

ICR WATER USERS ASSOCIATION

Public Comment Following Board of Directors Meeting, Talking Rock Ranch House

June 23, 2009

Those Present:

Board Members

Hugh Pryor, President
Hal Lobaugh, Vice President
Bill Meyer, Treasurer
Jimmy Stoner, Secretary
Shirley Lilien, Director

Contract Staff

Chris Williamson – Water System Operator
Dee Crooker-MDIFS

Public Comment Section

Member Guests

J Reid	F. Engel	Dayne Taylor	Gene Leasure
H. Roberts	B. Steffensen	Chris Stoner	Tom Sullivan
John Payne	Jim Clark	Leo Sullivan	Charles O'Brien
Shirley Leasure	Eileen McGowan	Marless Taylor	Erik Seineke
Kim Utz	Clint Poteet		

Member Comments

The following are questions/comments from the members, and responses by the Board:

Skip Reid: You're going to prepare a Motion, I suppose, for the reading in July with regard to the Architectural Review Committee and the Water Co. Do you intend to break the relationship between the two so that the ARC will no longer have any reporting responsibility to the Water Co, the Board will not be appointing the members of the Committee, there'll just be a clean break and there will be no association?

Hugh: That's the intent.

Skip Reid: And so, if you prepare that, it's passed, and the Architectural Review Committee will be on its own, and it will not be an issue for the Board?

Hugh: Correct.

Shirley: Except as to the accounting for the money.

Hugh: We need to understand what happened to the loot, but other than that . . .

Skip Reid: So, you just want an accounting? They would still be entitled to keep the funds to use for their activities, or the Water Board would keep the funds?

Shirley: It's sort of a legal question that I think the lawyer is going to have to clarify, but if they were assessing the plan fee without authority to assess a plan fee . . .

Skip Reid: Authority from whom?

Shirley: Well, if you read the By-laws, it says they can ask the Board for permission to assess a plan fee.

Hugh: Actually, it says they can ask the Association.

Shirley: The Association. The members. In other words, there should be input. I don't know who assessed that plan fee. We can't figure it out. We've been arguing about this, Skip, since I came aboard three years ago. It's been a difficult situation because there are people who feel very strongly that they want to approve the design and so forth in ICR. The problem is, is it questionably legal for that to ever have been put in the Water Co.

Skip Reid: Oh, I agree with that.

Shirley: It's the strangest thing I've ever seen. You're a lawyer.

Skip Reid: The CC&R's very clearly state . . .

Shirley: The CC&R's don't bind the Water Co. The Articles of Incorporation bind the Water Co.

Skip Reid: No, I understand that.

Shirley: And if your developer did this weird thing and dumped it in there and it was illegal when it was first done, then we somehow have to backtrack and get the problem fixed.

Skip Reid: Has the Water Co. not ratified that relationship by operating in accordance with the CC&R's and what's been done in the past?

Hugh: The ICR CC&R's?

Skip Reid: I was asking Ms. Lillien, who is an attorney.

Shirley: I'm retired. I am not speaking as an attorney. I am speaking as a Board member, who understands the law. Okay? And the answer is that from the time I came on the Board, I questioned it. But there were other Board members who felt differently. We vote as a majority. You've seen, we had disagreements today, and Jimmy lost on some of the votes. I lost on some of the votes.

Skip Reid: Well, back to my question. Did the conduct of the Board ratify that relationship so that now, we .

Shirley: The Board, prior to the Homeowner's Board. It was a developer Board. When you were reading through that list of the dates that things happened, if you look at the signatures on all of those papers, it was Swayze McCrain, Kathleen McCrain, I assume is his wife, and then someone named Mr. Gray.

Skip Reid: Bill Gary.

Shirley: Gary. And those three people were the ones that came up with this scheme to get rid of and do it so it didn't look like a Homeowners' Association. When our lawyer looked at it, and he presented that at this meeting, he said it's a de facto Homeowners' Association. You can't do that. So, it's a mess, Skip. And we need to get it straightened out.

Skip Reid: I agree with what you have said he's going to do. I think that the Water Co. should get out of the business of managing Lots 1-180.

