

MINUTES

AUDIT COMMITTEE MEETING OF SEPTEMBER 1, 2020 Incline Village General Improvement District

The Audit Committee meeting of the Incline Village General Improvement District was called to order by Audit Committee Chairman Matthew Dent on Wednesday, September 1, 2020 at 5:06 p.m. at the Boardroom located at 893 Southwood Boulevard, Incline Village, Nevada. This meeting was conducted virtually via Zoom.

Director of Information Technology Mike Gove said that the team is working through some challenges with Zoom toll free numbers and gave the public a non-toll free number to call.

A. ROLL CALL OF THE AUDIT COMMITTEE MEMBERS*

On roll call, present were Matthew Dent (Trustee, Chair), Cliff Dobler (At-Large Member), Sara Schmitz (Trustee), Raymond Tulloch (At-Large Member) and Derrek Aaron (At-Large Member).

Also present was Staff member Director of Finance Paul Navazio.

There were no members of the public present (State of Nevada, Executive Directive 006, 016 and 018 and 021).

B. PUBLIC COMMENTS*

Aaron Katz said that the system is screwed up as he doesn't know what the problem is. Dillon's Rule – local government exists only for prescribed powers and IVGID's are NRS 318. When District General Counsel cites to code sections, he should be looking for express powers and they better be there. Mr. Katz then recited several paragraphs of the Nevada Revised Statutes and then said that employee business travel, rewards, celebration expenses, monetary or non-monetary charities or non-profits were not addressed anywhere and that he should simply respond that there is substantial doubt. This should be resolved against IVGID Staff as they are instructing but he won't do that. Rather than speak the truth, he is appeasing Staff because he wants to be IVGID's fixer which was the same problem we had with the previous attorney. The Board wants an attorney that criticizes the Staff when they are inappropriate so you better have a talk with District General Counsel to be sure that is done; Mr. Katz then said that he would be submitting a written statement.

Margaret Martini said that she greatly appreciates the Audit Committee's professional approach to prioritizing the independent evaluation of the District's

Minutes

Audit Committee Meeting of September 1, 2020

Page 2

most contentious accounting and reporting practices. After more than six years, our citizens have documented inappropriate and unlawful practices that have materially distorted the District's financial statements. This has created a cascade of overstating revenues and understating operating expenses as well as concealing non-compliance with Board policies to create a false picture of the District's actual operations and financial health. Over those years, the previous Audit Committee, whose members also constituted the previous Board majority, has been silent, while management, without any Board investigation or oversight, has continued those practices. She supports this Committee's engagement of an independent expert accounting team to analyze these matters and she applauds Trustee member Schmitz for leading this effort. As our Board Treasurer and the newest addition to our Board, she believes that she will bring a fresh perspective and will work effectively with Moss Adams, this Committee, Staff and members of our community to substantively review these accounting policies and take the necessary corrective measures. This is a major step forward in ensuring that our District's financial statements are prepared in compliance with all relevant Nevada laws, regulations and Government Accounting Standard Board Statements. As a property owner, she looks forward to an accurate accounting of exactly how her taxes, rates and fees are being spent and how well all of the District's activities are being managed.

Diane Becker said she is a resident of Incline Village and that she has reviewed District General Counsel's presentation which hasn't addressed her key points. Two things that he needs to do is to give real advice and review the specific policies that he raises in NRS 318. The Board can delegate and the policies should be reviewed to ensure they are in compliance. Review the type of expenditures as we have heard, from Ms. Gumz, about some expenditures in 2019, specifically on April 15 and April 22, 2019, that were three expenditures that added together were food for ski employees. These expenditures need to be reviewed and then advise the employees what they can and cannot spend on. Also, we need case law references. She is concerned that the NRS allows counties to make these expenditures but not GIDs. She is not against employee expenses or charity donations but that they can only be done in compliance with the NRS so that the Board is insulated. She looks forward to hearing more from District General Counsel as she doesn't think he has done enough to alleviate concerns on this issue.

Frank Wright said that he is a candidate for the Board and that he was going to comment on something totally different but after listening to the Dillon's Rule conversation he wants to say that we had bad legal advice; bad advice and opinions. If it is not stated, then IVGID shouldn't be doing it. If we are spending

money where it is breaking the law or in a real funny zone, we need a real clear interpretation of what we can or can't do. He ran across a statement by our previous attorney that said we must follow our own laws. Now, we have a new attorney that too wants to get around things. If it isn't stated, then we can't do it. We need to make sure our Legal Counsel understands Nevada law. Also, he just received an opinion from the Nevada Attorney General that IVGID didn't violate the Open Meeting Law but that if they continue, they will. He filed his complaint in 2018 and 2 years and 4 months later, he got this rendition from the Attorney General which is another problem that is frustrating. Thank you.

