

SPECIAL BOARD MEETING MINUTES OF THE BOARD OF TRUSTEES OF LARAMIE COUNTY COMMUNITY COLLEGE DISTRICT, STATE OF WYOMING, HELD WEDNESDAY, JUNE 1, 2015, PETERSEN BOARD ROOM, ADMINISTRATION BUILDING, LARAMIE COUNTY COMMUNITY COLLEGE

Board Present: Board Chairman Ed Mosher, Vice Chairman Bill Dubois, Treasurer Don Erickson, Secretary Christine Lummis and Trustees Bradley S. Barker, III, and Carol Merrell

Board Excused: Trustee Brenda Lyttle, ACC Ex Officio Trustee Butch Keadle, and Student Ex Officio Trustee Jaime Quinones

Staff Present: President Joe Schaffer, Associate Vice President Lisa Murphy, and Legal Counsel Tara Nethercott

Visitors: None

**1. CALL TO ORDER** of the June 1, 2015, Board Meeting of the Laramie County Community College District Board of Trustees – Board Chairman Ed Mosher

Board Chairman Ed Mosher called to order the June 1, 2015, Board Meeting of the Laramie County Community College Board of Trustees District at 12:07 p.m.

**2. FOUNDATION OPERATING AGREEMENT – FOLLOW-UP DISCUSSION** – President Joe Schaffer

Trustees discussed the Foundation Operating Agreement and the changes proposed by the Foundation Board.

Trustee Erickson asked for a review of what President Schaffer thinks are the key points in the agreement for the College and the Foundation. President Schaffer shared some history of the agreement's inception, the reason for the agreement, and the advancement of that agreement to what the Board is being asked to consider. The Foundation prior to 2008 functioned independently of the College with the College providing a few in-kind services, a location on campus for their operations, and access to other campus facilities. Operating with a modest budget, the 2008 recession caused many of the Foundation's portfolios to become "under water." Even so, the Foundation was still functioning off the earnings of their operations, with the majority of the revenues coming from the 1% fee charged on their portfolio. The attorneys for both the College and the Foundation agreed the College's providing operational monies for the payment of services to the Foundation is legal. The initial agreement was approved by the LCCC Board of trustees on November 19, 2008. A second agreement was approved by the LCCC Board of Trustees on March 16, 2011. The 2011 operating agreement better delineated the roles and responsibilities of the Foundation, stated the College would annually provide development priorities to the Foundation, and provided for interaction between the College and Foundation to sustain the agreement. The Institutional Advancement model that merged the Foundation and Public Relations was implemented in spring 2012. Payments to the Foundation during this time were increased from \$150,000 to \$306,000. The increase enabled a needed change in staffing by providing the funding necessary to support an Associate Vice President of Institutional Advancement and a Director of Corporate Development and Major Gifts in addition to the already-established successful efforts of Brenda Laird as the College's Director of Scholarships and Annual Giving, and other support staff. Corporate gifts from Union Pacific and Wyoming Machinery soon followed. (The Foundation reimburses the College for staffing salaries and benefits.) Extremely important to note was the Foundation's spearheading the capital campaign for the Flex-Tech Building and University/Student Center that successfully led to a \$25 million local bond issue. Additionally, last year was the second largest year of giving, preceded only by the 2004 Matching the Spirit Campaign. The Foundation's portfolio has grown from \$14 million in 2011 to \$23 million today. Ultimately, the Foundation and the College and their respective boards have better synergy and a clearer understanding of the expectations of each.

President Schaffer stated the most salient point he wanted to leave with the LCCC Board of Trustees today is that the model works.

The new operating agreement is intended to accomplish the following:

- Sustains a commitment to the Institutional Advancement model.
- Provides stability for the Foundation by securing a longer six-year agreement with an opportunity for a review after three years.
  - o Three years spans the time in which the LCCC District Board of Trustees' elections occur.
- Provides for a 2.5% increase beginning in FY 2017 and each year thereafter of the agreement.
  - o Helps the Foundation manage such things as pay increases because they are not eligible for State-funded pay increases.
- Provides for a priority transfer of land included in the Campus Master Plan's planned expansion on 100.09 acres at a cost of \$185,000 to the College. (Some question still exists about the land on which the Ag complex is located.)
  - o An additional 115 acres is still under consideration. President Schaffer suggested the 115 acres be transferred to the College with an agreement of an 80/20 (80% to the College and 20% to the Foundations) net profit sharing should the land be developed for commercial purposes. The Foundation Executive Committee did not find President Schaffer's suggestion acceptable. The Foundation Executive Committee has since offered to let the College graze the land provided the College insures it and enters into a land agreement with the Foundation. The cost to insure the land is nominal at about \$30,000 for liability coverage. However, the Foundation would still have to provide some type of umbrella policy. During the May 26<sup>th</sup> meeting between President Schaffer and the Foundation Executive Committee, the Committee suggested the 115 acres, half of which is located in the flood plain, not be included in the agreement and any decisions be left open for discussion.
- Added language about improved confidentiality.

