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Sustainable Growth v. Jumpers, LLC, 122 Nev. Adv. Op. 7
(February 9, 2006)¹

CONSTITUTIONAL LAW

Summary

Plaintiffs, including Douglas County and various corporate parties, challenged a voter initiative which limited the number of new dwelling units that could be constructed annually in the county. Plaintiffs alleged that the voter initiative violated the county's master development plan, that the voter initiative was an unconstitutional taking in violation of the Nevada constitution, and that adopting the voter initiative would violate specific state constitutional and statutory provisions. The Nevada Supreme Court found the SGI sufficiently legal to survive summary judgment on each of plaintiffs' claims.

Disposition/Outcome

The Nevada Supreme Court reversed the district court's award of summary judgment to plaintiffs and remanded to the district court.

Factual & Procedural History

During the 2002 election, the voters of Douglas County voted in favor of the Sustainable Growth Initiative ("SGI"). The SGI limited the amount of new dwelling units in the county to 280 per year. The SGI's text read, "Shall Douglas County adopt an ordinance amending its development code to provide that no more than 280 new dwelling units shall be built annually in Douglas County, exclusive of the area regulated by the Tahoe Regional Planning Agency (TRPA), except in a disaster emergency declared by the Board of County Commissioners?"²

Plaintiffs ("Jumpers") filed actions against the Sustainable Growth Initiative Committee ("the Committee") challenging the SGI. These actions were consolidated into one action, which alleged that the SGI was inconsistent with the Douglas County Master Plan, that the SGI was facially invalid as a taking, and that the SGI could not be implemented without violating Nevada Constitution Article 19(3) or Nevada Revised Statute ("NRS") 295(4). Jumpers and the Committee both moved for summary judgment.

The district court granted Jumpers' motion for summary judgment, finding that the SGI was inconsistent with the Douglas County Master Plan. The district court entered a permanent injunction against the Committee. As to the other allegations, the

¹ By Gregory A. Hubbard

² Sustainable Growth v. Jumpers, LLC, 122 Nev. Adv. Op. 7 (February 9, 2006).

district court deemed them moot since summary judgment was granted solely on the SGI's inconsistency with the Master Plan. Nonetheless, the district court reasoned that the SGI was facially valid since it did not amount to a taking under the Nevada constitution. The court also reasoned that the SGI's language was too brief to be implemented without amending it, and that such amendment would violate Nevada Constitution Article 19(3) or NRS 295(4).

The Committee appealed the district court's findings as to all three allegations to the Nevada Supreme Court.

Discussion

Since the Committee was appealing the district court's summary judgment order, the Nevada Supreme Court reviewed the order de novo.

1. The SGI was sufficiently compliant with the Douglas County Master Plan

Though the Supreme Court disagreed with the Committee's claim that the SGI did not have to comply with the Master Plan because it was "a new legislative policy," the Court agreed with the Committee's alternate claim that the SGI did, in fact, comply with the Master Plan.

The Committee claimed that the SGI was not a zoning ordinance. Zoning ordinances are required to comply with Master Plans. The Committee argued instead that the SGI was a new legislative policy, not a zoning ordinance. The Court looked to the language of the SGI, which asked: "Shall Douglas County adopt an ordinance amending its development code to provide that no more than 280 new dwelling units shall be built annually in Douglas County?"³ The Court found that the SGI would have no legal effect unless it was enacted as a zoning ordinance. Accordingly, the Committee's claim was without merit.

The Committee claimed, in the alternative, that the SGI was in compliance with the Master Plan. The Court reaffirmed the rule that "municipal entities must adopt zoning regulations that are in substantial agreement with the master plan"⁴ and the relevant test is "whether the ordinance 'is compatible with, and does not frustrate, the [master] plan's goals and policies.'"⁵ The Court held that the SGI was not inconsistent with the Master Plan's stated goals, which included enhancing citizens' ways of life, ensuring equal access and opportunities to all citizens, managing future growth and land use, protecting natural and agricultural resources, and ensuring orderly development.

The Court discussed and refuted several areas in which the SGI may appear to conflict with the Master Plan. First, the Court found that the SGI's 2% growth cap was within the Master Plan's allowance for a growth rate of between 2 and 3.5 % per year. The Court dismissed Jumpers' argument that this percentage will necessarily decrease below two percent each year as the 280 units are added to the population. Second, the Court found that the SGI would benefit, not detriment, the conservation of natural

³ *Id.* (emphasis added).

⁴ *Nova Horizon v. City Council*, 769 P.2d 721, 723 (Nev. 1989).

⁵ *Napa Citizens v. Napa County Bd. of Supervisors*, 110 Cal. Rptr. 2d 579, 605-06 (Cal. Ct. App. 2001).

resources since the SGI would actually delay the need for improvements in the available water supply. Third, the Court found that even though Douglas County had secured water and sewer bonds based on an anticipated 3.5 % annual growth rate, the county had acted without any indication that the actual growth rate would be 3.5 %, and therefore the SGI is not inconsistent with the county's legitimate expectations. Fourth, the Court found that the SGI did not prevent the county from taking action to comply with the Master Plan's requirements for adequate affordable housing. Fifth, the Court found that SGI did not violate the Nevada constitution by impairing contractual obligations. The district court had found that the SGI rendered "transferable development rights" and "development agreements" invalid. However, the Supreme Court found that the SGI would not violate the constitution even if it did impair these contractual obligations because NRS 278.0201(3) provides an exception for new ordinances such as the SGI would create. Thus, even in light of these areas in which the SGI may appear to conflict with the Master Plan, the Court found that there was not evidence sufficient to sustain the award of summary judgment to Jumpers.

2. The SGI was facially valid under the Nevada Constitution

Jumpers argued that the district court should not have found the SGI facially valid under the Nevada constitution because the SGI acts as a taking. The Supreme Court declined to reach this constitutional issue *sua sponte*, since this issue had been deemed moot below. Even so, the Court indicated that it would defer to the district court's rationale since the SGI's living unit limit of 280 new dwelling units was not arrived at arbitrarily and capriciously, but was calculated based on the Master Plan's two percent minimum growth limit. The Court also indicated that it would defer to the district court's rationale because the SGI was substantially related to the state's legitimate interests in protecting public health, safety, morals, and general welfare.

3. Adoption of the SGI would not violated the Nevada Constitution or the Nevada Revised Statutes

The district court found that the SGI's language was so brief that it would have to be amended in order to be adopted through an ordinance. Specifically, the district court reasoned that the county would have to amend the SGI's language in order to ensure that developers built enough affordable housing. Such amendment, according to the district court, would violate NRS 295.180(1) which prevents amendment of an initiative within the first three years of its passage. The Supreme Court first noted this issue was deemed moot by the district court. Nonetheless, the Supreme Court reached the amendment issue *sua sponte* and held that adopting the SGI through an ordinance would not constitute an amendment in violation of NRS 295.180(1).

Conclusion

The Court concluded that Douglas County residents' actions in voting to maintain the rural character of their community were substantially compliant with the Master Plan.

Accordingly, the SGI is sufficiently valid to survive summary judgment. The district court's order of summary judgment was reversed and remanded.