

Approved by the Board of Directors of the
Rio Nuevo Multipurpose Facilities District
on _____, 2010

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

Wednesday, October 20, 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, October 20, 2010 in the Tucson Convention Center, Greenlee Room, 260 South Church Avenue, Tucson, Arizona commencing at 2:21 pm.

1. Roll Call

The meeting was called to order at 2:21 pm.

	Appointee	Present	Absent/ Excused
Jodi A. Bain, Chair	Senate	x	
Dan Cavanagh, Member	Governor	x	
Jeff DiGregorio, Member	Tucson	x (left at 6:00 pm)	
Scott Egan, Member	House	x	
Carlotta Flores, Member	Governor		x
Rick Grinnell, Member	Senate	x	
Mark Irvin, Vice Chair	House	x	
David N. Jones, Member	Governor	x	
Alberto Moore, Secretary	Governor	x (left at 4:54 pm)	
Anne-Marie Russell, Member	Tucson		x
Victor Soltero, Member	South Tucson	x (left at 6:00 pm)	

2. Review and possible action with regard to Minutes of September 15, 2010, September 23, 2010, and the motion language on the proposed hotel project from the October 7, 2010 meeting.

Minutes for September 15, 2010 and September 23, 2010 were delayed until the next scheduled meeting.

At the meeting on October 7, 2010, the Board approved a motion as follows: The Rio Nuevo Multipurpose Facilities District hereby issues a notice to proceed to the City of Tucson that will be good for 90 days pursuant to ARS 48-4204(B) on a proposed hotel convention center and garage project with the following parameters:

1. District participation is 100% of the hotel site generated specific TIF funds for the first 10 years. It will be reduced by 5% annually from there with a floor of a 50% allocation;
2. The ground lease for the hotel site will be at no charge for the first 5 years, thereafter it will be at market rate; assuming this is a 35 year bond it means the market rate is for 30 years;
3. The bond issuer is the City of Tucson;
4. The hotel flag is the Sheraton of Starwood Hotels;
5. The designs that the District has paid approximately \$21 million for, the District will be negotiating with the City of Tucson for half of the \$21 million for the cost of the design;
6. Distribution of income from the hotel site will be 50% for the City and 50% to the District;
7. The District will have representation at the table on all of the contracts;
8. The owner will be the bond required entity with negotiated ownership and oversight on behalf of the District;
9. The City is directed to review sufficiency of meeting rooms and consider adding rooms to the convention center to meet market demand;
10. The City will be required to pledge on-site bed and sales tax;
11. Direction to attorneys to negotiate on the GMP and proceed as we have been to bring the price down with the monies saved as part of those negotiations to be put back into the convention center for appropriate facelift to the existing convention center;
12. It will be an open book construction project;
13. 100% of the debt to be backed as required by the City Charter, or as acceptable under the City Charter.

PLEASE SEE ITEM 9, FOR SUBSEQUENT MOTION

3. Report from City staff.

i. Report and potential action/direction related to invoices.

Chair Bain indicated there was a Public Records Request to review the invoices for Legal Fees since April 2010. Vice-Chair Mark Irvin indicated that there are many hours that the current Board Counsel has not charged the District for.

Stacie Bird presented invoices to the Board for consideration. Each invoice was addressed by separate motion.

The invoice for Industrial Development Authority in the amount of \$1,805.00 was discussed by Board Special Counsel Bob Gugino. He indicated that this is an annual invoice that the Board needs to pay, as it is for the ongoing costs for the financing of the 2008 Bonds for the Trustee Fee and is a cost to the District. Chair Bain indicated that the Board has asked Stacie Bird to bring to the Board some of the invoices that are more difficult to understand and that the Board has not seen before, and once they have heard an explanation, the District Counsel recommended that she and Vice-Chair Mark Irvin initial off on them. Board Member Dan Cavanagh indicated that if

a nod is needed to pay the invoice he was giving it. Chair Bain said okay and asked for the next invoice to be addressed.

