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January 4, 2018

Via U.S. Mail

Tammy Holt-Still

**Re: Open Meeting Law Complaint, O.A.G. File No. 13897-253
Reno City Planning Commission**

Dear Ms. Holt-Still:

The Office of the Attorney General (OAG) is in receipt of your complaint (Complaint) alleging a violation of the Open Meeting Law (OML) by the Reno City Planning Commission (Commission) regarding whether the quorum necessary to continue the meeting existed after the chairman threatened to leave the meeting.

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. In response to the Complaint, the OAG reviewed the Complaint (no attachments were presented); the response to the Complaint from the Commission's counsel, Gregory A. Salter, Deputy Reno City Attorney; the agenda and meeting materials from the Commission's November 16, 2017, meeting; and the video for the Commission's November 16, 2017, meeting.

FACTUAL BACKGROUND

The Commission is a "public body" as defined in NRS 241.015(4) and subject to the OML. During its November 16, 2017, meeting, the Commission was down to a minimum quorum for Agenda Item 5.4 of four members. During this item, the Commission Chairman, Peter Gower, upon no Commission members making a motion on the item, stated he was departing the meeting, and, thus, would deprive the Commission of a quorum. Upon Mr. Gower's standing and moving to retrieve his coat from the back of his chair, another member of the Commission stated he would make a motion. Mr. Gower then reseated himself before even retrieving his coat, and the meeting continued. The eventual result was Agenda Item 5.4 was continued to the next meeting of the Commission.

DISCUSSION AND LEGAL ANALYSIS

Chapter 241 of the Nevada Revised Statutes requires the actions of public bodies “be taken openly and that their deliberations be conducted openly.” NRS 241.010(1); see *McKay v. Bd. of Supervisors*, 102 Nev. 644, 651 (1986). “Action,” with regard to a tentative map by the Commission, is taken by the majority of the members of the whole Commission. NRS 278.349. A “meeting” is a “gathering of members of a public body at which a quorum is present...” NRS 241.010(3)(a).

Your complaint alleges the Commission violated the OML because the Commission continued to deliberate Agenda Item 5.4 after Mr. Gower reseated himself when he stated he was departing the meeting. However, Mr. Gower never left the meeting. In fact, Mr. Gower did not even retrieve his coat from the back of his chair before he reseated himself. No other Commissioners made any move to leave. It appears Mr. Gower’s stated departure was to prompt someone to make a motion, and this was the result of Mr. Gower’s stated intent to depart. It further appears no one departed the meeting based on Mr. Gower’s statement within the less than 20 seconds Mr. Gower was not seated in his chair.

In short, Mr. Gower’s presence at the meeting was not interrupted, and the Commission did not lose its quorum. Thus, the OAG does not find a violation of the open meeting law.

Your complaint additionally mentions Commissioner Ed Hawkins made a concerning statement about his association with the applicant for Agenda Item 5.4, DR Horton. However, associations and meetings by members of public bodies with private persons and entities, as long as such associations and meetings are not collective meetings and associations involving multiple members of the public body, are not prohibited by the OML.¹ Such associations may be governed by Chapter 281A of the NRS.

¹ I.e., as long as the meetings with private persons or entities do not involve a quorum, walking quorum, serial communications, or other method by which members of a public body deliberate or decide to take action outside of a public meeting, a member of a public body does not violate the OML by individually communicating with private persons or entities.

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CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By:



JOHN S. MICHELA
Senior Deputy Attorney General
Gaming Division

JSM:arz
cc: Gregory A. Salter
Reno Deputy City Attorney