

DRAFT

**MINUTES
SPECIAL COMMISSION MEETING
NOVEMBER 09, 2011
UNM CONTINUING EDUCATION CENTER
1638 UNIVERSITY NE
ALBUQUERQUE, NEW MEXICO
9:00 A.M.**

9:00 A.M. Call to Order (David "Hossie" Sanchez, Chairman)

Commission Roll Call (Michael Henningsen)

Commissioners present:

Chairman, David "Hossie" Sanchez

Member, Benny Roybal

Member, Ruth Bitsui

Member, Larry Kennedy

Member, Kenneth "Twister" Smith

Member, Charlotte Rode

Member, Kenneth "Buster" Goff

Commissioners absent:

Pledge of Allegiance (led by Commissioner Smith)

Approval Items:

Minutes:

Commissioner Kennedy moved for approval of the September 01, 2011 Meeting Minutes, Commissioner Bitsui seconded the motion. Commissioners Roybal, Smith and Rode voted not to approve the draft minutes pending some necessary corrections and confusion. Commissioners Sanchez, Bitsui and Kennedy voted in the affirmative. The measure failed.

Commissioner Rode contended that all Commissioners were not given the same opportunity to review documents.

Management made it clear that all Commissioners were invited to view all documentation, some of which required the signing of a non-disclosure agreement, and that all but Commissioner Bitsui did, in fact, keep appointments at the EXPO offices to do just that. Commissioner Bitsui's schedule did not allow for a visit. However, in every case, copies of the new proposed lease agreement were FedEx'd overnight to those Commissioners residing outside of Albuquerque or for other reasons were not able to visit the office to pick up a copy. All Commissioners were in receipt of the new proposed lease agreement by Friday, November 4, 2011.

Commissioner Smith contended that a section of the minutes pertaining to Commissioners' access to the scoring of the Racetrack & Casino proposals was unclear.

It was later confirmed that the portion of the minutes was not unclear, and that all Commissioners did, in fact, have to opportunity to view all exhibits pertaining to the RFP.

Minor corrections to the September 01, 2011 minutes have been made.

Introduction of Guests:

Public Present: (represents only those officially signed in) Charlie Bennett, La Mesa Neighborhood Improvement Association; Travis Nabahe, Laguna Development Corporation; Roger Flegel, FWNA; Valerie Alarid, ABQ Downs; Charles Brunt, Albuquerque Journal; Julian Moya, Albuquerque City Council; James Mondloch; Rey Garduno; City Councilor; Mark Shoemsmith; Maggie Hart Stebbins, Bernalillo County Commissioner; Stephen Vigil, State Attorney General's Office; Liesa; E. Bemis; Trumbull Village Association; David Cameron; Nob Hill Neighborhood Association; Penny Smith; Dante Sautl; David Vogel; Bernadette McTigue; Guy C. Clark; Pete Dinelli; D. McCall; Doris Buckman; Cisco McSorely, State Senator; Don Cook; Eileen Boston, Vice President Trumbull Neighborhood Association; Elvira Lopez, President Fair Heights Neighborhood Association; Gerald Martinez; Roland Penttila; Ann Riley; Sharon Licero; Nerissa Whittington; Bob Martinez; Richard Gay; Jim McClintock; Tim Keller, State Senator; Bill Wyndam; President, Downs at Albuquerque; John Turner, Partner, Downs at ABQ; Pat Rogers, Downs @ ABQ; Michael Weinberg, LFC; Charles Solle, LFC; Jim White, State Representative

Staff Present: Dan Mourning, Interim General Manager; Agnes Maldonado, Administration Director; John C. Jaramillo; Special Projects Director; Larry Trujillo, Security; Mark Shoemsmith, Attorney; Michael Henningsen, Media Director

Financial Report: (Agnes Maldonado, Director of Administration)

Ms. Maldonado stated that strides have been made in reducing the deficit, including the consolidation of duties, necessary layoffs and many internal cost-cutting measures. Ms. Maldonado stated that at the current rate of deficit reduction, EXPO will show a net surplus of over \$40,000 by 2013. Ms. Maldonado went on to explain that EXPO staff is aggressively seeking new, profitable interim events in an effort to increase revenue. She also stated that many new controls have been set into motion in the "bank", including the installation of new security systems, further segregation of duties and intensified cash controls that will prevent theft and mismanagement.

Ms. Maldonado stated that EXPO Management and staff had discussed and were proposing dates for the 2012 New Mexico State Fair. The proposed dates are September 12-23, 2011.

