IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF RENO, A MUNICIPAL CORPORATION, AND THE CITY COUNCIL THEREOF,
Appellants,
vs.
SOUTHTOWNE CROSSING, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondent.

No. 43565

FILED

FEB 15 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a petition for judicial review in a community development matter. Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

Respondent, Southtowne Crossing, applied to the City of Reno to construct two billboards as part of a planned development. Southtowne's application was rejected, and it appealed that decision to Reno's Board of Adjustment (Board). The Board reversed the denial. Sharon Zadra, a member of the city council, appealed the Board's decision to the city council (the City). Reno's Municipal Code required the clerk to place the appeal on the next regularly scheduled meeting of the city council, December 17, 2003.[1] However, the clerk set the date for January 14, 2004. At some point in the process, the clerk called Southtowne and asked for a waiver of the timing requirement, which Southtowne refused.[2]

[1]RMC 18.36.805.

[2]The parties presented conflicting evidence and several evidentiary arguments concerning the timing of the City Clerk's request for a waiver.

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The City heard the appeal on January 14, 2004, and overturned the Board's decision. The City issued its decision within the time frame mandated under the Code. Southtowne then filed a petition for judicial review with the district court, which the district court granted. The City now appeals from the district court's order granting judicial review and argues that the district court erred in overturning the City's decision because the City timely appealed the matter, timely decided the matter, and because Southtowne suffered no prejudice when the City heard the matter late. Additionally, the City contends that the district court's decision inappropriately extinguished the City's right to have an appeal heard on the merits.

We conclude that the City's contentions have merit. Although it was error for the City to improperly schedule the hearing, Southtowne did not demonstrate that it suffered any harm from this error. However, we admonish the City to make every effort in the future to comply with statutes and regulations.

We review a district court's determinations of law de novo.[3] "Where a procedural dereliction . . . is relatively unimportant, and the rights of other parties to the agency proceeding are not prejudiced,

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. . . *continued*

We conclude that the timing on the Clerk's request is not a relevant issue in determining the outcome of this case. Therefore, we will not address this issue on appeal.

[3]Dewey v. Redevelopment Agency of Reno, 119 Nev. 87, 93, 64 P.3d 1070, 1075 (2003).

substantial compliance with procedural requirements is adequate."[4] A party must demonstrate prejudice before an administrative decision will be set aside.[5]

Here, the City substantially complied with the Code[6] and Southtowne has failed to show that it suffered any harm as a result of the City's failure to schedule the issue at the December 17, 2003, meeting. Southtowne suffered no delay as a result of the clerk's error because the City issued its decision within the appropriate time frame. Although Southtowne contends that allowing the City to knowingly decline to follow its own legislative mandates will set a dangerous precedent, it has presented no evidence that other parties have been harmed by the City's actions, nor has it presented evidence that the City regularly violates its own Code. As a result, we conclude that Southtowne has failed to

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[4]Checker Cab v. State, Taxicab Authority, 97 Nev. 5, 9, 621 P.2d 496, 498 (1981).

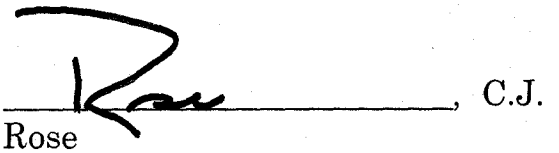
[5]Northwest Coal. for Altern. to Pesticides v. Lyng, 844 F.2d 588, 595 (9th Cir. 1988) (noting that the Bureau of Land Management's failure to properly notify an interested party regarding a proceeding did not require reversal of a district court's decision).

[6]Furthermore, we reject Southtowne's argument that use of the mandatory language "shall" versus the permissive "may" negates the possibility of allowing for substantial compliance under the specific facts of this case. After reviewing the limited legislative history, we conclude that the primary purpose of the statute was to provide uniformity in the appellate process for land use planning decisions. The City also asserts that Reno Municipal Code 18.36.805 was adopted to ensure that land use applications are decided in a timely fashion and do not languish, and we agree. Here, the City issued its decision well within the permissible timeframe allowed under its Code. Therefore, the purpose of the Code has been achieved.

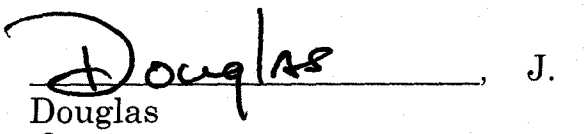
demonstrate that any prejudice or harm resulted from the City's failure to appropriately schedule the hearing. Thus, the district court erred by granting Southtowne's petition for judicial review.

Accordingly we,

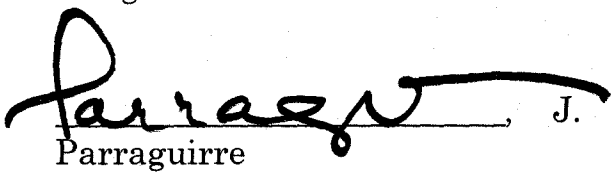
ORDER the district court's judgment REVERSED AND REMAND this case to the district court for a hearing on the merits.



_____, C.J.
Rose



_____, J.
Douglas



_____, J.
Parraguirre

cc: Hon. Peter I. Breen, District Judge
Reno City Attorney
Hale Lane Peek Dennison & Howard/Reno
Washoe District Court Clerk