Hugh: We've been told that for at least a year and a half, and we have tried to gracefully pass this responsibility from us to a stand-alone ARC, non-profit, non-Homeowners' Association kind of an organization, and so far, we've been unsuccessful. What I'm proposing to do is just brute force exclude them.

Skip Reid: Which is exactly . . . Swayze, et al. developed Granite Oaks. They have the exact same set up, and when the friction developed between the review committee and the water company, the water company did exactly what you're doing. Passed a resolution, broke the relationship in connection with any responsibilities, and went on their merry way.

Homeowner (HO_) HO 2: The ARC over there went totally away and they're relying totally on the CC&R's.

Shirley: Well, our lawyer told us that it's easy to set up a new organization if the people want it.

Hugh: You're exactly right.

HO 3: Hugh, then, will your resolution effect the dissolution of the ARC?

Hugh: I don't think it has anything to do with the ARC. It just separates the ARC from the Water Co.

Jimmy: So it doesn't exist.

Skip Reid: No, they'll exist per the CC&R's.

Shirley: But it's homeowners who will have to take up the slack and enforce it. Not us.

Skip Reid: So, you guys will have a lot of extra free time then?

Gene Leasure: Earlier, when MDI was giving their report, I think Bill asked them for a report, and the answer was that they could do that report, but they would have to go through Bob Busch before they can give it to the Board. I don't understand that. Doesn't MDI work for the Board?

Hugh: I don't recall what you're referring to, specifically.

Jimmy: The sample membership list, I believe, was the request, and the response was that she would give it to Bob Busch.

Bill: My take on that, Gene, was that she was only going to send it to Bob to distribute to the Board.

Gene: Right. I don't understand that. Why can't she communicate directly to the Board?

Skip Reid: Like she does when she comes to the meetings.

Bill: She could, but I don't know if she has all of our e-mail addresses, quite frankly.

Shirley: She probably does.

Gene: Well, right now, that's not the point. The point is why is Bob Busch between MDI and the Board.

Hal/Hugh: He's our Manager.

Gene: That shouldn't stop your accounting firm from talking directly to the people that hired them.

Hugh: You know, it works just fine.

Gene: I don't think MDI works for Bob Busch.

Hugh: MDI to Bob Busch to us, in the flash of an e-mail. It's that simple and that's the way we do business.

Gene: I find that very strange that they can't talk to the Board, e-mail to the Board.

Shirley: They can, but the Board doesn't deal with a lot of issues that she deals with, with Bob. We could do it that way.

Gene: When you ask for a special report, she should be able to e-mail it directly to the Board.

Shirley: No, that report cannot go via e-mail because e-mail is not secure and there are privacy issues. So, that particular report is a different . . .

Gene: Oh, that's just smoke. You e-mail back and forth all the time. Okay, let's get off of it.

Shirley: No, there are unlisted phone numbers and there are all kinds of things in these reports.

Bill: None of that's going to be in there, Shirley.

Shirley: No, it shouldn't be. And that was one of the reasons. He was going to check and make sure the information was all information that should be released. We had that discussion. The report will be put together. It's not an issue.

Gene: Are all the large meters paying the monthly meter fee per the Commission order?

Hugh: What is your real question?

Gene: Are all the large meters that are in the District, within the Company boundaries, paying the monthly meter charge that was ordered by the Commission?

Hugh: Everybody pays the meter charge except for Talking Rock Golf.

Gene: Why are they exempt?

Hugh: They're exempt by agreement.

Gene: No, not the agreement I read.

Dayne: They're not exempt by the order.

Hugh: We believe by our agreement that they are exempt and that information has been communicated to the Commission. I haven't heard anything back from the Commission.

Skip Reid: Do we get a copy of the communication to the Commission?

Hugh: It's on the website. It's on the e-docket site. It's correspondence from either Crockett or Busch. I don't remember which.

Gene: Now that public comment is not going to be published, how do you propose that members communicate with the Board?

Hugh: Well, maybe we should adopt your rules of order.

Gene: My rules of order?

Hugh: That you use for the sewer district.

Gene: We have public comment before we adjourn the meeting.

Jimmy: Do you include them in the Minutes?

Gene: Yes, sir.

