

RIO NUEVO MULTIPURPOSE FACILITIES BOARD MEETING

Tucson, Arizona
November 19, 2012
1:00 p.m.

REPORTED BY:

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1 (Meeting commenced at 1:05 p.m.)

2 CHAIRMAN McCUSKER: So let's go ahead and start.
3 We can get the pledge, roll call, and minutes out of the way
4 while we're waiting for Cody.

5 Mr. Sheafe?

6 MR. SHEAFE: I can do that.

7 (Pledge of Allegiance was recited.)

8 (1:06 p.m.)

9 CHAIRMAN McCUSKER: Michele, would you do the roll
10 call, please.

11 MS. BETTINI: Mark Irvin?

12 MR. IRVIN: Here.

13 MS. BETTINI: Jannie Cox?

14 MS. COX: Here.

15 MS. BETTINI: Jeff Hill?

16 MR. HILL: Here.

17 MS. BETTINI: Fletcher McCusker?

18 CHAIRMAN McCUSKER: Here.

19 MS. BETTINI: Alberto Moore?

20 SECRETARY MOORE: Present.

21 MS. BETTINI: Chris Sheafe?

22 MR. SHEAFE: Here.

23 MS. BETTINI: And we're waiting on Cody.

24 CHAIRMAN McCUSKER: And Cody is on the way. We
25 had a text message from Cody; he's right behind us. We'll

1 make sure we don't lose him.

2 And I saw you emailed out the transcripts.

3 MS. BETTINI: I didn't put -- this is from two
4 meetings ago, not the last meeting.

5 CHAIRMAN McCUSKER: Okay. So what was the last
6 version we've approved?

7 Mark, do you know?

8 MR. COLLINS: The meeting before October 22,
9 whatever that was, was the last one we've approved. October
10 22.

11 CHAIRMAN McCUSKER: We haven't seen those yet?

12 MS. BETTINI: No -- you have.

13 MS. COX: Yeah, we have.

14 MS. BETTINI: November 9th I sent out today.

15 CHAIRMAN McCUSKER: Can I have a motion to
16 approve?

17 MS. COX: So moved.

18 CHAIRMAN McCUSKER: Second?

19 MR. SHEAFE: Seconded.

20 CHAIRMAN McCUSKER: All in favor, say aye.

21 (The Board voted and motion was passed.)

22 CHAIRMAN McCUSKER: Someone can move us into exec.

23 MS. COX: So moved.

24 MR. SHEAFE: Let's move to exec. That's a motion.

25 CHAIRMAN McCUSKER: Seconded. In Room 152.

1 All in favor, say aye.

2 (The Board voted and motion was passed.)

3 CHAIRMAN McCUSKER: Thank you. And we'll wait for
4 Cody.

5 (The Board convened for executive
6 committee at 1:07 p.m.)

7 (2:37 p.m.)

8 We said 2:40, so you want to give it a couple of
9 minutes? About three minutes, we'll go ahead and start.
10 Okay. So we need a motion to reconvene.

11 SECRETARY MOORE: So moved.

12 CHAIRMAN McCUSKER: That was Alberto.

13 Second, please?

14 MS. COX: Second.

15 CHAIRMAN McCUSKER: Second by Jannie.

16 All in favor, say aye.

17 (The Board voted and motion was passed.)

18 CHAIRMAN McCUSKER: Okay. We'll see if we can
19 advance the open meeting agenda. Thank you, everyone.

20 From my perspective, we are dangerously close to
21 getting back to business. I'm sorry for the long time in
22 executive committee, but most of that was around the City of
23 Tucson settlement agreement. We'll talk about that in a
24 minute. I think everyone knows we're working very hard to
25 issue a qualified audit this year. We're dangerously close

1 to doing that. If you were here at our last meeting, you'll
2 recollect that we were assigned, each of us, some projects.
3 We are eager to begin to advance the ball. The crucial
4 piece of that, of course, is going to be how we move forward
5 with the City of Tucson. We'll talk about that in the next
6 to the last item on the agenda.

7 So a quick update on the annual audit. We are
8 maybe a couple weeks away from being able to issue that. We
9 have all the work that we need for the period ending
10 June 30, 2012, in front of BeachFleischman. There are some
11 things that are timing as it relates to assets, property
12 ownership, debt, but we think we should have that shortly.
13 Our next meeting -- remind me again -- is December...

