Pursuant to NRS a joint meeting of the Nye County Board of Commissioners, Nye County Board of Highway Commissioners, Nye County Licensing and Liquor Board, the Nye County Board of Health, the Governing Body of the Unincorporated Town of Pahrump, the Governing Body of the Unincorporated Towns of Beatty, Belmont, Gabbs, Manhattan, and Railroad Valley, and the Board of Trustees for the Pahrump Pool District, was held at 10:00 a.m. in the Commissioner Chambers, 2100 E. Walt Williams Drive, Pahrump, Nevada 89048.

John Koenig, Chair
Debra Strickland, Vice-Chair
Lorinda Wichman, Commissioner
Donna Cox, Commissioner
Leo Blundo, Commissioner
Sandra L. Merlino, Ex-Officio Clerk of the Board
Chris Arabia, District Attorney
Sharon Wehrly, Sheriff
Tim Sutton, County Manager

Also present: Lorina Dellinger, Assistant County Manager; Kelly Sidman, Deputy Clerk; Samantha Tackett, Administrative Manager; Marla Zlotek, Chief Deputy District Attorney

Not Present: Chris Arabia, District Attorney; Sharon Wehrly, Sheriff

Commissioner Cox was present via telephone.

1. Pledge of Allegiance

The Pledge was recited.

2. Approval of the Agenda for September 17, 2019 (Non-action item)

Tim Sutton said items 5 and 21-23 could be removed from the agenda.

3. GENERAL PUBLIC COMMENT (Three-minute time limit per person.) Action will not be taken on the matters considered during this period until specifically included on an agenda as an action item (first).

Ammie Nelson announced there would be a meeting at the Nugget on September 25, 2019, from 5:30 p.m. to 8:30 p.m. for Dr. Joseph Bradley who was running for District 36 Assemblyman.

Joe Burdzinski said he was representing Our Lady of the Valley Catholic Church building committee. He thanked Commissioners Blundo and Strickland for their assistance with the Regina Caeli Center they were building with a special thanks to Commissioner Strickland for setting up a meeting with the Planning Director.
3. GENERAL PUBLIC COMMENT (Three-minute time limit per person.) Action will not be taken on the matters considered during this period until specifically included on an agenda as an action item (first)-Cont’d.

Randy Case said she organized craft fairs in Pahrump and urged the Commission to take action to solve the seller permit debacle.

Amargosa Town Board member Pat Minshall said last week she obtained budgets for both Tonopah and Round Mountain, neither of which had a line item for an ambulance service so she contacted them. She asked if it was under another heading and the reply was that the Town of Tonopah did not have a paid ambulance service. They volunteered and were directed by Nye County. When Ms. Minshall asked who paid for the vehicles, repairs and supplies and who billed for the runs the response was the County paid and Nye County EMS handled the billing. Until June or July, 2017, the Amargosa ambulance service was under Nye County EMS and there had never been a line item in the Amargosa budget for the ambulance service. In an effort to start up the ambulance service again they were told by Scott Lewis they had to finance it on their own. Ms. Minshall wanted to know why Amargosa was being treated differently. When no other town with an ambulance service, elected or not, was having all of their equipment, supplies, repairs, and medical director paid by Nye County, why was Amargosa, a much poorer board, expected to shoulder that burden which could put them in the red. Ms. Minshall also mentioned a private meeting with Tim Sutton, Commissioner Blundo, Mr. Lewis and John Bosta. She said the town board was not notified of that meeting and she did not get a satisfactory response of what went on other than if the ambulance was turned over to the town the town was expected to pay for the insurance.

Diane Southworth advised that at 3:00 p.m. today there would be an affordable housing meeting at the Nye Community Center. At 3:30 p.m. tomorrow there would be a meeting at NyE Communities Coalition regarding the holiday dinners since the holiday task force was disbanded. The RAM clinic on October 4-6, 2019, needed more volunteers. Ms. Southworth also had a list of VFW events.

John Pawlak from NyE Communities Coalition said the RAM clinic on October 4-6, 2019, would be at the Pathways Innovation Education Center at 2000 S. Mount Charleston Drive West. The clinic would provide free medical, dental, vision, and mental health services for the uninsured, underinsured, unemployed and those who could not afford to pay. There were no eligibility requirements and services were available to adults and children.

John Bosta stated he called the County Clerk’s Office and was told there was no ordinance for ambulances under Nye County. He then called the Department of Public Health which licensed ambulances and asked them about the ambulance and Emergency Management. That office informed Mr. Bosta that all of the towns prior to the giving of the license to Emergency Management Services had ambulance services. He thought Vance Payne pulling the ambulance out of the barn in Amargosa was in
3. GENERAL PUBLIC COMMENT (Three-minute time limit per person.) Action will not be taken on the matters considered during this period until specifically included on an agenda as an action item (first)-Cont'd.

violation of the permit the town had prior to Mr. Payne having any authority over the ambulances.

4. For Possible Action – Discussion and deliberation of the minutes of the joint meetings of the Nye County Board of Commissioners, Board of Highway Commissioners, Nye County Licensing and Liquor Board, Nye County Board of Health, the Governing Body of the Unincorporated Town of Pahrump, the Governing Body of the Unincorporated Towns of Beatty, Belmont, Gabbs, Manhattan, and Railroad Valley, and the Board of Trustees for the Pahrump Pool District regular meeting on August 20, 2019 and teleconferences on August 28, 2019 and August 30, 2019.

Commissioner Koenig said toward the bottom of page 5 of the August 20, 2019, minutes the word “said” needed to be inserted. Also, on page 3 of the August 30, 2019, minutes, John Bosta was referring to a meeting held in Pahrump, not an Amargosa Town Board meeting.

Commissioner Strickland made a motion to accept the minutes with changes made by the Chairman; seconded by Commissioner Blundo; 5 yeas.

SITTING AS THE BOARD OF COUNTY COMMISSIONERS

5. For Possible Action - Emergency Items

This item was removed from the agenda.

6. Commissioners'/Manager's Comments

Emergency Management Director Scott Lewis discussed the Storm Area 51 event and said County, fire and EMS resources were ready to respond. The EOC/ICP would be open and operating as of tomorrow with the main objective being a seamless operation without interruption in the respective communities. He then introduced the team who would help manage the incident.

Commissioner Blundo gave a shout out to Desert Haven for their advertising on Facebook. He said he attended a RadWaste convention and would present more on that at his next town hall. As to the Storm Area 51 event, Commissioner Blundo recommended people fill their gas tanks and buy extra water. He said while the County was doing everything it could to curtail and manage the situation, it could not be done without that partnership with the residents.
6. Commissioners'/Manager's Comments-Cont'd.

Commissioner Wichman added that besides water and fuel people should tell anyone they knew who was coming to this area to bring Chapstick, hand lotion and sun screen. She then advised she received a gubernatorial appointment to the indigent defense services committee set up the last legislative session. It would be an ongoing committee and she looked forward to doing it.

Commissioner Strickland cautioned parents to also be ready for the Storm Area 51 event. On September 28, 2019, there would be a BLM clean-up. That day was Public Lands Day and they would meet at Indian and Hafen Ranch Road at 8:00 a.m.

Commissioner Cox thanked Chief Lewis and Sheriff Wehrly for keeping the County safe during the Area 51 event. She then mentioned there was still a weed problem at Calvada Eye and the irrigators were also still not working properly in the pond.

Commissioner Koenig said he would be in the emergency office in case money needed to be spent so he could authorize it.

Regarding a conversation Commissioner Blundo, John Bosta, the Chief and the County Manager had, Commissioner Blundo read the e-mail he sent to Pat Minshall. It was clear to him why they were not included. It was a back and forth discussion about Nye County operating a fire district, which in the end he understood the County did not operate one.

TIMED ITEMS

7. 10:00 – For Possible Action – 3rd Community Development Block Grant (CDBG) Public Meeting: 1) Presentation of potential projects; and 2) Invite the public to participate by providing ideas, comments and suggestions concerning the proposed projects.

