


IN THE SUPREME COURT OF THE STATE OF NEVADA

DAN SCHINHOFEN,
Appellant,
vs.
NYE COUNTY BOARD OF COUNTY
COMMISSIONERS,
Respondent.

No. 48512

FILED

JUN 08 2007

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying judicial review of a conditional use permit decision. Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

Respondent Nye County Board of County Commissioners' decision to grant a conditional use permit is a discretionary act.¹ Accordingly, this court, like the district court, reviews the Board's decision for arbitrary or capricious abuse of discretion.² Generally, discretion is abused only when the decision is without any apparent grounds or

¹See Enterprise Citizens v. Clark Co. Comm'rs, 112 Nev. 649, 653, 918 P.2d 305, 308 (1996).

²Id.; City Council v. Irvine, 102 Nev. 277, 279, 721 P.2d 371, 372-73 (1986).

reasons,³ or when the decision is not supported by substantial evidence.⁴ In reviewing the Board's conditional use permit decision, we are limited to the record before the Board.⁵

Here, having reviewed the record before us in light of this standard, we perceive no abuse of the Board's discretion. At a public hearing, the Board heard testimony both for and against the conditional use application and considered all of the views presented. Although, during the hearing, the Board did not expressly refer to the conditional use permit factors set forth in the Nye County Code,⁶ it nevertheless discussed many of those factors and adopted the planning staff's findings,⁷

³Irvine, 102 Nev. at 280, 721 P.2d at 373.

⁴Id. at 280-81, 721 P.2d at 373; Enterprise Citizens, 112 Nev. at 653, 918 P.2d at 308 (recognizing that substantial evidence is evidence that "a reasonable mind might accept as adequate to support a conclusion" (quoting State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986))).

⁵Enterprise Citizens, 112 Nev. at 653, 918 P.2d at 308.

⁶Nye County Code § 17.04.920(L); see also Nye County Code §§ 17.04.920(T) and (U).

⁷In considering and applying these factors, the Board necessarily interpreted the Nye County Code. And as the Board recognized, the factors essentially require a determination that the proposed conditional use is non-detrimental to community welfare and consistent with the existing or intended character of the surrounding area and the master plan objectives. Thus, in comparing the proposed use with existing and non-existing permissive uses on similarly zoned property under the master plan and determining that, with several restrictions imposed, the

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which apparently separately addressed each of the Code's factors.⁸ The Board's decision to grant the conditional use permit was within its

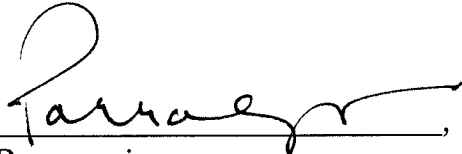
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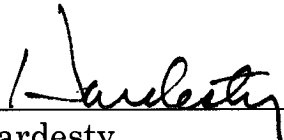
proposed use accorded with these requirements, the Board did not exceed its authority. Compare NRS 278.315(1) (providing that the governing body may set forth conditional use permit requirements by ordinance), with Nye County Code § 17.04.920(K)(1) (stating that the planning commission must issue a conditional use permit when the planning commission or "BOCC" find that the chapter's general and special standards and requirements have been met) and Nye County Code § 16.36.080(B) (providing for the Board's review of conditional use permit determinations); see generally Enterprise Citizens, 112 Nev. 649, 918 P.2d 305 (recognizing that proposed varying uses may be reviewed in light of permitted uses under the master plan's zoning requirements).


⁸The planning staff's written findings are not included in the record. As the petitioner in the district court, appellant Dan Schinhofen bore the burden of ensuring that documents considered by the Board and addressed in his district court memorandum of points and authorities were formally included in the district court record. Irvine, 102 Nev. at 279, 721 P.2d at 372; cf. Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (noting, generally, that when evidence upon which a decision is reached is not included in the appellate record, it is assumed that the record supports the decision). In any case, even though appellant does not agree with the planning staff's findings or that they fully address the Code's factors, he has not shown that those findings, or the Board's consideration of them, were made without any reasons therefore or without substantial evidence supporting them. See Clark Co. Liquor & Gaming v. Simon & Tucker, 106 Nev. 96, 98, 787 P.2d 782, 783 (1990) (recognizing that the existence of conflicting evidence does not compel interference with an administrative decision that is supported by substantial evidence).

properly exercised discretion; accordingly, we affirm the district court's order denying judicial review.⁹

It is so ORDERED.


_____, J.
Parraguirre


_____, J.
Hardesty


_____, J.
Saitta

⁹We have considered Schinhofen's arguments with respect to the district court's procedure and timeliness. We note that, before the district court rendered its decision, both parties presented their written arguments. The record bears no indication that, after reviewing the parties' written arguments, the court had any further questions; nor does it contain any request for a hearing. Accordingly, as Schinhofen had an opportunity to present arguments to the court, due process was met. See Browning v. Dixon, 114 Nev. 213, 217, 954 P.2d 741, 743 (1998) (citing Grannis v. Ordean, 234 U.S. 385, 394 (1914) ("The fundamental requisite of due process of law is the opportunity to be heard.)); Continental Ins. Co. v. Moseley, 100 Nev. 337, 338, 683 P.2d 20, 21 (1984) (noting that due process is met when a party has had an opportunity to present the court with any objections (citing Mullane v. Central Hanover Tr. Co., 339 U.S. 306 (1950))). Further, while we appreciate Schinhofen's concern that matters of public importance, like this one, be resolved in a timely manner, the record contains no request for expedited consideration, and we cannot conclude that the district court unreasonably delayed its decision. In any event, even if there existed unreasonable delay in this case, such delay is not grounds for reversal.

cc: Hon. Robert W. Lane, District Judge
Dan Schinhofen
Nye County District Attorney/Pahrump
Nye County Clerk