IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 82806

MARY LOU MCSWEENEY-WILSON,

Appellant,

v.

STOREY COUNTY COMMISSIONERS;
and STERICYCLE, INC.,

Respondents.

Appeal from Orders Granting Motions to Dismiss
First Judicial District Court, Case No. 20 OC 00051E

RESPONDENT STERICYCLE, INC.'S ANSWERING BRIEF

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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 the Supreme Court and judges of the Court of Appeals may evaluate possible disqualification or recusal.

Respondent Stericycle, Inc. ("Stericycle") is a Delaware corporation. Stericycle has no parent corporation and no publicly held company owns 10% or more of Stericycle. McDonald Carano LLP is the sole law firm with attorneys who have appeared for Stericycle in this matter or are expected to appear on its behalf in this Court.

Dated: July 28, 2021.

McDONALD CARANO LLP

/s/ Chelsea Latino

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JURISDICTIONAL STATEMENT

On March 12, 2020, the district court entered its orders dismissing appellant's petition for judicial review for lack of standing under NRS 278.3195(4). *See* V Appellant's Appendix ("AA") 1112-20. Notices of entry of those orders were filed on March 16 and 17, 2021, respectively. *See* Respondents' Appendix ("RA") 25, 33. Appellant noticed this appeal on April 15, 2021. V AA 1182-87. Appellate jurisdiction is proper under NRAP 3A(b)(1), but as detailed in the argument section below, a jurisdictional defect existed in the district court concerning standing that would likewise defeat this appeal.

ROUTING STATEMENT

This appeal, which presents no issues of constitutional significance or statewide public importance, is neither presumptively retained by the Supreme Court nor assigned to the Court of Appeals under NRAP 17.

STATEMENT OF ISSUES

1. Did appellant lack standing to petition for judicial review where it is undisputed that she neither filed an administrative appeal to the Board as required by NRS 278.3195(4)(a) nor was aggrieved by the Board's decision as required by NRS 278.3195(4)(b)?

STATEMENT OF THE CASE

This case arises from a petition for judicial review filed in the district court by appellant Mary Lou McSweeney-Wilson ("Wilson") under NRS 278.3195. *See* I AA 1-4. The petition challenged respondent Storey County Commissioners' (the "Board") August 18, 2020 decision approving Stericycle's application for a special use permit in connection with property located in the Tahoe-Reno Industrial Center ("TRI Center") and approximately 12 miles east of Wilson's residence. *See* I AA 4, 11.

Wilson filed the petition in the district court on September 10, 2020, identifying the Board as the sole respondent and "Mary Lou McSweeney-Wilson, et. al., Homeowners of Rainbow Bend Community, and Storey County Residents" as petitioners. I AA 1. The Board subsequently moved to dismiss the Petition for lack of standing. III AA 734. Upon intervening in the action, Stericycle likewise moved to dismiss the Petition because Wilson lacked standing to obtain judicial review or to otherwise challenge the Board's decision. *See* RA 5-15; *see also* V AA 1091-97.

While the motions to dismiss were pending, the district court granted the Board's motion to correct the caption of the case to reflect

Wilson as the sole petitioner. V AA 1103. Purporting to seek reconsideration of that decision two days before the hearing on the pending motions to dismiss, Wilson moved to substitute as petitioners two nonparty individuals who she believed had standing to petition for judicial review and allegedly retained Wilson to represent them in the action. V AA 1041-42. Ultimately, the district court concluded that Wilson failed to establish that reconsideration was warranted. V AA 1113. Finding that Wilson neither appealed to the governing body nor was aggrieved, the district court further concluded that Wilson lacked standing to petition for judicial review under the plain language of NRS 278.3195(4). V AA 1119. As a result, the district court dismissed the petition with prejudice. V AA 1114, 1120. This appeal followed.

