ADAM PAUL LAXALT
Attorney General

J. BRIN GIBSON
First Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

KETAN D. BHIRUD
General Counsel

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511

October 5, 2018

AG OPINION

Mr. Aaron L. Katz
Post Office Box 3022
Incline Village, Nevada 89450

Re: Open Meeting Law Complaint, OAG File No. 13897-282
Incline Village General Improvement District

Dear Mr. Katz:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging violations of the Open Meeting Law (OML) by the Incline Village General Improvement District Board of Trustees (Board) regarding the continued failure of the Board to approve the minutes for its meeting of August 22, 2017.

On February 21, 2018, the OAG found the Board violated the OML by failing to timely approve the minutes for its meeting of August 22, 2017. In the Findings of Fact and Conclusions of Law for OAG File Number 13897-260 (Findings), which contained the violation finding, the OAG found good cause did not exist to delay the approval of minutes at the Board's meetings of January 10, 2018, and January 24, 2018. Subsequent to January 24, 2018, the Board held seven more meetings at which it did not approve the minutes for its meeting of August 22, 2017. The Board approved the minutes at its meeting of May 23, 2018.

The Board, in response to your complaint, submitted that it could not approve the minutes at a meeting prior to May 23, 2018, because the Board Trustee which requested additional changes to the minutes did not provide the additional changes in time for any of the other meetings. The Board stated, by not approving the minutes, it was avoiding further violation of the OML, specifically, NRS 241.035(1)(e) which requires a public body to include other information in its minutes as requested by a member of the public body.

The OAG does not find this argument persuasive. Minutes are a reflection of a meeting. *See* NRS 241.035. A member of a public body may request information be included in the minutes of a meeting. However, such a request must be made in time for the public body to approve the minutes pursuant to NRS 241.035(1). As found by the OAG in its Findings: a "member of a public body must provide any information necessary to make the member's requested changes to the public body's minutes as soon as practicable after the meeting at which the member requests the changes." To find otherwise would lead to an absurd result: a member of a public body could state he has information he desires be included in the minutes, never provide the information, and cause the minutes to not ever need approval for the "good cause" of waiting for the information the member stated he would provide. If a member of a public body does not provide information the member desires be included in the minutes as soon as practicable after the meeting where the member requests changes to the minutes based on the information, good cause for a delay in the approval of the minutes will not be found.

However, the OAG, in its Findings, previously found the Board violated the OML by failing to timely approve the minutes for its meeting of August 22, 2017. In review of your current complaint, the OAG does not find a new violation of the OML.

If the Board had failed to correct its violation, the OAG could have taken action under NRS 241.037(3)(a) based on the on-going nature of the violation. However, the Board corrected its violation on May 23, 2018. The OAG may consider taking action for future, similar OML violations of the Board pursuant to NRS 241.040.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: _____
JOHN S. MICHELA
Senior Deputy Attorney General
Gaming Division
Telephone: (775) 687-2126

JSM:sad
c: Jason D. Guinasso, Esq.
Hutchison & Steffen
500 Damonte Ranch Parkway, Suite 980
Reno, Nevada 89521

HUTCHISON & STEFFEN
ATTORNEYS

500 DAMONTE RANCH PARKWAY, SUITE 980
RENO, NV 89521
775.853.8746
FAX 775.201.9611
HUTCHLEGAL.COM

JASON D. GUINASSO
PARTNER
JGUINASSO@HUTCHLEGAL.COM

May 31, 2018

RESPONSE

Via Electronic Mail- CBateman@ag.nv.gov
& Hand Delivery to:

Ms. Caroline Bateman, Chief Deputy Attorney General
State of Nevada Office of The Attorney General
Boards and Open Government Division
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101

Re: RESPONSE OF INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT BOARD OF TRUSTEES- OPEN MEETING LAW COMPLAINT, KATZ, AARON O.A.G. FILE NO. 13897-282

Dear Ms. Bateman:

We received your May 8, 2018, correspondence notifying the Incline Village General Improvement District (herein referenced as "IVGID" or "District") of the above referenced complaint by Aaron Katz alleging that IVGID has violated the Nevada Open Meeting Law ("OML"). Please accept this correspondence and the referenced enclosures as IVGID's response.

I. Issue Presented

A. Whether the Board of Trustees violated the Open Meeting law by failing to timely approve their meeting meetings for the August 22, 2017 regular meeting after the Office of the Attorney General's Findings of Fact and Conclusions of Law addressed the initial violation of delayed approval under OAG File No. 13897-260.

II. IVGID's Position

A. The Board of Trustees did not violate the Open Meeting Law after receipt of the Findings of Fact and Conclusions of Law received from the Office of the Attorney General under O.A.G. File No. 13897-260

1. The Board of Trustees had "good cause" for the delay of approval of the Board's August 22, 2017 Meeting Minutes after receipt of the Findings of Fact and Conclusions of Law under A.G. File No. 13897-260

On or about December 18, 2017, Aaron Katz filed a Complaint with the Office of the Attorney General pursuant to Nevada Revised Statutes (NRS) 241.039 alleging violations of the Nevada Open Meeting Law by IVGID. IVGID responded to said Complaint accordingly. Mr. Katz filed a supplement to his Complaint on January 16, 2018, and thereafter IVGID responded to the supplement.

On February 21, 2018, a Findings of Fact and Conclusions of Law was prepared regarding the allegations and supplemental allegations submitted by Mr. Katz alleging IVGID failed to timely approve their meeting minutes for fifteen (15) meetings held between December 14, 2016, and November 15, 2017.

Among the minutes of concern, were the minutes from the August 22, 2017 meeting.

In the OAG's Findings of Fact and Conclusions of Law, the OAG specifically opined as to its findings as to whether IVGID violated the Open Meeting Law in the delayed approval of the minutes as follows:

> 17. As of January 30, 2018, the Board has not approved the minutes for its meeting held on August 22, 2017. Prior to the expiration of the time mandated by statute, the Board held two (2) meetings at which it could have approved the minutes. The Board initially considered approving the minutes at its meeting held on October 25, 2017, approximately sixty-four (64) days after the meeting and nineteen (19) days after the time period mandated by statute for approval of the minutes.
>
> 18. At the October 25, 2017, meeting, a member of the public requested modifications to the minutes of the August 22, 2017, meeting. The Board chair asked the Board clerk to review the minutes with the member of the public and approval of the minutes was deferred to the meeting of November 15, 2017.
>
> 19. At the November 15, 2017, meeting, a power outage caused the cancellation of the meeting prior to the Board's consideration of the minutes for the meeting of August 22, 2017, and approval of the minutes was deferred to the meeting of December 13, 2017.
>
> 20. At the December 13, 2017, meeting, a Board trustee had more adjustments to the minutes for the meeting of August 22, 2017, and the approval was tabled. As of the January 22, 2018, the Board trustee had not provided the Board's clerk with all of the information necessary to complete the requested adjustments to the minutes.
>
> 21. The Board did not consider approval of the minutes for the meeting of August 22, 2017, at its meetings held on January 10, 2018, and January 24, 2018.
>
> ...
>
> The Board also argues it had good cause not to approve the minutes from the meeting of August 22, 2017, within the statutory time. The required approval period set out in NRS 241.035(1) contains an exception: "unless good cause is shown." Good cause is a "legally sufficient reason." BLACK'S LAW DICTIONARY 213 (7th ed. 1999). Basically, Good Cause is a real reason.
>
> In the case of the minute approval for the Board's meeting of August 22, 2017, the Board indicated it had good cause to delay approval of the minutes at its meetings of the October 25, 2017; November 15, 2017; and December 13, 2017. The good cause claimed for the meeting held on October 25, 2017, was a member of the public requested revisions to the minutes while the Board clerk was on vacation and the Board clerk was still on vacation on October 25, 2017. The good cause

> claimed for the meeting held on November 15, 2017, was a power outage during the meeting causing the meeting items occurring after the power outage, including approval of the minutes, to be moved to the next meeting. The good cause claimed for the meeting held on December 13, 2017, was a recently discovered apparently important missing period of time from the minutes. All of these appear to be real reasons supporting a delay in approving the minutes and not concocted reasons seeking to avoid compliance with the statute. The OAG finds each of these three (3) instances of claimed good case to actually be good cause.
>
> The Board further claims the failure of the Board trustee requesting revisions to provide all of the requested revisions to the Board's clerk by January 22, 2018, was good cause not to approve the minutes of August 22, 2017, at the Board's meetings held on January 10, 2018, and January 24, 2018. The Board trustee discussed the desired changes at the meeting held on December 13, 2017. If any additional information was required to make the requested changes to the minutes, the trustee should have provided it as soon as practicable after the meeting. A member of a public body must provide any information necessary to make the member's requested changes to the public body's minutes as soon as practicable after the meeting at which the member requests the changes. Thus, the OAG finds good cause did not exist to excuse approval of the minutes of August 22, 2017, at the meetings of January 10, 2018, and January 24, 2018. The Board did not offer any claim of good cause excusing its failure to approve the minutes of August 22, 2017, at its meetings of September 13, 2017, and September 26, 2017.
>
> ...
>
> Based on the Findings of Fact and Legal Standard and Conclusions of Law as set out above, the OAG finds the Board and Committee failed to approve minutes as required by NRS 241.035(1) fifteen (15) times.
>
> ...
>
> Here, upon investigating the present Complaint, the OAG makes findings of fact and conclusions of law that the Board and Committee committed violations of the OML by failing to approve meeting minutes within the statutorily required time fifteen (15) times. Therefore, the Board and Committee must place on their next meeting agendas these Findings of Fact and Conclusions of Law and include them in the supporting material for the meetings. The agenda items must acknowledge these findings of Fact and Conclusions of Law to be the result of the OAG investigation in the matter of the Attorney General File No. 13897-260, and that it has been placed there as a requirement of NRS 241.0395.

Further, the Nevada Open Meeting Law Manual has provided clarity that "[...] in the case of a public body that meets infrequently, formal approval of the minutes of a previous meeting may be delayed several months." Here, the Office of the Attorney General has provided confirmation that formal approval of minutes may be delayed for good cause, this confirms that the time frame in which the minutes must be approved is not a 45-day strict deadline.

When considering whether to place the August 22, 2017 minutes on the agenda for approval, the Board and District Clerk faced a situation of multiple dilemmata. The District was unable to agendize the minutes for approval within the 45-day deadline as doing so would violate NRS 241.035(1)(e), requiring that:

> 1. Each public body shall keep written minutes of each of its meetings, including:
> ...
> (e) Any other information which any member of the public body requests to be included or reflected in the minutes.

As shown in **Exhibit 1**, the District Clerk has been in correspondence with Trustee Matthew Dent since December 2017 regarding additional information he felt was not accurately reflected in the minutes as proposed. The District has been unable to pursue approval of the minutes with good cause, as the outstanding request of the Trustee that changes be made would've resulted in an OML violation had the minutes been approved excluding the information the member of the public body requested be reflected therein.

Since the March 13, 2018 meeting, in which the Board discussed the A.G. File No. 13897-260 Findings of Fact and Conclusions of Law, IVGID and its staff have made timely approval of minutes a top priority and have agendized and approved all subsequent meeting minutes in a timely manner, in accordance with NRS 241.0395.

As the OAG already ruled, IVGID did violate the Open Meeting Law as stated above, specifically in regard to the delayed formal approval of the August 22, 2017 minutes. However, in an effort to comply with Nevada Open Meeting Law and the spirit of such, the District chose to further delay the approval of the minutes until all members of the public body had the opportunity to ensure they were an accurate reflection of what occurred, preventing any further violations of Nevada OML.

It was not until May 10, 2018 that Trustee Dent fully provided all attachments he committed to providing to District Clerk Herron at the December 13, 2017 meeting, to be included as attachments to the August 22, 2017 minutes. District Clerk Herron promptly submitted the revised minutes including Trustee Dent's attachments as an agenda item for the May 23, 2018 regular Board meeting, where they were formally approved. In light of the District's prompt action, we ask the Attorney General not commence prosecution of the alleged violation in the best interests of the public, concurrent with NRS 241.0365.

III. Scope of Response

IVGID has not responded to each and every assertion submitted in Mr. Katz's narrative, as Mr. Katz has a history of providing lengthy pleadings and complaints in an effort to waste the resources of the District. IVGID's response has focused on whether there was a violation of the Nevada Open Meeting Law.

IV. IVGID Did Not Violate the Open Meeting Law

In the event that this memorandum has failed to address an alleged violation of the Nevada Open Meeting Law due to the vagueness and ambiguity of Mr. Katz's Complaint, IVGID denies that any such violation has occurred. IVGID has a stellar record of abiding by the provisions of NRS Chapter 241 and has worked diligently over the years to make sure that District business is conducted with openness and transparency.

V. Concluding Remarks

In accordance with the foregoing, IVGID respectfully requests that the Attorney General conclude that there has been no violation of the Nevada Open Meeting Law.

Thank you for the opportunity to respond to the Open Meeting Law Complaint of Frank Wright, A.G. File No. **13897-282**.

Sincere regards,

HUTCHISON & STEFFEN, LLC
Jason D. Guinasso, Esq.

Encl.

cc: Chairwoman Kendra Wong
General Manager Steve Pinkerton
District Clerk Susan Herron

JDG:bf

EXHIBIT 1

EXHIBIT 1

AFFIDAVIT OF SUSAN HERRON

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

Under penalty of perjury, I, Susan Herron, hereby swear that the information contained in this Affidavit is true and accurate:

1. My name is Susan Herron.

2. I am a resident of the State of Nevada.

3. I am over 18 years of age.

4. I serve as the Executive Assistant/District Clerk/Public Records Officer for Incline Village General Improvement District ("IVGID").

5. The August 22, 2017 minutes were originally placed on the October 25, 2017 Agenda as Agenda Item "H".

6. I was on vacation the week leading up to the October 25, 2017 meeting.

7. There was a request from a member of the public, Ms. Judith Miller, for me to further review the August 22, 2017 minutes; however, due to the fact that I was on vacation, I was unable to further review the minutes prior to the October 25, 2017 meeting.

8. Upon my return from vacation, I was able to review the August 22, 2017 minutes further, and make the revisions requested by Ms. Miller.

9. I re-submitted the corrected August 22, 2017 minutes at the next regular meeting to follow the October 25, 2017 regular meeting.

10. The next regular Board meeting to follow the October 25, 2017, meeting was on November 15, 2017.

11. The August 22, 2017 minutes were re-submitted with the revisions requested by the public, and the minutes were placed on the November 15, 2017 regular meeting agenda as Agenda Item "H.1" for possible approval.

12. At the November 15, 2017 meeting, at approximately 9:55p.m. Chairwoman Wong called for a five-minute break and stated the Board would resume session at 10:00p.m.

13. Before the Board resumed its meeting, the power went out which was beyond the control of the Board.

14. At that time, Chairwoman Wong removed items G through K from the Agenda and moved them to the Agenda for the next meeting.

15. The next regular Board meeting to follow the November 15, 2017 meeting, was on December 13, 2017.

16. The August 22, 2017, minutes were re-submitted only, with no new revisions and the minutes were placed on the December 13, 2017 regular meeting agenda as Agenda Item "I.1".

17. During the December 13, 2017 meeting, the August 22, 2017 minutes were tabled due to Trustee Dent requesting further review of the Livestream and further revisions to certain areas of the August 22, 2017, minutes after further review.

18. I agreed to work with Trustee Dent to add additional information to the minutes based off of the Livestream recording from the August 22, 2017 meeting.

19. Attached, as Exhibit A, are e-mails dated December 20, 2017, December 22, 2017, January 22, 2018, April 11, 2018, and May 10, 2018 which are exchanges between Trustee Dent and myself regarding the August 22, 2017 minutes.

20. The August 22, 2017 minutes were included on the Board of Trustees meeting agenda of May 23, 2018 for acceptance. These minutes were approved with modifications and are attached as Exhibit B.

DATED: This 24th day of May 2018.

SUSAN HERRON

SUBSCRIBED and SWORN to before me this 24th day of May 2018.

NOTARY PUBLIC

V.L. RECTOR
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 98-3772-2 - Expires January 14, 2021

EXHIBIT A

Herron, Susan

From: Herron, Susan
Sent: Wednesday, December 20, 2017 9:55 AM
To: Matthew Dent
Subject: Minutes of August 22, 2017

Hi Matthew,

I am following up on our commitment to work to add information to the August 22, 2017 minutes. I think you had some specific text you wanted included – could you please send that to me? Or if I am misunderstanding, let me know what we need to do.

Thanks,
S

Susan A. Herron, CMC
Executive Assistant/District Clerk/Public Records Officer
Incline Village General Improvement District
893 Southwood Boulevard, Incline Village, NV 89451
P: 775-832-1207
F: 775-832-1122
M: 775-846-6158
sah@ivgid.org
http://ivgid.org

Herron, Susan

From:	Matthew Dent <matthew.ivgid@gmail.com>
Sent:	Friday, December 22, 2017 10:35 AM
To:	Herron, Susan
Subject:	Re: Minutes of August 22, 2017

Good morning,
I will get you something next week. I hope you have a Merry Christmas. Thank you. Matthew

Trustee Matthew Dent
Incline Village GID Board of Trustees
(775) 530-1345 | www.matthewdent.com
893 Southwood Blvd. Incline Village, NV 89451

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT

On Wed, Dec 20, 2017 at 9:55 AM, Herron, Susan <Susan_Herron@ivgid.org> wrote:

Hi Matthew,

I am following up on our commitment to work to add information to the August 22, 2017 minutes. I think you had some specific text you wanted included – could you please send that to me? Or if I am misunderstanding, let me know what we need to do.

Thanks,

S

Susan A. Herron, CMC

Executive Assistant/District Clerk/Public Records Officer

Incline Village General Improvement District

893 Southwood Boulevard, Incline Village, NV 89451

P: 775-832-1207

F: 775-832-1122

M: 775-846-6158

Herron, Susan

From: Matthew Dent <matthew.ivgid@gmail.com>
Sent: Friday, December 22, 2017 10:39 AM
To: Herron, Susan
Subject: Re: Automatic reply: Minutes of August 22, 2017

Sounds good. Enjoy the holidays. We can touch based on the January 2nd. Thank you. Matthew

Trustee Matthew Dent
Incline Village GID Board of Trustees
(775) 530-1345 | www.matthewdent.com
893 Southwood Blvd. Incline Village, NV 89451

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT

On Fri, Dec 22, 2017 at 10:35 AM, Herron, Susan <Susan_Herron@ivgid.org> wrote:
Thank you for your e-mail. I am out of the office until Tuesday, January 2, 2018. If this is a public records request, I will look into it upon my return. If this is an emergency, please call 775-832-1100. Thanks, Susan

adds to 8/22 mins

Herron, Susan

From: Matthew Dent <matthew.ivgid@gmail.com>
Sent: Monday, January 22, 2018 9:54 AM
To: Herron, Susan
Subject: Re: Minutes of August 22, 2017
Attachments: Nevada Law References On Retaining Email1.pdf

Please include the attachment 3 page document with the approved minutes from August 22nd. I have a couple other items I will send you as well. Thank you. Matthew

Trustee Matthew Dent
Incline Village GID Board of Trustees
(775) 530-1345 | www.matthewdent.com
893 Southwood Blvd. Incline Village, NV 89451

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT

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Susan A. Herron, CMC

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http://ivgid.org

Nevada Law References On Retaining Emails

The minimum retention times for local government public records are governed by Nevada law under **NRS 239.125** as excerpted below and referred to in the agenda item but not included in the packet.

"**NRS 239.125**: *Local governmental records: Program for management; regulations of State Library, Archives and Public Records Administrator.*"

The law says that local governments can adopt their own minimum retention times for public records, as long as they are the same length or longer than the state law minimums. This is addressed in **NRS 239.125 (1):**

" 1. A local governmental entity may establish a program for the management of records, including the adoption of schedules for the retention of records and procedures for microfilming, which must be approved by the governing body and comply with the applicable provisions of this chapter and any regulations adopted pursuant thereto."

In the absence of a local program that has retention schedules longer than Nevada minimum retention times and that has also been approved by the IVGID Board of Trustees, the state minimums apply to IVGID. There is no provision for any local government to adopt minimum retention times shorter than the state minimums.

The minimum retention times in Nevada are addressed in **NRS 239.125 (2):**

" 2. The State Library, Archives and Public Records Administrator shall adopt regulations to carry out a program to establish and approve minimum periods of retention for records of local governments. The proposed regulations or any amendment thereto must be submitted to the Committee on Local Government Finance, established pursuant to NRS 354.105, for its advice and recommendations."

The State Library, Archives and Public Records Administrator has established detailed minimum legal retention times for local government email correspondence that depends on the type of email. The category definitions are also thoroughly specified in the Nevada Local Government Retention Schedule (see excerpts below). The regulations do not allow for alternative definitions or for shorter retention times by local governments.

The most relevant correspondence categories are excerpted below from the Administrative Records section of the Nevada Local Government Retention Schedule. Specifically relevant text is underlined. (http://nsla.nv.gov/uploadedFiles/nslanvgov/content/Records/SRC/Administrative.pdf)

Type of Record	**Description**	**Minimum Retention Time**
Correspondence: **Executive**	Records not duplicated elsewhere that contain **executive level correspondence (emails,** social media, letters, memos, etc...) documenting the entities functions, pattern of action, policies and achievements. Correspondence may	**Permanent**

	pertain to, but is not limited to, budgeting and financial, decisions, official positions, planning, directing, policy and rulemaking, prominent; celebrated and/or noteworthy achievements, formal announcements, awards and/or events.	
Correspondence: **Complaints**	This record series documents complaints, and may include, but is not limited to, name, address, and phone number of person making complaint, description of complaint, name of person responding to complaint, resolution of complaint, correspondence and related records. **This series includes electronic mail that communicates the above.**	**Three (3) calendar years after response or resolution**
Correspondence: **Routine Business**	This series consists of **correspondence (emails**, social media, letters, memos, etc.) that is work related and deals with the day-to-day office administration and activities. Examples may include, but are not limited to, internal correspondence, external correspondence from various individuals, companies, and organizations requesting information pertaining to the agency business, and other routine inquiries.	**One (1) calendar year from the date of the correspondence.**
Correspondence: **Transitory**	This series consists of **correspondence (emails**, social media, letters, memos, etc.) that do not document core functions or activities of an agency or department and do not require an official action. Examples may include, but are not limited to, **general announcements including meeting reminders, notices of upcoming events, informational copies (cc or bcc) of correspondence** which do no document administrative action, follow-up or suspense (tickler), transmittal letters that do not add information to the transmitted material or attachments, **spam, junk mail, unsolicited vendor mail, personal mail.**	**Retain only as long as the record holds value to the agency.**

Some other relevant categories are excerpted below from the Administrative Records section of the Nevada Local Government Retention Schedule. Specifically relevant sections are underlined. (http://nsla.nv.gov/uploadedFiles/nslanvgov/content/Records/SRC/Administrative.pdf)

Type of Record	Description	Minimum Retention Time
Directives of Manager	Direction or instruction by manager or executive officer. This series may include, but is not limited to, executive orders, bulletins and advisories, directives, policy statements, notes on policy and procedures, related correspondence, and similar documents.	**Permanent.**
Contracts and Agreements	This record series documents products and services provided to a governmental entity for a specified cost and period of time. This series may contain, but is not limited to, lease/rental agreements, service contracts, contracts for program services, copies of bid documents, copies of legal notices, **related correspondence, and similar documents.**	**Six (6) fiscal years from the termination/completion of the contract or agreement**
Staff Meeting Records	This series documents the actions and activities taking place at internal staff meetings, team meetings, managers meetings, and other internal meetings. These types of meetings do not always produce minutes, but this series may include minutes, agendas, notes, reports, newsletters, correspondence, and related documents.	**One (1) calendar year from the date of the meeting.**
Electronic Mail (E-mail)		

From: Matthew Dent [mailto:matthew.ivgid@gmail.com]
Sent: Monday, January 22, 2018 9:54 AM
To: Herron, Susan <Susan_Herron@ivgid.org>
Subject: Re: Minutes of August 22, 2017

Please include the attachment 3 page document with the approved minutes from August 22nd. I have a couple other items I will send you as well. Thank you. Matthew

Trustee Matthew Dent
Incline Village GID Board of Trustees
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[Image removed by sender.]

On Fri, Dec 22, 2017 at 10:35 AM, Matthew Dent <matthew.ivgid@gmail.com<mailto:matthew.ivgid@gmail.com>> wrote:
Good morning,
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Trustee Matthew Dent
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[Image removed by sender.]

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Thanks,
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Susan A. Herron, CMC
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P: 775-832-1207<tel:(775)%20832-1207>
F: 775-832-1122<tel:(775)%20832-1122>
M: 775-846-6158<tel:(775)%20846-6158>
sah@ivgid.org<mailto:sah@ivgid.org>
http://ivgid.org

Herron, Susan

From: Matthew Dent <matthew.ivgid@gmail.com>
Sent: Thursday, May 10, 2018 2:22 PM
To: Herron, Susan
Subject: Meeting Minutes of August 22, 2017
Attachments: 1a IVGID's efforts to concealpublic records gets bizarre _ Nevada Journal.pdf; 1b ivgid commits felony level crimes.pdf; 1c IVGID officials caught in false testimony _ Nevada Journal.pdf; 1d NPRI files public records complaint with AG's office __ Nevada Policy Research Institute.pdf; August 22 Transcipt.pdf

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Susan

As stated several times previously, the August 22nd meeting minutes omit nearly 20 minutes of dialog between the Trustees and Staff. In order to provide an accurate and complete version of what actually transpired at the meeting, I have included a transcript of the meeting.

I am deeply concerned about this troubling pattern of the censorship committee (GM Steve Pinkerton, General Counsel Jason Guinasso, & our Clerk Susan Herron). This assault on free speech has been witnessed by the Incline Village & Crystal Bay residence over the last several months and has included the following:

- Filtering correspondence received by the District
- Interrupting citizens public comments
- Censoring/omitting pertinent information from the Meeting Minutes

The latest act of overreach by the censorship committee was on full display at last nights Board meeting 5/9/2018 at 3:28:55 https://livestream.com/IVGID/events/8198653/videos/174618053

This has gone on for far too long going on for far too long and I will continue to voice my concerns when the Board, Staff, General Counsel fail to comply with Board Policies, Practices, Ordinance, and NRS.

Please include this email as part of the August 22nd Meeting Minutes along with the attachments. Thank you. Matthew

Trustee Matthew Dent
Incline Village GID Board of Trustees
(775) 530-1345 | www.matthewdent.com
893 Southwood Blvd. Incline Village, NV 89451

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT

August 22, 2017 1:45:00 to 2:30:00

1:45:41 Wong: "Before we start these items session I just want to preface there have been allegations, that there have been um, how would you phrase it Jason, um, that there have been, that public records have not been provided to the public. Just for the, just for the record the district has not received anything from the internal general, the attorney generals office that there have been any violations. So um, but, in talking to Trustee Callicrate, um, we did think that it would be a good idea to review our policies so that the board understands what our policies are, um, where they stem from, and then um just so that we know what the baseline is and then if we need to make revisions going forward we can do that and at future meetings. So I will turn this over to Mr. Guinasso and Ms. Herron to review our policies."

1:46:55 Callicrate: "Kendra, I have a couple of questions that I wanted to ask before we got into a presentation." Um, just because I have, I think it will expedite and help clear things up. That is why I wanted to move this up in general business. Um, most importantly I guess is to my fellow board members, um and it has to do with this 30 day email retention policy. And its was by the email August 4th or was it something earlier? And when I got that August 4th email that was the first time I'd heard about the 30 day, um, email retention. And I'm you know, I'm asking you guys, did you hear that earlier than that or am I missing something or was I absent during that meeting when it came up? Cause I don't think it was ever addressed by the board. So I'm just asking when we were all ware of it.

