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RIO NUEVO MULTIPURPOSE FACILITIES BOARD MEETING

Tucson, Arizona
November 9, 2012
12:58 p.m.

REPORTED BY:

John Fahrenwald



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(Meeting begins at 12:58 p.m.)

CHAIRMAN McCUSKER: We will call the meeting to
order. It's two minutes after one o'clock (sic).

Michele, will you do roll call, please?

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5 MS. BETTINI: Mark Irvin?
6 MR. IRVIN: Here.
7 MS. BETTINI: Jannie Cox?
8 MS. COX: Here.
9 MS. BETTINI: Fletcher McCusker?
10 CHAIRMAN McCUSKER: Here.
11 MS. BETTINI: Alberto Moore?
12 SECRETARY MOORE: Present.
13 MS. BETTINI: Chris Sheafe?
14 MR. SHEAFE: Here.
15 MS. BETTINI: Cody Ritchie?
16 MR. RITCHIE: Here.
17 CHAIRMAN McCUSKER: And I didn't mean to skip over
18 the pledge.
19 (Pledge of Allegiance was recited.)
20 CHAIRMAN McCUSKER: And Jeff did RSVP, right?
21 He's coming? We have a quorum -- if somebody wants to move
22 to executive session.
23 MS. COX: So moved.
24 MR. RITCHIE: Second.
25 CHAIRMAN McCUSKER: All in favor, say aye.

1 (The Board voted and the motion was passed.)³
2 CHAIRMAN McCUSKER: We are temporarily in
3 executive session.
4 (The Board moved to executive session at
5 1:00 p.m.)
6 (The Board reconvenes at 2:44 p.m.)
7 CHAIRMAN McCUSKER: Okay. We're reconvening. We
8 need a motion to come out of executive session.
9 MR. IRVIN: So moved.

10 CHAIRMAN McCUSKER: Mark, say that again.

11 MR. IRVIN: So moved.

12 CHAIRMAN McCUSKER: Second plea, Chris?

13 MS. COX: Second.

14 CHAIRMAN McCUSKER: That's fine. All in favor say
15 aye.

16 (The Board voted and the motion was passed.)

17 CHAIRMAN McCUSKER: Thank you.

18 Sorry, everyone. We took a little longer than we
19 thought. Our plan to -- as you can tell from the agenda, we
20 are discussing primarily the litigation issues with the City
21 of Tucson. And I can update you on the status of that.

22 I will indicate that although we're not required
23 to have a call to the audience, we will go ahead and do
24 that. So if you are interested in speaking to us, go ahead
25 and fill out a card, and we'll make time to do that today

1 around any issues you would like to give us feedback on.

2 To update the public on the status of the
3 conversations with the City, if you will remember from our
4 last regularly-scheduled meeting, we went public with a
5 proposal that was designed to touch on all of the issues
6 between the two jurisdictions. That was in response to a
7 counteroffer from the City attorney. The city council has
8 indeed discussed that. They discussed it in executive
9 session and returned a counterproposal to us from the City
10 with the request that it remain confidential.

11 We've worked on that this afternoon, first chance
12 we've had really to be together and respond to that. And
13 we're going to direct our counsel, Mr. Mark Collins, to
14 respond to the City attorney, and we'll continue this

15 dialogue.

16 I can say that we are optimistic -- cautiously
17 optimistic -- that maybe the City is getting it. Part of
18 what we're trying to do here is to complete a full
19 resolution of all the issues between the two jurisdictions
20 so that Rio Nuevo can get back to work.

21 It's a very complex process, and a very
22 complicated document. If you look at the documents that
23 have been released publicly, you will see that we were not
24 all that far apart. So we're trying to come together. And
25 it's a challenge because, not only does our Board have to

1 agree, but then ultimately, of course, the city council has 5
2 to agree. And that is truly a test of time and patience.

3 We continue to insist that the forensic audit work
4 that was initiated under the reconstituted board be
5 completed and that the City fully cooperate with us in that
6 process and that there is a resolution to those audits.

7 If you looked at the two documents side by side,
8 we had proposed binding arbitration; the City did not want
9 to enter into binding arbitration. We believe that we have
10 a resolution to that that we're going to propose to them in
11 our counter.

