

Approved, as amended 3/12/15.
See pg 13 for amendment

Meeting Minutes for 2/12/15

A Special Meeting (Closed Session) of the Board of Directors of the Kensington Police Protection and Community Services District was held Thursday, February 12, 2015, at 6:00 P.M., at the Community Center, 59 Arlington Avenue, Kensington, California. The Regular Meeting of the Board of Directors (BOD) of the Kensington Police Protection and Community Services District (KPPCSD) followed.

ATTENDEES

<u>Elected Members</u>	<u>Speakers/Presenters</u>
Len Welsh, President	Kim Manolius, Hanson Bridgett
Pat Gillette, Vice President	Richard Muller
Chuck Toombs, Director	Mark Wijzen
Vanessa Cordova, Director	Simon Braufman
Rachelle Sherris-Watt, Director	Peter Conrad
	Romey Douglas
	Cath Delaney
	Ava Schuing
<u>Staff Members</u>	Garen Corbett
GM/COP Gregory Harman	Laura Chick
Stg. Kevin Hui	Steve Bates
Lynn Wolter, District Administrator	Leslie Reckler
	Donna Stanton
	David Bergen
	Barbara Steinburg
<u>Press</u>	Rob Furnin
Joel Koosed, Outlook	Jan Behrsin
Alan Wang, Chanel 7 News	John Lipscomb
	Rich Carlson
	Bill Stanton
	Deborah Lane
	A. Stevens Delk
	Ted Blanckenburg
	Bob Treppa
	Kevin Padian
	Deanna Coulis
	Mark Bell
	Sylvia Elsbury
	Mabry Benson
	Brian Echler
	John Stein
	Miki Tal
	Ciara Wood
	Sara Schroeder
	Chris Hall
	Don Morris
	Leonard Schwartzburd
	Gloria Morrison

Board President Welsh called the meeting to order at 6:07 PM and took roll call. President Welsh, Vice President Gillette, Director Toombs, Director Cordova, Director Sherris-Watt, General Manager/Chief of Police Harman, and District Administrator Wolter were present.

President Welsh said that the Board's Policy and Procedures Manual allowed a limit of five minutes per person during public comments and said that, should it prove necessary, he would impose the limit.

PUBLIC COMMENTS

Gloria Morrison asked if GM/COP Harman's performance would be discussed, under Item a, during the Closed Session and whether the discussion would encompass the events of May 2014. President Welsh responded that the Board would be discussing that time period.

Gloria Morrison also asked if, under Item b, there would be a discussion of suspension and the gathering of facts. President Welsh responded that it would mainly be a reporting session.

Gloria Morrison asked about the proposed MOU's language about violation of regulations or orders and asked if the loss of one's service weapon while off duty was a violation of any regulation or order. GM/COP Harman replied that answering this question would be too close to a personnel matter. President Welsh added that, whenever there is a personnel matter, investigations could sometimes take a long time.

Peter Conrad asked if General Manager/Chief of Police meant that the two positions were considered to be a single position for the purpose of the performance evaluation. President Welsh replied that it was a single position with multiple duties and that the performance review would be for single person with a set of duties; the Board would need to look at the whole.

Romey Douglas introduced herself as the former PTA president of Kensington School. She said it had been her pleasure to work with many of the police officers and that they had done honor to their badges; but Keith Barrow had not done honor to his badge, his fellow officers, or the community. She said she found it abhorrent that it had taken so long to find out about it and that nothing had been done. She added that, since officers come to the school and patrol hallways on a daily basis, she was concerned that someone of such low character would be held up as a role model for the children. She recommended that Sergeant Barrow be removed from the police force immediately.

CLOSED SESSION

The Board entered into Closed Session at 6:10 P.M., pursuant to California Government Code Section 54957b.

- a. The Board to discuss the General Manager/Chief of Police performance review.
- b. The General Manager/Chief of Police to discuss personnel appointment, employment, and evaluation of performance of District personnel.
- c. The Board to discuss the possible contract extension and terms of the extension of the General Manager/Chief of Police.

OPEN SESSION

The Board returned to Open Session at 7:45 P.M.

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

President Welsh reported that, during its Closed Session, the Board had discussed the General Manger/Chief of Police's performance and the history of the investigation everyone attending wanted hear about. He reported that no action had been taken on the item.

President Welsh reported that the Board had discussed the possible extension of the General Manger/Chief of Police contract and that the Board had taken no action on it. He said that the Board planned to have a Special Closed Meeting to determine what action to take on the Chief and that the meeting had been set for Monday, February 16, 2015, at 8:00 P.M. He said the public could come to that meeting and give comment prior to the Closed Session.

President Welsh began to read KPPCSD Policy and Procedures Manual Section 5030.43, "No oral presentation shall include charges or complaints against any District employee regardless of whether or not the employee is". Vice President Gillette interrupted him and suggested that he skip reading the rest of the policy.

President Welsh said he understood that many in attendance were upset about recent news and that no one in the room was more upset about it than he was. He said he was going to explain, to the extent the law allowed, how the process worked, what the restrictions were, and what the Board intended to do about the situation.

Vice President Gillette said she understood it was an emotionally charged moment for everyone. She said that the Board's legal counsel was present to help the Board and the community with the situation because, when it comes to dealing with police officers, there are very strict requirements of the law and many constraints about what can and can't be said. She also explained the various roles of everyone involved: the Board's role is to evaluate the Police Chief/General Manager, and the Police Chief/General Manager's role is to manage the police officers. She said that the Board has no say in discipline that's imposed on police officers. She said the Board couldn't change those decisions; rather, all the Board could do was evaluate how the Chief handled a particular situation. She said that, if the Board decided that the Chief did not handle things appropriately, the Board would decide what would be the appropriate action to take.

