



Minutes of the Regular Meeting of the Board of Trustees

Tuesday, September 15, 2009, 10:00 am

A Regular Meeting of the Cuyahoga Arts and Culture (CAC) Board of Trustees was called to order at 10:03 a.m. in the 2nd floor Board Room in the Idea Center at Playhouse Square, 1375 Euclid Avenue, Cleveland, Ohio.

The roll call showed Trustees David Bergholz, Sari Feldman, and Steven Minter to be present. It was determined that there was a quorum. Chris Coburn and Vickie Johnson were absent.

Also in attendance were: CAC Staff: Meg Harris, Interim Executive Director; Achala Wali, Director of Grant Programs; Donnie Gill, Grant Program Coordinator; and Stacey Hoffman, Grant Program Coordinator.

1. APPROVAL OF MINUTES

It was moved by Trustee David Bergholz and seconded by Trustee Sari Feldman that the minutes of the July 7, 2009 Regular Meeting of the Board of Trustees, which were previously submitted and read by the Board, be approved.

Resolution: Be it resolved that the minutes of the July 7, 2009 Regular Meeting of the Board of Trustees are approved.

Ayes: Bergholz, Feldman and Minter.

Nays: None.

2. INTERIM EXECUTIVE DIRECTOR'S REPORT

Ms. Harris stated that the final Ethics Policy and related statutes of the Ohio Revised Code were provided to each Trustee for review, along with a comparison of the draft policy approved by the Board in March for submission to the Ohio Ethics Commission for review. The changes made to the March draft reflect comments from the Commission.

It was moved by Trustee David Bergholz and seconded by Trustee Sari Feldman that the Ethics Policy be adopted by the Board of Trustees.

Resolution: Be it resolved that the Ethics Policy in the form now presented to the Trustees be adopted as the Ethics Policy of Cuyahoga Arts and Culture.

Ayes: Bergholz, Feldman and Minter.

Nays: None.

Ms. Harris stated that she had reviewed CAC's Bylaws and highlighted specific areas for change. These suggestions were reviewed by CAC's legal counsel, Barbara Hawley. Ms. Harris stated that the goal of the review and revisions were to have the Bylaws accurately represent the way CAC operates. She continued, stating that the Bylaws had not been revised since they were created over two years ago when CAC was established.

Ms. Harris pointed out two changes of note:

- 1) The removal of language that relates CAC's funding to the County Investment Models.
- 2) The requirement for specific Board approval for any one expenditure over \$5,000, provided the expenditure is within the Board approved budget and the appropriations resolution.

Ms. Harris stated that based on the discussion of the Board at the July 7th meeting, there had been a request by Trustee Bergholz that CAC revisit the Bylaws, specifically the references to the County Funding Models. These Funding Models were used at the outset before CAC had established grant guidelines and policies. As CAC continues to mature as an organization and it continues to modify its guidelines, the County Models, along with the programs of other arts funders across the United States, are considered when evaluating and creating grant guidelines and policies. Ms. Harris continued that the removal of the requirement of specific Board approval for each disbursement over \$5,000 was meant to give the office more flexibility. She pointed out that expenditures must be within the Board approved budget and annual appropriations. She further commented that the majority of all expenditures are specifically approved by the Board as part of contract approvals, such as all grant agreements and contracts for services. The revised Bylaws reflect the way CAC operates and are consistent with applicable laws.

It was moved by Trustee Sari Feldman and seconded by Trustee David Bergholz to amend the Bylaws of Cuyahoga Arts and Culture.

Resolution: Be it resolved that the Bylaws of Cuyahoga Arts and Culture be amended and restated in the form presented to the Trustees.

Ayes: Bergholz, Feldman and Minter.

Nays: None.

Audit/Audit Committee

Ms. Harris stated the audit committee held a meeting on August 17th. The first matter reviewed by the committee was the Audit Committee Charter. As a result, there was a recommendation that the charter be modified to add the bulleted item: Provide analysis and recommendations on the financial aspects of grant programs. The purpose of adding this bullet was to give the committee the authority to provide recommendations specifically in the area of the grant award calculations.

Ms. Harris continued that the committee also reviewed the document titled Internal Control Risk Assessment which was created by Jared Maloof and Matt Slife, both employees of KPMG, who volunteered their time to work on this project. The outcome of this document will be the creation of specific internal control policies that will be brought to the Board for approval in the next several months.

The Audit and Finance Advisory Committee will meet next in December, 2009.

