

Case No. 81474

IN THE SUPREME COURT OF
THE STATE OF NEVADA

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

Petitioner,

vs.

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

Respondents

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

REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

HENDERSON CITY
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November 12, 2020

NRAP 26.1 DISCLOSURE STATEMENT

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

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

DATED this November 12, 2020.

CITY OF HENDERSON

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III. INTRODUCTION

The City's Petition for Writ of Mandamus ("Petition") presented three questions: (1) can Solid State initiate a new action seeking judicial review of the Henderson City Council's final action on August 5, 2019 (or other final actions dating back to 2017) within the pending Enforcement Case¹, which sought damages and injunctive relief for the City's alleged failures to enforce the conditions of the Coral Academy CUP?; (2) alternatively, and more generally, should petitions for judicial review concerning the review of a municipal body's final action be heard separately from other types of actions?; and (3) is it proper for a petition for judicial review to include what amounts to a memorandum of points and authorities, more than a hundred pages of exhibits, many of which were never before the Henderson City Council, and a request for hearing, none of which comports with process set forth in EDCR 2.15?

The City's Petition explained why the answer to each of these questions was no, and that as a result, the district court in this case abused its discretion when it failed to strike Solid State's improperly filed Amended Petition and/or its improper

¹ The term "Enforcement Case" used throughout this brief refers to the action initiated by Solid State against the City on February 4, 2019 in business court, (Case No. A-19-788817-B) through the Complaint set forth at JA001- 0234, in which Solid State sought damages, attorney fees, and an injunction against the City. The Enforcement Case concerned the City's enforcement of a conditional use permit (the "Coral Academy CUP") the City awarded to Solid State's neighbor, Eastgate, LLC ("Eastgate") in 2017.

contents. The City's Petition deals narrowly with the fatal flaw Solid State made when it filed the Amended Petition within the Enforcement Case in contravention of numerous court rules including the Nevada Rules of Civil Procedure.

Solid State's Answer² did not address any of the issues raised in the City's Petition. It did not cite a single case, statute, or rule, supporting the proposition that its Amended Petition was properly filed in the Enforcement Case. It did not cite any authority stating that a petition for judicial review should be filed and heard with another action. It did not defend the contents of the Amended Petition that do not comply with NRCP 8 or EDCR 2.15.

Instead, Solid State argues that this Court should not entertain the Petition and that the City had adequate relief absent a writ of mandamus. Solid State also attempts to manufacture an irrelevant factual dispute and expands on its prior misstatements and contradictory arguments about its Amended Petition, now asserting that it had been granted leave to file the Amended Petition which would replace the Complaint in the Enforcement Case.

Solid State never got to the issues in the Petition. As a result, this Court should issue a writ instructing the district court below to strike the Amended Petition or alternatively, its improper contents.

² The term "Answer" as used in this Reply refers to the Answer to Petitioner's Petition for Writ of Mandamus.

IV. SUMMARY OF FACTUAL AND LEGAL CORRECTIONS.

Solid State's Answer sets forth factual misstatements and assertions that are incorrect or unsupported by record citation, misinterpretations of orders that are irrelevant and not part of the limited record in this case, and inaccurate legal assertions. These issues will be addressed further in the body of the City's Reply but the following table summarizes some of the defects in Solid State's Answer:

Solid State's Inaccurate or Inconsistent³ Assertions.	The Accurate or Correct Assertion.
Inconsistency: Solid State contends that the City's issue with the Amended Petition was simply form and content and in its oral arguments at the district court said it knew the City would provide the record of proceedings, that it had not yet submitted its opening brief because it knew that further briefing was required, and that it knew it could not request a hearing as part of its petition. <i>See</i> Answer at p. 6; (<i>see</i> JA2 275, lns.14-25; JA2 276, lns. 1-5).	Correction: The primary issue in the City's Motion to Strike ⁴ and this Petition was the filing of the Amended Petition in the already existing Enforcement Case. (<i>See</i> JA2 239-243); <i>see also</i> Petition generally. Moreover, in its Opposition, Solid State argued that the form of its Amended Petition including its "memorandum of points and authorities", exhibits as the record, and its hearing request complied with EDCR 2.15 (<i>See</i> JA1 235 – 237).

