

## MINUTES

### **REGULAR MEETING OF NOVEMBER 15, 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, November 15, 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 Pete Todoroff, Margaret Martini, Devenney Leijon, Gene Brockman, and others.

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

#### **C. PUBLIC COMMENTS\***

Mary Simmons introduce herself, Vice President of Business Development for NVEnergy. She introduced her colleagues in attendance. Ms. Simmons then thanked the Board for allowing them to speak about the outages recently and in the past. She apologized as she knows that any type of outage is inconvenient and it can be frustrating. She said she wanted to talk about what has happened; what we has been completed, and other things we want to complete over the next several months. She thanked Mr. Poindexter for his input. She said we take our obligations very seriously and hold ourselves accountable. We hope to attend the Community Open House to provide information.

Chris Hoffman, NV Energy representative, said the Incline substation is fed from Carson City. There were interruptions over the Brockway substation but it has been out of service for the past year and has now been re-energized. The outage was caused by a pole fire outside of Carson City. NVEnergy's goal is safety of the public and employees. NVEnergy works with the Bureau of Land Management and the United States Forest Service for fire season. NVEnergy changed the settings on protective gear which may prevent circuits from restoring automatically. De-energizes lines have to be inspected. If we attempted to reenergize, we could cause a fire. There are two responders to this area from Reno and Carson City service and Liberty Utilities. The teams dispatch from their homes in Stateline and Galena Forest with good response times to this area. NVEnergy completed inspections of overhead circuits from pole to pole and identified issues that need to be changed out; crews are working on those issues.

Jeff Poindexter read from a prepared statement which is attached hereto.

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

Aaron Katz read from a prepared statement which is attached hereto.

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

Frank Wright said the public comment advisory statement has been changed because he has been complaining. He said he has been interrupted by District General Counsel and the Board Chairwoman told him to face the Board but the Attorney General said he didn't have to; he could face any way he wanted to. They also made them change public comment advisory statement. They didn't find specific violations but they hammered District General Counsel for his behavior and Chairwoman Wong for not allowing the public to speak. They are hurting us, the citizens. The land purchase - what difference would it be to see Staff sell our Recreation Center; its public property. They have sold parcels without Board activity. You have a Staff who don't care about the Board and it is a crime because you need to go out to bid; check with Washoe County. We are going to give District General Counsel a \$300,000 guarantee. Wake up or go down with them. We have the worse General Manager we have ever had and the Parasol facts are wrong.

Pete Todoroff said it is evident that our community doesn't want to pursue the Parasol matter. Why are we spending more money on another attorney? We want no more discussion and no more money spent on it. Mr. Todoroff said he wrote a letter to NVEnergy about our power outages. He said he spoke with Mary

Simmons; it's a concern for the community. There wasn't adverse weather and there were still outages; they have assured us they are updating the equipment.

John Eppolito thanked the trash police board for returning his trash can after six weeks. He said it was frustrating. He said he hoped there is another side to what he is hearing from Mr. Wright and Mr. Katz. Mr. Eppolito said he mainly wanted to talk about what is happening at the schools with data mining. Most parents have no idea. There is meeting tomorrow at 4:00 p.m. at the Incline Village Public Library. We are expecting a local principal, a Washoe County School District board member, a State Board of Education board member, a gentleman running for Nevada State Senate, and one IVGID employee.

Bill Echols read from a prepared statement which is attached hereto

Andy Whyman thanked community members for their spirited commentary. He said he can't agree with all of their conclusions. He said he wanted to address the issue of Parasol. He said he spoke with the relevant players in this issue, did some research, and read some of the documents. At some point, due diligence comes to an end. It seems that the Board should move on. It's a real opportunity for Parasol and IVGID to do something that would be mutually beneficial for both parties. Both parties could gain something that would be substantive and useful to our community. A number of people talked about \$5.5 million building, it's a number, an opening negotiation. It's misleading to say we are going to buy a building for \$5.5 million. He asked what the Parasol Foundation actually stands for. He said his father was a real estate lawyer in New York City. He lived in a suburban community outside the city and donated his time to help build housing in that area; it was controversial, but the community appreciated it. They praised him for his efforts. His father did it for himself; he did something that mattered in his lifetime.

Mindy Carbajal from the Boys & Girls Club from Kings Beach and Truckee said they are opening a site located at the Incline Elementary School, and plan to serve 80-100 kids. These enrichment programs, for youth (Kindergarten through 5<sup>th</sup> Grade) are hosted in a safe environment for \$50 a year. There will be an enrollment night to learn more about the program. She said she is working with Staff to transition the kids from the IVGID program to Boys and Girls Club Program.

**D. APPROVAL OF AGENDA (for possible action)**

Chairwoman Wong moved for flexible agenda. Trustee Morris seconded the motion for a flexible agenda. All Board members concurred. Chairwoman Wong said the meeting would proceed with a flexible agenda.

**E. STAFF PRESENTATIONS\***

**E.1. Solid Waste Services Update (Presenting Staff Member:  
Director of Public Works Joe Pomroy)**

Director of Public Works Joe Pomroy gave a Solid Waste Services Update PowerPoint presentation.

Chairwoman Wong called for a ten minute break at 6:40 p.m.; the Board reconvened at 6:50 p.m.

**F. GENERAL BUSINESS (for possible action)**

Prior to beginning General Business, Chairwoman Wong said that there have been no violations of the Nevada Open Meeting Law and that these first four items are included on our agenda not to admit wrongdoing but rather to promote transparency.

Trustee Callicrate pointed out the comments made by the Attorney General which are critically important. He read the Attorney General's comments regarding the District General Counsel. No Open Meeting Law Violations have been committed but the issues were corrected and he wanted to point that out, on the record, as these are serious comments by our Attorney General. Chairwoman Wong said this Attorney General's opinion is contradictory to another response we had in the past. There has been some turnover in the Attorney General's office and there are new people who are responding to the Open Meeting Law complaints. We have revised it but the language did come from the Attorney General's office themselves. Trustee Morris said District General Counsel was operating out of good faith. It's important, when something needs to change, we change and learn from it and move forward. Trustee Horan said anytime we are criticized regarding our regulations, they raise concerns; however, the responses from the Attorney General is not a science, it's an art. You will get variations and move on. In 2016 was when it was this was filed; we will learn and move on.

Trustee Dent said asked a clarifying question regarding a statement made by the Attorney General's office in one of the complaints. District General Counsel Guinasso said he can't speak for the Attorney General; however, there are different people writing these opinions and there are different styles. District General Counsel Guinasso said he as an appointment with Chief Deputy Attorney General Bateman to go over and reconcile and he will bring up the language Trustee Dent brought up.

- F.1. Open Meeting Law Results – Acknowledgement of the Findings of Fact and Conclusions of Law as the result of the State of Nevada Office of the Attorney General investigation in the matter of Attorney General File No. 13897-224, Open Meeting Law Complaint – Placed on this agenda in accordance with Nevada Revised Statutes 241.0395 (Chairwoman Kendra Wong)**

There was no further discussion by the Board.

- F.2. Open Meeting Law Results – Acknowledgement of the Findings of Fact and Conclusions of Law as the result of the State of Nevada Office of the Attorney General investigation in the matter of Attorney General File No. 13897-226, Open Meeting Law Complaint – Placed on this agenda in accordance with Nevada Revised Statutes 241.0395 (Chairwoman Kendra Wong)**

There was no further discussion by the Board.

- F.3. Open Meeting Law Results – Acknowledgement of the Findings of Fact and Conclusions of Law as the result of the State of Nevada Office of the Attorney General investigation in the matter of Attorney General File No. 13897-233, Open Meeting Law Complaint – Placed on this agenda in accordance with Nevada Revised Statutes 241.0395 (Chairwoman Kendra Wong)**

There was no further discussion by the Board.

- F.4. Open Meeting Law Results – Acknowledgement of the Findings of Fact and Conclusions of Law as the result of the State of Nevada Office of the Attorney General investigation in the matter of Attorney General File No. 13897-234, Open Meeting Law Complaint – Placed on this agenda in accordance with Nevada Revised Statutes 241.0395 (Chairwoman Kendra Wong)**

There was no further discussion by the Board.

**F.5. 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)**

Megan Fogarty said she received the title report and that there were various easements but nothing else surprising. There was a bill of sale related to sewer system improvements that appeared to be constructed on the property by Parasol. The genesis was probably the ownership of the sewer system improvements and IVGID taking on those during operations. The language wasn't clear; there was a reference to monies paid to owners by IVGID. She said she ran a further analysis; it may mean, if IVGID paid monies for those sewer system improvements for some reason in conjunction with the construction of the building then it gives indication there is acknowledgement of the ownership by Parasol of those improvements. It goes to the analysis that if Parasol owns the building, the terms of the lease, and improvements related thereto. The likely driving force behind that was the allocation of obligation on ongoing operation rather than transfer of operation and that she is not sure if that is a crucial component. In regards to right of use, as discussed at the last meeting, it comes from the original CC&Rs and the CC&Rs amendment prohibitions. Under the CC&R amendment, Parasol collaborators, that type of use by IVGID would not qualify. IVGID is not a tax-exempt entity, which is a collaborator criteria component, and not a non-profit under State laws, so under that analysis it can be dismissed. A potential right of use would be IVGID acting as a legal successor to Parasol, which is permitted by the restrictions; IVGID probably wasn't intended to be the successor to the entity, rather successors in interest in leasehold or in building improvement. So according to the full analysis, IVGID is not successor to the entity but likely not intended to be the successor of the building ownership because the building wasn't constructed at that time. To call IVGID a legal successor even if they sublease the premises or take it back would be a stretch as well; we can rule them out. The original permitted uses for Recreation and related purposes - if IVGID were to use the property to provide recreational services for the

community, it would fall into the approved uses within CC&Rs. IVGID Staff provides recreation; it would fall within the CC&Rs. If it's solely used for Staff, the Staff furthers the recreation activities to the community, but there are Staff who deal with utilities as the other part of the IVGID charter and mission but not sure if that's enough to remove you from the permissive recreational and permissible use. It is important because the original CC&Rs contained in the deed that transfer the title to IVGID. It's reasonable to include grantor, Boise Cascade, charter and mission of IVGID include recreational services to the community and utilities, and that's why they may had include 'related' services language into the restriction; she doesn't know the original intent. Yes, most likely IVGID can use the property under recreational use restriction and most likely Administrative Staff to further the recreational activities that are provided by IVGID.

Trustee Callicrate thanked Ms. Fogarty. He said his concern is with the original intent and that it isn't clearly defined in the CC&Rs and CC&Rs amendments and open to interpretation. If it is not a definitive yes, then it is a no. He said the concern is if we get the building, we still couldn't legally occupy it because Donald Reynolds has their own restrictions since we aren't a collaborator. He said he is concerned that we are still not sure if we can or cannot occupy the building. We can occupy the land next to the building. We are precluded from occupying the building because of grant restrictions with the Parasol Foundation and original CC&Rs and amended CC&Rs. It's not a definite yes. Ms. Fogarty said she hasn't reviewed the grant Trustee Callicrate speaks of and that this document would need to be reviewed; however, she is not sure that would find IVGID as the owner of property according to the restrictions use for the building. She said she doesn't know the terms of that restriction and granting language related to construction or something else. If you are the owner with restrictions granted to you as owner of the property, it's what you make of it.

Chairwoman Wong said she spoke with a community member who is a lawyer in town; Chairwoman Wong continued that she wondered if there was existing case law for CC&Rs construed and interpreted by the courts. She said the lawyer/public member said the CC&RS are construed and interpreted to allow use of property unless there is a specific restriction that says an activity can't happen on the property; the intention leans toward allowed use instead of restricting. Ms. Fogarty said case law is out there that relates to associations and subdivision. This doesn't fall into that but doesn't necessarily mean case law doesn't apply to that; its difference is factually. The deed restriction in a grant from 1977; as a general rule, the court won't

rule that you can't use the property unless it is specific. When you look at IVGID's ability to use the building, recreation and related purposes will most likely fall under that. She said some can argue it was intended for a baseball stadium and parking but it didn't state that in the document. In plain language, it is recreation and related purposes; does that intend to include utility as a catch all to service the community, which is the question in play. Trustee Horan asked District General Counsel about the grant and ability to do anything. District General Counsel Reese said when we looked at the Reynolds Foundation documents, it was cursory because they haven't been examined too much, but nothing jumped out as impermissible. When there are a donation of land and stipulation for buildings and funds raised, the Donald W. Reynolds is a fantastic partner and we should go ask him. We believe there was nothing objectively preventive, and if someone figured it out, we can ask the Foundation. Trustee Horan said it's an item that needs to be clarified. The Foundation is winding down as of December 31<sup>st</sup>. District General Counsel Guinasso said that's correct.

Trustee Morris asked Ms. Fogarty, who would have standing on these things – with regards to CC&Rs, it's only Boise Cascade and their successors in interest; there wouldn't be anyone else in standing who would have say in the matter. Ms. Fogarty said that is correct. As far as successors and interest to the entity itself, the entity appears to have dissolved. There are successors and interest in the land that was owned at the time by Boise Cascade. Historically, we don't know who that might be. No one came forward during the CC&Rs amendment. If for someone reason Boise Cascade and Gardena thought their rights continued on in some fashion that might be the case but we don't know for certain.

Trustee Dent said he is trying to understand what it all means and wanted a list of documents she had used to base her opinion on. Ms. Fogarty said the introduction of the original memorandum, packets including meeting minutes, business plan, introduction, and supplemental memorandum, title, the specific exception document and that the grant wasn't originally determined and that she doesn't have a copy of that in her possession. Trustee Dent said there is a grant agreement and a letter of clarification that was sent to our attorney for potential revision that goes along with the grant agreement. Ms. Fogarty said she will certainly look at if the Board decides to move forward with modification of the lease.

Chairwoman Wong clarified that we engaged Ms. Fogarty to opine on the scope of documents at this time. Trustee Callicrate said, in regards to what

Dent asked about, the grant is a historical document and that those should have been included. The grant agreement between IVGID and Parasol was not reviewed by Ms. Fogarty as part of her overview. District General Counsel Guinasso said the grant agreement restricts Parasol not IVGID. Trustee Callicrate said it has language regarding leasing. Trustee Dent asked for clarification letter from the Parasol Tahoe Community Foundation's Chief Executive Officer Claudia Anderson regarding the grant agreement; District General Counsel Guinasso said he doesn't have that letter, and anything from Donald W. Reynolds and Parasol is between those entities and aren't a part of our record. District General Counsel Guinasso said we were invited to review that document at Parasol but that we don't have that document as it wasn't provided by Parasol. Trustee Dent said he reviewed it and that Ms. Anderson said she gave it to District General Counsel but District General Counsel just said he doesn't have it.

Trustee Horan said it needs to be clarified; there is no restriction that Donald W. Reynolds said they were going to impose on them regarding the disposal of the building. District General Counsel Guinasso said the questioning that is being asked is appropriate for Parasol not us as it is not for us to opine rather that's the Parasol Foundation's business. Chairwoman Wong said the letter that came from Ms. Andersen is on the website and it is dated June 19, 2017; Chairwoman Wong then read a portion of the letter to clarify. Trustee Dent said wasn't the letter he was referring to. The letter spoke about significant details that were specific to IVGID. District General Counsel Guinasso said if Parasol wants to present that to our Board, it's up to Parasol to do so but it's not up to him to authorize that document.

