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Redrock Valley Ranch v. Washoe Cnty., 127 Nev. Adv. Op. No. 38 (July 7, 2011)¹
Natural Resources-Special Use Permits; Review of Agency Decisions

Summary

Appeal from a district court's order denying a petition for judicial review of a county's special use permit denial.

Disposition/Outcome

The Supreme Court affirmed the district court's denial for judicial review because Washoe County had the authority to make the final decision of whether to grant or deny permits for water use and relocation.

Factual and Procedural History

Redrock Valley Ranch (RVR) filed multiple applications with the State Engineer in an effort to move water from one basin to another. Initially, Washoe County protested the transfer applications, but later entered into a stipulation with RVR where the County would withdraw its protests if RVR agreed to limit its interbasin transfer request. The State Engineer ultimately approved RVR's transfer request, and found that the changes in use would not conflict with existing water rights or interests or be detrimental to the public interest. Furthermore, while the application was pending, the Regional Water Planning Commission amended the Washoe County Comprehensive Regional Water Management Plan (Water Management Plan) to note RVR's water rights as a potentially available water resource.

The Washoe County Development Code requires the County make five findings before issuing a special use permit.² The fourth required finding is "the issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding areas."³

The Washoe County Department of Community Development recommended approval, however the Washoe County Board of Adjustment could not make the fourth finding required by the code. RVR appealed this decision to the Washoe County Commission, and the Commission denied RVR's application based on multiple public concerns, the existence of another similar relocation project, and testimony from a hydrology expert that this project would be detrimental to the hydrology of the area. Thus, the Commission concluded it could not make the finding of no detrimental effect.

RVR then petitioned for judicial review under NRS 278.0233. The district court confined its review to the record before the Commission and denied relief because substantial evidence supported the Commission's decision. This appeal followed.

¹ By Cristen Thayer.

² The five findings are consistency, improvements, site suitability, issuance not detrimental and effect of a military installation. Washoe County Code § 110.810.30 (2007).

³ *Id.*

Discussion

Justice Pickering delivered the opinion of the Court, and rejected RVR's main argument that Washoe County did not have authority to deny the permit.

The State Engineer's Decision Does Not Preempt Washoe County's Decision

RVR first argued the State Engineer's authority preempted Washoe County's authority over the permit decision. However, the Court found while NRS 533.370 permits the engineer with authority to decide whether to approve an application for a permit, the statute works in tandem with other Nevada water law statutes. Consequently, the County still maintained authority over political, social and economic decisions relating to water; especially decisions that relate to long-term comprehensive plans, Nevada law and notions of public welfare.⁴

Here, while the engineer did make a finding that the application would probably not be detrimental to the public interest, this public interest finding does not obviate local social, political and economic concerns. Furthermore, the Commission limited the basis for denying the permit to policy conflict, noise impacts, changes to community character, public health issues, and lowering of property values, all of which are distinct from the issues addressed by the engineer.

In addition, the Court rejected RVR's argument that the Water Management Plan's referral to the project as a "potential" water source indicated regional approval, because "potential" means "possible" and is distinguishable from "actual." Therefore, use of the word "potential" did not show any approval of the project. In any event, the County is the final authority regarding necessary infrastructure improvements relating to the plan. Therefore, the County had the authority to act in regard to RVR's permit application.

Washoe County's Decision is not Precluded by the Engineer's Decision

RVR next argued Washoe County's failure to appeal the State Engineer's determination precluded it from finding otherwise, based on the engineer's statutory authority under NRS 533.370. For issue preclusion to apply, the issue decided in the previous proceeding must be identical to the issue in the current proceeding. For claim preclusion to apply, the present action must be based on the same claims or any part of them that could have been brought in the prior case. Issue and claim preclusion can apply to agency decision, but courts carefully apply it in this context because while public interest is part of any agency's decision, the meaning of public interest differs from agency to another.⁵ The differing functions and interests of agencies can therefore defeat a finding of preclusion.⁶

Here, the State Engineer and the County play distinct roles in water management. The State Engineer is vested with authority to base decisions on logistical issues about feasibility and may deny permits where its use threatens to prove detrimental to the public interest. The County's broad authority encompasses these considerations as well as zoning and related matters. Furthermore, the denial of special use permits is for the County, not the engineer to decide. The County's authority to make decisions on water use is distinct from the engineer's

⁴ Serpa v. Washoe County, 111 Nev. 1081, 1085, 901 P.2d 690, 695 (1995).

⁵ 2 Koch, Charles H., Jr., ADMINISTRATIVE LAW AND PRACTICE § 5:72 (3d ed. 2010).

⁶ Holmberg v. State Div. of Risk Management, 796 P.2d 823, 826 (Alaska 1990).

considerations, which are much narrower public interest considerations. Thus, the Washoe County Commission did not abuse its discretion in rejecting any preclusion.

Washoe County Did Not Violate the Stipulation Between it and RVR

The Court summarily rejected RVR's argument Washoe County violated the stipulation because in the stipulation, Washoe County merely stated it would drop its protests to the water right applications, not that it would issue a special use permit.

Washoe County Based its Decision on Sufficient Evidence

Finally, RVR argued the Commission did not have sufficient evidence to deny the permit. However, the Commission based its decision on extensive public testimony, which it may⁷, and this gave it substantial evidence to support the County's conclusion to deny the permit.

Conclusion

Washoe County did not abuse its discretion in denying RVR's special use permit application. The State Engineer's findings of no detriment to public interest and recommendation for approving the permit did not bind the County, because the County has the authority to make the final decision of whether to grant or deny permits for water use and relocation. Therefore, the district court's denial of judicial review is affirmed.

⁷ Stratosphere Gaming Corp. v. City of Las Vegas, 120 Nev. 523, 96 P.3d 756, 760 (2004).