

## Meeting Minutes for 9/8/16

A Special Meeting (Closed Session) of the Board of Directors of the Kensington Police Protection and Community Services District was held Thursday, September 8, 2016, at 6:00 P.M., at the Community Center, 59 Arlington Ave., Kensington, California. A Regular Meeting of the Board of Directors, in Open Session, followed.

### ATTENDEES

<u>Elected Members</u>	<u>Speakers/Presenters</u>
Len Welsh, President	Deborah Russell, CPA
Rachelle Sherris-Watt, Vice President	Gloria Morrison
Chuck Toombs, Director	A. Stevens Delk
Patricia Gillette, Director	Simon Brafman
Vanessa Cordova, Director	Larry Nagel
	Celia Concus
	Sylvia Elsbury
<u>Staff Members</u>	Kevin Padian
Interim GM/COP Kevin Hart	Bill McNab
Lynn Wolter, District Administrator	Dave Spath
<u>Press</u>	

President Welsh called the meeting to order at 6:07 P.M. President Welsh, Vice President Sherris-Watt, Director Toombs, Director Gillette, Interim GM/COP Hart, and District Administrator Wolter were present. Director Cordova was absent, but President Welsh announced she would participate in the Closed Session by phone.

### PUBLIC COMMENTS

None.

The Board entered into Closed Session at 6:08 P.M.

### CLOSED SESSION

- a. Public employment: Title: (General Counsel) – Pursuant to Government Code Section 54957.
- b. Public Employee Performance (Government Code section 54957(b) Title: Interim General Manager/Chief of Police.)
- c. Public Employee Performance (Government Code section 54957.6) Agency Designated Representatives: Jonathan Holtzman/Randy Riddle, Renne Sloan Holtzman Sakai LLP:

Unrepresented Employee: General Manager/Chief of Police.

The Board came out of Closed Session and into Open Session at 7:31 P.M.

Roll call: President Welsh, Vice President Sherris-Watt, Director Gillette, and Director Toombs were present. President Welsh reported that, although Director Cordova had participated in the Closed Session by phone from Russia, she would not participate in the Open Session.

President Welsh reported that no action had been taken on any of the three Closed Session items.

### **PUBLIC COMMENTS**

Simon Brafman thanked the Outlook for its article on his wife's philanthropic work in Greece and those Kensington residents who had donated to this cause.

Gloria Morrison asked when the KPPCSD's Policy and Procedures Manual would be brought up to date. She said she still looked at all the pages produced by the committee of hardworking people, and she had no idea what had and had not been incorporated into the manual.

Gloria Morrison said that what had happened with legal fees during the past fiscal year was outrageous.

A. Stevens Delk said that IGM/COP Hart had requested a full and fair investigation of the Cordova traffic stop and that the Richmond investigation had been completed in February. She noted that the investigation of Officer Barrow had been completed in April and the one for Officer Ramos had been completed in July. She said that, at the prior month's meeting, she had pointed out that there had been differences between the independent investigation and that of IGM/COP Hart. She said that, until these differences were addressed, one could wonder if IGM/COP Hart's final decisions were full and fair. She noted that next month would mark the one-year anniversary of the traffic stop and that it was time to bring the matter to a close. She said she wanted these matters to appear on the next month's agenda for clarification and resolution.

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### **BOARD COMMENTS**

Director Toombs reported that the Finance Committee had met on August 31<sup>st</sup> and had approved the final budget and having Nicolay serve as the District's OPEB actuary, subject to some follow-up questions.

Director Gillette reported John Gaccione, IGM/COP Hart, and she had met about the traffic safety signs. She said the meeting had been interesting and that it had allowed her to learn about Mr. Gaccione's and IGM/COP Hart's expertise in this area. She said that Mr. Gaccione had designed a sign that she thought would be pleasing to everyone. She said it also was nice to see the care that had been taken to attend to an issue that was important to the community. She noted that this said a lot about having a local police department and about locally controlled policies. She concluded by saying there should be something to show at an upcoming meeting.

Director Gillette said she wanted to correct a statement that had been made by one of the candidates at the El Cerrito Democratic Club's recent meeting: That the job of General Manager had been outsourced to the Public Law Group. She said this was absolutely not true. She said the Board had outsourced the job of General Counsel. She said the District's Interim General Manager was, and always had been since he had been hired, Kevin Hart. She said she wanted to ensure that there was no confusion about this – especially among those running for the District Board.

Vice President Sherris-Watt reported that the California Special District Association (CSDA) was holding a contest for high school and college students to make videos representing California Special Districts. She offered to pass along the information to anyone who knew of an interested student.

Vice President Sherris-Watt reported that, on August 25<sup>th</sup>, she had toured the Oakland Fire Prevention Demonstration Garden with members of the Fire District Board. She said she hoped Kensington would have its own such garden to show fire-safe plantings.

