

Pursuant to NRS 239B.030, the undersigned  
affirms that the following document does not  
contain the social security number of any person.

JOHN L. MARSHALL  
SBN 6733  
570 Marsh Avenue  
Reno, Nevada 89509  
Telephone: (775) 303-4882  
Attorney for Petitioners Comstock  
Residents Association & Joe McCarthy

Electronically Filed  
Aug 03 2015 08:30 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

COMSTOCK RESIDENTS ASSOCIATION,  
JOE McCARTHY

Appellants,

v.

LYON COUNTY BOARD OF  
COMMISSIONERS; COMSTOCK  
MINING INCORPORATED

Respondents,

No. 68433

District Court Case No. 14-CV-00128

**DOCKETING STATEMENT**

1. Judicial District: Third Department: Assigned Senior Judge

County: Lyon Judge: Hon. Robert Estes

2. Attorney filing this docketing statement:

John L. Marshall Telephone: (775) 303-4882  
570 Marsh Avenue  
Reno NV 89509

Clients: Comstock Residents Association, Joe McCarthy

3. Attorneys representing respondents:

Steven B. Rye                      Tel: (775) 463-6511  
Lyon County District Attorney  
31 S. Main Street  
Yerington, NV 89447

Client: Lyon County Board of County Commissioners

James R. Cavilia                      Tel: (775) 687-0202  
Allison, MacKenzie, Pavlakis, Wright & Fagan  
402 N. Division Street  
Carson City, NV 89703

Client: Comstock Mining Inc.

4. Nature of disposition below:

Review of agency determination.

Dismissal; Failure to state a claim.

5. Does this appeal raise issues concerning any of the following (child custody, venue, termination of parental rights):

No.

6. Pending and prior proceedings in this court:

None.

7. Pending and prior proceedings in other courts:

*Comstock Residents Association, et al., v. Lyon County Board of County Commissioners*,  
Case No. 14-CV-01304 (Third Judicial District Court). Pending Nevada Public Records Act  
claim filed after District Court dismissed motion to amend in the instant case.

8. Nature of the action:

Appellants challenged Lyon County's grant of Comstock Mining Inc.'s application to  
change the longstanding and repeatedly readopted Master Plan and zoning to allow industrial

1 mining uses within Silver City and Comstock Historic District/Virginia City National Historic  
2 Landmark.

3 9. Issues on appeal:

4 Whether the District Court erred by denying Appellants' Petition for Judicial Review and  
5 dismissing claims for Open Meeting Law and due process violations.

6 10. Pending proceedings in this court raising the same or similar issues:

7 None that counsel is aware.

8 11. Constitutionality of Statutes:

9 Not Applicable.

10 12. Other issues:

11 This appeal involves substantial issues of first impression and public policy. These issues  
12 include whether (1) under the Nevada Open Meeting Law a claim for relief may be stated for an  
13 illegal serial meeting facilitated in part by communications through an applicant's consultant,  
14 (2) a claim may be stated under the Nevada and the United States Due Process Clauses when  
15 members of a decision-making body refuse to recuse themselves where one's husband was *de*  
16 *facto* employed by the applicant and another received the majority of his election contributions  
17 from the applicant and in return provided special access and treatment, (3) a public agency may  
18 limit the contents of the official record in a judicial review action by excluding otherwise  
19 relevant records simply because they are held by individual County Commissioners not the  
20 central administration, (4) a County may reverse without explanation of changed circumstances,  
21 longstanding, applied, and recently readopted Master Plan land use designation in order to allow  
22 industrial open pit mining uses within Silver City and the Comstock Historic District/Virginia  
23 City National Historic Landmark and which directly contradicts other specific Master Plan  
24  
25  
26  
27  
28

1 policies, all contrary to the recommendation of its own Planning Director and Planning  
2 Commission.

3 13. Trial:

4 No trial.

5 14. Judicial disqualification:

6 Appellants do not intend to file a motion for judicial disqualification.  
7

8 15. Date of entry of written judgment or order appeal from:

9 June 5, 2015.

10 16. Date written notice of entry of judgment or order served:

11 June 15, 2015. Service affected by Mail/electronic/Fax.

12 17. If time for filing notice of appeal was tolled:

13 No.  
14

15 18. Date notice of appeal filed:

16 July 14, 2015.

17 19. Specify statute or rule governing time limit for filing notice of appeal:

18 NRAP 4(a).

19 20. Specify the statute or other authority granting this court jurisdiction to review the  
20 judgment or order appealed from:

21 NRAP 3A(b)(1); the District Court's June 5, 2015 Order Denying Judicial Review  
22 constituted a final judgment as it resolved all outstanding issues in the case.  
23

24 21. List all parties involved in the action in the district court:

25 a. Petitioners Comstock Residents Association, Gayle Sherman, Joe McCarthy,  
26 Respondent Lyon County Board of Commissioners, Respondent Comstock Mining Inc.

27 b. Petitioner Gayle Sherman chose not to participate in this appeal.  
28

22. Give a brief description of each party's separate claims and the trial court's disposition of each claim, and how the claim was resolved, and the date of disposition of each claim:

1. Appellants' First Cause of Action: Violations of the Nevada Open Meeting Law.

Disposition: Dismissed for failure to state a claim.

Date of disposition: December 5, 2014.

2. Appellants' Second Cause of Action: Denial of due process.

Disposition: Dismissed for failure to state a claim.

Date of disposition: December 5, 2014.

3. Appellants' Third Cause of Action: Judicial Review/Abuse of Discretion.

Disposition: Denied.

Date of disposition: June 5, 2015.

4. Appellants' Fourth Cause of Action: Violation of NRS 278.220 (Judicial

Review/Abuse of Discretion.)

Disposition: Denied.

Date of disposition: June 5, 2015.

23. The orders appealed from adjudicated ALL claims alleged below and the rights and liabilities of all parties to the action below.

24. Not Applicable.

25. Not Applicable.

26. Copies of the latest filed complaint and orders challenged, and notices of entry are attached hereto as Exhibits 1 through 4

### **VERIFICATION**

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my

1 knowledge, information and belief, and that I have attached all required documents to this  
2 docketing statement.

3 Name of Appellants: Comstock Residents Association, Joe McCarthy

4 Name of Counsel of Record: John L. Marshall

5 State and county where signed: Washoe County, Nevada.

6 Date: August 1, 2015.

7  
8 By \_\_\_\_\_ /s/

9 John L. Marshall

10 570 Marsh Avenue

11 Reno, NV 89509

12 775.303.4882

13 johnmarshall@charter.net

14 Attorney for Appellants

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Docketing Statement was served on the parties by mailing a copy thereof on the 1st day of August 2015, by United States mail, postage prepaid and electronic mail to:

Steven B. Rye  
District Attorney  
31 S. Main Street  
Yerington, NV 89447  
srye@lyon-county.org

James R. Cavilla  
Allison, MacKenzie, Pavlakis, Wright & Fagan  
402 N. Division Street  
Carson City, NV 89703  
JCavilia@allisonmackenzie.com

\_\_\_\_\_/s/\_\_\_\_\_  
John L. Marshall

INDEX TO EXHIBITS

Exhibit 1	Complaint for Declaratory and Injunctive Relief/Petition for Writ of Mandate or Judicial Review (filed January 31, 2014; 35 pages)
Exhibit 2	Notice of Entry of Order and attached Order Granting in Part and Denying in Part Motion to Dismiss (filed December 5, 2014; 8 pages)
Exhibit 3	Notice of Entry of Order and attached Order Granting in Part and Denying in Part Plaintiffs' Motion to Augment Record (filed June 19, 2015; 5 pages)
Exhibit 4	Notice of Entry of Order and attached Order Denying Petition for Judicial Review (filed June 15, 2015; 6 pages)



# EXHIBIT 1

E  
X  
H  
I  
B  
I  
T  
  
1

E  
X  
H  
I  
B  
I  
T  
  
1

# EXHIBIT 1

1 JOHN L. MARSHALL  
2 SBN 6733  
3 570 Marsh Avenue  
4 Reno, Nevada 89509  
5 Telephone: (775) 303-4882  
6 Attorney for Plaintiffs/Petitioners Comstock  
7 Residents Association, Gayle Sherman, Joe  
8 McCarthy

2014 JAN 31 PM 1:47

THIRD JUDICIAL DISTRICT  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT  
Tanya Sceirine  
DEPUTY

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE THIRD JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA  
IN AND FOR LYON COUNTY

COMSTOCK RESIDENTS ASSOCIATION,  
GAYLE SHERMAN, JOE MCCARTHY

Case No.: 14-CV-00128

Plaintiffs/Petitioners,

Dept. No.: II

v.

LYON COUNTY BOARD OF  
COMMISSIONERS; COMSTOCK  
MINING INCORPORATED

Defendants/Respondents,

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF/  
PETITION FOR WRIT OF MANDATE OR JUDICIAL REVIEW

I. INTRODUCTION

1. Plaintiffs/Petitioners Comstock Residents Association ("CRA") members, Gayle Sherman and Joe McCarthy are residents of the Comstock including Silver City, Lyon County, Nevada. In this lawsuit they challenge the January 2, 2014 action of the Defendant Lyon County Board of Commissioners ("BOC") to reverse decades of prior precedent – and contrary to the recommendation of its own Planning Commission and professional planning staff – and grant a version of Defendant Comstock Mining Incorporation's ("CMI") application to allow mining uses within Silver City. Because Lyon County provided no basis to depart from its prior

1 precedent, acted contrary to law and without proper notice and record support, and was unduly  
2 influenced, Plaintiffs/Petitioners ask that Lyon County BOC's January 2, 2014 action be  
3 reversed.

## 4 II. PARTIES

5 2. Plaintiff/Petitioner CRA is a not-for-profit organization incorporated in Nevada  
6 and through its members appeared at appropriate public hearings and objected to the CMI's  
7 application to allow mining uses within Silver City. Members of CRA live, work, recreate  
8 and/or commute in the Comstock Historic District in general and more specifically in Silver  
9 City.  
10

11 3. Plaintiff/Petitioner Gayle Sherman lives in Silver City at 100 Grant Street. Ms.  
12 Sherman first purchased her home in 1976 and lived there for many years until she had to sell  
13 her home to pay for her son's college education. Ms. Sherman repurchased her old home in  
14 2001 after, and in express reliance upon, Lyon County's 1986 denial of Nevex Gold's  
15 application to make the same land uses changes as CMI obtained.  
16

17 4. Plaintiff/Petitioner Joe McCarthy and his wife Ann purchased land from 2003 to  
18 2006 and built their Silver City home in 2006 and have been living there since 2007. Prior to  
19 purchasing their land and building their house, Mr. and Ms. McCarthy diligently researched the  
20 applicable land uses allowed within Silver City and specifically determined that mining was not  
21 a permitted use on lands within Silver City now owned by CMI.  
22

23 5. Defendant Lyon County Board of Commissioners is the governing body of a  
24 subdivision of the State of Nevada and pursuant to NRS Chapter 278 possesses the authority  
25 and responsibility to regulate land use for the benefit of the public within Lyon County, Nevada.

