



NOTICE OF MEETING

The special meeting of the Incline Village General Improvement District will be held starting at 2:00 p.m. on Thursday, February 4, 2016 in the Chateau, 955 Fairway Boulevard, Incline Village, Nevada.

- A. PLEDGE OF ALLEGIANCE*
- B. ROLL CALL OF THE IVGID BOARD OF TRUSTEES*
- C. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration.

Public Comment Advisory Statement – *Public comment, as required by the Nevada Open Meeting Law, is an opportunity for people to publicly speak to the assembled Board of Trustees. Generally, it can be on any topic, whether or not it is included on the meeting agenda. In other cases, it may be limited to the topic at hand before the Board of Trustees. Public comment cannot be limited by point of view. That is, the public has the right to make negative comments as well as positive ones. However, public comment can be limited in duration and place of presentation. While content generally cannot be a limitation, all parties are asked to be polite and respectful in their comments and refrain from personal attacks. Willful disruption of the meeting is not allowed. Equally important is the understanding that this is the time for the public to express their respective views, and is not necessarily a question and answer period. This generally is not a time where the Board of Trustees responds or directs Staff to respond. If the Chair feels there is a question that needs to be responded to, the Chair may direct the General Manager to coordinate any such response at a subsequent time. Finally, please remember that just because something is stated in public comment that does not make the statement accurate, valid, or even appropriate. The law mitigates toward allowing comments, thus even nonsensical and outrageous statements can be made. Counsel has advised the Staff and the Board of Trustees not to respond to even the most ridiculous statements. Their non-response should not be seen as acquiescence or agreement just professional behavior on their part. IVGID appreciates the public taking the time to make public comment and will do its best to keep the lines of communication open.*

- D. APPROVAL OF AGENDA (for possible action)

Incline Village General Improvement District

Incline Village General Improvement District is a fiscally responsible community partner which provides superior utility services and community oriented recreation programs and facilities with passion for the quality of life and our environment while investing in the Tahoe basin.

893 Southwood Boulevard, Incline Village, Nevada 89451 • (775) 832-1100 • FAX (775) 832-1122

www.yourtahoeplace.com



NOTICE OF MEETING

Agenda for the Board Meeting of February 4, 2016 - Page 2

E. GENERAL BUSINESS (*for possible action*)

1. 2016/2017 Board Retreat

- a. Beach Operations PowerPoint Presentation: Identify and discuss concerns and sensitive issues at the District's beaches, discuss ideas and concepts for potential policy/operational solutions, establish clear direction and call to action from Board of Trustees, determine next steps including progress update in April 2016, and get direction and feedback from the Board of Trustees on the creation of a Memorandum of Understanding with Red, White and Tahoe Blue in connection with the events to be held on July 1 – 4, 2016 at various IVGID facilities and venues (Requesting Staff Member: Parks and Recreation Director Indra Winquest) – **pages 1 - 17**
- b. 2016/2017 Capital Improvement Program PowerPoint Presentation: Capital Improvement Program Prioritization – Obtain guidance and direction from the Board of Trustees (Requesting Staff Member: Director of Asset Management Brad Johnson) – **pages 18 - 32**
- c. 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. 13897-164; Open Meeting Law Complaint – Placed on this agenda in accordance with Nevada Revised Statutes 241.0395 (Presented by District General Counsel Jason Guinasso) – **pages 33 - 62**

F. 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.

G. ADJOURNMENT (*for possible action*)



NOTICE OF MEETING

Agenda for the Board Meeting of February 4, 2016 - Page 3

CERTIFICATION OF POSTING OF THIS AGENDA

I hereby certify that on or before Monday, February 1, 2016 at 9:00 a.m., a copy of this agenda (IVGID Board of Trustees Session of February 4, 2016) was delivered to the post office addressed to the people who have requested to receive copies of IVGID's agendas; copies were either faxed or e-mailed to those people who have requested; and a copy was posted at the following six locations within Incline Village/Crystal Bay in accordance with NRS 241.020:

1. IVGID Anne Vorderbruggen Building (Administrative Offices)
2. Incline Village Post Office
3. Crystal Bay Post Office
4. Raley's Shopping Center
5. Incline Village Branch of Washoe County Library
6. IVGID's Recreation Center

/s/ Susan A. Herron, CMC

Susan A. Herron, CMC

Clerk to the Board of Trustees (e-mail: sah@ivgid.org/phone # 775-832-1207)

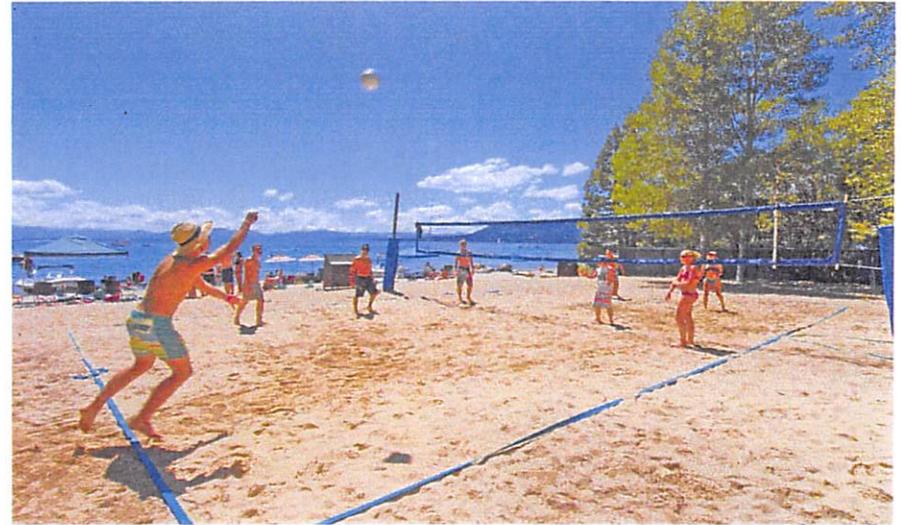
Board of Trustees: Kendra Wong, Chairwoman, Tim Callicrate, Jim Hammerel, Phil Horan, and Matthew Dent.

Notes: Items on the agenda may be taken out of order; combined with other items; removed from the agenda; moved to the agenda of another meeting; moved to or from the Consent Calendar section; or may be voted on in a block. Items with a specific time designation will not be heard prior to the stated time, but may be heard later. Those items followed by an asterisk (*) are items on the agenda upon which the Board of Trustees will take no action. Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to call IVGID at 832-1100 at least 24 hours prior to the meeting. Copies of the packets containing background information on agenda items are available for public inspection at the Incline Village Library.

IVGID'S agenda packets are now available at IVGID's web site, www.yourtahoeplace.com; go to "Board Meetings and Agendas". A hard copy of the complete agenda packet is also available at IVGID's Administrative Offices located at 893 Southwood Boulevard, Incline Village, Nevada, 89451.



BOT Retreat
February 4, 2016
Prepared by Indra Winquest
Director of Parks & Recreation



One District ~ One Team



Workshop Goals , Objectives and Desired Outcomes

- Identify and discuss concerns and sensitive issues at beaches
- Discuss ideas and concepts for potential policy/operational solutions
- Establish clear direction and call to action from Board of Trustees
- Determine next steps including progress update in April 2016



District Strategic Plan References

Long Range Principle #2, Finance, Objective 3. - With allocated resources, equate service expectations and the capability to deliver.

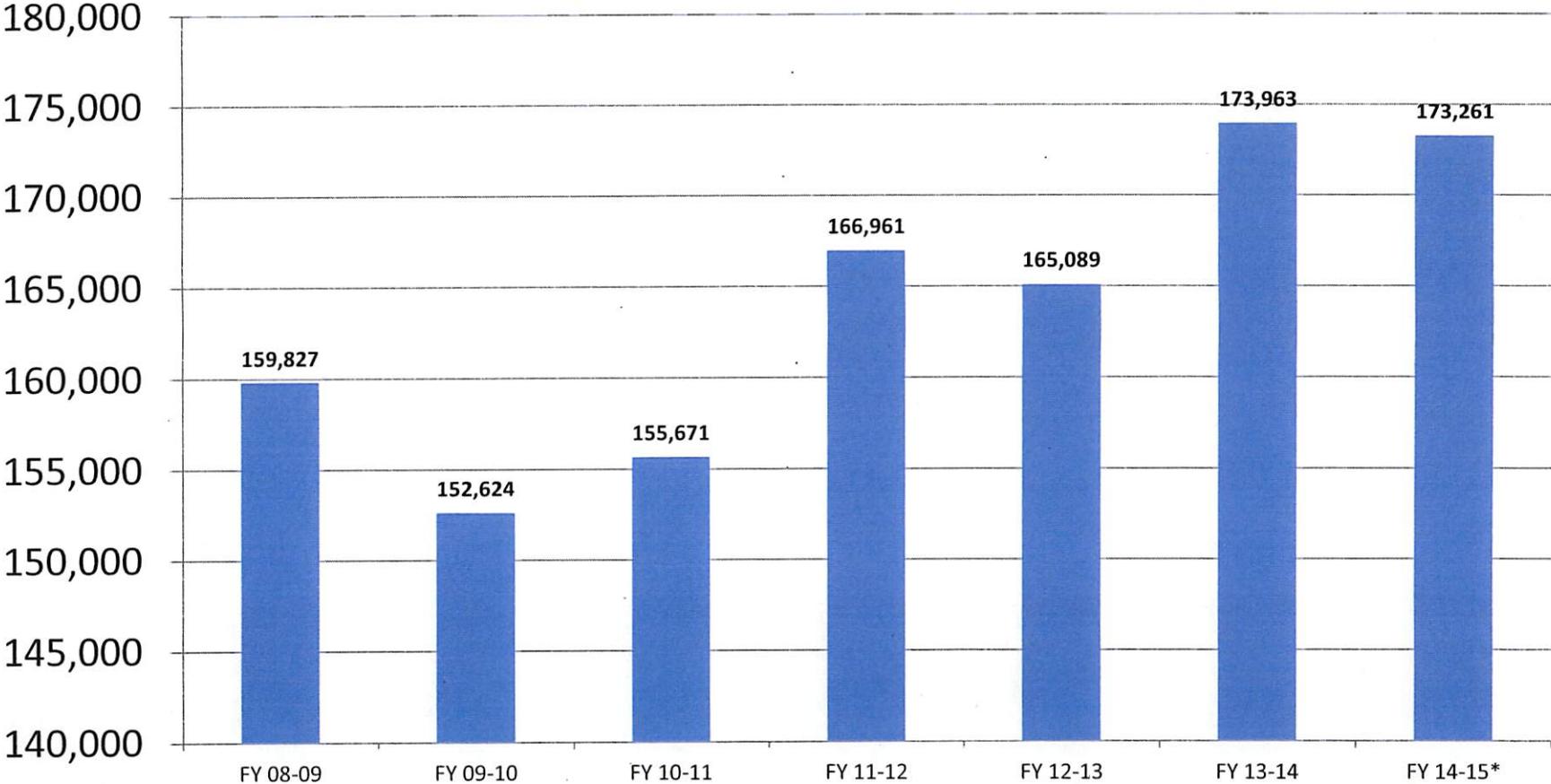
Long Range Principle #4, Service, Objective 4. - Analyze the net effect of established services levels on the District operations and apply changes as needed and encourage/reward continuation of appropriate performance. Budgeted Initiatives for 2015-2016, B. Service levels are expected to remain at our above current levels. The emphasis is on providing the best customer experience.



