amended
16 (sic) Petition. The City reserves the right to argue that later. However, to clarify for the purposes of
17 the City's Motion, the Order addressed Solid State's failed attempt to secure an injunction to shut down
18 Coral Academy in the middle of the school year on the theory that City was not properly enforcing the
19 Coral Academy CUP to Solid State's standards and that the City was wrong because it would not
20 immediately revoke the Coral Academy CUP at Solid State's demand. The Order rejected Solid State's
21 version of the facts and its legal reasoning in support of its legal maneuvering.
22

23 No doubt Solid State has selectively and unhelpfully cited the Order to try to save its improper
24 Amended (sic) Petition (Pl.'s Opp. at 3-4, 7-8). For instance, Solid State would (and likely will have
25 to) oppose the portion of the Order that concludes Solid State, did not file timely petitions concerning
26 the November 27, 2017 and January 10, 2019, City Council actions (see Order at p.8, ¶¶ 23-24), which
27 the Amended (sic) Petition purports to challenge (Pl.'s Pet.; Pl.s' Opp. at 2, 7-8). Further, Solid State
28

1 is going to have difficulty overcoming the fact that this Court has already ordered that it does not have
2 standing to challenge the City's enforcement of the Coral Academy CUP. See id. at p. 8, ¶¶ 26-28.

3 The fact that there was an upcoming City Council meeting (held on May 21, 2019) concerning
4 the Coral Academy CUP conditions as Solid State sought an injunction revoking it or compelling the
5 City to enforce it to Solid State's satisfaction, did mean, as this Court determined, that Solid State had
6 not exhausted its administrative remedies (see Order p.9, ¶ 33) concerning the enforcement of the Coral
7 Academy CUP. And subsequently Solid State blew its opportunity to challenge the City Council's
8 determinations at the May 21, 2019 meeting, just like it had in the past for the November 21, 2017 and
9 January 10, 2019 meetings.
10

11 That this Court recognized that Solid State might have the opportunity to file later petitions for
12 judicial review (*see* Order at p. 8, ¶ 27; p. 9; 33), does not mean that this Court sanctioned, or the City
13 conceded to, the filing an improper petition for judicial review seeking a review of all of the City
14 Council's past decisions concerning the Coral Academy CUP. As a result, the Court should reject
15 Solid State's invitation to incorrectly apply the Order.
16

17 *e. Solid State Continues to Ignore EDCR 2.27.*

18 Although Solid State's exhibits are not part of the record that any court may consider in hearing
19 a petition for judicial review, there is no question that the exhibits attached to Solid State's Amended
20 (sic) Petition do not comply with EDCR 2.27. Rather than cure the error by filing amended exhibits
21 that do comply, Solid State is simply waiting for this Court to formally instruct it to do so. The Court
22 need not indulge Solid State's non-compliance, which already could have been remedied with little
23 effort. The Court should strike the exhibits for many reasons but may strike them for Solid State's
24 continued refusal to comply with EDCR 2.27.
25

26 **III. CONCLUSION**

27 Solid State has attempted to file an improper petition for judicial review, in an improper action,
28 in an improper court. While the City does not doubt this Court's capability to correctly determine Solid

1 State's meritless Amended (sic) Petition, rules matter. Solid State's Amended (sic) Petition fails to
2 comply with the law and applicable rules concerning the scope, contents, and process for filing a
3 petition for judicial review. For the reasons set forth above and in the City's Motion, this Court should
4 strike Solid State's Amended (sic) Petition.

5 DATED this November 6, 2019.

6 CITY OF HENDERSON

7
8
9 

10 BRANDON P. KEMBLE
11 Assistant City Attorney
12 Nevada Bar No. 11175
13 240 Water Street, MSC 144
14 Henderson, NV 89015

15 Attorneys for Defendant

16 **CERTIFICATE OF SERVICE**

17 On November 6, 2019, a true and correct copy of the above and foregoing DEFENDANT CITY
18 OF HENDERSON'S REPLY IN SUPPORT OF MOTION TO STRIKE PLAINTIFF'S AMENDED
19 PETITION FOR JUDICIAL REVIEW was served to the following party via E-Service through EJDC
20 E-Filing (Odyssey); and that the date and time of the electronic service is in place and instead of service
21 by U.S. Mail.

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23 Ryan B. Davis, Esq.
24 ERICKSON & WHITAKER PC
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Attorneys for Plaintiff
SOLID STATE PROPERTIES LLC.


An employee of the City of Henderson



EXHIBIT “A”

FILED

OCT - 2 2019

Alvin L. Johnson
CLERK OF COURT

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

**IN THE ADMINISTRATIVE MATTER OF
PROCEDURES RELATED TO
CONFORMITY TO APPLICABLE
FILING REQUIREMENTS**

Administrative Order: 19-05

WHEREAS, the Chief Judge is responsible for supervising the administrative business of the Eighth Judicial District Court, ensuring the quality and continuity of its services, supervising its calendar, reassigning cases as convenience or necessity requires, assuring the court's duties are timely and orderly performed and otherwise facilitating the business of the District Court. NRS 3.025; see also EDCR 1.30(b);

WHEREAS, this Court is in the process of amending the Eighth Judicial District Court Rules to bring them into conformity with the 2019 amendments to the Nevada Rules of Civil Procedure, Nevada Rules of Appellate Procedure, and Nevada Electronic Filing and Conversion Rules;

WHEREAS, this Court previously suspended and modified certain local rules in Administrative Order 19-03 filed March 12, 2019;

WHEREAS, NEFCR 8(a)(1) requires a document submitted to an electronic filing system be automatically filed and simultaneously served;

WHEREAS, in the seven months since the amended NEFCR took effect, the clerk has seen a proliferation of self-represented litigants submit documents that do not meet the applicable filing requirements;

1 **WHEREAS**, NEFCR 8(b)(1) authorizes the clerk to review documents after they have
2 been submitted, filed, and served, to determine whether they conform to the applicable filing
3 requirements;
4

5 **WHEREAS**, NEFCR 8(b)(3) authorizes this Court to adopt local rules defining what
6 constitutes a nonconforming document and specify which nonconforming documents the clerk is
7 authorized to strike;

8 **WHEREAS**, NRCP 77(c)(2)(D) authorizes the clerk to act on any other matters that does
9 not require the court's action;

10 **WHEREAS**, the explanatory commentary of the Nevada Code of Judicial Conduct,
11 Canon 2, Rule 2.2, states that "[i]t is not a violation of this Rule for a judge to make reasonable
12 accommodations to ensure self-represented litigants the opportunity to have their matters fairly
13 heard";
14

15 **WHEREAS**, until the amended local rules supersede this Order and take effect;

16 **IT IS ORDERED** the following constitutes nonconforming documents in the Eighth
17 Judicial District Court:

- 18 1. A document that is filed in the wrong case;
- 19 2. An unsigned document;
- 20 3. An unsigned order;
- 21 4. Multiple documents bundled together and filed as one document commencing a
22 civil action;
- 23 5. Any document filed to commence an action that is not a complaint, petition,
24 application, or other document that initiates a civil action; or
- 25 6. Any document filed to commence an action that does not have the proper case
26 type designation or cover sheet as required by NRS 3.275.
27
28

1 **IT IS FURTHER ORDERED** that the clerk shall not file any unsigned order. The clerk
2 shall furnish the order to the appropriate department and shall notify the filer and all registered
3 users receiving service under NEFCR 9(b).
4

5 **IT IS FURTHER ORDERED** that the clerk shall strike any document filed to
6 commence an action that is not a complaint, petition, application, or other document that initiates
7 a civil action pursuant to NEFCR 8(b)(3). The clerk shall close the case as filed in error and
8 return any filing fee. The clerk must also notify the filer and all registered users receiving service
9 under NEFCR 9(b).
10

11 **IT IS FURTHER ORDERED** for any other nonconforming document, if the filer is a
12 self-represented litigant, the clerk is authorized to cure the nonconforming document, replace it
13 with the conforming document where appropriate, and notify the filer and all registered users
14 receiving service under NEFCR 9(b). If the filer is an attorney who filed the nonconforming
15 document, the clerk shall provide notice and an opportunity to cure pursuant to NEFCR
16 8(b)(2)(A).
17

18 DATED this 2nd day of October, 2019.
19

20
21 By: _____

Linda Marie Bell
Chief Judge
Eighth Judicial District Court
22
23
24
25
26
27
28

EXHIBIT “B”

Case No. _____

IN THE SUPREME COURT OF
THE STATE OF NEVADA

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
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JOINT APPENDIX VOLUME II

HENDERSON CITY
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July 16, 2020

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DATED this 16th day of July, 2020.

