

Meeting Minutes for 1/14/16

A Special Meeting (Closed Session) of the Board of Directors of the Kensington Police Protection and Community Services District was held Thursday, January 14, 2016, at 6:30 P.M., at the Community Center, 59 Arlington Ave., Kensington, California. The Regular meeting of the Board of Directors followed.

ATTENDEES

<u>Elected Members</u>	<u>Speakers/Presenters</u>
Len Welsh, President	Randy Riddell, Renne Sloan Holtzman Sakai LLP
Rachelle Sherris-Watt, Vice President	Adam Benson, Renne Sloan Holtzman Sakai LLP
Chuck Toombs, Director	John Holtzman, Renne Sloan Holtzman Sakai LLP
Patricia Gillette, Director	Deborah Russell, CPA
Vanessa Cordova, Director	Mabry Benson
	Gloria Morrison
	David Spath
<u>Staff Members</u>	Karl Kruger
Interim GM/COP Kevin Hart	Jim Watt
Sgt. Hui (on duty)	Ron Weiselman
Lynn Wolter, District Administrator	Linda Lipscomb
	Catherine de Neergaard
<u>Press</u>	Leonard Schwartzburd
	Steve Bates
	Lisa Caronna
	Celia Concus
	David Bergen

President Welsh called the meeting to order at 6:32 P.M. President Welsh, Vice President Sherris-Watt, Director Toombs, Director Cordova, Director Gillette, Interim GM/COP Hart, and District Administrator Wolter were present.

PUBLIC COMMENTS

Mabry Benson said she wanted the labor negotiators to hear what she had to say about the MOU and about possible extension of contracts with present or future General Managers or Chiefs of Police. (Jonathan Holtzman and Adam Benson came into the room). She said nothing in the contracts should prevent police services from being provided in any manner the Board sees fit. She said that the previous MOU allowed the Board to dismiss officers and that the Board should retain that power.

CLOSED SESSION

The Board entered into Closed Session at 6:35.

- a. Conference with Labor Negotiators (Government Code Section 54957.6) Agency designated representative: Jonathan Holtzman, Renne Sloan Holtzman Sakai LLP. Employee organization: Kensington Police Officers Association. The Board was to receive an update in contract negotiations.
- b. Public Employee Performance Evaluation (Government Code Section 54957(b)) Title: Interim General Manager/Chief of Police.

The Board returned to Open Session at 7:40 P.M.

President Welsh took roll call. Vice President Sherris-Watt, Director Toombs, Director Gillette, Director Cordova, and President Welsh were present.

President Welsh reported that the Board

- Had considered only Item a.
- Had been briefed by its representatives and had given guidance.
- Would return to Closed Session at the end of the Open Session

PUBLIC COMMENTS

Linda Lipscomb said that Richard “Tony” Lloyd had passed away on December 24th. She said he had been a KPPCSD Director, serving the same four years on the Board as she and that he had served with Directors Toombs and Gillette and Director Welsh, as well. She said that she, Tony, and Paul Dorroh had campaigned together. She said that he had “shown up” – serving in leadership positions – that he had spoken up for what he thought was right and fair; and that he had kept calm – never raising his voice or showing disrespect during discussions. She noted that, among his many accomplishments, he had served as President of the Board and had been Chairman of the committees to which he had been assigned and that he had fulfilled his commitment to the community, despite having serious health problems. She concluded by saying that volunteers like Tony were “where the rubber meets the road with democracy” and that she was happy to have served with him.

Ms. Delk thanked the Board and staff for improvements that had been made to the way minutes were amended and posted. She noted that there were no minutes posted under the website’s new Approved Minutes tab for January, May, June, July, September, and October of the prior year and that they did not appear under this tab because they had been approved without amendments. She asked that a notation appear on the new tab, if these minutes were to be found elsewhere. She asked that the pages of the minutes be numbered separately, in addition to being hand-numbered as part of each Board Packet.

Ms. Delk also commented upon the Policy Manual’s section pertaining to Public Complaints. She said greater clarity was needed with respect to complaints made by members of the public against the Board of Directors and that a new section was needed for complaints against the General Manager/Chief of Police. Ms. Delk handed out a copy of her comments and this document is included, under correspondence, in the February Board Packet.

Leonard Schwartzburd read the oath he had taken when he was sworn into the CERT Program. He noted this was the same oath taken by the IGM/COP and each member of the Board. He summarized the reasons why President Welsh and Director Toombs had violated their oaths:

- Preventing members of the public from being able to express themselves freely at meetings.
- Intimidating bullying.
- Cooperating in a cover up of dishonest falsification of the minutes of ten months earlier.
- Making untrue statements.

Dr. Schwartzburd said IGM/COP Hart violated his oath by:

- Cooperating with the attempted cover up of the dishonest falsification of the minutes.

- The manner in which he responded to Dr. Schwartzburd's complaint of a dishonest and false police report.

Dr. Schwartzburd concluded by saying that he was angry that President Welsh, Director Toombs, and IGM/COP Hart had proven that they were not public servants who were there to serve the public. Dr. Schwartzburd handed out a copy of his comments, and this document is included, under correspondence, in the February Board Packet.

Gloria Morrison thanked IGM/COP Hart for his extensive explanation of his recent investigations. She said it didn't make her happy that there was an individual who continued to embarrass Kensington. She said she didn't like to think Kensington had become a place where mistakes couldn't be made without them being considered to be part of a plot or something sinister.