Trustee Morris said Parasol is representing to us that they can, if we agreed, sell us the leasehold improvement, we could take it over, with only the requirements or requests put in the original offer letter. If there are other restrictions they want to impose, those haven't been proposed. District General Counsel Guinasso said the original letter and the letter Chairwoman Wong referenced were the only letters Parasol presented publically. If there were additional restrictions, we would need to hear from them. As of now, there are no encumbrances from the Donald W. Reynolds entity.

Trustee Horan said it's no surprise the original restrictions to Parasol were for leasing to non-profits. We need a letter from them that said it doesn't apply to us. District General Counsel Guinasso said its Parasol's issue. It's premature; we've been asked to do basic due diligence relative to IVGID, not to whether Parasol can or cannot do. We have not been given authority

to negotiate the lease modifications; we have been focusing on basic encumbrances on the property itself.

Ms. Fogarty said, in summary, other than the bill of sale, there were no new CC&Rs in the title report to speak to the owner of the improvements or permitted use by IVGID. There was nothing in the title report to change the conclusion contained in the original memorandum except for two things. First, for the argument for/against IVGID's ability to use property, in regards to the CC&Rs, as legal successor to Parasol in relation to IVGID's recreation purposes, if you use the property for recreational purposes and Staff use to further the recreation purpose for the remainder of the term, it would apply with CC&Rs. Secondly, the original memorandum proposed two options – maintaining status quo or negotiating the purchase agreement of terms acceptable to IVGID, with a third option, which would be renting space from Parasol in compliance with the CC&Rs. The liability depends on size of IVGID as far as what Parasol seeking to turn over. Trustee Callicrate said Ms. Fogarty used the term property, where as it was more specific in your original overview. It needs to spell out the property as land and structure as a building. We can use the property, but if there are stipulations with use of the building, then that is where we are having issues with terminology. We are struggling with the uses for that building. It needs to be more specific; it's open to interpretation, which has been an issue since the beginning in March. Ms. Fogarty apologized; the interpretation with use of property was to include the building. She said she can revise that to include the building. If you use property, you would fall into the original CC&Rs use. She said she will send a clarified copy to include property and the building.

Trustee Dent said he agrees with Trustee Callicrate with language about the property and the building. He said he is in the same situation as two months ago. If not a true yes, it's a no. Chairwoman Wong said Ms. Fogarty's reports were well written, thorough, and thoughtful. The information received, related to potential successors with Boise Cascade and Gardena, indicate relative low risk of someone coming to filing a claim; we have to factor that in if and when we start with negotiations.

Trustee Morris said he wanted clarification, in the conclusion, on the remainder of the 50 year term with CC&Rs, they expire relatively soon; Ms. Fogarty said it is 50 year term for CC&Rs of itself; she will provide a revised supplement.

**F.6. 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)**

- A. Is there a justifiable need for additional recreation space? Is there a justifiable need for different administration space?

*The Board all agreed that the answer is yes to both of these questions.*

- B. Are there other spaces in IV/CB, either for rent or purchase, that meet the needs of IVGID?

*The Board all agreed that yes there are spaces available, but they are not ideal for Staff and staffing needs. It would require splitting up our Administration Staff, renting separate spaces for departments, and doesn't allow us to gain efficiencies.*

- C. Would it be advantageous for IVGID to design and build space that meets our specific needs?

*Given the proposed cost of Parasol, four Board members said no; one Board member said yes.*

- D. Is the Parasol proposal an economically viable option?

*The question regarding the right to use the building remains outstanding thus Staff or District General Counsel would have to reach out to Gardena to get the restrictions lifted.*

- E. Are the terms and conditions of the Parasol proposal the most advantageous for IVGID?

District General Counsel Guinasso said he reached out to the successor to Gardena and Boise Cascade which led us to Office Depot office attorneys. He asked for clarity of restriction or willingness to release restriction early. They were willing to entertain that possibility. They invited us to negotiate with them. District General Counsel Guinasso said he didn't have the authority to engage in an in-depth negotiation but rather to ask the Board if its wishes are

relative to that restriction. Chairwoman Wong said it makes sense. Trustee Callicrate said it's been going on eight months; he said he would appreciate if Parasol would have already done this due diligence and then come to the Board. It sounded great initially, and with all these restrictions, it's soured him toward Parasol. There are community members who have given thousands, millions of dollars to them. He said we find out about the Donald W. Reynolds Foundation dissolving and that non-profits have left. It has put the community at odds and the community is opposed. We were excited but now it's soured us and caused a rift in our Board. Parasol should follow their scope, operate, and do the maintenance that has been deferred on the building. They need to bring the building back around with what it was supposed to be, and in ten years, once the CC&Rs have been lifted, then we can go forward with negotiations. Our current Southwood building isn't ideal and we can move forward with that building while we analyze the community plan, look at the numbers to build onto the Recreation Center during renovations, and look at other opportunities to explore as a Board. He said he would like to go into the holiday season without Parasol hanging over our head. It's been life consuming for our Staff and Board members. We have gone over and above our due diligence. Parasol should have done the due diligence. We learned a valuable lesson; we need to finish the master plans and dog park. Trustee Callicrate continued that he would like to see Parasol step up to plate; make modifications that makes sense to them or vacate the building; they have done a disservice over the past few years and we have been put in a bad place. We need to work as a team on more important issues.

Chairwoman Wong said there is a lot of what Trustee Callicrate just said that is not our responsibility. We are good stewards of assets of the community. There are some long-term capital project that have been kicked down the road for fifteen years. We have a responsibility to our community members. It's not our responsibility how Parasol manages their business and that's important to clarify. Regardless how people feel about Parasol, it's not our responsibility.

Trustee Callicrate said do what you are supposed to do or vacate. Let's not spend money on this if we don't know if we can occupy the building and focus our energy for the dog park, beach house, mountain pro shop, etc. which have been on the radar for many years. We need to be aware of how our Administrative team operates with

minor modifications. We need financial wherewithal. We could get the old grade school to prevent from high-end condos from going in. We have spent so much time and energy towards Parasol. Information wasn't forthcoming and not fair to the lawyers. Step back, let Parasol become compliant with the lease. Go into the New Year with better priorities. He said he doesn't want to operate Parasol.

Trustee Morris said he is sensitive to the community's concern with Parasol and what they do and do not do. He said as Trustees of the Board of IVGID, we aren't here to improve, restore or repair the reputation of Parasol. Let's focus on what is the best for IVGID and that this isn't a bailout. We were presented with an opportunity and within the next ten years or sooner, we will need to build or replace the Southwood building which is at least a \$6 million decision. Over a short period of time, we have to convene this Board to spend money on a new building. If we can find something in this offer from Parasol, we can solve our problem. We can't concern ourselves with Parasol and their problems. He said the challenges over the last few months; it's not surprising to find out more information. If Parasol had presented us with a nice clean opportunity, it would have been better, and just because they didn't, it doesn't mean we shouldn't consider this opportunity. There would be still hurdles that needed to be cleared before we sign and take possession. Do we spend \$6 million in a few years or do we spend a lot less for additional benefits. On its face, it is still a good opportunity if we can get the numbers right.

Trustee Dent said he wished we had more information when we started this eight months ago. We keep getting a trickle of information. Why are we wasting time? We could be focusing on the master plan, dog park, and spend time and money on assets of the District, instead of \$5.5 million plus money on renovations. We could rebuild the Recreation Center and make improvements which is an economically viable option. Kill the Parasol proposal and move forward for the best interest of this community.

Trustee Morris said the community wants additional space and services. The scientific survey results show they want more space. Building onto the Recreation Center, he doesn't see how that could occur.

Trustee Horan said there is a vocal part of the community that doesn't want it but some are in favor of it. He said he wished Parasol was more forthcoming with information. From a space basis, we have not negotiated a price. It's an opportunity we were obligated to entertain. He said he doesn't want to give up the process. We have some items that we can focus on: Master plan needs to be completed. The clarification of the grant needs to be addressed. It's time to take a pause. The cost of culvert has gone up. We have another issue that wasn't mentioned yet, how do we pay for it. We need to complete the master plan, have Parasol clean up this stuff, and keep it on the back burner. This exercise was beneficial. In 1999, this wasn't put together well. We could have done better and addressed it at that time. We need to take a break from this.

Chairwoman Wong said we need to look at how the Community Services Master Plan (CSMP) and projects related to Diamond Peak culvert, and how are all of those pieces come together in the five year Capital Improvement Project plan. Other projects haven't been conceptualized yet. She said Trustee Horan is on the right path. We need to take pause until after the CSMP is complete and see how it all fits together - we need to prioritize them. We are at least six months out before we have a complete CSMP plan.

Trustee Horan said the Administration Building shouldn't be put on the back burner and needs to be addressed with asbestoses, ADA compliance, and radon.

Chairwoman Wong said our Director of Asset Management did a great job presenting the five year plan but we need to balance our critical projects with what the community wants. Replacing and maintaining assets might take priority over new assets.

Trustee Callicrate said if it's not an outright no, we need to take a break as it's been all consuming; shift energy to the dog park and put it on the radar. Tell Parasol to find the list of questions in a few months. It will allow us to address the strategic plan. Let's put this on hold. There is direction that we need to give to Parasol so that those questions can be answered.

Trustee Horan said he wishes people would stop saying we would spend \$5.5 million because we wouldn't spend that. Chairwoman

Wong said Ms. Fogarty presented potential viable options when we revisit this and they meet the needs to replace an asset.

Trustee Callicrate said he is concerned about a definitive answer about occupying the building. We need to have those options brought back to us down the road. We have thrashed over this for the past six months so this is a good opportunity to regroup and refocus energies on priorities.

Chairwoman Wong said she will call the Parasol CEO and the Board Chair regarding the decision and asked District General Manager Pinkerton to add something to the Long Range Calendar to regroup.

Trustee Morris said it would make sense to continue to work with Office Depot to lift the CC&RS so when we bring this back, we will have an answer. District General Counsel Guinasso said the restriction will be resolved before we take possession as lease or purchase. We can find out what it takes to get clarification regarding scope or what it would take to release the restrictions altogether.

Trustee Horan asked if that is a Parasol or IVGID activity since we own the land; Parasol can clean up the restrictions with Donald W. Reynolds Foundation.

Trustee Morris asked for target date and when can we consider the District's five year strategic plan to talk about what we want to do and what we can do. District General Manager Pinkerton said in regards to the goal, it is to get the Master Plan done by late spring.

Trustee Dent asked about putting out more money with Parasol. District General Counsel Guinasso said he will touch base with Office Depot but he is under retainer.

Trustee Morris asked if we have to make a motion. Chairwoman Wong said no. Hearing no further comments/discussion, Chairwoman Wong moved onto the next General Business item.

- F.7. Receive, discuss, and possibly provide direction on the history of Resolution 1760 (Policy and Procedure Number 135), Temporary Dog Park at Village Green, and how this amenity fits**

**into the Community Services Master Plan (Requesting Staff Member: Parks and Recreation Director Indra Winquest)**

Director of Parks and Recreation Indra Winquest said during his update at the Board of Trustees meeting on October 25, it was requested by the Board to bring back an agenda item on the future of a dog park. Staff provided the history of the dog park from 2004, meeting minutes, resolution, and health and safety consideration from 2004. He said we are looking to have a productive and proactive discussion to create a clear understanding, as well as create a timeline for current and future challenges as we move through the challenges and noted that it is expected that a dog park will be high on those priorities in the Community Services Master Plan (CSMP).

Trustee Morris said two possible sites we are being considered; please expand on the process, and why those two sites were selected. Director of Asset Management Johnson said the two sites were identified because they are publically owned - school district or United States Forest Service. He said privately held sites, of unknown status; we didn't identify it because we don't have permission to access it. Part of the process with the CSMP is a nuts and bolts evaluation – lay out and facilities. It's not a formal decision but rather a preliminary design. We will apply criteria to those two parcels, and possibly a third parcel. They are adequate size with realistic acquisition. Director of Parks and Recreation Winquest said in a conversation with Washoe County School District, they gave us permission for recreation for community; it's a verbal agreement.

Trustee Callicrate said they thought this was a temporary fix at the Village Green that became somewhat permanent and in fact is the de facto dog park. When it comes to kids playing, picnics, or fly kites, it's bad to have on the Village Green. There could opportunity like we had with the bike park with the Holman Family.

Trustee Horan asked about any discussion of costs. Director of Parks and Recreation Winquest said there has been no formal discussion but that five or six years ago, it was appraised at \$2.3 million. We will get an updated appraisal. Director of Asset Management Johnson said for the discussion with Washoe County School District, we don't know what negotiations looks like. Demolition and off-haul would be \$1 million according to them. Trustee Horan asked about size for dog parks. Director of Asset Management Johnson said the number one rule of dog parks is make them large as you can. He said three acres would be adequate but that doesn't include parking

and other park facilities. He said you would break the park into three (3) one (1) acre parcels so you could have two of the three acres/fields in service with one acre in reserve for rotation so there isn't wear and tear.

Trustee Morris said we would like to get the dogs off of Village Green and that he is a dog lover so he understands that it is not the case to throw up a fence and there you go. Director of Asset Management Johnson said it's a matter of land acquisition, market value, and if we have to scrape the site, thus the costs can change. It could be a Cadillac or Chevrolet park. Director of Asset Management Johnson said with the United States Forest Services site, you don't have demolition but we need to add a restroom and parking as it is a requirement to have a restroom.

Director of Parks and Recreation Winquest said as we work with Design Workshop on the CSMP, we will ask them to list opportunity sites for a dog park, preliminary concept design based on trends, best practices, and based on where we located it. It will change what it looks like based on that location. Director of Asset Management Johnson said it is very preliminary with tremendous variables. It's a tremendous opportunity with partnership with private/public or whether multi-party, public/public such as Tahoe Transportation District has done for regional transit stops. They could bring dollars that could drastically offset those hard costs. They are currently looking for grants for the elementary school site, but the site across from high school is also a potential site. Both facilities could have potential for surplus of land. There could be a co-development of that site.

Trustee Callicrate said we need to get people from the dog community involved when it gets to that part of design. Sooner versus later when it's appropriate. Make a District General Manager's Committee to gather community members to try to address this and follow the rules. Director of Parks and Recreation Winquest said he doesn't want to move forward without having significant input from the community.

Chairwoman Wong said it's a long term solution with a short term problem and asked if there was any short term solution. Director of Parks and Recreation Winquest said our Board can direct the District General Manager to direct Staff to come back with options. There are no great options but we can look at potential sites to alleviate the issue. He said for the record, he has been managing the ball fields and bookings, and understands it very well. The people have done a great job for making it work for this long at Village Green and yes, Staff does have to clean up after dog owners

sometimes; the mixed use has been positive overall. Chairwoman Wong asked if they can hang in there until we can make a long term solution. Director of Parks and Recreation Winqest encouraged the public to attend and speak up about this issue and thanked Steve Dolan for his passion.

