

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun

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**Board of Pilot Commissioners
Monthly Board Meeting
February 24, 2011
9:30 a.m.
MINUTES**

OPEN MEETING**1) Call to Order and Roll Call –**

The terms of Commissioners Miller and Johnston - Board President and Vice President respectively - having expired on February 23, 2011, Executive Director Garfinkle called the meeting to order at 9:35 a.m. Commissioners Miller, Johnston, Tate, Osen, Wainwright and Roberts were present, constituting a quorum. Business, Transportation and Housing Agency was represented by BTH Deputy General Counsel Morocz telephonically from Sacramento. Executive Director Garfinkle, Board Counsel (Deputy Attorney General) Dennis Eagan, Staff Services Analyst Brian Vu, and Office Technician Kelly Dolcini also were present.

Executive Director Garfinkle introduced Ms. Kelly Dolcini who joined the staff on February 1, 2011 as the Board's Office Technician. Board members welcomed her aboard.

2) Election of Board Officers – Commissioner Tate

Commissioner Tate presided over the election of Board officers, each to serve for a two-year term commencing February 24, 2011.

Commissioner Tate nominated Commissioner Miller to serve as president. Commissioner Roberts seconded the motion. Commissioner Tate called for the vote of the Board. Commissioner Miller was elected on a unanimous roll call vote; Commissioner Miller abstained.

Commissioner Tate nominated Commissioner Johnston to serve as vice-president. Commissioner Roberts seconded the motion. Commissioner Tate called for the vote of the Board. Commissioner Johnston was elected on a unanimous roll call vote; Commissioner Johnston abstained.

The election of officers thus completed, President Miller thereupon presided over the remainder Board meeting.

3) Approval of Minutes

President Miller requested approval of the minutes of the January 27, 2010 Board meeting. Commissioner Tate moved approval with authority to Board staff to make clerical, non-substantive corrections. Commissioner Johnston seconded the motion, which passed unanimously on a voice vote.

Consideration of correction to Item 19B of the December 16, 2010 minutes was deferred to the March Board meeting.

4) Announcements - President Miller

President Miller reported on the progress to date on the Board's surcharge audit being conducted by Shea Labaugh Dobberstein, CPA's. Engagement Principal Ron Simonian in correspondence dated February 23, reported that the audit field work is complete and SLD staff is wrapping up the work paper binder and will submit it for director/principal review next week. Mr. Simonian will conduct the principal level review during the first week of March and a draft report should be available shortly thereafter.

President Miller also reported that SFBP has offered the opportunity to ride along on jobs undertaken by the bar pilots. The offer was extended to Commissioners Miller, Johnston, and Tate, and to PMSA Vice President Mike Jacob. Other Commissioners would be welcome, though as experienced mariners, the educational value of the experience would be less than for those to whom the offer was directed. No rides as of yet have been taken; President Miller stated that he and others who have the opportunity to ride along will report on their rides once they occur.

5) Board Member Activities – Board Members

President Miller reported that he had met with former Assistant Director Nancy Bennett who is now a Regional Public Affairs Manager for the California League of Cities. She is enjoying her new responsibilities, and the ability to spend more time with her young family. She sends her greetings and best wishes to the Board and the staff.

Vice-President Johnston reported that on Friday, February 18, he had attended the christening of the reopened Mare Island drydock and recycling facility operated by Allied Recycling. He reported that there is one ship in dry dock and a second due to arrive shortly. The availability of this facility will increase dry docking capacity significantly on the Pacific Coast.

6) Executive Director's Report – Executive Director Garfinkle

A) Correspondences and activities since the January 27, 2011 meeting.

On January 27th, Commissioner Osen provided Board staff with a Marine Pilot Fatigue Management proposal done in the United Kingdom in 1999. Copies are available in the Board office for interested parties.

On February 2nd staff received notice that the Office of Administrative Law approved the changes to Section 215 of title 7 approving the change of frequency mandate for the combination course to five years from three and reducing the minimum length of the manned model training to five days from six. This regulation will go into effect on March 4, 2011.

On February 7, 2011, the Executive Director had a phone conversation with Robert Schoening, the United States Coast Guard (USCG) drug and alcohol program manager, who informed him that as the Board is not a "marine employer" or a "vessel operator," there is no federal mandate to subject the trainees to random or pre-employment testing, that we have no obligation to participate in a federally mandated DOT drug testing program and are exempt from filing the annual Management Information System (MIS) report. He did suggest however that from a policy viewpoint the Board continue to randomly test trainees.

