

NYE COUNTY AGENDA INFORMATION FORM

Action
 Presentation
 Presentation & Action

Department: District Attorney		Agenda Date:	
Category: Regular Agenda Item		August 30, 2019	
Contact: Chris Arabia, District Attorney		Phone:	Continued from meeting of:
Return to: Chris Arabia		Location: Pahrump	
		Phone:	
Action requested: (Include what, with whom, when, where, why, how much (\$) and terms) <p>Discussion and deliberation pursuant to NRS 244.360(1) and 244.360(2) to direct the Clerk to set a public hearing not less than 30 nor more than 40 days subsequent to the filing of the complaint by Neal Jones on August 8, 2019 regarding the high nitrate levels in the water in Belmont, Nevada and the wells that were drilled there illegally.</p>			
Complete description of requested action: (Include, if applicable, background, impact, long-term commitment, existing county policy, future goals, obtained by competitive bid, accountability measures) <p>Staff recommends setting a Public Hearing on September 18, 2019 in Pahrump, NV.</p>			
Any information provided after the agenda is published or during the meeting of the Commissioners will require you to provide 10 copies: one for each Commissioner, one for the Clerk, one for the District Attorney, one for the Public and two for the County Manager. Contracts or documents requiring signature must be submitted with three original copies.			
Expenditure Impact by FY(s): (Provide detail on Financial Form) <p style="text-align: right;"><input type="checkbox"/> No financial impact</p>			

Routing & Approval (Sign & Date)

1. Dept	Date	6.	Date
2.	Date	7.	Date
3.	Date	8. Legal	Date
4.	Date	9. Finance	Date
5.	Date	10. County Manager	Date

MG ✓ Place on Agenda N/A

ITEM # 6

NRS 244.360 Abatement of nuisances: Complaint; notice; hearing; order; enforcement of order; costs; alternative procedures.

1. Whenever a written complaint is filed with the county clerk alleging the existence of a nuisance, as defined in [NRS 40.140](#), within the county, the county clerk shall notify the board of county commissioners, who, except as otherwise provided by subsections 5 and 6, shall forthwith fix a date to hear the proof of the complainant and of the owner or occupant of the real property whereon the alleged nuisance is claimed to exist not less than 30 nor more than 40 days subsequent to the filing of the complaint.

2. At the time of fixing the hearing, the board of county commissioners shall order and cause notice of the hearing to be published at least once a week for 2 weeks next preceding the date fixed for the hearing in a newspaper of general circulation published in the county and, if none is so published in the county, then in a newspaper having a general circulation in the county.

3. At the time fixed for hearing, the board of county commissioners shall proceed to hear the complaint and any opponents. The board may adjourn the hearing from time to time, not exceeding 14 days in all. At the hearing, it shall receive the proofs offered to establish or controvert the facts set forth in the complaint, and on the final hearing of the complaint, the board shall by resolution entered on its minutes determine whether or not a nuisance exists and, if one does exist, order the person or persons responsible for such nuisance to abate the same. If the order is not obeyed within 5 days after service of a copy upon the person or persons responsible for the nuisance, the board of county commissioners shall cause the abatement of the nuisance and make the cost of abatement a special assessment against the real property.

4. The special assessment may be collected at the same time and in the same manner as ordinary county taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy, collection and enforcement of county taxes shall be applicable to such special assessment.

5. As an alternative to the procedure set forth in subsections 1, 2, 3 and 4, the board of county commissioners, upon receipt from the county clerk of notice of the filing of a complaint alleging the existence of a nuisance, may direct the district attorney to notify the person responsible for such nuisance to abate it, and if such notice is not obeyed after service thereof, within a reasonable time under the circumstances, as specified by the board, to bring legal proceedings for abatement of the nuisance, and for recovery of compensatory and exemplary damages and costs of suit. Such proceedings shall be under the control of the board of county commissioners in the same manner as other suits to which the county is a party.

6. Notwithstanding the abatement procedures set forth in the preceding subsections, any board of county commissioners in this State may, by ordinance, direct the district attorney of the county in which the board has jurisdiction to bring all necessary civil actions on behalf of the county in any court of competent jurisdiction to enjoin, abate or restrain the continued violation of any ordinance, rule or regulation enacted, adopted or passed by said board and having the effect of law, the violation of which is designated as a nuisance in such ordinance, rule or regulation. If the board of county commissioners decides to direct the district attorney as herein provided, it shall enact an ordinance empowering the district attorney to file all necessary civil actions in the name of the county in any court of competent jurisdiction to enforce any such ordinance, rule or regulation of the board having the effect of law.

