

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.

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Elizabeth A. Brown
Clerk of Supreme Court

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

RESPONDENT'S APPENDIX

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(Chronological)

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Reply Memorandum of Points and Authorities In Support of Stericycle, Inc.'s Motion to Dismiss	11/23/2020	RA 18 – RA 22
Stericycle, Inc.'s Motion to Dismiss (without exhibits)	10/28/2020	RA 05 – RA 17
Stericycle, Inc.'s Reply In Support of Motion to Intervene	10/12/2020	RA 01 – RA 04

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP and on July 28, 2021, the foregoing was electronically filed with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system, as follows:

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FIRST JUDICIAL DISTRICT COURT OF NEVADA

STOREY COUNTY

* * * * *

MARY LOU MCSWEENEY-WILSON, ET.
AL., HOMEOWNERS OF RAINBOW
BEND COMMUNITY AND STOREY
COUNTY RESIDENTS,

Petitioners,

vs.

STOREY COUNTY COMMISSIONERS,

Respondent.

CASE NO.: 20 OC 00051E

DEPT NO.: 1

STERICYCLE, INC.'S REPLY IN SUPPORT OF MOTION TO INTERVENE

Intervenor Stericycle, Inc. ("Stericycle") submits the following Reply in support of its Motion to Intervene pursuant to NRCP 24 and NRS 12.130.

MEMORANDUM OF POINTS AND AUTHORITIES

Petitioner, who lacks standing to even bring her purported petition for judicial review challenging the Board's approval of Stericycle's special use permit ("SUP"), opposes intervention because Stericycle is "only the subject of the commissioner's vote" and can simply "re-apply for the special use permit again should this Court grant the Petition," and because Petitioner and unidentified "members of the communities of Rainbow Bend and Lockwood Community Corporation" did not receive notice that they are not legally entitled

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BY

DEPUTY

to receive and, thus, were allegedly unaware of the proceedings before the Board. Opp'n at 2-3. Incredibly, Petitioner further requests that the Court order Blockchains LLC to intervene and order the Board to pay Petitioner compensation if Stericycle is granted intervention. Beyond underscoring that Stericycle's intervention is warranted, Petitioner's arguments are meritless, improper, not cogently argued or supported by relevant legal authority, and should be rejected.

It is axiomatic that Stericycle is a necessary party to this purported judicial review proceeding in which Petitioner seeks to "rescind" the Board's approval of Stericycle's SUP. *See, e.g., Kay v. Nunez*, 122 Nev. 1100, 146 P.3d 801 (2006) (identifying the applicant as a respondent); *Holt-Still v. Washoe Cty. Bd. of Commr's*, No. 78784, 2020 WL 3570377 (Nev. June 30, 2020) (same); *Garmong v. Lyon Cty. Bd. of Commr's*, No. 74644, 2019 WL 1989191 (Nev. May 3, 2019) (same). As the "subject of the commissioner's vote," the applicant and permit holder of the SUP, and the owner of the real property benefitted by and to be operated under the SUP, Stericycle has a direct, substantial, and legally protectable interest in the subject matter of this action. And as Petitioner herself acknowledges, Stericycle's interest will not "remain intact" if the Board's vote is "changed." Opp'n at 5. Even if Stericycle could simply "re-apply" for the SUP as Petitioner suggests, were Petitioner to obtain a judicial order overturning the Board's decision, Stericycle would indisputably be deprived of its property rights and existing land use entitlement all without having had an opportunity to participate in these proceedings and protect its private interests. This is true despite that the Board and Stericycle have a shared interest in having the petition dismissed or the Board's decision affirmed, as Stericycle's private interests are not adequately represented by the Board.¹ For these reasons, intervention of right is warranted under NRCP 24(a).

¹ For example, a settlement agreement between the existing parties could directly affect Stericycle absent its intervention. *Cf. Dangberg Holdings Nev., L.L.C. v. Douglas Cty. Bd. of Cty. Commr's*, 115 Nev. 129, 141, 978 P.2d 311, 318 (1999) (recognizing that a settlement agreement would have impeded the intervenors' ability to protect their interests).

1 Second, Petitioner's alternative requests are both procedurally and substantively
2 improper. It is unclear what authority Petitioner has, if any, to seek Blockchains, LLC's
3 intervention, let alone in a representative capacity on behalf of an unknown number of
4 unnamed homeowners.² Nor does Petitioner cite to any legal authority to support her request
5 for compensation from the County. While the Court should summarily reject such requests, it
6 is important to note that legal expenses could have been minimized or entirely avoided had
7 Petitioner not opposed Stericycle's intervention, named Stericycle as a party in the first instance,
8 or simply not filed a petition with multiple jurisdictional defects to begin with.

9 In sum, Stericycle satisfies the standard for intervention of right under NRCP 24(a)
10 and should therefore be allowed to intervene. At the very least, the Court should permit
11 intervention under NRCP 24(b) given that Petitioner does not dispute, and therefore concedes,
12 that Stericycle's defense "shares with the main action a common question of law or fact" and
13 that Stericycle's motion is timely. *See Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 563, 216
14 P.3d 788, 793 (2009) (treating a party's failure to dispute an argument as conceding the point).

15 Respectfully submitted this 12th day of October, 2020.

16 McDONALD CARANO, LLP

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27 ² Notably, the time period for any challenge to the Board's decision has since expired under NRS
28 278.0235, so any attempt to join Blockchains as a petitioner would be futile. *Cf. Washoe Cty. v. Otto*, 128 Nev. 424, 435, 282 P.3d 719, 727 (2012) (noting that a petitioner cannot circumvent a statutory limitations period by amending the petition "outside of the filing deadline").

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that I served the foregoing STERICYCLE, INC.'S REPLY IN SUPPORT OF MOTION TO INTERVENE by placing a true and correct copy thereof enclosed in sealed envelopes, upon which first class postage was prepaid, in the United States mail addressed to the following parties at the addresses listed below:

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

DATED: October 12, 2020.

