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1 Case No. CV20121

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF STOREY

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VIRGINIA HIGHLANDS, LLC, a Nevada
limited liability company,

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Petitioner,

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vs.

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STOREY COUNTY, a political subdivision
of the State of Nevada,

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Respondent.

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DECISION AND ORDER

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This is a petition for judicial review by Virginia Highlands, LLC, a real estate development company, challenging the decision of the Storey County Commission denying an application for an amendment to the Storey County Master Plan. Virginia Highlands asks for review of the Storey County decision under NRS 278.0233, Actions Against Agencies, and NRS Chapter 30.010, the Uniform Declaratory Judgment Act.

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On February 26, 2007, Virginia Highlands filed with Storey County a Master Plan Amendment Application and a Zone Change Application seeking a mixed-use residential Planned Unit Development for 8,600 acres in Storey County. Before the property was purchased by Virginia Highlands, it had been used since 1986 as a manufacturing, storage and testing facility for ammunition, rocket propellant and explosives and was zoned Special Industrial Use.

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On December 20, 1994, Storey County adopted its Master Plan. The Master Plan contained the following statement regarding the property now owned by Virginia Highlands:

1 A short distance beyond the disposal site is the turnoff to the Aerojet of
2 Nevada facility, which is at the end of a winding two lane road. This high-tech
3 explosives manufacturing and testing facility is intentionally located in an area
4 four miles from any other development. As such it provides an unusual
5 planning and land use opportunity. With the existing two-plus mile buffer
6 around it, consideration should be given to classifying the area a "high risk
7 industrial" zone. The "high risk industrial" classification could be defined to
8 include similar facilities. Property tax rates for this classification would reflect
9 costs related to providing additional services. It is likely that many firms
10 involved in same or similar types of manufacturing and/or testing would be
11 interested in relocating to an area which already had the necessary regulatory
12 framework in place.

13 Virginia Highlands' argument regarding its application for the Master Plan
14 amendment is two-fold. First it argues that the statement regarding the Aerojet property was
15 not the result of a rational planning process, but was rather merely the recognition of a prior
16 existing Special Use Permit which was imposed by a prior Stipulation and Court Order
17 involving a predecessor of Virginia Highlands. Therefore, it argues, the statement is not
18 really a part of the Master Plan and should be given no consideration.

19 The second argument of Virginia Highlands regarding the amendment application is
20 that even if the Special Industrial designation of the property is consistent with the Storey
21 County Master Plan, Virginia Highlands' request for a Mixed Use Residential designation
22 is also consistent with the Master Plan; and the high risk industrial designation is no longer
23 appropriate since those high-risk functions have been abandoned. Therefore, for both
24 reasons, the Master Plan Amendment Application was unnecessary and the Commissioners
25 had to consider the Zone Change Application.

26 At the Commission meeting on August 21st, 2007, at which the amendment
27 application was considered, the Storey County Commission denied the Master Plan
28 Amendment Application and did not consider the Zone Change Application. The question
for this court, then, is whether the denial of the Master Plan Amendment Application was
appropriate.

Virginia Highlands maintains that the statement in the Master Plan regarding its
property is not to be considered because it was not part of a rational and deliberative planning
process, but rather merely recognition of a prior court order allowing high-risk use. The

1 language of the statement belies that view. The statement recognizes that because of the
2 location of the property four miles from any other development "it provides an unusual
3 planning and land use opportunity." It goes on to say:

4 Property tax rates for this classification would reflect costs related to providing
5 additional services. It is likely that many firms involved in the same or similar
6 types of manufacturing and/or testing would be interested in relocating to an
7 area which already had the necessary regulatory framework in place.

8 The Commissioners were looking to attract other businesses of the same type, thereby
9 generating more taxes. They were not looking to the past, but had a rational basis for
10 maintaining the high-risk use designation into the future. The statement in the Master Plan
11 regarding the property now owned by Virginia Highlands cannot be ignored or read out of
12 the plan. The Commission clearly intended to maintain the property for special industrial use
13 as part of the Master Plan.

