

MINUTES

REGULAR MEETING OF DECEMBER 11, 2019 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 Wednesday, December 11, 2019 at 6:00 p.m. at the Chateau located at 955 Fairway Boulevard, Incline Village, Nevada.

Recognition of the Incline Village High School Girls' Golf Team was led by Chairwoman Kendra Wong. The audience responded with a congratulatory round of applause.

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 Peter Morris, Tim Callicrate, Phil Horan (resigned), Matthew Dent and Kendra Wong

Also present were District Staff Members Director of Public Works Joe Pomroy, Director of Human Resources Dee Carey, Director of Golf/Community Services Darren Howard, Diamond Peak Ski Resort General Manager Mike Bandelin, Engineering Manager Nathan Chorey, and Director of Finance Gerry Eick.

Members of the public present were Tony Lillios, Karen Gotelli, Mike Hess, Margaret Martini, Pete Todoroff, Judith Miller, Aaron Katz, Steve Dolan, Gail Krolick, Jack Dalton, Kathleen Watty, and others.

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

Chairwoman Wong said that former Trustee Phil Horan moved out of his home on Monday, December 9, 2019 and tendered his resignation on that date. Chairwoman Wong said that she appreciated him and all that he added to the Board. Trustee Callicrate said that he echoes Chairwoman Wong's sentiments and publicly thanked former Trustee Horan for his service and even though there were some heated exchanges, former Trustee Horan contributed quite a bit so thanks for a good job. Trustee Morris said thank you to former Trustee Horan and all that he has done for the community and for him. Former Trustee Horan was a fabulous

Trustee and he will be sorely missed. Trustee Dent thanked former Trustee Horan for his service.

C. PUBLIC COMMENTS

Aaron Katz said that he has two items, written statements on both, and that he is objecting to Staff's response to his public records request and that if he doesn't get what he wants by Friday, he will be filing a complaint with the Attorney General. Mr. Katz then said that he would like to talk about Mr. Beko's request to go after him and stated that this was the third attorney to look at this. Many people think that just because you win you get attorney fees; not true. There is a specific statute/rule and you don't have it. Where did Mr. Beko share with you the reason to seek additional fees? Is there a statute in the Federal regulations, well, he has three cases where you can't get them and that this would be creating new law doing what he is proposing and you will spend more than twenty five thousand dollars so this should be considered very carefully. There are potential costs and penalties if the District doesn't prevail so this would be opening us all to that. Further, this is chilling to the community and Mr. Katz read an excerpt from a document dated May 18 written by Devon Reese, Esq. Mr. Katz closed by saying that the District has attorneys so why didn't they try to come to some resolution, he thinks it is because their intent was not to end this case.

Judith Miller read from a written statement which is attached hereto.

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

Pete Todoroff said that he just wanted to mention that there is a Citizen Advisory Board meeting tomorrow, starting at 5:30 p.m., at the Parasol Building and it is about short term rentals so anyone interested should attend.

Mike Hess read from a written statement which is attached hereto.

Tony Lillios read from a written statement which is attached hereto.

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

Chairwoman Wong said that she would like to remove General Business Items H.10 and H.11 in their entirety from this agenda; there were no objections.

Trustee Dent said that he would like to move Consent Calendar Item G.2. to after General Business Item H.1.

Trustee Callicrate said that he would like to have General Business Item H.1. removed as he thinks that the District can get a thirty day extension; Chairwoman Wong asked if we could leave the item where it is and then talk about that during the discussion of that item. Trustee Callicrate agreed with that plan.

Hearing no further changes, Chairwoman Wong approved the agenda as amended.

E. DISTRICT STAFF UPDATE (for possible action)

E.1. Interim District General Manager Indra Winqest

Interim District General Manager Winqest went over his submitted report.

Trustee Callicrate said that he noticed the item on the District Records Retention Schedule and that he didn't recall that coming before this Board and asked if it is something that should have been brought to this Board before it is finalized. Interim District General Manager Winqest said that once we get the draft back from the State of Nevada, Staff will be bringing it before the Board. Trustee Callicrate said that he would like the Board to see what is being put forth as we are going to be legally bound by this schedule and that he would like the Board to have some input because this has gotten us into some issues in the past so the Board needs to see it before we get to the final draft. Chairwoman Wong said that once we get the feedback from the State of Nevada, we can agendaize it as a Board item and then we can look at it.

Trustee Dent said, regarding the beach bar, that the Board has received a ton of e-mails about the services down there. Their contract is up so it is imperative that we do something there. We need to tell Incline Spirits something and we should probably extend that contract. Given that we have construction in the next two to three years, perhaps we should go out to bid when we know what the next facilities look like We need to do something there as we have heard from the community so it is time for us to act on that as well as bring back a bidding policy to the Board.

Interim District General Manager Winqest said thank you to everyone who has written an e-mail about Incline Spirits and stated that they have done a fantastic job. In 2021, we will not have a Burnt Cedar pool and in 2022 we will start replacement of the building at Incline Beach. He has been in contact

with others and he will be bringing back his plan on January 15. On the policy, the Board has given us direction so we have our marching orders, and Staff will start working on that for these types of contracts.

F. REPORTS TO THE BOARD OF TRUSTEES*

There were no reports to the Board of Trustees.

G. CONSENT CALENDAR (for possible action)

G.1. Review, discuss and possibly adopt the District Boundary Map as presented by the Washoe County Registrar of Voters – Map dated April 1, 2019

G.2. Review, discuss and possibly approve the designation of Audit Firm for Audit Services for Fiscal Year Ending June 30, 2020 – Eide Bailly, LLP at a cost of \$58,500 (the last year of a five year contractual obligation) (Requesting Trustee: Chairman of the Audit Committee Phil Horan) (*moved to General Business Item H.1.a.*)

Trustee Morris made a motion to approve the Consent Calendar as amended. Trustee Callicrate seconded the motion. Chairwoman Wong asked for comments, hearing none, called the question – the motion was passed unanimously.

H. GENERAL BUSINESS (for possible action)

H.1. Review, discuss and possibly approve the Presentation and Acceptance of June 30, 2019 Comprehensive Annual Financial Report including an Unmodified Report by the District's Auditor (Requesting Staff Member: Director of Finance Gerry Eick)

Chairwoman Wong said that now is the time to have the discussion about tabling this item.

Trustee Callicrate said that he would like to table this item until we have a full Board and that the District can easily get a thirty day extension which is an opportunity to address any concerns. Chairwoman Wong asked Staff to weigh in on the State law/requirements. Director of Finance Gerry Eick said that there is a requirement, under the Nevada Revised Statutes, that within

thirty days of receipt of the audit report, from the auditors, this Board must consider it or ask for an extension. The State of Nevada will gladly grant a thirty day extension and will consider a second extension of thirty days but won't go any further than that. Trustee Morris said that he has no problem with delaying however by delaying the presentation, it will be after our Director of Finance's retirement date and that he thinks it is important for him to be here to present it and he doesn't want that to be an issue. Director of Finance Eick said that he will gladly attend another meeting. Interim District General Manager Winqest said that he is not comfortable presenting this audit report this year but we can make that happen. Chairwoman Wong said that it is likely that the District will need both of those extension. Director of Finance Eick said he will submit them on behalf of the District. Chairwoman Wong said she is okay with pushing this out and that if anyone has a problem, she would encourage them to schedule a meeting with our Director of Finance and/or Eide Bailly so as to get their issues resolved prior to our next meeting.

H.1.a. Review, discuss and possibly approve the designation of Audit Firm for Audit Services for Fiscal Year Ending June 30, 2020 – Eide Bailly, LLP at a cost of \$58,500 (the last year of a five year contractual obligation) (Requesting Trustee: Chairman of the Audit Committee Phil Horan) *(moved from Consent Calendar Item G.2.)*

Director of Finance Eick said that the Audit Committee today considered this question and passed a unanimous motion to recommend it to this Board.

Trustee Dent said, in the past, we have discussed internal controls and how discussed how the auditor doesn't look at any of our internal controls. What is your recommendation for having a third party look at the internal controls to put to rest any concerns. Director of Finance Eick said that it is not that they don't, they actually consider them quite a bit however it doesn't result in a report. You can ask someone to look at them and give you a report and given the number of questions and concerns out there, it is something that you should look at and you need to give it a focus; define the focus and specify the area you want to look at. His recommendation would be to explore the idea of having an internal control review and that rather than saying "all", identify a particular area of concern. The Board will have an opportunity to consider this next year because you are going out to a request for proposal process so you could expose this to other firms. Eide Bailly could do it and may be able to offer a very efficient way to do it. If this Board

says that they want to have one done, the Board needs to define it and that should start in January or February. Finding somebody, while agreeing on the scope and value of doing it, should be no problem. Chairwoman Wong said that she is not in favor of having another firm do it because she doesn't want to pay two firms to do the same work as that would be a waste of resources financially as well as Staff resources. We can build that into our services with Eide Bailly and ask them for a quote in addition to their audit fees. Trustee Dent said that he doesn't know if he wants Eide Bailly to do this work as he would like to have a new perspective and someone not close to what we are doing. Director of Finance Eick said that the Board should first figure out what areas you want to look at and that frankly there could be an advantage with familiarity and a disadvantage with familiarity. Additionally, some firms are better at some tasks than others so you want to keep your options open. Interim General Manager Winquest said that he fully supports an internal control audit as there are a lot of concerns from the community and while he is very confident that we have internal controls in place, nothing but good can come out of this. Whoever we hire must be credible to the community and, with no offense to Eide Bailly as he knows they can do it, we really need to pay attention to what Staff is saying. The Board needs to put together a scope of services and then get the best we can based on that scope of work; he supports this. Chairwoman Wong said she would like to agendaize a scope of services for the February meeting which would give the Board enough time to look at it and then include it in the 2020/2021 budget as well as time to start looking at firms and then budget for the following fiscal year. Trustee Dent asked if it could be on the early February meeting schedule and then asked how critical was it for us to approve this tonight. Director of Finance Eick said that the Board can approve it in March and that it was done during this time for efficiency. Trustee Morris said that the road to hell is always paved with good intentions and that he doesn't want us to be sitting here in February with nothing so we need to have a skeleton scope of work as the Board doesn't know all the internal controls and he would appreciate that narrowing. Director of Finance Eick said that internal control is reviewed as a regular part of the audit process and there are some general categories and, as an example, one would be cash as investments. Staff can come up with a skeleton with the topics that are standard to the industry which is in broad categories and then beyond that it would be important for the Board to drill down. How we report capital projects, if the Board really wants to go there, you need to tell us what our controls are on estimating capital projects and the Board would need to say that rather than capital assets because it has five or six subheadings. Staff can try to help to get it focused as it is a valid conversation and that

can be identified from professional literature. Chairwoman Wong said that typically it is broad so you can have at the start which then revolves around the process items and then there is operational review. There are different ways to look at it too. Director of Finance Eick said that there is a national standard that has set out a national standard which includes topics, processes, and operational effectiveness. We need to help the people who will be doing the work. Trustee Dent asked if this could be an item on the January 15 agenda. Director of Finance Eick said that Staff will have it ready before that date. Interim District General Manager Winquest said that this is dependent on the timing of the hiring of the new Director of Finance. Trustee Dent said he wants to start the discussion sooner rather than later. Chairwoman Wong said that the Board can start the conversation but not finalize it. Trustee Dent asked for this item to be tabled; Chairwoman Wong agreed and asked for it to be included on the March 11 agenda.

