

## INSCRIPTION CANYON RANCH SANITARY DISTRICT

P.O. Box 215 Chino Valley, AZ 86323

~ PUBLIC SESSION MINUTES ~

November 27, 2018

Approved December 21, 2018

**Date:** Tuesday, November 27, 2018

**Time:** 10:30 a.m.

**Place:** The meeting was held at the Days Inn, 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 10:30 a.m.

### 2. ROLL CALL.

Present were: David Barreira, Board Chairman; Bill Dickrell, Board Member; Robert Busch, District Manager; Stephen Polk, Legal Counsel; Bob Lynch, Legal Counsel; Al Pozkanzer, Exiting Board Member and Jeannine Yeager, Clerk.

Members of the Public: Linda Frisch, Bob Frisch, Ray Damesek, Alan Cocherell, Roy Kneale, Derrill Fulkerson, Clint Poteet, Suzanne Terwilliger, John Terwilliger, Bob Summers, Jeanette Summers, Bob Hilb, and Eileen McGowan.

### 3. CALL TO THE PUBLIC.

Mr. Barreira reminded the public to fill out a “Request to Speak” paper if they wanted to speak or ask questions of the Board. Mr. Barreira also reminded the public that they would have 2 minutes to speak. Mr. Barreira mentioned that Mr. Busch would be timing the speakers.

Mr. Barreira called the Board Meeting to order at 10:30 a.m. Then they did the Roll Call of the Board Members.

Mr. Barreira called on the first speaker, Bob Hilb.

Mr. Hilb stated that on the agenda there was the issue of insurance in the Executive Session but not in the main body of the agenda and Mr. Hilb asked if that was something that the Board would be discussing in accordance with the open meeting laws. Also, Mr. Hilb asked about the By-Laws about a one year term for Board Members and that Mr. Barreira had been in office for longer than one year and Mr. Hilb wondered where it stated in the By-Laws or in a meeting that

Mr. Barreira's term was extended for longer than one year. Mr. Hilb stated that he had gone back in the meetings and that there was something in there about "alternating between three Board Members".

Mr. Hilb stated that he had talked to Mr. Barreira about the court transcripts and that Mr. Barreira's statements had contradicted the court transcripts and that Mr. Barreira had told Mr. Hilb that Mr. Barreira had been advised by his attorneys to say that in court. Mr. Hilb stated that that was a lie and if Mr. Barreira knew it was a lie, even if his attorneys had advised him to say so and they knew it was a lie, then that it could possibly be considered perjury.

Mr. Hilb stated that there were no clear cut things in the law regarding the vacancy and that Title 38 only applies to officers and commissions and boards that get compensation from the taxpayers and that would not apply. So Mr. Hilb felt that Mr. Barreira shouldn't and that he understood that Mr. Barreira went to the County Attorney and why didn't Mr. Barreira go to the Attorney General's office because in these types of cases the Attorney General's office has already tried these cases and that the District has already spent too much money on lawyers and that the least expensive way to handle this would be to get an opinion out of the Attorney General's office before anything is done. Mr. Hilb stated that it looked like Mr. Barreira is always taking the course of action where it ends up costing the taxpayers a huge amount of money.

Mr. Barreira stated that Mr. Hilb's time was up.

Mr. Barreira stated that the next to speak is Alan Cocherell

.Mr. Cocherell asked what was the final determination for Al Poskanzer's status as a qualified elector on the Board?

Mr. Barreira stated that this would be discussed in the General Meeting. Then Mr. Barreira asked if there was anyone else with questions on the call to public. There was not. Mr. Barreira stated that the next item on the agenda was the Consent Agenda.

Mr. Barreira moved that the Consent agenda be approved. Mr. Dickerell seconded, Mr. Dickrell, Mr. Barreira and Mr. Poskanzer stated "aye".

Mr. Barreira moved that the Board would now go into Executive Session for discussion or consultation for legal advice with the attorneys of the ICRSD pursuant to A.R.S. Section 38-431.03.(A)(3) and discussion with the attorneys of the ICRSD 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 the order to avoid or resolve litigation pursuant to A.R.S. Section 38-431.03.(A)(4) Mr. Dickrell seconded. Mr. Dickrell, Mr. Barreira and Mr. Poskanzer voted "aye", Mr. Barreira asked Mr. Polk for admonition.

Mr. Polk responded that he understood that the Board was now in Executive Session and that the members of the public should exit the room for the Executive Session.

