

MINUTES

REGULAR MEETING OF JULY 20, 2017 Incline Village General Improvement District

The regular meeting of the Board of Trustees of the Incline Village General Improvement District was called to order by Chairwoman Kendra Wong on Thursday, July 20, 2017 at 6:00 p.m. at the Chateau located at 955 Fairway Boulevard, Incline Village, Nevada.

A. PLEDGE OF ALLEGIANCE*

The pledge of allegiance was recited.

B. ROLL CALL OF THE IVGID BOARD OF TRUSTEES*

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

Also present were District Staff Members Director of Finance Gerry Eick, Communications Coordinator Misty Moga, Director of Human Resources Dee Carey, Director of Public Works Joe Pomroy, Parks and Recreation Director Indra Winquest, General Manager Diamond Peak Ski Resort Mike Bandelin, and Director of Asset Management Brad Johnson.

Members of the public present were Jean Eick, Shirley Appel, Gene Brockman, Pete Todoroff, Margaret Martini, Andy Whyman, Shirley Altick, Howard Beckerman, Mike Abel, Darryl Dworkin, Gayle Holderer, Conn Davis, Denise Davis, Ilojsa Dobler, Frank Wright, Aaron Katz, Judith Miller, Linda Newman, Cliff Dobler, Bret Hansen, Steve Dolan, Bill Devine, and others.

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

C. PUBLIC COMMENTS*

Bret Hansen read from a prepared statement which is attached hereto.

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

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

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Darryl Dworkin thanked Staff and the Board for the kayak mat to the beach, thanked the General Manager for his open door policy, and noted that he heard this second hand but it is his understanding, regarding Parasol and as a reminder to the Board that at the last meeting when open discussion was held, there was about 90% opposed to the purchase. He is suggesting, if the Board is still considering going forward on the purchase, which he is not in favor of, that at the very least he would expect two things – a ten year cost study and an overall cost versus lease of an equivalent amount of space. You need to know the actual cost and know what we would have to put into it. He doesn't know the economics but the General Manager talked about changing demographics and having less residents so we may not need as big of a building.

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

Aaron Katz requested to increase public comment to after each item and then cited from two written statements which are attached hereto.

Ms. Miller read from a prepared statement which was not submitted and the substance of her comments had to do with the upcoming Citizen Advisory Board meeting to be held on July 24, 2017 in the IVGID Boardroom and that the land upon which the D.W Reynolds Non-Profit Center Building and the Recreation Center were built upon were originally designated commercial. We have no walkable town center and perhaps this land could fill that void if it were rezoned.

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

Mike Abel said that he wanted to give a compliment to the people who are running the golf course as it is a bright spot. He went over the General Manager's action which are all understandable as he was formerly in redevelopment in Stockton until it went south and then he went to Manteca. Now, he is in Incline Village. Now is not the time to expand when we have ailing infrastructure. Look at the emergency procurement as well as recent unexpected emergencies which is stuff that has been unaddressed for many years. There is ten million dollars in the pipeline fund so let's spend it. We need to protect the health and safety of the community before spending this money.

Frank Wright said that he is absolutely shocked at three Board members who have been hijacked, tricked, and fooled by our Legal Counsel and General Manager. Do you really believe everything these guys tell you? He would like to tell you something you don't know; there are five Open Meeting Law complaints pending. He met with the folks at the Attorney General's office and they are very concerned about what is going on in this community. He would suggest that each of you get your own private counsel because if you don't you are letting this guy take you

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

Aaron Katz requested to increase public comment to after each item and then cited from two written statements which are attached hereto.

Judith Miller said that the Citizen Advisory Board is having a meeting this coming Monday and that there will be a presentation on the update of the area and environmental plan and urged residents to come to this meeting. Ms. Miller read from a prepared statement which was not submitted.

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

Mike Abel said that he wanted to give a compliment to the people who are running the golf course as it is a bright spot. He went over the General Manager's action which are all understandable as he was formerly in redevelopment in Stockton until it went south and then he went to Manteca. Now, he is in Incline Village. Now is not the time to expand when we have ailing infrastructure. Look at the emergency procurement as well as recent unexpected emergencies which is stuff that has been unaddressed for many years. There is ten million dollars in the pipeline fund so let's spend it. We need to protect the health and safety of the community before spending this money.

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down and you will have regrets because you don't know about the Open Meeting Law. It is his bet that he hasn't contacted you about them and rather done this on his own and you haven't been told thus he is putting you out there to be hung. He has already filed an Open Meeting Law complaint against this litigation process which may have deeper consequences because District General Counsel benefits financially. Go after the money as he sued for \$2,100 and you spent \$40,000 to fight that. There has been no public meeting to discuss this thus it will complicate all the litigations that the Board is involved in and they will be placed in jeopardy.

Steve Dolan said he is speaking with regard to the little flyer and an e-mail he sent to all the Board members and many of the Staff that relates to allowing our streams to be polluted and having kids playing in toxins. Mr. Dolan then quoted from a TRPA statement and said that this is what is in our play area for kids and it has been building up for seventeen years. Another study by the University of Reno, Nevada listed some of the microbes and bacteria such as e.coli, etc. and they are all on Village Green. All of the Trustees have told him that they want a dog park and tonight he is here to talk about the children playing in it and he doesn't know how much you can do. It is legal for IVGID to occupy the old elementary school site and we have about a month to get the dogs out of there before school starts.

Pete Todoroff said he is a 37 year resident and he wanted to reiterate what Ms. Miller said about the Citizen Advisory Board. His concern about the Parasol building is that 90% of this community wants no part of it. If Parasol has gone into default it is not this government's job to bail them out and that this would be using office space which is not necessary. Office buildings can be rented so use that money for infrastructure and not to bail out Parasol.

Shirley Appel said that her complaint is not with the Board and that she may have to take this to a different point but the East Shore Express busses go up and down Southwood from mid-June to Labor Day weekend and the traffic, dust, and horn honking is unacceptable as far as she is concerned. It seems to her that there are other places where it could be done such as the old Stanley's restaurant or the three schools that are empty all summer. She just noticed, as she was going up Village, one of those busses stopped at the new elementary school and that this service should not be impacting any residential area. She has been given the name of the Tahoe Transportation District person who is in charge of this and she is going to get ahold of them. She would appreciate any help that this Board can provide to get this to stop as she has to keep her windows closed, can't enjoy her deck, and feels that something needs to be done.

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Andy Whyman said that he would like to start by apologizing before this group as this is a self-imposed retirement appearance and duty calls. He has a son who is a Rhodes Scholar and he recently came to Incline to visit him and help him with the accumulation of stuff. They loaded the truck, went to the dump, and a gentleman greeted him. Told him they have three yards and he knows that they are allowed twelve yards and his son said that his vehicle couldn't possibly carry two yards and the gentleman told him that it was a three yard minimum every time you come in so we were charged for three yards. We came back again and got charged again. We were charged for three yards every time we went there and once we hit twelve yards, we were charged \$30 per load after that. If you are entering into negotiations with Waste Management, look at this because it is one of those freebies that isn't free at all.

John McKabe said he was here tonight to introduce himself as he is opening a shop two doors down from T's Rotisserie. It is a new music shop with lots of amenities. He would like to get involved with the schools as well as start a non-profit. He would also like to get kids interested in the arts and he knows funding is there for sports but he is here to help with music and hopes to be open by the end of this month.

Wayne Ford said the staff that is handling the complaint line for IVGID is doing a great job and wants to give him credit for doing a really good job and he has been very responsive and gotten right on it. One small item is the new cans as absentee ownership has its challenges and people are putting their cans out the day before and then they stay there and stay there until someone calls. He shouldn't be putting back people's cans. He has been told to be a good neighbor so he dug out the fire hydrant twice so he has done his duty. Having people taking care of the property should also take care of the cans.

D. APPROVAL OF AGENDA (for possible action)

Chairwoman Wong asked for any changes to the agenda as submitted; Trustee Callicrate asked that General Business Item F.4. be moved to General Business Item F.1. Chairwoman Wong agreed to that change and the agenda was approved as amended.

E. STAFF PRESENTATIONS*

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

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Director of Public Works Pomroy gave an overview of the submitted materials.

Trustee Morris said, as a member of the General Manager's Committee on Solid Waste, going back to Mr. Hansen's comments at the last meeting, we have had a very robust discussion with Waste Management and he is very pleased with the way they are handling it and that we have to make sure they come through but they are making good progress.

E.2. Community Services Update (Presenting Staff Member: Parks and Recreation Director Indra Winquest)

Parks and Recreation Director Indra Winquest gave a verbal update on Community Services activities.

Trustee Callicrate said, regarding 4th of July, kudos to the whole team and all the Senior Staff members who were able to make it. It was well organized and he heard nothing but raves. The only constructive item was in front of the Veteran's area, we should have had a zero popup policy and had that for the entire day. The paratrooper event was the best but that the tents were encroaching and people should be encouraged to keep it to only what you need. Parks and Recreation Director Winquest agreed it was a point of contention during the events and Staff is looking at banning them or taking them down during the events as we do agree and it has been talked about. Trustee Horan said he would echo what has been said about how well run it was. He had a couple of things to add – the choice to beef up the staff on the ingress has made a big difference as he observed people being turned away because they didn't have the appropriate paperwork, etc. Staff has done a really good job on making sure that the people that should be there are allowed to be there. He has been there for music events which are fun for everyone. On the 4th, we had a lot of people working a lot of hours and people were pretty happy; Trustee Horan then mentioned several Staff members by name and said that they did a really, really good job. Parks and Recreation Director Winquest said that he will pass on the compliments to Staff.

At 7:10 p.m., Chairwoman Wong called for a break; the Board reconvened at 7:20 p.m.

F. GENERAL BUSINESS (for possible action)

- F.1. Proposed modification to the 30-year ground lease between the Parasol Tahoe Community Foundation and Incline Village General Improvement District – Response and possible discussion of additional research requests as directed at the June 28, 2017 IVGID Board of Trustees Meeting, possible discussion on potential expenditures related to the proposed lease modification, and discussion on other details related to the proposed lease modification (Requesting Staff Member: District General Manager Steve Pinkerton) (was General Business Item F.4.)**

General Manager Steve Pinkerton said that he anticipates that all the due diligence will be completed by the end of the month and that there might be a presentation at the August 17 meeting. District General Counsel Jason Guinasso said that he reached out to several law firms to get the best person and he had a discussion over at Holland and Hart who identified an individual and he gave an overview of her experience/qualifications. The quote received is broken up into three parts – legal review of existing documentation, three to five documents, - \$7,500; analyze and review revisions to lease amendment - \$3,500; preparation of bill of sale, etc. - \$4,000. all of which translates into \$350 per hour. Chairwoman Wong said so this is \$15,000 in lieu of a billable rate. District General Counsel Guinasso said yes, if there is more work to be done, it will be at the \$350 per hour rate and there would have to be approval for any additional work. Trustee Callicrate said the concern he has, and he is glad this person is qualified, and would be more interested in is the initial work. In looking over what we currently have he sees it more at six to twelve hours and thinks that we are jumping the gun at the bill of sale, etc. He is more interested in having her look at the existing documents and doing the research on if they are in default and noted that we are nowhere near a bill of sale. District General Counsel Guinasso said those are excellent points and that he provided her with all the documents that are on the website and that she reviewed all that material in preparation of this quote without charging us. He did ask her to provide a comprehensive quote and we don't have to take all of it on as it can be taken in pieces. We can proceed in a sequential manner with the Board's needs. It is not a foregone conclusion at this point as the quote has been provided and that twelve hours of work at \$350 per hour would be \$4,200. If the Board wanted to take a deep dive into the documents to provide a good analysis she would be available at a public meeting if needed

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and as this conversation continues. Chairwoman Wong said that she feels a better decision would be made after we have the information at our next meeting but that the quote is a good starting point. Trustee Morris said that he tends to agree with Chairwoman Wong and noted that he likes the three parts and that provides flexibility. He is a little anxious about contemplating what we are doing and that we need to make a decision about how we want to proceed. District General Counsel Guinasso said he wants to be clear on this effort not because he doubts his own effort but that this is in response to the Board's desire to have a second opinion and that he sought out the best law firm/attorney and if you want to view her CV you can do so at hollandandhart.com/mforgerty. Chairwoman Wong said on the next agenda let have the Parasol as an item and follow up with an item on this issue and include all the support materials. District General Counsel Guinasso said he only just got this quote a couple of days ago, that he was being responsive to the Board's concerns, and he will prepare a Board memorandum for the next packet. Trustee Callicrate said for the next meeting agenda please be sure to always have the Parasol item as the first item. Chairwoman Wong said she sees it more as a report and that it can be put at the beginning. District General Counsel Guinasso said with the experience we have had with the Audit Committee, he would like the Board to think about what to do when a contractor gets communications from the public and how those are responded to as, with Eide Bailly, it costs them money so we need to have it coordinated in a way to receive public input but to ensure it doesn't get out of hand. Chairwoman Wong asked about control. District General Counsel Guinasso said he didn't want to cut off public concern but have it done in a coordinated way while having them addressed efficiently; presented by the public and then submitted to the attorney when the Board finds it to be important. Trustee Horan asked if this was just for Parasol; District General Counsel Guinasso said yes and that it is an effort to control costs and not to dampen comments/concerns. You, as the Board, are responsible for that and to keep control of it from a cost standpoint. Chairwoman Wong said from that point of view, we can't control our community members in what they send to them as we have zero control over that. District General Counsel Guinasso said when we talk at the next meeting let's discuss it so you can anticipate any potential additional costs as he doesn't want the Board to be surprised. Trustee Callicrate said that he wants to help facilitate and encourage public input and then we can go through that information and glean out the pertinent major questions that we haven't thought of or are in addition to. There might be questions that can be readily addressed without going to the Attorney. In trying to manage our finances it is his hope that the community will work within that framework. We can't stop public inquiry nor

should we want to. He understands that this is about bringing up the potential and that we may not get to that point as we may say thanks but no thanks and we don't know that yet. District General Counsel Guinasso said he hopes we can have a broader discussion at the next meeting. Trustee Dent said that setting a budget for the Attorney helps to control those costs so let's stick to our \$15,000 budget and that when it comes back to the Board we have to understand we might get that question and then we can decide what needs to happen. District General Counsel Guinasso said excellent point and it is something to think about so you are prepared for the next time; think it through and gather your thoughts about how the Board may want to address retaining outside counsel for their opinion. Trustee Horan said, while it is not really on the agenda, his only comment would be he doesn't see why if outside counsel receives unsolicited questions those wouldn't be referred back to the Board and then we can decide if they should be addressed and why we could incur costs. District General Counsel Guinasso said he just wanted to mention it as he was thinking about the potential for cost overruns and wanted to address it proactively. He will bring it up at the next meeting so we can talk it through as well as the potential protocol, possible hard cap on the budget, whether the Attorney reviews and reads the correspondence, etc.

F.2. Review, discuss, and possibly make a sole source finding and review, discuss, and possibly authorize a Procurement Contract for a Replacement Caterpillar Backhoe – 2017/2018 Capital Improvement Project; Fund: Public Works; Division: Shared; Project # 2097LE1728; Vendor: Cashman Equipment in the amount of \$115,786.27 (Requesting Staff Member: Director of Asset Management Brad Johnson) (was General Business Item F.1.)

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

Trustee Horan said that the residual value will likely reduce the cost. Director of Asset Management Johnson said yes and that estimate is \$20,000 and it is going out to public auction so it may exceed that number. Trustee Dent asked why we are buying new and why not buy used. Director of Asset Management Johnson said that ultimately buying new is about life and condition of the asset, guaranteed up time, and about availability on demand. Trustee Dent asked if it would be used on the pipeline and for snow removal. Director of Asset Management Johnson said snow removal is more

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limited and in select areas. Where there is stacked snow or where access to a meter is necessary, in the winter, it will be used to excavate snow but it is not one of our primary pieces of snow removal equipment as it is more about snow excavating. Trustee Dent said when it comes to hours you have 3,900 divided by 16 years so that equals 6 weeks per year. We are selling a 2001 machine and they are selling for about \$40,000. He went on and Googled it and most have higher hours. It is his experience with equipment to have equipment that is 20 to 30 years old so he would like us to take a more creative approach and do what is best for the community rather than going out and buying new. Director of Asset Management Johnson said we are not a construction firm and that this is about on demand and availability. We don't rent because when a water leak occurs it has to be available which is a bit of a burden on the utility provider. On the resale value and the philosophy of rebuild and stretch the asset life, our philosophy has been extending life as long as possible but not incurring costs of repairs that exceed the value of resale and it is about just in time replacement at the end of the depreciated life. Trustee Morris said that he has no experience with construction so could one of these weeks, in the middle of winter, we experience a water leak and the engine goes so we only have a backhoe so this is the alternative. Director of Asset Management Johnson said that is correct and that this is the only excavating piece of equipment in inventory. Trustee Horan said that with respect to buying a used piece of equipment, which is an interesting philosophical discussion that we need to have at some point in time, is not a bad idea to think about but before we decide to do it, we need to do some research and have some discussion; he is in favor of exploring that possibility.

Trustee Horan made a motion to make the following finding:

IVGID's purchase of a replacement Caterpillar backhoe from Cashman Equipment is exempt from competitive bidding for the following reasons:

- A. This purchase is for items which may only be contracted from a sole source (NRS 332.115.1.a). Cashman Equipment is the exclusive dealer for Caterpillar equipment for Northern Nevada.
- B. This purchase is for additions to and repairs and maintenance of equipment which may be more effectively added to, repaired, or maintained by a certain person (NRS 332.115.1.c). The District's heavy equipment fleet is exclusively Caterpillar

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equipment and Cashman Equipment is the exclusive dealer for Caterpillar equipment for Northern Nevada.

