

1 **BEFORE THE COMMISSION OF APPRAISERS OF REAL ESTATE**

2 **STATE OF NEVADA**

3 SHARATH CHANDRA , Administrator,  
4 REAL ESTATE DIVISION,  
5 DEPARTMENT OF BUSINESS AND  
6 INDUSTRY,  
7 STATE OF NEVADA,

8 Petitioner,

9 vs.

10 CRAIG E. JIU  
11 (License No. A.0002330-CG),

12 Respondent.

**Case No. 2016-4145 & AP 17.021.S**

**OPPOSITION TO RESPONDENT  
CRAIG JIU’S PETITION FOR  
REHEARING PURSUANT TO NAC  
645C.505**

13 Petitioner, Sharath Chandra, Administrator of the Real Estate Division, Department  
14 of Business & Industry, State of Nevada (“Division”), by and through its counsel, Aaron D.  
15 Ford, Nevada Attorney General, and Peter K. Keegan, Deputy Attorney General, hereby  
16 file the instant Opposition to Respondent Craig Jiu’s Petition for Rehearing Pursuant to  
17 NAC 645C.505 (“Petition for Rehearing”).

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. LEGAL STANDARD**

20 NAC 645C.505, sets for the standard for the Commission to evaluate a petition for  
21 rehearing and reads as follows:

22 The following procedures will be used for a rehearing in a case  
23 where a ruling or decision of the Commission is against a licensee  
24 or holder of a certificate:

25 1. The licensee or holder of a certificate may, within 15  
26 calendar days after receipt of the decision, petition the  
27 Commission for a rehearing.

28 2. The petition does not stay any decision of the Commission  
unless the Commission so orders.

3. The petition must state with particularity the point of law  
or fact which, in the opinion of the licensee or holder of a  
certificate, the Commission has overlooked or misconstrued and

1 must contain every argument in support of the application that  
2 the licensee or holder of a certificate desires to present.

3 4. Oral argument in support of the petition is not permitted.

4 5. The Division may file and serve an answer to a petition for  
5 a rehearing within 10 calendar days after it has received service  
6 of the petition.

7 6. If a petition for rehearing is filed and the Commission is  
8 not scheduled to meet before the effective date of the penalty, the  
9 Division may stay enforcement of the decision being appealed.  
10 When determining whether a stay is to be granted, the Division  
11 shall determine whether the petition was filed in a timely manner  
12 and whether it alleges a cause or ground which may entitle the  
13 licensee or holder of a certificate to a rehearing.

14 7. A rehearing may be granted by the Commission for any of  
15 the following causes or grounds:

16 (a) Irregularity in the proceedings in the original hearing.

17 (b) Accident or surprise which ordinary prudence could not  
18 have guarded against.

19 (c) Newly discovered evidence of a material nature which the  
20 applicant could not with reasonable diligence have discovered and  
21 produced at the original hearing.

22 (d) Error in law occurring at the hearing and objected to by  
23 the applicant during the earlier hearing.

24 8. A petition for a rehearing may not exceed 10 pages of  
25 standard printing.

## 26 **II. ARGUMENT**

### 27 **A. The Record Belies Respondent's Contention that He was Not Allotted** 28 **Sufficient Time to Present His Case.**

As the Commission recalls, this hearing lasted two days from October 10-11, 2018,  
and then was resumed for another two (2) days on January 29-30, 2019. Nevertheless,  
Section B of Respondent's Petition for Rehearing argues, pursuant to NAC 645C.505(7)(a),  
that there were irregularities in the proceedings and that he was not afforded an adequate  
opportunity to present his case to the Commission.<sup>1</sup> This argument is refuted by the hours  
of direct testimony offered by Michael Brunson contained in the record on October 11, 2018  
and January 29, 2019.<sup>2</sup> Respondent Jiu adopted co-respondent Michael Brunson's

<sup>1</sup> *Petition for Rehearing*, p. 3-4, ln. 21-28; 1-2.

<sup>2</sup> Exhibit 1: *Transcript of October 11, 2018, Nevada Appraisal Commission Hearing in Case Nos. 2016-4145 & 2016-4146*, p. 167 – 254; Exhibit 2: *Morning transcript of January 29, 2019, Nevada Appraisal Commission Hearing in Case No. 2016-415- & 2016-4146*, p. 100-118; Exhibit 3: *Afternoon transcript of January 29, 2019, Nevada Appraisal Commission Hearing in Case No. 2016-415- & 2016-4146*, p. 25-42.

