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IN THE SUPREME COURT OF THE STATE OF NEVADA

COMSTOCK RESIDENTS
ASSOCIATION; and JOE
McCARTHY,

Appellants

Case No. 68433
Appeal from Third Judicial Dist.
Court Case No. 14-CV-00128

v.

LYON COUNTY BOARD OF
COMMISSIONERS; and
COMSTOCK MINING
INCORPORATED

Respondents.

RESPONDENTS' JOINT ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

- The InterGroup Corporation; and
- Van Den Berg Management I, Inc.

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1 for failure to state a claim for relief because (a) CRA failed to allege facts that
2 a quorum of the Board had met, serially or otherwise, and deliberated outside
3 of an agendaized public meeting or that the action taken by the Board was
4 outside the scope of the clear and complete agenda items in violation of the
5 OML; and (b) CRA failed to state a claim for violations of due process where
6 the subject members of the Board properly disclosed all items required by
7 Nevada law, had consulted with the Nevada Commission on Ethics and the
8 Lyon County District Attorney's Office, and nobody objected at the January 2,
9 2014 public meeting to the full Board deliberating on CMI's Application.

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1 CRA originally filed its Complaint on January 31, 2014. On June 6,
2 2014, the Board filed a Motion to Dismiss in which CMI joined. After full
3 briefing of the Motion to Dismiss, the District Court held a hearing on
4 September 10, 2014. On December 3, 2014, the District Court entered an order
5 dismissing CRA's claims of violations of the OML and due process for failure
6 to state a claim on either of said issues.

7 **STATEMENT OF FACTS**

8 **A. The Application.**

9 In or about August 2013, CMI submitted to the Lyon County Planning
10 Department a Master Plan Amendment and Zone Change Application (the
11 "Application"). JA Vol. 5 at 0654-0686. The Application sought a change to
12 the land use and zoning designations for six parcels of real property totaling
13 approximately 87.2 acres in the area of Silver City. JA Vol. 5 at 0656. The
14 specific requests made in the Application were to amend the Lyon County
15 Master Plan by changing the land use designation from Suburban Residential
16 (NR) to Rural Residential (RR) on approximately 42.57 acres and from
17 Resource to Rural Residential on approximately 12.29 acres and to amend the
18 zoning designation from NR1 to RR3 on 54.86 acres and from NR1 to RR5 on
19 32.34 acres. JA Vol. 5 at 0657.

20 Prior land use and zoning designations for the six parcels making up the
21 subject property were as follows:

22 Parcel	Master Plan	Zoning	Current Land Use
23 1	Resource	NR1	Vacant
24 2	Suburban Residential	NR1	Vacant
25 3	Resource	NR1	Vacant
26 4	Suburban Residential	NR1	Vacant
27 5	Suburban Residential	NR1	Vacant
28 6	Suburban Residential	NR1	Vacant/Abandoned Mining Facilities

1 JA Vol. 5 at 0656.

2 The Suburban Residential land use category is defined as high density
3 and is optimal for apartments, duplexes, and single family units at 5 to 10 units
4 per acre (or lot sizes ranging in size from .1 acre to .2). JA Vol. 5 at 0659.
5 Zoning allowed under the Suburban Residential category are NR1, NR2, NR3,
6 (non-rural residential districts) and MHP (mobile home park). As noted above,
7 the zoning on the subject property was NR1, which allows for high density
8 single family residences and related uses. See Lyon County Code (“LCC”)
9 10.03.09.

10 The Resource land use category is defined as low density property (one
11 dwelling unit per 40 acres) that is generally in remote or rural parts of Lyon
12 County and is used for resource uses including but not limited to mining. The
13 NR1 zoning is inconsistent with the Resource land use designation because
14 NR1 zoning does not generally allow for rangeland, mining, or forestry uses
15 that would otherwise be authorized on Resource-designated lands. Likewise,
16 the NR1 designation allows for residential development that would not be
17 authorized on the Resource-designated lands.

18 CMI’s Application sought changes to the land use and zoning
19 designations as follows:

Parcel	Master Plan	Zoning
1	Resource	RR5
2	Rural Residential	RR3
3	Rural Residential	RR3
4	Rural Residential	RR3
5	Rural Residential	RR3
6	Rural Residential	RR3

28 JA Vol. 5 at 0656.

1 The Rural Residential designation is defined as rural density allowing
2 from 1 dwelling unit per 20 acres to 1 dwelling unit per 5 acres. The RR3
3 zoning designation allows for not more than 1 dwelling unit per 5 acres.
4 Mining is an allowable use pursuant to special use permit under the RR3
5 designation (requires separate application and approval for special use permit).
6 See LCC 10.03.04. Similarly, the RR5 zoning designation allows for not more
7 than 1 dwelling unit per 20 acres and mining is a special use thereunder. See
8 Id. at § 10.03.06.

9 CMI intends to explore for minerals on the subject property and, if
10 minerals are found in sufficient quantities, CMI may apply for a special use
11 permit to mine the property. CMI could have explored for minerals on the
12 property under the prior land use and zoning designations, however, to do so
13 under the prior designations was sure to be a waste of time and money as
14 mining is neither a permitted nor a special use under the prior designations. In
15 order to justify the expense of performing mineral exploration on the subject
16 property, it was necessary to amend the land use and zoning to allow for the
17 potential of mining uses. CMI's intentions in this regard were clearly set forth
18 in its Application and on the record. JA Vol. 5 at 0634.

19 The Board's decision to amend the land use and zoning designations as
20 set forth above does not, in and of itself, authorize mining uses. As noted
21 above, the Lyon County Code requires further application to Lyon County in
22 order to obtain a special use permit to conduct mining on the subject property.
23 CRA's concerns about mining (open pit or otherwise) are irrelevant to the
24 decision currently being reviewed and will be addressed if and when CMI
25 applies for a special use permit to conduct mining activities. CMI did not
26 apply for a special use permit in connection with the Application and has not
27 heretofore applied for a special use permit to conduct mining activities on the
28 subject property.

1 **B. Planning Commission Meetings**

2 The Lyon County Planning Commission initially set CMI's Application
3 for public hearing on November 12, 2013. JA Vol. 5 at 0687; JA Vol. 8 at
4 1257-1259. Prior to the November 12, 2013 meeting, the Lyon County
5 planning staff prepared a report concerning CMI's Application. JA Vol. 7 at
6 1008-1016. A corrected staff report, totaling 35 pages was delivered only a
7 few hours prior to the planned meeting. JA Vol. 6 at 0973-1000; JA Vol. 7 at
8 1001-1007; JA Vol. 12 at 2019. Therefore, at the outset of the meeting, CMI
9 asked for and the Planning Commission granted a continuance of the hearing
10 on the Application to December 10, 2013 in order to allow CMI and others
11 interested in the Application to review and respond to the corrected staff report,
12 if necessary. JA Vol. 12 at 2019.

13 At the December 10, 2013 Planning Commission meeting, the Planning
14 Commission accepted testimony and evidence from CMI and from various
15 individuals both for and against the Application. JA Vol. 12 at 2020-2025. At
16 the close of the December 10, 2013 meeting, the Planning Commission voted
17 5-1 to recommend that the Board deny the Application for a Master Plan
18 Amendment and 6-0 to recommend that the Board deny the Application for a
19 zone change. JA Vol. 12 at 2026. The Lyon County planning staff then
20 prepared and delivered to the Board reports on the Planning Commission's
21 actions with respect to the Application. JA Vol. 1 at 0107-0152.

22 **C. Board of Commissioners Meeting**

23 The Board, having the recommendations of the Planning Commission,
24 set CMI's Application for public hearing before the Board on January 2, 2014.
25 JA Vol. 1 at 0106. In addition to the Planning Commission reports, the Board
26 was provided with various documents for its consideration in connection with
27 the Application. In total, the packet of materials provided for the Board's
28 consideration exceeded 500 pages and included the following:

- Planning Commission Staff Reports – JA Vol. 1 at 0107-0152;
- Lyon County Planning Department Letters to CMI regarding Planning Commission’s findings – JA Vol. 1 at 0153-0156;
- Minutes from the December 10, 2013 Planning Commission meeting – JA Vol. 1 at 0157-0164;
- Minutes from the November 12, 2013 Planning Commission meeting – JA Vol. 1 at 0165-0167;
- Planning Department Staff Reports provided to Planning Commission before its consideration of the Application – JA Vol. 1 at 0168-0213;
- CMI’s Application and supporting documents, including correspondence and documents outlining the benefits of the Application to Lyon County – JA Vol. 1 at 0214-0250; JA Vol. 2 at 0251-0287;
- An exhaustive Technical Report, including maps and analyses regarding CMI’s Application – JA Vol. 2 at 0288-0373;
- Seventeen emails/letters to the Lyon County Planning Department offering support of CMI’s Application – JA Vol. 2 at 0374; JA Vol. 3 at 0375-0397;
- Thirteen emails/letters to the Lyon County Planning Department opposing CMI’s Application – JA Vol. 3 at 0398-0428;
- Comments and minutes of meetings of the Silver City Advisory Board, including petitions and various other attachments – JA Vol. 3 at 0455-0500; JA Vol. 4 at 0501-0511;
- A PowerPoint presentation made by Ascent Environmental, Inc. at the December 10, 2013 Planning Commission meeting – JA Vol. 4 at 0512-0527;

- 1 • A description of a DVD presentation made by Robert Elston at the
2 December 10, 2013 Planning Commission meeting – JA Vol. 4 at
3 0528-0530 (a copy of the DVD was also made a part of the
4 Record on appeal with the District Court and was submitted
5 pursuant to this Court’s December 22, 2015 Order);
- 6 • A PowerPoint presentation made by CMI at the December 10,
7 2013 Planning Commission meeting – JA Vol. 4 at 0531-0587;
8 and
- 9 • Various other emails/letters received after the December 10, 2013
10 Planning Commission meeting – JA Vol. 4 at 0588-0612.

11 All of the foregoing materials were appended to the public agenda for the
12 Board’s January 2, 2014 public meeting.

13 In addition to the materials provided with the agenda, the County
14 Commissioners and members of the Lyon County Planning Department
15 individually received emails from citizens, CMI, and others to discuss the
16 Application. JA Vol. 17 at 2882-2894; JA Vol. 18 at 2895-2919; JA Vol. 19 at
17 2920-2970; JA Vol. 20 at 2971-3000; JA Vol. 21 at 3001-3124; JA Vol. 22 at
18 3125-3155. Some of these communications reveal that meetings with
19 individual Commissioners and members of the Planning Department staff took
20 place to express concerns, opposition, or support for the Application. See e.g.,
21 JA Vol. 21 at 3046.

22 At the January 2, 2014 hearing, Jeff Page, the Lyon County Manager,
23 who was involved throughout the process of the Planning Commission’s and
24 the Board’s consideration of CMI’s Application, disclosed a proposed
25 reduction in the scope of the Application that would reduce the amount of
26 acreage under consideration for a Master Plan Amendment and Zone Change.
27 JA Vol. 5 at 0633. Thereafter, the individual Commissioners made public
28 disclosures as required by law. JA Vol. 5 at 0633-0634. Commissioners

1 Keller and Hastings presented written disclosures, which have been made a
2 part of the record on appeal. JA Vol. 4 at 0616-0619.

