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Via First Class Mail

James T. Slade
589 Leealan Drive
Gardnerville, NV 89460

Re: Open Meeting Law Complaint, A.G. File No. 13897-191
Douglas County Board of Commissioners

Dear Mr. Slade:

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 complaint alleges three violations arising from one agenda item, No. 9.¹ First, the complaint alleges that the agenda item "was not described with clear and complete detail."

¹ 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 Ruhenstroth 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 Ruhenstroth Community Plan. The property owner is Jon Corley, Corley Ranches, LLC, and the applicant is Mark Neuffer, Alta Consulting, LTD. APN: 1220-14-000-007 **(1st Reading)** (Hope Sullivan) 1 hour

Second, the complaint alleges that the agenda item “was drafted to create confusion.” Finally, the complaint alleges that “the restrictions on public comment were unreasonable.”

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.²

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.³

DISCUSSION AND ANALYSIS

The first alleged violation is that agenda item No. 9 “was not described with clear and complete detail.” NRS 241.020(2)(d)(1) requires that an agenda must include a “clear and complete statement of the topics scheduled to be considered during the

² The DCPC considered the proposed Master Plan amendments in two agenda items.

³ 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.

meeting” while NRS 241.020(2)(d)(2) 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”). 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 complaint further asserts that agenda item No. 9 was not “clear and complete” in that it did not specify that the Board must make certain findings for the Master Plan amendments in conformance with Douglas County Code (DCC) 20.608.040. “A higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public.” *Sandoval*, 119 Nev. at 154-55, 67 P.3d at 906 (citations omitted). However, agenda item No. 9 complied with the statutory mandate to provide the public clear notice that the Board would deliberate and potentially take action on the proposed amendments to the Master Plan and the Specific Plan. 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. Furthermore, the OML does not grant the OAG oversight of the decision-making process of the Board under DCC 20.608.040.

The second alleged violation is that that agenda item No. 9 “was drafted to create confusion.” This allegation is an adjunct to the first alleged violation. However, there is no factual basis to support this allegation. A plain reading of the agenda item establishes that the Board would deliberate and potentially take action on the proposed amendments to the Master Plan and the Specific Plan. The record evidences no confusion on the part of the public in attendance.

The third alleged violation is that “the restrictions on public comment were unreasonable.” NRS 241.020(2)(d)(3) sets forth minimum requirements for public comment but permits a public body to take additional public comment.⁴ “When the

⁴ 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.

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 conformance with NRS 241.020(2)(d)(3)(I), 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.

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. 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). The Board took public comment in compliance with the requirements of NRS 241.020(2)(d)(3). 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

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).