³ Solid State's Answer and its district court oral arguments often directly contradict its Opposition to the City's Motion to Strike (Plaintiff's Opposition to Defendant's Motion to Strike Plaintiff's Amended Petition found at JA1 227 - 238 is referred to in this Reply as the "Opposition."). Such inconsistencies would never be permitted in appellate courts where arguments that belie the record and are raised for the first time in oral argument are rejected. *Quinn v. Eighth Judicial District Court in and for County of Clark*, 410 P.3d 984, 989, 134 Nev. 25, 32, n. 7 (2018).

⁴ Defendant City of Henderson's Motion to Strike Plaintiff Solid State Properties, LLC's Amended Petition for Judicial Review found at JA1 199 – JA1 226 is referred to in the Reply as the "Motion to Strike."

Solid State's Inaccurate or Inconsistent ³ Assertions.	The Accurate or Correct Assertion.
<p>Inaccuracy: Solid State attempts to impugn the City for the timing of the Petition following the Court's "December 18, 2019" decision, asserting the timing undermines the importance of the issue of law raised in the City's Petition and the need for clarification. <i>See Answer at 12-13.</i></p>	<p>Correction: First, the timing of the City's Petition has no effect on the importance of the issues raised therein. Second, the Court's "decision" was not made until the order on the Motion to Strike was entered on January 30, 2020. The City filed its Petition July 16, 2020. Between January 30, 2020 and July 16, 2020, the City's attorneys and staff were displaced from Henderson City Hall and were focused on the legal issues and urgencies that arose as the City of Henderson responded to the COVID-19 pandemic. During that period Solid State took no action or otherwise attempted to move the matter forward.</p>
<p>Inaccuracy: Solid State manufactures an irrelevant factual dispute attempting to preclude writ relief. <i>See Answer at p. 9(i)</i></p>	<p>The Petition asks the Court to resolve the issue of whether the Amended Petition was properly filed in the existing Enforcement Case and is not concerned with the question of what constitutes the City's final action. No factual issues are necessary to determine whether the Amended Petition complies with the relevant portions of the NRCP, EDCR, and or NEFCR.</p>

Solid State's Inaccurate or Inconsistent ³ Assertions.	The Accurate or Correct Assertion.
<p>Inaccuracy: Solid state erroneously argues that there was no clear authority compelling the district court to strike the Amended Petition. <i>See</i> p. 8 ¶ 3; pp. 10 -11.</p>	<p>Correction: NRCP 3 states that the filing of a complaint initiates an action and the advisory committee notes inform that: “As used in these rules, ‘complaint’ includes a petition or other document that initiates a civil action.” Thus, a petition initiates a new action. <i>See</i> ADKT 522 p.2. NRCP 4 states that a petition must be served along with a summons in one of the manners set forth in NRCP 4.1 - 4.4.⁵ NEFCR 9(a) states that that a petition and its required summons cannot be served through an EFS. Most courts examining the issue have determined that petitions for judicial review cannot be combined with other matters. <i>See</i> Petition pp. 13 -15 <i>see also Smith</i>, 950 P.2d at 283, 113 Nev. at 1348 (district court may have duty to strike improper pleading or document). <i>See also</i> Petition p. 16.</p>

⁵ NRCP 4.2(d)(3) specifically sets forth the procedure for serving political subdivisions like the City of Henderson: Any county, city, town, or other political subdivision of the State, and any public entity of such a political subdivision, must be served by delivering a copy of the summons and complaint to the presiding officer of the governing body of the political subdivision, or an agent designated by the presiding officer to receive service of process.