26 6. Defendant CMI, a mining corporation, owns and or controls lands within the  
27 Comstock generally and specifically within and adjacent to Silver City. In 2013, CMI applied  
28

1 to Lyon County to amend the Lyon County Master Plan and applicable zoning for “the purpose  
2 of pursuing continued mineral exploration, development and the economic mining potential of  
3 the subject property.” In order to mine its property within Silver City, CMI needed to undue  
4 years of prior planning and reverse multiple Lyon County BOC decision. CMI’s application  
5 sought to change the long-standing aster Plan land use designations and zoning for their  
6 property in and adjacent to Silver City from its current Suburban Residential (where mining is  
7 not permitted) designation to Rural Residential (where mining is permitted). CMI’s application  
8 to add mining uses by seeking a Master Plan amendment and Zoning change is referred to  
9 herein as CMI’s “2013 Application.”  
10

### 11 **III. BACKGROUND**

#### 12 **A. The Comstock Historic District, Silver City and Lyon County’s Prior Land Use** 13 **Decisions**

14 7. The Virginia City National Historic Landmark represents a truly unique piece of  
15 Nevada and national cultural history. The site of the single most productive mining strike in  
16 history, the Comstock brought tens of thousands of people to Nevada, generated enormous  
17 wealth and created the towns of Virginia City, Gold Hill and Silver City, the second largest  
18 metropolitan center in the Far West at the time. The Virginia and Truckee Railroad (recently  
19 restored as a recreational/tourist railroad) was constructed to service the mines, and important  
20 advances in unionizing and labor standards occurred in the Comstock during the 1860’s. The  
21 Comstock also generated significant technological achievements in the mining industry later  
22 incorporated worldwide. Because of the Comstock, Nevada became a territory in 1861 and a  
23 state on October 31, 1864.  
24  
25  
26  
27  
28

1           8.       Recognizing its critical cultural resource value to the citizens of Nevada and the  
2 Nation, the United States first designated the Virginia City Historic District as a National  
3 Historic Landmark on July 4, 1961.

4           9.       The National Park Service lists the site as in a threatened condition as a result of  
5 recent surface mining:

6                       Several contributing buildings, a portion of the historic highway at  
7 Greiner's Bend, and the entire mountainside adjacent to Gold Hill are in  
8 danger of sliding into an inactive mining pit developed in the 1970s. **The**  
9 **cumulative effect of contemporary surface mines within the central**  
10 **corridor of the district has been a gradual destruction and**  
11 **disintegration of the historic landscape that constitutes the visual**  
12 **heart of the historic district.**

13           10.      In 1969, the Nevada Legislature enacted Chapter 384 of the Nevada Revised  
14 Statutes to create the Comstock Historic District ("CHD"). The Comstock Historic District Act,  
15 as NRS 384.010 to 384.210 is known, is the only Comstock-specific legislation designed to  
16 protect this amazing site of Nevada history and national heritage.

17           11.      In the Comstock Historic District Act, the Nevada Legislature decreed that it is  
18 "the public policy of the State of Nevada to promote the educational, cultural, economic and  
19 general welfare and safety of the public through the preservation and protection of the  
20 structures, sites and areas of historic interest and scenic beauty" of the CHD. NRS 384.020  
21 (emphasis added).

22           12.      Silver City, Nevada, is one of the few residential communities identified in Lyon  
23 County. It is one of two communities Lyon County dedicated as a living, historic community.  
24  
25  
26  
27  
28

1           13.     As modern planning and zoning emerged for the Silver City area, it retained this  
2 historical backdrop as its foundation, and overlaid a modern transect of desired development.  
3 The Silver City Town Site has been envisioned consistently as having a commercial core with a  
4 small industrial zone which includes some historic mills and mines, all surrounded by  
5 residential development. Beyond the boundaries of the Town Site, land use has consistently  
6 been designated for less dense development and open space. Using different designations with  
7 different names, this basic concept has carried through generations of land use plans and  
8 continues today.

10           14.     In 1971, Lyon County enacted its first master plan and related zoning. It planned  
11 and zoned Silver City like all the other towns in the county: urban appropriate uses and densities  
12 within the town and rural uses and densities outside of town.

13           15.     Since Lyon County's original planning for Silver City it has consistently and  
14 uniformly determined that the basic urban/rural distinction meets the needs of the Silver City  
15 community and the county as a whole.

17           16.     In 1986, Nevex Mining Company applied to Lyon County to change the land use  
18 and zoning designations for property within Silver City from urban uses to rural uses to allow  
19 mining within the town (Nevex applied at the same time for a special use permit to mine). The  
20 Lyon County Commission denied Nevex's proposed land use and zone changes specifically  
21 finding that Nevex's application for more rural uses and densities violated its Master Plan and  
22 was otherwise inappropriate.

24           17.     In 1986, the Lyon County BOC, offered a long, comprehensive list of "findings of  
25 fact" supporting the denial, including that, "[t]he proposed rezoning violates the following  
26 expressed goals of the county's master plan: To manage natural resources in a beneficial way;  
27  
28

1 To improve neighborhood stability and increase property values by preventing incompatible and  
2 disruptive land use.” Other specific findings include:

- 3 a. After a four hour presentation on June 17 [1986], the Planning Commission, by  
4 vote of five to two, recommended denial of the Nevex rezoning request considered  
5 today.
- 6 b. In reference to requirements for zoning established by NRS Section 278 and 250,  
7 we find (A) that the Nevex rezoning request does not comply with the Lyon  
8 County Master Plan. (B) The proposed rezoning does not promote the  
9 conservation of open space or protect the natural and scenic resources from  
10 unreasonable impairment. (C) The proposed rezoning would have both a long-  
11 term adverse financial impact to Silver City and the Comstock National Historic  
12 Landmark. (D) The proposed rezoning does not promote the health and general  
13 welfare of the Silver City area. (E) The proposed rezoning is not compatible with  
14 the Silver City area and does not encourage the most appropriate use of land in the  
15 Silver City Townsite.
- 16 c. There is no land in the Silver City Town site zoned RR-5, and the present zoning is  
17 predominantly residential in nature.
- 18 d. The proposed rezoning would significantly harm the integrity of the Comstock  
19 Historic District and the National Landmark District.
- 20 e. The proposed rezoning violates the following expressed goals: (A) to manage  
21 national resources in a beneficial way. (B) To improve neighborhood stability and  
22 increase property values by preventing incompatible and disruptive land uses.

23  
24  
25  
26 18. In 1990, Lyon County affirmed its 1986 decision when it adopted a new Master  
27 Plan and maintained the same urban/rural land use designations for Silver City.  
28

19. Lyon County approved two goals for Silver City in the 1990 Master Plan:

Goal #1 – To maintain, promote, and secure the historic character of the community and to prevent the destruction or degradation of the historic character. Objective: Lyon County should support the Comstock Historic District Commission in its legislative mission.

Goal #2 – Lyon County should review all new development proposals with the intent to protect the riparian ecology associated with Gold Canyon and American Ravine, with the intent of protecting water quality, minimizing flooding, erosion and sedimentation, and preserving natural drainage, habitat, and aesthetic functions.

20. In 2002, Lyon County again examined the appropriate land use designations for Silver City and its environs and in the West Central Lyon County Land Use Plan again designated Silver City as appropriate for urban uses and densities.

21. The West Central Lyon County Land Use Plan concludes that Silver City has the potential for continued limited growth with only half of the potential home sites developed. The plan for slow growth of the community was acknowledged, as was the historic nature of the town's architecture and the context of the community within the Comstock Historic District and the Virginia City National Historic Landmark. In the plan, Lyon County stated that Silver City did not have the kind of development potential they saw in Dayton Valley, but instead hoped for gradual residential and commercial growth of Silver City while maintaining the community's historical integrity.

22. In the West Central Lyon County Land Use Plan, the Lyon County BOC adopted specific goals for Silver City that articulated future direction and continuation of earlier policies set out in previous master plans as follows:



1           a.       To recognize, enhance, and protect the unique character of Silver City.  
2   Among the actions set forth to implement this Goal was “to maintain that scale and primary  
3   residential character by retaining the existing Master Plan designation and zoning categories.”

4           b.       To preserve the scale of the community by architectural review that is  
5   sensitive to how new structures fit into the existing fabric. Among the actions set forth to  
6   implement this Goal was “to preserve the existing pedestrian character by maintaining alleys,  
7   soft paving approaches, and relatively narrow streets.”

8           c.       To promote the revitalization of the commercial corridor by promoting  
9   reinvestment.

10          d.       To preserve and strengthen the existing infrastructure, i.e., water,  
11   roadways, drainage, and public facilities. Among the actions set forth to implement this Goal  
12   was “Lyon County shall provide an infrastructure inventory and deficiency evaluation and  
13   report. Lyon County shall provide a long term if modest capital improvement commitment (i.e.,  
14   20 years) that methodically addresses these deficiencies.” Also included was an action “to  
15   implement and actively oversee the ‘dark sky’ ordinance.”

16          e.       To focus on encouraging tourist-oriented historic activities that do not  
17   degrade the quality of life central to Silver City’s uniqueness. Among the actions set forth to  
18   implement this Goal was “to actively support the efforts of residents to preserve and improve  
19   their property.”

20          f.       To limit earth disturbance or above-ground mining activities that create  
21   visual scarring or that disrupt the fabric of the community. The only action set forth to  
22   implement this Goal was “Lyon County shall establish a land use policy that minimizes the  
23   impact of mining and other significant earth-disturbing activities that degrade quality of life.”  
24  
25  
26  
27  
28

1           g.       To maintain the primary focus of the community as residential. The only  
2 action set forth to implement this Goal was “to urge the Board of County Commissioners to  
3 carefully consider all zone changes or Master Plan amendments that would substantially alter  
4 the character and identity of Silver City.”

5           23.     Because of its historic value and scenic beauty, Storey County recently prohibited  
6 new open pit mines within its portion of the heart of the Comstock –following Highway 342  
7 from just north of Silver City through Gold Hill and into Virginia City.

9       **B.   Development and Adoption of the 2010 Lyon County Comprehensive Master Plan**

10          24.     In December 2010, Lyon County adopted a new, fully vetted County-wide  
11 Comprehensive Master Plan (2010 Comprehensive Master Plan). For the fifth time, it  
12 specifically considered the appropriate land uses for Silver City.

13          25.     During the development of the 2010 Comprehensive Master Plan, numerous public  
14 hearings and community workshops were held throughout Lyon County. The community  
15 workshops concentrated on developing the county-wide land use map as well as the language to  
16 be included in the text. Development of the 2010 Comprehensive Master Plan was a standing  
17 item on Lyon County Planning Commission meetings from September of 2005 to its adoption in  
18 late 2010.

19          26.     The 2010 “Comprehensive Master Plan is the culmination of four years of  
20 dialogue and analysis that has included a wide array of participants including the Board of  
21 Commissioners, the Planning Commission, community advisory councils, County staff and the  
22 community at large. A series of community meetings, open house events and workshops were  
23 held throughout the county to obtain citizen input and recommendations, including eight  
24 meetings on issues identification in March 2007, eight community meetings and two joint  
25 Planning Commission/Board of Commissioners sessions on community vision in April and  
26  
27  
28

1 September 2007, six meetings in November 2008 in goals and policies, fourteen meetings in  
2 January, April and May 2009 on land use maps, six meetings in July 2009 on land use goals and  
3 policies, and finally eleven sessions in October 2009 and March 2010 on the overall County-  
4 wide Comprehensive Plan.” 2010 Comprehensive Master Plan at 1.10-1.11.

5 27. On December 23, 2010, the Lyon County Board of Commissioners held a public  
6 hearing to consider adopting the 2010 Comprehensive Master Plan. The only public comment  
7 at the December 23, 2010 BOC hearing were Silver City residents that expressly supported the  
8 proposed the Master Plan as it applied to Silver City as recommended by the Planning  
9 Commission. Lyon County Board of Commissioners thereafter unanimously adopted the same  
10 planning designations for Silver City.