By: _____

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4825-2322-6318, v. 2

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**FIRST JUDICIAL DISTRICT COURT OF NEVADA
STOREY COUNTY**

MARY LOU MCSWEENEY-WILSON, ET.
AL., HOMEOWNERS OF RAINBOW
BEND COMMUNITY AND STOREY
COUNTY RESIDENTS,

Petitioners,

vs.

STOREY COUNTY COMMISSIONERS;
and STERICYCLE, INC.,

Respondents.

* * * * *

CASE NO.: 20 OC 00051E

DEPT NO.: 1

STERICYCLE, INC.'S MOTION TO DISMISS

Respondent Stericycle, Inc. ("Stericycle") moves to dismiss the Petition for District Court Review filed on September 10, 2020 ("Petition") by Petitioners Mary Lou McSweeney-Wilson, et al., Homeowners of Rainbow Bend Community and Storey County Residents ("Petitioners").¹ This Motion is made and based on the following memorandum of points and authorities, the exhibits attached hereto, all of the pleadings and papers on file in this action, and any oral argument that the Court may order in this matter. An original and a copy of a proposed order granting this Motion are attached hereto as **Exhibit 1** and **Exhibit 2**, respectively, pursuant to FJDCR 3.10.

¹ The Petition does not cite, and Stericycle is unaware of, any legal authority permitting Ms. Wilson to sue in a representative capacity on behalf of other unidentified parties. NRCP 17(b)(1).

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioners Mary Lou Wilson and an unknown number of unidentified homeowners of Rainbow Bend Community and “Storey County Residents” seek judicial review of the Storey County Board of Commissioner’s (the “Board”) August 20, 2020 unanimous approval of the issuance of a special use permit to Stericycle. Citing to NRS 278.3195 and NRS 278.0235 as the purported basis of the Court’s jurisdiction, Petitioners request the Court “rescind” the Board’s approval “based upon the potential violation to the health, safety, and welfare of Storey County and its surrounding areas.” Pet. at 18; *see also* Supp. to Pet. at 1. However, the Petition suffers from multiple independent jurisdictional defects which compel dismissal.

First, Petitioners lack standing to seek judicial review. NRS 278.3195(4) affords a limited right to request judicial review of final local zoning and land use planning decisions only to a person who has filed an administrative appeal *and* is aggrieved by the administrative decision. Because Petitioners neither filed an administrative appeal nor have demonstrated they are aggrieved, Petitioners lack standing to obtain judicial review based on the plain language of NRS 278.3195(4).

Second, while a challenge to the Board’s decision may have been more properly presented as a petition for writ of mandamus, Petitioners independently lack standing to obtain writ relief based on “potential” generalized harm to the public at large and nonexistent procedural irregularities. In any event, Petitioners are precluded from seeking writ relief because the 25-day limitations period in NRS 278.0235 has expired. Accordingly, not only do Petitioners lack standing to seek writ relief, but they are time-barred from doing so. Thus, leave to amend would be futile and the Petition should be dismissed with prejudice.

II. FACTUAL BACKGROUND

On or about June 23, 2020, Stericycle applied for a special use permit (“SUP”) for development of a medical and other specialty waste incinerator facility at 1655 Milan Drive in the Tahoe-Reno Industrial Center (“TRI Center”) (the “SUP Application”), which is approximately 15 miles east of the Rainbow Bend Community. *See* NRS 47.130. The TRI

Center is a 107,000 acre industrial park located in the northern portion of Storey County, the entirety of which is zoned I-2 Heavy Industrial.² 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.” 1999 Code § 17.37.020. The TRI Center is expressly authorized and intended to be developed with “heavy industrial” uses and “production processes which should not be located near residential or commercial uses due to the intensive nature of the industrial activity and/or the scale of operation,” including specifically, “[i]ncinerators, of any type and used for any purpose.” Resolution at Ex. C, p. 11; 1999 Code § 17.37.040(R).

Given the SUP Application’s compliance with TRI Center zoning, planning staff prepared a staff report recommending approval with conditions of Stericycle’s SUP Application. *See* Storey Cty. Planning Comm’n Meeting Agenda Packet at pp. 3-19 (Aug. 6, 2020), https://www.storeycounty.org/AgendaCenter/ViewFile/Agenda/_08062020-880.³ The Storey County Planning Commission (“Planning Commission”) considered the SUP Application at two regularly scheduled, public meetings on July 16, 2020 and August 6, 2020. *See* Storey Cty. Bd. of Comm’rs Meeting Agenda Packet at pp. 408-09 (Aug. 18, 2020), https://storeycounty.org/AgendaCenter/ViewFile/Agenda/_08182020-889; *see* Pet. at Ex. 1. In addition to reviewing the staff report and recommended findings, the Planning Commission heard from members of the public and representatives from Stericycle. By majority vote on August 6, 2020, the Planning Commission recommended approval of Stericycle’s SUP Application to the Board. *Id.*

² Pursuant to NRS 278.0201 through 278.02053, development on the property is governed by a Development Agreement and Development Handbook adopted by Storey County on February 1, 2000 and the Storey County Zoning Ordinance adopted July 1, 1999 (“1999 Code”). The 1999 Code, as well as the Resolution Determining Similar Uses In The I-2 Heavy Industrial Zone adopted May 3, 2005 (“Resolution”), are judicially noticeable matters of law under NRS 47.140(4) and available online at the following link: <https://www.storeycounty.org/309/Zoning-Ordinances>.

³ The Court may take judicial notice of this and the other documents cited herein, which are matters of public record whose accuracy cannot reasonably be disputed. NRS 47.130. *Cf. Baxter v. Dignity Health*, 131 Nev. 759, 764, 357 P.3d 927, 930 (2015) (providing that a court may “consider unattached evidence on which the complaint necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the plaintiff’s claim; and (3) no party questions the authenticity of the document.”).

