

RIO NUEVO MULTIPURPOSE FACILITIES BOARD MEETING

Tucson, Arizona  
July 15, 2014  
1:00 p.m.

REPORTED BY:

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1 (Meeting commenced at 1:04 p.m.)

2 CHAIRMAN McCUSKER: Let's call the meeting to  
3 order. It's 1:06 p.m. [sic].

4 We understand Cody Ritchie is inbound. Mr. Hill  
5 is at a conference, right? So he won't be here. Let's do  
6 the pledge.

7 Mr. Sheafe, you were last, so you have to lead the  
8 pledge.

9 (Pledge of Allegiance recited.)

10 CHAIRMAN McCUSKER: Michele, call the roll.

11 MS. BETTINI: Mark Irvin?

12 SECRETARY IRVIN: Here.

13 MS. BETTINI: Fletcher McCusker?

14 CHAIRMAN McCUSKER: Here.

15 MS. BETTINI: Chris Sheafe?

16 TREASURER SHEAFE: Here.

17 MS. BETTINI: Jannie Cox?

18 MS. COX: Here.

19 MS. BETTINI: Alberto Moore?

20 MR. MOORE: Present.

21 CHAIRMAN McCUSKER: And we did mention that  
22 Mr. Hill has got an excused absence.

23 You have a copy of the June 24 transcript that's  
24 been provided us. Any conversation and questions? If not,  
25 I'll entertain a motion to approve.

1 SECRETARY IRVIN: So moved.

2 TREASURER SHEAFE: Second.

3 CHAIRMAN McCUSKER: All in favor, say aye.

4 (Ayes.)

5 And we have an Executive Session scheduled. We  
6 need a motion to recess.

7 SECRETARY IRVIN: So moved.

8 CHAIRMAN McCUSKER: I need a second.

9 MS. COX: Second.

10 CHAIRMAN McCUSKER: All in favor, say aye.

11 (Ayes.)

12 MR. MOORE: All right. We'll be back in about 60  
13 minutes.

14 (The Board recessed to Executive Session  
15 at 1:05 p.m.)

16 (Meeting reconvened at 1:45 p.m.)

17 CHAIRMAN McCUSKER: We need a motion to reconvene.

18 MS. COX: So moved.

19 CHAIRMAN McCUSKER: Second, please.

20 SECRETARY IRVIN: Second.

21 CHAIRMAN McCUSKER: All in favor, say aye.

22 (Ayes.)

23 CHAIRMAN McCUSKER: Okay. We're back in business.

24 And, Dan, I'll bring you up in a minute.

25 I will make some opening remarks only because

1 we've got some very important items on the agenda.

2 This is a very productive time for Rio Nuevo. We  
3 do have a lot going on. We have a very important  
4 procurement we're going to talk about today. We'll get an  
5 update from Elaine on the TCC progress.

6 But I walked through it Monday, and it's really  
7 going to be quite spectacular. Some of the bathrooms are  
8 done. Some of the concession areas are done. The ceiling  
9 work, for the most part, is done.

10 As you know, we've been working opposite the TCC  
11 schedule. So we go in for a few days, and then there's an  
12 event, we have to clean up and back out. We have about an  
13 eight-week run now. So we're going to really look to a lot  
14 of progress over the next couple of months, which could  
15 include the installation of the new seats. So the next two  
16 months, we expect to see a lot of work.

17 The TCC, you'll see an item later on the agenda to  
18 talk about celebrating that. We're getting a lot of  
19 positive feedback about the work that we're doing on that  
20 particular site.

21 The City, of course, is moving ahead, as you  
22 probably all know, on the privatization of the TCC  
23 management. So we do expect a decision here shortly from  
24 the City on their selection of a bidder. So you have a new  
25 Arena, new managers, and probably new food concessions

1 because those were all bid out simultaneously. So we're  
2 looking forward to an exciting time at the Arena.

3 We are moving forward with the West Side. If you  
4 were here in the last meeting, you remember we agreed to  
5 hire an architect to begin design of what we call the Lienzo  
6 Project. We have that person identified. The attorneys are  
7 working up an agreement for that. Hopefully by our August  
8 meeting we'll have something we can begin to talk about to  
9 the public about our plans for far West Side.

10 In the meantime, we've launched a hotel and  
11 helping restore the Eckbo fountains and doing all kinds of  
12 positive things for downtown. So it's an exciting time to  
13 be part of the Rio Nuevo Board.

14 I will also say that this has been a real learning  
15 experience on the procurement side. We have posted every  
16 single thing related to this procurement. And I believe  
17 we're probably the only -- Chris would know -- the only  
18 jurisdiction in the state that has been this transparent  
19 regarding a public entity procurement.

20 The RFP responses are on our website,  
21 rionuevo.org. The overall score sheet is posted. And the  
22 individual member's scores are posted. So there can just be  
23 no conversation about the lack of transparency of this Board  
24 and this group of people. So we're going to work through  
25 the rest of that today in an open session.

1           So, Dan, tell us how we're doing financially.

2           MR. MEYERS:   Okay.  As you all know --

3           CHAIRMAN McCUSKER:  You might start with your name  
4 for the transcription.

5           MR. MEYERS:  Dan Meyers, CFO.

6           As you all know, the June 30th marking of our  
7 fiscal year.  And so cash balances at the end of the year  
8 are as follows:  Alliance Bank operating account,  
9 approximately 5.8 million; Alliance Bank ISC account,  
10 approximately 5 million.  In the Bank of Tucson operating  
11 account, we have \$280,000, approximately.

12           The funds remaining in the City of Tucson, which  
13 are being used to pay for the TCC Arena renovation, are  
14 currently at 2.768 million.

15           As far as commitments sitting out there right now,  
16 Mission Gardens is at 1.1 million; Streetscapes, 750,000;  
17 the downtown hotel parking garage, which is still a couple  
18 years off, is 4.3 million; and remaining commitment to  
19 Tucson Community Center remodel is almost 6.1 million.

20           We've already paid 1.7 for the renovation, of  
21 which 140 of that is still sitting as payable in retention.

22           Any questions?

23           CHAIRMAN McCUSKER:  What is the timing on the  
24 hotel?  You know, I'm not sure we should be reflecting that  
25 at a current.  I know we've committed it, but it's not

1 anything we're going to have to write a check for --

2 MR. MEYERS: Absolutely not.

3 CHAIRMAN McCUSKER: -- for when? Years?

4 MR. MEYERS: I think it's a couple years, isn't  
5 it?

6 SECRETARY IRVIN: Two years.

7 CHAIRMAN McCUSKER: Maybe we put a footnote or  
8 something there saying it.

9 MR. MEYERS: Okay.

10 CHAIRMAN McCUSKER: Because it makes it looks like  
11 it's an immediate obligation.

12 MR. MEYERS: Right. It makes our cash position a  
13 little tighter than it really is.

14 MR. MOORE: Excuse me. Mr. Chairman?

15 CHAIRMAN McCUSKER: Mr. Moore.

16 MR. MOORE: I've noticed we don't have the Fox  
17 Theatre, again, in here. We have that option that we might  
18 want to take?

19 MR. MEYERS: Well, it was an option. It's nothing  
20 we really totally committed to, but I can certainly add it.

21 MR. MOORE: Well, I just thought to see it keep  
22 coming up just so that we're reminded that we have to make  
23 some decision on it in the next new months.

24 CHAIRMAN McCUSKER: It's technically not a  
25 commitment.

1 MR. MOORE: Okay. All right.

2 CHAIRMAN McCUSKER: So I'll put it on the next  
3 agenda since it's not agendized today.

4 MR. MOORE: All right. Fine.

5 CHAIRMAN McCUSKER: But thank you for reminding  
6 us.

7 Any other questions for Dan?

8 Thank you very much.

9 MR. MEYERS: Thank you.

10 CHAIRMAN McCUSKER: I don't see Elaine yet. We're  
11 a little early, so we'll come back to the TCC.

12 Chris, you want to go ahead and start on our  
13 training?

14 MR. SCHMALTZ: Sure.

15 CHAIRMAN McCUSKER: All right. The Board has  
16 requested and our attorneys have obliged us with a brief  
17 training on the open meeting law and conflicts of interest  
18 laws.

19 MR. SCHMALTZ: Sorry, Mr. Chair. It was a --

20 CHAIRMAN McCUSKER: Stand by. Elaine just walked  
21 in.

22 Elaine, are you ready to go, or do you need a  
23 minute?

24 MS. BECHERER: Nope. I've got everything ready.  
25 I've got it all.



1 CHAIRMAN McCUSKER: All right.

2 Take a seat, Counselor.

3 We are a little early coming out of exec.

4 MS. BECHERER: Yes, sir.

5 CHAIRMAN McCUSKER: We were working around you.

6 So the first item on the agenda, Elaine, is just an update  
7 on the Arena Project.

8 MS. BECHERER: So what I have -- sorry. I'm a  
9 little tardy.

10 CHAIRMAN McCUSKER: Name and...

11 MS. BECHERER: Elaine Becherer, Rio Nuevo TCC  
12 Arena project manager. And what I have is actually hard  
13 copies of the most current owner's report. And I do have  
14 them digitally so I can project. And then I also have the  
15 financial reports that I'd like to go through with you.