11 28. The 2010 Comprehensive Master Plan states that it “represents a future vision of  
12 Lyon County along with recommendations for achieving that vision. The ideas of the Plan are a  
13 distillation of the community's many desires, tempered by what seems necessary, feasible, and  
14 reasonable.”

15 29. The 2010 Comprehensive Master Plan is organized in two tiers: a County-wide  
16 Component and more specific Community Plans.

17 30. The County-wide Component of the 2010 Comprehensive Master Plan provides  
18 for the overall foundation and framework for directing the County’s future growth and  
19 development. The County-wide Component is the umbrella document that applies to all of the  
20 unincorporated area of Lyon County. It represents the overall vision, goals and policy direction,  
21 generalized land use patterns for the entire County, and the land use designations for lands  
22 outside of defined communities. The County wide-Component provides guidance for the  
23 preparation of the more specific Community Plans.

1           31.     The Community Plan tier of the 2010 Comprehensive Master Plan presents the  
2 specific vision, goals and policy direction, and land use pattern for each identified community  
3 as determined through the community planning process. Community Plans are designated for  
4 existing established communities. These maps provide detailed views of the community's  
5 desired growth and development for the future taking into consideration each community's  
6 unique character, opportunities and constraints. The County will work with each community to  
7 complete Community Plans, including Community Land Use Plans in each community.  
8

9           32.     Lyon County intended the 2010 Master Plan to at least "serve for about 10 years."  
10 2010 Comprehensive Master Plan at 1.8.

11           33.     The 2010 Comprehensive Master Plan "is comprehensive because the elements  
12 cover a broad range of development and growth issues which can be influenced significantly by  
13 the County Planning Commission, Board of Commissioners and other governing authorities and  
14 agencies. The Plan is general because the recommendations are broad. The plan is long-range  
15 because consideration is given to the problems and opportunities which may arise over the next  
16 twenty or so years. The Plan is dynamic because there will be amendments to adapt to new  
17 situations and meet new challenges over time." 2010 Comprehensive Master Plan at 1.8.  
18

19           34.     No new situation or new challenge has presented itself in Silver City since the  
20 adoption of the 2010 Comprehensive Master Plan.  
21

22           35.     The 2010 Comprehensive Master Plan contains policies and goals that are County-  
23 wide in nature as well as specific to its eight diverse communities, including Silver City. The  
24 following excerpts from the Master Plan are relevant to CMI's 2013 Application.

25           a.     Policy LU 1.1: "Follow development patterns as established on  
26 Countywide Land Use Plan or a more specific Community Plan. The Community Plan  
27  
28

1 envisioned for Silver City has not yet been initiated by Lyon County.” Until a Community Plan  
2 is adopted, the Countywide Land Use Plan will be the guide.

3           b.     Policy LU 1.4: “Locate industrial development as designated on County-  
4 wide Land Use Plan or determined by criteria. Industrial uses, including extractive industries,  
5 will occur in areas that are designated on the County-wide Land Use Plan. New industrial uses  
6 should only be located in areas that do not adversely impact existing residential settlements.”

7           c.     Policy CC 1.3: “Design Tailored to Communities. New development in  
8 Lyon County should address and respect the unique character of communities within the county.  
9 Strategies: develop Community Plans to identify typical or desirable design elements that  
10 maintain or promote the community’s desired image. Adopt County-wide standards that allow  
11 the flexibility to address specific design needs for individual communities in Lyon County.” In  
12 Silver City, this means maintaining the historic character of development in the Town Site,  
13 continuing the architectural standards within the Comstock Historic District, retaining or  
14 restoring existing historic structures, and limiting new development to those proposals that fit  
15 with the historic image of Silver City.

16           d.     Goal CC-3: Heritage (under Community Character and Design, Chapter 5).  
17 “Historic places, structures, and landmarks in the county will be preserved and will provide an  
18 opportunity for residents and visitors to learn about and celebrate our heritage.”

19           e.     Policy CC-3.1: “Maintain and restore historic resources. Lyon County will  
20 encourage and support efforts to preserve and restore registered historic structures, and  
21 landmarks, and districts. Strategies: Revise zoning to encourage historic use and development  
22 patterns including mixed-use structures and districts. Within historic districts, promote historic  
23 design elements, features, and context, and prohibit building design that compromises the  
24 integrity of the historic community character. Within historic districts, limit new land uses that  
25  
26  
27  
28

1 would pose a risk to historic structures or the historic character of the district. Promote the  
2 preservation of historic landscape features to maintain historic settings and the integrity of  
3 historic resources within historic districts.”

4 f. Goal NR 9: Mining and Resource Extraction (under Natural Resources and  
5 Environment, Chapter 6). Lyon County will promote the continued development of mineral and  
6 aggregate resources while working to prevent and reduce conflict between mining and other  
7 resource extraction activities and residential, commercial and industrial development.

8 g. Policy NR-9.3: Mitigate Operations. “To the extent possible, Lyon County  
9 will require resource extraction projects to mitigate adverse operational impacts on such items  
10 as public infrastructure, traffic, agricultural operations, residential and commercial land uses,  
11 the visual character of the area, etc.” Silver City is an existing community with residential,  
12 commercial and industrial areas that would be adversely affected by the mining activities  
13 envisioned by CMI there were similar to the impacts anticipated for the proposed Nevex mine  
14 in 1986.

15 h. Goal CP-1: Support Diversity. “Lyon County will celebrate and support  
16 the diversity of character among communities in the county.”

17 i. Policy CP-1.1: Recognize Diversity of Communities. Lyon County  
18 planning efforts and regulations will consider the unique aspects of communities in the county,  
19 and will allow for variation and exceptions to address key aspects of their diversity.”

20 j. Goal CP-3: Community Plans. “Lyon County will support community-  
21 based planning efforts that elaborate community-specific goals that are developed with strong  
22 public consensus.”

23 36. The communities within the Comstock Historic District, including Silver City, are  
24 the oldest in Lyon County, representing a unique aspect of historic development within the  
25

1 County. Embracing the historic character of Silver City and supporting planning actions and  
2 designations that are consistent with Silver City's heritage is consistent with the intent of this  
3 Goal. It is anticipated that the Community Plan process will begin soon for Silver City, which  
4 is identified as one of eight existing, established communities in Lyon County for which a  
5 Community Plan is required under the Comprehensive Master Plan. Because the Community  
6 Plan is intended to tier off the Comprehensive Master Plan, maintaining the Master Plan  
7 decisions for Silver City is critical to the continuity and consistency of this process.

9 37. As with prior land use plans in Lyon County, the 2010 Comprehensive Master  
10 Plan embraced the historic nature and slow pace of development in Silver City, acknowledging  
11 that: "Over the past 30 years residential infill and limited commercial endeavors have occurred  
12 on existing historic properties in Silver City. The pace of development has been slow for a  
13 variety of reasons, including challenging topography, limited water and sewer infrastructure,  
14 and an array of patented and unpatented mining claims."

16 38. The 2010 Comprehensive Master Plan also states "Silver City has a strong sense of  
17 identity and prides itself on its cohesive small town atmosphere. The community treasures its  
18 historic buildings and landscape features, as evidenced by the preservation and rehabilitation of  
19 many original structures. New construction is regulated for exterior architectural features by the  
20 Comstock Historic District Commission."

22 39. The 2010 Comprehensive Master Plan establishes the entire area within the Silver  
23 City Community Boundary as an Historic Character District, defined as follows: "Historic  
24 Districts include those areas in and around lands included in the Comstock Historic District and  
25 Silver City or other future historic designations to preserve existing historic character or to  
26 promote 'historic' architectural design elements. Tools might include mixed-use, design  
27 guidelines and conservation easements."

1           40.     The lands within the Community Boundary for Silver City will also be the subject  
2 of a Community Plan for Silver City. The lands owned by CMI that are proposed for the  
3 Master Plan Amendment and Zoning Map Change are all included within the Community  
4 Boundary. Therefore, all of the Comstock Mining lands included in its application are within  
5 the Historic Character District.

6  
7           41.     In addition to the Character Districts, the Land Use Plan Map for Silver City  
8 establishes Land Use Categories. In keeping with the historical pattern of planning and zoning  
9 for Silver City, the lands proposed for Master Plan Amendment and Zoning Map Change are  
10 generally divided between a Suburban Residential designation within the Town Site boundary,  
11 and a Resource designation outside that boundary.

12           42.     CMI proposes to change this Suburban Residential designation within the Silver  
13 City Town Site to Rural Residential which typically includes zoning such as RR-3 and RR-5  
14 where mining could be allowed under a Special Use Permit. Rural Residential planning and  
15 zoning (except RR-1) have never been included within the Silver City.

16  
17           43.     CMI's owns or controls over 6,000 acres of land outside of Silver City in the  
18 Comstock, a significant portion of which are classified as appropriate for mining.

19           44.     Prior to adoption of the 2010 Comprehensive Master Plan Defendant CMI,  
20 objected to the proposed land use designations for their property within Silver City – which they  
21 desired to mine. Lyon County rejected CMI's request.

22  
23       **C.   Public Reliance on Stable Silver City Master Planning**

24           45.     Over the years, Nevada citizens purchased/and or invested in property and  
25 businesses within and around Silver City as a result of, and in reliance on, these public,  
26 deliberate and consistent land use decisions.



1           46.     For example, after Lyon County 1971 Master Plan, Chris and Bonnie Brown  
2 purchased land and built their home in 1977. As described above, Gayle Sherman moved a  
3 house to her Silver City lot and in 1984 undertook an extensive remodel. In 1985, Darlene and  
4 John Cobbey purchased a lot on Main Street, Silver City, with historic structures and made  
5 extensive restorations and renovations of them.

6  
7           47.     After Lyon County BOC denied Nevex Gold's application to change the Silver  
8 City land use to allow mining, citizen investment continued. In 1987 Karen Kreyeski purchased  
9 her home on Vivian Street and under took a major remodel including the addition of a master  
10 suite, detached garage and utility room. In 1990, Dan and Janet Rose purchased land on Vivian  
11 Street and built a house thereon shortly after.

12           48.     In 1992, after Lyon County adopted the revised Master Plan in 1990, Deborah  
13 Nicholson purchased her home on Buckeye Street in Silver City as did Wil and Carol Godwin  
14 in 1999 on Dayton Toll Road. In 2001, Gayle Sherman repurchased her home on Grant Street  
15 and Jeff Nicholson and Jean Legassick purchased their house on 2<sup>nd</sup> Street.

16  
17           49.     In 2002, Lyon County confirmed the land use for Silver City in the West Central  
18 Lyon County Master Plan and Jack and Lorraine Richmond purchased their on The Golden  
19 Road. In 2004 Suzanne Cassidy purchased her historic home on Main Street as did Allison  
20 Woodman and Allen Jackson. In 2006, Chad and Judi Olsen purchased land and built their  
21 home. In 2007, Cyndy Etchegoin purchased her home and Joe and Ann McCarthy built their  
22 home on land acquired from 2003 to 2007.

