MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON GOVERNMENT AFFAIRS

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
May 8, 1981

The Senate Committee on Government Affairs was called to order by Chairman James I. Gibson, at 12:28 p.m., Friday, May 8, 1981, in Room 243 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator James I. Gibson, Chairman
Senator Jean Ford, Vice Chairman
Senator Gene Echols
Senator Virgil Getto
SEnator James Kosinski
Senator Keith Ashworth
Senator Sue Wagner

GUEST LEGISLATORS:

Assemblyman Jim Banner

STAFF MEMBERS PRESENT:

Dave Stankow, Deputy Legislative Counsel
Anne Lage, Committee Secretary

SENATE BILL NO. 65

Amends charter of City of North Las Vegas to extend term of police judge.

Chairman Gibson explained that this bill had been held for the outcome of the North Las Vegas election. The question on the ballot did pass, thus the proposal to amend the charter was appropriate.

Chairman Gibson reviewed the amendment to this bill.

Senator Echols moved "Amend and Do Pass" on Senate Bill No. 65.

Senator Wagner seconded the motion.

The motion carried unanimously. (Senators Ford, Getto and K. Ashworth were absent for the vote.)

SENATE BILL NO. 633

Requires construction of shelters from radioactive fallout in certain public buildings.

Mr. David Horton, National Legislative Vice-Chairman of the American Legion, presented his written testimony in support of Senate Bill No. 633 to the committee. (See Exhibit C.)

In response to Chairman Gibson's question on fiscal impact, Mr. Horton stated that most structures that were slanted from the outset to provide fallout shelter space as part of their floor plan can be constructed at no additional cost merely by the selection of material and the placement of materials.

Mr. Don Dehne, Assistant Director to the Adjutant General, testified in support of this bill. He stated that there were shelter difficiencies in some areas of the state. He stated that the federal standard book would be used to provide information for the governor's standards.

Mr. Bill Hancock, State Public Works Board, testified that the state public works board had three shelter analysts on the board. He believed the $100,000 threshold was much too low. He also explained that new housing which tended to use stucco and light structures were not easily adaptable to fallout capabilities. He voiced concern about the commencement date of July 1, 1981. The public works board had a number of projects which would have to be modified substantially to conform.

He explained that the public works board used to send their plans to Santa Rosa to be evaluated for fallout protection capabilities. This was a few years ago, but at that time it figured out to increase building costs by about one percent. Mr. Hancock had worked out a fiscal note on this bill. If they had to adapt the pavillions, the prison buildings and other projects they had on line which ran around $59,888,000 in construction costs, it would add an extra $598,880 to include fallout protection capabilities. On the new program that was recommended by the governor, the two prisons and the warehousing facility, there would be an expense of $40,394.

Mr. Chuck Neely, Clark County School District, testified if this bill was passed certain modifications would have to be made in their current construction procedures.

Mr. Neely stated that if this would be federally or state funded there would be no problem. But, if it had to come out of their budget, that would create a problem.

Senator Echols moved "Indefinite Postponement" on Senate Bill No. 633.

Senator Ford seconded the motion.

The motion carried unanimously.

ASSEMBLY BILL NO. 283

Allows local governing body to extend time for review of subdivisions of land.

Ms. Irene Porter, Executive Director for the Homebuilders of Nevada, testified that this bill contained several sections. The homebuilders were involved in the section relating to tenative and final maps.

Ms. Porter stated that the tenative and final map issue for the homebuilding industry came as the result of an attorney general's opinion. She distributed a copy of the attorney general's opinion and subsequent corresespondence. (See Exhibit D.) Prior to this opinion the homebuilders had always worked with the idea that as long as they recorded a final map every year, the tenative map did not terminate.

Because of this opinion Ms. Porter expressed concern that the mandatory expiration of tenative maps after two years would cause developers not to submit long range subdivision plans for their review since they would expire before being built. These long range plans were very useful to a variety of Clark County agencies.

Senator Wagner stated that the head of the Washoe County Regional Planning Commission had voiced concern over the provision on page 3, lines 16 and 17, subsection 4 wherein it stated; "No condition may be imposed on any second or subsequent final map which was not imposed on the first final map." This could have a detrimental effect on very large subdivisions such as the Double Diamond Ranch development in Reno.

Ms. Porter replied that these lines were included as a result of discussions in the Assembly Government Affairs committee. The builders of subdivisions wanted it included as they felt they should know just what they will have to pay for before they become involved.

Ms. Porter explained that section 1, which dealt with the definition of an "acre", was included as an amendment due to a conflict in Clark County. Certain property owners who had originally purchased an acre of land (43,560 sq. ft.) were forced to dedicate a portion of that land for a street right-of-way. Then when the owners tried to get building permits, the health department indicated that they did not have a true acre anymore. This language would provide that an acre or a half acre be considered as the land area including the rights-of-way that had been dedicated. This would make interpretations of an acre consistent.

Ms. Porter also explained that the definition of a "lot" was included as a result of conflicts between the health department and local governments. The health department had required that when a well was developed, a separate parcel for that well had to be deeded out. In one situation four adjacent property owners had decided to share one well. When they deeded out the well parcel, then it was determined that there were five lots instead of four. With five lots, they were then under the classification of a subdivision and had to apply for a variance. Although the state health department had been granting variances, this bill would clarify this issue by stating that the lots considered had to be used or intended solely for building purposes.

The final amendment discussed was requested by the Washoe County Health Department. It related to properties which had a gradient slope on them. There was a conflict with a subdivision that was located half in Washoe county and half in Storey county. Due to the slope building requirements owners could build on Washoe lots but not on Storey lots. This amendment utilized Washoe County language so that there would be statewide consistencey in the treatment of lots with up to a 20 percent slope.

Mr. Joe Denny, Clark County, testified in support of this bill if the language Senator Wagner had been concerned with on page 3, lines 16 and 17 was omitted.

Mr. Bob Sullivan, Carson River Basin Council of Governments, testified in opposition to this bill.

Ms. Debbie Langston, City of Reno, voiced concern over the provisions on page 3, lines 16 and 17. They felt the local governing body should have some authority to place additional

conditions on subdivision maps.

She stated that the city of Reno was against not being able to calculate the area for rights-of-way, as a situation might develop where the lots could become undersized. She stated that Washoe County had not had any problems with the definition of an acre lot.

Ms. Langston stated that on page 2, the word "utility" should not be removed as the local agency should be able to review and approve the placement of such utilities.

Mr. Gene Martens, Washoe County Regional Planning Agency, testified that it should be clarified that the final map should conform to the tenative map.

He felt that phasing should be permitted whenever possible to keep flexibility with regard to the changing conditions and fluctuations in financing.

Mr. Douglas Hopkins, Washoe County Public Works, believed that a utility company should not be excluded from some kind of review process such as a parcel map, subdivision map, special use permit, etc.

Mr. David Dietz, Douglas County, stated that they had several objections to the bill. He was opposed to the provisions on page 1, section 1 which dealt with gross acreage rather than net acreage. This would pose a health problem as it would allow urban lots to be reduced to a size smaller than a conventional house could be put on. It would allow a house to be built on a lot for which the useable land would be insufficient for a septic system.

He also stated that the problems mentioned with reference to the term "lot" was not a Douglas County problem, and did not think it was a statewide problem.

Mr. Al Edmundson, Bureau Chief Consumer Health Protection Services, testified that they felt a net acre was more appropriate because they want separation between wells and septic systems to prevent infiltration of sewage into the water supplies.

