

Case No. 81474

IN THE SUPREME COURT OF
THE STATE OF NEVADA

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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

**ANSWER TO PETITIONER'S
PETITION FOR WRIT OF MANDAMUS**

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NRAP 26.1 DISCLOSURE

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 judges of this court may evaluate possible disqualification or recusal.

1. Solid State Properties, LLC is a Nevada Limited Liability Company and has no parent corporation, nor does any publicly held company own 10% or more of Solid State Properties, LLC's stock.
2. Solid State Properties, LLC is represented in the Eighth Judicial District Court and this Court by Erickson & Whitaker PC.

DATED this 15th day of October, 2020.

ERICKSON & WHITAKER PC

By: /s/ Brian C. Whitaker
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I. INTRODUCTION

This Court generally declines to consider writ petitions such as the one filed by Petitioner, the City of Henderson (“the City”). Ordinarily, the mechanism of an appeal is an adequate remedy, and the Court rarely grants a writ of mandamus as a result.

As the Petitioner, the City bears the burden of proof of demonstrating that the remedy of a writ of mandamus in this case is warranted. To meet its burden, the City must demonstrate that 1.) no disputed factual issues exist between the parties; 2.) the District Court was clearly obligated to honor the City’s request for dismissal; and 3.) no other legal remedy for the Petitioner exists. Or, the City must show that an important issue of law necessitates clarification by this Court.

The City has not met its burden, and this case does not warrant the remedy requested.

On October 16, 2017, the City granted a conditional use permit (“CUP”) to a private entity, 7777 Eastgate LLC (“Eastgate”), allowing it to lease its property to a public charter school, Coral Academy of Science Las Vegas (“Coral Academy”). Subsequent to granting the CUP, the City ultimately amended the CUP four (4) times on November 27, 2017, January 10, 2019, May 23, 2019, and August 8, 2019. Although each amended notice issued by the City required post-issuance compliance from Coral Academy, the City ultimately failed to enforce any such compliance.

As a result of the City’s behavior, on February 4, 2019, Solid State Properties, LLC (“Solid State”) filed a Complaint against the City in the Eighth Judicial District Court (“District Court”) (Case No. A-19-788817-B) detailing the City’s abuse of discretion in granting the CUP but failing to enforce its provisions.

See Joint Appendix Volume I at 001, 013-014. The Complaint sought damages, attorney’s fees, and injunctive relief against the City and in favor of Solid State. *Id.* at 015.

On March 5, 2019, Solid State filed a Motion for Preliminary Injunction, asking the District Court to enjoin the City from continuing to refuse to enforce the CUP. On March 19, 2019, the City opposed Solid State’s Motion for Preliminary Injunction, insisting that Solid State’s Motion was “unripe” because Solid State had failed to “exhaust[] all its available administrative remedies” by not waiting to file until after “pending” City Council meetings. *Id.* at 229, lines 9-20. In denying Solid State’s Motion for Preliminary Injunction, the District Court agreed with the City, finding that Solid State had “not exhausted all its available administrative remedies,” as the CUP was still not a final action from the City, and that it could “later potentially file a petition for judicial review.” *Id.* at 230, lines 4-7.

On September 3, 2020, after the City’s final action on August 8, 2019 and in accordance with the District Court’s Order, Solid State timely filed its Amended Petition for Judicial Review (“Petition”), the document at issue in this case, pursuant to NRS 278.0235. *Id.* at 035-198. The City filed its Motion to Strike Solid State’s Petition (“Motion to Strike”) on September 17, 2019. *Id.* at 199-226. There, the City reversed course and took the opposite position from that taken in its Opposition to Solid State’s Motion for Preliminary Injunction, arguing Solid State could not “challenge the various actions the Council has taken concerning the Coral Academy CUP beginning in 2017.” *Id.* at 205, lines 1-2. According to the City, the November 27, 2017, January 10, 2019, May 23, 2019, and August 8, 2019 actions were final in nature and Solid State was too late to challenge any of them, with the exception of the August 8, 2019 action. *Id.* at 205, lines 3-15.

On December 18, 2020, the District Court denied the City’s Motion to Strike. *See* Joint Appendix Volume II at 293, lines 20-23. Almost seven (7)

months after the District Court's December 18, 2019 Order denying the City's Motion to Strike, the City finally filed the instant Petition for Writ of Mandamus on July 16, 2020.