16 CHAIRMAN McCUSKER: And we have some copies, hard  
17 copies for the public?

18 MS. BECHERER: I do.

19 (Passed out copies.)

20 MS. BECHERER: So do you want me to project this  
21 as well? It's easier to just go to --

22 CHAIRMAN McCUSKER: Are there enough copies that  
23 if anybody wants one --

24 MS. BECHERER: There are. I have extra.

25 CHAIRMAN McCUSKER: All right. Just set them on

1 the table.

2 MS. BECHERER: Okay.

3 CHAIRMAN McCUSKER: If anybody wants to follow  
4 along, they can.

5 MS. BECHERER: So as a brief overall update of  
6 where we are, we are on schedule and on budget. We just  
7 moved into Phase II and III of the restroom and concessions  
8 renovations. We have vetted out the asbestos abatement for  
9 the escalator lobby as well as the breezeway.

10 And the document in front of, you if you take a  
11 look at the current budget column -- so it's the third  
12 column from the left -- the Rio Nuevo fund at 7.8 million,  
13 that is our original project budget which includes project  
14 soft costs as well as construction. The 370,000 for the  
15 City of Tucson that contributed to the project management;  
16 and then 96,000 that the City contributed for miscellaneous  
17 HVAC and F&CM repairs; and then 544,000 for all the plumbing  
18 fixtures and all the duct insulation. Those are our  
19 original project numbers.

20 And if you move down that column, you can see that  
21 the Rio Nuevo grand total of 7.8, we're still on budget  
22 where -- we started construction March 10th. And it's, you  
23 know, the middle of July. Everything will be wrapped up the  
24 end of December.

25 And that includes all of the 12 sets of restrooms,

1 the breezeway, the Arena, overall construction. They've  
2 concluded the painting on the upper arena floor. That's  
3 completely blacked out now. The expansion joint is  
4 complete. And they're currently doing replacement of the  
5 light fixtures on the concourse level.

6           What questions do you have regarding the overall  
7 project budget?

8           TREASURER SHEAFE: The 7.8 was purely a hard  
9 number; is that correct?

10           MS. BECHERER: That was the number that -- that's  
11 correct -- that back in -- last year, June -- I forget --  
12 that the Board approved the overall project budget of 7.8  
13 when I presented three different options.

14           TREASURER SHEAFE: Correct.

15           MS. BECHERER: Yes.

16           TREASURER SHEAFE: Okay. And you're saying that  
17 that number has not changed; the incidentals that are below  
18 that were additions that the City had actually agreed to and  
19 funded.

20           MS. BECHERER: That is correct.

21           And so when you continue down that line and you  
22 add in the 96,000, the 370, and the 544,000, the City is now  
23 contributing a million dollars to our current project that's  
24 under construction. And, big picture, it's overall, almost  
25 a \$9 million project now when originally it was a 7.8. So I

1 think that's a win -- a win for everybody.

2 CHAIRMAN McCUSKER: Those items, Chris, if you  
3 remember, we took the position that they were deferred  
4 maintenance. And it actually went all the way to the City  
5 Council. And ultimately they approved that million dollar  
6 additional investment. So we actually added it to our  
7 budget, and the current contractor's doing the work while  
8 they're in the facility.

9 MS. BECHERER: It's wonderful.

10 CHAIRMAN McCUSKER: Mr. Moore.

11 MR. MOORE: I noticed that we didn't put in here  
12 the contribution the City's made towards the escalators and  
13 the new elevators and stuff like that. Is that a different  
14 situation?

15 MS. BECHERER: So it's a different scope of work  
16 in the sense that those are different projects completely,  
17 different project budgets, and those are actually complete  
18 now.

19 MR. MOORE: Right.

20 MS. BECHERER: And so I think in my delivery and  
21 accountability to you, if I came to you with a document that  
22 was two or three pages long and it showed 9 million plus an  
23 additional 17 million, it would be very convoluted.

24 CHAIRMAN McCUSKER: Is this the number it ended up  
25 being? Can you refresh our memory, what did the City end up

1 spending on the elevators?

2 MS. BECHERER: It was plus-or-minus 17 million.  
3 And it included the elevators; escalators, and, you know,  
4 projects from the past couple of years.

5 I believe that Ron Lewis is here to help me to  
6 elaborate on the other projects that comprise that  
7 \$17 million, Mr. Moore.

8 But that is -- that is the number that, months  
9 ago -- I think it was almost last year -- that maybe you  
10 asked that question. And the City went through a process of  
11 going through and recapturing and listing all of those  
12 projects. And it totaled 17 million.

13 CHAIRMAN McCUSKER: And those projects are all  
14 done?

15 MS. BECHERER: Yes, they are. We're doing punch  
16 list items on the elevators and escalators. But, yes, they  
17 are -- they are done. So schedule completion is complete.

18 CHAIRMAN McCUSKER: Chris, you will notice that  
19 while the budget's the same, the contingency's come down.

20 So, Elaine, if you can just touch on the \$150,000  
21 difference between the original budget and current project  
22 budget.

23 MS. BECHERER: Yes.

24 So there's a couple of different categories where  
25 the funds increased or decreased from the original project.

1 One is them is the construction documents from 230 to 185.  
2 Projects soft costs increased to 150. Construction  
3 increased from 4.9 million to 5.5. So that's why there's a  
4 decrease in the overall contingency from the original  
5 project budget.

6 So prior to having all of our numbers as far along  
7 as they are today, we had a \$600,000 contingency. You know,  
8 three, four months into construction, we still have a  
9 \$450,000 contingency, which is also really great news for  
10 the project.

11 CHAIRMAN McCUSKER: Any questions for Elaine?

12 I think we've got some photos online. We're  
13 trying to keep the public up to speed on that. And the  
14 Arena, I think, is dark for the next six weeks or eight  
15 weeks.

16 MS. BECHERER: The Arena will go dark as of  
17 August 4th. So we have a couple more weekends with -- the  
18 Jehovah's Witnesses in town Thursday through Sunday. And  
19 then, August 4th, we will start demolition of approximately  
20 4900 fixed seats. And then we'll have a week hiatus because  
21 there's another client coming in. And then we will start,  
22 at the end of August, putting in all new fixed seats. And  
23 those will be done by October 1st.

24 TREASURER SHEAFE: Where are you staging all those  
25 seats while you're doing --? I'm just curious.

1 MS. COX: In her garage.

2 MS. BECHERER: They're at my house. I'm just  
3 kidding.

4 What we've been doing is been strategizing with  
5 TCC and with Concord, because Concord's coming in one point  
6 of access. And so what we're thinking is that the truck  
7 will come in with new fixed seats. They'll bring them in  
8 from the east side, off the church. They'll be able to load  
9 them in and on the concourse level.

10 So the week that we are off construction because  
11 of our client coming in, they don't come up on the concourse  
12 level because it's an arena floor event. So we can house  
13 everything there. They can start to put together the seats.  
14 And then once that event's over, the demolition will be  
15 done.

16 The electrical is being lined up so that will all  
17 be done as they demo the seats. The new seats will be  
18 ready, and they'll start right away install the new ones.  
19 So they were all on -- you know, they're all on top of each  
20 other.

21 And, really, August 4th is when you'll really feel  
22 like it's fully, fully under construction because we're  
23 going to have it for, you know, a good almost two months.  
24 Right now it's spotty because we have to shut down and clean  
25 up come Thursday afternoons to get ready for the next event.

1 CHAIRMAN McCUSKER: Anything else on the Arena?

2 Okay. Item 8, let me see if I can have --  
3 summarize this.

4 I'll probably need you and counsel to help.

5 But we did bid out video boards. We looked around  
6 the whole west coast for -- I know more about video board  
7 definition and -- than I ever care to know. We got two  
8 responsive bids. But in that process one of the bidders  
9 suggested an alternative that could result in a slightly  
10 smaller board but a significant savings. However, we didn't  
11 bid those specs, per se, so we can't legally accept the  
12 alternative.

13 Is that pretty close?

14 MR. SCHMALTZ: That's correct.

15 CHAIRMAN McCUSKER: Okay. So our only choice is  
16 to ignore that, which would be silly, or rebid?

17 MS. BECHERER: That is correct.

18 CHAIRMAN McCUSKER: Do you need any action from us  
19 to rebid, Chris, or . . .?

20 MR. SCHMALTZ: Continue the Item 8. And then we  
21 can agendize, essentially, a termination of the existing  
22 procurement and we will rebid.

23 CHAIRMAN McCUSKER: And so do we need a motion to  
24 terminate the current procurement?

25 MR. SCHMALTZ: Well, because it's not agendized



1 that way, I would hesitate to do that today.

2 CHAIRMAN McCUSKER: Okay.

3 MR. SCHMALTZ: I would continue that item.

4 CHAIRMAN McCUSKER: Just continue that.

5 MR. SCHMALTZ: Yes.

6 CHAIRMAN McCUSKER: All right.

7 TREASURER SHEAFE: So moved.

8 CHAIRMAN McCUSKER: Move to continue Item 8.

9 MS. COX: Second.

10 CHAIRMAN McCUSKER: All in favor, say aye.

11 (Ayes.)