1:48:00 Horan: "I don't think since I've been on the board that we've actually discussed specifically email policy."
Callicrate: "And um, Kendra, I don't remember which since we first got on whether that was something that was ever discussed, on that email policy or not."

1:48:15 Wong: "Well there's a lot of existing policies the district has that this board in particular hasn't reviewed, virtually all of our policies and procedures have existed well before this board." Any policies and procedures that were put in place by previous Boards, until this Board readdresses it. We, we don't really discuss it and they carry forward."

1:48:41 Callicrate: Well, I guess my biggest thing is the 30 day retention policy and when I was looking further emails came up that after 30 days transitory emails are destroyed. I am like wait a minute.

1:49:01 Wong: Why don't we let our staff review the policies. And if there are still questions as to when the policy was developed and if it is something we need to develop we can address it at a separate meeting and notice it because we are not going to be making any decision today. "So lets get a full understanding of the policy, when it was implemented, why it was implemented, and then move forward."

1:49:27 Callicrate: "Well okay, but I do and will have several questions to ask, that I would like to ask."

1:49:31 Wong: "I think that is absolutely appropriate. I think we just need to establish what the baseline is before we start picking apart policy. Alright."

1:49:35 Guinasso: "Um, thank you Madam Chair. Well we've provided a copy of the policy for you all to review as part of the board packet. Um, what Id like to do is um, have uh your public records officer uh Susan Herron discuss how this policy is implemented on a day to day basis. So um Ms Herron, could you please tell the board how public requests are handled under this policy, under Nevada law when you get a request like that, what that entails and how you respond."

1:50:05 Herron: "Um, certainly. I would draw your attention to in the packet page 450, B1. Typically I receive an email request from a member of the public. The minute I receive that email request, the clock starts the following day. Then I would draw your attention to the bottom paragraph number 3 where it says a response will be made within 5 business days within receipt of that request, not counting that day.

1:50:43 "So I will look at the request, and if it's a document I can readily access, typically I turn it around in an hour, minutes, you know, it just depends. If its something I need to research, typically what I will do within that 5 day period is I will answer the requestor, tell the requestor that I need some more time to do this. Typically I will say I need until the end of the month, you know, something like that. I give them, uh, a period of time."

1:51:12 "The key here is that I have to respond within five days. That does not mean that I have to give the request. I have to respond within five days. So that is what I do. I process a bunch of these. I keep a log, you know, we probably process between 30 or 40 a month. So thats, you can do the math, that s 1 or 2 a day. Some of these require, um, that I reach out to staff. Some of them require that I can get a contract right away and turn it around in like I said 5 or 10 minutes. So that's typically my process."

1:51:45 Guinasso: "Thank you Madam Chair, so um with that if there is any violation of, uh, Nevada law relative to not producing records in accordance with the Nevada Public Records Act, there are remedies available to a member of the public similar to those remedies that would be available if there was an open meeting law violation. Presently there are no complaints against the district for violations relative to failure to produce public records and, uh, and so really there is nothing to comment in that regard about certain allegations that are being made, that we're somehow not compliant with the public records act. So with that I think that wraps up our discussion on the Public Records Act, other than questions that you or the rest of the Board may have."

1:52:25 Wong: "Well, lets, lets start with what defines a public record and public information"

1:52: 40: Herron: "So typically a public record is something that we have put out into the public, i.e. included in a board meeting, included in a board packet, uh put it on our website, um I'm trying to think of something else, eh, that's basically it. That's a public record."

1:53:11 Wong: "So what would not be public records?"

1:53:14 Herron: "Working, uh, papers, uh, draft documents, uhhhm, that's basically it. I mean we're a public agency most of our work is public."

153:25 Morris: A, A, A question maybe to to clarify all of this in terms of data.... How do we, or um, how do we class an email? If I send you an email.... is that something we keep forever?
S: "Emails are transitory records, are transitory in nature. The content is when they become a record."
"I will give, may I give you an example? Say the Director of Asset Management goes out for an informal bid. He gets those bids in, he now has a record. That record he retains until he converts that over into a purchase order or contract. Once he converts those over into a purchase order or a contract, that's a new record. He can, he can actually get rid of those emails."

1:54:22 S: "Emails are a form of communication only. Its just like a letter or picking up a phone and calling somebody. So the majority of our emails result in an action, i.e. a purchase order, a check request, something like that. You all make decisions, so those are our records." That's why emails are transitory. And I must tell you that I have spoken to the State Librarian. He agrees with me, he has given me some citations on that. As does every other city that I've reached to as a Nevada Municipal Clerk. I belong to that association and I went out to them and all of them have a policy that says emails are transitory. They're just a form of communication."

1:55:12 Callicrate: "Um, just uhh. And um I'm ou know, forgive me if I have to go over and reiterate, but I looked up 239.125, went on the website and download for my colleagues what the entirety. Excuse me one and two are subsections..... Some of the emails, um, can and can't be deleted. Umm, they must be permanent or have a one year shelf life or have less than that. And, um, I specifically say on page number two that any correspondence, um, email, social media, letters, etc at the executive level are permanent records. They cannot be deleted. Um, that's per NRS, um, this particular, um, statute. And then correspondence under complaints, it says this series includes electronic email that is 3 calendar years after we sponsor a resolution. And routine business is one calendar year from the day of the correspondence.
And then transitory, which they do here, is general announcements as Susan had mentioned if it goes to an actionable item if it's a work order or what not, spam junk mail, vendor mail, personal mail, things of that nature. And then it goes further down on page 3, directives of a manager are permanent. Contracts and agreements are 6 fiscal years. This is all pretty self-explanatory and very explicit. We as a district can elongate that, and, and require longer periods of time, we cannot however truncate them and take less time, um, to archive something."
That's the concern that I had when I got that initial email, um, from Mr. Smith because it took 58 days before he was finally replied to. From August 1st, it was 58 days later and that's more than the 5 days. And I know you have a tremendous amount of work Susan and I appreciate the hard work that you do. But what happens to those emails when they are deleted or when they're destroyed? We have no record of them? Or are they put on server or are they actually archived or what happens? And I'm concerned about that because if we don't keep permanent archivable email records, we are in violation of the law."

1:57:53 Guinasso: "Nuh, not all emails are public records, uh that's the point. The definition of a public record is all public books and public records of a government entity, the contents of which are not otherwise declared by law to be confidential. A public record is not a statutorily defined

term. In all of the things you provided there's no statutorily defined term. The only definition for a record under NRS, uh chapter 239 is for the, for official record which is under NRS 239.0784." (Reads state agency record definition) "So, um first of all, you have to understand what a public record is before you categorize all emails into that category. Now the second piece of the analysis is if, if its not a public record, what is it? If its not a public record, what Susan explained to you, is that you are dealing with what has been categorized as a transitory record. And again a transitory record is defined as follows: transitory records are public records but because of their limited value they do not have to be retained."

1:59:23: Callicrate: "Right"

1:59:24 Guinasso: "Transitory records are created primarily for the informal communication of information and do not require an official action. Transitory records do not set policy, establish guidelines or procedures, discuss a business matter or discuss a decision, certify a transaction or act as evidence of receipt. Transitory records may be treated as having a reference or administrative value that ends when the agency no longer needs the information in the record."

Callicrate: "That right and if we have, excuse me Mr. Guinasso"

Wong: "Hold on, let Mr. Guinasso finish.

1:59:55 Guinasso: "Furthermore transitory records may be destroyed when the reference or administrative value of the record ends. However a public records request received before a transitory record is destroyed, that transitory record must be released. So that's the full counsel on this, its not just picking and choosing different things and "

2:00:15 Callicrate: "No its states very clearly that any executive correspondence must become a permanent record within the districts archives. And if somebody is requesting something that was either from the board to the general manager or from the board into the general packet, or um any complaints to the district, any complaints to the district are public records by virtue of the fact that they are made by the public as a complaint against the district. And if we don't keep those for 3 years we are in violation of the law, it states right here."

2:00:46 Wong: "OK, lets back up on a couple of things, so first of all, as board members, we cannot direct staff to do anything, we have to act as a board together. So that"

2:01:00 Callicrate: "Kendra, this the law Kendra. This is the law. And if we are not in compliance with the law, we're in violation of the law". And regardless of who asks it as a Board, or it's the chairman of the board, or whatever."

2:01:12 Callicrate: "The fact that if, if for whatever reason, our Clerk to the Board, is relying on something different than what is the law, by direction of her immediate boss, I have real concerns with that. And this is what has been brought up by Mr. Smith."

2:01:30 Wong: "There are many ways to interpret laws."

Callicrate: "No, not this, Nevada state law trumps of all of IVGIDs. Well I'm sorry this is very, very upsetting to me."

2:01:40 "There are a lot of ways to interpret laws first of all. Second of all our, our, district clerk (pause).

2:01:45 Guinasso: "Would you please."

2:01:49 Wong: "Mr. Lyons please sit down."

2:02:00 Wong: "Our district clerk has reached out to the State and gotten their guidance and they have, why don't you communicate what, what the state has communicated to you about our policy."

2:02:15 Herron: "Uh, we have an approved retention schedule. The state has told me that we have, emails are transitory records, and that we're in full compliance with the law."

2:02:30 Herron: "Eh, I would like to address if I may. Mr. Smiths request. I did not wait 59 days to talk with Mr. Smith".

Callicrate: "58"

Herron: "Pardon me, 58 days to talk to Mr. Smith. I've been in contact with Mr. Smith over and over and uh".

Callicrate: "Via email or just on the phone?"

Herron: "Via email and I would be more than happy to share those with you."

Herron: "He has extended time with me when I've told him I can't find things or are still looking for things. He has been very gracious, as have other members of the public. Mrs Newman can speak to that as well. Just did one for her today."

2:03:08 "Um, I don't shirk my duty on this. I recognize how important it is. So I believe Mr. Newman, pardon me, Mr. Smith maybe a little mistaken or maybe was out of town or something and didn't get an email."

2:03:20 Herron: "But we're in compliance. I consult with District General Counsel and"

2:03:35 Guinasso: (interrupting) "Uh, what I would like to do is just say that this discussion on this specific complaint has not been agendized. If we are here to review the policy then that's what we need to keep the discussion to. If you want to agendize a specific complaint we can certainly do that but we are well outside the scope of this agenda item and we are suppose to be talking about policy and not a specific complaints of members of the public.

2:03:56 Callicrate: "That was an example it is not to take any specific action on it"

2:04:01 Wong: "OK, anything else on this?"
Horan: "Well, how, how do we, hold on a second. How do we, how do we resolve the differences in opinion. We have State advice that we are in compliance and we have an interpretation of NRS that says we're not."

2:04:23 Guinasso : "Madam Chair"
Wong: "Here's what I would suggest, I would suggest that our legal counsel, Mr Guinasso, take this information, um, identify what is factual and what isn't in this document. Um, if he needs to, meet with Trustee Callicrate to resolve some of the issues if there are discrepancies. And if there are discrep, if there areas where Trustee Callicrate's documents is correct and we need to make revisions in our policies, then we'll (inaudible)."

2:04:51 Callicrate: "Um, this is all off the Nevada Revised Statutes websites and I have links to the actual statute wording and I added some of my own here. And I'm surprised this wasn't even included in our board book".

2:05:96 Wong: "I'm looking at your document right now and I'm looking at the NRS. And there is information on this document that is not on the NRS, so there is a discrepancy somewhere."

Callicrate: "Really"

Wong: "Yes, When I look at this sheet I see a lot of dialog on this sheet that is not listed in the NRS.

Callicrate: "But all of the italicized, number 1, and number 2, the minimum retention times and all of the box stuff is right off the website, I just cut it off today."...
205:40 Guinasso: "If the board would, um, like to direct your staff and legal counsel to revise the current policy because you think there are problems with it, we can certainly do that."

2:05:50 "But, the policy as stands now, has not been found to be illegal by any reviewing agency. All of our, all the records requests have been handled, have been handled in accordance with Nevada law."

2:06:02: "And if somebody disagrees with that, there is a venue to deal with that and that's not before this board, that's before other agencies given jurisdiction to hold us to account when we haven't complied with Nevada law."

2:06:20 Wong: "Mr. Dent"
"I was just going to say. I just went on my phone and looked up the Nevada State Library um, um Archives and when I looked up transitory, an example of transitory is no document, uh, correspondence which don't document administrative action, follow up, suspense, transmittal letters that do not add additional information to the transmitted material or attachments, spam, junk mail, unsolicited vendor mail and personal mail, transitory email. I mean to me it sounds like we are talking about that all IVGID email and all day to day operations are nothing more than spam. We know that's not true. So I'm, I'm uh, kind of taken aback by this a little bit. And

um, seeing this go back and forth over the last several weeks. When you get an email saying that we are destroying emails. It is kinda alarming. You know it just doesn't sit right. And uh, and so I don't, I don't know what to do. I don't really think that sitting here and going back and forth and having our attorney try to tell us what it is, or having staff try to tell us what it is. I don't think that is best step forward. I mean, it, it appears to me, um, that, you, we, may be in violation. Um, Based on what's kind of transpired today and what maybe you know maybe that the, maybe whats going on the last several weeks you sent the emails.

2:08:05 Dent "It appears potentially there could be impropriety, um or possible misconduct, um, and, and, I believe we need to look into this a little bit further when it comes to uh IVGID's public records, and, um, the record retention that's involving the districts legal counsel, the general manager and other staff members.

2:08:30 Dent "Um, these allegations, I, I take them very seriously. Um, I think we all should and I want to make sure we are doing what is right. Ultimately that is what we should be striving for, is doing whats right and whats best for this community.
Um, for and I really think for the protection of all the parties involved, um I would request that um, per board policy 3.1.8 agendizing items, that the chair place the following on the agenda for the next meeting. Um, the Board appoint an independent investigator to investigate these public record issues involving the general manager, the legal counsel and other staff. Secondly, I think that the board, that the board place the general manager on administrative leave, with pay, pending the outcome of the investigation and appoint an acting general manager and lastly."

Wong: "Wait lets back up"

Crowd: (yelling) "Shut up! Let him finish!"

Dent: "suspends the legal counsel pending the investigation and appoint legal counsel in the interim. I think if we go in that direction, that might be a better route. We remove anyone that might have been a part of this and we really get a true answer that's correct and there is no spin to it."

Wong: "Ok, first of all, we uh, this is agendized that we are not taking any action. This was in an informational item"

Callicrate: "He's requesting an agenda item"

Wong: We are not going to. So we're not going to be taking any action"

Dent: "I requested an agenda item for the next meeting, Madam Chair, based on the significance of what has transpired today and what's been going on in the last several weeks."

Guinasso: "We can't take action on this agenda item."

Wong: "Well we can't take any action on this item"

Guinasso: "We can't take action on this agenda item."

Dent: "Well then I will send you an email tomorrow"

Callicrate: "Or bring it up at the next agenda item. Its pertinent to the Parasol foundation"

Dent: "Correct, when public records are being destroyed that pertain to Parasol, I mean this is something that should be very, very scary for everyone in the community, for any board member sitting up here. We need to make sure we're doing what is right.

Callicrate: "I concur" Crowd: (clapping) "Yes! Absolutely

Wong: "Any more comment"

2:10:05 Callicrate: "Yes, I would like the Nevada State Laws brought forth in its entirety, regarding this particular issue 239.125 and we need to review it in its entirety, the entire board and we need to make sure we are compliant and if we aren't then we need to become compliant. And if anybody, and I'm not saying that they are, but if anyone has inadvertently acted outside of what the law requires by the dismissal, or dissolution or the destruction of emails or records of the district, then appropriate actions will be taken. This is just, this is not good, and I am very upset. And I might as a suggestion to our general manager to please take the appropriate uh steps to compile all this information for the board and our general counsel."
Wong: "I think you are jumping ahead because that is agenda item 3. To discuss the NRS."
Wong: "So lets close item 1 and move onto item 2, verbally review policies and practices under NRS 239.100..."

2:12:25 Guinasso: "Yes. Thank you Madam Chair. Eh the IVGID best practices were adopted, um, effective two twelve twelve or 2013 are provided in the board packet but what I would like to, um, do now is have your public records officer, uh, discuss how emails are, uh, handled under this best practice policy."
2:12:49 Herron: "Could you clarify, uh emails are handled, uh the retention of them or"
Guinasso: "Sure, um, well first address, it'd be good, just address what are the best practices policy here and then address how this actually works, um, on a, from a day to day operations standpoint."

2:13:10 Herron : "So this practice was adopted by two or written and prepared by two IT directors ago.
"And um, as you can see it adopts a standard of a detailed signature etcetera and then we follow the NRS on retention of records, for emails and I have, provided emails within the last several days, 30 days back, as, as requested by members of the public."
Callicrate: "If it requires something that's prior to the thirty days back how would, and those are public records, how would they be accessed for us?"

2:13:57 Herron: "You know as I mentioned before, an email is a form of communication, so as I explained with my example, my, the Director of Asset Management, and if he goes out and if he gets informal bids, that email is a record until its turned into a purchase order and its no longer"

Callicrate: What, what if and, this is hypothetically an important email, what if an email is turned into an actionable item it and it rose to the level of being an important email that somebody was trying to take action on?"

Herron: "Then that is a public record and I would request that from that individual"

Callicrate: "So is that before the 30 days?"

Herron: "Correct"

Callicrate: "So that's the 60 or 90 days or 3 years or whatever it might be"
2:14:38"Correct, because our staff has been trained to understand that the contents of an email may be a public record, so that they, you know, they would have to save that email as a public record. i.e. a bid. So if that bid was never turned into a contract the Director of Asset Management would probably keep that for a period of the length of that bid is valid. So say that bid is only valid for 90 days, he would keep that. If I had a public records request for that, he would send that to me"

2:15:15 Callicrate: "Thank you."

2:15:17 Guinasso: "So there is, the point is that, um, there are some emails that can in fact qualify as public records and some that don't. Just as there are some documents that the district has in its possession that qualify as public records and others that don't. Um and that's part of the reason why you have a designated public records officer, um, to identify that information and produce it to the public in a timely manner and that is part of the reason why you have district counsel to help advise of those, if any issues come up that may not be clearly articulated in the statute."

2:16:06 Wong: "So, I guess that then brings up the question. How do you know that the emails that should be public requests, those are the ones to retain and not deleted? And then how do they come to you so that you know they are public records. And how do we know that we are not deleting emails that could be public records?"

2:16:25 Herron: "We have trained our staff to recognize what a record is, number one."
2:16:40 "Number two, when a member of the public makes a request they have to be pretty specific."

216:50 "So they would have to, they would have to say I would like the quote on the culvert, you know that took place around April of 2015. They can't just make a general, a general request. I want all of Brad Johnson's emails from 2014 to 2017. That's not a document request, a public records request.

2:17:02 "So that's how its done. So they have to be very specific in what they want and it actually has to be a record."

2:17:15 "I know that members of the public have been frustrated when I say there are no records available. I can't provide what does not exist"
"And I think that's a point that people don't understand, is if you're requesting something that you think exists, it may not exist."

2:17:39 Dent: "Similar to our chart of accounts that I requested"

Herron: "Correct"

Dent: "It doesn't exist?" Crowd: (loud laughter) "Good one!"

Wong: "Well, shall we have a glass of water."

Guinasso: "So, uh that, that concludes our, uh, discussion on, uh, email retention and the email policy"

Wong: "Any other questions from the board?"

Callicrate: "What about the retention schedule, where does that fall, number 3?"

Wong: "Ok, so that'll close number 2 and we'll move on to number 3."

Item #3 2:18:20

2:18:30 Guinasso: "Um, Ms. Herron would, uh, you please, uh, describe the document that's in the Board materials under F14 to the board."

2:18:39 Herron: "Certainly, I will draw your attention to page 461, that is where our local government retention schedule review letter is from the state of Nevada, which was approved. That is the, that is the records retention schedule that I follow."

Callicrate: "Now, I have a question on that, wasn't this, um, updated in 1997?

Herron: "No"

Callicrate: "Oh it wasn't?"

Heron: "No"

Callicrate: "Because that this the information I was able to find on the website for NRS. 1997 its was , he modified to updated, uh, to include specifically email, because this was starting to become a new format of email documentation and communication. And it just happened to be the first year that I was on the board, um the first time. I remember this new found thing called email was just coming around and how will the local and, um, state government agencies deal with that and potentially archive and that's when the came up with the basis for this latest statute.

And again, with everything that we are using and doing I think we need to make certain that we are using the latest and greatest from the state of Nevada.

2:20:13 Herron: "Perhaps, I misunderstood your question. You were, you were asking if this is the latest district retention schedule. I apologize."

Herron: "The district's retention schedule is dated 1994, we have not updated it since then.

Callicrate: "But the state of Nevada has updated it from 1997. And I think that we should be, whatever the latest. If they have updated it again within the last 10 years or 5 years or whatever, we should be operating under the latest revisal, otherwise we are operating under a law that no longer exists or pertains to the district, which could then lead to potential issues with the, um, destruction of emails and potential records which is why we are here talking about these things tonight. That would be my suggestion."

2:21:04 Guinasso: "Um, Ms. Herron, would you, uh can you, uh, tell the board about a conversation you recently had with the state archives on this very issue?"

Herron: "Certainly. So, um, the state archivist called me and said that he had an inquiry from a member of the public and we discussed, uh, the districts local government retention schedule in 1994. And while he told me, that, um, he did concur that it was approved, he did say that is what you follow. So the state, the second paragraph on 239.125 does not apply because we do have a retention schedule. And while he said that it has not been updated in a while, that we are in conforming, in compliance and that the district is actually keeping records longer than they are required."

2:22:00 Herron: "I do have a copy of the local governments records manual program plan dated 2016. He and I did have a brief discussion, um, about emails. He recognizes that we are following the law and concurred to that."

2:22:15 Dent: "Um, NRS 239.125, you said we don't have to follow that, because we have a, um, retention schedule?"

2:22:24 Herron: "Yes, under 239.125 if you read the"

2:22:15 Dent: "It's a yeah, it says the state library archivist and public records administer shall adopt regulations to carry out a program to establish and approve minimum periods of retention for records of local governments. So, we, we mean, if we have a policy that's outdated from 1994, uh, that wouldn't supersede what, what's going on here in SLA, correct?"

2:22:53 Herron: "Incorrect, because paragraph"
Dent: "So are we uh, because we have a policy we can hold records less than what that state mandates?"

Herron: "We under 239 paragraph 1 it reads a local government entity may establish a program for the management of records, including the adoption of schedules for the retention of records

and procedures for microfilming which must be approved by the governing body and comply with the applicable provisions of this chapter and any regulations adopted pursuant thereto." "So we have a retention, an approved retention schedule, therefore number 2 does not kick in, that's only"

2:23:32 Dent: "So, so we have a retention schedule that doesn't include email"

Wong: "Trustee Dent let her finish"

Dent: "I'm just asking a simple question, Madam Chair, I don't need to be interrupted by you. Um, I'm asking a simple question. We had a retention schedule that doesn't include email, so we don't have to follow a policy that the state sets in place that mandates we have to hold emails a certain amount of time. It doesn't make any sense. This is outrageous."

2:24:00 Callicrate: "And it's not, it's not being compliant with, NRS law supersedes anything that this district wants to pretend it's doing appropriately or not. That's the concern that I have. And the fact that, to what Trustee Dent said, there is nothing in here addressing anything regarding emails on our 1994 schedule as I brought up before. That's all well and good but its 1994 and this is 2017 so we have a 23 year old policy that we're following and in that time we have an NRS statute that specifically dictates what we can and cannot archive, or what we should be archiving and yes we can go longer than that."

2:24:40 "But we cannot subvert the law and be less regardless of what someone has told you verbally or what you are telling us verbally. I would like to see it in writing from the uh the library and the person you spoke with, because there is a lot of hearsay and innuendo and things that have been bandied about. I want to see it upfront in writing. I would appreciate that, thank you."
2:25:04 Dent: "We need an investigation, this is ridiculous, and its"

225:15 Horan: "Well, Madam Chair, I think that the, the, the, the questions being raised is a valid question. We always want to make sure we are following the law. I don't think there is any intent on anybody in the district to subvert the law. We have been following a practice which is apparently thought was correct. If we, it is incorrect we should correct it. And I don't have any problem with that. I think we ought to make sure that we know that we're wrong before we correct something that may or may not be wrong, I, I don't know the answer to it. But I don't, I think that throwing things back and forth with the, with the implication that we are intentionally trying to subvert the law is not correct. I don't think there is any intention at all. We may not be up to date. That may be true. But I, I think, I think we should determine that. And, and I don't know the best way to do that is to, to, to work with counsel and the clerk to work with the regulatory bodies to make sure we are following the appropriate regulations."

2:26:08 Guinasso: "Thank you, um, trustee Horan. I would just remind the Board your legal counsel and your sr. staff have been going through all the policies and procedures and going through the regulations that have been adopted over the years in and effort to codify what we are calling the IVGID code. Um, that, code is slated to be presented to you all within the next couple months here. We have made significant progress in that regarding the practices, policies, and

procedures to insure the things that have been inacted and have been followed over the years are in fact in compliant with Nevada law. So, as part of that review we are reviewing whether these, um, sections are in fact compliant.

2:27:19 But for the time being our current practices relative to public records have withstood the test of time, um we have not been found to have been in violation of any Nevada Public Records Act by any complainant or any overseeing body that would respond to those complaints. So I think the controversy that is being manufactured here tonight is not based in fact or as Trustee Callicrate said is based on innuendo and supposition..."

2:28:37 Wong: "To respond to your point Trustee Horan, what I've been hearing from this hearing is that she has been communicating with the state and we are in compliance with the law even though our, our record retention policy might be a bit out of date."

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IVGID's efforts to conceal public records gets bizarre

Staff blandly admits felony-level destruction of email records

BY STEVEN MILLER
© 2017, NEVADA JOURNAL | WEDNESDAY, AUGUST 23, 2017 | 2 COMMENTS

Has Incline Village's often-criticized local government — the Incline Village General Improvement District, or "IVGID" — finally gone off the deep end?

According to district staff, members of the public can no longer review any history of top administrators' email communications on matters of public controversy, or anything else, older than 30 days.

The reason, District Clerk Susan Herron told records-requester Mark E. Smith, is that, for emails, the district suddenly has a new 30-day "retention policy."

Such a policy would directly contradict state law, which makes it a C class felony to destroy or conceal emails and other public records.

Herron, who also has the titles Executive Assistant and Public Records Officer, answers to IVGID General Manager Steven Pinkerton, who, along with IVGID Public Works Director Joseph Pomroy, was the subject of Smith's requests under the Nevada Public Records Act.

Smith is a longtime activist on north Lake Tahoe's problem with roving bears and the unsecured garbage and waste containers that attract them.

"I was pretty active in getting the trash ordinance updated" in 2016, he told *Nevada Journal*. His June 4 public-records request, he says, had been triggered by learning "that the [IVGID] board of trustees was going to have a review of the new franchise agreement with the trash disposal company, Waste Management."

Also coming up was a board review of Pinkerton's performance. In April, the members had extended his contract for three years. Then in June he'd requested a reputed $64,000 raise.

Smith wanted to see how vocal Incline Village and Crystal Bay residents had been with complaints about the new franchise agreement. It had increased IVGID's financial subsidy of Waste Management local operations, he said, but service, nevertheless, had continued to decline.

"They" — IVGID and the trash company — "had a huge problem meeting their obligations this spring," he said. Under the new franchise agreement, Waste Management committed to pick up "green waste" — mainly pine needles, pine cones and tree debris — every week.

However to service Smith's neighborhood this spring, he said, it took the company five weeks. And, he learned, talking to other people, as well as IVGID insiders, that throughout the district

Double-dipping ex-purchasing director reportedly repays school district

But CCSD keeps key findings of internal probe hidden from public

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A former employee of the Nevada State Education Association is suing his former

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The Clark County School District spent over $13,000 this year to discuss the child sex-education advocacy program that made headlines when it was reported that the district was considering teaching masturbation to Kindergartners.

