

INSCRIPTION CANYON RANCH SANITARY DISTRICT

P.O. Box 215 Chino Valley, AZ 86323

**PUBLIC SESSION
~MINUTES~**

Approved 5/1/12

March 1, 2012

Date: Thursday March 1, 2012

Time: 3:00 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 3:00 p.m.

2. ROLL CALL.

Bob Hilb, Chairman; Brian Ray, Board Member; Scott Robbins, Board Member; Bob Busch, District Manager; Isabel Yribe, District Clerk; Bill Whittington, Counsel; and the following audience members according to the sign in sheet:

Clint Poteet	Barb Hilb
John Freeman	Hugh C. Pryor
Paula Green	Charles O'Brien
Dick Tracey	Eileen McGowan
Leo Sullivan	Gene Leasure
Dayne Taylor	Linda Hazzard
Jimmy Stoner	Chris Stoner
Curt Anderson	

3. 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. Adoption of a Resolution in connection with the Amended and Restated Development Agreement between the District and developers (Talking Rock and Whispering Canyon).
- B. Proposed Settlement Agreement between the District and developers of The Preserve and the associated MOU executed by the parties.
- C. Proposed procedure for collection of unpaid user fees, late fees and interest charges in connection with user fee billings of September and October 2011 including placing liens on property with balances more than 90 days past due.

Brian Ray seconded the motion and the following discussion ensued:

- **Jimmy Stoner** wanted to know which attorney would be present during Executive Session. *Bob Hilb stated that the attorneys present would be Bob Lynch and Bill Whittington.*

The motion passed unanimously.

Executive session began at approximately 3:05 p.m.

4. RECONVENE INTO PUBLIC SESSION at approximately at 3:35

A. Adoption of a Resolution in connection with the Amended and Restated Development Agreement between the District and developers (Talking Rock and Whispering Canyon). Bob Hilb began to state that “on the advice of the attorney” when Mr. Whittington interjected that what was discussed in Executive Session could not be revealed in Public Session. Mr. Whittington stated that everything spoken about with an attorney is governed by the Attorney/Client Privilege. Mr. Whittington went on to say that in the end result something had to be shared with the public; the phrase “the attorney said” should not be used. Mr. Scott Robbins read the entire Resolution.

I.C.R. SANITARY DISTRICT RESOLUTION 2012- 2

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

WHEREAS, on March 1, 2012 the Governing Board of the Inscription Canyon Ranch Sanitary District (the “Governing Board”) met in special session at 3 p.m. at the Days Inn Conference Room 1, 688 Fletcher Court, Chino Valley, AZ 86323 with the follow Directors present:

Bob Hilb
Brian Ray
Scott Robbins

WHEREAS, the attached AMENDED AND RESTATED DEVELOPMENT AGREEMENT establishes: (i) an orderly basis for operating the Santec Plant and the existing infrastructure, (ii) clear procedures for the expansion of sewer capacity when needed in the future, (iii) a protocol for approving future phases of Developers property, and (iv) provide for the acceptance of the existing Santec Plant, the Talking Rock infrastructure, on-site and off-site and confirmation of the acceptance of the Whispering Canyon infrastructure pursuant to the terms and conditions set forth in this Amended Development Agreement.

THEREFORE, BE IT RESOLVED by the Governing Board of the I.C.R. Sanitary District, Yavapai County, Arizona, that the Amended and Restated Development Agreement in the form submitted to the Board in an email from Kim Korp dated Tuesday February 21, 2012 together with the exhibits thereto presented to the Board by email from Clint Poteet on Wednesday February 22, 2012 is approved and the Board is authorized to execute the Agreement in a final form substantively the same as presented to the

Board. The motion authorizing this resolution was adopted unanimously at the Board meeting on March 1, 2012.

I.C.R. SANITARY DISTRICT, a political subdivision of the State of Arizona.

Mr. Robbins then moved to adopt the resolution in connection with the Amended and Restated Development Agreement between the developers of Talking Rock and Whispering Canyon or the Resolution 2012-2.