23  
24           50.     As residents bought and invested in Silver City, the community grew as well. In  
25 the late 1960's in Silver City began a slow change from the old to the new as an influx of young  
26 people bought land in what was truly a ghost town. The few remaining mining widows were  
27 respectfully integrated into the newcomer's enthusiasm and interests. The Fire Department  
28

1 was revitalized as was the town advisory council. Houses were restored and newly built,  
2 children were born and families established. In this rebirth of Silver City, the blending of the  
3 old-timers and the newcomers resulted in a refreshing freedom of expression and robust  
4 community involvement. The Silver City Schoolhouse became the Silver City Community  
5 Center, the heart of a unique town life that values individual independence and treasures the  
6 collective act of building a community from the bones of the past.  
7

8 51. In the 1980's and the 1990's more homes were built as more newcomers (this time  
9 artists, teachers and archeologists) found the charms of small town life attractive. When the  
10 Silver City Community Center burned to the ground in 2003, the community rallied around the  
11 restoration and rebuilding of the center, donating thousands of hours to reclaim artifacts, restore  
12 the building and navigate political obstacles that impeded the historically accurate rebuild of the  
13 center. With stubborn perseverance, the Silver City Community Center was lovingly and  
14 carefully rebuilt and the community became stronger for it. It is now a place reserved for  
15 spirited local governance, fellowship and fun and is the physical embodiment of Silver City's  
16 journey from ghost town to thriving community.  
17

#### 18 **D. Advent of CMI's Unprecedented Money Influence in the Comstock**

19 52. Since its recent entry into the Comstock, CMI has sought to purchase influence in  
20 a variety of ways, initiated in Storey County and then perfected in Lyon County. In Storey  
21 County where it needed various special land use permits, CMI contributed to County  
22 Commissioner election campaigns and hired the father of the sole planner employed by Storey  
23 County.  
24

25 53. Once it had received the approvals it needed in Storey County, CMI turned its  
26 attention to Lyon County as it needed to change the Silver City land use designations in order to  
27 mine on that portion of its ownership in Lyon County.  
28

1           54.     In December 2010, when it adopted the 2010 Master Plan and ignored CMI's first  
2 reclassification request, the Lyon County BOC consisted of Chairman Joe Mortenson, Vice-  
3 chair Chuck Roberts, and Commissioners Phyliss Hunewill, Ray Fierro and Larry McPherson.  
4 Vice-chair Chuck Roberts represented District I, which includes Silver City. Commissioner  
5 Roberts made clear that he favored maintaining the longstanding land use designations in Silver  
6 City. As a result of the 2010 election, Vida Keller replaced Commissioner Larry McPherson.  
7

8           55.     In order to gain the vote of the District I Commissioner, CMI needed to replace  
9 Vice Chair Roberts. Vice chair Roberts came up for reelection in 2012.

10          56.     In the 2012 election, CMI threw its huge corporate and unprecedented support  
11 behind Bob Hastings, the challenger to Commissioner Roberts.

12          57.     CMI and its related companies contributed \$17,500 in cash to Bob Hastings to  
13 insure his election. CMI's cash contributions were approximately 60 percent Mr. Hastings'  
14 cash contributions that year.  
15

16          58.     CMI's cash contributions to Mr. Hastings election campaign in 2012 were  
17 unprecedented in scale. According to Nevada Secretary of State records, CMI's cash  
18 contribution to Bob Hastings dwarfed all prior contributions to any candidate from a single  
19 interest by 350 percent.  
20

21          59.     CMI cash contribution to Bob Hastings was more than any other Lyon County  
22 BOC candidate has ever raised in **total** contributions (cash and in kind) in any other BOC  
23 election. The average Lyon County BOC candidate since 2008 has raised \$7,379 in these other  
24 races according to reports posted by the Nevada Secretary of States. CMI's \$17,500  
25 contribution more than doubled this average campaign fund raising.  
26  
27  
28

1           60.     CMI's contribution to Bob Hastings equaled the total amount of cash contributions  
2 raised by Vice-chair Roberts during the 2012 District I race. Without CMI's cash contributions,  
3 Mr. Roberts would have outraised Mr. Hastings in all contributions by \$25,716 to \$12,059.

4           61.     Plaintiffs/Petitioners are informed and believe that CMI also contributed to Mr.  
5 Hastings' campaign significantly in other ways. During the 2012 campaign, CMI held  
6 "Community Open Houses" within Mr. Hastings' election district, and provided free food,  
7 drinks and music. At these "Open Houses," CMI, Plaintiffs/Petitioners are informed and  
8 believe, introduced Mr. Hastings, allowed him to speak and promote his election.  
9

10          62.     In the November 2012 election, Bob Hastings defeated Mr. Roberts in the election  
11 for District I Commissioner.

12          63.     After CMI's overwhelming support for Commissioner Hastings and in opposition  
13 to a perceived opponent provided the following blunt message to the other BOC members: if  
14 CMI perceives a commissioner as unfriendly to its position, CMI will fund an opponent who is  
15 friendly.  
16

17          64.     CMI also makes strategic hiring decisions of those related to important decision  
18 makers, as it did in Storey County.

19          65.     In Lyon County, CMI hired either Keller Rebuilders (owned by Commissioner  
20 Keller and her husband) or Commissioner Keller's husband directly to work CMI owned or  
21 controlled buildings and structures in the Comstock. CMI thereafter created a foundation,  
22 apparently only supported by CMI contributions, and hired either Keller Rebuilders or  
23 Commissioner Keller's husband to continue work on CMI owned or controlled buildings and  
24 structures in the Comstock. Commissioner Keller's husband is currently working for CMI's  
25 foundation on a one year contract. This contract began in the Spring of 2013 and is therefore  
26  
27  
28

1 due to expire in the Spring of 2014. When Commissioner Keller considered CMI's 2013  
2 Application, her husband's employment contract was due to expire shortly thereafter.

3 66. According to her Nevada Financial Disclosure Forms, in 2013 and 2014 Ms.  
4 Keller received income from only four sources: Lyon County (\$26,136 annually), Priceless  
5 Realty Inc., Keller Rebuilders/Consulting, and Lakeview Plaza LLC. Plaintiffs/Petitioners are  
6 informed and believe that Commissioner Keller and her husband owe Lyon County over \$8,000  
7 in real property taxes.  
8

9 67. Plaintiffs/Petitioners are concerned that if Commissioner Keller and her husband  
10 sole source of income outside of their contracts with CMI is Commissioner Keller's Lyon  
11 County salary, Ms. Keller's possess a powerful incentive to maintain good relations with CMI  
12 and improve CMI's business opportunities.  
13

14 68. CMI also employed Commissioner Hasting's wife in relation to certain events it  
15 put on.

16 69. CMI also hired Commissioner Hasting's daughter's boyfriend as an equipment  
17 operator.

18 70. In addition to directly hiring family members, CMI contributes to causes favored  
19 by Commissioners. For example, Commissioner Hastings has stated, "Comstock Mining has  
20 worked with me to help support several charities, including the Mason Valley Boys & Girls  
21 Clubs - Dayton Units."  
22

23 **E. With Influence In Place, CMI Applies to Change Silver City Land Uses Designations**

24 71. In August 2013, CMI applied to Lyon County to change the land use designations  
25 and zoning within Silver City from more urban to more rural which would allow industrial uses,  
26 such as mining, which heretofore had been prohibited.  
27  
28

1       72.     CMI, a mining company, filed its 2013 Application in order to mine the property,  
2     stating the application was for "the purpose of pursuing continued mineral exploration,  
3     development and the economic mining potential of the subject property."

4       73.     CMI's 2013 Application was, for all intents and purposes, the same application for  
5     land use designation changes filed by Nevex Gold and rejected by Lyon County in 1986.

6       74.     CMI's 2013 Application contained no expert reports and based its request for  
7     zoning change primarily on an assertion that all prior Lyon County land use decisions had been  
8     in error.

9       75.     CMI's 2013 Application failed to specify any change in conditions in Silver City  
10     or Lyon County.

11       76.     CMI's 2013 Application failed to address the express policies in the 2010 Master  
12     Plan that were contrary to CMI's request to locate an industrial use, such as mining, with Silver  
13     City.

14       77.     The citizens of Silver City overwhelmingly oppose CMI's 2013 Application.  
15     Approximately 75 percent of the 146 registered voters in Silver City oppose CMI's 2013  
16     Application and signed a petition to that effect.

17       78.     Lyon County has created a system of town advisory councils to provide input of  
18     the directly affected communities on issues of concern.

19       79.     In September 2013, the Silver City Advisory Council considered CMI's 2013  
20     Application and unanimously voted to recommend that it be denied.

21       **F.   Lyon County Planning Staff and Planning Commission Reject CMI's Application**

22       80.     Upon receipt of CMI's 2013 Application, Lyon County Planning Department staff  
23     began to analyze it and compare it to the policies and guidance contained in the 2010 Master  
24     Plan.

1           81.     In addition, Plaintiffs/Petitioners completed a thorough legal, planning,  
2 environmental, economic and historical evaluation of CMI's 2013 Application.  
3 Plaintiffs/Petitioners submitted their final collated expert report to Lyon County. The final  
4 report established not only consistency of Lyon County's many prior decisions on the same  
5 question, but also inconsistency, and adverse economic, environmental, and social impacts of  
6 CMI's proposed industrial uses within Silver City.  
7

8           82.     Upon an exhaustive review of the CMI's 2013 Application and  
9 Plaintiffs/Petitioners' final report, Lyon County's professional planning staff recommended that  
10 CMI's application be denied, based on the following considerations:

- 11                 a.     Industrial land uses requested by the application were in conflict with  
12 multiple 2010 Master Plan policies.  
13                 b.     No change in conditions has occurred to justify so altering the longstanding  
14 land use designations within Silver City.  
15                 c.     The proposed reduction in density would make needed town infrastructure  
16 improvements less likely.  
17                 d.     As envisioned by the 2010 Master Plan, a land use change of such a  
18 magnitude should be considered, if at all, during the development of the Silver City Community  
19 Plan.  
20

21           83.     Lyon County originally agendized CMI's 2013 Application for October 8, 2013.  
22

23           84.     After CMI received Lyon County planning staff's Staff Report recommending  
24 denial of CMI's 2013 Application, Plaintiffs/Petitioners are informed and believe that CMI  
25 contacted upper level Lyon County management and held a meeting attended by both members  
26 of the Planning Commissioners and BOC and the Lyon County Manager. Lyon County has  
27 never disclosed what was discussed at this meeting.  
28

1           85.     A large number of Silver City residents attended the October 8, 2013 Planning  
2 Commission meeting.

3           86.     After the Planning Commission had already approved its agenda for the day, while  
4 keeping the public at the meeting for more than an hour, CMI and Lyon County staff announced  
5 that they had agreed to seek a continuance to the next Planning Commission meeting in  
6 November. Although CMI and Lyon County both had advance knowledge of their proposed  
7 request, neither party alerted Silver City residents or their representatives of the likely  
8 continuance of the hearing for which residents travelled to Yerington to participate in.

9  
10          87.     November 12, 2013, the Lyon County Planning Commission held a public hearing  
11 on CMI's 2013 Application.

12          88.     During its presentation on its application, CMI provided no expert testimony to  
13 counter or address the evidentiary record created by Plaintiffs/Petitioners and the Lyon County  
14 Planning Department. Instead, CMI presented a totally new presentation, not provided to any  
15 one in advance, regarding exact boundaries of the original Silver City town site. The Planning  
16 Commission chastised CMI for the introduction of last minute information not shared with the  
17 obviously interested parties.

18  
19          89.     Both Commissioner Hastings and Keller attended the November 2013 Planning  
20 Commission during the hearing on CMI's 2013 Application.

21  
22          90.     After hearing hours of public testimony, the Planning Commission adopted the  
23 recommendation of its professional staff and recommended – by a 4 to 1 vote – that the BOC  
24 deny CMI's application.

25          91.     In making its recommendation, the Planning Commission found the following:

26                 “A.     The proposed amendment is not in substantial compliance with, nor  
27 promotes the Master Plan goals, objectives and actions in that it is not in keeping with the  
28



1 majority of applicable guiding principles, goals, policies, strategies and community description  
2 contained in the 2010 Lyon County Comprehensive Master Plan, County-wide Component.

