RIO NUEVO MULTIPURPOSE FACILITIES BOARD MEETING

Tucson, Arizona
July 15, 2014
1:00 p.m.

REPORTED BY:
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(Meeting commenced at 1:04 p.m.)

CHAIRMAN McCUSKER: Let's call the meeting to order. It's 1:06 p.m. [sic].

We understand Cody Ritchie is inbound. Mr. Hill is at a conference, right? So he won't be here. Let's do the pledge.

Mr. Sheafe, you were last, so you have to lead the pledge.

(Pledge of Allegiance recited.)

CHAIRMAN McCUSKER: Michele, call the roll.

MS. BETTINI: Mark Irvin?

SECRETARY IRVIN: Here.

MS. BETTINI: Fletcher McCusker?

CHAIRMAN McCUSKER: Here.

MS. BETTINI: Chris Sheafe?

TREASURER SHEAFE: Here.

MS. BETTINI: Jannie Cox?

MS. COX: Here.

MS. BETTINI: Alberto Moore?

MR. MOORE: Present.

CHAIRMAN McCUSKER: And we did mention that Mr. Hill has got an excused absence.

You have a copy of the June 24 transcript that's been provided us. Any conversation and questions? If not, I'll entertain a motion to approve.
SECRETARY IRVIN: So moved.  
TREASURER SHEAFE: Second.  
CHAIRMAN McCUSKER: All in favor, say aye.  

(Ayes.)  

And we have an Executive Session scheduled. We need a motion to recess.  
SECRETARY IRVIN: So moved.  
CHAIRMAN McCUSKER: I need a second.  
MS. COX: Second.  
CHAIRMAN McCUSKER: All in favor, say aye.  

(Ayes.)  

MR. MOORE: All right. We'll be back in about 60 minutes.  

(The Board recessed to Executive Session at 1:05 p.m.)  

(Meeting reconvened at 1:45 p.m.)  

CHAIRMAN McCUSKER: We need a motion to reconvene.  
MS. COX: So moved.  
CHAIRMAN McCUSKER: Second, please.  
SECRETARY IRVIN: Second.  
CHAIRMAN McCUSKER: All in favor, say aye.  

(Ayes.)  

CHAIRMAN McCUSKER: Okay. We're back in business. And, Dan, I'll bring you up in a minute. I will make some opening remarks only because
we've got some very important items on the agenda.

This is a very productive time for Rio Nuevo. We do have a lot going on. We have a very important procurement we're going to talk about today. We'll get an update from Elaine on the TCC progress.

But I walked through it Monday, and it's really going to be quite spectacular. Some of the bathrooms are done. Some of the concession areas are done. The ceiling work, for the most part, is done.

As you know, we've been working opposite the TCC schedule. So we go in for a few days, and then there's an event, we have to clean up and back out. We have about an eight-week run now. So we're going to really look to a lot of progress over the next couple of months, which could include the installation of the new seats. So the next two months, we expect to see a lot of work.

The TCC, you'll see an item later on the agenda to talk about celebrating that. We're getting a lot of positive feedback about the work that we're doing on that particular site.

The City, of course, is moving ahead, as you probably all know, on the privatization of the TCC management. So we do expect a decision here shortly from the City on their selection of a bidder. So you have a new Arena, new managers, and probably new food concessions.
because those were all bid out simultaneously. So we're looking forward to an exciting time at the Arena.

We are moving forward with the West Side. If you were here in the last meeting, you remember we agreed to hire an architect to begin design of what we call the Lienzo Project. We have that person identified. The attorneys are working up an agreement for that. Hopefully by our August meeting we'll have something we can begin to talk about to the public about our plans for far West Side.

In the meantime, we've launched a hotel and helping restore the Eckbo fountains and doing all kinds of positive things for downtown. So it's an exciting time to be part of the Rio Nuevo Board.

I will also say that this has been a real learning experience on the procurement side. We have posted every single thing related to this procurement. And I believe we're probably the only -- Chris would know -- the only jurisdiction in the state that has been this transparent regarding a public entity procurement.

The RFP responses are on our website, rionuevo.org. The overall score sheet is posted. And the individual member's scores are posted. So there can just be no conversation about the lack of transparency of this Board and this group of people. So we're going to work through the rest of that today in an open session.
So, Dan, tell us how we're doing financially.

MR. MEYERS: Okay. As you all know --

CHAIRMAN McCUSKER: You might start with your name for the transcription.

MR. MEYERS: Dan Meyers, CFO.

As you all know, the June 30th marking of our fiscal year. And so cash balances at the end of the year are as follows: Alliance Bank operating account, approximately 5.8 million; Alliance Bank ISC account, approximately 5 million. In the Bank of Tucson operating account, we have $280,000, approximately.

The funds remaining in the City of Tucson, which are being used to pay for the TCC Arena renovation, are currently at 2.768 million.

As far as commitments sitting out there right now, Mission Gardens is at 1.1 million; Streetscapes, 750,000; the downtown hotel parking garage, which is still a couple years off, is 4.3 million; and remaining commitment to Tucson Community Center remodel is almost 6.1 million.

We've already paid 1.7 for the renovation, of which 140 of that is still sitting as payable in retention.

Any questions?

CHAIRMAN McCUSKER: What is the timing on the hotel? You know, I'm not sure we should be reflecting that at a current. I know we've committed it, but it's not
anything we're going to have to write a check for --

MR. MEYERS: Absolutely not.

CHAIRMAN McCUSKER: -- for when? Years?

MR. MEYERS: I think it's a couple years, isn't it?

SECRETARY IRVIN: Two years.

CHAIRMAN McCUSKER: Maybe we put a footnote or something there saying it.

MR. MEYERS: Okay.

CHAIRMAN McCUSKER: Because it makes it looks like it's an immediate obligation.

MR. MEYERS: Right. It makes our cash position a little tighter than it really is.

MR. MOORE: Excuse me. Mr. Chairman?

CHAIRMAN McCUSKER: Mr. Moore.

MR. MOORE: I've noticed we don't have the Fox Theatre, again, in here. We have that option that we might want to take?

MR. MEYERS: Well, it was an option. It's nothing we really totally committed to, but I can certainly add it.

MR. MOORE: Well, I just thought to see it keep coming up just so that we're reminded that we have to make some decision on it in the next new months.

CHAIRMAN McCUSKER: It's technically not a commitment.
MR. MOORE: Okay. All right.

CHAIRMAN McCUSKER: So I'll put it on the next agenda since it's not agendized today.

MR. MOORE: All right. Fine.

CHAIRMAN McCUSKER: But thank you for reminding us.

Any other questions for Dan?

Thank you very much.

MR. MEYERS: Thank you.

CHAIRMAN McCUSKER: I don't see Elaine yet. We're a little early, so we'll come back to the TCC.

Chris, you want to go ahead and start on our training?

MR. SCHMALTZ: Sure.

CHAIRMAN McCUSKER: All right. The Board has requested and our attorneys have obliged us with a brief training on the open meeting law and conflicts of interest laws.

MR. SCHMALTZ: Sorry, Mr. Chair. It was a --

CHAIRMAN McCUSKER: Stand by. Elaine just walked in.

Elaine, are you ready to go, or do you need a minute?

MS. BECHERER: Nope. I've got everything ready.

I've got it all.
CHAIRMAN McCUSKER: All right.

Take a seat, Counselor.

We are a little early coming out of exec.

MS. BECHERER: Yes, sir.

CHAIRMAN McCUSKER: We were working around you.

So the first item on the agenda, Elaine, is just an update on the Arena Project.

MS. BECHERER: So what I have -- sorry. I'm a little tardy.

CHAIRMAN McCUSKER: Name and...

MS. BECHERER: Elaine Becherer, Rio Nuevo TCC Arena project manager. And what I have is actually hard copies of the most current owner's report. And I do have them digitally so I can project. And then I also have the financial reports that I'd like to go through with you.