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Waste Management had not provided anything like the weekly service it had promised and for which property owners had paid.

"So yes, over the whole neighborhood, big piles all over the place for a month and a half," said Smith.

"The period runs late May to late July: a two-month period when they're supposed to pick up green waste. And for five weeks out of the eight weeks they didn't pick up green waste in a lot of the community."

There were also chronic problems with Waste Management's servicing of damaged commercial dumpsters.

"It was taking them, in some cases, a month to service dysfunctional dumpsters," he said. "But part of their agreement with the district was they would also upgrade trash service in terms of their responsiveness. But that got markedly less responsive." And it was the same thing with residential service.

So, on June 4, Smith — seeking a multi-year picture of the issue — submitted his records request, writing IVGID:

> Also, by way of this letter, I am making a Public Records Act request for each and every complaint that IVGID has received about any aspect of:
>
> a) Waste Management's service for the period of 1 January 2010 to the present date,
>
> b) The performance or lack thereof of IVGID's trash enforcement program for the period of the first engagement of George Valentic to the present,
>
> c) Mr. Pinkerton's performance related in any way to trash collection or trash enforcement, for the period of his first day of employment for the District to the current date; and
>
> d) Mr. Joe Pomroy's performance related in any way to trash collection or trash enforcement for the same period as noted in (c), above.
>
> Further, I request each and every email sent or received by Mr. Pinkerton or Mr. Pomroy to or from any person representing Waste Management or any Waste Management subcontractor, supplier or vendor, in any regards for the period from Mr. Pinkerton's first day of engagement with the District until the present date.
>
> Finally, I also request each and every document related to all corrective action the District has taken in attempts to resolve the failure of Waste Management to abide by the Franchise Agreement.

Five weeks later, IVGID Clerk Herron emailed Smith a peculiar response:

> I just wanted to give you a status on your document request of June 4, 2017. Staff has advised that for Items 1. through 3. Waste Management has responded/taken care of those requests. For a), b), c) and d) I have no public records responsive to your requests. I continue to work on the balance and will update you again at the end of this month if not before.

In fact, says Smith, Waste Management had not "responded/taken care of" the requests he'd made to IVGID.

Moreover, *it is IVGID, as a local government*, that is subject to the Nevada Public Records Act, not the trash company.

On August 1, 58 days after the initial request, IVGID finally turned over a handful of emails. Although Smith's request had covered multiple years, with special attention to 2016, the district had released only a dozen *recent* emails. And the earliest was dated a couple of weeks *after* his June 4th request.

"So the two problems," Smith told *Nevada Journal*, "are, one, they didn't [provide] anywhere near [the records requested], but, two is, they received my email on June 4th, and *after* they received my request, they deleted emails."

Wrote Herron:

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Steven Miller
Managing Editor

Karen Gray
Reporter/Researcher

> In response to your request for e-mails between our District General Manager and Director of Public Works and Waste Management, I have a thumb drive available for your pick up at our 893 Southwood offices. *You will see thirty days of e-mails as that is our retention policy.* (Emphasis added.)

This appears to be the first time that anyone at Lake Tahoe or anywhere else had ever heard of a "30-day email retention policy."

Smith had also submitted a records request to review any email communications between IVGID's Pinkerton and Pomroy on one side and representatives of the Parasol Foundation, on the other. The nonprofit has been seeking to interest IVGID's board in changing the terms of Parasol's long-term lease of IVGID land, on which Parasol's building sits. The proposal has elicited skepticism and controversy.

Only a few of those requested email records were provided Smith. The rest — under the 30 day "policy," were either withheld or deleted.

If any of these requested emails still exist in some form of digital backup, IVGID would have illegally concealed them, a category C felony under Nevada law, specifically NRS 239.320. If the emails were destroyed, that, also, is a C felony under the same statute:

> NRS 239.320 Injury to, concealment or falsification of records or papers by public officer. An officer who mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his or her office, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

Under NRS 193.130, at least one year in jail is mandatory:

> A category C felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years. In addition to any other penalty, the court may impose a fine of not more than $10,000, unless a greater fine is authorized or required by statute."

IVGID Clerk Susan Herron had apparently been convinced by her IVGID bosses that their sudden new "policy" of destroying emails after a mere 30 days was legal because of three interlocking arguments:

1. The general manager, Pinkerton, legally the real controller of the records, had told her to do it.
2. Under a policy statement adopted by a 2011 IVGID board of trustees, the general manager was allegedly given "the discretion to interpret and to modify" board policy "on a case by case basis, as deemed necessary and appropriate under the circumstances." It is unknown if such discretion was ever reviewed by the state archivist.
3. Twenty-three years ago, in 1994 — well before the planet-wide explosion of email — the Nevada State Archives Administrator, under the law then in place, had approved IVGID's then "proposed schedule(s) for the retention and/or disposition of records," which, of course, did not mention emails.

What Herron never acknowledged was that Nevada records-retention law frequently changes, and did so many times in the next 20 years. An appendix to the Nevada Local Government Retention Manual, issued by the state, reveals hundreds of such changes, just over the last nine years. One such important change is that email records have long been explicitly protected at the same level as hard-copy records. Thus, emails to and from the IVGID *executive* — that is, the general manager — must be *permanently* retained, and all *complaints* must be retained for at least three years, as this page from the Nevada Local Government Retention Schedule indicates.

Nevada Administrative Code 239.155 now also requires that any change in retention schedules that would dispose of records — such as IVGID's alleged "policy" of destroying all emails after 30 days — must first be reviewed and approved by the State Library's Archives and Public Records Administrator. NRS 239.125 also requires that records-retention policies must be adopted by the *governing board* of a local government, not merely by its hired executive or a lawyer who reports to him.

Given the sudden, apparently ad hoc, obstacles thrown up against Smith's attempt to see General Manager Pinkerton's email communications over the last couple of years, *Nevada Journal* asked Smith if he thought the new "policy" might just be a way to not honor his records request.

"I think that's exactly right," he said. "This is the most blatant time when they've done something that seems so obviously intentional. In the past, you chalk it up to ineptitude, or lack of time, bureaucratic fumbles with no malicious intent. Here, I have a hard time finding a non-malicious reason for this."

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Karen Gray

Online Editor
Eric Davis

Contact Us
Nevada Journal
7130 Placid St.
Las Vegas, NV 89119
Phone: (702) 222-0642
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Incline Village government commits felony-level crimes to conceal public records

By Michael Schaus
Wednesday, August 23, 2017

In a stunning admission reported earlier today exclusively by the *Nevada Journal*, staff at the Incline Village General Improvement District (IVGID) openly confessed to destroying or concealing public records as a matter of policy — a felony-level crime under Nevada state law.

After area resident Mark Smith submitted a public records request for, among other things, copies of all email correspondence between IVGID general manager Steve Pinkerton and the district's trash company, Waste Management, IVGID staff responded by only providing copies of emails from the past 30 days, citing a "retention policy" whereby any emails older than 30 days were either destroyed or withheld from production.

Yet, NAC 239.155 expressly requires that local governments *permanently* retain the email correspondence of executives like IVGID general manager Steve Pinkerton. The only exception to this mandate is if a local government adopted their own written records retention schedule, *which had received the approval* of the State Library, Archives and Public Records Administrator. Yet, by IVGID's own admission, their 30 day retention policy received no such approval.

As Nevada Journal managing editor and NPRI senior vice president Steven Miller reported:

> If any of the requested emails still exist in some form of digital backup, IVGID would have illegally concealed them, a category C felony under Nevada law, specifically NRS 239.320. If the emails were destroyed, that, also, is a C felony under the same statute.

In addition to the District's policy violating the letter of the law, it also eviscerates the spirit and intent of the state's public records law, as this exact case demonstrates:

> On August 1, 58 days after the initial request, IVGID finally turned over a handful of emails. Although Smith's request had covered multiple years, with special attention to 2016, the district had released only a dozen *recent* emails. And the earliest was dated a couple of weeks *after* his June 4th request.
>
> "So the two problems," Smith told *Nevada Journal*, "are, one, they didn't [provide] anywhere near [the records requested], but, two is, they received my email on June 4th, and *after* they received my request, they deleted emails."

In responses to the allegations of criminality at IVGID, NPRI communications director Michael Schaus released the following statement:

> It is imperative that local governments be transparent and are held accountable to the people they serve. In order to keep taxpayers in the dark, IVGID has chosen to blatantly and flagrantly defy state law. The State must immediately investigate IVGID's unlawful actions and take any means necessary to bring them into compliance with the state's public records law.

Be sure to visit NevadaJournal.com or click here to read the story, *IVGID's efforts to conceal public records gets bizarre*, in its entirety.

You can find this online at: http://www.npri.org/issues/publication/incline-village-government-commits-felony-level-crimes-to-conceal-public-records

CONTACT NPRI
E-mail
office@npri.org

7130 Placid St.
Las Vegas, NV 89119
702-222-0642
Fax: 702-227-0927

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NPRI files public records complaint with AG's office

Monday, August 28, 2017

In response to last week's Nevada Journal report — which found that the Incline Village General Improvement District's records retention policy violates state law — the Nevada Policy Research Institute has chosen to file a formal complaint with the Attorney General's office.

NPRI president John Tsarpalas issued the following statement:

"Nevadans deserve maximum transparency from their government, which is something the state's public records law is supposed to provide. But this law means nothing if governments are free to defy it without consequence. The Attorney General must ensure all governments provide their citizens with the maximum transparency they deserve, and that the law demands."

Click here to read more about the Incline Village General Improvement District's efforts to conceal their records from the public.

For more information, please contact NPRI transparency director Robert Fellner at 702.222.0642 or rf@npri.org.

Make a difference. Donate!

You can find this online at: http://www.npri.org/issues/publication/npri-files-public-records-complaint-with-ags-office

CONTACT NPRI
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IVGID officials caught in false testimony

State's top authority refutes district's compliance claims

BY STEVEN MILLER
© 2017, NEVADA JOURNAL | TUESDAY, AUGUST 29, 2017 | 2 COMMENTS

Functionaries of Incline Village's local government repeatedly insisted last week that their sudden scheme to destroy all emails to and from top executives after 30 days had the State of Nevada's stamp of approval.

The very next day, however, the state's top authority on the matter explicitly denied their assertions.

"As Administrator I have not approved the Incline Village General Improvement District's current records retention policy whereby all emails older than 30 days are deleted," responded Jeffrey Kintop, administrator for the Nevada State Library, Archives and Public Records.

Kintop had been copied on the original email that first revealed IVGID administrators had promulgated a new "retention policy," allowing them to destroy — or at the very least withhold — all public-record emails.

IVGID Clerk Susan Herron, executive assistant to General Manager Steven Pinkerton as well as his appointed public-records officer, had sent that original email to Tahoe resident Mark E. Smith, explaining why IVGID was denying him virtually all of the email records he'd requested.

Smith — active in the effort to reform North Shore trash administration and thus protect trash-diving Tahoe wildlife — had requested *all* emails between Pinkerton or his public works director and IVGID contractor Waste Management, as well as all complaints made by area residents to IVGID about the district's stumbling trash-collection service.

After 58 days, Herron responded with only a handful of the requested records, explaining the wholesale denial by referencing the alleged new 30-day policy.

Smith and others have speculated that the 58 days had largely been devoted — by Herron's boss Pinkerton and IVGID General Counsel Jason Guinasso — to looking for legal-sounding rationales for keeping Pinkerton's email communications with Waste Management secret from the public.

However, the email letter of State Public Records Administrator Kintop — sent in response to an inquiry from NPRI's transparency research director, Robert Fellner — implied that any such rationale fails, since under the Nevada Public Records Act, NRS 239.125, local governments' minimum periods of records retention must be formally approved by the Administrator.

The same statute also indicates that any such new record-retention policies "must be approved by the governing body" of the local government. However, Tuesday's discussion of IVGID

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A former employee of the Nevada State Education Association is suing his former

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trustees revealed that Pinkerton and Guinasso had never brought their sudden truncation of email life before that board for approval.

Nevertheless, IVGID Clerk Susan Herron, IVGID General Counsel Jason Guinasso and IVGID Chair Kendra Wong had all, at the August 22 meeting, assured the four remaining board trustees and the attending public that the district was in full compliance with state law.

The threesome, however, never addressed key provisions of the record-retention directives that the State of Nevada sets out for local governments. One such key directive — cited by Records Administrator Kintop in his response to NPRI — is that, "E-mail is managed by its content, not its format."

In itself that statement would appear to demolish Herron's basic argument — which Guinasso repeatedly allowed her to make and which she repeatedly attributed to the Administrator's office — that *all* email, regardless of content, are "transitory records," and thus can legally be destroyed after 30 days.

To the contrary, wrote Public Records Administrator Kintop to NPRI, citing page 9 of the official administrative schedules online here, "E-mail messages are public records when they are created or received in the transaction of public business. They must be retained as evidence of official policies, actions, decisions, or transactions."

The retention time period for executive communications, such as Pinkerton's emails, say the directives, is *permanent*. For complaints from the public, the retention period is a minimum of three years.

While Clerk Herron and Chair Wong could conceivably have remained ignorant regarding the relevant contents of the record-retention manual Nevada provides local governments, full knowledge and candid reporting to the board of those regulations would seem to be a core, ethical responsibility of IVGID General Counsel Guinasso.

The above link goes to a key page of the 2016 Nevada Local Government Retention Schedule. The complete 455-page document is online here. The entire August 22 IVGID board meeting can be livestreamed from these two linke: First part and Second part.

Nevada Journal's initial story on IVGID's effort to not comply with state public record law was published August 23. It can be accessed here.

———

Steven Miller is managing editor of Nevada Journal and senior vice president at the Nevada Policy Research Institute

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EXHIBIT B

MINUTES

REGULAR MEETING OF AUGUST 22, 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 Tuesday, August 22, 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 Human Resources Dee Carey, Director of Public Works Joe Pomroy, Parks and Recreation Director Indra Winquest, General Manager Diamond Peak Ski Resort Mike Bandelin, Director of Golf Michael McCloskey, and Director of Asset Management Brad Johnson.

Members of the public present were Jack Hubbard, Chuck Otto, Darryl Dworkin, Andy Whyman, Gail Krolick, Ken Viel, Barbara Stedman, Gayle Holderer, Frank Wright, Alan Tiras, Cliff Dobler, Paul Smith, Margaret Martini, Pete Todoroff, Natalie Tiras, Steve Price, Steve Dolan, Bruce Simonian, John Krolick, Iljosa Dobler, Jon Bigelow, Ramona Bigelow, Greg Flanders, Bill Devine, Gene Brockman, Linda Newman, Bill Ferrell, Mark Newman, Sara Schmitz, Judith Miller, and others.

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

C. PUBLIC COMMENTS*

Ben Dosseff said he wanted to ask the city if they would more or less get Incline Village cleaned up of trash as trash is being thrown out of car windows and dropped by visitors and by people who live here. He has worked hard on trying to get it cleaned up and it is not working to well therefore he is asking the city for help on cleaning up Incline Village and also some way of keeping up with the trash

being dropped out there. Mr. Dosseff continued that he is a walker for exercise and that he sees quite a bit of trash that one doesn't notice when driving but that when you get out and walk around you see it. There is a lot of trash everywhere and he is here to ask for either help or a solution to the problem. He can show anybody where these areas are at and where it is really, really bad and basically that is what he came here for - to report it. We all live in a beautiful place known as Lake Tahoe and it is hard to believe it is going on and nothing is being down about it.

Sara Schmitz said that she has received a trash violation and requested a review of the policy regarding trash carts and yard waste.

Pete Todoroff said he is a thirty seven year resident in Incline and he wants to speak about disturbing the meeting. He heard there was a problem with a sign out front. He wants the money put into the infrastructure and not bail out Parasol. It is troubling that there was a problem and he doesn't understand why this would happen. Money should be put into infrastructure not Parasol.

Darryl Dworkin read from a prepared statement which is attached hereto.

Jack Hubbard read from a submitted statement which is attached hereto.

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

Judith Miller said that she had a written statement to give to the Board from Aaron Katz; District General Counsel refused the statement and Chairwoman Wong said that Mr. Katz had to be here to submit his own written statement. Ms. Miller then said that she was out of town during the Parasol lease amendment meeting but that she did hear a little bit about it and has some observations. Even Ms. Anderson said that the building had no value as there is no one, other than IVGID, that could occupy the building. She heard, and this is hearsay, that our General Manager said that the land use restriction wasn't a problem nor was it in the past. She thinks it is a big concern and is especially now so because of the original land use amendment that allowed the building to be built and the occupancy was based on a false document. Someone signed that document as President of Gardena Service Company which was dissolved ten years earlier. Why was that sought? Because no one wanted to go to the courts. Why would we go to the court as that would be horrendous; rather let's just instead fool the citizens to think we had the land use amendment. It wasn't true then and it isn't true now. We are seeking to again ignore the land use amendment because it states very clearly that is for recreation and related purposes only. And pardon her, but the administration of IVGID has much more to do than just recreation so we cannot have our

administrative staff occupy that building as it is against the land use restrictions and it is something that according to past decisions of Nevada courts that this opens up the District to tremendous liability where any citizen could come forward, challenge it, and you will end up in the courts again with legal costs. Of course you never hear what those legal costs are and she quite sympathizes with the Board. You don't find out about the costs are until well after they have been incurred and this is something that you need to stop and something that is against the laws of the State of Nevada. The State of Nevada has several court cases that have been presented by the Nevada Supreme Court. You need to read those carefully and understand that you need to hear from your attorney on a regular basis exactly what's going on with every legal matter that the District is involved in. Umm, let's see, she is running out of time, and oh yes tonight you are looking at; time ran out and Chairwoman Wong said that Ms. Miller could submit her comments for inclusion into the written record – no statement was submitted by Ms. Miller.

Frank Wright said that he is submitting Mr. Katz's written comments and handing those to the District Clerk right now. Chairwoman Wong said that they will not be entered into the record. Mr. Wright responded that there will be an Open Meeting Law complaint. Chairwoman Wong asked that Mr. Wright's time be reset and that the submitted written comments not be attached to these minutes. Mr. Wright said that there are so many things going on that have to be fixed and right now District General Counsel, Staff, and the Chairwoman are taking us down a path that is unacceptable. He asked Mr. Clark why he held the forum on the Parasol building and if he was getting something from it, Mr. Clark responded $150,000 so that begs the question to our General Manager – how much are you getting. This could be his buy out and an exit plan and that exit plan is being brought by the Chairwoman because he will be out of here soon. Maybe all Staff should have exit plans. The District has four Open Meeting Law complaints that the Board members who are violating it haven't been consulted by our Counsel. There is criminal activity with public records not being given and even more criminal activity in that e-mails are being destroyed. Mr. Katz has proposed three different proposals/offers and none have left the desks of our District General Counsel or Staff. Do you understand what you have to done to the litigation? One hundred percent on the dollar is being offered and not one Board has been privy to these offers which have been rejected unilaterally. This is criminal and illegal in the State of Nevada and he really doesn't know why the others were elected. You have been left out of the loop. When the opinions on these four Open Meeting Law complaints come down it is not going to be pretty. Counsel, you are in big trouble.

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

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

Mark Newman said that the history of America is that when elected officials go against the wishes of the people, bad things happen to those officials. It appears we have three of them on the IVGID Board. The Diamond Peak Master Plan and now Parasol are these projects of the puppet master of these three Trustees. Eventually, the puppet master will be exposed. Goodwill will triumph, the whistleblower will get immunity and will come forward, and we all know what happens next, watch yourselves.

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

Gail Krolick said she has been a resident for twenty eight years and she would like to take you all back to January 2000. The Parasol lease was signed by her as Chair, it is a contract, and one she expected all to abide by. She is imploring this Board not to go forward with a purchase of a building that is already owned by this community. Parasol has done good work in this community, to ask this Board to change the lease, heard them all, truth is somewhere in the middle which is your job to figure out. She wants to be very clear that she is not representing anyone else and noted that she is currently the President of Board Realtors. Mr. Simonian made it very clear that you need to get the facts and then make sure to call us back. If someone is calling you, return the call whether it is uncomfortable or not. She remembers when she last saw the Sheriff at a meeting and that was when we were going to tear the Chateau down. The community is divided and her husband is a very smart man who suggested that perhaps a special election is needed. She would urge that a special election be discussed and she thinks that is the route that this Board should go - let the community vote. Lastly, she is asking that the community have respectful dialogue and that she apologizes for her outburst. In closing, she is asking again to speak with your constituents and follow up.

Wayne Hooper said he is a forty year resident of Incline Village and that he is very disappointed in our current Board and General Manager. The Board and the General Manager have a responsibility to the parcel owners and not Parasol Tahoe Community Foundation. To consider a plan that would cost the residents six million dollars after a retrofit is very irresponsible. Incline Village residents want our facilities maintained rather than a building for administrative employees. Is it really necessary for IVGID employees to work in a Taj Mahal building? He doesn't understand the urgency when it wasn't on the plan approved two weeks ago. He also doesn't understand moving ten employees out of the Recreation Center to accommodate employees. There is a building across the street for lease. There are a lot of expenses as the golf course in need of repair, Mountain Clubhouse

pushed over for several years, and cart paths are in disrepair. There are multiple areas at Championship Golf Course after this last winter. Because of the large amount of this purchase and borrowing, he suggests going to the public for a vote. Finally, the General Manager's contract was extended for three years, which took effect April, why are you considering these contract changes at this time? What is going on here? Where is the justification for a new contract?

Shelia Bowman-Meyer said that she is homeowner association board member and that she is here because of General Business Item 3., the easement, which is going to be between her property and the Recreation Center. Only request is she would like to have an actual fire gate as she doesn't want a pedestrian gate and that she wants to have an actual gate to keep people from getting in there. Yes, we have it to accommodate Lake Tahoe School but that she doesn't want people traipsing through her property.

Bill Ferrall said he is here to discuss the stress test for the Community Services fund and submitted a piece of paper entitled "IVGID Executive Summary" Special Revenue Fund Balance Stress Test, Audited Fund Balance versus Planned Capital Project Transfers and Lease Modification Assumptions, presented to Board of Trustees August 22, 2017 which is attached hereto. This piece of paper shows a lot of numbers and he was duly stressed after review. The numbers just don't line up as the new numbers are about $891,000 off which is a total mystery. He took the actuals that were passed and looked at the numbers and the big number is the master plan that is on there. The Community Services plan is a bucket for the funds for all the venues and it is a big bucket with an estimated budget of $16.21 million. The Parasol remodel as well as the sale of Southwood is estimated at two million dollars and if $1.3 million to $1.4 million of that goes over then the numbers line up. Where the real miss is the payments to Parasol shown as seven hundred thousand for four years and there is a fifth year which doesn't mention the seven hundred and eighty thousand dollars so he doesn't know as there is $955,920 in actual payments. So in looking at the real numbers, it is off by $80,000 and all the interest which totals a $3.9 million miss and thus it will be a negative in the fund after paying all the fees and with a $3.995 million in reserves, it is upside down by $3 million. He doesn't understand the stress test and asked that the Board take a look at the numbers as they don't make sense.

Andy Whyman said he wanted to talk about two items – comments to date cause adjustment. We live in interesting times and troubled times. We live in times where people don't listen to each other, theirs is the only facts and dialogue disappears. Some of his fellow citizens have exercised their rights and their rights are not about being open to other facts. The things he wanted to talk about, listen carefully, is

the opioid epidemic. We have a real problem which is no better, no worse, but we have lost a citizen who has died because of that and thus that brings forth an occasion for conversation. He sits on a committee with Washoe County and the Sheriff and they are meeting at end of September. All the stakeholders will come together to discuss this situation and what happens. He has talked to the Governor who is getting a committee together to try and address this issue. His last point is the Parasol meeting at which he stayed for an hour and then walked out. He was disappointed as there was no real dialogue, no give and take, talk about facts across individuals, and it ended up with questions and answers. He would submit, before it goes to a Board vote, that you do hold a community meeting with a forum where we can talk with each other and get the facts.

Jeff Homola said that he has been a resident and homeowner since 1993 and he has seen a lot of things happen, changes in this town, used to come to these meetings, stopped because he couldn't sleep, and that is because the Board is not listening to the people. The last time was with magic carpets and that turned out real well. Why does IVGID need the Parasol building? IVGID needs more office space and they are currently in a building just over eight thousand square feet. You want to move offices out of the Recreation Center to create an additional workout room but is this room really needed and will it make up the revenue for the burden of the Parasol Tahoe Community Foundation building? The Parasol Tahoe Community Foundation building is over 31,000 square feet and some of it is wasted. To make it worse, Parasol Tahoe Community Foundation subsidizes non-profits so the rent is not at fair market value. $5.5 million is just a start as there are many other costs to be incurred and estimates are $500,000 to $700,000. Utilities and upkeep would be considerably more than Southwood. He is tired of IVGID Staff and Management expanding everything. IVGID is to provide water, sewer, and recreation and he wonders how the courts would look upon it.

Patricia Moser Morris said that she would like to point to Nevada Revised Statutes 350.807 which requires a two thirds vote to resolve to and then it has to go to the State of Nevada, Department of Taxation, and then you have to appeal to taxation. Therefore, a four fifths vote would be required. Also like to bring to the attention of the Board, at the public forum which she attended, the General Manager acknowledged that a purpose built building has been outlined and could be built for a lower total cost. Her second question is why would IVGID consider buying a $5.5m building that appraised for $1 million less?

John Eppolito thanked the Board for what you do for the community as it is a thankless job. He doesn't have detailed comments but he was at a school board meeting today and this is like a picnic compared to that meeting. Haven't heard

anything in favor to buy that building but there must be something and he hasn't heard it. He likes Mr. Whyman's idea, which might be a good idea, as all he has heard has been negative. To the gentleman that talked about Centerpointe building, he is not sure if that is true. Mr. Dobler is compelling and Ms. Krolick's comment was pretty good however a special election may not be a good idea but a community forum might be. You should be listening to the community and all he is hearing is don't want to buy the building. Finally, it is puzzling why you are considering modifying the General Manager's contract since it was done within the last year.

Greg Flanders said he was here tonight to state his opposition to the lease modification. Overvalued building that is not worth the $5.5 million asking price, worth far less than $4.5 million Barnett used. There are properties on the market that are asking too much and no lending institution would use this estimate. The Centerpointe building is the most recent sale and it was not considered thus Barnett didn't consider all the facts. It is his opinion the building is worth zero. For IVGID, it is not a good fit and not an efficient office place as only 63% of the space is usable. Parasol wants over 5,000 square feet which leaves 8,161 for IVGID yet his Recreation Fee will be used to pay for all. The offer before the Board is absurd and he would urge the Board to thank Parasol and then kindly refuse. Put this fiasco to the bed and get back to the projects. Don't spend any more of his fees on this pie in the sky.

Bruce Simonian said it is a pleasure to be before the Board again and said that this capital improvement project has been on the books for many years. It was taken off the five year list and put on the sixth year so we have been kicking the can down the road for quite a while. This is an opportunity to look at the facts and he would note that IVGID hasn't even begun to negotiate. The problem with the Administration building is that it is not ADA compliant and it has Radon so let's deal with it now. By spending between $300,000 and $400,000 it would just be continuing to put lipstick on a pig and we do that a lot. We have done it at the Mountain Golf Course. The Administration building needs a new roof, costs more to heat than the Parasol building, and where else would they move the offices as they have looked at other buildings. If people have solutions, rather than adversarial solutions, this Board is looking for solutions and let's work together to make the best possible decisions. He would agree with Mr. Whyman about having an open forum. The bullying, etc. serves no one and the Parasol building is an alternate. Let's all work together as a community rather than fighting each other.

