

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

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**Wednesday, May 19, 2010**

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

A special meeting of the Board of Directors of the Rio Nuevo Multipurpose Facilities District was held on Wednesday, May 19, 2010 in the Tucson Convention Center, Maricopa Room, 260 South Church Avenue, Tucson, Arizona commencing at 2:00 pm.

**1. Roll Call**

The meeting was called to order at 2:08 pm.

<b>Appointee</b>		<b>Present</b>	<b>Absent/ Excused</b>
Jodi A. Bain, Member	Senate		x
Dan Cavanagh, Member	Governor	x	
Jeff DiGregorio (Acting Chair)	Tucson	x	
Scott Egan, Member	House	x	
Carlotta Flores, Member	Governor	x	
Mark Irvin, Member	House	x	
David N. Jones, Member	Governor		x
Alberto Moore, Member	Governor	x	
Anne-Marie Russell, Member	Tucson		x
Victor Soltero, Member	South Tucson	x	
Alan F. Willenbrock, Member	Governor	x	

**2. Status report and possible action regarding liability insurance – Mark Irvin and D.M. Lovitt Insurance.**

Mr. David Lovitt read a letter that was part of a packet of information distributed to the board:

We are pleased to present this analysis of Public Entity/Officials liability insurance for the Rio Nuevo Board of Directors. The request for proposals included those companies shown on the spreadsheet plus 8 others who declined to quote due to the exposure or are no longer interested in providing public official's liability insurance.

This analysis is a brief summary of policy definitions and provisions in order to help select the most appropriate insurance company for this Board of Directors and does not represent that coverage does or does not exist for any particular claim.

Of the 5 companies illustrated 2 are admitted and 3 are non-admitted. Non admitted carriers do not need to file financial statements or rates with the Arizona Department of Insurance and are not covered by the State insurance guarantee fund providing a maximum of \$300,000 for claims in the event of insolvency of an insurance company.

Our suggestion is to select the highest limit of liability affordable with an admitted company including Prior Acts coverage. ACE has the highest A.M. Best rating of A+ and the most competitive premium for the \$5,000,000 limit of liability.

Each of the companies were rated on the following criteria. Bond Rating, Premiums, Prior Acts Coverage, Defense Outside Limits, Extended Reporting Period, Definition of Insured, Definition of Wrongful Act, Side A Non-Rescindable Coverage, Settlement/Hammer Clause, Non-Monetary Relief Liability, Crisis Management Fund, Punitive & Exemplary Damage, and Exclusions.

Board Counsel, Keri Silvyn indicated that the insurance would cover the individual Board Members only in their capacity as a District Board Member, and would also cover the Executive Director under the employee provision. If the Board decides to hire the Executive Director from an outside agency, the Board would require the agency to insure the employee and name the Board as a co-insured.

Mr. Lovitt indicated that if the Board decides to go with ACE, the application would just need to be signed, with the insurance in effect the next day or so. He recommends the coverage be no less than \$5 million, with a \$50,000 deductible.

After some discussion by the Board, a motion was made by Board Member Mark Irvin, seconded by Alberto Moore to move forward with Mr. Lovitt's recommendation per the \$5 Million, with the \$25,000 deductible as outlined in the spreadsheet basis. Motion approved 8-0.

**Item 12 was moved out of order**

**12. Call to the Audience**

Mr. Mikki Niemi addressed the Board regarding Budget information on the Rio Nuevo Website.

**3. Interim Executive Director's report – Richard Miranda.**

In the absence of Interim Executive Director Richard Miranda, Deputy Finance Director Silvia Amparano indicated that Jim Sutz from Piper Jaffray gave an update to the Mayor and Council on the Capital Plan for the Hotel. They did voice some concerns on the risk that the City will take on if they fully backed the Hotel Bonds. They raised some issues that they want staff to look into whether they can negotiate with perhaps the State to issue a Letter of Credit or ask Garfield Traub or the Starwood if they are willing to also provide Letters of Credit or some sort of help so that the City would not have to back-stop the project if the funds did not come through. Staff is going to start those discussions.

Ms. Amparano indicated that there was no action taken on behalf of the Board since the last Rio Nuevo Board meeting. Mr. Miranda did ask her to give the Board some information regarding a request that the City asks the Chair to take action on. This action is a budget change order for the Pre-Development Agreement with Garfield Traub. Basically, since the payment has already been made, the change order is to correct an administrative/accounting error and move budget capacity to the correct account.

Ms. Amparano indicated that the City received a draft report from the Fitch Rating agency stating that they were downgrading the City's Certificate of Participation and the outstanding GO Bonds one notch from AA to AA-. What that could mean is that when we go out to sell the COPS that the City is planning to sell next month, it probably will cost us more to issue them, but will not know until we go out into the market. We are expecting to hear from Standard & Poors on May 20<sup>th</sup>, and probably on May 21<sup>st</sup>. The City was not surprised due to the City's current financial circumstances.