3 B. The proposed amendment would result in land uses which are incompatible  
4 with the actual and planned adjacent land uses, and does not reflect a logical change in land use  
5 in that the amendment would change the planned character and intensity of residential  
6 development and enables the potential development of a land use incompatible with the actual  
7 and planned adjacent and predominant residential land uses.

8 C. The proposed amendment fails to identify or respond to changed conditions  
9 or further studies that have occurred since the Master Plan was adopted by the Board, and the  
10 requested amendment does not represent a more desirable utilization of land.

11 D. The proposed amendment will adversely affect the implementation of the  
12 Master Plan goals, objectives and actions, and will adversely impact the public health, safety or  
13 welfare.

14 E. The proposed amendment does not promote the desired pattern for the  
15 orderly physical growth of the County as set forth for the Silver City community in the  
16 2010 Lyon County Comprehensive Master Plan, County-wide Component.

17 F. The existing Comprehensive Master Plan and/or any related element  
18 thereof is not in need of the proposed amendment.

19 G. The proposed amendment is not compatible with the surrounding area, and  
20 the goals and policies of the Comprehensive Master Plan, particularly those related to Silver  
21 City.

22 H. The proposed amendment will have effects on service provision, including  
23 adequacy or availability of facilities and services, and is not compatible with existing and  
24 planned service provision.

1 I. Deviation from the strict adherence to the Comprehensive Master Plan  
2 would result in a situation neither intended nor in keeping with other key elements and policies  
3 of the Plan.

4 J. The proposed Plan amendment will not promote the public welfare and will  
5 be inconsistent with the goals and policies of the Comprehensive Master Plan and the elements  
6 thereof, and

7  
8 K. The burden of proof has not been met by the applicant in their application  
9 to warrant a change in the Master Plan at this time.”

10 92. The Planning Commission’s findings mirrored the BOC’s 1986 findings on the  
11 similar Nevex Gold Master Plan amendment application.

12 93. For at least the last two years, the Lyon County BOC has upheld every positive  
13 recommendation of the Lyon County Planning Commission.

14  
15 **G. Without Explanation, Lyon County BOC Reverses its Own Prior Findings, its**  
16 **Professional Staff and Planning Commission Recommendations and Approves CMI’s**  
17 **Application**

18 94. Lyon County agendized CMI’s 2013 Application to be heard by the BOC at its  
19 January 2, 2014 meeting.

20 95. At the beginning of the January 2, 2014 meeting, Commissioner Keller announced  
21 she had a new action for consideration by the BOC. Commissioner Keller indicated she had  
22 contacted BOC members and CMI to discuss her proposal. Although Commissioner Keller  
23 characterized the new proposal as a “compromise” offered on behalf of the Silver City  
24 residents, she never contacted any representative of the Silver City Town Board or concerned  
25 residents to discuss the new alternative.  
26  
27  
28

1           96.     On January 1, 2014, Commissioner Keller and her husband, a CMI employee, met  
2 privately with BOC Chair Joe Mortensen and the Lyon County Manager. Plaintiffs/Petitioners  
3 are informed and believe that Commissioner Keller, her husband, Commissioner Mortensen and  
4 the County Manager then met with CMI's CEO and its consultant. Despite meeting the day  
5 before with CMI's CEO and its consultant, Commissioner Keller informed the public during the  
6 January 2 meeting that she had only been working with CMI's consultant.  
7

8           97.     Commissioner Keller has had extensive contacts with CMI. Commissioner Keller  
9 refused to meet with representatives of Silver City despite repeated invitations.

10          98.     Even though they had advance knowledge of the new proposal, no BOC member  
11 or Lyon County staff contacted Silver City residents or their known representatives to either  
12 discuss the proposal or provide any notice of the intent to introduce it during the January 2,  
13 2014 hearing.  
14

15          99.     Commissioner's Keller's new proposed action substantially modified the  
16 boundaries of the proposed area for land use designation changes. Commissioner Keller's new  
17 action represents a substantial, and heretofore undisclosed amendment to CMI's 2013  
18 Application.  
19

20          100.    CMI's 2013 Application proposed to change land use designations for their  
21 ownership within Silver City. The proposed change in land use and zoning designation would  
22 permit CMI to pursue further permits for a range of new using including industrial type uses  
23 such a mining, feed lots, etc. Some of these uses were classified as "allowed," which means  
24 that CMI could pursue themwith an ordinary permit application. Other of the new uses, such  
25 as the industrial one including mining, could only be pursued after obtaining a "special" use  
26 permit.  
27  
28

1           101. When Lyon County's professional planning staff assessed the appropriateness of  
2 CMI's application, it analyzed the full range of potential uses, including special uses such as  
3 mining, that could occur under the proposed land use changes.

4           102. In direct contravention to their professional planning staff analysis and the BOC's  
5 many prior considerations of the same basic planning decision such as the 1986 Nevex Gold  
6 application, BOC members in favor of the application determined that they could only consider  
7 the allowed uses during their discussion of CMI's 2013 Application. These members  
8 determined that they could not consider the potential impacts of special uses, such as mining  
9 and other industrial uses, at this stage in the land use planning determination.

11           103. During the January 2, 2014 hearing, CMI presented no expert testimony to  
12 counter the factual record regarding the adverse impacts of its 2013 Application. The record is  
13 devoid of any evidence of actual benefits to the public resulting from the 2013 Application.  
14 The record is also devoid of any changed circumstances in Silver City or its environs to justify  
15 a change in Lyon County's long-standing and consistent land use policies for Silver City.

17           104. After public comment, the BOC held an abbreviated discussion consistent with  
18 their constrained view of the allowable impacts to consider and voted, 4 to 1 to overturn the  
19 Silver City Advisory Council, its professional planning staff recommendation, and the  
20 recommendation of its Planning Commission, and grant Commissioner Keller's new amended  
21 CMI 2013 Application.

23           105. The findings made by the BOC on January 2, 2014 to approve the revised CMI  
24 application are legally and factually inconsistent with the Lyon County BOC's prior decisions  
25 approving the 1971 Master Plan, the 1986 denial of the same application by Nevex Gold,  
26 approving the 1990 Lyon County Master Plan, approving the 2002 Lyon County West Central  
27 Master Plan and the 2010 Lyon County Comprehensive Master Plan.

1           106. The Lyon County BOC did not refer the amended 2013 Application for a Master  
2 Plan amendment to its Planning Commission for a report prior to taking action on the  
3 application.

4           107. Instead, Lyon County BOC referred the amended Master Plan amendment to the  
5 Planning Commission for a report **after** the BOC approved the amendment.  
6

7       **H. Adverse Effects of BOC's Action on Silver City Residents**

8           108. CRA members, who include many Silver City residents, and Gayle Sherman and  
9 Joe McCarthy will be adversely affected by the BOC's approval of the CMI's revised 2013 in  
10 the following ways:

11               a. Plaintiffs/Petitioners did not receive prior notice and an opportunity to  
12 prepare for the actual application acted on by the BOC on January 2, 2014.

13               b. Plaintiffs/Petitioners were excluded from communications between BOC  
14 members that would otherwise have been public.  
15

16               c. CMI's existing mineral exploration in Silver City and surface mining in  
17 the adjacent Lucerne Pit. CMI's past and present exploration and mining activities cause  
18 degraded visual conditions, loud industrial noises within a quiet residential area, dust and dirt  
19 on roads and in the air, and increased traffic on nearby roads including trucks and other  
20 industrial equipment. The change in land use designations and zoning from prohibiting  
21 industrial uses such as mining in Silver City will likely cause these present adverse effects to  
22 increase.  
23

24               d. The change in land use designations and zoning from prohibiting  
25 industrial uses such as mining to allowing it under a special use permit will reduce the value of  
26 Plaintiffs/Petitioners' property.  
27  
28

1 e. Surface mining, made possible by the change in land use will exacerbate  
2 and accelerate the destruction of the CHD. Road building, cuts and fills, trenching, drill pads,  
3 and subsequent associated surface mining activities, as noted by the National Park Surface  
4 individually and cumulatively degrade the unique character of the CHD. In addition, the noise  
5 associated with the proposed activities will substantially alter the character of the CHD. As  
6 CRA members have testified, the construction, drilling and other activities associated with  
7 CMI's past and current mineral exploration and mining have significantly altered the aural  
8 landscape in the CHD and efforts to attenuate have proven unsuccessful.

10 f. Mining operations can generate dust from mining and mineral processing  
11 operations and associated truck traffic, releasing particulates, nitrous oxide, sulfur dioxide, and  
12 carbon monoxide from the equipment used to mine and process ore minerals. These emissions  
13 can generate smog and other forms of air pollution that may impact local air quality. Mine  
14 sites can also have increased concentrations of specific metals and salts in water used in – or  
15 runoff from – mine sites. Acid mine drainage is a phenomenon that can occur when rock  
16 containing sulfides is exposed to air and water. The water can become acidic and often carries  
17 elevated levels of toxic metals. Acid mine drainage occurs most frequently in association with  
18 metals mines [such as gold and silver mines] and can affect water quality. Pit lakes, another  
19 water quality concern during and after mine closure, are created when mining is completed in a  
20 pit and dewatering pumps are turned off, allowing groundwater to flow back into the pit.  
21 Similar concerns about the acidity and concentration of heavy metals in these water bodies  
22 arise in association with metals mines. Changes in water quality and quantity can affect not  
23 only human health but also wildlife habitat and ecosystem health. Environmental impact  
24 assessment processes often intensively focus on bio-diversity issues in Nevada, and as a  
25  
26  
27  
28

1 consequence, operating plans require significant dedication to design of mitigation and  
2 management efforts.

3 g. The change in land use to rural versus urban densities will it more difficult  
4 for infrastructure improvement for Silver City that would improve the citizens' quality of life.

5 **I. Timely Commencement of this Action**

6 109. On January 8, 2014, the Office Manager to the Lyon County Commissioners and  
7 County Manager distributed to CMI and a Silver City Town Advisory Board member an email  
8 with the subject line "Planning Final Action 01/02/2014." The email attached letters dated  
9 January 7, 2014 that describes the BOC's final action granting Commissioner Keller's revised  
10 CMI 2013 Application. While no evidence exists that this notice of final action has been filed  
11 with the Clerk of the Lyon County or another entity identified by Lyon County as clerk to the  
12 BOC, Lyon County contends that "the date of the email, January 8, 2014, [is] the filing date  
13 with the clerk's office" sufficient to trigger the NRS 278.0235 25-day limitation period.  
14

15 110. Plaintiffs/Petitioners file this action within 25 days of Lyon County's January 8,  
16 2014 notice of final action.  
17

18 **FIRST CAUSE OF ACTION**

19 **(Violations of Nevada Open Meeting Law)**

20 111. Plaintiffs/Petitioners re-allege and incorporate by reference Paragraphs 1 through  
21 110 inclusive, of this Complaint/Petition, as if fully set forth below.  
22

23 112. Nevada's Open Meeting Law, NRS Chapter X, requires that Lyon County BOC  
24 give proper notice of what it will consider taking action at each meeting.

25 113. Nevada Open Meeting Law also outlaws BOC members from deliberating outside  
26 of noticed public meetings.

27 114. Lyon County BOC violated both Nevada Open Meeting requirements by failing to  
28 agendize the action actually taken and deliberating on the action outside of a public hearing.

115. Since Lyon County BOC approval of Commissioner Keller's proposal violated Nevada's Open Meeting Law, it is void.

116. A real, live and present controversy exists between Plaintiffs/Petitioners and Defendants/Respondents.

## SECOND CAUSE OF ACTION

**(Denial of Due Process)**

117. Plaintiffs/Petitioners re-allege and incorporate by reference, Paragraphs 1 through 116 of this Complaint, as if fully set forth below.