Vice President Gillette said that, when the initial report had come in, in May 2014, GM/COP Harman reported it to the Board at that time. Vice President Gillette said that, from that point on, the Board could not know about the investigation or about the discipline. She explained that the reason for that was that the Board ultimately could sit as the appellate Board if the officer appealed the discipline imposed by the Chief. Therefore, the Board couldn't hear about the investigation until after the officer involved had decided not to appeal the Chief's decision. She said that only then could the Board learn about the investigation and the discipline imposed. Vice President Gillette said that this was the first time the Board had heard about the discipline that had been imposed and that the Board's job was to evaluate whether it believed the Chief of Police had handled the situation the way he should have. She said that legal counsel was present to clarify things further, if necessary.

PUBLIC COMMENTS

Richard Muller wanted to know why there had been such extraordinary delay, saying that the Board had heard about this situation in May, and he wondered why the Board hadn't asked, in the following months, what was happening. He said nothing seemed to have come out about the situation until after a reporter had uncovered it. He said the Board couldn't hide behind legal reasons.

Mark Wijisen said that Reno had figured out what had gone on and questioned why the Board hadn't.

Simon Brauffman said that it saddened him that it took an incident like this to get the community to come to a meeting. He asked the Chief if, because of the nine-month delay, the policeman in question's integrity – should he be called as a witness – could be lost because of this charge and with this incident being public knowledge. He also asked if this put the community in jeopardy because one potential witness had lost his credibility. He concluded by saying that the real issues were management and performance.

Peter Conrad asked the Board to explain why it was skipping the item in the Procedures Manual which would keep everyone from getting sued. He said it seemed to be something that was started on but not continued. He asked why this was.

President Welsh replied that there was a section, 5030.43, in the Policy and Procedures Manual. He then read the section: "No oral presentation shall include charges or complaints against any District employee, regardless of whether or not the employee is identified in the presentation by name or by another reference which tends to identify. All charges or complaints against employees shall be submitted to the Board of Directors under provisions contained in Policy #1030." He added that Policy #1030 was a procedure for submitting written complaint. He said there was a set of significant issues and that the Board wanted people to express themselves because they felt very strongly.

President Welsh also said that the Board went through the procedure that was legally provided for with respect to investigating a situation like the one before the Board. He said that no opportunity existed for the Board to cross-examine the officer about items that appeared in the press.

Cath Delaney, a Lake Drive resident, thanked the Board for its public service. She said she was the daughter of a police officer and therefore understood the tenet of a policeman's weapon. She said she was concerned about the police officer's weapon and that, as a mother, she was concerned that one of the officers had been involved with prostitution. She also said she wanted to address the inherent conflict of interest in the way the community was run. She said this might mean disbanding our police force and joining another police force so there would be more transparency and more accountability.

President Welsh asked those who wanted to speak to raise their hands so he could get a count. He asked people to hold their comments to five minutes.

Ava Schuing said she was concerned about leadership. She said she wanted to connect the police situation to the budget issue. She expressed concern that the police officer who was under investigation had been leading the negotiations for the police with the Board. She asked why the Board had allowed this to happen. She questioned why the Board was considering a four-year contract that guaranteed jobs and increases.

Garen Corbett said he didn't envy the Board's responsibilities and that he didn't appreciate the poor reputation being seen of Kensington in the media. He said that during his three years as a homeowner, he'd been saddened by the level of divisiveness. He said there was a general lack of oversight, the budgets were made up of very optimistic assumptions, there was a lack of long-term planning, and personnel management had been inadequate. He recommended that the role of GM and COP be separated. He said the GM had lost the community's confidence and that his handling of the Reno events had magnified that view. He said the GM/COP's contract should not be renewed. He concluded by saying the MOU should be delayed and that there should be a fresh look at the budget projections.

Laura Chick said she agreed with what the prior three speakers had said. She said she was a former elected official and that she had a reputation of being a fiscal watchdog. She said the events of the week had pulled her in. She said this wasn't about a particular officer; it was about a dysfunctional government. She said the confidence of too many people had been lost. She said the GM and COP functions should be separated.

Steve Bates said his family had been in Kensington since 1925 and that he had moved here in 1985. He said that problems had surfaced over that past ten to fifteen years. He said that in the past, as with GM/COP Bray, the GM/COP had had more of a professor-style; he sat behind a desk and wore a tweed jacket. He said the community did not need a separation of the job – just a different kind of person in the job who worked for the neighbors not for the police themselves. He said that did not mean the community shouldn't be good to its police officers. He reiterated that the GM/COP should be doing his best for the residents, not for contracts for his officers. He said he hoped things could be fixed because going to El Cerrito would not be the answer. He said El Cerrito was not in good financial shape and that El Cerrito's police spend most of their time in the "flats" – dealing with burglaries, stick-ups, etcetera, whereas Kensington's officers patrol

the hills. He said that El Cerrito borders Richmond and, therefore has a lot of issues. He said he doubted Kensington would receive good service from El Cerrito. He concluded by asking the Board to fix things.

