IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID AND TOM CASSINELLI,

Appellants,

vs.

HUMBOLDT COUNTY, A POLITICAL SUBDIVISION; AND KENT ANDERSON, PLANNING DIRECTOR,

Respondents.

No. 35649

FILED

JUL 12 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellants', David and Tom Cassinelli, petition for a writ of mandamus. In the underlying case before the district court, appellants argued that the Humboldt County Planning Board erroneously approved several parcel map applications in Paradise Valley that conflicted with the master plan and statutory provisions without public notice.

Appellants contend on appeal that the district court abused its discretion by failing to issue the writ of mandamus because: (1) the district court erred in finding that they were not aggrieved parties who should have been afforded notice of the parcel map applications under statutory and procedural due process provisions; (2) the approval of the parcel map applications was improper because they conflicted with the master plan; (3) the parcel map applicants intentionally evaded subdivision requirements; and (4) the parcel map applicants' failure to apply for a variance from the master plan rendered their application approvals void. We conclude that none of appellants' assignments of error has merit, and we therefore affirm the district court's order.

Our review of the district court's denial of a petition for a writ of mandamus is limited in scope to

determining whether the district court abused its discretion.[1] In doing so, we afford great deference to local determinations regarding zoning.[2]

First, appellants contend that the district court erred in concluding that they were not aggrieved parties and that they therefore were not required to have been given notice of the parcel map applications under NRS 278.464(6), procedural due process or the Open Meeting Law.[3] NRS 278.464(6) permits an applicant or other person aggrieved by a governing board's decision on parcel map applications to appeal that determination as provided in local ordinances.[4] However, NRS 278.464, and other statutory provisions governing zoning and land use planning, do not define "aggrieved party."

In the land use context, this court has interpreted an "aggrieved party" to be "one whose 'personal right or right of property is adversely and substantially affected.'"[5] In City of Reno v. Harris, this court concluded that the City had standing to appeal a local zoning decision because the municipality had "a vested interest in requiring compliance with its land use decisions."[6] Likewise, in Enterprise Citizens v. Clark County Commissioners, this court implicitly concluded that neighboring landowners had standing to appeal a

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[1]County of Clark v. Doumani, 114 Nev. 46, 53 n.2, 952 P.2d 13, 17 n.2 (1998).

[2]See Nevada Contractors v. Washoe County, 106 Nev. 310, 314, 792 P.2d 31, 33 (1990).

[3]The Open Meeting Law is codified at NRS 241.020.

[4]Humboldt County Ordinance 16.16.200 permits an applicant to file an appeal within thirty days from the parcel map application decision.

[5]City of Reno v. Harris, 111 Nev. 672, 676, 895 P.2d 663, 666 (1995) (quoting Estate of Hughes v. First Nat'l Bank, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980)).

[6]Id. at 677, 895 P.2d at 666.

company's request for a zoning variance because substantial evidence indicated that their property rights would be impacted by the residual effects of the company's requested variance, such as increased air and noise pollution.[7]

Appellants assert that they are adjacent landowners to some of the parcel map applicants; however, they do not provide any evidence to support that fact or to indicate that they are adversely impacted by the parcel map applications in any way. Moreover, the record indicates that the parcels complied with the zoning regulations and were not alleged to have any impact outside of the property being parceled. Thus, we conclude that there is no evidence that appellants have shown an adversely or substantially impacted property right that would give them standing to appeal the parcel map application approvals under NRS 278.464(6).

Because appellants lacked standing to appeal the parcel map application approvals, we need not affirmatively address whether NRS 278.464(6) requires public notice of pending parcel map applications. We do note, however, that under traditional statutory interpretation, the absence of any explicit public notice requirement suggests that none is required for those who are not aggrieved.[8] Moreover, because appellants fail to show a substantially impacted property right for purposes of showing they are "aggrieved parties," we conclude that no procedural due process rights are implicated

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[7]112 Nev. 649, 652, 918 P.2d 305, 307 (1996).

[8]See Charlie Brown Constr. Co. v. Boulder City, 106 Nev. 497, 503, 797 P.2d 946, 949 (1990), overruled on other grounds by Calloway v. City of Reno, 116 Nev. 250, 993 P.2d 1259 (2000).

or affected.[9] Finally, appellants' third argument, that notice was required under the Open Meeting Law, also need not be addressed absent standing to challenge the Planning Board's decisions.

Next, appellants contend that because the parcel map applications did not comply with the Paradise Valley Master Plan, the Planning Board abused its discretion in granting the applications. In County of Clark v. Doumani, we concluded that a master plan is generally afforded a presumption of applicability.[10] But we also stated that master plans "should not be viewed as a 'legislative straightjacket from which no leave can be taken'" - local discretion is permissible.[11]

The statutory language regarding the relationship of master plans and preexisting zoning regulations is somewhat conflicting. NRS 278.250(2) only requires zoning regulations to conform to a master plan when enacted or adopted after the master plan has been passed. NRS 278.0284 provides that subsequent zoning regulations should be adopted in accordance with the master plan and also requires planning boards in counties with 100,000 to 400,000 people to review preexisting land use ordinances after a master plan is adopted. NRS 278.0284 also states that "[i]f any provision of the master plan is inconsistent with any regulation relating to land development, the provision of the master plan governs any action taken in regard to an application for development." But there is no similar provision for counties, such as

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[9]See Burgess v. Storey County, 116 Nev. 121, 124-25, 992 P.2d 856, 858 (2000); see also Bing Construction v. Douglas County, 107 Nev. 262, 266, 810 P.2d 768, 770 (1991).

