

IN THE SUPREME COURT OF THE STATE OF NEVADA

COMSTOCK RESIDENTS
ASSOCIATION; AND JOE MCCARTHY,
Appellants,
vs.
LYON COUNTY BOARD OF
COMMISSIONERS; AND COMSTOCK
MINING INCORPORATED,
Respondents.

No. 68433

FILED

JAN 25 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

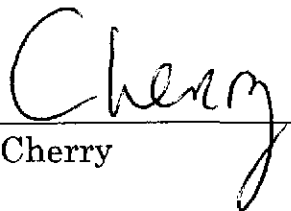
ORDER DENYING REHEARING

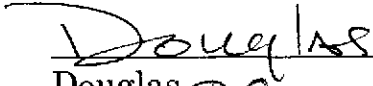
This is a petition for rehearing of the order issued in *Comstock Residents Ass'n v. Lyon County Board of Commissioners*, Docket No. 68433 (Order Affirming in Part, Reversing in Part, and Remanding, December 2, 2016). The order reversed in part and remanded a district court order dismissing claims of due process violations against the respondents. Respondents, Lyon County Board of Commissioners and Comstock Mining Incorporated filed a petition for rehearing arguing that we misapprehended material facts and our purported misapprehended facts caused us to erroneously reverse the district court's dismissal of the Comstock Resident's Association's due process claim.

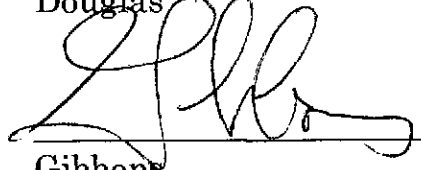
This court only considers a petition for rehearing if the court has "overlooked or misapprehended a *material fact* in the record or a material question of law in the case" or if it has "overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case." NRAP 40(c)(2) (emphasis added). A decision to dismiss a complaint is rigorously reviewed on appeal with *all alleged facts in the complaint presumed true* and all inferences

drawn in favor of the complaint. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A complaint need accomplish no more than to "set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending party has adequate notice of the nature of the claim and relief sought." *W. States Constr., Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992). When reviewing a motion to dismiss, we must assume that all of the alleged facts found in the complaint are true, therefore, the actual accuracy of the facts recited in the order is immaterial to our decision to reverse the dismissal of the due process claim. The district court is tasked with making factual findings and has yet to do so. Accordingly, we deny the petition for rehearing.

It is so ORDERED.


Cherry, C.J.


Douglas, J.


Gibbons, J.

cc: Chief Judge, The Third Judicial District Court
Hon. Robert E. Estes, Senior Judge
John L. Marshall
Allison MacKenzie, Ltd.
Lyon County District Attorney
Third District Court Clerk