OFFICE OF THE ATTORNEY GENERAL
STATE OF NEVADA

In the matter of:
DOUGLAS COUNTY BOARD OF COMMISSIONERS

OAG FILE NO.: 13897-344

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BACKGROUND

Jeanne Shizuru filed a complaint on August 25, 2019 with the Office of the Attorney General (“OAG”) alleging violations of the Nevada Opening Meeting Law (“OML”) by the Douglas County Board of Commissioners (“Board”), regarding meetings held by the Board on July 1, 2019 and August 6, 2019 \(^1\) (“Complaint”). The Complaint alleges that the Board violated the OML as follows:

**ALLEGATION NO. 1:** The description of agenda item no. 7 of the Douglas County Board of Commissioners’ July 1, 2019 meeting was too vague and generic, when it utilized the phrase “and other properly related matters.”

**ALLEGATION NO. 2:** The Douglas County Board of Commissioners’ discussion of the proposed development agreement between Park Ranch Holdings, LLC, and Douglas County was premature under NRS 278.0201(3) and Douglas County Consolidated Development Code Title 20.400.030(B).

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 Complaint and attachments; the July 1, 2019 Meeting Agenda, supporting materials, the supplemental meeting agenda packet, minutes for the July 1, 2019 meeting, visual

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\(^1\) Ms. Shizuru also filed a separate Complaint with the OAG on August 15, 2019, alleging OML violations by the Douglas County Board of Commissioners at its August 6, 2019 meeting. The OAG will address the alleged OML violations by the Douglas County Board of Commissioners at their August 6, 2019 in a separate opinion.
recording of the July 1, 2019 meeting, and the written response to the Complaint and supporting materials thereto.

After investigating the Complaint, the OAG determines that the Board violated the OML by failing to include a “clear and complete statement of topics to be considered” on their July 1, 2019 meeting agenda.

**FINDINGS OF FACT**

1. The Douglas County Board of Commissioners is a “public body” as defined in NRS 241.015(4) and is subject to the OML.

2. On July 1, 2019, the Board held a public meeting.

3. The agenda for the Board’s July 1, 2019 meeting included the following:

   7. For presentation only. Introduce **Ordinance 2019-1556**, an ordinance repealing Ordinance 2004R-1097 and Ordinance 2007-1223, which adopted the Development Agreement with Park Cattle Company for the Muller Parkway Extension and the First Amendment thereto, and adopting a Development Agreement between Park Ranch Holdings, LLC and Douglas County regarding the Muller Parkway right-of-way dedication, construction, development of property along the future Muller Parkway, and all other properly related matters. First Reading (Mary Anne Martin) 10 minute presentation (approximate).

4. The supporting material for the Board’s agenda item no. 7 included the following: (a) Ordinance No. 2019-1556; (b) Park Ranch Holdings, LLC Development Agreement; (c) Map of Existing Parcels within proposed New Park Receiving Area; (d) Map of Existing Land Use with Park Receiving Area; (e) Grant, Bargain & Sale Deed; (f) Map of proposed Muller Parkway; (g) documents related to the Drainage Easement and Construction Easement; (h) Map of Minden homes removed from flood plain; (i) Map of new Muller Parkway; (j) Park Cattle Company for Muller Parkway Development Agreement; (k) Cost Estimate for Ashland Park; and (l) Cost Estimate for Muller Parkway.

5. At the July 1, 2019 Board meeting, prior to beginning her presentation, Deputy District Attorney Mary Anne Martin disclosed that the development agreement contemplated several regional drainage improvements that would benefit many Minden residents, including herself.
6. Ms. Martin began her presentation by noting that the development agreement would be before the Board at an adoption hearing on August 1, 2019 and that the agreement would be considered concurrently with the Master Plan Land Use Map update. Ms. Martin further indicated that the development agreement was contingent upon the Master Plan Amendment being approved in tandem with the development agreement.

7. Ms. Martin’s presentation included information that the Master Plan Amendment would relocate 1,044 acres from the Topaz Ranch Estates/Holbrook Junction community plan, which was based on a review of the Master Plan Land Use Maps and an analysis of the County’s future growth as well as a determination on which areas could be developed that would be able to connect to water and sewer utilities, among other variables.

8. Ms. Martin’s presentation then continued to address the right-of-way for Muller Parkway, the regional drainage improvements, detention ponds and multimodal paths, as well as certain restrictions found under the development agreement and included discussion of easements.

