

RIO NUEVO MULTIPURPOSE FACILITIES BOARD MEETING

Tucson, Arizona
February 4, 2013
5:00 p.m.

REPORTED BY:

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1 (Meeting commenced at 5:03 p.m.)

2 CHAIRMAN McCUSKER: Okay. We're going to call the
3 meeting to order.

4 According to the State of Arizona, it's 5:04;
5 according to my clock it's 5:03. Close enough for
6 government work.

7 Cody, when's the last time you did the pledge?

8 MR. RITCHIE: The last two times.

9 CHAIRMAN McCUSKER: I think you volunteered.

10 (The Pledge of Allegiance was recited.)

11 CHAIRMAN McCUSKER: Michele?

12 MS. BETTINI: Mark Irvin?

13 MR. IRVIN: Here.

14 MS. BETTINI: Jeff Hill?

15 MR. HILL: Here.

16 MS. BETTINI: Jannie Cox?

17 MS. COX: Here.

18 MS. BETTINI: Fletcher McCusker?

19 CHAIRMAN McCUSKER: Here.

20 MS. BETTINI: Alberto Moore?

21 SECRETARY MOORE: Present.

22 MS. BETTINI: Chris Sheafe?

23 MR. SHEAFE: Here.

24 MS. BETTINI: Cody Ritchie?

25 MR. RITCHIE: Here.

1 CHAIRMAN McCUSKER: Okay. We're going to go into
2 the Executive Session. I would need a motion.

3 MR. SHEAFE: So moved.

4 CHAIRMAN McCUSKER: All in favor, say aye.

5 (Ayes.)

6 (The Board voted and the motioned
7 carried.)

8 CHAIRMAN McCUSKER: We'll see you back here at
9 5:45, or maybe a little earlier.

10 (The Board adjourned for Executive
11 Session at 5:05 p.m.)

12

13 (Meeting reconvened at 5:41 p.m.)

14 CHAIRMAN McCUSKER: Okay. We can have a motion to
15 reconvene.

16 MS. COX: So moved.

17 CHAIRMAN McCUSKER: Jannie.

18 Second?

19 MR. IRVIN: Second.

20 CHAIRMAN McCUSKER: All in favor, say aye.

21 (Ayes.)

22 CHAIRMAN McCUSKER: Okay. The Rio Nuevo Board is
23 back in business at 5:40. And here we go.

24 For public consumption, the agenda item today will
25 be a discussion and possible vote on the settlement

1 agreement between the Rio Nuevo District and the City of
2 Tucson.

3 So, Mr. Collins, we have a copy -- if you'll make
4 some copies available for the press and public -- and then,
5 if you please, walk us through this.

6 MR. COLLINS: Yes, Mr. Chairman.

7 CHAIRMAN McCUSKER: And then, just if somebody
8 would leave some out there in case somebody comes late.

9 MR. COLLINS: Mr. Chairman, members of the Board,
10 I'm happy to report that we've made more and more progress
11 on the settlement with the City. You folks have in front of
12 you a copy that we've discussed in Executive Session. I've
13 just made available to the public a clean version without my
14 notations on it.

15 What I'd like to do is to walk through the various
16 provisions in the agreement, make sure that if any of you
17 have any questions, we can talk about those questions. And
18 then take it from there.

19 CHAIRMAN McCUSKER: And correct my interpretation
20 if this is not correct: This is, by design, a global
21 settlement?

22 MR. COLLINS: Yes.

23 CHAIRMAN McCUSKER: One agreement, one signature,
24 will resolve all the lawsuits, all the pending claims, the
25 audits, anything that exists between the two jurisdictions?

1 MR. COLLINS: Yes. In fact, the recitals really
2 set that up. The recitals -- if you go through the
3 recitals, the purpose of this is the cessation, if you will,
4 of hostilities between the City of Tucson and Rio Nuevo.
5 And the recitals of this agreement set that up. It's an
6 effort to resolve all three of the lawsuits and resolve
7 other disputes that have been ongoing between the City of
8 Tucson and Rio Nuevo.

9 As I said, the recitals set that up, talk about
10 the creation of Rio Nuevo, talk about the requirements of
11 Rio Nuevo, talk about the 2009 amendments, the change in the
12 governing of Rio Nuevo. And Paragraph 8 of the recitals,
13 which is on Page 2, recites, Mr. Chairman, exactly what
14 you've said: By the terms of this agreement, the Rio Nuevo
15 and the City of Tucson desire to direct significant
16 investment in the primary component and resolve all of their
17 differences as set forth in the agreement.