Mr. Bryce Wilson, Nevada Association of Counties, testified in opposition to page 1, lines 3, 4 and 5. He cited an example that a person could purchase a section of land and advertise

640 one acre lots and they would not really be one acre lots as all the roads and access come out of the original 640 acres.

He was also against allowing septic tanks on one-quarter acre lots because in many areas the water tables would not accept a septic tank, and the language in this bill would mandate this.

The committee decided to give this bill further consideration before acting on it.

ASSEMBLY BILL NO. 527

Provides procedure for payment of normal salary to public employee when he is eligible at same time for sick leave and workmen's compensation.

Assemblyman Jim Banner explained that this bill was a result of conversations with the school teachers wherein there was a problem of the coordination of benefits when a teacher was injured on the job. This bill would resolve the procedural problems encountered.

Assemblyman Banner distributed a memo from Joe E. Nusbaum, Chairman of nevada Industrial Commission, wherein Mr. Nusbaum had no objections to this bill. (See Exhibit E.)

Ms. Joyce Woodhouse, Nevada State Education Association, requested support of this bill by the committee.

Senator Ford moved "Do Pass" on Assembly Bill No. 527.

Senator Getto seconded the motion.

The motion carried unanimously.

ASSEMBLY BILL NO. 310

Permits increasing police judges' salaries during term.

Judge Mosley, Municipal Court Judge, testified that the Municipal Court Judges of Las Vegas were requesting a change of Nevada Revised Statute 5.030, Nevada Revised Statute 266.450 and City Charter provision 2090, subsection 5 which prohibits the raising of municipal court judges' salaries during their terms of office. It was their position that inflation made raises during their four year terms necessary. He stated that the

judges currently made $26,000 a year. He stated that with the current rate of inflation, the purchasing power of their salary would be reduced 54 percent over a four year period.

Judge Mosley pointed out that he did not consider the wage he was receiving as a living wage.

Chairman Gibson asked Judge Mosley if he had noticed the judicial amendment which was on the ballot. It provided for an increase in judges' salaries during their term. Judge Mosley responded that the measure was ill-conceived at best as it contained several issues in addition to the provision for raising judges' salaries. He did not believe the voters turned it down because of the increase in the judges' salary provision.

Judge Loring Primeaux, Las Vegas Municipal Judge, testified that this bill was an enabling act. It did not provide for the monetary amounts. It permitted the local governing units to raise salaries if they felt the court load and the financial position of the city necessitated it.

Senator Wagner asked if the City of Las Vegas was in support of this bill. Judge Primeaux responded that he was in no position to speak for the city commission.

The committee decided to give this bill further consideration.

ASSEMBLY BILL NO. 521

Provides procedure for filing of grievances by state employees.

Mr. Bob Gagnier, Executive Director State of Nevada Employees Association, testified that this bill would put into the law statutory authority for what they actually already had. For the past nine years they have had a grievance procedure which consisted of a six member committee that ruled on all grievances other than those set up by the statutes such as dismissals and suspensions. The reason this bill was introduced was because last year an attorney had raised the question that because the legislature had not authorized this procedure, it was not legal. This was not pursued in the courts, however they wanted to make it clear that they were authorized to have this procedure in the future.

Mr. Fred Bartlett, State Personnel Division, testified that they wanted a fiscal aspect included within the bill. They were in support of this bill.

Senator Kosinski moved "Do Pass" on Assembly Bill No. 521.

Senator Ford seconded the motion.

The motion carried unanimously.

Assemblyman Joseph Dini testified as to the reasonings behind the amendment in Assembly Bill No. 283. Mr. Dini said it was on this bill to take care of a problem in Virginia Highlands. The health department refused to allow people to build on lots with over 20 percent slope. The subdivision had been approved in 1971, yet 161 lot owners were being deprived of the use of their property.

Mr. David Stankow,Deputy Legislative Counsel, explained that the new section, which was section 4 of the bill, was taken directly from the state board of health regulations on the subject of sewer systems. Washoe County was under county health regulations, however, Storey County was under the state health regulations. This was the reason Washoe parcels did not have a problem obtaining building permits, while Storey did.

ASSEMBLY BILL NO. 541

Requires governor to fill vacancies in certain county offices with persons from same political party as most recent office-holder.

Senator Wagner moved "Do Pass" on Assembly Bill No. 541.

Senator Echols seconded the motion.

The motion carried unanimously.

SENATE BILL NO. 508

Creates Colorado River commission.

Chairman Gibson indicated that the Governor did not object to this bill.

Senator K. Ashworth moved "Do Pass" on Senate Bill No. 508.

Senator Echols seconded the motion.

The motion carried unanimously.

SENATE COMMITTEE ON
GOVERNMENT AFFAIRS
May 8, 1981

As there was no further business this day, meeting was adjourned at 5:50 p.m.

Respectfully submitted by:

Anne L. Lage
Anne L. Lage, Secretary

APPROVED BY:

James I. Gibson
Senator James I. Gibson, Chairman

DATE: June 3, 1981

EXHIBIT A

REVISED: 5/6/81

SENATE AGENDA

COMMITTEE MEETINGS

Committee on Government Affairs, Room 243.

Day Friday, Date May 8, 1981, Time upon adjournment.

S. B. No. 633--Requires construction of shelters from radioactive fallout in certain public buildings.

A. B. No. 283--Allows local governing body to extend time for review of subdivisions of land.

A. B. No. 310--Permits increasing police judges' salaries during term.

A. B. No. 527--Provides procedure for payment of normal salary to public employee when he is eligible at same time for sick leave and workmen's compensation.

A. B. No. 541--Requires governor to fill vacancies in certain county offices with persons from same political party as most recent officeholder.

A. B. No. 521--Provides procedure for filing of grievances by state employees.

ATTENDANCE ROSTER FORM — COMMITTEE MEETINGS

SENATE COMMITTEE ON GOVERNMENT AFFAIRS

DATE: May 8, 1981

EXHIBIT B

PLEASE PRINT NAME	PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
FRED Bartlett	State Personnel	885-4120
Doug Hopkins	Washoe County Public Works	785-4281
GENE MARTENS	WASHOE CO. REGIONAL PLANNING COMSN.	
Debbi Lamastra	City of Reno	785-2215
Joyce Woodhouse	Nevada State Ed Assn	
Jim Banner	Assemblyman	
Joe Fisher	Nevada State Ed. Assn.	882-5594
Dave Horton	Box 2107 CC: American Legion	883-1966
DON DEHNE	STATE CIVIL DEFENSE	885-424
David Dietz	Douglas County	
Bob Felten	State of Nevada Employees Assn.	882-3910

Library Note:

Exhibits (D and E) of this meeting were misfiled at the end of the May 4, 1981 meeting, and the last page of Exhibit C and the first pages of Exhibit D were found misfiled at the end of the May 22, 1981 meeting. Library staff has moved these documents to the May 8, 1981 meeting. However, Exhibit D, as it was found, appears to be incomplete—some of the supposedly attached exhibits to one of the letters do not appear to have been included or are missing.

Because of the misfiling of the exhibits, the Bates numbering at the bottom of the pages will appear inconsistent.

Research Library
April 2014

EXHIBIT C

STATEMENT OF DAVID HORTON, NATIONAL LEGISLATIVE VICE-CHAIRMAN, THE AMERICAN LEGION, BEFORE THE COMMITTEE ON GOVERNMENT AFFAIRS, NEVADA STATE SENATE, IN SUPPORT OF S.B.633, MAY 8, 1981.