14 MR. COLLINS: 12th.

15 CHAIRMAN McCUSKER: -- 12th. We may call a
16 special meeting to approve the audit just so we can get it
17 done, published, and off to the State as part of their
18 entire auditing process.

19 Under Item No. 7, a piece of that is related to
20 the Fox Theatre debt. And I've enjoyed both sides of this
21 ledger. Counsel has confirmed for me that I likely do not
22 have a conflict of interest because I served as a voluntary
23 Board member of the Fox Theatre, which is one of the things
24 that is provided for in the conflict statutes. But in any
25 case, we're probably not going to take any action on that

1 today because it's related to the determination of the final
2 audit.

3 But to give everyone a quick history lesson on
4 that item: Over the years, Rio Nuevo invested three
5 different times in the Fox Theatre, ultimately spending
6 around \$12 million. The last tranche of that was in the
7 form of a loan. None of us were here. When I was at the
8 Fox, I raised a number of issues to this Board about the
9 appropriateness of that kind of indebtedness to a
10 not-for-profit theater that was lucky to break even. But in
11 any case, there was a loan on the books of \$5.8 million, and
12 varied interest at the bond rate, which is six and a half
13 percent interest.

14 So we, meaning the Rio Nuevo Board, saddled the
15 Fox Theatre with a \$5.8 million debt at six and a
16 half percent interest. The interest alone is over \$300,000
17 a year. The Theatre's budget is about a million dollars.

18 So it was an impossible situation the day that
19 note was drafted. Five years later, the first payment on
20 that note was due, September of last year. And I believe I
21 was the first civilian on that side of the microphone to
22 indicate to the Board that the Fox had no ability now or
23 ever to repay that indebtedness, and that we wanted to talk
24 about some new terms.

25 Over the ensuing months, the Rio Nuevo Board and

1 the Fox Theatre Board did, in fact, agree on a term-out of
2 that indebtedness that we thought that we could afford and
3 would in fact keep the District's debt whole. One of the
4 interesting pieces about this transaction, however, is the
5 intervention of the national historical trust.

6 The National Trust for Historic Preservation is
7 actually the lessee of the Fox Theatre. The District has a
8 lease, with an entity called Fox Rehab, LLC, that the member
9 of that is the National Trust for Historic Preservation.
10 They are, in fact, our tenant. They sublease the theater,
11 then to the Fox Foundation to operate it. It's very
12 complicated.

13 But that position gives them the right to veto any
14 obligations the Fox Theatre would enter into. And indeed
15 they exercised that right by saying they did not agree with
16 the terms that had been arrived at between the Rio Nuevo
17 Board and the Fox Theatre Board. So that's left us at kind
18 of a standstill here for the last several months.

19 As any business facing debt where the
20 collectibility is in doubt, accounting principles require us
21 to consider the collectibility and reasonableness of that
22 asset. We've done that. The recommendation we believe that
23 we'll see in the final draft of the audit will be that we
24 stop accruing the interest on that indebtedness and that we
25 reserve some portion of that as uncollectible. And our

1 advice at this point is: probably half of that, at a
2 minimum, is uncollectible debt. You'll see that as the
3 final draft evolves.

4 We wanted to just share that because the Fox has
5 been one of those poster children of past misdeeds. And
6 the -- you know, the headline might likely be, you know, Fox
7 Debt Lost Forever.

8 But there's a long path to all of us getting to
9 this point. We remain optimistic that at some point we can
10 sit down with all three parties, including the Trust, and
11 still arrive at some terms that return some portion of that
12 debt back to the District. Is that clear as mud for
13 everybody?

14 MS. COX: Clearer.

15 CHAIRMAN McCUSKER: Clearer. Thank you.

16 Susan, could you update us on your work, please.

17 MS. VOS: Good afternoon, Mr. Chairman of the
18 Board, Board members. Just a really quick update.

19 I did get a response from John Sundt and more
20 information from Silvia on the Depot Project, so hopefully
21 I'll be able to wrap that up within the next couple of
22 weeks. I need to assess that information that was provided
23 to me, and then finally it will have to go through review.
24 Our firm policy is that everything before it's released has
25 to go through a partner review. But that is nearing its

1 end, hopefully sooner rather than later.

