

**PUEBLO CITY-COUNTY LIBRARY DISTRICT BOARD OF TRUSTEES  
MINUTES OF THE SPECIAL WORK SESSION**

**May 16, 2010**

**I. CALL TO ORDER AND ROLL CALL**

The special session of the Pueblo City-County Library District Board of Trustees was called to order at the Rawlings Public Library at 5:04 p.m. by Vice President Sherri Baca. Ms. Baca welcomed the Friends of the Library, noting that the Friends are important to the history of the Library District and their input is important.

Board Members Present: Jim Stuart, President (*arrived at 5:22*); Sherri Baca, Vice President; Marlene Bregar (*arrived at 5:12*); Katherine Frank; Philip Mancha; Roy Miltner; Frances Terrazas-Alexander (*arrived at 5:45*)

Friends of the Library Present: Jim Stuart; Michael Voute; Lois Pfost; Doris Kester; Roy Miltner

Attorneys Present: Nicholas Gradisar; Heidi Glance, Holland & Hart

Staff Present: Jon Walker, Executive Director; Chris Brogan, Chief Financial Officer; Jane Palmer, Director of Public Services; others not recorded

Mr. Walker introduced Heidi Glance who is a partner and lead tax attorney at Holland & Hart in Denver. Mr. Walker also thanked those attending for being here and suggested everyone present introduce themselves. Mr. Walker then turned the discussion over to Ms. Glance.

**II. DISCUSSION ITEMS**

**A. Possible Reasons for Forming a Foundation**

Ms. Glance began by suggesting a conversation about why the library wants to have a Foundation.

Dr. Mancha noted as sources of funding, the library had only two legs on the stool and a third leg would be useful, particularly in perilous times financially, and he suggested a Foundation would provide more symmetry in financing. Mr. Walker explained that the library receives approximately 85% of funds from property taxes and another 10% from specific ownership tax, so 95% of the library's funding comes from public funding. Ms. Glance asked if there are restrictions on how the library can use that money or if there are special projects the library would like to do that it does not have funding to do. Mr. Walker said the library has a Strategic Plan where it has identified needs that cannot be realized without major additional funding. For example, the Strategic Plan calls for expanded services in outlying areas of the county in Colorado City and Rye, the Mesa, and the north end of Pueblo, but there is no funding. Mr. Miltner added that the library is not necessarily restricted from using its funds to do those things.

**B. Activities of a Foundation**

Mr. Voute said having a Foundation will allow the library to tap into new sources of revenue that are not being tapped into now. (*Ms. Bregar arrived at this point.*) Mr. Voute said larger grants, corporate gifts and estates might only be available to Foundations. There was additional discussion on charitable contributions which could be given to the Friends of the Library, although it is not their focus, and the library does not have a development person on staff to seek grants or build endowments.

Ms. Glance asked if the Foundation funds would be primarily for endowments. The library could seek out significant donations and hold those, not spending the money down, but held in reserve, and Mr. Walker agreed there is a strong inclination that way. The other possibility is that it could fundraise through the library. The Friends of the Library can and does some fundraising, but they

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do not have a development person or the possibility of building endowments. Having a third source in perpetuity would be valuable and important, and a Foundation having that as its focus and goal, which is different from both the library and the Friends of the Library, would be a positive addition.

Mr. Miltner said one of the questions to resolve is to what extent this would be a restricted endowment. Ms. Glance said there can be different types of restrictions, and donors can impose their own restrictions. The Board can impose restrictions on the endowment and make procedures for changing those restrictions.

### **C. Potential Relationship of Foundation with Library and Friends of the Library**

Ms. Glance pointed out that the first three topics on the agenda are related. If the organization is focused on development and endowment activities, she asked if it would be limited to fund raising and giving people ways to give to an endowment fund. The Foundation will be working with the Library District to decide on projects to be funded, noting those would be looked at as separate organizations. Typically there is a lot of cooperation between the two organizations, with the same goal, but it is important to think about how the different boards are structured to make sure that cooperative spirit is there forever. If the governance structures are not set up properly, there can be tensions between the organizations, and the Foundation Board could change the purpose to be something other than funding the library. As the Board considers the purpose of the organization, Ms. Glance encouraged the group to focus on how it will be structured and how closely the two will be tied together from the beginning.

Mr. Walker asked what kind of options are available and asked, for example, if the PCCLD Board of Trustees could also serve as the Foundation Board. Ms. Glance advised against the two being that closely tied, and the most common occurrence is for some members of the Library Board to also serve on the Foundation Board.