Commissioner Smith motioned to change Agenda Order: RFP after LFC presentation. Seconded by Commissioner Roybal. Commissioner Kennedy voted no, others abstained. Motion carried.

New Business

Presentation of LFC Program Review (Dupuy Bateman)

Mr. Bateman, who conducted the LFC Program Evaluation at EXPO, explained that he was contracted to do so by the LFC. Mr. Bateman's presentation was read directly from the evaluation, contents of which can be found at http://www.nmlegis.gov/lfc/lfc/lfcdocs/perfaudit/State_Fair_Report_Final.pdf Mr.

Bateman stated the key findings were:

- State Fair is operationally insolvent
- Failed to properly manage key contracts (Downs and carnival)
- Lacks cash controls.
- Cash on-hand not adequate to pay creditors (largest amount owed GSD).
- Lacks a strategic plan

- Expiration in January of 2012 of the Racetrack & Casino lease has led to “crisis management mode,” forcing strategic decisions based on short-term needs rather than long-term goals.

Mr. Bateman went on to state that management has been extremely responsive to the findings laid out in the report, especially with regard to instituting new cash controls, straightening out its books and getting on the road to recovery from its deficit.

During his presentation, Mr. Bateman stated that EXPO New Mexico had attempted to amend the current Downs lease with an extension through 2013, but that questions were raised by several legislators as to the binding legality of such an amendment being that it arguably extended the lease well beyond its proscribed 25-year term.

Commissioner Goff asked for clarification; specifically, why is EXPO not pursuing the extension and what happens in the event no extension is granted. The current agreement expires prior to the next Legislative Session.

Rode: asked Bateman to explain further what he saw in “cash room”: Bateman answered that the Fair takes in roughly 3.5 million in revenue annually. Those monies are collected in various places, then taken to cashiers in the bank for recording and holding until next business day. Primarily, there was no segregation of duties in the bank—records could be altered, money could be taken as cash without management noticing. Management has put new controls in place to prevent these activities. Several employees either retired or left their positions.

Smith asked if there are any claims other than Risk Management. Bateman said there may have been an amount owed to NMSP, but that management had worked to resolve that issue.

Bateman went on to further discuss Advertising offset, saying that previous GM signed an affidavit saying that the Downs had complied with the arrangement when there was apparently no actual advertising executed that was beneficial to the Fair.

Bitsui asked what the procedure for going forward is. Bateman said the LFC has provided the Fair with a list of recommendations, and that the Fair has taken action on many of them.

Rode: what was response from Downs on \$420,000 for advertising for FY2010/2011. Bateman said Downs told him they had done no advertising up to that point, but if they were awarded the new contract, they would produce advertising to be approved by the Fair or pay the amount in cash at the end of the lease period (1/11/12).

Roybal: Commission Duties—(Charles Solee) LFC said that Commission enabling statutes need to be updated to better segregate studies.

Kennedy asked who was consulted on Staff: Bateman said Chairman, Mourning, Maldonado attended a conference in October this year. No Commissioners attended

Kennedy asked if Bateman’s characterization of the RFP as “rushed” was his opinion. Bateman said that management expressed that it needed to be done quickly to preserve the revenue stream, and that he agreed. Bateman stated that in his opinion, 30 days was not enough time for an alternative use response

Kennedy: is it Fair to state that most of the evaluation refers to a previous administration. Bateman confirmed that most of it was, in fact, under a previous administration.

Sanchez: recommended to GM that he provide all commissioners LFC recommendations and plan for moving forward.

Goff: Why aren't we moving forward on the extension? Bateman stated that all extensions have been exhausted, and that any new extension would require Legislative approval, and that management felt that Legislative approval would not be forthcoming prior to expiration of lease—Legislature will not be in session when lease expires.

Mr. Dan Mourning, Interim GM, answered that the current lease expires January 11, 1012, and that there is no hold-over clause: the agreement terminates. Mr. Mourning stated that, following extensive meetings with legal counsel it was determined that there are certainly no guarantees that the Legislature would approve such an extension, and that the most prudent direction forward was to follow through with the transparent RFP process that has been demanded by the public—and the State Legislature—for years.

Senator Tim Keller was asked by Commissioner Rode to speak to the issue. Sen. Keller stated that the amendment was in a state of "legal ambiguity" in regard to the question of its legality. However, Sen. Keller stated that it is unlikely that the Downs would be asked to cease operations at the term of its lease until an extension could be worked out.

