



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

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August 29, 2012

John L. Marshall, Esq.  
570 Marsh Avenue  
Reno, Nevada 89509

Re: Open Meeting Law Complaint / AG File No. 12-025  
Storey County Planning Commission

Dear Mr. Marshall:

This Office has reviewed your Open Meeting Law (OML) complaint alleging the Storey County Planning Commission (SCPC) acted on a unagendized matter at its July 19, 2012 meeting. Specifically, it is alleged the SCPC acted to forward its approval of Comstock Mining Inc.'s application for amendment to its special use permit before approval of the minutes of the meeting.<sup>1</sup>

This Office has jurisdiction to investigate OML complaints and to seek civil remedies, including injunctive relief, to require compliance with the OML, or to prevent violations of the OML. A criminal misdemeanor penalty and a monetary penalty are also authorized relief in any court of competent jurisdiction. NRS 241.037; NRS 241.040.

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<sup>1</sup> Storey County Code: **17.60.050 Advisory action of the planning commission.** At the conclusion of the hearing, the planning commission shall take such action thereon as it deems warranted under the circumstances and shall announce and record its action by formal resolution and such resolution shall recite the findings of the planning commission upon which it bases its decision. Conditions of approval, if any, shall be included in the resolution. The resolution shall be sent to the board of county commissioners within twenty-one days of approval of the minutes by the planning commission. The decision of the planning commission in the legislative matter of granting, granting with conditions, or denying special use permits or variances shall be advisory only to the board of county commissioners. (Ord. 159 §. 2(part), 1999)

SCPC is an advisory body to the Storey County Board of Commissioners (BOCC).<sup>2</sup> SCPC voted to approve CMI's application to amend condition #5 of CMI's special use permit after an extensive and lengthy public comment period and discussion by the PC members. Immediately after the vote to approve CMI's application, the SCPC separately voted to forward its approval of CMI's application to the BOCC, but before approval of the SCPC's minutes wherein the action occurred.

Comstock Residents Association (CRA) filed this OML complaint alleging the SCPC "took an unagendized action to approve a portion of its minutes" which was not listed on the agenda and identified for possible action. NRS 241.020(2)(c)(2).

SCPC minutes from July 19, 2012 does not show an action agenda item to consider approval of a portion of its minutes from the ongoing meeting (of course there were no minutes then). But the action taken was an affirmative vote to forward CMI's application to the BOCC before approval of the Planning Commission minutes. This action was contrary to Storey County Code 17.60.050, making both the motion and action unnecessary in a public meeting. County Code determined when the SCPC's resolution could be forwarded to the BOCC.

We reviewed the agenda and minutes for the July 19, 2012 SCPC meeting, and the August 16, 2012 SCPC meeting. SCPC approved minutes from its July 19, 2012 meeting on August 16, 2012.

SCPC approval of CMI's application was not affected by its subsequent attempt to bypass the Storey County Code requirement to approve minutes, or because of the failure to agendize the motion to immediately forward CMI's application to the BOCC without first approving minutes from the meeting. SCPC's action to forward the resolution was not only a violation of the OML, NRS 241.020(2)(c)(2), but it also was a violation of Storey County Code 17.60.050. See fn 1, above.

In the meantime, CMI's application to amend its SUP appeared on the BOCC's August 7, 2012 meeting agenda, but because the SCPC had not yet taken action to approve minutes of its July 19, 2012 meeting, the BOCC did not take action on the matter and the matter will have to be considered on a future BOCC agenda.

Cure or corrective action was not necessary in this case. Approval of minutes in due course was all that was required and it occurred on August 16, 2012. No further action by this Office is required.

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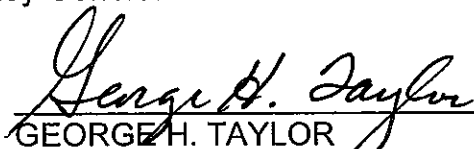
<sup>2</sup> Storey County Code: **2.12.090 Scope of authority.** The planning commission is declared to be an advisory body to the county commissioners, and any decisions rendered by the planning commission may be reversed by the county commissioners unless decisions of the planning board, as contained in the minutes forwarded to the county commissioners, are expressly ratified and approved by the county commissioners upon receipt. (Ord. 61 § 11, 1973)

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We are closing our file on this matter.

Sincerely,

CATHERINE CORTEZ MASTO  
Attorney General

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GHT/CG

cc: William A. Maddox, District Attorney  
Pat Whitten, Storey County Manager  
Storey County Planning Commission Members:  
Doug Walling, Chairman  
Bret Tyler, Vice-Chairman  
Virgil Bucchianeri  
Lydia Hammack  
John Herrington  
Laura Kekule  
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