



CITY OF BOULDER

STUDY SESSION ITEM ADDENDUM

MEETING DATE: September 14, 2023

STUDY SESSION ITEM

Item 1 - Library IGA Update

Update and request for direction regarding the Intergovernmental Agreement with the Boulder Public Library District

PURPOSE

Below is an addendum to the staff memorandum regarding the transition of the library to the Boulder Public Library District. Also attached is a letter from the Boulder Public Library District (**Attachment A**).

On March 15, 2022, the City Council held a study session in advance of public hearings on whether to proceed with formation of a library district by resolution. While that resolution-based formation did not occur, during that study session, staff presented information that included detailed analysis on the two key issues up for discussion on September 14 – disposition of real property and the board of trustee appointment process. That analysis can be found in the [March 15, 2022 Study Session Memorandum](#). The pertinent sections of that memorandum are copied below.

The feedback from the council at that time was mixed. Several council members expressed support for the transfer of the city's real property interests as recommended by staff, several expressed support for leasing the facilities to the district, and several expressed support for a mixture of the two approaches.

There are two reasons staff is seeking additional guidance from council on these issues – the first is due to the mixed feedback received in 2022. Second, much of the study session discussion was in anticipation of a district without that institution actually existing. Now that the district has been formed through the petition and voter approval process, and trustees for the district have been seated, the city and the newly formed district are developing and negotiating the detailed transition process as two separate governmental bodies.

While staff has been consistent in its recommendations, we were remiss in sharing back the feedback we initially received from council at the March 2022 study session. We look forward to clear direction on September 14 regarding how council would like staff to move forward in the negotiations.

(From March 15, 2022, memorandum including follow up from Hotline)

ANALYSIS

Key Issue 1: Lease versus Sale/Deed

There are two primary approaches to transfer real property to the library district, long-term lease or conveyance by some form of fee simple title. Title to each property may include the land and building(s) as a three-dimensional unit under the [Colorado Common Interest Community Act](#) or conveyance of the building and a ground lease or license arrangement.

I. Background

The Boulder community has a long history of establishing facilities and expanding them for its library system. The four city-owned library properties were paid for by the community through taxation. If these properties are conveyed to the library district, the properties will be owned by the library district and will exist in service to the community. The maintenance of the facilities will be paid for by the community through library district taxation.

The four city-owned library facilities and a brief history¹ of how the city came to own these facilities in service to the community is as follows:

Carnegie Library for Local History, 1125 Pine St.

In 1907, after 10 years of an active community campaign to open a public library, a volunteer library board obtained funding from Andrew Carnegie to build Boulder's first public library. The Pine Street site was purchased to secure the grant, along with an appropriation for operating funding from the city. When the city charter was drafted in 1918, funding was dedicated through the .333 mill as stated in Charter Section 134. Donations and contributions from the community were used to purchase the collection and furnishings for the library.

In 1975, the Boulder Library Foundation partnered with six other organizations on a fundraising campaign to develop materials on Boulder history and genealogy. Between 1980 and 1985, the Carnegie Library building (vacant and deteriorating) was renovated and equipped as the community's local history archive and genealogical library with funding obtained from community donations and grants.

Main Library, 1001 Arapahoe Ave.

A new city hall was built in 1952, without the library wing promised in the 1945 bond election. After being informed that the city had no funds for additional repairs to the Carnegie Library building, the Library Commission mounted a community campaign for a new library. This campaign resulted in a successful 1959 bond election and construction of what is now the Main Library north building.

Boulder's rapid population growth continued and by 1971, the Main Library lacked the space needed to serve the community. The Library Commission worked with the city manager to put a bond issue on the ballot which received voter approval and funded the 1974 expansion of the Main Library over Boulder Creek. The expansion included space for the city's first cable TV station, a project that the library and Library Commission managed.

In 1987, a .38 percent sales tax increase/\$14 million bond measure received voter approval. The bond revenues funded construction of the Main Library south building and renovation and expansion of the George Reynolds Branch Library.

In 2011, the community passed a city-wide, \$49 million bond proposal to address "significant deficiencies" in the city's deferred capital maintenance, including the Main Library. The south building was renovated between 2011 and 2015 using funds from this bond, supplemented by revenues from the Library Fund, and annual set-asides made from the library operating budget to the Facilities Renovation and Replacement Fund.

George Reynolds Branch Library, 3595 Table Mesa Dr.

By the early 1960's, new families moving into the rapidly growing Table Mesa area wanted local library services. The George F. Reynolds Branch Library was constructed in 1968, with more than 80 percent of funding obtained through community bequests, donations and a federal grant.