Vice President Sherris-Watt said that, during the month, she had done five walk-throughs of the Community Center with architects and that the District had received five proposals, which she said would be opened within the coming few days. She said that the proposals would come before the Board in October and that the goal was to hire someone before the end of October.

President Welsh thanked John Gaccione for helping with the signage. He said he liked Mr. Gaccione's comments at the prior meeting and was grateful for his helping the District come up with language of which the community could be proud.

Director Gillette said that Garen Corbett had put something on Next Door shortly before the meeting that was terrific. She said it encouraged people to pay attention to the Fire District as well as the KPPCSD. She said the Fire District wasn't always as lucky as the KPPCSD in enjoying large turnouts. She said Mr. Corbett pointed out some interesting things and that, as the community considered what its structure was going to look like going forward, people should attend Fire District and KPPCSD meetings to get a good feel for how the Boards operate, how transparent they are, the issues they're taking care of, and what the financial issues are.

President Welsh asked if Fire Board President Nagel wanted to make any comments. Mr. Nagel announced that the Fire District Board would be meeting the following Wednesday.

#### STAFF COMMENTS

IGM/COP Hart reported that National Night Out had been held on August 2<sup>nd</sup> and that there had been over 18 parties with a total of at least 400 people attending. He reminded residents to lock their doors and vehicles and to close their garage doors. He said that some of the community's recent burglaries had been through unlocked doors. He reported that trees had been pruned and that barbeques had been added to the park during the prior month.

IGM/COP Hart reported that he was working on the Richmond RMS/CAD consortium issue that he had cited in his monthly report. He explained that San Pablo, Hercules and Pinole were other members of the consortium that had made use of Richmond's dispatch and records service. He said that Richmond had notified all these members that it was discontinuing this service. He said Richmond was interested in continuing to provide dispatch services, but it was no longer interested in providing records management services. He noted that this records system had "gone dark" for a period of 19 days in the prior year. He reported that members of the consortium were meeting weekly to develop options and that Richmond planned to cease providing service on July 1, 2017.

Celia Concus asked where the minutes for the Finance Committee were – she said they hadn't been posted on the website. She said she only could find agendas. Director Toombs responded that the minutes were included in the Committee's agenda packets and explained that each such packet included the minutes of the Committee's prior month meeting. He clarified that there would be a Finance Committee meeting on September 21<sup>st</sup>, and the minutes from the August 31<sup>st</sup> Committee meeting would be included in that meeting packet.

IGM/COP Hart reported that Advanced Systems Group had been authorized by him to install a new audio-video system. He said that it had been a long time coming and that he thought everyone would be pleased with it. He noted that additional funding had been provided by the K-Groups. He said that the

system would survive construction and youth groups' ball games and that he hoped the system would be operational by the next meeting. He said the system would provide improved microphones and the ability to live-stream meetings. He said that the system was more expensive than he had hoped it would be but that it should last a long time. Director Toombs asked if the system would be ADA compliant. IGM/COP Hart responded in the affirmative. A member of the public asked what the cost would be. IGM/COP Hart responded that he budgeted amount was \$21,000 and that additional funds had been received from KIC and KCC to meet the total cost of about \$31,000.

Celia Concus said she was pleased that there would be a new system. She responded that she had been unable to find it in the budget and asked IGM/COP Hart to point it out when the budget agenda item was discussed.

Bill McNab asked if the system would be locked up. IGM/COP Hart responded in the affirmative.

### CONSENT CALENDAR

President Welsh asked if anyone wanted to comment on the Consent Calendar.

Gloria Morrison said that the legal fees for Fiscal-Year 2015-16 were \$263,000 and that this was outrageous. She said that the Board was supposed to get the best use of the community's money and that she couldn't believe that this had been allowed to happen. She asked that there be a procedure to control these costs. President Welsh responded that the Board had asked for a detailed analysis of the legal fees so there could be a discussion – hopefully by the next Board meeting – about what situations and requests were causing the fees to be so high. He said solving the problem required understanding what was driving the costs and then determining how to limit access to the attorneys in order to keep costs under control. Ms. Morrison said that the budget had been \$99,000 and that, when the costs go this far over, the Board should be discussing it. She said that, at some point, the Board should say it can't spend any more and that she hoped this problem didn't occur in the current fiscal year.

President Welsh asked the Directors if they wanted to pull any items from the Consent Calendar. Director Toombs asked for Items c and d.

