

MINUTES
CHURCHILL COUNTY PLANNING COMMISSION WORKSHOP
Thursday, January 30, 2025

1. Call to Order

Chair Bunyard called the regular workshop of the Churchill County Planning Commission to order at 6:30 p.m. in the Commission Chambers, County Administrative Complex, 155 N Taylor Street, Fallon, Nevada.

PLANNING COMMISSIONERS PRESENT: Zack Bunyard, Chair; Jeff Goings, Vice Chair; Victor Ansotegui, Member; Tami Edgmon, Member; and Mark Hyde, Member.

PLANNING COMMISSIONERS ABSENT: Joe Frey, Member, and Scott Nelson, Member.
No Public Members were present at this workshop.

STAFF PRESENT: Randy Hines, Public Works Director; Dean Patterson, Senior Planner; Joseph Sanford, Deputy District Attorney-Civil; and Diane Moyle, Administrative Assistant.

2. Public Comment

Chair Bunyard asked for public comments and there were none.

3. Verification of the Posting of the Agenda

Chair Bunyard verified with Diane Moyle that the agenda had been posted in accordance with NRS 241 and the Churchill County Code.

4. Consideration and possible action re: Review and adoption of Agenda as submitted or revised

Member Edgmon made a motion to approve the Agenda as submitted. Vice Chair Goings seconded the motion, which passed unanimously (5-0).

5. Orientation of Planning Commission Members.

- A. Discussion regarding how planning operates in Churchill County and the role of the Planning Commission in decision making.

Dean Patterson, Senior Planner, shared a PowerPoint presentation reviewing zoning and planning laws and regulations (see attached). Most planning regulations are found in Nevada Revised Statutes (NRS) 278 and outline what authority is given to different jurisdictions and decision making boards. He stated that the Churchill County planning codes were established in about 1972. There was a major overhaul and rewrite of these ordinances in 2005 where they combined many of the ordinances into a Development Code, Title 16. The Use Table was restructured in 2019. There are 19 Titles for Churchill County, and Public Works, Planning and Building administers many of these. He explained how laws and regulations work independently and together.

Mr. Patterson explained how these regulations are grouped into different titles and what each title includes. Laws establish the administrator(s) who will make decisions regarding the implementation of the regulations. The Planning Commission is one of the decision makers for

certain laws. Dean Patterson shared the different permits and processes for these in our code, as well as the notice requirements. All permits require conformance with the Title. He went over some of the specific areas where the Planning Commission reviews permits and regulations to be considered. In Title 16 there are some general development standards that applies to all development applications, land division development standards, site development standards, and some specific use standards. He explained that the staff report includes code review and how the application either meets or doesn't meet these requirements. The Master Plan and code establishes zoning districts and outlines regulations for each. He also shared additional triggers for special use permits that would apply for specific uses, even if the use in the table only needs a zoning review. A zoning review is not an official permit, but rather an informal compliance review done administratively. He demonstrated a portion of the use table and explained how to understand the symbols and the differences between permitted and not allowed.

Chair Bunyard inquired if there were any questions or comments from the commissioners, and Member Hyde expressed appreciation for the information. Vice Chair Goings asked related to the NAS (Naval Air Station) Overlay and how that is represented in the table. Dean Patterson remarked that if there is a symbol in that column for a particular use, and the application is for a location that falls within the NAS Overlay area or may impact military operations, then they would need to comply with the process outlined in that column since there may be conditions needed to ensure compatibility with these operations.

B. Discussion regarding Open Meeting Law and Ethics for Government Employees.

Joseph Sanford, Deputy District Attorney—Civil, shared a presentation describing planning laws (see attached). He shared how laws have been interpreted relating to private property rights and when something is allowed for government involvement—scope of powers. There is a sort of tug of war between individual property right holders and the societal right to limit the scope of what someone may want to do. The Euclidean zoning is the idea that says that we can limit a person's use of property to a certain type of use for the betterment of society all together. A zoning ordinance contains an "escape valve" in the form of a variance and use permit. If for some reason the use a person wants to have does not fit what the code allows, the person has a way to work toward obtaining a permit to allow it. That prevents the "state" from a taking. If a property is zoned for residential; however, there is a problem with the property that prevents it from being used as the code states, there needs to be a way for the person to obtain a variance based upon the problem specific to that property.

Mr. Sanford outlined that state law requires the adoption of a plan—regional plan and master plan to name a couple. These are important because they can affect private property rights. He explained that precondemnation is a common issue in more urban areas. Basically, the state could adopt a master plan that says that they will build a highway through a person's property, and although they have not actually gotten to the point of taking the property, the person may no longer be able to sell their property due to the plan outlining the route of the highway through this property. Even though the plan hasn't actually taken the action yet, it is important to remember that as these plans get adopted, they have effects not just some day in the future, but immediately upon adoption. He shared how zoning ordinances are intended to be adopted in conformance with the general plan. They are essentially sorted by the type of use, and then further by density or intensity. He further shared that subdivision and mapping laws are established by adoption of laws by the state. Nevada adopted a Map Act that outlines the requirements for division of land. This creates entitlements, and this is how people will eventually be able to sell those properties. The division of land is how it

establishes the right to build according to the map that has been presented. This commission and the board, through the mapping process, is giving permission to establish the rights to property according to the maps that are approved and recorded. There are limitations set for the different types of map approvals as well as processes for moving forward with timelines that must be met.

Joe Sanford pointed out an important note that when a person comes and asks for approval to do something the burden of proof is on the applicant. If they are asking for a permit, they need to show that their use is compatible with the surrounding uses and to show that they are not going to have negative impacts. It is not up to the government to figure out every single issue that could have come up related to the use and come up with a plan for them. It is on them to address the concerns related to the use they propose. If the commissioners ever have a question or an issue, they can ask the applicant how they will address the issue, but it isn't up to the commission to come up with the solution or plan. One of the reasons that this commission and the public are invited to participate in the process, is because staff may not think about all of the potential issues that could arise. He suggested that the commission understand that it is upon the applicant to meet all of the requirements to be a good neighbor. That is especially true of negative impacts. He shared a few examples. It is good for the commission to express concerns, but it is not their responsibility to come up with the solution to the concern—that is upon the applicant to address. He followed with spot-zoning and how we want to avoid allowing some uses allowed in some areas, but not in others, and they just make these up as they go along. Generally, the commission's decisions are discretionary. If the question is whether a use is compatible with the surrounding area, that is something that no one is going to be able to say for sure, and therefore, it is a discretionary decision to say that the members of the board decided whether it either was or wasn't. He cautioned members not to say that it doesn't meet the requirements of the code when that opinion is contradicted by the evidence. They could say that it isn't compatible for a particular reason as long as the evidence doesn't show that not to be the case. He gave an example of incompatibility due to noise when noise wasn't addressed or whether the proposed solution for screening is insufficient to address the sight problem. He mentioned that they should not say that they are concerned about the traffic being too high when there is a traffic study that indicates that won't be the case. They could state what the basis is why they disagree with the evidence that is provided that causes their concern. They could also indicate that they believe this use to be incompatible with the neighboring area. Certain statements and decisions made when in contradiction to the evidence presented could be a basis for contesting their decision.