3 Once all disclosures had been made, Rob Loveberg, the Lyon County
4 Planning Director, noted to the Board that the Planning Commission
5 recommended denial of the Application. Mr. Loveberg further notified the
6 Board that many citizens were opposed to the Application and many citizens
7 were in favor of the changes proposed by the Application. JA Vol. 5 at 0634.

8 **1. Presentation of the Application.**

9 Mark Rotter, a civil engineer representing CMI, presented the
10 Application to the Board. JA Vol. 5 at 0634. Mr. Rotter presented for nearly
11 thirty minutes with the members of the Board asking questions throughout.
12 Recording of January 2, 2014 Board meeting, CMI #1 at 23:10-50:30. Mr.
13 Rotter presented an analysis of historical land uses in and around the subject
14 property. Recording of January 2, 2014 Board meeting, CMI #1 beginning at
15 25:50. He further testified that the Application would not allow mining on the
16 property, but that a special use permit would have to be obtained prior to any
17 mining of the subject property. Recording of January 2, 2014 Board meeting,
18 CMI #1 beginning at 34:00.

19 Mr. Rotter presented testimony and photographic evidence of CMI's
20 efforts to preserve the historic quality of the Comstock, which includes
21 expending, as of that date, more than \$1 million in historic restoration and
22 preservation efforts. Recording of January 2, 2014 Board meeting, CMI #1
23 beginning at 41:15. He also pointed out the inconsistency of the current zoning
24 and master plan designations, which allow medium residential density, and the
25 topography of the subject property, which is not at all suitable for dense
26 residential development. He noted that, even if no mining ever occurs on the
27 property, the requested Master Plan Amendment and zone change would be the
28

1 most appropriate master plan and zoning designations for the subject property.
2 Recording of January 2, 2014 Board meeting, CMI #1 beginning at 41:15.

3 Finally, Mr. Rotter expressed CMI's agreement with the proposed
4 reduction in the number of acres subject to the changes requested in the
5 Application and described the scope and effects of the same. Recording of
6 January 2, 2014 Board meeting, CMI #1 beginning at 47:40.

7 **2. Opposition to the Application.**

8 Three individuals at the hearing presented the formal opposition to the
9 Application: Erich Obermayer, Chairman of the Silver City Citizens Advisory
10 Board; John Marshall, attorney representing CRA; and John Singlaub, of
11 Ascent Environmental Company. JA Vol. 5 at 0634. Mr. Obermayer
12 presented the recommendation of the Silver City Advisory Board, which was
13 that the Application be denied. JA Vol. 5 at 0634; see also Recording of
14 January 2, 2014 Board meeting, CMI #1 at 57:00-1:03:00.

15 Mr. Marshall, presenting on behalf of CRA, spoke for approximately ten
16 minutes and emphasized prior land use planning decisions in Lyon County and
17 urged the Board to deny the Application based on prior land use planning
18 decisions affecting the subject property. Recording of January 2, 2014 Board
19 meeting, CMI #1 at 1:03:20-1:12:05.

20 Finally, Mr. Singlaub testified in opposition to the Application. Mr.
21 Singlaub discussed the Board's prior denial of an application by Nevex Mining
22 to change the zoning designation on the subject property in 1986 and urged the
23 Board to do the same with respect to CMI's Application. Recording of
24 January 2, 2014 Board meeting, CMI #1 at 1:23:45-1:39:02.

25 **3. Proposed Reduction of Acreage and Motion to Approve** 26 **Master Plan Amendment.**

27 Following the presentations for and against the Application,
28 Commissioner Vida Keller discussed the proposed reduction of the amount of

1 acreage subject to the Master Plan Amendment and zone change request from
2 87.2 acres to 71.63 acres, which would operate to protect the Silver City
3 viewshed and historic buildings. JA Vol. 5 at 0634. Commissioner Keller
4 noted that the proposed acreage reduction was her idea and she moved to
5 approve the Master Plan Amendment based on the reduced acreage. JA Vol. 5
6 at 0634; see also Recording of January 2, 2014 Board meeting, CMI #1
7 beginning 1:40:20. The motion was seconded by Commissioner Mortensen.
8 JA Vol. 5 at 0635.

9 **4. Public Comment.**

10 After the motion to approve the Master Plan Amendment was made and
11 seconded, the Board opened the hearing for public comment. Approximately
12 68 people signed in on the sign-in sheet provided therein. Many of those
13 persons made public comment. JA Vol. 4 at 0613-0615. Twenty-six people
14 spoke in opposition to the Application, although many of them merely
15 expressed an opposition to open pit mining, which was not actually at issue.
16 JA Vol. 5 at 0635. Twenty-three people spoke in favor of the Application. JA
17 Vol. 5 at 0635-0636. In total, the Board accepted public comment for a period
18 of approximately 1 hour and 50 minutes. See Recording of January 2, 2014
19 Board meeting, CMI #2 00:15-1:34:20 & CMI #3 00:00-16:50. All members
20 of the public who desired to speak were afforded the opportunity to do so.

21 **5. Board Deliberations and Final Comments on Master Plan** 22 **Amendment.**

23 Following public comment, the individual Commissioners deliberated
24 the Master Plan Amendment in public. All five Commissioners extensively
25 expressed their views and opinions with respect to the Application. Mr. Rotter
26 and Mr. Marshall were also invited to make final comments in support of their
27 respective positions. JA Vol. 5 at 0636; see also Recording of January 2, 2014
28 Board meeting, CMI #3 at 17:20-59:40. A predominant theme during the

1 Board's deliberations was that the requested Master Plan Amendment and
2 Zone Changes would not authorize any actual mining on the subject property.
3 The Board repeatedly noted that conditions on any mining work to be done on
4 the subject property would be considered if and when CMI applied for a
5 special use permit. See Recording of January 2, 2014 Board meeting, CMI #3
6 at 17:20-59:40.

7 Following deliberations of the Board and final comments from Mr.
8 Rotter and Mr. Marshall, Commissioner Mortensen called for a vote on the
9 motion. The motion passed 4-1, with Commissioner Arellano representing the
10 sole dissenting vote. JA Vol. 5 at 0636. The motion included the following
11 findings as required by the Lyon County Code and Nevada law:

- 12 • The applicant has demonstrated that the amendment is in substantial
13 compliance with and promotes the Master Plan goals, objectives and
14 actions in that it is in keeping with applicable guiding principles,
15 goals, policies and strategies;
- 16 • The proposed amendment is compatible with the actual and planned
17 adjacent land uses, and reflects a logical change in land uses in that
18 the amendment would decrease the density of residential
19 development;
- 20 • The proposed amendment has demonstrated a response to changed
21 conditions or further studies that have occurred since the Master Plan
22 was adopted by the Board, and the requested amendment represents a
23 more desirable utilization of land;
- 24 • The proposed amendment will not adversely affect the
25 implementation of the Master Plan goals, objectives and actions and
26 will not adversely impact the public health, safety or welfare;
- 27 • The proposed amendment will promote the desired pattern for the
28 orderly physical growth of the County, maintains relatively compact

1 development patterns, and guides development of the County based
2 on the least amount of natural resource impairment and the efficient
3 expenditure of funds for public services;

- 4 • The proposed amendment is compatible with the surrounding area,
5 and the goals and policies of the Comprehensive Master Plan;
- 6 • The proposed amendment will have no major negative impacts on
7 transportation services and facilities;
- 8 • The proposed amendment will have minimal effect on service
9 provision, including adequacy or availability of facilities or services,
10 and is compatible with existing and planned service provision;
- 11 • Strict adherence to the Comprehensive Master Plan would result in a
12 situation neither intended nor in keeping with key elements and
13 policies of the plan.

14 JA Vol. 5 at 0634-0635. All of the Board findings are supported by evidence
15 in the record, including, but not limited to, the various presentations,
16 comments, documents and maps, and the Board's own knowledge of existing
17 conditions and the area. E.g., JA Vol. 5 at 0629-0636.

18 **6. Motion to Approve Zone Change.**

19 The Master Plan Amendment and Zone Changes were presented
20 together, with public comment being heard on both items together. JA Vol. 5
21 at 0636. After the vote on the Master Plan Amendment, Commissioner Keller
22 moved to approve the requested Zone Change based on the reduced acreage
23 proposal. JA Vol. 5 at 0637. Commissioner Hastings seconded the motion,
24 which passed unanimously. JA Vol. 5 at 0637.

25 **7. Referral to Planning Commission Under NRS 278.220(4).**

26 Rob Loveberg, Lyon County Planning Director, explained that the
27 Board's decision on the Master Plan Amendment must be sent back to the
28 Planning Commission for a report, but that the Board's action on the Zone

1 Change is a final action that does not require any further action by the Planning
2 Commission. JA Vol. 5 at 0636; JA Vol. 28 at 3800 (Aff. of Rob Loveberg, ¶
3 5).

4 On January 30, 2014, the Board sent a letter to the Planning Commission
5 notifying the Planning Commission of its decision to amend the Lyon County
6 Master Plan. JA Vol. 28 at 3800 (Aff. of Rob Loveberg, ¶ 6); JA Vol. 28 at
7 3803. At the regularly-scheduled February 11, 2014 Planning Commission
8 meeting, the Planning Commission considered the Board's action to approve
9 the Master Plan Amendment and determined to send a report back to the Board
10 pursuant to NRS 278.220(4) expressing concern for the Board's decision and
11 recommending commencing a community planning process for Silver City. JA
12 Vol. 28 at 3800 (Aff. of Rob Loveberg, ¶¶ 7-8); JA Vol. 28 at 3805-3809.

13 On March 6, 2014, the Board voted unanimously to acknowledge receipt
14 of comments and submissions from the Planning Commission. JA Vol. 28 at
15 3801 (Aff. of Rob Loveberg, ¶ 9) JA Vol. 28 at 3811. The Board did not take
16 any further action on the comments of the Planning Commission as it was not
17 required to do so under NRS 278.220(4).

18 The foregoing process regarding the Board's actions on CMI's
19 Application is consistent with Lyon County practices and procedures and is, in
20 the opinion of Rob Loveberg, consistent with the requirements of NRS
21 278.220. JA Vol. 28 at 3801 (Aff. of Rob Loveberg, ¶¶ 10-11).

22 **8. Proceedings in the District Court.**

23 On January 31, 2014, CRA filed with the Third Judicial District Court of
24 the State of Nevada in and for Lyon County a Complaint/Petition for Judicial
25 Review, in which it brought four claims for relief: (1) violations of the OML;
26 (2) denial of due process; (3) abuse of discretion; and (4) violation of NRS
27 278.220(4). JA Vol. 1 at 0001-0035.