CHAIRMAN McCUSKER: And we have some copies, hard copies for the public?

MS. BECHERER: I do.

(Passed out copies.)

MS. BECHERER: So do you want me to project this as well? It's easier to just go to --

CHAIRMAN McCUSKER: Are there enough copies that if anybody wants one --

MS. BECHERER: There are. I have extra.

CHAIRMAN McCUSKER: All right. Just set them on
the table.

MS. BECHERER: Okay.

CHAIRMAN McCUSKER: If anybody wants to follow along, they can.

MS. BECHERER: So as a brief overall update of where we are, we are on schedule and on budget. We just moved into Phase II and III of the restroom and concessions renovations. We have vetted out the asbestos abatement for the escalator lobby as well as the breezeway.

And the document in front of, you if you take a look at the current budget column -- so it's the third column from the left -- the Rio Nuevo fund at 7.8 million, that is our original project budget which includes project soft costs as well as construction. The 370,000 for the City of Tucson that contributed to the project management; and then 96,000 that the City contributed for miscellaneous HVAC and F&CM repairs; and then 544,000 for all the plumbing fixtures and all the duct insulation. Those are our original project numbers.

And if you move down that column, you can see that the Rio Nuevo grand total of 7.8, we're still on budget where -- we started construction March 10th. And it's, you know, the middle of July. Everything will be wrapped up the end of December.

And that includes all of the 12 sets of restrooms,
the breezeway, the Arena, overall construction. They've concluded the painting on the upper arena floor. That's completely blacked out now. The expansion joint is complete. And they're currently doing replacement of the light fixtures on the concourse level.

What questions do you have regarding the overall project budget?

TREASURER SHEAFE: The 7.8 was purely a hard number; is that correct?

MS. BECHERER: That was the number that -- that's correct -- that back in -- last year, June -- I forget -- that the Board approved the overall project budget of 7.8 when I presented three different options.

TREASURER SHEAFE: Correct.

MS. BECHERER: Yes.

TREASURER SHEAFE: Okay. And you're saying that that number has not changed; the incidentals that are below that were additions that the City had actually agreed to and funded.

MS. BECHERER: That is correct.

And so when you continue down that line and you add in the 96,000, the 370, and the 544,000, the City is now contributing a million dollars to our current project that's under construction. And, big picture, it's overall, almost a $9 million project now when originally it was a 7.8. So I
think that's a win -- a win for everybody.

CHAIRMAN McCUSKER: Those items, Chris, if you remember, we took the position that they were deferred maintenance. And it actually went all the way to the City Council. And ultimately they approved that million dollar additional investment. So we actually added it to our budget, and the current contractor's doing the work while they're in the facility.

MS. BECHERER: It's wonderful.

CHAIRMAN McCUSKER: Mr. Moore.

MR. MOORE: I noticed that we didn't put in here the contribution the City's made towards the escalators and the new elevators and stuff like that. Is that a different situation?

MS. BECHERER: So it's a different scope of work in the sense that those are different projects completely, different project budgets, and those are actually complete now.

MR. MOORE: Right.

MS. BECHERER: And so I think in my delivery and accountability to you, if I came to you with a document that was two or three pages long and it showed 9 million plus an additional 17 million, it would be very convoluted.

CHAIRMAN McCUSKER: Is this the number it ended up being? Can you refresh our memory, what did the City end up
spending on the elevators?

MS. BECHERER: It was plus-or-minus 17 million. And it included the elevators; escalators, and, you know, projects from the past couple of years.

I believe that Ron Lewis is here to help me to elaborate on the other projects that comprise that $17 million, Mr. Moore.

But that is -- that is the number that, months ago -- I think it was almost last year -- that maybe you asked that question. And the City went through a process of going through and recapturing and listing all of those projects. And it totaled 17 million.

CHAIRMAN McCUSKER: And those projects are all done?

MS. BECHERER: Yes, they are. We're doing punch list items on the elevators and escalators. But, yes, they are -- they are done. So schedule completion is complete.

CHAIRMAN McCUSKER: Chris, you will notice that while the budget's the same, the contingency's come down.

So, Elaine, if you can just touch on the $150,000 difference between the original budget and current project budget.

MS. BECHERER: Yes.

So there's a couple of different categories where the funds increased or decreased from the original project.
One is them is the construction documents from 230 to 185. Projects soft costs increased to 150. Construction increased from 4.9 million to 5.5. So that's why there's a decrease in the overall contingency from the original project budget.

So prior to having all of our numbers as far along as they are today, we had a $600,000 contingency. You know, three, four months into construction, we still have a $450,000 contingency, which is also really great news for the project.

CHAIRMAN McCUSKER: Any questions for Elaine?

I think we've got some photos online. We're trying to keep the public up to speed on that. And the Arena, I think, is dark for the next six weeks or eight weeks.

MS. BECHERER: The Arena will go dark as of August 4th. So we have a couple more weekends with -- the Jehovah's Witnesses in town Thursday through Sunday. And then, August 4th, we will start demolition of approximately 4900 fixed seats. And then we'll have a week hiatus because there's another client coming in. And then we will start, at the end of August, putting in all new fixed seats. And those will by done by October 1st.

TREASURER SHEAFE: Where are you staging all those seats while you're doing --? I'm just curious.
MS. COX: In her garage.

MS. BECHERER: They're at my house. I'm just kidding.

What we've been doing is been strategizing with TCC and with Concord, because Concord's coming in one point of access. And so what we're thinking is that the truck will come in with new fixed seats. They'll bring them in from the east side, off the church. They'll be able to load them in and on the concourse level.

So the week that we are off construction because of our client coming in, they don't come up on the concourse level because it's an arena floor event. So we can house everything there. They can start to put together the seats. And then once that event's over, the demolition will be done.

The electrical is being lined up so that will all be done as they demo the seats. The new seats will be ready, and they'll start right away install the new ones. So they were all on -- you know, they're all on top of each other.

And, really, August 4th is when you'll really feel like it's fully, fully under construction because we're going to have it for, you know, a good almost two months. Right now it's spotty because we have to shut down and clean up come Thursday afternoons to get ready for the next event.
CHAIRMAN McCUSKER: Anything else on the Arena?

Okay. Item 8, let me see if I can have -- summarize this.

I'll probably need you and counsel to help.

But we did bid out video boards. We looked around the whole west coast for -- I know more about video board definition and -- than I ever care to know. We got two responsive bids. But in that process one of the bidders suggested an alternative that could result in a slightly smaller board but a significant savings. However, we didn't bid those specs, per so, so we can't legally accept the alternative.

Is that pretty close?

MR. SCHMALTZ: That's correct.

CHAIRMAN McCUSKER: Okay. So our only choice is to ignore that, which would be silly, or rebid?

MS. BECHERER: That is correct.

CHAIRMAN McCUSKER: Do you need any action from us to rebid, Chris, or . . . ?

MR. SCHMALTZ: Continue the Item 8. And then we can agendize, essentially, a termination of the existing procurement and we will rebid.

CHAIRMAN McCUSKER: And so do we need a motion to terminate the current procurement?

MR. SCHMALTZ: Well, because it's not agendized
that way, I would hesitate to do that today.

CHAIRMAN McCUSKER: Okay.

MR. SCHMALTZ: I would continue that item.

CHAIRMAN McCUSKER: Just continue that.

MR. SCHMALTZ: Yes.

CHAIRMAN McCUSKER: All right.

TREASURER SHEAFE: So moved.

CHAIRMAN McCUSKER: Move to continue Item 8.

MS. COX: Second.

CHAIRMAN McCUSKER: All in favor, say aye.

(Ayes.)

(The Board voted and the motion carried.)

CHAIRMAN McCUSKER: Okay. So let's just table it.