Historical Discussions

- Initial Discussion at Board Retreat on February 5th, 2015. Established commitment to move forward with Shuttle service.
- Board of Trustees updated during Parks & Recreation verbal updates at June 24, July 29, and August 26, 2015 meetings.

Beach Visits 2008-2015

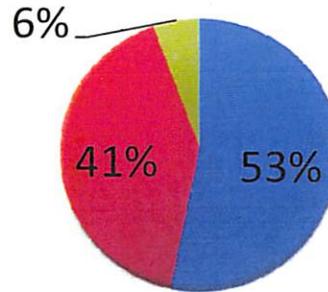


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Beach Data showing Guest Access Ticket Usage

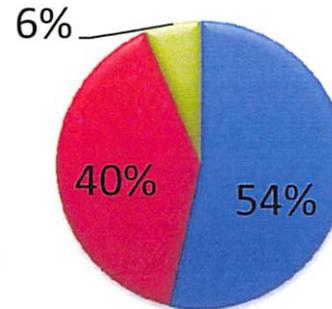
2013

- PPH: 53%
- Dailys: 41%
- Guest Access Ticket: 6%



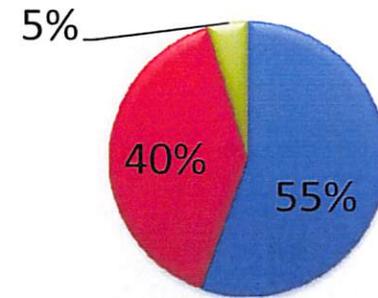
2014

- PPH: 54%
- Dailys: 40%
- Guest Access Ticket: 6%



2015

- PPH: 55%
- Dailys: 40%
- Guest Access Ticket: 5%



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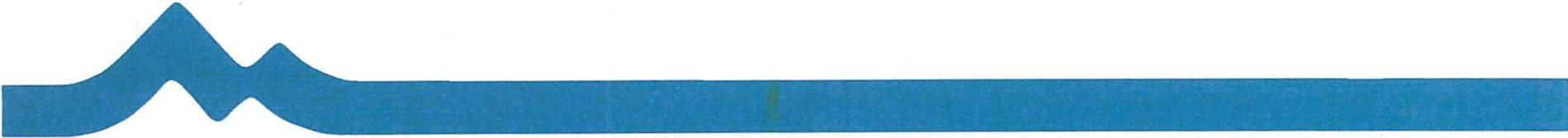


Burnt Cedar Pool & Gate Operational Season

- Extended operational season for Burnt Cedar pool as a service level enhancement
- 2015 May 16 – September 27
- 2016 proposed May 14 – October 1
- Cost Neutral at minimum
- Extended operational season for beach gates simultaneous with Burnt Cedar pool season
- Ski Beach boat ramp season May 1 – October 31
- Weather dependent



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Parking at Incline Beaches

Concerns

- Parking lots are full by 10 a.m. during peak times (June – August; exception is weekdays at Burnt Cedar)
- Full and part-time resident concerns about lack of availability due to increased amount of visitors
- Number of vehicles in parking lots before Staff arrives at gates

Suggested Solutions

- *Preferred parking.* Issue two to three permits, per parcel, to be required during peak time (which is to be determined) by summer 2017
- Permits would be interchangeable
- Begin staffing gates earlier on weekends or do not unlock gates until gate staff arrives with the exception of Ski Beach
- Community Shuttle



Commercial Boat Operations at Ski Beach

Concerns

- Excessive trailer parking at Village Green/Aspen grove and Overflow Lot
- Safety and liability

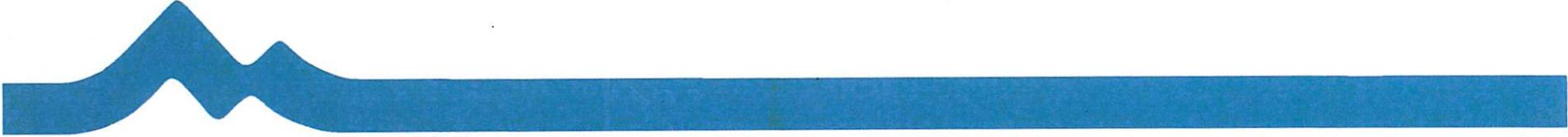
Suggested Solutions

- No trailer parking allowed unless attached to a vehicle at both Village Green and overflow lots
- All operators required to provide IVGID with Business License and proof of insurance
- Develop Infraction Policy that includes potential loss of launch privileges



Community Shuttle 2015 Review

- Proof of concept period: Shuttle operated 17 Days in 2015 (Sat-Sun & Fri July 3rd), June 27 – Aug 16
- Total riders = 518
- July 3 – 5th riders = 350
- 6 days affected by weather
- Most popular pick up spots – Diamond Peak/Big Water Grille and Raley's Shopping Center
- Most popular destination – Incline Beach
- Beach Host on board
- Shuttle Service contract with Tahoe Truckee Transportation



Community Shuttle 2016 adjusted

- Shuttle to operate 15-17 total days including Mon July 4th
- 2 shuttles July 3-4th
- Reduce stops and continue to include DP/Big Water Grille, Raley's, Recreation Center & 3 beaches – continuous loop
- Increase marketing and community outreach
- Continue to contract out Shuttle Service to Tahoe Truckee Transportation
- Analyze & determine viability and proof of concept for future at the end of the 2016 season



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July 4th Holiday week

- Continue to staff gates until 10 p.m.
- No cash/credit cards at the gate on July 4. Must pre-purchase daily beach passes for guests
- Continue to operate additional access points and kiosk at Aspen Grove and Recreation Center (wristbands)
- Additional lighting after fireworks (possibly Burnt Cedar)
- Extended hours at Ski Beach ramp, 6 a.m. to ???
- Shuttle July 2-4th
- All hands on deck!



Red, White & Tahoe Blue (RWTB) Collaboration

- IVGID Legal Counsel and Staff recommend developing a Memorandum of Understanding (MOU) with RWTB.
- Annual working document based on RWTB requests for IVGID facilities and services
- MOU would document the relationship between IVGID and RWTB including IVGID requirements and any potential cost recovery from RWTB for IVGID services
- Approval of annual MOU would be contingent upon approval of a special event permit from Washoe County
- Annual updated MOU would be approved by IVGID Board of Trustees, if requested

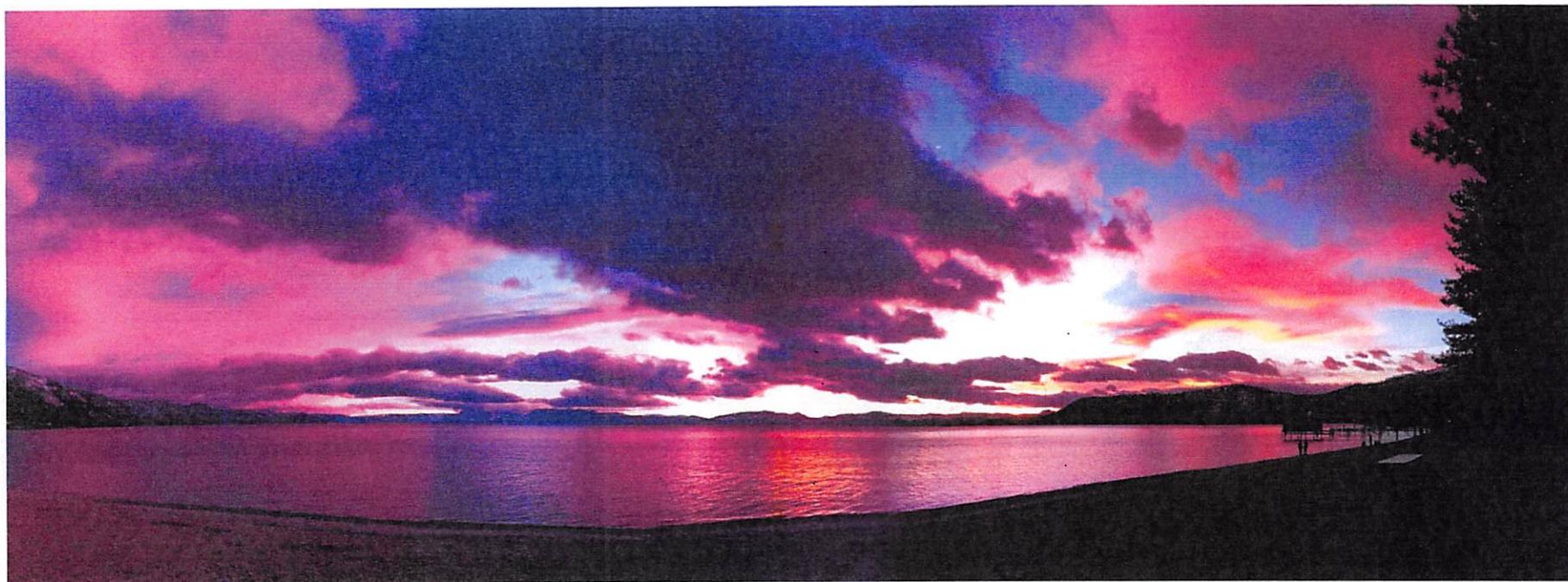


Workshop Goals , Objectives and Desired Outcomes

- Identify and discuss concerns and sensitive issues at beaches
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- Determine next steps including progress update in April 2016