Solid State’s Inaccurate or Inconsistent ³ Assertions.	The Accurate or Correct Assertion.
<p>Inaccuracy: Solid State contends that the Amended Petition replaced the Complaint in the Enforcement Action. <i>See</i> Answer pp. 14, 16.</p>	<p>Correction: The Complaint is still pending in the Enforcement Case:</p> <p>“MR. KEMBLE . . . <i>there is an operative Complaint in this case.</i></p> <p>THE COURT: I don’t disagree with you on that. I’m not disagreeing.” (JA2 293, lns. 14-17.). (emphasis added).</p> <p>Solid State also admitted at the hearing that the Complaint in the Enforcement Case is still pending when it served its purposes to oppose the City’s arguments concerning service:</p> <p>“In February of this year, they were served with the Complaint, the original Complaint. And then they were also served with the Motion for Preliminary Injunction. <i>And all those matters are still pending.</i>” (JA2 279, lns. 16-19.). (emphasis added).</p> <p>No order in this case has disposed of the Complaint in the Enforcement Case.</p>
<p>Inconsistency: Solid State conflicting argues the Amended Petition was a proper amendment to the Complaint in the Enforcement Case. <i>See</i> Answer pp. 14, 16., after arguing the reverse in its Opposition.</p>	<p>Correction: In its Opposition to the City’s Motion to Strike, Solid State argued: “Here, Solid State’s Amended Petition complies with <u>none</u> of the rules of an amended pleading . . .” (<i>see</i> JA1 231 – JA1 232) (emphasis added). But, at the district court hearing Solid State attempted to save the Amended Petition by changing its argument and stating that it was an amended pleading. (<i>See</i> JA2 279, lns. 22-25; JA2 280, lns. 1-3; JA2 292, lns. 8-13.).</p>

Solid State's Inaccurate or Inconsistent ³ Assertions.	The Accurate or Correct Assertion.
<p>Inaccuracy: Solid State misrepresents that the Court's March 5, 2019 order denying Solid State's request for injunctive relief in the Enforcement Case granted it leave to file a petition for judicial review within the already existing Enforcement Case. <i>See Answer</i> at p. 4, ¶ 4 referring to JA1 at 229, lines 13-14; p. 5 referring to JA1 at 230, lines 4-7. Solid State's Answer asserts on multiple occasions that it had been granted leave to amend its Complaint. <i>See Answer</i> p. 14, ¶ 2; p. 15, ¶ 3.</p>	<p>Correction: These contentions are false and unsupported by any meaningful citation to the record in this matter. The district court's March 5, 2019 order denying Solid State's request for an injunction against the City is not part of the record here.⁶ Solid State cites only its own arguments in a misguided attempt to convince this Court that the filing of the Amended Petition in the Enforcement Case was proper.</p>
<p>Inaccuracy: Solid State mistakenly offers that the City has an adequate remedy by simply asking the Chief Judge to reassign the improperly filed Amended Petition. <i>See Answer</i> p. 11-12.</p>	<p>Correction: A request for reassignment presumes and sanctions that the Amended Petition was properly filed in the first place. The Amended Petition was an improper filing. Defending and appealing an improper action initiated by an improper document or pleading is not an adequate remedy. <i>Smith v. Eighth Judicial Dist. Court In and For County of Clark</i>, 950 P.2d 280, 283, 113 Nev. 1343, 1348 (1997).</p>
<p>Inaccuracy: Solid State wrongly claims that it is improper to dismiss or strike an improperly filed document. <i>See Answer</i> pp. 15 – 16.</p>	<p>Correction: Where a document is improperly filed the district court may have a duty to strike it. <i>Smith</i>, 950 P.2d at 283, 113 Nev. at 1348; <i>see also</i> Petition at p. 16.</p>

⁶ The Joint Appendix in this matter is a “joint” appendix, agreed to by the parties prior to the filing of the City's Petition, and Solid State has not sought to supplement the Joint Appendix. Citations outside of the agreed upon appendix are improper. *State, Nevada Employment Sec. Dept. v. Weber*, 676 P.2d 1318, 1319, 100 Nev. 121, 123 (1984) (“Reference to matters outside the record is improper.”).

