

# ACTION ITEM MINUTES

The General Managers Advisory Committee Meeting on Ordinance 7, 10:00 a.m. on Tuesday, October 27, 2020 (held on Zoom).

Page 1 of 10

District General Manager Indra Winquest welcomed everyone, made sure that everyone had the agenda, and briefly explained the agenda.

## A. ROLL CALL OF COMMITTEE MEMBERS

Present: Diane Becker, Mary Danahey, Denise Davis, Kristen Ferrall (absent), Scott Hill, Margaret Martini, Hal Paris, Trevor Smith, Bruce Townsend, Ken Viel (absent), and Frank Wright. Indra Winquest, IVGID District General Manager, Paul Navazio, Director of Finance (absent) and Tim Callicrate, IVGID Board of Trustees, Chairman. **Administrative Support Staff**: Kari Ferguson and Susan Herron

**Rules of Engagement**: All committee members shall be respectful of one another and treat each other with kindness. No one member shall talk over another member. All ideas are welcome however they may not be discussed in depth or in detail depending upon time and/or merit and that determination is solely held with the General Manager. All committee members are equal participants.

## B. DISCUSSION ON THE BEACH DEED

1. Legal Aspects
2. Property Rights
3. What is a Guest?

GM Winquest went over the Beach Deed. **Action Item 013**: Administrative Staff Herron to e-mail the lawsuit information that was posted to the website.

**Mr. Wright** said a tenant is someone who can physically occupy the parcel. Has to be interpreted exactly as it reads; definition of tenant and guest has to be attacked. There are non-buildable lots that are in this town that have beach access. Thinks the Rec Fee should be withdrawn until they can have a guest or a tenant on an empty lot - issue to deal with. The courts could invalidate the deed if they wanted. Board has right to decide/define tenant and guest. Have to take in the non-buildable lots and people who occupy parcels and then all the guests and tenants. Want to protect the deed in the courts.

**Ms. Becker** said she is a lawyer, practiced for 43 years, difference between lease which has a tenant and then a license and that generally she has found that vacation and short term rentals are licenses. If you look at deed, it says occupants, which is a license, we should wait for the lawyers because she believes there is a difference. There is so much case law across the country discussing this topic.

GM Winquest said that unbuildables pay their fee, get their privileges, and to revoke that opportunity may present legal repercussions.

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Page 2 of 10

**Chairman Callicrate** said we do need legal clarification and we need to get the question answered of can we go back to those folks that own unbuildable lots and come to some agreement or see what we can do to undo those. Hotel and motel – originally, community was to have five to six casinos and this was looking ahead to the potential which didn't transpire. If there are already definitions out there, we should go by those.

**Ms. Becker** said on the unbuildable lots and the people who have bought, they may have different rights and can be divided and as to selling, they may not be able to sell that right. Representation by real estate broker/agent is important as well.

**Ms. Martini** said the reason they included the hotels and motels was for the purpose of getting the fees because things weren't selling that well and the original owners were trying to get funds because they were financially stressed. They were added at that time, applied according to this deed, and then applied for each room.

**Mr. Wright** said he has a whole bunch of information that needs to be understood, He bought in Washoe 1 which was an unincorporated area that was annexed. Crystal Bay came in under a different annexation. His neighbor, who bought here, within his purchase he has a lot that is attached because they bought into an unbuildable lot. Bunch of lots that these developers have bought and subdivided and then sold off as non-buildable lots. The lots he stopped, two of them, were sold to people who live outside the area. We have a problem with the unbuildable lots. The deed restriction is very clear as all things relate to having a person physically living on the lot. We need to have legal look into this and then have it cleaned up by legal. GM Winquest agreed that we need to address the unbuildable lots. Term parcel owner doesn't define if a structure is built on it.

**Ms. Becker** said property owners, as they are now constituted, unbuildable that was subdivided is not as now constituted. Should look at all of these things; she hadn't heard about subdividing.

**Mr. Wright** said that is huge what Ms. Becker just said, subdivided with new APN's, agree 100%. Very clear on as constituted, enforce deed as written.

**Ms. Ferrell** said in looking at draft of short term renter ordinance it is defined as renter.

**Ms. Becker** said those words are to define a specific occupancy, short term rentals are licenses not leases. She is no longer practicing law and is a retired lawyer. They will look at and be able to tell us.