Trustee Dent asked about the two proposed spots and asked if one of the parcels is part of the Washoe County lands bill process. Director of Asset Management Johnson said the Federal Lands Bill come out of Congressman Amodei's office and it is about lands disposal/distributing lands to local entities within Washoe County. There are multiple agencies participating and our request is very small. There has been no formal bill has drafted; Congressman Amodei is waiting for a blessing from Washoe County thus there is no definitive timeline. District General Manager Pinkerton said in the spring, we could approach the forest service with a lease. Director of Asset Management Johnson said a formal transfer is act of Congress. We can request a long-term land lease under a permit to construct a dog park, encumber land, and conduct environmental impact process. It would be a long process but it is an option. Trustee Dent asked if there is a short process. Director of Asset Management Johnson said no, even if we rent it. Trustee Dent asked if we could do anything before we get the land. Director of Asset Management Johnson said we could pursue the Washoe County Lands Bill and put in an application and we could do a preliminary design. Once we get the green light, there is public review. Director of Asset Management Johnson said it's a formal application like we did with the Diamond Peak Master Plan. They consider the application, consider Staff dedicated for review, and get permission for analysis, design, and construction.

Trustee Callicrate said we need to do three quarters of the work even if we have to rent. Director of Asset Management Johnson said if we own it, we don't have to the environmental study. In addition, if we own it, we would be off and running. Because if the Federal Government currently owns it, we would have to the impact study.

Chairwoman Wong asked about costs. Director of Asset Management Johnson said encumbrance costs and other costs could be approximately \$100,000-\$150,000 for at-risk work. Chairwoman Wong asked how those costs fit into CSMP. Director of Asset Management Johnson said we need to go through the process with priorities before moving forward.

Trustee Morris said knowing the history with United States Forest Services land, would the timing for the old school take as long. Director of Asset Management Johnson said it depends on if we partner. Trustee Morris asked if we can do a precursory review of alternatives. Director of Asset Management Johnson said this has been look done, dating back at 2004; we have looked at the base site at the Diamond Peak but it is an active site. The District has done the homework with temporary locations but we are happy to do the homework again.

Chairwoman Wong said the next steps is to incorporate it into the CSMP as we know it's a priority and we are committed at making it a priority. It's a long road from here.

Trustee Callicrate said we hope to expedite this process to give hope to the dog park people. We need to go through the process that we need to abide by and it won't happen tomorrow. Commitment has been made to put this in as a priority.

**F.8. Review, discuss, and possibly take action to authorize to continue contract for legal services for the Incline Village General Improvement District with the law firm of Reese, Kintz, Guinasso, LLC and their successor in interest law firms of Reese, Kintz, LLC and Hutchison & Steffen, PLLC, for remainder of the current contract term set to expire at the end of 2018 (Requesting Staff Member: General Manager Steve Pinkerton)**

District General Manager Pinkerton said that the District approved the contract last August and that the contract expires at end of 2018. The partners are principles in two different firms and Reese, Kintz, and Hutchison & Steffen have agreed to fulfill the contract. We have access to a local and a statewide firm. Staff recommends we continue with current contract with interest in Hutchison & Steffen; options are outlined in the Staff report.

Trustee Callicrate said he is concerned that this isn't what we discussed to agendize. We hired the firm of Reese, Kintz, and Guinasso. District General Counsel Guinasso has gone to another firm. He said he would be comfortable with continuing with Reese until contract expires and that he isn't comfortable with two firms because which law firm is in charge in which matter and that this isn't simplifying the process. The simplest way to move forward would to go with Reese, Kintz.

Trustee Dent said he was caught off guard with this agenda item since our discussion at last meeting was that Reese, Kintz, and Guinasso was doing business as Reese, Kintz and Hutchison & Steffen was not in the original discussion. He said he thought we would be discussing if they could fulfill the contract or not.

Chairwoman Wong said we have some options: Stay with Reese, Kintz, Hutchison & Steffen, go with both, hire internal, or start the bid process again and evaluate who our legal services should come from.

Trustee Horan asked who is in charge if we have a lawsuit and how is it administered. District General Counsel Guinasso said nothing would change going forward. District General Counsel Reese said you have hired two lawyers. The lawyers are two people, not an LLC. You are still working with a person, a human being. He apologized for that not being clear at the last meeting. We will continue to do the good work at the desire of the board. District General Counsel Reese said there is too much work and not enough bandwidth for one person as 105 hours a month is light. You had Scott Brooke for many years who tried to be the only lawyer. You get resources for both firms. Our position is you hired two lawyers regardless of the roof over our head and who we are remains the same.

Trustee Morris asked about the management and cost. The current existing contract contemplate that people move firms. You don't have new contract if we added another partner. There is a new company in the mix; it doesn't change the existing contract and we are trying to be respectful of your needs. Trustee Morris asked about liability and insurance. District General Counsel Reese said both firms carry insurance with the highest rating with national reputations to meet the needs of the District.

Trustee Callicrate said he understands the two for the price of one and that the District is putting out thousands a month, as well as additional expenses. He said he is concerned that the costs to the District has doubled, the amount of litigation or complaints with Open Meeting Law violations has raised exponentially. When you look at the Open Meeting Law, our District General Counsel has been admonished by the Attorney General and thus he is concerned with bringing in another firm because we have the highest paid attorneys. We are just a general improvement district. If you can't continue, it would be appropriate to go to a Request for Proposal for the opportunity to get the service for less than ten thousand dollars a month for

a lawyer who is versed in Open Meeting Law and ideally someone who lives in our community fulltime.

Trustee Horan said in reviewing the choices, based on the answers from both counsels, he said he isn't concerned having two law firms because we will have the same attorneys. We have a lot going on in the legal realm. He said he wants to continue as is and as we approach the end of contract, we go out with a Request for Proposal.

Trustee Dent said he spoke to colleagues around the State and he asked about their legal fees. They pay significantly lower for attorneys. Trustees ask information from the District General Manager and the attorney drafts the responses which he doesn't know if that's a good idea. He said he is concerned with the language from the Attorney General's office. It might be a good idea to take a break. Continue with Reese, Kintz or go out to a Request for Proposal to start over, reboot, and set priorities.

Trustee Morris said unfortunately this District is not too comparable to other general improvement districts in the state especially with legal services. We are compelled to spend money on legal services due to Mr. Katz and other vexatious litigants. We are still working through that processes which is unfortunate. He said changing the status quo is going to be more costly. He said he fears it would put us at risk or spend time and effort reeducating a new legal firm. He said he is comfortable with continuing with current legal counsel.

Chairwoman Wong said she agreed. Concerns voiced by Trustee Callicrate and Dent can be met with the resources from Hutchison & Steffen for the same price. Chairwoman Wong said District General Counsel Reese and District General Counsel Guinasso answered her concerns with the two law firms.

Trustee Callicrate said it was the Beko law firm who handle the Katz case and that it is easy to reeducate other firms. If you have practiced for a long time, it's easy to move forward. Trustee Callicrate said that he wasn't pleased with how this was presented. He listened to the Livestream and this is not what we discussed at the last meeting. Chairwoman Wong said there are options. Trustee Callicrate said it's not clear and complete. People come to the Board meeting to expect us to do something; if we don't do what is stated, it's an Open Meeting Law violation.

Trustee Morris referred to the options. There are alternatives to the agenda. Chairwoman Wong said we can direct Staff to bring back information regarding those options. Trustee Horan said we can vote on it as presented, or direct Staff.

Trustee Horan made a motion to direct the District General Manager to continue to contract for legal services for Incline Village General Improvement District with the law firm Reese, Kintz, Guinasso, LLC and their successor in interest law firms of Reese, Kintz, LLC and Hutchison & Steffen, PLLC, for remainder of the current contract term set to expire at the end of 2018. Trustee Morris seconded the motion.

Trustee Horan said regardless if people don't like the representatives from each firm, it's too soon to throw out the baby with the bathwater and that we can conduct a Request for Proposal in August.

Trustee Callicrate said he will vote no because of the statements made earlier; we have had a multitude of legal actions with present counsel.

Trustee Morris said if we went with another firm, there would be a cancellation costs with the current firm.

Hearing no further comments, Chairwoman Wong called the question – Trustees Horan, Wong, and Morris voted in favor of the motion and Trustees Callicrate and Dent voted opposed; the motion passed.

**F.9. Review, discuss, and possibly adopt a revised Audit Committee Policy 15.1.0 (Requesting Trustee: Vice Chairman Phil Horan)**

Trustee Horan said we held an Audit Committee meeting earlier today. There was clean up with the language and an update of Audit Committee policy and we have before us the completed copy and went over same. He said there will be an Audit Committee Meeting to receive and review the final audit. Additionally, last year, we had some expenses with an issue brought up by the public that was not a part of the audit contract. In the updated policy, it states that the independent auditor shouldn't bill any fees unless authorized by the Audit Committee and that includes responses items that are brought by either an internal or external source; this is covered in the last sentence.

Director of Finance Eick said under 2.5, on agenda packet page 760, is the results of comments and discussion in regards to when the Audit Committee must meet and noted that some people were concerned with that language. To meet the Nevada statutes, we got into the recognition of meeting for the requirement. Under 2.6, we added the word "written" to be clear its requirement is to be a written report instead of oral report.

Trustee Callicrate asked about policy changes with strikeouts so the Board and community members could see what is being changed. Director of Finance Eick said prior language indicated possibility of meeting four times a year but in reality the committee doesn't meet four times a year.

Trustee Callicrate said we need to monitor our internal controls and that he isn't comfortable with that; what if there is a complaint, they will have to wait until that time to bring up the concerns. He wants the language to require to meet quarterly as it is specifically mentioned by Eide Bailly. Chairwoman Wong said she doesn't interpret the wording that way as the language from Eide Bailly had nothing to do with the committee meeting but rather financial statements. Trustee Callicrate said he understands, but future Audit Committees can meet only once a year if they wanted to.

Trustee Dent said Trustee Callicrate brings up a good point. Anytime we update the policy, we need to show what is being changed. He said something came up last year regarding an inquiry pertaining to the audit - is there a way to get a written report for anything we have them look at and evaluate. Director of Finance Eick said the auditors already provided a document regarding those who communicate with those in governance. The auditors already provide letters on compliance and those regarding governance and if there is disagreement with management. Trustee Dent said it's not reported; Director of Finance Eick said yes it is as it is in the engagement letter and they stated there was nothing to report.

Trustee Callicrate asked if the District asks for particular specifics, they can say they haven't found anything out of the ordinary, it would be a verbal response but doesn't seem appropriate. Director of Finance Eick said it is in the engagement letter and additional work would be included in the scope. This policy addresses additional work; they will do a mutual agreement instead of like last time when it was imposed upon them. Trustee Callicrate said documentation is what Trustee Dent is asking for and said that's an appropriate way to respond. If documentation is not more than stating they

reviewed and found nothing wrong; how do they arrive at that, and what calculations do they go through. Director of Finance Eick said it's called Agreed Upon Procedures between both parties to know if they want to proceed. Trustee Callicrate asked about things that come up that are outside of the scope. Director of Finance Eick said they have a professional responsibility to identify those items, they will not ignore it, and specifically it is in 1.0 as we added the language that doesn't preclude them from their professional responsibility.

District General Counsel Reese asked for clarification regard the exceptions for comments. Director of Finance Eick said they will make an observation of conditions that exist. They may say they observed it exists and we want to look into it and, in some cases, suggest what we should do about it.

Trustee Horan made a motion to adopt the revised Policy 15.1.0, Audit Committee. Trustee Morris seconded.

Trustee Callicrate said he wanted the original changes to be included. Trustee Horan said he can provide the redline copy. Trustee Callicrate said he doesn't have it now, so he won't support the motion. Trustee Dent said he too wanted to see the strikethrough.

Hearing no further comments, Chairwoman Wong called the question – Trustees Wong, Horan, and Morris voted in favor of the motion and Trustee Dent and Callicrate voted opposed; the motion passed.

At approximately 10:05 p.m., the power went out and Chairwoman Wong deferred all remaining items to the next regularly scheduled Board meeting. Prior to adjournment of the meeting, Chairwoman Wong allowed the public to make its public comments under agenda item L.

**G. DISTRICT STAFF UPDATE – DEFERRED UNTIL NEXT REGULAR SCHEDULE BOARD MEETING DUE TO POWER OUTAGE**

General Manager Steve Pinkerton

- ❖ Financial Transparency
- ❖ Capital Projects Update
- ❖ Board Retreat
- ❖ Quarterly Dashboards

- H. **APPROVAL OF MINUTES** *(for possible action)* – **DEFERRED UNTIL NEXT REGULAR SCHEDULE BOARD MEETING DUE TO POWER OUTAGE**
1. Regular Meeting of August 22, 2017
- I. **REPORTS TO THE IVGID BOARD OF TRUSTEES\*** – **DEFERRED UNTIL NEXT REGULAR SCHEDULE BOARD MEETING DUE TO POWER OUTAGE**
1. District General Counsel Devon Reese
- 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\*** – **DEFERRED UNTIL NEXT REGULAR SCHEDULE BOARD MEETING DUE TO POWER OUTAGE**
- K. **CORRESPONDENCE RECEIVED BY THE DISTRICT\*** – **DEFERRED UNTIL NEXT REGULAR SCHEDULE BOARD MEETING DUE TO POWER OUTAGE**
- 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 Trustee Morris' longwinded statement is like saying the clutch in my car is out and I need to buy a new Ferrari because I need a new clutch. That's sums up the Parasol. Unless Staff can show the urgency then we are creating programs to justify the purchase. After the comments today, this is not on hold rather it is still in the foreground and it is deceitful. Some of the programs proposed will now be offered by the Boys and Girls Club. Be good stewards. The community wants fiscal responsibility.

Pete Todoroff he said he has been here longer than anyone on the Board but that Ms. Martini has been here longer. The dog park is a good idea if IVGID doesn't have to pay for it. District General Manager Pinkerton had the idea to have the community pay for it. They can't do anything with that building at the old elementary school until the building is removed. Mr. Todoroff continued that he met with Trevor Lloyd and Eric Young about the community plan and that it has to be turned in to the Tahoe Regional Planning Agency by the end of the month. He asked if these attorneys had expertise in government. He said he heard District General Counsel

Guinasso isn't an expert in government. He said he has never seen so many complaints as this year. Why are there so many complaints if we have attorneys?

Raymond Tulloch thanked the Board for listening to the community. He thanked Trustees Callicrate and Dent for serving and listening as there is a lot of pressure. District General Counsel Reese is staying at the Holiday Inn to learn about Contracts 101 and that he has never heard of a lawyer who does not understand contracts. He said he is here to talk about the dog park. The biggest turnout was when it was discussed at the board meeting. He came to speak on behalf of the dog park. Mythical dog owners want a fenced dog park; he said he is yet to find anyone who wants that. He said he heard Trustee Morris say to stuff them away. If you piss off dog owners, it will make Parasol look minor. He said he appreciate Staff's comments about the users cooperating with each other. He said he thought he would be invited to participate on the Community Services Master Plan committee but he wasn't because he tells people what he thinks. He said he is from Scotland and wouldn't play soccer on field.

Steve Dolan said he is here for several reasons and not just the dog park. He said he appreciates the movement and talk of potential cost and alternatives. He said he has signatures regarding the dog park. He agrees to having a committee to review this to get community involvement. He said it's incredible that Trustee Dent, Trustee Horan, and the lawyer had to go over to Parasol for a document they don't want to release. Why do they make you come over? Are they hiding things? You could get the document. It's cherry picking by Counsel. You need to manage him better. Counsel said you are getting just Guinasso and just Reese but then at the same time mentions you are getting all the other resources.

