IN THE SUPREME COURT OF THE STATE OF NEVADA

W.W. JOHNSON DEVELOPMENT, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Appellant,
vs.
CITY OF RENO; THE CLERK FOR THE CITY OF RENO; LYNETTE JONES; RENO CITY PLANNING COMMISSION; JOHN RUSSELL; AND STELLA RUSSELL,
Respondents.

No. 50092

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for a writ of mandamus seeking to compel the Reno City Clerk to certify as approved a tentative map for hillside development. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

On appeal, appellant W.W. Johnson Development, LLC, asserts that the Reno City Clerk was required to certify its tentative map application approved as filed and that the City arbitrarily ignored its policy of returning incomplete applications by continuing to process the application despite its alleged deficiencies. Separately, Johnson challenges the intervention of respondents John and Stella Russell, who dispute Johnson's claim to an emergency easement across their property, which is adjacent to the proposed development.

For the following reasons, we conclude that Johnson's arguments fail and therefore affirm the district court's order denying Johnson's petition. The parties are familiar with the facts and we do not recount them here except as necessary to our disposition

Automatic certification under NRS 278.350(2)

Johnson asserts that the Clerk was required under NRS 278.350(2) to certify its tentative map application as approved because the 60-day period under NRS 278.330(5) for taking action on the application had allegedly expired. As discussed below, we disagree.[1]

Under NRS 278.330(5), a planning commission has 60 days to "recommend approval, conditional approval or disapproval" of a tentative map "after accepting [it] as a complete application." Under NRS 278.350(2), if no action is taken on a complete application within this time, "a tentative map as filed shall be deemed to be approved, and . . . the planning commission . . . shall certify the map as approved."

Based on these provisions, the district court determined that Johnson's tentative map was not eligible for automatic certification under NRS 278.350(2) because the earliest date that Johnson's application could have been accepted as "complete" was April 12, 2007, and 60 days had not yet elapsed for purposes of NRS 278.330(5).

Contrary to Johnson's claims, we perceive no error in the district court's construction of "completeness" for purposes of NRS 278.330(5) or regarding its finding that Johnson's application did not become "complete" until April 12, 2007. As a matter of state law, a

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[1]We generally review a district court's denial of a petition for a writ of mandamus for an abuse of discretion. See City of Las Vegas v. Walsh, 121 Nev. 899, 902, 124 P.3d 203, 205 (2005). Nevertheless, a district court's findings of fact are reviewed for substantial evidence, while legal conclusions, such as when an application becomes "complete" for purposes of NRS 278.330(5), are reviewed de novo. See Keife v. Logan, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003).

"complete" application is a clear precondition to commencing review of a tentative map application.[2] See NRS 278.330(5); NAC 278.270 ("The period allowed the . . . local agency for its review begins on the date when the application [for a tentative map] is complete," i.e., when "all the required items of information have been submitted").

Moreover, substantial evidence supports the district court's finding that Johnson's application was not "complete" for purposes of NRS 278.330(5) until April 12, 2007. See Keife, 119 Nev. at 374, 75 P.3d at 359. Here, although Johnson originally submitted its application on February 20, 2007, Johnson did not submit a technically correct slope map until April 12, 2007, despite two previous failed attempts to do so.

Specifically, Johnson's first slope map failed to reflect lots, streets, and lacked the proper numbering and the second slope map failed

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[2]Nevertheless, relying on Reno Municipal Code section 18.06.202(d), Johnson contends that the period for taking action on its application began on February 20, 2007, the application's submission date, since under that ordinance "[a]n incomplete application does not waive the time limitations in which the application must be heard." Additionally, citing former Reno Municipal Code section 18.08.050, Johnson contends that the period for taking action on its application was shortened to 45 days. We conclude that we need not address these contentions here, nor any inconsistency between Reno Municipal Code section 18.06.202(d) and NRS 278.330(5), because Johnson failed to raise these ordinances as issues below and failed to demonstrate that Reno Municipal Code section 18.06.202(d) or former Reno Municipal Code section 18.08.050 affected the district court's jurisdiction. Accordingly, we decline to apply them on appeal. See Britz v. Consolidated Casinos Corp., 87 Nev. 441, 447, 488 P.2d 911, 915 (1971) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.").

to contain contour lines. In other words, the first map failed to "have the project superimposed [over the contour lines]," while the second "had the project superimposed but without contour lines."

According to both City Planner Cheryl Ryan and City Civil Engineer, Bill Gall, because a slope map is intended to facilitate a determination of whether the topography of a site can support a proposed development, without a project that is accurately superimposed over a site's contour lines, this determination is impossible to make.

Moreover, as a courtesy, following each of Johnson's failed attempts to provide a corrected slope map, Ryan informed Johnson's representatives that the map was deficient, notified them that Johnson's application could not be submitted to the Planning Commission without a corrected map, and requested that they provide the omitted information. According to Ryan, on both occasions, "they agreed."

Based on this course of conduct, which reasonably supports an inference that Johnson understood that its application was incomplete, and the testimony of Ryan and Gall, who agreed that Johnson's application was not functionally "complete" without a corrected slope map, we conclude that substantial evidence supports the district court's finding that Johnson's application was not complete for purposes of commencing the 60-day clock under NRS 278.330(5) until Johnson submitted a corrected slope map on April, 12, 2007.

The City's return policy

Characterizing the City's policy of returning incomplete applications as an agency rule, Johnson contends that the City deprived him of due process by arbitrarily ignoring its own regulation in continuing

to process its application instead of returning it as incomplete. This argument fails for three reasons.

