

**Minutes for Meeting  
Of the Board of Directors of the  
Rio Nuevo Multipurpose Facilities District  
2:30 pm**

**Thursday, February 9, 2012**

**at**

**400 W. Congress Street, Room #158, Tucson, Arizona 85701**

A meeting of the Board of Directors of the Rio Nuevo Multipurpose Facilities District was held on Thursday, February 9, 2012, at 400 W. Congress Street, Room #158, Tucson, Arizona, commencing at 2:42 p.m.

**1. Roll Call.**

The meeting was called to order at 2:42 p.m.

	<b>Appointee</b>	<b>Present</b>	<b>Absent/Excused</b>
Jodi A. Bain, Chair	Senate	X	
Tim Bathen	Governor	X	
Jannie Cox	Governor	X (left at _____ PM)	
Carlotta Flores,	Governor		X Excused
Rick Grinnell, Senate	X		
Jeff Hill, Treasurer	Governor	X	
Mark Irvin, Vice Chair	House	X	
Alberto Moore, Secretary	Governor	X	
Jonathan Paton	House		X Excused

**Counsel:**

Special Counsel John Sundt	X	
Special Counsel Tessa Riley		X

**Others Present:** Sarah Perkins, University of Arizona graduate student intern

**2. Discussion and possible approval of the January 13, 2012 and January 26, 2012 minutes.**

► Motion by Jannie Cox to accept and approve the January 13, 2012 and January 26, 2012 meeting minutes; seconded by Tim Bathen. Passed unanimously, 7-0.

**3. Announcements from the Chair.**

Two interns interviewed by the former Executive Director and Alberto Moore have started with the District; Both Sarah Perkins (a graduate student) and Kareem Miller (an undergraduate student) are student interns that attend the University of Arizona.

A list of District meeting dates through July 2012 have just been confirmed with the Landlord and are now posted on the website. First meeting of every month is planned to be the main meeting, the second meeting listed will be held as needed. Meetings will start at 2:30 and the executive officers will plan to arrive early at 2:00 to catch up on office matters or issues as may be needed.

#### **4. Community Outreach Update.**

Jannie Cox asked each of the board members to confirm if they had an opportunity to communicate with their liaisons or have any issues to report. Jannie again challenged the board members to make ongoing contact with their organizations and stakeholders and report back to the District. Chair Bain reported she and Treasurer Hill had lunch with two Metro Chamber folks and she has had other meetings with gem show hosts.

Tim Bathen reported that he spoke with Travis Reese of the Downtown Business Development Association who is still trying to rally people and has not yet been able to hold the first meeting. Tim Bathen stated he had met with TREO and has heard nothing so he assumes they have no problems. However, TREO would prefer to not play this out in the media with negative press because the City is not coming to the table in good faith or dragging out the mediation.

Jannie Cox had lunch with Ron Shoopman of the Southern Arizona Leadership Council (SALC), who stated he would like to liaise with the District. Jannie Cox volunteered to be his liaison contact person as she is in SALC.

Chair Bain reported she went to the first mayoral meet-and-greet that took place in Ward 1 to learn and shadow Regina Romero and learned many of their concerns. She was yelled at by some taxpayers for the Rio Nuevo mess and invited folks to call on her and other board members.

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

**i. Rialto Theater.** Chair Bain reminded the board that the Board members had received a copy of the Rialto letter. This letter basically states that the Rialto prefers to move ahead with other alternatives but thanks the District for their efforts. Rick Grinnell reported that while the Rialto theater made a decision not to continue with their requests to the District, that they still have outstanding contractual requirements under the lease they need to comply with. Chair Bain reminded folks that Jonathan Paton reached out to them over the past several months, Mark Irvin offered his real estate background, and Rick Grinnell offered his restaurant and venue background all in an effort to mentor people on the ground if the Rialto theater team wanted. The Rialto rejected this assistance.

**ii. Fox Theater.** Chair Bain stated that Special Counsel Mark Collins informed that the Board is mostly done and limited review of two issues remain. Special Counsel is available by telephone but did not attend today to conserve costs. Two remaining issues are the percentage rent and outstanding legal fees. Mark Irvin explained percentage rent clauses and explained that it is important to note that the Fox is actually paying all the taxes they should where the Rialto is not. The Board and Fletcher McCusker then discussed the amount of money owed in legal fees and the possibility of the Fox paying half in cash and half in trade, as community time in the

building (by way of "community credits"), at \$400 per hour, or some other fair rate to be negotiated.

Alberto Moore stated in order to do that we would have to market the hours for use for that property and are we prepared to do this. As far as legal fees go, Alberto Moore sees no benefit in this and he encourages the Board to look at a percentage rent, as they are not getting any real income from the Fox, and the Board needs to have some commitment or payoff from the efforts put into the project. Jannie Cox stated she does see a community benefit from having use of the building for the community and that she does not think it will be an issue to work with the Fox on this. She also stated it is hard to imagine that the community would not come forward and use the facility. She agrees and believes the credits will be used.

Tim Bathen stated that, in the alternative, the Fox has to pay the full dollar amount of the legal fees. When asked, Chair Bain confirmed the amount owed in legal fees is approximately \$65,000. Secretary Moore suggested this sum be termed and payable over two to five years. Mark Irvin further stated that from Fox's perspective, they do not mind paying for legal bills incurred but this strange transaction has taken a whole herd of people to bring the Board up to speed and the Fox should not have to pay for that part of it and should not, quite frankly, have to. The other Board members disagreed.

