
COLORADO COMMISSION ON
 **HIGHER
EDUCATION**

ACCESS TO HIGH-QUALITY, AFFORDABLE EDUCATION FOR ALL COLORADANS

MINUTES

March 4, 2004

Otero Junior College

La Junta, Colorado

CCHE Minutes
March 4, 2004

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COLORADO COMMISSION ON HIGHER EDUCATION

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Commissioners

Present: Judith Altenberg; Raymond T. Baker, Chair; Terrance L. Farina, Vice Chair; Michael Feeley; Richard L. Garcia; Pres Montoya; Dean Quamme (via telephone); Greg C. Stevinson; and James M. Stewart; William Vollbracht (via telephone); and Judy Weaver.

Advisory Committee

Present: Wayne Artis and Ryan McMaken.

Commission Staff

Present: Carol Futhey; Joan Johnson; Diane Linder; Lucille Montoya; Bridget Mullen; and Richard Schweigert.

I. Call to Order

Chair Ray Baker called the regular meeting of the Colorado Commission on Higher Education to order at 10 a.m. in the Banquet Room of the Student Center at Otero Junior College, in La Junta, Colorado.

Action: Commissioner Stewart moved approval of the minutes of the February 5, 2004, Commission meeting. Commissioner Altenberg seconded the motion, and the motion carried unanimously.

Chair Baker recognized and thanked Mr. Jim Rizzuto, President, Otero Junior College, for hosting the Commission meeting. Mr. Rizzuto welcomed the Commission and the higher education representatives to the community college campus in the Arkansas Valley. Mr. Rizzuto presented a brief overview of the community college. Otero Junior College is a rural community college that has been in existence since 1941. They still hold the name junior college due to the strong emphasis in transfer of students from two-year programs on out to four-year schools. One unique thing that they have developed, with Lamar, Trinidad, and Otero, is the REAP program where they are tied in with Adams State College so people can take four-year programs and get a bachelor's degree without leaving those respective communities. Population break out in the service area (Crowley, Otero, and Bent counties) from a Hispanic standpoint is around 50 percent of the total population in the three-county area.

II. Reports

A. Chair's Report

Chair Baker, reported that there were no Commissioners absent. He also reported that Executive Director Foster was on a leave of absence. He stated that, to Mr. Foster's credit, his staff has done a tremendous job of keeping things on pace. Ms. Joan Johnson heads up the Community College Task Force and has done a great job.

A Task Force meeting will be held at 1 p.m. following the Commission meeting. The final Task Force meeting is March 10 and the task force will be completing a final report due on April 5.

B. Commissioners' Reports

Commissioner Farina expressed his appreciation to Chair Baker for stepping up in Mr. Foster's absence.

C. Advisory Committee Reports

Mr. Wayne Artis, CCHE Advisor, thanked the Commission for allowing him to participate in the deliberations of that Community College Task Force body. His observation so far is that there is a lot of work to be done in a very short period of time.

D. Public Comment

None

III. Consent Items

A. Proposal to Offer a Special Education, Generalist Degree Program at Metropolitan State College of Denver

The Trustees of Metropolitan State College of Denver (MSCD) request Commission approval to offer a Bachelor of Arts (B.A.) degree in Special Education Generalist. The institution designed this proposal to meet Colorado Department of Education (CDE) teacher education performance and content standards for special education, as well as standards developed by the field specialty professional society.

The proposed degree plan has been developed to respond to the recently adopted Special Education Generalist licensure designation by the State Board of Education (SBE). This new licensure encompasses the mild-moderate needs designation that was formerly the designated licensure endorsement area. Veteran teachers holding the Mild/Moderate licenses will be able to continue with these for a period of time. Teacher candidates initially entering this field will pursue the generalist license.

The content of the degree plan for undergraduate students includes 38 credit hours of general education coursework, 13-17 hours of either elementary or secondary specialization coursework, and 65 hours of special education core content coursework. Whether a teacher candidate is completing an elementary or secondary education specialization, the degree can be completed in 120 credit hours. Embedded with the coursework is 894 hours of field experience for both undergraduate and post-baccalaureate students.

For post-baccalaureate candidates, who have already earned an appropriate content area degree and are seeking the courses necessary for licensure, the course requirements involve 48 credit hours devoted to professional education coursework.