MS. BECHERER: We'll be getting the new solicitations out on Friday of this week. And it will be a 14-day solicitation just like before. And then we'll go through the same process.

CHAIRMAN McCUSKER: Item 9, we do have a contract.

Because it's a contract, it comes back to the full board.

Elaine, can you briefly explain Item 9?

MS. BECHERER: Yes.

So Item 9 is a contract with Schneider and Associates for structural services, design services. What it entails is a -- it's a combination of a lot of things.
We've had to do some testing of the existing breezeway ceiling. We've had to review the new ceiling, the new drop-down ceiling, their attachments. They've had to design structure for the new video board, as well as help us with the design of some new entry soffits.

It's important to know that Swaim and GLHN, our architect and engineer, plumbing and electrical engineer on the project, they are not structural engineers, nor do they have a structural engineer in house.

So typically you have an architect who was all of their subconsultants that are managing all of these projects -- or managing all of the consultants -- pardon me. And in this case, we have different contracts for the different consultants. And so what this is, is another consultant who has been working on the project. And this is his contract to -- to formalize his scope of work and his fees.

CHAIRMAN McCUSKER: And how much money are you talking about?

MS. BECHERER: So his original fees were $12,300. And that consisted of confirming the loading capacity of the steel structure over the arena floor because we have a new sound system -- a new sound cluster that we are hanging. He is working on calculating and preparing new rigging diagrams that the TCC and future performers will use.
He's been designing and documenting the steel structure at the south wall. We took out all of the existing piping, and we're putting in new steel sound attenuation panels. And then he --

CHAIRMAN McCUSKER: Let me ask Chris a question. This is a small item. It is under the threshold the Chairman and the Treasurer have, but it's here because it's a new --

MS. BECHERER: New contract.

CHAIRMAN McCUSKER: -- new contract?

MR. SCHMALTZ: Mr. Chairman, Members of the Board, just to clarify, it's not necessarily here because it's a new contract. It's here because it's a professional services contract. The code requires all professional service contracts to come to the Board regardless of size.

MS. BECHERER: So the original scope of work was for 12,300. And there's an additional service of $2,200. So -- I forget the total -- 14,000, something like that, for the structural fee.

CHAIRMAN McCUSKER: Do you need more room with Schneider? Should we give you some leeway in that or just that you --

MS. BECHERER: If possible, a little leeway. But not much is needed. I do not anticipate it even reaching $20,000. We're at 14,000 now.
CHAIRMAN McCUSKER: Just quickly, again, they're engineering what, exactly?

MS. BECHERER: Well, they're engineering a whole bunch of little things throughout the project: The breezeway ceiling, the soffits, the entry soffit, the south wall. They had to design a beam for a new entry into a wall that's a load bearing wall. We needed a lentil. So it's a whole bunch of little things that we need their professional services for.

CHAIRMAN McCUSKER: What is your pleasure?

TREASURER SHEAFE: I'm noticing here, Elaine, that this says twelve, three. You confused me when you added the additional funds.

But Fletcher raises an interesting point. These are small items that keep coming up. Should we just approve 18,000, up to, and then leave it to staff to make good choices?

MS. BECHERER: So as best as --

CHAIRMAN McCUSKER: It's a specific contract, right?

MS. BECHERER: It is a specific contract.

CHAIRMAN McCUSKER: So we kind of have to approve the contract.

TREASURER SHEAFE: Well, we have to approve this contract. But this contract's for twelve, three.
MR. SCHMALTZ: Mr. Chairman and Members of the Board, Board Member Sheafe, what you can do -- because this is a -- we are piggybacking off of a City of Tucson contract -- it's a cooperative purchasing agreement with this engineer -- you can set the not-to-exceed number at $18,000 that we put into that cooperative purchases -- or whatever the number is --

TREASURER SHEAFE: All right.

MR. SCHMALTZ: -- into that cooperative purchasing contract. And then that would be the not-to-exceed number based upon the scope. And if we need more, we can then come back and do a change order.

TREASURER SHEAFE: And this -- Chris, this contract would fall within that parameter?

MR. SCHMALTZ: Correct. Yes.

TREASURER SHEAFE: Okay. So I'll make a motion that we set not-to-exceed 18,000 to cover the structural engineering contractual obligations of the District in completing this job.

SECRETARY IRVIN: I'll second that.

CHAIRMAN McCUSKER: Any further discussion?

All in favor, say aye.

(Ayes.)

CHAIRMAN McCUSKER: Any opposed?

(The Board voted and motion carried.)
Okay. Anything else for Michele while she's standing here?

SECRETARY IRVIN: You mean Elaine?

CHAIRMAN McCUSKER: I'm sorry. What did I say? Michele? I was looking at her.

Thank you, you're doing a great job.

MS. BECHERER: Thank you.

CHAIRMAN McCUSKER: While we're talking about the Arena, Item No. 10 is my agenda item. We did budget for something in the overall budget in the marketing side. But we're at a point where we're enough in advance whether -- if we do want to do something, we would need get specific, particularly with dates and talent.

But we've tentatively held the date of January 3rd with the TCC staff to do some sort of Rio Nuevo, Tucson-City-Arena celebration.

The best bang for our buck in that particular situation, I believe, would be to host a concert. Not only would it be a huge celebration, but we need the concert world to see this arena completed. And it would be my hope that we would be in a position by then that we could really showcase the new Arena and invite producers, agents, managers, talent, promoters from around the country, to come see our new Arena.

We do have a line on a hall of fame act that is
available. I believe the event itself is probably a break-even proposition. You wouldn't give it away. You still have a ticketed event. But, you know, if we're not interested in making any money, you could keep the ticket at 20 or 25 bucks and have a really nice event.

So I would just ask that you entertain that and maybe authorize -- the money's in the budget, but I think we would need an authorization for us to go forward to actually book the band and book the -- book the arena.

MS. COX: So moved.

CHAIRMAN McCUSKER: Can't tell you who the band is. But soon we could.

Jannie moved that. Any second to that?

SECRETARY IRVIN: I'll second that.

CHAIRMAN McCUSKER: Any further conversation?

MR. MOORE: Mr. Chairman?

CHAIRMAN McCUSKER: Mr. Moore.

MR. MOORE: Question: Is that budget also going to include to bring the producers and --

CHAIRMAN McCUSKER: No. I would hope that they'd see the wisdom of just being here for the event. The band and the band's managers would have some complimentary tickets. They normally get that. They could invite -- use that to invite some others. So hopefully we can work with them to -- maybe the only thing we do is offer them a free
ticket. But I wouldn't pay for anything.

MR. MOORE: Would we be hosting an event?

CHAIRMAN McCUSKER: I think we could do that, have a VIP --

MR. MOORE: Some kind of --

CHAIRMAN McCUSKER: Meet and greet. Yep.

MR. MOORE: We want to make them feel welcome and not just come for the show.

CHAIRMAN McCUSKER: Yeah.

MR. MOORE: Okay.

MR. RITCHIE: Did you check to make sure there's not a basketball game that day?

CHAIRMAN McCUSKER: I did not, no. It's kind of limited at the TCC and the particular town.

Do you want to check the basketball schedule real quick?

TREASURER SHEAFE: Well, we're not voting on the date, necessarily.

CHAIRMAN McCUSKER: Well, you know, that's true. We could just vote on the concept. We can work around the date.

All right. So we have a motion and a second.

All in favor, say aye?

(Ayes.)
CHAIRMAN McCUSKER: Any opposed?

(The Board voted and the motion carried.)

All right. Stay tuned.

Okay, Chris. So back to the regular schedule.

And are these out there if anybody --

MR. SCHMALTZ: Yes.

CHAIRMAN McCUSKER: -- wants to borrow.

MR. SCHMALTZ: There are some additional ones if anyone would like that.