Brian Ray seconded the motion and the following discussion ensued:

- **Charles O'Brien** questioned the need for a Development Agreement. *Mr. Hilb stated that the question was answered at the last meeting and didn't feel that it should be discussed another time. Mr. Hilb stated that this was just a Resolution to memorialize the decision made at the previous meeting.* Mr. O'Brien asked when the minutes of February 22nd would be approved. *Mr. Hilb stated that perhaps they would be approved at the next meeting.* Mr. O'Brien then stated that at that time Mr. Hilb would have to discuss those matters and clarify the confusing statements that he provided. Mr. O'Brien stated that Mr. Hilb could discuss it now or discuss it then, and that Mr. Whittington would confirm that. *Mr. Hilb asked Mr. Whittington if it was necessary to discuss that matter again. Mr. Whittington answered that he didn't have to, but was permitted to if he wanted. Mr. Whittington also stated that if it merits, the discussion could be revisited. Mr. Hilb stated that perhaps it could be discussed when the minutes of the Feb 22nd meeting was on the agenda.* Mr. O'Brien asked if each of Harvard and Whispering Canyon were going to receive 10% annually of the gross... (Interruption). *Mr. Hilb then interrupted by stating that the Development Agreement would not be discussed at this time. Mr. Hilb then reiterated that only questions regarding this resolution would be answered.*
- **Jimmy Stoner** asked when copies of the Development Agreement that were negotiated and agreed to adopt at the last meeting, and the Resolution, going to be available for the people in the District. *Mr. Hilb stated that a document doesn't become public until it is signed and as of yet it wasn't. He also stated that once the document was signed later today, it would be posted on the website.* Mr. Stoner then asked if that was both the Resolution and the Development Agreement. *Mr. Hilb stated that the document that would be signed today was the Resolution, if it passed. He stated that it would be sometime next week when the Development Agreement was completely signed.*
- Charles O'Brien asked Scott Robbins if the Resolution that he read was the one being considered. *Scott Robbins stated that it was.*

The motion passed unanimously.

B. Proposed Settlement Agreement between the District and developers of The Preserve and the associated MOU executed by the parties. Mr. Hilb stated that this was a companion document as required in the Development Agreement. Mr. Hilb in a summary stated that the previous Board had no agreement with the Preserve. He went on to say that one had been cancelled and was never replaced. He stated that the Pivotal Agreement, with the Preserve was memorialized in this document. In his summary of things incorporated, Mr. Hilb stated that there is no money owed from the Preserve to the

District. He also stated that the District previously accepted all Infrastructures and that the District had that Bill Of Sale dated 2008. The Preserve Sales Office was excluded from having to hook up with the District Sewer until the office was torn down and replaced with a house sometime in the future. Mr. Hilb stated that the Preserve chose not to be involved with the Developer because that development was basically completed. He also stated that the predecessor to the Pivotal Agreement required a payback of 15% over 20 years in its provision but that the Board negotiated it down to 10%. Mr. Hilb also stated that because it was a small amount, the \$22,000 would be paid back in two increments of \$11,000. One payment would be made after this Agreement was signed and another payment would be made a year from now. Gene Leasure interrupted and Mr. Hilb asked him to hold the questions until the end of the summary. Mr. Hilb continued by stating that there were two lots that put in alternate systems during the moratorium. Those lots were given the option to stay on their alternate systems or hook up to the District sewer if they paid the necessary fees. Mr. Hilb said that the Preserve preferred to just have fees paid at the time a house was built and because there was no Agreement in place, the District agreed.

Brian Ray made a motion to approve the Settlement Agreement as presented before them.

Scott Robbins seconded the motion and the following discussion ensued:

- **Gene Leasure** suggested that the Board look at the Agreement signed by the District and the Preserve. It was his recollection that no other fees were to be paid to the Preserve. He stated that he thought that what the District was proposing was a violation of that agreement. *Bob Hilb stated that there were emails between the former Board members and the Preserve that provided for certain things but that they were not put on the Bill of Sale. Mr. Hilb stated that because there was room for argument, the Board Members felt it was not worth going into litigation at this moment and therefore agreed to negotiate.* Gene Leasure suggested that the Board go back and read the Bill of Sale. *Mr. Hilb stated that he along with several other people read the Bill of Sale and stated that he disagreed.*
- **Dayne Taylor** asked if Mr. Hilb was referring to the Development agreement between the District and the Preserve. *Mr. Hilb stated that the only agreement that was found between the District and The Preserve was the Pivotal Agreement and that agreement was cancelled. Mr. Hilb stated that that was the only agreement they could find at the time.* Mr. Taylor asked if there was any understanding regarding the Phase 12 at Talking Rock Ranch becoming the Preserve. *Mr. Hilb stated that unfortunately when that sale occurred, it became a separate entity. He also stated that Counsel was asked for its opinion, and it was looked at by the lawyer not present. Mr. Hilb stated that the only agreement that was found was the Pivotal Agreement.* Mr. Taylor asked if the agreement was between the District and Pivotal. *Mr. Hilb stated that it was between the District and the Preserve. He went on to say that the only agreement that The Preserve was a part of was the Pivotal Agreement. Mr. Hilb stated that it was the only thing that the Preserve signed.* Mr. Taylor asked if there was an agreement between the District and Pivotal. *Mr. Hilb said "yes".* Mr. Taylor asked Mr. Hilb to show him that document. *Mr. Hilb stated that it was approved at a previous meeting.* Mr. Taylor asked that he be shown that document as it was a public record. *Mr. Hilb asked that Mr. Taylor make a public records request.* Mr. Taylor then stated that 2 ½

months ago Mr. Hilb stated there would be a public request form on the website. He asked if Mr. Busch would be expected to do that because he has yet to see it.

- **Charles O'Brien** asked about the nature of the relationship between The Preserve and the Sanitary District at present. *Mr. Hilb stated that until they sign this agreement, they couldn't find anything.* Mr. O'Brien asked why then they were signing the agreement. He also wanted to know what the District's obligations under the agreement are. *Mr. Hilb stated that there are lots that need to be serviced by the District. He also stated that because not all the lots are sold at The Preserve so there had to be something that had to memorialize the obligations of both the District and The Preserve as far as the sale of future lots.* Mr. O'Brien stated that he understood that The Preserve was started for reason of the sale by Harvard as one of its proposed Subdivisions. *Mr. Hilb stated that he believed that to be correct.* Mr. O'Brien then stated that he felt it was incumbent upon Harvard to resolve these issues and present an arrangement to the District, with The Preserve, that serves everyone's purposes. He felt that the District was undertaking obligations it had no reason to undertake. He stated that The Preserve was exposed because they had no former relationship with the District and felt it was Harvard's responsibility to get this straightened out. *Mr. Hilb asked Mr. Whittington if he would like to respond. Mr. Whittington stated that he would not in Public Session.*
- **Hugh Pryor** had a comment about the relationships between the parties. He stated that he believed the MOU was signed by Harvard, The Preserve and Whispering Canyon and that it was the genesis of the documents that the District has considered so far.

The motion passed unanimously.

Bob Hilb stated for the record that once this document was signed it would be put on the website.

- C. Proposed procedure for collection of unpaid user fees, late fees and interest charges in connection with user fee billings of September and October 2011 including placing liens on property with balances more than 90 days past due.** Mr. Hilb stated that Bob Busch presented the Board with a proposal that basically states that if any fees aren't paid after 30 days or more a reminder notice would go out stating that any account that is 60 days or more would be subject to a \$60 late fee. The District would then mail out a delinquent notice to the owner and add a \$60 late fee on the account. If any fees are still unpaid after 90 days or more from the invoice date, the District will hand deliver or send via certified mail, a preliminary lien notice stating that if the delinquency is not paid within 30 days a lien would be placed on the property. *Mr. Whittington asked if he meant \$60 or if he meant \$5. Mr. Hilb stated that that's what was in the proposal and that what would be discussed at this time.* Mr. Hilb stated that some research would have to be done to see if the customers could be charged the fee again as it was unclear. He stated that if the Board accepted the proposal presented today, there would have to be a rate hearing meeting. *Mr. Whittington stated that if a motion was made to approve the proposal that it be modified to reflect the current fee schedule of a \$5 late fee and associated documents thereto and the collection timeline and notices as exhibits 1 through 5.*

Scott Robbins made a motion as stated by counsel to accept the fees as they are. Mr. Robbins stated that it was so moved, as suggested by Counsel.

