

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

March 8, 2011

I. CALL TO ORDER AND ROLL CALL

Mr. Stuart called the meeting to order at 4:05 p.m.

Board Members Present: Jim Stuart, President; Sherri Baca, Vice President; Frances Terrazas-Alexander (*arrived at 4:35*); Marlene Bregar (*arrived at 4:23*); Philip Mancha; Roy Miltner

Board Members Absent: Katherine Frank

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

Attorney Present: Nicholas Gradisar

II. CORRECTIONS OR MODIFICATIONS TO THE AGENDA None.

Mr. Walker welcomed Jane Palmer back to the library district and provided some background on her work with the library prior to returning as the Director of Public Services.

III. DISCUSSION ITEMS

A. Results of Poll for Alternate Date/Time for Board Work Sessions

Mr. Stuart announced that at the February 15 Work Session, the Board requested a poll of alternate dates or times to consider for Board Work Sessions. The results of that poll will be discussed. Mr. Walker distributed the poll results, and none of the days/times were convenient for all seven Board members; however, Monday at 6:00 p.m. was convenient for six Board members. After expressing concern about changing the date without the input of all Board members, it was decided to add the discussion to the agenda for the regular Board meeting in hopes of finding a time that will work for everyone.

B. 622 S. Union Lease Renewal

Mr. Stuart said the library district has leased property at 622 S. Union since November 2001. The space originally was used during the construction of the Rawlings Library as temporary quarters for certain library operations such as Finance and Facilities. Beginning in 2005, the library district sublet a large portion of the property to the Friends of the Library at cost. An option for a five-year lease renewal has been negotiated and is due by April 1, 2011. It is recommended the Board approve renewal of this lease.

There was background provided regarding the terms of the lease and the renegotiated term which limits annual rent increases to 2% resulting in a savings of \$3,600 over the five-year term. There was additional discussion regarding the arrangements between the landlord and library and advantages of renewing the lease. Mr. Walker indicated that the library is getting a rate that is slightly below market. The amount of the lease renewal requires Board approval.

Board members agreed this should be added to the Regular Meeting agenda.

C. Pueblo Library Foundation

Mr. Stuart said the Trustees have heard a proposal from the Southern Colorado Community Foundation (SCCF) concerning the establishment of a Pueblo Library Foundation. Further discussion will take place with presentations from the library's attorney and finance officer.

Mr. Gradisar distributed an outline of the steps for the Board to consider for a PCCLD Foundation. Mr. Gradisar said the first step is to establish a Not for Profit Corporation. A determination needs to be made on how it will be organized and relationships with the Library Board of Trustees. This is an area that merits additional investigation because it is important for it to be a "public" foundation and

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controlled by a public entity such as the Library Board. The Bylaws would have to cover how Board members would be selected, and for it to be a non-profit, there would have to be some specific language so none of the assets would fall to a private person or organization if the foundation ever dissolves.

Mr. Gradisar said those are pretty easy steps to take once the decisions are made. The more involved portion is getting the tax-exempt status. The organization would have to apply for an EIN number and fully describe what it will be doing in terms of fundraising and set a budget of anticipated receipts and expenditures for a two-year cycle. The IRS will provide a determination letter that the requirements have been met, and the IRS reserves the right to review to make sure it does what it said it would do and is operating as a charitable organization. Mr. Gradisar said there is a presumption that it is a private foundation unless notice is given that it is public and it meets the criteria of getting at least one-third of its support from the public. That might be easier to prove if the Board controls the foundation. *(Ms. Bregar arrived at this point.)*

Ongoing requirements are for the foundation to file an annual tax return with the IRS, although it would not be required to pay taxes, but it must be filed.

Mr. Stuart asked if there is an advantage between private and public foundations. Mr. Gradisar explained the primary difference is a public foundation must distribute 5% of the assets annually or pay an excise tax. Mr. Stuart asked if it would have a different 501(3)(c), and Mr. Gradisar said it would not. Mr. Stuart expressed a preference for a public foundation. Mr. Gradisar said the idea would be that fundraisers are making an appeal to the public; not just to a single family or organization.