Danielle McKee from Finance said she had received a few proposals. She was still working on pricing information so the pre-eligibility applications could be presented to CDBG and then those eligible applications would be brought back to the Board for prioritizing. The projects were:

1. Complete an environmental assessment on the remaining Pahrump fairgrounds property that had not been previously assessed. Mrs. McKee explained an environmental assessment was in process for a portion of the lands that would be affected by the detention basin, which was set to be completed by the end of the year. This project would propose CDBG fund the environmental assessment on the rest of the fairgrounds property so when the phases continued an environmental assessment would not need to be done. She was waiting for some price quotes to present a cost to CDBG.
7. 10:00 – For Possible Action – 3rd Community Development Block Grant (CDBG) Public Meeting: 1) Presentation of potential projects; and 2) Invite the public to participate by providing ideas, comments and suggestions concerning the proposed projects-Cont’d.

2. Develop a plan and construct a well at the north end of the Pahrump fairgrounds property as a water source for all future project phases. Mrs. McKee understood the water well system currently in place was not feasible to give water to the entire property.

3. A community center to be constructed near the already completed shooter site and parking lot.

4. A sewer system for the fairgrounds.

Mrs. McKee advised there were four projects submitted from Amargosa – park restrooms; an emergency generator for the community complex; a satellite fire station; and a standalone handicapped/family restroom at the park.

Trevor Dolby from Amargosa clarified they did not need $130,000.00 for bathrooms. That was the town’s capital projects budget. The estimated cost was $16,000.00.

Robert Adams suggested a fairgrounds project to expand the infrastructure to include electrical.

Dave Stevens would like to see benches at the parks for the disabled.

Mrs. McKee noted both Mr. Adams’ and Mr. Stevens’ projects.

12. 10:15 – For Possible Action – Discussion and deliberation regarding the Treasurer’s Reports.

Treasurer John Prudhont said he planned on getting July’s report in today, but it would be in on Friday with the August report because he ran into some issues as far as the timing of closing the month. The revised May and June reports were being submitted today.

Commissioner Wichman made a motion to accept the revised May and June reports; seconded by Commissioner Blundo; 5 yeas.
8. 10:00 – For Possible Action – Public Hearing, discussion and deliberation pursuant to NRS 244.360 on a complaint alleging the existence of a nuisance located in Belmont, Nevada, and adopt, amend and adopt, or reject Nye County Resolution No. 2019-31: A Resolution Finding the Existence of Nuisance Conditions; or Nye County Resolution No. 2019-32: A Resolution Finding Nuisance Conditions Do Not Exist.

Commissioner Koenig opened the public hearing.

Neal Jones, Attorney Arlette Newvine and Attorney Philip Kreitlein were present. Mr. Jones asked to introduce the evidence packet they had.

Marla Zlotek explained this was set for a hearing and due process needed to be clearly honored with any evidence put in and time allowed for the Commissioners to review and digest it. NRS 244.360 allowed the hearing to be continued for 14 days with consent and that would be meaningful due process. She asked Mr. Jones’ counsel whether or not they wanted to continue so the documents could be thoroughly reviewed.

Ms. Newvine stated her position that her client had provided a very clear and concise argument with documents. She asked to not continue this hearing today because her client had spent time with other counsel conversing with the District Attorney’s Office as to how to bring forth this evidence and Ms. Zlotek told them to bring it today.

Ms. Zlotek stated that was completely inaccurate. At no time did she have a conversation with both parties.

Mr. Kreitlein stated he had a conversation with Ms. Zlotek on Friday about the presentation of evidence and due process was a topic of discussion. He said they were prepared to go forward with the presentation of evidence and Mr. Jones was prepared to refer to the exhibits. Mr. Kreitlein explained the overwhelming majority of the documents boiled down to a report from an engineering firm. He said the Board memorizing every page would not be necessary to make the determination on the nuisance claim.

Commissioner Wichman said she would like to hear this today noting the residents of Belmont had made the long trip.

Commissioner Koenig stated he personally was not comfortable with that much back-up so either he did not get the back-up and the item was heard today or the Board got the back-up and it was continued.

Commissioner Wichman said if Mr. Jones was referring to the SRK report, she was familiar with it, but she would like to hear from everyone in the public hearing today even if the determination was put off until the next meeting.
8. 10:00 – For Possible Action – Public Hearing, discussion and deliberation pursuant to NRS 244.360 on a complaint alleging the existence of a nuisance located in Belmont, Nevada, and adopt, amend and adopt, or reject Nye County Resolution No. 2019-31: A Resolution Finding the Existence of Nuisance Conditions; or Nye County Resolution No. 2019-32: A Resolution Finding Nuisance Conditions Do Not Exist-Cont’d.

Commissioner Strickland said if Mr. Jones’ counsel could be convinced to not give the Board the back-up for review she thought the Commissioners were well educated in what happened and should be able to draw a conclusion without that document.

Ms. Newvine asked if the suggestion was that her client make his argument but not provide his evidence.

Commissioner Wichman said logic dictated that if Mr. Jones provided the Commissioners with additional back-up they needed time to read it.

Ms. Newvine and Mr. Kreitlein conferred with their client.

Mr. Kreitlein stated they would prefer the recommendation by Commissioner Wichman. Allow them to present their evidence today and the Commissioners could hold off on any final determination until the next Board meeting.

Sheriff Wehrly was present.

Commissioner Wichman made a motion to accept the additional back-up; seconded by Commissioner Strickland.

Ms. Zlotek advised the back-up would need to be distributed to the other two locations and suggested to continue with the parties that had appeared from long distances, accept the evidence, and have the hearing to allow the complainant to make their argument and supply their proof required by statute. Anyone would be allowed to testify or respond, including the public, and then it may be continued for up to 14 days, at which point the evidence could be individually considered and then come back for the decision that needed to be made in public.

Commissioner Strickland commented Commissioner Cox did not have the documents.

Ms. Newvine advised they had supplied Samantha Tackett with a thumb drive and suggested sending it via e-mail.

Commissioner Wichman pointed out the Commissioners present would not have an opportunity to read those documents and neither would Commissioner Cox.

Commissioner Koenig said that was his problem.
8. 10:00 – For Possible Action – Public Hearing, discussion and deliberation pursuant to NRS 244.360 on a complaint alleging the existence of a nuisance located in Belmont, Nevada, and adopt, amend and adopt, or reject Nye County Resolution No. 2019-31: A Resolution Finding the Existence of Nuisance Conditions; or Nye County Resolution No. 2019-32: A Resolution Finding Nuisance Conditions Do Not Exist-Cont’d.

Commissioner Strickland withdrew her second.

Ms. Newvine asked if this were to be continued after they made their argument, then the next hearing within 14 days would be just to announce the decision with no further comment at that point.

Commissioner Koenig said there would be a lot more discussion because during those 14 days he would read the 9,000 pages of back-up.

Commissioner Wichman asked one of her colleagues to second her motion to accept the additional documentation, continue with the public hearing today, and continue this item to the next meeting in order to make the motion on the item after the Commissioners had an opportunity to digest the late back-up; seconded by Commissioner Cox; 3 yeas. Commissioners Koenig and Strickland voted nay.

Commissioner Koenig asked the Clerk to address the publication notice.

Sam Merlino advised notice was published in the Las Vegas Review Journal on September 3 and 10, 2019. Administration also had a publication.

Commissioner Koenig asked Administration to address the publication notice.

Samantha Tackett advised it was posted in the Nevada Legal Press on August 31, 2019, and was also posted on the Pahrump Valley Times Web site the day of the last hearing.

The Board was in recess while the additional back-up was distributed.

Ms. Tackett advised the additional back-up was e-mailed to Commissioner Cox. It was currently printing in Beatty and it had been distributed in Tonopah.

Ms. Newvine thought Commissioner Wichman had a personal conflict with this issue and asked her to disclose her commitments with the Belmont Saloon and refrain from voting.