Chuck Otto said that he must admit that when he first heard about the Parasol proposal he thought why IVGID would spend $5.5 million on Taj Mahal for our Staff

and bailout the Parasol Tahoe Community Foundation. He has since taken the time to look at the website, packets, and try and understand the facts as it is the best way to make decisions rather emotion. Asked himself the question, is this a solution looking for a problem or a problem looking for a solution. IVGID has two problems – the Administration building is forty five years old and we are spending a lot of money to rehabilitate it and we have a Recreation Center that is widely used by all demographic stratus and it does need some expansion. So two problems with multiple solutions and one is the Parasol building and there are others such as tearing down the Administration building and building a new one. He saw an estimate of five hundred dollars per square foot which doesn't get you too much if you are trying to solve two problems and it is an expensive solution for one. Moving to other buildings and then you have to decide do you rent or buy. Then he looked at the Parasol building and how much space IVGID would exclusively enjoy and how much would be used for shared space and could use for other purposes such as recreation, meeting space, etc. If you net down all of the facts and look at the costs per square foot or actual cost it is not clear to him that the Parasol building isn't the least expensive of all of them.

Kevin Lyons said he is a thirteen year resident who owns Governance Sciences Group who provide the scientific Flashvote survey services and he recently learned that the community doesn't want to spent the money on the Parasol building and that the strongest approvals are being outweighed. He is disturbed by District Counsel and the General Manager and asked to play something for the Board which he did and then discussed data. Mr. Lyons concluded by stating that he wants the Board to avoid being dragged into this and to fix IVGID now otherwise the community will do the cleaning itself.

Lynn Carol said she is not sure that this is the exact right time for a severance package for the General Manager because she is an independent contractor. He was given a bonus to move here and now he wants a severance to leave here. When someone leaves, they are usually fired for cause, go away because they are too sick, tired or old so she doesn't understand why the Board would be giving him this money because in the world of normal people, one is given money to get rid of them. There is no grounds to give this severance because in her real world, you do the job then leave. She asks that the Board reject any idea of severance and to reject the parachutes as she pays a lot of IVGID when she only uses the beaches twice a year and she also resents paying somebody to not work for us.

Hearing no further public comments, Chairwoman Wong closed public comments and called for a ten minute break at 7:15 p.m.; the Board reconvened at 7:25 p.m.

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

Chairwoman Wong asked for any changes to the agenda as submitted; Chairwoman Wong asked for the removal of General Business Item F.10. and Trustee Callicrate asked that General Business Items F.12, F.13, and F.14 be moved up to item F.1. before Parasol and then that items F.8 and F.9 be moved up right after the Parasol item. Hearing no further changes, Chairwoman Wong approved the agenda as revised.

E. STAFF PRESENTATIONS*

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

Director of Public Works Pomroy gave a verbal update.

Trustee Callicrate asked what the smallest mandatory locking cart is; Director of Public Works Pomroy said 96 gallon. Trustee Callicrate asked if that happened automatically; Director of Public Works Pomroy said a customer can chose either 64 or 96 gallon. Trustee Callicrate said so the smallest available is 64 gallon; Director of Public Works Pomroy said for a violation, the customer is issued a 96 gallon.

Trustee Callicrate said that he spoke with Mr. Hansen from Waste Management and commended him for having a nightmare task but that he understands he is trying to be as accommodating as possible so please pass on that he is doing the best job as he can. He would like to take a moment at the Board and District level to realize that this has been one of those roll outs, and he has been here for thirty two years, where he didn't know as much as he knows now. We have to zero tolerance and we probably should have issued locking carts to all our residents. He thinks that the trash committee needs to look at some way to amend the zero tolerance policy especially as it relates to garbage versus pine needles. A lot of confusion exists with the pine needles especially with the small print on the stickers. Most are doing what they have done for many years prior and there are some lots that are problematic. This has been a huge transition and he is listening to all the folks and that those with a large area to clean up it is about yard waste versus household waste. We have to have some way to accommodate folks and he is also surprised at the automatic issuance of a 96 gallon tote. We need to work with them and he understands zero tolerance but when it isn't garbage on the side and it is yard waste we have

to have some way to accommodate that. Getting a 96 gallon tote seems excessive and he has also heard from several people that their routes are changing and that pick up times are all over the map. He knows that Mill Creek used to be 9 a.m. and now it is all over the map and for recycling it is good luck. That is an issue that needs to be addressed as well. He is also glad that the transfer station has corrected itself but we need to get pickup squared away and he would appreciate getting the route matter fixed. Trustee Horan said that both he and Trustee Morris are on the General Manager's Solid Waste Committee and we have talked about a number of these issues and that the Director of Public Works can talk about the route changes which have been adjusted. Director of Public Works Pomroy said that he did speak to Waste Management about the routes and that Waste Management did some adjustments to balance in May and have also been doing some adjusting in how they are making the pickups so they are trying to get that settled down. Pickup times may change and then they will be consistent going forward and he expects that by this fall they will have them solidified. He knows that there have been disruptions and Waste Management wants to reestablish that consistency and get that locked down; Waste Management is really working hard to get the final route established. Trustee Horan said that he agrees that the rollout was not what anyone wanted but now we have an onsite, full time manager, Mr. Munson, who was a driver and that has made a big difference as well as having most of the phone problems being sorted out. He has personally tested it a few times and it worked. He understands that the routes are frustrating and hopefully those will be consistent as we move forward. Trustee Callicrate said we need to get the information about the onsite manager and the direct telephone line out to folks or do so via e-mail. He also would like, as quick as possible, some workable solution on garbage waste versus yard waste and the mandatory can size. Trustee Horan said the Board can address the can size at our next committee meeting and then bring back some recommendations to the Board.

F. GENERAL BUSINESS (*not for possible action)*

F.1. Verbally review Policy Resolution No. 137 – Resolution Number 1801, A Policy for the provision of records and information to the public *(was General Business Item F.12)*

F.2. Verbally review IVGID E-Mail Best Practices and NRS 239.010 *(was General Business Item F.13)*

F.3. Verbally review the District's Records Retention Schedule and NRS 239.125 Local governmental records: Program for management; regulations of State Library, Archives and Public Records Administrator *(was General Business Item F.14)*

Requesting Trustee: Trustee Callicrate through Chairwoman Kendra Wong; Presenters: District General Counsel Jason Guinasso and District Clerk Susan Herron

See Attachment A

F. GENERAL BUSINESS *(for possible action)*

F.4. **Proposed modification to the 30-year ground lease between the Parasol Tahoe Community Foundation and Incline Village General Improvement District – Response and possible discussion of additional research requests as directed at the July 20, 2017 IVGID Board of Trustees Meeting, possible discussion on potential expenditures related to the proposed lease modification, and discussion on other details related to the proposed lease modification (Requesting Staff Member: District General Manager Steve Pinkerton)** *(was General Business Item F.1)*

General Manager Pinkerton gave an overview of the submitted materials.

Trustee Callicrate said that he appreciated the work done on the Board packet and that he has gone through this several times and that it has been requested to obtain a copy of the D.W. Reynolds Deed of Trust, preliminary title report, Barnett & Associates appraisal report, property condition assessment report, independent legal opinion and all of that has been done verbally or left unanswered. We need to get answers on the Gardena Services matter, is the Parasol lease in compliance or in default, what can be the utilization of the building, will it take three or four Trustees voting in favor to do a lease agreement, and having an independent legal counsel answerable to the Board answering all these questions. Yet, here we go again taking another hour and half and all we are doing is irritating more of the community.

Trustee Callicrate made a motion for the IVGID Board of Trustees or any of its designees immediately cease and desist any further

> lease installment purchase agreements negotiations with the Parasol Tahoe Community Foundation (PTCF) and that the PTCF become legally compliant with all current lease agreements before an initiating any further changes or modifications to the PTCF lease with the Incline Village General Improvement District. Trustee Dent seconded the motion.

Trustee Horan said he will be voting no on this motion because he doesn't think that this Board has done everything it needs to do to decide and he doesn't know whether we should or not but wants to continue to explore this opportunity. Chairwoman Wong said that she agrees and is reserving making any decisions until more information is gathered and she has had the time to go through it all. District General Counsel Guinasso said he is noting, for the record, that the motion as stated mischaracterizes the transactions as it is currently stated of this agenda item. Trustee Callicrate said it was marked for possible action. District General Counsel Guinasso said that it isn't consistent with the notice to the public and that this is not an installment lease. Trustee Horan said that Trustee Callicrate needs to restate his motion.

> Trustee Callicrate restated his motion for the IVGID Board of Trustees or any of its designees immediately cease and desist any further proposed lease modification negotiations with the Parasol Tahoe Community Foundation (PTCF) and that the PTCF become legally compliant with all current lease agreements before an initiating any further changes or modifications to the PTCF lease with the Incline Village General Improvement District. Trustee Dent seconded the revised motion.

Trustees Horan and Wong said their position is not changed. Trustee Morris said he will be voting against this motion as he feels he has to consider everything to improve this community. Trustee Callicrate said that he completely disagrees with his three colleagues as the Parasol Tahoe Community Foundation is in breach of their contract and that before we can move forward on their request for renegotiation and then further include a purchase/lease installment agreement they have to become compliant with their current lease or vacate the building – there are two choices - as this is doing a huge disservice to the community. Chairwoman Wong asked for order. Trustee Callicrate said that this is a very emotional issue to him as he was on the Board when this agreement was signed and we were warned about this way back in 2000 and we all said oh no and they are going to

there for the ninety nine years. He is not impugning the character of the Parasol Tahoe Community Foundation or their Board of Directors and what they have given back to this community however since it has come to the forefront that the D.W. Reynolds Foundation and their philanthropic is going to be ceasing and desisting at the end of this year, which they got that information three years ago, and the building is basically vacant. They are asking $5.5 million to purchase a building and we are doing a direct transfer of 8,600 square feet from Southwood. There are restrictions on kitchens and the general space and this, to him, is a tremendous affront to this community and the monies they have invested for us to spend appropriately. We can agree to disagree but this is such an emotional thing for him but more than that he is looking at the dollars and cents, and a Trustee he has to act accordingly and when the bulk of the community doesn't want us to purchase it then to him it is like a lesson in frustration for the community because we are just prolonging this situation and that is why he has offered this motion and asked the Chairwoman to call the question.

Hearing no further comments from the Board, Chairwoman Wong called the question - Trustees Callicrate and Dent voted in favor of the motion and Trustees Wong, Morris, and Horan voted not in favor of the motion; the motion is not passed.

District General Counsel Guinasso said when the Board asked for a written legal opinion it was provided in the May 10, 2017 Board packet, specifically on agenda packet pages 4-6, for those who are interested in the proposed transaction that was provided.

General Manager Pinkerton continued his review.

District General Counsel Guinasso said that it is probably important to note, at this point, that there hasn't been a negotiation and that this Board is engaging in due diligence. There has been no counter offer, no perimeters set for engaging with the Parasol Tahoe Community Foundation, process to date has been due diligence, and that the price has just been thrown out there. General Manager Pinkerton added that they provided a draft lease and we went back with one which was reviewed at an earlier meeting. District General Counsel Guinasso said perhaps we are at a point where you ask your Staff to enter into negotiations but that hasn't been done up to this point.

General Manager Pinkerton continued his review.

Chairwoman Wong asked when the Community Services Master Plan will be complete and when will the Board be receiving final report. General Manager Pinkerton said end of this year or the beginning of next year. Chairwoman Wong said there is synergy with the Community Services Master Plan and how moving Administration fits within that master plan and how it ties in overall strategic planning. General Manager Pinkerton said in looking at future programming, he sees this building addressing some of the needs as pointed out in the Community Services Master Plan, and then at some point, make a determination of where the existing Administration building will go. It nets out at $2 million which makes sense to go on IVGID land so it will automatically be $2 million less to build on IVGID land plus not having the cost of rental space. Identifying a space for Administration illuminates other potential as the Recreation Center was the identified space but if we are at the D. W. Reynolds building that provides the maximum potential at the Recreation Center complex. An example would be a second gym, etc. because there will be more available space if you put Administration at another space. This is a good time to talk about it because right in the middle of analyzing all of that.

General Manager Pinkerton continued his review.

Trustee Morris said on agenda packet page 223, bottom line, it states there is shared space of 7,800 square feet which could be used for community services over and above what we are currently providing. General Manager Pinkerton said yes and that is rooms only. Trustee Morris said so if this pencils out, the District gets 7,800 more square feet to do stuff; General Manager Pinkerton said yes.

General Manager Pinkerton continued his review.

Trustee Callicrate said so the Parasol building is over fifteen years old and while it has been adequately maintained, it needs carpeting, etc. which would be part of the renovation. This is a Class A office building that IVGID is trying to turn into office and recreation facilities. A local builder spoke and said that the building codes have changed and that we won't know what we are getting until we open up the walls so perhaps it is a bit premature to say operating costs won't be that much more than a ten thousand square foot building and what about the cost of heating. General Manager Pinkerton pointed out that the cost of heating is not the same and that the projections are including for the building now. Utility costs are about double and that the

maintenance is significantly less than Southwood. Staff doesn't know every unknown however on agenda packet page 17 is the information from the architect who built the building and in both appraisals it is noted that the Parasol Tahoe Community Foundation has done significant energy replacement. The building hasn't depreciated to the point of fifteen years and we are just presenting our actual numbers and theirs so it is comparable. We have a full maintenance department with four full time employees who can do it at a lesser cost than one person dedicated full time. Please take a look at their audit which we have converted for an apples to apples comparison.

General Manager Pinkerton continued his review.

Trustee Morris said that he didn't see by moving the Administration Staff from the Recreation Center that we gain some additional space; do you know what that square footage would be. General Manager Pinkerton said that information is around agenda packet page 31, the fitness room would be about $175,000 as right now we have a lot of people crammed into a very small space and it is about 1,800 square feet.

Trustee Dent asked if the property condition assessment report has been incorporated into the five year capital improvement plan. General Manager Pinkerton said that the five year capital improvement plan anticipates the payment schedule and tenant improvements. Trustee Dent said until you have an idea of the actual condition we don't know how much in reserves to set aside and asked if that need will be incorporated. General Manager Pinkerton said what we are estimating is what we are including. Trustee Dent said that the upkeep for five years and additional costs is very similar to dealing with a homeowners association that tells you what needs to be done and then set so much aside. These could be huge amount of costs and will that get tacked onto whatever is the negotiated price because until we have that, we don't get to see a full picture. General Manager Pinkerton said that he feels that Staff has done that and that we don't normally do a replacement budget however we have our stress test as we don't put in a replacement reserve for each building. Trustee Dent said that the property condition assessment will give us an idea. General Manager Pinkerton said that Staff has estimated the operating costs. Trustee Dent said, referencing agenda packet page 239, that it was brought up earlier that we only had $700,000 for the lease which doesn't include both the principle and the interest so if the calculation was done correctly it seems the case would be it would fail the stress test. General Manager Pinkerton said that these are

the anticipated costs at this time. Trustee Horan said that the payments would have to include interest. General Manager Pinkerton said we will have to see what the final payment is and if the payments are higher than it would impact the stress test. Trustee Dent said that the stress test is incorrect so we are not seeing the full picture and if the costs are higher than the stress test would fail. The purchase price could shift but this is following our process of doing things incorrectly. General Manager Pinkerton said that he takes exception to that statement. Chairwoman Wong asked if we could update all of the known costs with what we have received so far. General Manager Pinkerton said that he didn't remember them as being higher than $700,000 however he will take another look. Trustee Callicrate said, getting back to one of the earlier requests, and it is something he has been asking, for about three months, based on the stress test and the lease payments being based on four or five years, as well as contemplating lease purchase installment, how many Trustees does it take to okay that action. Chairwoman Wong said that is a really good question as it really depends on how we structure the contract. Trustee Callicrate said that the Nevada Revised Statutes says we have to have 66-2/3 of the Board but for a plain modification of the lease it takes three votes and this is where the discrepancy takes place and we haven't been given a written opinion so he would like that in writing so that he can refer to it. District General Counsel Guinasso said that the flaw in what was just said is that this is not a lease. Trustee Callicrate said it is an installment lease purchase agreement. District General Counsel Guinasso said it would depend upon on how we structure the agreement and that the legal opinion is it would take three votes. Trustee Callicrate said isn't this an installment agreement like we did with the golf carts. Chairwoman Wong said we do have another agenda item and that this can be one of the things that we can ask for from the legal opinion. Trustee Horan said that we have an opinion from our counsel that says we can do it and that we are in the process of deciding whether or not we want to do it and we aren't there yet. He isn't there and when we get to that item we can make it a condition of a second opinion. District General Counsel Guinasso said one point to highlight is that whatever the it is we haven't gotten to that so asking him to speculate until we get to the it means his legal opinion is tentative however once we get to the point where you ask the General Manager to negotiate then he can, at that time, give a legal opinion. Trustee Horan said and that could involve the second opinion. District General Counsel Guinasso said yes, absolutely. Trustee Morris said he would like to take a lot of the negativity out of this, which isn't surprising as it is a huge consideration but at the moment, no decision has been made and he is undecided. What he is trying to figure out is what the benefits are, at what price, at what value do

we equate it to, and at the moment, he is not sure. It seems we have an offer on which we have made no negotiation. Some people think we have agreed to that asking price; we have not. This is also not a bailout of the Parasol Tahoe Community Foundation and frankly that is not his worry as he is not a Board member of the Parasol Tahoe Community Foundation. He is going to decide, within his purview, what is good for the community, does it make sound fiscal sense, and sound community sense. If the numbers and the values work, then he will be behind it and if not he won't be behind it. It comes up at every meeting because it is a huge thing before us. Again, whatever the price is, and there has been no negotiation, there is a lot of vitriol in the community that we are going to pick a number, statistic sort of answer because we have got value at Southwood that would offset this purchase, but we haven't agreed to anything at any price. We know that we are going to have to ante up to replace the Administration building as it is close to an unsafe working environment. In the next however many years, we are going to have to do something about that and it will take approximately $5 million to replace that site and we have something that could potentially do more. He wants to continue to consider it and see if it is a good thing for the community. Further, he wants the community to continue to voice opinions and facts, know that there are no alternative facts on either side, and then come to a rational and reasonable decision that is the best decision for the community and he will present that. General Manager Pinkerton said that he apologizes as that number should be $780,000. We mirror the same concerns as the Trustees and said that we have to do our due diligence and that focus and passion in doing the due diligence is that we want to make sure that accurate facts come out. Staff has spent the last two or three months gathering information and we are very excited about doing the analysis to ensure that the Board can make an informed decision as well as making sure you have all the pertinent information. Trustee Horan said that we are looking at this proposition as we received it from the Parasol Tahoe Community Foundation and that nothing has been negotiated. The things that are very important to him and that are required for him to move forward are price as the Parasol Tahoe Community Foundation and the non-profits bear all the incremental costs attributed to them as he doesn't want any parcel owner to see there is a subsidy there and he thinks that is achievable and we are on our way to having the Staff provide the potential utilization. This is a lot of information to digest to see if this is something that can be used cost effectively and can the community really use this. The outline of the space talks about shared space and he doesn't think it should be looked at as shared space as really it is IVGID space and that the big rooms might become recreational spaces. This has not been negotiated, he

is not going to give free rein to the tenants and Parasol Tahoe Community Foundation, it would be our building with preferential treatment and we have to figure out a way to do that and perhaps it is adjusted every year as it can't be fixed for forever. These are his thoughts as we go into these negotiations and these are the things he will be thinking about. Chairwoman Wong said she is not there yet as she needs more time with this information to see where she is and she is just waiting as it hasn't gotten to make or break for her. Trustee Morris said he wanted to clarify with Trustee Callicrate that he had expressed concern about all the items and he wants to make sure that this is something that has been requested and to clarify that. Trustee Callicrate said it is the Donald W. Reynolds deed of trust, preliminary title report, property condition assessment report, legal opinion of May 10, CCR's for the Boise Cascade use, validity of Gardena Services, and is Parasol Tahoe Community Foundation compliant with their lease or are they in default and if they aren't, we are we going to do, voting requirements by this Board, what is the State law, and how do we move forward.

F.5. Review, discuss and possibly approve obtaining a second legal opinion, regarding modification to the lease between Parasol Tahoe Community Foundation and IVGID, from Holland and Hart LLP at a not to exceed cost of $15,000 (Requesting Trustee: Chairwoman Kendra Wong) *(was General Business Item F.2.)*

District General Guinasso gave an overview of the submitted materials.

Chairwoman Wong asked Ms. Megan Fogarty of Holland and Hart LLP if she had done a preliminary evaluation of documents on our website and if this is something that she has done before. Ms. Fogarty said she is frequently asked to review existing leases and this is very similar to ground leases and it is definitely part of the analysis that she runs on a daily basis. She did skim through the proposal and didn't give it a review for her take as that is really for depth of question and that components two and three are down the road. Component one is looking at what is out there and giving the advice that she sees, concerns, what the title report says, and that she would characterize this as being with totally fresh eyes and it seems to her that component one is what is being asked currently. Trustee Morris welcomed and thanked Ms. Fogarty and said that he would assume that most of her business is in commercial rather than governmental thus does that make a difference. Ms. Fogarty said she is familiar with Open Meeting Law issues, etc. which have to be taken into account. Trustee Morris said he doesn't feel we are at the position of doing everything and asked if she had an unease

about doing it all or do we need anything more. Ms. Fogarty said she will review the existing lease and any encumbrances, etc. of record and then analyze what she sees in all of those documents as they play together. Trustee Morris asked if that will include a review of the law of what we can and can't do. Ms. Fogarty said she could but that her expertise is as a real estate transaction and that part of the analysis doesn't go in depth in the analysis of the statutes. Would she say do you need two, three or four vote – not at that stage and that wasn't considered in her original proposal. Trustee Callicrate said the Board has given you a good overview and noted that there are a lot of emotions but that there are bits of information we need to get to and that number one to move forward with is would you be able to determine if the Parasol Tahoe Community Foundation is compliant with their lease or outside of it. Ms. Fogarty said yes, if that is part of this analysis and noted that she gives those opinions frequently. Trustee Callicrate then said it is critically important to find out where it all fits. Ms. Fogarty said she would need more documents as what the Board is approving doesn't include digging through minutes. District General Counsel Guinasso asked Ms. Fogarty, for the record, if before his first conversation with her if they had had any relationship. Ms. Fogarty responded no. District General Counsel Guinasso then asked Ms. Fogarty if they had ever worked together before; Ms. Fogarty responded no. District General Counsel Guinasso said that this is an independent second opinion opportunity as he made an effort to find someone outside of his circle and that Ms. Fogarty came highly recommended and that he submits her to this Board with great humility. There is a chance that Ms. Fogarty could come to a different opinion and that is a risk he is willing to take because this Board asked for this and that it is in the best interest of this Board and the community so that you have confidence and that he would strongly recommend hiring Ms. Fogarty and have her proceed with Item 1 of her quote.

Trustee Morris said he is prepared to make a motion. Chairwoman Wong asked if it would be for Item 1 or Items 1 through 3. Trustee Morris said that personally he feels that Item 1 would be a good thing to do and that he doesn't believe we need to do Items 2 and 3. Trustee Callicrate said that he tends to agree and that this will answer some long overdue questions such as default, etc. once and for all and get those questions answered thus he could support going forward with Item 1 on this matter.

Trustee Morris made a motion to authorize the District General Manager to enter into an agreement with the law firm of Holland and Hart LLP to seek a second legal opinion on the requested

lease modification by Parasol Tahoe Community Foundation to the Incline Village General Improvement District at a cost not to exceed $7,500. and for the following service only - Legal review of existing Ground Lease, as amended, and related covenants, conditions, restrictions and encumbrances of record relating to the leased property (with the anticipation that the recorded encumbrances will contain approximately 3 to 5 encumbrance documents requiring detailed review). Trustee Callicrate seconded the motion. Chairwoman Wong asked for any further comments; none were received. Chairwoman Wong called the question – Trustees Horan, Wong, Callicrate and Morris voted in favor of the motion and Trustee Dent voted opposed. The motion was passed.

Chairwoman Wong called for a break at 9:45 p.m. with the Board reconvening at 10 p.m.

F.6. Review, discussion and possible action on District General Manager Steven J. Pinkerton annual performance evaluation (Requesting Trustee: Chairwoman Kendra Wong) *(was General Business Item F.8.)*

Trustee Callicrate said in light of the hour of the day and to give proper review, he would like to continue the General Manager's review to the next scheduled meeting as he is a little spun out and has an idled brain thus he moves to continue the District General Manager's review to the next meeting. Trustee Dent seconded the motion. Chairwoman Wong asked for comments, receiving none, called the question – Trustees Wong, Dent, and Callicrate voted in favor of the motion and Trustees Horan and Morris voted opposed; the motion was passed.

F.7. Review, discussion and possible action on Incline Village General Improvement District General Manager Steven J. Pinkerton's Employment Agreement – Specific paragraphs are:

Section 4 – Compensation, Fringe Benefits, and Expense Reimbursement - 4.1 Salary; 4.3 Benefits (Vacation; Sickness, Health Insurance and Miscellaneous) (d), (e) and (f);

Section 7 – Termination of Agreement - 7.1 By EMPLOYEE; 7.2 By IVGID. (Requesting Trustee: Chairwoman Kendra Wong) *(was General Business Item F.9.)*

Trustee Callicrate moves to carry over the review and discussion of the District General Manager's Employment Agreement to the next regularly scheduled meeting. Trustee Dent seconded the motion. Chairwoman Wong asked for comments, receiving none, called the question – Trustees Wong, Dent, and Callicrate voted in favor of the motion and Trustees Horan and Morris voted opposed; the motion was passed.

F.8. Review, discuss and possibly approve a grant of an Emergency Access Easement on District Property to North Lake Tahoe Fire Protection District, APN 127-040-07, 964 Incline Way (Requesting Staff Member: Director of Asset Management Brad Johnson) *(was General Business Item F.3.)*

Director of Asset Management Brad Johnson gave an overview of the submitted materials.

Trustee Horan said that we had a question about the gate; is the gate prescribed by the North Lake Tahoe Fire Protection District. Director of Asset Management Johnson said that we will have a say and that he anticipates that the gate will be like at other park properties and that we are not proposing a chain or something like that. Trustee Callicrate said that he is glad that Staff is in conversation with the homeowners association president and that this isn't cost prohibitive. Trustee Horan said there is no cost to the District. Trustee Morris said there is no cost to the District in granting this easement and stated that there is no fence there now so pedestrians can walk through now. Director of Asset Management Johnson said that is correct and that there is landscaping there now thus the majority of the pedestrians come through on an unpaved portion which is not a significant hindrance to use.

Trustee Callicrate made a motion to:

1. Approve granting a permanent, non-exclusive, emergency access easement to North Lake Tahoe Fire Protection District on APN: 127-040-07 – 964 Incline Way (the Recreation Center parcel).

2. Authorize Staff to execute all necessary legal documents upon review by Staff and General Counsel.

Trustee Dent seconded the motion. Chairwoman Wong asked for comments, receiving none, called the question – the motion was passed unanimously.

F.9. Review, discuss. and possibly approve a Sole Source Finding and review, discuss, and possibly authorize a Procurement Contract for Snowmaking Fan Guns, 2017/2018 Capital Improvement Project (CIP): Fund: Community Services; Division: Ski; Project # 3464SI1002; Vendor: Snow Machines, Inc. in the amount of $72,250 (Requesting Staff Member: Director of Asset Management Brad Johnson and General Manager Diamond Peak Ski Resort Mike Bandelin) *(was General Business Item F.4.)*

Director of Asset Management Johnson gave an overview of the submitted materials.

