

City of N. Las Vegas v. Dist. Ct., 122 Nev. Adv. Op. 102, 147 P.3d 1109
(Dec. 21, 2006)¹

ADMINISTRATIVE LAW – WRIT OF MANDAMUS

Summary

The City of North Las Vegas (“CNLV”) appeals from an order of the Eighth Judicial District Court, State of Nevada, granting writs of prohibition and mandamus following an administrative appeal from a special use permit decision.

Disposition/Outcome

Petition denied. Stay issued on December 23, 2005 vacated. The administrative appellant never satisfied the local ordinance’s aggrievement standards by demonstrating that the CNLV Planning Commission’s (“Planning Commission”) decision might affect her property rights. Because the administrative appellant never perfected her appeal, the CNLV City Council (“City Council”) lacked the authority to proceed with the appeal and rule on its merits. Thus, the district court did not abuse its discretion by directing the City Council to vacate its ruling on the merits of the appeal. Denied respecting to the CNLV’s petition for extraordinary relief.

Factual and Procedural History

In November 2004, Check City Partnership (“Check City”) leased property in CNLV in anticipation of operating a check cashing and payday loan operation on the premises. CNLV Municipal Code (“Municipal Code”) requires financial institutions to obtain a permit in order to operate in the proposed location. Thus, Check City applied to the Planning Commission for a special use permit. Although she had not attended any planning commission hearings, CNLV resident Kimberly Davis (“Davis”) timely filed an administrative appeal challenging the Planning Commission’s approval of Check City’s application for a special use permit.

Davis incorrectly noted that she lived within 300 feet of the proposed Check City location when completing the administrative appeal form. Because she actually lived more than 300 feet from the proposed location of the Check City operation at issue, the Municipal Code required Davis demonstrate, via affidavit, that her property rights were or would be affected by the decision of the Planning Commission.² Check City subsequently objected to Davis’ appeal

¹ Summarized by Matt Lay

² See N. LAS VEGAS, NEV. MUN. CODE § 17.28.070(D)(1). Section 17.28.070(D)(1) of the Municipal Code reads in pertinent part:

“An appeal from the decision of the planning commission as provided in this section may be taken to the city council by the appellant, the city manager or his designee, any property owner as shown on the latest tax rolls of the Clark County assessor’s office within a radius of three hundred (300) feet of the exterior boundary of the lot or parcel of land described in the application, or any other person who may establish that his property rights are or may be affected by the decision. Such appeal shall be in writing and shall be filed with the city clerk on forms provided. The appeal shall specify wherein there was error in the decision of the planning commission. Additionally, any person filing an appeal from a decision of the planning commission on the basis that his property rights are or may be affected by said decision shall include an affidavit stating the nature and

because she neither lived within 300 feet of the proposed operation nor had she filed an affidavit demonstrating how her property rights would be affected by the decision of the Planning Commission. Davis ultimately submitted the required affidavit, which identified “oversaturation of the same type of business” in the area as her sole reason for appealing the Planning Commission’s decision.

The City Council held a public hearing on Davis’s appeal, even though Davis failed to appear at the hearing. The City Council continued the hearing so that Davis could attend. Check City again challenged Davis’ appeal, arguing that Davis was not aggrieved by the Planning Commission’s decision as defined in NRS 278.3195(1), because she had failed to attend any Planning Commission hearing.³

The City Council held a second hearing on Davis’ appeal less than one month later. Again, Davis failed to attend the meeting. Nevertheless, a majority of City Council members voted to deny Check City’s application for a special use permit. Check City filed a complaint in district court. In a verified complaint, Check City sought to compel the City Council to vacate its decision denying Check City’s application for a special use decision, or, in the alternative, to approve Check City’s application for a special use permit.

Ultimately, the district court found that Davis’ appeal was timely and was not barred by her failure to attend the planning commission hearing. However, the Court found that because Davis failed to attend any City Council hearing on her appeal, establish her standing as an appellant under the Municipal Code, and prosecute her appeal, she abandoned her appeal. The district court issued writs of mandamus and prohibition vacating the City Council decision and reinstating the Planning Commission decision approving the special use permit.

The City Council, among others, filed a writ petition alleging that the district court assumed the City Council’s authority to interpret and apply its Municipal Code. The Nevada Supreme Court granted a stay of the district court’s order granting writs of prohibition and mandamus and directed Check City to file an answer.

Discussion

1. Whether Nevada Revised Statute (“NRS”) 2.090(2) allows a party to immediately appeal from an interlocutory order granting mandamus relief.

The Nevada Supreme Court may not issue a writ of mandamus or a writ of prohibition when a petitioner has a plain, speedy, and adequate remedy in the ordinary course of law.⁴ However, NRS 2.090(2) does not entitle a party to immediately appeal from an interlocutory order granting mandamus relief. Moreover, NRS 34.310 requires that appeals from district court

location of his property interest and the manner in which this property interest will be affected by the decision being appealed.”

³ NEV. REV. STAT. § 278.3195(1) (2005). NRS 278.3195(1) reads in pertinent part:

“In a county whose population is 400,000 or more, a person shall be deemed to be aggrieved under an ordinance adopted pursuant to this subsection if the person appeared, either in person, through an authorized representative or in writing, before a person or entity described in paragraphs (a) to (d), inclusive, on the matter which is the subject of the decision.”

