

LICENSE PLATE AUCTION GROUP (LPAG)

Colorado Department of Revenue

Conference Call

June 16, 2014

Minutes to the Meeting

Members in Attendance: Bobby Juchem, Peter Pike, Bob Gall, Ryan Carson, Gina Robinson, T.H. Mack Sr. and Maren Rubino, and Mark Simon (all via telephone).

Guests in Attendance: Lee Ann Morrill – AG’s Office, Chris Hochmuth – DOR, Marty Zim & Stephanie Ricker – Zim Consulting, anonymous caller detailed in the GoToMeeting dash board (all via telephone).

CONVENE:

Bobby convened the meeting at 12:12.

General discussion ensued as to what constituted a quorum, how many was necessary, what happens if people dropped off, etc.

Approval of the Minutes:

It was moved by T.H. Mack and 2nd by Maren that the minutes from May 19, June 4 and June 9, 2014 be approved. Motion passed.

Mark re-opened the discussion of what constituted a quorum and how many were present and this was discussed again.

Tax Deductibility:

- LeeAnn started out that the group needed to be sure that the Governor’s Office was informed that the group was or was not going to certify the tax credit for this auction. LeeAnn had spoken with Zach Pierce and Ben Segal (all from the Governor’s Office) and the result was that the Governor’s Office had no specific concerns either way. They did agree that disclosure language needed to be very clear about what the LPAG was going to do either way.
- Bobby asked for a consensus of the group on this issue. Mark said that he spoke to Zach at 10 min. before 12 and confirmed everything LeeAnn just said.
- Bobby asked for a motion, noting that Zim Consulting was waiting for direction from the LPAG as to how to proceed.
- TH asked Marty what the standard had been. Marty replied that they usually do a letter that states that “you should always consult with your tax advisor”, and that there is always an amount that is set for goods and services and a certain amount that is tax deductible over and above that is a true charitable contribution. In this case, they would tailor the letter to focus that nothing is tax deductible and make that clear it should be fine. For the actual event, it will depend if there is a fiscal sponsor (who might act as the charitable pass through) or not. As long as all the disclosures are made clearly and upfront.

- Bob asked LeeAnn if they had to establish a fair market value for this auction. LeeAnn stated that 1) this was something they had gone over in the past in Executive Session and 2) asked if it was OK to discuss in an open session. LeeAnn went ahead and stated that if group wanted to certify for the tax credit they would have to establish a fair market value prior to auction.
- TH asked for legal solutions. LeeAnn stated that she didn't think a legal solution was necessary, that the statute was pretty clear. The group certified or it did not. If they did, there were certain steps that must be followed including establishing fair market value and repayment to the General Fund for the tax Credit; if LPAG did not certify, then they needn't do anything.
 - TH asked what repaying the General fund meant. LeeAnn stated that if the LPAG certified that the portion of the winning amount exceeds the fair market value that the group set then the 20% of the excess is eligible for the income tax credit and the LPAG must reimburse the General Fund that amount.
 - TH then discussed people who had made donations to the State for State forestry and received some sort of deferment or credit and asked if they had to replace that money to the General Fund. LeeAnn didn't know as she didn't represent those people, she represented LPAG and LPAG's authorizing statute required repayment if the 20% excess if certified and there was no way around it. TH believed LPAG should certify.
 - LeeAnn reiterated what she had previously stated: The group certified or it did not. If they did, there were certain steps that must be followed including establishing fair market value and repayment to the General Fund for the tax Credit; if LPAG did not certify, then they needn't do anything.
 - TH asked what the Pro's and Con's were as anyone could blurt out the statute, but he wanted to know from someone who had firsthand experience with this, if there were ways to maneuver around the statute.
 - Mark weighed in stating that those provisions of the statute were added as a marketing tool, but it had to be budget neutral. Also that it was really a backup plan if LPAG went to the IRS for an opinion letter and didn't get it.
 - TH asked Mark if he knew about the State Forestry donations. **[GoToMeeting's audio cut-out here due to technical difficulties for about 25 seconds.]**
 - ...when the audio returned, Mark was discussing how the Legislature had gone back and forth several times about Land Trusts and that is was up to the Legislature on any given piece of legislation what they wanted to do about this sort of thing, that there was no set consistent answer.
 - TH said let's do it. Mark said we couldn't because we have no data and no time, we'd only be guessing. TH said we should rely on Marty.
 - Marty suggested doing it later, after we've done the first auction so there would be data and that there were only 9 weeks until the auction and it would add red tape.
 - LeeAnn made it clear the TH was asking legal advice in open session and Mark didn't understand the question.
 - TH said, "The only question I have is, if there is language that says 'no' then can we look it up, where is it where can we get it? If there isn't then we need to move forward."
 - Mark said he'd email that statute to TH. TH said to highlight the specific part of the statute.
 - LeeAnn asked if Marty's question was could the LPAG decide to not certify for this auction, and then change its mind later for future auctions. Marty confirmed. LeeAnn asked, again, if the group was OK with her dispensing legal advice in open session. Most

