
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: April 3, 2019

RE: Legal Status Report for April 8, 2019 Trustees' Meeting

Annual Administrative Resolution

Task: Review and approve the 2019 Annual Administrative Resolution.

Status: A draft 2019 Annual Administrative Resolution is included in your packet for review. The Annual Administrative Resolution is a house keeping matter we bring to the Board each year. The Resolution reviews and delegates responsibility for a number of annual actions the District must take. The majority of the duties are delegated to Library Staff or legal counsel. The Resolution provides documentation that you are aware of your responsibilities and have taken action to ensure compliance.

Action: Review the resolution and approve upon motion, second and majority vote.

Election of Officers

Task: Elect officers for the coming year.

Status: At the March Board meeting Trustees Quijano and Arnold were appointed to the nominating committee. It is expected they will present a slate of nominations. Nominations will be open at the meeting if additional candidates wish to run for an office. Legal counsel will assist in the voting process if necessary.

Action: Elect officers by either approving a nominated slate by motion, second and majority vote, or by electing individual officers upon nomination and vote.

Fort Collins Urban Renewal Authority Project Discussions and Negotiations

Task: Work with the Executive Director and the Board to review and evaluate the Library District’s participation in the planned Drake Road and College Avenue redevelopment.

Status: The City of Fort Collins Urban Renewal Authority (“URA”) is proposing to fund a redevelopment project utilizing Tax Increment Financing. The URA and developer, Brinkman Brothers, presented their proposal at the March Board meeting. The URA provided some information concerning the project, including estimated program costs, estimated tax increment revenues, fiscal impact modeling, and a draft intergovernmental agreement. Documents provided by the URA assume the District agrees to a contribution of 66% of its incremental revenue, or \$17,886 annually up to a maximum cap of \$573,000 for the project.

The Board has discussed the possible budget impacts of pledged tax increment revenue and concerns regarding the project. At the March meeting, the Board provided direction to the Executive Director and to legal counsel to continue discussion and negotiation with the URA.

The URA originally planned to finalize the project and plan in April. However, the URA and the Poudre School District have been unable to advance their negotiations and the final approval is delayed until that impasse is resolved.

Legal counsel has reviewed a draft IGA with the URA concerning tax increment sharing and provided a redline with comments to be passed along to the URA. The negotiations with the school district should not impact the District’s ability complete its agreement, provided the underlying plan and expected public improvements do not change following further negotiations.

Action: None at this time. Further developments will be brought to the Board for consideration or action as necessary.

TIF/URA Question re Propriety of Tax “Sharing”

Task: A question was asked at a public meeting regarding “the propriety and legality of redirecting funds approved by voters for specified purposes away from the purpose voters approved and into a different function.” A Trustee asked us to “evaluate whether the recent litigation and legislation would indicate that we could not share our general mill levy revenue for non-library purposes.”

Status: First, the District is not (through the URA committee or otherwise) determining how much of its general mill levy revenue to “share” with the URA. The law provides that all of the incremental revenue attributable to increased valuation of the Urban Renewal Project goes to the URA. The recent changes in the statute allow the District to argue that the URA should return some of the incremental revenue because the District will incur additional expense as a result of the Project.

These questions were addressed by the Colorado Supreme Court in 1980 in a case called *The Denver Urban Renewal Authority v. Charles D. Byrne et al.* As the Denver City Auditor, Mr. Byrne refused to execute an agreement allocating TIF funds to the URA because the increment would otherwise be part of Denver’s general fund and used for Denver’s purposes. In ordering Mr. Byrne to execute the agreements and upholding the agreement between the URA and Denver, the Court considered whether the tax increment financing model created a financial obligation on the City or otherwise directed the use of the City’s general funds.

The Court determined the funds generated by the tax increment and remitted to the URA to pay for the project bonds were not tax revenues of the City, nor were they revenues appropriated from the City, and that such tax increment schemes were consistent with the Colorado Constitution. Under the URA agreement the City would continue to receive the revenues it was entitled to on the property if the URA project never went forward and these were the only revenues the City had an interest in receiving. Finally, the Court noted the City was not required to approve of the project submitted by the URA and therefore consented to the allocation of tax increment revenues. The Courts reasoning is based on furthering the public interest, both local and statewide, of addressing and fighting blight.

As applied to the question presented by the Board, the District would not be considered to have “redirected” funds away from library purposes as the increment revenues generated are not funds the District can direct. While the analysis in *Byrne* is specific to the agreement in place between the Denver URA and the City of Denver, the general principals remain applicable.

Action: No action necessary at this time.

Intergovernmental Agreement Re: TIF Financing

Task: Tax Increment 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: The IGA that would formally govern this process did not have sufficient buy in and will not be formalized. However, the URA is proceeding with the general procedures that IGA outlined, namely the use of financial modeling to calculate project costs and service impact to taxing districts to help determine a fair allocation of TIF revenue.

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. The District has considered a policy for reviewing a TIF project, but has not adopted one to date.

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). Any policy should clearly delineate when this negotiation period is deemed to have begun and what the District requires to begin negotiations.

Action: No action at this time.

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.

Update: At the March meeting, the Board requested legal counsel and Ms. Miller, the Director of Finance, discuss how much in lease/purchase financing the District could pursue under its current budgetary and financial limitations. To date, this has not occurred, but a conversation will be held shortly concerning this.

Action: No action is required at this time. This item is being retained as placeholder for future considerations.