Mr. Chair, Members of the Board, my name is Chris Schmaltz. I'm one of your attorneys at Gust Rosenfeld with my partner, Mark Collins. It's my pleasure to be here today to talk to you about open meeting law issues and conflict of interest under the statutes.

Feel free at any time to ask any questions. If a question comes up on any point that I make, either on the slide or in my discussion, don't hesitate to interrupt and ask away.

And in the interest of time, we'll try to keep it to 15 or 20 minutes.

Anyway -- the next slide -- I always like to start out with this statement, which is in the statute. And so whenever you hear either a statement from Mark or me with regard to a question related to open meeting laws, this is
always what I keep in mind and certainly what you all should keep in mind as well. This is the statement that's in the statute, so it's an expression of -- from our legislature, sort of what the open meeting law is all about.

So the final sentence is the key, from my perspective as your advisor is, toward this end, any person or entity charged with the interpretations of this article shall construe this article in favor of open and public meetings.

I think that's sort of been a role that I enjoy in my practice with you as well as with other public entities. It's a role I take seriously and certainly feel free to ask me any questions with regard to that.

Next slide, please.

So here we're talking about ARS 38-431. This is the open meeting law. It applies to any meeting of a quorum of members of a public body. So we're going to go into the definitions and talk about that. But that's what it applies to; it's about open government; it's about any collection of public entities, members of a public entity who can take action. As you know, a quorum is a -- is a collection of members of a public body that can act and take legal action.

That meeting, by statute, can occur via technological device. And it's in any context where any one of you or the members of the public body propose any type of
legal action or action otherwise, a discussion on potential legal action.

A quorum --

CHAIRMAN McCUSKER: Will you talk for a minute about email streams.

MR. SCHMALTZ: Oh, yeah. I'm going to get -- I will absolutely get to that.

CHAIRMAN McCUSKER: Is that a separate slide, or is that related to --

MR. SCHMALTZ: Multiple slides on email and the dangers of email, et cetera.

CHAIRMAN McCUSKER: Okay.

MR. SCHMALTZ: But, yes. As a broader point, email absolutely can serve as a basis for a meeting and be construed as a meeting. The main point being, the "reply all" button is not your friend, right? If an email goes out to all of you, the "reply all" button should be avoided at all costs.

So a quorum is a majority of the public body, the constituted however many members of that public body there are. However, sometimes it can be less than a majority because members are conflicted out, they can't participate, or they're not present. And so by the rules of that body, you can still conduct a meeting even when you have less of a quorum present to hold a meeting that day.
There are a variety of ways that this sort of quorum notion can get tripped up and trip you up with regard to sort of whether a meeting can occur. And so your sensitivity to, if I'm here with two or three others and we're talking about something that might either -- we know is on an agenda or might be coming up on an agenda, you have to be careful about that. Not that I'm saying that it's automatically a meeting, but that it could be construed by others who are trained in investigating these things and looking hard at these things -- like the Attorney General and the county attorney, et cetera -- may construe three of you at a certain location talking about a certain item as being a meeting.

And so that issue should be always in your mind when there are a few of you gathered to talk about a specific thing that could or might or will be on an agenda coming up or has been on an agenda and you just find out, taking legal action on it.

Any questions with regard to that?

On the slide there's a spokes of the wheel notion. And the spokes of the wheel idea is, one of you serves as the communicating node. So I, as a member of the Board, start to talk with you individually about what your take is on this upcoming action we're going take. And I'm communicating to each of you individually to avoid the open
meeting law issues because we're not all talking at the same time.

Except what I'm doing is communicating everybody else's thoughts to you as I individually talk to you. And so in that instance, I am the hub, and you are all connected through me like the spokes of a wheel. And so, in effect, we are creating a meeting by me being the conduit through which everybody is discussing the item. There is potential there.

And modern technology makes that so much easier to do that I have updated my presentation on this to address exactly that idea. Modern technology has created the situation that it is easy to inadvertently do this. You're not even thinking about it. But, in effect, you're acting as that conduit through which you're having a meeting. Meanwhile, nobody is talking to one another.

Next slide.

So as I mentioned, the public body is the duly appointed board or planning commission or town council. And it also encompasses officially established committees. So if, in an act that you take as a -- you create a subcommittee that is to address and be the West Side Parcel subcommittee -- just as an example. But this is a formal act. Not an ad hoc sort of go forth and negotiate related to this, two of you do this, but a subcommittee that is
intended to meet on and report to the full Board related to West Side issues. If you constitute that committee, that committee is subject to the open meeting laws. So its agenda, everything else, is subject to the requirements I'm going to touch on.

So this really encompasses the -- and be sensitive to committees that you establish for that specific and official purpose.

Next slide.

So what are the requirements? I think you're all probably aware of it and comfortable with these requirements, but I'll touch on them. Notice of the meeting has to be provided at least 24 hours ahead of time. Posting of the agenda, website of the agenda, the agenda itself has to list the specific items that you're going to address. It cannot be so generic such that it really could cover a wide variety or range of things.

It needs to provide -- again, the idea is notice to the public about the action that you're going to take. And that requires that there be some specificity with regard to what it is you're going to approve or take action on. So there -- if you -- if there's an open question about what the action might be, you know, the agenda item can reflect that.

However -- again, this is the idea about open
government, providing the notice to the public that this body is going to take legal action with regard to this specific thing. And that's important to sort of reaffirm this idea that this is all about open communication to the public because you serve on their behalf.

Many agendas include a call to the public. However, that's not required. It's not a statutory requirement. You can, as a Board, provide that opportunity. Almost every public entity does that, provides it. However, it's not an agenda item that you can take action on.

You can respond to criticism. The statute allows you to respond to criticism that's directed at you personally and to address any inconsistencies or to deal with any criticism that you hear personally. But you, as a Board, can't take action on anything that is brought up or discussed during the call to the public because it's not technically agendized.

If somebody has a grievance that they want to address related to their neighbor, that's not on the agenda. They brought it up. They brought it up during the call to the public. And so the only thing that you can do related to that is direct staff to put it on the next agenda so the public then has notice that you're going to talk about and deal with that specifically.

(Mr. Moore left the proceeding.)
MS. COX: Chris, were you saying that if you were making comments as a member of the public that -- I think I heard you say that we could ask clarifying questions of that individual. I thought it was understand that we could not respond to anything they said.

MR. SCHMALTZ: You can respond to criticism.

That's it.

MS. COX: Okay.

MR. SCHMALTZ: So if there is criticism directed at you --

MS. COX: I see.

MR. SCHMALTZ: Yeah.

MS. COX: Okay.

MR. SCHMALTZ: And the law gives you that right to respond to that negativity by either clarifying or working through sort of what the issue is with that person who is criticizing you specifically.

But if you go down the road of somebody brings up something during the call to the public, it's not a -- it's not an open invitation to sort of engage in a dialogue with that person. You have to say, it's not on the agenda. We can't really discuss it. We can't get into it with you. However, we'll put it on the next agenda or I'll talk with you about it offline and we'll see if we'll put it on the agenda.
That's as far as you can really go.

CHAIRMAN McCUSKER: We've got, you know, legislative members that become Board members. And they're used to being able to ask the questions.

MR. SCHMALTZ: Yeah.

CHAIRMAN McCUSKER: And we take the position that you can't do that.

MR. SCHMALTZ: Yeah. And the call to the public situation, it's really -- it's an opportunity to get crosswise with the open meeting law because if things are brought up that aren't on the agenda, they're not on the agenda.

So it's -- the public would have no foreknowledge -- 24 hour's notice -- again, if you -- if you think back to that, they would have no -- they wouldn't have 24 hour's notice that this topic was being brought up. And so that should send red flags off immediately in that, okay, the public had no notice about this topic. It's not on our agenda, so we need to put it on an agenda so the public knows that we're going to talk about it.

Legislative rules. They've exempted themselves from many of those rules.

