

1 OFFICE OF THE ATTORNEY GENERAL  
2 STATE OF NEVADA

3 In the matter of:

4 MINDEN TOWN BOARD and  
5 DOUGLAS COUNTY PLANNING  
6 COMMISSION

OAG FILE NOS.: 13897-338 & 339

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

7 **BACKGROUND**

8 James T. Slade filed two separate complaints with the Office of the Attorney General  
9 (“OAG”) alleging violations of the Nevada Opening Meeting Law (“OML”) by the Minden  
10 Town Board (“Board”) and Douglas County Planning Commission (“Commission”),  
11 regarding meetings held by the Board and Commission on July 3, 2019 and July 9, 2019,  
12 respectively (collectively “Complaints”). The Complaints allege that the Commission  
13 violated the OML as follows:

14 **ALLEGATION NO. 1:** During its July 3, 2019 meeting, the Minden Town Board  
15 discussed and took action on an item that was not properly noticed on the meeting  
16 agenda.

17 **ALLEGATION NO. 2:** During its July 9, 2019 meeting, the Douglas County  
18 Planning Commission discussed and took action on an item that was not properly  
19 noticed on the meeting agenda.

20 The OAG has statutory enforcement powers under the OML and the authority to  
21 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS  
22 241.040. The OAG’s investigation of the Complaints included a review of the following: the  
23 Complaints and attachments; the public notice agendas, supporting materials, minutes for  
24 the July 3, 2019 and July 9, 2019 meetings, visual recordings of the July 9, 2019 meeting,  
25 and written responses to the respective Complaints and supporting materials.

26 After investigating the Complaints, the OAG determines that the Board and  
27 Commission violated the OML by failing to include a “clear and complete statement of  
28 topics to be considered” on their respective July 3, 2019 and July 9, 2019 meeting agendas.

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2 **FINDINGS OF FACT**

3 1. The Minden Town Board is a “public body” as defined in NRS 241.015(4) and  
4 is subject to the OML.

5 2. The unincorporated town of Minden, Nevada was created under Douglas  
6 County Code (“DCC”) 18.04.010. Minden’s town advisory board is vested with the powers  
7 for unincorporated towns in order to administer services enumerated in DCC 18.04.030,  
8 including “acquisition, disposal, annexation or de-annexation, maintenance and  
9 improvement of town property provided the town advisory board presents any proposed  
10 acquisition, disposal, annexation, or de-annexation, maintenance and improvement of town  
11 property to the board of county commissioners for review and approval.” See DCC  
12 18.04.040 and 18.04.030.

13 3. On July 3, 2019, the Minden Town Board held a public meeting.

14 4. The agenda for the Board’s July 3, 2019 meeting included the following:

15 1. For possible action: Discussion and possible action to provide to  
16 Douglas County regarding the 2020 master Plan as it pertains to the  
17 Minden/Gardnerville Community Plan future land use map and the  
18 proposed revisions of the Master Plan maps. Appearance by Tom  
19 Dallaire, Community Development Director, Douglas County. **Public  
comment.**

20 5. The supporting material for the Board’s agenda Item 1 included an  
21 Administrative Agenda prepared by JD Frisby, Town Manager and Rachel Hamer,  
22 Administrative Service Manager, as well as maps of the proposed Town of Minden  
23 community plan area boundaries as they related to the Master Plan update and prepared  
24 by Douglas County Staff. Supplemental supporting materials for the Board’s agenda Item  
25 1 further included, among other documents, a document labeled “Park Ranch  
Holdings/Douglas County Development Agreement-”.

26 6. At the Board meeting, Tom Dallaire, Community Development Director for  
27 Douglas County, gave a presentation which included discussion on the Muller Parkway  
28

1 bypass and the Park Ranch Holdings Agreement as it related to the restrictions to the  
2 proposed area.