Solid State’s Inaccurate or Inconsistent³ Assertions.	The Accurate or Correct Assertion.
Inaccuracy: Solid State inaccurately contends that the issues raised in the City’s Petition are not important issues of law and are not of statewide importance. <i>See</i> Answer at 12-13.	Correction: Determination of the issues raised in the City’s Petition will inform petition filers, municipalities, and district courts throughout Nevada of the proper procedures and contents of petitions for judicial review so that these matters can be consistently determined by district courts and issues on appeal better framed for appellate courts. Thus, the issues in the City’s Petition are matters of statewide importance. <i>Lorton v. Jones</i> , 322 P.3d 1051, 1053, 130 Nev. 51, 54 (2014).
Inaccuracy: Solid State incorrectly claims that the Amended Petition was served pursuant to NRCP 4. <i>See</i> Answer p. 16 ¶ 2.	Correction: NRCP 4 requires the issuance of a summons and service through one of the means provided in NRCP 4.1 (waiving service), 4.2 (personal service), 4.3 (service outside Nevada, or 4.4 (alternative service). Solid State has not and cannot cite to a summons issued with the Amended Petition, and has not and cannot produce evidence of service that complies with NRCP 4.1 - 4.4. (Specifically NRCP 4.2(d)(3).)
Inaccuracy: Solid State mistakenly claims it paid a filing fee for the Amended Petition. <i>See</i> Answer p. 16 ¶ 2.	Correction: Solid State paid a filing fee when it filed the Enforcement Complaint (<i>see</i> JA2 264-265 (noting payment on 02/05/2019) but paid no filing fee when it filed the Amended Petition.

V. ARGUMENT

A. Writ Relief is Appropriate.

Solid State’s Answer contends this Court should not entertain the City’s

Petition because: 1) there is an alleged factual dispute; 2) there was no clear authority compelling the district court to grant the City's Motion to Strike; 3) the City has an adequate remedy other than writ relief; and 4) the City's Petition does not raise an important issue that requires clarification. *See Answer pp. 9-13.* Each contention is incorrect.

1. No Factual Dispute Prevents Writ Relief.

The City's Petition raised only three issues: (1) did Solid State improperly attempt to initiate a new action by filing file the Amended Petition in the already existing Enforcement Case?; (2) relatedly, is it ever proper to combine an action for damages and other relief brought through a complaint with an action brought through a petition for judicial review; and/or (3) should the district court have stricken the portions of Solid State's Amended Petition that did not comply with EDCR 2.15? All the factual issues required to resolve these issues are contained in the docket and filings in this case.

It is not in dispute that Solid State initiated an action, the Enforcement Case, by filing a complaint seeking damages and injunctive relief for the City's alleged failure to enforce the Coral Academy CUP issued in 2017. (*See* JA1 001 -034; JA2 264-265). It is not in dispute that seven months later Solid State filed the Amended Petition in the Enforcement Case attempting to initiate an action for judicial review. (*See* JA1 035-198; JA2 264-265). Nor is it disputed that the Amended Petition

contains a factual statement, a standard of review, a legal argument, and more than a hundred pages of exhibits. (*See* JA1 035-198). These are the only facts relevant to deciding the City’s Petition.

Solid State’s manufactured dispute about the proper scope of the Amended Petition does not prevent this Court from determining whether electronically filing the Amended Petition in the seven-month-old Enforcement Case complies with the Nevada Rules of Civil Procedure, the Eighth Judicial District Court Rules, or the Nevada Electronic Filing and Conversion Rules.

