

RECORD OF PROCEEDINGS

 O'Brien Prtg. & Stat. 90912

MINUTES OF THE NOVEMBER 3, 2010 SPECIAL MEETING OF THE PUEBLO CONSERVANCY DISTRICT

Directors Present: Sandstrom, Farley, Barela

Also Present: Administrator Rick Kidd, Councilor Don Banner

Guests: Jerry Pacheco, Pueblo City Manager; Tom Florczak, City of Pueblo Attorney; Earl Wilkinson, City of Pueblo Director of Public Works; Scott Hobson, City of Pueblo Senior Planner

Not having access into the Heritage Center the meeting was moved to the adjacent temporary City Council Chambers at 9:03. With a quorum present, the Pueblo Conservancy District board meeting was called to order at 9:10 am.

Tom Florczak:

In 2008 the City received assessments on a number of properties and the City paid those. Then they received a bill for approximately \$157,000 charged against the Ice Arena property. This issue was not resolved to City satisfaction. Earlier this year the City sought to have discussions of having the Pueblo Conservancy District dissolve and the City taking over their responsibilities. Mr. Sandstrom had told them that Judge Maes was not supportive of this action. Sandstrom met with Pacheco and they discussed an alternative of the City paying a reduced lump sum amount of \$150,000 (inclusive of individual parcels) and the District would maintain the assessments against the other entities receiving direct benefit of the District's levees. The City Council is not in favor of this. The City wants to renew talks of taking over the District.

The Council also wants more information specific to the Ice Arena parcel.

Gus Sandstrom:

Discussed the new certification of maintenance fund assessments that had just been submitted to the County Treasurer and the changes that the District had made in an attempt to make the assessments more equitable for all properties and entities receiving benefit of the District. Sandstrom said that all of the City's concerns have an answer, but they will not be given at this meeting.

Florczak said that the assessments are arbitrary and capricious and it appeared that if you had some political influence they were changed.

Sandstrom said that the District has concerns about making sure that proper maintenance and improvements will be done in perpetuity.

Banner said that when the City raised this issue that the District wanted a detailed plan for how the City will accomplish the goals and needs of the District.

Farley expressed concerns that in the end the City take-over of the District will cost the people of the City more than the \$150,000 assessment.

Banner suggested the Board have a separate meeting to discuss the issues raised. Sandstrom affirmed and said that the City had been told that there would not be a decision made at this meeting.

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O'Brien Prtg. & Stat. 90912

November 3, 2010 Minutes, Page 2 of 2

The City staff asked if they could be excused. With no objections being made, they left the meeting.

The Board continued the discussion of pros and cons without any conclusions. They asked Kidd to meet with Wilkinson to discuss District operations and responsibilities so that the City can develop a plan to meet the demands made upon the District. Banner was directed to convey this to Pacheco and that the Board will consider action at their December regular meeting. The Board decided that further discussion will continue at the next regular meeting.

The business meeting was adjourned at 10:17 am. The next regular meeting date is November 17, 2010.

APPROVED:

Gus Sandstrom, Director

Kathleen Farley, Director

Carla Barela, Director

THE PUEBLO CONSERVANCY DISTRICT

NOTICE OF
SPECIAL MEETING

DATE: NOVEMBER 3, 2010 (WEDNESDAY) AT 9:00 A.M.

PLACE: SOUTHEASTERN COLORADO HERITAGE CENTER,
201 WEST B STREET, PUEBLO, COLORADO

AGENDA

1. ROLL CALL
2. CITY OF PUEBLO REQUESTS FOR INFORMATION AND DISSOLUTION OF
THE PUEBLO CONSERVANCY DISTRICT
 - JERRY PACHECO, CITY MANAGER
 - TOM FLORCZAK, CITY ATTORNEY
3. OTHER BUSINESS AS MAY BE BROUGHT BEFORE THE BOARD

Future regular meetings are scheduled at 8:00 am on:

November 17

December 15

~~---CONFIDENTIAL---~~

LIST OF PCD IRREGULARITIES

1. No Public Notice of Director Meetings Given in Violation of C.R.S. §25-6-402(2)(c).

(a) Failure to pass a resolution at the first annual regular meeting setting a place for posting notices of meetings.

