

IN THE SUPREME COURT OF THE STATE OF NEVADA

COUNTY OF DOUGLAS, A POLITICAL  
SUBDIVISION OF THE STATE OF  
NEVADA; DOUGLAS COUNTY BOARD  
OF COMMISSIONERS; AND CLEAR  
CREEK, LLC,  
Appellants,

vs.

ALPINE VIEW ESTATES PROPERTY  
OWNERS' ASSOCIATION, A NEVADA  
NON-PROFIT CORPORATION,  
Respondent.

No. 43643

**FILED**

**JUL 05 2006**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Reynolds*  
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting a writ of mandamus in a land use dispute. Ninth Judicial District Court, Douglas County; David R. Gamble, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

In County of Clark v. Doumani, this court affirmed a district court grant of a writ of mandamus ordering a local Board of Commissioners (BOC) to approve a rezoning request that it had denied.<sup>1</sup>

This court clearly enunciated the appropriate review standards:

We review the district court's grant or denial of a writ petition under an abuse of discretion standard. The grant or denial of a rezoning request is a discretionary act. If a discretionary act is supported by substantial evidence, there is no abuse of discretion. Further, a presumption of

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<sup>1</sup>114 Nev. 46, 54, 952 P.2d 13, 18 (1998).

validity attaches to local zoning enactments and amendments.<sup>2</sup>

After considering the arguments of the parties and reviewing the voluminous record in this appeal, we conclude that the staff reports prepared for the Master Plan amendment and the planned development application adequately provided the necessary findings to support the appellant Board of Commissioners' (BOC) actions; and that those findings were supported by substantial evidence.

### **Arguments of the parties**

Appellants Clear Creek, LLC and Douglas County (hereinafter "appellants") argue first that the required findings under Douglas County Ordinance (DCO) 20.608.040<sup>3</sup> should be considered guidelines, not mandatory, inflexible requirements. The appellants also contend that the findings were satisfied, primarily by the staff report addressing each finding. Further, they argue that the findings were supported by substantial evidence, citing the voluminous administrative record.

The appellants claim that there was abundant evidence to show that the amendment was consistent with policies in the Master Plan. They argue that changed circumstances justified the amendment, and that there was a demonstrated need for the amendment, citing primarily the previously ineffective TDR program and the county's desire to use the program to preserve agricultural land in the Carson Valley, which was

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<sup>2</sup>Id. at 53, 952 P.2d at 17 (internal citations omitted).

<sup>3</sup>We note that DCO 20.608.040 lists the mandatory findings for an amendment to the Master Plan in four subsections, which actually reflect eleven findings.

already beginning to be subdivided. They also contend that the project was compatible with adjacent land use, citing the hundreds of acres of open space around the edges of the property and the rural character of the neighboring lands. The appellants further argue that the project did not cause any material adverse affects outside the property, primarily citing the highway overpass construction that was designed to minimize traffic impact on the surrounding neighborhoods.

Respondent Alpine View contends that the findings made by the BOC did not comply with DCO 20.608.040, primarily because the findings were based on the specific plan, not the proposed Master Plan amendment. They argue that the BOC disregarded the Master Plan in its investigation, citing the BOC's failure to fully consider and state specific findings about certain Master Plan chapters, including coordination with the Washoe Tribe and the conservation plan, as well as Master Plan elements concerning land use, development, population and housing, growth management, and public services. They claim that only thirty-three percent of the elements, three percent of the goals, and just over one percent of the policies of the Master Plan were reviewed by the BOC. Alpine View also argues that the BOC findings were inconsistent with the mandated findings, that the staff report was inconclusive and incomplete, and that there was no compelling reason to support overriding the Planning Commission's (PC) recommendation.

Next, the appellants contend that the district court wrongly found fault with the BOC's decision to hear the Master Plan amendment in conjunction with the planned development proposal. They argue that the BOC's action was necessary and proper, since under DCO 20.676.090, a planned development in a receiving area is required to utilize the TDR

program. Further, the appellants point out, there is a statutory scheme in place that strictly regulates modifications to planned development,<sup>4</sup> thus protecting residents from the sort of drastic potential changes suggested by the district court's order.

Appellants further contend that the district court erred in basing its decision on speculation and what might happen in the future. They note that any change in the approved plan would have to be considered by the BOC on its merits, and it was error for the district court to speculate that a future BOC would act irresponsibly in approving undesirable changes.

Alpine View counters that the district court properly considered a historical perspective of prior enactments and denials by the BOC, arguing that the BOC's consistency in such actions was relevant to whether the BOC based its decision on substantial evidence. Alpine View also defends the district court's reasoning in determining that findings based on the specific plan cannot amount to substantial evidence to support a Master Plan amendment that is separate from the specific plan.

Finally, the appellants argue that the district court ignored the presumption of validity to which local land-use decisions are entitled, and erroneously substituted its own judgment for that of the BOC, quoting the district court judge at oral argument when he stated that reviewing the Master Plan matrix presented by the developer was "an exercise in futility because I find myself second guessing the fact finders in this case, which is the County Commission." The appellants contend that the

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<sup>4</sup>See NRS 278A.380-.410.

district court erred in re-weighing the evidence and substituting its own judgment for that of an elected board.

