

**Minutes for the Special Meeting and Public Hearing on the Depot Plaza Block Forensic
Audit Examination Report
Of the
Board of Directors of the
Rio Nuevo Multipurpose Facilities District
3:00 pm
Tuesday, March 13th, 2012
at
400 W. Congress Street, Room #222, Tucson, Arizona, 85701**

A Special Meeting and Public Hearing of the Board of Directors of the Rio Nuevo Multipurpose Facilities District was held on Tuesday, March 13, 2012, at 400 W. Congress Street, Room #222, Tucson, Arizona, commencing at 3:00pm.

1. Roll Call.

The meeting was called to order at 3:03p.m.

	Appointee	Present	Absent/Excused
Jodi A. Bain, Chair	Senate	X	
Tim Bathen	Governor	X (arrived 3:06 pm)	
Jannie Cox	Governor	X	
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 Sean Brearcliff

Special Counsel John Sundt

Forensic Auditors David Barber and Susan Voss; Regier, Carr & Monroe

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

2. Presentation of the Depot Plaza Block Forensic Audit Examination to the Community and the District by RC & M Firm to be followed by a Forensic Audit Study Session Briefing, if appropriate, with possible discussion by the District board.

Chair Bain made some opening remarks regarding the submission and presentation of the Depot Plaza Block Forensic Audit Examination Report. It was stated that the triggering nor the release of this first forensic audit was not meant as a hit at the City of Tucson, and it was the hope of the Board that the three forensic audits would help the District, the City and the taxpayers figure out what money the City continues to claim as owed it by the District is actually owed, and possibly help the City with their own potential recovery of funds overpaid and internal protocol reviews.

Chair Bain stated that the city and the mediator and others had had been concerned that the release of the forensic audits would stop or ruin the mediation process, but that the release was not intended for this purpose. This first release took place based upon the motions to order the various forensic audit reviews and give the public transparency. Also, she stated she had spoken with Jonathan Paton for his thoughts on the release today since it was he who had made the motion for the audits to be done, and wanted the details released to the public as soon as possible when they were finished. Although Paton was unable to make the meeting due to personal reasons, he was aware the release was going to take place and agreed that transparency was important.

It was also stated that no one on the Board realized what a complicated process it would be, as well as how long it would take to for the forensic financial analysis. She stated she personally agreed that cooperative and collaborative relations are needed by City leadership moving forward, and that was what the Board was attempting to do while creating a financial a baseline because of the second year of qualified financials. She reminded the audience that the Depot Plaza Block Forensic Audit was ordered because the City demanded an additional \$1,500,000.00 of the little remaining District funds from past Rio Nuevo efforts. The Board could not justify the expenditure based upon the contracts and information received from the City yet the City continued to demand the funds. The forensic audit was in part ordered as a cost savings mechanism to preserve the \$1,500,000.00 by ordering a \$42 to \$46,000 audit which potentially preserves \$1,450,000 + of funds for future projects moving the community ahead in a positive manner.

Mr. David Barber, forensic auditor, explained that his firm was engaged by the Board in the Fall of 2011 to perform a forensic audit accounting regarding the expenditures related to the Depot Plaza Block projects. The projects reviewed included the construction of the underground Depot parking garage and improvements to the Plaza area above it, which was located at the same site as the MLK apartments. The Depot garage was built at

approximately the same time as the MLK apartments, which was a City project and not Rio Nuevo's. The City Finance Department was responsible for the accounting for all the Depot Plaza Block projects according to their own information and reporting.

Mr. Barber stated that his firm had obtained over 4,000 pages of documents from the City through the District's counsel letter requests which included contracts, invoices, pay applications, spreadsheet analysis, and internal and external memos and other documents and communication. The initial letter request from his firm was not responded to and the District's counsel proceeded to send a second request which was responded to. Public information from the City and other websites were also used. Documents were examined to determine if Rio Nuevo had (i) authorized the expenditures and to what extent, (ii) if there was adequate support for the expenditures, (iii) if the expenditures specifically related to the Depot projects, and (iv) if there was any indication of misused funds.

Mr. Barber stated that 'Question Costs' (a term of art) had been identified, and defined a 'Question Cost' as an expenditure not supported by adequate documentation, a cost that is unnecessary or unreasonable, or a cost possibly in violation of a law or regulation. Exhibit L in the report represents the 'Question Cost' which totaled approximately \$2,300,000.00 and falls into the four major categories. Mr. Barber continued that his firm also looked at the total expenditures of the projects in comparison to the amounts approved by old Rio Nuevo Board, and found that approximately \$2,200,000.00 was spent beyond what appears to have been approved by the Rio Nuevo Board from 2003 through 2009.

Ms. Susan Voss explained that the four key categories of the firm's findings were: Expenditures in Excess of Board Approval, MLK Expenses charged to the Depot Garage, Expenditures that were Lacking Support, and City Finance Department charges that were inappropriately made to and paid by the District.