A. Stevens Delk said she would like Items b and d pulled. She said that, with respect to Item b, she wanted to thank District Administrator Wolter for doing a great job of summarizing her comments from the prior month in the minutes. She said there had been a difference in the findings of the Richmond Investigation and those of IGM/COP Hart's findings. She said that, in his letter to Director Cordova, IGM/COP Hart had changed one of the Richmond findings from "sustained" to "exonerated." She said she had been told that her comment had been confusing and meaningless because it couldn't be verified without the Hart-Cordova letter, a copy of which she said she had happened to see only by chance. She asked IGM/COP Hart to comment on the validity of her comment on the matter. She also asked when the full Kensington Police Department investigation would be made public. IGM/COP Hart responded that this was a personnel matter and that he, therefore, could not comment on it. IGM/COP Hart said that there were potentially more charges that the public did not know about because they were not necessarily alleged by the complainant. So, he said, during the course of the investigation, there may have been a couple of other violations of departmental policy that had not been listed in the letter to Director Cordova – because she didn't allege them. Ms. Delk responded that that hadn't been the question she had asked. She said that finding number nine had been in the Richmond investigation and so was released information; therefore, it was no longer a personnel matter. She said that, in his letter to Director Cordova, IGM/COP Hart had determined that finding number nine was "exonerated" and asked him to explain his decision. IGM/COP Hart responded that he couldn't answer her question with the matter still pending.

President Welsh asked Ms. Delk if there was a problem with the minutes. Ms. Delk responded that the minutes were fine. President Welsh said that the minutes were adequate and that, perhaps, her question could be answered, once the investigation was completed.

Director Toombs asked about the amount of overtime shown in the Unaudited Profit and Loss Report for Fiscal-Year 2016-17; he noted that \$22,155 had been spent year-to-date, but the budgeted amount for the two-month period was \$12,500. He asked what had caused the increased amount. IGM/COP Hart responded that there had been two vacancies for almost one year and a third vacancy for the past two months. And, he said, there had been an increase in things that had needed to be investigated during the prior three months.

Director Toombs asked why the year-to-date amount of about \$13,000 for 564 Communications (RPD) was lower than the budgeted amount of \$26,000. District Administrator Wolter responded that Richmond was historically late in sending its invoices, which caused a lag in reporting.

Director Toombs said that legal fees are high and that the Board had asked for a breakdown by topic area. He said there was something else he wanted to note: Unlike a household that would decide to stop spending because it couldn't afford something, the District didn't have that luxury: It had to investigate each and every allegation or claim filed against it – that's what government agencies had to do. He said the District had no choice but to defend, investigate, and respond to any and all allegations against it.

Sylvia Elsbury asked if the public would ever know what all the claims are. Director Toombs responded that it depended on whether it was a personnel matter. He said it would be possible to get a generalized subject matter breakdown, which is what he's asked the attorneys for. He noted that personnel matters couldn't be disclosed for privacy reasons. He said that, for example, it would be possible to get a breakdown for the IA for the Cordova matter or for general information about a something like a murder. He said he wanted to receive an audit summary of every expense so the community could see what the District has to deal with. He reiterated that the District had to address every claim.

Director Gillette said she wanted to add to Director Toombs' comments:

- When people make public records requests the lawyers often have to be involved in responding to them. She noted that there were some citizens in the community who constantly make public records requests, which sometimes require legal review before the records can be turned over.
- As someone who's leaving the Board, she'd encouraged the Board to adopt a policy whereby the Board would actually have a process about how Directors access legal counsel and about the tone and the content of communications to legal counsel. She added that some members of the Board had not agreed to that; thus, Directors could access legal counsel whenever they wanted to, which resulted in a lot of expenditures.
- Many times lawyers write down "discussion with Pat Gillette" but not the nature of the discussion. Therefore, she said, it was hard to go back and recapture what a particular discussion entailed. She said she had asked for the billing detail to broken down by Director, but the attorneys said that couldn't be done for this reason.
- She hoped that, as the Board moved forward, it would work to control legal costs – in part by limiting access so that some Directors weren't contacting the attorneys 20 to 30 times a week by email, with sometimes inappropriate tone.

Director Toombs said that, with respect to Item d, the Unaudited P&L Report for July – August 2016, the Levy Tax showed \$1.47 million and the budgeted amount showed \$1.65 million and asked if this difference was due to a timing anomaly. Deborah Russell responded that the way in which the County reports the revenue is that, in July, the County gives the District a journal entry to record the prior year's revenue and then, in December, the County reverses that amount and gives the District the actual revenue – once the first property taxes are received.

A. Stevens Delk asked about 448 Franchise Fees. She said that the total for the Fiscal Year 2015-16 was \$57,159. She said that the table in the July 14<sup>th</sup> packet had shown the Franchise Fee amount to be \$92,718. She said she could not find a variance notation for this change of about \$35,000 and asked Ms. Russell to explain this. Ms. Russell responded that she did year-end adjustments and that this had been one of them. She explained that this had been an accrual for that part of the Franchise Fee Revenue that the District owed to the County. She clarified that the District collects 7% and then passes 3% of solid

waste revenues onto the County. She said that this amount had been accrued but hadn't been paid out yet. Dr. Delk responded that this shouldn't be a reduction in Account 448 Franchise Fee Revenue; instead it should be an increase in Account 890 Waste/Recycle. Ms. Russell responded that the auditor would be coming in a month and she would ask him if the amount needed to be moved. She said the District had budgeted for the portion it was supposed to receive – net.