1 The Board considered Stericycle's SUP Application at a regularly scheduled, public
2 hearing on August 18, 2020. *See* Storey Cty. Bd. of Comm'rs Meeting Minutes at pp. 6-12
3 (Aug. 18, 2020), https://storeycounty.org/AgendaCenter/ViewFile/Minutes/_08182020-889.

4 The Board heard from planning staff, representatives of Stericycle, and members of the
5 public. Based on compliance with the unique, intense industrial zoning within the TRI Center
6 and satisfaction of applicable findings, the Board approved Stericycle's SUP Application by
7 unanimous vote. *Id.* After notice of the Board's final decision was filed with the County
8 Clerk on August 20, 2020, Petitioners filed the Petition initiating this action on September
9 10, 2020.

10 **III. ARGUMENT**

11 As detailed below, Petitioners have no right to judicial review under NRS 278.3195
12 or the Storey County Code ("SCC"). Moreover, while a challenge to the Board's decision
13 may have been more properly presented to the district court through a petition for writ of
14 mandamus, Petitioners independently lack standing to obtain extraordinary relief and are
15 otherwise time-barred from doing so pursuant to NRS 278.0235. Accordingly, this Court
16 must dismiss as a matter of law based on lack of jurisdiction or, alternatively, based on the
17 applicable statute of limitations. *See* NRCP 12(b)(1), (5); *see also Washoe Cty. v. Otto*, 128 Nev.
18 424, 431, 431, 282 P.3d 719, 725 (2012) (providing that noncompliance with the statutory
19 requirements for judicial review is grounds for dismissal for lack of jurisdiction); *Bemis v.*
20 *Estate of Bemis*, 114 Nev. 1021, 1024, 967 P.2d 437, 439 (1998) ("A court can dismiss a complaint
21 for failure to state a claim upon which relief can be granted if the action is barred by the statute of
22 limitations.").

23 **A. Petitioners Lack Standing to Seek Judicial Review Under NRS 278.3195.**

24 Because petitions for judicial review are statutory creations, the Legislature may limit
25 the availability of judicial review. *See State Dep't of Health & Human Servs. v. Samantha,*
26 *Inc.*, 133 Nev. 809, 814, 407 P.3d 327, 330 (2017) (acknowledging that a statute limiting the
27 availability of judicial review is well-established as "legislative prerogative"); *Washoe Cty.*
28 *v. Otto*, 128 Nev. 424, 431, 431, 282 P.3d 719, 724 (2012) (explaining that "[c]ourts have no

1 inherent appellate jurisdiction over official acts of administrative agencies except where the
2 legislature has made some statutory provision for judicial review”). When the Legislature
3 creates a specific procedure for judicial review, “[s]trict compliance with the statutory
4 requirements is a precondition to jurisdiction by the court of judicial review,’ and
5 ‘[n]oncompliance with the requirements is grounds for dismissal.” *Id.*, 282 P.3d at 725 (quoting
6 *Kame v. Emp. Sec. Dep’t*, 105 Nev. 22, 769 P.2d 66 (1989) (alterations in original).

7 Petitioners seek judicial review under NRS 278.3195. Pet. at 18 (requesting “that this
8 Court grant review and rescinding [sic] of the Storey County Commissioner’s vote approving
9 the Special Use Permit for Stericycle”); *see also* Supp. to Pet. at 1. NRS 278.3195(1) requires
10 local governments to adopt an ordinance allowing “any person who is aggrieved by a
11 decision” of a planning commission created under NRS 278.030 or “other person appointed
12 or employed by the governing body who is authorized to make administrative decisions
13 regarding the use of land” to “appeal the decision to the governing body.” NRS
14 278.3195(1)(a), (d). The ordinance adopted by Storey County in accordance with NRS
15 278.3195(1) is codified at Section 17.03.130 of the Storey County Code of Ordinances
16 (“SCC”). *See* SCC § 17.03.130(A) (allowing an “applicant or any aggrieved party” to appeal
17 certain “administrative decision[s]” to the Board within 10 days of the written administrative
18 decision, which may be affirmed, modified, or reversed by the Board); *id.* § 17.03.130(B)(1)
19 (conferring standing to file an administrative appeal to the applicant or any aggrieved party
20 who has participated in the administrative process).

21 After the governing body renders its decision in an administrative appeal, judicial
22 review is available to a limited category of persons, as follows:

23 Any person who:

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

26 (b) Is aggrieved by the decision of the governing body,

27 may appeal that decision to the district court of the proper county by filing a
28 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.

1 NRS 278.3195(4). Accordingly, NRS 278.3195(4) affords a limited right to request judicial
2 review of final local zoning and land use planning decisions only to a person who (1) has
3 filed an administrative appeal and (2) is aggrieved by the administrative decision. As the
4 Nevada Supreme Court held in *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 804 (2006),
5 and has concluded on multiple occasions, “NRS 278.3195(4) is clear and unambiguous, and
6 thus, we follow its plain meaning.” *See also City of Reno v. Citizens for Cold Springs*, 126
7 Nev. 263, 270, 236 P.3d 10, 15 (2010) (acknowledging that “the express language in NRS
8 278.3195(4) . . . sets forth that a person who administratively appeals a zoning decision under
9 the applicable ordinance to the governing board and is aggrieved by the board’s decision may
10 appeal by timely filing a petition for judicial review in district court”).

11 Based on the plain language of NRS 278.3195(4), Petitioners have no right to judicial
12 review because Petitioners never appeared at nor appealed the Planning Commission’s decision,
13 never appeared at nor participated in the hearing before the Board, and fail to establish they are
14 “aggrieved” for purposes of standing to seek judicial review. *See Kay*, 122 Nev. at 1106, 146
15 P.3d at 806 (holding that “NRS 278.3195(4) governs a party’s standing to challenge the
16 Board’s decision in the district court”).

