

MINUTES

REGULAR MEETING OF OCTOBER 25, 2017 Incline Village General Improvement District

The regular meeting of the Board of Trustees of the Incline Village General Improvement District was called to order by Chairwoman Kendra Wong on Wednesday, October 25, 2017 at 6:00 p.m. at the Chateau located at 955 Fairway Boulevard, Incline Village, Nevada.

A. PLEDGE OF ALLEGIANCE*

The pledge of allegiance was recited.

B. ROLL CALL OF THE IVGID BOARD OF TRUSTEES*

On roll call, present were Trustees Matthew Dent, Peter Morris, Phil Horan, Tim Callicrate, and Kendra Wong.

Also present were District Staff Members Communications Coordinator Misty Moga, Director of Public Works Joe Pomroy, Director of Finance Gerry Eick, Director of Human Resources Dee Carey, Parks and Recreation Director Indra Winquest, and Director of Asset Management Brad Johnson.

Members of the public present were Margaret Martini, Pete Todoroff, Steve Dolan, and others.

(60 individuals in attendance at the start of the meeting which includes Trustees, Staff and members of the public.)

C. PUBLIC COMMENTS*

Frank Wright said he distributed an Open Meeting Law complaint (attached hereto) that has been ruled on by the Attorney General. Complaints alleged this Board was doing something illegal and stifling public comment. Mr. Wright said that the Attorney General ruled in his favor to be able to face the public when making his public comment. The Attorney General also chastised District General Counsel for stopping public comment because he has no right to do that. He has stifled public comment and done a lot to this community. Mr. Wright encouraged everyone to look at the ten page Attorney General rendering as District General Counsel will say they were vindicated. Mr. Wright said he provided his filed complaint to be put into the Board record for the next Board packet because three minutes isn't enough

time, especially since the Board doesn't reply to us. There is a problem with the Board; they have their mind made up. It's our money and they are destroying it.

Linda Newman read from a prepared statement which is attached hereto.

Mark Newman said there is a dedicated group in town who believe the Parasol deal needs to stop. The amendment for Parasol is invalid. The taxpayers should take possession of land and building if Parasol doesn't knock it down. The vast majority of Incliners are against it. We have five trustees who have a sworn duty and two are protectors while three are puppets to master. Tell Parasol to please leave immediately; they can take the building with them. Remember, the Wall Street adage, follow the money. The most carefully woven lies unravel. Bring the truth to light.

Judy Miller read from a prepared statement which is attached hereto.

Aaron Katz said he wished the District Clerk were here as he has a request for her. She routinely prepares minutes that a speaker like myself submits a written statement and that corresponds with the oral statement. Sometimes the oral statement is different. He said he wishes his spoken statement was accurate. He said, regarding his litigation with IVGID, that a brief was filed with the Supreme Court and IVGID pulled out items and cherry picked pleadings about IVGID to try to mold the opinion of the community but hid the other side of the story. His written statement includes a copy of the brief and he wants the public to read them and ask themselves are they frivolous or legitimate. Mr. Katz said, for the August 22 meeting, he was not able to make that meeting and that the Chairwoman and District General Counsel intentionally refused to accept his written statement and that it would be another Open Meeting Law complaint. The statement still needs to be shared with the public and that the Board was kept in the dark about the negotiation. He said he provided the written statement and invites everyone to look at it. Mr. Katz said he has another written statement regarding the Parasol issue – he said it's improper of an Attorney to render an opinion without all the facts and that Ms. Fogarty refused to consider something because the District General Manager told her not to consider it so this Board has a half way opinion on half way facts and it is wrong. According Nevada Revised Statutes 43, this Board can ask for a judicial declaration of the court; they will resolve every issue you have. He said reaffirms that he is against this thing with Parasol and facts show Parasol conspired with IVGID.

Cliff Dobler read from a prepared statement which is attached hereto.

Iljosa Dobler read from a prepared statement which is attached hereto.

Pete Todoroff said he is hosting a new weekly Bonanza meeting at the old library. We will have a third meeting on November 3rd at the new library. He said there was no audio on the August 22 meeting. He said he didn't know about the community forum. He said he has been on that list but didn't receive notice. Have we heard from the second attorney? Ninety percent of this community doesn't want to get involved with Parasol so why are we spending money on another attorney.

Margaret Martini read from a prepared statement which is attached hereto.

Wayne Ford read from a prepared statement which is attached hereto.

Steve Dolan said he is in favor of multiple public comments and that he spoke to Bill Horn [former District General Manager]. He said the caveats was collaboration with Project MANA and they were ousted thus we need to consider that. He said he thought Parasol was a good organization but is hearing negatives things. Mr. Dolan continued that he emailed the Board about the water puddling on Village Green. With the over watering, the kids are playing in the contaminates that flourish in that water. The ethics statement you are considering reading is an insult to every one; it attempts to sensor opinions coming from yourselves. He said he hoped the ethics statement won't be read. Lastly, Diamond Peak Ski Education Foundation is a great recreation function in town. He said he served on that Board and what they receive in monies is not enough. The amount of people coming in from other towns for races and reputation Diamond Peak gets from those racers; it's the best advertising they can get. They come from all over the basin and the nation; it's a great endorsement.

Bret Hansen from Waste Management said they continue to have regular meetings with IVGID. Mr. Hansen then spoke about the pine needle program, reported on increased staffing levels, including support, and that they now have nine drivers which is an increase of three, a customer service agent, and dedicated mechanic has been added which is a first for this site as everything has been previously handled at/in Reno/Carson. Pine needle collection was all handled with no delays. He said they received very little questions or complaints. Waste Management has created a winter contingency plan to include pick up contingencies and expanded communication which includes e-mail and text alerts to customers. Mr. Hansen said he and his staff met with multi-agencies to discuss the winter contingency plan and will continue to keep the lines of communication open. Waste Management will work with IVGID Public Works with the Christmas tree recycling program. We will make sure the 2018 pine needle collection goes well.

Micki Napp read from a prepared statement which is attached hereto.

Andy Whyman said it's no surprise this is a dysfunctional board. People intend to do the right thing but this has not happened as far as he can tell. He spoke about the self-evaluation tool, used by Board members, and how it must be difficult with members seeing things the same way. How do you deal with that situation? We can have these back and forth, we can wait for the next elections, and we can see how that goes. There have been instances where Board members work with a facilitator and work on how the responsibilities and functions should be. He said the Board doesn't get how to work together so call in someone who knows how it works to learn how to be a more functional Board. He said he attended two dog and pony shows about finances and that there are one hundred and eighty degree differences of opinions of our finances. Additionally, there was no opportunity of dialogue so one way to address it is to have a panel with both sides present to debate the facts.

D. APPROVAL OF AGENDA (for possible action)

Chairwoman Wong asked to remove General Business Items F.1., F.2., and F.4.; those items were removed.

E. STAFF PRESENTATIONS*

E.1. Update on the Community Services Master Plan including the Community Services Master Plan survey results presentation presented by Parks and Recreation Director Indra Winquest

Parks and Recreation Director Indra Winquest said there are great things happening in the community and gave an update on where we are in the Community Services Master Plan Process. The process began in late spring/summer of 2016 by hosting public workshops, meetings, and surveys. Parks and Recreation Director Winquest reviewed the items that have been completed and what we will be working on in regards of priorities and document development. He also spoke about the purpose of the survey; rating and use of community services and venues; support for additional services; and preference for funding. A statistically valid survey was sent to 6,859 parcels. The consultants will do a deeper dive of the survey results and explain the statistically valid survey and Staff will work to get these results up on the website. We also had an open participation survey.

Trustee Callicrate said each of the people he spoke to said that they took the survey twelve times. It's difficult but maybe it was a glitch. We need to make sure that doesn't take place. Parks and Recreation Director Winqest said that does get determined and will be accounted for. Trustee Callicrate said he was concerned they can do that as it's going to skew the results. Parks and Recreation Director Winqest said it is identified during the process, but he isn't the survey expert, and will look into it.

Chairwoman Wong asked about the statistically valid survey and open participation survey gap. District General Manager Pinkerton said it's not a significant gap and that he was interested to understand the difference; it did not change the thresholds.

Parks and Recreation Director Winqest spoke about the online survey and the difference with some of the responses; it will be tied to difference in demographics based on full time or part time residents. There is a ton of data and he encouraged the Board to take a deep dive. If there are any questions to ask the consultant, let us know; they are very responsive.

Trustee Morris asked about the confidence level with statistically valid survey for those who can't accidentally submit multiple surveys; Parks and Recreation Director Winqest said he will address that.

Trustee Horan asked about the long-range calendar regarding the dog park as he is of the opinion that there needs to be a solution. Parks and Recreation Director Winqest said when the master plan document comes out, you will see that will be a high priority and that we need to have this ongoing discussion in particular with a dog park.

E.2. Community Services Update presented by Parks and Recreation Director Indra Winqest

Parks and Recreation Director Winqest gave a beach recap and said with the guest access ticket, formally known as authorization and white forms, Staff made significant changes to tighten up that process and then displayed the beach visit graph of visits. In 2016, we added three weeks to the season for a total of one hundred twenty nine operating days. In 2017, we had one hundred forty two operating days and we reached the 200,000 number but please understand we are tracking it for a longer season. It has gone up but not as significant as it may appear and he doesn't want the community to think an extra 30,000 people are coming in rather it is extended tracking as

we are tracking more accurately through the year. We want to track the kids five and under, where we didn't track them before because they come in for free, and in particular, we are interested in tracking at Burnt Cedar.

Parks and Recreation Director Winquest then said he receives a lot of calls regarding AirBnB and that Staff can't do anything about how people use their property. A large majority of dailies/guests are coming in on punch card or with someone with a Picture Pass and pay.

Chairwoman Wong said this says a lot to the Beach Supervisor and her staff so please pass along the Board's appreciation as the beaches are the number one visited venue by residents. Parks and Recreation Director Winquest said he will pass along the compliments to Staff. We have a lot of nice customers but many are nasty and contentious people and it is a testament to our Staff that they keep their composure. The numbers have been consistent over three years in July/August with a gradual increase with guest access tickets and that we need to have an additional forum on these items. Picture Passholders are 50% in peak season; non-peak is higher than that and we haven't seen change in those numbers. District General Manager Pinkerton said Reno visitors' website has reports; tax occupancy is paid by AirBnB. This information helps us to get an idea of day-to-day on vacation rentals and we have seen an increase in timeshares and VRBO's. The numbers are not surprising as they correlate with economy. When the economy went down, VRBO's went down in numbers. We are back to pre-recession levels now. Parks and Recreation Director Winquest said there are factors that make the numbers fluctuate such as weather, lake levels, and tourism visits were up significantly. Weather on Labor Day and/or Memorial Day impact visit numbers and that we had one of our biggest September's this year. Our preferred parking program ran from June 23 – August 13 and we had 2,236 vehicles and noted that this was a pilot program in 2016. This year, we posted signage which helped to catch people to divert them to park somewhere else if they weren't picture passholders or punch card holders. Overall, the feedback was outstanding and Staff communicated with property management companies on parking. Parks and Recreation Director Winquest then shared the following proposed 2018 service enhancements at the beaches:

- Preferred parking at Burnt Cedar
- Additional staffing at overflow parking lot and Aspen Grove to help with boat/car parking challenges.
- Paddle board storage; there are a lot of people on the waitlist

- Concessions – working with Incline Spirits, Action Water Sports, Brimms
- Mobi mats – ADA accessible; easy access with kayak launch down the beach.

Trustee Horan asked about security. Parks and Recreation Director Winquest said there is surveillance at the restrooms and at the Ski Beach gate, Hermit Beach is a challenge, and Staff is working with the Hyatt to add more security to get 100% coverage. The gate camera protects the paddleboard storage. We have not had any theft over the past several months. Trustee Horan said he appreciates how we can track who is on our beaches.

Trustee Morris asked if the additional staffing helped at the boat ramp. Parks and Recreation Director Winquest said yes as it was more efficient and safe with no one lingering in the pull-out lane. We could communicate more with those coming through the gate and help to alleviate people speeding down that road. We appreciate the Boards' support on that.

Parks and Recreation Director Winquest then shared the following Community Services Highlights:

- Water carnival: 575 attendance at Incline Park
- Dog Days of Fall at Burnt Cedar Pool, 170 dogs
- Tennis – afternoon clinics; junior clinics
- Pickleball round robin
- Recreation Center 25th Anniversary Celebrations: BBQ 125 attendees. We identified members of 25 years. Recreation Center Ice Cream Social – 100 attended; thanks to Trustees Callicrate and Horan for scooping ice cream.

Golf:

- Glow golf
- New hole-in-one page
- Club Tahoe Golf Trophy presentation

Diamond Peak:

- Ski chair marketing to promote IVGID venues
- Snowflake BBQ – 320 community members attended

Upcoming events:

Trail of Treats and Terror at Sierra Nevada College and the Lake Tahoe School – this is a great community collaboration.

Chairwoman Wong thanked Parks and Recreation Director Winquest for all that he does. Parks and Recreation Director Winquest said we will have an opening of the Community Bike Park at 11 a.m. on Saturday, October 28. Thank you to those who have been instrumental with building this park; we are super excited about it.

Chairwoman Wong, at 7:21 p.m., called for a ten minute break; the Board reconvened at 7:31 p.m.

Chairwoman Wong thanked Robyn Bradford for her service to our District with running the Mountain Golf Course.

E.3. Post Audit Report presented by Director of Finance Gerry Eick

Director of Finance Gerry Eick said he isn't looking for any action rather this is a process to identify where we are instead of waiting until December; Director of Finance Eick gave the PowerPoint presentation which is incorporated herewith by reference.

Chairwoman Wong thanked Director of Finance Eick for his presentation tonight and at the recent held Community Forum.

E.4. Solid Waste Services Update (Presenting Staff Member: Director of Public Works Joe Pomroy)

Director of Public Works Joe Pomroy gave a verbal Solid Waste Services update which included a brief history and then went over the recycling statistics - recycling started in 1992 with crates and every other week service which continued for 15 years. Limited materials were acceptable for the crates and resulted in a 6% recycling levels. There wasn't a green waste program at the time, but there was a pine needle collection pile. In 2007, the recycling moved to a blue bag program with every other week service. With that program, recycling increased to 17% and that included dumpsters at homeowners associations. It is the District's hope that the recycling will increase with additional service. Director of Public Works Pomroy then reviewed the zero tolerance statistics with violations.

Chairwoman Wong asked about free items on the curb. Director of Public Works Pomroy said its private property and if owners put stuff at the curb, we would explain the trash policy, tell them they need to clean it up, and remind them about the dump voucher. The garbage man wouldn't pick it up if it had a sign on it. They are careful about that and they leave things that don't look like trash. Trustee Horan asked about a fine in that case of the free item. Director of Public Works said there was no fine or violation against the property that was addressed; we may have made an advisory call to them.

F. GENERAL BUSINESS (for possible action)

F.1. Receive, review and discuss supplement from Megan Fogarty of Holland and Hart LLC regarding modification to the lease between Parasol Tahoe Community Foundation and IVGID, responses to Board of Trustees questions related thereto, as well as related covenants, conditions, restrictions and encumbrances of record relating to the leased property and the proposed lease modification (Requesting Trustee: Chairwoman Kendra Wong) *SUPPLEMENT FROM MS. FOGARTY WILL BE DISTRIBUTED AT THE MEETING*** (ITEM WAS REMOVED, IN ITS ENTIRETY, FROM THIS AGENDA)**

F.2. Review, discuss and possibly vote on each of the following questions regarding the Parasol Tahoe Community Foundation request for modification to their 30-year ground lease: (Requesting Trustee: Chairwoman Kendra Wong) (ITEM WAS REMOVED, IN ITS ENTIRETY, FROM THIS AGENDA)

- A. Is there a justifiable need for additional recreation space? Is there a justifiable need for different administration space?
- B. Are there other spaces in IV/CB, either for rent or purchase, that meet the needs of IVGID?
- C. Would it be advantageous for IVGID to design and build space that meets our specific needs?
- D. Is the Parasol proposal an economically viable option?
- E. Are the terms and conditions of the Parasol proposal the most advantageous for IVGID?

F.3. Review, discuss and possibly approve the Ethics Law Announcement on future agendas (Requesting Trustee: Vice Chairman Phil Horan)

Trustee Horan said he brought this topic forward because it's about transparency and accountability. It's a good thing to do; it's not an insult, and it shows we are trying to do that.

Trustee Callicrate said he is concerned with wording as the Nevada Revised Statutes, for general improvement districts, states that anybody who speaks during public comment is held to this and that everyone has the right to speak so we could all be affected by that and he feels it is broadening the Nevada Revised Statutes. Further, it's not necessary, Nevada Revised Statutes are clear, this is slightly skewing what it states, and this doesn't need to be put this onto our agendas. District General Counsel Devon Reese said he disagrees with Trustee Callicrate. He said if someone comes before this Board with a conflict of interest, it should be disclosed. Historically, it hasn't been read here. It comes before the Board since we have public comment periods in the front and tail end of the meeting. Trustee Callicrate said anyone could speak during the public comment section. For any of the Trustees to say they know someone and they have to disclose it, it's not business.

Chairwoman Wong referenced the end of sentence 'matter being considered' and said for her it is about conducting business. Trustee Callicrate said the District has been operating fifty seven years without the ethics statement thus it is not necessary. We all know we have to disclose. If someone is coming before the Board, we need to let you know we have a relationship or conflict of interest with business dealings therefore it is not necessary.

Trustee Morris said we should include it to make sure we are doing it correctly and are obligated to be sure everyone is clear with this statement, it is not a big deal, rather just another item on agenda that is short and to the point; he said he is comfortable with it.

Trustee Dent referenced Nevada Revised Statutes Chapter 281A and said that it touches on the matter and that if someone has an issue they should file it with the Ethics Commission.

Trustee Horan made a motion to approve the ethics law announcement to be included on the Incline Village General Improvement District Board of Trustees meeting agendas and to be read by General Counsel as presented. Trustee Morris seconded the motion. Chairwoman Wong asked for any further comments, receiving none, she called the question – Trustees Dent, Callicrate, and Wong voted opposed; Trustees Morris and Horan voted in favor; the motion failed.

- F.4. Review, discuss, and possibly approve the Diamond Peak Ski Education Foundation agreement (Requesting Staff Member: General Manager Diamond Peak Ski Resort Mike Bandelin) (ITEM WAS REMOVED, IN ITS ENTIRETY, FROM THIS AGENDA)**
- F.5. Review, discuss, and possibly approve the goals for Fiscal Year 2017/2018 for the District General Manager (Requesting Staff Member: District General Manager Steve Pinkerton)**

District General Manager Pinkerton said we will be making sure we execute the elements of the plan in a timely manner.

Trustee Callicrate thanked the District General Manager for thorough report and it being consistent with what we have done in the past. He said he was concerned because it was February or March when we last discussed the District's Strategic Plan. He said the majority of Board has not been part of the Strategic Plan process thus it needs to be updated so all five of us can all be on the same plan and have the same goals. It will need a little tweaking so we can be consistent with an updated plan based on this Board. District General Manager Pinkerton said we can adopt the goals and bring it back to work on it.

Trustee Morris said he wanted to expand on what Trustee Callicrate said. You have a timing issue with Community Services as we need the Strategic Plan to feed into the goals. We need to have an outline to see how the Strategic Plan and Community Services Master Plan fit together. District General Manager Pinkerton said we need to continue our dialogue.

Chairwoman Wong said we have items on our Board work plan to know how to go forward and that it will be a long, slow process. We need to look at meeting dates to meet and go over this.

Trustee Dent said we are setting goals on a two year old plan, but then at the December meeting we will set or change the Strategic Plan, and go back and reset goals based on those sessions. He said he has been vocal about the Strategic Plan; we need to have a discussion with areas of common interest and build cohesion and it's a good starting point. He said he is in favor to postpone this until we can have a meeting about a plan and move forward with goals laid out today. It doesn't make sense to approve it when not everyone has had input with. Chairwoman Wong said the District General Manager's goals are broad enough; we can build and develop the plan and he will be evaluated on them. The Strategic Plan will evolve along with his goals.

Trustee Horan said he agrees with Trustee Callicrate and that these goals are the plans that the Board adopts and he is accountable for those plans. Trustee Callicrate said he said he worked on the original Strategic Plan and there are three Board members that weren't part of it. We usually adopt the Strategic Plan and goals, but if we do it now, we will have to amend the goals which is cumbersome. He said if Board moves forward, he want a proviso included to update it based on the Strategic Plan as soon as possible. We can't put this off as we keep pushing it out.

Trustee Morris said our goal is to amend the Strategic Plan sooner rather than later and that he agreed with Trustee Callicrate. We need to make this happen sooner than later. Chairwoman Wong said we are on the same page and we just need to determine if it is a two-step or a one step process.

Chairwoman Wong moved to accept the General Manager's proposed goals for Fiscal Year 2017/2018 as listed and added a goal that the District General Manager work with the Board to update the District's Strategic Plan during this fiscal year. Trustee Horan second the motion. Chairwoman Wong asked for further comment.

Trustee Callicrate said the fiscal year is a broad time and that we should have this taken care of by a certain date as again it's cumbersome. Chairwoman Wong said it's a long process and we don't want to rush this. We don't just do this as a Board, we have to get community input and allow time for that. Trustee Horan said part of the District General Manager's evaluation would consider how the District General Manager brings this process along.

Hearing no further comment, Chairwoman Wong called the question – the motion passed unanimously.

F.6. Review and discussion of the submitted Elected Official and Governing Board Self-Evaluation Tool (Requesting Trustee: Chairwoman Kendra Wong)

Chairwoman Wong said every year we go through self-evaluation process and thanked the Board members for getting it turned in on time for this meeting. It is her opinion, in looking at the comments, that we continue to be a work in progress and have worked together for the last nine months.

Trustee Callicrate said, to your point and what Trustee Dent said, it's been an in-progress situation which has been trying at times and familial at times. An in-depth strategy with our individual priorities can help with potential or perceived conflicts as it has been hard to work in continuous turmoil and that he wants a cohesive team. Trustee Callicrate then apologized for the meeting before with the strained relations with Trustee Morris. He said he recognized and will work at being cordial and open to view points and hope the same from others members.

Trustee Horan asked about facilitation with this group. Would it be helpful to have someone help us? Chairwoman Wong said we can discuss it and agendize that for future meeting; it might work well with the Strategic Plan process. Trustee Callicrate said we have done this before, and we were able to be candid with Coral Bridge. We cannot meet in social functions. It's not a normal way to act in a small community. If we address the underlining issues, it gets it out in open. We need a structured facilitation from someone who doesn't know us. We could brutally honest with each other, and hash out the perceived or actual issues. We can pick out strong points and move on and come together as productive board. Trustee Morris said having common direction with outside sources; he would be happy to considerate it. District General Counsel Reese said the Board can direct Staff without a motion.

G. DISTRICT STAFF UPDATE

General Manager Steve Pinkerton

- ❖ Financial Transparency
- ❖ Capital Projects Update

District General Manager Pinkerton gave an update for each item and Director of Asset Manager Brad Johnson provided a verbal update on the bike park project.

H. APPROVAL OF MINUTES (for possible action)

H.1. Regular Meeting of August 22, 2017

District General Manager Pinkerton said a member of public has asked the District Clerk to review these minutes; Chairwoman Wong tabled them to next meeting.

I. REPORTS TO THE IVGID BOARD OF TRUSTEES*

I.1. District General Counsel Jason Guinasso

District General Counsel Reese provided an update on Open Meeting Law complaints and the District's Retention Schedule.

Chairwoman Wong asked if the Board can attend records retention training as well as Staff. District General Counsel Reese said that we can arrange a separate training for the Board.

Trustee Callicrate said that this is a small town and that he wanted to know what the status of Jason Guinasso with RKG firm was. District General Counsel Reese said effective November 1, 2017, Mr. Guinasso will be working for the state wide law firm of Hutchison and Steffen which is the State of Nevada's Lieutenant Governor's law firm. Mr. Guinasso will be leaving RKG however RKG still has business to wrap up.

