

The University of New Mexico
Board of Regents' Meeting
December 11, 2012
Student Union Building Ballroom C
Meeting Minutes

Members present: President Jack L. Fortner, Vice President Don L. Chalmers, Secretary Treasurer Carolyn J. Abeita, J.E. "Gene" Gallegos, Bradley C. Hosmer, James H. Koch, Jacob P. Wellman (Quorum).

Administration present: President Robert Frank, Executive Vice President David Harris, Chancellor Paul Roth, Senior Vice Provost for Academic Affairs Michael Dougher, Vice President Josephine de Leon (Equity and Inclusion), Vice President Helen Gonzales, Vice President Paul Krebs (Athletics), Sr. Executive Officer Ava Lovell (Finance and Administration), Vice President Eliseo Torres (Student Affairs), Interim University Counsel Lee Peifer.

Regents' Advisors present: President Amy Neel (Faculty Senate), President Mary Clark (Staff Council), Chair Gary Gordon (UNM Foundation), Executive Director and Board Secretary Greg Heileman (UNM Parent Association), President Donald W. Dusynski (Retiree Association).

Regent Fortner called the meeting to order at 9:10 a.m.

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

Motion to move Health Sciences Board Action Items 1, 2, 3, 4 and 6 to Consent Items and to remove Action Item 5 from the Agenda passed unanimously (1st Abeita, 2nd Chalmers).

Regent Abeita noted that Item 6 is also on the Agenda as Finance and Facilities Committee (F&F) Agenda Item D.

II. Approval of Summarized Minutes of the October 9, 2012 BOR meeting, Regent Fortner

Motion to approve the minutes of the October 9, 2012 meeting passed unanimously (1st Gallegos, 2nd Abeita).

III. President's Administrative Report, President Robert Frank

President Frank reported there has been substantial progress in discussions with the Sandia Foundation and a MOU (Memo of Understanding) should be forthcoming shortly.

He stated there has been a great deal of discussion regarding the Funding Formula. UNM has testified before the LFC (Legislative Finance Committee) arguing there should be three distinct formulas: one for the research universities, one for other four-year institutions and one for two-year institutions. This will allow the legislature to more easily implement policies for each of the sectors individually.

After a two-day meeting with the other Presidents of Mountain West Conference schools, Dr. Frank reports that they continue to feel the conference is in a pretty good situation right now so no decisions were made.

UNM now has a storefront open in Beijing and in 2013, we will admit students from the People's Republic of China. We will continue to recruit international students and increase the support systems available to them once they arrive.

With regard to RCM (Responsibility Center Management), a recommendation from the committee is expected this spring.

Dr. Frank will be meeting with the BOR regarding the upcoming rebid on Sandia Labs. He expects it to come to a head in February. He will provide the regents with a briefing paper in the next three to four weeks.

Kevin Stevenson has completed a Capacity Analysis at both the graduate and under graduate level. It is important that we function at our maximum capacity, the ability to fill all of our seats so that we do not have to hire more faculty or build more classrooms. That is our efficiency point. In the first analysis, while UNM is doing this much better than most universities, we can always do better.

Regent Abeita noted that several courses necessary for a degree program are offered just once a year; she hopes the Capacity Analysis work will consider this issue, as well as class wait lists. Dr. Frank said they would consider those issues.

Comments from Regents

Regent Koch commented on the idea that Regents should have more of an academic background. He stated that Don Chalmers brings considerable business acumen to the Board. It was key to getting the Rio Rancho campus up and running. Gene Gallegos brings legal expertise to the Board, demonstrated by the settlement that was avoided; the case has been successfully litigated through the trial court and on appeal. It is doubtful the plaintiffs will petition the Supreme Court. As a result, there is a bond fund of nearly \$4 million that will be available for the Law School Endowment for a Professorship in Evidence and Procedure. Former Regent Mel Eaves provided legal expertise to the BOR as Regent Abeita does today.

Regent Fortner noted that all members of the BOR have received the Staff Council resolution regarding the compensation plan.

Public Comment, specific to agenda items (none)

IV. Approval of Pottery Mound Land Transfer, Michael Anderson, Associate University Counsel, Valentino Jaramillo and Daniel Waseta, Pueblo of Isleta Cultural Affairs Committee

Motion to approve the Resolution of the Regents of the University of New Mexico authorizing and directing the transfer of the Pottery Mound to the Pueblo of Isleta passed unanimously (1st Abeita, 2nd Koch).

Mr. Anderson stated that the University has determined that the Pueblo of Isleta is in the best position to manage, protect and preserve the important site known as Pottery Mound. That, in addition to the cultural significance of the site to the Pueblo of Isleta, has led to the decision that the University should convey its interest to the Pueblo. The draft resolution directs and authorizes the Executive Vice President of Administration to quit claim all of the University's right, title and interest to the Pottery Mound site to the Pueblo of Isleta, while reserving to the University a reasonable right of access for non-collecting, non-disturbing scientific study, including student training.

Mr. Jaramillo, Director of Cultural Affairs for Isleta Pueblo, thanked the University for its decision to transfer this site to the Pueblo of Isleta. This decision has great significance not only for the Pueblo of Isleta, but for other tribal groups in New Mexico, as well. It signifies a return of this historic past to the rightful owners and recognizes the ongoing connection between our ancestors, those who have gone before us, and those of us who are still here, the descendants. There is a strong connection between what has been uncovered at Pottery Mound and what still exists in the community. Those who have seen the Kiva Murals and the pottery pieces can understand the importance of the site. It remains a window to the past. The Pueblo of Isleta, and the Cultural Affairs Department, appreciate the efforts by UNM, going back to the days of Dr. Frank Hibben, to preserve and protect the past. We will do everything to protect the site from vandals and those who engage in illegal collecting. We will protect it not only from looters, but also from environmental impact or damage. We are caretakers of the land. Thank you to the Pueblo of Isleta's Governor's Office as well as to UNM.