Ms. Voss stated that in the category of expenditures in excess of board approval: \$11.6 million was the latest figure which appeared to be arguably approved by the old Board for Depot Garage expenditures. \$13,823,000 had been spent on the garage according the City's flow of funds which equals expenditures in excess of old board approval of \$2,223,000.

In the category of MLK expenses not appropriately charged to the Depot Garage: in appropriate expenditures totaling \$121,236 were found. The total found for expenditures lacking support was \$2,083,142. In the fourth category, City charges that were inappropriately made to and paid by the District: a total of \$114,987 had been charged to

the District, and while not all the charges could be broken out specifically, certain labor charges which totaled \$48,976 were paid for City salaries had been clearly identified.

Mark Irvin asked if the number to understand was the \$2.2 million that could not be justified. Ms. Voss answered that it was the \$4.6 million. Tim Bathen asked if the \$2.2 million that could not be traced was unusual. Ms. Voss answered affirmatively. Rick Grinnell asked for clarification on how \$4 million was reached from \$2 million. Ms. Voss answered \$13.8 million was being indicated by the City as being spent on the garage, while her firm had found \$2.3 million without supporting documentation, and \$2.2 million that had not been approved for expenditure on the garage. Chair Bain asked for clarification of the process explained on page 3 and 4 of the report of how costs increased between 2003-2008. Ms. Voss stated that the Plaza garage was estimated to cost \$4.9 million and the City agreed to pay fifty percent. Chair Bain asked how the balance of \$7,489,000 was used. Ms. Voss answered it was used for plaza improvements, utility extensions, streetscape and Arizona Alley. Chair Bain asked for a clarification: was it that \$2.5 million was used for streetscapes and utilities. Ms. Voss answered affirmatively.

Jannie Cox asked for an explanation of the amount \$300,645 that was listed in the report under "Amounts for which Payment Applications were Located, but Unable to Identify in Flow of Funds". Ms. Voss stated there was \$394,000 that was not documented, but the \$300,645 did have documentation and the firm wanted to give credit for that.

Chair Bain asked counsel if it was possible to say by looking at the report if an additional \$1.5 million was owed to the City. Special Counsel Brearcliff answered that they would need to go over the report further in order to make that determination. It was also stated that the District's 2011 Financial Audit could potentially be amended and restated due to a reclassification of cash versus bond proceeds remaining.

Chair Bain asked Ms. Voss if they had seen any funds the City could recover. Ms. Voss answered they would need all of the City's side of the records too, of what they had paid, to know that and in this analysis they did not have all of that information. Chair Bain asked if they knew how to ask for that on the next audit to try and help to see if the City had recoverables. Ms. Voss answered that it was on the City's part of cooperation for that issue to be able to be reviewed based upon documents turned over for the analysis. Mr. Barber answered there might be one or two items that would have the potential for that in this current audit if the City reviewed those items and compared to what their paperwork demonstrated as to them internally.

Chair Bain asked about Exhibit N as there was a list of the people who had signed off on the documents which Ms. Voss confirmed.

Chair Bain asked if Westside project selection could be done by the next meeting on April 5th. Ms. Voss and Mr. Barber both answered probably not because of the new materials and the number of projects reviewed as a part of it and while it was over half way completed the busy tax accounting season also slowed things down.

3. Presentation and potential discussion regarding the confidentiality of the ongoing District/City Mediation process. Hon. Tom Zlaket.

Chair Bain then stated that that Mr. Zlaket, the mediator, was present and he specifically requested that his discussion with the Board happen in executive session just like it had with the City a few weeks prior.

- ▶ Motion to go into Executive Session made by Jannie Cox at 3:30 pm; seconded by Alberto Moore. Passed unanimously 7-0.

4. Executive Session (actually began at 3:40pm).

- ▶ Motion to come out of Executive Session made by Alberto Moore at 4:02 pm; seconded by Mark Irvin. Passed unanimously 5-0. Jannie Cox and Rick Grinnell were not present for the vote to come out of Executive Session.

5. A Public Hearing and Call to the Audience opened on the Rio Nuevo Multipurpose Facilities District receipt of the Depot Plaza Block Forensic Audit Examination. The Board was available for public commentary on this matter via speaker card submission.

- ➔ As there was no one in the audience who had submitted a yellow speaker's card, this agenda item did not take place. The Board thanked all parties for attending and the board's hopes to work with the City and other stakeholders going forward based upon mutual respect and in good faith and requested that when the District said they did not owe something it was taken seriously and not turned into political rhetoric to bash the District and its board for attempting to stop the financial bleeding and to preserve the little remaining funds.

6. Adjournment

- ▶ Motion made at 4:09 by Alberto Moore to adjourn; seconded by Jeff Hill. Passed unanimously 6-0, (Rick Grinnell was not present for the vote to adjourn the meeting).