

February 28, 2011

Released Closed Minutes
Haywood Community College
February, 2011

These are released closed minutes primarily from the meetings the HCC Board of Trustees had relating to the solar thermal project at the Creative Crafts (Arts) Building.

Yellow highlighting is mine. It usually signifies a question or accentuates a statement. There may be some comments at the end of each set of minutes.

These reflect closed minutes held on:

- 8-12-10
- 8-18-10
- 8-30-10
- 9-2-10
- 9-15-10
- 10-7-10
- 10-20-10
- 11-17-10
- 12-15-10

Monroe A. Miller Jr.

Closed Session
Special Called Meeting
Board of Trustees
Minutes
8-12-10

Dr. Johnson distributed a cash flow analysis pertaining to solar. Mr. Nicklas explained the spreadsheet to Trustees and explained the different scenarios based on solar thermal and PV. Based on the analysis, it makes sense to buy out as soon as Trustees can afford to do so. Maintenance is included in the projections.

Dr. Johnson stated that Steve Levitis, solar attorney, will be providing an overview of where he is with the solar developer. Trustees had previously assigned confidentiality statements and picked up the solar documents for their review prior to today's meeting. Mr. Levitis was contacted via telephone at this time. He introduced himself and stated that the solar developer requires the structure of two documents because of their financing and tax credits. It is a complicated process on what the developer has to do to qualify for these credits. The equipment is owned by one entity and another entity is involved in financial terms of operations. There are three separate components to the HCC system. Currently all three are contained in these two documents and they would like to avoid breaking them out to avoid having so many. FLS has to have investor approval to make changes to their documents and that may not be consistent with our timeframe. Their attorney received these

documents yesterday. There are two things that must take place simultaneously, the terms and the requirements by us. We also hope to get a sense as to flexibility to make changes from developer. Dr. Johnson stated that she would like to give a quick summary of the conversations with the county bond attorney and the county attorney and some of the language in these documents is due to that conference call. She stated that there are two drafts from county in terms of their lease on access agreement but essentially because the county is financing the construction of building. The county will own the land and building and when the loan is paid in full, they will convey the land and building back to the College. The College will lease the building from the county and will have an agency agreement. We are trying to confirm that the bond holders are not entitled to any security holdings on the solar equipment. The county's bond attorney has received these documents. Ms. Forga asked if the county will sign off that they have no rights to this equipment, etc. Dr. Johnson stated that the county does not expect to have any rights to solar equipment, etc. However, the documents will be reviewed to make sure this doesn't create any issues for the county's viewpoint. Mr. Bumgarner wanted to know if these documents address the photovoltaic also. Mr. Levitis responded that they do. Mr. Bumgarner asked if Trustees sign these documents then FLS will be putting on a PV system. Mr. Levitis responded yes. Dr. Johnson stated that she had forwarded Mr. Levitis three questions from Trustees and she received a response last night. In regards to the ability to buy out any piece of equipment, Mr. Levitis stated that there is a purchase option – referenced as system and components. If there is a breach the solar developer has 30 days to remove their equipment. If the removal doesn't take place, HCC would have the ability to keep some of the equipment. He stated that the document is worded that Trustees do have the option to purchase. Mr. Levitis commented that as to a buyout, his understanding is that the fair market value requirement is a function of the tax laws and they not allowed to set the price in advance. He is not sure that Trustees can't bind in them in some ways, but he thinks the tax laws will rule that. Some discussion took place regarding how HCC will be paying on the solar thermal side. After discussion, Mr. Levitis stated that he would change the language to state delivery point.

Mr. Bumgarner stated that Trustees had some questions and it would be good to address those at this time.

Mr. Levitis stated that he found their documents to be very confusing and he tried to clean them up as much as possible. He reminded Trustees that they are trying to sort through a strange structure.

Structural Questions

- 2) Do we need to break out for PV. Mr. Levitis stated that it is his hope that the agreements can be in one document.
- 3) Can the college purchase any component of the system separately? Mr. Levitis will have to make sure solar developer is okay with this.
- 4) Does the college have any separate real estate entity that should be a party to these agreements? It was agreed to make sure Trustees are responsible for real estate of the College.
- 5) Question regarding term of agreement. Mr. Levitis stated that their documents provided an initial term and a renewal term. He knows they have to have a 7 year term due to tax deals. Trustees agreed that there should be different terms and a renewal cannot be forced on Trustees. There needs to be clear maintenance agreements for initial and renewal terms. If HCC buys the system, there should be a firm maintenance contract price for a specific timeframe.

