

ADAM PAUL LAXALT
Attorney General



NICHOLAS A. TRUTANICH
Chief of Staff

KETAN D. BHIRUD
General Counsel

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Avenue, Ste. 3900
Las Vegas, Nevada 89101

October 23, 2017

Via US Mail

Judith L. Miller

Re: Open Meeting Law Complaint, OAG File No. 13897-234
Incline Village General Improvement District

Dear Ms. Miller:

The Office of the Attorney General (OAG) received your complaint alleging that the Incline Village General Improvement District Board of Trustees (IVGID) violated the Nevada Open Meeting Law (OML) when it considered a proposal from the Parasol Tahoe Community Foundation (PTCF) without properly noticing the item on its meeting agendas. Specifically, you alleged that the agendas for IVGID's April 25, May 10, and May 24, 2017, meetings failed to meet the "clear and complete statement" requirement pursuant to Nevada Revised Statute (NRS) 241.020(2)(d)(1) because IVGID categorized PTCF's proposal as a "modification to a lease" without stating that the modification may involve the termination of a lease and the subsequent execution of a purchase agreement and new lease.

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037, 241.039, 241.040. In response to your complaint, the OAG reviewed the public notices and agendas, supporting materials, and minutes for IVGID's April 25, May 10, and May 24, 2017, meetings, together with a response to the complaint from IVGID Legal Counsel, Jason Guinasso.

Based on the evidence presented, the OAG concludes that no violation of the OML occurred. IVGID's agenda items pertaining to the PTCF proposal meet the OML's "clear and complete statement" requirement as the agenda item descriptions provided sufficient notice to the public regarding the topic of discussion.

FACTUAL BACKGROUND

IVGID is created pursuant to NRS 318, is a “public body” as defined in NRS 241.015(4), and is therefore subject to the OML. The OML issue at hand concerns discussion and action regarding a 2.36-acre parcel in IVGID described as “Incline Park.”

IVGID entered into a 30-year lease of the Incline Park property with PTCF in 2000.¹ PTCF subsequently constructed a building on the property with a \$6.6 million grant from the D.W. Reynolds Foundation.² On March 17, 2017, PTCF sent IVGID a letter requesting a modification to the lease.³

Subsequently, IVGID placed the PTCF lease matter on its April 25, 2017 meeting agenda as Agenda Item No. 5 of General Business. Agenda Item No. 5 was identified for possible action and reads as follows:

Review, discuss, and take possible action on the proposed modification to the 30-year ground lease with Parasol Tahoe Community Foundation (PTCF) **AND** provide feedback on the D.W. Reynolds Non-Profit Center Feasibility Report dated April 18, 2017 (Requesting Staff Member: General Manager Steve Pinkerton)

During IVGID’s April 25, 2017 meeting, the IVGID trustees considered the PTCF lease matter at length, with statements from IVGID trustees and IVGID’s counsel. During the course of discussion, IVGID trustees considered the proposal and expressed varying degrees of support. IVGID trustees did not take action to approve the lease modification or proposed actions associated with the modification during the April 25, 2017 meeting.

IVGID subsequently placed the PTCS lease matter on the agenda of its May 10, 2017 meeting as Agenda Item No. 1 of General Business. Agenda Item No. 1 was identified for possible action and reads as follows:

Review, discuss, and possibly approve the next steps on the request for modification to the ground lease between Parasol Tahoe Community Foundation and Incline Village General Improvement District (Requesting Trustee: Chairwoman Kendra Wong)

¹ Original Lease between PTCF and IVGID dated January 12, 2000.

² “D.W. Reynolds Non-Profit Center Feasibility Report” at pg. 6 (April 18, 2017).

³ *Id.* at Attachment 1.

A draft lease amendment agreement with PTCS was included in the support materials for Agenda Item No. 1. IVGID trustees and IVGID's general manager engaged in a discussion regarding the proposed lease agreement amendment. The IVGID trustees did not take action on this item during the May 10, 2017 meeting.

IVGID placed the PTCS matter on the agenda of its May 24, 2017 meeting as Agenda Item No. 5 of General Business. Agenda Item No. 5 was identified for possible action and reads as follows:

Proposed modification to the 30-year ground lease between the Parasol Tahoe Community Foundation and Incline Village General Improvement District – Response to additional research requests as directed at the May 10, 2017 IVGID Board of Trustees Meeting (Requesting Staff Member: District General Manager Steve Pinkerton)

IVGID trustees considered Agenda Item No. 5 at length, and they provided extensive comments on the PTCS matter. After discussion and deliberation, the trustees took a fifteen minute break. IVGID trustees did not take further action on this agenda item at the May 24, 2017 meeting.

DISCUSSION AND LEGAL ANALYSIS

NRS 241.020 governs agenda requirements for meetings of public bodies and it requires a "clear and complete statement of the topics scheduled to be considered during the meeting." NRS 241.020(2)(d). The purpose of the "clear and complete statement" requirement is to provide the public with "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." *Sandoval v. Bd. of Regents of Univ.*, 119 Nev. 148, 154-55, 67 P. 3d 902, 906 (2003). Additionally, "[a] higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public." *Id.*, citing *Gardner v. Herring*, 21 S.W.3d 767, 773 (Tex.App.2000).

Here, the April and May 2017 agenda items in question, which discuss modifying the PTCF lease, fulfill the OML's "clear and complete statement" requirement. IVGID's agenda item descriptions regarding the PTCF lease provided the public with notice that IVGID would deliberate, provide feedback regarding the feasibility report, and potentially take action on the 30-year ground lease with PTCF. The significant public attendance and comment on the PTCS matter at the April and May 2017 IVGID meetings demonstrate that IVGID described the item on its agenda in a way that included sufficient information to place members of the public on notice that trustees would discuss the complex issue of the

Judith Miller
October 23, 2017
Page 4

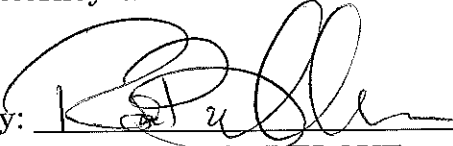
PTCF lease at its April and May 2017 meetings. It follows that IVGID's agenda descriptions complied with the OML's "clear and complete statement" requirement and no OML violation occurred on the facts alleged in the complaint.

CONCLUSION

The IVGID trustees' consideration of the PTCF Lease Agreement at the April 25th, May 10th, and May 24th meetings complied with the OML. 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: 
ROSALIE BORDELOVE
Deputy Attorney General

RB:arz

cc: Jason D. Guinasso, Counsel
Incline Village General Improvement District Board of Trustees