Regular Meeting of Board of Directors New Mexico Lottery Authority August 31, 2011 MINUTES

Call to Order: Board Chair Marcus Rael called the meeting to order at 11:03 a.m. M. Rael asked for roll call. Present and constituting a quorum were Nino Trujillo, Herman Tabet, Marcus Rael, Reta Jones, and Clifford Stroud (via telephone).

Introductions: The following employees were present from NMLA: Tom Romero, Adriana Binns, Sylvia Jaramillo, Evelyn McKnight, Pam Poteat, Dave Ramirez, Vince Torrez, Michael Boland, Linda Hamlin, Karla Wilkinson, Randy Bertram and Wilma Atencio. Also present was Robert Conklin with Conklin, Woodcock and Ziegler, P.C.

Approve Proposed Agenda: M. Rael called for a motion to remove item 5A1 from the proposed agenda and to approve the amended agenda. H. Tabet moved that the agenda be accepted as amended. Second by C. Stroud. All in favor, 5-0. There was no further discussion.

Approve Minutes of June 27, 2011 Board of Directors Meeting: M. Rael entertained a motion to approve the minutes from the June 27, 2011 Board meeting. R. Jones moved to approve the minutes. Second by N. Trujillo. All in favor, 5-0.

Executive Session:

At 11:06 a.m., M. Rael entertained a motion to move into Executive Session to discuss limited personnel matters only. A motion was made by C. Stroud to enter into closed Executive Session. Second by N. Trujillo. A roll call vote was taken: C. Stroud, yes, H. Tabet, yes; N. Trujillo, yes; R. Jones, yes and M. Rael, yes. All in favor, 5-0. There was no further discussion.

At 11:22 a.m., M. Rael entertained a motion to reconvene the open meeting and to exit the closed Executive Session. A motion was made by C. Stroud to exit the Executive Session and stated that the only things discussed were personnel matters. Second by H. Tabet. A roll call vote was taken: C. Stroud, yes; R. Jones, yes; H. Tabet, yes; N. Trujillo, yes and M. Rael, yes. All in favor, 5-0. There was no further discussion.

Executive Reports:

CEO:

General Update: T. Romero reported the total gross sales are at \$20.9 million. We are tracking approximately 3% behind last year's sales to date. Powerball sales are at \$5.0 million, \$532 thousand ahead of last year's sales or about 12%. Mega Millions sales are at \$1.2 million and Roadrunner Cash at \$1.4 million or 1% behind last year's sales. Hot Lotto is at \$900 thousand or 20% behind last year's sales, while PICK 3 is approximately \$5thousand ahead of last year. Instant ticket sales are at \$11.5 million or \$900 thousand – 7% behind last year's sales. Sales do better when the jackpots are higher and there were some good run ups earlier in the year. Roadrunner cash does well when it climbs. It just got hit at \$420 thousand last week. However, the biggest concern we have is with Instant Tickets. We thought sales were stabilized, but as I stated were \$900 thousand behind last year's sales.

9/08/11/wa Amended on 12/14/11/wa T. Romero reported that several initiatives are underway. They include research conducted by GTECH printing and Intralot for Instant Tickets, looking at prize structures, play styles, color, themes, distribution, training for sales rep on recruiting, and a new training tool being presented by GTECH printing called "TAG" (Train—Act—Grow), remapping routes to help field sales personnel visit high-volume stores more frequently, product research and market testing, sidewalk signage at some store entrances and in-store digital advertisements to promote total prizes paid during the previous month.

Legal RFP Award:

T. Romero reported that a Request for Proposals for Legal Services as General Counsel was drafted, reviewed by Board Chair and issued on August 12, 2011. Deadline to submit proposals was August 26, 2011. The Lottery received three proposals from three law firms: Brownstein, Hyatt, Farber, Schreck, LLP, Conklin, Woodcock and Ziegler, P.C.; and Peacock Myers, P.C.

On August 29, 2011, an evaluation committee comprised of M. Rael, A. Binns, S. Jaramillo and T. Romero reviewed the proposals submitted. The proposals were evaluated based on the firms' experience, capabilities, responsiveness to the NMLA and their technical capabilities and price.