STATEMENT OF FACTS

I. Stericycle Applied for an SUP for the Development of an Incinerator Facility at the TRI Center.

In June 2020, Stericycle applied for approval of a special use permit ("SUP") in connection with proposed development of a medical and other specialty waste incinerator facility located at 1655 Milan Drive in the TRI Center ("SUP Application"). *See* I AA 28. The TRI Center is a 107,000-acre industrial park located in the northern portion of Storey County and

approximately 12 miles east of the Rainbow Bend Community where Wilson resides. *See* I AA 11, 28; III A 742; IV AA 899; *see also* Appellant's Opening Brief ("AOB") 17, 42:23-24.

The TRI Center, including Stericycle's property, is zoned I-2 Heavy Industrial.[1] *See id.*; RA 6-7. I-2 Heavy Industrial zoning "is intended to provide areas for the development and operation of industrial and manufacturing uses which, by nature of their intensity, may be incompatible with other types of land use activities." Storey County Code of Ordinances ("SCC") § 17.37.020 (1999); *see* RA 7. The TRI Center is expressly authorized and intended to be developed with "heavy industrial" uses and "production processes which should not be located

[1] Pursuant to NRS 278.0201 and NRS 278.0203, development at the TRI Center is governed by a Development Agreement dated February 1, 2000, Development Handbook adopted by Storey County on February 1, 2000, and Storey County Zoning Ordinance dated July 1, 1999. *See* NRS 278.0201(3). These documents, as well as the Resolution Determining Similar Uses In The I-2 Heavy Industrial Zone adopted May 3, 2005 ("Resolution"), are matters of law and public record. *See Resources*, Tahoe-Reno Industrial Center, https://tahoereno.com/resources/ (last visited July 22, 2021) (follow hyperlinks for "Development Agreement," "Development Handbook," "Zoning Ordinance," and "Resolution on Similar Uses"). Although Wilson has not raised any issues that implicate the contents of any of these documents, this Court may take judicial notice of them in its discretion. *See* NRS 47.130(2)(b); NRS 47.140(4), (6); NRS 47.150(1).

near residential or commercial uses due to the intensive nature of the industrial activity and/or scale of the operation," specifically including "[i]ncinerators, of any type and used for any purpose." Resolution at Ex. C, p. 11; SCC § 17.37.040(R) (1999).

II. The Board Approved and Issued the SUP to Stericycle As Recommended by the Planning Commission and Staff.

Staff of the Storey County Planning Commission ("Planning Commission") prepared a staff report finding that Stericycle's SUP Application complied with TRI Center zoning and recommending its approval. *See* IV AA 829, 900; RA 7. The Planning Commission considered the SUP Application at two regularly scheduled, public meetings on July 16, 2020 and August 6, 2020. *See* I AA 28; IV AA 817-22, 824-29. At both meetings, the Planning Commission heard from planning staff, Stericycle representatives, and members of the public. IV AA 817-22, 824-29. On August 6, 2020, the Planning Commission voted 5-1 to recommend approval of the SUP Application to the Board. IV AA 829. *See also* SCC § 17.03.010(B) ("The planning commission is advisory to the board.").

The Planning Commission's recommendation came before the Board at a regularly scheduled, public meeting on August 18, 2020. I AA

22, 28.[2] The Board heard from planning staff, representatives of Stericycle, and members of the public. I AA 28-33. Based on compliance with the unique, intense industrial zoning within the TRI Center and satisfaction of applicable findings, the Board approved Stericycle's SUP Application by unanimous vote. I AA 33.

III. Upon Hearing About Stericycle's SUP Through Word-of-Mouth After the Board's Decision, Wilson Petitioned for Judicial Review Under NRS 278.3195.

Wilson did not attend or provide comment at any of the three public meetings of the Planning Commission or Board, but rather heard about Stericycle's SUP "through word of mouth." IV AA 906; *see also* I AA 16-17, 130-31. After notice of the Board's final decision was filed with the County Clerk on August 20, 2020, Wilson petitioned for judicial review 21 days later on September 10, 2020. *See* I AA 1; IV AA 901.