### **D. Likely Sources of Support for Foundation**

Ms. Glance said there are three kinds of 501(3)(c) organizations: Public Charity, Private Foundations, and Supporting Organizations. Public Charities and Private Foundations are distinguished by the source of support. A Public Charity gets money from sources like the Friends of the Library Book Store and also gets donations from a large variety of people. A Private Foundation has a major sponsor, such as the Bill and Melinda Gates Foundation. (*Mr. Stuart arrived at this point*) A Supporting Organization derives its charity status from its supporting organization, and she explained that relationship in more detail. Ms. Glance explained how recent legislation made the three types of Supporting Organizations less attractive. Ms. Glance advised that a Supporting Organization would be used if there would be significant contributions from a single source. Congress recognizes a Supporting Organization as a Public Charity, but the distinction is that it is subject to a whole set of rules and reporting requirements and minimum distribution requirements similar to those of Private Foundations. Ms. Glance said a lot of the rules are counter-intuitive, and there are a lot of extra rules for a Private Foundation.

### **E. Possible Ways to Structure a Foundation**

When deciding how to structure the Foundation, Ms. Glance suggested some thought be given to where the money will come from. If the money is expected from donors who are closely associated with the organization, (such as the Board of Trustees or employees), it might make sense to structure it as a Supporting Organization rather than a Public Charity. Ms. Glance explained that the Supporting Organization is formed for the purpose of benefiting the library, and it can get its support from anywhere. If the Foundation were structured as a Public Charity and received testamentary gifts, those would not jeopardize the Public Charity status because those would be considered an "unusual grant from an unexpected source" and would not be a "continuing grant." The Board of Trustees would have the ability to either appoint or approve the

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members of the Foundation, but it needs to have that structure in place. Congress decided that Supporting Organizations are not exactly the same because they can have large contributions, which makes it slightly preferable to be a Public Charity than a Supporting Organization.

Ms. Baca pointed out that the Public Charity could be structured in a way where the Board of Trustees could appoint the Foundation Board to keep it from changing its purpose. There was additional discussion on the differences between a Public Charity and a Supporting Organization, cross-over members on the Board of Trustees and Foundation Board, and the importance of members of each Board understanding their role and purpose which would be different for each.

Mr. Stuart asked Ms. Glance for her recommendation of the best structure for the library's circumstances, and Ms. Glance responded that it would make sense to structure it as a Public Charity as long as the expected sources of support would qualify. Ms. Glance said a Public Charity will make it easier to attract donations from Private Foundations because they do not have to take the extra steps required to give to a Supporting Organization.

There was additional discussion in which Ms. Glance suggested reviewing the past five years of contributions to determine if those would qualify as a Public Charity. Mr. Gradisar asked if the test is based on the number of donors or where the money comes from, and Ms. Glance said at least one-third of support must come from a wide variety of support, and only 2% of that can come from any individual person.

### **F. Governance Structure for Foundation**

Dr. Mancha asked if the State writes the rules for Foundations or the Federal Government. Ms. Glance explained that organizations that raise money in the State of Colorado are required to register with the Secretary of State on an annual basis, but matters affecting the tax-exempt status are federal rules with the IRS.

Mr. Walker asked if there are specific rules in the State that will affect the library's Foundation. Ms. Glance said there is a statute that imposes certain rules on organizations that hold institutional funds to ensure endowment funds are managed in a prudent manner. Those rules will apply in the absence of a particular agreement with a donor, but the donor's stipulations will take precedence over rules set by the state. The IRS has become more intrusive in asking for information about how charitable organizations are governed.

Ms. Glance explained that filing the exemption application with the IRS will set the parameters by which the organization will operate, and that is what is filed with the Secretary of State. If changes are made, it may require going back to notify the IRS of those expanded activities. Ms. Baca said the goal would be to make the mission broader; for example, endowments might only be a piece of it. Mr. Miltner commented that it seems that it needs to be "generally specific." (*Ms. Alexander arrived at this point.*)

Ms. Glance said donors may be interested in specifics, and it may have to set aside some restricted funds for specific purposes. There was a discussion whether the present government funding sources would be affected by a Foundation, and Mr. Walker explained how the library is funded through a voter-approved mill levy. Ms. Glance raised a concern if the public sees a lot of money in a Foundation, it may be motivated to reduce the mill levy.

### **G. Next Steps**

Mr. Walker said if it were established as a Public Charity, it will require writing the rules, creating a mission statement, and the IRS would approve (or not approve) that request. Ms. Glance added the need to either form it as a corporation or a trust and explained some of those differences, and usually it is set up as a nonprofit corporation. Ms. Glance went on to explain some of the differences.

