

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

3 In the matter of:

4 DOUGLAS COUNTY BOARD OF
5 COMMISSIONERS

OAG FILE NO.: 13897-344

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

6
7 **BACKGROUND**

8 Jeanne Shizuru filed a complaint on August 25, 2019 with the Office of the Attorney
9 General (“OAG”) alleging violations of the Nevada Opening Meeting Law (“OML”) by the
10 Douglas County Board of Commissioners (“Board”), regarding meetings held by the Board
11 on July 1, 2019 and August 6, 2019¹ (“Complaint”). The Complaint alleges that the Board
12 violated the OML as follows:

13 **ALLEGATION NO. 1:** The description of agenda item no. 7 of the Douglas County
14 Board of Commissioners’ July 1, 2019 meeting was too vague and generic, when it
15 utilized the phrase “and other properly related matters.”

16 **ALLEGATION NO. 2:** The Douglas County Board of Commissioners’ discussion of
17 the proposed development agreement between Park Ranch Holdings, LLC, and
18 Douglas County was premature under NRS 278.0201(3) and Douglas County
19 Consolidated Development Code Title 20.400.030(B).

20 The OAG has statutory enforcement powers under the OML and the authority to
21 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS
22 241.040. The OAG’s investigation of the Complaints included a review of the following: the
23 Complaint and attachments; the July 1, 2019 Meeting Agenda, supporting materials, the
24 supplemental meeting agenda packet, minutes for the July 1, 2019 meeting, visual
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27 ¹ Ms. Shizuru also filed a separate Complaint with the OAG on August 15, 2019, alleging
28 OML violations by the Douglas County Board of Commissioners at its August 6, 2019
meeting. The OAG will address the alleged OML violations by the Douglas County Board
of Commissioners at their August 6, 2019 in a separate opinion.

1 recording of the July 1, 2019 meeting, and the written response to the Complaint and
2 supporting materials thereto.

3 After investigating the Complaint, the OAG determines that the Board violated the
4 OML by failing to include a “clear and complete statement of topics to be considered” on
5 their July 1, 2019 meeting agenda.

6 FINDINGS OF FACT

7 1. The Douglas County Board of Commissioners is a “public body” as defined in
8 NRS 241.015(4) and is subject to the OML.

9 2. On July 1, 2019, the Board held a public meeting.

10 3. The agenda for the Board’s July 1, 2019 meeting included the following:

11 7. For presentation only. Introduce **Ordinance 2019-1556**, an
12 ordinance repealing Ordinance 2004R-1097 and Ordinance 2007-1223,
13 which adopted the Development Agreement with Park Cattle Company
14 for the Muller Parkway Extension and the First Amendment thereto,
15 and adopting a Development Agreement between Park Ranch Holdings,
16 LLC and Douglas County regarding the Muller Parkway right-of-way
dedication, construction, development of property along the future
Muller Parkway, and all other properly related matters. First Reading
(Mary Anne Martin) 10 minute presentation (approximate).

17 4. The supporting material for the Board’s agenda item no. 7 included the
18 following: (a) Ordinance No. 2019-1556; (b) Park Ranch Holdings, LLC Development
19 Agreement; (c) Map of Existing Parcels within proposed New Park Receiving Area; (d) Map
20 of Existing Land Use with Park Receiving Area; (e) Grant, Bargain & Sale Deed; (f) Map of
21 proposed Muller Parkway; (g) documents related to the Drainage Easement and
22 Construction Easement; (h) Map of Minden homes removed from flood plain; (i) Map of new
23 Muller Parkway; (j) Park Cattle Company for Muller Parkway Development Agreement;
24 (k) Cost Estimate for Ashland Park; and (l) Cost Estimate for Muller Parkway.

25 5. At the July 1, 2019 Board meeting, prior to beginning her presentation,
26 Deputy District Attorney Mary Anne Martin disclosed that the development agreement
27 contemplated several regional drainage improvements that would benefit many Minden
28 residents, including herself.