Trustee Erickson thanked President Schaffer for the historical and explanatory information, stated his appreciation of the Foundation Board on which he served two years, and acknowledged many Foundation Board members are "movers and shakers" in the community and have the expertise and commitment to the College necessary for future development. He asked why the Foundation Executive Committee feels so strongly about keeping the additional 115 acres and encouraged negotiating an agreement that would transfer all the land rather than agreeing to a "piecemeal" transfer of the land. He also expressed concern about the College covering the cost of insurance for the land.

President Schaffer, responding to the question of the Foundation's rationale for keeping the 115 acres, stated the land provides the Foundation with an asset that may be of future interest to the College, and therefore would encourage the College to continue collaborating with the Foundation. He did not believe the Foundation has any interest in developing the land.

Trustee Merrell agreed that the Foundation is necessary to the College's development but also believed that a total land transfer was most preferable. Trustee Dubois and Trustee Barker, however, disagreed stating the non-transfer of the additional 115 acres would have no long-term impact, negative or otherwise, on the College. Trustee Barker added the Foundation's retention of the land gives them a certain amount of leverage.

Counsel Nethercott observed that even though the relationship between the College and the Foundation are copasetic at this time, and no change in that relationship is foreseen, that as the College's attorney she would advise the College to protect itself with regard to the 115 acres of land. She suggested the option of adding a "first right of refusal" for the purchase the land be added to the agreement, noting the College's non-ownership of the land would inhibit future building projects for long-term growth and development. For Chairman Mosher, President Schaffer stated the 100.09 acres encompasses everything from the western side of the shelter

break, all the way by the western pond, up to the north pond, behind the Ag Building and all the way to College Drive, essentially everything on the Campus Master Plan.

Regarding the insurance, Counsel Nethercott stated that the cost to the College to cover the additional 115 acres would be insignificant because the College already owns much of the property and is a governmental entity. Whereas, the Foundation has their own insurance costs like any non-governmental entity would. President Schaffer noted further that the College's insurance policy has traditionally covered all the land in question because the College and the insurance company assumed the College owned all of the land. Regardless, the Foundation will have to purchase some type of umbrella policy if the Foundation retains ownership of the land. Some type of liability policy would have to be purchase to cover any liability-related occurrences from the grazing of stock on that land. The College's carrying of a liability policy would reduce the Foundation's cost of the umbrella policy. President Schaffer stated he has been clear with the Foundation Board that he does not see adding to the operating agreement a subsidy to pay for the insurance covering the 115 acres. Counsel Nethercott observed that the Foundation Board has a fiduciary duty to maximize profits for the benefit of the College. Typically, the relationship between these types of institutions—the College and the Foundation—is to provide flexibility in fundraising and dollar usage for development through a public/private partnership where dollars can be raised more creatively and effectively. Some contention seems to exist about which institution can better maximize the profits from the use of the 115 acres. If the conversation is about bargaining chips, then the conversation has derailed because there should be no competition between the two entities. The conversation should be about who's in the best position to maximize the value of whatever asset either institution has.

At Trustee Merrell's request Institutional Advancement Associate Vice President Lisa Murphy offered her observations of the operating agreement and land discussions to date. She first acknowledged President Schaffer's comprehensive review of the Foundation's past and proposed operating agreements and thanked him for this. She also pointed out that President Schaffer is the first College president to bring the Foundation into the College family. She emphasized the unification of the College's and Foundation's boards and further emphasized the importance of the continuation of this cohesive relationship. She also remembered a past trustee's suggestion that the Foundation's operations be outsourced and that the Foundation be "kicked off" the campus. Associate Vice President Murphy stated that retaining ownership of the 115 acres as a "golden chip" is at best redundant because President Schaffer has given the Foundation the "golden chip" through the provisions of the proposed operating agreement, an action unsurpassed by any other on behalf of the College. Having heard the concerns of some trustees, she suggested President Schaffer, LCCC trustee representatives, Foundation President George McIlvaine, and Foundation Board member Anna Marie Hales meet to discuss those concerns along with the other information shared. Trustee Erickson later voiced support for this suggestion. She added the Foundation Board was appreciative of the opportunity to provide a Foundation update during last summer's June 18<sup>th</sup> Board meeting and would be appreciative of another opportunity to do so. Board Chairman Mosher stated he saw no disadvantage to the agreement as presented and believed the College and the Foundation Board should engage in a continuous conversation over the next three years.

