

Approved by the Board of Directors of the  
Rio Nuevo Multipurpose Facilities District  
On July 21, 2011

**Minutes for Regular Meeting  
&  
Budget Public Hearing  
Of the Board of Directors of the  
Rio Nuevo Multipurpose Facilities District  
3:30 pm  
Thursday June 23, 2011**

**Tucson Convention Center, Leo Rich Theatre  
260 South Church Avenue  
Tucson, Arizona**

A special meeting of the Board of Directors of the Rio Nuevo Multipurpose Facilities District was held on Thursday, June 23, 2011 in the Tucson Convention Center, Leo Rich Theatre, 260 South Church Ave, Tucson, Arizona, commencing at 3:30 pm.

**1. Roll Call**

The meeting was called to order at 3:37pm.

	<b>Appointee</b>	<b>Present</b>	<b>Absent/Excused</b>
Jodi A. Bain, Chair	Senate	X	
Rick Grinnell, Acting Treasurer	Senate	X	
Mark Irvin, Vice Chair	House	X	
Alberto Moore, Secretary	Governor	X	
Carlotta Flores, Member	Governor	X	
Timothy Bathen	Governor	X	
Jeffrey Hill	Governor		X
Jannie Cox	Governor	X	
Jonathan Paton	House		X

**Counsel:**

General Counsel Keri Silvyn	X
Counsel Mark Collins	X

**2. Discussion and possible approval of the May 19, 2011 and May 25, 2011 minutes**

These minutes will be approved in July. They are not yet ready due to receipt by temp agency of the drafts in non-editable format. Also, all minutes (other than April 13, 2011) prior to May 19, 2011 have been approved and had been forward to the City for posting. They appear to have been lost in cyber space and will be forwarded again to be posted. The jump drive with the final approved versions is being recovered after going 'down'.

Counsel was requested to email to Chair Bain any final drafts of minutes in her possession.

### **3. Announcements from the Chair**

Board Member Hill was in a car accident and will not be here today. Feel free to send him your quick recovery wishes. Also, we will be having a public hearing on the budget today. Copies of the agenda, speaker cards and draft budget are available to you on the table in the front of the stage for review and reference. Please remember we are a team and all work together for the betterment of Tucson. Let us please remain cordial and respectful as we address one another.

### **4. D & O Insurance with discussion and possible direction/action: (i) insurance broker compensation and (ii) ratification of duplex and/or 133 Washington insurance policy.**

Mark Irvin – DM Lovitt Insurance is the district's insurance representative and manages the District insurance. They did not take or get a commission on the D & O Insurance previously approved. We used to keep him on retainer last year. Bain stated that David Lovitt is amenable to a one time fee rather than retainer now. Irvin continued that he then recommends a flat commission to be approved for this policy. Irvin continued that the commission is normally a 5% requirement in the industry. It was suggested the sum to Lovitt be \$1500. Irvin made a motion for approval of a \$1500 fee which was seconded by Alberto Moore. Motion passed 7-0

(ii) Chair Bain as to approve the insurance obtained by majority vote of the executive officers between the last meeting and today because the insurance was expiring. Chair Bain explained that Counsel Gugino was clear that the insurance for the Duplex is the City's responsibility per the one year lease and if the District has proper paperwork representing this (which Counsel Gugino confirmed is in place), then the District need not obtain it as well. A motion was made by Mark Irvin to approve the District's renewal of insurance policy on the Washington Property at a discounted rate not including the Duplex. Seconded by Rick Grinnell. Passed 7-0.

### **[out of order] 9. Call to the audience:**

Ally Miller: Why was the Fox Theater agreement signed in 2005, but not notarized until 2008? Are there conflicts of interest on the board?

Steve Kowalczyk, Ward 6: Term sheet items should have been finished. The city is waiting on the board. There needs to be a 1 on 1 meeting between the board and the city of Tucson.

Michael Toney: IGA on city match funds good for you guys.

### **5. Report from Counsel with potential direction/action from the District:**

#### **i. The Fox**

Mark Collins – The board is attempting to resolve their issues through a restructuring. We have received a proposal which is under review. Chair Bain stated she has received it by email but had not yet reviewed it and did not know if the Alberto Moore, Carlotta Flores or Mark Irvin had reviewed it yet either? Alberto Moore – Do we have any discussions that involve Mr. McCluster today because we can let him know he need not stay for the meeting if he is not needed for questions? None at this time and Fletcher McKuster was informed he need not stay for Fox issues. Carlotta Flores – Should we move to Executive Session to avoid talking this

through twice? [Note, per Executive Session, direction to proceed per direction given in executive session to executive officers].

**ii. Depot Plaza Garage**

The city and district are in discussions. Do we need to ratify this date, from July 21, 2011, to August 18, 2011? Consent and affirmation June 16, 2011 – August 16, 2011 from calendar of meetings.

**iii. Close-out of Proposed Hotel Project**

Irvin – Money is being disputed. When will construction audit be complete? Why is it taking so long? Phil Dalrymple of R & A CPA is unsure of timeline because they do not know if the requested documents and information will be timely submitted for review. Mark Irvin continued to question the reason for the construction forensic audit and why it is happening and why it is not happening faster. Moore – What has been requested and have these items been properly submitted to you? Susan Vos – A letter request for production of documents has been submitted to each of the City and Garfield Traub and documents are requested to be submitted by early next week.