1 6. Ms. Martin began her presentation by noting that the development agreement
2 would be before the Board at an adoption hearing on August 1, 2019 and that the agreement
3 would be considered concurrently with the Master Plan Land Use Map update. Ms. Martin
4 further indicated that the development agreement was contingent upon the Master Plan
5 Amendment being approved in tandem with the development agreement.

6 7. Ms. Martin's presentation included information that the Master Plan
7 Amendment would relocate 1,044 acres from the Topaz Ranch Estates/Holbrook Junction
8 community plan, which was based on a review of the Master Plan Land Use Maps and an
9 analysis of the County's future growth as well as a determination on which areas could be
10 developed that would be able to connect to water and sewer utilities, among other variables.

11 8. Ms. Martin's presentation then continued to address the right-of-way for
12 Muller Parkway, the regional drainage improvements, detention ponds and multimodal
13 paths, as well as certain restrictions found under the development agreement and included
14 discussion of easements.

15 9. Information regarding the County's Transportation Master Plan and the
16 consequences of non-completion or noncompliance with the development agreement was
17 then presented.

18 10. Thereafter, Commissioner Nelson stated his opposition on the record to
19 moving the Receiving Area from TRE to Minden.

20 11. Finally, information regarding costs to the County should the County
21 purchase easements on the river through Klauber Ranch, the number of current lawsuits
22 regarding development, costs to construct lanes on Muller Parkway; and where the County
23 stood on submitting the BUILD grant was provided to the Board.

24 12. No action was taken by the Board.
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1 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

2 **1. The Board violated the OML by failing to include a “clear and complete**
3 **statement of topics to be considered” on its July 1, 2019 meeting agenda.**

4 An agenda for a meeting of a public body must include a “clear and complete
5 statement of the topics to be considered during the meeting.” NRS 241.020(2)(d)(1). The
6 “clear and complete statement” requirement of the OML stems from the Legislature’s belief
7 that “incomplete and poorly written agendas deprive citizens of their right to take part in
8 government’ and interferes with the ‘press’ ability to report the actions of government.”
9 *Sandoval v. Bd. Of Regents of Univ.*, 119 Nev. 148, 154 (2003). Strict adherence with the
10 “clear and complete” standard for agenda items is required for compliance under the OML.
11 *Id.* The OML “seeks to give the public clear notice of the topics to be discussed at public
12 meetings so that the public can attend a meeting when an issue of interest will be
13 discussed.” *Id.* at 155. The OAG previously explained:

14 *Sandoval’s* holding means that use of catch-all phrases such as ‘and all matters
15 related thereto’ do[] not comply with the statute’s requirement that each
16 agenda contain a clear and complete statement of topics. Related matters,
17 should they come up during a meeting, must be agendized for discussion at a
18 future meeting.

19 Op. Nev. Att’y Gen. No. 10-049 (December 17, 2010).

20 Further, “a ‘higher degree of specificity is needed when the subject to be debated is
21 of special or significant interest to the public.” *Id.* at 155-56. (*quoting Gardner v. Herring*,
22 21 S.W.3d 767, 773 (Tex. App. 2000)). An update to a County’s master plan is undoubtedly
23 a subject of special or significant public interest under *Sandoval*. In 1996, Douglas County
24 adopted a twenty year Master Plan, which was required by Nevada Revised Statute
25 (“NRS”) 278.150, “for the purpose of providing long-term guidance on the development of
26 cities, counties, and regions in Nevada.”² Previously, the Douglas County Board of

27 ² Douglas County, Nevada Master Plan ([https://www.douglascountynv.gov/
28 government/departments/community_development/planning_division/master_plan](https://www.douglascountynv.gov/government/departments/community_development/planning_division/master_plan)).

