# MEMORANDUM

**TO:** Board of Trustees

**FROM:** Thomas P. Beko, Esq.
Erickson, Thorpe & Swainston, Ltd.
POOL/PACT Counsel

**REVIEWED BY:** Steven J. Pinkerton
General Manager

Jason D. Guinasso, Esq.
District General Counsel

**SUBJECT:** Receive and discuss a verbal status report from litigation counsel, Tom Beko, Esq., regarding litigation involving Aaron Katz Case No. CV11 01380 under Nevada Supreme Court Appeal Nos. 70440 & 71493

Review, discuss, and possibly approve one of four options, outlined in the body of the memorandum supporting this agenda item or created at the Board meeting, regarding the continued defense of award of attorney fees subject to Mr. Katz's appeal under Nevada Supreme Court Appeal Nos. 70440 and 71493 (decision of Board of Trustees could have a financial impact on the District of more than $400,000)

**DATE:** August 17, 2018

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## I. PURPOSE OF THIS MEMORANDUM

The purpose this memorandum is to provide, at a noticed, public meeting, the background on this court case and provide options to the Board of Trustees on the next steps. It is important for the Counsel to have an affirmation of this Board of Trustees direction on this case as this case began with an entirely different Board of Trustees in place.

## II. BACKGROUND OF THE COURT CASE(S) AND OUTCOME(S)

This is agenda item arises out of ongoing litigation with resident Aaron Katz. While legal counsel to the District has provided several comprehensive regular updates on this litigation to the Board and to the Public over the years, we now provide a brief summary of the background and report.

## A. Five Years of Litigation Before the Washoe County District Court

Mr. Aaron L. Katz moved from California to Incline Village in 2009. Mr. Katz is a former CA attorney. In 1983, Mr. Katz was convicted on one felony count of perjury involving a personal tax avoidance scheme and subsequently suspended from the practice of law for three years by the State Bar of California. Mr. Katz is a serial vexation litigant who has had a well-documented history of suing government entities, as well as filing administrative claims. Mr. Katz is an adversary who has initiated a multitude of frivolous attacks against IVGID in every conceivable forum, including the Nevada Attorney General's office, the Nevada Commission on Ethics, the Public Utilities Commission, the Department of Taxation, the Nevada Legislature, the Washoe County Commission, the Washoe County Sheriff and the Washoe County District Court.

Within two years of moving to Incline Village, Mr. Katz continued his litigious ways and sued the Incline Village General Improvement (IVGID) on May 4, 2011 (Case No. CV11 01380). The sitting Board of Trustees at that time consisted of Ted Fuller, Bruce Simonian, Chuck Weinberger, Bea Epstein, and Joe Wolfe. Once sued, IVGID reported this litigation to its insurer, POOL/PACT, who assigned Erickson, Thorpe, & Swainston, Ltd. to be the counsel of record. Mr. Katz's case against IVGID initially stemmed from his objection to paying IVGID's annual $830.00 recreation fee, and eventually developed into a five-years of litigation against the District. Mr. Katz represented himself.

During the litigation, Mr. Katz filed 28 separate causes of action against IVGID with 250 charging paragraphs in a Complaint that was over 80 pages in length. Mr. Katz alleged causes of action primarily sought to invalidate the recreation fee, and also included a single cause of action alleging the failure to respond to certain requests for production of public records according to Chapter 239. Eventually, all of Mr. Katz's claims were dismissed by the Court because they did not have any legal or factual support; however, because there were disputes over facts concerning his public records claims, the Court heard testimony on the public records claims during a bench trial before Judge Patrick Flanagan on March 21, and 22, 2016.

IVGID takes the requirements of Nevada's Public Records Act very seriously, and has appointed a Public Records Officer to ensure compliance with the law and respond to records requests from the public. IVGID does not conceal public records and the evidence presented to Judge Flanagan at Trial proved that IVGID had fully complied with the law. At the bench trial, the District's evidence proved that IVGID fully complies with the Nevada public records law. The evidence also revealed that Mr. Katz' requests were not legitimate attempts to obtain documents but were utilized as a weapon to harass and distract the employees of IVGID from

their mission to serve the community at large. After carefully considering this evidence, Judge Flanagan ruled decisively that IVGID and its appointed Public Records Officer had fully complied with Nevada's public records law and acted in good faith and with due diligence in responding to Mr. Katz' numerous requests for records. Written judgment was rendered in favor of IVGID. In his Order, Judge Flanagan gave great deference to the right of the public to inspect public records and documents. However, the Court also emphasized that the government must retain the ability to function without undue harassment and unreasonable interference. In reviewing the evidence regarding the specific public records requests at issue, the Court concluded IVGID's responses were appropriate.

Following the final judgment on the merits, IVGID pursued a motion for attorney's fees and costs against Mr. Katz under NRS 18.010(2)(b), which allows a District Court to award attorney's fees to a prevailing party where the opposing party brought or maintained a claim without reasonable ground or for the purposes of harassment. In addition to Mr. Katz's litigation tactics, with which the Court was intimately familiar after overseeing the case for five years, IVGID also presented evidence of Mr. Katz's actions in pursuing meritless actions before the Nevada Commission on Ethics, complaints under the Open Meeting Law and relentless requests for voluminous public records – including a harassing request made during the bench trial – as part of Mr. Katz's campaign against IVGID.

The Court agreed with IVGID. Judge Flanagan issued a well-reasoned written decision on July 15, 2016, awarding IVGID $229,372.75 in attorney's fees and costs against Mr. Katz *(which along with the required interest were deposited into a trust account pending the appeal process; those monies remain in that trust account as of the date of this memorandum).* Judge Flanagan's order reveals the award was appropriately based upon Mr. Katz's vexatious and harassing conduct. In awarding fees, Judge Flanagan saw through the arguments presented by Mr. Katz, ruling that his "entire suit was a pretext for Mr. Katz to obstruct and impede IVGID's operation to the detriment of thousands of other residents." (Order, p. 4, ll. 1-3).

Regarding the public records claim, Judge Flanagan explained that:

> "*[a]t trial, it became abundantly clear that IVGID had made every effort to accommodate Mr. Katz's numerous request[s] for documents.*"

(Order, p. 4, ll. 18-19). Continuing on, the Court found that:

> "*Mr. Katz [was] under the dubious impression that simply having the ability to make a public records request entitles him to treat the employees of IVGID as his own . . . . [displaying] an unfounded sense of entitlement that goes far*

*beyond the bounds of what the Nevada public records laws allow for, and further illustrat[ing] Mr. Katz's contempt for both this court and the orderly operation of IVGID."*

(Order, p. 6, ll. 6-16). The Court continued on as follows

> *While Mr. Katz may fancy himself a community watchdog, his actions, taken as a whole, lead this court to one undeniable conclusion: this was a frivolous lawsuit. NRS 18.010(2)(b) was designed precisely for these matters "because such claims . . . overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public." NRS 18.010(2)(b).*
>
> *What began as a quest by Mr. Katz to invalidate the $800 recreation fee he was required to pay as a resident of Incline Village, morphed into an obsession with obstructing the staff of IVGID with burdensome records requests and contentious litigation. Neither courts nor the laws of Nevada exist so that those who detest their local governments can bully them into submission. At some point, these actions must come to an end. That point has now been reached.*

(Order, pp. 6-7, ll. 17-6).

**B. Post-judgment Appeals to the Nevada Supreme Court and Efforts to Collect Attorney Fees and Costs.**

Mr. Katz appealed the decisions of the Washoe County District Court to the Nevada Supreme Court. The appeal was for the dismissal of his substantive causes of action under Appeal No. 70440, as well as the award of attorney's fees and costs in favor of the District under Appeal No. 71493. It was at this time that Mr. Katz engaged the services of Richard F. Cornell, Esq. As detailed below, the first appeal (of the underlying substantive issues) was fully briefed and submitted to the Nevada Supreme Court for decision. On February 26, 2018, the Nevada Supreme Court affirmed each of the Washoe County District Court's decisions in favor of IVGID. In April of 2018, Mr. Katz filed a petition for rehearing asking the deciding panel of the Nevada Supreme Court to reconsider the decision affirming the Washoe County District Court. The Nevada Supreme Court denied that petition. Thereafter, on May 23, 2018, Mr. Katz filed another petition, this time

asking the entire Nevada Supreme Court (all seven justices) to rehear the case. On July 26, 2018, the Nevada Supreme Court unanimously denied that petition as well. Thus, short of an appeal to the United States Supreme Court, this portion of the litigation is now final.

> Appeal No. 70440, on February 26, 2018, the Nevada Supreme Court issued an Order of Affirmance finding no reversible error by the District Court; **see attached Exhibit 1**.
>
> Mr. Katz filed a motion for reconsideration, which was summarily denied; **see attached Exhibit 2**.
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> Thereafter, Mr. Katz requested en banc reconsideration, which was also denied; **see attached Exhibit 3**.

The second appeal, regarding the award of attorney's fees to the District (Appeal No. 71493), was put on hold by the Court's order entered March 1, 2017. Mr. Katz' attorney filed a Motion to Stay proceedings in the second appeal pending disposition of the first appeal. He argued that if the underlying judgment was not affirmed then the District would not have a basis for an award of attorney's fees because it would validate that some or all of Katz' claims were not frivolous or not brought for the purpose of harassment. IVGID opposed that motion and argued that proceeding in a piecemeal fashion would not be efficient. Nonetheless, the Nevada Supreme Court ordered that the briefing schedule and other deadlines in Case No. 71493 be suspended until a decision was entered in the first appeal. However, the Nevada Supreme Court did not stay the enforcement of the judgment entered against Mr. Katz. Therefore, IVGID was permitted to take the necessary steps to collect the judgement.

Regarding IVGID's efforts to enforce the judgment, this was a very complex process because of the award of fees against Mr. Katz personally and the vast majority of his assets are held in various trusts. IVGID attorneys proceeded with post-judgment discovery to gain information about Mr. Katz's assets so that IVGID could collect the money it was owed under the judgment. Post-judgment discovery included the scheduling of a Judgment Debtors Examination. Mr. Katz refused to answer several discovery requests and opposed being examined under oath by filing a motion to stay discovery and execution proceedings with the Washoe County District Court. On August 24, 2017, a hearing was held on Mr. Katz' motions. After hearing the arguments, the Court denied all of Mr. Katz's motions.

After the ruling, Mr. Katz' debtor's exam was scheduled for August 31, 2017. At the Judgment Debtors Examination, negotiations ensued and resulted in an agreement between Mr. Katz and the District. In this regard, Mr. Katz agreed to

tender the entire amount currently due (through September 13, 2017) pursuant to the Judgment previously rendered against him by the District Court ($241,646.11). After the check cleared, IVGID filed and recorded a full satisfaction of the judgment.

**Exhibit 4 attached** to this memorandum are the excerpts of the agendas, minutes, and presentations given to the Board of Trustees, in noticed, public meetings, since May 18, 2016 regarding this case. The dates of these attachments are as follows:

- ✓ May 18, 2016
- ✓ July 27, 2016
- ✓ September 28, 2016
- ✓ April 25, 2017
- ✓ June 12, 2017
- ✓ August 22, 2017
- ✓ September 13, 2017
- ✓ January 24, 2018
- ✓ March 13, 2018

## III. NEXT STEPS

This Board of Trustees consisting of Tim Callicrate, Matthew Dent, Phil Horan, Peter Morris, and Kendra Wong now are in the position to decide what the future of this litigation will be for the Incline Village General Improvement District.