Linda Newman said she supports the Committee's unanimous decision to engage an independent accounting firm to evaluate the propriety of Management's failure to use Enterprise funds to account and report the activities of Community Services and the Beaches, the treatment of Punch Card utilization, as well as the capitalizing of consulting services and repairs. She also encourages the inclusion of analyzing the treatment of the \$2 million of revenues collected annually for the future replacement of 6 miles of failing effluent pipeline as current, rather than deferred revenues as well as considering the sums collected as part of the unrestricted net position of the Utility Fund. She strongly encourages this Committee recommend securing the opinion of the Attorney General on the concrete powers of our General Improvement District as it relates to the use of our taxes, fees and charges for services to make cash and non-cash contributions to non-profits. Although there is a provision in NRS 244 for Counties on charitable donations, NRS 318 does not explicitly grant these powers to General Improvement Districts. Interpretations of NRS 318 from our current legal counsel lack the gravity of an opinion from the Office of the Attorney General. In her view, this is the best way to resolve this matter. As the District's 2020 financial statements are currently under audit, she highly recommends that you undertake the review of the annual internal control audit plans and review management's annual assessment of their internal controls for the prior year's audit plan – as stated in Policy 15.1.0. In light of the mounting correspondence raising critical issues, along with the absence of a comprehensive framework of internal controls, and the discovery daily of other pressing matters under this Committee's purview, she encourages this committee to secure additional resources to assist you. As also stated in Policy 15.1 –the engagement of an independent financial advisor might be best undertaken sooner rather than later.

C. APPROVAL OF AGENDA (for possible action)

Audit Committee Chairman Dent asked for any changes; none were received; the agenda is approved as submitted.

D. GENERAL BUSINESS ITEM (for possible action)

D.1. Review with Audit Committee, long range calendar (Requesting Trustee: Audit Committee Chairman Matthew Dent)

Audit Committee Chairman Dent said that the next Audit Committee Meeting is September 30 and that there will be a CAFR update. Staff is a little bit delayed in getting our items to them and they were sent to Eide Bailly this week and they are moving forward. Eide Bailly has a couple of items that they want to see before the CAFR is finalized. Director of Finance Navazio said that there needs to be some discussion about a policy, that needs to come before the Audit Committee, as they are being updated and that one thought is to have a standing item for an internal controls update; we can talk about how to engage with the Audit Committee and give them a better sense of progress. Audit Committee Chairman Dent said that we also may want to look at the scope for the auditor in order to look at an RFQ as we want to do that sometime in October so he would like to look at that process taking place. At-Large Member Cliff Dobler said that he is not clear and asked if this item was about asking us what we want on the agenda? Audit Committee Chairman Dent said that you can e-mail anything you want on the agenda to him and that he will get that on there and that he is asking Staff to plug in dates or we can meet more often as he is just putting in placeholders so you can request now or you can send an e-mail. At-Large Member Dobler said he would like to request a couple of things now – review of the welcome, transmittal, and management discussion and analysis (MD&A) which are produced by management. In 2019, it consisted of 18 pages of data and as he went through it, there were 3 components and so many errors that he would like to see them and review them. Audit Committee Chairman Dent said then let's have them on the September 30 meeting. Director of Finance Navazio said that typically the MD&A is the last thing prepared because it draws from the audited statements and that it might be possible to have a draft ready for September 30, however his thought would be that it should be on the October meeting agenda and that he needs to check as he doesn't know how far along the audit will be thus he would like to put that on the October 28 meeting agenda. Audit Committee Chairman Dent asked if the Director of Finance could send that material to the Audit Committee members prior so that we can have a discussion. At-Large

Member Dobler said that his thought process is that no one will read them because they will fall asleep. They need to go on a big diet as we don't need to be disclosing things that we don't need to. His goal is to work with the Director of Finance and the Audit Committee to trim them down to something that matters. At-Large Member Derrek Aaron said that he concurs and that per the milestone schedule that he thinks was presented that we need to see those deliverables including the kickoff meeting minutes for the whole audit. It is his understanding that there was people that were left off and that is pretty significant of being left out. He would like to see that presentation and then anything we are handing off to Eide Bailly. The content in the whole audit package may be boiler plate stuff. At-Large Member Dobler said yes, let's see the boiler plate items. Audit Committee Member Schmitz said that in Policy 15.1.0, and specifically 2.4.1., it is her understanding and feeling that when materials are being delivered to the auditor that materials should also be shared with the Audit Committee so that we have the opportunity to understand what is being shared so we are involved in the information process so we aren't waiting for the cake in the oven to be finished. The materials should be shared with the Audit Committee at the same time. Director of Finance Navazio said that for the MD&A and the cover, he has no problem with providing that concurrent with it going to the auditors. He has had discussions with the Audit Committee members that there is room for improvement and that he can provide a narrative to explain the financial results to someone who may not be a CPA or who doesn't want to comb through all the schedules. The approach he has always taken is to communicate, in an accessible way, in the summary of the document. He is not using IVGID's old template and that if someone wants to see a draft or examples, he is happy to share that information and get feedback. At-Large Member Dobler said that it doesn't matter what your philosophy is, he wants to see it. District General Counsel Joshua Nelson said that the Audit Committee is discussing details of future agenda items and that he is recommending that you keep it to the agenda items. Audit Committee Member Schmitz said that she received an e-mail from District General Manager Winquest that said he is going to present the whistleblower procedure and the other thing is, before we start the budget process, and this is one of the things that she has discussed with the Director of Finance and the District General Manager, is budgeting for things that are available to the general public. We have had some discussion about those types of costs and activities, which is budgeted under the General Fund as

