

**MINUTES OF THE OCTOBER 8, 2012
BOARD OF APPRAISERS MEETING
OF THE PUEBLO CONSERVANCY DISTRICT**

Minutes of a meeting of the Board of Appraisers of the Pueblo Conservancy District held October 8, 2012 at 5 PM at the office of Banner & Bower, P.C. 115 E. Riverwalk, Suite 400, Pueblo, CO 81003.

Board Members Present: Sean Tapia, Paul Willumstad and Donna Phillips.

Also Present: Rick Kidd, District Engineer and Donald J. Banner

Mr. Kidd noted that notice of this meeting had been duly posted.

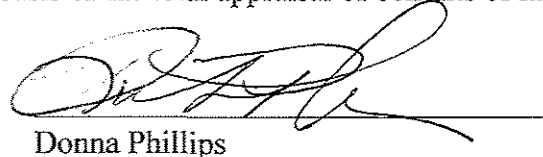
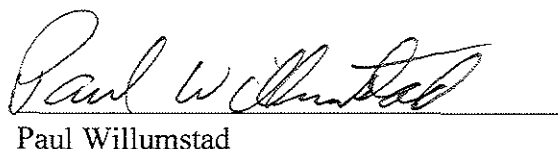
It was noted that the Board had originally been appointed by Court Order on December 19, 2011 by Judge Maes, then presiding judge and the appointments were reconfirmed by Judge Alexander by Court Order of October 4, 2012. That Court Order of October 4, 2012 also provided for reducing the percentage of the maintenance fund assessment to 1% of the total appraisal of benefits as determined by the Directors of the District upon recommendation of the Board of Appraisers.

The Board of Appraisers has met with and received and reviewed a Final Report dated September 25, 2012 designated "Pueblo Conservancy District Assessment Project Development of Assessment-Phase II". This Report was received at a meeting of the Directors of the District at which time the team that researched and completed the Report made its presentation to the Directors of the District who were also the members of the Board of Appraisers. Upon motion made and duly seconded, it was

RESOLVED, that the Board of Appraisers adopt the findings and conclusions as set forth in the Report referred to herein and recommends adoption by the Directors of the District of said findings and conclusions and the methodology set forth therein for determining a fair and equitable maintenance fund assessment.

RESOLVED, that the Board of Appraisers reports to the Supervising Court the description of lands to be included within the boundaries of the Pueblo Conservancy District and the description of lands to be excluded from the boundaries of the Pueblo Conservancy District.

RESOLVED, that the Board of Appraisers recommends to the Directors of the District a maintenance fund assessment apportioned on the basis of the total appraisal of benefits of land included in the boundaries of the District.


Sean Tapia
Donna Phillips
Paul Willumstad

**MINUTES OF THE OCTOBER 8, 2012
SPECIAL MEETING
OF THE PUEBLO CONSERVANCY DISTRICT**

Minutes of a meeting of the Directors of the Pueblo Conservancy District held October 8, 2012 at 5 PM at the office of Banner & Bower, P.C. 115 E. Riverwalk, Suite 400, Pueblo, CO 81003.

Board Members Present: Sean Tapia, Paul Willumstad and Donna Phillips.

Also Present: Rick Kidd, District Engineer and Donald J. Banner

Mr. Kidd noted that notice of the meeting had been duly posted.

The recommendations of the Board of Appraisers were considered by the Directors. It was noted that Northstar Engineering had been making certain revisions of the lands to be included in the District and those to be excluded from the District and that the final report from Northstar had not been received. Northstar is working with the District Engineer on making those determinations. Upon Motion duly made and seconded it was:

RESOLVED, that the District adopt the final recommendation of the boundaries of the District as will be finalized by Northstar Engineering and the District Engineer;

RESOLVED, that once reviewed by the Directors, a Report be made to the Supervising Court of lands to be included and lands to be excluded from the boundaries of the District

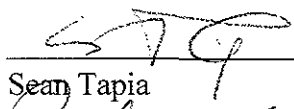
RESOLVED, that the District utilize the methodology set forth in the Final Report of September 25, 2012 designated Pueblo Conservancy District Assessment Project Development of Assessment-Phase II as the basis for a maintenance fund assessment for the year 2013.