H.2. Review, discuss, comment and provide direction to Staff regarding “Popular Report” format for District Capital Improvement Projects (Requesting Staff Member: Director of Finance Gerry Eick)

Director of Finance Eick went over the submitted materials.

Trustee Dent said that he agreed on the percent complete and that he would like to have a description similar to what is included in the CAFR as he likes a number. He doesn't need to know about rolling stock however the narrative is key as it helps make sense and all of the columns are needed. Trustee Dent said that he had a separate question about the CIP report but would hold it until that review. Chairwoman Wong said, regarding percentage completion, that project completion is one thing but also because your billing typically lags, we need to clarify that column is construction and not financial. Trustee Dent said, being in construction, that the narrative provides more clarity. Director of Finance Eick said, referencing agenda packet page 145, that every project will have a status and that particularly on multi-phase projects that would be helpful. Trustee Morris said that he appreciates that discussion as he was going to bring that up. This discussion has hit both things for him, narrative and descriptive, and that there is really a need for multi-phase projects. On agenda packet page 145, Staff has given us a three by five matrix which he likes very much with some narrative on how some things are progressing. Director of Finance Eick said that he agrees on narrative and effective communication as well as doing the same on the data sheets. Trustee Dent said on the CIP report that he has been asking for this

to be brought before the Board as a standalone item to get all our questions answered. Director of Finance Eick said it was not his intention for this to be a one bite at the apple but rather to show what the current report can accomplish whilst understanding that there is an appetite for more information and an expectation for expansion. Trustee Dent asked if the plan was to see if we are okay with this report and then take last fiscal year's report and plug it into this new format. Interim District General Manager Winquest said we can do that and as far as bringing this report back, we will have a transition period so he would like to go at a pace with transition. Trustee Dent said in looking at this report annually, we budgeted seventeen million dollars and only spent nine million dollars which seems odd so he would appreciate that being brought back to the Board. Director of Finance Eick said that Staff knows the answers for all these projects on these sheets. Trustee Dent said then bring it back to the Board sooner rather than later. Interim District General Manager Winquest said that Staff can give you an update at the January 15 meeting. Chairwoman Wong asked about the first item on this sheet and what exactly is Staff trying to tell us. Director of Finance Eick said that some people want to see pieces but without the narrative and change management, it probably doesn't make sense and he then went on to explain the roof project. Trustee Dent asked for the reason of why this was broken down that way as it exceeded the General Manager's spending authority and that shouldn't have happened. Director of Finance Eick said that Staff brought the seventy seven thousand dollar contract to this Board for approval. Trustee Dent said that the reason this Board asked for this is because there was some piece that was missing and for checks and balances. Director of Finance Eick said that it would be really good if we did the part in the middle when we are doing the budget and what can we do with change management. The important thing to explain, during the budget process, is that once the Board adopts the budget, Staff has a set number and then measure how did we do against that number. If you want to talk about what we did or didn't do, that is a different style report. Trustee Dent said he agreed that it would be good to do during the budget process however we don't have enough time to do that at the budget meetings. Trustee Morris said that it may be helpful to have if this came to the Board or not and then the approved by the Board date. Director of Finance Eick said that part of our system within Accounting captures that information so there are ways to accommodate that request. Chairwoman Wong said that it makes sense to her. Trustee Morris said that he would like us to start using it as it continues to be helpful so let's get going on it. Director of Finance Eick said, as a reminder, that this is an internal document and that Staff will

not be communicating this information to the State and that the objective is to create and build understanding.

Director of Finance Eick then moved onto agenda packet page 144 and said that Staff provided sample definitions and that there was a lot of thought given to these definitions and said that it is only completed or cancelled projects that are available for reallocation. Trustee Dent asked if it was reallocation for the cart paths that came in under budget or was it expand that reallocation if that is the Board's direction understanding that the Board can reallocate. Director of Finance Eick went over the cart path project. Trustee Dent asked about the Mountain Golf Course Clubhouse project. Director of Finance Eick said he does not call it complete. Trustee Dent said okay and that he appreciates knowing that; thank you. Chairwoman Wong said that she is okay with the definitions as they stand and asked if Staff needed anything else. Director of Finance Eick said that he trying to make sure that people have ways to communicate where we are at, trying to look ahead, and that the stress test was provided because not everything is done in one year. Chairwoman Wong said that it would be great to see this report when we look at capital projects for the budget.

H.3. Review, discuss, and possibly authorize a new Capital Improvement Project 3241LI1903 for the Mountain Golf Cart Path Replacement for 2019-2020 fiscal year, Pre-Design Phase for an amount not to exceed \$161,500 by reallocation of \$161,500 from CIP Project 3242LV1899 Mountain Course Cart Fleet (Requesting Staff Member: Director of Golf/Community Services Darren Howard)

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

Trustee Morris asked if we were making this overly complicated because the Board agreed that the money that wasn't used would go to the cart path and that was slightly larger than \$161,500. He doesn't understand why it is \$161,500 and \$163,000 because then we have around two thousand dollars that floats around so why not one project for cart paths that is \$163,000. Director of Finance Eick said that he is aware of that conversation and he doesn't disagree if the Board wants to allocate \$163,000 that is fine. He also thought he heard that the Board didn't want to look at one piece but rather have an understanding/look at the whole project without definition of the pieces or phases. Part of this effort is to communicate to the Board and the public of how we do our work and that there is sensitivity about moving

money from one project to another. This is more precise, is open to feedback, and so everyone understands the approach taken. Trustee Dent said that the one hundred and ten thousand square feet is the cart path in its entirety; has Staff gone through and done the assessment of what is really needed. Director of Finance Eick said that there is no conclusion and that this is the top of the funnel which is identifying what needs to be done. Trustee Dent said that his concern is about spending \$161,500 on design or would we be better served to find the worst part of the carts and get something done because we aren't doing it now or in a couple of months. Interim District General Manager Winquest said on agenda packet page 174 it does speak to when our Engineering Team will start the process. He knows that \$161,000 sounds like a lot of money but we need to allow our Engineering Team to do their work. They will go through and evaluate everything in order to put together a scope of work for the project. Staff can keep the Board updated and let you know the progress made as Staff would like to scope the entire project. We hope we don't spend that much and he doesn't think Staff will but Staff was asked to bring back the outer perimeters, by the Board, so we don't want to focus on the details as we have some time because everything is covered in snow. If the Board wants to put a limit on pre-design, Staff will comply. Our best interests will be served by allowing our Engineering Team to evaluate what we need to do and Staff is not going to spend \$161,000 in Engineering time. Trustee Dent asked if you plan on doing this in this fiscal year or push until summer so you won't be doing this in the middle of the golf season or is this something that can push until next fall. Director of Public Works Pomroy said if we go into the design phase, Staff will go through holes one through eighteen and we won't do this until the snow melts off. We will do the assessment/analysis and most of it would occur during golf play. We would have to do some borings to assess the conditions and we would do a full evaluation like was done in 2003 at the Championship Golf Course. Trustee Dent asked how much time do you think it will take. Director of Public Works Pomroy said it depends on if we do it in house or bring in a paving consultant. Trustee Dent asked why can't we do it in house as you are qualified. Director of Public Works Pomroy said that Staff can't do the base mapping which is a decision point. Trustee Dent said that his concern is the cost of this and that the alternative is to create this project and not authorize the money because we don't see it happening this fiscal year rather it would be at the end of the year or the first project in June so let's just create a project so we have a budgeted project and then we can figure out how much to allocate next year and how much we want to authorize for design. Chairwoman Wong said that she would like to ask a clarifying question – the impetus of this was because we had the savings,

then the funds carryover to next year, so if we don't authorize the carryover then essentially do the funds go away. Trustee Dent said we are not doing a pre-design before the end of the fiscal year rather it is a cart path project and then we add to it. Chairwoman Wong said she is fine with it. Trustee Morris said that \$161,000 sounds like a lot for pre-design and the end of the fiscal year is the end of June so he hopes to start some of this work this year and in this fiscal year which would mean late spring of 2020 and not waiting until September 2020 to start. Trustee Dent said that the cart paths are covered in snow until May, the Engineering Staff will go out there and mark it up with paint, categorize the areas and then it will go to survey at some point. It is not a priority project so we don't have to authorize this project or open up the checkbook to something we are not doing. Interim District General Manager Winquest said that the goal was to commit these funds to the Mountain Golf Course cart path project which will start in late May/early June and Staff can come back to you with a better analysis from our internal team and that when they are ready to start that effort, we have approved funds for their internal charges. The Board can make a motion tonight or reallocate the entire amount of \$166,000 plus or we can bring it back later. We just don't want to hamstring our Engineering Team when they are ready to do the work. The goal is to do them as soon as we can and Staff will be bringing back some information at the January 15 meeting. We want to make sure the timing is right especially with us going to lithium battery operated carts; we want to make sure that Staff has the funds. Director of Public Works Pomroy said that there is a current contract with Lakeside Paving to do paving work to fix some of the worst areas. We are onboard with the Board to, within the next thirty six months, to get rehabilitated cart paths; a resolution within a three year time frame.

Trustee Dent made a motion to authorize establishing a new Capital Improvement Project 3241LI1903 Mountain Golf Cart Path Replacement for an amount not to exceed \$166,395. by reallocation of \$166,395 from CIP Project 3242LV1899 Mountain Course Cart Fleet. Trustee Morris seconded the motion. Chairwoman Wong asked for any further comments, hearing none, she called the question – the motion was passed unanimously.

At 7:38 p.m., Chairwoman Wong called for a break; the Board reconvened at 7:50 p.m.

H.4. Review, discuss and possibly approve 2020 Key Rates for the Championship Golf Course, Mountain Golf Course and Resident

Play Passes (Requesting Staff Member: Director of Golf/Community Services Darren Howard)

Director of Golf/Community Services Darren Howard gave the presentation as submitted in the packet.

Trustee Dent asked if the buying the ten play pass and then upgrading to a twenty pay pass situation has been nipped; Director of Golf/Community Services Howard said yes, he has fixed that situation.