Ms. Morrison said she had questions about the status of Director Cordova's accusation of harassment. IGM/COP Hart responded that the investigation was still pending; the investigator was still working on it. President Welsh added that IGM/COP Hart had asked the Richmond Police Department to conduct the investigation. IGM/COP Hart said he anticipated that the investigation would be completed by the end of the first week of February.

Ms. Morrison asked about the status the Policy and Procedures Manual, noting that there had been a committee that had done a lot of work on this. President Welsh responded that he would be making an appointment of a Board Coordinator for this and said he thought that person would be making a report soon. Ms. Morrison said she would hate for all the previous work to have been for no purpose.

Mabry Benson repeated the comments she had made prior to the Closed Session: With respect to the MOU being negotiated with the police officers and the possible contracts with GMs and COPs, nothing in them should prevent the District from providing police service in any manner it saw fit. She said that the prior MOU provided that the Board could dismiss officers and that the Board should retain that power.

Ms. Benson said she wanted to thank staff on the draft minutes because they now had the watermark of "draft" written on them. She also thanked IGM/COP Hart for mentioning his 100-Day Plan in his General Manager's Report and for reporting that he was working on it. Regarding IGM/COP Hart's mention of the internal investigations, she said that, while some residents were happy with the police officers, some residents had complaints about actions of some of the officers. She said that, as long as the GM and COP positions were combined there would be problems. She said the process for filling the GM/COP position, or of these as separate positions, needed to get started. She said that the Board needed to establish a process for this and asked if the Board would do nothing until after it received the findings of the Ad Hoc Committee, which she said likely would not happen until July. She noted that the Board likely would need to extend IGM/COP Hart's contract in March since an alternative had not been discussed. She then asked if IGM/COP Hart would continue with more extensions. She said that there would need to be an interview process for the permanent employee or employees, with the positions formally advertised and that a firm should be hired to assist with that process. She said that, given the amount of time the process would likely take, the Board should have begun earlier.

Ms. Benson said that she had spoken with Charles Reichmann, of the Ad Hoc Committee, about contracting out and said that he was reluctant to proceed with working on this without Board approval allowing him to contact possible agencies.

Jim Watt said the current economic climate could create economic hardships for the District. He said that, based on information he had received from CalPERS and on declines in equities since the start of the year, CalPERS performance for the fiscal year-to-date was a negative 12%. He said this meant that the District's \$8.3 million invested in CalPERS pension fund was worth about \$7 million. He said it was unlikely that CalPERS would be able to change this negative into its target return of 7.5%. He said that a miss of 5% on CalPERS's returns would translate into an additional \$15,000 contribution on the part of taxpayers to fund officers' pensions and that a negative 12% return would translate into an additional

annual contribution of \$140,000. He concluded by saying that, given the generous compensation packages – based on the compensation study he had prepared, the District was not looking out for the long-term protection of the taxpayer.

Lisa Caronna reported on the Kensington Improvement Club's (KIC) recent work:

- Hired the arborists of Brende & Lamb to prune the oak tree in the Colusa Circle, which was then lit with holiday lights by local merchants.
- Pathway cleanups – special thanks to Gretchen Gillfillan, with an upcoming cleanup of upper Ardmore Path on February 6th.
- Work with the County gardener – thanks to Lorraine Osmundson, with weeding and enhancements being done on the Arlington Avenue medians using landscape and lighting tax dollars.
- Coordinating with Kensington Property Owners' Association (KPOA) in identifying a process for undergrounding utilities, with a workshop to be scheduled for sometime in the spring.

President Welsh thanked Ms. Caronna for the work being done by the KIC and other K-Groups.

Catherine de Neergaard thanked Jim Watt and Mabry Benson for their comments. She reported that there is a new Kensington group – the Kensington Green Group, for all things green and sustainable. She said there would be a meeting at Gayle Tapscott's home at 7:00 PM, on the 20th. She reported that there would be several speakers discussing community choice energy – neighborhood energy as an alternative to PG&E to reduce the carbon footprint.

Steve Bates reported there had recently been another water main break on Arlington Avenue that caused flooding in at least two homes. He said his three homes had been flooded by a break in 2012, at which time he had learned that EBMUD paid only a fraction of every dollar for damage caused. He said he was working to compile a list of recent water main breaks in order to get a group together to approach EBMUD. He noted that EBMUD's policy was to repair, not to inspect and maintain – even though it knows its pipes are aging and likely to continue breaking. President Welsh concurred that the community was having lots of water main breaks, said he wanted to talk to the District's attorneys to see what action could be taken, and thanked Mr. Bates for bringing the matter to the community's attention. IGM/COP Hart added that Mr. Bates was doing his own research, that he had met with Mr. Bates, and that he wanted to meet with him again to ensure a united front in moving forward with EBMUD.

Celia Concus said she had been asking for consistency in the way crime statistics were included. She said that sometimes there is a Watch Commander's Report and sometimes the information is just included. Sometimes the Watch Commander's identified and other times it's identified as a Sergeant's report, with no identification who the officer is. She said she wanted to know who was working and when. She said that, specifically, she wanted to know who had been working in October, when Director Cordova had been pulled over in Berkeley. She asked if there was a response to that. IGM/COP Hart responded that he was working to develop consistency. He noted that, for the prior two months – due to a problem with Richmond Police Department's system, all statistics had had to be done by hand. IGM/COP Hart invited Ms. Concus to come by his office to discuss her concerns. President Welsh added that he understood her concern to be that of consistent format and encouraged her to take IGM/COP Hart up on his offer of a meeting.

