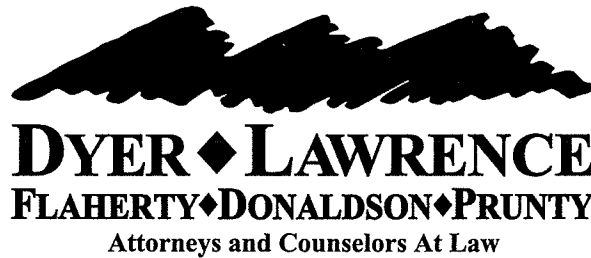


SANDRA G. LAWRENCE*
FRANCIS C. FLAHERTY
THOMAS J. DONALDSON
JESSICA C. PRUNTY
NORMAN J. AZEVEDO

* ALSO ADMITTED IN CALIFORNIA



SUE S. MATUSKA*
CASEY A. GILLHAM
KIRK R. BRENNAN*

OF COUNSEL
MICHAEL W. DYER

MEMORANDUM

TO: Truckee Meadows Regional Governing Board

FROM: Norman J. Azevedo & Jessica C. Prunty ✓

RE: Pending Litigation - Washoe County's Anticipated Mootness Argument

DATE: June 8, 2017

I. INTRODUCTION

Washoe County voted to withdraw AB 39 at their meeting on April 11, 2017. It has been represented to us by the District Attorney's office that the County Manager sent a letter to the Chair of Government Affairs on April 14, 2017, setting forth the County's request to withdraw AB 39.

On April 17, 2017, the RPGB sent the County Commission's counsel, Assistant District Attorney Paul Lipparelli, an offer to settle the pending litigation regarding AB 39. *See* Attachment 1. The RPGB's offer provided that the RPGB would dismiss the pending litigation with prejudice and also stipulate that the 2002 and 2005 Settlement Agreements are expired and have no legal effect. In exchange, the RPGB requested that the County Commission stipulate that NRS 278.0286(2) requires the County Commission to file all relevant information related to any of its legislative proposals seeking to amend, alter, repeal or replace any of the provisions in NRS 278.026 to 278.029 with the RPGB prior to submitting such proposals to the Legislative Counsel Bureau. Additionally, the RPGB also requested that the County Commission stipulate that RPGB Regulation on Procedure X requires the County Commission to file all relevant information related to any of its legislative proposals seeking to amend, alter, repeal or replace any of the provisions in NRS 278.026 to NRS 278.029 with the RPGB not less than 60 days prior to submitting such legislative proposals to the Legislative Counsel Bureau.

Mr. Lipparelli responded to the RPGB's offer on April 21, 2017, stating that the County Commission was not willing to agree to the RPGB's terms, but would agree to the filing of a joint stipulation that provides this matter is now moot and there is nothing further for the Court to do. *See* Attachment 2. Mr. Lipparelli has indicated that if the RPGB was not willing to agree to the County Commission's proposed stipulation, he would file a motion to dismiss based on mootness grounds.

II.
EXECUTIVE SUMMARY

We have conducted legal research and analysis on the viability of the County's anticipated motion to dismiss on the basis that the litigation is moot due to the withdrawal of AB 39. The RPGB's petition for declaratory ruling set forth that the parties had differing interpretation of NRS 278.0286(2) and RPGB Regulation on Procedure X and requested that the court issue a declaration, interpreting the statute and the regulation. The withdrawal of AB 39 does not resolve that controversy, a controversy that will only be resolved by the court.

Moreover, our research and analysis show that the RPGB could raise two arguments that would likely be successful in opposing a motion to dismiss by the County. The first argument would be that the County Commission voluntarily ceased its misconduct. The second argument would be that this is a matter capable of repetition, but evading review.

III.
ANALYSIS

Courts will generally only rule on cases that present live controversies. "A moot case is one which seeks to determine an abstract question which does not rest upon existing facts or rights." *State v. Second Judicial Dist. Court*, 373 P.3d 63, 65 (2016). The County is anticipated to assert that because AB 39 was withdrawn, there is no controversy, the case is therefore moot and must be dismissed. However, regardless of the withdrawal of AB 39, the parties still have a controversy as to their interpretations as to the scope and applicability of NRS 278.0286(2) and RPGB Regulation on Procedure X. That is the controversy the court is being called on to resolve.

Additionally, even if the court agreed that the withdrawal of AB 39 rendered the matter moot, there are two exceptions to the mootness doctrine that, in our opinion, could be successfully argued in this matter. One exception to the mootness doctrine relates to the voluntary cessation of the alleged wrongful conduct. If a defendant voluntarily ceases the complained-of-conduct, that does not make a case moot if there is a reasonable expectation that the defendant will repeat the wrong.

