

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARY LOU MCSWEENEY-WILSON,

Appellant/Petitioner,

vs.

No. 82806

Electronically Filed
Jun 14 2021 08:07 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

District No. 20OC000051E

STOREY COUNTY COMMISSIONERS
AND STERICYCLE, INC.,

Respondents.

APPELLANT OPENING BRIEF

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

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

STERICYCLE, INC.
c/o McDonald/Carano
Michael Pagni and Chelsea Latino
100 W. Liberty St.
10th Floor
Reno, Nevada 89501

Attorney for Appellant

Attorneys for Respondents

1	TABLE OF CONTENTS,i
2	TABLE OF AUTHORITIES,ii, iii, iv
3	STATEMENT OF ISSUES PRESENTED FOR REVIEW,4
4	STATEMENT OF THE CASE,4
5	STATEMENT OF THE FACTS,9
6	LEGAL ISSUES, 12, 20, 32
7	
8	<u>ISSUE 1</u> -Whether the Nevada Governor’s Executive Order suspending the Open
9	Meeting Law requirement for three (3) physical postings in three (3) locations
10	within Storey County and the Order to Stay at Home during the worldwide
11	COVID-19 pandemic created a Due Process violation under the United States and
12	Nevada Constitutions?12
13	<u>ISSUE 2</u> -Whether Appellant/Petitioner had standing to bring a Petition for Judicial
14	Review of the County Commissioners vote to approve a special use permit for
15	Stericycle, Inc., a biohazardous medical waste incineration plant, when she and
16	other Storey County Residents did not receive Notice of the Agendas?.....20
17	<u>ISSUE 3</u> -Whether Appellant/Petitioner could satisfy the standing requirement if
18	representing Phillip Hilton, Rainbow Bend resident and Sam Toll, Gold Hill
19	resident, both Storey County residents, if they satisfied NRS 278.3195(4)?32
20	CONCLUSION.....40
21	
22	
23	
24	
25	

TABLE OF AUTHORITIES

<i>Action Apartment Ass'n, Inc. v. Santa Monica Rent Control Bd.</i> , 509 F.3d 1020, 1026 (9th Cir.2007),	27, 30
<i>Agudath Isr. of Am. v. Cuomo</i> , 983 F.3d 620 (2nd Cir. 2020),	21
<i>Attorney General v. Nevada Tax Comm'n</i> , 181 P.3d 675, 124 Nev. 232 (Nev. 2008),	24
<i>Brittain v. Hansen</i> , 451 F.3d 982, 991 (9th Cir.2006),	27, 30
<i>Buzz Stew. LLC v. City of N. Las Vegas</i> , 124 Nev. 224, 228, 181 P.3d 670, 672 (2008),	12
<i>Capp v. Cnty. of San Diego</i> , 940 F.3d 1046 (9th Cir. 2019),	21, 26
<i>Christensen v. Yolo County Bd. of Sup'rs</i> , 995 F.2d 161 (9th Cir. 1993),	29
<i>City of Las Vegas v. Macchiaverna</i> , 99 Nev. 256, 257, 661 P.2d 879, 880 (1983),	24
<i>Cnty. of Sacramento v. Lewis</i> , 523 U.S. 833, 845–49, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998),	27, 30
<i>Desrosiers v. Governor</i> , 486 Mass. 369, 158 N.E.3d 827 (Mass. 2020),	22
<i>Halverson v. Skagit County</i> , 42 F.3d 1257 (9th Cir. 1995),	29
<i>Harris v. County of Riverside</i> , 904 F.2d 497, 502 (9th Cir.1990),	29
<i>Henning Jacobson v. Commonwealth of Massachusetts</i> , 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643, 3 Ann.Cas. 765 (1905),	22
<i>Hodel v. Va. Surface Mining & Reclamation Ass'n</i> , 452 U.S. 264, 302, 101 S.Ct. 2352, 69 L.Ed.2d 1 (1981),	27
<i>Humboldt River Ranch Ass'n v. Pershing Cnty. Bd. of Comm'rs</i> , 381 P.3d 622(Table) (Nev. 2012),	12

1	<i>Kay v. Nunez</i> , 146 P.3d 801, 805 (Nev. 2006),	26
2	<i>Li v. Ruiz</i> , 922 F.2d 844 (9th Cir. 1990),	28
3	<i>Marsh v. Cnty. of San Diego</i> , 680 F.3d 1148, 1154 (9th Cir.2012),	28, 31
4	<i>McKay v. Board of Sup'rs of Carson City</i> , 730 P.2d 438,	
5	102 Nev. 644 (Nev. 1986),	24
6	<i>Nasierowski Bros. Inv. Co. v. City of Sterling Heights</i> ,	
7	949 F.2d 890, 896 (6th Cir.1991),	29
8	<i>Nunez v. City of Los. Angeles</i> , 147 F.3d 867, 871 (9 th Cir. 1998),	21, 26, 28, 31
9	<i>Portland Audubon Soc'y v. Endangered Species Comm.</i> ,	
10	984 F.2d 1534, 1548 (9th Cir. 1993),	26
11	<i>Recchia v. City of L. A. Dep't of Animal Servs.</i> ,	
12	889 F.3d 553 (9th Cir. 2018),	27
13	<i>Sanchez v. Wal-Mart Stores</i> , 125 Nev. 818, 823,	
14	221 P.3d 1276, 1280 (2009),	12
15	<i>Soranno's Gasco, Inc. v. Morgan</i> , 874 F.2d 1310, 1318 (9th Cir. 1989),	27
16	<i>Sylvia Landfield Trust v. City of L.A.</i> (9th Cir. 2013),	31
17	<i>Village of Euclid v. Ambler Realty Co.</i> , 272 U.S. 365, 395,	
18	47 S.Ct. 114, 121, 71 L.Ed. 303 (1926),	29
19	<i>Vincent Gillespie & Another 1 v. City of Northampton</i> ,	
20	460 Mass. 148, 950 N.E.2d 377 (Mass. 2011),	22
21		
22		
23	<u>STATUTES</u>	
24	NRAP 17 (a) (11),	3
25	NRAP 17 (a) (12),	3

1	NRS Chapter 241,26
2	NRS 241.010,16
3	
4	NRS 241.020,16, 20, 21
5	NRS 241.020(1),24
6	NRS 241.020(3),23
7	
8	NRS 278.0235,20, 34
9	NRS 241.036,19
10	NRS 241.0365,17
11	NRS 278.3195(4)(b),.....2, 4, 10, 26, 32, 33, 34, 35, 37, 38, 41
12	
13	FJDCR 3.13,7, 8, 32
14	NRCP 12 (b) (5),12
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

1
2 IN THE SUPREME COURT OF THE STATE OF NEVADA

3
4 MARY LOU MCSWEENEY-WILSON,
5 Appellant/Petitioner,

6 vs.

No. 82806

7 District No. 20O000051E

8 STOREY COUNTY COMMISSIONERS
9 AND STERICYCLE, INC.,

10 Respondents.

11
12 APPELLANT OPENING BRIEF

13
14 Mary Lou McSweeney-Wilson, Appellant/Petitioner, filed a Petition for
15 Judicial Review regarding the Storey County Commissioners vote to approve a
16 special use permit granting Stericycle, Inc. the ability to incinerate biohazardous
17 medical waste material at Tahoe-Reno Industrial Center.

18
19 This special use permit was voted upon by two (2) Storey County
20 Commissioners, Jay Carmona, and Marshall McBride, on August 18, 2020.
21 Commissioner Lance Gilman recused himself from the vote, since he had sold the
22 property to Stericycle, Inc.

23
24 The vote of approval took place between the Storey County Planning
25 Commissioners and the Storey County Commissioners between July and August of

1 2020, when the Nevada Governor had suspended the Open Meeting Law, requiring
2 physical postings of Agendas in three (3) locations within Storey County and
3 within three (3) days of the Storey County Planning and Commission meetings.
4

5 In addition, the Nevada Governor's Stay At Home Ordre was in effect, because
6 of the worldwide Pandemic concerning COVID-19.

