

**Minutes for the Meeting
Of the Board of Directors of the
Rio Nuevo Multipurpose Facilities District
2:30pm
Thursday, May 10th, 2012
at
400 W. Congress Street, Room #222, Tucson, Arizona, 85701**

A meeting of the Board of Directors of the Rio Nuevo Multipurpose Facilities District was held on Thursday, May 10th, 2012, at 400 W. Congress Street, Room #222, Tucson, Arizona, commencing at 2:26pm.

1. Roll Call.

The meeting was called to order at 2:26 p.m.

	Appointee	Present	Absent/Excused
Jodi A. Bain, Chair	Senate	X	
Tim Bathen	Governor	X	
Jannie Cox	Governor	X	
Rick Grinnell	Senate		X Excused
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 Brearcliffe

Others Present: Michele Bettini, Rio Nuevo Operations Administrator
Sarah Perkins, University of Arizona graduate student intern

Tim Bathen arrived at 2:27pm

2. Discussion and possible approval of the April 5th, 2012 minutes.

Chairwoman Bain highlighted three issues that needed to be corrected in the April 5th meeting minutes; Notice to Proceed should be in upper-case rather than lower-case letters, a possible double-phrase that discussed publishing the MOU that should be a Motion to Approve the MOU regarding the Tucson Convention Center bathrooms, and a statement made by Rick Grinnell that appeared to already be fixed.

- ▶ Motion by Alberto Moore to accept and approve the April 5th, 2012 meeting minutes; seconded by Tim Bathen. Jannie Cox and Mark Irvin abstained. Passed 4-0.

3. Announcements from the Chair.

Chairwoman Bain thanked Jannie Cox for her submission to the newsletter detailing the Community Outreach Program. Chair Bain stated that she had talked to Sean Brearcliffe about writing something for the Consultant's Corner portion of the newsletter, and comments and questions from the public will be included as well as links to events happening at the Fox and Rialto theaters.

Chair Bain stated that there would be a half-day retreat for the Board on June 14th to discuss how to move forward now that legislation regarding Rio Nuevo had not changed, and to discuss the budget. The Board agreed to hold the retreat beginning at 9:00am to be followed by the regularly scheduled board meeting at 2:30pm.

Chair Bain stated that nothing had changed in regards to stadium district law in the last legislative session, but the Downtown Tucson Partnership might try again in the next session to get some incentives passed.

Chair Bain brought to the attention of Tim Bathen, Jeff Hill and Jannie Cox that the Governor's office had made contact with her and that there was no record of their oaths on file. Jannie Cox and Jeff Hill acknowledged receiving paperwork from the Governor's office; Tim Bathen stated he had not received anything yet. Chair Bain requested that board members submit signed and notarized copies of their paperwork so they will be on file for future use as needed.

4. TIF collection and Financial Reporting.

Chair Bain distributed samples of the Transaction Privilege Tax return that had come from Elaine Smith at the Arizona Department of Revenue that businesses in the Rio Nuevo District use for filing. Chair Bain stated that how much revenue the District receives and knowing how much the state thinks it gives the District is still being determined. The District's cash position is still unknown. A spreadsheet of distributions AZDOR claims to have sent to Wells Fargo or to the City of Tucson was distributed. Chair Bain pointed out that distributions from FY 2011-2012 were down significantly, and in one to one and a half years, the District's debt service jumps up and the TIF money coming in might not be enough to cover the debt service. Chair Bain stated that while in discussion with Ms. Smith, she inquired as to how the AZDOR knows how much TIF revenue is coming in. Chair Bain explained the difference between the PMA (Pima County) and PDA (Rio Nuevo District) codes on the TPT-1 return, and that if a business fails to use the PDA code, the District receives none of the TIF money that would have been collected from that business. Chair Bain explained that she had asked Kelly Gottschalk to meet with the District once a month to review TIF collections because it appears the City uses a different form than the state, and the collection amounts were not matching up. Chair Bain relayed information Ms. Gottschalk had shared, that in the past the City used interns to canvass businesses in the District to ensure businesses understood how to file the TPT-1 form using the proper code for the District. Chair Bain explained that City has the database of businesses located in the District; the Board does not, so the Board needs to understand how the City is currently ensuring proper PAD code usage. This might explain why TIF collections had decreased in the past year even though sales in the state had increased overall. Jannie Cox asked what the next step to resolve the situation was. Chair Bain explained that there is a person in the City Finance Department who calculates the City's portion of TIF collection using a form different than the state form who then confers with the AZDOR to see if the collections numbers match up. The difference in the TIF numbers the City had to calculate the District financials versus what the AZDOR had on record was first brought up by Beach Fleishman. Chair Bain explained the difference might be because the City is no longer working to educate business owners about PAD code usage. The motivation to not educate business owners could be that the City receives more money through state shared revenue dispersions if the District is not receiving the money. Chair Bain stated the question going forward was how to get the City to do what they did before with working with business owners if that is the issue. Alberto Moore asked if the City could supply a monthly TIF report to the District. Chair Bain confirmed that she had suggested as much in her communication with Kelly Gottschalk. Mark Irvin questioned