12 (The Board voted and the motion  
13 carried.)

14 CHAIRMAN McCUSKER: Okay. So let's just table it.

15 MS. BECHERER: We'll be getting the new  
16 solicitations out on Friday of this week. And it will be a  
17 14-day solicitation just like before. And then we'll go  
18 through the same process.

19 CHAIRMAN McCUSKER: Item 9, we do have a contract.  
20 Because it's a contract, it comes back to the full board.

21 Elaine, can you briefly explain Item 9?

22 MS. BECHERER: Yes.

23 So Item 9 is a contract with Schneider and  
24 Associates for structural services, design services. What  
25 it entails is a -- it's a combination of a lot of things.

1           We've had to do some testing of the existing  
2 breezeway ceiling. We've had to review the new ceiling, the  
3 new drop-down ceiling, their attachments. They've had to  
4 design structure for the new video board, as well as help us  
5 with the design of some new entry soffits.

6           It's important to know that Swaim and GLHN, our  
7 architect and engineer, plumbing and electrical engineer on  
8 the project, they are not structural engineers, nor do they  
9 have a structural engineer in house.

10           So typically you have an architect who was all of  
11 their subconsultants that are managing all of these  
12 projects -- or managing all of the consultants -- pardon me.  
13 And in this case, we have different contracts for the  
14 different consultants. And so what this is, is another  
15 consultant who has been working on the project. And this is  
16 his contract to -- to formalize his scope of work and his  
17 fees.

18           CHAIRMAN McCUSKER: And how much money are you  
19 talking about?

20           MS. BECHERER: So his original fees were \$12,300.  
21 And that consisted of confirming the loading capacity of the  
22 steel structure over the arena floor because we have a new  
23 sound system -- a new sound cluster that we are hanging. He  
24 is working on calculating and preparing new rigging diagrams  
25 that the TCC and future performers will use.

1           He's been designing and documenting the steel  
2 structure at the south wall. We took out all of the  
3 existing piping, and we're putting in new steel sound  
4 attenuation panels. And then he --

5           CHAIRMAN McCUSKER: Let me ask Chris a question.

6           This is a small item. It is under the threshold  
7 the Chairman and the Treasurer have, but it's here because  
8 it's a new --

9           MS. BECHERER: New contract.

10          CHAIRMAN McCUSKER: -- new contract?

11          MR. SCHMALTZ: Mr. Chairman, Members of the Board,  
12 just to clarify, it's not necessarily here because it's a  
13 new contract. It's here because it's a professional  
14 services contract. The code requires all professional  
15 service contracts to come to the Board regardless of size.

16          MS. BECHERER: So the original scope of work was  
17 for 12,300. And there's an additional service of \$2,200.  
18 So -- I forget the total -- 14,000, something like that, for  
19 the structural fee.

20          CHAIRMAN McCUSKER: Do you need more room with  
21 Schneider? Should we give you some leeway in that or just  
22 that you --

23          MS. BECHERER: If possible, a little leeway. But  
24 not much is needed. I do not anticipate it even reaching  
25 \$20,000. We're at 14,000 now.

1           CHAIRMAN McCUSKER: Just quickly, again, they're  
2 engineering what, exactly?

3           MS. BECHERER: Well, they're engineering a whole  
4 bunch of little things throughout the project: The  
5 breezeway ceiling, the soffits, the entry soffit, the south  
6 wall. They had to design a beam for a new entry into a wall  
7 that's a load bearing wall. We needed a lentil. So it's a  
8 whole bunch of little things that we need their professional  
9 services for.

10          CHAIRMAN McCUSKER: What is your pleasure?

11          TREASURER SHEAFE: I'm noticing here, Elaine, that  
12 this says twelve, three. You confused me when you added the  
13 additional funds.

14          But Fletcher raises an interesting point. These  
15 are small items that keep coming up. Should we just approve  
16 18,000, up to, and then leave it to staff to make good  
17 choices?

18          MS. BECHERER: So as best as --

19          CHAIRMAN McCUSKER: It's a specific contract,  
20 right?

21          MS. BECHERER: It is a specific contract.

22          CHAIRMAN McCUSKER: So we kind of have to approve  
23 the contract.

24          TREASURER SHEAFE: Well, we have to approve this  
25 contract. But this contract's for twelve, three.



1           Okay. Anything else for Michele while she's  
2 standing here?

3           SECRETARY IRVIN: You mean Elaine?

4           CHAIRMAN McCUSKER: I'm sorry. What did I say?  
5 Michele? I was looking at her.

6           Thank you, you're doing a great job.

7           MS. BECHERER: Thank you.

8           CHAIRMAN McCUSKER: While we're talking about the  
9 Arena, Item No. 10 is my agenda item. We did budget for  
10 something in the overall budget in the marketing side. But  
11 we're at a point where we're enough in advance whether -- if  
12 we do want to do something, we would need get specific,  
13 particularly with dates and talent.

14           But we've tentatively held the date of January 3rd  
15 with the TCC staff to do some sort of Rio Nuevo,  
16 Tucson-City-Arena celebration.

17           The best bang for our buck in that particular  
18 situation, I believe, would be to host a concert. Not only  
19 would it be a huge celebration, but we need the concert  
20 world to see this arena completed. And it would be my hope  
21 that we would be in a position by then that we could really  
22 showcase the new Arena and invite producers, agents,  
23 managers, talent, promoters from around the country, to come  
24 see our new Arena.

25           We do have a line on a hall of fame act that is

1 available. I believe the event itself is probably a  
2 break-even proposition. You wouldn't give it away. You  
3 still have a ticketed event. But, you know, if we're not  
4 interested in making any money, you could keep the ticket at  
5 20 or 25 bucks and have a really nice event.

6 So I would just ask that you entertain that and  
7 maybe authorize -- the money's in the budget, but I think we  
8 would need an authorization for us to go forward to actually  
9 book the band and book the -- book the arena.

10 MS. COX: So moved.

11 CHAIRMAN McCUSKER: Can't tell you who the band  
12 is. But soon we could.

13 Jannie moved that. Any second to that?

14 SECRETARY IRVIN: I'll second that.

15 CHAIRMAN McCUSKER: Any further conversation?

16 MR. MOORE: Mr. Chairman?

17 CHAIRMAN McCUSKER: Mr. Moore.

18 MR. MOORE: Question: Is that budget also going  
19 to include to bring the producers and --

20 CHAIRMAN McCUSKER: No. I would hope that they'd  
21 see the wisdom of just being here for the event. The band  
22 and the band's managers would have some complimentary  
23 tickets. They normally get that. They could invite -- use  
24 that to invite some others. So hopefully we can work with  
25 them to -- maybe the only thing we do is offer them a free

1 ticket. But I wouldn't pay for anything.

2 MR. MOORE: Would we be hosting an event?

3 CHAIRMAN McCUSKER: I think we could do that, have  
4 a VIP --

5 MR. MOORE: Some kind of --

6 CHAIRMAN McCUSKER: Meet and greet. Yep.

7 MR. MOORE: We want to make them feel welcome and  
8 not just come for the show.

9 CHAIRMAN McCUSKER: Yeah.

10 MR. MOORE: Okay.

11 MR. RITCHIE: Did you check to make sure there's  
12 not a basketball game that day?

13 CHAIRMAN McCUSKER: I did not, no. It's kind of  
14 limited at the TCC and the particular town.

15 Do you want to check the basketball schedule real  
16 quick?

17 TREASURER SHEAFE: Well, we're not voting on the  
18 date, necessarily.

19 CHAIRMAN McCUSKER: Well, you know, that's true.  
20 We could just vote on the concept. We can work around the  
21 date.

22 All right. So we have a motion and a second.

23 All in favor, say aye?

24 (Ayes.)

25



1 CHAIRMAN McCUSKER: Any opposed?

2 (The Board voted and the motion  
3 carried.)

4 All right. Stay tuned.

5 Okay, Chris. So back to the regular schedule.

6 And are these out there if anybody --

7 MR. SCHMALTZ: Yes.

8 CHAIRMAN McCUSKER: -- wants to borrow.

9 MR. SCHMALTZ: There are some additional ones if  
10 anyone would like that.

11 Mr. Chair, Members of the Board, my name is Chris  
12 Schmaltz. I'm one of your attorneys at Gust Rosenfeld with  
13 my partner, Mark Collins. It's my pleasure to be here today  
14 to talk to you about open meeting law issues and conflict of  
15 interest under the statutes.

16 Feel free at any time to ask any questions. If a  
17 question comes up on any point that I make, either on the  
18 slide or in my discussion, don't hesitate to interrupt and  
19 ask away.

20 And in the interest of time, we'll try to keep it  
21 to 15 or 20 minutes.

22 Anyway -- the next slide -- I always like to start  
23 out with this statement, which is in the statute. And so  
24 whenever you hear either a statement from Mark or me with  
25 regard to a question related to open meeting laws, this is

1 always what I keep in mind and certainly what you all should  
2 keep in mind as well. This is the statement that's in the  
3 statute, so it's an expression of -- from our legislature,  
4 sort of what the open meeting law is all about.