The Brownstein, Hyatt, Farber, Schreck firm received 77 out of 100 points and the Conklin, Woodcock and Ziegler firm received 92 points. The Peacock Myers proposal was not scored as the proposal indicated that they were seeking to represent the NMLA solely for legal services in all areas of intellectual property. The other two proposals did not list intellectual property as part of their services.

Based upon the evaluation of the proposals as submitted, the committee is recommending to the Board and asking approval to authorize the CEO, on behalf of the Lottery, to enter into contracts, subject to final negotiations, as follows; Conklin, Woodcock and Ziegler law firm as general counsel; Brownstein, Hyatt, Farber, Schreck law firm for the option to use their legal services relating to bond, finance and real estate matters and should a conflict arise, as the backup law firm for general legal counsel; And Peacock Myers law firm for legal services for intellectual property matters.

In all three recommendations the prices would not exceed those prices proposed by the respective firms. The contracts would be for a period of one year with the option to renew for up to four (4) successive one-year terms at the same price, terms and conditions, not to exceed an aggregate term of five (5) years, including all extensions and renewals.

Subject to negotiations, submission of any documents required and signing of contracts, the new contracts would commence on October 1st, 2011.

M. Rael entertained a motion to approve the evaluation committee's recommendation for Legal RFP. H. Tabet moved to accept the three contracts as presented by the CEO for legal services. Second by N. Trujillo. All in favor, 5-0.

Past Due and Delinquent Retailer Accounts Policy and Procedure: T. Romero presented the Past Due and Delinquent Retailer Accounts Policy and Procedure. Although past and existing retailer agreements or documents outline potential consequences for retailers that fail to pay the Lottery when it conducts its weekly sweeps, to the existing Executive staff's knowledge, the Board has never adopted a policy that addresses retailers that fail to pay the Lottery.

The existing practice of staff is to make contact with retailers that do not have sufficient funds when their accounts are swept and eventually, depending on the amount owed, the staff will disable their ability to sell on-line games and process tickets. This helps to minimize liability. If the amount is still not paid, the lottery will eventually pickup any instant ticket stock they have until they make their accounts whole.

The policy being proposed by the staff for Board consideration outlines time lines for a retailer to make their account whole. Retailers have a contract/agreement with the Lottery to sell Lottery games, the proposed policy officially authorizes the staff to disable terminals, remove instant games, and if necessary, to cancel the contract/agreement with the retailer. This policy also authorizes the assessment of a financial penalty for failing to make their accounts whole within a reasonable time period.

T. Romero reported that except for a very few isolated cases, the Lottery has been successful in recovering monies owed and maintaining retailers that for whatever reason may have had a temporary financial problem. However, in order to disable terminals, remove tickets, assess penalties, and/or cancel a retailer contract, we believe a Board adopted policy would put the Lottery in a better position to handle those isolated cases where it has become difficult to recover money or resolve issues with difficult retailers. The policy has been reviewed by legal counsel and the staff is recommending this policy and asking Board for consideration to adopt this policy.

M. Rael entertained a motion to approve the Past Due and Delinquent Retailer Accounts Policy. R. Jones made a motion to approve the Retailer Policy - the Past Due and Delinquent Retailer Accounts Policy and Procedure. Second by N. Trujillo. All in favor, 5-0. There was no further discussion.

NMLA Rules for On-Line Game: T. Romero reported that due to changes in the Powerball game scheduled for January 15, 2012; it is necessary to update our Rules for On-Line Games. As previously discussed, Powerball will be turning 20 years old in 2012. The Multi-State Lottery Association (MUSL), of which we are a member, voted to double the starting jackpot for Powerball from \$20 million to \$40 million and to increase the second tier prize amount from \$200,000 to \$1 million, as well as increase prizes at the lower levels. MUSL also voted to change the matrix from a 5/59 and 1/39 to a 5/59 and 1/35. This will provide better overall odds to players. In order to fund and accomplish these changes the price for one wager will increase from \$1 to \$2. Changes were also made to the Power Play option of the game that players can still pay an additional \$1 for a chance to win increased prizes at the lower levels. The game changes will begin on Sunday January 15, 2012. There was some clean up language that the lottery took advantage, such as definitions like licensee lottery. The staff is asking Board for consideration to adopt this policy as amended.

M. Rael entertained a motion to approve the rules for on line game. R. Jones made a motion to approve the NM Lottery Rules for On Line Games as presented to be effective January 15, 2012. Second by H. Tabet. All in favor, 5-0. There was no further discussion.

