

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUCKEE MEADOWS REGIONAL
PLANNING GOVERNING BOARD, A
GOVERNING BOARD FOR REGIONAL
PLANNING IN WASHOE COUNTY;
AND CITY OF RENO,
Appellants,
vs.
COUNTY OF WASHOE, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,
Respondent.

No. 37947

FILED

JUN 02 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
By *J. Richards*
COURT DEPUTY CLERK

ORDER OF REVERSAL

This is an appeal of a district court order granting a writ of mandamus. The district court granted respondent Washoe County's writ petition, concluding that appellant Truckee Meadows Regional Planning Governing Board (RPGB), had exceeded its statutory authority in amending the Truckee Meadows Regional Plan (the regional plan) over the objections of Washoe County, one of the local planning entities affected by the amendment. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

This court reviews a district court order granting or denying a writ petition under an abuse of discretion standard.¹ In granting the petition for a writ of mandamus, the district court interpreted several

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

statutes. Questions of statutory interpretation are reviewed by this court de novo.²

Appellants contend that the district court erred in granting respondent's petition for a writ of mandamus, since such a writ is only appropriate to compel performance of a statutorily mandated duty, and because an adequate remedy at law existed for respondent.³

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station.⁴ Additionally, "[a] writ of mandamus may issue to . . . control an arbitrary or capricious exercise of discretion."⁵ This court has long held that a writ of mandamus may be used to compel a board or tribunal to exercise its judgment and make a decision, but should not be used to correct errors where action has already been taken.⁶ Extraordinary writs may issue only where there is no plain, speedy, and adequate remedy at

²Firestone v. State, 120 Nev. 13, 83 P.3d 279, (2004) (quoting Construction Indus. v. Chalue, 119 Nev. 348, 351, 74 P.3d 595, 597 (2003)).

³See NRS 278.02788(4), which provides, in pertinent part, that a party "aggrieved by the determination of the governing board may seek judicial review of the decision within 25 days after the determination."

⁴See NRS 34.160.

⁵Civil Serv. Comm'n v. Dist. Ct., 118 Nev. 186, 188, 42 P.3d 268, 270 (2002) (citing Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981)).

⁶State ex rel. Hetzel v. Board of Comm'rs, 8 Nev. 309, 310 (1873).

law.⁷ In rare instances, however, this court has permitted the use of writs of mandamus even when there was an alternative remedy at law.⁸

In Falcke v. Douglas County,⁹ a landowner petitioned this court for a writ of mandamus, challenging the decision of the Douglas County Board of Commissioners denying a master plan amendment and a zoning change. The issue in the case was whether the county development code, requiring a super-majority vote to approve any master plan amendment, was in conflict with NRS Chapter 278, Nevada's Planning and Zoning statutes.¹⁰ Acknowledging that the landowner could have sought a declaratory judgment under NRS 30.040, this court concluded that the conflict between the county code and state statute was "an urgent

⁷See Harvey L. Lerer, Inc. v. District Court, 111 Nev. 1165, 1168, 901 P.2d 643, 643 (1995) (citing NRS 34.330, and State ex rel. Dep't Transp. V. Thompson, 99 Nev. 358, 662 P.2d 1138 (1983)).

⁸See e.g., State of Nevada v. Dist. Ct., 116 Nev. 127, 134, 994 P.2d 692 (2000) (extraordinary relief necessary to address matters of statewide importance); Smith v. District Court, 113 Nev. 1343, 1344, 950 P.2d 280, 281 (1997) (petitions considered when sound judicial economy and administration militated in favor of such consideration); State v. Babayan, 106 Nev. 155, 176, 787 P.2d 805, 819 (1990) (writ appropriate where there was a "gross miscarriage of justice").

⁹116 Nev. 583, 3 P.3d 661 (2000).

¹⁰Falcke, 116 Nev. at 589, 3 P.3d at 664 (finding that NRS 278.220 is silent as to the voting requirements for amendments to a master plan; this court concluded that silence reflected the legislature's intent that a simple majority was sufficient).

and important issue of law, which requires clarification by this court,”¹¹ and granted the petition.¹²

We conclude that it was not an abuse of discretion for the district court to consider the writ petition in this matter, as it was arguably similar in circumstance to the matter considered by this court in Falcke. We now turn to the issue of the district court’s interpretation of the regional planning statutes, which we review de novo.

At issue here is the RPGB’s statutory authority to amend a local sphere of influence¹³ boundary by first amending the regional plan. That plan, created by the RPGB and the Regional Planning Commission (RPC), was mandated by NRS 278.0272.¹⁴ The statute calls for RPGB and RPC to formulate and periodically review the regional plan.¹⁵ That statute is part of a statutory scheme intended to ease the friction in a historically prickly relationship between Reno, Sparks, and Washoe County regarding land use and planning.¹⁶ Local land use and zoning

¹¹Id. at 586, 3 P.3d at 663.

¹²Id. at 590, 3 P.3d at 665.

¹³NRS 278.026(7), in pertinent part, defines sphere of influence as “an area into which a city plans to expand as designated in the comprehensive regional plan[.]”

¹⁴NRS 278.0272(1): “The regional planning commission shall develop a comprehensive regional plan for the physical development and orderly management of the growth of the region for the next 20 years.”

¹⁵Id. at (1) and (7).

