

IN THE SUPREME COURT OF THE STATE OF NEVADA

WASHOE COUNTY, A POLITICAL
SUB-DIVISION OF THE STATE OF
NEVADA, ON RELATION OF ITS
BOARD OF COUNTY
COMMISSIONERS,

Appellant,

vs.

ANDY KALLAS AND BLAIR E.
SULLIVAN, INDIVIDUALS,
Respondents.

No. 44160

FILED

APR 19 2006

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 petition for a writ of mandamus that challenged the Washoe County Board of Commissioners' decision to vacate the abandonment of a public street. Second Judicial District Court, Washoe County; James W. Hardesty, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition. This appeal involves the abandonment of Navarro Court, initially requested by two adjacent property owners and contested by two abutting property owners. Navarro Court is a "stub" dead-end street that runs generally north to south within the Desert Springs Subdivision.

Material injury to the public

The district court's decision to entertain and issue a writ of mandamus is discretionary, and this court will not overturn the district court's decision to issue such a writ absent an abuse of discretion.¹

NRS 278.480 governs abandonment of public right-of-ways and easements, and provides: "if, upon public hearing, the governing body, or the planning commission . . . is satisfied that the public will not be materially injured by the proposed vacation, it shall order the street or easement vacated."² We have held that this "statute is clear and unambiguous on its face."³

The Washoe County Development Code (WCDC) is analogous to the language in NRS 278.480(5), and provides:

Except as otherwise provided in Section 110.806.40, if, upon public hearing on the appeal of the Planning Commission's final action on an abandonment or vacation of an easement or street, the Board is satisfied that the public will not be materially injured by the proposed vacation, it shall order the street or easement vacated.⁴

¹See Kussman v. District Court, 96 Nev. 544, 545, 612 P.2d 679, 680 (1980); see also NRS 34.160.

²NRS 278.480(5).

³City of Reno v. Estate of Wells, 110 Nev. 1218, 1221, 885 P.2d 545, 548 (1994).

⁴WCDC 110.806.35.

A plain reading of the statute and administrative code indicates that the appellant Washoe Board of County Commissioners (the Board) “shall” or must order a street to be vacated if it is satisfied that the public will not be materially injured by the proposed vacation.

In City of Reno v. Estate of Wells, this court held that a “mere detriment” to the public, or a detriment to private parties, will not defeat a proposed abandonment.⁵ We reasoned that, “the legislature’s use of ‘material’ as a modifier of ‘injury’ implies that a mere detriment is insufficient to defeat a proposed abandonment.”⁶

Wells involved the City of Reno’s abandonment of a “stub” right-of-way, at the request of adjacent residential property owners. The Reno Planning Commission approved the abandonment after learning that the city fire and engineering departments did not oppose the abandonment and “because the right-of-way did not provide essential access to emergency vehicles or the public.”⁷

Wells, the owner of abutting residential property, appealed the abandonment to the Reno City Council.⁸ Primary access to Wells’ property was obtained from another street to the north of his property.⁹ Nonetheless, Wells argued the right-of-way’s abandonment would detrimentally affect the development opportunities for his property. The

⁵Wells, 110 Nev. at 1221-22, 885 P.2d at 548 (emphasis in original).

⁶Id. (emphasis in original).

⁷Id. at 1220, 885 P.2d at 547.

⁸Id.

⁹Id. at 1219, 885 P.2d at 547.

city council was unpersuaded by Wells' arguments and affirmed the abandonment on the ground that it found no material injury to the public.¹⁰ Wells then petitioned the district court for a writ of mandamus to compel the city council to vacate the abandonment. The district court granted the petition, and overturned the abandonment, emphasizing the abandonment's "lack of public benefit."¹¹

We reversed, holding that the district court improperly used a "public benefit" test instead of the "materially injured" test.¹² We further held that substantial evidence supported abandonment of the right-of-way, reasoning that:

the right-of-way does not currently provide access to any party or emergency vehicles (nor will it be necessary for any party or emergency vehicles to access the property through the right-of-way if the property is developed in the future), and the City has no intention of developing or using the right-of-way. . . . That evidence, coupled with the City's express disinterest in owning and maintaining an unused, unnecessary right-of-way, requires us to reverse the district court's order.¹³

In the present matter, Wells is instructive. Navarro Court is essentially an unnecessary right-of-way that the Washoe County Planning Commission (Planning Commission) was disinterested in owning and maintaining. The county had no intention of developing or using Navarro Court. The Washoe County Department of Community Development did

¹⁰Id. at 1220, 885 P.2d at 547.

¹¹Id. at 1220-21, 885 P.2d at 547 (emphasis in original).

¹²Id. at 1221, 885 P.2d at 548.

¹³Id. at 1222-23, 885 P.2d at 548-49.

not oppose the abandonment. The fire, engineering and water departments did not oppose the abandonment. The record does not show that the abandonment has any detrimental effect other than the abutting property owners' loss of secondary access to their properties. The Planning Commission found that "the abandonment does not create a detriment to abutting or surrounding properties. Although the neighbor to the rear uses the access as a secondary access, the abandonment will not eliminate primary access to any property." Substantial evidence supports the Planning Commission's finding that there was no material injury to the public.

The Board overturned the Planning Commission's decision because it disagreed with the Planning Commission's finding that the abandonment did not detrimentally affect "abutting or surrounding properties." However, the Planning Commission was not required to find a lack of detriment to abutting or surrounding properties in order to approve the abandonment. Whether the abandonment detrimentally affects two abutting properties is not the relevant inquiry under NRS 278.480(5), WCDC 110.806.35, and Wells. The relevant inquiry is whether the abandonment results in a material injury to the public. We hold that a mere detriment to abutting or surrounding properties is not a material injury to the public.

Abuse of discretion

An arbitrary and capricious abuse of discretion by a board is found where there is "an apparent absence of any grounds or reasons for

the decision. "We did it just because we did it."¹⁴ This includes instances where a board "is not acting within its legally delegated powers."¹⁵ Further, applying an incorrect legal standard or basing a ruling on an erroneous view of law is an abuse of discretion.¹⁶

We hold that the Board incorrectly applied a detriment to "abutting or surrounding properties" test, instead of the "materially injured" test. We agree with the district court's finding that the Board arbitrarily and capriciously abused its discretion in overturning the Planning Commission's decision, and affirm the abandonment of Navarro Court. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Douglas, J.
Douglas

Becker, J.
Becker

Parraguirre, J.
Parraguirre

¹⁴City Council v. Irvine, 102 Nev. 277, 279-80, 721 P.2d 371, 372-73 (1986).

¹⁵Id. at 279, 721 P.2d at ____.

¹⁶See Bergmann v. Boyce, 109 Nev. 670, 676-77, 856 P.2d 560, 564 (1993).

cc: Second Judicial District Court Dept. 9, District Judge
Washoe County District Attorney Richard A. Gammick /Civil
Division
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Washoe District Court Clerk