It was moved by Trustee David Bergholz and seconded by Trustee Sari Feldman to amend the Audit and Finance Committee Charter to include: Provide analysis and recommendations on the financial aspect of grant programs.

Resolution: Be it resolved to amend the Audit and Finance Committee Charter to include: Provide analysis and recommendations on the financial aspect of grant programs.

Ayes: Bergholz, Feldman and Minter.

Nays: None.

Finances and Operations

Ms. Harris stated that the cigarette excise tax revenue received through August represented a 6.27% decrease over the same period in 2008. This figure is less than forecasted in CAC's 2009 budget. Ms. Harris stated interest receipts continue to be lower than forecasted with StarOhio yield currently at 0.17%.

Ms. Harris stated that expenditures through August were within budgeted figures.

3. GRANT PROGRAMS

Grantee Compliance Matters

Ms. Harris stated that the Board had received a memo regarding various grantee compliance issues. There were a variety of issues presented with recommended actions for each grantee.

1. Recommendation that the Board revoke the General Operating Support grant made to Passport Project for years 2009 and 2010 in the annual amount \$18,147 because Passport Project failed to submit its 2007 Certified Financial Review to CAC by the extension deadline of July 31, 2009. Passport Project will not be in "Good Standing" with CAC until the 2007 and 2008 Certified Financial Reviews are submitted to CAC.

It was moved by Trustee Steven Minter and seconded by Trustee David Bergholz to revoke the General Operating Support grant made to Passport Project for years 2009 and 2010 in the annual amount \$18,147 for non-compliance in reporting.

Resolution: Be it resolved to revoke the General Operating Support grant made to Passport Project for years 2009 and 2010 in the annual amount \$18,147 for non-compliance in reporting.

Ayes: Bergholz, Feldman and Minter.

Nays: None.

2. Recommendation that the Board revoke the General Operating Support grant made to Cleveland Women's Orchestra for year 2010 in the annual amount \$8,614 for not meeting

the requirement in Section 3(e) of the Grant Agreement which states “Grantee employs and shall continue to employ at least one paid, professional artistic and/or administrative Staff or Personnel working a minimum of 20 hours per week.”

Mr. Bergholz asked if the Cleveland Women’s Orchestra had received notice regarding this issue. Ms. Harris responded that staff had requested W-2’s from the organization but had not informed the organization that a recommendation would be made to the Board to revoke the grant.

Mr. Minter asked if the wage determined whether or not the grant requirement was satisfied because the wages paid may not accurately reflect the number of hours worked.

Ms. Harris stated that staff had used minimum wage amounts to determine whether or not the requirement was met. It would be unfair to overlook this compliance issue as the requirement may have caused other organizations to be ineligible for the General Operating Support grant program.

Mr. Bergholz expressed concern over whether grantees clearly had notice that CAC was applying the minimum wage in determining compliance with the staffing requirement. It was suggested that the eligibility requirements clearly state that grantees must pay at least the minimum wage.

It was moved by Trustee David Bergholz and seconded by Trustee Steven Minter to revoke the General Operating Support grant made to Cleveland Women’s Orchestra for 2010 for the reason that the organization does not meet the minimum staffing requirement.

Resolution: Be it resolved that the Cleveland Women’s Orchestra does not meet the minimum staffing requirements for organizations receiving General Operating Support grants and therefore the grant for 2010 in the amount of \$8,614 is revoked.

Ayes: Bergholz, Feldman and Minter.

Nays: None.

3. Recommendation that the Board revoke the 2008 Project Support grant made to Unity Center Church in the amount \$26,250 in response to the written notification that the project had not and will be executed.

It was moved by Trustee Steven Minter and seconded by Trustee Sari Feldman to revoke the 2008 Project Support grant made to Unity Center Church in the amount \$26,250 in response to the written notification to CAC that the project had not and will be executed.

Resolution: Be it resolved to revoke the 2008 Project Support grant made to Unity Center Church in the amount \$26,250 in response to the written notification that the project had not and will be executed.

Ayes: Bergholz, Feldman and Minter.

Nays: None.

4. Recommendation that the Board revoke the 2008 Project Support grant made to Cudell Improvement in the amount \$13,600 in response to the written notification that the project had not and will be executed.

It was moved by Trustee David Bergholz and seconded by Trustee Steven Minter to revoke the 2008 Project Support grant made to Cudell Improvement in the amount \$13,600 in response to the written notification that the project had not and will be executed.

