

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVSUR, INC., A/K/A NEVSUR
INSURANCE AGENCY, INC., A
NEVADA CORPORATION,
Appellant,
vs.
CITY OF NORTH LAS VEGAS, A
MUNICIPAL CORPORATION OF THE
STATE OF NEVADA,
Respondent.

No. 35635

FILED

MAY 06 2003

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 denying a claim for mandamus relief in a zoning case. On appeal, Nevsur makes two arguments. We conclude Nevsur's arguments lack merit.

FACTS

In 1989, Becker Enterprises, on behalf of Nevsur, submitted an application to rezone a 320-acre tract in the City of North Las Vegas (City) from M-2 industrial to a planned unit development (PUD). The City approved the application through the adoption of a resolution of intent.

A resolution of intent expires two years after its adoption, unless the resolution provides otherwise. The resolution does not rezone the property; instead, it states the City's intent to rezone the property. Nevsur's plan included a mix of industrial, commercial, resort, multi-family residential, and single-family residential uses. Overall residential density was to be six units per acre.

Nevsur developed all the parcels in the PUD except five parcels totaling approximately 63 acres. Nevsur applied for, and was granted, extensions of time to complete development in 1992 and 1995. In

1998, Nevsur applied for a third extension of time to complete the final five parcels. The staff of the North Las Vegas Planning Commission (Planning Commission) recommended approval of the extension, subject to certain conditions. The Planning Commission agreed, recommending approval of Nevsur's application.

The North Las Vegas City Council (Council) approved the application, conditioned upon rezoning one undeveloped twelve-acre parcel (parcel) from multi-family to single-family residential. The Council relied on opposition from neighboring landowners, both at the Council meeting and the Planning Commission meeting; personal knowledge of its members, several of whom are residents in the area; and maps of the area, including the areas surrounding Nevsur's PUD, to reach its decision.

Nevsur filed a complaint seeking, among other claims, a writ of mandamus compelling the City to approve the extension of time and leave the parcel designated as multi-family residential. Nevsur contended the Council's decision was arbitrary and capricious and unsupported by substantial evidence. Further, Nevsur argued the Council failed to give deference to the master plan.

The district court denied Nevsur's petition for mandamus relief. The district judge found substantial evidence existed to support the Council's decision. This appeal followed.

DISCUSSION

First, Nevsur argues the district court abused its discretion in determining substantial evidence existed to support the decision of the North Las Vegas City Council. We disagree.

Substantial evidence is "that which "a reasonable mind might accept as adequate to support a conclusion.""¹ While baseless protestations may be insufficient, "substantial and specific" objections may be relied upon.²

Here, neighbors and the City Council members articulated specific concerns over another multi-family project in the area. The concerns included increased traffic, overcrowding in the local schools, increased crime, diminution in property values, and a loss of privacy by homeowners visible from the proposed multi-family building. The district court did not abuse its discretion because substantial evidence existed to support the decision of the City Council.

Second, Nevsur contends the district court abused its discretion in determining the City Council's decision gave substantial deference to the master plan. We disagree.

The decision by a board to grant or deny a rezoning application is presumed valid.³ Notwithstanding the presumed validity of a board's decision, "the master plan is also entitled to deference."⁴ The

¹McClanahan v. Raley's, Inc., 117 Nev. 921, 924, 34 P.3d 573, 576 (2001) (quoting State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971))).

²City of Las Vegas v. Laughlin, 111 Nev. 557, 559, 893 P.2d 383, 385 (1995).

³County of Clark v. Doumani, 114 Nev. 46, 53, 952 P.2d 13, 17 (1998).

⁴Id. at 54, 952 P.2d at 17.

court has stated, "The master plan of a community is a "standard that commands deference and a presumption of applicability," but should not be viewed as a "legislative straightjacket from which no leave [may] be taken.""⁵ Simply put, judicial intervention is improper "absent clear necessity."⁶ Thus, if a master plan allows various uses, "it is within the discretion and good judgment of the municipality to determine what specific use should be permitted."⁷

Nevsur's application for another extension was not denied in its entirety. To the contrary, the extension was approved subject to changing one parcel to single-family residential. Single-family residential development in a high-density residential area is consistent with the master plan because the master plan specifically allows for such use. In fact, all of Nevsur's single-family residential development within the PUD has been on land designated high-density residential. Thus, because the master plan allows for single-family residential in areas classified as high-

⁵Id. at 53-54, 952 P.2d at 17 (quoting Enterprise Citizens v. Clark Co. Comm'rs, 112 Nev. 649, 659, 918 P.2d 305, 311 (1996) (quoting Nova Horizon v. City Council, Reno, 105 Nev. 92, 96, 769 P.2d 721, 723 (1989))).


⁶Nova Horizon, 105 Nev. at 97, 769 P.2d at 724 (citing Board of Comm'rs v. Dayton Dev. Co., 91 Nev. 71, 75, 530 P.2d 1187, 1189 (1975)).

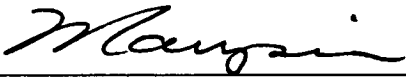
⁷City of Reno v. Harris, 111 Nev. 672, 679, 895 P.2d 663, 667 (1995).


density residential, the City Council substantially complied with the master plan.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Eighth Judicial District Court Department 12, District Judge
Curran & Parry
Deaner, Deaner, Scann, Malan & Larsen
Clark County Clerk