18 The agreement components have been in the public
19 for quite some time. Last fall or late summer, the Board
20 went public with a version of this agreement. Subsequent to
21 that, the City made available other versions of the
22 agreement. Since that time, there's been a great deal of
23 discussion and revisions, but the basic components of this
24 agreement are substantially similar to what was disclosed
25 back in later summer/early fall.

1 Staying on Page 2, the first one is The Audits.
2 It talks about the audits, it talks about the fact that
3 there are going to be ongoing audits and that the parties
4 will cooperate in the statutory audits that are going to be
5 ongoing.

6 Section 3 deals with the Tucson Convention Center.
7 It provides for investment of significant funds --
8 \$6 million -- towards renovation in the TCC on the
9 conditions set forth in Section 3.

10 Section 4 resolves the disputes that have been
11 ongoing between Rio Nuevo and the City of Tucson regarding
12 the property that is now known as Fire Central. The City
13 keeps Fire Central and waives roughly \$2.1 million of claims
14 against the District.

15 The Depot Garage is Section 5. The Depot Garage
16 is part of the 2008 bond issuance by the District. A great
17 deal of District money went into the creation of the Depot
18 Garage. Section 5 creates a revenue stream for the District
19 from the City of Tucson.

20 Section 6 is the Arena Site. As everybody knows,
21 there's been a great deal of dispute about the Arena Site
22 and what should happen to that. Sections 6 deals with that
23 property. And stated simply -- which is kind of hard -- but
24 stated simply, if this agreement is ultimately signed,
25 within 30 days after that, the City of Tucson will give the

1 District reps and warranties of all the claims against this
2 property. And shortly thereafter, the District can decide
3 whether to accept title with those warts on it, or to let
4 the City keep the property, in which case, the District will
5 receive roughly \$900,000 when the City sells the property or
6 enters into a long-term lease.

7 Westside development, Section 7. Section 7 of the
8 agreement really covers several parcels of property. The
9 Brickyard, City of Tucson will remain title holder to what's
10 called 351 South Brickyard. The Westside parcel -- there's
11 a parcel of property south of the Brickyard. The exhibits
12 that would be part of this agreement define that. That
13 parcel is coming to the District to be developed in
14 accordance with whatever codes are applicable to it. The
15 District can go ahead and develop the property. Mission
16 Gardens, of course, is also there -- "there" meaning in the
17 Westside. This deals with Rio Nuevo agreeing to fund
18 certain amounts to Mission Gardens.

19 Section 8 deal withs the Presidio property, which
20 has been a bone of contention. This Section 8 resolves the
21 Presidio property bone of contention between the City and
22 the District.

23 The same is true with Section 9, which deals with
24 the Duplex.

25 Section 10 deals with Church and Council parking

1 lots. One of them comes to the District. The City
2 maintains the other one.

3 Section 11, Hotel Development, agrees that both
4 parties are going to work towards a hotel development so
5 that we can satisfy the requirements of 48-4204.

6 Section 12 is Streetscape Development. The
7 District is committing an amount not to exceed \$750,000 for
8 development of certain downtown areas.

9 Section 13 is Payment of Suspended Contracts. As
10 people know, there are some unexpended bond proceeds.
11 Section 13 deals with the City being reimbursed a certain
12 portion of those proceeds for money that they've paid. The
13 balance of it will come to the Board to be distributed -- to
14 be utilized on 2008 bond projects.

15 Section 14, Mr. Chair, is -- really deals with the
16 heart and soul of the dismissal of the Pending Lawsuits and
17 Mutual Release of Claims.

18 Section 15 is the matching funds. It really
19 restates the fact that the City is obligated under the
20 statutes to match investments in the TIF District.

21 And then Section 16 is a series of general
22 statutory -- contract provisions frequently found in
23 agreements like this. The only one which is a little bit
24 different is the conflict of interest restatement. As you
25 all are aware, the conflict of interest statutes that apply

1 to public entities are different than what apply to all of
2 us individually. So this just restates what the statutes
3 are.

4 So that's what the nature of the agreement is.

5 CHAIRMAN McCUSKER: Mark, two quick questions.

6 Does the public version of this have the exhibits attached?

7 MR. COLLINS: It does not. I have a few of the
8 exhibits -- I have a few sets of the exhibits. I didn't get
9 that done in time.

10 CHAIRMAN McCUSKER: But if the media that's here
11 needs a full set, they can have a copy with the exhibits?

12 MR. COLLINS: Yes.

13 CHAIRMAN McCUSKER: And it's not a specific
14 section, but one of the issues that's challenged us since
15 the new legislation has been this issue, Mark, of Notice to
16 Proceed, which was in this specific 2009 legislation. This
17 agreement also resolves what that means to both of us. Can
18 you touch on how we resolve the Notice.