Commissioner Wichman stated she had no commitments other than they were her constituents in her district and she would not refrain from voting.
8. 10:00 – For Possible Action – Public Hearing, discussion and deliberation pursuant to NRS 244.360 on a complaint alleging the existence of a nuisance located in Belmont, Nevada, and adopt, amend and adopt, or reject Nye County Resolution No. 2019-31: A Resolution Finding the Existence of Nuisance Conditions; or Nye County Resolution No. 2019-32: A Resolution Finding Nuisance Conditions Do Not Exist-Cont’d.

Ms. Newvine believed there were instances where Commissioner Wichman played in a musical band at the Belmont Saloon as well as Oz Wichman having supplied some opposition to the complaint being heard today.

Commissioner Wichman stated her husband was not here and had no voting capacity on the Board. Her husband operated in his capacity as the Nye County Water District general manager. Nothing came to her household financially and the band she played with volunteered to play music to raise funds for projects. Commissioner Wichman would not refrain from voting because there was no financial gain to her household from anyone in Belmont.

Ms. Newvine said it was not just a financial gain but also a personal commitment in Commissioner Wichman’s personal capacity to the Town of Belmont.

Neal Jones asked that his statement and the evidence presented be included in the minutes [see Attachment 1]. In summary, Mr. Jones alleged the wells drilled on three properties in Belmont, including the Belmont Saloon property, were drilled in violation of numerous sections of NRS and the Nevada Administrative Code (NAC) regarding sanitation and separation of wells and septic systems. The wells were drilled too close to septic systems and the septic system on the Belmont Saloon property was undocumented. Neither the County nor any of the State agencies had done anything about the potential contamination of the water no matter what evidence Mr. Jones presented. He believed the water situation in Belmont was both a nuisance per se and a nuisance in fact. Mr. Jones asked the County Commissioners to establish that the negligent actions of the property owners had met the criteria establishing a nuisance.

Ms. Newvine stated her client reserved rebuttal if necessary.

Donna and Edwin Motis were present. Mrs. Motis explained in approximately 2012 the spring in Belmont that provided their cabin with water started to diminish due to the mild winters. By 2014 they were concerned about running out of water. On April 30, 2015, they spoke with Joe Pollich at the State Water Department to explain the water situation and indicated there might be a possibility they would have to start hauling water from Tonopah. Mr. Pollich said that was unacceptable and they could not be refused domestic water to their cabin as the waters in Nevada belonged to the public. Therefore they were entitled to have a domestic well drilled, which they had drilled on the opposite side of their property from the sewer. Their sewer was also encased in a sanitary seal of 100 feet. Mrs. Motis said their water had been tested four times since 2015 and had
never exceeded the contamination level. She felt the allegations in the nuisance complaint did not exist on their parcel.

Newman Dessauer stated they drilled their well in good faith and did not do anything unlawful. His nitrates were at the higher end at nine, but he noted the levels referred to by Mr. Jones were for public wells, not for domestic wells.

Natural Resources Director Darrell Lacy said at the time this process started he was Planning Director and had much involvement in this matter. He advised there was a significantly larger nitrate problem in the Town of Pahrump and thousands of people there were subject to more than what the people in Belmont were potentially looking at. He had not seen any results from the Safe Drinking Water certified lab saying any of the Belmont results were above 10. Mr. Lacy noted that number was for safe drinking water standards for public water systems, not private water systems. The people being talked about had domestic wells, as did one business in the town of Belmont, and the only regulatory responsibility the County had was for the commercial septic system at the Belmont Saloon. Mr. Lacy also pointed out something Mr. Jones forgot to mention was the memorandum of understanding the County had with NDEP to delegate authority for commercial septic systems up to 3,000 gallons throughout Nye County. A small commercial septic system, known as an OSDS, operated under the State general permit for the discharge.

Commissioner Wichman asked Mr. Lacy if he knew when the septic tank was installed and when the State codes of today were established.

Mr. Lacy said NAC 445A-9704 stated systems in operation before August 26, 2008, were basically grandfathered and they may request, by submitting a notice of intent to continue operation, receive a general permit as applicable from the division or other administrative authority to continue operation until the system failed, the groundwater was affected, the system was expanded, or a public or community sewage system was available. Nye County’s first record of this was in 2008, but it was unknown when it was installed. Between that and discussions with residents in Belmont it was Mr. Lacy’s determination it met the exemption of being in operation prior to August 24, 2008. He reiterated there were no public drinking water systems in Belmont and there had been no readings above the 10 milligrams per liter set by the EPA for safe drinking water standards. Even if it was above that it would not designate it as a nuisance otherwise a good chunk of Pahrump would be a nuisance area also.
8. 10:00 – For Possible Action – Public Hearing, discussion and deliberation pursuant to NRS 244.360 on a complaint alleging the existence of a nuisance located in Belmont, Nevada, and adopt, amend and adopt, or reject Nye County Resolution No. 2019-31: A Resolution Finding the Existence of Nuisance Conditions; or Nye County Resolution No. 2019-32: A Resolution Finding Nuisance Conditions Do Not Exist-Cont’d.

Commissioner Strickland confirmed with Mr. Lacy the County did nothing wrong by issuing the OSDS.

Mr. Lacy stated he was not saying there were no concerns about future issues. If Belmont started growing then he would have concerns, but that did not mean there was an existing nuisance. He said most of the issues were NDEP, Department of Water Resources or State Health Department issues.

Mrs. Metis provided a copy of her statement along with well test reports showing their nitrate levels were way below 10 for the minutes [see Attachment 2].

Joseph LaBossiere asked Mr. Lacy if nitrates in nearby wells would be one reason a septic system would fail.

Mr. Lacy said potentially.

Mr. LaBossiere pointed out nitrates were naturally occurring organic matter, not rocks buried in the ground.

Dave Stevens said this should have been straightened out in 2008.

Neal Jones said he was not here about the nitrates, although that was a portion of the issue. He was here for the nuisance and how the failure to abide by the laws had created the nuisance. Mr. Jones felt he had established that.

Ms. Zlotek said it appeared the complainant had offered his proof, had rested, and had no further testimony to present. Each member of the Board had been provided a true and accurate copy of what was provided in the binder. Ms. Zlotek asked if there was anything additional from the complainant.

Mr. Jones said his argument was included in the body of evidence.

The Board was in recess until 2:00 p.m.

Commissioner Cox was not present.
9. 10:00 – For Possible Action – Public Hearing, discussion and deliberation to: 1) Adopt, amend and adopt, or reject Nye County Bill No. 2019-12: A Bill proposing to repeal and replace in its entirety Nye County Code 17.04.770, the Signage Requirements applicable to the Pahrump Regional Planning District; and providing for the severability, constitutionality and effective date thereof; and other matters properly relating thereto; and 2) Set an effective date.

Commissioner Blundo made a motion to continue this item to the next meeting in Pahrump; seconded by Commissioner Strickland.

Commissioner Koenig advised a workshop was going to be scheduled.

The motion to continue this item to the next meeting in Pahrump passed with 5 yeas.

Commissioner Koenig asked Commissioner Strickland to organize a workshop to get comments from the public and to work with Planning as well.

10. 10:00 – For Possible Action:

10a. For Possible Action – Public Hearing, discussion and deliberation on MP-2019-000013: An application for a (Minor) Master Plan Amendment to change an approximately 1.12-acre portion of a 30.0-acre parcel from Rural Density Residential (RDR) to Rural Development Area (RDA), located at 9381 S. Homestead Road, Pahrump, NV, Assessor’s Parcel Number 045-411-03. Agee and Karen Spidle – Property Owner. Paul Thomas/GATA HF, LLC – Applicant.

10b. For Possible Action – Public Hearing, discussion and deliberation on ZC-2019-000036: An application for a Zone Change to change an approximately 1.12-acre portion of a 30.0-acre parcel from Rural Homestead Residential (RH-4.5) to Commercial Manufacturing (CM), located at 9381 S. Homestead Road, Pahrump, NV, Assessor’s Parcel Number 045-411-03. Agee and Karen Spidle – Property Owner. Paul Thomas/GATA HF, LLC – Applicant.

Commissioner Strickland made a motion to approve MP-2019-000013 and ZC-2019-000036 to the business opportunity overlay zone based on the RPC recommendations, staff findings, and subject to all conditions outlined in the staff report; seconded by Commissioner Wichman.