Mr. Sanford explained that zoning changes, variances or use permits are discretionary, and mapping compliance or zoning reviews are more ministerial, which means that we just want to make sure that they have met the conditions. A proposed use that is already allowed by zoning should be discretionary, but there are remedies in the law when a person doesn't agree with the decision made. He outlined the review process with appeals through the various committees, commissions, boards and courts. Standard of review is substantial evidence, and if the commission stated that they do not believe that a particular use is compatible with the surrounding uses, this is generally upheld. The latest trend has been to sue for a taking. There are a lot of politics involved with some of these decisions and the laws on which they were based. He encouraged the members to keep their statements to the discretionary issues, such as the traffic issues previously mentioned. He shared an example where a member could say that they have heard the members of the public in attendance at the meeting that state they do not believe it fits with the area, they have reviewed the application and their proposed use and believe that it does not fit with a neighboring parcel or the

area, and that would be a pretty safe answer. The more that they try to justify with specifics, the more that when it goes to a court case, it will be brought out as a reason to overturn the decision. The county must be able to defend the statements made by the decision making board members during meetings related to the outcome.

Joe Sanford went over some legal cases as examples to help commissioners understand the laws and how to handle discussions and conditions they may want to have on permits they are considering. In the case of 5th & Centennial, an amendment to a master plan of streets by a municipality could qualify as an announcement of intent to condemn areas for easements and rights of way for purposes of establishing precondemnation damages. There was some discussion, and Mr. Sanford remarked that although the condemnation hadn't taken place—when they actually did condemn it, eminent domain would require that just compensation be paid—and this was just in the planning stage, they created what is called precondemnation damages, where it is acknowledged that it hadn't been taken yet, but the owner has been damaged because they are no longer able to either sell it or build in the area that is planned to be condemned. It was sort of like a partial taking, and a certain amount of damages ended up having to be paid. Member Hyde questioned if this is a two-tiered payment system where when it hasn't taken place yet and the planning has damaged the property owner so there is some consideration paid, and then when the road does go in there is another payment. Joe Sanford agreed that the second payment for the actual damage that has occurred takes into account any previous damage payment made. Generally, no one would receive a payment up front during the planning stage unless they sue for these damages.

Mr. Sanford continued with the legal case examples. In the example of the Badlands, the planning board was not clear in defining that the original developer used up the development potential for the area set aside as a golf course in the approval of the original development, and the area set aside for the golf course had no further development potential. That is not what they did, though, so the court decided in favor of the second developer who purchased the property that was slated to be a golf course because it was in the correct zoning for residential development and had the right to be developed as such. Since the municipality decided against the development, it was considered a taking and they ended up paying for the damages. Some of the decision by the court was based off of text messages that commissioners had sent to each other because it had become political. Anything that one commission member sends to another member or a member of the public related to their job as a commissioner is considered public record. It came out that based upon the comments made there was no way the development was going to be approved, no matter what the developer did, so it was ruled as a taking. The main lesson from this case is to understand that they have the authority to deny something as long as they state clearly when issuing a denial to base it on factors that are related to what is being asked. If it is a compatibility issue, then keep the remarks related to that. If it is related to the applicant not having a plan for addressing sight, odor, or light pollution issues, then state those clearly. The more their comments are toward unrelated issues, there is a greater chance of having their decision challenged. Stick closely to the zoning laws within their authority and to meeting the findings related to the application. Vice Chair Goings asked what could have been changed in how the decision was made related to this example to be upheld in the courts. Joe Sanford thinks that it could have been the way things were worded during the division of the land with the development, and that it wasn't made clear that the golf course was connected to the original development when it came to the development rights. They could have established some type of covenant where the municipality had an interest, or many other things could have been done to state clearly that the development potential for this “open space” requirement was moved to the

other portion of the development. Ultimately, they ended up creating two separate parcels, two completely separate approvals, where one was planned to be a golf course, but it wasn't restricted in that fashion. The argument came back to the zoning which the new parcel retained was eligible for residential development. There was no prior restriction on the new parcel that said that it was supposed to be "open space." There was more discussion related to this example. Mr. Sanford said that, typically, it should have made it clear at the map recordation stage to have a type of conservation easement or type of restrictive covenant that said as part of being able to build the residential portion, the other portion was not able to be used for anything that is not a golf course or some sort of open land feature.

Joe Sanford then moved to examples related to monetary exactions—exactions are when there is some sort of barrier to a use that is related to the use they are proposing, and it needs to be mitigated. He likened this to Safety-Kleen with the odor issues. An exaction would be a request that in order to mitigate an issue the applicant would have to do something—install cleaners, filters, or screening for sight pollution issues. Those are fine to use. Every mitigation, or exaction, has to have two things—a nexus (related) to whatever the use compatibility issue is (smell, sight pollution, and so forth) and be roughly proportional to what they are asking. He shared the two most prominent court cases called Nollan and Dolan and how they established the criteria for these two essential standards. Members of a public body cannot request something for public benefit in order for someone to be approved for a use unless it is related to the use requested (i.e. to mitigate an impact proportionally related to that use). Randy Hines, Public Works Director, reiterated what Mr. Sanford said regarding commissioners stating a concern and that it is the applicant's responsibility to say how they would mitigate that concern. If the applicant doesn't provide the answer, he believes that the commission should not make suggestions, and he asked Mr. Sanford what the commission should do at that point. The discussion was that the commission has the authority to table a decision until the applicant comes up with the solution, or they could deny the application because it doesn't meet the findings required for the application. They could also set a condition, proportional to the related issue, that requires the applicant to mitigate for the concern. This condition shouldn't be something vague, like "you will address foot traffic", which has its own problems; however, the commission could have the applicant come back in a month with a plan to address the issue; or if it isn't a significant issue, they could state that the applicant should address this issue, but it wouldn't be a requirement of the permit. Director Hines pointed out that if it is added as a condition, it is something that has to be dealt with later, and Mr. Sanford agreed that the commission could state that the applicant will address the foot traffic issues to the satisfaction of the Director, which sets forth a plan to defer the commission's authority to the Director to address a small portion of the application in order to be able to approve the remainder. Director Hines then mentioned that if the applicant provides a plan that the Director doesn't believe is acceptable to address the issue and denies it, the applicant still has the ability to appeal the Director's decision to the Planning Commission for further review. Further examples and discussion related to exactions commenced. Implementation of additional fees/taxes recommended for approval by the board of county commissioners should not be overburdensome, nor should they be set to target certain types of businesses, developments, and so on. These must be reasonable and based upon mitigation issues related to the application—not placing the entire public burden upon one applicant.

