MINUTES

SPECIAL MEETING OF MARCH 13, 2018
Incline Village General Improvement District

The special meeting of the Board of Trustees of the Incline Village General Improvement District was called to order by Chairwoman Kendra Wong on Tuesday, March 13, 2018 at 11:30 a.m. at the Chateau located at 955 Fairway Boulevard, Incline Village, Nevada.

Chairwoman Kendra Wong introduced Ms. Nevarez-Goodson.

**Time Certain - 11:30 a.m. - A presentation will be given to the Board of Trustees by State of Nevada, Ethics Commission, Executive Director Nevarez-Goodson. This presentation is informational/educational in nature.**

Ms. Nevarez-Goodson gave her presentation which is incorporated herewith by reference and will be posted on the website following this training.

At 12:20 p.m. Chairwoman Wong called for a break, at 12:28 p.m. Chairwoman Wong reconvened the meeting.

A. **PLEDGE OF ALLEGIANCE** *

The pledge of allegiance was recited.

B. **ROLL CALL OF THE IVGID BOARD OF TRUSTEES** *

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

Also present were District Staff Members Communications Coordinator Misty Moga, Director of Public Works Joe Pomroy, Director of Finance Gerry Eick, Director of Human Resources Dee Carey, Diamond Peak Ski Resort Manager Director of Golf Michael McCloskey, Director of Information Technology Jeremy Breeden, and Director of Asset Management Brad Johnson.

Members of the public present were Aaron Katz, Judith Miller, Gene Brockman, Shirley Altick, Joe Wolfe, and others.

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

Judith Miller said she saw on the future timetable that there was going to be a discussion about a new retention schedule for public records and she wanted to know what was happening and is the District still destroying e-mails or has there been some type of suspension of the alleged policy. On the budget, several years ago, we had a consultant who worked on the strategic plan and who looked at the services that are offered, what we wanted, used, etc. and she has never seen any of that considered. It is budget time and the time for consideration is now. If the Board doesn’t know all the costs and if the Board doesn’t know what it costs and you have Human Resources, Information Technology, Payroll, etc. and that most governments, every few years, look at and see what it costs. Some items have been contracted out so isn’t it time to look at some of our biggest costs and check outsourcing. When we had elections a few years back, candidates expressed interest in a zero based budget which hasn’t happened so there are no details of costs. We get these global figures they don’t include capital or debt service and a lot of them have seemed to have been rolled back in Facility Fees as actual revenue for a venue when we all know it is not the revenue of the venues, it is a mandatory fee imposed involuntarily on our taxpayers so you are the Board, you have the power of oversight, with the numbers that you are given there is no oversight.

Aaron Katz said he had several written statements that he is submitting to be attached to the meeting minutes. Thanked Ms. Goodson for giving the presentation to the Board and said that you don’t get the real story as he was hoping that the Board would have allow the public to ask questions and since they didn’t he is submitting two questions to Ms. Goodson about ethics and they are dealing with things in the past. He was hoping that Ms. Goodson could comment and he has given her a copy of his statement and asks that the Board allow her to answer. The Open Meeting Law violation is a very serious matter and he has heard, around town that the Board intends to throw it off as a technicality, whitewashed, and nothing of significance. You have faulty Staff and faulty Counsel. Specifically, Trustee Horan asked some similar question and he got faulty advice from Staff so don’t believe your Staff or your attorney. If you have a question, ask Ms. Goodson. He also has a written statement about the scorecard which he found horrendous. For you to consider the Open Meeting Law as a scorecard and have your Chair laughing and the attorney nodding his head. The score is not even and he has it all documented and what he believes what the truth is.

Greg Fish said he has a couple of comments about golf; TIGC has 106 active members and last year they had 134 so they are right on track for this year. They held twenty different tournaments, 175 open plays, and last year they spent $33,950 at the Chateau for services and $1,800 in the golf pro shop. They are really happy with the services they receive. They have 2,450 rounds scheduled
which represent a good chunk of golf in Incline and at $70 per round that equates to over $171,000 in golf fees which doesn't include pro shop equipment, etc. He wants to mention, for planning considerations, that the course was really in need of some maintenance and that you have half the number of employees needed and he hopes that you will increase that number in order to make the course the high quality course. At the Chateau, they would love to see the Grille extend their hours with longer hours on the weekends and love to see it open in the winter. TIGC is offering to pay for a big screen television if the District will also buy one for the Grille. He is also hoping that Staff will be given four or five thousand dollars to improve the restaurant. They are willing to contribute, really happy, but they would like it to be that much better.

Joe Wolfe said he is here for two reasons – one, as a private citizen and two, as a past President and non-voting member of IVGC. The previous speaker took the words right out of his mouth. How important is golf to this community – we utilize this facility when the season is on and with the beating the course took last year, Staff needs extra dollars and they did do an excellent job of bringing it back so he asks for support for that. Regarding General Business Item F.1., he congratulates the Board on their win against Mr. Katz and for keeping up on that fight. He is hopefully that the Supreme Court will find in the District's favor on the fees. Mr. Wolfe concluded by thanking all for their service to the community.

D. APPROVAL OF AGENDA (for possible action)

Chairwoman Wong asked for changes to the agenda, none were made, so Chairwoman Wong said that the agenda is approved as submitted.

E. APPROVAL OF MINUTES (for possible action)

E.1. Regular Meeting of February 7, 2018

Chairwoman Wong asked for any changes, none were received. Chairwoman Wong said that the minutes were approved as submitted.

F. GENERAL BUSINESS (for possible action)

F.1. Order of Affirmance from the Supreme Court of the State of Nevada, Aaron L. Katz, Appellant vs. Incline Village General Improvement District, Respondent, No. 70440 dated February 26, 2018 (Chairwoman Kendra Wong)
Chairwoman Wong referred back to e-mail that the Board received and said that we are at a place on waiting for the appeal period to pass. Chairwoman Wong said that this item required no vote and asked if there were any comments; no comments were made by any Board member.

F.2. Open Meeting Law Results – Acknowledgement of the Findings of Fact and Conclusions of Law as the result of the State of Nevada Office of the Attorney General investigation in the matter of Attorney General File No. 13897-260, Open Meeting Law Complaint – Placed on this agenda in accordance with Nevada Revised Statutes 241.0395 (Chairwoman Kendra Wong)

Chairwoman Wong said that the Board received a copy of the findings and that there is a requirement for this to be on the agenda and that has been done. There is no remediation, no fines, and this is related to how we were calculating days. We now have more guidance going forward.

Trustee Horan said his view of the Open Meeting Law is that it is very, very important and that he takes all the Open Meeting Law items seriously and that this is about correct and move on.

Chairwoman Wong said that this item required no vote and asked if there were any further comments; no further comments were made by any Board member.

F.3. Adoption of District Boundary Map as presented by the Washoe County Registrar of Voters – Map dated January 24, 2018 (Requesting Staff Member: General Manager Steve Pinkerton)

District General Manager Pinkerton gave an overview of the submitted memorandum. Trustee Horan asked if there were any changes in the boundaries; District General Manager Pinkerton said no.

Trustee Morris made a motion to adopt the District Boundary Map as presented by the Washoe County Registrar of Voters (map dated January 24, 2018) and execute the requested declaration. Trustee Callicrate seconded the motion. Chairwoman Wong asked for comments, receiving none, called the question – the motion was passed unanimously.
F.4. Review, discuss, and possibly provide input to the Overview of 2018/2019 Operating Budget Presentation (Requesting Staff Member: District General Manager Steve Pinkerton)

Order of Presentation:
- Beaches
- Recreation Programming
- Community Services Administration
- Tennis
- Parks
- Diamond Peak Ski Resort
- Golf Courses at Incline Village (Championship and Mountain)
- Facilities
- General Fund
- Internal Services
- Utilities

General Manager Pinkerton gave an overview of the included 2018/2019 Operating Budget.

Trustee Morris said that the Board keeps hearing the continuing conversation about rising employee costs and holding fees steady and while he knows that we will have to do something about that, how easy would it be to create a statistic on income per employee versus cost per employee so all can see how effectively we are using our employees. District General Manager Pinkerton said yes, we can provide that measurement. Chairwoman Wong asked if this would be based on full time equivalents. Trustee Morris said yes and that it should be retrospective of the year and asking for it just as another number to show how efficient we are.

Director of Parks and Recreation Indra Winquest gave the following overviews.

Beaches

Trustee Horan said that every year, we get more and more information to make our decision. What he is going to say applies to every presentation and that he was just thinking about some of the comments that the Board heard here. The Facility Fee counts as revenues and the Board knows it is a source and for presentations, he would suggest putting that source at the bottom of the presentation as a thought. On service levels, we talked about
this last year, he understands that each venue does measurement and that we do the NPS which is a valid data point but he thinks that at all of our venues, we need to identify, with service level measurement being soft, that if we decrease staff what does that mean but if Staff could identify something that if they change, they can identify what is the impact and that this could be a gigantic step forward and that he is only mentioning this as an item for fine tuning. On the ready to serve numbers, he knows we did this last year and that it is really about the same, so he would ask that Staff reference if they are changing. As an example, which he knows is being done at Ski that is scheduling for crowds; this is something that other venues need to do. Director of Parks and Recreation Winquest said he agrees and that if the Board wants to give him the specific financial perimeter, it would be very easy for him to tell they what would occur as Staff does have other matrixes that they use and that under the District General Manager's leadership, we have focused on service level matrixes.

Recreation Programming

Trustee Callicrate said he was just punching in the numbers, from agenda packet page 77, 225,000 visits for the Recreation Center and if you divided that out over 364 days, you get 618 people per day which equates to 44 people per hour in a 14-hour day, which is a lot and that excludes the aquatics. He would like to share that with the people in the community because people say they see people standing around. He brings it up because it is something and is the largest number and when it is broken down, and some say it looks like people are standing around, there is an opportunity for you to delicately share the actual numbers of our staffing at the Recreation Center. He agrees with Trustee Horan on how this is put out and the cross reference and the potential for down the road. Director of Parks and Recreation Winquest said that the only people that say we are not busy are those that don't use it and the visit number incorporates people who come in and watch their kids play basketball or Lake Tahoe School volleyball practice. Staff has counters on the front door and every single one of these contacts requires interaction so our Staff is working all the time however he appreciates these comments and he will work to educate those in the community who don't understand it.

Chairwoman Wong called for a break at 1:35 p.m.; the Board reconvened at 1:43 p.m.

Community Services Administration
Trustee Morris asked regarding the ready to serve graph on agenda packet page 89, considering there is no external revenue coming in, why doesn’t revenue and expense not equal each other. Director of Finance Gerry Eick said one key fundamental to the presentations is that Staff has presented the Facility Fee as a flat amount and we have not reallocated the Facility Fee which may make a change in how Community Services Administration captures the excess if something comes along i.e. contractual services, picks it up for Community Services as a whole in order to meet the discretionary items if they come along. Director of Parks and Recreation Winquest added that when adjustments are made, they should reflect that previously mentioned amount.

Tennis

No questions were asked by the Board after this presentation.

Parks

No questions were asked by the Board after this presentation.

Diamond Peak Ski Resort General Manager Mike Bandelin gave an overview for the Diamond Peak Ski Resort.

Trustee Callicrate asked if Staff had a per day cost to get the place up and running? Diamond Peak Ski Resort General Manager Bandelin asked for clarification – summer or winter. Trustee Callicrate clarified that he meant during ski season. Diamond Peak Ski Resort General Manager Bandelin said he didn’t have that off the top of his head. Director of Finance Eick – said $5,058,322 is the cost we incur which equates to approximately $40,000 per day. District General Manager Pinkerton added that it also depends on the amount of people on the mountain.

Trustee Morris, referencing agenda packet page 106, on staffing, asking what is making up the increases and where is the focus. Diamond Peak Ski Resort General Manager Bandelin said it is a mix of adjustments with most being at Snowflake Lodge. We want to accomplish a different level of service to try and achieve more revenue with the remainder being slight adjustments in banquets. District General Manager Pinkerton said, as a reminder, that in the winter any food sales go into the Diamond Peak budget.
Director of Golf Michael McCloskey gave the overview on the **Golf Courses at Incline Village**.