Trustee Callicrate said regarding charity tournaments and especially at the Championship Golf Course that he thought they took place in early June or in September and that any tournaments per se were usually relegated to the early and late parts of the season however it seems that there are tournaments all the time throughout the summer. Are they just tournaments in general and how many non-charity tournaments do we hold during the season because we are here to service the residents first. Director of Golf/Community Services Howard said that the charity tournaments are still held during the first part of the season and then late in the season. As far as outside tournaments go there are some small events that we do late in the afternoon and we do some club tournaments that are shotguns but those are not outside tournaments. Trustee Callicrate asked if the Hyatt was bringing in outside groups and that he was asking just to dispel those rumors. Director of Golf/Community Services Howard answered no.

Trustee Dent said that there was a sixty thousand dollar budget for trees and only ten thousand dollars was spent even though it was a fire hazard. Director of Golf/Community Services Howard said we have a ninety nine tree limit. Interim District General Manager Winquest said that we could utilize those funds and acknowledged that the Mountain Golf Course needs a lot of tree work but that there is a limit on the number of trees. He has given the direction to start budgeting more funds for brush and clearing for obvious fire prevention. Our Staff would love to talk about this for an hour or more but there is a lot that goes into this effort and going forward you are going to see more money for this kind of work.

Chairwoman Wong said that she understands that we need to go slow on a rate increase and asked if the proposed rate increase was enough to cover costs and start closing gaps. Director of Golf/Community Services Howard said that it provides a great start for us and that he is sensitive to raising it too much, too fast. He is working on a five year plan and some of that could

be a three to four percent increase for residents with one year it being in daily fees and then the following year it being in play passes and alternates. In looking at the historic records, it was proposed before but not done. That is his plan and he will come back to the Board and share how that can work for us.

Trustee Morris said that he appreciates all the analysis that Staff is doing and on agenda packet page 183, the non-resident rounds at the Championship Golf Course, you are predicting the same number of rounds in 2020 versus 2019 which is less than what we were getting and about the same per round as two years later; he is not trying to nitpick rather an observation/question. Director of Golf/Community Services Howard said he is working with the clubs and the fee structures and that he is hoping to push some of that and bolster that bottom line. Interim District General Manager Winquest said he is referring to the round mix and changing that mix a little bit as well as time periods as we are concerned about pricing and sensitivity as well as price elasticity. Trustee Morris said at the Championship Golf Course we are forecasting twenty three thousand rounds so what is the comfortable carrying capacity. Director of Golf/Community Services Howard said it is twenty thousand to twenty five thousand rounds. Trustee Morris asked about the rates/numbers of competing courses. Director of Golf/Community Services Howard said that those are the rates for this year going forward. Trustee Morris said for non-residents, we are considerably cheaper and using Edgewood as an example do you agree or disagree and why. Director of Golf/Community Services Howard said that Edgewood is a destination area where there are tons of hotels, casinos, etc. and it is much easier for them to draw to their area. We have the Hyatt so only one hotel which stays booked with people who are coming up to play golf but most to enjoy Lake Tahoe. The big concern for us is they have a lot of resources to draw from so we are looking at marketing better. We need to figure out how to get people here. Trustee Morris asked what plans that you can think of now, understanding that you are still figuring it out, that we can do with the non-resident rounds to supplement the resident rounds. Director of Golf/Community Services Howard said that we are pretty packed during the peak times so he is going to challenge our Marketing Department on how to promote the shoulder season because we are not doing a great job there and there is a lot more we can do to get more play to the shoulder seasons. Most of our residents leave right at Labor Day or shortly thereafter and that will be part of that movement to get more play in there. Trustee Morris said that he hoped that the Mountain Golf Course will get more rounds as well as we definitely want to see the non-residents help to subsidize the residents.

Trustee Dent said on the play pass rates that Staff is projecting to raise them by five percent yet we haven't done anything there is five years so why aren't they higher and he understands he is raising his own rate. Director of Golf/Community Services Howard said that he didn't want to go crazy the first year but if we think the market can bear that then ten percent is still a pretty good deal. Trustee Dent said that is sixty to seventy dollars per round and he thinks there is a way to improve there and that a bump there would not affect anyone there. Also, what type of cancellation policy do we have or scheduled backups for cancellations. Do we lose a lot of revenue on this side – what is the plan? Director of Golf/Community Services Howard said that this was something that he identified this year. We have a stated policy but we have no way to capture somebody that cancels a tee time because we don't require a credit card to book a time and that this is something that he is going to work on as capturing that information is a real issue. We need to solve the back end first and his main concern is to try and get a real cancellation policy and reservation policy with non-residents and guests. The issue has been identified and he is concerned about it.

Trustee Callicrate said that this is the first that he realized that it wasn't happening and while he is for supporting the golfing community there should be no ifs, ands, or buts, that we should require a credit card deposit so put as much energy in that arena as you can because knowing about cancellations allow us to reallocate that spot. Director of Golf/Community Services Howard said thank you and duly noted.

Trustee Dent said that we have not raised the rates in a long time and asked if it is the same thing with meals and have we upped those rates. Director of Golf/Community Services Howard said that he has met with two of the clubs already and they understand a two or three dollar rate increase and it is our plan to do that increase as increases in food hasn't been touched in eight years. Trustee Dent said, regarding maintenance and equipment costs, in utilizing battery power rather than battery carts, what are the savings from using gas on maintenance versus battery carts at the Mountain Golf Course. Director of Golf/Community Services Howard said that is a great comment and that Staff looks at that all the time. For maintenance, they are trying to move to lithium and then figure out how that can work on maintenance equipment. It is moving that way on vehicles that move them around. Any replacements in the future, we will go with lithium because it lasts all day and there are less maintenance costs because there is no fuel. Staff is with you but not totally there yet. Trustee Dent said he is not for experimenting

with products but have that in the back of your mind when evaluating future purchases. For non-resident rates, if you are changing the times that non-residents can play, are you charging too much at the Championship Golf Course at two hundred dollars because it seems like it is going the other as it is a volume thing and then we need to talk about service. Director of Golf/Community Services Howard said he needs to totally understand what we can withstand and that he thinks the increases as proposed are okay and going forward, they will be too high so he doesn't want to go there yet. This could backfire next year so we made enough of an increase that we are safe and we will keep evaluating it. We are going to see if some of those rounds are moved to the prime times and moving to our discount time. We need to know if they are moving to that time because it is cheaper or are they playing when it is the first time they can play. Trustee Dent said it is good that Staff has got a handle on this and adjust all we can. Touching on services levels, during the budget, we need to figure out where we can cut because there is an opportunity to cut there. So get with the clubs and figure that out while not having unintended consequences as we need to discuss that with our future budgeting. Director of Golf/Community Services Howard said that Staff is looking at this item and that it is heavily on their minds as we want to do so without losing total service and while trying to figure out where that line is and that dollar amount can be; appreciate the question.

Trustee Dent asked if it was Staff's recommendation to have a ten percent (10%) increase on the play passes. Interim District General Manager Winquest said the Board can make their motion with a ten percent (10%) increase and recapped that the way in which folks were purchasing a ten play pass and then upgrading to a twenty play pass to pay less, Staff is doing away with that. The current model isn't sustainable so if the Board wants to move the needle to get to what a digestible subsidy is, Staff has struggled with that, then we need to determine who we are at Golf. If we weren't discounting residents and charging rack rates, our golf courses would be throwing off cash. We need to take a look at inflationary increases and if that is three percent then it should be a few points above that. Staff is confident that these rate increases will help with the offset. As to the cancellation policies, Staff is navigating through that process and working with our software experts such that the District will create a firm cancellation policy that will apply to residents as well that will help move the needle. The present challenge is to automate that process. We have looked at other golf courses and they raise their rates every year to be sustainable. This needs to be a hot topic of conversation over the next five years. The Director of Golf/Community Services is bringing back a plan and Staff is paying attention to

expenses as it is one of the things that we have been looking at is the shoulder season services. Trustee Dent asked that Staff be bold and move swiftly.

Trustee Dent made a motion to approve 2020 Key Rates, as presented, for the Championship Golf Course, Mountain Golf Course and adding a 10% Resident Play Pass increase as recommended by Staff. Trustee Callicrate seconded. Chairwoman Wong asked for further comment, hearing none, she called the question – the motion was passed unanimously.

H.5. Review, discuss, and possibly direct to develop operational alternatives to the Guest Access Ticket process (*Discussion Only*) (Requesting Staff Member: Interim District General Manager Indra Winquest)

Interim District General Manager Winquest gave his presentation.

Chairwoman Wong said that pay to play has got to be on the table just for the pure fact that it is going to stop wasting time. An owner will have to decide if that have guests for five days do they want to pay for them to go to the beaches every day. Having the transactions paid for in advance at the Recreation Center counter instead of at the beach gates is the direction we should be going. Interim District General Manager Winquest said that Staff is not going to limit the amount of transactions and get a return on investment on the staff time spent. Staff is recommending putting it back on the owner and how much access they are granting. By leaving the ticket(s) in will call, that is a paid ticket, is the model that would put this back on them and this ties in with what we are heaving from our community about beach visits. It is more about efficiency and a return on the investment of time.

Trustee Callicrate said that this is a great first step and that he has been one of those people, for the last thirty five years, that has said it is kind of out of control. He would like to talk about a possible cap and not getting to buy unlimited punch cards as well as tightening up pay to play. He also realizes that we don't have unlimited punch cards but it will make people think and that is a good thing. Let's put the onus back on the owners and have a closer control on who is accessing our beaches because if there is abuse, then we can catch it. He appreciates this presentation and keep on with this same track.

Trustee Morris said he too is in favor of pay to play and making people aware of the access that they are giving away. He has a little reticence on putting on a cap and is hopeful that we can solve that challenge economically rather than statutorily. If guest prices keep going up and up, it will help with the numbers. Continue to think this through and come up with other ideas; he likes this and awaits more ideas.

Trustee Dent said thank you for the six page presentation as it is the shortest one for him as a Trustee. Find a system we can conform to and see what the possibilities are out there that we can work within and then bring that back to us in the first part of the year, budget for it, and let's make everyone's life a little less complicated. Interim District General Manager Winquest said that he thinks our current system may work, with some customization, so Staff will start with the Vermont system and let them wrap their heads around it. This is unique to us so we will have to for that work but there will be a return on investment. Trustee Dent asked, regarding punch cards, if there was anything we can do to adjust that system. Interim District General Manager Winquest said we first have to figure out punch cards reform. Staff has done the best they can on how to deal with it. Trustee Dent said that he appreciates the recommendation in the packet and keep doing whatever you can.

