

INSCRIPTION CANYON RANCH SANITARY DISTRICT

P.O. Box 215 Chino Valley, AZ 86323

**PUBLIC SESSION
~MINUTES~**

Approved 5/1/12

February 22, 2012

Date: Tuesday February 22, 2012

Time: 1:00 p.m

Place: Days Inn Conference Room 1, 688 Fletcher Court, Chino Valley, AZ 86323

1. CALL TO ORDER.

The Governing Board for the Inscription Canyon Ranch Sanitary District convened into public session at approximately 1:00 p.m.

2. ROLL CALL.

Bob Hilb, Chairman; Brian Ray, Board Member; Scott Robbins, Board Member; Bob Busch, District Manager; Isabel Yribe, District Clerk; Bob Lynch Counsel (via phone in Executive Session); and the following audience members according to the sign in sheet:

Harvey Roberts
John Freeman
Stan Steiner

Clint Poteet
Hugh C. Pryor

3. RULES OF ORDER FOR CONDUCT OF MEETING FOR ACCOMMODATION OF

MR. CHARLES O'BRIEN *Mr. Hilb stated that when the time came for the Call to the Public, any members of the audience wishing to speak would have to wait to be recognized and speak from the microphone so as to be clearly heard by Mr. O'Brien. Mr. Hilb also stated that there would be no cross talking and speaking unless called upon.*

4. REPORTS AND CORRESPONDENCE

A. Manager's Report:

1. Posting Place *Mr. Busch stated that an additional "official" posting location would be reported to the County. The posting places are at the Prescott Realty Office, 5360 W. Inscription Canyon Drive and at the Talking Rock Guard Shack, 14501 N. Talking Rock Ranch Rd. .*

2. ADA Accommodations Research *Mr. Busch gave the audience members and the Board information that he had researched for possible accommodation to Mr. O'Brien's request for accommodation. The information included voice conferencing, video conferencing, and voice conferencing over the internet. Some systems would require wireless internet access and one or more computers. Mr. Busch also stated that there would be the need for additional equipment and third party conferencing services, depending on the system chosen. Mr. Busch also*

stated that some of these potential accommodations would be awkward to set up and take down before and after Executive Sessions.

- 3. Plant Operations** *Mr. Busch stated that a Flushing Schedule had been completed and that flushing would begin this week and continue over the next 3 months. Over 60 sections of the collection system will be flushed and used sections will be isolated.*

Mr. Busch stated that replacement cost of the present odor control equipment would be about \$6000 and the purchase cost of equipment for upgrading would be about \$15,000. He recommended that, since a plant improvement program is part of the MOU and new Development Agreement, this item be tabled for a future meeting.

- 4. Collection Process** *Mr. Busch stated he had received a recommended process from legal counsel and would review it and prepare recommendations for consideration by the board at a future meeting. Mr. Busch stated that there would be a possibility for the District to require an additional late fee on balances due after a certain amount of time.*

5. CALL TO THE PUBLIC

- **Harvey Roberts** read from a document which he also handed to the District Clerk. It read as follows:

“To reinforce a comment I made at the previous meeting. The Treatment plant and the TR infrastructure are the property of TR not the District. Up till now Harvard has reimbursed the costs for any repairs or modifications made by the District. The recommendation to increase the size of a pipe to reduce odors should be done but paid for by Harvard. I should point out that the District has not accepted ownership of the plant and that one of the tasks of the District Engineer is to determine the condition of the plant and specify necessary changes to be accomplished by Harvard prior to acceptance. For the same reason, why would the District reimburse Harvard for maintenance done on the TR infrastructure that is owned by Harvard. If the District had been allowed to do the maintenance, Harvard would have reimbursed the District. It is my opinion that the Board is not performing due diligence in its negotiations with Harvard.” Mr. Hilb stated that this item would be discussed later in the meeting.

6. EXECUTIVE SESSION

Bob Hilb made a motion to go into Executive Session for: discussion or consultation for legal advice with the attorneys of the Inscription Canyon Ranch Sanitary District pursuant to A.R.S. Section 38-431.03.(A)(3) and discussion or consultation with the attorneys of the Inscription Canyon Ranch Sanitary District in order to consider its position and instruct its attorneys regarding the District's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation pursuant to A.R.S. Section 38-431.03.(A)(4) re:

- A. Status of District for claims for attorney fees.