CHAIRMAN GIBSON, MEMBERS OF THE COMMITTEE:

Thank you for considering promptly this important measure. A hearing 4 days after the introduction of Senate Bill 633 is even faster than the 11 days it took to get the first hearing on the Public Lands Ownership Act. I appreciate your promptness and your interest.

The Problem

In the 1960's I remember seeing the results of a Government study summarizing the effect of a nuclear exchange between the United States and Russia. Our losses, based upon a population that has centralized in nuclear target areas, with little provision made for fallout protection, were on the order of 60%. The Russian losses, based upon a long-continued policy of industrialized de-centralization and a thorough system of fallout protection, were on the order of 6%--less than she suffered in World War II. The Russian losses were "acceptable" --leaving her with sufficient population and strength to carry on effective warfare. Our losses would leave us incapable of doing so.

Since that time, the situation has deteriorated. Russia has increased her delivery capability of nuclear weapons, both in quantity and in accuracy, and has further improved the shelter available to her population from fallout radiation. Our Federal Government has abandoned it Constitutional responsibility of providing for the common effectivity defense by abandoning the National Shelter Program in favor of numerous welfare

programs.

At the same time, our population has become even more centralized in nuclear target areas. The Defense Department has stated that a nation-wide fallout shelter system has a greater life-saving potential for the investment involved than any other element of strategic defense...it is, in fact, essential to the damage-limiting effectiveness of other strategic defense elements.

In 1965 President Lyndon Johnson stated: "Without fallout shelter protection...all defense weapons lose much of their effectiveness in saving lives."

He further described fallout shelters as "the least expensive way of saving millions of lives, and the one which has clear value even without other systems."

A report by the National Academy of Sciences stated in 1958:

> "Adequate shielding is the only effective means of preventing radiation casualties (in a nuclear attack)."

Available Solution

Nevada is in a better position than most states to resolve this problem. With an expanding population and much construction going on, shelters can be incorporated into new structures with little or no added cost, providing both fallout protection and long-term energy savings.

The Department of Defense publication "Personal and Family Survival" says on page 42, "When new buildings are being constructed, fallout protection should be included in the designs through 'slanting' techniques." On page 43 an example of "slanting" in school construction is given: "by placing the cafeteria beneath the sloping, stepped concrete floor of the auditorium area, the architect was able to use normal

structural components without modification to provide more shelter spaces."

Senate Bill 633 provides for such "slanting" to be used in new public construction. The basement of the Security Bank building here in Carson City is an example of excellent fallout shelter space being incorporated in new building construction by the private sector. Once Senate Bill 633 gives our local agencies experience in incorporating fallout shelter space in new construction, they will be better equipped to encourage or require privately-funded construction to provide for fallout shelter space.

Advantages of S.B.633

In addition to handling the radiation hazzard, fallout shelters with the capability of protecting against as little as 5 lb. per square inch blast over-pressure (a standard attainable even in home shelters) permits the occupants of such a shelter to be twice as close to ground zero and still survive. By cutting the effective radius of the nuclear device to one-half the lethal area is reduced to one-quarter.

Shelters tend to be located in basements or in locations where ground can be bermed up against the outside walls, thereby providing an effective "heat sink" for the floor space that comprises the shelter area. Such floor space is easier to heat and easier to cool, and therefore requires less energy. (One of the arguments in favor of earth-sheltered homes is that they are far more energy efficient as well as cheaper to maintain.)

If the MX is built in Nevada, much of our State that has heretofore enjoyed a 100% survival capability from nuclear attack will be converted into prime target areas. This is the so-called "nuclear sponge" strategy. The fiscal impact on

many of our rural areas will be enormous. If Nevada is already contributing to handling the fallout radiation impact by the passage of S.B.633 (and its companion bill S.B.632) we will be in a much stronger bargaining position to obtain federal funds to soften this fiscal impact.

I urge your favorable action on S.B.633.

McDonald, Carano, Wilson, Bergin
Bible, Frankovich & Hicks

ATTORNEYS AT LAW

ROBERT L. McDONALD
DONALD L. CARANO
THOMAS R. C. WILSON II
LEO R. BERGIN
PAUL A. BIBLE
JOHN FRANKOVICH
LARRY R. HICKS
ALVIN J. HICKS
MIKE SLOAN
ALAN BIBLE, OF COUNSEL

EXHIBIT D

241 RIDGE STREET
P. O. BOX 2670
Reno, Nevada 89505
AREA 702/322-0635 · 329-9288

VALLEY BANK PLAZA, SUITE 912
4TH AND BRIDGER STREETS
Las Vegas, Nevada 89101
AREA 702/388-2555

REPLY TO:
Las Vegas Office

January 14, 1980

Mr. Bill Curran
County Counsel
Office of the District Attorney
Clark County Courthouse
Las Vegas, Nevada 89101

RE: Southern Nevada Homebuilders Association

Dear Bill:

I have had an opportunity to review your recent letter to Attorney General Richard Bryan concerning the impact of his Opinion No. 79-11, with my clients the Southern Nevada Homebuilders Association.

Let me express our appreciation for your willingness to work to find an acceptable solution to this difficult problem. We believe that we certainly will be able to live with the result set forth in your letter until the next session of the Nevada Legislature.

Again, thanks to you and Bob for your cooperation in this regard.

Sincerely,

MIKE SLOAN

MS/ef

Office of the District Attorney

CLARK COUNTY COURTHOUSE
LAS VEGAS, NEVADA 89101
(702) 386-4761

ROBERT J. MILLER
DISTRICT ATTORNEY

BILL CURRAN
COUNTY COUNSEL

December 28, 1979

The Honorable Richard H. Bryan
Attorney General for the State of Nevada
Capitol Complex
Carson City, Nevada 89710

Dear Dick:

George Ogilvie, Las Vegas City Attorney, and Mike Sloan, counsel for the Southern Nevada Homebuilders' Association, have advised me of your letter to Mr. Ogilvie, dated November 2, 1979, in which you expanded upon AGO 79-11 relative to the filing of tentative subdivision maps. In that letter you advise local jurisdictions in Southern Nevada to reevaluate whether enforcing compliance with AGO 79-11 would be unfair to those who have relied on prior practices and suggest that we would be justified in not giving your formal opinion retroactive application.

In accordance with the supplemental opinions expressed in the aforementioned letter, I have advised the Clark County Zoning Administrator that the County may be legally estopped from strictly enforcing NRS 278.360 with respect to the granting of extensions of time for the filing of final subdivision maps. Subdividers who relied on the existing administrative practice and filed their tentative maps prior to the issuance of AGO 79-11 on June 13, 1979, will be allowed to apply for more than one extension of time before being required to file their final map, at least until the adjournment of the 1981 Legislative Session. Subdividers who filed their tentative maps subsequent to the issuance of AGO 79-11 will continue to be advised that only a single extension of not more than one year may be granted.

If our interpretation is not consistent with the mandates of NRS 278.360 as interpreted by your office's formal opinion and subsequent letter, please advise us as soon as possible.