1 testimony as his own.<sup>3</sup> Similarly, the record of the October 11, 2018, hearing clearly reflects  
2 Respondent resting his principal case without being rushed. No irregularities regarding  
3 the presentation of Respondent's case exist in this matter to justify a rehearing.

4 **B. Respondent's Petition for Rehearing Fails to Identify Any Error of**  
5 **Law Objected to by Respondent during the Hearing pursuant to**  
6 **NAC 645C.505(7)(d).**

7 Section B of Respondent's Petition for Rehearing also argues, pursuant to  
8 NAC 645C.505(7)(d), that the "multiple errors of law" occurred during the hearing that now  
9 justify a rehearing.<sup>4</sup> However, the bulk of Respondent's Petition for Rehearing attacks the  
10 decision of the Commission for failing to include citations to the record and the exhibits  
11 contained therein. These arguments do not qualify for any of the enumerated basis to grant  
12 a rehearing pursuant to NAC 645C.505(7). In fact, the provision cited to by Respondent,  
13 NAC 645C.505(7)(d), only allows the Commission to grant a hearing for an, "error of law  
14 occurring at the hearing and objected to by the applicant during the earlier hearing."

15 Section E of Respondent's Petition for Rehearing does argue that the Commission  
16 committed an error of law by "taking over a function of the judiciary[,]" when it allowed  
17 Mr. Lubawy to testify.<sup>5</sup> Respondent appears claims that Mr. Lubawy's involvement in  
18 outside, but related litigation involving the Respondent biased his testimony and opened a  
19 flood-gate to expert testimony appraisers filing complaints against on one another in an  
20 attempt to "knock out their competition."<sup>6</sup> The Respondent's arguments in his Petition for  
21 Rehearing makes no transcript reference to any objection lodged against Mr. Lubawy's  
22 testimony during the hearing and further fails to identify how the Commission allowing  
23 Mr. Lubawy to testify constitutes an error or law.<sup>7</sup> Pursuant to NRS 233B.123 Mr.  
24 Lubawy's testimony and report were properly admitted into the record because Mr. Lubawy

25  
26 <sup>3</sup> Exhibit 2: *Transcript of October 11, 2018*, p. 254-255.

27 <sup>4</sup> Petition for Rehearing, p. 3-4, ln. 21-28; 1-2.

28 <sup>5</sup> Petition for Rehearing, p. 8-10.

<sup>6</sup> Petition for Rehearing, p. 8-10.

<sup>7</sup> Respondent did object to Mr. Lubawy's testimony on October 10, 2018, stating that "the Division's position is lacking an independent analysis."

1 was a sworn witness, testified to the authenticity of his expert report, and Respondent was  
2 provided an opportunity for cross-examination.<sup>8</sup> Therefore, Respondent's Petition for  
3 Rehearing fails to demonstrate any basis to conduct a rehearing, pursuant to  
4 NAC 645C.505(7)(d), based upon an error in law.

5 **C. The Record in this Case Demonstrates that the Commission Applied**  
6 **the Correct Preponderance of Evidence Standard of Proof and the Record**  
7 **also Contains Substantial Evidence Supporting the Findings of the**  
8 **Commission.**

9 Section C of Respondent's Petition for Rehearing attacks the written decision of the  
10 Commission on various grounds, essentially arguing that the decision offer no citations to  
11 the record, exhibits, or the defenses of the Respondent.<sup>9</sup>

12 NRS 233B.125 sets forth the requirement that a decision or order adverse to a party  
13 in contested administrative case contain both findings of fact and conclusions of law and  
14 that they be separately.<sup>10</sup> NRS 233B.125 also sets forth the standard of proof in a contested

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15 <sup>8</sup> **NRS 233B.123 Evidence.** In contested cases:

16 1. Irrelevant, immaterial or unduly repetitious evidence must be excluded. Evidence may be admitted,  
17 except where precluded by statute, if it is of a type commonly relied upon by reasonable and prudent persons  
18 in the conduct of their affairs. Agencies shall give effect to the rules of privilege recognized by law. Objections  
19 to evidentiary offers may be made and must be noted in the record. Subject to the requirements of this  
20 subsection, when a hearing will be expedited and the interests of the parties will not be prejudiced  
21 substantially, any part of the evidence may be received in written form.