- B. Proposed Amended and Restated Development Agreement between the District and developers (Talking Rock and Whispering Canyon) and the associated Memorandum of Understanding (MOU) executed by the parties.
- C. Proposed Settlement Agreement between the District and developers of The Preserve and the associated MOU executed by the parties.

Brian Ray seconded the motion and the motion passed unanimously.

Bob Busch stated for the record that an attorney would be present during the Executive Session.

Executive Session Began at approximately 1:15 p.m.

6. RECONVENE INTO PUBLIC SESSION at approximately 2:50 p.m.

- A. **Status of District for claims for attorney fees.** This item requires no action at this time.
- B. **Proposed Amended and Restated Development Agreement between the District and developers (Talking Rock and Whispering Canyon) and the associated Memorandum of Understanding (MOU) executed by the parties.** Mr. Hilb gave a brief summary on this topic. He stated that the new agreement is based on the previous agreement that has been in place for many years. The interpretations of that agreement were the cause of much conflict between the parties. A number of the provisions were not followed by the District and could have resulted in a lawsuit. He stated that some of the actions of the former Board could be construed as a violation of the law, such as charging 25% interest each month and could have lead to a separate lawsuit. He stated that some compromises were necessary to arrive at the agreement and that it now contains much more detail in some areas to avoid or prevent misinterpretation. He stated that the District will accept the infrastructure under the agreement. A rate for effluent is established in the agreement at \$4.00 per 1,000 gallons for the first 1 million gallons. This is more than the going rate for effluent. All the money in the escrow account will be transferred to the District's account with the County. Future lot fees will go into the County account for the District. Developers will collect the remaining amount from Pivotal or pay the amount directly. He also stated that parts of the Proposed Settlement Agreement were often misquoted. It is often stated that the developers were to construct a plant at no cost to the District. They ignore the fact that the District was required to repay the cost at 15% of gross revenue for 20 years. The new agreement lowers the repayment percentage to 10% and only 50% of the cost is subject to repayment. A clear method of resolving disputes is included in the new agreement to avoid court actions. Developers will contribute matching funds up to \$150,000 for plant improvements and upgrades. One compromise made by the District was to reimburse the cost, up to \$47,000, of maintaining the Talking

Rock collection system during the dispute. He stated that the District received substantial benefits from the new agreement.

Bob Hilb made a motion to approve the Amended and Restated Development Agreement in the form submitted to the Board in an email to Kim Corp dated Tuesday February 21, 2012 together with the exhibits thereto presented to the Board by email from Clint Poteet on Wednesday February 22, 2012 substantially the form as presented and authorize the Board to execute the Agreement in a final form substantively the same as presented to the Board. Brian Ray seconded the motion and the following discussion ensued:

- **Harvey Roberts** wanted to know how the Board arrived at the dollar amount for effluent over a million gallons. He felt it should be based on the cost to produce. *Mr. Hilb stated that a market survey indicted that the going rate is about \$1.00 per 1,000 and the District will receive a higher rate.* Mr. Roberts said he understood that the payback was to be only from bona fide customers in Talking Rock. He said new agreement is a big change. *Mr. Hilb stated that it was his understanding that it was a percentage of total revenues. Mr. Hilb also stated that it would not be a big change. He also stated that in other Developments it comes from Bonds.*
- **Harvey Roberts** stated that it was his assumption that the Developer wanted to build a subdivision and a golf course. In order to get approval, they needed some provision for watering the golf course with effluent. *Mr. Hilb stated that there were many different stories going around and that there was documentation about the history of this topic that should be looked into for accuracy.* Mr. Roberts stated that he understood that the Development Agreement would allow for the Plant to be built at no cost to the District. *Mr. Hilb explained to Mr. Roberts that there was a payback clause that was often over looked.*
- **Harvey Roberts** asked about the time limit that the District had to pay this back. *Mr. Hilb stated that it had a 20 year cap at 10% and after 20 years the debt was forgiven.*
- **Harvey Roberts** asked what the total payback was. He also asked what the Cost of the Bill of Sale was. *Mr. Hilb indicated that the cost in the Bill of Sale is about 6.5 million dollars. Our revenue is about \$300,000 per year, so about \$600,000 will be repaid.* Mr. Roberts then asked about the specifications considered for acceptance. *Mr. Ray then added that the specifications were met at the time of the inspection by the County and by ADEQ. Bob Hilb then stated that the Board had to negotiate on this or risk going into court again.*

- **Harvey Roberts** stated that the Water Board had a similar case. *Mr. Hilb stated that the Board had no desire to go into litigation again. He also stated that he did not want to discuss different Board issues at this meeting.*
- **John Freeman** in response to Mr. Roberts's comments stated that effluent was a by-product different from groundwater, and had a very limited market.