5 So the final sentence is the key, from my  
6 perspective as your advisor is, toward this end, any person  
7 or entity charged with the interpretations of this article  
8 shall construe this article in favor of open and public  
9 meetings.

10 I think that's sort of been a role that I enjoy in  
11 my practice with you as well as with other public entities.  
12 It's a role I take seriously and certainly feel free to ask  
13 me any questions with regard to that.

14 Next slide, please.

15 So here we're talking about ARS 38-431. This is  
16 the open meeting law. It applies to any meeting of a quorum  
17 of members of a public body. So we're going to go into the  
18 definitions and talk about that. But that's what it applies  
19 to; it's about open government; it's about any collection of  
20 public entities, members of a public entity who can take  
21 action. As you know, a quorum is a -- is a collection of  
22 members of a public body that can act and take legal action.

23 That meeting, by statute, can occur via  
24 technological device. And it's in any context where any one  
25 of you or the members of the public body propose any type of

1 legal action or action otherwise, a discussion on potential  
2 legal action.

3 A quorum --

4 CHAIRMAN McCUSKER: Will you talk for a minute  
5 about email streams.

6 MR. SCHMALTZ: Oh, yeah. I'm going to get -- I  
7 will absolutely get to that.

8 CHAIRMAN McCUSKER: Is that a separate slide, or  
9 is that related to --

10 MR. SCHMALTZ: Multiple slides on email and the  
11 dangers of email, et cetera.

12 CHAIRMAN McCUSKER: Okay.

13 MR. SCHMALTZ: But, yes. As a broader point,  
14 email absolutely can serve as a basis for a meeting and be  
15 construed as a meeting. The main point being, the "reply  
16 all" button is not your friend, right? If an email goes out  
17 to all of you, the "reply all" button should be avoided at  
18 all costs.

19 So a quorum is a majority of the public body, the  
20 constituted however many members of that public body there  
21 are. However, sometimes it can be less than a majority  
22 because members are conflicted out, they can't participate,  
23 or they're not present. And so by the rules of that body,  
24 you can still conduct a meeting even when you have less of a  
25 quorum present to hold a meeting that day.

1           There are a variety of ways that this sort of  
2 quorum notion can get tripped up and trip you up with regard  
3 to sort of whether a meeting can occur. And so your  
4 sensitivity to, if I'm here with two or three others and  
5 we're talking about something that might either -- we know  
6 is on an agenda or might be coming up on an agenda, you have  
7 to be careful about that. Not that I'm saying that it's  
8 automatically a meeting, but that it could be construed by  
9 others who are trained in investigating these things and  
10 looking hard at these things -- like the Attorney General  
11 and the county attorney, et cetera -- may construe three of  
12 you at a certain location talking about a certain item as  
13 being a meeting.

14           And so that issue should be always in your mind  
15 when there are a few of you gathered to talk about a  
16 specific thing that could or might or will be on an agenda  
17 coming up or has been on an agenda and you just find out,  
18 taking legal action on it.

19           Any questions with regard to that?

20           On the slide there's a spokes of the wheel notion.  
21 And the spokes of the wheel idea is, one of you serves as  
22 the communicating node. So I, as a member of the Board,  
23 start to talk with you individually about what your take is  
24 on this upcoming action we're going take. And I'm  
25 communicating to each of you individually to avoid the open

1 meeting law issues because we're not all talking at the same  
2 time.

3           Except what I'm doing is communicating everybody  
4 else's thoughts to you as I individually talk to you. And  
5 so in that instance, I am the hub, and you are all connected  
6 through me like the spokes of a wheel. And so, in effect,  
7 we are creating a meeting by me being the conduit through  
8 which everybody is discussing the item. There is potential  
9 there.

10           And modern technology makes that so much easier to  
11 do that I have updated my presentation on this to address  
12 exactly that idea. Modern technology has created the  
13 situation that it is easy to inadvertently do this. You're  
14 not even thinking about it. But, in effect, you're acting  
15 as that conduit through which you're having a meeting.  
16 Meanwhile, nobody is talking to one another.

17           Next slide.

18           So as I mentioned, the public body is the duly  
19 appointed board or planning commission or town council. And  
20 it also encompasses officially established committees. So  
21 if, in an act that you take as a -- you create a  
22 subcommittee that is to address and be the West Side Parcel  
23 subcommittee -- just as an example. But this is a formal  
24 act. Not an ad hoc sort of go forth and negotiate related  
25 to this, two of you do this, but a subcommittee that is

1 intended to meet on and report to the full Board related to  
2 West Side issues. If you constitute that committee, that  
3 committee is subject to the open meeting laws. So its  
4 agenda, everything else, is subject to the requirements I'm  
5 going to touch on.

6 So this really encompasses the -- and be sensitive  
7 to committees that you establish for that specific and  
8 official purpose.

9 Next slide.

10 So what are the requirements? I think you're all  
11 probably aware of it and comfortable with these  
12 requirements, but I'll touch on them. Notice of the meeting  
13 has to be provided at least 24 hours ahead of time. Posting  
14 of the agenda, website of the agenda, the agenda itself has  
15 to list the specific items that you're going to address. It  
16 cannot be so generic such that it really could cover a wide  
17 variety or range of things.

18 It needs to provide -- again, the idea is notice  
19 to the public about the action that you're going to take.  
20 And that requires that there be some specificity with regard  
21 to what it is you're going to approve or take action on. So  
22 there -- if you -- if there's an open question about what  
23 the action might be, you know, the agenda item can reflect  
24 that.

25 However -- again, this is the idea about open

1 government, providing the notice to the public that this  
2 body is going to take legal action with regard to this  
3 specific thing. And that's important to sort of reaffirm  
4 this idea that this is all about open communication to the  
5 public because you serve on their behalf.

6 Many agendas include a call to the public.  
7 However, that's not required. It's not a statutory  
8 requirement. You can, as a Board, provide that opportunity.  
9 Almost every public entity does that, provides it. However,  
10 it's not an agenda item that you can take action on.

11 You can respond to criticism. The statute allows  
12 you to respond to criticism that's directed at you  
13 personally and to address any inconsistencies or to deal  
14 with any criticism that you hear personally. But you, as a  
15 Board, can't take action on anything that is brought up or  
16 discussed during the call to the public because it's not  
17 technically agendized.

18 If somebody has a grievance that they want to  
19 address related to their neighbor, that's not on the agenda.  
20 They brought it up. They brought it up during the call to  
21 the public. And so the only thing that you can do related  
22 to that is direct staff to put it on the next agenda so the  
23 public then has notice that you're going to talk about and  
24 deal with that specifically.

25 (Mr. Moore left the proceeding.)

1 MS. COX: Chris, were you saying that if you were  
2 making comments as a member of the public that -- I think I  
3 heard you say that we could ask clarifying questions of that  
4 individual. I thought it was understand that we could not  
5 respond to anything they said.

6 MR. SCHMALTZ: You can respond to criticism.  
7 That's it.

8 MS. COX: Okay.

9 MR. SCHMALTZ: So if there is criticism directed  
10 at you --

11 MS. COX: I see.

12 MR. SCHMALTZ: Yeah.

13 MS. COX: Okay.

14 MR. SCHMALTZ: And the law gives you that right to  
15 respond to that negativity by either clarifying or working  
16 through sort of what the issue is with that person who is  
17 criticizing you specifically.

18 But if you go down the road of somebody brings up  
19 something during the call to the public, it's not a -- it's  
20 not an open invitation to sort of engage in a dialogue with  
21 that person. You have to say, it's not on the agenda. We  
22 can't really discuss it. We can't get into it with you.  
23 However, we'll put it on the next agenda or I'll talk with  
24 you about it offline and we'll see if we'll put it on the  
25 agenda.



1           That's as far as you can really go.

2           CHAIRMAN McCUSKER: We've got, you know,  
3 legislative members that become Board members. And they're  
4 used to being able to ask the questions.

5           MR. SCHMALTZ: Yeah.

6           CHAIRMAN McCUSKER: And we take the position that  
7 you can't do that.

8           MR. SCHMALTZ: Yeah. And the call to the public  
9 situation, it's really -- it's an opportunity to get  
10 crosswise with the open meeting law because if things are  
11 brought up that aren't on the agenda, they're not on the  
12 agenda.

13           So it's -- the public would have no  
14 foreknowledge -- 24 hour's notice -- again, if you -- if you  
15 think back to that, they would have no -- they wouldn't have  
16 24 hour's notice that this topic was being brought up. And  
17 so that should send red flags off immediately in that, okay,  
18 the public had no notice about this topic. It's not on our  
19 agenda, so we need to put it on an agenda so the public  
20 knows that we're going to talk about it.

21           Legislative rules. They've exempted themselves  
22 from many of those rules.

23           So -- and the minutes, the open meeting law  
24 requires that minutes be taken, either transcriptions you  
25 know, handwritten minutes, or recording of the meetings.

1 You have those options. But there are specific rules that  
2 address. You have to take the minutes. Again, this is open  
3 government. Here's what we did. Here's the record of what  
4 we did.

5 So one of the key things and interesting things  
6 that I like to touch on is that the open meeting law confers  
7 a right to, as I said, attend and listen.

8 (Mr. Moore returned to proceeding.)