David Bergen said he wanted the website documents to be in text format instead of PDF format. He added that he wanted the documents to be text-readable. Vice President Sherris-Watt added that she and IGM/COP Hart were interested in making improvements to the website.

Chris Hall said he wanted the Ad Hoc Committee to hurry along the separation of the GM/COP position for Chief Hart's sake and everyone else's. President Welsh responded that he didn't know what the Ad Hoc Committee's schedule was. Mr. Hall suggested that the Committee provide an update. Mr. Hall asked President Welsh to repeat what he reported out at the end of the Closed Session. President Welsh responded that he had reported that the Board had met with its labor negotiators, the Board had been

given certain information, and the Board gave the negotiators some advice. President Welsh clarified that this had to do with the MOU and that the negotiators worked for the District.

Ron Weiselman questioned how an MOU could be negotiated when the District didn't know how much money it had. President Welsh responded that the District did know how much money it had. He said that work was being done on figuring out the District's future pension and healthcare obligations. He added that this was being reviewed at Finance Committee meetings.

BOARD COMMENTS

Vice President Sherris-Watt reported that the Park Buildings Committee's January 20th meeting date had been changed to January 27th at 7:00 PM and that a Community Center pump had been replaced the prior week. She also noted that work had begun on the reservoir and, as a result, there were lots of trucks in the area; she encouraged people to drive with caution in the area.

Director Gillette said she echoed the comments made about Tony Lloyd by Linda Lipscomb. She said his passing was a loss to the community, and he had donated his time here and elsewhere for a number of various organizations.

President Welsh said he would miss Tony Lloyd; he had been warm and accessible to President Welsh when he had first joined the Board. He added that he and Director Toombs had written a piece for the February Outlook. He asked Director Toombs to read the article.

Director Toombs said that Outlook Editor, Linnea Due, had asked President Welsh and himself to write the piece. He read the eulogy, which cited that Mr. Lloyd had passed away on December 24th from complications due to longstanding health issues. He noted that Tony had been born in Detroit in 1949; had met his wife, Carol, at Michigan Bell; moved to California in 1976; spent his career at Pacific Bell/AT&T; was an accomplished musician, vocalist, founding member of the Blues Daddies and member of Cantare Con Vivo; visited families at Christmastime to convince their children that Santa was outside their windows; served as Moderator at the Arlington Community Church and as a board member of the Kensington Community Council; served as a KPPCSD Director from 2010 – 2014, serving as Vice President and President during some difficult years; was a devoted husband and father of two daughters; and was positive and constructive. Director Toombs added that donations in Tony's name could be made to Cantare Con Vivo or Arlington Community Church. He concluded by announcing that a memorial service would be held January 29th at 2:00 PM at the Arlington Community Church and that he would miss Tony.

President Welsh said that a couple of people had asked what the Board was doing about the IGM/COP's contract, which would be ending soon. He said there would be a Closed Session, following the Open Session, to address the matter.

STAFF COMMENTS

GM/COP Hart reported:

- For the past few months he had been working to resolve a longstanding feud between two neighbors, over cars parked for longer than 72 hours. He noted that members of the Board had received correspondence regarding this matter.
- He was working to organize a Goals and Objectives Workshop for 2016. He said he wanted to clarify the Board's intention about the facilitator – was it the Board's intention that he return with three proposals, or was it the Board's intention that he select the facilitator in order to move things along quickly.

Director Cordova responded that she thought IGM/COP Hart was to select the date only. She said she wanted to see a handful of consultants specializing in this type of work. She suggested Public Law Group as a resource. She didn't want the IGM/COP to unilaterally pick the facilitator. Vice President Sherris-Watt noted that the Fire District had done this type of strategic planning and that she was comfortable with IGM/COP Hart selecting a facilitator. President Welsh said he thought things had been clear in the minutes of the last meeting and he asked if Director Cordova had had a chance to review those minutes. Director Cordova said she might have misunderstood. She said she wanted to see scope and cost information as well as information about who might be available to perform the work. IGM/COP Hart said that he wasn't opposed to providing the information and that time was of the essence. Director Cordova said she would look at the proposed candidates. IGM/COP Hart responded that the minutes indicated the direction in which he was to go, but that, if the Board wanted to go in a different direction, he served Board.

Randy Riddle noted that, if the Board wanted to go in a different direction, it would need to be on the agenda. Vice President Sherris-Watt said she would be comfortable with IGM/COP Hart identifying a couple of suggestions and Director Cordova reviewing them. Director Gillette said that the Board had hired the IGM/COP to make certain decisions for the Board and that the Board could be stalled forever in trying to get to perfect. She concluded by saying that the Board should stick with the decision it had made at the prior Board meeting. President Welsh noted that a decision had already been made and he didn't want to change it. He said the Chief needed to work to find a date and then move forward.

IGM/COP Hart confirmed that had direction.

IGM/COP Hart asked District Administrator Wolter to report on recent changes made to the minutes to make them more user friendly. District Administrator Wolter reported that minutes contained in Board Packets had always been draft minutes; but, in order to make it more obvious that these minutes were draft minutes, she had added a "Draft" watermark to them. She noted that a header had been added to the minutes, indicating that approved minutes, whether approved as prepared or approved as amended, would appear on the District website, under the tab "Approved Minutes." Director Toombs responded that the minutes looked really nice.

President Welsh asked what changes would be made, with respect to amending minutes. Randy Riddle responded that, going forward, there would be draft minutes and a drop down menu for all approved minutes.