M. **REVIEW WITH BOARD OF TRUSTEES, BY THE DISTRICT GENERAL MANAGER, THE LONG RANGE CALENDAR (for possible action) – DEFERRED UNTIL NEXT REGULAR SCHEDULE BOARD MEETING DUE TO POWER OUTAGE**

N. **ADJOURNMENT (for possible action)**

The meeting was adjourned at 10:17 p.m.

Respectfully submitted,

Misty A. 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 Bill Echols (1 page): 6-year resident

Submitted by Linda Newman (1 page): Public Comment at the 11-15-17 Board of Trustees Meeting By: Linda Newman – To be included with the Minutes of the Meeting

Submitted by Jeff Poindexter (1 page): Public Comment at the 15 Nov 2017 IVGID Board Meeting

Submitted by Margaret Martini (1 page): Public Comment at the IVGID 11-15-17 Board Of Trustees Meeting By: Margaret Martini – To be included with the Minutes of the Meeting

Submitted by Aaron Katz (16 pages): Written Statement to be attached to and made a part of the written minutes of the IVGID Board's Regular November 15, 2017 Meeting – Agenda Item F(5) – Proposed modification to the ground lease between IVGID and the Parasol Tahoe Community Foundation ("Parasol")

Submitted by Aaron Katz (8 pages): Written Statement to be included in the written minutes of this November 15, 2017 Regular IVGID Board Meeting – Agenda Item F(5) – Review and discussion of legal issue "Supplemental Memorandum" from Attorney Megan Fogarty re: the proposed Parasol building purchase

Submitted by Aaron Katz (5 pages): Written Statement to be included in the written minutes of this November 15, 2017 Regular IVGID Board Meeting – Agenda Item F(6) – Voting on Chairperson Wong's Six (6) cherry picked questions regarding possible purchase of the Parasol building

Submitted by Aaron Katz (6 pages): Written Statement to be included in the written minutes of this November 15, 2017 Regular IVGID Board Meeting – Agenda Item H(1) – Approval of the minutes of the IVGID's Board Regular Meeting of August 22, 2017

Bill Echols  
983 Wander Way  
6-year resident  
I have no business interests in Incline Village

3 or 4 years ago, the NLTFPD hosted a town hall meeting at the Firehouse to discuss defensible space and becoming a **Fire Adapted Community**. One of the conclusions that came out of the meeting was the broad support amongst the attendees for mandatory defensible space regulation. As best I can tell, nothing came of this. Tonight, I would like to bring this topic back into focus. We only have to look 100 miles from here to see the death and destruction wildfires can have in an urban setting.

IVGID is to be commended for their defensible space work on IVGID owned land, most recently in the wooded area across from the high school. U.S. and State of Nevada Forest Service land and particularly private land holding in IV have a lot of work to do. This is a public safety issue every bit as much as traffic regulation. It is also becoming a financial issue. It is increasingly difficult to get homeowners insurance in Incline Village. After the casualty losses the insurance industry took this year from fires, floods, and hurricanes, any insurance that homeowners can get will be more expensive, or worse, non-existent. Insurance availability is not a birthright. Insurance companies can elect not to write policies. If that happens, real estate values will plummet.

I have done everything the NLTFPD has told me I must do to be compliant with defensible space guidelines. But if my neighbors do not comply, then my work is for naught. Defensible space works only if every landowner maintains his or her property. That is clearly not happening. That is why I ask that IVGID take the lead in devising a program requiring landowners to maintain their property so Incline Village can be a safe, **Fire Adapted Community** as well as one of the most beautiful places on this planet. The Napa area used to be a beautiful place. It is quite a bit less so after the fires. Do we want to risk that happening to Incline Village?

If IVGID does not have the legal or legislative authority to force mandatory defensible space, it should lobby for it. If that proves impossible, it can use its bully pulpit to encourage, prod and / or shame property owners into action.

I would like to get a response from an IVGID manager or Trustee as to what IVGID will do with respect to this issue. If the answer is nothing, I would like to know why not. If the answer is yes, IVGID will move forward on mandatory defensible space, then I would like to know what will be done, what the time line is and what I and other concerned citizens can do to help move this project along.

If IVGID chooses to do nothing, the question is not IF we will suffer a devastating fire, it is only WHEN it will happen. Thank you for your time and attention.

Public Comment at the 11-15-17 Board of Trustees Meeting

By: Linda Newman – To be included with the Minutes of the Meeting

Public access to government actions and information is fundamental to accountability. Without transparency and accountability there is a breakdown in public confidence. Our District's improvisational approach to Nevada Law has resulted in the concealment of public records, violations of the spirit and the rules of open meeting law, a chronic dissemination of false and misleading information and fraudulent financial reports. It is time for the Board Majority to join the Board Minority and take corrective action to protect the public interest and to fulfill your fiduciary duties to the citizens you were elected to serve. The time for ignoring the red flags of criminal activity is over –deal with them now before they grow into something far more dangerous.

I request the Chair place the following items on the Agenda:

1. Forensic Accounting Audit and a Management Performance Audit
2. Independent investigation of District Employees and Legal Counsel's concealment and destruction of public records
3. A malpractice claim against Mr. Reese and Mr. Guinasso --and an RFP for new legal counsel with solid Governmental Agency experience
4. An RFP for new independent auditor with a wider scope of responsibilities including the development of strong internal controls

And one item to remove from the Agenda:

Parasol

It should be clear that the Community opposes this lease modification and spending \$5.5 million of our Rec Fee for "leasehold improvements." That should be enough to take this off the table. If it isn't, all Trustees have stated that the \$5.5 million price ticket is unacceptable. Any decisions you make on flawed and incomplete information and legal opinions that are not based on reviewing all of the documents – are bad decisions. And bad decisions have consequences...

## Public Comment at the 15 Nov 2017 IVGID Board Meeting

My name is Jeff Poindexter. I am a permanent resident in Incline Village. I am speaking to you tonight as an individual and as a businessman a Realtor.

During the last four weeks we have experience at least four power failures. After the large power failure last Thursday, I was able to talk to both the CEO of NV Energy, Mr. Paul Caudill and subsequently the Senior Vice President for Customer Operations, Mr. Pat Egan to try and determine why these equipment failures were occurring and to offer a forum for NV Energy to explain the failures as well describe what they were planning to reduce equipment failures in the future.

I offered the Tahoe Business Exchange as a forum for NV Energy to explain their plans for this area but also suggested that the IVGID Board meeting was also a mechanism to get to a larger audience. NV Energy was very proactive in immediately contacting IVGID but unfortunately IVGID was unable to put them on the agenda. Despite that, they have come to this meeting but do not have a slot of time to speak to the topic. Hopefully IVGID will place them on a future agenda and provide them time to provide details for future improvements in this area.

Why is this important? These recent power failures occurred during a benign weather environment. As an individual this will be much more impacting if it occurs in weather such as we had last winter. As a business these impacted me as well as essentially all other businesses regardless of the weather. For those individuals on vacation I would imagine they were not very happy.

My hope is that IVGID will step forward with both individual residents as well as Incline and Crystal Bay businesses to provide a forum for working with NV Energy as they lay out their future plans for improvements not only in Incline Village and Crystal Bay but for Northern Nevada as a whole.

Public Comment at the IVGID 11-15-17 Board Of Trustees Meeting

By: Margaret Martini – To be included with the Minutes of the Meeting

Tonight's agenda could leave a citizen speechless! The sheer arrogance of our Board Chair, Vice Chair, General Manager and Legal Counsel are breathtaking.

After the sharp admonitions of the Office of the Attorney General, I would like to know what steps our Board will be taking on disciplining our Counsel for disrespecting our citizens and undermining the public's faith in transparency and open government? I would also like to know how the Board could even consider the retention of the RK firm and the addition of Mr. Guinasso and his new law firm when neither Mr. Reese nor Mr. Guinasso have any respect or understanding of the Open Meeting Law, the Public Records Act or their responsibility to provide competent legal advice.

I would also like to know how Chair Wong and Trustees Morris and Horan can continue to ignore the will of our citizens strongly opposing the Parasol bailout and spending \$5.5 million of our Rec Fee for Administrative Office Space? And, I want to know how one can rely on a second opinion from an attorney who was specifically directed to base her opinion on the selective facts and documents provided by our General Manager and a Parasol Board Member –with only the addition of a Preliminary Title Report. If you are looking for a legal foundation to move forward –you don't have one. What you do have is a legal morass of maybes and a road ahead lined with all kinds of legal liabilities. Although you have chosen to ignore the voices of our citizens and all the facts and documents that constitute REAL Due Diligence, you cannot avoid the consequences of willful ignorance. As history has proven, this is the bedrock of failure, not success.

And one final question because time is short. Mr. Pinkerton, Trustees Wong, Horan and Morris as you betray your oath to serve the public interest and abide by the laws of our nation and our state –Have you no shame?

**WRITTEN STATEMENT TO BE ATTACHED TO AND MADE A PART OF THE WRITTEN  
MINUTES OF THE IVGID BOARD'S REGULAR NOVEMBER 15, 2017 MEETING –  
AGENDA ITEM F(5) – PROPOSED MODIFICATION TO THE GROUND LEASE  
BETWEEN IVGID AND THE PARASOL TAHOE COMMUNITY  
FOUNDATION ("PARASOL")**

**Introduction:** Here, again, the IVGID Board's chairperson continues to shepherd this agenda item forward notwithstanding our community is overwhelmingly opposed to it. And here again I have discovered yet another legal reason to summarily dismiss this massive "bail out" at local property owners' expense. And now it's the Donald W. Reynolds Foundation ("DFW") grant which funded Parasol Foundation's ("Parasol's") construction of its non-profit center building ("the building"). And that's the purpose of this written statement.

**More Evidence of IVGID's Staff's Lack of Competence:** When Parasol first approached IVGID with the subject proposal, our "so called" professional staff was instructed to conduct due diligence and report back to the Board with their findings. So what is the first thing one would have thought staff would have done to accomplish this charge? **ORDER A PRELIMINARY TITLE REPORT** to the land underneath the building! But to date, IVGID staff deny they have secured such report<sup>1</sup>.

Had staff prosecuted its charge, besides the PHONY *recorded* Amended Covenants, Conditions and Restrictions<sup>2</sup> ("CC&Rs") which at first blush seem to allow Parasol to use the land underneath the building for purposes other than park and recreational purposes, and no other purposes, what else would it have learned? The July 9, 1999 Construction Grant Agreement ("the Grant Agreement") between Parasol and its financial benefactor, DFW. How do I know? Because ¶5.1 of that agreement mandates that the parties "file a Memorandum of Grant Agreement in the land records" for Washoe County.

**What Does the Grant Agreement Disclose?** Quite a number of things. But rather than identifying each and every one, I have attached a copy of the agreement, without exhibits and other documents expressly incorporated by reference (such as Parasol's April 21, 1999 Grant Request, and July 23, 1999 and August 3, 1999 "letters" referenced at page 11 of the Grant Agreement), as Exhibit "A" to this written statement.

**The Grant Agreement's Use Restrictions:** ¶5.1 of the Grant Agreement, at page 11, states that "Any use of the (proposed building)...which is inconsistent with the philanthropic or charitable purpose generally set forth in (Parasol's) Grant Request shall be considered a willful and material

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<sup>1</sup> I last asked for a copy on October 29, 2017.

<sup>2</sup> This topic is the subject of an extensive written statement attached at pages 156-183 of the packet of materials prepared by staff in support of the Board's regular September 13, 2017 meeting (go to [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT\\_Packet\\_Regular\\_9-13-17.pdf](https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_9-13-17.pdf)).

breach of this Agreement." What does this mean? If IVGID purchases the Parasol Building and uses it for *any* purposes other than philanthropic or charitable, there will be a breach of the agreement.

Since IVGID's announced use will violate the foregoing use restrictions, ***isn't this a fact the Board should clearly understand before it moves forward?***

**The Remedy For Violation of the Grant Agreement's Use Restrictions:** So what is the remedy for violation of the Grant Agreement's use restrictions? "All right, title and ownership of said (building), including, but not limited to, all real property, rights of way, easements, equipment, machinery, appliances, chattels...and other rights and privileges...shall immediately revert to and vest in the Foundation. This restriction and right of reversion shall run with the land and be binding upon (Parasol), its successors and assigns, for a term of twenty-one (21) years from the date of completion of the" Parasol Building.

**Moreover, We Now Have More Evidence Parasol is Currently and Ever Since January 12, 2000 Has Been in Breach of the Lease:** Would you not agree with me that the use restrictions and penalties in the grant agreement referenced above encumber in some way or manner the Parasol Building? Assuming you do, consider the following language under ¶XIII(A)14 of the Lease<sup>3</sup>:

"Lessee shall not...encumber...*in any way or manner* the structures that will be situated on Lessor's realty."

Ladies and gentlemen, ***Parasol is in breach of its Lease agreement with IVGID!*** And what is the remedy for Parasol's default? According to ¶XIII(B)14 of the Lease,

"In addition to any other rights or remedies provided herein or at law or in equity, Lessor, at its sole option...may require Lessee to remove the Non-Profit Center facility from the leased premises and return said real estate to its former, natural state/condition."

***Aren't these facts the Board should clearly understand before it moves forward?***

**Conclusion:** Now that the Board knows that its intended use of the Parasol Building violates the Grant Agreement, threatens reversion of title and ownership of the building to DWR, and that since inception Parasol has been in violation of the Lease, why engage Parasol in this matter until it produces written evidence that these use restrictions have been removed and it is no longer in

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<sup>3</sup> See page 305 at [https://www.yourtahoepiece.com/uploads/pdf-ivgid/Parasol\\_4-25-2017,\\_Attachment\\_2\\_Original\\_Lease\\_between\\_PTFCF\\_and\\_IVGID,\\_Pages\\_from\\_General\\_Business\\_Item\\_G.5.\\_-\\_Ground\\_Lease\\_with\\_PTFCF\\_4-25-17-4.pdf](https://www.yourtahoepiece.com/uploads/pdf-ivgid/Parasol_4-25-2017,_Attachment_2_Original_Lease_between_PTFCF_and_IVGID,_Pages_from_General_Business_Item_G.5._-_Ground_Lease_with_PTFCF_4-25-17-4.pdf).

violation of its Lease with IVGID? And why is it members of the public are the ones who are forced *AGAIN* to do our "so called" professional staff's due diligence?

Finally, according to Attorney Megan Fogarty's written analysis of the Parasol Building issue, including her "Supplemental Memorandum,"<sup>4</sup> she did not consider the Grant Agreement, its use restrictions, and its applicability to IVGID because she only relied upon "cherry picked" materials provided by our General Manager and Parasol's equivalent ("This Supplemental Memorandum...is based *solely on information contained in* the documents previously reviewed in preparation of the Original Memorandum, and that *certain Preliminary Report issued by Tigor Title of Nevada, Inc.*, dated September 15, 2017"<sup>5</sup>). Is it any wonder neither Pinkerton nor Alling made Attorney Fogarty aware of any of these facts?

**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) and Frank Wright.

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<sup>4</sup> See page 668 of that packet of materials prepared by staff in anticipation of the Board's regular meeting of November 15, 2017 ["the 11/15/2017 Board packet" ([https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT\\_Packet\\_Regular\\_11-15-17\\_.pdf](https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_11-15-17_.pdf))].