The District has, in a trust account, $241,646.11 which is being held in trust until Appeal No. 71493 (dealing with the award of attorney's fees and costs) has been decided by the Nevada Supreme Court. The Court has not established a briefing schedule to date; however, we anticipate one to be set in the near future. It is also possible that the Nevada Supreme Court might refer this appeal into the Supreme Court mediation program.

The estimated cost to file briefing in defense of Appeal No. 71493 will be approximately $40,000. IVGID's retained counsel has indicated that the actual cost of defending the award of IVGID's litigation costs could be significantly less than this estimate if Mr. Katz properly limits his briefing to the issues raised in this second appeal. However, counsel cautions that given Mr. Katz' previous history, they expect that rather than limit his arguments to the issues raised in the appeal of the attorney fee award, Mr. Katz will seek to once again reargue all the issues he lost in the underlying appeal. Should he do so, that will dramatically increase the costs of defending that award to IVGID.

In summary, the District has spent a total of approximately $399,160.11 ($241,646.11 for proceedings at the Washoe County District Court and $157,514 on appeal before the Nevada Supreme Court under Appeal No. 70440) over the past seven years to successfully defend against Mr. Katz's civil action. Legal counsel expects that the fees and cost to defend the Washoe County District Court's award of attorney fees and costs under Appeal No. 71493 will be an additional $40,000. Additionally, the cost to recover attorney fees and costs incurred as a result of Mr. Katz's appeals will be an additional $30,000. Therefore, the total fees and costs of Mr. Katz's lawsuit against the District is estimated to reach approximately $469,160.11.

## IV. OPTIONS

***Recommended Action #1:*** Reaffirm and approve the continued legal efforts of retained litigation counsel, Tom Beko, Esq., to defend the attorney fees awarded by the Washoe County District Court ($241,646.11) held in trust by the District. These legal services will continue under Appeal No. 71493 and are estimated to cost the District approximately $40,000.

***Recommended Action #2:*** Reaffirm and approve the legal services of retained litigation counsel, Tom Beko, Esq., to recover attorney fees and costs associated with Mr. Katz's appeals under Supreme Court Case Nos. 70440 & 71493. The anticipated cost to recover all the attorney fees and costs incurred will be approximately $30,000. To date, approximately $157,514.00 has been spent to defend against Mr. Katz's appeals. However, counsel recommends that IVGID wait to attempt to recover the fees and costs spent on appeal until Appeal No. 71493 has been briefed and decided by the Supreme Court.

***Alternative Action #1:*** Do not approve continued defense of award of attorney fees subject to Mr. Katz' appeal under Supreme Court Appeal No. 71493 and direct staff to refund the $241,646.11 paid by Mr. Katz to the District in exchange for Mr. Katz withdrawing his appeal.

***Alternative Action #2:*** Do not authorize litigation counsel, Tom Beko, Esq., to pursue attorney fees and costs associated with Mr. Katz' appeals under Nevada Supreme Court Appeal Nos. 70440 & 71493 and direct staff to return to the Board for authorization after Appeal No. 71493 is briefed and decided. To date, approximately $157,514.00 has been spent to the defend against Mr. Katz's appeals.

***Other Action Proposed By Board:*** Board of Trustees can consider alternative proposed action within scope of this agenda item at the August 27, 2018 Board of Trustees meeting.

## V. CONCLUDING COMMENT

This General Business item is being brought forth before this current Board of Trustees as it is imperative that counsel understands how this current Board of Trustees feels about this matter and that counsel gets this decision so it is prepared to pursue whatever option this Board of Trustees votes to pursue. The District has been successful, to date, in this case because all parties on the District team understood the plan of action. At this critical time in this case, it is the time to affirm the plan of action for this litigation.

# EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON L. KATZ,
Appellant,
vs.
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT,
Respondent.

No. 70440

FILED

FEB 26 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court final judgment in an action against a general improvement district (GID). Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant primarily challenges four district court orders, which we address in turn.[1] Perceiving no reversible error, we affirm.[2]

*August 22, 2012, Order*

The district court granted judgment on the pleadings with respect to appellant's first, second, third, fourth, fifth, seventh, eighth, ninth, tenth, and eleventh claims. Although those claims sought various

[1]Because appellant's challenges to the district court's other orders appear to be moot if the four primary orders are affirmed, we do not specifically address appellant's challenges to the other orders.

[2]In rendering this disposition, we have attempted to address all of appellant's arguments that were cogently presented in district court and again in the opening brief. *See Francis v. Wynn Las Vegas, LLC*, 127 Nev. 657, 671 n.7, 262 P.3d 705, 715 n.7 (2011); *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). To the extent that this disposition does not specifically address additional arguments that appellant raises, we have determined that those arguments do not warrant reversal.

forms of declaratory relief, the district court determined that the statutes that formed the basis for those claims did not authorize a private right of action. In making this determination, the district court relied on *Builders Association of Northern Nevada v. City of Reno*, which recognized that "[t]he Uniform Declaratory Judgments Act does not establish a new cause of action" and that "[i]f a statute expressly provides a remedy, courts should be cautious in reading other remedies into the statute." 105 Nev. 368, 369-70, 776 P.2d 1234, 1234-35 (1989).

Appellant first contends that these ten claims were viable under NRS 30.040(1). While the language in that statute may arguably be at odds with *Builders Association*, appellant does not address *Builders Association*, much less ask that it be modified or overturned. Thus, appellant's third, fourth, and fifth claims are directly controlled by *Builders Association* because they challenge respondent's alleged violations of NRS Chapter 354's Local Government Budget and Finance Act. 105 Nev. at 370, 776 P.2d at 1235. Similarly, because appellant's remaining seven claims challenge respondent's actions allegedly violating NRS Chapter 318, and because NRS 318.515 provides an express remedy for a GID elector to challenge such actions, the reasoning in *Builders Association* applies with equal effect to those claims.[3]

Appellant next contends that NRS 308.080(4) grants him standing to assert his first claim wherein he seeks a district court order requiring respondent to adopt a service plan. We disagree, as that statute

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[3]Although appellant contends that NRS 318.515(1) demonstrates the Legislature's intent to provide an immediate private remedy for a GID's violation of NRS Chapter 318, we find that argument implausible in light of NRS 318.515(4).

pertains to enjoining a departure from an already-adopted service plan. Because nothing in NRS Chapter 308 or NRS Chapter 318 clearly requires a GID to retroactively adopt a service plan if it was not required to do so when it was created, we are not persuaded that the Legislature intended for NRS 308.080(4) to have the effect that appellant proffers.[4] *See In re CityCenter Constr. & Lien Master Litg.*, 129 Nev. 669, 673, 310 P.3d 574, 578 (2013) ("The ultimate goal of interpreting statutes is to effectuate the Legislature's intent.").

Appellant next contends that he has standing as a taxpayer to assert his first through fifth claims. While we note appellant's reliance on *City of Las Vegas v. Cragin Industries, Inc.*, 86 Nev. 933, 478 P.2d 585 (1970), *disapproved of in part by Sandy Valley Associates v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 955 n.7, 35 P.3d 964, 969 n.7 (2001), this court recently reaffirmed the general rule that a taxpayer lacks standing when he or she has not "suffer[ed] a special or peculiar injury different from that sustained by the general public," *Schwartz v. Lopez*, 132 Nev., Adv. Op. 73, 382 P.3d 886, 894 (2016) (citing *Blanding v. City of Las Vegas*, 52 Nev. 52, 69, 280 P. 644, 648 (1929)). Thus, we are not persuaded that appellant has taxpayer standing. Although *Schwartz* recognized a "public-importance exception" to the general rule, 132 Nev., Adv. Op. 73, 382 P.3d at 894, we are not persuaded that the exception applies here, as appellant is the only GID elector that has chosen to participate this litigation.

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[4]We are not persuaded by appellant's argument that the Legislature implicitly intended to adopt such a requirement by virtue of its 1977 amendment to NRS 308.020.

Appellant finally contends that his eighth and eleventh claims seeking a refund of the Beach and Recreation Facility Fees are viable. In particular, appellant contends that he should not be required to comply with NRS 318.201(12) because the process for seeking a tax refund is ill-suited for seeking a refund of Beach and Recreation Facility Fees. While we recognize that the tax-refund process may provide an awkward means for appellant to seek a refund of the Beach and Recreation Facility Fees, we cannot ignore NRS 318.201(12)'s plain language, and nothing in the records suggests that appellant has tried to comply with the tax-refund process such that the district court or this court would otherwise be justified in excusing appellant's noncompliance.

*August 27, 2014, Order*

The district court granted what it termed "summary judgment" on appellant's sixth, fifteenth, and seventeenth claims. With respect to the sixth and fifteenth claims, appellant primarily contends that the district court's ruling should be reversed because there was a factual dispute as to whether the utility rate changes set forth in respondent's resolutions were just and reasonable, as well as nondiscriminatory. We disagree for two primary reasons. First, appellant has not persuasively argued that a GID's utility rates are subject to the "just and reasonable" and "not unduly discriminatory" standards in NRS Chapter 704 and NAC Chapter 704 pertaining to public utilities. *See* 1977 Nev. Stat. ch. 293, §§ 1-3, at 541-42 (removing GIDs from the control of the Public Services Commission and instead enacting NRS 318.199's framework).[5] Second, and although

[5]This is not to say that the Legislature intended to condone GIDs imposing wholly unreasonable or extremely discriminatory utility rates. Nonetheless, we are not persuaded that respondent is necessarily bound by

respondent's and the district court's references to "summary judgment" may have caused confusion, the district court's March 21, 2013, order effectively characterized appellant's sixth and fifteenth claims as seeking judicial review of an administrative agency's decision. Thus, in adjudicating appellant's sixth and fifteenth claims, the district court was not required to determine whether a factual dispute existed, but rather, the district court was only required to determine whether respondent's resolutions were supported by substantial evidence. *Cf.* NRS 233B.135(4) (defining "substantial evidence" in the context of judicial review of an administrative decision as "evidence which a reasonable mind might accept as adequate to support a conclusion"). Because respondent followed the procedures outlined in NRS 318.199 for changing the utility rates,[6] and because respondent provided a justification sufficient for a reasonable mind to accept as supporting the rate increases (including but not limited to Joseph Pomroy's memoranda dated February 9, 2011, and February 8, 2012), we are not persuaded that the district court committed reversible error in adjudicating appellant's sixth and fifteenth claims in favor of respondent.

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*Springfield Gas & Electric Co. v. City of Springfield*, 126 N.E. 739, 744 (Ill. 1920)'s definition of "reasonable and just" or appellant's subjective definition of what is unduly discriminatory.

[6]In the absence of a specific statutory mandate, we are unable to conclude that appellant's due process rights were violated by being permitted to speak only for three minutes at the hearings or by respondent allegedly ignoring appellant's opinions that the rate structures were unjust and unreasonable as well as unduly discriminatory. *Ames v. City of N. Las Vegas*, 83 Nev. 510, 513, 435 P.2d 202, 204 (1967) (recognizing that due process is not necessarily violated when a governing body discounts a protestor's objection).

