

## MEMORANDUM

**TO:** Board of Trustees

**FROM:** Kendra Wong  
Chairwoman

Jason Guinasso  
District General Counsel

**SUBJECT:** 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

**DATE:** August 16, 2017

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Under Policy 3.1.0, the Board of Trustees has specifically delegated the authority to negotiate settlement of claims made against the District. In this regard, Policy 3.1.0, titled, "Conduct Meetings of the Board of Trustees" includes a provision under 0.6 Rules of Proceedings, g. Claims which reads as follows:

- g. Claims. The General Manager and General Counsel, and their designees, are authorized to negotiate on behalf of IVGID, the settlement of all property damage, personal injury, or liability claims, unless otherwise ordered by the Board of Trustees. Final settlement of such claims may be authorized by the General Manager, provided the amount attributed to IVGID is less than the amount that must be approved by the Board for amounts per occurrence, including all sources of payment (insurance, risk reserve, operating funds, or working capital). For claims that exceed the amount, those must be approved by the Board, the General Manager may authorize and accept a tentative settlement, which shall not be final and binding upon IVGID, unless and until approved by the Board of Trustees.*

Recently, there has been some statements made, related to the *Katz v. IVGID* matter, that Mr. Katz is offering a settlement of his lawsuits and the appeals related thereto. Further, it has been asserted that the IVGID Board of Trustees has been denied an opportunity to approve or reject Mr. Katz's alleged settlement offer. These statements are false and misleading. Mr. Katz has not offered a settlement of the lawsuits he has filed against the District or his appeals related thereto.

Mr. Katz, through his attorneys, Mr. Cornell and Mr. Harris, have been negotiating with the District's Litigation Counsel, Mr. Beko, temporary resolution of the outstanding judgment IVGID has against Mr. Katz in the amount of \$229,392.75 plus interest and post judgment fees and costs in an effort to avoid having to answer written interrogatories and submit to a judgment debtor's examination that is scheduled for Wednesday, August 23, 2017. Rather than post a supersedeas bond or make a cash payment for the entire judgment, Mr. Katz has made a few unreasonable and self-serving offers during this negotiation.

First, Mr. Katz offered to pay the entire judgment if, and only if, IVGID waived any and all post-judgment interest, attorney's fees and costs. However, Mr. Katz did not agree to withdraw his appeal as a part of his offer. Rather, he demanded that he receive the cash paid to satisfy the judgment in the event that his appeals were successful in whole or in part.

The General Manager and District General Counsel determined, in accordance with the authority delegated to them under Policy 3.1.0, Mr. Katz's opening offer in this negotiation was not

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reasonable or worth bringing back to the Board for approval because it would ask for IVGID to waive fees and interest accrued to date plus any other fees and interests pending the outcome of the appeal. Remember, the appeals IVGID has been required to respond to, at the community's expense, are solely the result of Mr. Katz' voluntary action and there is no reasonable basis for IVGID to ever waive its rights to recover all the attorney fees and costs that Mr. Katz has caused IVGID to incur. Notably, Mr. Katz has had ample opportunity to simply deposit the judgment amount owed to the District with the Clerk of the Court at which point IVGID would likely be required to cease all efforts to enforce the judgment pending the conclusion of the appeal.

Recently, Mr. Katz made another offer to reach a temporary resolution of the outstanding judgment IVGID has against him. In this regard, Mr. Katz offered to pledge (via deed of trust) real property that he owns in Reno, Nevada and to allow the District to put a first priority lien on the subject property.

In response, the General Manager and District General Counsel determined, in accordance with the authority delegated to them under Policy 3.1.0, that Mr. Katz' offer to pledge the Reno property was not reasonable and worth bringing back to the Board for approval. There is a significant difference between having a deed of trust securing an indebtedness and a supersedeas bond. With a deed of trust, IVGID would be forced to foreclose upon the lien, conduct a foreclosure sale, and spend time and money associated with that process. Further, the value of the property is speculative and there is no assurance IVGID would recover the money it will be owed when the Mr. Katz's appeals are finally decided. Meanwhile, a supersedeas bond required by the Court to stay execution on the judgment against Mr. Katz would only require IVGID to present the Nevada Supreme Court decision(s) to the insurer to receive satisfaction of the judgment. Both District General Counsel and District General Manager are in agreement that the District is not interested in changing the court's judgment or the court rules required to obtain a stay of execution on the judgment.

The subject of the negotiations between Mr. Katz and IVGID has not been the settlement of all outstanding appeals. To date, Mr. Katz has not made any offer to settle the lawsuits he has filed against the District and his appeals related thereto.

