

**Approved by the Board of Directors of the
Rio Nuevo Multipurpose Facilities District
on May 5, 2011**

**Minutes for Meeting
of the Board of Directors of the
Rio Nuevo Multipurpose Facilities District**

Thursday, February 17, 2011

**Tucson Convention Center, Greenlee Room
260 South Church Avenue
Tucson, Arizona**

A meeting of the Board of Directors of the Rio Nuevo Multipurpose Facilities District was held on Wednesday, February 17, 2011 in the Tucson Convention Center, Greenlee Room, 260 South Church Avenue, Tucson, Arizona commencing at 2:00 pm.

Meeting called to order by Chair Bain at 2:05.

1. Roll Call (2 min)

	Appointed	Present	Absent/Excused
Jodi A. Bain, Chair	Senate	X	
Jeff DiGregorio, Member	Tucson	X	
Carlotta Flores, Member	Governor	X	
Rick Grinnell, Member	Senate	X	
Mark Irvin, Vice Chair	House	X	
Alberto Moore, Secretary	Governor	X	
Anne-Marie Russell, Member	Tucson		X
Victor Soltero, Member	South Tucson	X	

**2. Discussion and possible approval of the December 15, 2010, January 6, 2011 and
January 20, 2011 minutes. (5 min)**

Chair Bain indicated there is a correction to today's agenda that the Rio Nuevo District's second January meeting was January 20th and not January 15th as stated on the agenda.

Victor Soltero moved to approve the December 15th minutes; Rick Grinnell Seconded; 7-0 approved.

Jeff DiGregorio moved to approve the January 20th minutes; Victor Soltero Seconded; 7-0 approved.

Jeff DiGregorio moved to approve the January 6th minutes; Rick Grinnell seconded; 7-0 approved.

3. Financial Audit Update and Report. Jodi Bain, Alberto Moore and Rick Grinnell (10 min)

The annual financial audit for year ending June 30, 2010 has been completed and was handed out to the Board. The audit has been given to the Auditor General. Rick Grinnell indicated he has some questions about some of the numbers and process for this audit. Mr. Grinnell was asked by Chair Bain to submit his concerns to the auditor – Beach Fleischman. Chair Bain explained that at the next meeting, the Board would be able to invite Beach Fleischman to attend and answer some of the District's questions if desired. Specific concern was mentioned by Mr. Grinnell about discrepancies in what the audit says and what the Board was told as to cash availability. Chair Bain read the *qualifying letter* from the auditor (Beach Fleischman) into the record (*Attached to these minutes*).

The Board had further discussion about needing a treasurer/financial management firm for the District. Chair Bain indicated that Beach Fleischman has offered to assist the District to identify a short-list of firms and/or personnel that could provide these services for a public agency.

Mr. Rick Grinnell also requested that the District obtain clarification from the City about the obligations to pay the bonds as between the City and Wells Fargo to ensure the District will not be delinquent on debt payment. Counsel Silvyn indicated her understanding is that Wells Fargo is the Trustee and is obligated to pay the bond holders first out of the TIF funds received by the state and the remainder is then passed on to the City's general account.

4. Fox Theater presentation with possible discussion/action. Executive Director Craig Sumberg (15 min)

Michael Harkins from the Fox Foundation and Craig Sumberg, Executive Director of the Fox Theatre presented information on the Fox Theatre as it relates to the history of the Fox Theatre and the Fox Theatre Foundation funding/fundraising.

Alberto Moore requested information about financials; Mr. Sumberg committed to bringing 2010 financial information to the Board when it is completed next month (April 2011). Alberto Moore asked what the plan is to be more successful. Mr. Sumberg answered that the Fox will continue to build its brand and continue to actively seek private donations and programming. Alberto Moore asked what the plans are to pay the \$1.5 to Rio Nuevo as due this year. Mr. Sumberg indicated they will not have the money to pay this debt obligation and would like to work with the District on that obligation.