3 7. After Mr. Dallaire’s presentation and Board comments, public comments were  
4 entertained, including comments by Mr. Slade that the proposed maps and the issues with  
5 the Park Ranch Holdings Agreement with Douglas County was a violation of the open  
6 meeting law.

7 8. After the presentation, and comments by the Board and the public, the Board  
8 unanimously voted to support the 2020 Master Plan as it pertains to the  
9 Minden/Gardnerville Community Plan and the attached future land use maps and  
10 proposed revisions to the Master Plan maps, with the condition that a Specific Plan was  
11 required for the entire 1040 of Urban Service Area acres prior to any project being  
12 approved.

13 9. The Douglas County Planning Commission is a “public body” as defined in  
14 NRS 241.015(4) and is subject to the OML.

15 10. On July 9, 2019, the Douglas County Planning Commission held a public  
16 meeting.

17 11. The agenda for the Commission’s July 9, 2019 meeting included the following:

18 3. For possible action. Discussion on Resolution Number PC 2019-03  
19 (ref. DP 19-0327), the 2019 update to the Douglas County Master Plan  
20 Future Land Use Maps, and other properly related matters. Following  
21 presentation from staff on updates to the Master Plan Future Land Use  
22 Maps, the Planning Commission will take public comment and  
23 deliberate. The Planning Commission may recommend approval,  
24 approval with modifications, or denial of the proposed resolution to the  
25 Board of Commissioners.

26 12. The supporting material for the Board’s agenda Item 3 included an Agenda  
27 Action Sheet and Memorandum regarding the Draft 2019 Master Plan Update to Future  
28 Land Use Maps (ref. DP 19-0327) (“Memorandum”) prepared by Sam Booth, AICP,  
Planning Manager. The Memorandum makes the following recommendation:

1 Based on the discussion and findings in the staff report, adopt Resolution PC  
2 2019-03 (ref. DP 19-0327), recommending approval of the 2019 Douglas County  
3 Master Plan Future Land Use Maps and Community Plan boundaries to the  
4 Board of Commissioners, with such recommendation contingent upon the  
5 Board's concurrent approval of the Park Ranch Holdings development  
6 agreement imposing certain limitations on the newly-designed receiving area.

7 13. At the Commission meeting, Mr. Slade provided public comment that the  
8 Commission's Agenda Item 3 was vague and generic and did not mention the proposed Park  
9 Ranch Holdings Development Agreement.

10 14. The District Attorney's Office positioned that the Commission's discussion of  
11 the Park Ranch Holdings Development Agreement was not an OML violation so long as  
12 the Commission was not preparing a recommendation on the Park Ranch Holdings  
13 Development Agreement.

14 15. Tom Dallaire, Community Development Director, gave a presentation which  
15 included discussion on the Park Ranch Holdings Development Agreement as it related to  
16 the restrictions to the proposed area.

17 16. After the presentation, and comments by the Commission and the public, the  
18 Commission unanimously voted to adopt resolution number PC 2019-03, reference DP 19-  
19 0327, as modified and to recommend to the Board of County Commissioners approval of the  
20 Douglas County, Nevada 2019 Master Plan update to the Future Land Use Maps with the  
21 exception that the Future Land Use Maps not include the provisions of the proposed new  
22 Development Agreement with Park Ranch Holdings.

## 23 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

24 **1. The OML requires that a Board or Commission's agenda include a clear and  
25 complete statement of the topics to be considered at the meeting.**

26 An agenda for a meeting of a public body must include a "clear and complete  
27 statement of the topics to be considered during the meeting." NRS 241.020(2)(d)(1). The  
28 "clear and complete statement" requirement of the OML stems from the Legislature's belief  
that "incomplete and poorly written agendas deprive citizens of their right to take part in  
government' and interferes with the 'press' ability to report the actions of government."

