

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

3 In the matter of:

4 DOUGLAS COUNTY BOARD OF
5 COMMISSIONERS

OAG FILE NOS.: 13897-340, 345, 346, &
347

6
7 **BACKGROUND**

8 Lynn N. Muzzy, Virginia V. Starrett, Thomas C. Starrett, and Jeanne M. Shizuru
9 each filed a complaint with the Office of the Attorney General (“OAG”) alleging violations
10 of the Nevada Opening Meeting Law (“OML”) by the Douglas County Board of County
11 Commissioners (“Board”), regarding a meeting held by the Board on August 6, 2019.
12 (collectively herein, the Complaints shall be referred to as “Complaints”). All Complaints
13 relate to the Board’s alleged consideration of a Master Plan Map update and a related
14 development agreement between Douglas County and Park Ranch Holdings, LLC. The
15 Complaints allege violations of the OML as follows:

16 **ALLEGATION NO. 1:** The description of the agenda items utilized in the notice of
17 the Douglas County Board of County Commissioners’ August 6, 2019 meeting was
18 too vague and failed to inform the public of the matters under discussion.

19 **ALLEGATION NO. 2:** The Board of County Commissioners failed to provide
20 sufficient personal notification of the master plan amendment heard at its August 6,
21 2019 meeting under Douglas Co. Code 20.20.030.

22 **ALLEGATION NO. 3:** The Open Meeting Law was violated when Deputy District
23 Attorney General Mary Anne Martin failed to disclose the extent of demonstrated
24 bias and conflict of interest.

25 **ALLEGATION NO. 4:** The approval by the Douglas County Board of County
26 Commissioners of the Development Agreement between Park Ranch Holdings, LLC,
27 and Douglas County is null for the County’s failure to comply with the requirements
28 of NRS 278.220.

1 The OAG has statutory enforcement powers under the OML and the authority to
2 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS
3 241.040. The OAG's investigation of the Complaints included a review of the following: the
4 four individual Complaints and the respective attachments; the public notice agenda for
5 the Board's August 6, 2019 meeting; the meeting packet and supplemental materials for
6 the Board's August 6, 2019 meeting; minutes for the August 6, 2019 Board meeting; the
7 visual recordings for the August 6, 2019 meeting; and written responses to the respective
8 Complaints and supporting materials thereto.

9 After investigating the Complaints, the OAG determines that the Douglas County
10 Board of County Commissioners did not commit a violation of the OML.

11 FINDINGS OF FACT

12 1. The Douglas County Board of County Commissioners is a "public body" as
13 defined in NRS 241.015(4) and is subject to the OML.

14 2. On August 6, 2019, the Board held a public meeting.

15 3. The agenda for the Board's August 6, 2019 meeting included the following:

16 1. For possible action. Discussion of Resolution 2019R-039 (ref. DP 19-
17 0327), the 2019 update to the Douglas County Master Plan Future Land
18 Use Maps, and other properly related matters. Following presentation
19 from staff on updates to the Master Plan Future Land Use Maps, the
20 Board of Commissioners will take public comment and deliberate. The
21 Board of Commissioners may approve, approve with modifications, or
22 deny the proposed resolution. (Tom Dallaire and Sam Booth) 30 minute
23 presentation (approximate).

24 **Due to a Record Courier system error, the Master Plan item scheduled
25 for the August 1, 2019 Board of County Commissioners meeting
26 identified as Resolution 2019R-039 was not timely noticed. The Special
27 Meeting has been scheduled for August 6, 2019 starting at 1:00 PM. It
28 is anticipated that the development agreement with Parch Ranch
Holdings LLC may be continued from the August 1, 2019 Board Meeting
to the Special Meeting on August 6, 2019 so that the Board may review
and consider the two items together.

2. For possible action. Discuss the adoption of Ordinance 2019-1556, an
ordinance repealing Ordinance 2004R-1097 and Ordinance 2007-1223,

1 which adopted the Development Agreement with Park Cattle Company
2 for the Muller Parkway Extension and the First Amendment thereto,
3 and adopting a Development Agreement between Park Ranch Holdings,
4 LLC and Douglas County regarding the Muller Parkway right-of-way
5 dedication, construction, development of property along the future
6 Muller Parkway, and all other properly related matters. Third Reading.
7 (Tom Dallaire and Mary Anne Martin) 60 minute presentation
8 (approximate).