opposed to Community Services, that aren't restricted to only parcel owners because we are doing things for the general public so it is something that we should discuss. At-Large Member Dobler said that the odd thing about it is that if you take a look at the resolution for facilities and beaches, parks aren't mentioned which is kind of ironic. Audit Committee Chairman Dent said he would agree and asked if a 3 p.m. start time works for everyone; all members agreed to the proposed time of 3 p.m. for September 30. Audit Committee Chairman Dent said that the deadlines for the agenda items is September 18 and that is to him and then the deadline for back up materials is September 22.

D.2. Review, discuss and possibly make a recommendation to the Board of Trustees to allocate funding and approve a proposal for the analysis and recommendations related to Enterprise (proprietary) vs. Special Revenue (governmental) fund accounting, Central Services cost allocations, punch card accounting for the Community Services and Beach Funds, and the capitalization of consulting and repairs for all of the District's Governmental and Proprietary Funds (Requesting Trustee: Audit Committee Member Sara Schmitz)

Audit Committee Chairman Dent said back in March, at a Board of Trustees meeting, the Board of Trustees voted to authorize this to happen and allow the Audit Committee Chair to engage the consultant so there is no action necessary tonight and that he wanted to make sure we are all on the same page and that this will go onto the Consent Calendar next Wednesday just to do a modification of the District's budget. Audit Committee Member Schmitz said that at the March 11 meeting, the Board of Trustees did authorize the Audit Committee Chair to engage and that authorization was given so does this need to go back to the Board of Trustees; she thought that District General Counsel Nelson informed her that it is up to the Chair? District General Counsel Nelson said that this is a budget clean up item and that it doesn't affect the issuance of the contract but it is something that we want to clean up. At-Large Member Dobler said that he is a bit confused as how could you put it on the Consent Calendar if you have no budget for it. It was authorized in the last fiscal year and now you are turning around and saying we don't have the funds? Now you are coming back and saying put it on the Consent Calendar because we don't have budget money? Director of Finance Navazio said he

wanted to clarify; there are two issues – the authority provided by the Board of Trustees was to proceed with a contract and that the Audit Committee can take that action. This authority was given last March and if the committee had taken action, and in hindsight, they should have either included it or taken action. Money was added for internal controls and utilities but money was not put in the budget so the only thing that is being suggested is increasing the budget to provide the funding for the study or, alternatively, the Board of Trustees could re-direct from some other purpose. Basically, it is a budget clean up item which is a companion item to put the appropriation in place. At-Large Member Raymond Tulloch asked why wasn't it accrued and carried forward into this budget. Audit Committee Member Schmitz said that she didn't want to put words into the Director of Finance's mouth but what has been discovered here is that potentially this happened at a meeting before the current Director of Finance was an employee of the District so it got missed and fell through the cracks. It was overlooked and we have to deal with it. Director of Finance Navazio said he thinks that is accurate and we solve it by bringing it forward. Audit Committee Member Schmitz gave an overview of the submitted materials and stated that only one response was received and that the other firm was unable to provide a response due to their capacity. There is no conflict in using Moss Adams because it is a completely different discipline from the contract review. At-Large Member Dobler said so we have a proposal here and that his biggest concern is, since he is the sponsor of the errors, that he wants to make sure that we are delivering all of his memorandums to assist them in making their decisions as he doesn't want this to be a one-sided review as he has worked on this for 5 years as well as the memorandums. Audit Committee Member Schmitz said she would feel remiss that she didn't include the information that was shared and that yes, your memorandums were shared as well as the document that the Director of Finance put together on punch cards. She will be delivering the same items again and she will take this on as an action item. There may be other items that would come out in the kickoff meeting and you would be there to be interviewed as well as the Director of Finance. This approach is going to be open, transparent and inclusive so everyone will be willing to accept the outcome of this engagement. At-Large Member Tulloch said that the proposal looks pretty good and it should be sponsored by the Audit Committee so the vendor understands who is the client. His only remark is total cost proposed and there is a cost for different levels so is there a breakdown for