Board Member Alan Willenbrock asked to have copies of the report given to the Board.

**i. Discussion and possible action with regard to Workflow Processes.**

Deputy Finance Director provided a flow chart with the current Check Approval Process. She indicated that the formulized procedure has been in effect for about a year.

No action was required by the Board.

**4. Status report and possible action with regard to Convention Center construction and Hotel Pre-development projects – Greg Shelko.**

Greg Shelko indicated there were no updates since the meeting on May 13<sup>th</sup>.

Board Member Alberto Moore asked Mr. Shelko to discuss what profits that Garfield Traub and Starwood are taking out.

Mr. Shelko indicated that the owner of the Hotel will most likely be the Rio Nuevo Multipurpose Facilities District and/or the City of Tucson, or an entity to be created for financing purposes only. The Developer is Garfield Traub Development Arizona LLC (GTDA); the Design Builder is Turner-Sundt Joint Venture and DLR Architects; and the Hotel Operator will be Starwood Hotels & Resorts Worldwide.

Mr. Shelko indicated that in relation to the contractual relationships, GTDA is under contract to the District to effectively turnkey (from concept through construction and opening) a publicly owned and publicly financed hotel for a fixed fee (3.5% of the development cost excepting certain owner and transaction related expenses excluded from the fee base). GTDA has no post-construction equity or ownership interest in the hotel.

The design-build team is under contract to GTDA. They too have no equity or ownership interest in the hotel post-construction. Their fees are 4.5% and 6.4% for the builder and the architectural team respectively. (A separate design-build agreement between the parties will require District review and approval, together with the GMP.)

Starwood would be under contract with the District, City or affiliated entity to manage the hotel. It operates the hotel for the owner (District and City) on a fee basis, and has no ownership or equity interest in the hotel. The term of the operating agreement is a maximum 15 years under IRS regulations. The fee structure is projected at 3% of gross revenues plus performance incentive fees. The latter are commonly known as subordinate and super-subordinate fees, projected to be 1% and .5% commencing in the 4<sup>th</sup> or 5<sup>th</sup> year of operation (i.e., after stabilization) and paid subject to bond indenture requirements for reserves etc. Starwood proposes to invest \$1.75 million in 'key money' that can be used to offset capital cost, and, to contribute \$3 million to fund an operating reserve. These fees and financial contributions are all subject to negotiation of the hotel agreements for operating, pre-opening & marketing, development services and room block. These projections used in the preliminary capital plan and proformas are for planning purposes and are subject to District (and City) approvals.

Mr. Shelko then gave a distribution of income. He indicated that all of the unspent reserves funded with District tax increment revenue and other accumulated site specific taxes accrue to the benefit of the District and the City, as does all bottom line income (profit) after all operating, debt and other expenses. In addition, the District and the City benefit exclusively from the appreciated value of the hotel asset itself over time. Moreover, the District and the City also benefit from the annual and incremental economic impacts of the hotel (per the Conventions, Sports & Leisure report of same) and from its catalytic impact in furtherance of private downtown reinvestment.

In relation to third parties, Conventions, Sports & Leisure was under contract with the District to perform the economic impact study. It has no financial or other interest in the outcome of the hotel project decision-making process. And HVS is under contract with the District to perform the market study, which would be updated at the time of bond rating and financing. It has no financial or other interest in the outcome of the hotel project decision-making process.

After some discussion by the Board, went to Item 5.

5. **Status report regarding TCC Hotel post-bid activities –David Jones, Greg Shelko.** Greg Shelko indicated that the design-builder and the developer were in the process of compiling the bid results into a proposed draft Gross Maximum Price (GMP) for future Board consideration.

Mr. Shelko will project out Starwood fee earnings over the term of the Qualified Management Agreement, and, will summarize the Phoenix Sheraton basic deal points. He indicated that he will provide those to Chair Jeff DiGregorio and Board Counsel Keri Silvyn for distribution to the Board when complete.

6. **Status report and possible action with respect to the District Audit – David Jones.** Board Counsel Keri Silvyn indicated that the Auditor General contacted her and they are still negotiating the final contract with Crowe Horwath. The Board will get a copy when that is done. She is going to attempt to have Crowe Horwath come before the Board to have a discussion with us prior to signing the Contract. There is no projected date to when the discussion will be finalized.

**Item 9 was moved out of order**

**9. Discussion and possible action with regard to the Convention Center/Hotel project and/or the Preliminary Plan of Finance.**

Board Counsel Bob Gugino indicated that a question was asked at the last Board meeting how the 3-1/2% of Gross Operating, how the \$1.7 key fee, \$3 million letter of credit has become not an agreed to term, but a term that is repeatedly thrown out, basically what has been talked about to Starwood.