118. The Due Process Clause of the United States and Nevada Constitutions, as well as Nevada Ethics in Government Act, guarantee citizens that decisions made by government officials shall be free from undue influence. These laws provide that where a reasonable person would perceive a conflict of interest on the part of government official when he or she considers a matter, the government official must recuse himself or herself from consideration of that matter.

119. Commissioner Keller received income from CMI before and during her consideration of that company's application to expand its mining opportunities and thereby expand resources available to continue to hire Commissioner Keller's husband.

120. Commissioner Keller's receipt of money from CMI in this instance disqualifies her from participating in the consideration of CMI's 2013 Application.

121. CMI's unprecedented and outsized cash contributions to Commissioner Hastings's election campaign, as well as CMI's employment of Commissioner Hastings' wife and daughter's boyfriend and CMI's contributions to Commissioner Hastings' preferred charities, also poses a perceived or actual conflict of interest and disqualifies him from participating in the consideration of CMI's 2013 Application.

122. Plaintiffs/Petitioners' due process rights were therefore violated by the participation of Commissioners Keller and Hastings during consideration of CMI's 2013 Application.



1 **THIRD CAUSE OF ACTION**

2 **(Abuse of Discretion)**

3 123. Plaintiffs/Petitioners re-allege and incorporate by reference Paragraphs 1 through  
4 122 inclusive, of this Complaint/Petition, as if fully set forth below.

5 124. Pursuant to the Nevada Revised Statutes, Lyon County possesses the authority to  
6 control land uses within its boundaries. The Nevada Legislature empowered counties to  
7 regulate land uses for the public health, convenience, safety and welfare and promotion of the  
8 general good of its communities through NRS Chapter 278.

9 125. On each and every of the five separate occasions in which it addressed the exact  
10 same land use designation question (the most recent being in 2010), the Lyon County BOC  
11 found that the appropriate land use designation for the CMI's parcels in Silver City was urban  
12 and not industrial. In 1986, Lyon County BOC expressly found that the land use designations  
13 request by CMI in its 2013 Application were contrary to the good of the community and  
14 contrary to the 2010 Comprehensive Master Plan.

15 126. Since 2010, no changes in circumstances have occurred to justify a change in land  
16 use designations.

17 127. The revised CMI 2013 Application substantially conflicted with the adopted 2010  
18 Comprehensive Master Plan.

19 128. The record before the Lyon County BOC fails to contain the evidence necessary  
20 to support the findings made by the BOC on January 2, 2014, that directly contradicted the  
21 findings made by the BOC on the five prior times it addresses the same question.

22 129. The Lyon County BOC abused its discretion when it refused to consider the full  
23 range of uses contemplated CMI's 2013 Application.

24 130. Spot zoning is "zoning with disregard for the welfare of the whole community, for  
25 the benefit of a few or in violation of a comprehensive plan." *Save a Valuable Environment v.*  
26 *City of Bothel*, 576 P.2d 401, 405 (Wash. 1978). Such zoning is arbitrary and capricious, as it  
27 disregards the emphasis upon consistency of rezoning with existing land uses. Lyon County  
28

1 BOC's action approving CMI's amended 2013 Application constitutes illegal spot zoning as it  
2 disregards the welfare of the whole community to the benefit of a mining company.

3 131. Lyon County BOC's action approving CMI's amended 2013 Application was  
4 therefore contrary to law.

5 **FOURTH CAUSE OF ACTION**

6 **(Violation of NRS 278.220)**

7 132. Plaintiffs/Petitioners re-allege and incorporate by reference Paragraphs 1 through  
8 131 inclusive, of this Complaint/Petition, as if fully set forth below.

9 133. NRS 278.220(4) mandates that "[n]o change in or addition to the master plan or  
10 any part thereof, as adopted by the planning commission, made be made by the governing board  
11 in adopting the same until the proposed change or addition has been referred to the planning  
12 commission for a report thereon . . . ."

13 134. When the Lyon County BOC revised and then adopted CMI's Application it made  
14 a change and/or an addition to the master plan that had not been heard by the Planning  
15 Commission.

16 135. Instead, the Lyon County BOC first acted upon the changed/added proposed  
17 Master Plan amendment and then referred the amendment to the Planning Commission for a  
18 *post hoc* report.

19 136. Lyon County BOC therefore violated NRS 278.220(4).

20 **REQUEST FOR RELIEF**

21 WHEREFORE, as a result of the approval of the revised CMI 2013 Application,  
22 Plaintiffs/Petitioners request judgment in their favor as follows:

23 1. That the Court declare that Lyon County BOC violated the Nevada Open Meeting  
24 Law;

25 2. That the Court declare that Lyon County BOC denied Plaintiffs/Petitioners their  
26 due process rights;

27 3. That the Court declare that Lyon County BOC abused its discretion and/or acted  
28 contrary to law;

1           4.       That the Court declare that Lyon County BOC violated NRS 278.220 by failing to  
2 refer the revised proposed Master Plan amendment to its Planning Commission prior to  
3 adopting it;

4           5.       That the Court mandate that the adoption by Lyon County BOC of the revised  
5 2013 Application is null and void.

6           6.       That this Court issue an injunction enforcing the declarations issued above;

7           7.       For Plaintiffs/Petitioners costs associated with this action;

8           8.       To the extent permitted by law, for an award of reasonable attorneys' fees; and,

9           9.       For such other and further relief as the Court may deem just and proper.

10 Dated: January 31, 2014.

11                   Respectfully submitted,

12  
13 By 

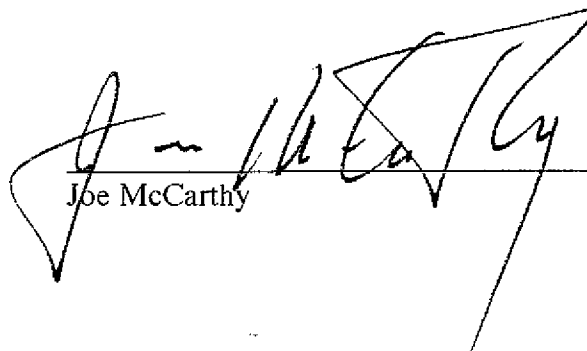
14                   John L. Marshall, SBN 6733  
15                   570 Marsh Avenue  
16                   Reno, NV 89509  
17                   775.303.4882

18                   Attorney for Plaintiffs/Petitioners CRA, Gayle  
19                   Sherman, Joe McCarthy  
20  
21  
22  
23  
24  
25  
26  
27  
28

**AFFIDAVIT/VERIFICATION**

I, Joe McCarthy, a member of the Board of Directors of Plaintiff CRA and a named Plaintiff/Petitioner, have read the foregoing Complaint/Petition and know the contents thereof; that the contents thereof were prepared with the assistance and advice of counsel for CRA. The contents of the Complaint, subject to inadvertent or undiscovered errors, are based upon and therefore limited by the records and information still in existence, presently recollected and thus far discovered in the course of preparation of this Complaint, are true to the best of my knowledge, information and belief. I reserve the right to make any changes in the contents of this Complaint if it appears at any time that omissions or errors have been made or that more accurate information becomes available.

Dated: January 31, 2014.



Joe McCarthy

# EXHIBIT 2

E  
X  
H  
I  
B  
I  
T  
  
2

E  
X  
H  
I  
B  
I  
T  
  
2

# EXHIBIT 2

1 Case No. 14-CV-00128

2 Dept. No. Senior Judge

3 The undersigned hereby affirms this  
4 document does not contain a social security  
number.



5  
6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7  
8 IN AND FOR THE COUNTY OF LYON

9 COMSTOCK RESIDENTS ASSOCIATION,  
10 GAYLE SHERMAN, JOE McCARTHY,

11 Plaintiffs/Petitioners,

12 vs.

13 LYON COUNTY BOARD OF  
14 COMMISSIONERS; COMSTOCK MINING  
INCORPORATED,

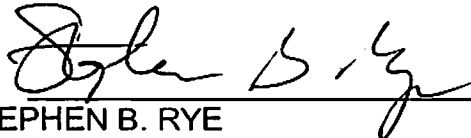
15 Defendants/Respondents,

16 **NOTICE OF ENTRY OF ORDER**

17 Please take notice that the Court entered its Order Granting in Part and Denying in Part  
18 Motion to Dismiss on December 3, 2014. A copy of the Order is attached hereto.

19 DATED this 5 day of December, 2014.

20 ROBERT L. AUER  
21 DISTRICT ATTORNEY

22  
23 By:   
24 STEPHEN B. RYE  
25 CHIEF DEPUTY DISTRICT ATTORNEY  
26 31 South Main Street  
27 Yerington, NV 89447  
28 775-463-6511

Attorney for Respondent/Defendant  
Lyon County Board of Commissioners


Certificate of Service

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 5<sup>th</sup> day of December, 2014, a copy of the foregoing Notice of Entry of Order and Order was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative Offices, addressed to:

John L. Marshall, Esq.  
570 Marsh Ave.  
Reno, NV 89509

James R. Cavilia, Esq.  
Allison, MacKenzie, Pavlakis  
Wright & Fagan, Ltd.  
402 N. Division Street  
Carson City, NV 89703

Dated this 5<sup>th</sup> day of December, 2014.

  
\_\_\_\_\_  
Employee

1 Case No. 14-CV-00128

2 Dept. No. II

2014 DEC -3 PM 12:28

THIRDA DISTRICT  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT  
DeAnn Peoples  
DEPUTY

3  
4  
5  
6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF LYON

8  
9 COMSTOCK RESIDENTS ASSOCIATION,  
GAYLE SHERMAN, JOE McCARTHY,

10 Plaintiffs/Petitioners,

11 vs.

12 LYON COUNTY BOARD OF  
13 COMMISSIONERS; COMSTOCK MINING  
INCORPORATED,

14 Defendants/Respondents,

15  
16 **ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS**

17 Comstock Residents Association, Plaintiff/Petitioner herein, ("CRA") filed a Complaint  
18 for Injunctive and Declaratory Relief/Petition for Judicial Review. The Complaint included  
19 four causes of action: (1) Violations of Nevada Open Meeting Law; (2) Denial of Due  
20 Process; (3) Abuse of Discretion; (4) Violation of NRS 278.220. Comstock Mining, Inc.  
21 ("CMI") filed its Answer on March 28, 2014. Lyon County filed its Answer on March 27,  
22 2014. On June 10, 2014, Lyon County filed a Motion to Dismiss or in the alternative Motion  
23 for Summary Judgment, requesting that the Court dismiss the first, second and fourth  
24 causes of action. CMI filed a joinder in the Motion on June 13, 2014. CRA filed its  
25 Opposition to the Motion on July 3, 2014. Lyon County filed its Reply on July 29, 2014.

26 This matter came before this Court for hearing on September 10, 2014. James R.  
27 Cavilia, Esq., and Justin Townsend, Esq., Allison, MacKenzie, Pavlakis, Wright and Fagan,  
28 Ltd., appeared representing CMI. John L. Marshall, Esq. appeared representing CRA.



1 Stephen B. Rye, Lyon County Chief Deputy District Attorney, appeared representing Lyon  
2 County. The Court reviewed the pleading and all documents on file, the applicable law, and  
3 considered the arguments of the parties.