This degree plan replaces the degree program approved by the Commission in March 2002. The structural elements of that degree plan would remain in the Generalist degree (i.e., four-year completion requirement, admissions, advising and counseling, 800 hours of field experience, and assessment). Only the coursework elements to address the new licensure requirements have been changed.

The degree proposal has been reviewed by CDE for alignment to special education and teacher performance standards and has been recommended for approval.

Staff Recommendation

That the Commission approve the request of the Trustees of Metropolitan State College of Denver to offer a Special Education Generalist licensure as a Bachelor of Arts degree and a post-baccalaureate licensure-only program.

B. Grant Proposal Recommendations for the CCHE/TAG Expenditures

The Advanced Technology Fund receives cash funds from the Waste Tire Fund. In the 2003 legislative session, the possible uses of these funds were expanded. CCHE is working with Colorado Institute of Technology (CIT) to fund grants with Advanced Technology Funds and CIT funds. The first of these grants is now ready for approval by CCHE.

Staff Recommendation

That the Commission approves \$418,275 in funding for the following awards:

1. Colin Wolden – Colorado School of Mines – Accelerating Fuel Cell Development through Research & Education – \$56,904
2. John Dorgan – Colorado School of Mines – Research & Education in Support of Biobased Products – \$111, 371– this project includes waste diversion and recycling research
3. Anthony Maciejewski – Colorado State University – Center for Robustness in Computer Science – \$250,000

Action: Commissioner Montoya moved approval of the staff recommendations for agenda items III A and B. Commissioner Altenberg seconded the motion and the motion carried unanimously.

IV. Action Items

A. Centennial Scholar Program: Merit Aid Policy Changes Required for Implementation

Ms. Diane Lindner presented a follow-up on the action that the Commission took last month regarding the merit financial aid changes. The proposed changes are the formal Commission policy changes that will guide the implementation for institutions in 2005-06 for awarding merit aid. In summary, the changes that were adopted last month included that beginning in 2004-05, only Colorado residents may receive merit aid. This would be the earliest beginning of any of the changes and pertain primarily to graduate students. Beginning in 2006 recent high school graduates will have to meet Commission admission standards and have a minimum cumulative high school GPA of 3.75 for eligibility for a Centennial Scholarship; a 3.5 GPA will be required for renewal. Undergraduates who are not recent high school graduates will be held to the same standards: a minimum GPA of 3.75 for initial award of the Centennial Scholarship and a 3.5 GPA for renewal.

Ms. Bridget Mullen outlined the current allocation methodology for merit aid. Out of approximately \$7 million allocated to institutions in 2003-04, \$5 million goes to both public and private four-year institutions, \$1.8 million to the public two-year institutions and area vocational schools. Assuming no additional funding in future fiscal years, the allocation patterns will remain approximately in these categories. If there is additional funding, the four-year public and private institutions will be allocated additional money based on their proportionate share of undergraduate resident FTE. Total funding for the public two-year and area vocational schools will remain constant although there could be shifts among institutions as the funding formula is phased in. The funding changes will be phased in over a five-year period. No institution will lose more than 10 percent of its merit funding in 2005-06 due to the implementation of the new allocation method.

Commissioner Montoya asked what the ratio is in the financial aid appropriation for merit versus need-based. Ms. Mullen stated that need-based aid is about \$40 million and merit is almost \$7 million.

Ms. Lindner stated that the policy changes that are presented to the Commission today for action is a way to implement a vision discussed last month, and that vision is primarily that the Centennial Scholar program will reward the top scholars in Colorado. The program will assist in recruiting and retaining these top scholars in Colorado colleges and universities, and set a standard that will attract other students, helping them to set a higher bar for themselves. Commitment to rewarding top scholars is a balanced approach to financial aid that allows continued focus on the Commission's priority of opening access to need-based students yet there is a small fund set aside for the top academic achievers.

Ms. Mullen reviewed how the policy will be implemented since the majority of policy initiatives will not go into effect until July 2005 and there will be a phase-out of current recipients. Freshmen admitted in 2005 have 3 years to complete under the old policy, 2005 sophomores have two additional years of awarding and juniors in 2005 will have one year of additional funding under the existing guidelines.

Transfer students who are initially awarded a Centennial Scholarship must meet the 3.75 GPA requirement and transfer students who had received a Centennial Scholarship award at their previous school could be awarded at the new institution with a 3.5 GPA.