Commissioner Koenig opened and closed the public hearing.

The motion to approve MP-2019-000013 and ZC-2019-000036 to the business opportunity overlay zone based on the RPC recommendations, staff findings, and subject to all conditions outlined in the staff report passed with 4 yeas.
11.10:00 – For Possible Action – Discussion and deliberation for a Show Cause Hearing to determine if there is sufficient cause to: 1) Revoke the Special Use Permits SU-14-0008 and SU-2014-000043 granted to Green Cross of America, Inc., for medical and recreational marijuana cultivation; and 2) Revoke Marijuana Licenses MM-2018-000060 and RM-2018-000022 granted to Green Cross of America, Inc., for medical and recreational marijuana cultivation, on 3.78 acres located at 5101 S. Oakridge Avenue, Pahrump, NV. Assessor’s Parcel Number 044-521-41. Grantee – Green Cross of America, Inc. / Peter Gnecco, CEO.


Peter Gnecco, appearing on behalf of Green Cross, advised he just got his badge straightened out for the renewal of the recreational and medical licenses. Without them he should not be trying to get a County license as one was dependent on the other. He said there had been no movement with the State and he could not get anyone at the State to assist him. Mr. Gnecco stated he was here today to ask for an extension.

Commissioner Koenig asked if anything was growing.

Mr. Gnecco said there were some plants in process but they were destroyed as there was no way for them to deal with it. He never sold anything out of the facility, but he sold wholesale to processors in Las Vegas. He explained he could not sell the rest until he got the licenses straightened out with the State, which had been going on for eight months. Mr. Gnecco reiterated the State was the hold up and asked for any leniency the County could give him.

Planning Director Brett Waggoner advised no fees had been paid to the County so far this year. He spoke with the State this morning and was told there had been no reports to the State through the metric system either since December, 2018. According to the State Mr. Gnecco was required through the license issues to continue to stay in compliance with the metric system. On July 10, 2019, the license was transferred back to Green Cross and at that point they could access the metric system and start the reporting again.

Detective Chris Sehnert said he tried to inspect the facility on June 10, 2019, but no one was there, not even security guards. As far as product being frozen that would have to be inspected. Detective Sehnert had also not received any waste logs since last year.

Code Compliance Officer Amanda Marshall added no sales fees had been received since the beginning of the year. There had also not been any communication with anyone regarding renewals or inspections.

Commissioner Blundo said in Nevada there was one high standard with gaming and he believed the Governor with the marijuana compliance board wanted the same high
11. 10:00 – For Possible Action – Discussion and deliberation for a Show Cause Hearing to determine if there is sufficient cause to: 1) Revoke the Special Use Permits SU-14-0008 and SU-2014-000043 granted to Green Cross of America, Inc., for medical and recreational marijuana cultivation; and 2) Revoke Marijuana Licenses MM-2018-000060 and RM-2018-000022 granted to Green Cross of America, Inc., for medical and recreational marijuana cultivation, on 3.78 acres located at 5101 S. Oakridge Avenue, Pahrump, NV. Assessor’s Parcel Number 044-521-41. Grantee – Green Cross of America, Inc. / Peter Gnecco, CEO-Cont’d.

standard in that industry. What Commissioner Blundo heard today was several violations of the code and he said unfortunately he could not support this item.

Mr. Gnecco said the State gave the license back to them and they tried to get metric, but everything they had was recreational and they could only get into the medical because recreational expired in December when held by Exhale. The owner of the building had also locked them out for lack of payment, but Mr. Gnecco told him he needed access to it because of the marijuana in there. Mr. Gnecco felt he was doing all he could.


SITTING AS THE NYE COUNTY BOARD OF HIGHWAY COMMISSIONERS

Commissioner Blundo assumed the Chair of the Board of Highway Commissioners.


Commissioner Wichman asked for an update on Senita Courts.

Public Works Director Tim Dahl advised it was not good. They were having trouble with the equipment and had resorted to manual labor to lay the chip seal.

Commissioner Koenig talked about the flashing 25 mph speed limit when children were present sign on Pahrump Valley Boulevard and Dandelion. He read the expert’s recommendations and would like the signs taken down as recommended along with the speed limit returned to 45 mph. Commissioner Koenig then talked about the speed limits on Blagg. As he went through the roundabout to go north on Blagg the speed limit was 45 mph. When he got to Atkinson there were two signs, one 35 mph and then another 35 mph 100 feet down the road. Those speed limits were put in for homes that were never built, but theoretically he would have to go 35 mph until after Bell Vista where he saw another sign that allowed him to go 45 mph. Commissioner Koenig would like them either painted yellow or taken down because they should not be there before he or someone else got a ticket.
13. General road report by Public Works Director-Cont’d.

Mr. Dahl said he would take the consultant’s recommendations and remove the 35 mph statutory signs on Blagg. He would also remove the “when children are present” signs on Pahrump Valley Boulevard. He advised the four-way stop on Dandelion was not warranted by the engineer. The consultant was also conducting a speed study on Pahrump Valley Boulevard and Dandelion and would give recommendations as to speed. Mr. Dahl then told the Board his department had spent over 60 days with the durapatcher this year and he thanked the Board for allowing him to have that vital piece of equipment.

John Bosta mentioned the almost impassable areas on Anvil Road and believed it needed to be repaired immediately as it was one of three major roads in Amargosa.

Commissioner Koenig explained there had been numerous discussions with the people building the solar plant there. He believed their trucks were causing it, and they agreed, so the County entered into a memorandum of understanding with them. The agreement was when they were done they would spend over $1 million to fix it. They were also supposed to be maintaining it right now and Commissioner Koenig asked Mr. Dahl to contact them to see if they were.

SITTING AS THE NYE COUNTY LICENSING AND LIQUOR BOARD

Commissioner Strickland assumed the Chair of the Licensing and Liquor Board. Sheriff Wehrly was not present.

LIQUOR

14. For Possible Action – Discussion and deliberation to extend the Temporary Retail Liquor License issued to CourseCo, LLC, sole member of Pahrump Golf, LLC for the Lakeview Golf Course located at 1471 E. Mt. Charleston Dr., Pahrump, NV. John Telischak and Thomas Isaak – Owners/Applicants.

Samantha Tackett said there was a change in key personnel. The original applicant was no longer with the company so staff was working with the new manager. Another applicant had to complete a physical fingerprint card, but it was incomplete when submitted so the Sheriff’s Office had sent it to him to complete and return, but it had not been returned. Ms. Tackett had confirmed this applicant could go to his local sheriff or police department and do the live scan fingerprinting, but she was not sure if that had happened yet.

Commissioner Koenig made a motion to extend the temporary retail liquor license for 90 days; seconded by Commissioner Wichman; 4 yeas.
15. For Possible Action – Discussion and deliberation to extend the two temporary Retail and Package Liquor Licenses for Nevada Desert Lounge located at 1481 E. Nevada Highway 372, Units B and C, Pahrump, NV. Nicholay Panchev – Manager/Applicant and Peter Panchev – Owner/Applicant.

Detective Chris Sehnert advised the report was clear. He just had some bullet point corrections to make as recommended by the Sheriff.

Samantha Tackett said as she did not have a completed report from the Sheriff so she would not recommend approval of this.

Commissioner Koenig made a motion to extend the two temporary retail and package liquor license for 30 days; seconded by Commissioner Wichman.

Commissioner Blundo asked if it was possible to make a motion for a permanent contingent on the report being submitted because this just kept coming back.

Ms. Tackett explained there were some business licensing issues yesterday that she understood had been resolved through the Planning Department. If the question was to approve extending these for 30 days and issue a permanent when the report was received she would support that.

Commissioner Wichman withdrew her second.

Commissioner Koenig withdrew his motion.

Commissioner Koenig made a motion to extend the two temporary retail and package liquor licenses for Desert Lounge for 30 days and if during that period the reports came back the licenses became permanent; seconded by Commissioner Wichman; 4 yeas.

