

**Minutes for Meeting
Of the Board of Directors of the
Rio Nuevo Multipurpose Facilities District
2:00 pm
Thursday, November 10, 2011**

**General Assembly Meeting Room
400 W. Congress, Ste. 158
Tucson Arizona**

A meeting of the Board of Directors of the Rio Nuevo Multipurpose Facilities District was held on Thursday, November 10, 2011, in the General Assembly Meeting Room, 400 W. Congress, Ste. 152, Tucson Arizona, commencing at 2:00 p.m.

1. Roll Call.

The meeting was called to order at 2:05 p.m.

	Appointee	Present	Absent/Excused
Jodi A. Bain, Chair	Senate	X	
Tim Bathen	Governor	X	
Jannie Cox	Governor	X	
Carlotta Flores,	Governor		X Excused
Rick Grinnell,	Senate	X	
Jeff Hill, Treasurer	Governor	X	
Mark Irvin, Vice Chair	House	X (left after executive session at approx. 5:10 pm)	
Alberto Moore, Secretary	Governor	X	
Jonathan Paton	House	X (arrived at 2:40 pm)	
Executive Director:			
Larry Lewis Exec. Director		X	
Counsel:			
Special Counsel Mark Collins		X	
Special Counsel Sean Brearcliffe		X	

2. Discussion and possible approval of minutes.

► Motion by Jannie Cox to approve minutes from meetings on September 20, 2011, October 5, 2011, and October 18, 2011; seconded by Secretary Moore; passed 7-0; one abstention: Rick Grinnell as to the October 18, 2011 minutes as he was not in attendance at that meeting.

3. Announcements from the Chair.

Chairman Bain explains that the paperwork requested and needed by the AZ Department of Revenue (ADOR) has been prepared by Beach Fleischman and sent in. The form was put together by Beach, Fleischman with questions to the City and it lists the indebtedness of Certificates of Participation ("COPS") and bonds. A question was sent to the City by Beach Fleischman for confirmation.

The District has completed a Seventh Addendum to the Depot Plaza parking garage use matter so that the City can continue to use the parking garage thru Dec. 16, 2011.

Chairman Bain reports that one of the District accountants reached out to her and Rusing & Lopez about information being posted by the City that the District did not know about such posting and did not consent or agree to it. Some of the City posted information counsel stated was subject to disputes and/or third-party authorization. There were things like expense reports containing home addresses and other personal information, etc. Sean Brearcliffe for the District asked the City to take the information down. On November 9th, the City responded back to Sean Brearcliffe that they are going to put the information back up today (11.10.11) by noon if the District does not tell them which pieces of it the District is objecting to. Sean Brearcliffe will talk about that more later in report from counsel.

Chairman Bain reports that the District is testing out a microphone system and trying to determine whether it makes more sense to rent one or purchase them for meetings. In the long run (6 months or more) it appears to be more cost effective to buy one.

4. Executive Director Report.

Larry Lewis discussed the move to state building for meetings.

Rialto Theater proposal is pending under direction of the Board. The Board responded to the theater asking for financial information so the Board can proceed with a proper evaluation as directed at a meeting. Larry Lewis met with representatives at a breakfast meeting on Tuesday, November 8th and reasserted the position of the Board. The evaluation of the proposal has been hindered somewhat by information that arrived late or incomplete, with some of the information received just this morning. The Board is preparing a response letter outlining what the board will accept as terms for an agreement.

The 2011 annual financial audit is underway. Beach Fleischman the financial audit for fiscal year ending 2011. Lack of bank documents (Wells Fargo statements) has somewhat hindered the completion of the audit and it is likely the financial audit will be qualified once again.

Meetings have moved to the Arizona state building. The larger Corporations Commission room upstairs will be used for the December 15, 2011 meeting as of today.

5. District Treasurer and accounting update and discussion with possible direction/action.

Treasurer Hill reports he has been to R&A Accountants (the Board's internal accountants) a number of times and has discovered some disconnects internally with existing accounting company is limited in scope by who they can put on the project. So, unfortunately, with data coming in slowly and in spurts from Wells Fargo, it is difficult to collate it in a manageable, prompt manner to examine it. Even the information they were relying on for the amount of money in the accounts as of July 1st may not even be accurate.

