

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 44681

HOWARD YARBOROUGH; ELVA
YARBOROUGH; AND SIERRA DISPLAY,
Appellants,
vs.
WASHOE COUNTY DEPARTMENT OF
COMMUNITY DEVELOPMENT,
Respondent.

FILED

OCT 26 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a petition for judicial review in a zoning matter.¹ Second Judicial District Court, Washoe County; Peter I. Breen, Judge.

NRS Chapter 278 governs planning and zoning matters. With respect to challenging administrative planning and zoning decisions in the district court, NRS 278.0235 provides that any petition for judicial review of a final administrative decision must be filed "within 25 days after the date of filing of notice of the final action, decision or order."

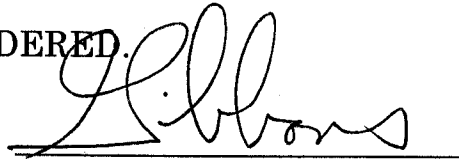
Although, in the underlying proceeding, a written notice dated August 31, 2004, indicated that the Washoe County Board of Commissioners' non-conforming use decision was filed that same day, appellants admittedly did not file their petition for judicial review of the administrative decision until four days after the September 25, 2004 limitation period expired. After the district court dismissed their petition as untimely, appellants appealed.

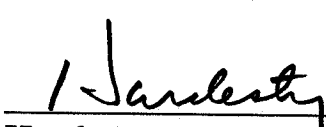
As we have repeatedly recognized, "the time period for filing a petition for judicial review of an administrative decision is mandatory and

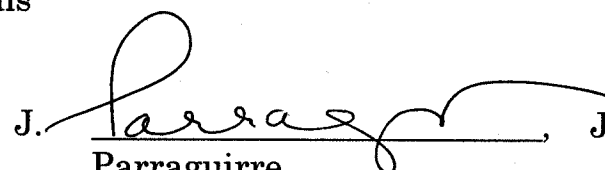
¹Pursuant to NRAP 34(f), we have determined that oral argument is not warranted in this case.

jurisdictional,” and thus, it may not be excused.² Accordingly, as the district court properly dismissed appellants’ untimely petition, we affirm the district court’s order.³

It is so ORDERED.


Gibbons J.


Hardesty


Parraguirre J.

²Kame v. Employment Security Dep’t, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989); SIIS v. Partlow-Hursh, 101 Nev. 122, 124-25, 696 P.2d 462, 463-64 (1985) (recognizing that when a statutory appeal period is silent as to whether it may be excused, the appeal period is considered mandatory and jurisdictional); see also County of Clark v. Doumani, 114 Nev. 46, 952 P.2d 13 (1998) (recognizing that NRS 278.0235 imposes a twenty-five day period for requesting district court review of a final zoning decision).

³As its holding that the arbitrarily different treatment of tortfeasors (and tort victims) violated constitutional equal protection guarantees is inapposite to this case, as all persons seeking judicial review of NRS Chapter 278 administrative decisions are treated the same, Turner v. Staggs, 89 Nev. 230, 510 P.2d 879 (1973), does not compel a different result. In any case, appellants neither raised this issue below nor pointed to any authority standing for the proposition that the Legislature must set forth identical periods in which to petition for judicial review of every type of administrative action. See Desert Chrysler-Plymouth v. Chrysler Corp., 95 Nev. 640, 643-44, 600 P.2d 1189, 1190-91 (1979) (explaining that this court may decline to hear constitutional issues not raised below); Allen v. Vermont Employment Security Board, 333 A.2d 122, 124 (Vt. 1975) (noting that “there is no constitutional right of appeal” and declining to address an argument that an appeal period violated constitutional equal protection guarantees when the court was “cited to no cases requiring a state to proscribe identical appeal periods for every type of appeal” and the issue was not raised below).

cc: Second Judicial District Court Dept. 7, District Judge
Carolyn Worrell, Settlement Judge
Kenneth J. McKenna
Washoe County District Attorney Richard A. Gammick /Civil
Division
Washoe District Court Clerk