1 *Sandoval v. Bd. Of Regents of Univ.*, 119 Nev. 148, 154 (2003). Strict adherence with the  
2 “clear and complete” standard for agenda items is required for compliance under the OML.  
3 *Id.* The OML “seeks to give the public clear notice of the topics to be discussed at public  
4 meetings so that the public can attend a meeting when an issue of interest will be  
5 discussed.” *Id.* at 155. Further, “a ‘higher degree of specificity is needed when the subject  
6 to be debated is of special or significant interest to the public.” *Id.* at 155-56. (*quoting*  
7 *Gardner v. Herring*, 21 S.W.3d 767, 773 (Tex. App. 2000)).

8 The Park Ranch Holdings Agreement is a subject of special or significant public  
9 interest under *Sandoval*. In 1996, Douglas County adopted a twenty year Master Plan,  
10 which was required by Nevada Revised Statute (“NRS”) 278.150 “for the purpose of  
11 providing long-term guidance on the development of cities, counties, and regions in  
12 Nevada.<sup>1</sup> The Douglas County Board of Commissioners adopted a 15 Year Update of the  
13 Douglas County Master Plan (2011) on March 1, 2012, which contains two volumes. *See*  
14 *id.* The Park Ranch Holdings Agreement may affect the development of Douglas County,  
15 including the Minden and Gardnerville Communities, as the agreement would:

16 ...relocate 1,044 acres of receiving area from the Topaz Ranch  
17 Estates/Holbrook Junction Community Plan to the Minden and Gardnerville  
18 Community Area Plans; impose a cap of 2,500 residential units that may be  
19 developed within the newly-designated receiving area (a density of less than  
20 2.4 units per acre); require all development within the new receiving area to  
21 connect to water and sewer utilities, prohibit ‘big box’ commercial development  
22 in excess of 30,000 ft. of commercial space; secure the right of way for Muller  
23 Parkway in accordance with the Transportation Plan; secure additional right  
24 of way for flood conveyance and a multi-modal maintenance trail from Toler  
25 Lane to Heybourne Road; install drainage improvements with regional flood  
26 benefits; secure an easement to install culverts beneath Highway 88 to reduce  
27 the flood impact and/or remove from the special flood hazard area more than  
28 100 existing homes in the Town of Minden; establish a 6-year timeframe for  
the construction of Muller Parkway; and obligate Park Ranch Holdings to pay

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1 <sup>1</sup> Douglas County, Nevada Master Plan ([https://www.douglascountynv.gov/government/departments/community\\_development/planning\\_division/master\\_plan](https://www.douglascountynv.gov/government/departments/community_development/planning_division/master_plan)).

1 for the cost of constructing one lane of Muller Parkway through the Ashland  
2 Park property.<sup>2</sup>

3 Based on the aforementioned facts, the Master Plan updates and the proposed Park  
4 Ranch Holdings Agreement hold special or significant interests to the public under  
5 *Sandoval*.

6 **2. The Minden Town Board violated the OML by failing to include a “clear  
7 and complete statement of topics to be considered” on its July 3, 2019  
8 meeting agenda.**

9 Here, the Board’s agenda Item 1 for the Board’s July 3, 2019 meeting failed to  
10 provide notice to the public that the Board planned to deliberate and possibly take action  
11 on the Park Ranch Holdings Agreement as it related to the Master Plan update. The  
12 agenda simply stated that the action item was with regards to the 2020 Master Plan, that  
13 the item pertained to the Minden/Gardnerville Community Plan, future land use map, and  
14 the proposed revisions of the Master Plan maps. The agenda was wholly silent as to any  
15 discussion on the Park Ranch Holdings Agreement. Thus, the agenda was not “clear and  
16 complete”, whereby the public would have sufficient notice of the nature of the Park Ranch  
17 Holding Agreement and its effects on the Master Plan Update. A citizen could reasonably  
18 assume that the discussion at the July 3, 2019 meeting regarding the Master Plan Update  
19 would not have included any discussion relative to the Park Ranch Holding Agreement.