Mr. Barreira asked the members of the public to leave, including Mr. Poskanzer. Mr. Poskanzer stated that he was not going to leave and that he would explain why he was not going to leave as soon as the public leaves. Mr. Lynch stated that Mr. Poskanzer could explain as soon as the public left the room. The public asked if they had a right to stay and hear Mr. Poskanzer's explanation as to why he was staying and Mr. Barreira stated that the public needed to exit the room. Mr. Barreira stated that the board was not going to go into executive session while the public and Mr. Poskanzer were still in the room.

Mr. Polk stated that he wished to clarify for Mr. Barreira that the Executive Session could be held as long as it was just the Board Members and anyone who was necessary to the discussions in the Executive Session. So Mr. Polk instructed Mr. Barreira that he could make a determination that Mr. Poskanzer could stay in the Executive Session since he was to be part of the discussion in the Executive Session.

**During the Executive Session, the public will be asked to leave the Board meeting room until the general session is re-convened**

**CONVENE into Executive Session at 10:40 a.m.**

**RECONVENE from Executive Session at approximately 11:30:00 a.m.**

Mr. Barreira stated they would be going out of order on the agenda and that the first item would be item E, Possible Board declaration of vacancy on the Governing Board for position occupied by Al Poskanzer and possible actions concerning procedure for filling the vacancy.

Mr. Barreira moved that in as much as the legal advice they have received from the legal team that Mr. Poskanzer has been removed due to his actions and declare the vacancy on the Board. Mr. Dickrell seconded. Mr. Barreira instructed Ms. Yeager, the clerk, not to record any votes from Mr. Poskanzer from this point forward. Mr. Poskanzer stated that he is represented by counsel and that this matter has not been adjudicated and that he has been advised by counsel to retain his seat until and unless this matter is completely adjudicated. Mr. Poskanzer stated that the opinion of Board Counsel is one side of the story and it has not yet gone to court and until a judge has made a final declaration, Mr. Poskanzer is following his advice from his counsel to retain his seat on the Board.

Mr. Poskanzer stated. "If this Board wants to have me removed then the Board will be doing something illegal and it will be a complete and total waste of taxpayer money." Mr. Poskanzer stated that he would prefer that this not happen but he is a dually elected official and his counsel has told him that he should retain his seat and that because this had not been adjudicated in a court of law. Mr. Barreira stated that he could not give Mr. Poskanzer any more than two

minutes as he did the public because Mr. Poskanzer is not a board member. Mr. Poskanzer stated that it was going on the record as such. The motion carried, Mr. Barreira and Mr. Dickrell voting “aye” on the motion.

Mr. Barreira made a motion to recognize the distribution of the opinion memorandum from Mr. Lynch and Mr. Dickrell seconded the Motion. It carried, with Mr. Barreira and Mr. Dickrell voting “aye”.

Mr. Lynch then passed out copies of the Memorandum to the public and stated that the Board was not throwing Mr. Poskanzer off the Board. The Board is doing nothing but recognizing that because Mr. Poskanzer had moved out of the district and voted out of the District, that by law, operation of law, ARS 38-291.5 he no longer has voting rights in the District. Mr. Lynch stated that it does not require court action for a vacancy to occur and that there are a whole list of reasons to cause a vacancy to occur by an operation of law. What the board is allowed to do is to recognize that one of those things has happened. And then act accordingly under its by-laws to fill the vacancy.

Mr. Poskanzer can challenge that in court if he wishes. There is a special kind of lawsuit for that purpose and there is nothing we can do about that. But it is the Board’s obligation to recognize the vacancy and then its bylaws, the statute says that the board will fill the vacancy and the bylaws say, “Here’s how you do it.” They are controlled by these by laws and this statute and they must take the action they are going to take to address the vacancy.

Mr. Barreira stated that according to the bylaws, section 5, that they advertise the vacancy and he would suggest that they post on the website with a term that ends in 2020 and the board would like anyone that is interested to apply for that position to send in writing their desire and include in their desire, any experience that they had serving on other boards. Mr. Barreira stated that they were also going to advertise in the newspaper and he would instruct the District Manger to post it in the newspaper by the fifth of December and then have another meeting of the board in or around the second week of December.

Mr. Barreira stated the motion and said, “All in Favor”, Mr. Dickrell seconded. Mr. Barreira and Mr. Dickrell stated “aye”.