- C. The equipment proposed for purchase, by virtue of the training of the personnel or of any inventory of replacement parts maintained by the local government is compatible with existing equipment (NRS 332.115.1.d). The District's heavy equipment fleet is exclusively Caterpillar equipment and the District employs mechanics trained for Caterpillar equipment and maintains an inventory of replacement Caterpillar parts.
- D. Items, supplies, materials, or equipment that are available pursuant to an agreement with a vendor that has entered into an agreement with the General Services Administration (GSA) or another governmental agency located within or outside the State of Nevada (NRS 332.115.1.m). The pricing received from Cashman Equipment is via the National Joint Powers Alliance (NJPA). NJPA is a Minnesota based municipal contracting agency that provides nationally leveraged, competitively solicited, and cooperatively shared procurement contracts to its member agencies.

Trustee Morris seconded the motion. Chairwoman Wong asked for comments; Trustee Horan said we should proceed with this way and maybe take a look at an alternative way. Hearing no further comments, Chairwoman Wong called the question – the motion passed unanimously.

Trustee Horan made a motion to:

- 2. Authorize a procurement contract with Cashman Equipment totaling \$115,786.27.
- 3. Authorize Staff to execute all purchase documents based on a review by General Counsel and Staff.

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

- F.3. Review, discuss, and possibly declare an emergency as it relates to contracting for the repair of the damaged culvert beneath the Lodgepole run at Diamond Peak Ski Resort and direct Staff to solicit bids to complete repairs of the damaged culvert section and bring back results to the Board of Trustees for award of a construction contract at the August 17, 2017 meeting (Requesting Staff Member: Director of Asset Management Brad Johnson) (was General Business Item F.2.)**

Director of Asset Management Johnson gave a PowerPoint presentation which is included herewith by reference, reviewed the submitted materials, and answered various informational questions posed by the Board of Trustees. Chairwoman Wong said that the Board needs an analysis, within the next couple of Board meetings, on what has been spent and how much is left from Diamond Peak's record year/in the Community Services fund. Trustee Morris said that doing nothing is not an option; Director of Asset Management Johnson said that is right as it would be putting the public at great risk.

Trustee Callicrate made a motion to declare an emergency, consistent with Nevada Revised Statute (NRS) 338.011.2, as it relates to contracting for the repair of the culvert beneath the Lodgepole run damaged by summer run-off at Diamond Peak.

Trustee Morris seconded the motion. Chairwoman Wong asked for comments. Trustee Horan said that Staff has done an outstanding job of outlining this item and that he will support it. Hearing no further comments, Chairwoman Wong called the question – the motion was passed unanimously.

Trustee Callicrate made a motion to direct Staff to solicit bids, consistent with NRS 338.1444, to complete repairs of the damaged culvert section and bring results back to the Board of Trustees for award of a construction contract at the August 17, 2017 meeting. Trustee Morris seconded the motion. Chairwoman Wong asked for comments. Trustee Horan said he has the same comments. Hearing no further comments, Chairwoman Wong called the question – the motion was passed unanimously.

- F.4. Review, discuss, and possibly approve the District's Form 4410LGF Indebtedness Report and related Debt Management Policy as of June 30, 2017 for filing with the Nevada Department of Taxation and the Washoe County Debt Commission and review, discuss, and possibly approve Form 4411LGF Five Year Capital Improvement Plan, related Five Year Project Summary, and Carryover Project List, for the fiscal years starting 2017-2018, for filing with the Nevada Department of Taxation, the Washoe County Clerk and the State of Nevada Legislative Counsel Bureau (Requesting Staff Member: Director of Finance Gerry Eick) (was General Business Item F.3.)**

Director of Finance Gerry Eick gave an overview of the submitted materials.

Trustee Horan asked if there were any changes in the numbers that the Board approved in the main meeting on the budget. Director of Finance Eick said there are no changes as part of the State instructions is that they have to agree. Staff is reusing all the numbers except for the effluent pipeline because it goes beyond the 2017/2018 item. Trustee Horan asked about the compliance reporting requirement about the debt related to our budget. Director of Finance Eick said these are the current balances, current plans, and provides a recap of plans for five years forward. Chairwoman Wong said that the District is required to file these reports in accordance with the Nevada Revised Statutes (NRS). Trustee Dent, referencing agenda packet page 53, right in the middle, Community Services Capital Projects, there is a transfer from Community Services Special Revenue of \$2.9 million – what is that. Director of Finance Eick said one of the expectations is to state revenue and resources to be used. We adopted our budget for 2017/2018 and it included \$2.7 million for facility fees that are specifically for capital and this states that we intend to transfer those monies to complete the capital projects. Because the Community Services capital project fund had already been collecting in 2016, it was included in the carryover and \$612,942 is listed so the three sources equal the two uses. Trustee Dent asked if the \$2.9 million includes \$1.6 million for the Parasol building. Director of Finance Eick said no because the Parasol building is not a planned project.

Trustee Horan made a motion that the Board of Trustees approves the District Indebtedness Report Form 4410LGF as of June 30, 2017, including our Debt Management Policy and direct staff to file the documents with the State of Nevada Department of Taxation and Washoe County Debt Commission by August 1, 2017. Trustee Morris

seconded the motion. Chairwoman Wong asked for comments. Trustee Horan said that this is a reiteration of things that have been approved and discussed before. Hearing no further comments, Chairwoman Wong called the question; Trustees Callicrate and Dent voted opposed and Trustees Wong, Horan, and Morris voted in favor; the motion passed.

Trustee Horan made a motion to that the Board of Trustees approves Form 4411LGF Five Year Capital Improvement Plan as of July 1, 2017, the related Five Year Project Summary, and the Carryover Project List, for the fiscal years starting 2017-2018 for filing with the Nevada Department of Taxation, the Washoe County Clerk and the State of Nevada Legislative Counsel Bureau by August 1, 2017. Trustee Morris seconded the motion. Chairwoman Wong asked for comments.

Trustee Horan said that he has the same comments and that this is about being in compliance with the State of Nevada. Trustee Morris asked if that any of his colleagues are voting no to please comment now and what happens if this is a no vote. Trustee Callicrate said that he is being consistent with the last three budget cycles, he campaigned on zero balance budgeting, as did others, and we haven't done that. He didn't support the budget and as far as what should be done, he doesn't have an answer if it were to fail; perhaps step back and look at compliance. If there are any future budget or debt management situations with a zero based budget and in depth audited financials he will be voting no. Trustee Dent said well said Trustee Callicrate. Last year, we approved it and he voted in favor. He then found out, from the Department of Taxation that this report, last year, actually got submitted two additional times and that is the eighth or ninth reason why he will not be voting in favor.

Hearing no further comments, Chairwoman Wong called the question – Trustees Callicrate and Dent voted opposed and Trustees Wong, Horan, and Morris voted in favor – the motion passed.

G. DISTRICT STAFF UPDATE

General Manager Steve Pinkerton

- ❖ Financial Transparency
- ❖ Capital Improvement Projects update
- ❖ Golf Courses at Incline Village
- ❖ Washoe County Community Area Plan

General Manager Steve Pinkerton gave an overview of each item.

Trustee Dent asked if the Board will get a binder like we did last year and in years past. General Manager Pinkerton said if you want them, we can provide. Chairwoman Wong asked who wanted one; all the Board members said that they would like a budget binder.

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

H.1. Regular Meeting of May 24, 2017 – Chairwoman Wong asked for any changes, hearing none, approved the minutes as submitted.

I. REPORTS TO THE IVGID BOARD OF TRUSTEES*

I.1. District General Counsel Jason Guinasso

District General Counsel Guinasso provided an update on the Katz litigation – (1) edited the answering brief which was submitted and accepted by the Nevada Supreme Court and Mr. Katz has to file his reply and then submit it for decision unless oral argument is necessary; (2) in District court, there was a recent action to grant our attorneys request to dispose Mr. Katz as a judgment debtors examination and when we have a date/time for that, we will let everyone know and try and facilitate a way to know what happens; and (3) as of today, Mr. Katz is no longer representing himself and he substituted the attorney who was representing him and one that will represent him on the substantive appeal who will probably write the answering brief next month.

Trustee Dent asked if there were five potential Open Meeting Law complaints or what is the number. District General Counsel Guinasso answered that he has responded to all that we have gotten and that typically the process for notification is when the Attorney General makes a decision, we provide the Board with the entire record – the complaint, response, and the decision and that the Board can change this process if desired. Trustee Dent then asked where Governance Sciences Group (GSG) litigation stands. District General Counsel Guinasso answered that presently we have a motion for a preliminary injunction before the District court which is asking to enjoin GSG from using the customer data that they acquired from IVGID and the date for the hearing hasn't been secured yet.

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

Chairwoman Wong stated one reminder and that is that the Trustees General Manager evaluations are due next Friday. Also, Nevada League of Cities has invited us to their annual conference.

K. CORRESPONDENCE RECEIVED BY THE DISTRICT*

District Clerk Susan Herron said that correspondence has been received from Aaron Katz and Mark Smith and that it has been distributed and will be included, in hard copy form, in the next Board packet.

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

Margaret Martini said it is interesting that there is such consternation on a public safety item and all the discussion about it when just a meeting or two ago \$1.6 million was slid into the budget for the Parasol buyout. If we have that much slush money, why so concerned about spending money on the culvert – what a sham! She parked in the electric car parking stall and one of the neighbors, across the street, called the Sheriff and asked them to ticket her as she is taking a spot that he wants so he can charge his car. So we have neighbors coming over and charging their car and something needs to be done about that as there is no reason anyone shouldn't be paying for charging and the stalls/equipment needs to be removed. For eighteen years, she volunteered to teach soccer and she coached with dogs peeing on coats, etc. Dogs and kids don't work on athletic fields and she is one hundred percent behind Steve Dolan. For seventeen years, IVGID has been trying to deal with the dog park and today we are nowhere closer which is ridiculous. All the coaches have been complaining for years and years so step up and fix this problem.

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

General Manager Pinkerton went over the calendar and for August 17, Staff will check to see if the Parasol building is available to hold our meeting. Trustee Morris said on October 25 he will be out of the country and will need to call in. Trustee Callicrate said on September 26 he will need to call in.

N. ADJOURNMENT (for possible action)

The meeting was adjourned at 9:07 p.m.

Respectfully submitted,

Susan A. Herron
District Clerk

Attachments*:

**In accordance with NRS 241.035.1(d), the following attachments are included but have neither been fact checked or verified by the District and are solely the thoughts, opinions, statements, etc. of the author as identified below.*

Submitted by Bret Hansen (1 page): IVGID Trustee Meeting – July 20, 2017

Submitted by Iljosa Dobler (1 page): Business Item F2-D – Diamond Peak Culvert 07-20-2017

Submitted by Clifford F. Dobler (10 pages): Business Item F2-D – Diamond Peak Culvert 07-20-2017

Submitted by Margaret Martini (2 pages): 7-20-17 IVGID Board of Trustees Meeting, Margaret Martini, Public Comment

Submitted by Aaron Katz (28 pages): Written statement to be attached to and made a part of the written minutes of the IVGID Board's regular July 20, 2017 meeting – Agenda Item F(4) – Alleged modifications to Parasol's ground lease – Recent revelations which reveal that Parasol has no right to occupy the subject lands, and that the IVGID Board needs to immediately eject Parasol from possession!

Submitted by Aaron Katz (10 pages): Written statement to be attached to and made a part of the written minutes of the IVGID Board's regular July 20, 2017 meeting – Agenda Item C – Public Comment – Recent revelations that entitlement costs for Phase 1a development of the Diamond Peak Master Plan ("The DPMP") are in fact going to exceed \$1M!

Submitted by Linda Newman (7 pages): IVGID 7-20-17 Board of Trustees Meeting, Public Comment by Linda Newman

July 20, 2017

Bret Hansen – Waste Management – District Manager

- Local Phone System Update
 - Phones are up and running as yesterday.
 - We've been reaching out to those customers who left voicemail messages.
 - In our last meeting Trustees Horan and Morris and Mr. Pinkerton expressed their frustration and concern over our inability to take customer calls. I agree that this has been unacceptable... this message has been heard loud and clear and will remain a top priority for us.
- Pine Needle Collection Update
 - Collection has been going as scheduled for weeks. We're all caught up and will complete our final route tomorrow. This will close out the pine needle collection season for the summer. Pine needle collection will resume in October.
 - In the meantime, we are developing a more efficient system for handling the high volumes which put us behind in May.
- Wildlife Cart Status
 - An order has been placed for eight hundred 96-gallon Wildlife resistant carts in anticipation of the Ordinance One enforcement beginning August 1st.
- Free Recycling at the Transfer Station
 - Recycling drop off at the transfer station has been restored. Residents do not have to wait in the transfer station line to drop off recycling for free.
 - The recycling collection bin is easily accessible in the middle of the transfer station lot.
 - This will also reduce wait times at the transfer station.
 - We've implemented a customer feedback form – which has been well received.
 - We will be using the information to coach our employees and improve customer service.
- Contract Review
 - I take this very seriously and accept full responsibility for the service failures that we've had. Without question this past year has presented us with some unexpected challenges.
 - In order to get our service levels back on track, I've reassigned staff from other locations around our area. Those employees are with me tonight to demonstrate our dedication to this community.
 - If anyone here is currently experiencing service problems, our team is set up at the back of the room and ready to help. Please stop and speak with us tonight.

From: ILJOSA DOBLER iljosa@aol.com
Subject: Re: Business Item F2-D - Diamond Peak Culvert 7-20-2017
Date: July 20, 2017 at 4:15 PM
To: tim callicrate tim2tahoe@msn.com, Matthew Dent Dent_trustee@ivgid.org, Kendra Wong wong_trustee@ivgid.org, Phil Horan horan_trustee@ivgid.org, pmorris.ivgid pmorris.ivgid@gmail.com, Steve Pinkerton sjp@ivgid.org
Cc: Susan Herron Susan_herron@ivgid.org



Re: Business Item F2-D - Diamond Peak Culvert 7-20-2017

Iljosa Dobler

995 Fairway Blvd.

In regard to the replacement of the 36" Culvert on the Spillway and Lodgepole ski trails. It was planned last year, designed last year and construction budgeted this year. It has been scheduled to be replaced after the spring run off sometime in September, so I'am appalled that now, you're considering it an emergency just so you can potentially get FEMA funds and circumvent NRS requirements. This is just WRONG. I'd expect you to act with higher moral standards as a board.

Thank you

Please include this public statement in the minutes of this board meeting and the next Meeting of Board of Trustee Packet.

July 20, 2017

To: Board of Trustees

From: Clifford F. Dobler

Re: Business Item F2-D - Diamond Peak Culvert 7-20-2017

I have reviewed the Board Packet regarding this business item.

Today I walked from the 72" culvert up Lodgepole to the Express Chair lift loading area. This is basically the line of the 36" culvert.

There were several areas which were fenced off where testing or inspections had taken place.

The Project Summary ("PS") which is part of the Board Packet states :
"A condition assessment investigation was performed in 2011/2012 with a pre-design evaluation completed in 2012/2013. These initial phases determined both culverts are in poor condition and badly in need of rehabilitation to avoid eventual pipe collapse."

Repeat: POOR CONDITION AND BADLY IN NEED - 4 YEARS AGO

My concerns are as follows:

1) The proposal is presented as an EMERGENCY. Not quite true as the work was planned in the capital projects budget as far back as March and the entire \$3,330,000 project is to be completed over the 2018 and 2019 fiscal years. In May 2016, over one year ago, \$403,000 was

budgeted for design and scope work getting ready for this year's project.

2) In general, work would only be accomplished in the late summer as water flows decrease and digging must be completed by mid October. So whether the culvert was damaged in the spring the work would have been accomplished as provided in the budget anyhow.

3) There are major conflicts in the PS which is undated and the Memorandum dated July 7, 2017("Memo").

A) The PS indicates that there is 1,200 lf of 36" CMP ("branch culvert') to be replaced in each of the next two years wherein the Memo indicates there is 4,000 lf. I walked off the length this morning and came up with approximately 3,500 lf. Seems that we are short about 2,800 lf at \$41 per foot is about \$1,150,000. Do we not intend on replacing the entire amount of 36" CMP. It is all old.

B) The Memo states recent inspections indicate as much as 1,000 lf of the 36" branch culvert may need immediate replacement. The budget only has 600 lf.

C) The Memo indicates under Financial Impact that the \$1,367,500 budget did not include enough money for a large section of the branch line culvert but the funds are available for use. Figure that. What is being said is lets rob the budget for the 72" culvert.

D)The MEMO also states that the second year of the project budget may need to be increased in order to offset the cost of the unplanned repairs. What was unplanned, the project was

budgeted to be done anyhow. If the "unplanned repairs" are being done in year one why would the second year budget need to be increased. A contradiction exists with item C above.

- E) The PS indicates there is 3,600 If of CMP to be replaced over the next two years but the Memo indicates there is only 1,800 If.

Who is in charge here?

Clifford F. Dobler

MEMORANDUM

TO: Board of Trustees

THROUGH: Steven J. Pinkerton
General Manager

FROM: Bradley A. Johnson, P.E.
Director of Asset Management

SUBJECT: Review, discuss, and possibly declare an emergency as it relates to contracting for the repair of the damaged culvert beneath the Lodgepole run at Diamond Peak Ski Resort and direct Staff to solicit bids to complete repairs of the damaged culvert section and bring back results to the Board of Trustees for award of a construction contract at the August 17, 2017 meeting

STRATEGIC PLAN: Long Range Principle 5 – Assets and Infrastructure

DATE: July 7, 2017

I. RECOMMENDATIONS

That the Board of Trustees makes a motion to:

1. Declare an emergency, consistent with Nevada Revised Statute (NRS) 338.011.2, as it relates to contracting for the repair of the culvert beneath the Lodgepole run damaged by summer run-off at Diamond Peak.
2. Direct Staff to solicit bids, consistent with NRS 338.1444, ~~to complete~~ repairs of the damaged culvert section and bring results back to the Board of Trustees for award of a construction contract at the August 17, 2017 meeting.

II. DISTRICT STRATEGIC PLAN

Long Range Principle 5 – Assets and Infrastructure – The District will practice perpetual asset renewal, replacement, and improvement to provide safe and superior long term utility services and recreation activities.

- The District will maintain, renew, expand, and enhance District infrastructure to meet the capacity needs and desires of the community for future generations.
- The District will maintain, procure, and construct District assets to ensure safe and accessible operations for the public and the District's workforce.