9 MR. SCHMALTZ: It doesn't give people the right to  
10 speak unless there's a specific statutory reference or  
11 requirement for a public hearing.

12 I deal a lot in the zoning and land use world.  
13 And so there are often requirements for public hearings on  
14 rezonings or other types of zoning-related actions. And the  
15 statute specifically says you will conduct a public hearing.

16 Technically, then, you opened a public hearing.  
17 And then that is a right for the people to come up to the  
18 microphone and say their piece with regard to that item.  
19 But the open meeting law itself does not contain any right  
20 to speak during an agenda. Now, any Chair of a public body  
21 always has the right, the authority, to allow public input  
22 on an item.

23 But what the open meeting law doesn't do is give  
24 people the right to come up and stand at this microphone and  
25 speak. You certainly have the right to do that. But it's

1 always a point that I like to highlight, in that the call to  
2 the public is sort of a right for people to come up and  
3 express their grievances to their government, right? But  
4 it's not something that you necessarily have to do or could  
5 choose to do or are required to do under the statute.

6 Next slide.

7 Oftentimes we have public bodies who have either  
8 adopted or would like to adopt Robert's Rules of Order. We  
9 have been -- and I often recommend and go through this  
10 process of changing those rules to make sure that the  
11 Robert's Rules of Order are a guide. I put this slide up  
12 only because Robert's Rules of Order are there for a reason.  
13 They provide order to a public meeting.

14 They -- but treat them as a guide only. They help  
15 for the orderly flow. They conduct. They control.  
16 Oftentimes it has elaborate rules, which I won't get into,  
17 in terms of dealing with motions, et cetera. Anyway, we  
18 would like to use them as a guide because they do provide  
19 some order for meetings.

20 Go ahead.

21 Okay. So to get you -- on your email -- focused,  
22 technology, social media, et cetera. These are current  
23 issues that can trip up and have tripped up people related  
24 to open meeting law.

25 Go ahead.

1           So with regard to email, the law is clear that a  
2 meeting can occur via technological means. So email is  
3 exactly that. Send one email to all members of the Board.  
4 Somebody hits a reply all. It's about a specific item on  
5 which you could take legal action. That's a meeting. Yes,  
6 I agree with that in a -- in a reply all. That's a problem.  
7 Don't do it. Never -- if you see -- ever see an email  
8 related to the Board business that goes to all of you, never  
9 hit reply all. Ever.

10           Only reply to either staff or an individual,  
11 specifically, to respond. But even then, in an email that  
12 has gone to everyone, red flags should immediately be going  
13 off saying, hey, this is a problem. Particularly if this is  
14 an item that is appropriate for discussion in open session.

15           You cannot -- and, A, it should be obvious that  
16 you cannot reply all. But you also can't be the chain of  
17 emails that is a forwarding of. That's sort of a  
18 modification of the spokes of the wheel idea. So I forward  
19 it to this person. This person forwards it on to the next  
20 Board member. That Board member forwards it on. And the  
21 history is all in that email that continues to get  
22 forwarded.

23           When it goes to the quorum person, the person that  
24 trips the quorum, that's potentially a meeting because  
25 you're all discussing and communicating to others what it is

1 that you think about that issue.

2 Go ahead.

3 So in an email, these are just some rules or  
4 advice that we always give. Do not announce your position  
5 on anything that might come before you as a body to others  
6 in an email. Do not ask or query anybody else about an  
7 issue that might -- or an item that might come before you in  
8 an email.

9 And do not appoint me or Mark or Michele to be the  
10 hub of the spokes of the wheel. Don't try do that either:  
11 Hey, would you send this out and ask people X?

12 No. Never do that either.

13 The AG, there are AG opinions and examples and  
14 consent decrees, where they have linked together those types  
15 of communications that have gone to more than a quorum of  
16 the board members.

17 And this is a key point to remember: Email,  
18 communications dealing with public business are potentially  
19 public records subject to disclosure under the public  
20 records law. So be sensitive to that idea and communicate  
21 as appropriate in your emails. Because they may --  
22 especially with regard to Board business -- because they may  
23 all be subject to public records requests.

24 Go ahead.

25 Texting and social media are sort of the next

1 layer of that, even more convenient, nowadays. It's what we  
2 tend to default to. It's what I use a lot. And so this is  
3 another issue that certainly -- the technological means --  
4 it absolutely falls into.

5 It's a great way for people who are members of  
6 public bodies to communicate to the public, to sort of  
7 communicate sort of here's what's going on, that sort of  
8 thing. However, there are areas where you can get tripped  
9 up on the open meeting law side.

10 Remember that these meetings can be held via  
11 technological means. And so if you have a Twitter feed, if  
12 you have a Facebook page, if you have a Tumblr blog, all of  
13 those things can be an opportunity for an electronic or  
14 technological gathering of you all because you want to chime  
15 in on a point that was made with regard to this project that  
16 the board was working on. And I put it on my Twitter feed  
17 or my Facebook page. And then I reply to it. And then  
18 multiple Board members reply to it or do -- go into the  
19 comments and reply to it. That's the potential for a  
20 meeting because you're all, via that one page or via that  
21 one tweet, participating in the conversation that should be  
22 here after we put it on an agenda. Right?

23 So there are selected AG opinions that address  
24 each of those notions. Unilateral email that proposes  
25 action. That is the invite for, let's violate the open

1 meeting law. Right? So don't try to. Never do that, send  
2 out an email to members of the Board that proposes that we  
3 take action with regard to X. Never a good idea.

4           Communicating through the media, there was an AG  
5 opinion, I think a few years ago, that dealt with the  
6 potential for, if I make a statement as a public official in  
7 the media, is that a potential open meeting law violation?  
8 I think generally that has been concluded that it's okay if  
9 you are responding to questions, responding to a reporter  
10 query with regard to that.

11           However, if in that media statement you say  
12 something about me and three other members of the Board, we  
13 all agree that X -- and this is an item that hasn't been on  
14 an agenda, that hasn't come before you or is scheduled to  
15 come before you. But you -- there's a statement in the  
16 media that is akin to, well, we've talked about this, or, go  
17 talk to them; they agree with me kind of a thing, that just  
18 invites sort of the idea that they've had a conversation  
19 ahead of time, more than a quorum. That's a potential open  
20 meeting law issue. Right?

21           CHAIRMAN McCUSKER: Chris, what about a reporter  
22 that's the spoke in the wheel? Somebody calls me, then they  
23 call Alberto, then they call Mark, then they call Cody. You  
24 know, they interviewed a quorum of us, but none of us  
25 necessarily knew that anybody else was talking to --

1           MR. SCHMALTZ: Well, if any -- Mr. Chair, Members  
2 of the Board, if any of you ever hear, well, your fellow  
3 Board member said, in that conversation, you got to stop. I  
4 would stop.

5           Because they -- while you may not intend for them  
6 to be the hub, right, it may, by that very process, be --  
7 they may be either baiting you into it or inadvertently  
8 participating in this process, whereby he or she is  
9 communicating to a quorum of you what the views of everybody  
10 else is, thereby creating this spokes-of-the-wheel meeting  
11 situation where you're all communicating to one another  
12 through this singular person.

13           If you ever hear in the conversation, well, this  
14 Board member said X with regard to this issue; what is your  
15 feelings on this? I wouldn't go down that road. And I  
16 wouldn't want to hear what the other Board member had to  
17 say. You need to hear what they have to say in here after a  
18 properly noticed agenda.

19           And the blog meeting is -- again, it's the  
20 Facebook page sort of. But if you have an individual blog,  
21 say you're a communicator and you want do this, you want  
22 sort of -- I'm a member of this public body and I want to  
23 write about sort of what we're doing and -- and I think  
24 that's an important service. That's terrific. Communicate  
25 to the public.



1           However, if -- when you get into sort of issues is  
2 that -- and comments and you respond to comments and public  
3 Board members of other members of the public body start to  
4 respond to blog posts, that has the potential to create a  
5 situation where a quorum of you are having a meeting.

6           So the vast majority of open meeting law  
7 complaints involve Executive Sessions. Executive Sessions  
8 can only be held for the seven reasons listed in the  
9 statute, no other reason.

10           You cannot have an Executive Session simply  
11 because the issue is embarrassing, uncomfortable, or messy.  
12 That's not a test. It's not part of the test.

13           Primarily, the Executive Sessions that we deal  
14 with, with you all, is legal advice, property-related  
15 negotiations, settlement and contract negotiations. Right?  
16 But -- and employment, employment issues. Those are four.  
17 There are a couple of others.

18           But that's -- those are the reasons why you can  
19 have an Executive Session. Only those parties who are  
20 necessary for the Executive Session may be present. You  
21 have to take minutes.

22           And this is the main point I always make with  
23 regard to Executive Sessions. Executive Session, they are  
24 private, slash, confidential. But they're not secret.  
25 Again, that's the whole point. You have to put them on the

1 agenda.

2 Go ahead, next slide.

3 You have to put them on the agenda and give the  
4 public notice that you may potentially go into Executive  
5 Session. There has to be specific action to do that. You  
6 have to provide the reason why, the statutory reason. And  
7 more than just the statutory reason, you have to give  
8 some -- which we do on our agenda, the reason why and the  
9 purpose for which the Executive Session is being held.