Legal Questions

- 1) Need someone to review representations and warranties.
- 2) Trustees stated that they want language to say contract in effect until all are agreements are signed and in place.
- 3) Indemnity – Dr. Johnson will check with attorney and county attorney. Trustees requested that patent infringement be inserted.
- 4) Insurance - Dr. Johnson stated that she will get the state insurance clarified.

- 5) Assignment rights – Trustees stated that they approve assigning rights and capacity to perform to FLS.
- 6) Remedies in regards to default – Discussion took place regarding this question and Mr. Levitis agreed that he would include something in regards to construction. Mr. Nicklas stated that If the company defaults then HCC would get the equipment.
- 7) NCUC approvals – There is some question about the approvals. Mr. Levitis is not sure what approvals they need. Mr. Nicklas stated that they don't need NCUC approval, but has to comply with how metering will take place.
- 8) Waiver of indirect and consequential damages – It was agreed that Mr. Smathers would review this and provide input.

Business Questions

- 1) Status of FLS proposal – Negotiations are still taking place.
- 2) REC proceeds – It was determined that if FLS benefits then the College should also.
- 3) Penalties for failing to meet the deadline by a specific date – Open conversations should take place with FLS regarding where they stand. Mr. Nicklas stated that he has shared his timeline with FLS.
- 4) When energy going out of the system is this point of delivery – It was determined that language is needed. Mr. Nicklas stated that he will get his electrical engineer to provide wording.
- 5) Frequency of payments or invoices - It was suggested to do quarterly.
- 6) Inclusion of 60% guarantee for minimum purchase of solar – Mr. Nicklas stated that he will set down with FLS to review again.
- 7) Charge more for thermal output – It was suggested to push back on output.
- 8) **Publicity – It was agreed that the College reserves the right to review and approve any publicity regarding the HCC Project.**
- 9) Term of maintenance agreement – If the College buys out the system at the end of the term then the College should have the right to use FLS or another entity and if FLS is selected the terms should be spelt out in regards to cost.
- 10) **Rights to access - Dr. Johnson suggested during business hours of the college, but if there is a problem with the system they would have access. However, during an emergency they should get clearance from the College.**

Technical Questions

It was determined that Mr. Nicklas will follow up with technical questions.

Dr. Johnson stated that Trustees should send any additional questions to her before August 18th. Rose – She in turn will get those to Mr. Levitis.

Discussion took place in regards to the technical issues and if it would be a benefit to have other Trustees involved. Mr. Nicklas stated that he feels the easiest way is to see how thing evolve.

Mr. McMahon wanted to know if there was a plan B in case the contract falls through. **Dr. Johnson stated that the cost of the solar thermal will have to be in the loan request that goes to the county.** After discussion, it was agreed that Dr. Johnson would get some leads from Mr. Nicklas regarding maintenance of the solar companies that are skilled in that area just as a back-up.

Discussion took place regarding the PV. Mr. Nicklas stated that as it appears on the timeline, Trustees will determine by August 30th if the solar systems can be included. He stated that he needs to begin working with the GC to identify items that can be cut

Mr. Ensley made a motion to return to Open Session. Ms. Forga seconded the motion and it was unanimously approved.

Another Closed Session was called in order for everyone to turn in the documents that were distributed during closed session. Everyone turned their documents in at this time.

Ms. Forga made a motion to return to Open Session. Mr. McMahon seconded the motion and the Board unanimously approved.

Comments: Who is the “county bond attorney”?

Closed Session Minutes
Board of Trustees
Regular Meeting
8-18-10

The Closed Session Minutes were distributed for June 21st. Mr. McConnell made a motion to accept the minutes as written. Ms. Forga seconded the motion and it was unanimously approved.

Dr. Johnson announced that Ms. Starrs has uploaded the latest solar documents from Mr. Levitis. He has captured the dialog provided by Trustees and he is moving forward on these items. She stated that Trustees need to review items in yellow and make sure that these are items that they wanted him to do. She has requested items for Mr. Smathers to review and he what he is addressing are in blue. He will be working with the solar attorney on these issues.

Dr. Johnson began reviewing the document at this time.

Structural Questions Section

The first section was in regards to structural questions. Mr. Sorrells had a question about item #4 in regards to the loan. Dr. Johnson stated that the solar attorney is working with county attorney and **bond attorney** for the language. In regards to #5, **Mr. Ensley clarified that solar thermal buyout is a maximum of 10 years and PV is maximum of 20 years.** Mr. Sorrells wanted to know if the maintenance agreement will be spelled out. Mr. Bumgarner stated that according to Mr. Nicklas part of proposal included a specific amount for maintenance after buyout. Some discussion took place regarding the life cycle of the equipment. Mr. McMahon stated that in regards to #5 the draft stated that if we buy the system we have to use them as a maintenance provider for 2 years. That is something we may or may not want to keep. Trustees should be cautious because will this statement obligates the College for 2 years and Trustees need to make sure and identify associated costs. **Steve – huge electrical wiring cost. Dean – are you saying since the wiring is due to the solar, can we value engineer some of that into the solar contract.**