Hugh: I've read through a few of those. I don't recall seeing that, Gene, but I'll take your word for it.

Gene: Actually, we don't have very much public comment. I can bring up one point about public comment. I don't know what meeting it was. It was maybe a couple of months ago, but Clint had a disagreement with the Board decision, and during the public meeting, he voiced his disagreement and it's in the Minutes that he disagreed. We had an answer for his disagreement, but it was all in there. We didn't keep it out.

Charles O'Brien: I trust that the Minutes of this meeting will fully and fairly reflect the discussion about the materials excised from the preceding Minutes. Is that correct? What I mean is, you're going to provide a detailed explanation with the give and take between the two sides, the TRR side and the ICR side, as to why these portions are being deleted. In other words, you said their view was subjective and an opinion and had to be deleted, but your view was not objective and not an opinion, so it could be maintained. I would like that reflected in these Minutes because that accurately reflects or indicates what happened.

Hugh: I think I understand, and when I get my opportunity to edit the Minutes, I will insert what the logic was and I'll also make a comment on what I actually reported.

Charles O'Brien: And the position of Jimmy and Bill.

Hugh: Yes.

Charles O'Brien: The other thing that I would like to point out to everyone is that the Board occupies a fiduciary relationship to the Members, and it really is a high duty, a very high standard. It means that you have to consider the interests of the Members and segments within the membership, and I say that because you mentioned you don't want things to be divisive, but I don't think it's a matter of being divisive. I think it's divided, and I think there should be a lot of time spent examining what's been happening and trying to resolve these issues. I sat on three reporting and registered company boards, and I have had extensive experience as a Board member and as an attorney, and what's happening here is not a healthy situation.

Hugh: I don't think anybody would disagree with that.

Dayne: I would encourage the Board – you said previously that the Company was not operating to the open meeting law, but you were going to conduct the meetings in accordance with the open meeting law. I would encourage you to either go a training class or go to the website and read what is said because regarding the Minutes, regarding the adjournment of the meeting prior to the public comment, is in total disagreement with the open meeting law.

Hugh: You recognize that we're not subject to that law.

Dayne: I understand that, but the Board has made a decision to operate. Either you operate to that standard, or you do not.

Hugh: There's varying shades of gray, Dayne.

Dayne: The open meeting law is black and white.

Clint: I've been coming to these meetings and looking at the water reports, and there continues to be a high amount of water being lost over in Inscription Canyon Ranch. Is there a leak somewhere?

Hugh: We don't have a handle on that, I don't think.

Clint: 3 million gallons of water is a ton of water. It seems like you should be able to identify where the 3 million gallons are going.

Chris Williamson: You'd have to shut down one well to try to isolate a potential leak. We do our meter readings monthly. The well's been off long enough if that's the source of the problem because it will show up on the next cycle. It will show up as soon as somebody compares what is being read today compared to what is being pumped.

Hugh: The bothersome part to me is that there is a long standing and persistent relatively high percentage of unaccounted for water on the ICR side. It's been going on for a long time. Nobody really understands it, and I think it would be a good idea if we could figure out what's going on.

Bill: The Operations Committee will be looking at this closer. One additional thing that happens to us on the ICR side is that between the well field and our customers is the fire station. And there's a hydrant there that taps into our water. We do not have a record of their use, if they do use that water for training purposes and for other purposes. That's one of the things also we'll be collecting information on.

Dayne: They're obligated to give a record to the Water Co. of their water consumption.

Bill: I have dropped by and they are keeping records, and we'll be picking those records up.

Dayne: On the depreciation schedule that you gave for this water system, can you share the monthly depreciation dollar amounts?

Bill: Yes, I can. And recognize that these numbers will change, but first, I'll give them to you. Appreciation expense for ICR infrastructure per month is \$2,614.50. Depreciation expense for TRR infrastructure is \$22,135.67. Depreciation expense for Preserve at the Ranch is \$705. Depreciation expense for WC is \$4,547.33. Currently, the depreciation expense for ICR is not the expense that we can use as part of our budget with procedure with ACC because that was a contribution in aid of construction by the developer. So, we show it as an expense, but then we turn around and take it off by amortizing the contribution. The \$22,135.67 for TRR right now reflects depreciating all infrastructure we have accepted. We have accepted 100% of the infrastructure except for Phase 9C and 10. That changes with the June statement because we've reduced what we've accepted as advances. We reduced from 100% advanced down to 48% advanced, so the depreciation will go down for TRR. We can make those available to you at the next meeting if you'd like.