Mr. Barreira went to item 6A on the agenda, setting the date for the next board meeting. Mr. Barreira asked Mr. Busch if the meeting room would be available on December 17<sup>th</sup> and Mr. Busch stated that he would find out. Then Mr. Barreira asked Mr. Lynch to address items B, C, D, and E as to the reports on litigation and report on status of claim by Talking Rock and communications with the insurance company and activity pursuant to Section 12 of the Amended and Restated Development Agreement.

Mr. Lynch stated that on the matter of the litigation, they got an order from the judge on November 9<sup>th</sup> awarding limited attorney's fees to the plaintiff and saying a bunch of other things that Mr. Lynch feels is wrong. The plaintiff had 15 days to file the claim and it was only for 4-1/2 hours of time on June 21<sup>st</sup>. They filed a claim for about half of what they had prematurely filed for the whole process yesterday afternoon about 5:30 p.m. Mr. Lynch advised the Board that it has no choice but to file a Motion for Reconsideration and if that is not listened to by this judge, to appeal because there is a \$5 million claim waiting out there that the judge has managed to say things about in this which was not supposed to be about this at all, that threatens the financial viability of the board and the district.

On the status of the claim by Talking Rock, Mr. Lynch got a note from opposing council about getting together about informal settlement discussions with all sorts of requirements and Mr. Lynch sent him a note back that he had been in touch with the insurance company and advised them of where they are and when Mr. Lynch hears back from them. then he will let them know because obviously we have very little insurance coverage for the kind of lawsuit that has been going on that doesn't involve dollars. So Mr. Lynch sent off a letter reporting to the insurance company where everything is, sending them the documents, and he is waiting to hear back from them.

In regards to the previous comment about items 5C and 6D, both items are reasonably related to each other and they are not in violation of the open meeting law. On the Section 12 thing, that goes to a requirement to the development agreement that if there's a disagreement between one of the developers here, Talking Rock and the District, that it first must go to mediation and arbitration before it goes through litigation. The informal discussion goes through that, the claimant can't go through with the claim for \$5 million without going through mediation and arbitration. We originally suggested an informal discussion back in April which was in a letter that Mr. Lynch sent to opposing counsel on the day they filed the lawsuit. But we will see where this goes. At this point, we have to rely on the insurance company and see what their next move is. They have given us what's called a Letter of Reservation of Rights which means the lawsuit you're in now isn't about money, it's about non-money things. But since it's not monetary damages, we have very limited coverage and we recognize that limited coverage and reserve our right as to what else to do as things develop and so we're still on the hook and we have to keep feeding them information and they tell us what they are going to do next. So the insurance policy will stay in force and is available if we need it. They are all interconnected.

Mr. Barrier stated that they would move to new business item A of the meeting notice and changing the posting locations to omit 14501 N Talking Rock Ranch Road. This is a result that Talking Rock no longer wants the meeting notices posted at the guard shack.

Mr. Barreira moved to instruct Mr. Busch to send a letter to the county notifying them that they would no longer be posting the meeting notices at the Talking Rock guard shack. Mr. Dickerell seconded. There was some discussion about whether or not two physical locations are required for posting. Mr. Busch stated that there are not public locations in the District so if two places are required we would need to place it on a post. Mr. Barreira asked Mr. Polk if he knew what the law now requires for posting and if they could just do it on the website. Mr. Polk stated that he thought it had to be two physical locations but that he would check that for the board. Mr. Polk stated that they would need to find a second location for the posting. Mr. Barreira stated that he had talked to Mr. Wittington that the State may have changed the law as to the locations of the meeting notices. Mr. Lynch stated that he would suggest that the Chairman change his motion to instruct the District Manager to take steps to comply with posting requirements under the law and then notify the county because of the changes that are made. Mr. Barreira stated that he would make that his amended motion and to reflect that in the record and Mr. Dickrell seconded, Motion carried. Mr. Barreira and Mr. Dickrell voted “aye”.

Mr. Cocherell asked if Talking Rock had requested that the postings no longer go to them and Mr. Busch answered that they had requested that the postings no longer be at the guard shack.

Mr. Barreira went to item B, the approval of the Financial Review by Alys Cohan, CPA and approval to submit to the County. Mr. Barreira made a motion that they approve the financial report, Mr. Dickerell seconded. Motion passed. Mr. Barreira and Mr. Dickrell voted “aye”.

Mr. Barreira stated that item C is the ratification of the Manager’s Issuance of Work Order but it isn’t on everyone’s agenda so Mr. Barreira said no action would be taken on that item..

## **ADJOURNMENT**

*Therefore, the meeting was adjourned at 11:44 am.*

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Date

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Board Clerk