

**MINUTES OF THE SEPTEMBER 28, 2016  
REGULAR MEETING  
OF THE PUEBLO CONSERVANCY DISTRICT**

**Directors Present:** Bill Alt, Barb Bernard, Matt Cordova, Corrine Koehler, Bud O'Hara, Donna Phillips, Ron Serna, Paul Willumstad

**Also Present:** Administrator Rick Kidd, Attorney Joe Bower

**Guests:** Kim Kock, NorthStar Engineering  
Chris Woodka, Southeastern Colorado Water Conservancy District  
Chad Schreivogel, Colorado Department of Parks and Wildlife  
Mike Trujillo, Colorado Department of Parks and Wildlife

The regular meeting of the Pueblo Conservancy District was called to order by President Willumstad at 10:30 am. A quorum was present.

**Minutes:**

The minutes of the August 24, 2016 regular meeting were reviewed. Alt moved to approve the minutes and Serna seconded. Motion passed.

**Public Forum:**

None

**Treasurer's Report:**

Kidd said that he did not notice anything unusual in the accountants report. Willmstad asked Bower to check into the proposed Amendment U and let the Board know if its provisions would impact the District. Bernard moved to accept the August accountant compilation report. Seconded by Phillips. Motion passed.

**Bills –** Bernard said that she had reviewed the invoices from Kidd, NorthStar, Swerdfeger, and Lytle. Bernard moved to pay the bills and Koehler seconded. Kidd asked Kock to explain the additional charges for their oversight of Phase 2 construction. Kock explained that the original projected time for construction was 135 days. This time was attained on June 3. He said that the construction time has run long due to the time it has taken to acquire the properties along Wildhorse Creek and for the construction at the 18<sup>th</sup> Street Bridge. He said that we are now 105 days past the anticipated time period. Swerdfeger had still continued doing some work so it was not a total shut down until the work could start at the bridge and demolition of the houses. Swerdfeger has recently been doing a lot of work at 18<sup>th</sup> Street. Kock anticipates that it will take about six to eight weeks to finish and they are putting in 2-2.5 hours per day. NorthStar is 30-percent over on that task item right now, for a total of \$27,000. They anticipate \$10,000-\$15,000 more. Motion passed.

The following bills were posted for review and approval:

Vectra:

|             |   |
|-------------|---|
| \$ 400.00   | MBD&G, Monthly Accountant fees                |
| \$ 500.00   | Banner and Bower, Attorney fees               |
| \$ 1,700.00 | Kidd Engineering, Administrator/Engineer fees |
| \$ 200.00   | Alt, Director's Fee                           |
| \$ 200.00   | Bernard, Director's Fee                       |
| \$ 200.00   | Cordova, Director's Fee                       |
| \$ 200.00   | Koehler, Director's Fee                       |
| \$ 200.00   | Maroney, Director's Fee                       |



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|           |  |
|-----------|--|
| \$ 221.65 | Maroney, Mileage for attending Fountain Creek committee meetings |
| \$ 200.00 | O'Hara, Director's Fee   |
| \$ 200.00 | Phillips, Director's Fee   |
| \$ 200.00 | Serna, Director's Fee  |
| \$ 200.00 | Willumstad, Director's Fee                                       |
| \$ 172.60 | Chem-Way Lawn Care, Levee weed spraying                          |

CNB Draw Account:

|              |  |
|--------------|--|
| \$ 490.00    | Kidd Engineering, Levee Phase 2 CA/CO, Progress meetings, completion review  |
| \$ 7,025.00  | NorthStar Engineering, Arkansas Task F.2 – Phase 3 Final Design, Construction Documents, Bidding   |
| \$ 291.50    | NorthStar Engineering, Arkansas reimburseables   |
| \$ 1,680.00  | NorthStar Engineering, Second supplemental for the BHE diversion preliminary design  |
| \$ 8,798.00  | NorthStar Engineering, Wildhorse Task D – Construction support services  |
| \$ 68.00     | NorthStar Engineering, Wildhorse reimburseables  |
| \$ 2,940.00  | NorthStar Engineering, Maintenance Fund Assessment Support, Appraisal Phase III Services, Property Acquisitions, Artwork and Recreational Opportunities meetings |
| \$ 6.50      | NorthStar Engineering, MFA & etc. reimburseables   |
| \$211,591.60 | KR Swerdfeger Construction, Arkansas and Wildhorse Levees Phase 2  |
| \$ 3,287.90  | Altman, Keilbach, Lytle et.al., Wildhorse Creek Area Eminent Domain and Land Acquisitions 8-31-16 invoice  |
| \$ 156.76    | The Pueblo Chieftain, Phase 3 RFP advertisement  |

**Property Acquisitions:**

Bower said that David Lytle asked that the deeds not be recorded yet. There is still some processing that needs to be completed.