The motion passed unanimously.

C. Proposed Settlement Agreement between the District and developers of The Preserve and the associated MOU executed by the parties. This item was tabled as it is still under negotiation.

7. OLD BUSINESS

A. Future meeting dates, times and locations. Mr. Hilb stated that the next meeting time and date would be driven by negotiation with the Settlement Agreement with the Preserve and the time is unknown. This item was tabled.

B. Possible accommodations under the Americans with Disabilities Act as a result of a request by Mr. Charles O'Brien. *Bob Hilb asked if there was any discussion on this item.*

- **Brian Ray** stated that if a different location is chosen for meetings, the District would have to look into the need for internet service and its cost.
- **Scott Robbins** asked Mr. Busch if Mr. O'Brien would be satisfied with the phone conferencing in the interim.
- **Bob Busch** stated that it was his understanding that Mr. O'Brien would not be satisfied in the long term with the phone conferencing. He stated that it was his understanding that Mr. O'Brien wanted to participate visually and vocally.
- **Bob Hilb** asked if it was considered "reasonable". He also stated that the Public has a right to "listen" to the meeting. He stated that the District must do what is reasonable. Mr. Hilb stated that it was a small district with a small budget. He stated that the phone should be reasonable.
- **Scott Robbins** asked to quickly poll the audience regarding the reasonability of the telephone conference option as an accommodation for Mr. O'Brien. These were the results:
 - **Harvey Roberts** stated that the telephone would suffice. He also stated that if it was good enough for the attorneys to participate in the meetings, it should work for Mr. O'Brien.
 - **John Freeman** stated that at the Prescott Board Meetings the audience had the option to listen or to see it. He stated that Mr. O'Brien should pick one. He stated that the phone should suffice.
 - **Hugh Pryor** stated that the phone was enough.
 - **Bob Busch** suggested that the Board consider what the City of Prescott, Chino Valley or Prescott Valley would do.

- **Hugh Pryor** added that no one does what the board is considering. There is no precedent for doing what the board is considering with video. He again stated that the phone was good enough.
- **Brian Ray** suggested a Polycom System.

Bob Hilb made a motion to authorize Bob Busch to spend \$500 on a Polycom type phone conferencing system to accommodate Mr. O'Brien. Brian Ray seconded the motion the following discussion ensued:

- **Scott Robbins** stated that the Rules of Conduct would have to be adhered to.
- **Bob Hilb** stated that there would have to be order to the meetings.
- **Bob Busch** stated that a basic standalone model would run approximately \$499
- **Bob Hilb** stated that it was his experience that the basic model would suffice.

Bob Hilb removed the previous motion.

Bob Hilb then made a motion to authorize Bob Busch to spend up to \$500 on a basic omni-directional speaker phone conferencing system. Brian Ray seconded the motion and the motion passed unanimously.

C. Contract for engineering services- Consideration of insurance requirement.

Bob Hilb made a motion to modify the engineering contract previously approved be modified to change the liability insurance requirement to \$1 million and that Bob Busch is authorized to execute the contract. Brian Ray seconded the motion and the motion passed unanimously.

D Contract for operator services with AQuality Water Co. Bob Hilb made a motion to authorize Bob Busch be authorized to execute the contract tendered to AQuality Water Co. Brian Ray seconded the motion and the following discussion ensued:

- **Bob Busch** stated that the term is for two years and at the current rate. Flushing is included at that rate.

The motion passed unanimously.

E Increasing insurance coverage under the insurance umbrella and addition of Employment Practices Insurance: After a brief discussion, it was agreeable to the Board Members to increase the insurance umbrella. Regarding the Employment Practices Insurance, the Board Members felt that it was not necessary.

Bob Hilb made a motion to increase the insurance umbrella to \$3 million as per the offer (at an additional \$500 per year) and refuse the Employment Practices Insurance. Brian Ray seconded the motion and the motion passed unanimously.

9. ADJOURNMENT

There being no further business, the meeting was adjourned at 3:45 p.m.

Date

Board Clerk