

**Minutes for the Meeting
Of the Board of Directors of the
Rio Nuevo Multipurpose Facilities District
2:30pm
Wednesday, May 23rd, 2012**

**At
400 W. Congress Street, Room #222, Tucson, Arizona, 85701**

A meeting of the Board of Directors of the Rio Nuevo Multipurpose Facilities District was held on Wednesday, May 23rd, 2012, at 400 W. Congress Street, Room #222, Tucson, Arizona, commencing at 2:37pm.

1. Roll Call.

The meeting was called to order at 2:37 p.m.

	Appointee	Present	Absent/Excused
Jodi Bain, Chair	Senate	X	
Tim Bathen	Governor	X	
Jannie Cox	Governor	X	
Rick Grinnell	Senate	X	
Jeff Hill, Treasurer	Governor		X
Mark Irvin	House	X	
Alberto Moore, Secretary	Governor	X	
Jonathan Paton	House	X	

Counsel:

Special Counsel Mark Collins

Others Present: Craig Sumberg, Fletcher McCusker, Tom Warne, Fox Theater
Norma Gentry and Laurel Islas, Proventures for Fox Theater and Fletcher McCusker
Michele Bettini, Operations Administrator
Sarah Perkins, University of Arizona graduate student intern

2. Discussion and possible approval of the May 10th, 2012 minutes.

- ▶ Motion by Jannie Cox to accept and approve the May 10th, 2012 meeting minutes; seconded by Tim Bathen. Mark Irvin requested a delay of the vote until the June 18th Board Retreat because he did not get a chance to review various sections yet. Jannie Cox then agreed to Mark Irvin's request to table the motion. Passed unanimously.

3. Announcements from the Chair.

Chair Bain stated that discussions are happening with various downtown entities including the Fox and Rialto theaters to include their schedules and information on the Rio Nuevo website. It was also announced that she had taken an office hiatus and arranged to spend significant time at the Rio Nuevo office over the next month or so

in order to focus on administrative and financial issues facing the District. Bain expressed her hope that a board member would be present in the office once a week for a few hours at minimum so a board member would be available to answer questions and accept comments from the public. Bain also discussed that board members who are Governor Appointees from Spring 2011 would be receiving another new packet of Oath Forms with instructions from the Governor's office. Jannie Cox stated that the forms she received previously had not included instructions on how to fill the forms out properly or where to send them when completed.

4. Fox Theatre Presentation and Update.

Fox Theatre Board Chair Fletcher McCusker presented. He regaled that it was nearly one year ago that he had informed the District board of the Fox's unfortunate position with regards to operations and finances and that the Fox was not able to pay its first \$1.5 million debt payment to Rio Nuevo. The picture today for the Fox was very different and had improved dramatically since then with over \$1.1 million in earned invoice for 2011. A PowerPoint presentation was given by Norma Gentry and Laurel Islas, Proventures for Fox Theater and Fletcher McCusker highlighting the progress the Fox Theatre has made in the past (calendar) year and included the following information:

- ▶ Earned income increased from a past yearly average of \$500,000 to \$1.1 million in 2011.
- ▶ Contributions rose from \$60,000 three years ago to nearly \$250,000 in 2011.
- ▶ Revenue for 2011 was nearly \$1.5 million.
- ▶ 140+ shows and events in 2011 including concerts and film series.
- ▶ Email list increased from 1,000 one year ago to 17,000 addresses.
- ▶ Facebook friends increased from 3,000 to 7,500 people.

Craig Sumberg, Fox Theatre Executive Director, reported that the brand and reputation improved dramatically in the past year. Mr. Sumberg stated that one year ago, the Fox team consisted of himself and a box office manager, but that team has now grown to six full-time employees with a development associate being hired in the near future. Mr. Sumberg acknowledged the District board appointee to the Fox Foundation board, Dan Cavanaugh, as a great addition. Chair Bain stated that the link on the Rio Nuevo website announcing the second open position on the Fox Board would be reattached in the near future.