Celia Concus asked if the minutes would continue to be summary minutes or if they would change to action minutes. President Welsh responded that might be on the agenda in the future but that wasn't what was taking place at this point.

Leonard Schwartzburd said it was really important for the public to know what the approved minutes are. He said that, if the draft minutes are incorrect, it was incumbent upon everyone to present what had actually been approved so that it would be obvious. He said the draft minutes weren't the final minutes and that the final minutes should be most available to the public.

Ron Weisman asked that changes be highlighted in amended minutes so readers would know what had been changed. President Welsh asked Randy Riddle to discuss what was standard practice, with respect to minutes, and noted that the District had limited staff with limited time. Mr. Riddle responded that the approach the District would now be taking would be consistent with general practice. President Welsh asked if there was a problem with highlighting changes, especially in light of the fact that there weren't very many changes. IGM/COP Hart responded that changes were already being highlighted in yellow in the approved minutes, so that readers would know, when reading the approved minutes, what changes had been made.

In consideration of CPA Deborah Russell's and consultant Adam Benson's attendance, the Board proceeded to Item 9h.

9h. The Board received the Draft Actuarial Study of Retiree Health Liabilities as of July 1, 2015. The report had been prepared by Total Compensation Systems, Inc.

IGM/COP Hart reported that the Actuarial Study was a legal requirement, that a study had to be done every two years, and that the District had worked with Total Compensation Systems for several years. He noted that Mr. Benson and members of the public had spoken with the actuary. He said the Finance Committee had reviewed the report on December 17th, at which time a motion had been made to move the report forward for the Board's consideration. He introduced Ms. Russell and Mr. Benson, who summarized the work that had been completed.

Ms. Russell said she had completed some work that had been requested and she distributed copies of her work. She said one of the questions that had arisen had to do with the number of active and retired members. She said she had prepared a recap, which matched the budget. She said the actuary had been given one retiree too many and that, at the time of the report's preparation, there had been nine active members, which was what the actuary had used. Ms. Russell had prepared a schedule, by age group and by active or retired category, and the type of plan in which the members were enrolled. She said the second page of her summary showed the premiums being paid for the members. She said the budget reflected real numbers.

Mr. Benson said he had reviewed the actuarial report. He noted that the Finance Committee had raised some questions about some of the assumptions but that, without answering those specific questions, the report, as prepared, satisfied the District's legal obligation. He added that nothing prohibited the District from contributing more than the ARC (Annual Required Contribution) to the OPEB Trust. He said actuaries had some discretion in making assumptions but that modifying those assumptions would affect the result, negatively or positively.

IGM/COP Hart reported much had been said about the trend rate. Ms. Russell responded that the actuary stood by his rate of 4%. She added that some in the community had questioned that rate but that the District had hired a professional who had been approved and who, even after having been approached by members of the community, stood by that rate. Mr. Benson said a 4% medical trend rate was a little on the low side, if looking over a short period of time. He noted that CalPERS rate declined by 3.8% in 2015 but went up by about 4.5% in 2016. IGM/COP responded that the actuarial report covered a 24-year period of time and that this drove the actuary determining a 4% trend rate. Discussion ensued about the range of medical trend rates used by various actuaries, with Mr. Benson concluding that a 4% trend rate was not as conservative as he would like to see.

Mr. Benson discussed the discount rate. He noted that the District had a little over \$600,000 in the trust, invested in one of CalPERS' three CERBT portfolios, with each of the three portfolios having a different target rate of return. He said the actuary had used a 7% discount rate, that using this rate was pretty consistent, and that he didn't think the District needed to lower that rate.

IGM/COP asked if Mr. Benson and Ms. Russell were comfortable with the actuarial report. They responded in the affirmative.

President Welsh noted that Mr. Benson had raised the issue of the medical trend rate being on the low side and, as a result, the Board might want to consider contributing more to the OPEB Trust. Mr. Benson responded that, if the market declined, newly added money would likely decline in value. Ms. Russell added that, if extra were to be contributed, it would be a cash transaction involving the moving of cash from savings to the trust but that the transaction wouldn't affect the District's income statement.

Jim Watt said he was opposed to the Board approving the actuarial study and handed out a document he had prepared. He said the vote of the Finance Committee, recommending that the Board accept the Study as prepared, had been eight to one, with himself as the dissenting vote. He said that he was opposed to the Board's accepting the report as prepared; instead, he wanted the Board to ask Mr. Benson to prepare some alternatives: a 5% medical trend and a 6% discount rate. He said that the Board should approve a report based on reasonable assumptions and accurate data and that it needed to

approve a report that would ensure that adequate money would be available for the officers' medical costs upon their retirements. He summarized his rationale for using different rates than those used by the actuary. He also said he disagreed with the mortality assumptions made by the actuary and said that the actuary had failed to include the implied subsidy, which he said would increase the amount that the District would need to contribute.

Mr. Watt concluded by recommending that the District contract for a new actuarial report by either Bartle Associates, the District's former actuarial firm, or by Nicolay Consulting, which prepares actuarial reports for the Fire District. He added that a report prepared by Bartle would cost about \$8,500 and one prepared by Nicolay would cost about \$4,000.

At 9:21, the Board took a break in Item 9h and moved to Item 9b.

9b. The Board received a presentation from the Interim General Manager, who recognized the 2015 Kensington Police Department Citizen's Academy participants for their contributions to the community.