Mr. Walker said he spoke with the Pikes Peak Library District (PPLD) foundation representative, and they raise money in a variety of ways with some money received undesignated. Mr. Walker said the library sends out an annual fundraising letter, and the donors could be asked to give to the library foundation instead. Mr. Gradisar said that is the kind of thing the IRS would want to see. Mr. Gradisar said the purpose of the foundation would have to be identified, such as "limited to the support for the library and its educational programs."

Mr. Stuart asked if the library might need to get a tax attorney involved, and Mr. Gradisar responded it would be important to have a tax attorney review it. Ms. Baca said she would feel better with a tax attorney to make sure it is set up right. Ms. Baca offered to share the contact information for Heidi Glance from Holland & Hart in Denver, who has served her organization, with Mr. Walker.

Mr. Gradisar said other issues to resolve will be whether the foundation will have staff. Mr. Stuart said at PPLD the foundation representative they spoke with worked for PPLD. Ms. Baca said it might be a subsidized position until the foundation is strong enough to hire its own staff, and that works well if the foundation can use library staff.

Mr. Stuart said if we are going to do this by the end of the year, these decisions will have to be made by mid year, and he suggested that the Board either devote a Work Session for an organizational meeting or hold a special meeting to discuss the details of how this will work.

There was a discussion whether examining the steps was premature if the Board opts to use the SCCF, and Mr. Gradisar suggested the Board would want to have an advisory committee at the very least. There was further discussion whether using the SCCF would prevent setting up a foundation in the future and moving the funds. Dr. Mancha said what Mr. Miltner was asking is which way the Board wants to do this, and the other decisions will flow from that decision. Mr. Stuart said even if they use the SCCF, things will have to be decided organizationally.

Mr. Stuart said the first question may be whether to use the SCCF. Mr. Gradisar cautioned that once you start with SCCF you may not be able to get all the money back, depending on how the contract is written, and there was additional discussion regarding donor designations which may prevent removal of the funds. Dr. Mancha emphasized that this is a long-term relationship, and he does not like the idea of paying a fee although he understands the SCCF provides services. *(Ms. Alexander arrived at this point.)* Ms. Bregar said it is important to balance the fees with the value of the staff time and ask if the 1% fee is more than what it would cost in employee man hours. Ms. Bregar encouraged the Board to make sure in legal terms to find out if in fact that money could be moved into the library's own

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foundation. Mr. Stuart asked Mr. Gradisar to verify that. Mr. Gradisar added that as long as money is put in by someone other than the library, the money can be paid directly to the library, but if the library puts money in, the library cannot get it back directly. One way to get around that would be to have the foundation pay a contractor directly.

Mr. Stuart asked if Ms. Brogan had anything to add. Ms. Brogan provided information from the Arapahoe Library showing the foundation expenses from several years ago, some of the fees provided pro bono, which amounted to about \$100,000 annually. Ms. Brogan said the key consideration is the GASB requirement which considers a foundation a "component unit." Ms. Brogan provided information regarding the three criteria for component units, which means that it must be audited, and there is an expense to that. Ms. Brogan said the component unit requirement could be significant.

Mr. Walker and Mr. Stuart met with Dee Fowler at PPLD, and she had a lot of good information. The PPLD Foundation was established in 2004 and has been very successful, averaging \$900,000 annually in proceeds. Mr. Walker pointed out that Dee Fowler is a trained development specialist, and she has done that for a long time working previously for a major university and the El Pomar Foundation, and he attributed the success to that experience. Dee Fowler said she is most successful with capital projects or "bricks and mortar," and it is more difficult to ask for donations for no specific purpose. She said it works better to identify projects to fundraise toward.

Mr. Walker said another thing common in libraries is a three-point relationship between the Library Board of Trustees, the foundation, and the Friends of the Library. That relationship is always interesting, and in some cases the foundations and the Friends are one, which is the case at Denver Public Library. Dee Fowler said there is a possibility of connecting the Friends and the foundation in Colorado Springs. Mr. Walker said this has worked in different ways. Ms. Baca said the Friends of the Library could even expand their role to include a foundation, which might be a good strategy. The Friends of the Library do a really good job of fundraising, and they do it in a very specific way with the book store. Mr. Walker said where it gets complex is in that fundraising piece, and the governance can be an issue as well.

