



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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September 4, 2012

GREGORY M. SMITH
Chief of Staff

Larry A. Wahrenbrock
P.O. Box 246
Silver City, NV 89428

Re: Open Meeting Law Complaint / AG File No. 12-024
Storey County Planning Commission

Dear Mr. Wahrenbrock:

This Office has reviewed your Open Meeting Law complaint alleging the Storey County Planning Commission (SCPC) acted on an agenda item which was not clear and complete as required by NRS 241.020(2)(c)(2). The SCPC acted to forward its approval of Comstock Mining Inc.'s application for amendment to its special use permit (SUP) before approval of the minutes of the meeting.¹ SCPC is an advisory body to the Storey County Board of Commissioners (BOCC).²

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.

¹ 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)

² 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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You sent me a copy of the July 19, 2012 agenda so there is no need to set out agenda item "SPECIAL USE PERMIT #2000-222-A-1, in full herein. We do not agree with your allegation that the item's use of the adjective "administrative" to describe Comstock Mining Inc.'s application to amend its mining Special Use Permit was unclear or incomplete. Review of the entire item leads us to conclude the item clearly described the topic discussed by the SCPC, which was an amendment to the SUP which amendment pertained to "use of trucks and equipment within the boundaries of the SUP and on State route 342." We reviewed the minutes of this meeting. Extensive public comment and discussion by the SCPC with Comstock Mining Inc.'s executive, the BLM District Manager, the District Attorney and the County Manager clearly demonstrated that the item's description of topic was right on target.

The physical location of the SUP was adequately described by map which was available at the meeting as an enclosure (#2) of the Storey County Staff Report (Austin Osborne).

We take this opportunity to remind the SCPC that the 2011 Legislature now requires that the public body denote each agenda item for which action may be taken with the words: "for possible action." The asterisk method is no longer allowed by the OML. NRS 241.020(2)(c)(2).

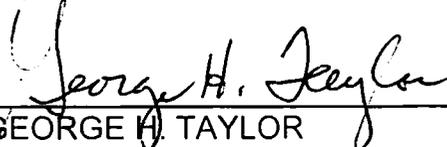
We do not find a violation of the OML after review of the minutes of SCPC's July 19, 2012 meeting. We only remind SCPC to modify its agenda format to conform with NRS 241.020(2)(c)(2).

We are closing our file on this matter.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:



GEORGE H. TAYLOR
Senior Deputy Attorney General
(775) 684-1230

GHT/CG

cc: William A. Maddox, District Attorney
Pat Whitten, Storey County Manager
Storey County Commission Members: Bob Kershaw, Chairman; Greg "Bum" Hess, Vice Chairman; Bill Sjovangen, Member. Planning Commission Members: Virgil Bucchianeri; Doug Walling; Bret Tyler; Laura Kekule; Lydia Hammack; John Herrington; Larry Prater