Trustee Morris asked if this was replacing two existing guns or ones that are out of service. General Manager Diamond Peak Ski Resort Mike Bandelin said this is the replacement of two snowmaking fan funs on District property. Trustee Morris said that they have very little residual value. Director of Asset Management Johnson said that is correct and that Staff strips them for parts and sells the remainder for scrap. Trustee Morris asked if this was part of the capital improvement plan; Director of Asset Management Johnson said yes.

Trustee Morris made a motion that the Board of Trustees makes the following finding:

The District's purchase of two replacement snowmaking fan guns from Snow Machines, Inc. (SMI) is exempt from competitive bidding for the following reasons:

A. This purchase is for additions to and repairs and maintenance of equipment which may be more effectively added to, repaired, or maintained by a certain person (NRS 332.115.1.c). Diamond Peak's snowmaking fan gun fleet is standardized on SMI equipment.

B. The equipment proposed for purchase, by virtue of the training of the personnel or of any inventory of replacement parts maintained

by the local government is compatible with existing equipment (NRS 332.115.1.d). Diamond Peak's snowmaking fan gun fleet is standardized on SMI equipment and the District employs snowmaking staff that is trained for SMI fan guns and controls and maintains an inventory of replacement SMI parts.

Trustee Horan seconded the motion. Chairwoman Wong asked for any comments; Trustee Horan asked if these snow guns are of a higher quality and/or has the technology changed thus we are getting a better bang for our buck. General Manager Diamond Peak Ski Resort Bandelin said they do contribute a lot more efficiencies and tie in with our process control system. Hearing no further comments, Chairwoman Wong called the question and the motion was unanimously passed.

Trustee Morris made a motion to:

1. Authorize a procurement contract with SMI totaling $72,250.

2. Authorize Staff to execute all purchase documents based on a review by general Counsel and Staff.

Trustee Horan seconded the motion. Chairwoman Wong asked for any comments; hearing no comments, Chairwoman Wong called the question and the motion was unanimously passed.

F.10. Review, discuss, and possibly authorize an Interlocal Agreement with the State of Nevada Department of Transportation (NDOT) and review, discuss, and possibly authorize an Additional Services Addendum for Construction Inspection Services for Repairs of the Effluent Export Pipeline – 2017/2018 CIP Project: Fund: Utilities; Division: Sewer; Project # 2524SS1010; Vendors: NDOT in the Amount of $1,002,600 and Tri Sage Consulting in the Amount of $65,000 (Requesting Staff Member: Director of Public Works Joe Pomroy and Director of Asset Management Brad Johnson) *(was General Business Item F.5)*

Director of Asset Management Johnson and Director of Public Works Pomroy gave an overview of the submitted materials.

Trustee Morris asked if in this section we are basically going to do thirteen spot repairs; Director of Asset Management Johnson said yes. Trustee

Morris said then at some point later we will replace the actual pipe; Director of Asset Management Johnson said yes. Trustee Morris said hopefully this will delay things; Director of Asset Management Johnson said that the goal is to buy time and then replace in its entirety. We have found critical failures and this is about fixing them today. Trustee Morris said so we can't wait and do the whole thing at once because the risk is too high. Director of Asset Management Johnson said on the welded steel pipeline, we do our assessment, do the repair, which saves us money and buys us additional time and we use that time to pursue 595 funding as well as it provides us time to chase co-location. If all three hit, we go from a $23 million project to something that is potentially twenty five percent of those costs which translates into a strong potential return on investment to rate payers. Trustee Horan said this is a requirement and there is no other option; Director of Asset Management Johnson said yes, that is true as the Nevada Department of Environmental Protection has said the District will repair this. Trustee Morris said this is a million dollars and asked if there was an opportunity to get that funding from the Federal government. Director of Asset Management Johnson said we do not have a current agreement and until we have a new one, with all the details, we can't qualify work that has been completed. This work is in the rearview mirror. Chairwoman Wong asked how much did we participate in the process. Director of Asset Management Johnson said that the Nevada Department of Transportation used an alternative delivery project process which is designed for big projects and is based on a variety of factors. Granite Construction was selected to complete that work. The pipeline work wasn't a component of that initial scope but because we are already a project partner and have an interlocal agreement with the Nevada Department of Transportation we approached them about doing all of this work and they suggested that it be included in their job. They handed it over to Granite Construction who developed the change order pricing which makes the change order part of a competitively bid project. This process incorporates coordination and speed as Granite Construction was already mobilized so we will get this in the fall versus going it alone next summer. Chairwoman Wong asked about the bid. Director of Asset Management Johnson said that this is Granite Construction's price with no markup, no ownership, and no management fee. They aren't even charging us for Staff time and they have been a great collaborative partner throughout the entire process. Trustee Horan asked what the District was going to be doing. Director of Asset Management Johnson said we will be managing the construction itself with District Staff and Tri Sage Staff on site during the work. Trustee Horan asked if this would have been the same as if we had done it ourselves; Director of Asset

Management Johnson said yes, that is correct. Trustee Morris said so the pipe snake didn't do what it was expected to do so are we helping the manufacturer out via quid pro quo. Director of Asset Management Johnson said we aren't partnering with them to additional research and development. They will come back and it will cost us additional dollars to put it into the pipeline along with future shipping. Trustee Morris asked if the shipping to Canada was on us; Director of Asset Management Johnson said yes, it is on us.

Trustee Morris made a motion to

1. Authorize an Interlocal Agreement with the State of Nevada Department of Transportation (NDOT), in the amount of $1,002,600, for the construction of effluent export pipeline repairs as part of the State Route 28 Shared Use Pathway Project.

2. Authorize Staff to sign the agreement based on a review by General Counsel and Staff.

3. Authorize Staff to approve change orders to the construction contract for additional work not anticipated at this time of up to 15% of the project bid – $150,000.

4. Authorize Staff to enter into an Additional Services Addendum with Tri Sage Consulting totaling $65,000 for construction inspection services during completion of the project.

Trustee Callicrate seconded the motion. Chairwoman Wong asked for comments, hearing none, called the question – Trustees Wong, Horan, Morris, and Callicrate voted in favor of the motion and Trustee Dent voted opposed to the motion. The motion passed.

F.11. Review, discuss and possibly award a Construction Contract for the Emergency Repair of the Damaged Culvert Beneath the Lodgepole Run at Diamond Peak Ski Resort – 2017/2018 CIP Project: Fund: Community Services; Division: Ski; Project # 3499LI1101; Vendor: Burdick Excavating Co. Inc. in the amount of $328,328 (Requesting Staff Member: Director of Asset Management Brad Johnson) *(was General Business Item F.6)*

Director of Asset Management Johnson gave an overview of the submitted materials.

Trustee Callicrate asked if there were any other unforeseen pipe lines up that trail that we should be addressing; we have the monies budgeted so should we be doing the entire line. Director of Asset Management Johnson said it is a great suggestion however we are limited in both time and capability. We can't guarantee that the upper portion won't fail in the near or far future or that we won't experience sink holes, etc. There are two challenges – one is the time frame as we have to be done by October 15 so we are getting as much as we possibly can with double crews and being as aggressive as possible. We are going from a fairly gradual slope to a very steep slope and as we approach more hill climbing, that requires more specialty and more design. It is Staff's recommendation to tackle the low hanging fruit, get reimbursed by the Federal Emergency Management Agency (FEMA) as the lower section is eligible. Trustee Dent asked what is being done to prevent human failure such as catching this earlier. Director of Asset Management Johnson said that he doesn't entirely agree with that statement as we continue to inspect and have Staff members who are looking at this area. This is about good best practices and he would remind the Board that yes, the pipe was old and that it was a catastrophic event by nature that was caused by run off that tore the mountain side apart which undermined the culvert. If this was simply a case of operational neglect then it would not be eligible for FEMA funding and the reason for the funding is because of the historical nature of this past winter. Staff is implementing inspection process, etc. and the engineered parts that are going in are superior so we will have a much more robust and capable pipeline which means we are expanding the capacity for drainage and setting up for the future very well.

Trustee Callicrate made a motion to:

1. Award a construction contract to Burdick Excavating Co. Inc. in the amount of $328,328 for the construction of the emergency repairs of the damaged culvert beneath the Lodgepole run at Diamond Peak Ski Resort.

2. Authorize Staff to execute the contract based on a review by General Counsel and Staff.

3. Authorize Staff to approve change orders to the construction contract for additional work not anticipated at this time of up to 20% of the project bid – $65,600.

Trustee Horan seconded the motion. Chairwoman Wong asked for comments, hearing none, called the question – the motion was unanimously passed.

Chairwoman Wong called for a break at 11:00 p.m. with the Board reconvening at 11:05 p.m.

F.12. Review, discuss and possibly approve the Bargaining Agreements for Non-Supervisory and Superintendent Bargaining Units with the Operating Engineers Local Union No. 3 (Requesting Staff Member: Director of Human Resources Dee Carey) *(was General Business Item F.)*

Director of Human Resources Dee Carey gave an overview of the submitted materials.

Trustee Horan made a motion to authorize the Board Chairwoman and Board Secretary to execute bargaining unit agreements with the Operating Engineers Local Union No. 3 for the Non-Supervisory and Superintendent employees as negotiated by the IVGID Management Team. Trustee Callicrate seconded the motion. Chairwoman Wong asked for comments, receiving none, called the question – the motion was unanimously passed.

Trustee Horan said he would like to complement our Human Resources Director for the skill and practice used to deal with the Staff and for arriving at this arrangement.

F.13. Review, discuss and approve proposed settlement agreement between Governance Services Group, Inc. and IVGID – reference IVGID v. Governance Services Group, Inc. Case No. CV17-00922, Second Judicial Court of the State of Nevada (Requesting Staff Member: General Manager Steve Pinkerton and District General Counsel Jason Guinasso) – *THIS ITEM F.10. WAS REMOVED IN ITS ENTIRETY FROM THE AGENDA*

F.14. Review, discuss, and possibly give direction on (a) Policy 3.1.0, 0.6 Rules of Proceedings, g. Claims, and (b) as it relates to the offer made by Aaron L. Katz in the *IVGID v. Katz* litigation and regarding the debtor's examination slated to be held on Wednesday, August 23, 2017; specifically Mr. Katz's offer to pledge a real piece of property so as to stay the slated debtor's examination and fulfill the requirements of the District court order issued by the Honorable Judge Flanagan (Requesting Trustee: Chairwoman Kendra Wong and District General Counsel Jason Guinasso) *(was General Business Item F.11)*

District General Counsel Guinasso gave an overview of the submitted materials and added that he was informed today that a motion was filed by Mr. Katz' attorney to stay enforcement of the judgment because he didn't want to submit to the judgment debtors examination and that the court granted that motion which goes before the court on Thursday with the sole purpose being about the real property. This matter will be heard and decided by Judge Flanagan. If the court rules in Katz' favor, we will accept the deed and if the court rules in IVGID's favor, we will reschedule the examination. District General Counsel Guinasso reminded the Board that ongoing litigation and detailed questions should be discussed in non-meeting, discussions are confidential, and not permitted to discuss without consent of the Board as a whole.

Trustee Horan said that there has been a question about Policy 3.1.0 in which there is clear delegation of the authority to the General Manager and Counsel and stated that he is comfortable with that delegation as we have hired a professional to run our business so he is happy with the policy as written.

Trustee Morris said that he agrees with Trustee Horan and he too is very comfortable with the policy and that he sees no reason to change any of the process and while unfortunate, we are forced to incur additional time and effort which would be good if resolved.

Trustee Callicrate said that there was a bill from Beko and Associates for additional services provided and it dealt with the documentation that was filed that was almost two and a half times what it was allowed to be. If this is a direct affront to the Supreme Court, it is impacting us financially as we have to follow the rules. Chairwoman Wong said she understands where Trustee Callicrate is going but it is not part of this agenda item and we can

schedule a litigation non-meeting. District General Counsel Guinasso said for our next non-meeting, he will invite Mr. Beko to attend so he can specifically answer the questions regarding the litigation decisions about exceeding the limits.

Chairwoman Wong asked if Counsel needed anything else; District General Counsel Guinasso asked if the Board was comfortable with the policy and that the negotiations have been conducted under that policy. Trustee Dent asked about exceeding the authorized budget; District General Counsel Guinasso said not that he is aware of. Trustee Dent asked if the Board could stop spending money on this matter; District General Counsel Guinasso said that is up to the Board to make that decision and that his legal advice is there is an outstanding judgment which requires an expenditure of funds thus you would have to answer to the public as to why you did not pursue. Trustee Dent said if we don't have the budget to go and get a third of what we spent it just doesn't make sense. Chairwoman Wong reminded Trustee Dent that this isn't part of this agenda item. Trustee Dent said there are no costs associated with it. Chairwoman Wong said that the question isn't about costs incurred rather about the policy. Trustee Dent said we are just digging a big hole. Chairwoman Wong said we can't discuss it because it is not a part of this agenda item.

G. DISTRICT STAFF UPDATE

G.1. General Manager Steve Pinkerton

- **Financial Transparency**
- **Capital Improvement Projects update**
- **Golf Courses at Incline Village**

General Manager Steve Pinkerton gave an overview of each item.

Trustee Horan asked, regarding the pump track, if we are spending any more money on that project now. General Manager Pinkerton said just staff time. Trustee Horan said he would like to see that limited.

H. APPROVAL OF MINUTES *(for possible action)*

H.1. Regular Meeting of June 12, 2017

Chairwoman Wong asked for any changes, hearing none, approved the minutes as submitted.

H.2. Regular Meeting of June 28, 2017

Chairwoman Wong asked for any changes, hearing none, approved the minutes as submitted.

I. REPORTS TO THE IVGID BOARD OF TRUSTEES*

I.1. District General Counsel Jason Guinasso

a. Verbally review the process of responding to an Open Meeting Law Complaint

District General Counsel went over the process of responding to an Open Meeting Law complaint.

Trustee Horan said he appreciated the change in the practice on the notification of the complaint. Trustee Dent said he requested the written response and wanted to know why a Trustee can't review those responses. District General Counsel Guinasso said it is an ongoing investigation. Chairwoman Wong added that if it is shared with the Trustees it becomes a public record. District General Counsel Guinasso said that he would prefer not to open himself up to discovery.

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*

Chairwoman Wong said that she had two updates; she, Trustee Horan and members of Staff have met with Senator Heller's staff and Congressman Amodei's staff as a follow up to the meeting held in March. Trustee Horan said that these meetings were very useful as the District is appealing to both delegations on legislative activities they are involved in.

K. CORRESPONDENCE RECEIVED BY THE DISTRICT*

District Clerk Susan Herron said that correspondence had been received from Sara Schmitz, Aaron Katz, Ellie Dobler, Karen Kuehnis, Blaine Bolton, Gloria Brimm, Leslee Medeiros, Ron DeCaprio, David Frank, Thomas Lahey, Phillip Klein and Alison Appel and that all correspondence was distributed and it will be included in the next Board packet.

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.

Cliff Dobler said he knows the Board is really tired but let's concentrate on two small things; he read the definition of installment under Nevada Revised Statutes 350.0055. When buying personal property, it is sold by a bill of sale, we are securing that with a promissory note with installment payments which is secured by a deed of trust which is going to give Parasol Tahoe Community Foundation collateral and therefore there is no doubt that it needs a 4/5 vote. As far as property that Mr. Katz is offering, a promissory note is secured by a deed of trust. He is also willing to make payments, secured by deed of trust, foreclosure takes about a year, and you would have about $350,000 so you should really consider it. If he doesn't pay monthly then the only stop is bankruptcy. Foreclosure on the land doesn't take that long and a promissory note is a good as money.

Margaret Martini said what an interesting meeting. She read a lot of the Parasol papers, CCR's, etc. Early on Trustee Dent asked for a property profile which should have been step one. So in looking at paperwork, from her perspective, Parasol Tahoe Community Foundation is in default. It is black and white so why not call it a lease default? Any reason? Do not spend one more penny or any more minutes of Staff time in this Parasol Tahoe Community Foundation charade. Over and over you have discussed it to the point of ad nauseam. The number one item is the legal agreement – are they in default, haven't even looked at a property profile or the lease. Look at the comps, you are not comparing apples to apples, and the land value – duh. $5.5 million is for a lease buyout. Three members of this Board should be recalled and the General Manager should be terminated at once. Whenever would we have 500 people? Are we purchasing this for the possibility of 500 people for a function – it makes no sense. Ridiculous comparison, not looking a ridiculous statements, you haven't looked at basics – the property profile and lease default.

Steve Dolan passed on his opportunity to speak.

Kevin Lyons said that was a very interesting session on the e-mail policy and that he got to see the most preposterous statements. He is very fortunate to work with officials and get invited to their special events. The law is very simple and clear and it has nothing to do with going out to the public. Law also is very clear on records management and Mr. Lyons then read from the Nevada Revised Statutes. He heard crap and lies from the attorney who put the public records clerk out in

front. There are category c felonies with a minimum of one year in jail. The investigation is a very smart move and obligated to do that. Mr. Lyons concluded by stating he will have a lot more to say about this in the future.

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

General Manager Pinkerton said that the Attorney General has confirmed the Open Meeting Law training for September 6 at 3 p.m. and that will be held here at the Chateau. All Trustees confirmed their attendance and Trustee Callicrate said he will try and be back here as close to 3 p.m. as he can. General Manager Pinkerton then went over the Long Range Calendar and Trustee Morris noted he will be calling in for the October 25 meeting. Chairwoman Wong said that she liked one of the community members' suggestion for a community meeting on the Parasol so she asked Staff to bring back some possible dates/times.

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

The meeting was adjourned at 11:45 p.m.

Respectfully submitted,

Susan A. Herron
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 Darryl Dworkin (1 page): From Darryl Dworkin, 705 Birdie Way

Submitted by Jack Hubbard (1 page): Moral Issue: Words and Contracts have force – both moral & legal

Submitted by Margaret Martini (1 page): BOT meeting of 8-22-2017, Public Comments: Margaret Martini, please add to the minutes of the meeting

Submitted by Clifford F. Dobler (8 pages): Public Comments at August 22, 2018 Board of Trustee Meeting – To be included in next Board packet

Submitted by Iijosa Dobler (3 pages): Public comment to be included in the next Board Packet, Board of Trustee meeting on August 22, 2017

Submitted by Linda Newman (2 pages): Written Statement for the 8-22-17 Board of Trustees meeting – To be included with the Meeting Minutes

Submitted by Bill Ferrall (1 page): IVGID Executive Summary – Special Revenue Fund Balance Stress Test

From Darryl Dworkin
705 Birdie Way

~~Can we please be completely honest? IVGID has been considering a BUILDING PURCHASE for $5.5 MILLION, NOT a "Lease Modification".~~
WHY would IVGID "purchase" what we already own? We OWN the land and thus the property as a whole; that's a simple fact. A building cannot be sold without the land it's on.

I believe that The Parasol Foundation is looking for a bail-out from IVGID and for some unknown reason the IVGID Board seems overly willing to GIFT THEM $5.5 million of RESIDENT MONEY instead of simply relieving them of their requirement to maintain the building and pay the utilities for that building.... **a building on our land that has zero, repeat, ZERO commercial, thus ZERO FINANCIAL, value due to deed restrictions precluding commercial usage. To base any decision on any appraisal is improper as there is absolutely no comparable possible!**

BUT IF THERE WERE COMPARABLES then:
Wouldn't the last sale of the Centerpoint Building, 30,000 sq. ft., be a reasonable comparable? $2.1 million just a couple of years ago.

Please allow a more realistic consideration. IF IVGID were to sell the Southwood building and land for $2.0 million or more and move into leased space to replace that building at, and I've checked this, UNDER $2.00/sq. ft. per month; then we would have more than 8 YEARS to build a building on our land that better fit our requirements; not 3 times the size, 3 times the maintenance and utility costs, than we actually need. HAPPENS THAT THERE ARE TWO 5,000 SQ. FT. SECTIONS CURRENTLY AVAILABLE IN THE CENTERPOINT BUILDING.

As an alternative, we could allow Parasol a "lease modification" wherein the Parasol Foundation retains their clients and existing space and IVGID takes over the maintenance and utilities of the building as well as the usage of the currently unoccupied space.

That alternative would provide for about 25 years of building usage BEFORE using up $2,000,000 from the sale of the Southwood property AND leave intact 100% of the $1.6 million already set aside as a down payment to Parasol for other, needed, expenses.

EITHER temporary leasing while building a building the size we need OR allowing Parasol a lease modification wherein we take over maintenance and utilities only makes sense.
~~Nothing else I've heard does.~~

MORAL ISSUE; WORDS AND CONTRACTS HAVE FORCE - BOTH MORAL & LEGAL.

IT IS IMMORAL TO EXPECT TO BE BAILED OUT ON AN AGREEMENT AND DOUBLY SO BY TAX PAYERS WHO SEEM TO HAVE NO SAY.

YOU, OUR ELECTED TRUSTEES, HAVE A MORAL & FIDUCIARY DUTY TO THE CITIZENS WHC ELECTED YOU - NOT TO PARASOL.

THIS IS NOT EVEN CLOSE TO A GOOD DEAL & CERTAINLY NOT THE BEST DEAL AVAILABLE

YOUR RESPONSIBILITIES ARE TO YOUR CONSTITUENTS FOR THE BEST DEAL.

SINCE PARASOL HAS MANAGED TO HAVE THE TWO MOST EFFECTIVE TENANTS LEAVE THE ARE NOW IN BREACH OF THEIR LEASE AGREEMENT. see section XIII, A3, (b) regarding the use & business Plan

THIS OPENS THE DOOR TO IVGID TO TAKE TITLE TO THE BUILDING OR TO FORCE PARASOL TO GO BACK TO THEIR PRIMARY MISSION. same section page 24 item 8

NOT TO ABSOLVE THEMSELVES OF THEIR RESPONSIBILITIES OF SUPPORTING LOCAL NON-PROFITS AND OF MAINTAINING THE BUILDING ETC.

AN EXPANSION OF OFFICE SPACE IS NOT IN IVGID'S 5 YEAR CAPITAL PLAN - THEREFORE ONE CAN SAFELY ASSUME IT IS NOT A 5 YEAR PRIORITY - THEREFORE WE SHOULD NOT COMMIT THE COMMUNITY TO MORE DEBT FOR ANY AMOUNT OF TIME.

ESPECIALLY WHEN YOU HAVE CHOSEN NOT LIVE UP TO PREVIOUS BOARDS PROMISES TO REDUCE THE FEE (TAX) WHEN BONDS WERE PAID OFF. FEW PEOPLE TRUST THE BOARD OR MANAGEMENT ANYMORE.

WHEN ONE GETS INTO THE WEEDS. IE. LOOKS AT THE SPACE UTILIZATION, REMAINING TENANTS, OTHER OPTIONS, ETC. IT LOOKS WORSE & WORSE.

I URGE YOU NOT TO AGREE TO THIS DEAL.

BTW - THE SAME MORAL ARGUMENT APPLIES TO MODIFYING AN EMPLOYMENT CONTRACT SHORTLY AFTER BOTH PARTIES REACH MUTUAL AGREEMENT. THE REQUESTING PARTY IN NO WAY IS WORRIED ABOUT THE CITIZENS, ONLY THEIR OWN PERSONAL INTERESTS.

Submitted by
Jack Hubbard 91

BOT meeting of 8-22-2017

Public Comments: Margaret Martini, please add to the minutes of the meeting.

It is difficult to believe that more than three years have passed since GM Pinkerton joined out district, and in that time SO LITTLE HAS BEEN ACCOMPLISHED. Although a great many consultants have been hired an extravagant amount of our money has been spent our GM has failed to exercise leadership in solving our districts most pressing problems.

INSTEAD HE HAS CREATED MORE.

He has not proposed any constructive action on the overcrowding on our beaches or proposed solutions for Ordinance 7, he has managed to significantly increase our beach operating expenditures and REPURPOSED the money we had reserved for a new beach building. He has created the bus to nowhere and has propagated a 25% increase in our Beach Fee that will be collected next year.

While he has been PURSUING YEAR-ROUND AMUSEMENTS AT DIAMOND PEAK, and the $ 5.5 million-dollar BAIL OUT of Parasol for ill planned administrative offices he has NEGLECTED AND RAN TO FAILURE of our districts critical infrastructure. In the past few months there have been 16 emergency repairs of infrastructure INCLUDING breakdowns of other facilities, machinery and equipment.

General Manager Pinkerton's new trash franchise agreement and the incompetent trash collection have fermented community outrage and threatened the health and safety of our citizens and wildlife.

Financial accounting and reporting has become more opaque and VERY SHORT ON ACCURACY. And his new excursion into withholding public records from citizens and Trustees along with his ad hoc destruction of emails add up to a very DISMAL TRACK RECORD.

And tonight, rather than holding our GM accountable, Chair Wong supports REWARDING HIS FAILURE TO PERFORM by increasing his total compensation and adding new clauses to IMPROVE CONDITIONS UPON HIS RESIGNATION OR TERMINATION.

THIS IS ALL UNACCEPTABLE. If the Chair cannot determine the difference between good management and bad, then it is time for our Trustees to ELECT A NEW CHAIR or for the community TO CONSIDER A RECALL.

Public Comments at August 22, 2018 Board of Trustee Meeting - To be included in next board packet

From: Clifford F. Dobler

Re: Deficiency in the Appropriate Level of Reserves for the Utility Fund

Over the past two years, I have spent considerable time and energy reviewing the financial reporting of IVGID and have been disturbed about the dishonest reporting of reserves.

The Board has developed a set of Policies and Practices which addresses the necessity for Cash reserves for emergencies and poor economic times. The Practices provide the calculations of how much money should be set aside and are described as an "Appropriate Level". I will call them RESERVES as most Staff members have decided that description fits the bill.

These cash reserves have different names such as Fund Balance, Working Capital or Unrestricted Net Position depending on what Fund is being addressed.

The calculations can vary dramatically if money for capital projects have been authorized and set aside but have not yet been spent.

The Utility Fund REQUIRED "Reserves" are now underwater created by improper reporting since at least 2015

As a result, money which was set aside for the $23,000,000 Effluent Pipeline Project is being repurposed for other projects.

I have prepared an analysis which is displayed on this chart.

The General Manger and the Director of Finance considers any reserves in the Utility Fund id Unrestricted thus telling the citizens how well off we are.

They consider the $12,836,000 at the end of June to be Unrestricted money and fail to consider that the accumulated $9,417,000 collected for the Effluent Pipeline Project and the $3,576,000 set aside for other authorized projects is

Restricted money and cannot be considered in determining whether or not an appropriate level of Reserves has been complied with.

As a result, the Utility Fund at the end of June has a negative reserve of $156,000

The problem becomes more intensified because Mr. Eick has reported two conflicting numbers for the required reserves by considering a wrong policy limited to the General Fund and Special Revenue Funds and a Utility Rate Study which produces two different amounts of $1,813,328 and $2,500,000. Slipping a phrase into a Practice document just won't work .

If the correct Policy and Practice (19,1.0 & 19.2) was used the appropriate reserves should be approximately $4,742,000. (See the attached calculation).

Because there are negative reserves, a projected $263,000 loss for 2018, $299,000 recently authorized for two unbudgeted water projects , and the repurposing of $1,000,000 of the Effluent Pipeline funds and the proper required reserves of $4,742,000 a big giant hole of $6,470,000 has been created which needs to be replenished.

How do you as citizens feel about your money being collected for one thing and used for another thing without your knowledge?

Expect a utility rate increase or a large borrowing soon

There is an accounting principle called Substance over Form. I have attached it for your review. The staff should consider it.