different levels? Also he has never seen an IT charge before? At-Large Member Aaron said that there is one identified firm, Moss Adams, and asked if there was another firm that hasn't been disclosed that we are still considering and are we still waiting on this firm to share something with us? Audit Committee Chairman Dent said that he reached out to HintonBurdick and that they can't meet our needs at this time so the only proposal is from Moss Adams. At-Large Member Aaron said we should take the time to find another firm as he would really like to consider two firms as we need to make sure we have interviewed a couple of firms and make our case. He doesn't know if he would give his approval without another firm to consider. At-Large Member Tulloch said that he takes At-Large Member Aaron's point and he is always one for competitive bidding. Given that the total amount is \$28,000, he doesn't think it is justified to delay this given its importance. At-Large Member Dobler said that he thinks that the impact, if these errors are proven to be errors and that they are requiring restatement, will be a major impact on delivering a final audit and that will require some major misstatement so delaying any longer is shooting ourselves in the foot; let's approve it tonight and get it started. Audit Committee Member Schmitz asked Staff if in working with Moss Adams, as it relates to working with the firm, would you be comfortable engaging them in another project such as this? Director of Finance Navazio said that every project is a little different and this is a different group so no, he doesn't see any real issues or concerns with the experience to date and that he is anticipating this one getting off to a quicker start as it is a little more finite and if we are familiar with their internal process, this one will go smoother. He did do some due diligence on Moss Adams with reference checks, etc. and all had very positive feedback so he has no concern with the Audit Committee proceeding and that eyes wide open is all that we ask. District General Manager Winquest said he agrees as the District hasn't been working with Moss Adams as long but that they seem to be very solid. He does give merit to what At-Large Member Aaron said as the District has been accused of sole sourcing and he has had several conversations with At-Large Member Dobler but that Audit Committee Member Schmitz did do a good job of explaining and providing an understanding that there is a reason. She did try to solicit two bids and one firm said that they couldn't meet our expectations. It was explained on the record so the community doesn't think we are hiring our favored collaborators. Audit Committee Chairman Dent said we wanted to go with a different firm so it didn't look like we were stacking

the deck but given that we have two months to bring this across the finish line, we do need to move forward with this item. If not for the timing, he would agree that we should be getting more bids. Finally, we need to take out the District and put in the Audit Committee. Audit Committee Member Schmitz said that they did a good job considering the timing and that when she read the meeting minutes, At-Large Member Dobler had been bringing up a particular concern which she misinterpreted and that was the question about the Utility Fund and how it has been representing collecting the \$2 million from ratepayers. She also knows that it is an item for the potential CAFR because we did restrict \$9.6 million and that she thinks that At-Large Member Dobler's other issue will be handled in this year's audit. She wanted to acknowledge that he mentioned it and that she didn't get it into the scope of work. Audit Committee Chair Dent said, in his discussions with Eide Bailly, he is going to be sending over a couple of follow up items that were discussed. At-Large Member Aaron said that he does understand the serious nature of getting these points reviewed and that he does appreciate the oversight. Given the nature of this item, he probably is not going to support it. He is sure that Moss Adams is a capable firm and that he will express his opinion at the appropriate time. Audit Committee Chair Dent said that there will be no vote at this time and that we will get clarity and provide feedback. At-Large Member Dobler said he doesn't understand the action. District General Counsel Nelson said that it gets to the discussion at the beginning of the item and that is after review, we have determined that the authority for the Audit Committee Chair was already provided at the March Board of Trustees meeting so there is no sending this back as the Audit Committee Chair already has the authority to execute the contract.

D.3. Review, discuss, and possibly take action related to the following communications that have been received and are included:

- 3.D.a. April 2, 2020 e-mail communication regarding Dillon's Rule from Ms. Diane Heirshberg and May 2, 2020 e-mail communication from Attorney General Opinion (dated 2005) from Joy Gumz (13 pages)**
- i. Update/Response (Requesting Member: District Legal Counsel Joshua Nelson)**