So -- and the minutes, the open meeting law requires that minutes be taken, either transcriptions you know, handwritten minutes, or recording of the meetings.
You have those options. But there are specific rules that address. You have to take the minutes. Again, this is open government. Here's what we did. Here's the record of what we did.

So one of the key things and interesting things that I like to touch on is that the open meeting law confers a right to, as I said, attend and listen.

(Mr. Moore returned to proceeding.)

MR. SCHMALTZ: It doesn't give people the right to speak unless there's a specific statutory reference or requirement for a public hearing.

I deal a lot in the zoning and land use world. And so there are often requirements for public hearings on rezonings or other types of zoning-related actions. And the statute specifically says you will conduct a public hearing.

Technically, then, you opened a public hearing. And then that is a right for the people to come up to the microphone and say their peace with regard to that item. But the open meeting law itself does not contain any right to speak during an agenda. Now, any Chair of a public body always has the right, the authority, to allow public input on an item.

But what the open meeting law doesn't do is give people the right to come up and stand at this microphone and speak. You certainly have the right to do that. But it's
always a point that I like to highlight, in that the call to
the public is sort of a right for people to come up and
express their grievances to their government, right? But
it's not something that you necessarily have to do or could
choose to do or are required to do under the statute.

Next slide.

Oftentimes we have public bodies who have either
adopted or would like to adopt Robert's Rules of Order. We
have been -- and I often recommend and go through this
process of changing those rules to make sure that the
Robert's Rules of Order are a guide. I put this slide up
only because Robert's Rules of Order are there for a reason.
They provide order to a public meeting.

They -- but treat them as a guide only. They help
for the orderly flow. They conduct. They control.
Oftentimes it has elaborate rules, which I won't get into,
in terms of dealing with motions, et cetera. Anyway, we
would like to use them as a guide because they do provide
some order for meetings.

Go ahead.

Okay. So to get you -- on your email -- focused,
technology, social media, et cetera. These are current
issues that can trip up and have tripped up people related
to open meeting law.

Go ahead.
So with regard to email, the law is clear that a
meeting can occur via technological means. So email is
exactly that. Send one email to all members of the Board.
Somebody hits a reply all. It's about a specific item on
which you could take legal action. That's a meeting. Yes,
I agree with that in a -- in a reply all. That's a problem.
Don't do it. Never -- if you see -- ever see an email
related to the Board business that goes to all of you, never
hit reply all. Ever.

Only reply to either staff or an individual,
specifically, to respond. But even then, in an email that
has gone to everyone, red flags should immediately be going
off saying, hey, this is a problem. Particularly if this is
an item that is appropriate for discussion in open session.

You cannot -- and, A, it should be obvious that
you cannot reply all. But you also can't be the chain of
emails that is a forwarding of. That's sort of a
modification of the spokes of the wheel idea. So I forward
it to this person. This person forwards it on to the next
Board member. That Board member forwards it on. And the
history is all in that email that continues to get
forwarded.

When it goes to the quorum person, the person that
trips the quorum, that's potentially a meeting because
you're all discussing and communicating to others what it is
that you think about that issue.
Go ahead.

So in an email, these are just some rules or advice that we always give. Do not announce your position on anything that might come before you as a body to others in an email. Do not ask or query anybody else about an issue that might -- or an item that might come before you in an email.

And do not appoint me or Mark or Michele to be the hub of the spokes of the wheel. Don't try do that either:
Hey, would you send this out and ask people X?
No. Never do that either.

The AG, there are AG opinions and examples and consent decrees, where they have linked together those types of communications that have gone to more than a quorum of the board members.

And this is a key point to remember: Email, communications dealing with public business are potentially public records subject to disclosure under the public records law. So be sensitive to that idea and communicate as appropriate in your emails. Because they may -- especially with regard to Board business -- because they may all be subject to public records requests.
Go ahead.

Texting and social media are sort of the next
layer of that, even more convenient, nowadays. It's what we tend to default to. It's what I use a lot. And so this is another issue that certainly -- the technological means -- it absolutely falls into.

It's a great way for people who are members of public bodies to communicate to the public, to sort of communicate sort of here's what's going on, that sort of thing. However, there are areas where you can get tripped up on the open meeting law side.

Remember that these meetings can be held via technological means. And so if you have a Twitter feed, if you have a Facebook page, if you have a Tumblr blog, all of those things can be an opportunity for an electronic or technological gathering of you all because you want to chime in on a point that was made with regard to this project that the board was working on. And I put it on my Twitter feed or my Facebook page. And then I reply to it. And then multiple Board members reply to it or do -- go into the comments and reply to it. That's the potential for a meeting because you're all, via that one page or via that one tweet, participating in the conversation that should be here after we put it on an agenda. Right?

So there are selected AG opinions that address each of those notions. Unilateral email that proposes action. That is the invite for, let's violate the open
meeting law. Right? So don't try to. Never do that, send
out an email to members of the Board that proposes that we
take action with regard to X. Never a good idea.

Communicating through the media, there was an AG
opinion, I think a few years ago, that dealt with the
potential for, if I make a statement as a public official in
the media, is that a potential open meeting law violation?
I think generally that has been concluded that it's okay if
you are responding to questions, responding to a reporter
query with regard to that.

However, if in that media statement you say
something about me and three other members of the Board, we
all agree that X -- and this is an item that hasn't been on
an agenda, that hasn't come before you or is scheduled to
come before you. But you -- there's a statement in the
media that is akin to, well, we've talked about this, or, go
talk to them; they agree with me kind of a thing, that just
invites sort of the idea that they've had a conversation
ahead of time, more than a quorum. That's a potential open
meeting law issue. Right?

CHAIRMAN McCUSKER: Chris, what about a reporter
that's the spoke in the wheel? Somebody calls me, then they
call Alberto, then they call Mark, then they call Cody. You
know, they interviewed a quorum of us, but none of us
necessarily knew that anybody else was talking to --
MR. SCHMALTZ: Well, if any -- Mr. Chair, Members of the Board, if any of you ever hear, well, your fellow Board member said, in that conversation, you got to stop. I would stop.

Because they -- while you may not intend for them to be the hub, right, it may, by that very process, be -- they may be either baiting you into it or inadvertently participating in this process, whereby he or she is communicating to a quorum of you what the views of everybody else is, thereby creating this spokes-of-the-wheel meeting situation where you're all communicating to one another through this singular person.

If you ever hear in the conversation, well, this Board member said X with regard to this issue; what is your feelings on this? I wouldn't go down that road. And I wouldn't want to hear what the other Board member had to say. You need to hear what they have to say in here after a properly noticed agenda.

And the blog meeting is -- again, it's the Facebook page sort of. But if you have an individual blog, say you're a communicator and you want do this, you want sort of -- I'm a member of this public body and I want to write about sort of what we're doing and -- and I think that's an important service. That's terrific. Communicate to the public.
However, if -- when you get into sort of issues is that -- and comments and you respond to comments and public Board members of other members of the public body start to respond to blog posts, that has the potential to create a situation where a quorum of you are having a meeting.

So the vast majority of open meeting law complaints involve Executive Sessions. Executive Sessions can only be held for the seven reasons listed in the statute, no other reason.

You cannot have an Executive Session simply because the issue is embarrassing, uncomfortable, or messy. That's not a test. It's not part of the test.

Primarily, the Executive Sessions that we deal with, with you all, is legal advice, property-related negotiations, settlement and contract negotiations. Right? But -- and employment, employment issues. Those are four.

There are a couple of others.

But that's -- those are the reasons why you can have an Executive Session. Only those parties who are necessary for the Executive Session may be present. You have to take minutes.

And this is the main point I always make with regard to Executive Sessions. Executive Session, they are private, slash, confidential. But they're not secret. Again, that's the whole point. You have to put them on the
agenda.

Go ahead, next slide.