Brian Ray seconded the motion and the following discussion ensued:

- **Gene Leasure** stated that he heard Counsel make a motion. He stated that it was his belief that Counsel could not make a motion. *There was some confusion about who made the motion and the District Clerk clarified for the record that Scott Robbins made a motion based on the wording/suggestion made by Counsel. Mr. Robbins asked Counsel if that was okay. Mr. Whittington stated that it was.*
- **Bob Hilb** stated that if it turns out that the District could only charge the fee once, that they do that instead of the rate hearing because it would take a lot of time and energy. *Mr. Whittington stated that this was a fair discussion, but it was not a part of this motion.*

The motion passed unanimously.

- **Mr. Hilb** asked that Mr. Busch research whether or not the fee could be charged more than once. The clerk asked for clarification on who seconded the motion. Mr. Hilb stated that he seconded the motion. Mr. Whittington then asked for the motion to be restated and Bob Hilb seconded the motion. The Board re-voted, and the motion passed unanimously.
- **Mr. Hilb** then stated that regarding the consideration of changing the rate structure, if it turns out the late fee could not be charged; this would be discussed at another time.
- **Bill Whittington** then stated that irrespective of the interpretation of the District Manager, the late fees are what they are and it turns out that the interpretation is only cumulative, and nothing about the policy or the documents that modify that can be added cumulatively and modified.
- **Bob Busch** stated he was reluctant to add a \$5 a month charge on any accounts that haven't been notified at this point. He stated he was not certain how the District could add a \$5 charge on top of the late fees. *Mr. Hilb stated that Mr. Busch could get together with Mr. Whittington to see if the customer could be charged more than once.*
- **Bill Whittington** stated that it was his understanding that Mr. Busch was questioning whether the District would want to add that charge as a matter of policy, considering its past practice.
- **Bob Busch** stated that it was his understanding that upon approval of the proposal the District would move forward whether it was a cumulative charge or a one time fee
- **Bob Hilb** stated that it was his understanding of the proposal, that if the District was allowed to charge a late fee, it would be charged every time the District sent out a notice. If the District was only allowed to charge once, then there would not be any more late fees charged to the process.
- **Bob Busch** stated that he interpreted it as a choice of a monthly fee or a one time fee.
- **Bob Hilb** stated that the interpretation would have to be made and decided upon.
- **Bob Busch** stated that he already made the interpretation because the District already billed them only once.
- **Bob Hilb** asked that Mr. Busch get together with Mr. Whittington to research if the customer could be billed more than once. If it turned out they couldn't be, then the District would go with the policy that was just approved.

Bob Hilb adjourned the meeting accidentally.
Bob Hilb called the meeting back to order

5. OLD BUSINESS

A. Future meeting time. Bob Hilb stated that a regular time and place would have to be determined. Mr. Hilb asked if Bob Busch would look into that. He asked Mr. Busch if the District had any outstanding items that needed to be put on a future agenda. Mr. Busch stated that Financial Reports and approval of past meeting minutes were pending. Mr. Busch confirmed that Financial Reports were usually ready after the 20th of the month. Mr. Busch suggested that a meeting would be needed in April and should at least be scheduled once a month. It was decided that Thursday March 22, 2012. The time wasn't decided as Bob Hilb would get with Mr. Whittington and post it later.

- **Chris Stoner** asked if there were going to be meetings every third Tuesday of the month as posted with the county. *Mr. Hilb stated that it was no longer the case as meetings had to be often cancelled due to negotiations. Mr. Hilb stated that the item of future meetings would be discussed at the next meeting.*
- **Dick Tracey** asked that the Board go back through and check about putting things on the agenda as promised in the past. *Bob Hilb stated that this would be considered.*
- **Charles O'Brien** stated that there was tremendous confusion about the MOU and the Development Agreement and that he hoped that sometime in the near future the Board Members would provide the entire membership with an explanation of the events that led to these illegal transactions. Specifically, what the District has given away. For example, that Harvard is no longer required to build or add to a facility to meet capacity needs. Also, why there was a change in the amount that the District was required to pay to Harvard and Whispering Canyons. Also, why arbitration wasn't pursued as provided for in the Agreement. And finally, he stated that the people would like to know who the experts were who provided consultation because there are a lot of technical questions; in particular whether Dwight Zemp, ACT III or any affiliate or employee or agent of those entities in person, were involved in providing information and consultation. *Bob Hilb stated that it would be considered but that this information was discussed at a previous meeting and saw no reason to repeat it.*

6. ADJOURNMENT

Therefore the meeting was adjourned at 4:10 p.m.

Date

Board Clerk