Leslie Reckler, of Edwin Drive, thanked the Board for its service. She said she understood the privacy laws that surround employees, especially police; that some questions could only be asked in Closed Session; and that other questions could never be answered. She said that some questions probably could be answered publicly:

- Does the department have a functional internal affairs staff? Please identify that staff and the practices and procedures followed for an internal affairs investigation.
- What is the policy on suspension with pay during an investigation?
- Did the department obtain a public employer defense counsel to advise the investigator? If not, why not?
- Why did the Chief of Police not recuse himself and hire an outside investigator to expedite the process and remove the inherent conflict of interest between Chief investigating the union president during contract negotiations during an election season?
- Was Barrow, or any other officers, on a paid trip to Reno for training or some other event during the date range in question?
- Were public funds involved?
- Why was a Closed Session not called prior to tonight – the investigation was closed on January 12th?
- Please retain an outside investigator to perform an internal audit on the investigation in question to determine if there were delays related to the timing of the election and to determine whether appropriate disciplinary measures exist.
- If you don't engage an independent investigator, please explain your reasons for not doing so.

Ms. Reckler asked that these questions be answered prior to the next Board meeting and that, if questions can't be answered due to privacy reasons, it be so noted. She said that Officer Barrow must be removed from the force because he could not police effectively. She said that, because he was a police officer, he must walk on water. She said he broke the law. She concluded by saying that the Board should not approve any contracts with any officer or the Chief of Police until the events of May were better understood and that she looked forward to responses.

President Welsh responded that the questions were excellent and that the Board would do its best to answer them by the next meeting.

Donna Stanton said she found it appalling that this had not been brought out before the election.

David Bergen said he was a retired engineer who moved to Kensington in 1958. He said that many were aware of his thoughts by way of Next Door. He said that, because of the problems with the police department and the Board and the way they've been set up, the community should look at the El Cerrito option, noting the community had that relationship with the fire department. He also suggested that any actions with the MOU be tabled. He asked that Barrow and Harman be terminated legally. He said he had heard there had been a Board meeting on February 9th but had not been able to get any information about it.

President Welsh asked GM/COP Harman to respond to Mr. Bergen. GM/COP Harman said he had already responded to Mr. Bergen and let him know there had not been a Board meeting on February 9th.

Barbara Steinburg said she'd lived here since the early 1950s. She said one of the most important things for her had been that she'd felt safe and that she'd felt safe because of the police department. She said the service provided by the police department should not be lost in the midst of the incident. She said that, with respect to Officer Barrow, it would be a mistake to rush to judgment. She said the only thing perfect about any of us was hindsight. She said everyone had character flaws and that the situation should be re-evaluated. She concluded by saying she applauded the police department and by saying how safe she'd been because of the department.

Rob Furnin said he'd joined the 200-member Kensington Property Owners' Association three weeks earlier. He said he'd been asked to read the Property Owners' statement, which stated that the budget couldn't support the current MOU, but that the Property Owners' Association could support an MOU that fit within the District's means. He said there was a crisis of confidence due to the lack of professionalism and due to revelations about some members of the police force. He said the Property Owners' Association had commented extensively about the financial risks faced by Kensington because the budget could not support the proposed MOU throughout its entire term. He said the financial projections presented in November and January were flawed and made the MOU seem affordable only on paper. He said the MOU should contain language that would enable the agreement to be re-opened if, at any point, it became necessary for the District to dip into reserves to meet operating expenses. He said the credibility of the negotiations appeared to be undermined, given that a chief negotiator was under investigation during the negotiations. He asked:

- Why did the Board negotiate with someone under investigation?
- Why didn't the Board use a separate professional negotiator?

He said the MOU should not be passed now and that the District needed a professionally produced projection that could convincingly support the MOU, with a reopening clause.

Jan Behrsin said he'd lived in Kensington since 1974. He said that, on the District website under "Latest News", an announcement had been posted that summarized the investigation of the officer involved in the Reno incident and a description of the process.

He asked when each Director had been made aware of this press release.

- Director Cordova said she had learned about the press release from a print reporter who had called her on her cell phone the prior afternoon at approximately 3:30. She said she had been asked to provide comment on the press release and that she had responded, "What press release?"
- Vice President Gillette said she was checking her email because she had been the one who had sent the press release to the Board members as soon as it had been finalized.

Mr. Behrsin asked if all the Directors had been involved in drafting the press release. Vice President Gillette said that two directors and outside counsel had prepared the release. Mr. Behrsin asked why all directors hadn't been involved. President Welsh responded that would have violated the Brown Act. Mr. Behrsin asked how many directors had been involved in preparing the document. President Welsh replied that he, Vice President Gillette and outside counsel had prepared it.

President Welsh said he'd received a draft copy of the press release, which he had thought was in its final form; then had received a call from a San Jose Mercury News reporter who had been interested in the Board's February 12th meeting; and then had sent the press release to the reporter.

- Director Toombs said he had received the email the prior day, at 4:37 PM. He said he had no idea when it had been released to the press.
- Director Sherris-Watt said she had learned about it the prior day, at approximately 5:00 PM, when Thomas Peele had contacted her for comment.

Mr. Behrsin asked if Director Toombs had provided any input for the press release. Director Toombs replied, "No."