Staff recommend the Commission adopt the merit aid policy as written.

Commissioner Farina asked what happened in regard to the question that Dr. Burns raised concerning the 3.75 clarification.

Staff reviewed the data and about 15 percent of transfer students going into the four-year institutions meet the higher GPA requirements, suggesting that a 3.75 GPA is not too high and will not negatively affect that population.

Wayne Artis, CCHE Advisor, asked why you would allow transfer students with a cumulative GPA of 2.5. Ms. Mullen stated that the current policy is being phased out. Those who are awarded up until the policy goes into effect July 2005 are under the old guidelines, which allows student to be awarded at 2.5 as freshmen.

Dr. Jack Burns questioned the inconsistencies if you are transferring from a community college into a four-year institution you have to have a 3.75 in your college curriculum in order to have a merit scholarship. In other words you could be in that limbo zone in which you have a merit scholarship at a community college but not then be able to continue that in a four-year school.

Commissioner Stevinson asked why there is a distinction and why it is not the same playing field for everyone?

Ms. Mullen stated that there is no distinction made for transfer students, but that GPA requirements are identical for all students who are initially awarded the merit award. A 3.75 targets the most meritorious student and so regardless of what level you are entering at the university, a Centennial Scholarship student must have a 3.75 GPA to be initially awarded. Staff makes the distinction in policy simply as a clarification regarding different definitions of undergraduate student status. Ms. Mullen reiterated that all students initially awarded must have a 3.75 GPA. Current Centennial Scholarship recipients must maintain a 3.5 GPA for renewal.

Ms. Lindner stated that as policy for the program is written, if a student has a Centennial Scholarship and transfers, they could transfer in at a 3.5 and be awarded a Centennial Scholarship at the new institution. That does not say that the new institution must award them the Centennial Scholarship but if they chose to, they could award at a 3.5 GPA.

Given the limited amount of funds available for merit, it is consistent with the goal of the Centennial Scholarship to set a high standard, awarding these limited funds to the best students in Colorado.

Ms. Lindner stated that whether a student is awarded as a sophomore at a community college or as a sophomore at a four-year school, the bar is the same: the student must have a 3.75 GPA. Staff does not see an inconsistency in implementation.

Commissioner Garcia asked what would happen to a student who is a transfer student who had been awarded a Centennial Scholarship, maintains a 3.5 GPA as required and then transfers to CU-Boulder for example and CU-Boulder denies continuation of the scholarship.

Ms. Lindner stated that would be similar to any transfer student getting any kind of aid. When a student transfers, financial aid does not automatically transfer with the student. Each institution awards a student at the point of entry to that institution.

Commissioner Garcia asked why the policy could not avoid the confusion of a renewal versus a first-time award GPA and just say 3.75 for all recipients?

Ms. Lindner responded that you could do that. However, if a student had been a recipient of a Scholarship for two years, maintaining a 3.5 GPA and then transferred, it could confuse the student and the parent. They may get denied a Scholarship when they transfer, but the denial would not be based on the grade point. It may be that CU decides not to award it or they may not have the funding available at the time the student applies for admission to CU.

Commissioner Stevinson stated that he understands the consistency in what staff recommend, but has a problem when a student comes out of high school they are expected to have a 3.75 GPA and once they are in the institution you want them to maintain a 3.5 GPA.

Commissioner Montoya questioned if a student starts in at a community college at 3.75 and drops to a 3.5, they transfer to a four-year institution they're still eligible for the scholarship if they are already in the program. If they are not in the program and go in at a 3.5, they are not eligible.

Ms. Lindner responded that as any first-time awarded student, they would have to have a 3.75 GPA.

Commissioner Stevinson stated that he understood but that it was of the opinion that the high school GPA of 3.75 was a lower standard than a college GPA of 3.75.

Ms. Mullen stated that when staff ran statistics there was a higher percentage of the student population that has a GPA between 3.75-4.0 than between 3.5 and 3.74. About 20 percent of the student population are included regardless if we focus on that 3.75-4.0 GPA. A higher percent of a student body is maintaining a 3.75+ GPA versus that 3.5-3.74.

Mr. Artis commented that unlike the GOS scholarship, there is no guaranteed portability from the 2- to 4-year sector in this program.

