

**New Mexico Finance Authority
207 Shelby St.
Santa Fe, NM 87501
(505) 984-1454**

**Minutes of Board Meeting
May 07, 2013
Room 322 – State Capitol**

Present:

Nann M. Winter, Chair	Stelzner, Winter, Warburton, Flores et al
Paul Gutierrez, Vice Chair	Executive Director, NMAC
William Fulginiti, Secretary	Executive Director, NMML
Tom Clifford, Treasurer	Dept. of Finance & Administration
David Martin	NM Energy & Minerals Dept.
Butch Tongate	Designee, NM Environment Department
Blake Curtis	CEO, Curtis & Curtis Seed
Antoinette Vigil	Designee, NM Economic Development Dept.
Terry White	CEO, Sunwest Trust, Inc.
Katherine Ulibarri	Central NM Community College

Absent:

Jerry Jones	CEO, Stolar Research
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Finance Authority Staff:

Angela	
Connie Marquez-Valencia	Bob Spradley
Dan Opperman	Donna Trujillo
John Brooks	John Gasparich
Marquita Russel	Michael Zavelle
Robert Brannon	Richard Garcia
Sanjiv Doreswamy	Yolanda Valenzuela

Guests:

Andrew Jacobsen	DFA
Brett Woods	NMEMNRD
Linda M. Kehoe	LFC
Rachel King	
Richard Virtue	
Susan Rodriguez	DFA/LGD

1. Call to Order and Roll Call.

The meeting was called to order at 9:30 a.m. Roll was called and a quorum established.

2. Approval of Agenda

Mr. William Fulginiti moved, seconded by Mr. Butch Tongate, to approve the agenda. The motion was unanimously approved.

3. Report from Chief Executive Officer

Mr. John Gasparich, CEO, reported on the following:

- ◆ Revamped Finance Authority website will go live on May 22;
- ◆ The State Auditor's office has indicated the Finance Authority will be off the "at risk" list on May 15, 2013.

4. Presentation of Fiscal Year 2012 Audit Report. Mr. Bruce Bleakman and Mr. Javier Machuca presented. Mr. Bruce Bleakman and Mr. Javier Machuca presented the Finance Authority Audit for 2012.

Mr. Bleakman briefly described the audit process that is designed to detect material inaccuracies in the financial statements, fraud, internal control weaknesses and noncompliance with laws and regulations. Mr. Bleakman reported on the Exit conference with the Audit Committee and management. The State Auditor's office has reviewed and approved the audit.

Mr. Machuca reported the audit results and findings are similar to those contained in the 2011 audit. Two findings were considered material weaknesses in internal controls. There were 10 additional findings, 5 significant deficiencies and 5 other non-compliance with the State Auditor's requirements. Audit findings included: Financial reporting oversight; Payment of public funds without an approved contract; Account reconciliations and cutoff procedures; Use of company credit cards; IT issues; Bond covenants; Timely submission of reports; Reporting on federal grants; IRS required reporting of taxable fringe benefits; Timely cash receipts deposit; Travel and per diem expenditures; and Equipment.

Chair Gutierrez requested the audit be placed on the agenda as an information item at the next regular meeting to address Board questions and/or concerns. He said the Board received the audit this morning, which does not provide sufficient time for review. Chair Gutierrez noted that all official action has been taken but felt the Board as a whole should review the audit.

5. Consideration for Approval of Recommendation to Select REDW to Perform FY2013 Audit. The Audit Committee and the Contracts Committee recommends selection of REDW to perform the FY2013 audit.

Secretary Tom Clifford moved, seconded by Secretary David Martin, to approve the Audit Committee and Contracts Committee recommendations to select REDW to perform the FY 2013 Audit. The motion was unanimously approved.

6. Discussion of Albuquerque Public School District No. 12 0 Purchase of Building by Albuquerque Public Schools (APS) for use by Digital Arts & Technology Academy (DATA) Charter High School. Lease Purchase with New Mexico Finance Authority as Lessor and APS as Lessee and a sublease by APS to the DATA Charter. The Albuquerque Public School District (APS) has applied, on behalf of the Digital Arts & Technology Academy Charter School (DATA), for Lease Purchase Financing through the Public Project Revolving Fund ("PPRF").

Ms. Marquita Russel reported that this project for APS on behalf of DATA is expected to be presented to the Finance Authority for approval at the June Board meeting and the highlights of the proposed financing are being presented as information this month in order to incorporate any concerns of the Board prior to the final structure being presented.