This Court does not need to resolve the scope of the Amended Petition to determine that a complaint initiates an action, and a petition for judicial review initiates another action under NRCP 3.⁷ This Court does not need to know the scope of the Amended Petition to know that it was not served with a summons on the City in compliance with NRCP 4⁸ and that attempted service through an electronic filing system (EFS) was improper under NEFCR 9(a)⁹. The Court does not need to resolve

⁷ NRCP 3: “A civil action is commenced by filing a complaint with the court.” The Advisory Committee Notes clarify that the term “complaint” used in NRCP 3 “includes a petition or other document that initiates a civil action.” *See* ADKT 522 p. 2.

⁸ NRCP 4 (c)(2): A summons must be served with a copy of the complaint. The plaintiff must furnish the necessary copies to the person who makes service. *See* also NRCP 4.1 - 4.4 setting forth methods of service.

⁹ NEFCR 9(a): “Service of documents through an EFS is limited to those documents served electronically under JCRCP 5, NRCP 5, or NRAP 25, as applicable. A summons and a complaint, petition, or other document that must be served with a summons, served under JCRCP 4 or NRCP 4, or a subpoena, served under JCRCP 45, NRCP 45, or any statute, cannot be served through an EFS.

any factual issue to know that no filing fee was paid (*see* JA2 264-265) when the Amended Petition was filed and that the Amended Petition was not randomly assigned pursuant to EDCR 1.60(a) and/or EDCR 1.62(a).¹⁰ Thus, Court may determine the City's Petition and issue an appropriate writ.

This case falls squarely under *Smith v. Eighth Judicial Dist. Court In and For County of Clark*, 113 Nev. 1343 (1997) cited by both parties as controlling authority. *See* Petition p. 11; Answer pp. 8,9,10, 11, 12. In *Smith*, this Court entertained a writ petition seeking relief after the district court denied plaintiff's motion to dismiss an improperly filed cross-claim in a pending action. 950 P.2d at 281, 113 Nev. at 1344. The Court determined that filing a cross-claim outside of an answer was improper, was not a mere technical defect¹¹, and the Court issued a writ instructing the district court to vacate and reconsider its order. *Id.* at 950 P.2d at 283, 113 Nev. at 1348. The Court also noted that the district court might have a duty to strike the improper cross-claim. *Id.*

Here, the Amended Petition was improperly filed in the Enforcement Case

¹⁰ EDCR 1.60(a): “. . . Unless otherwise provided in these rules, all cases must be distributed on a random basis . . .”; EDCR 1.62(a) “. . . Civil cases shall be assigned randomly to the balance of full-time civil judges not designated business court judges . . .”

¹¹ The City is not attempting to capitalize on a technical defect here. The City understand technical defects and humbly admits to its own in this case as it supplements its Petition with the documents pursuant to NRAP 21(a)(1), notwithstanding the fact that it has already provided notice to all the parties through a stipulation entered into by the parties in the district court on July 21, 2020.

and among other defects, was not properly served on the City. This is no technical defect, it goes to the heart of the rules of civil procedure that spell out how actions are commenced, served, and how they are distributed for determination. Therefore, the Court should issue a writ like the one in *Smith* instructing the district court to vacate its prior order and strike the Amended Petition.

2. Clear Authority Compelled the District Court to Strike the Amended Petition.

As set forth above, NRCP 3, NRCP 4, EDCR 1.60(a) and 1.62(a), and NEFCR all provided bases for striking the Amended Petition. Solid State failed to set forth any reason why such authority was not controlling. Also, it may be—and in this case is—the district court’s duty to strike an improperly filed document or pleading. 950 P.2d at 283, 113 Nev. at 1348.

3. The City Has No Adequate Remedy Other Than Writ Relief.

Solid State contends that the City has an adequate remedy other than writ relief because the district court permitted the City to ask the district court to reassign the matter. *See Answer* p. 11. Solid State is incorrect. The City’s arguments concerning random assignment are meant to show just one of the many ways that filing the Amended Petition within the Enforcement Case violates procedural and court rules. However, post-filing reassignment does not fix the problems with the Solid State’s filing – it sanctions them.