Ms. Mullen responded by saying that we did not have that portability support from the financial aid community.

Commissioner Farina directed a comment to Dr. Burns indicating that he was satisfied that the institution has the decision making authority to continue the

scholarship if an awarded student transferred from OJC to CU for example, the institution could still grant that merit scholarship at 3.5 GPA.

Dr. Burns stated that it was helpful but he still worried about the small number of students who may not have had a merit scholarship at a community college but really needs one when they transfer into CU or CSU and if they're below 3.75, they wouldn't qualify.

Commissioner Farina stated that the Commission does want to raise the bar without hurting existing people.

Dr. Burns stated that in terms of dollars we are talking only about a relatively small number and therefore the cost impact would not be large and would hate to exclude those few students if they cannot win one of these scholarships that may make the difference between their going on to a four-year institution.

Ms. Lindner stated that they would be eligible for need awards. Merit generally isn't thought of as making the difference between attending or not attending, but has a purpose of rewarding hard work and high achievement.

Dr. Burns stated that it was a point well taken.

Commissioner Garcia questioned if any research has been done on the percentages of those that are need-based, the merit scholars, and those that fall in the middle. Those who would not qualify for that need-based and probably wouldn't qualify for merit.

Ms. Mullen stated that Financial Aid numbers have been analyzed by levels 1, 2 and 3, which are the categories established for need-based aid. Keeping in mind FY 2003 data is based on higher appropriations, our award was twice as much as we currently have in merit for FY 2004. For 2003 data, there are 3,600 students at level 1 that are receiving merit, 594 students at level 2, 2,937 students at level 3. 2,700 students have no income reported. It is not a requirement for the student to report their income if they are only receiving a merit award at the institution. There is a significant percentage of students in the level 1 need category which means that they are at the 150 percent of PELL eligible. These students are also most likely receiving the Colorado student grant.

Mr. Artis questioned what admission standards the community college students would have to meet to be eligible for a Centennial Scholar award?

Ms. Mullen replied that as the policy is written, they have to meet Commission admission standards. Whatever the admission standards are for community colleges under commission policy is the admission standards that the community college student would have to meet to be eligible for an award.

Mr. Rich Schweigert pointed out that when the discussion started several months ago, staff considered recommending a 3.75 across the board, both to receive and renew an award. It was the schools that came back and said that was too high. The 3.5 GPA which is creating the confusion was a compromise on the part of Commission staff. You can make an argument if you wanted to keep it at 3.75 through their whole time in college that there would be enough kids to do it. Staff did work with the schools on that issue.

Jeff Paolucci, Director, Financial Aid, Otero Junior College, raised questions about the average GPA of existing merit students to assess the difference in GPA levels that would exist between the students awarded under the new policy versus existing merit-based students.

Ms. Mullen replied that the cumulative GPA for 2003 merit recipients is 3.5. Current policy qualifies students for merit if they have a 3.0 GPA.

Staff Recommendation

That the Commission approves the proposed changes to the Financial Aid Policy.

Action: Commissioner Weaver moved approval of the staff recommendation. Commissioner Stewart seconded the motion and the motion carried with a vote of ten (10) in favor and one (1) opposed (Commissioner Stevinson).

B. Revisions to Policy and Procedures for the Discontinuance of Academic Degrees with Low Program Demand

Dr. Carol Futhey brought before the Commission a request for updating a policy that deals with programs that are identified as low demand. This policy applies to those programs that have been in existence longer than five years. Last month's agenda item dealt with what were called newly approved programs. This particular policy applies to those programs that are under the responsibility of the governing boards. There are two points to be updated: 1) use of exemptions on the part of institutions to prevent them from discontinuation, and 2) clarification of when a program is identified as low demand. How does staff get a program off this list so that both CCHE as well as the institution or governing board staff are clear about how that is going to happen. Currently the policy requires a program meet the state's criteria. Each of the three levels of programs has its own numeric benchmark. At the baccalaureate level a program is to graduate at least 10 students a year in the most recent year that we are looking at or 20 over a 3-year period. At the master's level the number drops to 3 in the most recent year or 5 over a 3-year period, and doctoral drops to one graduate in the most recent year or 3 over a 3-year period. If a program is not meeting its benchmark, depending on the level of the program, then they are identified as being low demand.