Regent Koch noted this is similar to a return of land to Cochiti Pueblo in 2004. It reaffirms the University's conviction of the importance of Native Americans to UNM.

BOR officers signed the resolution.**V. Regent Committee Reports** (reports are included in BOR E-Book)Finance and Facilities Committee, Regent Don Chalmers, Chair**Consent Items:****Motion to approve consent agenda items A, B, C, D, E, F & G passed unanimously (1st Chalmers, 2nd Gallegos).**

- A. Disposition of Surplus Property for Main Campus on lists dated October 26, 2012 and November 16, 2012
- B. Contract Approval:
Information Technology/Telecommunications - NEC
- C. Approval of:
Capital Project for University Advisement & Enrichment Center/University Communications & Marketing Backfill Renovation
- D. Approval of Second Amendment to Lease-Center for Development and Disability 2300 & 2340 Menaul Blvd. NE

Regent Koch noted that, per BOR minutes, the proposal for the purchase of 1650 University included the Center for Development and Disability (CDD) and the Center on Alcohol, Substance Abuse and Addictions (CASAA) as anchor tenants of that building. Regent Koch asked several questions. Will 1650 be fully occupied without CDD? Are the UNM tenants that will replace CDD going to save the University rent dollars? What is the cost of that building now? What are the improvements going to cost? Will we now be required to go before the Board of Finance regarding 1650? The Regent has no problem with the current location of CDD or this amendment, it is just that the proposal represented that CDD and CASAA would not be renting outside space any longer.

Regent Chalmers said that F&F has asked for an update at their next meeting on tenancy at 1650. Regent Koch asked Chancellor Roth to confirm that they expect no problems filling that building with tenants that will save UNM on rent currently paid to outside landlords.

Chancellor Roth said circumstances have changed since the purchase of 1650. He agreed that that F&F and the BOR should have been updated on the developments that have led to the decisions not to locate CDD and CASA at 1650.

- E. Approval of UNM Historic Preservation Plan
- F. Approval of Naming of Outdoor Basketball court at School of Law "Ferguson Court"
Regent Fortner remembered Will Ferguson with fondness and thanked him for his donation.
- G. Approval of Fiscal Watch Report and Monthly Consolidated Financial Reports.

Regent Fortner gave notice that, in the future, Agenda Items for discussion should not be put on a Consent Agenda.

Action Items:

- H. Approval of ACC Student Housing Lease Amendments (Lobo Village), Kim Murphy, Director Real Estate

Motion to approve the lease amendments to Sections 7.3, 20.1, 20.2, and 22.1 (omitting Section 5.4 entirely) passed unanimously (1st Gallegos, 2nd Chalmers).

Mr. Murphy: We are requesting approval of an amendment to the Lobo Village lease with ACC (American Campus Communities). In the course of finalizing the ACC project on Main Campus, Casas del Rio, we made certain improvements and clarifications to the lease. We are proposing to incorporate certain of those changes into the Lobo Village lease agreement. The comparison of changes document prepared for F&F is part of the documentation before

you. We are incorporating language previously approved in the Casas del Rio lease into the Lobo Village lease.

Regent Chalmers noted these are not changes to the former “deal points” but just language changes.

Regent Gallegos objected to the inclusion in the Lobo Village lease of the naming rights section, Section 5.4. “Regents’ policy 2.11 makes it very clear that the naming of any facility, room, building, what have you, on campus is to be accomplished and approved by the BOR.” He believes there is a big problem incorporating this, the naming of a “project,” into the lease. It sets a bad precedent.

Regent Abeita asked if the language “in a fashion consistent with UNM policy” was not sufficient to assure that naming would not devolve to a third party. Regent Gallegos said “Houses of the River” has already been named without BOR approval. He does not believe this should be embedded in the lease, particularly when this lease might be a model for future leases and propagate “naming rights” issues.

Regent Hosmer asked if an amendment to Section 5.4 specifying, “Lessee will propose the name for the Project” would satisfy Regent Gallegos’ concerns.

Regent Gallegos stated that, traditionally, faculty members, deans, presidents propose these names. It is internal to the community. He is opposed to the idea of some third party contractor having any role, at all, in proposing names.

- I. Approval of South Campus Commercial-Master Development Agreement Fairmont Properties, LLC (Cleveland OH), David Harris, EVP for Administration

Motion to approve the UNM-Fairmont Properties, LLC Master Development Agreement for development of a South Campus mixed-use retail-focused project, with substitute Exhibits B and C and the substitution of the proposed reciprocal non-compete language for the language currently in Section 5.3, and that Lobo Development Corporation be instructed to proceed with the negotiation of a form of ground lease for the project, which, if and when approved by the Board of Regents, will be inserted as Exhibit I to the Master Development Agreement passed with six Regents voting yea and Regent Gallegos voting no (1st Chalmers, 2nd Koch).

Motion to approve a commitment of up to 10 million dollars of real estate sale proceeds – currently managed by the UNM Foundation – which shall be made available for the South Campus commercial development project, with the understanding that final approval and actual expenditure of the funds, or any portion thereof, for the funding of infrastructure or other investment opportunities will require subsequent Regent approval passed unanimously (1st Chalmers, 2nd Koch).

David Harris, EVP of Administration, said this particular Master Development Agreement (MDA) is being recommended to the Regents on a unanimous vote by the Board of Directors of the Lobo Development Corporation. Since the establishment of the Lobo Development Corp. (LDC) in 2007, we have tried several times to secure a Master Developer to provide the expertise we lack. We now believe that the lands surrounding and south of The Pit provide an immediate opportunity, and not the locations on Lomas Blvd., especially with our Athletic Facilities and Lobo Village in the area. President Frank has led the negotiations with Fairmont over the last six months. This agreement is really the start of the process. There are several steps along the way, each of which will be subject to BOR approval.

