

IN THE SUPREME COURT OF THE STATE OF NEVADA

SOCIETY FOR THE PREVENTION OF
CRUELTY TO ANIMALS OF
NORTHERN NEVADA,

Appellant,

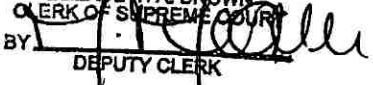
vs.

CITY OF RENO, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA; G.P. INDUSTRIES, D/B/A
RENO IRON WORKS,
Respondents.

No. 85912

FILED

APR 19 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review in a municipal permitting matter. Second Judicial District Court, Washoe County; Kathleen A. Sigurdson, Judge.

Respondent G.P. Industries d/b/a Reno Iron Works (RIW) owned a parcel of land adjacent to Appellant Society for the Prevention of Cruelty to Animals of Northern Nevada's (SPCA-NN) land. RIW applied to Respondent City of Reno (the City) for a Major Site Plan Review (MSPR) for grading cuts and fills of its lot. The City Planning Commission heard presentations from the City Planner, RIW, and SPCA-NN before approving RIW's MSPR. SPCA-NN appealed the planning commission's decision to the City Council. The council held two hearings on SPCA-NN's appeal. During the second hearing, the City Council heard public comments and presentations from each of the relevant parties, RIW, SPCA-NN, and the City Planning Department. After lengthy discussions regarding the project, the City Council affirmed the planning commission's approval of RIW's MSPR.

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SPCA-NN petitioned for judicial review in the Second Judicial District Court. The district court denied the petition. SPCA-NN now appeals, arguing that: (1) the City's findings were insufficient; (2) the City improperly interpreted its Administrative Land Development Code (ALDC); (3) the City's findings were not supported by substantial evidence; (4) the City improperly deferred review of the traffic analysis; (5) the City Council violated SPCA-NN's right to due process when a Councilmember failed to disclose outside communications at the beginning of the hearing, and; (6) the City failed to notify SPCA-NN of the Planning Commission's hearing or find substantial compliance with the noticing ordinance.

Our role in reviewing an administrative decision is identical to that of the district court. *Elizondo v. Hood Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013); *State Tax Comm'n v. Am. Home Shield of Nev., Inc.*, 127 Nev. 382, 385-86, 254 P.3d 601, 603 (2011). Therefore, we do not give deference to the district court's decision. *City of Reno v. Bldg. & Const. Trades Council of N. Nev.*, 127 Nev. 114, 119, 251 P.3d 718, 721 (2011). An administrative agency's legal conclusions are reviewed de novo. *State Dep't of Tax'n v. Masco Builder Cabinet Grp.*, 127 Nev. 730, 735, 265 P.3d 666, 669 (2011). While not controlling, an agency's interpretation of a statute is persuasive when the statute is one the agency administers. *Nev. Pub. Emps. Ret. Bd. v. Smith*, 129 Nev. 618, 625, 310 P.3d 560, 565 (2013).

An administrative agency's factual findings are reviewed for clear error or an abuse of discretion. *Taylor v. Dep't of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013). An agency abuses its discretion when its decision is arbitrary or capricious. *State Tax Comm'n*, 127 Nev. at 385, 254 P.3d at 603. The focus is on whether the findings are

supported by substantial evidence. *Elizondo*, 129 Nev. at 784, 312 P.3d at 482. “Substantial evidence is evidence which a reasonable mind might accept as adequate to support a conclusion.” *Smith*, 129 Nev. at 624, 310 P.3d at 564. “Substantial evidence need not be voluminous.” *City of Reno v. Estate of Wells*, 110 Nev. 1218, 1222, 885 P.2d 545, 548 (1994).

The City’s decision is sufficiently specific

SPCA-NN argues that the City did not “make legally adequate findings” that sufficiently detailed or explained its decision. Relying on *Eureka County v. State Engineer*, SPCA-NN argues that such decisions “must be sufficiently explained and supported to allow for judicial review.” 131 Nev. 846, 856, 359 P.3d 1114, 1120-21 (2015).

Eureka County is distinguishable. There, the water commissioner based his decision on the proposed future development of mitigation plans, rather than the evidence before him. *Id.* at 856, 359 P.3d at 1121. We held that the State Engineer “may not defer the determination of what mitigation would encompass to a later date.” *Id.* Conversely, while the City Council did not recite all of the specific findings reflected in the record, the complete record nonetheless demonstrates that the City Council reviewed and considered each of the criteria required under ALDC 18.08.304(e) and 18.08.603(e)(1). These requirements were each addressed in SPCA-NN’s appeal packet, the City’s staff report, the presentations from city staff, RIW, and SPCA-NN, and the public comments from SPCA-NN’s employees. The City incorporated those considerations into its decision, which it noted was “based on a review of the staff report, the record on appeal, and information presented at this public hearing for this appeal,

and based on [its] ability to make all the findings.” Accordingly, we conclude that the City’s decision was sufficiently specific.

The City did not improperly limit its review under the ALDC

We now address whether the City improperly interpreted the ALDC, limiting its review of SPCA-NN’s appeal. SPCA-NN argues that the City misinterpreted ALDC 18.08.603(e)(1) by confining its review and analysis of the compatibility factors to the design plans and surrounding development only and not reviewing the intended use of the property. We conclude the City’s interpretation is within the language of the code.

We accord words in a statute their plain meaning unless doing so would be contrary to the spirit of the statute. *Berkson v. LePome*, 126 Nev. 492, 497, 245 P.3d 560, 563 (2010). We will also construe statutes to avoid absurd results. *State, Private Investigator’s Licensing Bd. v. Tatalovich*, 129 Nev. 588, 590, 309 P.3d 43, 44 (2013). While not controlling, an agency’s interpretation of a statute is persuasive when the statute is one the agency administers *Smith*, 129 Nev. at 625, 310 P.3d at 565.