On February 8, Board staff received a copy of a letter sent from Pacific Merchant Shipping Association (PMSA) to the California Department of Finance in support of the Board's Finance Committee request to lower the Board operations surcharge. A copy of this letter was provided to the Board members.

On February 11, the Board staff received two petitions for a rate hearing. PMSA filed first; SFBP filed later that day.

On February 15, Board staff received a copy of a letter from PMSA to the Board's Pension Committee Chair, Commissioner Tate, objecting to the Pension Committee acting on HNC Sec. 1167 in the absence of supporting regulations.

On February 16, Board staff was notified by Jennifer Wada of the W Group (lobbyists retained by SFBP) that Assemblywoman Skinner had agreed to author a PMSA/SFBP sponsored bill of non-controversial changes to clean up the language of Division Five of the Harbors and Navigation Code.

On February 16 and 17 staff received additional correspondence from both counsel for SFBP and PMSA regarding the scheduling of the rate hearing.

On February 23, Board staff received a copy of a letter from PMSA to President Miller containing the same objection with elaboration as was voiced in the letter to the Pension Committee Chairman received on February 15. Both letters were provided to Board members.

B) Report on pilot licensing matters in the past month and current month.

In January the Board staff renewed licenses for Captains Kleese, Kelso, Carlier, Greig, Roberts, Lemke and Pinetti. In February Board staff renewed licenses for Captains Wagner, Hoburg, Pate, and Aune.

C) Report on surcharges received by the Board.

Executive Director Garfinkle reported the Board collected surcharges totaling \$209,217.34 broken down as follows: Board operations surcharge \$160,230.34, pilot continuing education surcharges of 27,135.00 and trainee training surcharges of \$21,852.00.

D) Report on legislative activities and contractual matters.

Staff Services Analyst Brian Vu reported on the following contracts:

SFBP contract - Issue Memo and Non-competitive Bid (NCB) is currently with the California Highway Patrol (CHP).

Janitorial contract - contract agreement request along the scope of review is also with CHP.

Investigator services contract - is still in a state of flux and is currently receiving staff attention. Once terms are arrived at, it will be ready to go out to bid.

Manned model training contract - Vendor's list along with the scope of review has been sent to CHP which currently is working on the bid package.

Comira amendment - Staff is currently working on the NCB and Issue Memo. It will be sent out as soon as possible.

Alarm contract - due to ongoing uncertainty with DGS on whether we will be relocating, no further action on this contract has taken place.

The following will be performed under an "X Number," which is the CHP's means of obtaining a service costing less than \$5000.

Drug testing for trainees - agreement has been signed with Global Drug and Alcohol Testing. Terms for the testing are random and post-incident. They will start generating random names and will notify staff once a trainee has been selected.

Court reporter – "X number" paperwork has been prepared and a reporter will be present at our scheduled rate hearing on April 6, 2011.

In discussions following this report, Commissioner Roberts questioned whether CHP was dedicating enough time to BOPC's contracts and inquired if additional pressure can be placed upon CHP to hasten its pace. Deputy General Counsel Morocz stated that there was nothing that could be done; it was a resource issue. SFBP Pilot Capt. Nyborg asked if Port Revel would still hold a spot for the next SFBP class. Executive Director Garfinkle responded that Port Revel Director Arthur de Graaw has been very gracious in his dealings with BOPC and is indeed still holding a spot. Executive Director Garfinkle also clarified that the Port Revel amendment to the existing contract had been completed; however the manned model training solicitation which will require bids from interested vendors is nearing completion.

Retired SFBP pilot, Capt. Keon, inquired why the BOPC was soliciting bids, especially since Port Revel is the best manned model facility and had served the Board's needs well in the past. President Miller responded by explaining that under pressure from CHP, the BOPC was forced to put substantially all contracts, including this one, out for bid. The Department of General Services did not favor the NCB process, as it may exclude other potential bidders. However, President Miller explained

that the scope of review sent to CHP was very specific in terms of criteria and curriculum, and that it might be that Port Revel is the only facility able to provide the services.