CITY OF HENDERSON

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*Attorneys for Petitioner
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Henderson City Attorney's Office and that on this July 16, 2020, the Joint Appendix Volume II was filed electronically with the Clerk of the Nevada Supreme Court and a CD-ROM containing a true and correct copy was placed in the U.S. mail, first-class postage affixed, and addressed as follows:

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Attorneys for Plaintiff
SOLID STATE PROPERTIES LLC.

/s/ Laura Kopanski
An employee of the
Henderson City Attorney's Office

OFFICIAL FEES FOR THE EIGHTH JUDICIAL DISTRICT COURT Effective November 1, 2018
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Adoptions	Petition for Adoption NRS 19.013 (S56), 19.020 (S3), 19.0302 (S99), 9.0303 & CCC 2.32.080 (S20), 19.031 (S25), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15)	\$238.00
	Petition for Adoption of Child With Special Needs NRS 19.034	\$1.00
	Petition for Enforcement of Post Adoptive Contact Order NRS 19.034	\$1.00
Answer or Appearance	Answer or First Appearance in Civil Action not contained in NRS 125 NRS 19.013 (S44), 19.0302 (S99), 19.0303 & CCC 2.32.080 (S20), 19.031 (S25), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15)	\$223.00
	Fee for Each Additional Defendant Named in Answer or First Appearance See Examples on Page 6 NRS 19.0335 (S30)	\$30.00
	Answer or First Appearance in Construction Defect or Complex Action NRS 19.013 (S44), 19.0302 (S349), 19.0303 & CCC 2.32.080 (S20), 19.031 (S25), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15)	\$473.00
	Answer or First Appearance in Business Court Action NRS 19.013 (S44), 19.0302 (S1,359), 19.0303 & CCC 2.32.080 (S20), 19.031 (S25), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15)	\$1,483.00
	Answer or First Appearance in Divorce, Annulment or Separate Maintenance Action NRS 19.013 (S44), 19.0302 (S99), 19.0303 & CCC 2.32.080 (S20), 19.031 (S14), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15), 19.033(3) & CCC 2.32.030 (S5)	\$217.00
	Answer or First Appearance in Termination of Domestic Partnership Action NRS 19.013 (S44), 19.0302 (S99), 19.0303 & CCC 2.32.080 (S20), 19.031 (S14), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15)	\$212.00
	Answer or First Appearance in Child Custody Action NRS 19.013 (S44), 19.0302 (S99), 19.0303 & CCC 2.32.080 (S20), 19.031 (S14), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15)	\$212.00
	Appeal From Justice or Municipal Court NRS 19.013 (S42), 19.020 (S5)	\$47.00
Appeals	Notice of Appeal to the Supreme Court NRS 19.013 (S24)	\$24.00
	Supreme Court Filing Fee for Appeal Payable to the Clerk of the Supreme Court NRAP 3(e)	\$250.00
	Bond for Costs on Appeal to Supreme Court NRAP 7(b) (S500)	\$500.00

Complaints

Annulment	Complaint for Annulment NRS 19.013 (S56), 19.020 (S3), 19.030 (S32), 19.0302 (S99), 19.0303 & CCC 2.32.080 (S20), 19.031 (S14), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15), 440.605 (S10)	\$269.00
Child Custody	Complaint for Child Custody NRS 19.013 (S56), 19.020 (S3), 19.030 (S32), 19.0302 (S99), 19.0303 & CCC 2.32.080 (S20), 19.031 (S14), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15)	\$259.00
Civil	General Civil Complaint NRS 19.013 (S56), 19.020 (S3), 19.030 (S32), 19.0302 (S99), 19.0303 & CCC 2.32.080 (S20), 19.031 (S25), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15)	\$270.00
	Complaint in Interpleader (New Civil Action) NRS 19.013 (S56), 19.020 (S3), 19.030 (S32), 19.0302 (S99), 19.0303 & CCC 2.32.080 (S20), 19.031 (S25), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15)	\$270.00
	Complaint for Construction Defect or Other Complex Action NRS 19.013 (S56), 19.020 (S3), 19.030 (S32), 19.0302 (S349), 19.0303 & CCC 2.32.080 (S20), 19.031 (S25), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15)	\$520.00
	Complaint Filed in Business Court NRS 19.013 (S56), 19.020 (S3), 19.030 (S32), 19.0302 (S1,359), 19.0303 & CCC 2.32.080 (S20), 19.031 (S25), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15)	\$1,530.00
	Fee for Each Additional Plaintiff Named in Complaint See Examples on Page 6 NRS 19.0335 (S30)	\$30.00
	Request for Foreign Deposition Subpoena NRS 19.013 (S56), 19.020 (S3), 19.030 (S32), 19.0302 (S99), 19.0303 & CCC 2.32.080 (S20), 19.031 (S25), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15)	\$270.00
	Registration of Foreign Judgment NRS 19.013 (S56), 19.020 (S3), 19.030 (S32), 19.0302 (S99), 19.0303 & CCC 2.32.080 (S20), 19.031 (S25), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15)	\$270.00
	Transfer to Business Court NRS 19.0302 (S1,260 - Difference between General and Business Complaint)	\$1,260.00
	Third Party Complaint NRS 19.0302 (S135)	\$135.00
Divorce	Complaint or Joint Petition for Divorce NRS 19.013 (S56), 19.020 (S3), 19.030 (S32), 19.0302 (S99), 19.0303 & CCC 2.32.080 (S20), 19.031 (S14), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15), 19.033(1) (S30), 440.605 (S10)	\$299.00
Separate Maintenance	Complaint or Joint Petition for Separate Maintenance NRS 19.013 (S56), 19.020 (S3), 19.030 (S32), 19.0302 (S99), 19.0303 & CCC 2.32.080 (S20), 19.031 (S14), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15), 19.033(1) (S30), 440.605 (S10)	\$259.00
Domestic Partnership	Complaint or Joint Petition for Termination of Domestic Partnership NRS 19.013 (S56), 19.020 (S3), 19.030 (S32), 19.0302 (S99), 19.0303 & CCC 2.32.080 (S20), 19.031 (S14), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15), 19.033(1) (S30)	\$289.00

Other Domestic	Miscellaneous Domestic Complaint NRS 19.013 (S56), 19.020 (S3), 19.030 (S32), 19.0302 (S99), 19.0303 & CCC 2.32.080 (S20), 19.031 (S25), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15)	\$270.00
Confession of Judgment	Confession of Judgment NRS 17.110 (S28)	\$28.00
Domestic Case Reopening	Motion/Opposition for the Sole Purpose of Modifying Child Support, Reconsideration or New Trial Within Ten Days of Entry of the Final Judgment Additional Fees May Apply if Case was Initiated by Joint Petition NRS 19.0312	No Fee
	Motion/Opposition to Modify or Adjust a Final Order in NRS Chapter 125, 125B or 125C Cases Additional Fees May Apply if Case was Initiated by Joint Petition NRS 19.0312 & CCC 2.32.040(c) (S25)	\$25.00
	Additional Fee for First Motion to Modify or Enforce Final Order in NRS Chapter 125 Cases Initiated by Joint Petition NRS 19.0333 (S129)	\$129.00
	Additional Fee for First Opposition to Motion to Modify or Enforce Final Order in NRS Chapter 125 Cases Initiated by Joint Petition NRS 19.0333 (S57)	\$57.00
Guardianship	Petition for Guardianship Where the Stated Value of the Estate is \$2,500 or Less NRS 19.013(6)	No Fee
	Petition for Guardianship Where the Stated Value of the Estate is More Than \$2,500 NRS 19.013 (S5)	\$5.00
	Objection, Cross-Petition or Answer 19.0303 & CCC 2.32.080 (S20), 19.031 (S25), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15)	\$80.00
Liens	Application Regarding Frivolous or Excessive Liens NRS 19.020 (S3), 19.030 (S32), 19.0302 (S99), 19.0303 & CCC 2.32.080 (S20), 19.031 (S25), 19.0312 & CCC 2.32.040(a) (S10), 19.0313 (S10), 19.0315 & CCC 2.32.010 (S15), 108.2275 (S85)	\$299.00
Minor's Compromise	Petition to Compromise a Minor's Claim NRS 41.200	No Fee
Miscellaneous Filings	Filing of Other Papers to be Kept by the Clerk NRS 19.013 (S5), 19.020 (S3), 19.0313 (S10)	\$18.00
	Any Certificate Under Seal Not Otherwise Provided For NRS 19.013 (S6)	\$6.00
Motions	Motion for Summary Judgment or Joinder NRS 19.0302 (S200)	\$200.00
	Motion to Certify or Decertify a Class NRS 19.0302 (S349)	\$349.00

