

**MINUTES OF THE MEETING OF  
THE REGENTS OF THE UNIVERSITY OF NEW MEXICO**

February 15, 2011

Board of Regents Meeting 9:00 a.m.

Roberts Room, Scholes Hall

Board of Regents Executive Session 11:08 a.m.

Roberts Room, Scholes Hall

**Attendance:**

Regents present:

Jack L. Fortner, Vice President  
Carolyn J. Abeita, Secretary-Treasurer  
Don L. Chalmers  
J.E. "Gene" Gallegos  
James H. Koch  
Cate Wisdom

Regent not present:

Raymond G. Sanchez, President

President:

Dr. David J. Schmidly

Executive Vice Presidents present:

David Harris, EVP & COO  
Suzanne Ortega, EVP & Provost  
Paul Roth, Chancellor HSC

Vice Presidents present:

Eliseo Torres, Vice President, Student Affairs  
Julia Fulghum, Vice President, R&D  
Paul Krebs, Vice President, Athletics  
Helen Gonzales, Vice President for Human Resources  
Ava Lovell, Vice President and Controller  
Josephine Deleon, Vice President, Equity and Inclusion  
Carmen Alvarez Brown, Vice President Enrollment Management  
Stephen McKernan, HSC Vice President, Hospital Operations

University Counsel Present:

Lee Peifer, Interim Sr. Associate University Counsel

Regents' Advisors present:

Richard Wood, President, Faculty Senate  
Merle Kennedy, President, Staff Council  
Lissa Knudsen, President, GPSA

Michael Thorning, Chief of Staff, ASUNM, for Lazaro Cardenas, Jr., President,  
ASUNM  
Steve Chreist, President, Alumni Association  
Anne Yegge, Chair, UNM Foundation  
Maria Probasco, President, Parent Association  
Cynthia Stewart, President Retiree Association

Regent Vice President Fortner presided and called the meeting to order at 9:00 a.m. He noted that Regent Sanchez was in Santa Fe representing the university.

**I. Confirmation of a Quorum; Adoption of the Agenda,** Regent Fortner

**II. President's Administrative Report,** David Schmidly, President

Dr. Schmidly reported the university had heard from its accrediting agency, the Higher Learning Commission (HLC). The report the university submitted on advising was accepted and deemed to be an excellent progress report by the HLC staff. The report from the HLC noted UNM had given "...impressive evidence of the focus and intention, as well as the investment the university has made, to improve academic advising since the comprehensive visit." Dr. Schmidly thanked the Regents, the administration, the Provost, all the colleges, students, faculty and staff for their efforts to strengthen advising.

**III. Regents' Comments** (none)

**IV. Public Comment-Agenda Items**

Michael Thorning, Chief of Staff, Associated Students of UNM (ASUNM): Thank you to Student Affairs and Real Estate for working so closely with ASUNM. He thanked Dr. Walter Miller for forming an advisory team for future needs.

**V. Approval of Preliminary Materials** (Component II, Phase 1 Student Housing), Kim Murphy, Director, Real Estate (presentation in BOR eBook)

Discussion: Mr. Murphy introduced Vice President Torres. Dr. Torres said the process of increasing student housing on campus began in 1996. He thanked Kim Murphy, Amy Coburn, Mary Kinney, Bob Dolan, Walt Miller, student government and Lobo Development for all their work on this project.

Walter Miller, AVP, Student Life: ASUNM has been involved from the beginning of this project. 1965 was the last time a traditional facility for student housing was built, yet enrollment has been growing. Lobo Village addresses the need for housing for upper classmen. Current bed capacity is about two thousand four hundred.

Regent Koch noted the university is currently paying mortgages on four of the nine dorms.

In response to Regent Koch, EVP David Harris estimated that it would extend the completion of new dormitories from 2012 to 2014 if the university decided to start fresh and start this process as a capital project of the university. UNM has the bonding capacity to do it, but the American Campus Communities (ACC) proposal has also met with acceptance at the bond rating agencies. At the most optimistic, financing would take five months, architect selection two, design and drawings five to six months, another two to three months for the bid process and eighteen months for construction. Securing approvals from the BOR, the Higher Education Department and the State Board of Finance would also be required.