Chairwoman Wong said that the District's contract is with RKG so do we need to look at other options. District General Counsel Reese said that RKG is a legal formality and that we have an existing contract and we will honor that contract for the term of the contract. As a Board, you can choose legal counsel at any time with some implications. Both RK as well as Hutchison and Steffen will aid you in your needs. Chairwoman Wong said we will need to add this to our Long Range Calendar.

Trustee Morris asked about any outstanding Open Meeting Law complaints that we have not received. District General Counsel Reese said there are no new ones and that there were a number of them that were filed but there

has been no violations and there are no pending complaints. There were threats and we will work with the Attorney General if those arise.

J. BOARD OF TRUSTEES UPDATE (NO DISCUSSION OR ACTION) ON ANY MATTER REGARDING THE DISTRICT AND/OR COMMUNITIES OF CRYSTAL BAY AND INCLINE VILLAGE, NEVADA*

Trustee Dent gave an update about the League of Cities meeting that was held three weeks ago in Mesquite and said it was a good experience and that it was nice to get together with other representatives throughout the State. The marijuana tax topic came up and noted that there is a meeting with the Department of Taxation tomorrow.

Chairwoman Wong said we had a tour of the District and its facilities recently with Congressman Amodei and that we went to the top of Diamond Peak to show fire safety and culvert work. The tour and information was positively received and he will see how he can help us at a Federal level.

K. CORRESPONDENCE RECEIVED BY THE DISTRICT*

District Clerk Misty Moga stated that no correspondence have been received by the District.

L. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration; see Public Comment Advisory Statement above.

Margaret Martini said she spoke to a woman who has issues with the maintenance and condition of the ladies' restroom in the Recreation Center and that she has spoken to Staff who told her that the ladies' locker room is budgeted to be cleaned once a week. Ms. Martini asked if there is Board oversight about what is being done in our facilities as it's prudent for the Board to look at each program, and see if it needs to be downsized or cancelled and there are programs that we should subtract programs. We need less concentration on Parasol, spend less on that, and look at our current facilities. She said she looked at the balance sheets and there is no plus side. We go over and over it again; the Board isn't interested in making that happen.

Steve Dolan thanked the Board for their perseverance. He said he heard the Board wanted to work together to come to a consensus. He said he heard a TED Talk about the importance of play. He said going to Napa is exactly what the Board

should do and take Staff with you. He said it would help with what you are doing. Thank you for helping to clean up the streams and fields.

Mike Abel spoke about District General Counsel's update about the Attorney General's decisions on the Open Meeting Law complaints; he said he feels that counsel is not being candid. He encouraged everyone to read Mr. Wright's response statement in his open meeting law complaint.

M. REVIEW WITH BOARD OF TRUSTEES, BY THE DISTRICT GENERAL MANAGER, THE LONG RANGE CALENDAR (for possible action)

District General Manager Pinkerton said he wanted to confirm the fourth quarter community meeting is set to be an overview of the Parasol matter with information stations set up to get further information and to have dialogue with Staff; it would be held on November 7 at 6 p.m. here at the Chateau. It will be informal and include overview materials regarding recreation, finance, and construction.

Trustee Callicrate said there needs to be a formal presentation at the beginning so the Board can ask pertinent questions like a town hall meeting as that would go a long way with one or two items. District General Manager Pinkerton said there will be a formal meeting once we get further along with the process.

Trustee Horan said in terms of town hall, how do we notice that type of meeting. District General Counsel Reese said you can create any meeting you desire but properly notice without action as the agenda items are too vague to take action. District General Counsel Reese continued that usually not all of the Board members are present during town hall style meeting rather there is generally one board member.

Chairwoman Wong asked if we can do a face-to-face. District General Manager Pinkerton said we can structure this open house with information stations and that on November 7 at 6 p.m. it is a Meet and Greet about Parasol with Staff present as well.

District General Manager Pinkerton said, for the November 15 Board meeting, Staff is putting together a preliminary staff report of facilitation and Strategic Plan timing and that the dog park can be added. Trustee Callicrate said it's long overdue. Chairwoman Wong said we need a staff report and we need the report from Holland & Hart's Ms. Megan Fogarty prior to the meeting as we are waiting on her follow up report and title report.

N. ADJOURNMENT (for possible action)

The meeting was adjourned at 9:20 p.m.

Respectfully submitted,

Misty Moga
District Clerk

Attachments*:

**In accordance with NRS 241.035.1(d), the following attachments are included but have neither been fact checked or verified by the District and are solely the thoughts, opinions, statements, etc. of the author as identified below.*

Submitted by Frank Wright (11 pages): Attorney General's opinions and comments on the above OML's filed by Frank Wright

Submitted by Linda Newman (1 page): IVGID October 25, 2017 Board of Trustees Meeting Public Comment By: Linda Newman – To be included with the Minutes of the Meeting

Submitted by Judith Miller (1 page): October 25, 2017: Ivgid Board of Trustees Meeting Public Comment to be included in the minutes of this meeting

Submitted by Aaron Katz (11 pages): Written Statement to be included in the written minutes of this October 25, 2017 regular IVGID Board meeting – Agenda Item F(1) – Review and discussion of legal issue supplement from Attorney Megan Fogarty re: Proposed Parasol building purchase

Submitted by Aaron Katz (44 pages): Written Statement to be included in the written minutes of this October 25, 2017 regular IVGID Board meeting – Agenda Item C – Public Comments – Report on the *Katz v. IVGID* litigation – Katz's reply brief has been filed and the appeal has been transferred to the court's screening process

Submitted by Aaron Katz (29 pages): Written Statement to be attached to and made a part of the written minutes of IVGID Board's regular October 25, 2017 meeting – Agenda Item C – Public Comments – Offer to pledge real property as security for IVGID's money judgment to stay enforcement until final resolution of pending appeals

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Submitted by Clifford F. Dobler (2 pages): Public Comment for the October 25, 2017 Board of Trustee Meeting to be included in the next Board Packet

Submitted by Ilijosa Dobler: (1 page): IVGID Board of Trustees – Justification of extra space needed for new programs

Submitted by Margaret Martini (1 page): IVGID 10-25-17 Board of Trustees Meeting Public Comment By: Margaret Martini – To Be Included with the minutes of the meeting

Submitted by Wayne Ford (4 pages): For Me: When it comes to trash IVGID is not a good neighbor

Submitted by Micki Napp: (2 pages): Dog Days of Fall Event Oct 7th

Submitted by Bret Hansen – Waste Management (1 page) – IVGID Board of Trustees Meeting 10/25/2017

Attorney General's opinions and comments on the above OML's filed by Frank Wright.

Open Meeting Law File Nos; 13897-224 and 13897-226

These are selected excerpts from the Nevada Attorney General responding to the above Open Meeting Law Complaints, to view the complete file go to the Nevada Attorney General's web site and click on OML decisions.

The public comment advisory statement is seriously flawed: Examples commented on by Attorney General,

1. Statement: "Equally important is the understanding that this **is not the time for the Public to express their respective views, and it is not necessarily a question and answer period.**"
2. Statement: "Finally please remember that just because something is stated in public comment that does make the statement accurate, valid or even appropriate. "The law mitigates towards allowing comments, thus even nonsensical and outrageous statements can be made."
3. However, the Chairperson and or **General Counsel** may cut off public comment deemed in their judgement to be slanderous and offensive, inflammatory and or willfully disruptive, legal counsel has advised the board not to respond to even the most ridiculous statements.

The above portions of the public comment advisory statement were categorically condemned by the Attorney General for being statements which did not foster public participation in government. **(Emphasis added)**

Violation: Frank Wright faced the audience during his public comment, and was told to face the board. That Attorney General opinioned that Mr. Wright could speak to the audience.

AG Statement: "**Here the board fails to provide a reasonable basis for requiring Mr. Wright to face the board during public comment**".

AG's Violation: Secret training sessions for board members, AG ruled there was not enough evidence to find a violation of the OML, but cautioned the board that all meetings should be open to the public and properly noticed.

AG's Violation: "**The boards counsel has not demonstrated a recognition of the importance of Public Comment periods to the fulfillment of the spirit of the OML**"

AG's Comment: "The Boards public comment advisory statement which is contained in the agenda improperly authorizes and empowers the Boards legal counsel to stop public comment. Such authority lies with the Board Chair."

AG's Comment: "Every citizen may freely speak, write and publish his sentiments on all subjects being responsible for the abuse of that right: Nevada Constitution: "and no law shall be passed to restrain or abridge the liberty of speech or of the press."

AG's Comment: "Moreover the general tone of the advisory statement appears to misunderstand the centrality and dignity of public comment in providing the public with the opportunity to participate in the conduct of public bodies"

AG's Summary: **The office of the Attorney General determines that the board did not commit any provable OML Violations, However, the Boards general attitude, combined with the conduct of it counsel, discouraged public participation in its meetings and actions and thus has not properly recognized the spirit of the OML** Note: **The Attorney General condemned Jason Guinasso's cutting off public comment and inserting himself into board actions.**

Document distributed
by Frank Wright 10/25/17

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA
3

4 In the matter of:

5 INCLINE VILLAGE GENERAL
6 IMPROVEMENT DISTRICT
7

OAG FILE NOS.: 13897-224 & 226

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

8 BACKGROUND

9 Frank Wright filed two separate complaints on February 16, 2017, and April 3, 2017,
10 (Complaints) with the Office of the Attorney General (OAG) alleging violations of the
11 Nevada Open Meeting Law (OML) by the Incline Village General Improvement District
12 Board of Trustees (Board). The Complaints allege that the Board violated the OML as
13 follows:

14 **ALLEGATION NO. 1:** The Board improperly required Mr. Wright to face the
15 Board, as opposed to the audience, during his public comment at the beginning of the
16 Board's meeting on February 8, 2017.

17 **ALLEGATION NO. 2:** The Board's legal counsel improperly cut off Mr. Wright's
18 public comment during the February 8, 2017, meeting.

19 **ALLEGATION NO. 3:** The Board held two training sessions without noticing them
20 in accordance with the OML.

21 **ALLEGATION NO. 4:** The Board held meetings with its legal counsel in violation
22 of the OML.

23 The OAG has statutory enforcement powers under the OML and the authority to
24 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS
25 241.040. The OAG's investigation of the Complaints included a review of the agenda and
26 recording of the February 8, 2017 meeting, together with written responses to the
27 Complaints and supporting materials from Jason Guinasso, Esq., counsel to the Board, and
28 a sworn affidavit from Mr. Guinasso regarding Allegation No. 4.

1 After investigating these Complaints, the OAG determines that no clearly cognizable
2 OML violations occurred, but that the Board's approach to public concerns failed to
3 encourage openness and participation, both of which are key tenets of the OML.

4 More particularly, the manner in which the Board and its counsel hold training
5 sessions approaches a potential violation of the OML. Furthermore, the Board and
6 counsel's approach to public comment periods may discourage public participation in its
7 meetings, which does not comport with the spirit and policy behind the OML.

8 FINDINGS OF FACT

9 1. The Board is a "public body" as defined in NRS 241.015(4) and is subject to
10 the OML.

11 2. The Board's February 8, 2017, agenda provided for general periods of public
12 comment at the beginning of the meeting and before adjournment, and contained the
13 following Public Comment Advisory Statement, which Mr. Guinasso read into the record
14 prior to the first general public comment period:

15 PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised
16 Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in
duration.

17 Public Comment Advisory Statement – A public body has a legitimate interest
18 in conducting orderly meetings. IVGID may adopt and enforce reasonable
19 restrictions on public comment to ensure the orderly conduct of a public
20 meeting and orderly behavior on the part of persons attending the meeting.
21 Public comment, as required by the Nevada Open Meeting Law, is an
22 opportunity for people to publicly speak to the assembled Board of Trustees.
23 Generally, it can be on any topic, whether or not it is included on the meeting
24 agenda. In other cases, it may be limited to the topic at hand before the Board
25 of Trustees. Public comment cannot be limited by point of view. That is, the
26 public has the right to make negative comments as well as positive ones.
27 However, public comment can be limited in duration and place of presentation.
28 While content generally cannot be a limitation, all parties are asked to be polite
and respectful in their comments and refrain from personal attacks. Willful
disruption of the meeting is not allowed. *Equally important is the
understanding that this is not the time for the public to express their
respective views, and is not necessarily a question and answer period.*
This generally is not a time where the Board of Trustees responds or directs
Staff to respond. If the Chair feels there is a question that needs to be
responded to, the Chair may direct the General Manager to coordinate any
such response at a subsequent time. *Finally, please remember that just
because something is stated in public comment that does not make the
statement accurate, valid, or even appropriate. The law mitigates
toward allowing comments, thus even nonsensical and outrageous*

1 *statements can be made. However, the Chairperson and/or General*
2 *Counsel may cut off public comment deemed in their judgment to be*
3 *slanderous, offensive, inflammatory and/or willfully disruptive.*
4 *Counsel has advised the Staff and the Board of Trustees not to respond*
5 *to even the most ridiculous statements.* Their non-response should not be
seen as acquiescence or agreement just processional behavior on their part.
IVGID appreciates the public taking the time to make public comment and will
do its best to keep the lines of communication open.

5 *(Emphasis added).*

6 3. On February 8, 2017, Mr. Wright began his public comment during the first
7 general public comment period by facing the audience. The Board Chair, Kendra Wong,
8 cut Mr. Wright off and forced him to face the Board when speaking. Less than two minutes
9 later, Mr. Guinasso cut off Mr. Wright's public comment citing slander after Mr. Wright
10 made statements regarding Mr. Guinasso's 2016 candidacy for Nevada State Assembly
11 District 26.

12 4. Board Secretary, Tim Callicrate, interceded and requested that a portion of
13 Mr. Wright's allotted time be returned to him so that Mr. Wright could have the
14 opportunity finish his public comment. Over Mr. Guinasso's objections, Chair Wong
15 granted Mr. Wright 15 additional seconds to finish his public comment and then abruptly
16 cut Mr. Wright off at the end of the 15 seconds.

17 5. The Board sets a three-minute timer for each public member's comment
18 period. When the timer goes off, the speaker is cut off, at times mid-sentence.

19 6. Multiple members of the public complained during the two public comment
20 periods of the February 8, 2017, meeting, stating that the Board had stopped accepting
21 public comment on specific agenda items and that the Board's decision impaired the
22 public's ability to be heard on issues before the Board.

23 7. Mr. Wright received an uninterrupted three minutes of public comment time
24 during the general public comment period at the end of the February 8, 2017, meeting.

25 8. Immediately following the January 18, 2017, Board meeting, the Board
26 attended a training session ("January Training Session") conducted by Mr. Guinasso. The
27 January Training Session was directed solely at the Board.

28 9. Notice of the January Training Session was posted on the evening of January

1 17, 2017, at the Board administrative offices and the morning of January 18, 2017, at the
2 location of the session. The Board did not post or distribute any other notices regarding
3 the January Training Session. The Notice of the January Training Session stated that the
4 Board "may" attend. The Notice was silent as to whether members of the public may attend
5 the January Training Session.

6 10. The Board held another public meeting on March 8, 2017. Immediately
7 preceding the March 8th Board meeting, the Board attended another training session
8 ("March Training Session") conducted by Mr. Guinasso and conducted solely for the Board.
9 Also on March 8th, Mr. Guinasso conducted a gathering with Board members to discuss
10 pending or existing litigation involving IVGID.

11 11. On February 27, 2017, notice of the March Training Session was posted at the
12 Board administrative offices and at the location of the meeting. The Board did not post or
13 distribute any other notices regarding the March Training Session. The Notice of the
14 March Training Session stated that the Board "may" attend. The Notice was silent as to
15 whether members of the public may attend the March Training Session.

16 12. The January and March Training Sessions were entitled "So, You Were
17 Elected an IVGID Trustee, Now What?" The support materials for both training sessions
18 posed specific questions directly related to matters within the Board's jurisdiction and
19 control. The questions included the following: "Who are the people I am serving with, what
20 are their priorities and ideas, and how can I work with them to accomplish my goals and
21 serve the public well?", "What are the priorities of the District?" and "What powers,
22 duties/responsibilities and obligations do I have?"

23 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

24 **1. The OAG Possesses Insufficient Evidence to Find that the Board Training**
25 **Sessions Were "Meetings" Under the OML.**

26 NRS 241.020 governs open and public meetings and it provides that "all meetings
27 must be open and public, and all persons must be permitted to attend any meeting of these
28 public bodies" except as otherwise provided by specific statute. NRS 241.020(1). A

1 “meeting” generally requires a “gathering of members of a public body at which quorum is
2 present, whether in person or by means of electronic communication, to deliberate toward
3 a decision or to take action on any matter over which the public body has supervision,
4 control, jurisdiction or advisory power.” NRS 241.015(3). “Deliberate’ means collectively
5 to examine, weigh and reflect upon the reasons for or against the action. The term includes,
6 without limitation, the collective discussion or exchange of facts preliminary to the ultimate
7 decision.” NRS 241.015(2).

8 The OML provides an exception for a gathering “which occurs at a social function if
9 the members do not deliberate toward a decision or take action on any matter over which
10 the public body has supervision, control, jurisdiction or advisory power.” NRS 241.015(3).
11 The spirit and policy behind the OML favors open meetings and any exceptions should be
12 strictly construed. *Chanos v. Nevada Tax Commission*, 124 Nev. 232, 234, 181 P.3d 675,
13 677 (2008); *Del Papa v. Board of Regents*, 114 Nev. 388, 394, 956 P.2d 770, 774 (1998).
14 “[T]he narrow construction of exceptions to the Open Meeting Law stems from the
15 Legislature’s use of the term ‘specific’ in NRS 241.020(1) and that such exceptions must be
16 explicit and definite.” *Chanos*, 124 Nev. at 239, 181 P.3d at 680. “[E]xceptions to the Open
17 Meeting Law extend only to the portions of a proceeding specifically, explicitly, and
18 definitely excepted by statute.” *Id.* The exceptions to the OML requirements, “must not
19 be used to circumvent the spirit or letter of this chapter to deliberate or act, outside of an
20 open and public meeting, upon a matter over which the public body has supervision,
21 control, jurisdiction or advisory powers.” NRS 241.016(4).

22 The January and March Training Sessions were organized by the Board, specifically
23 directed to its members, conducted by its counsel, and contemplated attendance only by its
24 members. The OAG cautions that the questions that formed the basis for the Training
25 Sessions may be perceived as inviting interactive communications among the Trustees and

26 ...

27 ...

28 ...

1 a collective discussion or exchange of facts.¹ If such discussions or exchanges of facts were
2 preliminary to some action or decision of the Board, they would constitute deliberations
3 under NRS 241.015(2). Where a gathering of a quorum of a public body includes
4 deliberation, the gathering necessarily meets the definition of a “meeting” contained in the
5 OML.

6 According to evidence obtained by the OAG from IVGID, the trustees’ responses to
7 the questions posed in the training materials suggest they discussed the priorities of the
8 Board in general terms. However, the OAG does not possess specific evidence that the
9 discussion which occurred during the Training Sessions, together with any exchange of
10 facts, were preliminary to, or resulted in, any action or decision of the Board. As a result,
11 the evidence does not support a finding that the interaction among trustees that occurred
12 during the Training Sessions qualifies as “deliberation.” NRS 241.015(2). Absent
13 “deliberation,” the Training Sessions would not constitute “meetings” under NRS
14 241.015(3). It follows that evidence does not support a finding that the January and March
15 Training Sessions violated the OML.

16 The OAG cautions IVGID and its counsel that while no OML violation is found here,
17 IVGID should take reasonable actions to clearly and purposefully comply with the OML,
18 avoiding, where possible, the specter of violation. This may include opening the Training
19 Sessions to the public and noticing and conducting them as public meetings, absent some
20 important reason to continue with its current Training Session practices.

21 **2. The March 8, 2017, Attorney-Client Conference Regarding Potential or**
22 **Existing Litigation Is an Exception to the OML.**

23 A gathering of members of a public body, at which quorum is actually or collectively
24 present, does not constitute a meeting pursuant to the OML when the purpose of the
25 gathering is for the members “to receive information from the attorney employed or

26 ¹ The overview of questions posed in the training materials include, but are not limited to,
27 the following: (1) What are the priorities of the District?; (2) Who are the people I am
28 serving with, what are their priorities and ideas, and how can I work with them to
accomplish my goals and serve the public well?

1 retained by the public body regarding potential or existing litigation involving a matter
2 over which the public body has supervision, control, jurisdiction or advisory power and to
3 deliberate toward a decision on the matter, or both.” NRS 241.015(3)(b)(2).

4 The OAG does not possess any evidence that the March 8, 2017, conference between
5 the Board and its counsel involved any action other than the sharing of information
6 regarding potential or existing litigation. Counsel’s sworn affidavit provides that the only
7 matters discussed during the March 8, 2017 conference concerned specific existing or
8 potential litigation involving the Board. Therefore, the March 8, 2017, conference
9 constituted an attorney-client conference that falls within the OML exception as provided
10 in NRS 241.015(3)(b)(2). The Board did not violate the OML by holding and attending the
11 March 8, 2017, attorney-client conference.

12 **3. The Board’s Counsel Has Not Demonstrated a Recognition of the**
13 **Importance of Public Comment Periods to the Fulfillment of the Spirit of**
14 **the OML.**

15 In Nevada, public bodies exist to aid in the conduct of the people’s business. NRS
16 241.010(1). Public bodies must allot time to allow comments from the general public either
17 “at the beginning of the meeting before any items on which action may be taken are heard
18 by the public body and again before the adjournment of the meeting” or “after each item on
19 the agenda on which action may be taken is discussed by the public body, but before the
20 public body takes action on the item.” NRS 241.020(2)(d)(3). The OML exists to ensure
21 that the public is able to meaningfully participate in government. See NRS 241.010.

22 Every citizen may freely speak, write and publish his sentiments on all subjects
23 being responsible for the abuse of that right; and no law shall be passed to restrain or
24 abridge the liberty of speech or of the press. Nev. Const. art. I, § 9. The United States
25 Supreme Court created a federal rule consistent with the Nevada Constitution in *N.Y.*
26 *Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964), that protects even a defamatory falsehood
27 in certain circumstances. *N.Y. Times Co.*, 376 U.S. at 279-280. The public has important
28 First Amendment interests in its ability to comment before public governmental bodies.
White v. City of Norwalk, 900 F.2d 1421, 1425 (9th Cir. 1990).

1 The OML requires public bodies to offer at least two periods of public comment
2 during public meetings—one at the beginning of the meeting before any items on which
3 action may be taken are heard, and another at the end of the meeting prior to adjournment.
4 NRS 241.020(2)(d)(3). Restrictions on public comment must be included in the agenda and
5 must be reasonable restrictions to the time, place and manner of the comments, but may
6 not restrict comments based upon viewpoint. NRS 241.020(2)(d)(7). The interpretation
7 and enforcement of rules during public meetings are highly discretionary functions. See
8 *White, supra*, 900 F.2d 1421 at 1426. The decision to stop a speaker is left to the discretion
9 of the presiding officer of the public body. *Id.* A public body may impose restrictions on
10 public comments that are repetitious, irrelevant, or disruptive comment. *Id.*

11 Here, the Board fails to provide a reasonable basis for requiring Mr. Wright to face
12 it during public comment. While reasonable rules and regulations during public meetings
13 ensure orderly conduct of a public meeting and ensure orderly behavior on the part of those
14 persons attending the meeting, the Board presents no evidence that the requirement to
15 face the Board was necessary to ensure that the speaker's comments could be properly
16 heard or recorded, or to otherwise ensure the orderly conduct of the meeting.