NMLA Rules for Quickster (EZ Play) Games: T. Romero reported as mentioned in the committee meetings that the product game name may change. The lottery is moving forward with the name "Quicksters", to imply a quick style, easy to play game. The "EZ Play" name is actually trademarked by the Ohio State Lottery. Other names that the marketing and advertising agency wanted to use were already patented and/or trademarked. Our attorneys advised that we not use those names, because they were already in use and there was a high potential for litigation. The name "Quicksters" is what the marketing and advertising team came up with.

M. Rael asked P. Poteat if she liked the name "Quicksters". P. Poteat responded and stated that it was catchy and had more personality then "EZ Play". A. Binns commented that it was better than "EZ Play"; like the term "scratchers", it would be an umbrella name and there would be different names under that. It would be up to the agency to make it memorable and catchy with their launch campaign.

H. Tabet asked "how do you pronounce the name". A. Binns replied like "Quick"....it's "Quicksters". There were some comments on how the public may interpret the name. M. Rael asked if that was what the lottery was recommending that the name be changed to. T. Romero responded "Quickster" games.

T. Romero reported that during the board workshop and budget meeting in May and again at the June Board meeting, it was discussed and decided to move forward with offering a game product generally referred to as EZ Play. As mentioned this name is already trademarked by the Ohio Lottery. These games are played in four other states and use different names. For the lottery, the term "EZ Play" just referenced a play style, as opposed to a game product, which is why the lottery wanted to look for a new name. This game is similar to instant scratcher games except they are printed by the Intralot Retailer terminals and are quick pick type games.

Programming for the game is currently pending with Intralot so the anticipated start date is unknown. Regardless of the start date, the lottery would need to have the rules adopted and in place. The original start date for this game was slated for October 2011, now it may be mid November. However the lottery feels that this would not be a good time to launch this game, due to other Holiday games coming up and have been promoting and with the new Powerball launch in mid January 2012.

The existing NMLA Rules for instant and drawing games do not cover this type of game product. Staff incorporated the rules based in part by rules from other states and excerpts from our Instant and Draw game rules. The most significant difference in the rules for "Quicksters" is that the tickets expire, ninety days from the day of purchase and print. Unlike a draw game, there is no drawing, so it can't expire ninety days from the date of drawing and unlike the regular instant games that we have to end and give an announced end of date to go pick up all the tickets that are out in the field, the lottery won't have to do that with this game. The overhead, the resource and the cost factor for this game will be considerably less.

H. Tabet asked if there would be any chance to change the name before board approval. H. Tabet expressed his dissatisfaction with both names and suggested other "quick" type names. T. Romero responded that the problem with using "Quick Play" or something similar is that it may be confusing with current lottery game products and confusion on the part of the retailer.

A. Binns commented that there were a lot of different names considered, like "Quick Play", but there were concerns that if players were to ask for Quick Play it may get confusing at the retailer level with the term "Quick Pick", which a lot of times players use with Powerball. The lottery has to be careful. The lottery looked at "Quick Draw", but for the same reasons as Quick Play didn't proceed. The lottery liked "Scribblers", but we are trying to reinforce you should play the game, similar to the scratcher game. The lottery was told that we would most likely receive some push back from Scrabble. So issues like these, the lottery had to discount a lot of the names. There was some hesitation on the name "Quicksters", but it had more personality and uniqueness to it. A. Binns reported that if the Board would give the lottery some time to put together the campaign and give the game some personality and feels confident the game will do well. A. Binns added that the lottery's advertising agency felt the "Quicksters" name had strong potential for creative messaging.

M. Rael asked when the campaign was going to roll out. A. Binns advised depending on when the game launches...the lottery was originally told that the game start up was October 2nd launch so we've been pushing ahead as much as we can. Now it appears that the game won't launch until 2012. A. Binns added that it's whenever the game launches.

M. Rael asked who decides when the game launches. Both A. Binns and T. Romero responded Intralot and the lottery. Intralot gives the lottery the date the programming will be completed, turned over for testing and when they are actually ready to turn the game on; however, it's still the NM lottery's decision when a game launches.