Office Technician Kelly Dolcini reported on the Comira pilot practice analysis study which will help in determining appropriate testing procedures for trainee selection and to ensure the written and simulator tests are directly related to the job of a pilot. To achieve this goal, the BOPC will be working closely with Drs. Norman Hertz and Roberta Chinn of Comira Testing and the SFBP over the next several months. The first informational meeting between Comira, the Port Agent and Board Staff will be held March 14 at 9:30 am.

7) Port Agent's Report - Capt. Bruce Horton

A) Monthly confidential written report on pilots absent for medical reasons (AFMR) presented to Board. **Board may go into Closed Session to discuss contents of the Port Agent's confidential report as authorized by the Harbors and Navigation Code, Section 1157.1.**

Captain Rusty McBride was found NFFD on October 15, 2010 by a BOPC designated physician.

B) Recommended Minimum Rest Period Exceptions:

There were 18 during the month of January. The majority (nine) of them occurred on January 7, with the shortest time being 9.7 hours off. There were 22 pilots on the Board with one not-fit-for-duty (NFFD) and one riding.

C) Monthly report on SFBP ship piloting business activity.

Billed moves in December 2010 compared to the three year average were as follows: Bar crossings down 4.7% (522), bay moves down 24.4% (101), river moves down 2.6% (25), total moves down 8.4% (648) and gross registered tons (GRT) down 2.8% (26,100,000) When compared to January 2010, bar crossings are up 11.5%, total moves are up 13.3% and GRT up 18.7%.

The P/V GOLDEN GATE experienced a failure of the port main engine on February 9, 2011. After further inspection, it has been determined that the engine needs to be replaced. At this point in time, there are no replacement engines available and Caterpillar, the manufacturer, is currently building one for SFBP. It is expected that the boat will be down at least eight weeks.

The launch EAGLET has been chartered and will be replacing the P/V GOLDEN GATE while repairs are made. The EAGLET is the same boat SFBP chartered in 2008 when the P/V GOLDEN GATE was going through its service life extension overhaul.

On February 11, 2011 under bar conditions red (winds in excess of 40 knots or swells greater than 12 feet), the wooden boarding platform on the P/V CALIFORNIA was crushed when it came into contact with the steel accommodation ladder on the M/V HYUNDAI FEDERAL. This was due to increasing swells, the pilot boat surfing, and the accommodation ladder being too low for the conditions.

In addition, the Port Agent reported that there were two reported instances in January of non-carriage of a Personal Piloting Unit (PPU). Both involved the pilot who piloted the USS TRIPOLI. He was unable to use the laptop due to the vessel being a dead-ship tow with no available power supply.

All Commissioners were provided with copies of the Port Agent's confidential written report of pilots who have been absent for medical reasons. After the Board had had the opportunity to read the report, President Miller inquired whether any member wished to go into closed session to discuss the contents of the confidential report. There were no requests.

8) Pilot Evaluation Committee - Captain Nyborg

The Pilot Evaluation Committee met on February 16, 2011. In closed session, all six trainees were interviewed individually. The current trainees include: Fawcett, Laakso, Carr, Johnson, Manes, and Stoltz. Their time in the program ranges from two months to 22 months. All trainees are progressing well at this time. The next scheduled meeting will be held on March 16, 2011.

9) Reported Safety standard Violations and Investigations – Executive Director Garfinkle

There were no safety standard violations since the last meeting.

10) Reportable Piloting Events – Executive Director Garfinkle

There were no reportable piloting events since the last meeting.

11) Rules and Regulations Committee – Commissioner Wainwright

A) Report on Rules and Regulations Committee activities since last meeting.

Commissioner Wainwright reported that there had not been a meeting of the Committee since the previous Board meeting. The next Rules and Regulations Committee meeting is scheduled on March 3, 2011 at 1:00 p.m.

B) Report on progress of Section 215, Pilot and Inland Pilot Training.

Commissioner Wainwright reported that that the reduction in manned model training from six to five days and change combination course frequency to five years from three years is currently with the Office of Administrative Law and will go into effect March 4, 2011.

C) Report on progress of Section 217, Medical Examinations.

Commissioner Wainwright reported that this amended regulation was submitted to the Office of Administrative Law (OAL) February 3, 2011 and is currently being reviewed.

D) Report on progress of Section 211.5, Investigator Minimum Standards.

