

**Minutes for Meeting
of the Board of Directors of the
Rio Nuevo Multipurpose Facilities District**

Wednesday, June 30, 2010

**Tucson Convention Center, Greenlee Room
260 South Church Avenue
Tucson, Arizona**

A meeting of the Board of Directors of the Rio Nuevo Multipurpose Facilities District was held on Wednesday, June 30, 2010 in the Tucson Convention Center, Greenlee Room, 260 South Church Avenue, Tucson, Arizona commencing at 2:00 pm.

1. Roll Call

The meeting was called to order at 2:25 pm.

	Appointee	Present	Absent/ Excused
Jodi A. Bain, Chair	Senate	x	
Dan Cavanagh, Member	Governor	x	
Jeff DiGregorio, Member	Tucson		x
Scott Egan, Member	House	x	
Carlotta Flores, Member	Governor	x (left at 5:45 pm)	
Mark Irvin, Vice Chair	House	x	
David N. Jones, Member	Governor	x (left at 5:50 pm)	
Alberto Moore, Secretary	Governor	x	
Anne-Marie Russell, Member	Tucson		x
Victor Soltero, Member	South Tucson	x	
Alan F. Willenbrock, Treasurer	Governor		x

Chair Jodi Bain indicated that Rick Grinnell had been named as the final appointment to the Board by the Senate. He will be completing his Oath of Office after this meeting.

2. Review and possible action with regard to the Minutes of June 2, 2010 and June 9, 2010.

A motion to approve the minutes as presented for June 2, 2010 was made by Board Member Scott Egan, seconded by Board Member Carlotta Flores, passed 9-0, Board Member Dan Cavanagh Abstaining.

Chair Jodi Bain indicated that the Minutes for June 9, 2010 were not ready for approval.

3. Interim Executive Directors Report – Richard Miranda

i. Discussion and possible action with regard to a schedule for decision-making on the hotel.

Mr. Miranda reminded the Board that there were past due invoices that need approval. Chair Jodi Bain indicated that she had some questions on the invoices and should have them approved by Friday.

Mr. Miranda indicated that Jessie Sanders will put the Design presentation from last week's Board meeting onto the Rio Nuevo website tomorrow morning. It is entitled, "SEE HOTEL DESIGN INSIDE AND OUT".

Mr. Miranda indicated there is a meeting with City Attorney, Mike Rankin, Interim Executive Director, Richard Miranda, and Chair Jodi Bain tentatively scheduled for 8:00 am, July 6, 2010 to solely discuss the timeline.

Board Member Dan Cavanagh asked the status of the motion to have Mr. Miranda ask the City Manger to designate this Board as the designee to determine the issue of abatement vs. rent on the Rialto Theatre. Deputy Finance Manager Silvia Amparano indicated that she spoke to Mr. Rankin, and a letter is being drafted to assign the District to have the authority to abate the rent.

Item 13 was moved out of order.

13. Call to the Audience

(Presentations are limited to 3 minutes per speaker and a maximum of 30 minutes per meeting).

The following members of the public addressed the Board:

Bill DuPont, Friends of Tucson's Birthplace – Mission Garden and Night & Day Studios
Pete Simon, Worlds Masterminds – Grant writing a source of income, theme park before hotel.

Mikki Niemi – Rio Nuevo Hotel, wait until after audit is complete

4. Discussion and action on 2011 budget.

Vice Chair Mark Irvin indicated that the Board had questions on the footnotes on the Budget. Deputy Finance Director Silvia Amparano explained the footnotes.

A motion was made by Vice Chair Mark Irvin, seconded by Board Member Alberto Moore to approve the budget as presented with any changes to the Budget presented to the Rio Nuevo Board for approval and with clear direction that any expenditure of "unobligated funds" along with those in account J025 – Depot Plaza Parking Garage, as appearing on the Rio Nuevo Capital Budget for FY 2011 spreadsheet attached to these minutes require specific Rio Nuevo Board motion and approval at a future meeting and appearing on said spreadsheet.