IGM/COP Hart said voluntarism was unique to Kensington. He read the memo he had prepared that summarized topics the Citizen's Academy had covered. He said he had commissioned challenge coins for the Kensington Police Department, gave a history of challenge coins, and then presented coins to each of the Directors and to each of those who had participated in the Academy. Academy graduate participants were: Bill Benson, Mabry Benson, David Garfin, Susan Garfin, Katie Gluck, Peter Liddell, Gretchen Gillfillan, Jim Watt, and S.D.

Mabry Benson and Susan Garfin encouraged others to attend the Citizens' Academy.

IGM/COP Hart also recognized Officer Wilkens for organizing the Citizens' Academy and presented her with a challenge coin – the first member of the Kensington Police Department to have received one.

President Welsh thanked all those who had participated in the Citizens' Academy.

At 9:34 the President Welsh entertained a motion to extend the meeting.

MOTION: Director Toombs moved, and President Welsh seconded, that the meeting go beyond 10:00 PM.

Motion passed: 5 – 0.

AYES: Welsh, Gillette, Toombs, Sherris-Watt, Cordova NOES: 0 ABSENT:

The Board resumed discussion of Item 9h.

Paul Dorroh reiterated that the Finance Committee's vote to recommend Board approval of the actuarial study had been eight to one and explained why he had voted in the affirmative in light of Mr. Watt's extensive presentation. He said it was a legal requirement to determine an amount that the District would record as an expense and that the amount had to come from an actuarial study. He said he had more than 24 years of experience in the insurance business and that he had reviewed many actuarial reports during that time. He said that, based on his experience, the number prepared by the actuary might not be wrong. He noted that actuaries were almost always wrong because they were in the business of predicting the future – which nobody can do. He said that, while there might be discrepancies among various actuaries, he urged the Board not to get a new actuarial study. Instead, he recommended waiting to have a new report prepared in two years and, in the meantime, possibly interviewing different actuarial firms.

Director Gillette thanked Mr. Watt for his research and Mr. Dorroh for his explanation. She said she thought Mr. Dorroh's comments were appropriate, in that the District had paid for the report. She added that the District had the option of contributing more than the actuary recommended and that the Board

should consider this. She asked Marilyn Stollon and Mr. Watt not to attribute bad motive or intent to people trying to do their jobs – whether the actuary or one of the people in the District. She said Mr. Watt had raised sufficient cause for the District to consider whether this was the right actuary for the District.

Vice President Sherris-Watt said the District had just completed its three-year contract with this company. She noted that the mathematics of the report were correct but the premise was incorrect. She said she was uncomfortable approving the actuarial report because some of its assumptions were incorrect and its conclusion would impact the budget and other decisions for the next two years. She asked Randy Riddle what the Board's legal obligation was. Ms. Russell responded that, if the District opted to request another actuarial report, the District would need those numbers by March or April for purposes of preparing the budget. Director Gillette asked if the District could ask for a new actuarial report next year. IGM/COP Hart responded in the affirmative but added there would be a cost associated with it. Vice President Sherris-Watt asked, if there were new numbers in a new MOU, might that be a good time to prepare a new actuarial study. Director Gillette said she didn't want to jump to conclusions; this had been recommended by the Finance Committee, with eight of nine members voting in the affirmative. Vice President Sherris-Watt responded that she had done her due diligence and spoken with other actuaries and that she would be happy to write up a report for the Board's next agenda.

President Welsh said he wanted to hear what Fire Board Director, Larry Nagel, had to say. Mr. Nagel reported that, at the prior night's Fire District meeting, the Fire Board had reviewed an actuarial report prepared by Nicolay, which used a more conservative set of assumptions. He said he appreciated the fact that some of the KPPCSD Directors were concerned about the report they had received. He said the Nicolay report came back with a 13% increase in the amount of money the Fire District should set aside for medical costs for its retirees. He noted that the Fire District had nowhere near as many retirees and no active members. He said that, the prior night, they had gone from a position of being \$200,000 over funded, to one of \$26,000 underfunded. He said what had contributed to the change was that people were living longer.

President Welsh asked Randy Riddle if the actuarial report failed to meet the GASB legal requirements. Mr. Riddle responded that this wasn't his area of expertise. Mr. Benson responded that the actuary was certified and so met the requirement. President Welsh said he didn't see any benefit to obtaining another report. Mr. Benson added that the District's minimum requirement was the pay-as-you-go amount.

Jim Watt noted that Total Compensation Systems actuary had decreased the recommended ARC between his report of two years earlier and his current report and said he found this unintelligible. President Welsh responded that he wasn't in favor of spending more money for another actuarial report, adding that the Board could always contribute more than the recommended amount.

Vice President Sherris-Watt said she thought the report was faulty, and she wanted what was best for Kensington. Director Cordova added that the Directors, as fiduciaries, had a legal responsibility to adopt an actuarial report and an even greater one to adopt a report in which they had confidence. She said the report had failed to include the implied subsidy and more current mortality information, and it contained incorrect employee counts. She asked that the item be continued, with Mr. Benson seeing what he could come up with as an estimate. She added that, if the Board voted on the item that night, she would be a "no" vote.

Director Gillette asked if the District could ask the actuary come to explain his report. The response was in the negative.

Ron Weisman asked that the Board put aside more money.

Celia Concus noted that \$6,500 had been budgeted for recruiting but had not been spent. She said that, when IGM/COP Hart had decided he needed health insurance, the Board just voted for it – no one

complained that the District didn't have the money. She concluded by saying the District needed to be financially responsible.

President Welsh called for the question.