12 The other pieces of that are repayment to the
13 District for the Depot Garage; the arena lot, which is very
14 valuable to us, which the City initially did not want to
15 give title to the District; and then a number of other
16 issues around some of the projects between the two
17 jurisdictions. And, of course, of paramount importance to
18 us is the legal requirement that the City match everything
19 that the District do.

20 So, Mark, if you can appreciate what we're telling
21 you, we would entertain a motion to instruct counsel to
22 proceed along those lines with the City attorney and the
23 mayor.

24 MS. COX: So moved.

25 MR. SHEAFE: I think it should be said that the

1 tenure or the atmosphere of this Board has been trying to
2 minimize the legal conflicts and the battling and the
3 arguing back and forth, and that's been our effort. And
4 that doesn't necessarily indicate that there's been any
5 different attitude on the part of the City. But we really
6 do want to get back to the business of building things for
7 the City of Tucson and revitalizing our downtown and not
8 using money on these kinds of issues.

9 CHAIRMAN McCUSKER: Is that a second?

10 MR. SHEAFE: Yes, a long second.

11 CHAIRMAN McCUSKER: All right. You're famous
12 for --

13 MR. SHEAFE: -- for my long seconds.

14 CHAIRMAN McCUSKER: We have a motion and a second
15 to instruct counsel to continue the conversations along the
16 lines we've just discussed with the City of Tucson. Any
17 further discussion?

18 All in favor, say aye. Any opposed?

19 (The Board voted and the motion was passed.)

20 CHAIRMAN McCUSKER: Okay. There's a piece to this
21 that will be probably new to the public. But you'll
22 recollect that the District filed a claim against the City
23 approximately six months ago, to the day, regarding the
24 condition of the Tucson Convention Center. That's one of

6

25 the things we're trying to work out in this settlement

1 agreement.

7

2 The law provides that you have 180 days after that
3 claim to file or not file that lawsuit. We are not just
4 going to let the time expire on that because in the event we
5 don't settle, we are clearly comfortable litigating that
6 issue. That lawsuit would have to be filed today.

7 What we've negotiated with the City is -- what we
8 call in legal terms a tolling agreement, or basically an
9 agreement that both sides will agree to postpone that
10 deadline so we can continue to work on this settlement.

11 We've entered into a short-term tolling agreement.
12 I'm beginning to sound like Congress in the fiscal cliff,
13 but we've negotiated a short-term agreement. We would
14 expect we would need longer than what they've offered us to
15 resolve that, so we're also going to instruct counsel, via a
16 motion here in a minute, to accept their tolling terms for
17 the moment, but also ask that you get us some more time so
18 that we can appropriately work through these issues.

19 The other thing of course that's occurred in the
20 last couple of days is Chris and I report to a new boss,
21 President-elect Andy Biggs. I have a meeting with him next
22 week. I think it would be inappropriate for us to move
23 swiftly on some issues that we have not briefed the
24 president-elect on. So that's another reason -- a
25 legitimate one, in my opinion -- that we would want some

1 more time from the City.

8

2 So we would need a motion to approve today's
3 tolling terms, and then to instruct counsel to ask for

4 additional time.

5 MR. COLLINS: Mr. Chair, I think you also -- there
6 needs to be a motion authorizing the execution of the
7 tolling agreement that I have with me that we've discussed.
8 It tolls the statute of limitations and prevents the
9 necessity of filing of the lawsuit. I'd like to have that
10 signed today so that we're protected.

11 CHAIRMAN McCUSKER: All right. Any -- we've all
12 seen that. Does anybody object to that? If not, please
13 make a motion to that effect.

14 MR. IRVIN: Make a motion we sign the tolling
15 agreement.

16 SECRETARY MOORE: I'll second that.

17 CHAIRMAN McCUSKER: Any further discussion?
18 All in favor, say aye. Any opposed, nay.

19 (The Board voted and the motion was passed.)

20 CHAIRMAN McCUSKER: And under whose signature is
21 that?

22 MR. COLLINS: It will be under the secretary and
23 the chairman. If I may approach the bench, I'd love to have
24 it signed.

25 CHAIRMAN McCUSKER: I've never had my bench

1 approached.