16. For Possible Action – Discussion and deliberation to extend the Temporary Retail Liquor License for Johnny’s Taco Shop, LLC located at 1330 S. Highway 160, Pahrump, NV. Victor A. Zepeda and Juan Ramirez – Owners/Applicants.

Commissioner Koenig made a motion to extend for 30 days to become permanent once Detective Sehnert turned the report over to Samantha Tackett; seconded by Commissioner Wichman; 4 yeas.

Commissioner Koenig assumed the Chair of the Board of County Commissioners.
CONSENT AGENDA ITEMS – These are items that Staff recommends for approval. The Board reserves the right to move any consent agenda item to the regular segment of the agenda should issues arise that need to be addressed. Discussion of any item from the Consent Agenda Items that needs review before a decision is made.

17. For Possible Action – Approval of Elected Official Collection Report.

Commissioner Wichman made a motion to approve items 17-20; seconded by Commissioner Blundo; 4 yeas.

18. For Possible Action – Approval to set the date and location for the second Board of Commissioners meeting in December for Tuesday, December 17, 2019 in Pahrump, Nevada.

Commissioner Wichman made a motion to approve items 17-20; seconded by Commissioner Blundo; 4 yeas.

19. For Possible Action – Approval to accept Grant Notice of Sub-Recipient Award for the Emergency Solutions Grant (ESG) in the amount of $10,500.00, along with Requirements and Attachments. Agreement to run from July 1, 2019 through June 30, 2021. This grant is funded from Fund 10340 Grants and there is no County match required.

Commissioner Wichman made a motion to approve items 17-20; seconded by Commissioner Blundo; 4 yeas.

20. For Possible Action – Approval to accept funding revenue in the amount not to exceed $10,000.00 from Nevada Housing Division for Affordable Housing Trust Funds Program. Agreement to run from July 1, 2019 through June 30, 2022. This grant is funded from Fund 10340 Grants and there is no County match required.

Commissioner Wichman made a motion to approve items 17-20; seconded by Commissioner Blundo; 4 yeas.

BOARD OF COMMISSIONERS

21. For Possible Action – Closure of meeting, pursuant to NRS 288.220 for purposes of conferring with the County’s management representatives regarding labor negotiations, issues and other personnel matters.

This item was removed from the agenda.
22. Closed meeting, pursuant to NRS 288.220 for purposes of conferring with the County's management representatives regarding labor negotiations, issues and other personnel matters.

This item was removed from the agenda.

23. For Possible Action – Discussion and deliberation on labor negotiations, issues and other personnel matters presented in closed meeting.

This item was removed from the agenda.

36. For Possible Action – Discussion and deliberation regarding approval of a Project Funding Application for Pahrump Veterans of Foreign Wars (VFW) Post 10054 in the amount of $15,000.00 to assist in funding their roof replacement project.

Martin Aguiar expressed appreciation to the Board for what they did for the VFW. He discussed the various programs the VFW provided for veterans and explained they were asking for a grant of $15,000.00 to assist the post in replacing their roof. He said the post had raised $13,000.00 itself.

Commissioner Blundo made a motion to approve the project funding application for Pahrump Veterans of Foreign Wars Post 10054 in the amount of $15,000.00 to assist funding their roof replacement project contingent upon the applicant following the procedures of the program and fund from the Veterans Services, 10210; seconded by Commissioner Strickland; 4 yeas.

DISTRICT ATTORNEY

24. For Possible Action – Discussion and deliberation to approve and accept the 2019 Violence Against Women Act STOP/SASP Grant Terms and Conditions Addendum requested by the Nevada Office of the Attorney General regarding the 2019 STOP Grant awarded to Nye County on behalf of Nye County District Attorney’s Office to fund the position of a specialized prosecutor.

Commissioner Wichman made a motion to approve; seconded by Commissioner Blundo; 4 yeas.

PUBLIC ADMINISTRATOR

25. Quarterly report from the Public Administrator.

Commissioner Blundo made a motion to accept; seconded by Commissioner Strickland; 4 yeas.
26. **For Possible Action – Discussion and deliberation regarding nominating a member of the Board of County Commissioners to apply for a position to serve on the White Pine-Nye Resource Advisory Committee (RAC) as authorized under the Secure Rural Schools (SRS) Act.**

Commissioner Wichman said she would like to have some other Nye County residents on the board.

Commissioner Strickland said she was interested.

Commissioner Blundo made a motion to nominate Commissioner Strickland; seconded by Commissioner Wichman; 4 yeas.

27. **For Possible Action – Discussion and deliberation to ratify the Ground Lease Agreement between Nye County and the United States Postal Service (USPS) for land located at 101 4th Street, Gabbs, NV, Assessor’s Parcel Number 001-171-06 for the purpose of continuing postal service in Gabbs.**

Commissioner Wichman made a motion to approve; seconded by Commissioner Strickland; 4 yeas.

28. **Presentation of the updated Position Justification Form.**

Tim Sutton explained this was an administrative form used whenever a new position was requested. In response to the Board’s direction a couple of additional sections were added to quantify and pre-plan the OPEB liabilities and to require more information from the requesting department as to how the position would benefit the department’s efficiency and how that efficiency would be monitored.

29. **For Possible Action – Discussion, deliberation and direction to staff to consider accepting the donation of certain land and money from Valley Electric Association to construct a community center.**

Tim Sutton said about three years ago when Valley Electric sold its redundant transmission line they made statements that they would make individual payments to account holders, which they did. They also promised to give $5 million and some land for the construction of a community center. A group was formed that met and discussed the different ways that could be implemented and administered. That group came up with a design, but Valley Electric then had some internal issues and discussions fell apart. Valley Electric representatives had approached Mr. Sutton to see if the County was willing to take over the project with the $5 million donation Valley Electric was still prepared to do. Mr. Sutton said he did not feel he had the authority to do that and brought it to the Board for that determination.
29. For Possible Action – Discussion, deliberation and direction to staff to consider accepting the donation of certain land and money from Valley Electric Association to construct a community center-Cont’d.

Commissioner Wichman made a motion to accept; seconded by Commissioner Strickland.

Commissioner Koenig pointed out they were giving $5 million plus land only to be used for the sole purpose of constructing the Pahrump Community Center. He asked if that meant the community center had to be built on that piece of land or if it could be built anywhere in the town using that money.

Mr. Sutton did not know the answer to that today.

Commissioner Koenig asked if it could be contingent upon being able to build the building wherever the County wanted to.

Commissioner Strickland agreed the land was not large enough to facilitate parking, but she suggested accepting it now and working out the bugs without contingencies.

Commissioner Wichman agreed and suggested having staff work on the coordination instead of waiting for someone at Valley Electric to come up with good ideas on the County’s behalf.

Mr. Sutton said staff could start looking at the questions being asked if the Board was interested in moving forward.

Commissioner Strickland pointed out the County was not the only one given this opportunity. She felt the County should move forward without asking questions that could create a roadblock.

Jaydee Webb, chairman of the Pahrump Park and Recreation Advisory Committee, said they were given this letter of intent at their last meeting. They had been trying to find out some things and attended two meetings with Mr. Peck, the interim CEO of Valley Electric. Mr. Webb said it was a package deal from what Mr. Peck said. It was both land and money, but Mr. Peck did not say if the building had to be built there. Mr. Webb said the committee would follow through with whatever the Board would like. Valley Electric just wanted the plan agreed on.

Dave Stevens told the Commission to not deal with Valley Electric Association and reminded everyone about the swimming pool they promised.

The motion to accept passed with 4 yeas.
FINANCE

30. For Possible Action – Discussion and deliberation regarding the budget status through June 2019 for Nye County and all sub-entities for Fiscal Year 2019.

Savannah Rucker advised the GL was closed on Thursday, September 12, 2019, and she was working through the process of year end with October 18, 2019, being the hard close. She said to date the County was on time and on track and she would keep the Board updated through the audit process. The budget to actual revenue report showed $39.6 million revenue collected, which was about $600,000.00 more than budgeted. Mrs. Rucker expected to end FY19 with about $40.3 million. Turning to the budget reports for each department, she said there were no departments in the general fund over budget. The Sheriff’s Office was the main concern, but they were sitting at 98.6% for the fiscal year. She also pointed out fund 10604, the employee health insurance plan, ended up with revenues in excess of expenditures. Mrs. Rucker was going to bring something to the Board on how to manage that fund and utilize the left over dollars to the employees’ benefit.