**MOTION: Director Toombs moved, and Director Gillette seconded, that the Board accept the report as presented, with the caveat added by Director Gillette that the Board would revisit and consider adding more than the recommended amount to the account.
Motion passed 3 – 2.**

AYES: Welsh, Gillette, Toombs NOES: Sherris-Watt, Cordova ABSENT:

Upon the motion having been made and seconded, Gloria Morrison added that the Finance Committee had said it wanted to do what had been added as the caveat and said she supported Director Toombs' motion.

President Welsh asked if it would make sense to have a new actuarial report. Director Toombs responded he, Mr. Benson, President Welsh, and IGM/COP Hart had a conversation on December 30th about these issues. One of the recommendations they had made was to have the actuary re-run some numbers and then have orders of magnitude done by Mr. Benson. He said that Mr. Benson had done reports of orders of magnitude and cost and that they weren't anywhere near as bad as people had thought; but they still had not asked the actuary to run new numbers with different assumptions. He said that, under these circumstances, it seemed premature to have a new actuarial report done. He added that what had been discussed at the Finance Committee had been to run new numbers with different medical trend rates and discount rates, see what the numbers looked like, and have Mr. Benson prepare an order of magnitude report. President Welsh responded that preparing a new actuarial report could be tabled, pending the discussion at the next Finance Committee meeting.

6. Update from Ad Hoc Committee on Governance

David Spath reported that there had been a meeting the prior week and that work plans and suggested timelines had been received for all but one of the three tasks: Rick Artis had been injured and so had been unable to submit his work but would be doing so shortly. Dr. Spath said the groups had indicated that they likely would complete their work by June.

Dr. Spath reported there was some difficulty associated with obtaining information on contracting out: The committee would need Board authorization to contact and engage in discussions about costs of service with other agencies. President Welsh responded that he didn't see any difficulty with that.

President Welsh asked if the Committee was taking into consideration transition costs that the District would bear if it were to contract out for services, noting that he had heard these could be very costly. He asked if the Committee planned to go to a fiscal expert to determine what the cost of transition would be – in addition to the contract costs. Dr. Spath responded that this was something the Committee would need to look at. President Welsh noted that the District had its own OPEB and CalPERS obligations and said that his understanding was that these wouldn't go away: The District would owe a bill if it were to make a transition to contracting out for police services. He said this suggested that conversations would need to be had with CalPERS and a financial consultant. Dr. Spath responded that a good place to start might be to ask the Fire District what its transition costs had been when it contracted out for service. Dr. Spath added that there would be obligations with respect to retirees and that, if the current officers weren't hired by the contracting agency, there would be an added cost there as well. President Welsh suggested that Mr. Benson might be able to assist with this issue. Director Gillette responded that she thought it would not be a good idea to rely on twenty-year-old information from the Fire District, with respect to transition costs. President Welsh clarified that, in addition to the cost for contracted service, there would be a cost associated with getting out of the District's current structure of providing its own service.

Vice President Sherris-Watt said there likely would be hidden costs and surprises with any of the options being considered. Director Gillette responded that she didn't think this was a hidden cost: it's a very real cost.

Mabry Benson said the concerns were very real but that the Board was asking a lot of a volunteer committee for whom this was not an area of expertise. President Welsh clarified that he thought a consultant would be needed to identify such costs. Dr. Spath responded that the Committee was still in its beginning stages and was just beginning to identify where it might need consultants.

Randy Riddle asked for clarification of what the Committee was seeking from the Board. President Welsh responded that it was seeking a letter giving members of the Committee permission to engage in dialog with different jurisdictions about what the costs might be if the District were to contract out for services. Mr. Riddle responded that this was within the scope of the Committee's charge from the Board and that, if President Welsh wanted to sign a letter memorializing this, it would be fine. President Welsh asked Dr. Spath to prepare a draft letter. Director Cordova asked for confirmation that Mr. Riddle would review the letter before President Welsh signed it. President Welsh responded in the affirmative.

Dr. Spath reported that each of the subcommittees would be providing updates at the Committee's meetings. He said members of the public were welcome to attend the Committee's meetings and to submit documents and letters. Director Cordova complimented Dr. Spath on the job he was doing as the Committee's Chairman.

Dr. Spath announced there would be a Community Forum on January 23rd, with coffee being served a 9:30 and the forum going from 10:00 until noon.

Ron Weiselman said, if the Ad Hoc Committee wouldn't be completing its work until June, it wouldn't be in time for the ballot. He said no one was talking about getting rid of the Dorroh amendment and that this prohibited the splitting of the GM/COP position. Dr. Spath responded that the Committee's role was to present findings of fact. President Welsh noted that Mr. Riddle had given an opinion that the Dorroh initiative wasn't lawful. Dr. Spath clarified that the Dorroh document had to do with contracting out for services.

IGM/COP Hart said he had received documents that individuals had asked to have posted on the Ad Hoc Committee's section of the website. He said he wanted to ensure that the Board wanted this to occur. Dr. Spath clarified that there were documents that the Committee had received from the public on issues relevant to the Committee's work. IGM/COP Hart clarified that the Board would not see these until they had been posted online. Director Gillette responded that this would give undue importance to those documents and that she foresaw judgment calls that could prove troublesome. She said that, on the other hand, she wasn't sure it really mattered, given she wasn't sure how many people would look at them. Director Toombs said that the Committee should look at the good and the bad, synthesize it, and then let the Board know what was critically relevant.