**Mr. Smith** said they were created when most of Incline Village was vacant and to encourage development so they were legally created at the inception thus they are all the same. Buildable versus unbuildable are not relative. They are a tiny, tiny fraction of what we are talking about and are less than 1%. Unbuildable lots are people who have been paying fees for years and it

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Page 3 of 10

could amount to millions of dollars in refunds and it would be creating a huge mess of trying to undo that. If this is about crowding the beaches, it is a small drop in the bucket. Incline Village now – vacate lots are under 50 that are privately owned. Rights were given to those people and having a house versus a non-house is not relative to this discussion. Those unbuildable lots came before the Board and were approved to have the rights through Board action. Transferred those to other people as a marketable piece of real estate. Building or not is not relevant to the discussion. Most basic, given to the parcel, not about a tenant, owner or occupant. The bundle of rights is part of the parcel. None of those parcels were subdivided. If we do have some parcels that are subdivided, the number is relatively finite and hasn't changed measurably. All of those were interchanged – Incline Creek Estates is an example.

**Mr. Hill** said that great points have been brought forward and he would like to take a look at the deed separately from Ordinance 7 as the deed can't be changed and it is a document we have to adhere to. Ordinance 7 was created by IVGID to implement, Ordinance 7 can be changed, and we need to recognize that. Thankful that you put the legal questions up first. Look at the beach deed – property owners, tenants of property owners which includes hotels and motels, guests of property owners only to the extent of what a guest is; he welcomes any legal clarification that can be offered. We can't change the Beach deed but we do need legal interpretation. IVGID has the right to levy charges and assessments and control and maintain the property. Second thing we need clarification from attorneys is what we can control and regulation i.e. Ordinance 7, definition of guest, commercial property, etc. That is set in stone – the beach deed. Legally, we need to understand what our rights are. We can change Ordinance 7 – eligible parcel owners, people that pay their fees, would think we can change this because it is in Ordinance 7 – say buildable versus unbuildable. Commercial owners get 5 and only 5. Limiting commercial owners – get 5 only and they can't pay for more. Seemed to have regulated a commercial building as well such as Rainbow Printing. They might have ten or twenty tenants; they only get 5 passes total with no right to get additional passes so we can regulate them very strictly. We don't seem to be restricting short term rentals as strictly, likely that we do have the right to control or regulate them in a different way. First question for attorney is do we have the right to regulate and restrict commercial more strictly than non-commercial. If we have a problem with short term rentals, we don't have anything in Ordinance 7 to regulate them. Need to have those legal questions answered, create a structure that weaves it together and have a rationale behind the whole thing. GM Winquest said he thinks all are behind this.

**Ms. Ferrall** said that for commercial properties, the owner can purchase additional picture passes and punch cards; the tenants cannot.

**Mr. Wright** said the issue goes down to the deed, unbuildable that have been subdivided, and his issue is that someone paid \$14,000 so they can subdivide that lot and sell those privileges. Attorneys have got to weigh in on all of this. Lot of issues have to be resolved through the attorneys of where we are and what we can do.

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Page 4 of 10

**Mr. Hill** said on paragraph 69, in Ordinance 7, the attorney's opinion is needed. Interpretation may be wrong and we probably need to change that language.

**Ms. Becker** said we should write up all these questions, circulate, and then send it to the lawyers. **Action Item 014:** Ms. Becker will write up the questions then Staff will circulate and get feedback. Following that feedback, will send to lawyers for their thoughts.

## C. **BRIEF HISTORY OF ORDINANCE 7**

1. Amendments
2. 2020 Administrative Changes (COVID impact)

GM Winquest went over the History of Ordinance 7.

**Mr. Paris** agrees with getting questions answered by Legal.

**Ms. Becker** said that short term rentals were illegal at this time, legal in hotel/motel/condo at that time.

**Ms. Martini** said that she does have a document that was from Bob McDonald stating that guests have to be accompanied by parcel owner. **Action Item 015:** Margaret to share that document with the committee.

GM Winquest went over the 2020 Administrative Changes. **Action Item 016:** Staff to get all this information to the committee (from March 25, 2020).

**Ms. Martini** said that we need to have a caveat that changes need to be Board approved. GM Winquest said that is a great point and that no golf was approved by the Board.