Next, Joe Sanford moved to a presentation related to Open Meeting Law and Ethics (see attached). He went over what types of meetings, discussions, and so forth are subject to Open Meeting Law requirements. Gathering of members of a public body where there is a quorum (more

than half) deliberate (very broad interpretation) about a subject that they have control over. Discussions unrelated to decisions they will make are not a violation; however, if it is something that may come before them, they should exercise caution. There are specific notification requirements related to Open Meeting Law, and he went over these. He also talked about the public perception of a violation of Open Meeting Law when they see a quorum of members gathered, even in a public place, without knowing what they are talking about. Even though the members may not be discussing an item they are considering, the public could file a complaint of violation, and they would be required to investigate what took place. The members may find themselves in a situation to defend themselves about what they were talking about when they spoke with the other members—often the members are not going to remember what they were talking about and there won't be any evidence that they were not discussing something over which they have supervision. Electronic communications count, whether it is email or texting, so if they are reaching out to fellow members, they should keep the conversations limited to when and where a meeting is to take place and not express any thoughts related to any item before them. One of the most common violations is responding to all electronically with concerns about items on the agenda. Be aware of who is receiving the electronic communication, or who could potentially receive a serial electronic communication. All deliberations and decisions must be made in a public meeting. He covered discussions that are allowed, including lobbying for votes or staff meetings where there is less than a quorum in attendance in order to discuss items on the upcoming agenda. Staff meetings provide a chance to really get into the details and get ideas related to concerns that maybe staff doesn't think about or that may be publicly important that the others hadn't considered. Information gathering is okay, but there should be no discussion of thoughts, opinions, or questions relayed to any other members outside of the less than a quorum briefing (staff meeting), and no polling of voting intentions should be taken when there are multiple briefings with members. The only time that the county might consider multiple briefings could be related to a very large development project or where there could be a contentious litigation type of case, and the members want to know more about it before the meeting. In those cases, they can present the members with information, but that would be the limitation. No discussion and no polling for voting should take place. Do not state how you intend to vote prior to the public meeting. That potentially removes the public from the deliberation process. When a member of a public body has their mind made up regarding an issue regardless of what the public may say, there could be the perception that a violation has taken place.

Joe Sanford continued by explaining the fundamental right of lobbying. The reason that people are elected or appointed to serve on public bodies is because they know things about the community, and they can't be required to only consider information that they get from staff or staff meetings, because then the decision should have just been made by the staff. They are supposed to bring their experience and connection to and knowledge of the community to the meetings. If a member of the community, or applicant, wants to talk to the members of the public body, they should have that opportunity. Though, members are not required to talk to or meet with anyone. If they want to talk to them, it is okay, but they should refrain from stating how they will vote on an item or continuing to listen when they talk about conversations with other commissioners. This presents a problem because there is no idea how many members that person has spoken to or whose opinions have been shared with which members, and this could constitute an Open Meeting Law violation. It is okay to vote based on personal or specialized knowledge, but it is best to include that knowledge on the record. This way it doesn't appear to be arbitrary or capricious. He shared some examples. It is not okay to vote based on information provided by the applicant that is not on record or on a promise to do something. He expressed some concerns that come with lobbying. Any

questions about meeting with someone, or if a member wants a member of staff or the District Attorney's office to attend the meeting, should be directed to the department. He stated that members should never accept anything from an applicant—a meal, gifts, and so forth—because it gives the appearance of impropriety or bribery. Also, it is preferable that members discuss issues after they see the material in the packet, and they should supplement the record in the meeting if they receive extra critical information. Do not tell anyone how you plan to vote and end any discussion that includes what another commissioner says. Meetings with an attorney regarding litigation are not considered Open Meetings and do not have to be agendaized. They don't have to have any particular notice to anyone. These are limited to actual or potential litigation involving the commission. He encouraged members to stick to the agenda, and pointed out that items can be taken out of order unless there is a specific appointment time listed on the agenda. He expressed caution related to staff reports, request for future agenda items and visiting before or after the meetings because there isn't any specific information listed on the agenda. It is okay for staff to tell historical things, or for commissioners to give reports of activities or meetings attended, but if someone starts making general comments about types of applications and what should or should not be approved, that has not been properly noticed on the agenda. There was some discussion related to things that should not be said in meetings. The public has a right to attend meetings and be involved in the process, and when certain comments are made that exclude them from this process, it may be construed as a violation. He went over the penalties for these violations that would be imposed on the members found in violation of Open Meeting Law, and these cannot be reimbursed by the County. He strongly cautioned against knowingly violating Open Meeting Law because that is considered a misdemeanor and is punishable by fines and possible incarceration. He encouraged any member that notices an error on an agenda to say something ahead of time to avoid any appearance of a violation. Mr. Sanford covered defamation, and that, unless false comments are knowingly made about an applicant or member of the public, their statements made at a public meeting are privileged and do not constitute defamation. He went over the requirements for allowing public comment. He shared that the best practice is to allow for public comments once before any action item and once immediately prior to the end of the meeting, and to allow the public to comment on each action item that is not disruptive to the meeting process. If the commission wishes to impose time limits for public comment, these must be uniform and apply to all comments made on any item. If no time limit is imposed on one person, it cannot be imposed on another person. Board members should avoid making public comment. If a member wants to make it about something that is extremely public, and not deliberative or associated with any item on the agenda. It could be expressing appreciation to a member of staff or public for the service they provide. Any comments related to a case or code should not be made during public comment. It might be under Future Agenda Items or covered by some other item on the agenda, but it shouldn't be made during public comment. Members are not generally considered public unless they chose to get down off the dias in order to make a public statement. If you have something that is important enough to make public comment of an actual legitimate nature, you should ask to have it added to the agenda. He went over the role of the Chair or Vice Chair in conducting meetings, as well as not allowing disruptive people, comments, or actions during meetings that could be used for the purpose of intimidation, or disruption of the orderly conduct of the meeting.

Joe Sanford moved next to ethics for public officials and shared the general rule that a member should not participate in any matter in which they have a personal interest. That is anything where they have a monetary interest, or any time that is part of the application to whom they have a personal connection—not just knowing the person, but have some type of close relationship—that

could affect their ability to make an unbiased decision (usually within third degree of consanguinity/affinity—see chart in the presentation). They should disclose this information at the time the item is called, before any discussion takes place. They should also abstain if the interest would affect the judgement of a reasonable person. Any conflict has to be disclosed regardless of whether or not they believe that relationship would affect their ability to make a decision. When in doubt, they should disclose the relationship. Member Edgmon questioned the wording they should use when they do not wish to take part in the discussion on an item due to this type of conflict, and Mr. Sanford responded that recusing and abstaining generally mean the same thing. There was some discussion among the members regarding this issue, and Joe Sanford indicated that they do need to state in a concise way the nature of the conflict without going into too much detail. Director Hines encouraged anyone with a potential conflict to contact Mr. Sanford before the meeting, and he will guide them on how to handle it. Joe Sanford explained that when you are not going to take part in the discussion of an item the more correct term would be to recuse yourself. This must be done prior to anyone deliberating on the item. If the member gets involved in the deliberations prior to disclosing the conflict, they have compromised the whole thing. The disclosure doesn't have to go into any real detail, and just stating that there is a financial conflict, familial connection, and so on is sufficient. It should be enough to let the public know whether the issue would taint the public body's judgement on the item. It was pointed out that the word abstain just means that they will not vote, which is generally used if a person just couldn't make up their mind or they don't want to vote on that particular issue. Mr. Sanford mentioned that it is common regarding meeting minutes to have abstention(s) from those who did not attend the meeting for which the minutes pertain. Abstaining from a vote is not disclosing a conflict of interest.

Member Hyde brought up an example given by Mr. Sanford in the first presentation where a decision was made to deny an application because the public sentiment was so strongly opposed. He knows that sometimes they have the vocal minority that show up to their meetings. He asked for clarification when there are a good number of people who are really opposed to an item at a meeting where the members of the commission do not see a real issue with the application and how they should handle that. Joe Sanford highlighted the discretionary authority that this public body has, which includes a statement of compatibility with surrounding uses. If a huge number of the public that is surrounding this proposed use shows up and says that it is not compatible and they base their decision on lack of compatibility, it is pretty likely that it will be upheld. If they base their decision on something other than lack of compatibility, it could be a problem. He suggested that there are ways to be smart in how they are going to deny something that is within their discretion. Things like compatibility are greatly within their discretion, and it can be based upon public comment. He gave an example of a variance where they base the decision off of the nature of the property, but the nature of the property doesn't support that decision, it could pose a problem. There are some decisions that can be discretionary, and there are other decisions that are based upon an interpretation of a regulation. An example was given of a glare study on a solar project that indicated that most impacts would be covered, but there will be some residual impacts to neighbors. The members could state that they believe this level of an impact is too much. That is within the discretion of the commission. As opposed to another example of an environmental impact where a National Environmental Policy Act (NEPA) report has indicated that there would be no adverse impact, and the members just don't like it and think there will be a problem. There isn't anything to support that opinion, which is where it could be interpreted as arbitrary.