At 9:02 p.m., Chairwoman Wong called for a break; the Board reconvened at 9:15 p.m.

H.6. Review, discuss, and possibly provide direction for the next step in the process to possibly revise Ordinance 7, An Ordinance Establishing Rates, Rules and Regulations for Recreation Passes and Recreation Punch Cards by the Incline Village General Improvement District (Requesting Staff Member: Interim District General Manager Indra Winquest)

Interim District General Manager Winquest gave an overview of the submitted materials.

Trustee Morris said, referencing agenda packet page 224, that this was the best crystallization of stripping out the administrative items and that it was absolutely perfect. He likes getting these out in other forms and revising the fees as it is time that they should be changed and updated. He thinks this is really great and totally in the right direction; all for us doing this.

Trustee Dent asked if the rates/fees can be outside of the ordinance. Interim District General Manager Winquest said yes and that Staff can make them part of the key rates or have it so increases only are brought back to the Board and that we can do that either for your approval or within the General Manager's report. Trustee Dent said that bringing it back for the Board's action is fine.

Chairwoman Wong said that it takes about five years to recover from post-traumatic syndrome when something blows up so it is great that we are revisiting these and let's get them done.

Trustee Callicrate said the last time was a good attempt but that it did go south very quickly and that this is good because it doesn't affect as many people. In the February meeting, he will have some very pointed items regarding pop-ups, etc. Thanks to Staff for your hard work.

H.7. Review, discuss and possibly approve the General Manager's job description (Requesting Trustee: Chairwoman Kendra Wong)

Chairwoman Wong gave an overview of the submitted materials and said she made her changes with our current Interim District General Manager in mind and that the redlined version are her changes.

Trustee Dent asked, referencing agenda packet page 235, on the salary change, where did that come from. Interim District General Manager Winquest said that the Human Resources Staff did a salary comparison of all the General Manager's in the area and that is the range.

Trustee Dent said, referencing agenda packet pages 238 and 241, regarding the education and no longer required to live in Incline Village, with the forty five mile radius, the person could be someone who lives in Colfax so maybe we should change the language to "if an internal candidate who has been with the District, they can live within X miles of the District". Chairwoman Wong said she is not opposed to that and that she hopes that the Board could revisit that item. Trustee Callicrate suggested live within the Nevada state boundaries. Chairwoman Wong said that is fine.

Trustee Morris said he has one small one, referencing agenda packet page 238, on education, it says that a master's degree is strongly preferred and

asked if we have to say it is strongly preferred as that may be a barrier we don't need so he would suggest removing the word strongly.

Chairwoman Wong asked the Interim District General Manager if there were any changes he would like to see. Interim District General Manager Winquest said it is fine and that it is a bit unethical for him to ask for any changes. He does meet all the qualifications and is comfortable with the job description. A lot of people have reached out him and it is his philosophy that the Board should be making the decisions and he wouldn't do so without the Board's approval and that he does run things through the Board; this is a concern that has come up within the community. Chairwoman Wong said that the Board does have policy changes that we need to clean up. Trustee Callicrate said as long as everything is compliant with the Nevada Revised Statutes.

Trustee Morris made a motion to approve the District General Manager's Job Description as revised. Trustee Dent seconded the motion. Chairwoman Wong asked for any further comment, none were made, so she called the question – the motion was unanimously passed.

H.8. Review, discuss, revise and possibly approve the questions for Trustee Candidates (Requesting Trustee: Chairwoman Kendra Wong)

Chairwoman Wong said that this is just a preview to give all of us a starting as we are going through the interview process and if you have other questions, we can ask them and that these are the same questions this Board used before.

Trustee Morris said that his concern was that we had a rigid structure and that this was all we could discuss and that as long as we do have the ability to ask other questions, he is good. Chairwoman Wong said that she would encourage all of the Board members to go through these questions and read through these questions versus other questions. District Clerk Susan Herron reminded the Board of the timing shown on the posted agenda and trying to stick to that schedule. Chairwoman Wong said that public comment might throw off that timing. Trustee Morris added that the Board may need to take a break.

Trustee Callicrate made a motion to approve the questions presented for the Trustee candidates. Trustee Morris seconded the motion. Chairwoman Wong asked for further comments, none were made, so she called the question – the motion was passed unanimously.

H.9. Review, Discuss, and Possibly Authorize Multiple Contracts for the Water Resource Recovery Facility Improvements Project; 2019/2020 Capital Improvement Project: Fund: Public Works; Division: Sewer; Project # 2599SS1707; Vendors: K.G. Walters Construction Co., Inc., in the amount of \$1,508,500 and Jacobs Engineering in the amount of \$60,000. and Acknowledge the additional use of \$466,500 of Utility Fund cash to complete the project (Requesting Staff Member: Director of Public Works Joe Pomroy)

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

Trustee Callicrate asked if this project was going to improve the odors that come down to the Mill Creek area. Director of Public Works Pomroy said it will improve them but not eliminate them. Trustee Callicrate said that there is a woman around the corner from where he lives that has asthma. Director of Public Works Pomroy said it is in the five year plan to address the fugitive odors.

Trustee Dent said that there was fifty thousand dollars that was budgeted in 2018 which wasn't included in this memorandum. This went out to bid and it is what it is. How can the Board be assured that there aren't other projects within the District that Jacobs hasn't updated their costs on equipment? Director of Public Works Pomroy said that the District has no other projects in this phase as we rejected the last one and it will get entered into the capital projects budgets for next year. Trustee Dent said this is dipping into utility fund reserves which is imperative for us to keep that in mind with the rate study and do a rate increase; this project is an example of doing that and keep it in mind for the future.

Trustee Morris made a motion to award a construction contract to K.G. Walters Construction Co., Inc. in the amount of \$1,508,500 for the Water Resource Recovery Facility Improvements Project, authorize Chair and Secretary to execute the contract with K.G.

Walters Construction Co., Inc., based on a review by General Counsel and Staff, authorize Staff to approve change orders to the construction contract for additional work not anticipated at this time of up to 10% of the project bid – \$150,000., authorize Staff to enter into an Additional Task Order with Jacobs Engineering totaling \$60,000 for services during construction of the project, and acknowledge the additional use of \$466,500 from the Utility Fund cash to complete the Project Budget for CIP 2599SS1707. Trustee Callicrate seconded the motion. Chairwoman Wong asked for further comments, none were made so she called the question – the motion was passed unanimously.

H.10. Case No. CV11-01380 Aaron L. Katz v. IVGID

- (1) Receive and discuss a verbal status report from litigation counsel, Thomas P. Beko, Esq., regarding litigation involving Aaron Katz Case No. CV11 01380 under Nevada Supreme Court Appeal Nos. 70440 & 71493
- (2) Review, discuss and possibly approve the filing of a motion to recover costs accumulated between the payment of \$241,046.11 made by the Plaintiff and the time of the order, which is estimated at up to \$150,000, with the cost of filing this motion to be not exceed \$25,000

(Requesting Staff Member: Interim District General Manager Indra Winquest with assistance from Thomas Beko, Esq.)

This item was removed from the agenda in its entirety.

H.11. Case No. CV18-01564 Mark E. Smith v. IVGID

- (1) Receive, review and discuss status report from litigation counsel, Thomas P. Beko, Esq., regarding defense of lawsuit initiated by Mark E. Smith under Case No. CV18-01564 against the Incline Village General Improvement District (“IVGID”), IVGID Board Chair Kendra Wong, and District Legal Counsel Jason Guinasso.
- (2) Review, discuss and possibly approve legal fees and costs to cover fees that were not budgeted as of the last update (estimated to be not to exceed \$13,000.00 over current authorization).
- (3) Authorize litigation counsel, Thomas P. Beko, Esq., to pursue a motion to remove IVGID Board Chair Kendra

Wong and District Legal Counsel Jason Guinasso from this lawsuit (estimated budget \$10,000.00).

(Requesting Staff Member: Interim District General Manager Indra Winquest with assistance from Thomas Beko, Esq.)

This item was removed from the agenda in its entirety.

I. APPROVAL OF MINUTES (for possible action)

I.1. Regular Meeting of November 13, 2019

Chairwoman Wong asked for any changes, none were requested; the minutes were approved as submitted.

J. REPORTS TO THE IVGID BOARD OF TRUSTEES*

J.1. District General Counsel: Law Firm of Hutchison & Steffen

District General Counsel Jason Guinasso said that Counsel Beko will be here at the next meeting to report on litigation and that he had nothing further to report.

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

Trustee Dent said that he will be attending the Nevada League of Cities upcoming luncheon.

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.

Brad Johnson said he is a resident of Incline Village and that he was here to speak about the decision you will make on December 18th to appoint a new member to this Board. You have eight candidates to choose from. Some of whom are tremendously well qualified for the position. I am confident there is more than one individual in that pool that all of you can reach agreement on that is capable of doing the job well. That is capable of working collaboratively with you to advance the interests of this community. I urge you to reach a compromise and appoint that

individual on Wednesday. It may be hard to do so. It may mean not getting the individual that is your first choice. But reaching compromise and providing governance to this District is the job you signed up for. Do not allow this decision to go to Washoe County because you think you may get from them a better candidate than you can achieve with your fellow Trustees. To do so is to abdicate control of this community to an organization that has proven itself, more often than not, as absentee and deaf to the desires and best interests of Incline Village and Crystal Bay. Find a path to compromise and appoint. You have stellar candidates. Do right by your community. Do right by this District.

Gerry Eick said that he apologizes to Trustee Dent as the Board did not award the contract on the Mountain Golf Course Clubhouse roof and that he made a mistake for which he apologizes as Staff awarded that contract. It has been his privilege to work for the District and with such an amazing group of dedicated people who are what makes IVGID work for our community. He appreciates being allowed to contribute to the community and the State with both the POOL and the hospital. IVGID is full of accomplished people and that he has always tried his best. For the past forty five years, he has worked at accountancy and to always do the greatest good and for IVGID affording him the chance to do worthwhile work; thank you very much. All those present gave Mr. Eick a round of applause. Chairwoman Wong thanked Mr. Eick for his service to the District and our community and hoped that he and his wife have a great retirement.

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

Interim District Manager Winquest went over the long range calendar. Chairwoman Wong noted that she will be out of town on March 25. Trustee Dent asked for a reminder on the date the changes to the Board of Trustees handbook at due; Chairwoman Wong said they are due to Staff by December 31, 2019. Interim District General Manager Winquest reminded the Board that the appointment to fill the Board vacancy will need to be done by January 8, 2020.

