

March 21, 2019

Special Meeting of the board of directors of Bear Mountain Recreation and Park District was held Thursday, March 7, 2019, at 5:00 p.m. in the Senior Center at 10300 San Diego Street, Lamont, California. The District is a political subdivision in the State of California.

1. **SPECIAL SESSION:** Special Session to Begin at 5:30 p.m. at David Head Center, Senior Center.
2. **CALL TO ORDER AND ROLL CALL:**
Mr. Perez- called the meeting to order at 5:30 p.m. Board Members present Mrs. Villanueva, Mr. Rodriguez, Mr. Horton, and Mr. Perez. Board Members Absent: Mr. Jimenez. Staff present Lorena Cervantes, District Manager. Legal Counsel; Mr. Hodges.
3. **FLAG SALUTE**
4. **APPROVE AGENDA AS TO FORM:**

MOTION Mr. Rodriguez moved Mr. Horton second to approve the agenda as form. Motion passed 4 ayes, 0 noes and 1 absent.

5. **DISTRICT EXECUTIVE CLOSED SESSION:**

- a) Potential litigation pursuant to (§54956.9(b): One Case Alleged Discrimination

Mr. Hodges passed out a memorandum to the board before going into closed session. **Mr. Hodges-** this memorandum outlines essentially when a conflict of interest arises between a board member and the District what needs to take place I have gone through an analysis of the common law as with statutory law and the government code essentially if it is reasonably foreseeable the decision will be made by the board or by a board member voting will have a material financial effect or there is some form of not being able to vote without helping yourself. You can't serve two masters when that situation exists the board member must recuse themselves before any action is taken. On page 3 of 4 Where a conflict exists, the Director must disclose the conflict, refrain from participating in discussions, and refrain from influencing fellow board members. The following steps should be taken I outlined them the 4th one is Recuse, leave the room and ask that the minutes reflect both. Page 4 has my recommendation it is as District Counsel that Director Villanueva recuse herself from discussion of the Closed Session Agenda Item- "Potential Litigation- One Case Alleged Discrimination" during this special meeting and any meeting thereafter wherein that same Agenda Item is discussed. Because based on the letter that I saw it appears to me that a conflict exists at least under common law if under government code section related to potential financial interest so that is my recommendation. **Mrs. Cervantes-** asked Mrs. Villanueva is she understood. **Mrs. Villanueva-** replied yes. **Mr. Perez-** so before we vote should that director recuse themselves now that way it can be on the record. **Mr. Hodges-** that director it's up to her

or him to recuse themselves however if any vote its taken where a conflict is shown that vote is null and void additionally if they participate a board member participates in an action where there is a conflict of interest that exists there can be civil as well as criminal penalties including loss being able to hold an elected position in perpetuity so the decision obviously is up to the board member where a conflict exists it's my recommendation that a recusal takes place based on the conflict of interest but I can't make that decision for the board member. **Mrs. Villanueva-** asked are we going to discuss it in closed session. **Mr. Hodges-**the closed session agenda item is potential litigation one case alleged discrimination. I can't expand on more than that out here that is all we can disclose before closed session we can make the minutes after closed session if any action was taken about that but that is all we can discuss right now. **Mr. Perez-** as a note Director Jimenez showed up the time it 5:35 p.m. **Mr. Perez-** if the director that this affects doesn't recuse themselves, essentially, they can be criminally and civilly they can expose themselves to that type of prosecution. **Mr. Hodges-** If you look at the third paragraph the first sentence explains this situation. The common law principle requires public officers to avoid placing themselves in a position in which personal interest (or the appearance thereof) may come into conflict with their duty to the public. So, if your personal interest in the matter could conflict with your duty on this board there is a conflict of interest that has arisen, and you should recuse yourself from discussions and negotiations or voting on that matter. **Mrs. Villanueva-** then regarding the letter I turned in if I want to discuss it then there can be consequences. That is what you are trying to tell me? **Mr. Jimenez-** more like there can be consequences against the letter. **Mr. Hodges-** we are going to discuss this in closed session it is not an open session agenda item because it could raise to potential litigation and potential liability on the District it needs to be discussed in closed session and discussed and not reported outside of that. **Mr. Jimenez** She can't be in close session **Mr. Hodges-** I can't make that decision for her. The law seems to support that she should recuse herself, but I can't make that decision for her. I am not her personal attorney I represent the District and so if there is a conflict of interest that exists and action is taken where there is a conflict that action can be null and void if you ask what I am doing here what I am doing is protecting the District from the actions that you do take making sure that they are proper so because I believe that a conflict does exists for the purposes of taking action Director Villanueva should recuse herself but I can't make that decision for her. **Mr. Jimenez-** What he is saying that in closed session he recommends you not to go because there can be conflict of interest but at the end of the day it is your decision and if you want to be in closed session but him as an attorney recommends that you are not present there can be criminal and civil consequences against you. **Mrs. Villanueva-**then I will wait outside so I can know what the decision was and if I must appeal and bring my lawyer. **Mr. Perez-** the time is 5:40 p.m. during discussion Director Villanueva has recused herself from this special meeting the closed session.

MOTION Mr. Horton moved Mr. Rodriguez second to go into closed session at 5:41 pm.
Motion passed 3 ayes, 0 noes and 2 absent.

- a) The board came out of closed session at 6:54 p.m. Under closed session the board discussed agenda item 5. a) Potential litigation pursuant to (§54956.9(b): One Case

Alleged Discrimination. The board reviewed a legal memorandum prepared by District Counsel a discussion was had about the memorandum as well as the facts undermine the memorandum district counsel made recommendation to the board. Board took No Action no further business was discussed during closed session.

6. DIRECTORS TIME:

- a) **Mrs. Villanueva**-Thank you and good night.
- b) **Mr. Rodriguez**- Good meeting
- c) **Mr. Jimenez**- Thank everyone for coming and have a good night
- d) **Mr. Horton**- Thank everyone for coming good night
- e) **Mr. Perez**- A lot of good discussion took place tonight. Thank you, good night.

7. ADJOURNMENT

MOTION Mr. Horton moved Rodriguez second to adjourn the meeting at 6:56 p.m. Motion passed 5 ayes, 0 noes, and 0 absent.