As part of the 2009 Legislative session, the New Mexico Finance Authority Act was amended to expand the definition of a PPRF “eligible entity” to include Charter Schools. As part of that legislation, the Finance Authority was directed to adopt rules and regulations governing the financing of Charter Schools prior to funding any charter schools. Following five months of conversation and negotiation, the New Mexico Finance Authority Legislative Oversight Committee finally approved revisions to the PPRF rules and regulations at its December 2009 Meeting with the Finance Authority Board approving the revised rules at its January 2010 meeting. Following the revisions to the rules and regulations, the Charter School lease financing sections were incorporated into Finance Authority policies in February 2011. In addition to the criteria that was contained in the rules, the policies set additional credit parameters that mitigate various business risks associated with the Charter School financing that are not typical of other PPRF credits. These risks include:

- *Collateral risk* – the risk that the value of the building will decline faster than the principal balance of the loan;
- *Appropriation risk* – the risk that the primary funds used to pay the lease will not be budgeted by the Legislature;
- *Management risk* – the risk that the management of the Charter School will change and that the new management will be unable to maintain the same level of education and enrollment will decline, thus affecting the revenues into the school; and
- *Re-authorization risk* – that the Charter School will lose its authorization and that the Charter School will therefore not be eligible for funds used to pay the lease.

To help mitigate these risks, the policies set the minimum “debt service” coverage at 1.10x, sets the minimum loan-to-value at 75% if the applicant is the charter school and sets the loan-to-value ratio at 80% if the applicant is the local school board acting on behalf of the charter school (because the school district will be required to make a good faith effort to identify another school to lease the facility if the facility becomes vacant); and provides that the facility proposed for financing is zoned for appropriate adaptive reuse, including commercial use, as determined by the Finance Authority. Though there has been a great deal of interest in the Finance Authority’s ability to provide lease financing, we have only recently received our first application for a project that meets the criteria established in the rules and policies.

APS on behalf of DATA is seeking PPRF lease purchase financing to purchase its existing building so that it may lower its overall lease expense. Currently, the School pays approximately \$656,000 annually in lease expense. By lowering lease expense, the School will be able to fully cover lease payments with its distribution of State supported rent assistance revenue, thereby eliminating the use of other operational funds needed to cover the lease (annual PPRF lease purchase expense, under current rates, is approximately \$181,000). Additionally, the PPRF lease purchase will improve the School’s cash flow position and, in conjunction with recent tenant

improvements to facility, will allow them to expand to approximately 350 students within the next four years.

Pursuant to PPRF Loan Management Policies (Section 8), Charter Schools or the chartering school district acting on behalf of the charter school may apply to the PPRF for lease purchase financing for the acquisition of charter school facilities. DATA wishes to exercise its purchase option of its lease agreement, wherein the Landlord has agreed to assign the purchase option to the Finance Authority for purchase of the facility. The School is currently updating a 14-month-old appraisal of the property; previous appraisal states the market value of the property equal to the price of the purchase option of \$3,450,000. The PPRF Trustee will hold title to the facility and lease it to the APS based on a twenty year financing structure. APS, in turn, will sub-lease it to DATA. As required by PPRF Loan Management Policies, the lease purchase will equal an 80% loan-to-value collateral ratio (\$2,760,000) and APS/DATA will provide a 20% down equity payment (\$690,000). The Finance Authority has focused on structuring the lease purchase so that DATA's distribution of the State-supported rent assistance, which equates to approximately \$700 per pupil per year, will cover the annual lease purchase payment and maintain at least a 1.10x coverage ratio as required by Policy. Using this school year's enrollment, the estimated coverage with the per pupil rent assistance revenue is approximately 1.16x. Although the lease purchase structure focuses on the State supported rent assistance, the lease purchase financing will ultimately enjoy a General Obligation pledge of APS.

Charter School financings and land-secured transactions introduce elements of risk to which the PPRF is unaccustomed. Staff notes the following risks associated with this financing:

- 1) Given the demand for the services provided by DATA and its strong historic management, staff has determined that this project has limited management risk.
- 2) DATA has incurred enrollment swings of 10% from year to year. DATA expects that that enrollment will, at least, maintain its current position or increase. DATA is an APS authorized charter school and offers courses that meet CNM (Central New Mexico Community College) requirements for dual credit. Additionally, NMFA Lease Purchase financing will reduce annual lease expense, allowing DATA to reinvest the savings into its philosophy and curriculum, thereby increasing enrollment and retention.
- 3) While requiring Charter Schools to provide a down payment of equity will mitigate the risk of a Charter School opting out, lease purchase agreements are not considered debt of the Charter School and the Charter School does not actually have a mortgage on the property and can walk away. Having APS as the Lessee/Sub-Lessor reduces NMFA's risk since APS is required to make a good faith effort to identify another school to lease the facility if the facility becomes vacant.
- 4) Charter Schools and the State-supported rent assistance revenue have been controversial issues with the Legislature. There is risk that the Legislature may eliminate or modify the State-supported rent assistance formula while the lease purchase obligation is outstanding. The Finance Authority proposes that the lease financing for DATA be limited to 20 years, which still provides reduced rent payments for the Charter School and minimizes largely the

Finance Authority's exposure for this appropriation risk.