9 4. During the first public comment period of the August 6, 2019 meeting, among
10 other speakers, Mr. Muzzy, Ms. Shizuru, and Ms. Starrett provided comment related to the
11 Park Ranch Development Agreement, the Master Plan Amendment, and open meeting law
12 in general.

13 5. Prior to reading the agenda items into the record by Chairman Barry Penzel,
14 Chief Civil Deputy Attorney Doug Ritchie discussed Nevada OML and specifically
15 summarized the findings in *Sandoval v. Bd. Of Regents of Univ.*, 119 Nev. 148 (2003). Mr.
16 Ritchie further cautioned that the Board may not consider the various issues raised in the
17 public comment but not on the agenda, how to construct Muller Parkway, how it will be
18 paid for, whether a gravel pit would be constructed in the Pine Nuts, or reexamination of
19 the County Master Transportation Plan. Mr. Ritchie further clarified that these issues
20 were not on the agenda and that what was on the agenda was an amendment to the Master
21 Plan Maps as well as a proposed development agreement.

22 6. Prior to the Board's discussion of the agendized items, Mary Anne Martin,
23 Deputy District Attorney, disclosed on the record that she owned a home that was located
24 in the special flood hazard area, and that should the development agreement be approved
25 by the Board, her home would be removed from the special flood hazard area.

26 7. During the presentation, the procedural overview of the Master Plan
27 Amendment process was presented, including the proposed changes to the Master Plan
28 Maps. Information was also presented regarding (1) traffic problems on Highway 395; (2)
the 2017 Transportation Master Plan; (3) Muller Parkway Construction; (4) regional
drainage benefits; (5) Receiving Area restrictions; (6) preservation of Klauber Ranch; (7)
estimated Douglas County Financial Obligations per the proposed agreement; (8) projected

1 debt services payments; (9) fund allocation preliminary recommendations; and (10)
2 additional funding considerations.

3 8. Ultimately, the Board voted to adopt Resolution 2019R-039 (ref. DP 19-0327).

4 9. Ultimately, the Board voted 3-1 to adopt Ordinance 2019-1556.

5 LEGAL STANDARDS AND CONCLUSIONS OF LAW

6 1. The OML requires that the Board's agenda include a clear and 7 complete statement of the topics to be considered at the meeting.

8 An agenda for a meeting of a public body must include a "clear and complete
9 statement of the topics to be considered during the meeting." NRS 241.020(2)(d)(1). The
10 "clear and complete statement" requirement of the OML stems from the Legislature's belief
11 that "incomplete and poorly written agendas deprive citizens of their right to take part in
12 government' and interferes with the 'press' ability to report the actions of government."
13 *Sandoval v. Bd. Of Regents of Univ.*, 119 Nev. 148, 154 (2003). Strict adherence with the
14 "clear and complete" standard for agenda items is required for compliance under the OML.
15 *Id.* The OML "seeks to give the public clear notice of the topics to be discussed at public
16 meetings so that the public can attend a meeting when an issue of interest will be
17 discussed." *Id.* at 155. Further, "a 'higher degree of specificity is needed when the subject
18 to be debated is of special or significant interest to the public.'" *Id.* at 155-56. (*quoting*
19 *Gardner v. Herring*, 21 S.W.3d 767, 773 (Tex. App. 2000)).

20 2. The Board's descriptions its August 6, 2019 meeting provided 21 sufficient "clear and complete statements of topics to be considered".

22 The Complaints assert that the Board's August 6, 2019 agenda insufficiently
23 described an alleged amendment to the master plan that was not stated in the agenda,
24 specifically that the Douglas Board took action on a master plan amendment that changed
25 zoning of agricultural land to receiving area.