7 Therefore, the residents of Rainbow Bend and Lockwood Community
8 Corporation were not provided physical written or posted Notice of Stericycle's
9 plan.
10

11 The Nevada Governor's Orders created an unintended consequence for the
12 citizens of Storey County to be blind-sighted by the Storey County Commissioners
13 vote to approve the special use permit to Stericycle, Inc., a danger to the health,
14 safety, and welfare of the community and surrounding areas.
15

16 Appellant/Petitioner discovered the special use permit vote through word of
17 mouth from a neighbor living in Rainbow Bend, who was on the Homeowners
18 Association and Canyon General Improvement District, Larry Huddleson.
19

20 Appellant/Petitioner immediately filed the Petition for Judicial Review on
21 September 10, 2020, which was within twenty-five (25) days of August 18, 2020,
22 pursuant to NRS 278.3195(4)(b).
23
24
25

1 NRAP 26.1 DISCLOSURE STATEMENT

2
3 The undersigned counsel of record certifies that there are no corporations or
4 any publicly held company that owns 10% or more of petitioner's stock.
5

6 Undersigned counsel also certifies the following are persons and entities as
7 described in NRAP 26.1(a), and must be disclosed. These representations are made
8
9 in order that the judges of this court may evaluate possible disqualification or
10
11 refusal.

12 Keith Loomis, Assistant District Attorney, representing the Storey County
13
14 Commissioners.

15 Michael Pagni and Chelsea Latino from the law firm of McDonald/Carano,
16
17 representing Stericycle Inc.

18 DATED this 12th day of June, 2021.

19 By: /s/: MARY LOU WILSON
20 MARY LOU WILSON
21 Attorney At Law Bar #3329
22 2064 Regent Street, Reno, Nevada 89509
23 775-771-8620
24
25

1 Routing Statement for Retention by the Nevada Supreme Court

2 NRAP 17 (a) (11) and (12). Cases retained by the Nevada Supreme Court are
3 NRAP 17 (a) (11), Matters raising as a principal issue a question of first
4 impression involving the United States or Nevada Constitutions or common law;
5 As stated, the two Nevada Governor's Order's during the worldwide COVID-19
6 pandemic suspending the Open Meeting Law and the Order to Stay at Home
7 precluded Appellant/Petitioner an opportunity to oppose the special use permit
8 against Stericycle, Inc., a dangerous biohazardous medical waste facility, twelve
9 (12) miles from Rainbow Bend, Lockwood, in Storey County, Lockwood, Nevada.
10
11

12 These two (2) Orders violated Appellant/Petitioner's Due Process rights of the
13 United States and Nevada Constitutions.
14

15 Agendas of the Storey County Planning and Commission meetings were
16 typically posted at the Rainbow Bend Clubhouse and Lockwood Senior Center,
17 which were closed to the public during this time period, resulting in residents of
18 Lockwood without the ability to object to this dangerous company.
19

20 NRAP 17 (a) (12), Matters raising as a principal issue a question of statewide
21 public importance;
22

23 This question involves statewide public importance because the health, safety,
24 and welfare of Storey, Washoe, Carson, Douglas, Lyon, counties, Truckee River,
25

Pyramid and Tahoe Lakes, and federally protected wild Mustangs, which are at risk from the poisonous dioxins that spew into the air.

ISSUES FOR APPEAL

ISSUE 1-Whether the Nevada Governor's Executive Order suspending the Open Meeting Law requirement for three (3) physical postings in three (3) locations within Storey County and the Order to Stay at Home during the worldwide COVID-19 pandemic created a Due Process violation under the United States and Nevada Constitutions?

ISSUE 2-Whether Appellant/Petitioner had standing to bring a Petition for Judicial Review of the County Commissioners vote to approve a special use permit for Stericycle, Inc., a biohazardous medical waste incineration plant, when she and other Storey County Residents did not receive Notice of the Agendas?

ISSUE 3-Whether Appellant/Petitioner could satisfy the standing requirement if representing Phillip Hilton, Rainbow Bend resident and Sam Toll, Gold Hill resident, both Storey County residents, if they satisfied NRS 278.3195(4)?

STATEMENT OF CASE

Appellant/Petitioner, hereinafter called (Wilson), filed a Petition for Judicial Review on September 10, 2020, within twenty-five (25) days after the Storey County Commissioners, hereinafter called (Commissioners), vote on August 18, 2020. Appellant Appendix, V. I, pp. 1-128. On September 11, 2020, a Supplement to the Petition was filed, which attached voluminous research done by Blockchains, Corporation, against Stericycle, Inc. I;129-250 and II;251-471.

(Wilson) relied primarily upon the Utah Physicians for a Healthy Environment, Clean Air, Clean Energy, Clean Future, opposing the (Commissioner's) arbitrary

1 and capricious decision to approve the special use permit for Stericycle, Inc.
2 II;126-28 and V;1128-29.

3
4 The (Commissioners), represented by the Assistant District Attorney, Keith
5 Loomis, filed a Motion to Dismiss the Petition on September 23, 2020 for lack of
6 standing. III;734-40. The corporation, Stericycle, Inc., hereinafter called
7 (Stericycle), filed a Motion to Intervene in the lawsuit on September 25, 2020.
8 V;1130-63. (Wilson) filed an Opposition to Stericycle's Motion to Intervene
9 V;1121-27. The district court filed an Order to Permit Stericycle to Intervene.
10 Thereafter, Stericycle filed a Motion to Dismiss the Petition for lack of standing on
11 October 28, 2020. IV;898-904.

12
13
14 (Wilson) filed an Opposition to the (Commissioner's) Motion to Dismiss on
15 October 1, 2020. III;741-50 and IV;751-97. And, (Wilson) filed an Opposition to
16 (Stericycle's) Motion to Dismiss on November 13, 2020. IV;905-18. The
17 (Commissioner's) filed a Reply to the Opposition on October 12, 2020. IV;798-
18 857 and 941-1000 and V;1001-30. (Stericycle) filed a Reply to the Opposition on
19 November 23, 2020. IV;919-23.

20
21 The district court granted an Order for an evidentiary hearing on November 16,
22 2020. V;1098-1100.

23
24 (Wilson) filed a Notice of Witnesses and Exhibits for the Evidentiary Hearing
25 on December 2, 2020, which included photographs showing the Rainbow Bend

1 Clubhouse and Lockwood Senior Center were closed to the public because of
2 COVID-19. II;483-500 and III;501-11.

3
4 The (Commissioner's) filed a Motion to Correct Caption to eliminate Rainbow
5 Bend Homeowners and Storey County Residents filed December 28, 2020.

6 IV;924-31. (Wilson) filed an Opposition to Correct Caption to eliminate Rainbow
7 Bend Homeowners and Storey County Residents on January 4, 2021. IV;932-36.

8
9 The (Commissioner's) filed a Reply to Opposition to Motion to Correct Caption on
10 March 8, 2021. V;1072-84. The district court filed an Order to Correct Caption,
11 eliminating Rainbow Bend Homeowners and Storey County Residents, leaving
12 (Wilson) alone within the caption as Petitioner on January 12, 2021. V;1103-05.

13
14 On January 15, 2021, (Wilson) filed a Notice of Appearance for Michael E.
15 Wilson, to assist (Wilson) as co-counsel. V;1164-66. (Wilson) also filed
16 Subpoenas for three (3) witnesses, Larry Huttleston, Phillip Hilton, and Scott
17 Martin, to testify regarding the lack of physical postings at the Rainbow Bend
18 Clubhouse, Lockwood Senior Center, and Lockwood Fire station on January 15,
19 2021. V;1106-07; 1108-09; and 1110-11.

20
21 Thereafter, the (Commissioner's) filed a Motion in Limine on January 21, 2021.
22 III;621-724, and a Corrected Motion in Limine on January 22, 2021. III;717-724,
23 attempting to limit the evidentiary hearing to only argument, with no witnesses.
24
25

1 (Wilson) filed an Opposition to Motion and Corrected Motion in Limine on
2 January 25, 2021, claiming witnesses were necessary during the evidentiary
3 hearing. III;725-30. (Wilson) filed a Notice of Additional Argument under NRS
4 241.020, on February 12, 2021. II;475-82.