**President's Report –**

Willumstad asked Bower to have Banner report back to the Board on Amendment U. The 18<sup>th</sup> Street Bridge wall is a graffiti palette waiting to happen. Kock said that Swerdfeger is to give him some information about anti-graffiti coatings that could be put on the concrete. Willumstad asked if this is what should be done or would a mural be a better alternative. Kock said that he would contact Jean Latka. Willumstad may see her at a meeting he will be attending this afternoon. Willumstad suggesting that Pueblo Urban Renewal may also want to be involved, as a part of their west side revitalization project.

**Administrator's Report –**

Kidd said that the Colorado Division of Parks and Wildlife representatives were here to follow up on their previous request for additional lighting at the Lake Runyon parking lot. Parks and Wildlife has said that they are willing to pay for the initial costs to install additional lights, they just cannot take on the Black Hills Energy monthly charges. Kidd said that he had asked Black Hills if there is a bullet resistant type light that they could install. He was told that they are not aware of any. Willumstad suggested that Dennis O'Quin at C&O Window and Door may have some ideas for shielding the parking lot lights. Nick is Dennis's son. Kidd explained that the District used to charge Parks & Wildlife an annual lease of \$2500. However, due to their costs to maintain the area, they had asked to change the lease agreement to a no annual fee. Chad Schreivogel said that Lake Runyon is one of the best warm water fisheries in the State. They would like to keep this site but it is very time consuming and expensive for them to maintain it. The area must be left open at night for fishing. For the most part, those who come in to fish are not a problem and help do some cleaning. The problem is some of the others who come in to the area. Willumstad asked Bower to send a letter to the County Commissioners asking for additional policing. Schreivogel said that the most benefit would be some night time patrol.



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Willumstad said that Charlie Montera at Ralph's Neon and Electric may also have some ideas for vandal resistant lighting. Kock said that Mickey Byer with the City may also be a resource. Kidd said that he met with Scott Dalton, of CDOT, to discuss the requested rerouting of the trail. Kidd's primary concern is a created flat and concealed area that would be conducive to homeless camps. Dalton assured Kidd that CDOT would work with him to make the area less habitable. They are to meet as construction nears completion. Dalton also reaffirmed what Bill Zwick had told Kidd. The City is concerned about the relatively sharp turns in the bike path alignment but they are working to mitigate the major problems. Kidd said that he received a call from the Pueblo County Detention Center. They told him that the call was from Dr. Heidi Wodiuk and asked if he would accept the call. Kidd said that he declined. Willumstad said that was the correct action.

**Fountain Creek Committees Reports –**

O'Hara said that Maroney had attended the meetings and that he had not. Therefore, there is not a report this month.

**Arkansas and Wildhorse Levee Construction –**

Kock reported that the mandatory pre-bid meeting for Phase 3 was held on September 20<sup>th</sup>. Three contractors were represented. The proposals are due on October 4<sup>th</sup>, at 1:00 pm. The evaluation committee will convene at that time and begin the proposal evaluation process. The separate sealed pricing proposals will be opened after the qualifications part of the submittals are evaluated. A provision in the documents, per earlier agreements with the contractors, is that no less than two price proposals will be opened. The contractor will need 14 days from the notice of award to have documents ready for the District to then issue the notice to proceed. Kock suggested holding a special meeting of the Board on October 11<sup>th</sup> to consider the results of the proposals and issue a notice of award as appropriate. After discussion it was decided to hold the special meeting on October 11, 2016, at 11:00 am in Don Banner's office. Kidd will post notice of the special meeting. After additional discussion, it was decided that the evaluation of the proposals will also be posted as a special meeting with entering into executive session for the actual reviewing of the proposals.

**Old Business:**

**Recreation and Mural Sub-Committees –** Koehler reported on the meeting held on September 23<sup>rd</sup>. One of the City's planning grant requests was awarded. There is currently an application in for a CDOT grant in the amount of \$200,000, and another grant request. The Pueblo Conservancy District pledged \$15,000 as local match for the grant received. The City is looking at a larger GOCO grant. Scott Hobson is working on the grants. The UP Railroad will be invited into the process soon. Senator Garcia will be contacted for his support. Koehler and Steven Meier met with City Manager Sam Azad yesterday. Azad is going to contact Peter Roper about going to the Pueblo Chieftain Editorial Board. We need to do a marketing campaign so people are more aware as the planning process moves through. Bernard says there is some misinformation in the community and we need to overcome this.