Peremptory Challenge	Peremptory Challenge of Judge SCR 48.1	\$450.00
Foreclosure Mediation	Petition for Foreclosure Mediation Assistance NRS 107.086 (\$25 for Petition), NRS 107.086 (\$250 for Mediation)	\$275.00
	Response/Answer to Petition for Foreclosure Mediation Assistance NRS 107.086 (\$250 for Mediation)	\$250.00
Petitions	General Civil Petition NRS 19.013 (\$56), 19.020 (\$3), 19.030 (\$32), 19.0302 (\$99), 19.0303 & CCC 2.32.080 (\$20), 19.031 (\$25), 19.0312 & CCC 2.32.040(a) (\$10), 19.0313 (\$10), 19.0315 & CCC 2.32.010 (\$15)	\$270.00
	Petition for Approval of a Minor Contract NRS 19.013 (\$56), 19.020 (\$3), 19.030 (\$32), 19.0302 (\$1,359), 19.0303 & CCC 2.32.080 (\$20), 19.031 (\$25), 19.0312 & CCC 2.32.040(a) (\$10), 19.0313 (\$10), 19.0315 & CCC 2.32.010 (\$15)	\$1,530.00
	Fee for Each Additional Petitioner Named in Civil Petition See Examples on Page 6 NRS 19.0335 (\$30)	\$30.00
Probate		
Petitions	Petition for Letters Testamentary or Administration Where Stated Value of the Estate is \$2,500 or Less NRS 19.013	No Fee
	Where the Stated Value of the Estate is More Than \$2,500 but Less Than \$20,000 NRS 19.013 (\$72), 19.020 (\$1.50), 19.030 (\$32), 19.0303 & CCC 2.32.080 (\$20), 19.031 (\$25), 19.0312 & CCC 2.32.040(a) (\$10), 19.0313 (\$10), 19.0315 & CCC 2.32.010 (\$15)	\$185.50
	Where the Stated Value of the Estate is More Than \$20,00 but Less Than \$200,000 NRS 19.013 (\$72), 19.020 (\$1.50), 19.030 (\$32), 19.0302 (\$99), 19.0303 & CCC 2.32.080 (\$20), 19.031 (\$25), 19.0312 & CCC 2.32.040(a) (\$10), 19.0313 (\$10), 19.0315 & CCC 2.32.010 (\$15)	\$284.50
	Where the Stated Value of the Estate is \$200,000 or More NRS 19.013 (\$72), 19.020 (\$1.50), 19.030 (\$32), 19.0302 (\$352), 19.0303 & CCC 2.32.080 (\$20), 19.031 (\$25), 19.0312 & CCC 2.32.040(a) (\$10), 19.0313 (\$10), 19.0315 & CCC 2.32.010 (\$15)	\$537.50
Contests	Petition to Contest any Will or Codicil, Objection, Cross-Petition or Answer Where Stated Value of Estate is \$20,000 or Less NRS 19.013 (\$44), 19.0303 & CCC 2.32.080 (\$20), 19.031 (\$25), 19.0312 & CCC 2.32.040(a) (\$10), 19.0313 (\$10), 19.0315 & CCC 2.32.010 (\$15)	\$124.00
	Where Stated Value of Estate is \$20,000 or More Than \$20,000 but Less Than \$200,000 NRS 19.013 (\$44), 19.0302 (\$99), 19.0303 & CCC 2.32.080 (\$20), 19.031 (\$25), 19.0312 & CCC 2.32.040(a) (\$10), 19.0313 (\$10), 19.0315 & CCC 2.32.010 (\$15)	\$223.00
	Where Stated Value of Estate is \$200,000 or More NRS 19.013 (\$44), 19.0302 (\$352), 19.0303 & CCC 2.32.080 (\$20), 19.031 (\$25), 19.0312 & CCC 2.32.040(a) (\$10), 19.0313 (\$10), 19.0315 & CCC 2.32.010 (\$15)	\$476.00
Qualifying Powers	Filing of Qualifying Powers NRS 19.013 (\$15)	\$15.00

Statement of Domicile	Filing of Statement of Domicile NRS 41.195 (\$5)	\$5.00
Transfer of Case	Transfer of Proceeding From a District Court NRS 19.013 (\$56), 19.020 (\$3), 19.030 (\$32), 19.0302 (\$99), 19.0303 & CCC 2.32.080 (\$20), 19.031 (\$25), 19.0312 & CCC 2.32.040(a) (\$10), 19.0313 (\$10), 19.0315 & CCC 2.32.010 (\$15)	\$270.00
	Transfer of Proceeding From a Justice or Municipal Court NRS 19.013 (\$42)	\$42.00
Wills	Lodging an Original Will NRS 19.013 (\$5), 19.020 (\$3), 19.0313 (\$10)	\$18.00
Writs	Issuance of Writ of Attachment, Garnishment, Execution or Other Writ Designed to Enforce Any Judgment NRS 19.0302 (\$10)	\$10.00
Clerical Fees		
Copies	Each Page Copied From Any Document NRS 19.013 (50c)	50¢
Certification	Certification of Any Copy of a Document Prepared by the Clerk NRS 19.013 (\$3)	\$3.00
	Examination and Certification of Any Copy of a Document Prepared by Another NRS 19.013 (\$5)	\$5.00
Exemplification	Exemplification of Any Copy of a Document Prepared by the Clerk NRS 19.013 (\$6)	\$6.00
	Examination and Exemplification of Any Copy of a Document Prepared by Another NRS 19.013 (\$9)	\$9.00
Searches	Search of the Records Per Year, Per Name NRS 19.013	50¢
Transcription		
	Fees Assessed to Party Requesting the Transcript:	
	For the original draft and one to copy to be delivered within 24 hours after requested	
	\$8.03 per page	
	\$3.62 per page for any additional copies	
	For the original draft and one to copy to be delivered within 48 hours after requested	
	\$6.01 per page	
	\$2.72 per page for any additional copies	
	For the original draft and one to copy to be delivered within 4 days after requested	
	\$5.01 per page	
	\$2.26 per page for any additional copies	
	For the original draft and one to copy to be delivered more than 4 days after requested	
	\$3.80 per page	
	\$1.00 per page for any additional copies	
	NRS 3.370	

Fees Assessed to a Party Requesting the Transcript who is Represented by a Nonprofit Legal Corporation or a Program for Pro Bono Legal Assistance:

For the original draft and one to copy to be delivered within 24 hours after requested

\$5.50 per page

\$1.10 per page for any additional copies

For the original draft and one to copy to be delivered within 48 hours after requested

\$4.13 per page

83¢ per page for any additional copies

For the original draft and one to copy to be delivered within 4 days after requested

\$3.44 per page

69¢ per page for any additional copies

For the original draft and one to copy to be delivered more than 4 days after requested

\$2.75 per page

55¢ per page for any additional copies

NRS 3.370

Fees Assessed to Any Party Other Than the Party Ordering the Original Transcript:

For a copy to be delivered within 24 hours after requested

\$1.10 per page

For a copy to be delivered within 48 hours after requested

83¢ per page

For a copy to be delivered within 4 days after requested

69¢ per page

For a copy to be delivered more than 4 days after requested

55¢ per page

NRS 3.370

Video Services

Recordings of Courtroom Proceedings

Provided on a CD-ROM

\$2.00

Provided on a New Memory Stick

\$5.00

Provided on a Resubmitted Memory Stick

No Fee

NRS 239.055

Examples

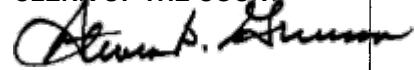
Examples of Multiple Party Civil Filing Fee

A. A complaint is filed with four plaintiffs. The filing fee would be \$270 for the first plaintiff plus \$90 (\$30 for each additional plaintiff).