- of the members were OK with this. Maren asked that if we waived privilege for this particular question, were they waiving privilege for other things and setting precedence. LeeAnn said she'd be happy to write something up and send it out to the Group (only) but she believed it would be for this one issue of certification only.
- Maren asked Bobby to Poll the group on waiving the privilege on the question of Certification:
 - Maren – No
 - Ryan – No
 - TH – Yes
 - Mark – No
 - Bob G. – Yes
 - Gina – No
 - Peter Pike – Yes
 - Bobby J. -- Before Bobby voted or was asked to vote, TH asked for everyone to explain their vote.
 - Maren state that she believed that we had discussed this at great length in Executive Session(s) and that our privilege was too important and wanted to keep it safe, as it opened a can of worms of when it is OK and when it isn't OK.
 - Mark stated that this issue that might lead to litigation in the future and LPAG needed to hold this close to the chest.
 - LeeAnn stated that as this had been discussed at length in Executive Session(s) and that all of the Pro's and Con's had been laid out already, the real question was simply a policy decision for LPAG, namely to certify for this event or not.
 - Mark moved to not certify for this auction and that the LPAG will revisit this issue once there was sound data to work with. TH 2nd the motion. Bobby called the roll:
 - Gina – Aye
 - Peter Pike – Aye
 - Mark – Aye
 - TH – Aye
 - Maren – Aye
 - Bob G. – Aye
 - Ryan – Aye
 - Bobby J. – Aye
 - Motion passed.
 - Bob Gall asked Mark, "Because the monies are being collected and used for charitable purposes, are the monies going to be a charitable deduction? We're not talking tax credit now, just charitable deduction?" Mark answered, to consult your tax advisor. Bob asked if that's what the Governor should say if asked the same question. Mark said that until there is an opinion letter form the IRS that would be the answer. Mark and TH went on to disagree about how hard it would or wouldn't be to get that IRS letter.
 - Mark asked LeeAnn to confirm that LPAG would open itself up to litigation if they stated that any part of the auction was tax deductible without the letter. LeeAnn stated, again, that they were asking for legal advice in open session, but did say that she'd be happy to

put it in writing and send it out to the Group only with Attorney Client privilege all over it, that she really would prefer to answer these questions in a formal Executive Session.

- TH asked if 1) certain questions could be answered on paper and 2) what was preventing the Chair from calling a brief Executive Session, if there were any members of the public on the call.
- Bob G. commented that moving in and out of Executive Session took too much time and that there was only limited time available and various people were dropping in and out of the call due to scheduling conflicts and thought this was not the way to handle it.
- Mark asked if the recordings of these meetings were posted on line. Maren said they were available to the public. So Mark noted that the recording would have to be edited. Maren corrected him by detailing how this call would be ended, the special Executive Session with the non-published GoToMeeting info would be initiated, once finished, that call would be ended and this call would be restarted with emails out to those members of the public who had been in attendance that LPAG had re-started. The same process LPAG has used numerous other times in the past.
- TH then agreed that it would take up too much time. TH then stated that Robert's Rules of Order did not apply to the LPAG because it was a State entity, and asked LeeAnn to confirm this. She said this was true, that Robert's Rules did not control, that the Statute did, but that Robert's Rules could be helpful where the Statutes were silent. TH interrupted LeeAnn by stating, "The Statute does allow you to resume business if you started with a quorum. So Statute does, Robert's Rules don't." LeeAnn said that a majority must vote to take action, and if there isn't a quorum the action is void, which is why her position is that a quorum must be maintained for formal action. Meetings without quorums can be held for information purposes only.
- Mark summarized by saying that without an Opinion Letter from the IRS and without getting expert legal opinions from a tax attorney or the AG's charitable giving/tax expert, he was not comfortable in doing anything other than referring people to their own tax professional for advise and would not make any motions to the contrary, Maren agreed.
- TH asked how Mark would feel if he could obtain language or a statute that said it was, would he be comfortable. Mark reiterated his position that LPAG MIGHT pass along a tax attorney's opinion, but please get your tax professional's advice.
- TH continued to point out that as a result LPAG had a lot of uncertainty around this issue and wanted a better/nicer way to say, please go consult your tax attorney.
- Bob G. asked that we moved on to other topics.

Mark moved that in the LPAG disclosures it is clearly state the LPAG is making no representation about tax deductibility, consult your tax advisor. TH 2nd.

Bobby called the Roll:

- Maren – Yes

- Bobby J. – Yes
- TH – Yes
- Ryan – Yes
- Bob – Yes
- Mark – Yes
- Gina – Yes
- Peter Pike – Yes

Patent:

Bobby suggested that since Maren would be dropping off shortly, that anything else that needed a vote be brought forward now.

Marty said that while working on marketing for the ranges of configurations to be auctioned the media that they were dealing with thought it was way too complicated, so he was wondering if LPAG had actually voted on these and if they were locked into them.