The City's opposition to Solid State's Petition, and its request that this Court instruct the District Court to strike Solid State's Petition, is based solely on issues of form and content, and does not meet the necessary burden for this Court to grant its request. According to the City, because Solid State's Petition allegedly contained an erroneous title, because Solid State allegedly paid no filing fee, and because Solid State allegedly did not comply with certain rules for the form and content of its Petition, this Court should restrict Solid State's ability to object to the City's inaction, thus depriving Solid State of its property rights.

Solid State's Petition should be allowed to move forward.

II. PERTINENT FACTS

Solid State and Eastgate have owned adjoining lots within the Black Mountain Industrial Center ("BMIC") since August 10, 2017. The BMIC is zoned for general and commercial land use only, but Eastgate leases its property to Coral Academy which operates a Kindergarten through Seventh Grade public charter school on Eastgate's lot. Educational use is not a permitted use pursuant to the existing zoning, and necessitated an application for conditional use.

On August 21, 2017, Eastgate filed for a CUP with the City, seeking to operate the public charter school and to increase occupancy levels. The City granted the CUP on October 16, 2017, which grant Solid State promptly appealed. A brief history of that appeal and Solid State's subsequent allegations are relevant here to demonstrate what Solid State believes to be the merits of the case.

As a result of Solid State's appeal, the City modified the CUP for the first time on November 27, 2017, requiring Eastgate to, among other things, comply with a queuing plan to eliminate the vehicle build up on Solid State's property

during school drop-off and pick-up times and construct an alternate roadway for ingress and egress into the Eastgate lot.¹

On August 13, 2018, Coral Academy opened its doors for the 2018-2019 school year without having begun construction on the alternate roadway and without incorporating any queuing plan to eliminate traffic queuing on Solid State's parcel.

Over a period of several months, Solid State and the City communicated regarding Eastgate's non-compliance with the CUP, and the City issued three (3) more amendments to the CUP, on January 10, 2019, May 23, 2019, and August 8, 2019, requiring Eastgate to comply with several additional provisions, most of which went unheeded by Eastgate. Rather than revoking the CUP for non-compliance, the City refused to enforce the provisions it adopted, and on February 4, 2019, Solid State filed its Complaint, in Business Court, against the City, detailing the City's abuse of discretion in granting the CUP but failing to enforce its provisions. *See* Joint Appendix Volume I at 001, 013-014. In the Complaint, Solid State sought damages, attorney's fees, and injunctive relief against the City. *Id.* at 015.

The City did not object to the Business Court filing, and when Solid State filed its Motion for Preliminary Injunction on March 5, 2019, the City opposed the Motion, stating, "The failure to exhaust available administrative remedies renders a matter non-justicable [*sic*] because it is unripe." *Id.* at 229, lines 13-14. According to the City, "To avoid a determination of non-justiciability, a person must generally exhaust all available administrative remedies before filing a law suit [*sic*]." *Id.* at 229, lines 14-15. The City continued further, as follows:

¹ Access to Eastgate's parcel can only be achieved via passage over Solid State's parcel. The arrangement is governed by a cross parking and access agreement between Eastgate and Solid State.

Because there are pending proceedings, that Solid State knew were forthcoming but did not challenge, at which Solid State can be heard and can later potentially file a petition for judicial review, it has not exhausted all its available administrative remedies and its case is not ripe for judicial determination.

Id. at 229, lines 16-18.

On June 5, 2019, the District Court denied Solid State's Motion for Preliminary Injunction. *See* Joint Appendix Volume II at 264. Pursuant to that June 5, 2019 Order, Solid State had not "exhausted all its available administrative remedies" and could not be granted injunctive relief. *See* Joint Appendix Volume I at 230, lines 4-7. Instead, Solid State would have to wait for a final version of the CUP from the City, after which it could "file a petition for judicial review." *Id.*

The City's final iteration of the CUP is dated August 8, 2019, although the City, reversing course, now disagrees with Solid State's representation that the August 8, 2019 decision stands alone as the only final decision from the City Council. *See* Petition for Writ of Mandamus at 7. On September 3, 2019, Solid State filed its Petition, complying with the timing provisions of NRS 278.0235. *See* Joint Appendix Volume I at 035-198. Solid State's Petition contained no claims for civil relief or requests for damages.