Alberto Moore asked whether an analysis has been done to bring in a 3rd party to operate the theatre? Mr. Harkins answered that the Fox is not large enough for a 3rd party to run the Fox. Alberto Moore asked about the original financial plan to make the Fox successful and why we are in this situation. Mr. Harkins responded that the original plan at time was created in a very different market/time where it was anticipated that a lot more downtown development would occur. The current Fox Foundation has inherited a financial problem. Alberto Moore asked if shutting the Fox Theatre down is an option. Mr. Harkins responded that while that is an option, the Fox Foundation (an all volunteer Board and Advisory group) feels it is not a good option for

downtown. Mr. Sumberg also indicated that staff and the Board are trying to right the sinking ship. They have recently (6 months) resurrected the Board of Advisors to assist with fundraising.

Alberto Moore asked what is in the budget. Current budget is \$800,000 in revenues; 4 staff with 3 that are part-time; the volunteer Board; with a Loss of approximately \$500,000.

Mark Irvin commented and commended the Fox on their efforts and suggested that as the Fox gets a better handle on its numbers that we can open dialogue to how to make the Fox more successful. Rick Grinnell proposed that a few of the Board members commit to sitting down with the Fox to work through the numbers. Mark Irvin agreed to assist in this effort.

Carlotta Flores asked how the current Fox Foundation group perceives downtown as to Second Saturdays, the City's assistance, and perception of safety to come downtown. Ms. Flores agrees that the crown jewel is/was the Fox, but the Fox was also expected to be the driver to get people downtown. In the current economy, there is not a lot of discretionary income and we need to figure out what to do now.

Mr. Harkins responded that the Advisory board currently comprises the catalysts that are bringing people downtown on Second Saturdays. People are re-discovering downtown and we need to build on that. Fox Foundation would love to work with existing businesses downtown on collaborative efforts to get people downtown.

Carlotta Flores asked what the Fox is doing outside of Second Saturdays since Second Saturdays does not generate enough revenue to sustain the rest of the days of the month. Mr. Sumberg indicated that a lot of work has been done with the rest of the businesses on the block; a lot has been happening downtown and the momentum is there; feels optimistic about downtown and Fox's goal is to be financially self-sufficient and help downtown; it is coming, but is slow and methodical. Carlotta and Mark will interface with the Fox to assist.

6. Thrifty Block law suit attorney presentations (20 min)

Taken out of order

Three attorneys presented their credentials: Cary Sandman – Waterfall, Caldwell Economidis and Villamana, P.C.; Cliff Altfeld – Altfeld & Battaile, P.C.; Mark Collins – Gust Rosenfeld.

Counsel Gugino gave a brief summary of the lawsuit that has been filed by Mr. Kromko and Ms. Hawkins. Chair Bain indicated the lawsuit has been submitted to the District's insurance agent, Mr. Lovitt, to see if the Directors and Officers Insurance would cover this matter. Counsel Gugino indicated that if insurance does cover this, the insurance company will (many times) defer to the selection of an attorney by the insured. Chair Bain asked whether selection of an attorney could invalidate the insurance coverage. Counsel Gugino indicated that such a decision would not invalidate insurance coverage.

Interviews were conducted; Lawyers and law firms were requested to submit a fee structure in writing to Chair Bain. Chair Bain indicated that she is familiar with all of these attorneys, but none of them currently represent Ms. Bain or her clients. Mark Irvin has also worked with all 3 of these firms in the past with no active matters.

Each firm representative gave brief presentation.

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

i. Depot Plaza Garage Extension.

Special Counsel Gugino reported that the Extension Agreement has been fully executed by the City and the District Board; it is a 2-month extension through the end of February. Rick Grinnell asked whether there needs to be an additional extension. Special Counsel Gugino responded that without some extension or new agreement, there are no further payments due to the District after February.

ii. Status of Term Sheet for Settlement IGA.

Special Counsel Gugino indicated there is no report at this time

iii. The Fox Theater.