B. In response, three defendants respond with one answer; the filing fee is \$223 plus \$60 (\$30 for each of the two additional defendants). Another defendant answers individually and pays the \$223 answer fee. An additional five defendants answer jointly and pay \$223, plus \$120 (\$30 for each of the additional four defendants).

C. The complaint is amended to add two plaintiffs. The fee would be \$60 (\$30 for each plaintiff added)

Source: Letter dated 6/23/03 from Administrative Office of the Courts



1 **NEOJ**
2 **BRIAN C. WHITAKER, ESQ.**
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9 1349 Galleria Drive, Suite 200
10 Henderson NV 89014
11 Telephone: 702-433-9696
12 Facsimile: 702-434-0615
13 **Attorneys for Plaintiff/Counterdefendant**
14 **SOLID STATE PROPERTIES LLC**

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 **SOLID STATE PROPERTIES LLC, a Nevada**
12 **Limited Liability Company;**

13 **Plaintiff,**

14 **v.**

15 **THE CITY OF HENDERSON, NEVADA,**
16 **a Municipality,**

17 **Defendant.**

CASE NO. A-19-788817-B
DEPT. NO. 16

NOTICE OF ENTRY OF ORDER
DENYING DEFENDANT'S MOTION TO
STRIKE PLAINTIFF'S AMENDED
PETITION FOR JUDICIAL REVIEW

Date: 12/18/2019

18 **TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:**

19 **PLEASE TAKE NOTICE that an ORDER DENYING DEFENDANT'S MOTION TO**
20 **STRIKE PLAINTIFF SOLID STATE PROPERTIES, LLC'S AMENDED PETITION FOR**
21 **JUDICIAL REVIEW was filed on January 30, 2020, a true and accurate copy of which is attached**
22 **hereto.**

23 Dated this 30th day of January, 2020

24 **ERICKSON & WHITAKER PC**

25 By: 

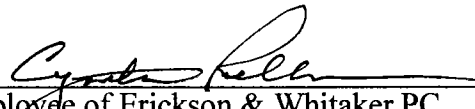
26 **BRIAN C. WHITAKER, ESQ.**
27 Nevada Bar No. 2329
28 1349 Galleria Drive, Suite 200
Henderson, NV 89014
Attorneys for Plaintiff/Counterdefendant
SOLID STATE PROPERTIES LLC



CERTIFICATE OF SERVICE

I certify that I am an employee of Erickson & Whitaker PC, and that on the 30th day of January, 2020, I submitted the within document to Odyssey eFileNV for filing and service through the District Court's electronic filing system to the following counsel of record:

Wade Gochmour, Esq.; Wade.Gochmour@cityofhenderson.com
Brandon Kemble, Esq.; Brandon.Kemble@cityofhenderson.com
Attorneys for Defendant


Employee of Erickson & Whitaker PC

Steven D. Grierson

ORDR
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Telephone: 702-433-9696
Facsimile: 702-434-0615
Attorneys for Plaintiff
SOLID STATE PROPERTIES LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

SOLID STATE PROPERTIES LLC,
a Nevada Limited Liability Company,

Plaintiff,

vs.

THE CITY OF HENDERSON, NEVADA,
a Municipality,

Defendant.

Case No.: A-19-788817-B
Dept. No.: 16

Date of Hearing: 12/18/2019
Time of Hearing: 9:00 a.m.

ORDER DENYING DEFENDANT'S MOTION TO STRIKE
PLAINTIFF SOLID STATE PROPERTIES, LLC'S
AMENDED PETITION FOR JUDICIAL REVIEW

Defendant City of Henderson's Motion to Strike Amended Petition for Judicial Review having come on regularly for hearing on December 18, 2019; Brandon P. Kemble, Esq., appearing on behalf of Defendant, and Brian C. Whitaker, Esq., of Erickson & Whitaker PC, appearing on behalf of Plaintiff.

The Court being fully briefed and hearing argument of counsel, and good cause appearing therefore, finds:

1. That Defendant's Motion to Strike is denied; and

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JAN 21 2020

2. That Defendant may seek a random reassignment of the pending Amended Petition to another courtroom pursuant to EDCR 1.61(c)(3-4) if Defendant elects to do so.

IT IS SO ORDERED.

ENTERED this

1/28/2020


JUDGE TIMOTHY C. WILLIAMS

Submitted by:
ERICKSON & WHITAKER PC

By:


BRIAN C. WHITAKER, ESQ.
Nevada Bar No. 2329
1349 Galleria Drive, Suite 200
Henderson, NV 89014
Telephone: 702-433-9696
Attorneys for Plaintiff
SOLID STATE PROPERTIES LLC

Reviewed by:

Declined to sign
NICHOLAS G. VASKOV
Nevada Bar No. 8298
BRANDON P. KEMBLE
Nevada Bar No. 11175
240 Water Street, MSC 144
Henderson, NV 89015
Telephone: 702-267-1200
Attorneys for Defendant
CITY OF HENDERSON

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REGISTER OF ACTIONS

CASE NO. A-19-788817-B

Solid State Properties LLC, Plaintiff(s) vs. City of Henderson, Nevada,
Defendant(s)

§
§
§
§
§
§

Case Type: **Other Business Court Matters**
 Date Filed: **02/04/2019**
 Location: **Department 16**
 Cross-Reference Case Number: **A788817**

PARTY INFORMATION

Defendant	City of Henderson, Nevada	Lead Attorneys Nicholas G. Vaskov <i>Retained</i> 702-267-1231(W)
Plaintiff	Solid State Properties LLC	Brian C. Whitaker <i>Retained</i> 702-433-9696(W)