In 1987, a .38 percent sales tax increase/\$14 million bond measure received voter approval. The bond revenues funded expansion of the George Reynolds Branch Library and operating funds to restore library hours and buy more books.

New North Boulder Branch Library, 4540 Broadway St.

In 1995, the city adopted the North Boulder Subcommunity plan, including a village center with a public library. In 1997, a commitment was obtained from Safeway to donate land for the library. Development Excise Tax revenues were appropriated so construction on the branch library could begin that year. But the land donation was not approved by council until 1998, operating funds were not appropriated, and revenues set aside for library construction were reallocated to other needs. After 27 years, the completion of the new north boulder branch has been funded through a combination of Community, Culture and Safety Tax revenues, the General Fund, the Library Fund, and donations to the Library Fund, and is anticipated to break ground in 2022.

The transfer of property during the formation of other Colorado library districts varied. The table 1 below is information about the transfer of property for other Colorado library districts when they were formed.

Staff does not have data from all 57 library districts across the state, but did solicit additional information on this topic. We received responses from 26 library districts. Most district libraries currently own their own their land and buildings. At the time of formation, fourteen [14] libraries were deeded the buildings and land. Seven [7] leased buildings from their establishing

entity at the time of formation. Two [2] were deeded the buildings but leased the land. Several others began as districts or transitioned from community-based libraries.¹

Table 1. Some Colorado Library Districts Transfer of Property at Formation

Library	Est.	Transfer of Ownership? / Cost	Lease Cost
Poudre River Library District, Fort Collins	2007	Yes; No cost	One building; cost not provided
Clear Creek County, Georgetown	2004	No	\$1/year
Rangeview Library District, Thornton	1995	Yes; No cost	-
Grand County	1995	-	Branches leased from towns or county; \$65/month + utilities for one branch, \$1/year for 13 years for another branch
Mesa County Library District, Grand Junction	1992	Yes; Market rate	-
Estes Park Public Library*	1988	Yes; Building. No cost.	Land \$1/year
Weld Library District	1986	Building; No cost	One building; \$10/year
East Routt, Steamboat	1980	-	\$1/year for 20 years
Pueblo City- County Library District	1969	No	\$1/year for 99 years

*Town gives annual refund to Urban Renewal Authority \$10K, and \$27,600 for building bond.

II. Options

Option A. Lease: Under this option, the city leases one or more of the library buildings to the library district. The library district is responsible for all maintenance and future capital improvements.

Considerations

- City and library district will have landlord/tenant relationship.
- A lease term is limited to 20 or possibly 30 years per charter section 111.
- Library district controls investment into facilities, and the city and district determine the level of city review or approval to modifications to the building.
- City retains ownership of buildings and land.
- Library district could not pledge the properties for bond or certificates of participation funding.
- As the west bookend of Boulder’s Civic Area, the Main Library land has shared use with other city services.

The city subsidizes some 501(c)(3) not-for-profit organizations such as The Dairy Arts Center, Boulder Museum of Contemporary Art and Colorado Chautauqua Association through leasing of the city’s buildings and land used by these organizations. This support was critical to these organizations’ ability to establish and offer arts and cultural opportunities in Boulder. While the

¹ This paragraph was created in response to a Hotline question in advance of the March 15, 2022 study session, and was not a part of the original staff memo.

library has a complementary [mission](#) and exists to serve the community, as an independent governmental entity with stable funding, a library district will not require a subsidy.

Option B. Transfer of ownership buildings/land: Under this option, the city transfers one or more of the library buildings to the library district with the land. The library district is responsible for maintenance of the buildings and land and future capital improvements to the buildings.

Considerations

- Library district owns assets and controls investment in facilities. The city and library district do not have a landlord/tenant relationship.
- The library district may pledge the assets for bond or certificates of participation funding.
- For Carnegie Library for Local History, the George Reynolds Branch Library, and the new north Boulder Branch Library, the land is discrete and not used by other city services.
- As the west bookend of Boulder’s Civic Area, the Main Library land has shared use with other city services.
- The library district is able to dictate the geographic distribution and diversity of services and facilities through the sale of property.
- C.R.S. § 24-90-112(2)(a) (**Attachment B**) prevents the library district from using the proceeds from the sale of property for any other purpose than providing library services.

Option C: For one or more of the library facilities, the city transfers only the buildings to the library district, and the city owns the land. The library district is responsible for maintenance and future capital improvements to the buildings.