III. BACKGROUND

Within the Diamond Peak base area, Incline Creek is contained within a buried 72-inch diameter corrugated metal pipe (CMP) culvert running approximately 1,800-feet from just above the upper parking lot to just below the Schoolhouse Lift loading area. A 24 to 36-inch diameter CMP culvert branch line runs approximately 4,000-feet from the 72-inch culvert just below the Diamond Peak Skier Services Building, up the Lodgepole run, to mid-way up the Spillway run. These culverts were installed by Boise Cascade in the 1960s to facilitate the construction of the base area of Ski Incline.

Starting in 2011, the District has been engaged in planning and design as part of a multi-year capital improvement project to rehab the 1,800-feet of 72-inch culvert along with major sections of the branch culvert. This project is currently in the final design process with construction of rehab improvements planned for 2018.

As reported to the Board of Trustees by the General Manager at the June 12, 2017 meeting, Diamond Peak saw heavy run-off starting in early June from the near record snowpack. This run-off caused areas of significant surface erosion throughout the mountain and damaged portions of the branch culvert beneath the Lodgepole run.

A section of approximately 100-feet of the branch culvert was exposed, undermined, and damaged and a number of additional sink holes appeared along the culvert alignment. Diamond Peak staff completed immediate repairs intended to prevent and contain near term catastrophic failure as well as to temporarily isolate the public and District Staff from the undermined areas. Subsequent inspections conducted over the course of June and early July have indicated as much as 1,000-feet of the branch culvert may need immediate replacement.

The damaged culvert must be repaired prior to the start of the 2017/2018 ski season and the October 15th Tahoe Regional Planning Agency grading deadline in order to avoid risking the safety of the public, further damage to District infrastructure, and harm to the environment of Lake Tahoe. The damaged section

Review, discuss, and possibly declare
an emergency as it relates to
contracting for the repair of the damaged
culvert beneath the Lodgepole run
at Diamond Peak Ski Resort

-3-

July 7, 2017

of the branch line culvert cannot be buried as-is as it will not support soil loading
nor survive another run-off event without failing catastrophically.

Design for repair of the damaged section is currently being completed by CH2M
via the existing design contract awarded by the Board of Trustees, as part of the
larger multi-year culvert project, at the June 8, 2016 meeting. In order for a
contractor to procure materials and mobilize with sufficient time to complete repairs
by the October 15th grading deadline, a construction contract must be awarded no
later than mid-August.

With design of the repairs still on-going as of the writing of this memorandum, there
is not adequate time available to prepare the necessary front-end bidding and
contractual documentation associated with the formal bidding requirements of
NRS 338.143 (publicly advertised bids for construction of projects greater than
\$100,000) nor allow for the necessary advertising and qualification timelines
associated with the formal bidding process.

IV. BID RESULTS

NRS 338.011.2 states that the bidding requirements stipulated in NRS Chapter
338 do not apply to a contract:

"Awarded to meet an emergency which results from a natural or
artificially created disaster and which threatens the health, safety or
welfare of the public. If the public body or its authorized representative
determines that an emergency exists, a contract or contracts
necessary to contend with the emergency may be let without
complying with the requirements of this chapter. If such emergency
action was taken by the authorized representative, the authorized
representative shall report the contract or contracts to the public body
at the next regularly scheduled meeting of the public body."

Though NRS 338.011.2, through the declaration of an emergency, would allow the
District to award a contract without competitive bidding, District Staff proposes to
solicit bids, consistent with the requirements of NRS 338.1444 (soliciting bids for
construction of projects less than \$100,000), from three qualified and licensed
contractors with award of the contract by the Board of Trustees at the August 17,
2017 meeting. In order to expedite the process, Staff proposes to solicit bids from
the three qualified contractors currently under contract with the District for
completion of major capital projects:

Contractor	Project
Gerhardt and Berry Construction	2017 Watermain Replacement
Burdick Excavating	WRRF Access and Decant Improvements
K.G. Walters Construction	Sewer Pump Station #8 Improvements

All three contracts were awarded via publicly advertised competitive bidding and the District already has the necessary licensure, insurance, and bonding information on file for all three contractors.

V. FINANCIAL IMPACT AND BUDGET

A total of \$1,367,500 is included in the 2017/2018 Capital Improvement Program budget under Incline Creek Culvert Rehabilitation at Diamond Peak Project – 3499LI1101 (see attached data sheet). ~~Thought the project budget does not include completing rehabilitation of as large a section of the branch line culvert as what may now be necessary, the funds are available for use. As the Incline Creek Culvert Rehabilitation at Diamond Peak Project construction budget is spread over two fiscal years (with work of the larger project planned for late summer 2018), the second year of project budget may need to be increased during next year's budget cycle in order to offset the cost of the unplanned repairs.~~

The cost of the immediate branch line repairs is preliminarily estimated at \$250,000.

Total proposed budget for completion of the brand line repair work will be presented to the Board of Trustees at the August 17, 2017 meeting upon completion of bidding.

District Staff has met with Federal Emergency Management Agency (FEMA) about the repair work qualifying for federal reimbursement and FEMA Staff have indicated the work qualifies and is a candidate for reimbursement.

VI. ALTERNATIVE

None. The District must move forward with repairs of the damaged branch line culvert and complete work prior to the October 15th grading deadline in order to avoid risking the safety of the public, further damage to District infrastructure, and harm to the environment of Lake Tahoe.

Project Description	Within the Diamond Peak base area, Incline Creek is contained within a buried 72-inch diameter corrugated metal pipe (CMP) culvert running approximately 1,800-feet from just above the upper parking lot to just below the Schoolhouse Lift loading area. The culvert runs beneath the upper and lower parking lots roughly along the Western edge of the Diamond Peak Skier Services Building (DPSSB) and then following the Eastern boundary of the lower parking lot. Additionally there is a feeder creek contained within a buried 36-inch CMP culvert intersecting the Incline Creek 72-inch culvert near the Southwest corner of the DPSSB. Rehabilitation work would involve in-situ lining of the CMP culvert via a structural application while Incline Creek is diverted via temporary pumping. This project is a multi-year multi-phase Project. A condition assessment investigation was performed in 2011/2012 with a pre-design evaluation completed in 2012/2013. These initial phases determined both culverts are in poor condition and badly in need of rehabilitation to avoid eventual pipe collapse.		
Project Internal Staff	The Engineering Department would manage all phases of this project.		
Project Justification	This project must be completed to avoid an eventual pipe collapse of either/both the 72" and 36" CMP in the base area. A collapse could impact the structural integrity of the DPSSB, parking lots, and/or the general base area of the ski resort. The District has no as-built information or engineering drawings regarding the design, construction, alignment, or planned life expectancy of this culvert. This culvert is not and has not been on any routine inspection or maintenance program. During construction of the DPSSB, the culvert was encountered in multiple locations and a number of buried access hatches were located. A brief field inspection of the interior of the culvert, via those uncovered access hatches, identified areas in which spot corrosion has eaten through the entire wall thickness of the CMP. This project allows for an engineering design, permitting, and culvert rehabilitation for its entire length.		
Forecast			
Budget Year	Total Expense	Total Revenue	Difference
2018			
36" CMP Rehabilitation (600LF)	250,000	0	250,000
72" CMP Rehabilitation (1800 LF)	800,000	0	800,000
Construction Management	37,500	0	37,500
Contingency	175,000	0	175,000
Internal Services	30,000	0	30,000
Stream Diversion	75,000	0	75,000
Year Total	1,367,500	0	1,367,500
2019			
36" CMP Rehabilitation (600LF)	250,000	0	250,000
72" CMP Rehabilitation (1800 LF)	1,450,000	0	1,450,000
Construction Management	37,500	0	37,500
Contingency	100,000	0	100,000
Internal Services	50,000	0	50,000
Stream Diversion	75,000	0	75,000
Year Total	1,962,500	0	1,962,500
	3,330,000	0	3,330,000
Year Identified	Start Date	Project Partner	Manager
2012			Principal Engineer
			Est. Completion Date

7-20-17 IVGID Board of Trustees Meeting
Margaret Martini Public Comment

Here we go again –another Board Meeting with another agenda item on Parasol. This time there are no documents to review, so let me bring a matter of great importance to your attention. For as long as I can recall, the property taxes and other taxes the District collects in the General Fund, has paid for the District’s Administrative Office Building. Suddenly, this Spring, three members of this Board determined that if the District buys out the lease with Parasol and takes control of the Building for new Administrative Offices, the Community Services Fund should take on the \$5,500,000 obligation and pay for all the operations, maintenance and capital improvements. How can this be? The Community Services Fund collects our Rec Fee to support our recreation services and facilities and provides us with recreational privileges. When was it determined that this Fund could legally take on the responsibilities of the General Fund? Unless I’m mistaken, the Community Services Fund REC FEE revenues are collected for our recreation and are not a source of revenues for anything the District can’t otherwise afford. If any one were to review the General Fund’s financials they would see that the general fund does not have enough property taxes and Consolidated taxes or any other revenue to buy out the Parasol lease and also cover the debt service on the installment purchase price, let alone operate, maintain and create a replacement reserve fund to cover current and future capital improvements. If the General Fund can’t afford it, any further discussion of buying out the lease should be off the table. The last thing we need is for our Rec Fee to be used to take on the financial responsibility for a 15 year old 31,500 square foot building. Unlike our property taxes which are capped by the State, the District’s ability to increase our Rec and Beach fees have no such limits. We could all wake up one budget season and discover that our Rec Fee has doubled to support a building none of us want as well as requiring us to pay additional funds for all the other recreation related services and facilities that we do support and want to properly maintain. Someone

needs to look at the legalities of making this lease buyout by the Community Services Fund and someone also needs to do the math on what legacy projects and other projects the Community Services will have to sacrifice if our REC FEE is Used to buyout the Parasol lease.

**WRITTEN STATEMENT TO BE ATTACHED TO AND MADE A PART OF THE WRITTEN
MINUTES OF THE IVGID BOARD'S REGULAR JULY 20, 2017 MEETING – AGENDA**
**ITEM F(4) – ALLEGED MODIFICATIONS TO PARASOL'S GROUND LEASE –
RECENT REVELATIONS WHICH REVEAL THAT PARASOL HAS NO RIGHT
TO OCCUPY THE SUBJECT LANDS, AND THAT THE IVGID BOARD
NEEDS TO IMMEDIATELY EJECT PARASOL FROM POSSESSION!**

Introduction: Meeting after recent meeting I and others have presented evidence to the IVGID Board that Parasol Foundation ("Parasol") is entitled to nothing in consideration of its consent to premature termination of its ground lease on IVGID property. Now I present the ultimate evidence; *Parasol has no right whatsoever to occupy these lands.* And that's the purpose of this written statement.

History: On/about November 16, 1977 IVGID purchased 26.6 acres of unimproved land from Boise Cascade Home & Land Corporation ("Boise Cascade") for \$1.25M. The deed which granted title to these lands¹ was accompanied by Conditions, Covenants and Restrictions² ("CC&Rs") which in no ambiguous manner, at ¶1, limited use for "only...park and recreational and related purposes *and for no other purposes.*" On July 1, 1999 Gardena Servicing Company ("Gardena"), the alleged "successor by merger" to Boise Cascade, executed a modification to the CC&Rs³ ("the modified CC&Rs") which modified ¶1 of the CC&Rs, to limit use of these lands for "only...park and recreational and related purposes and for no other purposes, *except for the construction of a building for the use of...Parasol...Parasol...collaborators...or...Parasol('s)...legal successors.*" It is my position that the true beneficiaries of these restrictions are the inhabitants and property owners of Incline Village and Crystal Bay.

Based upon this use modification, effective January 12, 2000, IVGID entered into a ground lease with Parasol for the latter's use of approximately 1.5 acres⁴ of the subject 26.6 acre parcel at \$1/year in rent for a period of thirty (30) years, with two options to renew for a combined lease term

¹ See pages 34-35 of that packet of materials prepared by staff in anticipation of the IVGID Board's regular May 10, 2017 meeting ["the 5/10/2017 Board packet" (https://www.yourtahooplace.com/uploads/pdf-ivgid/Item_C._-_Presentation_-_Ground_Lease_with_PTCF_5-10-17.pdf)].

² See pages 36-37 of the 5/10/2017 Board packet.

³ See page 38 of the 5/10/2017 Board packet.

⁴ See page 344, ¶XXIV(A), of that packet of materials prepared by staff in anticipation of the IVGID Board's regular April 25, 2017 meeting ["the 4/25/2017 Board packet" (https://www.yourtahooplace.com/uploads/pdf-ivgid/General_Business_Item_G.5._-Ground_Lease_with_PTCF_4-25-17.pdf)].

of up to ninety-nine (99) years⁵. Although on January 24, 2002 the lease was amended, primarily to increase the amount of acreage to 2.36 acres⁶, the remaining unmodified lease terms were expressly ratified, reaffirmed and confirmed.

One of those reaffirmed terms was paragraph XV which expressly acknowledged existence of the CC&Rs, modified CC&Rs and their use restrictions against the property. And notwithstanding, under this same paragraph, Parasol agreed to "assume full and complete responsibility regarding said (use restrictions), and...to hold (IVGID) free and harmless (from) *any* claims, demands or lawsuits by *any* persons...concerning...such claims, including...attorney's fees and costs."

Finally, both Parasol and IVGID were represented by able attorneys. IVGID was represented by now Judge Neal Manoukian, and Parasol was represented by Gino Menchetti.

Because Gardena Service Company Did Not Exist on July 1, 1999, the Modified CC&Rs Are Completely VOID: Since the modified CC&Rs recite that Gardena is a "California corporation," I decided to examine corporate records on file with the California Secretary of State. And here is what I discovered:

1. On October 31, 1989 Boise Cascade and Gardena entered into an "Agreement of Merger."

2. According to that agreement of merger, Boise Cascade was merged into Gardena and thereafter, all of Boise Cascade's former "rights, privileges, immunities and franchises, and all (of its) ...property, real, personal, and mixed" succeeded to Gardena. Thereafter, Boise Cascade *ceased to exist*.

3. That agreement of merger was filed with the Secretary of State on December 11, 1989 as document No. A379712. A copy of that agreement is attached as Exhibit "A" to this written statement.

4. On January 24, 1990 Irving Littman and Carol Raymer, the president and assistant secretary of Gardena, respectively, executed a "Certificate of Election to Wind Up and Dissolve" Gardena. This certificate was filed with the Secretary of State on January 30, 1990 as document No. D333152. A copy of this certificate is attached as Exhibit "B" to this written statement.

5. On January 24, 1990, Irving Littman, J.E. Clute and Alice Hennessey, the then directors of Gardena, executed a "Certificate of Dissolution" on Gardena's behalf. This certificate was filed with the Secretary of State on January 30, 1990 as document No. D333153. A copy of this certificate is attached as Exhibit "C" to this written statement.

⁵ See pages 276-320 of the 4/25/2017 Board packet.

⁶ See pages 344-348 of the 4/25/2017 Board packet.

6. According to this certificate Gardena was dissolved and all known assets were distributed to the persons entitled thereto.

Simply stated, nine (9) years and five (5) months later, on July 1, 1999, Gardena did not legally exist. And whatever assets it may have at one time had, had been distributed to persons other than Gardena. In other words, any act purported to have been done on Gardena's behalf was void and a nullity. Which means *the modified CC&Rs do not and never did exist!*

Am I wrong Mr. Guinasso? If so, please explain why.

Did Irving Littman Know That Gardena Did Not Exist on July 1, 1999? Given Mr. Littman was a corporate officer of the successor to Boise Cascade, a publicly traded company, a major position in the business world, he was not an unintelligent guy. In fact to the contrary, he was and is probably a very sophisticated and savvy guy. How then could he have forgotten he had dissolved Gardena nearly nine and one-half (9-1/2) years earlier?

So the question; why would a man in his position ever agree to modify the CC&Rs nine and one-half (9-1/2) years after Gardena had been dissolved?

Did IVGID Know That Gardena Did Not Exist on July 1, 1999? ¶XV of the lease between IVGID and Parasol recites that IVGID has "full knowledge of the existence of the...restrictive covenant...(in) the November 16, 1977 Deed from Boise Cascade...to (IVGID)...that the...Deed's Covenants, Conditions and Restrictions limit the use of said realty...that the restrictions have been amended twice; (and, that) the relevant amendment, executed July 1, 1999, was signed by Irving Littman, President of Gardena...a California corporation...the successor to Boise Cascade."

Moreover, IVGID was represented by Judge Manoukian. Should not Judge Manoukian be charged with actual knowledge Gardena was not a California corporation in good standing at the time, even if he did not have actual knowledge?

But let's go a bit farther. Paragraph XV of the subject lease very clearly states that Parasol "assumes full and complete responsibility regarding (the CC&Rs use restrictions)...and...agrees to hold (IVGID) free and harmless (from) any claims, demands or lawsuits by any persons...concerning...such claims, including...attorney's fees and costs."

And if this weren't enough, said paragraph XV also very clearly states that Parasol holds IVGID "free and harmless (from) any claims, demands or lawsuits by any persons who may challenge the" validity of the modified CC&Rs and "further agrees to indemnify (IVGID) concerning any such claims."

Why would IVGID require a release and indemnification under the facts of this case?

Did Parasol Know That Gardena Did Not Exist on July 1, 1999? Being a party to the subject lease, and for the same reasons as IVGID, Parasol has admitted it had *full knowledge* of the above-recited facts.

Moreover, Parasol was represented by Gino Menchetti. Should not Mr. Menchetti, just like Judge Manoukian, be charged with the same actual knowledge Gardena was not a California corporation in good standing at the time, even if he did not have actual knowledge?

But let's go a bit farther. What attorney in his right mind would ever voluntarily allow his/her client to give a release and indemnification like the ones the subject hereof?

But there's more:

1. ¶18(a) of the purchase and sales agreement between Boise Cascade and IVGID for the subject 26.6 acres declared that IVGID's purchase was contingent upon Boise Cascade's conveyance of approximately 31 acres to Mansel and Patricia Ocheltree adjacent to the subject 26.6 acres ("the Ocheltree property"), and the Ocheltree's concurrent gift deeding of the Ocheltree property to IVGID.