Additional discussion ensued during which the trustees considered whether they should take action on the proposed operating agreement during this meeting, and President Schaffer again reviewed the College's offerings contained in the agreement. He pointed out the College cannot add more unrestricted funds to support the Foundation, and so the coming six years needs to be used to help the Foundation grow its unrestricted account and its portfolio so that it will generate the revenues necessary to sustain its operations. He added that the College's investments in the Foundation's operations come with high expectations. He also stated he is comfortable with a land-lease agreement for the additional 115 acres and that the College cannot cover the insurance.

Trustee Dubois moved and Trustee Barker seconded,

**MOTION:** That the Board of Trustees approves the Foundation Operating Agreement as written.

Trustee Dubois moved and Trustee Lummis seconded,

**MOTION TO AMEND THE ORIGINAL MOTION:** That the Board of Trustees approves the Foundation Operating Agreement as written with the addition of “right of refusal” language should the Foundation decide to sell or lease the 115 acres of land not being transferred to the College.

**DISCUSSION:** None

**MOTION TO AMEND THE ORIGINAL MOTION CARRIED** unanimously.

#### **CONSIDERATION OF ORIGINAL MOTION**

**DISCUSSION:** Trustee Erickson said he will vote against the original motion but that he would be in favor of meeting with the Foundation Executive Committee because he believed “cleaning up” the ownership of the 115 acres would be in the best interest of the College. Trustee Merrell said she will abstain from the vote because she sees value in both sides and that she believes in the Foundation but would also like for the “clean up” to occur now. Board Chairman Mosher stated the expectation, based on President Schaffer’s comments, is that the College will not pay for any insurance associated with the 115 acres. Counsel Nethercott assured no such language exists in the operating agreement currently before the trustees. Board Chairman Mosher asked if the Board had a deadline for acting on the operating agreement to which President Schaffer responded June 30<sup>th</sup> is when the current operating agreement expires. He added that he did not anticipate the operating agreement changing before the Board’s June 17<sup>th</sup> meeting and that the agreement as is would not prevent him from accomplishing what he needs to achieve. He reiterated the College will need to enter into a land-lease agreement for the 115 acres, that the College should not bear any insurance costs, and that approval of the agreement would not negate his responsibility to continue to negotiate the land transfer. He also urged the trustees to use the next three years to consider the continuation of the agreement and to remember that a property exchange is inherent in the agreement.

Trustee Erickson moved and Trustee Merrell seconded,

**MOTION:** That the Board of Trustees postpones action on the Foundation Operating Agreement until June 17<sup>th</sup> Board meeting or during a special meeting that might be held prior to that date.

**DISCUSSION:** None

**MOTION TO POSTPONE ACTION FAILED** with two yeses (Trustee Erickson and Trustee Merrell) and three noes (Trustees Barker, Dubois, and Lummis).

Having moved, seconded and passed unanimously the **MOTION TO AMEND THE ORIGINAL MOTION**, which amended the operating agreement as presented by adding language concerning “right of refusal”, Counsel Nethercott directed the trustees to vote on the original motion.

**MOTION TO APPROVE ORIGINAL MOTION AS AMENDED** carried with three yeses (Trustees Barker, Dubois, and Lummis), one abstention (Trustee Merrell), and one no (Trustee Erickson).

For the record, Counsel Nethercott’s further review of parliamentary procedure following the meeting determined the motion, which was believed to have failed, actually passed.

- 3. PUBLIC COMMENT** (Public comment may be made on anything not on the agenda. Comments will be limited to five minutes.) – Board Chairman Ed Mosher

No persons from the public were present.

- 4. ADJOURNMENT** of the June 1, 2015, Board Meeting of the Laramie County Community College District Board of Trustees – Board Chairman Ed Mosher

Board Chairman Ed Mosher adjourned the June 1, 2015, Board Meeting of the Laramie County Community College Board of Trustees District at 1:17 p.m.

- 5. EXECUTIVE SESSION** – *An executive session was held.*

Prior to adjournment of the June 1, 2016, Special Board Meeting, Trustee Erickson moved and Trustee Merrell seconded the Board convene an executive session to discuss personnel and legal matters.

**MOTION CARRIED** unanimously.

Respectfully submitted,

Vicki Boreing  
Board Recording Secretary