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December 28, 2012

Via Email and Mail

Kevin R. Smith, Esq.
1275 W. Washington
Phoenix, AZ 85007
Kevin.Smith@azag.gov

**Re: Inscription Canyon Ranch Sanitary District Board Open Meeting Law
Complaints**

Dear Mr. Smith:

As you may know, this firm represents the Inscription Canyon Ranch Sanitary District ("ICRSD"). We have received your letter dated October 18, 2012 outlining the Open Meeting Law Complaints that have been filed against the ICRSD Board. Thank you for granting an extension on the deadline to respond, to December 30, 2012 (because December 30th is a Sunday, we assume that December 31st is the operative date).

Your October 18th letter requested additional documentation to aid in your determination of the alleged violations. To comply with that request, enclosed please find copies of all Executive Session Minutes for all Board Meetings held between June 1, 2011 and August 1, 2012 (Attachment "A"). We have included a table of contents for the Executive Session Minutes for your ease of reference.

You had also requested copies of any Board Meeting Notices, Agendas, and Minutes for any Meetings that occurred between June 1, 2011 and August 1, 2012, which the complainant had not already provided. Attached, please find the following documents for the ICRSD Board:

- Notice/Agenda for June 9, 2011
- Notice/Agenda and Minutes for August 23, 2011
- Notice for March 1, 2012, and
- All Notices, Agendas, and Minutes for June 25, 2012

(Attachment "B"). It is our understanding that you have received the other Notices, Agendas, and Minutes from the complainant. Please note that there are no Public Meeting Minutes for the June 9, 2011 Meeting (only an Executive Session was held – which was noticed – see Attachment "A" for the Executive Session Minutes and Attachment "B" for a copy of the Notice).

Lastly, you asked for an explanation of how the 1) Policies and Procedures, 2) Memorandum of Understanding, and 3) the Amended and Restated Development Agreement were created and who was involved in their creation. We address each of these three items individually below.

Policies and Procedures: In the Spring of 2011, prior to being elected, (future) Board Member Robbins was tasked with looking at other sanitary districts' policies and procedures. Board Member Robbins and District Manager Busch began reviewing other districts' policies and procedures to get a feel of the norm in the industry, one of those districts being the Camp Verde Sanitary District. In the Fall of 2011 Board Member Robbins traveled to the Camp Verde Sanitary District and obtained a copy of their polices. He was not accompanied by any Board Member.

At the January 20, 2012 Meeting of the Board, Board Member Robbins announced that he would prepare a rough draft of the Policies and Procedures for the consideration of the Board at a Public Meeting by March 2012. In the time that followed, Board Member Robbins contacted Clint Poteet, the construction coordinator for the Talking Rock Development, to get input on the constructional and operational aspects of the Policies and Procedures as they pertained to the Talking Rock Development. As Board Member Robbins continued to work from the template received from the Camp Verde Sanitary District, he also received input from at least one other member of the community (a non-Board Member). These individuals never acted as a committee (the Board never created one), but rather just offered friendly advice to Board Member Robbins.

Due to Board Member Robbin's limited software ability, approximately in mid-February of 2012, Board Member Robbins asked District Manager Busch to take over the editing of the template document. District Manager Busch completed this preliminary editing in mid-March and emailed the initial draft to the Board Members for their review and individual comments prior to the May 1, 2012 Meeting. This is also when the document was posted on the ICRSD website for public review and comment. All comments and responses by the Board Members were sent directly to the District Manager. At the May 1, 2012 meeting, in Public Session, it was unanimously voted to have legal counsel review the Policies and Procedures. The Board approved the Policies and Procedures in Public Session on October 29, 2012, with modifications. As of the writing of this letter, our office is working on additional amendments to the Policies and Procedures.

The Claimant's suggestion that the Policies and Procedures had never been mentioned previous to January 20, 2012, and his statement that they came out of nowhere in March of 2012 are both unfounded. The enclosed Notice and Agenda for the August 23, 2011 Meeting notices that during Executive Session the Board would be requesting "legal advice pursuant to ARS 38-431.03 (A)(3) regarding the District policies and procedures, possible changes; open meeting compliance issues." It is also reflected in the Public Minutes for the same Meeting (the Executive Session Minutes are also included in Attachment "A").