Changes to the document entitled, “Notes to Fiscal Year 2010-11 Budget Information” as follows:

Amend foot note (2) by adding at the end: “only by motion of the Rio Nuevo District Board.

Amend foot note (4) (*now note 5*) by adding at the end: “...and this is an estimated projected number depending on the future of the proposed project.”

Amend foot note (9) (*now note 10*) to read: “These are proposed projects. They are estimated numbers for budgeting purposes only. Projects are not approved. Any changes to or allocations of use to the budget requires specific motion by the Rio Nuevo District Board.”

Amend foot note (11) (*now note 12*) by changing in full to read: “This is not currently applicable at this time and therefore no profit or loss is stated from operations.”

On the sheet entitled, “RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT BUDGET AND RELATED INFORMATION PER A.R.S. 48-4232 FOR FISCAL YEAR 2010-11”.

Create a foot note after the item (*now note 4*), “TIF Revenues” under “Anticipated Receipts for Fiscal Year 2010-11”, to read: “Figure is estimated at 2% increase over the projected actual from FY 2010, which were \$8,888,614.”

On Rio Nuevo Capital Budget for FY 2011 Worksheet. add note: “Any expenditure of “Unobligated Funds” along with those in Account J025 Depot Plaza Parking Garage, as appearing on this spreadsheet, require specific Rio Nuevo District Board motion and approval at a future meeting.”

The motion passed on a roll call vote 8-0 with Board Member Scott Egan Abstaining.

5. Discussion and possible action with regard to bond counsel services for the District – Jodi Bain.

Chair Jodi Bain indicated that the Board has been struggling to determine at what point to acquire bond counsel, and at what time should they start working with Shawn Dralle with RBC Capital Markets. The Board will possibly approve the bond counsel to be retained with the understanding that they will not accrue costs or to do anything until they receive a notice to proceed from the Board. This way the Board can control the process in regards to the timeline that will be discussed with our team and Mr. Miranda and his team. Therefore we are not running up bills and are transparent to the community.

A motion to retain Lewis and Roca as Bond Counsel was made by Vice Chair Mark Irvin, seconded by Board Member Carlotta Flores. The motion passed on a roll call vote 8-0 with Board Member Scott Egan Abstaining.

6. Discussion on the Executive Director Job Description – Alberto Moore

Chair Jodi Bain indicated that Board Member Alberto Moore put together a draft job description for the Executive Director position, which is very detailed and is four pages long. She asked for the opportunity to work with Mr. Moore to reduce it to 2 pages, using the same information, adding some statutory requirements that we may be obligated to make. There is a concern that we are asking for 5 people in 1 document.

Mr. Moore indicated that time is of the essence, as we are working this job every week, and we need an Executive Director to be able to set priorities that we can work with. We need to follow through on this, and should not drag this out too long. We have a lot of attorneys but we do not have anyone directing traffic. Chair Jodi Bain asked Board Member Alberto Moore if it would be okay if she works on the draft to be ready for discussion and approval in two weeks. Mr. Moore indicated yes.

After some discussion Item 7 was addressed.

7. Update on Auditor General's office and Crowe Horwath on the audit - David Jones and Dan Cavanagh

i. Discussion and approval of payment agreement with Auditor General - Keri Silvyn

Board Counsel Keri Silvyn indicated that there were two questions that were brought up at the last meeting. One was related to our agreement with the Auditor General where there was a statement that the District shall be responsible for any penalty that accrues as a consequence of a late payment on the contract between Crowe Horwath and the Auditor General. When we looked at the contract with Crowe Horwath there were no consequences for a late payment. She discussed this with the Auditor General and they indicated that there is a statutory penalty which is accrual of interest on any outstanding balance that is more than 30 days old. That statutory reference is now in our contract with the Auditor General.

The second issue was whether the contract was clear on the importance of the timing and delivery of the audit. Is there a penalty if the audit is late. The way the contract is working with Crowe Horwath is there are five equal payments due during the life of the contract. The final payment, which is 1/5 of the total contract is not delivered until final delivery of the audit. So the penalty is withholding of the final payment. As to the 5 payment installments, the District will be given an invoice from the Auditor General and will have 15 days to make the payment, per the Statute or Contract.