the City's impetus to continue working with business owners and the possibility of it becoming a District undertaking. Chair Bain stated that in prior meetings with the City, the City indicated they would always work with the businesses because ultimately it benefits the City to do so. Tim Bathen Jeff Hill stated that in the past it was the City controlling Rio Nuevo, but now with the reconstituted board in control of Rio Nuevo, it would be in their interest to limit the amount that goes into the District. Chair Bain said she thinks it would be in the City's best interest to make sure the District is able to cover the debt service because the City is the one who backstops the bonds. Tim Bathen asked if this issue could be put on the study session during the June 14th retreat. Mark Irvin mentioned that when he had ordered things online in the past year, a choice would appear asking if he was inside the Rio Nuevo District or the City and questioned when that was triggered. Chair Bain explained the difficulty in getting just the amount of information that was being presented. Jeff Hill mentioned another column was needed on the form that shows gross retail sales so there is a baseline because the District can't corroborate what the City is using as a base since they have a different sales tax rate from the State.

5. Study Session – Budget FY 2013.

Chairwoman Bain stated that there was an anticipated 2.25% increase in TIF revenue from FY 2012, and that the amounts in the FYE 2011 Actuals column would probably need to be footnoted or restated because of the TIF money mismatch. Chair Bain explained that the District was now using QuickBooks instead of Intact because it is less expensive and when RNA was using Intact, it was hard to have City information imported into Intact, because once entered, it could not be changed. Michele Bettini and Susan Vos started working in March getting QuickBooks Plus set up. QuickBooks Plus is much less expensive than Intact and it has an audit trail. Chair Bain continued that Michele is inputting information from July 2011 forward, and that Susan will be importing Intact information from the City over the next few months. This time period is due to the complexity of unbundling payables by account and the need to hand review to make sure that the fiscal years are accurate.

Chair Bain clarified the \$400,000 amount in the FYE 2011 Actuals under Auditing and Banking Services was due to the Performance Audit completed in the fall of 2010. Chair Bain continued that more revenue was received in FY 2011 than was expected; \$12.5 million versus \$ 10.5 million, and that for FY 2012, the \$10.0 million that was projected to be received is looking more like \$9.0 million; \$1 million short. This amount could change when the amount from the TCC leaseback is entered, but that information had just been received today. Chair Bain stated that the District would come in about \$150,000 under the operating budget for FY 2012. For the FY 2013, Chair Bain highlighted the proposed budget amounts and explained the increases and decreases.

Chair Bain continued that there was no strategic plan in place to cover debt service. Mark Irvin stated from a flip side perspective, he wondered if he would be as aggressive as he used to be as when he was in control of Rio Nuevo. Tim Bathen questioned under Financial Resources, if there should be an entry for potential income coming in from the City in the form of a settlement. Jannie Cox asked if Contributions to organizations could be changed to Community Outreach so it doesn't give the impression that the District has money to give away. Alberto Moore asked what the City's incentive is to be accurate in collecting Rio Nuevo TIF funds, and what can the Board do to motivate the City. The District doesn't currently have the staff to do what the City has done in the past. Chair Bain asked Special Counsel Brearcliffe if the City has a fiduciary duty to do so. Special Counsel Brearcliffe responded that the City probably has a legal obligation to report the amount of TIF money collected accurately. Jeff Hill stated that duty to report and making sure businesses are putting the Rio Nuevo code on the TPT-1 form is a different issue. Chair Bain stated that Mark Collins was preparing a report that would outline the District's statutory obligations from July through June of each year, and if the City has any coordinating responsibility. Alberto Moore expressed concern that if there is a shortfall, who would take responsibility to monitor the situation because the District doesn't have the staff to do so. Chair Bain suggested the creation of an internship program similar to what the City had where interns would go to businesses, but the City is supposed to be handling it under the original IGA. Tim Bathen asked if the City had anyone currently working with the businesses. Alberto Moore stated that if

there is a revenue shortfall with bonds that need covering, if it was the City's responsibility to pay so they should be one to also be responsible to ensure the funds are being collected. Chair Bain said that according to the AZDOR, the person in the City's Finance Office was very much on top of the TIF collections issue, but that doesn't mean the reporting is being done correctly at the business level. Chair Bain continued that if the City had not changed its procedures, then what explains the drop in TIF revenue. Mark Irvin suggested that before we start speculating on what the City was or was not doing that perhaps we consider asking Kelly Gottschalk to come in and see if anything had changed in the City's way of doing things and to discuss why she thinks numbers are down. Jannie Cox questioned if it was to the City's advantage to collect TIF revenue because the more money the District receives, the more money the City receives. Chair Bain stated it might not work out that way if money that goes to the District might go to the City otherwise through state shared revenue. Tim Bathen stated that the City then has an incentive to not collect TIF money for the District and they can argue they are fulfilling their part of the IGA, but there's no way to know if they are doing so as aggressively as they used to. Special Counsel Brearcliffe stated that the District should always be able to compare the amounts being reported as PAD to the State versus what is being reported to the City and a large difference would indicate something was happening. Alberto Moore questioned who was going to take responsibility to pay the debt service. Chair Bain answered that the City had insurance that had been purchased when the bonds were sold, and reserves that Wells Fargo would activate if needed. Chair Bain asked Special Counsel Brearcliffe to ask Pat Lopez if when there is a shortfall and the City is involved in the form of a backstop, if it affects both the issuer's credit rating and the City's. Chair Bain suggested bringing in accounting students to walk the streets on a quarterly basis and educate the businesses in the District about the PAD code. Alberto Moore stated that that was a function of the City and the District needs to hold them accountable. Tim Bathen stated that he agreed with Alberto, but he doesn't know how the District can say that the City isn't being as aggressive as they used to be; there is no way to hold them accountable. Alberto Moore stated it was more an issue of holding them accountable to pick up any shortfall, not just ensuring the TPT-1 form is filled out properly. Chair Bain questioned what to do moving forward even if it wasn't the District's responsibility. Chair Bain compared the ongoing computer invoice system the Downtown Tucson Partnership has in place based on property parcel with the collection aspect of the District. Jannie Cox stated that the first thing to do is find out if the City knows there is a problem.