6 (Commissioner's) filed a List of Additional Exhibits for the Evidentiary
7 Hearing on February 18, 2021, including witnesses, Minutes from Agendas, and
8 Governor's Orders. V;1031-39.

10 (Commissioner's) filed its Storey County Commissioner's Evidentiary Hearing
11 Statement on February 12, 2021. III;523-615. (Stericycle) filed its Hearing
12 Statement on February 12, 2021. III;616-20. (Wilson) filed her Evidentiary
13 Hearing Statement on February 16, 2021. III;512-22.

15 (Wilson) discovered that there were two (2) men that had "participated" in the
16 zoom meetings of the Storey County Planning and Commission meetings on
17 August 6, 2020 and August 18, 2020, and filed a Motion to Shorten Time and
18 Leave of Court to Correct Judge's Order Changing the Caption to Eliminate
19 Homeowners of Rainbow Bend Community, and Storey County Residents,
20 Pursuant to FJDCR 3.13, filed February 17, 2021. V;1040-43. (Commissioner's)
21 filed a List of Additional Exhibits for the Evidentiary Hearing on February 18,
22 2021. V;1031-39.
23
24
25

1 (Wilson), (Commissioner's), and (Stericycle) appeared through a zoom meeting
2 with the Honorable Judge James Wilson to discuss the newly filed document.
3 (Commissioner's) requested a continuance of the evidentiary hearing, (Stericycle)
4 opposed the continuance, and the district court granted additional time to file
5 research and writing on the issue.
6

7 (Commissioner's) filed an Opposition to (Wilson) Motion to Shorten Time and
8 Leave of Court to Correct Judge's Order Changing the Caption to Eliminate
9 Homeowners of Rainbow Bend Community and Storey County Residents Pursuant
10 to FJDCR 3.13, on March 2, 2021. V;1044-48.
11

12 Although (Stericycle) Opposed the Continuance, it filed an Opposition to
13 (Wilson) Motion on March 3 2021. V;1049-71. (Wilson) filed a Replies to the
14 (Commissioner's) and (Stericycle's) Opposition. V;1072-84 and 1049-71.
15

16 Thereafter, the district court eliminated the evidentiary hearing and filed an
17 Order Dismissing the Petition on March 12 2021. V;1112-16. The district court
18 also filed an Order Granting Stericycle's Motion to Dismiss on March 12, 2021. V;
19 1117-20.
20

21 (Wilson) filed a Motion to Stay the district court's Order and Motion to file a
22 Petition for Writ of Mandamus or Prohibition on March 17, 2021. V;1188-90.
23

24 (Wilson) filed a Petition for Writ of Mandamus or Prohibition on March 23,
25 2021. V;1195-1229. Within the time limit, (Wilson) filed a Notice of Appeal while

1 the Petition for Writ of Mandamus or Prohibition was pending, on April 15, 2021.
2 V;1182-84 and 1185-87.

3 (Stericycle) filed an Opposition to the Motion for Stay on April 2, 2021.
4
5 V;1172-78. The district court granted the Opposition to the Motion for Stay on
6 April 15, 2021. V;1179-81.

7 This Court denied the Petition for Writ of Mandamus or Prohibition on May 14,
8 2021. V;1169-70.

9
10 This Court filed Notice of a Settlement Hearing and appointed J. Douglas Clark,
11 as the Settlement Judge. V;1171. On May 19, 2021, Appointed Settlement Judge
12 Clark scheduled a telephone conference with the parties, heard argument, and
13 determined that this was not an appropriate settlement case. V;1167-68. This Court
14 then Ordered briefing of the matter.

15
16 STATEMENT OF THE FACTS

17
18 Blockchains Corporation, the largest land owner at Tahoe Regional Industrial
19 Center, (TRI), was notified in writing of the Stericycle Corporations request for the
20 special use permit and hearings of the Storey County Planning and Commission
21 meetings, and launched their research and opposition to the company, providing
22 stunning examples of bad practices, fines, and rejection by other states, including
23 California, Washington, Utah, and North Las Vegas, Nevada. I;129-250 and
24 II;251-47.
25

1 Although Blockchains presented their opposition to the special use permit of
2 Stericycle, Inc., during the Storey County Planning and Commission meetings, via
3 Zoom, the Storey County Planning and Commissioners rejected Blockchains
4 arguments and approved the special use permit for Stericycle, Inc. on August 18,
5 2020, by two commissioners, Jay Carmona and Marshall McBride. Commissioner
6 Lance Gilman, who represented Rainbow Bend and Lockwood Community
7 Corporation, recused himself from the vote because he sold the land to Stericycle,
8 Inc. and had a conflict of interest. III;523-616, specifically, pp. 601-15.
9

10
11 (Wilson), a ten-year resident of Rainbow Bend Community, Storey County,
12 Nevada, learned about the approval of Stericycle's special use permit through an
13 officer of the Rainbow Bend Homeowner Association and Canyon General
14 Improvement District, Larry Huddleson. (Wilson) immediately filed a Petition for
15 Judicial Review on September 10, 2020, which was timely filed under NRS
16 278.3195(4)(b). The purpose of the filing was for the district court to determine
17 whether the Storey County Commissioners acted in an arbitrary and capricious
18 manner when approving the special use permit granted to Stericycle, Inc. The
19 research and writing presented by Blockchains Corporation showed that Stericycle,
20 Inc. incinerated biohazardous toxic medical waste, which emitted some of the most
21 dangerous chemicals known to man. (Wilson) wanted the district court to Order a
22 re-vote of the Storey County Commissioners, since Storey County residents were
23
24
25

1 unaware of the Agendas of the Storey County Planning and Commission meetings.
2 Had residents known about these meetings, there would have been an outcry of
3 objection to the special use permit.
4

5 Two executive Orders by the Governor impaired the Storey County residents
6 from opposing the Stericycle, Inc. special use permit because of the worldwide
7 COVID-19 pandemic. The first Order suspended the Open Meeting Law, requiring
8 physical postings of Storey County Planning and Commission Agendas in three (3)
9 locations within the county, within three (3) days of the meetings. The other Order
10 involved residents to Stay at Home, except in necessary circumstances.
11

12 Both of these Orders curtailed Storey County residents from learning about the
13 Stericycle, Inc. special use permit request and the ability to oppose this dangerous
14 company.
15

16 Therefore, the actions of the Storey County Commissioners approval of the
17 special use permit for Stericycle amounted to a violation of Due Process of the
18 Fourteenth Amendment to the United States and Nevada Constitutions, had an
19 unintended result of the Governor's Orders, and allowed for arbitrary and
20 capricious decision-making without Notice and an opportunity to be heard.
21
22
23
24
25

1 ARGUMENTS

2 *Standard of review-*

3
4 “A district court order granting an NRCP 12(b)(5) motion to dismiss is subject to
5 rigorous appellate review.” *Sanchez v. Wal-Mart Stores*, 125 Nev. 818, 823, 221
6 P.3d 1276, 1280 (2009). This court will recognize all factual allegations as true and
7 draw all inferences in favor of the nonmoving party. *Buzz Stew. LLC v. City of N.*
8 *Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). The petition for judicial
9 review “should be dismissed only if it appears beyond a doubt that it could prove
no set of facts, which, if true, would entitle it to relief.” *Id. Citing Humboldt River*
Ranch Ass’n v. Pershing Cnty. Bd. of Comm’rs, 381 P.3d 622 (Table) (Nev. 2012)

10 ISSUES FOR APPEAL

11 ISSUE 1-Whether the Nevada Governor’s Executive Order suspending the Open
12 Meeting Law requirement for three (3) physical postings in three (3) locations
13 within Storey County and the Order to Stay at Home during the worldwide
COVID-19 pandemic created a Due Process violation under the United States and
Nevada Constitutions?