Stacie Bird then presented the final invoices for the Dplace Tech for the Depot Garage security. Stacie Bird requested approval to pay the last invoice in the amount of \$12,473.06 that will close out the PO and also the reimbursement of \$33,155.63 invoice paid on behalf of the District for the PO that was approved by the former Board Chair Jeff DiGregorio and was due to the contractor. Finance Director Kelly Gottschalk indicated that in the past the practice had been that when the Rio Nuevo District entered into a contract the City would often use City of Tucson contracts and as the contracting party. This work had been done and performed and was due to the contractor who performed the work, under good faith to these contractors the City of Tucson is paying these invoices, but They are not City of Tucson bills and this is something that will need to be worked out later. Ms. Bird indicated the expenditure would come out of the 2008 Bond funds.

A motion was made by Vice-Chair Mark Irvin, seconded by Board Member Scott Egan to not pay the invoice until the issues with the Depot Garage are resolved.

A substitute motion was made by Board Member Dan Cavanagh, seconded by Board Member Jeff DiGregorio to honor past Board decisions. Board Member Victor Soltero indicated that he is concerned that the PO that was approved at a time when an established Board was in place, is not being paid. Board Member Dan Cavanagh indicated that he believes that past Board decisions need to be honored, and that District Counsel agrees that this is an appropriate District obligation. Board Member David Jones indicated that the Board needs to stop playing games and take care of their obligations. Motion failed 4-4, with Board Members David Jones, Victor Soltero, Jeff DiGregorio, and Dan Cavanagh voting Yes, and Vice-Chair Mark Irvin, Board Members Alberto Moore, Scott Egan, and Rick Grinnell voting No, and Chair Bain abstaining.

A vote was then taken on the original motion not to pay the invoice. Motion failed 3-5, with Vice-Chair Mark Irvin, Board Members Alberto Moore, Scott Egan voting Yes, and Board Members David Jones, Rick Grinnell, Victor Soltero, Jeff DiGregorio, and Dan Cavanagh voting No, and Chair Bain abstaining.

Counsel Keri Silvyn indicated that because the substitute motion to pay failed, and the first motion to not pay also failed, this does not give clear direction to the City to pay the invoice.

Board Member Rick Grinnell indicated that he would like to readdress this item after discussion in the Executive Session.

A motion was made by Vice-Chair Mark Irvin, seconded by Board Member Rick Grinnell to pay the invoice for Tucson District Energy in the amount of \$4,163.51 and the associated drawn down from the 2009 COPS for the design of the Central Energy

Plant. Board Counsel Bob Gugino indicated that this invoice is one of the continuing obligations set forth from the 2009 COPS. Motion passed 9-0.

Board Member Dan Cavanagh questioned when the City is \$36 to \$50 million in debt, and has a Sales Tax question in two weeks, why and how the City would be picking up projects at a moments notice and funding them. Finance Director Kelly Gottschalk indicated that the City would have preferred not to do that, but there were contracts issued and obligations in the City's name that the City has stepped into in the interim to make sure that those contractors were made whole and basically they are not harmed by this situation that is going on here between the District and the City, regarding the IGAs and other things. So the City stepped in, not that we want to, but we feel like that it was the right thing to do. There were also projects that were critical to the taxpayers of Tucson that we wanted to continue. We didn't want the Depot Plaza Garage, for example, to be 98% complete just sitting there, not of use to the community.

Board Member Dan Cavanagh indicated that regarding projects that District had approved, he specifically asked if there was any paperwork showing that this Board had entered into a contract, and the answer was no, so he is at a loss when City staff says they are paying on projects that the District signed, but are unwilling to pay. Finance Director Kelly Gottschalk indicated that the City believes that the Board has approved everyone of these projects. We have information that provides the support that we believe approves these projects from your Board, those come in a variety of forms but I know that a variety of people have looked at those, including the auditors.

Board Member Dan Cavanagh asked what the District's unallocated cash balance was. Finance Direction Kelly Gottschalk indicated that this information is updated monthly on the Rio Nuevo's website, and the information has been provided to Chair Bain, Vice-Chair Mark Irvin, and Board Counsel Keri Silvyn and Bob Gugino. A financial position update proforma on projects had been provided yet a current consolidated cash proforma for the District had not. Ms. Gottschalk indicated that the cash balance as of September 30, 2010 is \$4,313,399.54 in Fund 055, there are smaller amounts in the pooled cash accounts and a clearing account, the total unrestricted cash in your Fund 055 which is your operating fund is \$4,261,194.18, and Fund 155, which is your 2008 Bond Funds, is \$6,547,523.41. The total of all unrestricted cash is \$10,808,717.59. There is also \$445,350.18 being held with the Trustee for the 2009 COPS.