**MOTION: Director Gillette moved, and President Welsh seconded, to adopt the Consent Calendar.**

**Motion passed 4 – 0.**

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

### OLD BUSINESS

- 7a. Update from Ad Hoc Committee on Governance – The Ad Hoc Committee Chair presented the Board with recommendations for the October 1<sup>st</sup> public meeting, in which the Final Report will be presented to the public. The Board discussed and advised the Chair as to the desired format for the presentation of the report.

David Spath reported that the Ad Hoc Committee was close to completing its responsibilities. He said they had held a meeting on September 1<sup>st</sup> at which the Committee made more edits to the report and sent it back to the editor. He said that the editor would return the report to the Committee on Monday and that there would be a meeting on September 15<sup>th</sup>, at which time the Committee would invite public comments. He said that more edits might be made then, and the final report would be available in advance of the October 1<sup>st</sup> meeting.

Dr. Spath reported that the Fire Board had created an ad hoc consolidation committee, with Nina Harmon and Janice Kosel as the committee members. He said they would be meeting with KPPCSD Ad Hoc Committee members Gail Feldman and Chris Deppe to go over the consolidation part of the report.

Dr. Spath said that the October 1<sup>st</sup> meeting would need to be noticed by the District and asked the Board to provide direction about what kind of presentation the Board wanted. President Welsh asked if there was a format Dr. Spath would recommend. Dr. Spath said that, perhaps, the Committee should give a brief overview of its findings – the pros and cons – and then allow the Board and the public to ask questions. Dr. Spath noted that the room had been reserved for two hours on October 1<sup>st</sup>, so this would necessitate a hard ending time for that meeting. Vice President Sherris-Watt suggested 15-minute presentations for each area studied.

Director Gillette expressed concern for those who hadn't attended the previous meetings and asked if 10 – 15 minutes would provide enough time. She said it would be important for residents to understand the findings of the Ad Hoc Committee. Director Gillette asked how everyone would be given a chance to ask questions. Dr. Spath suggested writing questions on cards and then opening the floor up to questions from the audience.

President Welsh said he was concerned about the shortness of the presentations and said he wanted to learn about where there had been disagreement among the members of the Committee. Dr. Spath responded that there was general consensus among committee members but that there were still a couple of issues that needed to be resolved, which, he said, might have to be presented as such.

President Welsh thanked Dr. Spath for all the hard work.

- 7b. The Board reviewed and considered approving the Fiscal-Year 2016/17 final proposed budget. The Finance Committee had reviewed the proposed final budget at its meeting held on August 31, 2016, and recommended the Board approve the proposed final budget for FY 2016/17.

IGM/COP Hart summarized the item, noting that this was the fifth time the document had been presented. He said there had been some slight changes to the budget.

IGM/COP Hart reported that expenses were projected to be \$3,184,462, which was a \$325,000 increase over the prior year. He reported that revenue was projected to be \$3,050,419 and that a slight deficit of \$134,042 was projected. He said that \$150,000 was included for Community Center upgrades and that \$50,000 had been included for the possible temporary relocation of the police department, if the Fire District proceeds with work on the Public Safety Building. He reported that the unassigned fund balance available for contingencies would be \$1,288,835. He said that legal fees were budgeted to be the same as the prior year at \$99,000 but expressed concern over the high legal fees of the prior year, which suggested that the District might need to budget a greater amount for this. He recommended that the District put guidelines in place in order to reduce legal fees. He concluded by reporting that the Finance Committee had met on August 31<sup>st</sup> and had recommended that the Board approve the budget.

Deborah Russell said she wanted to weigh in on one thing: The budget includes \$150,000 for the Community Center upgrades and \$50,000 for the possible relocation. She said these weren't actually part of the budget: They were part of the earmarked money that would come out of savings.

IGM/COP Hart reported that few changes had been made to the document since it had first been presented in May.

Director Toombs asked if the \$150,000 and the \$50,000 in the reserves would become an expense if taken out of savings and spent. Ms. Russell responded in the affirmative.

Vice President Sherris-Watt said she had attended the Finance Committee's August meetings and asked IGM/COP Hart to identify the three things that had changed.

IGM/COP Hart provided an overview of the expenses:

- Police salaries and benefits, retiree benefits, and non-sworn wages (Accounts 502 – 540) \$2,284,828.
- Police expenses (Accounts 552 – 599) \$316,112.