IVGID - Utility Fund

Analysis of Unrestricted Net Position (Reserves) Reported vs. Proper Reporting, for June 30, 2017, Budget for 2018 and additional budget overruns for 2018

		2016-2017		Revised
Unrestricted Net Position at June 30, 2016		$ 12,026,276		$ 12,026,276
Estimated 2017 activities - From Budget				
Cash Flow from Operations		4,855,500		4,855,500
Acquisition of Capital Assets		(1,904,000)		(1,904,000)
Carryover capital projects		(1,603,000)		(1,603,000)
Payment of Capital Debt		(482,000)		(482,000)
Payment of Interest		(160,900)		(160,900)
Investment Earnings		105,000		105,000
Capital Grants				
OMISSIONS - RESTRICTED MONEY				
Effluent Pipe Line Accumulated Resources - $23 Million project				**(9,417,000)**
Carryover Projects - Authorized and set aside mainly new Storage Building at Utility yard				**(3,576,000)**
Unrestricted net position at June 30, 2017		$ 12,836,876		$ **(156,124)**
2018 Budget - Cash Flows				
Cash Flow from Operations		$ 4,592,220		$ 4,592,220
Transfer from Internal Services Fund		120,000		120,000
Acquisition of Capital Assets		(4,428,100)		(4,428,100)
Carryover capital projects		(3,576,000)		-
Payment of Capital Debt		(495,761)		(495,761)
Payment of Interest		(147,373)		(147,373)
Investment Earnings		96,000		96,000
Excess of Uses over Sources		$ (3,839,014)		$ **(263,014)**
New Project Authorizations				
6-12-2017 Unbudgeted Water Item - from Pipeline Reserves				**(235,000)**
6-28-2017 Budget Overrun Water Item - from Pipeline Reserves				**(64,095)**
Repurposed $1,000,000 of the $2,000,000 which should have been set aside for the Effluent Pipeline in 2018 Budget				**(1,000,000)**
Required Reserves to comply with Board Policy & Practice				**(4,752,000)**
Estimated Total Shortage to comply with the proper Policy & Practice and restore the money repurposed from the Effluent Pipeline accumulated funds				$ **(6,470,233)**
WHICH RESERVE POLICY DO YOU WANT?				
Appropriate Level of Fund Balance				
Policy & Practice 7.1 & 7.2	Incorrect		$	1,813,328
Utility Rate Study	from rate study		$	2,500,000
Appropriate Level of Working Capital				
Policy & Practice 19.2 &19.2	CORRECT		$	**4,752,000**

IVGID
Budgeting and Fiscal Management
Appropriate Level of Working Capital
Practice 19.2.0
Effective July 1, 2015

2.0 Definition of Target amounts for Working Capital as measured each Fiscal Year End

Operations	45 to 90 Days of operating expenses excludes depreciation and interest
Debt Service	up to one year payments of interest expense
Capital Expenditure	up to 1 year of a 3 year average depreciation

Calculations at June 30, 2016 - Latest data availabe

Operations	
2017 CAFR reports operating expenses (no depreciation or interest)	$6,798,197
	$6,798,197
Per day based on 365 days	18,625
90 days of operating expenses	**$ 1,676,268**
Debt Service	
2016 CAFR reports interest expense	**$ 167,500**
Capital Expenditure	
2017 in 2018 budget depreciation expense	2,930,000
2016 CAFR depreciation expense	2,929,425
2015 CAFR depreciation expense	2,865,958
Total of 3 years	8,725,383
One year average of the three years	**$ 2,908,461**
Total of Target amounts of Working Capital (Reserves)	**$ 4,752,229**

3.0 Other Accumulation of Resources

The District may accumulate other resources in support of Debt Service or the Multi - Year Capital Plan in addition to Working Capital since these needs extend beyond the measurement period of one year

Effluent Pipeline	**$ 9,417,000**
Carryover Projects into 2018	**$ 3,576,000**

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT
ONE DISTRICT – ONE TEAM

Budgeting and Fiscal Management
Appropriate Level of Working Capital
Policy 19.1.0

POLICY. The District will maintain a formal practice on the level of working capital that should be maintained in the Enterprise (Utility) Fund.

Enterprise Funds distinguish between current and non-current assets and liabilities. It is possible to take advantage of this distinction to calculate Working Capital (i.e., current assets less current liabilities). The measure of working capital indicates the relatively liquid portion of total Enterprise Fund capital, which constitutes a margin or buffer for meeting obligations. It is essential that the District maintain adequate levels of working capital in its Enterprise Funds to mitigate current and future risks (e.g., revenue shortfalls and unanticipated expenses) and to ensure stable services and fees. Working Capital is a crucial consideration, too, in long-term financial planning. Credit rating agencies consider the availability of working capital in their evaluations of continued creditworthiness. Likewise, laws and regulations may speak to appropriate levels of working capital for some Enterprise Funds.

The Government Finance Officers Association (GFOA) recommends that local governments adopt a target amount of working capital to maintain in each of their Enterprise Funds. The District's targets will be formally described in the Practice as adopted and amended as needed.

Working capital is defined as current assets minus current liabilities; the District will consider certain characteristics of working capital that affect its use as a measure. Specifically, the "current assets" portion of working capital includes assets or resources that are reasonably expected to be realized in cash (e.g., accounts receivable) or consumed (e.g., inventories and prepaid expenses) within a year.

Stability of revenues and expenses are also considerations for an accurate calculation of working capital. The District will consider the adequacy of Working Capital in its Enterprise Funds during each annual budget process. The majority of such consideration will be established by the predictability of the revenues to be received from users. Building Working Capital in the Enterprise Funds is an acknowledged purpose in response to revenue shortfalls and unanticipated expenditures, debt service requirements and planning for capital expenditures.

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT
ONE DISTRICT – ONE TEAM

Budgeting and Fiscal Management
Appropriate Level of Working Capital
Policy 19.1.0

The District employs the term "Net Position" for Enterprise Funds, calculated in accordance with Generally Accepted Accounting Principles (GAAP). Financial reporting distinguishes Restricted from Unrestricted Net Position. Typically, only the latter is available for spending. Working Capital for operating needs should be sourced from Unrestricted Net Position. The District has debt service and capital expenditure needs that extend beyond one year. Therefore, amounts outside of the calculation of Working Capital may develop for those purposes. As such these may also be considered elements of both Restricted and Unrestricted Net Position.

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT
ONE DISTRICT ONE TEAM

Budgeting and Fiscal Management
Appropriate Level of Working Capital
Practice 19.2.0

RELEVANT POLICIES: 1.1.0 Strategic Planning, 12.1.0 Multi-Year Capital Planning, and 13.1.0 Capital Project Budgeting, 14.1.0 Debt Management, 19.1.0 Appropriate Level of Working Capital

PRACTICE. It is the practice of the Incline Village General Improvement District, hereinafter referred to as the District, to maintain Working Capital in each [redacted] in a manner which provides for contractual, bond and customer service obligations, while meeting its routine and non-routine cash flow requirements and complying with all federal, state and local statutes and regulations.

1.0 SCOPE

This Practice shall apply accounting principals as forth in Generally Accepted Accounting Principles (GAAP) considering the unique characteristics of the District. To that end the following measurements will apply to each fund:

- Strength of collections of accounts receivable, to the extent they can be converted to cash within a timeframe expected for use in the District's operations.
- Historical consumption of inventories and prepaid expenses, to the extent they can be utilized to support operations within the timeframe of the District's budget cycle.
- Levels and flow of annual operating expenses. At no time will the calculation consider less than 45 days operating needs. However, any amount over 90 days needs must be specifically supported and approved in writing by the District's General Manager.
- Support by the General Fund. This includes shared expenses and operating transfers that represent Central Services Cost Allocations.
-
- Control over rates and revenues.
- Asset age and condition, whether there is a chance of extra ordinary repairs or a replacement under the Capital Improvement Plan.
- Volatility of expenses and the ability to control fixed and variable costs.

Budgeting and Fiscal Management
Appropriate Level of Working Capital
Practice 19.2.0

- Management plans for Working Capital including any inherent affects of Restricted Net Position or items extending beyond one year that would normally not be covered by Working Capital.
- Debt Service or Multi-Year Capital Plan needs identified as current requirements.

2.0 Definition of Target amounts for Working Capital as measured each Fiscal Year End

Utilities

Operations – 45 to 90 days of operating expenses**

Debt Service – up to one year's payments of interest expense, since current maturities of long term debt are already considered in determining working capital, when classified as a current liability.

Capital Expenditure – up to 1 year of a 3 year average depreciation

** Operating expense excludes depreciation and interest.

3.0 Other Accumulation of Resources

The District may accumulate other resources in support of Debt Service or the Multi-Year Capital Plan in addition to Working Capital since these needs extend beyond the measurement period of one year.

Public comment to be included in the next Board Packet

Board of Trustee meeting on August 22, 2017

By: Iljosa Dobler

995 Fairway

To begin with I was a licensed real estate broker for 15 years and saw many commercial appraisals.

I am here to talk about the recent apparaisal of the Parasol Building conducted by Barnett dated July 7, 2017

Barnet had four assignments. I only have time to talk about the appraised value derived by the Income Approach.

According to Barnett, The estimated value of $4,300,000 is based on obtaining a cap rate of 6.5% based on annual cash flow of $279,000.

So first of all the square foot of rentable space is different from that of Dale Smith an architect and planner of the building.

By adjusting square feet to Dale Smith numbers Potential Gross Rents are lower by $77,855 in the Reality column

Then there must be a replacement reserve which is provided in a Property Conditions Report. My best guess would be about $50,000 annually which is only .04% of the estimated original building cost of $12,000,000. Pinkerton indicated a report would be completed.

Now the net operating income (cash flow) drops to only $151,000 so at a 6.5% annual return for the land and building it is only worth $2,233,000

But the land is owned by IVGID which according to Barnett is worth $1,000,000. That needs to be deducted.

Also Barnett did a Rental Rate Advantage Report studying the loss of Rents. Done correctly the free rent to Parasol for office and storage space of $40,800 and $8,844 respectively per month discounted at 5% annually over the 20 years creates a present value rent loss of $630,000 which must be deducted. The same is true for the half rents to the non profits for a six year term gives a present value of $150,000.

When we make all of these deductions we are down to at value of $552,000 After tenant improvements of approximately $500,000 there is no real economic value.

Claudia Anderson of Parasol made a statement that with the land use restrictions the property is worth ZERO so why are we even entertaining $5,500,000

Thanks

Appraisal vs Reality of the Parasol Building

	Barnett SF	Smith SF	Barnett Appraisal	REALITY
Rents				
Office	15,211	12,268	$ 365,064	$ 294,432
Storage	3,902	2,510	31,500	20,180
Meeting Rooms	5,640	3,784	90,000	90,000
	24,753	18,562	486,564	404,612
Vacancy			(24,328)	(20,231)
Potential Gross Rents			462,236	384,381
Expenses			(182,784)	(182,784)
Replacement Reserve			0	(50,000)
Net Operating Income			279,468	151,597
Capitalizaton Rate of 6.5% per annum			**4,299,505**	**2,332,268**
Required Adjustments				
Value of Land as stated by Barnett				(1,000,000)
Loss on Rents -Parasol				(517,000)
Loss on Parasol Storage Rents				(113,000)
Loss on Non Profit Rents				(150,000)
NET VALUE			**$ 4,299,505**	**$ 552,268**

Barnett Appraisal Assumptions

1. The land and building are owned as one. There is no ground lease
2. Full Market Rents are received. No adjustment for free rent to Parasol and half rents to other non profits
3. Rent Losses are stated as the present value of future free or below market rents discounted at 5% annually but not included in the appraisal report. The calculations are found in the Rental Rate Advantage Report - INCORRECT CALCULATIONS

	Total loss	Monthly	Present Value
Parasol office -20 yrs	$ 816,000	40,800	$ 305,000
Parasol storage - 20 yrs	176,880	8,844	no info
Non Profits office - 6 yrs	172,800	28,800	130,000
	$ 1,165,680	78,444	$ 435,000

4. No Inflation was considered throughout the term of the leases

Written Statement for the 8-22-17 Board of Trustees Meeting – To be included with the Meeting Minutes
By: Linda Newman

To be perfectly clear, tonight's meeting agenda is all about Failure! Ignoring it, Covering it up or Rewarding it. These failures point to a breakdown of the Board's authority and supervision of the District and our Chair's failure to exercise leadership in holding our General Manager, Legal Counsel and Director of Finance accountable. This Board must demand our District's compliance with Nevada law, the protection of our health and safety and take prudent measures to ensure our financial sustainability.

IGNORING FAILURE
The District has failed to hold Parasol accountable for breaching the terms of its lease agreement. Rather than providing a notice of default the District is engineering a $5.5 million bail out that transfers Parasol's financial responsibilities and legal liabilities to every parcel owner paying a Recreation Facility Fee. This is an affront to every citizen that expects our elected officials to honor and protect our interests.

THE COVER UP
In defiance of Nevada law, our General Manager and District legal counsel have initiated litigation against citizens and a local business without the Board approving these actions and appropriating public funds in a public meeting. The General Manager and Legal Counsel have also rejected Settlement offers without Board knowledge or consent. Our General Manager and Legal Counsel have withheld public records from our citizens and our Trustees. Staff emails have been destroyed. There is nothing on this Agenda that holds the General Manager and Legal counsel accountable for breaking the law. Instead, we are pointed to District Policies that have been interpreted to validate these unlawful practices. Apparently, our Chair, General Manager and Legal Counsel seem to think IVGID rules supersedes Nevada Law. They don't. And corrective action must be taken now.

REWARDING FAILURE
Chair Wong is recommending the Board increase the General Manager's total compensation which already exceeds most of Nevada's top governmental employees –including the Governor and the Attorney General. She is also proposing new terms that would provide a golden parachute in the event he resigns or is terminated. Anyone reviewing Mr. Pinkerton's neglect of the District's vital infrastructure resulting in expensive mandated emergency repairs for the Diamond

Peak Culvert and the Effluent Pipeline or had to deal with the consequences of the new Trash Franchise Agreement or examined his unrestrained spending and refusal to provide accurate and complete financial information –could reasonably reach a different conclusion and request the Board consider Mr. Pinkerton's termination.

Submitted by
Bill Ferrall

IVGID Executive Summary
Special Revenue Fund Balance Stress Test
Audited Fund Balance versus Planned Capital Project Transfers
and Lease Modification Assumptions
Presented to Board of Trustees August 22, 2017

LINE		COMMUNITY SERVICES SPECIAL REVENUE FUND		
		AS PRESENTED	REVISED	Explanations
1	**Audited Fund Balance 6/30/16**	7,854,828	7,854,828	
2	Projected Sources FYE 6/30/17	19,574,000	23,176,760	2017 est in 2018 Budget
3	Projected Uses FYE 6/30/17	(16,702,000)	(21,195,785)	2017 est in 2018 Budget
4	**Projected Fund Balance 6/30/17**	10,726,828	9,835,803	Difference $891,000?
5	Budgeted Sources FYE 6/30/18	20,671,514	20,671,514	
6	Budgeted Uses FYE 6/30/18	(21,290,234)	(21,765,234)	$475K contingency out
7	Budgeted Lease Modification	(1,600,000)	(1,600,000)	Down Payment
8	**Projected Fund Balance 6/30/18**	8,508,108	7,142,083	
9	**Used for Planned Projects:**			
10	FYE 6/30/19	(100,000)	(100,000)	Legacy Projects
11		(150,000)	(150,000)	Diamond Peak MP
12	FYE 6/30/20	(1,183,000)	(1,183,000)	Diamond Peak MP
13	FYE 6/30/21	(1,183,000)	(1,183,000)	Diamond Peak MP
14	FYE 6/30/22	(978,887)	(978,887)	Diamond Peak MP
15	**Sources for Projected Lease Modification:**			
16	General Fund - Transfers in			
17	FYE 6/30/18	493,142	493,142	Parasol Remodel
18	FYE 6/30/19	700,000	700,000	Sale of Southwood
19	FYE 6/30/20	100,000	100,000	Sale of Southwood
20	FYE 6/30/21	600,000	600,000	Sale of Southwood
21	Comm. Serv. Cap. Proj. Revenue	660,000	660,000	$132,000 - per yr Parasol, Meet Rms
22	**Uses for Projected Lease Modification:**			New Programs
23	DWR Bldg Remodel			
24	FYE 6/30/18	(493,142)	(493,142)	
25	Rec. Center Remodel			
25	FYE 6/30/18	(175,329)	(175,329)	
27	Lease Payments			Debt Pay to Parasol
28	FYE 6/30/19	(700,000)	(955,500)	Principal & Interest
29	FYE 6/30/20	(700,000)	(920,400)	Principal & Interest
30	FYE 6/30/21	(700,000)	(885,300)	Principal & Interest
31	FYE 6/30/22	(700,000)	(850,200)	Principal & Interest
32	FYE 6/30/23	-	(815,500)	Principal & Interest
33	**Fund Balance**	3,997,892	1,004,967	
34	**Current Target by Policy**	3,995,000	3,995,000	
35	**Remainder/(Shortage)**	$ 2,892	$ (2,990,033)	

The following twenty six (26) pages are Attachment A to the minutes of the August 22, 2017 IVGID Board of Trustees meeting as submitted by Trustee Matthew Dent on May 10, 2018 under the authority of Nevada Revised Statutes 241.035 1.(e) which reads as follows:

(e) Any other information which any member of the public body requests to be included or reflected in the minutes.

Herron, Susan

From:	Matthew Dent <matthew.ivgid@gmail.com>
Sent:	Thursday, May 10, 2018 2:22 PM
To:	Herron, Susan
Subject:	Meeting Minutes of August 22, 2017
Attachments:	1a IVGID's efforts to concealpublic records gets bizarre _ Nevada Journal.pdf; 1b ivgid commits felony level crimes.pdf; 1c IVGID officials caught in false testimony _ Nevada Journal.pdf; 1d NPRI files public records complaint with AG's office __ Nevada Policy Research Institute.pdf; August 22 Transcipt.pdf
Follow Up Flag:	Flag for follow up
Flag Status:	Flagged

Susan

As stated several times previously, the August 22nd meeting minutes omit nearly 20 minutes of dialog between the Trustees and Staff. In order to provide an accurate and complete version of what actually transpired at the meeting, I have included a transcript of the meeting.

I am deeply concerned about this troubling pattern of the censorship committee (GM Steve Pinkerton, General Counsel Jason Guinasso, & our Clerk Susan Herron). This assault on free speech has been witnessed by the Incline Village & Crystal Bay residence over the last several months and has included the following:

- Filtering correspondence received by the District
- Interrupting citizens public comments
- Censoring/omitting pertinent information from the Meeting Minutes

The latest act of overreach by the censorship committee was on full display at last nights Board meeting 5/9/2018 at 3:28:55 https://livestream.com/IVGID/events/8198653/videos/174618053

This has gone on for far too long going on for far too long and I will continue to voice my concerns when the Board, Staff, General Counsel fail to comply with Board Policies, Practices, Ordinance, and NRS.

Please include this email as part of the August 22nd Meeting Minutes along with the attachments. Thank you. Matthew

Trustee Matthew Dent
Incline Village GID Board of Trustees
(775) 530-1345 | www.matthewdent.com
893 Southwood Blvd. Incline Village, NV 89451

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT

August 22, 2017 1:45:00 to 2:30:00

1:45:41 Wong: "Before we start these items session I just want to preface there have been allegations, that there have been um, how would you phrase it Jason, um, that there have been, that public records have not been provided to the public. Just for the, just for the record the district has not received anything from the internal general, the attorney generals office that there have been any violations. So um, but, in talking to Trustee Callicrate, um, we did think that it would be a good idea to review our policies so that the board understands what our policies are, um, where they stem from, and then um just so that we know what the baseline is and then if we need to make revisions going forward we can do that and at future meetings. So I will turn this over to Mr. Guinasso and Ms. Herron to review our policies."

1:46:55 Callicrate: "Kendra, I have a couple of questions that I wanted to ask before we got into a presentation." Um, just because I have, I think it will expedite and help clear things up. That is why I wanted to move this up in general business. Um, most importantly I guess is to my fellow board members, um and it has to do with this 30 day email retention policy. And its was by the email August 4th or was it something earlier? And when I got that August 4th email that was the first time I'd heard about the 30 day, um, email retention. And I'm you know, I'm asking you guys, did you hear that earlier than that or am I missing something or was I absent during that meeting when it came up? Cause I don't think it was ever addressed by the board. So I'm just asking when we were all ware of it.

1:48:00 Horan: "I don't think since I've been on the board that we've actually discussed specifically email policy."
Callicrate: "And um, Kendra, I don't remember which since we first got on whether that was something that was ever discussed, on that email policy or not."

1:48:15 Wong: "Well there's a lot of existing policies the district has that this board in particular hasn't reviewed, virtually all of our policies and procedures have existed well before this board." Any policies and procedures that were put in place by previous Boards, until this Board readdresses it. We, we don't really discuss it and they carry forward."

1:48:41 Callicrate: Well, I guess my biggest thing is the 30 day retention policy and when I was looking further emails came up that after 30 days transitory emails are destroyed. I am like wait a minute.

1:49:01 Wong: Why don't we let our staff review the policies. And if there are still questions as to when the policy was developed and if it is something we need to develop we can address it at a separate meeting and notice it because we are not going to be making any decision today. "So lets get a full understanding of the policy, when it was implemented, why it was implemented, and then move forward."

1:49:27 Callicrate: "Well okay, but I do and will have several questions to ask, that I would like to ask."

1:49:31 Wong: "I think that is absolutely appropriate. I think we just need to establish what the baseline is before we start picking apart policy. Alright."

1:49:35 Guinasso: "Um, thank you Madam Chair. Well we've provided a copy of the policy for you all to review as part of the board packet. Um, what Id like to do is um, have uh your public records officer uh Susan Herron discuss how this policy is implemented on a day to day basis. So um Ms Herron, could you please tell the board how public requests are handled under this policy, under Nevada law when you get a request like that, what that entails and how you respond."

1:50:05 Herron: "Um, certainly. I would draw your attention to in the packet page 450, B1. Typically I receive an email request from a member of the public. The minute I receive that email request, the clock starts the following day. Then I would draw your attention to the bottom paragraph number 3 where it says a response will be made within 5 business days within receipt of that request, not counting that day.

1:50:43 "So I will look at the request, and if it's a document I can readily access, typically I turn it around in an hour, minutes, you know, it just depends. If its something I need to research, typically what I will do within that 5 day period is I will answer the requestor, tell the requestor that I need some more time to do this. Typically I will say I need until the end of the month, you know, something like that. I give them, uh, a period of time."

1:51:12 "The key here is that I have to respond within five days. That does not mean that I have to give the request. I have to respond within five days. So that is what I do. I process a bunch of these. I keep a log, you know, we probably process between 30 or 40 a month. So thats, you can do the math, that s 1 or 2 a day. Some of these require, um, that I reach out to staff. Some of them require that I can get a contract right away and turn it around in like I said 5 or 10 minutes. So that's typically my process."

1:51:45 Guinasso: "Thank you Madam Chair, so um with that if there is any violation of, uh, Nevada law relative to not producing records in accordance with the Nevada Public Records Act, there are remedies available to a member of the public similar to those remedies that would be available if there was an open meeting law violation. Presently there are no complaints against the district for violations relative to failure to produce public records and, uh, and so really there is nothing to comment in that regard about certain allegations that are being made, that we're somehow not compliant with the public records act. So with that I think that wraps up our discussion on the Public Records Act, other than questions that you or the rest of the Board may have."

1:52:25 Wong: "Well, lets, lets start with what defines a public record and public information"

1:52: 40: Herron: "So typically a public record is something that we have put out into the public, i.e. included in a board meeting, included in a board packet, uh put it on our website, um I'm trying to think of something else, eh, that's basically it. That's a public record."

1:53:11 Wong: "So what would not be public records?"

1:53:14 Herron: "Working, uh, papers, uh, draft documents, uhhhm, that's basically it. I mean we're a public agency most of our work is public."

153:25 Morris: A, A, A question maybe to to clarify all of this in terms of data.... How do we, or um, how do we class an email? If I send you an email.... is that something we keep forever?
S: "Emails are transitory records, are transitory in nature. The content is when they become a record."
"I will give, may I give you an example? Say the Director of Asset Management goes out for an informal bid. He gets those bids in, he now has a record. That record he retains until he converts that over into a purchase order or contract. Once he converts those over into a purchase order or a contract, that's a new record. He can, he can actually get rid of those emails."

1:54:22 S: "Emails are a form of communication only. Its just like a letter or picking up a phone and calling somebody. So the majority of our emails result in an action, i.e. a purchase order, a check request, something like that. You all make decisions, so those are our records." That's why emails are transitory. And I must tell you that I have spoken to the State Librarian. He agrees with me, he has given me some citations on that. As does every other city that I've reached to as a Nevada Municipal Clerk. I belong to that association and I went out to them and all of them have a policy that says emails are transitory. They're just a form of communication."

1:55:12 Callicrate: "Um, just uhh. And um I'm ou know, forgive me if I have to go over and reiterate, but I looked up 239.125, went on the website and download for my colleagues what the entirety. Excuse me one and two are subsections..... Some of the emails, um, can and can't be deleted. Umm, they must be permanent or have a one year shelf life or have less than that. And, um, I specifically say on page number two that any correspondence, um, email, social media, letters, etc at the executive level are permanent records. They cannot be deleted. Um, that's per NRS, um, this particular, um, statute. And then correspondence under complaints, it says this series includes electronic email that is 3 calendar years after we sponsor a resolution. And routine business is one calendar year from the day of the correspondence.
And then transitory, which they do here, is general announcements as Susan had mentioned if it goes to an actionable item if it's a work order or what not, spam junk mail, vendor mail, personal mail, things of that nature. And then it goes further down on page 3, directives of a manager are permanent. Contracts and agreements are 6 fiscal years. This is all pretty self-explanatory and very explicit. We as a district can elongate that, and, and require longer periods of time, we cannot however truncate them and take less time, um, to archive something."
That's the concern that I had when I got that initial email, um, from Mr. Smith because it took 58 days before he was finally replied to. From August 1st, it was 58 days later and that's more than the 5 days. And I know you have a tremendous amount of work Susan and I appreciate the hard work that you do. But what happens to those emails when they are deleted or when they're destroyed? We have no record of them? Or are they put on server or are they actually archived or what happens? And I'm concerned about that because if we don't keep permanent archivable email records, we are in violation of the law."

1:57:53 Guinasso: "Nuh, not all emails are public records, uh that's the point. The definition of a public record is all public books and public records of a government entity, the contents of which are not otherwise declared by law to be confidential. A public record is not a statutorily defined

term. In all of the things you provided there's no statutorily defined term. The only definition for a record under NRS, uh chapter 239 is for the, for official record which is under NRS 239.0784." (Reads state agency record definition) "So, um first of all, you have to understand what a public record is before you categorize all emails into that category. Now the second piece of the analysis is if, if its not a public record, what is it? If its not a public record, what Susan explained to you, is that you are dealing with what has been categorized as a transitory record. And again a transitory record is defined as follows: transitory records are public records but because of their limited value they do not have to be retained."

1:59:23: Callicrate: "Right"

1:59:24 Guinasso: "Transitory records are created primarily for the informal communication of information and do not require an official action. Transitory records do not set policy, establish guidelines or procedures, discuss a business matter or discuss a decision, certify a transaction or act as evidence of receipt. Transitory records may be treated as having a reference or administrative value that ends when the agency no longer needs the information in the record."

Callicrate: "That right and if we have, excuse me Mr. Guinasso"

Wong: "Hold on, let Mr. Guinasso finish.

1:59:55 Guinasso: "Furthermore transitory records may be destroyed when the reference or administrative value of the record ends. However a public records request received before a transitory record is destroyed, that transitory record must be released. So that's the full counsel on this, its not just picking and choosing different things and "

2:00:15 Callicrate: "No its states very clearly that any executive correspondence must become a permanent record within the districts archives. And if somebody is requesting something that was either from the board to the general manager or from the board into the general packet, or um any complaints to the district, any complaints to the district are public records by virtue of the fact that they are made by the public as a complaint against the district. And if we don't keep those for 3 years we are in violation of the law, it states right here."