Trustee Morris said we heard from a couple of the golfers that there is a bit of a concern about maintenance so within your numbers will we get that sort of quality of golf course that our golfers will expect. Director of Golf McCloskey said it is a twofold answer — part of the new personnel restructuring that the Board approved is to allow the individuals to live where they need to live. We do over 22,000 rounds of golf and last year was a challenge as the conditions weren't up to our expectations. We put out 10,000 rounds before we got over our growing season and with the hopes of rain, this season, we hope to have a longer spring, and yes, he is confident with the numbers on the products provided.

Trustee Morris said and what about the possibility to gain more revenue by having more open hours in the Grille. Director of Golf McCloskey said we are open to that conversation however it might change our recreation exemption and it is a conversation that we have had. District General Manager Pinkerton said when the golf course closes, business drops 90%. Staff is talking about doing other programming and hopefully if we open it they will come. Also, it was the spring last year but rather the rain we had in December. Director of Golf McCloskey said it was the perfect storm of weather events last year because the rain came and then it froze the turf so we had a layer of ice on the course which isn’t good thus we had ice damage; fortunately, we are not seeing any of that this year.

Trustee Horan asked about the head professional the Mountain Golf Course; Director of Golf McCloskey said Staff is working on that hiring right now.

**Sales and Event Manager Cathy Becker** gave an overview on **Facilities**.

Trustee Horan, referencing agenda packet page 134, in the second grouping is there a typographical error as Services and Supplies are going up. Sales and Event Manager Cathy Becker said we are replacing microphones, sunshades, etc. Trustee Horan said those sound more of a capital thing rather than operating charges. Chairwoman Wong asked why that wasn't in our capital budget. Director of Finance Eick said it is about useful life but that Staff will look at it again.

Director of Human Resources Dee Carey began the overview on the **General Fund**, introduced Director of Information Technology Jeremy
Breeden and then the overview was wrapped up by Director of Finance Gerry Eick.

Human Resources – No questions were asked by the Board after this presentation.

Information Technology was an introduction only.

General Fund - No questions were asked by the Board after this presentation.

Chairwoman Wong called for a break at 3:06 p.m.; the Board reconvened at 3:13 p.m.

Director of Asset Management Brad Johnson gave the overview of Internal Services and was assisted by Director of Finance who gave the overview of Workers Compensation.

Trustee Dent asked for an explanation as to why $499,000 has been spent versus $429,000 that was budget. Director of Finance Eick said $495,000 is for Workers Compensation and the balance is for the increase in payroll at Ski.

Director of Public Works Joe Pomroy gave the overview on Utilities.

Trustee Callicrate said he has been asked by some folks about the amount of replacement, in miles, that has been done on our watermains and our sewer mains. Director of Public Works Pomroy said we have done thirty six miles in watermains and we rehabilitate, in place, for sewers because we televise and inspect about every ten years as well as perform cleaning and maintenance thus we have no pending sewer replacement. Trustee Callicrate followed up and said so that is a third or greater. Director of Public Works Pomroy responded we do one hundred percent inspection of sewer with less than a mile for sewer. We have steel watermains and then we have concrete ones; we are down to the last five miles. Director of Asset Management Johnson said we have one hundred miles with thirty six miles replaced and we do a comprehensive assessment as some of our pipes have one hundred year life and what remains is less than six miles which we discuss during our annual watermain contract.
District General Manager Pinkerton wrapped up the presentation and thanked the Staff for preparing and organizing all the information. Staff will now move onto finalizing the capital budget with the capital tour being held on March 26 and the presentation on March 28 followed by the draft budget coming to the Board for approval on April 11.

Trustee Morris said that he understands the many, many hours of budget preparation, thank you for all the work, appreciate coming up with more matrixes, and he really thanks all of you for the effort you put in.

Trustee Horan said he agrees with all of what Trustee Morris said and that the problem with doing a great job is that the more you give the more we are going to ask for. This Staff is one of the best reasons for being a Trustee.

Chairwoman Wong said thank you and that she appreciates this information as she always learns from it.

G. **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.

There were no members of the public present so no public comments were made.

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

The meeting was adjourned at 3:45 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 Aaron Katz (2 pages): Written statement to be included in the written minutes of this March 13, 2018 regular IVGID Board Meeting – Agenda Item C – Public Comment – Presentation by State Ethics Commission’s Executive Director Nevarez-Goodson
Submitted by Aaron Katz (4 pages): Written statement to be included in the written minutes of this March 13, 2018 regular IVGID Board Meeting – Agenda Item F(2) – The office of the Attorney General’s ("OAG's") finding of fifteen (15) IVGID Open Meeting Law ("OML") violations

Submitted by Aaron Katz (35 pages): Written statement to be included in the written minutes of this March 13, 2018 regular IVGID Board Meeting – Agenda Item C – Public Comment – Attorney Guinasso's intentionally false testimony to the IVGID Board insofar as past Open Meeting Law ("OML") complaints filed by citizen Aaron Katz, and their alleged outcomes

Submitted by Aaron Katz (13 pages): Written statement to be included in the written minutes of this March 13, 2018 regular IVGID Board Meeting – Agenda Item C – Public Comment – Another parcel with multiple dwelling units whose owner(s) currently pay and for some number of years have been paying, a single Beach ("BFF") and/or Recreation ("RFF") Facility Fee(s). When is Staff going to do its job of assessing parcels with multiple dwelling units multiple BFFs and/or RFFs?
WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS
MARCH 13, 2018 REGULAR IVGID BOARD MEETING – AGENDA ITEM C –
PUBLIC COMMENT – PRESENTATION BY STATE ETHICS COMMISSION’S
EXECUTIVE DIRECTOR NEVAREZ-GOODSON

Introduction: Here the IVGID Board has scheduled a presentation by the State's Ethics Commission. This written statement has been prepared in the hope Ms. Goodson will answer the two ethics questions which appear below.

Ethics Question No. 1: The Parasol Foundation ("Parasol") is a local non-profit which operates a community non-profit center (a 31,500 square foot building) on land owned by IVGID which is subject to a multi-year ground lease which pays IVGID a paltry $1/year. In the immediate past Parasol has housed local non-profits in that building offering them below market rent, as a form of "in kind" philanthropy, in exchange for use of portions of the building. The IVGID Board's chairperson has been a member of one of those non-profits receiving use of the building from Parasol for some number of years. Until very recently, the IVGID Board's chairperson was a Board member of that non-profit.

Parasol approached the IVGID Board's chairperson with a request that its current lease with IVGID be terminated, a new one be entered into with a similar $1/year rent, and that IVGID pay Parasol $5.5M to purchase Parasol's leasehold improvements (i.e., the building). The request proposed that the IVGID Board's chairperson's non-profit would benefit from such a form of agreement in that it would receive future cash donations in lieu of below market rent. This request was advanced by the IVGID Board's chairperson at a number of meetings where she actively argued in favor of Parasol's request.

However at none of those meetings did the IVGID Board's chairperson announce in public her relationship with her non-profit, and how it stood to benefit from Parasol's request. Thus the question: did the IVGID Board's chairperson commit an ethical violation in failing to announce her affiliation with her non-profit which stood to benefit from Parasol's request? And given her commitment to the interests of her non-profit, in a private capacity, was she prohibited from actively participating in discussions concerning Parasol's request?

Ethics Question No. 2: The Diamond Peak Ski and Education Foundation ("DPSEF") is a local profit which operates and administers a youth ski team at Diamond Peak (Diamond Peak is owned and operated by IVGID). The DPSEF receives massive financial and "in kind" support from IVGID. IVGID in turn involuntarily taxes local property owners for the increased costs and loss of revenue associated with its financial support of the DPSEF.

The venue manager for DPSEF has a long time girl friend who is employed by DPSEF as a coach. She is paid by DPSEF, and she receives many other benefits from IVGID (a free ski pass, 50% discounts on food and beverage purchases, etc.) in her capacity as a DPSEF ski coach.
At a recent Board meeting Diamond Peak's venue manager made a public presentation urging support for a new multi-year contract between IVGID and DPSEF that he had negotiated, and would cost the public close to $1M in lost revenues/in kind consideration. At no time during his presentation did he disclose to the IVGID Board or the public his relationship with a DPSEF ski coach. Thus the question: did the Diamond Peak venue manager commit an ethical violation in failing to announce his relationship with a DPSEF coach who stood to benefit from the proposed contract? And given his commitment to the interests of his girl friend's non-profit, was he prohibited from actively participating in the presentation of this proposal and arguing in its support?

**Conclusion:** Hopefully the Executive Director will comment on these two questions.

Respectfully, Aaron Katz (Your Community Watchdog Because No One Else Seems to be Watching).
WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS MARCH 13, 2018 REGULAR IVGID BOARD MEETING – AGENDA ITEM F(2) – THE OFFICE OF THE ATTORNEY GENERAL’S (“OAG’s”) FINDING OF FIFTEEN (15) IVGID OPEN MEETING LAW (“OML”) VIOLATIONS

Introduction: On February 21, 2018 the OAG made a finding that IVGID had committed fifteen (15) OML violations. As a condition of that finding, the OAG ordered IVGID as follows:

"The Board and (the audit) Committee must place on their next meeting agendas these Findings of Fact and Conclusions of Law and include them in the supporting of material for the meetings. The agenda items must acknowledge these Findings Fact and Conclusions of Law to be the result of the OAG investigation in the matter of Attorney General File No. 13897-260, and that it has been placed there as a requirement of NRS 241.0395."¹

For this reason item F(2) appears on this meeting's agenda. However for this to occur, it means that Chairperson Wong and attorney Guinasso must admit that that allegedly perfect OML scorecard² is tarnished. And it means IVGID staff and Mr. Guinasso must come up with explanations aka damage control. So I and others I know expect they will "pooh-pooh" these violations and present them in the most misleadingly as possible manner³. And that's the purpose of this written statement.

Chairperson Wong With Attorney Guinasso's Assistance Have Misleadingly Labeled This Agenda Item Because They Don't Want the Public to Know They Have Condoned Fifteen OML Violations: According to NRS 241.0395(1), when "the Attorney General makes findings of fact and conclusions of law that a public body has taken action in violation of any provision of this chapter, the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges the" violation. Because here the OAG has found OML violations, IVGID has been instructed it must include this agenda item for this meeting. So have our Chairperson and staff told the public that this is the reason why this matter is on this meeting's agenda? Or are they attempting to white wash the truth by misleadingly labeling the agenda item as merely an "acknowledgment of... findings?" Have they told the public that this item has been placed on the agenda as a "result of the

1 See page 26, lines 8-13 in that packet of materials prepared by staff in anticipation of the IVGID Board’s special meeting of March 13, 2018 ["the 3/13/2018 Board packet" (https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Special_3-13-2018.pdf)].
2 Announced at the IVGID Board’s regular January 24, 2018 meeting [see 3:02:24-3:02:35 of the livestream of that meeting [https://livestream.com/IVGID/events/8027776/videos/169235515 ("the 1/24/2018 livestream")].
3 Attorney Guinasso revels in what he describes as his ability to make clear facts "ambiguous." And that's exactly what I expect will happen here. Because by all accounts, attorney Guinasso and IVGID staff should be embarassed to the nth degree by what has happened.
OAG investigation in th(is) matter...as a requirement of NRS 241.0395," or are they attempting to white wash the truth by misleadingly labeling the agenda item as it having been placed merely "in accordance with Nevada Revised Statutes 241.0395?"

In Chairperson Wong's and Attorney Guinasso's Efforts to Hide the Truth, Their Misleading Labeling of this Agenda Item Represents Another OML Violation: That's right. NRS 241.020(2)(d) instructs that notices of Board meetings must be preceded by "an agenda consisting of...a clear and complete statement of the topics scheduled to be considered during the meeting." Does the subject agenda item "clearly and completely" inform the public that this matter has been placed as a requirement of the OAG's Findings of Fact and Conclusions of Law expressly because he has found OML violations? If not, we have another OML violation.

