

INSCRIPTION CANYON RANCH SANITARY DISTRICT

P.O. Box 215 Chino Valley, AZ 86323

**PUBLIC SESSION
~MINUTES~**

Revised Feb 8, 2013

February 5, 2013

Date: Tuesday February 5, 2013

Time: 9:00 a.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 9:00 a.m.

2. ROLL CALL.

Present were Bob Hilb, Chairman; Scott Robbins, Board Member, Bill Whittington, Counsel; Bob Busch, District Manager; Isabel Yribe, District Clerk and the following audience members.

Bruce Eldredge
Stan Steiner
Jimmy Stoner
Charles O'Brien
Hugh Pryor

Eileen McGowan
Harvey Roberts
Chris Stoner
Tim Emberlin

3. CALL TO THE PUBLIC

- **Harvey Roberts** stated that after looking at the financial statements from the last meeting he was hoping that Bruce Eldredge would explain the significant changes made in the balance sheet. Mr. Roberts also stated the he hoped the Board would discuss the changes proposed to the Development Agreement with Whispering Canyon. He also suggested that, the Public participation discussion include discussion from the public.
- **Jimmy Stoner** submitted the following questions/comments to the Board and its members.
 - **Regular Meeting Public Comments:**
Both Dayne Taylor and Jimmy Stoner made numerous comments and provided copies of their statements for the December meeting requesting they be included in the minutes and answered in the appropriate meeting agenda items. Four residents made comments in the January meeting. These were not discussed and they have not being included for discussion in this meeting's agenda. When do you intend to discuss these items in Public Session?
 - **Item 5, Report from District Manager**

- Engineering Review, Whispering Canyon Phases 5-7. Who performed the review? Was the Prior Civiltec review discussed and incorporated in this analysis?
 - Status of RFQ: When will this document be available for review by District property owners?
 - Meeting with ADEQ: When can I, or others in the District, obtain a copy of the detailed meeting notes? Modifications to which permit were discussed with ADEQ? Who were the person(s) present in the meeting and who were the ADEQ personnel?
 - Financial Report to the County: What is the status of the SBR asset on the books?
 - **Item 7. Old Business:**
 - Item F. Changes to Bylaws. When will the changes be available for review and comment?
 - Item G. Approval of Whispering Canyon. When are the “Capacity Assurance Certificates available for detailed review?
 - **Item 8. New Business**
 - Item C. Isn't the Board required to approve legal fee invoices vs. the Manager?
 - Item E. Prior to approval of this action do you intend discussing the details of what you are directing Granite Basin Engineering to do?
 - **Charles O'Brien** commented on that the “letter” to the Attorney General reference in the agenda, was not a letter per se, but a complaint he filed for Violations of the Open Meeting Laws against the District including the preparation and dissemination of Policies, Rules and Bylaws. He stated that there was an ongoing investigation. Mr. O'Brien stated that to date, except for the initial draft, no form of this document has yet been discussed or shared with the Public though it was adopted in October many months ago. Now the District proposes to adopt changes to a document the public has never seen. He said the Office of the Attorney General finds this troubling. He said the OML Office is troubled that the District has not yet discussed the significance of the letter of the Attorney General. Mr. O'Brien wanted this comment to be on the record.
- 4. 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. Missing and unaccounted for records and documents, property of the District, that have not been produced by the previous District Board members.
 - B. Claims for reimbursement of attorney fees previously paid by the District.

- C. Possible changes and additions to ICRSD Bylaws, Rules, and Policies including Article II, Section 4 and new section 28; Article III, new Sections A7-A9 and Sections B9 and B10..
- D. Complaint against the District Board Members for Open Meeting Law violation(s) filed with the Office of Attorney General.
- E. Resolution 2013-1 Acceptance of Whispering Canyon, Onsite and Other Related Wastewater Facilities and approval of Bill of Sale in the amount of \$1,181,001.43, for infrastructure in Whispering Canyon, Phases 1 through 4 and possible amendment to the Amended and Restated Development Agreement dated March 1, 2012 (Implementation Agreement).
- F. Approval of Sewer Service Agreements and Capacity Assurance Certificates for Whispering Canyon Phases 5-7.
- G. Public Participation in Board Decision Making and at Public Meetings and order of business.
- H. Definition of fees and rates charged by the District

Scott Robbins seconded the motion. The motion passed unanimously without discussion.

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

Executive session began at approximately 9:20 a.m.