Vice Chair Goings brought up a previous discussion at a meeting where someone was

seeking a zone change from E-1 or R-1 to R-3, and there were a lot of members of the public that came regarding the increase in traffic from the increased density for the zone change. He believed that some evidence had been brought forth indicating that the increase in traffic from a future development could be mitigated. As a commission member and having grown up in this area, he thinks that he could argue against the information provided because there is already traffic problems in that area, and these would be aggravated by an increase in traffic due to additional housing in that area. Joe Sanford suggested that in a situation like that they should consider stating that they don't think that the traffic study is sufficient to address the traffic impact, even though a study had been previously provided, because they have been to the property, they see these features (hill, curve, etc.) that will cause problems, and so forth. There needs to be actual issues that they can specifically identify as to why they do not believe the study accurately reflected these problems. Chair Bunyard mentioned that this would also be another case where they could go back on conformity with the surrounding area. Mr. Sanford reiterated that as long as they are clearly stating what they are basing their opinion on, it helps the decision not to be considered arbitrary. Vice Chair Goings then asked if it was okay as a commissioner, if a traffic study was done indicating that any impacts could be mitigated and he knows deep inside that the traffic will be a problem, that he vote to deny the application. Mr. Sanford stated that it needs to be more concrete than he just knows inside his heart that it will be a problem. He will need to state clearly what his concerns are (A, B, C, etc.) and explain why he doesn't believe it will work based upon specific things. They are also able to ask why those concerns were not addressed in the traffic study, or they could give specific reasons why they think that the traffic study was invalid. It can't just be based upon a thought or feeling that it won't work. If this commission is concerned that an appeal to the board of county commissioners will potentially overturn their decision, they could request that the Director get an independent, outside traffic study done that addresses their particular concerns. They can't just say that they don't believe the traffic study is valid without stating why; they can say that they looked at the traffic study and state specifics about why they think it was flawed.

Member Edgmon inquired about the members asking questions about the conditions or things in the staff report, and if that is appropriate during the meeting. She mentioned a time when she noticed that there was a contradiction in the conditions listed in the staff report. It was stated that it is best to try to address things like that prior to the meeting; however, if it is just noticed at the meeting, it is imperative that they ask these questions in order to clarify and correct the requirements prior to making the decision. They certainly don't want to wait until after the meeting to bring these things up.

6. Public Comment

Chair Bunyard asked for any other public comments, and there were none.

7. Adjournment

Chair Bunyard thanked everyone for coming to participate. There were no further comments or questions, so he adjourned the meeting at 8:21 p.m.

Approved: _____

Zack Bunyard, Chair

Approved: _____

Jeff Goings, Vice Chair

Approved: _____

Victor Ansotegui, Commissioner

Approved: _____

Tami Edgmon, Commissioner

Approved: _____

Joe Frey, Commissioner

Approved: _____

R. Mark Hyde, Commissioner

Approved: _____

Scott Nelson, Commissioner

ATTEST:

Diane Moyle, Administrative Assistant



Introduction to Planning

State Law Basis – NRS 278 (and some others)



Master Planning

- Rules for what is included and process for planning
- Requirement for first plan but not for periodic review



Regulatory Code

- Law for Planning Commission
- Laws for zoning review processes
- Laws for land division processes



Rules for different sized jurisdictions

- Las Vegas
- Reno
- Small jurisdictions - everyone else

History

- County Code established ~1972 – lots of state law changes at the time
 - Established in several “Ordinances”
- Regular changes over time
- Major overhaul and rewrite in 2005
 - Combined Ordinances into a Development Code – Title 16
- More changes over time
 - Use Table overhauled in 2019

Titles – County Code

- 19 Titles for Churchill County
 - Public Works, Planning, and Building administers many of them
- A Title is a block of law relating to a subject
 - Title 16 – Planning
 - Title 10 & 12 - Roads
 - Title 14 - Building Construction
 - Title 19 - Floodplains
- A Title is normally a stand-alone set of laws
 - Administrator who is in charge of making decisions
 - Administration rules
 - Process requirements (permits, reviews, etc.)
 - Regulations & standards relating to the subject – largest part

Separation of Titles and Laws

- Title is a set of stand-alone law with important components
- Applicability
 - Subject of regulations / What it applies to
 - Area or jurisdiction it applies to / Where it applies
- Administrator – person responsible for implementing the laws
 - NOT the administrator from another Title
 - NOT the average person on the street
 - When Titles have close relationship, the Administrators coordinate
- Laws in one Title do not change laws in another Title
 - When addressing the same matter, both laws apply >most stringent
 - For example – Planning laws to not waive or change Fire Code laws
- Within a Title, laws for a specific subject to not apply to a different subject
 - For example – Container laws to not waive or change Parking laws
- Limited Exceptions – when one law specifically says it changes the other law.

Title 16

- Applicability:
 - County is the jurisdiction, excluding the city
 - All development, including land division, is the subject
- Administrator is “Planning Director” – Public Works director serves
 - Operates the department (budget, bills, building/office, staff, etc.)
 - Interprets Code and processes when unclear
 - Makes administrative decisions and actions needing official decision
- Specifies decision makers for different permits/processes
 - Administrator – limited to minor permits & interpretations
 - Planning Commission – most regular permits, recommendations
 - BOCC – code and zoning district changes, land divisions, PUDs, etc.

Title 16 (cont.)

- Establishes permits and the processes for them
 - Temporary Use Permits
 - Special Use Permits: Minor, Administrative, General, Major
 - Variances: Minor, Standard
 - Land Divisions: BLA, Parcel Map, Tentative Parceling Plan, Subdivision
 - Code changes: text, zoning district
 - Appeals of Director and PC decisions
- Establishes noticing requirements
 - Some permits have no notice
 - Many have neighborhood notice
 - Few have newspaper notice

Title 16 (cont.)

- ALL PERMITS require conformance with the Title
 - Thus – someone CANNOT just ask for approval without plans
 - Thus – Staff Report goes through the code requirements
 - Thus – Motions for Decision talk about being in conformance
- Establishes 10 Zoning Districts
 - Resource districts: RR-20, A-10, A-5
 - Residential districts: E-1, R-1, R-2, R-3
 - Commercial districts: C-1, C-2, Industrial
- Overlays: NAS Fallon, Hazen, Highway setback
 - Modify the normal rules in some way

Title 16 - Regulations

- General Development Standards –
 - Applies to all development: Land Division, SUPs, TUPs, etc.
 - Legal and physical access
 - Streets and stormwater
 - Protection of natural features
- Land Division Development Standards
 - Survey requirements
 - Infrastructure and its dedication
 - Water rights requirements

Title 16 – Regulations (cont.)