District General Counsel Nelson said that he did really appreciate the public comments that we got; he will provide an overview of Dillon's Rule, will then go over the 8 items, and then talk about the next steps which might include, if agreeable to the Audit Committee, a written public opinion that can be posted on the District's website. District General Counsel Nelson then gave a verbal overview of the submitted materials and Dillon's Rule. Audit Committee Member Schmitz said that one of the things that we have discussed at a prior meeting is how restrictive Washoe County is. She did some fact finding and Washoe County is very limiting and that they only allow expenses for meals during meetings which requires the approval of the Washoe County Commissioners even for those items. Did you learn any reasoning behind that and why? District General Counsel Nelson said that he did do some research and that it was a policy determination and not a legal restriction. In going back to Dillon's Rule and the amount of compensation it is a policy question for those entities. At-Large Member Dobler said he would like to take a few minutes because he did a lot of research and he looked at your presentation. He would like to address the support to non-profit groups and he is talking about expressed powers and you used incidental powers and there is nothing in there. NRS 318.116 is basic power that is granted and there are 21 items in there and it doesn't talk about services but rather about furnishing facilities. 14 is recreational in NRS 318.143; At-Large Member Dobler read part of this section, and that this basic power is only limited to providing the facilities. In our resolutions, we are saying that we are making the facilities available for use. There is nothing in the statutes that says programs are to be subsidized or educational programs or Easter egg hunts. If you go to NRS 318.210, trying to say it is implied powers - he read an excerpt. Specific powers are to furnish facilities and if you take those two statutes and constructing the idea that we can do community programs at losses has no bearing at all. As NRS 318 in total, make facilities available, offer it in a safe manner, it is facilities only and do nothing else. Nothing to provide support to non-profits. Express powers must be in the statutes. To do this under implied power, it started back in the Constitution. It is only implied to what your powers are and the only way to get this solved is to go to the Attorney General and get an opinion. His problem is providing a lot of facilities. A work around is Resolution 1701 and then we charge them something that is tremendously below market rate which gets us to yield management; it is substance over form. We are providing something at tremendously lower rates so we can provide the facilities

to them. We did the same thing with others such as Parasol, etc. It is being constructed around it through policies and policies that don't trump statutes. If statutes are giving express power, why would we ever believe we have implied power to do this and it is never expressed anywhere? This is papering around what the statutes actually say. District General Counsel Nelson said that this is the exact conversation that he wanted to have because the written opinion answers this question and he can make sure that providing programs is fleshed out and that he used the same statute on implied powers. At-Large Member Dobler said that incidental and implied are two different things. District General Counsel Nelson made reference to NRS 318.210. At-Large Member Tulloch said that he has some issues with your interpretations as it was about corruption and then look at the Attorney General opinion and if the power is not expressly allowed, it is disallowed. You can't lessen the statute by writing policies and you can't reduce that power. As one reads through the presentation, you ask were you trying to finesse your way through this? He doesn't think that anyone is philosophically opposed to some of this but with the credit card receipts, a blank one from Lupita's, the public should be concerned with that. District General Counsel Nelson said that he absolutely agrees that IVGID couldn't adopt a policy without the powers granted in NRS 318 and that when we get into the 8 items, hire and compensate employees, these things have been included in there. At-Large Member Tulloch said he will take some disagreement as we have to determine if we are public or private as we are trying to have it both ways. We subsidize venues and then we want to take the perks so we need to decide which direction we are going in. At-Large Member Aaron said that he concurs with District General Counsel as NRS 318.218 uses the words implied or incidental. Audit Committee Member Schmitz said that the phrase in NRS 318.210 that hit home are the very last few words. When we look at things, we need to be appropriate and carry out the intent of this chapter. They are the guiding words relative to Dillon's Rule. At-Large Member Dobler said that he has to agree with Audit Committee Member Schmitz and it is a guiding sentence. Look at the specific powers – they are to just furnish facilities and to say we can provide a whole bunch of services; he doesn't see it. Audit Committee Member Schmitz said we have facilities and recreation is an element of how does it come into recreation? At-Large Member Dobler said it is recreational facilities and build something that would be breakeven. He remembers when Gene Brockman was on the Board and that it

had to be breakeven because we didn't have that power. We issue privileges to whomever we want because we have decided to provide something beyond those powers. Most of this stuff was leased out to third parties who paid rent; they didn't care one way or the other. In reading this statute, we are inserting things that aren't there to make it work. Audit Committee Member Schmitz said just pull up NRS 318 as it talks about facilities for swimming pools and you are right, that is what it says. At-Large Member Dobler said with the resolution, we make facilities available for use, and where is the authority for programs? How much was it for the Recreation Center; \$400,000? We never got it at the golf courses, Diamond Peak, Tennis Center or the beaches. He doesn't know how we got from point A to point B. District General Counsel Nelson said that he really appreciates the feedback and discussion and that he will prepare his written opinion and give that to the Audit Committee and then we will have the opportunity to ask the Attorney General for an opinion. Audit Committee Chair Dent so that will come back to us on September 30; District General Counsel Nelson said yes. At-Large Member Aaron asked if the PowerPoint presentation was an all-inclusive list as it relates to NRS 318? Some of the discussions were outside these points. How do we make sure that we cover all the points that are related to NRS 318? Do you need a more comprehensive list? Or can you work one out on your own? District General Counsel Nelson said that those 8 items are the ones that were in Ms. Heirshberg's e-mail and then what At-Large Member Dobler brought up. If there are other things, he is happy to look at them. At-Large Member Aaron said so it is not all-inclusive and there is opportunity for other input.