14 Facts relevant for review:

15
16 Upon learning of the vote approving the special use permit of Stericycle, Inc., a
17 company that incinerates biohazardous medical waste, which emits dioxins into the
18 air and water, some of the most dangerous compounds known to man, (Wilson)
19 filed a Petition for Judicial Review in the district court with the First Judicial
20 District Court, Department 1. The initial caption read, “Mary Lou McSweeney-
21 Wilson, Et. Al, Homeowners of Rainbow Bend Community, and Storey County
22 Residents, Petitioners, vs. Storey County Commissioners, Respondents. This
23 caption was used throughout the litigation for approximately four (4) months.
24
25

1 The Petition questioned the arbitrary and capricious nature of two (2) Storey
2 County Commissioners that adversely impacted the health, safety, and welfare, for
3 surrounding counties for hundreds of miles, due to the emission of dioxins into the
4 air and water. An example of the nonsensical rationale for approving the vote came
5 from Commissioner, Jay Carmona, who stated, “Unfortunately, in today’s society,
6 we have to have a place to get rid of that stuff...So I think this is one of those
7 necessary evils.”
8
9

10 Although two (2) Storey County residents, Phillip Hilton, and Sam Toll, both
11 running for Storey County Commissioner, appeared during the Zoom meetings of
12 the Storey County Planning and Commission meetings on August 6th and August
13 18th 2020, opposing the special use permit, their opinions were ignored.
14

15 Phillip Hilton, a Lockwood resident, was seeking to take over Lance Gilman’s
16 seat for Storey County Commissioner and Sam Toll, Gold Hill resident in Storey
17 County, and Storey Teller Publisher of the local newspaper, was also seeking a
18 Storey County Commissioner’s position.
19

20 Toll argued that the approval of Stericycle would “set a dangerous precedence”
21 at the Storey County’s business park, especially in the wake of Nevada regulators’
22 headline-grabbing failure to investigate alleged workplace safety violations at
23 Tesla.
24

25 Hilton stated that passing Stericycle was an “alert.”

1 Storey County Planning and Commissioners acknowledged that monitoring
2 emissions done from the Stericycle incinerator would be done by Stericycle, Inc.
3 itself.
4

5 Toll explained, “This should concern everyone up and downwind from the
6 smokestacks. Contrary to the nonsense that spews from Kris Thomson’s lips, I
7 energetically support safe, responsible companies at TRIC. This company
8 [Stericycle] is neither safe nor responsible.”
9

10 Stericycle, Inc., a \$40-million-dollar facility is expected to process between 10
11 to 15 truck-loads of waste per day.
12

13 (Wilson) and other Storey County residents were unaware of these Planning and
14 Commission meetings, because of the two Governor’s Orders, suspending the
15 Open Meeting Law physical postings of Agendas and mandating Staying At
16 Home. (Wilson) received over two-hundred and fifty (250) named residents of
17 Rainbow Bend and Lockwood Community Corporation, against the special use
18 permit granted to Stericycle, Inc. within five (5) days and filed the document,
19 which opposed the (Commissioner’s) Motion to Dismiss the Petition for lack of
20 standing. III;741-50 and 734-40.
21
22

23 The residents of the two communities, which signed the petition, acknowledged
24 they knew nothing about Stericycle, it’s incineration of biohazardous medical
25 waste, or the Agendas for the Planning and Commission meetings. Residents knew

1 nothing about the Zoom meetings over the computer and were over the age of
2 fifty-five (55) years. ¹ The Governor's Executive Orders provided, "Whereas, on
3 March 12, 2020, I Steve Sisolak, Governor of the State of Nevada issue
4 Declaration of Emergency to facilitate the State's response to the COVID-19
5 pandemic," and "Closure of non-essential businesses," and "the requirement of
6 NRS 241.023(1)(b) for meetings of public bodies where members of the public are
7 permitted to attend and participate is suspended," and "NRS 241.020(4)(a) that
8 public notice agendas be posted in physical locations within the State of Nevada
9 are suspended," and "public notice agendas be posted to Nevada's notice website,
10 along with providing a copy to any person who has requested one via U.S. mail or
11 electronic mail," and "NRS 241.020(3)(c) that physical locations be available to
12 the public to receive supporting material for public meetings is suspended."
13
14
15
16 III;555-56.

17
18 These residents signed the petition approximately three (3) weeks after the
19 Petition for Judicial Review was requested, from (Wilson) going door to door.
20 III;741-750 and IV;751-797. Had these residents known about the vote, they would
21 have opposed it.
22
23
24

25 ¹ The Governor noted that residents over the age of sixty-five (65) years was a
susceptible group for COVID-19 infections.

1 (Wilson) wanted an evidentiary hearing to present three (3) witnesses to show
2 that there was no postings of Agendas and residents were unable to oppose this
3 dangerous company located twelve (12) miles from their homes. II;483-500,
4 III;501-11, V;1106-07, 1108-09, and 1110-11.²

6 Curiously, the special use permit was discussed and decided during July and
7 August 2020, when the two Governor's Executive Orders suspending the Open
8 Meeting Law requirements and the requirement to Stay at Home, were in effect
9 because of the COVID-19 worldwide pandemic.

11 Law relevant for review:

12 NRS 241.010 Legislative declaration and intent. In enacting this chapter, the
13 Legislature finds and declares that all public bodies exist to aid in the conduct of
14 the people's business. It is the intent of the law that their actions be taken openly
15 and that their deliberations be conducted openly.

17 NRS 241.020

19 3. Except in an emergency, written notice of all meetings must be given at
20 least 3 working days before the meeting. The notice must include:

21 (a) The time, place and location of the meeting.

23 (b) A list of the locations where the notice has been posted.

24 ² The State's argument that physical postings were done at the Lockwood firehouse
25 and Senior Center were contradicted by (Wilson's) witnesses.

1 (c) The name and contact information for the person designated by the public
2 body from whom a member of the public may request the supporting material for
3 the meeting described in subsection 7 and a list of the locations where the
4 supporting material is available to the public.
5

6 (d) An agenda consisting of:

7 (1) A clear and complete statement of the topics scheduled to be
8 considered during the meeting.
9

10 (2) A list describing the items on which action may be taken and clearly
11 denoting that action may be taken on those items by placing the term “for possible
12 action” next to the appropriate item or, if the item is placed on the agenda pursuant
13 to NRS 241.0365, by placing the term “for possible corrective action” next to the
14 appropriate item.
15

16 (3) Periods devoted to comments by the general public, if any, and
17 discussion of those comments. Comments by the general public must be taken:
18

19 4. Minimum public notice is:

20 (a) Posting a copy of the notice at the principal office of the public body or, if
21 there is no principal office, at the building in which the meeting is to be held, and
22 at not less than three other separate, prominent places within the jurisdiction of the
23 public body not later than 9 a.m. of the third working day before the meeting;
24
25

1 (b) Posting the notice on the official website of the State pursuant to NRS
2 232.2175 not later than 9 a.m. of the third working day before the meeting is to be
3 held, unless the public body is unable to do so because of technical problems
4 relating to the operation or maintenance of the official website of the State; and
5

6 (a) The date and time when the person posted the copy of the public notice;

7 (b) The address of the location where the person posted the copy of the public
8 notice; and
9

10 (c) The name, title and signature of the person who posted the copy of the
11 notice.
12

13 6. If a public body maintains a website on the Internet or its successor, the
14 public body shall post notice of each of its meetings on its website unless the
15 public body is unable to do so because of technical problems relating to the
16 operation or maintenance of its website. Notice posted pursuant to this subsection
17 is supplemental to and is not a substitute for the minimum public notice required
18 pursuant to subsection 4. The inability of a public body to post notice of a meeting
19 pursuant to this subsection as a result of technical problems with its website shall
20 not be deemed to be a violation of the provisions of this chapter.
21

22 11. As used in this section, “emergency” means an unforeseen circumstance
23 which requires immediate action and includes, but is not limited to:
24

25 (a) Disasters caused by fire, flood, earthquake or other natural causes; or

1 (b) Any impairment of the health and safety of the public.