17 Determining whether public comments are repetitious, irrelevant, or disruptive
18 should be left to the presiding officer of the meeting, namely Chair Wong. The Board's legal
19 counsel should refrain from interjecting his opinions, or silencing speakers, during public
20 comment periods.² The Board's public comment advisory statement, which is contained in
21 its agenda, improperly authorizes and empowers the Board's legal counsel to stop public
22 comment when such authority lies solely with the Board's Chairperson. Moreover, the
23 general tone of the advisory statement appears to misunderstand the centrality and dignity
24 of public comment in providing the public with the opportunity to participate in the conduct

25
26 ² The Board's counsel, who is not the presiding officer of the meetings, has a history of
27 interrupting and cutting off members of the public from speaking during public comment.
28 See OMLO 13897-171/180. The OAG cautions the Board that counsel's continued actions
to hinder public comment may lead to legal liability for the Board for any resulting OML
violations.

1 of *public* bodies. The OAG advises the Board to revise its public comment advisory
2 statement to grant the discretion to stop public comment to the Board's Chair and to show
3 appropriate respect to the citizenry in whom ultimate democratic authority rests.

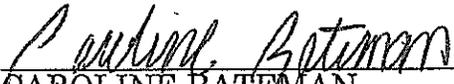
4 Ultimately, the Board allowed Mr. Wright to make his comments during both public
5 comment periods and so it did not commit a formal violation of the OML. Still, actions of
6 Board counsel have shown a lack of sufficient regard for public comment and its role in the
7 OML.

8 SUMMARY

9 Upon investigating these Complaints, the OAG determines that the Board did not
10 commit any provable OML violation. However, the Board's general attitude, combined with
11 the conduct of its counsel, discouraged public participation in its meetings and actions and
12 thus has not properly recognized the spirit of the OML.

13 DATED: October 19, 2017.

14 ADAM PAUL LAXALT
15 Attorney General

16 By: 
17 CAROLINE BATEMAN
18 Chief Deputy Attorney General
19 Boards and Open Government Division
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CERTIFICATE OF SERVICE

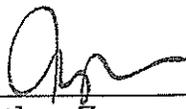
I hereby certify that on the 19th day of October, 2017, I served the **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL** addressed as follows:

Frank Wright
PO Box 186
Crystal Bay, Nevada 89402

Certified Mail No. 7009 2250 0001 8859 9003

Jason D Guinasso, Esq.
Reese Kintz Guinasso
936 Southwood Blvd., Suite 301
Incline Village, Nevada 89451

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Althea Zayas, an Employee of the
Office of the Attorney General
State of Nevada

IVGID October 25, 2017 Board of Trustees Meeting Public Comment
By: Linda Newman – To be included with the Minutes of the Meeting

Just a few short months ago, the Attorney General's Office launched an investigation into IVGID's concealment and destruction of public records. While this investigation is pursued, the District continues to deny the existence of requested public records and through a series of other creative excuses continues to conceal requested public records.

Just a few days ago, the Attorney General's Office in response to several Open Meeting Law Complaints issued a warning to our Board Chair and Legal Counsel that IVGID was violating the spirit of Open Meeting Laws.

In May of this year, the District had to restate its 2016 Certified Audited Financial Report after community members discovered that the audited financial statements were incorrect. The Auditor stated that IVGID had a material weakness in internal controls and recommended that an additional level of review of the statements be implemented. Despite this and additional evidence to the contrary, IVGID assures us that their financial reporting is accurate.

Although a FlashVote Survey demonstrating that more than 2/3 of respondents opposed the \$5.5 million Parasol bailout, Chair Wong has placed Parasol on every Board Agenda. In August the voices of our citizens protesting the proposed Parasol deal were not broadcast on Livestream for the first 40 minutes of Public Comment. One month ago, Attorney Megan Fogarty's second legal opinion was slipped into the Board Packet one day before the Board Meeting – precluding citizens and Trustees from having adequate time to carefully review her opinions. Tonight, the Board Chair and General Manager have taken their disrespect for our citizens one step further and omitted the supplement to her work product from the packet to avoid public oversight and will be presenting it to the Board after Public Comment.

Day by Day Chair Wong and her accomplices Trustees Horan and Morris, General Manager Pinkerton, Director of Finance Eick and Legal Counsel take a torch to all ethical standards of governance and dismantle the Nevada Laws established to protect our rights as citizens.

The recent Open Meeting Law opinion from the Office of the Nevada Attorney General advises IVGID to revise its Public Comments announcement because it doesn't "show appropriate respect to its citizenry in whom ultimate democratic authority rests". I'd like to make some suggestions. But before I do, I think it's important for all of us to maintain a professional business-like atmosphere. I've noticed more and more people bringing in alcoholic beverages. Is that appropriate for a government agency business meeting?

Now on to the Public Comments statement:

First, take off the word "advisory". This already sets a negative tone.

Next, remove the offensive, insulting sentence that warns everyone that public comments may not be accurate, valid or even appropriate. It sets a tone of mistrust of our fellow citizens. How would you feel if there was an announcement like that about comments from the Board or staff?

The Attorney General has already instructed that only the Board Chair, not our General Counsel, can cut off public comment deemed willfully disruptive, so this sentence needs to be revised accordingly.

And the sentence about staff and the Board not responding to anything is equally chilling. The Board meets to deal with the business of the District *and* its citizens. Citizens have questions; they have a right to answers. Questions for which a ready answer exists should be answered. Those that cannot be answered without discussions should routinely be referred to staff. Answers should be provided no later than the next board meeting and included in the Board packet, so that the public can see the response.

It's not just the language of the statement, but the overall lack of dialogue with and responsiveness to the public that has been and continues to be a divisive factor. According to the AG's opinion, "the Board's general attitude, combined with the conduct of its counsel, discouraged public participation in its meetings and its actions".

Was the format of IVGID's recent Community Forum encouraging public participation when almost the entire 2 hours was spent on staff presentations? Hopefully ALL of the questions submitted will be answered, not just the ones staff chooses.

And hopefully, the new Public Comment Announcement will be just the beginning of your efforts to include the community's voice in your decisions.

Judith Miller

**WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS
OCTOBER 25, 2017 REGULAR IVGID BOARD MEETING – AGENDA ITEM F(1) –
REVIEW AND DISCUSSION OF LEGAL ISSUE SUPPLEMENT FROM ATTORNEY
MEGAN FOGARTY RE: PROPOSED PARASOL BUILDING PURCHASE**

Introduction: On September 26, 2017 attorney Megan Fogarty presented her written analysis to the IVGID Board and the public responding to the Board's prior request for "an overview of the existing (ground) lease [between IVGID and the Parasol Foundation ("Parasol")] and whether Parasol is in default of its obligations under the lease...ownership of the building and an analysis of the CC&Rs that were (allegedly) modified in conjunction with th(at) lease"¹ ("the scope of work"). Notwithstanding, it is important to note that according to attorney Fogarty herself, her "analysis (wa)s based *solely* (up)on (cherry picked) information provided by...Parasol...Pinkerton (and augmented by her)...review of... the original (lease) including the original...2001 Business Plan...amendment to...lease(,) February 17, 2009...correspondence...presenting the 2009 Business Plan to Trustee Bea Epstein for (her)... review...the 2009 Business Plan (itself)...the April 29, 2009...(IVGID) Board of Trustees meeting agenda ...Parasol Report...to the (IVGID) Board of Trustees (and)...meeting minutes...the...recorded...deed... from Boise Cascade...transferring (26.6 acres)...the original CC&Rs...and, the...recorded...amendment to (CC&Rs)." Given "a complete title report...(wa)s in the process of being prepared," Attorney Fogarty represented that should an additional recorded (first) amendment to the CC&Rs exist, her analysis would "be supplemented, as necessary." Apparently a supplement has been prepared because the agenda for this meeting discloses it "will be distributed at (*rather than before*) the meeting."² Yet it turns out there is no supplement as of yet given this agenda item was removed from tonight's meeting. Nonetheless, I and others feel it is important to respond to deficiencies in Attorney Fogarty's analysis. And that's the purpose of this written statement.

Why Did Attorney Fogarty Refuse to Receive and Consider All Relevant Materials Pertaining to the Scope of Work? On September 12, 2017 I sent Attorney Fogarty additional materials and arguments pointing to additional material facts insofar as this matter is concerned we now see she *intentionally ignored*. Why would any competent attorney intentionally ignore material facts pertaining to a scope of work he/she had agreed to undertake? Who told Attorney Fogarty to ignore those materials and instead rely upon whatever "cherry picked" materials Mssrs. Pinkerton and Alling chose to present for her consideration? Regardless of the answers to these questions, the materials I sent to Attorney Fogarty included but were not limited to:

¹ That analysis appears as "attachment 2" following page 10 of the packet of materials prepared by staff in anticipation of the IVGID Board's regular September 26, 2017 meeting ["the 9/26/2017 Board packet" (https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_9-26-17.pdf)].

² See page 2 of the packet of materials prepared by staff in anticipation of this regular October 25, 2017 meeting ["the 10/25/2017 Board packet"https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Agenda_Regular_10-25-17.pdf].

1. Parasol's testimony and arguments advanced at the hearing on its February 22, 2011 appeal of the County's assessed valuation for the Parasol Building before the Washoe County Board of Equalization ("CBOE");

2. The minutes of the IVGID Board's May 28, 1997 regular meeting where the CC&R's use restrictions were expressly recognized by IVGID's General Manager and as a pre-condition to any land lease, and Parasol was instructed that those restrictions had to either be removed or ruled ineffective through a judicial confirmation process;

3. Facts pointing to Parasol being the one who caused the creation, execution and recordation of the July 1, 1999 amendment to CC&Rs [a fact bearing on Parasol's "unclean hands" (see discussion below) and thus barring it from arguing equitable relief such as "unjust enrichment" relied so heavily upon by Attorney Fogarty];

4. Rather than the two options presented by Attorney Fogarty, the need for a NRS 43.100(1) action to determine the validity of IVGID's proposed governmental action [a "governing body may file or cause to be filed a petition at any time in the district court...praying a judicial examination and determination of ***the validity of any (proposed)...instrument, act or project of the municipality***";

5. Evidence that IVGID's power to furnish facilities for "recreation" is expressly restricted to "***public recreation***";³

6. Evidence that IVGID intends to use the proceeds of the Beach ("BFF") and/or Recreation ("RFF") Facility Fee(s) to pay for acquisition, improvement and maintenance of the Parasol Building notwithstanding the BFF/RFF are nothing more than a NRS 318.197(1) "standby service charges" supposedly adopted to pay for the mere "availability (for the parcels involuntarily assessed) to use" recreational and beach facilities⁴, rather than acquisition of an administrative office building or use as a community nonprofit center; and,

7. The fact IVGID proposes paying for acquisition of the Parasol Building on an installment basis which would make this portion of the proposed purchase a NRS 350.0055(2)(a) "installment purchase

³ As a result of Washoe County Board of Commissioners ("the County Board") Ordinance No. 97, Bill No. 117, on June 15, 1965 IVGID was granted the power to furnish facilities for *public recreation*. Although the word "public" was deleted from former NRS 318.143 during the fifty-fourth (1967) session of the Legislature and restated at NRS 318.116(13) [see SB408, §§23, 24 (App.8/9:1540-1622)], because no retroactive intent was expressed [*Sandpointe Apts. v. Eighth Judicial Dist. Court* (2013) 129 Nev. Adv. Op. 87, 313 P.3d 849], and the County Board did not subsequently grant IVGID the power to furnish facilities for "recreation," it is my position IVGID has no power to furnish facilities for any type of recreation other than *public recreation*.

⁴ See IVGID Resolution 1860 (https://www.yourtahoeplace.com/uploads/pdf-ivgid/Item_H.3._-_Resolution_1860_5-24-17.pdf).

agreement" requiring [per NRS 350.087(1)] approval of a resolution adopted by a minimum of two-thirds (2/3) of the IVGID Board.

Without consideration of all material facts on a subject, how can Attorney Fogarty possibly be expected to render the prudent and comprehensive analysis she represents? Whatever the answer, I ask the Board consider the following:

Attorney Fogarty's Discussion of the Current Lease: Attorney Fogarty represents her "analysis ...focuses on...whether Parasol is in default of its obligations under...the Lease. (Although she acknowledges) there are a number of affirmative obligations (upon) Parasol...after discussions with...Pinker-ton and Mr. Alling ('the legal representative of Parasol') regarding the status of such obligations, (she concluded)...there is only one potential default by Parasol (under)...Section XIII(A)(3)...***a significant reduction in use from what is contemplated in Parasol's long term business plan.***"

Notwithstanding, Attorney Fogarty's analysis admits "***there is no bright line test on what constitutes a significant reduction in use in the context of Parasol's business plan.***"

But ***there is a second potential default*** which Attorney Fogarty has not identified, and that is Parasol's use of the subject lands in violation of the CC&R's land use restrictions (see discussion below). After all, considering ¶16 of the Lease's Recitals ["provided that all pre-conditions and conditions (announced at the IVGID Board's May 28, 1997 regular meeting) are met and strictly adhered to by" Parasol⁵], ¶XV of the Lease [Parasol "assumes full and complete responsibility regarding (the) issue" of use other than for "park and recreational and related purposes and...***no other purposes***"], and ¶XXIII(B)(2) of the Lease ["***all provisions of this Lease, whether recitals, designated covenants, terms or conditions...shall be deemed to be both covenants and conditions***"], if the amended CC&Rs are invalid then "all pre-conditions and conditions (have ***not*** been)...met."

Has anyone (other than me) examined the pre-conditions and conditions announced at the IVGID Board's May 28, 1997 regular meeting? Let me quote from the minutes of that meeting: "General Manager Finnigan...noted that there is a deed restriction on the parcel that it is to be used for recreation purposes only, but that staff would work with the Foundation to resolve the deed restriction, ***either through removal or judicial confirmation.***" Assuming the amended CC&Rs are invalid, has the deed restriction ever been removed? Has anyone ever secured judicial confirmation that the subject lands can be permissibly used for purposes ***other than*** "park and recreational and related purposes and...***no other purposes***?" If not, ***why hasn't Attorney Fogarty discussed this basis for default?***

⁵ At this meeting Parasol was put on notice that as a pre-condition to any land lease, Parasol was required to either cause removal of or a judicial confirmation decree that the CC&R's use restrictions, to the extent they prohibited Parasol from using the subject lands as a community non-profit center, was ineffective.

Attorney Fogarty's Discussion of Parasol's 2001 Business Plan: Notwithstanding Attorney Fogarty admits "a significant reduction *in use* from what is contemplated in Parasol's long term business plan...***could be considered a material change in the intended use of the (Parasol) Building,***" and that section XIII(A)(3) of the Lease does not define "the specific components of...contemplated use, whether it be the number of Resident Collaborators or the exact area space allocations by square footage," she opines these factors "likely do...not constitute the *entirety of the contemplated use*" because they do "not necessarily constitute a material modification to Parasol's 'purposes' that would affect Parasol's actions under the Lease (such as)...payment and performance obligations."

Why does Attorney Fogarty raise the issue of what constitutes "the entirety of...contemplated use?" Section XIII(A)(3) of the Lease makes no reference to "entirety of...contemplated use." Rather, it only requires "a significant reduction" in use.

And why does Attorney Fogarty raise the issue of Parasol's payment and other performance obligations under the Lease when the operative issue here is whether there has been "a significant reduction in use from what (wa)s contemplated in Parasol's long term business plan?"

Notwithstanding these are all red herrings, at the end of the day Attorney Fogarty admits "***there is no... correct legal answer as to whether the contemplated use should be viewed from either the global or more detailed perspective,***" and if the former, whether Parasol is in default

Attorney Fogarty's Discussion of Parasol's 2009 Business Plan: Viewing the 2001 Business Plan from a more detailed perspective, Attorney Fogarty acknowledges Parasol's unilateral "removal of a set number of anticipated Resident Collaborators...could be considered a material change in the intended use of the (Parasol) building." But because she reasons: ¶XXIV(C)(3) of the Amended Lease instructs that Parasol's "stated...purpose and intent is...set forth in its Business Plan - 2001(; that)... said Business Plan may be amended...in the future(; that)...any material modification to...the Business Plan...may be made only with (IVGID's) consent(; however, that neither the)...First Amendment (to the Lease) nor Section XXIII(A)(2)...requires written consent;" in addressing the ultimate question of "whether IVGID granted consent to the 2009 Business Plan," Attorney Fogarty raises another "red herring" issue; "implied IVGID consent." In other words whether "the (mere) ***lack of comment*** by the IVGID Board at its April 29, 2009 meeting "after receipt of the 2009 Business Plan...could arguably be seen as providing implied consent."

But "lack of comment" is *irrelevant*. What is relevant is "*action...by a majority vote of the full Board.*" Without that express action, there can be no consent to material modifications to the 2001 Business Plan. As to the issue of what constitutes Board action, consider the following:

1. Although GIDs "have the power to...dispose of...real...property, and any interest therein, (expressly) *including leases,*" NRS 318.100(1) makes clear that it is the GID's "*board* (which has)...each of the basic powers enumerated in this chapter," and NRS 318.160 instructs that *only "the board* shall have th(at) power;"

2. For these reasons, ¶XXIII(A)(8) of the Lease states that the "Lease shall not be effective until final action...is taken by **each of the parties' Boards**;" and,

3. Recital G to the Lease states that "IVGID's **Board of Trustees** formally agreed to lease the subject realty to Lessee...on May 28, 1997, as part of its regular meeting agenda;

4. Because Joseph V. Marson and Gail Krolick entered into the Lease on January 12, 2000 on behalf of "Lessor," it is noteworthy that NRS 318.075(1) instructs that IVGID is a quasi-municipal *corporation*, and ¶XXIII(A)(3) of the Lease declares that "the...persons executing this Lease *on behalf of any corporation* (have)...represent(ed) and warrant(ed) that (they are)...duly authorized to execute and deliver this Lease *on behalf of said corporation*;" and,

5. Finally, ¶XXIII(A)(7) of the Lease declares that "whenever *any action* by the IVGID Board of Trustees is mentioned in this Lease, **such action shall be by a majority vote of the full Board**."

Although Attorney Fogarty points to "the *lack of comment by the IVGID Board*...as evidenced in the...April 29, 2009...meeting minutes," notably, she **fails** to point to mandated "**action...by a majority vote of the full (IVGID) Board**." In other words, Parasol's unilateral "removal of a set number of anticipated Resident Collaborators...c(an) be considered a material change in the intended use of the (Parasol) building" because consent "**by a majority vote of the full (IVGID) Board**" **never occurred**.

In essence admitting that the IVGID Board never consented to modification of Parasol's 2001 Business Plan and thus **Parasol is in default**, Attorney Fogarty shifts gears altogether by raising another "red herring" issue: "if IVGID were to claim...default...it is important to explore (its)...potential remedies." In other words, rather than focusing upon whether/not Parasol is in breach of the Lease (the issue at hand), Attorney Fogarty addresses the ultimate issue of "potential remedies." That subject is discussed below under "unjust enrichment."

Attorney Fogarty's Discussion of Ownership of the Parasol Building: Notwithstanding Attorney Fogarty admits that the "general rule in American common law (is) that **all buildings become a part of the real property as soon as they are placed on the land**." Moreover she concludes that "provisions (of the Lease) seem to indicate that the parties intended for the Building improvements to immediately become a part of the Property" owned by IVGID, and that "the Lease does not expressly state that the Building improvements are the property of Parasol during the term of the Lease." Notwithstanding she concludes that because "Pinkerton and...Alling both confirmed that Parasol has been taking...depreciation on the Building during the lease term," somehow Parasol may very well "hold...ownership of the Building during the term of the Lease."

Not that Mr. Pinkerton is competent to testify as to how Parasol reports its financial affairs, or why, and Parasol's unilateral reporting of depreciation of the Building should *not* have any bearing on the question of *who owns the Building*, I and others believe Attorney Fogarty's opinion is flawed because she did *not* consider Parasol's February 22, 2011 admissions to the CBOE insofar as these very issues were concerned. Specifically, Attorney Fogarty did not learn that Parasol has admitted it does not own the Building, and that its reporting of depreciation was nothing more than "an

accounting concept" so it could "record (the Building) on its balance sheet, so (its costs)...would be fairly presented" to donors and others. Listen to the following recital of fact:

"Mr. Ashley (Parasol's 'Certified Public Accountant and Certified Valuation Analyst') stated Parasol had recorded assets on its balance sheet, consisting of a building and... related accumulated depreciation. He stated there were operating leases and capital leases...the lease...with IVGID was a capital lease...For a capital lease, the lessee would treat the lease as a purchase, which meant (it)...was recorded as an asset and depreciated. Member Green asked why a capital lease was used if Parasol did not intend to ever own the building? Mr. Ashley (answered)...**it was basically an accounting concept**...The goal of classifying something as a capital lease was to have the lessee record it on its balance sheet, so the obligation would be fairly presented."

Attorney Fogarty's Discussion of Alleged Unjust Enrichment Claims: Without sufficient facts to conclude as she has, Attorney Fogarty speculates premature "Lease termination *would* result in the landlord becoming inequitably and unjustly enriched at the expense of the tenant" and as a result, "a court...*would* likely...set aside the forfeiture" because of the lack of cost (and)...unjust gain to" IVGID. Really?

But Attorney Fogarty neglects to discuss the concept of ***unclean hands***. In other words, where a party seeking equitable relief is guilty of "unclean hands," he/she is *barred* from seeking equitable relief. Put into context, if Parasol was the one who created the phony CC&R amendment which purportedly allows it to use the subject lands for a nonprofit center, especially in light of section XV of the Lease where Parasol and releases and indemnifies IVGID should "*any persons (including IVGID) make* claims, demands or lawsuits...challeng(ing) the (CC&R) Amendment," ***it has waived any right to assert unjust enrichment.***

Moreover, assuming *arguendo* unjust enrichment even applies [and here it does not (see discussion below)], rather than the market value of the Parasol Building or the cost to replace it, Attorney Fogarty makes clear that "the theory of unjust enrichment focuses on ***the unjust gain to IVGID***, whatever that gain may be. And ***in light of the "number of factors at play (in)...assess(ing) ...the potential value of the (Parasol) Building to IVGID," Attorney Fogarty concludes the exercise "will likely be difficult."***

But there is another issue at play under the discussion of unjust enrichment. And that is whether the court need even go there should IVGID compel Parasol to remove its building. Section XIII(B)(7) of the Lease states that "in the event of a default or breach (of the Lease, IVGID)...at its sole option (may compel Parasol)...to **remove the Nonprofit Center facility from the leased premises and return said real estate to its former, natural state/condition.**" Thus if there is a default under the Lease and IVGID requires Parasol to remove the building, there will be no "unjust gain" Parasol can assert. ***Why then does Attorney Fogarty raise the issue of unjust enrichment?***

Attorney Fogarty's CC&R Analysis: Although Attorney Fogarty acknowledges a "question has been posed as to whether Gardena (Service Co.) had authority to execute the CC&R Amendment... either because it was beyond the powers granted to those winding up the affairs of the corporation or because that individual was not the director or officer holding such authority," she:

1. *Speculates* that "it stands to reason that the Boards at the time and their respective counsel would have vetted th(at) authority;" and notwithstanding,

2. Concludes that ultimately the answer to these questions "***is largely a question of fact depending on" matters to which Attorney Fogarty is not privy***, because they "***would require an investigation...which is beyond the scope of this Memorandum.***"

Attorney Fogarty's Failure to Analyze Nev. Const. Art. 1, §15 (and) U.S. Const. Art. 1, §10 Insofar as Standing to Bring a Claim For Violation of the CC&Rs: Notwithstanding this standing issue, Attorney Fogarty assumes the CC&R Amendment is *invalid* and then discusses her opinion of the legal effect: "Gardena ...*is the only known party with standing to bring a claim of violation of the restrictive covenant.*" But given the CC&R restrictions were imposed to guarantee *public* park and recreation use and no other uses, and the subject land was purchased with the RFF which purportedly pays for the availability to use *public* recreational facilities acquired with that RFF, it is disingenuous to argue the property owners who have paid the RFF, as well as their successors and assigns, do not have standing to bring claims for violation of the CC&Rs. *City of Reno v. Goldwater* (1976) 92 Nev. 698, 558 P.2d 552 is instructive.

