

IN THE SUPREME COURT OF THE STATE OF NEVADA

HUMBOLDT RIVER RANCH
ASSOCIATION, A NEVADA
CORPORATION,
Appellant,
vs.
PERSHING COUNTY BOARD OF
COMMISSIONERS; CHARLES
AZZARELLO; AND JUDY KRITIKOS,
NECESSARY PARTIES,
Respondents.

No. 54449

FILED

FEB 24 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malow
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order dismissing a zoning action. Sixth Judicial District Court, Pershing County; Richard Wagner, Judge.

Respondents Charles Azzarello and Judy Kritikos own real property in the Humboldt River Ranch Community in Pershing County, Nevada. Azzarello filed an application with the Pershing County Planning Commission requesting a change in zoning from general commercial to industrial. The Planning Commission denied Azzarello's application. Subsequently, Azzarello appealed the Planning Commission's decision to the Pershing County Board of Commissioners (the Board). The Board reversed the Planning Commission's decision. The Humboldt River Ranch Association (HRRA) did not participate during the meetings of the Planning Commission or the meetings of the Board, nor did it take any formal action or an official vote concerning the zoning change sought by Azzarello. However, property owners in the Humboldt River Ranch Community were present at both the Planning Commission and the Board

meetings. The individual property owners similarly did not file an appeal within the local zoning appellate process.

HRRA filed a petition for judicial review in the district court requesting that the Board's ruling be reversed and that the zoning be returned to general commercial. The Board then filed a motion to dismiss HRRA's petition for judicial review for lack of standing and failure to exhaust administrative remedies. Before the district court made a ruling on the Board's motion to dismiss, HRRA filed a motion to amend its petition for judicial review to add the property owners who were present at the Planning Commission meeting or the Board meeting.

The district court granted the motion to dismiss, concluding that HRRA lacked standing to bring a claim because the plain language of both NRS 278.3195(4) and Pershing County Development Code 17.810.45 requires that the party seeking to file a petition for judicial review must have first filed an appeal from the Planning Commission's decision. In addition, the district court concluded that HRRA failed to exhaust its administrative remedies as it did not participate during the administrative process before either the Planning Commission or the Board and, thus, did not actively protect its rights. The district court did not address HRRA's motion to amend because its decision to grant the Board's motion to dismiss disposed of the action.¹

On appeal, HRRA argues that the district court erred in granting the Board's motion to dismiss. Specifically, HRRA argues that the district court erroneously found that HRRA failed to exhaust its administrative remedies and that the court erred in interpreting NRS

¹The parties are familiar with the facts, and we do not recount them further except as necessary to our disposition.

278.3195(4). HRRRA further argues that the district court abused its discretion in refusing to allow HRRRA to amend its petition for judicial review.²

Standard of review

“A district court order granting an NRCP 12(b)(5) motion to dismiss is subject to rigorous appellate review.” Sanchez v. Wal-Mart Stores, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009). This court will recognize all factual allegations as true and draw all inferences in favor of the nonmoving party. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). The petition for judicial review “should be dismissed only if it appears beyond a doubt that it could prove no set of facts, which, if true, would entitle it to relief.” Id.

HRRRA failed to exhaust its administrative remedies

HRRRA contends that the district court erred in concluding that HRRRA did not exhaust its administrative remedies. Because HRRRA did not participate in the proceedings before the Planning Commission or the Board, we disagree.

“The doctrine of exhaustion of administrative remedies is well established in the jurisprudence of administrative law.” Woodford v. Ngo, 548 U.S. 81, 88 (2006) (quoting McKart v. United States, 395 U.S. 185, 193 (1969)); see First Am. Title Co. v. State of Nevada, 91 Nev. 804, 806, 543

²HRRRA also argues that the order prepared by the Pershing County District Attorney and entered by the district court does not appropriately conform with the oral decision enunciated by the district court, and that the district court failed to recognize the special legal relationship between HRRRA, the covenants, conditions and restrictions of the Humboldt River Ranch Community Plan, and the Pershing County Special Plan Regulation Ordinance. We have reviewed these arguments and conclude that they lack merit.

P.2d 1344, 1345 (1975). The exhaustion doctrine generally requires that a person exhaust all available administrative remedies before proceeding in the district court, “and failure to do so renders the controversy nonjusticiable.” Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 571, 170 P.3d 989, 993 (2007).

By failing to participate and protect its rights in an official capacity in the proceedings before the Planning Commission and the Board, HARRA attempted to thwart the objectives of the zoning appellate process and the doctrine of exhaustion of administrative remedies. Accordingly, we conclude that the district court did not err in granting the Board’s motion to dismiss, because HARRA failed to exhaust its administrative remedies pursuant to NRS 278.3195(4). See Mesagate HOA v. City of Fernley, 124 Nev. 1092, 1100-01, 194 P.3d 1248, 1254 (2008) (stating that “[u]nder NRS 278.3195’s new procedure, a right of review has been created in the district court—and that right only comes into existence after the governing board’s decision has been properly challenged through, and reviewed by, the governing board’s internal appellate procedure”).

The district court’s interpretation of NRS 278.3195(4) is consistent with the plain language of the statute

HARRA contends that the interpretation of NRS 278.3195(4) by the district court is nonsensical because a person to whom the Planning Commission’s decision is favorable could not file a petition for judicial review after becoming aggrieved when the Board reverses the Planning Commission’s favorable decision.

The construction of a statute is a question of law, which we review de novo. Kay v. Nunez, 122 Nev. 1100, 1104, 146 P.3d 801, 804 (2006). “When interpreting a statute, we look first to its plain language.”


Arguello v. Sunset Station, Inc., 127 Nev. ___, ___, 252 P.3d 206, 209 (2011); see In re Candelaria, 126 Nev. ___, ___, 245 P.3d 518, 520 (2010) (providing that “[i]f a statute’s language is clear and the meaning plain, this court will enforce the statute as written”).


Pursuant to NRS 278.3195(4), a petition for judicial review can only be filed with the district court by a person who administratively appeals a zoning decision under the applicable ordinance to the governing board and is aggrieved by the board’s decision. We recognize that the decision of the Planning Commission was favorable to the position taken by HRRRA, however, based on the plain language of NRS 278.3195(4)’s limiting criteria, HRRRA was required to file an appeal within the local zoning process in order to pursue a petition for judicial review. See Kay, 122 Nev. at 1104, 146 P.3d at 805 (stating that “NRS 278.3195(4) is clear and unambiguous, and thus, we follow its plain meaning”). HRRRA did not file such an appeal before filing its petition for judicial review, and we therefore conclude that the district court did not err in dismissing HRRRA’s petition.

The district court did not abuse its discretion in refusing to allow HRRRA to amend its petition for judicial review

HRRRA contends that the district court abused its discretion in refusing to allow HRRRA to amend its petition to include the Humboldt River Ranch Community property owners. We conclude that the district court did not abuse its discretion because the individual property owners similarly failed to file an appeal within the local zoning appellate process and, thus, did not exhaust their administrative remedies pursuant to NRS 278.3195(4). See generally Heiman v. Workers’ Comp. Appeals Bd., 57 Cal. Rptr. 3d. 56, 58 (Ct. App. 2007) (stating that a homeowners association is a separate legal entity apart from the owners).

In light of the foregoing, we AFFIRM the district court's order granting the Board's motion to dismiss.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering

cc: Hon. Richard Wagner, District Judge
Cathy Valenta Weise, Settlement Judge
Gayle A. Kern
Prezant & Mollath
Steve E. Evenson
Pershing County District Attorney
Pershing County Clerk