Steven Beffort said that within the MOU between Lobo Development and the BOR are some specifics that identify that Lobo Development is to relieve the University of the responsibility to manage and develop real estate, to maximize returns to the University from real estate assets, to provide net revenue to the University to support its teaching, research and service

missions and to create learning opportunities for students through its development activities. We will be using a two-step negotiation process for this development that we have used in previous developments.

The first step is to develop an MDA that outlines expectations of Fairmont and UNM, including a form of ground lease. The MDA before you has been vetted, unanimously approved by the LDC Board and sent to F&F. We ask for BOR approval of the MDA, which will allow negotiations to proceed on the form of the ground lease for parcel specific ground leases to follow. The approved Ground Lease Form will be incorporated as an exhibit to the MDA. The goal is to bring the Ground Lease Form back to the BOR for approval within sixty days.

The second item for which we are seeking approval is the authority to consider the use of funds up to \$10 million to enhance the infrastructure value of the property. With that authority, it will be possible to negotiate ground rent on both developed and undeveloped property. That funding would be provided from real estate sale proceeds currently managed by the UNM Foundation. Once the form of ground lease is determined, parcel-specific preliminary materials will be submitted by Fairmont and, if approved by the BOR, negotiations will commence on specific lease agreements, which will include the financial elements of each deal.

Eric Ludit of Forest City Real Estate Services: We were retained by Lobo Development to assist with the development of the South Campus properties. We have had a long relationship with the University, as a consultant to LDC and as a partner at Mesa del Sol. Much of our business is partnering with university such as MIT, Johns Hopkins and the University of Pennsylvania to bring to fruition developments such as this one. In that role, we have signed documents such as this one. It is logical that this property should be developed as commercial property. You could accomplish that in two ways. The first would be to just sell the land to a developer. I think UNM realized it would be best to maintain at least some control over what happens on the South Campus to protect what you have already created there, with The Pit, Lobo Village and the Science and Technology Park. We believe this MDA preserves that control. This puts together a public/private partnership between UNM and Fairmont Properties, with their expertise in developing commercial properties with universities. The MDA provides Fairmont with the assurances it needs to begin to expend resources to put together preliminary site plans, leasing efforts, designs, pro forma and budgets. It also gives them some land control. It allows UNM to retain a voice throughout the development process and beyond. It gives the BOR the ability to approve the ground leases as the projects come together. It gives UNM the right to approve project plans, leasing, project budgets, operating pro forma. The University can, going forward, assure that what is developed on the South Campus positively reflects the values of the University and ultimately enhances the image and brand of UNM. The document is flexible. The time is right to move forward with this project—retailers are beginning to look forward to 2014 and beyond for new ways/places to enter the market.

John Salazar: The MDA names the parties to the agreement and the land to be developed, three separate parcels on the South Campus (described in Exhibit A of the MDA). To go forward at all the BOR must approve the MDA. If you do, the next step is to negotiate a form of ground lease for Parcel Three. Parcel Three is the largest and most complicated parcel. It will be developed in phases; there will be retail aspects, there will be restaurants, there may be some offices. The form of ground lease will not contain economic provisions. There are no economic provisions in the MDA. If you do not like the form of ground lease brought back to you, the MDA terminates. If you approve the form of ground lease, it becomes part of the MDA as Exhibit I. Then Fairmont will submit preliminary materials, including plans, schedule and budgets to Lobo Development. The preliminary plans are very important to the future approval process because they will contain conceptual plans, designs, drawings, site development, architecture, landscaping, signage, and infrastructure. The preliminary plans will also include a preliminary budget, including development and operating pro formas,

proposed rent, financing terms and equity return rates anticipated for their investors. At this point, you will have a very good idea of what the development will look like, who are likely tenants and the economics of the project and you still have not entered into a ground lease. When LDC determines that the preliminary materials are complete and that they are satisfied with them, the materials will be forwarded to the Regents. The BOR must then approve the preliminary plans or that parcel is out of the deal completely. There is no ground lease and there is no commitment to Fairmont yet. If you do approve the preliminary plans, that parcel becomes an Approved Parcel. Then Fairmont would prepare final materials, final budgets, final plans, and final schedules. LDC would then review the final materials and, if satisfied that the final materials are consistent with the preliminary materials (because the BOR will have approved of the preliminary materials) Fairmont would develop the Ground Lease.

Mr. Salazar confirmed to Regent Fortner that one, two or three parcels could/would be developed under the MDA. Regent Abeita asked for clarification of a "discontinued parcel." Mr. Salazar responded that if the preliminary materials are disapproved, UNM will tell Fairmont why they are disapproved. Fairmont will have an opportunity to cure the defect the University sees. If the University approves, the process proceeds. If not, that parcel is no longer eligible for development.

Regent Koch said, as Chair of the Board of Lobo Development, he intends to move all of the materials out of LDC and to the BOR F&F Committee as quickly as possible.

Mr. Salazar continued: The next step is the development of the Ground Lease. The Ground Lease will contain economic provisions. If a Ground Lease satisfactory to the BOR cannot be developed, that parcel becomes a Discontinued Parcel and is out of the deal. The MDA, if executed, gives Fairmont the opportunity to convince the Regents that you should do business with them. They will have certain exclusive rights for a five-year period from the execution of a Ground Lease for each parcel. Their exclusivity does not commence until the Ground Lease is signed. If they are slow, you would have the opportunity to deal with other developers. There is an agreement that UNM and Fairmont will not compete with each other during the five-year period. At tab 5 of your bound materials, you will find substitute language for Section 5.3, different from what was forwarded from LDC, to establish a reciprocal non-compete. Behind tab 6, you will find three sheets, rather than the two sheets forwarded by LDC. The addition of page three shows the shopping center component of Parcel 3. Tab 7 contains a description of all three parcels. The document forwarded from LDC contained a description of Parcel 3 only. Tab 8 has a matrix of questions raised and answers to them.