With respect to his seventeenth claim, appellant contends primarily that he was a third-party beneficiary under a deed and that he sufficiently alleged the need for an appointment of a receiver. Assuming appellant was a third-party beneficiary, we conclude that the district court was within its discretion in declining to appoint a receiver. *See Hines v. Plante*, 99 Nev. 259, 261, 661 P.2d 880, 881 (1983) (observing that the decision to appoint a receiver is within the district court's discretion). As the district court recognized, "[t]he appointment of a receiver . . . is a harsh and extreme remedy which should be used sparingly and only when the securing of ultimate justice requires it." *Id.* at 261, 661 P.2d at 881-82. Here, appellant's primary allegation in support of appointing a receiver was that respondent was permitting unauthorized people to access the beaches. Based on the record, we cannot conclude that the district court abused its discretion in determining that this allegation did not warrant the appointment of a receiver. Beyond that allegation, appellant's remaining allegations and requests for relief pertained to whether the Beach Facility Fee was imposed in violation of NRS Chapter 318. As explained above, NRS 318.515(1) provides the mechanism by which those objections must be lodged.[7] Thus, we are not persuaded that the district court committed reversible error in adjudicating appellant's seventeenth claim in favor of respondent.

*March 11, 2016, Order*

The district court granted partial summary judgment on appellant's twelfth claim relating to the Nevada Public Records Act (NPRA),

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[7]Contrary to appellant's contention, the allegations in his seventeenth claim do not clearly implicate the interpretation of respondent's deed, nor does his prayer for judgment ask for any such interpretation.

reasoning that appellant lacked standing to challenge the fee provision in Resolution 1801 because he had never been charged with a fee under that Resolution. Appellant argues that no prior assessment of a fee under the Resolution was required in order for him to challenge the Resolution.

We conclude that partial summary judgment was proper, albeit on ripeness grounds. *See In re T.R.*, 119 Nev. 646, 651, 80 P.3d 1276, 1279 (2003) ("Although the question of ripeness closely resembles the question of standing, ripeness focuses on the timing of the action rather than on the party bringing the action."). In particular, appellant has identified five specific problems he has with the Resolution. Three of these five problems involve a fact-specific interplay between the Resolution and the NPRA's provisions authorizing the imposition of fees in certain instances, and it is not possible to determine whether the Resolution violates the NPRA until appellant has actually been assessed a fee.[8] Accordingly, we conclude that the district court properly granted partial summary judgment on appellant's NPRA claim. *See Pack v. LaTourette*, 128 Nev. 264, 267, 277 P.3d 1246, 1248 (2012) (recognizing that this court will affirm the district court's judgment if the district court reached the right result, albeit for different reasons).

*April 22, 2016, Order*

Following a bench trial, the district court ruled in favor of respondent with regard to all 24 of appellant's exhibits, concluding respondent had committed no violations of the NPRA. On appeal, appellant

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[8]Appellant's other two identified problems appear to involve precatory language in the Resolution that do not actually impose any restriction on a person requesting public records from respondent.

challenges the district court's determination with respect to the following seven exhibits.

*Draft internal budget*

At trial, Susan Herron testified that she did not provide any draft internal budgets to appellant based on her belief that "draft" documents are not public records. Appellant does not dispute the propriety of Ms. Herron's belief but instead argues that her failure to articulate the basis for refusing to produce the draft documents at the time she responded to appellant's request violated NRS 239.0107. Appellant, however, does not point to any authority suggesting that a violation of NRS 239.0107(1)(d) automatically requires the governmental entity to turn over the otherwise confidential records. Because we are not willing to read such a requirement into the NPRA, we conclude that appellant has failed to establish reversible error with respect to his request for a draft internal budget.

*Employee separation agreement*

Before trial, the district court reviewed *in camera* an employee separation agreement that Ms. Herron had declined to provide appellant on confidentiality grounds and determined that the agreement was, in fact, confidential. Appellant contends (1) respondent made public another former employee's termination agreement; (2) at the time she denied appellant's request, Ms. Herron did not comply with NRS 239.0107(1)(d); and (3) the district court erred in not ordering the production of a redacted version of the agreement. We are not persuaded by appellant's arguments. His first contention fails because he has not cited any authority that respondent waived the confidentiality of one agreement by making public another agreement. His second argument fails for the same reason as described with respect to his request for the draft internal budget. His third

contention fails because the necessary implication of the district court's determination was that the agreement was incapable of redaction such that respondent was not required to do so under NRS 239.010(3). Thus, we conclude that appellant has failed to establish reversible error with respect to his request for the employee separation agreement.

*Attorney memo*

Before trial, the district court reviewed *in camera* a memo from respondent's general counsel that Ms. Herron had declined to provide on the ground of attorney-client privilege and determined that the memo was, in fact, a privileged confidential communication. Appellant contends that respondent failed to introduce evidence that the communications in the memo were intended to be "confidential" as that term is defined in NRS 49.055. However, respondent provided the district court with the memo, who in turn reviewed it and concluded that based on the memo's content, the memo was indeed intended to be a privileged confidential communication. Thus, we conclude that appellant has failed to establish reversible error with respect to his request for the attorney memo.

*Hyatt Sport Shop sales records*

In an email to Ms. Herron, appellant asked for sales records from the Hyatt Sport Shop. In the same email, appellant also asked for various contracts respondent had entered into and for minutes from a meeting of respondent's board of trustees. In response, Ms. Herron provided appellant with the contracts and minutes but responded that the sales records were confidential. At trial, Ms. Herron first testified that she had complied with appellant's NPRA request but she later testified that she withheld the sales records because they contained confidential information. Appellant contends that Ms. Herron's testimony was inconsistent, in that

she testified she complied with his request but also testified she did not comply with the request. We do not necessarily perceive any inconsistency in Ms. Herron's testimony as she correctly testified that she produced *some* documents responding to a portion of appellant's NPRA request and that she withheld the sales records as confidential. In any event, we are not persuaded that this potential inconsistent testimony amounts to reversible error with respect to appellant's request for the sales records.

*Food and beverage discount logs*

Ms. Herron testified at trial that she did not produce food and beverage discount logs pursuant to appellant's request because any such logs had already been destroyed in conformance with respondent's document-retention policy. Although appellant contends that respondent's destruction of those documents violated NRS 239.124, it does not appear that appellant made this argument in district court, *see Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981), and in any event, a violation of NRS 239.124 would not "un-destroy" the logs such that appellant could have access to them.[9] Thus, appellant has not established reversible error with respect to his request for the food and beverage discount logs.

*Computerized data*

Appellant observes that the district court used appellant's offers to access respondent's computers as evidence to support the district court's post-judgment imposition of attorney fees. This observation is

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[9]Appellant contends that because NRS 239.310 imposes criminal penalties for willful and unlawful destruction of public records, the district court should have subjected respondent to the consequences of the alleged NRS 239.124 violation. The district court, however, is not the appropriate entity to institute criminal proceedings for an alleged NPRA violation.

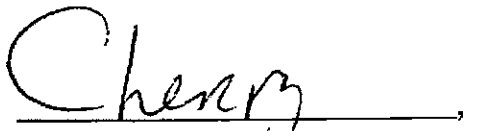
irrelevant to the issues presented in this appeal, and thus, does not constitute reversible error.

*List of Incline Village residents' names and addresses*

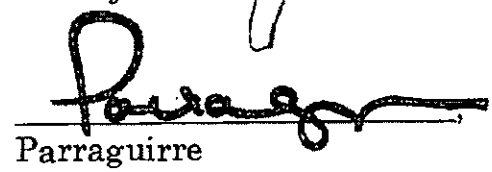
Appellant requested from Ms. Herron a list of the names and mailing addresses of all Incline Village residents. In response to this request, Ms. Herron stated that respondent had no such list. At trial, Ms. Herron testified that *at the time of trial*, respondent possessed a list of Incline Village residents' names and addresses, but when questioned whether respondent had that same list when appellant requested it, Ms. Herron answered, "No." In light of Ms. Herron's unequivocal testimony, we are not persuaded that the district court committed reversible error in declining to order respondent to produce a list that did not exist at the time of appellant's NPRA request.

In light of the foregoing, we

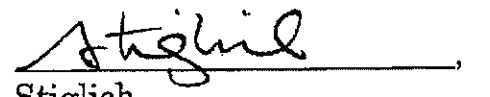
ORDER the judgment of the district court AFFIRMED.



_____, J.
Cherry



_____, J.
Parraguirre



_____, J.
Stiglich

cc: Hon. Egan K. Walker, District Judge
Richard F. Cornell
Erickson Thorpe & Swainston, Ltd.
Washoe District Court Clerk

# EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON L. KATZ,
Appellant,
vs.
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT,
Respondent.

No. 70440

FILED

APR 24 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

*ORDER DENYING REHEARING*

Rehearing denied. NRAP 40(c).

It is so ORDERED.

Cherry, J.
Cherry

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

cc: Hon. Patrick Flanagan, District Judge
Richard F. Cornell
Erickson Thorpe & Swainston, Ltd.
Washoe District Court Clerk

# EXHIBIT 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON L. KATZ,
Appellant,
vs.
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT,
Respondent.

No. 70440

FILED

JUL 26 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

*ORDER DENYING EN BANC RECONSIDERATION*

Having considered the petition on file herein, we have concluded that en banc reconsideration is not warranted. NRAP 40A. Accordingly, we

ORDER the petition DENIED.

Douglas, C.J.

Cherry, J.

Gibbons, J.

Pickering, J.

Hardesty, J.

Parraguirre, J.

Stiglich, J.