1 On December 3, 2014, the District Court dismissed CRA's claims for
2 violations of the OML and denial of due process. JA Vol. 28 at 3766-3771.
3 The foregoing Order was entered following full briefing on a Motion to
4 Dismiss filed by the Board and joined by CMI and a hearing held thereon on
5 September 10, 2014. The District Court concluded that CRA had failed to
6 allege facts to support a contention that the Board had violated the OML in any
7 way or that two of the five Commissioners should have recused themselves
8 under applicable Nevada law. Specifically, the District Court concluded that
9 no facts were alleged to support a finding that a serial meeting of the
10 Commissioners had occurred or that the Board had taken action beyond the
11 scope of the clear and complete agenda items for its public meeting. JA Vol.
12 28 at 3769.

13 The parties briefed the District Court on the remaining claims for relief,
14 which were collectively referred to as the Petition for Judicial Review. CRA
15 filed an Opening Brief, an Opposition Brief, and a Reply Brief. JA Vol. 28 at
16 3837-3876; 3894-3904; 3926-3936. The Board and CMI jointly filed an
17 Opening Brief, an Opposition Brief, and a Reply Brief. JA Vol. 28 at 3785-
18 3811; 3905-3925. Following the briefing, the District Court held a hearing on
19 April 20, 2015 and thereafter issued an Order Denying Petition for Judicial
20 Review on June 5, 2015. JA Vol. 28 at 3937-3940.

21 The District Court concluded that the Board's decision was based on
22 substantial evidence, "which a reasonable mind could accept as sufficient to
23 support the Board of Commissioners' decision to amend the master plan and
24 zoning" and that the Board "did not abuse its discretion in amending the master
25 plan and zoning." JA Vol. 28 at 3940. Specifically, the District Court found
26 that the Board's decision was based on "testimony and evidence both in favor
27 of and against CMI's Application for a Master Plan Amendment and Zone
28 Change" and that "there was presented to [the Board] testimony from the

1 public, surveyors, engineers, land use planners, CRA members, CRA's
2 attorney, and environmental experts." JA Vol. 28 at 3938. On that basis, the
3 District Court affirmed the Board's decision to grant CMI's Application.

4 The District Court also concluded that NRS 278.220(4), which requires
5 that the Board refer its decision to amend the Master Plan to the Planning
6 Commission for a report, is ambiguous. JA Vol. 28 at 3940. The District
7 Court noted that the Board had referred its decision back to the Planning
8 Commission who then prepared and sent a report back to the Board. JA Vol.
9 28 at 3940. The District Court then concluded that NRS 278.220(4) "does not
10 require the Board to vote again after receipt of the Planning Commission's
11 report." JA Vol. 28 at 3940.

12 **SUMMARY OF ARGUMENT**

13 **A. The Court Should Uphold the Board's Decision to Grant CMI's** 14 **Application.**

15 The Board's decision to grant CMI's Application was based on
16 substantial evidence. Absent a finding that the Board abused its discretion and
17 failed to base its decision on substantial evidence, this Court must uphold the
18 Board's decision. The evidence before the Board reflects that the public
19 offered both support and opposition to the Application, which was considered
20 by the Board at a public hearing. All members of the public who wished to
21 offer support or opposition to the Application were permitted to do so, after
22 which the Board openly deliberated and voted to approve CMI's Application.
23 There is no evidence of any abuse of discretion and, therefore, this Court
24 should uphold the decision of the Board.

25 **B. The Board Made All Findings Required by Law.**

26 Lyon County Code sets forth the precise findings that must be made in
27 order to approve an amendment to the Lyon County Master Plan. The Board
28

1 made all such findings and the findings were supported by substantial evidence
2 in the record.

3 **C. The Board's Decision is Consistent with Master Plan Goals.**

4 CRA argues that mining is incompatible with planning and zoning in
5 Silver City. There are three problems with CRA's argument. First, the Board
6 did not approve any mining on the subject property or within Silver City. In
7 order to mine the property, CMI will first have to apply for a special use
8 permit, which it has not done. Second, the subject property is almost entirely
9 outside the town site of Silver City. Third, the planning and zone changes
10 reflect the existing conditions of the subject property, which are that the
11 property is not served by water or sewer and that the parcels are generally
12 undeveloped.

13 **D. CRA Alleges no Facts to Support a Claim for Violation of the**
14 **OML.**

15 CRA alleges two violations of the OML. First, CRA contends that
16 members of the Board met and deliberated serially on CMI's Application. This
17 claim fails because the facts alleged by CRA are that only two of the five
18 members of the Board met to discuss a proposal to reduce the scope of CMI's
19 Application, while a third member of the Board exchanged emails with a
20 representative of CMI on a matter that was unrelated to the aforementioned
21 proposal. There is no evidence that a quorum of the Board actually deliberated
22 outside of a public meeting. Indeed, the Board's decision was deliberated and
23 made in a public meeting.

24 Second, CRA asserts that the decision taken in the open meeting was not
25 properly agendized where the decision was merely to reduce the scope of
26 changes requested by CMI. The actual decision taken, however, was within
27 the scope of the agendized matters and no action was taken beyond said scope.

28 ///

1 **E. CRA Fails to Allege Facts to Support a Claim for Violation of**
2 **Due Process.**

3 CRA asks this Court to apply a foreign standard to the question of
4 whether public officials must recuse themselves. However, NRS Chapter
5 281A clearly sets forth the applicable standard, which is that a public official
6 must only recuse him or herself where clearly defined conflicts of interest
7 exist. CRA fails to even allege the kind of conflicts required in Nevada in
8 order to require recusal. Thus, CRA's claim fails as a matter of law.

9 **STANDARD OF REVIEW**

10 **A. Standard of Review of Board's Decision.**

11 This Court is tasked, just as the District Court below was tasked, with
12 reviewing the Record that was before the Board to ascertain if there "was any
13 substantial evidence before the Board which would sustain the Board's action."
14 McKenzie v. Shelly, 77 Nev. 237, 242, 362 P.2d 268, 270 (1961). In
15 reviewing land use and zoning decisions, Nevada jurisprudence has long held
16 that the reviewing court is "not empowered to substitute its judgment for that
17 of a zoning board, in this case the Board of County Commissioners, when the
18 board's action is supported by substantial evidence." Id. at 240, 362 P.2d. at
19 269. Only rarely may a court interfere with a governing board's decision, "and
20 then only when it can be demonstrated by the one seeking the privilege that the
21 governing board is acting outside of its legal powers." City Council of City of
22 Reno v. Irvine, 102 Nev. 277, 278, 721 P.2d 371, 372 (1986). Judicial
23 interference is not warranted except in cases of "manifest abuse of
24 discretion." Id. at 279, 721 P.2d at 372 (quoting City of Henderson v.
25 Henderson Auto, 77 Nev. 118, 122, 359 P.2d 743, 745 (1961)). The burden of
26 proving abuse of discretion lies with CRA. Id. at 278, 721 P.2d at 372; see also
27 NRS 233B.135(2).
28

1 A charge against an administrative body for abuse of discretion seeks to
2 ascertain whether that body acted arbitrarily or capriciously. See Stratosphere
3 Gaming Corp. v. City of Las Vegas, 120 Nev. 523, 528, 96 P.3d 756, 760
4 (2004); Karadanis v. Bond, 116 Nev. 163, 167, 993 P.2d 721, 724 (2000);
5 Helms v. State of Nevada, Div. of Environmental Protection, 109 Nev. 310,
6 313, 849 P.2d 279, 281 (1993); and Barnum v. Williams, 84 Nev. 37, 41, 436
7 P.2d 219, 222 (1968). An administrative decision is arbitrary and capricious
8 only when it “lacks support in the form of substantial evidence.” Stratosphere,
9 120 Nev. at 528, 96 P.3d at 760 (quoting Tighe v. Las Vegas Metro. Police
10 Dept., 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994)).

11 Finally, in conducting a review of land use and zoning decisions, this
12 Court is limited to reviewing “the agency record to decide whether substantial
13 evidence supports the governing body’s findings.” City of Reno v. Citizens for
14 Cold Springs, 126 Nev. 263, 271, 236 P.3d 10, 15 (Nev. 2010). “Substantial
15 evidence is that which a reasonable mind could accept as sufficient to support a
16 conclusion.” Id.

17 **B. Standard of Review of Order of Dismissal.**

18 This Court reviews orders of dismissal *de novo*. Buzz Stew, LLC v. City
19 of North Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). A claim
20 must be dismissed if it appears beyond doubt that the plaintiff is entitled to no
21 relief under any set of facts that could be proved in support of the claim.
22 Washoe Medical Center, Inc. v. Reliance Insurance Co., 112 Nev. 494, 496,
23 915 P.2d 288, 288-89 (1996).

24 **ARGUMENT**

25 **A. The Entire Record was Presented to the District Court and is** 26 **Presented Here.**

27 CRA begins its arguments here with an assertion that the Board has
28 failed to provide the entire record as required by NRS 233B.131(1). This

1 assertion is based on a claim that members of the Board “used their own
2 personal electronic devices to communicate extensively with each other and
3 CMI regarding CMI’s land use application” and that the Board has failed to
4 provide copies of these alleged communications. Opening Brief at p. 36, ll. 1-
5 5.

6 CRA claims that “it is clear that substantial communication between
7 Commissioners and CMI occurred in the days just before the January 2, 2014
8 hearing but little email and no texts were provided from the Commissioners,
9 particularly from Commissioner Keller, the apparent instigator of the
10 communications.” Opening Brief at p. 36, l. 19 to p. 37, l. 3. CRA has failed
11 to show what makes the aforementioned alleged existence of communications
12 “clear” or what these alleged communications might show. The reality is that
13 the record is devoid of any evidence to support CRA’s allegations, which
14 should therefore be disregarded.

15 The Record produced at the District Court was the entire record. CRA
16 has no evidence whatsoever of a failure to provide the entire record. The
17 Record contains everything on which the Board based its decision to amend the
18 Master Plan and zoning. Further, as was shown in the District Court and as
19 will be shown herein, the Board’s decision was made at a public hearing after
20 receiving and deliberating on evidence presented both for and against CMI’s
21 Application.

22 **B. The Board’s Decision to Amend the Master Plan and Zoning was**
23 **Supported by Substantial Evidence and Must Be Upheld.**

24 The Master Plan and zoning process is a process governed by statute.
25 NRS Chapter 278 guides the land use planning process from the initial
26 application through deliberations by the Planning Commission and by the
27 Board. That process was strictly followed in this matter over the course of
28 several months. The Board is empowered by NRS Chapter 278 to make

1 ultimate decisions regarding master plans and zoning designations. See NRS
2 278.020(1). As noted above, this Court should not substitute its judgment for
3 that of the Board. See Citizens for Cold Springs, 126 Nev. at 271, 236 P.3d at
4 15-16.

5 The Board received copious amounts of evidence, both for and against
6 the Application. Certainly, a reasonable mind could accept the evidence, when
7 considered both for and against the Application, to support a conclusion to
8 grant the Application to amend the Lyon County Master Plan and change the
9 zoning designations on the subject property.