Resolution: Be it resolved to revoke the 2008 Project Support grant made to Cudell Improvement in the amount \$13,600 in response to the written notification that the project had not and will be executed.

Ayes: Bergholz, Feldman and Minter.

Nays: None.

5. Recommendation that the Board takes the following actions, which will be effective, October 2, 2009 for the PS08 grant program for the five PS08 grantees with outstanding final reports:
 - a) For organizations that received up to 60% of the grant award in advance:
 - Revoke remainder of grant award.
 - Organization will not be in “Good Standing” until PS08 reports are submitted to CAC.
 - b) For organizations that received no advanced payment of funds:
 - Revoke full amount of PS08 grant award
 - Organization will not be in “Good Standing” until a letter stating 1) why the project failed to be executed or 2) why the final report was not submitted, is received by CAC.

Ms. Harris stated that as of today there are four PS08 Grantees with outstanding final reports. All organizations received an e-mail reminder in June that final reports were due within sixty days of the June 30 grant period end date. Any grantee organization that did not submit a final report to CAC by August 31st, 2009 received a letter stating that the organization was not in compliance with the PS08 grant agreement and that it had 30 days to submit the PS08 report or appropriate action would be recommended to the Board of Trustees regarding current and future funding.

Mr. Bergholz asked if the revoking of grants had to go through the Board.

Ms. Hawley replied that the Board did not need to review each grant to be revoked if a policy was adopted and staff acted uniformly.

Deena Epstein, Senior Program Officer for The George Gund Foundation stated that they give staff the authority to revoke grants but that the Board then ratifies that decision/action.

It was moved by Trustee David Bergholz and seconded by Trustee Steven Minter to adopt the policy as submitted with the condition that the Board will ratify the revoking of grants.

Resolution: Be it resolved to adopt the above policy with the condition that the Board will ratify the revoking of grants.

Ayes: Bergholz, Feldman and Minter.

Nays: None

4. GRANT PROGRAM UPDATES

General Operating Support (GOS) Grant Program

Ms. Gill informed the Board that staff had been working to increase communication with GOS grantees. Two initiatives were started within the past year: site visits and an electronic newsletter.

Ms. Gill continued and stated that CAC plans to conduct at least one site visit for each GOS Grantee over the 3 year grant period. To date, 40 of 64 site visits have been completed. The purpose of the site visit is to meet key staff, learn more about the organization and its programs and to make sure there is clear communication between CAC and the grantee.

Ms. Gill informed the Board that the site visits generally last about an hour and take place at the grantee's facility. The primary contact person and executive director are required to attend. It is encouraged that representatives from finance, marketing and key program staff attend as well.

Ms. Gill further stated that during the site visit, CAC staff discusses the impact of the current grant funding from CAC, the impact of recession on the organization, any follow-up on grantee reporting or interesting news/press coverage, the next funding cycle, updates on the launch of OCDP and a review of the CAC credit and publicity policy. A short tour of the organization may take place as well.

Ms. Gill said that the overall response to the site visits was positive. The grantees appreciate the opportunity to talk about their programs. They also like the opportunity to ask CAC questions. Ms. Gill noted that the two most frequent questions asked are in regard to the status of the tax revenue and the executive director search. A list of GOS site visits completed is available if anyone is interested.

Ms. Gill reported on the second initiative, the electronic newsletter. The first newsletter was distributed in June; it is primarily for communicating with GOS grantees. Additionally, newsletters were sent in July and August. The goal is to distribute a newsletter monthly or every other month depending on the amount of news. The response has been positive on that as well.

Ms. Gill also reported on the Ohio Cultural Data Project (OCDP) training sessions scheduled for the week of September 21. To date, 116 people have registered from 71 different organizations. GOS grantees will be required to submit a report to CAC using the OCDP system as part of the 2009 GOS Annual Report due in January 2010.

Ms. Gill informed the Board that \$29, 816, 933.50 has been paid out for the GOS program. All GOS grantees have received their full award for 2009.

Project Support Grant Program

Ms. Hoffman informed the Board that one 2008 project remained unfinished; due to the nature of the project an extension was requested and granted to Northeast Shores Development Corporation until 10/20/09 with the final report due 11/17/09. Over \$700,000 has been paid out for the 2008 Project Support grant program.

Ms. Hoffman gave a brief update of the 2009 Project Support grant program. Fifty-four of the fifty-five grantees are in compliance. The Cleveland Municipal School District (CMSD) is not under contract; CAC legal counsel and CMSD legal counsel are working together to finalize the Grant Agreement. Three projects have already been completed and final reports received. Fourteen advance payments have been disbursed totaling \$109,443. Staff has been able to attend thirteen events to date. The initial grantee meeting held before the project period started has proven beneficial in regard to regular communication between the grantees and CAC.