<sup>5</sup> There is no reference to the subject Grant Agreement in this Preliminary Title Report.

**EXHIBIT "A"**

## CONSTRUCTION GRANT AGREEMENT

THIS CONSTRUCTION GRANT AGREEMENT (the "Agreement") is made and entered into this 9<sup>th</sup> day of July, 1999, by and between The Parasol Foundation, Inc., a not-for-profit corporation, ("Grantee") and the DONALD W. REYNOLDS FOUNDATION ("Foundation").

### RECITALS

WHEREAS, Grantee has submitted a "Grant Request" to the Foundation for a grant for a new Community Services Center building in Incline Village, Nevada on the Grantee's premises; and

WHEREAS, the Foundation has approved a grant not to exceed \$6,621,500 to construct such a building and to provide for equipment, furnishings and materials all as described in the Grant Request (herein collectively referred to as the "Project"); and

WHEREAS, the Foundation is willing to provide the requested funds in accordance with the terms and conditions of this agreement.

The parties to this Agreement do hereby agree as follows:

### SECTION 1 COMMITMENTS

1.1 Grant. The Foundation agrees to fund a grant not to exceed \$6,621,500 ("Grant Amount") to construct, furnish and equip the Project as described in Grantee's request, subject however to the terms and conditions set forth below and in the cover letter, Exhibit "G", and further based on the Grantees representations and warranties as set forth in this agreement. The Foundation is relying upon these representations and warranties which are material to the performance of this agreement.

1.2 Restricted Fund for Building Maintenance, Repair & Equipment ("Restricted Fund"). Grantee agrees that upon execution of this Agreement, it will promptly and diligently proceed to initiate a fund drive to provide a Restricted Fund for the maintenance of the building. This fund shall be in an amount equivalent to \$1,324,300 which is twenty percent (20%) of the Grant Amount. There shall be an Agreement creating the Restricted Fund, which shall cause these funds to be set aside and be restricted to providing only maintenance and upkeep of this building, which shall be kept in a "first-class" condition. The Restricted Funds shall not be used to operate this building or for its routine custodial services. No part of the Restricted Fund shall include any funds from the Grant. Grantee agrees that the Restricted Fund will be fully subscribed by cash and/or pledges no later than the completion of the project. Pledges are payable within three years of completion of the Project. Occupying any portion of the project shall occur only after the Restricted Fund is fully subscribed as specifically defined herein as Section 1.3 "Project Occupancy". Grantee shall provide quarterly to the Foundation a Confidential Update on Restricted Fund Report, Exhibit "H", outlining all cash and pledges received. A copy of the Restricted Fund Agreement shall be given to the Foundation prior to the solicitation of any Restricted Fund funding. An example of the Restricted Fund Agreement Establishing The Restricted Fund for Building Maintenance, Repair and Equipment is provided herein as Exhibit "A".

1.3 Project Occupancy. Grantee shall not occupy any portion of the project for normal business use and functions prior to the Restricted Fund being fully subscribed. This does not preclude or exclude the Grantee and its vendors working in the facility to adequately complete the installation, testing, punch list and necessary training of project-related equipment and machinery.

1.4 Grantee Representative. The Grantee shall notify the Foundation as to the identity of the person appointed by the Grantee to serve as the "Grantees Representative", who shall be no more than one

reporting level from the Chief Executive Officer. By virtue of this appointment, the Grantee Representative shall be vested with the authority to act for the Grantee and whose acts, agreements and/or approvals shall be binding upon the Grantee institution. The notification shall include a certification of the signature of the Grantee's Representative.

1.5 Foundation Representatives. The Foundation will appoint, at its expense, Phil Thomas as the "Foundation Representative" for Design and Construction issues and David Zemel for Program issues with authority to make such approvals as may be required on behalf of the Foundation in connection with this project. The Foundation Representative shall be responsible solely to the Foundation and shall owe no duty to the Grantee in the performance of his duties. The Foundation will send Grantee a written notification certifying the Foundation Representative's signature.

- (A) The Foundation Representative is charged with the responsibility to review and insure that the plans and specifications accurately reflect the Project Described in the Grant Request.
- (B) The Foundation Representative will make visitations during the construction phase on behalf of the Foundation to be satisfied construction is proceeding in accordance with the plans and specifications.
- (C) The Foundation Representative will monitor the equipment purchases as being necessary to the operation of the building and that such purchases are within the equipment budget.

1.6 Access to Premises and Information. The Grantee agrees to provide the Foundation Representative with full and complete access to the following:

- (A) Access to the site and the building;
- (B) Access to all books and records relating to the Project, including review and inspection of invoices, bills of material, lien waivers, payment records, architectural reports, surveys and any other information which may reasonably relate to the progress of the Project or any problems which may materialize.
- (C) The Foundation Representative shall have the right to discuss the Project with any of Grantee's staff or employees as well as employees or agents of the architect or the construction contractor;
- (D) The Grantee will provide the Foundation Representative with desk space in its offices and at the site, and will, at its expense, make telephone and secretarial services available to the Foundation Representative as may be reasonably necessary for the performance of his duties in connection with the Project.

1.7 Commencement Dates. Upon satisfaction of any conditions set forth in the cover letter, attached as Exhibit "G", Grantee shall initiate the various project phases as defined below. Grantee shall use its best efforts to commence work beginning with the Planning Phase by July 23, 1999 or from the date such conditions are satisfied. If the work, as defined below, does not commence by that date, the Foundation may, at its sole option, elect to terminate this agreement by giving written notice to the Grantee. The Grantee, its selected architectural firm and general contractor (Project Team) shall create and provide the Foundation with a Gantt chart indicating all of the milestone dates associated with commencing and completing each of the phases.

- (A) Planning Phase. Prior to engaging in or continuing with any further design, the Grantee shall:

- (1) begin and/or complete the process of selecting an architectural firm and general contractor. The architectural firm shall prepare the plans and specifications that must reflect the kinds of cooperation, coordination, consolidation, efficiencies, and effectiveness your program plans to achieve. Subsequent to written representation from the Grantee to the Foundation all of these conditions have been met, the Grantee may release their architectural firm to begin to seek and acquire all permits, licenses and regulatory approvals necessary to commence the construction of the improvements. The general contractor shall work with the architect throughout all design phases to provide information pertaining to means and methods of construction, general constructability, and scheduling that will be reflected in the plans and specifications to acquire accurate market pricing.
  - (2) initiate and execute the Restricted Fund Agreement and will evidence such with a specific and detailed schedule for achieving full subscription of the Restricted Fund as outlined in section 1.2 herein.
- (B) Design Phase. Upon completion of the Planning Phase as defined herein, Grantee shall engage the Project Team to resume the project design using its best efforts to complete the construction documents in a timely manner.
  - (C) Construction Phase. Upon completion of the Design Phase as defined herein, the Grantee shall have or shall work to establish the project cost with its general contractor. Grantee shall use its best efforts to substantially complete the work in a timely manner.

1.8 Completion Dates. The Planning Phase shall be completed no later than ninety (90) days from the commencement date defined in section 1.7 herein. All phases of the Project as defined above, including the procurement and installation of furnishings and equipment, shall be completed by July 23, 2002. Grantee agrees to act diligently and to exercise its best efforts to meet this completion date.

1.9 Architectural Firm. Prior to engaging an architectural firm for the planning, designing and construction supervision of the Project, the Grantee shall furnish the Foundation Representative with the credentials of the proposed architectural firm. Grantee shall have made reasonable effort, prior to furnishing credentials to the Foundation Representative, to ensure that the architect is qualified for the project and is in good standing in their professional arena. It is the Foundation's desire that such firm shall be competent to design and supervise the Project within the Grant budget parameters and the stated scope of work in the Grant Request. If the Foundation Representative has no reasonable objection to the engagement of the architectural firm, the Grantee may proceed to retain such firm. A copy of the contract between the Grantee and the architects shall be furnished to the Foundation as well as any subsequent amendments or modifications of such contract. Grantee shall notify the Foundation of the name of the architect who has been designated as the supervising architect who will be certifying the requests for payment and calculating the percentage completion of the project in such requests for payment.

- (A) The architectural firm shall promptly prepare a "time-line" schedule of events showing, among other items: when the plans and specifications will be prepared; when the construction bids will be let; when the construction will commence; and an estimated completion date.
- (B) The architect shall require a topographic survey with boundaries and legal description of the site, any soil studies which may be necessary or appropriate and shall assist Grantee in obtaining an appropriate Phase I environmental audit from a firm regularly engaged in performing such studies and in taking such corrective measures as may be required.

- (C) When the Schematic Design Presentation Package has been prepared along with a preliminary cost estimate, it shall be submitted to the "Foundation Representative" who shall review them for compliance with the Project as described in the Grant Request.
- (D) The Final Plans and specifications shall be prepared after the Schematic Design Presentation package has been approved. A final budget will also be prepared showing an architectural breakdown of construction costs and all other costs. The Budget shall identify any costs not included in the Grant Request which are to be funded to the Grantee out of funds other than the Grant. These shall be submitted to the Foundation Representative for his review prior to submitting the Project for bids.

1.10 Bid Process. When the plans and specifications have been reviewed and approved by the Grantee, Grantee shall invite bids for the construction and equipping of the Project. The Grantee will select the "best bid" for both the construction and for the various items of furnishings and equipment. The selection of the "best bid" shall include such factors as cost, quality of workmanship, reputation and ability to complete the Project on or before the Completion Date. It shall not be required to obtain competitive bids on furnishings or equipment that costs less than \$10,000.00.

1.11 Construction Contract. When a contractor has been selected, the Grantee shall furnish a fully executed copy of the Construction Agreement to the Foundation. Subsequent modifications or amendments shall also be furnished to the Foundation immediately. The contractor shall be required to post a payment performance completion bond as defined in Section 1.12 below.

1.12 Payment & Performance Bond. The contractor shall be required to post a payment performance completion bond in amounts at least equal to the total contract price as security to Grantee for the faithful performance and of all obligations to the contractor. This bond premium is an appropriate cost of the construction project.

1.13 Insurance Coverage. Prior to commencement of actual construction, the Grantee shall obtain at least the following types of insurance coverage:

- (A) Workmen's compensation.
- (B) Fire and extended coverage (in builders risk completed value form).
- (C) Builders risk insurance for the full insurable value of the improvements.
- (D) Comprehensive general liability insurance of not less than the amount of the authorized grant, covering both Grantee and Foundation as insured parties.
- (E) Such other insurance coverage as may be deemed reasonable and necessary.

These coverages are to be considered as covered costs of construction under the grant and evidence of such coverage shall be furnished to the Foundation.

1.14 Cost Projections. The Grantee and the architect shall prepare and furnish to the Foundation Representative, simultaneously with the plans and specifications, a detailed cost projection for:

- (A) All labor, materials and services necessary for construction of the building in accordance with the plans and specifications as stated in the Grant Request.
- (B) All furnishings, and equipment, including the installation charges for such items as were included in the Grant Request.

★ 1.15 Donor Recognition. The Project shall be named the Donald W. Reynolds Community Memorial Center and shall be known as such for all purposes. No interior or external portion of the Project shall ever be given any other name unless otherwise approved in writing by the Foundation. The plans and specifications shall provide for a space in the building to display a plaque describing Donald W. Reynolds and shall include a space for a bronze bust of Mr. Reynolds in a prominent and suitable location.

1.16 Publicity Policy. Grantee hereby acknowledges it has received a statement from the Foundation outlining its policy regarding publicity and agrees to abide by such policy. The essential elements of the policy are as follows:

- (A) The Grantee may announce and publicize the Project after first permitting the Foundation to review such publicity prior to its dissemination.
- (B) The Grantee is encouraged to publicize this grant to advance the reputation of the institution and assist in raising additional funds in support of its mission.
- (C) The focus of any such publicity shall be upon the Grantee and its program.
- (D) It is the Foundation's policy that its only public involvement with the Project will be the initial press release announcing the Grant and participation in the dedication ceremony when the building is completed. All public attention shall be directed toward the Grantee, the accomplishments of Grantee and upon the Project.
- (E) Advanced approval is required by the Foundation on all written external materials that reference the Foundation, including all fundraising materials.

1.17 Project Evaluation. Between the time of award notification and building dedication, Grantee shall provide the Foundation with current copies of the Grantee's annual certified financial audit. After completion of the project, the Foundation may, at its option, send representatives to make physical site visits to the Project at one year, three years, five years and then every five years post completion of the project. Grantee shall submit a brief written report annually within 90 days of the Grantee's fiscal year end that shall:

- (A) describe the utilization of the building,
- (B) show the contribution the Project has made to the achievement of the agency's strategic objective,
- (C) show a reconciliation of the Restricted Fund for:
  - (1) the achievement of the end of the capital campaign.
  - (2) the use of the Restricted Fund income as prescribed in the Restricted Fund Agreement.
  - (3) propose anticipated expenses for the upcoming year to be funded from the Restricted Fund.

## SECTION 2 WARRANTIES AND REPRESENTATIONS

The following warrants and representations are true and correct as of the signing of this Agreement and each request for payment by Grantee shall constitute an affirmation that the following representations and warranties remain true and correct as of the date of such request and, unless Foundation is notified to the contrary prior to the disbursement of the requested payment, will be true and correct on the date of such payment.

2.1 Exempt Status. Grantee represents that it is organized and operated exclusively for one or more of the purposes set forth in Section 170(c)(2)(B) of the Internal Revenue Code of 1986, as amended

(herein the "Code"), and that it is an organization described in Section 509(a)(1) of the Code. During any period, the Foundation shall be required to make any payments to Grantee under and in the manner provided by this Agreement, Grantee shall immediately notify the Foundation of any change or changes in the purposes for which Grantee is organized and operated and any change in the status of Grantee as an organization described in Section 509(a)(1) of the Code. The obligations of the Foundation under this Agreement shall cease immediately upon Grantee being organized and operated for a purpose other than those described in Section 170(c)(2)(B) of the Code or upon donee not being an organization described in Section 509(a)(1) of the Code.

★ 2.2 Title. Grantee shall furnish, in writing, the Foundation Representative proof of good and marketable title, in fee simple, to the premises upon which the building is to be constructed, subject only to reasonable rights-of-way, easements, conditions, covenants and restrictions which will not interfere with the construction and operation of the Project. The site location of the premises is as shown on the preliminary site plan attached hereto and incorporated hereto as Exhibit "B".

2.3 Authority. Grantee has taken all action necessary to authorize the execution and delivery by it of this Agreement and all other documents contemplated hereby to which it is a party and to authorize the consummation of the transactions contemplated in this Agreement. A copy of the resolutions of the Grantee authorizing the acceptance of the Grant and all acts required by this Agreement is incorporated herein as Exhibit "C".

2.4 Ability to Perform. Grantee represents that a building(s) with the following features (the "Building(s)") can be constructed, equipped and furnished on the site in full compliance with all governing and applicable federal, state and local laws, ordinances, building(s) codes and regulations, for a sum not to exceed the "Grant Amount". Based on the Grantee's Grant Request to the Foundation, the Building(s) shall have the following features: ★

- (A) The Building(s) shall be free standing and shall not share a common wall with any other building(s).
- (B) The Building(s) shall be approximately 30,236 gross square feet in size computed in accordance with common or accepted methods.
- (C) The Building(s) shall have two (2) floor(s).
- (D) The exterior finish of the Building(s) shall be of heavy timber, stucco and stone.