Regent Chalmers asked if there was enough positive cash flow from current dorms to finance their maintenance. Dr. Miller said the need is always greater than the money available.

EVP Harris reported to Dr. Schmidly that if the university were to take on this project itself it should not interfere with financing other academic needs on campus, such as the Biology building, because a different revenue stream would be committed to the dorms.

EVP Harris also stated he believed the existing dorms are maintained adequately and are safe. There just isn't money to upgrade to the amenities students prefer.

Walter Miller clarified that when this project is complete, there will be thirty eight hundred beds, not thirty eight hundred rooms.

Walter Miller introduced Jamie Wilhelm, Mark Rogers, Matt Stein and Vic Young from ACC. They gave the presentation on Preliminary Materials (Component II: Phase I Student Housing).

Approval of the Preliminary Materials will, per the contract, allow the development of the project beyond the conceptual stage into a ground lease, priced-out drawings and construction budgets. During construction, emergency access through the university will be maintained, as well as "move in/move out." The risk schedule that's included shows a paid to date for architects, design fees and surveys. The approval of "Preliminary Materials" will enter the University and ACC into a risk sharing relationship in which, going forward, design risk is split on a fifty-fifty basis while a ground lease is negotiated. ACC is paying for everything, but the risk sharing would be to the extent if the project was terminated; there would be other remedies to completely own the project and plans.

Rates are based on existing on-campus room rent with a three percent annual increase and based on leases to students for an academic year rather than a calendar year. When complete, the employees on site will be employees of ACC. ACC will be responsible for all the operational aspects.

In the past, ACC has not experienced any problems regarding access to amenities by students residing in other non-ACC campus housing. "Communal activities" have not been defined yet; the leasing office and operations space for ACC will be there,

there may be an opportunity for Chartwells to lease space, there could be a fitness area, a social lounge, a theater. In response to a question regarding access by students from other dorms, ACC stated that security would be similar to what exists currently. An escort by one of the residents would be needed to walk through; there would not be free access to every hall, individual unit or bedroom.

Regent Chalmers noted that the University Foundation would be the recipient of any monies generated from naming rights.

Mr. Stein outlined the schedule: approval of Preliminary Materials in February will lead to a ground lease in May 2011, a phased GMP and Completion of Construction documents for Building A in April 2011, a GMP and Completion of Construction Documents for Buildings B,C and D in July 2011, abatement/demolition of Santa Anna and some SRC halls between May and August 2011. The project occupancy date is August 2012.

Mr. Wilhelm, ACC EVP for Public/Private Transactions, stressed that in order to meet 2012 opening a full budget will not be complete at the beginning of construction. There will be budget and permitting sufficient to begin demolition.

Regent Chalmers confirmed with ACC that a Guaranteed Maximum Price contract (GMP) for the entire project will be completed by August, 2011.

The rent schedule shows the minimum ground rent UNM would receive, \$305 thousand. The pro forma ground rent and upside over minimum will vary depending on construction costs.

Regent Gallegos stated that ACC is a for-profit business and they want to negotiate as favorable a deal as they can. It needs to be favorable for the university, as well.

Regent Gallegos: The south campus development is eight hundred sixty four beds for \$41 million, including \$1.6 million to build roads, or \$109 per square foot. The first year ground rent is \$333,600. On main campus, there will be no fitness center built, no swimming pool, no roads, no parking lot. This project is for one thousand twenty six beds at a construction cost of \$23.5 million, \$92 per square foot. This project is about twenty per cent more beds than south campus. By ACC's own calculation the revenue flow is about the same in both projects, \$6 million plus. But they are proposing UNM receive potentially less ground rental for the main campus for what is more valuable land. Only ACC has control over the budget. If it goes over budget by \$3 million, which is eight or nine percent, UNM's ground rent is impacted \$180 thousand, which is almost thirty per cent. UNM shouldn't be at risk all out of proportion due to a construction budget increase. If the pro forma says the first year rental should be \$485 thousand then that should be the rental. Under our master agreement negotiated in 2009, we are entitled to fair market value rental. We were not entering into a venture in which we were partnering with ACC as to the outcome of their budget. The terms should be as they were for the south campus, a fixed amount based on their projection of their costs. This plan should be rejected.