Considerations

- Library district owns the buildings. The city and library district do not have a landlord/tenant relationship.
- The city retains ownership of the land and the responsibility to maintain it. This could be advantageous in situations where no clear parcel lines exist or the land surrounding asset has a non-library community purposes, such as the Main Library.
- This may be an overly complex ownership structure especially for facilities and land that are discrete from other city services as it requires the library district and the city to clearly define responsibilities and service levels.

Staff Recommendations on Property Transfer

An interdepartmental staff team of the city, including the City Manager’s Office, Library, Facilities and Fleet, Planning and Development Services, City Attorney’s Office and Innovation and Technology developed and reviewed the options, discussed the various considerations, and developed the recommendation (Table 2) to the LDAC.

Table 2. Staff Recommendation to LDAC for Property Transfer to the Library District

Facility	Building Transfer Ownership	Land Transfer	Building Lease	Land Lease/ Agreement
Carnegie Library for Local History, 1125 Pine St.	X	X		
Main Library, 1001 Arapahoe Ave.	X			X
George Reynolds Branch Library, 3595 Table Mesa Dr.	X	X		
New north Boulder branch library, 4540 Broadway St.	X	X		

This staff recommendation was made for the following reasons:

- There are two advantages to a library district to own through fee title the library facilities and land.
 - The district has control over the property and may improve and maintain them according to its own standards and at its own cost without a complex landlord/tenant relationship regarding maintenance and capital improvements.
 - When a local government, such as a library district or a city, owns a property, then it may pledge the property as collateral for either certificates of participation or bonds.
- The buildings remain in the public domain, being used by a governmental entity for the purpose they were originally developed for. Staff recommends nominal charges to the library district for title transfer or lease as the community has already paid for the facilities through taxation. It is recommended the IGA include a first right of refusal clause giving the city the opportunity to purchase the assets from the district if they are intended to be sold to address a concern about the asset being sold to an entity that might be undesirable to the local community. Another option would be a right of reverter clause. With such a clause, if a library facility ceased being used for library purposes, it returns to the city for another public use. While the library district will not obtain any proceeds that it could use to move library services to somewhere else in the community, the district would still have the option to ask for voter approval to increase the mill levy to fund such changes.

Key Issue 2: Library District Board of Trustee Appointment

Colorado Library Law (**Attachment C**) provides two options for the appointment of library district board of trustees as the terms expire after the initial board members are appointed by the establishing entities (City of Boulder and Boulder County). The initial board of trustees is appointed by a committee composed of two members of each establishing entity, and then ratified by a two-thirds majority of each legislative body.

Thereafter, the establishing entities have two options:

Option 1: Establishing entities review, appoint and ratify.

The establishing entities may continue appointing trustees to fill vacancies via the same committee process described above. This means two city council members and two

commissioners participate on a committee to review applications and select appointees for ratification by the full council and commissioners.

Option 2: Trustees review and appoint, establishing entities ratify.

The establishing entities may delegate to the district board of trustees the authority to recommend new trustees, ratified by a two-thirds majority of each legislative body. This means the trustees would review applications and appoint trustees. These appointments are then sent to the city council and BOCC for ratification. With the delegation process, failure of the legislative bodies to act within 60 days of the trustees' recommendation shall be considered ratification of the appointment of trustees recommended by the board.

ATTACHMENT

A - Letter from the Boulder Public Library District

BOULDER PUBLIC LIBRARY DISTRICT

City of Boulder, City Council
1777 Broadway
Boulder, CO 80302

Attn: Honorable Members of the City Council

Re: Response to Issue Raised in September 4, 2023 Hotline Message and Boulder
Public Library District Trustees' Position Regarding Conveyance or Lease of
Facilities Used for Library Purposes

Greetings from the Library District Board of Trustees ("Board of Trustees").

This letter responds to a recent Boulder Council HOTLINE communication commenting on the City staff Memo that asked: "Does the council agree with the staff recommendation to transfer ownership of the real property assets to the Boulder Library District?"

The HOTLINE communication asserted that real property should be leased to the District and not conveyed despite the recommendations and rationale of City staff. We were asked by the City Attorney's office to respond to issues raised in this HOTLINE message. We would also like to take the opportunity to clarify how library districts operate and to explain our position on conveyance of library facilities, which is aligned with city staff.

The Library Board of Trustees supports the recommendation of City Staff to convey the real property (hereinafter "Library Facilities") for multiple reasons outlined below.

1. Library Districts have every incentive, and are required by law, to maintain library facilities in good condition.

The HOTLINE suggests that "if the assets are conveyed, there are no standards for insurance, upkeep, maintenance, and improvements. The properties may be underinsured, unkempt and poorly maintained. There is no control on any of that..."