When the policy was reviewed in August 2000, one of the issues raised was the number of exemptions that an institution could exercise. An exemption is determined in part by whether or not a program is central to the institution's role and mission; secondly, if it affects student access within the state. Based on those two criteria, institutions can identify undergraduate programs that they would like exempted from possible discontinuation. There are different numbers of exemptions that are appropriate depending on the size of institution. For the smaller institution the exemptions can run up to five for institutions with undergraduate FTE of fewer than 5,000 then an exemption of five can be used. For larger institutions, the Commission's strong encouragement in August 2000 was that larger institutions only have three exemptions. The staff's conclusion, after review, is that the policy regarding exemptions for larger institutions stay as is.

The second point that the staff needed to address had to do with how institutions get the programs that are identified as low demand off the list if they become productive. Two sections have been added to the policy to clarify that for the institutions and then another change that has to do with how long a program needs to meet a benchmark before it comes off. Currently a program only has to meet the benchmark once and then it is removed from the low demand list. Staff is asking that the policy be revised so that a program must meet the benchmark at least two years in a row. Staff want to see more of a sustained commitment on the part of the program before it comes off the list. Staff is recommending that the Commission approve these two revisions to the policies and procedures.

Commissioner Feeley asked when an institution applies for an exemption, is it the Commission that makes the determination to grant or deny the exemptions. Have the governing boards run up to the number of exemptions? Dr. Futhey stated that the governing board identifies and determines if the program is an exemption and then CCHE treats it as such. The number is limited. What we will bring forward next month will be a list of programs that are on low demand, including those as exemptions as well.

The governing boards of the larger institutions have worked in good faith to stay at three, and that is why the staff concluded it was comfortable with leaving the language a little more flexible as it is currently written.

Commissioner Feeley asked how many programs have been discontinued historically over the last 10 years. This information will be provided in an agenda item on low demand programs next month.

Dr. Futhey responded that when a program is low demand, there is a 3-year period once the program is identified that an institution can intervene and come up with some strategies to try and grow that program to meeting the benchmark. Either the program can meet the benchmark by some commitments or some changes within the

program. They can exempt it if it is an undergraduate program, and there by protect it, or it can be discontinued.

Staff Recommendation

That the Commission approve the revisions to the Policy and Procedures for the Discontinuance of Academic Degrees with Low Program Demand, effective immediately with the date of Commission adoption.

Action: Commissioner Stevinson moved approval of the staff recommendation. Commissioner Montoya seconded the motion and the motion carried unanimously. Commissioner Weaver commented that she liked the additions that were made because it emphasizes sustainability rather than needing what is required one year and going on low demand the next year.

C. Exemptions to the 120 Credit Hour Statutory Requirement for Baccalaureate Programs

This item was tabled to the April 1, 2004, meeting.

Action: Commissioner Farina moved approval to lay over agenda item IV, C to the April 1, 2004, meeting. Commissioner Weaver seconded the motion and the motion carried unanimously.

V. Items for Discussion and Possible Action

A. Resolution of Support for the Continuation of the Legislative Capital Development Committee

Joan Johnson, CCHE Director of Capital Assets, presented a proposed resolution of support for the continuation of the Legislature's Capital Development Committee. The committee will sunset July 1 of this year unless there is a bill passed which extends the life of the committee.

Ms. Johnson presented a short, 20-year history of the committee and how much it has meant to higher education institutions in terms of having legislators understand the capital needs on the various campuses.

CCHE Advisory Ryan McMaken said that for those who work with the general assembly on a regular basis, the CDC is a very helpful point of access and has been helpful in providing them with information on what kinds of projects have been proposed.

Mr. McMaken added that most of this activity took place a couple of years ago when there was actual capital construction money. He is hopeful that someday in the future there will once again be money for capital projects.

He also said it would change the way he and many of his fellow lobbyists stay on top of things if there was no capital development committee at all. As a student organization, his group depends on more formal points of access into the legislature because they just don't have a lot of informal connections. He said the CDC has been very helpful for them.

Staff Recommendation

That the Commission approve the resolution for the continuation of the Legislative Capital Development Committee and that it be sent to the Capital Development Committee, the Joint Budget Committee and the Legislature as soon as possible.

Action: Commissioner Stevinson moved approval of the staff recommendation. Commissioner Weaver seconded the motion and the motion carried unanimously.