- ❖ Peter noted that the Group had voted on ranges for marketing purposes but that changes could be made.
- ❖ Bobby said that we had hired Zim Consulting for their marketing expertise; maybe we should look at taking the advice they were offering and perhaps give them the opportunity to switch this up a bit.
- ❖ Marty confirmed this and offered further that in attempting to have the clearest, simplest, easiest message for the auction, and have the most popular and easiest plates to sell, may not be the ones that bring in the most money; especially since this first auction is kind of a test/pilot to see how this will work. Zim would like to listen to his Marketing people and keep it clear and simple and have permission to change up the initial 4 configurations for auction. Marty didn't think he needed a vote but would bring forward a recommendation about what the configurations should be for the next meeting.
- ❖ Additionally, they'd like to simplify the event and have the four configurations being auctioned kick off the on-line auction. Thus it would not be a black tie event at the Brown Palace but a much more scaled down event at a smaller more casual venue, so as to make the best use of the 9 weeks available and have the best event that 9 weeks will allow, and make the most money possible.
- ❖ They will have an updated plan worked up and available for review for the next meeting. Marty didn't believe a vote as needed but wanted to be sure that this was ok.
 - TH thought the group had taken a formal vote regarding the site in a previous meeting. Marty acknowledged that they had, but they had lost the time and wanted to change the approach to accommodate the time remaining for a quality event.
 - Bobby believed, again that LPAG hired Zim to put on a successful event and we should take their advice to heart and move forward. TH agreed.
 - LeeAnn was OK as long as the group felt that these changes were within the scope of the contract and how these changes might affect the cost of the event.
 - Marty confirmed that the scope would not change and the price will not be more, they were just making sure that it all fit within the budget. (The price for the venue might be less.)

- Mark didn't believe this would be true, as Colorado Cross Disability Coalition would be paying for the venue through their fundraising efforts. Marty confirmed this. Mark thought that the having the "lesser" venue might affect CCDC's fund raising efforts and that any money left over after the event CCDC had promised to donate back to the fund that the LPAG's money would go to.
- Marty didn't believe the changes would change the costs or amount of money brought in except that it might increase due to accessibility by more people. Stephanie thought that most "Ultimate Sports Fans", who might be willing to spend thousands of dollars on, don't own a tux, so making it more accessible might draw these people out.
- At this point Maren left the call.
- Bob asked if minimum bids were going to be set up. Marty said they were working on this now. \$500 for the online, but were still working on the live auction minimums. Bob was further curious about how the minimum bids were being researched and established. Marty discussed how Sprocket was gathering this information.
- Marty said he'd have a proposal sent out so everyone would have an opportunity to review it before the next meeting.
- TH asked if Marty was concerned about the time frame. Marty confirmed he was very concerned and had been for about 2 months. He was sure he could do it, as the modified event discussed, and do it well, but that doing the black tie version at the Brown Palace would look thrown together and wouldn't go well.
- ❖ Bobby asked again if there was anything else that might need a vote as he might have to jump off as well and a quorum would no longer be available.
 - Marty asked about what the group's decision was with regards to Perpetuity. Bobby said that he was still getting the research back and would send it out to everyone as soon as possible to discuss at the next meeting. Marty wanted it for posting to the web site.
- > LeeAnn wanted to speak about the Contract with Colorado Cross Disability collation. She believed there was enough information to move forward and she'd be working with Gina on this, but believed that she'd like to have a vote from the Group about moving forward with the "Sole Source" process.

TH moved that LPAG moved forward with this. Gina 2nd. The motion passed.

Bobby had to leave the call.

As there was no longer a quorum, the balance of the meeting was for updates and information only.

- > LeeAnn updated the group on the Patent. Bob G., LeeAnn and Devin Leajo had a conference call regarding the patent. Devin is working on it to see what might happen. They are formulating a plan to see what sort of communications might be required with the patent holder. TH asked if it looked favorable. LeeAnn thought it might, but she wasn't the patent expert, which is why Devin was looking at it. TH asked if it was OK to move forward. LeeAnn deferred her answer to an Executive Session.

- > Mark asked about the One Off auction strategy that was on the agenda. Mark TH and Marty discussed this and referred back to the May minutes to determine that this was referring to a one time sort of auction without having a full blown event. Marty noted that there was a real opportunity to explore this with Hand Bid (the auctioneer) as they did many auctions. TH asked if they needed a formal vote to move forward with this. Mark thought we did need a formal vote, and it should authorize Marty to explore it with Hand Bid on an individual basis. Mark also thought we should develop policy for this to screen various charities. Marty has already started to move forward on this some recommendations in the future.
- > Peter brought up the June 30th agenda to have it finalized for Maren to complete and distribute. TH asked if LeeAnn was going to have information that needed to be presented in Executive Session. LeeAnn was going to confer with Devin and then if needed she'd communicate directly with Maren and get it scheduled if necessary. General discussion ensued about agenda topics.
- > Peter Pike asked about the videos being provided for the Marketing. Marty said that they would need to be carefully crafted and would bring in Sprocket to consult on this at the next meeting.
- > TH was concerned that since he was selected as the spokesperson, no one had spoken with him. Marty said that they hadn't contacted him because they hadn't finalized everything yet. Once finalized then TH would be contacted.

Meeting adjourned at 1:36 pm

Respectfully submitted
Chris Hochmuth
Administrative Services Supervisor
Title and Registration Sections
Department of Revenue