- 5) This particular property is zoned as M-1 (Light Manufacturing Zone) which allows adaptive reuse of the building should APS decides to terminate the lease.

Secretary Clifford commented that charter schools pose a complicated and difficult issue. He asked if the district is prepared to pay the loan should the charter school fold. Ms. Russel said the lease is with the APS who will sublease to DATA. If DATA cancels the lease, APS would use its best efforts to find another lessee. Ms. Rachel King said the risk is slightly greater because the charter school has the option for any reason to cancel the lease from year to year. Secretary Clifford said it looks like a good deal for APS and the charter school but voiced concern about security for the Finance Authority.

7. **Consent of City of Alamogordo - (Otero County) – 0080-WTB, Time Extension Request.** Staff recommends approval of contract amendment for time extension to the City of Alamogordo Water Trust Board Project WTB #80. Staff is requesting approval and concurrence from the NMFA Board to extend the funding agreement time period for WTB #80 to eighteen months (November 21, 2014).

Mr. William Fulginiti moved, seconded by Mr. Butch Tongate, for approval of contract amendment for time extension to the City of Alamogordo Water Trust Board Project WTB #80. The motion was unanimously approved.

8. **Request to Open 15th Round of Competitive New Markets Tax Credit Application Cycle.** Staff recommends that a 15th Round of competitive applications be opened May 10, 2013 with a closing deadline of June 6, 2013.

The NMFA Board, on behalf of Finance New Mexico, has offered fourteen competitive application cycles to date, including an exclusive application round for projects located in rural areas. From these application cycles, Finance New Mexico has closed transactions for nine projects totaling \$132.346 million. Additionally, one project for \$8 million is in the process of negotiating a final term sheet.

Staff proposes that a 15th application cycle be opened on May 10, 2013 and close on June 6, 2013. Staff will be meeting with local Economic Development Representatives and conduct various meetings around the state to use the remaining \$11.5 million of NMTC Allocation. As proposed, applicants will be able to download the NMTC application from the NMFA website beginning May 10th, and submit it and all required attachments by June 6th.

Mr. William Fulginiti moved, seconded by Ms. Antoinette Vigil that a 15th Round of competitive applications be opened May 10, 2013 with a closing deadline of June 6, 2013. The motion was unanimously approved.

9. **Consideration for Approval of Fee Schedule for Economic Development Bond Program.** Staff recommends adoption of the Economic Development Bond fee schedule.

The fee schedule proposed by staff attempts to compensate the Finance Authority for staff time incurred in the underwriting, approval, issuance and monitoring stages of the financing.

Additionally, if the requested bonds require Private Activity Bond ("PAB") Volume Cap, the fees charged by the State Board of Finance will also be charged and passed through to the State Board of Finance on behalf of the benefitting project. The fees are consistent with other conduit issuers both in New Mexico and in other states.

The Board, after briefly discussing staff's proposal, requested the item be referred to the Finance/Loan Committee for further discussion and recommendation.

Report from the Chairperson of the Contracts Committee. *Committee members are: Secretary Ryan Flynn, Chair; Secretary Jon Barela and Jerry Jones.*

Mr. Butch Tongate noted the Contracts Committee's recommendation was considered under Agenda Item 5 above and that the Contracts Committee unanimously recommended the Board approve REDW to perform the FY 2013 Audit under the third year of the IPA Recommendation.

10. Update on Activities

Report from the Chairperson of the Audit Committee. *Committee members are: Secretary Tom Clifford or designee Ricky Bejarano, Chair; Paul Gutierrez, Vice-Chair, and Secretary David Martin.*

11. Update on Activities

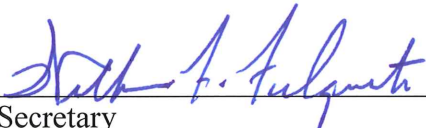
Secretary Clifford noted the Audit Committee's recommendation was considered under Agenda Item 5 above. The budget was also discussed with a request made for supplementary information.

12. Next Board Meetings

May 23, 2013, 9:30 a.m.
Room 322, State Capitol
Santa Fe, NM

13. Adjournment

The meeting adjourned at 10:40 a.m.


Secretary

5-23-2013
Date