2 Westside: We're just continuing to go through
3 most of the documents. Hopefully once Depot is off my desk,
4 I can devote even more time to the Westside and start
5 getting it done quicker. And also on the agenda, I noted
6 that it's referred to as two forensic audit projects, but
7 there is a third one quietly out there, which is the TCC
8 East Entrance forensic audit that was started at R&A CPAs.
9 It was transferred to Regier Carr & Monroe, but it's kind of
10 just sat on the back burner waiting for clear direction from
11 you all. Also, wanting to get the other two projects done
12 before I open up a third one. So eventually, I'll just be
13 looking for clear direction from you to continue on that.

14 CHAIRMAN McCUSKER: Counsel, then is it safe to
15 assume that that audit was authorized, that -- you know,
16 that that was one of the forensic audits that the Board
17 authorized that Regier had not been able to start?

18 MR. COLLINS: It's my understanding -- I haven't
19 gone back to review the minutes, but I'm seeing nods from a
20 couple of the Board members who were on the Board at that
21 time that it was in fact authorized. It was --

22 CHAIRMAN McCUSKER: Would you go back and just
23 confirm that for us?

24 MR. COLLINS: I will.

25 CHAIRMAN McCUSKER: I don't believe it requires

1 any action, but if it does, we'll put it on a subsequent
2 agenda.

3 MR. COLLINS: Right. I will confirm that. As I
4 say, if there had been recent correspondence with members of
5 the board, maybe we can --

6 CHAIRMAN McCUSKER: I think we agree with your
7 sense of priorities. Let's get the Depot done, the Westside
8 done, and then we'll talk about that.

9 MS. VOS: All right. I just want to make sure you
10 guys knew I didn't forget about that one.

11 And then the accounting assistance, that's died
12 down a little bit. We have been getting some audit
13 adjustments from Bill. But again, we'll be looking for some
14 direction once your audit is completed on either
15 transferring that activity over to Bill and Michele to do,
16 or if you want us to continue with the accounting systems on
17 a monthly basis.

18 CHAIRMAN McCUSKER: And thank you for your help.

19 Any questions for Susan?

20 Mark, quick update on the 2008 bond issues.

21 MR. COLLINS: Really, there's nothing new to
22 report, Mr. Chairman, members of the Board. We're still
23 awaiting Mr. Hicks' opinion.

24 CHAIRMAN McCUSKER: Anybody have any questions or
25 need any further clarification on this? This is the

1 question about the unspent money, the 2008 bonds, about six
2 and a half million dollars. We're waiting for bond counsel
3 to tell us the status of that, whether or not it can be
4 spent or has to be paid back.

5 MR. COLLINS: There has to be a determination
6 by -- Mr. Hicks is the one who rendered the opinion that the
7 2008 revenue bonds were tax exempt. That opinion is vital
8 to that bond issuance. He has been provided, I understand,
9 with all the information he needs to render his opinion on
10 what can and should be done with the unexpended bond
11 proceeds. We've been waiting for that. And as of -- at
12 least as of Friday of last week, I was informed that it had
13 not yet arrived.

14 CHAIRMAN McCUSKER: All right. And while you're
15 up there, let's go ahead and move to Item 10, City of Tucson
16 Settlement Agreement. The -- and correct me if I confuse
17 the timing because we've obviously gone back and forth on
18 this a lot -- we have been working on responding to the City
19 of Tucson's counter proposal to our proposal. In the last
20 meeting, a special meeting, we authorized the executive
21 officers and counsel to continue to negotiate with the City.
22 We've done that in person and offline as much as we can.

23 We have a draft agreement today that includes some
24 changes that we've been making. And I think we're prepared
25 to suggest to counsel -- you know, and correct me if I'm

1 mistaken -- members to authorize us to continue those
2 negotiations. Under --

3 MR. COLLINS: Yeah. I've been instructed by you
4 folks that we ought to proceed forward with making the
5 counteroffer that we've discussed.