According to the City, "Nearly 3 months passed without Solid State taking any action on [*sic*] in the Enforcement Case." *See* Petition for Writ of Mandamus at 5. In reality, however, Solid State was not biding its time, as is evidenced by its February 4, 2019 Complaint and its March 5, 2019 Motion for Preliminary Injunction. Instead, Solid State was simply waiting for the City's final iteration of the CUP in order to exhaust its administrative remedies before filing its Petition.

On September 17, 2019, the City filed its Motion to Strike Solid State's Petition, setting forth the same arguments against the Petition which it has again set forth in the instant Petition for Writ of Mandamus, namely 1.) that the Petition

contained “either a typographical error” or was “incorrectly named;” 2.) that Solid State “did not pay a separate filing fee;” 3.) that the Petition “included a request for a hearing;” 4.) that Solid State did not separately serve the Amended Petition on the City;” 5.) that the matter “was not randomly assigned;” 6.) that the Petition was filed “in the already pending Enforcement Case;” and 7.) that the Petition contained “improper legal arguments [and] exhibits.” *See* Petition for Writ of Mandamus at 5, 6. In its Motion to Strike, the City argued that its multiple decision regarding the CUP were separate actions and that Solid State should have challenged each one individually instead of challenging “the various actions the Council has taken concerning the Coral Academy CUP beginning in 2017.” *See* Joint Appendix Volume I at 204, lines 20-23; 205, lines 1-2.

Solid State opposed the City’s Motion to Strike on October 1, 2019 and at a hearing on December 18, 2019, the District Court denied the City’s Motion, clearly setting forth its reasons for doing so as follows:

- The issue is a form and content issue, not a time and manner issue (Joint Appendix Volume II at 275, lines 5-6);
- Form and content issues require only substantial compliance, and not strict compliance (*Id.* at 275, lines 8-12; 287, lines 13-17);
- The District Court is a court of general jurisdiction and the issue will be fairly briefed (*Id.* at 282, lines 18-19; 284, lines 12-15; 290, lines 19-20);
- On the other hand, by granting the City’s Motion, the Court could potentially impact Solid State’s property rights (*Id.* at 287, lines 7-9);
and

- The City may request a random assignment to a different judge, thus ensuring a review of the issue by someone unfamiliar with the facts of the case (*Id.* at 293, line 25; 294, lines 1-3).

After the District Court's December 18, 2019 decision denying the City's Motion to Strike, the City waited almost seven (7) whole months before filing its Petition for Writ of Mandamus with this Court. Rather than acting urgently to address any of the issues presented in its Petition for Writ of Mandamus, the City acted dilatorily, essentially acknowledging any lack of urgency expressed in its Petition.

This Court should deny the City's request in its Petition for Writ of Mandamus and allow the District Court's order denying the City's Motion to Strike Solid State's Petition to stand. Doing so will ensure Solid State's property rights are protected and allow both parties to fully brief a Petition for Judicial Review in the District Court.

III. ARGUMENT

A. **The City Has Not Met the Burden Necessary for This Court to Issue a Writ.**

The City has not met its burden in establishing the issuance of a writ of mandamus is warranted in this case, and this Court should not issue such a writ.

Pursuant to *State ex rel. Department of Transp. v. Thompson*, 99 Nev. 358, 362, 662 P.2d 1338, 1340 (1983), "[J]udicial economy and sound judicial administration militate against the utilization of mandamus petitions to review orders denying motions to dismiss and motions for summary judgment." As a result, though the Nevada Supreme Court has "the power to entertain such petitions," it will "no longer utilize that power." *Id.*

Subsequent to its holding in *Thompson*, the Nevada Supreme Court reaffirmed its holding there of refusing to entertain requests for writs of mandamus

“because very few writ petitions warrant extraordinary relief” *Smith v. Eighth Judicial Dist. Court*, 113 Nev. 1343, 1344, 950 P.2d 280, 281 (1997). Although this Court has discretion to consider writ petitions, it is judicious in its use of its discretion and typically “will not exercise [its] discretion to consider writ petitions that challenge orders of the district court denying motions to dismiss or motions for summary judgment.” *Id.*

Exceptions to this Court’s rule of not exercising its discretion to consider writ petitions are “very few” and include “considerations of sound judicial economy and administration militated in favor of granting such petitions.” *Id.* See also *Helfstein v. Eighth Judicial Dist. Court of Nev.*, 131 Nev. 909, 912, 362 P.3d 91, 94 (2015) (“Because an appeal is ordinarily an adequate remedy, this court generally declines to consider writ petitions challenging interlocutory district court orders”).

