
MEMORANDUM

TO: Poudre River Public Library District

FROM: Seter & Vander Wall, P.C., Kim J. Seter, Esq., Elizabeth A. Dauer, Esq., and Cameron J. Richards, Esq.

DATE: January 9, 2019

RE: Legal Status Report for January 14, 2019, Trustees' Meeting

Resolution Regarding Banking Authorization

Task: Prepare a banking resolution conferring signature authority to the new Finance Officer in place of Jeff Barnes.

Status: With the retirement of Jeff Barnes, his successor needs to be granted the authority to conduct the District's financial, investment and banking transactions. The attached draft resolution names the three individuals with authority to take such action on behalf of the District in their official capacities and rescinds any former delegations of authority.

Action: Pass the Resolution Regarding Banking Authorization upon motion, second and majority vote of a quorum present.

Library Policy Regarding Consideration of TIF Financing Proposals

Task: Work with the Executive Director to draft a policy concerning the time frame for the District to review the impact of any TIF proposals.

Status: Following discussion at the previous two meetings, the Executive Director and the legal team propose the following language for the District's policy on reviewing TIF supported projects:

“For any proposed Urban Renewal Plan, or substantial modification to an existing Urban Renewal Plan, submitted by the Fort Collins Urban Renewal Authority pursuant to C.R.S. 31-25-107(9.5) within the boundaries of the Library District, the Library District shall deem the 120 day negotiating period established by C.R.S. 31-25-107(9.5)(c) to commence on the date the Project

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Review Committee, or any other similar committee formed by the Fort Collins Urban Renewal Authority, has delivered a copy of its written opinion and recommendation regarding the proposed project, allocations of incremental property tax revenue and mitigation of impacts to the Library District. This policy shall not function as a waiver of any right granted to the Library District under the provisions of C.R.S. 31-25-107(9.5).”

This policy takes into account the stated intent that the County and the URA will proceed under the guidelines of the draft IGA with a Project Review Committee. If the URA decides to proceed with other policies and procedures for the implementation of the project, this policy may require modification. The District has explicitly reserved all rights granted to it under the URA law, which will preserve the Districts statutory options in the event a project does not go through the Project Review Committee process.

Action: The policy is presented for second reading as the prior version was presented at the December meeting. The policy can be adopted upon motion, second and majority vote of a quorum of trustees, or can be held over for further comment or action.

Intergovernmental Agreement Re: TIF Financing

Task: Tax Incrment Financing is an economic development tool usually utilized to fund Urban Renewal Authorities. TIF financing affects the library because:

A. The assessable value of a TIF area is determined and then fixed.

B. The revenue derived from the library mill levy on any growth in assessable value for a period of 25 years thereafter is called the Tax Increment.

C. The Tax Increment is diverted from the library to an Urban Renewal Authority to be used to finance public infrastructure or provide other incentives to development.

Historically, affected taxing entities had no say in the imposition of TIF. Recent laws have given taxing entities a voice in whether or not their incremental tax revenue should go entirely to the URA. It is still the presumption that new development drives the increase in the Tax Increment and should be given to the URA. However, taxing entities now have a forum to argue otherwise.

Larimer County considered forming a TIF financing committee by intergovernmental agreement to assist the County and taxing entities in developing information to fairly distribute the opportunity cost of TIF.

Status: We reviewed and commented on the drafts of the proposed IGA and provided those comments to staff for consideration. As of October 3, 2018, no subsequent draft or final IGA has been submitted for review or approval.

At the September meeting, Trustee Wise reported that he has joined the URA board as a commissioner. Discussion at the URA had focused on what timeframe was appropriate for an impacted taxing entity to review projects, financial impact models, and possible mitigation steps including negotiating a reduced increment from the URA. Trustee Wise was seeking input from other Trustees, staff and legal counsel. Suggestion of a policy for reviewing a TIF was considered.

Legal Counsel and Director Slivken were originally working on a policy that would permit 60 days to review any proposal concerning TIF financing before a Board vote was necessary. This time period would allow for 2 Board of Trustees meetings before a decision is rendered. However, the policy needed to sync with the IGA, which may impact the time available. Under the draft agreement a Public Review Committee is formed to analyze a project using an approved Financial Impact Model. Additionally, Colorado Law provides a default period of 120 days for an impacted taxing entity to negotiate an agreement concerning what increment goes to the URA. C.R.S. § 31-25-107(9.5).

At the November meeting, Trustee Wise informed the Board that the County did not receive substantial buy-in from various stakeholders to warrant advancing the proposed IGA. Accordingly, the County Attorney is not submitting the IGA for adoption by either Larimer County or any other taxing entity in Larimer County. However, the stated intent of the parties will be to use the draft IGA as “principles” to guide TIF use in Larimer County. How this will be actually implemented is unknown.

Update: The decision to proceed with the general terms of the IGA provides some guidance on how these projects will be handled in the future. However, unless certain components of the IGA are formally adopted as policy by the URA, there is no assurance these will be followed nor will there be any recourse to the Library District, or any other taxing district, if the URA deviates from the procedures.