6 CHAIRMAN McCUSKER: We would need a motion on
7 that.

8 MR. SHEAFE: So moved.

9 MS. COX: Second.

10 CHAIRMAN McCUSKER: That was Chris. Seconded by
11 Jannie.

12 Any further discussion?

13 All in favor, say aye.

14 Any opposed?

15 SECRETARY MOORE: I oppose.

16 CHAIRMAN McCUSKER: Opposed by Alberto.

17 (The Board voted and motion was passed.)

18 MR. COLLINS: Mr. Chairman, before you go forward,
19 I think we also need, in connection with that, to talk about
20 the TCC issue. I don't want you to forget that.

21 CHAIRMAN McCUSKER: Yeah. As a part of that
22 settlement agreement -- and I think the City is going to box
23 us in a corner unless they act in their meeting tomorrow --
24 we extended the filing of the lawsuit for the Tucson
25 Convention Center claims through Wednesday.

1 Correct, counsel?

2 MR. COLLINS: That's correct.

3 CHAIRMAN McCUSKER: So if they do not agree to
4 extend that further, we would have no choice as a Board, I
5 believe, but to authorize Sean to file that lawsuit. And
6 that literally means we would have to probably authorize
7 Sean to do that in this meeting so that we do not miss a
8 deadline. And then, respectively, request the City to
9 extend that tolling agreement. If they do not, then I think
10 we're obligated, in my sense, to file that lawsuit.

11 MR. COLLINS: Mr. Chair, members of the Board, I
12 would agree. I think that the lawsuit -- for those of you
13 who may be new to this -- has to do with the sublease. Sean
14 can speak to it more than I can. But it has to do with
15 protecting the interests of the Board with respect to its
16 sublease and the City of Tucson's duties.

17 MR. BREARCLIFFE: And I'll try and be quick about
18 it. But just in case there's some who aren't as familiar
19 with it as a few of us are:

20 To begin with, the City and the District are
21 parties to a sublease agreement with the TCC where the
22 District acts as a sublessor and the City acts as a
23 sublessee of the TCC. It's a triple net lease which means
24 that the tenant, the City, pays rent, taxes, insurance, and
25 all maintenance expenses arising from the use of the

1 property.

2 In the summer of last year, Tommy Obermaier, who
3 was the City's director of the TCC, identified a laundry
4 list of maintenance and repair problems with the TCC, quite
5 substantial ones, including bathrooms and the bleachers. We
6 -- our firm was then charged by the District to submit that
7 laundry list that its own director had come up with to the
8 City, asking them to take care of the maintenance and repair
9 items under the terms of the sublease. This was sent in
10 October of last year.

11 In November, we get an unequivocal response back
12 from the City that they refused to take care of any of those
13 maintenance and repair items. Subsequently, we submitted --
14 because the law requires it -- a notice of claim to the City
15 of Tucson reiterating the demand that it take care of these
16 maintenance and repair items and also to remedy the breach
17 of the lease.

18 The City didn't do so. It ignored the notice of
19 claim letter, and now we are at time limit -- actually we
20 have passed the time limit to file the lawsuit under the
21 one-year statute of limitations.

22 I say we're past it because the City agreed to
23 toll that. We've asked for an unlimited tolling period in
24 which -- so that the District could continue its
25 negotiations of the overall settlement in good faith. We

1 didn't want to file the lawsuit if there was a chance we
2 could resolve all the disputes. The City only agreed to
3 give the District a two-week tolling agreement, forcing us
4 to file the lawsuit, if at all, by essentially Thanksgiving
5 Day.

6 So our firm was charged with, you know, drafting
7 the complaint and getting it all ready to go. We have done
8 that. And we have been holding it in advance hoping against
9 hope, I guess, we'd get agreement by the City to toll it
10 further. They have yet to give that approval. So the risk
11 you face by not filing it is that you lose all claims
12 relating to the repair and maintenance costs for the TCC.
13 So eventually --

14 CHAIRMAN McCUSKER: It should be noted that in
15 either side's current settlement offers, that the City has
16 affirmed their willingness to abide by the triple net lease.
17 And there's no real argument that in the final settlement we
18 would dismiss these claims. So for them not to extend it
19 makes no sense in terms of the overall conversations we're
20 having with the settlement.

21 Except for timing issues, right?

22 MR. BREARCLIFFE: That's correct.

23 CHAIRMAN McCUSKER: I mean, really, that's the
24 crux of the matter, is that if we don't file by Wednesday at
25 five o'clock, we lose the right to file forever.