¹⁶See NRS 278.0261(4): “It is the intent of the Legislature . . . that each local government and affected entity shall exercise its powers and duties in a manner that is in harmony with the powers and duties
continued on next page . . .”

plans must conform to the regional plan; thus an amendment to the regional plan may concomitantly require an amendment to an affected local plan.¹⁷ Amendments to the regional plan may be proposed only by local governing bodies, the RPC, or the RPGB.¹⁸

The RPC may designate joint planning areas within the regional plan,¹⁹ as they did here in designating the Reno-Stead Corridor, a joint planning area.²⁰ Such a designation obligates the local entities affected to develop a master plan for the joint planning area.²¹ That

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exercised by other local governments and affected entities to enhance the long-term health and welfare of the county and all its residents.”

¹⁷NRS 278.028(1), (4).

¹⁸NRS 278.0272(7).

¹⁹NRS 278.02784(1).

²⁰The regional plan provides, at section IV, subsection 35r, p. IV-107:

The Reno-Stead Corridor is designated a joint planning area. Reno and Washoe County shall recommend, and the RPC shall confirm, the boundaries of the joint planning area. Reno and Washoe County shall develop the joint plan, which shall address: land use, sphere of influence boundaries, environmentally sensitive areas, sewer, water, transportation and other major public facilities.

²¹NRS 278.02784(2).

master plan must be submitted for review to the RPC,²² and must conform to the regional plan.²³

Here, private property owners applied to the local joint planning area subcommittee, made up of members from both Reno and Washoe County, for a change to the Reno sphere of influence boundary in the Reno-Stead Corridor joint plan. The two local planning entities had previously agreed that neither would independently propose any amendments to sphere of influence boundaries. Since Washoe County opposed the proposed boundary change, the joint planning subcommittee took no action on the application for change, which had the effect of denial.

The property owners then asked the RPC to propose an amendment to the regional plan that would effect the same change in Reno's sphere of influence that they had sought from the local subcommittee. After public hearings, the RPC recommended approval of the amendment, and the RPGB formally approved the amendment.

The district court concluded that RPGB's approval of that amendment circumvented the power of the local planning entities, against the stated intent of the Legislature. Appellants urge us to conclude that this interpretation was arbitrary and capricious, and reverse the order of the district court.

Our reading of the statutes makes it plain that the Legislature contemplated local agreement to joint master plans, followed by review and approval by the RPC. However, such plans are always subject to

²²Id. at (3)(d).

²³Id. at (3)(a); see also NRS 278.028(1).

conformance with the regional plan. Thus, an amendment to the regional plan as sought by the private property owners here would effectively force a change in the sphere of influence boundary in the master plan.

Nothing in the statutes convinces us that the RPC did not have the statutory authority to propose such an amendment to the regional plan. The aspirational language of NRS 278.0261(4) notwithstanding, the RPC is not forbidden from proposing, nor is the RPGB forbidden from approving, such an amendment without full agreement from the subcommittee or other local entities.²⁴ Admittedly this action does little to reinforce the spirit of cooperation these statutes were intended to foster, but the statutes also make it clear that the legislature intended the regional planning entities to have the final say on such matters.²⁵ We conclude, therefore, that the district court erred in

²⁴The regional plan provides a lengthy list of factors the RPC must consider when contemplating a sphere of influence boundary amendment; agreement or approval of the affected entity is not among them. See Truckee Meadows Regional Plan, section IV, subsections 35(k-m), p. IV-105; and section IV, Exhibit 1, p. IV-19.

²⁵NRS 278.0272 Development, review and amendment of regional plan; public hearings required.

3. In developing the plan, the [RPC] shall:


- (a) Review and consider each existing regional plan and master plan that has been adopted pursuant to the provisions of this chapter and that applies to any area in the region, and any similar plan of a local government, and may seek and consider the advice of each local planning commission and any other affected entity; and

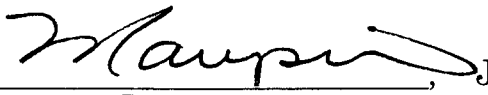
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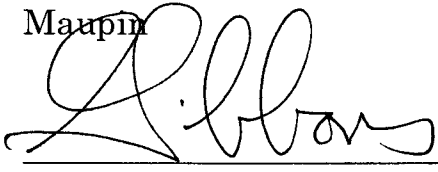
interpreting the statutes, and abused its discretion in issuing the writ. Accordingly, we

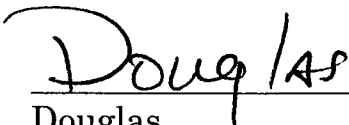
REVERSE the order of the district court and REMAND to the district court with instructions to deny respondent's petition for a writ of mandamus.²⁶

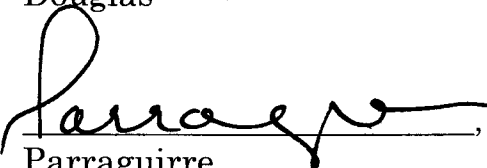

_____, C.J.
Becker


_____, J.
Rose


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Maupin


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Parraguirre

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- (b) Coordinate the elements of the plan and make them consistent with each other. (Emphasis added.)

²⁶The Honorable James W. Hardesty, Justice, voluntarily recused himself from participation in the decision of this matter.

cc: Hon. Brent T. Adams, District Judge
Norman J. Azevedo
Reno City Attorney
Marshall Hill Cassas & de Lipkau
Washoe District Court Clerk