EVENTS & ORDERS OF THE COURT

	OTHER EVENTS AND HEARINGS 02/04/2019 Complaint (Business Court) <i>Complaint</i> 02/04/2019 Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i> 02/04/2019 Summons Electronically Issued - Service Pending <i>Summons</i> 03/05/2019 Motion for Preliminary Injunction <i>Plaintiff's Motion for Preliminary Injunction on Order Shortening Time</i> 03/05/2019 Exhibits <i>Solid State's Motion for Preliminary Injunction - Exhibits 1 through 21</i> 03/07/2019 Affidavit of Service <i>Affidavit of Service of Summons and Complaint</i> 03/16/2019 Affidavit of Service <i>Affidavit of Service for Motion for Preliminary Injunction on Order Shortening Time and Exhibits 1 through 21</i> 03/19/2019 Opposition to Motion <i>City of Henderson's Opposition to Plaintiff's Motion for Preliminary Injunction on Order Shortening Time</i> 03/20/2019 Reply to Opposition <i>Plaintiff's Reply to Defendant's Opposition to Motion for Preliminary Injunction on Order Shortening Time</i> 03/21/2019 Motion for Preliminary Injunction (9:30 AM) (Judicial Officer Williams, Timothy C.) <i>Motion for Preliminary Injunction on Order Shortening Time</i> Parties Present Minutes Result: Motion Denied 04/19/2019 Minute Order (2:51 PM) (Judicial Officer Williams, Timothy C.) <i>re: Plaintiff's Motion for Preliminary Injunction</i> Minutes Result: Minute Order - No Hearing Held 06/05/2019 Findings of Fact, Conclusions of Law and Judgment <i>Findings of Fact, Conclusions of Law, and Order Denying Plaintiff's Motion For Preliminary Injunction</i> 06/05/2019 Notice of Entry of Findings of Fact, Conclusions of Law <i>Notice of Entry of Findings of Fact, Conclusions of Law, and Order</i> 09/03/2019 Petition for Judicial Review <i>Plaintiff's Petition for Judicial Review</i> 09/17/2019 Motion to Strike <i>Defendant City of Henderson's Motion to Strike Plaintiff Solid State Properties, LLC's Amended Petition for Judicial Review</i> 09/18/2019 Clerk's Notice of Hearing <i>Notice of Hearing</i> 10/01/2019 Opposition to Motion <i>Plaintiff's Opposition to Defendant's Motion to Strike Plaintiff's Amended Petition for Judicial Review</i> 10/21/2019 Stipulation and Order <i>Stipulation and Order to Continue Hearing on Defendant's Motion to Strike</i> 10/23/2019 Notice of Entry of Stipulation and Order <i>Notice of Entry of Stipulation and Order to Continue Hearing on Defendant's Motion to Strike</i> 11/06/2019 Reply in Support <i>Defendant City of Henderson's Reply in Support of Motion to Strike Plaintiff Solid State Properties, LLC'S Amended Petition for Judicial Review</i> 11/08/2019 Notice of Rescheduling of Hearing <i>Notice of Rescheduling Hearing</i> 12/18/2019 Motion to Strike (9:00 AM) (Judicial Officer Williams, Timothy C.) <i>Defendant City of Henderson's Motion to Strike Plaintiff Solid State Properties, LLC's Amended Petition for Judicial Review</i> Parties Present Minutes
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	10/23/2019 Reset by Court to 11/13/2019
	11/13/2019 Reset by Court to 12/18/2019
	12/18/2019 Reset by Court to 12/18/2019
	Result: Motion Denied
01/30/2020	Order Denying Motion <i>Order Denying Defendant's Motion to Strike Plaintiff Solid State Properties, LLC's Amended Petition for Judicial Review</i>
01/30/2020	Notice of Entry of Order <i>Notice of Entry of Order Denying Defendant's Motion to Strike Plaintiff's Amended Petition for Judicial Review</i>
07/02/2020	Notice of Hearing <i>Notice of Hearing</i>
07/29/2020	Status Check (9:00 AM) (Judicial Officer Williams, Timothy C.) <i>Status Check re Status of Case;briefing on Petition for Judicial Review</i>

FINANCIAL INFORMATION

	Plaintiff Solid State Properties LLC	
	Total Financial Assessment	1,530.00
	Total Payments and Credits	1,530.00
	Balance Due as of 07/09/2020	0.00
02/05/2019	Transaction Assessment	1,530.00
02/05/2019	Efile Payment Receipt # 2019-07673-CCCLK Solid State Properties LLC	(1,530.00)

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IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

SOLID STATE PROPERTIES, LLC,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO.
)	
CITY OF HENDERSON, NEVADA,)	A-19-788817-B
)	
Defendant.)	DEPT. NO. 16
)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE TIMOTHY C. WILLIAMS
WEDNESDAY, DECEMBER 18, 2019

APPEARANCES:

For the Plaintiff:

BRIAN C. WHITAKER, ESQ.

For the Defendant:

BRANDON P. KEMBLE, ESQ.

REPORTED BY: DANA J. TAVAGLIONE, RPR, CCR No. 841

1 LAS VEGAS, NEVADA, WEDNESDAY, DECEMBER 18, 2019

2 * * * * *

3

4 THE COURT: Okay. Next up, page 9,
5 Solid State Properties, LLC, vs. City of Henderson.

6 This is the same case.

7 MR. WHITAKER: Well, I'm back already.
8 It's just a different case but --

9 THE COURT: Oh, yeah, I know.

10 MR. WHITAKER: -- all tying back to the
11 same thing.

12 THE COURT: Yes.

13 MR. KEMBLE: Good morning, Judge. Brandon
14 Kemble on behalf of the City of Henderson.

15 MR. WHITAKER: Brian Whitaker appearing on
16 behalf of plaintiff, Solid State -- petitioner,
17 Solid State Properties.

18 THE COURT: All right. It's my
19 understanding this is the City of Henderson's
20 Motion to Strike Plaintiff Solid State's Amended
21 Petition for Judicial Review.

22 MR. KEMBLE: Yeah, I guess we'll call
23 this -- that was "Solid State Wars," and this will
24 be "Solid State Strikes Back." Same -- pretty much
25 the same underlying, somewhat the same underlying

1 dispute. But what you have before you here is --

2 THE COURT: Solid State strikes back again.

3 MR. KEMBLE: I thought it was clever.

4 MR. WHITAKER: It's timely.

5 MR. KEMBLE: What we've got here is an
6 important procedural issue that plays as an
7 appellate issue, and I'm going to present these to
8 you as issues presented to an appellate court.
9 There's three reasons why you should grant our
10 Motion to Strike:

11 The first is that a Petition for Judicial
12 Review, which is a new and separate action, cannot
13 be filed in the action that is before this Court.
14 The second issue is that Rule 1.161(b)18 specifically
15 identifies the granting of a permit as an issue that
16 is not a business court matter.

17 And, third, the Amended Petition here does
18 not conform to the requirements of EDCR 2.15. And
19 when we first got this pleading, Judge, it looked
20 like a chimera time error -- to me, a three-headed
21 monster. Right? It looked like it could be amended
22 pleading; it looked like it could be Petition for
23 Judicial Review, and it looked like it could be a
24 motion. We really didn't know what it was, and
25 we're still speculating.

1 It has been eliminated in the opposition
2 that this is not an amended pleading. So that
3 leaves us two things. Right? This is a Petition
4 for Judicial Review. If that is the answer, you
5 must strike it. A Petition for Judicial Review
6 initiates an action. You cannot file a separate
7 action where an action already exists. There is a
8 separate filing fee for a Petition for Judicial
9 Review.

10 A Petition for Judicial Review cannot be
11 served electronically as it was attempted to be done
12 here, and the electronic filing rules specifically
13 identify petitions as documents that commence
14 actions. You cannot simply file a Petition for
15 Judicial Review as a motion and request a hearing
16 date and have it heard as a motion.

17 If you look at this as a petition as well,
18 the document itself does not conform to 2.15
19 procedurally or technically. Procedurally, this is
20 all wrong. Right? What you have in front of you is
21 a petition that also includes legal argument and
22 also includes a purported record. The purported
23 record here is nothing like what a court will review
24 in determining a Petition for Judicial Review, which
25 as Your Honor knows, is specifically limited to the

Case No. _____

IN THE SUPREME COURT OF
THE STATE OF NEVADA

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

JOINT APPENDIX VOLUME II

HENDERSON CITY
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July 16, 2020

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<u>VOLUME</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>BATES</u>
II	Defendant City of Henderson's Reply in Support of Motion to Strike Plaintiff Solid State, LLC's Amended Petition	11/06/2019	JA 239 – JA 259
II	Notice of Entry of Order Denying Motion to Strike	01/30/2020	JA 260 – JA 263
II	Docket	07/09/2020	JA 264 – JA 265
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DATED this 16th day of July, 2020.

CITY OF HENDERSON

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Henderson City Attorney's Office and that on this July 16, 2020, the Joint Appendix Volume II was filed electronically with the Clerk of the Nevada Supreme Court and a CD-ROM containing a true and correct copy was placed in the U.S. mail, first-class postage affixed, and addressed as follows:

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1 record that was before the city council when it made
2 its decision.

3 We've set out in our briefing all of the
4 documents that are not related to this matter and
5 all of the ones that are missing from what is
6 actually in the record.

7 Second of all, EDCR 2.15(E) says if that is
8 an opening brief, it has to comply with the Nevada
9 Rules of Appellate Procedure 28. I've made a list
10 here of all the ways that this opening brief does
11 not comply with NRAP 28: There is no disclosure.
12 There is no table of contents. There is no table of
13 authorities. There is no routing statement. There
14 is no statement of issues. There is no statement of
15 the case. There is no statement of the facts.
16 There is no summary of the argument. There is no
17 certificate of compliance.