Hugh: We will, right? Because we'll have the June numbers.

Bill: Right. So, again, the \$22,135 for TRR is a depreciation expense for all of the infrastructure that we've accepted from them. We've accepted all of the infrastructure as an advance in aid of construction. Per the amended Restated Well Agreement, effective June 1, we will change what we've accepted from 100% down to 52%, and that will change the appreciation.

HO 3: So, one more question. Will the Board's actions next month to sever the relationship with the Architectural Committee also include at that time an accounting of our money?

Hugh: If we can get it. I know there's a lot of noise. I've only seen a memo or two of what's going on, so I'm really naive with respect to what actually has happened over the past month or two. It's hard for me to comment, but what bothers me is walking into this halfway through is why the people who own those lots don't take on the responsibility of running their own architectural review committee.

Skip Reid: When we get the Water Co. out of the way, we probably will.

Hugh: Are you an owner in that?

Skip Reid: Yes.

Kim Utz ARC: I have the dubious distinction at this point in time as being the Chairman of the Architectural Review Committee. If you guys want to try and split us off, that's fine. That's something you can do, and I know that's something you want to do. And if you want a full accounting of our checkbooks, that's fine too. We absolutely have nothing to hide. We have two accounts. One is what we call a plan check review account. Those fees were authorized by the Water Board when the ICR ARC was put into effect with resident members. We also have a performance deposit account similar to what they have here in TR. We request, and again, by the Water Board at the time it was done, we request from a builder - it can come from the builder or from the lot owner - a deposit when they begin building their home so that they have some skin in the game to make sure that litter's not all over the lot, they complete the project in time, that it's built according to the standards that were approved as submitted - you know, that the colors that they submitted are the colors that end up on the house - and we have been extremely diligent about making sure that those things occur. There isn't a member of this committee, and there are five of us, who goes around the neighborhood looking to find violations. We act on things when it's brought to us, and then if we believe there is a necessity to do that, we do that, and we act on that. We may send out a friendly reminder letter asking for compliance. We'll send another letter if we don't get compliance after that. We may give it to our attorney, who also was approved by the Water Board and requested by the Water Board that we have an attorney. This isn't something that we went out and did on our own. This attorney's not on retainer. This attorney is used on an as-needed basis, and is paid out of the funds from that plan check fee account. As for the funds in the performance review account, it's like a trust account. The money goes in, people finish their projects, they get the money back. And I also will say that there have been times where because of the way the agreement is set up when people sign these agreements, and again, these performance deposits were approved by the Water Board at the time you were put together, allows us to fine a resident if, in fact, the standards, colors, don't complete on time. By the way, we're very lenient with completion. If somebody needs an extension, we'll be more than happy to give it to them if there's a good reason. So, there have been times when we have fined residents and we have taken money from that performance account and moved it into the plan check fee account. Those are the only operating expenses that the ARC has. We are not, and I'm going to take exception to this, a homeowners association of any kind. And our attorney has been very clear with us in saying that we're not a homeowners association. We don't have dues, there's no way to collect money from a resident.

Hugh: Was somebody trying to make you a homeowners association?

Shirley: Can I ask you a question?

Kim Utz ARC: We have never been a homeowners association, and don't want to be.

Shirley: I've been on the Board for three years. The by-laws say that the Board or the members, the organization appoints members to the Board. Last I heard, RJ and two other people were on the Board. Now, you're telling me there are five members, and you weren't one of them, and I'm wondering who appointed you or whoever the additional people are.

