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February 12, 2016

Via First Class Mail

Gregory Garmong
11 Dee Court
Smith Valley, Nevada 89430

Re: Open Meeting Law Complaint, A.G. File No. 13897-181
Lyon County Planning Commission

BACKGROUND

Mr. Gregory Garmong (Mr. Garmong) publicly commented to the Lyon County Planning Commission (Commission) opposing the construction of a Verizon Cell Tower in Smith Valley, Nevada, on property occupied by the Smith Valley Fire Protection Department Station 40 (Station). He alleges being subjected to rude and harassing behavior from the Commissioners during his thirty minute public comment. He alleges that the interference with his presentation was suppression of his testimony, a violation of NRS 241.020(2)(d)(7).¹

Mr. Garmong also alleges that the Commissioners repeatedly interrupted his presentation. He was asked to "move on." He alleged Commissioners "badgered" and "harassed" him as he tried to finish his presentation.

Mr. Garmong concluded that the Commissioners "had traversed a line from bad manners to outright intentional statutory violation of the letter and spirit of the OML."

¹ NRS 241.020(2)(d)(7); The "Notice of public meeting must include an agenda consisting of any restrictions on comments by the general public. Any such restrictions must be reasonable and may restrict the time, place and manner of the comments, but may not restrict comments based upon viewpoint.

FACTS

Mr. Garmong submitted a twenty-one page document to the Lyon County Planning Commission in which he argued that the Smith Valley Fire Protection District's (SVFPD) Community Development Application (Application) for the construction of a Verizon Cell Tower was legally defective.

SVFPD, the proponent of the construction of a "cell tower" on the district property, allowed 30 minutes of public comment for proponents of construction of the tower. Commission Chairman Rick Jones also allowed thirty minutes of comment to Mr. Garmong, the only opponent of the construction of the cell tower.

Mr. Garmong provided a lengthy letter to the Commission with charts, SVFPD's property deed and other documents to support his opposition. He presented a legal argument that the SVFPD property deed underlying the Application for construction of the tower failed to meet Lyon County's Application legal requirements. He alleged that the Application was legally defective.

Once the Commission heard the basis for Mr. Garmong's opposition, Chairman Rick Jones asked Lyon County Deputy District Attorney Matthew K. Merril (DA Merril), in attendance, whether the Board could vote on the Application in view of Mr. Garmong's challenge to the legality of the property deed as support for the Application. DA Merril advised the Commission it could vote, although Mr. Garmong's challenge would be subject to further review by the District Attorney's Office.

The Attorney General's investigation consisted of review of Mr. Garmong's complaint, his twenty-one page letter in opposition to the Application, together with the SVFPD's property deed, and the minutes of the November 10, 2015 Commission meeting. We also obtained information from the Lyon County's website. An interview was conducted by telephone with the Lyon County Development Director who was in attendance at the Commission's November 10th meeting.

ANALYSIS

The jurisdiction of the Attorney General extends only to enforcement of Open Meeting Law. NRS 241. Enforcement does not extend to investigation of the "legal sufficiency" of any document, or to the legitimacy of the review of said document by a local government.

As soon as the legality of the Development Application was raised, Board Member Harold Ritter asked whether a legal challenge to the Development Application's underlying property deed must be considered. He asked legal counsel whether the Commission could take action on the Development Application. Counsel said they could continue.

After careful review of all the facts, Mr. Garmong's allegation of violation of the OML does not rise to the level of a violation of suppression of public comment or any other provision of the OML. There is simply no evidence suggesting suppression of comment, except Mr. Garmong's claim.

NRS 241.020(2)(d)(7)² applies to conduct that actually disrupts a public meeting. Time, place, and manner restrictions must appear on each public body's agenda; however, restrictions placed on a public agenda are not intended to be a civility code. Should a public meeting suffer an actual disruption, meaning that the public body cannot continue the meeting, only then can the public body take action to remove the person(s) whose willful action has prevented continuation of the meeting. NRS 241.030(4)(a).³ Conduct between the members and the public may be less than harmonious, but unless the conduct actually causes a cessation of the meeting there is no violation of the OML. Review of the facts, minutes of the meeting, coupled with the interview of the County's Economic Development Director, who attended the meeting, there is no evidence that the Commission meeting was willfully disrupted.

There is no evidence in this record that the Commission opposed Mr. Garmong's presentation and overtly tried to suppress his comments. Rudeness, assuming the Commission or several of them were rude, did not cause a disruption of the meeting. Review of the meeting minutes suggests the Commission was only interested in factual issues applicable to the Application. There is no evidence that the Commission has formally or informally implemented a policy or a practice that discourages or prevents public comment.

If there is something illegal in the Development Application, it is a matter for the Lyon D.A. to investigate. The Commissioners voted unanimously to approve the Development Application. The Application was placed on the Board of County Commissioners December 3, 2015 meeting agenda.⁴

² NRS 241.020(2)(d)(7): An agenda must contain any restrictions on comments by the general public. Any such restrictions must be reasonable and may restrict the time, place and manner of the comments, but may not restrict comments based upon viewpoint.

³ NRS 241.030(4)(a): 4. This chapter does not: (a) Prevent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.

⁴ Mr. Greg Garmong's legal opposition to approval of the recommendation of the Planning Commission was discussed on the Board of County Commissioner's December 3, 2015, agenda. The BOCC has final authority to approve or deny Planning Commission recommendations. Mr. Garmong gave public comment regarding the fire department's legal authority to pursue construction of a cell tower. District Attorney Steve Rye said the District Attorney's Office had reviewed the Application and said the Commissioners could move forward with consideration of the Application. The Planning Commission's recommendation was approved by a divided vote.

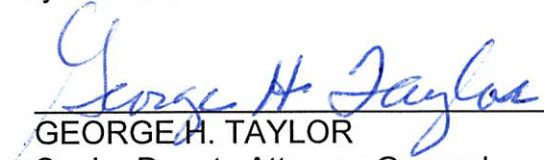
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This complaint does not state a claim under Chapter 241 of the OML. We are closing our file.

Sincerely,

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By:



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