Now why wouldn't Chairperson Wong and Attorney Guinasso want the public to clearly understand that the reason this matter has been placed on the agenda as a requirement of the OAG's Findings of Fact and Conclusions of Law expressly because he has found OML violations? Because they intentionally want to hide the truth!

In other words, they're both dirty to the core. They've both bought into the "IVGID culture" where they care more about themselves personally, their colleagues, IVGID staff members and favored collaborators than the public they were elected and appointed to serve.

Attorney Guinasso's Disingenuous Defense to the Subject OML Violations Demonstrates he is UNFIT to Serve as IVGID's Attorney: Understand that the OAG has found that the IVGID Board and its Audit Committee violated NRS 241.035(2) because it failed to approve the minutes of fifteen (15) meetings4 "within 45 days after th(ose) meetings."5 He has found that this statute is "clear on its face."6 So what were attorney Guinasso's legal defenses?

Attack the Messenger: Listen to footnote 1 commencing at page 48, lines 27-28 of the 3/13/2018 Board packet: "In its Responses to the Complaint, the Board and Committee included recitations of (my)...criminal history; references to prior filings deemed frivolous or alleged to be frivolous; references to prior, unrelated, dismissed OML complaints; and references to unrelated litigation. The OAG did not consider these items during its investigation as they are not relevant to the examination of the Complaint in this matter."

Erroneous Interpretation of the Clear Language of NRS 241.035(2): "The Board and Committee make two (2) arguments concerning (the) time in which minutes must be approved. On, the statutory time...does not expire until the next meeting of the public body occurring after the

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4 See page 55, lines 19-20 of the 3/13/2018 Board packet.
5 See page 52, line 26 of the 3/13/2018 Board packet.
expiration of forty-five (45) days from the date of the meeting\textsuperscript{7}. Two, the forty-five days set out in the statute are working (rather than calendar) days\textsuperscript{8}.

According to the OAG's Findings, both "arguments are erroneous." Translation: attorney Guinasso's legal analysis was erroneous!

**The Board Had Good Cause in Not Approving the Minutes From its August 22, 2017 Meeting Within the Statutory Time\textsuperscript{9}:** Because "the Board did not offer any claim of good cause excusing its failure to approve the minutes of (its) August 22, 2017 (meeting) at its meetings of September 13, 2017 and September 26, 2017" meetings, nor did "good cause...exist to excuse (their) approval...at the (Board's) meetings of January 10, 2018 and January 24, 2018, the OAG found a violation of NRS 241.035(1)\textsuperscript{10}.

**The Board Had Good Cause in Not Approving the Minutes From its Other Thirteen (13) Meetings the Subject of This Complaint Within the Statutory Time:** Yet it did not claim good cause when it ultimately approved the minutes of those meeting\textsuperscript{11}.

**The Audit Committee Had Good Cause in Not Approving the Minutes From its May 10, 2017 Meeting Within the Statutory Time\textsuperscript{12}:** Yet it did not claim good cause when it ultimately approved the minutes of that meeting on November 15, 2017 given the "statute required the Committee to approve (those)...meeting minutes at its meeting of September 13, 2017\textsuperscript{13}.

**Why You Should Not Be Misled by the OAG's Reference to the Time for Producing Minutes and Making Them Available to the Public** which appears at page 55, lines 21-25 of the 3/13/2018 Board packet. Attorney Guinasso has seized upon this language to ambiguously argue that somehow IVGID has been vindicated insofar as part of the subject OML complaint is concerned. Nothing could be further from the truth.

NRS 241.035(2) instructs that the "minutes or an audio recording...of public meetings...must be made available for inspection by the public within 30 working days after adjournment of (a) meeting." I believe it was for this reason that Susan Herron negligently informed the Board on December 13,

\textsuperscript{7} See page 53, lines 6-9 of the 3/13/2018 Board packet.
\textsuperscript{8} See page 53, lines 9-10 of the 3/13/2018 Board packet.
\textsuperscript{9} See page 54, lines 12-13 of the 3/13/2018 Board packet.
\textsuperscript{10} See page 55, lines 12-15 of the 3/13/2018 Board packet.
\textsuperscript{11} See page 55, lines 16-17 of the 3/13/2018 Board packet.
\textsuperscript{12} See page 55, lines 16-17 of the 3/13/2018 Board packet.
\textsuperscript{13} See page 51, lines 19-20 of the 3/13/2018 Board packet.
2017 that "there's always a 'draft' the following day...that...is available...I've sent (it) out when we've had requests on items from the A.G. (Attorney General). Typically what I do is I take my time and I do update them."

Trustee Horan: But "does that mean that we are in compliance?"

Susan Herron: "You are in compliance because there's always a draft."14

Thus according to Ms. Herron, all the Board had to do to be in compliance with NRS 241.035(2) was to have staff prepare a mere draft of the minutes within 45 days of a meeting.

But my complaint was NOT for a violation of NRS 241.035(2). Rather, it was for fifteen (15) violations of NRS 241.035(1)! Again, attorney Guinasso's mastery of ambiguity3!

**Conclusion:** So what have we learned? Susan Herron lacks competence. Attorney Guinasso lacks competence. Chairperson Wong’s and attorney Guinasso’s actions are detrimental to our community because rather than accepting responsibility for clear violations of the OML, and proposing measures to ensure they are not repeated, they mislead the public and attack members of our community who are required to be watch dogs because we cannot depend upon the Board and attorney Guinasso to be the watch dogs on the public's behalf.

**And You Wonder Why Our Recreation ("RFF") and Beach ("BFF") Facility Fees Which Finance This Colossal Waste are as High as They Are?** I’ve now provided more answers.

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

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WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS MARCH 13, 2018 REGULAR IVGID BOARD MEETING – AGENDA ITEM C – PUBLIC COMMENT – ATTORNEY GUINASSO’S INTENTIONALLY FALSE TESTIMONY TO THE IVGID BOARD INSOFA R AS PAST OPEN MEETING LAW (“OML”) COMPLAINTS FILED BY CITIZEN AARON KATZ, AND THEIR ALLEGED OUTCOMES

Introduction: At the Board’s regular meeting of January 24, 2018 attorney Jason Guinasso gave a synopsis of OML complaints filed by Frank Wright, Aaron Katz and Judith Miller. Let me quote Mr. Guinasso:

"I want this Board and the public to understand a few important facts with regard to Open Meeting Law ("OML") complaints...Since I was retained in 2015...there have been seventeen (17) OML complaints filed. Eleven (11) of those seventeen (17)...were filed by Mr. Frank Wright. Five (5) of those seventeen (17)...were filed by Mr. Katz or his wife...Of those complaints during my tenure no violations of the OML were found but for one instance. There was an agenda item in question which was found not to be clear and complete. However, the Board cured that issue by taking subsequent corrective action.

Now prior to your retaining our office in 2015 my predecessor responded to twelve (12) OML complaints, four (4) of which were filed by Frank Wright and seven (7) of which were filed by Mr. Katz or his wife...In response to three (3) of those complaints the Board had to take corrective action to cure potential violations...With respect to one other complaint the Office of the Attorney General provided some guidance, but did not find a violation. All the other complaints resulted in a finding of no violation...So in summary, overall, there have been twenty-nine (29) OML complaints filed against IVGID since 2011 in total. Of those complaints, all but two (2) were filed by Mr. Wright...Mr. Katz or his wife."

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1 Mr. Guinasso does not identify who filed the seventeenth (17th) OML complaint. And don’t you just love how he lumps everything I do with what my wife does? The disrespect Mr. Guinasso, staff and a couple of notables in our community have for my wife demonstrates their collective arrogance and disrespect. Isn’t my wife entitled to have a voice of her own? Then why not afford her the respect of voicing her own OML complaints rather than lumping them together with mine?

2 Mr. Guinasso does not identify who filed the twelfth (12th) OML complaint.

3 NRS 241.0365(1) states that "if a public body...takes action in conformity with this chapter to correct an alleged violation of this chapter within 30 days after the alleged violation, the Attorney General may decide not to commence prosecution of the alleged violation if the Attorney General determines foregoing prosecution would be in the best interests of the public."
The facts reveal that Mr. Guinasso neither knows how to count, nor how to tell the truth. And that’s the purpose of this written statement.

The Truth: I won’t speak for Mr. Wright nor my wife, Judith Miller. But I will state I have not filed the twelve (12) OML complaints against IVGID Mr. Guinasso has accused me of filing. To the best of my knowledge I have filed eight (8), and their Office of Attorney General ("OAG") Numbers are: 11-025, 13-008, 13-017, 13-031, 13-032, 13897-171, 13897-180 and 13897-260. In those eight (8) complaints there were twenty-nine (29) separate allegations of acts not in compliance with

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4 See 2:59:12-3:01:31 of the livestream of the IVGID Board’s meeting of January 24, 2018 ["the 1/24/2018 livestream" (https://livestream.com/IVGID/events/8027776/videos/169235515)].

5 If anyone doesn’t believe me, he/she is free to look up the complaints on his/her own [I have provided the OAG numbers, and the opinions themselves are posted on the AG’s OML Opinion web site (go to: http://ag.nv.gov/About/Governmental_Affairs/OML_Opinions/)]. And if I have missed any, which I don’t believe I have, I am sure Mr. Guinasso will be quick to point out

6 For some reason this opinion is not posted on the OAG’s web site. For this reason I have marked a copy as Exhibit "A" and attached it to this written statement. And BTW, this opinion found that not only did IVGID commit an OML violation, but that the violation constituted an unlawful act! Given this fact, how can Mr. Guinasso report, in good conscience, that "the Office of the Attorney General...did not find a(ny OML) violation?"

7 Go to: http://ag.nv.gov/uploadedFiles/agnvgov/Content/About/Governmental_Affairs/OML_Portal/Opinions/2013-07-08_AG_File_No_13-008.pdf.


9 Go to: http://ag.nv.gov/uploadedFiles/agnvgov/Content/About/Governmental_Affairs/OML_Portal/Opinions/AGFileNo13-031.pdf.


11 Go to: http://ag.nv.gov/uploadedFiles/agnvgov/Content/About/Governmental_Affairs/OML_AGO_13897-171_180.pdf.

12 Go to: http://ag.nv.gov/uploadedFiles/agnvgov/Content/About/Governmental_Affairs/OML_AGO_13897-260.pdf.
the OML. I don’t call each of these allegations a separate "complaint" but if that's what Mr. Guinasso wants to call a "complaint," I say let’s do it.

Of those twenty-nine (29) separate "complaints," the OAG found sixteen (16) express OML violations, ten (10) non-violations\textsuperscript{13}, and three (3) instances where IVGID was able to avoid a violation finding by taking corrective action\textsuperscript{14}. In other words, the three (3) instances of corrective action were really additional OML violations IVGID was able to technically avoid by in essence pleading \textit{nolo contendere} rather than guilty as charged. So in essence nineteen (19) out of twenty-nine (29) complaints (65.5\%) involved IVGID's violation of the OML. Or if you want to just count formal complaints, five (5) out of eight (8) [62.5\%] in essence involved IVGID's violation of the OML. These are the facts Mr. Guinasso!

I have prepared a spreadsheet which documents each of the above OML complaints, the dates the OAG issued its opinion, a summary of the outcome, and with the exception of the first complaint\textsuperscript{6}, the URLs that the Board can go to in order to read exactly what the OAG found\textsuperscript{15}.

A very, very different picture than the one attorney Guinasso misleadingly paints. Wouldn’t you agree?