4 On October 23, 2014, the Court held a hearing to issue the ruling on the pending  
5 motions before the Court.

6 Good cause appearing, the Court makes the following findings and Order.

7 **Findings of Fact:**

- 8 1. Citizens have alternative methods to pursue some of the claims in the Complaint.
- 9 2. CRA filed a complaint under the Open Meeting Law alleging essentially: (1) that  
10 the Board of County Commissioners held a meeting or deliberated outside of an  
11 agendized meeting in violation of the Open Meeting law; and, (2) the agenda item  
12 was not specific enough, and the Board took action that was not specified on the  
13 agenda.
- 14 3. CRA alleges in the complaint that two commissioners met on January 1, 2014, in  
15 violation of the Nevada Open Meeting law.
- 16 4. The Complaint does not contain allegations that more than two commissioners  
17 met outside of an agendized meeting. CRA alleges in its Opposition that a third  
18 commissioner met with a representative of the applicant and that representative  
19 was present at the January 1, 2014 meeting.
- 20 5. The complaint and opposition do not include an allegation that supports or  
21 establishes any serial meeting.
- 22 6. CRA filed a cause of action for violation of due process based on a conflict of  
23 interest of two of the County Commissioners. The thrust of the CRA complaint is  
24 that a Commissioner must recuse him or herself when a reasonable person would  
25 perceive a conflict of interest.
- 26 7. CRA alleges that Commissioner Keller received compensation from CMI.
- 27 8. Commissioner Keller stated in the record that she consulted with the Nevada  
28 Commission on Ethics and the Lyon County District Attorney.

1 9. Commissioner Keller disclosed on the record prior to her decision what her  
2 connections were with CMI.

3 10. No person or entity objected at the hearing to Commissioner Keller's participation  
4 in the hearing.

5 11. Representatives of CRA were present at the Planning Commission and County  
6 Commission public hearings on the CMI Applications.

7 12. CRA alleges that campaign contributions to certain board members rose to the  
8 level creating a conflict of interest, and that said members were required to recuse  
9 themselves from the decision.

10 13. CRA filed a cause of action alleging that Lyon County did not follow NRS 278.220  
11 with respect to the CMI Applications.

12 **Conclusions of Law:**

13 1. A motion to dismiss a claim under NRCP 12(b)(5) tests the legal sufficiency of the  
14 claim set out against the moving party and such a motion should be granted if it  
15 appears beyond doubt that the plaintiff is entitled to no relief under any set of  
16 facts that could be proved in support of the claim. Washoe Medical Center, Inc. v.  
17 Reliance Insurance Co., 112 Nev. 494, 915 P.2d 288 (1996).

18 2. The Court must balance the rights granted citizens to challenge acts by the  
19 government with the rights of the governing body and rights of citizens who may  
20 or may not oppose the actions of the government.

21 3. The Board of County Commissioners' meetings are subject to the Nevada Open  
22 Meeting law.

23 4. The allegations in the Complaint together with the factual showing in CRA's  
24 opposition brief for a violation of the Nevada Open Meeting law are factually  
25 deficient to state claim under the Nevada Open Meeting law.

26 5. A meeting is defined as a gathering of a quorum of members of the public body to  
27 deliberate towards a decision. NRS 241.015(2). A quorum is defined as a simple  
28 majority of the members of the board. NRS 241.015(5).

6. The Nevada Open Meeting Law is not intended to inhibit all private discussions of public issues. Dewey v. Redevelopment Agency of City of Reno, 119 Nev. 87, 94-95, 64 P.3d 1070, 1075 (2003) (citing McKay v. Board of Cty. Comm'rs, 103 Nev. 490, 495-96, 746 P.2d 124, 127 (1987)).
7. The Nevada OML prevents or prohibits collective deliberations or actions where a quorum is present. The complaint alleges that only two County Commissioners were present at the specific meeting held January 1, 2014, alleged to be the violation.
8. Serial meetings are also prohibited under the Nevada OML if such serial meetings constitute deliberations. In this case, the complaint and opposition brief do not sufficiently allege a serial meeting or any serial deliberation. The facts alleged in the complaint and opposition brief do not constitute a serial meeting as defined in the Nevada Open Meeting Law or pursuant to the Nevada Supreme Court decision of Del Papa v. Bd. of Regents, 114 Nev. 388, 956 P.2d 770 (1998).
9. The agenda items challenged by CRA for the January 2, 2014, County Commissioner agenda are clear and complete in accordance with NRS 241.020.
10. The action of the Board of Commissioners did not exceed the scope of the clear and complete agenda items. NRS 241.020(2)(c)(1) requires that discussion at a public meeting cannot exceed the scope of a clearly and completely stated agenda topic. Sandoval v. Bd. of Regents of Univ., 119 Nev. 148, 154, 67 P.3d 902, 905 (2003). The Board complied with the applicable provisions of Nevada law with respect to the agenda topics.
11. CRA has not stated a claim under the Nevada Open Meeting Law.
12. The Commissioners made adequate disclosures related to CMI prior to consideration of the agenda items and decision on the CMI Applications. Therefore, the Commissioners were allowed to deliberate on the matter. See NRS 281A.420(1).

- 1 13. A public official who properly discloses the items mentioned in NRS 281A.420(1)  
2 is permitted to deliberate and vote on the matter in question unless the "judgment  
3 of a reasonable person in the public officer's position would be materially affected  
4 by" the disclosed item(s). NRS 281A.420(3).
- 5 14. A public official is presumed not to be materially affected by the gift, loan,  
6 significant pecuniary interest, or commitment to another's interests if the benefit to  
7 the public officer is not greater than that accruing to any other person affected by  
8 the matter in question. NRS 281.420(4).
- 9 15. The complaint does not contain sufficient allegations to support a claim that there  
10 was an actual or perceived conflict of interest requiring that any Board members  
11 recuse themselves from the decision under the relevant standards set forth in  
12 Nevada and federal law.
- 13 16. Nevada law does not require recusal based upon campaign contributions if they  
14 are properly reported. See NRS 281A.420(2)(a); Nevada Attorney General  
15 Opinion 1998-29.
- 16 17. CRA has not stated a claim for violation of due process in the Complaint in file  
17 herein.
- 18 18. The Lyon County Commissioners have ultimate authority to make changes to the  
19 master plan pursuant to NRS Chapter 278 and NRS 278.220. If the County  
20 violates NRS 278.220, the statute provides a remedy. NRS 278.220 states quite  
21 clearly that no change may be made.
- 22 19. NRS 278.220 carries its own remedy in that before that change can be made,  
23 which the court understands that the Board of Commissioners has the ultimate  
24 authority, it still requires a report by the Planning Commission. When the county  
25 makes a change that change may or may not be beneficial and that's the reason  
26 that the Planning Commission or why the statute states that the Planning  
27 Commission must make a report. The Comstock Residents argue that the county  
28

1 put the cart before the horse. The Court agrees. The violation of NRS 278.220 is  
2 not dismissed.


3 Based on the foregoing, and good cause appearing,

4 IT IS HEREBY ORDERED that the Motion to Dismiss with respect to the First Cause  
5 of Action, Nevada Open Meeting Law Violation, is GRANTED, and the First Cause of Action  
6 is DISMISSED with prejudice and without leave to amend.

7 IT IS FURTHER ORDERED that the Second Cause of Action, Due Process, is  
8 GRANTED, and the Second Cause of Action is DISMISSED with prejudice and without  
9 leave to amend.

10 IT IS FINALLY ORDERED that the Motion to Dismiss the Fourth Cause of Action,  
11 NRS 278.220, is DENIED.

12 Dated this 2nd day of December, 2014.

13  
14 :   
15 DISTRICT JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT 3

E  
X  
H  
I  
B  
I  
T  
  
3

E  
X  
H  
I  
B  
I  
T  
  
3

# EXHIBIT 3

1 Case No. 14-CV-00128

2 Dept. No. Senior Judge

3 The undersigned hereby affirms this  
4 document does not contain a social security  
5 number.

FILED

2015 JUN 10 PM 2:01

TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

KATHY THOMAS  
DEPUTY

6  
7 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF LYON

9 COMSTOCK RESIDENTS ASSOCIATION,  
10 GAYLE SHERMAN, JOE McCARTHY,

11 Plaintiffs/Petitioners,

12 vs.

13 LYON COUNTY BOARD OF  
14 COMMISSIONERS; COMSTOCK MINING  
INCORPORATED,

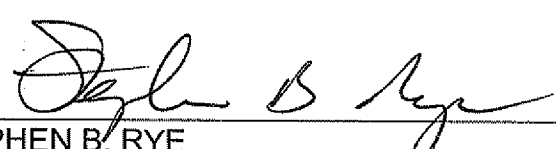
15 Defendants/Respondents,

16 **NOTICE OF ENTRY OF ORDER**

17 Please take notice that the Court entered its Order Granting in Part and Denying in Part  
18 Plaintiffs' Motion to Augment Record on June 5, 2015. A copy of the Order is attached hereto.

19 DATED this 10 day of June, 2015.

20 ROBERT L. AUER  
21 DISTRICT ATTORNEY

22  
23 By:   
24 STEPHEN B. RYE  
25 CHIEF DEPUTY DISTRICT ATTORNEY  
26 31 South Main Street  
27 Yerington, NV 89447  
28 775-463-6511

Attorney for Respondent/Defendant  
Lyon County Board of Commissioners


Certificate of Service

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 10th day of June, 2015, a copy of the foregoing Notice of Entry of Order and Order was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative Offices, addressed to:

John L. Marshall, Esq.  
570 Marsh Ave.  
Reno, NV 89509

James R. Cavilia, Esq.  
Allison, MacKenzie, Pavlakis  
Wright & Fagan, Ltd.  
402 N. Division Street  
Carson City, NV 89703

Dated this 10th day of June, 2015.

  
\_\_\_\_\_  
Employee



1 Case No. 14-CV-00128

2 Dept. No. II

FILED

2015 JUN -5 PM 1:51

TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT  
Tanya Sceirine  
DEPUTY

3  
4  
5  
6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF LYON

8  
9 COMSTOCK RESIDENTS ASSOCIATION,  
GAYLE SHERMAN, JOE McCARTHY,

10 Plaintiffs/Petitioners,

11 vs.

12 LYON COUNTY BOARD OF  
13 COMMISSIONERS; COMSTOCK MINING  
INCORPORATED,

14 Defendants/Respondents,

15  
16 **ORDER GRANTING IN PART AND DENYING IN PART**  
17 **PLAINTIFFS' MOTION TO AUGMENT RECORD**

18 Plaintiffs/Petitioners, Comstock Residents Association, Gayle Sherman, and Joe  
19 McCarthy, (collectively "CRA"), filed a Motion to Augment the Record on December 16,  
20 2014. Defendant/Respondent, Lyon County, and Defendant/Respondent, Comstock  
21 Mining, Inc. ("CMI"), jointly filed an Opposition to the Motion on January 2, 2015. CRA filed  
22 Reply on January 9, 2015.