John Lipscomb said he had lived in Kensington as a young child and for much of his adult life. He said that the community's demographics hadn't changed much since his parents had moved to the community in the 1970s. He said he'd always considered Kensington to be a very safe place to live, especially considering the close proximity to Richmond, Oakland, and Berkeley. He said the hard work of the Board and the police force, which kept the community safe, contributed to the good quality of life. He said Kensington's low crime rates were a direct result of its police force, especially because of the efforts of Sergeant Keith Barrow and Chief Greg Harman. He said it was reflected in the latest FBI crime statistics that Kensington had very few violent crimes. He stated that criminals knew that, if they committed a crime in Kensington, they likely would be arrested by one of the community's officers. He said the most recent 2013 FBI violent crime statistics showed that Kensington was safer than Piedmont and Sausalito and quite a bit safer than El Cerrito and Berkeley. He said a lot of residents were concerned about the Reno incident that had been in the papers the prior few days. He said he didn't know if the news articles told the true story, or even the

whole story. He said it wasn't unheard of for newspapers to get things wrong or for authors to have corrupt agendas. He noted that Sergeant Barrow had served on the Kensington police force for many years and had served the community well. He said he couldn't think of anyone he'd rather respond to his mother's house, should there be a problem, unless it was Chief Harman. He said that, before the community rushed to judgment – based on a biased newspaper articles – or that people resign or be fired, the community should let the Board do its job the community had elected it to do: Conduct an independent investigation and find out the true facts and then make a decision. He stated that anything less would be a disservice to the community. He said the Board was competent had the best interests of Kensington residents at heart and that it would be a mistake to contract out police services if the community wanted to maintain a high level of safety. He concluded by thanking the Board for its service.

Rich Carlson said he had been a resident for 32 years and that as part of his past employment he had handled police disciplinary matters at the Alameda County Sheriff's Department for 18 years. He said the Board had a very difficult issue and that the Board could not be involved in the day-to-day discipline of officers; that was up to the Chief. He said he didn't know why the Chief had decided upon the discipline he had, but that was the Chief's decision. He said that, going forward, the Board had two big issues:

1. The discipline of officers. Mr. Carlson said that, through the District's law firm, the Board could come up with disciplinary procedures that the Board would expect to be fulfilled by those who worked for them.
2. With respect to the police contract, there was an inherent conflict of interest. He said the Board could have a peace officer as the General Manager negotiating with peace officers. He said a professional negotiator should handle the negotiations.

Mr. Carlson also said there was nothing the Board could do about Officer Barrow. He said he didn't think it would be a good idea to contract out for police service. He said that, for the 32 years he had lived in Kensington, the police department had been wonderful and that he was very please with the services. He cautioned that more situations such as the current one likely would occur again if the Board didn't have an organizational structure that would allow the Board to get timely information and to manage a situation. He said the Board needed to put in place a structure that would allow it to function more effectively.

Bill Stanton said that two separate people should perform the GM and COP functions. He said the Chief had been accused of covering up and inflating crime statistics – big time. He said there was a cover-up right now. He said the Board knew about the incident during the election but said nothing about it. He said the Board could not put through an MOU and said that, if the Board tried to put through an MOU, people were going to stop them. He said he was glad the Board had referred to the Policy and Procedures Manual because people had gone through it with the old Board and were told that the Manual was just a list of suggestions; it wasn't governed by it. He concluded by saying he was really angry.

Vice President Gillette said she wanted to answer Mr. Behrsin's question. She said she had finally found her email and that she had sent the email, which contained the press release, to the Board members at 4:36 PM the prior day.

Deborah Lane said she had lived in the community for about 20 years and that she was an architect. She said she had originally worked on the Community Center in 2010. She said she wasn't an expert in the matters before the Board that evening but that, originally, the meeting was supposed to be a finance committee meeting. Director Toombs replied that this was the Board's monthly regular meeting; the finance meeting had been at the end of January. Ms. Lane said she was concerned about, in addition to the police department, that the community had responsibility for a huge piece of property. She said the Community Center had not been kept up properly and, therefore, it probably would need to be torn down. She said there wasn't enough consideration for money being allocated to the park. She said there had been enough money to do the plan in 2010 and that, in the interim, money and time had been wasted.

A Stevens Delk said that Measure G had been about hiring an extra officer. She said an extra officer had been hired until two years later and that she didn't recall there having been a problem with crime during those two years. She noted that, in his November report, the General Manager said that the police department could save money by holding a position a position open. She said that records showed no

correlation between fewer officers and more overtime. She also noted that, according to Transparent California, a single officer had earned 35% of the District's total overtime and that this had increased his salary by 20%. She added that managing the District's overtime would help mitigate financial problems.

Ted Blanckenburg, of Ardmore Road, said it was heartening to see such a concerned citizenry present. He said he was sad and surprised at some of the rudeness that had been exhibited by the crowd when the Directors had come out of its Closed Session, noting there had been booing and hissing. He said he wanted to talk about his family's direct involvement with the police department. He said that one of his children had gone missing and that Chief Harman and Sergeant Barrow had organized a search party and found her. He said that she had been paralyzed but that, if they hadn't found her promptly, she would not have survived. He said Chief Harman and Sergeant Barrow had his full confidence. He said he had daughters who lived in the community and he had a wife and said he had no problem with them being policed by the officers on the force.

Bob Treppa, a 15-year resident, said he hadn't had any interaction with the police department. He thanked the Kensington Property Owners' Association for its letter. He said this was a pretty "cush" job for policemen because Kensington didn't have crime and wasn't Richmond, Berkeley, or Oakland. He likened the Kensington Police Department to the Oakland A's rookies, saying that kind of staff needed a really good coach.