Commissioner Wainwright reported that the Rules and Regulations Committee had completed its work on Section 211.5 – Investigator Minimum Standards. However, a question exists with respect to Board policy regarding contracting with retired pilots to provide services to the Board as Board investigators. He called on President Miller to address the issue.

President Miller stated his view that, while retired pilots might be the best qualified to investigate a maritime incident on waters under the jurisdiction of the Board, it is imperative that the Board's incident review procedures engender full confidence from the maritime community. Contracting with retired pilots might be considered suspect because of the lengthy professional and economic association between current licensees and prior licensees. Furthermore, in the event that a licensee contests an Incident Review Committee (IRC) report or recommendation, the work product of a retired pilot serving as an investigator might be impeached by counsel representing the licensee, citing the earlier relationship. If the impeachment is successful, it would jeopardize the IRC report and the Board's ability to act on it.

President Miller stated that the draft resolution that had been provided to the Board was a collaborative effort between Member Morocz and himself.

President Miller invited discussion. There were differences of opinion expressed.

Member Morocz stated that BTH supports the resolution.

President Miller then moved the following resolution:

Resolution concerning Board policy with respect to hiring retired licensees as Board investigators:

The Board finds that contracting with and using a pilot who was previously licensed by the Board would raise issues of potential appearance of bias or conflict of interest. Even an appearance of impropriety would jeopardize the integrity of the investigatory process and would shake the public's confidence in its ability to rely on the outcome of Board investigations resulting in licensing actions. Having been members of an unincorporated association of individuals and each a shareholder in a privately held corporation owned exclusively by fellow-licensees, previous licensees investigating the potential misconduct of their former business and professional associates cannot project the appearance of being unbiased or having no conflict of interest. Therefore, the Board finds that contracting previously licensed pilots as Commission investigators is not desired. Accordingly, the Board instructs the Executive Director not to offer Commission investigator opportunities to previous licensees of the Board.

The motion was seconded by Commissioner Tate. President Miller called for discussion by the Board. There was none.

President Miller invited comment from the public. Vice President Mike Jacob of the Pacific Merchant Shipping Association stated that PMSA supports the policy resolution.

The yeas and nays were ordered. The motion carried on a vote of 5 yeas, 1 nay, Commissioner Osen voting against.

President Miller stated that the Board next would take up agenda item 20.

20) Proposed regulation for adoption – Member Morocz

Member Morocz presented and offered to the Board for final adoption a completed amendment to Board regulation Section 210 concerning the incident review process and recommended its adoption. The amendment is intended to conform the Board's regulations regarding incident review process to statutory changes made by SB 1627 (Wiggins) which became effective on January 1, 2009. The Board reviewed and discussed the proposed amendment. After discussion, Commissioner Wainwright moved final adoption of the amendment. The motion was seconded by Commissioner Roberts. President Miller called for further discussion by the Board. There was none.

Whereupon the motion passed unanimously on a voice vote.

Commissioner Roberts inquired as to whether the Board should strike "inland pilot" from regulation. Board Counsel Eagan responded that it was a minor change and a blanket correction of the regulations could be done at a later date.

The Board then returned to regular order and took up agenda item 12.

12) Finance Committee – Commissioner Osen

There was no report.

13) Pilot Fitness Committee – Commissioner Roberts

A) Report on January 12, 2011 Pilot Fitness Committee meeting.

Commissioner Roberts reported that the Board's Pilot Fitness Committee met on February 15, 2011 at 9:00 a.m. All members were present and the Committee's full agenda was considered.

Commissioner Roberts reported that the UCSF study is progressing well and hopes it will be finalized in the next month or so. Commissioner Roberts also stated that there may be additional drug panel testing recommendations to the Board. President Miller stated that this recommendation may cause an increase in cost and recommended that the Pilot Fitness Committee conduct a market survey to provide cost estimates that can be incorporated in the preparation of a Budget Change Proposal.

The next scheduled meeting of the Pilot Fitness Committee is March 16, 2011 at 9:30 a.m.

At the conclusion of the Board's consideration of agenda item #13, President Miller announced that the Board would take a brief recess. The Board recessed at 10:58 a.m.

The Board reconvened at 11:17 a.m. President Miller noted that, by inspection, all Board members and staff were present and that a quorum was re-established, and that Member Morocz was on-line from Sacramento. The Board then moved to consideration of agenda item #14.