2 MR. COLLINS: Your signature lines are -- here you
3 go. Here's a colored pen so we can scan it in and Sean
4 doesn't have to run over to the courthouse.

5 CHAIRMAN McCUSKER: Government in action. Is the
6 top one for me?

7 MR. COLLINS: Yeah. Either way. I just need both
8 of your signatures. Thank you, gentlemen.

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9 CHAIRMAN McCUSKER: Feels a little bit like we're
10 kicking the can down the road, but we are optimistic that
11 we're making progress tying up all of this.

12 Under the agenda -- I'll kind of come to -- I'll
13 try and follow the order now that we've dealt with some of
14 the pressing legal matters.

15 In Item No. 4, I think the message we want to
16 communicate to the public and to the City is that these five
17 projects we have discussed and been involved with, and as a
18 Board, are prepared to move on. However, of course, we have
19 to settle.

20 So this will be news to my Board, but, you know, I
21 would like to suggest that we have a member assigned to each
22 one of those items that will allow us, even while we're
23 negotiating the settlement, to begin to make some progress
24 on each one of these projects. And with that, I'm happy to
25 discuss that -- if you think that's a good idea, bad idea,

1 or untimely idea, given where we are with the City. 10

2 MR. IRVIN: I think it's probably a good idea,
3 Mr. Chairman. You know, the only one that I think sticks
4 out to me as one that has got somebody's name written all
5 over it, would probably be No. 5. And I know Alberto has
6 been involved in that kind of since day one. Although I do
7 think it might be a little bit premature until we get our
8 settlement done. But I don't have any problem at all with,
9 you know, taking whichever one of those somebody would like
10 me to, or not.

11 CHAIRMAN McCUSKER: Cody?
12 Chris? Albert?

13 MR. SHEAFE: I have no objection.

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14 CHAIRMAN McCUSKER: Okay. I also thought of
15 Alberto for Rancho Chuk-shon because of his investment in
16 that. I'm fine talking the TCC if we want to do that. I
17 think the natural person for Fifth and Congress is probably
18 Chris -- I mean, I'm sure the Granada Infrastructure would
19 be Chris. And then the other two, unless you feel
20 passionately about monitoring the TCC improvements -- and
21 then I'll take Rancho Chuk-shon.

22 SECRETARY MOORE: I don't mind Rancho Chuk-shon
23 and the Mission Gardens because they all sort of fit
24 together.

25 CHAIRMAN McCUSKER: And so Alberto will be our

1 designated representative.

11

2 Do you want to put those two together?

3 SECRETARY MOORE: I think it's better because
4 they're both --

5 MR. IRVIN: -- together.

6 SECRETARY MOORE: They're next door to each other,
7 so...

8 CHAIRMAN McCUSKER: All right. And Granada, Chris
9 Sheafe. McCusker, take the TCC.

10 Maybe, Mark, you can help me?

11 MR. IRVIN: Happy to.

12 CHAIRMAN McCUSKER: And that leaves Fifth and
13 Congress. That's Scott Stiteler's projects, the hotel and
14 the new restaurants and the coordination we have to do with
15 him around those projects.

16 You want to do that?

17 MS. COX: I'm happy to do that -- are you talking
18 to Mark?

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19 CHAIRMAN McCUSKER: To you. To you.

20 MS. COX: I'd be happy to do that if you want me
21 to do that.

22 CHAIRMAN McCUSKER: Cody has a conflict there,
23 right? We should probably --

24 MR. RITCHIE: Yes.

25 CHAIRMAN McCUSKER: Let's go through your

1 conflicts there, just briefly.

12

2 MR. RITCHIE: Oh, boy. Well --

3 CHAIRMAN McCUSKER: Cody sells insurance, so if he
4 has a client that's involved in one of these, we're going to
5 recuse him.

6 So we haven't assigned you to anything, so you're
7 probably okay.

8 MR. RITCHIE: At this instance, I prefer it that
9 way.

10 CHAIRMAN McCUSKER: All right. So everybody has a
11 job, except Cody, who has immeasurable conflicts.

12 MR. COLLINS: Yeah.

13 CHAIRMAN McCUSKER: Okay. Item No. 5, these are
14 technical amendments to our administrative rules that relate
15 to director indemnity. We have an amendment that's been
16 drafted by counsel. It would amend our administrative rules
17 to provide additional indemnification to us individually,
18 which we think's important given we have five lawsuits that
19 surround us and prior Board members have, in fact, been
20 named personally. And so you've all seen that.