In *City of Reno* lands were donated to the City "as a public park and playground for the use and benefit of the people of the City of Reno." Decades later, the City traded a portion of this property to private persons for a nonpublic use. On the issue of standing, the taxpayers and residents who lived in close proximity to the subject lands and who brought suit, "beyond question," were deemed to have standing to compel the City to honor its trust." Thus "summary judgment return(ed) the park property to the City." Our Supreme Court found that "when the City accepted the gift of land..a contract was created *obligating the City* to hold such property in trust for the people of Reno to enjoy as a park and playground. (Under)...Nev. Const. Art. 1, §15 (and) U.S. Const. Art. 1, §10...that obligation could *not* later be impaired by legislative enactment" *or otherwise*.

If use of the lands underneath the Parasol Building is restricted to the public's use and benefit as a park or recreation, I submit any protesting citizen has standing to bring claims for violation of the CC&Rs under the authority of City of Reno.

Attorney Fogarty's Failure to Analyze NRS 271.315(1) Insofar as Standing to Bring a Claim For Violation of the CC&Rs: I submit a subsequent Nevada Supreme Court decision reaffirms the issue of standing. In *Citizens for Cold Springs v. City of Reno* (2009) 125 Nev. 625, 218 P.3d 847 the City of Reno voted to annex approximately 7,000 acres of land in the Cold Springs Valley and adjacent areas. Property owners and residents of Cold Springs filed a complaint for declaratory and injunctive relief along, with a petition for writ of mandamus, seeking review and reversal of the annexation claiming it would have an adverse effect on Cold Springs' rural community. Although the trial court

dismissed this complaint on the issue of standing, our Supreme Court reversed recognizing citizen standing as to annexation decisions. Given this decision was founded upon statutory (NRS 268.668) citizen standing, I discuss its similar application to NRS 271.

1. NRS 318.116(14) declares that furnishing facilities for public³ recreation, as provided in NRS 318.143, is a basic power which may be granted to a GID;

2. Thus where, as here, a GID has been granted the basic power to furnish facilities for public recreation [see NRS 318.116(14)], NRS 318.143(1) declares that the IVGID Board may acquire, construct, reconstruct, improve, extend and better **facilities for recreation**. It is because of this statute the Board asserts it has the power to acquire the Parasol Building;

3. NRS 318.100(1) declares that the IVGID Board shall have each of the basic powers enumerated in this chapter, or otherwise authorized by law. Except as otherwise provided in this chapter, the Board may finance the costs of constructing or otherwise acquiring *any* improvement appertaining to the basic power to acquire facilities for public recreation, and it may pay for any such acquisition by any of the procedures provided in this chapter;

4. One of those procedures is set forth at NRS 318.101(1) which declares that as an alternate procedure for acquiring, improving or converting any public improvement (or any combination thereof), **and for defraying all or any portion of the cost thereof**, the IVGID Board may levy special assessments against assessable property specially benefited thereby to implement any one, all or any combination of basic powers stated in NRS 318.116. In this regard, the Board is vested with the powers granted to municipalities **by chapter 271 of NRS**;

5. Similar to NRS 318.199(4), NRS 271.310(1) declares that any and all property owners interested in an acquisition project may present their views (written complaint, protest or objection) to the governing body on the date and at the place fixed for public hearing. After that hearing has concluded, after all written complaints, protests and objections have been read and considered, and after all persons desiring to be heard in person have been heard, NRS 271.310(2) declares that the governing body shall pass upon the merits of each such complaint, protest or objection, by resolution or ordinance; and,

6. NRS 271.315(1) declares that **any person** who has filed a written complaint, protest or objection **may**, within 30 days after the governing body has finally passed on the complaint, protest or objection, **commence an action or suit in any court of competent jurisdiction to correct or set aside the détermination**.

Thus if use of the RFF to acquire the Parasol Building is deemed a NRS 318.350 special assessment, I and others I know submit that any protesting citizen has standing to bring claims for the propriety of a resolution which specially assesses local property owners for the costs to acquire and improve the Parasol Building.

Attorney Megan's Failure to Discuss the Two-Thirds Vote Requirement: The requirement that any resolution which approves payment to Parasol on an installment basis, or as a special assessment, raises the issue, in at least two particulars, insofar as the number of trustees required to pass that resolution (this was an issue I presented to Attorney Fogarty in my September 12, 2017 materials she has failed to address). First, assuming Parasol's installment payment terms represent a NRS 350.0055(2)(a) "installment purchase agreement," NRS 350.087(1) mandates approval by resolution adopted by **two-thirds** ($\frac{2}{3}$) of the IVGID Board.

Second, NRS 318.350(1) declares that the expenses of making *any* public improvement (to implement any one, all or any combination of basic powers stated in NRS 318.116) may be defrayed by special assessments upon lands and premises abutting upon the improvement and other lands as in the opinion of the board may be specially benefited by the improvement, **as the board determines by an affirmative vote of at least two-thirds of its members**. Therefore if use of the RFF to acquire the Parasol Building, as if it were a special assessment (to defray the expenses of purchasing the Parasol Building, upon lands and premises abutting upon the improvement and other lands as in the opinion of the board may be specially benefited by the improvement), requires approval by **two-thirds** ($\frac{2}{3}$) of the IVGID Board.

Thus use of the RFF to pay for acquisition of the Parasol Building requires approval by two-thirds ($\frac{2}{3}$) of the IVGID Board.

Attorney Fogarty's Analysis of CC&R Violation Remedies: Attorney Fogarty opines that any claim for violation of the CC&Rs by a successor or assign of Boise Cascade (or presumably any other person with standing) would "likely would be barred by "the same concepts of (alleged) unjust enrichment discussed" above. But as discussed above, Parasol's "unclean hands" and decision to compel Parasol to demolish the building and return the subject lands in their natural state, *bar* it from seeking equitable relief (another "red herring" issue).

Attorney Fogarty's Conclusions: Based upon the incomplete "facts at hand," boil down to only two remedies: "to maintain the status quo under the terms of the Lease or to negotiate the formal acquisition of the (Parasol) Building...at whatever value is deemed reasonable when considering the numerous factors in play."

But in my in my September 12, 2017 materials shared with Attorney Fogarty, she has failed to suggest a third remedy: a NRS 43.100(1) action to determine the validity of IVGID's proposed governmental action. In other words, praying for a judicial examination and determination insofar as all of the issues raised by Attorney Fogarty, the IVGID Board and/or the public. ***Since questions have been raised over Parasol's right to continued use of the Building, either under the current Lease or under its proposed modification, as well as IVGID's right to use the Building for its administrative office needs, would not the NRS 43.100(1) remedy represent the more preferable remedy?***

IVGID's Misuse of the RFF: Where is the \$5.5M or more of the purchase price going to come from? At the Board's May 24, 2017 meeting it voted to transfer \$1.6M from the Community Services Special Revenue Fund to fund the proposed down payment to purchase the Parasol Building. This proposed transaction was reported to the Department of Taxation on Form 4404LBF at page 24, Schedule B-14, and page 22, Schedule B-13, of the 2016-17 Budget. But in reality, this payment comes directly from the RFF because each year IVGID budgets to spend approximately \$6M *more* than the revenues its staff assign to its Community Services Special Fund. This deficiency is covered (subsidized) by a Rec Fee of essentially (\$5,776,770), a like amount.

Given staff have been steadily increasing the fund balance in the Community Services Special Revenue Fund by carrying forward (rather than completing) past capital projects funded, yet intentionally not prosecuted, the fund has built up a balance of \$7,142,083. Although this will be the source of the subject \$1.6M, the Board should understand this "balance" is actually the product of unspent RFF subsidies from previous years. In other words, ***the Board proposes that the acquisition costs for the Parasol Building purchase will come from the RFF.*** This use conflicts with the uses the Board represented on May 24, 2017 in its Resolution 1860, the RFF would be used for⁶.

Conclusion: Given Attorney Fogarty admits:

1. Parasol's unilateral "removal of a set number of anticipated Resident Collaborators...could be considered a material change in the intended use of the (Parasol) building" as well as "***a significant reduction in use from what is contemplated in Parasol's long term (2001) business plan.***" As such, she admits this represents a "potential default by Parasol (under)...Section XIII(A)(3)" of the lease;
2. And yet she offers "***no...correct legal answer as to whether...contemplated use*** (under the Lease) ***should be viewed from either the global or more detailed perspective,***" and if viewed from a global perspective, whether Parasol is in fact in default;
3. And yet she offers "***no bright line test on what constitutes a significant reduction in use in the context of Parasol's business plan;***"
4. Under ¶XV of the Lease [Parasol "assumes full and complete responsibility regarding (the) issue" of use other than for "park and recreational and related purposes and...***no other purposes***"];
5. That whether the purported amended CC&Rs, which expand that use, are valid "***is largely a question of fact*** (which)...would require an investigation (and it)...***is beyond the scope of this Memorandum;***" and,

⁶ See pages 98-106 of the packet of materials prepared by staff in anticipation of the Board's regular May 24, 2017 meeting ["the 5/24/2017 Board packet" (https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_5-24-17.pdf)].

6. In light of the "number of factors at play (it)...*will likely be difficult (to)...assess...the potential value of the (Parasol) Building to IVGID*" assuming the Board does not vote to compel Parasol to demolish the building.

According to me,

1. Any property owner whose predecessor has paid the RFF has standing to bring suit to enforce the CC&Rs and thus prevent IVGID from entering into any agreement which allows anyone to use the Parasol Building for purposes in violation of those CC&Rs;

2. Any property owner who objects to use of the RFF to pay for acquisition of the Parasol Building has standing to bring suit to prevent that fee from being used for that purpose; and,

3. Given Attorney Fogarty's conclusion that there is "*no bright line test*" as to whether IVGID can be assured it will not be sued should it spend public funds to acquire the Parasol Building, the remedy of NRS 43.100, which allows the Court to determine the validity of proposed governmental action *before it occurs*, seems to be the most prudent option. Thus,

How is it Attorney Fogarty can prudently recommend that the IVGID Board take any action whatsoever other than filing a NRS 43.100(1) action to determine the validity of any proposed governmental action?

And You Wonder Why the RFF is as High as it is? I've now provided more answers.

Respectfully, Aaron Katz (Your Community Watchdog Because No One Else Seems to be Watching).

**WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS
OCTOBER 25, 2017 REGULAR IVGID BOARD MEETING – AGENDA ITEM C –
PUBLIC COMMENTS – REPORT ON THE KATZ v. IVGID LITIGATION –
KATZ'S REPLY BRIEF HAS BEEN FILED AND THE APPEAL HAS BEEN
TRANSFERRED TO THE COURT'S SCREENING PROCESS**

Introduction: In the past IVGID's attorney, Jason Guinasso, has informed the IVGID Board of events and documents filed in the Nevada Supreme Court insofar as the *Katz v. IVGID* appeal is concerned. But rather than providing information and documents insofar as all events are concerned, Mr. Guinasso has *ONLY* provided documentation flattering to IVGID.

For instance, wouldn't the filing of my Reply Brief be considered an event worthy of sharing with the public? Notwithstanding that brief was filed with the Court on September 21, 2017, has Mr. Guinasso shared it with the Board and the public so both can learn of my response to IVGID's Respondent's Brief¹? Of course not. But why not? Because rather IVGID staff want to perpetuate the skewed and biased picture IVGID staff regularly provide to the Board and the public.

For this reason I am attaching a copy of my Reply Brief so the Board and the public have access to *all* materials pertaining to the *Katz v. IVGID* appeal. I have nothing to hide. Why does IVGID? And this is the purpose of this written statement.

I Have Attached a Copy of My Reply Brief as Exhibit "A:" Read it for yourself. Frivolous lawsuits are those filed by a party or attorney who "because of a lack of supporting legal argument or factual basis for the claims....is aware they are without merit."² Or stated differently, the inquiry is "whether the pleading is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law" [*Bergmann v. Boyce* (1993) 109 Nev. 670, 856 P.2d 560, 564³]. Do the facts and bases for appeal alleged sound like they are completely frivolous and without merit? Do they not argue for the extension, modification or reversal of existing law?

Conclusion: So now the Board and the public have all the documents and legal arguments before them so they can intelligently evaluate whether what IVGID staff have done with your

¹ A brief staff chose to share with the Board and the public and include at pages 24- 178 of the packet of materials prepared by staff in anticipation of the Board's regular June 12, 2017 meeting ["the 6/12/2017 Board packet" (https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_6-12-2017.pdf)].

² See <https://definitions.uslegal.com/f/frivolous-lawsuit/>.

³ Go to

https://scholar.google.com/scholar_case?case=5145399311351624396&hl=en&as_sdt=6&as_vis=1&oi=scholarr.

Recreation ("RFF") and Beach ("BFF") Facility Fees has been wise and prudent. Although I suspect IVGID staff will be quick to point the finger of blame at me, I and others I know believe the blame sits firmly with them and the Board which has abdicated all of its statutory obligations and oversight to un-elected staff with an agenda.

And You Wonder Why the RFF/BFF are as High as They Are? I've now provided more answers.

Respectfully, Aaron Katz (Your Community Watchdog Because No One Else Seems to be Watching).

EXHIBIT "A"

AARON L. KATZ,)
)
 Appellant,) Case No. 70440
 vs.)
)
 INCLINE VILLAGE GENERAL)
 IMPROVEMENT DISTRICT, ETC.,)
)
 Respondent.)
 _____)

APPELLANT'S REPLY BRIEF

**APPEAL FROM JUDGMENT OF DISMISSAL AND
JUDGMENT AFTER BENCH TRIAL**

Second Judicial District, State of Nevada

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INTRODUCTION

"If you're weak on the facts and strong on the law, pound the law. If you're weak on the law and strong on the facts, pound the facts. If you're weak on both, pound the table."¹The RAB resounds in "table pounding."

Notwithstanding IVGID admits review is primarily de novo (RAB:15:10-11), its brief is replete with personal attacks. To demonstrate IVGID's efforts to "poison the pool" rather than address the many difficult and precedent setting issues, consider its marginalization of the messenger:

1. A single "disgruntled citizen" (RAB:35:9-10, 36:8-9). Consider the fellow citizens who provided testimony in opposition to IVGID's motion for attorney's fees (App.22:4780-4786, 4793-4828);
2. Appellant "masquerades" as a citizen watchdog (RAB:2:7-9);
3. A "rogue extortionist...wreak(ing) havoc...entirely inconsistent with the purpose for which (NRS 318)...w(as) created" (RAB:36:18-20);
4. "Coerc(ing IVGID)...to pay exorbitant sums to avoid the costs of defending serial lawsuits and administrative complaints" (RAB:2:12-15). Yet other than RFF/BFF refunds, Appellant seeks no pecuniary relief.
5. A "convicted felon" (RAB:2:9, f.n.1). IVGID knows this allegation to be

¹ <http://quoteinvestigator.com/2010/07/04/legal-adage>.

false. In Matter of Katz (1991) 1 Cal.StateBarCt.Rptr. 502 (App.21:4500-4510), at App.21:4502: "in 1988, the Santa Clara County Superior Court entered an order...expunging his conviction." California Penal Code, §1203.4(a)(1).

With that said, Appellant addresses de novo review on no less than seven difficult, first impression issues.

I. THE REAL PARTY IN INTEREST IN THIS CASE IS NOT THE KATZ TRUST BUT RATHER, APPELLANT. MOREOVER, SINCE APPELLANT IS THE SOLE TRUSTEE AND BENEFICIARY OF HIS TRUST, HE IS ALLOWED TO PROCEED IN PROPRIA PERSONA

IVGID contends Appellant cannot obtain a judgment because he is not the proper party. According to IVGID, since all of Appellant's causes of action are founded upon property ownership, and title is held in the Katz Trust, only the trust, an alleged separate entity per Guerin v. Guerin, 116 Nev. 210, 993 P.2d 1256, 1258 (2000)², represented by counsel (App.16:3541:1-5), is the proper party (RAB:14:2-18).

Firstly, none of Appellant's causes of action (AOB:70-71) but possibly his

² Guerin did not analyze this issue. Rather, its focus was solely on legal representation. Guerin's dicta was founded upon Salman v. Newell, 110 Nev. 1333, 885 P.2d 607 (1994) and Sunde v. Contel of California, 112 Nev. 541, 542-43, 915 P.2d 298, 299 (1996). But Sunde addressed the legal representation of corporations rather than trusts. And although Salman addressed two business entities alleged to be "trusts," the authority relied upon [Jones v. Niagara Frontier Transp. Auth., 722 F.2d 20, 22 (2nd Cir. 1983)] also addressed legal representation of corporations rather than trusts. Thus neither Salman, Sunde nor Guerin reached the point asserted here.

eighth and eleventh RFF/BFF refund requests (AOB:24-25) and seventeenth judicial construction/enforcement of the beach deed's covenants/contractual provisions (AOB:54) are founded upon property ownership.

Second, Appellant's eighth and eleventh causes of action seek RFF/BFF refunds (AOB:24-25), notwithstanding Appellant is an owner. Given all laws applicable to the refund of county general taxes are applicable to RFF/BFF refunds (¶8 at App.5/6:825-835/App.5/6:836-847), NRS 318.201(12), and NRS 354.250 permit "any person³...aggrieved" to file suit, one does not need to be on title to seek refund. Thus a taxpayer's "agent" may seek refund [NRS 361.385(1)]. Per ¶12.8 of the Katz Trust (App.16:3389), so may Appellant.

Moreover, the beach deed's covenants/easements are enforceable by a qualified property owner's successors and assigns, as are third party beneficiaries (AOB:56). Further, ¶18 of Ordinance 7, which regulates beach access (App.16:3371), defines "owner" to be "any person exercising acts of (property) ownership. Since NRS 30.020 permits suit by any person "interested" under a deed or other writings constituting a contract, Appellant does not need to be 100%

³ Where a statute declares "any person...may sue," the element of standing is satisfied. See: Stockmeier v. Nevada Dep't of Corr. Psych. Review Panel, 122 Nev. 385, 394-95, 135 P.3d 220, 226-27 (2006); Citizens for Cold Springs v. City of Reno, 125 Nev. 625, 629-32, 218 P.3d 847, 849-52 (2009).

on title to property to be sufficiently "interested" in bringing a NRS 30.040(1) action.

Notwithstanding, IVGID relies upon Olsen Family Trust v. District Court, 110 Nev. 548, 874 P.2d 778 (1994). Olsen holds that in a wife's proceeding to enforce a divorce decree which sought to attach assets held in trust by her ex-husband's mother, the wife was required to join the trust. But Olsen was/is both incorrectly decided and distinguishable.

Incorrectly decided because Olsen does not address NRS 163.140(1), 163.115, 163.120 or 163.130. Manifestly, a lawsuit against a trust is brought against the trustee(s) and not against the trust itself.

Distinguishable because Olsen did not involve a lawsuit where the trust was plaintiff. Although nothing in the Uniform Act of Trusts addresses the proper party [although NRS 163.375 and ¶12.8 (App.16:3389) of the Katz Trust expressly declare it is Appellant], under common law, as codified in Restatement (Second) of Trusts, §§2, 177, a trust is not a legal entity capable of a legal action on its own behalf (AOB:69-70). Rather, it is the Trustee who may bring suit on behalf of the trust. Raymond Loubier Irrevocable Trust v. Loubier, 858 F.3d 719, 730-31 (2d Cir. 2017); United States Bank National Association v. La Mar Gunn, 31 F.Supp.3d 636, 641 (D.Delaware 2014) [trustee of express trust may sue in his own

name without joining the trust]; In Re: Beatrice Rottenberg Living Trust, 833 N.W.2d 384, 392-93 (Mich.App. 2013) [the trustee, when the beneficiary, is the real party in interest relative to claims on behalf of the trust]; Naier v. Beckenstein, 27 A.3d 104, 110-11 (Conn.App. 2011) [same result].

Thus the action was properly brought by Appellant (and not the Katz Trust). To the extent the caption may not reflect his capacit(ies), it is a technical defect easily correctable NRCP 15(a); Good v. Second Judicial District, 71 Nev. 38, 279 P.2d 467 (1955). Thus, dismissal because Appellant is not the proper party would be a clear abuse of discretion [Stephens v. Southern Nevada Music Co., 89 Nev. 104, 507 P.2d 138 (1973)].

As to who can represent the Katz Trust, the evidence established Appellant is its sole beneficiary and trustee (App.16:3365:15-3366:6; AOB:69; RAB:13:12-14). Universally, the rule of law is clear: only if the beneficiaries of a trust are persons other than or in addition to the trustee, must it be represented by counsel. Lee v. Catron, 203 P.3d 104, 105 (N.M. 2008). Where the sole trustee is also the sole beneficiary of a trust, he/she may appear in propria persona. Lee, citing Tradewinds Hotel, Inc. v. Cochran, 799 P.2d 60, 66 (Haw.App. 1990); Alusio v. Bancroft, (2014) 230 Cal.App.4th 1516, 1523-24, 179 Cal.Rptr.3d 408.

Since the rule of Salman and Guerin comes from rules governing the

practice of law, this Court should align itself with authority throughout the country viz this issue of first impression and hold that where the sole trustee of a trust is also its sole beneficiary, there is no requirement he/she be represented by counsel when making claims on behalf of the trust.

This aspect of the judgment must be vacated.

II. WHERE AN INVOLUNTARY "TAXPAYER"-CITIZEN SUFFERS DIRECT PREJUDICE, MAKING THE SPECIFIC ILLEGAL/ULTRA VIRES CHALLENGES APPELLANT MAKES, AND WHERE THERE IS NO EXPRESS NRS REMEDY, HE MAY BRING A PRIVATE ACTION

A significant portion of the RAB applies the principles of Builders Association of Northern Nevada v. City of Reno, 105 Nev. 368, 776 P.2d 123 (1989) and Baldonado v. Wynn Las Vegas, LLC, 124 Nev. 951, 965, 194 P.3d 96, 106 (2008) to this taxpayer. IVGID asserts that because Appellant has a “remedy,” he cannot maintain a declaratory relief action.

That “remedy,” according to IVGID, is to: 1) convince the Washoe County Board of Commissioners ("County Board") to remove IVGID's trustees⁴ [NRS 318.080(6)]; 2) convince 20% of Incline Village/Crystal Bay voters⁵ to petition the

⁴ Given IVGID's Board is elected (NRS 318.095), it is disingenuous to suggest the County Board would ever overrule the will of IVGID's voters. Moreover, removal will not reverse decisions (such as bonding) which can impact for decades.

⁵ Because of IVGID's voting scheme, two-thirds of property owners directly affected by the RFF/BFF are disenfranchised from petitioning (App.14:2892:20-2897:7, 19:4065:3-20).

County Board to initiate "corrective action" [NRS 318.515(1)]; 3) convince the Department of Taxation ("DOT") to notify the County Board to initiate that same "corrective action;" or, 4) convince 25% of Incline Village/Crystal Bay voters to sign a petition recalling IVGID's trustees [NRS 318.0955; Const.Art. 2, §9]. Assuming IVGID has taken illegal/invalid actions, IVGID argues Appellant, by himself, is powerless to do anything. Although Judge Flanagan agreed (App.10:2022:6-7), on careful review of this first impression issue this Court should decisively declare the contrary.

■ **Due Process** (first through fourth causes of action (AOB:17-20)) mandates government provide a procedure which provides taxpayers a meaningful opportunity to contest the legality/validity of governmental action. Insofar as the RFF/BFF are concerned, due process does not mandate taxpayers pay the tax first as a prerequisite to bringing an action for declaratory/injunctive relief. City of Anaheim v. Superior Court, (2009) 179 Cal.App.4th 825, 831, 102 Cal.Rptr.3d 171, 175-76 [citing McKesson Corp. v. Florida Alcohol Beverages & Tobacco Division, 496 U.S. 18, 39 (1990)]. Thus it is insufficient to argue "a" statutory remedy exists whereby taxpayers may merely "protest."

Moreover, the remedy must be adequate. "Adequate remedy" in this context means one that specifically allows taxpayers to make specific challenges to taxes

already assessed, and to press constitutional/other claims. Rickley v. County of Los Angeles, (2004) 114 Cal.App.4th 1002, 1013-14, 8 Cal.Rptr.3d 406, 414.