10 In McKenzie v. Shelly, 77 Nev. 237, 242, 362 P.2d 268, 270 (1961), the
11 Nevada Supreme Court upheld a land use decision by the Washoe County
12 Board of Commissioners. The Court reasoned as follows:

13 The record shows that at the public hearing which was
14 properly noticed, eight witnesses testified against and
15 eleven in favor of the requested amendment of the
16 land use plan. All persons wanting to speak for or
17 against the requested amendment were given an
18 opportunity to do so.

19 It would serve no purpose to detail the nature of all
20 the evidence presented at the public hearing. It does
21 appear from the record that the Board's action was
22 based not only on such oral evidence, but also upon a
23 map of the general plan and upon its own knowledge
24 of existing conditions. Also, over one thousand
25 signed written communications were submitted to the
26 board.

27 77 Nev. at 240, 362 P.2d at 269.

28 Here, the Record also shows substantial witness testimony both for and
against the Application. JA Vol. 5 at 0634-0636. The Record also shows that
all persons wanting to speak for or against the Application were given an
opportunity to do so. JA Vol. 5 at 0634-0636; see also Recording of January 2,
2014 Board meeting, CMI #2 00:15-1:34:20 & CMI #3 00:00-16:50

In addition to the witness testimony both for and against CMI's
Application, CMI also presented expert testimony. JA Vol. 5 at 0654-0726.

1 CRA has previously asserted that CMI's Application "contained no expert
2 reports." JA Vol. 28 at 3851. In fact, CMI's Application was prepared by
3 Manhard Consulting, a firm with engineers, surveyors, architects, and land use
4 planners, who compiled an extensive report, which was part of CMI's
5 Application. JA Vol. 5 at 0654-0726. It is unclear why CRA would deem this
6 not to be an expert report. If ever there was a report prepared by experts in the
7 field of land use planning, the report of Manhard Consulting submitted with
8 CMI's Application would seem to be it. Furthermore, CMI's Application was
9 presented at the January 2, 2014 Board meeting by Mark Rotter, a civil
10 engineer with extensive land use and planning experience in Lyon County. JA
11 Vol. 5 at 0634. Mr. Rotter presented for nearly thirty minutes with the
12 members of the Board asking questions throughout. Recording of January 2,
13 2014 Board meeting, CMI #1 at 23:10-50:30. Mr. Rotter presented an analysis
14 of historical land uses in and around the subject property. Recording of
15 January 2, 2014 Board meeting, CMI #1 beginning at 25:50. He further
16 testified that the Application would not allow mining on the property, but that a
17 special use permit would have to be obtained prior to any mining of the subject
18 property. Recording of January 2, 2014 Board meeting, CMI #1 beginning at
19 34:00.

20 Mr. Rotter presented testimony and photographic evidence of CMI's
21 efforts to preserve the historic quality of the Comstock, which includes
22 expending, as of that date, more than \$1 million in historic restoration and
23 preservation efforts. Recording of January 2, 2014 Board meeting, CMI #1
24 beginning at 41:15. He also pointed out the inconsistency of the current zoning
25 and master plan designations, which allow medium residential density, and the
26 topography of the subject property, which is not at all suitable for that sort of
27 residential development. He noted that, even if no mining ever occurs on the
28 property, the requested Master Plan Amendment and zone change would be the

1 most appropriate master plan and zoning designations for the property.
2 Recording of January 2, 2014 Board meeting, CMI #1 beginning at 41:15.

3 CMI's Application was supported by substantial expert testimony and
4 exhaustive evidence. Without detailing the nature of all the evidence presented
5 to the Board in this matter, this Court can readily ascertain that the Board's
6 findings and action taken were based not only on oral and visual evidence
7 presented at the public hearing, but also on a myriad of documentary evidence
8 available to the Board and on the Board's own knowledge and insight of the
9 relevant conditions applicable to the Application. The District Court
10 concluded that the Board's decision was based on substantial evidence, "which
11 a reasonable mind could accept as sufficient to support the Board of
12 Commissioners' decision to amend the master plan and zoning" and that, "in
13 relying on the substantial evidence before it, [the Board] did not abuse its
14 discretion in amending the master plan and zoning." JA Vol. 28 at 3940. For
15 the reasons set forth above, this Court should likewise uphold the Board's
16 decision to grant CMI's Application.

17 **C. The Board is not Required to Make Findings of Changed**
18 **Circumstances, but did in fact Make such Findings.**

19 CRA spends a good portion of their argument asserting that the Board
20 may only amend the Master Plan upon a specific showing of "changed
21 circumstances." Opening Brief at pp. 38-40. It likewise spends a good portion
22 of its "Background" section outlining prior Lyon County land use decisions
23 going back to 1971. Opening Brief at pp. 7-17. In support of its contention,
24 CRA cites only NRS 278.210(4) and Lyon County Code ("LCC")
25 10.12.09(F)(1)(c). NRS 278.210(4) applies on its face only to a planning
26 commission, not a governing body such as the Board.

27 Further, LCC 10.12.09(F)(1)(c) is taken entirely out of context. LCC
28 10.12.09(F)(1) provides that "[w]hen making an approval, modification or

1 denial of an amendment to the master plan land use map or text, the
2 commission and the board shall, at a minimum, make one of the following
3 findings of fact,” and then goes on to list five potential findings, including
4 “changed conditions.”

5 Moreover, fatal to CRA’s argument is that LCC 10.12.09(F)(1) provides
6 the precise “boilerplate” language that must be used by the Board in making
7 any one of the findings listed in that section. For example LCC
8 10.12.09(F)(1)(c) provides that the Board, if it is making a finding of changed
9 conditions in support of a Master Plan Amendment, must recite that “[t]he
10 proposed amendment has demonstrated and responds to changed conditions or
11 further studies that have occurred since the master plan was adopted by the
12 board, and the requested amendment represents a more desirable utilization of
13 land.” Similar language is required for findings based on (a) consistency with
14 the Master Plan (LCC 10.12.09(F)(1)(a)); (b) compatibility with land uses
15 (LCC 10.12.09(F)(1)(b); (c) no adverse effects (LCC 10.12.09(F)(1)(d); and
16 (d) a desired pattern for growth (LCC 10.12.09(F)(1)(e). Nothing more than
17 the precise language set out in LCC 10.12.09(F)(1) is required.

18 Here, the Board made each of the findings outlined in LCC
19 10.12.09(F)(1) and used the language required by said provision. JA Vol. 5 at
20 0634-0635. Furthermore, each of the findings was supported by substantial
21 evidence presented to and deliberated by the Board at the public hearing on
22 January 2, 2014.

23 **D. The Board’s Decision is Consistent with Existing Master Plan**
24 **Goals.**

25 CRA next asserts that the Board’s decision is incompatible with the
26 Master Plan. Opening Brief at pp. 40-51. CRA essentially posits that mining
27 is incompatible with the residential nature of Silver City. There are at least
28 three problems with CRA’s arguments.

1 First, the Board's decision to grant CMI's Application does not authorize
2 CMI to conduct any mining activities on the land. Indeed, during the Board's
3 deliberations, each of the individual Commissioners clearly expressed that they
4 were not authorizing any mining activity by granting CMI's Application and
5 that any mining to be conducted on the subject property would require a special
6 use permit. JA Vol. 5 at 0634-0636.; see also Recording of January 2, 2014
7 Board meeting, CMI #3 at 17:20-59:40.

8 Second, the subject property is almost entirely outside the boundaries of
9 Silver City however those boundaries are defined. JA Vol. 1 at 0223; 0237-
10 0243. CMI's Application called for Master Plan and zone changes to
11 approximately 81.63 acres, nearly all of which is outside of Silver City. JA
12 Vol. 1 at 0223. The Board granted CMI's Application with respect to only
13 71.63 acres, with a portion being removed to protect the viewshed of Silver
14 City residents and to provide an additional buffer.

15 To the extent that CRA argues that mining activities in or near Silver
16 City will adversely affect Silver City, those arguments are misplaced and
17 premature. No mining activities under the master plan and zoning designations
18 put in place by the Board can occur without CMI first obtaining a special use
19 permit. CRA's claims and arguments regarding the impacts of mining were all
20 presented to and considered by the Board prior to a decision being reached.
21 The Record also establishes that mining and mining exploration activities have
22 been conducted in the Comstock and Silver City area for over one hundred
23 (100) years, and patented and unpatented mining claims are included within the
24 subject property. JA Vol. 8 at 1282; JA Vol. 8 at 1389; JA Vol. 8 at 1424; JA
25 Vol. 8 at 1454-1464; JA Vol. 11 at 1920-1930 (as illustrative and not
26 comprehensive references). Even though the Application does not request
27 authority to mine, the Board may certainly consider historic mining uses and
28

1 the patented and unpatented mining claims in deciding whether to approve the
2 CMI Application.

3 Third, the changes approved by the Board in this case are reasonable and
4 justifiable. As stated in the Lyon County planning staff recommendation: (a)
5 the parcels in the Application are not served by a municipal water system and
6 to do so would require significant improvements; (b) the parcels are not served
7 by a sewer system, and the Silver City area is not well suited to individual or
8 on site sewer systems; and (c) the parcels are generally undeveloped. JA Vol.
9 8 at 1280. This lack of infrastructure clearly demonstrates that the subject
10 property was not appropriately designated for dense residential development.

11 Finally, CRA insists that the Board should have considered mining
12 activity in considering CMI's Application, even though CMI's Application did
13 not ask the Board to approve any mining activity. CRA posits that "otherwise
14 [the Board] never will have the opportunity to do so." Opening Brief at p. 49,
15 l. 9. Notwithstanding, the Board clearly will have the opportunity to consider
16 mining activity if and when CMI files an application for a special use permit,
17 which it is required to do in order to perform such activity.

18 CRA relies on and misrepresents California case law that is wholly
19 inapplicable to this matter. In City of Redlands v. County of San Bernardino,
20 96 Cal. App. 4th 398, 406-08 (Cal. Ct. App. 2002), the California appellate
21 court determined that the administrative agency was required by the California
22 Environmental Quality Act to consider all *environmental* impacts of proposed
23 Master Plan Amendments. There is no equivalent requirement in Nevada.
24 More importantly, contrary to CRA's misrepresentation of the above-
25 referenced case, there is no requirement, either in Nevada or in California, that
26 the Board consider "all potential consequences arising from amendments to its
27 General Plan." Opening Brief, p. 49, ll. 12-13. The Board was not required to
28

1 consider uses that were not at issue in CMI's Application and the Board
2 expressly did not authorize any mining activity on the subject property.

3 **E. The Board Complied with NRS 278.220(4).**

4 NRS 278.220(4) states as follows:

5 No change in or addition to the master plan or any
6 part thereof, as adopted by the planning commission,
7 may be made by the governing body in adopting the
8 same until the proposed change or addition has been
9 referred to the planning commission for a report
10 thereon and an attested copy of the report has been
filed with the governing body. Failure of the planning
commission so to report within 40 days, or such
longer period as may be designated by the governing
body, after such reference shall be deemed to be
approval of the proposed change or addition.