21 And I guess, Mark, I can take a motion to approve
22 that as drafted. Is --

23 MR. COLLINS: Mr. Chair, what you need, I think,

24 is a motion to approve the amendment to Article 7 of the
25 administrative rules. Actually the change is in Article 7,

1 Paragraph 7.1.

13

2 MR. IRVIN: I'd make such a motion.

3 MR. SHEAFE: Second.

4 CHAIRMAN McCUSKER: Any further discussion?

5 All in favor, say aye. Opposed, nay.

6 (The Board voted and the motion was passed.)

7 CHAIRMAN McCUSKER: The second piece of that
8 agenda item is that we have asked Mark to draft a
9 indemnification agreement that would be between the Rio
10 Nuevo District and any of its Board members, sitting or
11 otherwise, from the time the Board was reconstituted, that
12 provides additional hold harmless and indemnification around
13 stupid acts that we might incur.

14 I guess you can't indemnify me for stupidity, but
15 pretty much anything short of that. So without the
16 facetious comments, what does this provide for the Board
17 members?

18 MR. COLLINS: It's my recommendation that in
19 addition to the change to the administrative rules, that
20 there be a standalone agreement between the Board and its
21 members confirming that they have an indemnification set
22 in -- as set forth in that contract that we've discussed.

23 CHAIRMAN McCUSKER: And we should probably make
24 these available to the public, right? Do you have some
25 copies with you?

1 MR. COLLINS: I don't have copies of that, but I
2 can certainly --

14

3 CHAIRMAN McCUSKER: -- yeah. We can post them?

4 MR. COLLINS: Yeah, we can post them. I can give
5 one to Michele and we can post them.

6 SECRETARY MOORE: Do we need a motion?

7 MR. IRVIN: You know, on that agreement, we are
8 talking about inserting the words reconstituted in the
9 second paragraph?

10 CHAIRMAN McCUSKER: You would probably want --
11 what you should do is make motion to approve -- or make a
12 motion to amend.

13 Or can we just instruct you to amend it and then
14 approve it as amended?

15 MR. COLLINS: Well, you could -- my suggestion is
16 that you -- that you instruct me to amend it to confirm that
17 this agreement is applicable to the members of the Rio Nuevo
18 Board who have been members subsequent to March of 2010.

19 And what it's going to entail, folks --

20 CHAIRMAN McCUSKER: We can approve that with that
21 amendment? We can approve it as amended?

22 MR. COLLINS: Yes, yes.

23 CHAIRMAN McCUSKER: Mark, do you want to make that
24 motion?

25 MR. IRVIN: I'm happy to make that motion.

15

1 So moved.

2 MS. COX: Second.

3 CHAIRMAN McCUSKER: We moved and seconded that we
4 approve the hold harmless and indemnification agreement
5 subject to the amendment that we just gave you, that it
6 applies to any member of the reconstituted Board.

7 All in favor, say aye. Any opposed, nay.

8 (The Board voted and the motion was passed.)

9 CHAIRMAN McCUSKER: That motion has passed.

10 Item No. 6 under our agenda -- just in the way of
11 an update, the Superior Court did uphold our motion to
12 dismiss in that. This was a case that was brought against
13 the District where the plaintiff asserted that the District
14 had violated the gift clause. Our defense was that we are
15 exempt. The Court has upheld our defense. We will file the
16 final motions in that and the plaintiff has 30 days,
17 roughly, to appeal.

18 And we don't need to do anything else in that
19 regard, right, Counsel?

20 MR. COLLINS: Well, with respect to the motion, we
21 don't. But as this Board is aware, there's a lot more left
22 in that lawsuit because it has to do with the Thrifty block.
23 And we have to decide what we're going to do with that.

24 CHAIRMAN McCUSKER: Do we need to do that today?

25 MR. COLLINS: No.

1 CHAIRMAN McCUSKER: The City of Tucson we talked 16
2 about. I believe I've covered the agenda. And I've covered
3 anything else that we would be authorized to talk about.