2. Both the subject 26.6 acres and the Ocheltree property were burdened by Boise Cascade with identical CC&Rs which limited their use for "only...park and recreational and related purposes and for no other purposes."

3. In accordance with the above purchase and sales agreement, on December 7, 1977 Mr. and Mrs. Ocheltree in fact gift deeded the Ocheltree property to IVGID subject to the CC&Rs against that property.

4. Nearly six years later, on or before October of 1983, IVGID wanted to lease an approximate .51 acre portion of the Ocheltree property to the Reno-Sparks Convention/Visitors Authority ("the RSCVA"). However, the RSCVA's intended use of this property as a visitor's center and chamber of commerce would be in clear violation of the CC&Rs.

5. So someone(s) came up with the idea to circumvent these CC&Rs by asking Mr. and Mrs. Ocheltree, *rather than Boise Cascade*, to modify them. Before we examine who that someone(s) might have been, I would submit that the RSCVA's use of the .51 acre portion of the Ocheltree property violates the CC&Rs against that property because if anyone had the power to modify those CC&Rs, it certainly *wasn't* Mr. and Mrs. Ocheltree.

6. Notwithstanding, on October 6, 1983 Mr. and Mrs. Ocheltree executed an amendment to the CC&Rs against the Ocheltree property now allowing use "only for park and recreational and related purposes and for no other purposes *except* for the construction and use of a building for the use of the Incline Village Crystal Bay Chamber of Commerce and the Incline Village Visitors and

Convention Bureau." Who was the attorney who assisted the Ocheltrees in presumably preparing and recording this "amendment?" Gino Menchetti⁷.

7. Why didn't Mr. Menchetti go back to Boise Cascade to get it to modify the CC&Rs against the .51 acre portion of the Ocheltree property (after all, the merger with Gardena did not take place until October 31, 1989)?

8. Now let's fast forward sixteen (16) years. Who was the attorney who represented Parasol in its lease of the subject 2.36 acres from IVGID? Gino Menchetti⁸!

9. Who was the attorney who prepared the modified CC&Rs for Mr. Littman to sign? Although I don't know the answer, I have attached a copy of those modified CC&Rs as Exhibit "E" to this written statement. If one compares Exhibits "D" to "E," one will see they're essentially *identical*!

10. Once Mr. Menchetti learned of the modified CC&Rs' existence, assuming *arguendo* he was not the author of Exhibit "E," is it conceivable he would *not* have actually examined them? If not, once he examined this document, would he not have seen that they were signed by Mr. Littman on behalf of Gardena? And to confirm that Mr. Littman had the actual authority to do what he had purportedly done⁹, would not Mr. Menchetti have had to have run a search with the California Secretary of State to confirm Gardena was in good standing and that Mr. Littman was the president he represented himself to be? And would not Mr. Menchetti have then learned of Gardena's dissolution nine and one-half (9-1/2) years beforehand?

11. Is it not odd to find a paragraph like ¶XV in a lease such as the subject lease which addresses waivers, releases and indemnifications? After all, if one examines the lease between IVGID and the RSCVA for the approximate .51 acre portion of the Ocheltree property¹⁰, one will discover that such waivers, releases and indemnifications are *conspicuously absent*.

⁷ A copy of Mr. and Mrs. Ocheltree's amendment to the CC&Rs against the Ocheltree property is attached as Exhibit "D" to this written statement. Note the upper left hand corner of the amendment which states that after recording, it should be mailed to Mr. Menchetti.

⁸ See page 317 of the 4/25/2017 Board packet.

⁹ Note that paragraph XXIII(A)(3) of the lease includes an affirmation that "the person...executing this lease on behalf of any corporation...represent(s) and warrant(s) that he, she or it is duly authorized to execute...this lease on behalf of said corporation."

¹⁰ I have and if anyone wants to examine it to confirm what I represent, please feel free to contact me.

12. Is it not odd to find Mr. Menchetti's signature on the lease to be "as to form only?" After all, Judge Manoukian's signature is conspicuously *not restricted* "as to form only." Why did Mr. Menchetti feel it important to attempt to limit the import of his representation of Parasol?

Does Mr. Pinkerton Know That Gardena Did Not Exist on July 1, 1999? If he doesn't, I and others I know feel he should be fired and here's why. Was not staff directed by the Board to conduct "due diligence" insofar as this Parasol issue were concerned? And did not Mr. Pinkerton repeatedly represent to the Board and the public that he had in fact conducted that diligence and based thereupon, he was recommending that the Board move forward? Yet did Mr. Pinkerton ever advise the Board and the public that the modified CC&Rs are void and of no effect because the grantor did not legally exist at the time they were executed? Since Mr. Pinkerton did not bring this material fact to the Board's and the public's attention, being the professional public employee he is, should he not be charged with that knowledge?

Does Mr. Guinasso Know That Gardena Did Not Exist on July 1, 1999? If he doesn't, I and others I know feel he should be fired as IVGID's attorney. As a legal professional, should he not be charged with that knowledge?

Given Parasol Has No Right to be Using the Subject 2.36 Acres For its Non-Profit Community Center, What Right Does it Have to Demand Any Monies From IVGID?

Does Not the IVGID Board Have the Obligation to Vote to Immediately Terminate Parasol's Lease, and to Forceably Remove it From the Public's Property?

If the IVGID Board Votes to Terminate Parasol's Lease, Won't IVGID Face Retaliation For the Alleged Prejudice it May Suffer? Given paragraph XV of the lease which expressly "hold(s) IVGID free and harmless (from) *any* claims, demands or lawsuits by *any* persons...concerning...such claims, including...attorney's fees and costs," what do you think?

Does Not the IVGID Board Also Have the Obligation to Vote to Immediately Terminate RSCVA's Lease, and to Forceably Remove it From the Public's Property? And if the Board will not do what it is required to do, I ask proceedings be initiated to remove those board members who refuse.

Isn't the Prudent Thing for the Board to Do is to File a Judicial Validation Action So the Court Can Sort Out All of the Issues Raised by the Facts We Now Know? NRS 43.100(1) states that a "governing body may file...a petition...in the district court...for *any* act or project...undertaken, wholly or in part, praying (for) a judicial examination and determination of the validity of any power conferred or of *any instrument, act or project.*" And NRS 43.140(1) states that "the court shall...determine all matters and things affecting the question(s) submitted, (and) shall make such findings with reference thereto and render such judgment and decree thereon as the case warrants." Isn't this exactly what needs to take place?

Conclusion: In my opinion the subject properties should *NEVER* have been leased to Parasol, the RSCVA or anyone else for that matter who intended to use either for purposes other than park and recreational purposes, *and no other purposes*. As I stated when this issue first came before the Board in March of this year, modifying the CC&Rs against the subject 26.6 acres eighteen (18) years ago was one of the dirtiest things done in IVGID's illustrious past. Now the Board has the opportunity to undo the wrong which never should have taken place, and that's exactly what it should do. Let Parasol be paid *nothing*.

And You Wonder Why the RFF Which Has Financed This Colossal *Mis-Use* is Out of Control?
I've now provided more answers.

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

EXHIBIT "A"

379401

A379712

SURV

FILED
In the office of the Secretary of State
of the State of California

BH

DEC 11 1989

AGREEMENT OF MERGER

March Fong Eu
MARCH FONG EU, Secretary of State

AGREEMENT OF MERGER dated October 31, 1989, between GARDENA SERVICE COMPANY ("Surviving Corporation") and BOISE CASCADE HOME & LAND CORPORATION ("Absorbed Corporation").

R E C I T A L S

A. Surviving Corporation is a corporation duly organized and existing under the laws of the state of California, with its principal office located at One Jefferson Square, Boise, Idaho 83728.

B. Surviving Corporation has a capitalization of 250 authorized shares of common stock, having a par value of \$100 per share, of which 10 shares are issued and outstanding.

C. Absorbed Corporation is a corporation duly organized and existing under the laws of the state of Delaware, with its principal office located at One Jefferson Square, Boise, Idaho 83728, and is qualified to do business as a foreign corporation in the state of California.

D. Absorbed Corporation has a capitalization of 1,000 authorized shares of common stock, having a par value of \$10 per share, of which 1,000 shares are issued and outstanding.

E. The boards of directors of the constituent corporations deem it desirable and in the best interests of the corporations and their shareholders that Absorbed Corporation be merged into

Surviving Corporation, in accordance with the provisions of applicable laws of California and Delaware, in order that the transaction qualify as a "reorganization" within the meaning of Section 368(a)(1)(A) of the Internal Revenue Code of 1954, as amended.

1. Merger. In consideration of the mutual covenants, and subject to the terms and conditions hereinafter set forth, the constituent corporations agree as follows:

Absorbed Corporation shall merge with and into Surviving Corporation, which shall be the surviving corporation.

2. Terms and Conditions. On the effective date of the merger, the separate existence of the Absorbed Corporation shall cease, and the Surviving Corporation shall succeed to all the rights, privileges, immunities, and franchises, and all the property, real, personal, and mixed, of the Absorbed Corporation, without the necessity for any separate transfer. The Surviving Corporation shall thereafter be responsible and liable for all liabilities and obligations of the Absorbed Corporation, and neither the rights of creditors nor any liens on the property of the Absorbed Corporation shall be impaired by the merger.

3. Conversion of Shares. The manner and basis of converting the shares of the Absorbed Corporation into shares of the Surviving Corporation is as follows:

(a) Each share of the common stock of Absorbed Corporation issued and outstanding on the effective date of the merger shall be converted into one-tenth of a share of the common stock of the Surviving Corporation, which shares of common stock of the Surviving Corporation shall thereupon be issued and outstanding. The ten shares of common stock in the Surviving Corporation which are currently held by the Absorbed Corporation shall be turned over to the Surviving Corporation and held as treasury stock.

(b) After the effective date of the merger, each holder of certificates for shares of common stock in the Absorbed Corporation shall surrender them to the Surviving Corporation or to its duly appointed agent, in such manner as the Surviving Corporation shall legally require. On receipt of such share certificates, the Surviving Corporation shall issue and exchange therefor certificates for shares of common stock in the Surviving Corporation, representing the number of shares of such stock to which such holder is entitled as provided above.

(c) Holders of certificates of common stock of the Absorbed Corporation shall not be entitled to dividends payable on shares of stock in the Surviving Corporation until certificates have been issued to such shareholders. Thereafter, each such shareholder shall be entitled to receive any dividends on shares of stock of the Surviving Corporation issuable to them hereunder

that may have been declared and paid between the effective date of the merger and the issuance to such shareholder of the certificate for his shares in the Surviving Corporation.

4. Articles of Incorporation. The articles of incorporation of the Surviving Corporation shall continue to be its articles of incorporation following the effective date of the merger.

5. Bylaws. The bylaws of the Surviving Corporation shall continue to be its bylaws following the effective date of the merger.

6. Directors and Officers. The directors and officers of the Surviving Corporation on the effective date of the merger shall continue as the directors and officers of the Surviving Corporation for the full unexpired terms of their offices or until their successors have been elected or appointed and qualified.

7. Approval of Shareholders. This Agreement of Merger shall be submitted for the approval of the shareholders of the constituent corporations in the manner provided by applicable law at meetings to be held on or before October 31, 1989, or at such other time as the boards of directors of the constituent corporations may agree.

8. Effective Date. The effective date of this merger shall be the date when the merger is effective pursuant to California law.

9. Abandonment of Merger. This Agreement of Merger may be abandoned by action of the board of directors of either the Surviving or the Absorbed Corporation at any time prior to the effective date on the happening of either of the following events:

(a) If the merger is not approved by the shareholders of either the Surviving or the Absorbed Corporation on or before December 31, 1989, or

(b) If, in the judgment of the board of directors of either the Surviving or the Absorbed Corporation, the merger would be impracticable.

10. Assignment of Agent. The Surviving Corporation agrees that it may be served with process in the state of Delaware in any proceeding for enforcement of any obligation of any constituent corporation of this state, as well as for enforcement of any obligation of the Surviving Corporation arising from this merger, including any suit or other proceeding to enforce the right of any stockholder as determined in appraisal proceedings pursuant to the provisions of Section 262 of the Delaware Corporations' Code, and irrevocably appoints the Secretary of State of Delaware as its agent to accept service of process in any such suit or other proceeding; the Secretary of State shall forward such process to One Jefferson Square, Boise, Idaho 83728.

11. Execution of Agreement. This Agreement of Merger may be executed in any number of counterparts, and each such counterpart shall constitute an original instrument.

Executed on behalf of the parties by their officers, and sealed with their corporate seals, respectively, pursuant to the authorization of their respective boards of directors on the date first written above.

SURVIVING CORPORATION
GARDENA SERVICE COMPANY

ATTEST:

By Jr James Bellino III
Title ASSISTANT SECRETARY

By JR Bellino
Title VICE PRESIDENT

ABSORBED CORPORATION
BOISE CASCADE HOME & LAND
CORPORATION

ATTEST:

By Jr James Bellino III
Title ASSISTANT SECRETARY

By Jr Elante
Title VICE PRESIDENT

I hereby certify that 100% of the shareholders voted in favor of the adoption of this Agreement.

GARDENA SERVICE COMPANY

By Jr James Bellino III
Assistant Secretary

LB9286A

BOISE CASCADE HOME & LAND
CORPORATION

By Jr James Bellino III
Assistant Secretary

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

J. R. Ayre and A. James Balkins, III, being first duly sworn, on oath deposes and say: That they are the Vice President and Assistant Secretary of Gardena Service Company, the corporation that executed the above and foregoing instrument, and the officers of said corporation who signed the name of said corporation to such instrument in such official capacity; that at the time of executing said instrument, as aforesaid, affiants had full power and authority to execute such instrument on behalf of said corporation, and to bind said corporation to carry out each, every, and all the terms, conditions, obligation, and undertakings recited and set forth therein.

A. James Balkins, III
A. James Balkins, III
Assistant Secretary

J. R. Ayre J. R. Ayre, Vice President

Subscribed and sworn to before me this 31st day of October, 1989.

Delicia Bennett
Notary Public for Idaho
Residence: Boise
My commission expires: 4/29/91

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

J. E. Clute and A. James Balkins, III, being first duly sworn, on oath deposes and say: That they are the Vice President and Assistant Secretary of Boise Cascade Home & Land Corporation, the corporation that executed the above and foregoing instrument, and the officers of said corporation who signed the name of said corporation to such instrument in such official capacity; that at the time of executing said instrument, as aforesaid, affiants had full power and authority to execute such instrument on behalf of said corporation, and to bind said corporation to carry out each, every, and all the terms, conditions, obligation, and undertakings recited and set forth therein.

A. James Balkins, III
A. James Balkins, III
Assistant Secretary

J. E. Clute J. E. Clute, Vice President

Subscribed and sworn to before me this 31st day of October, 1989.

Delicia Bennett
Notary Public for Idaho
Residence: Boise
My commission expires: 4/29/91

OFFICERS' CERTIFICATE
OF
GARDENA SERVICE COMPANY

We, J. R. Ayre, Vice President, and A. James Balkins, III, Assistant Secretary, of GARDENA SERVICE COMPANY, a corporation duly organized and existing under the laws of the state of California, do hereby certify:

1. That they are the Vice President and the Assistant Secretary, respectively, of Gardena Service Company, a California corporation.
2. The total number of outstanding shares of each class of this corporation entitled to vote on the merger is as follows:

<u>Class</u>	<u>Total Number of Shares Entitled to Vote</u>
Common	10

3. That the principal terms of the agreement of merger in the form attached were approved by the shareholders of this corporation by a vote of the number of shares of each class which equaled or exceeded the vote required by each class to approve said agreement of merger.

4. That each class entitled to vote and the minimum percentage vote of each such class is as follows:

<u>Class</u>	<u>Minimum Percentage Vote Required to Approve the Merger</u>
Common	100%

5. That the vote required of the shareholders of Gardena Service Company was obtained.

Each of the undersigned declares under penalty of perjury that the

statements contained in the foregoing certificate are true of
their own knowledge. Executed at Boise, Idaho on December 8,
1989.

J. R. Ayre
J. R. Ayre, Vice President

A. James Balkins III
A. James Balkins, III

Assistant Secretary

L89300A

OFFICERS' CERTIFICATE
OF
BOISE CASCADE HOME & LAND CORPORATION

We, J. E. Clute, Vice President, and A. James Balkins, III, Assistant Secretary, of BOISE CASCADE HOME & LAND CORPORATION, a corporation duly organized and existing under the laws of the state of Delaware, do hereby certify:

1. That they are the Vice President and the Assistant Secretary, respectively, of Boise Cascade Home & Land Corporation, a Delaware corporation.
2. The total number of outstanding shares of each class of this corporation entitled to vote on the merger is as follows:

<u>Class</u>	<u>Total Number of Shares Entitled to Vote</u>
Common	1,000

3. That the principal terms of the agreement of merger in the form attached were approved by the shareholders of this corporation by a vote of the number of shares of each class which equaled or exceeded the vote required by each class to approve said agreement of merger.

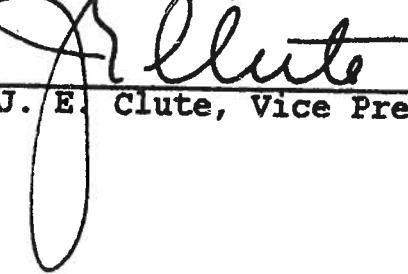
4. That each class entitled to vote and the minimum percentage vote of each such class is as follows:

<u>Class</u>	<u>Minimum Percentage Vote Required to Approve the Merger</u>
Common	100%

5. That the vote required of the shareholders of Boise Cascade Home & Land Corporation was obtained.

Each of the undersigned declares under penalty of perjury that the

statements contained in the foregoing certificate are true of
their own knowledge. Executed at Boise, Idaho on December 8,
1989.

By 
J. E. Clute, Vice President


A. James Balkins, III
Assistant Secretary

L89300B

EXHIBIT "B"

379401

D333152

CERTIFICATE OF ELECTION TO WIND UP AND DISSOLVE

IRVING LITTMAN and CAROL RAYMER certify that:

1. They are the president and the assistant secretary, respectively, of GARDENA SERVICE COMPANY, a California corporation.
2. The corporation has elected to wind up and dissolve.
3. The election was made by the vote of 100 shares of the corporation and representing 100% of the voting power of the corporation.