11 Under this provision, only changes in or additions to master plans must
12 go back to the Planning Commission for a report. Changes or additions to
13 zoning are not covered by this statute. Moreover, the statute does not require
14 that the proposed master plan change go back to the Planning Commission for
15 a report prior to the Board voting on the proposed action.

16 Under the statute, the Planning Commission has no authority to overturn
17 or reject the Board's action to amend the Master Plan. Indeed, NRS
18 278.020(1) empowers the Board "to regulate and restrict the improvement of
19 land and to control the location and soundness of structures." Furthermore, the
20 Planning Commission did not attempt to overturn the Board's decision, instead,
21 it merely expressed its concerns therewith. JA Vol. 28 at 3805-3807.

22 Ultimate authority for zoning and planning rests with the Board. In this
23 case, the Planning Commission made recommendations to the Board.
24 Nevertheless, the Board is empowered by NRS Chapter 278 to make the final
25 decision on CMI's Application. See Falcke v. Douglas County, 116 Nev. 583,
26 590 n. 4, 3 P.3d 661, 665 n. 4 (2000) (noting that the plain language of NRS
27 278.220 does not require that the governing body's decision comport with the
28 Planning Commission's recommendation); see also 79-14 Op. Att'y Gen. 73

1 (1979) (concluding that the governing body “is not precluded from
2 subsequently acting on a proposed amendment to the Master Plan which
3 initially failed to obtain an affirmative two-thirds majority vote of the
4 [Planning Commission]”); Lyon County Code 10.12.07; 10.12.09.

5 CRA’s interpretation of NRS 278.220(4) is illogical. CRA interprets the
6 statute to mean that any governing body decision that differs from that of the
7 Planning Commission must be referred back to the Planning Commission
8 before the governing body can take any final action. Thus, here the Planning
9 Commission would have all the power necessary to stop the Board from
10 making any decision with which it disagrees. Such illogical interpretation is
11 entirely contrary to the provisions of NRS Chapter 278 that give ultimate
12 authority over land use matters to the Board. Under CRA’s reasoning, any
13 Board decision that differs with the Planning Commission’s recommendations
14 can never be final unless the Planning Commission approves it. Surely this is
15 not the intent of NRS 278.220(4) to remove the final authority from the elected
16 officials and place it in the hands of an appointed commission.

17 The undisputed facts are that the Planning Commission considered
18 CMI’s Application and recommended to the Board that the Application be
19 denied. JA Vol. 12 at 2020-2026; JA Vol. 1 at 0107-0152. The Board
20 disagreed with the Planning Commission, voted to approve the Application for
21 an amendment to the Master Plan, and referred its decision under NRS
22 278.220(4) back to the Planning Commission for a report. JA Vol. 5 at 0634-
23 0637; JA Vol. 28 at 3803. The Planning Commission submitted a report back
24 to the Board and the Board accepted the report, but declined to take any further
25 action thereon. JA Vol. 28 at 3811.

26 At most, NRS 278.220(4) delays when the Board’s action becomes final.
27 It does not, however, determine whether the Board’s decision is final. The
28 Board’s decision became final no later than when the Planning Commission

1 submitted its report to the Board and the Board declined to alter the decision it
2 had made on January 2, 2014. This is the only logical interpretation of NRS
3 278.220(4).

4 The process adhered to by the Board and the Planning Commission
5 conforms with NRS 278.220(4) and longtime Lyon County practices. JA Vol.
6 28 at 3801. The Board has complied with NRS 278.220(4) and this Court
7 should uphold the District Court's conclusion that CRA has no claim for relief
8 thereunder.

9 **F. There are no Set of Facts Alleged by CRA to Support any Claim**
10 **of Violations of the OML.**

11 CRA's Complaint asserts two separate violations of the OML: (1) that
12 the Board did not properly agendize the actions it would consider at its January
13 2, 2014 meeting and (2) that a majority of the members of the Board
14 deliberated outside of said meeting. Neither in its Complaint nor in
15 subsequently raised allegations does CRA allege facts to support either of these
16 claims.

17 **1. The Board did not meet or deliberate outside of the**
18 **January 2, 2014 public meeting.**

19 CRA's Complaint alleges only that Commissioners Keller and
20 Mortensen met and deliberated prior to the January 2, 2014 public meeting of
21 the Board and outside of any public meeting. JA Vol. 1 at 0026, ¶ 96. Under
22 NRS 241.015, a meeting of the Board only occurs when a majority of its
23 members meet and deliberate. There are five members of the Board.
24 Therefore, the allegations of the Complaint fail to give rise to a claim that the
25 Board held a non-public meeting as the factual allegations of the Complaint
26 make mention of a meeting of only two out of five members of the Board.

27 CRA has subsequently asserted that a serial gathering of the Board
28 occurred. Opening Brief at pp. 55-56. NRS 241.015(3)(a)(2) indicates that a

1 meeting of a public body takes place when the members of a public body meet
2 in a series of gatherings, where in all such individual gatherings less than a
3 quorum of said members is present but collectively a quorum is present and
4 that the series of gatherings was held with specific intent to avoid the
5 provisions of NRS Chapter 241. CRA alleges that such a series of gatherings
6 took place by certain members of the Board prior to its January 2, 2014
7 meeting to deliberate and prepare a proposal to reduce the scope of CMI's
8 Application. Opening Brief at pp. 54-56.

9 In support of its contention that a serial meeting occurred here, CRA
10 cites two Nevada cases: Del Papa v. Bd. of Regents, 114 Nev. 388, 956 P.2d
11 770 (1998), and Dewey v. Redevelopment Agency of the City of Reno, 119
12 Nev. 87, 64 P.3d 1070 (2003). In Del Papa, the Court held that a serial
13 meeting of the Nevada Board of Regents occurred when individual regents
14 used electronic communications amongst each other to deliberate towards a
15 decision. 114 Nev. at 400-01, 956 P.2d at 778-79. In Del Papa, the serial
16 gatherings included only members of the public board who discussed with one
17 another a decision that was ultimately made outside of a public meeting. Id.

18 CRA also cites Dewey to support its argument that a serial meeting
19 occurred here. In Dewey, this Court determined that no violation of the OML
20 occurred where back to back staff briefings each involving less than a quorum
21 of the public board were held and there was no evidence that said meetings
22 "involved the kind of exchange of information and collective discussions
23 present in the faxed distributions and serial telephonic communications
24 identified in [Del Papa]." 119 Nev. at 99, 64 P.3d at 1078. The facts in Dewey
25 are that while a quorum of the public board met in a series of gatherings at
26 which the same information was discussed, the board members did not
27 exchange information or discuss the issues with one another outside of a public
28

1 meeting. For these reasons, the Court held that no meeting occurred in
2 violation of NRS Chapter 241.

3 The facts alleged by CRA here are easily distinguished from the facts of
4 Del Papa. Moreover, Dewey supports the Board's position that no meeting of
5 the Board occurred outside of the January 2, 2014 meeting.

6 Here, CRA alleges that CMI representatives first discussed its
7 Application with Commissioner Fierro in person on December 30, 2013, and
8 then sent an email to Commissioner Fierro on December 31, 2013 containing a
9 map of the parcels subject to its Application. Opening Brief at p. 55, ll. 9-17;
10 JA Vol. 19 at 2932-2933. CRA then alleges that CMI representatives had
11 meetings with Commissioners Mortensen and Keller (and others who are not
12 members of the Board) on January 1, 2014. Opening Brief at p. 55, ll. 17-25.
13 CRA ties these events together to support its assertion that a majority of the
14 Board met serially to deliberate the compromise proposal.

15 First, there is no evidence that the communications with Commissioner
16 Fierro had anything to do with any proposal to reduce the scope of the
17 Application. Indeed, the email to Commissioner Fierro on December 31, 2013,
18 which has been referenced by CRA, was from Manhard Consulting, not from
19 anyone at CMI. JA Vol. 19 at 2932-2933. Moreover, the email only states that
20 it contains as an attachment "a map of the Comstock Mining Master Plan
21 Amendment and Zone Change parcels in Silver City with topography and an
22 image." JA Vol. 19 at 2932-2933. There is no indication that this email or any
23 other communication by anyone with Commissioner Fierro had anything to do
24 with the proposal to reduce the scope of the Application, which was discussed
25 at the January 2, 2014 meeting.

26 Second, and more to the point, there is no allegation and absolutely no
27 evidence offered by CRA that Commissioner Fierro discussed or exchanged
28 any information with Commissioners Keller and/or Mortensen prior to the

1 January 2, 2014 meeting. As such, under the standards set forth in Del
2 Papa and Dewey, no deliberations or meeting of said Commissioners occurred
3 outside of the public meeting.

4 Moreover, regardless of any communications between the
5 Commissioners and CMI, no actions were taken or decisions made. Indeed,
6 there is no evidence that any Commissioner, either individually or in concert
7 with other Commissioners, deliberated towards any decision on CMI's
8 Application prior to the January 2, 2014 meeting. The decisions to amend the
9 Lyon County Master Plan and to change the zoning were ultimately taken in an
10 open meeting with the input of the public, including CRA. There is no
11 evidence at all to suggest the Board intended to avoid the provisions of NRS
12 Chapter 241.

13 At most, two Commissioners met to discuss a proposal to reduce the
14 scope of the Application. Two of five commissioners is not a quorum.¹
15 Therefore, even if the Court accepts the facts alleged here by CRA as true, they
16 do not in any way support a finding that a quorum of the Board met to
17 deliberate towards a final decision outside of a public meeting. All actions
18 taken by the Board were taken in compliance with the OML.

19 The District Court, in dismissing CRA's OML claims, concluded that
20 the OML "is not intended to inhibit all private discussions of public issues" and
21 cited Dewey. JA Vol. 28 at 3769. The District Court also concluded that the
22 facts alleged in CRA's Complaint and in subsequent pleadings (the same facts
23 alleged in its Opening Brief) do not give rise to a conclusion that a serial
24 gathering occurred. JA Vol. 28 at 3769. For the reasons set forth above, this
25 Court should uphold the District Court's conclusions that CRA has failed to
26 state a claim under the OML.

27
28 ¹ A quorum exists only when a simple majority of the public body convenes to deliberate. NRS 241.015.