2 In this regard, the Nevada Governor's Executive Order suspending the Open
3 Meeting Law requirements because of the COVID-19 worldwide pandemic, was
4 done under section 11 section, emergency. However, the executive Order could
5 hardly have anticipated the arbitrary and capricious nature of the Storey County
6 Commissioners approval of Stericycle, Inc., a biohazardous medical waste
7 incinerator, affecting the health, safety, and welfare of Storey and neighboring
8 communities, bodies of water, and wildlife, including the protected wild Mustangs,
9 when nobody could voice their opposition. Therefore, the Storey County
10 Commissioner's vote, in the absence of Notice to the communities that would be
11 affected, is a violation of the Due Process Clause of the United States and Nevada
12 Constitutions.
13

14 NRS 241.036 Action taken in violation of chapter void. The action of any
15 public body taken in violation of any provision of this chapter is void.
16

17 As such, the two emergency Governor's Orders during the time of the approval
18 of the special use permit for Stericycle, Inc., should be Reversed and a re-vote of
19 its approval held so that Storey County residents are provided physical postings
20 and launch their opposition to this dangerous company.
21
22
23
24
25

1 ISSUE 2-Whether (Wilson) had standing to bring a Petition for Judicial Review of
2 the County Commissioners vote to approve a special use permit for Stericycle,
3 Inc., a biohazardous medical waste incineration plant, when she and other Storey
County Residents did not receive Notice of the Agendas?

4 Facts relevant for review:

5 In this case, the district court accepted the petition and supplemental petition on
6 September 10th and 11th 2020, but the (Commissioners) and (Stericycle) moved to
7 Dismiss them for lack of standing, alleging that (Wilson) failed to satisfy NRS
8 278.3195 and 278.0235. III;734-40 and IV;898-904.
9

10 In Opposition to the Motion to Dismiss, (Wilson) relied upon the fact that she,
11 Rainbow Bend Homeowners, and Storey County Residents were unaware of the
12 Storey County Planning and Commission meetings. This failure of physical notice
13 of Agendas was due to the Governor's executive Orders to suspend the Open
14 Meeting Law and Stay At Home because of the worldwide pandemic of COVID-
15 19. (Wilson) relied upon receiving two hundred and fifty (250) signatures of
16 residents who opposed Stericycle, Inc. III;741-750 and IV;751-797. (Wilson)
17 argued that NRS 241.020, and its legislative history, provided her with "standing"
18 to bring a judicial review. (Wilson) also opined that the (Commissioner's) vote was
19 a violation of Due Process rights under the Fourteenth Amendment to the United
20 States and Nevada Constitutions. II;475-82 and IV;751.
21

22 Law relevant for review:
23
24
25

1 The legislative history of NRS 241.020, provided (Wilson) with general
2 standing ability, and a substantive due process claim, showing a government
3 deprivation of life, liberty, or property. *Nunez v. City of Los. Angeles*, 147 F.3d
4 867, 871 (9th Cir. 1998), Citing *Capp v. City of San Diego*, 940 F.3d 1046 (9th Cir.
5 2019).

6
7 In *Agudath Isr. of Am. v. Cuomo*, 983 F.3d 620 (2nd Cir. 2020), On March 7,
8 2020, Governor Cuomo can "temporarily suspend any statute, local law, ordinance,
9 or orders, rules or regulations, or parts thereof, of any agency," and can "issue any
10 directive ... necessary to cope with the disaster." *Id.* The Governor's Order does not
11 apply to "essential" businesses, which State guidance describes as those "providing
12 products or services that are required to maintain the health, welfare and safety of
13 the citizens of New York State."

14
15 Similarly, the Nevada Governor's Executive Orders had the public health,
16 welfare, and safety in mind, which would not include the Storey County
17 Commissioner's vote permitting a biohazardous medical waste incinerator at
18 Tahoe Regional Industrial Center. Rather, there was no rational basis for
19 suspending NRS 241.020 because of the worldwide pandemic.
20
21

22
23 In essence, the Governor's Order suspending physical postings of Agendas for
24 Storey County Planning and Commission meetings violated residents of their Due
25

1 Process rights under the Fourteenth Amendment to the United States and Nevada
2 constitutions.

3
4 In *Desrosiers v. Governor*, 486 Mass. 369, 158 N.E.3d 827 (Mass. 2020), the
5 Court concluded that the emergency orders were subject to a **rational basis**
6 review. The emergency orders as a whole were informed by public health
7 recommendations and serve the State interest of slowing the spread of COVID-19,
8 which is a legitimate State interest. See *Henning Jacobson v. Commonwealth of*
9 *Massachusetts*, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643, 3 Ann.Cas. 765 (1905);
10 *Vincent Gillespie & Another 1 v. City of Northampton*, 460 Mass. 148, 950 N.E.2d
11 377 (Mass. 2011).

12
13
14 Passing the special use permit for Stericycle, Inc. was not an everyday
15 occurrence, was not an essential business, and had far-reaching impact for Storey
16 and other surrounding counties in Northern Nevada. The special use permit was
17 approved within the July and August Agendas of the Planning and Commission
18 meetings. I;22 (August 18, 2020, Agenda); I;51-55 (10-15 trucks of biohazardous
19 waste every day from the Western U.S. and Canada travelling to TRI); I;99-100
20 (Stericycle settles with EPA for penalties in waste-handling and storage permit in
21 Washington); and I;127-28 (Utah Physicians Study showing dioxins from
22 Stericycle's incineration into the atmosphere, travels hundreds of miles, causes
23 100% fatal human "Mad Cow" disease, increase rates of serious diseases like
24
25

1 cancer, pregnancy complications, birth defects, and autism-among people who live
2 within several miles of incinerators.

3
4 Suspending the Open Meeting Law:

5 The Nevada Governor's suspension of the Open Meeting Law requirements of
6 physical postings in three locations and three days before a public meeting had no
7 rational basis to prevent the spread of the COVID-19 virus and had unexpected
8 consequences, since it impaired (Wilson) and other Storey County residents their
9 Due Process rights of Notice and an Opportunity to be heard.

11 The only exception to the three-day physical posting requirement of the Open
12 Meeting Law is when there is an emergency and the public body must meet before
13 the three days have passed. The Governor's emergency Order does not meet the
14 definition of emergency under the Open Meeting Law because action by the Storey
15 County Commission was not required without the three-day posting. NRS
16 241.020(3).
17
18

19 Had Storey County residents been provided Notice of the request for
20 Stericycle's special use permit, there would have been opposition, since the
21 biohazardous medical waste incineration adversely impacts the health, safety, and
22 welfare of the community.
23

24 As such, (Wilson) had standing to bring forward the Petition for Judicial
25 Review and the district court abused its discretion by dismissing the petition in

1 favor of the (Commissioner's) and granting the motion to dismiss in favor of
2 (Stericycle). V; 1085-90 and 1091-97.

3
4 In *Attorney General v. Nevada Tax Comm'n*, 181 P.3d 675, 124 Nev. 232 (Nev.
5 2008), the Court held meetings of public bodies should be open "whenever
6 possible" to comply with the spirit of the Open Meeting Law. Since generally all
7 meetings must be open, this court strictly construes all exceptions to the Open
8 Meeting Law in favor of openness. In *McKay v. Board of County Commissioners*,
9 we noted that the narrow construction of exceptions to the Open Meeting Law
10 stems from the Legislature's use of the term "specific" in NRS 241.020(1) and that
11 such exceptions must be explicit and definite.
12

13
14 Because exceptions to the Open Meeting Law must be construed narrowly to
15 favor openness and public bodies should meet openly whenever possible, we
16 recognize that exceptions to the Open Meeting Law extend only to the portions of
17 a proceeding specifically, explicitly, and definitely excepted by statute.
18

19 In *McKay v. Board of Sup'rs of Carson City*, 730 P.2d 438, 102 Nev. 644 (Nev.
20 1986), leading rule of statutory construction is to ascertain the intent of the
21 legislature in enacting the statute. *City of Las Vegas v. Macchiaverna*, 99 Nev. 256,
22 257, 661 P.2d 879, 880 (1983).
23

24 This intent will prevail over the literal sense of the words. *Id.* at 257-258.
25

1 The meaning of the words used may be determined by examining the context
2 and the spirit of the law or the causes [102 Nev. 651] which induced the legislature
3 to enact it. Id. The entire subject matter and policy may be involved as an
4 interpretive aid. Id.