Special Counsel Gugino indicated that he can try to answer any questions related to the IGA with the Fox. Total due to the District with interest is \$7.4 million. Bob indicated how those payments are expected to be paid. The payments are to be made in the form of any "net operating income" to be paid on an annual basis and then at the end of every 5 years the difference between the NOI paid during the previous 5 years and, by September 2011, 1.5 M; September 2016, 1.5 M and in September 2021, 2.6 M plus interest paid on the underlying obligation by RN during the course of the Bond which will be in the amount of approximately 1.8 M or a total of approximately 4.4 M between September 2016 and September 2021. Alberto Moore asked how much total was invested by the District to the Fox. Mr. Gugino indicated \$11.3 million has been invested with an expectation that the \$7.4 be re-paid.

iv. 133 W. Washington Building Bathroom and Museum of Presidio.

Special Counsel Gugino reported that this item was on a previous agenda, but quorum was lost before it could be discussed. The District owns a few buildings in this area – 133 W. Washington, the Restrooms and Museum Building at the Presidio Complex, and the duplex. 133 W. Washington, is occupied by Presidio Trust and Parks and Recreation. Parks and Recreation maintains the Presidio and the duplex. From a liability and expense standpoint, it makes sense to lease 133 W. Washington, restrooms and museum complex to the City, which would relieve the BID tax obligation and maintenance obligations from the District. The lease has been drafted with a 1-year term with automatic extensions; \$5.00 per year in rent; must be only used for historical purposes by the deed restrictions. Tenant would pay insurance and 75% of the BID, other 25% of BID to be paid by user of the duplex; City is responsible for all maintenance and upkeep; City must maintain liability insurance as well. District is currently paying insurance costs on the property. Through Mr. Rankin, the lease is being presented to the City.

Chair Bain asked what happens if the City fails to perform. If the City does not perform, the City would receive written notice and have 30 days to cure. As to the obligations of insurance, the City is self-insured. Rick Grinnell asked why this property pays BID. Mr. Gugino indicated it was made part of the BID originally. Mr. Grinnell is going to look into why/how this is subject to the BID; cost is \$1500 per year for the BID, so Board should balance costs of

attorney fees to look into this versus the cost of the BID. Mark Irvin moves to approve the lease agreement as presented; Jeff DiGregorio seconded. 3-4 motion fails (Chair Bain, Carlotta Flores, Alberto Moore, Rick Grinnell voting no). Rick Grinnell asked for clarification on what happens if the District gets rid of the BID; Mr. Gugino clarified that if the District gets rid of the BID, there will be no obligations to pay the BID. Chair Bain asked who is obligated to maintain the property. Bob Gugino said the City. Rick Grinnell made a motion to re-consider the original motion made by Mr. Irvin and to approve that original motion; Ms. Flores seconded. Motion passes 7-0.

**Carlotta Flores left the meeting at 3:50 P.M.*

v. Thrifty Block law suit matter.

Chair Bain noted that she had been informed by Counsel Silvyn that current Counsel Silvyn cannot handle this lawsuit due to conflict issues, and Special Counsel Gugino does not handle litigation. Therefore, the District needs to hire an attorney to handle the lawsuit and for this reason the presentations occurred earlier in the meeting

7. Arena Parcel RFP process update. Mark Irvin and Rick Grinnell (5 min)

Mark Irvin gave a report about the status of the process; still a couple of weeks away from making a decision. Chair Bain asked if we are aware whether Lou Ginsberg's retirement from the City will affect the timing of the process. Mr. Irvin indicated it did not.

8. Origins Film use, discussion and possible action regarding: (i) Friends of Tucson Birthplace (focus on) Tucson Origins Heritage Park, (ii) Tucson Presidio Foundation and (iii) Los Descendientes, etc. (8 min)

Chair Bain reported that Mr. Bill DuPont would like to have permission for a one-time showing of the Film for a fundraising for the Friends of Tucson Birthplace. Mark Irvin voiced a few concerns. First, it was designed to be shown a certain way on particular equipment to allow for the quality of the film to be seen and must adhere to that. Secondly, this is an asset that was purchased with public funds and people should not be charged to see it. Rick Grinnell indicated that he would be comfortable if the event is free to see the film and Friends of Tucson's Birthplace can then solicit donations. Jeff DiGregorio indicated he is also concerned that it be shown on the right equipment.