18 The remedy for that under NRAP (J),
19 noncomplying brief, strike it. So whether this is a
20 petition or whether this is an invalid petition,
21 which we argue it is, or whether it's somehow a
22 valid petition with an opening brief and other
23 documents included --

24 THE COURT: And which rule are you relying
25 upon again, sir?

1 MR. KEMBLE: Sure.

2 THE COURT: I mean, looked at the EDCR. I
3 understand what it says. And which Nevada Rule of
4 Appellate Procedure.

5 MR. KEMBLE: 28. So in EDCR 2.15(E) it
6 says that opening briefs, oppositions and any
7 replies have to conform with NRAP 28.

8 THE COURT: Okay. Briefs. Go ahead, sir.

9 MR. KEMBLE: I'll pause right there to let
10 me find it. We did cite it in our brief. I think
11 it's page 10.

12 THE COURT: I understand. You did.

13 MR. KEMBLE: Policy wise, Judge, this is
14 improper and burdensome for you. We've already got
15 a Complaint in this matter that you're deciding as a
16 trial judge. We have other things to file to
17 determine whether that's proper as well.

18 But as the case law that we set out in our
19 brief indicates, it is improper to put -- to try to
20 couple a Complaint for damages that will be trialed
21 or tried as under the rules of trial with a different
22 evidentiary standard, different standards of review,
23 to couple that with a Petition for Judicial Review,
24 which as I indicated, is heard as an appellate
25 matter.

1 You're sitting as a reviewing court,
2 reviewing the city council's decision. You are
3 bound by the rules of appellate procedure, not the
4 rules of the trial court. That's a policy support
5 that the "Goodwin" case sets out. That Court
6 heartily condemned the combining of these matters
7 with two different standards and laid out how
8 difficult that is for another reviewing court to
9 determine issues when those matters are improperly
10 coupled.

11 Judge, those are the reasons. If you have
12 any questions for me. The appropriate remedy here
13 is just to strike this. It should be re-filed. It
14 should be properly served, and it should be signed
15 randomly as the rules of the judicial court mandate.
16 And I'll leave it there. Thank you, Your Honor.

17 THE COURT: Thank you, sir.

18 MR. WHITAKER: I'll try to be brief,
19 Your Honor. This isn't going to be that
20 complicated. First of all, when you look at their
21 paperwork, their documents and everything they've
22 submitted to you, one thing you're going to find
23 that they keep referring to -- and that's the whole
24 premise for their Motion to Strike -- is what is a
25 petition? What is to be contained within a

1 Petition for Judicial Review?

2 You can hear the crickets chirping because
3 there's not a single reference to statute or case
4 law because there isn't any that defines what can be
5 contained within a Petition for Judicial Review. If
6 you even take a look at the rule or EDCR 2.15, it
7 does not define nor does it describe the content of
8 the petition. If you take a step back and look at
9 the initiating process, it's set forth in NRS
10 Chapter 278.0235, there is no discussion of the
11 content of the petition, what it must contain or
12 what it must not contain.

13 The purpose of the petition is simply to
14 apprise the governing body that passed the
15 ordinance -- whatever it might be in this particular
16 case, municipal ordinance -- of the challenge by way
17 of an appeal to this court, pursuant to state
18 statute of the decision that was ultimately rendered
19 by the city. That's what it is.

20 And let's take a step back in time. Yes,
21 there was an original Complaint that was lodged with
22 this court. As the Court knows, the city took
23 exception to that document, and in followup, there
24 was a Motion for Preliminary Injunction that was
25 filed and denied, but it's significant that the

1 Court take notice of why that application, when it
2 was originally submitted to this Court was denied.

3 And I'm going to quote from their body of
4 their pleading. This is right out of their pleading
5 on the motion -- or an opposition to the Motion to
6 Preliminary Injunction, and this is one of the
7 critical questions here apprising why this petition
8 and why it's filed in the manner it is because the
9 petition does reference four separate hearings
10 before the city council.

11 THE COURT: You know, here, I'll kind of
12 short-circuit this a little bit, but there hasn't
13 been a discussion on this. And when it comes
14 specifically with dealing with rules like 2.15, I
15 have to make a determination, in a general sense,
16 whether it's a substantial compliance rule or strict
17 compliance.

18 And the reason why I say that is this, I
19 mean, there's case law here in the State of Nevada,
20 and I'm looking at the rule, and it talks, it
21 discusses a Memorandum of Points and Authorities and
22 so on, and we do have that; right? Whether it's in
23 the exact form as set forth in Nevada Rule of
24 Appellate Procedure, I guess 28, is another issue.

25 But here's my point: Typically, when it

1 comes to issues regarding strict compliance or
2 strict instruction as it relates to an issue, you're
3 dealing with time and manner statutes; right?

4 MR. WHITAKER: Yes.

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

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

21 THE COURT: I understand that. I do.

22 MR. WHITAKER: That hasn't happened yet.
23 So there will be briefing following the submission
24 of that record to the court. There will be a full
25 brief from us, from them, as it would be an

1 appellate process; and thereafter, after that
2 process completed, only then can we request that
3 this Court order a hearing. Only when that process
4 is completed. That's under the Eighth Judicial
5 District Court rule.

6 The problem that they're having right now
7 is they're trying to redefine what must be stated in
8 a petition. And what we're telling you, Your Honor,
9 there is no rule of law; there is no governing
10 statute; there is no governing case law that states
11 what must be contained within the petition. That's
12 where they're taking the exception.

13 That's why they're moving to strike because
14 it had exhibits attached to it, because it had some
15 legal points and authorities attached to it and;
16 thereafter, somehow that this is improper. Well, if
17 it's improper, cite to me a case or a statute that
18 says the petition can only contain X information.
19 It's not there.

20 And so what the petition is supposed to do
21 is apprise the city -- in this case, the City of
22 Henderson -- that there is an objection taken to the
23 conditional use permit, which it granted. And the
24 reason why I raise this point on this is because
25 they've taken exception to the fact that the

1 petition encompasses four separate hearings; and
2 they argue now, before this Court, that each one of
3 those was a separate matter and that each one of
4 them was independently filed.

5 And the only reason why I bring that to
6 light is because they're already barred, judicially
7 estopped from making that argument to this Court, as
8 a matter of law. And why do I say that? Because
9 they stood here in the same courtroom, and you used
10 that basis for denying our prior request that we
11 made because you determined, based upon their
12 argument, that the decision that we were then before
13 you addressing was not final.

14 In fact, because they told you the matter
15 was set for another hearing in May, that it was not
16 final and our administrative rights had not yet been
17 fully exhausted, which was required under the
18 statute; and, therefore, you actually made a ruling
19 and a determination in the Findings of Fact and
20 Conclusions of Law that we had not exhausted our
21 municipal remedy and, therefore, the application was
22 premature.

23 That's the Court's ruling. That its order.
24 And that was a ruling in favor of the City. They
25 made the argument. They now can't walk it back and

1 try to argue that, "Well, wait a minute they were
2 each one independently final now, and by the way, we
3 were wrong when we said that to you before and you
4 ruled in our favor." It just does not work that
5 way.

6 what we now have before you -- and they're
7 not challenging the timeliness of the filing because
8 it is timely. It's not even a debate. What they
9 want to argue now is that we can only challenge the
10 final hearing, which was in August, August 8th of
11 2019. That we no longer have the right to look at
12 all the actions taken by the City from the inception
13 of this Conditional Use Permit until it was finally
14 approved by the City Council without amendment and
15 without further hearing.

16 And in this regard, I would refer the Court
17 to the state statute, which says that you can only
18 appeal a final determination. Based upon the City's
19 own argument to this Court, it wasn't final until
20 the August 8th, 2019, hearing before the City
21 Council, and the petition is before you in a timely
22 manner.

23 we don't dispute their arguments with
24 regard to the exhibits. The exhibits, I agree, were
25 not properly -- and I have no excuse. I can

1 apologize to the Court for that. They did not
2 comply EDCR 2.27. There should have been, because
3 of the number of pages, Bates-stamping appended to
4 each one of those documents, and that's an oversight
5 by my staff, and I take responsibility for that.
6 That can be corrected. That's not a basis for a
7 Motion to Strike. Nor is what is in the content of
8 the petition the basis for a Motion to Strike.