Rick Grinnell asks for clarification on the availability of actual resources between dollars cash and the bonds. Treasurer Hill answers in the negative. Mr. Grinnell asks whether the Board could obtain a qualified financial statement from Beach, Fleischman. Treasurer Hill answers that the accounting must be unscrambled first. Chairman Bain states the real question is whether the Board will have a disqualified opinion this time. Treasurer Hill will be talking with Beach, Fleischman regarding it, and questioning why certain numbers are not making sense.

Rick Grinnell confirms that last year the Board received a qualified position based on financials of June 2010; confirms now the Board is working off a qualified opinion and a balance sheet as of June 2011, and is now starting out "behind the 8-ball" with respect to the accounting numbers. Treasurer Hill states if the Board is not able to achieve some sort of clarity from documents that remain missing, the auditor will have no choice but to either disqualify or qualify based upon the current data. Treasurer Hill describes that to disqualify means that the auditor does not feel confident s/he has enough records to determine that the financial documents presented are factual. Under a disqualified position, existing bonds may be affected, for example, as people may not be interested in floating a bond based upon unreliable documents. Treasurer Hill is unsure if or how a disqualified position would affect current bonds.

Chairman Bain describes discussions with Beach, Fleischman about the various sources of revenue that were in a pooled cash account at the City, and asks if we can't know what came in or out for whatever reason, at what point can the Board simply say, "this is where we start from" and suggests it may just need to be a Board decision.

Special Council Sean Brearcliffe states the Board is trying to obtain from Wells Fargo the actual, original bank statements and records. The financial records received to date from the City, which are purported to be from Wells Fargo, are often nothing but summaries prepared by the City. He is working to obtain the ultimate source documents that might allow the Board's own accountants to trace dollars back. Without those backup documents, the Board is unable to rely on what has been received from the City and the 2010 qualified financial statement supports this.

Rick Grinnell asks in those statements we received from Wells Fargo, will we receive a reconciliation of bond expenditures and matching receipts or payouts. Sean Brearcliffe answers there should have been detailed submissions from the City, including backup, when it was paying bills and submitting applications for disbursement of funds to Wells Fargo. Wells Fargo should not have issued payment without detailed backup. With the records from Wells Fargo, the Board should be able to trace most expenditures.

Rick Grinnell asks about the money the City has, the \$10M that the Board has, and the \$3 - \$6M question mark; is that TIF money or is that bond money which hasn't been expended? Treasurer

Hill answers that it is unknown as of yet, but that Wells Fargo kept separate accounts for TIF funds and for bonds so that information would feasibly come from the Wells Fargo statements once those are received, and the Board can then request the balance from the City.

Tim Bathen asks if there are any other records we are waiting besides the ones from Wells Fargo. Beach, Fleischman is in the process of determining what records are needed.

6. DBA, name and mission of District discussion with potential direction/action from the District.

No discussion.

7. Report from Counsel with potential discussion/direction/action from the District.

i. **Fox Theater (Mark Collins).** Special Counsel Mark Collins reports on the inability to reach an agreement on the terms of a forbearance agreement w/ Fox. Therefore, because the efforts of Chairman Bain and Fletcher McCusker, some progress has been made toward restructuring the entire Fox debt which he will discuss in executive session. As of November 9th, the outline of a letter of intent was approximately 80% complete.

ii. **Rialto Theater (Sean Brearcliffe).** Nothing of substance to report.

iii. **Wells Fargo Bank Matter (Sean Brearcliffe).** All new matters have already been addressed.

iv. **TCC Lease (Sean Brearcliffe).** No progress since sending the letter out; there's been no response from the City. Further action may need to be addressed in executive session.

v. **Claims and Mediation (Sean Brearcliffe).** In response to two complaints filed against the City of Tucson by the District, the City and the District have agreed to attempt to mediate the disputes. The mediation is scheduled to take place on December 14 – 15, 2011 with former Arizona Supreme Court Justice Tom Zlaket as the mediator. Special Council Sean Brearcliffe will be speaking with City Attorney, Mike Rankin, next week to work out the terms of the mediation itself and will have more to report after that.

vi. **Audit Matters.** All new matters have already been addressed.