If the District Manager and District General Counsel are able to negotiate a reasonable final settlement to this claim with Mr. Katz, they will bring the final negotiated settlement to the Board of Trustees for consideration.

The Board of Trustees, during its discussion of this agenda item, is reminded that this is ongoing litigation and that detailed questions relating to the litigation itself should be discussed during a litigation non-meeting meeting with District General Counsel. Additionally, the Board is reminded that discussions that occur during litigation non-meetings are confidential and protected by attorney client privilege. As such, Trustees are not permitted to disclose what is discussed during a litigation non-meeting without the consent of the Board as a whole.

If the Board of Trustees has a desire to modify the authority to negotiate settlements it has given to the General Manager and District General Counsel under Policy 3.1.0 then such direction could be given at this meeting to the General Manager. Thereafter, the General Manager will work with District General Counsel on revisions to the policy for the Board to consider and adopt at a subsequent meeting.



## **Conduct Meetings of the Board of Trustees Policy 3.1.0**

**POLICY.** The Board of Trustees will fix the time and place of the regular meeting of the Board of Trustees of the Incline Village General Improvement District and provide the manner in which special meetings of said District may be called, designating an official mailing address, and establishing the order of business and rules for its proceedings for the Incline Village General Improvement District, Washoe County, State of Nevada.

- 0.1 Regular Meetings.** The regular meetings of the Board of Trustees of the Incline Village General Improvement District shall hereafter be held at the time and place set by the Board of Trustees.
- 0.2 Special Meetings.** Special meetings of the Board of Trustees shall be held upon call of the Chair of the Board or of at least two of the members thereof. Notice of all meetings shall be given in conformity with the provisions of Nevada Revised Statutes 241.020.
- 0.3 Meeting Place.** All meetings of the Board of Trustees shall be held within the District.
- 0.4 Holidays.** In the event that any day fixed for a regular meeting of the Board shall fall upon a holiday, that meeting shall be rescheduled by the Board.
- 0.5 Item(s) of Business.** The item(s) of business at the regular meetings of said Board may include, but are not limited to:
  - Roll call of Trustees
  - Initial Public Comment
  - Public Hearings (if any)
  - Approval of minutes
  - Approval of agenda
  - Approval of Bills
  - Reports
  - Consent Calendar\*
  - General Business\*
  - Final Public Comment



## **Conduct Meetings of the Board of Trustees Policy 3.1.0**

- Adjournment

\*UNLESS OTHERWISE APPROVED BY The Board Chair, no matter shall be heard, or acted upon unless all relevant materials have been included in the Board of Trustees Meeting Packet.

### **0.6 Rules of Proceedings.**

- a. Public Meetings. All meetings of the Board shall be in accordance with Nevada Revised Statutes 241, the Nevada Open Meeting Law.
- b. Quorum. A majority of the Board of Trustees present in person or by remote communication shall constitute a quorum for the transaction of business. In no event shall any matter be approved without the affirmative vote of three trustees.
- c. Method of Action. The Board of Trustees shall act only by motion which, to become effective, shall be adopted by the affirmative vote of at least a majority of its members present in public meeting, unless otherwise provided by statutes. In the event of only three members present, the method of action must be unanimous.
- d. Recording Vote. Except where action shall be taken by the unanimous vote of all Trustees present and voting, the yes/ayes and no/nays shall be taken on all actions had and entered upon the minutes. All Trustees shall have the equal right to vote; make and second motions. If the vote for/against any item is not unanimous, the Chair may ask the Clerk to conduct a roll call vote.
- e. Ordinances. The enacting clause of all ordinances passed by the Board shall include the word "ordinance" and be consecutively numbered. All actions to pass or revise an ordinance shall be attested by the Secretary.



## Conduct Meetings of the Board of Trustees Policy 3.1.0

- f. Contracts. Contracts entered into by the District that are required to be advertised under Nevada Revised Statutes 332 and/or 338 must be approved by the Board of Trustees. All documents approved or awarded by the Board shall be signed in the name of the District by the Chair and countersigned by the Secretary, unless authorization to sign is given to another person(s) by the Board.

Contracts, other than those covered by Nevada Revised Statutes 332.115 and which are not subject to the advertising thresholds of Nevada Revised Statutes 332 and/or 338, may be authorized, approved and executed by the General Manager of the District or designee, unless otherwise ordered by the Board of Trustees.

Contracts covered by Nevada Revised Statutes 332.115 may be authorized, approved and executed by the General Manager or his designee of the District, if it is for an amount less than the advertising threshold of Nevada Revised Statute 332. Contracts over the threshold of NRS 332.115 must be approved by the Board of Trustees.