Thank You



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Board Study Session
2016/2017 Capital Improvement Budget
CIP Project Prioritization
February 4, 2016

Bradley A. Johnson, P.E. – Director of Asset Management



2016/17 Budget Calendar

Revision dated October 1, 2015

- Operating Component
 - √ August: Educate & review
 - √ September: Review dynamic pricing & format function & object
 - √ November: Key Rates and/or dynamic pricing
 - √ January: Utility Rate Study
 - February: Deliberate programming priorities
 - March: Expenses & punch cards
 - April: Preliminary Budget
 - May: Adopt 2016/2017 Budget
- Capital Projects & Debt Service Components
 - √ October: Prioritize/define debt versus pay as you go, highlight current 5 year plan
 - October to January: Staff goes through CIP & finance analysis
 - February: Preliminary CIP & funding plan is released
 - March: Feedback & follow up from further analysis
 - April: CIP Tour
 - May: Adopt 2016/17 CIP
 - June: Adopt 5 Year Capital Budget & Financing Plan

Issues Reviewed to Date

- June & July – Strategic Plan emphasis on measurement, committed to 5 year projection
- August – separate tracks for operations versus capital improvement projects, budget drivers
- October – role of multiple funding sources, when to consider debt, identify priorities, intergenerational equity
- December – flow of resources, replacement funding alternatives, bonding example
- January – CIP project types, CIP funding sources, role of master plans/facility plans, preliminary discussion on CIP prioritization and regulatory compliance

CIP Project Prioritization

- Factors used by Staff to help prioritize CIP projects and determine urgency
 - Safety
 - Regulatory Compliance
 - Project Type – Existing Facility or New Initiative
 - Condition Assessment
 - Operations
 - Economics

CIP Project Prioritization

- Safety of the public and District Staff
 - Is the safety issue perceived or real?
 - Frequency of exposure to safety issue?
 - Have there been any incidents and/or near misses to date?
 - Is the safety issue also regulatory?
 - Code compliance
 - OSHA
 - Industry guidelines
 - Are operational controls/solutions available?
 - Has legal and/or insurance pool provided an opinion?

CIP Project Prioritization

- Regulatory Compliance
 - Is the District causing harm to people/property/environment due to the regulatory non-compliance?
 - Is the regulatory compliance issue documented with a controlling Agency?
 - Is the District at risk of administrative orders/fines/legal action?
 - Is there a stipulated remediation?
 - Is there a stipulated compliance date?
 - Are operational controls/solutions available?
 - Has legal and/or insurance pool provided an opinion?

CIP Project Prioritization

- Project Type
 - Existing Facility or New Initiative?
 - In-kind replacement or expansion/enhancement?
 - Has the project been discussed with or identified by the Board of Trustees/Community/Venue Stakeholders/Public?
 - Is the project identified in a District facility plan or master plan?
 - Has preliminary scoping or design work already been completed on the project?
 - Has the highest and best use of the asset been considered?

CIP Project Prioritization

- Condition Assessment
 - What is the asset's life-cycle?
 - Is there supporting data?
 - Manufacturer's guidelines
 - Industry best practices
 - Work orders
 - Professional evaluations
 - Does the condition impact operations? Customer experience? Have there been complaints?
 - Does the condition lead to further/accelerated asset degradation?
 - Does the condition affect the aesthetic character of the facility? Front-of-house or back-of-house?

CIP Project Prioritization

- Operations
 - Will the project enhance operational efficiency/capacity/effectiveness?
 - Is there supporting data to justify the project?
 - Manufacturer's guidelines
 - Industry best practices
 - Facility plans/professional evaluations
 - Are there operational/business practice changes available that provide similar results?
 - Will the project enhance the customer experience?
 - Have there been customer complaints?
 - Are there operational limitations to delivery of the project?

CIP Prioritization

- Economics
 - Will the project reduce operating costs?
 - Will the project increase operating revenues?
 - Is there a project return on investment?
 - Has a cost/benefit analysis taken place?
 - Is there non-District funding available to support completion of the project?
 - Grant funding
 - Private funding
 - Are there economies of scope/scale available?

CIP Project Prioritization

- Board Policy 12.1.0 – Multi-Year Capital Planning
 - Provides general guidelines for project prioritization
 - Neutral on Existing Facilities vs. New Initiatives
 - Neutral on schedule for regulatory compliance
 - Neutral on condition driven Existing Facilities projects

CIP Project Prioritization

From the October 2015 Study Session:

If an existing asset has reached the end of its useful life AND the condition assessment indicates a need for replacement AND is still an asset that the community wants, needs, and uses, it will be **priority #1**.

If an existing asset is near the end of its useful life AND the condition assessment indicates replacement is near, but needs modification AND modification will benefit the communities continued wants, needs, and uses, it will be **priority #2**.

If it is a new idea and/or addition to the District's assets/offerings/services, it must be an addition that is wanted by the community, AND willing to be funded by the community, through new sources; it will be **priority #3**.

CIP Project Prioritization

Does the Board of Trustees want to specifically include any of the CIP project prioritization factors discussed today into Policy 12.1.0 revisions?

Does the Board of Trustees want to add greater prioritization emphasis to any certain factors?
Safety? Regulatory Compliance?

Board Policies

- Based on Board Input from the October 2015, December 2015, January 2016, and February 2016 study sessions:
 - Staff intends to bring Policy 12.1.0 Multi-Year Capital Planning for update by April 2016
 - Staff intends to bring Policy 13.1.0 Capital Project Budgeting for update by April 2016
 - Staff intends to bring Policy 14.1.0 Debt Management for update by April 2016
 - The District Debt Management Policy annual filing must be approved by 7/31/16 (scheduled 6/29/16)

Questions and Discussion

Long Range Principle 2 – Finance

Develop and maintain a long term plan to sustain financial resources.

Long Range Principle 5 – Assets & Infrastructure

Maintain a 5-Year and 20-Year capital improvement plan.



Capital Planning Multi-Year Capital Planning Policy 12.1.0

POLICY. The District will prepare and adopt comprehensive multi-year capital plans to ensure effective management of capital assets. A prudent multi-year capital plan identifies and prioritizes expected needs based on a community's strategic plan, establishes project scope and cost, details estimated amounts of funding from various sources, and projects future operating and maintenance costs. The capital plan should cover a period of at least five years, preferably ten or more.

- 1.0 Identify needs. The first step in the District's capital planning is identifying needs. The District has a commitment to the maintenance of its existing infrastructure. The District's Multi-Year Capital Plan will use information including development projections, strategic plans, comprehensive plans, facility master plans, regional plans, and citizen input processes to identify present and future service needs that require capital infrastructure or equipment. In this process, attention will be given to:
 - 1.1 Capital assets that require repair, maintenance, or replacement that, if not addressed, will result in higher costs in future years.
 - 1.2 Infrastructure improvements needed to support new development or redevelopment.
 - 1.3 Projects with revenue-generating potential.
 - 1.4 Improvements that support economic development.
 - 1.5 Changes in policy or community needs.

- 2.0 Determine costs. The full extent of project costs should be determined when developing the multi-year capital plan. Cost issues to consider include the following:
 - 2.1 The scope and timing of a planned project should be well defined in the early stages of the planning process.
 - 2.2 The District should identify and use the most appropriate approaches, including outside assistance, when estimating project costs and potential revenues.



Capital Planning Multi-Year Capital Planning Policy 12.1.0

- 2.3 For projects programmed beyond the first year of the plan, the District should consider cost projections based on anticipated inflation.
 - 2.4 The ongoing operating costs associated with each project should be quantified, and the sources of funding for those costs should be identified.
 - 2.5 A clear estimate of all major components required to implement a project should be outlined, including land acquisition needs, pre-design, design, and construction or acquisition, contingency and post-construction costs.
 - 2.6 Recognize the non-financial impacts of the project (e.g., environmental) on the community.
- 3.0 Prioritize capital requests. The District continually faces extensive capital needs and limited financial resources. Therefore, prioritizing capital project requests is a critical step in the capital plan preparation process. When evaluating project submittals the District will:
- 3.1 Reflect the relationship of project submittals to financial and governing policies, plans, and studies.
 - 3.2 Allow submitting departments to provide an initial prioritization.
 - 3.3 Incorporate input and participation from major stakeholders and the general public.
 - 3.4 Adhere to legal requirements and/or mandates.
 - 3.5 Anticipate the operating budget impacts resulting from capital projects.
 - 3.6 Apply analytical techniques, as appropriate, for evaluating potential projects (e.g., return on service, pay back period, cost-benefit analysis, cash flow modeling).
 - 3.7 Re-evaluate capital projects approved in previous multi-year capital plans.
- 4.0 Develop financing strategies. The District recognizes the importance of establishing a viable financing approach for supporting the multi-year capital plan. Financing strategies should align with expected



Capital Planning
Multi-Year Capital Planning
Policy 12.1.0

project requirements while sustaining the financial health of the District. The capital financing plan should:

- 4.1 Anticipate expected revenue and expenditure trends, including their relationship to multi-year financial plans.
- 4.2 Prepare cash flow projections of the amount and timing of the capital financing.
- 4.3 Continue compliance with all established financial policies.
- 4.4 Recognize appropriate legal constraints.
- 4.5 Consider and estimate funding amounts from all appropriate funding alternatives.
- 4.6 Ensure reliability and stability of identified funding sources.
- 4.7 Evaluate the affordability of the financing strategy, including the impact on debt ratios, taxpayers, ratepayers, and others.

