RIO NUEVO MULTIPURPOSE FACILITIES BOARD MEETING

Tucson, Arizona
November 19, 2012
1:00 p.m.

REPORTED BY:
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(Meeting commenced at 1:05 p.m.)

CHAIRMAN McCUSKER: So let's go ahead and start.

We can get the pledge, roll call, and minutes out of the way while we're waiting for Cody.

Mr. Sheafe?

MR. SHEAFE: I can do that.

(Pledge of Allegiance was recited.)

(1:06 p.m.)

CHAIRMAN McCUSKER: Michele, would you do the roll call, please.

MS. BETTINI: Mark Irvin?

MR. IRVIN: Here.

MS. BETTINI: Jannie Cox?

MS. COX: Here.

MS. BETTINI: Jeff Hill?

MR. HILL: Here.

MS. BETTINI: Fletcher McCusker?

CHAIRMAN McCUSKER: Here.

MS. BETTINI: Alberto Moore?

SECRETARY MOORE: Present.

MS. BETTINI: Chris Sheafe?

MR. SHEAFE: Here.

MS. BETTINI: And we're waiting on Cody.

CHAIRMAN McCUSKER: And Cody is on the way. We had a text message from Cody; he's right behind us. We'll
make sure we don't lose him.

And I saw you emailed out the transcripts.

MS. BETTINI: I didn't put -- this is from two meetings ago, not the last meeting.

CHAIRMAN McCUSKER: Okay. So what was the last version we've approved?

Mark, do you know?

MR. COLLINS: The meeting before October 22, whatever that was, was the last one we've approved. October 22.

CHAIRMAN McCUSKER: We haven't seen those yet?

MS. BETTINI: No -- you have.

MS. COX: Yeah, we have.

MS. BETTINI: November 9th I sent out today.

CHAIRMAN McCUSKER: Can I have a motion to approve?

MS. COX: So moved.

CHAIRMAN McCUSKER: Second?

MR. SHEAFE: Seconded.

CHAIRMAN McCUSKER: All in favor, say aye.

(The Board voted and motion was passed.)

CHAIRMAN McCUSKER: Someone can move us into exec.

MS. COX: So moved.

MR. SHEAFE: Let's move to exec. That's a motion.

CHAIRMAN McCUSKER: Seconded. In Room 152.
All in favor, say aye.

(The Board voted and motion was passed.)

CHAIRMAN McCUSKER: Thank you. And we'll wait for Cody.

(The Board convened for executive committee at 1:07 p.m.)

(2:37 p.m.)

We said 2:40, so you want to give it a couple of minutes? About three minutes, we'll go ahead and start.

Okay. So we need a motion to reconvene.

SECRETARY MOORE: So moved.

CHAIRMAN McCUSKER: That was Alberto.

Second, please?

MS. COX: Second.

CHAIRMAN McCUSKER: Second by Jannie.

All in favor, say aye.

(The Board voted and motion was passed.)

CHAIRMAN McCUSKER: Okay. We'll see if we can advance the open meeting agenda. Thank you, everyone.

From my perspective, we are dangerously close to getting back to business. I'm sorry for the long time in executive committee, but most of that was around the City of Tucson settlement agreement. We'll talk about that in a minute. I think everyone knows we're working very hard to issue a qualified audit this year. We're dangerously close
to doing that. If you were here at our last meeting, you'll recollect that we were assigned, each of us, some projects. We are eager to begin to advance the ball. The crucial piece of that, of course, is going to be how we move forward with the City of Tucson. We'll talk about that in the next to the last item on the agenda.

So a quick update on the annual audit. We are maybe a couple weeks away from being able to issue that. We have all the work that we need for the period ending June 30, 2012, in front of BeachFleischman. There are some things that are timing as it relates to assets, property ownership, debt, but we think we should have that shortly. Our next meeting -- remind me again -- is December...

MR. COLLINS: 12th.

CHAIRMAN McCUSKER: -- 12th. We may call a special meeting to approve the audit just so we can get it done, published, and off to the State as part of their entire auditing process.

Under Item No. 7, a piece of that is related to the Fox Theatre debt. And I've enjoyed both sides of this ledger. Counsel has confirmed for me that I likely do not have a conflict of interest because I served as a voluntary Board member of the Fox Theatre, which is one of the things that is provided for in the conflict statutes. But in any case, we're probably not going to take any action on that
today because it's related to the determination of the final
audit.