2:00:46 Wong: "OK, lets back up on a couple of things, so first of all, as board members, we cannot direct staff to do anything, we have to act as a board together. So that"

2:01:00 Callicrate: "Kendra, this the law Kendra. This is the law. And if we are not in compliance with the law, we're in violation of the law". And regardless of who asks it as a Board, or it's the chairman of the board, or whatever."

2:01:12 Callicrate: "The fact that if, if for whatever reason, our Clerk to the Board, is relying on something different than what is the law, by direction of her immediate boss, I have real concerns with that. And this is what has been brought up by Mr. Smith."

2:01:30 Wong: "There are many ways to interpret laws."

Callicrate: "No, not this, Nevada state law trumps of all of IVGIDs. Well I'm sorry this is very, very upsetting to me."

2:01:40 "There are a lot of ways to interpret laws first of all. Second of all our, our, district clerk (pause).

2:01:45 Guinasso: "Would you please."

2:01:49 Wong: "Mr. Lyons please sit down."

2:02:00 Wong: "Our district clerk has reached out to the State and gotten their guidance and they have, why don't you communicate what, what the state has communicated to you about our policy."

2:02:15 Herron: "Uh, we have an approved retention schedule. The state has told me that we have, emails are transitory records, and that we're in full compliance with the law."

2:02:30 Herron: "Eh, I would like to address if I may. Mr. Smiths request. I did not wait 59 days to talk with Mr. Smith".

Callicrate: "58"

Herron: "Pardon me, 58 days to talk to Mr. Smith. I've been in contact with Mr. Smith over and over and uh".

Callicrate: "Via email or just on the phone?"

Herron: "Via email and I would be more than happy to share those with you."

Herron: "He has extended time with me when I've told him I can't find things or are still looking for things. He has been very gracious, as have other members of the public. Mrs Newman can speak to that as well. Just did one for her today."

2:03:08 "Um, I don't shirk my duty on this. I recognize how important it is. So I believe Mr. Newman, pardon me, Mr. Smith maybe a little mistaken or maybe was out of town or something and didn't get an email."

2:03:20 Herron: "But we're in compliance. I consult with District General Counsel and"

2:03:35 Guinasso: (interrupting) "Uh, what I would like to do is just say that this discussion on this specific complaint has not been agendized. If we are here to review the policy then that's what we need to keep the discussion to. If you want to agendize a specific complaint we can certainly do that but we are well outside the scope of this agenda item and we are suppose to be talking about policy and not a specific complaints of members of the public.

2:03:56 Callicrate: "That was an example it is not to take any specific action on it"

2:04:01 Wong: "OK, anything else on this?"
Horan: "Well, how, how do we, hold on a second. How do we, how do we resolve the differences in opinion. We have State advice that we are in compliance and we have an interpretation of NRS that says we're not."

2:04:23 Guinasso : "Madam Chair"
Wong: "Here's what I would suggest, I would suggest that our legal counsel, Mr Guinasso, take this information, um, identify what is factual and what isn't in this document. Um, if he needs to, meet with Trustee Callicrate to resolve some of the issues if there are discrepancies. And if there are discrep, if there areas where Trustee Callicrate's documents is correct and we need to make revisions in our policies, then we'll (inaudible)."

2:04:51 Callicrate: "Um, this is all off the Nevada Revised Statutes websites and I have links to the actual statute wording and I added some of my own here. And I'm surprised this wasn't even included in our board book".

2:05:96 Wong: "I'm looking at your document right now and I'm looking at the NRS. And there is information on this document that is not on the NRS, so there is a discrepancy somewhere."

Callicrate: "Really"

Wong: "Yes, When I look at this sheet I see a lot of dialog on this sheet that is not listed in the NRS.

Callicrate: "But all of the italicized, number 1, and number 2, the minimum retention times and all of the box stuff is right off the website, I just cut it off today."...
205:40 Guinasso: "If the board would, um, like to direct your staff and legal counsel to revise the current policy because you think there are problems with it, we can certainly do that."

2:05:50 "But, the policy as stands now, has not been found to be illegal by any reviewing agency. All of our, all the records requests have been handled, have been handled in accordance with Nevada law."

2:06:02: "And if somebody disagrees with that, there is a venue to deal with that and that's not before this board, that's before other agencies given jurisdiction to hold us to account when we haven't complied with Nevada law."

2:06:20 Wong: "Mr. Dent"
"I was just going to say. I just went on my phone and looked up the Nevada State Library um, um Archives and when I looked up transitory, an example of transitory is no document, uh, correspondence which don't document administrative action, follow up, suspense, transmittal letters that do not add additional information to the transmitted material or attachments, spam, junk mail, unsolicited vendor mail and personal mail, transitory email. I mean to me it sounds like we are talking about that all IVGID email and all day to day operations are nothing more than spam. We know that's not true. So I'm, I'm uh, kind of taken aback by this a little bit. And

um, seeing this go back and forth over the last several weeks. When you get an email saying that we are destroying emails. It is kinda alarming. You know it just doesn't sit right. And uh, and so I don't, I don't know what to do. I don't really think that sitting here and going back and forth and having our attorney try to tell us what it is, or having staff try to tell us what it is. I don't think that is best step forward. I mean, it, it appears to me, um, that, you, we, may be in violation. Um, Based on what's kind of transpired today and what maybe you know maybe that the, maybe whats going on the last several weeks you sent the emails.

2:08:05 Dent "It appears potentially there could be impropriety, um or possible misconduct, um, and, and, I believe we need to look into this a little bit further when it comes to uh IVGID's public records, and, um, the record retention that's involving the districts legal counsel, the general manager and other staff members.

2:08:30 Dent "Um, these allegations, I, I take them very seriously. Um, I think we all should and I want to make sure we are doing what is right. Ultimately that is what we should be striving for, is doing whats right and whats best for this community.
Um, for and I really think for the protection of all the parties involved, um I would request that um, per board policy 3.1.8 agendizing items, that the chair place the following on the agenda for the next meeting. Um, the Board appoint an independent investigator to investigate these public record issues involving the general manager, the legal counsel and other staff. Secondly, I think that the board, that the board place the general manager on administrative leave, with pay, pending the outcome of the investigation and appoint an acting general manager and lastly."

Wong: "Wait lets back up"

Crowd: (yelling) "Shut up! Let him finish!"

Dent: "suspends the legal counsel pending the investigation and appoint legal counsel in the interim. I think if we go in that direction, that might be a better route. We remove anyone that might have been a part of this and we really get a true answer that's correct and there is no spin to it."

Wong: "Ok, first of all, we uh, this is agendized that we are not taking any action. This was in an informational item"

Callicrate: "He's requesting an agenda item"

Wong: We are not going to. So we're not going to be taking any action"

Dent: "I requested an agenda item for the next meeting, Madam Chair, based on the significance of what has transpired today and what's been going on in the last several weeks."

Guinasso: "We can't take action on this agenda item."

Wong: "Well we can't take any action on this item"

Guinasso: "We can't take action on this agenda item."

Dent: "Well then I will send you an email tomorrow"

Callicrate: "Or bring it up at the next agenda item. Its pertinent to the Parasol foundation"

Dent: "Correct, when public records are being destroyed that pertain to Parasol, I mean this is something that should be very, very scary for everyone in the community, for any board member sitting up here. We need to make sure we're doing what is right.

Callicrate: "I concur" Crowd: (clapping) "Yes! Absolutely

Wong: "Any more comment"

2:10:05 Callicrate: "Yes, I would like the Nevada State Laws brought forth in its entirety, regarding this particular issue 239.125 and we need to review it in its entirety, the entire board and we need to make sure we are compliant and if we aren't then we need to become compliant. And if anybody, and I'm not saying that they are, but if anyone has inadvertently acted outside of what the law requires by the dismissal, or dissolution or the destruction of emails or records of the district, then appropriate actions will be taken. This is just, this is not good, and I am very upset. And I might as a suggestion to our general manager to please take the appropriate uh steps to compile all this information for the board and our general counsel."
Wong: "I think you are jumping ahead because that is agenda item 3. To discuss the NRS."
Wong: "So lets close item 1 and move onto item 2, verbally review policies and practices under NRS 239.100..."

2:12:25 Guinasso: "Yes. Thank you Madam Chair. Eh the IVGID best practices were adopted, um, effective two twelve twelve or 2013 are provided in the board packet but what I would like to, um, do now is have your public records officer, uh, discuss how emails are, uh, handled under this best practice policy."
2:12:49 Herron: "Could you clarify, uh emails are handled, uh the retention of them or"
Guinasso: "Sure, um, well first address, it'd be good, just address what are the best practices policy here and then address how this actually works, um, on a, from a day to day operations standpoint."

2:13:10 Herron : "So this practice was adopted by two or written and prepared by two IT directors ago.
"And um, as you can see it adopts a standard of a detailed signature etcetera and then we follow the NRS on retention of records, for emails and I have, provided emails within the last several days, 30 days back, as, as requested by members of the public."
Callicrate: "If it requires something that's prior to the thirty days back how would, and those are public records, how would they be accessed for us?"

2:13:57 Herron: "You know as I mentioned before, an email is a form of communication, so as I explained with my example, my, the Director of Asset Management, and if he goes out and if he gets informal bids, that email is a record until its turned into a purchase order and its no longer"

Callicrate: What, what if and, this is hypothetically an important email, what if an email is turned into an actionable item it and it rose to the level of being an important email that somebody was trying to take action on?"

Herron: "Then that is a public record and I would request that from that individual"

Callicrate: "So is that before the 30 days?"

Herron: "Correct"

Callicrate: "So that's the 60 or 90 days or 3 years or whatever it might be"
2:14:38"Correct, because our staff has been trained to understand that the contents of an email may be a public record, so that they, you know, they would have to save that email as a public record. i.e. a bid. So if that bid was never turned into a contract the Director of Asset Management would probably keep that for a period of the length of that bid is valid. So say that bid is only valid for 90 days, he would keep that. If I had a public records request for that, he would send that to me"

2:15:15 Callicrate: "Thank you."

2:15:17 Guinasso: "So there is, the point is that, um, there are some emails that can in fact qualify as public records and some that don't. Just as there are some documents that the district has in its possession that qualify as public records and others that don't. Um and that's part of the reason why you have a designated public records officer, um, to identify that information and produce it to the public in a timely manner and that is part of the reason why you have district counsel to help advise of those, if any issues come up that may not be clearly articulated in the statute."

2:16:06 Wong: "So, I guess that then brings up the question. How do you know that the emails that should be public requests, those are the ones to retain and not deleted? And then how do they come to you so that you know they are public records. And how do we know that we are not deleting emails that could be public records?"

2:16:25 Herron: "We have trained our staff to recognize what a record is, number one."
2:16:40 "Number two, when a member of the public makes a request they have to be pretty specific."

216:50 "So they would have to, they would have to say I would like the quote on the culvert, you know that took place around April of 2015. They can't just make a general, a general request. I want all of Brad Johnson's emails from 2014 to 2017. That's not a document request, a public records request.

2:17:02 "So that's how its done. So they have to be very specific in what they want and it actually has to be a record."

2:17:15 "I know that members of the public have been frustrated when I say there are no records available. I can't provide what does not exist"
"And I think that's a point that people don't understand, is if you're requesting something that you think exists, it may not exist."

2:17:39 Dent: "Similar to our chart of accounts that I requested"

Herron: "Correct"

Dent: "It doesn't exist?" Crowd: (loud laughter) "Good one!"

Wong: "Well, shall we have a glass of water."

Guinasso: "So, uh that, that concludes our, uh, discussion on, uh, email retention and the email policy"

Wong: "Any other questions from the board?"

Callicrate: "What about the retention schedule, where does that fall, number 3?"

Wong: "Ok, so that'll close number 2 and we'll move on to number 3."

Item #3 2:18:20

2:18:30 Guinasso: "Um, Ms. Herron would, uh, you please, uh, describe the document that's in the Board materials under F14 to the board."

2:18:39 Herron: "Certainly, I will draw your attention to page 461, that is where our local government retention schedule review letter is from the state of Nevada, which was approved. That is the, that is the records retention schedule that I follow."

Callicrate: "Now, I have a question on that, wasn't this, um, updated in 1997?

Herron: "No"

Callicrate: "Oh it wasn't?"

Heron: "No"

Callicrate: "Because that this the information I was able to find on the website for NRS. 1997 its was , he modified to updated, uh, to include specifically email, because this was starting to become a new format of email documentation and communication. And it just happened to be the first year that I was on the board, um the first time. I remember this new found thing called email was just coming around and how will the local and, um, state government agencies deal with that and potentially archive and that's when the came up with the basis for this latest statute.

And again, with everything that we are using and doing I think we need to make certain that we are using the latest and greatest from the state of Nevada.

2:20:13 Herron: "Perhaps, I misunderstood your question. You were, you were asking if this is the latest district retention schedule. I apologize."

Herron: "The district's retention schedule is dated 1994, we have not updated it since then.

Callicrate: "But the state of Nevada has updated it from 1997. And I think that we should be, whatever the latest. If they have updated it again within the last 10 years or 5 years or whatever, we should be operating under the latest revisal, otherwise we are operating under a law that no longer exists or pertains to the district, which could then lead to potential issues with the, um, destruction of emails and potential records which is why we are here talking about these things tonight. That would be my suggestion."

2:21:04 Guinasso: "Um, Ms. Herron, would you, uh can you, uh, tell the board about a conversation you recently had with the state archives on this very issue?"

Herron: "Certainly. So, um, the state archivist called me and said that he had an inquiry from a member of the public and we discussed, uh, the districts local government retention schedule in 1994. And while he told me, that, um, he did concur that it was approved, he did say that is what you follow. So the state, the second paragraph on 239.125 does not apply because we do have a retention schedule. And while he said that it has not been updated in a while, that we are in conforming, in compliance and that the district is actually keeping records longer than they are required."

2:22:00 Herron: "I do have a copy of the local governments records manual program plan dated 2016. He and I did have a brief discussion, um, about emails. He recognizes that we are following the law and concurred to that."

2:22:15 Dent: "Um, NRS 239.125, you said we don't have to follow that, because we have a, um, retention schedule?"

2:22:24 Herron: "Yes, under 239.125 if you read the"

2:22:15 Dent: "It's a yeah, it says the state library archivist and public records administer shall adopt regulations to carry out a program to establish and approve minimum periods of retention for records of local governments. So, we, we mean, if we have a policy that's outdated from 1994, uh, that wouldn't supersede what, what's going on here in SLA, correct?"

2:22:53 Herron: "Incorrect, because paragraph"
Dent: "So are we uh, because we have a policy we can hold records less than what that state mandates?".

Herron: "We under 239 paragraph 1 it reads a local government entity may establish a program for the management of records, including the adoption of schedules for the retention of records

and procedures for microfilming which must be approved by the governing body and comply with the applicable provisions of this chapter and any regulations adopted pursuant thereto." "So we have a retention, an approved retention schedule, therefore number 2 does not kick in, that's only"

2:23:32 Dent: "So, so we have a retention schedule that doesn't include email"

Wong: "Trustee Dent let her finish"

Dent: "I'm just asking a simple question, Madam Chair, I don't need to be interrupted by you. Um, I'm asking a simple question. We had a retention schedule that doesn't include email, so we don't have to follow a policy that the state sets in place that mandates we have to hold emails a certain amount of time. It doesn't make any sense. This is outrageous."

2:24:00 Callicrate: "And it's not, it's not being compliant with, NRS law supersedes anything that this district wants to pretend it's doing appropriately or not. That's the concern that I have. And the fact that, to what Trustee Dent said, there is nothing in here addressing anything regarding emails on our 1994 schedule as I brought up before. That's all well and good but its 1994 and this is 2017 so we have a 23 year old policy that we're following and in that time we have an NRS statute that specifically dictates what we can and cannot archive, or what we should be archiving and yes we can go longer than that."

2:24:40 "But we cannot subvert the law and be less regardless of what someone has told you verbally or what you are telling us verbally. I would like to see it in writing from the uh the library and the person you spoke with, because there is a lot of hearsay and innuendo and things that have been bandied about. I want to see it upfront in writing. I would appreciate that, thank you."
2:25:04 Dent: "We need an investigation, this is ridiculous, and its"

225:15 Horan: "Well, Madam Chair, I think that the, the, the, the questions being raised is a valid question. We always want to make sure we are following the law. I don't think there is any intent on anybody in the district to subvert the law. We have been following a practice which is apparently thought was correct. If we, it is incorrect we should correct it. And I don't have any problem with that. I think we ought to make sure that we know that we're wrong before we correct something that may or may not be wrong, I, I don't know the answer to it. But I don't, I think that throwing things back and forth with the, with the implication that we are intentionally trying to subvert the law is not correct. I don't think there is any intention at all. We may not be up to date. That may be true. But I, I think, I think we should determine that. And, and I don't know the best way to do that is to, to, to work with counsel and the clerk to work with the regulatory bodies to make sure we are following the appropriate regulations."

2:26:08 Guinasso: "Thank you, um, trustee Horan. I would just remind the Board your legal counsel and your sr. staff have been going through all the policies and procedures and going through the regulations that have been adopted over the years in and effort to codify what we are calling the IVGID code. Um, that, code is slated to be presented to you all within the next couple months here. We have made significant progress in that regarding the practices, policies, and

procedures to insure the things that have been inacted and have been followed over the years are in fact in compliant with Nevada law. So, as part of that review we are reviewing whether these, um, sections are in fact compliant.

2:27:19 But for the time being our current practices relative to public records have withstood the test of time; um we have not been found to have been in violation of any Nevada Public Records Act by any complainant or any overseeing body that would respond to those complaints. So I think the controversy that is being manufactured here tonight is not based in fact or as Trustee Callicrate said is based on innuendo and supposition..."

2:28:37 Wong: "To respond to your point Trustee Horan, what I've been hearing from this hearing is that she has been communicating with the state and we are in compliance with the law even though our, our record retention policy might be a bit out of date."

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IVGID's efforts to conceal public records gets bizarre

Staff blandly admits felony-level destruction of email records

BY STEVEN MILLER
© 2017, NEVADA JOURNAL | WEDNESDAY, AUGUST 23, 2017 | 2 COMMENTS

Has Incline Village's often-criticized local government — the Incline Village General Improvement District, or "IVGID" — finally gone off the deep end?

According to district staff, members of the public can no longer review any history of top administrators' email communications on matters of public controversy, or anything else, older than 30 days.

The reason, District Clerk Susan Herron told records-requester Mark E. Smith, is that, for emails, the district suddenly has a new 30-day "retention policy."

Such a policy would directly contradict state law, which makes it a C class felony to destroy or conceal emails and other public records.

Herron, who also has the titles Executive Assistant and Public Records Officer, answers to IVGID General Manager Steven Pinkerton, who, along with IVGID Public Works Director Joseph Pomroy, was the subject of Smith's requests under the Nevada Public Records Act.

Smith is a longtime activist on north Lake Tahoe's problem with roving bears and the unsecured garbage and waste containers that attract them.

"I was pretty active in getting the trash ordinance updated" in 2016, he told *Nevada Journal*. His June 4 public-records request, he says, had been triggered by learning "that the [IVGID] board of trustees was going to have a review of the new franchise agreement with the trash disposal company, Waste Management."

Also coming up was a board review of Pinkerton's performance. In April, the members had extended his contract for three years. Then in June he'd requested a reputed $64,000 raise.

Smith wanted to see how vocal Incline Village and Crystal Bay residents had been with complaints about the new franchise agreement. It had increased IVGID's financial subsidy of Waste Management local operations, he said, but service, nevertheless, had continued to decline.

"They" — IVGID and the trash company — "had a huge problem meeting their obligations this spring," he said. Under the new franchise agreement, Waste Management committed to pick up "green waste" — mainly pine needles, pine cones and tree debris — every week.

However to service Smith's neighborhood this spring, he said, it took the company five weeks. And, he learned, talking to other people, as well as IVGID insiders, that throughout the district

Double-dipping ex-purchasing director reportedly repays school district

But CCSD keeps key findings of internal probe hidden from public

Former NSEA staffer accuses union of racial discrimination

A former employee of the Nevada State Education Association is suing his former

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Waste Management had not provided anything like the weekly service it had promised and for which property owners had paid.

"So yes, over the whole neighborhood, big piles all over the place for a month and a half," said Smith.

"The period runs late May to late July: a two-month period when they're supposed to pick up green waste. And for five weeks out of the eight weeks they didn't pick up green waste in a lot of the community."

There were also chronic problems with Waste Management's servicing of damaged commercial dumpsters.

"It was taking them, in some cases, a month to service dysfunctional dumpsters," he said. "But part of their agreement with the district was they would also upgrade trash service in terms of their responsiveness. But that got markedly less responsive." And it was the same thing with residential service.

So, on June 4, Smith — seeking a multi-year picture of the issue — submitted his records request, writing IVGID:

> Also, by way of this letter, I am making a Public Records Act request for each and every complaint that IVGID has received about any aspect of:
>
> a) Waste Management's service for the period of 1 January 2010 to the present date,
>
> b) The performance or lack thereof of IVGID's trash enforcement program for the period of the first engagement of George Valentic to the present,
>
> c) Mr. Pinkerton's performance related in any way to trash collection or trash enforcement, for the period of his first day of employment for the District to the current date; and
>
> d) Mr. Joe Pomroy's performance related in any way to trash collection or trash enforcement for the same period as noted in (c), above.
>
> Further, I request each and every email sent or received by Mr. Pinkerton or Mr. Pomroy to or from any person representing Waste Management or any Waste Management subcontractor, supplier or vendor, in any regards for the period from Mr. Pinkerton's first day of engagement with the District until the present date.
>
> Finally, I also request each and every document related to all corrective action the District has taken in attempts to resolve the failure of Waste Management to abide by the Franchise Agreement.

Five weeks later, IVGID Clerk Herron emailed Smith a peculiar response:

> I just wanted to give you a status on your document request of June 4, 2017. Staff has advised that for Items 1. through 3. Waste Management has responded/taken care of those requests. For a), b), c) and d) I have no public records responsive to your requests. I continue to work on the balance and will update you again at the end of this month if not before.

In fact, says Smith, Waste Management had not "responded/taken care of" the requests he'd made to IVGID.

Moreover, *it is IVGID, as a local government*, that is subject to the Nevada Public Records Act, not the trash company.

On August 1, 58 days after the initial request, IVGID finally turned over a handful of emails. Although Smith's request had covered multiple years, with special attention to 2016, the district had released only a dozen *recent* emails. And the earliest was dated a couple of weeks *after* his June 4th request.

"So the two problems," Smith told *Nevada Journal*, "are, one, they didn't [provide] anywhere near [the records requested], but, two is, they received my email on June 4th, and *after* they received my request, they deleted emails."

Wrote Herron:

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Steven Miller
Managing Editor

Karen Gray
Reporter/Researcher

> In response to your request for e-mails between our District General Manager and Director of Public Works and Waste Management, I have a thumb drive available for your pick up at our 893 Southwood offices. *You will see thirty days of e-mails as that is our retention policy.* (Emphasis added.)

This appears to be the first time that anyone at Lake Tahoe or anywhere else had ever heard of a "30-day email retention policy."

Smith had also submitted a records request to review any email communications between IVGID's Pinkerton and Pomroy on one side and representatives of the Parasol Foundation, on the other. The nonprofit has been seeking to interest IVGID's board in changing the terms of Parasol's long-term lease of IVGID land, on which Parasol's building sits. The proposal has elicited skepticism and controversy.

Only a few of those requested email records were provided Smith. The rest — under the 30 day "policy," were either withheld or deleted.

If any of these requested emails still exist in some form of digital backup, IVGID would have illegally concealed them, a category C felony under Nevada law, specifically NRS 239.320. If the emails were destroyed, that, also, is a C felony under the same statute:

> NRS 239.320 Injury to, concealment or falsification of records or papers by public officer. An officer who mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his or her office, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

Under NRS 193.130, at least one year in jail is mandatory:

> A category C felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years. In addition to any other penalty, the court may impose a fine of not more than $10,000, unless a greater fine is authorized or required by statute."

IVGID Clerk Susan Herron had apparently been convinced by her IVGID bosses that their sudden new "policy" of destroying emails after a mere 30 days was legal because of three interlocking arguments:

1. The general manager, Pinkerton, legally the real controller of the records, had told her to do it.
2. Under a policy statement adopted by a 2011 IVGID board of trustees, the general manager was allegedly given "the discretion to interpret and to modify" board policy "on a case by case basis, as deemed necessary and appropriate under the circumstances." It is unknown if such discretion was ever reviewed by the state archivist.
3. Twenty-three years ago, in 1994 — well before the planet-wide explosion of email — the Nevada State Archives Administrator, under the law then in place, had approved IVGID's then "proposed schedule(s) for the retention and/or disposition of records," which, of course, did not mention emails.

What Herron never acknowledged was that Nevada records-retention law frequently changes, and did so many times in the next 20 years. An appendix to the Nevada Local Government Retention Manual, issued by the state, reveals hundreds of such changes, just over the last nine years. One such important change is that email records have long been explicitly protected at the same level as hard-copy records. Thus, emails to and from the IVGID *executive* — that is, the general manager — must be *permanently* retained, and all *complaints* must be retained for at least three years, as this page from the Nevada Local Government Retention Schedule indicates.

Nevada Administrative Code 239.155 now also requires that any change in retention schedules that would dispose of records — such as IVGID's alleged "policy" of destroying all emails after 30 days — must first be reviewed and approved by the State Library's Archives and Public Records Administrator. NRS 239.125 also requires that records-retention policies must be adopted by the *governing board* of a local government, not merely by its hired executive or a lawyer who reports to him.

Given the sudden, apparently ad hoc, obstacles thrown up against Smith's attempt to see General Manager Pinkerton's email communications over the last couple of years, *Nevada Journal* asked Smith if he thought the new "policy" might just be a way to not honor his records request.

"I think that's exactly right," he said. "This is the most blatant time when they've done something that seems so obviously intentional. In the past, you chalk it up to ineptitude, or lack of time, bureaucratic fumbles with no malicious intent. Here, I have a hard time finding a non-malicious reason for this."

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Online Editor
Eric Davis

Contact Us
Nevada Journal
7130 Placid St.
Las Vegas, NV 89119
Phone: (702) 222-0642
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Incline Village government commits felony-level crimes to conceal public records

By Michael Schaus

Wednesday, August 23, 2017

In a stunning admission reported earlier today exclusively by the *Nevada Journal*, staff at the Incline Village General Improvement District (IVGID) openly confessed to destroying or concealing public records as a matter of policy — a felony-level crime under Nevada state law.

After area resident Mark Smith submitted a public records request for, among other things, copies of all email correspondence between IVGID general manager Steve Pinkerton and the district's trash company, Waste Management, IVGID staff responded by only providing copies of emails from the past 30 days, citing a "retention policy" whereby any emails older than 30 days were either destroyed or withheld from production.

Yet, NAC 239.155 expressly requires that local governments *permanently* retain the email correspondence of executives like IVGID general manager Steve Pinkerton. The only exception to this mandate is if a local government adopted their own written records retention schedule, *which had received the approval* of the State Library, Archives and Public Records Administrator. Yet, by IVGID's own admission, their 30 day retention policy received no such approval.

As Nevada Journal managing editor and NPRI senior vice president Steven Miller reported:

> If any of the requested emails still exist in some form of digital backup, IVGID would have illegally concealed them, a category C felony under Nevada law, specifically NRS 239.320. If the emails were destroyed, that, also, is a C felony under the same statute.