Regent Koch asked if the MDA specifically stated that the BOR could invest in infrastructure. President Frank said he believes Fairmont would welcome such an investment. Regent Chalmers stated that the second motion the BOR is being asked to approve is a commitment of up to \$10 million for the South Campus commercial development project, final approval and actual expenditure of which will require subsequent BOR approval.

Regent Gallegos noted that investment in infrastructure by UNM required a completely different type of ground lease and different terms. He also said Sections 1.27, 1.52, 2.2, 2.3 and the Term Sheet all have terms and one section indicates negotiations between Fairmont and LDC while another refers to negotiations between Fairmont and the BOR. What governs? How do we arrive at a Ground Lease with all these different terms?

Mr. Salazar said developing the economic Ground Lease so "late" in the process is an advantage to the University as it will have a great deal of information on which to base the lease. The steps are the MDA, then the form of ground lease for Parcel 3, then preliminary materials, then final materials and then the economic Ground Lease.

Regent Gallegos noted that the BOR becomes liable for 50% of the cost of the final materials if the Board does not like the economic Ground Lease. Mr. Salazar said those are the

“reimbursables”. He stated that if Fairmont starts preparing the preliminary materials and the BOR does not approve those materials, the understanding is that the BOR will reimburse Fairmont 50% of its actual cost extended to 3rd parties for preparing the materials. If the Board approves the preliminary materials and then does not approve the Ground Lease, then the “reimbursables” continue up to the time the Ground Lease is disapproved. That is an exposure for the BOR.

Regent Gallegos said the Term Sheet refers to Fair Market Rent. What does that mean and how do we arrive at that? Mr. Salazar said the Fair Market Ground Rent is mutually determined by the parties. Regent Gallegos said this document appears to say that disagreements between the parties will be resolved by mediation. Could we be in mediation to decide what Fair Market Ground Rent is rather than the BOR, knowing the value of our land, stating the rent we to which we believe we are entitled? Mr. Salazar said if the parties cannot agree on the rent there would be no purpose for mediation, the deal would be over. You cannot force someone to enter into a deal.

Regent Koch asked if the BOR signs this deal, but then turns it down in ninety days, the only cost to us is the 50%? Mr. Salazar said if there is no agreement on a form of ground lease, there would be no cost. “Reimbursables” begin after the form of ground lease, when the preliminary materials are prepared for parcel-specific development.

Regent Koch emphasized the scope of the deal—it is a seventy-four year lease.

Regent Gallegos said this agreement says that if Fairmont is in default, we are limited to compensatory damages. “We give up consequential damages; we give up punitive damages. On the completion guarantee agreement we waive our right to a jury trial.” The regent strongly doubts that fiduciaries of a public institution can give up legal remedies like that. He has raised this concern several times since August. Mr. Salazar said that in this document the power lies with the BOR. Why would we be suing them? If we had consequential damages, they could potentially sue us for negligent disapproval of their materials or acting in bad faith; the University could be on the hook as it could pay a large judgment. Mr. Salazar agrees with Regent Gallegos when it comes to the Ground Lease. The Terms Sheet specifies that both parties retain all rights, in terms of damages and remedies, when we get to the Ground Lease. Mr. Salazar said we do reserve the right to sue for actual damages and we do reserve the right to equitable and injunctive relief. We do preserve remedies, but damages are limited on both sides.

Thomas Neale, Associate Director Real Estate, said they have completed the preliminary analysis on investing in infrastructure and whether it was feasible to deliver an improved site to a developer as opposed to delivering as site in an “as is” condition. The likely investment return or internal rate of return or yield on our investment would be approximately 11%, at a minimum of 150 basis points, over and above what we could expect to achieve by simply leasing the land “as is.”

Mr. Harris presented two proposed motions. One to approve the Master Development Agreement and one to approve Regent Koch’s interest in investing in the infrastructure, which would be brought back before the Regents.

Regent Chalmers said this is step one to develop our property to generate revenue to pay off some of our bonds. Regent Wellman is pleased this will bring needed amenities to South Campus.

J. Renovation of Lobo Baseball Stadium Press Box, Suites, Paul Krebs, VP, Athletics

Motion to approve discussions between UNM and Gerald A. Martin, Ltd. of the creation of a P3 Agreement for a ten-year lease at Lobo Field and development of a multi-use baseball facility passed unanimously (1st Koch, 2nd Chalmers).

Mr. Krebs said we are about to complete the first phase of the renovation of the Lobo Field Baseball Stadium. We have been discussing a public-private partnership with Gerald A. Martin, Ltd. (GM). This would be a P3 Agreement whereby GM would lease the land from UNM, GM would build the facility, GM would own the facility and lease it back to UNM for ten years, and, after the ten-year lease, UNM would own the facility. We are asking for permission for Tom Neale to enter into negotiations with GM to create a lease. We would come back with a design concept, as well as financial arrangements and the lease, for BOR approval before proceeding further.

Information Items:

K. Contract Information:

UNM Chemistry Department – Neaspec GmbH
UNM Biology Department – Carl Zeiss Microscopy, LLC

L. FY 2013/14 Budget Development Update, Andrew Cullen, AVP Budget

Mr. Cullen reported that the first meeting of the Strategic Budget Leadership Team to review a preliminary scenario we have developed with President Frank will be held in the next week. The RCM committee is gathering data. The Instructional Capacity Analysis will have a strong influence on the budget recommendation. The Tuition and Fee Team is moving forward on reviewing and approving the modified Student Fee Review Board (SFRB) policy. This team will also consider several tuition and fee policy recommendations that Regent Hosmer has proposed. A 1% increase in tuition and fees would generate \$1.125 million for the University. A 1% increase in compensation for faculty, staff, students, GAs and TAs would cost the University approximately \$2.25 million. The University's net revenues available for debt service are down by about \$69 million. This takes our debt service coverage ratio, used by the rating agencies, below the three times coverage debt that the University desires. If we are to consider additional debt, there could be some negative pressure on our Aa2 rating with Moody's.