Sincerely,

ROBERT J. MILLER
DISTRICT ATTORNEY

By _____
BILL CURRAN
County Counsel

BC:nw

1349

CITY OF

Boulder City

Nevada

P. O. BOX 357

900 ARIZONA STREET 8900

December 27, 1979

Honorable Richard H. Bryan
Attorney General
State of Nevada
Capitol Complex
Carson City, Nevada 89710

Re: Opinion #79-11

Dear Attorney General Bryan:

Recently Mr. George Ogilvie forwarded to me a Xerox copy of a letter you sent to him ostensibly clarifying your Opinion #79-11.

Opinion #79-11 was issued upon the formal request of my predecessor, Monte J. Morris, on behalf of the City Council of Boulder City. Therefore, I am concerned as to the effect of your most recent letter as well as what future action you foresee.

As you accurately concluded in your most recent letter, compliance with your original Opinion #79-11 has led, at least in part, to numerous and expensive cases challenging the manner and method of enforcement of subdivision law by this City.

I know that you can appreciate the necessity of clarification and finality in this area. I would personally appreciate having a definitive word from you as soon as is possible.

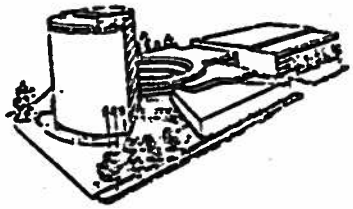
Sincerely yours,

Steven J. Parsons, City Attorney

SJP:sf

cc: Mr. George Ogilvie
Mr. Bill Curran
Mr. George Franklin
Mr. John Marchino

City of Las Vegas



GEORGE F OGILVIE
CITY ATTORNEY

December 11, 1979

Mr. Hank Chism, Chairman
Southern Nevada Homebuilders' Association
5017 Alta Drive
Las Vegas, Nevada

Re: Status of tentative subdivision maps under NRS 278.360

Dear Mr. Chism:

I am enclosing a copy of a letter addressed to me from the Honorable Richard Bryan, Attorney General of the State of Nevada, in which he clarifys his office's Opinion No. 79-11 relative to the status of tentative subdivision maps which have not been processed in accordance with NRS 278.360. You will note that Mr. Bryan, for various reasons, concludes that the entities in Southern Nevada should determine for themselves whether they wish to follow their established practices with respect to such maps until the Nevada Legislature has had the opportunity to re-examine the situation, or to follow the dictates of Attorney General's office Opinion No. 79-11.

I have discussed this matter with Mr. Don J. Saylor and Mr. Harold Foster, Deputy City Manager and Director of Community Planning and Development, respectively, of the City of Las Vegas and it is our conclusion that the City of Las Vegas will continue accepting final maps which comply with Section 11-2-9 of its City Code at least until the adjournment of the 1981 session.

Very truly yours,

George F. Ogilvie

George F. Ogilvie,
City Attorney

GFO/ph
Enclosure

cc: Bill Curran, Esq.
James A. Wagner, Esq.
John Marchino, Esq.
Steven Parsons, Esq.
Don Saylor
Harold Foster
Mike Sloan, Esq.

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
CAPITOL COMPLEX
CARSON CITY 89710

RICHARD H. BRYAN
ATTORNEY GENERAL

LARRY D. STRUVE
CHIEF DEPUTY ATTORNEY GENERAL

November 2, 1979

Honorable George Ogilvie
City Attorney
City of Las Vegas
400 E. Stewart
Las Vegas, NV 89101

Dear George:

This will respond to your request for clarification of Opinion No. 79-11 issued by this Office on June 13, 1979. Since that opinion was issued, several factors have been brought to this Office's attention which have indicated that strict compliance with the legal conclusions expressed in the opinion could result in substantial hardship to local governments and developers in Southern Nevada who have relied on long standing administrative interpretations contrary to the conclusion of Opinion No. 79-11.

Moreover, a more detailed review of the legislative history of the 1977 amendments to N.R.S. 278.360, including an examination of the minutes and recommendations of the technical committee created pursuant to S.C.R. 48, reflects nothing to indicate that the Legislature contemplated that the amendments would disrupt the long standing Southern Nevada interpretation.

It has also been brought to our attention that compliance with the conclusions set forth in Opinion No. 79-11 could trigger numerous lawsuits against local governmental entities in Southern Nevada by developers who have in good faith relied on the prior practice and who now face severe economic hardship if those practices are retroactively altered. This situation is particularly acute in the case of the City of Las Vegas which has incorporated the Southern Nevada interpretation of N.R.S. 278.360 in Section 11-2-9 of its City Code. Similarly, there are substantial hardships facing Clark County. Homebuilders argue with considerable merit that they should not be penalized for following the law as interpreted by City and County officials. For these reasons and because the legislative intent of the 1977 amendments is far from clear, this Office believes it would be prudent for local jurisdictions in Southern Nevada to evaluate the particular circumstances of their own

ordinances and administrative practices to determine whether compliance with Opinion No. 79-11 would be unfair to those who have relied on prior practices. We believe that the prospect of costly litigation and the uncertainty as to the true purpose of the 1977 amendments would justify a determination by those jurisdictions to continue to follow their prior practices until the Nevada Legislature can address this problem.

Sincerely,

RICHARD H. BRYAN
Attorney General

Bible, Frankovich & Hicks

ATTORNEYS AT LAW

ROBERT L. McDONALD
DONALD L. CARANO
THOMAS R. C. WILSON II
LEO P. BERGIN
PAUL A. BIBLE
JOHN FRANKOVICH
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ALVIN J. HICKS
MIKE SLOAN
ALAN BIBLE, OF COUNSEL

241 RIDGE STREET
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AREA 702/322-0635 · 329-9288

VALLEY BANK PLAZA, SUITE 912
4TH AND BRIDGER STREETS
Las Vegas, Nevada 89101
AREA 702/385-2555

REPLY TO:
Las Vegas Office

October 25, 1979

The Honorable George Ogilvie
City Attorney
City of Las Vegas
400 East Stewart Avenue
Las Vegas, Nevada 89101

RE: Attorney General Opinion No. 79-11

Dear George:

I have enclosed, for your consideration, copies of the materials which I previously provided to Attorney General Richard Bryan on behalf of the Southern Nevada Homebuilders Association.

As we have previously discussed, Richard's office is in the process of reviewing its Opinion No. 79-11 with an eye toward restoring the status quo in Southern Nevada until the next session of the Nevada Legislature. I am hopeful that a letter opinion to this effect will be issued in the near future. I believe there is considerable justification for this position and would hope that you and other local City and County counsel will be able to reach the same conclusion.

If you have any questions about the enclosed material or require further information, please let me know. Again, let me thank you for your assistance in this regard.

Sincerely,

MIKE SLOAN

MS/ef
enclosures:
bcc: H. A. "Hank" Chism

McDonald, Carano, Wilson, Bergin
Bible, Frankovich & Hicks

ATTORNEYS AT LAW

ROBERT L. MCDONALD
DONALD L. CARANO
THOMAS P. C. WILSON II
LEO P. BERGIN
PAUL A. BIBLE
JOHN FRANKOVICH
LARRY R. HICKS
ALAN J. HICKS
MIKE SLOAN
ALAN R. HALE, OF COUNSEL

[illegible]
Reno, Nevada [illegible]
[illegible]

[illegible]
Las Vegas, Nevada 89101
[illegible]

REPLY TO:
Las Vegas Office

September 4, 1979

The Honorable Richar Bryan
Attorney General
State of Nevada
The Heroes Memorial Building
Capitol Complex
Carson City, Nevada 89710

Dear Dick:

I have been retained by the Southern Nevada Home-builders Association in connection with Opinion No. 79-11 issued by your office on June 13, 1979.

