

APPROVED BY THE
RIO NUEVO BOARD
APRIL 13, 2005

**RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT BOARD
MEETING MINUTES
WEDNESDAY, MARCH 9, 2005 6:00 P.M.
RIO NUEVO COMMUNITY MEETING ROOM
52 WEST CONGRESS, 2ND FLOOR
TUCSON, ARIZONA**

1. Roll Call

The meeting was called to order at 6:05 p.m. After a roll call, a quorum was determined to be present.

Board members present: Ruben Suarez, Arlene Lopez and Margaret Hardy.

Board member absent: Olivia Hernandez

Rio Nuevo staff members present:

Greg Shelko, Director

Randy Emerson, Director of Development

Bill O'Malley, Construction Manager

Karen Leone, Project Manager

Virginia Monyak, Staff Assistant

Attorney for the Board: Bill Hicks of Snell & Wilmer

Guest Speakers:

Herb Stratford, Executive Director for the Fox Theatre Foundation

Tim Anderson, Principal for Hargreaves Associates

2. Call to the Audience

There was no one in the audience who wished to speak to the Board.

3. Approval of February 9, 2005 Meeting Minutes

Ms. Hardy moved to approve the minutes as presented. Ms. Lopez seconded the motion. The motion passed unanimously (11 to 0).

6. Resolution approving a Fox Theatre Financing Plan – Resolution No. 2005-02

The Fox Financing Plan was taken out of order.

Mr. Shelko addressed the Board. He told them that it's staff's recommendation that

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Board authorize the district to negotiate an amendment to the development agreement which would facilitate the opening of the Fox Theatre on December 31, 2005, versus an uncertain date.

The plan calls for investing \$5.5 million in the form of tenant improvements to the building. The money to fund the loan would come borrowing from the Tucson Industrial Development Authority (IDA). The Treasurer of the Board and City's Fiscal Officer Scott Douthitt has developed a plan to create a sinking fund to have the Fox pay off the Rio Nuevo debt to the IDA within the first 5-7 years. Based on the Theatre's proforma, the Fox should be able to pay back at least \$4.5 million over a 15-year loan term with \$2.5 million balloon payment due in the 15th year. During the 15-year period the Fox would have paid to the District all principal, interest costs incurred from borrowing from the IDA, and any transactions costs associated with that borrowing. The Fox could retire the debt early, or without having to refinance the balloon payment, by increased performance in terms of operating income over the 15 year term, or greater success than the \$1.5 million every five years in fundraising.

The communications that were forwarded to the Board show that Mayor & Council Subcommittee asked some very serious questions about the financial ability of the Fox to pay back the debt to the District. It was looked at in a very rigorous way. People other than staff underwrote the transaction to make sure that the financial assumptions, performance projections, and proforma were reasonable and the income would be available. The construction contract scope of work was scrutinized to make sure that the work that is going into the Fox is necessary. Every dollar is being managed. The Fox has guaranteed maximum price construction contract in place. Weekly meetings with the Fox and with the construction contractor are being held. Other theatre companies were asked to take a look at the proforma so that it wasn't just being looked at with a lender's eye, but by those that are experienced in these types of businesses. It was looked at by the Orpheum Theatre in Phoenix, the Fox Theatre in Atlanta, and a couple of other formats that are similar in size to the theatre and our community. Conversations with the tax equity entity that plans to invest \$2 million in the project have taken place. The draft agreement that has been developed sets out some rigorous performance standards.

The Rio Nuevo Citizens Advisory Committee voted last week in favor of the financial plan. Should it be approved tonight, it will be taken to the full Mayor and Council on March 22, 2005.

Mr. Stratford was available to answer any questions.

Chair Suarez noted that the numbers in the plan from a fiscal point of view are good, but asked what was going to be done to jump-start the fundraising.

Mr. Stratford responded that over the last three years they have averaged \$700,000 in

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private (non-Rio Nuevo) fundraising. The Fox has the tools to be successful. Not only has the Board been expanded by 1/3, but community leaders like Mike Hand, Don Bourn and Don Martin have been appointed. These people will be able to draw from a different pool of donors. A full-time development director has been hired. Having an opening date of December 31st will also help to stimulate interest. The Fox has been getting a lot of calls over the last month. In fact, January and February are already booked with more events than had been projected in the Performa. The increased capacity of the board and the hiring of the development director will be the key to taking the project to the next level.

Ms. Hardy stated that she favored the Fox from the beginning; however, it needs to be put on the record that if this proposal goes forward, the Fox needs to know that there won't be another chance. She said she appreciates the effort Mr. Stratford and the board has put into the project. Without it, it wouldn't have gotten as far as it has. The comments expressed in the press recently shouldn't be taken personal. Everyone knows that the director or board hasn't squandered money. She thanked Mr. Stratford on behalf of the downtown community. She was excited to go into to the facility recently to see how much work had been done. If the investment isn't made now, the theatre won't be open anytime soon. She looks forward to being there New Year's Eve!

Ms. Hardy moved that the Board accept the Financial Plan as presented and approve Resolution 2005-02. Ms. Lopez seconded the motion. The motion passed unanimously (11-0).