MEMORANDUM

TO: Board of Trustees

THROUGH: Steven J. Pinkerton
General Manager

FROM: Susan A. Herron, CMC
District Clerk

Jason Guinasso
District General Counsel

SUBJECT: 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. 13897-164; Open Meeting Law Complaint – Placed on this agenda in accordance with Nevada Revised Statutes 241.0395

DATE: January 26, 2016

On or about January 26, 2016, the District received File Number 13897-164 Attorney General Opinion. We are including this opinion on our agenda to acknowledge findings by the Attorney General that the public body has taken an action in violation of the Open Meeting Law. The complaint, response, and the opinion of the Attorney General are attached. This item fulfills the requirement to provide notice to the public, in accordance with Nevada Revised Statutes, of the Attorney General's opinions. This item is included to promote transparency and accountability in government by ensuring the public is made aware of the findings by the Attorney General.

Please be advised that District General Counsel spoke to the Attorney General's office regarding clarification of his office's expectations in light of the Findings of Fact and Conclusions of Law. The Attorney General reiterated to District General Counsel that his Opinion is only a warning to the Board to come into compliance with the clear and complete rule with regard to the structure and content of Board agenda items.

Additionally, the Attorney General will not be seeking a Court order to compel any corrective action. The Attorney General has said it would rather the Trustees address the issues surrounding the structure and contents of the Agenda with the public.

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.
13897-164; Open Meeting Law Complaint –
Placed on this agenda in accordance with
Nevada Revised Statutes 241.0395

-2-

January 26, 2016

Finally, the Attorney General emphasized that corrective action is a right that the Legislature has given to public bodies. In the event that the Board would like to take corrective action on a matter, even if the action is taken only based on an abundance of caution that a violation may have occurred, corrective action should include an independent rehearing, reconsideration, independent deliberative action or some other phrase or standard, but corrective action excludes action that simply affirms a predetermined vote duplicative of previous action. In this regard, corrective action might include rescinding the prior action(s) followed by discussion and further deliberation under a new agenda item before taking a new independent vote, all of which is done in public meeting.

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**IN THE STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL**

IN THE MATTER OF:

**INCLINE VILLAGE GENERAL
IMPROVEMENT DISTRICT; its BOARD
OF TRUSTEES.**

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

**OPEN MEETING LAW OPINION
Attorney General File No. 13897-164**

BACKGROUND

The Board of Trustees for Incline Village General Improvement District (IVGID) asserts that it took corrective action on September 23, 2015, after a member of the public complained that an action agenda item from a previous public meeting was not "clear and complete" in compliance with NRS 241.020(2)(d)(1). Public bodies may take action to correct alleged violations of the Open Meeting Law (OML) pursuant to NRS 241.0365.¹

FINDINGS OF FACT

1. The Trustees reorganized and reassigned leadership responsibility, including the chairman, vice chairman, secretary and treasurer on August 26, 2015. Trustee Bill Devine (Devine) sought to reorganize the Board officers based on his displeasure with the Chairman's "management style." Devine explained his view and his belief that reorganization of officers was needed during that public meeting. The Trustees' discussion and action to reorganize

¹ **NRS 241.0365 Action taken by public body to correct violation of chapter; timeliness of corrective action; effect.**

1. Except as otherwise provided in subsection 4, if a public body, after providing the notice described in subsection 2, takes action in conformity with this chapter to correct an alleged violation of this chapter within 30 days after the alleged violation, the Attorney General may decide not to commence prosecution of the alleged violation if the Attorney General determines foregoing prosecution would be in the best interests of the public.

2. Except as otherwise provided in subsection 4, before taking any action to correct an alleged violation of this chapter, the public body must include an item on the agenda posted for the meeting at which the public body intends to take the corrective action in conformity with this chapter. The inclusion of an item on the agenda for a meeting of a public body pursuant to this subsection is not an admission of wrongdoing for the purposes of civil action, criminal prosecution or injunctive relief.

3. For purposes of subsection 1, the period of limitations set forth in subsection 3 of NRS 241.037 by which the Attorney General may bring suit is tolled for 30 days.

4. The provisions of this section do not prohibit a public body from taking action in conformity with this chapter to correct an alleged violation of the provisions of this chapter before the adjournment of the meeting at which the alleged violation occurs.

5. Any action taken by a public body to correct an alleged violation of this chapter by the public body is effective prospectively. (Added to NRS by 2013, 727).

1 leadership responsibility was taken under item F.8.² Trustee Devine had included in the
2 Board's supporting materials packet, a one page memorandum addressed to the Board of
3 Trustees for the August 26th public meeting. Devine stated in the memorandum that he felt it
4 was time to reorganize the Board and that he would lead the discussion of this agenda item.
5 However, agenda item F.8 did not give any notice that the topic for discussion was
6 reorganization of leadership officers. The memorandum was only addressed to the Board, not
7 to the public.

8 2. The Trustees reorganized leadership officers by vote taken under item F.8.
9 Chairman Jim Smith (Smith) was voted out of the chairman's office. Smith resigned from the
10 Board within twenty-four hours of his displacement as chairman.

11 3. The Office of the Attorney General (OAG) received an OML complaint alleging
12 that agenda item F.8 was not *clear and complete* in compliance with
13 NRS 241.020(2)(D)(1). The complaint asserted, "This item gives the public absolutely no
14 indication as to the actual intent of the item or the shocking events which followed."

15 4. The Board of Trustees agendized corrective action for its September 23, 2015,
16 meeting as agenda item G.3.³

17 5. Item G.3 was introduced by the Trustees' legal counsel (Counsel). He told the
18 Trustees that the item was in response to the OML complaint and a letter from the OAG.
19 Counsel stated item G.3's sole purpose was to confirm the August 26th vote for new officers.
20 Counsel told the Board that the *clear and complete* rule (NRS 241.020) is not defined. There
21 was no discussion or deliberation before the Trustees' duplicate perfunctory vote to confirm
22 the same leadership officers already selected on August 26th.

23 ///

24 _____
25 ² Item F.8. Incline Village General Improvement District Board of Trustees Policy 3.1.0, Conduct Meetings of
the Board of Trustees, Specific Section - 0.11 Officers of the Board (Requesting Trustee Bill Devine).

26 ³ Item G.3. Re-organization of Board of Trustees to confirm officers chosen at August 26, 2015, meeting.
27 Officers being confirmed are Kendra Wong, Chairwoman, Jim Hammerel, Vice-Chair, Tim Callicrate, Secretary,
28 Bill Devine, Treasurer. This action is being taken in conformity with the Nevada Revised Statutes (NRS) Chapter
241.0364 to proactively address an alleged violation of the Nevada (Open Meeting Law (Requesting Staff
member: District General Counsel Devon Reese).

1 6. The OAG reviewed the video of the September 23rd meeting as part of this
2 investigation. The OAG also requested statements from the Trustees. Three Trustee's
3 submitted affidavits in response to the complaint and specific questions from the OAG
4 investigation. Trustee Tim Callicrate (Callicrate) did not submit an affidavit. Trustee Jim
5 Smith resigned within twenty-four hours of the meeting; he did not submit an affidavit.

6 7. Trustee Devine's Affidavit said he requested item F.8 be placed on an agenda,
7 but Chairman Smith refused. Trustee Devine insisted he would stand by his request to place
8 his requested item on an agenda. Smith finally approved it for placement on the agenda for
9 August 26, 2015. Trustee Devine also said in his affidavit that he did not discuss, deliberate
10 and/or agree to take any action on the item with Trustees Kendra Wong or Callicrate prior to
11 the August 26, 2015, meeting.

12 8. The OAG requested that Trustee Devine explain in a statement why agenda
13 item F.8 did not specify that its topic for discussion was reorganization of the Trustee's
14 leadership offices. Devine had sent the Trustees a short explanation that the topic was
15 reorganization and that memo was included in the agenda packet, but he did not include
16 reorganization as the topic in agenda item F.8. He did not answer the OAG's question.

17 9. Trustee Jim Hammerel (Hammerel) responded to discovery questions with an
18 affidavit. Hammerel said he spoke with Trustee Devine on August 15, 2015, so he could ask
19 him what his intentions were with the item. Hammerel said that Trustee Devine was the only
20 trustee he spoke with before the meeting.

21 10. Trustee Wong said that she did not speak with any other board members about
22 Trustee Devine's August 26th agenda item.

23 11. The Trustees did not discuss the OML complaint during the September 23rd
24 public meeting. No Trustee asked why a confirming vote would correct the August 26th
25 violation, or whether the item should be reconsidered from the beginning. No Trustee asked
26 for a legal explanation about the *clear and complete* rule. There was no further discussion by
27 the Trustees. The Trustees did not rescind their August 26th vote, which reshuffled the
28 Trustees into new positions as Board officers. Reorganization of leadership officers on

1 September 23rd was a perfunctory duplication of its earlier August 26th vote.

2 12. Two persons made public comment during this meeting. Frank Wright,
3 complainant herein, reminded the Trustees that corrective action should be more than mere
4 affirmation of the action. Mr. Wright suggested that the Board should take new nominations
5 for the positions to be reorganized and then revote on the new nominations if they intended to
6 take corrective action.

7 **ISSUES AND ANALYSIS**

8 **Whether Item F.8 on IVGID's August 26, 2015, public meeting agenda was *clear***
9 ***and complete* within the meaning of NRS 241.020(2)(d)(1).**

10 **Whether Item G.3 on IVGID's September 23, 2015, public meeting agenda was in**
11 **conformity with the OML so that it constituted corrective action within the meaning of**
12 **NRS 241.0365.**

13 **ISSUE No. 1**

14 **Whether Item F.8 on IVGID's August 26, 2015, public meeting agenda was *clear***
15 ***and complete* within the meaning of NRS 241.020(2)(d)(1).**

16 The Nevada Supreme Court has twice analyzed the phrase *clear and complete* as
17 used in NRS 241.020(2)(d)(1).⁴ In *Sandoval* the Court rejected a so-called "germane
18 standard" because it was too lenient and allowed a public body to stray from its agenda. The
19 Court said that "[T]he legislative history of NRS 241.020(2)(c)(1) illustrates that the Legislature
20 enacted the statute [the *clear and complete* rule] because 'incomplete' and poorly written
21 agendas deprive citizens of their right to take part in government.'" *Id.* 119 Nev. at 154, 67
22 P.3d at 905. [NRS 241.020(2)(c)(1) is now codified at (2)(d)(1)]. The Court emphasized that
23 the purpose of the agenda is to give the public, not Board members, clear notice of the topics
24 listed for discussion.