17 First, not only did Petitioners fail to participate in any administrative appeal, they concede
18 they “were unaware” of Stericycle’s SUP Application and the three public hearings at which
19 it was discussed. Pet. at 17. Judicial review is clearly not available because Petitioners did
20 not appeal to the governing body as required by NRS 278.3195(a)(4) nor exhaust administrative
21 remedies by appearing before the Planning Commission or Board, and, therefore, there is no
22 decision of which Petitioners could demonstrate they were aggrieved as required by NRS
23 278.3195(4)(b). *See Holt-Still v. Washoe Cty. Bd. of Commr’s*, No. 78784, 2020 WL 3570377
24 at *2 (Nev. June 30, 2020) (“Because appellants did not appeal to the governing body, the
25 district court correctly concluded that they lacked standing to petition for judicial review.”).

26 Second, Petitioners fail to demonstrate they were “aggrieved” under NRS 278.3195(1)
27 and SCC § 17.03.130(B). Both SCC § 17.03.130(B)(1) and NRS 278.3195(4) require that
28 Petitioners demonstrate they are “aggrieved” to have standing. The term “aggrieved party” is

“defined 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 Va. Beach Beautification Comm’n v. Bd. of Zoning Appeals*, 344 S.E.2d 899, 902 (Va. 1986) (recognizing that aggrieved in the land-use context requires an “immediate, pecuniary and substantial interest” such that the land use decision would “amount to a denial of some personal or property right different from that suffered by the public generally”). According to the allegations of the Petition, Petitioners are homeowners of Rainbow Bend Community, which is over 15 miles west of the subject property for which the SUP was granted and well beyond the 300-foot notice area. *See* Pet. at 1, 17; Supp. to Pet. at 1-2; 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). Furthermore, Petitioners fail to allege, let alone demonstrate, how development 15 miles away and downwind of their 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 their property. TRI Center was created for the express purpose of establishing compatibility of intense industrial uses, and those heavy industrial entitlements are decades old and well beyond legal challenge by Petitioners here. Given that Petitioners are not “aggrieved” parties and did not participate at any of the public hearings before the Planning Commission as required by SCC § 17.03.130(B)(1), they lacked standing to administratively challenge the Planning Commission’s decision and, therefore, they also lack standing to challenge the Board’s decision in this Court under NRS 278.3195(4). *Cf. Kay*, 122 Nev. at 1106-07, 146 P.3d at 805-06 (acknowledging that a party must have standing to challenge the land use decision administratively in order to challenge that decision judicially).

Alternatively, Petitioners cannot satisfy the “appeal” requirement under NRS 278.3195(4)(a) because there was no “administrative decision” to appeal under SCC § 17.03.130(A). The Planning Commission’s recommendation for approval of Stericycle’s SUP

Application was merely “advisory only to the board.” SCC § 17.03.090; *see also* SCC § 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)). Because only a recommendation had been made by the Planning Commission, there was no actual decision for the Board to the review in an administrative appeal. *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, rather than an actual decision, that the board’s tie vote upheld). Accordingly, the Planning Commission’s recommendation for approval did not constitute an “administrative decision” that Petitioners could “[h]a[ve] appealed” as required by NRS 278.3195(4)(a).⁴ 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 Petitioners did not administratively appeal to the Board, NRS 278.3195(4) does not afford Petitioners a right of judicial review. *Id.*

B. Petitioners Lack Standing to Seek the Proper Remedy of Extraordinary Writ Relief and Are Otherwise Time-Barred From Doing So Under NRS 278.0235.

Assuming, *arguendo*, that the proper procedure to challenge the Board’s approval is through a writ of mandamus, Petitioners’ challenge would still be defective as Petitioners lack standing to seek extraordinary relief and are otherwise time-barred from doing so. *See* NRS 34.170; *see also Holt-Still*, 2020 WL 3570377, at *1 (acknowledging that “a party who wins at the planning-commission level but loses at the governing-body level,” and thus lacks standing to

⁴ Notably, the fact that Petitioners did not and could not have appealed to the Board “does not make the words ‘[h]as appealed’ any less clear or ambiguous,” nor would such an interpretation lead to an absurd or unintended result. *Holt-Still*, 2020 WL 3570377, at *1. Not only is a petition for extraordinary relief available where no adequate legal remedy such as judicial review exists, 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 (quoting NRS 278.3195(4)(a)). To the extent Petitioners seek to proceed in the face of this plain and unambiguous statutory scheme, the Court should decline to broaden the availability of judicial review beyond what the Legislature intended. *See State Dep’t of Health & Human Servs.*, 133 Nev. at 814, 407 P.3d at 330; *Washoe Cty.*, 128 Nev. at 431, 282 P.3d at 724-25.

petition for judicial review under NRS 278.3195, “may petition for extraordinary relief”). Thus, even if Petitioners sought leave to amend to seek writ relief because they lack standing to seek judicial review, dismissal with prejudice and without leave to amend is still warranted.

1. Petitioners Lack Standing to Petition for Extraordinary Writ Relief.

Any attempt to cure the jurisdictional defects of the petition for judicial review through a request for leave to amend and seek a writ of mandamus would present separate jurisdictional defects still requiring dismissal because Petitioners have no beneficial interest in obtaining extraordinary relief. “Although state courts do not have constitutional Article III standing, ‘Nevada has a long history of requiring an actual justiciable controversy as a predicate to judicial relief.’” *In re Amerco Derivative Litig.*, 127 Nev. 196, 213, 252 P.3d 681, 694 (2011) (quoting *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986)). Generally, to establish standing, a party must show the occurrence of an injury that is “special,” “peculiar,” or “personal” to him and not merely a generalized grievance shared by all members of the public. *Schwartz v. Lopez*, 132 Nev., Adv. Op. 73, 382 P.3d 886, 894 (2016).