## D. **CURRENT RECREATION ACCESS & PRIVILEGES – IVGID PICTURE PASS**

1. Parcel owner(s), family tree, commercial parcels, long term tenant, additional picture pass (\$) no golf
2. No Beach Parcels
3. IVGID Picture Pass Privileges/Access at Community Services Venues & Beaches

**Mr. Hill** said he is interested to know if a three-month tenant can get a picture pass. GM Winquest said it doesn't happen and that if someone signs a six month or year lease, they are issued a picture pass. If, for whatever reason, after 3 months, the owner comes in and says this tenant moved, kicked out or whatever so we want to free up that space on our parcel, the Director of Parks and Recreation has the authority to make that decision but typically we make them wait.

**Ms. Davis** said that the parcels with no beach access, don't pay the beach fee, so that is not a big deal. The fee used to be \$125, however this year, there is a drastic change in the ratio with

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Page 5 of 10

a larger portion going to the beaches. So \$166 for a pass, not necessarily that amount, picture pass for a non-beach parcel, it is much less, but she doesn't think it is spelled out, so she doesn't disagree with the logic. Buying an extra picture pass or punch card is not the same for everybody because of the allocation of our \$830. GM Winquest said if someone that has no beach access wants to buy another pass that additional picture pass would cost \$65 because we only have \$330 on the Recreation Fee. In a normal year, when it is \$705, it is higher and around \$166.

**Mr. Townsend** asked if there was a limit on the number they can buy? GM Winquest said that there is no limit on picture pass or punch cards. Mr. Townsend said if one buys one of these passes and they don't use it, they don't get any money back right? GM Winquest said in order to buy a picture pass, one has to be within the family tree and we don't do refunds. Mr. Townsend said commercial can do likewise? GM Winquest said yes. Ms. Ferrall added that the owner of the commercial property must do the purchasing and they mostly do punch card purchases.

**Mr. Hill** said we still need to look at paragraph 69. GM Winquest said we don't sell a lot of additional picture passes but that may have increased this year. Commercial operations at our beaches are going to be discussed more in depth because it is a point of contention.

**Mr. Wright** said when you purchase an extra punch card, you are buying a gift card. IVGID has stuck an expiration time on that. We need to look at the laws of a gift card – no expiration on them. Thinks that putting an expiration date on these may be wrong, attorneys need to look at. The punch cards have got to go away as they create a big problem for everyone. Washoe 1 and Crystal Bay residents realize nothing with punch card as it only reduces their guest fees. That could be a problem down the line and the attorneys need to look at that. Punch cards are a huge problem. GM Winquest said he understands the need to discuss punch cards.

**Mr. Paris** said another great question for Ms. Becker to draft is that gift cards are for some service and the fee is for access so it might not be within the definition of a gift card.

**Chairman Callicrate** said that he appreciates the insights of all and thank you; he needs to leave the meeting early – left the meeting at 11:21 a.m.

## **E. CURRENT RECREATION ACCESS & PRIVILEGES – RECREATION PUNCH CARD**

1. Recreation Punch Card Privileges/Access at Community Services Venues & Beaches
2. No Beach Parcels
3. Additional Punch Cards (\$\$)
4. Accounting Challenges
5. Transferable
6. No cap on purchase of additional punch cards

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Page 6 of 10

GM Winquest went over the punch cards. Confirmed that contra revenue is going away. Also confirmed that there isn't a huge black market of sales of punch cards however we don't have Staff actively searching for this type of action.

**Mr. Paris** said there were two in his ten years.

GM Winquest said we want to bump up the penalty of abuse of passes. Also, there needs to be a limit on the purchase of punch cards.

## F. CURRENT RECREATION ACCESS & PRIVILEGES – GUESTS

1. Guests Rates at some community services venues (must be present with IVGID pass holder)
2. With IVGID pass holder at beaches
3. Recreation Punch Card
4. Non Resident Rates
5. Beach Exchange Passes
6. Daily Beach Tickets (Must be IVGID pass holder to purchase)
7. Short Term Renter

GM Winquest went over the topic.

**Ms. Ferrall** asked in comparing the number of punch cards sold, do you have any idea on beach visits how many were handed out? GM Winquest said in looking at the data, which has changed a little bit over the years, technology has improved this counting.