Director Gillette asked about Account 581 Building Repairs/Maintenance: Did these apply to the Public Safety Building? IGM/COP Hart responded in the affirmative. Director Gillette noted that, since it's all taxpayer money, there should, at some point, be a discussion about the possibility forming a committee to discuss how to look at the future of the public safety building – both Districts looking at what's best for Kensington taxpayers, not what's best for the Fire District or the Police District. She said it didn't make sense that the Fire Department and the Police Department would be relocating to different spaces, in the event the Public Safety Building were to be renovated. President Welsh said that the community was on the verge of getting an analysis on the three options being considered for the Public Safety Building and that this would be a good time to begin such a discussion. Director Gillette said she wondered why the Fire District had spent so much money redoing the Public Safety Building and then decided it was going to tear it down. Fire District President Larry Nagel responded that it was because they couldn't predict the future. President Welsh said that further questions on this topic should be asked at the Fire District Board's meetings. Vice President Sherris-Watt responded that she'd been notified that there would be a structural report coming and that Don Dommer had told her he would notify her when it had been completed. She reported that the architects had met with fire and police personnel twice to determine what kind of space would be needed.

- Recreation salaries and benefits (Accounts 601 – 623) \$31,407
- Recreation expenses (Accounts 640 – 678) \$90,916

Gloria Morrison asked if Account 672 Park O&M was for the new part of the park. IGM/COP Hart responded that it was for the entire park. Ms. Morrison asked for clarification that this included the part in front of the Community Center. Deborah Russell noted that the District was aware that the O&M tax

for the park needed to be spent only on the new part of the park. She added that, every year, the District spent more on the new part of the park than the amount collected in the O&M tax revenue.

- District Expenses (Accounts 810 – 898) \$316,349

Director Gillette asked if the Fire District and the KPPCSD each had a copier. IGM/COP Hart responded in the affirmative. Director Gillette noted that there were two copiers in one building for which the taxpayers paid. Vice President Sherris-Watt responded that there were two floors and that there were issues of privacy for the police.

Celia Concus said that, if legal fees had been \$260,000 for the prior year, it seemed reasonable that the amount budgeted for the current fiscal year should be more than \$99,000. President Welsh responded that there had been a discussion about this a year earlier, and \$150,000 had been budgeted. But, he said, Karl Kruger had said that if that amount were budgeted, the District would spend it, and so the amount had been lowered. Ms. Concus responded that this approach hadn't succeeded and asked why not increase the amount and be realistic. Director Toombs responded that he'd prefer to leave the amount as budgeted. He noted that the budget was a planning tool and that the Board could have a mid-year review. President Welsh said he thought the District could get through a year with \$100,000 for legal fees if the situation were managed well and indicated that the Board could have done a better job of managing this expense. He added that, as the year progressed, the Board could monitor its progress. Director Gillette said that she was not going to take responsibility for not managing the District's legal expenses. She said she thought that there had been an effort to manage this expense but that there had been people on the Board and people in the public who had caused this expense to increase exorbitantly. She said she could not agree more with Ms. Morrison, and she noted that Ms. Elsbury had written something about this on Next Door – that the legal fees were ridiculous for this sized community. She noted that some members of the Board had tried very hard to manage these fees but had been rebuffed in that attempt. She said the new Board would need to find a way to control access to legal counsel – both by the public and by members of the Board. She noted that the Board could not control the public records requests being made by certain members of the community, who insisted on making requests over and over again. She said that the Board could not control people suing the District, which then required the District to defend itself, and that the Board could not control members of the Board making complaints that had to be investigated by the District's lawyers or by outside investigators. She also said that her fear was that, if the Board increased the amount beyond the \$99,000 budgeted, some in the community and on the Board might consider this license to continue the behavior, which she cited as bad behavior. She said some were using the District's attorneys as their "dumping ground for their anger" and were making inappropriate requests of legal counsel. Therefore, she said, she would leave the amount as budgeted. Vice President Sherris-Watt said that she understood Ms. Concus' point and that she would be comfortable increasing the amount somewhat – perhaps to \$150,000, but she was okay with leaving the amount as budgeted and then reviewing the amount mid-year. She noted that, because the Board was looking at attorneys, it was helpful to communicate what the Board was hoping to spend. She said she hoped this would encourage the attorneys to bring their fees in line. She said this was her reason for leaving the amount low. Ms. Concus responded by saying that she thought it was irresponsible financial policy.

Gloria Morrison asked if the public paid when they requested documents. President Welsh responded that they paid a statutory low rate, per page. He noted that the rate didn't include the cost of staff time or attorney review. He said many people didn't understand that, and so he was glad she'd asked the question.

IGM/COP Hart continued by saying that operating expenses totaled \$3,039,612 and that capital expenditures totaled \$144,850.