Fletcher McCusker continued with the following information:

- ▶ The advertising budget for the Fox had increased from \$22,000 to \$250,000 in the past year.
- ▶ The Fox's reputation with promoters has greatly improved. New partners for the Fox include the Rialto Theater and UA Presents.
- ▶ The Fox has two main fundraising events: Oscar Night, which raises between \$80,000 and \$100,000 a year, and Chasing Rainbows which raised \$50,000 this past year. Bollywood will return in 2012.

Mr. McCusker explained that the Fox was nearly broke one year ago and that made it difficult to book acts which require a 50% advance of their fee the day the act is booked. The Bank of Tucson approved a \$150,000 line of credit that has allowed the Fox to produce shows on its own and book upcoming attractions such as Willie Nelson and Lyle Lovett. Mr. McCusker outlined the Foundation's upcoming administrative plans including a new website and improved ticketing options including ADA seating. ADA and companion seating is offered at the lowest ticket price and in the past, the ticketing system recognized ADA seating as premium seating. The new ticketing system will correct this issue. Mr. McCusker explained that short-term solutions were in place and that the theater could support only about \$100,000 a year in rent/debt service. Currently, the National Historic Trust is the recipient of about a \$90,000/year dividend on their \$3.5 million investment in the Fox. Mr. McCusker expressed his willingness to come to the District board retreat on June 18th if needed to work out the finer points of the District's agreement with the Fox if they had not been resolved by then.

Tim Bathen inquired how far out the Fox business plan went, and what expected attendance numbers would be in 2014 or 2015. Mr. McCusker answered that the Fox hopes to expand to 180 shows per year with an additional 20,000 attendees. This would max out the Fox's show capabilities, so alternative sources of revenue, such as the Fox's new full liquor license that allows for additional beverage sales would be explored. Additionally, when the Fox reopens in August after two months of a dark period, food service will be offered. Altogether, this would result in anticipated revenues of \$1.5 to 1.7 million dollars per year.

Mark Irvin stated that his three issues he had with the Fox had been answered; not having a working board, lack of utilization of the Fox, and a reputation of being hard to work with.

Rick Grinnell asked about streetcar construction impeding the Fox, and where patrons of the Fox are parking. Mr. McCusker answered business was down about 20% and that construction has affected people moving around downtown. Also, people were parking mostly in the Pennington, Depot Plaza or city parking garages.

Mr. Grinnell stated that the handicapped seating issue didn't appear to be corrected on the Fox Theater website, and asked if there was a way to let people know that handicapped passenger drop-off was available, maybe on Stone since there would be a barrier to attendance for handicapped patrons once streetcar construction shuts down Congress Street in front of the Fox. Mr. McCusker replied he would talk to Chris Leighton with ParkWise about that. Rick Grinnell congratulated Mr. McCusker and Mr. Sumberg for booking again Willie Nelson. Mr. McCusker responded that Willie had contacted them, and that is happening more frequently with various artists. Mr. Sumberg responded that the Fox is getting more well-known with artists and agents, thanks in part to increased exposure such as the when Amos Lee was featured on "live from the artists den" on PBS, performing at the Fox.

Rick Grinnell asked who the Fox's competitors are. Mr. McCusker answered that casino which can attract artists who can play to larger audiences and pay artists more than the Fox can. The Rialto has become more of a partner and plays to a different demographic. Rick Grinnell asked if the Fox would be able to help the Rialto understand the value of doing an economic impact study such as the Fox is doing. Mr. McCusker replied that the Fox had invited the Rialto to participate, and once the Fox completes their study, they'd be happy to help the Rialto and anyone else interested. The availability and cost of doing an economic impact study was discussed. Mr. McCusker responded that it was costing the Fox \$3,500 using folks out of Prescott College. Jannie Cox asked if the Sound Strike was affecting the Fox. Mr. McCusker responded that there are artists who want to appear that had boycotted, but it was important to not involve the Fox in the politics of the issue. Mr. Sumberg stated that it's an issue for a small number of acts. Jannie Cox congratulated and thanked the Fox team on its transformation. Jonathan Paton inquired as to what caused the shift in the boycott and when it happened. Mr. McCusker replied that the boycott against Arizona happened as a result of SB1070, and affected the Rialto more than the Fox; the shift happened after about a year.