But to give everyone a quick history lesson on
that item: Over the years, Rio Nuevo invested three
different times in the Fox Theatre, ultimately spending
around $12 million. The last tranche of that was in the
form of a loan. None of us were here. When I was at the
Fox, I raised a number of issues to this Board about the
appropriateness of that kind of indebtedness to a
not-for-profit theater that was lucky to break even. But in
any case, there was a loan on the books of $5.8 million, and
varied interest at the bond rate, which is six and a half
percent interest.

So we, meaning the Rio Nuevo Board, saddled the
Fox Theatre with a $5.8 million debt at six and a
half percent interest. The interest alone is over $300,000
a year. The Theatre's budget is about a million dollars.

So it was an impossible situation the day that
note was drafted. Five years later, the first payment on
that note was due, September of last year. And I believe I
was the first civilian on that side of the microphone to
indicate to the Board that the Fox had no ability now or
ever to repay that indebtedness, and that we wanted to talk
about some new terms.

Over the ensuing months, the Rio Nuevo Board and
the Fox Theatre Board did, in fact, agree on a term-out of
that indebtedness that we thought that we could afford and
would in fact keep the District's debt whole. One of the
interesting pieces about this transaction, however, is the
intervention of the national historical trust.

The National Trust for Historic Preservation is
actually the lessee of the Fox Theatre. The District has a
lease, with an entity called Fox Rehab, LLC, that the member
of that is the National Trust for Historic Preservation.
They are, in fact, our tenant. They sublease the theater,
then to the Fox Foundation to operate it. It's very
complicated.

But that position gives them the right to veto any
obligations the Fox Theatre would enter into. And indeed
they exercised that right by saying they did not agree with
the terms that had been arrived at between the Rio Nuevo
Board and the Fox Theatre Board. So that's left us at kind
of a standstill here for the last several months.

As any business facing debt where the
collectibility is in doubt, accounting principles require us
to consider the collectibility and reasonableness of that
asset. We've done that. The recommendation we believe that
we'll see in the final draft of the audit will be that we
stop accruing the interest on that indebtedness and that we
reserve some portion of that as uncollectible. And our
advice at this point is: probably half of that, at a
minimum, is uncollectible debt. You'll see that as the
final draft evolves.

We wanted to just share that because the Fox has
been one of those poster children of past misdeeds. And
the -- you know, the headline might likely be, you know, Fox
Debt Lost Forever.

But there's a long path to all of us getting to
this point. We remain optimistic that at some point we can
sit down with all three parties, including the Trust, and
still arrive at some terms that return some portion of that
debt back to the District. Is that clear as mud for
everybody?

MS. COX: Clearer.

CHAIRMAN McCUSKER: Clearer. Thank you.

Susan, could you update us on your work, please.

MS. VOS: Good afternoon, Mr. Chairman of the
Board, Board members. Just a really quick update.

I did get a response from John Sundt and more
information from Silvia on the Depot Project, so hopefully
I'll be able to wrap that up within the next couple of
weeks. I need to assess that information that was provided
to me, and then finally it will have to go through review.

Our firm policy is that everything before it's released has
to go through a partner review. But that is nearing its
end, hopefully sooner rather than later.

Westside: We're just continuing to go through most of the documents. Hopefully once Depot is off my desk, I can devote even more time to the Westside and start getting it done quicker. And also on the agenda, I noted that it's referred to as two forensic audit projects, but there is a third one quietly out there, which is the TCC East Entrance forensic audit that was started at R&A CPAs. It was transferred to Regier Carr & Monroe, but it's kind of just sat on the back burner waiting for clear direction from you all. Also, wanting to get the other two projects done before I open up a third one. So eventually, I'll just be looking for clear direction from you to continue on that.

CHAIRMAN McCUSKER: Counsel, then is it safe to assume that that audit was authorized, that -- you know, that that was one of the forensic audits that the Board authorized that Regier had not been able to start?

MR. COLLINS: It's my understanding -- I haven't gone back to review the minutes, but I'm seeing nods from a couple of the Board members who were on the Board at that time that it was in fact authorized. It was --

CHAIRMAN McCUSKER: Would you go back and just confirm that for us?

MR. COLLINS: I will.

CHAIRMAN McCUSKER: I don't believe it requires
any action, but if it does, we'll put it on a subsequent
agenda.

MR. COLLINS: Right. I will confirm that. As I
say, if there had been recent correspondence with members of
the board, maybe we can --

CHAIRMAN McCUSKER: I think we agree with your
sense of priorities. Let's get the Depot done, the Westside
done, and then we'll talk about that.

MS. VOS: All right. I just want to make sure you
guys knew I didn't forget about that one.