Legal Questions Section

Some discussion took place in regards to the language regarding the lease. **It states that the lessee is FLS, but then the contract references FLS20.** Mr. Morris explained that one of those referenced would be the broker. **The broker is getting the tax credits and doesn't care about the REC's.** The other company wants the REC's because that is what funds the company. **Mr. Levitis stated that what really drives this deal is the tax credits. HCC can't use these tax credits.** Mr. Smathers stated that his concern is if this deal falls through, which entity would Trustees sue? **Who would be liable for any errors or mistakes if they occur?**

Mr. Ensley stated that in regards to #6, Trustees want to make sure that banks do not have a right to equipment and that HCC has the right to the equipment. He would like that spelled out.

Business Question Section

The attorney is clarifying #4, #6 and #7.

Technical Question Section

These are currently in negotiations but there were a few comments that were captured. Mr. Nicklas is provided information in #2 to Mr. Levitis to put in contract. All others are things the attorney needs to clarify.

Mr. Bumgarner requested that Trustees review the timetable. Dr. Johnson stated that the next official step is that Trustees will take action on the solar contract on August 30th pending approval by NCCCS.

Dr. Johnson stated that she wants to clarify if HCC has to submit the lease to the system office. It may be that the lease can be approved on August 30th and the contract later.

Ms. Forga made a motion to return to Open Session. Mr. Lanning seconded the motion and the Board unanimously approved.

Closed Session Minutes
Special Called Meeting
Board of Trustees
August 30, 2010

Dr. Johnson stated that Mr. Levitis will provide a general overview of contract negotiations at this time. Changes are still being made and when banking gets involved, the document changes may not roll through so easily.

Mr. Levitis stated that the documents they have been working with are standard FLS documents. FLS has a complex tax structure, due in part to their investors. The investors' lawyers have limited authority and if there are any major changes the approval lies with the investors. With this said, he is trying to limit the changes that are essential to protect HCC's interests. Dr. Johnson requested clarification of whose comments were red and whose were blue. Mr. Levitis stated that the red is deletions and the blue is additions. All changes would be FLS changes to the last version. Anything not highlighted means they have accepted our changes. If it is in red, it is something HCC has asked for that they are not will to accept. The whole pricing structure still has to be resolved. There seems to be confusion about to what extent we are paying for a guaranteed minimum amount of purchase. The most productive way to handle that is to let him get to the next step and get back to Trustees. Mr. Sorrells stated that the architect said there would be no cost to HCC and that HCC would eventually make money. Is that true? Mr. Levitis stated that this is a fully redundant system and it is going in at no capital costs to HCC and the way it is structured is to negotiate terms for BTU's or therms comparing to natural gas and that it is lower than natural gas. The idea is that the price that HCC is paying is lower than they would be paying if using natural gas and that it doesn't cost anything for capital. This will take place for a period of years and then HCC have option to purchase equipment at fair market value at time of purchase. During lease term, Trustees are better off with this agreement unless natural gas were to fall below the purchase price. HCC will have realized those energy savings without any capital cost. Ms. Melville asked if natural gas prices continue to climb will that affect the fair market value of the system. Mr. Levitis stated that he would say yes, that an appraiser would probably look at the cost of gas and the system. She asked if that meant HCC savings

would be greater. Mr. Levitis responded yes.

Mr. Smathers stated that it appears everything is moving along at a steady pace with everyone involved. His concern is that there are separate agreements with the county and financing. He is trying to get a grip on when Mr. Levitis thinks we can get an agreement with FLS. This solar piece needs to be hammered out first before going into final documents with the county and those documents are on a tight timeframe. Mr. Levitis stated that it has been frustrating because FLS is not moving quickly. The intent at this point is to not ask for any more than is necessary to protect HCC's interests or it will not meet the timeframe. He stated that he feels the best strategy is to let him do one more round with their lawyers and come back to Trustees and say here is what we have on the table. Dr. Johnson stated that between now and September 15th would be the timeframe.