N. ADJOURNMENT

The meeting was adjourned at 10:00 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 Judith Miller (1 page): Public Comment IVGID Board of Trustees Meeting 12/11/19

Submitted by Aaron Katz (6 pages): Written statement requested to be included in the written minutes of this December 11, 2019 regular IVGID Board meeting – Agenda Item H(10) – Approval to spend not to exceed \$25,000 with Attorney Beko to file motion to recover an estimated \$150,000 in postjudgment attorney’s fees and costs incurred in two Nevada Supreme Court Appeals, Nos. 70440 & 71493

Submitted by Aaron Katz (12 pages): Written statement requested to be included in the written minutes of this December 11, 2019 regular IVGID Board meeting – Agenda Item C – Request the IVGID Board and Interim General Manager Winquest intervene to compel Public Records Officer (“PRO”) Susan Herron to make available for examination and possibly copying all ETS billing statements in the Katz appeal matter before they can be altered and falsified by means of redaction by Ms. Herron’s public employee colleagues and/or Jason Guinasso

Submitted by Tony Lillios (2 pages)

Submitted by Mike Hess (1 page) – Public Comments IVGID Board of Directors Meeting 12/11/2019

Submitted by Margaret Martini (2 pages) – December 11, 2019 IVGID Board of Trustees Meeting Public Comment by Margaret Martini – to be included with the meeting minutes

Public Comment IVGID Board of Trustees Meeting 12/11/19

Mr. Beko and Mr. Guinasso are once again leading the charge to seek additional attorney's fees against my husband. Most people have no idea what the case was about. First, it asked for a determination that the Rec Fee is really an invalid special tax against property. IVGID relies on a type of fee that elsewhere funds essential infrastructure like water and sewer lines. Everywhere else a standby charge was accessed to vacant lots only, because they provided no revenue from use. But when the original developers of Incline couldn't afford to buy the beaches they had promised, instead of using the normal and fair process of turning to the voters for a bond approval, they came up with a board approved recreation "standby fee" to acquire and subsidize recreational amenities. Instead of assessing just vacant lots, IVGID assesses the Rec fee on improved lots whose occupants do provide revenue from user fees. Unfortunately the Court declined to address this issue, stating that no citizen has the right to challenge this practice. Another element of the case was to seek public records: things like a detailed budget and an employee separation agreement (likely with payments of undisclosed, unbudgeted, unapproved public funds). Courts have determined similar documents are clearly public records. But again Judge Flanagan, who had a history of deferring to public agencies, rather than to the public they serve, decided that these were not public records and just asking for them was allegedly frivolous.

IVGID has had a horrible track record when it comes to producing public records. And it should be everyone's right to question such unusual methods of taxing the public. But these are the 2 main elements in the lawsuit my husband filed after spending four frustrating years (Beko's statement in the packet that the lawsuit was filed just 2 years after moving here is false) approaching other agencies for help (Department of Taxation, Attorney General, District Attorney, IVGID Board, Sheriff). Sadly, public agencies here tend to support other public agencies, not the public, so none would investigate any of IVGID's questionable practices. The lawsuit was a last resort.

Now IVGID's attorneys want you to approve spending even more on legal fees to punish someone for seeking transparency and fairness.

But even more important, the Board and the public should be fully informed. The funds only cover filing a motion, not prosecuting it. The agenda item does not even raise potential risks or present any alternatives.

IVGID is undergoing many changes. There's a great deal of optimism that we are on a new path to involve the community in decisions and seek to understand and compromise with those whose opinions differ from our own. I hope your decision tonight will demonstrate this new spirit of good will and unity. 'Tis the season.

Judith Miller

WRITTEN STATEMENT REQUESTED TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS DECEMBER 11, 2019 REGULAR IVGID BOARD MEETING – AGENDA ITEM H(10) – APPROVAL TO SPEND NOT TO EXCEED \$25,000 WITH ATTORNEY BEKO TO FILE MOTION TO RECOVER AN ESTIMATED \$150,000 IN POSTJUDGMENT ATTORNEY’S FEES AND COSTS INCURRED IN TWO NEVADA SUPREME COURT APPEALS, NOS. 70440 & 71493

Introduction: Here attorney Beko seeks authority to bill the District up to \$25,000 to file and prosecute a motion, presumably in district court, to recover an estimated \$150,000 in attorney’s fees and costs incurred defending the District after Katz’s satisfaction of the attorney’s fee judgment in case No. CV11-01380. **But nowhere does he share the legal justification for seeking such fees.** He wants the Board to assume, as he has, that just because the District was awarded fees in district court and prevailed on appeal, it is entitled to recover its fees and costs on appeal. But the law declares otherwise. And because it does, if the District goes forward as Mr. Beko suggests, not only is it jeopardizing the loss of the \$25,000 or possible more he seeks, but other costs and expenses he does not even discuss; something every conscientious legal advisor is ethically required to share. Therefore before deciding this agenda item, the Board and the public need to answer the following important questions:

I. What legal authority supports the recovery of post-judgment (i.e., appeal) attorney’s fees and costs incurred defending a NRS 18.010(2)(b) judgment rendered for bringing or maintaining a lawsuit without reasonable ground or to harass?

II. What potential detriment does the District face should it proceed as Mr. Beko proposes and fail?

III. Why didn’t staff, Mr. Beko and the Board attempt to put an end to the wasteful expenditure of our Recreation Facility Fees (“RFFs”) on Mr. Beko’s attorney’s fees in this case by formally engaging in settlement discussions?

These are the purposes of this written statement.

I. There is No Established Legal Authority:

Many lay persons believe that the person who prevails in litigation or on appeal is entitled to recover its attorney’s fees and costs. This is wrong. Given nowhere does Mr. Beko tell the Board and the public the legal authority he relies upon which authorizes his filing of a “motion to recover costs (in district court) accumulated (since Katz’s)...payment of \$241,046.11,” before the Board authorizes him to seek such costs it should make him share that authority. And it should make him counter the authority to the contrary.

A. The American Rule: states that absent a statute, rule¹ or contractual provision, attorney's fees are *not* recoverable to either party either in district court or on appeal.

B. Although NRS 18.010(1)² Allows Parties to Contract Amongst One Another an Allowance of Attorney's Fees and Costs to the Prevailing Party in Litigation, Here There is No Such Contract:

C. Although NRCP 68(a)³ Allows a Party Who Has Made a Written Offer to Allow Judgment to be Taken Against It to Recover Its Attorney's Fees and Costs Where the Recipient of the Offer Recovers Less Than What Has Been Offered, Here No Such Offer Was Made:

D. Although NRS 18.010(2)(b)² Allows a Party to Recover Its Pre-Judgment Attorney's Fees and Costs Where the Opposing Party Has Brought or Maintained a Lawsuit Without Reasonable Ground or to Harass, It Does Not Allow the Party to Recover Its Post-Judgment Fees and Costs: because there is nothing in NRS 18.010(2) which expressly extends to post-judgment fees and costs.

"Because NRS 18.010 does not explicitly authorize attorney's fees on appeal...PETA (wa)s not entitled to attorney's fees incurred through its appeal of Berosini's favorable trial judgment" [*Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1356-1357, 971 P.2d 383, 388 (1998)⁴].

E. The Only Statute or Rule Which Allows a Party to Recover Attorney's Fees and Costs Incurred on Appeal is Nevada Rule of Appellate Procedure ("NRAP") 38⁵:

"There is no provision in the statutes authorizing the district court to award fees and costs incurred on appeal. NRAP 38(b) authorizes only this (Supreme) Court to make such an award," even where attorney's fees and costs were originally awarded in the trial court pursuant to NRS 18.010(2)(b) [*Board of Gallery of History, Inc. v. Datecs Corporation*, 116 Nev. 286, 288, 994 P.2d 1149, 1150 (2000)⁶].

F. But the District Has Waived the Right to Recover its Attorney's Fees and Costs Were Incurred in the First Appeal: The first appeal became final more than a year ago. *Nowhere* in its Order of Affirmance did the Supreme Court award the District post-judgment attorney's fees and costs. The

¹ When we say rule we are referring to the Nevada Rules of Civil Procedure ("NRCP").

² See <https://www.leg.state.nv.us/NRS/NRS-018.html#NRS018Sec010>.

³ NRCP 68 appears at <https://www.leg.state.nv.us/CourtRules/NRCP.html>.

⁴ Go to <https://www.casemine.com/judgement/us/5914bb60add7b04934796376>.

⁵ NRAP 38 appears at <https://www.eg.state.nv.us/CourtRules/NRAP.html>.

⁶ Go to <https://www.casemine.com/judgement/us/59147e83add7b04934451aa6>.

absence of a ruling awarding such fees acts as denial of the claim [*Tulelake Horseradish, Inc. v. Santa Margarita Ranch, LLC*, (Appeal No. 69305) (June 20, 2016)⁷ citing *McClure v. Moore*, 565 So.2d 8, 11 (Ala, 1990)] and it becomes “the law of the case.” As such, the *de facto* denial of such fees “must be adhered to throughout its subsequent progress both in the lower court and upon subsequent appeal” [*Tulelake Horseradish, supra*, citing *Board of Gallery, supra*, at 116 Nev. 289].

G. Insofar as the \$38,997.65 in Attorney’s Fees and Costs Incurred in Second Appeal⁸, the District’s Odds of Successfully Recovering Them in the Supreme Court Are Slim at Best: NRAP 38(b) instructs that:

Only “when an appeal has frivolously been taken or...processed in a frivolous manner (or)...or processed solely for purposes of delay...or whenever the appellate processes of the court have otherwise been misused...may...the court require the offending party to pay, as costs on appeal, such attorney fees as it deems appropriate.”

Even the most cursory examination of the briefs in the second appeal reveals it would be preposterous to assert that it was “frivolously...taken or...processed in a frivolous manner.” The odds of establishing the contrary would be quite an uphill battle and slim at best.

Moreover, it Makes No Financial Sense (i.e. Cost/Benefit) to Spend \$25,000 More With Mr. Beko Attempting to Recover the \$38,997.65 in Fees and Costs Incurred in Second Appeal: Given the legal standard for recovering attorney’s fees on appeal, does it make sense to waste another \$25,000 or more chasing \$38,997.65?

II. Potential Costs and Penalties:

What are the potential costs and penalties to the District should it disregard the law as it is laid out, proceed as Mr. Beko and staff propose, let alone fail?

A. Only \$25,000 to File and Prosecute the Motion: As the Board can see, what is at issue here is far more than simply filing and prosecuting a motion for attorney’s fees. There are quite a few ancillary issues and depending upon how they are resolved, each may lead to new filings in appellate court. Given Mr. Beko’s record on estimating legal costs, his \$25,000 estimate should be

⁷ Go to <https://www.casemine.com/judgement/us/59145b7cadd7b049341dfd7e>.