**New Business:**

**Resolution on Exempt Property –**

The proposed resolution read as follows:

At a meeting of the Board of Directors of the Pueblo Conservancy District held September 28, 2016, the following resolution was adopted:

**RESOLVED**, that the properties described on the list of exempt properties for 2014 and 2015 delivered to the Pueblo Conservancy District by the Treasurer of Pueblo County be exempt from the Maintenance Fund Assessments of the Pueblo Conservancy District. The properties are described as follows:



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|              |         |  |          |        |  |
|--------------|---------|--|----------|--------|--|
| 2014         |         |  |          |        |  |
| EXEMPT       |         |  |          |        |  |
| 99000-00-006 | \$1.56  | Frank DiRico                             | pcd only | EXEMPT |  |
| 06114-13-041 | 27.56   | OASIS CHRISTIAN CHURCH                   | pcd only | EXEMPT |  |
| 04311-17-010 | 14.14   | POSADA                                   | pcd only | EXEMPT |  |
| 04311-17-012 | 12.04   | POSADA                                   | pcd only | EXEMPT |  |
| 04311-17-017 | \$15.96 | POSADA                                   | pcd only | EXEMPT |  |
| 06024-03-010 | \$1.02  | RIVER OF GRACE BAPTIST CHURCH            | pcd only | EXEMPT |  |
| 2015         |         |  |          |        |  |
| EXEMPT       |         |  |          |        |  |
| 04292-14-001 | \$13.52 | LOYAL ORDER OF THE MOOSE LODGE # 19      | pcd only | EXEMPT |  |
| 38010-01-005 | \$10.40 | GRAND VIEW BAPTIST CHURCH                | pcd only | EXEMPT |  |
| 15014-14-028 | \$5.98  | VIC OCANA COMMUNITY YOUTH FOUNDATION     | pcd only | EXEMPT |  |
| 06024-03-003 | \$6.34  | RIVER OF GRACE BAPTIST CHURCH            | pcd only | EXEMPT |  |
| 06024-03-010 | \$1.02  | RIVER OF GRACE BAPTIST CHURCH            | pcd only | EXEMPT |  |
| 15012-10-019 | \$25.98 | POSADA                                   | pcd only | EXEMPT |  |
| 05253-42-008 | \$6.44  | UNITED LATIN AMERICAN PENTECOSTAL CHURCH | pcd only | EXEMPT |  |
| 15031-01-003 | \$5.12  | SPANISH PEAKS ASSET MANAGEMENT LLC       | pcd only | EXEMPT |  |
| 05261-21-008 | \$13.68 | SOUTHERN COLO CHOICES R E LLC            | pcd only | EXEMPT |  |
| 04330-12-011 | \$1.94  | TRINITY LIFE CENTER                      | pcd only | EXEMPT |  |

Kidd said that it appears to him that the properties which the County has proposed for exemption are all non-profit entities. Even though the amounts are small he is concerned about the precedence for not assessing these specific entities. Bernard agreed that there could be a problem with the precedent. Koehler says that we need more information and suggested tabling the question until the next meeting that Don Banner would be able to attend. Koehler so moved and O'Hara seconded. Motion passed.

#### **Resolution for Board Indemnification –** The proposed resolution reads as follows:

WHEREAS, the Pueblo Conservancy District is a "public entity" as defined in CRS 24-10-103(5); and

WHEREAS, appointed members of the Board of Directors of the Pueblo Conservancy District are "public employees" as defined in CRS 24-10-103(4)(a); and

WHEREAS, CRS 24-10-118(2)(a) provides that a public employee may be immune from liability in certain actions for tort or that could lie in tort unless the employee is acting in a willful and wanton manner in causing and injury or loss; and

WHEREAS, CRS 24-10-118(5) provides that a public entity may, by resolution adopted at an open meeting, if it determines that it is in the public interest to do so, defend a public employee against a claim for punitive damages or pay or settle any punitive damage claim against a public employee; and

WHEREAS, members of the public may not be interested in serving as appointed members of public entities if they were not indemnified by the entity for loss or damage they may suffer by virtue of their service as members of a Board of a public entity;

NOW THEREFORE, BE IT RESOLVED: that to the fullest extent possible under the law, the Pueblo Conservancy District does hereby adopt a policy of indemnifying members of its Board of Directors against any and all loss or damage they may suffer as a result of law suits that may be filed against said Board members individually because of their service on the Board, including claims for punitive damages, provided that the alleged claim of injury was not caused by the willful or wanton act of the Board member against the party claiming injury. Any Board member who is included individually in any law suit brought about as a result of the Board member's service on the Board of the Pueblo Conservancy District shall give immediate notice to the President of the Board, the Administrator and Attorney for the Board of said law suit. Failure to do so may invalidate this indemnification. The Pueblo Conservancy District reserves the right to defend the action brought against a Board member using attorneys of its choosing.