As you are aware, this opinion has and will continue to cause consid able hardship to homebuilders in southern Nevada and has impacted the planning activities of each of the local governments in southern Nevada.

After carefully reviewing the opinion and related materials, I have concluded that a re-evaluation of your office's position might be appropriate in order to consider a number of factors which were not brought to your office's attention at the time the opinion was prepared.

In order to understand our position, it may be helpful to consider the history of N.R.S. 278.360. Chapter 110 of the Statutes of Nevada (Fortieth Session, 1941), provided for, among other things, city, county and regional planning in certain counties, the creation, organization and power of planning commissions and regulation of subdivisions.

Section 22 of the Act provided, in part:

> . . . The subdivider may within one year approval approval or conditi nal approval of the tentative map or maps of a subdivision cause said subdivision, or any part thereof, to be surveyed and a final map thereof to be prepared in accordance with the tentative map as approved. Any failure so to record such final map within one year from the approval or conditional approval of the tentative map shall terminate all proceedings, and before such final map may thereafter be recorded, or any such sales be made, a new tentative map shall be submitted.

Section 23 of the Act pro ded for the enactment of local ordinances to prescribe detailed regulations which, in addition to the provisions of the Act, would govern matters of improvements, mapping, and related subjects, but not in conflict with the Act. As thus enacted, Nevada law made no provisions for an extension of time for filing a final map, and that situation remained until N.R.S. 278.360 was amended in 1977 to provide for "a single extension of not more than one year within which to record a final map . . .". [Emphasis supplied.]

We believe that reference to "a final map" from 1941 through 1977 is significant when read in conjunction with the requirement that the subdivider shall within one year after approval of the tentative map, " . . . cause the subdivision, or any part thereof, to be surveyed and a final map prepared." [Emphasis supplied.] It is our position that the crucial question is whether the recording of "a final map" for all or any portion of the area covered by the tentative map, satisfies the requirement of the law. The statute has been silent on this point since 1941 to this date; the 1977 amendment only addresses itself to the question of an extension of time for filing an initial final map.

It is clear that the longstanding administrative interpretation of the requirements of N.R.S. 278.360 by all local governments in Clark County, dating back perhaps as far as 1941, reflects a construction of that language

to mean that "a final map" for all or any part of the area covered by the tentative map satisfied the one year period.[1] Thereafter, subsequent final maps had to be

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[1] Such a procedure is not without precedent. For example, Section 66456.1 of the California Code (Government Code) provides for the filing of multiple final maps.

New Jersey law provides for a series of extensions, which in the case of subdivisions in excess of fifty (50) acres has no fixed outside time limits but which is left to the determination of the planning board, taking into consideration (1) the number of dwelling units and non-residential floor area permissible under preliminary approval, and (2) the potential number of dwelling units and non-residential floor area of the section or sections awaiting final approval, (3) economic conditions, and (4) the comprehensiveness of the development; provided that if the design standards have been revised, such revised standards may govern. 6 N.J. Session Laws, 1975, Chapter 291, §37, N.J. Stat. Anno. Title 40:55D-1, et. seq.

Opinion No. 79-11 suggests that the southern Nevada interpretation does not make sense from a planning viewpoint, but a number of planners, including Fred Welden state that "relatively good planning and socioeconomic arguments can be made for either of the two review procedures." (See attached letter from Fred Welden, Exhibit No. 1).

Mr. Don Saylor, deputy city manager of the City of Las Vegas, who formerly served as director of planning for more than fifteen years, states that the interpretation mandated by Opinion 79-11, if unchanged,

> . . . could lead to a very detrimental situation in that developers would not file a tentative map on any more property than that which they intended to develop immediately which means that the overall pattern of land development would be broken down into smaller units thereby creating a situation of fragmentation rather than permitting an overall cohesiveness.

Exhibit No. 2.

filed in accordance with local ordinances. Prior to 1977, according to this interpretation, no extension of time was available to record the first map if a final map covering all or a part of the area of the tentative map was not recorded within one year of the approval of the tentative map, the tentative map expired. For this reason, none of the members of the Southern Technical Committee were concerned by the 1977 amendment relating to an extension of time for the recording of an initial final map. It was never contemplated that the language would alter the existing administrative interpretation, but rather would only afford greater flexibility to developers by allowing them to seek a one year extension for filing an initial final map for a portion of the area covered by the tentative map. Thereafter, subsequent final maps were to be filed as required by the local government involved.

My understanding of the northern Nevada interpretation of the 1977 amendment to N.R.S. 278.360 is that the new language providing for a single extension of one year is addressed to the issue of an extension of time - not whether the final map required was for all or a part of the area covered by the tentative map. While it appears that the northern Nevada practice has been to require a final map for the entire area covered by the tentative map or to treat the tentative map as terminated except as to the area covered by a final map filed within one year, such an interpretation is no more required by the statute in question than the southern Nevada interpretation. Indeed, the fact that different political subdivisions have different interpretations is consistent with the entire concept of local control of planning matters, which is the cornerstone of N.R.S. Chapter 278. From 1941 until the present, provision has been made for local ordinances to "round out" the requirements of N.R.S. 278.360. Unfortunately, after the 1977 session, the statute reviser moved this provision from N.R.S. 278.370 to N.R.S. 278.326, thereby depriving the section of having its full and proper impact on the immediately preceding section, N.R.S. 278.360.

The southern Nevada interpretation of N.R.S. 278.360 has been set forth in ordinance, most particularly, by the City of Las Vegas. Section 11-2-9 of the Las Vegas City Code provides:

11-2-9: FINAL MAP:

(A) Following the approval of a tentative map by the City Commission, the subdivider or his agent shall present to the Planning Commission a final

> map for approval on all the area for which a tentative map has been approved, or a series of final maps, each covering a portion thereof, within one year, or within successive one year intervals, from the date of the approval of the tentative map, unless the time is extended. The Planning Commission or City Commission may grant one (1) extension of not more than one ( ) year for each one year time period. If a final map is not recorded within one year from the approval date of the tentative map or the date of the previously recorded final map, or extension thereof, then a new tentative map shall be required and presented to the Planning Commission. The subdivider, or his agent, shall present to the Planning Commission with the final map a copy of the recorded deed showing ownership of the property embraced in the final map to be in the name of the person signing the final map as owner, or proof of ownership of the property sufficient to satisfy the City Attorney. A fee of fifty dollars ($50.00) shall be paid at the time of filing each final map.

See also Boulder City Code, Section 11-36-4(M) and similar requirements in the codes of Clark County, North Las Vegas and Henderson.

While there is some variation between the requirements of each of these governmental entities, every one of them has consistently taken the position that the recording of a final map for a portion of the area covered by the tentative map satisfied the requirements of N.R.S. 278.360 and kept the remaining portions of the tentative map valid.