Some discussion took place regarding energy used by HCC. Ms. Levitis stated that the way the contract reads is that if the system delivers 90% less than designed they have to pay HCC a differential to cover the costs for procuring from another source. He believes it is linked to natural gas and the backup is electric. They may need agree that the costs are electric instead of natural gas. That obligation only kicks in if they miss by more than 10%, first 10% is HCC risk. Mr. Sorrells asked if FLS has done a site visit. Mr. Levitis responded that the language in the contract is that they have done a site evaluation. Mr. McMahon asked what are the biggest sticking points? Mr. Levitis stated that he had touched on most of them. The latest solar purchase agreement came in last night and he hasn't had a chance to review it. Dr. Johnson stated that Trustees wanted the right to purchase the equipment at anytime if FLS went out of business, and the contract said HCC couldn't purchase within the first five years. Mr. Levitis stated that they are not willing to allow us to purchase within the first 5 years and he has suggested they will be liable for the lease. They are not in agreement. Mr. McMahon stated that there is a statement that at end of contract if Trustees purchased equipment, we had to use FLS to do maintenance and Trustees were concerned that HCC might have staff to maintain the system at that point. Mr. Levitis commented that he doesn't know what their position is on that.

Dr. Johnson stated that in regards to the sight analysis, Mike Shore said they had run their own detail analysis on computer. Staff wanted that included in the contract and that FLS understands the productivity analysis.

Some discussion took place in regards to the loan and the solar. Dr. Johnson stated that there are two things that she has been working on with attorneys. The attorneys have confirmed that HCC can move forward separating the loan from the solar. Dr. Johnson stated that she questioned Greg Driver about what happens regarding Senate Bill 668 if HCC cannot get a contract on the solar or if the solar is not a part of the building. She distributed a copy of his response. Discussion took place.

Dr. Johnson stated that the goal is to have the solar contracts ready for approval by the September 15th meeting.

Ms. Melville made a motion to return to Open Session. Mr. McMahon seconded the motion and it was unanimously approved.

Comment: "Mr. Sorrells asked if FLS has done a site visit. Mr. Levitis responded that the language in the contract is that they have done a site evaluation." What? It takes a lawyer to answer a question like that? Why can't Mr. Sorrells get a straight answer from FLS.

Special Called Meeting
Minutes
September 2, 2010

Mr. Sorrells stated that he would like to hear numbers associated with solar. Since Trustees are going through the value engineering process it would be good if information could be shared pertaining to the contractors part as it relates to solar. Mr. Nicklas responded that there is some interfacing. He doesn't have any costs from the contractor regarding solar interfacing, but can get that information. However, any changes made would be considered a change order at this point. Mr. Sorrells stated that he only wanted to see the estimates. Mr. Nicklas stated that it will more than likely be prices from FLS since they are the ones that supplied those associated costs. Mr. Bumgarner stated that Innovative Design get those costs to the administrative staff and they can share with Trustees.

Mr. Sorrells made a motion to return to Open Session. Ms. Forga seconded the motion and the motion was unanimously approved.

Respectfully submitted,
Teresa Starrs, Secretary
Board of Trustees

Comment: "Mr. Sorrells stated that he would like to hear numbers associated with solar. ... Nicklas responded that there is some interfacing. He doesn't have any costs from the contractor regarding solar interfacing, but can get that information. However, any changes made would be considered a change order at this point." What? This is what is typically called, putting the cart before the horse.

Board of Trustees
Closed Session Minutes
September 15, 2010

The Closed Session of the Board of Trustees began at 4:30 p.m. on September 15, 2010. Dr. Johnson informed Trustees that the latest solar agreements have been loaded to the computer desktops. A Term sheet has also been uploaded for information. The goal is for the attorneys to finish work so that she can give the documents to the Board of Trustees for review well before the October meeting. Currently the attorneys are waiting on feedback from FLS. Mr. Sorrells asked when Trustees could see a diagram. Dr. Johnson stated that this is the first time she has heard that request. She stated that there is some language about BTU's produced. Mr. Sorrells stated that he would like to see the interfacing of how it comes into site. Mr. Morris stated that some of it is on page 40.

Mr. Levitis was connected by phone at this time and Dr. Johnson requested that he provide an update. Mr. Levitis stated that attorneys are very close to a final version of documents. Currently the biggest issue is the pricing structure. FLS thought there would be a fixed fee payment with a defined amount and it would be obligated to deliver as long as 90% of what was promised is delivered. If the College needed more and FLS generated more, College would be charged for that at a fixed fee. Mr. Nicklas preferred that the College pay on a meter basis. There is one issue still not resolved and that is under 2.1, which had a number of contingencies that potentially allowed solar developer to get out of the contract if it can't get financing. Mr. Levitis stated the College needed some point at which it could pull a plug if things couldn't get done. This was

negotiated and the date of August 1, 2011 is the date that FLS doesn't have everything finalized Trustees can terminate and find someone else. These items are in the solar purchase agreement. The lease is almost done with only minor changes. Most of the items brought forward at the August meeting have been resolved. There are still a few things unresolved. There are no longer any provisions for sharing of REC proceeds. This solar developer has a lot of conditions imposed by their investors and therefore they can't negotiate on some things. They have actually been pretty flexible under the circumstances.