19 MR. COLLINS: That's what it does resolve, is what
20 it means to the City of Tucson and Rio Nuevo. It doesn't
21 mean that some other third party couldn't raise a question
22 about the Notice to Proceed, doesn't satisfy the statute.

23 But it certainly satisfies that both the City and
24 the District are agreeing that that's a priority -- "that"
25 meaning the development of the hotel component of the

1 primary component -- and that both of us -- both the parties
2 are going to work toward towards that.

3 CHAIRMAN McCUSKER: And it provides that any
4 investment in any hotel site would accommodate the Notice to
5 Proceed?

6 MR. COLLINS: It does provide that.

7 CHAIRMAN McCUSKER: And then dollar one invested
8 in the TCC would satisfy that component of the Notice to
9 Proceed.

10 MR. COLLINS: That is what the City and I have
11 been trying to work to solve. Again, the two parties, we
12 would agree to that. Once this is signed, both the City and
13 Rio Nuevo would be agreeing to that.

14 CHAIRMAN McCUSKER: Any questions for counsel?

15 MS. COX: Good job, Mark. That's all I have to
16 say is, good job.

17 MR. SHEAFE: Mr. Chairman, could I extend a motion
18 that we authorize the Chairman and Mr. Moore to sign for
19 Rio Nuevo so that we can have an assigned agreement
20 immediately?

21 And my motion would be that we authorize the
22 signatures from the District so that we can have a signed
23 agreement here tonight and that would go to council first
24 thing in the morning.

25 MS. COX: Second.

1 CHAIRMAN McCUSKER: We have a motion and a second.
2 It looks like our attorney wants to say something.

3 MR. COLLINS: As you all are aware, there is a
4 potential conflict that Cody has. And so if there's a vote
5 on this or discussion, I just want everybody to be aware
6 that Cody's not participating, not because he doesn't care,
7 but because I've told him that there's a potential conflict.
8 And out of an abundance of caution, he's not participating.

9 CHAIRMAN McCUSKER: The simple nature of that
10 conflict is the client relationship?

11 MR. COLLINS: Yes. Oh, yeah. The conflict of
12 interest statutes that apply to governmental entities like
13 this Board are arduous and far-reaching. And I will
14 acknowledge that my decision to suggest to Cody that he not
15 participate is out of an abundance of caution. It isn't
16 because there's any real -- what I would consider in my
17 world, a conflict.

18 CHAIRMAN McCUSKER: I have a motion, a second.
19 Any discussion?

20 Let's do a roll call vote. Michele?

21 MS. BETTINI: Mark Irvin?

22 MR. IRVIN: Yes.

23 MS. BETTINI: Jeff Hill?

24 MR. HILL: Aye.

25 MS. BETTINI: Jannie Cox?

1 MS. COX: Yes.

2 MS. BETTINI: Fletcher McCusker?

3 CHAIRMAN McCUSKER: Aye.

4 MS. BETTINI: Chris Sheafe?

5 MR. SHEAFE: Yes.

6 MS. BETTINI: Cody can't vote.

7 CHAIRMAN McCUSKER: And we should, for the record,
8 identify that Cody recused or abstained?

9 MR. COLLINS: Recused.

10 CHAIRMAN McCUSKER: Recused himself.

11 MR. COLLINS: He's not participating, right.

12 MS. BETTINI: And Alberto Moore?

13 SECRETARY MOORE: Thank you. Before I enter my
14 vote, I'd like to make some comments.

15 Having volunteered for over two long years with my
16 fellow Board members and the newly reconstructed Rio Nuevo
17 Board working to clean up the mess left by years of the City
18 of Tucson mismanagement and -- possibly worse --
19 malfeasance, I believe that it is to the best interest of
20 the taxpayers of Arizona and residents of Tucson to enter
21 into the settlement negotiations.

22 Throughout those negotiations the Rio Nuevo Board
23 has acted in good faith to resolve the issues before us in
24 an open and transparent manner. To that end, each of every
25 time we submitted a settlement proposal to the City, that

1 offer was made public.

2 The City's counteroffers have been made privately
3 outside of public input or scrutiny, even being kept from
4 the City Council. I have been told by Council members that
5 the negotiations have been handled primarily by the City
6 Attorney, Mike Rankin, and the City's former attorney
7 through his firm and current mayor, Jonathan Rothschild.

8 The public must decide for themselves why that was
9 the case and what the motives might be. Time and time again
10 we have made offers that would provide for the best possible
11 outcomes to the taxpayers, considering the City's
12 recalcitrance and the State Attorney General's failure to
13 actively pursue questions of malfeasance.