5. Resolution authorizing the acquisition by negotiation or eminent domain of certain real property necessary for the Civic Plaza Project

Ms. Hardy made a motion to adjourn into executive session to discuss legal strategy with Counsel. Ms. Lopez seconded the motion. The motion passed unanimously (11-0). The Board went into executive session at 6:26 p.m.

The Board returned from Executive Session at 6:46 p.m. Ms. Lopez moved to approve Resolution No. 2005-01 authorizing the acquisition of certain real property necessary for the Civic Plaza project. Ms. Hardy seconded the motion. The motion passed unanimously (11-0).

4. Monthly Project Updates

Mr. Emerson advised that rather than going through the March project updates like they normally do, Mr. Anderson, the Principal from Hargreaves Associates who is in town was asked to give the Board an update on the Civic Plaza project.

Mr. Anderson advised that the public meeting held on February 2nd was well attended. They received a lot of comments that will be posted on the Rio Nuevo website shortly.

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Most comments had to do with the Cultural Plaza. They've been holding meetings with focus groups, neighborhoods, TDA, and TPAC. Comments received will be presented at the next public meeting along with more a detailed programming session on March 24th. Another public meeting will be held about 6 weeks after that one. The master-planning portion of this project should be complete by the middle of May. Construction will take about 18 months with an anticipated completion date of 2007.

Ms. Hardy suggested that when they hold future public meetings they should be held within the neighborhoods (Barrio Viejo & Menlo Park) to get a better turnout. With the development of the first Master Plan the neighborhood residents changed a lot of things because there was a better understanding. Originally Menlo Park said they didn't want pedestrians in the area, a parking garage, and the museums. Basically they started with a big open space and then they said, "Hey, we want things!" You'll probably want to do that when you have something more concrete as opposed to something abstract.

Mr. Anderson said they have been trying to meet with the neighborhoods. In fact, Menlo Park has submitted a position paper.

The Board had no further questions on the March project update.

7. Resolution approving a Construction Manager at Risk Contract with Sundt Corporation for the Civic Plaza.

Mr. O'Malley asked for approval of Resolution No. 2005-03 relative to a contract with Sundt Corporation to act as the Construction Manager (CM) at Risk for the Civic Plaza and parking structure. The board was sent a memorandum from Greg Shelko explaining the Construction Manager at Risk and one from Jennifer Gallaspie explaining the RFQ process. The CM at Risk is considered necessary due to the complexity of the project. It will provide strong contractor control of the project.

Pre-construction responsibilities will include:

- Regularly attending design meetings and public meetings
- Visiting the site to become familiar with the conditions under which the Work is to be performed
- Recommending any additional investigations and testing for construction of the project
- Reviewing drawings during design of the project
- Proactively advising the project team on issues affecting the constructability of the project
- Preparing periodic cost estimates and provide tracking reports on project costs

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- Preparing value engineering reviews to identify economies
- Proactively advising the project team on costs of the work and manage the project budget
- Developing and maintaining the project design and construction schedule
- Identifying early construction, phased construction, or long lead time impacts on the project

During the construction phase of the project, responsibilities will include:

- Managing the bid process to achieve competitive bids for the Work
- Complying with City MBE and WBE utilization policies
- Assisting the City to obtain governmental approvals and permits
- Scheduling and facilitate the pre-construction conference
- Controlling the Work to complete construction consistent with the Contract Documents
- Controlling the Work site to perform construction efficiently, safely, and without interfering with the use of adjacent land areas
- Reviewing, verifying, and approving shop drawings, product data and samples
- Monitoring quality control of the Work and performing testing and inspection as required
- Maintaining project record documents and submit to the City
- Implementing and monitoring a project safety program
- Warranting the construction to be free of defects in materials and workmanship for a period of two years
- Correcting defective work
- Managing the testing of systems and training of City staff
- Facilitating punch list inspections and corrections of defective work
- Managing project close-out and final inspections

The Construction Manager at Risk (CM at Risk) will provide pre-construction management services during the design phase of the project and serve as the general contractor during construction of the project. Construction Management at Risk begins with the firm in an agency support role for pre-construction services in the amount of \$330,520. Prior to beginning construction, the CM at Risk will assume the risk of delivering the project for a negotiated guaranteed maximum price.

Guaranteed Maximum Price or GMP means the sum of the maximum cost of the Work; the CM at Risk's construction fee (4.95% of the cost of the Work); general conditions costs (proposed as maximum of \$1,675,718); taxes, bonds, insurance

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costs; and bid contingency. In addition to the GMP amount the Rio Nuevo office will recommend a City contingency for changes in scope of work during construction. The GMP will be made part of the Construction Services Agreement by executing an amendment to the contract.

Ms. Hardy made a motion to approve Resolution 2005-03 approving the contract with Sundt Corporation to act as the construction manager at Risk for the Civic Plaza project. Ms. Lopez seconded the motion. The motion passed unanimously (11-0).

8. Announcements

Greg Shelko:

- Civic Plaza Public Meeting – March 24, 2005
- La Entrada Apartments are underway and moving quickly
- Tom Doucette has tentatively scheduled the groundbreaking for the Paseo Estrella Development for April 14th

9. Future Agenda Items

- Parking Master Plan

10. Adjournment

Margaret Hardy made a motion to adjourn the meeting at 7:12 p.m.. Ms. Lopez seconded the motion. The motion passed unanimously (11-0).