Ms. Hoffman stated that all past and present Project Support grantees would receive an invitation to attend the OCDP training sessions being held. Project Support grantee organizations are not required to participate but CAC staff has strongly encouraged them to participate.

5. GRANT PROGRAM POLICY 2011 REVIEW

Ms. Wali informed the Board that she was seeking approval of the revised eligibility guidelines that would encompass both grant programs. She highlighted the following changes:

General Eligibility Criteria

1. Intent to Apply – All organizations interested in applying to CAC grant programs must submit the appropriate Intent to Apply form with documentation verifying their eligibility for the program. The Intent to Apply must be received by the stated deadline for the program. This process was in place for the PS 09 grant program and will now be implemented as a general procedure for determining eligibility for all CAC grant programs. Once the applicant has demonstrated that it meets all eligibility criteria, it will be able to begin the application process.
2. Ineligible Organizations – Units of Government will be added to the list of ineligible organizations. Units of Government include K-12 school districts, public colleges and universities, public libraries, metroparks, cities, townships and counties.
3. Clarification: *Arts and Cultural Heritage* – In order to provide specific language around the term *Arts and Cultural Heritage* CAC will use the National Taxonomy of Exempt Entities (NTEE) Classification Codes. The NTEE codes are used by the IRS, research organizations and foundations to classify nonprofit organizations.

Mr. Bergholz suggested that he would like examples of organizations that would be ineligible based on use of the NTEE codes.

Mr. Bergholz asked what the rationale was for not allowing units of government to apply to CAC for funding. Ms. Hawley, CAC's legal counsel, stated that the cigarette tax is restricted in how it can be used. Grants may only be made to an "arts or cultural organization" as defined in Section 3381.01(A) of the Revised Code. That section states that:

"Arts or cultural organization" means any corporation, organization, association or institution that: (a) Provides programs or activities in areas directly concerned with the arts or cultural heritage; and (b) Is not for profit and whose net earnings may not lawfully inure to the benefit of any private shareholder, member, or individual.

Mr. Bergholz asked how much flexibility there was in its use. Mr. Minter shared his concern with being as inclusive as possible. He asked if the law clearly defines units of government as ineligible.

Ms. Hawley explained that there are specific words used in the Ohio Revised Code to describe local governments. They are referred to generally by the term "political subdivisions" and specifically by the type of political subdivision, such as counties, municipal corporations, townships, state-assisted institutions of higher education, and school districts. The Ohio Revised Code does not refer to political subdivisions as "corporations, organizations or associations." Further, the tax exemption of political subdivisions is based on their governmental functions, not on any characterization of them as being "not for profit" or entities whose net earnings do not inure to benefit private persons. Political subdivisions don't have "net earnings." She commented that there wasn't any legislative history to explain the thinking of the General Assembly when it enacted Chapter 3381, but the exclusion of political subdivisions from the definition of eligible grant recipients may have been based on the fact that political subdivisions receive other public funding, such as from property taxes, income taxes, sales taxes and State appropriations.

Mr. Bergholz suggested there was a difference between receiving public funding and receiving public funding for the arts. He shared his concern regarding the base of support we would lose if we do not allow these organizations to apply for and receive funding.

Jeff Rusnak, M & R Consulting, suggested that the Board could take this to the state legislature for correction/clarification.

Ms. Harris shared her concern that the many friends groups that support local governments may come in for funding as a result of the units of government being ineligible. CAC would need evidence from the friends groups that they satisfy the Ohio Revised Code requirement that they directly provide arts or culture programming activities and are not simply fund-raising organizations or supporting organizations.

Mr. Minter stated that he would like to find a way to be more inclusive with the Project Support program. He asked Ms. Hawley to prepare an opinion on whether the interest revenue earned on tax monies invested may be used to fund projects of units of government.

Ms. Wali continued, highlighting the changes made to the General Operating Support eligibility criteria only:

General Operating Support (GOS) Criteria

1. Clarification: Paid Staff requirement – In the first cycle of GOS, the guidelines stated that the “organization must employ at least one paid, professional, artistic and/or administrative staff member, working a minimum of 20 hours per week.” This would be changed to read as “At least one 20 hour per week paid staff for a minimum of 2 years prior to application deadline. Staff is defined as person(s) for whom W-2 is filed and with board approved authorization to sign for financial transactions and grant-related documents.”
2. Clarification: Status of schools, colleges and universities – K-12 schools, colleges and/or universities would be ineligible (in previous GOS Guidelines, an exception was made for the Cleveland Institute of Art and the Cleveland Institute of Music).