ALDC 18.08.603(e)(1) largely governs the approval of a major site plan review. This provision provides review criteria that must be considered and met before a major site plan review is approved. The factors central to this case include whether: (1) “[t]he proposed design is compatible with surrounding development;” (2) “[t]he characteristics of the project . . . are reasonably compatible with the types of development permitted in the surrounding area;” and (3) “[t]he approval will not be materially detrimental to public health, safety, or welfare.” ALDC 18.08.603(e)(1)(a), (d)-(e).

This provision does not include the term “use” but does require findings be made as to “design” compatibility. This is the key issue here. SPCA-NN argues that consideration of the proposed “use” of the property is encompassed in review of the design and project characteristics. Conversely, the City interprets the review criteria as requiring consideration of the “design” only, which is limited to the cite *plan* before the commission rather than the contemplated *use* of the land.

Black’s law dictionary defines “design” as “[a] plan or scheme” or “[p]urpose or intention combined with a plan.” *Design*, Black’s Law Dictionary (11th ed. 2019). It defines “development” as “[a] substantial human-created change to improved or unimproved real estate, including the construction of buildings or other structures.” *Development*, Black’s Law Dictionary (11th ed. 2019). Of note, the term “use” does not appear in the relevant sections of the ALDC and the concept of “use” is not implicated by the generally accepted definitions of design and development. We thus conclude the City’s interpretation is within the plain language of the code and does not yield an absurd result. Therefore, we are persuaded by the City’s interpretation.

Substantial evidence supports the City’s findings

SPCA-NN argues that the City’s decision is not supported by substantial evidence. SPCA-NN contends the City never analyzed compatibility with the surrounding development and that the staff reports, the discussions and public comment, the presentations by each party, and the sound study introduced by RIW, each addressing compatibility, do not constitute “evidence.” Additionally, SPCA-NN contends that the City

improperly deferred analysis of traffic safety concerns because it indicated that it would have RIW complete a secondary study after approval.

Substantial evidence supports the City's findings that the MSPR was compatible with the surrounding development, and that the traffic impacts could be sufficiently mitigated. The City planning department's staff report and presentation addressed each of the compatibility factors, as did RIW's original application for the MSPR and RIW's response to SPCA-NN's appeal. In addition, RIW presented its position at the city council hearing and submitted a sound study supporting the compatibility of the plan with the surrounding development. SPCA-NN also presented its position at the hearing and had several of its employees and supporters submit public comments addressing the compatibility factors and traffic concerns. Additionally, the city council members engaged with presenters and staff, discussing and asking questions about compatibility and traffic concerns.

Each of the foregoing reasonably supports the City's findings that RIW's application met the requirements for MSPR approval by the City Planning Commission. While SPCA-NN offered contrary evidence, which it argued demonstrated that the City's decision was incorrect, "we cannot substitute our judgment for that of the City Council as to the weight of the evidence." *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523, 530, 96 P.3d 756, 761 (2004). Accordingly, we conclude that substantial evidence supported the City's denial of SPCA-NN's appeal.

SPCA-NN's due process rights were not violated

Finally, we turn to whether SPCA-NN's due process rights were violated by a council member's late disclosure of outside communications

and the failure to receive notice of the original city hearing. SPCA-NN does not cite any binding authority indicating that an untimely required disclosure results in substantial prejudice resulting in the violation of due process. The City Council Rules require councilmembers to disclose outside communications at the beginning of the hearing, but such disclosures are not required to be extensive and do not affect a councilmember's ability to vote unless the councilmember believes it would affect their ability to decide a matter fairly and impartially. Reno City Council Rule 8.3. Here, a councilmember disclosed outside communications during, rather than at the beginning, of the hearing. However, SPCA-NN was given ample opportunity to respond regarding the communication that the councilmember disclosed. Thus, we conclude that the untimely disclosure did not result in prejudice.

As to the notice requirements, SPCA-NN argues that the City failed to make a formal finding as to whether there was substantial compliance with the notice requirements, *see* ALDC 18.08.305(f)(2), when SPCA-NN claimed that it had not received required notice about the MSPR hearing. However, the City addressed the issue of notice during each hearing, and the City used its mailing list to support its position that notice was mailed to SPCA-NN. *See* ALDC 18.08.305(c)(1)(e) (stating that “[s]ervice of a notice shall be effective on the date of mailing”). Additionally, per the City’s code, “failure of the property owner(s) to receive any notice . . . shall not affect the validity of any proceeding. . . .” *Id.* SPCA-NN received actual notice, by public notice, even if not by mail. Moreover, if the planning commission erred by failing to make a formal finding regarding substantial compliance with the notice requirements, SPCA-NN was not

prejudiced because it received actual notice, and each hearing addressed the notice issue. Thus, even if a substantial compliance finding were made, SPCA-NN fails to show that there would have been a change in the outcome of the proceedings.

In sum, the City's findings were sufficiently specific. Further, we agree with the City's interpretation of ALDC 18.08.603(e)(1) and conclude that substantial evidence supports the City's factual findings. Finally, SPCA-NN's due process rights were not violated by a councilmember's late disclosure of communications, or the alleged failure to receive notice of the original planning commission hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



_____, J.
Herndon



_____, J.
Lee



_____, J.
Bell

cc: Hon. Kathleen A. Sigurdson, District Judge
Jonathan L. Andrews, Settlement Judge
Luke A. Busby
Reno City Attorney
Snell & Wilmer, LLP/Reno
Washoe District Court Clerk