Memorandum of Understanding: Apparently, the current ICRSD Board made the settlement of the multiple lawsuits against the District a priority during the recall election that placed them in office. Prior to taking office, the current Board requested a meeting with legal

counsel and opposing counsel to ascertain the status of the lawsuits. That meeting took place in Executive Session on June 9, 2011. Subsequent to that meeting, the Board Chair, Bob Hilb took the lead and responsibility of negotiating business issues with the developers while prior legal counsel negotiated legal issues in an attempt to resolve the ongoing litigation. (Harold Watkins represented the District until our office became District Counsel in August 2011.)

As I understand it, these efforts involved negotiating the terms of the Memorandum of Understanding ("MOU") with the developers. While negotiating and working on the MOU, Board Chair Hilb requested input from District Manager Busch and other non-Board Members in the District on topics where Hilb lacked expertise. At various time, Board Chair Hilb asked Mr. Pryor, a resident of the District, for comments on various subjects that he had expertise. As a result of a meeting with Mr. Poteet (a non-Board Member), Board Chair Hilb took the Proposed Settlement Agreement that was presented to the previous Board before they left office and converted it into the MOU. Board Chair Hilb did not meet with other Board Members outside of any posted meetings. He met with District's legal counsel when he thought appropriate. In early August, a draft of the MOU was provided to the District's legal counsel for comment.

At that point in time (August 2011), Mr. Watkins was replaced as legal counsel by Jeff Coughlin and our office. Mr. Coughlin was hired as litigation counsel and took the lead on assisting the District in revising the MOU and the settlement negotiations. During those negotiations all settlement language in the MOU was moved to a settlement agreement, leaving the MOU as a business agreement that would be the basis of the Amended and Restated Development Agreement and Settlement Agreement ("ARDASA"). It was recommended that a specialist be retained. Attorney Lynch was hired to research various items which were included in both the MOU and the ARDASA . The drafted MOU was approved in Public Session on November 17, 2011.

Amended and Restated Development Agreement: The MOU required that an Amended and Restated Development Agreement and Settlement Agreement ("ARDASA") be completed within 90 days. Board Chair Hilb took the lead on this document as well. He was not assisted by any other Board Members. The developers completed the initial leg work of integrating the MOU terms into the previous development agreement. In early January 2012 the developers sent Board Chair Hilb a Discussion Draft of the ARDASA. Board Chair Hilb than asked legal counsel, District Manager Busch, former Board Member Freeman, and community member Mr. Pryor to provide input and compare the old development agreement, the ARDASA and the MOU. The input was combined and provided to Mr. Lynch on January 31, 2012 for final review and revisions. The final ARDASA was approved in Public Session on February 22, 2012.

It is the District's position that no violation occurred in the drafting of any of these documents. There were no "constructive committees" working on these projects. The single Board Member who took charge of each project asked for comments from the District Manager and community members when they felt the need - and without direction from the Board. Otherwise the documents were noticed, properly discussed in Executive Session, and voted on in Public Session.

The District also maintains that no violation of Executive Session laws were committed. When the Board was elected the District was in the midst of a large lawsuit. Executive Sessions

Kevin R. Smith, Esq.
Attorney General Office
Re: Open Meeting Law Complaints

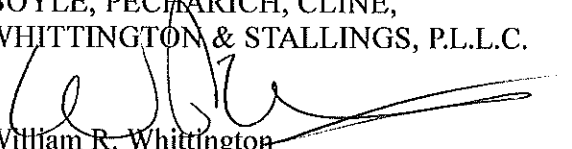
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were held to get a handle on the District's legal situation from the various District counsels. The District also contends that no non-essential personnel were included in those Executive Sessions. Opposing counsel was in attendance at the Executive Session of June 9, 2011 for the essential purpose of providing background on the proposed settlement, so that the Board could receive legal advice.

If you have any questions please feel free to call me directly.

Sincerely,

BOYLE, PECHARICH, CLINE,
WHITTINGTON & STALLINGS, P.L.L.C.


William R. Whittington

WRW/nmg

Enclosures

Cc: Governing Board without attachments