6. Report from Counsel

i. Tucson Convention Center MOU. Chair Bain clarified that there were some issues in the MOU that the City needed addressed before being comfortable with voting on it relating to the further defining of Arena parcel boundaries. The City also requested the use of the word "motorized electric" instead of "hydraulic", and further clarification of ADA issues in regards to past non-compliance and future issues.

- ▶ Motion to change the language of the TCC Memorandum of Understanding made by Jannie Cox at 3:22pm; seconded by Jeff Hill. Passed 5-1 with Alberto Moore voting no.

ii. Litigation, Claims and Mediation.

1. Kromko Matters

Special Counsel Brearcliffe read out loud a letter transmitted via email from Mark Collins. It stated that the Bourn entities had filed their Rule 26.1 Disclosure Statement, as had the plaintiffs Kromko and Hawkins. Neither the City nor the District has responded with their respective 26.1 disclosure obligations. No party has commenced discovery or motion practice. The matter is scheduled to go before a five day jury trial beginning on February 20, 2013. Chair Bain mentioned that in that last legislative session, the question if the gift clause applied to the District was discussed and Legislators felt it did apply to the District unless specifically exempted out. This is significant because if the District is subject to the gift clause, then the lawsuit could be settled per a gentleman's agreement.

2 and 3. City and Related Matters and Garfield Traub/Turner/Sundt

Special Counsel Brearcliffe stated that responses to motions filed by the City are due next week. Also, that there had been a hearing the previous week about the four motions to dismiss by the District in the Garfield-Traub/Turner/Sundt lawsuit versus Rio Nuevo. The first three counts were dismissed; breach of contract, wrongful termination, and breach of duty of good faith. The judge allowed Garfield Traub twenty days to re-plead. The fourth claim for defamation against Rio Nuevo/Jodi Bain and Tim Bathen was allowed to go through and will be subject to motion practice in the future. Mark Irvin questioned what the grounds to dismiss the first three complaints were and why Garfield Traub was being allowed to re-file. Special Counsel Brearcliffe answered that because Garfield Traub was not a licensed contractor at the time it entered into the Master Development Agreement, and because they pled in their complaint that they were when they were not, Garfield Traub needed to re-plead confirming that they either were licensed at the time or didn't have to be licensed. In the defamation claim, it was the District's position that Garfield Traub didn't plead in their complaint that the statements were made with malice and since the parties involved were public figures, there is no claim for defamation. Special Counsel Brearcliffe stated that the judge disagreed and that Garfield Traub had at minimum pled a case for defamation. Mark Irvin asked for clarification that the District is not required to answer the defamation claim until Garfield Traub re-pleads their whole complaint which Special Counsel Brearcliffe confirmed.

7. Community Outreach

Jannie Cox asked for a discussion by the Board about the kinds of things that should be addressed when doing community outreach. Chair Bain state that Sarah Perkins has been working on a presentation to give to community groups. Jannie Cox questioned if the Board wants to move forward with a Speaker's Bureau. Chair Bain said there used to be a lot of interest in the community to learn what was happening with Rio Nuevo when the new board was seated but was unsure if the interest was still there given the new direction the board has to take with what it can or can't do. Mark Irvin stated that there used to be many opportunities to speak with the public, but doesn't know now if there is waning interest or why there are fewer chances to speak. Chair Bain asked if the board would like to discuss the issue further in the June 14th retreat. Tim Bathen stated that what the board is doing now is such a grind, and that he agreed with Mark Irvin that there isn't much of a story to tell. Jannie Cox agreed but said that the board could be educating the community about the process and what it takes to do what the board is doing. Chair Bain said that the board was tasked with complying with a list of recommendations in the performance audit and community outreach was one of those recommendations. Chair Bain stated that the Westside audit would hopefully be completed in time for the retreat and the difference between what the forensic audit was finding and what the financial audits were finding were contributing to a slowdown in such things as community outreach.

8. Call to the Audience.

No speaker requests.

9. Adjournment.

- ▶ Motion to adjourn made at Jeff Hill at 3:34pm; seconded by Alberto Moore. Passed unanimously 6-0.