18-28628

cc: Second Judicial District Court Chief Judge
Richard F. Cornell
Erickson Thorpe & Swainston, Ltd.
Washoe District Court Clerk

# EXHIBIT 4

7. Review and authorize the District's General Manager to extend the existing Hyatt Sport Shop lease with Hyatt Regency Lake Tahoe for a period of three (3) years at a rate of ten percent (10%) of gross sales (Requesting Staff Member: Director of Community Services Sharon Heider)

8. Have a Board discussion about perceived conflict of interest by having two members of the legal firm, Reese, Kintz, Guinasso, pursuing elected public office and, if elected to office, a plan for how the District's legal needs will be fulfilled – this is a no action item, for discussion purposes only (Requesting Trustee: Trustee Tim Callicrate)

9. Policy 3.1.0 Conduct Meetings of the Board of Trustees – Discussion about past Board member attendance at meetings and looking into the future to ensure that the current Board meeting schedule is meeting the needs of and requirements of conducting District business and that Board members can attend such meetings as tentatively scheduled (reference: Long Range Calendar) (Requesting Trustee: Chairwoman Kendra Wong)

10. Community Services Master Plan – Discussion of amenities proposed currently and for the future such as dog park, bocce courts, pickleball courts, Senior Programming, pump track, etc. – this is a no action item for discussion purposes only (Requesting Trustee: Chairwoman Kendra Wong; Staff Member: Director of Community Services Sharon Heider)

J. DISTRICT STAFF UPDATE – GENERAL MANAGER STEVE PINKERTON

1. District Financials
2. Technology
3. Communications

K. REPORTS TO THE IVGID BOARD OF TRUSTEES*

1. District General Counsel Devon Reese
   a. Aaron L. Katz vs. Incline Village General Improvement District; Motion to recover $226,466.80 in Attorney's Fees incurred by District

**K.1. District General Counsel Devon Reese**

**a. Aaron L. Katz vs. Incline Village General Improvement District; Motion to recover $226,466.80 in Attorney's Fees incurred by District *(moved to after General Business Item I.3.)***

District General Counsel Devon Reese gave background on the case and said he was informed today that Mr. Katz has appealed Judge Flannigan's decision so there will be additional costs of between $25,000 to $30,000. Chairwoman Wong said these are just the legal costs and that this doesn't factor in Staff time to prepare materials which are another added cost to consider. District General Counsel Reese said that the District Clerk has been largely responsible for the human power along with others and that he would commend the Staff for the work put in. It is hard for him to quantify it as there is no metric but that there is no doubt that the toll and costs are beyond the $270,000 that the District will spend on this lawsuit. Trustee Callicrate said it was brought up in one of our prior meetings that POOL/PACT paid for some; what did they pay for. District General Counsel Reese said they did pay for some but then denied coverage as the District's coverage didn't cover administerial acts and that he didn't know of any government that has that type of coverage. Trustee Callicrate said taking out the individual, going after folks who rightfully or wrongfully bring lawsuits against the District, has had a chilling effect on getting records. He doesn't want it to be misconstrued that he is supporting Mr. Katz but if it were another individual and this individual felt they weren't getting the appropriate response and that it escalated to some point, are we sending the wrong message as this is a slippery slope here with the individual involved such that it may cloud the overarching issue and that he doesn't want to see the District recouping over a certain amount. District General Counsel Reese said that the Board encourages your Staff to be open and honest and in a way that is meaningful and timely as the District doesn't have this level from anyone else. Anyone is allowed to examine records, as we have advised, and the District goes out of its way to produce and overproduces so he doesn't think this is sending a message to others. He has practiced law for twenty years and this is the first time he has seen a vexatious litigant and he has not seen this anywhere else so this is an outlier case. This litigant has a thirty or maybe forty year history of engagement all over the United States in a number of Districts and when he found something objectionable or an opportunity to gain, he pursued that. There is no guarantee that this motion will be granted as Judge Flannigan may find otherwise. Judge Flannigan may make it

significant enough to deter this individual and not others and Judge Flannigan doesn't have that intention. When you read his order, he states that the government has a duty to provide documents. It was mentioned that Judge Flannigan always votes for IVGID, that is absolutely incorrect and that he acted with compassion and went out of his way to make sure that Mr. Katz was able to provide his position and ultimately he didn't rule in favor of Mr. Katz. Judge Flannigan is above reproach. The billing records are included and there was a lot of work that went into this matter.

Trustee Dent asked what was the precedent for doing this and has it happened often in Washoe County or in Nevada where a government entity seeks to recover damages. District General Counsel Reese went over the procedures of the case and said that in 99.5% of the cases there is a filing to recover their fees. We are a payer system which is different from the European system where the loser pays every time. There is not a certainty that these fees will be recovered however it could be favorable because of the tactics of this litigant but that doesn't necessarily mean that we might not recover a penny. If it doesn't happen, we might have a meeting about recovery which would be a part of the process.

Chairwoman Wong said that these are not damages but costs only. Trustee Callicrate said that this answered a few questions. District General Counsel Reese said that this is for the recovery of our attorney fees and costs and that damages are entirely different. He could be countersued for the pain and suffering and that would be the damages that our District Clerk suffered but those fees and costs have a different level of proof.

Trustee Hammerel said that he moved this agenda item up to earlier in the agenda for two reasons – one, it was tucked back and buried and that he knew tonight would probably be a lengthy meeting so he didn't want it to get swept under the rug as it is an important issue for the Board to discuss; and two, he hoped that Mr. Katz and his wife Judy Miller would be here tonight. He commends our legal staff for moving in this direction as this District has been taking it on the chin for years now and that this is a serial and vexatious litigant not only in Nevada but in California and that it is time to fight back. He understands where Trustee Callicrate is coming from but that this is above and beyond what he considers to be a reasonable person and the law protects the reasonable person. He is glad we are moving in this direction and noted that history has a tendency of repeating itself. On agenda packet page 434, section D., a California bar court said, during the review of Mr. Katz's previous litigation, a number of things that

struck him as déjà vous and he quoted those passages. Mr. Katz, for the past few years, has been a strong opponent to the Recreation Fee and other minor fees such that it has escalated to where the District has incurred hundreds of thousands of dollars and potentially $25,000 to $30,000 more and that he, as a resident, is outraged and thinks that everyone should be outraged. Trustees are voted in to defend and we should have done this a long time ago so he is glad we are moving along this course and that he wishes he could look you in the eye Mr. Katz.

District General Counsel Reese said that the second piece of litigation that has been percolating is Mr. Frank Wright vs. IVGID; District General Counsel Reese than gave an overview of the filed case and said that the case was found in favor of IVGID. It is anticipated that the District will file for costs and fees and that he thinks that total will be $25,000 to $35,000 in its entirety. It sounds like Mr. Wright will appeal so this could be going to the Supreme Court so there is potential to incur an additional $25,000 to $35,000 and that he will bring back new developments as they occur.

Chairwoman Wong said that these items cost the District tens of thousands of dollars to file these motions and that she gladly pays the $830 and in fact she pays two so she understands it. District General Counsel Reese said that most litigants must hire counsel to represent them but that Mr. Katz and Mr. Wright represent themselves which doesn't mix as Mr. Wright is not writing his own motions so we will explore that as it appears to be similar to what Mr. Katz is writing. Mr. Katz has a legal background but he is not licensed. For most people, it is not worth it to represent themselves however it only costs $85 to file and $85 to appeal and if they produce their own records, which he is not certain of, there are not other costs to personally appear so they don't have legal fees like the District does. In both of these cases there has been a publicly made claim that they will ask for their costs. Only lawyers can ask for those and a pro se cannot make that claim.

**I.4. Review and authorize a Cost Share Funding Agreement with the State of Nevada for Incline Creek Restoration in the amount of $114,207 with a District share of $55,793 (Requesting Staff Member: R. Charles Miller, P.E., Principal Engineer)**

Principal Engineer Charley Miller gave the presentation included in the packet.

6. Review, discussion and award of a Design Services Contract for the Community Services Master Plan – 2016/2017 Capital Improvement Program (CIP): Fund: Community Services; Project #4999RS1603; Parks and Recreation Master Plan Update - Vendor: Design Workshop in the amount of $215,835 (Requesting Staff Member: Director of Community Services Sharon Heider)

7. Review, discussion and authorization to negotiate a contract for legal services for the Incline Village General Improvement District with the law firm of RKG Lawyers LLC for a term of three (3) years; negotiated contract will be brought back for the Board's approval at a future Board of Trustees meeting (Requesting Staff Member: District General Manager Steve Pinkerton)

8. Review, discussion and possible action on District General Manager Steven J. Pinkerton annual performance evaluation (Requesting Staff Member Director of Human Resources Dee Carey; discussion will be lead by Chairwoman Kendra Wong)

9. Review, discussion and possible action on Incline Village General Improvement District General Manager Steven J. Pinkerton's Employment Agreement - Automatically renew and extend the General Manager Employment Agreement for an additional three year term beginning on April 28, 2017 and ending on April 27, 2020 (Requesting Staff Member: Director of Human Resources Dee Carey; discussion will be lead by Chairwoman Kendra Wong)

H. DISTRICT STAFF UPDATE

1. General Manager Steve Pinkerton
   - ❖ Solid Waste
   - ❖ Information Technology
   - ❖ Communications
   - ❖ Branding
   - ❖ 2015-2016 Pre-Audit Budget Results

2. Director of Asset Management Brad Johnson
   - ❖ Incline Beach House Project

3. Director of Golf Michael McCloskey
   - ❖ 2016 Golf Season to date

I. REPORTS TO THE IVGID BOARD OF TRUSTEES*

1. District General Counsel Jason Guinasso
   a. Aaron L. Katz, Plaintiff vs. Incline Village General Improvement District, Defendant, Case No. CV11-01380, Order dated July 15, 2016

are in the documents as this all deals with documents so he can't see how she can stay on the November ballot.

## E. APPROVAL OF AGENDA *(for possible action)*

Chairwoman Wong asked that I.1.a. Reports to the IVGID Board of Trustees be moved to after the approval of the agenda. Chairwoman Wong asked for any other changes, hearing none, she deemed the agenda approved as revised.

## I. REPORTS TO THE IVGID BOARD OF TRUSTEES* *(moved up on the agenda at the request of the Board)*

### I.1. District General Counsel Jason Guinasso

**a. Aaron L. Katz, Plaintiff vs. Incline Village General Improvement District, Defendant, Case No. CV11-01380, Order dated July 15, 2016**

District General Counsel Jason Guinasso said that Counsel has reported on this case a couple of times this year including that we were successful in getting all twenty four causes dismissed, that we were going to pursue recovering of fees and costs, and that all understood that it is rare to get them but that they had a meeting about this topic with retained Counsel and the General Manager and that it was determined, in this circumstance, that we really had no choice but to pursue it as it was nearly $250,000 and that the twenty four causes that were dismissed were frivolous and that it wouldn't be fair, to the community, not to pursue. District General Counsel Guinasso then read excerpts from Judge Flanagan's order included in the packet and stated that for those who asked the question does it chill citizens rights to complain or go to court - the answer is absolutely not. This community got justice and a real victory and the implications go to this one extraordinary individual.

Chairwoman Wong thanked all of our current and former Staff and current and former Board members who have endured the verbal and written abuse. This judgment, in of itself, she hopes provides some satisfaction of working towards something. To our former Board members who took a solid position, this is as much of a victory for you as it is for us. Thank you to our Staff for doing your jobs and staying above the fray and thank you to our District Clerk as you do this multiple times a day.

Trustee Hammerel said he concurred with Chairwoman Wong's comments and that what is on everyone's minds is the next step. District General Counsel

Guinasso said that there has to be a final judgment before we proceed forward as it is not yet final. Mr. Katz has retained Legal Counsel who has made a motion to set it aside. Judge Flanagan will have a decision to make but that there is no basis in law to have it set aside. Appeal time is being tolled while the motion is being considered. Once the appeal is taken, Mr. Katz and his attorney will have to get a stay to prevent us from getting a judgment. As soon as it is final, he will approach the Board, in closed session, for legal strategy to pursue that judgment and to receive those funds for IVGID accounts. Further, he would be remiss not to recognize the attorneys who handled this item and that is Tom Beko, Brent Ryman and Charity Felts; they did a bang up job and should be recognized for their good work.

## F. PRESENTATIONS*

### F.1. Director of Community Services Sharon Heider – Update on Community Services activities

Director of Community Services Sharon Heider gave a brief PowerPoint presentation, which is incorporated herewith by reference.