Item 10 and 11 was moved out of order.

11. Discussion regarding Executive Director. - Bain and Alberto Moore

Chair Bain indicated that there were only 2 applicants for the Executive Director position. She is requesting that the deadline to accept applications be extended to December 15, 2010. A motion to extend the deadline for accepting applications be extended to December 15, 2010 was made by Board Member Dan Cavanagh, seconded by Vice-Chair Mark Irvin. Motion passed 9-0. The document on the website will be updated to reflect the extension of the deadline.

10. Discussion and possible action regarding the Treasurer position.

Board Counsel Keri Silvyn indicated that Board Member Scott Egan was the only one nominated for the position of Treasurer. She indicated that the Board is waiting for one more appointment by the Governor, and the Statute indicated that the Board is to designate a member of the Board with financial management or accounting experience as Treasurer or with who to liaison with a contracted financial service provider. There is a question as to whether the current Board members have the expertise that is necessary to fill that position. She indicated if the Board so chooses, they should wait until that person has been appointed. Board Member Dan Cavanagh indicated that the Board could choose Board Member Scott Egan, and at the time when the new Board Member is appointed there could be a new election at that time.

A motion was made by Board Member Scott Egan, seconded by Board Member Dan Cavanagh to postpone the appointment until the Board can get more direction on this issue. Motion passed 9-0.

4. Discussion and potential action related to properties and projects (not the proposed hotel project) within the District.

Item was not discussed.

5. Update on the Duplex/Presidio Property. – Mark Irvin, Carlotta Flores and Bob Gugino

Vice-Chair Mark Irvin indicated that Board Member Carlotta Flores and Board Counsel Bob Gugino have been involved in what the Board should do with their Duplex and the Presidio property. He mentioned that they had the opportunity to spend some time at the “Tucson Meet Yourself”, and he was impressed with the groups that he saw. One of the properties is being used by Parks and Recreation, and what he saw he was very impressed with. Board Counsel Bob Gugino indicated that the Duplex property is boarded up and needs substantial work for it to be fit for occupation. The property at 133 Washington is being used by Parks and Recreation and they are doing an invaluable job in maintaining the entire Presidio complex keeping it in wonderful condition. Parks and Recreation has been using that for offices for coordinating the maintenance of the Presidio, and also used by the Tucson Presidio Trust, the group that mans the museum and the Presidio. Mr. Gugino indicated that they have talked to several groups that are interested in working to help renovate the Duplex and hopefully turn that into a museum/office some

combination. We are going to have presentations by all of the groups to the Board sometime in the next 30 days.

Board Counsel Bob Gugino indicated that he would be asking Board Counsel Keri Silvyn to have an agenda item at the next meeting to draw up a lease with Parks and Recreation and the Tucson Presidio Trust for the control and use of that building.

At 3:21 pm, a motion to go into Executive Session was made by Board Member David Jones, seconded by Board Member Victor Soltero. The motion passed 9-0.

- 6. Report #1 from Counsel.**
 - i. Proposed hotel, garage, TCC project matters.**
 - ii. Executive Session:**
 - Discussion and possible direction and/or action as to:**
 - 1. East Entrance punch list and close out.**
 - 2. GMP.**

- 8. Report #2 from Legal Counsel.**
 - i. Report and possible action on Rialto contractual issues and TRE.**
 - ii. Update on status of IGAs.**
 - iii. Executive Session:**
 - Discussion and possible direction and/or action as to:**
 - 1. Hotel Project COT/District Term Sheet Negotiations.**
 - 2. Rialto lease contractual issues and TRE.**
 - 3. Audit.**
 - 4. Depot Garage.**

At 4:54 pm, a motion to come out of Executive Session was made by Board Member Dan Cavanagh, seconded by Board Member Victor Soltero. The motion passed 10-0. Board Member Alberto Moore left during Executive Session.