- Site Development Standards – mainly for zoning permits
 - Setbacks
 - Parking
 - Landscaping
- Specific Use Standards
 - Accessory Dwelling
 - Home Business
 - Renewable Energy Facilities (separate chapter)
 - Mobile Home Parks & RV Parks – Title 15

Title 16 – Use Table

- One of most important parts of the Code
 - Determines if a use is allowed
 - Determines what permit is needed for an allowed use
 - If an exact match is not in the table, Director determines “Similar Use”
- Additional SUP Triggers – even if use only needs a Zoning Review
 - 24 hour operations
 - High traffic volumes
 - High water use
 - Hazardous materials
 - Alcohol sales (in Title 5)
 - Director determination related to public health and safety
- Zoning Review
 - not official permit, but rather an informal compliance review

Title 16 – Use Table

Uses ^A	RR-20	A-10	A-5	E-1	R-1	R-2	R-3	C-1	C-2	I	NAS†B
Personal Training Service and Classes (professional, health, fitness, arts, etc.)							S	S	S	S	†S
Laundromat							S	R	R	R	n/a
Dry Cleaner								S	S	S	n/a
Baking Facility								S	S	S	†S
Craft/Art Studio (welding/pottery/painters/etc.; includes sales)	S	S	S					R	R	R	†A
Testing Service (office and sample collection; processing 1-use and field kits)								R	R		†A
Laboratory (chemical testing)								S	S	S	†X
Materials Testing Excludes Explosive and Combustion Testing - see industrial uses									S	S	†S
Veterinary Clinic	S	S	S					R	R	S	†S
Pet Grooming (for sales see retail)	S	S	S					R	R	R	†A
Mobile Animal Care Service Office (Grooming, Farrier, etc.)								R	R	R	n/a
Animal Boarding or Kennel	S	S	S						S	S	†S
Taxidermy	S	S						S	S	S	n/a
Construction Contractors and Property Services (incl. repair; plumbers, electricians, sign co., well drilling, etc.) * For painting contractors, or outdoor material/heavy equipment storage								R/S*	R/S*	R/S*	†S
Utility and Telecom Offices/Shop * If fleet vehicle storage and maintenance is included	S							R/S*	R/S*	R/S*	†S

Planning and Zoning

- ▶ Planning and Zoning are aspects of land-use regulation
- ▶ Source of authority:
 - ▶ Inherent aspect of sovereignty
 - ▶ Understood by both common law and Roman law
- ▶ Recognized as valid exercises of “police power” by United States Supreme Court in Village of Euclid decision.
 - ▶ Source of term “Euclidean zoning” – which sounds like Euclidean geometry

Planning and Zoning

- ▶ Nevada Supreme Court has parallel Euclid case.
 - ▶ State ex rel Davie v. Coleman
 - ▶ Importantly, a zoning ordinance contains an “escape valve” in the form of variance and use permits.
 - ▶ When regulations that apply to all are “unnecessarily burdensome” to a few because of unique circumstances, a means of relief from the mandate can be provided.

Planning

- ▶ State law requires the adoption of a plan
 - ▶ Terms “master”, “general”, “comprehensive” are used in statutes and appear to be synonyms.
 - ▶ “plan” can also refer to a regional plan (TRPA) and a “master plan” as in a privately developed master planned community.
- ▶ A plan is intended to be a policy document by which the jurisdiction sets forth development goals, favored uses, growth areas, transportation corridors and the like.
 - ▶ Purpose is to promote “health, safety, morals, or the general welfare”

NRS 278.020

Zoning

- ▶ Zoning ordinances are intended to be adopted in conformance with the general plan.
- ▶ Zoning is sorted essentially by type of use
 - ▶ E.g. residential, commercial, industrial, agricultural
- ▶ Further sorted by density or intensity
 - ▶ E.g. single-family residential/multifamily residential; number of units per acre; type of commercial or industrial activity allowed

Subdivision and mapping

- ▶ Like many states, Nevada adopted a Map Act governing the subdivision and mapping of parcels.
- ▶ Subdivision mapping is generally the bread and butter of land-use and entitlement
- ▶ Mapping is usually accomplished by a tentative map followed by a final map or a subdivision map.

Process

- ▶ The adoption of master planning and zoning ordinances is initiated by the local jurisdiction.
- ▶ The process of seeking a certain land use is initiated by the land-owner or a developer with some interest in the land.

Process

- ▶ Most decisions are made at open meeting.
- ▶ Ministerial or administrative decisions can be made without need for hearing.
- ▶ If a public meeting is required, notice is given in conformity with open meeting law.
- ▶ Generally, notice is posted in public notice areas, and on the property sought to be developed.
- ▶ Notice is generally mailed to nearby properties, including in particular abutting property owners.

Process

- ▶ When an application is submitted for a land use change or variance (whether an amendment to the master plan, a rezoning, a use permit) we look for general compatibility with the surrounding areas.
 - ▶ Burden of proof is upon the applicant to show that approval is warranted.
 - ▶ Burden is on applicant to show that negative impacts will not occur or have been adequately address (i.e. mitigation or offset by exaction).
 - ▶ Variances generally require a higher burden (e.g. convincing and substantial)
- ▶ Ostensibly we seek to avoid spot-zoning.
- ▶ The decision to grant a variance is discretionary.

Process

- ▶ Important to understand what standard applies
- ▶ A zoning change or a variance or a use permit are discretionary.
- ▶ Mapping compliance may be ministerial.
 - ▶ Although a map may result in the discretionary imposition of conditions and exactions.
- ▶ A proposed use that is already allowed by zoning should be discretionary.... but...

Process

- ▶ Disappointed land use applicants or stakeholders may seek review through the process set forth by the local entity. NRS 278.3195.
- ▶ Further review is generally taken by a petition for judicial review. All administrative remedies must first be exhausted.
- ▶ Standard of review is substantial evidence
- ▶ Similarly administrative appeals exist. Writs of mandamus or prohibition are recognized remedies under Nevada law.
- ▶ Or you can just sue for a taking. It's the latest trend.

Stratosphere

- ▶ 120 Nev. 523 (2004).
- ▶ Denial of particular use was not improper when based largely on community opposition even when consistent with zoning.

5th & Centennial

- ▶ Amendment to master plan of streets by municipality could qualify as an announcement of intent to condemn for purposes of establishing precondemnation damages cause of action
- ▶ But was not itself a taking

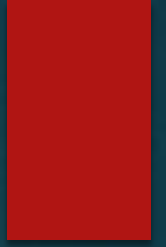
Badlands

- ▶ Essential points:
 - ▶ Land developer created planned community with residential component and golf course.
 - ▶ Developer sold interest in golf course.
 - ▶ Golf course use terminated by owner.
 - ▶ Owner applied for residential development.
 - ▶ Issue became political—and proposed development was denied.
 - ▶ Landowner sued and lost and lost and then won and won and won....
And won.