2.5 Construction/Compliance. All construction will be performed on the improvements within the perimeter of the site as shown on Exhibit "B" and shall be in accordance with the plans and specifications approved by Grantee and its Architect and as furnished to the Foundation. The anticipated use of the premises complies with all applicable zoning ordinances, building codes, regulations and ADA requirements affecting the premises and all requirements for such use have been or will be satisfied before construction commences.

2.6 Payment of Obligations. All obligations incurred by Grantee for the cost of designing, constructing, furnishing and equipping the building will be paid by the Grantee as described in Section 3.2, "Funding The Account". Within ten (10) full business days after Grantee receives funding from the Foundation, the Grantee will make payment for all incurred obligations that were represented in the "Fund Request". Prior to receiving funding, Grantee must provide the Foundation a report with proof of payment for all items funded in the previous month's "Fund Requests".

2.7 No Litigation. There are no actions, suits or proceedings pending or, to the knowledge of Grantee, threatened against or affecting it or the premises, at law or in equity, or before or by any Governmental Authority.

2.8 Licenses; Permits. Grantee possesses or will obtain prior to commencement of construction all franchises, certificates, licenses, permits and other authorizations from governmental or regulatory authorities that are necessary in any material respect for the construction ownership, maintenance, or operation of the project and Grantee is not in violation of these licenses, permits or agreements in any material respects.

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SECTION 3  
PROGRESS PAYMENTS PROCEDURE

The grant, which is the subject of this Agreement, shall be distributed to the Grantee in progress payments according to the following provisions.

3.1 Bank Account. Unless otherwise approved by the Foundation in writing, the Grantee will open and maintain at its expense an account at a bank selected by Grantee (the "Account"). The Account shall be used exclusively for the payment of the costs of designing, constructing, equipping and furnishing the Building. The Account shall provide monthly statements and require a return of all checks charged to the Account. The Account may be an interest bearing account which shall be used for costs associated with the Building. The funds in the Account shall be subject to withdrawal on checks signed by at least two (2) persons who shall be either two authorized officers of Grantee, or one or more authorized officers of Grantee and Grantee's Representative as identified in paragraph 1.5. Grantee shall keep the Foundation advised of the signatures of all persons authorized to sign checks drawn on the Account.

3.2 Funding the Account. At such time as funds are first required for the Account, and monthly thereafter until final acceptance by Grantee of the Building, Grantee's Representative will prepare and submit to the Foundation a request (the "Fund Request") containing an estimate of the amount of cash or additional cash needed in the Account to pay bills received and approved for payment by Grantee in connection with designing, constructing, equipping and furnishing the Building during the preceding month as incorporated herein as Exhibit "D". Such Fund Request shall include a statement of the book balance in the Account as of the date of the Fund Request. The Fund Request shall be certified by the Grantee's Representative and shall include a certification by the architect as to the percentage of completion of the Project at the date of the Fund Request. In no event shall the funds already distributed when added to the funds being requested be a greater percentage of the total grant than the percentage of completion certified by the architect.

3.3 Providing Funding. Within ten (10) full business days after Foundation approval of the Fund Request, the Foundation shall provide funds, by check or wire transfer to the Account in amounts at least equal to all reasonable Fund Requests.

3.4 Limitation on Funding. In no event shall the aggregate amount which is to be paid by the Foundation for constructing (including architect's fees), equipping and furnishing the building exceed the authorized grant amount.

3.5 Excess Costs. Should the cost of constructing (including architect's fees), equipping and furnishing the building, including all amounts heretofore paid by the Foundation to Grantee, exceed the grant amount, the Grantee will pay from its unrestricted funds, (without the use of funds received as a gift for this special purpose from any other person or corporation) such excess amount or amounts in order to complete the construction of the building and the purchase and installation of the equipment and furnishings therein.

3.6 Surplus Grant Funds. Should the Project costs be less than the Grant amount, including all amounts heretofore paid by the Foundation with respect to said Building, the Foundation shall be obligated to provide funds only to the extent of actual costs. Any surplus left in the Account or held by the Foundation shall be returned to the Foundation's general funds.

3.7 Retainage. All contracts for the construction of the Building and for furnishings and equipment (including installation thereof) shall provide, that at least five percent (5%) of all bills rendered for services rendered and materials furnished shall not be payable until all work or materials called for by such contracts has been completed or furnished to the Project and accepted by the architects and Grantee.

3.8 Purchases. From time to time subsequent to the letting of the construction contracts, Grantee will purchase, or contract for purchase of, such furnishings and equipment as shall not have been specified in the construction contracts, and contract for the installation thereof where installation is necessary. Grantee will deliver to the Foundation's Representative, copies of all such purchases and contracts. All such purchases and contracts shall specify a delivery date and an installation date and when possible, the net delivered and/or installed cost. As used in this Agreement, the terms "furnishings" and "equipment" shall include only those capital items as listed on Exhibit "E" which are necessary for the Building to be used for the purposes for which it is intended. Exhibit "E" may be furnished supplementally, but in any event prior to letting the construction bids. The Foundation reserves the absolute right to reject any such purchases it determines in its sole judgment which are unnecessary and upon such rejection, the Grantee will pay for any such rejected items out of its separate funds.

3.9 Expenditure Restrictions. Without the prior written approval of the Foundation, the costs described below shall not be considered a part of the cost of constructing, equipping and furnishing the Building, and under no circumstances shall any of the costs described below be approved or paid, directly or indirectly, from the Account:

- (A) Any amounts expended for the extension of sewer, water, gas, electrical, steam or other utility lines beyond ten feet from the Building;
- (B) Any amounts expended for demolition costs or the cost of removing existing structures at the site;
- (C) Any roads into the Project or parking lots or parking facilities even though they are to be used in connection with the Project;
- (D) Any amounts expended for land surveys;
- (E) Any amounts expended for soil testing not included in the contractor's bid;
- (F) Any amounts expended for legal services to the Grantee;
- (G) The cost of special consultants retained by the architects and/or Grantee other than those covered by the architect's basic fee;
- (H) The cost of reproductions of working drawings and specifications issued by the architect and/or Grantee for the purpose of bidding and construction, other than those to be provided by the architect, the cost of which is covered by their basic fee;
- (I) Any amounts required to be expended by Grantee in accordance with the contract between Grantee and the architects in excess of 6.5% of the cost of constructing the Building as provided in the construction documents;
- (J) Any amounts included in the Grant Request as a "contingency". Unforeseen costs and expenditures may arise, in which case the Grantee may request in writing, additional funding up to five percent (5%) of the original Grant Amount approved by the Foundation. These additional costs must be explained and satisfactorily justified before approval of such additional funding will be considered.

3.10 Final Payment. Prior to approval or payment from the Account of any bill representing final payment on a contract for construction of the Building, Grantee's Representative and the architect shall execute and forward to the Foundation a document certifying that all work called for by said contract has been completed and accepted. As soon thereafter as possible, the bill representing final payment shall be approved and the Foundation will deposit in the Account such additional amount, if any, as may be needed to pay such bills and payment by Grantee shall be made as soon thereafter as possible.

3.11 Lien Waivers. All parties performing labor or furnishing materials to the Project shall furnish Grantee with partial lien waivers within ten (10) days following each progress payment for the amount of work completed and paid for as of the date of billing on which the latest progress payment was based. General lien waivers are to be furnished to Grantee on the final payment.

3.12 Change Orders. Any changes in the plans, which Grantee may wish to make in the course of the work, shall be approved in writing in advance by the Architects, and the Grantee's Representative. Consent of the Foundation will only be required if the changes would cause the overall Project costs (including any contingency funds) to be exceeded. Consent of the Foundation will also be required when all such change orders, in the aggregate, exceed 1% of the total construction cost of the Project.

3.13 Completion Report. Upon completion of the Project and prior to final payment hereunder, a certificate of occupancy and governmental approval is to be furnished to the Foundation within thirty (30) days after completion of the improvements. The Grantee will require the Architects to furnish "as built" drawings and materials for the Project.

#### SECTION 4 DEFAULT IN PERFORMANCE

The Foundation shall have the right, at any time, to terminate this Agreement after fifteen (15) days written notice to Grantee, if Grantee has refused or substantially failed, without legal justification, to perform any act required by this Agreement or if any events of default have occurred. The following items shall be considered events of default.

4.1 Breach of Agreement. If Grantee shall fail or refuse to comply with any of the covenants, agreements or obligations contained in this Agreement or any other instrument or document given in connection with this grant.

4.2 Breach of Warranty. If Grantee materially breaches any warranty or representation contained in this Agreement or any other writing given in connection with this grant.

4.3 Breach of Construction Contract. If Grantee shall fail or refuse to comply with any term or condition of the construction contract. ✱

4.4 Not in Accordance with Plans. If the description, area, character or condition of the improvements differs materially from the information provided to the Foundation or the construction of improvements be not materially in compliance with the plans and specifications.

Such termination shall be deemed effective upon the expiration of said fifteen (15) days, if Grantee has not theretofore corrected the events of default or performed the acts described in the notice. During the pendency of this 15-day period, the Grantor will suspend any further payments pending the corrective action by the Grantee. In the event of termination of this Agreement, the Foundation shall have the right to require

the balance in the Account to be paid over to it and to refrain from making any further advance hereunder. In such event the Grantors' obligations hereunder shall cease.

SECTION 5  
GENERAL TERMS AND CONDITIONS

5.1 Use Restriction and Right of Reversion. It is expressly agreed by the Grantee, its successors or assigns, that the Project shall be used for the philanthropic or charitable purposes generally set forth in the Grantee's Grant Request dated April 21, 1999 the terms of which are hereby incorporated by reference. Any use of the Project which is inconsistent with the philanthropic or charitable purpose generally set forth in Grantee's Grant Request shall be considered a willful and material breach of this Agreement and if such breach continues unremedied for thirty (30) days after written notice by the Foundation thereof specifying the acts constituting the inconsistent use and requesting that it be remedied, all right, title and ownership of said Project, including, but not limited to, all real property, rights of way, easements, equipment, machinery, appliances, chattels to the extent the same become fixtures now or hereafter used in connection with the use and operation of the Project on the real property, all permits, licenses, franchises, certificates and other rights and privileges obtained in connection with the operation of the Project, shall immediately revert to and vest in the Foundation. This restriction and right of reversion shall run with the land and be binding upon the Grantee, its successors and assigns, for a term of twenty-one (21) years from the date of completion of the Project. The parties agree to file a Memorandum of Grant Agreement in the land records, the form of which is attached hereto as Exhibit "F". No act or omission upon the part of the Foundation shall be a waiver of the operation or enforcement of this restriction and right of reversion. ★

5.2 No Agency. Grantee understands and agrees that Foundation is not the agent or representative of Grantee, nor is the Foundation Representative a representative of Grantee. This Agreement shall not be construed to make the Foundation liable to materialmen, contractors, sub-contractors, craftsmen, laborers or others for goods or services delivered or provided by them upon the premises.

5.3 No Liability to Third Parties. Notwithstanding any other provisions of this Agreement to the contrary, the terms, covenants and conditions contained in this Agreement are for the sole benefit of the parties hereto, and no reliance or benefit is intended to be granted to any person or company not a party to this Agreement.

5.4 Notices. All notices shall be in writing and shall be sent to the respective addressees of the parties as follows:

Grantee:

The Parasol Foundation, Inc.  
P.O. Box 5206  
Irvine Village, NV 89450  
Attn: Elizabeth Croom, Exec. Dir.

Grantor:

Donald W. Reynolds Foundation  
1701 Village Center Circle  
Las Vegas, NV 89134-6303  
Attn: Steven L. Anderson, President

A notice may be hand delivered or mailed, postage prepaid, first class, registered or certified mail, return receipt requested. Any notice sent by mail shall be deemed to have been received on the third business day following the date of mailing.

5.5 Applicable Law. This Agreement has been delivered and accepted in, and shall be a contract made under and shall be entered into and governed by the laws of the State of Nevada. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law,

such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.

Executed in multiple original counterparts, each of which constitutes the original agreement, and an executed counterpart delivered to each signatory as of the day and year first above written.

"FOUNDATION"

DONALD W. REYNOLDS FOUNDATION

By: Steven L. Anderson  
Steven L. Anderson, President

"GRANTEE"

The Parasol Foundation  
a not-for-profit corporation

\* By: Warren Trepp  
Warren Trepp, President Chairman  
(Name)

\* signed subject to letters dated July 23, 1999 and August 3, 1999 from Parasol to Donald W. Reynolds Foundation.



**WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS  
NOVEMBER 15, 2017 REGULAR IVGID BOARD MEETING – AGENDA ITEM  
F(5) – REVIEW AND DISCUSSION OF LEGAL ISSUE "SUPPLEMENTAL  
MEMORANDUM" FROM ATTORNEY MEGAN FOGARTY RE:  
THE 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")]; whether Parasol is in default of its obligations under the lease...ownership of the building; combined with an analysis of the CC&Rs that were (allegedly) modified in conjunction with th(at) lease"<sup>1</sup> (collectively, "the scope of work"). On October 25, 2017 attorney Fogarty prepared a "Supplemental Memorandum" insofar as the scope of work were concerned<sup>2</sup>. The purpose of this written statement is intended to update deficiencies in Attorney Fogarty's initial analysis.

**Garbage-in-Garbage Out:** It is important to recognize that according to attorney Fogarty herself, not only was her initial "analysis...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)," but her Supplemental Memorandum is based "solely on (cherry picked) information contained in the documents previously reviewed in (her)...Original Memorandum" augmented by a Ticor Title Preliminary Title Report dated September 15, 2017<sup>3</sup> ("the preliminary title report").

Given: there are additional documents not referenced in the preliminary title report<sup>4</sup>, IVGID staff are on notice of those documents, attorney Fogarty is on notice of those documents<sup>5</sup>, and the

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<sup>1</sup> 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](https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_9-26-17.pdf))].

<sup>2</sup> See pages 668-671 of the packet of materials prepared by staff in anticipation of the IVGID Board's regular November 15, 2017 meeting ["the 11/15/2017 Board packet" ([https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT\\_Packet\\_Regular\\_11-15-17\\_.pdf](https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_11-15-17_.pdf))].

<sup>3</sup> See pages 672-692 of the 11/15/2017 Board packet.

<sup>4</sup> Namely, a July 9, 1999 grant agreement between Parasol and the DW Reynolds Foundation ("DW Reynolds") as well as any amendments/modifications thereto (collectively, "the grant agreement"). Since the grant agreement is attached to another written statement concurrently submitted by the

preliminary title report expressly excludes matters "not known to the Company, not recorded in the public records...(ye)t known to the insured Claimant and not disclosed in writing to the Company by the insured,"<sup>6</sup> attorney Fogarty *cannot* limit her analysis by ignoring the grant agreement nor any other relevant documents she has been put on notice of, or would be reasonably revealed by her examination thereof.

In other words, if attorney Fogarty's analysis is based upon incomplete information (i.e., "garbage"), that's exactly the worth of her conclusions.

**Why Has Attorney Fogarty Refused to Receive and Consider *All* Relevant Materials Pertaining to the Scope of Work?** Because it is the product of the IVGID Culture<sup>7</sup>.

