

IN THE SUPREME COURT OF THE STATE OF NEVADA

D.R. HORTON, INC., A NEVADA  
CORPORATION,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
SUSAN JOHNSON, DISTRICT JUDGE,  
Respondents,

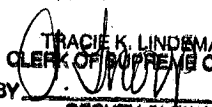
and

DORRELL SQUARE HOMEOWNER'S  
ASSOCIATION, A DOMESTIC NON-  
PROFIT CORPORATION,  
Real Party in Interest.

No. 51262

**FILED**

APR 10 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

ORDER DENYING PETITION FOR  
WRITS OF MANDAMUS AND PROHIBITION

This original petition for writs of mandamus and prohibition challenges a district court order that determined that real party in interest's NRS 40.645 notice of constructional defects satisfied the requirements of that statute, except with respect to one type of defect alleged. The district court's order also directed petitioner to specify how it will proceed with respect to the satisfactorily noticed defects.

According to petitioner, real party in interest's notice of constructional defects failed to comply with this court's statement in D.R. Horton v. District Court that a constructional defect notice based on

extrapolation<sup>1</sup> is valid under NRS 40.645 only “if it identifies the subset or characteristics of the subset” of homes in the community to which the constructional defects apply.<sup>2</sup> Real party in interest argued in the district court that its notice of constructional defects complied with that requirement by identifying the alleged constructional defects by address and within particular floor plans in the community.<sup>3</sup> The district court, exercising its “wide discretion” with regard to the sufficiency of a constructional defect notice,<sup>4</sup> agreed with real party in interest, except with respect to one form of alleged constructional defects. The district court consequently directed petitioner to determine how it wished to proceed regarding real party in interest’s notice of constructional defects,<sup>5</sup> to the extent that the court had determined that it complied with NRS 40.645’s requirements. This petition followed.

The writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse of discretion.<sup>6</sup> A writ of mandamus’s counterpart, the writ of prohibition, is

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<sup>1</sup>That is, the notion that the scope of constructional defects within a community may be estimated from the scope of the alleged defects’ presence within a representative sample of residences in the community. See D.R. Horton v. Dist. Ct., 123 Nev. \_\_, \_\_, 168 P.3d 731, 739-40 (2007).

<sup>2</sup>123 Nev. at \_\_, 168 P.3d at 740.

<sup>3</sup>See id. at \_\_, 168 P.3d at 740.

<sup>4</sup>Id. at \_\_, 168 P.3d at 739.

<sup>5</sup>See NRS 40.647; NRS 40.6472.

<sup>6</sup>See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

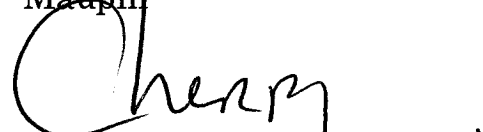
available to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the district court's jurisdiction.<sup>7</sup> Both mandamus and prohibition are extraordinary remedies, however, and whether a petition will be considered is within our discretion.<sup>8</sup> Petitioner bears the burden to demonstrate that our intervention by way of extraordinary relief is warranted.<sup>9</sup>

Having considered this petition and its supporting documentation we are not persuaded that the district court manifestly abused its discretion or acted in excess of its jurisdiction such that our extraordinary intervention is warranted.<sup>10</sup> Accordingly, we

ORDER the petition DENIED.<sup>11</sup>

 J.

Maupin

 J.

Cherry

 J.

Saitta

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<sup>7</sup>NRS 34.320.

<sup>8</sup>See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).

<sup>9</sup>Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

<sup>10</sup>NRAP 21(b); Smith, 107 Nev. 674, 818 P.2d 849.

<sup>11</sup>In light of this order, we deny as moot petitioner's motion for a stay and its motion for leave to file a reply to real party in interest's opposition to its stay motion.

cc: Hon. Susan Johnson, District Judge  
Marquis & Aurbach  
Quon Bruce Christensen Law Firm  
Eighth District Court Clerk