⁸ Although neither staff nor Mr. Beko has shared the amount of fees and costs incurred defending the second appeal, there is a June 12, 2019 invoice from Mr. Beko and it totals this number. Moreover, Mr. Beko’s “estimated cost to file briefing in defense of (the second) appeal...w(as)...approximately \$40,000” [see page 275 of the packet of materials prepared by staff in support of the Board’s December 11, 2019 meeting (https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_12-11-19.pdf) – “the 12/11/2019 Board packet”].

viewed with caution. Because once the District becomes part of an ongoing effort to recover post-judgment attorney's fees and costs, it will be irrevocably committed for the long haul.

Moreover, where is the statute or rule that allows the District to file a motion to recover these costs?

B. The Chilling Message: these actions send to those in our community or to later become members of our community who might ever decide the need to sue the District. Is that the message the Board wants to send?

C. NRCP 11(c)(1)⁹: instructs that if a person presents a pleading to the court which is not warranted by existing law or a nonfrivolous argument to extending or reversing existing law or establishing new law, the court may impose appropriate sanctions on any attorney, law firm, or party who has violated the rule or is responsible for the violation.

D. Special Motion to Dismiss: NRS 41.660(1)(a)¹⁰ instructs that whenever an action is brought against a person based upon his/her good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern, the person against whom the action is brought may file a special motion to dismiss. NRS 41.660(5) instructs that where the court dismisses the action, the case is over.

E. NRS 41.670(1)(a)¹¹: Moreover where the court grants a special motion to dismiss, NRS 41.670(1)(a) instructs it "*shall* award reasonable costs and attorney's fees to the person against whom the action was brought."

F. NRS 41.670(1)(b)¹¹: Moreover still, where the court grants a special motion to dismiss, NRS 41.670(1)(b) allows the court the power to additionally award the person against whom the action was brought up to \$10,000.

G. NRS 41.670(1)(c)¹¹: Moreover still, where the court grants a special motion to dismiss, NRS 41.670(1)(c) gives the person against whom the action is brought the standing to bring a separate action to recover: (1) compensatory damages; (2) punitive damages; and, (3) the attorney's fees and costs of bringing and prosecuting that separate action.

H. Abuse of Process: This is a tort. The elements are: "a willful act in the use of the legal process not proper in the regular conduct of the proceeding;" and, "an ulterior purpose...other than resolving a legal dispute."¹² Here the District now knows it cannot recover post-judgment attorney's

⁹ NRCP 11 appears at <https://www.leg.state.nv.us/CourtRules/NRCP.html>.

¹⁰ NRS 41.660 appears at <https://www.leg.state.nv.us/NRS/NRS-041.html#NRS041Sec660>.

¹¹ NRS 41.670 appears at <https://www.leg.state.nv.us/NRS/NRS-041.html#NRS041Sec670>.

¹² See *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 877, 879 (2002) [go to <https://www.casemine.com/judgement/us/59147bd5add7b04934424076>].

fees in this case pursuant to NRS 18.010(2)(b), or otherwise. Thus any motion seeking to recover those fees (especially if filed in district court¹³) would not be proper. And since it would not be proper, the District would have to have some other ulterior purpose. And what would that purpose be?

Hatred and retaliation. The equivalent of burning a witch from, Salem, or feeding a Christian to the lions. What evidence of hatred and retaliation do we have? Let me provide two examples.

In its motion for attorney's fees the District hid the fact that \$103,191.05 of the fees it sought were paid by its insurer, the Nevada Public Agency Insurance Pool ("NPAIP"). In other words, this sum had nothing to do with reimbursing the District. Moreover, it was recently learned that the NPAIP policy of insurance issued to the District prohibited the latter from pursuing these fees for itself without express written authorization from the NPAIP; authorization *never* received.

Additionally, the District submitted a redacted memo from deceased attorney Scott Brooke which allegedly outlined how \$45,070.80 of his and others' fees had allegedly been spent defending the District in my litigation. Although the particulars of that memorandum have never been publicly revealed, if they were they would reveal how essentially all of those fees were spent on matters having nothing directly to do with the Katz litigation. In particular, it is believed that the majority were spent appealing the NPAIP's decision to withdraw a legal defense inasmuch as the same was not covered under its liability policy.

Now why would the District attempt to recover fees and costs it did not pay to defend itself in my litigation?

III. Failure to Pursue Some Settlement of the Litigation:

After the NPAIP withdrew its legal defense of my lawsuit, why didn't staff or Mr. Beko attempt to put an end to the wasteful expenditure of our RFFs on attorney's fees? After all, the District had many, many opportunities yet *never* did it propose anything! I ask you compare this fact with attorney Devon Reese's comments to the Board concerning the cost-benefit of engaging in litigation at its May 18, 2016 meeting:

"Normally each party would have costs and they would have attorneys which would cause someone at some point in time to say hey this is not worth it."¹⁴

The District has had legal representation in my case from day one. In fact, it has had several attorneys (Mr. Beko, Mr. Loomis, Scott Brooke, Devon Reese, Jason Guinasso). So why didn't someone at some point in time say "hey, this is not worth it?"

¹³ Remember, district court has no jurisdiction (*Board of Gallery, supra*, at 116 Nev. 288).

¹⁴ The District livestreams the Board's meetings (see <https://livestream.com/accounts/3411104>). The comments of Mr. Reese quoted above appear starting 2:52:09 of the May 18, 2016 livestream (see <http://livestream.com/IVGID/events/5418809>).

Instead, staff dug in their collective heels to fight me at every opportunity, regardless of cost. Just like it did with Steve Kroll, Frank Wright, Kevin Lyons and now Mark Smith in their respective lawsuits with the District. And why? Because it is more important to make citizens who sue the District pay, be chastised and labeled pariahs, and to chill future litigation, rather than to avoid or put an end to those lawsuits. And now staff and Mr. Beko are asking for even more.

Alternatives: Typically staff memoranda in support of proposed Board action include “alternatives” and “business impact.” Yet here, neither subject is included. Specifically, the subject memorandum fails to list any alternatives (such as initiating some type of settlement). Shouldn’t it?

Conclusion: Mr. Beko’s and staff’s proposed motion lacks legal justification and if filed, it is guaranteed to spark even more litigation at a cost far in excess of \$25,000. And should Mr. Beko be unsuccessful, he will have subjected the District to even more detriment. And why?

Perhaps the Board should engage the services of a truly independent attorney to counsel with “new eyes” to counsel the Board as to the advisability of going down the road Mr. Beko suggests? Because once it starts down that road, it will likely be too late.

And You Wonder Why Our RFF is as High as it is Because it is Wasted on Legal Fees Such as These? I’ve now provided more answers.

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

WRITTEN STATEMENT REQUESTED TO BE INCLUDED IN THE WRITTEN MINUTES OF THIS DECEMBER 11, 2019 REGULAR IVGID BOARD MEETING – AGENDA ITEM C – REQUEST THE IVGID BOARD AND INTERIM GENERAL MANAGER WINQUEST INTERVENE TO COMPEL PUBLIC RECORDS OFFICER (“PRO”) SUSAN HERRON TO MAKE AVAILABLE FOR EXAMINATION AND POSSIBLE COPYING ALL ETS BILLING STATEMENTS IN THE KATZ APPEAL MATTER BEFORE THEY CAN BE ALTERED AND FALSIFIED BY MEANS OF REDACTION BY MS. HERRON’S PUBLIC EMPLOYEE COLLEAGUES AND/OR JASON GUINASSO

Introduction: On December 7, 2019 I made the following e-mail request to examine public records¹:

“All...Erickson, Thorpe & Swainston (‘ETS’)...billings to IVGID insofar as...my latest appeal...(wa)s concerned...subsequent (to) June 12, 2019” as well as “records evidencing IVGID’s payment of some or all of such billings.”

These records where a local governmental entity’s records as defined by NAC 239.101²:

All “information that is created or *received* pursuant to a law or ordinance, or *in connection with the transaction of the official business of any office or department of a local governmental entity*, including, without limitation, all documents, papers, letters, bound ledger volumes, maps, charts, blueprints, drawings, photographs, films, newspapers received pursuant to NRS 247.070, recorded media, financial statements, statistical tabulations and other documentary materials or information, regardless of physical form or characteristic.”

Susan Herron is IVGID’s Public Records (“PRO”) and Information (“PIO”) Officer. And for this reason the above-request was directed to her. NRS 239.001, et seq. is Nevada’s Public Records Act (“NPRA”), and NRS 239.0107(1)³ instructs that:

“Not later than the end of the fifth business day after the date on which the person who has legal custody or control of a public book or record of a governmental entity receives a written or oral request from a person to inspect, copy or receive a copy of the public book or record, a governmental entity *shall* do one of the following, as applicable:

¹ My e-mail request is attached as Exhibit “A” to this written statement.

² Go to <https://www.leg.state.nv.us/nac/NAC-239.html#NAC239Sec101>.

³ Go to <https://www.leg.state.nv.us/NRS/NRS-239.html#NRS239Sec0107>.

(a) Except as otherwise provided in subsection 2 (see below), allow the person to inspect or copy the public book or record or, if the request is for the person to receive a copy of the public book or record, provide such a copy to the person.

(b) If the governmental entity does not have legal custody or control of the public book or record, provide to the person, in writing:

- (1) Notice of that fact; and
- (2) The name and address of the governmental entity that has legal custody or control of the public book or record, if known.

(c) Except as otherwise provided in paragraph (d), if the governmental entity is unable to make the public book or record available by the end of the fifth business day after the date on which the person who has legal custody or control of the public book or record received the request, provide to the person, in writing:

- (1) Notice of that fact; and
- (2) A date and time after which the public book or record will be available for the person to inspect or copy or after which a copy of the public book or record will be available to the person.”

NRS 239.0107(2)³ instructs that:

“If a public book or record of a governmental entity is readily available for inspection or copying, the person who has legal custody or control of the public book or record *shall* allow a person who has submitted a request to inspect, copy or receive a copy of a public book or record.”

Moreover, NRS 239.010(1)⁴ instructs that:

“Except as otherwise provided (and here there are no exceptions)...all public books and public records of a governmental entity *must be open at all times during office hours to inspection by any person*, and may be fully copied.”

On December 9, 2019 Ms. Herron responded to my public records request as follows⁵:

⁴ Go to <https://www.leg.state.nv.us/NRS/NRS-239.html#NRS239Sec010>.

⁵ Ms. Herron’s e-mail response is also attached as part of Exhibit “A” attached to this written statement.

“The District is in receipt of an invoice from ETS however it is in the review process and therefore has not been approved for payment nor processed for payment (and) thus I have nothing to provide to you in response to your request. (Moreover,) this completes your records request in its entirety.”