4 And we do have some audience members that would
5 like to speak, I think.

6 Bill O'Malley?

7 ATTENDEE: Thank you.

8 I'm Bill O'Malley. I'm here representing the
9 Friends of Tucson Birthplace. And I wanted to give you a
10 brief update on Mission Garden and the activities that the
11 Friends are undergoing.

12 We're currently working on the Phase 2 planting of

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13 Mission Garden. Phase 1 was completed last spring and
14 included the Kino heritage fruit trees. Phase 2, now, is
15 the native plant demonstration area and Timeline Gardens,
16 plus trees outside the west wall of the garden to screen it
17 from Grande Avenue. Phase 2, so far we've planted 19 trees.
18 We've got 15 more we'll be planting tomorrow. Ultimately
19 there will be 63 trees and 500-and-some total plants.

20 We did get a grant from the Tohono O'odham Nation,
21 as part of their gambling funds, of \$39,000. That will help
22 us with the Timeline Gardens. And we plan to use
23 representatives from the Nation also to help us with those
24 gardens. Those gardens represent the agricultural methods
25 that have been used at the garden for the past 4,000 years.

1 We were also visited by the Garden Writers club of ¹⁷
2 America when they were here several weeks ago. We had over
3 400 visitors to the garden. That day we had several
4 displays set up with a representative from the Tohono
5 O'odham; we had archaeologists; we had representatives from
6 Native Seeds/SEARCH, who are working with the garden. It
7 was a great day.

8 We have also been visited by a reporter and
9 photographer from the New York Times, and we're anticipating
10 an article coming out any day now on the gardens. We're
11 looking forward to that.

12 Just a reminder, garden is open to the public
13 Saturday mornings from 8:00 to 12:00; that's when we do a
14 lot of our planting, but you are all welcome to stop by.
15 And if you want a little exercise and want to help plant
16 some trees that are going to live for generations to come,
17 you're all welcome to come out. We'd like to see you.

18

Thanks.

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CHAIRMAN McCUSKER: Thanks a lot.

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Josefina Cardenas?

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ATTENDEE: Thank you, gentlemen. I was getting

22

worried about you. I was here waiting for you until 2:00,

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so you have my prayers. I know that it's been difficult for

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you. So I thank you in the work we have up until now. And

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it's going to be interesting, and I enjoy hearing that the

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1

Mission Gardens and Rancho Chuk-shon will be working

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together; we're neighbors.

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And I wanted to let you know that today we also

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received a great notice from Washington that Rancho can move

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forward to apply for a Catholic Campaign for Human

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Development and Economic Development. The diocese has been

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working closely with us. And so that's great news for

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today. And we'll be investing with the gifts and talents

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and the skills of the Barrio people with Rancho to bring in

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all the work we can to this development.

11

So I'm excited to continue working with this. And

12

I applaud your work, and I also would ask for your support.

13

Thank you.

14

CHAIRMAN McCUSKER: Thank you very much. Good

15

luck.

16

MR. RITCHIE: Congratulations.

17

ATTENDEE: Thank you.

18

CHAIRMAN McCUSKER: That being all the business on

19

today's agenda, we'll entertain a motion to adjourn.

20

MS. COX: So moved.

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CHAIRMAN McCUSKER: Jannie moved.

22

Second, please?

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23 MR. RITCHIE: Second.

24 CHAIRMAN McCUSKER: All in favor of adjournment,
25 say aye. Any opposed?

19

1 (The Board voted and the motion was passed.)

2 CHAIRMAN McCUSKER: We stand adjourned.

3 Thank you, everyone.

4 Let's talk about the next meeting date.

5 MR. SHEAFE: You've got one. The 21st.

6 CHAIRMAN McCUSKER: We have one set for
7 November 21st. That's the day before Thanksgiving.

8 But if I recollect, we did that on purpose, right,
9 Michele, to accommodate everybody's schedule?

10 So if that's going to be a problem, I guess, let
11 us know. But that was deliberately done on that day.

12 (Meeting adjourned at 3:06 p.m.)

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C E R T I F I C A T E

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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.

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John Fahrenwald

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