To establish standing in writ proceedings, “the petitioner must demonstrate a ‘beneficial interest’ in obtaining writ relief.” *Heller v. Legislature of State of Nev.*, 120 Nev. 456, 460–61, 93 P.3d 746, 749 (2004) (quoting NRS 34.170). A “beneficial interest” means “a direct and substantial interest that falls within the zone of interests to be protected by the legal duty asserted.” *Id.* at 461, 93 P.3d at 749. “This beneficial interest requirement has been interpreted to mirror the common law standing requirement. . . . In essence, the party seeking writ relief must show a ‘direct and substantial interest’ not just a generalized interest as a citizen.” *Garmon v. Lyon Cty. Bd. of Comm’rs*, No. 74644, 2019 WL 1989191, at *1 (Nev. May 3, 2019) (quotations omitted). Where, as here, “the petitioner[s] will gain no direct benefit from [the writ petition’s] issuance and suffer no detriment if it is denied,” the petitioners have no beneficial interest in obtaining writ relief and, therefore, lack standing to do so. *Heller*, 120 Nev. at 461, 93 P.3d at 749.

Petitioners do not allege any direct and substantial interest in obtaining the relief they seek. Rather, Petitioners allege generalized interests as citizens in protecting “the health, safety, and welfare” of Storey County and “its surrounding areas” from “potential” adverse

effects on (1) “the residences of Rainbow Bend Community”; (2) additional “neighboring residences of Storey County, to include, . . . Lockwood Community Corporation, Virginia City, Virginia City Highlands, Mark Twain, Gold Hill, Mustang, Patrick, Pyramid Lake, Pyramid Lake Indian Reservation, Wadsworth, Nixon, and Truckee River”; (3) “Washoe, Carson, Douglas, Lyon, Churchill, and Storey Counties”; and (4) other unidentified “neighboring communities, livestock, wildlife, including Wile [sic] Mustangs, rivers, lakes, and counties, for hundreds of miles.” Pet. at 17-18. These generalized issues are not only insufficient to establish standing, they are an improper collateral attack on final, nonappealable heavy industrial entitlements vested in the TRI Center decades ago.

Moreover, not only are the “potential” detriments that Petitioners allege entirely speculative and not based on actual harm, but Petitioners cannot show that they will gain any direct benefit if they obtain the relief sought. Pet. at 18. Petitioners allege that they received no notice and “were unaware” of the proceedings, and therefore request that the matter be remanded for another public hearing to allow them to object to the issuance of Stericycle’s SUP. Petitioners have no direct and substantial interest in obtaining such relief given that they reside over 15 miles east of the 300-foot notice area. *See* NRS 278.315(3)(b)-(c); SCC § 17.03.070(B)(2)-(3). Because Petitioners fail to show a direct and substantial injury based on the approved use of the land, and instead rely on a generalized injury that is speculative at best and otherwise based on nonexistent procedural irregularities, Petitioners cannot meet the standing requirement for seeking writ relief. *See Garmong*, 2019 WL 1989191, at *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). Accordingly, leave to amend would be futile and the Petition should be dismissed with prejudice.

2. Petitioners Are Time-Barred from Requesting Extraordinary Relief.

Leave to amend to request extraordinary writ relief or other equitable remedy would also be futile under NRS 278.0235. NRS 278.0235 contains a 25-day limitations period for challenges to land-use decisions as follows:

No action or proceeding may be commenced for the purpose of seeking judicial relief or review from or with respect to any final action, decision or order of

1 any governing body . . . unless the action or proceeding is commenced *within*
2 *25 days after the date of filing of notice of the final action*, decision or order
with the clerk or secretary of the governing body, commission or board.

3 (Emphasis added.) Here, the filing of the notice of the final action occurred no later than
4 August 20, 2020, when the notice of the final action was provided to Stericycle. *See Cty. of*
5 *Clark v. Doumani*, 114 Nev. 46, 52, 952 P.2d 13, 17 (indicating that the applicant must be
6 informed of the notice of final action “to give effect to the statute of limitations”), *overruled*
7 *on other grounds by Kay*, 122 Nev. 1100, 146 P.3d 801. Because the 25-day limitations
8 period expired no later than September 14, 2020, any challenge to the Board’s decision is
9 time-barred under NRS 278.0235. As the Petition fails to invoke the Court’s jurisdiction for
10 purposes of judicial review under NRS 278.3195(4), “it cannot properly be amended outside
11 of the filing deadline.” *Washoe Cty.*, 128 Nev. at 435, 282 P.3d at 727. The Petition should
12 therefore be dismissed.

13 IV. CONCLUSION

14 For the foregoing reasons, Stericycle respectfully requests that the Petition for Judicial
15 Review be dismissed with prejudice.

16 Dated this 28th day of October, 2020.

17 McDONALD CARANO, LLP

18 By 

19 Michael A.T. Pagni (NSBN 6444)
20 Chelsea Latino (NBSN 14227)
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25 mpagni@mcdonaldcarano.com
26 clatino@mcdonaldcarano.com

27 *Attorneys for Respondent Stericycle, Inc.*
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that I served the foregoing STERICYCLE, INC.'S MOTION TO DISMISS by placing a true and correct copy thereof enclosed in sealed envelopes, upon which first class postage was prepaid, in the United States mail addressed to the following parties at the addresses listed below:

Mary Lou Wilson
2064 Regent Street
Reno, NB 89509

Anne Langer
Keith Loomis
Storey County District Attorney's Office
201 S. C Street, P.O. Box 496
Virginia City, NV 89440

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

Dated this 28th day of October, 2020.

By: _____

An Employee of McDonald Carano LLP

INDEX OF EXHIBITS

Exhibit No.	Description	Pages
1	[Proposed] Order Granting Stericycle, Inc.'s Motion to Dismiss	4
2	Copy of [Proposed] Order Granting Stericycle, Inc.'s Motion to Dismiss	4

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Attorneys for Respondent Stericycle, Inc.