The proposed resolution for indemnification will provide additional protection over what the District's insurance provides. O'Hara moved to approve the resolution and Cordova seconded. Motion passed.



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**Resolution for levee “No Trespassing” posting –**

The proposed resolution reads as follows:

WHEREAS, the Pueblo Conservancy District is a “public entity” as defined in CRS 24-10-103(5); and

WHEREAS, appointed members of the Board of Directors of the Pueblo Conservancy District are “public employees” as defined in CRS 24-10-103(4)(a); and

WHEREAS, the Pueblo Conservancy District is responsible for the maintenance of a 2.8 mile levee that runs through the City of Pueblo and provides flood control for the downtown area of the City of Pueblo which flood control benefits the entirety of Pueblo County; and

WHEREAS, the physical condition of the levee may in of itself constitute a “dangerous condition” as defined in CRS 24-10-103(1.3) requiring the Directors to exercise reasonable care in exercising the Board’s responsibilities to protect the public from a safety risk in accessing or using the levee; and

WHEREAS, pursuant to CRS 24-10-106 (e) sovereign immunity is waived by a public entity in an action for injury resulting from a dangerous condition of any public facility located in any park or recreation area maintained by a public entity; and

WHEREAS, pursuant to the Colorado case law construing CRS 24-10-106 (e) a “public facility” is one that must be accessible to the public and maintained by a public entity to serve a beneficial public purpose; and

WHEREAS, to establish a waiver of sovereign immunity resulting from a dangerous condition an injured party must show that the injuries occurred as a result of the physical condition of a public facility or the use thereof (1) constitutes an unreasonable risk to the safety of the public, that (2) is known to exist or should have been known to exist in the exercise of reasonable care, and (3) is proximately caused by the negligent act or omission of the public entity in constructing or maintaining the facility; and

WHEREAS, the Pueblo Conservancy District may in the future desire to create recreational activities along the levee which activities would be open to the public;

NOW THEREFORE, BE IT RESOLVED: that until the levee is properly fenced to protect members of the public from inadvertently falling off the 40 foot wide top of the levee, the levee shall be conspicuously posted with “NO TRESPASSING” signage and to the extent practical, all contractors working on maintenance of the levee shall take reasonable precautions to blockade access by the public to the top of the levee.

The concept of this resolution was proposed at the last Board meeting. Serna moved to approve the resolution and it was seconded by Cordova. Motion passed.

**2017 Budget** – Kidd provided a preliminary budget spreadsheet for the Directors to start thinking about before the next meeting. Kidd said he understands that the District must now have a public first reading and final approval of their annual budgets, and that the final budget must be approved in November. It was suggested that the Board do a review of their current year budget at the August meetings.

**Other Business:**

**2015 Audit Report** – Kidd passed out the Draft 2015 Audit Report. He said that he had just received them from the auditor and that, unfortunately, the report had to be approved today since the report must be filed with the State by September 30<sup>th</sup>. Kidd said that this is the second year that we have had to be audited and that he is still learning what information is needed and how it needs to be provided for the audit. Kidd said that he and Kock had both met with Larry Daveline and San DeNardo during the audit preparation. He does not believe we will have problems with the audits being so late in the future. Bernard moved to accept the audit report with reluctance. Serna seconded. Motion passed. Kidd was asked to have Sam DeNardo attend the next meeting.

Alt said that Pueblo will be featured on C-Span this coming Saturday. He does not know the scheduled time yet. Alt will email the showing times out to the Board when he has more information.

Serna asked what happened to the CD that was being passed around earlier in the year. The title was something similar to “Water in the West”. Directors are to check to see if they are the one to have it last.

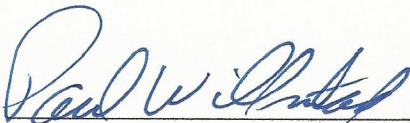


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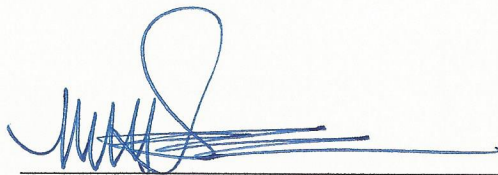
There being no other business to come before the Board the meeting was adjourned at 11:58 am. Special meetings will be held on October 4th at 1:00 pm at the offices of NorthStar Engineering, and October 11<sup>th</sup> at 11:00 am at the offices of Banner and Bower.

The next regular meeting date will be October 26, 2016, at 10:30 am.

APPROVED:



Paul Willumstad, President



Matt Cordova, Secretary