And then the accounting assistance, that's died
down a little bit. We have been getting some audit
adjustments from Bill. But again, we'll be looking for some
direction once your audit is completed on either
transferring that activity over to Bill and Michele to do,
or if you want us to continue with the accounting systems on
a monthly basis.

CHAIRMAN McCUSKER: And thank you for your help.

Any questions for Susan?

Mark, quick update on the 2008 bond issues.

MR. COLLINS: Really, there's nothing new to
report, Mr. Chairman, members of the Board. We're still
awaiting Mr. Hicks' opinion.

CHAIRMAN McCUSKER: Anybody have any questions or
need any further clarification on this? This is the
question about the unspent money, the 2008 bonds, about six and a half million dollars. We're waiting for bond counsel to tell us the status of that, whether or not it can be spent or has to be paid back.

MR. COLLINS: There has to be a determination by -- Mr. Hicks is the one who rendered the opinion that the 2008 revenue bonds were tax exempt. That opinion is vital to that bond issuance. He has been provided, I understand, with all the information he needs to render his opinion on what can and should be done with the unexpended bond proceeds. We've been waiting for that. And as of -- at least as of Friday of last week, I was informed that it had not yet arrived.

CHAIRMAN McCUSKER: All right. And while you're up there, let's go ahead and move to Item 10, City of Tucson Settlement Agreement. The -- and correct me if I confuse the timing because we've obviously gone back and forth on this a lot -- we have been working on responding to the City of Tucson's counter proposal to our proposal. In the last meeting, a special meeting, we authorized the executive officers and counsel to continue to negotiate with the City. We've done that in person and offline as much as we can.

We have a draft agreement today that includes some changes that we've been making. And I think we're prepared to suggest to counsel -- you know, and correct me if I'm
mistaken -- members to authorize us to continue those negotiations. Under --

MR. COLLINS: Yeah. I've been instructed by you folks that we ought to proceed forward with making the counteroffer that we've discussed.

CHAIRMAN McCUSKER: We would need a motion on that.

MR. SHEAFE: So moved.

MS. COX: Second.

CHAIRMAN McCUSKER: That was Chris. Seconded by Jannie.

Any further discussion?

All in favor, say aye.

Any opposed?

SECRETARY MOORE: I oppose.

CHAIRMAN McCUSKER: Opposed by Alberto.

(The Board voted and motion was passed.)

MR. COLLINS: Mr. Chairman, before you go forward, I think we also need, in connection with that, to talk about the TCC issue. I don't want you to forget that.

CHAIRMAN McCUSKER: Yeah. As a part of that settlement agreement -- and I think the City is going to box us in a corner unless they act in their meeting tomorrow -- we extended the filing of the lawsuit for the Tucson Convention Center claims through Wednesday.
Correct, counsel?

MR. COLLINS: That's correct.

CHAIRMAN McCUSKER: So if they do not agree to extend that further, we would have no choice as a Board, I believe, but to authorize Sean to file that lawsuit. And that literally means we would have to probably authorize Sean to do that in this meeting so that we do not miss a deadline. And then, respectively, request the City to extend that tolling agreement. If they do not, then I think we're obligated, is my sense, to file that lawsuit.

MR. COLLINS: Mr. Chair, members of the Board, I would agree. I think that the lawsuit -- for those of you who may be new to this -- has to do with the sublease. Sean can speak to it more than I can. But it has to do with protecting the interests of the Board with respect to its sublease and the City of Tucson's duties.

MR. BREARCLIFFE: And I'll try and be quick about it. But just in case there's some who aren't as familiar with it as a few of us are:

To begin with, the City and the District are parties to a sublease agreement with the TCC where the District acts as a sublessor and the City acts as a sublessee of the TCC. It's a triple net lease which means that the tenant, the City, pays rent, taxes, insurance, and all maintenance expenses arising from the use of the
In the summer of last year, Tommy Obermaier, who was the City's director of the TCC, identified a laundry list of maintenance and repair problems with the TCC, quite substantial ones, including bathrooms and the bleachers. We -- our firm was then charged by the District to submit that laundry list that its own director had come up with to the City, asking them to take care of the maintenance and repair items under the terms of the sublease. This was sent in October of last year.

In November, we get an unequivocal response back from the City that they refused to take care of any of those maintenance and repair items. Subsequently, we submitted -- because the law requires it -- a notice of claim to the City of Tucson reiterating the demand that it take care of these maintenance and repair items and also to remedy the breach of the lease.

The City didn't do so. It ignored the notice of claim letter, and now we are at time limit -- actually we have passed the time limit to file the lawsuit under the one-year statute of limitations.