**iv. Term Sheet**

Counsel Mark Collins – The term sheet is expired and was due to be completed in a format for agreement final approval on February 16, 2011. There are settlement claims between the city and District, but no progress yet. Both parties are at a standstill. Mark Irvin – Is a lack of progress our fault? Let's keep this on the front burner. Counsel Mark Collins – It is unclear why it continues to stall and it does not appear to be the district's action which have caused this. As chair Bain pointed out various times, there are studies, legal descriptions and other reports in the hands of the City to have moved the term sheet forward which to my knowledge still have not been ordered by them. Irvin – Then why does the City state we are not moving the term sheet forward? A lot of time and effort went into the terms in the term sheet and we need to move forward on it. Can you (Counsel Collins) find out the status of the matter.

**v. Thrifty Block law suit and District documents/property matter**

Counsel Mark Collins – We have filed a cross claim against the city. The City filed that it be dismissed and it was assigned to Starling. At a hearing not notices, Judge Villareal granted the City's motion to dismiss the claim and the ruling came June 22, 2011. I have filed on behalf of the District that this be vacated. Mark Irvin – Will there be a hearing on whether the city should be a party to it? Why should the City be a party at all? Counsel Collins – Yes there will be a hearing. The IGA is a tri-party agreement between BP partners, Rio Nuevo and the City. The City negotiated and brokered the deal. To have any kind of full and binding resolution either by a court of business agreement, all parties to the IGA need to be at the table. It is unclear why the city would want to be excluded when they brokered the transactions that led up to the litigation.

**vi. Executive Director Matters (summarized)**

Counsel Mark Collins – There is a conflict of interest statute called 38-504 which was brought to the District's attention late last week. We can craft an agreement to Mr. Durband but it is unsure how the District can protect itself as this matter can be brought up by any tax payer. Irvin – Are we bound by this statute? Mark Collins – Yes, however, a further question is does the board want to raise those defenses? General Counsel Keri Silvyn – Mark Collins' analysis is right and accurate. I agree with him. Moore – How would contracting with Donovan then affect our D & O liability insurance? Counsel Mark Collins – I have not addressed that issue directly in the analysis to be discussed in executive session but we would need to look closely at that in regards

to Mr. Durband as it would be considered a known conflict. Generally this type of issue does invalidate insurance but it would need to be more fully reviewed to be 100% sure. The issue is to what cost is the District comfortable with expending to defend the matter if and when it would be raised by any tax payer. Also, any matter the City and the District are adverse to each other on that Durband worked on as the downtown aide to Ward 6 potentially disallows Durband's participation. [A lengthy discussion followed]

**[out of order] 12. Future meeting dates and possible planning retreat**

Chair Bain – Future meetings are July 21, 2011, August 18, 2011 and September 15, 2011 AND

Second Thursday of October 2011, November 2011 and December 2011

→**Motion to move into Executive Session** at 4:54 pm was passed by Rick Grinnell and seconded by Timothy Bathen.

**6. Executive Session: Upon a public majority vote of members constituting a quorum, the Board of Directors may hold an executive session in accordance with A.R.S. 38-431.03 (A), (3) and (7) for legal advice concerning the following matters:**

- i. Fox Theater**
- ii. Depot Plaza Garage**
- iii. Close-out of proposed Hotel Project**
- iv. Budget**
- vi. Executive Director matters**
- vii. Legal representation and requirements for a district**

→**Motion to move out of Executive Session at 6:40 pm** was passed by Alberto Moore and seconded by Tim Bathen. Passed 7-0.

**7. Executive Director update with possible direction/action.** Direction to proceed per direction given in executive session.

**8. District Financial Update and Final Draft Budget matters addressed by R & A CPA firm with discussion and possible direction/action.** R & A made a brief presentation of the status of the accounting process shift from the City to self-sustainment.

**10. Discussion and potential action/approval on 2012 Budget**

R & A made a presentation of the draft budget for 2012 with discussion for revision of footnotes to add additional statutory language.

Chair Bain – Budget will be finalized for public hearing with changes per CPA & Counsel.

**11. Public hearing opened and called to order on the Rio Nuevo Multipurpose Facilities District Budget.** [See approved as attached]

**The floor was opened to call the audience:**

Kelly Gottschalk: Expenditures must not exceed monies. Money is capped for 2012 fiscal year. [Discussion ensued after this with result to check with bond counsel and Counsel Collins; noting, however, the District is a state related entity and not subject to same statues as cities, towns and counties]

Michael Toney: The arena needs bleachers. Your budget needs to include that.

Ann Charles: The city has built in extra funds. You have not. Why is that?

Rick Grinnell made a motion: To pass the 2012 budget with changes to footnotes as noted in this meeting and seconded by Alberto Moore, unanimously passed 7-0.

**Motion to adjourn made b at 7:00 pm by Alberto Moore and seconded by Jannie Cox. Passed 7-0.**

**Approved  
Rio Nuevo Multipurpose Facilities District  
Budget 2012**

**TO BE ATTACHED.**