[2] In light of the COVID-19 pandemic, the meetings were conducted via Zoom. Nev. Exec. Dep't, Declaration of Emergency Directive 006 (Mar. 22, 2020) (suspending in-person open meeting law requirements) [hereinafter ED 006]; Nev. Exec. Dep't, Declaration of Emergency Directive 026 (June 29, 2020) (extending ED 006 through July 31, 2020) [hereinafter ED 026]; Nev. Exec. Dep't, Declaration of Emergency Directive 029 (July 31, 2020) (extending ED 006 again) [hereinafter ED 029].

Wilson's petition named the Board as the sole respondent and identified "Mary Lou McSweeney-Wilson, et. al., Homeowners of Rainbow Bend Community, and Storey County Residents" as "Petitioners." I AA 1. In the petition, Wilson requested "review and rescinding" of the Board's decision "based upon the potential violation to the health, safety, and welfare, of Storey County and its surrounding areas." I AA 18. According to Wilson, an "outcry of citizens" would have demanded denial had they been aware of the SUP Application, but "Petitioners were unaware of the voting on this crucial issue, because many of its residents do not have computers, and have been sheltered since the COVID-19 restrictions, pursuant to the Order of the Governor of the State of Nevada." I AA 17. Although the petition was styled as being brought on behalf of these citizens, the only individual the petition identified was Wilson herself. I AA 1. The petition neither identified any of the individuals supposedly included as petitioners nor described the basis on which Wilson purported to represent any of them.

In response, the Board filed a motion to dismiss for lack of standing. III AA 734. After the district court granted its motion to intervene, Stericycle likewise sought dismissal on the grounds that Wilson lacked

standing to obtain judicial review under NRS 278.3195 or otherwise challenge the Board's decision, and therefore, the district court lacked jurisdiction to consider the petition. *See* RA 5-21; IV AA 898; *see also* V AA 1091-97, 1130-63.

IV. Before the District Court Considered the Motions Challenging Her Standing to Seek Judicial Review, Wilson Sought to Substitute Two New Parties as Petitioners After NRS 278.0235's 25-day Limitations Period Had Expired.

While the dismissal motions were pending, because the petition neither identified any other petitioner nor any relationship that would allow Wilson to represent any other petitioners, the Board moved to correct the case caption to remove "et al., Homeowners of Rainbow Bend Community, and Storey County Residents" and identify Wilson as the sole petitioner. IV AA 925-26. The district court granted the Board's motion and ordered that the caption be amended on January 12, 2021. V AA 1103-05. Wilson purported to seek reconsideration of that decision two days before the motions to dismiss were scheduled to be heard on February 19, 2021. *See* V AA1040; RA 23-24; *see also* V AA 1098, 1101.

Effectively conceding she lacked standing, Wilson asked the district court to not only reconsider the removal of "et al., Homeowners of Rainbow Bend Community, and Storey County Residents" from the

caption, but also add the names of two individuals to the caption to reflect their substitution as petitioners, as follows: "Phillip Hilton, Rainbow Bend Resident, and Sam Toll, Resident of Storey County, represented by Mary Lou McSweeney-Wilson, Petitioners." V AA 1040-42. Because Wilson's last-minute request presented "a number of legal issues," the hearing on the motions to dismiss was taken off calendar to allow for full briefing. RA 23-24; *see* V AA 1044-67.

V. The District Court Dismissed Wilson's Petition with Prejudice for Lack of Standing Because She Neither Administratively Appealed Nor Was Aggrieved As Required By NRS 278.3195(4).

The district court denied Wilson's request for reconsideration and dismissed Wilson's petition entirely in two orders filed on March 12, 2021. V AA 1112, 1117. The district court concluded that Wilson failed establish any viable grounds warranting reconsideration with respect to the amended case caption. V AA 1112-13. As to the jurisdictional challenges, the district court concluded that Wilson lacked standing to petition for judicial review because, as Wilson herself conceded, she did not appeal to the governing body as required by NRS 278.3195(4)(a). V AA 1119; *see* V AA 1113 (explaining that participation in the administrative process is required in order to appeal an administrative

decision under the Storey County Code). The district court further concluded that Wilson lacked standing under NRS 278.3195(4)(b), finding that Wilson could not establish she was aggrieved because it was undisputed that she had 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." V AA 1119 (quoting SCC § 17.03.130(B) (defining "aggrieved party").