Solid State initiated a new action when it filed the Amended Petition, and

many other requirements of initiating an action needed to be met besides an initial random assignment. Solid State needed to pay the filing fee for commencing a new action, a summons needed to be issued and served on the City along with a proper petition. These violations are distinct from the ultimate issue about whether the Amended Petition should be heard with the Enforcement Case, or generally can be heard with any other type of action.

In any event, if the City's Petition is correct, allowing the improperly filed Amended Petition will force the City to conduct unnecessary litigation and appeal this issue after the matter is decided if this Court does not entertain the writ and grant relief. Again, the parties' jointly cited authority, *Smith*, supports the City's position that seeking reassignment is an inadequate remedy. Where the district court should have dismissed or stricken an improper document or pleading, forcing a party to defend the action initiated by the improper pleading and waiting to appeal a final judgment is an inadequate remedy, and writ relief is appropriate. *Smith*, 950 P.2d at 283, 113 Nev. at 1348. Thus, this Court should issue a writ instructing the district court to strike the Amended Petition.

4. The Issues Presented in the City's Petition Are Important Issues of Law that Require Clarification and Are of Statewide Importance.

Even if Solid State were correct about a possible factual dispute, or that there was no law compelling the district court to act, or that the City had an adequate remedy other than writ relief, this Court can—and should—entertain the City's

Petition to clarify an important issue of law that has statewide impact. *Smith*, 950 P.2d at 281, 113 Nev. at 1345 (stating that clarifying important issues of law provides an additional ground for writ review).

“[E]ven when a legal remedy is available, this court may exercise its discretion to consider a writ petition when the petition presents a legal issue of statewide importance that needs clarification, and principles of judicial economy and public policy weigh in favor of considering the petition.” *Lorton v. Jones*, 322 P.3d 1051, 1053, 130 Nev. 51, 54 (2014). In *Lorton*, this Court entertained and granted a writ petition seeking clarification of Nevada’s term limits because of the importance of clarifying an issue that had the potential to impact multiple municipal elections reasoning:

Beyond determining whether Sferrazza and Dortch are eligible for the position of Reno mayor, resolution of this petition will also help define the parameters of Article 15, Section 3(2), so that future potential candidates and challengers will be able to understand the provision’s effect and the district courts will be able to apply an established interpretation of the provision to any factual disputes that may arise with regard to a specific candidate’s eligibility, not only in Reno, but in any city where the government is structured such that the mayor is a member of the city council.

Id. at 322 P.3d at 1053, 130 Nev. at 55.

Petitions for judicial review challenging county and municipal body decisions are filed, or can be filed, in every district court in Nevada. The same is potentially true of actions seeking damages resulting from the award or denial of a

permit by one of those bodies. As in *Lorton*, providing clarity about the proper procedure and requirement for filing petitions for judicial review, whether they can be combined with other actions, and their appropriate contents is of statewide importance. It will allow petition filers, municipal bodies, and courts to understand how, where, and what to file in a petitions so that they can be more efficiently determined at the district court level and better presented for appellate review. *Lorton*, at 322 P.3d at 1053, 130 Nev. at 55.

Without addressing the substance of these issues raised in the Petition, Solid State argues that the issues raised in the Petition concerning the filing and contents of petitions for judicial review are not important issues of law in need of clarification, summarily concluding: “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.” *See* Answer p 12, ¶ 3. Solid State does not explain or otherwise support this incorrect assertion. Thus, this Court should entertain the City’s Petition and issue a writ instructing the district court to strike the Amended Petition or alternatively, its offending contents.

B. Solid State’s Arguments That the Amended Petition Replaced the Enforcement Complaint are Incorrect and Raise Another Potential Serious Error.