- 9. Update, discussion and possible direction to the District Negotiating Team regarding proposed Hotel Project – the District Negotiating Team**

Chair Bain indicated that in the Executive Session the Board discussed a proper response to their partner, the City of Tucson, on a going forward basis regarding the proposed Hotel project. Vice-Chair Mark Irvin indicated that on October 7, 2010 the Board made a motion outlining a number of issues that were acceptable to this Board to move forward with the hotel and provided a notice to proceed. He indicated that he would like to amend a few items. Vice-Chair Mark Irvin made the following motion to revise the motion on the proposed Hotel project made and approved on October 7, 2010:

The Rio Nuevo Multipurpose Facilities District hereby issues a revision to the notice to proceed issued October 7, 2010 to the City of Tucson that is good for 90 days (this means to obtain results within this timeframe) and pursuant to A.R.S. Section 48-4204(B) on a proposed hotel, convention center and garage project with the following parameters (as amended):

1. The District participation will be 100% of the hotel generated site specific TIF;

2. Subject to a ground lease that will be provided for term at no charge;
3. Bond Issuer – Third party entity created to own the hotel;
4. Hotel Flag – Sheraton of Starwood Hotels;
5. Design plans for the hotel will be contributed to the hotel project and be counted toward the District's contribution to the project;
6. Distribution of any and all income (this means the net profit) from hotel and garage components – 50% City/50% District;
7. District will have representation at negotiations of all contracts related to the project and financing;
8. Owner of the hotel will be the bond-required entity with the District having 49% ownership and City has 51% as required by Bonds;
9. City shall review the sufficiency of meeting room space in the TCC and consider adding space to meet market demands;
10. The City will be required to pledge all on-site bed and sales tax. (This effectively means: Pledge of a City funded Special Reserve Fund of no less than \$4.5 million (exact amount to be the greater of: no less than \$4.5 million *or* equal to the construction sales tax and building permit fees generated by the construction) to the project and contribution of City Sales, Transient Rental and Bed taxes and any imposed surcharges generated by the Hotel).
11. Direction to District counsel and City to continue negotiating on the GMP to bring the price down; it is recommended that any funds saved as part of those negotiations go back into the convention center for an appropriate face lift;
12. Hotel and project shall be an open-book construction project;
13. The City shall 100% guaranty the bonds (backstop) which language shall comply with the City Charter requirements for such matters.

The motion was seconded by Board Member David Jones.

A substitute motion was made by Board Member Scott Egan, seconded by Board Member Rick Grinnell, that the Rio Nuevo District board of directors, in its capacity as the financial directors of the District, conclude that the current convention center hotel proposal is not financially viable at this time. I move that all current contracts for services related to the convention center hotel proposal be brought to prompt and orderly termination, in accordance with the terms of those contracts and Arizona Revised Statutes, over the course of the next 30 days, and that all plans, drawings, specifications, financing plans, technical reports and other contract deliverables and work products produced under those contracts to date be surrendered to, and become the property of the Rio Nuevo District.

Vice-Chair Mark Irvin indicated that the District cannot control what the City of Tucson does, we can only make a decision on what we can do. Although the relationship has not been very good in the past, this is an opportunity to build on our relationship with them. We need to recognize that if we do not build a hotel with the TIF revenues, these are sight specific revenues that occur only if we build a hotel. If we do not build this hotel, there are no revenues. If the District takes on debt the TIF District will continue until 2025 or until all authorized debt payment are completed.

Board Member David Jones indicated that the motion that was made before the substitute motion that Board Member Scott Egan made, is not a legal obligation that commences with this Board. What we are doing is allowing the City officials to provide, if they see fit to proceed with the hotel concept. The issue on whether or not the City has the money or whether or not the hotel is financially viable, that those individuals who purchase the bonds will look at that very carefully and they would not go down a road that would have the City go into default. This Board is not trying to get out of its responsibility, but it is endeavoring to be a vehicle to help the City officials make decisions on whether it is in the best interest of the future of Tucson to have an economic generator. We need to provide the vehicle, if there is a public and political will to make this project work.

