

IN THE SUPREME COURT OF THE STATE OF NEVADA

VICTOR S. ELGOHARY,
Appellant,
vs.
WASHOE COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA; WASHOE COUNTY BOARD
OF COUNTY COMMISSIONERS; AND
KURT D. CAILLIER, TRUSTEE FOR
KURT D. CAILLIER LIVING TRUST,
Respondents.

No. 84611

FILED

OCT 30 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a pro se appeal from a district court order denying a petition for judicial review contesting an abandonment decision. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

Respondent Kurt D. Caillier Living Trust purchased a home at 425 Pahute Road in Crystal Bay, Nevada. At the time of the purchase, part of the home encroached into the cul-de-sac at the end of Pahute Road. Respondent Washoe County had previously granted an easement for the encroaching portion of the property. To resolve the issue permanently, Respondent Kurt D. Caillier (Caillier), as trustee for the trust, applied to Washoe County requesting an abandonment of 1,197 square feet of Pahute Road adjacent to his property. The proposed abandonment retained the cul-de-sac as a turnaround and did not physically change the road.

The abandonment application proceeded to a Planning Commission hearing. At the hearing, Appellant Victor Elgohary, another Pahute Road resident, opposed the abandonment application. Elgohary's main concerns were that freight delivery companies would not deliver to

Pahute Road and that Pahute Road would not be serviced by emergency vehicles.

Caillier's application was approved by the Planning Commission in a 6-1 vote. Elgohary appealed the Planning Commission's decision to Respondent Washoe County Board of County Commissioners (BCC). The BCC voted to affirm the Planning Commission's approval of Caillier's application by a vote of 5-0.

Elgohary filed a petition for judicial review in the district court, seeking review of the BCC's approval of Caillier's application. Elgohary included several exhibits with the petition. Washoe County filed a motion to strike the exhibits and all portions of the briefing that relied on the exhibits, arguing the exhibits were not in the administrative record, and accordingly could not be considered on a petition for judicial review. Caillier joined the County's motion.

The district court ordered oral argument on the petition for judicial review and the motion to strike. The day before the hearing, Elgohary filed unsolicited supplemental briefing. During the hearing, Washoe County moved to strike the supplemental briefing as procedurally improper.

The district court denied Elgohary's petition for judicial review and affirmed the BCC's approval of the abandonment application. The district court concluded the BCC's approval was supported by substantial evidence. The district court also granted Washoe County's motion to strike Elgohary's exhibits and supplemental briefing. Elgohary now appeals the district court's order.

The BCC's approval of the abandonment application was supported by substantial evidence

Elgohary argues the abandonment application was not supported by substantial evidence. The approval or denial of an abandonment application is a discretionary act. See *City of Reno v. Estate of Wells*, 110 Nev. 1218, 1222, 885 P.2d 545, 548 (1994). If the approval or denial is supported by substantial evidence, there is no abuse of discretion. *Id.* “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) (internal quotation marks omitted). This court is limited to the record made before the local governing body when it acted. *Id.*

The Planning Commission may approve an abandonment application at the request of an abutting property owner after holding a public hearing. NRS 278.480(2); WCDL 110.806.15(a). Prior to approving an abandonment application, the Planning Commission must find the following:

- (a) Master Plan. The abandonment or vacation is consistent with the policies, action programs, standards and maps of the Master Plan and the applicable area plans;
- (b) No Detriment. The abandonment or vacation does not result in a material injury to the public; and
- (c) Existing Easements. Existing public utility easements in the area to be abandoned or vacated can be reasonably relocated to provide similar or enhanced service.

WCDL 110.806.20.

Here, we conclude there is substantial evidence to support all three findings required by WCDL 110.806.20. First, substantial evidence supports the BCC’s affirmance of the Planning Commission’s finding that

the abandonment is consistent with the master plan. The evidence in the record demonstrates that no applicable language exists in the master plan regarding the abandonment application. Elgohary's cited language from the master plan is either not incorporated in the master plan or not applicable to the abandonment.

Second, the BCC's affirmance of the Planning Commission's finding that there is no material injury to the public is also supported by substantial evidence. Ample evidence in the record reflects that the abandonment will not materially change the cul-de-sac or the narrowness of Pahute Road. Elgohary conflates the material injury from the long standing, pre-abandonment encroachment of the home on the public right-of-way with the material injury of the abandonment. Elgohary's arguments regarding material injury from the narrowness of Pahute Road and the limited turnaround capacity exist both with and without the abandonment.

Third, substantial evidence supports the BCC's affirmance of the Planning Commission's finding that existing easements can be reasonably relocated. No evidence showed any public utility easements existed on the portion of Pahute Road to be abandoned. Accordingly, we conclude the district court did not err in denying Elgohary's petition for review because the BCC's approval of Caillier's abandonment application was supported by substantial evidence.

The district court did not abuse its discretion in striking Elgohary's filings

Elgohary contends the district court abused its discretion in striking his exhibits and the references in his brief to the exhibits because the information was relevant to the dispute. Elgohary also contends the supplemental brief should not have been struck. A district court's grant of

a motion to strike is reviewed for an abuse of discretion. *See Thomas v. Hardwick*, 126 Nev. 142, 152-53, 231 P.3d 1111, 1118 (2010).


First, we conclude the district court did not abuse its discretion in striking Elgohary's exhibits and references in his brief to the exhibits. On a petition for judicial review, a district court is limited to reviewing only the administrative record. *City of Reno v. Folsom*, 86 Nev. 39, 44, 464 P.2d 454, 457 (1970) (“[T]he scope of review by the district court is limited to the record made before the administrative tribunal”); *Redrock Valley Ranch, LLC v. Washoe Cty*, 127 Nev. 451, 456 n.3, 254 P.3d 641, 644 n.3 (2011) (noting the district court declined to consider supplemental exhibits because the appellant did not establish the exhibits were part of the administrative record). The record before us demonstrates the exhibits were not included in the administrative record. Elgohary had an opportunity to present these exhibits at both the Planning Commission hearing and the BCC hearing but did not.

We further conclude the district court did not abuse its discretion in striking Elgohary's supplemental brief. The district court did not request supplemental briefing, nor did Elgohary request leave to file the document. And while Elgohary argues there is no rule allowing the district court to strike the document, the district court has inherent authority to manage the filings before it. *See City of Sparks v. Sparks Mun. Court*, 129 Nev. 348, 363, 302 P.3d 1118, 1128-29 (2013) (noting that a district court has inherent powers “to carry out its basic functions” and the court has inherent authority “to manage its own affairs”); *see also* NRCP 83(b) (“In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.”). Thus, we conclude the district court did not abuse its discretion in striking Elgohary's filings.


We decline to consider Elgohary's arguments regarding whether the BCC erred in interpreting NRS 278.480(7) and whether Elgohary's due process rights were violated by the BCC because Elgohary raised these claims for the first time with the district court. *State ex rel. State Bd. of Equalization v. Barta*, 124 Nev. 612, 621, 188 P.3d 1092, 1098 (2008) (stating "a party waives an argument made for the first time to the district court on judicial review").

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Bell

cc: Hon. Lynne K. Simons, District Judge
Victor S. Elgohary
Gunderson Law Firm
McGee & Associates/Newport Beach
Washoe County District Attorney/Civil Division
Washoe County District Court Clerk