Dr. Johnson asked about Article 5. Mr. Levitis stated that FLS will meter the consumption and will pay per the metered amount. It will pay in four payments based on usage in quarter installments. Mr. Ensley referenced exhibits B1 & B2 and asked if we have to pay FLS whether or not we use the energy. Mr. Levitis stated that in exhibit B2 is the amount the College has to pay regardless of what it uses. However, FLS does have to demonstrate that it has produced that much. If its system only produced 50%, then the College wouldn't have to pay difference. Mr. Sorrells asked if it was metered at the delivery side. Mr. Levitis stated that it is metered on both sides of the delivery point. Mr. Sorrells asked what would happen if of the system breaks down. Mr. Levitis stated that if it is FLS's fault, it would be responsible. Trustees have the warranties. This would only come into play if total usage was less than 60% of what is projected. Mr. Levitis stated that FLS has maintenance obligation on chiller. If it's a manufacturer's problem then it is HCC's problem. If it is maintenance issue then it is an FLS problem. There was some questions asked in regards to the solar malfunctioning, how does the College know it is not working. Mr. Levitis stated that he thinks there is an automated system that makes that determination. He will ask Mr. Nicklas about this. Mr. Sorrells asked how it is computed when the county has mild weather and don't need the system to heat or cool. Mr. Levitis responded that this is where the 60% was developed as a reasonable usage for year round variations. FLS's model is to have a flat fee that HCC pays and he and Mr. Nicklas have proposed 60%. It is not likely to result in a situation where HCC would be paying for energy it doesn't need. Mr. Nicklas feels confident that the metered amount is going to exceed the 60%.

Mr. McMahon referenced Exhibit B2 addresses the minimum, but this could go higher if there is 90% usage. Mr. Nicklas felt the change would be less than 1%.

Mr. McMahon wanted to know if HCC could negotiate a maximum. Mr. Levitis referenced B1 and stated that this is the actual 100% estimated usage. This is the anticipated amount of what the solar system will produce not what the building uses. Dr. Johnson asked a question of Mr. Levitis that based on his work what are the disadvantages. Mr. Levitis stated that personally he likes the flat fee because you know what your tops side exposure is and there was a differential build in if their system went down. Dr. Johnson responded that the Board asked for it to be metered at a previous meeting instead of paying a flat fee. Mr. Levitis stated that there certainly are tradeoffs and is not sure which is better. Mr. Ensley asked about Mr. Levitis to verify the BTU's as there is some discrepancy based on what has been presented in previous drafts. There were some additional questions about the minimum amount. Mr. Levitis stated that the chart is now based on usage and HCC paying a minimum amount which should be well within actual usage.

Mr. Levitis wanted to inform Trustees of where he was with the insurance, publicity and indemnities. Mr. Levitis and Mr. Smathers are to work on these issues but he has not yet heard from Mr. Smathers. Dr. Johnson stated that she did respond on the publicity section. Mr. Levitis stated that he would clarify that section. Mr. Sorrells asked about BTU usage per month. Mr. Levitis stated that he asked FLS to insert some additional monthly information into the exhibit. The usage in the agreement is based on previous 12 month usage and that will balance out over periods of higher usage or lower usage. Dr. Johnson stated that Mr. Nicklas has provided this previously if Board members want to refer to those documents.

A question was asked earlier about an outage and what was metered. Ms. Tull had placed a call to Mr. Nicklas

and his response is that the outage of all major components would be metered including the chiller. There being no further discussion regarding the solar agreements, Mr. Levitis disconnected from the call. Mr. Smathers stated that he would be meeting with Marjorie Mann tomorrow regarding the bankruptcy issues (in regard to the 1500 roof).