**Attorney Fogarty's Conclusions:** based upon the incomplete "facts at hand," continue to boil down to only three remedies: "to maintain the *status quo* under the terms of the Lease...to negotiate the formal acquisition of the (Parasol) Building...at whatever value is deemed reasonable when considering the numerous (unresolved) factors in play,"<sup>1</sup> or "if...feasible," to "rent...a portion of the (Parasol) Building from Parasol, utilizing the space in furtherance of IVGID's...limited...recreational services to the community."<sup>8</sup>

**My Conclusion:** because attorney Fogarty has failed to suggest a fourth remedy: a NRS 43.100(1) action to determine the validity of IVGID's proposed governmental action. In other words, seeking a judicial examination and determination insofar as all of the issues raised by attorney Fogarty, the IVGID Board and/or the public. Given ***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?***

I and others I know continue to ask ***how 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?***

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undersigned which has been requested to be attached to the minutes of this meeting, the grant agreement is expressly incorporated by referenced herein, and made a part of this written statement.

<sup>5</sup> On September 12, 2017 and November 11, 2017 the undersigned put attorney Fogarty on express notice thereof. Copies of both e-mails to attorney Fogarty in response to her initial Memorandum and Supplemental Memorandum are attached hereto as Exhibit "A."

<sup>6</sup> See ¶3(b) at page 682 of the 11/15/2017 Board packet.

<sup>7</sup> A culture where: IVGID employees are more committed to themselves, their fellow public employee colleagues and their "favored collaborators," than the public they were hired to serve; and trustees are indoctrinated to believe they are permitted to do nothing more than adopt policy.

<sup>8</sup> See page 671 of the 11/15/2017 Board packet.

**And You Wonder Why the Recreation Facility Fee 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).

**EXHIBIT "A"**

## Your Review/Analysis of IVGID's Proposed Purchase of Parasol Building Leasehold Improvements - Follow Up

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**From:** "s4s@ix.netcom.com" <s4s@ix.netcom.com>  
**To:** mfogarty@hollandhart.com  
**Cc:** Wong Kendra Trustee <wong\_trustee@ivgid.org>, Callicrate Tim Trustee <callicrate\_trustee@ivgid.org>, Horan Phil <horan\_trustee@ivgid.org>, Dent Matthew <dent\_trustee@ivgid.org>, Morris Peter <morris\_trustee@ivgid.org>, Herron Susan <Susan\_Herron@ivgid.org>  
**Subject:** Your Review/Analysis of IVGID's Proposed Purchase of Parasol Building Leasehold Improvements - Follow Up  
**Date:** Nov 11, 2017 2:48 PM

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Hello Megan -

I am writing to you with respect to your October 25, 2017 "Supplemental Memorandum" with respect to the above-referenced subject. As you know I am a citizen of Incline Village and your memorandum appears in the packet of materials prepared for the IVGID Board's upcoming November 15, 2017 meeting. As you know, this is the second time I have written to you to share material facts which have intentionally been withheld from you by IVGID and Parasol staff; the first being on September 12, 2017 (see below).

The reason I wrote to you before, and now again write to you, is because you have refused to consider material public records hidden from you by IVGID and Parasol staff members which I and others believe are necessary before you submit any legal opinion you were asked to give. Notwithstanding, you consistently attempt to limit your liability by conditioning whatever opinion you make upon your receipt and consideration of a very limited number of cherry picked facts/documents, rather than all of them.

And here, again, I am putting you on notice of facts you have refused to consider which are material to the matters discussed in your Supplemental Memorandum.

It turns out that on July 9, 1999, Parasol entered into a grant agreement with the DW Reynolds Foundation whereby the latter agreed to provide funding for construction of most of the Parasol Building. Did you know this? In case you didn't, I will be presenting a copy of that agreement to the Board this Wednesday for inclusion in the minutes of that meeting. I am happy to provide you with a copy before hand. All you need to do is ask.

Mr. Pinkerton knew of this agreement because on April 18, 2017 he acknowledged knowledge of the same in a Feasibility Report he submitted to the IVGID Board (see pages 315-16 of the Board packet for next Wednesday's meeting) as part of his alleged "due diligence."

Now the agreement provides that a memorandum of its existence will be recorded with the County Recorder. And for this reason, I fully expected it would have been disclosed in the preliminary title report you received/discussed. But somehow it wasn't.

Although a title insurer will tell you that you have no coverage for matters affecting the state of title which are not noted in a title report yet which you know of, apparently you don't impress the same conditions upon your clients. Apparently you feel it is sufficient to stick your head in the sand and limit your consideration to specific cherry picked documents shared by Pinkerton, Alling in this case, or as here, a title company.

Well guess what. Now you are on actual notice notwithstanding the fact this agreement isn't noted in the title report. And now that you are on notice, shouldn't you demand that IVGID/Parasol provide you with a full and complete copy?

And while you're waiting, did Mr. Pinkerton share with you that pursuant to that agreement, should the building be used for any purpose other than as a nonprofit center, title passes to the DW Reynolds Foundation rather than IVGID? Did he share with you that according to the representations made by Parasol to DW Reynolds, the 2.36 acres of land underneath the Parasol Building are owned in fee by Parasol rather than IVGID? Once you learn that misrepresentations are being made with respect to land and improvements the subject of your analysis, doesn't that cause you to become more proactive in insuring that all relevant information and documents are being shared?

And now that you know the above-facts, don't you feel it is necessary to examine and share with the IVGID Board any modifications to that grant agreement which may have taken place between Parasol and DW Reynolds, and their effect (especially modifications pertaining to the building's continued use to the extent it conflicts with IVGID's intended use)?

And now that you know the above-facts, don't you feel you should withhold your Supplemental Memorandum conclusions on the subject until you have had an opportunity to review all of the relevant materials which have been withheld from you?

Finally, given all of the non-definitive conclusions you have shared in both memoranda, why wouldn't you recommend to the IVGID Board that the most prudent and conservative approach to the entire subject matter would be to file a judicial validation action under NRS 43.010, et. seq, letting the court sort out the answers to all of the questions you pose?

Hopefully, that is exactly what you do.

Thank you for your hopeful consideration of this material. Aaron Katz

P.S. - Since a copy of this e-mail has been sent to the IVGID Board, I ask staff to include it in the next Board packet. I want the public to see how an attorney hired for the express purpose of rendering opinions on the underlying issues affecting the proposed Parasol bail out, completes her job.

-----Original Message-----

From: Aaron L Katz

Sent: Nov 11, 2017 1:50 PM

To: s4s@ix.netcom.com

Subject: Re: Your Review/Analysis of IVGID's Proposed Purchase of Parasol Building Leasehold Improvements

On 9/12/2017 12:01 AM, [s4s@ix.netcom.com](mailto:s4s@ix.netcom.com) wrote:

Hello Megan -

My name is Aaron Katz. I am a resident of Incline Village. I am a critic of much of what IVGID does because generally it is contrary to law/the given facts of a matter/its financial wisdom, and unlike IVGID staff, I speak the truth.

I am writing to you about your assignment to: review and provide opinions re:

IVGID's current ground lease with Parasol with respect to the land underneath the Parasol Building;  
Those November 16, 1977 CC&Rs recorded against the land underneath the Parasol Building;  
The alleged July 1, 1999 amendment to those CC&Rs;  
Alleged proposed amendments to current ground lease with Parasol;  
The preparation of a bill of sale evidencing the transfer of Parasol Building leasehold improvements/personal property; and,  
The preparation of an installment promissory note and deed of trust evidencing carry back financing for IVGID's purchase of leasehold improvements/personal property.

I am writing to you about these matters because I believe you have not been given the truth. Instead you have been given what many of us call Guinasso "spin." Our community is overwhelmingly opposed to this proposed transaction for many of the reasons stated herein. Notwithstanding, it is being steam rolled forward by IVGID staff, the IVGID Board's chairperson and Guinasso.

It is staff's intent to use you as a tool to substantiate its wishful purchase of the Building. Consequently, you have not been given the truth so you are equipped to do your job. So with your permission, I intend to share the truth. I and others believe that once you understand the truth, you will be as opposed to the proposed transaction as is the majority of our community, and you will share that opinion with the IVGID Board (rather than unelected staff and/or Guinasso).

I have attached a comprehensive written statement which details the subject matter. I intend to have this statement attached to the minutes of the Board's September 13, 2017 meeting. This statement documents the truth and all that I represent. I hope you will consider it.

Notwithstanding, here are some of the head notes in my statement which speak directly to the scope of your review:

1. This Transaction is Artfully Mis-Labeled as a Ground Lease Amendment When in Truth it is Termination of the Existing Ground Lease, Installment Purchase/Sale of Leasehold Improvements, a Seller Lease Back, and a \$5.5M Bail Out at Local Property Owners' Expense;
2. There Can be No Sale of Leasehold Improvements Because Parasol and the County Assessor Admit Those Improvements Already Belong to IVGID;

3. Because the Payment Provisions For This Transaction Represent a NRS 350.0055(2)(a) Installment Purchase Agreement, They Require Approval by Four IVGID Trustees [see NRS 350.087(1)]. Notwithstanding 2 trustees are opposed to the agreement, Guinasso is giving biased advice that it can be approved by only 3 trustees due to artful labeling;
4. Because the July 1, 1999 Amended CC&Rs Are Phony and of No Effect, No One Can Use the Building Other Than for Park and Recreation Purposes. This restriction prohibits IVGID's use of ANY portion of the building as a replacement administrative office building. And by the way, IVGID and Parasol KNEW that these CC&Rs were phony back in 2000 when they entered into the current existing ground lease;
5. And These Restrictions Prohibit Parasol's Intended Use After Sale as a Non-Profit Center;
6. Parasol Admits its Leasehold Improvements Have a Market Value of Zero. So why is IVGID considering paying anything?
7. Although IVGID's Appraiser Estimates Parasol's Leasehold Improvements Have a Market Value of \$4.5M, When You Consider Necessary Deductions From That Value (the Value of the Land Underneath the Parasol Building, and the Lease Advantage Parasol Realizes From Below Market Lease Back for Twenty Years), it Really Has a Market Value of Zero. So why is IVGID considering paying anything?
8. Notwithstanding the Parasol Building Consists of 31,500+ Square Feet, Because of Parasol's Right to Exclusive Use of 3,900 Square Feet of Office Space, and Non-Exclusive Use of the Remainder of the Building But for 6,087 Square Feet of Office Space Reserved for IVGID, IVGID Only Ends Up With Exclusive Use of 6,087 Square Feet of Office Space. This makes no sense given the \$5.5M purchase price, and it makes even less sense when one considers that IVGID staff represent they require a minimum of 10,000 square feet of replacement office space. So why is IVGID considering paying anything?
9. IVGID Staff Intend to Use the NRS 318.197(1) Rec Fee Which is Involuntarily Levied Against All Incline Village/Crystal Bay Property [NRS 318.201(1)] to Purchase the Subject Leasehold Improvements, Notwithstanding, This Fee Cannot be Used For This Purpose [meaning IVGID will be guilty of NRS 205.300(1) embezzlement].

I hope you find these materials useful in your review. If you have questions or require clarification, please do not hesitate to contact me.

Truly yours, Aaron Katz [(775) 833-1008]



**WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS  
NOVEMBER 55, 2017 REGULAR IVGID BOARD MEETING – AGENDA ITEM F(6)  
– VOTING ON CHAIRPERSON WONG'S SIX<sup>1</sup> (6) CHERRY PICKED QUESTIONS  
REGARDING POSSIBLE PURCHASE OF THE PARASOL BUILDING**

**Introduction:** Here Chairperson Wong attempts to back the IVGID Board into a corner insofar as her quest to purchase the Parasol Building by getting a majority to approve her five<sup>1</sup> (5) prefatory questions. Given Ms. Wong has intentionally omitted a series of other equally if not more important questions, here I submit those omitted questions in the hope the Board will vote on these issues as well. And that's the purpose of this written statement.

**Ms. Wong's Six (6) Questions<sup>2</sup>:** as if they answer the ultimate question as to whether IVGID should pay millions of dollars to purchase the Parasol Building:

1. Putting aside the question of cost, "is there a justifiable (rather than fabricated) need for additional recreational programming/other space?"
2. Putting aside the question of cost, "is there a justifiable (rather than fabricated) need for different administrative office space?"
3. Assuming the answer to question 2 above is yes, "are there other comparable spaces in Incline Village/Crystal Bay, either for rent or purchase, that meet IVGID staff's needs?"
4. Assuming the answer to either question 1 or 2 above is yes, "rather than purchasing or renting other comparable spaces in Incline Village/Crystal that meet IVGID staff's needs, including the Parasol Building, would it be advantageous for IVGID to design and build space that meets the public's specific needs?"
5. "Is Parasol's purchase/lease back proposal an economically viable option?"
6. *Not* putting aside the question of cost, "are the terms and conditions of Parasol's purchase/lease back proposal the most advantageous for IVGID?"

**Given the Shortfalls of Attorney Fogarty's Written Analysis Insofar as This Issue is Concerned<sup>3</sup>, the Following Additional Questions are Proffered For the Board to Answer:**

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<sup>1</sup> Actually six (see discussion below).

<sup>2</sup> See page 3 of the agenda for this meeting at [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT\\_Agenda\\_Regular\\_11-15-17.pdf](https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Agenda_Regular_11-15-17.pdf).

<sup>3</sup> See my written statements submitted at the Board's regular October 25, 2017 meeting as well as contemporaneously herewith which address deficiencies in Attorney Fogarty's written analysis insofar as this subject is concerned.

1. Given Attorney Fogarty ignored citizen Aaron Katz's September 12, 2017 letter and materials and November 11, 2017 e-mail pertaining to the Board's proposal to purchase the Parasol Building, yet analyzed limited issues and made global recommendations, should the Board give any credence to her written analysis/Supplemental Memorandum?

2. Aren't there at least a second and third potential default by Parasol under the current Lease which Attorney Fogarty has failed to address? First of all, doesn't ¶G of the Lease's Recitals pre-condition entrance into the Lease upon "all pre-conditions and conditions (announced at the IVGID Board's May 28, 1997 regular meeting being)...met (being) **strictly adhered to** by" Parasol? And doesn't ¶XXIII(B)(2) of the Lease instruct that "all provisions of this Lease, whether recitals, designated covenants, terms or conditions...shall be deemed to be both covenants and conditions?" Given it was announced at the Board's May 28, 1997 meeting that the subject deed restriction on use will have to be resolved, **either through removal or judicial confirmation**," and here it has *not*, does not Parasol's failure to strictly satisfy "all pre-conditions and conditions" announced at the IVGID Board's May 28, 1997 regular meeting represent a **second** potential default under the current Lease?

3. Second of all, doesn't ¶5.1 of the grant agreement state that "any use of (the Parasol Building)...which is inconsistent with the philanthropic or charitable purpose generally set forth in (Parasol's) grant request (represent a)...willful and material breach of th(at) agreement?" Doesn't ¶5.1 go on to recite that if Parasol violates this use provision, "all right, title and ownership of said (building)...immediately revert to and vest in" favor of DW Reynolds? Doesn't this represent an encumbrance of the Parasol Building in some "way or manner?" And if so, hasn't Parasol violated ¶XIII(14) of the Lease which prevents Parasol from "encumbering in any way or manner the structures that will be situated on (IVGID's) realty?" Doesn't Parasol's encumbering the Parasol Building represent a **third** potential default under the current Lease?