We believe the statements of an official of the State Lands Division should be given no greater weight than that of other individuals who served on the interim legislative committee. Moreover, those comments are not addressed to the real issue involved. Fred Welden, who chaired the Northern Nevada Technical Advisory Committee indicates that there was an unspoken assumption by his group predicated on the interpretation of N.R.S. 278.360 in northern Nevada. Irene Porter, who chaired the Southern Nevada Technical Advisory Committee, likewise indicates that her group operated upon the unspoken assumption that the 1977 change would not alter the southern Nevada interpretation since the amendment addressed only the issue of an extension of the time for filing an initial map and in no way called into question the understanding that a partial final map satisfied the requirement of N.R.S. 278.360. Two very

important documents concerning the 1977 amendments apparently were not considered prior to the issuance of Opinion No. 79-11. The first, Report of the Technical Advisory Committees on SCR 48 (attached hereto as Exhibit No. 5) sets forth the findings and recommendations of the two technical advisory committees working on proposed legislation concerning construction projects and subdivision review. Pages 2 and 3 of that report set forth the recommendations relating to subdivisions, but are completely silent on the question of extensions and what form a final map must take. Secondly, the Minutes of the Meetings of the Nevada Technical Advisory Committees (attached hereto as Exhibit No. 6) reflect no discussion of the vital question of whether the filing of "a final map" within the prescribed time period satisfies the requirements of N.R.S. 278.360. The only mention of extension is found on page 2 of the Minutes of the Northern Nevada Technical Advisory Committee for January 9, 1976, where there is a brief discussion of the problem of recording a final map within one year and it is stated that it "might be advantageous to allow extensions on one-year time limits for tentative maps . . .".

The almost total absence of discussion of the issues involved in Opinion No. 79-11 would certainly appear to indicate that a sweeping and fundamental change in the longstanding interpretation of N.R.S. 278.360 was never intended. Indeed, a fair reading of these two documents supports the view that a primary and reoccurring theme throughout the work of these two committees was to strengthen rather than weaken local control over the subdivision process.

For these reasons, and because no other direct legislative history can be found,[2] we believe existing

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[2] Indeed, it is our position that an examination of the history of N.R.S. Chapter 278 from 1941 to the present

Footnote 2, cont'd.

demonstrates a clearly discernible legislative intent to place primary responsibility for all planning, zoning and subdivision matters in the hands of local authorities. The substantial amendments made in 1977 only underscore this conclusion.

In a similar analysis of Montana's subdivision law, that State's Supreme Cour. concluded that a review of the act " . . . will demonstrate unequivocally a legislative intent . . ." to place control of subdivision development in local governmental units in accordance with a comprehensive set of requirements and therefor held that a lower court ruling giving a state agency expanded control over subdivisions ". . . is in error as it is in direct conflict with the legislature's undeniable policy of local cont:ol . . .". Montana Wilderness Association v. Board of H & E Sciences, 559 P.2d 1157 (1976).

In the present matter, we likewise believe that a fair review of t' history of legislation in this area demonstrates a mandate for local control in Nevada. For this reason we believe the correct interpretation of N.R.S. 278.360 on the issue in question requires a recognition of the legislature's awareness of long e. sting administrative practices at the local level which supplement rather than conflict with the language in question, and which allow each local government to address the question of what steps are necessary to satisfy the requirement of recording "a final map" in a meth ! deemed most appropriate by the individual governmental entity.

rules of statutory construction mandate a conclusion that the 1977 Legislature did not intend to remove regulation of such matters from local authorities where it had been vested, without incident, since 1941. Well established rules of statutory construction support the position that if doubt exists as to the true intent of the legislature existing administrative practices must be considered. State ex rel Springmeyer v. Brodigan, 35 Nev. 35 (1912). Reference to contemporary usage and practice and a consideration of the statute as a whole may not only support but may require an extended interpretation of the administrative board's power. 3 Sutherland, Statutory Construction, p. 164, (1974).

"The law is well established that longstanding administrative interpretation of a statute by the agency charged with its execution is entitled to great weight, and if reasonable should be upheld." Alabama v. United States, 461 F.2d 1324, 1329 (C.C. 1972). See also, N.L.R.B. v. Boeing Company, 412 U.S. 67 (1973), and Kay v. F.C.C., 433 F.2d 638 (CADC, 1970).

In Nevada, our Court has stated that contemporaneous construction of a statute as established by long practice and acquiescence by the legislature is often restored to where language of a particular statute is doubtful. Clover Valley Land and Stock Company v. Lamb, 43 Nev. 375 (1920).

> "Where a doubt may exist as to the proper construction to be placed on a constitutional or statutory provision, courts will give weight to the construction placed thereon by . . . officers whose duty it is to execute its provisions."

Seaborn v. Wingfield, 56 Nev. 270 (1935); See also, Attorney General's Opinion No. 480, June 24, 1947.

In the present matter, the available evidence demonstrates a consistent and longstanding interpretation of N.R.S. 278.360 by planning officials in southern Nevada, the people charged with the statute's execution, which when read in conjunction with the law, compel the conclusion that the southern Nevada practice is consistent with the statute and authorized pursuant to N.R.S. 278.326 (formerly N.R.S. 278.370).

Indeed, even if the southern Nevada interpretation is wrong, a point which we do not concede, our own Supreme Court has recognized that where " . . . property rights have been built up in reliance upon an erroneous construction of a statute by public officers, or where overturning such construction would unsettle many important laws, and cause consequent loss and hardship, such considerations sometimes press quite heavily upon courts in construing statutes, especially if the true construction is really doubtful. State ex rel Cuttings . LaGrove, 23 Nev. 88 (1895).

In the matter at hand, there can be no doubt that developers in southern Nevada have relied upon the long-standing practices of local governments in southern Nevada. Now, suddenly, as a result of Opinion No. 79-11, tentative maps that have been valid for a number of years are no longer valid; substantial hardships are resulting from the expense of refiling tentative maps; approvals previously given and relied upon may not be given again even though thousands of dollars have been expended in reliance on the first approval. Such adverse consequences should be avoided by modifying Opinion No. 79-11 to recognize that each local governmental entity has the power to determine whether it will allow multiple final maps and if so, in what time frame such maps must be filed. This delegation of power to local governments (which was first made by the Nevada Legislature in 1941) was changed in 1977 only to the extent that the recording of an initial final map must take place within one year, unless a single one year extension is granted. Such a result would enable local governments in southern Nevada to continue their existing practice while recognizing that local governments in northern Nevada could follow their present interpretation, which is essentially that set forth in the opinion in question.

This suggested modification would thus restore the status quo until the legislature meets in 1981, when the question can be addressed in detail. I honestly believe fairness as well as sound legal precedent make such a modification desirable and defensible.

Thank you for your consideration.

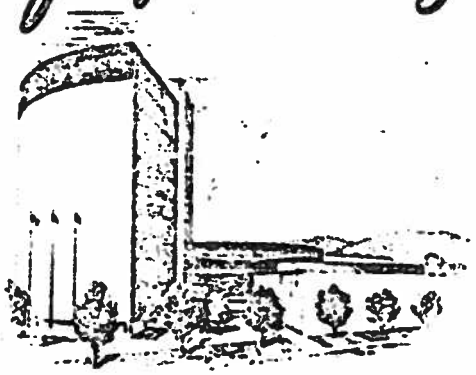
Sincerely,

MIKE SLOAN

MS/ef
attachments:

City of Las Vegas

DON J. SAYLOR, AIP
DEPUTY CITY MANAGER



COMMUNITY SERVICES
BUSINESS ACTIVITY
COMMUNITY PLANNING
& DEVELOPMENT
FIRE SERVICES
PUBLIC SERVICES
RECREATION & LEISURE
ACTIVITIES
SENIOR CITIZEN'S
CENTER

August 30, 1979

Mr. Mike Sloan
Valley Bank Plaza
9th Floor
300 South 4th Street
Las Vegas, Nevada 89101

Dear Mr. Sloan:

It has long been the practice of the City of Las Vegas to allow filing of final maps on all or a portion of an approved tentative map. If a final map is filed only on a portion thereof, subsequent final maps must be filed within one (1) year of the last succeeding final map or the City may require the submittal of a new tentative map. This practice is predicated upon the philosophy that the approval of the tentative map in fact is a statement by the City to the developer that he has the authority to develop land over a period of time as long as all of the conditions attached to the approval of the tentative map are satisfied. The use of this policy demands that a substantial evaluation of the tentative map be made prior to any approvals and it is at this stage of the subdivision process where the greatest amount of staff input and evaluation takes place. The submittal of the final map is considered to be more or less of a "housekeeping" procedure where the loose ends are tied together. The tentative map, in fact, becomes a plan and is considered an integral part of the planning process. The final map procedure is, in fact, the phasing of the planned development into saleable or buildable units.

