

Amendment No. 938

Assembly Amendment to Senate Bill No. 354 Second Reprint (BDR 22-235)

Proposed by: Assemblymen Kirkpatrick and Ocegüera

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) **blue bold italics** is new language in the original bill; (2) **green bold italic underlining** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold dashed underlining** is newly added transitory language.

BAW



Date: 5/22/2009

S.B. No. 354—Revises provisions governing land use decisions. (BDR 22-235)



SENATE BILL NO. 354—COMMITTEE ON JUDICIARY

MARCH 23, 2009

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing land use ~~decisions;~~ planning.
(BDR 22-235)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to land use planning; revising provisions relating to the appeal of land use decisions; revising provisions relating to the designation of gaming enterprise districts; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the governing body of each city and county is required to adopt an ordinance providing that an aggrieved person may appeal the decision of a planning commission, board of adjustment, hearing examiner or other similar official to the governing body. (NRS 278.3195) A person who is aggrieved by a decision of the governing body concerning that appeal may then appeal the decision of the governing body to the district court by filing a petition for judicial review. ~~This~~ Section 1 of this bill authorizes an aggrieved person to appeal the decision of a governing body that considered a recommendation of a planning commission, board of adjustment, hearing examiner or other similar official or a decision of a governing body which was made without the necessity of a decision or recommendation by a planning commission, board of adjustment, hearing examiner or other similar official. Solely within the confines of a county whose population is 400,000 or more (currently Clark County), ~~this bill~~ section 1 also provides that, for the purpose of determining whether a person who is seeking judicial review of a decision of a governing body is an "aggrieved person" who may seek such judicial review of the decision: (1) the person shall be deemed not to be aggrieved unless the person appeared before the governing body, planning commission, board of adjustment, hearing examiner or other similar official on the matter which is the subject of the decision and fully set forth his position and the grounds in support of his position; and (2) the person shall not be deemed to be aggrieved on the basis that the decision he is appealing may increase or create competition which he claims may be detrimental to his property rights or other legal interests.

Existing law provides that the Nevada Gaming Commission is prohibited from approving a nonrestricted license for an establishment in a county whose population is 400,000 or more (currently Clark County) unless the establishment is located in a gaming enterprise district, which is defined as "an area that has been approved by a county, city or town as suitable for operating an establishment that has been issued a nonrestricted license." (NRS 463.0158, 463.308) If the location of a proposed establishment is within the Las Vegas Boulevard gaming corridor or the rural Clark County gaming zone, but not within an area already designated as a gaming enterprise district, the Commission is prohibited from approving a nonrestricted license for the proposed establishment unless the location of the proposed establishment is first

designated a gaming enterprise district pursuant to the criteria set forth in NRS 463.3084. (NRS 463.3082) However, if the location of a proposed establishment is not within the Las Vegas Boulevard gaming corridor or the rural Clark County gaming zone and not within an area already designated as a gaming enterprise district, the Commission is prohibited from approving a nonrestricted license for the proposed establishment unless the location of the proposed establishment is first designated a gaming enterprise district pursuant to the criteria set forth in NRS 463.3086, which contains certain additional requirements that are not contained in NRS 463.3084, such as the requirements that: (1) the property line of the proposed establishment must be not less than 500 feet from the property line of a developed residential district and not less than 1,500 feet from the property line of a public school, private school or structure used primarily for religious services or worship; and (2) a three-fourths vote of the governing body of the county, city or town is required for designation of the location as a gaming enterprise district. (NRS 463.3086)

Section 1.5 of this bill revises the boundaries of the Las Vegas Boulevard gaming corridor to include certain new areas. Consequently, if a proposed establishment which is located in a new area of the Las Vegas Boulevard gaming corridor and which is not already in a gaming enterprise district were to seek to have the location designated as a gaming enterprise district, the determination of whether the location may be designated as a gaming enterprise district would be based upon the criteria set forth in NRS 463.3084, rather than the criteria set forth in NRS 463.3086.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 278.3195 is hereby amended to read as follows:

278.3195 1. Except as otherwise provided in NRS 278.310, each governing body shall adopt an ordinance providing that any person who is aggrieved by a decision of:

(a) The planning commission, if the governing body has created a planning commission pursuant to NRS 278.030;

(b) The board of adjustment, if the governing body has created a board of adjustment pursuant to NRS 278.270;

(c) A hearing examiner, if the governing body has appointed a hearing examiner pursuant to NRS 278.262; or

(d) Any other person appointed or employed by the governing body who is authorized to make administrative decisions regarding the use of land,

may appeal the decision to the governing body. In a county whose population is 400,000 or more, a person shall be deemed to be aggrieved under an ordinance adopted pursuant to this subsection if the person appeared, either in person, through an authorized representative or in writing, before a person or entity described in paragraphs (a) to (d), inclusive, on the matter which is the subject of the decision.

2. Except as otherwise provided in NRS 278.310, an ordinance adopted pursuant to subsection 1 must set forth, without limitation:

(a) The period within which an appeal must be filed with the governing body.