Moreover, “Petitioners carry the burden of demonstrating that extraordinary relief is warranted.” *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

To grant a petition requesting this Court overturn a District Court Order denying a Motion to Dismiss or to Strike (both NRCP 12 motions), this Court must find that 1.) “no disputed factual issues exist;” 2.) that the District Court was “obligated” to grant the Motion to dismiss “pursuant to clear authority under a statute or rule;” and 3.) that “no plain, adequate and speedy legal remedy” exists. *Smith* at 113 Nev. 1345, 950 P.2d, 281 (“[T]his court will continue to exercise its discretion with respect to certain petitions where no disputed factual issues exist and, pursuant to clear authority under a statute or rule, the district court is obligated to dismiss an action”). *Pan* at 120 Nev. 224, 88 P.3d 840, 841 (“[A] writ of mandamus is proper only when there is no plain, adequate and speedy legal remedy”).

In addition, the Court “may exercise [its] discretion where . . . an important issue of law requires clarification. The interests of judicial economy . . . will remain the primary standard by which this court exercises its discretion.” *Smith* at 113 Nev. 1345, 950 P.2d, 281.

Here, the City has not met its required burden for the Court to overturn the District Court’s denial.

i. Disputed factual issues exist between the parties.

The parties factually dispute whether the City’s iteration of the CUP dated August 8, 2019 is the City’s final decision or whether each amendment to the CUP from November 27, 2017 to August 8, 2019 constitutes a final decision warranting its own Petition for Judicial Review. For this Court to consider the City’s Petition, no disputed factual issues may exist. *Smith* at 113 Nev. 1345, 950 P.2d, 281. *See Libby v. Eighth Judicial Dist. Court of the State*, 130 Nev. 359, 363, 325 P.3d 1276, 1278 (2014) (“As a general rule, this court *will not exercise its discretion to consider petitions for extraordinary writ relief that challenge district court orders* . . . but an exception applies when *no disputed factual issues exist* and, pursuant to clear authority under a statute or rule, the district court is obligated to dismiss an action” (internal citations omitted)). (Emphasis added). In *Libby*, the Court “elect[ed] to exercise [its] discretion to consider the merits of [a] writ petition” only because “*the facts concerning the timeline of events are not disputed*,” and because Nevada statute “provid[ed] clear authority” that had been “inconsistently applied” by the district court. *Id.* at 130 Nev. 363, 325 P.3d 1279. (Emphasis added).

Here, unlike in *Libby*, the facts surrounding the timeline of events relating to the issuance of the CUP and its various amendments is in dispute, and this Court should deny the City’s Petition. According to the City, Solid State should have filed “a petition for judicial review within 25 days of any of the notices” *See*

Petition for Writ of Mandamus at 19. This is an incredible assertion and one that the City is estopped from making since in opposing Solid State's March 5, 2019 Motion for Preliminary Injunction it argued that no final action had occurred. Now, however, the City argues that each of the notices is a separate final action and that to object to each of the notices, Solid State should have filed a Petition for Judicial Review of each notice.

Pursuant to *Smith*, this Court "reaffirm[s] the general rule of *Thompson*," and will exercise its discretion only "with respect to certain petitions where no disputed factual issues exist, and, pursuant to clear authority under a statute or rule, the district court is obligated to dismiss an action." 113 Nev. 1345, 950 P.2d 281. And pursuant to *Libby*, this Court "will not exercise its discretion to consider petitions for extraordinary writ relief that challenge district court orders" unless no disputed factual issues exist. 130 Nev. 363, 325 P.3d 1278.

The parties disagree on the scope of Solid State's Petition, with Solid State arguing that its Petition objects to each of the City's amendments to the CUP while the City argues that the Petition should apply only to the August 8, 2019 amendment. Because disputed factual issues exist in this case, this Court should refrain from using its discretion to grant the City's Petition.

- ii. No clear law exists obligating the District Court to dismiss Solid State's Petition.

Moreover, there is no clear authority, whether statute or common law rule, obligating the District Court to dismiss Solid State's Petition. As stated above, only petitions for writ relief that involve "clear authority under a statute or rule" obligating the District Court to dismiss an action will be considered by this Court. *Smith* at 113 Nev. 1345, 950 P.2d, 281.