4. Because ¶XXIII(A)(7) of the Lease clearly states 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**," isn't it true there can be no "implied consent" to Parasol's modification to its 2001 Business Plan? And if there can be no implied consent, doesn't Parasol's unilateral "removal of a set number of anticipated Resident Collaborators" become another potential default under the current Lease?

5. Given Parasol's admission that the Parasol Building is owned by IVGID, and that Parasol's depreciation during the lease term was only for "accounting concept" purposes, isn't it true IVGID already owns the Parasol Building? And if so, why pay Parasol anything?

6. Assuming Parasol is in default under the current Lease, and the Board votes to compel Parasol to demolish the Parasol Building and restore the land underneath to its natural condition, how is IVGID "unjustly enriched by any dollar amount at the expense of the tenant?"

7. Is Parasol guilty of unclean hands given the CC&R amendment is not valid, and it played a role in its recordation if not outright preparation? If so, hasn't Parasol agreed under the current Lease to assume *all* liability with respect to this issue?

8. What doesn't the Board understand about "all liability with respect to this issue?"

9. Given the land underneath the Parasol Building was purchased with the Recreation Facility Fee ("RFF") for public park and recreational purposes, and no other purposes, and IVGID proposes using the RFF to acquire that building, do you not agree that all property owners who involuntarily paid the charge as well as their successors and assigns, **have standing** to bring claims for violation of the restrictive covenant?

10. Does not Parasol's proposal that the building's acquisition price be paid on an installment represent an "installment purchase agreement which requires approval by a resolution adopted by **two-thirds** ( $\frac{2}{3}$ ) of the IVGID Board?

11. Does not use of the RFF to acquire the Parasol Building represent the proceeds of a special assessment against property which requires approval by resolution adopted by **two-thirds** ( $\frac{2}{3}$ ) of the IVGID Board?

12. Given IVGID represents that the RFF is a standby service charge for the mere availability to use public recreational facilities which are just as available to be used by any member of the general public as those who are involuntarily assessed, and that the charge is involuntarily levied pursuant to NRS 318.201(1) against all parcels/residential dwelling units in Incline Village/Crystal Bay under the guise the parcels/residential dwelling units being assessed receive "special" services which are not available to those parcels/residential dwelling units which are not assessed in consideration of payment, yet no special services are furnished, do you have an opinion as to whether this fee may be permissibly used to purchase the Parasol Building?

13. Have you not concluded that the Board is left with only two remedies: "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 isn't there a third remedy you haven't mentioned? Namely a NRS 43.100(1) action to determine the validity of IVGID's proposed governmental action ("the 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...instrument, act or project of the municipality**")?

14. Given you admit: "**there is 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 the former, whether Parasol is in default; "**there is no bright line test on what constitutes a significant reduction in use in the context of Parasol's business plan;**" whether the purported amended CC&Rs are valid "**is largely a question of fact** (which)...would require an investigation (and)...**is beyond the scope of this Memorandum;**" 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;**" any property owner whose predecessor has paid the Rec Fee has standing to bring suit to enforce the CC&Rs and prevent IVGID from entering into any agreement which allows anyone to use the Parasol Building for purposes in

violation of the CC&Rs; doesn't any property owner who objects to use of the Rec Fee to pay for acquisition of the Parasol Building have standing to bring suit to prevent that fee from being used for that purpose;

15. How then can you can prudently recommend that the IVGID Board take **any** action whatsoever on this Parasol issue *other than* filing a NRS 43.100(1) action to determine the validity of any proposed governmental action?

**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?**"

2. That as such, Parasol may have committed a material change in the building's intended use and that this represents a "potential default by Parasol (under)...Section XIII(A)(3)" of the lease?

3. That there is "**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, Parasol is in fact in default?

4. There is "**no bright line test on what constitutes a significant reduction in use in the context of Parasol's business plan?**"

5. That under ¶XV of the Lease Parasol has "assume(d) full and complete responsibility regarding (the) issue" of use other than for "park and recreational and related purposes and...**no other purposes?**"

6. That whether the purported amended CC&Rs, which expand permitted use, are valid "**is largely a question of fact** (which)...would require an investigation...**beyond the scope of this Memorandum?**"

7. 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?

8. And 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?

And according to me and others,

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; and,

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;

***How can the IVGID Board conclude it is wise to answer any of Chairperson Wong's meaningless questions and spend any more of the public's moneys on attorney's fees other than to file 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  
NOVEMBER 15, 2017 REGULAR IVGID BOARD MEETING – AGENDA ITEM  
H(1) – APPROVAL OF MINUTES OF THE IVGID BOARD'S REGULAR  
MEETING OF AUGUST 22, 2017**

**Introduction:** Here the IVGID Board is presented with proposed minutes of its August 22, 2017 meeting to approve<sup>1</sup>. NRS 241.035(1)<sup>2</sup> instructs that "within 45 days after the meeting or at the next meeting of the public body, whichever occurs later...a public body *shall* approve the minutes of (that) meeting (which shall)...includ(e): (a) the date, time and place of the meeting; (b) those members of the public body who were present, whether in person or by means of electronic communication, and those who were absent; (c) the substance of all matters proposed, discussed or decided and, at the request of any member, a record of each member's vote on any matter decided by vote; (d) *the substance of remarks made by any member of the general public who addresses the public body if the member of the general public requests that the minutes reflect those remarks or, if the member of the general public has prepared written remarks, a copy of the prepared remarks if the member of the general public submits a copy for inclusion*; (and, e) any other information which any member of the public body requests to be included or reflected in the minutes."

Given the proposed minutes fail to include prepared written remarks submitted by Darryl Dworkin, Jack Hubbard, Margaret Martini, Clifford Dobler, Iljosa Dobler, Linda Newman, Bill Ferrall, Judith Miller and Frank Wright, all members of the general public who addressed the IVGID Board in person on August 22, 2017 and asked that their proffered written remarks be included in the minutes of that meeting, and Aaron Katz, a member of the general public who addressed the IVGID Board in writing making the same request, I object. And that's the purpose of this written statement.

**NRS 241.035(1) Makes Clear Members of the General Public May "Address" a Public Body Either Orally or by Means of Prepared Written Remarks:**

**Public Comment Cannot be Denied Based Upon its Content or Author:** Yet here that's exactly what Chairperson Wong and attorney Guinasso have done.

**The Public's Right to Address Public Bodies is a Fundamental Right to be Construed *Liberally*:** Yet here Chairperson Wong and Guinasso have gone out of their way to construe this right restrictively. In other words, the only members of the general public who have standing to "address" the Board are those who physically appear at public meetings for that purpose.

**There is Nothing in NRS 241.035(1) Which Mandates That the Prepared Written Remarks a Member of the General Public Submits for Inclusion in the Minutes of That Meeting Must be**

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<sup>1</sup> See pages 765-800 of the packet of materials prepared by staff in anticipation of the IVGID Board's regular November 15, 2017 meeting ["the 11/15/2017 Board packet" ([https://www.yourtahoepalace.com/uploads/pdf-ivgid/BOT\\_Packet\\_Regular\\_11-15-17\\_.pdf](https://www.yourtahoepalace.com/uploads/pdf-ivgid/BOT_Packet_Regular_11-15-17_.pdf))].

<sup>2</sup> Go to <https://www.leg.state.nv.us/NRS/NRS-241.html#NRS241Sec035>.

**His/Her Own Prepared Written Remarks:** Moreover, routinely, the Board allows those addressing the Board at public meetings to submit written remarks for inclusion in the minutes of those meetings *authored by persons other than themselves*. So why not here?

**There is Nothing in NRS 241.035(1) Which Precludes a Member of the General Public From "Addressing" the Board at a Public Meeting Via His/Her Prepared Written Remarks in Lieu of Oral Testimony, Whether/Not He/She is Physically Present:** The option sits with the member of the general public.

**Since There *is* Something in NRS 241.035(1) Which Allows Members of a Public Body to Address Their Fellow Members at a Public Meeting Notwithstanding They Are Not Physically Present, Members of the Public Have the Same Right:** Take a look at NRS 241.035(b): the minutes of public bodies must reflect those members who are present, "whether in person or by means of electronic communication." Thus if it is appropriate for members of a public body to address the Board as a whole at a public hearing, notwithstanding they are *not* physically present, then why can't members of the general public do the very same thing?

**Moreover, in the Past, the IVGID Board Has Routinely Allowed Members of the Board to Address the Board as a Whole at Public Meetings Notwithstanding They Are Not Physically Present:** By way of example, take a look at the written minutes of the Board's June 12, 2017 meeting<sup>3</sup>. At page 469 the Board will see that Trustee Callicrate was allowed to appear by means of telephone. Throughout the minutes of that meeting the Board can see where Trustee Callicrate was permitted to "address" the Board; especially when voting. So what is the justification for not extending the same right to "address" the Board as a whole to members of the general public notwithstanding they are not physically present?

**Moreover in the Past, the IVGID Board Has Routinely Allowed Members of the Public to Address the Board as a Whole by Means of Prepared Written Statements Notwithstanding They Are Not Physically Present at Public Meetings:** That is the very reason why the agenda includes a section (for this November 15, 2017 meeting, ¶K) for "Correspondence Received by the District." So if it's acceptable to submit written remarks without being physically present at a Board meeting, without asking they be made a part of the minutes of a board meeting, what is the justification for not allowing them to correspond via prepared written statements they wish be included in the minutes of a Board meeting?

**On November 12, 2017 the Board Was Given Advance Notice of Deficiencies and the Opportunity to Correct Them:** I have attached a copy of my e-mail of even date as Exhibit "A" to this written statement, which gave such notice. If the Board disregards its obligations and an OML complaint ensues, it will have no one to blame but itself.

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<sup>3</sup> Go to <https://www.yourtahoepace.com/uploads/pdf-ivgid/0822-small.pdf>.

**Conclusion:** The fix is easy. Add all written remarks to the proposed minutes before they are approved by the Board, including my August 22, 2017 written remarks. Because this of course will embarrass IVGID staff because my August 22, 2017 minutes directly discuss an agenda item for that meeting, Chairperson Wong and staff want to do anything in their power to censor criticism. But sometimes you must bite your lower lip to do the right thing, even though it hurts. I ask the Board to please do the right thing.

The money to defend against another OML complaint is going to come from our recreational facility fee because *ad valorem* and consolidated taxes are spent on employee salaries and benefits. **And You Wonder Why the Recreation Facility Fee 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).

EXHIBIT "A"

## Objections to Agenda Item H(1) for the IVGID Board's November 15, 2017 Meeting

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**From:** "s4s@ix.netcom.com" <s4s@ix.netcom.com>  
**To:** Wong Kendra Trustee  
**Cc:** Callicrate Tim Trustee <callicrate\_trustee@ivgid.org>, Horan Phil <horan\_trustee@ivgid.org>, Dent Matthew <dent\_trustee@ivgid.org>, Morris Peter <morris\_trustee@ivgid.org>, Herron Susan <Susan\_Herron@ivgid.org>  
**Subject:** Objections to Agenda Item H(1) for the IVGID Board's November 15, 2017 Meeting  
**Date:** Nov 12, 2017 9:43 AM

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Dear Chairperson Wong and the Other Honorable Members of the IVGID Board:

I object to the form of proposed written minutes submitted by staff for approval by the IVGID Board [see pages 765-800 of the Board packet of materials prepared by staff in anticipation of this meeting {"the 11/15/2017 Board packet" ([https://www.yourtahoepace.com/uploads/pdf-ivgid/BOT\\_Packet\\_Regular\\_11-15-17\\_.pdf](https://www.yourtahoepace.com/uploads/pdf-ivgid/BOT_Packet_Regular_11-15-17_.pdf))}].

As your attorney should instruct each of you, NRS 241.035(1)(d) declares, in part, that "a public body shall approve the minutes of a meeting (which shall)...includ(e)...the substance of remarks made by any member of the general public who addresses the public body if the member of the general public requests that the minutes reflect those remarks or, if the member of the general public has prepared written remarks, a copy of the prepared remarks if the member of the general public submits a copy for inclusion."

The proposed minutes fail to reflect at least four different sets of prepared written remarks submitted by members of the general public who requested those remarks be included in the minutes of that meeting.

The first set of missing prepared written remarks consist of those expressly acknowledged that were submitted by Darryl Dworkin, Jack Hubbard, Margaret Martini, Clifford Dobler, Iljosa Dobler, Linda Newman and Bill Ferrall (see pages 799-800 of the 11/15/2017 Board packet). None is attached to the proposed written minutes.

The second set of missing prepared written remarks consist of those submitted by Judith Miller which were rejected by Chairperson Wong (see page 766 of the 11/15/2017 Board packet). Given that written statement ABSENT the several exhibits which were attached already appears in the September 13, 2015 Board packet (go to [https://www.yourtahoepace.com/uploads/pdf-ivgid/BOT\\_Packet\\_Regular\\_9-13-17.pdf](https://www.yourtahoepace.com/uploads/pdf-ivgid/BOT_Packet_Regular_9-13-17.pdf)) at pages 233-243, what is gained/accomplished by refusing to attach them to the formal written minutes of the Board's August 22, 2017 meeting, complete with all exhibits submitted, as requested?

Putting that question aside, there is nothing in NRS 241.035(1) which states that the prepared remarks submitted by a member of the general public who addresses a public body (arguably in person) must be his/her remarks. I have evidence of numerous occasions in the past where members of the general public have submitted written remarks at public meetings authored by persons other than themselves. And yet in all circumstances, those written remarks have been attached to the written minutes of those meetings. But here Chairperson Wong and Guinasso propose otherwise. And why? Because of the views expressed, and the speaker. These are both improper reasons for rejecting legitimate public comment.

The third set of missing prepared written remarks consist of those submitted by Frank Wright which were rejected by Chairperson Wong (see page 767 of the 11/15/2017 Board packet). Again, there is nothing in NRS 241.035(1) which declares that the prepared remarks submitted by a member of the general public who addresses a public body (arguably in person) must be his/her remarks.

The fourth set of missing prepared written remarks consist of the same remarks submitted by myself which were rejected by Chairperson Wong. There is nothing in NRS 241.035(1) which states that the only way a member of the general public can legitimately address a public body is in person. The purpose for public comment is frustrated where a public body mandates that members of the public be physically present before they are entitled to submit their public comment. Yet here, this is what Chairperson Wong is requiring.

Moreover, the Board routinely allows fellow Board members to address the Board as a whole at public meetings when they are NOT physically present. Is the Board saying it's all right for Board members to address the Board as a whole when they are not physically present, yet it's not all right for members of the general public to do the same thing?

So let's make it simple. Correct the proposed minutes in all respects prior to approving them, or I will file an Open Meeting Law ("OML") complaint. And I ask that at least one Board member make the formal request that all missing written statements

11/12/2017

Objections to Agenda Item H(1) for the IVGID Board's November 15, 2017 Meeting

including mine be attached as requested. Why put the public to the added expense and inconvenience of responding to yet another OML complaint when so simple a fix exists?

And so we're clear Susan, please include a copy of this e-mail in the next Board packet.

Respectfully, Aaron Katz