I say we're past it because the City agreed to toll that. We've asked for an unlimited tolling period in which -- so that the District could continue its negotiations of the overall settlement in good faith. We
didn't want to file the lawsuit if there was a chance we could resolve all the disputes. The City only agreed to give the District a two-week tolling agreement, forcing us to file the lawsuit, if at all, by essentially Thanksgiving Day.

So our firm was charged with, you know, drafting the complaint and getting it all ready to go. We have done that. And we have been holding it in advance hoping against hope, I guess, we'd get agreement by the City to toll it further. They have yet to give that approval. So the risk you face by not filing it is that you lose all claims relating to the repair and maintenance costs for the TCC. So eventually --

CHAIRMAN McCUSKER: It should be noted that in either side's current settlement offers, that the City has affirmed their willingness to abide by the triple net lease. And there's no real argument that in the final settlement we would dismiss these claims. So for them not to extend it makes no sense in terms of the overall conversations we're having with the settlement.

Except for timing issues, right?

MR. BREARCLIFFE: That's correct.

CHAIRMAN McCUSKER: I mean, really, that's the crux of the matter, is that if we don't file by Wednesday at five o'clock, we lose the right to file forever.
MR. BREARCLIFFE: That's true. And then again, the filing would be just to preserve the claims, not to pursue them per se, because that would -- all those claims would be resolved in the pending settlement.

So I would just ask that in the event no additional tolling is arrived at -- agreement is arrived at with the City -- or a full settlement of all claims, including the TCC claims -- by Wednesday, that my firm be authorized to file a lawsuit for the purpose of preserving --

MR. RITCHIE: Mr. Chairman, I'd just like to note that if anybody from the City is listening or can hear us right now, this is getting beyond frustrating because I think the taxpayers are getting sick and tired and having to file lawsuits.

I mean, I'm prepared to go along with rest of the Board to do exactly what you're saying, Sean, but I would hope that in good faith that they would not force us into this action because it's just unwarranted use of money -- waste of money. It's warranted, but it is a waste of time, especially when -- with what you just told us.

MR. SHEAFE: Sean -- just a question,

Mr. Chairman.

Sean, you have all the paperwork prepared. At this point it's not -- am I correct in assuming that there
really isn't anything more than just filing the documents with the court?

MR. BREARCLIFFE: That's absolutely correct. It's all ready to go.

MR. SHEAFE: All right. Well, reluctantly I would support the motion too.

And I might ask, Mr. Chairman, if you would be interested in attending that council meeting yesterday just to make sure everybody's aware -- or I mean tomorrow -- just because, you know, this is probably one of those things that's more paperwork. And with the holidays and everything, it may not be that adversarial. After all, we've satisfied most of issues in the other negotiations.

CHAIRMAN McCUSKER: It would be my hope to reach out to Mayor and council today and/or tomorrow, privately or publicly, regarding the necessity to extend this.

You know, I think the motion that I heard you needed is, in the absence of a settlement agreement, in the absence of a tolling extension, we would otherwise authorize you to file a lawsuit.

MR. BREARCLIFFE: That's right.

SECRETARY MOORE: That would be the motion.

MR. RITCHIE: Yeah. It's -- time for a question or --

CHAIRMAN McCUSKER: I have a motion. Do I have a
second?

MR. IRVIN: I'll second.

MS. COX: Second.

CHAIRMAN McCUSKER: Mark Irvin beat you to that.

So, Alberto, go ahead.

SECRETARY MOORE: I would just like to amend that to say that they have to provide us an answer by noon on Wednesday.

MR. SHEAFE: I would accept that. Good idea.

CHAIRMAN McCUSKER: So we have an amended motion that in the absence of a settlement agreement and the absence of the tolling extension by noon on Wednesday, that we would authorize you to file the lawsuit.

MR. HILL: Second.

CHAIRMAN McCUSKER: And Jannie was the second -- Mark was the second.

MS. COX: Mark was the second.

CHAIRMAN McCUSKER: So you approve?

MR. HILL: Now amended.

CHAIRMAN McCUSKER: Yeah. Restated his motion. Any further discussion?

All in favor, say aye.

Any opposed?

(The Board voted and motion was passed.)

CHAIRMAN McCUSKER: Okay. Thank you very much.
Thanks for all your hard work.

I didn't see any cards come up. This is the time we normally have the call to the audience. But not seeing any, let's entertain a motion to adjourn.

MS. COX: So moved.

CHAIRMAN McCUSKER: All in favor, say aye.

We stand adjourned.

(Meeting adjourned at 2:56 p.m.)
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