14 The housing development proposed by Virginia Highlands for its property is not
15 consistent with this Master Plan. A master plan is to serve as a pattern and guide for the
16 growth and development of the county. Therefore, an amendment to the Master Plan would
17 be necessary if the Virginia Highlands development project were to go forward.

18 This court must give deference to the legislative determination of the Storey County
19 Commission that it did not wish to amend its Master Plan. Although the Nevada Supreme
20 Court has not dealt directly with the standard of review of a county decision not to amend
21 a master plan, it is clear that the court must be highly deferential to the enacting body. As
22 the Nevada Supreme Court said in *Coronet Homes, Inc. v. McKenzie*, 84 Nev. 250, 255-56,
23 439 P.2d 219, 223 (1968), in the context of a land use request:

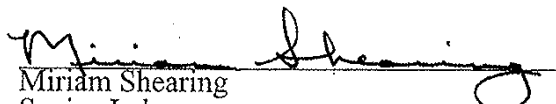
24 The days are fast disappearing when the judiciary can look at a zoning
25 ordinance and, with nearly as much confidence as a professional zoning expert,
26 decide upon the merits of a zoning plan and its contribution to the health,
27 safety, morals or general welfare of the community. Courts are becoming
28 increasingly aware that they are neither super boards of adjustment nor
planning commissions of last resort.

29 Nevada law, thus, is consistent with the law of Minnesota as articulated in *Concept*
30 *Properties, LLP v. City of Minnetrista*, 694 N.W. 2d 804, 814 (Minn. App. 2005). A

1 municipal body acts in a legislative capacity when it adopts or amends a comprehensive
2 land-use plan. *Id.* Municipal bodies have broad discretion in making zoning and land-use
3 decisions. *Id.* Courts will reverse zoning decisions only where there are no grounds for
4 reasonable debate and where the action of the municipal body is arbitrary, capricious,
5 discriminatory, or illegal. *Id.* The evidence presented by Virginia Highlands was not
6 sufficient to support the view that any of these defects apply to the Storey County refusal to
7 amend its Master Plan.

8 For the foregoing reasons, this court denies Virginia Highlands' prayer that Storey
9 County be ordered to approve the Application for Amendment to the Master Plan. Since this
10 court has concluded that the Virginia Highlands' Zoning Application was inconsistent with
11 the Master Plan and finds that the Storey County Commission never considered the Zoning
12 Application, this court also denies Virginia Highlands' prayer that its Zoning Application be
13 approved. This court also concludes that there is no basis for any relief to Virginia
14 Highlands under NRS 278.0237.

15 IT IS SO ORDERED this 24th day of September, 2008.

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19 Miriam Shearing
20 Senior Judge
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court in and for Carson City and Storey County, and that on this 25th day of September, 2008, served by the following method of service:

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|-------------------------------------|----------------------|--------------------------|---------------------------|
| <input checked="" type="checkbox"/> | regular U.S. Mail | <input type="checkbox"/> | overnight UPS |
| <input type="checkbox"/> | certified U.S. Mail | <input type="checkbox"/> | overnight Federal Express |
| <input type="checkbox"/> | registered U.S. Mail | <input type="checkbox"/> | Fax to # |
| <input type="checkbox"/> | hand delivery | <input type="checkbox"/> | personal service |

a true copy of the foregoing **DECISION AND ORDER** addressed to:

Mark E. Amodei, Esq.
9210 Prototype Way, Suite 200
Reno, NV 89521

Stephen Mollath, Esq.
Prezant & Mollath
6560 S.W. McCarran Blvd., Suite A
Reno, NV 89509

Mark H. Gunderson, Esq.
5345 Kietzke Lane, Suite 200
Reno, NV 89511

The Honorable Miriam Shearing