As a result, the district court dismissed the petition with prejudice. V AA 1120. This appeal followed.

SUMMARY OF ARGUMENT

The district court correctly dismissed Wilson's petition because she lacked standing to obtain judicial review under NRS 278.3195(4), which this Court has repeatedly held is "clear and unambiguous." *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 804 (2006). Wilson conceded that she did not file an administrative appeal. Therefore, the plain language of NRS 278.3195(4)(a) compelled the dismissal of Wilson's petition. This is the precise result that this Court already has reached on several prior occasions. *See id.*; *Holt-Still v. Washoe Cnty. Bd. of Cnty. 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."); *see also Mesagate Homeowners Assoc. v. City of Fernley*, 124 Nev. 1092, 1101, 194 P.3d 1278, 1254 (2008) ("Mesagate has failed to exhaust its administrative remedies by not appealing the City's building permit to the Board of Appeals established by the Fernley Development Code pursuant to NRS 278.3195. Thus, judicial review is improper . . . ."). These established principles are dispositive here.

In addition, while affirmance is warranted under NRS 278.3195(4)(a) alone, a second jurisdictional defect compelled dismissal of Wilson's petition because she was not "aggrieved" by the Board's decision. Wilson is a homeowner in the Rainbow Bend Community, which is no less than 12 miles away from the subject property and well beyond the 300-foot notice area under NRS 278.315 and SCC § 17.03.130(B). Therefore, even if she had attempted to administratively appeal, which she did not, Wilson still would have lacked standing to seek judicial review. Accordingly, the district court lacked jurisdiction to consider her petition.

Wilson's arguments to the contrary ignore, misstate, or otherwise misapprehend the issue before the district court and do not warrant reversal of the district court's dismissal with prejudice. Thus, Stericycle respectfully requests that this Court affirm.

ARGUMENT

I. Standard of Review

This Court reviews orders granting motions to dismiss and purely legal questions de novo. *See Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227–28, 181 P.3d 670, 672 (2008); *see also Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009) ("Subject matter jurisdiction is a question of law subject to de novo review."). Orders denying reconsideration are reviewed for abuse of discretion. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 589, 245 P.3d 1190, 1197 (2010).

II. Wilson Lacks Standing to Seek Judicial Review of the Board's Decision Under the Plain Language of NRS 278.3195(4).

Wilson has no right to judicial review based on the plain language of NRS 278.3195. 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). The ordinance adopted by Storey County in accordance with NRS 278.3195(1) is codified at Section 17.03.130 of the Storey County Code of Ordinances. *See* SCC § 17.03.130(A) (allowing an "applicant or any aggrieved party" to appeal certain "administrative decision[s]" to the Board within 10 days of the written administrative decision, which may be affirmed, modified, or reversed by the Board); *id.* § 17.03.130(B)(1) (conferring standing to file an administrative appeal to the applicant or any aggrieved party who has participated in the administrative process).

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); *Kay*, 122 Nev. at 1105, 146 P.3d at 804 ("NRS 278.3195(4) is clear and unambiguous, and thus, we follow its plain meaning"). In other words, NRS 278.3195(4), "even when liberally construed and broadly interpreted, requires a petitioner to have appealed to the governing body," as well as be aggrieved by the governing body's decision. *Holt-Still*, 2020 WL 3570377, at *2.

Here, Wilson concedes she did not appeal to the governing body as required by NRS 278.3195(4)(a). As a result, she lacked standing to seek judicial review and, thus, the district court lacked jurisdiction to consider her petition. *See Holt-Still*, 2020 WL 3570377, at *2 ("Because appellants did not appeal to the governing body, the district court correctly concluded that they lacked standing to petition for judicial review."). The district court's dismissal should be affirmed on this basis alone. *Washoe Cnty. v. Otto*, 128 Nev. 424, 431, 431, 282 P.3d 719, 725 (2012) (explaining that "'[s]trict compliance with the statutory requirements is a precondition to jurisdiction by the court of judicial review,' and '[n]oncompliance with the requirements is grounds for dismissal'"

(quoting *Kame v. Emp. Sec. Dep't*, 105 Nev. 22, 769 P.2d 66 (1989) (alterations in original))).

