OFFICE OF THE ATTORNEY GENERAL
STATE OF NEVADA

In the matter of:
MINDEN TOWN BOARD and
DOUGLAS COUNTY PLANNING
COMMISSION

OAG FILE NOS.: 13897-338 & 339

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

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

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

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

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. The OAG’s investigation of the Complaints included a review of the following: the Complaints and attachments; the public notice agendas, supporting materials, minutes for the July 3, 2019 and July 9, 2019 meetings, visual recordings of the July 9, 2019 meeting, and written responses to the respective Complaints and supporting materials.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. The supporting material for the Board’s agenda Item 3 included an Agenda Action Sheet and Memorandum regarding the Draft 2019 Master Plan Update to Future Land Use Maps (ref. DP 19-0327) (“Memorandum”) prepared by Sam Booth, AICP, Planning Manager. The Memorandum makes the following recommendation:
Based on the discussion and findings in the staff report, adopt Resolution PC 2019-03 (ref. DP 19-0327), recommending approval of the 2019 Douglas County Master Plan Future Land Use Maps and Community Plan boundaries to the Board of Commissioners, with such recommendation contingent upon the Board’s concurrent approval of the Park Ranch Holdings development agreement imposing certain limitations on the newly-designed receiving area.

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

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

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

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

LEGAL STANDARDS AND CONCLUSIONS OF LAW

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

An agenda for a meeting of a public body must include a “clear and complete statement of the topics to be considered during the meeting.” NRS 241.020(2)(d)(1). The “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.”
Sandoval v. Bd. Of Regents of Univ., 119 Nev. 148, 154 (2003). Strict adherence with the “clear and complete” standard for agenda items is required for compliance under the OML.

Id. The OML “seeks to give the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed.” Id. at 155. Further, “a higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public.” Id. at 155-56. (quoting Gardner v. Herring, 21 S.W.3d 767, 773 (Tex. App. 2000)).

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

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

for the cost of constructing one lane of Muller Parkway through the Ashland Park property.  

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

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

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

While the supporting materials for agenda Item 1 included a document referencing the “Park Ranch Holdings/Douglas County Development Agreement”, the Board cannot rely on such supplemental documents to comply with the “clear and complete” requirement for its agenda. The plain language of the OML does not authorize a public 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).* The Board also may not rely upon materials and an agenda from a public workshop in a joint session between the Douglas

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

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

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

While the supporting materials for agenda Item 3 included a July 1, 2019 Memorandum by Sam Booth, AICP, Planning Manager, Subject “Draft 2019 Master Plan Update to Future Land Use Maps (ref. DP 19-0327) that discussed the Park Ranch Holdings Agreement, like the Minden Town Board, the Commission cannot rely on such supplemental documents to comply with the “clear and complete” requirement for its agenda. The OAG reiterates that the plain language of the OML does not authorize a public 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).
Accordingly, based on the foregoing, and factoring the higher standard required for an item of special or significant interest, the Commission did not meet the “clear and complete” standard for its agenda, so as to provide the public with sufficient information to determine whether agenda Item 3 was a matter of interest, resulting in an OML violation by the Commission.

**SUMMARY**

Upon investigating the present Complaint, the OAG makes findings of fact and conclusions of law that the Minden Town Board and the Douglas County Planning Commission violated the OML by failing to comply with the “clear and complete statement” requirement for its July 3, 2019 and July 9, 2019 meeting, respectively.

If the Attorney General investigates a potential OML violation and makes findings of fact and conclusions of law that a public body has taken action in violation of the OML, “the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law.” NRS 241.0395. The public body must treat the opinion of the Attorney General as supporting material for the agenda item(s) in question for the purpose of NRS 241.020. *Id.* Accordingly, the Board and the Commission must place an item on their respective next meeting agendas in which they acknowledge the present Findings of Fact and Conclusions of Law (“Opinion”) resulting from the OAG investigating in the matter of Attorney General File Nos. 13897-338 and 339. The Board and the Commission must also include the OAG Opinion in the supporting materials for their respective next meetings.

Moreover, NRS 241.037 confers upon the OAG the power bring suit “in any court of competent jurisdiction to have an action taken by a public body declared void or for an injunction against any public body or person to require compliance with or prevent violations of [NRS 241].” NRS 241.037(1). Further, NRS 241.0365(1) provides that if a public body takes action to correct an alleged violation within 30 days of the alleged violation, the Attorney General may decide not to commence prosecution of the alleged violation if the Attorney General determines foregoing prosecution would be in the best
interests of the public. Here, the OAG received information by the Commission that the Douglas County Board of Commissioners has agendized an item for possible action that will rescind the previous actions related to the Master Plan updates and start the Master Plan Maps update process over, which will be heard by the County Commissioners on September 5, 2019. While the OAG finds that an OML violation has occurred, it is the OAG’s position that the foregoing remedies required of the Board and the Commission are sufficient to address the violations.

Dated: August 14, 2020

AARON FORD
Attorney General

By: /s/ Justin R. Taruc
Justin R. Taruc
Deputy Attorney General
CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of August, 2020, I served the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, CERTIFIED MAIL addressed as follows:

Minden Town Board  
1604 Esmeralda Ave.  
Minden, NV 89423

Certified Mail No.:  7019 0160 0000 0498 6407

Douglas County Planning Commission  
1616 Eighth St.  
Minden, NV 89423

Certified Mail No.:  7019 0160 0000 0498 4397

James T. Slade

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/s/ Debra Turman  
An employee of the Office of the Nevada Attorney General