Kevin Padian, a 25-year resident, said he'd never been involved with civic affairs because everything had seemed to be running fine until last year. He said that at that time he saw conflict he didn't understand. He said he had questions. He addressed President Welsh to confirm that the officer's discipline had been concluded. Mr. Padian asked what had been the disposition. President Welsh replied that the Board was not allowed to talk about it legally – the Board couldn't say what the discipline had been. President Welsh clarified that this was the law. Mr. Padian asked for confirmation that two Board members had been negotiating the MOU. President Welsh replied that was correct. Mr. Padian asked for confirmation that all three continuing Board members were attorneys. President Welsh responded that was correct. He asked whether the two members negotiating the contract had to vote yes on the agreement when it came before the full Board or risk a lawsuit for negotiating in bad faith. Vice President Gillette responded, no. Mr. Padian asked for clarification. Vice President Gillette said that the negotiators acted only on the direction of the full Board. She said the two Board members had no independent authority to make an offer, to accept an offer, or to do anything without coming back to talk to the full Board. She said the full Board had told the two negotiators what to offer, and the two came back to the full Board and reported what the response had been, and so it went, back and forth. She said that, until the Board approved the contract, there would be no agreement. Mr. Padian asked if there would be a risk of bad faith negotiating if the Board didn't approve the proposed agreement. Vice President Gillette replied, no, and said that the Board had confirmed this with legal counsel. Vice President Gillette said she didn't think the Board would approve a contract that the full Board didn't agree on. Director Cordova said she disagreed with that statement.

Deanna Coulis thanked the Kensington Property Owners' Association for sending out financial information and expressed concern about the Reno events and asked that the Board hold the Chief responsible for the actions of his employees.

Mark Bell, a 14-year resident of York Avenue, said he'd been a staunch supporter of the Board, the police force, and Chief Harman. He said he wasn't going to step away, the battle was on, and that what he had faith in was the process. He said he wanted truth, honesty, openness, and clarity. He thanked the Board for its hard work.

Sylvia Elsbury, a resident since 1998, asked for clarification about who wrote the press release. She said Director Sherris-Watt, and perhaps another Director, had learned about the release from the press. She asked if the President sent out press releases without informing other Directors and if the President might engage in other activities without the knowledge or participation of the other Directors.

President Welsh responded that it was frustrating for people to hear that Directors couldn't do or say this and couldn't do or say that because of the law. He said the Board had to operate under the Brown Act and

that this constraint meant, generally speaking, that when some sort of Board activity needed to occur that wouldn't be done in an Open or Closed Session, only two Board members could work on it or it would be a violation of the Brown Act. He said this was why all five Board members couldn't contribute to the press release.

Director Cordova addressed President Welsh and said that Directors at least deserved the courtesy of knowing that he was releasing a press release, even if other Directors didn't review it. She said that she and Director Sherris-Watt should have been informed before a reporter was informed.

President Welsh apologized, and Director Cordova thanked him.

Mabry Benson said that in 2011 the community had sent down to El Cerrito for a bid for services and that part of the bid said 10 officers would be stationed in Kensington all the time. She said this would be the same officers and service we had always had, and that the officers would not be spending their time on San Pablo Avenue.

Director Toombs responded that the Brown Taylor Report had been done in 2009. He said that, in that report, Brown Taylor had called for six officers that would be on patrol and that this would be a decrease from the current structure of nine officers and a Chief. President Welsh asked if there had been a projected savings. Director Toombs said that the only way to make contracting out cost-effective would be to cut back on the number of officers put on the street. He said the community would not have sergeants patrolling the way it currently had. He said there would be only six patrolmen and no Chief: It would be a cut in service from a ten-person force to six. President Welsh said this topic would need to be discussed at a later date.

Brian Echler, a Beloit Avenue resident, asked the Board and the Chief to understand that there had been a loss of trust and confidence. He urged the Board to do the right thing.

John Stein, a 32-year resident, said there had been a breach of the officer's privacy rights, strongly encouraged the Board to get to the bottom of the breach of these rights, and asked that this be done without delay. He said the community should support the investigation process, and that the investigation needed to be fair, objective, and thorough. He reminded everyone, including the press, that this was the United States of America, where there is rule of law. He said everyone should exercise personal restraint before prematurely coming to any conclusions. He said that, in this country – which included Kensington, all were innocent until proven guilty. He said it was unfortunate that a few residents had behaved like a lynch mob. He strongly encouraged the Board to pursue the matter with all due speed.

Miki Tal, a Kerr Avenue resident since 2008, said she was a former prosecutor and was now a criminal defense attorney. She said that defense would be entitled to know if an officer had been involved in moral turpitude and that likely would result in a person not being convicted of a crime. She said that, for its protection, the community had to ensure that officers were clean. She said the community could not have officers performing investigations if they'd been involved in moral turpitude and that Officer Barrow could not stay. She said that the Chief, who decided that the officer could stay and continue to investigate, was outrageous because during that time the community's safety and investigations had been compromised.

Ciara Wood said she had grown up in Kensington. She said this was not a lynch mob: this was the community showing an amazing amount of control. She said not to confuse expressions of outrage with being a mob.

Sarah Schroeder, a Colgate Avenue resident, said had lost complete trust in the officers. She asked the Board to fix the situation to better the community. She said she was shaking and upset.

Peter Conrad said people were not operating on allegations, exactly. He said there was a police report out in Reno that the community could probably get. He wondered if the Officers' Bill of Rights stretched out to Reno that would prevent the community from getting it. He said the officer went with fellow officers to the

police station to report what had happened so he could recover his gun. He said the suggesting that people were acting like a lynch mob without any knowledge of anything was not true.

Chris Hall, a 24-year Kensington resident, said that part of the problem was information – the community was not getting full disclosure. He said he understood there were laws. He asked why there was a group of Kensington officers in Reno. He asked if they'd gone up to aid the officer and if they'd all gone together.