10 During the Executive Session, only those persons  
11 reasonably necessary may attend. You cannot take a straw  
12 poll or have deliberation or any discussion, take a  
13 preliminary sort of let's have a show of hands, none of  
14 that. All legal action has to take place out in the open.

15 So -- and just like we do here, out -- once the  
16 Executive Session is over, you come out and reconvene in the  
17 regular session out here in public. And any final voter  
18 decision that's taken -- that is to be taken on the item  
19 that you got legal advice on or the contract or the  
20 settlement that you're working on, that action has to take  
21 place out here in the public meeting.

22 Go ahead.

23 These are the violations for open meeting law.  
24 These are the penalties for open meeting law violation.  
25 \$500 for each violation. If it's intentional -- I'm using

1 the reporter to be the hub of a wheel -- removal from  
2 office, potentially, if it's intentional.

3 All legal action taken by the body at the meeting,  
4 null and void. Not voidable, null and void.

5 There are statutory steps that apply if you want  
6 to ratify that action at a subsequent meeting. But they are  
7 very specific and you have to do that in order to ratify the  
8 action.

9 Any other questions with regard to open meeting  
10 law issues?

11 Okay. So I'll move on quickly to conflicts of  
12 interest. This is the main statute that deals with -- this  
13 is 503(A) that deals with contract, sales, purchase of  
14 service that you're -- that you may be involved in. We're  
15 going to go through each of the underlined words.

16 And then the next slide talks about any action  
17 that maybe taken, same language --

18 Go ahead.

19 -- public officer or employee of a public agency  
20 who or -- who has or whose relative has a substantial  
21 interest in any decision. So first session is related to  
22 contract, services, et cetera.

23 This is much broader. Any decision. And if you  
24 have a substantial interest in a decision of a public body.

25 So what do all these words mean?

1           Go ahead.

2           The statute defines them all. Public officer is  
3 you. You are appointed members of a public agency.

4           Public agency is the District.

5           This is interesting. The statute specifically  
6 defines relative. And this is the list that's in the  
7 statute. So again, you or a relative having a substantial  
8 interest. So relative is spouse, child, child's parent. It  
9 goes way beyond your nuclear family, right?

10           So take a look at that list, sort of absorb that  
11 list, because these are -- all should be the triggers,  
12 should be red flags related to conflicts of interest.

13           Go ahead.

14           Substantial interest, pecuniary -- relating to  
15 money -- or proprietary -- relating to ownership,  
16 business -- interest, either direct or indirect, other than  
17 a remote interest. So notice how that is phrased in the  
18 statute. Practically everything that's related to money or  
19 property or ownership, related to you or a relative, is a  
20 substantial interest unless it fits within a carve out that  
21 is a remote interest. So everything relating to money or  
22 property unless it's a remote interest, right, for you and a  
23 relative.

24           So the language says you have to make known that.  
25 The public needs to know that you have a potential conflict.

1 So you have to make known in the public -- in the official  
2 records of the body. Doing that by, ahead of time, writing  
3 to the clerk or at the meeting itself you declare that you  
4 have a conflict.

5           And by participating, that means no action, no  
6 discussion, no voting, no nodding of the head, no nothing.  
7 We always recommend -- my advice is always to leave the  
8 room. That way you don't get into the squinting of the eyes  
9 and the nodding of the head and the shaking of the head and  
10 any of that sort of, I disapprove, or, I think that's great,  
11 sort of notions of this is an item that I've already  
12 declared I have a conflict with, but I'm still in the room  
13 and I'm somehow sort of with my body language conveying  
14 approval or disapproval. We always -- to avoid that  
15 scenario, we always recommend that you leave the room for  
16 that item.

17           So the remote interests, which I won't go into  
18 detail, are -- you know, there's a whole list of them. So  
19 remember, you have a substantial interest related to money,  
20 indirectly or directly, related to money or proprietary  
21 interest, unless it's a remote interest. And there's a  
22 variety of remote interests, that of a landlord and tenant,  
23 interest of an attorney of a contracting party, an interest  
24 of a nonprofit cooperative bargaining association.

25           Go ahead.

1           Ownership of shares of a corporation and  
2 certain -- up to certain percentages.

3           Go ahead.

4           That of a public officer or a relative, et cetera,  
5 unless that would infer a direct economic benefit or  
6 detriment upon the officer or the relative of another  
7 subdivision, et cetera.

8           Go ahead.

9           This is an interesting carve out, a remote  
10 interest. If you are a member of a trade association that  
11 is more than ten -- or I guess it says at least ten -- which  
12 is no greater than -- if your interest is the same as any  
13 other member of that trade association, you might fall into  
14 this remote interest category.

15           We had a issue of that with a town council that we  
16 represent where a minister was dealing with an issue  
17 associated with signage for religious activities. And he  
18 had a religious -- he had services, and he wanted to put  
19 signs out on the sidewalk. And so it was related to his  
20 interest -- it was about gathering people at his  
21 congregation, et cetera. But because he fell within this --  
22 his interest is identical to any other church sort of leader  
23 within that community, his interest was determined to be a  
24 remote interest because he had an identical interest in the  
25 location of those signs.

1           Go ahead.

2           So the headline test and red flags internally,  
3 right? This is having your radar up at all times. If the  
4 item has a possible personal or a relative, as the statute  
5 defines, interest, pause to assess and talk to Michele or  
6 Mark, right? Immediately communicate, this is a potential  
7 issue. I need think about this.

8           Ultimately though it's your decision. We will --  
9 we can give you advice with regard to that and tell you,  
10 this is what we think. But you, as the public issue --  
11 public officer, you're the final -- you have the final say  
12 on that.

13           There is a procedure to request an opinion. It's  
14 pretty rarely followed. And the main point to remember is,  
15 keep your radar up with regard to these issues at all times.  
16 Be sensitive to this issue. You are a member of a public  
17 body. These are potential issues. So have your radar up  
18 and be sensitive to this at all times.

19           So what do I do if I determine that I or a  
20 relative has a substantial interest? Make known that either  
21 writing ahead of time -- email is probably good -- and then  
22 at the meeting itself declare, I have a potential conflict  
23 of interest. I'm not participating in any way in this item,  
24 and leave the room.

25           These are the penalties. Intentionally or

1 knowingly violate, that's a felony and removal from office.  
2 Recklessly or negligently violate this, Class I misdemeanor,  
3 highest misdemeanor. Contracts in violation are voidable by  
4 the body that you are a member and potential civil action  
5 where all the fees and costs can be recovered.

6 Any questions with regard to any of that  
7 information?

8 MS. COX: This may -- we could gather for my  
9 birthday party, right?

10 MR. SCHMALTZ: Yes.

11 MS. COX: We could all be there in the same room  
12 together.

13 MR. SCHMALTZ: Yes.

14 MS. COX: We could all be officially invited with  
15 a written invitation or an email --

16 MR. SCHMALTZ: Yes.

17 MS. COX: -- to come to my birthday party. And  
18 that would be totally okay. We just don't talk business at  
19 my birthday party.

20 MR. SCHMALTZ: Here's the best practice that I  
21 recommend, if you know -- if you got an -- if you've all  
22 been invited to an event that you know that the majority of  
23 you is going to be at, notify Michele so that she can post a  
24 potential gathering of a possible quorum of the Board, there  
25 is no agenda, no action will be taken, there is no items



1 that will be discussed.

2 You post that notice to the public --

3 MS. COX: Oh, I --

4 MR. SCHMALTZ: -- so that they all know that a  
5 potential quorum of you will be at this event, but you made  
6 clear that -- and you provide notice to the public that  
7 we're not discussing anything, we're not doing anything at  
8 that meeting. Because it is a meeting. It's a gathering of  
9 you. But no action's being taken. And if you're up front  
10 with that and you post that notice to public ahead of time,  
11 24 hours ahead of time, then you're safe, in my mind.

12 MS. COX: So if we were going to something in the  
13 public and then we looked around and realized we're all in  
14 the same room, we didn't know we were all going to be in the  
15 same room --

16 MR. SCHMALTZ: Yes.

17 MS. COX: -- we just make sure that we don't get  
18 together.

19 MR. SCHMALTZ: I would -- that would be the  
20 best -- that would certainly be the best practice, for sure,  
21 yes.

22 MS. COX: Okay. Thank you.

23 CHAIRMAN McCUSKER: In part of our official  
24 duties, we routinely get invited to things.

25 MR. SCHMALTZ: Yes.

1           CHAIRMAN McCUSKER: The streetcar opening, the  
2 Rialto grand opening. The same issue there?

3           MR. SCHMALTZ: Yes.

4           CHAIRMAN McCUSKER: If there are four of us there,  
5 if we just post it?

6           MR. SCHMALTZ: I would -- I would -- I would  
7 recommend that, in terms of the best practice, notify  
8 Michele more than 24 hours ahead of time that I've been  
9 invited to this. I might go to it.

10           And if she -- and then she will put together a  
11 short post that says, notice of a possible quorum, no  
12 agenda, no meeting, no action, so that the public has notice  
13 to the possibility that four of you will be there. That's  
14 the safest route to go.