5. RECONVENE INTO PUBLIC SESSION at approximately 10:15 a.m.

6. REPORTS

Manager Report. Bob Busch reported on the following agenda items.

Report from District Manager

- Report on District Operations: WWTP Flows & performance; flushing & odor control. *Mr. Busch stated that there was a noticeable increase in the Average Daily Flow for January at 40,400 gallons per day. He also stated that odor media for the plant is on order and should arrive any day. The generator at the TRR lift station was not cycling correctly and was addressed by Gentec under warranty.*
- Closure of Escrow Account and transfer of fund and the status deeds of trust. *Mr. Busch stated that Escrow funds were transferred in January. A final payment was made by Pivotal for approximately \$110K. Mr. Busch also stated that the District received a payment on a number of the Deeds of Trust. He asked that the Board refer to the handout he provided. Mr. Busch stated that a few of those have asked for an extension. Mr. Hilb asked who'd be responsible for making those extension approvals. Mr. Busch stated that it was his understanding that Harvard would be responsible. Mr. Hilb asked Bob Busch if those properties were discussed with Harvard. Mr. Busch stated that they were. Mr. Hilb stated that it was probably not worth the legal fees it would take to get those monies back. However, some of those fees could be recouped when houses were built on the properties. Mr. Busch also reported that The Preserve offered the District a 10% discount on the \$11056 payment due in January if the balance was by the end of December. Mr.*

- Busch stated that he accepted the discount and by paying early, the District saved approximately 10% (\$1100).*
- *Engineering review of plans for Whispering Canyon phases 5-7. Mr. Busch stated that the plans were submitted by Whispering Canyon to Yavapai County for review over 5 years ago. The design drawings from Whispering Canyon were received by the District on December 17th. Granite Basin and A Quality Water have recently reviewed the plans. There are specific timelines in the Development Agreement regarding District approvals. It was Mr. Busch's opinion that the District move forward and get an approval for those three Phases. Tim Emberlin from Whispering Canyon stated that the County was hesitant to issue an extension as plans were submitted approximately five years ago with no action. It was Mr. Emberlin's opinion that they had until the end of March done so.*
 - *Report on possible of transfer of funds within the budget. Mr. Busch stated that due to the legal fees being over their allotted budget, he'd need authority for additional funds to make sure those items were paid. To date, legal fees were approximately \$54,083, with an allotted budget of \$40,000. Mr. Busch stated that approximately \$100K would be needed in that budget category to make it until the next fiscal year. He stated this would make more sense than to get approval for each invoice as it came in. He said this was on the agenda.*
 - *Status of RFQ. Mr. Busch stated that the RFQ was almost complete. Mr. Busch also stated that in the near future a Selection Committee should be appointed.*
 - *Results of meeting with ADEQ and recommendation regarding modification to wastewater treatment plant permit. Mr. Busch stated that he, Chairman Hilb and engineer Davin Benner met with four ADEQ staff members. Mr. Busch stated that the District is in technical violation of the permit because the permit is for 455,000 gallons and we have a plant of 62,500 gallons. ADEQ also stated that the District should be using historical flows in submitting for permits, not the gallons per day in Table A. It was ADEQ's opinion that the plant should not be considered for expansion at this time. The Plans for expansion should be planned to be constructed and utilized within a 5 year period. Mr. Busch also stated that ADEQ indicated the District could resubmit the application for the Santec Plant and they'd be able to repermit it in 8-10 months instead of 18 months for a normal application. Mr. Hilb stated that previous permit did not have a closure plan for the old SBR plant. He stated that a clean closure for the SBR Plant would include soil tests and a statement that access pipes have been capped. That could be included with a resubmittal of the Santec Plant permit. Mr. Busch stated that plans to be resubmit the application to ADEQ is on the agenda.*
 - *Management Letter and Financial Report for fiscal 2011-2012 prepared by Alyx Cohan, CPA for submittal to Yavapai County. Mr. Busch stated that Alyx Cohan did a considerable amount of work for the District over and beyond her initially contracted duties. He noted that the complications involved adjustments needed because of the provisions in the Development Agreement. Liabilities were required to be booked for the amount of payback for the infrastructure, and for the amounts owed to the Preserve.*

