

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHERRI HUGHES,
Appellant,
vs.
VALENTE DEVELOPMENT, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; AND CITY OF LAS VEGAS,
A POLITICAL SUBDIVISION OF THE
STATE OF NEVADA,
Respondents.

No. 49221

FILED

APR 30 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *S. Young*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review and a petition for a writ of mandamus in a zoning action.¹ Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

Appellant Sherri Hughes raises three arguments on appeal: (1) Las Vegas City Council cannot approve a general plan amendment unless the Las Vegas Planning Commission (Planning Commission) first approves the amendment by a two-thirds majority vote, (2) respondents failed to meet the minimum standards of approval for a variance under Las Vegas Municipal Code Section 19.18.070(L), and (3) substantial evidence did not support City Council's approval of respondent's GPA-9127 land use application.

¹This court recently determined that the appropriate means of appealing a land use application is a petition for judicial review and not extraordinary relief such as a writ of mandamus. See Kay v. Nunez, 122 Nev. 1100, 146 P.3d 801 (2006). Therefore, this order will not address the petition for writ of mandamus.

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

Discussion

This court reviews a petition for judicial review of the City Council's decision to determine whether it is supported by substantial evidence. Kay v. Nunez, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006). "Substantial evidence is that which 'a reasonable mind might accept as adequate to support a conclusion.'" Yamaha Motor Co., U.S.A. v. Arnoult, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) (quoting State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)).

Interpreting NRS 278.210

Hughes argues that the plain and unambiguous language of NRS 278.210 is rendered meaningless if the City Council can approve an amendment without first obtaining the Planning Commission's approval by two-thirds majority vote. We disagree because the meaning of NRS 278.210 is best understood in light of NRS 278.220 and Nevada Attorney General Opinion Number 79-14. NRS 278.220(4) allows for the governing body to make changes or additions to a master plan provided that the proposed changes or additions are referred to the Planning Commission for a report and that report is filed with the governing body. Nevada Attorney General Opinion Number 79-14 recognizes this requirement. It concludes that the governing body has authority to act on a proposal even where the Planning Commission has failed to recommend it, provided that the report requirements of NRS 278.220 are met. 79-14 Nev. Op. Att'y. Gen. 51, 55-57 (1979). Thus, the governing body is free to accept or reject the proposal once the Planning Commission report is filed. Id.

We further conclude that Hughes' interpretation of NRS 278.210 renders the elected City Council useless and puts the decision making power into the hands of the appointed Planning Commission.

This interpretation eliminates the remedy of judicial review, leaving the ultimate determination with the Planning Commission, which is not the intended result of NRS 278.210. Therefore, we reject Hughes' claim and conclude that the City Council acted within its authority when it accepted the amendment.

Request for variance

Hughes also argues that City Council should not have approved respondent's request for a variance because respondent failed to show that exceptional conditions on the property led to exceptional difficulties or undue hardships under Las Vegas Municipal Code Section 19.18.070(L).

Respondent's requested variance allowed it to forego the development's open-space requirements. During the City Council meeting on the variance, Councilman Ross noted that a park and school were located within a block of the proposed development. Thus, the development site had an exceptional condition of proximity to already existing open space for recreational areas. Requiring respondent to set aside valuable property for additional open space constitutes an undue hardship. We therefore conclude that substantial evidence supported the City Council's grant of the variance.

Substantial evidence


Hughes argues that substantial evidence did not support approval of respondent's land use application GPA-9127. The grant or denial of a rezoning request is a discretionary act, and that discretion is not abused when supported by substantial evidence. County of Clark v. Doumani, 114 Nev. 46, 53, 952 P.2d 13, 17 (1998). In Doumani, we stated that "[t]he master plan of a community is a "standard that commands deference and a presumption of applicability," but should not be viewed as a "legislative straightjacket from which no leave can be taken."” Id. at 53-

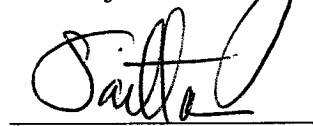
54, 952 P.2d at 17 (quoting Enterprise Citizens Action Committee v. Clark Co. Bd. of Comm'rs, 112 Nev. 649, 659, 918 P.2d 305, 311 (1996)).

Hughes interprets Doumani to stand broadly for the proposition that it is an abuse of discretion not to adhere to a master plan when confronted with roughly equal support and opposition for a rezoning request. We disagree. In Doumani, we held that the district court did not abuse its discretion in finding that the board abused its discretion in not adhering to the master plan. 114 Nev. at 54, 952 P.2d at 18. Thus, contrary to Hughes' contention, we did not announce a blanket rule as to what constitutes an abuse of discretion in that situation. Rather, we determined that the district court had not abused its own discretion.

Additionally, substantial evidence supported approval of GPA-9127. Notably, the rezoning requests were consistent with zoning in the surrounding areas as evidenced by the substantial public support for the application. Testimony before the City Council also suggested that the rezoning request was compatible with the area's traffic flow and transportation requirements. Moreover, Councilman Ross testified that granting the application would not violate the Interlocal Agreement. Accordingly, we

ORDER the district court order AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Susan Johnson, District Judge
Ara H. Shirinian, Settlement Judge
Law Office of Hayes & Welsh
Kummer Kaempfer Bonner Renshaw & Ferrario/Las Vegas
Las Vegas City Attorney
Eighth District Court Clerk