B. Colorado State University at Pueblo Proposed Sale of Walking Stick Property

Ms. Joan Johnson, CCHE Director of Capital Assets, presented the item on the Colorado State University at Pueblo's proposed sale of 18.15 acres (called takedown #4) of the Walking Stick property. In 1988, the State Board of Agriculture, with the help of Andy Love, then a member of the Board, put together a deal on a lot of acreage surrounding what would turn out to be CSU-Pueblo. At that time, the policies and procedures were not as developed or as complicated as they are now. CCHE staff could find very little in the archives about what was submitted to CCHE for approval. CCHE approved the general terms of the sale of the Walking Stick Property in 1988.

Back in 1992, CSU-Pueblo (USC at that time) entered into an agreement with the Holystone Corporation for the eventual sale and development of approximately 395 acres of the property that surrounds the Walking Stick Golf Course, which is below the campus itself. Several parts were sold and developed in the next several years. After 17.87 acres were sold in 2000, the Holystone Corporation then received a university waiver from its commitment to purchase at least 10 acres but no more than 34 acres per year.

In the 1990s, several changes in developers took place. Now TMC Heritage Corporation owns W.S. Land, LLP, the current developer. The president and major shareholder of this corporation is J.P. Scheidegger of Toronto, Canada.

Back in 1998, Robert Shirley, then USC president, used his power of attorney to approve the sale of the first two takedowns. The July 2000 transaction was \$11,800 an acre. The proposed sale in takedown #4 is \$10,959 an acre, a price based on a 1999 appraisal.

The CSU System Board of Governors at its February 4, 2003, meeting approved selling takedown #4 for \$10,959 an acre. One of the board members questioned the apparent reliance on the 1999 appraisal. CCHE staff insisted on a new appraisal, which came in at \$14,992 an acre, a difference of \$64,000 more than the 1999 appraisal.

It took about six months to complete the appraisal. A December 15, 2003, letter signed by Don Hamstra, President, CSU Board of Governors; Jeff Shoemaker, Vice President of the Board; and CSU System Chancellor Dr. Larry Penley requested that CCHE approve the sale of this property for \$10,959 an acre, which was the 1999 appraisal price. The decision to ask CCHE to approve the sale based on the 1999 appraisal was not made in an open meeting, according to minutes of past board meetings. That is one of the reasons why CCHE staff recommends the Commission not approve this request. More important reasons for the Commission to not approve this transaction are:

- It was very difficult for CCHE staff to find any information in 2003 about the principals involved in purchasing this property; and
- The CSU System, as well as other higher education entities, has a fiduciary duty to sell state assets at a rate that will bring in the maximum amount of money.

In 2003, CCHE staff could not find much information at the Secretary of State's Office on these firms, their officers, or board of directors. Ms. Johnson said CCHE staff believes it is a disservice to the university and to the endowment fund that benefits from Walking Stick land sales to sell the property at less than the current appraised value. CCHE staff recommends that the university renegotiate with the developer for a purchase price closer to that of the 2003 appraisal while working with the city of Pueblo to revise the master plan for development of this property.

The following representatives from the CSU System responded to Ms. Johnson's presentation and to later questions from the Commission: Dr. Larry Penley, Chancellor of the CSU System; C.W. Smith, a member of the CSU Board of Governors; and Ms. Judy Schmidt, deputy general counsel for the CSU System.

Dr. Larry Penley said the CSU System must minimize risk while maximizing the return for the CSU-Pueblo endowment. His comments included the following:

- Holystone, the developer at that time, basically complied with the expectation of the university of taking down (or purchasing) the equivalent of 10 acres per year with the 1994 purchase of 75 acres (in two parcels) and the 2000 purchase of 17 acres--if the total is averaged over the 6.2 years involved;
- The July 2000 takedown (takedown #3) was the most recent takedown before takedown #4 and was for \$11,800 per acre;
- The approved per acre price in 2003 was for \$10,959 per acre, or \$841 less per acre than the earlier takedown. The \$10,959 per acre price negotiated in the

fourth quarter of 2002 may have been at a lower per-acre price than takedown #3 because the land was located on the periphery of the golf course and was without the roads or utilities of takedown #3;