Regent Chalmers: The construction budget already includes a contingency of \$1.7 million, so construction would have to cost \$4.7 million over the projected amount for that to happen. The floor of \$305 thousand is the fair market value of the land and we have the potential to share any upside. If they hit their budget, which would entail spending the full budget plus the contingency, we would get \$484 thousand and go up from there. That's significant—almost fifty percent above fair market value. If they come in under budget or don't spend the full contingency, we'll get more than \$484 thousand for the first year.

Mr. Wilhelm said that at the time the fixed ground rent for the first five years of Lobo Village was negotiated ACC had a fully bid GMP contract. They can do the same thing on main campus in August 2011. In order to hit 2012 they have to do a split contract; begin demolition, for example, when students are away. To have the same situation as Lobo Village, the occupancy date would have to be bumped to 2013. The current proposal guarantees the university fair market value as determined by the university.

Regent Gallegos stated that UNM is not in business with ACC to share their risk or guarantee their 7.5 percent rate of return. That was never agreed to in the master agreement of 2009. "I object to the financial terms." This hasn't been negotiated as the south campus contract was. It seems to be completely on ACC's terms. He noted that at the last minute he, Regent Chalmers and Regent Koch renegotiated as many as twenty items of concern with ACC on the Lobo Village lease to make it more fair to UNM. That was the negotiation that resulted in the ten year option to purchase should we feel it was necessary. There was a situation where ACC sought to reduce the guaranteed rental on Lobo Village for year five. They called through John Salazar and said their economics were such that the rent for year five needed to be \$250 thousand instead of \$375 thousand. We said no. After a few hours John Salazar called back and said it would be \$375 thousand. "I just don't see any negotiation on our part in this deal."

Regent Chalmers said to give the impression that this hasn't been vetted by people on the university's side is not right. This fair market value, arrived at by Kim Murphy of UNM, passed through Lobo Development and through the Finance and Facilities Committee. Due to our desire to bring this housing on line by 2012, ACC does not have a guaranteed maximum price at this time.

Regent Chalmers made the following motion:

"I move that we adopt the recommendations of the Regents' Facilities and Finance Committee and approve the American Campus Communities Preliminary Materials dated February 2, 2011 for the Component II: Phase I Main Campus student housing development with the following amendment to the Preliminary Materials:

"At page 44, delete the last paragraph that commences with 'PLEASE NOTE:' and substitute in lieu thereof:

“PLEASE NOTE: The above Rent Schedule proposal assumes that, should ad valorem taxes be assessed on the project, the real estate tax burden will be shared as agreed to in the Lobo Village lease provisions on tax risk sharing, with the understanding the ground rent will never fall below the guaranteed \$305,000 minimum (increased annually by the percentage increase of tenant rental revenue).”

**Motion passed**, with Regents Wisdom, Koch, Abeita, Fortner and Chalmers voting yea and Regent Gallegos voting no, to approve the American Campus Communities Preliminary Materials dated February 2, 2011, for the Component II: Phase I Main Campus student housing development with the amendment proposed by Regent Chalmers (1<sup>st</sup> Chalmers, 2<sup>nd</sup> Koch). (Regent Sanchez na)

Further discussion: Regent Abeita asked if the renegotiated items of concern, mentioned by Regent Gallegos, regarding the Lobo Village agreement would be incorporated into the Main Campus agreement.

Mr. Wilhelm asked Mr. Salazar to correct him if he mis-stated anything. He said the Lobo Village ground lease will be the beginning point for this lease. It will be changed for items specific to main campus, ground rent, parking, and food service, for example, but the points referred to by Regent Gallegos will be included. Mr. Salazar did not correct any of Mr. Wilhelm’s statements.

Regent Koch noted that more housing on campus should make it possible for more students to attend UNM which should result in increased tuition revenue.