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Once the entity is formed, it completes a form describing its purpose and activities, who sits on the Board, what the relationship is among the members of the Board, and budget and financial information for three years. The IRS will make a determination based on the description whether it will qualify as a charitable organization.

As the Foundation operates, it will be maintaining financial records, and each year the Foundation will prepare a calculation of the public support to make sure it is meeting the requirements. Ms. Glance said if a Public Charity does not meet the requirements it will become a Private Foundation. There was further discussion of whether being structured as Supporting Organization would prevent that, and Ms. Glance went on to explain the three types of Supporting Organizations—Type 1, Type 2, Type 3. Type 3 does not have the structural relationship with the organization and is not really tied to activities. Congress said it does not have the kind of oversight needed, and they were leery of Supporting Organizations so they included some rule limits and limits on giving grants unless they get certain information to ensure it is a Type 1 rather than a Type 2 or 3. There are other rules imposing tax on people related to the Supporting Organization, preventing having a relationship with someone sitting on the Board, whether the transaction is at fair market value, etc., that make the Supporting Organization a little less favorable than a Public Charity.

Mr. Walker asked how it would fit under the rules if in the first year it turns out that the Friends of the Library is the major supporter. Ms. Glance said since the Friends of the Library is also a Public Charity, it would be considered good support. Ms. Baca expects in the beginning the Library District and Friends of the Library may be the primary supporters. Mr. Walker provided examples of other libraries where the Foundation, the Friends of the Library and the Library Board are separate entities or where the Friends of the Library and the Foundation are a single entity.

Mr. Voute asked why PPLD is considering changing its present model, and Mr. Walker said it is only a discussion, and Mr. Stuart got the sense that the groups were not working well together, but their Friends of the Library is not as strong.

Dr. Mancha expressed concern about setting it up so it will be cooperative forever, and there was discussion about how the organization is structured, the size of the organization, and strategies to insure the Foundation does not take a different path.

Dr. Mancha asked if there is an optimal size. Ms. Glance said a larger Board may be helpful if the Foundation needs assistance in fundraising. More than 15 would require an Executive Committee. Ms. Glance suggested 7-15 being a comfortable size, which might be closer to seven at the start.

Mr. Stuart asked for the timeline and sequence for getting the tax-exempt status. Ms. Glance said the entity first forms the Articles of Incorporation and then works out the Bylaws. Then it files the tax-exempt application, and she explained it could take 2-3 weeks or 2-3 months, and usually the longer time period would require responses to additional questions.

Mr. Stuart asked if the Foundation can continue to function until it gets the tax-exempt status. Ms. Glance said it could as long as it is filed within 27 months and relates back to the date of incorporation; however, the Foundation cannot represent to potential donors that their contributions will be tax-exempt until it obtains the tax-exemption. Ms. Glance said if there is a large potential donation the Foundation would not get without the tax-exempt status, there is a way to expedite the process.

Mr. Stuart explained that our vision is for the Friends of the Library to continue as they do now, operating the book store and encouraging memberships, and the Foundation will not be a membership organization. The purpose would be to build an endowment to use when money is tight or to build additional libraries. The library could look to the Foundation to provide big dollars with the Friends of the Library funding smaller projects.

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Dr. Mancha posed possibilities such as the Foundation setting up a business to provide funding or a separate Friends group in support of the Pueblo West Library, for example, and suggested that the structure be set up to accommodate future scenarios. There was additional discussion about members of the Friends Board serving on the Foundation Board, and it was felt that participation from the Friends would short-circuit misunderstandings, and there should be a team working together to benefit the library. Ms. Glance said there can be designated spots. Ms. Kester said the Friends of the Library is discussing a significant contribution to form the Foundation. Dr. Mancha said he would like to see the three organizations as a body of equals, and Mr. Stuart cautioned against favoritism from staff toward either organization.

Ms. Baca suggested a discussion about staff because the Foundation may not be able to support paid staff initially, and she asked if the library staff can bridge that gap. Ms. Glance explained that the library can provide staff time and resources for the Foundation, and when the Foundation is able to have paid employees, they could be library employees dedicated to fundraising with the Foundation paying the salary as a contribution to the Library District.

Mr. Miltner asked about other costs, and Ms. Glance said the Foundation will have to file tax returns, so there may be accounting fees with preparing tax returns. There are nominal fees for filing with the Secretary of State for solicitation registration, for example. Initially, the Foundation will probably not need office space, and the Library District might allow the Foundation to use space in the library for meetings.

Ms. Baca asked if the Foundation Board would appoint Jon Walker as the Executive Director of the Foundation. Ms. Glance said it could, and there was discussion that initially the Foundation would have to operate on a shoestring with the Director providing some direction and the CFO providing assistance, and at the very least there needs to be a point person for the Foundation.