A. Stevens Delk said she had a question about District expenses. She said that, under the new Bay View Refuse contract that had gone into effect a year ago, there was no longer a charge to the District of about \$3,600 per year for garbage pick-up. She said that there should be no legal or consulting costs associated with the line item for another five, or so, years – until the District gets to within about one year of a new contract. She noted that \$20,000 had been budgeted, with \$1,000 for public education and



\$19,000 for legal fees. She asked why the \$20,000 had been budgeted. President Welsh responded that this was a good point. Ms. Delk noted that, for the prior fiscal year, total expenses for this line item had been \$260. President Welsh responded that the County had notified the District that it wanted the District to adopt a new reporting protocol, which could increase the District's expenses. IGM/COP Hart interjected that the attorneys had not reviewed this document yet because PLG had stopped providing service to the District. President Welsh responded that there would need to be a meeting with the County and Bay View Refuse to determine what would be needed. IGM/COP Hart noted that the reason the amount had been budgeted was because of the unknown – there was a new contract from the County that would need to be reviewed. Ms. Delk noted that the 19-year contract between the County and the District had expired and that this MOU had been required because of the 1989 state law that mandated that there be a 50% diversion from landfill by the year 2000. She said that Counties had been required to manage unincorporated Districts and communities and that, under the agreement, Bay View was to pay the County 3% of gross profits. She asked if there would be a new County contract. President Welsh said there was some question of whether this contract had expired or whether it was self-renewing – the language wasn't clear. He said he was reluctant to raise the matter because the percentage going to the County could change, and he didn't want to see it go higher. Director Toombs asked if this would be a justification to leave the legal fees unchanged. President Welsh responded that he thought the amount could be reduced by at least \$10,000. Director Toombs said that there was a potential new contract that might need to be negotiated. IGM/COP Hart interjected that the County was seeking another, updated, contract and that this 45-page document was awaiting legal review. Director Toombs clarified that these legal fees would come from the District's solid waste franchise fees and added that, if the District was looking at a new contract, it would cost money and so he recommended leaving the amount as budgeted. IGM/COP Hart said he could bring the matter back mid-year. President Welsh agreed.

IGM/COP Hart reiterated that capital outlay was budgeted to be \$144,850 and that total expenses were budgeted to be \$3,184,462.

Celia Concus asked where the money for the new sound system appeared in the budget. IGM/COP Hart responded that it was in Account 978. He said that the amount budgeted was \$21,000, that the actual cost would be \$31,000, and that the difference would be made up by donations from KCC and KIC.

**MOTION: Director Toombs moved, and President Welsh seconded, to adopt the final budget.  
Motion passed: 4 – 0.**

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

- 7c. The Board reviewed and discussed possibly changing the order and manner in which it takes general public comment for items not on the agenda.

President Welsh said this had been an issue first raised by Richard Karlsson several meetings earlier. He said that Mr. Karlsson had noted that the Board sometimes had spent an excessive amount of time taking public comments not related to any item on the agenda and that these comments had come first in the agenda – preempting discussion of items actually on the agenda. He said that Mr. Karlsson had questioned whether that made sense. President Welsh said that when and how the Board took public comment was not addressed in the Policy Manual. He said the Policy Manual only indicated that each speaker was limited to five minutes and that the limit was 20 minutes per subject matter. He said he didn't think that there needed to be a change in the Policy Manual but that the Board might want to adopt a practice of, when public comments are going beyond 20 minutes, a Board member could make a motion to cut off public comment and postpone the remaining public comments until all the business on the agenda had been completed. He noted that public comment varied from meeting to meeting but that, for some meetings, the public comments had lasted 1½ hours.

Director Gillette said that Paul Dorroh had raised an interesting point, which was that people came to meetings expecting to hear discussion about a particular issue on an agenda but that, because some members on the Board had been insisting on cutting off the meetings at 10:00 PM, lengthy public

comments were preventing the Board from completing all its business by that time. She said there couldn't be unlimited public comments on one end of the meeting and then a call to end that meeting before completing all business on the agenda. She said that what Mr. Karlsson had proposed wasn't an uncommon practice among other jurisdictions. She said her only concern was that she didn't want ending public comments to look personal. Thus, she said calling for an end to public comments at a particular time might make more sense, with discretion for the Board to extend it, if it so wished. President Welsh responded that doing this would require a Policy Manual change.

Director Toombs noted that Mr. Karlsson had been unable to attend the meeting due to a back injury and said that he had told Mr. Karlsson that the Board wouldn't be discussing the item this evening. He said that, in fairness to Mr. Karlsson and everyone else who wanted to weigh in on this and to ensure the Board had the chance to see, again, the emails that had been received on this, he would like to hold off on making a decision. President Welsh responded that he didn't mind taking this up at the next regular meeting.

A. Stevens Delk said this was the fourth time she had come to make a comment on this matter. She said that a review of meeting audios had indicated that public comments had usually lasted 30 to 40 minutes and that fewer than half were on matters not on the agenda. She said it was a perception that the public comments go on and on; most people had spoken three minutes or less. She said that the "infamous" 5½ hour March meeting had been the one that had caused Mr. Karlsson to make his suggestion and that fewer than ten minutes of public comments had been on items not on the agenda. She said she didn't think that moving some public comments to late in the evening would encourage the public to comment.