- Review of Financial Report for October, November, and December 2012. Mr. Eldredge handed out revised numbers that reflected Alyx Cohan's input from her audit. He explained the adjustments made by CPA Alyx Cohan as of June 30, 2012. He noted that the changes affected the Balance Sheet beginning in July 2012. All Balance Sheets after that date would be affected. Mr. Stoner, from the audience asked if these revised financial reports were posted. Mr. Busch stated that they were not. Mr. Eldredge stated the December ones posted were correct and he handed out corrected ones for the other months. During the review of the December financials, Mr. Busch asked that Mr. Eldredge consider having a revenue category for lot sales. Mr. Hilb asked that Mr. Eldredge look into that and bring it to the next meeting. Mr. Busch asked that Mr. Eldredge reflect the \$4 million received for the Talking Rock Infrastructure in his report. Mr. Hilb asked that Mr. Busch and Mr. Eldredge get together to find how the budget could be adjusted so that the Insurance and Legal Fees overages were addressed. Mr. Hilb stated that it was his understanding that the County didn't care as long as the Budget total is not affected. Mr. Eldredge asked for permission to get a check payable to the Insurance Company so that Bill Weber could contract those services for the District as it was due in 10 days. Mr. Hilb stated that would be done in a latter agenda item.

Insurance Report Bill Weber

Mr. Weber stated that it was his recommendation that the District contract ACE Insurance for its Directors and Officers Coverage. He stated that the premiums would be significantly higher due to the Districts adverse loss history in previous years. He also stated that for general liability Alteris was a company that was a little more expensive than Auto-Owners but offered more general liability coverage. Mr. Weber stated that it was his recommendation that the District take the Alteris Insurance Coverage. He also stated that Alteris would consider coverage for next year. Mr. Weber stated that Alteris Insurance was specific in terms of coverage to Sanitary Districts. Mr. Weber also suggested that the District keep small claims away from the Insurance Company so as not to add to the Districts loss record and not raise the premiums any further. Mr. Weber stated that the first premium was due in ten days. Mr. Weber stated that he could not find a D and O carrier but could find a General Liability carrier for \$1 million dollars umbrella coverage. He will continue to search as Mr. Hilb recommended. Mr. Weber also asked if the District wanted an extension of "Cyber Liability" coverage for approximately \$240. After a brief discussion among the Board and its Counsel, it was decided a vote would be taken during the appropriate time on the agenda later in the meeting. Mr. Hilb asked Mr. Weber to ask Alteris if they would consider throwing in Cyber liability as part of their package.

7. CONSENT AGENDA (Routine items that may be approved by one motion)

Minutes of prior meetings

Minutes of Rate Hearing, January 8, 2013

Public Meeting Minutes of January 8, 2013

Executive Session Minutes of January 8, 2013.

Reimbursement to District Manager for \$122.04 for:

Travel to attend meeting with ADEQ in Phoenix.

Mr. Bob Busch suggested that the minutes for January 8, 2013 rate hearing be removed from the Consent Agenda as the date read January 8, 2012. Mr. Hilb made a motion to remove those minutes and approve the Consent Agenda. Scott Robbins seconded the motion. The motion passed unanimously without discussion.

Mr. Hilb made a motion to change the date on the rate hearing to read January 8, 2013 and approve those minutes as corrected. Scott Robbins seconded the motion. The motion passed unanimously without discussion.

8. OLD BUSINESS - DISCUSSION & POSSIBLE ACTION RE;

A. Missing and unaccounted for records and documents, property of the District, that have not been produced by the previous District Board members. *There is no action on this item at this time.*

B. Claims for reimbursement of attorney fees previously paid by the District. *There is no action on this item at this time.*

C. Complaint against the District Board Members for Open Meeting Law violation(s) filed with the Office of Attorney General. *Mr. Hilb stated to clarify that this is an investigation of some complaints and the District did answer at the end of December and hasn't heard anything on this matter since. There is no action on this item at this time.*

D. Approval of Management Letter and Financial Report for fiscal 2011-12 prepared by Alyx Cohan, CPA, for submittal to Yavapai County. *Bob Hilb made a motion that Scott Robbins sign the Management Letter and for Bob Busch to submit the Management letter and Report. Scott Robbins seconded the motion. The motion passed unanimously without discussion.*

E. Resolution 2013-1 Acceptance of Whispering Canyon, Onsite and Other Related Wastewater Facilities and approval of Bill of Sale in the amount of \$1,181,001.43, for infrastructure in Whispering Canyon, Phases 1 through 4 and possible amendment to the Amended and Restated Development Agreement dated March 1, 2012 (Implementation Agreement). *There is no action on this item at this time.*