[1:29:1901; RL § 1562; NCL § 2043] — (NRS A [1971, 944](#); [1973, 215](#))

August 8, 2019

Certified Mail / Return Receipt Requested

7017 3040 0000 7273 6898 / 9590 9402 3757 8032 5279 08

Ms. Sandra Merlino
NYE COUNTY CLERK
101 Radar Road
P.O. Box 1031
Tonopah, NV 89049

NRS Chapter 244 – Counties: Government: Health and Safety

NRS 244.360 Nuisance complaint

1. Nuisance defined in NRS 40.140(1)(a): 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.
2. Contamination of the water aquifer and underground water supply for the community of Belmont, is a threat to the health and safety of the community, is injurious to the health of the community and is a nuisance.
3. The purpose of the sanitation laws of the State of Nevada is to protect the health of the individual family and the community and to prevent the occurrence of nuisances by safely disposing of all human and domestic wastes. (NAC 444.778 (1)). Per NAC 444.778 (2) (a, c & d), wastes must be disposed of so that they will not:
 - i. Contaminate any drinking water supply.
 - ii. Create a nuisance due to odor or unsightly appearance.
 - iii. Contaminate any body of water.
4. According to US EPA, after agriculture, the most common reason for nitrates to be found in well water is the improper construction or location of wells in relation to a septic system. There is no agriculture in Belmont. Testing of the waters in Belmont has shown low levels of nitrates in the waters, with the exception of the new wells, drilled in 2015, listed below that were drilled in violation of the State of Nevada sanitation laws.

NUISANCE COMPLAINT

- A. Wells were drilled in 2015 in Belmont which violated the existing State laws regarding sanitation.
 - 1) NAC 444.790 states 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 stated in the law.
 - 2) NAC 444.792 (2) states you must maintain a minimum 100 foot horizontal separation from a water well to the perimeter of the components of any individual sewage disposal systems (septic system). There is no chronological order stated in the law.
 - 3) It takes a minimum of 1/3 acre of **vacant land** to install a legitimate individual sewage disposal system.
 - 4) The following wells were drilled in violation of the State sanitation laws and pose a threat to contaminate the underground waters in the community of Belmont, putting the health and safety of all persons at risk.
 - i. Parcel 004-553-01; only 1/3 acre in size, owners Numa and Dorothy Dessauer (Numa R. and Dorothy Kay Dessauer Trust). This well has shown elevated levels of nitrates in the well water at nearly the maximum allowable levels established

- by EPA. Nitrate levels are far in excess of any other wells in the area that have been tested.
- ii. Parcel 004-533-01; only 1/3 acre in size, owners Edwin and Donna Motis (Motis Family Trust). This well has shown a 61% increase in the nitrate levels in the well water year-over-year.
 - iii. Nevada Division of Water Resources (NDWR) stated in its ruling related to Alleged Violation Case 188 (AV:188) that NDWR's interpretation of NAC 534.330(2)(c) is that the property owners are responsible to know and abide by all the laws of the State of Nevada, not the well driller they hired.
- B. Belmont Saloon, parcel 004-535-30, owner Tracy Bilyeu, which is on less than 1/2 acre parcel
- i. The Belmont Saloon operates with an illegal well and has no water right to use water from the well (according to the State Engineer, in writing)
 - ii. NDWR has written that there are no records of the well on the parcel of the Belmont Saloon.
 - iii. NDWR has stated that the well on the parcel of the Belmont Saloon does not even exist, even though NDWR has knowledge that the well does exist.
 - iv. The septic system for the Belmont Saloon is undocumented (according to the State of Nevada and Nye County)
 - v. Nye County granted a permit for this undocumented commercial septic system at the Belmont Saloon based upon the observations of an unlicensed and uncertified person, even though State law requires a licensed professional to design and inspect the system.
 - vi. Nye County attempted to grant a permit for this undocumented commercial septic system as a discharge permit and general permit, even though Nye County does not have the statutory authority to grant these permits.
 - vii. The undocumented commercial septic system for the Belmont Saloon does not conform to the requirements stated in the general permit application to be considered for a permit as a general permit.
 - viii. The archaic underground fuel storage tank on the parcel of the Belmont Saloon is unregistered and unregulated.
 - ix. All of these pose a threat to the water, health and safety of the community.

Thank you for your anticipated cooperation in this matter.
Respectfully submitted,



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