Rick Grinnell clarified via a hypothetical: 75 hours at \$400 per hour = \$30,000. Using those numbers as an example only, the Board can allocate the maximum on any one day of 4 hours. If an entity uses the facility for more than 4 hours, the entity taking needs to pay. He suggests considering the overage payments be paid half to the Fox and half to the Board, to further reduce the debt (principal or interest).

Upon request, Fletcher McClusker addresses the Board. He likes the idea of in-kind contributions but it costs the Fox \$1,000 - \$1,200 to even open the theater because they use contract vendors and not permanent staff. There is no staff model like the Rialto has so when the Fox opens, it has to pay the contract people: sound, labor, ushers, security, utilities, and cleaning. Chair Bain believes the community piece is important because the Fox is a piece of Tucson's history. Secretary Moore states he would rather see the Fox pay the \$65,000 owed in legal fees.

► Motion to cap the legal fees at \$65,000; \$32,500 be paid back to the District in cash, \$10,000 up front payment, and \$22,500 termed over the next two years. The second issue with regard to the percentage rent, is completely dropped made by Mark Irvin Motions seconded by Jannie Cox.

► Rick Grinnell makes a friendly amendment. While he has no issue with the community partnership, he would prefer to take the \$65,000, divide it up by 24 months, with no interest, and separate the legal fees from the community partnership issue. Mr. McCusker states paying \$2,708 per month is fine. The friendly amendment is accepted by the motion maker, Mark Irvin, and the second, Jannie Cox.

On the percentage rent issue, Mark Irvin again explained percentage rent, but does not believe it should be used as a tool to recover funds in this case.

Jannie Cox called for the vote (with no percentage rent) on the amended motion:

- ▶ Motion carries 6-1, with Secretary Moore voting no.

**iii. Litigation, Claims and Mediation.** Special Counsel Sundt has no new information as to the litigation on Kromko to rely on from Special Counsel Collins. As to the mediation with the City of Tucson, there is another meeting next week and hopefully the matter will be chipped away at. The mediator is attempting to build a relationship on a single issue between the District and City. The suits will need to be served timely. As for the Garfield Traub litigation, it is now a matter of public record. The District has filed its motion to dismiss and is scheduled to be heard on March 12.

Rick Grinnell requested full public disclosure of all discussion with release of the position papers from both sides to the mediation so that the public knows who wants what and how things are progressing or not; is the City Mayor and Council and staff acting in good faith or dragging their feet? He spoke to Steve Kozochyk and they think it should be public so the community can participate. Rick Grinnell also stated that he thinks the City Mayor and Council and staff should not be able to hide behind this process for their mismanagement the new District Board for their ineptitude.

Special Counsel Sundt stated that because of the mediation agreement in place, the City would have to also agree to full public disclosure of their position statements.

- ▶ Motion that after the March 1st scheduled mediation session, that the mediation position statements and discussions from both parties become public made by Rick Grinnell; Seconded by Tim Bathen.

Discussion:

Correction stated that there are two mediation sessions scheduled on one particular issue between now and March 1st.

Secretary Moore discussed his concern about telegraphing the District's positions and giving exposure to certain material before it makes sense to do so.

Jannie Cox stated the mediation is going well and she enjoys having respectful, reasonable conversations about the issues without media pressures. She would not like to be the one that forces the City into something to happen before the City is ready.

Special Counsel Sundt explains some of the litigation and mediation process issues to consider.

Chair Bain requested that those board members involved in the mediation to report at the next meeting in open session (if they are amenable) on whether the mediation is potentially yielding positive results and momentum and should be continued.

Chair Bain calls for the vote to make the mediation discussions public:

Jeff Hill – Yes

Jannie Cox – No and asked to explain her vote; explained that it is out of respect to the time people have put into this and to the City for their participation.

Alberto Moore – No

Mark Irvin – No and asked to explain his vote; explained that we need to allow reasonable time the District and City to meet and work through the process and that prior to doing something like this the District needs to visit with the City beforehand as to do otherwise goes against the confidential nature of the process and unless there is a reason to change the process he is not prepared to interrupt it at this time. He did encourage Rick Grinnell to bring this back for discussion at the next board meeting.

Rick Grinnell - Yes

Jodi Bain – No and asked to explain her vote; explained that it is out of respect to the integrity of the process as agreed to in writing and the City, as well as, the mediator who requested this stay outside of a media frenzy which could put the Mayor and Council in a political position rather than working through the issues.

Tim Bathen - Yes

► Motion fails 4-3.

## **6. Training Study Sessions: Conflict of Interest and Open Meeting.**

A Board training session on both Conflict of Interest and Open Meeting matters were held.

## **7. Call to the Audience.(Offered to take place prior to the Training Sessions as the audience wanted to take part in being an audience for the sessions and stated this).**

Richard Bayse, representing the Pima Association of Taxpayers; Subject: Claims of scam using Rio Nuevo money by the City of Tucson regarding the I-10 lowering study.

John Kromko, representing himself asked why the District did not thank him for trying to get the District property back.

## **8. Adjournment.**

► Motion to adjourn at 4:40 made by Alberto Moore; seconded by Tim Bathen; passed 6-0 (Jannie Cox left after a few minutes of the Training Session).