

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 MARY LOU MCSWEENEY-WILSON,

4 Petitioner,

5 vs.

No. 82806

7 District Court No. 20 OC 000051E

8 STOREY COUNTY COMMISSIONERS AND
9 STERICYCLE, INC.,

10 Respondents.

11
12 EXHIBITS IN SUPPORT OF PETITION FOR
13 WRIT OF MANDAMUS OR PROHIBITION
14 VOLUME VI

15
16 MARY LOU MCSWEENEY-WILSON
17 Attorney At Law, Bar #3329
18 132 Rue De La Noir
19 Sparks, Nv. 89434
20 775-771-8620

KEITH LOOMIS
Assistant District Attorney
201 S. C. Street
Virginia City, Nevada 89440

21 STERICYCLE, INC.
22 c/o McDonald/Carano
23 Michael Pagni and Chelsea
24 Latino
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Reno, Nevada 89501

Attorney for Appellant

Attorneys for Respondents

Electronically Filed
Jun 10 2021 06:04 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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Docketing Statement,1251-1258

3. At a regular meeting of the Storey County Board of Commissioners ("Board") on August 18, 2020, the Board approved Stericycle's SUP Application. *See* Pet. at Ex. 1 pp. 1, 7-12.

4. Petitioner Mary Lou McSweeney-Wilson concedes she did not appear in opposition of Stericycle's SUP Application at either the July 16, 2020 or August 6, 2020 Planning Commission meeting, did not appeal the decision of the Planning Commission to the Board, and did not appear in opposition of Stericycle's SUP Application at the August 18, 2020 Board meeting. *See* Pet. at 16-17.

5. On September 10, 2020, Petitioner filed a *Petition for District Court Review of Storey County Commissioners Vote to Permit Stericycle's Special Use Permit, In Violation of Public Health, Safety, and Welfare* ("Petition"). Petitioner seeks judicial review of the Board's decision with respect to Stericycle's SUP Application and requests that the Court "rescind" approval of the same under NRS 278.3195 and NRS 278.0235.

6. After intervening, Stericycle moved to dismiss the Petition for, among other things, lack of standing under NRS Chapter 278.

LEGAL ANALYSIS

NRS 278.3195(1) requires local governments to adopt an ordinance allowing "any person who is aggrieved by a decision" of a planning commission created under NRS 278.030 or "other person appointed or employed by the governing body who is authorized to make administrative decisions regarding the use of land" to "appeal the decision to the governing body." NRS 278.3195(1)(a), (d). After the governing body renders its decision in an administrative appeal, judicial review is available to a limited category of persons, as follows:

Any person who:

(a) Has appealed a decision to the governing body in accordance with an ordinance adopted pursuant to subsection 1; and

(b) Is aggrieved by the decision of the governing body, may appeal that decision to the district court of the proper county by filing a petition for judicial review within 25 days after the date of filing of notice of the decision with the clerk or secretary of the governing body, as set forth in NRS 278.0235.

NRS 278.3195(4).

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Accordingly, NRS 278.3195(4) affords a limited right to request judicial review of final local zoning and land use planning decisions only to a person who (1) has filed an administrative appeal and (2) is aggrieved by the administrative decision. *See Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 804 (2006) (“NRS 278.3195(4) is clear and unambiguous, and thus, we follow its plain meaning.”); *see also City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 270, 236 P.3d 10, 15 (2010) (acknowledging that “the express language in NRS 278.3195(4) . . . sets forth that a person who administratively appeals a zoning decision under the applicable ordinance to the governing board and is aggrieved by the board’s decision may appeal by timely filing a petition for judicial review in district court”); Storey County Code of Ordinances (“SCC”) § 17.03.130(B)(1) (defining “aggrieved party . . . as a person with a legal or equitable interest in the property affected by the final decision or property located within the notice area of the property that is entitled by law to notice”); NRS 278.315(3)(b)-(c) (requiring notice be sent to owners and certain tenants of property “located within 300 feet of the property in question”).