Director Toombs reiterated that there had been a lot of people who had wanted to participate in the discussion of this item and that he wanted to see all the relevant emails on the item prior to the Board's next discussion.

President Welsh asked that the item be tabled until the next meeting.

Director Gillette said she didn't think that anyone on the dais was saying they didn't want public comment. She said that there was business the Board had to take care of, that two Directors were closing down the meetings at 10:00 PM, and that the District's business needed to be taken care of first. She said that, when the Board needed to deal with items such as the budget and the MOU, it couldn't take the chance of not getting to them because other people decided to come and talk about items not on the agenda.

Kevin Padian suggested that people could work together on this matter. He said people's comments could be limited to two minutes: People could make bullet points and then submit written summaries. He said that the difference between the KPPCSD Board and the UC Board of Regents was that the KPPCSD Board actually listened when one talked to them. He said that the respect for comments was very constructive and that, if the comment time per person were reduced, more people could speak.

President Welsh suggested moving on to New Business.

Vice President Sherris-Watt said she wanted table Item 8c, review of an agreement between the Kensington Police Protection and Community Services District and the Kensington Community Council. She said that the Kensington Hilltop School's back to school night was that evening and, thus, those parents who might like to participate in the discussion would be unable to do so. She said she understood that this needed to be addressed by October, and President Welsh responded that it would be fine to table this.

#### **NEW BUSINESS**

- 8a. The Board received a report from the Interim General Manager/Chief of Police and considered approving a contract with Nicolay Consulting Group, to perform an OPEB Actuarial Valuation for the District for the District.

IGM/COP Hart introduced the item, explaining that there had been concerns with the most recent actuarial report: Among them had been the trend rate and the discount rate. He explained that, although the current report was good for a two-year period of time, it didn't address changes resulting from the new MOU. He reported that the Finance Committee had discussed proposals from a couple of actuaries and had recommended that the Board consider entering into an agreement with Nicolay to perform an updated actuarial report. He said that Nicolay's proposal for the work was \$4,700, which was less than what had been budgeted, and that the proposed update would enable the Finance Committee and the Board to evaluate whether enough money was being contributed to the OPEB.

President Welsh asked if the not-to-exceed amount issue, raised by the Finance Committee, had been resolved. IGM/COP Hart responded that the amount had increased from the initial estimate because he had asked that the report include a presentation and that \$4,700 was a firm estimate.

Vice President Sherris-Watt said she was enthusiastic about the proposal because Nicolay addressed all the difficulties she'd had with the former report. She cited that Nicolay had updated the mortality table and the medical trend rate. She asked for clarification that the presentation would be made to the Board. IGM/COP Hart responded in the affirmative.

IGM/COP Hart reported that a second proposal had been received, that it had been much higher, and that Nicolay had submitted a lower – less than half – proposal because it wanted the job.

Director Toombs asked if the clock would be reset by a new actuarial report; would this enable the District to put off doing another actuarial for two more years. IGM/COP Hart responded that the answer Nicolay had given when asked this question was that it would depend – there were variable factors that would affect the answer. Director Toombs said it would be good value if the District could do this actuarial report and then not have to do another one for two more years. He also noted that he was surprised by the difference between the two estimates; this one at \$4,700 and the other one at \$13,000.

Deborah Russell asked if the Nicolay proposal was less expensive because it was an update, as opposed to being a new actuarial report. She asked if Nicolay had indicated what a full, new, report would cost. IGM/COP Hart responded in the negative. IGM/COP Hart said that Nicolay would be using information from the most recent report as the starting point for developing an updated report.

Director Gillette said that, because she hadn't attended the Finance Committee meetings, she wanted to know what the discussion had been about the two different proposals and whether any due diligence had been done with respect to getting references on the two consulting groups.

Vice President Sherris-Watt said that Bartel and Associates was very well known and had been recommended to the District by PLG. She said Nicolay was also well known, that they did a lot of work in San Francisco, and that they had provided a list of agencies for which they'd worked. She said there was a slight difference in presentation between the two companies; one was more polished. But, she said, both companies were well known. She noted that the price difference likely had to do with differences in overhead and Nicolay's desire to do the work.

President Welsh said there had been some reluctance because Nicolay had contacted Bartel to ask what amount they had proposed; thus, Nicolay had been able to underbid. He noted that Bartel had given up the information freely. He reported that Paul Haxo had said that, when he had been Board president, Nicolay had done the actuarial reports and that he had been impressed by the quality of their work and the ease with which the reports could be understood.