You have to put them on the agenda and give the public notice that you may potentially go into Executive Session. There has to be specific action to do that. You have to provide the reason why, the statutory reason. And more than just the statutory reason, you have to give some -- which we do on our agenda, the reason why and the purpose for which the Executive Session is being held.

During the Executive Session, only those persons reasonably necessary may attend. You cannot take a straw poll or have deliberation or any discussion, take a preliminary sort of let's have a show of hands, none of that. All legal action has to take place out in the open.

So -- and just like we do here, out -- once the Executive Session is over, you come out and reconvene in the regular session out here in public. And any final voter decision that's taken -- that is to be taken on the item that you got legal advice on or the contract or the settlement that you're working on, that action has to take place out here in the public meeting.

Go ahead.

These are the violations for open meeting law.

These are the penalties for open meeting law violation.

$500 for each violation. If it's intentional -- I'm using
the reporter to be the hub of a wheel -- removal from
office, potentially, if it's intentional.

All legal action taken by the body at the meeting,
null and void. Not voidable, null and void.

There are statutory steps that apply if you want
to ratify that action at a subsequent meeting. But they are
very specific and you have to do that in order to ratify the
action.

Any other questions with regard to open meeting
law issues?

Okay. So I'll move on quickly to conflicts of
interest. This is the main statute that deals with -- this
is 503(A) that deals with contract, sales, purchase of
service that you're -- that you may be involved in. We're
going to go through each of the underlined words.

And than the next slide talks about any action
that maybe taken, same language --

Go ahead.

-- public officer or employee of a public agency
who or -- who has or whose relative has a substantial
interest in any decision. So first session is related to
contract, services, et cetera.

This is much broader. Any decision. And if you
have a substantial interest in a decision of a public body.

So what do all these words mean?
Go ahead.

The statute defines them all. Public officer is you. You are appointed members of a public agency.

Public agency is the District.

This is interesting. The statute specifically defines relative. And this is the list that's in the statute. So again, you or a relative having a substantial interest. So relative is spouse, child, child's parent. It goes way beyond your nuclear family, right?

So take a look at that list, sort of absorb that list, because these are -- all should be the triggers, should be red flags related to conflicts of interest.

Go ahead.

Substantial interest, pecuniary -- relating to money -- or proprietary -- relating to ownership, business -- interest, either direct or indirect, other than a remote interest. So notice how that is phrased in the statute. Practically everything that's related to money or property or ownership, related to you or a relative, is a substantial interest unless it fits within a carve out that is a remote interest. So everything relating to money or property unless it's a remote interest, right, for you and a relative.

So the language says you have to make known that.

The public needs to know that you have a potential conflict.
So you have to make known in the public -- in the official
records of the body. Doing that by, ahead of time, writing
to the clerk or at the meeting itself you declare that you
have a conflict.

And by participating, that means no action, no
discussion, no voting, no nodding of the head, no nothing.
We always recommend -- my advice is always to leave the
room. That way you don't get into the squinting of the eyes
and the nodding of the head and the shaking of the head and
any of that sort of, I disapprove, or, I think that's great,
sort of notions of this is an item that I've already
declared I have a conflict with, but I'm still in the room
and I'm somehow sort of with my body language conveying
approval or disapproval. We always -- to avoid that
scenario, we always recommend that you leave the room for
that item.

So the remote interests, which I won't go into
detail, are -- you know, there's a whole list of them. So
remember, you have a substantial interest related to money,
indirectly or directly, related to money or proprietary
interest, unless it's a remote interest. And there's a
variety of remote interests, that of a landlord and tenant,
interest of an attorney of a contracting party, an interest
of a nonprofit cooperative bargaining association.

Go ahead.
Ownership of shares of a corporation and
certain -- up to certain percentages.

Go ahead.

That of a public officer or a relative, et cetera,
unless that would infer a direct economic benefit or
detriment upon the officer or the relative of another
subdivision, et cetera.

Go ahead.

This is an interesting carve out, a remote
interest. If you are a member of a trade association that
is more than ten -- or I guess it says at least ten -- which
is no greater than -- if your interest is the same as any
other member of that trade association, you might fall into
this remote interest category.

We had a issue of that with a town council that we
represent where a minister was dealing with an issue
associated with signage for religious activities. And he
had a religious -- he had services, and he wanted to put
signs out on the sidewalk. And so it was related to his
interest -- it was about gathering people at his
congregation, et cetera. But because he fell within this --
his interest is identical to any other church sort of leader
within that community, his interest was determined to be a
remote interest because he had an identical interest in the
location of those signs.
Go ahead.

So the headline test and red flags internally, right? This is having your radar up at all times. If the item has a possible personal or a relative, as the statute defines, interest, pause to assess and talk to Michele or Mark, right? Immediately communicate, this is a potential issue. I need think about this.

Ultimately though it's your decision. We will -- we can give you advice with regard to that and tell you, this is what we think. But you, as the public issue -- public officer, you're the final -- you have the final say on that.

There is a procedure to request an opinion. It's pretty rarely followed. And the main point to remember is, keep your radar up with regard to these issues at all times. Be sensitive to this issue. You are a member of a public body. These are potential issues. So have your radar up and be sensitive to this at all times.

So what do I do if I determine that I or a relative has a substantial interest? Make known that either writing ahead of time -- email is probably good -- and then at the meeting itself declare, I have a potential conflict of interest. I'm not participating in any way in this item, and leave the room.

These are the penalties. Intentionally or
knowingly violate, that's a felony and removal from office. Recklessly or negligently violate this, Class I misdemeanor, highest misdemeanor. Contracts in violation are voidable by the body that you are a member and potential civil action where all the fees and costs can be recovered.

Any questions with regard to any of that information?

MS. COX: This may -- we could gather for my birthday party, right?

MR. SCHMALTZ: Yes.

MS. COX: We could all be there in the same room together.

MR. SCHMALTZ: Yes.

MS. COX: We could all be officially invited with a written invitation or an email --

MR. SCHMALTZ: Yes.

MS. COX: -- to come to my birthday party. And that would be totally okay. We just don't talk business at my birthday party.

MR. SCHMALTZ: Here's the best practice that I recommend, if you know -- if you got an -- if you've all been invited to an event that you know that the majority of you is going to be at, notify Michele so that she can post a potential gathering of a possible quorum of the Board, there is no agenda, no action will be taken, there is no items
that will be discussed.

You post that notice to the public --

MS. COX: Oh, I --

MR. SCHMALTZ: -- so that they all know that a potential quorum of you will be at this event, but you made clear that -- and you provide notice to the public that we're not discussing anything, we're not doing anything at that meeting. Because it is a meeting. It's a gathering of you. But no action's being taken. And if you're up front with that and you post that notice to public ahead of time, 24 hours ahead of time, then you're safe, in my mind.

MS. COX: So if we were going to something in the public and then we looked around and realized we're all in the same room, we didn't know we were all going to be in the same room --

MR. SCHMALTZ: Yes.

MS. COX: -- we just make sure that we don't get together.

MR. SCHMALTZ: I would -- that would be the best -- that would certainly be the best practice, for sure, yes.

MS. COX: Okay. Thank you.

CHAIRMAN McCUSKER: In part of our official duties, we routinely get invited to things.

MR. SCHMALTZ: Yes.
CHAIRMAN McCUSKER: The streetcar opening, the Rialto grand opening. The same issue there?

MR. SCHMALTZ: Yes.

CHAIRMAN McCUSKER: If there are four of us there, if we just post it?

MR. SCHMALTZ: I would -- I would -- I would recommend that, in terms of the best practice, notify Michele more than 24 hours ahead of time that I've been invited to this. I might go to it.

And if she -- and then she will put together a short post that says, notice of a possible quorum, no agenda, no meeting, no action, so that the public has notice to the possibility that four of you will be there. That's the safest route to go.