Kim Utz: Let me clarify that for you, please. If you look into Article 18 of the ICR CC&R's for Lots 1 through 180, it shows that until the time that 51 lots have been sold, there's three members. After that time, there are five members. In the beginning, and I've been on and off this Board for six years, in the beginning, those members were appointed. However, after the first appointment, the Water Board asked that we hold an election for members. The reason being, and this was directly from Jim Edens, but Jim was very clear in saying the Board wants to make sure that there are no collusion or favoritism or anything else like that shown in the appointment of ARC members. So, election is the way you're going to go and that's what we want you to do. Now, elections, per their assignment, for people to have a three year term. However, if someone dropped off the Board and new member was appointed, there was not necessarily a time limit associated with that appointment. Today, on this committee that I'm the chairman on, I'm appointed and the other four members are elected. I was appointed 2 ½ years ago to take the position of a member that didn't want to be on the Board anymore. So, that's how that's done, and it was done at the direction of the Water Board.

Shirley: There's been no change in the By-laws, though. And the By-laws say that membership and the Board appoints the members to the ARC and the replacements. It's pretty clear.

Skip Reid: The CC&R's make that pretty clear. Jim Edens unilaterally decided that we should have elections.

Shirley: You can see the whole thing is quite complicated.

Kim Utz: We can only operate under the direction we were given, and nobody ever changed it.

Shirley: Well, someone should have read the By-laws. You're asking the Water Co. to operate in a way that is not consistent with its By-laws.

HO 4: Who are the other members of the Board?

Kim Utz: Eileen McGowan, Jan Marshall, Eric Santee, Fred Mayer. Now, Fred and I, Fred's home is on the market. He may not be on the Board that much longer and will need to be replaced, and I look at it from the standpoint that when January rolls around, or December rolls around, I would be on the Board as an appointee for three years, and I should have to stand re-election or give up my spot, but I don't think it's right for me to stay on after just being appointed. I hope that clears up some issues. I don't know if it does or not, but appreciate your time.

Shirley: It does.

Shirley Leasure: For a year and a half, I've been coming to the Water Board meetings. I started in January a year ago, and was talking to Shirley about the architect, so I asked about it, and nobody knew anything, even on the Water Board. So, I started going to all the architect meetings. Because you always hear, they said this, they said that. And I went there with the same feeling as Mr. Stephenson came to the meeting. By the way, in a year and a half, two people have come to their meetings. Any way, my neighbor got a letter and that's what got me started to go see what was really going on. But I kept saying, are you guys going to see what they do there? And I verified the money was never involved. The money was separate. You guys had nothing to do with it and the whole thing. What makes me mad is now all of a sudden, everybody's gonna get involved, and they never have come to the meetings to find out or talk it over. Mr. Stephenson did. He started this whole thing. The other woman who got a letter about her trailer, moved it. He moved his, but he moved it out in the middle of nowhere so everybody in the whole world can see if sitting next to his option. But that's his option.

Bob Stephenson: That's where the ARC say to put it.

Shirley Leasure: No, they said behind the rear plane of your house. I hear that.

Bob Stephenson: That's where it is.

HO 5: It's behind the rear plane of the house, and if it stayed behind the front plane of the house, we wouldn't have all these problems.

Shirley Leasure: Right. But they never came to the meetings and that's what really irks me. It's the same way, all the people who came to the Water Board meeting. Some of them have come for 2 or 3 years, but I think we need to pay attention to these people that just all of a sudden start all this garbage and they don't even attend anything.

Leo Sullivan: I'd like to say something in defense of Mr. Steppenson. You know, I never got involved in a lot of this stuff either, but there's an old saying, if it ain't broke, done fix it.

Shirley Leasure: Well, then you need to come . . . everybody should be more aware. I think they are now because of all this, but I think horrible comments and name calling is uncalled for. All you have to do is go to a meeting.

Skip Reid: Shirley, I spoke at length yesterday with Jan Marshall, who's also on the ARC, and one of the points I made to him is they never told us when the meetings are.

Shirley Leasure: It's funny. I haven't missed one.

Skip Reid: It's difficult for people to attend a meeting if they don't when it's going to be.

Shirley Leasure: Call the 800 number.

Gene: All you have to do is ask, Skip.

Skip: Maybe they could publish a schedule of their meetings, locations, and times.

Shirley: And bottom line, what does this have to do with the Water Co.? That's the whole point. And your developer is the one who did this, so we're not pointing a finger at anyone. He wanted to get rid of it and he dumped it in a way that shouldn't have been done. And that's what's causing the problem.