In addition to the District's policy violating the letter of the law, it also eviscerates the spirit and intent of the state's public records law, as this exact case demonstrates:

> On August 1, 58 days after the initial request, IVGID finally turned over a handful of emails. Although Smith's request had covered multiple years, with special attention to 2016, the district had released only a dozen *recent* emails. And the earliest was dated a couple of weeks *after* his June 4th request.
>
> "So the two problems," Smith told *Nevada Journal*, "are, one, they didn't [provide] anywhere near [the records requested], but, two is, they received my email on June 4th, and *after* they received my request, they deleted emails."

In responses to the allegations of criminality at IVGID, NPRI communications director Michael Schaus released the following statement:

> It is imperative that local governments be transparent and are held accountable to the people they serve. In order to keep taxpayers in the dark, IVGID has chosen to blatantly and flagrantly defy state law. The State must immediately investigate IVGID's unlawful actions and take any means necessary to bring them into compliance with the state's public records law.

Be sure to visit NevadaJournal.com or click here to read the story, *IVGID's efforts to conceal public records gets bizarre*, in its entirety.

You can find this online at: http://www.npri.org/issues/publication/incline-village-government-commits-felony-level-crimes-to-conceal-public-records

CONTACT NPRI
E-mail
office@npri.org
7130 Placid St.
Las Vegas, NV 89119
702-222-0642
Fax: 702-227-0927
75 Caliente
Street Reno, NV 89509
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NPRI files public records complaint with AG's office

Monday, August 28, 2017

In response to last week's Nevada Journal report — which found that the Incline Village General Improvement District's records retention policy violates state law — the Nevada Policy Research Institute has chosen to file a formal complaint with the Attorney General's office.

NPRI president John Tsarpalas issued the following statement:

"Nevadans deserve maximum transparency from their government, which is something the state's public records law is supposed to provide. But this law means nothing if governments are free to defy it without consequence. The Attorney General must ensure all governments provide their citizens with the maximum transparency they deserve, and that the law demands."

Click here to read more about the Incline Village General Improvement District's efforts to conceal their records from the public.

For more information, please contact NPRI transparency director Robert Fellner at 702.222.0642 or rf@npri.org.

Make a difference. Donate!

You can find this online at: http://www.npri.org/issues/publication/npri-files-public-records-complaint-with-ags-office

CONTACT NPRI
E-mail office@npri.org
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IVGID officials caught in false testimony

State's top authority refutes district's compliance claims

BY STEVEN MILLER
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Functionaries of Incline Village's local government repeatedly insisted last week that their sudden scheme to destroy all emails to and from top executives after 30 days had the State of Nevada's stamp of approval.

The very next day, however, the state's top authority on the matter explicitly denied their assertions.

"As Administrator I have not approved the Incline Village General Improvement District's current records retention policy whereby all emails older than 30 days are deleted," responded Jeffrey Kintop, administrator for the Nevada State Library, Archives and Public Records.

Kintop had been copied on the original email that first revealed IVGID administrators had promulgated a new "retention policy," allowing them to destroy — or at the very least withhold — all public-record emails.

IVGID Clerk Susan Herron, executive assistant to General Manager Steven Pinkerton as well as his appointed public-records officer, had sent that original email to Tahoe resident Mark E. Smith, explaining why IVGID was denying him virtually all of the email records he'd requested.

Smith — active in the effort to reform North Shore trash administration and thus protect trash-diving Tahoe wildlife — had requested *all* emails between Pinkerton or his public works director and IVGID contractor Waste Management, as well as all complaints made by area residents to IVGID about the district's stumbling trash-collection service.

After 58 days, Herron responded with only a handful of the requested records, explaining the wholesale denial by referencing the alleged new 30-day policy.

Smith and others have speculated that the 58 days had largely been devoted — by Herron's boss Pinkerton and IVGID General Counsel Jason Guinasso — to looking for legal-sounding rationales for keeping Pinkerton's email communications with Waste Management secret from the public.

However, the email letter of State Public Records Administrator Kintop — sent in response to an inquiry from NPRI's transparency research director, Robert Fellner — implied that any such rationale fails, since under the Nevada Public Records Act, NRS 239.125, local governments' minimum periods of records retention must be formally approved by the Administrator.

The same statute also indicates that any such new record-retention policies "must be approved by the governing body" of the local government. However, Tuesday's discussion of IVGID

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But CCSD keeps key findings of internal probe hidden from public

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A former employee of the Nevada State Education Association is suing his former

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The Clark County School District spent over $13,000 this year to discuss the child sex-education advocacy program that made headlines when it was reported that the district was considering teaching masturbation to Kindergartners.

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trustees revealed that Pinkerton and Guinasso had never brought their sudden truncation of email life before that board for approval.

Nevertheless, IVGID Clerk Susan Herron, IVGID General Counsel Jason Guinasso and IVGID Chair Kendra Wong had all, at the August 22 meeting, assured the four remaining board trustees and the attending public that the district was in full compliance with state law.

The threesome, however, never addressed key provisions of the record-retention directives that the State of Nevada sets out for local governments. One such key directive -- cited by Records Administrator Kintop in his response to NPRI — is that, "E-mail is managed by its content, not its format."

In itself that statement would appear to demolish Herron's basic argument — which Guinasso repeatedly allowed her to make and which she repeatedly attributed to the Administrator's office — that *all* email, regardless of content, are "transitory records," and thus can legally be destroyed after 30 days.

To the contrary, wrote Public Records Administrator Kintop to NPRI, citing page 9 of the official administrative schedules online here, "E-mail messages are public records when they are created or received in the transaction of public business. They must be retained as evidence of official policies, actions, decisions, or transactions."

The retention time period for executive communications, such as Pinkerton's emails, say the directives, is *permanent*. For complaints from the public, the retention period is a minimum of three years.

While Clerk Herron and Chair Wong could conceivably have remained ignorant regarding the relevant contents of the record-retention manual Nevada provides local governments, full knowledge and candid reporting to the board of those regulations would seem to be a core, ethical responsibility of IVGID General Counsel Guinasso.

The above link goes to a key page of the 2016 Nevada Local Government Retention Schedule. The complete 455-page document is online here. The entire August 22 IVGID board meeting can be livestreamed from these two links: First part and Second part.

Nevada Journal's initial story on IVGID's effort to not comply with state public record law was published August 23. It can be accessed here.

———

Steven Miller is managing editor of Nevada Journal and senior vice president at the Nevada Policy Research Institute

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Nevada Law References On Retaining Emails

The minimum retention times for local government public records are governed by Nevada law under NRS 239.125 as excerpted below and referred to in the agenda item but not included in the packet.

"NRS 239.125: *Local governmental records: Program for management; regulations of State Library, Archives and Public Records Administrator.*"

The law says that local governments can adopt their own minimum retention times for public records, as long as they are the same length or longer than the state law minimums. This is addressed in NRS 239.125 (1):

" 1. A local governmental entity may establish a program for the management of records, including the adoption of schedules for the retention of records and procedures for microfilming, which must be approved by the governing body and comply with the applicable provisions of this chapter and any regulations adopted pursuant thereto."

In the absence of a local program that has retention schedules longer than Nevada minimum retention times and that has also been approved by the IVGID Board of Trustees, the state minimums apply to IVGID. There is no provision for any local government to adopt minimum retention times shorter than the state minimums.

The minimum retention times in Nevada are addressed in NRS 239.125 (2):

" 2. The State Library, Archives and Public Records Administrator shall adopt regulations to carry out a program to establish and approve minimum periods of retention for records of local governments. The proposed regulations or any amendment thereto must be submitted to the Committee on Local Government Finance, established pursuant to NRS 354.105, for its advice and recommendations."

The State Library, Archives and Public Records Administrator has established detailed minimum legal retention times for local government email correspondence that depends on the type of email. The category definitions are also thoroughly specified in the Nevada Local Government Retention Schedule (see excerpts below). The regulations do not allow for alternative definitions or for shorter retention times by local governments.

The most relevant correspondence categories are excerpted below from the Administrative Records section of the Nevada Local Government Retention Schedule. Specifically relevant text is underlined. (http://nsla.nv.gov/uploadedFiles/nslanvgov/content/Records/SRC/Administrative.pdf)

Type of Record	Description	Minimum Retention Time
Correspondence: Executive	Records not duplicated elsewhere that contain executive level correspondence (emails, social media, letters, memos, etc...) documenting the entities functions, pattern of action, policies and achievements. Correspondence may	Permanent

	pertain to, but is not limited to, budgeting and financial, decisions, official positions, planning, directing, policy and rulemaking, prominent; celebrated and/or noteworthy achievements, formal announcements, awards and/or events.	
Correspondence: Complaints	This record series documents complaints, and may include, but is not limited to, name, address, and phone number of person making complaint, description of complaint, name of person responding to complaint, resolution of complaint, correspondence and related records. This series includes electronic mail that communicates the above.	Three (3) calendar years after response or resolution
Correspondence: Routine Business	This series consists of correspondence (emails, social media, letters, memos, etc.) that is work related and deals with the day-to-day office administration and activities. Examples may include, but are not limited to, internal correspondence, external correspondence from various individuals, companies, and organizations requesting information pertaining to the agency business, and other routine inquiries.	One (1) calendar year from the date of the correspondence.
Correspondence: Transitory	This series consists of correspondence (emails, social media, letters, memos, etc.) that do not document core functions or activities of an agency or department and do not require an official action. Examples may include, but are not limited to, general announcements including meeting reminders, notices of upcoming events, informational copies (cc or bcc) of correspondence which do no document administrative action, follow-up or suspense (tickler), transmittal letters that do not add information to the transmitted material or attachments, spam, junk mail, unsolicited vendor mail, personal mail.	Retain only as long as the record holds value to the agency.

Some other relevant categories are excerpted below from the Administrative Records section of the Nevada Local Government Retention Schedule. Specifically relevant sections are underlined. (http://nsla.nv.gov/uploadedFiles/nslanvgov/content/Records/SRC/Administrative.pdf)

Type of Record	Description	Minimum Retention Time
Directives of Manager	Direction or instruction by manager or executive officer. This series may include, but is not limited to, executive orders, bulletins and advisories, directives, policy statements, notes on policy and procedures, related correspondence, and similar documents.	Permanent.
Contracts and Agreements	This record series documents products and services provided to a governmental entity for a specified cost and period of time. This series may contain, but is not limited to, lease/rental agreements, service contracts, contracts for program services, copies of bid documents, copies of legal notices, **related correspondence, and similar documents.**	**Six (6) fiscal years from the termination/completion of the contract or agreement**
Staff Meeting Records	This series documents the actions and activities taking place at internal staff meetings, team meetings, managers meetings, and other internal meetings. These types of meetings do not always produce minutes, but this series may include minutes, agendas, notes, reports, newsletters, correspondence, and related documents.	**One (1) calendar year from the date of the meeting.**
Electronic Mail (E-mail)		

ADAM PAUL LAXALT
Attorney General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 East Washington Avenue, Ste. 3900
Las Vegas, Nevada 89101

J. BRIN GIBSON
First Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

KETAN D. BHIRUD
General Counsel

May 8, 2018

COMPLAINT

Via U.S. Mail

Incline Village General Improvement District – Board of Trustees
Kendra Wong, Chair
895 Southwood Boulevard
Incline Village, NV 89451

Re: Incline Village General Improvement District – Open Meeting Law Complaint, OAG File No. 13897-282

Dear Chair Wong:

The Office of the Attorney General (OAG) has the authority to investigate and prosecute alleged violations of the Open Meeting Law (OML). NRS 241.039. The OAG is in receipt of a Complaint alleging OML violations by the Incline Village General Improvement District Board of Trustees (Board).

The OAG requests that the Board prepare a response and/or defense to the allegations contained in the attached Complaint. Please include any records or documentation that support the Board's response.

Due to the time limitations set forth in NRS 241, the OAG asks that you respond on or before May 23, 2018.

Should you have any questions, please contact Althea Zayas at (702) 486-3224 or via email at azayas@ag.nv.gov.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: /s/ Caroline Bateman
CAROLINE BATEMAN
Chief Deputy Attorney General

CB:arz
Enclosure

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson St.
Carson City, NV 89701
Phone: 775-684-1100
Fax: 775-684-1108

555 E. Washington Ave. #3900
Las Vegas, NV 89101
Phone: 702-486-3420
Fax: 702-486-3768

www.ag.nv.gov

For official use only:
Received by: MF
Date Received: 04/19/18
Complaint Type:
Referred to: ☐ BOF ☐ GI ☐ IFU ☐ OML ☐ MFU ☐ MFCU ☐ PIU ☐ WCFU
OFFICE OF THE ATTORNEY GENERAL
CARSON CITY, NEVADA
APR 23 2018

COMPLAINT FORM

The information you report on this form may be used to help us investigate violations of state laws. When completed, mail, or electronically submit your form and supporting documents to the office listed above. Upon receipt, your complaint will be reviewed by a member of our staff. The length of this process can vary depending on the circumstances and information you provide with your complaint. The Attorney General's Office may contact you if additional information is needed.

ONLY COMPLAINTS THAT ARE SIGNED WILL BE PROCESSED

INSTRUCTIONS: Please TYPE/PRINT your complaint in dark ink. You must write LEGIBLY. All fields MUST be completed.

SECTION 1.

COMPLAINANT INFORMATION

Salutation: ☒ Mr. ☐ Mrs. ☐ Ms. ☐ Miss

Your Name: KATZ (Last) AARON (First) L (MI)

Your Organization, if any:

Your Address: P.O. Box 3022 (Address) Incline Village (City) NV (State) 89450 (Zip)

Your Phone Number: (775) 833-1008 (Home) ____ (Cell) ____ (Work) ____ (Fax)

Email: s4s@ix.netcom.com Call me between 8am-5pm at: ☐ Home ☐ Cell ☐ Work

Age: ☐ Under 18 ☐ 18-29 ☐ 30-39 ☐ 40-49 ☐ 50-59 ☒ 60 or older

SECTION 2.

TYPE OF COMPLAINT

☐ General Investigations	☐ Mortgage Fraud
☐ High Tech Crime	☒ Open Meeting Law
☐ Insurance Fraud	☐ Public Integrity
☐ Medicaid Fraud	☐ Workers Comp. Fraud
	☐ Ticket Sales

SECTION 3.

BUSINESS OR INDIVIDUAL COMPLAINT IS AGAINST

Business/Provider Name:

Individual/Contact: Last First Job Title *(Example: CEO)*

Individual/Business Address: Address City State Zip

Individual/Business Phone: Work Mobile Fax

Individual/Business Email:

Individual/Business Web Site:

Please detail the nature of your complaint against the individual, business, or provider listed in Section 3. Include the who, what, where, when, and why of your complaint, full explanation of the transaction involved and a chronology of the events. (Please include any nicknames or aliases, identifying information such as Social Security number(s), license plate(s), year/make of vehicle(s), etc.). You may use additional sheets if necessary.

My complaint is:

ALLEGED OPEN MEETING LAW VIOLATION IS AGAINST

Name of Public Body: Incline Village General Improvement District

(i.e., specific board, commission, agency, or person(s) etc.)

Date of meeting where alleged violation occurred (mm/dd/yyyy): 3/13, 3/28, 4/11, 4/25, 2018

Please detail the specific violations against the board, commission, or agency or person listed in Section 3. Include the who, what, where, when, and why of your complaint. You may use additional sheets if necessary. Remember the Open Meeting Law applies only to public bodies (see NRS 241.015 for definition) and only to members of public bodies.

My complaint is:

See attached statement incorporated by reference

PUBLIC OFFICIAL'S INFORMATION (Whom Your Complaint Is Against)

Official's Name:_____
Title:_____
Official's Government Agency or Body:

_____

Official's Work Address: _____ _____ _____ _____
(Street / PO Box) (City) (State) (ZIP Code)

Official's Telephone:_____

SECTION 4.

PAYMENTS

Did you make any payments to this individual or business? ☐ Yes–***Continue to Next Question*** ☐ No–***Skip to Section 5***

How much did the company/individual ask you to pay?

_____

Date(s) of payments (mm/dd/yyyy):

_____

How much did you actually pay? $ _____ Payment Method: ☐ Cash ☐ Credit Card ☐ Debit Card ☐ Check
☐ Financed ☐ Wire Transfer ☐ Money Order ☐ Cashier's Check ☐ Other: _____

Was a contract signed? ☐ Yes ☐ No If yes, date you signed the contract (mm/dd/yyyy): _____

Identify your attempts to resolve the issue(s) with the company, corporation, or organization.

_____

OTHER AGENCIES

Have you contacted another agency for assistance? ☐ Yes ☒ No If so, which agency?

_____

Have you contacted an attorney? ☐ Yes ☒ No
If so, what is the attorney's name, address, and phone number?

_____ _____ _____
Last First Phone

_____ _____ _____ _____
Address City State Zip

Is court action pending? ☐ Yes ☐ No

Have you lost a lawsuit in this matter? ☐ Yes ☐ No

SECTION 5.

EVIDENCE

List and attach photocopies of any relevant documents, agreements, correspondence, or receipts that support your complaint (examples include billing statements, correspondence, receipts, payment information, witnesses, and any other document which explains or supports the matters raised in the complaint). **No originals.** Copy both sides of any canceled checks that pertain to this complaint.

SECTION 6.

WITNESSES

List any other known witnesses or victims. Please provide names, addresses, phone numbers, email addresses, and/or websites.

SECTION 7.

Sign and date this form. The Attorney General's Office cannot process any unsigned, incomplete, or illegible complaints. IF YOUR COMPLAINT IS SUBMITTED WITHOUT A SIGNATURE, IT WILL BE RETURNED TO YOU.

I understand that the Attorney General is **not my private attorney**, but rather represents the public by enforcing laws prohibiting fraudulent, deceptive or unfair business practices. I understand that the Attorney General does **not** represent private citizens seeking refunds or other legal remedies. I am filing this complaint to notify the Attorney General's Office of the activities of a particular business or individual. I understand that the information contained in this complaint may be used to establish violations of Nevada law in both private and public enforcement actions. In order to resolve your complaint, we may send a copy of this form to the person or firm about whom you are complaining. I authorize the Attorney General's Office to send my complaint and supporting documents to the individual or business identified in this complaint. I also understand that the Attorney General may need to refer my complaint to a more appropriate agency.

I certify under penalty of perjury that the information provided on this form is true and correct to the best of my knowledge.

Signature

AARON L. KATZ

Print Name

04/20/2018

Date (mm/dd/yyyy)

SECTION 8. (Optional)

ATTACHMENT TO NEVADA ATTORNEY GENERAL OPEN MEETING LAW COMPLAINT FORM

INTRODUCTION

The Incline Village General Improvement District ("IVGID") is a general improvement district ("GID") and governmental subdivision of the State of Nevada [NRS 318.075(1)]. On May 20, 1961 IVGID was created by Washoe County Bill No. 57, (initiating) Ordinance No. 97 [see NRS 318.055(1)(a)]. As such it is an "administrative...executive or legislative body...created by...a...statute of this State" [see NRS 241.015(4)(a)(2)] and a "public body" for purposes of NRS 241[1] [the Open Meeting Law ("the OML")].

After the Washoe County Board of Commissioners ("the County Board") adopted IVGID's initiating ordinance it appointed "five persons to serve as the first board of trustees of the district" [NRS 318.080(3)]. Thereafter, IVGID conducted, and currently conducts, biennial elections for the election of trustees who serve for terms of 4 years each. Elections for trustees are staggered so that in 2014, for instance, two trustees were elected. And in 2016, three trustees were elected [see NRS 318.095(3)].

IVGID's Board of trustees ("the Board") regularly conducts "meetings" subject to the OML in that three or more "gather...to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power" [see NRS 241.015(2)(a)(1)]. Those meetings are typically noticed in writing ("the notice") "at least 3 working days before th(os)e meeting(s and)...include: (a) the time, place and location(s) of the meeting(s); (b) a list of the locations where the notice has been posted; (and for purposes of this complaint,) (c) *an agenda*" [NRS 241.020(2)].

STATEMENT OF FACT

NRS 241.035(1) instructs that "each public body *shall* keep written minutes of each of its meetings...(and) unless good cause is shown, (it)...*shall* approve the minutes of a meeting *within 45 days after* the meeting or at the next meeting of the public body, whichever occurs later." On February 21, 2018 the Office of Attorney General ("OAG") issued its Findings of Fact and Conclusions of Law ("findings") in its File No. 13897-260[2]. Those findings, in part, addressed the Board's failure to approve the minutes of its regular August 22, 2017 meeting ["good cause did not exist to excuse approval of the minutes of August 22, 2017 (within the statutory time)...as required by NRS 241.035(1)"[3]]. The findings acknowledge that those minutes were not approved at the Board's "meetings of September 13...September 26[4]...October 25...November 15...and December 13, 2017[5]...

[1] See NRS 241.015(4)(a)(2) and (7).

[2] See http://ag.nv.gov/uploadedFiles/agnvgov/Content/About/Governmental_Affairs/OML_Portal/Opinions/Katz%20260%20Opinion.pdf.

[3] See page 8, lines 12-20 of the findings.

[4] See page 8 line 15 of the findings.

(as well as) January 10...and January 24, 2018."[6] Reference to the Board's agendas for February 7[7], February 21[8], March 13[9], March 28[10], April 11[11] and April 25[12], 2018 meetings will disclose that they were not approved at *any* of those meetings! In fact if complainant did not file this complaint, who knows when, *if ever*, the minutes of the Board's August 22, 2017 meeting would be approved? And expressly because of the filing of this complaint, the earliest those minutes can be approved will be May 9, 2018[13]. ***This would be a mind boggling eight and one-half (8½) months after the meeting, and an unbelievable seventy-seven (77) days after the OAG issued its findings***!

After complainant's filing of his complaint in File No. 13897-260[2] on December 18, 2017[14], and after IVGID had been formally notified of its filing, IVGID staff quickly agendized for approval proposed minutes of two outstanding Board meetings, both of which were the subject of OML violations in File No. 13897-260; the minutes of the Board's October 25, 2017 and November 15, 2017 meetings[15]. Yet proposed minutes for a third outstanding Board meeting which had resulted in an OML violation (the subject August 22, 2017 meeting), were not agendized for approval. Why?

Subsequently, the Board held six meetings; on February 7, February 21, March 13, March 28, April 11 and April 25 of 2018[13]. And at none of those meetings did IVGID staff agendize for approval the minutes of the Board's subject August 22, 2017 meeting. Why?

THE BOARD'S SPECIAL MEETING OF MARCH 13, 2018

At the Board's special meeting of March 13, 2018 its chairperson in tandem with staff vaguely and misleadingly labeled the OAG's Opinion in File No. 13897-260[16] as nothing more than:

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[5] See page 7, lines 17-19 of the findings.

[6] See page 8, lines 12-15 of the findings.

[7] See https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Agenda_Regular_2-7-18.pdf.

[8] See https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Agenda_Regular_2-21-18.pdf.

[9] See https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Agenda_Special_3-13-2018.pdf.

[10] See https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Agenda_Regular_3-28-18.pdf.

[11] See https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Agenda_Regular_4-11-18.pdf.

[12] See https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Agenda_Regular_4-25-18.pdf.

[13] See https://www.yourtahoeplace.com/ivgid/board-of-trustees/meetings-and-agendas.

[14] Page 1, line 11 of the OAG Opinion.

[15] See the agenda for the Board's regular January 24, 2018 meeting (https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Agenda_Regular_1-24-18.pdf).

[16] Given this subject matter was of "special or significant interest to the public," the Board was required to provide an even "higher degree of specificity" in its description of this agenda item, than that required for the typical agenda description. Yet here, the description intentionally provided the exact opposite.

"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. 13897-260, Open Meeting Law Complaint – Placed on this agenda in accordance with Nevada Revised Statutes 241.0395"[17]

When agenda item F(2) was called for discussion, chairperson Wong disingenuously attempted to "white wash" away the violation findings by asserting IVGID's professional staff and its attorney somehow didn't know how to properly count days in a calendar. But now that the Board had received input from the OAG insofar as how to count days, Ms. Wong disingenuously announced that future violations would not occur. She then pooh-poohed the importance of the OAG's findings by seizing upon the fact that there was "no remediation...no fine, there's nothing more that we have to do."[18] And although she acknowledged that the matter had been placed on the agenda "in accordance with NRS 241.0395," at no time did she share with the public that the reason it was on the agenda was because once OML violations are found, the matter is required to be placed on the Board's next meeting's agenda.

PROLOGUE

Given the IVGID Board has never approved the minutes of its regular August 22, 2017 meeting, and obviously neither Ms. Wong nor IVGID staff have learned to count, this complaint asks three questions:

1. How long do members of the public have to wait for the minutes of meetings to be approved by their public body's governing Board, before filing complaint with the OAG that those minutes have not been approved as NRS 241.035(1) instructs?

2. Why is it that members of the public are responsible for ensuring that their public body's governing board fulfill their responsibility of approving the minutes rather than individual board members themselves?

3. What consequence is there to IVGID Board members for committing OML violations such as this one (because up to now there has been nothing)?

CONCLUSION

Given a whole lot more than forty-five (45) days have elapsed since the OAG's Opinion published in File No. 13897-260, and nearly nine (9) months have elapsed since the Board's August 22, 2017 meeting, complainant asks *how much more time must elapse before the OAG compels the IVGID Board to approve the minutes of its August 22, 2017 meeting before it takes more punitive measures*? And why is it that a member of the public needs to be the one to compel compliance with the OML

[17] See the agenda for that meeting (https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Agenda_Special_3-13-2018.pdf).

[18] The Board livestreams its meetings, and the livestream of this portion of the Board's special meeting of March 13, 2018 (https://livestream.com/IVGID/events/8108022) can be viewed commencing at 1:08:20 of the livestream.

when the Board is assisted by what is supposed to be a professional staff and attorney well versed in public law?

Complainant has shared his views of IVGID on several past occasions; an enterprise run by non-elected and mostly nonresident staff who have callous disregard for the rights of its citizens. In the words of the late George Carlin, their "arrogance is stunning." Part of the reason is because IVGID staff does not consider IVGID to be "public." According to them, at best IVGID is only "quasi-public."[19] And for this reason, IVGID staff believe they can pretty much do anything they want without repercussion or consequence. Given this complaint does not represent the first instance of IVGID's OML violations, I and others believe something *more* is required to "get its attention" and to protect the public. And given its actions are intentional, it is complainant's view that the Board's inaction is tantamount to *contempt of the findings*!

For these reasons the time has come to subject the IVGID Board, its public officers (especially its chairperson who allows inappropriate conduct like this to repeatedly occur), its staff and attorneys (who are all accessories) to which the Board has abdicated all powers, to real consequence. Given *only* "the Attorney General shall investigate and prosecute any violation of...(NRS) chapter" 241 [NRS 241.039(1)]; the public is forced to rely upon the OAG to protect their interests; and, it is the OAG that "may sue in any court of competent jurisdiction...*for an injunction against any public body or person* to require compliance with or *prevent violations of the provisions of this chapter*" [NRS 241.037(1)]; amongst other remedies, complainant feels that the time has come to obtain an injunction which permanently enjoins future violations of NRS Chapter 241 by IVGID. This way should they continue, the perpetrator(s) will be in contempt of court and for the first time face very real consequence for their conduct.

Given each Board member was present at the Board's March 13, 2018 meeting and thus cannot claim ignorance to the underlying facts recited herein, Complainant also asks that the OAG invoke the criminal and civil penalties of NRS 241.040. This means bringing an action to recover civil penalties against the Board's trustees who have taken action in violation of chapter NRS 241 (the failure to approve minutes of the Board's August 22, 2017 meeting). Complainant asks that the assessment of civil penalties be levied against individual trustees *personally* for at least two reasons. First, if it doesn't cost these public stewards personally, then the purpose served will not be achieved. And second, if Board members allow IVGID's finances to be depleted by a like amount, it will mean that the real people who are paying these penalties are the citizens who have been prejudiced by Board member's OML violations.

[19] See https://www.yourtahoeplace.com/ivgid/about-ivgid.