9 with regard to counsel's arguments with
10 regard to service, they're standing here today. The
11 issue with regard to service was waived the moment
12 they stood in this courtroom to argue the merits of
13 the case to you. No. 1, that more importantly, they
14 were already served and have been served with this
15 process twice. In February of this year, they were
16 served with the Complaint, the original Complaint.
17 And then they were also served with the Motion for
18 Preliminary Injunction. And all those matters are
19 still pending. The service is still there. They're
20 not going to deny that they've ever been served with
21 any of this process.

22 But their question is "Wow, this is not the
23 appropriate forum for a petition because it replaced
24 a Complaint." well, it's an Amended, and the fact
25 is they challenged the original filing, claiming

1 that it was not a proper format for a petition.
2 That's all been revised and amended now, and it's
3 been timely submitted to this Court as a petition.

4 THE COURT: The Amendment was filed
5 September 3rd; right?

6 MR. WHITAKER: That is correct.

7 And there are no causes of action
8 associated with this petition for damages. They're
9 not -- it's not in the petition at all. So their
10 whole argument that they've made that this is a
11 concurrence of two types of cases, a civil action
12 and a Petition for Judicial Review is not accurate.

13 One final point with regard to -- and I
14 don't like to go to procedure too much on this
15 because it's pretty straightforward. But they've
16 made an objection to the fact that this is in
17 business court, and since they like to cite the
18 rules, I will cite the rule right back to them
19 Rule 1.61: If you're going to object to a matter
20 being in business court, you have ten days from the
21 date you're notified of the assignment to business
22 court to object, and they didn't do it. They
23 haven't done it. It's been in this courtroom since
24 February of this year.

25 THE COURT: And I must point out, my docket

1 is not limited to business court. I have juris
2 over --

3 MR. WHITAKER: No. You have jurisdiction
4 over others, and I know because I've been here. You
5 get random assigned matters that are not business
6 court.

7 THE COURT: Tort cases, med-mal, class
8 action. We get it all.

9 MR. WHITAKER: On that, Your Honor, I just
10 submit the petition should go forward. We should be
11 able to present our client's rights to this Court
12 with regard to the issues that are raised through
13 the Conditional Use Permit, passed by the City
14 Council. This petition was timely.

15 Thank you, Your Honor.

16 THE COURT: Thank you, sir.

17 Counsel, you get the last word.

18 MR. KEMBLE: I hope so. Let me present to
19 you some of Mr. Whitaker's arguments against himself
20 in his opposition. First off, Mr. Whitaker has now
21 argued that that was just a simple memorandum that
22 was attached to the petition. In his opposition,
23 claims to be the opening brief. He's argued it was
24 not the record. In his opposition, he argues it was
25 the record.

1 This is an issue, maybe not of form and
2 content, but of forum and content. Okay. You're
3 hearing this as a business court matter. They've
4 paid the filing fee. There's a "B" next to the case
5 name here. This is a business court matter. This
6 cannot be heard as a business court matter, a
7 Petition for Judicial Review.

8 THE COURT: What says that? I mean, what
9 law says that? I mean, and if you're going to
10 object to business court, don't you have to do that
11 within a certain time period?

12 MR. KEMBLE: Yes. That was another great
13 point because he read you half the rule. It's you
14 get to object within ten days or your first
15 response.

16 THE COURT: Sir. Listen to me.

17 MR. KEMBLE: Yes.

18 THE COURT: This is a general jurisdiction
19 court.

20 MR. KEMBLE: I agree.

21 THE COURT: Technically, we don't have
22 business court or construction defect now. We just
23 have specialty dockets. And so I can hear medical
24 malpractice. I can hear products liability. If the
25 chief judge wanted to assign to me a construction

1 defect case, I could hear that. I could hear --

2 MR. KEMBLE: 100 percent right, Judge.

3 THE COURT: -- a criminal case.

4 MR. KEMBLE: No, I absolutely agree.

5 THE COURT: We had a civil contempt matter
6 returned in this department this morning. I can
7 hear all that. And so the designation doesn't
8 matter, sir. I don't mind telling you that, whether
9 it's a "B" or a "C."

10 I forget what we had in construction
11 defect. Did we have a designation? I don't know.
12 It's been too many years.

13 MR. KEMBLE: Judge, I, 100 percent, agree
14 you've got one of the broadest civil calendars that
15 you can have. But the matter, under the EDCR, has
16 to be assigned to you; right? He can't just come in
17 here and just file random Complaints and random, you
18 know, documents in this case and say you're entitled
19 to hear them.

20 THE COURT: But it was assigned to me.

21 MR. KEMBLE: Yeah, the Complaint was
22 assigned to you. And our whole argument is that a
23 petition -- which starts a new action, right, under
24 the electronic filing rules and under -- well, the
25 electronic filing rules that we've cited, as

1 commencing a new action, that needs to be randomly
2 assigned to a judge. They need to pay the filing
3 fee that's associated with that.

4 And then, Judge, you said, you know, it
5 doesn't set forth what has to be in a petition;
6 right? But if you claim something in your
7 opposition as an opening brief, the rule does say
8 that you have to comply with Rule 28. It says "You
9 must comply with Rule 28."

10 THE COURT: What do I do with this
11 regard -- because we get Petitions for Judicial
12 Review from time to time. Once I get the petition
13 in, I set the matter for a status check, and we set
14 forth a briefing schedule. That's how that works in
15 every case.

16 MR. KEMBLE: And if this was properly in
17 front of you, I think that would be the right
18 procedure. We'd set a status -- you know, we'd do
19 status check; we'd come in here and tell you how
20 long we need to produce the record. We put the
21 record in. You'd set a briefing schedule. They'd
22 file an opening brief. We'd file an opposition.
23 They'd file response brief.

24 But what happened here is you got this
25 thing called a "petition." It included, according

1 to them in their opposition, their opening brief in
2 the record, one of their complaints is that they'd
3 still be sitting around waiting for our response if
4 they hadn't filed the record. They've already told
5 you that they're taking control of this. They're
6 filing the record. They've filed the opening brief.
7 That's in their opposition, Judge.

8 But the point is we've first got to
9 determine was this properly filed in this action;
10 can you file another action within an action that
11 already exists? The petition is a separate action.
12 These arguments about, you know, that we made in
13 prior hearings. Of course we said that the petition
14 was the proper remedy. It is the only remedy for
15 challenging the City Council decisions. But that
16 doesn't mean that they can just come in here and
17 file that as a motion, serve it electronically in
18 contravention to the rules. The petition is
19 separate action.

20 And second of all, yes, the business
21 courts, right, if this is a business court matter, I
22 don't see how a matter that is specifically
23 precluded from being a business court matter can be
24 heard in this business court case. And we've got a
25 right to challenge that.

Case No. _____

IN THE SUPREME COURT OF
THE STATE OF NEVADA

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
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July 16, 2020

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DATED this 16th day of July, 2020.

CITY OF HENDERSON

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Henderson City Attorney's Office and that on this July 16, 2020, the Joint Appendix Volume II was filed electronically with the Clerk of the Nevada Supreme Court and a CD-ROM containing a true and correct copy was placed in the U.S. mail, first-class postage affixed, and addressed as follows:

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/s/ Laura Kopanski
An employee of the
Henderson City Attorney's Office

1 THE COURT: When you say "specifically
2 precluded," what do you mean by that? I want to
3 make sure I understand.

4 MR. KEMBLE: Yeah. I'll let you know in.
5 I wrote my citation down here. It's EDCR 1.61(B)18.

6 THE COURT: Let me look in these pesky
7 EDCRs. And that's 1.61?

8 MR. KEMBLE: 1.61(B)18.

9 THE COURT: Okay. All right.

10 MR. KEMBLE: I mean, that's specifically
11 what the petition challenges, the granting of the
12 Conditional Use Permit. And for them to say, "Well,
13 we've already consented to the jurisdiction on this
14 Petition for Judicial Review, I don't know how that
15 can be the case.