3.D.b. August 7, 2020 e-mail communication asking Is IVGID Improperly Using the District's Ad Valorem Taxes? from Aaron Katz (2 pages)

Audit Committee Chair Dent said that he spoke with the Director of Finance and District General Counsel; he then asked Director of Finance Navazio if he wanted to address this item. District General Counsel Nelson said that he did do due diligence and there is no provision in the NRS that doesn't prevent us from using the taxes. He did contact Indian Hills and NRS 354.512 specifies when an agency creates a fund, they need to indicate the source of the funds. When Indian Hills did was they restricted its fund and it is coming from the Utility Fund. Director of Finance Navazio also did some due diligence

and that he believes that the context is only the General Fund therefore ad valorem is the recovery of the central services allocation plan. The e-mail suggests that a certain Nevada public agency is stating that they are using it. We can continue to chase that agency and there are a number of agencies that recover similar to what we do. Compared with our research, he confirmed that the Department of Taxation that this is allowed. He is willing to work with District General Counsel if the Audit Committee wants a written response. At-Large Member Dobler said after the submittal of the 14 points, he supplemented it with 7 more points and that this correspondence has gone into limbo. Audit Committee Chair Dent said that it hasn't gone into limbo and that there were a couple of items on the last agenda that will be carried forward to the next meeting; he told Staff to leave it off the agenda.

E. APPROVAL OF MEETING MINUTES (for possible action)

E.1. Audit Committee Meeting Minutes of August 19, 2020

Audit Committee Chair Dent asked for changes, none were received, the minutes were approved as submitted.

F. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration.

Linda Newman said thank you all for a very lively and comprehensive discussion. She greatly appreciates everyone's preparation for the agenda items and the variety of well thought-out points of view.

G. ADJOURNMENT (for possible action)

The meeting was adjourned at 6:57 p.m.

Respectfully submitted,

Susan A. Herron
District Clerk

Attachments*:

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

Submitted by Aaron Katz: Written statement to be included in the written minutes of this September 1, 2020 IVGID Audit Committee meeting – Agenda item D(3) – Review, discuss and possibly take action re: Staff’s actions in light of *Dillon’s Rule*

**WRITTEN STATEMENT TO BE INCLUDED IN THE WRITTEN MINUTES OF
THIS SEPTEMBER 1, 2020 IVGID AUDIT COMMITTEE MEETING – AGENDA
ITEM D(3) – REVIEW, DISCUSS AND POSSIBLY TAKE ACTION RE: STAFF'S
ACTIONS IN LIGHT OF *DILLON'S RULE***

Introduction: Here local resident Diane Heirshberg Becker asks our Audit Committee “to investigate whether IVGID has the (legal) authority to make...donat(ions)...to local charities (and the Visitor’s Bureau... giv(e) IVGID venue cards to employees to use at no cost...send...employees on business trips and reimbursing business expenses, including travel...(using procurement) cards (to pay for)...’pizza for employees working non-stop,’ ‘Gung Ho meeting at Brewforia,’ ‘birthdays at MOFOS,’ ‘lunch after a tough week,’ ‘food for a going away party’ ...hav(ing) parties for birthdays and celebrations and bring(ing) in food for employees or giv(ing) gift certificates...tak(ing) people out to dinner as business entertainment...reward(ing)...employees with ‘IVGID bucks’ ...under *Dillon’s Rule*?”¹ In response our attorneys (Best, Best & Krieger) have provided a history of *Dillon’s Rule*², and presumably approved of all of these activities based upon NRS 318.180, 318.185, 318.116 and 318.210³. I disagree. And that’s the purpose of this written statement.

Dillon’s Rule: instructs, and we’ve been through this many, many times, local governments exist to *only* exercise those expressly enumerated powers in the initiating [see NRS 318.055(4)(b)] or supplemental (see NRS 318.077) ordinances as long as “one or more of those authorized in NRS 318.116, as supplemented by the sections of this chapter designated therein,” *and none other* [see A.G.O. 63-61, p.102, p. 103 (August 12, 1963)]. And should there be “any fair, reasonable (or) substantial doubt concerning the existence (or lack of the existence) of power (it) is (to be) resolved... *against* the (municipal) corporation...(and) all acts beyond the scope of...powers granted are void” [*Ronnow v. City of Las Vegas* (1937) 57 Nev. 332, 343, 65 P.2d 133]. So with that said,

Employee Business Travel: Mr. Nelson tells us the alleged “express” enumerated authority for this expenditure is NRS 318.180, 318.185, 318.210⁴. Yet *none* of these statutes has anything to do with the propriety of general improvement district (“GID”) expenditures for public employee business travel, let alone “express” propriety. NRS 318.180 says nothing more that “the board shall have the power to hire and retain agents, employees, servants, engineers and attorneys, and any other persons necessary or desirable to effect the purposes of this chapter.” NRS 318.185 says nothing more than “the board shall have the power to prescribe the duties of officers, agents, employees and

¹ See pages 111-113 of the packet of materials prepared by staff in anticipation of this September 1, 2020 Audit Committee meeting [“the 9/1/2020 Committee packet” (https://www.yourtahoeplace.com/uploads/pdf-ivgid/0901_-_Audit_-_Searchable-1.pdf)].