6 In this regard, (Wilson) argues that the Governor's Order to suspend the Open
7 Meeting Law during the COVID-19 worldwide pandemic because of an
8 emergency did not have a rational relation or nexus in stemming the spread of
9 COVID-19 and because residents of Storey County needed to be aware of the
10 special use permit of Stericycle, Inc. through physical postings in order to lodge
11 their opposition. As such, the legislative intent was violated. In essence, the
12 Governor's executive Order suspending the Open Meeting Law amounted to a
13 closed meeting for purposes of the special use permit vote, which violated
14 (Wilson) due process rights.

17 (Wilson) requests this Court find that the Open Meeting Law requiring three
18 day and three location posting has been violated through the Governor's Executive
19 Order suspending requirements during the COVID-19 pandemic because there was
20 no rational basis for the action. (Wilson) alleges violations of her constitutional
21 rights under the due process clause of the United States and Nevada constitutions
22 because of the actions resulting from the Governor's Executive Order as discussed
23 above.

1 (Wilson) also requests an Order requiring a re-vote of the special use permit of
2 Stericycle, Inc., with proper physical notice given to Storey County residents
3 pursuant to NRS Chapter 241.
4

5 Pursuant to Nevada Revised Statute 278.3195(4), any person who has appealed a
6 decision to the governing body and is aggrieved by the decision of the governing
7 body "may appeal that decision to the district court of the proper county by filing a
8 petition for judicial review."
9

10 Although the Nevada Revised Statutes do not set forth any procedures to govern
11 a petition for review, the Nevada Supreme Court has held that "[i]n a petition for
12 judicial review . . . the district court reviews the agency record to determine
13 whether the Board's decision is supported by substantial evidence." *Kay v. Nunez*,
14 146 P.3d 801, 805 (Nev. 2006).
15

16 In other contexts, courts have reviewed the "whole record" before an agency
17 including "everything that was before the agency pertaining to the merits of its
18 decision." *Portland Audubon Soc'y v. Endangered Species Comm.*, 984 F.2d 1534,
19 1548 (9th Cir. 1993).
20

21 "To establish a substantive due process claim, a plaintiff must, as a threshold
22 matter, show a government deprivation of life, liberty, or property." *Nunez v. City*
23 *of Los Angeles*, 147 F.3d 867, 871 (9th Cir. 1998). Citing *Capp v. Cnty. of San*
24 *Diego*, 940 F.3d 1046 (9th Cir. 2019).
25

1 In above-referenced case, the Court stated that "[T]he relevant inquiry is not
2 whether [the Plaintiff] should have been [afforded a hearing] in this particular case,
3 but whether the statutory procedure itself is incapable of affording due process."
4 *Soranno's Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1318 (9th Cir. 1989) (citing
5 *Hodel v. Va. Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 302, 101 S.Ct.
6 2352, 69 L.Ed.2d 1 (1981)). Cited in *Recchia v. City of L. A. Dep't of Animal*
7 *Servs.*, 889 F.3d 553 (9th Cir. 2018).

8
9
10 In this regard, (Wilson) argued that the failure to receive physical notice of the
11 Storey County Planning and Commission Agendas because of the Governor's
12 Orders suspending the Open Meeting Rule and the Stay-at-Home Order, prevented
13 her and the other Storey County residents to oppose Stericycle and violated their
14 due process rights. The worldwide pandemic prevented the normal course of
15 procedures permitting voicing strong opposition to this biohazardous medical
16 waste incinerator, which will spew the most dangerous pollutants for hundreds of
17 miles. Utah Physicians Study, V;1128-29.

18
19
20 "Substantive due process protects individuals from arbitrary deprivation of their
21 liberty by government." *Brittain v. Hansen*, 451 F.3d 982, 991 (9th Cir.2006)
22 (citing *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 845–49, 118 S.Ct. 1708, 140
23 L.Ed.2d 1043 (1998)); see also *Action Apartment Ass'n, Inc. v. Santa Monica Rent*
24 *Control Bd.*, 509 F.3d 1020, 1026 (9th Cir.2007) ("An arbitrary deprivation of
25

1 [rights in real property] may give rise to a viable substantive due process claim in
2 any case in which the Takings Clause does not provide a preclusive cause of
3 action.”). To constitute a violation of substantive due process, the alleged
4 deprivation must “shock the conscience and offend the community's sense of fair
5 play and decency.” *Marsh v. Cnty. of San Diego*, 680 F.3d 1148, 1154 (9th
6 Cir.2012) (citation and internal quotation marks omitted); see also *Nunez v. City of*
7 *Los Angeles*, 147 F.3d 867, 871 (9th Cir.1998). Cited in *Li v. Ruiz*, 922 F.2d 844
8 (9th Cir. 1990).

11 In this regard, the research done and presented during the Storey County
12 Planning and Commission minutes presented by Blockchains, attached as exhibits
13 in the Petition and Supplemental Petition shock the conscience. Blockchains
14 extensive research, over three hundred (300) pages, showed that Stericycle, Inc.,
15 was not an appropriate company for Northern Nevada. Blockchains, LLC’s
16 Objection to Special Use Permit 2020-021 Stericycle Inc. Medical Waste
17 Incinerator Facility. Supplement to Petition, filed September 11, 2020, Exhibit 1.
18 I;129-250 and II;251-471.

21 These unsuitable areas of concern include, fines, violations of incineration,
22 causing dangerous dioxins into the atmosphere, and fraudulent business practices.
23 A number of States, such as California, Washington, and North Las Vegas have
24 refused entrance to Stericycle, and Utah’s Physicians Study has shown how
25

1 dangerous the toxins are from the burning of biohazardous medical waste is to the
2 environment, including an increase in autism, cancer, birth defects, and Mad Cow
3 disease. Utah Physicians Study. V;1128-29. Utah recently received a large sum of
4 money because of Stericycle's violations of business practices.

6 "To establish a violation of substantive due process, the plaintiffs must prove
7 that the government's action was 'clearly arbitrary and unreasonable, having no
8 substantial relation to the public health, safety, morals, or general welfare.' "
9 (quoting *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395, 47 S.Ct. 114,
10 121, 71 L.Ed. 303 (1926). Cited in *Halverson v. Skagit County*, 42 F.3d 1257 (9th
11 Cir. 1995).

14 In *Harris v. County of Riverside*, 904 F.2d 497, 502 (9th Cir.1990); and
15 *Nasierowski Bros. Inv. Co. v. City of Sterling Heights*, 949 F.2d 890, 896 (6th
16 Cir.1991), the Court noted that constitutional procedural due process was
17 inapplicable because the proposed Agreement only targeted a small number of
18 property owners. Also, the Court noted that notice was published and posted
19 regarding the defendants' intent to adopt the Agreement at specific meetings, and
20 also that notice was published and a public hearing was held on the redevelopment
21 plan prior to its adoption. Cited in *Christensen v. Yolo County Bd. of Sup'rs*, 995
22 F.2d 161 (9th Cir. 1993).

1 In this situation, the petition for judicial review potentially affects the health,
2 safety, and welfare of hundreds of residents of Storey, Washoe, Carson, Douglas,
3 Lyon, and Churchill counties, federally protected wild Mustangs, and bodies of
4 water, such as the Truckee River, Pyramid, and Lake Tahoe, because the dioxins
5 produced through incineration of biohazardous medical waste, which travels
6 hundreds of miles.
7

8
9 A recent event showed that the smoke from wildfires in the Western United
10 States drifted as far east as New York and Washington DC, with residents there
11 observing hazy skies and unusual sunrises. The Guardian, September 15, 2020.
12

13 (Stericycle's) biohazardous medical waste will be incinerated and the deadliest
14 compounds known to science: Dioxins, Furans, Heavy Metals, Radioactive
15 Elements, and even Prions, causing danger for future medical problems in the form
16 of cancer, pregnancy complications, birth defects, and autism-among people who
17 live within several miles of incinerators, and the highly infective proteins that
18 cause the 100% fatal human "Mad Cow" disease, which will travel hundreds of
19 miles. Utah Physicians Study, V;1128-29.
20

21 "Substantive due process protects individuals from arbitrary deprivation of their
22 liberty by government." *Brittain v. Hansen*, 451 F.3d 982, 991 (9th Cir. 2006)
23 (citing *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 845-49 (1998)); see also
24 *Action Apartment Ass'n, Inc. v. Santa Monica Rent Control Bd.*, 509 F.3d 1020,
25

1 1026 (9th Cir. 2007) ("An arbitrary deprivation of [rights in real property] may
2 give rise to a viable substantive due process claim in any case in which the Takings
3 Clause does not provide a preclusive cause of action.").