22 2. Documentary evidence may be received in the form of authenticated copies or excerpts. Upon request,  
23 parties must be given an opportunity to compare the copy with the original.

24 3. Every witness shall declare, by oath or affirmation, that he or she will testify truthfully.

25 4. Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on  
26 any matter relevant to the issues even though the matter was not covered in the direct examination, impeach  
27 any witness, regardless of which party first called the witness to testify, and rebut the evidence against him  
28 or her.

5. Notice may be taken of judicially cognizable facts and of generally recognized technical or scientific  
facts within the specialized knowledge of the agency. Parties must be notified either before or during the  
hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff  
memoranda or data, and they must be afforded an opportunity to contest the material so noticed. The  
experience, technical competence and specialized knowledge of the agency may be utilized in the evaluation  
of the evidence.

(Added to NRS by [1967, 808](#); A [1977, 57](#); [1997, 1603](#); [2015, 707](#))

<sup>9</sup> See Petition for Rehearing, p. 4, ln. 16-21; p. 4- 7.

<sup>10</sup> **NRS 233B.125 adverse decision or order required to be in writing or stated on record; contents of final decision; standard of proof; notice and copies of decisions and orders.** A decision or order adverse to a party in a contested case must be in writing or stated in the record. Except as provided in subsection 5 of NRS 233B.121, a final decision must include findings of fact and conclusions of law, separately stated. Findings of fact and decisions must be based upon a preponderance of the evidence.

1 case, requiring that findings of fact be based upon a preponderance of the evidence. NRS  
2 233B.125 requires that findings of fact, if set forth in statutory language, must be  
3 accompanied by a concise and explicit statement of the underlying facts supporting the  
4 findings.

5 Here, the Decision of the Commission plainly sets for the findings of fact in a concise  
6 and explicit manner and does so separately from the statutorily stated conclusions of law.<sup>11</sup>  
7 The Commission’s findings and conclusions are plainly set out using the applicable  
8 preponderance of evidence standard.<sup>12</sup> Respondent’s argument seeks to impose a  
9 requirement upon the Commission to prepare what amounts to an argumentative  
10 decision/order with citations to the record and exhibits supporting its conclusions; however,  
11 no such requirement exists. Rather, when a contested administrative case is appealed to  
12 the district courts, on a petition for judicial review, the district courts perform a review  
13 using the “substantial evidence” standard of review.<sup>13</sup> The substantial evidence standard

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14 Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement  
15 of the underlying facts supporting the findings. If, in accordance with agency regulations, a party submitted  
16 proposed findings of fact before the commencement of the hearing, the decision must include a ruling upon  
17 each proposed finding. Parties must be notified either personally or by certified mail of any decision or order.  
18 Upon request a copy of the decision or order must be delivered or mailed forthwith to each party and to the  
19 party’s attorney of record.

(Added to NRS by 1967, 809; A 1985, 351; 2015, 708)

20 <sup>11</sup> See Commission’s Findings of Fact and Conclusions of Law, filed Feb. 8, 2019; *Compare Elizondo*  
21 *v. Hood Mach., Inc.*, 129 Nev. 780, 312 P.3d 479 (2013) (where the Court reversed and remanded the  
22 decision of the hearing officer for failing to include separately stated findings of fact and conclusions of law  
23 supporting the hearing officer’s determination and facilitating judicial review).

<sup>12</sup> See Commission’s Findings of Fact and Conclusions of Law, filed Feb. 8, 2019, p. 3, ln. 21-22.

<sup>13</sup> **NRS 233B.135 Judicial Review: Manner of conducting; burden of proof; standard for  
24 review.**

1. Judicial review of a final decision of an agency must be:

- (a) Conducted by the court without a jury; and
- (b) Confined to the record.

25 Ê In cases concerning alleged irregularities in procedure before an agency that are not shown in the record,  
26 the court may receive evidence concerning the irregularities.

2. The final decision of the agency shall be deemed reasonable and lawful until reversed or set aside in  
27 whole or in part by the court. The burden of proof is on the party attacking or resisting the decision to show  
28 that the final decision is invalid pursuant to subsection 3.

