

SENATE BILL NO. 354—COMMITTEE ON JUDICIARY

MARCH 23, 2009

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing land use decisions.
(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; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, the governing body of each city and county is required to
2 adopt an ordinance providing that an aggrieved person may appeal the decision of a
3 planning commission, board of adjustment, hearing examiner or other similar
4 official. This bill: (1) revises the terminology used in existing law concerning the
5 rights of a person who has appeared before a planning commission, board of
6 adjustment, hearing examiner or other similar official; and (2) authorizes an
7 aggrieved person to appeal the decision of a governing body that considered a
8 recommendation of a planning commission, board of adjustment, hearing examiner
9 or other similar official or a decision of a governing body which was made without
10 the necessity of a decision or recommendation by a planning commission, board of
11 adjustment, hearing examiner or other similar official. Solely within the confines of
12 a county whose population is 400,000 or more (currently Clark County), this bill
13 defines an "aggrieved person" as a person who: (1) appeared before the governing
14 body, planning commission, board of adjustment, hearing examiner or other similar
15 official on the matter which is the subject of the decision; and (2) suffered an injury
16 as a result of the decision that has a substantial adverse effect on the person's
17 property or other legal rights. (NRS 278.3195)



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:~~ **appeared before:**

(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 **on the matter for which the person appeared** to the governing body. In a county whose population is 400,000 or more, a person shall be deemed to ~~be aggrieved~~ **have appeared** 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~~ **appellant** 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 ~~is~~ and **is aggrieved by the decision of the governing body;**

(b) Is aggrieved by ~~the~~ **a** decision of ~~the~~ **a** governing body ~~is~~ **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. **The appeal to the district court must be confined to the issues considered by the governing body. The remedy provided in this subsection is the exclusive remedy for a person described in paragraphs (a), (b) and (c).**

5. **For the purposes of judicial review, in a county whose population is 400,000 or more, a person shall be deemed to be aggrieved by a decision if, on the matter which is the subject of the decision:**

(a) **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; and**

(b) **The injury that the person claims he will suffer as a result of the decision will have a substantial adverse effect on his property rights or other legal interests, except that a person shall**



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1 *not be deemed to be aggrieved pursuant to this paragraph on the*
2 *basis that the decision he is appealing may increase or create*
3 *competition that he claims may be detrimental to his property*
4 *rights or other legal interests.*

5 6. *The provisions of this section must not be construed to*
6 *impair or prohibit a person from exercising the right to:*

7 (a) *Seek appropriate redress for any violation of state or*
8 *federal law by a person or entity described in paragraphs (a) to*
9 *(d), inclusive, of subsection 1 if the person has exhausted all*
10 *available administrative remedies; or*

11 (b) *Appear before a governing body to express his opinion*
12 *concerning any matter before the governing body, notwithstanding*
13 *the fact that the person has previously failed to appear before a*
14 *person or entity described in paragraphs (a) to (d), inclusive, of*
15 *subsection 1 and that the person is not entitled to appeal a decision*
16 *to the governing body in accordance with an ordinance adopted*
17 *pursuant to subsection 1.*

18 7. As used in this section, “person” includes the Armed Forces
19 of the United States or an official component or representative
20 thereof.

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