M. Rael asked would there be a huge problem with the Board seeing what the campaign would consist of or would that cause an expense. If the campaign is created and the Board decides that they don't like it and the agency has to start over, would that create a lot of expense for the lottery? A. Binns responded saying that marketing in a group is very difficult and when you try to get a lot of opinions up front, then you end up with a different animal than when you started with. If that's what the Board wishes to do, but that's not the ideal way to do a marketing campaign.

T. Romero reported that the other issues regarding the names themselves, it's how many of those names are trademarked. Like the name Scribblers, Squigglers, Quick Draw and the Quick Plays all of these are already trademarked and patented by other companies or lotteries and that's where the difficulties come into play. It's hard to find an unusual name that relates to the game and stick in a players mind. T. Romero stated that if the Board wants to see the presentation, the lottery would make arrangements. If the Board wants to approve the rules and reference them as an EZ Play" style game to where it doesn't even reference the name itself, the lottery could certainly do this.

M. Rael commented that he doesn't like the name, but A. Binns' feels strongly that it's not a good idea to present the campaign, due to varying opinions and the possibility of making changes or come up with a new campaign. It's not the ideal way for campaigns to be launched. M. Rael asked the Board if they were comfortable with A. Binns' recommendation and move forward with the name and see how it goes or get a list of options. H. Tabet expressed his dissatisfaction, but felt that it's the lottery's job. M. Rael expressed the same and stated that it was A. Binns' and marketing's job.

M. Rael entertained a motion to approve the NMLA Rules for Quickster Games. R. Jones moved to accept the rules as recommended. Second by N. Trujillo. All in Favor, 4-1. (H. Tabet voted nay) There was no further discussion.

Financial Statements: S. Jaramillo presented financials for fiscal year 2011. The lottery returned the second highest amount of net income for a fiscal year to the State; we returned \$41,307,290 to the Legislative Lottery Scholarship program. This net revenue is nearly 1.5 million dollars more than the revised FY 11 budget. For FY 11, the lottery has returned more than \$487 million dollars to the State for education since the inception of the Lottery. The lottery should be reaching the \$500 million mark during the fall of 2011.

FY 11 net instant sales (after deducting prize, spoiled and stolen tickets) were approximately \$75.8 million and accounted for approximately 56% of net sales. These net sales were over \$1 million more than the Revised FY 11 budget, but were more than \$2.6 million dollars less than the net instant ticket sales for the same period in fiscal year 2010—a drop of 3.39%. In the last 4 fiscal years, instant ticket sales have continued to drop each year. From our record setting net instant sales for FY 2007 of \$91.4 million dollars, which were 61.7% of net sales, net instant sales have decreased by \$15.6 million dollars or about a 17% drop in net instant ticket sales.

9/08/11/wa Amended on 12/14/11/wa Net drawing game sales for FY 2011 were approximately \$59.7 million. Net drawing sales were about \$1.8 million ahead of the Revised FY 11 budget, but were \$5.4 million less than net drawing sales for FY 2010. Contrary to Net Instant ticket sales declining in the last 4 years, Net Drawing games sales have increased by \$3.1 million dollars since FY 2007. Back in FY 2007 net drawing game sales accounted for about 38.3% of net sales. In FY 11 net drawing game sales accounted for 44% of net sales. For the lottery, this shift to a higher percentage of net drawing game sales in FY 2011 may be good in that drawing game sales cost less in that we don't have a printing cost or a shipping cost for these tickets and the overall average prize payout is lower—a 52.39% average prize payout for on-line games compared to a 58.32% for instant games.

Total Operating Revenues for the Fiscal Year were \$135.5 million dollars, which were about \$2.8 million ahead of the Revised FY 11 Budget, but were almost \$8 million less than last fiscal year. Non-Operating Revenues ended the year slightly ahead of the Revised FY 11 budget by \$5,000, but were \$32,000 behind FY 2010. This was mainly due to lower interest rates during the fiscal year.

Total Game Expenses ended the year at 101.97 % of the revised budget--almost equal to operating revenues, which ended the year at 102.14% of budget. Total game expenses were 65.86% of Gross Revenues the Budget was 65.97% of gross revenues. Game Expenses were almost \$5.7 million dollars less than last fiscal year, partially due to lower sales in fiscal year 2011 and some savings in game expense line items, such as ticket vendor fees, where there is about a \$200,000 computed savings on equivalent sales for the two years.