26 As noted above, an agenda for a meeting of a public body must include a "clear and
27 complete statement of the topics to be considered during the meeting." NRS
28 241.020(2)(d)(1). The OAG has previously addressed the requirements for a public body to

1 meet the “clear and complete statement” requirement for agenda descriptions on
2 resolutions, ordinances, regulations, statutes, or rules. *See* AG OMLO 99-01 (January 5,
3 1999). Specifically, the OAG has previously declared, “When listing a statute (or ordinance,
4 regulation, resolution, rule or the like) on an agenda for consideration or action by a public
5 body, describe what the statute, ordinance, regulation, resolution, or rule relates to.” *Id.*
6 This requirement was promulgated to address the concern that “the public [] know whether
7 attending the meeting was going to be worth their time, whether it is a subject that they
8 are interested in, and whether they need more information on the subject.” *Id.* (citing
9 *Hearing on S.B. 140 Before the Assembly Committee on Government Affairs*, 1989
10 Legislative Session, 4 (May 10, 1989)).

11 In this case, Agenda Item 1 of the Douglas Board’s August 6, 2019 meeting, on its
12 face, indicated that there would be “[d]iscussion on Resolution 2019R-039 (ref. DP 19-0327),
13 the 2019 update to the Douglas County Master Plan Future Land Use Maps.” The Douglas
14 Board’s description for agenda item no. 1 provided not only the Resolution number, it also
15 included the reference number as well as specifically stating what the Douglas Board would
16 be considering at its August 6, 2019 meeting, namely a change to the Douglas County
17 Master Plan Future Land Use Maps.” Accordingly, the OAG does not find a violation of
18 the OML.

19 Additionally, the Douglas Board’s description for agenda item no. 2 also comports
20 with the OML’s requirement for a “clear and complete statement”. Indeed, agenda item
21 no. 2 provided adequate notice that the Board would discuss the adoption of Ordinance
22 2019-1556. The agenda further explained that this Ordinance would “repeal[] Ordinance
23 2004R-1097 and Ordinance 2007-1223, which adopted the Development Agreement with
24 Park Cattle Company for the Muller Parkway Extension and the First Amendment thereto,
25 and adopting a Development Agreement between Park Ranch Holdings, LLC and Douglas
26 County regarding the Muller Parkway right-of-way dedication, construction, development
27 of property along the future Muller Parkway, and all other properly related matters.” Thus,
28 the agenda provided notice to the public that the Muller Parkway right-of-way dedication,

1 construction, development of property along the future Muller Parkway would be discussed
2 at the meeting.

3 **3. The Douglas Board did not violate the OML by failing to provide**
4 **personal notification of the August 6, 2019 meeting.**

5 The Complaints also assert that the Douglas Board failed to provide sufficient
6 personal notification of the master plan amendment at the Douglas Board's August 6, 2019
7 meeting. NRS 241.020(3) provides what is deemed minimum public notice of a public
8 meeting under Nevada's OML:

9 3. Minimum public notice is:

10 (a) Posting a copy of the notice at the principal office of the public body
11 or, if there is no principal office, at the building in which the meeting is
12 to be held, and at not less than three other separate, prominent places
13 within the jurisdiction of the public body not later than 9 a.m. of the
third working day before the meeting;

14 (b) Posting the notice on the official website of the State pursuant
15 to NRS 232.2175 not later than 9 a.m. of the third working day before
16 the meeting is to be held, unless the public body is unable to do so
17 because of technical problems relating to the operation or maintenance
of the official website of the State; and

18 (c) Providing a copy of the notice to any person who has requested notice
19 of the meetings of the public body. A request for notice lapses 6 months
20 after it is made. The public body shall inform the requester of this fact
by enclosure with, notation upon or text included within the first notice
sent. The notice must be:

21 (1) Delivered to the postal service used by the public body not
22 later than 9 a.m. of the third working day before the meeting for
transmittal to the requester by regular mail; or

23 (2) If feasible for the public body and the requester has agreed to
24 receive the public notice by electronic mail, transmitted to the
25 requester by electronic mail sent not later than 9 a.m. of the third
26 working day before the meeting.