After some discussion, Ms. Silvyn clarified that the direction she is getting from the Board regarding the agreement with the Auditor General is to make sure that there is a hard reference in the Crowe Horwath contract that if the amount that is in their contract should increase at all, this agreement needs to be revised and possibly amended.

8. Status report and possible direction regarding convention center/hotel based activities –David Jones and Greg Shelko.

Greg Shelko gave the following report:

East Entrance - Fire Marshall inspection was conducted this morning and passed; the State elevator / escalator inspection are scheduled for July 1st and 2nd; City certificate of occupancy inspection tentatively planned for July 6th, which is subject to State sign-off; building testing and commissioning tentatively set for next week, which is subject to all sign-offs. Punch list is down to 10 items from earlier today; four related to stainless work to be completed at escalator area, and the inspection itself; aesthetic or quality issues with the polished concrete appearance (consistency/density of exposed aggregate) at escalator/stair base; and non-structural issue with an interior column out of tolerance about 5/16" over 25' (floor to ceiling); several maintenance or clean up type items; resolution by Turner/Sundt of City standard verses specified for installed hardware (conformity question); and Turner/Sundt resolution with City of Tucson of adequate clearance questions for rooftop air handler access (also a City standard versus manufacturer recommended and specification conformity question). If at the time of the Certificate of Occupancy, if there are punch list items that remain, sufficient funds are in retainage (\$260,000) to complete or correct them.

Hotel / TCC Expansion Preconstruction and Design

GMP proposal in Draft form has been delivered to District's counsel and City Attorney. The City Attorney has distributed it to Mayor and Council and project staff.

Chair Jodi Bain indicated that the Board is considering bringing on a specialist to review the construction documents, the development agreement, and the draft GMP with the Board in the next couple of weeks.

Board Member Carlotta Flores suggested that the Board invite the public to a Grand Opening of the New Convention Center Entrance. Mr. Shelko indicated that he would work with Tommy Obermaier from the Tucson Convention Center on a possible date.

9. Report on the Rialto – Doug Biggers and Jeannine Mortimer

Board Counsel Jeannine Mortimer indicated that an IGA was entered into in 2004 which provided for an investment by the District to acquire the Rialto property. To date, a total investment of \$2.3 million has been spent, \$1.5 million was for the acquisition of the building, \$350,000 was for the initial renovation, and \$430,000 for air conditioning system. The theatre property was leased back to the Rialto Foundation under the IGA for a 50 year term. The rent is a triple-net lease for monthly rent to be paid, including insurance and repairs. The base rent for years 1-10 is \$3,690 per month which started in May of 2005, and then in years 11-50 of the lease term the rent will be \$3,690 per month or 3% of their gross receipts at that time. Under the IGA, the Rialto Foundation has some renovation/restoration requirements during the first 10 years of the lease, and they are required to spend 3% of their gross receipts on the restoration of the Theatre.

Under the IGA they are entitled to rent abatement after the first year of the lease term, which commenced in September 2005, until year 10. They have provided financial reports and abatement requests to the City through June 30, 2009. The City considered their request for fiscal years 2006, 2007, and 2008, with the only issue from 2008 being \$39,000 that was requested in abatement for the Greenroom improvements.

For clarification, the motion that was made earlier this month regarding seeking an appointment by the City Manager to be the designee to determine rent abatement issues was limited to rent abatement and I think that was appropriate under the terms of the IGA. At this point we have an outstanding request for rent abatement in the amount of approximately \$300,000 that the bulk of the abatement request is for the Greenroom improvements and to sound proofing that was acquired recently.

One of the other requirements in the IGA is the requirement of the Congress Street Investors, LLC, (CSI) which is a separate entity from the Foundation, was to invest and spend \$3.28 million in the acquisition or improvement of properties in the Rio Nuevo boundaries. CSI was the entity that originally had the purchase agreement for the Rialto property when the IGA was done in 2004. CSI had spent money on properties in the Rio Nuevo bounding, but not the Rialto building. The District acquired their rights to purchase the Rialto property from CSI.