Where no adequate remedy exists, taxpayers may invoke the equitable jurisdiction of a court of general jurisdiction, meaning they may bring a declaratory relief action (Valley Forge Towers Apartment N. LP v. Upper Merion School District, ___ A.3d ___ 2017, WL2859007 *5 (Pa. 2017); Board of Trustees of Illinois Valley Community College District 513 v. Putnam County, 13 N.E.3d. 1275, 1279 (Ill.App. 2014)) to challenge the constitutionality or validity of a statute (City of Fernley v. State Dep't of Taxation, 132 Nev.Adv.Op. 4, 366 P.3d 699, 705 (2016)), a "tax" disingenuously labeled a "fee" (Douglas Co. Contractors v. Douglas Co., 112 Nev. 1452, 929 P.2d 253, 254 (1996); Clean Water Coalition v. The M Resort, LLC, 127 Nev. Adv. Op. 24, 255 P.3d 247, 252 (2011)), or the propriety of other governmental action⁶ (City of Reno v. Goldwater, 92 Nev. 698, 700, 558 P.2d 532, 533 (1976)).

And where the challenge is to an exaction the governing body has no jurisdiction to create, a statutory scheme that merely allows challenges based upon procedural errors or irregularities is inadequate, meaning taxpayers may seek declaratory/injunctive relief. Dumas v. Pappas, 6 N.E.3d 370, 375 (Ill.App. 2013).

⁶ Or what IVGID disingenuously labels "legislative action" (RAB:18:12-13, 21:14, 22:8-9, 36:16-17, 39:11, 58:16-17). IVGID does not have the power to create statutes under NRS 318.

The "remedy" IVGID and Judge Flanagan assert is even more inadequate than that declared in Dumas.

The notion Appellant can urge the County Board to remove "IVGID" Trustees who voted to assess/collect an allegedly illegal tax or ask 25% of voters to recall them, does not stop the IVGID Board from having assessed/collected taxes illegally, nor create a "rebate remedy," nor does it guarantee removal/recall of Trustees.

Rodgers v. Whitley, 668 N.E.2d 1023, 1028-29 (Ill.App. 1996) is instructive. There, a referendum procedure for creating or limiting tax procedures was held to be an inadequate remedy at law for taxpayers seeking declaratory/injunctive relief on the basis of the limitation on taxes creating a deterioration of services.

Builders Association is distinguishable. Those plaintiffs sought determination that "Reno violated NRS 354.5989." Because "NRS 354.6245 provides a remedy for violation of NRS 354.5989" (Id., 776 P.2d at 1235), this Court found "courts should be cautious in reading other remedies into the statute." But here the district court found there is no express statutory remedy "under...the LGBFA" (App.10:2024:6-10) or "NRS Chapter 318" (App.10:2022:11)].

Although NRS 354.6245 creates a remedy in favor of the DOT, it is only

judicial review after findings by the State of Board of Equalization ("SBOE") relative to the County Assessor's (rather than IVGID's) assessment of ad valorem property taxes (NRS 361.410). Although IVGID collects the RFF/BFF as though they were ad valorem taxes (NRS 318.201(11)), the DOT has "no dog in this fight."

Moreover, it is only where a special statute is clearly intended to provide an exclusive remedy that relief under the Declaratory Judgment Act is not available" Iroquois Post No. 229 v. City of Louisville, 279 S.W.2d 13, 14 (1955). Here there is nothing to demonstrate NRS 354.6245 was intended to be the exclusive remedy for the relief Appellant seeks.

Express Statutory Relief: Moreover, NRS 318.202(12) implies the remedy of this very kind of lawsuit [eighth and eleventh causes of action (AOB:24)]. And it is appropriate to raise the issues Appellant has raised in a tax refund suit. See: Thomas v. City of East Palo Alto, 53 Cal.App.4th 1084, 1088, 62 Cal.Rptr.2d 185 (1997). Therefore, the "rebate process" (NRS 244.360(4), 244.36605(2)(f) and/or 268.043(6)) applies.

NRS 361.420 and 354.250 imply similar remedies.

NRS 318.199(6), when viewed broadly and liberally (NRS 318.015(1)-(2)) implies a similar remedy; action by any protesting plaintiff to set aside

resolution(s) adopting: the RFF/BFF [seventh, ninth, tenth and sixteenth causes of action (AOB:21-23)], and/or water/sewer rates [fifth cause of action (AOB:20-21)].

NRS 34.320 implies a similar remedy; petition by any "person...beneficially interested...(in) arrest(ing)...proceedings of any...corporation (or) board...when (they)...are without or in excess of...jurisdiction" [proposed twentieth cause of action (App.12:2557:20-2558:15)].

Certainly nothing in any of these statutes declares that only some agency exclusive of Appellant can bring suit.

Implied Remedy: Since "every right, when withheld, must have a remedy and every injury its proper redress" (Marbury v. Madison (1803) 5 U.S. 137, 163), and here according to IVGID there is an absence of alternative remedies to the harm caused by statutory violations, it is appropriate to imply a private right of action. Jacobellis v. State Farm Fire and Casualty Company, 120 F.3d 171, 174 (9th Cir. 1997). Given NRS 318.199(6), 318.201(12) and 34.320 incorporate the common law right (See: Silver v. City of Los Angeles, 57 Cal.2d, 39, 40-41, 366 P.2d 651 (1961)) that allows taxpayers to bring declaratory relief actions to set aside illegally/invalidly imposed taxes and to obtain refund, this is the very kind of proper implied remedy recognized in Baldonado, 124 Nev. 958.

The judgment should be vacated to the extent it dismisses Appellant's claims on these bases.

III. TAXPAYERS NEED NOT SUFFER INJURY UNIQUE TO THEMSELVES RELATIVE TO OTHERS SIMILARLY SITUATED, TO ASSERT STANDING

IVGID's position is that for a taxpayer to have standing to bring an action such as Appellant's, he/she must suffer some special, "unique" injury. Taken to its extreme, IVGID argues it may impose blatantly illegal/invalid taxes on all Incline Village/Crystal Bay property/residential "dwelling unit" owners, and as long as it assesses an identical tax against each, it is immune from any consequence. This contention is baseless.

To the extent City of Las Vegas v. Craigin Industries, Inc., 86 Nev. 933, 939, 478 P.2d 585, 589 (1970) and Schwartz v. Lopez, 132 Nev.Ad.Op. 73, 382 P.3d 886, 894-95 (2016) do not summarily defeat IVGID's contention, the Court should consider Judge Hicks' opinion in Wright v. Incline Village General Improvement District, 597 F.Supp.2d 1191 (D.Nev. 2009), that individual landowners have standing, on their own behalves, to challenge IVGID's determination they are not entitled to beach access because of use covenants/restrictive deeds (Wright, 597 F.Supp.2d at 1199-1203). Importantly, Judge Hicks correctly distinguished between standing and the merits of the

taxpayer's challenge, and focused on whether the taxpayer had presented a non-privileged legal challenge alleging injury to a protected right (Id., at 1200).

Furthermore, as Judge Hicks observed, standing can be based upon a course of conduct that will continue (Id., at 1201)⁷.

That certainly is the case here. IVGID readily acknowledges (RAB:36:15-18) it has been imposing the RFF/BFF for decades. It believes it should be permitted to raise revenue in this fashion indefinitely, and quite obviously, intends to do so unless/until enjoined. Beyond doubt, Appellant, an IVGID taxpayer, has suffered ~~an~~^{the} injury [if he refuses to pay his home will be foreclosed, NRS 318.201(12)]. There is a causal connection between his injury and the conduct complained of, and it is likely (rather than speculative) his injury will be redressed by a favorable decision (Wright, 597 F.Supp.2d at 1199). This satisfies standing.

IVGID's reliance upon Daimler Chrysler Corporation v. Cuno, 547 U.S. 332, 346, 126 S.Ct. 1854, 1863-64 (2006) is misplaced. That case holds state taxpayers do not have standing to challenge an award of franchise tax credits to an auto manufacturer. That is a different situation (how the State spends the revenue it generates after collection) than how the State assesses/collects the tax.

Although here the Court must look at how the RFF/BFF, once collected, are

⁷ The late Judge Reed for the Northern District of Nevada reached the same conclusion based upon the same reasoning in Kroll v. IVGID, 598 F.Supp.2d 1118, 1134-35 (D.Nev. 2009).

spent to determine whether what has been assessed/collected is really a permissible "fee" (AOB:4-6, 36), Daimler does not prevent a taxpayer from raising that issue.

Appellant, being a properly named party, having a private right of action and standing, now addresses the merits of his claims.

IV. THIS COURT SHOULD DECLARE THE RFF/BFF, AS IMPOSED/COLLECTED, CONSTITUTE ILLEGAL TAXES

IVGID contends (RAB:43:10-12) that if this Court reverses Judge Flanagan on issues of real party in interest, private right of action, and standing, the case should be remanded for determination on the merits of Appellant's "unlawful tax" allegations. That would be both unnecessary, unwise, and potentially foster yet a third appeal⁸ involving the parties.

Given this Court has the ability to affirm the judgment on grounds different from those relied upon by the District Court⁹ (in fact, this Court can affirm the judgment if the District Court reached the correct result, even if for the wrong reasons¹⁰), it has the ability to find individual taxpayer standing and address (wholly or in part) Appellant's constitutional/other attacks (See: Schwartz v. Lopez). That is especially so here, where IVGID has stated its position on the

⁸ Appeal No. 71493.

⁹ Milender v. Marcum, 110 Nev. 972, 976, 879 P.2d 748, 751 (1994) and cases cited therein.

¹⁰ Saavredra-Sandoval v. Wal-Mart Stores, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010).

merits (RAB:27:16-31:11, 44:10-45:10) and the record does not tender dispute as to any issue of material fact (Reno v. Goldwater, 558 P.2d at 533).

IVGID argues (RAB:27:12-28:12) it is authorized to assess the RFF/BFF [NRS 318.197(1)], and to enforce their collection [NRS 318.201(8)]. It argues (RAB:9:1-9, 60:8-14) any tax it creates, even if contrary to statute, is not unconstitutional (Const.Art. 4, §§20, 21) because only the State, and not a (quasi)-municipal corporation, can violate those sections.

Appellant counters that while the statutory scheme allows IVGID to:

- a) Create fees "other than special assessments," that does not mean it can use the provisions of NRS 318.197(1) to create a tax or special assessment and disguise it as a fee;
- b) Create a "standby service charge...for the availability of service," that does not mean the RFF/BFF are legitimate "standby service charges;"
- c) Collect prospective rather than delinquent [NRS 318.201(4)] fees "for services or facilities furnished by the district...against the property served" [NRS 318.201(1), (9)] as if they were property taxes, that does not allow IVGID to treat "fees" as taxes against property not served;
- d) Nor does that mean the RFF/BFF in fact pay for any services, let alone those furnished to property.

Based upon the differences between fees and taxes, the evidence submitted in support/opposition to Appellant's motion for partial summary judgment (AOB:28) is uncontroverted that under the guise of creating "fees," IVGID has created "taxes" which the Legislature permits no local government to create (NRS 361.445).

The resolutions adopting the RFF/BFF should be set aside (AOB 38:39).

Moreover, consider:

A. **A (QUASI)-MUNICIPAL CORPORATION CAN ASSESS TAXES ONLY TO THE EXTENT THE LEGISLATURE EXPRESSLY ALLOWS**

Quasi-municipal corporations [NRS 318.015(1)] are governed by laws applicable to municipal corporations. Candlewood Hills Tax v. Medina, 74 A.3d 421, 426 (Conn.App. 2013). The presumption is that the Legislature did not intend municipal corporations to create taxes unless the intention is clearly manifested. State v. Lincoln County Power District No. 1, 60 Nev. 401, 407, 111 P.2d 528, 530 (1941). Thus, the State delegation of power to its political subdivisions is not a grant of power to license or tax for revenue purposes. Clark County v. City of Los Angeles, 70 Nev. 219, 222, 265 P.2d 216, 218 (1954).

Where an ordinance¹¹ creates a tax not authorized by statute¹², it is unconstitutional in that it violates Const.Art. 1, §15; the law impairing public obligations of contract. City of North Las Vegas v. Central Telephone Co., 85 Nev. 620, 622-23, 460 P.2d 835, 836 (1969). This represents another reason why it was/is proper for Appellant to request declaratory relief to examine the legislative scheme for NRS 318 to determine what specific exactions a GID may impose, as well as what expenditures may be permissibly made. Where the specific grant to raise revenue is missing, the Court cannot imply one.

B. NRS 318 DOES NOT ALLOW IVGID TO RAISE REVENUES BY CREATING "TAXES" MASQUERADING AS "FEES".

Nowhere in NRS 318 is IVGID allowed to levy/collect a uniform, special tax against property, let alone residential "dwelling units" (§§2.1 and 2.2 at App.5/6:768). Dillon's Rule (AOB:1, n.15) expressly prohibits it. Yet for all of the reasons stated in Appellant's Motion for Summary Judgment and at AOB:28-38, that is exactly what IVGID has done¹³.

¹¹ Or here a resolution, its NRS 318 equivalent.

¹² The only taxes IVGID may legitimately levy against property are ad valorem (NRS 318.225).

¹³ Since filing, Appellant has discovered even more examples of IVGID impermissibly using the RFF/BFF as operating revenue in funds other than the general fund, and other than as a traditional "standby service charge." For this Court's purposes, it suffices that IVGID has never denied this assertion, nor presented contradictory evidence.

C. **BASED UPON THE PRINCIPLES OF CLEAN WATER COALITION, THE RFF/BFF REPRESENT TAXES AND NOT FEES**

To determine whether the RFF/BFF are "fees," as IVGID contends, one must examine the following principles gleaned from Clean Water:

Political subdivisions are not bound by statutes that violate a specific constitutional limitation (Id., 127 Nev. at 309-10);

The nature of a tax or charge a law imposes is not determined by the label assigned but rather, its operating incidences (Id., 127 Nev. at 315; AOB:28-29);

A tax is compulsory. It entitles the taxpayer to receive nothing except governmental rights enjoyed by all citizens (AOB:33). A user fee is voluntarily incurred. It applies to a specific charge for the use of publicly provided services not enjoyed by all citizens (Id., 127 Nev. at 314-15; AOB:35-36);

An exaction for the purpose of generating revenue is a tax (Id., AOB:35-36). Even where it exhibits the "features" of a fee, where its "true purpose" is to raise revenue to finance expenditures benefitting an entire political subdivision (or here, the world's tourists), it is clothed with indicia of a tax rather than being a regulatory measure (Id., 127 Nev. at 315-17; AOB:35-36);

When the question is whether a local or special law is permissible

because a general law cannot be made applicable, courts look to whether an emergency exists and a general law cannot be applied (Id., 127 Nev. at 319-20; AOB:37-38).

Applying these basic principles to Appellant's motion for summary judgment (App.5/6:758-759), IVGID failed to offer evidence of triable issues (AOB:28-38) addressing any of these principles. As a matter of law, the RFF/BFF constitute involuntary taxes, not voluntary service charges.

Insofar as IVGID's justification for assessing the RFF/BFF based upon "emergency," the evidence is uncontroverted here there is none. As IVGID freely admits (RAB:36:15-18), it has been assessing these "fees" for "more than half (a) century." It therefore cannot credibly claim, nor does it, that the RFF/BFF are assessed to retire previous special assessments. Whatever special assessments might have existed in the past have long since been retired; and, NRS 318.197(1) expressly prohibits use of "fees" for special assessment purposes.

Addressing procedural deficiencies insofar as 2010-12 RFF/BFF enabling resolutions are concerned (AOB:38-39), IVGID failed to proffer any evidence or arguments other than "need."

Not only does Appellant's complaint state claims for relief in this regard, but because of the absence of triable issues, remand should not be for Judge Flanagan

to determine whether the RFF/BFF are illegal taxes. Instead, because the facts are not in dispute, this Court should declare their invalidity and instruct the district court to enter judgment, as it did in Schwartz v. Lopez, 382 P.3d at 892, and apply ancillary relief in conformity therewith.

V. **AS A SUCCESSOR/ASSIGNEE OF THE BEACH DEED'S USE EASEMENT/COVENANTS, APPELLANT HAS STANDING**

IVGID convinced Judge Flanagan to dismiss this claim on the basis of standing; that is, any person entitled to enforce the beach deed's covenants must join 7,800+ other Incline Village property/residential "dwelling unit" owners with beach access as NRCP 19(a) indispensable parties (AOB:55). This was wrong.

The basic principle of law concerning joinder, especially insofar as this deed is concerned, is set forth in Wright v. IVGID, *supra*, (AOB:58-59). Only if the relief sought can adversely affect other property owners' rights as contained in the beach deed itself, are they necessary parties to the extent the instant litigation cannot adequately protect their interests. But where Appellant's position adequately protects their interests, they are not necessary parties. Id., 597 F.Supp.2d at 1206-08.

Generally, covenants running with the land are enforceable by any owner of property. Stuttering Foundation, Inc. v. Glynn County, ___ S.E.2d ___, 2017 WL2623872 *5 (Ga. 2017). Any person entitled to the covenant's benefit has

standing re: enforcement. North Bay Avalon, LLP v. Speedway, LLC, 797 S.E.2d 510, 512 (Ga.App. 2107); Mosley v. Arnold, 486 S.W.3d 656, 660 (Tex.App. 2016).

Moreover, since this beach deed represents a contract (App.5/6:763:20-23) where property owners are "intended-third party beneficiaries" (Wright, 597 F.Supp.2d at 1205), any interested taxpaying-citizen has standing (Goldwater, 558 P.2d at 533).

The question of whether IVGID is violating the beach deed's covenants depends upon the clear language of the covenants themselves. They must be narrowly construed. This Court cannot imply missing language, and extrinsic evidence becomes irrelevant (Cumel v. Copperleaf Homeowners Association, 393 P.3d 1279, 1290 (Wyo. 2017) [covenant granting easement of unrestricted access to public lands to plaintiff except for federal lands-extrinsic evidence irrelevant]; Accord: Lake at Twelve Oaks Home Association, Inc. v. Houseman, 488 S.W.3d 190, 196 (Mo.App. 2016). Moreover, where the covenant's language is ambiguous, it is construed against its drafter. Avery v. Medina, 94 A.3d 1241, 1247 (Conn.App. 2014).

Rather than "recreation...only...and for such other purposes as...expressly authorized" therein (App.5/6:761:28-762:7), IVGID asserts the beach deed allows

it to impose "reasonable rules, regulations and controls upon...use of said easement...to effectuate the purposes (t)herein mentioned" (App.5/6:762:16-19). In opposition to IVGID's motion for summary judgment (App.14:2989:4-25)

Appellant testified:

This power conflicts with the beach deed's use restrictions (App.10:1951:1-5);

IVGID regularly grants access to unauthorized persons (App.14:2885:10-2929:2), including anyone exercising First Amendment rights (App.14:2922:20-2923:10), and anyone else for approximately 68% of the year (App.14:2890:19-20);

IVGID regularly uses the beaches for commercial "for profit" and philanthropic purposes (App.14:2915:13-2918:7);

IVGID pledges the beaches as security to guarantee repayment of general obligation bonds issued to improve facilities other than the beaches (App.14:2910:9-14);

IVGID's "bare" ownership as property owners' beach steward was never intended to last forever (App.10:1951:4-10);

The reasons why IVGID, rather than a property homeowners' association, acquired the beaches, no longer exist (App.14:2889:10-21);

More than 60% of property/residential "dwelling unit" owners with beach access have no voice because they are disenfranchised because of IVGID's voting scheme (App.14:2892:20-2897:7, 14:2898:2-10);

The BFF is not a legitimate standby service charge, for the same reasons the RFF isn't (App.14:2911:19-21);

NRS 318.197(1) does not permit special "assessments;"

The BFF is the product of IVGID's misrepresentations that: the beaches would be public property (App.14:2878:6-8); and, their costs of acquisition/operation would be paid with ad valorem tax revenue (App.14:2877:26-2878:4, 14:2881:3-2882:14, 14:2888:2-2889:9);

The BFF is the product of IVGID's breach of a March 7, 1968 settlement agreement (App.14:2878:20-2880:2, 14:2902:23-2903:13);

IVGID assesses residential "dwelling units" rather than just parcels as NRS 318.201(1) and (9) instruct (App.14:2885:17-2886:1);

The BFF pays more than simply the costs IVGID incurs to operate the beaches (App.14:2903:25-2907:20, 14:2910:15-2914:14); and,

Since the beaches are private property (App.14:2891:22-2892:14), NRS 318.015(2) prohibits the BFF as "a method for financing the costs" of their development.

If Appellant is correct insofar as these allegations are concerned, the result will benefit all 7,800+ property/residential "dwelling unit" owners meaning that although "interested," their compulsory joinder is unnecessary.

Because this cause of action was dismissed on improper standing/joinder grounds (App.16:3538:2-3540:27), all this Court can really hold is that it states a claim for relief under NRCP 8(a), and remand accordingly.

VI. THE COURT SHOULD DECLARE THE STANDARD OF JUDICIAL REVIEW FOR THE SETTING OF ANY UTILITY RATE BY AN AGENCY OTHER THAN THE PUBLIC UTILITIES COMMISSION ("NPUC") TO BE THE SAME AS THAT OF THE NPUC: FAIR, JUST AND REASONABLE. FURTHER, THE COURT SHOULD DECLARE THAT THE RECORDS UPON WHICH IVGID SETS UTILITY RATES ARE PUBLIC RECORDS AND THUS MUST BE DISCLOSED TO ANY USER UNLESS CONFIDENTIAL OR THEY CANNOT BE APPROPRIATELY REDACTED

This issue poses a number of questions of first impression¹⁴.

The first is the standard of judicial review. IVGID contends nothing more than "substantial evidence," meaning rules applying to "public hearings" and the NPUC do not apply. Hypothetically, goes the argument, IVGID can set unjust and unreasonable rates and as long as there is some evidence in support, they are unattackable.

Respectfully, it is inconceivable the Legislature would have intended less

¹⁴ One those "first impression issues" cannot relate to standing. Any person who has protested proposed water/sewer rates may commence an action to set aside the resolution establishing those rates [NRS 318.199(6)].

rights to persons living in quasi-municipalities that set water/sewer rates than a public utility subject to NPUC regulation.

NRS 704.040 and 704.660 mandate that the charges set by the NPUC must be just and reasonable. If not, they are unlawful.

Although NRS 704.020(2)(a) exempts municipalities, towns or villages from NPUC supervision, regulation and control of their public utilities, in defining "public utility," GIDs that furnish public water/sewer services are not exempted (NRS 704.021). Thus, any public utility which furnishes, for compensation, any water for domestic purposes shall furnish each city, town, village or hamlet it serves with a reasonably adequate supply of water at reasonable rates [NRS 704.660(1)]. This means that even if the NPUC does not set IVGID's rates, they must be set according to NPUC procedures.

This position is consistent with caselaw. A municipally-owned utility system, although excluded from regulation, is still required to serve its customers without unreasonable discrimination in its rates/services. Inland Real Estate Corp. v. Village of Palentine, 496 N.E.2d 998, 1002 (Ill.App. 1986). While utility rate making powers may be delegated to a (quasi-)municipality, ultimately they are subject to legislative control, (City of Logansport v. Public Service Commission, 177 N.E. 249, 256 (Ind. 1931)), and the standard of "reasonableness" is still

mandated. (City of Novi v. City of Detroit, 446 N.W.2d 118, 120-21 (Mich. 1989)).

This is all consistent with the main United States Supreme Court case on this point, Springfield Gas & Electric Company v. City of Springfield, 257 U.S. 66, 70-71, 42 S.Ct. 24 (1921). Although a municipal corporation is permitted to go into the public utility business, it is only on the theory public welfare will thereby be served (AOB:44). Thus the standard for their rates is fixed by the legislature.

Accordingly, a "substantial evidence" standard is the incorrect standard. The proper standard is "just and reasonable" per NRS 704.040, 704.660 (AOB:47-48).