In its Opposition before the district court Solid State was unable to refute the core arguments raised in the City’s Motion to Strike – that the Amended Petition

could not be filed in the existing Enforcement Case and its contents were improper. Instead, at the hearing before the district court Solid State argued directly contrary to its Opposition. Solid State told the district court that the Amended Petition was an amendment that replaced the Enforcement Case. (See JA2 279, ln. 22 – JA2 280, ln. 6). It made this argument to the district court despite having spent pages arguing that the Amended Petition was not an amended pleading, setting forth the requirements for an amended pleading, and emphasizing that “Solid State’s [Amended] Petition *complies with none of the rules for an amended pleading* as it was not refiled, was not preceded by any motion to amend, and does not denote ‘whether it is the first, second, third, etc. amended pleading’” see JA1 231 – JA1 232). (emphasis added). In its Answer, Solid State calls and raises its self-conflicting arguments by asserting that it had been granted leave to file the Amended Petition. See Answer p. 14, ¶ 2; p. 15, ¶ 3. Solid State does so without citing any order granting such leave, and even though it never sought leave from the Court to amend the Complaint in the Enforcement Case. There is no such order (see JA2 264 – 265) and Solid State admitted in its Opposition that it never sought leave from the district court to amend the Complaint in the Enforcement Case with the Amended Petition (See JA1 231 – JA1 232).

If this Court were to accept Solid State’s argument that the district court ruled that the Amended Petition replaced the Enforcement Complaint pursuant to a proper

amendment that determination raises another potential error by the district court – allowing an amended pleading where Solid State admitted, indeed argued in its written papers, that the Amended Petition complies with none of the rules of an amended pleading.

Moreover, both Solid State and the district court confirmed that the Enforcement Case Complaint is still pending.¹² Further, the Enforcement Case and the Amended Petition are not only procedurally different actions, they are also different cases altogether. The Enforcement Case concerns Solid State’s claims that the City improperly enforced certain conditions that related to the CUP as it was issued in 2017 and amended thereafter. (*See* JA1 001 - 034). Its Complaint alleges that the City “abused its discretion” in how it was enforcing the conditions against Eastgate 7777 and Coral Academy. (*Id.*)

Even under Solid State’s view the Amended Petition concerns whether the City lacked substantial evidence to approve the Coral Academy CUP and incorporates every hearing concerning the Coral Academy CUP from its issuance in

¹² MR. KEMBLE . . . *there is an operative Complaint in this case.*

THE COURT: I don’t disagree with you on that. I’m not disagreeing.” (JA2 293, lns. 14-17.). (emphasis added).

Solid State also argued: “In February of this year, they were served with the Complaint, the original Complaint. And then they were also served with the Motion for Preliminary Injunction. *And all those matters are still pending.*” (JA2 279, lns. 16-19.). (emphasis added).

2017 through the most recent meeting concerning it on August 5, 2019. (*See* JA1 035 - 055). Despite attempting to incorporate everything since the Coral academy CUP was first granted in 2017, the Amended Petition focuses on the placement of a traffic median, among other alleged impositions that Solid State did not mention in the Complaint in the Enforcement Case. (*Id.* at 050-053). This makes sense because Solid State was complaining about the City's alleged lax enforcement of the conditions that applied to Eastgate 7777 and its tenant Coral Academy in the Enforcement Case. The traffic median and most of the other grievances in the Amended Petition are, according to Solid State, impositions on its property rights that were not supported by substantial evidence. (*Id.*) Thus, the Amended Petition was neither procedurally nor substantively a continuation of the Enforcement Action. It was for reasons known only to Solid State, an attempt to avoid the impact of filing a new action. Consequently, it was an abuse of discretion not to strike it and this Court should issue a writ directing the district court to correct that error.