In addition, affirmance is independently warranted for lack of standing because Wilson was not "aggrieved" by the Board's decision as required by NRS 278.3195(4)(b). Because "the Legislature chose not to define 'aggrieved' for appeals in counties with populations of less than [700,000]," *City of N. Las Vegas v. Eighth Jud. Dist. Ct.*, 122 Nev. 1197, 1206, 147 P.3d 1109, 1115 (2006), the pertinent local ordinance enacted under NRS 278.3195 controls who is "aggrieved" for purposes of filing an administrative appeal and petitioning for judicial review. *Cf. Kay*, 122 Nev. at 1107, 146 P.3d at 806 (indicating that the Legislature substituted its own definition of aggrieved for purposes of local land use decisions in Clark County, requiring that the definition of "aggrieved" under subsection 1 also apply to subsection 4). The Storey County Code defines "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." SCC § 17.03.130(B)(1); *see also* 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"); SCC § 17.03.070(B)(2)–(3) (same).

However, Wilson is a homeowner in the Rainbow Bend Community, which is over 12 miles west of the subject property for which the SUP was granted and well beyond the 300-foot notice area. *See* I AA 1, 17. Moreover, despite alleging a generalized interest in protecting "the health, safety, and welfare" of Storey County and "its surrounding areas" from "potential" adverse effects, she neither alleged nor could demonstrate how development 12 miles away and downwind of her property, within an existing 107,000-acre industrial park that has already been approved for the specific, intended purpose of aggregating the largest, most intense heavy industrial land uses in the County in one location miles away from residential uses, adversely and substantially affects her property. *See Kay*, 122 Nev. at 1107, 146 P.3d at 806 (noting the Nevada Supreme Court has "defined an 'aggrieved party' for general appellate purposes as one whose personal or property right has been adversely and substantially affected" (quoting *Estate of Hughes v. First Nat'l Bank*, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980))). Thus, Wilson lacked

standing because she was not "aggrieved" as required by NRS 278.3195(4)(b), which is an independent basis for affirmance.

Finally, in no event does NRS 278.3195(4) afford Wilson a right to judicial review because the Planning Commission's recommendation for approval of Stericycle's SUP Application was merely "advisory only to the board," such that there was no administrative decision Wilson could have "appealed," and thus, no administrative decision by which she could have been "aggrieved." SCC § 17.03.090; *see also id.* § 17.03.010; NRS 278.030(2) (providing that "counties whose population is less than 45,000 *may* create by ordinance a planning commission" (emphasis added)); NRS 278.315(1) (providing that a "governing body *may* provide by ordinance for the granting of variances, special use permits, conditional use permits or other special exceptions by . . . the planning commission" (emphasis added)). *Cf. Bd. of Comm'rs of Las Vegas v. Dayton Dev. Co.*, 91 Nev. 71, 73, 75–76, 530 P.2d 1187, 1188, 1190 (1975) (determining that a tie vote by the board resulted in no decision where there was only a recommendation from the planning commission, but no actual decision for the board's tie vote to uphold).

But as this Court concluded in *Holt-Still*, the fact that Wilson did not and could not have appealed to the Board "does not make the words '[h]as appealed' any less clear or ambiguous." 2020 WL 3570377, at *1 (alteration in original). Not only is extraordinary writ relief available where no adequate legal remedy such as judicial review exists,[3] but had the Legislature intended to extend standing to a party who could not appeal to the governing body, "it would not have included a separate subsection expressly requiring a petitioner to '[h]a[ve] appealed' to the governing body." *Id.* at *2 (alterations in original) (quoting NRS 278.3195(4)(a)).