Dr. Johnson called Mr. Nicklas at this time. Dr. Johnson explained that Trustees still had a few questions regarding the solar agreement. The questions center around the College's use of the absorption chiller and if it is not working why are we paying a minimum. Also, why is the metered rate preferable to the fixed rate. Mr. Nicklas stated that with metering, HCC only pays for the amount used. If there is no demand there will be no billing. He felt this was a fair way to do. As to the metering part, the fixed amount is a lot chancy. If FLS doesn't deliver, how would the College know? Mr. Ensley stated that based on Exhibit B-1 the annual BTU's are 1441 million. He remembers an amount of 711 for annual BTU's on \$9600 per year. He asked how did Mr. Nicklas got from 700 to 1400? Mr. Nicklas stated that change may have been a mistake in drafts from FLS and he will clarify. He suggested that Trustees focus on the principal. The \$ 12.50 on unit price won't change. The building has been modified based on value engineering therefore there will be some difference. Mr. Sorrells asked if the metered usage is coming out of solar collector. Mr. Nicklas responded no, Trustees want them to meter energy coming out of the collector and going out to tanks. That is how FLS will collect it's RECS. HCC will only be billed on the amount that comes out of the tank. Dr. Johnson asked even though it is metered, will HCC still pay the minimum. Mr. Nicklas stated that HCC would pay for minimum but that the minimum should still more cost effective in the long-run. Dr. Johnson stated that the Trustees need to look at a comparison of utility cost if not using the solar and cost of utility with the solar so that it has a true cost comparison for consideration. Mr. Nicklas stated that he will simulate the energy projections for the building and will update the latest version of the chart. Dr. Johnson asked what source of energy this building is designed to use. Mr. Nicklas responded gas, solar and electric. Dr. Johnson stated that Trustees need total projection with gas and electric with solar and gas and electric without solar. Some additional questions were asked regarding the percentages of 60% and 65%. Mr. Nicklas stated that the system is designed to provide 60% free to HCC down the road and 40% HCC would have to pay. Dr. Johnson stated that the determining factor is look down the road as income. Dr. Johnson stated that it might be a good idea to have a work session between Trustees, the college's solar attorney and Innovative Design to review the income and cost projections. Mr. Nicklas stated that in the beginning, HCC is only going to be paying. Down the road all those savings come to HCC, plus the REC's savings. REC's won't go away during contract period. There being no further discussion, Mr. Boyd made a motion to return to Open Session. Mr. Ensley seconded the motion and the Board unanimously approved.

Comments: “ Mr. Levitis stated the College needed some point at which it could pull a plug if things couldn't get done. This was negotiated and the date of August 1, 2011 is the date that FLS doesn't have everything finalized Trustees can terminate and find someone else.” Make a note, because at this date, HCC indicates that the design is not yet complete! How in the hell can FLS insure that everything is finalized in six (6) months if the design is not yet complete?

Board of Trustees
Closed Session Minutes
October 7, 2010

The Closed Session of the Board of Trustees began at 7:50 a.m. on October 7, 2010.

Chair Bumgarner stated that the Closed Session is broken down into two main sections. The first section will be to review the energy use/cost comparison provided by Mike Nicklas and the second section will be to review the solar agreements with attorney Steve Levitis.

Mr. Nicklas reviewed a power point at this time. A hard copy was provided to Trustees. The power point reviewed an energy savings slide that showed comparisons of BTU's for the current facility, with ASHRAE 90.1 base w/plug loads, with SB 668 requirement of 30% reduction, with solar thermal and photovoltaic, which overall equated to a 70% reduction in BTU's. The other slides gave dollar savings for HCC for 1-7 years and then 10, 20, and 30 years.

Chair Bumgarner asked why the PV was reflected in one of the slides because it is of no benefit to HCC. Mr. Nicklas stated no, it will not benefit HCC right now, but it will in later years. Mr. Sorrells asked if HCC gets credit for the PV on Senate Bill 668. Mr. Nicklas responded not really, to meet Senate Bill 668 the college had to design the building with the solar thermal. The PV has not been presented as required for Senate Bill 668 but it will generate income for the college in the future. Mr. Sorrells asked if HCC will be exceeding the 30% requirement. Mr. Nicklas responded yes and referenced that meeting the energy reduction requirements took the building beyond the 30% because could not do part of a system. Ms. Melville stated that HCC will meet and exceed 668 and will make money to offset the cost down the road. She asked if the state will allow HCC to keep the money down the road. Dr. Johnson responded that it will be the College's money. She requested to make a quick summary of the discussion for the benefit of new Board members. When the Board agreed to look at alternative strategies for meeting Senate Bill 668, it agreed to explore solar because HCC couldn't meet Senate Bill 668 without it. Other options explored were not viable for various reasons. Solar thermal is part of the design and is required to meet Senate Bill 668. However, the PV is not required.

At this time Mr. Nicklas reviewed the spreadsheets that had been previously distributed to Trustees. Discussion took place regarding generation of BTU's. Mr. Sorrells asked if it states in the contract that FLS will generate a certain number of BTU's. Mr. Levitis stated that FLS is obligated to design a system to meet HCC needs. Dr. Johnson stated that what Mr. Nicklas has presented is what it would cost the college to purchase and pay for gas without the solar and with the solar. Mr. Smathers asked what is the remedy if solar systems don't produce what they are required to produce. Mr. Levitis stated that if they default on the agreement the remedy is to terminate the contract. This is addressed in Article 13.2 of the agreement. Mr. Morris asked why the building needs a backup system if this works. Mr. Nicklas stated that it is best to plan for the worst case scenario. Trustees are asking FLS to supply at least 65%, and that means there should be back-up for 35%. It is also routine to design back-up systems for major buildings.