9. Call to the Audience [taken out of order].

Kelly Gottschalk, Assistant City Manager and Chief Financial Officer, wants to clarify financial information discussed under Item #5, above and stated that the District is misrepresenting that it has not received all bank statements

5. Returns to District Treasurer and accounting update and discussion with possible direction/action [taken out of order]. Chairman Bain returns to No. 5 to gain feedback response among the Board. Chairman Bain agrees that the District received \$10M and the rest of the money has not been reconciled yet. Chairman Bain states that most of the District's money

today held by Wells Fargo as trustee (there is at least \$10 M) is held in reserve and not useable per Wells Fargo. Sean Brearcliffe was requested to find out if money, left over after the trustee receives the TIF funds from the state, is still flowing into the City or has it been moved to the Alliance Bank. In September 2011, the Board was told they were short approximately \$114,000 for the month of State received funds to Wells Fargo for debt service, that being the third or fourth time this calendar year. *So then, why is the City and other parties claiming the District has received over \$3M more than last year and is flush?* Sean Brearcliffe answers that he would hope to get the answer from Wells Fargo.

Rick Grinnell asks where the money came from that the City is holding.

Jeff Hill responds that in his initial meeting with R&A, they had the absolute numbers for transfers of July 1, 2011. Subsequent communication says they should not have been able to confirm this and it was not confirmed that they had such information. Upon examination in other meetings, it turns out that that information is not available and the one person who can handle that has been out of the office for a variety of reasons. Another employee left to go to another firm. [Jonathan Paton arrived at 2:40.] It is added that it is an employee issue that will be discussed in executive session.

Rick Grinnell asks Ms. Gottschalk to provide something in writing to the board explaining where the money came from. Ms. Gottschalk states that she has and briefly responds that the City transferred \$5M from the Board's operating fund, \$5M from the bond proceeds, and the remainder is left in the account. It was then brought up how the City would have \$5 M in bond money.

9. Returns to Call to the Audience [taken out of order].

Barry Sleight of Oro Valley; subject: bonds.

James Jordan of Tucson, representing the people of Tucson, Barrio Kroeger Lane, and Menlo Park and Occupy Rio Nuestro. Also notifies the Board of his difficulty in learning of the meeting date, time, and place. Claims it was not on the website.

Chairman Bain encourages people to also submit their issues and positions in writing to the Board and can drop it off at the office, mail it or email it.

Jonathan Paton questions whether the meetings are listed on the website. The Board then confirms that it is. Next scheduled regular meeting is December 15th at 2:00 in the Arizona State building, most likely upstairs in the Corporations Commission room.

Jonathan Paton suggests the Board take measures to ensure the date and time are clearly posted on the District's website. It was confirmed the information was and is posted at www.rionuevo-tucson.org.

Resumes Call to the Audience.

Josefina Cardenas, representing resident of Barrio Kroeger.

Isabel Garcia, representing Protect Chuk Shon.

Jonathan Paton expresses frustration with the inability to interact with the audience and invites the audience to speak with him about their issues.

Chairman Bain and Larry Lewis discussed the comment section on the District website, and put forth the email address of comments@rionuevo-tucson.org for comments, and the possibility of office hours for Board members.

Larry Lewis clarifies that there is also a website is www.rionuevo-tucson.org adding that there is a link from the City's old Rio Nuevo website that will take users to the new website which maintains the correct dates.

8. Executive Session.

► Motion was made to go into executive session at 2:59 pm by Secretary Moore; seconded by Tim Bathen. Passed unanimously 8-0.

Jannie Cox left at 5:07 as the executive session ended. Mark Collins, Vice-Chair Irvin, and Rick Grinnell were not present after the executive session.

► Motion was made to resume the general session at 5:08 by Secretary Moore; seconded by Tim Bathen. Passed unanimously 5-0.

7. Returns to Report from Counsel with potential discussion/direction/action from the District [taken out of order].

There has been extensive direction given regarding No. 7(5) or 8(5) of claims of mediation as well as direction given in executive session that follows the previous motions regarding the Fox and the Rialto and there is no further business or motions.

10. Adjournment. Motion was made to adjourn by Secretary Moore at 5:11; seconded by Treasurer Hill; passed unanimously 5-0, no abstentions.