**VI. Approval of Nominations for Michael D. Daly and Robert M. Murphy to Lobo Development Corporation board of directors**, Steven R. Beffort, Secretary/Treasurer, Lobo Development Corporation (report in BOR eBook)

**Motion passed** unanimously to approve the nominations (1<sup>st</sup> Gallegos, 2<sup>nd</sup> Abeita).

**VII. Approval of Fiscal Watch Report and Monthly Financial Report**, Ava Lovell, VP HSC/UNM Finance and University Controller (report in BOR eBook)

**Motion passed** unanimously to approve the Fiscal Watch Report as presented (1<sup>st</sup> Chalmers, 2<sup>nd</sup> Abeita).

Discussion: Ms. Lovell noted that although Athletics shows \$1 million unfavorable, no BCS (Bowl Championship Series) revenue is included in this report. In response to Regent Koch, Ms. Lovell said that Athletics should be about break-even at the end of the fiscal year. A plan for the South Golf Course break-even has been submitted to Dr. Schmidly and the Cost Containment committee. The Cost Containment group is also working on Continuing Ed.

Chris Vallejos, AVP, Institutional Support Services, reported that UNM has begun to withhold revenue from NMSO (New Mexico Symphony Orchestra) ticket sales and is making progress on the money due UNM. NMSO has been paying UNM about

\$1 thousand a week on its debt of \$250 thousand. We have stated that we will not book another performance unless that performance is paid up. Their board will take up that issue today. NMSO has received very favorable treatment for dates at Popejoy Hall. We are looking at filling some of those dates with other shows in order to replace what revenue we were receiving.

### **VIII. Public Comment**

Dr. Richard Wood, President, Faculty Senate: It was important to have this debate regarding the Main Campus student housing contract with ACC in public. Thank you for having it. The future of NMSO matters greatly to the faculty. While he believes NMSO should meet its commitment, he urges UNM to be flexible. NMSO serves the community in many ways. We don't want to be responsible for killing the New Mexico Symphony Orchestra.

Mary Vosevich, Director, Physical Plant, reported on the efforts of the Physical Plant staff in dealing with the effects of the cold and the natural gas crises during the week of Jan. 31<sup>st</sup>. The switch to diesel from natural gas for the boilers cost approximately \$51 thousand and, across campus, there was about \$200 thousand in damage due to the very cold weather. Insurance claims will be filed for that damage. UNM has in excess of 11 million square feet in its buildings and PPD staff worked around the clock to monitor the grounds and buildings for damage.

Regent Abeita expressed thanks to everyone who worked through the crisis.

President Schmidly also commended Ms. Vosevich and her staff for the work they did for the university during that time.

### **IX. Adjournment**

Vote to close the meeting and to proceed in Executive Session.

**Motion passed** to proceed in Executive Session at 11:08 a.m. (1<sup>st</sup> Abeita, 2<sup>nd</sup> Gallegos).

### **X. Executive Session 11:08 a.m. – 12:10 p.m., Roberts Room**

- A. Discussion, where appropriate, of threatened or pending litigation pursuant to Section 10-15-1.H (7) NMSA (1978).
- B. Discussion, where appropriate, of potential purchase, acquisition or disposal of real property pursuant to Section 10-15-1.H (8) NMSA (1978).
- C. Discussion, where appropriate, of limited personnel matters pursuant to Section 10-15-1.H (2) NMSA (1978).

### **XI. Vote to re-open the meeting**

**Motion passed** at 12:10 p.m. to re-open the meeting.

D. Certification that only those matters described in Agenda item X were discussed in Executive Session. If necessary, final action with regard to those matters will be taken in Open Session.

**Motion passed** to certify no final action was taken in Executive Session. (1<sup>st</sup> Fortner, 2<sup>nd</sup> Abeita, Koch, Chalmers, Gallegos, Wisdom).

## **XII. Adjournment**

**Motion passed** at 12:12 p.m. to adjourn the meeting (1<sup>st</sup> Koch, 2<sup>nd</sup> Wisdom).

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Raymond G. Sanchez, President  
Board of Regents

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Carolyn J. Abeita, Secretary/Treasurer  
Board of Regents