RESOLVED, that the District Engineer be authorized to coordinate with the Assessor and Treasurer of Pueblo County the maintenance fund assessment for 2013 and to take such steps as are reasonable and necessary to put said assessment in place for the year 2013.

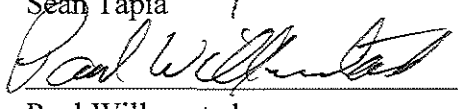
RESOLVED, that if the boundaries of the District cannot be reconfigured in time to certify to the Pueblo County Treasurer and Assessor the information necessary for a maintenance fund assessment for 2013, the existing boundaries of the District be used and that the methodology set forth in the Final Report referred to herein be applied to said lands that are within the District at this time.

The Directors then noted that no action had been taken on the resignation by Sean Tapia from the Board. Sean was asked if he would remain on the Board until December 15th, 2012 and he agreed to do so. The Directors tabled the acceptance of the resignation until the monthly meeting in November. At that time, the Board will consider the need for a replacement of Mr. Tapia.

There being no further business, the meeting was adjourned.


Sean Tapia

Donna Phillips


Paul Willumstad

THE PUEBLO CONSERVANCY DISTRICT

AGENDA OF
BOARD OF APPRAISERS MEETING

DATE: OCTOBER 8, 2012 (MONDAY) AT 5:00 P.M.
PLACE: BANNER & BOWER, PC
115 E. RIVERWALK, SUITE 400, PUEBLO, COLORADO

1. ROLL CALL
2. CONSIDERATION FOR ADOPTION OF THE PHASE II APPRAISAL REPORT AND ASSESSMENT PROCESS AS PRESENTED BY NORTHSTAR ENGINEERING
3. OTHER BUSINESS AS MAY BE BROUGHT BEFORE THE BOARD OF APPRAISERS
4. ADJOURNMENT

AGENDA OF
SPECIAL MEETING
BOARD OF DIRECTORS

DATE: OCTOBER 8, 2012 IMMEDIATELY FOLLOWING THE BOARD OF APPRAISERS MEETING
PLACE: BANNER & BOWER, PC
115 E. RIVERWALK, SUITE 400, PUEBLO, COLORADO

1. ROLL CALL
2. CONSIDERATION FOR ADOPTION OF THE DISTRICT APPRAISAL RECOMMENDATIONS FROM THE BOARD OF APPRAISERS
3. ACCEPTANCE OF RESIGNATION OF DIRECTOR SEAN TAPIA
4. CONSIDERATION FOR A REPLACEMENT OF MR. TAPIA
5. OTHER BUSINESS AS MAY BE BROUGHT BEFORE THE BOARD OF DIRECTORS
6. ADJOURNMENT

Hearing Nov. 19, 2012 before Judge Alexander

Exhibits:

- A. History and Status of the District
- B. Current Boundary Map
- C. Phase II Final Report of September 25, 2012

Witnesses:

Sean Tapia

- 1. Name, address
- 2. Educational background, licenses, credentials
- 3. Position with PCD (District Director, President of the Board, Member of the Board of Appraisers).
- 4. Identify other Directors and Members of the Board of Appraisers.
- 5. Date of appointment on board (since September 1, 2011)
- 6. Identify History and Status of the District; Does this fairly and accurately outline the history and current status of the PCD? Offer into evidence.
- 7. Identify the Current Boundary Map of the District. Does this fairly and accurately outline the existing boundary of the District? Offer into evidence.
- 8. Identify the Phase II Final Report of September 25, 2012. Is this the report adopted by the Board of Appraisers and the District Directors? Offer into evidence.
- 9. Who were the parties that prepared the Phase II Final for the District? (Engineers and surveyors Northstar Engineering and Surveying, Inc. (Kim Kock and Michael Cuppy), Arrowhead Real Estate Appraisals, LLC (Kevin Roark), certified public accountants Garren, Ross & DeNardo, Inc. (Sam DiNardo) and attorneys Altman, Keilbach, Lytle, Parlapiano & Ware, P.C. (David Lytle)).
- 10. How was this group selected by the District? (This was the only group that responded to a well advertised and distributed Request for Proposal issued by the District.)
- 11. Did the District encourage this group to allow access to its data and determinations to the public? (Yes. The Board asked the group to allow access to its data and findings by the City of Pueblo and anyone else interested. All of the meetings of the Board with these consultants were open, public meetings which were attended by at least one and sometimes more than one representative of the City of Pueblo.)
- 12. Does the Phase II Final Report include a methodology for imposing a maintenance fund assessment on properties throughout Pueblo County?
- 13. What is that methodology? (Three tiers, Flood Zone, City property outside the Flood Zone, property in County outside the City and outside the Flood Zone. Each tier is