In *Libby*, the party requesting writ relief cited to “the plain language of” a specific Nevada statute the District Court had erroneously applied. 130 Nev. 363, 368, 325 P.3d 1278-1279, 1281.

The City cannot do that here, however. Arguing that Solid State’s Petition should have been filed in a separate case, the City cites case law from Idaho, Arizona, Tennessee, North Carolina, and Iowa, *none* of which is controlling in the State of Nevada. The City also relies on Administrative Order 19-05 which was filed one (1) month subsequent to Solid State’s September 3, 2019 Petition on October 2, 2019. The City cannot cite to a single controlling statute or case clearly defining or setting forth what information a Petition for Judicial Review should contain or where and how such a petition should be filed because there is no specific controlling law. Solid State complied with the requirements of NRS 278.0235 in filing its Petition and, unlike in *Libby*, no clear authority exists obligating the District Court to dismiss the Petition simply because Solid State allegedly filed in the wrong District Court department.

iii. An adequate legal remedy is available to the City.

Furthermore, an adequate legal remedy exists for the City should this Court choose to deny its request for a writ of mandamus and allow the District Court Order to stand. According to the holding in *Pan*, a writ of mandamus “is proper only when there is no plain, adequate and speedy legal remedy.” 120 Nev. 224, 88 P.3d 840, 841. *See Sonia F. v. Eighth Judicial Dist. Court*, 125 Nev. 495, 498, 215 P.3d 705, 707 (2009) (“An extraordinary writ may only be issued in cases where there is not a plain, speedy and adequate remedy at law”) (internal citations omitted). *See Int’l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (“Writ relief is not available . . . when an adequate and speedy legal remedy exists”).

Pursuant to the District Court's Order, the City can request Solid State's Petition be reassigned to another department, thereby guaranteeing random assignment and review by a judge not already privy to the facts of the case. *See* Joint Appendix Volume II at 293, line 25; 294, lines 1-3. In such an event, both parties would be given the chance to thoroughly brief the District Court. Should this Court grant the City's Petition for Writ of Mandamus, however, Solid State's property rights would be affected, as the time to file for judicial review has passed, and Solid State would be unable to pursue its objection to the City's issued CUP and the amendments to that CUP.

- iv. The instant Petition for Writ of Mandamus does not involve law that requires clarification.

Finally, although the Court could exercise its discretion to clarify the law, this case does not lend itself well to such an opportunity. This Court "may exercise [its] discretion where . . . an important issue of law requires clarification. The interests of judicial economy . . . will remain the primary standard by which this court exercises its discretion." *Smith* at 113 Nev. 1345, 950 P.2d, 281.

Solid State complied with all relevant statutes and case law in filing its Petition. Moreover, the District Court, in denying the City's Motion to Strike, clearly set forth its position on why the Motion was denied, clarifying that any issues with Solid State's filing were in form and content only and acknowledging that the City was entitled to a reassignment of the case. *See* Joint Appendix Volume II at 275, line 5-6; 293, line 25; 294, lines 1-3. No clarification regarding the filing of a petition for judicial review is needed, as any alleged issues arising as a result of Solid State's filing can be resolved at the District Court level. Moreover, the City, in waiting almost seven (7) months after the District Court's Order denying its Motion to Strike, has not shown that a clarification of the law at issue here is urgent or important. The City has not acted with urgency, and any

claims it makes with regard to the importance of clarity fall flat. *See* Petition for Writ of Mandamus at 3. A miscarriage of Solid State’s rights to pursue the issues raised in its Petition in order to clarify issues better rectified at the District Court level is not in the interest of judicial economy.

B. The District Court Did Not Act Arbitrarily or Capriciously.

Contrary to the City’s assertions, in denying the City’s Motion to Strike, the District Court did not act arbitrarily or capriciously. *See* Petition for Writ of Mandamus at 12. This Court reviews “district court orders for an arbitrary or capricious abuse of discretion, but also reviews questions of law *de novo*. *Helpstein*, 131 Nev. at 913, 362 P.3d at 94.

In this case, the District Court did not act arbitrarily or capriciously. Instead, the District Court stated specific reasons for denying the City’s Motion to Strike, one of which included Solid State’s potential loss of rights should the City’s Motion to Strike be granted. *See* Joint Appendix Volume II at 287, lines 7-9.