First, Johnson mischaracterizes the City's policy as an agency "rule." While agency action may be set aside if it violates an agency's own regulations, see NRS 233B.135(3); Marshall v. Lansing, 839 F.2d 933, 943 (3d Cir. 1988), as Ryan's testimony suggests, the City's policy functioned merely as a "guideline," a term that this court has construed in other contexts as, legally, "hav[ing] no practical effect." Sustainable Growth v. Jumpers, LLC, 122 Nev. 53, 63, 128 P.3d 452, 460 (2006).

Second, Johnson's argument is out of synch with the facts, which suggest that the City retained Johnson's deficient application—and allowed Johnson to supplement it on a rolling basis—by mutual agreement. See NRS 278.350(1). Therefore, rather than arbitrarily disregarding its return policy, the evidence suggests that the City attempted to accommodate Johnson's application in good faith.

Lastly, whether the City's return policy even applied to Johnson's application was called into question by Ryan, who interpreted the policy narrowly to require the return of applications with missing components, though not necessarily applications that were properly assembled but whose data was problematic. According to Ryan, unlike missing components, data deficiencies are discoverable only after time-consuming review, which would justify retaining a properly assembled application rather than "mak[ing] [an applicant] resubmit and pay new fees simply because . . . more refined data [is needed]."

Here, Johnson's application seemed to contain the required components—only the slope map data was deficient. Therefore, in Ryan's view, she was operating in line with normal procedures by continuing to

process Johnson's application while allowing Johnson to provide supplemental information as needed. Given this, and for the reasons stated above, we reject Johnson's contention that the City acted arbitrarily and thereby denied it due process.

Intervention

Separately, Johnson contends that the district court abused its discretion by permitting the intervention of respondents John and Stella Russell, owners of property adjacent to the development site who dispute Johnson's claim to an emergency access easement. See American Home Assurance Co. v. Dist. Ct., 122 Nev. 1229, 1245, 147 P.3d 1120, 1131 (2006) (reviewing the denial of a motion to intervene for an abuse of discretion). For the following reasons, we disagree.

Learning that Johnson was seeking unconditional approval of its tentative map, the Russells moved to intervene, claiming that they would be prohibited from further challenging the easement if Johnson's tentative map was approved as filed. Agreeing with this position, the district court granted the Russells' motion after holding oral argument, presumably allowing them to intervene as of right. See NRCP 24(a).

On appeal, Johnson challenges this ruling on two grounds, contending first that the Russells failed to adequately prove impairment, and second that the district court violated a local rule by granting the motion after oral argument without allowing Johnson ten days to file a written response. Both contentions lack merit.

Although Johnson contends that approving its tentative map as filed would not preclude the Russells from challenging the easement in later proceedings, at least a fair chance of impairment existed since unconditional approval would allow Johnson to avoid having to establish

the existence of the disputed easement and, consequently, would have compromised the Russells' ability to meaningfully oppose Johnson's application.[3] See Natural Resources, Etc. v. U.S. Nuclear Reg. Com'n, 578 F.2d 1341, 1345 (10th Cir. 1978).

Furthermore, although a responding party normally has ten days to respond, see WDCR 12(2), given that Johnson was allowed to proceed on an expedited schedule by presenting evi dence at the show cause hearing, and considering that the Russells were, therefore, proceeding as "expeditious[ly]" as possible under these "extraordinary circumstances," we fail to discern any error in hearing argument on the Russells' motion before Johnson filed its written response.

Based on the above, we conclude that the district court did not

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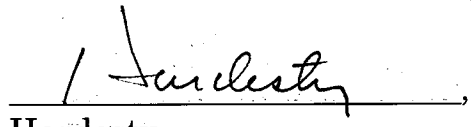
[3]Moreover, because Johnson fails to explain how allowing the Russells to intervene prejudiced its case against the City, any error in granting intervention is harmless. See Prete v. Bradbury, 438 F.3d 949, 959-60 (9th Cir. 2006) (granting intervention is reversible error only if it affects the substantial rights of the parties).

abuse its discretion in denying Johnson's petition for a writ of mandamus or in allowing the Russells to intervene. Accordingly, we

ORDER the judgment of the district court AFFIRMED.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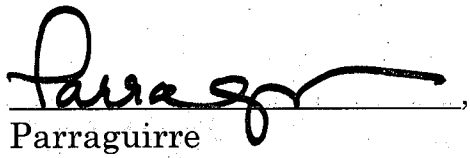
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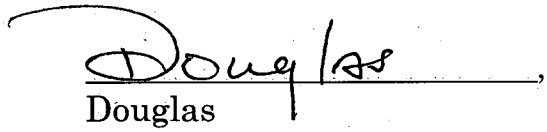
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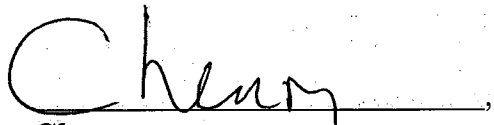
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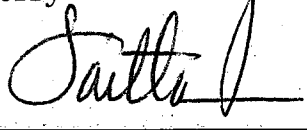
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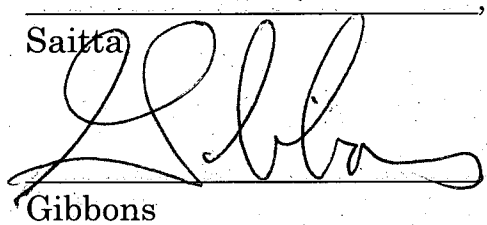
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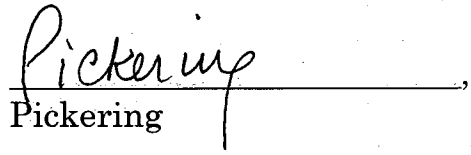
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cc: Hon. Steven P. Elliott, District Judge
Nicholas F. Frey, Settlement Judge
Tory M. Pankopf
Lionel Sawyer & Collins/Reno
Reno City Attorney
Washoe District Court Clerk