John Bosta said he received an e-mail from the deputy director of the Department of Taxation (DTAX) who wanted to discuss Mr. Bosta’s letter about the auditor stating the marijuana money had been put into a reserve account and could not be taken out. Mr. Bosta stated his understanding that at the last meeting with DTAX they were concerned if the audit report was properly done.

Commissioner Koenig explained the money was in those accounts and may reside in the general fund without being touched.

31. For Possible Action – Discussion and deliberation regarding the budget status through July 2019 for Nye County and all sub-entities for Fiscal Year 2020.

Savannah Rucker explained that first couple of months of the new fiscal year normally did not see a lot of revenues being deposited into the current fiscal year per the accounting standards. Comparing the same time frame in FY20 to FY19 the County was up from last fiscal year. Page 2 was the departmental expenditure report and Mrs. Rucker said at this point there were no departments projecting to be over budget through the month of July. With the Storm Area 51 issue she may have a different conversation the next time she presented this as the Sheriff’s Office and DEM had seen significant expenditures preparing for the event.

Commissioner Koenig asked what was happening with the judicial other fund.

Mrs. Rucker explained there were contractual obligations within that department specific for the Public Guardians and conflict attorneys. A significant portion of those was paid through encumbrances, which was why it showed encumbrances of $451,000.00 and actuals to date of $103,000.00. Miscellaneous overhead covered the insurance
31. For Possible Action – Discussion and deliberation regarding the budget status through July 2019 for Nye County and all sub-entities for Fiscal Year 2020-Cont’d.

payments for the insurance plan, $952,000.00 this year, which was the bulk of the expenditures in that fund showing 50% spent.

32. For Possible Action – Discussion and deliberation concerning a request to set a date, time, and location for a Public Hearing to adopt, amend and adopt or reject Nye County Resolution No. 2019-30: A Resolution Authorizing a Temporary Interfund Loan for Fiscal Year 2019-2020.

Commissioner Blundo asked if this could be heard at the October 15, 2019, Pahrump meeting.

Savannah Rucker advised she would like to have this done as soon as possible as it was a request from DTAX and CLGF.

Commissioner Blundo made a motion to set the date, time and location to amend, adopt or reject Nye County Resolution No. 2019-30, a resolution authorizing a temporary interfund loan for FY20 for October 1, 2019, at 10:00 a.m.; seconded by Commissioner Strickland; 4 yeas.

PLANNING/BUILDING/CODE COMPLIANCE

33. For Possible Action – Discussion and deliberation on Recreational Marijuana Establishment License Renewal Application RM-2019-000057: A request to approve the annual renewal of a Recreational Marijuana Establishment License (distributor) located at 301 S. Oxbow Avenue, Unit 13, Pahrump, NV. Assessor’s Parcel Number 38-244-09. Eugene & Nelda Fay Toy Trust - Property Owner. Nye Natural Medicinal Solutions, LLC dba NuVeda LLC – Applicant. This item is to correct an error which was on the BOCC’s August 20, 2019 agenda. The item was approved for the renewal of a Medical Marijuana Establishment License (distributor) when it should have been renewal of a Recreational Marijuana Establishment License (distributor).

Commissioner Blundo made a motion to approve; seconded by Commissioner Wichman; 4 yeas.
PUBLIC WORKS

34. For Possible Action – Discussion and deliberation to: 1) Award Bid No. 2019-16 – Service Truck with Crane to Curry Supply Co. in the amount of $138,891.00; 2) Execute Quote # 019Q17039r; and 3) Fund from 10205 – Road Fund.

Commissioner Blundo made a motion to 1) award Bid No. 2019-16, service truck with a crane, to Curry Supply Company in the amount of $138,891.00, 2) execute the quote and 3) fund from 10205, Road Fund; seconded by Commissioner Wichman.

Commissioner Strickland pointed out this was self-funded as the County was using proceeds from an auction.

Commissioner Blundo advised only one bid was received and all requested specifications were met.

The motion to 1) award Bid No. 2019-16, service truck with a crane, to Curry Supply Company in the amount of $138,891.00, 2) execute the quote and 3) fund from 10205, Road Fund, passed with 4 yeas.

PUBLIC PETITIONER

35. For Possible Action – Discussion and deliberation regarding appointing representatives for Nye County to the Central Nevada Regional Water Authority (CNRWA) including recommendations by the Nye County Water District Governing Board.

Commissioner Wichman made a motion to appoint Joni Eastley, Midge Carver, and John Koenig; seconded by Commissioner Strickland; 4 yeas.

37. For Possible Action – Discussion and deliberation regarding Nye County Proclamation No. P2019-06: A Proclamation recognizing November 2019 as National American Indian Heritage Month.

Commissioner Blundo made a motion to approve Proclamation No. P2019-06; seconded by Commissioner Wichman; 4 yeas.

38. GENERAL PUBLIC COMMENT (second)

Regarding the Storm Area 51 event, Pat Minshall advised as of 4:00 p.m. tomorrow there would be three Sheriff’s auxiliary units in place at the Alien Center Area 51 in Amargosa. They would be there 24 hours a day until midnight Sunday night.

Dave Stevens asked how the animal shelter was coming along.
38. GENERAL PUBLIC COMMENT (second)-Cont’d.

Commissioner Koenig advised the request for bids was with the District Attorney’s Office. As soon as they said the language was correct the bid would go out. About 30 days after that the bids should be received and then it would be heard by the Board.

Paul Burton announced today was John Bosta’s birthday.

39. Commissioners’/Manager’s Comments

All Commissioners wished John Bosta a happy birthday.

40. ADJOURN

Commissioner Koenig adjourned the meeting.

APPROVED this 16th day ATTEST:

Of

October, 2019.

Chair

Nye County Clerk / Deputy
Thank you.
My name is Neal Jones.
I ask that this written statement be included in the minutes of this meeting.
I am the person who filed the nuisance complaint.
For the record, I am a licensed Civil Engineer in the State of Nevada.

People wonder why we are taking the actions that we have.

We are attempting to protect the waters in Belmont from becoming contaminated due to the illegal actions of other property owners. We have always tried to maintain the best interest of the community in the actions we have taken in Belmont over the past 20+ years we have been there. We were asked when we first came to Belmont, “What are your intentions?” Then, as now, it is to protect and preserve the historical, independent and responsible lifestyle living off-grid in rural Nevada requires.

Standing up to the unconscionable and illegal actions of property owners that threaten to contaminate our water, our extremely precious resource that we all depend on for the survival and enjoyment of the community, has become a necessity and duty for us to undertake.

A timeline of the activities that have brought us to this point is provided in section 1 of your evidence package.

The reason for this public hearing is to decide if a nuisance or potential for a nuisance may exist in Belmont due to the negligence of property owners and the Belmont Saloon and their failure to abide by the most basic sanitation laws of the State of Nevada.

NAC 444.792 (2) mandates that you must maintain a minimum 100-foot horizontal separation from a water well to the perimeter of the components of a septic system, any septic system. Map 1 in section 4 of the evidence package graphically shows this required separation space from the existing septic systems on each of the (3) parcels named in the complaint. The hatched area around the parcels in question on the map clearly shows that the wells drilled in 2015 are unquestionably within the area where the wells are forbidden to be drilled. The Belmont Saloon has only approximately a 30-foot separation between its illegal well and its septic system.

Nevada water law, according to NRS 534.020, states “all underground waters within the boundaries of the State belong to the public…” This statute also states that “It is the intent of the Legislature, by this chapter, to prevent the waste of underground waters and the pollution and contamination thereof…”

A nuisance is defined in NRS 40.140(1)(a) and analyzed closely in recent Nevada Supreme Court opinions as “Anything which is injurious to health, or indecent and offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.”