Trustee Callicrate said he would like to acknowledge the District's Director of Community Services and Parks and Recreation Director for working with the Red, White and Tahoe Blue group as it was all hands on deck and we couldn't have asked for better collaborators. It was a tremendous success and he wanted to publicly acknowledge that IVGID went above and beyond and did a tremendous job.

Trustee Horan asked how the shuttle is going after 4th of July. Director of Community Services Heider responded not terrific and that Staff will be coming back with some recommendations. Trustee Horan followed up by asking about preferred parking. Director of Community Services Heider said it is going well and that it is too early to tell as we are very early on in the process.

Chairwoman Wong asked Director of Community Services Heider to send the Board the calendar of upcoming events to them via e-mail. Director of Community Services Heider said absolutely.

- ❖ Ordinance 7: An Ordinance Establishing Rates, Rules and Regulations for Recreation Passes and Recreation Punch Cards by the Incline Village General Improvement District
- ❖ District's Strategic Plan
- ❖ Fiscal Year 2016/2017 Budget
- ❖ Washoe County Community Area Plan Event on September 28, 2016 at 3 p.m. at the Chateau

2. Parks and Recreation Director Indra Winquest
   - ❖ Beaches Wrap Up

3. Director of Golf Michael McCloskey
   - ❖ 2016 Golf Season to date

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

1. Special Meeting of July 7, 2016
2. Regular Meeting of July 27, 2016
3. Special Meeting of August 4, 2016
4. Regular Meeting of August 24, 2016
5. Special Meeting of September 1, 2016

J. REPORTS TO THE IVGID BOARD OF TRUSTEES*

1. District General Counsel Jason Guinasso
   a. Aaron L. Katz, Plaintiff vs. Incline Village General Improvement District, Defendant, Case No. CV11-01380, Order dated September 21, 2016

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

L. CORRESPONDENCE RECEIVED BY THE DISTRICT*

M. 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.

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

O. CLOSED SESSION - The Board may consider a motion to enter into closed session to have a discussion regarding the Union Negotiations with the Operating Engineers of Northern Nevada pursuant to NRS 288.220.

P. ADJOURNMENT *(for possible action)*

## E. APPROVAL OF AGENDA *(for possible action)*

Chairwoman Wong said that she wanted move Item J. after Item F. Hearing no further changes, Chairwoman Wong approved the agenda as revised.

## F. PRESENTATIONS*

### F.1. Director of Community Services Sharon Heider – Update on Community Services activities

Director of Community Services Sharon Heider gave a brief PowerPoint presentation, which is incorporated herewith by reference.

## J. REPORTS TO THE IVGID BOARD OF TRUSTEES* *(move up to after Item F.)*

### 1. District General Counsel Jason Guinasso

#### a. Aaron L. Katz, Plaintiff vs. Incline Village General Improvement District, Defendant, Case No. CV11-01380, Order dated September 21, 2016

District General Counsel Jason Guinasso said that in his last report he stated that Mr. Katz had filed a motion to alter the judgment against him for fees and costs in his frivolous lawsuit; last week that motion was denied and that he wanted to bring to the Board's attention and the public, from page 4 of the order, the following:

> *"In Nevada, courts have the discretion to determine when an award of attorney fees is appropriate. Here, this Court has found that the award of attorney's fees to Defendant [IVGID] was appropriate. Throughout this litigation, Plaintiff [Mr. Katz] has shown that the motives for his claims were nothing more than to harass and burden the Defendant with excessive public records requests. In addition, Plaintiff's actions throughout this litigation have been nothing short of appalling and a waste of judicial resources. Again, by his actions, Plaintiff has led this Court to one undeniable conclusion: this was a frivolous lawsuit."*

With that, District General Counsel Guinasso said that he wanted to recognize the attorneys who got these results - Tom Beko and Charity Felts. Mr. Beko and Ms. Felts came before the Board and Mr. Beko said that they don't have anything to discuss and that the motion was denied so we will have the judgment rendered. The entire matter is on appeal with the Nevada Supreme Court and that is going to take a significant amount of time. This is an unfortunate piece of litigation which was drug out and is now going through the Nevada Supreme Court. The District Judge awarded the costs that have been incurred. Ms. Felts has a done a great deal of work and Mr. Ryman also participated and handled the latter part of this effort. They appreciate all the remarks from the various members and IVGID's Susan Herron was an enormous help who has gone so far above and beyond in providing everything they needed to achieve these results.

District General Counsel Guinasso said that he was very interested in bringing both of you here as this result was not an easy result and that is required a great deal of legal skill and acumen so he wanted to publicly thank you and your firm for the great work done.

Chairwoman Wong thanked Mr. Beko and Ms. Felts for all the time that have put in to this and that we really appreciate this time. Given that the Plaintiff's wife, Judy Miller, is a candidate for this Board and should she happen to be elected would this pose a conflict of interest? District General Counsel Guinasso said yes and that she would be directed not to participate in the public or the private litigation meetings. Trustee Hammerel said in addition to that there is an inherent conflict of interest as she would be an elected fiduciary and be a legal partner to the Plaintiff in this case with pecuniary interest to ensure they don't pay. District General Counsel Guinasso said that there is nothing in the law that prevents litigants from running for office and there are those that encourage folks to also take that extra step to run for office. There is nothing to prevent Ms. Miller from running and when these issues come up, she would have to recuse herself from the discussion and votes. Trustee Hammerel thanked Mr. Beko and Ms. Felts for their work.

Mr. Beko said that they have been representing IVGID for two decades and that this is unfortunate litigation and that they have been involved in other litigation that merited it. It is what it is and they

will defend them as they come. We have a District Judge who is willing to make some tough decisions; this case is on its way to appeal.

Trustee Hammerel said during that process if Mr. Katz and Ms. Miller decided not to pay those fees, would fees continue to be tacked on so we can collect above and beyond as this drags out. Mr. Beko said that the law provides for award of continuing costs to the prevailing party. District General Counsel Guinasso added that it would take a separate motion and that would be done after the appeal. Currently, we have incurred approximately $37,000 in post judgment fees and he imagines that this number will climb as we deal with the various issues.

District General Counsel Guinasso said that he would like to address the question that he gets quite a bit and that is what to expect next. He distributed a Clark County flowchart, which is incorporated herewith by reference, and went over that flowchart. The attorneys are working on a strategy to collect on this judgment and if Mr. Katz does appeal this judgment, he will need to fill a motion to stay which stops the enforcement but Mr. Katz must post a bond which guarantees payment.

Trustee Callicrate asked if this would be the same for any litigation towards the District and if the Plaintiff can't pay its bill and they file for bankruptcy, does the District have any recourse. District General Counsel Guinasso said that with bankruptcy a judgment is not automatically extinguished and we would make sure our lien was first in line. There is a lot of work to do to determine what is available to us so discovery will be done.

Chairwoman Wong called for a break at 7:16 p.m.; the Board reconvened at 7:27 p.m.

## G. GENERAL BUSINESS *(for possible action)*

**G.1. Review and possible award of Construction Contract for the Diamond Peak Base Lodge Restroom Remodel Project – 2016/2017 CIP Project: Fund: Community Services; Division: Ski; Project # 3464LI1501; Vendor: Sentinel Builders in the**

2. Review, discuss, and possibly augment the District's Operating Budget by adopting Resolution No. 1859 for fiscal 2016-2017 by $720,000, through the use of additional revenue of $2,700,000 for Community Services Special Revenue Fund and by $215,000 in revenue and expense for Internal Services for the current fiscal year, to cover additional expenses incurred providing a higher volume of services and to deal with consequences of extraordinary winter conditions (Requesting Staff Member: District General Manager Steve Pinkerton)

3. Review, discuss, and possibly enter into an Intergovernmental Grant Administration Agreement with South Tahoe Public Utility District (Requesting Staff Member: Director of Asset Management Brad Johnson)

4. Review, discuss and possibly approve the 2017 Red, White and Tahoe Blue (RWTB) Memorandum of Understanding (MOU) for the July 1 – 4, 2017 events (Requesting Staff Member: Director of Parks and Recreation Indra Winquest)

5. Review, discuss, and take possible action on the proposed modification to the 30-year ground lease with Parasol Tahoe Community Foundation (PTCF) **AND** provide feedback on the D.W. Reynolds Non-Profit Center Feasibility Report dated April 18, 2017 (Requesting Staff Member: General Manager Steve Pinkerton)

H. DISTRICT STAFF UPDATE

1. Diamond Peak Ski Resort General Manager Mike Bandelin – Verbal updated of 2016/2017 Ski Season

I. REPORTS TO THE IVGID BOARD OF TRUSTEES*

1. District General Counsel Jason Guinasso
   a. Update on the 2017 Nevada Legislative Session which is in process
   b. Update on the Aaron L. Katz vs IVGID litigation

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

K. CORRESPONDENCE RECEIVED BY THE DISTRICT*

which is odd, but it has to happen that way and it is a benefit to the community.

Trustee Morris asked the District General Manager if was expecting a vote on the lease modification that will be presented at the next meeting; District General Manager Pinkerton said no as it is just a draft.

Hearing no further comments, Chairwoman Wong called the question and the motion was unanimously passed.

## H. DISTRICT STAFF UPDATE

### H.1. Diamond Peak Ski Resort General Manager Mike Bandelin – Verbal updated of 2016/2017 Ski Season

Diamond Peak Ski Resort General Manager Mike Bandelin gave his report which is attached hereto and the Board congratulated Staff on their great season and asked various operational questions which were answered. Diamond Peak Ski Resort General Manager Bandelin thanked the Board for their support and said that he and the team are starting on maintenance right away.

## I. REPORTS TO THE IVGID BOARD OF TRUSTEES*

### I.1. District General Counsel Jason Guinasso

#### I.1.a. Update on the 2017 Nevada Legislative Session which is in process

District General Counsel Guinasso said that he is going to hold back on any specifics as there have been two deadlines – one was to get bills out of committee and that the next one is today which is to get them out of the house of origin so there will be a lot of information after today; he knows that one or more of the Trustees are coming to Legislative Day on Thursday so he is looking forward to seeing all of you there.

#### I.1.b. Update on the Aaron L. Katz vs IVGID litigation

District General Counsel Guinasso said that he met with legal counsel on Friday and that they are preparing their brief to answer the eighty

five page opening brief submitted by Mr. Katz. They did ask for an extension to file and they are working on the appropriate responses to the issues raised in that brief. With regards to fees and costs, they have sent requests for information, in the form of a discovery request, which to date have not been responded to. Right now, the priority is to respond to the brief and then take additional steps to secure the judgment won against Mr. Katz as there has been no stay or bond so what he owes is due and payable.

Trustee Morris asked what is the deadline for the response to the opening brief. District General Counsel Guinasso said he thinks it is three weeks from now and that he anticipates it will be ready to file next week or the week after. Trustee Morris followed up by asking if the court takes whatever time it needs or is there a timeline. District General Counsel Guinasso said that the next step will be for Mr. Katz to file a reply which is typically thirty days then the court takes everything under submission. The court can take oral argument but it rarely does so and if it is done it is usually to clarify. After that point, the court can take its time. The good news is that the Nevada Supreme Court has been reallocated and a lot of cases are handled in the lower court so they are getting through them quicker as it used to take them eighteen to twenty months but he is expecting a shortened timeline.