15           CHAIRMAN McCUSKER: You just paid the price of  
16 admission right there.

17           MR. MOORE: But it's okay to send Jannie presents.

18           MS. COX: Oh, yeah, that's okay.

19           TREASURER SHEAFE: As long as you don't put a  
20 little note in there that tells her how to vote on  
21 something.

22           CHAIRMAN McCUSKER: All right. Anything else for  
23 Chris?

24           That was outstanding.

25           MR. SCHMALTZ: Thank you.

1 CHAIRMAN McCUSKER: Thank you very much.

2 MS. COX: Thank you, Chris.

3 TREASURER SHEAFE: It really was. Thank you,  
4 Chris.

5 CHAIRMAN McCUSKER: You even changed his mind.  
6 Did you notice you got a thumbs up from Mr. Sheafe?

7 Okay. Item 12 should be pretty quick.

8 Now, we're still waiting for them to get back to  
9 us, right, Mark?

10 MR. COLLINS: Yes.

11 Mr. Chairman, Members of the Board, at the last  
12 meeting you authorized me to make some changes in the  
13 proposed ADOR IGA. I have made those changes. They've been  
14 provided to the ADOR, I have been advised. And we are  
15 awaiting their responses.

16 CHAIRMAN McCUSKER: Any questions for Mark on  
17 Item 12?

18 Okay. The big ticket item for today, Item 13.

19 And we'll need some help from counsel as we work  
20 through this.

21 Unless you live in a hole, you know that the  
22 District Board decided to seek a strategic partner for the  
23 so-called Arena Lot, that's the property that the Greyhound  
24 is temporarily located on. We won the deed to that  
25 property -- won is maybe not the right word. But we got the

1 deed to that property in a global settlement with the City  
2 of Tucson. We're very interested in its development in the  
3 future. It's the gateway to downtown from the West Side.  
4 And we released an RFP.

5 We've had two responses to that, which we have  
6 made public.

7 We opted to be the evaluating committee ourselves.  
8 So each member has, independent of each other and without  
9 any conversation with one another, scored those. Those  
10 scores have been made public. And then the overall ranking  
11 has been made public.

12 So, Mr. Schmaltz, walk us through now what our  
13 duties and responsibilities are.

14 And Cody is, in fact, conflicted. So as we just  
15 learned, leave the room.

16 (Mr. Ritchie left the proceeding.)

17 MR. SCHMALTZ: Mr. Chair, long time no see.

18 Yes. Before you, you have a couple of options.  
19 And the agenda sort of lays those out. Just sort of briefly  
20 I'll go through RFP itself.

21 RFP sort of identifies the process as the initial  
22 scores, which you have in front of you which the public has,  
23 based upon the proposals that we received. We received two  
24 proposals. Each of those proposals were scored by you  
25 individually. Those scores were compiled. The proposals

1 that we received were Nor-Gen and Peach Properties.

2 The scores of those proposals -- the combined  
3 scores was Nor-Gen, 5290; Peach Properties, 5115 based upon  
4 the seven evaluation categories listed in the RFP.

5 So the options you have before you today are to  
6 take those initial scores and designate that as the final  
7 list and direct us and others, sort of members of the Board  
8 that will participate in the negotiation, to proceed with  
9 negotiating with the number-one ranked proposer. If you  
10 went that option, that would be Nor-Gen.

11 Or Option B is, as articulated in your agenda and  
12 which the RFP provides for, is you have the option to  
13 schedule interviews with both proposers and then to score  
14 those interviews after those interviews are conducted. And  
15 then the final list, the final ranking, will be the result  
16 of the combination of the proposal scores, which you have  
17 before you today, and the scores from the interview using  
18 the exact same criteria that's listed in the RFP. So those  
19 are your options as well.

20 The other option is the cancel the solicitation.  
21 But that's sort of a third option. Those two options that I  
22 just discussed are what's before you today. It's at your  
23 pleasure. You can choose to do either one.

24 If you choose item -- to proceed with interviews,  
25 your motion should include sort of directing either that

1 those interviews be scheduled at the next regular meeting or  
2 at a special meeting of a certain time period to give the  
3 proposers time to prepare their presentations, et cetera,  
4 which we can schedule, with the idea that the final list and  
5 the final scoring may be conducted and announced at the next  
6 regular meeting or whatever sort of timing that you would  
7 like.

8 Any questions?

9 CHAIRMAN McCUSKER: And again, just to be clear  
10 for the public and the Board, if we opt to go with the oral  
11 presentation, you score the same categories and the same  
12 maximum points again?

13 MR. SCHMALTZ: Yes.

14 CHAIRMAN McCUSKER: And then those scores are  
15 combined with the proposal-only scores; is that correct?

16 MR. SCHMALTZ: Essentially you will get an  
17 identical score sheet that you received to score just the  
18 proposals. You will get the same blank score sheet, only on  
19 the top, now, it will say interview. And you will use the  
20 same scoring, the same point totals. You will add and do  
21 our own individual scoring based upon the interviews. And  
22 then all of those scores will be combined.

23 So again, the initial scores are 5 -- 5290, 5115.  
24 And then whatever the result, the combined scores with the  
25 interviews will be added to these to result in the final

1 list.

2 CHAIRMAN McCUSKER: And in the event there's a  
3 tie?

4 MR. SCHMALTZ: In the unlikely event that there's  
5 a tie, certainly, the minimum threshold, the minimum  
6 qualifications, the minimum criteria, were minimums. So  
7 you, as a Board, can make the determination that the highest  
8 offer then in the event of a tie, is the winning -- sort of  
9 the thumb on the scale in that event.

10 The RFP doesn't specifically address a tie or a  
11 tiebreaker. So you, as the Board, would have the option to  
12 make that determination.

13 CHAIRMAN McCUSKER: Any questions of Chris about  
14 the process?

15 What is your pleasure?

16 MR. SCHMALTZ: Mr. Chair, you have a question.

17 CHAIRMAN McCUSKER: Mr. Moore.

18 MR. MOORE: Now, it goes into interview, the  
19 participants can't change their proposal as they've  
20 presented it? or can they? Can they modify it during those  
21 interviews, or should they stay close to their presentation?

22 MR. SCHMALTZ: Well, the proposals have been  
23 scored. And so if they chose to offer an alternative during  
24 the interview, they do that at their own risk, in my mind,  
25 because that doesn't necessarily cut in a positive way for

1 them.

2 Yes. Since they both will have seen and have seen  
3 the other entity's proposal, there maybe parts of the  
4 interview that will tease out sort of details about each  
5 potential proposal that you want to hear that may impact  
6 sort of what -- how you score from the interview, how you  
7 score that potential proposer, right?

8 So the interview can take a lot of directions.  
9 And it's intended to sort of flesh out those ambiguities and  
10 detail that may not have been fully expressed in the  
11 proposal itself.

12 CHAIRMAN McCUSKER: In that vein, could the bidder  
13 change the economics of the proposal, increase the price,  
14 change the whatever?

15 It would seem to me that's inherently unfair --

16 MR. SCHMALTZ: Yes.

17 CHAIRMAN McCUSKER: -- if they were allowed to do  
18 that.

19 THE WITNESS: I don't think so, no. Their  
20 proposal is what their proposal is in terms of the  
21 economics, what they've said, what their product is,  
22 et cetera. The interview is really to --

23 CHAIRMAN McCUSKER: Clarify --

24 MR. SCHMALTZ: -- clarify.

25 CHAIRMAN McCUSKER: -- and ask -- we can ask any



1 kind of questions we want during this interview process.

2 THE WITNESS: That's correct. Because the  
3 economic piece of it was just a minimum qualification.

4 Any other questions?

5 CHAIRMAN McCUSKER: Okeydokey. If you move to  
6 select the scores as they stand, that would eliminate the  
7 need for an oral presentation.

8 MR. SCHMALTZ: Yes. That would need a second --  
9 that motion would need a second and then passage by a  
10 majority.

11 CHAIRMAN McCUSKER: If you move to -- and we vote,  
12 the majority votes on the oral presentation, then that's --  
13 that would proceed -- we would proceed and schedule those  
14 presentations.

15 MR. SCHMALTZ: That's correct.

16 CHAIRMAN McCUSKER: So it's really either one or  
17 other unless the majority of the Board was so inclined to  
18 terminate the entire process.

19 MR. SCHMALTZ: Yes.

20 CHAIRMAN McCUSKER: So you have three options.

21 Mr. Irvin?

22 SECRETARY IRVIN: I'd like to make a motion that  
23 we conduct interviews. I think this is the strategic piece  
24 that we have already expedited as far as a response. And I  
25 can't speak for anybody else, but I do have a number of

1 questions that I'd love to be able to pose that really were  
2 not addressed in either one of the proposer's response. So  
3 I'd like to see us go ahead with the oral interview of both  
4 of the applicants --

5 MS. COX: Second.

6 SECRETARY IRVIN: -- or excuse me -- proposers.

7 CHAIRMAN McCUSKER: We have a motion and a second  
8 of the Option B, to discuss and vote, schedule interviews of  
9 the highest ranked proposers -- we only have two -- at a  
10 subsequent date.