**Mr. Hill** said regarding boat access, one has to be an Incline resident or with one, do they check everyone? Do they charge guest access for everyone on the boat? GM Winquest said one can launch your boat with six guests and we charge every guest that comes through the gate which a lot of people don't like.

**Mr. Paris** said they are using the beaches – using the road, ramp, restrooms, etc. and they can board from the ramp but also do so from the beach so they are using it.

## G. EVALUATION OF CHALLENGES RELATED TO ORDINANCE 7 - DISCUSSION

1. Community Services Venues
2. Beaches

GM Winquest introduced the subject and offered a roundtable opportunity.

**Mr. Townsend** said that he uses the beaches a lot, don't have much family around, mostly using picture pass. If his family comes up, he uses the punch card and the fees come off of the \$166. If using it at up at Diamond Peak, it is to take the difference between resident and guest rates.

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Page 7 of 10

He didn't think the beach was that crowded, played bocce ball almost every Friday night and didn't have any problem finding a table at the beaches.

**Ms. Davis** said she agrees that we have more people moving to town, buying houses and living in them and second homeowners are spending more time up here because of the virus and the feeling of wanting to get away from more populous areas. We have to adjust to the fact that there are more people living here. Also, she thinks we have to adjust to the fact that traditional school has a very short summer vacation and yes, the beach is crowded in August or really in July because of when families can take their vacations. Look at beaches over the year long period, and if one goes to the beaches early in the evening, there are not a lot of people there. If you want to be there on a July day, from mid-morning to mid-day, it is going to be crowded. People are convinced that our beaches are being used by people that don't belong there, specifically asked questions to find out if things were possible – widespread misuse, no, she doesn't think so. Adjust to the fact that we have more people in town and they are going to have their families in town.

**Mr. Paris** said he was managing the beaches before there was a fence between the Hyatt which has reduced that access and it does happen both ways and happens without getting caught. Staff does catch the majority of abusers and it is not as prevalent as people think. When it is crowded, then more abuse can occur but it doesn't happen near as much as people think.

**Mr. Smith** said his primary interest is to preserve the bundle of privileges we have and that he hopes that we don't overact to a problem we think we have. He thinks that there are 1,000 or 2,000 more people living here full time. Approach reasonably and not overreact to what we think the situation might be. Open to listening to different perspectives, all focus on delivering the best experience to our owners and delivering that bundle of amenities to our owners.

**Ms. Ferrell** said we need to keep a long term vision in this planning, in the time of a pandemic, don't know how long this will last. Don't be reactionary to what it is now but to take this such that it spans past this pandemic and this situation of new homeownership.

**Mr. Hill** said he agrees with everybody to make it easy. Stating X, Y or Z is helpful but probably not conclusive because we don't have enough data. Do need additional restrictions, think that is what the public wants, need to clarify and simplify how people get beach access, use passes and punch cards, and if solution is to get away from punch cards, evaluate all options that go with that, let's access that. All sorts of different approaches to take for all types of access, all sorts of potential solutions. Can come up with those solutions but maybe there is a new normal and maybe our beaches aren't big enough and there are all sorts of things to access. This discussion was extremely helpful and that everyone brought up so many good points and once we get that clarification, we can then really dive in and come up with some reasonable solutions.

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Page 8 of 10

**Mr. Wright** said punch cards, no need for those without beach access don't need them, would simplify everything in the community if separated out. Would like to have everyone in town have free use of Recreation Center and guests pay more, simplify the paperwork. Simple is better. Getting back to the basics when community was first created, have to go back and clean up the convoluted mess. Need to simplify it.

**Ms. Danahey** said she is still absorbing everything, agree have to adjust to a new normal, need more actual data to determine how much of a problem, need to preserve the rights of the owner, also understand times have changed and we have to find a way to deal with that.

GM Winquest said at the other venues and programs, about 80% used by residents. Golf courses is less than that, number does change, will try and get better data – **Action item 017**. Diamond Peak is the one core venue where we have a heavy non-resident user which allows us to sell cheaper resident products and keep our other fees relatively flat. The fees are about balancing rates of non-residents in order to keep the resident rates low or flat. Need to factor in the effects of whatever we do to the other venues, agree that the beaches have gotten more crowded and it is up to use to make recommendations on how we might want to restrict that access, etc. More complicated than anyone thinks but really excited about the knowledge we have with this group.

