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CIVIL PROCEDURE: STANDARD OF UNCONSTITUTIONALLY VAGUE

Summary

Nevada State Contractors Board filed a complaint against Silverwing Development's multiple contracts entered for a project claiming the total contracted amount for the project exceeded Silverwing's monetary license limit in violation of NRS 624.220(2). NRS 624.220(2) limits the monetary license amount a contractor can bid on "one or more construction contracts on a single construction site or subdivision site for a single client."² The Board fined Silverwing \$1,000 per violation, and Silverwing petitioned for judicial review. The district court denied Silverwing's petition, and Silverwing appealed. Silverwing argued the term "subdivision site" in the statute is not unconstitutionally vague. The Board determined the common usage of "subdivision site" carries commonly understood meaning, and the statute is enforced with standard, without discrimination. Therefore, the statute is not unconstitutionally vague. Affirmed.

Background

Between 2013 and 2017, Silverwing Development developed three different condominium projects in Reno and Sparks and recorded each project as a "Condominium Subdivision" on its plat map. Each project required Silverwing to obtain separate building permits and certificates of occupancy for each building. In 2016, an anonymous complaint was filed against Silverwing's contracts during this period in violation of NRS 624.220(2). NRS 624.220(2) requires Nevada State Contractors Board to impose a limit on the monetary license amount a contractor can bid on "one or more construction contracts a single construction site or subdivision site for a single client."³ The Board's investigation revealed that Silverwing entered into multiple contracts with its contractors for the condominium development, which individually did not exceed the limit, but combined exceeded Silverwing's limit.

An administrative law judge held a hearing to determine the meaning of "subdivision site" in NRS 624.220(2). The Board defined "subdivision site" as a general location of a subdivision. Silverwing argued "subdivision site" is unconstitutionally vague because it could mean the location of an entire subdivision or an indeterminate location within a subdivision. Silverwing's owner, Mr. Witt, testified because each building requires separate building permits and certificates of occupancy, each building within each condominium development as a separate "site." He also explained multiple Silverwing contracts with a contractor were for separate contracts for each building. However, Silverwing's own recorded plat maps for the projects belied Silverwing's argument because they referred to each particular project as a "site," not the individual buildings.

The administrative law judge issued a decision concluding that Silverwing violated NRS 624.220(2) by entering into multiple contracts in the manner it did. Also, he determined that "subdivision site" is not unconstitutionally vague, and the Board's construction of the term was entitled to deference. Silverwing was fined \$1,000 per violation. Silverwing appealed after

¹ By Yoosun Jun.

² NEV. REV. STAT. § 624.220(2) (2019).

³ *Id.*

the district court denied the petition for judicial review.

Discussion

This court reviews appeals from an officer's decision in the same manner as a district court reviews the decision denying a petition for judicial review. The issues here, determination of statutory language and its constitutionality, are questions of law, and independent appellate review of an administrative ruling is appropriate.

If a law fails to prohibit an ordinary person with fair notice or if it authorizes discriminatory application, a law is impermissibly vague. Contrary to what Silverwing argues, the statute does not meet either of the standards. "Subdivision site" has a consistent common meaning in statutes, regulations, and ordinances relating to planning and zoning. The ordinary meaning of "subdivision site" is the general physical location of a subdivision, usually used as just "subdivision." Therefore, this court finds that the statute provides a person with ordinary intelligence fair notice that a contractor may not exceed its license limit in a particular subdivision, and the law applies with a reasonable standard. The statute is, consequently, not unconstitutionally vague.

Silverwing contends that NRS 624.220(2) is a bad policy because it restricts the amount of work a developer may be able to hire a contractor to do work when a contractor could work for multiple developers within a subdivision simultaneously. This court is not the appropriate place to address policy considerations; the Legislature and the Board would be.

Conclusion

The court affirms the district court's denial of Silverwing's petition for judicial review.