But the next issue for purposes of this case is even more significant.

NRS 318.199(2)-(5) mandate public hearings whenever sewer/ water rates are increased. They allow all users a reasonable opportunity to submit data, views or arguments. "A reasonable opportunity to submit data, views or arguments" should include the ability to examine data, views or arguments in support, and the ability to challenge (cross-examine) them. And since NRS 704.660(4) declares proceedings before the NPUC must be conducted pursuant to NRS 703.320-703.370, and NRS 703.330 cross-references NRS 703.196, this is further evidence a GID must offer the opportunity to examine financial (AOB:77), attorney's fee (AOB:82-83), utility fund expense (AOB:82) and interfund transfer (AOB:83)

records pertaining to utility rates, pursuant to NRS 703.196 and 239.010.

Because the purpose of the Public Records Act ("NPR") is to ensure accountability by facilitating public access to vital information regarding governmental activities (NRS 239.001), the public agency bears the burden of establishing privilege based on confidentiality. DR Partners v. Board of County Commissioners, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000); Florida Power & Light Co. v. Florida Public Service Commission, 31 So.3d 860, 866 (Fla.App. 2010). Thus upon Appellant's NPR requests, to withhold them IVGID would have had to prove the documents contained confidential information. But even then, the remedy would call for producing the records with the confidential portions redacted [NRS 239.010(3)].

Here, IVGID turned over nothing. It did nothing to assert confidential information was contained in these sought-after records. And consequently, it did nothing to attempt to redact anything that arguably could have been confidential.

The remedy of reversal is in order. IVGID's resolutions setting the subject rates must be set aside because of IVGID's failure to provide public hearings (AOB:41-46), and to establish its increased water/sewer rates were just, reasonable, non-discriminatory and non-preferential (AOB:47-48).

///

VII. IVGID SHOULD BE COMPELLED TO TURN OVER ALL REQUESTED PUBLIC RECORDS ABSENT SATISFYING ITS BURDEN OF DEMONSTRATING CONFIDENTIALITY NOT CAPABLE OF REDACTION

NRS 239.0107(1) Non-Compliance: IVGID asserts its responses to public records requests "complied with Nevada law" (RAB:74:16). The uncontroverted facts demonstrate otherwise. Instead of responding as NRS 239.0107(1) instructs, IVGID's Public Records Officer ("PRO"):

Made subjective determinations of what records were public (AOB:75-80) [the records "you requested...are not existing public documents" (App.24:5587, 5591, 5595, 5607-5608)] after admitting "practically everything...we have...except things that are specifically confidential or privileged" (RT:156:2-7);

Provided "answers" to requests to examine records (App.24:5501-5502, 5506, 5513-5514), rather than producing the records themselves (App.24:5512);

Offered selective examination of records she decided to produce rather than all the records requested (App.24:5500-5001, 5506-5509, 5510-5511, 5513-5514, 5612-5614); and,

Outright or *de facto* refused to produce requested records (App.24:5558-5567, 5615-5620).

Moreover, although IVGID argues all requested records were turned over (RAB:74:16-20), this assertion is belied by the 24 exhibits (e-mails) admitted into evidence (App.24:5500-5622). Even the most cursory examination of "back and forth" communications demonstrate the PRO's responses were misleading at best.

NRS 239.001(4) Non-Compliance: Instead of allowing "access to...books and records (pertaining) to (IVGID's) provision of" commercial, for profit, business enterprise services (App.24:5553, 5590-5595), as if provided by private entities, IVGID's PRO outright denied access (AOB:79-80).

NRS 239.010(4)(a) Non-Compliance: Instead of allowing "public record(s) to be examined)...in any medium in which (they are)...readily available," IVGID's PRO denied access ["I would be happy to provide...the report that goes to the Board each year which lists...parcels...I suggest you direct (your request)...to Washoe County" (App.24:5572, AOB:80-82)].

NRS 239.010(1) and 239.0107(2) Non-Compliance: Instead of allowing public "book(s) or record(s)...to be examined during normal business hours," IVGID's PRO denied access ["I decline your request to come to our offices" (App.24:5518, 5520, AOB:80-81)].

NRS 239.121(4) Non-Compliance: Instead of retaining public records "for 5 years or more," IVGID staff destroyed them (AOB:80, App.24:5514); a crime

(NRS 239.300).

In addition to IVGID's non-compliance with the NPRA, its arguments, at their core, fail to address the following issues (AOB:73), all of which point to clear error:

IVGID's Failure to Satisfy its Burden [NRS 239.0113(2)] of Proving: the public interest in nondisclosure clearly outweighed its interest in access [PERS v. Reno Newspapers, Inc., 129 Nev.Ad.Op. 88, 313 P.3d 221, 223-24 (2013)]; even before any in camera review [Reno Newspapers, Inc. v. Gibbons, 127 Nev. 873, 882-83, 266 P.3d 623, 629 (2011)] of IVGID's claimed "exemption(s), exception(s) or balancing of interests" (NRS 239.001(3); PERS, 313 P.3d at 223-24);

Requiring Appellant to Justify his Requests: The Freedom of Information Act ("FOIA") does not require citizens to explain their reasons for examining public records [Cameranesi v. United States Department of Defense, 856 F.3d 626, 637, 640 (9th Cir. 2017) citing National Archives & Records Administration v. Fabish, 541 U.S. 157, 172 (2004) and United States Department of Defense v. Federal Labor Relations Authority, 510 U.S. 487, 496 (1994)¹⁵].

Confidentiality: Notwithstanding NRS 239.0107(d)(1) requires claims of

¹⁵ Public Records Acts modeled after FOIA, such as NRS 239, are in accord. See: Castorina v. De Blasio, ___ N.Y.Supp.3d ___, 2017 WL1331602 *12 (N.Y.Sup. 2017); Office of the District Attorney of Philadelphia v. Bagwell, 155 A.3d 1119, 1135 (Pa.Cmwlth. 2017).

confidentiality to be asserted within five business days of a requester's request, here the PRO initially made no assertion whatsoever of confidentiality concerning the: CJ Johnson severance agreement (App.24:5585, Item 13), electronic list of parcel owners (App.24:5585, Item 14), Hyatt Sports Shop sales records (App.24:5595), and attorney Brooks' memoranda (App.24:5585, Items 5, 7-8, 10-11).

Only after being pressed as to why these records were not "public," did the PRO assert "confidentiality," at least concerning: IVGID's electronic list of parcel owners (App.24:5583-5584, RT.146:1-148:8) and, Hyatt Sports Shop sales records (App.24:5595). Although the PRO subsequently asserted "confidentiality" concerning the CJ Johnson severance agreement (App.20:4233:5-4234:17, 24:5582) and attorney Brooks' memoranda (App.24:5582-5583), she failed to "cit(e a)...specific statute or other legal authority that ma(d)e th(os)e record(s)...confidential" as NRS 239.0107(d)(2) mandates (AOB:77-82 [App.24:5574, 5577, 5587, NRS 239.0107(d)(2)]; and, disregarding her pre-litigation duty to log each record withheld as well as reasons for non-disclosure (Gibbons).

For all of these reasons, Appellant submits IVGID has waived any right to object based upon "confidentiality." See: Wardleigh v. Second Judicial District,

111 Nev 345, 354-55, 891 P.2d 1180, 1186 (1995); DeRemer v. Anderson, 41 Nev. 302-03, 169 P.737, 741-42 (1918).

Only at trial did IVGID assert its bases for "confidentiality" insofar as the: CJ Johnson severance agreement, it was a personnel record RAB:76, (App.20:4233:5-4234:17) rather than "government generated record" created at taxpayers' expense (Nev. Policy Research);

Electronic list of parcel owners (RT.146:1-148:8, RAB:80) which "is a public record" (Nev. Policy Research)¹⁶;

Hyatt Sports Shop sales records (RT.154:4-157:8, RAB:78),¹⁷ and

Attorney Brooks memoranda [attorney-client privilege (App.20:4232:13-4233:4)]¹⁸].

Assuming arguendo each of these records were confidential, the district

¹⁶ IVGID failed to satisfy its burden of offering any evidence those e-mail addresses were "obtained" for "the purpose of or in the course of communicating with" IVGID [NRS 239B.040(1)(a)].

¹⁷ IVGID failed to satisfy its burden of offering any evidence that information contained therein was provided for the purpose of: "registering with or applying...for...use of any recreational facility (IVGID)...offers for use through the acceptance of reservations;" or, "registering...enrolling...or applying...for participation in an instructional or recreational activity or event" (NRS 239.0105, RAB:77-80). Even if it had, such records would not be confidential if these same activities were offered by private entities on IVGID's behalf [NRS 239.001(4)].

¹⁸ IVGID failed to satisfy its burden of offering any evidence the memoranda were intended to be confidential (AOB:79)].

court failed to compel the PRO to "redact, delete, conceal or separate...confidential information from (that)...not otherwise confidential" (AOB:77-82) as NRS 239.010(3) mandates.

Because here all of these principles were disregarded, the only course of action this Court can take is to instruct, reverse and remand.

CONCLUSION

This appeal raises a number of important-indeed, profound-legal issues, not only in terms of standing, private right of action, and real party in interest, but insofar as how a GID may not finance itself, procedures for setting aside water/sewer rate resolutions, and handling public record requests. This case is a far cry from "Aaron Katz, the 'Manchurian litigator.'"

CERTIFICATE OF COMPLIANCE

1. I, Richard F. Cornell, Esq., certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using WordPerfect X8 Legal Version in 14 point Times New Roman font.

2. I further certify that this brief complies with the page-or-type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by

NRAP 32 (a)(7)(C) it is proportionately spaced, has a typeface of 14 points or more and contains 6872 words.

3. Finally, I hereby certify that I have read this Appellant's Reply Brief and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the Nevada Rules of Appellate Procedure.

Dated this 21st day of September, 2017.

Respectfully submitted,
LAW OFFICES OF RICHARD F. CORNELL
150 Ridge Street, Second Floor
Reno, NV 89501

By: /s/ Richard F. Cornell
Richard F. Cornell

CERTIFICATE OF SERVICE

The undersigned certifies that she is an employee of the Law Office of Richard F. Cornell and that on this date served a true and correct copy of Appellant's Reply Brief by way of the Court's Eflex filing system upon:

Thomas Beko, Esq.

Dated this 21st day of September, 2017.

/s/ Tuesday Lynch

Tuesday Lynch

**WRITTEN STATEMENT TO BE ATTACHED TO AND MADE A PART OF THE WRITTEN
MINUTES OF THE IVGID BOARD'S REGULAR OCTOBER 25, 2017 MEETING –
AGENDA ITEM C – PUBLIC COMMENTS – OFFER TO PLEDGE REAL PROPERTY
AS SECURITY FOR IVGID'S MONEY JUDGMENT TO STAY ENFORCEMENT
UNTIL FINAL RESOLUTION OF PENDING APPEALS**

Prologue: At the IVGID Board's regular August 22, 2017 meeting, Agenda Item F(11), staff described that item as review, discuss and possibly give direction concerning Policy 3.1.0.06(g)¹. But that's *not* what the item was about. Rather, it was *really about saving face*. The very same thing as agenda items F(10) [IVGID's alleged settlement with FlashVote (according to Kevin Lyons there is no settlement)], F(12) [IVGID's policy in relation to Susan Herron's latest denials of public record requests] and F(14) [IVGID's public records retention policy and staff's destruction of records allegedly in conflict with that policy] are all about. This subject is being played out in public and in minute detail because more than a year ago Trustee Horan told me that the Board has been instructed to engage in no conversations whatsoever with me. In fact you will likely discover that most IVGID employees have been similarly instructed.

Why is this written statement being submitted two months after the August 22, 2017 meeting? Because it was timely submitted on August 22, 2017 by Frank Wright as well as my wife. But the Board refused to accept it attach it to the written minutes of that Board meeting. Notwithstanding I will be filing an Open Meeting law ("OML") complaint with the Attorney General, I am presenting a duplicate copy and asking it be attached to the written minutes of this meeting so the public can learn the truth pertaining to this agenda item.

Introduction: On July 15, 2016 IVGID obtained an attorney's fee and cost judgment against me for \$229,392.75. The judgment is currently on appeal in Nevada Supreme Court case no. 71493. Notwithstanding attorney Reese told the IVGID Board a year ago it would have to decide whether to enforce the judgment pending the outcome of my appeal, the IVGID Board has never addressed that issue at a public meeting called for that purpose. Nor until recently has IVGID's attorney taken action to enforce the judgment. But recently that has all changed. IVGID's attorneys have initiated discovery to inquire into my personal assets, and it has obtained an order requiring me to appear at a debtor's examination to answer questions regarding those assets.

In response, I have submitted three offers to resolve the issue of judgment enforcement pending the outcome of my appeal. Expressly I have not submitted offers to globally settle *all* outstanding matters including my appeals because *I am not willing nor am I required to abandon my appeals*. But this hasn't been good enough for IVGID's attorney, Jason Guinasso, or our GM. According to them, unless I am willing to withdraw all of my claims, on appeal or otherwise [what Mr. Guinasso

¹ See pages 439-446 of the packet of materials prepared by staff in anticipation of the Board's regular August 22, 2017 meeting [<https://www.yourtahoeplace.com/uploads/pdf-ivgid/0822-small.pdf> ("the 8/22/2017 Board packet")].

labels "a reasonable final settlement to this claim" which includes "withdraw(al of)...his appeal as part of his offer"], they are neither interested in resolving the issue of judgment enforcement pending the outcome of my appeal, nor passing on my offers to the IVGID so it can resolve that issue. And that's the purpose of this written statement.

Comm'n. on Ethics of Nev. v. Hansen: 133 Nev. Adv. Op. 39, 396 P.3d 807 (2017) instructs that the IVGID Board *must* take action on matters such as these at a public meeting agendized for this purpose² whenever such matters involve the expenditure of public monies.

Nevada Rule 1.4(a)(1) of Professional Conduct³: states that: "A lawyer *shall*: Promptly inform the client of *any decision or circumstance* with respect to which the client's informed consent is required by these Rules." A lawyer's violation of this rule represents professional misconduct [Rule 8.4(a)].

Mr. Guinasso's Admission: Given Mr. Guinasso admits⁴ he has hidden the particulars of my three offers from his client, the IVGID Board, serious questions have arisen insofar as IVGID's staff's *ultra vires* acts, and **who it is who really administers IVGID.**

My First Offer: was submitted orally, nearly a year ago, by my attorney, Richard Cornell. That offer was that I would begin installment payments of 100% of the judgment over a five year term in exchange for a satisfaction of judgment with the *proviso* IVGID would repay that amounts to the extent they were reversed on appeal, and if it did not, I would have a judgment against IVGID which if not satisfied within 15 days of reversal, would permit me to recover my monies.

IVGID's Rejection: Notwithstanding I believe this offer was never presented to the IVGID Board for its determination, let alone at a public meeting, Mr. Beko informed my attorney that "his client" rejected that offer.

My Second Offer: was submitted on August 2, 2017, and it offered to pay 100% of the judgment in exchange for a satisfaction of judgment with the *proviso* IVGID repay that amount to the extent reversed on appeal, and if it did not, I would have a judgment against IVGID which if not satisfied within 15 days of reversal, would permit me to recover my monies⁵.

² Anyone who wants to read the opinion for him/herself may go to <http://law.justia.com/cases/nevada/supreme-court/2017/69100.html>.

³ <https://www.leg.state.nv.us/courtrules/RPC.html>.

⁴ See pages 439-466 of the packet of materials prepared by staff in anticipation of this August 22, 2017 meeting [the "8/22/2017 Board packet (https://www.yourtahoeplace.com/uploads/pdf-ivgid/General_Business_Item_F.11._-_Policy_3.1.0_and_Katz.pdf)].

⁵ Given I doubt the Board has ever seen this letter, a copy is attached as Exhibit "A" to this written statement.

IVGID's Rejection: Notwithstanding Mr. Guinasso now admits this offer was never presented to the IVGID Board for its determination, let alone at a public meeting, on August 3, 2017 Mr. Beko acknowledged receipt of my August 2, 2017 offer, and on August 8, 2017 he informed my attorney that "his client" rejected it⁶.

My Third Offer: Once I learned that IVGID was not interest in satisfaction of the judgment, on August 8, 2017 I submitted a third offer to resolve the issue of judgment enforcement pending the outcome of my appeal. This offer proposed security for IVGID's judgment; a deed of trust against a Reno property owned by my living trust having a value in excess of \$320,000⁷. This proposal was made in accord with *Nelson v. Kerr*, 121 Nev. 832, 122 P.3d 1252 (2005)⁸ which states that in lieu of posting a cash bond to stay enforcement pending appeal, ample security may be given⁹.

IVGID's Rejection: Notwithstanding Mr. Guinasso now admits this offer was never presented to the IVGID Board for its determination, let alone at a public meeting, on August 10, 2017 Mr. Beko asked my attorney for "clarification" of my third offer¹⁰. That clarification was provided on August 16, 2017¹¹. Within an hour or less of my attorney's clarification, on August 16, 2017, Mr. Beko informed my attorney that "his client" rejected it¹².

Global Synopsis of All Three Rejections: In all three instances, I and others I know believe that *none* was presented to the IVGID Board (Mr. Guinasso now admits⁴ that was the case insofar as at least the last two offers are concerned) so the Board could make a decision. Nor were they discussed at a public meeting. Nor did the IVGID Board ever take formal action at a public meeting.

⁶ Given I doubt the Board has ever seen either of these letters, copies of both are attached as Exhibit "B" to this written statement.

⁷ Given I doubt the Board has ever seen this letter, a copy is attached as Exhibit "C" to this written statement.

⁸ <http://law.justia.com/cases/nevada/supreme-court/2006/45571-1.html>.

⁹ Although Mr. Guinasso recites reasons why a pledge of ample security is not adequate, he fails to reconcile those views with the *Nelson v. Kerr* case which contrary to his representation, does *not* "chang(e)...court rules to obtain a stay of execution on the judgment."

¹⁰ Given I doubt the Board has ever seen this letter, a copy is attached as Exhibit "D" to this written statement.

¹¹ Given I doubt the Board has ever seen this letter, a copy is attached as Exhibit "E" to this written statement.

¹² Given I doubt the Board has ever seen this letter, a copy is attached as Exhibit "F" to this written statement.

IVGID Staff's Alleged Justification: How does IVGID staff justify its regressions now that the foregoing facts have come to light? With this agenda item which suggests the IVGID Board merely "review, discuss, and possibly give direction on Policy 3.1.0.6(g) [addressing] Rules of Proceedings, Claims" because the GM and attorney Guinasso allegedly had the power to reject all three of these offers without sharing them with the IVGID Board and obtaining the Board's formal rejection⁴.

Mr. Guinasso's Representations as to the Particulars of My Three Previous Offers Are False: In support of this agenda item Mr. Guinasso has prepared an August 16, 2017 memo³ which *wrongly* represents "Mr. Katz is offering a settlement of his lawsuits *and his appeals related thereto...*and that the IVGID Board of Trustees has been denied the opportunity to approve or reject Mr. Katz's alleged settlement offer(s)." Take a look at the offers themselves. You can clearly see for yourself that they do *not* propose what Mr. Guinasso represents they propose, and under no circumstances, are they *unreasonable*. This is part of the problem with relying upon hearsay from a source who: 1) has a bias against certain members of our community, including me, which colors his ability to render fair and impartial advice; and, 2) a history of not sharing the truth with the Board¹³.

Mr. Guinasso's Rejection of My Offers Was Unreasonable: In his memo⁴ Mr. Guinasso complains my offers were "unreasonable and self-serving." Let's examine his reasoning re: each:

Reason One: First he states I "did not agree to withdraw (my) appeal...Rather, (I) demanded that (I) receive cash...in the event that (my) appeals were successful in whole or in part."

Given my first and second offers proposed satisfying IVGID's outstanding judgment at 100 cents on the dollar, *why would I gratuitously offer to withdraw my appeals?* What was I "negotiating?" And if global settlement was something Mr. Guinasso wanted, *why didn't he engage in global settlement negotiations?* Given my first two offers were intended to accomplish nothing more than satisfying IVGID's judgment (and thus eliminating the need for IVGID to expend further monies on discovery or enforcement efforts *intended to accomplish the same result*), Mr. Guinasso's characterization of my offers as being anything other than what they really, was *false*.

¹³ If anyone wants evidence of the untruths Mr. Guinasso has shared with the Board, just with respect to my litigation no less, he/she need only examine the written statement attached to the minutes of the Board's regular June 28, 2017 meeting (see pages 717-725 of the 8/22/2017 Board packet).

But here we have another example. In Mr. Guinasso's current memo⁴ he reminds the Board "that (the) discussions that occur during litigation non-meetings are confidential and protected by (the) attorney client privilege. As such, *Trustees are not permitted to disclose what is discussed during a litigation non-meeting without the consent of the Board as a whole.*" Mr. Guinasso has forgotten who is the attorney, who is the client, and in whose favor the privilege runs. Given *each* trustee is a client, it is his/her individual decision to waive any claim of privilege."

Moreover, and think about this for a moment: if I did not intend to withdraw my appeals (because I was not proposing that IVGID take anything less than the full amount of its judgment), IVGID's judgment were reversed on appeal, and I had paid part or all of the judgment pending the outcome, *why would it be unreasonable for me to demand return of the monies unnecessarily paid?*

When it became apparent Mr. Guinasso was not interested in satisfaction of the judgment, I submitted a third offer intended to accomplish nothing more than providing security in lieu of a cash bond pending resolution of my appeals. This proposal would protect IVGID in case the judgment were affirmed. Mr. Guinasso does not share that even if I were to "deposit the judgment amount owed... with the Clerk of the Court," as he suggests, *the money would not go to IVGID until resolution of my appeals*" even though "IVGID would likely be required to cease all efforts to enforce the judgment pending...conclusion of the appeal(s)." How is that so different than posting alternative security?

Reason Two: Next Mr. Guinasso states that he and the GM determined amongst *themselves*, allegedly based upon "the authority delegated to them under Policy 3.1.0, (that) Mr. Katz's opening offer(s)...w(ere) not reasonable (n)or worth bringing back to the Board for approval because (they)...ask(ed)...IVGID to waive fees and interest accrued to date plus any other fees and interests pending the outcome of the appeal(s)."

Initially, IVGID Policy 3.0.1 does *not* give Mr. Guinasso and the GM the authority Mr. Guinasso represents (a more thorough discussion of this topic appears below).

And given my first and second offers proposed satisfying IVGID's outstanding judgment at 100 cents on the dollar, given the judgment were being satisfied now rather than after both appeals had been finalized, exactly what additional interest or other fees would accrue that I asked be waived?

And although my second offer did not propose paying arguable interest accruing *post*-judgment (approximately \$10,000), shouldn't the Board rather than un-elected staff have been given the opportunity to make this decision? Shouldn't the Board have been given the option of stopping the unnecessary "churning" of attorney's fees by giving up an arguable \$10,000 interest claim in consideration of receiving its nearly \$230,000 judgment *now*?

Reason Three: Next Mr. Guinasso states that he and the GM determined amongst *themselves*, again allegedly based upon "the authority delegated to them under Policy 3.1.0, (that) Mr. Katz's...offer...to pledge (via deed of trust) real property...in Reno...and to allow the district to put a first priority lien¹⁴...was not reasonable and worth bringing back to the Board for approval."

¹⁴ Exactly what *Nelson v. Kerr, supra*, allows.

For IVGID to enforce its judgment against this same property, assuming *arguendo* it were able to do so given I claim it is exempt from execution under NRS 21.090(1)(cc)¹⁵, it would have to go through a costly and time consuming execution process resulting in even more attorney's fees and costs. And even if successful, the purchaser at an execution sale (likely IVGID) would be subject to the trust's statutory right of redemption for up to a year after the sale.

Given the attorneys for IVGID have already been paid nearly \$142,000 after my initial appeal, with who knows how much more to hereafter be billed, consider the wisdom of Mr. Guinasso's words "there is no reasonable basis for IVGID to ever waive its rights to recover all the attorney fees and costs that Mr. Katz has caused IVGID to incur." Does the Board feel there is no reasonable basis?