Ms. Bregar said that is probably a discussion we would need to have with the Friends, and there was significant discussion about the importance of communicating with the Friends so they understand that the foundation would not impose on their role and how the Friends might support the foundation. Mr. Stuart said the Friends of the Library's mission has become clearer, and they are more well organized in making money and delivering it, and he thinks there should be two separate entities, but he does not see a conflict. Dr. Mancha emphasized there should be some flexibility to allow the Friends to do different things than what they are doing now, and the importance of thinking long-term.

Mr. Stuart said the first step would be to discuss this with the Friends Board, and they would appreciate being part of this process and to say how they would like to participate.

Mr. Walker suggested that one way to proceed with the Friends would be to empower the President and the Executive Director to present it to the Friends Board and get their response. Mr. Stuart agreed that could be done as early as next week.

Ms. Alexander raised the question of whether the two organizations would be competing for donors and whether there would be confusion in the community in how the two are different. Ms. Alexander also asked what the expectation is with regard to income with \$100,000 in anticipated operating costs, noting that the \$900,000 income in Colorado Springs is not likely in this community.

Mr. Stuart addressed the question of competition in the community and pointed out the Friends of the Library is a small membership organization, and the foundation should not be a membership organization. One is for "bricks and mortar," and the other is for small projects. Ms. Baca said you would want layers and not overlapping purposes.

Ms. Bregar asked if they are talking about an additional person or using people in the district. Ms. Alexander said people will want to know what percentage of their contribution is going to administrative fees. Ms. Baca asked if there are implications of shared employees. Ms. Alexander said at PCC, the foundation reimbursed PCC for their employees' time.

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Mr. Walker said these are questions he has been considering, and the library is not in a position to hire someone like Dee Fowler, although that may be possible down the road as the foundation matures. He sees the library supporting it, and the library district has some people working on development for grant writing and fundraising now. Mr. Walker said he sees that continuing, but how that works in terms of how they are employed needs to be clarified. Mr. Walker anticipates the library district would have to be prepared to subsidize the staffing. Mr. Walker said there are details to learn in terms of tax implications and how that works. Mr. Walker said the piece that we are not doing is what Ms. Brogan was talking about, and there is not a component unit that will be audited, but accounting for a foundation would be subsidized by the library district.

Dr. Mancha said one of the advantages Mr. Banner pointed out is that the SCCF has the infrastructure there. Mr. Walker said there is also an advantage in managing the books and investment decisions.

Ms. Brogan said at Arapahoe the foundation had its own bank account and made investment decisions, but she did much of their work, but they had a lot of expertise on the foundation board that provided pro bono services. Dr. Mancha said that could be a concern in Pueblo because there are not a lot of people here with that kind of expertise. Ms. Baca said there is enough expertise to manage a small account, so at the beginning it would be fine.

Ms. Bregar suggested the Board make a large "T" chart to consider the pros and cons with all the information. Mr. Stuart agreed that it appears a special meeting is needed because it is too important, and we need to get off on the right foot.

Mr. Walker suggested first discussing the initiative with the Friends. The Friends have a meeting next Tuesday.

Mr. Walker said for the Board retreat he is not sure who the right person might be and asked if Heidi Glance might help, or she may be able to suggest someone. Mr. Miltner suggested it be someone who is neutral. Ms. Bregar said there will be a lot of questions, and Heidi Glance could answer the questions and not care whether we set up our own or use the SCCF. Mr. Walker said he would contact Heidi Glance and see if she could recommend someone to facilitate the process for us, and he will have that available to discuss with the Board next Thursday. Ms. Baca added that Heidi Glance focuses on nonprofits. Then the Board can talk about setting a meeting date.

Ms. Alexander asked what the drive was to implement this before the end of the year. She asked if there is a project pending or if it is just a tool to stay focused, because she does not want to be pressured into making a decision hastily. Mr. Walker said the Annual Plan has this as a goal for 2011, but there is nothing at risk if it is not in place before the year ends. Mr. Stuart said the impetus was the election last fall, and the interest is in building a corpus for when the library really needs extra funding or to protect itself against an economic downturn.