14 I applaud Chairman McCusker for his dedication to
15 the economic welfare of the residents of the sixth poorest
16 metropolitan area in the country. It is because of the
17 dedication and hard work of this Board and private business
18 people that any discussions of downtown development is even
19 possible.

20 My decisions on the settlement offered to the City
21 of Tucson today is solely a statement of indictment against
22 the City, not a rejection of the settlement. I do have
23 concerns about some of the terms of the settlement today,
24 not because the terms are unacceptable, but because the
25 City's past performance gives me little confidence that it

1 will act in good faith and in the public's best interest.

2 The Rio Nuevo District has agreed to spend
3 \$6 million on renovation of the TCC. Will the City spend
4 the additional \$20 million-plus to bring the TCC up to
5 current standards which will attract quality production and
6 meet public needs?

7 The Rio Nuevo District has agreed to spend
8 \$1 million on Mission Gardens. Under the former
9 City-controlled Rio Nuevo board, allegedly over \$10 million
10 was spent on the project. It now has a handful of fruit
11 trees, four walls, and a Porta-Potty. Will a full
12 accounting of the money spent through the Friends of Mission
13 Gardens be required before more money is handed over, and
14 will the \$1 million dollars be fully accounted for in a
15 completely transparent manner from this day forward?

16 The Rio Nuevo District has leased our property on
17 Council and Church Street to the City-employee owned
18 ParkWise. Since the time the City traded the property for
19 the Presidio under the City-controlled Rio Nuevo Board, the
20 City has not responded with information requested regarding
21 an accounting of the revenues produced by this property.

22 Will we receive information on revenues produced
23 by this lease in order that we might negotiate future leases
24 in the best interest of the taxpayers?

25 Since as late as November, the settlement

1 agreement provided for the transfer of the Brickyard
2 property to the Rio Nuevo District. At some point in
3 December, the City began refusing to negotiate that property
4 claiming some confusion over the property's current control.
5 The Brickyard and surrounding areas, which was part of the
6 Proposition 400, was approved by the voters; therefore it
7 makes no sense that this property is not included in the
8 settlement agreement.

9 According to some, the City has made other
10 arrangements for that property more beneficial to their
11 political interests.

12 How many parties were really negotiating this
13 settlement with the City that were not legal parties to this
14 matter?

15 Through this year's long process, we have secured
16 some important pieces and not so important pieces of real
17 estate upon which vital development can and will occur. At
18 the same time, we have exposed the mismanagement and
19 corruption in the City of Tucson.

20 The bottom line is that this offer today is the
21 best we can do unless we want to continue spending hundreds
22 of thousands of dollars in attorneys' fees fighting a City
23 with more money and more attorneys.

24 And the settlement is in the best interest of the
25 residents of the City of Tucson and the taxpayers of

1 Arizona. And the real development and economic
2 opportunities spring from the newly reconstituted Rio Nuevo
3 Board.

4 So while I will be voting "No" today on the
5 settlement agreement, as a statement of principle rejection
6 of the City of Tucson's practices and disregard of the
7 taxpayers, I am confident that with Rio Nuevo's leadership
8 and determination we can move forward and return Downtown
9 Tucson to the vibrant place it once was.

10 Thank you.

11 My vote is no.

12 CHAIRMAN McCUSKER: Okay. By my count, that's
13 five aye, one no, one abstain. Motion carries.

14 MR. HILL: Not abstain, Mr. Chairman.

15 CHAIRMAN McCUSKER: Recused. Correct the record,
16 five ayes, one no, one recused.

17 Thank you, Mr. Hill.

18 (The Board voted and the motion
19 carried.)

20 CHAIRMAN McCUSKER: I think the last thing on the
21 agenda is Call to the audience. I don't see any.

22 I'll take a motion to adjourn.

23 MR. IRVIN: So moved.

24 CHAIRMAN McCUSKER: Mr. Irvin.

25 Any second?

1 MS. COX: Second.

2 CHAIRMAN McCUSKER: Jannie, second.

3 All in favor, say aye.

4 (Ayes.)

5 (The Board voted and the motion
6 carried.)

7 CHAIRMAN McCUSKER: We stand adjourned.

8 (Meeting concluded at 6:01 p.m.)

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C E R T I F I C A T E

I, John Fahrenwald, certify that I took the shorthand notes in the foregoing matter; that the same was transcribed under my direction; that the preceding pages of typewritten matter are a true, accurate, and complete transcript of all the matters adduced to the best of my skill and ability.

John Fahrenwald