Regent Koch said he heard North Campus is considering a raise for employees and a dental program for employees. Dr. Roth responded that they will ask the legislature for additional funds to get the faculty to the 25th percentile. We are asking for support to create a dental program to allow us to address some of the dental health needs in the state, not a dental benefit program for employees. Dr. Roth said the HSC has not asked for across-the-board raises.

Regent Koch explained the origin of the Legislature's tuition credit. It could come back on us if we get too far ahead of the Legislature in discussing tuition increases. Tuition rates are, to some degree, a legislative prerogative. Regent Chalmers said caution for the legislative process should not stop consideration of setting tuition based on good policy. Regent Hosmer is soliciting input on tuition-setting policy from many constituencies and that could include the legislature.

Regent Gallegos asked when the SFRB gets into the budget process. Mr. Cullen responded they may be hearing requests for dollars right now. Deliberations will begin the third week in January.

Regent Hosmer agreed with Regent Koch that the legislature should be brought along with our discussions regarding setting tuition. It seems to Regent Hosmer that setting tuition based on policy is a commitment and obligation we have to the students. We are not locked in to a given policy; we are counting on Mr. Cullen and his staff to understand the results of different choices and come forward with recommendations.

Regent Chalmers said the F&F Committee has asked President Frank to develop a long-term plan to deal with the unfunded liability, to be included in the budget for FY 14.

We would like to add the University of Tennessee as a peer to UNM.

Health Sciences Board, Regent Carolyn Abeita, Chair

Regent Koch asked how Consent Agenda Items 7 through 13 could be debated since they are on the Consent Agenda. Regent Fortner said that when the Agenda is approved at the beginning of the BOR meeting is the time to change the Agenda. However, Consent Agenda Items require unanimous approval. If someone votes no, the items are no longer Consent Items. Regent Abeita stated that many of the items on the Consent Agenda are simply extensions of contracts already in place. They came before the board when the contracts were originally executed. Both the HSC Facilities Audit and Compliance Committee and the Board of Directors have vetted these contracts.

HSC Agenda Items 1, 2, 3, 4 and 6 were changed to Consent Items. Items 7 through 13 were changed to Action Items and Items 12 and 13 are Information Items.

Consent Items:

Motion to approve Agenda Items 1, 2, 3, 4 and 6 passed unanimously (1st Abeita, 2nd Chalmers).

A. Request for Approval:

1. UNM School of Medicine Degree Candidates
2. UNM College of Nursing Degree Candidates
3. UNM College of Pharmacy Degree Candidates
4. Appointment of Michael Shannon to Carrie Tingley Hospital Board
- ~~5. UNM Health System 2012 Strategic Plan (removed from Agenda)~~
6. Center for Development and Disability Lease Amendment #2

School of Medicine Degree Candidates

Doctoral Degree	13
Master's Degree	29
Bachelor's Degree	36
Total	78

College of Nursing Degree Candidates

Doctoral Degree	3
Master's Degree	19
Bachelor's Degree	48
RN-BSN	13
Total	83

College of Pharmacy Degree Candidates

Doctor of Pharmacy Degree	1
Master's Degree	1
Total	2

Action Items:

7. UNMH Contracts with Aesculap Implant Systems, Biomet, Integra Life Sciences, K2M, Inc., Lanx, Medtronic Spinal and Biologics, NuVasive, Stryker and Zimmer, US Inc.

Motion to approve these contracts for spinal implants passed unanimously (1st Abeita, 2nd Chalmers).

Regent Chalmers pointed out that every one of these contracts was anticipated at the beginning of the fiscal year and the BOR approved the hospital operating budget in which they were included.

Chancellor Roth told Regent Koch that the contracts are for an amount up to \$3.5 million, based on utilization. Regent Koch wondered what these contracts cost the last time they were

issued. Dr. Roth indicated that the Finance Committee of the Hospital Board asked that question, were satisfied with management's answer and forwarded these to the full Hospital Board of Trustees that approved them. They then came to the Finance Committee of the HSC Board of Directors where they were reviewed, approved and forwarded to the full HSC Board of Directors, where it also passed. Dr. Roth assured the BOR that there had been proper oversight at two different Board levels to assure that these are appropriate.

Regent Koch said that while this has been well vetted on North Campus, that is not the case on Main Campus. Those boards have three UNM Regents, as well as non-regents, while the full UNM BOR has seven members. The Regent would like to see the minutes so that he can review the actions of the committees and boards in vetting the contracts. Had these items remained on the Consent Agenda there would have been no discussion of them at all. Regent Koch would prefer that these items had gone to the BOR F&F Committee to be discussed fully.

Regent Gallegos said that a year ago this month we had just completed the first year of a trail of the restructuring of HSC governance. There was concern that we were decoupling the North Campus and the Main Campus to an extent that might not be healthy, particularly from a financial standpoint. As we approved that restructuring, we passed an amendment that the Chair of the BOR F&F Committee would be the Chair of the HSC finance committee and that at least twice a year there would be a full, complete presentation of the HSC finance and budget to the BOR F&F Committee. We have never had those presentations and this discussion is symptomatic of that lack of reporting.

8. UNMH Contract with Siemens Medical Solutions USA, SSI ClickON LinX

Motion to approve the contract with Siemens Medical Solutions USA, SSI ClickOn LinX passed unanimously (1st Abeita, 2nd Gallegos).

Regent Abeita reported that this contract is for the electronic claims forms processing software package. The funding of \$40 thousand per year comes from the Hospital operating budget. Regent Koch clarified that the claims processing is \$40 thousand but the monthly maintenance is estimated at \$314 thousand annually.