Badlands

- ▶ Nevada Supreme Court finds in favor of developer.
- ▶ Rejects parcel argument from City
- ▶ Rejects that a qualified use needs to have both zoning AND land-use designation conformity
- ▶ Ignores vested rights argument by finding a total take
- ▶ Essentially finds a single denial sufficient by looking at totality of context—including salty texts

Monetary Exactions



Essential Nexus and Rough Proportionality

- ▶ *Nollan v. California Coastal Commission* (1987) 483 U.S. 825
 - ▶ Adjudicative decision that imposed public easement across property as condition on coastal development permit to mitigate for loss of visual access to the ocean from public roadway resulting from development
 - ▶ No nexus between loss of visual access and requiring landowner to permit public access to and along their shorefront
- ▶ *Dolan v. City of Tigard* (1994) 512 U.S. 374
 - ▶ Adjudicative decision that imposed dedication of land and public easement as conditions on building permit application for redevelopment
 - ▶ While nexus existed between impacts and conditions, the conditions were not roughly proportional in nature and extent to the impacts of proposed development

Nollan/Dolan Expanded to Certain Monetary Exactions

- ▶ *Ehrlich v. City of Culver City* (1996) 12 Cal. 4th 854
 - ▶ Adjudicative decision that imposed \$280,000 payment for public recreational facilities as condition on rezoning and permit to build condominium project
 - ▶ Statutory and constitutional challenges to development fees must be brought through the Mitigation Fee Act process
 - ▶ Mitigation Fee Act's "reasonable relationship" standard when applied to adjudicative exactions is consistent with *Nollan/Dolan* requirements
 - ▶ Legislatively imposed development impact fees also subject to Mitigation Fee Act, but under a less demanding standard
 - ▶ While an essential nexus existed between the recreational fee and the loss of recreational facilities resulting from proposed project, the record failed to demonstrate rough proportionality between the impacts of the proposed project and the fee

Nollan/Dolan Expanded to Certain Monetary Exactions

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- ▶ *San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal. 4th 643
 - ▶ Ordinance enacted housing replacement requirement to mitigate impacts associated with conversion of residential hotels to tourist hotels
 - ▶ Options included constructing or bringing onto market new residential units; sponsoring such construction; or paying in lieu fee established by set formula
 - ▶ Held that *Nollan/Dolan* did not apply, citing *Ehrlich* and distinguishing between ad hoc exactions and legislatively mandated, formulaic mitigation fees

Nollan/Dolan Expanded to Permit Denials

- ▶ *Koontz v. St. Johns River Water Mgmt. Dist.* (2013) 570 U.S. 595
 - ▶ District informed the applicant that it would only approve the project if the applicant agreed to either dedicate property to the District or make improvements to District-owned land
 - ▶ The applicant refused and the District denied the application
 - ▶ “[G]overnment’s demand for property from a land-use permit applicant must satisfy the requirements of *Nollan* and *Dolan* even when the government denies the permit and even when the demand is for money.”

Unresolved Issues

52

- ▶ *California Building Industry Association v. City of San Jose* (2015) 61 Cal. 4th 435
 - ▶ Inclusionary housing ordinance applying to all new residential projects of 20 or more units
 - ▶ 15% on-site units; 20% off-site units; in lieu fee based on median sales price of moderate-income family dwelling; dedication of land equal in value to in lieu fee; rehabilitation of comparable number and type of units
 - ▶ Held ordinance is a land use restriction and not an exaction
 - ▶ FN 11 – *Koontz* did not purport to decide whether *Nollan/Dolan* is applicable to legislatively prescribed monetary permit conditions that apply to broad classes of development

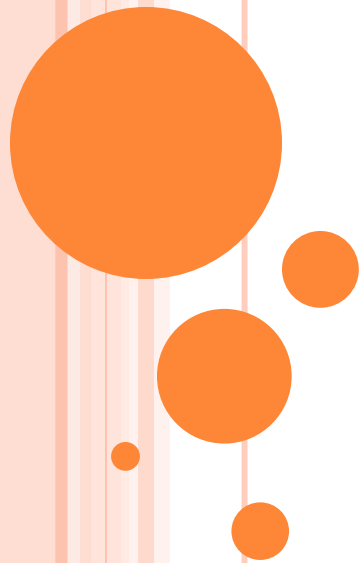
Recent U.S. Supreme Court Decision

- ▶ *Sheetz v. County of El Dorado*
 - ▶ Challenge to legislatively enacted traffic impact mitigation fee imposed as condition of building permit approval for manufactured home
 - ▶ Fee program identified category of fees based on location of project (zones) and type of development (single-family, multi-family, commercial, etc.)
 - ▶ Sheetz argued that traffic impact mitigation fee subject to *Nollan/Dolan*
 - ▶ California trial and appellate courts held traffic impact mitigation fee not subject to *Nollan/Dolan* because it was a legislatively enacted fee applicable to a broad class of property owners

Recent U.S. Supreme Court Decision

- ▶ *Sheetz v. County of El Dorado* (2024) 601 U.S. ____
 - ▶ Unanimously held that *Nollan/Dolan* does apply to legislatively established development impact fees
 - ▶ Court did not analyze whether the fee complies with *Nollan/Dolan*
 - ▶ Court left open the possibility of compliance based on “reasonable formulas” or schedules based on “classes of development”
- ▶ Potential Impact of Decision
 - ▶ Increase in fee challenges
 - ▶ Potential need to update or adopt new fee studies

OPEN MEETING LAW



WHAT IS A MEETING THAT IS SUBJECT TO OPEN MEETING LAW?

- Gathering of members of a public body at which a **quorum** is present to **deliberate** toward a decision or to take action **on any matter over which the public body has supervision**, control, jurisdiction or advisory power.
- Example: 3 person board
- Quorum = 2 members



NOTICE REQUIREMENTS

- Posted three working days prior to the meeting, not including the day of the meeting, by 9:00 am. Practically, this is one week less a day.
- Must include concise but informative notice to the public of the items to be discussed. (If you don't know what an agenda item means, neither does the public.)
- No action may be taken on items not on the agenda, or that are not marked for action.



SOCIAL GATHERINGS AND CONFERENCES

- Social gatherings and conferences are not meetings subject to open meeting law even if a quorum is present unless that quorum deliberates on a matter over which the public body has supervision.
 - Grocery Store Example: Not a violation to meet in the grocery store and say hello to a fellow Commissioner and ask about their family.
 - Public Perspective: Johnny Public sees two commissioners talking in the grocery store and files an OML complaint.