D. Partnership with Senior Resource Development Agency (SRDA)

Mr. Stuart said SRDA and PCCLD expect to renew a partnership first entered into in 2010. The terms of the partnership is for SRDA to pay PCCLD to update the Southeast Colorado 2-1-1 database of community service agencies and government programs available to citizens in southeastern Colorado. The renewal is expected to cover the period from April 15, 2011 through September 30, 2011. Richard Tucey, Special Projects Librarian, is expected to oversee this project once again.

Mr. Walker said the library had this project a year ago, and SRDA paid the library to create a database for a six-month project in which they were successful in getting Pueblo done. For the renewal our crew will now expand the database to cover more of southeastern Colorado. *(Ms. Baca left at this point)* Richard Tucey has returned to work with the library part-time, and his hours will be expanded to cover this project as well as the same clerks who were trained and are willing to return for this project. Mr. Walker said it is less than the \$25,000 threshold requiring Board approval, but he thought the Board should be aware that this is happening. Mr. Walker said this is a common role for libraries.

Ms. Bregar shared her experience that this is a wonderful tool for people to have, and it is easy for service providers to use.

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Ms. Alexander asked if it had been a good partnership. Mr. Walker said SRDA took this on and found that they were able to answer the questions and provide customer service, but they wanted assistance in maintaining the database. Libraries are good at cataloging information, so the partnership worked very well. Mr. Walker said the library billed SRDA for the time allocated to the project, and the staff are part-time and are happy to work the extra hours. Mr. Walker concluded that it is a win-win project.

E. Chamberlain Foundation

Mr. Stuart said PCCLD has been a beneficiary of the Chamberlain Foundation since it was established in 1979, and the gross proceeds from the fund to PCCLD were provided for the last five years. PCCLD has been informed that the Chamberlain Foundation intends to transfer the assets to the Southern Colorado Community Foundation. The attorney will report to the Board on this matter.

Mr. Gradisar said Mr. Walker asked him to review the documents, and there was a trial in Pueblo over litigation that commenced between the Chamberlain Foundation and US Bank. The funds total about \$6 million, depending on the economy, and part of the income is from coal leases that will expire soon. The Chamberlain Foundation is a private foundation, so they are required to pay 5% annually, and they have not been able to do that without invading the corpus of the trust. The IRS rules require excise taxes if it does not pay 5%, which would deplete the corpus as well. This is why it is important to be treated as a public foundation with an advisory committee to invest the assets.

Mr. Gradisar said the Chamberlain Foundation has filed a request to move the assets to the SCCF where it would be considered a public foundation and would not be required to distribute 5% annually. The library is one of several beneficiaries to receive 5% of the income, and the other 95% is split between other charitable organizations. US Bank has responded that they do not want it moved, and it has been acrimonious. US Bank earns \$60,000 a year in fees, and the return has been less than satisfactory. They have reached an agreement that they will charge no more than 1% a year in fees. Mr. Gradisar said the judge has not yet made a decision.

The Chamberlain Foundation wants to move the funds to a public foundation so there will be funds available in the future because the original intent was that the foundation wanted only the income to be distributed. If the Chamberlain Foundation prevails, the library will receive funds in perpetuity, but if US Bank is successful, the library will get money, but the funds will come to an end. None of the beneficiaries have taken a position. The Chamberlain Foundation had four attorneys and legal fees of \$35,000.

Mr. Walker said his concern is the damage to the Chamberlain Foundation done by spending \$35,000 on attorneys. Mr. Walker said we saw this with the Leidigh Trust, and the trustees appear to only be interested in lining their own pockets and were not concerned with wishes of the Leidighs. Mr. Gradisar added that the returns from US Bank were less than 5% a year, which may be understandable now, but on average the returns should have been higher than what they were.

Dr. Mancha asked if the library should take a position, and Mr. Gradisar said it is too late for that because the trial took place last Friday. Mr. Gradisar said what is clear is there will be a different trustee, and the advisory committee will recommend a change to the trustee. Mr. Gradisar said Judge Mattoon will make a decision some time after April 11, and the library will be notified of the outcome.

IV. ADJOURNMENT

Mr. Stuart reminded Board members that the next Regular Board Meeting will be held on Thursday, March 17 at the Lamb Library.

There being no further discussion, the Work Session adjourned at 5:29 p.m.

Respectfully submitted,

Jane Carlsen
Secretary