**FIRST JUDICIAL DISTRICT COURT OF NEVADA
STOREY COUNTY**

* * * * *

MARY LOU MCSWEENEY-WILSON, ET.
AL., HOMEOWNERS OF RAINBOW
BEND COMMUNITY AND STOREY
COUNTY RESIDENTS,

Petitioners,

vs.

STOREY COUNTY COMMISSIONERS;
and STERICYCLE, INC.,

Respondents.

CASE NO.: 20 OC 00051E

DEPT NO.: 1

**REPLY MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF STERICYCLE, INC.'S MOTION TO DISMISS**

I. Introduction

Stericycle's Motion presents the Court with a straightforward legal question—whether Petitioners have standing to seek judicial review of the Board's approval of Stericycle's SUP Application under NRS 278.3195(4). Despite that Petitioners' opposition is anything but straightforward, the undisputed facts and governing law allow only one conclusion: Petitioners lack standing to challenge the Board's approval of Stericycle's SUP Application under NRS 278.3195(4) or otherwise. Petitioners' conclusory arguments to the contrary are fatally flawed in that they ignore, misstate, or otherwise misapprehend the issue before the Court, and nothing in the opposition can salvage the multiple jurisdictional defects which compel dismissal of the petition.

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STOREY COUNTY CLERK

BY

DEPUTY

1 **II. In no event can Petitioners establish they have standing to seek judicial review or**
2 **relief under NRS 278.3195(4) and NRS 278.0235.**

3 Petitioners do not dispute that, under the plain meaning of NRS 278.3195(4), judicial
4 review is available only to a person who both filed an administrative appeal and is aggrieved
5 by the administrative decision. *Kay v. Nunez*, 122 Nev. 1100, 146 P.3d 801 (2006) (“NRS
6 278.3195(4) is clear and unambiguous, and thus, we follow its plain meaning.”). Further, it
7 is uncontested that Petitioners neither filed an administrative appeal nor participated in the
8 administrative process as required by NRS Chapter 278 and the Storey County Code. On this
9 basis alone, Petitioners lack standing under the plain meaning of NRS 278.3195(4) and, thus,
10 this Court lacks jurisdiction to consider the petition. *See Holt-Still v. Washoe Cty. Bd. of*
11 *Commr’s*, No. 78784, 2020 WL 3570377 at *2 (Nev. June 30, 2020) (“Because appellants
12 did not appeal to the governing body, the district court correctly concluded that they lacked
13 standing to petition for judicial review.”).

14 Petitioners erroneously argue that a “petition for writ of mandamus would be
15 appropriate if this Court were to dismiss or deny relief, since it is the next step after exhausting
16 the State remedy.” Opp’n at 3. To the contrary, there are significant differences between an
17 extraordinary writ and petition for judicial review. *Kay*, 122 Nev. at 1105, 146 P.3d at 805
18 (explaining the procedural distinctions between a writ of mandamus and petition for judicial
19 review). Specifically, a district court may have appellate jurisdiction to consider a petition
20 for judicial review where such right is created by statute, whereas extraordinary writs
21 implicate the courts’ original jurisdiction. *See id.* Not only do Petitioners lack standing to
22 seek extraordinary writ relief given that they rely on a generalized injury that is speculative
23 at best and otherwise based on nonexistent procedural irregularities, but any attempt to invoke
24 the Court’s original jurisdiction in this regard would be time-barred under NRS 278.0235.
25 *See Mot.* at 8-11; *see also Garmong v. Lyon Cty. Bd. of Comm’rs*, No. 74644, 2019 WL 1989191,
26 at *2 (Nev. May 3, 2019) (affirming district court’s dismissal of writ petition challenging a
27 governing body’s issuance of a special use permit based on lack of standing). Thus, leave to
28 amend would be futile and the petition should be dismissed with prejudice.

III. Petitioners' notice arguments lack merit and are insufficient to avoid dismissal.

Petitioners contend they do not dispute “that Stericycle complied with whatever conditions necessary for its application before the Planning and Commissioner’s meetings,” suggesting that the “only problem” with the Board’s decision is that they “were not provided proper Notice to oppose the special use permit.” Opp’n at 3. In doing so, Petitioners make vague allegations of due process violations and erroneously invite the Court to rewrite or otherwise expand the statutory notice provisions under Nevada’s land use and open meeting laws. *See id.* at 6-12. Petitioners arguments lack merit and, in any event, are insufficient to circumvent the unassailable legal authority that NRS 278.3195(4) does not afford them a right of judicial review of the Board’s decision.

Petitioners argue that they “were unable to view the agendas as posted because of the governor’s emergency order to stay home” and that those residents who have computers “were unaware of receiving notice through the internet.” Opp’n at 4, 7. However, Petitioners concede that they are not entitled by law to receive notice under NRS 278.315(3) because they do not own or occupy property “located within 300 feet of the property in question.” *See* SCC §§ § 17.03.070(B)(2)-(3), 17.03.130(B)(1). Nor do Petitioners argue that notice was not provided as required under Nevada’s open meeting laws. *See* NRS 241.020.¹ Of course, there can be no open meeting or due process violation based on lack of notice where no right to notice exists in the first place, and Petitioners arguments with respect to notice should be rejected. *See, e.g., 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 of and an opportunity participate in a special use permit hearing or in having the challenged special use permit denied).

¹ *See also* Nev. Exec. Dep’t, Declaration of Emergency Directive 006 § 3 (March 22, 2020) (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), [https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-22 - COVID-19 Declaration of Emergency Directive 006/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-22_-_COVID-19_Declaration_of_Emergency_Directive_006/).

The Court should likewise reject Petitioners' erroneous invitation to expand "the statute requiring Stericycle provide written notice to businesses and residences within three hundred feet." Opp'n at 11. Under the most basic principles of statutory construction, courts follow a statute's plain meaning absent an ambiguity. *Kay*, 122 Nev. at 1105, 146 P.3d at 804-05. Petitioners' conclusory argument for expanding NRS 278.315's notice requirements is futile as not only have they failed to show that the statute is ambiguous, but they have not shown that the plain meaning of any of its provisions was unintended. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (recognizing that courts need not consider claims of error by a party who neglects their "responsibility to cogently argue, and present relevant authority, in support").