If the above procedures were not utilized it could lead to a very detrimental situation in that developers would not file a tentative map on any more property than that which they intended to develop immediately which means that the overall pattern of land development would be broken down into smaller units thereby creating a situation of fragmentation rather than permitting an overall cohesiveness. I think a parallel could be drawn by comparison to the submittal of the plans for the construction of a building which is to be built in phases. It can readily be seen that even though the building is to be constructed in phases, it is vitally

Contd....

necessary to submit the entire building plan as a first step to insure the correct relationships of all phases of the construction to the end product.

If you have any further questions, please advise.

Sincerely,

DON J. SAYLOR
ACTING CITY MANAGER

DJS:pdm

necessary to submit the entire building plan as a first step to insure the correct relationships of all phases of the construction to the end product.

If you have any further questions, please advise.

Sincerely,

DON J. SAYLOR
ACTING CITY MANAGER

DJS:pdm

LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

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INTERIM FINANCE COMMITTEE (702) 885-5640
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ANDREW P. GROSE, *Research Director* (702) 885-5637

August 23, 1979

Senator Mike Sloan
1716 Griffith Avenue
Las Vegas, NV 89104

Dear ~~Senator Sloan~~ Mike:

I have looked into the background of NRS 278.360 to some extent. The reference to extensions of time and the phrase "or any part thereof" appear to be the two controversial points.

The authority to grant a single one-year time extension was added to NRS 278.360 in 1977. I have previously prepared a detailed history of the 1977 amendment of this section. An abstract of the most pertinent information is enclosed. I can give you my opinion as to the significance of the debate in the northern Nevada technical advisory committee relative to this provision for a time extension. The members of this northern group functioned under the assumption that all of the final maps for a given tentative map would have to be recorded before a specified date, or the portion of the tentative map for which no final map was recorded would automatically become invalid. Under this assumption, the debate over the length and number of possible time extensions was lengthy and substantive. Had the members felt that the entire tentative map could have been perpetually validated by the recording of a final map for a portion of the tentative, I can safely say that the debate would have been much less substantial.

The phrase "or any part thereof" has been in this section since 1941. We do not have any records from that far in the past to assist in determining legislative intent. However, I can summarize my understanding of the northern and southern Nevada interpretations of the reasons for inclusion of this phrase in the section. It is agreed that if the phrase "or any part thereof" were not included, the developer would have to file a single final map to cover the entire tentative map. If he did not do this, he would lose the potential of developing any of the property. In southern Nevada, the phase "or any part thereof"

has been interpreted as allowing perpetual validation of the tentative map if "any part thereof" is recorded before the specified date. In northern Nevada, the interpretation of the reason for including the section is to allow the developer to obtain approval to construct a portion rather than all of the project for which the original tentative was filed. If he does not file additional final maps to cover the entire tentative map within the specified time limit, the portion of the tentative map for which no final map has been filed becomes invalid.

As I mentioned on the telephone, relatively good planning and socioeconomic arguments can be made for either of the two review procedures. However, these arguments probably are not of importance to you at this time --- and I am sure you have heard them all by now anyway.

I hope that this information will be of some assistance to you. Good luck in this very complex and controversial field.

Sincerely,

Fred

Fred Welden
Senior Research Analyst

FW/llp

Southern
Nevada
Home Builders
Association

September 7, 1979

Mr. Mike Sloan
Valley Bank Plaza - Ste. 912
300 So. 4th St.
Las Vegas, Nev. 89101

Dear Mike:

Pursuant to your request relative to the recent Attorney General's opinion the following information is submitted. During the 1960's for a period of 3½ years I was employed at the County Planning Department additionally I was Director of Planning for the City of North Las Vegas from 1967-1976. Throughout those years our ordinances provided and we administered the filing of subdivision maps. Our practice was that tentative maps were valid for one year provided a final map for all, or any part, of the tentative was recorded during that year. If, at the end of the one year this was complete the tentative was valid indefinitely requiring no extensions. If this was not complete then the tentative expired.

The tentative map often covered large parcels and was used as the basis for good land planning including streets, utility, and public facility areas on an overall basis for future development.

I hope this information will be of assistance, please contact me if I may be of further help.

Very truly yours,

Irene Porter
Executive Director

IP/sg

P.O. BOX 5397 • LAS VEGAS, NEVADA • 89102 (702) 870-72[illegible]

J.G. VORNSAND
ZONING ADMINISTRATOR

TELEPHONE
386-4314

Clark County Zoning Division

CLARK COUNTY COURTHOUSE ANNEX
400 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA 89101

September 5, 1979

McDonald, Carano, Wilson, Bergin
Bible, Frankovich & Hicks
Attorneys At Law
Valley Bank Plaza, Suite 912
300 South Fourth Street
Las Vegas, Nevada 89101

Dear Mr. Sloan:

This is in reply to your letter of August 28, 1979, concerning Clark County Zoning Division's position on the validity period of tentative subdivision maps prior to the recent legal opinion addressing that question. Until advised otherwise by the District Attorney's Office (relying upon the Attorney General's opinion), we had always treated tentative maps as being valid indefinitely provided that a final map was filed on at least one portion of the property covered by the tentative map within one year of the approval of such tentative map. Unlike some other jurisdictions, we did not require that a final map be recorded each year in order to extend the validity of a tentative map. Neither did we view the 1977 amendment to the NRS as requiring any change in our procedure except in those instances where no final map had been recorded within the area of a tentative within the first year after the approval of the tentative map.

With respect to the impact of the change in interpretation, we find that some 130 tentative maps are potentially affected. Not all of them, of course, will be actually affected since some would not need to be refiled either due to completion within one year or abandonment of the project. Our filing fee for those tentative maps which do need to be resubmitted is $50 plus $2 per lot, not to exceed $400 per map.

The planning consequences of the change are difficult to quantify. Basically, we are concerned that the mandatory expiration of tentative maps after two years will cause developers not to submit long range subdivision plans for our review, since they would expire before being built. Such long range plans are very useful to a variety of Clark County agencies--private utilities as well as governmental units--in planning for services for new construction.

Now that we understand the full implications of the 1977 amendment to the NRS, we would certainly encourage the next Legislature to address the problems arising from the limited validity period of tentative maps, possibly by providing some local option in this regard.

Sincerely,

Greg Borgel
Principal Planner

GB:ws

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
CAPITOL COMPLEX
CARSON CITY 89710

RICHARD H. BRYAN
ATTORNEY GENERAL

LARRY D. STRUVE
CHIEF DEPUTY ATTORNEY GENERAL

June 13, 1979

Opinion No. 79-11

Time for filing subdivision maps--Under NRS 278.360 the time for filing final subdivision maps can extend no longer than one year after the filing of a tentative map plus no more than one additional year's extension, regardless of whether such maps embrace the entire proposed subdivision or only a portion or portions thereof.