CHAIRMAN McCUSKER: You just paid the price of admission right there.

MR. MOORE: But it's okay to send Jannie presents.

MS. COX: Oh, yeah, that's okay.

TREASURER SHEAFE: As long as you don't put a little note in there that tells her how to vote on something.

CHAIRMAN McCUSKER: All right. Anything else for Chris?

That was outstanding.

MR. SCHMALTZ: Thank you.
CHAIRMAN McCUSKER: Thank you very much.

MS. COX: Thank you, Chris.

TREASURER SHEAFE: It really was. Thank you, Chris.

CHAIRMAN McCUSKER: You even changed his mind.

Did you notice you got a thumbs up from Mr. Sheafe?

Okay. Item 12 should be pretty quick.

Now, we're still waiting for them to get back to us, right, Mark?

MR. COLLINS: Yes.

Mr. Chairman, Members of the Board, at the last meeting you authorized me to make some changes in the proposed ADOR IGA. I have made those changes. They've been provided to the ADOR, I have been advised. And we are awaiting their responses.

CHAIRMAN McCUSKER: Any questions for Mark on Item 12?

Okay. The big ticket item for today, Item 13.

And we'll need some help from counsel as we work through this.

Unless you live in a hole, you know that the District Board decided to seek a strategic partner for the so-called Arena Lot, that's the property that the Greyhound is temporarily located on. We won the deed to that property -- won is maybe not the right word. But we got the
deed to that property in a global settlement with the City of Tucson. We're very interested in its development in the future. It's the gateway to downtown from the West Side. And we released an RFP. We've had two responses to that, which we have made public. We opted to be the evaluating committee ourselves. So each member has, independent of each other and without any conversation with one another, scored those. Those scores have been made public. And then the overall ranking has been made public. So, Mr. Schmultz, walk us through now what our duties and responsibilities are. And Cody is, in fact, conflicted. So as we just learned, leave the room. (Mr. Ritchie left the proceeding.)

MR. SCHMALTZ: Mr. Chair, long time no see. Yes. Before you, you have a couple of options. And the agenda sort of lays those out. Just sort of briefly I'll go through RFP itself. RFP sort of identifies the process as the initial scores, which you have in front of you which the public has, based upon the proposals that we received. We received two proposals. Each of those proposals were scored by you individually. Those scores were compiled. The proposals
that we received were Nor-Gen and Peach Properties.

The scores of those proposals -- the combined scores was Nor-Gen, 5290; Peach Properties, 5115 based upon the seven evaluation categories listed in the RFP.

So the options you have before you today are to take those initial scores and designate that as the final list and direct us and others, sort of members of the Board that will participate in the negotiation, to proceed with negotiating with the number-one ranked proposer. If you went that option, that would be Nor-Gen.

Or Option B is, as articulated in your agenda and which the RFP provides for, is you have the option to schedule interviews with both proposers and then to score those interviews after those interviews are conducted. And then the final list, the final ranking, will be the result of the combination of the proposal scores, which you have before you today, and the scores from the interview using the exact same criteria that's listed in the RFP. So those are your options as well.

The other option is the cancel the solicitation. But that's sort of a third option. Those two options that I just discussed are what's before you today. It's at your pleasure. You can choose to do either one.

If you choose item -- to proceed with interviews, your motion should include sort of directing either that
those interviews be scheduled at the next regular meeting or at a special meeting of a certain time period to give the proposers time to prepare their presentations, et cetera, which we can schedule, with the idea that the final list and the final scoring may be conducted and announced at the next regular meeting or whatever sort of timing that you would like.

Any questions?

CHAIRMAN McCUSKER: And again, just to be clear for the public and the Board, if we opt to go with the oral presentation, you score the same categories and the same maximum points again?

MR. SCHMALTZ: Yes.

CHAIRMAN McCUSKER: And then those scores are combined with the proposal-only scores; is that correct?

MR. SCHMALTZ: Essentially you will get an identical score sheet that you received to score just the proposals. You will get the same blank score sheet, only on the top, now, it will say interview. And you will use the same scoring, the same point totals. You will add and do our own individual scoring based upon the interviews. And then all of those scores will be combined.

So again, the initial scores are 5 -- 5290, 5115. And then whatever the result, the combined scores with the interviews will be added to these to result in the final
CHAIRMAN McCUSKER: And in the event there's a tie?

MR. SCHMALTZ: In the unlikely event that there's a tie, certainly, the minimum threshold, the minimum qualifications, the minimum criteria, were minimums. So you, as a Board, can make the determination that the highest offer then in the event of a tie, is the winning -- sort of the thumb on the scale in that event.

The RFP doesn't specifically address a tie or a tiebreaker. So you, as the Board, would have the option to make that determination.

CHAIRMAN McCUSKER: Any questions of Chris about the process?

What is your pleasure?

MR. SCHMALTZ: Mr. Chair, you have a question.

CHAIRMAN McCUSKER: Mr. Moore.

MR. MOORE: Now, it goes into interview, the participants can't change their proposal as they've presented it? or can they? Can they modify it during those interviews, or should they stay close to their presentation?

MR. SCHMALTZ: Well, the proposals have been scored. And so if they chose to offer an alternative during the interview, they do that at their own risk, in my mind, because that doesn't necessarily cut in a positive way for
Yes. Since they both will have seen and have seen the other entity's proposal, there maybe parts of the interview that will tease out sort of details about each potential proposal that you want to hear that may impact sort of what -- how you score from the interview, how you score that potential proposer, right?

So the interview can take a lot of directions. And it's intended to sort of flesh out those ambiguities and detail that may not have been fully expressed in the proposal itself.

CHAIRMAN McCUSKER: In that vein, could the bidder change the economics of the proposal, increase the price, change the whatever?

It would seem to me that's inherently unfair --

MR. SCHMALTZ: Yes.

CHAIRMAN McCUSKER: -- if they were allowed to do that.

THE WITNESS: I don't think so, no. Their proposal is what their proposal is in terms of the economics, what they've said, what their product is, et cetera. The interview is really to --

CHAIRMAN McCUSKER: Clarify --

MR. SCHMALTZ: -- clarify.

CHAIRMAN McCUSKER: -- and ask -- we can ask any
kind of questions we want during this interview process.

THE WITNESS: That's correct. Because the economic piece of it was just a minimum qualification.

Any other questions?

CHAIRMAN McCUSKER: Okeydokey. If you move to select the scores as they stand, that would eliminate the need for an oral presentation.

MR. SCHMALTZ: Yes. That would need a second -- that motion would need a second and then passage by a majority.

CHAIRMAN McCUSKER: If you move to -- and we vote, the majority votes on the oral presentation, then that's -- that would proceed -- we would proceed and schedule those presentations.

MR. SCHMALTZ: That's correct.

CHAIRMAN McCUSKER: So it's really either one or other unless the majority of the Board was so inclined to terminate the entire process.

MR. SCHMALTZ: Yes.

CHAIRMAN McCUSKER: So you have three options.

Mr. Irvin?

SECRETARY IRVIN: I'd like to make a motion that we conduct interviews. I think this is the strategic piece that we have already expedited as far as a response. And I can't speak for anybody else, but I do have a number of
questions that I'd love to be able to pose that really were not addressed in either one of the proposer's response. So I'd like to see us go ahead with the oral interview of both of the applicants --

MS. COX: Second.

SECRETARY IRVIN: -- or excuse me -- proposers.

CHAIRMAN McCUSKER: We have a motion and a second of the Option B, to discuss and vote, schedule interviews of the highest ranked proposers -- we only have two -- at a subsequent date.

Any discussion, questions?

TREASURER SHEAFE: Let me make a couple of statements. And I apologize for being a little bit wordy. I personally take this responsibility here seriously and also, in reading through the proposals, was very appreciative of the effort that went into the proposals. I didn't think that either one of them, in any way, gave short shift to the opportunity for maximizing the value of the Arena Parcel.