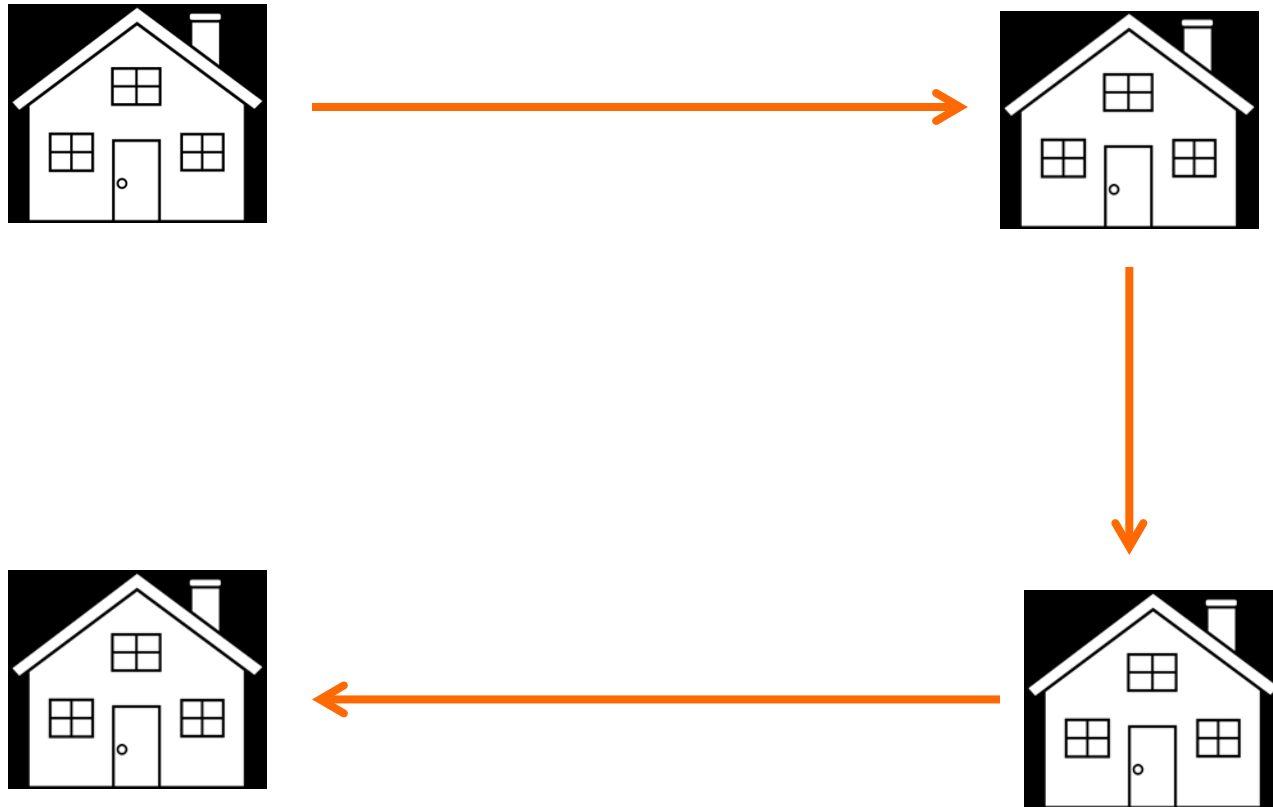
ELECTRONIC COMMUNICATION

- A quorum of a public body using serial electronic communication to deliberate . . . Violates the Open Meeting Law. That is not to say that in the absence of a quorum, members of a public body cannot privately discuss public issues or even lobby for votes. However, if a quorum is gathered by serial electronic communications, the body must deliberate and actually vote on the matter in a public meeting.

NEVADA SUPREME COURT



SERIAL COMMUNICATIONS (WALKING QUORUMS)



SERIAL COMMUNICATIONS (KEY PRINCIPLES)

- In the absence of a quorum, members of a public body can discuss public issues or even lobby for votes.
- less than a quorum may receive briefings and deliberate on issues, (with limitations).



SERIAL COMMUNICATIONS (BRIEFINGS)

- Two types

- Single less than Quorum briefing
 - No OML risk because there is no meeting.
 - Best practice to follow rules as if there will be Multiple briefings
- Multiple briefings
 - Information gathering is okay.
 - No discussion of thoughts, opinions, and questions are relayed between briefings. Should be limited in any briefing.
 - No polling of voting intentions should be taken.



SERIAL COMMUNICATIONS (EXAMPLE)

○ Mapes Hotel Renovation

- Staff held back-back briefings of less than a quorum of members to discuss six bids received for renovation. Determined not to be a serial communication
- Key Facts: No discussion of the thoughts, questions or opinions from one briefing were shared with the other briefing. No evidence of polling of votes. No indication of deliberation between meetings.



LOBBYING

- Requiring members of a board to consider only information obtained through public comment and staff recommendations presented in formal sessions would cripple the board's ability to conduct business.
- Lobbying by applicants is fundamentally allowed and even encouraged within our system of government.
- **You do not have to talk to anyone if you do not want to!**



LOBBYING CONCERNS

- **Open Meeting Law Serial Communication**
 - Asking for your promise to vote a certain way
 - Stating the opinions of other commissioners
- **Open Meeting Law violations for voting based on information not in the record.**
 - It is okay to vote based on personal or specialized knowledge not specifically in the record
 - It is not okay to vote based on information provided by applicant that is not in the record. (for example, a promise to build a park etc.)
- **Appearance of impropriety/bribery**
 - Do not accept anything from an Applicant even if not conditioned on your vote.

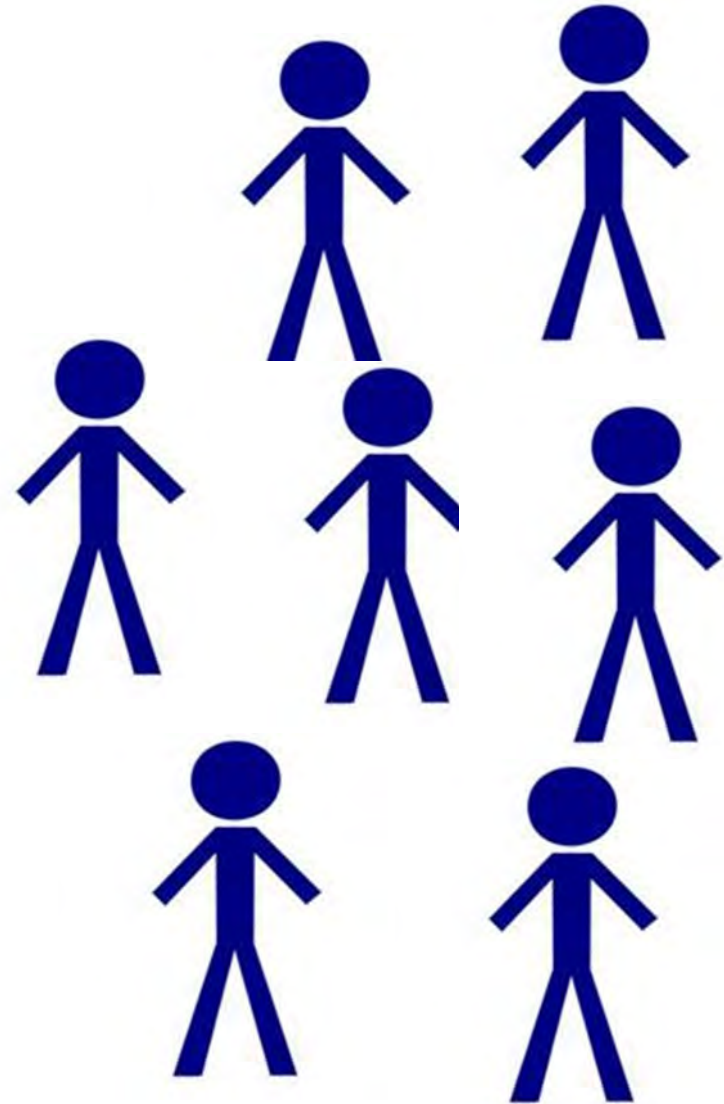


LOBBYING BEST PRACTICES

- Do not accept anything (even lunch) from anyone related to your work on the Commission
- Preferably discuss issues after you see the material in the packet. Supplement the record in the meeting if you receive extra critical information.
- Do not tell anyone how you plan to vote on an item prior to the meeting.
- End any discussion that includes, commissioner X said Y.



MEETINGS WITH ATTORNEY



THE AGENDA

- Stick to it
- Items can be taken out of order unless there is a specific appointment time.
- Be careful with Staff Reports, Request for Future Agenda Items and Visiting before and after Meeting.



WHAT NOT TO SAY IN MEETING



“I came today with my mind already made up.”

“There’s nothing you can tell me today that will change my mind about this situation.”