Dr. Frank cautioned about confusion from the donor that may result from sharing roles between the library and the Foundation, and those roles and missions need to be well-defined, and she asked for alternatives to sharing roles. Ms. Glance said when the Foundation is not in a position to pay salary, it must rely on Library District staff or volunteers from the Library Board because it is unusual to find someone willing to do that work on a voluntary basis. Dr. Frank asked if the organization must be in place before seeking grants, or if there is a way to fund the position before the Foundation is formed. Ms. Glance suggested forming the Foundation first, and there was discussion of the possibility of obtaining some grant funding without devoting huge resources to effort. There was additional discussion that the Foundation is not likely to go far without a development officer, but it was clear in PPLD's case that their first step had been to form the Foundation. Mr. Walker said PPLD opted to pay the Foundation Director a flat salary, and she was hired and continues as a member of the library staff.

Mr. Walker pointed out that the library is fortunate to have the Friends of the Library, and they have offered to provide a significant donation to get this started and to help "prime the pump." The Board of Trustees would have to be willing to allow some staff support initially help file paperwork and taxes. Mr. Walker asked Ms. Glance to estimate the dollar amount needed to form the Foundation. Ms. Glance said the fees themselves are relatively low, estimating about \$1,000 for filing fees, but paying someone else to do the paperwork could run anywhere from \$5,000-10,000. Ms. Glance said there are consultants who can write grants before the Foundation hires an Executive Director or Development Officer. Ms. Baca said she had seen start-up fees of about \$5,000.

Mr. Walker said as we take the next steps to create Bylaws for this group, he encouraged the group to discuss who will serve and the size of the Foundation Board. It was suggested it begin at 7-9 with the potential to grow to as many as 15. Ms. Kester said it will be important to have people who are not Trustees or Friends of the Library who can bring a different viewpoint to the Board. Ms. Bregar said her experience had been that often Foundation Boards are expected to have

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members who or influential in the community and will help raise money for the Foundation by organizing events or approaching potential donors. The people on the Friends of the Library are already giving their time, and the Foundation will need go-getters. Ms. Glance said the Foundation may need to increase the number of Board members to achieve that. Ms. Bregar suggested a larger Foundation Board with an Executive Committee or a small Board of Directors with fiduciary responsibilities and an Advisory Board who have connections in the community but do not necessarily participate in meetings.

Mr. Stuart asked who develops these Bylaws and how to proceed. There was additional discussion about the need for more thought on who should serve on the Foundation, a suggestion to go through donor records to identify people who might serve on the Foundation Board, but Ms. Glance suggested starting with a small group to define the Bylaws and structure. Ms. Kester pointed out that she had recently gone through this, and there are resources available to help prepare the required documents, and it seemed the legal and financial expertise were at this meeting to provide any further assistance needed.

Mr. Walker suggested forming a committee, perhaps bringing in one or two from outside the group, to work with legal and financial experts to come up with a suggested set of Bylaws and Articles of Incorporation to bring back to the Board of Trustees to review and make any changes needed in order to move forward. Mr. Walker recommended Ms. Kester as a member of the committee. Mr. Stuart suggested the Board discuss this at the next Work Session.

Ms. Alexander suggested that there be some analysis done on becoming a Supporting Organization or a Public Charity, and what effect that decision would make on the Bylaws. Ms. Alexander said there seemed to be some risks with both, and that might be a reasonable first step. Mr. Stuart suggested the committee might be charged with including that analysis. The committee's recommendation could be changed or accepted. There was additional discussion about the added restrictions on a Supporting Organization rather than a stand-alone Public Charity, but the primary concern was to prevent the Foundation from changing its purpose in the future which can be accomplished within the Bylaws

Mr. Stuart asked if there were any other questions.

Ms. Kester posed a question in the case of someone who wanted to give \$100,000 with the income to support children's programming, and Ms. Bregar understood that if the gift is accepted, it would be considered "restricted" funds that must be used in that way. Ms. Glance said if that is too much money for children's programming, there is nothing wrong with entering into a negotiation to gain some flexibility to allow the use of the funds in other ways. Ms. Kester asked if it is the vision of the group to allow that, and Mr. Stuart said it is. Mr. Walker agreed as long as it will benefit the Library District in some way.

Ms. Alexander asked if the members of the committee would be selected tonight or at the Board Work Session, and the preference was to work on it at the Work Session. Ms. Alexander said her comment would be to make sure there are representatives from legal and accounting.

**III. ADJOURNMENT** There being no further business, the meeting adjourned at 7:15 p.m.

Respectfully submitted,

Jane Carlsen  
Secretary