We further declare under penalty of perjury under the laws of the state of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: January 24, 1990.


Irving Littman

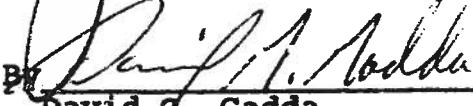

Carol Raymer
Carol Raymer

BOISE CASCADE CORPORATION

ok

By

J. E. Clute
Senior Vice President

By

David G. Gadda

Assistant Secretary

FILED
In the office of the Secretary of State
of the State of California

JAN 30 1990

The Sole Shareholder of the
Corporation

L500124E


MARCH FONG EU, Secretary of State

EXHIBIT "C"

379401

D333153

FILED
In the office of the Secretary of State
of the State of California

JAN 30 1990

CERTIFICATE OF DISSOLUTION

March Fong Eu
MARCH FONG EU, Secretary of S

J. E. CLUTE, ALICE HENNESSEY, and IRVING LITTMAN certify that:

1. They constitute 100% of the directors now in office of GARDENA SERVICE COMPANY, a California corporation.
2. The corporation has been completely wound up.
3. The corporation's known debts and liabilities have been adequately provided for by their assumption by Boise Cascade Corporation, One Jefferson Square, Boise, Idaho 83728.
4. The corporation's known assets have been distributed to the persons entitled thereto.
5. The corporation is dissolved.

We further declare under penalty of perjury under the laws of the state of California that the matters set forth in this certificate are true and correct of our own knowledge.

Date: January 24, 1990, at Boise, Idaho.

J. E. Clute
J. E. Clute

Alice E. Hennessy
Alice E. Hennessey

Irving Littman
Irving Littman

L500124D



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
P.O. BOX 942857
SACRAMENTO, CA 94257-0541

TAX CLEARANCE CERTIFICATE

January 10, 1990

EXPIRATION DATE: April 13, 1990

BOISE CASCADE CORPORATION
PAT STERRETT
P. O. BOX 50
BOISE ID 83728

ISSUED TO: GARDENA SERVICE COMPANY
Corporate Number 0379401 GS3C*

This is to certify that all taxes imposed under the Bank and Corporation Tax Law on this corporation have been paid or are secured by bond deposit or other security.

A copy of this Tax Clearance Certificate has been sent to the Office of the Secretary of State. This original Tax Clearance Certificate may be retained in the files of the corporation.

By the Expiration Date noted above, this corporation must have filed the documents required by the Secretary of State to dissolve, withdraw or merge. Requests for the appropriate documents must be directed to: Office of the Secretary of State at 1230 J Street, Sacramento, CA 95814. The telephone number is (916) 445-0620.

NOTE: If the required documents are not filed with the Secretary of State prior to the Expiration Date noted above, the corporation will remain subject to the filing requirements of the Bank and Corporation Tax Law.

FRANCHISE TAX BOARD

By J. Snyder
Tax Clearance Unit
Special Audit Section
Telephone (916) 369-4124

COPY

EXHIBIT "D"

AFTER RECORDING, MAIL TO:
D. G. MENCHETTI, LTD.
Post Office Box 7100
Incline Village, Nevada 89450

1178313

AMENDMENT TO
COVENANTS, CONDITIONS AND RESTRICTIONS

WHEREAS, the undersigned MANSEL OCHELTREE and PATRICIA OCHELTREE executed a Gift Deed dated December 7, 1977 to Incline Village General Improvement District (IVGID) recorded as document 503005, Book 1168, pages 190 to 191 in the office of the Washoe County Recorder, and

WHEREAS, said Gift Deed contains Covenants, Conditions and Restrictions which provide in part:

1. The property shall be used only for park and recreational and related purposes and for no other purposes.

WHEREAS, it is the desire of IVGID to allow a portion of the real property described in the attached Exhibit A to be used by the Incline Village Crystal Bay Chamber of Commerce and the Convention Bureau for a building to house said Chamber of Commerce and Convention Bureau.

NOW, THEREFORE, said Covenants, Conditions and Restrictions are amended in respect to Paragraph 1 to state:

1. The property shall be used only for park and recreational and related purposes and for no other purposes except for the construction and use of a building for the use of the Incline Village Crystal Bay Chamber of Commerce and the Incline Village Visitors and Convention Bureau.

In all respects said Covenants, Conditions and Restrictions contained in Exhibit A remain the same.

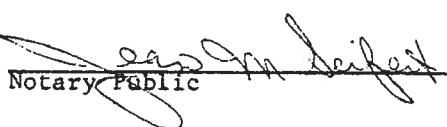
DATED this 6, day of 10, 1983.

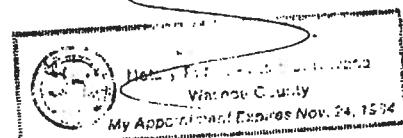
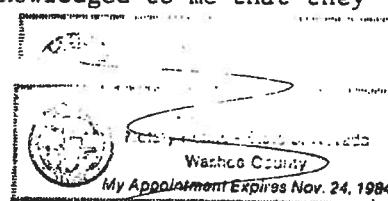
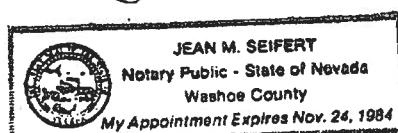

MANSEL OCHELTREE


PATRICIA OCHELTREE

State of Nevada)
COUNTY OF Washoe) ss

On June 6, 1983 personally appeared before me, a Notary Public, MANSEL OCHELTREE and PATRICIA OCHELTREE, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.


Notary Public



1178313

EXHIBIT "E"

AMENDMENT TO
COVENANTS, CONDITIONS AND RESTRICTIONS

WHEREAS, the undersigned Gardena Service Company, a California corporation, successor by merger to Boise Cascade Home & Land Corporation, executed a Deed dated November 16, 1977, to Incline Village General Improvement District (IVGID) recorded as document 503002, Book 1168, pages 174 to 176 in the office of the Washoe County Recorder, and

WHEREAS, said Deed contains Covenants, Conditions and Restrictions which provide in Paragraph 1 thereof:

1. The property shall be used only for park and recreational and related purposes and for no other purposes.

WHEREAS, it is the desire of IVGID to allow a portion of the real property described in Exhibit A to be used by the Parasol Foundation for a building to house said Parasol Foundation and Parasol Foundation collaborators.

NOW, THEREFORE, said Covenants, Conditions and Restrictions are amended in respect to Paragraph 1 to state:

1. The property shall be used only for park and recreational and related purposes and for no other purposes except for the construction of a building for the use of the Parasol Foundation, Parasol Foundation collaborators or the Parasol Foundation legal successors.

In all other respects, said Covenants, Conditions and Restrictions shall remain the same.

Dated this 1st day of July, 1999.

GARDENA SERVICE COMPANY


By _____
Title President

STATE OF IDAHO)
)
 } ss.
County of Ada)

On July 1, 1999, personally appeared before me, a Notary Public, Irving Littman, President of Gardena Service Company, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.




Cherie H. Anderson
Notary Public

**WRITTEN STATEMENT TO BE ATTACHED TO AND MADE A PART OF THE WRITTEN
MINUTES OF THE IVGID BOARD'S REGULAR JULY 20, 2017 MEETING –
AGENDA ITEM C – PUBLIC COMMENT – RECENT REVELATIONS
THAT ENTITLEMENT COSTS FOR PHASE 1a DEVELOPMENT
OF THE DIAMOND PEAK MASTER PLAN ("THE DPMP")
ARE IN FACT GOING TO EXCEED \$1M!**

Introduction: What is happening with staff's prosecution of the DPMP with the Tahoe Regional Planning Agency ("TRPA") and U.S. Forest Service ("USFS")? Since I am certain few if any on the IVGID Board, let alone the public, are aware, I thought it was important to bring both up to date in light of the amount of money being committed to a project the SE Group and the Board represented would in no manner be reliant upon the Recreation Facility Fee¹ ("the RFF"). And that's the purpose of this written statement.

History: The DPMP was another initiative of IVGID staff which began in May of 2013 and was completed in July of 2014² (can you believe over four years have passed and we're no closer to breaking ground on this project than we were back then?). Table 18 at page 55 of the 2014 DPMP included a list of anticipated capital expenditures, by phase. Phase 1 entitlement expenses were represented to total \$160K. Based upon this representation, when the 2015-16 five year capital improvement project ("CIP") plan was approved by the Board³, projected phase 1 entitlement costs were budgeted *and funded* at \$150K.

Although the initial DPMP was revised after proposed recommendations made by the DPMP Steering Committee in August of 2015 (primarily to divide phase 1 into two phases, 1a and 1b), and notwithstanding total estimated project entitlement and permitting costs had increased \$72.8K (from \$560K⁴ to \$632.8K⁵), phase 1a entitlement costs remained at the original represented \$160K⁵.

¹ See page 60 of the July 2014 DPMP ["2014 DPMP"] (http://www.diamondpeak.com/uploads/pages/Diamond_Peak_Master_Plan_July2014_c.pdf) which states under "Source of Capital and Debt Service" that "the IVGID Board of Trustees has provided clear and emphatic direction that the planned improvements at Diamond Peak *must be financially self-sustaining and not reliant upon use of the Recreation Facility fee.*" This representation was repeated on page 60 of the August 2015 modified DPMP ["the 2015 DPMP"] ([http://www.diamondpeak.com/uploads/pages/Diamond_Peak_Master_Plan_August2015_reduced_\(1\).pdf](http://www.diamondpeak.com/uploads/pages/Diamond_Peak_Master_Plan_August2015_reduced_(1).pdf)).

² See page 3, project overview, in both the 2014 and 2015 DPMPs.

³ See page 125 at https://www.yourtahoeplace.com/uploads/pdf-ivgid/2015-2016_Budget_Book.pdf.

⁴ See table 18 ("Anticipated Capital Expenditures by Phase") at page 55 of the 2014 DPMP.

⁵ See table 18 ("Anticipated Capital Expenditures by Phase") at page 55 of the 2015 DPMP.

The Board may recall that back in 2015, I was the only one telling the then Board that these numbers were fantasy because TRPA and the USFS would require preparation of an Environmental Impact Statement ("EIS"), IVGID would responsible for the cost of that statement, that cost would total \$350K-\$400K at a minimum, the DPMP phase 1a implementation and permitting costs would likely to total \$1M or more!

Thereafter, on October 21, 2015, the IVGID Board held a special meeting expressly to present the proposed DPMP with recommendations of the DPMP Steering Committee to the public. Page 4 of the packet of materials prepared by staff in anticipation of that meeting⁶ ("the 10/21/2015 Board packet") revealed that staff's estimate of cost "to complete the NEPA analysis and develop the EIS document" had increased to "\$350,000 to \$400,000." It also revealed that "\$250,000...was included in the 2014/2015 Capital Improvement Budget and carried forward, and an additional \$150,000 (wa)s included in the 2015/2016 Capital Improvement Budget." Thus according to IVGID staff, "the combined currently available budget for this project (wa)s \$400,000.

When the 2016-17 five year CIP plan was approved by the Board, projected phase 1a entitlement costs quietly "increased" and were funded by another \$350K⁷.

And again, I objected warning that this staff's proposal was a *de facto* admission that DPMP phase 1a implementation costs were likely to total \$1M or more and if so, future Boards would be unwilling to shelve actual improvement costs because of the previous costs actually incurred.

Although the 2017-18 CIP plan recently approved by this Board has budgeted no 2017-18 funds for phase 1a entitlement costs, it projects another \$150K in expenditures for 2018-19 entitlement costs⁸. I and others I know view this entry as another *de facto* staff admission that DPMP phase 1a implementation costs will likely in fact total a minimum of \$900K or more⁹.

At the recent Community Services Master Plan Workshop held June 24, 2017¹⁰, I am informed IVGID staff admitted that *the cost for the DPMP EIS is likely going to total \$700K!* If this is true, in addition to the \$750K which has ALREADY been previously budgeted and collected⁷, this is another staff admission that DPMP phase 1a implementation costs are now going to total \$1M or more!

⁶ See https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Special_10-21-2015.pdf.

⁷ See page 4 at https://www.yourtahoeplace.com/uploads/pdf-ivgid/FY16-17_5-year_Capital_Projects_%E2%80%93_Draft_Book.pdf.

⁸ See page 6 at https://www.yourtahoeplace.com/uploads/pdf-ivgid/Fiscal_Year_17_18_5_Year_Capital_Project_-_Draft_5_10_17.pdf.

⁹ \$150K in 2015-16, \$350K in 2016-17, and \$150K in 2017-18.

¹⁰ See <https://www.yourtahoeplace.com/ivgid/resources/community-services-master-plan>.

Watch How Staff Go Out of Their Way to Conceal the Fact That the DPMP EIS Alone is Likely Going to Total More Than \$700K: When I first heard that staff had admitted that EIS costs were likely going to total more than \$700K, I made a public records request to examine the books and records which revealed this truism. On July 10, 2017, Susan responded¹¹ that I should examine staff's data sheet for this project which could be accessed from IVGID's web site under its 2016-17 five year CIP summary¹². So that is what I did, and here is what I learned:

Page 4 of that link references 5 year detail for this project¹³ ("Ski Master Plan Implementation - Phases 1a and 1b"). As the Board can see, \$4,473,774 of budgeted expenses have been projected from/to 2016-2021.

Pages 275-76 on that page include a "Project Summary" for "Phase 1a and 1b... Implementation" for the DPMP (I have attached a copy of these pages to this written statement and marked them Exhibit "C"). Note the portion of these pages (noted with an asterisk) which state "Phase 1a...includes completing the necessary environmental entitlements [including an Environmental Impact Statement ("EIS") to satisfy TRPA and National Environmental Policy Act requirements]."

Now turn to the second page where you will see a break down, by year and scope of work, as to how that projected \$4,473,774 will be spent. Note that the *only* projected expense for phases 1a and 1b "pre-design and design" is the \$350K budgeted for 2016-17. The remainder of projected budgeted expenses are for actual construction of phases 1a and 1b. In other words, the only projected costs on these pages associated with preparing the subject EIS are the \$350K budgeted for 2016-17.

Simply put, Susan has led me on a "wild goose chase." The \$350K figure in no way responds to the \$700K figure Brad apparently admitted at the most recent work shop. Moreover, since the 2016-17 fiscal year is over and no portion of the \$700K EIS expense has actually been incurred, what was budgeted in 2016-17 has little relevance to the records I sought to examine.

In my opinion this examination serves as a "playbook" to see how staff conceal important public records which as here, prove embarrassing.

¹¹ Susan's July 10, 2017 e-mail is attached to this written statement as Exhibit "A." I have placed an asterisk next to the portion where Susan directs me as I have represented.

¹² See https://www.yourtahooplace.com/uploads/pdf-ivgid/Item_F.3._-_Indebtedness__etc._7-20-17.pdf.

¹³ I have attached a copy of this summary as Exhibit "B" to this written statement. I have placed an asterisk on top of the column addressing phases 1a and 1b of the DPMP.

Regardless, where are the records which evidence how much staff estimate the required EIS is going to cost?

Notwithstanding the Board Represented to the Public That in No Manner Would the DPMP be "Reliant Upon Use of the RFF¹," That is EXACTLY Where the Money Has Come From: Given the \$250K budgeted for 2014-15 was paid as a Diamond Peak capital project¹⁴, and recreational venue capital projects are allegedly paid for with the RFF¹⁵, contrary to the SE Group's and the Board's representations¹, this \$250K *came from the RFF*. And given the \$150K budgeted for 2015-16 was paid as a Diamond Peak capital project¹⁶, contrary to the SE Group's and the Board's representations¹, this \$150K also *came from the RFF*. And given the \$350K budgeted for 2016-17 was paid as a Diamond Peak capital project¹⁷, contrary to the SE Group's and the Board's representations¹, this \$350K also *came from the RFF*! And where does the Board think the: \$150K projected to be budgeted in 2018-19, \$1.183M projected to be budgeted in 2019-20, \$1.183M projected to be budgeted in 2020-21¹⁸ and \$878.897 projected to be budgeted in 2021-22 are going to come from?

Where Does the Board Think the Balance of the \$1M or More of Phase 1a Entitlement and Permitting Costs is Going to Come From? If \$750K (\$250K in 2014-15, \$150K in 2015-16 and \$350K in 2016-17) has already been budgeted for DPMP phase 1a and 1b entitlement costs, expressly *including* the EIS; more than \$230K of these costs have already been spent (see discussion below); the cost of preparing just the EIS, without reference to any other phase 1a and 1b entitlement costs, is going to exceed \$700K; where exactly does the Board expect the deficient money going to come from?

Of the \$500K Which Has Already Been Appropriated for Phase 1a DPMP Entitlements and Permitting, Nearly \$231K or More Has Already Been Spent: Several months ago I provided the board

¹⁴ See page 53 of the packet of materials prepared by staff in anticipation of the Board's regular May 15, 2014 meeting ["the 5/15/2014 Board packet" (https://www.yourtahooplace.com/uploads/pdf-ivgid/bot_regular_packet_5_15_2014p1.pdf)].

¹⁵ See page 6 of the 5/15/2014 Board packet.

¹⁶ See page 15 of the packet of materials prepared by staff in anticipation of the Board's regular May 21, 2015 meeting ["the 5/21/2015 Board packet" (https://www.yourtahooplace.com/uploads/pdf-ivgid/BOT_Packet_Reg_5-21-2015.pdf)].

¹⁷ See page 330 of the packet of materials prepared by staff in anticipation of the Board's regular May 18, 2016 meeting ["the 5/18/2016 Board packet" (https://www.yourtahooplace.com/uploads/pdf-ivgid/Item_I.3._-_General_Business_-_Res_1847_51816.pdf)] where the IVGID Board tells the public that these CIP costs are paid by the 2016-17 RFF.

