



STATE OF NEVADA  
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June 2, 2016

**Via First Class Mail**

Jeanne Shizuru  
PO Box 723  
Gardnerville, NV 89410

Re: Open Meeting Law Complaint, A.G. File No. 13897-188  
Douglas County Board of Commissioners

Dear Ms. Shizuru:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging violations of the Nevada Open Meeting Law (OML) by the Douglas County Board of Commissioners (Board) at a public meeting held on March 3, 2016. The gravamen of the complaint alleges that the Board unlawfully combined three "separate and significantly different and material" items that required action into one agenda item, No. 9.<sup>1</sup> First, the complaint alleges that because the Board only took public comment once

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<sup>1</sup> 9. For possible action. Discussion on (A) Adoption of **Resolution 2016R-015** (Development Application DA 14-079), an amendment to the Master Plan to change the land use designation from Agricultural to Receiving Area and to amend the text of the Ruhestroth Community Plan to create a "transition area" that would allow a diversity of residential density and non-residential development, and (B) Introduction of **Ordinance 2016-1458** (Development Application DA 15-046), for Specific Plan Approval to develop 130 acres for the following uses: Village Center: Mixed Use Commercial, Lodging, Live-work Studio Lofts: 78,000 sq. ft. Community Green: Barn, Orchard, Community Garden, Greenhouse: 10,000 sq. ft. Active Living: 42 units, 4 dwelling units per acre Cottage Homes: 136 units, 3.2 dwelling units per acre Ranch Homes: 60 units, 2.1 dwelling units per acre Working Ranch and Farm: 35 acres The site is proposed to have two access points off Pinenut Road. The subject 130 acre property is located at 859 Highway 395 and is known as The Corley Ranch. The property is zoned A-19 and is located in the Ruhestroth Community Plan. The property owner is Jon Corley, Corley Ranches, LLC, and the applicant is Mark Neuffer, Alta Telephone: 775-684-1100 • Fax: 775-684-1108 • Web: [ag.nv.gov](http://ag.nv.gov) • E-mail: [aginfo@ag.nv.gov](mailto:aginfo@ag.nv.gov) Twitter: @NevadaAG • Facebook: /NVAttorneyGeneral • YouTube: /NevadaAG

under agenda item No. 9, the public was prevented from commenting on each action item separately, in violation of NRS 241.020(2)(d)(3). Second, the complaint alleges that agenda item No. 9 was “unclear and incomplete” in violation of NRS 241.020(2)(d)(1) and (2), in that “the unlawful combining of items and lack of specificity of what votes would be taken” left the public “completely confused.”

The OAG has statutory enforcement powers under the OML and the authority to investigate allegations of a violation of the OML. NRS 241.039; NRS 2141.040. In response to the complaint, the OAG reviewed the public notice, agenda and supporting material for the meeting, the written minutes, audio and video recordings of the meeting, together with a response to the complaint from the Douglas County District Attorney’s Office.

### **FACTUAL BACKGROUND**

The Board is a “public body” as defined in NRS 241.015(4), subject to the OML.

On August 11, 2015, the Douglas County Planning Commission (DCPC) considered proposed amendments to the Master Plan map and text concerning the Ruhenstroth Community Plan, for the proposed development of 130 acres within the Corley Ranch (Specific Plan). The proposed Master Plan amendments and the Specific Plan were interdependent; the Specific Plan could only be implemented if the Master Plan map and text were re-designated to accept the Specific Plan. The DCPC recommended denial of the proposed amendments to the Master Plan and of the Specific Plan.<sup>2</sup>

On March 3, 2016, the Board considered the DCPC’s recommendations to deny the proposed Master Plan amendments and the Specific Plan under agenda item No. 9. County staff represented to the Board that the amendments to the Master Plan had to be approved before the Specific Plan could be approved. The Board then heard eighty minutes of public comment from thirty-one people before taking any action on agenda item No. 9. None of the public comment indicated confusion as to the potential action to be taken. To the contrary, the public’s comments were directed to the relative merits of the Corley Ranch development proposal. After public comment, the Board voted to approve the Master Plan amendments, and thereafter by separate vote approved the Specific Plan.<sup>3</sup>

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Consulting, LTD. APN: 1220-14-000-007 (1st Reading) (Hope Sullivan) 1  
hour

<sup>2</sup> The DCPC considered the proposed Master Plan amendments in two agenda items.

<sup>3</sup> The complaint alleges that there were three action items under agenda item No. 9: 1) approval of the proposed amendments to the Master Plan map; 2) approval of the proposed amendments to the Master Plan text; and 3) approval of the Specific Plan. However, the Board approved the proposed amendments to the Master Plan map and text in a single vote.