25 In *Schmidt* the Court said that, "In the past, we have recognized that '[b]y not requiring
26 strict compliance with agenda requirements, the '*clear and complete*' standard would be
27

28 ⁴ *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d. 902 (2003); *Schmidt v. Washoe County and Washoe*
County Board of County Commissioners, 123 Nev. 128, 159 P.3d 1099 (2007)

1 rendered meaningless because the discussion at a public meeting could easily exceed the
2 scope of a stated agenda topic, thereby circumventing the notice requirement.” *Schmidt v.*
3 *Washoe County*, 123 Nev. 128,138, 159 P.3d 1099,1103 (2007) (abrogated on other grounds,
4 *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 181 P.3d 670 fn.6 (2008)). The
5 Court approved the agenda topic in *Schmidt* because the Court found that the item explicitly
6 listed the topics for discussion thereby meeting all notice requirements.

7 The public must be given notice in fact of what is to be discussed, and possibly acted
8 upon, by the public body. Notice “in fact” means that the agenda item should have listed the
9 topic to be discussed for possible action: re-organization of Board officers. Merely listing a
10 Board Policy for possible action and a subsection of that policy without explicitly stating the
11 real topic of consideration, constitutes a poorly drafted agenda—one that violates the *clear*
12 *and complete* rule.

13 The Board’s packet of supporting materials contained a memo from Trustee
14 Devine stating that he wished to pursue reorganization; however, supporting materials are not
15 part of the agenda item. The *clear and complete* rule applies only to the agenda and explicitly
16 requires that the item inform the public of the topics to be discussed and possibly acted on.

17 The *Sandoval* Court said that public bodies must utilize a “higher degree of specificity
18 [in drafting agenda items] when the subject to be debated is of special or significant interest to
19 the public.” *Sandoval*, 119 Nev. at 154-155. Specificity means that the public should have
20 been made aware that reorganization of the Board officers was to be considered.
21 Reorganization of Board officers is a significant topic. The complaint in this matter makes that
22 very clear. Further proof that this agenda item was of significance is that within 24 hours
23 following the Trustee’s vote to reorganize Chairman Smith resigned from the Board of
24 Trustees. Despite legal counsel’s belief that *clear and complete* is a phrase that should be
25 defined, the undefined rule has served the public very well since 1989 and is capable of
26 application to public meeting agendas. *Sandoval* at p.154.

27 **ANSWER TO ISSUE No. 1**

28 **Item F.8 on the Trustee’s August 26, 2015, agenda was not *clear and complete* as**

1 required by NRS 241.020(2)(d)(1). It failed to provide notice, in fact, of the topic for
2 discussion and possible action.

3 ISSUE No. 2

4 Whether Item G.3. on IVGID's September 23, 2015, public meeting agenda was in
5 conformity with the OML and constituted corrective action within the meaning of
6 NRS 241.0365.

7 Because agenda item F.8 from August 26th was not *clear and complete*, the action
8 taken by the Trustees at the meeting was void. NRS 241.036. The analysis must now
9 consider the second issue herein: whether the action taken by the Trustees on September
10 23rd was effective to correct the violation.

11 NRS 241.0365(1) requires that corrective action must be taken in conformity with the
12 OML. The OAG may determine whether the asserted corrective action was in conformity with
13 the OML. If the Attorney General is satisfied that corrective action is in conformity with the
14 OML, then the Attorney General may forego prosecution of the public body if foregoing
15 prosecution would be in the best interests of the public. NRS 241.0365(3) extends the OML's
16 120 day limitations period (NRS 241.037) for another 30 days to determine if the public body's
17 corrective action is in compliance with the OML.

18 The OAG has encouraged public bodies to use corrective action long before the
19 enactment of NRS 241.0365. The OAG OML Manual at §11.04: **Reconsidering an action**
20 **that is void** provides the reader with examples of how corrective action has been applied in
21 the past. The Manual at §11.04 indicates that mere perfunctory approval of the prior action
22 during a subsequent meeting does not cure a violation. Such a matter should be placed on a
23 subsequent agenda and reheard.

24 Nevada's OML as well as other jurisdiction's Open Meetings Acts are silent as to how a
25 void action is to be remedied or cured by the public body. NRS 241.0365; NRS 241.036.
26 The OAG has always urged a public body to rehear or reconsider a matter where action was
27 taken allegedly in violation of the OML. The Nevada Supreme Court has not considered this
28 issue, nor has it interpreted NRS 241.0365 which states that corrective action must be in

1 conformity with the OML. Other states have considered this issue. The cases below provide
2 guidance.

3 Massachusetts recognizes that violations of the open meeting law may be corrected by
4 subsequent *independent deliberative action*. *Pearson v. Selectmen of Longmeadow*,
5 49 Mass.App.Ct. 119, 125, 726 N.E.2d 980 (2000). Such *independent deliberative action*
6 "helps[s] to accomplish the purpose of the open meeting law." *Benevolent & Protective Order*
7 *of Elks, Lodge No. 65 v. Planning Bd. of Lawrence*, 403 Mass. 531, 558, 531 N.E.2d 1233
8 (1988).

9 Courts in Florida rejected corrective action taken at meetings that were merely a
10 ceremonial acceptance or a perfunctory ratification of secret decisions, because such
11 perfunctory subsequent action plainly does not help to accomplish the purpose of the open
12 meeting law, and will not operate as a corrected action. *Id.* at 125, 726 N.E.2d 980, quoting
13 from *Tolar v. School Bd. of Liberty County*, 398 So.2d 427, 429 (Fla.1981). Thus, under *Tolar*,
14 a full, open and independent public hearing of the disputed issue can remedy the earlier
15 violation. See *Zorc v. City of Vero Beach*, 722 So.2d 891, 902 (Fla. 4th DCA 1998), *review*
16 *denied*. Only full, open and independent public hearings can correct a violation of the OML.

17 Colorado case law supports an interpretation of the OML that permits a state or local
18 public body to correct an OML violation by holding a subsequent meeting that complies with
19 the open meeting laws as long as it is not a mere rubber-stamping of an earlier decision. See
20 *Hyde v. Banking Bd.*, 38 Colo.App. 41, 44, 552 P.2d 32, 34 (1976); *Colorado Off-Highway*
21 *Vehicle Coalition v. Colorado Bd. of Parks and Outdoor Recreation*, 292 P.3d 1132,1136,
22 Ct of App. Div. 5 (2012). See *Cole v. State*, 673 P.2d 345, 349 (Colo.1983) ("The intent of the
23 **Open Meetings Law** is that citizens be given the opportunity to obtain information about and
24 to participate in the legislative decision-making process A citizen does not intelligently
25 participate in the legislative decision-making process merely by witnessing the final
26 tallying of an already predetermined vote.") See *Cole v. State*, 673 P.2d 345, 349
27 (Colo.1983).

28 ///

1 The Wyoming Supreme Court held that a public agency could cure a void action made
2 in violation of the Public Meetings Act "by conducting a new and substantial reconsideration of
3 the action in a manner which complies with the Act." *Gronberg v. Teton County Housing*
4 *Authority*, 247 P.3d 35, 42 (Wyo. 2011).

5 California's Brown Act (Open Meeting Act governing legislative bodies of local agencies
6 as defined therein) has been interpreted by the California courts to require a "true de novo
7 reconsideration of the actions taken in violation of the Brown Act." *Boyle v. City of Redondo*
8 *Beach* (1999) 70 Cal.App.4th 1109 (*Boyle*). In *Boyle*, an individual sued a city council upon
9 allegations that the council violated the Brown Act by discussing litigation not listed on its
10 posted agenda. *Id.* at p. 1114. The appellate court found a violation of agenda requirements
11 but concluded that the city council corrected the violation by holding a second meeting in
12 which the council discussed the litigation and rescinded all action taken at the initial meeting.
13 (*Id.* at pp. 1115, 1117-1118.)

14 Finally, the New Jersey Supreme Court weighed in on the proper way to correct a
15 violation of its open meetings laws. The Court rejected a claim from a public body that
16 corrective action was satisfied by *substantial compliance*. The Court held that strict
17 adherence to the letter of the law is required in considering whether a violation of the Act has
18 occurred. The Court, citing the statutory requirement, said that a public body might take
19 corrective or remedial action by "acting *de novo* at a public meeting held in conformity with this
20 act." N.J. S.A. 10:4-15(a); *Polillo v. Deane*, 379 A.2d 211,218-219 (N.J. 1977)

21 The OAG concurs with conclusions of the jurisdictions reviewed above. In each case
22 cited above, the public's right to participate in the public body's decision making was given
23 considerable deference. Corrective action must comply with the OML—it must not be a
24 rubber-stamp of a prior action whether it was taken in private or in public. *Substantial*
25 *compliance* is not a standard recognized by the Nevada Supreme Court as compliance with
26 the OML—instead strict compliance with the requirements of the OML is necessary.
27 Duplication of the August 26th vote on September 23rd as simply a rubber-stamp of prior
28 action and did not correct the violation.

Attorney General's Office
100 N. Carson Street
Carson City, Nevada 89701-4717

1 CLOSING SUMMARY

2 Corrective action was placed on the September 23, 2015, agenda, but the action taken
3 did not correct the violation from the August 26, 2015, public meeting. Trustees failed to
4 reconsider the matter in an independent fashion complete with discussion and deliberation.
5 Only such reconsideration would be corrective action as permitted by NRS 241.0365.

6 The OAG warns the Board to ensure that its agenda topics are clearly and completely
7 stated. The Trustees may not stray into other matters of discussion not clearly and completely
8 stated on its agenda. The OAG will take further action should this violation reoccur.