1 Commissioners adopted a 15 Year Update of the Douglas County Master Plan (2011) on
2 March 1, 2012, which contains two volumes. *See id.*

3 Here, our review of the minutes for this meeting and its videotaped recording shows
4 that the Board strayed from the agenda item's statement of topics to be considered. Agenda
5 item no. 7 provided notice that the Board would hear a presentation on the introduction of
6 Ordinance 2019-1556, which would repeal two previous ordinances and adopting a
7 development agreement between Park Ranch Holdings, LLC, and Douglas County
8 regarding the Muller Parkway right-of-way dedication, construction, and development of
9 property along the future Muller Parkway. However, information was provided regarding
10 a master plan amendment which would relocate 1,044 acres from the Topaz Ranch
11 Estates/Holbrook Junction community plan, a topic of which was not on the July 1, 2019
12 agenda. In addition to the provision of information related to the Master Plan update,
13 Commissioner Nelson also voiced his opposition to the relocation, specifically noting his
14 objection to moving the Receiving Area from TRE up to Minden.

15 Based on the foregoing, the Board's agenda item no. 7 failed to notice the public that
16 it would be considering an amendment to the Master Plan and is therefore a violation of
17 the OML.

18 **2. The alleged premature discussion by the Board of the development**
19 **agreement between Park Ranch Holdings, LLC, and Douglas County is not**
20 **an OML violation.**

21 Ms. Shizuru also alleges that both NRS 278.0201(3) and Douglas County
22 Consolidated Development Code Title 20.400.030(B) require that all zoning, ordinances,
23 and regulations be in effect before the introduction of a development agreement.

24 NRS 241.039(1) provides that a complaint alleging a violation of NRS Chapter 241
25 may be filed with the Office of the Attorney General. Moreover, NRS 241.039(2) provides
26 that the Attorney General "shall investigate and prosecute any violation of **this chapter**".
27 NRS 241.039(2) (emphasis added). On its face, NRS 241.039 only allows the OAG to
28 investigate and prosecute complaints under NRS Chapter 241. Ms. Shizuru's allegation

1 that the Board held premature discussions of the development agreement between Park
2 Ranch Holdings, LLC, and Douglas County, are not based on alleged violations of NRS
3 Chapter 241, Nevada’s Open Meeting Laws, but rather under NRS 278.0201(3) and
4 Douglas County Consolidated Development Code Title 20.400.030(B). The OAG only has
5 statutory authority to investigate and prosecute alleged violations under NRS 241 and
6 therefore will abstain from determining whether the Board violated NRS 278.0201(3) and
7 Douglas County Consolidated Development Code Title 20.400.030(B).

8 **SUMMARY**

9 Upon investigating the present Complaint, the OAG concludes that the Douglas
10 County Board of Commissioners violated the OML by failing to comply with the “clear and
11 complete statement” requirement for its July 1, 2019 meeting.

12 If the Attorney General investigates a potential OML violation and makes findings
13 of fact and conclusions of law that a public body has taken action in violation of the OML,
14 “the public body must include an item on the next agenda posted for a meeting of the public
15 body which acknowledges the findings of fact and conclusions of law.” NRS 241.0395. The
16 public body must treat the opinion of the Attorney General as supporting material for the
17 agenda item(s) in question for the purpose of NRS 241.020. *Id.* Accordingly, the Board
18 must place an item on its next meeting agenda in which it acknowledges the present
19 Findings of Fact and Conclusions of Law (“Opinion”) resulting from the OAG investigating
20 in the matter of Attorney General File No. 13897-344. The Board must also include this
21 OAG Opinion in the supporting materials for its next meeting.

22 Moreover, NRS 241.037 confers upon the OAG the power bring suit “in any court of
23 competent jurisdiction to have an action taken by a public body declared void or for an
24 injunction against any public body or person to require compliance with or prevent
25 violations of [NRS 241].” Upon review of the records received, no action was taken by the
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1 Board related to agenda no. 7, as the information was agendized “for presentation only,”
2 and thus no action was taken by the OAG.

3 Dated: August 14, 2020.

4 AARON FORD
5 Attorney General

6 By: /s/ Justin R. Taruc
7 Justin R. Taruc
8 Deputy Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August, 2020, I served the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL** addressed as follows:

Douglas County Board of Commissioners
P.O. Box 218
Minden, NV 89423

Jeanne M. Shizuru

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

s/ Debra Turman
An employee of the Office of the
Nevada Attorney General