Contrary to assertions in the communication, the Library Board of Trustees has the resources and every incentive to repair, rehabilitate, insure, and maintain the Library Facilities for the benefit of the community when conveyed. Colorado library law creates a structure that requires library districts to be well managed, with many safeguards built into the statute. The law's effectiveness is evident in the fact that library districts have been operating in Colorado for more than 50 years and none of the problems raised in the HOTLINE have ever occurred.

Under the Colorado Library Law (§§ 24-90-101 *et seq.*, C.R.S.) the Library District and the Trustees' only purpose is to serve the community by promoting:

... the establishment and development of all types of publicly supported free library service ... to ensure equal access to information without regard to age, physical or mental health, place of residence, or economic status ... to promote

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and coordinate the sharing of resources ... and the dissemination of information regarding the availability of library services ...

(the “Library District Purpose”). The 2022 election question also stated specific facilities and services would be restored, improved and enhanced if the district was formed and its mill levy passed (the “Election Promises”).

Fulfilling the Library District Purpose and the Election Promises is dependent on the repair, rehabilitation, improvement, and increased usage of the Library Facilities. The Library Trustees have the financial resources and every incentive to fully insure, maintain, and improve the Library Facilities if they are conveyed because:

- They are the only assets and facilities the Library District owns and is responsible for;
- They are necessary to fulfill the Library District’s Purposes;
- They are necessary to timely fulfill and are the subject of some of the Election Promises; and,
- Unlike the City, the Board of Trustees does not have other facilities and responsibilities that compete for its resources.

2. Library District options to finance major capital improvements and new capital construction.

A. Raising taxes to issue bonds.

The HOTLINE asks: “What happens when the District puts a mortgage on the crown jewel of City buildings, the main library, and is unable to meet its debt service? Do we end up with a bank or a private equity fund as the owner of the building?”

In short, the library district would never put a “mortgage” on a property. If it borrowed funds from a bank and did not utilize the sale/lease back process (described below), it would provide the lender with a municipal bond, funded through a tax levy. The terms of the bond would pledge a portion of the district’s tax revenues to bond payment. The lender/bond holder does not have a lien/mortgage on the property. **It can only enforce payment of the pledged portion of the tax revenue** and does not receive a lien or any other right to take property as security on any library building. A typical provision would pledge XX mills per year. In addition, the Main Library specifically would not be useful in financing any other library improvements because it is located on the Civic Center and the City will retain ownership of the underlying property.

Like any local government entity, all library districts in the state have the power to issue bonds. The amount is controlled by the voters and by the market. The Board of Trustees would never enter into a municipal bond transaction unless it served the District’s Purposes to provide library services and/or was necessary to fulfill Election Promises by obtaining a new facility. The Library District has a single purpose: to provide the best and most comprehensive library

services possible for the entire community. There is no question of “going into the real estate finance business with assets that had been purchased with our tax revenues” because the District is only in and can only be in the library services business.

Very few library districts have utilized their bonding authority. Our attorneys discourage the use of bonds because the sale/lease transaction (described below) can net many hundreds of thousands of dollars more for use in providing library services: it is a much simpler transaction; banks and other lenders are very comfortable with it; and the cost of a TABOR vote is avoided because repayment must be possible within current mill levy revenues. (Note that bond financing cannot be used to fund library operations.)

B. Financing major capital improvements and new construction without raising taxes

Instead of raising taxes to issue bonds, there are viable financing options to undertake major capital maintenance/improvements and to provide new Library Facilities if the district owns the facilities. Holding Library Facilities by lease would severely limit the Board of Trustees’ ability to undertake significant repairs and remodeling and to acquire and construct new facilities without an increase in taxes.

Significant repairs, remodeling and construction of new libraries are usually financed by sale/lease back transactions: either by way of sale and lease back from a financial institution; or, conveyance to and lease back from an entity formed by the Library District to obtain investment funds by selling “Certificates of Participation” (“COP”) in the lease revenues. These financing transactions are beneficial to the taxpayers because:

- They are repaid from general fund revenue derived from existing taxes without the need for any tax increase;
- They eliminate much of the legal and financial cost of “debt” financing under Colorado law; and
- Provide a very low borrowing cost because payments in excess of the funding provided by COP investors is exempt from state and federal taxation.

The savings to the taxpayers from a sale/lease back or COP transaction can exceed hundreds of thousands of dollars. Similar transactions utilizing leased property (sub-lease/lease back) transaction do not provide these benefits and are often very difficult to obtain.