And it seemed to me that both parcels -- or both proposers worked hard to meet the objectives that we've expressed for this property to maximize its use and also the speed with which we can create some additional activity downtown. So in a way, I feel conflicted because it's like we have two winners. And yet we owe the process and we owe
the participants some speed in getting this thing through the queue so they get some certainty in preparing what they are doing.

For all those reasons, I strongly support the idea of going through the interviews just to double confirm our understanding of how quickly each of the -- or the one proposal, lead proposal can be put into action and the certainty with which that plan has been proposed would evolve into reality.

MR. MOORE: My turn?

Well, if we do go into -- wanted to interview the two candidates, I think it's very important that we do it in a very timely basis. And I think that we should conduct these interviews within the next ten days, you know, however we're going to it, so that everyone has enough time to notify their teams, or whatever they want do, to come forward, make their presentation so that -- you know, maybe we have a special meeting to review this and then select whoever we want to select.

But this idea of dragging it out for another 30 days and then another 30 days after that, I don't think it's fair to the people that are spending a lot of money and making these -- this presentation and representing their interest to have this thing drug out.

CHAIRMAN McCUSKER: I think if the motion passes,
then we would move quickly to addressing the schedule.

SECRETARY IRVIN: Yeah.

CHAIRMAN McCUSKER: If the motion doesn't pass, it's moot.

Any other questions, comments?

Michele, call the roll.

MS. BETTINI: Mark Irvin?

SECRETARY IRVIN: Yes.

MS. BETTINI: Chris Sheafe?

TREASURER SHEAFE: Yes.

MS. BETTINI: Jannie Cox?

MS. COX: Yes.

MS. BETTINI: Alberto Moore?

MR. MOORE: No.

MS. BETTINI: Fletcher McCusker?

CHAIRMAN McCUSKER: Yes.

(The Board voted and the motion carried.)

All right. So we've agreed to go forward with the oral presentations. Talk about when. I agree with Alberto, it should be quickly. And I'm in favor of the special meeting. It would allow us to have a special meeting, hear the interviews, score the interviews, and make a final determination by our next standing meeting.

TREASURER SHEAFE: Mr. Chairman, I would propose
we do that. And I would like to -- because I'm now newly
educated in these things, I can say with certainly that this
will be a public meeting with public notice. And therefore
the interviews would take place in an arena open to anybody
interested to participate.

So my proposal would be that we do that and
conclude this process prior to the next scheduled Board
meeting.

SECRETARY IRVIN: Can I just ask a question?

So, Chris, if I understand it -- unless I missed
something -- we -- and I'm just -- my concern is, is that I
want to make sure that we have as full a quorum as we can
for people to be able to participate. I know that Jannie,
as an example, is out of the town a lot because it's the
summer. And I'd just like to have people, you know, be able
to be here and be able to participate.

So if I understand things correctly, we actually
would have the ability, if we wanted to, if we couldn't get
a special meeting scheduled and have this on our regular
agenda for the next meeting, is there anything that would
preclude us at that meeting from making a decision?

MR. SCHMALTZ: Mr. Chair, Board Member Irvin, no.

You absolutely could schedule it for your next regular
meeting. You could conduct the interviews as part of that
regular agenda. You could each individually score, at that
meeting, turn in your scores to Michele. They would be compiled on -- at that meeting. And the agenda would include sort of agenda items to take action.

CHAIRMAN McCUSKER: So we really don't need an action here. The Chairman's prerogative is to schedule a special meeting, so . . .

MR. SCHMALTZ: You can either schedule a meeting now or --

CHAIRMAN McCUSKER: We could work it out.

MR. SCHMALTZ: Yeah.

CHAIRMAN McCUSKER: You know, I could call the meeting, post it, and --

MR. SCHMALTZ: Other than providing notice to the proposers, which I would certainly recommend, that meeting provide some certain significant --

CHAIRMAN McCUSKER: -- with them regarding their availability.

THE WITNESS: Yeah, you could. Yes.

MS. COX: Chris, would there be any reason why -- our next meeting is what? -- the 27th of August?

MS. BETTINI: The 26th.

MS. COX: 26th?

Is there any reason why we couldn't maybe do the interviews on the 25th and then have our regular meeting on the 26th and make the decision that day?
MR. SCHMALTZ: You absolutely could do that, yes.

MS. COX: That would mean that we could score them and turn them in and it wouldn't all have to be rushed in a meeting.

Is that a potential . . .

MR. SCHMALTZ: Yes. Other than sort of the 24-hour-notice issue. I mean, we would do the agenda in advance.

MS. COX: Yeah. Do them both. You could --

MR. SCHMALTZ: Yes. You could do them the day before, turn in your scores, and than you could distribute it at the meeting.

CHAIRMAN McCUSKER: So I -- I -- the motion's been passed. I will work with the proposers and the Board members to see if we can schedule a special meeting. And if not, we default to the August meeting.

But I tend to agree with Alberto. I think the sooner we can get this done and give notice to the proposers, then we can have counsel immediately move to drafting an agreement. We could be -- August 27th is six weeks away. We could be really far down the line by then.

So let me see what I can work out schedulewise. And you know, we'll be in touch with everyone regarding the schedule.

MR. SCHMALTZ: Okay. Very good. Thank you.
CHAIRMAN McCUSKER: Thrifty Block Project, Mark, that's just an update.

We do, in fact, have a report. But I know that they are involved in bidding, so they really didn't want it to go public. But it sounds like they're making some progress.

MR. COLLINS: Yes. Mr. Chairman, Members of the Board, in the packet that you have in front of you, Tab No. 2 is the Report No. 4 from the developer.

Very briefly, the developer has engaged an architect to do some design and development package, received one of the design and develop package, and by now will have received another. All of this is outlined in the first page of Tab 2.

General contractor for all the property has been engaged. And the developer is looking to try and make the footprint, if you will, on the vacant property bigger. And hopefully expects to role out the marketing for the project in August or September of this year.

Anybody have any questions?

CHAIRMAN McCUSKER: And they are obligated to do this quarterly, right, Mark?

MR. COLLINS: Yes, Mr. Chairman.

The agreement that the District entered into with the City and with the developer is that the developer
provides quarterly reports to this Board. And you can
request that the developer appear and answer questions at
any time at any one of your meetings.

CHAIRMAN McCUSKER: Thank you.

Call to the audience, Michele, did you get any
cards?

MS. BETTINI: No.

CHAIRMAN McCUSKER: Mr. Schmaltz?

MR. SCHMALTZ: I'm sorry, Mr. Chair.

I would be remiss if I didn't include the
discussion on an RFP with a reminder to you all that since
you opted for the interview option, that the RFP in the
procurement is ongoing.

So all the rules associated with communicating
with any of the proposers, any of those rules that govern
their conduct, and the issues that you have to deal with in
terms of conflicts or otherwise, they remain in place
throughout the end of this process. And so just remain
cognizant of that and be careful about that in terms of this
is an ongoing solicitation. And so be sensitive to that.

(Mr. Ritchie reentered the proceeding.)

CHAIRMAN McCUSKER: And that includes
communication amongst ourselves.


CHAIRMAN McCUSKER: Okay. Then I'd entertain a
motion to adjourn.

MS. COX: So moved.

SECRETARY IRVIN: So moved.

Second.

MS. COX: Aye.

CHAIRMAN McCUSKER: All in favor, say aye.

(Ayes.)

CHAIRMAN McCUSKER: Adjourned.

(The meeting concluded at 3:08 p.m.)

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CERTIFICATE

I, John Fahrenwald, certify that I took the shorthand notes in the foregoing matter; that the same was transcribed under my direction; that the preceding pages of typewritten matter are a true, accurate, and complete transcript of all the matters adduced to the best of my skill and ability.

_________________________
John Fahrenwald