

IN THE SUPREME COURT OF THE STATE OF NEVADA

BENT BARREL, INC., D/B/A BILBO'S
BAR & GRILL,
Appellant,

vs.

CITY OF LAS VEGAS; CITY OF LAS
VEGAS CITY COUNCIL; OSCAR
GOODMAN IN HIS OFFICIAL
CAPACITY AS MAYOR OF THE CITY
OF LAS VEGAS; AND GARY REESE,
LARRY BROWN, LYNETTE BOGGS-
MCDONALD, LAWRENCE WEEKLY,
AND MICHAEL MACK, IN THEIR
CAPACITY AS CITY OF LAS VEGAS
COUNCILMEN,
Respondents.

No. 41251

FILED

SEP 03 2004

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion to dismiss. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

Appellant Bent Barrel, Inc., doing business as Bilbo's Bar and Grill, sought to enjoin the City of Las Vegas from granting a special use permit to a proposed tavern within 1,500 feet of Bilbo's Bar and Grill. Bilbo's objected to the issuance of a special use permit for a tavern operated by Higco, Inc. to be located in the Boca Park Marketplace, within 900 feet of Bilbo's, and to the City's waiver of the 1,500-foot separation requirement between taverns as set forth in Ordinance No. 5516.¹ The

¹Las Vegas Municipal Code 19.04.050. It should be noted that section 19.04.050 of the Municipal Code, and Ordinance No. 5516, which deleted the prior portion of the Municipal Code and replaced it with the
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waiver was based upon the existence of a street with a right-of-way width of 100 feet between Higo's proposed tavern and Bilbo's Bar and Grill, as set forth in the ordinance. In spite of Bilbo's objections, the City Council issued the permit and waived the 1,500-foot separation requirement. Bilbo's filed a complaint for declaratory judgment and a permanent injunction, alleging that the City Council wrongfully interpreted Ordinance No. 5516. Bilbo's also moved for a preliminary injunction to preserve the status quo. Higo opposed the preliminary injunction and moved to dismiss the complaint. After a hearing, the district court granted Higo's motion to dismiss, ruling that Bilbo's lacked standing.

Bilbo's contends that it has standing to object to the placement of a tavern within 900 feet by virtue of its property interests in its own special use permit, because the ordinance itself prohibits taverns from being located within 1,500 feet of each other and because of Bilbo's proximity to the proposed tavern. The district court determined that the ordinance did not create standing for Bilbo's to object to the grant of the special use permit to Higo because the ordinance was intended to protect the public from a conglomeration of taverns, but not to economically protect one tavern from another. We agree.

While statutory interpretation is a question of law subject to de novo review,² the City's interpretation of its own ordinances "is cloaked with a presumption of validity and will not be disturbed absent a manifest

... continued

language of the Ordinance, have slightly different language. The difference, however, is not relevant to the question of standing.

²University System v. DR Partners, 117 Nev. 195, 198, 18 P.3d 1042, 1045 (2001).

abuse of discretion.”³ The language of the ordinance demonstrates that it was designed to protect public health and safety. To have standing regarding a zoning decision, generally a person must be aggrieved by the zoning decision in a manner that affects more than the person’s interest in maintaining an economic advantage.⁴ Because a tavern’s economic interests are not within the zone of interests meant to be protected by the ordinance and Bilbo’s is not within the class of plaintiffs intended to challenge the City Council’s alleged disregard of the law,⁵ the district court properly concluded that Bilbo’s lacked standing to assert a claim for injury to its economic interests. Bilbo’s reliance on the ordinance language conferring a “protected use” on the holder of a special use permit is misplaced. The “protected use” language did not confer standing upon Bilbo’s because, when reading the ordinance as a whole and considering its stated purpose to protect the public, Bilbo’s economic interest is not the


³Boulder City v. Cinnamon Hills Assocs., 110 Nev. 238, 247, 871 P.2d 320, 326 (1994).


⁴See, e.g., Swain v. County of Winnebago, 250 N.E.2d 439, 444 (Ill. Ct. App. 1969) (stating that “[i]t is not the function of the county zoning ordinances to provide economic protection for existing businesses”); Eastern Service v. Cloverland, 744 A.2d 63, 67 (Md. Ct. Spec. App. 2000) (dismissing appeal on the ground that the appellant gas company’s sole purpose in challenging the grant of a zoning construction permit to a gas station one block away was to prevent competition).

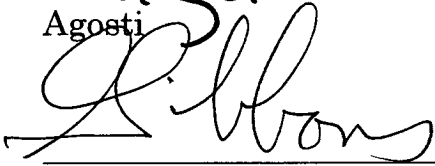
⁵See Clarke v. Securities Industry Assn., 479 U.S. 388, 399 (1987) (limiting standing for judicial review of agency action to the particular class of plaintiffs that Congress intended to be relied upon to challenge the agency’s alleged disregard of the law).

type of protected use shielded by the ordinance.⁶ Finally, Bilbo's proximity to the new tavern did not confer standing because the distance requirement was not meant to protect taverns' economic interests but rather to protect the public from a strong concentration of taverns and inebriates. Hence, the district court properly determined that Bilbo's lacked standing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Stewart L. Bell, District Judge
Peccole & Peccole
Las Vegas City Attorney
Clark County Clerk

⁶We also note that the "protected use" language does not appear in Las Vegas Municipal Code 19.04.050.