\textbf{Chairperson Wong Has Demonstrated She Doesn’t Care About the Board’s OML Violations, Nor the Embarrassment/Destruction She Has Caused Our Community Insofar as Those Violations Are Concerned Because Arrogantly, All She Cares About is Her "Scorecard" and the Opportunity to Mislead the Public by Marginalizing an Outspoken Critic:} As evidence of this statement, listen to what Ms. Wong had to say\textsuperscript{16} so gleefully and laughingly\textsuperscript{17} after attorney Guinasso made the above-quoted statement:

"I was going to ask you \textit{what our scoreboard was in terms of OML violations.}"
This Isn’t a Laughing Matter Ms. Wong! So why are you laughing? What exactly is so funny? Why do you think these matters warrants a "score card?" Why do you "gleefully" embrace whatever misleading or misrepresented facts attorney Guinasso spins simply because it supports your bias against those of us who are critics of your public performance? According to you, exactly how many instances of inappropriate Board conduct does it take before you will start taking these complaints seriously and voicing concerns? And most importantly, how gullible are you to take everything attorney Guinasso spoon feeds you/the Board as gospel when as here, the facts demonstrate otherwise? The problem in our community is that few of the public will dig into the facts to confirm that what staff and attorney Guinasso represent are either untruthful or misleading. The public relies upon you Ms. Wong to do this on their behalf. But when you don’t, is it really any surprise why those in our community who do know the truth accuse you and staff of misrepresentation and deception? Which leads me to my next point.

Who Bears Responsibility For These Latest OML Violations? At the Board's regular December 13, 2017 meeting members of the Board may recall I alerted the Board to the fact that it was in violation of the OML insofar as approving the minutes of its regular August 22, 2017\textsuperscript{18}, September 13, 2017\textsuperscript{19}, and, September 26, 2017\textsuperscript{20} meetings were concerned. My bases for this allegation was expressly because: none had been approved within forty-five (45) days of their meeting dates, and staff had failed to offer any "good cause" excuse. My comments on this subject were as follows\textsuperscript{21}:

\begin{quote}
"I want to talk about all the OML violations that are going to take place today. I preface this by...you've got this guy sitting there next to you (pointing to attorney Guinasso)"
\end{quote}


\textsuperscript{19} See agenda item I(2) of the 12/13/2017 Board packet.

\textsuperscript{20} See agenda item I(3) of the 12/13/2017 Board packet.

who is charging us over $120,000 a year to keep you out of trouble, to make sure you comply with the law, and here you’re not complying with the law. And he's going to cost you again unless he gives you the proper advice...The September 13, 2017 meeting. There will be an OML complaint filed if you don’t include the written statements that were asked to be included (in the minutes)...of that meeting. The minutes of the meeting of September 26, 2017. There will be an OML complaint filed if you don’t include the written statements that were asked to be included (in the minutes of that meeting). Well let's assume you solve those problems and do include the written statements. You’re going to have another OML complaint. Why? Because you’re supposed to approve minutes within forty-five (45) days, maximum, of the date of the hearing, and you haven’t done that. And you haven’t done it at least ten (10) times within the last year so you can’t complain that you had some 'good cause' for it."

In addition, I submitted a written statement on this subject that I asked be included in the written minutes of that meeting. That statement expressly alerted the Board to the subject untimeliness problem (a copy of that statement was attached to the minutes of that meeting). So again, neither attorney Guinasso, the Board nor Ms. Herron can claim "ignorance."

Later in the Board meeting, and to his credit, Trustee Horan brought up this subject. The following colloquy took place between the Board’s Clerk, Susan Herron, and Trustee Horan:

Trustee Horan: What about "the other question...that came up tonight about the time frame for the approval of minutes?"

Susan Herron: "Typically we have 45 days to do that. There's always a 'draft' the following day...that...is available...I've sent (it) out when we've had requests on items from the A.G. (Attorney General). Typically what I do is I take my time and I do update them...We're...a little behind and I apologize for that, but we're working as fast as we can to get these all updated."

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22 Because the Board refused to attach those written statements to the minutes of this meeting, an OML complaint was filed and it has been assigned OAG No. 13897-263.


25 See 4:07:44-4:07:51 of the 12/13/2017 livestream ("the other question that came up tonight on the time frame for doing this...the approval of minutes").
Trustee Horan: But *does that mean that we are in compliance?*

Susan Herron: "*You are in compliance because there’s always a draft.*"

Thus according to Ms. Herron, all the Board must do to be in compliance with NRS 241.035(1) is to have staff prepare a mere draft of the minutes within 45 days of a meeting. Given the findings of fact and conclusions of law made in OAG in complaint no. 13897-260\(^{26}\), *Ms. Herron was clearly wrong*\(^{27}\)!

So what was attorney Guinasso doing during this colloquy (after all, wasn't he alerted to the problem earlier in the meeting)? Take a look at the livestream. First he turns his head to Trustee Horan to hear his question. Then he turns his head to Ms. Herron to hear her response. And when Ms. Herron finishes her response and declares "we are in compliance," unbelievably, *attorney Guinasso nods his head up and down in agreement*\(^{28}\)!

**Why would the Board ever ask a non-lawyer staff person for an opinion insofar as a matter of law were concerned?** Why wouldn't the question be asked to the attorney sitting at the same dais as Ms. Herron?

Moreover, why wouldn't Mr. Guinasso have proactively interjected himself into the conversation, providing an accurate answer to Trustee Horan's question?

**And why would the Board ever believe anything Ms. Herron has to say given her history of negligence\(^{29}\)/ignorance or more bothersome, what now appears to have been an intentional misrepresentation\(^{30}\) because her loyalties lie with her public employee colleagues rather than the truth even though she knows her responsibilities under the law?** Let me give three examples, each of which suggests Ms. Herron knows what the OML says. Which means that what she represented to Trustee Horan on December 13, 2017 was intentionally false.

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\(^{26}\) See pages 48-57 of the packet of materials prepared in anticipation of the IVGID Board's special meeting of March 13, 2018 ("the 3/13/2018 Board packet").

\(^{27}\) See page 53 lines 12-18 of the 3/13/2018 Board packet.

\(^{28}\) Watch him for yourself at 4:08:36-4:08:37 of the 12/13/2017 livestream.

\(^{29}\) As I stated in my December 13, 2017 public comments to the Board, "it was outright negligence because your staff is negligent. Because your staff is incompetent. And you won’t do anything about it. So we keep having the(se) problems. Get your staff in line, complete the minutes within the statutory forty-five (45) days" (see 13:11-13:26 of the 12/13/2017 livestream).

\(^{30}\) I will let the reader decide which is the case.
Ms. Herron's Misrepresentation as to What Constitutes a Public Record at the Board's Regular August 22, 2017 Meeting: There the Board discussed public records in light of staff's e-mail retention policy. At that meeting Chairperson Wong asked: "What defines a public record and public information?"\(^{31}\) Listen to Ms. Herron's response:

"Typically a public record is something we have put out to the public. I.e., included in a board meeting. Included in a board packet. Uh, put on our web site...That's basically it. That's a public record"\(^{32}\)

This response engendered the following question from Chairperson Wong:

"So what would not be public records?"\(^{33}\)

Again Ms. Herron's response:

"Working papers, draft documents, huh...that's basically it."\(^{34}\)

Ms. Herron's Misrepresentation Insofar as "Transitory Records" Are Concerned, and Their Exclusion From the Definition of "Public Records:" Ms. Herron's response to Chairperson Wong above, engendered the following question from Trustee Morris:

"How do we...class(ify) an e-mail?"\(^{35}\)

Again Ms. Herron's response:

"E-mails are transitory records...The content is when they become (a) public record."\(^{36}\)

Attorney Guinasso's Clarification at the Board's August 22, 2017 Meeting That Ms. Herron's Exclusion of "Transitory Records" From the Definition of "Public Records" Was Wrong: There attorney Guinasso made it clear\(^{37}\) that because "transitory records are public records...where a


\(^{32}\) See 1:52:46-1:53:09 of the 8/22/2017 livestream.

\(^{33}\) See 1:53:10-1:53:11 of the 8/22/2017 livestream.

\(^{34}\) See 1:53:12-1:53:23 of the 8/22/2017 livestream.

\(^{35}\) See 1:53:34-1:53:55 of the 8/22/2017 livestream.

\(^{36}\) See 1:53:46-1:53:39 of the 8/22/2017 livestream.

\(^{37}\) See 1:59:10-2:00:09 of the 8/22/2017 livestream.
public records request is received or conferred before (a transitory record) is destroyed, that transitory record must be released." So Ms. Herron misstated the definition of a public record, as well as the suggestion or assertion "transitory records" are not public records.

NRS 239.010(1): Ms. Herron knows, or she certainly should know that her answer above is not the definition of a public record. After all, NRS 239.010(1) is clear: but for a series of exceptions (none of which is pertinent to this discussion) and "unless otherwise (expressly) declared by law to be confidential, all public books and public records of a governmental entity (are)...public books and public records."

NAC 239.101: Assuming for the moment Ms. Herron doesn't understand what the word "all" means, she knows or should know that NAC 239.101 amplifies that definition as follows: A "'record of a local governmental entity' or 'record' means information that is created or received pursuant to a law or ordinance, or in connection with the transaction of the official business of any office or department of a local governmental entity, including, without limitation, all documents, papers, letters, bound ledger volumes, maps, charts, blueprints, drawings, photographs, films, newspapers received pursuant to NRS 247.070, recorded media, financial statements, statistical tabulations and other documentary materials or information, regardless of physical form or characteristic."

Ms. Herron's March 21, 2016 Testimony in My Trial With IVGID: If the foregoing were not sufficient to demonstrate that Ms. Herron's response to Chairperson Wong was untruthful, listen to her testimony on this subject in my trial with IVGID commencing at pages 155, line 23 through 156 line 7 of the Reporter's Transcript:

Q. "What's a public document?

A. A public document is a document that has been made available to our public and is the property of the district...I mean, it's practically everything that we have.

Q. (Stated differently,) everything you have is public, except things that are specifically confidential or privileged, isn't it?

A. Yes."

So what is the truth Ms. Herron? What you testified under oath before the Court, or what you told the Board on August 22, 2017?

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38 Copies of these pages are attached as Exhibit "C" to this written statement.
Ms. Herron's Qualifications and Experience: Ms. Herron has placed the "CMC" designation after her name on most official IVGID materials which bear her name. What exactly does this designation mean, and from where does it come? It turns out "CMC" is a certification ("Certified Municipal Clerk") bestowed by the International Institute of Municipal Clerks ("the IIMC"); "a professional association that promotes continuing education...and provides networking solutions, services...benefits...and certification...to its members...through university and college-based institutes." According to the IIMC, "the Certified Municipal Clerk (certification) program is designed to enhance the job performance of...Clerk(s) in small and large municipalities." To earn that designation, a Municipal Clerk must attend extensive education programs. The CMC designation also requires pertinent experience in a municipality. The CMC program prepares the applicant...to meet the challenges of the complex role of...Municipal Clerk by providing (him/her)...with quality education in partnership with institutions of higher learning, as well as State/Provincial/National Associations.

Ms Herron's Ethical Responsibilities as a CMC: The IIMC has created a "Code of Ethics" to which all members adhere. Simply stated, this means that Ms. Herron has taken an oath to conduct the affairs of her public employment consistent with applicable OML laws through sound management practices, and in a manner which is beyond reproach and merits public confidence. Do you the reader feel that Ms. Herron has violated her oath?

Ms. Herron's Continuing Education Insofar as Public Records Matters Are Concerned: Exhibit "C" includes pages 78-79 of the transcript of trial testimony. There Ms. Herron testified that she has a college degree in business, she attended trainings offered by the OAG and she attends continuing education seminars.

All of these facts lead me to conclude that when Ms. Herron misstates the public records or OML to the Board, her misstatements are intentional.

39 The reader is directed to the agenda for the Board’s regular February 21, 2018 meeting (https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet-Regular_2-21-18.pdf) where Ms. Herron refers to herself as "CMC."
40 Go to https://www.iimc.com/.
42 Understand that IVGID is not a municipality. Rather, according to NRS 318.015(1), it is "a body corporate and politic and a quasi-municipal corporation." True municipalities are incorporated cities (NRS 268.696 and 267.485) and other forms of local government (like counties and unincorporated towns) which are authorized to exercise municipal powers (NRS 444.470).
44 A copy of that Code of Ethics is attached as Exhibit "D" to this written statement.
Ms. Herron's Compensation: Do you know how much compensation Mr. Herron is being paid as an administrative assistant to Mr. Pinkerton and Clerk to the IVGID Board? To Transparent Nevada, last year she was paid nearly $100,000 (including a $5,000 bonus) plus benefits! Are the duties Ms. Herron performs and the professionalism within which she performs them worth this level of compensation [which is directly subsidized by the Recreation Facility Fee ("RFF")]? I'll let the reader be the judge.