While the City claims this Court should “decide that as a matter of law that [*sic*] 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,” there is no black letter law indicating as much, and the City cites to none, as has been discussed above. *See* Petition for Writ of Mandamus at 12. The District Court did not abuse its discretion in this matter and this Court is under no obligation to find that the District Court was in error.

C. The District Court Did Not Err in Its Decision to Deny the City’s Motion to Strike.

The District Court did not err in its decision to deny the City’s Motion to Strike. According to the City, Solid State’s Petition should have been “a separate

filing that initiates a new case” and “should not [have been] combined or otherwise joined” with the already opened District Court case. *See* Petition for Writ of Mandamus at 13. Allegedly, because Solid State’s Petition was filed inside an already existing case, the Petition was “a fugitive document” and should have been struck pursuant to NRCP 12(f).

Solid State’s Petition, however, was not filed concurrent with an already existing civil case. Having been granted permission to amend its Complaint, Solid State timely filed its Petition pursuant to NRS 278.0235, removing damages and all claims for civil relief from the case. In doing so, Solid State modified its request to the District Court from a Complaint to a Petition for Judicial Review and appealed the City’s decision pursuant to the City’s objections and the District Court’s instructions.

In opposing Solid State’s Motion for Preliminary injunction, the City stated as follows:

The failure to exhaust available administrative remedies renders a matter non-justiciable [*sic*] because it is unripe. . . . To avoid determination of nonjusticiability [*sic*], a person must generally exhaust all available administrative remedies before filing a law suit [*sic*].

Because there are pending proceedings, that Solid State knew were forthcoming but did not challenge, at which Solid State can be heard and can later potentially file a petition for judicial review, it has not exhausted all its available administrative remedies and its case is not ripe for judicial determination.

See Joint Appendix Volume I at 229, lines 13-18.

And in denying Solid State’s Motion for Preliminary Injunction, the District Court agreed with the City, stating Solid State had not “exhausted all its available administrative remedies” and could not be granted injunctive relief. *See* Joint Appendix Volume I at 230, lines 4-7. Instead, Solid State would have to wait for a

final version of the CUP from the City, after which it could “file a petition for judicial review.” *Id.*

Attempting to justify its claim that Solid State’s Petition should not have been filed within the already existing District Court case and that it should have instead initiated a new case, the City references six (6) cases, none of which come from Nevada, and an Administrative Order dated October 2, 2019, a month subsequent to the City’s filed Petition. *See* Petition for Writ of Mandamus at 13-14.

Court precedent in Idaho, Arizona, Tennessee, North Carolina, and Iowa is not controlling in Nevada. Moreover, in every one of the out-of-state cases cited by the City, the petition or request for review was filed concurrently with a civil case. Here, Solid State’s Petition removed requests for civil relief and for damages, making the non-jurisdictional cases cited by the City inapposite. Granted leave to amend its Complaint, Solid State amended the format in which it objected to the City’s actions, filing a Petition for Judicial Review instead of a Complaint.

Furthermore, an Order allegedly detailing that a petition only commences a case is only efficacious on documents filed after the Order.

According to the City, because Solid State’s Petition allegedly did not initiate an action, was combined with an already existing case, was served through the electronic filing system, and did not require a filing fee, the Petition was a “fugitive document” and should have been struck by the District Court. *See* Petition for Writ of Mandamus at 16.

The City cites to several incongruous cases to justify such an assertion, relying on a Nevada District Court case in which the Court struck an Opposition to a Motion that was filed two (2) months after it was due and after an Order on the Motion had already been issued; a Nevada District Court case in which the Court

ordered a supplemental filing stricken because it had issued specific instructions to Plaintiff not to file any additional briefing; a third Nevada District Court case in which the Court struck medical records filed by Plaintiff in response to a Motion but allowed Plaintiff to respond properly even though his time for filing a response had passed; a fourth Nevada District Court case in which the Court struck a document as a sanction for litigation conduct; and a 9th Circuit Court case in which the Court struck an improperly filed confidential document as a sanction for litigation conduct. *See Peccole v. Peccole Nev.*, 2017 Dist. LEXIS 923, at 59 (Nev. Dist. Ct. Clark County 2017). *See Turner v. High Desert State Prison*, 2015 U.S. Dist. LEXIS 22231, at 3 (D. Nev. 2015). *See Picozzi v. Clark County Det. Ctr.*, 2018 U.S. Dist. LEXIS 137310, at 2-3 (D. Nev. 2018). *See Adobe Sys. Inc. v. Christenson*, 891 F.Supp.2d 1194, 1201 (D. Nev. 2012). *See Ready Transp., Inc. v. AAR Mfg.*, 627 F.3d 402, 403 (9th Cir. 2010).