Our library buildings are old and have significant major capital maintenance needs. The buildings’ age and the fact that they are public facing also means that they require a high degree of ongoing maintenance. City Facilities staff have reported that the four library buildings account for a little less than half of all maintenance calls on all city buildings. Recreation centers, which share similar characteristics, come second. As the HOTLINE notes, “The point is that the District is intended to be funded through its tax levy.” Ownership of buildings enables the Library District to finance major capital maintenance projects and new construction using existing revenues and without raising tax levies.

3. Short term leases of Library Facilities inhibits the Library District’s ability to plan and evolve to meet community needs over time.

The community voted to create a library district to ensure that a strong and resilient library system would exist for the community for generations to come. One of the great benefits of a library district is its ability to rely on sustained funding to plan facilities and services to address generational trends and changes.

The Library Trustees’ ability to do long-term generational planning is very limited if it cannot rely on the continued use and existence of its facilities and must plan for new facilities as a contingency. The Trustees will always have to be aware of and maintain resources to plan for termination or expiration of leases and the fact that their structures are subject to the uncertainties of new City Council members elected to 2 or 4 year terms.

By Charter, the City can only lease property for a period of 20 years. If leased, the Library Trustees must always be mindful of this limitation when doing any kind of financial and strategic planning:

- When making permanent long-term improvements to property that may be converted to other uses at the end of a lease term;
- When doing long-term planning to meet the future needs of the community in satisfaction of the District’s Purposes and fulfillment of the Election Promises; and,
- In annual budgeting for Facilities maintenance and improvements and for the provision of library services.

These are realistic concerns in a time when libraries, librarians, the need for library services and even the Library District’s Purposes are under attack across the country. While this Council may support the Library District Purposes, there is no guarantee that a newly elected council will do so and the perpetual renewal of leases of the Facilities cannot be guaranteed.

4. The Colorado Library Law has significant built-in safeguards against mismanagement of facilities by a Board of Trustees.

Management of the Library District is in the hands of a professional library director, whom the board of trustees is required, by law, to hire. C.R.S. § 24-90-109(c). The relationship between the board of trustees and the library director is very similar to the relationship between Council and the City Manager.

The City also maintains a degree of oversight of the Board of Trustees through the appointment process. Council and the Board of County Commissioners make final decisions on appointment (and removal) of trustees no matter what process is used to identify, qualify, and recommend candidates. C.R.S. § 24-90-108(c).

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Trustees are volunteers, who cannot “receive a salary or other compensation for services as a trustee.” C.R.S. § 24-90-108(4). Serving as a library district trustee is a fiduciary responsibility, which means that trustees must avoid "self-dealing" or "conflicts of interests" in which the potential benefit to the trustee is in conflict the interests of the library system. Conflict of interest policies are included in the Library District Bylaws.

The Library Law also requires a high degree of transparency for library district operations. It requires that:

- Board meetings must be noticed and open to the public, and the board’s bylaws must be filed with the legislative body of each participating governmental unit and the state library.
- Proposed budgets must be specifically noticed and copies provided to the public with a public hearing required before passage.
- Each year, the trustees must certify to Council and the Board of County Commissioners the amount of the mill levy necessary to maintain and operate the library during the ensuing year.
- At the close of each calendar year, the trustees must make a report to the community, the City Council, the Board of County Commissioners, and the State Library “showing the condition of its trust during the year, the sums of money expended, and the purposes of the expenditures and such other statistics and information as the board of trustees deems to be of public interest.”

The provisions noted above are also being addressed in the 3-party IGA under development among the City, the County and the Library District.

5. Closing comments.

In sum, the conveyance of the Library Facilities in fee simple as recommended by City Staff is in the community’s best interest because this approach:

- (1) helps fulfill the voters’ mandate that the newly formed library district provide expanded and enhanced library services and facilities;
- (2) meets the City’s desire to eliminate the costs of maintaining the Library Facilities while ensuring those facilities are well maintained and protected;
- (3) minimizes the current and future cost to the taxpayers of repairing and improving old facilities and acquiring new facilities;
- (4) and allows the Library Board of Trustees the tools and freedom needed to plan for the long-term future of the libraries and their services for every person in the community.

Finally, the Board of Trustees notes that false narratives were circulated during last year's election campaign claiming that library districts are irresponsible or not to be trusted in managing our community's beloved library system. In fact, library districts are not "special districts" like those that have received much notoriety. Instead, they are strictly managed and controlled under the Colorado Library Law with volunteer Trustees appointed specifically because of their love of libraries and all they can accomplish in a community. Perpetuating these narratives that only apply to "special districts" that are governed by completely different statutes is not helpful to the community or to the library district to which the community has entrusted the future of our libraries.

Sincerely,

Boulder Public Library Board of Trustees