What Price Should be Paid and by Whom For the Most Current OML Violations? In most other communities employee heads would fall for the behavior I describe in this written statement. But in Incline Village we give people like these raises and bonuses. Welcome to the IVGID culture!

Although Mr. Guinasso Disingenuously Asserts There is No Cost to IVGID Because His Legal Work is Included in the Monthly Retainer IVGID Pays, He is Very Wrong: At the Board's January 24, 2018 meeting Mr. Guinasso stated as follows:

"People in the community...have alleged...that somehow I am financially benefiting from these (OML) complaints being filed...Let me just say those statements are false and misleading...My predecessor charged you an hourly fee for the time spent responding to such complaints. My firm does not. Responding to Open Meeting Law complaints is covered under the contract between my law firm and IVGID. So...there is no financial benefit to me...when an Open Meeting Law complaint is filed. It's encompassed within the retainer agreement...we've established with the District...And that was an essential element of the contract based on the concerns this Board had about escalating costs...associated with the fees that were charged responding to complaints prior to your retaining us as counsel."

What was the monthly retainer IVGID was paying Mr. Guinasso's predecessor (Scott Brooks)? ZERO! What is Mr. Guinasso's? $10,000! How many hours worth of legal effort are encompassed within Mr. Guinasso's monthly retainer at $150/hour? 66 ⅔. How many hours does Mr. Guinasso spend responding to an OML complaint? Although the Board and the public doesn't know because Mr. Guinasso does not report the hours he spends responding to the typical OML complaint, it is most assuredly less than 66 ⅔ (which BTW is equal to about 8⅓ days assuming an 8 hour work day). So to represent that somehow there is no cost to IVGID for Mr. Guinasso's efforts responding to OML complaints is false.


46 I have attached a print out of Ms. Herron's 2017 IVGID compensation as Exhibit "E" to this written statement.

Moreover, how typical is it for a general improvement district ("GID") to be spending $10,000/month or more on attorney's fees? Others I know have done a survey of all GIDs in the State to find out the attorney's fees they typically spend compared to IVGID. And I have been informed essentially NONE spend even 10% of this sum. There is something very, very wrong with this picture and the reason is NOT because of the OML complaints citizens in our community file.

Moreover still, think about it for a moment. If it's prudent to spend this kind of money on attorney's fees for but 8½ days worth of work in a month, wouldn't it be more efficient to spend this same amount or less for a full 30 or more days worth of work in a month? I assure you IVGID could hire a full time attorney at Mr. Guinasso's fee or less. But of course that would assume IVGID has enough legal work to warrant this kind of expenditure. And if it doesn't, because it doesn't, that kind of answers the question whether it is prudent for IVGID to spend this kind of money with Mr. Guinasso, doesn't it?

Finally and more to the point, why hire an attorney? Isn't the reason so this person will provide sound legal advice and keep the District out of expensive litigation (like with citizen Kevin Lyons)? Wouldn't you expect that if the Board is put on notice that it is about to commit an OML violation, a competent attorney would intervene to ensure no violation takes place? Yet here that never happens. Here Mr. Guinasso sits at the dais and does nothing to protect his client. I don't know what you call this but where I come from it's called malpractice!

And when OML and other violations are confirmed either by the Attorney General or otherwise, who is it that faces the consequences? Stated differently, does Mr. Guinasso pay anything for his lack of competence? Does he ever apologize? Does he ever accept responsibility? Does he ever offer to refund the unnecessary fees he has charged the public?

I am sorry. Mr. Guinasso's actions, or more pointedly lack of action, in ensuring OML complaints are not committed, have cost IVGID many tens of thousands of dollars in addition to public distrust and embarrassment. In light of the most current fifteen (15) OML violations, I have a question for Mr. Pinkerton:

Are we still the envy of most Nevada public agencies?

Conclusion: The NRS requires written minutes of IVGID Board meetings to be approved within a given number of days for a very specific reason. Yet IVGID staff treat this statutory requirement with the arrogance and contempt they give to many other statutory requirements. This behavior is insulting to the State, and it is insulting to the residents and property owners of Incline Village/Crystal Bay. And the time has come to put a stop to this behavior.

If IVGID staff cannot do their job to comply with the NRS, it's time to terminate their employ and secure staff which can do their job. I ask the Board to compel staff to do its job and to adopt disciplinary measures should it fail.
Because the facts described above will result in the filing of another OML complaint, and the money to defend that complaint is going to come from our RFF because *ad valorem* and consolidated taxes are spent on employee salaries and benefits, is it any

**Wonder Why Our RFF and Beach Facility Fee ("BFF") Which Financially Support This And Other Equally Colossal Wastes Are as High as They Are?** I’ve now provided more answers.

Respectfully, Aaron Katz (Your Community Watchdog Because No One Else Seems to be Watching).
EXHIBIT “A”
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

In the Matter of
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT Attorney General File No. 11-025
and
Attorney General File No. 11-026

I.

BACKGROUND

These two Open Meeting Law (OML) complaints are similar. Each alleged that Board Chairman Ted Fuller, Incline Village General Improvement District (IVGID), stopped Mr. Aaron Katz' public comment without cause and before his three minute time limit had been exhausted during IVGID's August 10, 2011 public meeting (A.G. File No. 11-025). Mr. Olsen, complainant in AG File No. 11-026, alleged that when Mr. Fuller stopped Mr. Katz' public comment, Mr. Olsen attempted to cede his three minutes of public comment to Mr. Katz, but Mr. Fuller refused to allow it. Mr. Katz' complaint alleged Mr. Fuller wrongfully gavelled his comment at an end even though three minutes had not elapsed.

This office reviewed statements from Mr. Fuller and we reviewed the audio of the August 10, 2011 IVGID public meeting before rendering this opinion. We also reviewed the public comment notice published on IVGID's July 27, 2011 agenda.

II.

FINDING OF FACT

On August 10, 2011, toward the end of the Board's agenda, IVGID Chairman Ted Fuller called for the second period of general public comment, item K. Mr. Aaron Katz rose to speak during this period of public comment. Mr. Katz had already spoken during the first period of general public comment.

Mr. Katz spoke for 2 minutes and 14 seconds when Chairman Fuller stopped him in mid-sentence, dismissed him, and told him his "three minutes" were up. Mr. Katz said he was not finished, protesting that it had not been three minutes, but Mr. Fuller insisted his time
was up. Mr. Fuller then told him that he was out of order when Mr. Katz protested more vigorously.

For 2 minutes and 14 seconds, Mr. Katz had spoken without interruption. Even when he began speaking about an IVGID employee, Ramona Cruz, regarding Mr. Katz' allegation that IVGID's involvement in a local charity event had not been authorized, no one interrupted him until he said he had concluded Ms. Cruz used a corporate credit card without authorization. Up until this moment, Mr. Katz' comment had been measured, if somewhat aggressive, but the meeting had been peaceable.

Mr. Katz spoke on three matters, but it was the last matter that drew the ire of the Chair and indeed the entire Board. Mr. Katz recounted District employee Ramona Cruz's involvement in a local charity event. He said Ms. Cruz entered a volunteer team representing IVGID in a local charity event. He had evidence she used a corporate credit card to pay the entry fee, but he questioned who had authorized the expenditure.

In his complaint Mr. Katz alleged this constituted theft of public property, facilities, and monies for the personal benefit of a charity. He also alleged this was at least an ethical violation of IVGID's Code of Conduct and Ethical Responsibilities Handbook. Mr. Katz wanted to know who had authorized use of the corporate credit card to pay the entry fee. Mr. Katz referred to Ms. Cruz by name at least four times in public comment, but when he said he believed she had used the card without authorization, Mr. Fuller gavely his comment closed telling Mr. Katz he was out of time and he was out of order.

In his written statement provided to this office in response to the complaint, Mr. Fuller said Mr. Katz routinely and viciously attacked District staff members by name. He also said Mr. Katz had been asked to refrain from making personal attacks.

Mr. Fuller's statement also challenged Mr. Katz' characterization of IVGID employee Ramona Cruz's actions on behalf of the District as theft. Mr. Fuller said the characterization is inaccurate and only represents Mr. Katz' opinion, yet neither Mr. Fuller nor anyone else rebutted Mr. Katz' allegations regarding theft and other ethical violations following his public
comment. Finally Mr. Fuller stated that Mr. Katz was making wild accusations when he spoke about Ms. Cruz's activities with a local charity. Other Board members can be heard on the audio berating Mr. Katz for attacking Ms. Cruz.

Mr. Olsen can be heard on the audio offering three minutes of his time to Mr. Katz, but Mr. Fuller did not allow it. Mr. Olsen was allowed to use his three minutes of time to make a general public comment.

The public comment notice on the agenda for this meeting stated that the Chair reserved discretion to shorten the public's right to three minute comment.

III.

ISSUE

WHETHER THE OML IS VIOLATED WHEN, DURING A PUBLIC MEETING, THE CHAIR REFUSED TO ALLOW CONTINUATION OF AN INDIVIDUAL'S PUBLIC COMMENT BASED ON HIS BELIEF THE COMMENT WAS FACTULLY UNTRUE OR WHICH IN HIS OPINION CONSTITUTED A PERSONAL ATTACK ON THE PUBLIC BODY'S EMPLOYEE.

IV.

CONCLUSIONS OF LAW

The public's statutory right to address public bodies on any matter of public concern is well recognized and protected by the NEV. CONST. art. 1, § 9, and the First Amendment to the U.S. Constitution. OMLO 2001-22 (April 27, 2001) began with a discussion of the importance of the public's right to address public bodies.

///

1 NRS 241.020(2)(c)(3) specifically allows a public body to discuss public comment with the public immediately following the comment or following the comment period. Discussion does not include deliberation, but it does allow the public body to rebut charges and/or answer questions from the public.

2 This office has released a companion opinion involving the same public body and similar allegations—A.G. File No. 11-024. It contains a detailed discussion of the constitutional underpinnings and parameters of the First Amendment as it applies to public comment during public meetings.

3 Sec. 9. Liberty of speech and the press. Every citizen may freely speak, write and publish his sentiments on all subjects being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for libels, the truth may be given in evidence to the Jury; and if it shall appear to the Jury that the matter charged as libelous is true and was published with good motives and for justifiable ends, the party shall be acquitted or exonerated.
Through the Open Meeting Law, the Nevada Legislature has
given members of the public the right to address public bodies.
NRS 241.020(2)(c)(3) (Except in emergency situations, public body
must include public comment period on every agenda). Although
there is no constitutional right to participate in an open session of a
Knight*, 465 U.S. 271, 283 (1984), once a person is given a right to
address a public body, [thereafter] that right may be limited only
within constitutional parameters. *Rosenberger v. Rector & Visitors
of the Univ. of Va.*, 515 U.S. 819, 829 (1995); see *White v. City of
Norfolk*, 900 F.2d 1421, 1425-27 (6th Cir. 1990); *Leventhal v. Vista
at an open meeting, public body must not discriminate on the basis
of the particular views expressed). 4


Article 1, § 9 of the Nevada Constitution is explicit about a citizen's liberty of speech. California has an identical constitutional provision. The California Supreme Court in *Balboa Island Village Inn, Inc. v. Lemen*, 40 Cal. 4th 1141, 1160 (Cal.2007) quoted an 1896 California Supreme Court interpretation of the California Constitution's liberty of speech protection.

CAL. CONST. art. 1, § 2(a) states:

> Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. In *Dailey v. Superior Court* (1896) 112 Cal. 94, 44 P. 458 this court observed... that the wording of the above-quoted constitution provision "is terse and vigorous, and its meaning so plain that construction is not needed.... It is patent that this right to speak, write, and publish, cannot be abused until it is exercised, and before it is exercised there can be no responsibility." (Id. at p. 97, 44 P. 458.).

Nevada's Constitution explicitly protects its citizen's liberty of speech. Article 1, § 9, needs no interpretation—it speaks for itself in a fashion similar to the California court's expression of an identical constitutional right to free speech. NEV. CONST. art. 1, § 9.