Second, a court may consider a matter if it involves a matter of importance that is capable of repetition, yet evading review. This exception to the mootness doctrine applies when the duration of the challenged action is relatively short and there is a likelihood that a similar issue will arise in the future.

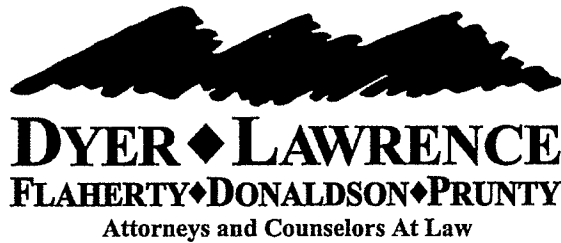
In our opinion, both of these exceptions could be successfully argued in this matter.

III.
CONCLUSION

Based on the above, it appears that the RPGB could successfully oppose the County Commission's motion to dismiss on mootness grounds by arguing that the matter is not moot because there is a present controversy, the County cannot evade review of the matter because it voluntarily withdrew AB 39, and this is a matter that is capable of repetition, but evading review because of the short duration of the legislative session and the County's position on the application and interpretation of NRS 278.0286(2) and RPGB Regulation on Procedure X.

ATTACHMENT 1

SANDRA G. LAWRENCE*
FRANCIS C. FLAHERTY
THOMAS J. DONALDSON
JESSICA C. PRUNTY
NORMAN J. AZEVEDO



SUE S. MATUSKA*
CASEY A. GILLHAM
KIRK R. BRENNAN*

OF COUNSEL
MICHAEL W. DYER

* ALSO ADMITTED IN CALIFORNIA

April 17, 2017

Paul Lipparelli, Asst. District Attorney - Civil
Washoe County District Attorney
1 South Sierra Street
South Tower, 4th Floor
Reno, Nevada 89501

plipparelli@da.washoecounty.us

Re: *RPGB v. Washoe County; Settlement Offer*

Dear Paul:

As you know, the Washoe County Board of Commissioners ("County Commission") very graciously requested the withdrawal of AB 39 at their most recent meeting on April 11, 2017. The Truckee Meadows Regional Planning Governing Board ("RPGB") recognizes the County Commission's request to withdraw AB 39 as a significant step in resolving the current litigation and has authorized me to communicate the following offer to settle this matter.

The RPGB seeks to reach an agreement in principle with Washoe County ("County") on the following terms: (1) the RPGB will dismiss the pending litigation with prejudice; (2) the RPGB will stipulate that the settlement agreement between the RPGB, the County, and the Sun Valley GID, which was entered into on October 17, 2002, in case number CV02-03469, has expired and no longer has any legal effect; and (3) the RPGB will stipulate that the settlement agreement between the RPGB, the County, the City of Reno, and the City of Sparks, which was entered into on August 22, 2005, also in case number CV02-03469, has expired and no longer has any legal effect.

In exchange for the aforementioned concessions, the RPGB requests that the County: (1) stipulate that NRS 278.0286(2) requires the County to file all relevant information related to any of its legislative proposals that seek to amend, alter, repeal or replace any of the provisions in NRS 278.026 to 278.029, inclusive, with the RPGB prior to submitting such legislative proposals to the Legislative Counsel Bureau; and (2) stipulate that RPGB Regulation on Procedure X requires that the County file all relevant information related to any of its legislative proposals that seek to amend, alter, repeal or replace any of the provisions in NRS 278.026 to 278.029, inclusive, with the RPGB not less than 60 days prior to submitting such legislative proposals to the Legislative Counsel Bureau.

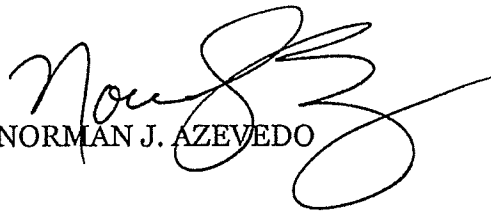
Paul Lipparelli
April 17, 2017
Page 2

The RPGB certainly agrees with the County Commission's recent sentiments that it is best to get the AB 39 dispute resolved, so that the parties can address more pressing issues facing our region through the Regional Plan update process that is already underway. Please contact our office by April 21, 2017, to let me know if the above proposal is acceptable to your client.

Thank you for your attention to this matter, and please do not hesitate to contact me if you would like to discuss any of these issues further.