Here, on the face of the Petition, Petitioner concedes she did not appeal the decision of the Planning Commission to the Board as required under NRS 278.3195(4)(a). In addition, despite alleging a generalized interest in protecting the “the health, safety, and welfare” of Storey County and “its surrounding areas” from “potential” adverse affects of the Board’s decision approving Stericycle’s SUP Application, *see* Pet. at 17-18, Petitioner cannot establish she is aggrieved by that decision as required under NRS 278.3195(4)(b) because it is undisputed that Petitioner has no “legal or equitable interest in the property affected by the final decision or property located within the notice area of the property that is entitled by law to notice.” SCC § 17.03.130(B); NRS 278.315(3). Thus, Petitioner lacks standing to petition for judicial review under the plain language of NRS 278.3195(4). *See Kay*, 122 Nev. at 1106, 146 P.3d at 806; *see also Holt-Still v. Washoe Cty. Bd. of Cty. Comm’rs*, No. 78784, 2020 WL 3570377, at *2 (Nev. June 30, 2020) (“Because appellants did not appeal to the governing body, the district court correctly concluded that they lacked standing to petition for judicial review.”).

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1 Accordingly, and good cause appearing,

2 **IT IS SO ORDERED** that Stericycle's Motion to Dismiss is GRANTED and the Petition
3 is dismissed WITH PREJUDICE.

4 **IT IS FURTHER ORDERED** that Stericycle shall serve a notice of entry of this order
5 on all other parties and file proof of such service within 7 days after this order is sent.

6 Dated this 12th day of March, 2021.

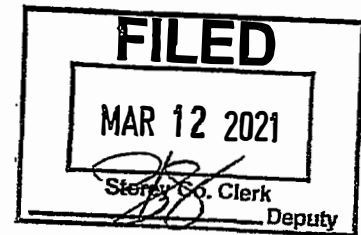
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9 DISTRICT COURT JUDGE

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20 Respectfully submitted by: _____

21 /s/ Chelsea Latino

22 Michael A.T. Pagni (NSBN 6444)
23 Chelsea Latino (NBSN 14227)
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Attorneys for Respondent Stericycle, Inc.



IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF STOREY

MARY LOU MCSWEENEY-WILSON,
Petitioner,

vs.

STOREY COUNTY COMMISSIONERS,
STERICYCLE, INC.

Respondents.

Case No. 20 OC 00005 1E

Dept. No. 1

ORDER OF DISMISSAL

This case arises out of the filing by Petitioner Mary Lou McSweeney-Wilson (Wilson) of a pleading entitled **Petition for District Court Review of Storey County Commissioners Vote to Permit Stericycle's Special Use Permit, In Violation of Public Health, Safety, and Welfare** (hereafter Petition). Both the Storey County Commissioners and Stericycle Inc. have moved to dismiss the Petition on the ground that Petitioner lacks standing to seek review of the decision of the Board of County Commissioners granting Stericycle Inc. a special use permit. The Court agrees and will subsequently expand upon the reason for that opinion.

Preliminarily, there is a pending motion for reconsideration of this court's order granting a motion to correct the caption of this case. The court's order removed two fictitious entities as plaintiffs in this case, i.e., Storey County Residents and Homeowners

1 of Rainbow Bend Community as well as an et al designation following petitioner's name.
2 A motion for reconsideration can be made if the court overlooked or misunderstood a
3 material fact, or overlooked, misunderstood, or misapplied law that directly controls a dispositive
4 issue. FJDCR 3.13(1). Petitioner contends that because she has recently discovered an actual
5 Storey County resident and a homeowner within Rainbow Bend, that she would like to include as
6 plaintiffs, that the order granting correction of the caption should be reconsidered. Such a
7 contention does not demonstrate a misunderstanding or the overlooking of a material fact, nor
8 does it demonstrate the overlooking, the misunderstanding or the misapplication of law.
9 Accordingly, that motion is denied.