[3] Of course, a party "must have standing to seek writ relief . . . for the district court to have subject matter jurisdiction over a petition for writ relief." *Garmong v. Lyon Cnty. Bd. of Comm'rs*, No. 74644, 2019 WL 1989191, at *1 (Nev. May 3, 2019). Even if Wilson had timely sought the proper remedy of extraordinary writ relief within NRS 278.0235's 25-day limitations period (she did not and is now time-barred from doing so), she still would lack standing to challenge the Board's decision because she has no beneficial interest in the relief she seeks, and instead relies on a generalized injury that is speculative at best and otherwise based on nonexistent procedural irregularities, as detailed herein. *See id.* at *1-2 (affirming district court's dismissal of writ petition challenging a governing body's issuance of a special use permit based on lack of standing where the petitioner "fail[ed] to show a direct and substantial injury, and instead relie[d] on a generalized injury").

The plain language of NRS 278.3195(4), "even when liberally construed and broadly interpreted, requires a petitioner to have appealed to the governing body." *Holt-Still*, 2020 WL 3570377, at *2. Because it is undisputed that Wilson did not do so, the district court correctly dismissed Wilson's petition for lack of standing. The district court also correctly concluded that Wilson lacked standing because Wilson was not "aggrieved" as required by NRS 278.3195(4)(b). Wilson's unsupported legal and factual arguments below and on appeal do not warrant reversal of the district court's decision.

III. Wilson's Remaining Arguments Lack Merit.

Despite the concession that she did not first file an administrative appeal and without disputing that she was not "aggrieved" or even attempting to address the requirements of NRS 278.3195(4), Wilson makes various unintelligible and unsupported arguments that ignore, misstate, or otherwise misapprehend the issue before the district court (i.e., standing under NRS 278.3195) and do not warrant reversal of the district court's decision. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (recognizing that the Court need not consider claims of error by a party who neglects

their "responsibility to cogently argue, and present relevant authority, in support"); *Douglas Disposal, Inc. v. Wee Haul, LLC*, 123 Nev. 552, 557 n.6, 170 P.3d 508, 512 n.6 (2007) (providing that the Court need not reach issues not addressed by the district court).

A. Nothing in this case implicates Wilson's due process rights.

Wilson argues that she "and other Storey County residents" were unaware of the proceedings due to Governor Sisolak's "Order to Stay at Home" and suspension of certain open meeting law requirements in connection with the COVID-19 pandemic. AOB 4, 15, 26–27. According to Wilson, these Emergency Directives denied Wilson notice and an opportunity to be heard, such that "the Storey County Commissioner's vote, in the absence of Notice to the communities that would be affected, is a violation of the Due Process Clause of the United States and Nevada Constitutions." AOB 20. Notwithstanding that Wilson commenced judicial review proceedings rather than a civil action asserting due process or open meeting law violations, nothing in this case implicates Wilson's due process rights. *Cf. City of Henderson v. Eighth Jud. Dist. Ct.*, 137 Nev. Adv. Op. 26, 2021 WL 2603094 (June 24, 2021) (noting that "[a] petition for judicial review requests district court review of an

administrative decision, while a civil action initiates litigation between two or more parties," and holding "that petitions for judicial review of land use decisions pursuant to NRS 278.3195 are distinct from civil actions").

Due process is implicated when a governmental decision deprives an individual of a "liberty" or "property" interest. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Malfitano v. Storey Cnty.*, 133 Nev. 276, 282, 396 P.3d 815, 819 (2017) (noting that a procedural due process claim involves interference with an existing liberty or property interest). Notably, Wilson does not dispute that she was not entitled by law to notice under NRS 278.315 given that she does not own or occupy property "located within 300 feet of the property in question." NRS 278.315(3); *see* SCC §§ 17.03.070(B)(2)–(3), 17.03.130(B)(1). Nor does she dispute that notice was provided in accordance with Nevada's open meeting laws in effect at the time. *See* NRS 241.020; ED 006 (suspending the requirement that public notice agendas be posted at physical locations under NRS 241.020 and explaining that notice need only be posted online and provided via email or mail upon request); ED 026; ED 029; IV AA 995–96.