Here, Solid State complied with the requirements of NRS 278.0235 in filing its Petition. The Petition eradicated civil claims and requests for damages, the City was served with the Petition pursuant to NRCP 4, and the filing fee Solid State did pay was greater in amount than the filing fee required for a petition. Solid State did not file late as in *Peccole*, in violation of a Court Order as in *Turner*, with insufficient information as in *Picozzi*, or in such a way that warranted sanctions for litigation conduct as in *Adobe Systems* and *Ready Transportation*. None of the cases cited by the City indicate in any way that Solid State's Petition should be struck.

In fact, in Nevada, there is a "general tenet that 'time and manner' requirements are strictly construed, whereas substantial compliance may be sufficient for 'form and content' requirements." *Leven v. Frey*, 123 Nev. 399, 408, 168 P.3d 712, 718 (2007). The City hopes to impose a strict compliance standard on Solid State rather than a substantial compliance standard. Solid State should be

able to assert its property rights, however, and to object to decisions of the Henderson City Council regarding the CUP. By granting the City's Petition for Writ of Mandamus, the Court would ultimately prohibit Solid State from asserting those rights. On the other hand, by denying the City's writ request, this Court would preserve Solid State's rights and allow both parties to brief the case in the District Court pursuant to Nevada case law, allowing for substantial compliance in form and content matters.

D. Assignment to the Business Court Does Not Warrant a Dismissal.

Solid State's filing of its Petition in Business Court does not warrant the Petition's dismissal. Pursuant to EDCR 1.61(c)(3), "Any party aggrieved by designation of a case as a business matter may seek review by the business court judge within ten (10) days of receipt of the assignment of the case to a business court judge or within ten (10) days of filing a responsive pleading, whichever is later."

Here, the City has never requested a reassignment from Business Court. The City did not seek a review by the Business Court within ten (10) days of Assignment, nor did the City seek a review by the Business Court within ten (10) days of responding to Solid State's Opposition to the City's Motion to Strike. Instead, the City availed itself of the protections the Business Court offered, opposing Solid State's action in the Business Court without requesting reassignment, and even filing its own matter to dismiss Solid State's Petition for Judicial Review.

Moreover, in denying the City's Motion to Strike, the District Court granted the City the ability to request a re-assignment of the case, even though the City's time for requesting a review and reassignment had long-since passed. *See* Joint Appendix Volume II at 293, line 25; 294, lines 1-3. The City chose not to request

a re-assignment of the case, instead waiting for almost seven (7) months, as detailed above, to file its Petition for Writ of Mandamus.

The City's plodding behavior should not now be used as justification for striking Solid State's Petition and depriving it of being able to brief the District Court regarding property rights issues.

E. Solid State's Petition complies in time and manner requirements for judicial review.

The City takes issue with Solid State's alleged violations of EDCR 2.15, stating, "The NRCP matter. The EDCR matter. The NEFCR matter. And when a district court sits as appellate body, appellate rules matter." *See* Petition for Writ of Mandamus at 19. Solid State agrees that rules do matter, and Solid State has complied with the time and manner requirements of NRS 278.0235 in filing its Petition. In Nevada, time and manner requirements require strict compliance, whereas form and content requirement require substantial compliance. *Leven*, 123 Nev. at 408, 168 P.3d at 718 (2007).

Solid State's property rights should not be negatively impacted for any alleged failure in complying with the City's "vision" of filing a Petition for Judicial Review. *See* Petition for Writ of Mandamus at 18. Instead, Solid State should be allowed to appeal the City's actions regarding the CUP.

Pursuant to the Nevada Supreme Court, "Nevada's jurisprudence expresses a policy preference for merits-based resolution of appeals" *Huckabay Props. V. NC Auto Parts, LLC*, 130 Nev. 196, 209, 322 P.3d 429, 437 (2014). While the City points to the ruling in *Huckabay*, in which the Court dismissed appeals for appellate relief based on the parties' noncompliance with court rule and directive, the City misses the differences between the facts of this case in *Huckabay*.