- assessed at a different rate, and the rate of assessment is applied to the actual value of the property as determined by the Pueblo County Assessor.)
14. Has the District adopted this methodology to be used in imposing a maintenance fund assessment?
 15. In the opinion of the Board of Directors, is the methodology being used fair and equitable to all of the property owners in the County? (We believe it is.)
 16. How would you respond to someone that owns property on the northern edge of Pueblo County who states that her land is too high in elevation to be in a Flood Zone and therefore does not receive a benefit from the District and should not bear an assessment for maintenance? (Every property owner in Pueblo County benefits from the public services located in the core of the City and the path of a Flood Zone if the levee maintained by the District was not properly maintained. The County emergency service 911 system is in that area. The County and Municipal Courts are in that area. The County Sheriff's office and jail are in that area. Pueblo County Department of Social Services and Planning and Development offices are in that area. A flood such as the one that occurred in the 1920's would devastate the economy of Pueblo County and the entire population of Pueblo County. There is a benefit to each property in Pueblo County and to each property owner to have the levee properly maintained.)
 17. Do you own property that is not in the flood zone that would be assessed a maintenance fund assessment?

Kim Koch:

1. Name, address.
2. Educational background, licenses, credentials. Employment, position with employer.
3. What role did Northstar Engineering assume in the work involved in determining a fair and equitable manner of imposing a maintenance fund assessment for the PCD?
4. Approximately how many separate parcels of land are within the existing boundaries of the PCD? (3,804).
5. Approximately how many separate parcels of land are within Pueblo County but outside the boundaries of the existing District? (_____).
6. Is there a need to properly maintain the levee? (Yes)
7. Why? (Flood control, primary reason.)
8. Doesn't the Pueblo Dam and Reservoir eliminate the need for the levee? (No)
9. Why not? (FEMA position on ignoring the dam for levee certification, etc.)
10. What is the rationale used in the Phase II Final Report for including all of Pueblo County within the District? (Based on an analysis by David Lytle, attorney for the Altman, Keilbach firm which was part of our group, we believed that in analyzing the applicable statutes, the District had the authority to impose a maintenance fund assessment on all

properties within the County without changing the boundaries of the District. However there are other reasons for wanting to include all of Pueblo County within the District. One of which is to enable the PCD to participate with other entities in the County on recreational developments along the Fountain River and other places. Another is to enable PCD to better coordinate flood control in conjunction with the various ditch companies within Pueblo County.)

11. What is the proposed rate of assessment in the various tiers that Mr. Tapia testified to? (Tier three consists of all property in the flood zone and it would be assessed at the rate of \$105.82 per \$100,000.00 of actual value. A property valued at \$120,000 within tier three would pay \$126.98 per year for the maintenance fund assessment. As a comparison, flood zone insurance for such property would cost approximately \$732.00/year or 5.7 times as much as the maintenance fund assessment. The higher the value the property, the worse the multiplier gets. A property valued at \$300,000.00 would pay a maintenance fund assessment of \$317.46 but flood zone insurance would cost \$3,090.00 annually, almost ten times as much as the assessment.

Tier two consists of all property within the City of Pueblo limits but outside the flood zone. Property in tier two would be assessed at the rate of \$9.87 per \$100,000.00 of actual value. [A property valued at \$120,000.00 within tier two would pay \$11.85 per year for the maintenance fund assessment. As a comparison, flood zone insurance for such property would cost \$690.00.]