Mr. Nicklas continued to explain the pages of the spreadsheet. Further discussion took place.

Mr. Levitis began his presentation on the solar agreements. Mr. Levitis stated that he is only going to touch on the areas that were of concern previously. The single biggest issue was the pricing. Now it seems pretty clear that the best way is the metered approach rather than guaranteed pricing. This is in section 5.1 of the solar purchase agreement. There is a minimum included in the pricing. FLS is in agreement with this change. However, it has not seen the final wording in this section. In Article 2, FLS originally proposed it had to satisfy its obligation by the date of certificate of occupancy. This was an area of concern and Trustees requested a hard date of August 1, 2011. Mr. Levitis stated that he feels FLS is okay with this date. Dr. Johnson stated that there are still a few legal issues that Mr. Smathers and Mr. Levitis need to talk through and these issues may be a problem with the developer. These issues deal with the indemnity and insurance and will be resolved before the agreements are presented to the Board for approval.

Mr. Sorrells stated that he had a question about open session information. Mr. Smathers stated that anything

that has been discussed so far should be in Closed Session. Mr. McMahon asked when HCC would be breaking ground on this building. Mr. Nicklas stated that the contractor is ready to go. Mr. McMahon asked what happens if the general contractor is ready for the infrastructure before the solar developer is ready to install the solar. Mr. Nicklas responded that HCC wants to give FLS adequate time closer to opening the building so that it can negotiate the best REC rates, because that is the rate the College will get at the end of the lease. He stated that this will provide enough time to get another developer if needed and most of the infrastructure will not be installed by that August date. Probably 90% of the infrastructure won't be put in at that point. Ms. Forga asked if the solar falls through, how close will the College be to meeting Senate Bill 668. Mr. Nicklas responded a fair distance. Ms. Forga asked if the solar falls through, can the College complete the building. Dr. Johnson reminded Trustees that she had previously shared an e-mail with them from the Director of the office of State Construction regarding the question if the solar falls through. His response was that the College must make the effort with the solar but if that effort falls short, the College can still build the building. IF that happens and the college does not meet Senate Bill 668, it would be required to attend a special meeting with state construction to explain its efforts and ask for "forgiveness". However, at this point the College is expected to move forward with the same effort. Some discussion took place on the solar developer and if there are others interested.

Mr. McConnell asked about Article 13 regarding default. Mr. Levitis responded that the party has a right to cure within 30 days and if not the agreement can be terminated. Trustees are entitled to liquidated damages. Mr. Levitis stated that he wants to clarify the language in 13.2 and 14. Mr. McConnell asked for clarification of the term suspension in 13.2. Mr. Levitis stated that he is not sure of any reason for suspension. Mr. Morris asked if the solar is not working whose responsibility is it to remove the equipment. Dr. Johnson responded it is FLS responsibility and it will pay the cost. IF there is a problem with the roof and the college has to fix the roof which requires panels to be removed, the college would pay for removal. Mr. Nicklas responded that the systems are pretty incremental, if there is a roof leak the system will not have to be taken off but only a few panels. The panels are designed so that part can be removed. Dr. Johnson stated that HCC is required to have an insurance policy as well as FLS. Mr. Levitis and Mr. Smathers are continuing to work on that issue.

Mr. Sorrells asked about the buy out at the end of the lease. He anticipated seeing an amount included in the lease. Mr. Levitis stated that it is tax law that an amount can't be included in the lease. Mr. Smathers wanted to know when the Board will need to vote on the lease and the agreement. Dr. Johnson stated that she and the attorneys are striving for the October 20th Board of Trustees meeting. Mr. Smathers stated that he wasn't sure if the issues brought up today could be resolved by that date. He stated that this is a good contract but he wants to work with Mr. Levitis on the indemnity and insurance clauses. Further discussion took place. Mr. McMahon requested that Mr. Levitis check on whether the College will be giving up its governmental immunity. Mr. Levitis agreed to check on this. Mr. Levitis stated that someone asked a question about the purchase of the system. He answered that the purchase amount would be based on value of the system component for the IRS values, not on the installed value.

Dr. Johnson stated that the draft solar documents had been presented to the County Commissioners by Chip Killian at their meeting on Monday. She has not heard anything back from them. The current plans are for the closing to be on October 15th. Mr. Levitis stated that all language in the county documents relating to solar has been agreed upon by all parties. There are no items controversial.

Ms. Forga confirmed that the County Documents are now final and the solar documents will continue to be worked on.