² See pages 123-129 of the 9/1/2020 Audit Committee packet.

³ See pages 130-131 of the 9/1/2020 Audit Committee packet.

⁴ See page 130 of the 9/1/2020 Audit Committee packet.

servants⁵, and (to) fix their compensation.” NRS 318.210⁶ says nothing more than that “the board shall have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this chapter.”⁷ So why doesn’t Mr. Nelson simply say that because there is “fair, reasonable (or) substantial doubt concerning the existence of (this) power(, it must be) resolved... *against* IVGID staff?

Employee Rewards: Mr. Nelson tells us the alleged “express” enumerated authority for this expenditure is NRS 318.180, 318.185, 318.210⁴. Yet again, *none* of these statutes has anything to do with the propriety of GID expenditures for public employee rewards, let alone “express” propriety. So why doesn’t Mr. Nelson simply say that because there is “fair, reasonable (or) substantial doubt concerning the existence of (this) power(, it must be) resolved...*against* IVGID staff?

Employee Celebration Expenses: Mr. Nelson tells us the alleged “express” enumerated authority for this expenditure is NRS 318.180, 318.185, 318.210⁴. Yet again, *none* of these statutes has anything to do with the propriety of GID expenditures for public employee celebrations, let alone “express” propriety. So why doesn’t Mr. Nelson simply say that because there is “fair, reasonable (or) substantial doubt concerning the existence of (this) power(, it must be) resolved...*against* IVGID staff?

Non-Monetary Donations to Local Charities and Non-Profits: Mr. Nelson tells us the alleged “express” enumerated authority for this expenditure is NRS 318.116⁸, 318.210⁹. Yet again, *neither* of these statutes has anything to do with the propriety of GID non-monetary donations to local charities and non-profits, let alone “express” propriety. So why doesn’t Mr. Nelson simply say that because there is “fair, reasonable (or) substantial doubt concerning the existence of (this) power(, it must be)... resolved...*against* IVGID staff?

Monetary Donations to Local Charities and Non-Profits: Mr. Nelson tells us the alleged “express” enumerated authority for this expenditure is NRS 318.116, 318.210⁹. Yet *again*, *neither* of these statutes has anything to do with the propriety of GID monetary donations to local charities and non-profits, let alone “express” propriety. So why doesn’t Mr. Nelson simply say that because there is “fair, reasonable (or) substantial doubt concerning the existence of (this) power(, it must be)...resolved ...*against* IVGID staff?

⁵ Has the IVGID Board “weighed in” on what constitutes business travel, and what represents a legitimate business expense?

⁶ See page 129 of the 9/1/2020 Audit Committee packet.

⁷ Has the IVGID Board “weighed in” on what business expenses are necessary or incidental to or implied from the legitimate duties of a particular public employee?

⁸ See page 128 of the 9/1/2020 Audit Committee packet. Moreover, nowhere does NRS 318.116 recognize that a GID may exercise the basic power to donate away the public’s money or other property.

⁹ See page 131 of the 9/1/2020 Audit Committee packet.

Notwithstanding *None* of These NRS Expressly Address the Issues Presented, Mr. Nelson Refuses to Suggest Application of Dillon’s Rule’s Mandate That Should There be “Any Fair, Reasonable (or) Substantial Doubt Concerning the Existence of Power (That Doubt Should be) Resolved... *Against*” IVGID: And why exactly is this?

Because Rather Than Speaking the Truth, Mr. Nelson is Trying to Share a Narrative Which Pleases His Client: so staff can continue to do what it shouldn’t be doing.

But the IVGID Board and the Committee Require a Different Attorney – One Who Criticizes the Board and Staff When as Here, They Are Acting Improperly:

And What’s Improper? The waste of public funds and assets²⁰! And since the RFF/BFF subsidize these expenditures, the waste of our Recreation (“RFF”) and Beach (“BFF”) Facility Fees!

Conclusion: I’m sorry. Our RFF/BFF do not exist so they can be used to “share the wealth” with favored special interest groups and our 1,012¹⁰ largely overpaid and over benefited employees. Staff will respond that these expenditures have been expressly authorized by the Board pointing to Resolutions 1480¹¹, 1492¹², 1493¹³, 1619¹⁴ and 1701¹⁵:

Resolution 1480: Abdicates the IVGID Board’s duty under NRS 318.175(1) “to manage, control and supervise all the business and affairs of the district” in favor of un-elected staff. Thus our GM is empowered to exercise “day-to-day supervision over all District employees” which “includes the power to...set (compensation levels)...each employee,” as well as some of the questionable expenditures identified in Ms. Becker’s e-mail request.