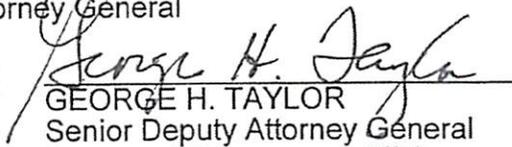
9 Because the OAG finds that IVGID has taken action in violation of the OML,
10 IVGID must place this Opinion on its next meeting agenda and also make the Opinion a part
11 of the meeting's supporting material. The agenda item must acknowledge the Findings of
12 Fact and Conclusions of Law to be the result of the OAG investigation in the matter of
13 Attorney General File No. 13897-164 and has been placed there as a requirement of
14 NRS 241.0395.

15 DATED THIS 25th day of January, 2016.

16 Sincerely,

17 ADAM PAUL LAXALT
18 Attorney General

19 By:


20 GEORGE H. TAYLOR
21 Senior Deputy Attorney General
22 Bureau of Government Affairs
23 Open Meeting Law

24 Cc: Devon Reese, Esq.
25 Jim Smith

26 Members:

27 Tim Callicrate
28 Kendra Wong
29 Jim Hammerel
30 Bill Devine
31 Philip Horan
32 Matthew Dent

Attorney General's Office
100 N. Carson Street
Carson City, Nevada 89701-4717

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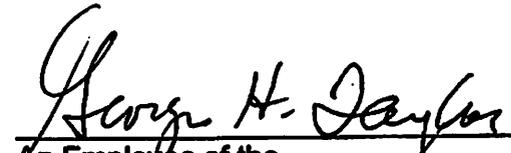
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the Office of the Attorney General of the State of Nevada, and that on the 25th day of January 2016, I mailed a true and correct copy of the forgoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW, OPEN MEETING LAW OPINION**, by U.S. Mail, Postage prepaid to the following interested parties:

Frank Wright
P.O. Box 186
Crystal Bay, Nevada 89402

Incline Village General Improvement District
Kendra Wong, Chairman
893 Southwood Blvd.
Incline Village, Nevada 89451

Devon T. Reese, Esq.
Reese, Kintz, Brohawn, LLC
936 Southwood Blvd., Ste. 301
Incline Village, Nevada 89451


An Employee of the
Office of the Attorney General



DEVON T. REESE*
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YVONNE L. MURPHY

* Licensed In Nevada
† Licensed In California
§ Licensed In Nevada & California
◊ Licensed In Illinois
‡ Licensed In Pennsylvania
Ω Of Counsel
⊗ Non-Attorney / Gov't Affairs Director

September 30, 2015

Mr. George Taylor, Esq.
Senior Deputy Attorney General
State of Nevada
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701-4717

**RE: Open Meeting Law Complaint of Frank Wright, A.G. File No. 13897-164
Incline Village General Improvement District ("IVGID")
Response of IVGID**

Dear Mr. Taylor:

We received your September 11, 2015, letter notifying the Incline Village General Improvement District (herein referenced as "IVGID" or "District") of the above referenced Complaint by Frank Wright alleging that IVGID has violated the Nevada Open Meeting Law ("OML"). Please accept this correspondence and the referenced enclosures as IVGID's response.

Issues Presented

1. Whether the August 26, 2015, IVGID Agenda Item No. 8 provided a "clear and concise" statement of the scheduled consideration of the topic.
2. Whether IVGID Trustees had the authority to reorganize and reassign leadership responsibility under Agenda Item No. 8.
3. Whether three members of the IVGID Board of Trustees met privately before the publically noticed meeting on August 26, 2015, to discuss Board action under Agenda Item No. 8
4. Whether the corrective action taken by the IVGID Board of Trustees on September 23, 2015, cures any alleged violation of the Open Meeting Law.

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///
///

INCLINE OFFICE: 936 Southwood Blvd., Suite 301, Incline Village, Nevada 89451

RENO OFFICE: 190 W. Huffaker Lane, Suite 402, Reno, Nevada 89511

LAS VEGAS: 2300 W. Sahara Ave., Suite 800, Las Vegas, NV 89102

PHONE 775.832.6800 FAX 775.832.6801 EMAIL info@rkglawyers.com WEB www.rkglawyers.com



IVGID's Position

A. The August 26, 2015, IVGID Agenda Item No. 8 Provided A "Clear And Concise" Statement Of The Scheduled Consideration Of The Topic.

The Open Meeting Law requires that IVGID provide "written notice of all meetings ... at least 3 working days before the meeting." Under NRS 241.020(2)(c)(1), this notice must include an agenda setting forth a "clear and complete statement of the topics scheduled to be considered during the meeting." Schmidt v. Washoe Cnty., 123 Nev. 128, 137, 159 P.3d 1099, 1105-06 (2007) The agenda must also provide a list of action items and a period devoted to public comment. Discussion at a public meeting cannot exceed the scope of a clearly and completely stated agenda topic."

Here, IVGID provided written notice of the August 26, 2015, meeting on or before Friday, August 21, 2015, at 9:00 a.m. See Exhibit A (August 26, 2015, Agenda). Agenda Item No. 8 was listed under "General Business" and included notice to the public of "possible action" and specifically provided:

8. Incline Village General Improvement District Board of Trustees Policy 3.1.0, Conduct Meetings of the Board of Trustees, Specific Section - 0.11 Officers of the Board (Requesting Trustee: Trustee Bill Devine)

This Agenda was accompanied by a Board Packet, which included a memorandum explaining the purpose of Agenda Item No. 8. See Exhibit B (Memorandum of Trustee Devine). Specifically, the Board packet included a memorandum from Trustee Bill Devine. This memorandum provided the following:

Our Board Policy 3.1.0 above states, under 0.11 Officers of the Board, "The term of office shall be for one (1) year or until a reorganization of the Board is required."

At this point in time, I feel it is time to reorganize the Board and I will lead the discussion on this Board agenda item marked for possible action.

IVGID satisfied the "clear and complete" requirement of the OML by:

- (1) clearly indicating that it planned to discuss Board Policy 3.1.0 under Section 11 concerning Board reorganization, and
- (2) providing a memorandum that clearly and unequivocally put the public on notice that Trustee Devine wanted the Board to take action on reorganizing its leadership.

In accordance with the foregoing, IVGID did not violate the OML under NRS 241.020(2)(c)(1).



B. IVGID Trustees Had the Authority to Reorganize and Reassign Leadership Responsibility Under Agenda Item No. 8.

Agenda Item No. 8 was clearly added to the agenda for action. Under IVGID rule, 3.1.0 the Board of Trustees has the authority to reorganize Board leadership at any time. See Exhibit C (Policy).

Expressing his concern about the leadership on the Board, Trustee Devine made a motion to nominate the following slate of officers to take effect immediately and to run through December 2016 See Exhibit D (August 26, 2015, Minutes):

Trustee Wong as Chair;
Trustee Callicrate as Vice Chair;
Trustee Smith as Secretary; and
Trustee Hammerel as Treasurer.

Trustee Wong seconded the Motion.

Trustee Hammerel agreed that rearrangement of the Board officers was necessary, but he disagreed with the slate of officers proposed by Trustee Devine.

Sharing the same concern as Trustee Hammerel, Trustee Wong asked District General Counsel if the Board could start over and have a revote to identify people for different positions. In response, District General Counsel advised that the Board had the option of allowing Trustee Devine's Motion to fail and, thereafter, a Trustee could then make a new motion which identifies a different slate of officers.

Thereafter, Chairman Smith opened the issue regarding whether to reorganize the leadership on the Board for public comment. Seven members of the public spoke during public comment, including the Complainant Mr. Wright. Notably, no one who offered public comment complained that they did not receive sufficient notice regarding the subject to be discussed under Agenda Item 8. All participants in public comment expressed their views regarding the proposed reorganization of the Board.

Accordingly, after having received public comment, the Board of Trustees deliberated on whether to reorganize the Board and then voted for new leadership. The result of the Board's action was as follows :

Trustee Wong was selected to be the new Chair;
Trustee Hammerel was selected to be the new Vice-Chair;
Trustee Callicrate was selected to be the new Secretary;
Trustee Devine was selected to be the new Treasurer.



Clearly, the Board had authority to take the foregoing action under both the OML and under IVGID Policy 3.1.0, sec. 11.

C. Three Members Of The IVGID Board Of Trustees Did Not Meet Privately Before The Publically Noticed Meeting On August 26, 2015, To Discuss Board Action Under Agenda Item No. 8.

In accordance with the Attorney General's request, please find enclosed with this position statement the Affidavits of Trustee Hammerel, Trust Wong and Trustee Devine. Also, please find the Affidavit of IVGID Board Clerk Susan Heron. The Trustees categorically and unequivocally deny meeting privately before the publically noticed meeting on August 26, 2015, to discuss Board action under Agenda Item No. 8.

D. The Corrective Action Taken By The IVGID Board Of Trustees On September 23, 2015, Cures Any Alleged Violation Of The Open Meeting Law.

Assuming for the sake of argument only that there was some violation of the OML when the IVGID Board reorganized its leadership, the IVGID Board took action to confirm its August 26, 2015 decision. In this regard, on September 23, 2015, the Board added this to the agenda and took action confirm reorganizing the Board. **See Exhibit E (September 23, 2015, Agenda)**. This September 23, 2015, corrective action cures any alleged violation of the OML as a result of the actions taken at the by the IVGID Board on August 26, 2015. See NRS 241.0365.¹

¹ NRS 241.0365 Action taken by public body to correct violation of chapter; timeliness of corrective action; effect.

1. Except as otherwise provided in subsection 4, if a public body, after providing the notice described in subsection 2, takes action in conformity with this chapter to correct an alleged violation of this chapter within 30 days after the alleged violation, the Attorney General may decide not to commence prosecution of the alleged violation if the Attorney General determines foregoing prosecution would be in the best interests of the public.

2. Except as otherwise provided in subsection 4, before taking any action to correct an alleged violation of this chapter, the public body must include an item on the agenda posted for the meeting at which the public body intends to take the corrective action in conformity with this chapter. The inclusion of an item on the agenda for a meeting of a public body pursuant to this subsection is not an admission of wrongdoing for the purposes of civil action, criminal prosecution or injunctive relief.

3. For purposes of subsection 1, the period of limitations set forth in subsection 3 of NRS 241.037 by which the Attorney General may bring suit is tolled for 30 days.

4. The provisions of this section do not prohibit a public body from taking action in conformity with this chapter to correct an alleged violation of the provisions of this chapter before the adjournment of the meeting at which the alleged violation occurs.