As there are several kinds of nuisances, I believe this particular case constitutes a nuisance per se. As the Nevada Supreme Court in their opinion in Sowers vs. Forest Hills Subdivision, defined a nuisance per se, as “a nuisance at all times and under any circumstances, regardless of location or surroundings.” A nuisance in fact is “one which becomes a nuisance by reasons of circumstances and surroundings.” It should go without saying that (1) evidence of water

...
contamination with the ability to contaminate an entire water aquifer and (2) the clear violation of water and sanitation laws constitutes a nuisance per se and a nuisance in fact.

We must also clarify the responsibilities of the County Commissioners and those of the District Attorney’s Office with respect to a nuisance complaint.

At the August 20, 2019 meeting of the BoCC, Commissioner Wichman stated that she had been given legal advice that the County did not have jurisdiction to rule on this complaint. Even though Commissioner Wichman failed to produce this alleged legal ruling, in a violation of the Nevada Open Meeting law, the County attempted to deny us our legal rights to have this public hearing in accordance with the requirements mandated in State law. Fortunately, the County DA asked for a special meeting of the Board to re-address our nuisance complaint, which we are thankful for. Otherwise, we would not be here today.

While it may have been misunderstood in the past, I am not seeking abatement of said nuisance, rather I am seeking to establish that a nuisance exists.

Per State law, NRS 244.360 (3), the sole responsibility of the Board of County Commissioners is to determine whether or not a nuisance exists. Only if they determine that a nuisance does exist, then they are to order the person or persons responsible for such nuisance to abate the same. The decision on if a nuisance exists or not, is to be based solely on the proofs offered to establish or controvert the facts set forth in the complaint and given as evidence in the public hearing set by the Board.

Per NRS 252.110 (5), it is the duty of the County District Attorney to bring all actions on behalf of the County for the abatement of nuisances. Not the County Commissioners. The commissioners are to base their decision solely on the evidence provided at the public hearing, not on what may occur if they decide on the existence of a nuisance.

Therefore, I am here to prove to you that the potential contamination of the underground waters of the State, waters that belong to the people of the State, through acts of negligence on the part of the property owners and the Belmont Saloon has created a nuisance per se and a nuisance in fact.

The purpose of the sanitation laws of the State of Nevada, according to NAC 444.778 (1), is to protect the health of the individual family and the community and to prevent the occurrence of nuisances. So, by definition, if you do not abide by the sanitation laws of the State, you are creating a nuisance.

One of the main tenets in the Nevada Supreme Court’s opinion establishing a nuisance, is the potential diminution of our property values. The contamination and degradation of our water source will have that effect on our property values. The Court stated that to sustain a claim for private nuisance, an interference with one’s use and enjoyment of the land must be both substantial and unreasonable. Interference is substantial if “normal persons living in the community would regard the alleged nuisance as definitely offensive, seriously annoying or intolerable.”

At issue here are water wells that the property owners had drilled in which they did not abide by or conform to the existing laws of the State of Nevada with respect to having sufficient acreage to drill the wells and maintaining the mandated separation between the wells and their existing septic systems, thereby leading to the possible contamination of their wells and then the possible contamination of the water aquifer as a whole for everyone else in the town site of Belmont.
The negligent actions of the property owners, thereby creating the nuisance, is the illegal drilling of their domestic wells. These wells were drilled in the spring of 2015. The property owners did not maintain the mandated spatial relationships to their existing septic systems, referred to as Individual Sewage Disposal Systems, or ISDS. The concept of attempting to "grandfather" the combinations of the systems in because the ISDS have existed for a number of years before the wells were drilled, does not alleviate the responsibility of the property owners to abide by the well-known and well documented laws of the State in place at the time they drilled their wells, and their responsibilities to keep from creating a nuisance.

Section 5 of your evidence package is a copy of the report we had commissioned from SRK Consulting in Reno. The findings of this report, a report stamped and signed by licensed professionals, shows that the property owners and residents of Belmont should be concerned about the future quality of the water, not only from the past actions of property owners, but the actions of the property owners who had the illegal wells drilled in 2015, only exacerbating the tenuous situation in Belmont.

NAC 444.790 mandates that you must have a minimum of one acre of land to have both a well and a septic system on a parcel. There is no chronological order in the law as to which comes first, the septic system or the well. It is just a requirement for a specific minimum amount of acreage necessary to have both a well and a septic system on it.

Tests on the water quality in Belmont, conducted by Nevada Division of Environmental Protection (NDEP) in conjunction with the Nye County Water District showed that the water in Belmont is very good. There were a few exceptions. The results from NDEP are given in the evidence package, section 6.

Map 2 in section 6 of the evidence package shows NDEP's results at the illegally drilled domestic water wells in question in the nuisance complaint. One of those wells shows a nitrate level at nearly the maximum allowed for drinking water and multitudes higher than any other water well in Belmont. The other domestic well in question shows a 61% increase in the year-to-year results for nitrates. According to the website for the Centers for Disease Control and Prevention (CDC) "High levels of nitrate in well water often result from improper well construction, well location, overuse of chemical fertilizers, or improper disposal of human and animal waste. Sources of nitrate that can enter your well include fertilizers, septic systems, animal feedlots, industrial waste, and food processing waste." There is no agriculture or industrial activity in Belmont, so fertilizers and industrial wastes are not the source of the nitrates.

What is the source of the nitrates?

The answer is right in front of us. The property owners did not abide by the laws, laws that are put in place to prevent the occurrence of nuisances, and to prevent the contamination of the water wells. Now the water in their wells is showing signs of contamination. Contamination that does not appear in any other wells in Belmont, yet. The only other well in Belmont that had a higher than average level of nitrates is the well closest to the Belmont Saloon with its illegal well and undocumented septic system. We will address the Belmont Saloon and the issues there momentarily.

Failure to abide by the existing sanitation and water laws of the State in the drilling of illegal wells, whether by the property owners or the well driller they hired, constitutes an unlawful use of one's own property. Unlawful use of one's own property is one of the main elements for a claim of nuisance in the State of Nevada.
With respect to the Belmont Saloon; contained within the evidence package for this public hearing is the documentation presented to the Nye County District Attorney’s Office regarding the illegal and unlawful operation of this business and the complicit and illegal activities of Nye County employees as it relates to this business.

We ask why the double standards for Commissioner Wichman when it comes to the upholding, enforcement and conformance with Nye County code and State laws, when it is her friends and associates that do not abide by the law? Commissioner Wichman, at the Commissioners meeting on August 7, 2018, agenda item #11, was quick to point out a variety of potential violations of County Code when she wished to deny Mr. Dennis Hof a license to operate his businesses. It seems that Commissioner Wichman felt that Mr. Hof was required to know, abide by and conform with every nuance of County Code, but when it comes to her friends and associates there is broad leeway in the conformance with and enforcement of the laws.

Why are her friends and associates held to a different standard than Mr. Hof was?

The other members of this Board, that were members of the Board at that time and were supportive of the actions of Commissioner Wichman and her strict interpretations of the law and statements that the Commissioners must abide by the letter of the law, should maintain this position in regards to this situation. If not, they should be able to publically explain why some people are required to abide by the laws and others are not.

Commissioner Wichman should familiarize herself with Nye County Code § 5.40.290 (F), 5.40.310 and others and see if these are not the exact same reasons she used in an attempt to deny Mr. Hof a license to operate and that these laws should applicable to the Belmont Saloon as well.

Why is it that this business does not have to abide and conform to the laws?

As is shown in sections 7 & 8 of the evidence package, investigators for Nevada Division of Water Resources (NDWR) were told, by the owner of the Belmont Saloon, of the existence of the well on the parcel of the Belmont Saloon, the first time they visited the property. For some reason NDWR felt the need to send these same investigators to the Belmont Saloon a second time, this time they were told by the owner that there was no well on the parcel of the Belmont Saloon. These same investigators then put this obviously false information into their official reports. This false information was then used to make a ruling by NDWR regarding the legality of the water source for the Belmont Saloon. The State Engineer, Jason King was telling other agencies within the State that there was no well on the parcel of the Belmont Saloon and then an hour later, telling another agency that if the Belmont Saloon were to use water from the well, it would be an illegal use of water.