¹⁸ See page 60 of the packet of materials prepared by staff in anticipation of this regular July 20, 2017 meeting ["the 7/20/2017 Board packet" (https://www.yourtahooplace.com/uploads/pdf-ivgid/Item_F.3._-_Indebtedness__etc._7-20-17.pdf)]. A copy of this page with circles around these projected budgeted expenditures is attached to this written statement as Exhibit "D."

with a spreadsheet which documented each of these expenditures (and none of this includes the hundreds of thousands of dollars of staff time which has been devoted to the project). I have now updated that spreadsheet to document nearly \$231K of costs¹⁹. Thus we only have \$519K or less remaining to pay for the required \$700K or more for the EIS, and this doesn't include any other design or pre-design expenses associated with DPMP phases 1a and 1b.

But Brad Johnson Disingenuously Tells Us in No Way is the Board Committed to Spending the Remaining Projected \$16,248,462 or More For the DPMP: He states that once staff have completed the entitling process and are ready to pull permits, a further Board can determine whether it actually wants to go forward with any of the separate projects the subject of the DPMP. *Bolderdash!*

Does anyone really believe that after having sunk more than \$1M (now projected to exceed \$1.3M¹⁸) into this pipe dream that most of our community *doesn't* want, any future Board is going to shelve the DPMP? Of course not! I bring these facts to the Board's attention because your staff will not, and it's time to put an end to the DPMP before any more of the RFF is improperly spent. Because if you don't, in the near term future²⁰ once another \$700K or more is committed to this project, it will simply be too late.

Conclusion: SE Group bamboozled past boards into believing they had to move expeditiously on the DPMP because our competitors were implementing their own summer time operations and if we didn't follow suit, we would be "left at the alter" so to speak. Given the process has already taken over four years with many more in sight before one dollar of operational revenue is collected, and our "so called" competitors have already rolled out their summer time operations, it is clear we are already "behind the eight ball" so to speak. Therefore what difference does it make if the DPMP project gets shelved? For these reasons I ask the Board to agendize this subject (suspending future expenditures prosecuting the DPMP) for its next Board meeting.

And You Wonder Why the RFF Which Finances This *Mis-Use* is Out of Control? I've now provided more answers.

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

¹⁹ That spreadsheet is attached to this written statement as Exhibit "E."

²⁰ Mr. Pinkerton has this scheduled this matter for approval on September 13, 2017 (see page 301 of the 7/20/2017 Board packet - the Board's long range calendar).

EXHIBIT "A"

From: "Herron, Susan" <Susan_Herron@ivgid.org>
To: "s4s@ix.netcom.com"
Cc: Kendra Wong <Kwong.ivgid@gmail.com>, Tim Callicrate <tim_callicrate2@ivgid.org>, "Horan, Phil" <Horan_Trustee@ivgid.org>, Peter Morris <Peter_Morris@ivgid.org>, Matthew Dent <dent_trustee@ivgid.org>, 'Jason Guinasso' <JGuinasso@rkglawyers.com>
Subject: RE: Records Request - Documents Related to DPMP Expenses
Date: Jul 10, 2017 10:52 AM
Attachments: SE Group Inv. 31225.pdf SE Group Inv. 31313.pdf

Aaron,

Your request: I would like to examine all invoicing associated with prosecution of the Diamond Peak Master Plan ("DPMP) project, from any vendor whatsoever other than the SE Group, from July 1, 2016 to the present. I have no records to provide to you.

Your request: With respect to SE Group in particular, I would like to examine all invoicing originating from the SE Group and directed to IVGID postdating its May 5, 2017 invoicing. Attached are two invoices from SE Group postdating May 5, 2017.

Your request: At the most recent Community Services Master Plan workshop I have been informed that Brad Johnson represented to members of the public that the cost of the required Environmental Impact Statement/Study ("EIS") for the DPMP was going to cost \$700K. Accordingly, I would like to examine all records relied upon by Mr. Johnson in his coming up with this estimate of cost.

See the 5/24/2017 Board packet, agenda packet page 88, seventh item from the top. You may also want to look at the data sheet for this project which can be found at our website; here is the link:

 <https://www.yourtahoeplace.com/ivgid/financial-transparency/5-year-capital-project-summary>

Page 4 and datasheets starting on page 275.

This completes your document request in its entirety.

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

EXHIBIT "B"

2016/2017 - 5 Year Project Summary Totals

Division	Project Number	Project Title	A - Major Projects New Initiatives			D - Capital Improvement - Existing Facilities			G - Equipment & Software		
			B - Major Projects Existing Facilities			E - Capital Maintenance			F - Rolling Stock		
			C - Capital Improvement - New Initiatives								
2016	2017	2018	2018	2019	2019	2020	2020	2021	Total	Project Type	Number of Projects
3464BD1403	Resurface Main Lodge Decks	48,420	-	-	-	-	\$2,510	100,930	E	1	
3464CD1701	Fuel Management Program	75,000	-	-	-	-	-	75,000	G	1	
3464HE1901	Snowmaking Compressor House (C45)	-	-	350,000	-	-	-	350,000	E	1	
3464HL1501	Diamond Peak Base Facilities Maintenance and Improvements	100,000	-	-	-	-	-	100,000	D	1	
3464NL430	2013 Ski Resort Snowmobile #672	-	12,000	-	-	-	-	12,000	F	1	
3464NL431	2013 Ski Resort Snowmobile #673	-	-	-	15,000	12,000	-	15,000	F	1	
3464NL432	2013 Ski Resort Snowmobile #688	-	-	-	12,700	-	-	12,700	F	1	
3464NL433	2015 Ski Resort Snowmobile #701	-	-	-	-	-	-	12,000	F	1	
3464NL434	2011 Ski Resort Snowmobile #644	12,000	-	-	-	-	10,000	10,000	F	1	
3464NL441	2014 Yamaha ATV #695	-	-	-	-	16,000	-	16,000	F	1	
3464NL442	2012 Yamaha ATV #683	-	-	-	-	21,000	-	21,000	F	1	
3464NL443	2013 Yamaha Rhino (ATV) #674	-	-	-	-	-	-	22,000	F	1	
3464NL444	2008 Yamaha Rhino (ATV) #639	-	-	22,000	-	-	-	200,000	E	1	
3464SI11002	Fan Gurn Purchase and Refurbishment	-	100,000	100,000	-	-	-	50,000	G	1	
3464SI11704	Snowmaking System Improvements	50,000	-	-	-	-	-	37,500	D	1	
3464SI1708	Upgrade Popular Snowmaking Power Alignment	7,500	30,000	-	-	-	-	900,000	G	1	
3468RE0002	Replace Ski Rental Equipment	360,000	-	135,000	220,000	185,000	-	175,000	G	1	
3468RE1609	Replace Ski Rental Machinery	175,000	-	-	-	-	-	2,147,500	B	1	
3469JL1105	Pavement Maintenance, Diamond Peak and Ski Way	50,000	62,500	1,535,000	500,000	-	-	30,440	F	1	
3469P4365	2007 Chevy 1-Ton Pick-up #596	-	30,440	-	-	-	-	30,440	F	1	
3469P4366	2007 Chevy 1-Ton Pick-up #597	-	30,440	-	-	-	-	40,000	D	1	
3469RS1709	Diamond Peak Way Finding Signage Evaluation and Enhancement	40,000	-	-	-	-	-	130,000	F	1	
3469TR1104	Replace 2010 Shuttle Bus #635	-	-	-	-	-	130,000	130,000	F	1	
3469TR1105	Replace 2010 Shuttle Bus #636	-	-	-	43,000	40,000	-	130,000	F	1	
3499BD1710	Diamond Peak Facilities Flooring Material Replacement	21,000	-	-	43,000	-	-	103,000	E	1	
3499LJ1101	Incline Creek Culvert Rehabilitation at Diamond Peak	160,000	1,967,500	1,362,500	-	-	-	3,490,000	B	1	
3499OE1205	Replace Staff Uniforms	113,300	-	-	160,000	-	-	273,500	G	1	
3499OE1502	Ski Services Administration Printer Copier Replacement 1210 Ski Way	-	-	-	10,000	-	-	10,000	G	1	
Total		1,320,420	2,749,302	3,644,200	1,461,000	831,260	10,006,182				41
Site Master Plan Implementation	3653BD1501	SKI Area Master Plan Implementation - Phase 1a and 1b	350,000	1,183,000	1,183,000	878,887	878,887	4,473,774	A	1	
	3653BD1502	SKI Area Master Plan Implementation - Phase 2	-	-	-	100,000	271,000	371,000	A	1	
Total		350,000	1,183,000	1,183,000	978,887	978,887	1,444,774				2
Parks	4378AT727	2000 JD 1500 Arecore Aerator #456 - Shared	-	13,675	-	-	-	13,675	F	1	
	4378AT728	2001 Toro Rake-O-Vac #485	30,500	-	-	-	-	30,500	F	1	
	4378AT729	1996 Lely Fertilizer Spreader #498	-	6,000	-	-	-	6,000	F	1	
	4378AT730	2005 Shatterline Aerifier	-	-	-	8,100	-	8,100	F	1	
	4378AT732	2008 Landpride Overseeder #622	-	-	-	-	17,000	17,000	F	1	
	4378BD1603	Resurface and Coat Incline Park Bathroom Floors	-	-	-	10,200	-	10,200	E	1	
	4378BD1604	Resurface and Coat Preston Park Bathroom, Mechanical Room, and Bleacher Floors	22,600	15,500	-	-	26,900	65,000	E	1	
	4378BD1605	Aspen Grove Flatscape and Retaining Wall Enhancement and Replacement	50,000	-	-	-	-	50,000	D	1	
	4378BD1701	Dumpster enclosure - Incline Park	7,500	45,000	-	-	-	52,500	D	1	
	4378BD1801	Preston Field Retaining Wall Replacement	-	-	-	64,750	225,000	289,750	D	1	
	4378BD2102	Batting cage - Incline Park	-	-	-	-	16,500	16,500	E	1	
	4378DL1702	Incline Park Backflow Device Replacement	20,000	-	-	-	-	20,000	E	1	
	4378DI1703	Village Green Backflow Device Replacement	-	16,000	-	-	-	16,000	E	1	
	4378LJ1207	Pavement Maintenance, East & West End Parks	-	12,500	-	-	-	12,500	E	1	
	4378LJ1303	Pavement Maintenance, Village Green Parking	-	22,500	-	-	12,500	35,000	E	1	
	4378LJ1403	Pavement Maintenance, Preston Field	-	-	-	22,500	-	22,500	E	1	
	4378LJ1602	Pavement Maintenance, Overflow Parking Lot	23,500	-	-	5,000	-	28,500	E	1	
	4378LJ1604	Pump Track Demonstration	50,000	-	9,100	-	-	50,000	C	1	
	4378NL440	2008 Suzuki ATV #617	-	-	-	-	-	9,100	F	1	
	4378NL447	2005 John Deere Pro Gator #572	-	31,425	-	-	-	31,425	F	1	
	4378NL458	2007 John Deere Pro Gator #604	-	-	-	32,000	-	32,000	F	1	
	4378NL459	2008 JD Pro-Gator #623	-	-	-	-	31,500	31,500	F	1	
	4378NL460	2008 JD Pro-Gator #624	-	-	-	-	31,500	31,500	F	1	
	4378P2250	2001 Pick-up Truck 4x4 (1/2-Ton) #474	31,000	-	-	-	-	31,000	F	1	
	4378P2251	2000 Flatbed 4x4 (1/2-ton) #356	-	31,000	-	-	-	32,000	F	1	
	4378P3301	2003 Pick-up Truck 4x4 (3/4-Ton) #554	-	-	-	32,000	-	32,000	F	1	
	4378P4354	2003 1-Ton Service Truck #520	-	-	-	33,000	-	33,000	F	1	
	4378P4355	2004 Pick-up Truck 4x4 (1-Ton) #541	-	20,000	100,000	-	-	120,000	C	1	
	4378RS1501	Replace Previous Incline Park Playground	-	-	-	15,000	100,000	115,000	E	1	
	4378RS1601	Replace Preston Park Playgrounds	-	-	-	17,100	-	17,100	F	1	
	4378SV528	2013 Ball Field Groomer #681	-	-	-	-	-	-	-	-	

EXHIBIT "C"



Project Summary

Project Number:	3653BD1501
Title:	Ski Area Master Plan Implementation - Phase 1a and 1b
Asset Class:	
Division:	53 - Snow Flake Lodge
Budget Year:	2017
Scenario Name:	Main
Budget Status:	Data Entry
Locations:	
Project	BD - Buildings & Structures
Something:	
Active:	Yes

Project Description

The goal of the Diamond Peak Ski Area Mater Plan is to provide new amenities and activities for the community of and guests to the communities of Incline Village and Crystal Bay. Phases 1a and 1b prioritizes revenue-generating activities to generate up-front net operating income to offset the capital costs of subsequent phases. Phase 1a also includes completing the necessary environmental entitlements (including an Environmental Impact Statement to satisfy TRPA and National Environmental Policy Act requirements) to allow all phases of the Master Plan to be approved by the TRPA and the USFS and allow the updated Master Plan to be adopted by TRPA as the master plan of record for Diamond Peak.

X

Activities budgeted for implementation in Phase 1a (pending Board Authorization) include:

- Challenge Course
- Canopy Tour
- Mountain Bike Trails
- Family/Kid's Base Area Bike Loop
- Kid's Pump Track
- Bike Skills Park
- Hiking Trail Improvements
- An Upgrade of the Lakeview Lift Download Capacity
- Formalization of Golden Eagle Bowl Egress

Phase 1b is the implementation (pending Board authorization) of the Alpine Coaster.

Project Internal Staff

All phases of this project will be managed by Diamond Peak and Engineering Division Staff.

Project Justification

Diamond Peak is an under-utilized IVGID asset 7-months of the year. Summer operations will help reduce the risk of poor winter business by moving Diamond Peak from being 100% dependent on the winter ski operation. Summer weather is more reliable as is summer visitation to the area. Some of the proposed improvements for summer operations are also capable of operating during the winter.

193B

Forecast				
Budget Year	Total Expense	Total Revenue	Difference	
2017				
Pre-Design and Design (Phases 1a and 1b)	350,000	0	350,000	
Year Total	350,000	0	350,000	
2018				
Construction Phase 1a	1,183,000	0	1,183,000	
Year Total	1,183,000	0	1,183,000	
2019				
Construction Phase 1a	1,183,000	0	1,183,000	
Year Total	1,183,000	0	1,183,000	
2020				
Construction Phase 1b	878,887	0	878,887	
Year Total	878,887	0	878,887	
2021				
Construction Phase 1b	878,887	0	878,887	
Year Total	878,887	0	878,887	
	4,473,774	0	4,473,774	
Year Identified	Start Date	Project Partner	Manager	Est. Completion Date
2014			Director of Asset Management	

EXHIBIT "D"

1930

193D

2017/2018 - 5 Year Project Summary Totals - FINAL

Division	Project Number	Project Title	Project Type		D - Capital Improvement - Existing Facilities			G - Equipment & Software			
			A - Major Projects - New Initiatives		E - Capital Maintenance			F - Rolling Stock			
			B - Major Projects - Existing Facilities		C - Capital Improvement - New Initiatives						
			2017 - 2018	2019 - 2019	2016 - 2020	2020 - 2021	2021 - 2022	Total	Project Type	Number of Projects	
Ski	3453FF1705	Replace Main Lodge / Snowflake Lodge Dining Furniture and Fixtures	60,000	30,000	-	-	-	90,000	G	1	
	3453FF1707	Replacement of Main and Snowflake Lodge Kitchen Equipment	-	33,000	113,000	-	-	146,000	G	1	
	3462CE1502	Diamond Peak Fiber Network to Luts	-	-	68,000	-	-	68,000	D	1	
	3462HE1502	Crystal Express Ski Lift Maintenance and Improvements	-	-	30,000	-	75,000	55,000	E	1	
	3462HE1702	Lakeview Ski Lift Maintenance and Improvements	115,000	39,000	-	30,000	192,000	376,000	E	1	
	3461HE1711	Lodgepole Ski Lift Maintenance and Improvements	-	-	-	-	60,000	60,000	E	1	
	3462HE1712	Bed For SHL Lift Maintenance and Improvements	-	-	30,000	20,000	-	50,000	E	1	
	3463HE1722	Loader Tire Chains (1 Set)	10,000	-	-	9,750	-	19,750	F	1	
	3463HE1723	2002 Caterpillar 950G Loader #524	-	-	-	-	50,000	50,000	F	1	
	3463HE1726	Replace 2006 Peterbilt 300 Snowcat #595	390,000	-	-	-	-	390,000	F	1	
	3463HE1728	Replace 2011 Grooming vehicle # E45	-	-	-	-	75,000	75,000	F	1	
	3463HV1727	Replace 2008 Grooming vehicle # E28	-	-	70,000	70,000	70,000	210,000	F	1	
	3464BD1302	Vehicle Shop/Snowmaking Pumphouse Improvements	176,122	-	-	-	-	136,122	F	1	
	3464BE1403	Resurface Main Lodge Decks	-	-	-	-	-	-	E	1	
	3464HE1501	Snowmaking Compressor House (C45)	-	-	-	52,510	-	52,510	E	1	
	3464LE1601	Ski Escort Snowmobile Fleet Replacement	12,500	12,500	13,000	13,000	13,500	50,000	G	1	
	3464LE1729	Snowplow # 3DAK	-	-	-	-	-	-	F	1	
	3464LI1501	Diamond Peak Base Facilities Maintenance and Improvements	-	-	-	19,000	-	19,000	F	1	
	3464LV1730	2014 Yamaha ATV #695	-	-	50,000	-	-	50,000	E	1	
	3464LV1731	2012 Yamaha ATV #683	-	-	10,000	-	-	10,000	F	1	
	3464LV1732	2013 Yamaha Rhino (ATV) #674	-	-	16,000	-	-	16,000	F	1	
	3464LV1733	2008 Yamaha Rhino (ATV) #639	-	22,000	-	-	-	22,000	F	1	
	3464SL1002	Fan Gun Purchase and Refurbishment	100,000	-	-	100,000	-	200,000	G	1	
	3464SL1708	Upgrade Popular Snowmaking Power Alignment	30,000	-	-	-	-	30,000	D	1	
	3464SL1713	Snow Gun Mounting Pedestals	9,000	-	-	-	-	9,000	C	1	
	3467LE1703	Child Ski Center Surface Lift	-	-	65,000	-	-	65,000	C	1	
	3468RED002	Replace Ski Rental Equipment	-	135,000	220,000	185,000	-	540,000	G	1	
	3469HE1739	Replace 2010 Shuttle Bus #635	-	-	-	25,000	25,000	50,000	F	1	
	3469HE1740	Replace 2010 Shuttle Bus #636	-	-	-	25,000	25,000	50,000	F	1	
	3469LI1105	Pavement Maintenance, Diamond Peak and Ski Way	25,000	125,000	410,000	1,500,000	-	2,120,000	B	1	
	3469LV1735	2007 Chevy 1-Ton Pick-Up #596	-	32,000	-	-	-	32,000	F	1	
	3469LV1736	2007 Chevy 1-Ton Pick-Up #597	-	24,000	-	-	-	34,000	F	1	
	3469LV1737	1991 9-Passenger Tram #267	-	-	-	-	-	34,000	F	1	
	3469PD1720	Diamond Peak Facilities Flooring Material Replacement	-	-	43,000	40,000	62,000	22,700	F	1	
	3499LI1101	Yerche Creek Culvert Rehabilitation at Diamond Peak	1,367,500	1,962,500	-	40,000	62,000	145,000	F	1	
	3499OE1205	Replace Staff Uniforms	-	-	-	-	130,000	-	3,330,000	B	1
	3499OE1502	Silver Services Administration Printer/Copier Replacement 1210 Ski Way	-	-	-	-	-	130,000	G	1	
	Total		2,305,122	2,425,000	1,279,000	2,459,260	630,200	9,058,542		37	
	3653BD1501	Ski Area Master Plan Implementation - Phase 1a and 1b	-	150,000	1,183,000	1,183,000	578,887	3,394,887	A	1	
	3653BD1502	Ski Area Master Plan Implementation - Phase 2	-	-	-	-	100,000	100,000	A	1	
	Total		150,000	1,183,000	1,183,000	1,183,000	878,887	3,494,887		2	