1 **2. The Agenda for the January 2, 2014 Board meeting**
2 **properly noticed the action to be taken therein.**

3 The Board agenda for CMI's Application and the notice of the January
4 2, 2014 meeting read as follows:

5 COMSTOCK MINING, INC – MASTER PLAN
6 AMENDMENT – Request to change the Master Plan
7 from Resource land use designation and Suburban
8 Residential land use designation to Resource land use
9 designation on approximately 32.34 acres and Rural
 Residential land use designation on approximately
 54.86 acres of a 94.27 total acre parcel; located off of
 Highway 341, Silver City (a portion of APN 08-091-
 05 & 08-091-02)

10 COMSTOCK MINING, INC. – ZONE CHANGE (for
11 possible action) – Request to change the zoning from
12 NR-1 (Non-Rural Residential – 6,000 sq. ft. lot size)
13 and RR-5 (Fifth Rural Residential – 20 acre
14 minimum) to RR-3 (Third Rural Residential – 5 acre
15 minimum) on approximately 54.86 acres and RR-5
 (Fifth Rural Residential – 20 acre minimum) on
 approximately 32.34 acres, of a 94.27 total acre
 parcel; located off of Highway 341, Silver City (a
 portion of APN 08-091-05 & 08-091-02)

16 JA Vol. 1 at 0106.

17 CRA alleges that the Board action taken during the meeting is a
18 violation of NRS 241.020 because it was not specifically included in the
19 agenda. In support, CRA alleges that “Commissioner Keller’s new proposed
20 action substantially modified boundaries of the proposed area for land use
21 designation changes. Commissioner Keller’s new action represents a
22 substantial, and heretofore undisclosed amendment to CMI’s 2013
23 Application.” JA Vol. 1 at 0026, ¶ 99. However, CRA leaves out that the
24 modified boundaries are actually a reduction in the amount of acreage affected,
25 are entirely included within the acreage and parcels described in the notice, and
26 do not affect any property outside of the originally proposed Application or
27 property referenced in the agenda. The Board approved zoning and Master
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1 Plan changes affecting approximately 71.63 acres, slightly less than the acreage
2 proposed. JA Vol. 5 at 0634-0637.

3 NRS 241.020(2) requires written notice to the public of all meetings.
4 The notice must include an agenda consisting of a “clear and complete
5 statement of the topics scheduled to be considered during the meeting.” NRS
6 241.020(2)(d)(1). “The agenda requirement merely prohibits a public body
7 from considering or taking action on items without providing proper notice.”
8 Schmidt v. Washoe County, 123 Nev. 128, 135, 159 P.3d 1099, 1104 (2007)
9 (holding that removal of an agenda item from consideration without prior
10 notice or public comment does not violate the Open Meeting Law).

11 During the consideration of these two agenda items, the Board only
12 discussed the proposed Master Plan Amendment and zoning change. The
13 Board did not discuss matters not included within the description of the items.
14 NRS 241.020(2)(d)(1) requires that discussion at a public meeting cannot
15 exceed the scope of a clearly and completely stated agenda topic. See
16 Sandoval v. Bd. of Regents of Univ., 119 Nev. 148, 154, 67 P.3d 902, 905
17 (2003). The Board never exceeded the scope of the agenda. CRA complains
18 that the Board took action that was less than that stated on the agenda. The
19 agenda provided notice that the Board would consider a Master Plan
20 Amendment and zone change, and CRA cannot claim they were not on notice
21 that those items would be discussed. Nothing in the OML precludes the Board
22 from taking action on less than that which is stated on the agenda. The Board
23 did not entertain an amendment enlarging the scope of the Application or
24 affecting property not referenced in the agenda or the materials that
25 accompanied the agenda. The property affected by the Board’s decision was
26 the same property that was described in the agenda. As such, there is no
27 violation of NRS 241.020.

1 Here, the Board merely reduced the scope and effect of an item on the
2 agenda. Furthermore, the Board offered the opportunity for public comment
3 on the reduced acreage proposal. The record contains no evidence that anyone
4 objected to the reduction. The only objections noted in the record are those in
5 opposition to the entire Application.

6 CRA offers no authority to sustain their assertions that the Board taking
7 action to reduce the acreage of the agendaized proposal is a “substantial”
8 modification that requires separate notice on the agenda. Moreover, CRA
9 ignores that the proposal to reduce the scope of the proposed Master Plan
10 Amendment and zone change was actually discussed at a public meeting at
11 which substantial public comment was offered.

12 Finally, it is curious that CRA’s objection on this point is merely that
13 CRA was “left without notice on whether or not the proposed parcels were
14 indeed those mapped and more importantly whether those parcels when
15 removed from possible open pit mining provide any viewshed protection.”
16 Opening Brief at p. 57, ll. 13-17. If this is CRA’s only complaint, CRA has
17 certainly had time to verify these issues in the time that has elapsed since the
18 January 2, 2014 meeting. Nonetheless, the Court should take note that CRA
19 makes no argument here and made no argument in the District Court that the
20 rationale given at the January 2, 2014 meeting for removing those parcels from
21 consideration is false. Therefore, it must follow that, even if a subsequent
22 meeting were to take place, CRA would have nothing on which to base an
23 objection that the reduced acreage does not provide viewshed protection to
24 residents of Silver City.

25 In sum hereof, Nevada law supports Respondents’ contentions that
26 action taken within the scope of an agenda item, when such action constitutes a
27 reduction in the scope and effect thereof, is proper. Moreover, CRA offers no
28 authority or any cogent argument that the action ultimately taken was not

1 discussed at the January 2, 2014 meeting. Quite simply, CRA has failed to
2 assert facts in support of a claim for violation of the OML. For these reasons,
3 this Court should affirm the District Court's dismissal of CRA's claims for
4 violation of the OML.

5 **G. CRA Cannot Sustain a Claim for Violations of Due Process.**

6 CRA asserts that the Board violated its due process rights where two of
7 the members of the Board refused to recuse themselves from deliberating and
8 voting on CMI's Application. CRA's entire claim is based on erroneous and
9 inapplicable standards.

10 CRA's Complaint alleges violations of due process rights embodied in
11 the federal and state constitutions and the Nevada Ethics in Government Act,
12 which is codified in NRS Chapter 281A. NRS 281A.420 provides the standard
13 by which a public official must determine whether conflicts of interest give rise
14 to an obligation to abstain from participating in the deliberations or vote on any
15 matter.

16 NRS 281A.420(1) provides that a public official should abstain from
17 voting on a matter: (a) regarding which the public official "has accepted a gift
18 or loan," (b) in which the public official "has a significant pecuniary interest,"
19 or (c) which would be affected by the public official's "commitment in a
20 private capacity to the interests of another person" unless the public official
21 discloses information "sufficient to inform the public" of the effects of the
22 proposed action on the loan, gift, pecuniary interest, or commitment to the
23 interests of another person. Moreover, the disclosure(s) required in NRS
24 281A.420(1) must be made at the time the particular matter is being heard and
25 in public.

26 A public official who properly discloses the items mentioned in NRS
27 281A.420(1) is permitted to deliberate and vote on the matter in question
28 unless the "judgment of a reasonable person in the public officer's position

1 would be materially affected by” the disclosed item(s). NRS 281A.420(3). A
2 public official is presumed not to be materially affected by the gift, loan,
3 significant pecuniary interest, or commitment to another’s interests if the
4 benefit to the public officer is not greater than that accruing to any other person
5 affected by the matter in question. NRS 281A.420(4). This is the standard in
6 Nevada when evaluating conflicts of interest.

7 NRS 281A.420(4) also states:

8 Because abstention by a public officer disrupts the
9 normal course of representative government and
10 deprives the public and the public officer’s
11 constituents of a voice in governmental affairs, the
12 provisions of this section are intended to require
13 abstention only in clear cases where the independence
of judgment of a reasonable person in the public
offer’s situation would be materially affected by the
public officer’s acceptance of a gift or loan,
significant pecuniary interest or commitment in a
private capacity to the interests of another person.

14 CRA chooses to ignore the clearly-defined Nevada standard and, instead,
15 urges the Court to consider and apply a standard from another jurisdiction.
16 CRA posits that the standard to be applied here is whether “the probability of
17 actual bias on the part of the judge or decision maker is too high to be
18 constitutionally tolerable.” Opening Brief at p. 57, ll. 24-27 (citing Caperton v.
19 Massey Coal Company, 556 U.S. 868, 872 (2009) (applying West Virginia
20 law)). CRA ignored the Nevada standard in the District Court as well. JA Vol.
21 27 at 3703. CRA chooses to apply the West Virginia standard because
22 application of the Nevada standard results in a finding that Commissioners
23 Keller and Hastings were not required to recuse themselves, which was the
24 conclusion of the District Court. JA Vol. 28 at 3769-3770.

25 In applying the Nevada standard set forth in NRS 281A.420,
26 Commissioners Keller and Hastings were permitted to participate in the
27 deliberations and vote on CMI’s Application.
28

1 Here, Commissioner Keller disclosed her husband's pecuniary interests
2 in projects funded by CMI.² JA Vol. 4 at 0617-0619. Having disclosed her
3 husband's pecuniary interests, Commissioner Keller was free to deliberate in
4 and vote on CMI's Application unless a reasonable person in her position
5 would be materially affected by her husband's pecuniary interests.

6 CRA makes no allegations or arguments that Commissioner Keller was
7 materially affected by her husband's pecuniary interests in projects funded by
8 CMI. Moreover, CRA makes no allegations that the benefits to Commissioner
9 Keller's husband exceed those of others receiving the same or similar benefits.

10 Like Commissioner Keller, Commissioner Hastings disclosed perceived
11 pecuniary interests in CMI held by his wife and his daughter's boyfriend. JA
12 Vol. 4 at 0620. His wife's pecuniary interest amounted to a total of \$225,
13 which she was paid by CMI for assisting in the set-up and clean-up of a single
14 event sponsored by CMI. JA Vol. 4 at 0620. Such an amount certainly fails to
15 rise the level of being a significant pecuniary interest in CMI.

16 Commissioner Hastings' daughter's boyfriend, Shawn Starks, was
17 employed by CMI to work in one of its mines. Commissioner Hastings
18 disclosed that Shawn Starks was hired on the basis of his prior experience with
19 industrial excavation. JA Vol. 4 at 0620. Certainly, Commissioner Hastings
20 was not required to disclose pecuniary interests of Shawn Starks for which
21 Commissioner Hastings derives absolutely no benefit. Nevertheless, in order
22 to avoid the appearance of impropriety, Commissioner Hastings did disclose
23 his relationship with Mr. Starks.

24 In contrast to the plain language of NRS 281A.420(3) and (4), CRA
25 argues that Commissioners Keller and Hastings should have recused
26 themselves if "a reasonable person would perceive a conflict of interest on the
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28 ² A plain reading of NRS 281A.420 would not likely lead to a conclusion that Commissioner Keller was
required to disclose her husband's interests. Nevertheless, considering Nevada's community property laws and
in order to avoid the appearance of impropriety, Commissioner Keller did disclose said interests.

1 part of government official when he or she considers a matter.” JA Vol. 1 at
2 0031, ¶ 118. This is a gross misrepresentation of the statutory standard guiding
3 the recusal of Nevada public officials. The mere perception of a conflict of
4 interest is not the standard set forth in any provision of NRS Chapter 281A.
5 Moreover, CRA has made no arguments or allegations that Commissioners
6 Keller and Hastings were materially affected by the pecuniary interests they
7 disclosed. Indeed, CRA makes no allegations or arguments that said pecuniary
8 interests even rise to the level of being significant as required under NRS
9 281A.420(1).