How exactly is it that you can use water illegally from a well that the State adamantly maintains does not exist? Employees of NDWR kept up this charade until the owner of the Belmont Saloon finally had to admit again that there was a well on the parcel of the Belmont Saloon, because she wanted to sell the Saloon. Easy enough for the State to deal with that. The State invites the owner of the Saloon to come apply for a water right to the well they say does not exist and if it did exist, would be being used illegally by the saloon. Did not seem to be any conflict or issues with the State to condone these illegal activities. Instead of enforcing the laws that they are supposed to uphold, it is easier to grant a water right for the illegal use of water.
The septic system for the Belmont Saloon is undocumented. This is according to both the State and Nye County. This on-site sewage disposal system (OSDS) is supposed to be designed and inspected by licensed design professionals, whom, according to State law and Nye County code must affix their seal to the design, thereby taking responsibility for the system. The County decides that having the owner of the Saloon provide documentation that there is a septic tank at the Saloon will be all it takes for the County to give them a permit for the system. Mr. Darrell Lacy, who holds no licenses or certifications in the State of Nevada to take responsibility for this OSDS, just goes out behind the Saloon, looks at the ground and proclaims that he does not see any issues with the OSDS. The County then grants the Saloon a permit for the OSDS as a general permit. The system at the Saloon does not meet the criteria to be permitted as a general permit and the County does not have statutory authority to grant general permits, but that is not enough to stop the County. They grant the permit anyway. I would doubt anyone else in Nye County has had an easier time in getting a permit for an OSDS than the Belmont Saloon.

These actions not only show the negligence of the property owners, but the negligence and complicity of Nye County and the State of Nevada and their failure to protect the waters of Belmont from contamination and degradation, thereby constituting the creation of a nuisance as defined by the laws and legal precedents of the State of Nevada.

Our responsibility is to show, through evidence that the property owners in Belmont have created a nuisance with their failure to abide by the sanitation and water laws of the State. We have done that.

The respondent’s responsibility is to show, through evidence, that they have abided by the laws and have not created a nuisance.

It is time for people to begin to acknowledge and accept the responsibilities for their personal actions and behaviors.

If there are no issues with the waters in Belmont; why would Mr. Oscar Wichman, General Manager for the Nye County Water District, say at the April 2017 meeting of the Belmont Town Advisory Board that we are going to have problems down the road with respect to the well and septic system issues there? This statement is contained in the recording of that meeting.

If there are no issues with the waters in Belmont; why would Ms. Jennifer Carr, Deputy Administrator for Nevada Division of Environmental Protection state to Mr. Darrell Lacy and Mr. Oscar Wichman that she has concerns about the nitrate levels in the wells that were drilled illegally? Why would Ms. Carr express this concern to Mr. Lacy and Mr. Wichman and then say that this information is not for the community’s consumption?

If there are no issues with the waters in Belmont; why does the State Health Department refuse to test the waters at the Belmont Saloon for chemical contamination?

If the State Engineer has stated, in writing, that if the Belmont Saloon were to use water from the well that the State Engineer says does not even exist, and that this use of the water would constitute an illegal use of water, why does the State ignore this illegal activity?
If there are no issues at the Belmont Saloon why do State employees and agencies lie and falsify information as it relates to the well on the parcel of the Belmont Saloon?

If there are no issues at the Belmont Saloon, why does Nye County attempt to grant permits for the OSDS at the saloon that they do not have statutory authority to grant?

If there are no issues at the Belmont Saloon, why does Nye County grant a permit for the OSDS at the saloon, when the system does not meet the requirements for this permit? Why, when Mr. Darrell Lacy acknowledges, in writing, that Nye County has delegated authority to grant permits for OSDS, but does not have the authority and jurisdiction to grants waivers, exemptions or variances for these OSDS, does Nye County go ahead and grant a permit for the OSDS at the Belmont Saloon when it does not meet the requirements set forth in Nye County Code or State law?

If there are no issues at the Belmont Saloon, why would Mr. Darrell Lacy state “I don’t think it is fair to the bar to ask them to spend hundreds or thousands on testing and inspections if we are going to tell them to shut down anyway because you don’t meet current setbacks and installation standards.” I guess the health and safety of the community is secondary in Mr. Lacy’s mind.

If there are no issues at the Belmont Saloon, why does Nye County violate not only County Code but State laws in their attempt to allow this business to keep operating? Should they not be attempting to have this business come into compliance and conformance with the laws and operate in a legal, lawful and safe manner?

Documentation of these actions and activities is provided for you in section 7 of your package of evidence for this public hearing.

If all is well in Belmont with the waters, then why all the subterfuge, deceit, lying, falsification of records and cover-up?

We are asking the County Commissioners, after reviewing the facts and evidence provided in this public hearing, to establish that the negligent actions of these property owners has met the criteria establishing a nuisance. We ask that the Commissioners uphold the rights of the people of Nevada and to protect and prevent the contamination and degradation of the water aquifer in Belmont by performing their legal duties in upholding the laws of the State of Nevada.

The property owners in Belmont, named in the complaint, have created a nuisance.

That is what is to be decided at this public hearing.

Thank you.

I will attempt to answer any questions that you may have.
September 17, 2019

My name is Donna Motis and this is my husband Edwin, known as Rick. We are here to provide you with the actual facts to disprove all the allegations regarding our portion of the Nuisance Complaint (A-4-ii) filed by Neal Jones.

In approximately 2012, the spring in Belmont that provided our cabin with water was starting to diminish due to the mild winters. By the end of 2014 we were running out of water and concerned that we would not have any water to our house for the coming summer.

On April 30, 2015 we called the State Water Dept. and talked to Joe Pollich. We explained our water situation and stated that there was a possibility that we would have to start hauling water from Tonopah to Belmont. He said that was unacceptable and we can not be refused domestic water to our cabin (a single-family dwelling) as the waters in Nevada belong to the Public. Therefore, we are entitled to have a domestic well drilled.

We contacted Rosenlund Drilling to drill our well as he was going to be in the area drilling other wells. He said he would obtain the proper permits he needed to drill. Our well was drilled on May 5 & 6, 2015.

In regards to NAG 444.790, the sewer system on our lot was already in place when we purchased the property in the 1980's and had been there for a multitude of years prior to that. Our lots have been on the Belmont Town map for years. Our lots are bordered on three sides by public streets and right-of-way and on the fourth side by a vacant lot owned by Nye County. Our well was drilled at the opposite side of our property from our sewer and is encased in a sanitary seal of 100 feet.

Our well water has been tested 4 times since 2015 and has never exceeded the contamination level on any test. Mr. Jones' comment that our well water has shown a 61% increase in nitrate levels year-over-year is a creative use of words. The Maximum Contamination Level (MCL) established by the US EPA for nitrates is 10. The actual number results from all our well water tests show that the nitrate levels have never exceeded 2.8 since our well was drilled, with the most recent test result of 2.4. Therefore, our well water is definitely within the parameters of the Safe Drinking Water Act. Nor is there a nuisance created due to odor or unsightly appearance from anything on our property. This well is on private property and is for our own personal use.

We may not know every NRS or NAC word for word, but as responsible adults with common sense, we would never do anything to jeopardize the safety and well-being of our family or anyone in Belmont. Mr. Jones has stated and I quote “he has a crusade to keep the people of Belmont Safe”. In the past 4 years Mr. Jones has filed numerous complaints with several State agencies regarding the water, septic and wells in Belmont. To my knowledge most of these complaints have been deemed invalid. My opinion of what Mr. Jones is doing is considered harassment.

We realize that since this complaint has been filed with the county, you have an obligation to address it to a certain extent. However, after talking to the Nevada Dept of Environmental Protection Agency, the Board of Nye County Commissioners really don’t have jurisdiction over State agencies regarding the NRS and NAC quoted in this complaint.

Therefore, with the facts we have provided to you today, we have proven that the allegations in the Nuisance Complaint filed by Mr. Jones do not exist on our Parcel 004-533-01 owned by the Motis Family Trust.

Thank you for your time.

Donna Motis

ATTACHMENT 2