5. Any action taken by a public body to correct an alleged violation of this chapter by the public body is effective prospectively.

(Added to NRS by 2013, 727)



E. IVGID Did Not Violate The Open Meeting Law.

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

F. Mr. Wright Brought Open Meeting Law Complaint in Bad Faith.

Mr. Wright has a long history of bringing complaints against IVGID that have no merit. This Complaint is yet another example of Mr. Wright asserting some alleged misconduct has occurred that has absolutely no basis whatsoever in law or in fact. IVGID submits that Mr. Wright's history of bringing frivolous complaints forward should be considered when evaluating the credibility of this Complaint. Further, IVGID urges the Attorney General to admonish Mr. Wright that wasting public time and resources on complaints, which are not supported by the evidence or Nevada law, is discouraged by your office.

Concluding Remarks

In accordance with the foregoing, IVGID respectfully requests that the Attorney General conclude that there has been no violation of the OML or, in the alternative, that the corrective action taken by the IVGID Board cured any alleged violation.

Thank you for the opportunity to respond to the Open Meeting Law Complaint of Frank Wright, A.G. File No. 13897-164.

Very truly yours,

Devon T. Reese, Esq.
IVGID General Counsel

Encl.

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



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4717

ADAM PAUL LAXALT
Attorney General

WESLEY K. DUNCAN
Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

September 11, 2015

Via United States Mail

Incline Village General Improvement District
Chairman Kendra Wong
893 Southwood Blvd.
Incline Village, Nevada 89541

Re: *Open Meeting Law Complaint, AG File No. 13897-164,*
IVGID Board of Trustees

Dear Ms.Wong:

The Attorney General's Office (AGO) has primary jurisdiction over the investigation and resolution of complaints alleging violations of the Open Meeting Law (OML) pursuant to NRS Chapter 241.0365–241.040.

The AGO has opened an investigation into an alleged OML violation by IVGID's Trustees during the public meeting on August 26, 2015. A complaint has been filed that alleges the Trustees action under agenda item 8 violated the OML's requirement that agenda items give a "clear and complete" statement of the topic(s) scheduled to be considered during the meeting. It's alleged that item 8 gave "no indication as to the actual intent of the item."¹ The agenda item cites to District Trustee's policy 3.1.0 section 0.11, Officers of the Board.² The essence of the complaint is that the agenda item failed to give notice to the public that "reorganization of the Board" was the topic.

This office found online a Memorandum to the Board from Bill Devine citing to section 0.11 Officers of the Board, in which he states that he would lead discussion of the subject: reorganization of the Board. His memo does not indicate when the discussion would occur, or even whether it would be in a public meeting.

¹ 8. Incline Village General Improvement District Board of Trustees Policy 3.1.0, Conduct Meetings of the Board of Trustees, Specific Section – 0.11 Officers of the Board (Requesting Trustee: Trustee Bill Devine)

² 0.11 Officers of the Board. The Officers of the Board shall be elected as provided by the Nevada Revised Statutes 318.085 and shall consist of a Chair ... Vice Chair ... Treasurer, and Secretary. The term of office shall be for one (1) year or until reorganization of the Board is required.

Kendra Wong, Chairman
Incline Village General Improvement District
September 11, 2015
Page 2

Please provide a written statement from Mr. Devine regarding the memo, when it was released, to whom, and when it was made available to members of the public, if at all. Most importantly, please explain why the phrase "reorganization of the Board" was not inserted in agenda item 8.

The complaint also alleges that three members of the Board met to discuss the Board action under item 8. The Bonanza quoted newly elected Chairperson Kendra Wong the day following the vote. She said "Obviously I knew it was an agenda item. I didn't know which direction it would go in." We are requesting a statement from Chairperson Wong explaining what she meant when she said she "didn't know which direction it would go." Her statement must explain whether she had pre-meeting discussions with Trustee Devine regarding item 8 and whether or not she discussed reorganization of the Board with him and with any other member of the Board.

The AGO requests a statement from Trustee Jim Hammerel which must disclose any pre-meeting discussions or communications he had from, or with the other Trustees regarding the reorganization of the Board of Trustees.

Please provide our office with a copy of the agenda, minutes, and audio/video recording of the public meeting held on August 26, 2015.

We also request that your counsel prepare on behalf of the board a response and/or defense to the allegations of OML violation(s) in the complaint.

This letter is notification that the Trustees may take corrective action within thirty days following an alleged violation of the OML. Corrective action is a statutory right enjoyed by public bodies which use the process found in NRS 241.0365.

There is a short statutory deadline to file for judicial relief. Accordingly, I ask that you submit your response to this complaint on or September 21, 2015.

If you have any questions, please contact Senior Deputy Attorney General George Taylor at (775) 684-1230.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By:



GEORGE H. TAYLOR
Senior Deputy Attorney General
Bureau of Government Affairs
Open Meeting Law Coordinator

Enclosure

cc: Attorney for public body; Devon T. Reese, Esq.
Members of public body; Jim Hammerel, Bill Devine, Tim Callicrate

SECTION 3.

BUSINESS OR INDIVIDUAL COMPLAINT IS AGAINST

Business/Provider Name: Incline Village General Improvement District Board of Trustees

Individual/Contact: Smith Jim Board Chair

Last First Job Title (Example: CEO)

Individual/Business Address: 893 Southwood Blvd Incline Village Nv 89451

Address City State Zip

Individual/Business Phone: _____

Work Mobile Fax

Individual/Business Email: _____

Individual/Business Web Site: _____

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

My complaint is:

See Attached Complaint Summary

ALLEGED OPEN MEETING LAW VIOLATION IS AGAINST

Name of Public Body: Incline Village General Improvement District Board of Trustees

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

Date of meeting where alleged violation occurred (mm/dd/yyyy): 8/26/2015

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

My complaint is:

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

Official's Name: Jim Smith, Kendra Wong, Tim Callicrate, Jim Title: Board of Trustee members

Official's Government _____

Agency or Body: Incline Village General Improvement District

Official's Work Address: 893 Southwood Blvd Incline Village Nv 89451

(Street / PO Box) (City) (State) (ZIP Code)

Official's Telephone: 775-832-1100

SECTION 4.

PAYMENTS

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

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

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

How much did you actually pay? \$ _____ Payment Method Cash Credit Card Debit Card Check

Financed Wire Transfer Money Order Cashier's Check Other: _____

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

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

OTHER AGENCIES

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

Have you contacted an attorney? Yes No

If so, what is the attorney's name, address, and phone number?

Last _____ First _____ Phone _____

Address _____ City _____ State _____ Zip _____

Is court action pending? Yes No Have you lost a lawsuit in this matter? Yes No

SECTION 5.

EVIDENCE

List and attach photocopies of any relevant documents, agreements, correspondence, or receipts that support your complaint (examples include billing statements, correspondence, receipts, payment information, witnesses, and any other document which explains or supports the matters raised in the complaint). No originals. Copy both sides of any canceled checks that pertain to this complaint.

SECTION 6.

WITNESSES

List any other known witnesses or victims. Please provide names, addresses, phone numbers, email addresses, and/or websites.

SECTION 7.

Sign and date this form. The Attorney General's Office cannot process any unsigned, incomplete, or illegible complaints.

I understand that the Attorney General is not my private attorney, but rather represents the public by enforcing laws prohibiting fraudulent, deceptive or unfair business practices. I understand that the Attorney General does not represent private citizens seeking refunds or other legal remedies. I am filing this complaint to notify the Attorney General's Office of the activities of a particular business or individual. I understand that the information contained in this complaint may be used to establish violations of Nevada law in both private and public enforcement actions. In order to resolve your complaint, we may send a copy of this form to the person or firm about whom you are complaining. I authorize the Attorney General's Office to send my complaint and supporting documents to the individual or business identified in this complaint. I also understand that the Attorney General may need to refer my complaint to a more appropriate agency.

I certify under penalty of perjury that the information provided on this form is true and correct to the best of my knowledge.

Frank Wright
Signature

Frank Wright

Print Name

775-253-4919

8-27-2015

Date (mm/dd/yyyy)

SECTION 8. (Optional)

The following section is optional and is intended to help our office better serve Nevada consumers. Please check the categories that apply to you.

Gender: Male Female

Have you previously filed a complaint with our office? Yes No

If yes, enter in the approximate filing date (mm/dd/yyyy) of your original complaint: _____

I am (mark all that apply):

- Income below federal poverty guideline
- Disaster victim
- Person with disability
- Medicaid recipient
- Military service member
- Veteran
- Immediate family of service member/veteran

Ethnic Identification:

- White/Caucasian
- Black/African American
- Hispanic/Latino
- Native American/Alaskan Native
- Asian/Pacific Islander
- Other: _____

Primary Language:

- English
- Spanish
- Other: _____

May we provide your name and telephone number to the media in the event of an inquiry about this matter?

Yes No

How did you hear about our complaint form (please choose only one):

- Called/visited Las Vegas AG Office
- Called/visited Carson City AG Office
- Called/visited Reno AG Office
- Attended AG Presentation/Event
- Another Nevada State Agency/Elected Official
- Search Engine
- AG Website
- AG Social Media Sites
- Media: Newspaper/Radio/TV
- Other

George Taylor
Nevada Attorney Generals Office
100 Carson St
Carson City, Nevada

Mr. Taylor,

Last night at the August 26 Board of Trustees meeting for the Incline Village General Improvement District regular board meeting one of the Trustee's, Bill Devine made a motion to change the leadership of the board. He had initiated an action item which is as follows: Item number 8 on the agenda:

8. Incline Village General Improvement District Board of Trustees Policy 3.1.0, Conduct Meetings of the Board of Trustees, Specific Section - 0.11 Officers of the Board (Requesting Trustee: Trustee Bill Devine)

This item gives the public absolutely no indication as to the actual intent of the item nor the shocking events which followed: The board made a motion to select new officers, those being a new chairman, a new vice chairman and a new Secretary/treasure. The motion went out to public comments and the public commented on the board motion. **The motion then failed.** Only to have a new motion proposed, and this time there was not public comment. The new motion then passed and the board proceeded to vote in new officers. Removing the current board chairman, a new vice chairman and a new Secretary/treasure.