10 In addition, CRA alleges that Commissioner Hastings was further
11 disqualified by virtue of CMI’s contributions to his election campaign in 2012.
12 JA Vol. 1 at 0031, ¶ 121. Nevada law on this issue is quite clear. NRS
13 281A.420(2)(a) states unequivocally that a public officer is not required to
14 disclose “[a]ny campaign contributions that the public officer reported in a
15 timely matter” pursuant to relevant statutes. Nevertheless, Commissioner
16 Hastings did disclose CMI’s contributions to his election fund.

17 Moreover, the Nevada Attorney General has taken the position that
18 campaign contributions are not conflicts of interest that require abstention from
19 voting on matters relating to or affecting campaign contributors. See Nevada
20 Attorney General’s Opinion (“AGO”) 1998-29. The Nevada Attorney General
21 recognized that the Nevada legislature (in predecessor statutes to NRS Chapter
22 281A) has kept campaign contributions separate from conflicts of interests. Id.
23 It determined that the Legislature had not intended for campaign contributions
24 to trigger a conflict of interest that might require abstention. Id. Revisions to
25 the applicable conflict of interest statutes, including the addition of NRS
26 Chapter 281A, since 1998 have not added anything to reverse or contradict this
27 finding. Commissioner Hastings was not required to disclose his campaign
28 contributions during the January 2, 2014 hearing and there is no authority that

1 required him to recuse himself from deliberating and voting on CMI's
2 Application.

3 Whether CRA likes it or not, land use decisions are discretionary
4 political decisions. They are ultimately made by elected officials. So long as
5 the decisions are supported by substantial evidence, as the Board's decision
6 here was, those decisions must be upheld. This Court should not and is not
7 empowered to substitute its opinion for the opinion of the duly elected
8 members of the Board.

9 In addition to the question of recusal, CRA demands that this Court
10 reverse the District Court's affirmation of the Board's decision on the basis that
11 the Board's decision was politically motivated. Opening Brief at p. 50, l. 24 to
12 p. 51, l. 7. In support of its demand, CRA cites Nova Horizon, Inc. v. City
13 Council of the City of Reno, 105 Nev. 92, 769 P.2d 721 (1989), and American
14 West Development, Inc. v. City of Henderson, 111 Nev. 804, 898 P.2d 110
15 (1995), both of which are grossly misinterpreted by CRA.

16 CRA would have this Court accept that Nova Horizons and American
17 West Development demonstrate a willingness by Nevada courts to overturn
18 planning decisions that are based on political pressures. CRA misrepresents
19 the law. In Nova Horizons, this Court overturned a decision to deny a zone
20 change application on the basis that the agency's decision was not based on
21 substantial evidence. 105 Nev. at 96-98, 769 P.2d at 724-25. There is no
22 discussion about political pressures influencing the agency.

23 CRA likewise misrepresents American West Development. In that case,
24 contrary to CRA's assertion, a municipality denied a developer's zoning
25 application. The developer thought the denial was based on political pressure,
26 but that issue was not analyzed by this Court, who remanded to the
27 municipality on entirely separate grounds. 111 Nev. at 807-09, 898 P.2d at
28 112-14. There is no legal or evidentiary basis upon which this Court should

1 reverse the District Court and overturn the Board's decision for perceived
2 political pressures.

3 Finally, CRA cites Ivey v. Eighth Judicial District Court, 129 Nev. Adv.
4 Op. 16, 299 P.3d 354 (2013), for the proposition that this Court has "examined
5 whether campaign contributions in accordance with state limits, nevertheless
6 amounted to a due process violation." Opening Brief at p. 59, ll. 17-20.
7 CRA's citation to Ivey is misplaced because this Court expressly held that
8 campaign contributions made in accordance with state limits are not violations
9 of due process rights and do not require recusal. Therefore, Ivey clearly
10 supports affirming the District Court's conclusion that Commissioner Hastings
11 was not required to recuse himself on the basis of CMI's properly disclosed
12 campaign contributions to his election fund.

13 Furthermore, both Commissioners Keller and Hastings consulted the
14 Lyon County District Attorney and the Nevada Commission on Ethics to
15 ensure their disclosures were proper and that they were not required to recuse
16 themselves from participating in the hearing of CMI's Application. JA Vol. 4
17 at 0617-0620.

18 Even accepting as true all of the facts alleged by CRA in support of its
19 claim that Commissioners Keller and Hastings were unduly influenced by the
20 pecuniary interests they disclosed and, in the case of Commissioner Hastings,
21 by the campaign contributions made by CMI, there is no basis on which CRA
22 might obtain the relief it seeks in its claim for violation of due process. For
23 these reasons, the Court should affirm the District Court's dismissal of CRA's
24 claim for violation of due process.

25 **CONCLUSION**

26 For the reasons set forth herein, Respondents respectfully request that
27 this Court affirm the District Court's denial of Appellants' Petition for Judicial
28 Review and the dismissal of Appellants' claims for violations of the OML and

1 due process. Further, Respondents respectfully request that this Court uphold
2 the Board's decision to grant CMI's Application to amend the Master Plan and
3 zoning on the subject property.
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1 **NRAP 28(f) ADDENDUM**

2 Pursuant to NRAP 28(f), relevant parts of statutes, rules, and regulations
3 that are cited but not reproduced in the foregoing Answering Brief are
4 reproduced here for the Court's reference.

5 **NEVADA REVISED STATUTES (NRS)**

6 NRS 233B.131(1):

7 Within 30 days after the service of the petition for
8 judicial review or such time as is allowed by the court,
9 the agency that rendered the decision which is the
10 subject of the petition shall transmit to the reviewing
11 court the original or a certified copy of the entire
12 record of the proceeding under review, including a
13 transcript of the evidence resulting in the final
14 decision of the agency.

15 NRS 233B.135:

16 1. Judicial review of a final decision of an
17 agency must be:

- 18 (a) Conducted by the court without a jury; and
19 (b) Confined to the record.

20 In cases concerning alleged irregularities in
21 procedure before an agency that are not shown in the
22 record, the court may receive evidence concerning
23 the irregularities.

24 2. The final decision of the agency shall be
25 deemed reasonable and lawful until reversed or set
26 aside in whole or in part by the court. The burden of
27 proof is on the party attacking or resisting the
28 decision to show that the final decision is invalid
pursuant to subsection 3.

3. The court shall not substitute its judgment
for that of the agency as to the weight of evidence on
a question of fact. The court may remand or affirm
the final decision or set it aside in whole or in part if
substantial rights of the petitioner have been
prejudiced because the final decision of the agency
is:

- (a) In violation of constitutional or statutory
provisions;
(b) In excess of the statutory authority of the
agency;
(c) Made upon unlawful procedure;
(d) Affected by other error of law;
(e) Clearly erroneous in view of the reliable,
probative and substantial evidence on the whole
record; or
(f) Arbitrary or capricious or characterized by
abuse of discretion.

1 NRS 241.015(3):

2 “Meeting”:

3 (a) Except as otherwise provided in paragraph

4 (b), means:

5 (1) The gathering of members of a
6 public body at which a quorum is present, whether in
7 person or by means of electronic communication, to
8 deliberate toward a decision or to take action on any
9 matter over which the public body has supervision,
10 control, jurisdiction or advisory power.

11 (2) Any series of gatherings of members
12 of a public body at which:

13 (I) Less than a quorum is present,
14 whether in person or by means of electronic
15 communication, at any individual gathering;

16 (II) The members of the public
17 body attending one or more of the gatherings
18 collectively constitute a quorum; and

19 (III) The series of gatherings was
20 held with the specific intent to avoid the provisions of
21 this chapter.

22 (b) Does not include a gathering or series of
23 gatherings of members of a public body, as described
24 in paragraph (a), at which a quorum is actually or
25 collectively present, whether in person or by means of
26 electronic communication:

27 (1) Which occurs at a social function if
28 the members do not deliberate toward a decision or
take action on any matter over which the public body
has supervision, control, jurisdiction or advisory
power.

(2) To receive information from the
attorney employed or retained by the public body
regarding potential or existing litigation involving a
matter over which the public body has supervision,
control, jurisdiction or advisory power and to
deliberate toward a decision on the matter, or both.

21 NRS 278.020(1):

22 For the purpose of promoting health, safety, morals,
23 or the general welfare of the community, the
24 governing bodies of cities and counties are authorized
25 and empowered to regulate and restrict the
26 improvement of land and to control the location and
27 soundness of structures.

25 NRS 278.210(4):

26 Except as otherwise provided in NRS 278.225, no plan
27 or map, hereafter, may have indicated thereon that it is
28 a part of the master plan until it has been adopted as
part of the master plan by the commission as herein
provided for the adoption thereof, whenever changed

1 conditions or further studies by the commission require
2 such amendments, extension or addition.

3 NRS 278.220:

4 1. Upon receipt of a certified copy of the
5 master plan, or of any part thereof, as adopted by the
6 planning commission, the governing body may adopt
7 such parts thereof as may practicably be applied to the
8 development of the city, county or region for a
9 reasonable period of time next ensuing.

10 2. The parts must thereupon be endorsed and
11 certified as master plans thus adopted for the territory
12 covered, and are hereby declared to be established to
13 conserve and promote the public health, safety and
14 general welfare.

15 3. Before adopting any plan or part thereof,
16 the governing body shall hold at least one public
17 hearing thereon, notice of the time and place of which
18 must be published at least once in a newspaper of
19 general circulation in the city or counties at least 10
20 days before the day of hearing.

21 4. No change in or addition to the master plan
22 or any part thereof, as adopted by the planning
23 commission, may be made by the governing body in
24 adopting the same until the proposed change or
25 addition has been referred to the planning commission
26 for a report thereon and an attested copy of the report
27 has been filed with the governing body. Failure of the
28 planning commission so to report within 40 days, or
such longer period as may be designated by the
governing body, after such reference shall be deemed
to be approval of the proposed change or addition.

18 NRS 281A.420:

19 1. Except as otherwise provided in this
20 section, a public officer or employee shall not
21 approve, disapprove, vote, abstain from voting or
22 otherwise act upon a matter:

23 (a) Regarding which the public officer or
24 employee has accepted a gift or loan;

25 (b) In which the public officer or employee has
26 a significant pecuniary interest; or

27 (c) Which would reasonably be affected by the
28 public officer's or employee's commitment in a
private capacity to the interests of another person,
without disclosing information concerning the gift or
loan, significant pecuniary interest or commitment in
a private capacity to the interests of the person that is
sufficient to inform the public of the potential effect
of the action or abstention upon the person who
provided the gift or loan, upon the public officer's or
employee's significant pecuniary interest, or upon the
person to whom the public officer or employee has a
commitment in a private capacity. Such a disclosure

1 must be made at the time the matter is considered. If
2 the public officer or employee is a member of a body
3 which makes decisions, the public officer or employee
4 shall make the disclosure in public to the chair and
5 other members of the body. If the public officer or
6 employee is not a member of such a body and holds
7 an appointive office, the public officer or employee
8 shall make the disclosure to the supervisory head of
9 the public officer's or employee's organization or, if
10 the public officer holds an elective office, to the
11 general public in the area from which the public
12 officer is elected.