9. UNMH Contract with Siemens Medical Systems

Motion to approve the contract with Siemens Medical Systems passed unanimously (1st Abeita, 2nd Gallegos).

This is for a four-year service agreement to provide maintenance and parts to a CT scanner. The total cost is estimated at \$1.4 million, funding coming from UNMH operating budget.

10. UNMH Contract with Princeton Place

Motion to approve the contract with Princeton Place passed unanimously (1st Abeita, 2nd Gallegos).

This contract for skilled nursing care services for post-acute care for appropriate patients will free-up beds when UNMH is at capacity at a cost of \$800 thousand per year. Dr. Roth clarified that Princeton Place is a nursing home facility. He said that many times, these are indigent patients who do not qualify for 3rd party payments. Funding is from the UNMH operating budget. Regent Koch commended the HSC for providing this charity care for the community.

11. UNMH Contract with Maxim Health Information Systems

Motion to approve the contract with Maxim Health Information Systems passed unanimously (1st Abeita, 2nd Gallegos).

This is a four-year contract to provide overflow coding services at a cost up to \$525 thousand per year. Funding is from the UNMH operating budget.

Information Items:

12. UNMH Contract with Medtronic, Inc., Nationwide Recovery Systems, Ltd. And Coca Cola
13. UNM Cancer Center contract with Icyt Mission Technology, Inc.

After confirming that Nationwide Recovery Systems is a collection agency, Regent Koch asked what the return has been. Dr. Roth stated that we do not go after patients aggressively, but after a period of time, we do make an effort to collect those funds. Regent Koch remembered the HSC being very aggressive in collections. Dr. Roth said they had never used predatory methods in collection attempts.

Regent Abeita explained that timing of Board meetings sometimes causes items to be placed on the BOR Agenda before the HSC Board meets, which can lead to times when agenda items might be placed in the wrong order on the BOR Agenda.

Motion to change the agenda to allow the Audit Committee report to precede the ASAR Committee report passed unanimously (1st Gallegos, 2nd Hosmer).

Audit Committee, Regent Gene Gallegos, Chair

- A. Report from the Audit Committee meeting 10/18/2012 and the Special Audit Committee meeting 12/5/2012

Presentation of FY12 External Financial Statements Audit:

- a. University of New Mexico (KPGM)
http://www.unm.edu/~conweb/resources/unm-audit-report_fy12.pdf
- b. University of New Mexico Hospital (Moss Adams)
<http://hospitals.unm.edu/about/finances/unmh.shtml>
- c. University of New Mexico Medical Group, Inc. (Moss Adams)

Regent Gallegos said audit reports for FY12 were completed and were presented to the Audit Committee at the Exit Conference. They have been reviewed and approved by the state Auditor and have been released.

Cynthia Reinhart presented for KPMG and Brandon Fryar for Moss Adams. Ms. Reinhart enumerated the responsibilities of each firm. The financial statement audit result is all Unqualified Opinions for UNM and all its components, no exceptions. The A-133 (Single Audit) also resulted in an Unqualified A-133 Compliance opinion with no material weaknesses and no findings of non-compliance. There were no material weaknesses, no material non-compliance and no significant deficiencies in the Internal Control Reports.

The Lobo Club prior year material weaknesses have been remediated. The auditors have met with the Lobo Club Audit Committee and Directors regarding the findings this year.

The Sandoval Regional Medical Center (SRMC) findings are a prior year error in capitalization of interest, which has been corrected, and getting all accounts payable into the expense of the current period. That was remedied with an entry to increase Accounts Payable and Accrued Liabilities. The correction of the two findings for UNM Hospitals results in increased revenue.

Ms. Reinhart drew BOR attention to recently issued accounting standards, which may impact UNM. GASB 68, Accounting and Financial Reporting for Pensions – effective for FY15 will have the greatest impact on UNM. The rough estimate is \$644 million based on the ERB's unfunded pension liability at June 30, 2011. She also reviewed the significant accounting estimates. Regent Koch noted the estimate of uncompensated care, at established charges, at \$457 million and recommended reminding the legislature just how much the university provides to the communities it serves. Dr. Roth noted that the Bernalillo County mill levy provides \$90 million in revenue to the Hospital, which is only half as much as the \$180 million cost of providing indigent care to the County.

The corrected and uncorrected misstatements were outlined. The uncorrected misstatements were not considered material to the separate financial statements of SRMC or UNMH.

The Other Post-Employment Benefits (OPEB) obligation is for health insurance benefits provided to retirees. This is Main Campus only as the HSC has a different program and does not have an obligation. Mr. Harris told Regent Koch that the liability has been identified, as currently required, but not funded in any way. Regent Gallegos clarified that a retiree reaching Medicare eligible age does not end the obligation of the University. There are some benefits we provide after an employee reaches that age. \$25 million of the liability is recorded in the financial statements. The remainder is just disclosed.

B. Resolution-Other Post-Employment Benefits (OPEB)

Motion to adopt the resolution regarding unfunded actuarial accrued liability for University of New Mexico post-employment benefit plan passed unanimously (1st Gallegos, 2nd Hosmer).

Regent Koch requested a vote, up or down, at the next BOR meeting on continuing to fund future retiree's health benefits.

Academic/Student Affairs & Research Committee, Regent Bradley Hosmer, Chair

Consent Items:

Motion to approve Consent Agenda Items A, B, C, D and E passed unanimously (1st Hosmer, 2nd Wellman).

- A. Approval of Transcribed Graduate Certificate in Educational Diagnosis
- B. Approval of Posthumous Degree for Antonio Barreras
- C. Approval of Branch Campus Operating Agreements-UNM Gallup
- D. Approval of Branch Campus Operating Agreements-UNM Valencia
- E. Approval of Branch Campus Operating Agreements-UNM Los Alamos

Regent Gallegos was told that the annual meetings with the branch campus boards have been scheduled.