Mr. Sorrells stated that Trustees have received some requests from people in the community in regards to more details about the solar project. He wanted to know how much can go public at this time. Mr. Smathers

responded that very little can be disclosed at this time. Once the reason for confidentiality does not exist things can be made public. Dr. Johnson responded that some of the REC values are classified as a trade secret. Ms. Forga made a motion to return to Open Session. Mr. Boyd seconded the motion and the Board unanimously approved.

Respectfully submitted,

Teresa Starrs

Secretary to the Board of Trustees

Comment: “Ms. Forga asked if the solar falls through, how close will the College be to meeting Senate Bill 668. Mr. Nicklas responded a fair distance. Ms. Forga asked if the solar falls through, can the College complete the building. **Dr. Johnson reminded Trustees that she had previously shared an e-mail with them from the Director of the office of State Construction regarding the question if the solar falls through. His response was that the College must make the effort with the solar but if that effort falls short, the College can still build the building.**”

WHAT???

Why don't you let that sink in.

“Mr. Sorrells stated that Trustees have received some requests from people in the community in regards to more details about the solar project. He wanted to know how much can go public at this time. **Mr. Smathers responded that very little can be disclosed at this time.**” I would be one of those people. Looks like this thing will be in lock-down forever.

Board of Trustees
Closed Session Minutes
October 20, 2010

The Closed Session of the Board of Trustees began at 4:40 p.m. on October 20, 2010.

Mr. John Livingston and Mr. Steve Levitas joined Trustees via telephone for the discussion regarding the solar sublease and solar agreement. The solar sublease was discussed first with only a few minor changes based on Trustee input from the last review of this document. The purchase agreement was then discussed with changes/corrections being brought forward by Mr. Livingston and Mr. Levitas.

After discussion, Chair Bumgarner asked if there were any additional questions. He stated that the substance is in the agreements presented and the language will change slightly but the substance will not. Further discussion took place regarding the solar system itself. Mr. Livingston and Mr. Levitas disconnected their telephone call at this time.

Dr. Barrett left the closed session at this time.

[**Editors Note:** Three paragraphs were redacted regarding a *****.]

The closed session minutes of the August 12, August 18, August 30, September 2, September 15, and October 7, 2010 meetings were distributed for review and approval. Ms. Forga made a motion to approve the minutes as presented. Mr. McMahon seconded the motion and the Board unanimously approved.

Board of Trustees
Closed Session Minutes
November 17, 2010

The Closed Session of the Board of Trustees Meeting began at 4:45 PM on Wednesday, November 17, 2010.

[**Editors note:** Comments about a ***** have been redacted.]

Dr. Johnson informed Trustees that additional solar documents have been uploaded to the laptops. The documents will be executed from FLS first and then sent to HCC for signatures.

These are supplementary documents that came out of the solar agreements that the Board approved. Dr. Johnson stated that they basically add additional protection to the Board and the College. Most of the supplemental documents will require FLS's signature. These documents are for your information only.

Ms. Forga stated that it was hoped that the contracts would be signed this month, however due to the holidays that may not take place.

Mr. Boyd made a motion to return to open session. Mr. McMahon seconded the motion and the Board unanimously approved.

Board of Trustees
Closed Session Minutes
December 15, 2010

The Closed Session of the Board of Trustees meeting began at 5:30 PM on Wednesday, December 15, 2010.

Chair Bumgarner distributed two sets of minutes for approval. Ms. Melville moved to approve the minutes of the October 20, 2010 Closed Session. Mr. McMahon seconded the motion and the Board unanimously approved. Mr. Lanning moved to approved the minutes of the November 17, 2010 Closed Session. Mr. Ensley seconded the motion and the Board unanimously approved.

Mr. Smathers provided several updates:

[**Editors Note:** Items 1 and 2 were redacted.]

- 1)
- 2)

3) Dr. Johnson stated that she has e-mailed the general contract for the CAB contractor to Mr. Smathers for his review. The in-depth contract is with state construction. Mr. Smathers noted no issues with the contract, stating that it conforms with the state contract requirements.

4) Mr. Smathers stated that an issue was raised about the electronic voting on the solar. The NC General Statute states that Trustees can have a written vote. He stated that it is his opinion that since a motion was passed to take an electronic vote at a previous meeting and everyone sent that written vote via e-mail there is not an issue. In order to have everything official it would be good if all Trustees sign their names to the e-mail that they sent for the record and to record that in the minutes. Mr. Morris suggested that electronic/written votes should be put in the By-Laws for future needs.

There being no further business, Ms. Melville made a motion to return to open session at 6:10 PM. Mr. Morris seconded the motion and the Board unanimously approved.

End of Released Closed Minutes.