Alpine View argues that the district court properly exercised its discretion in granting the petition, contending that there was substantial evidence to support the decision of the district court. Alpine View notes that the district court found that the BOC did not make the requisite findings, and that the BOC did not act upon substantial evidence. They then assert that, since “a reasonable mind might accept as adequate the District Court’s conclusions,” that therefore the district court did not abuse its discretion, and its ruling must be upheld. Alpine View supports this assertion by noting that the district court considered the voluminous evidence and permitted an extended hearing on the matter.

Alpine View additionally argues that, based on statutory construction and case law, the BOC did not have the power to amend the Master Plan without approval from the PC. Alpine View relies primarily on its interpretation of NRS 278.210, contending that the statute mandates a super-majority vote of the PC for any master plan amendments.<sup>5</sup>

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<sup>5</sup>This court will disregard that argument, since it was not pled by Alpine View below, nor was it addressed by the district court. Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Additionally, the statutory scheme involving master plan and zoning enactments makes it clear that the elected governing board has final authority to make amendments and changes; NRS 278.220(4) just mandates that such changes be “referred to the planning commission for a report thereon[.]” See also NRS 278.020(1), which declares that “the governing bodies of cities and counties are authorized and empowered to regulate and restrict the improvement of land;” and 79-14 Op. Att’y Gen. 69 (1979) (opining that the statutes give governing bodies full authority to make master plan changes regardless of planning commission action).

## Analysis

We disagree with the respondents' contentions that enactments such as were undertaken here require absolute strict compliance in enumerating and providing supporting evidence for each and every finding mandated by the County code, along with evidence of consideration and analysis of each element of a 314-page Master Plan plus a 56-page addendum. We hold that the findings made by the BOC, reflected primarily in the staff reports, as well as in transcripts of testimony at the many hearings, were adequate to meet the requirements of the County code, and were supported by substantial evidence.

The staff report detailed the important county-wide benefits derived from the transfer of development rights which would result from the amendment of the Master Plan, permitting the conservation of active agricultural lands in the Carson Valley. The report also noted that the project's improvements to the water system would provide cost savings to the county based on the impending federal arsenic standards, as well as enhance fire protection in the surrounding communities. In addition, the BOC considered community benefits as varied as improvements to hiking trails and trailhead access, construction of a highway overpass, and preservation of ridgelines and meadows within the project area. Although the BOC conceded that this amendment and project would increase the potential density of the project area, that density was still considered rural in nature, and was found to be compatible with the surrounding areas.

There were portions of the project that did not strictly comport with portions of the Master Plan. Most troubling was the BOC seemingly giving short shrift to the opposition of the Washoe Tribe, especially in light

of the County's announced goal of cooperation with the Tribe in planning matters, and the fact that a large parcel of Tribal land is surrounded on three sides by the subject property. However, the Tribe was permitted to speak at each meeting on the project, sent several lengthy letters expressing its concerns, and the specific concerns of the Tribe were noted in the staff report. Additionally, the primary concerns of the Tribe, groundwater impact, water quality, drainage, and possible damage to Clear Creek, considered a "traditional and customary resource for the Tribe," were addressed in the staff report in various places, although not specifically designated as responses to Tribal concerns.

There was an enormous amount of information provided to the BOC; and they heard exhaustively from both proponents and opponents of the project. It is obvious from the record that the BOC was aware of all the mandatory findings and considerations required by both local ordinances and state statutes. The BOC considered and discussed the many benefits and disadvantages of the project, and struggled mightily to determine what was in the best interests of the county as a whole.

In City Council of Reno v. Irvine, this court noted that "the essence of the abuse of discretion, of the arbitrariness or capriciousness of governmental action in denying a license application, is most often found in an apparent absence of any grounds or reasons for the decision. 'We did it just because we did it.'"<sup>6</sup>

We conclude that the BOC here did exactly what they are charged with doing. They considered a massive amount of evidence, discussed how the project would impact both the surrounding area and the


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<sup>6</sup>102 Nev. 277, 279, 721 P.2d 371, 372-73 (1986).

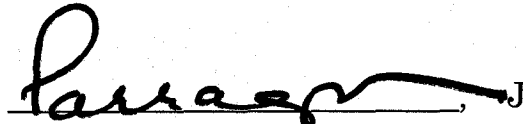
county as a whole, and made the decision that they thought was best. The staff report, along with the attached materials, provided more than sufficient evidence for the BOC's findings that this project, although not perfect, was worthy of the requested amendments and development approvals. We cannot say, based on our review of the record, that the BOC actions here were arbitrary, capricious, or an abuse of discretion.

Therefore, based on the presumption of validity that attaches to the discretionary zoning and land-use decisions of governing bodies, along with the abuse of discretion standard that the district court was to apply in considering the writ petition, we hold that the district court abused its discretion in granting the writ of mandamus and invalidating the actions of the BOC. Accordingly, we

REVERSE the order of the district court and REMAND to the district court with instructions to the district court to deny the respondents' petition for a writ of mandamus.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. David R. Gamble, District Judge  
Robert F Saint-Aubin, Settlement Judge  
Douglas County District Attorney/Minden  
Lemons Grundy & Eisenberg  
Thorndal Armstrong Delk Balkenbush & Eisinger/Reno  
Brooke Shaw Zumpft  
Douglas County Clerk