President Welsh asked Chief Harman to respond to Mr. Hall's questions. Chief Harman explained that the police department had two patrol teams during the week: while one team was working the other team was off. He said that the team that went to Reno was not on District business, did not use District vehicles and did not use District gasoline. He said they were up there as a team, socially. He said they were on their days off, and two of the officers were with their wives.

A member of the audience asked why the officers had their guns. Chief Harman responded that officers carried their weapons while off duty because they were police officers all the time. He reiterated that officers were allowed to carry their weapons while off duty and said they were allowed to do so when in Nevada.

Chris Hall asked if the officers had been identified.

Chris Hall said that the Board had learned about the incident in May and that the community had elected two new Directors in November. Mr. Hall asked if newly elected members Cordova and Sherris-Watt had been informed about the incident and investigation in November. President Welsh said the new Directors probably should have been informed sooner but that the first time they had been informed had been this evening.

Simon Braufman referred to Chief Harman's earlier comment that police officers were police officers all the time and asked if they were police officers when they broke the law. He said prostitution was legal in Reno but only in specific places. He said that, if the police report was correct, the incident took place in a motel and that would have made it illegal. He asked if that wasn't dereliction of duty.

President Welsh said the Board couldn't comment on Mr. Braufman's remarks. Mr. Braufman asked why that was. President Welsh asked Kim Manolius, the District's legal counsel from Hanson Bridgett, to explain. Mr. Manolius said the disciplinary nature of it made off-limits.

Chief Harman said the officer was never convicted of a crime. He was never charged with a crime.

A member of the audience asked how many lawyers were present among the Board and at the staff table and asked what Kim Manolius' hourly rate was. Chief Harman replied that the District's lawyer from Hanson Bridgett was at the staff table. Mr. Manolius said he believed the firm's blended rate was \$305 per hour.

Garen Corbett said he worked for the University of California and that he wished he wished he had such a good contracted rate. He said it could not continue that the new Directors were not receiving the same information as the incumbents.

Bill Stanton said that the microphones not working well fit into a cover-up. He said he'd had to use police and fire services quite a bit. He said the police took very little time to get to his place and that they arrived within minutes. He said he'd had a couple dozen 911 calls and that the fire department arrived before the police arrived. He said this indicated that we might not have such a bad situation if we merged with El Cerrito but he didn't really know about that. He said there appeared to be a cabal on the Board, with some Board members giving the shaft to other Board members. He said the Board and the Chief/General Manager were offering up a lot of lame excuses. He said it was obvious that the Board wasn't doing its best – there was a lot of politicking. He said none of the Board would have been elected if it had had the results of the Reno incident before the election. He corrected himself to say that two of the Directors probably would have been elected.

Director Cordova said good people and even good policy makers made mistakes. She said she had discussed matters with other Board members and felt confident that she and Director Sherri-Watt would be in the loop and that they could move on from that issue. She thanked people for their support.

Don Morris, a 31-year Kensington resident, said he'd seen a substantial change in the atmosphere in the last few years and that he probably wasn't the only one to notice it. He said he didn't think the service had changed or that the competence had changed, but that what he saw was conflict coming in and an assumption of bad faith. He said this was a different atmosphere than the community used to have. He said that, upon reading the newspaper article, he saw things that were contradictory. He asked for clarification about something claimed by the Property Owners' Association that the projected budget increase for one year was actually the projected increase for three years. He said that, if the increase was, in fact, for three years, the Property Owners' Association should have been more accurate.

Mr. Morris said that, in the past, some members of the community and some on the Board had made accusations of criminal misconduct to the County and that these had led to a County investigation, which found there had been no merit in those allegations. He said that being the case, those individuals were totally irresponsible because they ran up a lot of government expenditure with a Grand Jury. He said that, after that, they instigated legal proceedings, which ended up being thrown out. He said the people who took those actions were irresponsible.

Mr. Morris asked, when evaluating things, who among those involved in the public discourse had shown by their actions that they're consistently irresponsible. He said those who had made allegations and instigated a lawsuit then turned it around and said the Board was responsible for wasting money on legal expenses.

President Welsh confirmed that the Board had been sued twice: one was a demand for arbitration by the garbage company and then the Board also was sued by a group of citizens who claimed the Board had gone through a wrong process when approving the last contract for the Chief.

Mr. Morris asked for confirmation that there had been allegations made against the Chief. President Welsh confirmed that allegations had been made but had not been borne out – the Chief had been exonerated.

Mr. Morris said that, in 2012, he had had correspondence with the District's legal counsel, Kurt Franklin, and had asked why the Directors didn't have equal access to the Board's attorney. Mr. Franklin had written back saying that it had been practice, over a period of years, that only the president of the Board and the Chief of Police/General Manger had had access to the attorney. He suggested that the Board reconsider that.

Leonard Schwartzburd said the DA's letter, with regards to the charges that were brought, stated there was no evidence of criminal wrongdoing.