Presentation of Proposed Lease Agreement for Casino and Racetrack

EXPO Staff/Proposed Tenant

Mr. Dan Mourning, Interim General Manager, reviewed the procurement process employed in the issuance for the recent Request for Proposals regarding the Racetrack & Casino lease. Mr. Mourning reiterated that State of New Mexico Procurement Code has been followed to the letter. Mr. Mourning explained that the process resulted in two proposals, and explained that an evaluation committee appointed by Governor Susana Martinez according to procurement code, convened and ranked proposals numerically, resulting in the top-ranked offeror being the Downs at Albuquerque. Management then negotiated, as per procurement code, a proposed lease that was being presented to the Commission. Key differences in the existing lease versus the new proposed lease include:

- Request for Proposals process employed rather than sole-source agreement
- Base rent increase to up to 2.75million by year 3; Downs released the State Fair from all claims of damages—approximate value: \$2 million
- Reduced amount of property to be leased from 97 to 44 acres—more money per acre to Fair
- Downs responsible for all new construction, maintenance and upkeep
- Downs to pay participation rent annually in the sum of up to \$300,000.
- Downs responsible for booking 12 events in Tingley Coliseum, which are to be agreed upon by the Down and EXPO management; rent must be paid in advance
- Downs required to build at its expense: new casino, renovate grandstands, new maintenance warehouse for State Fair, construct drainage corrections, new entrance from Central to State Fair, underground gas tanks. State Fair owns all improvements at expiration of lease.
- New lease leaves barns, infield and San Pedro area to State Fair.
- Downs obligated to meet State Fair's racing obligations.
- All utilities are to be specifically metered, and Downs is obligated to pay all real utility costs.

Vanessa Alarid (Downs at Albuquerque)

Ms. Alarid's presentation made the following points:

- Vision for future: concerned about community, jobs
- New 50,000 sq ft facility will result in new jobs
- Proposed lease different from current lease
- Plans include green space for community (showed renderings of new facility)
- Stated that horseracing is part of NM heritage, equals \$500mil/year, 35,000 jobs
- Downs in business for more than 30 years
- Downs is shovel-ready, will employ 400 people, plus 500 construction jobs: \$6.225 million in payroll annually
- Will give neighborhood preference—better communication, creating jobs, being good neighbors
- Immediate economic impact to community--\$505 million paid over life of lease
- 200 percent increase in gaming tax—4.1 to 9.8 million in first year
- \$87.65 million to EXPO in rent over life of lease
- Partnerships with State Fair—sponsoring 12 events per year at Tingley at Downs cost
- Community Relations—open lines of communication, admittedly not present previously, traffic control, community development events, family oriented events, security plan developed with former Public Safety Cabinet Secretary (Darren White), scholarships, internships, job fairs, playground/open space, etc.
- Anchor for redevelopment consistent with Mayor's plan
- Lease is result of RFP—open, transparent process; 2010 sole-source lease was not the same: required Fair and taxpayers to incur cost of new construction
- New lease 45 acres @ \$5208/acre=2.75 vs. \$1718/acre
- See comparison sheet
- No offsets; \$300,000 per year required for joint promotions/advertising
- Downs will forgive \$2 in claimed damages against Fair
- New lease provides for participation rent
- Downs pays for all maintenance and improvements where Fair was required to incur those costs previously.
- New location adjacent to track—not at corner of Louisiana/Central
- Downs to pay all utilities on separate meter

Financial Report (Agnes Maldonado, Director of Administration)

Management has put ledger back in compliance, CFO position is being actively recruited, security measures such as cameras put in place, duties segregated, positions reassigned. Agency still carries a \$1.9 million debt, but is current with all creditors with the exception of debt owed to General Services Department. Actions include RIF of 16 positions, RIF'd open positions. FY 11/12 EXPO will pay most of deficit—all but \$700,000. \$48,000 surplus by 2013, increase events, saved \$60,000 in September alone due to RIF.

Dan Mourning, Interim GM, read aloud several letters in support of the new proposed lease with the Downs @ ABQ, from: Sen. George Munoz; Rep. Edward Sandoval; and others

Public Comment:

The following guests spoke in opposition to the new proposed lease agreement moving forward: David Vogel, Bernadette McTigue, Guy Clark, Pete Dinelli, Charlie Bennett, Doris Buckman, Cisco McSorely,

Eileen Boston, Elvira Lopez, Gerald Martinez, Roland Pentilla, Rey Garduno, Ann Riley, Nerissa Whittington, and Tim Keller

Most Common Opposition Points:

- Increase in crime and traffic in surrounding neighborhoods
- Gaming preys on the poorest populations
- Opposed to casinos and gaming in general
- Based on Downs track record as a tenant, is it smart to move forward?
- Downs has historically detracted from the value of the surrounding neighborhoods
- Process has been “rushed”

The following guests spoke in favor of the new proposed lease moving forward: Don Cook, Tom King, Sharon Licero; Bob Martinez; Richard Gay; Jim McClintock, D. McCall

- Will create jobs
- Provides opportunities for those in the neighborhood
- Will sustain Fair for future generations with a reliable revenue source
- Good opportunity to present more events in Albuquerque
- Significant economic impact to Albuquerque and the State of New Mexico throughout the life of the lease

Commissioner Kennedy moved for a resolution (refer to resolution). Bitsui seconded.

Commissioner Roybal stated he has been on commission 5 years. Referenced December lease, stated he had more time to look at last lease, and that he does not have enough information to vote on current proposal.

Smith: Stated there is conflicting information about the process, recommended that more discussion is required before a vote, and that every Commission member state their relationship to the Downs. Commissioner Goff stated that while he felt it was quite likely that the new proposal could result in a workable lease, he could not in good conscience vote on it today.

Commissioner Kennedy asked management if this is, in fact, the first time this process was put through the RFP process. Mr. Mourning answered in the affirmative, reiterated that procurement code was followed to the letter. Explained the process once more. Explained the process (sole-source agreement) that was attempted in December 2012 once more. Mr. Mourning also reiterated that the Commission does not have the final say in this process.

Commissioner Kennedy asked if this could have been handled as sole-source. Mr. Mourning stated it could have been if it were under 25 years.

Commissioner Kennedy asked if all Commissioners were invited to view all proposals, best and final offers, scoring sheets and other materials. Mr. Mourning stated in the affirmative.

Commissioner Goff said he was not invited to see all Proposals. Wishes the Commission had met more often to discuss this matter. Said the timeframe was too restricting. Mr. Mourning answered that all Commissioners had to opportunity to view all documentation provided they signed a nondisclosure agreement.

Commissioner Roybal stated the Commission had no input on creating the RFP. Stated he cannot vote in the affirmative without further information.

Commissioner Bitsui stated that the Commission has not received enough information on this issue, but that she supports gaming overall, and wishes to vote today.

Commissioner Rode stated that an RFP was issued in December of 2002, which was retracted by Richardson upon taking office, stated again in 2008 without the Governor's knowledge, the SF Commission wrote another RFP when it appeared the Downs would be moving to Moriarty. Stated Downs has been working since at least 2004 to formulate a new proposal or extension at a cost of hundreds of thousands of dollars in state (taxpayer) money. Stated Commission has been shut out of the process, and she cannot support the proposed lease.

Chairman Sanchez stated he has supported the Fair his entire life, and that his heart and passion is horseracing. Stated existing lease was bad for the Fair, but new proposed lease is good for the Fair. Expressed his support of passing the new proposed lease.

Commissioner Kennedy stated he does not trust that the Legislature will pass an extension based on the comments of one or two legislators—it's anyone's guess. Stated the process was as open and transparent as possible given the procurement process, urged Commission to vote on the issue.

Commissioner Goff reiterated his previous comments.

Commissioner Kennedy asked how much time the Commission would like to extend for discovery, withdrew motion to vote on the issue today.

Smith motioned that all Commissioners divulge personal association to the Downs, Roybal seconded. Motion carried.

Smith: no association

Roybal: no association

Rode: no association

Bitsui: no association

Goff: no association

Sanchez: has known operators on a professional basis as a horseman.

Commissioner Rode stated she wanted to clarify some questions with Ms. Alarid while she is present

- Stated she heard some vague statements in the presentation—why has Downs not already increased number of machines? Ms. Alarid stated that the Downs has previously been restricted by square footage.
- Stated there has been no outreach in the past. Ms. Alarid stated she has done specific, direct outreach since she was hired in March.

Commissioner Kennedy introduced a motion to table a vote on resolution, Goff seconded. "Workshop meeting" set for Monday, November 21; a second meeting on December 1. Motion carried.

Roll Call Vote:

Chairman, David "Hossie" Sanchez: affirmative

Member, Benny Roybal: affirmative

Member, Ruth Bitsui: affirmative

Member, Larry Kennedy: affirmative
Member, Kenneth "Twister" Smith: affirmative
Member, Charlotte Rode: affirmative
Member, Kenneth "Buster" Goff: affirmative

Adjournment

Commissioner Roybal motioned to adjourn, Kennedy seconded.