Ms. Herron’s response was not in compliance with the NPRA. Even though she admitted she was in possession of a public record, she refused to make it available for my inspection and possible copying anytime during office hours. Moreover, she failed to provide a date and time after which the subject invoice would be available to inspect and/or copy. In other words, Ms. Herron summarily swept my request under IVGID’s administrative office rug to languish there forever.

On December 9, 2019, in response to Ms. Herron’s refusal, I e-mailed back to her⁶ reminding that:

“There is nothing in the Public Records Act which permits you to refuse a legitimate records request for examination simply because ‘it (allegedly) is in the review process and...has not been approved...nor processed for payment’ and for this reason I again “ask(ed the requested billing invoice)...be made available for my examination.”

Ms. Herron ignored by renewed request.

The Reason Ms. Herron Refused to Allow Me to Examine the Requested Public Records Was So That Her Public Employee Colleagues and/or Attorney Jason Guinasso Had Time to Redact Much of Their Content. Which if True, Makes Her an Accessory to a Felony: Although Ms. Herron will likely not admit this, if placed under oath by the Office of Attorney General (“OAG”) or otherwise, I am certain she will be forced to admit this. Which if true makes her an aider and abettor (see NRS 195.030 below) to the NRS 239.300 crime of corrupting, altering and falsifying official records. NRS 239.300 instructs as follows:

“A person who (1)...corrupts, alters...or...falsifies...any record, process, charter, gift, grant, conveyance, bond or contract...or (4)...alters...or falsifies any...(public) document...belonging to any public office within this state is guilty of a category C felony.”

NRS 195.030(1) instructs as follows:

⁶ My follow up e-mail response to Ms. Herron’s is also attached as part of Exhibit “A” attached to this written statement.

“Every person who is not the spouse or domestic partner of the offender and who, after the commission of a felony...aids in the destruction or concealment of, material evidence, or harbors or conceals such offender with intent that the offender may avoid or escape from arrest, trial, conviction or punishment, having knowledge that such offender has committed a felony or is liable to arrest, is an accessory to the felony.”

My Request to the IVGID Board and Interim Manager Winquest to Intervene to Preserve the Requested Public Record in its Unaltered Form, and Make it Available For My Immediate Examination: For these reasons on December 10, 2019 I sent the IVGID Board and Interim Manager Winquest an e-mail⁷ asking that they intervene to preserve the requested billing invoice in its unaltered form, and to make it immediately available for my examination and possibly copying no later than Friday, December 13, 2019⁸.

Why Submit This Written Statement if I’ve Already Made E-Mail Request to the Board? The reasons are threefold. First, I want the public to see how staff, our interim GM and the Board respond to public record requests. Second, I want the record to be perfectly clear that I afforded the Board every opportunity to intervene to comply with the NPRA, should it do nothing. In other words, establishing willfulness. And third, I want to protect the public from civil penalties should complaint be made to the OAG and civil penalties be imposed.

There is Now a Consequence Whenever a Local Governmental Entity Willfully Violates the NPRA: SB289 was passed by the most recent (80th) session of the Legislature, and it added a new section to NRS 239 [approved by the Governor on June 13, 2019 (Chapter 612)], effective October 1, 2019, which reads as follows⁹:

“If a court determines that a governmental entity willfully failed to comply with the provisions of this chapter concerning a request to inspect, copy or receive a copy of a public book or record, the court *must* impose on the governmental entity a civil penalty of:

- (a) For a first violation within a 10 - year period, \$1,000;
- (b) For a second violation within a 10 - year period, \$5,000;
- (c) For a third or subsequent violation within a 10 - year period, \$10,000.”

Conclusion: When is the Board going to be the community’s watchdog to insure that public records are not altered, and that they are made timely available to those who request them? When is our interim GM going to replace Ms. Herron with someone who will scrupulously follow the law

⁷ That e-mail is attached as Exhibit “B” to this written statement.

⁸ This represents the fifth (5th) business day after my initial request.

⁹ Go to <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6505/Text>.

rather than frustrate it concerning public records? Given I have demonstrated on so many occasions before that IVGID budgets to overspend nearly \$7 million annually than the operational revenues it assigns to our recreation and beach venues, and this overspending is subsidized by Recreation (“RFF”) and Beach (“BFF”) Facility Fees, Mr. Guinasso’s fees (like those the subject of agenda item 11 for this meeting to defend the District for against staff’s violation of the NPRA¹⁰) are paid from the RFF.

And You Wonder Why Our RFF is as High as it is Because it is Wasted on Legal Fees to Defend Inappropriate Conduct Such as This? I’ve now provided more answers.

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

¹⁰ See pages 283-311 of the packet of materials prepared by staff in anticipation of this December 11, 2019 Board meeting [https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Regular_12-11-19.pdf (“the 12/11/2019 Board packet”)].

EXHIBIT "A"

RE: Records Request - Attorney Billing Invoices in Katz Appeal Case Since June 12, 2019

From: "s4s@ix.netcom.com" <s4s@ix.netcom.com>
To: "Herron,Susan"
Subject: RE: Records Request - Attorney Billing Invoices in Katz Appeal Case Since June 12, 2019
Date: Dec 9, 2019 4:16 PM

Thank you Ms. Herron -

First of all what is the date of the invoice? Or have there been more than a single invoice?

Second of all has it or several its been received redacted from Mr. Beko's office?

Now to the substance of your refusal.

There is nothing in the Public Records Act which permits you to refuse a legitimate records request for examination simply because "it is in the review process and therefore has not been approved for payment nor processed for payment." Whether or not it has been processed has nothing to do with its receipt. So I ask it be made available for my examination.

Evidence of payment on the other hand, is a different issue. If no part of the invoice (assuming only one) has been paid, then I would agree with you that you have no such records to make available for examination. However I would hope that once it is paid, you then provide evidence of that payment.

Please confirm you will be making available for my examination the invoice or invoices received in the form in which it or they were received, and when.

Thank you for your cooperation. Aaron Katz

-----Original Message-----

>From: "Herron, Susan" <Susan_Herron@ivgid.org>
>Sent: Dec 9, 2019 2:59 PM
>To: "s4s@ix.netcom.com" <s4s@ix.netcom.com>
>Subject: RE: Records Request - Attorney Billing Invoices in Katz Appeal Case Since June 12, 2019

>

>Dear Mr. Katz,

>

>This e-mail shall serve as IVGID's response to your records request of December 7, 2019 which reads as follows:

>

>The last billing statement you have provided for Erickson, Thorpe & Swainston ("ETS") billings in my latest appeal is dated June 12, 2019.

>

>I would therefore like to examine all subsequent ETS billings to IVGID insofar as this matter is concerned. I would also like to examine records evidencing IVGID's payment of some or all of such billings.

>

>The District is in receipt of an invoice from ETS however it is in the review process and therefore has not been approved for payment nor processed for payment thus I have nothing to provide to you in response to your request.

>

>This completes your records 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 Nevada 89451

>P: 775-832-1207

>F: 775-832-1122

>sah@ivgid.org

><http://yourtahoeplace.com>

>

>

>

>

>-----Original Message-----

>From: s4s@ix.netcom.com [mailto:s4s@ix.netcom.com]

>Sent: Saturday, December 7, 2019 9:52 AM

>To: Herron, Susan <Susan_Herron@ivgid.org>

>Subject: Records Request - Attorney Billing Invoices in Katz Appeal Case Since June 12, 2019

>

>Hello Ms Herron -

>

>Another records request.

>

>The last billing statement you have provided for Erickson, Thorpe & Swainston ("ETS") billings in my latest appeal is dated June 12, 2019.

>

>I would therefore like to examine all subsequent ETS billings to IVGID insofar as this matter is concerned. I would also like to examine records evidencing IVGID's payment of some or all of such billings.

>

>Thank you for your cooperation.

>

>Aaron Katz

EXHIBIT "B"

Susan Herron is Committing Public Record Act Violations by Refusing to Make Available for Examination ETS Attorney Billing Invoices in the Katz Appeal Case Since June 12, 2019 So Staff/Mr. Guinasso Can Alter/Redact Them

From: "s4s@ix.netcom.com" <s4s@ix.netcom.com>
To: Wong Kendra Trustee
Cc: "Herron,Susan" <Susan_Herron@ivgid.org>, "ISW@ivgid.org" <ISW@ivgid.org>, Callicrate Tim <tim_callicrate2@ivgid.org>, Dent Matthew <dent_trustee@ivgid.org>, Horan Phil <horan_trustee@ivgid.org>, Morris Peter <morris_trustee@ivgid.org>
Subject: Susan Herron is Committing Public Record Act Violations by Refusing to Make Available for Examination ETS Attorney Billing Invoices in the Katz Appeal Case Since June 12, 2019 So Staff/Mr. Guinasso Can Alter/Redact Them
Date: Dec 10, 2019 10:08 AM

Chairperson Wong, Other Honorable Members of the IVGID Board and Interim GM Winquest:

Susan Herron is refusing to make public records available for examination so staff/Mr. Guinasso can alter them by redaction. This constitutes Nevada Public Records Act ("NPRA") violations and I am asking you and Mr. Winquest to intervene NOW before staff are successful in their alteration of public records.

You will note that the staff memorandum in support of agenda item H(10) is conspicuously silent on the attorney's fees and costs Mr. Beko's firm has billed the District associated with my second appeal. So for that reason,

Below you will see that on December 7, 2019 I made request on the District's Public Records Officer ("PRO") to examine all ETS billings to IVGID subsequent to its June 12, 2019 billing insofar as my second appeal was concerned, and records evidencing IVGID's payment of some or all of such billings.

Below you will see that on December 9, 2019 Ms. Herron responded that "the District is in receipt of an invoice from ETS however it is in the review process and therefore has not been approved for payment nor processed for payment (and) thus I have nothing to provide to you in response to your request."

In other words, Ms. Herron admits she is in possession of public records which respond to my request however, she refuses to make them available for my examination for reasons having nothing to do with privilege or confidentiality. This represents a NPRA violation.

Let me explain to you why Ms. Herron is refusing to make these records available for my examination now. Because staff or probably more likely Mr. Guinasso haven't had an opportunity to alter them through redaction. Not only does this not justify Ms. Herron's NPRA violation, but it provides evidence of another violation; NRS 239.300(1) and (4) which makes it unlawful for "a person (to)...corrupt...alter...(or) falsif(y) any record" or "deface...or falsif(y) any...document...belonging to any public office within this state."

I ask the Board and Mr. Winquest to take control of the requested public records NOW to preserve them before staff/Mr. Guinasso have the opportunity to alter them, and to make them available for my immediate examination and possible copying.

Additionally, I ask the Board and Mr. Winquest to immediately provide me with the date(s) of all such billings which respond to my request. As you can see I made this request of Ms. Herron on December 9, 2019 and she is stonewalling a response. Ms. Herron is not only IVGID's PRO, she is its Public Information Officer ("PIO"). As PIO Ms. Herron is required to provide "information" to the public just as if it were a public record. But when that information is embarrassing or detrimental to herself or a colleague, she "clams up." And that's what she's doing here.