Skip Reid: This is not the only distinguishing element of what Swayze did.

Shirley: Well, I wasn't here. All I know is this isn't right and it has to be fixed.

Skip Reid: Well, it sounds like it's going to be resolved.

Shirley: Well, it would be nice if the people from the ARC would say, we acknowledge it and let's just come to an agreement, and we'll remove ourselves. Instead, we're having to do it piecemeal. We spent a lot of money with lawyers at a meeting. Why?

Kim Utz: If you go ahead and do this and you can do it legally, I don't know if you can or not, and certainly we're going to talk to ARC's attorney when I leave this meeting, if you can resolve it that way, that's to your satisfaction, that leaves 180 lot owners in ICR kind of up in the air. It gets you out of it, and that's great.

Shirley: It gets WC out of it, it gets the Preserve out of it, it gets TR out of it, and it leaves a problem for . . . It's a Water Co. issue. The Water Co. is responsible for the ARC.

Shirley Leasure: But all you had to do was send a letter. And you could have done it too. You could have sent a letter to, and say, look, this is a mistake. It shouldn't have been under the Water Board, and let them vote. And Earl Cummings even had that in one of the meetings. He said, we're going send out a letter and take a vote, and they never did it.

Skip Reid: I'd like to say that as an owner in Lots 1-180, the last thing we want is for lawyers for the Water Board and lawyers for the ARC to be duking it out and spending our money to decide something that we're not interested in having lawyers decide. You pass a resolution, sever the relationship with the ARC, and the residents of 1-180 will take on the responsibility.

Shirley: We're also not interested in having the ARC lawyer, who we knew nothing about by the way, okay? Suing us because he doesn't like it.

Kim Utz: We can put a stop to that.

Shirley: Well, someone ought to sit down and go through the Articles of Incorporation and the By-laws the way Hugh did, and you'll find this shouldn't have been.

Kim Utz: Absolutely.

Hugh: The one question that I would ask you is do you volunteer to make your financial records available? Would you do that at our next Water Board meeting?

Kim Utz: At the next Water Board meeting? When is that meeting?

Hugh: It's the fourth Tuesday in July.

Kim Utz: And what specifically do you want? Do you want bank statements, which I provided to Bob Busch.

Hugh: I'd like a clear accounting summary of the deposits, withdrawals, purposes of use, so on, for the last two years.

Shirley: In other words, who paid the money, how much did they pay?

Kim Utz: Absolutely, no problem.

Hugh: And then if we are able to pass an amendment to the By-laws and sever the relationship with the ARC, we will provide everybody through the Minutes or somehow that accounting that you provide to us. Just information. We're all under the scrutiny of public disclosure of our activities.

Kim Utz: I just want to make it real clear that the money that the ARC has spent on attorney fees is not costing any of the residents of Lots 1-180. Perhaps you've built a house in the last six years and paid a plan check fee, but that's what the money was intended for in the first place.

Shirley: It was for plan check. That's all it says in the By-laws is it was for plan check. If it was spent on attorney's fees, you guys work it out.

Kim Utz: That's what we were told by the Water Board that we were supposed . . .

Shirley: This Water Board person has been here for almost four years and I never heard a word of that. Never heard about a lawyer.

Kim Utz: It goes back before that.

Skip Reid: It will be a new day after Hugh's resolution is passed and we can move on.

Hugh: Okay, guys, thanks for coming.

Marless T.: I have a question or comment. Hugh, you said early on in the meeting that the ACC reports the public comments, so it was okay for them to publish them as part of the proceedings. And Jimmy pointed out that the ICRWUA meetings are also recorded, and you responded that you're aware of that. And that was the end.

Hugh: What more did you want?

Marless T.: It's interesting that we have to comment at the end because I do like the Sanitary Board meetings that you can comment as you go along, so that you will remember what it was pertaining to, but you are aware of this, but you still want to sanitize the Minutes

Hugh: I don't sanitize the Minutes.

Marless T.: I'm not asking for comment. I'm just saying that that's my comment.

Hugh: That's your interpretation and you're certainly entitled to that. Okay, thanks for coming. See you next month.