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Summary of Hantges v. City of Henderson, 121 Nev. Adv. Op. 32

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Hantges v. City of Henderson, 121 Nev. Adv. Op. 32, 113 P.3d 848 (2005).¹

PROPERTY: CITIZEN CHALLENGES & CONFLICTS OF INTEREST

Summary

A citizen has standing to challenge redevelopment plans, however the challenge must be done within the time proscribed under NRS 279.609. Additionally, the court held that the members of the City of Henderson's Redevelopment Advisory Commission ("Advisory Commission") were not "public officers" pursuant to NRS 281.4365 and therefore were not subject to the conflict of interest requirements of NRS 281.411 to 281.581.

Disposition/Outcome

The Nevada Supreme Court denied the citizen Hantges' petition for writ of mandamus challenging the Advisory Commission's designation of a redevelopment area, known as Tuscany Hills, as blighted. The court further denied Hantges' petition finding that no conflict of interest of two members of the Advisory Commission existed. Although the Court held that Hantges had standing as a citizen to contest the plan, the petition for writ of mandamus was untimely filed under NRS § 279.609(3). The Court held that members of an agency acting solely in an advisory capacity are not subject to the conflict of interest obligations of NRS §§ 281.411-281.581.

Factual and Procedural History

Commerce Associates, LLC, a Nevada corporation, purchased 525 acres of property ("Tuscany Hills") in Henderson, Nevada and requested the City of Henderson designate the property for redevelopment evaluation. The City of Henderson's Redevelopment Agency ("Redevelopment Agency") hired an independent consultant to study the property. The consultant concluded that the property was blighted.

Moreover, Commerce Associates entered into a Memorandum of Understanding ("MOU") with the Redevelopment Agency, an agreement to jointly evaluate Tuscany Hills' designation as a redevelopment area. The Advisory Commission approved the Tuscany Hills Redevelopment Plan ("Redevelopment Plan") in January, 2001, and the Henderson City Council subsequently approved it in March, 2001. The Advisory Commission was established to act solely in an advisory capacity to the Redevelopment Agency.

Two members of the Advisory Commission, Barry Fieldman and Robert Unger, were also members of Makena Entertainment, LLC ("Makena"), the managing member of Commerce. Fieldman and Unger recused themselves before the discussions of the MOU began and were not present during the Advisory Commission's voting.

One year after approval of the Redevelopment Plan, Commerce Association and the Redevelopment Agency finalized the Owner Participation Agreement ("OPA"), the plan that effectuated the Redevelopment Plan. The Advisory Commission approved this agreement, and in April, 2002, the City Council approved the OPA.

¹ By Patti Ross

Hantges filed a writ petition in district court approximately one month after the April, 2002 approval by the City Council. Hantges challenged the finding that Tuscany Property was blighted and also asserts that Fieldman and Unger had a conflict of interest based on their roles on the Advisory Commission and with Makena. Hantges did not make any challenges in 2001 after initial approval by the Advisory Commission and Henderson City Council.

The City of Henderson moved to dismiss Hantges' petition on grounds that he lacked standing to challenge the Redevelopment Plan. The district court dismissed the petition, but then later set aside the dismissal with respect to the conflict of interest challenge. However, the district court concluded there was no conflict of interest and Hantges' petition was denied.

Discussion

Standing: NRS § 279.609 governs actions that question an agency's findings and determinations regarding a redevelopment plan. However, NRS § 279.609 does not address who can bring such action. The court looked to the purpose behind the statute and concluded that the statute has the protective purpose of "avoid[ing] meaningless or unreasonable results"² with respect to redevelopment plans. The court held the statute must be construed liberally, such that the purpose and intended benefits can be effectuated and obtained. Allowing citizens, and not just property owners, to bring actions challenging redevelopment plans is in line with the statute's purpose.

Timeliness of the Petition: Under NRS § 279.609, a property owner must challenge a redevelopment plan or amendment within 90 days after the date of adoption of the plan. The court held that the OPA was not an amendment to the Redevelopment Plan, and therefore any challenges to the OPA or Redevelopment Plan had to have been brought within the initial 90-day period. Because Hantges did not challenge the Redevelopment Plan in 2001, the court found his 2002 petition untimely.

Conflict of Interest: The Court found that Fieldman and Unger did not participate during the approval process of the Redevelopment Plan and therefore there was no conflict of interest present.

The court further took the position that even if Fieldman and Unger had participated in the approval process there still would not have been a conflict of interest. Only "public officers" are subject to accountability for actions taken despite a conflict of interest under NRS § 281.581, and neither Fieldman nor Unger fell within the definition of "public officer" as defined by NRS § 281.4365. Members of a commission whose functions are solely advisory are excepted from the definition of public officer.³ Because the Advisory Commission's sole function was that of an advisor and did not have any powers to bind the City of Henderson or the Redevelopment Agency, no member of the Advisory Commission was a "public officer."

Moreover, the court recognized the need to have citizen participation on advisory committees and suggested that a conflicted member recuse himself from decision making, voting or discussions to avoid any appearance of impropriety.

² Hantages v. City of Henderson, 113 P.3d 848, 850 (Nev. 2005) (quoting Edgington v. Edgington, 80 P.3d 1282, 1287 (Nev. 2003)).

³ NEV. REV. STAT. § 281.4365(2)(b) explicitly excludes as public officer "[a]ny member of a board, commission or other body whose function is advisory."

Conclusion

Under *Hantges*, citizens have standing to challenge redevelopment plans, but must do so in a timely manner pursuant to NRS § 279.609. Furthermore, members of an advisory commission whose sole purpose is advisory are not subject to accountability for conflicts of interest under NRS § 281.411 because none of the members are considered “public officers.” However, recusal of such members avoids the appearance of impropriety.