20 While the supporting materials for agenda Item 1 included a document referencing  
21 the “Park Ranch Holdings/Douglas County Development Agreement”, the Board cannot  
22 rely on such supplemental documents to comply with the “clear and complete” requirement  
23 for its agenda. The plain language of the OML does not authorize a public body to rely on  
24 information contained in its supporting materials in order to meet the “clear and complete  
25 statement” requirement. *See* NRS 241.020(2)(d)(1). The Board also may not rely upon  
26 materials and an agenda from a public workshop in a joint session between the Douglas

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27 <sup>2</sup> “Draft 2019 Master Plan Update to Future Land Use Maps (ref. DP 19-0327)  
28 Memorandum by Sam Booth, AICP, Planning Manager, to Douglas County Planning  
Commission, dated July 1, 2019 available at [https://douglascountynv.iqm2.com/  
Citizens/Calendar.aspx](https://douglascountynv.iqm2.com/Citizens/Calendar.aspx), as part of the July 9, 2019 Agenda Packet.

1 County Planning Commission and the Douglas County Board of County Commissioners  
2 held on May 23, 2019 to comply with the “clear and complete statement” requirement for  
3 an agenda item by the Board for its July 3, 2019 meeting. *See id.* Accordingly, factoring  
4 the higher standard required for an item of special or significant interest, the Board did  
5 not meet the “clear and complete” standard for its agenda, so as to provide the public with  
6 sufficient information to determine whether agenda Item 1 was a matter of interest,  
7 resulting in an OML violation by the Board.

8  
9 **3. The Douglas County Planning Commission violated the OML by failing to**  
10 **include a “clear and complete statement of topics to be considered” on its**  
11 **July 3, 2019 meeting agenda.**

12 Similarly, the Commission’s agenda Item 3 for its July 9, 2019 meeting also failed to  
13 provide notice to the public that the Board planned to deliberate and possibly take action  
14 on the Park Ranch Holdings Agreement as it related to the Master Plan update. The  
15 agenda simply stated that the action item was with regards to the 2019 update to the  
16 Douglas County Master Plan Future Land Use Maps and “other properly related matters”.  
17 Again, the agenda was wholly silent as to any discussion on the Park Ranch Holdings  
18 Agreement. Thus, the agenda was not “clear and complete”, whereby the public would have  
19 sufficient notice of the nature of the Park Ranch Holding Agreement and its effects on the  
20 Master Plan Update. A citizen could reasonably assume that the Park Ranch Holding  
21 Agreement would not have affected the Master Plan Update.

22 While the supporting materials for agenda Item 3 included a July 1, 2019  
23 Memorandum by Sam Booth, AICP, Planning Manager, Subject “Draft 2019 Master Plan  
24 Update to Future Land Use Maps (ref. DP 19-0327) that discussed the Park Ranch  
25 Holdings Agreement, like the Minden Town Board, the Commission cannot rely on such  
26 supplemental documents to comply with the “clear and complete” requirement for its  
27 agenda. The OAG reiterates that the plain language of the OML does not authorize a public  
28 body to rely on information contained in its supporting materials in order to meet the “clear  
and complete statement” requirement. *See* NRS 241.020(2)(d)(1).





1 interests of the public. Here, the OAG received information by the Commission that the  
2 Douglas County Board of Commissioners has agendized an item for possible action that  
3 will rescind the previous actions related to the Master Plan updates and start the Master  
4 Plan Maps update process over, which will be heard by the County Commissioners on  
5 September 5, 2019. While the OAG finds that an OML violation has occurred, it is the  
6 OAG's position that the foregoing remedies required of the Board and the Commission are  
7 sufficient to address the violations.

8 Dated: August 14, 2020

9 AARON FORD  
10 Attorney General

11 By: /s/ Justin R. Taruc  
12 Justin R. Taruc  
13 Deputy Attorney General  
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