14) Pilot Pension Committee – Commissioner Tate

A) Commissioner Tate reported that the Pension Committee met on February 16, 2011 at 1:00 p.m. All members were present and the Committee's full agenda was considered.

B) Report on Pension Committee recommendations to increase pensions as per Harbors and Navigation Code, Division 5, Chapter 3, Section 1167.

Commissioner Tate reported that the Pension Committee had at its last meeting considered an adjustment to target pension amounts and pursuant to Harbors and Navigation Code section 1167 recommends to the Board an increase of 2.1 percent to be effective April 1, 2011. That reflects an increase in the cost of living index of 4.2% from January 1, 2008 through January 1, 2010.

Commissioner Tate noted that he had received correspondence from the Pacific Merchant Shipping Association objecting to consideration of a target pension increase because of the lack of regulations governing administration of the pension plan. A similar letter from PMSA dated February 23, 2011 and addressed to the President of the Board, was received prior to the meeting.

Board Counsel Eagan responded to the points raised in the PMSA letter as follows:

1. PMSA asserts that the Pension Committee did not review the pension benefits received by retirees, only the changes in the CPI. Section 1167 does not require a "review" of pension benefits. Those are prescribed by section 1163 and the individual benefits are a matter of public record. What is reviewed is the need for benefit increases and, if so, the amount of the increases. The Committee did that.
2. PMSA asserts that section 1167 is "wholly enabling" and requires a regulation for its implementation. Section 1167 does not direct the Board to enact implementing regulations. It may be subject to interpretation in regulations, but such regulations are not required. Section 1167 contains considerable detail concerning what it requires. This characterization of section 1167 as the type of code provision that does not require implementing regulations is confirmed by the excerpt from a publication of the Office of Administrative Law that was submitted with the PMSA letter.
3. PMSA asserts that the Board's pension decisions under section 1163 constitute "underground regulations," and that the Board may not take action on any pension-related matters, including benefit increases under section 1167, until regulations are enacted. The lack of regulations interpreting section 1163 does not relieve the Board of its responsibility to comply with the legislative mandate set forth in section 1167

Commissioner Tate moved that the Board approve the increase in target pension amounts by 2.1 percent effective April 1, 2011. Vice-President Johnston seconded the motion. President Miller called for discussion by the Board and comment by the public. Commissioner Osen stated his view that the Committee had not adequately reviewed the pensions presently received by beneficiaries of the pension plan.

The motion to approve passed on a voice vote, Commissioner Osen voting in the negative.

C) Report on Pension Committee recommendations on the pension application of former inland pilot, Capt. Craig Reeder.

An additional memorandum was presented to the Board concerning an issue of interpretation regarding subdivision (c) of section 1164, the subdivision that sets forth the eligibility requirements for inland pilots who seek a pension. Subdivision (c)(5) requires that, for services provided after January 1, 1994, an inland pilot must have performed a minimum of 75 piloting assignments per calendar year. Captain Reeder does not meet this requirement of at least 75 assignments a year, but asserts that the provision pertains only to calculation of benefits under section 1163, and that he is asking only for years of credit prior to January 1, 1994. On a motion by Commissioner Wainwright, seconded by Commissioner Roberts, the Board voted unanimously that subdivision (c)(5) was a requirement for eligibility for an inland pilot pension, and that inland pilots licensed for periods after January 1, 1994, must establish in support of their pension applications that they performed the 75-assignment minimum for each year after January 1, 1994.

A motion was then made by Commissioner Tate, seconded by Commissioner Johnston, to approve Captain Reeder's pension application. Discussion on the motion included the issue whether Captain Reeder met another eligibility requirement: that set forth in subdivision (c)(4) of section 1164. Subdivision (c)(4) requires that, since January 1, 1987, an inland pilot must have held himself out "as providing pilotage assistance to the entire shipping industry consistent with the inland pilot's license." By a unanimous vote against, the motion to approve Captain Reeder's application failed to carry.

A motion was then made by Commissioner Johnston, seconded by Commissioner Wainwright, to base refusal to approve the application on a ground additional to the failure to meet the 75-assignment-per-year minimum. The motion was to base the refusal on the separate and independent ground that Captain Reeder had not met the "holding out" requirement of subdivision (c)(4). That motion carried by a vote of 5-1, with Commissioner Tate voting no.