C. Solid State Does Not Even Attempt to Address the Contents of Its Deficient Amended Petition.

The process for filing and hearing a petition is entirely outlined in EDCR 2.15:

Rule 2.15. Petitions for judicial review other than pursuant to the Nevada Administrative Procedure Act.

(a) A petitioner seeking judicial review under authority other than NRS 233B must serve and file a memorandum of points and authorities in support thereof within 21 days after the record of the proceeding under review has been filed with the court.

(b) The respondent must serve and file a memorandum of points and authorities in opposition thereto within 21 days after service of petitioner's points and authorities.

(c) Petitioner may serve and file reply points and authorities not later than 7 days after service of respondent's opposition.

(d) After petitioner's time to reply has expired, either party may serve and file a notice of hearing setting the petition for hearing on a day when the judge to whom the case is assigned is hearing civil motions, and which is not less than 7 days from the date the notice is served and filed.

(e) All memoranda of points and authorities filed in proceedings involving petitions for judicial review must be in the form provided for appellate briefs in Rule 28 of the Nevada Rules of Appellate Procedure.

(f) Rules 2.22 through 2.28 apply to the hearing of petitions for judicial review.

While it spent significant time defending the contents of the Amended Petition in its Opposition to the City's Motion to Strike in the district court (*see* JA 235 – 236), Solid State makes little effort to defend the contents of the Amended Petition in its Answer. Where it once asserted it could file the record of proceedings and that its exhibits were the record, it now says nothing (*see* JA1 236). Where Solid State once asserted that it correctly “submitted its memorandum of points and authorities in support of its Petition” as part of the Amended Petition (*see* JA1 236) – silence. There now appears to be no dispute about the impropriety of the contents of the Amended Petition. At the least, the Court should issue a writ instructing the district court to strike the offending sections of the Amend Petition including the “memorandum of points and authorities”, the exhibits, and the request for hearing.

VI. CONCLUSION

The City's Petition is proper. There are no genuine factual disputes between the parties preventing determination by this Court. Clear authority compelled the district court to strike the Amended Petition and the City has no adequate remedy besides writ relief. Even if this were not the case, the issues raised in the City's Petition are issues of law that require clarification and are of statewide importance. Deciding the issues concerning the filing and contents of petitions for judicial review will provide clarity and consistency to petition filers, government bodies and district courts, and public policy favors doing so. As a result, the Court can and should entertain the City's Petition.

Solid State does not dispute the issues in the City's Petition on any substantive grounds, instead it argues that the Amended Petition was an amended pleading that replaced the Complaint in the already pending Enforcement Case despite the fact that Solid State admitted it was not an amended pleading and that it included a memorandum of points and authorities in its Opposition filed in the district court.

Petitions for judicial review initiate new actions. They should not be filed in existing actions. They must comply with the Nevada Rules of Civil Procedure and other court rules governing the filing of new actions—Solid State's Amended Petition did not. As a result, the district court had a duty to strike the Amended Petition and it abused its discretion in failing to do so. This Court should issue a writ

instructing the district court to vacate its prior order and enter a new one granting the City's Motion to Strike and/or otherwise instructing it to strike the Amended Petition.

Finally, at a minimum, this Court should take the opportunity to clarify the process and contents of a proper writ. That clarification should begin with a writ instructing the district court to strike the portions of Solid State's brief that offend EDCR 2.15 – specifically the “memorandum of points and authorities” in support of its petition. Further, the Court should make clear that the municipal body submits the record of proceedings, not the party filing the petition and not through more than a hundred pages of exhibits. This Court should enter a writ instructing the district court to strike the exhibits attached to the Amended Petition.

DATED this 12th day of November 2020.

CITY OF HENDERSON

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point font, Garamond style. I further certify that this brief complies with the type-volume limitation of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 5,663 words.

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

conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 12th day of November, 2020.

CITY OF HENDERSON

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Henderson City Attorney's Office, and that on November 12, 2020, a copy of the foregoing Reply in Support of 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 electronic mail as follows:

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