In a classic discussion of the strength of First Amendment protection for public discourse, the court found a First Amendment violation where a public body sought to use bylaws to prohibit public criticism, complaints, or charges against employees of the public body. The court said:

[Life]

4. 2011 AB 59 has amended public comment requirements.
While the Court recognizes the privacy and property interests of the [School] District's employees, the District's asserted interests pale in comparison to the expressive rights of the public. In Baca v. Moreno Valley Unified School Dist., 936 F.Supp. 719 (C.D.Cal. 1996), the district court invalidated a local ordinance strikingly similar to the Bylaw here. Responding to comparable arguments by the defendants, the Baca court explained that the "District's interest in protecting its employees' right of privacy is an interest it holds only as an employer, not as a government entity, e.g., a legislative body charged with permitting public comment at its meetings. Thus, its interest as an employer in protecting its employees' right to privacy cannot be characterized as a compelling governmental interest."


In the instant case, there are no bylaws involved, the sole action taken was by the Chairman who simply stopped public comment on his own authority.

Freedom of expression upon public questions is secured by the First Amendment. N.Y. Times Co. v. Sullivan, 376 U.S. 254, 269 (1964). This constitutional safeguard was fashioned to assure unfettered interchange of ideas for bringing about political and social changes desired by the people. The Sullivan Court said that: "[a] rule compelling the critic of official conduct to guarantee the truth of all his factual assertions and to do so on pain of libel judgment . . . leads to . . . self censorship and would deter protected speech." Id. at 279.

As a result of the critical importance of preserving and ensuring vigorous public debate and comment on matters of public concern, the Sullivan Court fashioned a federal rule that protects even a defamatory falsehood relating to a public official's conduct unless it was uttered with actual malice or reckless disregard of whether it was false or not. Id. at 279–280.


"[I]n the landmark case of New York Times Company v. Sullivan, the Supreme Court concluded that the negligence standard was too broad when applied to defendants who were commenting about the actions of a public official. To promote free criticism of public officials, and avoid any chilling effect from the threat of a defamation action, the High Court concluded that a defendant could not be held liable for damages in a defamation action involving a public official plaintiff unless "actual malice" is alleged and proven by clear and convincing evidence. Actual malice has been defined as "knowledge that it [the statement] was false or with reckless disregard of whether it was false or not." Reckless disregard means that the publisher of the statement acted with a "high degree of awareness of ... [the] probable falsity "of the statement or had serious doubts as to the publication's truth."
V.

CONCLUSION

It seems apparent from the record of the meeting that Mr. Fuller's decision to shorten Mr. Katz' three minutes of public comment was solely based on his disagreement with Mr. Katz' view that Ms. Cruz' actions were illegal. Applicable legal authorities clearly forbid restriction of public comment based solely on viewpoint. Mr. Katz' view was that an IVGID employee had illegally used a corporate credit card. He may have insinuated that Ms. Cruz had misused a credit card, but this allegation was clearly a matter within the authority and control of IVGID. It was entitled to be heard regardless of the condemnation expressed by members of the Board.

Up to the point he was stopped, Mr. Katz' tone and the subject matter of comment were entirely appropriate and legal under the Board's statement of reasonable restrictions applicable to public comment based on time, place, and manner. The Board meeting had been peaceable. There had been no interruptions of Mr. Katz' previous comments. Mr. Katz' comment was perhaps offensive, but the meeting was not disrupted until Chairman Fuller stopped Mr. Katz. There was no reasonable basis for doing so.

As discussed above, reasonable time, place, and manner restrictions on public comment are permissible by the public body, but unrestricted and unfettered discretion to shorten someone's comment is unreasonable. Such discretion fails constitutional muster if applied to legitimate comment, which is not disruptive or repetitious. See OMLO 2001-22 (April 27, 2001) for discussion of reasonable time, place, and manner restrictions. Unfettered discretion to shorten comment is not lawful.

In a companion Opinion—A.G. File No. 11-024—we warned Mr. Fuller that his actions which prevented further individual public comment based on viewpoint were illegal. Similarly, this matter warrants the same admonition, but because this complaint and the companion complaint in A.G. File No. 11-024 were filed close in time, and because Mr. Fuller has not pursued or announced any additional condition for public comment at subsequent meetings, nor has he prevented further public comment based on his view that IVGID public employees
were being attacked, we will not take legal action at this time. This office will only warn Mr. Fuller that another similar violation will result in appropriate legal action being taken. The purpose of this warning has been satisfied because Mr. Fuller presently appears to be in compliance with the OML.

NOTE: The 2011 Legislature through Act of June 15, 2011, ch. 383, § 2, 2011 Nev. Stat. 2383 (AB 59) now requires that when this office issues an opinion finding OML violation(s) the public body must place the matter on its next agenda for discussion and make this Office's opinion a part of supporting material to be made available to the Board and the public simultaneously.

Section 2 of AB 59 amending NRS 241.020 states:

Sec. 2. 1. If the Attorney General makes findings of fact and conclusions of law that a public body has taken action in violation of any provision of this chapter, the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law. The opinion of the Attorney General must be treated as supporting material for the item on the agenda for the purposes of NRS 241.020.


DATED this _22ND_ day of November, 2011.

CATHERINE CORTEZ MASTO
Attorney General

By: ____________________________
GEORGE H. TAYLOR
Senior Deputy Attorney General
Nevada State Bar No. 3615
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1230
EXHIBIT "B"
<table>
<thead>
<tr>
<th>Date</th>
<th>OAG No.</th>
<th>Description of Alleged Violation</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>11/22/2011</td>
<td>11-025</td>
<td>Terminating Katz's Public Comment After 2 Minutes, 14 Seconds. of the Second Public Comment Section of the Board's 8/10/2011 Meeting</td>
<td>OML Violation Because Chairperson Fuller's &quot;Actions Which Prevented Further Individual Public Comment on Viewpoint Were Illegal&quot;</td>
</tr>
<tr>
<td>7/8/2013</td>
<td>13-008</td>
<td>Failure to Call for Public Comment at 3/27/2013 Meeting Before Voting to Approve/Disapprove Agenda, in Part, Disciplining Bill Horn, Notwithstanding This Was Agenda Item Marked &quot;For Possible Action&quot;</td>
<td>No OML Violation as Approval of Agenda is Not a Business Item For Which Public Comment is Required. But See 7/23/2013 Opinion Below: &quot;Approval of the Agenda Is Not Simply a Ministerial Act... It Rises to the Level of Any Other Item Listed for Possible Action&quot;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Failure to Call Noticed Agenda Item at 3/27/2013 Meeting, in Part, Disciplining Bill Horn (Meeting Was Adjourned), After Agenda Was Published</td>
<td>No OML Violation as There is Nothing in the OML Which Requires Public Body to Conduct a Public Meeting After Posting an Agenda</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Failure to Call Noticed Agenda Item at 3/27/2013 Meeting, in Part, Disciplining Bill Horn (Meeting Was Adjourned), After Agenda Was Published, Contrary to IVGiD Policy 3.1.8</td>
<td>OAG Has No Jurisdiction Construing Bylaws or Policies That Do Not Conflict With the OML</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Serial Communications by Three Trustees Prior to 3/27/2013 Meeting Intended to Not Approve Agenda, in Part, Disciplining Bill Horn</td>
<td>No OML Violation Because Allegation Was Made Based Upon Information and Belief and Sworn Affidavits of Trustees Denied Participating in Serial Communications</td>
</tr>
<tr>
<td>7/23/2013</td>
<td>13-017</td>
<td>Failure to Call for Public Comment at 5/29/2013 Meeting Before Voting to Approve/Disapprove Agenda</td>
<td>No OML Violation Because Beginning With the Board's 6/12/2013 Meeting It Took &quot;Corrective Action on its Own Volition&quot; by Modifying its Agenda to Place &quot;Approval of the Agenda Following the First Period of Public Comment&quot; Which &quot;Brings the Agenda Into Literal Compliance With the Statute's Requirement&quot;</td>
</tr>
<tr>
<td></td>
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<td>Failure to Call for Public Comment at 5/29/2013 Meeting Before Trustees Took Action on Agenda Items G and H</td>
<td>No OML Violation Because Items G and H Were Not General Business Items - Thus No Right to Comment Before Board Action</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Omission of Colloquy Between Trustee Hammerel and Gerry Eick in the Minutes of the Board's 5/18/2013 Meeting That Attorney Billings Had Been Returned For Irregularities</td>
<td>No OML Violation Because the OAG's Review of the Audio Record of the Board's 5/8/2013 Meeting Did Not Support the Allegation That the Substance of All Matters Proposed, Discussed or Decided Was Omitted</td>
</tr>
<tr>
<td>Date</td>
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<tr>
<td>12/23/2013</td>
<td>13-031^3</td>
<td>Failure to Allow Public Comment on Agenda Item F.1 After Moving Item From General Business to Consent Calendar</td>
<td>No OML Violation Because Taking Advantage of a New OML Amendment, on 9/11/2013 the Board Took Corrective Action</td>
</tr>
<tr>
<td>1/6/2014</td>
<td>13-032^4</td>
<td>IVGID’s Hired Consultant Conducted Private Serial Polling With a Quorum of Board Member to Whittle Down the Number of Possible GM Candidates Without Public Notice</td>
<td>No OML Violation Since My &quot;Complaint Alerted the Trustees to the Possibility of a Violation&quot; and it Took Corrective Action Within 120 Days of the Alleged Violation</td>
</tr>
<tr>
<td>4/18/2016</td>
<td>13897-171^5</td>
<td>Public Notice and Revised Agenda for 9/16/2015 Meeting Were Not Posted in a Timely Manner Because Notice Was Electronically Provided to Katz Less Than 3 Business Days (12:54 P.M. Instead of 9:00 A.M.) Before the Meeting</td>
<td>No OML Violation Because Clerk’s Certification Declares Revised Agenda Was Timely Delivered to Postal Service - Electronic Delivery to Katz at/Prior to 9:00 A.M. Was Not Mandated (But Rather &quot;a Courtesy&quot;) Notwithstanding He Expressly Requested Notice</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Public Notice and Revised Agenda for 9/16/2015 Meeting Did Not Include the Name(s) of Persons the Subject of Possible Administrative Action (Filling a Board Vacancy)</td>
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<td>Board Chairperson and Counsel Violated OML in That They Admonished and &quot;Cut Off&quot; Katz’s Public Comments in Opposition to the Possible Appointment of Candidate Joe Wolfe to Fill a Board Vacancy</td>
<td>No OML Violation Because the Revised Agenda Included the Names of All 10 Candidates the Subject of Possible Administrative Action</td>
</tr>
<tr>
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<td></td>
<td>13897-180^6 Failure to Include the Substance of Remarks Made at 9/16/2015 Meeting When the Minutes of That Meeting Were Approved on 11/18/2015</td>
<td>No OML Violation Because the Decision to &quot;Cut Off&quot; a Person’s Public Comments Can Be Based Upon the Chairperson’s Subjective Determination &quot;Wilfull Disruption&quot; Had Occurred (the Person’s Comments Were &quot;Slanderous, Offensive and Inflammatory&quot;)</td>
</tr>
<tr>
<td>2/21/2018</td>
<td>13897-260^6</td>
<td>Approval of Minutes of the Board’s 12/14/2016 Meeting Was More Than 45 Days After the Meeting</td>
<td>No OML Violation Because There is No Requirement That a Person’s Verbatim Remarks Be Included in the Minutes</td>
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<tr>
<td></td>
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<td>Approval of Minutes of the Board’s 3/23/2017 Meeting Was More Than 45 Days After the Meeting</td>
<td>OML Violation Because Failure to Approve Minutes as Required by Statute Without Good Cause</td>
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<td>Approval of Minutes of the Board’s 5/10/2017 Meeting Was More Than 45 Days After the Meeting</td>
<td>OML Violation Because Failure to Approve Minutes as Required by Statute Without Good Cause</td>
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<td>Approval of Minutes of the Board's 5/24/2017 Meeting Was More Than 45 Days After the Meeting</td>
<td>OML Violation Because Failure to Approve Minutes as Required by Statute Without Good Cause</td>
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<td>Approval of Minutes of the Board's 6/12/2017 Meeting Was More Than 45 Days After the Meeting</td>
<td>OML Violation Because Failure to Approve Minutes as Required by Statute Without Good Cause</td>
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<td>Approval of Minutes of the Board's 6/28/2017 Meeting Was More Than 45 Days After the Meeting</td>
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<td>Approval of Minutes of the Board's 7/20/2017 Meeting Was More Than 45 Days After the Meeting</td>
<td>OML Violation Because Failure to Approve Minutes as Required by Statute Without Good Cause</td>
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<td>Approval of Minutes of the Board's 8/2/2017 Meeting Was More Than 45 Days After the Meeting</td>
<td>OML Violation Because Failure to Approve Minutes as Required by Statute Without Good Cause</td>
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<td>Approval of Minutes of the Board's 9/13/2017 Meeting Was More Than 45 Days After the Meeting</td>
<td>OML Violation Because Failure to Approve Minutes as Required by Statute Without Good Cause</td>
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<td>Approval of Minutes of the Board's 9/26/2017 Meeting Was More Than 45 Days After the Meeting</td>
<td>OML Violation Because Failure to Approve Minutes as Required by Statute Without Good Cause</td>
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<td>Approval of Minutes of the Board's 10/25/2017 Meeting Was More Than 45 Days After the Meeting</td>
<td>OML Violation Because Failure to Approve Minutes as Required by Statute Without Good Cause</td>
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<tr>
<td></td>
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<td>Approval of Minutes of the Board's 11/15/2017 Meeting Was More Than 45 Days After the Meeting</td>
<td>OML Violation Because Failure to Approve Minutes as Required by Statute Without Good Cause</td>
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<tr>
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<td>Approval of Minutes of the Audit Committee’s 5/10/2017 Meeting Was More Than 45 Days After the Meeting</td>
<td>OML Violation Because Failure to Approve Minutes as Required by Statute Without Good Cause</td>
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<td></td>
<td></td>
<td>Approval of Minutes of the Board's 11/15/2017 Meeting Was More Than 45 Days After the Meeting</td>
<td>OML Violation Because Failure to Approve Minutes as Required by Statute Without Good Cause</td>
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<tr>
<td>Date</td>
<td>OAG No.</td>
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<td>Result</td>
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<td>Failure to Approve Minutes of the Board's 8/22/2017 Meeting as of January 30, 2018 Notwithstanding the Lapse of More Than 45 Days After the Meeting</td>
<td>OML Violation Because Failure to Approve Minutes as Required by Statute Without Good Cause</td>
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</tbody>
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5. [http://ag.nv.gov/uploadedFiles/agnvgov/Content/About/Governmental_Affairs/OML_AGO_13897-171_180.pdf](http://ag.nv.gov/uploadedFiles/agnvgov/Content/About/Governmental_Affairs/OML_AGO_13897-171_180.pdf)
6. [http://ag.nv.gov/uploadedFiles/agnvgov/Content/About/Governmental_Affairs/OML_AGO_13897-260.pdf](http://ag.nv.gov/uploadedFiles/agnvgov/Content/About/Governmental_Affairs/OML_AGO_13897-260.pdf)
IN THE SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