The substitute motion failed 2-6, with Board Members Scott Egan and Rick Grinnell voting yes, and Chair Bain, Vice-Chair Mark Irvin, Board Members David Jones, Victor Soltero, Jeff DiGregorio, and Dan Cavanagh voting no.

Board Member Rick Grinnell indicated that this Board inherited a hotel project that he does not think fits, he has major concerns because of costs, the process in which this hotel is actually acquired, and the subsequent processes that have gone on. We have been left with responsibly to try to be partners, he has no problem with a hotel, and he has a problem with trying to make this specific hotel work. He does not feel comfortable with the amount of debt that will be passed on to future generations. He believes it is wrong for the Board to go forward with this project.

Board Member Jeff DiGregorio indicated that he believes that this project is probably the most appropriate project that he has seen during his time on the Rio Nuevo Board. He does not see this as a liability that we are passing on to future generations, he sees this as an investment rather than an expense. It disturbs him when he hears that this hotel will not make money, a Starwood operated hotel in the downtown setting in a tourist economy is going to make money. Hotels do make money all over the world. Many people who live in Tucson do not appreciate the fact that our income comes from the tourist industry. There is a 1 to 10 ratio tourist economy, for every \$1,000 invested in tourism, we get \$10,000 back. Most look at only the site specific revenues that will be generated by the hotel, but forget about the non-site specific revenues generated by the average visitor that spends six days here. Even if the hotel does not make money in a year, we are looking at tens of millions generated in the community from sales tax, some will come back to the TIF district, some will go to the State, City, and County. We will all benefit. It is doing the tax payer a great service because every dollar we receive from a visitor is a dollar that we do not have to collect from a resident.

Board Member Scott Egan indicated that he agreed with Board Member Rick Grinnell, that it is time to end the craziness.

Since the substitute motion failed, a vote was taken on the amended new motion which passed on a vote of 6-2, with Chair Bain, Vice-Chair Mark Irvin, Board Members David

Jones, Victor Soltero, Jeff DiGregorio, and Dan Cavanagh voting yes, and Board Members Scott Egan and Rick Grinnell voting no.

Item 3 was readdressed.

3. Report from City staff.

i. Report and potential action/direction related to invoices.

Board Member Rick Grinnell indicated that after the discussion in the Executive Session, he would like to make a new motion to reconsider paying the two invoices for the Dplace Tech for the Depot Garage security in the amounts of \$33,155.63 and \$12,473.06. The motion died for lack of a second.

Let the minutes show that Board Member Jeff DiGregorio left at 6:00 pm.

Let the minutes show that Board Member Victor Soltero left at 6:00 pm.

7. Status report, presentation and discussion with Garfield Traub and Turner/Sundt regarding east entrance, the GMP, punch list items and payment application matters – John Sundt and Alberto Moore

John Sundt indicated that staff from Garfield Traub and Turner/Sundt has come to this meeting to get an understanding of the allocation process and give an explanation about what appears to be conflicting certifications and dollars moving between contracts. He indicated that no one is being accused of anything sinister, but it is really unclear and we need to be walked through it.

After discussion between John Sundt, Garfield Traub, and Turner/Sundt regarding the pay applications, Steve Moffett from Garfield Traub indicated that there is a spreadsheet that Stacie Bird has developed that has every pool of money available for the GMP, the main entrance, and the design period. Steve Moffett suggested that John Sundt and representatives from the District sit down with Stacie Bird and go through her spreadsheet line-by-line. It was indicated that board members already had done this in a group setting.

Chair Bain, on behalf of the District Board to facilitate the understanding of this payment application calculation disconnect, requested that both Garfield Traub and Turner/Sundt separately put their position in written letter to the District by next Monday explaining the issue and the process before the next meeting.

12. Call to the Audience

Michael Tony, a member of the public, addressed the Board.

13. Future Meeting Dates and Agenda Items.

Next meeting to be held on Wednesday, October 27, 2010 at 2:00 pm.

14. Adjournment.

The Rio Nuevo Board formally adjourned the meeting at 6:54 pm.