Chairwoman Wong asked how long are we looking at and when will the District get its money. District General Counsel Guinasso said it depends as the court has a lot of options, which he explained, and the silver lining, from a District perspective and financial impact, is that if IVGID continues to prevail, the fees and costs can be included with what was awarded by the District court during the appeal.

Trustee Dent said that the last time this was discussed, nothing had been billed, so as what point do we start to measure our liability. As long as we prevail, the liability is low so this is something that he would like to discuss and setting a dollar amount because that has been in the background. District General Counsel Guinasso said there are two concurrent appeals and processes; the appeal on the substance of the twenty three or twenty four counts of complaint that Mr. Katz filed five years ago which are all within the eighty five page brief so we have to spend the money to respond and there is no option there. There is also no option for settlement given the posture of the

opposing party so we are stuck with that. He always recommends looking at the outcomes of the cases and then depending on the outcome of the appeal, we may have options. The second piece is the fees and costs and the ruling on the IVGID's fees and costs. Presently, there have been a lot of fees and costs to pursue what he owes at this point and they are working to recover those fees as the Board has already determined, as a priority, that the direction is to recover thus it is something to review after the appeal. We may have to discuss about what kind of budget is needed for recovery as every dollar we spend is a liability to Mr. Katz such that it would compel an adverse party to review. The adverse party is responsible for running up the meter and it is not our strategy or tactics that have taken up the time over the past five to six years.

Trustee Morris said that the District is legally required to respond and thus we have to incur the legal fees to do that. We have already spent those fees so we are now awaiting the outcome of that and then we have to decide how much to spend getting that money plus what we have spent on the appeal process; is that a pretty arcuate summary? District General Counsel Guinasso said that is a correct assumption and that the District could decide not to recover which is within your discretion. It would be something we would agendize and deal with at a later date.

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

There was no Board updates at this time.

**K. CORRESPONDENCE RECEIVED BY THE DISTRICT***

District Clerk Susan Herron said that there was no correspondence received between the time the packet was produced/distributed and this meeting.

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

Frank Wright said wow, he hasn't been so overwhelmed with BS; on the Katz case, IVGID has been warned to get in their response by April 14 and they have asked

5. Report from District General Counsel Jason Guinasso on the *Aaron Katz v IVGID* litigation which could include review, discussion and possibly action by the IVGID Board of Trustees (Requesting Staff Member: District General Counsel Jason Guinasso)

6. Review, discuss, and possibly approve a transfer from the General Fund Budget Contingency in the amount of $90,000 to General Government - General Administration – Professional Services (included in Services and Supplies under form 4404LGF for the year ended June 30, 2017) to provide resources for legal costs (Requesting Staff Member: General Manager Steve Pinkerton)

7. Review, discuss and possibly take action regarding Incline Village General Improvement District General Manager Steven J. Pinkerton's Employment Agreement. Section 4 – Compensation, Fringe Benefits, and Expense Reimbursement (Requesting Trustee: Chairwoman Kendra Wong)

F. DISTRICT STAFF UPDATE

1. General Manager Steve Pinkerton
   - ❖ Financial Transparency
   - ❖ Summer Construction
   - ❖ Winter Property Damage
   - ❖ Red, White and Tahoe Blue Status
   - ❖ Summer Venue Openings
   - ❖ Solid Waste Update

G. REPORTS TO THE IVGID BOARD OF TRUSTEES*

1. District General Counsel Jason Guinasso

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

I. CORRESPONDENCE RECEIVED BY THE DISTRICT*

J. 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.

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

effectively added to, repaired or maintained by a certain person (NRS 332.115.1.C). Diamond Peak's snow grooming fleet is exclusively PistenBully snow grooming vehicles which are sold exclusively by Kassbohrer All Terrain Vehicles.

C. The equipment proposed for purchase, by virtue of the training of the personnel or of any inventory of replacement parts maintained by the local government is compatible with existing equipment (NRS 332.115.1.d). Diamond Peak's snow grooming fleet is exclusively PistenBully snow grooming vehicles;

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

Trustee Morris made a motion to authorize a procurement contract with Kassbohrer All Terrain Vehicles, Inc totaling $372,500. and authorize Staff to execute all purchase documents based on a review by general Counsel and Staff. Trustee Horan seconded the motion. Chairwoman Wong asked for comments, hearing none, called the question and the motion was unanimously passed.

At 8:02 p.m., Trustee Callicrate left the meeting by hung up.

**E.5. Report from District General Counsel Jason Guinasso on the *Aaron Katz v IVGID* litigation which could include review, discussion and possibly action by the IVGID Board of Trustees (Requesting Staff Member: District General Counsel Jason Guinasso)**

District General Counsel Guinasso gave a PowerPoint presentation which is included herewith by reference.

Chairwoman Wong asked if we go through the discovery process at the same time as the appeals or are we on hold until the appeal process is complete. District General Counsel Guinasso said that there is no stay in place nor has a briefing on fees and costs. Because there are no stays nor has a bond been filed the post discovery continues and it will likely end in a

motion to compel as there is no legal authority for Mr. Katz not to respond. Trustee Dent said as this goes towards the appeal to the Nevada Supreme Court, will the appeal be on the $229,000 judgment. District General Counsel Guinasso said that no stay has been obtained and Mr. Katz hasn't asked the court to be held in abeyance. We are pursuing this but that there will be no briefing on fees and costs until a decision is made on the substance portion of the claim. Trustee Morris said that a member of the public mentioned other litigation going on against us; are you aware of any other legal complaints. District General Counsel Guinasso said there is nothing else currently pending other than Mr. Katz. Regarding Open Meeting Law complaints, he does believe that Mr. Wright has filed two that we have responded to and he is not aware of any other Ethics Commission filings. Trustee Morris said it was mentioned by a member of the public that we are going after Mr. Katz to silence his First Amendment rights and that one of those claims dealt with this but what were the rest of the claims and what is their status. District General Counsel Guinasso said that the twelfth cause of action is really about fees and what we are providing to him. This Board passed a resolution that states when a request exceeds a certain amount of pages there is a charge. Regarding the free speech issue, the court awarded the District recovery of attorney fees and costs and somehow that has been turned into having a chilling effect on the public initiating litigation against the District. That statement along might have pervasive value in a vacuum and might even have some merit in a different situation however this situation exceeds reasonable and appropriate in regards to challenging a governing body. Looking deeply, look at the warnings in the midst of litigation. Mr. Katz is not heeding the warnings of the courts rather he is overly disregarding the orders of the court and ultimately the court held that this individual needed to be held accountable for his action. Trustee Horan asked if the requirements of the courts and certain pages were being ignored. District General Counsel Guinasso said that typically the court frowns on exceeding pages and also has expectations to the rules with extraordinary circumstances. Given the litigation, Mr. Katz was given leave to exceed the page limit and as a result due process would require the court to respond in kind. Thus we anticipate that our motion will be granted. Mr. Katz didn't really oppose the request and made some minor academic points which we think the court will brush aside. Trustee Horan said in looking at the fees, what about the new fees. District General Counsel Guinasso said that it will cover all the fees through the filing of the answering brief so through May 15. What is taking place now and going forward with regard to discovery that is accruing more fees. This is a review of what our litigation team is doing and if this Board doesn't want to incur any more fees they

certainly have the ability to make that motion. His recommendation is to stay the course as it is important to complete the discovery process so we know what the assets are and then execute against that judgment. Trustee Horan said that could extend up to a year so is there a way to manage the costs that could occur. District General Counsel Guinasso said that there are no other costs for the appeal and that there should be no other work unless the court asks for oral arguments. He can ask counsel how much time it will take to prepare and then he can bring that back to the Board. Regarding post judgment discovery, he is going to meet with litigation counsel and go over the budget and he anticipates being able to bring something more concrete back to the Board for clarity. Trustee Horan asked what happens if the appeal goes against us. District General Counsel Guinasso said if the court reverses than it remands back to the District Court and then the question will be are the award of fees and costs appropriate. There could also be a scenario that one of the ten court orders are remanded back and the court finds for Mr. Katz and throws out the fees and costs. These are all potentials but not likely outcomes based on litigation counsel opinion. Strength of the appeal is not in question so the steps this Board is taking are reasonable and appropriate based on the legal position. If the legal position changes, then change what you are doing. Trustee Horan said that our position won't change until the appeal so our position won't change until next year but we are expending dollars now. District General Counsel Guinasso said the Board could wait but that the time to wait is after we have done discovery on assets. If time goes by and we don't identify the assets that can be collected against then you are giving the party the opportunity to project against judgment. Trustee Horan asked what we should pursue. District General Counsel Guinasso said that those are the questions and that our meeting is scheduled for the last week in June so he will have a report as a follow up in July. Trustee Morris said regarding monies due that he would appreciate having a better update about considerations as it appears to him that we have sunk costs as we have paid these bills so the money is gone and therefore if we are feeling very confident in our appeal, it would be wrong to no go after that money and get that debt collected sooner rather than later. In hearing from District General Counsel, the additional costs after May 15, would be if the appeals court askes for oral arguments and then collecting on the debt owed. District General Counsel Guinasso said that there is still a second appeal for fees and costs that will require briefing so there are three areas of costs pending. There are two ways to look at the issues – while we have this judgment there is a responsibility to pursue those fees and costs and the other way is we don't yet know the results so we could be throwing good money after bad especially if later on the District Court orders

are remanded so those are the two fair ways to look at the pending costs before you. This is a policy decision that this Board will have to make and his recommendation is based on where the litigation is now and where it is going; it would be good to allow litigation counsel to continue on this path but not with a blank check. He needs to look at the costs so he can report back with clarity and then the Board can weigh it out. Trustee Morris said after the meeting with the appeals counsel can you come back to us and include a counsel recommendation so that we know if we have a good or bad case. District General Counsel Guinasso said he will include a legal opinion as the District is the client and this Board gets to make the decision on how to spend the money and he will provide you with the best recommendation based on his legal experience. Trustee Dent asked that the District requests monthly billing versus nine month billing; District General Counsel Guinasso said he understands that request and he can address it in a non-meeting. Chairwoman Wong asked if we can make that request; District General Counsel Guinasso said we can talk about it in a non-meeting and closed by saying that he appreciates the time to give this update.

**E.6. Review, discuss, and possibly approve a transfer from the General Fund Budget Contingency in the amount of $90,000 to General Government - General Administration – Professional Services (included in Services and Supplies under form 4404LGF for the year ended June 30, 2017) to provide resources for legal costs (Requesting Staff Member: General Manager Steve Pinkerton)**

District General Manager Pinkerton gave an overview of the submitted materials.

Trustee Morris asked what is the total amount of the contingency; District General Manager Pinkerton answered $100,000. Trustee Morris asked if there is one in 2017/2018; District General Manager Pinkerton said yes, about 3%. Trustee Dent said that this bill was not unexpected and he understands using the contingency but let's set a budget and update it monthly if fees are occurring on a monthly basis as he was quite surprised this was over $80,000. This is a strange process and if we are supposed to be approving expenses then we need to forecast. District General Manager Pinkerton said because of our public nature, we would be better off talking about this in a non-meeting.