AARON L. KATZ, Plaintiff,

vs.  
Case No. CV11-01380

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, Defendant.

Department 7

TRANSCRIPT OF PROCEEDINGS
TRIAL
VOLUME I
March 21, 2016
9:30 a.m.
Reno, Nevada

Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription
the best of my ability.

Q. How long, Ms. Herron, have you served as public records officer?

A. Since about, I believe I got the official designation sometime in 2011. But working with the previous general manager, he had always asked me to respond to these.

Q. How much of your time do you spend as public or in responding to public records requests?

A. I would say between 25 and 35 percent of my job.

Q. What's your education history?

A. I hold a bachelors degree in business. I'm also a certified municipal clerk.

Q. When did you receive that certification?

A. I received that in September of 2010.

Q. And what, Ms. Herron, is entailed in becoming a certified municipal clerk?

A. You have to undergo several educational requirements and take a small little test and put in some hours and things like that.

Q. And in your role with the district, what have you done to either educate yourself or otherwise learn about Nevada Public Records Act?

A. When I first took the job, I studied it quite carefully and continued to have it as a reference. I've also
attended trainings as they've been offered by the Attorney General's Office or the Nevada State Libraries and Archives group. Most recently, I attended a seminar in October of 2015, which was offered by the Nevada State Library and Archives. And then in February of 2016, I attended an open meeting law training put on by the AG's office and it covered public records presentation given by Sara Bradley.

Q. Generally speaking, what do you do when you're confronted with a public records request?

A. Typically, I receive them via e-mail. I look them over and I see if I can respond quickly. If it's a specific record, i.e., asking for a contract, and I have that contract, I will respond very promptly and attach the contract to the e-mail, state that I completed that request, and document it in our system.

Q. And if you have questions about whether a certain document should be produced or not, is there someone you can talk to at the district?

A. Yes. I can always consult the district counsel.

Q. Who is that?

A. That would be Jason Guinasso and Devon Reese.

Q. Who was district counsel at the time of the requests that Mr. Katz spoke about this morning?

A. T. Scott Brook.
available to our public and is the property of the district
as requested. I mean, it's practically everything that we
have.

Q. And that's it, everything you have is public,
except things that are specifically confidential or
privileged, isn't it?

A. Yes.

Q. Okay. So if a privilege doesn't exist for the
name of a retail customer at the Hyatt Sport Shop, would you
agree with me that's a public record?

A. Could you repeat your question?

Q. I actually forgot it. I'm sorry.

THE COURT: Ms. Reporter, can you read that back?

(Whereupon the reporter read the record.)

MR. RYMAN: Objection, foundation.

THE COURT: Overruled.

THE WITNESS: I would probably not agree, because
it would depend upon how that transaction with that
individual occurred. If that individual paid with a credit
card and that document generated his or her name and their
credit card number, I would consider that a privileged
document, because we're tying two pieces of information
together.

BY MR. KATZ:
to get a priority booking at a recreational facility, and
you've received that information for that purpose, that
becomes confidential?

A. I do know there's a provision in there for that,
yes, I do.

Q. But when you just happen to get the names and the
addresses for other reasons, having nothing to do with that,
you're not aware of anything in 239 that makes that
confidential, are you?

A. E-mail addresses and phone numbers, I believe, all
of that information is confidential --

Q. Is that --

A. -- when it's attached to a name.

Q. Is that in 239 to your knowledge?

A. I believe it is, but I would have to research that
to be absolutely positive.

Q. I don't think it is, but I'm sure the Court will
take a look at it and determine what it is. You've used in
many of these responses, I have no document -- I have no
existing public documents or words to that effect, haven't
you?

A. Yes.

Q. What's a public document?

A. A public document is a document that has been made
EXHIBIT "D"
INTERNATIONAL INSTITUTE OF MUNICIPAL CLERKS

Professional, Personal

Code of Ethics

Believing in freedom throughout the World, allowing increased cooperation between public officials and other nationally and internationally, I

do hereby subscribe to the following principles and ethics which I affirm will govern my personal conduct as a member of IPMC:

✓ To uphold constitutional government and the laws of my community;
  To so conduct my public and private life as to be an example to my fellow citizens;
✓ To impart to my profession those standards of quality and integrity that the conduct of the affairs of my office shall be above reproach and to merit public confidence in our community;

To be ever mindful of my neutrality and impartiality, rendering equal service to all and to extend the same treatment I wish to receive myself;

✓ To record that which is true and preserve that which is entrusted to me as if it were my own; and
✓ To strive constantly to improve the administration of the affairs of my office consistent with applicable laws and through sound management practices to produce continued progress and so fulfill my responsibilities to my community and others.

These things I, as a member of IPMC do pledge to do in the interest and purposes for which our government has been established.

__________________________
(member signature)

This certificate granted by the authority of the International Institute of Municipal Clerks.

__________________________
IPMC Executive Director

__________________________
IPMC President
Susan A Herron (/salaries/search/?q=Susan%20A%20Herron)

EXECUTIVE ASST/DISTRICT CLERK (/salaries/search/?q=EXECUTIVE%20ASST/DISTRICT%20CLERK)

Regular pay: $90,962.21

Overtime pay: $0.00

Other pay: $5,750.00

Total pay: $96,712.21

Total benefits: $34,751.75

Total pay & benefits: $131,463.96

Public Records: Status: Active

This site contains REAL police records (court records of driving citations, speeding tickets, felonies, misdemeanors, offenses, mugshots, etc.), background reports, court documents, address information, phone numbers, and much more.
WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS MARCH 13, 2018 REGULAR IVGID BOARD MEETING – AGENDA ITEM C – PUBLIC COMMENT – ANOTHER PARCEL WITH MULTIPLE DWELLING UNITS WHOSE OWNER(S) CURRENTLY PAY, AND FOR SOME NUMBER OF YEARS HAVE BEEN PAYING, A SINGLE BEACH ("BFF") AND/OR RECREATION ("RFF") FACILITY FEE(S). WHEN IS STAFF GOING TO DO ITS JOB OF ASSESSING PARCELS WITH MULTIPLE DWELLING UNITS MULTIPLE BFFs AND/OR RFFs?

Introduction: Although I have stated before and reaffirm that I do not believe it is proper to assess RFFs/BFFs against "dwelling units" rather than "parcels,"¹ this is exactly what IVGID does. As the IVGID Board ("the Board") knows, each year, at staff’s urging, the Board adopts a Report for the Collection of the RFF/BFF on the County tax roll ("the NRS 318.201 Report") which assesses each residential dwelling unit (as opposed to parcel) a RFF and where appropriate, a BFF. If you want evidence of this assertion, please go to pages 94-107 of the packet of materials prepared by staff in anticipation of the Board’s regular May 24, 2017 meeting² ("the 5/24/2017 Board packet"), and examine ¶¶(A) at page 103 which states as follows:

"The following annual charges are for the availability of use of the recreational facilities above described, and such charges...shall be collected by the Washoe County Treasurer...(a) $705 annual base Recreation Facility Fee for each dwelling unit, whether such unit stands alone or is part of a multiple unit residential structure and whether or not such unit is separately assessed by the County Assessor; and, an additional $125 annual Beach Facility Fee pertaining to the use of the beaches or boat launching area."

What is a "dwelling unit?" According to IVGID Recreation Roll Policy No. 16.1.1.2.4³:

"any building or portion thereof, which contains living facilities with provisions for sleeping, eating, cooking, and sanitation."

¹ Because of NRS 318.201(1) ["Any board which has adopted rates pursuant to this chapter may...elect to have such charges for the forthcoming fiscal year collected on the tax roll...in such event, it shall cause a written report to be prepared...which shall contain a description of each parcel of real property receiving such services and facilities and the amount of the charge for each parcel for such year"] and NRS 318.201(9) ["When the board has made a final decision on a service charge or fee to be collected on the county tax roll, the secretary shall prepare and file a final report, which shall contain a description of each parcel receiving the services and the amount of the charge"]: ² See https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_5-24-17.pdf. ³ See page 36 at https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID.Board.Policies.pdf.
As I and others have complained many times before (the last time being February 7, 2018\(^4\) and the time before being December 13, 2017\(^5\)), our IVGID staff ISN'T adhering to the Board's "policy" of assessing each "dwelling unit" which is a portion of a building which is comprised of multiple "dwelling units" separate BFFs and/or RFFs. And that's the purpose of this written statement.

**How This Dereliction of Duty on IVGID Staff's Part Costs Local Property Owners:** Each year when the Board adopts its NRS 318.201 Report in support of new RFFs/BFFs, it first determines at ¶11\(^6\) "the amount of moneys (allegedly) required for the (forthcoming) fiscal year...for the proper servicing of...bonds and...the administration, operation, maintenance and improvement of (identified)...real properties, equipment and facilities." Once this number is determined, staff divides it by the number of dwelling units/parcels its staff have chosen to assess. And the mathematical result becomes each individual parcel's/dwelling unit's RFF and BFF. Therefore for 2017–18 the Board divided a RFF of "about $5,776,700" by 8,194 "dwelling units"/parcels\(^7\) and came up with a RFF of $705/dwelling unit. Similarly, the Board divided a BFF of "969,500" by 7,756 "dwelling units"/parcels with beach access\(^7\) and came up with a BFF of $125/qualified dwelling unit.