Reason Four: Next Mr. Guinasso states that he and the GM are opposed to any resolution of the issues identified above because "the subject of...negotiations between Mr. Katz and IVGID has *not* been the settlement of all outstanding appeals. (Since) to date, Mr. Katz has not made any offer to settle the lawsuits he has filed against the District and his appeals related thereto(, only) if the District Manager and...General Counsel are able to negotiate a reasonable final settlement to this claim...will...they...bring the *final negotiated settlement* to the Board...for consideration."

Putting aside the fact my offers were never intended to settle all outstanding matters including my pending appeals, if Mr. Guinasso and the GM are so obsessed with a global settlement, *what have they done to bring one about?* At every stage of the underlying lawsuit that gave rise to both appeals, IVGID's attorneys went out of their way to *never* engage in substantive settlement negotiations. Moreover since then they have offered *nothing*.

Reason Five: Next Mr. Guinasso reminds the Board that "the appeals IVGID has been required to respond to, at the community's expense, are (allegedly) solely the result of Mr. Katz's voluntary action and there is no reasonable basis for IVGID to ever waive its rights to recover all the attorney fees and costs that Mr. Katz has caused IVGID to incur." Before I respond to this statement, let's recap some of the salient facts:

1. According to IVGID, it incurred \$229,392.75 in attorney's fees and costs in the district court;
2. Those district court proceedings have resulted in *two* appeals; No. 70440 filed May 23, 2016 which appeals the district court's judgment in IVGID's favor, and No. 71493 filed October 14, 2016 which appeals the district court's attorney's fee and cost judgment;
3. On March 1, 2017 the Supreme Court issued an order suspending proceedings in the second appeal, pending the outcome of the first¹⁶;

¹⁵ <https://www.leg.state.nv.us/NRS/NRS-021.html#NRS021Sec090>.

¹⁶ Go to <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=40715> and press the link.

4. Although the Nevada Public Agency Insurance Pool ("the NPAIP") initially paid for/provided a defense to IVGID of the Katz litigation, in August of 2012 it denied coverage upon the grounds there was no coverage under its contract with IVGID¹⁷. IVGID appealed this decision and incurred in excess of \$30,000 not heretofore accounted for with attorney Glogovac. On November 5, 2012 the NPAIP rejected IVGID's appeal¹⁸. In other words, thereafter IVGID was self-insured insofar as its defense of the Katz litigation were concerned, notwithstanding *it withheld this material fact from the Board until May 18, 2016*¹⁹;

5. Thus when Mr. Guinasso asserts the costs IVGID has incurred "at the community's expense ...to respond to..the (subject) appeals...are *solely* the result of Mr. Katz's voluntary action," he does not speak the truth. Doesn't IVGID staff bearsome responsibility given the facts described in ¶4 above?

6. On May 18, 2016 Mr. Guinasso's law partner was asked how much my appeal was going to cost IVGID in attorney's fees. Mr. Reese's response was \$25,000-\$35,000²⁰;

7. Notwithstanding, after my filing of the first appeal, on August 31, 2016, IVGID's attorneys submitted an invoice for work taking place post-district court, totaling \$37,614.78;

8. On May 17, 2017, IVGID's attorneys submitted an invoice for their work preparing a proposed answering brief, totaling \$87,077.90;

9. On July 14, 2017, IVGID's attorneys submitted an invoice for additional work taking place post-district court, preparing their proposed answering brief, totaling another \$17,263.68; and,

10. The attorney's fees and costs IVGID will likely spend in the second appeal, cannot even be estimated.

In his memo⁴ Mr. Guinasso suggests that if IVGID prevails in either appeal, it will be able to recover its attorney's fees and costs incurred on appeal. Given Mr. Guinasso's track record for truthfulness is less than stellar, the Board's attention is directed to *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 971 P.2d 383 (1998)²¹. In this case a litigant was awarded attorney's fees and costs under NRS 18.010(2)(b) [the same basis for the judgment in IVGID's

¹⁷ See page 516 of the 8/22/2017 Board packet under "When Did Staff Know That the Defense Costs in the Katz Litigation Were No (Longer)...Being Paid by the NPAIP?"

¹⁸ See pages 680-82 of the 8/22/2017 Board packet.

¹⁹ See pages 516¹⁷ as well as 678-77 of the 8/22/2017 Board packet.

²⁰ See page 516 of the 8/22/2017 Board packet under "How Much Did Devon Reese Tell the Board and the Public This Appeal Would Cost?"

²¹ <http://caselaw.findlaw.com/nv-supreme-court/1237380.html>.

favor]. On appeal the creditor asked for attorney's fees and costs incurred on appeal because he had been awarded similar fees in district court. The Supreme Court disagreed. Unless the appeal itself is frivolous, the mere fact a prevailing creditor was awarded attorney's fees in district court under NRS 18.010(2)(b) *does not give him/her/it the right to receive them on appeal.*

Here there are two appeals. Given the first has nothing to do with the district court's NRS 18.010(2)(b) attorney's fee and cost award, assuming *arguendo* IVGID prevails (because if it doesn't there will be no claim for attorney's fees), there will be no right to claim attorney's fees on appeal unless the appeal itself was frivolous (which it is not).

Insofar as the second appeal is concerned, assuming *arguendo* IVGID prevails (because if it doesn't there will be no claim for attorney's fees either in the district court or on appeal), there will be no right to claim attorney's fees on appeal unless the appeal itself was frivolous.

Reason Six: Finally, in his memo⁴ Mr. Guinasso disingenuously states "Mr. Katz has had ample opportunity to simply deposit the judgment amount owed...with the Clerk of the Court." Who amongst you has \$230,000 or \$240,000 in cash sitting in your checking account(s) so you can "simply deposit" these sums with anyone, let alone the Clerk of the Court? This fact makes clear ***Mr. Guinasso and the GM have no interest in having the judgment satisfied.*** Because if they did, they would have presented all three offers to the IVGID Board.

So if Mr. Guinasso and the GM have no interest in having the judgment satisfied, exactly what is their interest? I submit there are two.

First, hasn't Mr. Guinasso demonstrated his self interest that he and his colleagues be able to "churn their fees" allegedly as a result of my lawsuit, providing an even greater pay day for themselves? Unlike the Board, they don't care about the costs to local property owners because they can always divert blame and that cost on to me.

Second, isn't their real intent to exact their "pound of flesh" against a citizen and local resident who has been critical of much of what IVGID does? Don't they want to use me as a "poster child" to send the subliminal message that if any citizen messes with IVGID or its staff in the future, he/she will realize the same fate as do I? Given this intent, it really doesn't matter how much IVGID staff spend (at local property owners' expense) on the Katz litigation; does it?

For all of these reasons, I submit Mr. Guinasso's reasoning for summarily rejecting my offers is disingenuous at best, and outright deceitful at worst.

As an Immediate Result of Mr. Guinasso's and the GM's Rejections of My Offers, IVGID Will Now Spend Even More Taxpayer Monies: because my attorney has been forced to file a motion for a stay and protective order, in part, because a credible offer to pledge security in lieu of a cash bond in accordance with *Nelson v. Kerr* has been rejected by un-elected persons other than the IVGID Board.

Is the IVGID Board So Insensitive it Insists on Treating One of its Residents and Local Property Owners as Mr. Guinasso and Staff Have Treated Me? Stated differently, if the shoe were on the other foot, is this the way you would want to be treated by your beloved IVGID?

I ask the Board to think back to the litigation IVGID staff initiated against the Diamond Peak Skier Services Building contractor guilty of having committed construction defects which caused flooding of the building's first floor. At some point staff engaged in settlement discussions with the contractor. When the contractor offered to pay 100% of IVGID's out of pocket costs, but not pay the \$50,000+ in attorney's fees and costs IVGID had incurred to prosecute litigation, our staff was in complete agreement. Even though this "diligence" cost local property owners over \$50,000 plus untold dozens if not hundreds of hours of uncompensated staff time, staff had no problem not only communicating but recommending settlement to the Board. What is different here?

Contrary to Their Representations, Mr. Guinasso's and the GM's Alleged Discretion to Resolve the Katz Litigation *Doesn't* Exist:

The IVGID Board's Power to Resolve Any of the Issues Presented: As I have shared with the Board and the public so many times before, NRS 318.175(1)²² gives the IVGID Board (rather than Mr. Guinasso and/or the GM) "the power (*as well as the duty*) to manage, control and supervise *all the business and affairs of the district.*" That power extends to this litigation.

IVGID's Power to Pass its Own Laws/Legislation: As I have shared with the Board and the public so many times before, IVGID is not a form of government²³ with general powers (to provide for the health, safety and welfare of its inhabitants). Rather, it is a limited form of government [a special district {NRS 308.020(2)²⁴}] which exists *only* to exercise those powers expressly "authorized in NRS 318.116" [NRS 318.055(4)(b)], as conferred by their County Boards²⁵, and "as supplemented by... sections of...chapter" 318 [NRS 318.077]. Because the Nevada Supreme Court has adopted *Dillon's Rule*²⁶ [*Ronnow v. City of Las Vegas*, 57 Nev. 332, 341-43, 65 P.2d 133 (1937)²⁷], IVGID exists to *only*

²² <https://www.leg.state.nv.us/NRS/NRS-318.html#NRS318Sec175>.

²³ Unlike counties, cities, and towns (NRS 244, 266, 269) granted police powers.

²⁴ <https://www.leg.state.nv.us/NRS/NRS-308.html#NRS308Sec020>.

²⁵ Nev. Const. Article 8, §8 declares the Legislature shall provide for/restrict the powers of general purpose governments. Since the Legislature has provided for GIDs, their powers are similarly restricted.

²⁶ Which declares "any fair, reasonable (or) substantial doubt concerning the existence of power is (to be) resolved...*against* the (municipal) corporation...(and) all acts beyond the scope of...powers granted are void" (*Ronnow, supra*, 57 Nev. 343).

²⁷ <https://www.courtlistener.com/opinion/3569018/ronnow-v-city-of-las-vegas/>.

exercise those expressly enumerated powers²⁸; *and none other* [A.G.O. 63-61, pp. 102-03 (August 12, 1963)²⁹]. This means that unless expressly granted, IVGID has no power to "legislate" or to pass laws masquerading as "Policies."

If a Power Isn't Expressly Conferred, It Does Not Exist: in accordance with *Dillon's Rule*²⁶, all rules or regulations "beyond the scope of...powers (expressly) granted *are void*." Given the basic powers a GID may exercise are set forth at NRS 318.116, a careful examination reveals that the power to make laws *does not exist*. Thus unless a rule or regulation is made under one or more express legislative grants expressly identified in NRS 318, it does not exist. In other words, and as *Dillon's Rule*²⁶ declares, "any fair, reasonable (or) substantial doubt concerning the existence of (regulatory) power is (to be) resolved...*against*" IVGID.

IVGID Policy 3.1.0.6(g) Claims: states as follows:

"The General Manager and General Counsel, and their designees, are authorized to negotiate on behalf of IVGID, *the settlement of all property damage, personal injury, or liability claims (against the District)*, unless otherwise ordered by the Board of Trustees. Final settlement of such claims may be authorized by the General Manager, provided the amount attributed to IVGID is less than the amount that must be approved by the Board for amounts per occurrence, including all sources of payment (insurance, risk reserve, operating funds, or working capital). For claims that exceed the amount, those must be approved by the Board, the General Manager may authorize and accept a tentative settlement, which shall not be final and binding upon IVGID, unless and until approved by the Board of Trustees."

I presume those of you who may be reading this written statement can comprehend the plain meaning of words put to paper. Therefore putting aside the question of whether IVGID can adopt policies with the force of law, let alone in conflict with *Comm'n. on Ethics of Nev. v. Hansen's* requirement that all matters involving the expenditure of public funds *must* be submitted to a local government's governing board for approval/rejection, did my first two offers to settle the subject attorney's fee/cost judgment in full represent "the settlement of (a)...property damage, personal injury or liability claim" made *against* the District? Of course not.

Did my third offer to merely secure the judgment pending the outcome of my appeals represent a "settlement of all...claims?" Of course not.

²⁸ Unlike counties, cities, and towns (NRS 244, 266, 269) granted police powers.

²⁹ http://ag.nv.gov/uploadedFiles/agnv.gov/Content/Publications/opinions/1963_AGO.pdf.

Therefore, how does this Policy apply? And if it doesn't apply, what authority did Mr. Guinasso and the GM have to withhold these offers from the Board, let alone to summarily reject them?

Given Mr. Guinasso and the GM Have *Not* Adhered to Board Policy 3.0.1, This Agenda Item is *Not* as Mr. Guinasso Has Framed it: Mr. Guinasso has labeled this agenda item "review, discuss and possibly give direction on Policy 3.1.0.06(g)...as it relates to the offer made by Aaron L. Katz...to pledge...real...property so as to stay the slated debtor's examination." In other words, whether "to modify the authority to negotiate settlements it has (allegedly) given to the General Manager and General Counsel under Policy 3.0.1." Given the problem is not with the policy itself, but rather, with Mr. Guinasso's and the GM's actions *not* in conformity therewith, there is little reason to give "direction...at this meeting (so)...revisions...(can be proposed) for the Board to (hereafter) consider and adopt at a subsequent meeting." In other words, perhaps now the Board sees why this agenda item is *really* about *saving face*.

What This Agenda Item is Really About, is a Diversion From the Fact Mr. Guinasso and the GM Have Impermissibly Hidden My Three Litigation Offers From the Board, and Summarily Rejected Them Without Authority: What the Board should really be considering, in my opinion, is what discipline to impose as a result of Mr. Guinasso's and the GM's impermissible acts, and against whom.

Notwithstanding, I Believe the Agenda Item is Worded Broadly Enough to Allow the Board to Approve My Offer to Pledge Security for the Judgment in Lieu of a Cash Bond: The question is whether my proposal to give security is sufficient to satisfy IVGID's money judgment should it not be reversed in full or in part on appeal? Here my living trust has proposed a highly desirable and salable Reno single family residence, with a fair market value in excess of \$320,000, and with no other liens or encumbrances thereagainst, to be secured by a deed of trust. If foreclosure is required because IVGID's money judgment is affirmed and I fail to satisfy it, it will be a simple, extra-judicial, relatively inexpensive, and final process.

In contrast, for IVGID to enforce its judgment against this same property, assuming *arguendo* it is even able to do so given I claim it is exempt from execution under NRS 21.090(1)(cc)³⁰, it would have to go through a costly and time consuming execution process. And even if successful, my trust would have the statutory right of redemption for up to a year after the sale.

Conclusion: Here the issues are twofold. First, it's *not* about paying the judgment pending the outcome of my appeals. It's about *securing* its payment. Given the magnitude of the judgment and the fact it is against a local resident who did nothing more than attempt to exercise his right as a citizen taxpayer to secure non-pecuniary judicial relief, why not permit him to secure it with something short of cash *unless your real motives are really to accomplish something different?*

³⁰ <https://www.leg.state.nv.us/NRS/NRS-021.html#NRS021Sec090>.

The second issue deals with Mr. Guinasso's and the GM's mis-use of the alleged authority to unilaterally reject offers such as the ones the subject of this written statement without bringing them to the IVGID Board for its acceptance/rejection as *Comm'n. on Ethics of Nev. v. Hansen* instructs. Given the Board has the authority to accept or reject offers such as these, and each member was elected to exercise that discretion, this series of episode shines light on one of the biggest problems we have here in Incline Village/Crystal Bay: ***exactly who is driving the bus?***

And You Wonder Why the RFF Which Has Financed This Colossal *Mis-Use* is Out of Control?
I've now provided more answers.

Respectfully, Aaron Katz (Your Community Watchdog Because No One Else Seems to be Watching).

EXHIBIT "A"

HARRIS LAW PRACTICE LLC
ATTORNEY AND COUNSELOR AT LAW
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(775) 786-7600
steve@harrislawreno.com

August 2, 2017

Via Email

Thomas Beko, Esq.
tbeko@etsreno.com

This letter, and all of its contents and attachments, is transmitted for settlement discussion purposes only. Accordingly, this letter and its contents are confidential and protected from discovery and disclosure pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Evidence, Federal Rules of Bankruptcy Procedure and/or Nevada Rules of Civil Procedure, and any and all other applicable rules, statutes or laws.

Re: Aaron Katz v. IVGID

Dear Tom:

I represent Aaron Katz with respect to negotiating with the Incline Village General Improvement District ("IVGID") resolution of the outstanding judgment that IVGID currently has in its possession against Aaron Katz, entered on July 15, 2016, pending resolution of the two (2) cases on appeals, which attorney's fees in the amount of \$226,466.80 and costs of \$2,925.95, total \$229,392.75. It is my understanding that IVGID has noticed a debtor's asset examination of Aaron Katz, has issued written interrogatories to Aaron Katz with respect to his personal assets and liabilities and has commenced formal execution process to levy on non-exempt assets that may belong to Aaron Katz.

In proposing a resolution of IVGID's judgment amount of \$229,392.75, I would offer payment of that amount to IVGID, in consideration of IVGID filing a satisfaction of judgment entered on July 15, 2016, and subject to the following conditions: The satisfaction would include any and all post-judgment interest, attorney's fees and costs that may have been incurred subsequent to the entry of judgment on July 15, 2016.

In the event the judgment entered on July 15, 2016, that is currently on appeal, is reversed or remanded by the Nevada Supreme Court, in whole or in part, IVGID would agree to repay the sum of \$229,392.75, or lesser sum as determined by the Nevada Supreme Court, to Aaron Katz within ten (10) business days from the entry of an order from the Nevada Supreme Court remanding or reversing IVGID's judgment. In the event that amount is not paid within ten (10) business days, then IVGID would execute a stipulation to confess judgment in writing for that amount and that Aaron Katz would be able to pursue all remedies available to him as a judgment creditor of IVGID.

Page 2
August 2, 2017

I believe the offer set forth herein above is a credible offer that seeks to resolve matters while the appeals on the two (2) judgments continue with the Nevada Supreme Court. I would request that pending IVGID board consideration of this settlement offer, that IVGID agrees not to pursue the judgment debtor examination of Aaron Katz, would not require answers to the written interrogatories to be submitted and would hold in abeyance any executions on its judgment. I look forward to a prompt response.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. R. Harris', written in a cursive style.

STEPHEN R. HARRIS, ESQ.

SRH/hb

cc: Aaron Katz via email

EXHIBIT "B"

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TBEKO@ETSRENO.COM

August 3, 2017

Stephen R. Harris, Esq.
Harris Law Practice, LLC
6151 Lakeside Drive, Suite 2100
Reno, NV 89511

Re: Aaron Katz

Dear Mr. Harris:

I am in receipt of your letter of August 2, 2017, and I've forwarded it on to my client for consideration. At this time, I have no authority to stop enforcement efforts on the judgment and I am in the process of preparing a motion for order to compel a response to my long-overdue discovery requests. As per my previous warnings to Mr. Katz and his counsel, this motion will seek a sanction award equal to all the costs incurred in pursuing the proper response. Those costs are already substantial and will increase even further. I would strongly recommend that they stop ignoring the requests and my efforts to seek compliance with the rules of civil procedure.

Sincerely,



THOMAS P. BEKO, ESQ.

TPB:dm

cc: Richard Cornell, Esq.

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1936 - 2007

TELEPHONE: 775.786.3930
FACSIMILE: 775.786.4160

TBEKO@ETSRENO.COM

THOMAS P. BEKO
JOHN A. ABERASTURI
JOHN C. BOYDEN
REBECCA BRUCH
BRENT L. RYMAN
ANDREA K. PRESSLER
PAUL M. BERTONE
ANN M. ALEXANDER
BRETT A. DIEFFENBACH

VIA Email communication and U.S. Mail

August 8, 2017

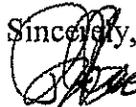
Stephen R. Harris, Esq.
Harris Law Practice, LLC
6151 Lakeside Drive, Suite 2100
Reno, NV 89511

Re: Aaron Katz

Dear Mr. Harris:

In follow up to your letter of August 2, 2017, I have spoken with my client regarding Mr. Katz's offer to pay a compromised amount on the outstanding judgment pending against him. The offer was rejected. If your client wishes to tender the amount of the judgment with accrued interest, that sum would total \$240,237.04.¹ If those funds are tendered, IVGID will certainly file and record a satisfaction of judgment. IVGID would further agree that in the event the Supreme Court reverses the underlying judgment, IVGID would return those funds to Mr. Katz thirty one days (31) after remittitur is entered by the Court, assuming IVGID has not filed any appeal from the Court's decision. This will afford IVGID an opportunity to consider any possible appeal.

Additionally, IVGID will not agree to stay proceedings to enforce the judgment. Should you wish to discuss this further, please feel free to contact me. Additionally, if Mr. Katz desires to tender any meaningful offer to fully resolve this case, I would be happy to pass on such an offer as well.

Sincerely,


THOMAS P. BEKO, ESQ.

TPB:dm
cc: Richard Cornell, Esq.

¹ That figure would increase by the amount of \$36.13 for every day which follows, at least until the interest rate changes at the end of 2017.

EXHIBIT "C"

HARRIS LAW PRACTICE LLC
ATTORNEY AND COUNSELOR AT LAW
STEPHEN R. HARRIS, ESQ.
6151 LAKESIDE DRIVE, SUITE 2100
RENO, NEVADA 89511
(775) 786-7600
steve@harrislawreno.com

August 10, 2017

Via Email

Thomas Beko, Esq.
tbeko@etsreno.com

This letter, and all of its contents and attachments, is transmitted for settlement discussion purposes only. Accordingly, this letter and its contents are confidential and protected from discovery and disclosure pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Evidence, Federal Rules of Bankruptcy Procedure and/or Nevada Rules of Civil Procedure, and any and all other applicable rules, statutes or laws.

Re: Aaron Katz v. IVGID

Dear Tom:

I recently communicated an offer in furtherance of compromise and settlement with respect to Aaron Katz and the July 15, 2016 judgment IVGID now has against him for approximately \$229,392.75. Your response was that "your client" (which Mr. Katz and others believe is the IVGID Board of Trustees rather than unelected staff) wants more.

As an alternative proposal for compromise and settlement of the judgment, rather than turning over money to IVGID right now, pending resolution of the two (2) appeals which are now pending, Mr. Katz would pledge a rental house he owns located at 1905 Cave Rock Rd., Reno, Nevada, worth approximately \$365,000, or more, with no encumbrances recorded against it, as security for satisfaction of the judgment in accordance with NRCP 62(d) and *Nelson v. Herr*, 123 Nev. 217 (2005). This real property collateral is more than sufficient to protect IVGID's interests with respect to its judgment. I would request that you formally present this offer in compromise and settlement to the IVGID Board, because Mr. Katz and others believe that the IVGID Board has never been asked to take action in a public meeting, as the recent Supreme Court case of *Commission on Ethics v. Hansen*, 133 Nev. Adv. Op. 39 (2017) appears to require, authorizing its attorneys to:

1. Enforce the judgment (notwithstanding a year ago Mr. Reese told the IVGID Board in a public meeting that this was something it would have to decide);
2. Reject Mr. Katz's offer of a year ago, transmitted to you by Mr. Cornell, that he would begin making good faith installment payments (rather than merely posting a bond) towards the judgment, as long as there was a mechanism in place to protect Mr. Katz should the judgment be reversed, in whole or in part; or

3. Reject Mr. Katz's offer I communicated to you in writing more than a week ago.

In the interim, I again would ask that you forbear any enforcement or post judgment discovery efforts for a short period of time while the parties negotiate a stipulation to serve as an alternative to a supersedeas bond. Given IVGID has done nothing to enforce its judgment in a year and ultimately, there is going to be a stay pending appeal of judgment satisfaction, one way or the other, I trust you agree there is little to be gained by pursuing unnecessary efforts which only create more legal work and expense to all involved to secure an appropriate court order which ultimately stays those efforts.

Very truly yours,


STEPHEN R. HARRIS, ESQ.