Operating expenses ended the year at 3.67% of total Gross Revenues, with the total operating expenses at 93.10% of the revised budget. Comparing the total operating expenses for this year to last year shows a .71% decrease or \$35,000 of reductions in total operating expenses.

S. Jaramillo next presented the financials for July 2011. The Lottery will have transferred \$3,159,431 dollars to the State of NM for Fiscal Year 2012, which is 31.03% of the Lottery's Gross Revenues. Last year at this time we had transferred nearly 3.4 million dollars, which was a 30.14% return. Last year's dollars were nearly \$218,000 dollars more, but a smaller percentage.

At the end of July 2011, net instant sales (after deducting prize, promotional, and stolen tickets) were approximately 5.7 million dollars, which were about 435,000 dollars less than the YTD net instant sales budget and about \$580,000 less than for July 2010. Net On-line sales at the end of July 2011 were over 4.4 million dollars. These sales were about 502,000 dollars less than the YTD budget and about \$445,000 less than for July 2010. All together, Total Operating Revenues through July 2011 were about \$935,000 less than the YTD Budget and were about \$1,025,000 less than the total operating revenues from last year.

Total Game Expenses were tracking behind the YTD Budget percentage at 91.40% of the budget but tracking in line with the Total Operating Revenues percentage, which was at 91.59% of its budget. YTD last year the Total Game expenses were at 66.26% of Gross Revenues. This fiscal year Total Game Expenses are lower at 65.06% of Gross Revenues. This lower percentage for games expenses was due to several line items in game expenses during July tracking much lower than the sales percentages for the month, such as advertising, ticket vendor fees, promotions, and shipping and postage.

Operating expenses were at 3.91% of total Gross Revenues at the end of July. With the total operating expenses at 81.59% of its YTD budget. Operating expenses for July are more than 6,100 dollars less than last July, 1.5% less at this time. Operating expenses are nearly 90,000 dollars less than the YTD budget, about 18.4% less than the budget. Several line items in operating expenses were less than the budget, such as salaries, wages, and benefits, depreciation and amortization, professional fees, materials and supplies, travel and other. Two line items in operating expense are over the budget, these are Leases and Insurance and utilities and maintenance both line items include the costs for the building next door.

Net Income is approximately \$220,000 less than the YTD Budget, and nearly \$218,000 less this year than last July or 6.45% less this year. With the 31.03% return, we easily met the 30% return for July. This return was met by holding back expenses and not through sales.

R. Jones expressed concern that while the lottery is fulfilling its statutory obligation to return 30% of net revenues to the state, cutting expenses in prizes and retailer incentives to achieve that goal is hurting sales. She said cutting expenses to increase revenue cannot be sustained long term.

Retailer Compensation Policy: S. Jaramillo presented the Retailer Compensation Policy; this plan was initially adopted in April 2001 and amended in 2005, 2006 and 2009 due to changes in games to which it applies to. The policy is being presented again due to the upcoming changes for Powerball in January 2012. Only one change is being presented, which is a dollar amount of the winning second tier Powerball ticket. Under the current plan the winning second tier amount is \$200,000 dollars and with the new changes in January 2012, the new winning second tier amount will be \$1,000,000 dollars. The retailer that sells the winning ticket will receive \$2,500 dollars. S. Jaramillo is presenting the Retailer Compensation Policy to the board and asking for consideration to adopting this policy.

R. Jones commented that this policy would not become effective until January 15, 2012.

M. Rael asked if this policy is in line with other state lotteries are paying to their retailers? T. Romero reported that in 1996, this policy was consistent with other lotteries in terms of sales incentives to retailers. The lottery has not done a comparison since startup; some lotteries may be paying the same, less or more on sales incentives.

M. Rael entertained a motion to approve the Retailer Compensation Policy. R. Jones made a motion to approve the Retailer Compensation Plan Policy effective January 15, 2012. Second by N. Trujillo. All in favor, 5-0. There was no further discussion.

AUDIT:

Internal Audit Reports: M. Boland presented several Audit Reports for acceptance by the board. A full detailed report was made during the Finance/Audit committee meeting.