4
5 To constitute a violation of substantive due process, the alleged deprivation
6 must "shock the conscience and offend the community's sense of fair play and
7 decency." *Marsh v. Cnty. of San Diego*, 680 F.3d 1148, 1154 (9th Cir. 2012)
8 (citation and internal quotation marks omitted); see also *Nunez v. City of Los*
9 *Angeles*, 147 F.3d 867, 871 (9th Cir. 1998). Where, as here, circumstances afford
10 reasonable time for deliberation before acting, we consider conduct to be
11 conscience-shocking if it was taken with deliberate indifference toward a plaintiff's
12 constitutional rights. *Lewis*, 523 U.S. 833 at 846. Cited in *Sylvia Landfield Trust v.*
13 *City of L.A.* (9th Cir. 2013).

14
15 Although the district court never heard the arbitrary and capricious arguments
16 regarding the Storey County Commissioners vote because it wanted to decide the
17 standing issue first, there is a need for a future evidentiary hearing to answer those
18 questions.
19

20
21 In this regard, the two voting commissioners, Jay Carmona and Marshall
22 McBride, failed to make a meaningful analysis in determining the health, safety,
23 and welfare of our communities. Commissioner Carmona was quoted as saying
24
25

1 that this biohazardous medical waste disposal through incineration was a
2 “necessary evil,” and there had to be “somewhere to dispose of this stuff.”

3
4 Voting for Stericycle’s special use permit to incinerate some of the most
5 dangerous toxins into our air amounts to a violation of the commissioners’ duty to
6 maintain a safe, healthy environment, and their vote approving the special use
7 permit for Stericycle appears arbitrary and capricious.

8
9 When balancing the financial benefit to Storey County with the obvious
10 potential health, safety, and welfare, violation, the scale is markedly tipped against
11 this vote.

12 ISSUE 3-Whether Appellant/Petitioner could satisfy the standing requirement if
13 representing Phillip Hilton, Rainbow Bend resident and Sam Toll, Gold Hill
14 resident, both Storey County residents, if they satisfied NRS 278.3195(4)?

15 Facts relevant for review:

16 Four months after the Petition was filed, the (Commissioner’s) argued that the
17 caption of the Petition for Judicial Review needed to be changed to exclude
18 Rainbow Bend Homeowners and Storey County Residents, leaving Mary Lou
19 McSweeney-Wilson as the lone Petitioner. IV;924-31.

20
21 (Wilson) opposed that Motion, asserting that there were over two hundred and
22 fifty (250) Rainbow Bend Homeowners and Storey County Residents that had
23 signed a petition opposing the special use permit for Stericycle, Inc. IV;932-36,
24 III;741-50 and IV;751-97, specifically, IV;776-97.
25

1 The district court granted the (Commissioner's) Motion to Change the Caption
2 of the Petition, eliminating Rainbow Bend Homeowners and Storey County
3 Residents from the caption, in an Order filed January 12, 2021, leaving only
4 (Wilson) in the caption. V;1103-05.

6 All parties filed Evidentiary hearing statements, which included names of
7 witnesses and exhibits expected to be admitted during the hearing. II;483-500 and
8 III;501-22, (Wilson); III;523-615 and V;1031-39, (Storey County Commissioners);
9 and III;616-20, (Stericycle, Inc.).

11 Unbeknown to (Wilson) at the time of writing the petition, and just days before
12 the evidentiary hearing date, (Wilson) discovered that two (2) residents of Storey
13 County satisfied NRS 278.3195(4). Both men were running for Storey County
14 Commissioner positions, "participated" in the meetings, and "opposed" Stericycle,
15 Inc. (Wilson) filed a Motion to Shorten Time and Leave to Reconsider the prior
16 Order that changed the caption to eliminate Rainbow Bend Community and Storey
17 County residents, because Phillip Hilton and Sam Toll had satisfied standing
18 through NRS 278.3195(4). V;1040-43.

21 This Motion was presented to the district judge, who granted a continuance of
22 the evidentiary hearing for further briefing. (Commissioner's) filed an Opposition
23 to the Motion for reconsideration Pursuant to FJDCR 3.13. V;1044-48 and
24 (Stericycle) also filed an Opposition. V;1049-71.

1 The district court eliminated the evidentiary hearing and granted (Stericycle's)
2 Motion to Dismiss the Petition and filed an Order Dismissing the Petition in favor
3 of the (Commissioner's). V;1112-16 and 1117-20.
4

5 Law relevant for review:

6 (Wilson) argued the "standing," requirement was met for NRS 278.3195(4)
7 through Phillip Hilton and Sam Toll when they "participated" in the zoom
8 meetings of August 6, 2020 and August 18, 2020, and verbally opposed the special
9 use permit of Stericycle, Inc. Within the Motion, (Wilson) asked the district court
10 to grant her "standing" to represent the two men and change the caption to Phillip
11 Hilton, Rainbow Bend Homeowner, and Sam Toll, Storey County Resident, who
12 had agreed to allow (Wilson) to represent them. This caption would be the same as
13 the original caption presented at the time of the filing, with the addition of the two
14 men's names.
15
16

17 NRS 278.3195(4) allows for any person who:
18

19 (a) Has appealed a decision to the governing body in accordance with an
20 ordinance adopted pursuant to subsection 1; and
21

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

1 Reviewing the Minutes of the Planning Commission dated August 6, 2020,
2 Sam Toll, from Gold Hill, Storey County, had “participated,” and was an
3 “aggrieved party,” voicing his objection to the special use permit for Stericycle,
4 Inc. in the Storey County Commissioner’s Evidentiary Hearing Statement, filed
5 February 12, 2021. III;523-615, specifically, p. 531, and Sam Toll “participated” in
6 the zoom meeting, which satisfied the “standing” requirement of NRS
7 278.3195(4).
8
9

10 Sam Toll stated, “Said he is calling from Gold Hill where his home is perhaps
11 the furthest away from this facility that it could be. Speaking in opposition of the
12 special use permit. Toll said he shares the concerns that Mr. Digesti from
13 Blockchains brought up, and also concerned about the wild horses. Said that even
14 though he didn’t participate in the vote, it is his understanding that Storey County
15 voted against Yucca Mountain when the opportunity was presented before the
16 voters. By the board approving these types of businesses, both Stericycle and the
17 Asian Chemical company we are setting a precedent to invite similar types of
18 companies in to Storey County. It’s important to recognize the types of firms that
19 we are going to let in and be cautious about what the long-term impact is for this
20 type of development not only to the horses but the impact to our first responders.
21 Toll stated that if there is an accident what type of equipment and dangers are they
22 going to be facing when they enter a dangerous situation at either of the two
23
24
25

1 facilities (Stericycle, AUECC). Said he has talked to folks within the fire
2 department and there is a very big concern about training equipment and potential
3 for personal injury and what could be released into the environment. Encouraged
4 the board not to approve this permit.” III;531.

6 Additionally, the “standing” requirement was satisfied where Sam Toll and
7 Phillip Hilton “participated,” and were an “aggrieved party,” voicing their
8 objections to Stericycle in Minutes of the Storey County Commission Meeting
9 dated August 18, 2020. III;610.