27 It is well-established law of statutory interpretation that statutes should be given
28 effect to their plain meaning. *MGM Mirage v. Nevada Ins. Guar. Ass'n*, 125 Nev. 223, 228-

1 29, 209 P.3d 766, 769-70 (2009) (citing *Public Employees' Benefits Prog. V. LVMPD*, 124
2 Nev. 138, 179 P.3d 542 (2008). Here, on its face, NRS 241.020(3) does not require personal
3 notification of a public meeting under the OML. Therefore, the OAG finds no OML
4 violation for the Board's failure to provide personal notification of its August 6, 2019
5 meeting.¹

6 **4. No OML violation occurred with Deputy District Attorney Mary Anne**
7 **Martin's alleged insufficient disclosure of her conflict of interest.**

8 NRS 281A.420 requires that public officers and public employees disclose certain
9 conflicts of interests. Here, Ms. Martin disclosed, prior to the Douglas Board's discussion
10 of the agenda items, that her home was located in the special flood hazard area and that if
11 the development agreement with Park Ranch Holdings were approved, that her home
12 would be removed from the special flood hazard area. Disclosures under NRS Chapter
13 281A are not within the purview of the OML.

14 **5. No OML violation occurred for the Douglas Board's alleged failure to**
15 **meet a condition precedent prior to consideration by the Board to enter**
16 **into the Park Ranch Holdings Agreement.**

17 The Complaints further assert that the Douglas Board failed to meet a condition
18 precedent prior to considering whether to enter into the agreement with Park Ranch
19 Holdings pursuant to NRS 278.220. Specifically, the Complaints assert that the Planning
20 Commission must have approved the Master Plan amendments prior to the adoption of the
21 development agreement, which did not occur in this instance.

22 Again, the OAG is limited to investigation and prosecution of complaint of alleged
23 violations of NRS Chapter 241. See NRS 241.039. The allegation that the Douglas Board's
24 actions in adopting the Park Ranch Agreement are defective pursuant to NRS 278.220 are
25 not based on alleged violations of NRS Chapter 241. As the OAG only has statutory
26 authority to investigate and prosecute alleged violations under NRS Chapter 241 in these

27 ¹ The OAG is mindful that NRS 278.210 provides additional notice requirements for
28 instances where adoption of a master plan and amendments thereto are proposed.
However, any alleged deficiencies on the part of the Board under NRS 278.210 are not OML
violations.

1 instances, the OAG will abstain from determining whether the Douglas Board violated
2 NRS 278.0201(3) and Douglas County Consolidated Development Code Title 20.400.030(B).

3 **SUMMARY**

4 While the OAG has found that the Douglas Board's agenda for its August 6, 2019
5 meeting complied with the OML, this Opinion should not be construed as providing an
6 opinion as to whether the Douglas Board violated NRS Chapter 278 or any applicable
7 Douglas County Code. The OAG has reviewed the available evidence and determined that
8 no violation of the OML has occurred. The OAG will close the file regarding this matter.

9 Dated: August 19, 2020

10 AARON FORD
11 Attorney General

12 By: /s/ Justin R. Taruc
13 Justin R. Taruc (Bar No. 12500)
14 Deputy Attorney General

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2 **CERTIFICATE OF SERVICE**

3 I hereby certify that on the 19th day of August, 2020, I served the foregoing
4 **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the
5 same in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL**
6 addressed as follows:

7 Douglas County Board of County Commissioners
8 1594 Esmeralda Ave.
9 Minden, Nevada 89423

10 Certified Mail No.: 7019 0160 0000 0498 4410

11 Lynn N. Muzzy
12 [REDACTED]
13 [REDACTED]

14 Certified Mail No.: [REDACTED]

15 Virginia V. Starrett
16 [REDACTED]
17 [REDACTED]

18 Certified Mail No.: [REDACTED]

19 Thomas C. Starrett
20 [REDACTED]
21 [REDACTED]

22 Certified Mail No.: [REDACTED]

23 Jeanne M. Shizuru
24 [REDACTED]
25 [REDACTED]

26 Certified Mail No.: [REDACTED]

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