

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS DEVELOPMENT  
COMPANY, LLC,  
Appellant,  
vs.  
CITY OF LAS VEGAS AND THE LAS  
VEGAS CITY COUNCIL,  
Respondents.

No. 51037

**FILED**

JUL 27 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY W. Luasado  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review or, in the alternative, a writ of mandamus in a zoning code variance matter. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant Las Vegas Development Company (LVDC) sought a variance from the Las Vegas City Council to place a 130-foot flagpole on the property of a car dealership directly adjacent to a residential neighborhood. The City Council granted LVDC's variance on the conditions that the flagpole be lowered to 100 feet and that the variance be subject to a six-month review. The City Council reviewed the variance a little more than a year after the variance was granted and held a hearing to allow several complaints from citizens of the neighborhood regarding the noise of the flag. As a result of the complaints, the City Council revoked LVDC's variance and ordered the flagpole removed.

LVDC filed a petition for judicial review in district court. The district court granted LVDC a preliminary injunction to enjoin the removal of the flagpole and remanded the matter back to the City Council for further review. After further review, the City Council again denied LVDC's variance request. LVDC again sought judicial review of the

variance denial. The district court denied LVDC's petition for judicial review and this appeal follows.

On appeal, LVDC argues that the City Council's denial of the variance was arbitrary and capricious. The parties are familiar with the facts, and we do not recount them in any more detail here except as necessary to our disposition.<sup>1</sup>

### Standard of Review

“When a party challenges a district court's decision to deny a petition for judicial review of an administrative agency's determination, our function, which is identical to that of the district court, is to review the evidence presented to the agency and ascertain whether the agency abused its discretion by acting arbitrarily or capriciously.” Father & Sons v. Transp. Servs. Auth., 124 Nev. \_\_\_, \_\_\_, 182 P.3d 100, 103 (2008). “The grant or denial of a special use permit is a discretionary act. If this discretionary act is supported by substantial evidence, there is no abuse of discretion. Substantial evidence is that which ‘a reasonable mind might accept as adequate to support a conclusion.’” City of Las Vegas v. Laughlin, 111 Nev. 557, 558, 893 P.2d 383, 384 (1995) (quoting State Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)).

### Denial of the variance

<sup>1</sup>LVDC also argues that the district court's denial of the variance: 1) violated the First Amendment and equal protection, 2) was improper due to the failure of a councilmember to recuse herself, 3) was improper due to the recusal of another councilmember, 4) was contrary to the principles of equitable estoppel and the vested rights doctrine, and 5) violated separations of powers because an attorney for the City Council acted ultra vires in advocating denial of the variance. We conclude that these arguments are without merit.

Las Vegas Municipal Code 19.18.070(L)(2) provides the standard for granting a variance:

Where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property . . . a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good.

We have held that “public opposition to a proposal is sufficient grounds for denial.” Carson City v. Lepire, 112 Nev. 363, 367, 914 P.2d 631, 634 (1996) (denial of a liquor license after public opposition upheld). Moreover, “just because there was conflicting evidence does not compel interference with [a] Board’s decision so long as the decision was supported by substantial evidence . . . [because] [i]t is not the place of the court to substitute its judgment for that of the Board as to the weight of the evidence.” Clark Co. Liquor & Gaming v. Simon & Tucker, 106 Nev. 96, 98, 787 P.2d 782, 783 (1990).

Here, we conclude that that the City Council did not act arbitrarily or capriciously in denying the variance at its review. Prior to the review, the City Council received 24 letters of complaint regarding the noise created by the flagpole and several members from the neighborhood testified at the hearing with similar complaints. LVDC was permitted to present its case, including all scientific tests and expert testimony, at the hearing. The fact that the City Council considered conflicting evidence opposing and supporting the application, and chose to rely on evidence opposing the application, does not provide this court a license to substitute

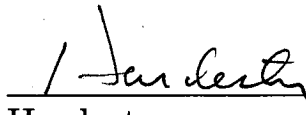
its judgment for that of the City Council. Further, although much of the evidence presented to the City Council related to the flag, and not the pole, there was substantial evidence presented that the pole's height did not comply with the variance as granted. We specifically note that while the variance was granted for a 100-foot flagpole, the pole erected is 109 feet.

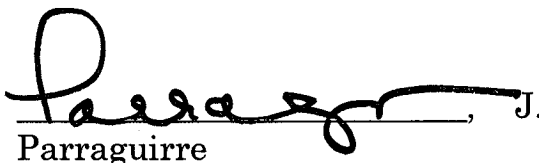
The fact that the variance was not reviewed for a year is not relevant and the City Council acted within its discretion in denying the variance after the review because the noise produced by the 109-foot flagpole was a nuisance to many area residents, and later inspection showed the actual flagpole exceeded the height allowed by the variance.

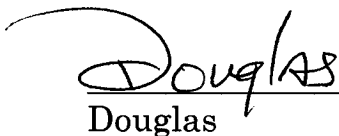
As such, we conclude that the City Council's denial and revocation of LVDC's request for a flagpole height variance was not arbitrary or capricious and was supported by substantial evidence in the form of opposition by the residents in the area who complained about the noise. Further, the City Council's denial and revocation of the variance

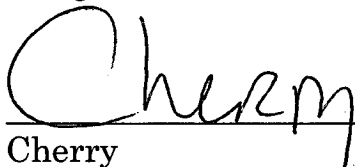
was not arbitrary and capricious because the standard under which variances may be granted is very narrow and the City Council has wide discretion to resolve such matters. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

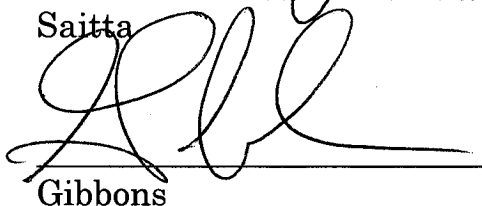
  
\_\_\_\_\_, C.J.  
Hardesty


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

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

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Michael Villani, District Judge  
Larry J. Cohen, Settlement Judge  
Chesnoff & Schonfeld  
Las Vegas City Attorney  
Eighth District Court Clerk