Legal counsel has prepared a draft letter to the URA Board which is

attached to this report. The purpose of this letter is to request the URA to adopt key provisions of the proposed IGA, such as the Public Review Committee process, as policy of the URA consistent with the procedures outlined by the now defunct IGA. This letter serves two purposes: 1) It puts the URA on notice of the District's policy concerning review of TIF proposals; 2) It will facilitate discussion and hopefully result in clear procedures on how the URA will address TIF funding proposals with impacted taxing districts.

Action: Review and discuss the draft letter. Consider authorizing legal counsel to send the letter, either as proposed or as modified, by motion, second and majority vote of a quorum of the Board.

Review of Bylaws

Task: Review the District's bylaws for any changes or updates that are necessary or inconsistent with changing law.

Status: The review of bylaws was requested as part of the ongoing review of policies. We will work with the committee of Ms. Quijano, Mr. Frey and Ms. Schultz to make appropriate and necessary revisions.

A mark-up copy will be provided to the Committee for review and comment prior to presentment to the Board.

Pursuant to the bylaws, any proposed amendment must be presented to the entire Board at least 15 days before a vote.

Action: None at this time.

Options for Funding Future Facilities Development

Task: Summarize financing options the District can consider to fund future facilities development.

Status: The District has three options to pay for the construction of new libraries or the improvement of existing branches: (1) Cash out of reserve/budgeted funds; (2) General obligation bonds; and (3) Lease/purchase financing with or without certificates of participation. Each is summarized below. We recommend use of certificates of participation as a simple and cost-effective approach.

Cash on Hand: Availability of this "pay as you go" option depends on the scale of the project, the District's financial position, and budget considerations for not only the next year, but in years to come. It is often

best to utilize cash on hand to provide current services.

General Obligation Bonds: The most common form of government financing. Bonds are secured by the full faith credit and taxing power of the government issuer. Bonds offer low interest rates and are attractive to investors due to their double tax-exempt status. However, the issuance of debt through general obligation bonds requires an election as does the corresponding increase in taxes pursuant to Art. X, §20 of the *Colorado Constitution* (“**TABOR**”).

Lease/Purchase with or without Certificates of Participation (“COP”): Libraries are in a unique position to take advantage of sale/lease back financing. From a legal perspective, this method involves selling or leasing a property that is owned by the District. The funds received are used to buy new or improve old facilities. The property sold/leased by the District is leased back to the District which pays rent consisting of principal and interest to the investor[s]. The lease back to the District contains an option to purchase the property at the end of the lease for a nominal fee, often \$1.00. Lease/purchase financing does not constitute long-term debt obligations of the issuing authority, and is therefore exempt from state and local laws that require voter approval under TABOR.

We recommend lease/purchase financing as the best option. However, we are ready to assist on any method the District may ultimately pursue.

Action: No action is required at this time.

Important Case Updates

Pornography Is Not Education v. EBSCO Industries, Inc., and Colorado Library Consortium

On October 10, 2018, Plaintiff Pornography Is Not Education, a Colorado non-profit corporation, filed suit against EBSCO and Colorado Library Consortium (“CLiC”) in Arapahoe County District Court alleging EBSCO and CLiC knowingly provide and make available sexually explicit and obscene materials to school children in Colorado through the EBSCO databases. Claims are being brought under Colorado’s Consumer Protection Act and federal laws concerning provision of obscene materials to minors.

Seter & Vander Wall is representing CLiC in this suit. Plaintiff is being represented by the Thomas Moore Society, an organization out of Nebraska that provides legal services in support of socially conservative causes. We will provide updates in the future as we are able.

Important Legislative Update

HB 19-1048 regarding library district trustee elections was introduced on January 7, 2019. The bill is ambiguous in its current form, but we interpret the bill to accomplish the following:

- A. Creates different classes of library districts:
 - 1. Those with appointed trustees who determine the length and limitation on number terms in their bylaws. -108(3)(a)
 - 2. Those with elected trustees with 4-year terms and term limits as determined by the forming government(s). -108(3)(a)
- B. C.R.S. § 24-90-108.5 purports to apply only to elected library district boards.
 - 1. After the date the bill goes into effect, all new library district formations will require an election to determine whether the trustees will be appointed or elected.
 - 2. The establishing entities of existing library districts may require an election to determine whether future trustees should be appointed or elected.
 - 3. If the voters determine that trustee should be elected at the initial election, section (2)(a) requires a separate election of the trustees at the next regular county wide election in odd numbered years.
 - 4. Subsection (4)(a) is a recall provision. A petition with 50 signatures filed more than 90 days before a trustee's term expires removes the trustee and forces an election for a new trustee at the next County election.
- C. Miscellaneous requirements.
 - 1. Requires all Trustees to take an oath or affirmation within thirty days of appointment or election.
 - 2. Requires thirty-day written notice to the establishing entities prior to any amendment of the District bylaws.

We are tracking this bill and will provide further update.