3. The court shall not substitute its judgment for that of the agency as to the weight of evidence on a  
question of fact. The court may remand or affirm the final decision or set it aside in whole or in part if  
substantial rights of the petitioner have been prejudiced because the final decision of the agency is:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the agency;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;

1 of review requires the reviewing Court to review the record and to determine whether the  
2 “facts found by the administrative factfinder are reasonably supported by sufficient, worth  
3 evidence in the record.”<sup>14</sup> There is simply no requirement that the decision of an  
4 administrative factfinder make citations to the record. Indeed, when a petition for judicial  
5 review is filed with a district court, the parties to the appeal are required to transmit a  
6 certified copy of the transcript along with the entire record of exhibits and filings to the  
7 district court so that the court can perform a review of the record and determine if the factual  
8 findings of the administrative factfinder are adequately supported by substantial evidence  
9 in the record.<sup>15</sup>

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- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
  - (f) Arbitrary or capricious or characterized by abuse of discretion.

16 4. As used in this section, “substantial evidence” means evidence which a reasonable mind might accept  
17 as adequate to support a conclusion.

(Added to NRS by 1989, 1650; A 2015, 710)

<sup>14</sup> *Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. 245, 249–50, 327 P.3d 487, 490 (2014).

18 <sup>15</sup> **NRS 233B.131 Transmittal of record of proceedings to reviewing court by party and**  
19 **agency; shortening of or corrections or additions to record; additional evidence; modification of**  
20 **findings and decision by agency based on additional evidence.**

21 1. Within 45 days after the service of the petition for judicial review or such time as is allowed by the  
22 court:

(a) The party who filed the petition for judicial review shall transmit to the reviewing court an original  
or certified copy of the transcript of the evidence resulting in the final decision of the agency.

(b) The agency that rendered the decision which is the subject of the petition shall transmit to the  
reviewing court the original or a certified copy of the remainder of the record of the proceeding under review.  
23 The record may be shortened by stipulation of the parties to the proceedings. A party unreasonably refusing  
24 to stipulate to limit the record, as determined by the court, may be assessed by the court any additional costs.  
The court may require or permit subsequent corrections or additions to the record.

25 2. If, before submission to the court, an application is made to the court for leave to present additional  
evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that  
there were good reasons for failure to present it in the proceeding before the agency, the court may order that  
the additional evidence and any rebuttal evidence be taken before the agency upon such conditions as the  
court determines.

27 3. After receipt of any additional evidence, the agency:

(a) May modify its findings and decision; and

(b) Shall file the evidence and any modifications, new findings or decisions with the reviewing court.

(Added to NRS by 1989, 1649; A 2015, 710)

**D. The Record Reflects Unbiased Deliberation by the Commission.**

Section D of Respondent’s Petition for Rehearing argues that the Commission was biased against Respondent in favor of Mr. Lubawy and failed to cite any basis in its decision for accepting Mr. Lubawy’s testimony over the Respondent’s testimony.<sup>16</sup> Respondent’s Petition for Rehearing cites to a non-binding Alaska case, *State v. Wold*, 278 P.3d 266 (AK 2012) in support of this proposition.

However, in Nevada, the law is clear, NRS 233B.135(3) specifically states that a reviewing “court shall not substitute its judgement for that of the agency as to the weight of evidence on a question of fact.”<sup>17</sup> That is to say, so long as the Commission’s decision to accept Mr. Lubawy’s testimony over the Respondent’s on any issue of fact, is supported by sound reasoning and substantial evidence, contained in the record, a reviewing district court will not disturb the Commission’s decision. As such, Respondent’s claim that the Commission’s Findings of Fact and Conclusions of Law are biased simply fails to provide any basis under NAC 645.505(7) for a rehearing.

**III. CONCLUSION**

Accordingly, the Division respectfully requests that Respondent’s Petition for Rehearing be denied.

DATED this 18th day of April, 2019.

AARON D. FORD  
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By:

  
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<sup>16</sup> Petition for Rehearing, p. 7-8.


<sup>17</sup> *Barrick Goldstrike Mine v. Peterson*, 116 Nev. 541, 547, 2 P.3d 850, 853-4 (2000).

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on April 18, 2019, I sent a copy of the foregoing, OPPOSITION TO RESPONDENT CRAIG JIU'S PETITION FOR REHEARING PURSUANT TO NAC 645C.505, via regular U.S. Mail, and electronic mail to the following:

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