- More than 300 acres still must be disposed of to realize total value for the CSU-Pueblo endowment;
- The CCHE-requested appraisal, completed over a more than a six-month period beginning in the spring of 2003 and terminating in either early fall or late summer of 2003, came in at \$14,492 per acre, or \$64,000 more than what the Board of Governors had already approved;
- The approximate cost of the appraisal of \$50,000 must be weighed against the \$64,000 that would be gained from selling the property at the new appraised value;
- In December 2003, the Board of Governors met in executive session to consider the following issues: a) its original decision; b) legal advice about its original decision that the university had communicated to the developer in December 2002; c) CCHE's recommendation about the appraisal; and d) the new appraisal.
- Because the board's original action stood without change, the Board of Governors made its approval public in February 2003 and wrote to then CCHE executive director, Tim Foster, in December 2003 about what the board had already decided in public session that year;
- The Attorney General should be consulted about CCHE's jurisdiction over dispositions of state property by higher education institutions;
- CSU System legal counsel believes that C.R.S. 23-55-107 does not specifically grant CCHE authority to review and approve land dispositions. It requires the Board of Governors to "report all proposed sales, leases, or exchanges of such real property adjacent to or titled in Colorado state university - Pueblo to the Colorado Commission on Higher Education, which will review and approve or disapprove the proposed transaction pursuant to Section 23-1-106, C.R.S." In turn, C.R.S. 23-1-106 specifies the powers of the Commission with respect to capital construction and long-range planning. This statute, however, only grants to the Colorado Commission on Higher Education powers to approve any acquisition or utilization of real property by a state-supported institution of higher education that involves spending state money. C.R.S. 23-1-106 does not grant the Colorado Commission on Higher Education power to review and approve or disapprove sale of property. At best this section grants CCHE power with respect to utilization of property that requires expenditures of state money. The sale of the Walking Stick property does not require expenditure of state money over and above internal staff time.
- CCHE should remand the issue to the CSU Board of Governors because: 1) an existing contract is already negotiated with the developer; 2) failure to close the transaction may expose not only the Board of Governors but the Commission to claims as a consequence of the delay of this action and failure to comply with the original approval; 3) the city of Pueblo will require modifications in the Walking Stick master plan that will result in a renegotiation with the developer and 4) disposition of this transaction would move the CSU System ahead and minimize

costs and legal risks.

C.W. Smith, a member of the Board of Governors, stated that the board approved the transaction in February 2003 after reviewing a number of documents. The board believes it has a legal and binding contract and an ethical duty to go through with the contract. The possibility of legal action is among the reasons the board believes the best answer is to close this transaction. Two previous developers, Otero Savings and Holystone Corporation, went broke. W.S. Land, LLP, is the third entity that has taken over development of the Walking Stick property.

Ms. Judy Schmidt, deputy general counsel for the CSU System, reiterated these points:

- The CSU System has a contract in place and failure to close this takedown is likely to result in a breach of contract claim against both the Board of Governors of the Colorado State University System and CCHE, according to several communications from the developer;
- CCHE may not have jurisdiction to approve or disapprove land *dispositions*, although the statute is fairly clear that it does have the authority to review and approve or disapprove land *acquisitions*;
- This is a significantly large development that has been going on since 1988 under an existing contract. The Board is not particularly happy about selling the land for \$64,000 less than the 2003 appraised value. However, it is a fair managerial decision to evaluate the possibility of getting the additional \$64,000 against the potential cost of litigation and defense.

The following chart summarizes some of the questions asked and those answered during the discussion:

| <i>Questions Asked</i> | <i>Responses Given</i> |
|--|---|
| Commissioner Feeley asked for a clarification about a possible claim against the Commission and the CSU System from the developer, particularly if the Commission doesn't have jurisdiction over the land disposition. | Dr. Penley said there may be a claim against the CSU System and the Commission because of the delay and failure to comply with the original board-approved action. |
| Commissioner Baker: Why did the CSU System have an appraisal done if it didn't believe CCHE had any review authority over land dispositions? Why would the CSU System pay \$50,000 for an appraisal | Mr. Smith said the Board of Governors decided it needed another appraisal in an effort to work with CCHE and to get the expertise it might need should the matter ever go to court. Dr. Penley said that although legal counsel advised him after |