## **H. GOALS FOR NEXT MEETING**

1. Provide 2020 Beach Visit Data - Winquest
2. Homework – Each Committee member provide Mrs. Herron their respected 4-5 primary areas (maximum) that need to be addressed in the Ordinance by 11/06
3. Begin reviewing Ordinance 7 by section identifying areas of high concern

## **I. SET NEXT MEETING DATE/TIME**

Ms. Ferrell – prefer evenings  
Mr. Townsend – prefer evenings  
Mr. Hill – mornings until ski  
Mr. Wright – either  
Ms. Danahey – either  
Mr. Smith – either  
Ms. Davis – either

11/10 will be next meeting

## **J. ADJOURNMENT at 12:14 p.m.**

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Page 9 of 10

## ACTION ITEM LIST

DATE	ACTION ITEM NUMBER AND BRIEF DESCRIPTION	WHO WILL COMPLETE	DATE COMPLETED
09/28/2020	001 – Form revision dates and explanation of revisions	GM Winqest	
09/28/2020	002 – Livestream links and survey results	Support Staff Herron	10/01/2020
09/28/2020	003 – Financial data	GM Winqest	
09/28/2020	004 – Historical spend	GM Winqest	
09/28/2020	005 – Input on Board philosophy	Chairman Callicrate	
09/28/2020	006 – Presentation from 09/09/2020	Support Staff Herron	10/01/2020
09/28/2020	007 – Resolution 1881	Support Staff Herron	10/01/2020
09/28/2020	008 – Two lawsuits	Support Staff Herron	10/26/2020 (posted to the website)
09/28/2020	009 – Punch card info	GM Winqest	
09/28/2020	010 – Info about guest accompanying picture pass holder	Committee Member Martini	
09/28/2020	011 – Visit distribution	GM Winqest	
09/28/2020	012 – 10/27 10 a.m. meeting date/time – does it work	All Committee Members	Scheduled
10/27/2020	013 – E-mail lawsuit information that is posted to the website	Support Staff Herron	
	014: Ms. Becker will write up the questions then Staff will circulate and get feedback. Following that feedback, will send to lawyers for their thoughts.	Ms. Becker	
	015: Ms. Martini to share the Bob McDonald document with the committee.	Ms. Martini	
	016: Staff to get all this information to the committee (from March 25, 2020).	Support Staff	
	017 - Winqest – at the other venues and programs, about 80% used by residents. Golf courses is less than that, number does change, will try and get better data	GM Winqest	

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Page 10 of 10

## CHAT FROM MEETING

- 10:21:57 From Trevor Smith: unbuildable vs buildable is irrelevant as all lots/homes and rights are equal as far fees paid and rights. Terminology aside we have provided the access and collected the fees.
- 10:22:54 From Denise Davis: How many unbuildable lots are there in the district? Are they all sold?
- 10:27:00 From Trevor Smith: Not very many privately owned lots (buildable or unbuildable). This is a very small percentage of total owners
- 10:30:28 From Trevor Smith: unbuildable lots were not subdivided
- 10:48:08 From Trevor Smith: the unbuildable lots cannot be subdivided
- 11:13:10 From Trevor Smith: I am guessing that there are not very many picture or punch cards purchased each year.
- 11:19:31 From Kristen Ferrall: this year to date, 2,040 ADDITIONAL punch cards were sold. That's on top of 12,125 regular punch cards
- 11:22:09 From Denise Davis: Thanks for the info, Kristen. By "regular punch card," do you mean cards part of the allotted 5 for each parcel?
- 11:22:29 From Kristen Ferrall: yes
- 11:22:36 From Denise Davis: Thanks
- 11:46:08 From Denise Davis: 2019 Beach Wrap Up doc shows guest access ticket visits from a low of 8,413 in 2015 to a high of 17,707 in 2019.
- 11:59:38 From Mary Danahey: Sorry having microphone issues
- 11:59:40 From Mary Danahey: one sec
- 12:07:34 From Trevor Smith: thank you Indra for allowing us this venue...
- 12:11:40 From Mary Danahey: I'm good with alternating am /pm
- 12:11:50 From Trevor Smith: either works for me
- 12:13:38 From Mary Danahey: Can these meetings be recorded for those that cannot attend?
- 12:14:38 From Mary Danahey: Thanks, Indra!

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