The order of events which led to this action was extremely irregular and in my opinion out of order. The public comment should have taken place after each motion.¹ Not in the middle of the motions.² And more importantly this agenda item did not indicate a major shakeup of board leadership was about to take place.³ It gives the appearance to be an item for discussion only.⁴

Certainly not a vote to remove officers and replace them with new officers of the board.

The public had they been properly notified would have shown up in mass to oppose this agenda item if they known. The average lay person would have no knowledge of 3.1.0 nor Specific Section 0.11 of the board policy. And to have such vague language is an injustice to the members of this community. The complete board packet that was distributed did not meet the time constraints as required by law. *No evidence? allegation*

One resident who must have been watching the events unfold on live-stream ran to the meeting from a local bar just so he could comment on the agenda item.

Comment: The board agenda was not clear as to the action that was taken. The public was unaware of the intent, and ultimate action taken. The public was deprived of being able to comment during the public comment period or to write letters to the board either in support or to oppose this action.

At a bare minimum this item should be redone at a future board meeting and the actions taken last night should be voided. It is rather clear on live-stream that the districts attorney gave the wrong directions to the board as to how to proceed with this reshaping of the board leadership. The trustees and public were misled. I believe this is a gross violation of the open meeting laws of the state of Nevada. The attorney's direction to the board was wrong, and the board's action was not done in accordance with the open meeting laws of the state of Nevada. It was arbitrary, the second motion should have had public comment, just like the first motion. If the majority members of the board want to hijack the leadership of the board, they should a a bare minimum follow the open meeting laws of the state of Nevada. It is clear this was pre-planned, which indicates three members of the board met to discuss this action outside the view of the public. (another open meeting law violation)
By Bill Devine, Kendra Wong, and Jim Hammerill.)

Thank you,
Frank Wright
36 Somers Loop
Crystal Bay, Nevada 89402
818-601-1996



NOTICE OF MEETING

The regular meeting of the Incline Village General Improvement District will be held starting at 5:30 p.m. on Wednesday, August 26, 2015 in the Chateau, 955 Fairway Boulevard, Incline Village, Nevada.

A Meet and Greet reception will be held prior to the Board meeting at 5:00 p.m. – all members of the public are invited to attend.

- A. PLEDGE OF ALLEGIANCE*
- B. ROLL CALL OF THE IVGID BOARD OF TRUSTEES*
- C. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration.

Public Comment Advisory Statement – *Public comment, as required by the Nevada Open Meeting Law, is an opportunity for people to publicly speak to the assembled Board of Trustees. Generally, it can be on any topic, whether or not it is included on the meeting agenda. In other cases, it may be limited to the topic at hand before the Board of Trustees. Public comment cannot be limited by point of view. That is, the public has the right to make negative comments as well as positive ones. However, public comment can be limited in duration and place of presentation. While content generally cannot be a limitation, all parties are asked to be polite and respectful in their comments and refrain from personal attacks. Willful disruption of the meeting is not allowed. Equally important is the understanding that this is the time for the public to express their respective views, and is not necessarily a question and answer period. This generally is not a time where the Board of Trustees responds or directs Staff to respond. If the Chair feels there is a question that needs to be responded to, the Chair may direct the General Manager to coordinate any such response at a subsequent time. Finally, please remember that just because something is stated in public comment that does not make the statement accurate, valid, or even appropriate. The law mitigates toward allowing comments, thus even nonsensical and outrageous statements can be made. Counsel has advised the Staff and the Board of Trustees not to respond to even the most ridiculous statements. Their non-response should not be seen as acquiescence or agreement just professional behavior on their part. IVGID appreciates the public taking the time to make public comment and will do its best to keep the lines of communication open.*

- D. APPROVAL OF AGENDA (for possible action)

Incline Village General Improvement District

Incline Village General Improvement District is a fiscally responsible community partner which provides superior utility services and community oriented recreation programs and facilities with passion for the quality of life and our environment while investing in the Tahoe basin.

893 Southwood Boulevard, Incline Village, Nevada 89451 • (775) 832-1100 • FAX (775) 832-1122
www.ivgid.org



NOTICE OF MEETING

Agenda for the Board Meeting of August 26, 2015 - Page 2

- E. **CONSENT CALENDAR** *(for possible action)*
- F. **GENERAL BUSINESS** *(for possible action)*
 - 1. **Comprehensive financial performance for 2014-2015 actual against budget for operations, capital projects and debt service and the actual allocation of the recreational standby fee to each component, change in cash reserves or net position by Fund presented by District General Manager Steve Pinkerton (Requesting Trustee: Chairman Jim Smith)**
 - 2. **Make a sole source finding for Transaction Resources Inc. (TRI) as the only available vendor for merchant services processing with RTP ONE and authorize Staff to enter into contract with Transaction Resources, Inc. for merchant processing, as substitute for current provider Wells Fargo N.A., estimated at current processing levels in the amount of \$90,000 (Requesting Staff Members: Diamond Peak Ski Resort General Manager Brad Wilson and Director of Finance, Accounting, Information Technology and Risk Management Gerry Eick)**
 - 3. **Authorize a purchase order for one Fairway Mower – 2015/2016 CIP: Fund: Community Service; Division: Golf; Project # 3242SV515; one Fairway Aerator – 2015/2016 CIP: Community Service; Division: Golf; Project # 3197AT715; one Greens Roller – 2015/2016 CIP: Fund: Community Service; Division: Golf; Project # 3197SE1601; one Gator Utility Vehicle – 2015/2016 CIP: Community Service; Division: Parks; Project # 4378NL456; Vendor: Belcorp Golf and Turf; Total Purchase Amount: \$126,159.02 (Requesting Staff Member: Engineering Manager Brad Johnson)**
 - 4. **Authorize a purchase order for one Rough Mower – 2015/2016 CIP: Fund: Community Service; Division: Golf; Project # 3242SV513; two Tee Mowers – 2015/2016 CIP: Fund: Community Service; Division: Golf; Project #'s 3142SV514 and 3142SV516; six Carryall Utility Vehicles – 2015/2016 CIP: Fund: Community Service; Division: Golf; Project #'s 3142NL404, 3142NL405, 3142NL406, 3142NL407, 3142NL408 and 3142NL409; Vendor: Turf Star, Inc.; Total Purchase Amount: \$134,006.04 (Requesting Staff Member: Engineering Manager Brad Johnson)**



NOTICE OF MEETING

Agenda for the Board Meeting of August 26, 2015 - Page 3

5. Approval of District's Debt Management Policy as previously approved, by reference, on May 21, 2015, and at the request of the State of Nevada (Requesting Staff Member: Director of Finance, Accounting, Information Technology and Risk Management Gerry Eick)
6. Incline Village General Improvement District's General Manager Steven J. Pinkerton Annual Performance Evaluation per Nevada Revised Statutes (NRS) 241.031
7. Incline Village General Improvement District Board of Trustees Policy 3.1.0, Conduct of Meetings of the Board of Trustees, Specific Section – 0.6 Rules of Proceedings, c. Method of Action (Requesting Staff: District General Counsel Devon Reese)
8. Incline Village General Improvement District Board of Trustees Policy 3.1.0, Conduct Meetings of the Board of Trustees, Specific Section - 0.11 Officers of the Board (Requesting Trustee: Trustee Bill Devine)

G. DISTRICT STAFF UPDATE

1. General Manager Steve Pinkerton
 - a. Information Technology Update
 - b. Beach Shuttle Update
 - c. General Manager's List of Board Requests
2. Senior Head Golf Professional Michael McCloskey
3. Assistant Parks and Recreation Director Indra Winquest

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

1. Regular Meeting of July 29, 2015
2. Special Meeting of August 5, 2015

I. REPORTS TO THE IVGID BOARD OF TRUSTEES*

1. District General Counsel Devon Reese



NOTICE OF MEETING

Agenda for the Board Meeting of August 26, 2015 - Page 4

- 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***
 - 1. Chairman Jim Smith – Verbal report about the recent Washoe County Organizational Effectiveness Committee meeting
- K. **CORRESPONDENCE RECEIVED BY THE DISTRICT***
- 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.**
- M. **REVIEW WITH BOARD OF TRUSTEES, BY THE DISTRICT GENERAL MANAGER, THE LONG RANGE CALENDAR (for possible action)**
- N. **ADJOURNMENT (for possible action)**

CERTIFICATION OF POSTING OF THIS AGENDA

I hereby certify that on or before Friday, August 21, 2015 at 9:00 a.m., a copy of this agenda (IVGID Board of Trustees Session of August 26, 2015) was delivered to the post office addressed to the people who have requested to receive copies of IVGID's agendas; copies were either faxed or e-mailed to those people who have requested; and a copy was posted at the following six locations within Incline Village/Crystal Bay in accordance with NRS 241.020:

- 1. IVGID Anne Vorderbruggen Building (Administrative Offices)
- 2. Incline Village Post Office
- 3. Crystal Bay Post Office
- 4. Raley's Shopping Center
- 5. Incline Village Branch of Washoe County Library
- 6. IVGID's Recreation Center

/s/ Susan A. Herron, CMC

Susan A. Herron, CMC

Clerk to the Board of Trustees (e-mail: sah@ivgid.org/phone # 775-832-1207)

Board of Trustees: Jim Smith, Chairman, Tim Callicrate, Kendra Wong, Jim Hammereel, and Bill Devine

Notes: Items on the agenda may be taken out of order; combined with other items; removed from the agenda; moved to the agenda of another meeting; moved to or from the Consent Calendar section; or may be voted on in a block. Items with a specific time designation will not be heard prior to the stated time, but may be heard later. Those items followed by an asterisk (*) are items on the agenda upon which the Board of Trustees will take no action. Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to call IVGID at 832-1100 at least 24 hours prior to the meeting. Copies of the packets containing background information on agenda items are available for public inspection at the Incline Village Library.

IVGID'S agenda packets are now available at IVGID's web site, www.yourtahoeplace.com; go to "Board Meetings and Agendas". A hard copy of the complete agenda packet is also available at IVGID's Administrative Offices located at 893 Southwood Boulevard, Incline Village, Nevada, 89451.