Jeff DiGregorio moved to allow one-time use of the film any time prior to April 15, 2011 to Friends of Tucson's Birthplace conditioned on that there be no cover-charge at the event; Friends of Tucson's Birthplace can seek donations to their organization during the event; and the film must be shown on blue ray or higher definition. Mark Irvin seconded. Alberto Moore does not see a problem with a nominal cover-charge to help the organization fundraise. Mark Irvin indicated that he has a problem with charging the public to see a film that was already paid for with taxpayer money. Motion passes 6-0.

9. Executive Director update and discussion. (5 min)

Chair Bain indicated the committee is about ½ way through the process; 3 candidates have removed their names. Interviews are proceeding. There is a 3-4 page form that can be filled out regarding the skill sets the District may consider in an executive director.

15. Call to the Audience: (Presentations are limited to 3 minutes per speaker. All those interested in speaking should complete and submit a Speaker's Card that will be made available at the meeting).

Taken out of order

Mike Toney addressed the Board.

10. New Securities and Exchange Commission (SEC) potential rules revision matter for appointed officials discussion and possible direction. Keri Silvyn and Jodi Bain (5 min)

Counsel Silvyn presented information on the new rule the SEC is adopting that would require appointed members of a bond-issuing board to register with the SEC as investment advisors. Comments are due to the SEC by February 22, 2011. Counsel Silvyn suggested the District create a letter to comment on this matter because it potentially affects the Board members

Rick Grinnel, Jodi Bain and Alberto Moore brought up the question of was it necessary for the District to comment on this issue. After some discussion about controlling cost, Mark Irvin moved for Counsel Silvyn to create a response letter to the SEC encouraging the SEC to modify its pending rule so that appointed members of a bond-issuing boards are not subject to SEC registration, and asked counsel to do its best to keep the drafting at about 1 hour of time and cost; Jeff DiGregorio seconded; Passes 6-0.

***Alberto Moore left at 4:20 p.m.**

Item 5(i) – Revisited.

i. Depot Plaza Garage Extension.

The Depot Plaza Garage Extension was revisited with a discussion about the need to offer an extension. Rick Grinnell made a motion to authorize Mr. Gugino to ask the City to enter into a 60-day extension of the lease agreement; Jeff DiGregorio seconded. Passed 5-0.

Item 6: Thrifty Block law suit attorney presentations – Revisited.

The selection of attorneys to handle the Thrifty Block lawsuit was revisited. Ms. Bain asked whether the Board would be comfortable asking the Executive Committee to select one of the attorneys interviewed or if there was another idea for selection. Mr. Grinnell asked that there just be a justification given for why a choice is made by the Executive Committee to the Board

when the decision is made but it seemed a sound method given the time constraints to file a response to the serviced complaint.

Jeff DiGregorio made a motion to direct the Executive Committee to select an attorney from the 3 interviewees and enter into a fee arrangement; Rick Grinnell seconded. Passes 5-0.

11. Update and discussion regarding District Website with possible direction. Mark Irvin (5 min)

This item was not discussed.

12. Outstanding Ballard Spahr invoices discussion and possible direction. Mark Irvin and Jodi Bain (5 min)

This item was not discussed.

13. Proposed Hotel Project update: Payment Applications, punch list and District motion dated 1.6.11 regarding these items with discussion and possible direction/action. Alberto Moore and Jodi Bain (10 min)

This item was not discussed.

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

No executive session was held.

- i. Depot Plaza.
- ii. Status of Term Sheet for Settlement IGA.
- iii. The Fox Theater.
- iv. Proposed Hotel Project payment close-out and punchlist items settlement agreement.
- v. Legal representation and requirements for a district.
- vi. Thrifty Block law suit matter.

Items noticed for Executive Session may be discussed and possible action taken in open session.

16. Announcements from the Chair.

No announcements.

17. Future Meeting Dates. (2 min)

18. Adjournment.

Rick Grinnell moved to adjourn the meeting at 4:30; Mark Irvin seconded. Passed 5-0.