Honorable Monte J. Morris
City Attorney
P.O. Box 367
Boulder City, Nevada 89005

Dear Mr. Morris:

You have requested an opinion interpreting NRS 278.360.

FACTS

NRS 278.360, which relates to the filing of final subdivision maps, provides as follows:

> "1. Unless the time is extended, the subdivider shall within 1 year after approval of the tentative map or before the expiration of any extension by the governing body cause the subdivision, or any part thereof, to be surveyed and a final map prepared in accordance with the tentative map. Failure to record a final map within the time prescribed in this section terminates all proceedings, and before the final map may thereafter be recorded, or any sales be made, a new tentative map shall be filed.
>
> "2. The governing body or planning commission may grant to the subdivider a

> single extension of not more than 1 year within which to record a final map after receiving approval of the tentative map." (Emphasis added)

Section 11-36-4(M) of the Boulder City Code provides as follows:

> "Within one year after approval or conditional approval of the tentative map by the City Council, the subdivider may cause the subdivision, or any portion thereof which is determined by the City Engineer to be a logical unit of the surveyed map, to be surveyed and a final map be prepared and filed with the City Engineer with the prescribed fees...." (Emphasis added)

The Planning and Engineering Department of Boulder City has taken the position in the past that, after a tentative map of a proposed subdivision was filed, a developer could divide the subdivision into smaller units and, so long as a final map for one of these units was filed within one year or within one year plus an extension of an additional year, the developer could thereafter in the future file final maps for the remaining units. This could be done one, two or several years thereafter, without having to terminate proceedings and file a new tentative map. For example, a developer could file a tentative map for the entire proposed subdivision on January 1, 1975. So long as a final map for a unit of the subdivision was filed on or before January 1, 1976 (assuming no extensions were granted), the proceedings, according to this interpretation, could not be terminated and final maps for remaining units of the subdivision could be filed January 1, 1977, January 1, 1978, January 1, 1979, etc. In the words of a legal opinion which you prepared for the City Council on September 26, 1978, "Subsequent units may be mapped and recorded at the discretion of the subdivider and as economic circumstances dictate."

You have stated that other jurisdictions in Southern Nevada agree with this interpretation and require developers, after the first final map was filed within the statutory time limit, to file other, subsequent final maps every year thereafter or within "reasonable" time limits.

However, an official of the State Lands Division, who served on a special interim legislative committee to revise Chapter 278 of NRS, states that the purpose of NRS 278.360, as amended by language proposed by the committee, was to require a complete termination of all proceedings and the filing of a new tentative map if the final map or maps for the entire subdivision covered by the original tentative maps were not filed within one year or one year plus the one year extension period. Under this interpretation, merely filing a final map on a portion of the subdivision within the statutory time limit would not toll the statute as to the remainder of the subdivision.

QUESTION

After a tentative map for a subdivision has been filed, does the filing of a final map of a portion of the subdivision within the statutory time limit set out in NRS 278.360 toll the statute as to the filing of subsequent final maps of the remaining portions of the subdivision after the statutory time limit?

ANALYSIS

The language added to NRS 278.360 by the 1977 legislature allowed for a one year extension to the original one year time limit for filing final maps. The 1977 amendments also provided that only "a single extension of not more than 1 year" could be granted for filing a final map. Chapter 580, Statutes of Nevada 1977, Sec. 10. The amendments to NRS 278.360 adopted by the 1977 Legislature when read in conjunction with the Interim Committee's recommendations constitute a declaration of legislative policy to require subdividers to file a final map on the entire subdivision within one year from the approval of the tentative map. The only exception to this requirement is the "single extension of not more than a year" found in NRS 278.360(2).

The variety of interpretations adopted by other political entities in Clark County would emasculate the provisions of NRS 278.360(2) and render them nugatory. Moreover, such a construction would be at odds with the purpose as well as the specific language of subparagraph 2 of NRS 278.360 which permits only a single extension of one year from the original one-year period for filing a final map.

It would appear to this office that the principle of expressio unius est exclusio alterius (the expression of one thing is the exclusion of another) is applicable here. The affirmance of a distinct policy on a particular subject implies the negation of the intention of the legislature to establish a different policy. Galloway v. Truesdell, 83 Nev. 13, 26, 422 P.2d 237 (1967). Where a statute creates, regulates and prescribes a mode of procedure, that mode must be followed and none other. Battle v. Hereford, 133 S.E.2d 86, 90 (W. Va. 1963); 2A Sutherland, Statutory Construction, 123, §47.23 (Sands, 4th ed. 1973).

The interpretations put upon NRS 278.360 by the governing bodies of the jurisdictions you mention in your opinion request would read into the statute certain automatic extensions of time to file final maps which simply are not there. Furthermore, the jurisdictions differ on the nature of these alleged automatic time extensions. One requires annual filings of final maps and another merely requires them to be filed in a "reasonable" time. The only extension of time allowed for filing final maps by the statute is a single one year's extension specifically granted by the planning commission or governing body of the applicable jurisdiction. The expression of one mode of procedure by NRS 278.360 is the exclusion of others. Galloway v. Truesdell, supra; Battle v. Hereford, supra.

When a statute directs a thing to be done by a private party within a specified time and makes his rights dependent on proper performance thereof, the statute is mandatory as to the time the thing must be performed. 2A Sutherland, Statutory Construction, 445, §57.19 (Sands, 4th ed. 1973).

> "...It is the province of the courts to enforce the will of the legislature, as expressed in the statutes. If it is evident from the ordinary grammatical construction of the words used, that it intended a right should be enjoyed only upon some specified conditions, there is no power, in the courts or elsewhere, to dispense with the conditions imposed, or to hold that a thing which it deemed essential to be done at one time, may nevertheless be done at another...." Corbett v. Board of Examiners, 7 Nev. 106, 108 (1871).

CONCLUSION

It is the opinion of this office that under NRS 278.360 the time for filing final subdivision maps is limited to one year after the filing of a tentative map, unless extended by the governing body of the planning commission of the applicable jurisdiction. Should a developer choose for an additional period of not more than one year as provided in NRS 278.360(2) to divide his proposed subdivision into units for the purposes of filing final maps, it is the opinion of this office that the failure to file final maps for all the units within the statutory time period will terminate the proceedings as to any unfiled units and a new tentative map must be filed as to those units.

Respectfully submitted,

RICHARD H. BRYAN
Attorney General

By: Donald Klasic
Donald Klasic
Deputy Attorney General

NEVADA INDUSTRIAL COMMISSION
OFFICE OF
THE COMMISSIONERS

EXHIBIT E

MEMORANDUM

TO: SENATOR GIBSON, CHAIRMAN
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

FROM: JOE E. NUSBAUM, CHAIRMAN, NIC

SUBJECT: AB 527

DATE: MAY 8, 1981

AB 527, as amended in the first reprint, is consistent with NIC's present practice with some public employers and their employees. If the employee elects to take sick leave and agrees to turn over his temporary total disability payments to the employer, NIC makes out the check to the employee but sends it to the employer who gets the endorsement of the employee.

Other than causing some extra work for NIC, we have no problems with this procedure, and we do recognize its benefit to certain employees.

NIC supports AB 527 as amended.

JEN:dn