Tier one consists of all property within the County of Pueblo but outside the flood zone and outside the City of Pueblo. Property in tier one would be assessed at the rate of \$6.81 per \$100,000.00 of actual value. [A property valued at \$120,000.00 within tier one would pay \$8.17 per year for the maintenance fund assessment. As a comparison, flood zone insurance for such property would cost \$690.00.])

12. As part of your responsibility in this project, did you review the applicable statute that authorized the creation of the Pueblo Conservancy District? (Yes)
13. Based on your review of the statute do you believe that the methodology used to determine a maintenance fund assessment as set forth in Phase II Final Report is fair and equitable to property owners in Pueblo County?
14. Do you own property not in the flood zone that would be assessed a maintenance fund assessment?

Dave Lytle:

1. Name, address.
2. Educational background. Licenses, credentials. Area of practice.
3. What role did you and your firm assume in this maintenance fund assessment project?
4. Did you review the applicable statutes authorizing the creation of the PCD and the imposition of a maintenance fund assessment?
5. Do you agree with the rationale for imposing an assessment on all properties within Pueblo County as testified to by Mr. Kock and set forth in the Phase II Final Report?
6. Do you believe that the boundaries of the PCD should be expanded to include all of Pueblo County?
7. What is your reason for this opinion?
8. Do you believe that the PCD could impose a maintenance fund assessment outside the existing boundaries of the District? (Yes)
9. What is the basis for this opinion? (Reasons set forth in Banner's letter to Treasurer/Assessor?...other reasons)
10. What would be the benefit to the PCD in expanding its boundaries?
11. Is a maintenance fund assessment a tax? (No. Cite Supreme Court case.)
12. Is the Tabor legislation such that it could impose limitations on the District's ability to impose a maintenance fund assessment? (Not in my opinion. CRS §37-1-109 specifically provides that all laws conflicting or in any way regulating or limiting the power of taxation or assessment, or otherwise interfering with the execution of the provisions of this statute, are declared to be inoperative and ineffective as to said statute, as completely as if they did not exist.)
13. Do you own property not in the flood zone that would be assessed a maintenance fund assessment?

Paul Willumstad:

1. Name, address.
2. Educational background. Licenses, credentials, Areas of Practice.
3. Position with PCD. (Board Member, Member of the Board of Appraisers)
4. Date of appointment on board. (September 1, 2011)
5. Have you participated in all of the meetings of the Board concerning the determination of a methodology for imposing a maintenance fund assessment? (Yes)
6. From your experience as a board member and participation in the process of adopting a fair and equitable method of imposing a maintenance fund assessment, do you believe that it is important to the PCD to include all property within Pueblo County within the District?
7. Why?
8. In the Notice published for this proceeding, it appears that the District intends to exclude federally owned property from an assessment. Is that correct? (Yes)
9. What is the rationale for doing so? (Difficulty in determining valuation of property. Difficulty in determining the benefit to federally owned lands. How would the District determine a fair and equitable assessment for the Pueblo Reservoir and Dam? How would the District collect any such assessment?)
10. Do you believe the District has the authority to exclude certain properties from a maintenance fund assessment? (The statute authorizing the District does not say that the District has jurisdiction over federal lands. The statute does specifically say that assessments of the District are to be collected by the Treasurer of the County in the same manner as the collection of real property taxes. The federal government does not pay real property taxes in Colorado. So I conclude that the District has the authority to exclude lands owned by the federal government from assessments. Additionally, CRS §37-3-104 provides that a District organized pursuant to the statute, which PCD is, is vested with "all powers necessary for the accomplishment of the purposes for which the district is organized". One of the purposes of the District is to provide for a fair and equitable maintenance fund assessment. If, in the opinion of the Board, excluding a property or class of properties is beneficial to maintaining a fair and equitable method of assessment, then the District has the power and authority necessary to exclude those properties.)
11. Will the property not in the flood zone that would be assessed a maintenance fund assessment?