EXHIBIT "E"

193E

Diamond Peak Master Plan Phase 1a Entitlement Expenses

193F

Date	Description	Amount	Running Balance	Notes
5/21/2014	Entertaining SE Group (Kent Sharp, Claire Humber) at Lone Eagle Grill SE Group Invoicing Prior to August 11, 2014	\$ 248.99	\$ 248.99	Billed to Brad Wilson's
	Staff Time/Expenses Assisting in Plan Preparation/Advocating Community Support	\$ 137,728.75	\$ 137,977.74	Detailed on SE Group's
9/6/2014	Authorization for Brad Wilson to Travel to Vail to Inspect Summertime Facilities	\$ 3,000.00	\$ 140,977.74	Approved by GM Pinke
	Authorization for Bruce Simonian to Travel to Vail to Inspect Summertime Facilities	\$ 2,995.00	\$ 143,972.74	Approved by Joe Wolfe
	Authorization for Jim Smith to Travel to Vail to Inspect Summertime Facilities	\$ 2,995.00	\$ 146,967.74	Approved by Joe Wolfe
9/8/2014	SE Group Invoice	\$ 5,371.83	\$ 152,339.57	
10/3/2014	SE Group Invoice	\$ 4,465.67	\$ 156,805.24	
6/5/2015	SE Group Invoice	\$ 5,620.81	\$ 162,426.05	
7/7/2015	LSC Traffic Consultant Invoice	\$ 1,334.75	\$ 163,760.80	
7/8/2015	SE Group Invoice	\$ 975.00	\$ 164,735.80	
8/8/2015	SE Group Invoice	\$ 3,010.00	\$ 167,745.80	
8/17/2015	LSC Traffic Consultant Invoice	\$ 600.00	\$ 168,345.80	
9/3/2015	SE Group Invoice	\$ 1,101.25	\$ 169,447.05	
9/11/2015	LSC Traffic Consultant Invoice	\$ 1,355.00	\$ 170,802.05	
9/19/2015	LSC Traffic Consultant Invoice	\$ 3,289.75	\$ 174,091.80	A Required Entitlement
10/2/2015	SE Group Invoice	\$ 183.90	\$ 174,275.70	
10/9/2015	LSC Traffic Consultant Invoice	\$ 4,650.25	\$ 178,925.95	
11/4/2015	SE Group Invoice	\$ 40.00	\$ 178,965.95	
11/10/2015	Check #754090 Accompanying TRPA Application for Temporary 2015 DPMP Summertime Operations Approvals Staff Time/Expenses Assisting Steering Committee	\$ 9,354.00	\$ 188,319.95	
12/2/2015	SE Group Invoice	\$ 372.08	\$ 188,692.03	
3/2/2016	SE Group Invoice	\$ 4,142.50	\$ 192,834.53	
4/7/2016	SE Group Invoice	\$ 7,427.50	\$ 200,262.03	
4/21/2016	TRPA Filing Fee Deposit - Approval of DPMP EIS - Permits	\$ 7,692.00	\$ 207,954.03	
5/19/2016	Check # Accompanying Application to TRPA for Temporary 2016 DPMP Summertime Operations Approvals	\$ 777.00	\$ 208,731.03	
7/8/2016	SE Group Invoice	\$ 860.00	\$ 209,591.03	
9/8/2016	SE Group Invoice	\$ 2,517.50	\$ 212,108.53	
10/7/2016	SE Group Invoice	\$ 2,177.79	\$ 214,286.32	
11/2/2016	SE Group Invoice	\$ 237.50	\$ 214,523.82	
12/7/2016	SE Group Invoice	\$ 948.75	\$ 215,472.57	
2/2/2017	SE Group Invoice	\$ 210.00	\$ 215,682.57	

Diamond Peak Master Plan Phase 1a Entitlement Expenses

193GT

Date	Description	Amount	Running Balance	Notes
3/3/2017	SE Group Invoice	\$ 383.75	\$ 216,066.32	
3/16/2017	3/13-16/2017 Pinkerton Washington DC Trip to Lobby in Favor of Disposal of Excess Federal Lands Legislation	\$ 2,104.68	\$ 218,171.00	
3/16/2017	3/13-16/2017 Pomroy Washington DC Trip to Lobby in Favor of Disposal of Excess Federal Lands Legislation	\$ 1,637.80	\$ 219,808.80	
3/16/2017	3/13-16/2017 Wong Washington DC Trip to Lobby in Favor of Disposal of Excess Federal Lands Legislation	\$ 1,888.07	\$ 221,696.87	
4/7/2017	SE Group Invoice	\$ 841.25	\$ 222,538.12	
5/5/2017	SE Group Invoice	\$ 7,473.90	\$ 230,012.02	
6/8/2017	SE Group Invoice	\$ 849.04	\$ 230,861.06	
	Estimated Design	\$ 50,000.00	\$ 280,861.06	2015 Project Design Su
	Estimated Permitting and Entitlements	\$ 200,000.00	\$ 480,861.06	2015 Project Design Su
	Estimated Permitting and Entitlements	\$ 150,000.00	\$ 630,861.06	2015 Project Design Su
	EIS	\$ 400,000.00	\$ 1,030,861.06	October 9, 2015 Staff N
	Additional EIS	\$ 300,000.00	\$ 1,330,861.06	Brad Johnson's Revelat
	Noise Consultant	\$ 10,000.00	\$ 1,340,861.06	A Required Entitlemen
	IVGID's Reimbursement of TRPA Staff's Time	?		TRPA Requirement Yet
	IVGID's Reimbursement of USFS Staff's Time	?		USFS Requirement Yet
	Consultant to Shepherd Through TRPA/USFS Applications	?		Does Anyone Really Th
	Staff Time to Assist Consultant in Shepherding Through TRPA/USFS Applications	?		Staff Doesn't Keep Tra
	Washoe County Approval Costs	?		The County Ultimately
	Washoe County Permitting Costs	?		The County Doesn't Iss
	Engineering Costs Associated With Washoe County Permitting	?		All "Designs" Will Requ
Amounts Estimated by SE Group for All Phase 1 Entitlement/Permitting Costs				\$ 160,000.00
Minimum Amounts Under Estimated				\$ 1,180,861.06

IVGID 7-20-17 Board of Trustees Meeting

Public Comment by Linda Newman

*To be included with the Minutes of the Meeting

Why do we have Public Meetings? Because the democratic process depends on the public having knowledge about the considerations underlying governmental actions as well as the expenditure of public funds.

The purpose of Open Meeting Law is to ensure transparency in the deliberations on which public policy is based. The Nevada Legislature stated that “It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.”

On June 29th, 2017 our Nevada Supreme Court in Case No. 69100 rendered a decision on Open Meeting Law that has a profound impact on our District and our District’s approach to initiating litigation and other legal issues behind closed doors. The Court citing existing Nevada Open Meeting Law, the Attorney General Open Meeting Law Manual and other Court cases, reaffirmed that “in order for a public body to make a decision, there must be a meeting. Although ‘the public body may gather to confer with legal counsel at times other than the time noticed for a normal meeting, when the public body confers with its counsel, its ‘deliberations may not result in any action...A decision to settle a case or make or accept an order of judgment would be an action, which is prohibited in any type of closed meeting.’” The Supreme Court further stated, “Just as a public body would need to meet in an open meeting to determine other material steps in the litigation process, such as initiating a lawsuit or agreeing to a settlement, it must also authorize an appeal of an adverse determination in an open meeting.”

The District’s actions on legal matters taken behind closed doors by the General Manager, three Trustees and Legal Counsel have been unlawful. Therefore, they have now subjected us to Open Meeting Law Violations and unnecessary expense. These unlawful actions may also provide an opportunity for the plaintiffs and defendants in IVGID suits to challenge the viability of litigation initiated by the District without Board of Trustees approval in a public meeting.

As our legal counsel has been providing Open Meeting Law training to our Trustees as well as other Board training, I am extremely concerned about the

instructions and guidance Counsel has provided our Board behind closed doors. I am also concerned about the accuracy of opinions legal counsel has rendered during public meetings. I believe that many of these legal judgments are now subject to challenge and the District should strongly consider whether the RKG firm is the right fit for our District.

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THE COMMISSION ON ETHICS OF THE STATE OF NEVADA v. IRA HANSEN IN HIS OFFICIAL CAPACITY AS NEVADA STATE ASSEMBLYMAN FOR ASSEMBLY DISTRICT NO 32 AND JIM WHEELER IN HIS OFFICIAL CAPACITY AS NEVADA STATE ASSEMBLYMAN FOR ASSEMBLY DISTRICT NO 39

THE COMMISSION ON ETHICS OF THE STATE OF NEVADA v. IRA HANSEN IN HIS OFFICIAL CAPACITY AS NEVADA STATE ASSEMBLYMAN FOR ASSEMBLY DISTRICT NO 32 AND JIM WHEELER IN HIS OFFICIAL CAPACITY AS NEVADA STATE ASSEMBLYMAN FOR ASSEMBLY DISTRICT NO 39

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Supreme Court of Nevada.

THE COMMISSION ON ETHICS OF THE STATE OF NEVADA, Appellant, v. IRA HANSEN, IN HIS OFFICIAL CAPACITY AS NEVADA STATE ASSEMBLYMAN FOR ASSEMBLY DISTRICT NO. 32; AND JIM WHEELER, IN HIS OFFICIAL CAPACITY AS NEVADA STATE ASSEMBLYMAN FOR ASSEMBLY DISTRICT NO. 39,

Respondents.

No. 69100

Decided: June 29, 2017

BEFORE PICKERING, HARDESTY and PARRAGUIRRE, JJ. State of Nevada Commission on Ethics and Tracy L. Chase, Carson City, for Appellant. Legislative Counsel Bureau Legal Division and Brenda J. Erdoes, Legislative Counsel, Kevin C. Powers, Chief Litigation Counsel, and Eileen G. O'Grady, Chief Deputy Legislative Counsel, Carson City, for Respondents.

OPINION

By the Court, HARDESTY, J.:

Assemblymen Ira Hansen and Jim Wheeler seek dismissal of this appeal, arguing that the notice of appeal is void because it was not authorized by the client, the Nevada Commission on Ethics, a public body. Because we determine that an attorney for a public body must have authorization from the client in a public meeting prior to filing a notice of appeal, the notice of appeal is defective and we lack jurisdiction to further consider this appeal.

FACTS AND PROCEDURAL HISTORY

In November 2013, respondent Assemblyman Ira Hansen received four citations from a Nevada Department of Wildlife employee for allegedly violating NRS 503.580, which prohibits certain animal traps from being set within 200 feet of public roads or highways. While the dispute was pending, respondent Assemblyman Jim Wheeler requested, and the Legislative Counsel Bureau (LCB) provided, a written legal opinion analyzing whether box traps and snare traps constitute traps prohibited under NRS 503.580.

On March 5, 2014, Fred Voltz filed an ethics complaint, termed a Request for Opinion (RFO), against each assemblyman with appellant the State of Nevada Commission on Ethics (the Commission). The RFO alleged that the assemblymen used their official positions to benefit personal interests. Voltz claimed that Hansen sought to use the LCB opinion to assist him in the defense of his criminal case.

After the Commission's general counsel reviewed the RFOs, the assemblymen sought dismissal by the Commission. The Commission denied the motion to dismiss on March 3, 2015. On April 2, 2015, the assemblymen filed a petition for judicial review in the district court.

Finding that the Nevada Assembly had sole jurisdiction to consider ethical questions concerning the assemblymen's acts, the district court granted the assemblymen's petition for judicial review on October 1, 2015, ordering the Commission to dismiss the RFOs. The assemblymen served the Commission with written notice of entry of the district court's order on October 26, 2015.

On the advice of the Commission's legal counsel, the chair and the executive director, without consulting the Commission, authorized the filing of a notice of appeal of the district court order directing the Commission to dismiss the RFOs. Three days later, on October 29, 2015, a notice of appeal was filed with this court on behalf of the Commission. The Commission did not hold a meeting prior to filing the notice of appeal.

On December 1, 2015, the assemblymen filed an open meeting law complaint against the Commission in the district court. The complaint alleged that the Commission violated the open meeting law when the Commission filed a notice of appeal without first making its decision, or taking action, to appeal the district court's order in a public meeting. The complaint sought to have the Commission's action of filing an appeal declared void because it was taken in violation of Nevada's open meeting law.

The Commission then held an open meeting on December 16, 2015, seeking to ratify and approve the action taken by the Commission's counsel in filing the appeal. The Commission voted unanimously in favor of appealing the district court's order granting the petition for judicial review and ordering the Commission to dismiss the RFOs. Alleging the notice of appeal is defective, the assemblymen now move to dismiss this appeal.

DISCUSSION

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The assemblymen fundamentally argue that the Commission's notice of appeal is defective because it was filed without proper authorization from the client. The Commission argues that the notice of appeal is valid because its chair and executive director provided counsel the authority to file the notice of appeal. The Commission further argues that it cured any initial failure to provide authority to its counsel when it later authorized an appeal in an open meeting. We conclude that the Commission's contentions lack merit and grant the motion to dismiss this appeal.

The right to appeal rests with the client

"The right to appeal is a substantial legal right," and "[i]t is the client, not the attorney, who determines whether an appeal shall be taken." 7A C.J.S. Attorney & Client § 301 (2015); see also Restatement (Third) of the Law Governing Lawyers § 22(1) (Am. Law Inst. 2000) (stating that the client decides "whether to appeal in a civil proceeding"). Further, the attorney must have such authority prior to filing a notice of appeal, because "there is no implied authority in the event of a judgment adverse to the client, to prosecute review proceedings by appeal and to bind the client for costs and expenses incidental thereto." In re Judicial Settlement of the Account of Proceedings of McGinty, 492 N.Y.S.2d 349, 352 (N.Y. Sur. Ct. 1985). "A client may not validly authorize a lawyer to make the decision[] [whether to appeal] when other law . requires the client's personal participation or approval." Restatement (Third) of the Law Governing Lawyers § 22(2) (Am. Law Inst. 2000).

Like decisions to settle a case, public bodies must comply with Nevada's Open Meeting Law when authorizing legal counsel to file a notice of appeal

The Commission argues that the decision to file a notice of appeal does not require an "action" by the public body. See NRS 241.015(3)(a)(1). In support of its argument, the Commission suggests that the decision to appeal is similar to the decision to file a motion by counsel. We view these litigation decisions differently on two grounds.

First, "action," as applicable to public bodies, is defined as a decision, commitment, or vote "made by a majority of the members present . during a meeting of a public body." NRS 241.015(1). In order for a public body to make a decision, there must be a meeting. NRS 241.015(1). Although "the public body may gather to confer with legal counsel at times other than the time noticed for a normal meeting," Adam Paul Lazalt, Nevada Open Meeting Law Manual § 4.11 (12th ed. 2016), http://ag.nv.gov/uploadedFiles/agmgov/Content/About/Governmental_Affairs/OML_Portal/_2016-01-25_OML_12TH_AGOMANUAL.pdf, when the public body confers with its counsel, its "deliberations may not result in any action . A decision to settle a case or make or accept an offer of judgment would be an action, which is prohibited in any type of closed meeting." 2005-04 Att'y Gen. Open Meeting Law Op. 4 (2005).

While NRS 241.015(3)(b)(2) allows public bodies to hold attorney-client conferences behind closed doors, we agree with our sister state that any "legal advice" exception to the open meeting law cannot be extended "to include a final decision to appeal" because such a decision "transcends 'discussion or consultation' and entails a 'commitment' of public funds." Johnson v. Tempe Elementary Sch. Dist. No. 3 Governing Bd., 20 P.3d 1148, 1151 (Ariz. Ct. App. 2000). Since filing an appeal involves the commitment of public funds, we hold that the decision to file a notice of appeal requires an "action" by the public body. Just as a public body would need to meet in an open meeting to determine other material steps in the litigation process, such as initiating a lawsuit or agreeing to a settlement, it must also authorize an appeal of an adverse determination in an open meeting.