11 During the August 18, 2020 zoom meeting, where the special use permit was
12 approved by Commissioners Carmona and McBride, Sam Toll stated,

14 “Echos what Mr. Digesi has said and expressed disapproval at the Planning
15 Commission. He is skeptical of self-reporting whether mining income for taxes, or
16 emissions from this proposed facility. His “backyard” is as far away from this
17 facility as you can get. By approving this type of business, the bar is set for other
18 businesses to come in with hazardous materials. With almost a dozen of these
19 types of businesses in the County, it sets a dangerous precedent. Mr. Toll agrees
20 with what’s happening at the industrial park and is encouraged by the diversity of
21 businesses. This kind of business does not belong near Lockwood and Rainbow
22 Bend. Mr. Toll explained how OSHA was turned away from investigating a
23
24
25

1 dangerous machine at Tesla. He encouraged the Commissioners to reject this
2 Special Use Permit.” III;610.

3
4 During the August 18, 2020 zoom meeting, Phillip Hilton, Rainbow Bend
5 Homeowner and Storey County Resident “participated,” and was an “aggrieved
6 party,” satisfying the standing requirement of NRS 278.3195(4), when he voiced
7 his opposition to Stericycle’s special use permit, stating, “Has there been any
8 environmental study/studies? Getting environmental waste in and out of the area –
9 has there been a study of traffic impacts? I-80 corridor is prone to accidents,
10 especially in winter. What would the impact be if there was a spill on the
11 highway?”
12

13
14 Commissioner Carmona answered, “Thinks they said about fifteen (15) trucks
15 per day.” III;610.

16
17 Commissioner McBride stated, “Yes, 10 to 15 trucks per day. (The County) has
18 a hazmat team and we work with Washoe County. The Fire Department is properly
19 trained and equipped to handle any hazmat accident that would occur-whether with
20 this company or anyone else on the I-80 corridor.” III;610.

21
22 The district court opined that the Petition failed to meet the standing
23 requirement of NRS 278.3195 because there had not been any appeal to the Storey
24 County Commissioners.
25

1 However, Sam Toll had participated in the Planning Commission meeting of
2 August 6, 2020, when the Planning Commission voted to approve the special use
3 permit and appealed to the Storey County Commissioners during their August 18,
4 2020 meeting, when saying,

5
6 “Echos what Mr. Digesi has said and expressed disapproval at the Planning
7 Commission. This kind of business does not belong near Lockwood and Rainbow
8 Bend.” III;610.
9

10 Since NRS 278.3195(4) demands an appeal from the Storey County Planning
11 Commission meeting to the Storey County Commissioners meeting, Sam Toll has
12 satisfied the requirement of an “aggrieved party.”
13

14 Phillip Hilton had also been one of over two hundred and fifty (250) persons,
15 who signed the petition opposed to Stericycle and participated in the zoom meeting
16 of the Storey County Commissioner’s August 18, 2020 meeting. IV;751-797,
17 Exhibit 4, p. 1, third name from the bottom and Minutes of the August 18, 2020.
18 III;610.
19

20 (Wilson) argued that these men satisfied the “standing” requirement under NRS
21 278.3195(4) and the petition was timely filed within twenty-five (25) days of the
22 August 18, 2020 meeting approving the special use permit pursuant to NRS
23 278.0235. Therefore, there should be no surprise to the parties, since the original
24
25

1 caption read Rainbow Bend Homeowners and Storey County Residents, which
2 Phillip Hilton and Sam Toll were a part. V;1040-43.
3

4 Had (Wilson) known at the time of filing the Petition for Judicial Review that
5 Phillip Hilton and Sam Toll “participated” and were “aggrieved parties,” which
6 met the statutory requirements for the appeal to the district court, (Wilson) would
7 have included them as named Petitioners in the original caption.
8

9 However, because (Wilson) was unaware of the actions taken by the Storey
10 County Commission in August, 2020, until a few days before the statutory time
11 period for filing the Petition for Judicial Review, which required immediate action,
12 prevented necessary investigation of the facts, which were later determined as the
13 case move forward. Again, the failure of Notice of the meetings, prevented the
14 presentation of these two individuals as petitioners, which would have satisfied the
15 requirements for appeal in the first instance, and we would not be here today in
16 front of this Court having this discussion concerning standing.
17
18

19 These two Storey County residents were learned after review and preparation
20 for the evidentiary hearing, where (Commissioner’s) evidentiary hearing
21 statements were presented with the Minutes of the Storey County Planning and
22 Commission meetings were noted. III;523-615. Once they were learned attended
23 both meetings, (Wilson) alerted the parties and attempted to satisfy the statute but
24 the district court denied the Petition anyway. V;1112-16 and 1117-20.
25

1 If it is determined that (Wilson) does not have standing, it must be remembered
2 that a person cannot have standing to appeal to the district court unless they
3 attended the Storey County Commission meeting and appeal the Storey County
4 Planning Commission meeting. None of these could happen because of the
5 Governor's Executive Orders to suspend the Open Meeting Law and the Order to
6 Stay At Home. If residents of Storey County had no knowledge of meetings
7 because nobody knew about them, unless you are running for Storey County
8 Commissioners, you don't know meetings were taking place. You cannot hear a
9 bell ring if you did not know they were going to ring it.

12 Conclusion:

13
14 (Wilson's) Due Process rights under the Fourteenth Amendment to the United
15 States and Nevada Constitutions have been violated by the district court's orders
16 because it eliminated the proof necessary to show "standing," so the Petition for
17 Judicial Review of the Storey County Commissioners vote approving the special
18 use permit for Stericycle, Inc. could be shown,

19
20 (Wilson) and other Storey County residents did not receive Notice and did not
21 have an Opportunity to be Heard, since there were no physical postings of the
22 Storey County Planning or Commission Agendas posted at the Rainbow Bend
23 Clubhouse or Lockwood Senior Center, because of the Governor's Emergency
24
25

1 Orders suspending the Open Meeting Law and Order to Stay At Home during the
2 worldwide pandemic for COVID-19.

3
4 Additionally, because of the district court Orders, (Wilson) was unable to
5 present Phillip Hilton, Rainbow Bend Homeowner, and Sam Toll, Storey County
6 Resident, who “participated,” and were “aggrieved parties,” in the Storey County
7 Planning and Commission meetings of August 6th and 18th 2020, and voiced their
8 opposition to the special use permit of Stericycle, Inc. in the zoom meetings.
9

10 Sam Toll satisfied the “aggrieved party” aspect of NRS 278.3195, since he
11 appealed to the Storey County Commissioners on August 18, 2020, advising them
12 that he had attended the Storey County Planning Commission Meeting of August
13 6, 2020, objected to the special use permit there during the zoom meeting, and
14 again at the Storey County Commission meeting of August 18, 2020.
15

16 These two men, who agreed to have (Wilson) represent them in the Petition,
17 also had their constitutional rights violated under the Due Process Clause of the
18 Fourteenth Amendment.
19

20 DATED this 10th day of June, 2021.

21 By: s/s: MARY LOU WILSON
22 MARY LOU WILSON
23 Attorney At Law Bar #3329
24 132 Rue De La Noir
25 Sparks, Nevada 89434
775-771-8620

CERTIFICATE OF COMPLIANCE

1. 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 requirement of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using WORD in font size 14 and Times Roman;

2. I further certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief excerpted by NRAP 32(a)(7)(c), it

Does not exceed fourteen thousand (14,000) words.

3. Finally, I hereby certify that I have read this appellate 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) (1), which requires every assertion in the brief 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.

//

//

1 I understand that I may be subject to sanctions in the event that the
2 accompanying brief is not in conformity with the requirements of the Nevada
3 Rules of Appellate Procedure.
4

5 DATED this 12th day of June, 2021.

6 By: s/s: MARY LOU WILSON
7 MARY LOU WILSON
8 Attorney At Law, Bar #3329
9 132 Rue De La Noir
10 Sparks, Nevada 89434
11 775-771-8620
12 Attorney for Appellant/Petitioner
13
14
15
16
17
18
19
20
21
22
23
24
25

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Clerk of the Nevada Supreme Court
201 South Carson Street
Carson City, Nevada 89701

The Honorable Judge James Todd Russell
The First Judicial District Court
Department 1
885 East Musser Street
Carson City, Nevada 89701

Stericycle Inc.
c/o McDonald/Carano
Michael Pagni
Chelsea Latino
100 W. Liberty St.
10th Floor
Reno, Nevada 89501