Resolution 1492: Allows unelected staff to “waive fees for use of District-owned facilities (for) ...1. a fundraising benefit for an Incline resident, provided...all proceeds go toward a major medical expense for a specific person, and not a group or organization; or 2. a meeting of a governmental agency.”

¹⁰ Go to <https://transparentnevada.com/salaries/2019/incline-village-general-improvement-district/>.

¹¹ See pages 12-17 at https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID_Policy_and_Procedure_Resolutions.pdf.

¹² This resolution appears at page 278 of the packet of materials prepared by staff in anticipation of the Board’s July 22, 2020 meeting [“the 7/22/2020 Board packet” (https://www.yourtahoeplace.com/uploads/pdf-ivgid/0722_-_Regular_-_Searchable.pdf)].

¹³ See pages 18-19 at https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID_Policy_and_Procedure_Resolutions.pdf.

¹⁴ See pages 38-41 at https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID_Policy_and_Procedure_Resolutions.pdf.

¹⁵ See pages 53-58 at https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID_Policy_and_Procedure_Resolutions.pdf.

Resolution 1493: Allows unelected staff to make cash donations from public funds to local non-profits for unspecified “community programs and events.”

Resolution 1619: Allows unelected staff to donate complimentary recreation privileges at the public’s recreational facilities for third party fund raising, professional courtesy, trade-out, promotion, or dignitary purposes.

Resolution 1701: Allows unelected staff to donate complimentary recreation privileges at the public’s recreational facilities to local non-profit, volunteer organization, national organization with a local chapter, or promoter of an activity based in or benefitting Incline Village/Crystal Bay, North Tahoe Region, government agency, or a local school” (whether or not public).

For these reasons, at the Board’s May 19, 2020 meeting I submitted a written statement¹⁶ in which I urged the Board to repeal Resolutions 1619 (complimentary recreation privileges) and 1701 (free or severely discounted use of IVGID facilities by qualified non-profit, volunteer organizations or promoters of activities based in or benefitting the North Lake Tahoe region, government agencies, and local school districts) because: they sanction giveaways of public recreational facilities at local parcel owners’ expense; they cost local parcel/dwelling unit owners hundreds of thousands if not millions of dollars annually; general improvement districts (“GIDs”) are not empowered to engage in such activities under NRS 318.116¹⁷; even if they were, IVGID has never been granted this power by the Washoe County Board of Commissioners¹⁸ (“County Board”); *Dillon’s Rule* instructs that since this power has not been expressly granted by the County Board, it cannot be assumed by implication¹⁹; and, these giveaways are examples of improper *government waste*²⁰.

Then at the Board’s June 23, 2020 meeting I submitted another written statement²¹ in which I

¹⁶ See pages 591-592 of the packet of materials prepared by staff in anticipation of the Board’s June 23, 2020 meeting [“the 6/23/2020 Board packet” (https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_Part2_06_23_2020.pdf)].

¹⁷ Go to <https://www.leg.state.nv.us/nrs/NRS-318.html#NRS318Sec116>.

¹⁸ The only basic powers a GID may exercise are those expressly granted in its initiating [NRS 318.055(4)(b)] and supplemental (NRS 318.077) ordinance(s) as long as “one or more of those authorized in NRS 318.116, as supplemented by the sections of this chapter designated therein.”

¹⁹ See the *Dillon’s Rule* discussion, *infra*.

²⁰ NRS 281.611(1) defines “improper governmental action” as “any action taken by a...local governmental officer or employee in the performance of the officer’s or employee’s official duties...which is: (a) in violation of any state law or regulation...(c) an abuse of authority...or (e) a gross waste of public money.”

²¹ See pages 272-278 of the packet of materials prepared by staff in anticipation of the Board’s July 22, 2020 meeting [“the 7/22/2020 Board packet” (https://www.yourtahoeplace.com/uploads/pdf-ivgid/0722_-_Regular_-_Searchable.pdf)].

urged the Board to repeal Resolution 1492 which gives “the General Manager...the administrative prerogative to waive fees for use of District-owned facilities under (certain medical expense and fellow government use) circumstances,” for similar reasons.

Now I add Resolution 1493 (cash donations to local non-profits) to the list for repeal, for similar reasons.

And to those asking why our RFF/BFF are as high as they are, and never seem to go down, now you have another example of some of the reasons why.

Respectfully, Aaron Katz (Your Community Watchdog), Because Only Now Are Others Beginning to Watch!