# Legal Update

# *Aaron Katz vs. IVGID*

In the Supreme Court of the State of Nevada

Case No. 70440

Appealed by Mr. Katz from Case No. CV11-10380 Second Judicial District Court, Dept. No. 7

# Questions that will be addressed in this report:

- **Background**: How did we did we get to the Nevada Supreme Court in this litigation and what are the issues that have been raised?

- **Present**: What is happening in the litigation now?

- **Future**: What are the next steps in the litigation?

# Background: how did we get here?

- First, it is important to remember the person behind the litigation:

  - **Former attorney**: Mr. Katz is a former CA attorney.
  - **Convicted Felon**: 1983 Mr. Katz was convicted on one felony count of perjury involving a personal tax avoidance scheme and subsequently suspended from the practice of law for three years by the State Bar of California.
  - **Serial Vexation Litigant**: in motion for award of attorney fees and costs, our litigation attorneys detailed a laundry list of cases that Mr. Katz had pursued against government entities, as well as the administrative claims he had either filed or orchestrated against IVGID.
  - **Frivolous Adversary**: Mr. Katz has initiated a multitude of frivolous attacks against IVGID in every conceivable forum, including the Nevada Attorney General's office, the Nevada Commission on Ethics, the Public Utilities Commission, the Department of Taxation, the Nevada Legislature, the Washoe County Commission, the Washoe County Sheriff and the Washoe County District Court.

# Background: how did we get here?

- Second, it is important to recognize the thread that runs through all Mr. Katz's attacks against IVGID:
  - Mr. Katz contends that IVGID provides facilities and services which go beyond the scope of what a General Improvement District can provide under statute.
  - Mr. Katz contends that the recreation fee is an illegal tax.
  - Mr. Katz disagrees with legislative actions by the Board.

# Background: how did we get here?

- Third, it is important to understand that, in waging his attacks on IVGID, Mr. Katz filed **28** separate causes of action against IVGID.
  - 250 Charging Paragraphs.
  - Charging complaint over 80 pages in length.
  - Court characterized Mr. Katz's legal attacks as a "Minotaur's Maze"

# Background: how did we get here?

- First Cause of Action:
  - District Violated NRS 318.077 by not filing modified service plan when authority of District was expanded in 1969 to include power to provide electrical facilities (IVGID has never provided electrical power as part of its utility service).
  - Dismissed by 8/22/12 Order.

# Background: how did we get here?

- Second Cause of Action:
  - District Violated NRS 318.116 when it adopted resolutions to impose recreational fees.
  - District acting outside its authority for raising and using revenue through recreational fees.
  - Dismissed by Order 8/22/12

# Background: how did we get here?

- Third Cause of Action:
  - District Violated provisions of Local Government Budget and Finance Act (NRS 654.612) by failing to adopt certain resolutions which set out the objects and purposes for various internal financial funds to manage revenue.
  - Dismissed by Order 8/22/12

# Background: how did we get here?

- Fourth Cause of Action:
  - Mr. Katz alleged that IVGID is a "public utility" subject to the requirements of NRS Chapters 704 and 354
  - Dismissed by Order 8/22/12

# Background: how did we get here?

- Fifth Cause of Action:
  - Mr. Katz alleged that the District violated NRS 354.626 and 354.6116 when revenues raised were allegedly used for purposes other than that which they were authorized.
  - Dismissed by Order 8/22/12

# Background: how did we get here?

- Sixth Cause of Action:
  - Mr. Katz challenged rates set for water and sewer services for 2011-2012 fiscal year.
  - Summary Judgement in favor of IVGID granted by Order 8/27/14

# Background: how did we get here?

- Seventh through the Eleventh Cause of Action:
  - Mr. Katz challenged legality of beach facility fee and Recreation Facility Fee
  - Dismissed by Order 8/22/12

# Background: how did we get here?

- Twelfth Cause of Action:
  - Mr. Katz alleged that IVGID failed to produce public records.
  - Mr. Katz also challenged Resolution No. 1801 requiring the payment of fees for copies of public records.
  - Partially resolved by Order of 3/11/16 granting summary judgment in favor of IVGID. Following Trial on March 21-22, 2016, Judgment entered for IVGID.

# Background: how did we get here?

- Thirteenth and Fourteenth Causes of Action:
  - Directed at Nevada Public Utilities Commission
  - Dismissed by Order 5/25/12

# Background: how did we get here?

- Fifteenth Cause of Action:
  - Mr. Katz challenged rates set for water and sewer services for 2012-2013 fiscal year.
  - Summary Judgment in Favor of IVGID by Order 8/27/14

# Background: how did we get here?

- Sixteenth Cause of Action:
  - Same as 9th Cause of Action, except this action was directed at 2012-2013
  - Because 9th Cause of Action was Dismissed by Court Order, Mr. Katz Voluntarily Dismissed by Stipulation and Order 10/29/12

# Background: how did we get here?

- Seventeenth Cause of Action:
  - Mr. Katz again challenged beach facility fees by challenging deed which transferred ownership of the beaches to IVGID.
  - Summary Judgment in Favor of IVGID granted by Order 8/27/14

# Background: how did we get here?

- Proposed Eighteenth through Twenty-Eight Causes of Action:
  - Motions for Leave to Amend Complaint Denied 8/7/13.

# Present: What is happening now?

- Reminder: All of Mr. Katz's causes of action were found to lack merit and were either dismissed or the Court found in favor of IVGID.

- Reminder: Mr. Katz was ordered to pay all of IVGID's attorney fees and costs.

- Reminder: Mr. Katz has appealed all of the District Court's orders to the Nevada Supreme Court.
  - Total of 10 Separate Decisions of District Court

# Present: What is happening now?

- For the Nevada Supreme Court to decide a case, the following actions must occur:
  - A timely appeal must be filed.
  - An Opening Brief not to exceed 30 pages must be filed.
    - Katz Brief was 86 pages.
    - Record on appeal exceeds 5000 total pages of pleadings, exhibits, and trial transcripts.
  - An Answering Brief not to exceed 40 pages must be filed.
    - Answer required 130 pages to respond to Katz Brief.
  - A Reply brief not to exceed 30 pages must be filed.

# Present: What is happening now?

- Summary of IVGID's Answer to Mr. Katz's Appeal

  (1) Appeal is defective and NV Supreme Court does not have jurisdiction to hear appeal because Mr. Katz failed to comply with District Court Order directing Mr. Katz to include two California Trusts as plaintiffs to the causes of action asserted.

  - Mr. Katz does not own real property in IVGID.
  - Property is owned by two trusts: (1) Miller Trust, Judith Miller Trustee, and (2) Katz Trust, Aaron Katz Trustee.
  - Trusts must be represented by attorney licensed in State of Nevada. Court order trusts to be represented by legal counsel within 60 days of its order.

  (2) Mr. Katz failed to frame issues on appeal in some sort of identifiable, understandable manner, and to support those issues with coherent legal argument. Appeal is frivolous.

# Present: What is happening now?

- Summary of IVGID's Answer to Mr. Katz's Appeal

(3) The District Court correctly concluded that Mr. Katz did not have a private right of action to challenge the manner in which IVGID managed the financial affairs of the District.

(4) The Court should affirm the District Court's Orders granting summary judgement in favor of IVGID.

(5) The 6th and 15th Causes of Action challenging water and sewer rates were lawful and appropriately dismissed.

# Present: What is happening now?

- Summary of IVGID's Answer to Mr. Katz's Appeal

(6) Dismissal of 17th Cause of Action was lawful and appropriate.

(7) Dismissal of 12th Cause of Action was lawful and appropriate.

(8) The District Court's decision to deny Mr. Katz's second and third requests to amend his complaint were lawful and appropriate.

(9) Court's findings after two day trial on 12th cause of action re Nevada Public Records Act is supported by evidence and Nevada law.

# Future: what are the next steps?

With regarding to Appeal, these are the next steps:

1. Mr. Katz must file a Reply on or before June 19, 2017 (30 days from May 15, 2017, plus three days for mailing, and if deadline falls on non-judicial day, then next business day).
2. Court may or may not ask for Oral Argument.
3. Court will take matter under submission and render a ruling (likely before the end of the calendar year, but could be longer).

# Future: what are the next steps?

With regarding to collecting attorney fees and costs, these are the next steps:

1. Trusts do not provide Mr. Katz protection from collecting on judgment.
2. Mr. Katz, to date, has evaded and refused to answer IVGID's discovery demands
3. Attorneys will attempt "meet and confer process" to resolve the discovery dispute so that IVGID will be in a position to move forward with a motion to compel if Mr. Katz continues to refuse to provide the information IVGID is seeking so that IVGID can collect on its judgment.
4. After post-judgement discovery is completed, IVGID attorneys will begin to take action to collect on judgment.
5. All fees and costs incurred as a result of post-trial motions and as a result of Mr. Katz, will be subject to recovery by IVGID and added to existing fees and costs owed to the District.

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

**Section 7** – Termination of Agreement - 7.1 By EMPLOYEE; 7.2 By IVGID. (Requesting Trustee: Chairwoman Kendra Wong)

10. Review, discuss and approve proposed settlement agreement between Governance Services Group, Inc. and IVGID – reference IVGID v. Governance Services Group, Inc. Case No. CV17-00922, Second Judicial Court of the State of Nevada (Requesting Staff Member: General Manager Steve Pinkerton and District General Counsel Jason Guinasso)

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

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

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

12. Verbally review Policy Resolution No. 137 – Resolution Number 1801, A Policy for the provision of records and information to the public

13. Verbally review IVGID E-Mail Best Practices and NRS 239.010

14. Verbally review the District's Records Retention Schedule and NRS 239.125 Local governmental records: Program for management; regulations of State Library, Archives and Public Records Administrator

G. DISTRICT STAFF UPDATE

1. General Manager Steve Pinkerton
   - ❖ Financial Transparency
   - ❖ Capital Improvement Projects update
   - ❖ Golf Courses at Incline Village

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

1. Regular Meeting of June 12, 2017
2. Regular Meeting of June 28, 2017

I. REPORTS TO THE IVGID BOARD OF TRUSTEES*

1. District General Counsel Jason Guinasso
   a. Verbally review the process of responding to an Open Meeting Law Complaint

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

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

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

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

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

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

Trustee Callicrate said that there was a bill from Beko and Associates for additional services provided and it dealt with the documentation that was filed that was almost two and a half times what it was allowed to be. If this is a direct affront to the Supreme Court, it is impacting us financially as we have to follow the rules. Chairwoman Wong said she understands where Trustee Callicrate is going but it is not part of this agenda item and we can schedule a litigation non-meeting. District General Counsel Guinasso said for our next non-meeting, he will invite Mr. Beko to attend so he can specifically answer the questions regarding the litigation decisions about exceeding the limits.