Not only can there be no open meeting or due process violation based on lack of notice where no right to notice exists in the first place, Wilson fails to identify a cognizable liberty or property interest, let alone one that was deprived. *See Crown Point I, LLC v. Intermountain Rural Elec. Ass'n*, 319 F.3d 1211, 1216–17 (10th Cir. 2003) (concluding that non-applicant had no "protectable property interest in the special use review procedure" where "the governing body retains discretion and the outcome of the proceeding is not determined by the particular procedure at issue"); *Hillside Cmty. Church v. Olson*, 58 P.3d 1021, 1026, 1030–31 (Colo. 2002) (concluding that, because there can be no property right in mere procedure under the due process clause, neighboring property owners had no cognizable property interest in notice and an opportunity to participate in a special use permit hearing or in having the challenged special use permit denied); *see also* IV AA 907 ("Petitioner does not contest that Stericycle complied with whatever conditions necessary for its application before the Planning and Commissioner's meetings."). As a result, Wilson's conclusory due process arguments fail and should be rejected.

B. The district court appropriately exercised its discretion to deny Wilson's futile request for "reconsideration."

Wilson erroneously suggests that the district court erred in amending the case caption to reflect Wilson as the sole petitioner and further that she could have satisfied NRS 278.3195's requirements if the district court "grant[ed] her 'standing' to represent the two men and change the caption to Phillip Hilton, Rainbow Bend Homeowner, and Sam Toll, Storey County Resident, who had agreed to allow (Wilson) to represent them." AOB 35. To the contrary, the district court properly (1) amended the case caption where Wilson failed to even attempt to explain what authority she had to seek relief on behalf of an unidentified group, and (2) denied Wilson's last-minute motion, which established no viable grounds for reconsideration and instead confirmed dismissal was required for lack of jurisdiction.

First, despite purporting to seek relief on behalf of all "Homeowners of Rainbow Bend Community, and Storey County Residents," Wilson fails to identify any authority permitting her to sue in a representative capacity on behalf of other unidentified parties, let alone in a judicial review proceeding and without following the procedural requirements

that would otherwise apply. *See* NRCP 23; *see also* NRCP 10. The district court was within its discretion to amend the caption accordingly.

Second, Wilson identified no viable grounds for reconsideration of that decision. Instead, she relied on purportedly new evidence which could have been discovered prior to the court's ruling—i.e., the minutes from the meetings that Hilton and Toll participated and at which Stericycle's SUP Application was considered. *See* V AA 1053–55. As participation by Hilton and Toll was neither material nor new, the district court was well within its discretion to determine that this information did not justify reconsideration. FJDCR 3.13(a) (providing for reconsideration where "the court overlooked or misunderstood a material fact, or overlooked, misunderstood, or misapplied law that directly controls a dispositive issue"); *see also Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) ("Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted.").

Finally, because Wilson's petition failed to invoke the district court's jurisdiction within the statutory time limit in NRS 278.0235, the petition could not "be subsequently amended" to name Hilton and Toll in

an attempt "to cure the jurisdictional defect."[4] *Washoe Cnty. v. Otto*, 128 Nev. 424, 426, 282 P.3d 719, 721 (2012). Nor did Wilson file a motion for substitution or identify any permissible basis for substitution under NRCP 25 (allowing substitution of parties upon the original party's death, incapacitation, or transferred interest).

As a result, even if the threshold jurisdictional defects with respect to Wilson's standing were overlooked and Toll and Hilton were

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[4] This is true notwithstanding that Wilson included "et al." language in the original caption—particularly given that the homeowners and residents the petition alleged were unable to voice their opposition surely would not include Hilton and Toll, who in fact participated and voiced their opposition. *See* I AA 16-17. Because NRCP 10 only allows for the use of a fictitious name to identify an unknown defendant—i.e., an adverse party, the district court correctly concluded that there was no provision within NRCP to identify fictitious parties as complainants. NRCP 10(d) ("Using a Fictitious Name to Identify a Defendant"); V AA 1103. Even if NRCP 10 allowed for using a fictitious name to identify a complainant, Wilson did not plead the basis for naming this universe of unknown individuals other than by their true identities in the Petition, did not exercise reasonable diligence in ascertaining their true identities, and failed to even attempt to address what, if any, authority she had to commence this action in a representative capacity to begin with. *See Nurenberger Hercules-Werke GMBH v. Virostek*, 107 Nev. 873, 881, 822 P.2d 1100, 1106 (1991) (listing the requirements for "pleading fictitious or doe defendants in the caption," such as "pleading the basis for naming defendants by other than their true identity" and "exercising reasonable diligence in ascertaining the true identity of the intended defendants"), *abrogated on other grounds by Costello v. Casler*, 127 Nev. 436, 254 P.3d 631 (2011).