The Board then directed staff to prepare findings in support of its decision, to be considered for adoption at the March 2011 Board meeting.

15) Low Sulfur Fuel – Commissioner Osen

Commissioner Osen reported that Mr. Cowen provided a report on three incidents.

16) Ad Hoc Working Group on Trainee Recruitment – Commissioner Tate

Commissioner Tate reported that the Board's Ad Hoc Working Group on Trainee Recruitment will meet on February 28, 2011 at 10 a.m.

17) Continuing Education Committee – Commissioner Roberts

Commissioner Roberts stated that the Port Revel June class is forging ahead as planned.

18) Pilot Power Committee – Commissioner Roberts

Commissioner Roberts reported that the Committee cancelled its February 24, 2011 meeting and the next meeting is tentatively scheduled for March 16, 2011 at 1:00 p.m. Section 237(d) date was not yet available but should be available in time for the March Board meeting.

19) Report of the Attorney General's Office – Board Counsel Dennis Eagan

There was no report.

Having previously discussed item 20, the Board proceeded to item 21.

21) Propriety of use of Board Operations for legal expenses in defense of charges of Board negligence.

The Board discussed the issues. Commissioner Osen stated his view that the Board's authorizing statute – specifically Harbors and Navigation Code section 1159.1 – does not specifically authorize payment of legal defense costs from the Board's operating fund. President Miller and Member Morocz expressed their views that legal defense costs are incident to carrying out the Board's mission and accordingly would be payable from the Board's operations fund. Member Morocz distinguished between defense costs that are covered through routine appropriations, and payments to satisfy a judgment, which must be approved by the Legislature.

PMSA Vice President Mike Jacob stated PMSA's view with respect to the payment of judgments or settlements from the Board's operations budget, which is funded by the Board's operations surcharge. A state appropriation alone does not make Board expenditures legal ones, at least not in the context of fees levied on navigation. While it may be proper to pay ordinary, regular legal expenses from the operations budget, the payment of a judgment or a settlement resolving charges of Board negligence should not be paid out of the Board's operations budget because that budget is funded by the operations surcharge and there are no benefits conferred on a vessel from such a payment. Any such payment would, in PMSA's view, be an improper levy of a tax on navigation.

At the conclusion of the discussion, Commissioner Osen moved that the Board seek authority from the Attorney General and from the Governor to hire outside legal counsel to provide an impartial opinion as to whether it is proper to use Board operations fund moneys for legal expenses in defense of charges of Board negligence.

President Miller inquired whether there was a second. The motion was not seconded. Accordingly, the motion did not proceed to a vote.

22) Briefing by Board Counsel on the Rate Hearing process and procedures.

Board Counsel Eagan briefed the Board on rate hearing processes and procedures.

The Board then moved to consideration of agenda items 24 and 25.

24) Public Comment on matters not on the Agenda

There were none.

25) Proposals for Additions to Next Month's Agenda

There were none.

President Miller then noted that unless and until he is reappointed, this would be Commissioner Tate's final Board meeting. President Miller noted that Commissioner Tate had agreed to continue to serve on Board committees, for which President Miller expressed his appreciation.

The Board then moved to consideration of agenda item 23.

President Miller announced that the Board would take a brief recess. The Board stood in recess at 12:46 p.m.

The Board reconvened at 1:05 p.m. President Miller noted that Commissioners Tate, Wainwright, Johnston, Roberts and Miller were present, constituting a quorum. Commissioner Osen was not present and Member Morocz was not on-line from Sacramento.

23) Performance Evaluation of Executive Director – Commissioner Tate

Review quarterly Performance Evaluation of Executive Director. The Board may go into closed session pursuant to 11126(a)(1) of the Bagley-Keene Open Meeting Act to discuss the evaluation.

President Miller announced that the Board would go into closed session to conduct a performance evaluation of Executive Director Garfinkle.

CLOSED SESSION

The Board began its closed session at 1:07 p.m.

OPEN SESSION

The Board reconvened in open session at 1:21 p.m. President Miller announced that in its closed session, the Board conducted a performance evaluation of Executive Director Garfinkle and took no other actions.

22) Adjournment

There being no further business to come before the Board, the Board adjourned at 1:22 p.m.