VIOLATION OF OPEN MEETING LAW

- \$500 civil fine **for each violation** – County cannot reimburse
- Misdemeanor - \$1,000 fine, 6 months jail



OPEN MEETING LAW AND DEFAMATION

- Any statement which is made by a member of a public body during the course of a public meeting is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.
- A witness who is testifying before a public body is absolutely privileged to publish defamatory matter as part of a public meeting, except that it is unlawful to misrepresent any fact knowingly when testifying before a public body.



PUBLIC COMMENT

- Legal Requirement: Once before any action item, and once after all other business OR after each action item on the agenda.
- Best practice: Once before any action item, once immediately prior to the end of the meeting. On each action item for which a public member wishes to speak that is not disruptive to the meeting process



PUBLIC COMMENT

- Public Comment at the start and end of the meeting may be on any item over which the Board has jurisdiction, even if that item is on the Agenda.
- Public comment may be limited to uniform periods of time. This applies to everyone! Failure to enforce this on any one speaker means it cannot be enforced on any speaker.
- Board members should avoid making public comment.



CONDUCTING A MEETING

- Chairperson is responsible for the orderly procession of the meeting. Including calling for a motion and voting, acknowledging speakers, and ensuring the meeting proceeds in a timely fashion.
- Chairperson may cut-off speakers and presentations that are redundant or irrelevant. Chairpersons may not limit public comment on the basis of



REMOVAL OF DISRUPTIVE PERSONS

- Chairperson may order that a person be removed from the meeting when they willfully disrupt the meeting to the extent that the orderly conduct of the meeting is impractical.
- For example, a person may be removed for intentionally making comments in the audience that are audible to the board and disruptive to the meeting. This includes things like clapping, whistling, stomping feet, etc.
- Best practice is to admonish then remove.



ETHICS FOR NEVADA OFFICIALS

- General Rule: Do not participate in any matter in which you have a personal interest.
- Do not approve, disapprove, comment on any matter in which
 - You have accepted a gift or a loan
 - You have a pecuniary interest (any economic interest)
 - The interests of a person to whom you have a commitment in a private capacity are at issue

If the above is true, then...



ETHICS FOR NEVADA OFFICIALS

- DISCLOSE THE INTEREST
 - Disclosure should be made at the time the item is called, before any discussion of the item takes place.
- ABSTAIN IF THE INTEREST WOULD AFFECT JUDGMENT OF A REASONABLE PERSON
- When in doubt - Disclose



“COMMITMENT IN PRIVATE CAPACITY”

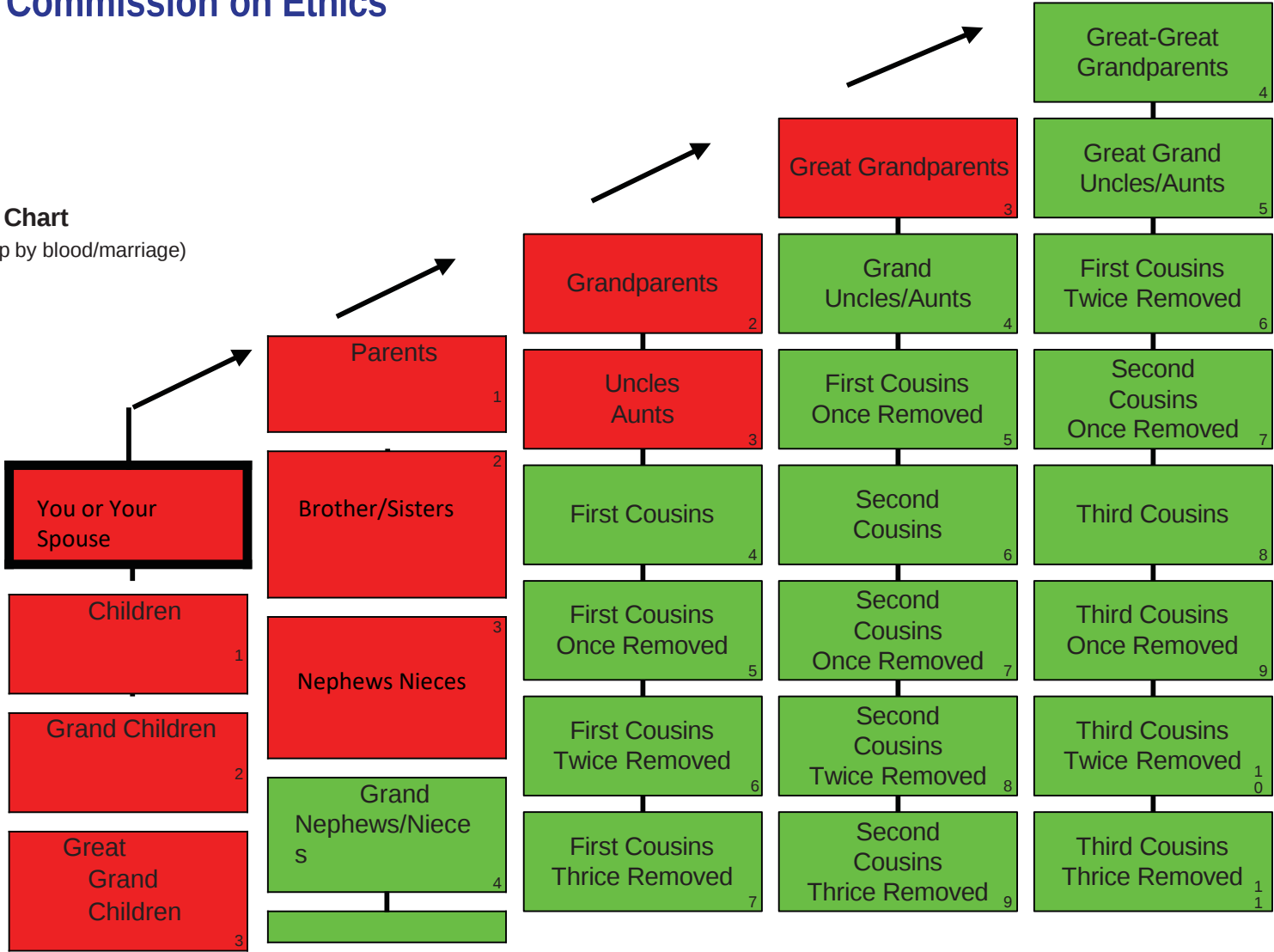
- Commitment to a person:
 - In your household
 - Related by blood or marriage within third degree of consanguinity
 - Employs you or a member of your household
 - You have a continuing ongoing business relationship
 - Other similar relationship



State of Nevada Commission on Ethics

Consanguinity/Affinity Chart

(Degrees of family relationship by blood/marriage)



Instructions:

For Consanguinity (relationship by blood) calculations:

Place the public officer/employee for whom you need to establish relationship by consanguinity in the blank box. The labeled boxes will then list the relationships by title to the public officer/employee. Anyone in a box numbered 1, 2, or 3 is within the third degree of consanguinity. Nevada Ethics in Government Law addresses consanguinity within third degree by blood, adoption or marriage.

For Affinity (relationship by marriage) calculations:

Place the spouse of the public officer/employee for whom you need to establish relationship by affinity in the blank box. The labeled boxes will then list the relationships by title to the spouse and the degree of distance from the public officer/employee by affinity. A husband and wife are related in the first degree by marriage. For other relationships by marriage, the degree is the same as the degree of underlying relationship by blood.