Steve Bates said he had concerns about contracting out: How much influence would Kensington have over what kind of police service it would have. He said this was very different from fire service. He said he was concerned that an oppressive culture could result. He asked if the Board would be looking at the kind of service the community would be receiving, if it were to contract out. Dr. Spath responded that these points were well taken and that the Committee would be meeting with jurisdictions that had contracts with the Sheriff's Department to discuss issues such as these. He added that a couple of jurisdictions had terminated their service contracts with the Sheriff's Department. Vice President Sherris-Watt noted that UC Berkeley contracted out for service: bomb disposal. Dr. Spath responded that contracting out for bomb disposal service was different from contracting out for community policing.

Randy Riddle said, with respect to the documents that would be posted, he would like to talk to Dr. Spath off-line; noting that the District would need to be careful about personal identifiers on the documents and that there should be some criteria about what goes up and what doesn't.

- 9a. Director Cordova appointed an alternative member to the Ad Hoc Committee on Governance to replace Miki Tal, who had recently resigned.

Director Cordova announced that Miki Tal had tendered her resignation and thanked Ms. Tal for her service. Director Cordova recommended that the Board appoint Mabry Benson to the Committee. She introduced Mabry Benson and said Ms. Benson had been attending all of the Ad Hoc Committee's meetings.

**MOTION: Director Cordova moved, and President Welsh seconded, that the Board appoint Mabry Benson to the Ad Hoc Committee on Governance.
Motion passed 5 – 0.**

AYES: Welsh, Gillette, Toombs, Sherris-Watt, Cordova NOES: 0 ABSENT:

At 10:31 the Board took a five-minute break.

CONSENT CALENDAR

President Welsh asked if anyone wanted to pull an item from the Consent Calendar.

Director Toombs said that he was interesting in the interim financial report, but the Board would be discussing this item later in the agenda.

**MOTION: Vice President Sherris-Watt moved, and President Welsh seconded, adoption of the Consent Calendar.
Motion passed: 5 – 0.**

AYES: Welsh, Gillette, Toombs, Sherris-Watt, Cordova NOES: 0 ABSENT:

President Welsh and IGM/COP Hart clarified that the presence of the Police Fees Resolution on the Consent Calendar constituted its second reading.

- 9c. General Counsel presentation on legal opinion regarding the ability of the same individual to hold the position of General Manager and Chief of Police.

Randy Riddle reported that he had been asked to issue an opinion about whether it was unlawful for the District to have the same individual serve as General Manager and Chief of Police. He said a perspective to be considered was whether it was unlawful for the District to have consolidated the duties of the two positions: The Board had made the determination that it wanted the same individual to perform these duties. Mr. Riddle reviewed his December 8, 2015 Memorandum in which he concluded:

- Community Service District Law does not limit the District from assigning its General Manager the additional title and duties of Chief of Police.
- Having a single person serve as both GM and COP would not violate the doctrine of incompatible offices.
- The above were consistent with the opinion of the District's prior counsel.

He said he had a high degree of confidence that, if a court were to consider this issue, this was the conclusion it would reach.

David Bergen read comments that had been prepared by Marilyn Stollon, which stated that she thought that having one person serve in both capacities constituted a conflict of interest and that the community would continue to have ongoing legal suits as long as it continued to have a combined GM/COP position. A copy of Ms. Stollon's comments is included in the February Board Packet, under Correspondence.

President Welsh clarified that there was a difference between the legal opinion and what the Board might choose to do – as a business decision – and said that the Ad Hoc Committee would be addressing this issue.

Mr. Riddle said that, as the GM/COP, Mr. Hart would have a single duty: Loyalty to the District.

Dr. Schwartzburd asked if it would be legal for a Special District to have one person serve as Fire Chief and General Manager. Mr. Riddle responded that he hadn't looked into this, with respect to Special Districts.

9d. The Board received a presentation from the Interim General Manager/Chief of Police regarding the mid-year 2015/16 review of the budget.

IGM/COP Hart gave a brief overview of the budget. He reported:

- The District had received more revenue than budgeted.
- Police Salaries were approximately \$7,000 lower than budgeted.
- District's net income was \$140,000 ahead of what had been budgeted.
- He expected to be under budget at the end of the year.

IGM/COP Hart thanked District Administrator Wolter for preparing the footnotes, which added a better understanding of the mid-year summary. Director Toombs said that he was impressed by the footnotes and thanked District Administrator Wolter for doing them. Director Toombs asked about Account 449. District Administrator Wolter responded that the District had just received a check from Bay View Refuse, in the amount of \$32,000, that represented the 7% franchise fee. She added that staff would need to review gross receipts to calculate the amount that needed to go to the County. Director Toombs asked if Bay View Refuse was current in what it owed. IGM/COP Hart responded in the affirmative. President Welsh added that Bay View Refuse had apologized for having been late in sending the fees and that they would pay monthly in the future.

9e. The Board received the proposed Resolution 2016-01 of the Kensington Police Protection and Community Services District amending Board policy governing the process for resolving public complaints regarding the General Manager/Chief of Police to provide separate procedure for resolving complaints against the General Manager/Chief of Police, and consider placing the resolution on the February 2016 agenda for approval.

Director Gillette introduced the item, saying that the proposed resolution was intended to provide a short-term fix until there could be a holistic review of the Policy and Procedures Manual. She explained that the way the policy manual was currently written was such that, if someone had a complaint against the GM/COP the individual had to go first to the GM/COP. She said this made no sense and that in order to correct this she had prepared proposed changes to Section 1030 (Public Complaints). Her proposal was that the complainant would, instead, first go to the Board President or to a person designated by the Board President. She noted that outside counsel had reviewed the proposed amendment. She clarified that what this meant was that a member of the Board would determine whether the Board would review the matter, in which case that Board member would have to recuse him or herself from any further involvement – because the Board acts as an appellate in such circumstances. Or, an outside investigator would review the matter. She added that the intent was to have a separate person so there could be an objective evaluation of a complaint.