STAFF COMMENTS

District Administrator Wolter said that, at the Finance Committee meeting, Karl Kruger had raised concerns about the compensated absences that appeared on the balance sheet of the draft audit reviewed at that meeting. She said that Mr. Kruger had compared the compensated absences amount reported in the 2012 audit to the amount reported in the 2013 draft audit, had said there had been a 20% increase, and that he had been concerned about this. District Administrator Wolter said that, based on Mr. Kruger's concern, she had reviewed the balance sheets from the audited financials going back to 2007. She said she had discovered that the compensated absences amount shown on the balance sheets fluctuated throughout that period. She reported that there had actually been a 17% increase in the compensated absences amount between FY 2012 and FY 2013 and that the amounts, in absolute dollars, fluctuated from a high of \$93,000 in 2007 to \$58,000 in 2009. She said that, when adjusted for inflation, the 2007 amount – as of June 30, 2007, which was a couple of months before GM/COP Harman was hired – would have equaled \$108,000 in 2013. She said this would have represented a 16% decline between FY 2007 and FY 2013.

Amendment:
replace this
sentence with
verbatim quote,
which is attached
to the end of
this set of
minutes.

CONSENT CALENDAR

MOTION: Vice President Gillette moved, and President Welsh seconded, to approve the Consent Calendar.

Motion passed 5 to 0.

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

President Welsh noted that the time was 9:43, close to 9:45. He said that, according to Board policy, Board meetings did not go beyond 10:00 unless there was a motion, passed by a 4 – 5 vote, to extend the meeting.

MOTION: Director Toombs moved, and Vice President Gillette seconded, that the meeting be extended until the Board was done with business.

Motion passed 5 to 0.

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

Mabry Benson said she thought the Board should place a time limit on the meeting. Director Toombs responded that the evening's business was so important that he didn't want there to be a time limit.

Director Cordova proposed an amendment to the motion.

MOTION: Director Cordova moved, and Director Sherris-Watt seconded, that the Board revisit extending the meeting at 10:30 PM.

Motion passed 4 to 1.

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

President Welsh said that, if needed, the Board would have another vote at 10:30 PM but that would require a majority vote, not a 4/5th vote. Director Cordova said it would be a 4/5th vote at 10:30. President Welsh responded that the Policy & Procedures Manual had only one provision for 4/5th vote and that was at 9:45 PM for the Board to extend meetings beyond 10:00 PM.

DISTRICT NEW BUSINESS

1. KPPCSD Directors Chuck Toombs and Pat Gillette presented, for approval, the Memorandum of Understanding between the KPPCSD and the Kensington Police Officers Association.

Vice President Gillette said that, in consideration of comments made that evening and in the interest of the community, the Board should delay consideration of the MOU until the next meeting.

Director Sherris-Watt said she was concerned that the negotiation process was irrevocably tainted. She said that the negotiations should begin again. She said she was concerned that the MOU, as proposed, might open Kensington to liabilities. She said she was concerned that the police officers had not been able to comment on the effect of the proposed agreement.

Vice President Gillette responded that the police officers elected who would represent them in negotiations. She said the officers chose Sergeant Barrow and Corporal Stegman to negotiate on their behalf. She said she didn't see where there could be a conflict of interest. Director Sherris-Watt asked if the officers had the right to revoke the vote on who negotiated for them.

GM/COP Harman said that Kensington Police Officers Association had approved the proposed agreement. He said that it was up to the Board whether or not it was going to move forward with it. Director Sherris-

Watt asked if the officers' approval had been unanimous. GM/COP Harman replied that he didn't know what the officers' vote had been.

Director Cordova asked if Director Sherris-Watt's concern was that an officer who had been under investigation had been negotiating a contract in which, directly or indirectly, the Chief of Police would be impacted and that this would cause the bargaining unit not to have confidence in the process. Director Sherris-Watt responded that this was her concern.

Director Cordova said it was unusual for management to sit within a bargaining unit. President Welsh responded that the GM/COP was not a member of the bargaining unit. GM/COP Harman responded that he was a dues paying member of the union for one reason: legal representation. He said he did not vote on the Police Officers Association's matters, and he did not attend their meetings. GM/COP Harman added that he had not negotiated the agreement. He said the Board had its two representatives and the police officers had their two representatives. He said his only input in the process had been to the Board as a staff person – providing financial and other information as negotiations continued.

Director Toombs clarified that five members of the Board had negotiated the contract. He said the Board had authorized every detail of what he and Vice President Gillette had taken to the officers. He said he and Vice President Gillette never decided anything without all five Directors having a full discussion in Closed Session. He said the current proposal had been presented in November, at which time it had been tabled until December. Then, it had been tabled until January and tabled again until that night's meeting.

GM/COP Harman clarified that the Police Officer's Association did not represent him – the proposed MOU had nothing to do with him. He said he had his own separate contract that he negotiated on his own.

**MOTION: Vice President Gillette moved, and Director Toombs seconded, that the Board delay consideration of the MOU until the next meeting.
Motion passed 5 to 0.**

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

Director Toombs said that, because Item 1 had been tabled, Items 2 and 3 were not relevant for discussion that evening.

4. General Manager/Chief of Police Harman presented for approval a contract proposal from IDA Structural Engineers for structural engineering services in connection with a seismic study of the Community Center for a fee of \$7,100.

GM/COP Harman read his memo about a seismic analysis. He reported that Lisa Caronna had recommended that two items be added to the analysis:

- Analysis for an essential facility
- Destructive analysis

Deborah Lane said the approach to the Community Center had been "overkill". She said that if the Community Center had to meet essential facility requirements, it would have to be torn down.

At this time, many attendees began to leave. Vice President Gillette thanked people for attending the meeting and for sharing their heartfelt comments.

Director Sherris-Watt said she was handing to District Administrator Wolter printouts of emails she had received so they could be included in the public record.

President Welsh said the Board was returning to Item 4, and he asked GM/COP Harman to brief the Board.