13 2. The provisions of subsection 1 do not
14 require a public officer to disclose:

15 (a) Any campaign contributions that the public
16 officer reported in a timely manner pursuant to NRS
17 294A.120 or 294A.125; or

18 (b) Any contributions to a legal defense fund
19 that the public officer reported in a timely manner
20 pursuant to NRS 294A.286.

21 3. Except as otherwise provided in this
22 section, in addition to the requirements of subsection
23 1, a public officer shall not vote upon or advocate the
24 passage or failure of, but may otherwise participate in
25 the consideration of, a matter with respect to which
26 the independence of judgment of a reasonable person
27 in the public officer's situation would be materially
28 affected by:

(a) The public officer's acceptance of a gift or
loan;

(b) The public officer's significant pecuniary
interest; or

(c) The public officer's commitment in a
private capacity to the interests of another person.

4. In interpreting and applying the provisions
of subsection 3:

(a) It must be presumed that the independence
of judgment of a reasonable person in the public
officer's situation would not be materially affected by
the public officer's acceptance of a gift or loan,
significant pecuniary interest or commitment in a
private capacity to the interests of another person
where the resulting benefit or detriment accruing to
the public officer, or if the public officer has a
commitment in a private capacity to the interests of
another person, accruing to the other person, is not
greater than that accruing to any other member of any
general business, profession, occupation or group that
is affected by the matter. The presumption set forth in
this paragraph does not affect the applicability of the
requirements set forth in subsection 1 relating to the
disclosure of the acceptance of a gift or loan,
significant pecuniary interest or commitment in a
private capacity to the interests of another person.

(b) The Commission must give appropriate
weight and proper deference to the public policy of

1 this State which favors the right of a public officer to
2 perform the duties for which the public officer was
3 elected or appointed and to vote or otherwise act upon
4 a matter, provided the public officer has properly
5 disclosed the public officer's acceptance of a gift or
6 loan, significant pecuniary interest or commitment in
7 a private capacity to the interests of another person in
8 the manner required by subsection 1. Because
9 abstention by a public officer disrupts the normal
10 course of representative government and deprives the
11 public and the public officer's constituents of a voice
12 in governmental affairs, the provisions of this section
13 are intended to require abstention only in clear cases
14 where the independence of judgment of a reasonable
15 person in the public officer's situation would be
16 materially affected by the public officer's acceptance
17 of a gift or loan, significant pecuniary interest or
18 commitment in a private capacity to the interests of
19 another person.

11 **LYON COUNTY CODE (LCC)**

12 **LCC 10.03.04:**

13 **A. Site And Structure Requirements:**

14 1. Lot area: Required area is nominal five (5)
15 acres minimum including road rights of way.

16 2. Lot width: The ratio of lot length to width
17 shall not be greater than four to one (4:1); minimum
18 two hundred feet (200') average width.

19 3. Density: There may be one or more single-
20 family dwellings on any lot or parcel having an excess
21 of five (5) acres; provided, there are not less than five
22 (5) acres for each such dwelling, and that such
23 structures are not less than fifty feet (50') apart.

24 4. Setbacks: Except as otherwise provided,
25 setbacks shall be as follows:

26 a. Front yard: Not less than thirty feet
27 (30').

28 b. Side yards: Not less than ten feet (10').

c. Rear yard: Not less than twenty feet
(20').

29 **B. Uses Permitted:** Uses permitted on a lot or
30 parcel having the required area and width are as
31 follows:

32 All uses permitted in RR-1 district.
33 Hunting and fishing lodges, wildlife refuges
34 and game farms.

35 **C. Special Uses:** The uses requiring a special
36 use permit in this zone shall be the same special uses
37 as authorized in RR-1 under the same limitations and
38 conditions; mining, including extraction and/or
39 processing of rock, sand, gravel, asphalt and like earth
40 products including topsoil stripping; rifle and archery
41 ranges; trapshoots; campgrounds; commercial
42 farrowing pens and feedlots.

1 LCC 10.03.06:

2 A. Site And Structure Requirements:

3 1. Lot area: Required area is nominal twenty
4 (20) acres minimum including road rights of ways.

5 2. Lot width: The ratio of lot length to width
6 shall not be greater than an average of four to one
7 (4:1).

8 3. Density: There may be one or more single-
9 family dwellings on any lot or parcel having an excess
10 of twenty (20) acres; provided, there is not less than
11 twenty (20) acres for each such dwelling, and that
12 such structures are not less than fifty feet (50') apart.

13 4. Setbacks: Except as otherwise provided,
14 setbacks shall be as follows:

15 a. Front yard: Not less than thirty feet
16 (30').

17 b. Side yards: Not less than ten feet (10').

18 c. Rear yard: Not less than twenty feet
19 (20').

20 B. Uses Permitted: Uses permitted on a lot or
21 parcel having the required area and width are as
22 follows:

23 All uses permitted in RR-4 district.

24 C. Special Uses:

25 1. Uses requiring a special use permit:
26 Uses as authorized in RR-4 district under the
27 same limitations and conditions.³

28 Commercial wind energy conversion systems.

2. On land designated by the assessor as
agricultural, landowners may provide buildings for
use as farm labor housing for seasonal or temporary
employees of the landowner. Such housing units may
include cooking facilities and must comply with
United States department of labor standards per title
20, chapter V of the code of federal regulations.

LCC 10.03.09:

There is hereby created a district to be known as a
Single-Family Nonrural Residential District (NR-1):

A. Site And Structure Requirements:

1. Lot Area: Required area is six thousand
(6,000) square feet minimum excluding road rights of
way.

2. Lot Width: Each lot shall be a minimum of
sixty feet (60') average width.

3. Setbacks: Except as otherwise provided,
setbacks shall be as follows:

³ Special uses under the RR-4 designation are the same as those listed under the RR-3 designation.

1 a. Front yard, not less than twenty feet
2 (20').

3 b. Side yards, not less than five feet (5').

4 c. Rear yard, not less than ten feet (10').

5 4. Density: There may be only one single-
6 family dwelling on any lot or parcel.

7 B. Uses Permitted: Uses permitted on a lot or
8 parcel having the required area and width are as
9 follows:

10 Garden houses, playhouses, tennis courts.

11 Single-family dwelling, one detached guest
12 building and accessory uses customarily incident to
13 the uses in this subsection and located on the same lot
14 or parcel, including a private garage with capacity of
15 not more than four (4) cars.

16 "Home occupations" as defined in this Title and
17 subject to provisions set forth.

18 C. Special Uses: Uses requiring a special use
19 permit shall include:

20 Child care facilities, other than home
21 occupation child care for hire as defined in this Title
22 not required to have a special use permit.

23 Churches.

24 Group care facilities.

25 Parks.

26 Public utility serving centers.

27 Recreational areas.

28 Residential industry.

Schools.

When on a lot or parcel of land having a
minimum of twenty one thousand (21,000) square
feet, the following:

Private golf, swimming, tennis and similar
clubs.

Sanitariums.

Other like uses.

LCC 10.12.07:

All changes to the zoning which apply to real property
must comply with the following procedures:

A. A request to change the zoning application
to a particular lot(s) or parcel(s) of real property must
be initiated by filing an application for a change of
zoning with the administrator.

B. The application must be in the form
established by the administrator and be accompanied
by a fee as set forth by resolution of the board before
it may be filed.

C. The application for a change of zoning must
be considered by the commission within forty five
(45) days after the application is filed with the
administrator.

D. The commission, after considering the
application, must prepare a recommendation
regarding the request for a change of zoning to the

board and include with the recommendation the minutes of its hearing regarding the application and the record prepared of its hearing.

E. The board must conduct a hearing to consider the application for a change of zoning within forty five (45) days after the close of the hearing conducted by the commission.

F. The burden of establishing that a change of zoning is consistent with the purposes of this title is on the applicant.

G. A change of zoning may be granted by a majority vote of a quorum of the board.

H. A change of zoning becomes effective upon its recordation in the parcel books kept in the administrator's office, the correction of the zoning district page and upon the filing of a notice of final action by the planning administrator with the clerk of the board. The notice of final action must also be mailed to the applicant.

LCC 10.12.09(F)(1):

When making an approval, modification or denial of an amendment to the master plan land use map or text, the commission and the board shall, at a minimum, make one of the following findings of fact:

a. Consistency With The Master Plan:

(1) Approval: The applicant has demonstrated that the amendment is in substantial compliance with and promotes the master plan goals, objectives and actions.

(2) Denial: The proposed amendment is not in substantial compliance with, nor does it promote the master plan goals, objectives and actions.

b. Compatible Land Uses:

(1) Approval: The proposed amendment is compatible with the actual and planned adjacent land uses, and reflects a logical change in land uses.

(2) Denial: The proposed amendment would result in land uses which are incompatible with the actual and planned adjacent land uses, and does not reflect a logical change in land uses.

c. Response To Change Conditions:

(1) Approval: The proposed amendment has demonstrated and responds to changed conditions or further studies that have occurred since the master plan was adopted by the board, and the requested amendment represents a more desirable utilization of land.

(2) Denial: The proposed amendment does not identify and respond to changed conditions or further studies that have occurred since the master plan was adopted by the board, and the requested amendment does not represent a more desirable utilization of land.

d. No Adverse Effects:

1 (1) Approval: The proposed amendment
2 will not adversely affect the implementation of the
3 master plan goals, objectives and actions, and will not
4 adversely impact the public health, safety or welfare.

5 (2) Denial: The proposed amendment
6 will adversely affect the implementation of the master
7 plan goals, objectives and actions, and would
8 adversely impact the public health, safety or welfare.

9 e. Desired Pattern Of Growth:

10 (1) Approval: The proposed amendment
11 will promote the desired pattern for the orderly
12 physical growth of the county, allows infrastructure to
13 be extended in efficient increments and patterns,
14 maintains relatively compact development patterns,
15 and guides development of the county based on the
16 least amount of natural resource impairment and the
17 efficient expenditure of funds for public services.

18 (2) Denial: The proposed amendment
19 does not promote the desired pattern for the orderly
20 physical growth of the county. The proposed
21 amendment does not allow infrastructure to be
22 extended in efficient increments and patterns, does not
23 maintain relatively compact development patterns,
24 and does not guide development of the county based
25 on the least amount of natural resource impairment
26 and the efficient expenditure of funds for public
27 services.
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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that I am an employee of
ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I
caused the foregoing document to be served on all parties to this action by:

✓ Placing a true copy thereof in a sealed postage prepaid envelope
in the United States Mail in Carson City, Nevada

as follows:

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

DATED this _15th_ day of January, 2016.

/s/ Susan Price
SUSAN PRICE

4835-2149-2012, v. 6