Mr. Shelko indicated that as part of the pre-development phase of the project, one of the tasks of Garfield Traub as part of the developer, was to assist the district in the negotiation of a term sheet. That term sheet is with Starwood Hotels and it is a 7-8 page document and the purpose of that is to identify and come to identify and come to some common thinking about what might be appropriate fees for the deal, so that you could construct the financing plans and pull all of this together and give the Board some decision points. So when we talk about a fee for Starwood to operate at 3%, this number is plugged in, but there are still negotiations to occur, but it is a number that Starwood is not objectionable to, but does not mean the District is going to buy, or like it, or would like to see a different number, that negotiation is wide open, as is the key money and the operator money, because we have not concluded any discussion on that term sheet, we just did not want to get ahead of the Board deliberation, and this Board has a lot of questions, and need to take deliberate time to understand all of this. It did not make sense to negotiate a term sheet not knowing whether or not we were going forward with the project.

Mr. Shelko indicated that as the Board's consultant and he feels the terms are comparable to similar transactions, but understands that they may or may not be acceptable to the District, but they are in the realm of reason. If the Board should decide that they think the Preliminary Capital Plan is worth pursuing than the next thing would be to negotiate in earnest the Hotel agreements, because they are going to form the final capital plan and bond document process.

Mr. Shelko will provide a projection of what the earnings will be over the next 15 years based on the HVS projections.

Board Member Alan Willenbrock distributed an article entitled Municipal Secondary Market Disclosure Information Coversheet along with the Overland park Development Corporation 2006 Annual Report, Updated – June 18, 2007 for Board review. He would like the Board to look at projections as probable that they will come in below projections.

Board Member Alan Willenbrock, added for the record a copy of the vote taken in Dallas County regarding their hotel. He has the actual vote margin of 2,087, and a couple of citations regarding the vote in Portland.

Tony Traub from Garfield Traub, indicated that the vote that Mr. Willenbrock was referring to was a comparison to the original HVS study pre September 11, 2001, and clearly the Dallas County has not performed to that pre 9-11 level. At the last meeting, Mr. Hazinski indicated that the projections were based on post 9-11. We are now in a

period that is very comparably to 9-11, and the conservatism that we have been seeing in our industry, not only with HVS, but PKF and other studies, are very conservative. People are starting at a much lower base and that should give further comfort to the Board.

Board Member Scott Egan commented that the projections were before the Arizona boycott we are experiencing now.

Chair Jeff DiGregorio indicated that while we cannot control over the market, or people's traveling, we do have control over is how the Hotel is marketed. He indicated that the Hotels that are successful have really good marketing, and he is very impressed with Starwood's marketing plan. He believes it must be supplemented heavily by top-notch marketing by our Metropolitan Tucson Convention & Visitors Bureau (MTCVB) and the Tucson Convention Center.

Tony Traub commented that he has been in this business for about 40 years. He started with Hyatt, and has been with all of the major chains, developers, and asset managers and all of them are very good. Every year since the Starwood Overland Park Hotel was opened, except for the first three months, their budget has been equal to or exceeded all of the marketing goals, except for the last year and a half to two years, since the downturn.

Board Member Alberto Moore asked if the Hotel was subject to property tax. Mr. Shelko indicated that the property is tax exempt, therefore would not be subject to property tax. Mr. Moore asked if the District can recoup the \$15-17 million spent for the study.

Deputy Finance Manager Silvia Amparano, indicated that Bond funds can only be used for Capital expenditures, and the costs for the study had already been expended with Bonds that were issued in 2008 COPs. She recommended that Board Counsel get an opinion by the District Bond Counsel.

**Item 8 was moved out of order**

**8. Discussion and possible action with regard to TCC convention and show commitments – Alan Willenbrock.**

Board Member Alan Willenbrock indicated that at the last Board meeting, Board Member David Jones asked a very good question from Rick Vaughn from the Metropolitan Tucson Convention & Visitors Bureau, if the District and the City potential are making a substantial commitment for the construction of this facility, have asked any of the Gem Shows or other customers to make a similar commitment, and reach out to our customers to see if they would be willing to sign some sort of agreement that they would promise to stay to some period of time, if in fact this facility is built. He would like to avoid the conventions leaving our city for a better, brighter, bigger facility in another city. The question would then be why the District did not ask them to sign a document to stay on for a number of years. He is not sure how to go about doing something like that, but would like to pursue the possibility.

Rich Singer from the Convention Center indicated that the overarching reality is that the TCC does not do a lot of convention business today, retaining our current business is not an issue. We do a lot of business today with people who will not leave town and will always be with us. The moment that this project starts happening we will start signing agreements with everyone we can sell. The moment we have the Hotel open, we will want to have the building busy. We are partners with the MTCVB and the Sheraton, and that will be where you get your growth, where you get your room numbers, and it is not about firming up business we already have today. We need the new facilities to see a real sea change with the convention market and to become real players for the first time.