9. Information regarding the County’s Transportation Master Plan and the consequences of non-completion or noncompliance with the development agreement was then presented.

10. Thereafter, Commissioner Nelson stated his opposition on the record to moving the Receiving Area from TRE to Minden.

11. Finally, information regarding costs to the County should the County purchase easements on the river through Klauber Ranch, the number of current lawsuits regarding development, costs to construct lanes on Muller Parkway; and where the County stood on submitting the BUILD grant was provided to the Board.

12. No action was taken by the Board.
LEGAL STANDARDS AND CONCLUSIONS OF LAW

1. The Board violated the OML by failing to include a “clear and complete statement of topics to be considered” on its July 1, 2019 meeting agenda.

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. The OAG previously explained:

Sandoval’s holding means that use of catch-all phrases such as ‘and all matters related thereto’ do[ ] not comply with the statute’s requirement that each agenda contain a clear and complete statement of topics. Related matters, should they come up during a meeting, must be agendized for discussion at a future meeting.


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)). An update to a County’s master plan is undoubtedly 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.”2 Previously, the Douglas County Board of

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Commissioners adopted a 15 Year Update of the Douglas County Master Plan (2011) on March 1, 2012, which contains two volumes. See id.

Here, our review of the minutes for this meeting and its videotaped recording shows that the Board strayed from the agenda item's statement of topics to be considered. Agenda item no. 7 provided notice that the Board would hear a presentation on the introduction of Ordinance 2019-1556, which would repeal two previous ordinances and adopting a development agreement between Park Ranch Holdings, LLC, and Douglas County regarding the Muller Parkway right-of-way dedication, construction, and development of property along the future Muller Parkway. However, information was provided regarding a master plan amendment which would relocate 1,044 acres from the Topaz Ranch Estates/Holbrook Junction community plan, a topic of which was not on the July 1, 2019 agenda. In addition to the provision of information related to the Master Plan update, Commissioner Nelson also voiced his opposition to the relocation, specifically noting his objection to moving the Receiving Area from TRE up to Minden.

Based on the foregoing, the Board's agenda item no. 7 failed to notice the public that it would be considering an amendment to the Master Plan and is therefore a violation of the OML.

2. The alleged premature discussion by the Board of the development agreement between Park Ranch Holdings, LLC, and Douglas County is not an OML violation.

Ms. Shizuru also alleges that both NRS 278.0201(3) and Douglas County Consolidated Development Code Title 20.400.030(B) require that all zoning, ordinances, and regulations be in effect before the introduction of a development agreement.

NRS 241.039(1) provides that a complaint alleging a violation of NRS Chapter 241 may be filed with the Office of the Attorney General. Moreover, NRS 241.039(2) provides that the Attorney General “shall investigate and prosecute any violation of this chapter”. NRS 241.039(2) (emphasis added). On its face, NRS 241.039 only allows the OAG to investigate and prosecute complaints under NRS Chapter 241. Ms. Shizuru’s allegation
that the Board held premature discussions of the development agreement between Park
Ranch Holdings, LLC, and Douglas County, are not based on alleged violations of NRS
Chapter 241, Nevada’s Open Meeting Laws, but rather under NRS 278.0201(3) and
Douglas County Consolidated Development Code Title 20.400.030(B). The OAG only has
statutory authority to investigate and prosecute alleged violations under NRS 241 and
therefore will abstain from determining whether the Board violated NRS 278.0201(3) and
Douglas County Consolidated Development Code Title 20.400.030(B).

SUMMARY

Upon investigating the present Complaint, the OAG concludes that the Douglas
County Board of Commissioners violated the OML by failing to comply with the “clear and
complete statement” requirement for its July 1, 2019 meeting.

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
must place an item on its next meeting agenda in which it acknowledges the present
Findings of Fact and Conclusions of Law (“Opinion”) resulting from the OAG investigating
in the matter of Attorney General File No. 13897-344. The Board must also include this
OAG Opinion in the supporting materials for its next meeting.

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].” Upon review of the records received, no action was taken by the

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Board related to agenda no. 7, as the information was agendized “for presentation only,” and thus no action was taken by the OAG.


                AARON FORD
                Attorney General

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

I hereby certify that on the 14th 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:

Douglas County Board of Commissioners
P.O. Box 218
Minden, NV 89423

Jeanne M. Shizuru

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