IGM/COP Hart reported that Adam Benson had recommended Nicolay, though Mr. Benson had said he hadn't had as much experience with Nicolay as with Bartel. IGM/COP Hart also noted that Nicolay was among CalPERS' recommended actuaries.

Deborah Russell said that Nicolay's main actuary, who had done most of the work in the past, was no longer with the company. Thus, she said, the Board should take this into consideration. President Welsh responded that this meant there was an element of the unknown.

Director Gillette said that, although Nicolay had provided a client list, it didn't mean that the clients were current. She expressed concern that the lower price could mean that the District might receive lower quality work. IGM/COP Hart responded that the way this should be viewed was that this was going to be an update of the current actuarial report, that it would change some of the variables contained in that report, and that the results of the report could amend the amount of OPEB funding.

President Welsh said that, although there might be some unknowns, this was a worthwhile endeavor to undertake.

Vice President Sherris-Watt noted that the proposed Nicolay report would bring the District up through GASB 74 and that, later, the District would need to get another update, to GASB 75, by 2017.

**MOTION: Vice President Sherris-Watt moved, and President Welsh seconded, that the KPPCSD enter into a contract with Nicolay Consulting Group to perform an OPEB actuarial valuation for the District.**

**Motion passed: 4 – 0.**

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

- 8b. The Board reviewed and considered approving Resolution 2016-12, fixing the employer contribution at an equal amount for employees and annuitants under the Public Employee's Medical and Hospital Care Act.

IGM/COP Hart introduced the item and explained that the contract with the Police Officers' Association includes a contribution of \$85 toward medical benefits, as of January 1 2017, and a contribution of \$125 towards this benefit, beginning July 1, 2017. Thus, he said, this resolution needed to be approved by the Board and sent to CalPERS.

Director Toombs asked for confirmation that this was tied to the recently approved MOU. IGM/COP Hart responded in the affirmative. IGM/COP Hart explained that, pursuant to the MOU, this was required for CalPERS so that it would know to deduct these amounts from what it pays to retirees.

**MOTION: President Welsh moved, and Director Gillette seconded, that the Board adopt Resolution 2016-12.**

**Motion passed: 4 – 0.**

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

- 8d. The Board discussed a legal opinion it had recently received and considered waiving its attorney-client privilege. The opinion is regarding whether the Board may amend a variety of the rules set forth in its Policy and Procedures Manual by simple majority vote. Policy 1010.20 currently states that a 4/5 vote of the Board is required to adopt a new policy or amend an existing Board policy. The Board considered voting to release the attorney-client privileged memorandum.

Vice President Sherris-Watt and Director Gillette said they had never received this legal opinion. Director Toombs responded that he had the email that had been sent. President Welsh said that, even if the email had gone out, the Directors said that they hadn't read it. Director Toombs responded that the email had gone out on the 22<sup>nd</sup> to all the Directors and IGM/COP Hart. Director Gillette asked who had

sent the email. Director Toombs responded it had been from Public Law Group. Director Gillette responded that she had received it and apologized.

Director Toombs said that at issue was whether the Board wanted to waive its attorney client privilege and provide the memo to the community.

President Welsh said that this had to do with legal requirements attached to making amendments to the Policy Manual and that he didn't see any reason why the Board wouldn't want to share what the attorneys had written.

Vice President Sherris-Watt apologized for having missed the email. She said she would need to abstain from voting, but she wouldn't object if the others wanted to vote on it.

President Welsh and Director Gillette said they thought the opinion should be made public, but Director Gillette said she didn't feel comfortable doing so with Vice President Sherris-Watt not having read the document.

President Welsh said there would likely be a Special Meeting on September 20<sup>th</sup> and that the item could be taken up then.

Celia Concus said that the agenda referenced Policy 1010.20 and that she had gone to the website's version of the Policy and Procedures Manual to see what situations were covered by the requirement. She said section 1010 was not there. President Welsh asked if this still had not been fixed: He had pointed this deficiency out months earlier. District Administrator Wolter responded that staff was still waiting to receive the policy version of the Board's recently approved budget resolution from the attorneys and that, once it was received, the old version of the manual would be removed from the website and the updated one, which would include section 1010, would be uploaded. IGM/COP Hart said staff would figure out a solution to the problem. President Welsh asked if there was a way to email the section to people, upon request. IGM/COP Hart responded in the affirmative.

President Welsh said that this agenda item would be tabled and that the Board would likely take it up at the September 20<sup>th</sup> meeting.

**MOTION: Director Toombs moved, and President Welsh seconded, to adjourn the meeting.**

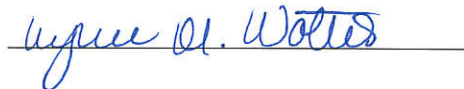
**Motion passed: 4 – 0.**

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

The meeting was adjourned at 9:10 P.M.



Len Welsh  
KPPCSD Board President



Lynn Wolter  
District Administrator