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### Summary of Southern Nevada Homebuilders Association v. Clark County, 121 Nev. Adv. Op. 46

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*Nevada Law Journal*

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***Southern Nevada Homebuilders Association v. Clark County*, 121 Nev. Adv. Op. 46 (Aug. 11, 2005)<sup>1</sup>**

**PROPERTY – STATUTORY INTERPRETATION – ZONING  
ORDINANCE**

**Summary**

On a request for declaratory relief from Clark County and various citizens groups, the district court declared valid a zoning ordinance requiring a two-thirds majority vote of the Clark County Commissioners for the approval of all non-conforming zone change applications. The district court concluded on a motion for summary judgment that the ordinance was valid. Southern Nevada Homebuilders Association (“SNHA”) appealed the decision of the district court.

**Disposition**

The Nevada Supreme Court reversed the decision of the district court, finding that the supermajority requirement violated the scope of the enabling statute. Additionally, the court concluded that the absence of an express supermajority clause in the Nevada Revised Statutes prohibits Clark County from adopting its supermajority requirement. Finally, the court noted that Clark County could interpret no other statutory scheme to support a basis for its supermajority requirement.

**Factual and Procedural History**

The Commissioners of Clark County passed Clark County Ordinance 2865 requiring, *inter alia*, a two-thirds vote for approval for all non-conforming zone change applications. During the adoption process, SNHA unsuccessfully opposed the adoption of the ordinance.

Once the Board of County Commissioners passed the ordinance, Clark County and various citizens and citizens groups filed an action in district court requesting a judicial declaration that the ordinance was valid and not in conflict with NRS 278.260.<sup>2</sup> SNHA filed a counterclaim, seeking a declaration that the supermajority requirement of the ordinance was a violation of the same section of the NRS.

The district court ruled that the supermajority requirement was not a violation of the statutes, concluding that the Nevada Legislature granted broad authority to bodies regulating zoning changes. The court found that NRS 278.230(2)<sup>3</sup> when combined with

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<sup>1</sup> By Wayne Klomp

<sup>2</sup> NEV. REV. ST. § 278.260 (2004) reads, in pertinent part, “The governing body shall provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts are determined, established, enforced and amended.” NEV. REV. ST. § 278.260(1).

<sup>3</sup> NEV. REV. ST. § 278.230(2) reads, “[t]he governing body may adopt and use such procedure as may be necessary for [putting into affect the master plan].”

278.260 granted Clark County the authority to require a supermajority for zoning changes.

### **Discussion**

The court reversed the decision of the district court, finding that the Nevada Legislature did not grant such broad authority to Clark County. The court came to its conclusions based upon two arguments. First, the enabling statute did not grant Clark County the authority to adopt a supermajority requirement for zoning changes. Second, the County had no other statutory basis for enacting the supermajority requirement.

The Nevada legislature authorized public entities such as Clark County to adopt zoning regulations in NRS 278.260(1)<sup>4</sup> and more generally in NRS 278.020.<sup>5</sup> In neither statute did the Nevada Legislature prescribe voting requirements for zoning changes, and the Court noted that no zoning application statute requires a supermajority for approval.

Although the district court found it inapplicable, the court followed *Falke v. Douglas County*<sup>6</sup> where the court invalidated a supermajority voting requirement because the enabling statute did not specifically grant authority for its adoption. In so doing, the court concluded that “[w]hen a statute does not express specific or heightened voting requirements, this court will not take it up on itself to fill in such requirements.”<sup>7</sup>

Finally, the court noted the lack of any other statutory basis for permitting a supermajority vote of the County. The statute on which the district court relied was insufficient to support a conclusion that the Nevada Legislature granted the County Commissioners express power to adopt a supermajority requirement.<sup>8</sup> When read in context of the statutory scheme, that statute cannot overcome the Legislature’s intent to require a simple majority vote for approval of zoning changes, as indicated by the Legislature’s silence in NRS 278.260.

### **Conclusion**

The enabling statute allowing the County commissioners to dictate the procedures for zoning and zoning changes does not authorize those procedures to include a supermajority vote. Additionally, the Nevada Legislature’s silence on the matter of voting requirements for approving master plan exceptions makes it clear that it intended only a simple majority.

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<sup>4</sup> For text, see *supra* note 2.

<sup>5</sup> NEV. REV. ST. § 278.020(1) reads, “governing bodies of cities and counties are authorized and empowered to regulate and restrict the improvement of land and to control the location and soundness of structures.”

<sup>6</sup> 116 Nev. 583, (2000).

<sup>7</sup> S. Nevada Homebuilders Ass’n v. Clark County, 121 Nev. Adv. Op. 46, 6 (August 11, 2005).

<sup>8</sup> The district court relied on NEV. REV. ST. § 278.230(2), quoted in *supra* note 3.