1 MR. BREARCLIFFE: That's true. And then again,
2 the filing would be just to preserve the claims, not to
3 pursue them per se, because that would -- all those claims
4 would be resolved in the pending settlement.

5 So I would just ask that in the event no
6 additional tolling is arrived at -- agreement is arrived at
7 with the City -- or a full settlement of all claims,
8 including the TCC claims -- by Wednesday, that my firm be
9 authorized to file a lawsuit for the purpose of
10 preserving --

11 MR. RITCHIE: Mr. Chairman, I'd just like to note
12 that if anybody from the City is listening or can hear us
13 right now, this is getting beyond frustrating because I
14 think the taxpayers are getting sick and tired and having to
15 file lawsuits.

16 I mean, I'm prepared to go along with rest of the
17 Board to do exactly what you're saying, Sean, but I would
18 hope that in good faith that they would not force us into
19 this action because it's just unwarranted use of money --
20 waste of money. It's warranted, but it is a waste of time,
21 especially when -- with what you just told us.

22 MR. SHEAFE: Sean -- just a question,
23 Mr. Chairman.

24 Sean, you have all the paperwork prepared. At
25 this point it's not -- am I correct in assuming that there

1 really isn't anything more than just filing the documents
2 with the court?

3 MR. BREARCLIFFE: That's absolutely correct. It's
4 all ready to go.

5 MR. SHEAFE: All right. Well, reluctantly I would
6 support the motion too.

7 And I might ask, Mr. Chairman, if you would be
8 interested in attending that council meeting yesterday just
9 to make sure everybody's aware -- or I mean tomorrow -- just
10 because, you know, this is probably one of those things
11 that's more paperwork. And with the holidays and
12 everything, it may not be that adversarial. After all,
13 we've satisfied most of issues in the other negotiations.

14 CHAIRMAN McCUSKER: It would be my hope to reach
15 out to Mayor and council today and/or tomorrow, privately or
16 publicly, regarding the necessity to extend this.

17 You know, I think the motion that I heard you
18 needed is, in the absence of a settlement agreement, in the
19 absence of a tolling extension, we would otherwise authorize
20 you to file a lawsuit.

21 MR. BREARCLIFFE: That's right.

22 SECRETARY MOORE: That would be the motion.

23 MR. RITCHIE: Yeah. It's -- time for a question
24 or --

25 CHAIRMAN McCUSKER: I have a motion. Do I have a

1 second?

2 MR. IRVIN: I'll second.

3 MS. COX: Second.

4 CHAIRMAN McCUSKER: Mark Irvin beat you to that.
5 So, Alberto, go ahead.

6 SECRETARY MOORE: I would just like to amend that
7 to say that they have to provide us an answer by noon on
8 Wednesday.

9 MR. SHEAFE: I would accept that. Good idea.

10 CHAIRMAN McCUSKER: So we have an amended motion
11 that in the absence of a settlement agreement and the
12 absence of the tolling extension by noon on Wednesday, that
13 we would authorize you to file the lawsuit.

14 MR. HILL: Second.

15 CHAIRMAN McCUSKER: And Jannie was the second --
16 Mark was the second.

17 MS. COX: Mark was the second.

18 CHAIRMAN McCUSKER: So you approve?

19 MR. HILL: Now amended.

20 CHAIRMAN McCUSKER: Yeah. Restated his motion.

21 Any further discussion?

22 All in favor, say aye.

23 Any opposed?

24 (The Board voted and motion was passed.)

25 CHAIRMAN McCUSKER: Okay. Thank you very much.

1 Thanks for all your hard work.

2 I didn't see any cards come up. This is the time
3 we normally have the call to the audience. But not seeing
4 any, let's entertain a motion to adjourn.

5 MS. COX: So moved.

6 CHAIRMAN McCUSKER: All in favor, say aye.

7 We stand adjourned.

8 (Meeting adjourned at 2:56 p.m.)

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C E R T I F I C A T E

I, John Fahrenwald, certify that I took the shorthand notes in the foregoing matter; that the same was transcribed under my direction; that the preceding pages of typewritten matter are a true, accurate, and complete transcript of all the matters adduced to the best of my skill and ability.

John Fahrenwald