substituted as petitioners, the Petition would remain jurisdictionally defective and NRS 278.3195(4) would still compel dismissal as neither Toll nor Hilton timely petitioned for judicial review within 25 days as required by NRS 278.0235. Even if Wilson had sought reconsideration based on evidence that was actually new (she did not), her discovery of two individuals' participation at the public meetings did not exempt those individuals from strictly complying with the time limit in NRS 278.0235 and all jurisdictional requirements for judicial review under NRS 278.3195(4). *See Nationstar Mortg. v. Rodriguez*, 132 Nev. 559, 561-62, 375 P.3d 1027, 1029 (2016) (declining to read a discovery component into a time limit for judicial review of a foreclosure mediation matter and providing that the Nevada Supreme Court "has never applied a discovery rule to any type of petition for judicial review"). In other words, Toll and Hilton were time-barred from challenging the Board's decision.

Even overlooking the jurisdictional defects above, reconsideration was still futile as Toll and Hilton likewise lacked standing to petition for judicial review. Wilson summarily argues that these individuals had standing because they participated in the public meetings before the Board. *See* AOB 35. However, standing to seek judicial review requires

that a petitioner establish both that the petitioner (1) "[h]as appealed to the governing body," ***and*** (2) "[i]s aggrieved by the decision of the governing body." NRS 278.3195(4). Neither Hilton or Toll filed an administrative appeal to the Board as required under NRS 278.3195(4)(a), nor could they have, and both lacked standing on that basis alone.[5]

Moreover, and notwithstanding that they respectively appeared at one or two of the public meetings, neither was aggrieved by the Board's decision as required under NRS 278.3195(4)(b) because, like Wilson, both lack any interest in Stericycle's property or "property located within the notice area of the property that is entitled by law to notice." SCC § 17.03.130(B)(1); *see also* NRS 278.315(3) (providing that properties within a 300-feet notice area are entitled by law to notice). Rather, the record reflects that, just like Wilson, both reside miles outside of the 300-

[5] As detailed above, the Planning Commission's recommendation for approval of Stericycle's SUP Application was not an "administrative decision" that could have been appealed as required by NRS 278.3195(4)(a). *See supra* note 3 and accompanying text; *see also Holt-Still*, 2020 WL 3570377 at *1, *2 (noting that the plain language of NRS 278.3195(4), "even when liberally construed and broadly interpreted, requires a petitioner to have appealed to the governing body" and that the fact that a party could not appeal "does not make the words '[h]as appealed' any less clear or unambiguous").

feet notice area. *See* IV AA 827 ("Sam Toll: Said he is calling in from Gold Hill where his house is perhaps the farthest away from this facility that it could be."); IV AA 881 ("Sam Toll: . . . His 'backyard' is as far away from this facility as you can get."); V AA 1041 (alleging Phillip Hilton is a homeowner of Rainbow Bend); IV AA 781 (identifying Phillip Hilton's address in Rainbow Bend); II AA 484. Thus, for multiple, independent reasons, reconsideration was futile because the district court lacked jurisdiction to consider the petition.

CONCLUSION

For the foregoing reasons, Stericycle respectfully requests that the Court affirm the district court's decision under NRS 278.3195(4).

Affirmation

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Respectfully submitted this 28th day of July, 2021.

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CERTIFICATE OF COMPLIANCE

I 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 2016 in 14-point font, Century Schoolbook 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 5,782 words.

Finally, 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)(1), which requires every assertion regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

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sanctions in the event that this brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: July 28, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP and on July 28, 2021, a true and correct copy of the foregoing was electronically filed and served on all registered parties to the Nevada Supreme Court's electronic filing system, as follows:

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