16 They couldn't come in here and file a
17 family court matter and say "We've already consented
18 to the Court's jurisdiction on that" simply because
19 we didn't object when they filed the Complaint,
20 which I think we still have the right to do under
21 the rule because our objection comes, and our first
22 response, which has not happened yet.

23 THE COURT: But I can't hear family court
24 matters. There's a difference there. Right? But
25 here's my point.

1 MR. KEMBLE: But as business court, Judge,
2 your jurisdiction is limited too.

3 THE COURT: No. I don't think so. But
4 here's my point. For example, there's two things:
5 No. 1, you're asking for striking or dismissal.
6 What seems to me the appropriate procedural
7 mechanism would be this because, No. 1, if you
8 strike it, it potentially could impact parties'
9 rights; right? I don't know for sure what the
10 impact would be.

11 But that's why my question was, at the very
12 beginning, as related -- and this is "Leven" case.
13 I don't mind saying that specifically when you look
14 at form and content as relates to substantial
15 compliance versus straight compliance, time and
16 manner. It seems like, to me, we're focusing on
17 form and content issues, you know.

18 And so my point is this: If you want this
19 matter transferred and you feel it should be
20 randomly assigned, why don't you just file a
21 petition or some sort of motion with the chief
22 judge. She hears it. She decides whether or not I
23 have the jurisdiction to hear it. It can move on.

24 But the issue is as far as -- and
25 especially under the facts of this case because I

1 remember this somewhat historically. Some of the
2 issues we're talking about way back, if I'm
3 overlooking it, dealt specifically with the issues
4 of the city counsel and issues of the C.U.P. and all
5 those things; right? And this case --

6 MR. KEMBLE: So this case, as originally
7 filed, dealt with the City's enforcement of the
8 C.U.P.

9 THE COURT: Right, right, right.

10 MR. KEMBLE: Which is a different standard
11 and a different decision than the City Council's
12 decision to grant a C.U.P.; right? And I think
13 that's the point that we tried to make in our brief.

14 Those are two different matters. And, boy,
15 wouldn't that be confusing if that went up on appeal
16 if you're hearing that first one, as a trial court
17 judge, applying all of your powers as a trial court
18 judge; and then that gets --

19 THE COURT: I didn't hear the first one;
20 right?

21 MR. KEMBLE: You heard it on injunction.
22 It's still here. It's still here.

23 THE COURT: Yeah, yeah.

24 MR. KEMBLE: And that's why that shouldn't
25 be combined with this one; right? You still have

1 the potential to hear the other one. That's the
2 Complaint that's before you.

3 THE COURT: When was the final decision on
4 it?

5 MR. KEMBLE: What's that?

6 THE COURT: When was the final
7 determination made in that one, or is it still
8 ongoing?

9 MR. KEMBLE: I'm sorry.

10 THE COURT: If it's a Petition for Judicial
11 Review, it has to be filed within a certain time
12 period; right?

13 MR. KEMBLE: Right. So the first case did
14 not challenge any particular decision. It
15 challenged our enforcement of the existing C.U.P.
16 That was the original Complaint that was filed.

17 THE COURT: How was that a business court
18 matter?

19 MR. KEMBLE: Well, I don't know, and I
20 think that's something we were going to raise in our
21 response. We were dragged in here on an injunction.
22 We kind of had a stalemate or agreed to a
23 stand-down, and then this got filed.

24 I don't want to get into this sidetrack of
25 all the timing here, but I'll do it, if you'd like.

1 THE COURT: No, you don't have to.

2 MR. KEMBLE: But that Complaint sets out
3 it's only severed allegations regarding enforcement.
4 You'll hear that as a trial court judge. You'll
5 apply evidentiary standards. You'll apply trial
6 court judge powers to that.

7 The Petition for Judicial Review, the judge
8 who hears that sits as an appellate judge to the
9 City Council. It applies a substantial evidence
10 standard to a limited record. There's no discovery
11 that you're going to be -- you or another judge is
12 going to decide. It is entirely different.

13 How you get rid of this, Judge -- that's
14 not our fault that they misfiled this; right? And,
15 you know, offering them an advisory opinion about
16 how to fix it I think is improper.

17 THE COURT: I'm not offering any advisory
18 opinion. You're alleging I don't have jurisdiction
19 to hear this. I'm a general jurisdiction judge. So
20 I could hear it. How it got here is peculiar, I'll
21 admit that.

22 MR. KEMBLE: I don't dispute your
23 jurisdiction to hear it as a general jurisdiction
24 civil court judge. I don't.

25 I do dispute that it was not randomly

1 assigned, as provided in the rules, and that it
2 can't be filed with this action. If they want it
3 here, they've got to file it somewhere else, and
4 then they can move to consolidate it. But that's
5 their burden. It's not --

6 THE COURT: Well, it might --

7 MR. KEMBLE: We're not --

8 (Reporter request.)

9 THE COURT: Yeah, it might not meet the
10 requirements of consolidation, to be honest with
11 you. That's a different issue.

12 MR. KEMBLE: I agree. And I apologize,
13 Judge, for talking over you a couple of times.

14 THE COURT: No. That's fine. That's fine.
15 She just needs -- sometimes I jump in. I apologize.
16 But go ahead.

17 MR. KEMBLE: Judge, those are all the
18 points that I think I have. Thank you.

19 MR. WHITAKER: Just to respond to the last
20 question that's been raised to you, and I will cite
21 you to a case, just so there's no confusion here.
22 The decision out of the Ninth Circuit, it's "Evans,"
23 "NRDC vs. Evans," Northern District of California.

24 And this is what the Court did in that
25 particular case where a petition was filed as an

1 amendment in a case where there was a civil lawsuit,
2 and the Court stated there: Be in the form of an
3 Amendment to the Complaint in an existing lawsuit,
4 rather than requiring the petition take the form of
5 an entirely new lawsuit; therefore, judicial economy
6 favors permitting judicial review by an Amended
7 Complaint, rather than a new lawsuit."

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

14 MR. KEMBLE: So I guess that is -- and I'm
15 still trying to get the final word here, but --

16 THE COURT: You know, well, and see, that
17 kind of supported my query earlier. And this, I
18 don't look at it as an advisory opinion. I just
19 look at if you're concerned about the random
20 reassignment issue, potentially, you have rights to
21 take care of that issue.

22 My concern is this: It's an amended
23 pleading and controlling right now. You're asking
24 me to strike it.

25 MR. KEMBLE: well, I'll turn to their

1 opposition where they spend pages stating that this
2 is not an amended pleading, and they give you all
3 the reasons that it doesn't comply as an amended
4 pleading.

5 THE COURT: well, it says it's an amended
6 pleading; right?

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

10 MR. KEMBLE: Or apparently not the
11 arguments in the opposition, where they say "This is
12 not an amended pleading," and they set forth all the
13 reasons why this does not qualify as an amended
14 pleading, and there is an operative Complaint in
15 this case.

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

18 MR. KEMBLE: Thanks, Judge.

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

25 Notwithstanding that, if the City of

1 Henderson is concerned about lack of random
2 assignment, you can file, whatever you need in that
3 regard, and I'm not saying you waive your rights. I
4 understand your position. I respect it. And maybe
5 the petition to the chief judge will alleviate that
6 issue. All right.

7 MR. KEMBLE: Yes. Thank you very much,
8 Your Honor.

9 MR. WHITAKER: Thank you very much,
10 Your Honor.

11

12 (The proceedings concluded at 11:50 a.m.)

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C E R T I F I C A T E

STATE OF NEVADA)
)SS:
COUNTY OF CLARK)

I, Dana J. Tavaglione, RPR, CCR 841, do
hereby certify that I reported the foregoing
proceedings; that the same is true and correct as
reflected by my original machine shorthand notes
taken at said time and place before the
Hon. Timothy C. Williams, District Court Judge,
presiding.

Dated at Las Vegas, Nevada, this 30th day
of December 2019.

/S/Dana J. Tavaglione

Dana J. Tavaglione, RPR, CCR NO. 841
Certified Court Reporter
Las Vegas, Nevada