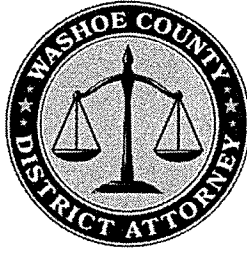
Sincerely,

DYER, LAWRENCE, FLAHERTY,
DONALDSON & PRUNTY


NORMAN J. AZEVEDO

cc: Charlene Bybee, Chair, RPGB
Kim Robinson, Executive Director, RPGB

ATTACHMENT 2



Christopher J. Hicks
District Attorney

P.O. Box 11130
Reno, Nevada 89520

775.328.3200
washoecounty.us/da

April 21, 2017

Norman J. Azevedo, Esq.
Dyer, Lawrence, Flaherty,
Donaldson & Prunty
2805 Mountain Street
Carson City, Nevada 89703

scanned and emailed to: nazevedo@dylawrence.com

Re: Case No. CV02-03469

Dear Mr. Azevedo:

This follows my phone conversation with Casey Gillham on April 19 and an email Mr. Gillham sent on April 20. Mr. Gillham informed me that Regional Planning Governing Board, its lawyers and the agency director may be meeting soon to discuss the litigation. Washoe County's position on the case is described below.

Washoe County's legislative proposal related to the composition of the Regional Planning Governing Board and the requirements for the appointment of county commissioners from certain commission districts was Assembly Bill 39 (AB 39). AB 39 was referred to the Nevada Assembly's Committee on Government Affairs on February 6, 2017. Following the April 11, 2017 Board of County Commissioners meeting, County Manager John Slaughter requested in writing that the chairman of the Government Affairs Committee withdraw AB 39 from further consideration by the Nevada Legislature.

The Nevada Legislature's Joint Standing Rules permit a legislative committee to take action on a bill only before the 68th day of the legislative session. Joint Standing Rule No. 14.3.1¹. The 68th day of the 2017 Legislature was April 14, 2017. AB 39 was not heard by the

¹ Rule No. 14.3. provides:

Except as otherwise provided in Joint Standing Rules Nos. 14.4, 14.5 and 14.6:

1. The final standing committee to which a bill or joint resolution is referred in its House of origin may only take action on the bill or joint resolution on or before the 68th calendar day of the legislative session. A bill may be re-referred after that date only to the Senate Committee on Finance or the Assembly Committee on Ways and Means and only if the bill is exempt pursuant to subsection 1 of Joint Standing Rule No. 14.6.

2. Final action on a bill or joint resolution may only be taken by the House of origin on or before the 79th calendar day of the legislative session.

3. The final standing committee to which a bill or joint resolution is referred in the second House may only take action on the bill or joint resolution on or before the 103rd calendar day of the legislative

Letter to Norman J. Azevedo, Esq.
April 21, 2017
Page 2 of 2

Committee on Government Affairs and no action was taken on the bill prior to the deadline. See, Nevada Legislature's Bills That Failed to Meet the April 14, 2017 deadline. <http://www.leg.state.nv.us/Session/79th2017/Reports/MissedApril14th.cfm>. The Nevada Legislature's Nellis system also shows no further action is allowed on the bill.


Nevada courts can resolve only actual controversies and lack the authority to render advisory opinions. A case may contain a live controversy in the beginning, but subsequent events can render the case moot. *Personhood Nevada v. Bristol*, 126 Nev. 599, 245 P.3d 572, (2010) (Passage of deadline for submitting ballot initiative signatures renders moot a case challenging proposed). The Regional Planning Governing Board petitioned the court to halt AB 39. That bill is dead and the legal controversy is now moot. Mootness destroys justiciability and there is nothing further for the court to do.

Washoe County will agree to the filing of a stipulation which states as follows: "Washoe County and the Truckee Meadows Regional Planning Governing Board hereby stipulate and agree that due to Nevada Legislature's Joint Standing Rule No. 14.3.1 and the absence of any necessary legislative action on AB 39 on or before April 14, 2017, there is no longer an actual controversy or case for the court to decide. The parties further stipulate and agree that all the petitions, motions and other papers filed on or after January 23, 2017 are withdrawn."

Following your next opportunity to confer with the members of the Regional Board, please let me know whether it will cooperate in the filing of a stipulation with the language Washoe County proposes.

Sincerely,

CHRISTOPHER J. HICKS
WASHOE COUNTY DISTRICT ATTORNEY

By 
PAUL A. LIPPARELLI
ASSISTANT DISTRICT ATTORNEY

Cc: Casey Gillham, Esq. (by email to: CGillham@dyerlawrence.com)

session. A bill may be re-referred after that date only to the Senate Committee on Finance or the Assembly Committee on Ways and Means and only if the bill is exempt pursuant to subsection 1 of Joint Standing Rule No. 14.6.

4. Final action on a bill or joint resolution may only be taken by the second House on or before the 110th calendar day of the legislative session.