11 Any discussion, questions?

12 TREASURER SHEAFE: Let me make a couple of  
13 statements. And I apologize for being a little bit wordy.

14 I personally take this responsibility here  
15 seriously and also, in reading through the proposals, was  
16 very appreciative of the effort that went into the  
17 proposals. I didn't think that either one of them, in any  
18 way, gave short shift to the opportunity for maximizing the  
19 value of the Arena Parcel.

20 And it seemed to me that both parcels -- or both  
21 proposers worked hard to meet the objectives that we've  
22 expressed for this property to maximize its use and also the  
23 speed with which we can create some additional activity  
24 downtown. So in a way, I feel conflicted because it's like  
25 we have two winners. And yet we owe the process and we owe

1 the participants some speed in getting this thing through  
2 the queue so they get some certainty in preparing what they  
3 are doing.

4 For all those reasons, I strongly support the idea  
5 of going through the interviews just to double confirm our  
6 understanding of how quickly each of the -- or the one  
7 proposal, lead proposal can be put into action and the  
8 certainty with which that plan has been proposed would  
9 evolve into reality.

10 MR. MOORE: My turn?

11 Well, if we do go into -- wanted to interview the  
12 two candidates, I think it's very important that we do it in  
13 a very timely basis. And I think that we should conduct  
14 these interviews within the next ten days, you know, however  
15 we're going to it, so that everyone has enough time to  
16 notify their teams, or whatever they want do, to come  
17 forward, make their presentation so that -- you know, maybe  
18 we have a special meeting to review this and then select  
19 whoever we want to select.

20 But this idea of dragging it out for another 30  
21 days and then another 30 days after that, I don't think it's  
22 fair to the people that are spending a lot of money and  
23 making these -- this presentation and representing their  
24 interest to have this thing drug out.

25 CHAIRMAN McCUSKER: I think if the motion passes,

1 then we would move quickly to addressing the schedule.

2 SECRETARY IRVIN: Yeah.

3 CHAIRMAN McCUSKER: If the motion doesn't pass,  
4 it's moot.

5 Any other questions, comments?

6 Michele, call the roll.

7 MS. BETTINI: Mark Irvin?

8 SECRETARY IRVIN: Yes.

9 MS. BETTINI: Chris Sheafe?

10 TREASURER SHEAFE: Yes.

11 MS. BETTINI: Jannie Cox?

12 MS. COX: Yes.

13 MS. BETTINI: Alberto Moore?

14 MR. MOORE: No.

15 MS. BETTINI: Fletcher McCusker?

16 CHAIRMAN McCUSKER: Yes.

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

19 All right. So we've agreed to go forward with  
20 the oral presentations. Talk about when. I agree with  
21 Alberto, it should be quickly. And I'm in favor of the  
22 special meeting. It would allow us to have a special  
23 meeting, hear the interviews, score the interviews, and make  
24 a final determination by our next standing meeting.

25 TREASURER SHEAFE: Mr. Chairman, I would propose

1 we do that. And I would like to -- because I'm now newly  
2 educated in these things, I can say with certainly that this  
3 will be a public meeting with public notice. And therefore  
4 the interviews would take place in an arena open to anybody  
5 interested to participate.

6 So my proposal would be that we do that and  
7 conclude this process prior to the next scheduled Board  
8 meeting.

9 SECRETARY IRVIN: Can I just ask a question?

10 So, Chris, if I understand it -- unless I missed  
11 something -- we -- and I'm just -- my concern is, is that I  
12 want to make sure that we have as full a quorum as we can  
13 for people to be able to participate. I know that Jannie,  
14 as an example, is out of the town a lot because it's the  
15 summer. And I'd just like to have people, you know, be able  
16 to be here and be able to participate.

17 So if I understand things correctly, we actually  
18 would have the ability, if we wanted to, if we couldn't get  
19 a special meeting scheduled and have this on our regular  
20 agenda for the next meeting, is there anything that would  
21 preclude us at that meeting from making a decision?

22 MR. SCHMALTZ: Mr. Chair, Board Member Irvin, no.  
23 You absolutely could schedule it for your next regular  
24 meeting. You could conduct the interviews as part of that  
25 regular agenda. You could each individually score, at that

1 meeting, turn in your scores to Michele. They would be  
2 compiled on -- at that meeting. And the agenda would  
3 include sort of agenda items to take action.

4 CHAIRMAN McCUSKER: So we really don't need an  
5 action here. The Chairman's prerogative is to schedule a  
6 special meeting, so . . .

7 MR. SCHMALTZ: You can either schedule a meeting  
8 now or --

9 CHAIRMAN McCUSKER: We could work it out.

10 MR. SCHMALTZ: Yeah.

11 CHAIRMAN McCUSKER: You know, I could call the  
12 meeting, post it, and --

13 MR. SCHMALTZ: Other than providing notice to the  
14 proposers, which I would certainly recommend, that meeting  
15 provide some certain significant --

16 CHAIRMAN McCUSKER: -- with them regarding their  
17 availability.

18 THE WITNESS: Yeah, you could. Yes.

19 MS. COX: Chris, would there be any reason why --  
20 our next meeting is what? -- the 27th of August?

21 MS. BETTINI: The 26th.

22 MS. COX: 26th?

23 Is there any reason why we couldn't maybe do the  
24 interviews on the 25th and then have our regular meeting on  
25 the 26th and make the decision that day?

1 MR. SCHMALTZ: You absolutely could do that, yes.

2 MS. COX: That would mean that we could score them  
3 and turn them in and it wouldn't all have to be rushed in a  
4 meeting.

5 Is that a potential . . .

6 MR. SCHMALTZ: Yes. Other than sort of the  
7 24-hour-notice issue. I mean, we would do the agenda in  
8 advance.

9 MS. COX: Yeah. Do them both. You could --

10 MR. SCHMALTZ: Yes. You could do them the day  
11 before, turn in your scores, and then you could distribute  
12 it at the meeting.

13 CHAIRMAN McCUSKER: So I -- I -- the motion's been  
14 passed. I will work with the proposers and the Board  
15 members to see if we can schedule a special meeting. And if  
16 not, we default to the August meeting.

17 But I tend to agree with Alberto. I think the  
18 sooner we can get this done and give notice to the  
19 proposers, then we can have counsel immediately move to  
20 drafting an agreement. We could be -- August 27th is six  
21 weeks away. We could be really far down the line by then.

22 So let me see what I can work out schedulewise.  
23 And you know, we'll be in touch with everyone regarding the  
24 schedule.

25 MR. SCHMALTZ: Okay. Very good. Thank you.

1           CHAIRMAN McCUSKER: Thrifty Block Project, Mark,  
2 that's just an update.

3           We do, in fact, have a report. But I know that  
4 they are involved in bidding, so they really didn't want it  
5 to go public. But it sounds like they're making some  
6 progress.

7           MR. COLLINS: Yes. Mr. Chairman, Members of the  
8 Board, in the packet that you have in front of you, Tab  
9 No. 2 is the Report No. 4 from the developer.

10           Very briefly, the developer has engaged an  
11 architect to do some design and development package,  
12 received one of the design and develop package, and by now  
13 will have received another. All of this is outlined in the  
14 first page of Tab 2.

15           General contractor for all the property has been  
16 engaged. And the developer is looking to try and make the  
17 footprint, if you will, on the vacant property bigger. And  
18 hopefully expects to role out the marketing for the project  
19 in August or September of this year.

20           Anybody have any questions?

21           CHAIRMAN McCUSKER: And they are obligated to do  
22 this quarterly, right, Mark?

23           MR. COLLINS: Yes, Mr. Chairman.

24           The agreement that the District entered into with  
25 the City and with the developer is that the developer



1 provides quarterly reports to this Board. And you can  
2 request that the developer appear and answer questions at  
3 any time at any one of your meetings.

4 CHAIRMAN McCUSKER: Thank you.

5 Call to the audience, Michele, did you get any  
6 cards?

7 MS. BETTINI: No.

8 CHAIRMAN McCUSKER: Mr. Schmaltz?

9 MR. SCHMALTZ: I'm sorry, Mr. Chair.

10 I would be remiss if I didn't include the  
11 discussion on an RFP with a reminder to you all that since  
12 you opted for the interview option, that the RFP in the  
13 procurement is ongoing.

14 So all the rules associated with communicating  
15 with any of the proposers, any of those rules that govern  
16 their conduct, and the issues that you have to deal with in  
17 terms of conflicts or otherwise, they remain in place  
18 throughout the end of this process. And so just remain  
19 cognizant of that and be careful about that in terms of this  
20 is an ongoing solicitation. And so be sensitive to that.

21 (Mr. Ritchie reentered the proceeding.)

22 CHAIRMAN McCUSKER: And that includes  
23 communication amongst ourselves.

24 MR. SCHMALTZ: Absolutely. Correct.

25 CHAIRMAN McCUSKER: Okay. Then I'd entertain a

1 motion to adjourn.

2 MS. COX: So moved.

3 SECRETARY IRVIN: So moved.

4 Second.

5 MS. COX: Aye.

6 CHAIRMAN McCUSKER: All in favor, say aye.

7 (Ayes.)

8 CHAIRMAN McCUSKER: Adjourned.

9 (The meeting concluded at 3:08 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