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

## G. DISTRICT STAFF UPDATE

**G.1. General Manager Steve Pinkerton**

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

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT
ONE DISTRICT – ONE TEAM

# NOTICE OF MEETING



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

*The Board of Trustees may make a motion for a flexible agenda which is defined as taking items on the agenda out of order; combining agenda items with other agenda items; removing items from the agenda; moving agenda items to an agenda of another meeting, or voting on items in a block.*

***-OR-***

*The Board of Trustees may make a motion to accept and follow the agenda as submitted/posted.*

E. GENERAL BUSINESS (*for possible action)*

1. Proposed modification to the 30-year ground lease between the Parasol Tahoe Community Foundation and Incline Village General Improvement District – Response and possible discussion of additional research requests as directed at the August 22, 2017 IVGID Board of Trustees Meeting, possible discussion on potential expenditures related to the proposed lease modification, and discussion on other details related to the proposed lease modification (Requesting Trustee: Chairwoman Kendra Wong)

2. Review, discuss, and possibly approve offer of Aaron Katz to tender the entire amount currently due through September 13, 2017, on Judgment previously rendered against him by the District Court in the amount of $241,646.11 in exchange for IVGID filing and recording a full satisfaction of the judgment and agreeing to a stipulated judgment pursuant to which IVGID would agree to the entry of a judgment in favor of Mr. Katz in the amount of $241,646.11, plus interest at the legal rate from September 13, 2017, **if,** and only if, IVGID fails to return Mr. Katz's payments within 30 days following the Nevada Supreme Court's issuance of a remitter on a judgment which reversed the District Court's decision in IVGID's favor of Katz (Requesting Staff Members: District General Manager Steve Pinkerton and District General Counsel Jason Guinasso)

3. Review, discussion and possible action on District General Manager Steven J. Pinkerton annual performance evaluation (Requesting Trustee: Chairwoman Kendra Wong)

guys came. Why were we given these carts and required to use them when we have something better to keep the bears out.

Jim Croley said he has an observation and a problem that this Board ought to try and deal with. There was a Community Forum about a week and a half ago and two of the Trustees were there. There were also one hundred people there who had a pent up demand for getting information about IVGID which was really disconcerting. Tonight, there are thirty people here, which is a low attendance, so you should hold a community forum in which there is active participation because this one was from one side and there were a lot of accusations flying so it is really hard to discern and really hard for someone like him to hear one side and there was no conversation happening. He used to teach his kids that when you don't understand an issue that you can't argue things without two sides. That forum was a one sided discussion and he asked why there is such a vacuum of information. He really hopes you can find a way to fix this as it is unfair to the population and it is a problem that you can and should solve. Help us to understand another perspective because with only one side, it is really tough. Try to find a way to create a two sided dialogue with the community.

Kaye Shackford read from a prepared statement which is attached hereto.

Steve Price read from a prepared statement which is attached hereto.

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

Chairwoman Wong asked for any changes to the agenda as submitted; Chairwoman Wong said she would like to swap General Business Items E.1. and E.2. Trustee Horan asked that General Business Item E.5. be removed in its entirety from the agenda.

## E. GENERAL BUSINESS *(for possible action)*

**E.1. Review, discuss, and possibly approve offer of Aaron Katz to tender the entire amount currently due through September 13, 2017, on Judgment previously rendered against him by the District Court in the amount of $241,646.11 in exchange for IVGID filing and recording a full satisfaction of the judgment and agreeing to a stipulated judgment pursuant to which IVGID would agree to the entry of a judgment in favor of Mr. Katz in the amount of $241,646.11, plus interest at the legal rate from September 13, 2017, if, and only if, IVGID fails to return Mr.**

**Katz's payments within 30 days following the Nevada Supreme Court's issuance of a remitter on a judgment which reversed the District Court's decision in IVGID's favor of Katz (Requesting Staff Members: District General Manager Steve Pinkerton and District General Counsel Jason Guinasso)** ***(was General Business Item E.2.)***

District General Counsel Guinasso introduced Litigation Counsel Tom Beko who gave an overview of the submitted materials.

Trustee Morris said that in trying to pursue payment, we have incurred additional fees and we will run up some more costs to get this money so what happens with those costs. Litigation Counsel Beko said that one of the offers that was made was to waive the right to recovery of additional expenses; we are not going to waive anything in the future. There have been litigation fees for the appeal and one concession Mr. Katz was seeking was a waiver to get additional fees. Depending on the outcome, we will have the ability to request ongoing fees and the following two appeals if IVGID is successful across the board IVGID may want to seek what it is incurring but right now there is nothing that can be done about that. Trustee Callicrate asked for a ballpark figure of what we are at right now; just some idea. Litigation Counsel Beko said that he doesn't have those figures but that he is guessing about $100,000 in the defense of the appeal and that he has been given the authority of up to $10,000 to get this judgment and he hasn't exceeded that amount. The costs on the appeal are very difficult to predict as the Supreme Court may or may not order oral arguments as they can take it under consideration. Initially, Mr. Katz was representing himself but he has since hired separate counsel but had he continued to represent himself oral arguments might not have been required. With this new representation, there is a greater chance that the Supreme Court will ask for oral arguments. He can't give an estimate because there are so many variables. District General Counsel Guinasso stated that roughly $90,000 was approved to pay for the costs for defending the first appeal and since that time, for just the costs to enforce the judgment, the District hasn't exceeded $10,000. Mr. Beko said that there are some more costs related to time extensions and untimely filings and that the reasons given will probably be approved by the Supreme Court i.e. computer failure, so he doesn't foresee them rejecting their request. They have dealt with two separate attorneys which helped a great and lead us to getting to this final resolution. District General Counsel Guinasso said, in defending the appeal, we can seek to recover costs and

there is an argument in favor but it is still unknown but there is authority but that lies within the court. There is no guarantee that we are always going to be as successful in getting IVGID's money back. The District General Manager has always been honest in not spending good money after bad. Trustee Morris said so you have spent less than $10,000 to collect $241,000 and for the appeal we don't have an option to not spending monies because we had to respond and if oral arguments go forth, we have to spend that money. District General Counsel Guinasso said that the Supreme Court ordered us to respond with an opening brief and we won't respond again until further order. Mr. Beko added that the District doesn't have to respond but then we will automatically lose. When the appeal was filed, and because it was done without opposing counsel, the appeal was huge. There were thousands of pages with 250 separate pleadings. Again, with District General Manager direction, we would have liked to work and prepare but there existed a possibility that the Supreme Court could find no response was required. We have been criticized for that but we didn't want to incur costs until we knew we had to do it.

Trustee Morris a motion that IVGID accept offer of Aaron Katz to tender the entire amount currently due through September 13, 2017, on Judgment previously rendered against him by the District Court in the amount of $241,646.11 in exchange for IVGID filing and recording a full satisfaction of the judgment and agreeing to a stipulated judgment pursuant to which IVGID would agree to the entry of a judgment in favor of Mr. Katz in the amount of $241,646.11, plus interest at the legal rate from September 13, 2017, if, and only if, IVGID fails to return Mr. Katz's payments within 30 days following the Nevada Supreme Court's issuance of a remitter on a judgment which reversed the District Court's decision in IVGID's favor of Katz. Trustee Horan seconded the motion. Chairwoman Wong asked for any comments.

Trustee Horan said based on the explanation by counsel, we could be saving the District money by accepting this offer and we would be foolish not to accept.

Hearing no further comments, Chairwoman Wong called the question, the motion was unanimously passed.

F. GENERAL BUSINESS *(for possible action)*

1. Review, discuss, and possibly approve the agreement between the Diamond Peak Ski Education Foundation (DPSEF) and the Incline Village General Improvement District covering the period December 14, 2017 to June 30, 2022 (Requesting Staff Member: Diamond Peak Ski Resort General Manager Mike Bandelin)

2. Review, discuss, and possibly provide direction on the Utility Rate Study Presentation 2018 (Requesting Staff Member: Director of Public Works Joe Pomroy)

3. Review, discuss, and possibly approve a Sole Source Finding and review, discuss, and possibly authorize a Procurement Contract for a Replacement Articulated Tractor Snowblower and Flail Mower – 2017/2018 Capital Improvement Projects: Fund: Public Works; Division: Shared; Project # 2097HE1731; and Fund: Public Works; Division: Sewer; Project # 2523LE1720; Vendor: ASI Nevada in the amount of $176,524.78 (Requesting Staff Member Director of Asset Management Brad Johnson)

4. Review, discuss, and possibly approve a Sole Source Finding and review, discuss, and possibly authorize a Procurement Contract for one TriFlex Mower and one Multi Pro Spray Rig – 2017/2018 Capital Improvement Projects: Fund: Community Service; Division: Golf; Project # 3242LE1730 and 3197LE1722; and Vendor: Turf Star in the amount of $111,514.66 (Requesting Staff Member Director of Asset Management Brad Johnson)

G. DISTRICT STAFF UPDATE

1. General Manager Steve Pinkerton

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

1. Regular Meeting of October 25, 2017

2. Regular Meeting of November 15, 2017

3. Regular Meeting of December 13, 2017

4. Regular Meeting of January 10, 2018

I. REPORTS TO THE IVGID BOARD OF TRUSTEES*

1. District General Counsel Jason Guinasso

   A. Update on Acquisition and Sale of Unbuildable Tax Delinquent Properties

   B. Litigation Update:
   - ❖ IVGID v. GSGI under Case No. CV17-00922 - Order Granting IVGID's Motion for Preliminary Injunctive Relief
   - ❖ Katz v. IVGID under Appeal No. 70440 - Order Submitting For Decision Without Oral Argument

   C. Update on the Attorney General's Decision Finding No Open Meeting Law Violation in response to OML Complaints of Frank Wright under File Nos. 13897-242; 13897-244; 13897-245

Trustee Morris asked if we would expect to hear any further activities from GSGI with regard to this paperwork. District General Counsel Guinasso said that GSGI could file a notice to appeal as they have thirty days to do so. Counterclaims were filed but we have moved to have them dismissed and that is before the District court awaiting this decision. Further, on a motion for summary judgment, our response is due in a couple of days and we will counter with our own request for our own summary judgment and he will let the Board know how that goes. Trustee Dent asked how much has been spent. District General Counsel Guinasso said he doesn't have the precise number but it is about $30,000.

- Katz v. IVGID under Appeal No. 70440 - Order Submitting For Decision Without Oral Argument

District General Counsel Guinasso said that oral arguments will not been done and that the case will be decided on the submitted briefs and he expects a decision in the coming months and no later than this summer. When we get the order, we will let you know how we proceed from there.

**I.1.C. Update on the Attorney General's Decision Finding No Open Meeting Law Violation in response to OML Complaints of Frank Wright under File Nos. 13897-242; 13897-244; 13897-245**

District General Counsel Guinasso gave an overview and noted that the Attorney General determined they didn't need a response from the public body. Just because someone files a complaint doesn't mean there is a violation, may be some confusion between complaint and violation, can file as many complaints as one wants to but that doesn't mean there has been any wrongdoing. There have been more open meeting law complaints during his tenure than any other time and regarding the statement that has been made repeatedly that this is financially benefitting him, those statements are false and misleading. He was retained 2015 and there have been seventeen Open Meeting Law complaints filed with eleven being filed by Mr. Wright, five filed by Mr. Katz or his wife, Ms. Miller, and one item that was cured. Prior to that retention, during the tenure of his predecessor, twelve were filed, and in response to them there were three where corrective action was taken and one other complaint where guidance was offered. Twenty

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

1. Regular Meeting of February 7, 2018

F. GENERAL BUSINESS *(for possible action)*

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)

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)

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)

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

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.

H. ADJOURNMENT *(for possible action)*

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.