GM/COP Harman reported that, following Measure L – to remodel the Community Center – not passing, Lisa Caronna, a member of the Park Buildings Committee, had provided an explanation why a seismic study had not been done as part of the preliminary work, leading up to Measure L. In an email, Ms. Caronna had explained that a seismic study would have premature at that time. She noted that the District had not wanted to spend money in advance of approval of the bond measure because the bond measure might not have passed. In that case, money that might have been spent in advance would have been wasted. For this reason, Rosemary Muller had not performed an in-depth structural analysis.

In her email, Ms. Caronna recommended that, at this juncture, the District should consider having a structural engineer perform an analysis and that she and Rosemary Muller recommended Stephen DeJesse of the structural firm IDA. GM/COP Harman said he had solicited a second bid from Stan Wu, but Mr. Wu had not provided one.

GM/COP Harman reiterated that the proposal from IDA was for \$7,100 but that it should be amended to include an essential facility analysis and destructive testing and that these two items would add \$4,480 to the \$7,100 thereby bringing the total to \$11,580.

Deborah Lane said the approach to the Community Center had been “overkill”. She said it was a small 4,000 square foot project. She said that if the Board wanted the building to become an essential facility it would need to tear down the building and that the \$2.5 million that had been proposed for the building had been too much for a 4,000 square foot building.

Director Toombs responded that \$480 was a reasonable investment to perform an essential facility analysis, whether or not the Board determined it would move forward with that in the future. Director Toombs also said that the Board needed to know what was inside the walls and that spending \$4,000 for destructive analysis was important to determine how much rebar was in the walls and to ascertain the quality of the concrete. He said that Mr. Watt had been pushing the Board for months to obtain a serious structural analysis and that the Community Center was a public building which therefore, needed to be safe.

Director Cordova said she objected to spending \$480 on an essential facility analysis. She asked if the new Park Building Committee had met yet. She recommended tabling the item until after the Park Building Committee had met. Director Toombs responded that this matter was urgent.

President Welsh said the Board needed to know what hazards existed in the Community Center.

Vice President Gillette expressed concern that there was only one bid and that she wasn't prepared to vote to spend more than \$10,000 based on one bid.

Jim Watt, a 46 year resident, said he had been pushing for quite some time and that it was time to make the building safe for the children. He said that, because of that, he had, at his own expense, had a structural engineer, Mr. Wallace, come to the Community Center. Mr. Watt said he had a full set of plans for the building and that they showed what was inside the walls. He said the structural engineer had looked at the set of plans and had said the building was in good shape. He said that the structural engineer had said he was going to provide a proposal prior to the night's meeting but had been unable to get to it. He said that structural engineer would provide the proposal the next day and the cost would be \$5,000 for the same scope of work described in the IDA proposal.

Vice President Gillette said she wanted more bids. She recommended that the Chief compile a longer list of experts and solicit more bids.

Peter Conrad said that, if the plans that Mr. Watt had provided sufficient detail about the walls, then \$4,000 wouldn't need to be spent.

GM/COP Harman said the District did not have a complete set of plans for the building and Rosemary Muller didn't, either. He said that the bid had been high because the District hadn't had the plans and that, with the plans, the cost should be lower.

Sherry Morrison, a new resident and a designer, asked if a needs assessment had been done. Director Toombs responded that a series of town hall meetings had been held, that more than three years had been spent on the process, and that the resulting Muller-Caufield report was posted on the District website. President Welsh added that the District just didn't have a structural analysis.

Director Cordova suggested performing an RFQ. Director Toombs responded that doing so would add \$5,000 to \$10,000 to the process and that this would be a lengthy process. Director Cordova said she worked in parks and open space and special districts, and that an RFQ would take two weeks.

Director Sherris-Watt noted that the Policy & Procedure Manual didn't have guidelines for obtaining bids. Director Toombs responded that the public contracts code was filled with requirements for public bids and that, therefore, this didn't need to be included in the Policy Manual. He said state law covered how the public bidding process occurred.

President Welsh suggested that the Park Buildings Committee take on this effort. Director Sherris-Watt asked if President Welsh had appointed all the Park Buildings Committee members. President Welsh responded that he had asked Peter Conrad, all the prior members of the committee, and welcomed anyone else who might be interested. Director Sherris-Watt said she would head the committee. President Welsh said he would assist.

MOTION: Director Cordova moved and Vice President Gillette seconded, that the Board continue the item until the convening of the Park Buildings Committee.
Motion passed 5 to 0.

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

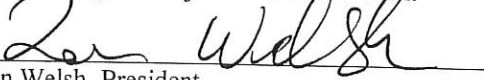
5. General Manager/Chief of Police Greg Harman asked if any member of the board would like to be nominated to the CSDA Board of Directors, Bay Area Network, Seat A, for the remainder of the 2013-2015 term.

GM/COP Harman summarized the item and asked if any Directors were interested in serving. None were.

MOTION: Vice President Gillette moved, and Director Cordova seconded, that the meeting be adjourned.
Motion passed 5 to 0.

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

The meeting was adjourned at 10:25 P.M.


Len Welsh, President


Lynn Wolter, District Administrator

Approved amendment.
This replaces
sentence on pg 13

"The DA's letter, with regard to the charges that were brought, were claimed to have stated that there was no evidence of wrongdoing. That's not what it said. It said there was no evidence of criminal wrongdoing, though it was represented the other way. And one of the reasons that there was no evidence of criminal wrongdoing is that there was no per diem established by this board. There were no regulations to have been broken."