5. Bank Investment: Options and Update.

Chair Bain reported that she and Treasurer Jeff Hill had been speaking with Wells Fargo and Alliance Bank about investment options for the District's unrestricted assets. Chair Bain said she had consulted with Counsel Mark Collins about the District's statutory obligations and options for spending unrestricted cash before she met with Alliance Bank in Phoenix. The June 18th board retreat will provide some opportunities to brainstorm the top concepts and ideas of what the board would be able to do and would like to do, such as a joint venture or a microloan program with some of the unrestricted funds. One issue is that the District does not have that much money or income coming in (especially next year potentially) aside from the amount that covers debt service. Chair Bain stated that she and Jeff Hill would attempt to consult with City Finance Director Kelly Gottschalk and other City folks after getting more information to find out how some of these options might work. Unfortunately the City often is non-responsive.

6. TIF Collection Update.

Bain discussed that the Arizona Department of Revenue is putting together some base numbers and information about how everything is calculated and that the board could use this information at the June 18th retreat to make plans moving forward based on what the debt service will be in a few years. Michele Bettini and Susan Voss can then put together a spreadsheet to see where the District is with the upcoming year's budget. This will also allow the District to possibly work with the City, if they are willing, to get interns on the street educating business owners how to fill out their tax forms. Bain stated that she expects the City to have a presence at the June 18th retreat to discuss TIF collections in general and how it has been done in the past.

7. Administrative Rules.

This was issue being brought back from the December 2011 board meeting approved changes to the Admin Rules that were not finalized as Mark Irvin left the meeting. Today it is discussed to due to the timing of possible upcoming board elections in a few weeks. Bain reminded the board that in the December meeting the board had removed the banking and other related components from the Vice-Chair position but left in the concept of the Vice-Chair. Today the review with possible action was to remove the Vice-Chair position as it is not statutorily recognized. Arizona Statutes only specifically provide for a Chairperson, Treasurer and Secretary which are the recognize these positions for banking purposes.

It was pointed out that the new draft version would also make the timing the same for unexcused and consecutive excused absences from board meetings.

Tim Bathen asked if this issue was because of the District's own rules and if bi-annual elections are mandatory. Bain answered that the District rules currently call for an election or vote of confidence every two years and referenced Section 6.2 of the District's administrative rules about elections. Bain outlined various options and ways the elections vote could proceed with new board members coming in as she left. Mark Irvin asked Mark Collins for clarification about the statutes allowing for a Chairperson, Secretary and Treasurer when the board was reconstituted. Mr. Collins answered affirmatively that a Vice-Chair was not a statutorily specified officer. Mr. Collins responded that he was not present for that and that he had not reviewed those minutes. Mark Irvin restated that it was hard to consider something new and so weighty until there was a chance to look at it. The Board was reminded that the issue to remove the Vice-Chair position was left over from December 2011 and was not new as it had been circulated various times and had been sent out via email. In fact, the board decided to wait to vote on this last piece as a courtesy to Mark Irvin because he was no longer at the meeting when it was put to a vote in December.

Mark Irvin stated that he would defer to counsel and it was stated that Mark Collins was also in attendance to address the issue in public session per Mark Irvin's request about how the administrative rules were a concern for insurance purposes and his conflict of interest matter he wanted to address in public.

Mark Irvin expressed his concern that it was the first time this issue was put to the board collectively as a group and that there was not enough information to be able to discuss it. The board then reminded him the issue had been discussed in executive session in the past, and various opinions had been gone through and letters were given, and it was being discussed now in public session per Mark Irvin's request and invited him to discuss his issues at that time. Mark Irvin responded that he declined. Chair Bain asked for any other discussion on the issue. Alberto Moore made a motion to remove the position of Vice-Chair from the admin Rules since it does not conform to state statutes and is not recognized as an officer. Rick Grinnell seconded the motion.