David Bergen conveyed information contained in a statement written by Marilyn Stollon, which reiterated that she thought there was a conflict of interest in having one person holding the combined position of General Manger and Chief of Police.

Mabry Benson said she was concerned that having just the Board President or a member of the Board decide what to do about a complaint was not going to be satisfactory because there had been instances where officers had come to the Board and asked to have a problem resolved and the Board just threw it away. She said that there wasn't enough specificity in the language.

Vice President Sherris-Watt thanked Director Gillette for proposing the language. She asked if two Board members might be good.

Director Toombs said he would like "more meat on the bones" to the proposal. He said he wanted to ensure that it would be clear what the Board President would decide and he would prefer to have an outside person conduct any investigation of any alleged complaint against the GM/COP, especially because the Board might need to act as the appellate.

Director Gillette responded that, in a corporate setting, it was typical for complaints against the CEO to be brought to the President of the Board. She said she would be willing to take another look at it and add "more meat" and bring it back. She said she wanted to get something in place sooner rather than later.

Director Cordova said that, if the Board had a policy of a rotating presidency, she would find this more palatable. She said the Board President's powers should stop at running the meetings and making appointments. She added that, given the District's structure, any complaints against the GM/COP should go to a civil review panel. She said she was not willing to cede her fiduciary power. Director Gillette responded that perhaps this could be a rotating ombudsman position of the Board. Director Cordova responded that this was headed in the right direction – that she would like to see this as a rotating position. Director Gillette said she would revamp and come back with something next month.

IGM/COP Hart clarified that this would not constitute a first reading. Rather, there would be another proposal.

- 9f. The Board reviewed proposed Resolution 2016-02 of the Kensington Police Protection and Community Services District amending Board policy governing the preparation of the budget to ensure consistency with state law provisions governing the budget process, and consider placing the resolution on the February 2016 Board agendas for approval.

Randy Riddle presented the item. He noted that there were inconsistencies between state law and the Board's Policy and Procedures Manual and, thus, he had prepared an amended policy, which would be consistent with State law, for the Board to consider. He said there had been a typographical error on the document. It had said both June 1 and July 1. The correct date was July 1. Director Toombs noted another typographical error with respect to an April date and a May one. Mr. Riddle confirmed that the May 15th date was correct. President Welsh asked if this constituted the first reading. IGM/COP Hart confirmed that was correct and that, with a four-fifths vote of the Board at the next meeting, it would be adopted. IGM/COP Hart said there would need to be a motion amending Section 3020.4 of the resolution to read July 1, instead of June 1.

MOTION: Director Gillette moved, and President Welsh seconded, that Section 3020.4 of the Resolution be amended to read "July."
Motion passed 5 – 0.

AYES: Welsh, Gillette, Toombs, Sherris-Watt, Cordova NOES: 0 ABSENT:

9g. Pursuant to Board Policy 4060.1, Board President Len Welsh appointed and publicly announced the members of the standing committees and Board Coordinators for calendar year 2016.

President Welsh announced the following appointments:

Standing Committees

- Finance: President Welsh said that he would like to continue as the Chairman, that he would like Director Toombs to continue as Vice Chairman, that he would like the current committee members (Pat McLaughlin, Gloria Morrison, Elena Caruthers, Karl Kruger, Paul Dorroh, Simon Brafman, Derek Suring, Paula Black, Linda Lipscomb, Jim Watt and Paul Haxo) to continue, and that he would like Rob Firmin to be a new member.
- Solid Waste: President Welsh explained this was really a County committee with a Kensington representative serving on it and said would like to do so.
- Emergency Preparedness: President Welsh asked Director Toombs to serve as Chairman and said he would like to serve as Vice Chair.

Board Coordinators

- Finance and Administration: President Welsh announced he would serve in this capacity because he would be Chairman of the Finance Committee.
- Intergovernmental/External Issues: Director Cordova
- District Policies and Procedures: Director Gillette
- Public Safety Building: Vice President Sherris-Watt
- Park Planning and Recreation:
 - Grounds – President Welsh as Chair with current committee members Katie Gluck, Charli Danielson, Gretchen Gillfillan, Ray Barraza, and Peter Liddell continuing.
 - Park Buildings – Vice President Sherris-Watt as Chair with current committee members (Ciara Wood, Peter Liddell, Katie Gluck, Jim Watt, Paula Black, Gretchen Gillfillan, and Peter Conrad) continuing with Todd Hodson as a new committee member.
- Park Funding – Vice President Sherris-Watt
- Community Outreach: Director Gillette

**MOTION: Director Gillette moved, and President Welsh seconded, that the Board adjourn back into Closed Session.
Motion passed: 5 – 0.
AYES: Welsh, Gillette, Toombs, Sherris-Watt, Cordova NOES: 0 ABSENT:**

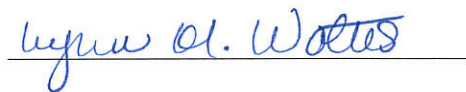
The Board adjourned to go back into Closed Session at 11:23 P.M.

The Board entered into Closed Session and then came out of Closed Session at 11:45 P.M. President Welsh announced there was no reportable action.

The meeting was adjourned at 11:45 P.M.



Len Welsh
KPPCSD Board President



Lynn Wolter
District Administrator