Mr. Douglas Biggers, Executive Director of the Rialto Theatre Foundation gave a PowerPoint Presentation with the following topics:

The Rialto Theatre at Five Years

- Mission Statement
- Board of Directors and Staff
- District & Foundation Investments
- Summary of Major Improvements
- The Business of the Rialto Theatre
- Forget the Cultural Benefits: The Rialto is an Economic Engine for Downtown
- Tucson is a Tough Town for the Concert Business
- Concessions are Essential to the Business
- The Recession & SB1070 Make life Difficult
- Revenues vs. Profit
- Other Venues & Operating Models
- Accomplishments
- Five Year Capital Improvement Plan
- Herbert Alley Patio Space

Mr. Bigger introduced Mike McGrath with Mesch, Clark & Rothschild, Counsel for the Rialto Theatre Foundation. Mr. McGrath indicated that the District's counsel requested documentation to help the Board better understand the relationship it has had with the Rialto Theatre Foundation over the last five years. Information was provided on our liquor license, insurance, tax returns, and documentation for the renovation. On August 18, 2010, we expect the Rialto Theatre Foundation Board to adopt and approve our 2010

fiscal year end statement. We will then make it available to the Rio Nuevo Board. Mr. Biggers will be assembling the documentation for all of the improvements that have been made in the past year and present those to the Rio Nuevo District Board at a future date.

Let the minutes show that Carlotta Flores left the meeting at 5:45 pm.

Let the minutes show that David Jones left the meeting at 5:50 pm.

10. Report on status of the Tucson Origins Film – Jonathan Mabry

Vice Chair Mark Irvin introduced Jonathan Mabry. Mr. Mabry indicated that they are in the final stages of completion on the film. He indicated that the Credits at the end of the film say, The Citizens of Tucson funded the creation of the film and the Rio Nuevo District holds the Copyright. The goal is to be able to premiere the film on August 14, 2010 as part of the Tucson's Birthday celebration along with the Cele Peterson celebration. The Fox Theatre has indicated that they would be willing to show the film free of charge, and will also not charge the District.

Vice Chair Mark Irvin indicated that this issue would be discussed in Executive Session.

Board Counsel Keri Silvyn indicated that the Origins film will be discussed in Executive Session under legal issues as to the copyright issues.

We will need to discuss in a future agenda the timing of release, venue for releasing the film, lead time needed to advertise, and working with the Fox Theatre.

Mr. Mabry indicated that the film needs to be shown in high definition, high sound quality, and the Fox Theatre is the perfect venue. Chair Jodi Bain indicated that it is important that the public not pay for something that they have already paid for

11. Report from Legal Counsel – Keri Silvyn and Jeannine Mortimer.

i. Report on negotiations of City of Tucson IGA.

ii. Update on Administrative Rules revisions.

iii. Report regarding Rialto.

No Reports

Item 14 was moved out of order.

14. Future Meeting Dates and Agenda Items.

Next scheduled meeting will be July 15, 2010 at 2:00.

12. Executive Session

At 6:00 pm, a motion to go into Executive Session was made by Vice Chair Mark Irvin, seconded by Board Member Dan Cavanagh, approved 6-0.

i. Negotiations with City of Tucson on IGA.

ii. Public records request and copyright agreement negotiations for the film and other collateral materials for Tucson Origins Park.

iii. Rialto Lease

A motion to come out of Executive Session was made by Board Member Dan Cavanagh seconded by Board Member Alberto Moore, approved 6-0.

15. Adjournment.

The Rio Nuevo Board formally adjourned the meeting after the executive session at 6:25 p.m.

NOTE: It is the intent of these meeting minutes to get the general meaning of the discussion, summarize what happened, and record official actions. The minutes are not intended to be a verbatim transcription of all that was said. Audio files of the meetings are available for review at City Hall, Finance Department, 255 West Alameda, 5th Floor West.