Second, "[w]hether to appeal is an issue much like whether to settle." Restatement (Third) of the Law Governing Lawyers § 22 cmt. d (Am. Law Inst. 2000). This distinction comes into focus when considering the expenditure of public funds in both the decision to settle and the decision to file an appeal. See Johnson, 20 P.3d at 1151.

Here, the notice of appeal was filed without any authorization from the Commission. It is the Commission as a whole that is the client—not the executive director, nor the Commission chair. We therefore conclude that the Commission's notice of appeal is defective, and we lack jurisdiction to consider it. See Guerin v. Guerin, 116 Nev. 210, 214, 993 P.2d 1256, 1258 (2000).

The American Bar Association Model Rules of Professional Conduct indicate that "[u]nder various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority . to decide upon settlement or whether to appeal from an adverse judgment." Model Rules of Prof'l Conduct preamble and scope 18 (2015). The dissent's analysis presupposes that the authority to file a notice of appeal is (1) delegable and (2) was delegated in this case. The dissent also cites City of San Antonio v. Aguilar, 670 S.W.2d 681 (Tex. App. 1984), rejecting a Texas Open Meeting Act appeal filed by a city attorney based on the city attorney's separate authority under the city's ordinances. Here, whether the authority to file a notice of appeal is delegable is not germane to our analysis because the record does not show and nothing in the statutes or regulations concerning the Ethics Commission provides for a grant or delegation of decision-making authority to the Commission's chair, director, or legal counsel to file a notice of appeal without action by the Commission as a whole. See NRS Chapter 281A; NAC Chapter 281A.

Although the Commission, as the client, subsequently authorized its attorney to file a notice of appeal, that authorization was not in effect at the time the notice of appeal was filed. When the Commission subsequently authorized the notice of appeal in an open meeting on December 16, 2015, more than 30 days had passed since the Commission was served with written notice of the district court's order. To the extent the Commission argues that the subsequent authorization cures any open meeting law violation, we note that NRS 241.0365(5) provides that any action taken to correct an open meeting law violation is only effective prospectively. Therefore, even if the Commission's legal counsel had filed a new notice of appeal after receiving authorization from the client, the appeal would have been dismissed as untimely. See NRAP 4(a)(1).

Because the notice of appeal was filed without Commission authorization, we conclude the notice of appeal is defective, and thus, this court lacks jurisdiction to consider the Commission's appeal. Accordingly, we grant the motion to dismiss the appeal.

PICKERING, J., dissenting:

The lawyer who represented the Commission on Ethics in district court filed a timely and proper notice of appeal. Yet, the majority dismisses the appeal for want of jurisdiction. It does so on the bases that (1) after losing in district court, the Commission had to meet and specifically authorize this appeal; and (2) while the Commission eventually did meet and ratify this appeal, its ratification is ineffective because it came too late, after the 30 days NRAP 4(a)(1) allows a party to file a notice of appeal had passed. Both holdings are incorrect and rest on a misconception of Nevada's Open Meeting Act, which applies when a quorum of a public body meets to deliberate or take action, not when it doesn't.

The Commission's executive director and its chair specifically authorized the Commission's counsel to file a notice of appeal, and the Commission thereafter met and ratified it. This was sufficient authorization for the

appeal. I would deny the motion to dismiss, order the parties to complete their briefs, and resolve this appeal on the merits.

I.

Some background provides helpful context for understanding this procedural dispute. The Commission received two ethics complaints, deemed “requests for opinions” or RFOs, against the respondents, Assemblymen Hansen and Wheeler. The complaints grew out of misdemeanor charges the Nevada Department of Wildlife initiated against Hansen under NRS 503.580, for placing snare traps near a roadway. As a member of the Nevada Legislature, Hansen can request legal opinions from the Legislative Counsel Bureau (LCB), a prerogative the public does not share. See NRS 218F.710(2). He did so, asking the LCB for its opinion on whether NRS 503.580, which prohibits placing steel traps within 200 feet of a public roadway, applies to box traps and snare traps. Legislative Counsel cautioned that it might look like a conflict of interest for Hansen to request the opinion and suggested he ask a colleague to make the request. Hansen turned to his fellow legislator, Wheeler. At Wheeler’s request, Legislative Counsel issued a written opinion that NRS 503.580 doesn’t apply to snare traps.

The ethics complaints, or RFOs, allege that the Assemblymen used their official positions, and government resources, to benefit Hansen’s personal interests in defeating the misdemeanor charges against him, when Hansen should have hired his own private lawyer. See NRS 281A.020; NRS 281A.400; NRS 281A.420; NRS 281A.440. As required by NAC 281A.405, Commission counsel and its executive director reviewed the RFOs and advised the Commission they believed it had jurisdiction to proceed. Citing legislative immunity, the Assemblymen filed a prehearing motion to dismiss with the Commission. Although the Commission denied the Assemblymen’s motion, it ordered its executive director to investigate the Assemblymen’s legislative immunity claim.

Dissatisfied, the Assemblymen filed a petition for judicial review or, in the alternative, writ relief in district court, seeking an order terminating the Commission’s proceedings against them. Appearing through its in-house counsel, the Commission objected that judicial review was premature because the Commission had yet to resolve the RFOs. The Commission and the Assemblymen submitted a stipulation and order to the district court in which (1) the Assemblymen agreed to waive confidentiality, see NRS 281A.440(8); and (2) both sides agreed to stay the Commission proceedings until the judicial proceedings—including any appeals—ran their course. After briefing and argument, the district court entered a written order in which it rejected the Commission’s prematurity objection, sustained the Assemblymen’s legislative immunity claim, and directed that “the Commission terminate its proceedings.”

Under NRAP 4(a)(1), the Commission had 30 days to file a notice of appeal. At the direction of the Commission’s executive director and its chair, Commission counsel timely did so. After letting the 30-day appeal period run, the Assemblymen filed a second suit in district court, in which they challenged the validity of the notice of appeal under the Nevada Open Meeting Act, NRS Chapter 241 (NOMA), because the Commission did not conduct a public meeting to authorize this appeal before filing it. In response, the Commission noticed and convened an open public meeting and ratified the notice of appeal.

The Assemblymen then filed the motion to dismiss now before the court. They argue that, because NOMA invalidates the Commission’s original notice of appeal, NRS 241.036, and limits the ratification vote to prospective effect only, NRS 241.0365(5), and because the time for filing a proper notice of appeal has expired, dismissal is required. In the alternative, the Assemblymen ask for a stay of this appeal while they pursue their NOMA suit in district court.

II.

A.

The difficulty with the Assemblymen’s argument—and the majority’s analysis—is that Nevada’s Open Meeting Act does not apply to the decision the Commission’s counsel, its executive director, and its chair made to file the notice of appeal. The eight-member Commission is, to be sure, a “public body” for purposes of NOMA. NRS 241.015(4); see NRS 281A.200(c) (“The Commission on Ethics, consisting of eight members, is hereby created.”). So, if enough members of the Commission to constitute a quorum had met privately and taken action as a group, NRS 241.036 and NRS 241.0365(5) would apply, and the Assemblymen would prevail because, under NRS 241.036 “[t]he action of any public body taken in violation of any provision of [NOMA] is void,” and, under NRS 241.0365(5), “[a]ny action taken by a public body to correct an alleged violation of [NOMA] by the public body is [only] effective prospectively.”

But “action,” for purposes of NOMA, is a strictly defined term of art. Insofar as relevant here, NOMA defines “action” to mean a “decision,” “commitment or promise made,” or “an affirmative vote” taken, by “a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body.” NRS 241.015(1)(a), (b), (c) (emphasis added). For purposes of NOMA, “meeting” also carries its own definition: “The gathering of members of a public body at which a quorum is present, whether in person or by means of electronic communication, to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.” NRS 241.015(3)(a)(1) (emphasis added). Neither the Commission’s counsel nor its executive director is a member of the Commission, and its chair met only with them. The decision to appeal thus did not implicate NOMA, because there was no quorum of the Commission’s members and, with no quorum, there was no meeting at which an action was taken.

The decision in *Dewey v. Redevelopment Agency of Reno*, 119 Nev. 87, 64 P.3d 1070 (2003) (en banc), is on point (and binding on this three-judge panel of the court). Dewey held that NOMA did not apply to a meeting between less than a quorum of a public body and staff. Id. at 88-89, 63 P.3d at 1071. As Dewey recognizes, by limiting NOMA to “meetings,” and defining “meeting” to require a “quorum,” the Nevada Legislature joined “a majority of states in adopting a quorum standard as the test for applying the Open Meeting Law to gatherings of the members of public bodies.” Id. at 95, 63 P.3d at 1075. Under the quorum standard, “a quorum is necessary to apply the Open Meeting Law to a given situation.” Id.; see Patricia E. Salkin, *American Law of Zoning* § 3A:6 (5th ed. 2016) (noting that “most states require a quorum to be present for Open Meetings Laws to apply to a meeting”) (citing Dewey and collecting cases). Absent a showing that less than a quorum of members has met serially with the “specific intent” of evading NOMA by avoiding a quorum, see NRS 241.015(3)(a)(2)—nothing suggests that here—NOMA “only prohibits collective deliberations or actions where a quorum is present.” *Dewey*, 119 Nev. at 95, 64 P.3d at 1075.

A quorum of the Commission did not meet and decide to file the notice of appeal; the decision was made by the Commission’s counsel and the executives to whom she answers. The Commission’s chair, who participated in the decision, was the only Commission member involved, and a single member of an eight-member body does not constitute a quorum. Under Dewey, without a quorum, NOMA and its invalidating statutes, NRS 241.036 and NRS 241.0365(5), do not apply.: See *City of San Antonio v. Aguilera*, 670 S.W.2d 681, 686 (Tex. App. 1984)

(rejecting open meeting law challenge to notice of appeal filed by city attorney after consultation with city manager: "The Open Meetings Act does not apply where definitionally there was no 'meeting'"); State Bank of Burleigh Cty. Tr. Co. v. City of Bismarck, 316 N.W.2d 85, 88-89 (N.D. 1982) (rejecting open meeting law challenge to notice of appeal because a public meeting was not required to authorize its filing); see also Mohr v. Murphy Elem. Sch. Dist. 21 of Maricopa Cty., 2010 WL 1842262 *2 (D. Ariz. 2010) (the "complaint fails to state a violation of the open meeting law, because it contains no allegation that legal action was taken outside of a public meeting by a quorum of Board members") (citing Dewey, 119 Nev. 87, 64 P.3d 1070, aff'd mem., 449 Fed. App'x. 650 (9th Cir. 2011)).

The majority relies on Johnson v. Tempe Elementary School District No. 3 Governing Board, 20 P.3d 1148, 1151 (Ariz. Ct. App. 2000), but their reliance is misplaced. In Johnson, a majority of the members of the public body met privately to authorize an appeal when, by the terms of Arizona's open meeting law, the meeting needed to be open, which invalidated the vote to authorize the appeal. Had there not been a "meeting" at all—the situation here—the open meeting statute would not have applied. See Boyd v. Mary E. Dill Sch. Dist. No. 51, 631 P.2d 577, 579-80 (Ariz. Ct. App. 1981) (affirming dismissal of open meeting law claim where the alleged legal action was taken by less than a quorum of the board), cited in Mohr, 2010 WL 1842262 at *2.

B.

This leaves the argument, raised by the Assemblymen for the first time in reply, but see Phillips v. Mercer, 94 Nev. 279, 283, 579 P.2d 174, 176 (1978) (court will not consider an issue first raised in reply), that only the governing board of a public body can authorize an appeal, not the entity's chair, its executive director, or its in-house lawyer. The decision to appeal is important enough that, if the client and lawyer cannot agree, the client's decision controls. See Restatement (Third) of the Law Governing Lawyers § 22 (Am. Law Inst. 2000), cited in majority opinion at 4. But that does not translate into a rule that only a client entity's governing board can authorize an appeal, as the majority suggests the Restatement supports. See id. § 96 cmt. d ("Who within an organization or among related organizations is authorized to direct the activities of a lawyer representing an organization is a question of organizational law beyond the scope of this Restatement"). Surely a lawyer who has represented an entity client in district court can accept the client representative's instruction to file a notice of appeal without demanding a board of directors' vote authorizing the appeal to proceed. See Cty. Council v. Butcher, 780 A.2d 1137, 1145 (Md. 2001) (reversing order dismissing appeal as unauthorized and noting that "[i]n a governmental attorney-client relationship, it is not uncommon to find an established policy giving the government attorney standing instructions and authority to take all actions necessary to protect the government client's appellate interests until such time as the client may adequately consider the matter").

A lawyer representing a client before a tribunal is presumed to have actual authority to do so. See Restatement (Third) of the Law Governing Lawyers § 25 (Am. Law Inst. 2000). The corollary to this rule is that an objecting party "bears the burden of persuading the tribunal that a lawyer's appearance was without actual authority." Id. cmt. c. Here, the Assemblymen's NOMA-based motion to dismiss fails to meet that burden. See Cty. Council, 780 A.2d at 1143 (observing that an "appellate court, upon its own motion or even that of opposing counsel, will not inquire ordinarily into the authority of the attorney to file the appeal"); City of Bismarck, 316 N.W.2d at 88 ("In the absence of a showing that the governing body intends otherwise, we see no reason to limit the authority of the city attorney to the conduct of law business at the trial level only."); Hopkins Cty. Bd. of Educ. v. Hopkins Cty., 242 S.W.2d 742, 743 (Ky. App. 1951) (because "[t]he authority given appellants' attorneys to prosecute this lawsuit would ordinarily include carrying it through to a final determination [on appeal] . it was not necessary that special authority, by resolution or otherwise, need have been given appellants' attorneys to prosecute this appeal"); City of San Antonio, 670 S.W.2d at 685 ("Since the appellees do not present any evidence to rebut the presumption of authority in this case, we find that the city attorney had authority to pursue this appeal.").

C.

But even accepting, arguendo, that the Commission's chair, executive director, and in-house counsel did not have authority to appeal on their own, without approval of the Commission itself, the motion to dismiss still should be denied, because the Commission properly ratified the appeal in an open meeting convened for that purpose.

"A lawyer's act is considered to be that of a client in proceedings before a tribunal . when . the client ratifies the act." Restatement (Third) of the Law Governing Lawyers § 26. Here, the Commission unanimously ratified the decision to take this appeal, albeit after the 30-day time for appeal expired. If NOMA applied, the notice of appeal would be ineffective because such ratification would only have prospective effect. See NRS 241.0265(5). But, as has been shown, NOMA did not apply to the decision to file the notice of appeal because there was no quorum and no meeting. See supra § I.A. Normal ratification principles therefore control, under which a client can ratify an appeal after the time for appeal has passed, so long as the lawyer timely filed the imperfectly authorized notice of appeal. Linn Cty. v. Kindred, 373 N.W.2d 147, 149 (Iowa Ct. App. 1985), noted in Restatement (Third) of the Law Governing Lawyers, *supra*, § 26 cmt. e; see Dutcher, 780 A.2d at 1145 ("The District Council's subsequent ratification of this appeal . , four days after the expiration of the statutory 30 day appeal period, does not defeat the timeliness of the filed appeal."); City of Tulsa v. Okla. State Pension & Ret. Bd., 674 P.2d 10, 13 (Okla. 1983) (reversing court of appeals order dismissing an appeal as unauthorized and untimely because the public entity did not ratify the notice of appeal the city attorney filed until the time for appeal had passed; even "[i]rregular and void acts may be ratified or confirmed at a subsequent meeting, provided it is a valid or legal meeting"). The Commission properly ratified the appeal; it should be allowed to proceed.

For these reasons, I respectfully dissent.

FOOTNOTES

1. The Commission argues that it is unreasonable for its counsel to be expected to gain approval of a quorum, in an open meeting, in order to defend the Commission, especially considering the time constraints involved in filing an appeal. However, public bodies need only give three working days' notice prior to holding a meeting. NRS 241.020(2). Acknowledging that such a requirement could create frustration for public bodies in receiving legal advice, this court previously explained that "[a]ny detriment suffered by the public body in this regard must be assumed to have been weighed by the [Legislature in adopting this legislation]." McKay v. Bd. of Cty. Comm'r of Douglas Cty., 103 Nev. 490, 496, 746 P.2d 124, 127 (1987).
2. The underlying premise for the dissent is that the open meeting law does not apply because there was no meeting. But that argument ignores the fact that actions by a public body must be taken by the body in an open meeting conducted in accordance with the open meeting law. When the action taken by the public body requires an open meeting, failure to hold an open meeting itself is a violation. NRS 241.015. There is no question in this case that there was no meeting.
3. The dissent bases its conclusion, in part, on ordinary rules of ratification. However, it concedes that under

the open meeting law, any attempted ratification by a public body is only effective prospectively.

4. The Commission also argues that the LCB lacks the ability to represent a legislator's private interests. Because the RFOs were submitted against the assemblymen in their official capacity, the LCB is representing the assemblymen in their official capacity, something it is authorized to do, including being able to "prosecute, defend, or intervene in any action or proceeding before any court. NRS 218F.720(1), NRS 218F.720(6)(c)(2) (defining "Legislature" as including "any authorized or former . member . of the Legislature"). The Commission further argues that assemblymen are not authorized to file an open meeting law case pursuant to NRS 241.037. Because the motion to dismiss concerns the validity of the notice of appeal filed without an open meeting, we do not address the assemblymen's authority to file an open meeting law complaint under NRS 241.037.

5. NRS 241.015(3)(a)(2) was not considered in Dewey because it did not become a part of NOMA until 2001. 2001 Nev. Stats., ch. 378, at 1836.

6. Even if NOMA applied, the Assemblymen's remedy would lie in the district court action they filed after the Commission filed its notice of appeal, not in a motion to this court to dismiss the Commission's appeal. See NRS 241.037(2) ("Any person denied a right conferred by this chapter may sue in the district court of the district in which the public body ordinarily holds its meetings . to have an action taken by the public body declared void."). It is not clear to me the second suit is timely, given the stipulated stay of Commission proceedings in district court, which specifically contemplates an appeal and was filed more than 60 days before the Assemblymen filed their second suit. See NRS 241.037(3)(b).

Hardesty, J.

I concur: Parraguirre, J.

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