- 2007: 1/7/2007; Minutes p. 99
- 2008: 1/16/2008; Minutes, p. 73
- 2009: 1/21/09; Minutes, p. 45
- 2010: 1/20/10; Minutes, p.19

(b) The minutes do not show that notice of meetings was ever posted or given by any other means.

2. District Parcel Conveyed to Directors In Order to Qualify Them.

- No consideration paid by the Directors to the Board for the parcel.
- No motion or resolution authorizing the conveyance.
- Evidently Mr. Sandstrom signed the deed conveying the parcel to himself and the other two directors without Board authorization.
- Sham conveyance and ownership to qualify directors that defeats the purposes of the statute in ensuring that they each director has a genuine property interest in the district.
Minutes, pp. 64, 46; Deed.

3. No Official Action Imposing Assessment on Ice Plaza Parcel.

- There is no official Board action approving imposition of the \$150,570 assessment against the Pueblo Municipal Building Corporation's Ice Arena parcel (parcel #05361-35-005).
- The assessor's office cannot explain how this assessment was made against this parcel.

4. Violations Make Board Actions Void or Voidable.

- Since Board Members did not have the statutorily required property ownership in the District they were not qualified to serve as directors. Consequently, their approval of maintenance assessments is void.
- Since the maintenance assessments and other Board actions were taken without public notice required by the Open Meetings Law, the Board's actions are void or voidable.

Pueblo Conservancy District

Reasons for Dissolution and Assumption of Responsibilities by City of Pueblo Stormwater Enterprise:

- Avoidance of "Double Fees"

The City Stormwater Enterprise imposes a utility service fee based upon impervious surface area to support its stormwater and flood control mission. The fee is assessed city-wide to support stormwater, drainage and flood control projects and maintenance.

The District imposes a maintenance assessment against all property located in the District to support maintenance of the Arkansas River levee. Property owners in this area essentially pay twice for the same service.

Dissolution of the District would eliminate the District assessment and put all residents of the City on an equal basis.

- Avoidance of Duplication of Efforts and Costs

The City Stormwater Enterprise has taken responsibility for flood mapping and preparation of drainage plans to prevent flooding throughout the City. Efforts by City officials were responsible for recent FEMA action removing large areas of the City from designated floodplains, thereby eliminating the need for property owners to purchase expensive flood insurance.

The City employs engineers and inspectors who already perform flood and stormwater services, and it has qualified engineering consultants under contract to perform work associated with certification of all dams and levees.

The District has no employees and one self-employed one-person contract engineer without the resources to undertake the certification process.

Dissolution of the District and assumption of the responsibilities by City would result in increased efficiencies and reduction of costs since the City has engineers already engaged in this work effort on a City-wide basis. The City also has developed extensive contacts and working relationships with the federal regulatory agencies which increases inter-agency effectiveness.

- Responsibility to the Voters

The District is an unelected board appointed by a judge. The District imposes "maintenance assessments" on real property which are indistinguishable from ad valorem property taxes, without any opportunity for the people to vote for the board imposing the assessments.

The stormwater enterprise of the City, on the other hand, is governed by the elected City Council. If the people are unhappy with how the enterprise is run, or the imposition of service fees, the voters can replace the council members. This meets the spirit of the original Boston tea party of "no taxation without representation."

- The City is already a caretaker of District property

The City holds several extensive easements over District property for trails, utility lines and the Arkansas River Legacy Project, including the Whitewater Park. The City is responsible for maintaining the Legacy Project, portions of which are connected to the levee. Additionally, the City owns hundreds of acres of adjacent lands used for parks and recreational purposes. Dissolution of the District would simplify ownership and allow the City greater flexibility in managing these holdings for the benefit of the public.

- Elimination of Arbitrary and Capricious Assessments

The District maintenance assessment is based upon valuations last done in 1926. Thus, the owners of an \$8 million building currently pay \$0.57 while some low-value properties have high assessments. District representatives have indicated they did not want to undertake an accurate valuation due to cost. Some property owners who objected had their assessments reduced, while other property owners (the City of Pueblo Building Corporation) have been ignored. The entire assessment scheme is defective and subject to challenge.

The City's stormwater fee is based upon impervious surface area as determined by aerial photography, and treats all similarly situated properties alike. The stormwater fees are rationally related to each property's contribution to run-off and flood hazard.