⁴ Harvey L. Lerer, Inc. v. Dist. Ct., 111 Nev. 1165, 1168, 901 P.2d 643, 645 (1995); NEV. REV. STAT. § 34.170; § 34.330 (2005).

mandamus proceedings comply with the rules of appellate procedure.⁵ However, no rule of appellate procedure provides for an appeal from an interlocutory order granting or denying a request for a writ of mandamus. Thus, because neither NRS 2.090(2) nor the rules of appellate procedure provide the Nevada Supreme Court with jurisdiction over interlocutory orders granting writs of mandamus, the City Council has no immediate right to appeal the district court's order. However, the Court reserved the right to consider writ petitions despite the existence of an otherwise adequate legal remedy where the Court's clarification of important issues of law serves public policy, judicial economy, and judicial administration.

2. Who may administratively challenge a planning commission's special use permit decision?

Certain provision of NRS 278.3195 provide a schema under which an aggrieved party may challenge Planning Commission decisions in accordance with relevant local ordinances. The Court concluded that although NRS 278.3195(1) defines an aggrieved person for the purposes of governing administrative appeals, local ordinances enacted under this statute determine who may appeal a Planning Commission decision. Municipal Code § 17.28.050 governs CNLV procedures regarding special use permits. Among other criteria, in order to demonstrate standing, an appellant must demonstrate that her property rights have been, or will likely be, affected by a decision of the Planning Commission. Davis failed to demonstrate how her property interest had been or would likely be affected by the Planning's Commission's decision to grant Check City's application for a special use permit. Moreover, the City Council failed to demonstrate how Davis had otherwise established standing for the purposes of an administrative appeal.

3. Whether an administrative appellant may abandon her challenge to a planning commission decision.

An appellant may abandon an appeal to the City Council from a planning commission decision. The City Council argued that under the Municipal Code, a timely filing of a single appeal preserved the right of all citizens to participate in a hearing de novo.⁶ Yet, the Court found that both NRS 278.3195 and the Municipal Code require the City Council to consider appeals as they relate to the appellant's alleged grievance. Thus, although there may exist more than one aggrieved party, the statutory and local ordinance provisions preclude the City Council from preventing an appellant with standing from abandoning her appeal.

⁵ See *Ashokan v. State Dep't. of Ins.*, 109 Nev. 662, 665, 856 P.2d 244, 246 (1993); NEV. REV. STAT. § 34.310 (2005). NRS 34.310 reads in pertinent part:

“The provisions of the Nevada Rules of Civil Procedure and Nevada Rules of Appellate Procedure relative to new trials in, and appeals from, the district court . . . apply to the proceedings mentioned in NRS 34.150 to 34.290, inclusive.”

⁶ See N. LAS VEGAS, NEV. MUN. CODE § 17.28.050(D)(2), (3). Section 17.28.050(D)(2), (3) of the Municipal Code reads in pertinent part:

“2. Automatic Stay. If an appeal is filed within the time specified, it automatically stays proceeding in the matter until determination is made by the city council. 3. Public Hearing. Upon the filing of the appeal, the city clerk shall set the matter for city council consideration at a public hearing. Notice by mail shall be given to all persons who appeared in person or through a representative at the planning commission public hearing. A hearing de novo shall be conducted by the city council.”

Concurring/Dissenting Opinions

DOUGLAS, J., CONCURRING in part and DISSENTING in part:

Justice Douglas concurred with the majority's conclusion that the Nevada Supreme Court had jurisdiction to consider the writ petition. Moreover, Justice Douglas concurred with the majority's determination that as long as Davis met the Municipal Code's requirements, she possessed standing to appeal from a planning commission decision. Furthermore, Justice Douglas concurred as to the majority's conclusion that the City Council could not allow an administrative appeal to proceed on behalf of other persons based on an administrative appeal originally filed by only one aggrieved party. However, Justice Douglas disagreed with the majority's remedy. Justice Douglas contended that the majority should have directed the City Council, through a writ of mandamus, to provide a new appeal period and allow any aggrieved party to challenge the Planning Commission's decision.

Conclusion

NRS 2.090(2) allows a party to appeal from an order granting a writ of mandamus only when that order finally resolves all of the issues in a particular case. Thus, the Nevada Supreme Court may consider a writ petition when there is no plain, speedy, and adequate remedy available to the appellate in the ordinary course of law.⁷

An aggrieved person need not appear before the planning commission in order to appeal to the governing body, as long as that person satisfies a local ordinance's aggrievement standards and appeals to the governing body in accordance with the appropriate local procedures.

The law requires an aggrieved person to institute an administrative appeal from a planning commission decision. Thus, an aggrieved person may abandon an administrative appeal from a planning commission decision if the appellant does not prosecute the administrative appeal, even if the appellant has demonstrated standing and the appeal has proceeded on the merits.

⁷ NEV. REV. STAT. § 2.090(b) (2005). NRS 2.090(b) reads in pertinent part:

“[t]he supreme court has jurisdiction to review upon appeal: 2. An order granting or refusing a new trial in such cases; an order in a civil action changing or refusing to change the place of trial of the action or proceeding after motion is made therefor in the cases in which that court has appellate jurisdiction; and from an order granting or refusing to grant an injunction or mandamus in the case provided for by law.”