IN THE SUPREME COURT OF THE STATE OF NEVADA

DGD DEVELOPMENT LIMITED PARTNERSHIP, A NEVADA LIMITED PARTNERSHIP; J.S. DEVCO LIMITED PARTNERSHIP, A NEVADA LIMITED PARTNERSHIP; SYNCON HOMES, A NEVADA CORPORATION; AND JOHN C. SERPA,
Appellants,
vs.
THE INDIAN HILLS GENERAL IMPROVEMENT DISTRICT,
Respondent.

No. 38273

FILED

FEB 10 2003

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

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order confirming a general improvement district resolution and denying a petition for judicial review.[1] Because we conclude that the district court erred, we reverse and remand this matter for further proceedings in accordance with this order.

This appeal arises from attempts by respondent Indian Hills General Improvement District ("District") to change sewer connection fees in its area of service following replacement of a pond-sewer treatment system with a new mechanical plant. Appellants ("DGD") are developers of land located within the district that will be subject to revised sewer connection fees per the resolution.

In June of 2000, the District published notice of its intent to reduce sewer connection fees from $4,804 to $4,680. Counsel represented

[1]See NRS 43.150 and NRAP 3A(b)(1).

03-02274

DGD at a July 12, 2000 public hearing and objected to the methodology the District used to compute the new connection fee. The formula for calculating the prospective connection fees essentially divided the cost of the mechanical plant among 400 new users. Contrary to indications in its public notice, the District ultimately adopted a resolution increasing the fees from $4,804 to $4,975.

DGD filed a petition for judicial review, claiming the District's resolution violated provisions of NRS Chapter 318 and that substantial evidence did not support the resolution. The District filed a separate petition for judicial confirmation of its resolution increasing the connection fees. The district court heard both petitions in a single hearing.

The district court conducted a de novo review of the District resolution, in accordance with Alberty v. City of Henderson,[2] and with the consent of the parties. Consequently, it reviewed evidence and testimony not included in the administrative record. This new evidence included evidence such as: a statement in the resolution that the District's historical practice in setting sewer connection fees was to charge the whole cost to the parties responsible for any expansion; charts of the various components and costs of various wastewater treatment facilities; and expert testimony on the cost and propriety of building a mechanical wastewater treatment plant versus upgrading the existing wastewater treatment facilities. Based on the evidence presented, the district court concluded (1) that the District acted within the parameters of the law because sufficient and substantial reasoning existed to justify the

---

[2]106 Nev. 299, 792 P.2d 390 (1990) (de novo review not proscribed in landowner appeals of estimated assessments pursuant to NRS 271.315).

resolution, and (2) a new hearing would not lead to a different result. Thus, the district court confirmed the District's resolution pertaining to the increased sewer connection fees and denied DGD's petition for judicial review. DGD now appeals, challenging the adequacy of the District's notice, the propriety of the district court's consideration of evidence beyond the administrative record, and the alleged arbitrariness of the connection fees adopted in the resolution. We agree that the district court should not have considered evidence outside the administrative record.

NRS 318.199(6)[3] provides that any person who protests an improvement district's resolution may move to set aside that resolution in any court with jurisdiction. However, this statute does not outline procedures for judicial action or the standard of review.[4]

In Urban Renewal Agency v. Iacometti,[5] we reviewed a district court's de novo review of a municipal agency determination. We stated that to allow the district court to conduct a trial de novo would, "'in effect, . . . relegate the commission hearing to a meaningless, formal, preliminary and place upon the courts the full administrative burden of factual

---

[3]NRS 318.199(6) states:

> Within 30 days immediately following the effective date of such resolution, any person who has protested it may commence an action in any court of competent jurisdiction to set aside the resolution.

[4]Id.

[5]79 Nev. 113, 379 P.2d 466 (1963).

determination.'"[6] We concluded that a district court's review of municipal agency action was limited to determining whether it "acted arbitrarily, capriciously, and abused its discretion."[7] This is a deferential standard of review; one limited to the record generated by the agency.[8]

In Alberty, we reaffirirmed Iacometti's standard of review and noted that the rule limiting the scope of review by a district court was "intended to encourage deference to municipal actions, based in part on the recognition that courts are less competent to conduct fact-finding on complex planning issues than the legislative bodies of municipalities."[9] However, under the facts of Alberty, we held that a district court could consider evidence not before the agency under limited circumstances. This exception was clearly limited to "landowner appeals of estimated assessments pursuant to NRS 271.315."[10] We permitted the district court to consider new evidence in that case to prevent unfairness because "the typical property owner will not realize he or she must present evidence . . . until after any hearings before the city council, i.e., on appeal to the district court."[11]

---

[6]Id. at 118-19, 379 P.2d 468-69 (quoting Nevada Tax Commission v. Hicks, 73 Nev. 115, 123, 310 P.2d 852, 856 (1957)).

[7]Id. at 118, 379 P.2d at 468; see also Tighe v. Von Goerken, 108 Nev. 440, 442, 833 P.2d 1135, 1136 (1992).

[8]Id.; Tighe, 108 Nev. at 442, 88 P.2d at 1136.