Action Items:

- F. Approval of an Honorary Degree

Motion to approve the Honorary Degree passed unanimously (1st Hosmer, 2nd Wellman).

- G. Approval of Fall 2012 Degree Candidates

Motion to approve the Fall 2012 Degree Candidates passed unanimously (1st Hosmer, 2nd Wellman).

UNM Degree Candidates	
Doctoral and MFA Degree	96
Master's Degree	372
Bachelor's Degree	1507
Associate's Degree	159
Total	2134

- H. Approval of Amendment to the by-laws of the NM Consortium

Motion to approve the Amendment to the by-laws of the NM Consortium passed unanimously (1st Hosmer, 2nd Wellman).

This consortium was created by the three New Mexico research universities for the development of potential throughout the state in partnership with the Los Alamos National Lab. The amendment proposes to rotate the chair among the universities, rather than held permanently by the Vice President for Research at UNM, as stated in the original by-laws.

Information Items:

I. Faculty Strength Update, Michael Dougher, Sr. Vice Provost for Academic Affairs

Dr. Dougher reported that UNM will be hiring 70.5 new faculty lines, 6.5 new lecturer, 1 librarian, and 20 new hires. He reported the hiring market, while not as good as last year, is still good.

J. Honors College Update, Catherine Krause, Interim Dean Honors College & University College

Dean Krause said they are pursuing curriculum approval. The objective is to have curriculum changes ready for the spring catalog, which will govern the entering class of Fall 2013. After passing through student and faculty committees, it will come to ASAR and the full BOR. We believe the Honors College will be in place, fully blown, for Fall 2013 and we are recruiting students now. We hope to achieve a 10% increase in the number of students with a 29 or higher ACT score and we will be accepting some students in the mid-to-upper 20s. Dean Krause told Regent Hosmer she has no doubt the Honors College will help to keep the most talented high school graduates in the state. We must balance enrolling as many of these students as possible, while having the capacity to serve them. Our capacity is near 100%. She also told the Regent they hope to be able to enroll 10% to 15% of entering freshmen in Honors. In terms of the number of students in high school now, we would like to get nearer to 30% of New Mexico students who score 29 or higher on the ACT. Already enrolled students who achieve the core courses in Math and English and maintain a high GPA will be eligible for Honors.

K. Lottery Scholarship Summit Report, Student Regent Jake Wellman

Regent Wellman said the next step will be to ask the BOR for advice in directing the conversation about the Lottery Scholarship. Last year the legislature put a top band on how much we could raise tuition, which plays into this conversation. 30% of total Lottery revenue must be spent on scholarships. While that 30% hovers around \$40 million, the demand, students that qualify and are eligible for the scholarship, has increased to close to \$60 million. Currently it is being funded through reserves, but those are being depleted. The LFC (Legislative Finance Committee) study showed that while the Lottery Scholarship dramatically increased the number of high school graduates attending college, it did not strongly increase the number of graduates statewide. One of the recommendations to come out of the LFC report is a tiered approach, where there would be different academic requirements for a recipient based on the institution they would attend; a community college might have a different requirement than a four-year university. UNM has found that the Lottery Scholarship does increase the number of students who graduate. Means testing, awarding the scholarship to Pell-eligible students, or raising the GPA from 2.5 to 3.0, would reduce eligibility by 30 to 35% and would seem to address the solvency issue sufficiently. Dean Krause's research showed that there is a pattern of grade inflation at New Mexico high schools that results in more students meeting entrance requirements but being less able to perform when they attend college. The survey of forum attendees showed that the majority of respondents preferred an increase in academic requirements to be eligible for the scholarship. Nearly as many preferred an approach tying both academic and needs based requirements to the scholarship. There was little support for doing nothing or for only a needs-based approach. We want legislation that incentivizes graduation and degree completion. We want to share this research with other New Mexico colleges and work with them on this issue. We want to solicit interest and feedback from legislators in hopes of building a coalition. We want to continue our dialog with the LFC. We would like to seek student endorsement of legislation.

Regent Fortner suggested consulting high school counselors. Regent Abeita said grade inflation is a concern. She also believes it is hard to tie student success to the scholarship because many students spend their time and funding getting remedial coursework and run out of funding before earning a degree. Lottery dollars are best spent on prepared students. Regent Wellman said that he believes reduced funding could affect incoming classes as early as Fall 2013.

VI. **Comments from Regents' Advisors** (reports received are included in BOR E-Book)

Faculty Senate, President Amy Neel. Dr. Neel said Faculty Senate and Staff Council would like to recognize three regents who have provided extraordinary service to the University. Their terms are coming to a close. Faculty Senate passed three resolutions recognizing the service of Carolyn Abeita, Don Chalmers and Jacob Wellman. Thank you for all your hard work over the last several years.

Staff Council, President Mary Clark. Ms. Clark said the Staff Council Executive Committee is presenting Staff Hero awards to those same regents. A Staff Hero is someone who has provided extraordinary service to benefit the staff of UNM.

UNM Foundation, Chair Gary Gordon. Mr. Gordon deferred his report to the next meeting.

Parent Association, Executive Director Greg Heileman. Mr. Heileman reported that on October 10th there was a Board of Directors meeting and Angie Gonzales Carver was elected Interim President. The Association hosted the golf tournament and the tailgate event before the Fresno State football game. The Provost's office hosted a retreat on December 15th. We have a Vice President and a Secretary-Treasurer who have agreed to serve on the board. The next meeting is December 18th at 3:00 p.m. We will be looking at the by-laws of the organization as well as the MOU with the BOR.

Regent Abeita thanked the parents for volunteering to serve. They are an important constituent group for the BOR.