Ms. Feldman suggested she would need to learn more about the public programming CIA and CIM provide; it is her understanding that CIA and CIM do not do substantial public programming in relation to their overall budgets. She added that the primary intent of the GOS funding is to serve the public. She continued that she would feel more comfortable funding these organizations based on their public programming.

A discussion ensued regarding the eligibility of colleges/universities in the General Operating Support program.

Mr. Minter suggested that the Board formally ask CIA and CIM to present their arguments for why they should be eligible for GOS funding. Mr. Minter requested that the Board delay making a decision in regards to the eligibility of colleges/universities in the GOS program until the October meeting when the other Board members would be in attendance. He added that staff should continue researching (with legal counsel) the option to fund units of government with CAC’s interest revenue.

It was moved by Trustee Steven Minter and seconded by Trustee Sari Feldman to approve the CAC Eligibility Guidelines with the exception of the matter of eligibility of colleges and universities for General Operating Support.

Resolution: Be it resolved that to approve the CAC Eligibility Guidelines with the exception of the matter of eligibility of colleges and universities for General Operating Support.

Ayes: Bergholz, Feldman and Minter.

Nays: None.

6. CPAC- CREATIVE WORKFORCE FELLOWSHIP

Ms. Van Voorhis informed the Board that one of their individual artist fellows, Seth Rosenberg, had passed away unexpectedly. He was a painter and a great advocate for Cuyahoga County and what it has to offer to the arts community.

Ms. Van Voorhis stated that all of the funds for the first cycle had been disbursed. The application deadline for the second cycle is set for September 25, 2009.

Seth Beattie, Program Manager for the Community Partnership for Arts and Culture, informed the Board that site visits had been conducted with all of the first cycle recipients. Regarding the second cycle, five grant workshops were held. Approximately 165 applications were received for the intent to apply. An FAQ sheet had been completed to help with the process.

Mr. Bergholz had attended one of the workshops and thought it was well done.

Ms. Harris commented that the FAQ was also very well done.

7. OTHER BUSINESS

Public Comment

Kevin Cronin, Bodwin Theatre Company, commended the individual artist program. He stated that this was a tough economy for organizations and individuals alike. He was addressing the Board to share his concern regarding a restriction that barred individuals from pursuing a grant if they were a higher education student.

Mr. Cronin clarified that one of his staff members was unable to pursue an individual artist grant since he is pursuing his PhD in history which is unrelated to his arts interests. He suggested that this was an over-broad (over-restrictive) policy/career.

Mr. Bergholz understood the dilemma. The intent of the grant was for it to be free money with the recipient's discretion on how it should be used. This is a legitimate way to narrow the risk.

Mr. Cronin suggested that there are ways to document how the money is being spent to ensure it is not going towards the cost of higher education.

Mr. Minter stated that it was helpful to have this concern brought to their attention. It is something that the Board could ask CPAC to look into.

Ms. Van Voorhis stated that they had already received a lot of policy suggestions through the process. The guidelines have already been posted and the deadline is looming. After the completion of the second round, it is the intent of CPAC to look back at both rounds and have the CPAC Board review changes and recommendations at that time.

Next Meeting

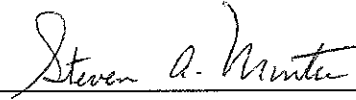
The next regular meeting of the CAC Board of Trustees is October 13, 2009 at 10:00 a.m. in the Second Floor Conference Room of Idea Center.

There being no further matters to come before the Board, Trustee David Bergholz moved to adjourn the meeting at 12:20 p.m. Trustee Sari Feldman seconded the motion.

Vote on Motion was as follows:

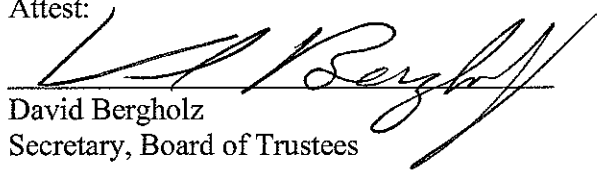
Ayes: Bergholz, Feldman and Minter.

Nays: None.



Steven Minter
President, Board of Trustees

Attest:



David Bergholz
Secretary, Board of Trustees