[10]114 Nev. at 53-54, 952 P.2d at 17 (quoting Enterprise Citizens, 112 Nev. at 659, 918 P.2d at 311).

[11]Id.

Humboldt County, that have less than 100,000 residents. In contrast, NRS 278.349(3)(e) provides that existing zoning ordinances take precedence over more recent master plans for tentative subdivision maps.

Because the zoning ordinance existed before the Paradise Valley Master Plan, and the county did not revise its zoning ordinances after the master plan was adopted, NRS 278.250(2) does not apply. Moreover, the record indicates that the Planning Board considered the effect of the Master Plan acreage requirement as it pertained to the applications affected by it and concluded that the policy of the Master Plan to maintain a certain quality of life was not contravened by approving these parcel map applications.[12] Because we afford deference to local land use decisions, we conclude that there was no error in approving parcel map applications that did not expressly conform to the master plan, and the district court did not abuse its discretion in denying relief to that effect.

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[12]The section of the Paradise Valley Master Plan dealing with zoning requirements is not a clear-cut acreage requirement, stating:

> This board feels that growth must be carefully planned to maintain the aesthetic quality of our lifestyles. We all choose to live here because of the wide-open spaces and very few neighbors. We are fully aware that often times ranchers and farmers must parcel some of their land in order to maintain their livelihood. We just ask that all of this be well-planned for the health and welfare of our whole community.
>
> This board knows it cannot tell our neighbors how to zone their property. We would highly recommend that all the large property owners re-zone to an agricultural zone of any given size. Agricultural zoning ranges from 2 ½ acres to 80 acres per parcel. We recommend this zoning simply because it will protect the rights

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Appellants also contend that the parcel map application approvals are void because the applicants intentionally evaded subdivision requirements under NRS 278.320, which are more stringent than those for parcel maps under NRS 278.461, by filing multiple applications on a single parcel of land. In Groso v. Lyon County, we concluded that the mere filing of multiple, simultaneous applications on a contiguous tract under the same ownership did not automatically constitute evasion of subdivision requirements absent other evidence that subdivision requirements should have been followed.[13] There is no evidence in this case to suggest that the parcel map applicants filed their applications to purposefully evade subdivision requirements or that other requirements of NRS 278.320 applied. Thus, we conclude that the district court properly denied the petition for a writ of mandamus on those grounds.

Finally, appellants contend that the applicants' failure to apply for a variance from the master plan rendered their applications void. The case law appellants rely on deals only with variances from specific zoning ordinances and not variances from master plans.[14] In fact, we could find no case law or statutes that require deviations from a master plan to be specifically petitioned for.[15] NRS 278.210 and NRS 278.220 provide only for amendments to the master plan itself

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to continue raising livestock within the area.

[13]100 Nev. 522, 524, 688 P.2d 302, 303-04 (1984).

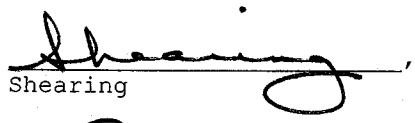
[14]See Enterprise Citizens, 112 Nev. at 654, 918 P.2d at 308-09.

[15]See, e.g., Doumani, 114 Nev. at 54, 952 P.2d at 18; City of Reno v. Lars Andersen and Assocs., 111 Nev. 522, 894 P.2d 984 (1995); Nova Horizon v. City Council, 105 Nev. 92, 93, 769 P.2d 721, 721 (1989).

and not for applications for specific parcels and their compliance with the master plan. Finally, NRS 278.315(1) requires local ordinances to set forth procedures for applying for variances. Humboldt County Ordinance 16.16.160 does not require a variance for a deviation from a master plan.

Accordingly, we conclude that none of appellants' contentions has merit, and that the district court did not abuse its discretion in denying the petition for a writ of mandamus. For the aforementioned reasons, we therefore

ORDER the judgment of the district court AFFIRMED.



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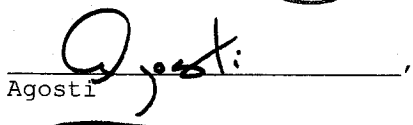

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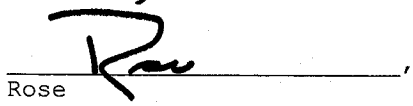

_____, J.
Rose

cc: Hon. Richard Wagner, District Judge
Humboldt County District Attorney
Steven F. Bus
Humboldt County Clerk