Retiree Association, President Donald W. Dusynski. Dr. Dusynski brought the Association of Retirees Organizations of Higher Education (AROHE) to the attention of the BOR. He believes this organization could have a significant impact on higher education. The Chairman of their site selection committee would like New Mexico to present an offer to host an AROHE meeting in the near future. The UNMRA continues to work on its initiatives, including the ERB and retirement issues. We will meet with the Provost in January.

VII **Public Comment**

Nicola Trevisan: Ms. Trevisan is a Social Worker and a Staff Representative of 1199, the National Union of Hospital and Health Care Employees, which represents the employees at UNM Hospital. She is the chief negotiator with the Union for the License and Technical Contract with the Hospital and the Vice President for the License and Technical Chapter of the union, representing about 1,900 employees. "I stand before you today to insist that the Hospital negotiate a fair wage increase and benefits package with the Union. We've been in full contract negotiations with the Hospital since May and it's unclear why a not-for-profit Hospital that is doing well financially, whose unrestricted net assets doubled between the end of FY06 and the end of FY11, which has 66+ days Cash on Hand and plans to build a \$146 million new hospital with internal resources would not budget for a wage increase for its employees. UNM, which has struggled financially in recent years, it still managed to budget a 1.7% one-time payment for faculty and staff and we thank you for that. UNMH, for the 3rd year in a row, states that they did not budget for a wage increase despite the fact that they come in under budget and turn a significant increase each year. The Hospital has grown its unrestricted net assets to over \$200 million. The Hospital says it can to this by budgeting conservatively, which apparently means budgeting for everything except a wage increase. While UNM has made changes to its health plan to help lower-paid employees, UNMH proposes to reduce the amount they contribute for eligible employees." Ms. Trevisan also spoke of pay inequities between senior, experienced employees and new employees. The Hospital rejected their proposal to correct the problem. UNMH also proposed making pharmacists exempt employees, reducing their annual earnings dramatically. She contended that, while employees are critically important to the delivery of safe and appropriate health care, UNMH does not reward their experience, dedication and loyalty. As a not-for-profit hospital supported by tax dollars, UNMH has the responsibility and obligation of

putting people before profit. The Union is also concerned with the new position created at the HSC for a former member of the Governor's office. Ms. Trevisan respectfully requested that the BOR let the Hospital know that it should budget conservatively for all of its expenses, employee raises included.

Roxroy Reid, UNM employee and 1199NM negotiation team member: It has been established in national and regional studies that one of the most important elements in delivering sound, safe and effective health care at hospitals is having well-trained, focused and fairly treated employees. Unfortunately, the people responsible for the delivery of health care at UNMH are finding it difficult to believe that management is dedicated to providing such an atmosphere. We come to the BOR because you, along with our legislators, are the only constitutionally charged body that seems to be accountable to the public. We have we have been negotiating, in vain, with the Hospital for months. As health care employees at UNMH, we understand and support the Hospitals commitment to growth, development and innovation, but we fundamentally disapprove of growth at the expense of the current working conditions, wages and benefits of existing employees. We are continually told the Hospital cannot afford to treat us fairly. We find that hard to believe. Mr. Reid also spoke about the new position created for a "political appointee" at a substantial increase in pay. The Hospital is also seeking to fill a position of Chief Operating Officer at a salary range "market competitive, based on experience." We question why the negotiators representing your Board cannot employ those same principles in developing a fair compensation program for the loyal and dedicated employees directly providing the health care to the Hospital patients. Mr. Reid presented petitions to the BOR.

Francis Draper, nurse in newborn ICU at UNM for nineteen years: Ms. Draper spoke in support of the nurses at UNMH. UNMH treats these nurses "in the same manner as they do disposable equipment." UNMH, which easily has the funds available, continues to deny nurses a wage increase. The experienced nurses are not being paid the current market value for their work and experience. In addition, the Hospital is losing nurses at a rate far above the national average. We provided management with a conservative estimate of replacing these nurses that amounted to \$20 million. We also highlighted the loss of knowledge and experience. Management's response is to hire new, inexperienced nurses. Management's stance puts patients at risk by making experienced nurses leave in order to get competitive market wages. "Management has no problem taking raises and bonuses for themselves while denying wage increase to the very people who make UNMH the fine institution it is. I implore you to use whatever influence you have with the management of UNMH to encourage them to treat their employees, who are the public face of UNMH, with the same financial generosity they treat themselves."

VIII. Vote to close the meeting and to proceed into Executive Session

Motion to proceed into Executive Session passed unanimously at 1:10 p.m. (1st Koch, 2nd Abeita).

IX. Executive Session 1:10 p.m. – 2:21 p.m.

- A. Discussion and determination where appropriate of threatened or pending litigation pursuant to Section 10-15-1.H (7) NMSA (1978).
- B. Discussion and determination where appropriate of the purchase, acquisition or disposal of real property pursuant to Section 10-15-1.H (8) NMSA (1978).
- C. Discussion and determination where appropriate of long range strategic planning related to public hospitals pursuant to Section 10-15-1H (9) NMSA (1978).
- D. Discussion and determination where appropriate of limited personnel matters pursuant to Section 10-15-1.H (2) NMSA (1978).

X. D. Vote to re-open the meeting at 2:21 p.m.


Motion to return to open session passed (1st Abeita, 2nd Gallegos).

E. Certification that only the matters described in Agenda item VII. were discussed in Executive Session and, if necessary, final action with regard to those matters will be taken in Open Session.

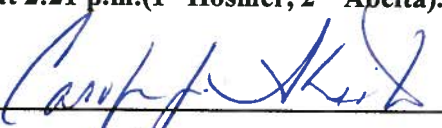
Motion to certify that no action was taken in executive session passed (1st Fortner, 2nd Wellman).

XI. Adjournment

Motion to adjourn the meeting passed at 2:21 p.m.(1st Hosmer, 2nd Abeita).



Jack L. Fortner, President



Carolyn J. Abeita, Secretary/Treasurer