M. Boland presented the 11-005 NMLA VIP Club Launch Prize Drawings Promotion. M. Boland reported that this promotion encourages lottery players to join the VIP Club by offering them a chance to win some prizes. This promotion consisted of three drawings held in January 2011. M. Boland reported there was one observation noted in the second of the three drawings, the master list was invalid. A software programming problem included 30 names from the first drawing on the master list of VIP Club members eligible to be in the second drawing. The error was not discovered until after the drawing. This slightly decreased valid player's chance of winning by .24 of 1% or 1 out of 420 chances to win. Instead the chances of winning increased to 1 out of 450 to win, very insignificant. It should be noted that the 30 previously entered names did not win in this second drawing and due to the small chance of winning, a redraw was not conducted.

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- M. Boland reported that although the lottery can't control software anomalies that occur, the lottery can control the verification of the master list. The solution and action plan with management's agreement is to have dual controls over the master list and also identifying minimum criteria in what constitutes a valid master list. This issue has been corrected and there have been no other issues since then. M. Boland would like to submit this report for acceptance by the board.
- R. Jones commented that there was a technical correction of the audit report language that was presented in the last committee meeting back in June 2011. The audit report stated that there was "no impact" and there was a negligible impact.
- M. Rael entertained a motion to accept the 11-005 VIP Club Launch Prize Drawings Promotion report. R. Jones moved to accept the audit report. N. Trujillo seconded. All in favor, 5-0.
- M. Boland presented the Annual Inventory Observation. M. Boland reported that this audit takes place annually in June. The inventory is to identify instant tickets, lottery premiums and point of sales items held in the warehouse, claims center and vans assigned to field sales reps. Internal Audit observes this inventory to ensure the integrity of the inventory process and in accordance with the procedures. There were no observations noted. M. Boland would like to submit this report for acceptance by the board.
- N. Trujillo asked if there is a process that is followed, when tickets are returned to the lottery. M. Boland reported that there is a process for all tickets returned to the lottery and destroyed; ticket destruction. Every ticket that is produced is accounted for from the time the ticket is printed to destruction for every game.
- M. Rael entertained a motion to accept the Annual Inventory Observation report. H. Tabet moved to accept the audit report. R. Jones seconded. All in favor, 5-0.
- M. Boland presented the 12-001 NMLA VIP Club June 2011 Player Survey Drawing Promotion. M. Boland reported that this promotion encourages lottery players to join the VIP Club by offering them a chance to win prizes. M. Boland reported that there were no observations noted. M. Boland would like to submit this report for acceptance by the board.
- N. Trujillo asked how many members are in the VIP Club. A. Binns reported that there are over 6,000 members.
- M. Rael entertained a motion to accept the 12-001 NMLA VIP Club June 2011 Player Survey Drawing Promotion report. R. Jones moved to accept the audit report. H. Tabet seconded. All in favor, 5-0.

BOARD CHAIR:

CEO Contract:

M. Rael reported that the Board of Directors is requesting a contract extension to Chief Executive Officer, Tom Romero's contract. The Board of Director's are all in concurrence in saying that Tom Romero and his staff have done a very good job, in this difficult market. The hard economic times we've had, record returns and as director Jones stated there are some issues with those and those are definitely not related to your work and the work of your staff. T. Romero has done a great job, run a tight ship, very professional organization and a great asset to the lottery authority. The Board of Director's would like to reward your great work and punish you by keeping you at the lottery.

M. Rael entertained a motion to extend the contract of our Chief Executive Officer, Tom Romero. C. Stroud moved that the Board of Director's extend Tom Romero's contract for a period of three years from the date of expiration. H. Tabet seconded. A roll call vote was taken. C. Stroud, aye; R. Jones, aye; H. Tabet, aye; N. Trujillo, aye; and M. Rael, aye. All in favor, 5-0.

M. Rael asked D. Ramirez for status on the network upgrade project. D. Ramirez reported that the lottery was close to completing background checks on the vendor's employees. We have received nine out of the 18 backgrounds needed. There is a master list of all the equipment ready to order. Once all the backgrounds are completed, we will begin. The project is due to be completed by mid December.

Announcements: M. Rael announced that next Board of Directors meeting would be scheduled for a day in October/November.

PUBLIC COMMENT: There was no public comment.

ADJOURNMENT: M. Rael entertained a motion to adjourn the meeting. R. Jones moved to adjourn the meeting. N. Trujillo second. All in favor, 5-0. The meeting was adjourned at 12:40 pm.