It doesn't take a mathematician to understand that if "the amount of moneys required" were divided by more dwelling units, the RFF/BFF for each "dwelling unit"/parcel **would be less**.

**Staff's Steadfast Refusal to Ensure That ALL Assessable "Dwelling Units" Are Paying Their Fair Share of Facility Fees:** In the past I and others have identified and called to the Board's and staff's attention some 1,000 or more "dwelling units" which are not being assessed the BFF and/or RFF. Yet staff have done **NOTHING** to uniformly assess all dwelling units, and past Boards have refused to require staff to adhere to Board Policy\(^8\). And now I provide evidence of another such dwelling unit which has not and currently is not being assessed its fair share!

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\(^6\) See page 104 of the 5/24/2018 Board packet.

\(^7\) See page 107 of the 5/24/2017 Board packet.

\(^8\) Something staff over and over assert is their job ("the Board creates policy. It's staffs' job to implement it").
692 Bidwell Court, Incline Village: Recently a secondary unit within this property was advertised for rent on craigslist.org. What is the configuration of this property? Let me read from the owners' craigslist listing:

"This two storey 815 square foot apartment is located above our garage. My wife and I live in the main house directly behind the apartment...Amenities:...two Incline Village Recreation/Beach passes...Appliances (for cooking): range/oven...microwave...garbage disposal."

Now let me describe the Assessor's description of the property:

"Split level, 2BD/2BA, 1,895 square feet, 1 card."

In other words, the owner's description omits a 1 bedroom second story apartment of 815 square feet of and in all likelihood a second kitchen for he and his wife. Given the second story apartment is part of "a...building...which contains (multiple) living facilities with provisions for sleeping, eating, cooking, and sanitation," the subject property consists of a minimum of TWO DWELLING UNITS.

Yet Only a Single RFF and a Single BFF Are Being Assessed: It is simple to determine whether a particular parcel is being assessed the BFF and/or RFF and if so, the number of BFFs and/or RFFs. One need simply go to the County Treasurer's web site, type in the street address or APN (in this case 125-383-01) and a copy of the parcel's property tax bill will appear. This is exactly what I did and a copy of that bill is attached as Exhibit "C" to this written statement.

Note where I have placed an asterisk next to the "tax detail" for this parcel, and IVGID's RFF/BFF. There you can clearly see that rather than two RFFs/BFFs, the owner of this parcel (William Fallon, Jr.) is being assessed but one RFF and one BFF. In other words, the rest of us who are paying our fair share are paying more than we need to pay! And why? Because our allegedly "professional staff" are not doing their jobs!

Which Means the Board's Failure to Assess All Residential Parcels With Multiple Dwelling Units Multiple RFFs/BFFs Renders the RFF/BFF Unconstitutional: Listen to Article 4, §21 of the Nevada Constitution: "in all cases...where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State." If the IVGID Board will not uniformly assess

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9 See post id: 6495813856 on Reno's craigslist (https://reno.craigslist.org/apa/d/authentic-log-cabin-lake/6495813856.html). A copy of this listing is attached as Exhibit "A" to this written statement.

10 See the County Assessor's Property Assessment Data for 692 Bidwell Ct, a screenshot copy of which is attached as Exhibit "B" to this written statement.

11 See https://www.leg.state.nv.us/Const/NvConst.html#Art4Sec21.
the RFF/BFF against all dwelling units within IVGID’s boundaries, then its refusal renders its BFF/RFF Resolution(s) unconstitutional.

Like I Said, This is Just Another Example of Literally Hundreds I and Others Have Brought to the Attention of the Board and IVGID Staff. And it's the third one since December 13, 2017!

NRS 318.203: States that "if a(ny)...person has a reasonable belief that a dwelling unit exists that is not currently being charged for services provided by a general improvement district...(he/she) may submit an affidavit to the board of trustees of the district, setting forth the facts upon which the ...person bases his or her belief." Once the "board of trustees receives (such)...affidavit (it)...may set a date for a hearing to determine whether the unit referenced in the affidavit is being used as a dwelling unit...If, after the hearing, the board determines that the unit...is being used as a dwelling unit, the board may adopt a resolution by the affirmative votes of not less than two-thirds of the total membership of the board to charge the owner pursuant to NRS 318.197 for the services provided by the district to the dwelling unit."

So Does the Board Really Require an Affidavit Versus This Written Statement in Order to Set a Hearing to Determine Whether 692 Bidwell Court Should be Assessed Two RFFs and Two BFFs? And retroactive, no less, to May 11, 1994 if not before, given William Fallon Has Owned This Property Since May 11, 1994, if not earlier.

Conclusion: Why does a member of the public have to continue to do staff's job of ferreting out "dwelling units" not being assessed their fair share of the RFF/BFF? And why is there no consequence to staff for not doing their job, especially after relevant facts like these are brought to their attention? In staff's quest for "under-utilized" revenue, isn't this a simple and inexpensive (i.e., "low hanging fruit") means of generating additional revenue?

And now consider staff's recent disingenuous assertion that the reason they sold public property with beach privileges (without express Board approval no less) that was acquired from Washoe County based upon the representation it would be retained for public "open space" purposes, is because they owe the public the fiduciary duty "to serve the important public purpose of recovering delinquent (facility) fees."

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12 According to pages 94-107 of the 5/24/2017 Board packet the RFF/BFF are "standby service charges" purportedly authorized by NRS 318.197(1) [see http://www.leg.state.nv.us/NRS/NRS-318.html#NRS318Sec197].

13 See the Assessor's read out for this parcel as the screenshot portion of Exhibit "B" to this written statement has cut off William Fallon's acquisition date next which is May 11, 1994.

14 See page 513 of the 1/24/2018 Board packet.
And You Wonder Why Our RFF and BFF are as High as They Are? I’ve now provided more answers.

Respectfully, Aaron Katz (Your Community Watchdog Because No One Else Seems to be Watching).
$1475 / 1br - 815ft² - AUTHENTIC LOG CABIN LAKE TAHOE - $1,475/month UNFURNISHED 1BR/1BATH (Incline Village, NV)

PEACE QUIET AMIDST THE NATIONAL FOREST

RENT: $1,475 A MONTH PLUS ELECTRICITY & GAS HEAT UTILITIES
$1,000 SECURITY DEPOSIT
$500 CLEANING DEPOSIT

*YOUR MOVE-IN COST IS $2,975, THE SECURITY DEPOSIT AND CLEANING MAY NOT BE APPLIED TO THE LAST MONTHS RENT.
*6 MONTH LEASE WITH MONTH TO MONTH OPTION OR 1 YEAR LEASE REQUIRED.
*THIS TWO STOREY 815 SQUARE FOOT APARTMENT IS LOCATED ABOVE OUR GARAGE. MY WIFE AND I LIVE IN THE MAIN HOUSE DIRECTLY BEHIND THE APARTMENT.
*THIS UNFURNISHED APARTMENT IS SUITABLE FOR MATURE, RESPONSIBLE ADULTS WITH EXCELLENT REFERENCES.

AMENITIES:
-QUIET CU DE SAC
-SMOKE FREE
- TWO INCLINE VILLAGE RECREATION/BEACH PASSES
- TWO CAR OFF STREET RESERVE PARKING PAD
- STORAGE SHED
- SNOW REMOVAL
- LIKE NEW
- PRIVACY
- FREE STANDING BUILDING WITH FOREST SERVICE LAND ON THREE SIDES OF THE PROPERTY
- NO COMMON WALLS
- OPEN HIGH CEILINGS

APPLIANCES:
- WASHER DRYER
- GARBAGE DISPOSAL
- MICROWAVE
- RANGE/OVEN
- REFRIGERATOR

UTILITIES: TENANT PAYS THE FOLLOWING
- ELECTRICITY
- AFFORDABLE FORCED AIR GAS HEAT - AVERAGING $85 A MONTH IN THE WINTER
- HIGH SPEED INTERNET AVAILABLE
- CABLE TV AVAILABLE

UTILITIES INCLUDED IN MONTHLY RENT
- WATER
- SEWER
- TRASH PICK-UP

THE NO'S
- NO GARAGE
- NO FIREPLACE
- NO SMOKING
- NO PETS... NO PETS... NO PETS!!
- NO LOUD NOISE VIOLATION...
THIS RENTAL IS NOT APPROPRIATE FOR PARTYING.

FOR MORE INFORMATION JUST CALL ME OR SEND AN EMAIL:
BILL - 775-990-2005/cell... "No text messages I'm not looking for a text mate!"
billfallon1@yahoo.com
EXHIBIT "B"
Last Recorded Document in our records: # 1795865 May 11, 1994

APN: 125-383-01 Card 1 of 1

Owner Information & Legal Description

Situs 692 BIDWELL CT, WASHOE COUNTY 89451
Owner 1 FALCON, WILLIAM JR
Mail Address 692 BIDWELL CT
INCLINE VILLAGE NV 89451
Rec Doc No 1795865 Rec Date 05/11/1994
Prior Owner
Prior Doc CHK
Keyline Desc INCLINE VILLAGE UNIT #1-A LOT 2 BLK H
Subdivision INCLINE VILLAGE 1A
Lot: 2 Block: H Sub Map#
Record of Survey Map: Parcel Map # 0
Section: 18 Township: 16 Range: 18 SPC
Tax Dist 5200 Add'l Tax Info Prior APN
Tax Cap Status Low Cap Qualified Primary Residence

Building Information

Quality R40 Good Bldg Type Sgl Fam
Stories SPLIT Square Feet 1,896
LEVEL
Year Built 1995
total Gar Area 0
WAY 1995
Bedrooms 2 Unfin Bsmt 0
Full Baths 2 Bsmt Type
Half Baths 0 Gar Conv Sq Foot 0
Fixtures 9 Total Gar Area 0
Fireplaces 0 Gar Type
Heat Type FA Det Garage 480
Sec Heat Type
Ext Walls SIDING/FR Bsmt Gar Door 0
Sec Ext Walls Sub Floor WOOD
Roof Cover METAL Frame FRAME
Obso/Bldg Adj 0 Construction Mod 1.15
% Complete 100 % Units/Bldg 1
Units/Parcel 1

Land Information

Land Use 200 NBC = Neighborhood Code
Size 19,549 SqFt or ~ 0.449 Acre

Valuation Information

Zoning MDS NBC TAJD
Water Muni NBC Map NBC Map Inc
Street Paved

Sales/Transfer Information/Recorded Document
Bill Detail

Washoe County Parcel Information

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Current Owner:
FALLON, WILLIAM J JR
692 BIDWELL CT
INCLINE VILLAGE, NV 89451

Taxing District
Range 18 Block H Township 16 Subdivision INCLINE VILLAGE 1A Lot 2

Installments

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Tax Detail

- **Incline Recreati**
  - Gross Tax: $830.00
  - Credit: $0.00
  - Net Tax: $830.00

- **Incline Village**
  - Gross Tax: $195.98
  - Credit: ($8.32)
  - Net Tax: $187.66

- **North Lake Tahoe 2**
  - Gross Tax: $1,043.06
  - Credit: ($44.29)
  - Net Tax: $998.77

- **State of Nevada**
  - Gross Tax: $281.86
  - Credit: ($11.97)
  - Net Tax: $269.89

- **Washoe County**
  - Gross Tax: $2,307.46
  - Credit: ($97.99)
  - Net Tax: $2,209.47

- **Washoe County Sc**
  - Gross Tax: $1,887.66
  - Credit: ($80.15)
  - Net Tax: $1,807.51

- **LAKE TAHOE WATER BASIN**
  - Gross Tax: $0.20
  - Credit: $0.00
  - Net Tax: $0.20

Total Tax: $6,546.22

Payment History

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