10 That leaves the court with the substantive issue of Petitioner's standing to seek review of
11 the Board decision to issue a special use permit to Stericycle Inc. NRS 278.3195(1) a party
12 aggrieved by a decision of the planning commission, may appeal the decision to the governing
13 body. Under NRS 278.3195(4) any person who has appealed the decision to the governing body
14 and is aggrieved by the decision of the governing body may appeal that decision to the district
15 court by filing a petition for judicial review. While the Legislature has defined whom is an
16 aggrieved party to mean a person who appeared in person or through an authorized
17 representative or in writing before e.g., a planning commission in counties whose population is
18 700,000 or more, it has not provided a similar definition for counties with a lesser population. In
19 *City of Las Vegas v. Eighth Judicial District Court*, 122 Nev. 1197, 1206 (2006) the court
20 explained that the Legislature did not define "aggrieved" for appeals in smaller counties
21 in order to allow ordinances adopted pursuant to NRS 278.3195(1) to address who may
22 appeal from a planning commission decision. In Storey County, the Planning
23 Commission is advisory only to the Board and does not make decisions other than to
24 recommend approval or denial of an application. Decisions are made by the Board.
25 Planning staff has some authority to make final decisions. See Storey County Code
26 (hereafter SCC) Section 17.03, 110. In order to appeal a staff decision, the aggrieved
27 party must have participated in the administrative process. SCC 17.030.130(B)(1). In
28 *Holt-Still v. Washoe Cty. Bd. Of Cty. Comm'rs*, 2020 Nev. Unpub LEXIS 649, the Court

1 held that under NRS 278.3195(4) an aggrieved party must have appealed to the governing
2 body and be a party aggrieved by the governing body's decision. Again, participation in
3 the administrative process is required. In *Kay v. Nunez*, 122 Nev. 1100 (2006) an
4 appellant clearly had standing where he appealed a decision of the planning commission
5 to the governing body and then filed a petition for judicial review challenging the
6 governing body's decision. In all these cases and statutes and ordinances some
7 participation in the process was required. In this case there is no allegation of any
8 participation in the proceedings by Ms. Wilson and she has essentially acknowledged that
9 she did not participate in any of the proceedings for which she now seeks judicial review.
10 For that reason, Petitioner lacks standing to seek review of the Board's decision to issue a
11 special use permit to Stericycle Inc. Accordingly the Petition for Review is dismissed.

12 Mr. Loomis shall serve a notice of entry of this order on all other parties and file
13 proof of such service within 7 days after the date the court sent the order to the attorney.

14 IT IS SO ORDERED.

15
16 DATED this 12th day of March, 2021.

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18 
DISTRICT COURT JUDGE

19
20 Submitted this 11th day of March, 2021.

21 By _____
22 Keith Loomis Chief Deputy District Attorney for Storey County
23 201 South C Street/Post Office Box 496, Virginia City, NV 89440
24 Telephone (775) 847-0964
e-mail kloomis@storeycounty.org

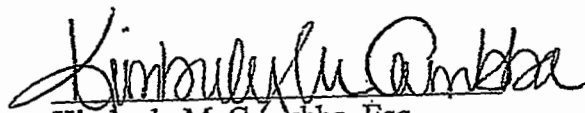
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 12th day of March, 2021, I served the foregoing Order by depositing a copy thereof in the United States Mail at Carson City, Nevada, postage paid, addressed as follows:

Anne Langer, District Attorney
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Storey County
201 S. C St.
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Mary Lou McSweeney-Wilson, Esq.
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Kimberly M. Carrubba, Esq.
Law Clerk, Dept. 1

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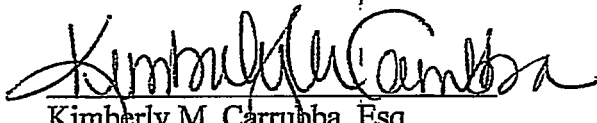
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Tracie Lindeman
Clerk of the Nevada Supreme Court
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