- g. Claims. The General Manager and General Counsel, and their designees, are authorized to negotiate on behalf of IVGID, the settlement of all property damage, personal injury, or liability claims, unless otherwise ordered by the Board of Trustees. Final settlement of such claims may be authorized by the General Manager, provided the amount attributed to IVGID is less than the amount that must be approved by the Board for amounts per occurrence, including all sources of payment (insurance, risk reserve, operating funds, or working capital). For claims that exceed the amount, those must be approved by the Board, the General Manager may authorize and accept a tentative settlement, which shall not be final and binding upon IVGID, unless and until approved by the Board of Trustees.



## **Conduct Meetings of the Board of Trustees**

### **Policy 3.1.0**

- 0.7. Robert's Rules.** Unless contrary to this rule, such meetings shall be substantially conducted in conformity with Robert's Rules of Order unless those provisions conflict with Chapter 241 of the NRS, in which case, the statutes will prevail.
- 0.8. Agenda Preparation.** The Board Chair, in cooperation with the General Manager, is responsible for preparing the agenda for each meeting. The Chair will place on the Agenda any item requested by a fellow Trustee. The General Manager shall schedule for consideration by the Board any matter requested to be placed on the agenda by any three Trustees. Unless directed otherwise by the Board, the General Manager may delay consideration of any item. In any conflict between the provisions of this paragraph and that of paragraph 0.9., paragraph 0.9. shall govern.
- 0.9. Reconsideration.** Reversal, or substantial modification, of any item by the Board of Trustees within six months of the meeting date at which the action was taken, shall only be considered As follows: the General Manager may request reconsideration of any action of the Board, and place reconsideration of the action before the Board, if the General Manager determines that the action compromises the efficiency of operations or otherwise impairs the effective management of The District. Additionally, a Board action may also be scheduled for reconsideration if at least three Trustees request same. Once placed on the agenda under the procedure established herein, the Board may rescind, modify, reaffirm, or take no action on the item; in the same manner it would take action on any other general item of business.
- 0.10. Public Participation.** Comments shall be solicited from the public during two comment periods, one at the start of the meeting and one prior to adjournment. The time limit shall be three (3) minutes for each person per comment period. No yielding of time shall be allowed.
- 0.11 Officers of the Board.** The officers of the Board shall be elected as provided by Nevada Revised Statutes 318.085 and shall consist of a Chair of the Board, Vice Chair of the Board, Treasurer, and



## **Conduct Meetings of the Board of Trustees Policy 3.1.0**

Secretary. The term of office shall be for one (1) year or until a reorganization of the Board is required.

- 0.12 Authorization to Sign Checks.** The General Manager and the officers of the Board are hereby authorized to sign checks drawn on the various bank accounts of the District. It shall be required that at least two (2) signatures are affixed to any check drawn on such accounts.
- 0.13 Facsimile Signatures.** The banks with which the District does business are authorized and directed to honor checks drawn on the various bank accounts of the District, when bearing any two facsimile signatures of the officers of the Board and General Manager of the District, after their manual signatures are filed with the Secretary of State, in conformance with Nevada Revised Statutes 351.030.
- 0.14 Reports.** The Board Meeting agenda may include items under Reports which are intended to inform the Board and/or the public. These reports are not actionable items rather informational in nature and substance. Should an action be required the matter shall be presented as a General Business Item.
- 0.15 Consent Calendar.** In cooperation with the Chair, the General Manager may schedule matters for consideration on a Consent Calendar. The Consent Calendar may not include changes to user rates or taxes, adoption or amendment of ordinances, or any other action which is subject to a public hearing. Each consent item shall be separately listed on the agenda, under the heading of "Consent Calendar." A memorandum will be included in the packet materials for each Consent Calendar item. The memorandum should include the justification as a consent item in the Background Section.

Any member of the Board may request the removal of a particular item from the consent calendar and that the matter shall be removed and addressed in the general business section of the meeting.





## **Conduct Meetings of the Board of Trustees Policy 3.1.0**

A unanimous affirmative vote shall be recorded as a favorable motion and approval of each individual item included on the Consent Calendar.

**0.16 Advisory Committees.** SECTION OMITTED

**0.17 Legislative Matters.** The General Manager may from time to time propose positions on legislative issues, which positions shall be reviewed and approved by the Board at its regular meeting. In the event a position on a legislative issue must be established prior to the next regular Board meeting, the General Manager is hereby authorized to adopt a position on IVGID's behalf.

**0.18 Conflict Resolution.** In the event that the provisions of Policy 3.1.0 conflict with any other Policy Provisions, this section shall prevail.