IV. Conclusion

For the foregoing reasons, Stericycle respectfully requests that the Court grant the Motion to Dismiss and dismiss the Petition with prejudice.

Dated this 23rd day of November, 2020.

McDONALD CARANO, LLP

By


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mpagni@mcdonalddcarano.com
clatino@mcdonalddcarano.com

Attorneys for Respondent Stericycle, Inc.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that I served the foregoing REPLY IN SUPPORT OF STERICYCLE, INC.'S MOTION TO DISMISS by causing true and correct copies thereof enclosed in sealed envelopes, upon which first class postage was prepaid, in the United States mail addressed to the following parties at the addresses listed below:

Mary Lou Wilson
2064 Regent Street
Reno, NV 89509

Anne Langer
Keith Loomis
Storey County District Attorney's Office
201 S. C Street, P.O. Box 496
Virginia City, NV 89440

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

Dated this 23rd day of November, 2020.

By: Michael A. Billino
An Employee of McDonald Carano LLP

1 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

2
3 IN AND FOR THE COUNTY OF STOREY

4 * * * * *



5
6 MARY LOU MCSWEENEY-WILSON,

7 Petitioner

Case No. 20 OC 000051E

8 vs.

Dept. No. 1

9
10 STOREY COUNTY COMMISSIONERS AND
11 STERICYCLE, INC.

12 Respondents.

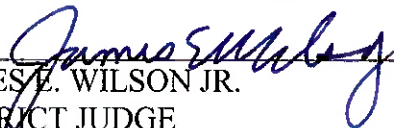
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14 ORDER OF CONTINUANCE

15
16 On the 18th day of February, 2021 an online meeting was held in a GoToMeeting format
17 among all of the parties and/or their legal representatives. This meeting was held in connection
18 with the pending motions to dismiss challenging Ms. Wilson's standing to petition for judicial
19 review under NRS 278.3195(4), which motions were scheduled to be heard on February 19,
20 2021. During the course of the meeting, Ms. Wilson requested a continuance of the February 19
21 hearing in light of the motion she filed on February 17, 2021, requesting reconsideration of
22 Judge Russell's Order on Motion to Correct Caption dated January 12, 2021. By that motion,
23 Ms. Wilson desires to substitute two persons as petitioners who she believes will have standing,
24 based upon her assertion that she just discovered within the previous three days that these
25 witnesses participated in the subject county meetings. There are a number of legal issues
26
27
28

1 concerning substitution of parties and neither the Storey County Commissioners nor Stericycle,
2 Inc. have had the opportunity to respond to that motion, which must be heard by Judge Russell.
3 Accordingly, the February 19, 2021 hearing on the issue of Ms. Wilson's standing under NRS
4 278.3195(4) is continued to a date and time to be set by Judge Russell. The parties shall brief
5 and submit Ms. Wilson's motion in accordance with FJDCR 3.8, 3.9, and 3.11.
6

7 IT IS SO ORDERED

8 Dated this 24 day of February, 2021.

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11 JAMES E. WILSON JR.
12 DISTRICT JUDGE
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clatino@mcdonalddcarano.com

Attorneys for Intervenor Stericycle, Inc.

FIRST JUDICIAL DISTRICT COURT OF NEVADA
STOREY COUNTY

* * * * *

MARY LOU MCSWEENEY-WILSON, ET.
AL., HOMEOWNERS OF RAINBOW
BEND COMMUNITY AND STOREY
COUNTY RESIDENTS,

Petitioners,

vs.

STOREY COUNTY COMMISSIONERS,
and STERICYCLE, INC.

Respondent.

CASE NO.: 20 OC 00051E
DEPT NO.: 1

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on March 12, 2021, the above-entitled Court entered its
ORDER GRANTING STERICYCLE, INC.'S MOTION TO DISMISS. A true and correct copy
of that Order is attached hereto as Exhibit 1.

Dated this 16th day of March, 2021.

McDONALD CARANO, LLP

By Chelsea Latino
Michael A.T. Pagni (NSBN 6444)
Chelsea Latino (NBSN 14227)
Attorneys for Proposed Intervenor Stericycle, Inc.

FILED
2021 MAR 16 PM 1:24
STOREY COUNTY CLERK
BY Adube
DEPUTY

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of McDONALD CARANO LLP and that I served the foregoing NOTICE OF ENTRY OF ORDER by placing a true and correct copy thereof enclosed in a sealed envelope, upon which first class postage was prepaid, in the United States mail addressed to the following party at the addresses listed below:

Anne Langer
Keith Loomis
Storey County District Attorney's Office
201 S. C Street, P.O. Box 496
Virginia City, NV 89440

And also on this day, I caused an envelope, containing a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER, to be hand-delivered to following person at the address listed below:

Mary Lou Wilson
2064 Regent Street
Reno, NV 89509

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

DATED: March 16, 2021.

By: _____
An Employee of McDonald Carano LLP

INDEX OF EXHIBITS

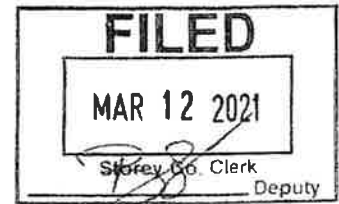
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<u>Exhibit</u>	<u>Description</u>	<u>Pages</u>
1	Order Granting Stericycle, Inc.'s Motion to Dismiss	4

4844-5073-3281, v. 1

Exhibit 1

Exhibit 1



FIRST JUDICIAL DISTRICT COURT OF NEVADA
STOREY COUNTY

* * * * *

MARY LOU MCSWEENEY-WILSON,

CASE NO.: 20 OC 00051E

Petitioner,

DEPT NO.: 1

vs.

STOREY COUNTY COMMISSIONERS;
STERICYCLE, INC.,

Respondents.