23 This matter came before the Court for hearing on April 20, 2015. James R. Cavilia,  
24 Esq., and Justin Townsend, Esq., of Allison MacKenzie, Ltd., appeared representing CMI.  
25 Stephen B. Rye, Lyon County District Attorney, appeared representing Lyon County. John  
26 L. Marshall, Esq. appeared representing CRA. The Court reviewed the pleadings and all  
27 documents on file, the applicable law, and considered the arguments of the parties.  
28

1 Good cause appearing, the Court makes the following Findings of Fact, Conclusions  
2 of Law, and Order.

3 **Findings of Fact:**

- 4 1. CRA seeks to augment the record on appeal (the "Record") by adding thereto the  
5 entirety of the 2010 Lyon County Comprehensive Master Plan (the "Master Plan"),  
6 certain emails between Plaintiff/Petitioner Gayle Sherman and Lyon County  
7 Commissioner Vida Keller, and certain letters from John L. Marshall, Esq. to Lyon  
8 County Commissioners Bob Hastings and Vida Keller.
- 9 2. CRA also requests that the Court take judicial notice of the official minutes of the  
10 December 23, 2010 meeting of the Lyon County Board of Commissioners,  
11 portions of election contribution reports for Lyon County Commissioners Bob  
12 Hastings, Vida Keller, and Chuck Roberts, and a May 2, 2014 letter from the Lyon  
13 County District Attorney's Office to John L. Marshall, Esq. concerning a public  
14 records request.
- 15 3. Lyon County and CMI consented to the Court taking judicial notice of the entirety  
16 of the Master Plan, although all relevant portions thereof are already included in  
17 the Record. Lyon County and CMI also stipulated to the addition to the Record of  
18 the emails between Plaintiff/Petitioner Gayle Sherman and Commissioner Keller  
19 and the letters from John L. Marshall, Esq. to Commissioners Hastings and Keller.

20 **Conclusions of Law:**

- 21 1. In judicial review of land use and zoning matters, all that the Court may consider  
22 is the evidence that was available and presented to the governing body when the  
23 final decision was made. City of Reno v. Citizens for Cold Springs, 126 Nev. 27,  
24 236 P.3d 10 (2010); NRS 233B.135(1)(b).
- 25 2. Except for those items to which Lyon County and CMI have consented, the items  
26 CRA seeks to have added to the Record were not part of the Record before the  
27 governing body and may not be considered by the Court in this action.

28 ///

1 Based on the foregoing, and good cause appearing,

2 IT IS HEREBY ORDERED that the Motion is GRANTED as to those items to which  
3 Lyon County and CMI specifically stipulated, which are (a) that the Court take judicial notice  
4 of the entirety of the Master Plan, which is included as Exhibit A to CRA's Motion; (b) that  
5 the Record is augmented to include the emails between Plaintiff/Petitioner Gayle Sherman  
6 and Commissioner Keller, which are included as Exhibit D to CRA's Motion; and (c) the  
7 letters from John L. Marshall, Esq. to Commissioners Hastings and Keller, which are  
8 included as Exhibit F to CRA's Motion.

9 IT IS FURTHER ORDERED that the remaining portions of the Motion are DENIED.

10 Dated this 5th <sup>June</sup> day of ~~May~~, 2015.

11  
12   
13 DISTRICT JUDGE  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT 4

E  
X  
H  
I  
B  
I  
T  
  
4

E  
X  
H  
I  
B  
I  
T  
  
4

# EXHIBIT 4

Office of the District Attorney  
Lyon County, State of Nevada  
801 Overland Loop, Suite 308, Dayton, Nevada 89403 - 31 South Main Street, Yerington, Nevada 89447 - 955 East Main Street, Fernley, Nevada 89404

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. 14-CV-00128

Dept. No. Senior Judge

The undersigned hereby affirms this document does not contain a social security number.

FILED  
2015 JUN 15 PM 2:57  
TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT  
DeAnn Peebles DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

COMSTOCK RESIDENTS ASSOCIATION,  
GAYLE SHERMAN, JOE McCARTHY,

Plaintiffs/Petitioners,

vs.

LYON COUNTY BOARD OF  
COMMISSIONERS; COMSTOCK MINING  
INCORPORATED,

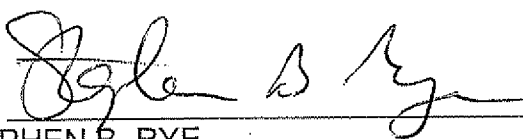
Defendants/Respondents,

NOTICE OF ENTRY OF ORDER

Please take notice that the Court entered its Order Denying Petition for Judicial Review on June 5, 2015. A copy of the Order is attached hereto.

DATED this 15<sup>th</sup> day of June, 2015.

STEPHEN B. RYE  
DISTRICT ATTORNEY

By:   
STEPHEN B. RYE  
DISTRICT ATTORNEY  
31 South Main Street  
Yerington, NV 89447  
775-463-6511

Attorney for Respondent/Defendant  
Lyon County Board of Commissioners

Certificate of Service

The undersigned, an employee of the Lyon County District Attorney, certifies that on the 15th day of June, 2015, a copy of the foregoing Notice of Entry of Order and Order was mailed, postage prepaid, by placing the same in the mail receptacle at Lyon County Administrative Offices, addressed to:

John L. Marshall, Esq.  
570 Marsh Ave.  
Reno, NV 89509

James R. Cavilia, Esq.  
Allison, MacKenzie, Pavlakis  
Wright & Fagan, Ltd.  
402 N. Division Street  
Carson City, NV 89703

Dated this 15th day of June, 2015.

  
\_\_\_\_\_  
Employee

1 Case No. 14-CV-00128

2 Dept. No. II

FILED

2015 JUN -5 PM 1:51

TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Tanya Sceirine DEPUTY

3  
4  
5  
6 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF LYON

8  
9 COMSTOCK RESIDENTS ASSOCIATION,  
GAYLE SHERMAN, JOE McCARTHY,

10 Plaintiffs/Petitioners,

11 vs.

12 LYON COUNTY BOARD OF  
13 COMMISSIONERS; COMSTOCK MINING  
INCORPORATED,

14 Defendants/Respondents,

15  
16 **ORDER DENYING PETITION FOR JUDICIAL REVIEW**

17 Plaintiffs/Petitioners, Comstock Residents Association, Gayle Sherman, and Joe  
18 McCarthy, (collectively "CRA") filed a Complaint for Injunctive and Declaratory  
19 Relief/Petition for Judicial Review on January 31, 2014. The Complaint alleged four causes  
20 of action: (1) Violations of Nevada Open Meeting Law; (2) denial of Due Process; (3) Abuse  
21 of Discretion; and (4) Violation of NRS 278.220. Comstock Mining, Inc. ("CMI") filed its  
22 Answer on March 28, 2014. Lyon County filed its Answer on March 27, 2014. On June 6,  
23 2014, Lyon County submitted to the Court a Motion to Dismiss or in the alternative Motion  
24 for Summary Judgment in which CMI joined, requesting that the Court dismiss the first,  
25 second and fourth causes of action (the "Motion to Dismiss"). On December 3, 2014, the  
26 Court issued an Order Granting in Part and Denying in Part the Motion to Dismiss and  
27 dismissed the first and second causes of action. The Court further ordered the parties to  
28

1 prepare and the parties did prepare a briefing schedule on the third and fourth causes of  
2 action (collectively the "Petition for Judicial Review").

3 After being fully briefed, this matter came before the Court for hearing on April 20,  
4 2015. James R. Cavilia, Esq., and Justin Townsend, Esq., of Allison MacKenzie, Ltd.,  
5 appeared representing CMI. Stephen B. Rye, Lyon County District Attorney, appeared  
6 representing Lyon County. John L. Marshall, Esq. appeared representing CRA. The Court  
7 reviewed the pleadings and all documents on file, the applicable law, and considered the  
8 arguments of the parties.

9 Good cause appearing, the Court makes the following Findings of Fact, Conclusions  
10 of Law, and Orders.

11 **Findings of Fact:**

- 12 1. The entire record on appeal (the "Record") has been presented to the Court and  
13 the Court has reviewed it in its entirety.
- 14 2. The Record contains testimony and evidence both in favor of and against CMI's  
15 Application for a Master Plan Amendment and Zone Change (the "Application").
- 16 3. The Record reflects that there was presented to the governing body testimony  
17 from the public, surveyors, engineers, land use planners, CRA members, CRA's  
18 attorney, and environmental experts.
- 19 4. The Record further reflects that Lyon County considered the environmental  
20 impacts and the compatibility of the requested changes to the surrounding area  
21 and whether the changes were permitted under and consistent with the goals and  
22 policies of the Lyon County Comprehensive Master Plan.
- 23 5. On December 10, 2013, the Lyon County Planning Commission considered CMI's  
24 Application and voted to recommend that the Lyon County Board of  
25 Commissioners deny the Application. Thereafter, Lyon County planning staff  
26 prepared and delivered to the Board of Commissioners reports on the Planning  
27 Commission's action with respect to the Application.



- 1           6. The Board of Commissioners considered CMI's Application on January 2, 2014  
2           and, after a public hearing in which the testimony and evidence outlined above  
3           were presented, deliberated and voted to approve a Master Plan Amendment and  
4           Zone Change.
- 5           7. On January 30, 2015, the Board of Commissioners sent a letter to the Planning  
6           Commission notifying the Planning Commission of its decision approving the  
7           Application.
- 8           8. On February 11, 2014, the Planning Commission held a regularly-scheduled  
9           meeting and considered the Board of Commissioners' decision on the Master  
10          Plan Amendment and determined therein to prepare and send a report back to  
11          the Board of Commissioners in which they expressed their concerns regarding the  
12          Board's decision.
- 13          9. On March 6, 2014, the next available regularly-scheduled Board of  
14          Commissioners meeting, the Board considered the Planning Commission's report  
15          and voted unanimously to acknowledge receipt of the same.

16          **Conclusions of Law:**

- 17          1. It is well-settled law in Nevada that the Court is constrained in judicial review of  
18          land use and zoning decisions to a review of the Record for abuse of discretion  
19          and that the Court may not substitute its judgment for that of the Lyon County  
20          Board of Commissioners absent a showing of manifest abuse of discretion.  
21          McKenzie v. Shelly, 77 Nev. 237, 362 P.2d 268 (1961); City Council of Reno v.  
22          Irvine, 102 Nev. 277, 721 P.2d 371 (1986).
- 23          2. The Lyon County Board of Commissioners' decision to approve the Application to  
24          amend the master plan and zoning will not be overturned absent a showing that  
25          said decision lacks support in the form of substantial evidence. Stratosphere  
26          Gaming Corp. v. City of Las Vegas, 120 Nev. 523, 96 P.3d 756 (2004).  
27          Substantial evidence is that which a reasonable mind could accept as sufficient to  
28

1 support a conclusion. City of Reno v. Citizens for Cold Springs, 126 Nev. 27, 236  
2 P.3d 10 (2010).

- 3 3. The Record contains substantial evidence, as noted in the Findings of Fact  
4 above, which a reasonable mind could accept as sufficient to support the Board of  
5 Commissioners' decision to amend the master plan and zoning.
- 6 4. The Board of Commissioners, in relying on the substantial evidence before it, did  
7 not abuse its discretion in amending the master plan and zoning and, whether or  
8 not the Court agrees with the Board's decision, the Court will not disturb the  
9 decision of the Board of Commissioners.
- 10 5. NRS 278.220(4), which requires that the Board of Commissioners refer its  
11 decision to amend the master plan to the Planning Commission for a report, is  
12 ambiguous.
- 13 6. The Planning Commission was provided notice of the Board of Commissioners'  
14 decision and reported back to the Board of Commissioners, and the Court  
15 concludes that NRS 278.220(4) does not require the Board to vote again after  
16 receipt of the Planning Commission's report.
- 17 7. The actions of the Board of Commissioners in reporting its decision to the  
18 Planning Commission and subsequently accepting the Planning Commission's  
19 report complied with NRS 278.220(4).

20 Based on the foregoing, and good cause appearing,

21 IT IS HEREBY ORDERED that the Petition for Judicial Review is DENIED in its  
22 entirety.

23 IT IS FURTHER ORDERED that judgment is entered in favor of  
24 Defendants/Respondents on the Third and Fourth Causes of Action.

25 Dated this 5th day of <sup>June</sup> May, 2015.

26   
27 \_\_\_\_\_  
28 DISTRICT JUDGE