[9]Alberty, 106 Nev. at 303, 792 P.2d at 393 (citing Iacometti, 79 Nev. at 118-19, 379 P.2d at 468-69).

[10]Id. at 303, 792 P.2d at 393.

[11]Id. at 303-04, 792 P.2d at 393.

The need for a de novo review by the district court to remove unfairness does not exist in the current case. Neither party contends that it would be unfair to restrict the district court's review to the hearing itself. Nor does either party claim that they were unaware that they had to fully develop the record at the prior hearing.

The district court in the present case acknowledged that it relied upon Alberty to "hear[ ] a whole bunch of evidence of things that were not considered at that hearing last July." The court also stated that looking "simply at the record . . . there was a problem, because [the District] did rely, as an essential fact, on a requirement of the [Nevada Division of Environmental Protection] that really wasn't the requirement." While recognizing that a district court's review was limited to the record created by the administrative body, the district court concluded that "[i]f you take the evidence presented today, along with the evidence presented back then [at the hearing], then the Board clearly had sufficient and substantial evidence to support its conclusion." We conclude that application of the exception crafted in Alberty to all cases would have the effect of making judicial processes the mechanism for establishing administrative evidence, thereby supplanting the administrative process. We therefore conclude that, under NRS 318.199(6), a district court's review is limited to the record generated at the public hearing.

The District argues that, because it filed a "petition for judicial confirmation," the district court properly considered evidence outside the administrative record, pursuant to separate statutory provisions

governing judicial confirmation.[12] The District argues that NRS 43.140 permits a de novo review by the district court. We disagree.

We conclude that NRS 43.140 does not extend a district court's review beyond the record at hand. Instances where the Legislature permits a trial de novo are the subject of express statutory authority.[13]

---

[12]See NRS 43.140(1), which states:

> The petition and notice shall be sufficient to give the court jurisdiction, and upon hearing the court shall examine into and determine all matters and things affecting the question submitted, shall make such findings with reference thereto and render such judgment and decree thereon as the case warrants.

(Emphasis added.) See also, NRS 43.160(2), which states:

> The court shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties.

[13]See, e.g., NRS 482.354, which governs licensing of the distribution, sale, rebuilding, and leasing of motor vehicles, states "Upon judicial review of the denial or revocation of a license, the court for good cause shown may order a trial de novo."

See also, NRS 692C.490(1), concerning the judicial review of actions of the commissioner of insurance in dealing with insurance holding companies, provides:

> Any person aggrieved by any act, determination, regulation, order or any other action of the commissioner [of insurance] pursuant to this chapter may petition for review thereof in the district court in and for Carson City. The court shall conduct its review without a jury and by trial de novo, except that if all parties including the commissioner so stipulate, the review shall be

continued on next page . . .

NRS 43.140 does not expressly grant such authority to the district court. Thus, we conclude that this provision allows a court to examine only the evidence already adduced at the prior hearing before the agency. The district court's review is limited to that record.

The current case is similar to Revert v. Ray,[14] where we held that the district court erroneously relied upon a brief, submitted by the state engineer after an administrative hearing had occurred, to supply findings absent from the administrative record.[15] We concluded that this constituted a "post hoc rationalization"[16] that was clearly absent from the record and, therefore, the district court should not have considered this evidence.

Thus, because both NRS 318.199(6) and 43.140 limit the district court's review to the record, we conclude that the district court should not have considered evidence outside the record generated by the District. Accordingly, we reverse the district court's judgment and remand for a hearing by the district court based on the record generated at the

---

. . . *continued*

> confined to the record. Portions of the record may be introduced by stipulation into evidence in a trial de novo as to those parties so stipulating.

see also NRS 607.215(3) and NRS 642.530 (allowing a court to order, upon petition for review, a trial de novo and dealing with, respectively, judicial review of decisions of the labor commissioner and judicial review of disciplinary action by the board of funeral directors, embalmers, and operators of cemeteries and crematories).

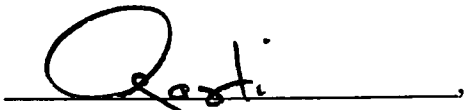
[14]95 Nev. 782, 603 P.2d 262 (1979).

[15]See id. at 787, 603 P.2d at 265.

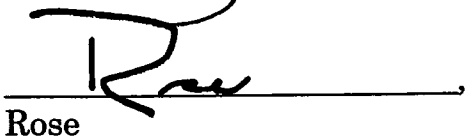
[16]Id.

public hearing by the District, in order to determine whether substantial evidence supported the District's resolution.[17]

We hereby ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



_____, C.J.
Agosti



_____, J.
Rose

_____, J.
Maupin

cc: Hon. Michael P. Gibbons, District Judge
Heaton & Doescher, Ltd.
Jeffrey K. Rahbeck
Douglas County Clerk

---

[17]We have carefully considered the parties' other arguments and conclude that they lack merit. The plain language of NRS 318.202(6) allowed the District to increase the sewer connection fee amount to $4,975, despite the lower $4,680 figure contained in the public notice. Otherwise, there would be no point in a deliberative process over hearing evidence.

A review of the record also reveals that the District's notice and agenda complied with Nevada's open meeting law requirements, and that no evidence in the record supports DGD's allegation that the District acted fraudulently.