There is no reason Mr. Winquest can't take possession of the requested records right now to preserve them in their unaltered form. So I ask him to do so.

I remind each of you that if assist Ms. Herron, Mr. Guinasso or others in refusing to turn over the requested records now for my examination, you will be accessories or principals as aiders and abettors under NRS 195.020 and 195.030 and thus equally responsible.

Finally, I also remind each of you that because of modifications to the NPRA, the Office of Attorney General ("OAG") now has jurisdiction to impose civil penalties on any public body which violates the NPRA. If I don't see corrective intervention by the Board or Mr. Winquest as requested prior to tomorrow evening's IVGID Board meeting, I intend to turn the matter over to the OAG.

Thank you for your hopeful intervention. Aaron Katz

-----Original Message-----

>From: "s4s@ix.netcom.com"

>Sent: Dec 9, 2019 4:16 PM

>To: "Herron,Susan"

>Subject: RE: Records Request - Attorney Billing Invoices in Katz Appeal Case Since June 12, 2019

>

>Thank you Ms. Herron -

>

>First of all what is the date of the invoice? Or have there been more than a single invoice?

>

>Second of all has it or several its been received redacted from Mr. Beko's office?

>

>Now to the substance of your refusal.

>

>There is nothing in the Public Records Act which permits you to refuse a legitimate records request for examination simply because "it is in the review process and therefore has not been approved for payment nor processed for payment." Whether or not it has been processed has nothing to do with its receipt. So I ask it be made available for my examination.

>

>Evidence of payment on the other hand, is a different issue. If no part of the invoice (assuming only one) has been paid, then I would agree with you that you have no such records to make available for examination. However I would hope that once it is paid, you then provide evidence of that payment.

>

>Please confirm you will be making available for my examination the invoice or invoices received in the form in which it or they were received, and when.

>

>Thank you for your cooperation. Aaron Katz

>

>-----Original Message-----

>>From: "Herron, Susan"

>>Sent: Dec 9, 2019 2:59 PM

>>To: "s4s@ix.netcom.com"

>>Subject: RE: Records Request - Attorney Billing Invoices in Katz Appeal Case Since June 12, 2019

>>

>>Dear Mr. Katz,

>>

>>This e-mail shall serve as IVGID's response to your records request of December 7, 2019 which reads as follows:

>>

>>The last billing statement you have provided for Erickson, Thorpe & Swainston ("ETS") billings in my latest appeal is dated June 12, 2019.

>>

>>I would therefore like to examine all subsequent ETS billings to IVGID insofar as this matter is concerned. I would also like to examine records evidencing IVGID's payment of some or all of such billings.

>>

>>The District is in receipt of an invoice from ETS however it is in the review process and therefore has not been approved for payment nor processed for payment thus I have nothing to provide to you in response to your request.

>>

>>This completes your records 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 Nevada 89451

>>P: 775-832-1207

>>F: 775-832-1122

>>sah@ivgid.org

>>http://yourtahoepalace.com

>>

>>-----Original Message-----

>>From: s4s@ix.netcom.com [mailto:s4s@ix.netcom.com]

>>Sent: Saturday, December 7, 2019 9:52 AM

>>To: Herron, Susan

>>Subject: Records Request - Attorney Billing Invoices in Katz Appeal Case Since June 12, 2019

>>

>>Hello Ms Herron -

>>

>>Another records request.

>>

>>The last billing statement you have provided for Erickson, Thorpe & Swainston ("ETS") billings in my latest appeal is dated June 12, 2019.

>>

>>I would therefore like to examine all subsequent ETS billings to IVGID insofar as this matter is concerned. I would also like to examine records evidencing IVGID's payment of some or all of such billings.

>>

>>Thank you for your cooperation.

>>

>>Aaron Katz

12/11/2019

Good evening. I am Tony Lillios, a 10 year resident of Incline Village, and one of the candidates for the Trustee appointment.

I want to first thank all of the Trustees and the IVGID staff who have sat down to speak with me over the past few weeks. I found each one of you to be generous with your time, passionate about your care for the District and at a high level of frustration of where we have found ourselves today. You all spoke about the demanding hours the role asks of each of you. With all that, I want to sincerely thank each and every one of you for the service you provide. It appears to be a thankless role at times and I want to be sure you at least once tonight hear some appreciation.

In speaking with each of you, I was surprised to find there was much more in common than I had expected from following meetings from home. But now as I reflect back, it isn't surprising. We all live here for a reason. And even with our diverse backgrounds, we have chosen this place to live. We all love Incline Village and Crystal Bay. We understand the privilege and the gift to call this place home. And as stewards of this, those who get involved feel the weight of shepherding it forward. What I see in all of you is the desire to do that well. To responsibly take care of what we have already created and to build upon that in service to the community.

In light of Trustee Horan's departure, I believe what is needed now is an appointment that can build bridges between the Trustees and the General Manager. This is the time to put down the gloves. To put aside partisan politicking that will further drive a wedge and divide the community. We are at a juncture here with the departure of the General Manager and Trustee Horan to step into a new way of business. What I see in Indra, is someone who looking to work with you each you individually, to proactively look into the future about what is possible and to leave the past behind us. I think it is time to show Indra and the community as a whole that you are all ready to move on and let him do the great the work I believe he is capable of.

In my view, it is your job, right here as a board, to come together and to find a way through to the replacement for Trustee Horan. To find a Trustee to see out the remainder of his term and to bridge us to the next election in November. It is NOT the time to appoint a partisan, agendaful candidate. Let the public next November decide where they want representation. They have never had a chance to exercise their vote on this unique set of 8 candidates' side by side that have now stepped forth.

I hope that you can find the common ground that you, right here as a board can come together and find someone qualified and competent that you all can work with to see out Trustee Horan's term.

Thank you for your time.

Tony Lillios

12/11/2019

Public Comments IVGID Board of Directors Meeting 12/11/2019

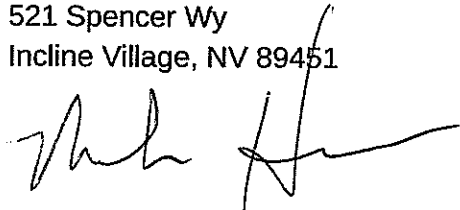
Thank you for the opportunity to comment.

H4 Golf Rates

First, thank you Darren Howard for the good work in your presentation. My comments are not a criticism of your work but are rather meant to provide the Board of Trustees with an additional concept that should be considered.

Within the IVGID Strategic Plan is the concept of IVGID's Cost Recovery Pyramid; such a principle allows for the full subsidy to no subsidy based on the benefit to the community and/or the individual. Last year according to our new financial report, we subsidized, assuming I didn't make a calculation error, the Championship course by \$382,734 and the Mountain Course by \$219,474. With the increased revenue proposed, that subsidy will be reduced by \$155,230 leaving a net subsidy of \$447,038. For the championship course we subsidize nonresident golf to the tune of \$98,208 and are at a rate of \$126.37, which is under Edgewood's lowest rate of \$175.00 per round. For the Mountain Course we subsidize the nonresident play to the tune of \$77,103 and at \$58.73 per round are nowhere near the Old Brockway rate of \$105.00. We should be charging more for nonresident players. The only changes recommended are for nonresident players. These comments are for your consideration.

Mike Hess
521 Spencer Wy
Incline Village, NV 89451

A handwritten signature in black ink, appearing to read 'Mike Hess', is written over the typed name and address.

*Susans
copy*

December 11, 2019 IVGID Board of Trustees Meeting Public Comment
By: Margaret Martini – To be included with the Meeting Minutes

I must object to Chair Wong's disrespect for the time and attention of our Board and our citizens by cramming tonight's agenda with items that should be discussed in depth at a later time and will stretch this meeting past midnight.

As for the important items that warrant everyone's attention, this Board cannot consent to another year of an Eide Bailly audit without discussing expanding the scope to include at a minimum, a report on the District's internal controls. To my knowledge, if there are internal controls, they are ineffective. Coupled with no audit committee oversight, there is no one looking out to ensure that our financial accounting and reporting complies with Nevada law and our own Board policies and practices. Simply stated, no citizen can have any confidence in the financial condition of any of our major funds and cannot know how our public money is actually being spent.

The 2019 CAFR is a sham! There are both false and misleading statements made by staff in the unaudited portions as well as erroneous statements in the audited footnotes. Voting to approve this CAFR is a vote to present false and misleading information to all readers of our financial statements. This includes the State, County, bondholders and our citizens.

As a property owner, rate and fee payer I must object to the use of my public money to fund unending litigation expenses against Mr. Katz and now, Mr. Smith. I do not pay these taxes, rates and fees to support Mr. Beko and Mr. Guinasso's lifestyles to wage war against a local business as was done against FlashVote and against citizens seeking public records. I do not want any more of our public money being misappropriated by Wong and Guinasso for their defense in a public records lawsuit that should have been settled by this Board more than a year ago.

Handwritten: Susan's copy

IVGID December 11, 2019 Audit Committee Meeting Public Comments
By: Margaret Martini – to be included with the Meeting Minutes

The primary **purpose** of an **audit committee** is to provide oversight of the financial reporting process, the **audit** process, the district's system of internal controls and compliance with laws and regulations. Unfortunately, this audit committee has failed to undertake any of its responsibilities. There have been countless memorandums from our citizens flagging non-compliance with laws and regulations, some of which have required a prior period adjustment to this year's CAFR and others which have been ignored. All of these memorandums point to the District's chronic lack of effective internal controls. So, my first question is what exactly do you do? ~~And why, are you, Mr. Horan here when you have physically moved out of the District and are no longer legally eligible to serve as a Trustee?~~ *UA*

The **purpose of a CAFR** is to be transparent about the use of taxpayers' money and to give the public a detailed accounting of all expenditures. A **CAFR** accomplishes this by including basic and more intricate financial reports along with notes, narratives and supporting data. Unfortunately, the CAFR you are recommending for approval has failed to provide transparency as it is littered with so many false and misleading statements in Staff's unaudited narrative as well as serious misstatements in the audited notes.

I have recently learned that this year's required management representation letter to the District's auditors is materially different than those presented in previous years. Among other additions and new omissions, Management no longer acknowledges responsibility for compliance with the laws, regulations and provisions of contracts and grant agreements. Management has also omitted that it has reviewed, approved, and taken responsibility for the financial statements and related notes. So, who authorized the changes to the Management Representation letter? Who is actually responsible for the District's compliance with laws and regulations and who is accountable for the accuracy of the financial statements and related notes? Any one?