ORDER GRANTING STERICYCLE, INC.'S MOTION TO DISMISS

Currently before the Court is Respondent Stericycle, Inc.'s Motion to Dismiss. Having reviewed and considered the pleadings, the Motion and all related documents, the applicable law and facts, and good cause appearing, the Court finds and concludes as follows:

FACTUAL BACKGROUND

1. In or about June of 2020, Stericycle applied to Storey County for a special use permit ("SUP") for development of a medical and other specialty waste incinerator facility at 1655 Milan Drive in the Tahoe-Reno Industrial Center ("TRI Center") (the "SUP Application"). *See* Pet. at Ex. 1.

2. The Storey County Planning Commission ("Planning Commission") considered the SUP Application at two regularly scheduled, public meetings on July 16, 2020 and August 6, 2020. By majority vote on August 6, 2020, the Planning Commission recommended approval of Stericycle's SUP Application to the Board. *See id.*

MCDONALD CARANO

100 WEST LIBERTY STREET, TENTH FLOOR • RENO, NEVADA 89501
PHONE 775.788.2000 • FAX 775.788.2020

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

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

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

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

LEGAL ANALYSIS

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

Any person who:

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

(b) Is aggrieved by the decision of the governing body,

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

NRS 278.3195(4).

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

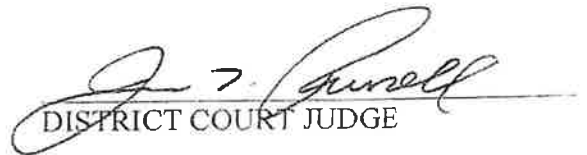
15 Here, on the face of the Petition, Petitioner concedes she did not appeal the decision
16 of the Planning Commission to the Board as required under NRS 278.3195(4)(a). In addition,
17 despite alleging a generalized interest in protecting the “the health, safety, and welfare” of
18 Storey County and “its surrounding areas” from “potential” adverse affects of the Board’s
19 decision approving Stericycle’s SUP Application, *see* Pet. at 17-18, Petitioner cannot
20 establish she is aggrieved by that decision as required under NRS 278.3195(4)(b) because it
21 is undisputed that Petitioner has no “legal or equitable interest in the property affected by the
22 final decision or property located within the notice area of the property that is entitled by law
23 to notice.” SCC § 17.03.130(B); NRS 278.315(3). Thus, Petitioner lacks standing to petition
24 for judicial review under the plain language of NRS 278.3195(4). *See Kay*, 122 Nev. at 1106,
25 146 P.3d at 806; *see also Holt-Still v. Washoe Cty. Bd. of Cty. Comm’rs*, No. 78784, 2020
26 WL 3570377, at *2 (Nev. June 30, 2020) (“Because appellants did not appeal to the governing
27 body, the district court correctly concluded that they lacked standing to petition for judicial
28 review.”).

1 Accordingly, and good cause appearing,

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

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

6 Dated this 12th day of March, 2021.

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8 
9 DISTRICT COURT JUDGE

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19
20 Respectfully submitted by:

21 /s/ Chelsea Latino
22 Michael A.T. Pagni (NSBN 6444)
23 Chelsea Latino (NBSN 14227)
24 McDONALD CARANO LLP
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Keith Loomis, SBN #1912
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FILED

2021 MAR 17 PM 4:23

STOREY COUNTY CLERK
BY Adube
DEPUTY

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

MARY LOU MCSWEENEY-WILSON,

Case No.: 20 OC 00005 1E

Petitioner,

Dept. No. 1

vs.

STOREY COUNTY COMMISSIONERS,
and STERICYCLE, INC.

Respondents.

NOTICE OF ENTRY OF ORDER

NOTICE is hereby given that on March 12, 2021, the Court duly entered an ORDER OF DISMISSAL in the above-referenced matter. A copy of said Order is attached hereto as Exhibit 1.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned affirms that the preceding document does not contain the social security number of any person.

DATED this 17th day of March, 2021.

Keith Loomis
Keith L. Loomis
Chief Deputy District Attorney

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of STOREY COUNTY DISTRICT ATTORNEY'S OFFICE and that on this day I personally served a true and correct copy of the NOTICE OF ENTRY OF ORDER by:

- ☒ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Personal Service/Hand-Delivery
- ☐ Reno-Carson Messenger Service

addressed to the following:

Mary Lou Wilson
2064 Regent St.
Reno, NV 89509

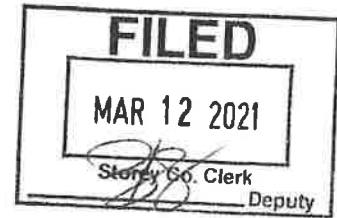
Michael A. T. Pagni, Esq.
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Dated this 17th day of March, 2021.


Teresa Sargent

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EXHIBIT 1



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

MARY LOU MCSWEENEY-WILSON,
Petitioner,

vs.

STOREY COUNTY COMMISSIONERS,
STERICYCLE, INC.

Respondents.

Case No. 20 OC 00005 1E

Dept. No. 1

ORDER OF DISMISSAL

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

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

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

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

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

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

14 IT IS SO ORDERED.

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

17
18 
DISTRICT COURT JUDGE

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

21 By _____
22 Keith Loomis Chief Deputy District Attorney for Storey County
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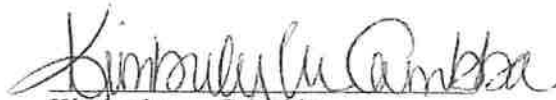
CERTIFICATE OF MAILING

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

Anne Langer, District Attorney
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201 S. C St.
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Kimberly M. Carrubba, Esq.
Law Clerk, Dept. 1

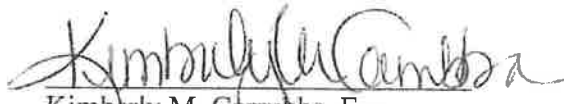
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