Here, Solid State is not seeking appellate relief, but instead, relief at the District Court level. In choosing to deny the City's Motion to Strike, the District

Court surely considered its “need to manage” its own docket, and a need to maintain a manageable docket should not carry any weight here. *Id.* at 130 Nev. 198, 322 P.3d 431.

Furthermore, the appellants in *Huckabay* failed to timely file an appellate brief, pursuant to a schedule set by the Court. *Id.* at 130 Nev. 199, 322 P.3d. 431. Rather than dismiss their appeal out of hand, the Court extended the briefing schedule, twice, and warned that any further noncompliance would result in a dismissal. *Id.* Solid State, unlike in *Huckabay*, is not out of compliance with any Court order or directive, has not been untimely in its filings, and has not requested any special concessions from this Court.

As the Court in *Huckabay* attempted to preserve appellants’ claims by twice extending a due date for a brief, this Court should allow this case to be heard on its merits, pursuant to Nevada policy, and deny the City’s Petition for Writ of Mandamus.

IV. CONCLUSION

The City granted a CUP to a private entity but scheduled a hearing because not all issues had been resolved or addressed. In fact, there were four (4) additional hearings and the CUP was amended four (4) times. With each amendment the City failed to enforce compliance; thus, negatively affecting Solid State’s property rights. In its attempt to assert its rights and oppose the City’s behavior, Solid State filed its Complaint against the City and a Motion for Preliminary Injunction. In denying Solid State’s Motion for Preliminary Injunction, the District Court indicated Solid State had not yet exhausted all its legal remedies. With the final City action on August 8, 2019 (the last issuance of the CUP), Solid State’s legal remedies had been exhausted and it timely filed a Petition for Judicial Review, which the City motioned to Strike.

The Court denied the City's Motion to Strike, underscoring that Solid State had complied with time and manner requirements for filing the Petition, that striking the Petition could negatively affect Solid State's rights, and that the City could request the case be transferred to another department to ensure judicial review by another judge.

Rather than requesting the case be transferred, the City waited almost seven (7) months, and then filed the instant Petition for Writ of Mandamus, arguing that because Solid State had allegedly not complied strictly with rules for form and content, the District Court should have granted its Motion to Strike.

The City has not met its burden of proof demonstrating that a writ of mandamus is required, as the parties dispute the final nature of each amended version of the CUP, as the District Court was not clearly obligated to strike Solid State's Petition, as the City has other legal remedies, and as no important issue of law needs clarification by this Court.

This Court should deny the City's Petition for Writ of Mandamus, allowing the District Court to exercise its discretion and allowing Solid State to move forward with its objections to the City's behavior. The District Court did not err in its decision to deny the City's Motion to Strike, and its decision should be permitted to stand.

DATED this 15th day of October, 2020.

ERICKSON & WHITAKER PC

By: /s/ Brian C. Whitaker
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VERIFICATION

1. I verify that the facts stated in this Answer are true and correct to the best of my knowledge or based on information and belief. I make this verification because the relevant facts are largely procedural and within my knowledge as an attorney for Solid State Properties, LLC.

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

DATED this 15th day of October, 2020.

/s/ Brian C. Whitaker
Brian C. Whitaker (#2329)

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Answer complies with the formatting requirements of NRAP 21(d) because it conforms to NRAP 32(c)(2), which requires this Answer to Petitioner’s Petition for Writ of Mandamus be reproduced in the manner prescribed by NRAP 32(a)(1), (3), (4), (5), (6), and (8); that it contain a caption setting forth the name of the Court, the title of the case, the case number, and a brief title; and that if a cover is used, it must be white.

I hereby certify that this Answer 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 2019 in 14-point font, Times New Roman style.

2. I further certify that this Answer complies with the type-volume limitations of NRAP 32(a)(7) and NRAP 21(d) because, excluding the parts of the Answer exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 6,306 words.

3. Finally, I hereby certify that I have read this Answer, 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 Answer complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the Answer regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying Answer is not in conformity with the

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requirements of the Nevada Rules of Appellate Procedure.

DATED this 15th day of October, 2020.

ERICKSON & WHITAKER PC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Erickson & Whitaker PC and that on the 15th day of October, 2020, a copy of the foregoing **ANSWER TO PETITIONER'S 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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