WHEREAS, Section 24-90-109(1)(p.5), C.R.S. requires the District to maintain a current, accurate map of the legal service area and provide for it to be on file with the State Library; and

WHEREAS, § 24-90-109(2.5), C.R.S. requires the Board of Trustees to respond to a survey by the state library at the close of each calendar year; and

WHEREAS, the statutes require that the Board of Trustees meet regularly at a time and in a place to be designated by the Board; and

WHEREAS, § 24-6-402(2)(c), C.R.S., specifies the duty of the Board of Trustees to designate a public posting place within the boundaries of the District for notices of meetings, in addition to any other means of notice; and

WHEREAS, in accordance with the Colorado Governmental Immunity Act, the Board is given authority to obtain insurance against liability for injuries for which the District may be liable under the Governmental Immunity Act, pursuant to § 24-10-115, C.R.S.; and

WHEREAS, concerning the public records of the District, § 24-72-202(2), C.R.S. defines “Official Custodian” to mean and include any officer or employee of any political subdivision of the state who is responsible for the maintenance, care, and keeping of public records, regardless of whether the records are in his or her actual personal custody and control; and

WHEREAS, the Local Government Budget Law of Colorado, §§ 29-1-101, *et seq.*, C.R.S., requires the Board to hold a public hearing on proposed budgets and amendments thereto, to adopt budgets, and to file copies of the budgets and amendments thereto; and

WHEREAS, the Board of Trustees desires to appoint a finance officer for the District to assist with providing financial services and to assist with the financial operations of the District, and who shall also be designated as the budget officer required to prepare and submit to the Board a proposed District budget by October 15, pursuant to §§ 29-1-104 and 29-1-105(3)(d), C.R.S.; and

WHEREAS, if required under § 29-1-603, C.R.S., the governing body of the District shall cause to be made an annual audit of the financial statements for each fiscal year; and

WHEREAS, pursuant to the Intergovernmental Agreement among the District, City of Fort Collins, and Larimer County dated December 18, 2007, the District is required to file an annual report with the City and the County by March 31 of each year; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE POUDDRE RIVER PUBLIC LIBRARY DISTRICT THAT:

1. The Board designates *The Fort Collins Coloradoan* as the official newspaper of general circulation within the boundaries of the District, or in the vicinity of the District if none is circulated within the District, and directs that all legal notices shall be published in accordance with applicable law therein.

2. The Board directs the Executive Director to file a copy of the District's bylaws with the State Library.

3. The Board directs the Executive Director to obtain bonding for the persons entrusted with the Library funds.

4. The Board directs the Executive Director to maintain a current, accurate map and file it with the State Library.

5. The Board directs the Executive Director to complete the annual questionnaire submitted by the State Library at the end of each year.

6. The Board will hold its regular meetings on the second Monday of every month at 4:00 p.m. at various library locations within the District.

7. Regular and Special Meeting notices shall be posted at: (1) the Office of the Clerk & Recorder of Larimer County; and (2) the Community Bulletin Boards at the Old Town Library at 201 Peterson Street; the Council Tree Library at 2733 Council Tree Avenue; and the Harmony Library at 4616 South Shields, Fort Collins, Colorado.

8. The following Trustees will serve as officers:

- _____ - President
- _____ - Vice President
- _____ - Secretary/Treasurer

9. The Board directs the Executive Director to obtain quotes and maintain insurance for the District, to insure the Trustees acting within the scope of employment by the Board against all or any part of liability for an injury; to insure against the expense of defending a claim for injury against the District, its staff or its Board. The Board will annually review all insurance policies in effect.

10. The Board designates the Executive Director to serve as the official custodian of public records for the District, who shall coordinate with legal counsel to the extent they maintain any public records.

11. The Board designates Rachel Miller, District accountant, as the District's finance officer. The Board designates the Finance Officer to serve as the budget officer, and to submit a proposed budget to the Board by October 15, and, in cooperation with legal counsel, to schedule a public hearing on the proposed budget; to prepare a final budget, budget resolutions and amendments to the budget, if necessary; to certify the mill levy on or before December 15; and to file the approved budgets and amendments thereto with the proper governmental agencies in accordance with the Local Government Budget Law of Colorado.

12. The Board of Trustees appoints the law firm of Seter & Vander Wall, P.C. as legal counsel for the District.

13. The Board directs the District accountant to prepare or cause to be prepared for filing with the State Auditor, if required, an audit of the financial statements by June 30. Further, the Board directs that the audit be filed with the State Auditor by July 31.

14. The Board directs the Executive Director to, no later than March 31 of each year, complete the annual report as required by the Intergovernmental Agreement with the City of Fort Collins and Larimer County which report shall include: the current state of the library system; goals and projections for the coming year; a summary of the current adopted budget; status of reserve accounts and accounts; and such other statistics and information as the Board deems to be of the public interest.

Whereupon, the motion was seconded by Trustee _____, and upon vote, unanimously carried. The Chair declared the motion carried and so ordered.

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**CERTIFIED COPY OF ANNUAL ADMINISTRATIVE RESOLUTION OF THE
POUDRE RIVER PUBLIC LIBRARY DISTRICT (2019)**

SIGNATURE PAGE

ADOPTED AND APPROVED THE 8TH DAY OF APRIL, 2019.

Poudre River Public Library District

By: _____
President

ATTEST:

By: _____
Secretary

CERTIFICATION

I, _____, Secretary of the Board of Trustees of the Poudre River Public Library District, do hereby certify that the attached and foregoing Resolution is a true copy from the records of the proceedings of the Board of said District, on file with Seter & Vander Wall, P.C., legal counsel to the District.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the District, Larimer County, Colorado, this 8th day of April, 2019.

Secretary

[SEAL]