SRH/hb

cc: Aaron Katz via email

EXHIBIT "D"

 ERICKSON, THORPE &
SWAINSTON, LTD.

ATTORNEYS AT LAW

99 WEST ARROYO STREET
RENO, NEVADA 89509

MAILING ADDRESS:
P.O. BOX 3559, RENO, NEVADA 89505

WWW.ETSRENO.COM

OF COUNSEL

DONALD A. THORPE

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PAUL M. BERTONE
ANN M. ALEXANDER
BRETT A. DIEFFENBACH
CHARITY F. FELTS

VIA Email communication and U.S. Mail

August 10, 2017

Stephen R. Harris, Esq.
Harris Law Practice, LLC
6151 Lakeside Drive, Suite 2100
Reno, NV 89511

Re: Aaron Katz

Dear Mr. Harris:

I am in receipt of your letter of today's date and I will forward it to my client. However, there are a few clarifications that I need you to make.

First, please describe what you mean by a "pledge." Would Mr. Katz immediately deed the property to IVGID, or are you envisioning some sort of promise on his part that he would tender the property to IVGID at some later date and upon some undefined conditions? Although I do not know this for sure, I suspect that IVGID would be very hesitant to agree to any proposal that would require IVGID to rely upon Mr. Katz's performance of any promise. Second, is Mr. Katz offering to tender this property in satisfaction of the debt? In other words, is he agreeing to convey unencumbered title to the property in exchange for a release of the judgment, or is he envisioning a subsequent forced sale of the property, the proceeds of which would then be used to satisfy the judgment? Without knowing the specifics of what you are actually proposing, I simply cannot provide my client with any opinion on the advisability of accepting the offer.

I would note that in support of your offer you direct me to NRCP 62(d) which certainly provides a basis upon which a party may obtain a stay of execution of a judgment by posting a supersedeas bond. However, what you are proposing is vastly different than a supersedeas bond. When a supersedeas bond is posted, the insurer would simply make an immediate payment to IVGID upon the happening of a stated occurrence. In this case, it appears that you are suggesting that IVGID would have to take possession of a piece of rental property (evict the tenant) and then conduct a sale of the property in order to satisfy the outstanding judgment. There is certainly nothing within NRCP 62(d) which would support your position. Moreover, the case you cite me to, namely *Nelson v. Kerr*, 123 Nev. 217 (2007), is a case in which the plaintiff sought money damages for the non-disclosure of defects in a residential property. I see absolutely nothing within this decision that relates to the issues at hand. I certainly see nothing within the decision to support your current

argument. Would you kindly provide me further explanation of how this case would support a contention that IVGID should, or must, accept this "pledge" in lieu of a cash deposit or supersedeas bond?

Finally, your previous offer further required IVGID to waive its right to recover additional attorney's fees and costs on appeal. I assume that because there was no mention of that demand, Mr. Katz has now abandoned that condition. If my assumption is incorrect, please advise me of that fact.

Please clarify these points and I will tender this offer to IVGID. As to the remaining matters you noted in your letter, I will leave those to the discretion of IVGID's retained counsel. I have no authority to stay execution proceedings.

Sincerely,



THOMAS P. BEKO, ESQ.

TPB:dm

cc: Richard Cornell, Esq.

EXHIBIT "E"

HARRIS LAW PRACTICE LLC
ATTORNEY AND COUNSELOR AT LAW
STEPHEN R. HARRIS, ESQ.
6151 LAKESIDE DRIVE, SUITE 2100
RENO, NEVADA 89511
(775) 786-7600
steve@harrislawreno.com

August 16, 2017

Via Email

Thomas Beko, Esq.
tbeko@etsreno.com

This letter, and all of its contents and attachments, is transmitted for settlement discussion purposes only. Accordingly, this letter and its contents are confidential and protected from discovery and disclosure pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Evidence, Federal Rules of Bankruptcy Procedure and/or Nevada Rules of Civil Procedure, and any and all other applicable rules, statutes or laws.

Re: Aaron Katz v. IVGID

Dear Tom:

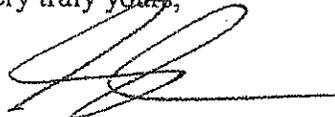
Following up on my letter sent to you in furtherance of my August 10, 2017 offer to stay enforcement of IVGID's \$229,392.75 judgment pending appeal in Nevada Supreme Court case no. 71493, and your responses to that letter of August 10, 2017 and August 14, 2017, I want to again state that IVGID shall receive a deed of trust recorded against the improved real property residence at 1905 Cave Rock Road, Reno, Nevada, in a first priority position. Mr. Katz believes that the current value of this property is close to \$325,000. In reviewing Zillow.com's valuation estimate, Zillow reports the subject residence having a value of \$322,565. Nevertheless, in order to lay to rest any questions of value, Mr. Katz offers to obtain a reputable broker opinion letter which attests to a value of at least \$320,000, and to provide it to you, no later than August 26, 2017. Such a valuation should more than sufficient to secure IVGID's judgment. I can also submit a draft of the deed of trust with language which will state that Mr. Katz's non-payment of the judgment, or part thereof, which is ultimately affirmed by the Nevada Supreme Court, if any, shall be the event of default. Assuming the IVGID Board approves this offer to stay enforcement pending appeal, a further condition will be that the IVGID Board approves release of the abstracted judgment above referenced you recorded on July 12, 2017, given this deed of trust will adequately secure the judgment amount until the pending appeal in the Nevada Supreme Court is decided.

I further request that Mr. Katz receive an open extension of time to provide answers to your outstanding post-judgment interrogatories, appear at your scheduled debtor's examination, or comply in any other manner with post-judgment discovery, while the IVGID Board considers approval of this stay re enforcement of the judgment, given approval renders the same moot. In case we are not able to negotiate a stay, this open extension of time can be revoked on fifteen (15) days written notice to Mr. Katz' counsel of record Richard Cornell.

Page 2
August 16, 2017

Finally, as you state in your email of August 14, 2017, in the event Mr. Katz fails to satisfy the subject judgment, to the extent not reversed in whole or in part, IVGID will be allowed to move forward with a foreclosure action for sale of the real property located at 1905 Cave Rock Road, Reno, Nevada, to recover the amount due on its judgment. I await your response.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. R. Harris', written over a horizontal line.

STEPHEN R. HARRIS, ESQ.

SRH/hb

cc: Aaron Katz via email

EXHIBIT "F"

 ERICKSON, THORPE &
SWAINSTON, LTD.

ATTORNEYS AT LAW

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CHARITY F. FELTS

VIA Email communication and U.S. Mail

August 16, 2017

Stephen R. Harris, Esq.
Harris Law Practice, LLC
6151 Lakeside Drive, Suite 2100
Reno, NV 89511

Re: Aaron Katz

Dear Mr. Harris:

I have conveyed your client's offer with your clarifications. IVGID, however, is not willing to agree to stay enforcement proceedings in exchange for a pledge (via deed of trust). As I explained, there is an enormous difference between having a deed of trust securing an indebtedness and a supersedeas bond. With a deed of trust, IVGID would be forced to foreclose upon the lien, conduct a foreclosure sale and all that is associated with that process. Moreover, as you are fully aware, such foreclosure proceedings are frequently complicated by intervening bankruptcy proceedings. With a supersedeas bond, IVGID need only present the Supreme Court decision to the insurer, following which time the judgment would be summarily paid. IVGID wants to end this litigation, or at least this aspect of the litigation, not buy itself into more. While you may be correct that Judge Flanagan would conclude that Mr. Katz's proposed pledge of the Reno property would provide sufficient security to IVGID, thereby justifying a stay of execution, it is my belief that he will find the security insufficient, especially given Mr. Katz's other assets. I think that Mr. Katz will first need to convince the Court that he lacks other assets needed to provide a cash deposit or obtain a supersedeas bond.

Nevertheless, as I indicated previously, IVGID will certainly stipulate to the entry of an order staying any enforcement proceedings if Mr. Katz does post a cash equivalent with the court. There will be no need for you to file a motion in that regard. Please let me know your thoughts.

Sincerely,



THOMAS P. BEKO, ESQ.

TPB:dm
cc: Richard Cornell, Esq.

Public Comment for the October 25, 2017 Board of Trustee Meeting to be included in next Board Packet

By Clifford F. Dobler

Re: Business Item F - Diamond Peak Ski Education Foundation Agreement

In the Memorandum under item III Background - the two sentences make no sense

Under item V - Financial Impact and Budget - states that the financial impact is minimal. This statement cannot be considered transparent.

Now we all desire transparency. It's talked about at every meeting and each Board and Staff member state they strive to be transparent.

Why Mr. Pinkerton, you're so transparent, I can almost see right through you.

I suggest that the parcel owners of this great town would love to know how much of a subsidy IVGID is providing to the Foundation.

After all, back in August 2015, Mr. Pinkerton stated in a Bonanza piece that resident golf rounds were subsidized by \$900,000 when compared to average non resident rates. I will use this same thought process.

So let's review the agreement

The agreement calls for eight races during the season. The IVGID website states an adult non resident daily rate for the 2017-2018 season is \$79 or \$89 an average of \$84

So here are the give aways

40 Photo ID Season Ski Passes for the coaches - (There are only 13 coaches)
 $\$289 \times 40 = \$11,569$

30 Race Day ski comp tickets for volunteers. $\$84 \times 30 \times 8 = \$20,160$

1 Ski comp ticket per 8 athletes of visiting team used by coaches. **Unknown amount.**

Foundation participants, parents and legal guardians that are not IVGID Picture Pass Holders may purchase season ski passes at the IVGID Picture Pass rate plus \$10 - **Unknown amount**

Discounted Daily Lift Tickets are available for participants and their parents. The Lift Ticket rate will be established by November 1 of each ski season by agreement between the Foundation and Diamond Peak. **This can be any rate.** The Foundation will sell the tickets keep 50% and Diamond Peak receives the other 50%. The example in the agreement suggests a rate of \$35 in which case IVGID would get \$17.50 for an average \$83 ticket. The example states the Foundation would sell 200 tickets per race. $\$84 \text{ less } \$17.50 = \$66.50 \times 200 \times 8 = \$106,400$

40 - 50% off food passes for the coaches. **NO LIMIT ON EACH PURCHASE.** Assume a purchase is \$25 so the discount would be \$12.50. $\$12.50 \times 40 \times 8 = \$4,000.$

THESE PASSES ARE NOT LIMITED TO RACE DAYS

Parking spaces 6 - **Unknown amount**

Combined, our citizens will be donating approximately \$142,000 to the Foundation. Is that amount minimal?. Lets here from the Trustees.

One trustee suggested these give aways are made up by food sales . Food has a net profit margin of about 20% after all costs and expenses so we would need to sell about \$700,000 of food at the races. Really

IVGID
Board of Trustee

Iljosa Dobler
995 Fairway Blvd.

Justification of extra space needed for new programs

Some members of the Board are still trying to justify added space needed for the Recreational center by suggesting 25 new programs. They fail to disclose that more than half of these programs already exist, or, are soon to be added by other agencies and non-profits at no cost to IVGID .

The county is in the process of doing renovations to the old library on Alder to house a new Senior/Community Center. It is scheduled to open mid January 2018. This will provide card playing areas, conversation areas, and exercise classes

The Elementary and Middle schools have after school programs and day care. Plans are to extend hours. Some are run by other non-profits and some by IVGID. It is safer for the children to remain at school than have them transported to another facility.

The Boys and Girls Club is expanding to Incline which will also address the care of our youth.

Tahoe Family Solutions provides counseling, homework help, language classes and summer camps.

St. Patrick's Church has a Friendship group like conversation café and a Day Care. They also helped Project MANA by providing space for their administration after they were evicted by Parasol.

Our Library offers reading programs and the Quilters club which meets monthly. Lifescapes meets first and 3rd Friday – Seniors are given an opportunity to write and share memories.

Tahoe Forest Hospital provides nutrition counseling and lectures on various health issues

Village Market has wine tasting every Thursday. This is a field I don't think IVGID has any business entering.

IVGID 10-25-17 Board of Trustees Meeting Public Comment

By: Margaret Martini – To Be Included With the Minutes of the Meeting

PARASOL is on the Agenda Again! The first General Business Item is a review and discussion of the supplement to the second legal opinion by Attorney Fogarty of Holland & Hart. However, Attorney Fogarty's Supplement is NOT in the Board Packet. In her first presentation a month ago, she had not received a Preliminary Title Report, ordered one, and indicated there were two additional exceptions to IVGID's property title. She also had some cleanup work on her initial opinion.

It is customary and perhaps mandatory for written material on a matter of this importance be included in the Board Packet in order to provide citizens with an opportunity to review and prepare any public comments they deem significant. Instead, the work product will be distributed at this meeting AFTER the public comment is completed. So no one can comprehensively review and analyze this new information –including the Trustees because they will have no idea of what is in the work product.

Chair Wong is in charge of the Board Agenda along with General Manager Pinkerton and our famed Attorney Guinasso. The District's pattern of concealing public records, ignoring our questions, comments and correspondence and now, further denying the public's right to provide input at public meetings –must come to an abrupt end.

Perhaps the solution to the denying of public rights makes this a great time for a recall.

Wong, Pinkerton and Guinasso have got to go!

Margaret Martini
Incline Village Resident

FOR ME: WHEN IT COMES TO TRASH IVGID IS NOT A GOOD NEIGHBOR .

I believe that if you have a problem with a neighbor you should first go and talk with them about it. Has that always worked ?, no. In some cases the need for an agency to step up or in the last case the need for law enforcement to step in ,is needed.

On June 30, 2017 I did not know that a good deal of my time defending my right for a peaceful place for me and my daughter to live ,would be put to a test. The persons that would start the test, that I did not know about, was IVGID , specifically my Mr. Murphy and Mr. Pomroy. On that day they did an enforcement by following up on a complaint of some mattresses being put out in front of a home with a sign on them "free". I had seen them there and they did not bother me at all. In fact I saw two people stop by and get two of them from the group.

I then later on saw people loading the mattresses in a truck and when I was leaving my home I stopped and told them that they could likely dump them at Waste Management ,for a small fee.

I at that point did not know IVGID had come by based on a complaint and sited the renter a fine of \$100 and made them also get a new garbage can . When I stopped by according to the renter they thought that I had been the one that turned them in. What took place after that there is no excuse for the the actions taken by the renter. I ended up having to file a Criminal Breach of Peace with the Sheriff's office at 3 am in the morning. I am happy to say that all is now taken care of and we as neighbors understand the truth. It has always been my position that the truth will always come out , yet this may take some time to happen. In this case it took over a month.

How is IVGID involved in all this? I never knew that putting out an item of value for a short period of time was a violation of illegal dumping. Attached to this letter is the Code from the Washoe County Health District. It is not illegal under that Code. So I guess that IVGID just made it illegal. Yet in all the public hearings we had I never heard that as an issue which would justify a \$100 fine. I think that this kind of no tolerance is going too far. This is for another time to discuss.

What is not for another time is the following: I asked Mr. Murphy and Mr. Pomroy to please let the neighbor know that I did not call in on the mattresses. The reply I got was this looked like a legal matter and I would have to make a request of public records. I did so and some three weeks later this is what I got. "There are no incoming call logs and I was told that it was a woman who telephoned about the mattresses". (see attached). Mr. Murphy and Mr. Pomroy refused to go to the home and let the renter know that I did not make the call. So this forced me and my daughter to have to live with the anger from the renter directed at us for over a month and go through a legal process with the court to be able to have a safe place to get the truth to the person who was fined and upset.

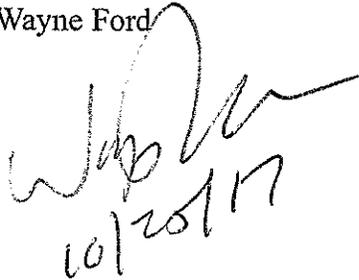
DO NOT USE THE CALL LINE WITH THESE PEOPLE IN CHARGE OF WHAT TAKES PLACE. JUST TALK TO YOUR NEIGHBOR, IT ONLY BRINGS IN AN AGENCY THAT COULD CARE LESS ABOUT WHAT THEY DO AND CAUSE FOR YOU AND YOUR NEIGHBORS.

So I need to correct my past statement: Mr. Murphy and Mr. Pomroy are not doing a good job. This Board and certain members of the staff are changing this community and it is not for the better. I know

of others that have gotten in the mail a notice of a trash fine and it was not even their home. So I will never use the call number again. I do not want to be connected to this kind of heavy handed and illegal enforcement of code. If bears get into the trash of others then good luck bears. For I would much rather deal with the bears than the dysfunctional, no records, IVIGD system. (If you are fining people you better keep records).

I would encourage that if you have a problem with the actions of a neighbor just go talk with them as we all used to do. Do not use this reporting system for those who run it cannot be trusted. Just talking to a neighbor is the kind of community we need to make sure we have and not the "turn your neighbor in" attitude currently being put forth by IVGID. I was guilty of this in the past year and will not be guilty of it in the future. IVGID has proven to me that the current no tolerance trash policy is not going to make for a better community , it is only going to bring forth distrust and anger between neighbors. That is not a community I will except living in and will do all I can to change the current people and policy that has caused this to take place. .

Wayne Ford



10/20/17

Subject: Report of illegal dumping : Request for public records
From: Herron, Susan (Susan_Herron@ivgid.org)
To: waynefordresidentialdesigner@yahoo.com;
Date: Monday, August 7, 2017 4:58 PM

Hi Wayne,

There are no incoming call logs and I was told that it was a woman who telephoned about the mattresses.

This completes your public records request in its entirety.

Have a great Monday evening!

Susan

Susan A. Herron, CMC

Executive Assistant/District Clerk/Public Records Officer

Incline Village General Improvement District

893 Southwood Boulevard, Incline Village, NV 89451

P: 775-832-1207

F: 775-832-1122

M: 775-846-6158

sah@ivgid.org

<http://ivgid.org>

From: Herron, Susan
Sent: Tuesday, August 01, 2017 8:33 AM
To: 'Wayne Ford' <waynefordresidentialdesigner@yahoo.com>
Subject: RE: Report of illegal dumping : Request for public records

Subject: RE: One persons trash is someones to someone else gold.
From: Franklin, Luke A. (LFranklin@washoecounty.us)
to: waynefordresidentialdesigner@yahoo.com;
Date: Thursday, September 21, 2017 8:43 AM

Wayne,

I did receive your voicemail. I clearly have yet to call you back. Putting a desk or dresser out for a few days or even a week, with a "free" sign would not be considered illegal dumping, by this agency. I cannot speak to IVIGID definitions of solid waste or what they consider illegal dumping. Our regulations consider illegal dumping to be this:

010.340 ILLEGAL DUMPING means causing solid waste to be placed, deposited or dumped in or upon any street, alley, public highway or road in common use, or upon any private property, public park, or other public property other than property designated or set aside for such a purpose by the government for proper land disposal. The term solid waste includes, but is not limited to, an overflow of any sewage, sludge, cesspool or septic tank effluent, or an accumulation of human excreta. Illegal dumping may be referred to as unlawful dumping.

If someone sets something out in the snow or is exposed to the elements for a long period of time to the point where it becomes dilapidated and damaged, even to the state of falling apart, then we would consider it to be an item the person didn't take time to care for and would then consider it to be waste and would require that "waste" to be removed and properly disposed of. Hope that helps a little better on the clarification.

Luke Franklin, REHS, BS

Senior Environmental Health Specialist | Environmental Health Services | Washoe County Health District

lfranklin@washoecounty.us | O: (775) 328-2642 | F: (775) 328-6176 | 1001 E. Ninth St., Bldg. B, Reno, NV 89512

**WASHOE COUNTY
HEALTH DISTRICT**
ENHANCING QUALITY OF LIFE



Public Health



WashoeEats.com

Micki Napp, 788 Trap Ct., Incline V

My topic *1 evening*

Dog Days of Fall Event Oct 7th

Board of Trustee Mtg Oct. 25, 2017

The ONE-&-ONLY day of the year the dogs of Incline can use the Burnt Cedar pool
10th Anniversary... and the BEST EVER Dog Days: 167 dogs & 300 people!

It was all fun & games!

No dog fights/no human fights/~~no politics~~. All positive w/smiles & just plain fun~!

Speakers of games . . .

We had 8 contests...some in the water and some on land.

Smaller dogs (who got to use the Baby Pool by the way) seemed to prefer the dry events such as "Best Costume" and "Owner Look-Alike" contests...while the Labs, Golden Retrievers and Shepherds loved the water sports.

Most popular contest ~~was~~ the "Wildest Belly Flop" which was won by a German Shepherd named "Argos" who launched himself high in the air & half way across the pool from a special ramp built by Sam Gough and Charlie Weidenholt. (This year they added another special carpet covered ramp that extended down into the water so that less athletic and older dogs could easily get in and out of the water.) Thank you Simonian for the carpeting!

~~Speaking of the more athletic dogs...the "Fastest Swimmer" contest was won by Saddle and "Best-in-Show" went to Baxter, a Golden Retriever who also won in numerous other categories including "Musical Sit" where the dogs (who are parading around the pool) must sit when the music stops. It may be hard to imagine, but there actually is discipline at this "Wet & Wooly" event!~~

all the contests
With 3 prizes in each contest, plus a Best-of-Show, we awarded 25 prizes, all donated by local businesses and organizations. We had 5 great judges, all members of our community. And Pet Network, who was our partner in this event, provided coffee for humans and prizes for dogs. What a team~!~!

Numerous people from the community said how much they appreciated IVGID making the beautiful BC pool available to our K9 friends. People and dogs were very respectful. All humans had to show an IVGID ID with beach privileges or be covered by a resident's punch card. No dogs were allowed on the beach.

1st truck

With 10 years of experience managing this event, we have learned how to make this popular COMMUNITY CROWD PLEASER both very enjoyable to our residents while still protecting our IVGID assets.

This is truly a WIN-WIN event which receives accolades every year.

10 yrs ago when another woman & I started Dog Days we wondered if anyone would show up. This yr 10 yrs Cal

Thank you to the Board of Trustees, to the IVGID staff, and especially to Indra and his team of Chris Cardador & Gwynne Cunningham, plus Misty Moga for the great team effort that makes Dog Days of Fall possible year after year.

team

>dbl/

*double the dog
trip - the people*

*The dog loving citizens of Andine
LOVE this event*

Jene

IVGID Board of Trustees Meeting 10/25/2017

BRET HANSEN - WASTE MANAGEMENT

*MARIS
HANSEN*

- Update
 - Per our continued meetings with City Manager Steve Pinkerton, we developed a plan to improve both pine needle recycling and overall collections operations. That plan included increased staffing, more trucks and better maintenance support.
 - We've increased the number of drivers working in Incline Village by 50% from 6 to 9 total 3
 - We've also hired an additional customer service agent to answer phones and help customers who stop by the transfer station on Sweetwater Drive.
 - A dedicated mechanic has been added to the Incline Village staff as well – this is a first for the site as all maintenance has previously been handled from Reno.
 - The increased staffing to our pine needle recycling routes has allowed us to service all of the pine needles on the same day of service without any delays.
 - In contrast to this Spring, during the October pine needle collection program, our customer service agents received very few questions or complaints.
- Weather Contingency Planning
 - In anticipation of another extreme winter – I have been working with my team to develop a winter weather contingency plan which outlines when our crews will return to areas that have been missed due impassible roads. It also determines how our customer will be contacted to alert them to the changes.
 - The expanded communications plan will include text alerts and email notifications for customers who opt in to the program.
 - Site Manager James Monson and I recently met with a contingent of transportation, government, and law enforcement representatives to discuss area road conditions, construction and weather concerns – all of which will be incorporated into our contingency plan.
 - We'll provide copy of this plan to IVGID Public Works in early November and continue to keep the lines of communication open.
- What's Next
 - Going forward we are beginning to work with IVGID Public works to publicize the Christmas Tree recycling program.
 - Continuing to review for improvements to the pine need collection in 2018
 - Planning improvements to the transfer station in 2018 to make the experience less confusing for customers.

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