Chair Jeff DiGregorio indicated that at the Phoenix area Sheraton Convention Center Hotel that opened about a year ago, had two years before construction was completed, they had their first year's debt obligations met with bookings. Starwood already had 3 years post-construction on the books before the Hotel opened. It can be done, it is marketing that make the difference, no matter what kind of business you have.

Board Member Carlotta Flores indicated that before we get so excited about the Hotel, we should find out from the Convention Visitors Bureau in the Phoenix area if they have had any ripple effect from the SB 1070 issue because we are the small guys, and they are the ones who help make this all happen and are very much part of the reason we even have this TIF. We need find out what the picture looks like in their area.

Chair Jeff DiGregorio indicated that he has seen the number of \$9 million in business already due to cancelations. He has had 30 local B&B's say they have lost business for the fall already. It is the reality, and how long it will last, hopefully not 3 years, but we do not know what will happen with this. Even if SB 1070 is cleared up, we do not know what is next, it could be something else, you do not know.

**7. Discussion and possible action with regard to District Executive Director – Alberto Moore.**

Board Member Alberto Moore indicated that a couple of meetings ago, he gave out an outline of a job description for the Executive Director position. He asked Board Counsel Keri Silvyn if she had any questions or improvements on it in order to meet State regulations.

Board Counsel Keri Silvyn indicated that she did not spend a lot of time reviewing the draft job description, but in taking a quick look at it does need to be revised to reflect some of the statutory requirements for the Board. It looks like a general employment contract for employment, but the District is not a general employer, and the Board needs to be sure that the job description reflects that. She is asking for direction on how much time she is to give to the job description, and if the Board would like she will have their Employment Lawyer in the office take a look at it.

A motion with the concept of going forward with hiring an executive Director function, whether it is a person hired by the Board or whether it is an outside entity was made by Board Member Alberto Moore, seconded by Dan Cavanagh, with the statement that he would like to wait until after the Audit to hire. After some discussion the motion passed 8-0.

Board Counsel Keri Silvyn then gave an analysis with the Pros and Cons that their firm has done regarding the executive director position. She asked Abby Goncharsky to look at the relationship of using a third party employee leasing firm vs. actually employing an executive director directly.

After some discussion by the Board, went to Item 10.

**10. Report from Legal Counsel – Keri Silvyn and Bob Gugino.**

**i. Existing contractual obligations, including but not limited to the status of the Garfield-Traub Master Development Agreement and IGA discussions with City of Tucson.**

Board Counsel Keri Silvyn indicated there was nothing to report on the Garfield Traub Master Development Agreement. In regards to the revised IGA with the City, the Board asked the City Attorney to start the revision and we are waiting for dates to meet with the City Attorney to go over a draft or some deal points on how the revised IGA would look.

**ii. Status of existing real estate holdings and investments.**

Board Counsel Bob Gugino discussed the four parcels of property that are held as fee simple ownership. They are the Convention Center, Fox Theatre, Rialto Theatre, and a small duplex behind the Presidio Complex.

**iii. Discussion of public records request.**

We have a couple of records requests from KGUN 9 for the Tucson Origins DVD that was created by Hillmann and Carr, a Washington DC firm. We need to discuss this in Executive Session regarding public records law. The status of that DVD at this point is there is a rough cut dated December 2004. We should be getting a fine cut of that 22-23 minute segment on Monday, if things go as well as they hope this weekend. They will then ask for some final comments and they will hopefully come out sometime in June or July.

**Item 13 was moved out of order**

**13. Future Meeting Dates and Agenda Items**

- Next scheduled meetings will be:
  - May 26, 2010 at 2:00 pm
  - June 2, 2010 at 2:00 pm
  - June 9, 2010 at 2:00 pm

**11. Executive Session**

A motion to go into Executive Session was made by Board Member Dan Cavanagh, seconded by Scott Egan, approved 8-0.

- i. Existing District contractual obligations, including but not limited to the Garfield-Traub Master Development Agreement and IGA with City of Tucson.**
- ii. Legal status of existing real estate holdings and investments.**
- iii. Legal advice with regard to public records request.**

A motion to come out of Executive Session and to direct District Attorney and Board Chair to act as directed in Executive Session with respect to the public records request was made by Alan Willenbrock, seconded by Scott Egan, approved 7-0.

**14. Adjournment**

Meeting was adjourned at 5:16 pm

*NOTE: It is the intent of these meeting minutes to get the general meaning of the discussion, summarize what happened, and record official actions. The minutes are not intended to be a verbatim transcription of all that was said. Audio files of the meetings are available for review at City Hall, Finance Department, 255 West Alameda, 5<sup>th</sup> Floor West.*