Bain invited Mark Collins to address what the board was hearing from Wells Fargo and what the statutes say. Mr. Collins stated the bank can take whatever position it wants, and that the statutes don't talk about a Vice-Chair position. Mark Collins stated the board would have to decide how to deal with an entity from a business standpoint when the position is not recognized by statute. It is not a legal question because the bank has the legal authority to make that call. Jonathan Paton asked if it was a matter of not knowing how the bank would respond until they came down on the board since the position was not prohibited or discussed.

Mark Collins replied again that the Vice-Chair is not mentioned in statutes. The issue becomes a matter of the position being designed to assist with the workload, so what to do with the position now that it is understood it is not recognized. Tim Bathen suggested having a discussion of the pros and cons of having a Vice-Chair and the purpose of the position. Chair Bain responded that the position was created because of the amount of work that needs to be done and that it was originally her idea. Also, at the time, the board was told that it shouldn't create the position, but the thought was that if statutes don't say you can't have the position, you can. Chair Bain continued that the position was supposed to assist with the workload no matter the title, but not being a recognized position has restricted that.

Jonathan Paton stated that because the position isn't addressed in statute, the real question is not if the position is legal, but if the position is a good idea or not.

Chair Bain stated that up until when the accounting was severed from the City and switched to Alliance and Bank of Tucson the Vice-Chair was recognized by the City. However, Bank of Tucson asked for the board to get a resolution from the Governor that the Vice-Chair position was recognized just like the other executive positions. The problem arose because this sort of thing does not exist. Jonathan Paton questioned if something happens to the Chair, if the Vice-Chair stands in. Chair Bain responded that the rules had been changed so that the Secretary or Treasurer steps in as these positions are emphasized in statutes. Jonathan Paton asked Chair Bain to clarify if she left the position of Chair, that the Vice-Chair would not replace her. Chair Bain responded that that was correct in the admin Rules. Tim Bathen stated that from what he was hearing statutorily, that the Vice-Chair has no standing and no reason to remain.

Bain asked if there was any more discussion. Alberto Moore suggested a call for the vote. A roll call vote on the motion was conducted.

Jannie Cox –no

Tim Bathen – pass for the moment, come back to this member

Alberto Moore – pass for the moment, come back to this member

Jodi Bain – pass for the moment, come back to this member

Jonathan Paton – pass for the moment, come back to this member

Mark Irvin – no

Rick Grinnell – He stated he would carry the motion and said Yes.

The 'passes' were then re-requested for their vote.

Alberto Moore - Yes.

Chair Bain stated she thought legally the board needed to talk about the position and how the board functions and committees going forward at the retreat and voted Yes.

Tim Bathen – yes

Jonathan Paton – no

Motion passes 4 to 3 with the caveat the administrative rules would also be discussed at the Retreat.

Bain then asked the board to think about so it could be decided at the Retreat if committees within the board were going to be formalized. Rick Grinnell stated he needed to introduce a Point of Order, that the District's administrative rules require a majority of the total board to change administrative rules. If eight people were seated and eligible to vote on the board, five votes would be needed for any change to the rules. Jeff Hill was not present. Jonathan Paton suggested using the District lawyers to look into the issue.

8. Report from Counsel.

Mark Collins reported that in regards to the Kromko matter, everything remains the same. Jonathan Paton inquired as to the lawsuit filed by Garfield Traub and how it affects him being on the board or not. Mark Collins responded that the lawsuit has to do with something Jonathan Paton allegedly did while on the District board, and his leaving the board should not change that. Jonathan Paton formally announced his resignation from the District board and expressed his pleasure in serving with the other board members but his campaign was going to go into full swing and he had moved to Marana.

9. Call to the Audience.

There were no speaker requests.

10. Adjournment.

- ▶ Motion to adjourn made by Tim Bathen/Jannie Cox/Jonathan Paton; seconded by Alberto Moore. Passed unanimously. Meeting adjourned at 3:37 pm.