## DISCUSSION AND ANALYSIS

The complaint is predicated on the argument that public bodies are prohibited from taking multiple actions under a single agenda item. However, NRS 241.020(2)(d)(1) only requires that an agenda must include a “clear and complete statement of the topics scheduled to be considered during the meeting” while NRS 241.020(2)(d)(2) only requires that an agenda must include a “list describing the items on which action may be taken and clearly denoting that action may be taken on those items.” See also *Sandoval v. Board of Regents*, 119 Nev. 148, 154, 67 P.3d 902, 906 (2003) (“discussion at a public meeting cannot exceed the scope of a clearly and completely stated agenda topic”). Furthermore, the language of NRS 241.020(2)(d)(6)(II) clearly contemplates that public bodies may address multiple agenda items simultaneously: “The public body may combine two or more agenda items for consideration.” Nothing in these statutory provisions can be construed to prohibit a public body from taking multiple actions under a single agenda item, provided the topic is clearly and completely stated and the action items are clearly denoted. The Board was permitted to deliberate and take action on the proposed amendments to the Master Plan and the Specific Plan under a single agenda item.

The first alleged violation is that the Board only took public comment once under agenda item No. 9. However, NRS 241.020(2)(d)(3) does not require public comment before each vote taken under a single agenda item. This is contrary to the plain language of the statute, which sets forth minimum requirements for public comment but permits a public body to take additional public comment.<sup>4</sup> “When the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it.” *Nevada Power Co. v. Pub. Util. Comm’n*, 122 Nev. 821, 837, 138 P.3d 487, 495 (2006) (citations omitted). In this instance, the Board took public comment at the beginning and before adjournment of the meeting in

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<sup>4</sup> NRS 241.020(2)(d)(3) requires that public comment be taken:

(I) At the beginning of the meeting before any items on which action may be taken are heard by the public body and again before the adjournment of the meeting; or

(II) After each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item.

The provisions of this subparagraph do not prohibit a public body from taking comments by the general public in addition to what is required pursuant to sub-subparagraph (I) or (II). Regardless of whether a public body takes comments from the general public pursuant to sub-subparagraph (I) or (II), the public body must allow the general public to comment on any matter that is not specifically included on the agenda as an action item at some time before adjournment of the meeting. No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

conformance with NRS 241.020(2)(d)(3)(l), in addition to taking public comment before taking any action on agenda item No. 9. The Board strictly complied with the statutory requirements for public comment.

The second alleged violation is that agenda item No. 9 did not present a clear and complete statement of the topics to be considered or the potential action to be taken. Agenda item No. 9 is clear and complete on its face. The two matters set forth in the agenda item were identified "for possible action" and labeled in bold as "(A)" and "(B)." Agenda item No. 9 clearly stated that "(A)" was adoption of Resolution 2016R-015 for the amendments to the Master Plan and "(B)" was the introduction of Ordinance 2016-1458 for approval of the Specific Plan for the development of Corley Ranch property. The substance of the public comments under agenda item No. 9 further demonstrate that the public fully comprehended the potential action to be taken: approval of the proposed development of 130 acres within the Corley Ranch. The agenda item accurately reflects that this action procedurally required two votes by the Board: approval of the amendments to the Master Plan, followed by approval of the Specific Plan.

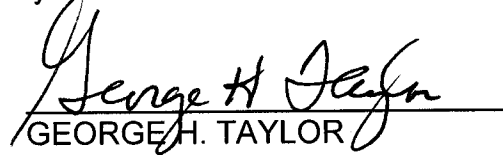
### CONCLUSION

The Board was permitted to deliberate and take action on the proposed amendments to the Master Plan and the Specific Plan under agenda item No. 9. The Board took public comment in compliance with the requirements of NRS 241.020(2)(d)(3). Agenda item No. 9 presented a clear and complete statement of the topics to be considered and the potential action to be taken, in compliance with NRS 241.020(2)(d)(1) and (2). No violation of NRS 241.020 occurred; the OAG will be closing its file on this matter.

Sincerely,

ADAM PAUL LAXALT  
Attorney General

By:

  
GEORGE H. TAYLOR  
Senior Deputy Attorney General  
Bureau of Government Affairs  
Boards and Open Government

GHT/klr

cc: Cynthea Gregory, Douglas County Deputy District Attorney  
Doug N. Johnson, Chairman, Douglas County Board of Commissioners  
Larry Werner, County Manager, Douglas County  
Hope Sullivan, Planning Manager, Douglas County