F. Possible changes and additions to ICRSD Bylaws, Rules, and Policies including Article II, Section 4 and new section 28; Article III, new Sections A7-A9 and Sections B9 and B10. *Mr. Hilb stated that the document was approved at the Oct 29th meeting. However, that was contingent on counsel making some changes. There were some legal questions that came up after that meeting. The legal issues are still open and the board did not see final version of the document approved Oct 29th until yesterday. At the last meeting the board discussed changes to Section 4 and new*

sections 28, A7-A9 and B9 and 10. So what is before the Board today is version of the document that includes the changes to the original document plus changes to Section 4 and the new Sections 28, A7-9 and B9 and 10. *Bob Hilb made a motion to approve the version of the Bylaws provided by counsel that includes the changes approved on October 29 plus changes to Section 4 and the new Sections 28, A7-A9 and B9 and 10. Scott Robbins seconded the motion. The motion passed unanimously.*

G. Consideration of Approval of Sewer Service Agreements and Capacity Assurance Certificates for Whispering Canyon Phases 5-7. *After a brief discussion it was determined by all that there was not enough information on the matter to make an informed decision. Mr. Tim Emberlin stated that this should be done before the end of March 2013. Mr. Hilb stated that the Board and its Counsel be prepared to meet sometime in early March. There is no action on this item at this time.*

H. Set time and place for next Public Meeting. *Bob Hilb made a motion to meet on February 28, 2013 at 9:00 a.m. at the Days Inn in Chino Valley. Scott Robbins seconded the motion. The motion passed unanimously.*

9. NEW BUSINESS AND POSSIBLE ACTION RE:

A. Public Participation in Board Decision Making and at Public Meetings and order of business. *Mr. Hilb stated that he had heard a lot of misinformation on what the responsibility of the board is to get public participation or have documents out ahead of time. There is no requirement to do that. We have committed as much as possible to have financial reports out because we heard that the state may change the law to require that 24 hours ahead. The board had been allowing participation until a few months ago but there was a lot of disruption and people claiming things were illegal. The District has spent a great deal of money investigating these claims and in extra meeting time. The Board decided that comments only be allowed during the Call to the Public. Mr. Hilb stated that comments could be submitted ahead of time and if could get them on the agenda they would be discussed. However comments that make legal or other claims must have a citation or we will not accept them. As far as the order of the Call to the Public in the meeting, it was put there so that the Board could ask for legal advice in executive session about items brought up in the Call to the Public. There does not seem to be reason to change that. There is no action on this item at this time.*

B. Approval of Financial Reports for October, November and December, 2012. *Bob Hilb made a motion to approve the Financial Reports for October, November and December 2012. Scott Robbins seconded the motion. The motion passed unanimously without discussion.*

C. Authorization for District Manager to approve invoices for legal fees that will cause the line item account to exceed the line item amount in the approved budget. *Bob Hilb made a motion to authorize the District Manager Busch to approve the legal/ insurance invoices that exceeds the line item budget as long as the total budget is not exceeded. Scott Robbins seconded the motion and the following discussion ensued. Bob Hilb stated that Mr. Busch needed to pay those invoices so long as they didn't go over the total budget. Mr. Busch asked how he was to do that. Mr. Hilb stated that the District project how much over the budget it would be and*

find out what was needed to amend the Budget in the meantime the invoices could be paid as long as the total budget was not exceeded. Mr. Whittington it probably wasn't any more complicated than to individually vote for and approve each invoice as it came in, but either way would suffice. The motion passed unanimously.

D. Approval of new/updated Insurance Proposal presented by Insurance Agent, Bill Weber. Mr. Hilb made a motion the Board not accept the extension of Cyber Liability. *Scott Robbins seconded the motion. The motion passed unanimously. Bob Hilb made a motion to accept the proposal by Alteris Insurance Co. for \$3454 for the General Liability Package and also to accept the proposal for Ace Insurance for the Core Liability package in the amount of \$10,085. Scott Robbins seconded the motion. The motion passed unanimously.*

E. Approval to authorize Granite Basin Engineering to resubmit to ADEQ, the permit to operate the Santec plant, and SBR plant closure information as discussed in the meeting with ADEQ staff. *Bob Hilb made a motion to authorize Granite Basin Engineering to resubmit to ADEQ the permit to operate the Santec plant with the addition of the SBR plant closure information. Scott Robbins seconded the motion. The motion passed unanimously.*

9. ADJOURNMENT

Therefore the meeting was adjourned at 11:55 a.m.

Date

Board Clerk