| <i>Questions Asked</i> | <i>Responses Given</i> |
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| of a \$260,000 parcel? | the 2003 appraisal was done that the CSU System could legally ignore CCHE, he decided that would not be a good business decision. |
| Commissioner Weaver said she was concerned that little is known about the principals involved in buying the land from CSU-Pueblo. | Ms. Schmidt and C.W. Smith noted at different times that information about the principals is available from the Secretary of State's website. The developer, W.S. Land, is a Colorado limited liability partnership and the general partner is the Canadian corporation. A filing accessible through the website gives the names of the directors of the Canadian corporation. |
| Commissioner Stevinson asked if the development corporation that advises CSU-Pueblo on land transactions has been made up of the same people from the beginning of the Walking Stick sales. | Ms. Schmidt said the development corporation is a Colorado non-profit corporation; the registered agent is Tom Farley, a Pueblo attorney. The development corporation has been made up of the same three individuals from the start, except that one member has resigned in the past year and has not been replaced. |

Considerable discussion took place over such matters as the legal authority of CCHE to act on land dispositions, the authority of the Board of Governors to act on the transaction if the Commission remands the matter to it, as Dr. Penley suggested; the willingness of the developer to compromise; the high cost of the 2003 appraisal; the need to clarify CCHE authority over land dispositions so that the Commission doesn't have the same discussion again over future Walking Stick takedowns; and the potential of the CSU System and CCHE to be sued by the developer.

Action: Commissioner Weaver made a motion to table this item and obtain a legal opinion from the Colorado Attorney General regarding CCHE authority on land dispositions. The Commission expects to get answers on the principals in the land transaction. Commissioner Stewart seconded the motion.

Joan Johnson, CCHE Director of Capital Assets, agreed with Commissioner Stevinson that CCHE would pursue getting the Attorney General's opinion on CCHE jurisdiction over higher education land dispositions.

Commissioner Feeley made a motion to expand the previous motion by asking the Board of Governors to report to CCHE whether or not they've proceeded with additional negotiations and the substance of those negotiations before any transactions are consummated. He said the Commission needed to clarify that before it abdicated its responsibility. Commissioner Baker asked Commissioner Feeley to withdraw his motion because, 1) both Dr. Penley and Dr. Applbaum, president of Colorado State University at Pueblo, have provided CCHE with lots of information, and 2) he believes the CSU System will not execute the transaction without advising the Commission. Commissioner Feeley then withdrew his motion. Commissioner Baker stated that the Commission stands by Commissioner Weaver's motion that Commissioner Stewart seconded.

Ms. Johnson stated that one of the statutes that President Penley cited, 23-55-107, C.R.S., concerns the CSU Board of Governors and is located in the section pertaining to state real estate transactions. The CSU System has to report any real estate dispositions to State Buildings and Real Estate Programs. C.R.S. 23-55-107 states that the Board of Governors should report to the Colorado Commission on Higher Education, which will review and approve or disapprove the proposed transactions pursuant to 23-1-106, which seems to be the big problem. She said the real question is whether the word "utilization" can be construed as encompassing land dispositions.

Commissioner Montoya asked for clarification concerning what he understood the motion to be: that the Commission will seek a legal opinion but also allow the Board of Governors to move forward with the transaction.

Commissioner Baker responded to Commissioner Montoya by saying that his interpretation was not part of the motion. He clarified that the Board of Governors is going to do what it wants to do based on the opinion that it has and that the Commission's decision is to table the item.

Action: At the suggestion of Commissioner Feeley, the Commission voted to table the matter. Commissioner Weaver made the motion, seconded by Commissioner Stewart. The motion stated that the Commission would investigate its authority to review and approve or disapprove land dispositions before it acts on the matter. The motion carried unanimously.

VI. Written Reports for Possible Discussion

A. FTE Exemption: Approval for State-Supported Instruction for Teleweb Courses at Colorado Mountain College

The Commission accepted the report on Approval for State-Supported Instruction for TeleWeb Courses at Colorado Mountain College.

B. CCHE Task Force – Alternative Methods of Funding Capital Construction and

Controlled Maintenance

The Commission accepted the report on Alternative Methods of Funding Capital Construction and Controlled Maintenance.

Action: Commissioner Altenberg moved adjournment of the meeting. Commissioner Weaver seconded the motion and the motion carried unanimously. The meeting adjourned at 12:00 noon.