(b) The procedures pursuant to which the governing body will hear the appeal.

(c) That the governing body may affirm, modify or reverse a decision.

(d) The period within which the governing body must render its decision except that:

(1) In a county whose population is 400,000 or more, that period must not exceed 45 days.

(2) In a county whose population is less than 400,000, that period must not exceed 60 days.

(e) That the decision of the governing body is a final decision for the purpose of judicial review.

(f) That, in reviewing a decision, the governing body will be guided by the statement of purpose underlying the regulation of the improvement of land expressed in NRS 278.020.

(g) That the governing body may charge the appellant a fee for the filing of an appeal.

3. In addition to the requirements set forth in subsection 2, in a county whose population is 400,000 or more, an ordinance adopted pursuant to subsection 1 must:

(a) Set forth procedures for the consolidation of appeals; and

(b) Prohibit the governing body from granting to an aggrieved person more than two continuances on the same matter, unless the governing body determines, upon good cause shown, that the granting of additional continuances is warranted.

4. Any person who:

(a) Has appealed a decision to the governing body in accordance with an ordinance adopted pursuant to subsection 1 ~~and~~ *is aggrieved by the decision of the governing body;*

(b) Is aggrieved by ~~the~~ *a* decision of ~~the~~ *a* governing body ~~regarding the use of land in which the governing body considered a recommendation of a person or entity described in paragraphs (a) to (d), inclusive, of subsection 1; or~~

(c) Is aggrieved by a decision of the governing body which, pursuant to the procedures contained in the applicable local ordinance, was made without the necessity of a decision or recommendation by a person or entity described in paragraphs (a) to (d), inclusive, of subsection 1,

~~may appeal that decision to the district court of the proper county by filing a petition for judicial review within 25 days after the date of filing of notice of the decision with the clerk or secretary of the governing body, as set forth in NRS 278.0235.~~

5. *In a county whose population is 400,000 or more, for the purpose of determining whether a person who is appealing a decision by filing a petition for judicial review is aggrieved by the decision:*

(a) The person shall be deemed not to be aggrieved by the decision unless the person appeared in person, through an authorized representative or in writing and fully set forth his position and the grounds in support of his position:

(1) Before a person or entity described in paragraphs (a) to (d), inclusive, of subsection 1 that considered the matter, if applicable; and

(2) Before the applicable governing body.

(b) The person shall not be deemed to be aggrieved on the basis that the decision he is appealing may increase or create competition that he claims may be detrimental to his property rights or other legal interests.

6. *The provisions of this section do not apply to a petition to designate the location of a proposed establishment as a gaming enterprise district pursuant to NRS 463.3084 or 463.3086.*

7. As used in this section, "person" includes ~~the~~ :

(a) The Armed Forces of the United States or an official component or representative thereof ~~and~~ ;

(b) Any governmental entity.

Sec. 1.5. NRS 463.3076 is hereby amended to read as follows:

463.3076 The location of a proposed establishment shall be deemed to be within the Las Vegas Boulevard gaming corridor if the property line of the proposed establishment ~~is~~ is located within any of the following areas:

1. ~~Is within 1,500 feet of the centerline of Las Vegas Boulevard;~~

~~2. Is south of the intersection of Las Vegas Boulevard and that portion of St. Louis Avenue which is designated State Highway No. 605; and~~

~~3. Is adjacent to or north of the northern edge line of State Highway No. 146;~~

The area beginning at the point of the northern edge line of State Highway No. 146 that is 1,500 feet west of the centerline of Las Vegas Boulevard, then proceeding north to the northern edge line of Tropicana Avenue, then proceeding west to the eastern edge line of Interstate 15, then proceeding north to the eastern edge line of Industrial Road, then proceeding north to the southern edge line of New York Avenue, then proceeding east to the intersection of the extension of the southern edge line of New York Avenue and the western edge line of Main Street, then proceeding south to the southern edge line of St. Louis Avenue, then proceeding east to the western edge line of Santa Rita Drive, then proceeding south along a line that is 1,500 feet east of the centerline of Las Vegas Boulevard to the western edge line of Paradise Road, then proceeding south to the southern edge line of Sands Avenue, then proceeding west to a point that is 1,500 feet east of the centerline of Las Vegas Boulevard, then proceeding south along a line that is 1,500 feet from the centerline of Las Vegas Boulevard to the northern edge line of State Highway No. 146, then proceeding west to the point of beginning.

2. The area beginning at the intersection of the western edge line of Las Vegas Boulevard and the extension of the northern edge line of Lewis Avenue, then proceeding north to the southern edge line of Stewart Avenue, then proceeding west to the eastern edge line of Casino Center Boulevard, then proceeding north to the southern edge line of United States Highway No. 95, then proceeding west to the western edge line of the Union Pacific Railroad Right-of-Way, then proceeding south to a point that is perpendicular to the extension of the northern edge line of Lewis Avenue, then proceeding east to the point of beginning.

Sec. 2. This act becomes effective on July 1, 2009.