

September 21, 2010

Approved Transcript from County Commission Meeting held on 9/7/2010
Minutes approved at County Commission Meeting on 9/20/2010

The following are approved transcripts from the last County Commission Meeting, held on 9/7/2010, for the following agenda item:

VII. Old Business

5. The General Education Building, the construction of a new Professional Creative Crafts Building, the extension of water lines, and parking improvements. Julie Davis, Finance Director and Chip Killian, County Attorney.

The speakers were **Mark Bumgarner**, Chair of HCC Board of Trustees, **Donna Forga**, Vice-Chair of HCC Board of Trustees (**running for District Court Judge in Nov.**), and **Rose Johnson**, President of HCC, in addition to Julie Davis, and Chip Killian.

Haywood County will post the **official minutes** on www.haywoodnc.net as they become available. This is only a portion of the minutes recorded on 9/7/2010.

[**Editors Note:** Throughout this verbatim transcript, I have highlighted (in yellow and bold) certain areas that should be called to your attention. In addition, comments are placed strategically throughout using this format of **Editors Note:**. Refer to the official transcript located on www.haywoodnc.net when posted in the approved minutes.]

Excerpt, Minutes 9-7-10

HAYWOOD COUNTY COMMISSIONERS

CALL TO ORDER

Chairman **J.W. “Kirk” Kirkpatrick**, III convened the regular meeting of the Haywood County Board of Commissioners at 9:00 a.m. in the Historic Courtroom at the Haywood County Historic Courthouse, Waynesville, North Carolina, with Chairman **J.W. “Kirk” Kirkpatrick**, III, Vice-Chairman **Bill Upton**, Commissioners **Charles “Skeeter” Curtis**, L. Kevin Ensley, and **Mark S. Swanger** present. Staff members present were County Manager **David Cotton**, Assistant County Manager Marty Stamey, County Attorney Leon M. “Chip” Killian, III, Finance Director Julie Davis, Public Information Officer **David Teague** and Administrative Assistant Rebecca Morgan.

OLD BUSINESS

Haywood Community College Installment Financing Contracts for the renovation of the General Education Building, the construction of a new professional Creative Crafts Building, the extension of water lines, and parking improvements

Verbatim Transcript

Julie Davis, Finance Director: I'll go ahead and start with the approving resolution and installment-financing contract and then Chip, I think has been dealing with the others. What you don't see here is a list of banks that had proposed a rate to us. We only had, we put out a proposal, I mean a request for proposal and sent it out to about seven banks. We only had one response. That was Bank of America and they gave us a really good rate, 3.14 percent. So, we just went ahead and put the Bank of America in all of these legal documents. They were really our only option, but I think it's a good option. Most of the banks don't go as long as fifteen years. That was one of the reasons they didn't respond, was they typically do ten-year, or shorter, financings of this type. So the resolution that you have here is a resolution of the Board of Commissioners of the County of Haywood North Carolina approving an installment financing contract and a deed of trust with respect thereto and delivery thereof, and providing for certain other related matters. This is quite long, but I did want to point out a couple of things in here. I think the Chairman read the project description, but also, under the second page, under section two is, discusses the approval authorization and execution of a contract of a principle amount not to exceed \$11.2 million. And further goes on to discuss the Bank of America and I don't know if we want to approve these as a group or, or wait till you listen to all the details of the other documents. The financing contract is next, after this approving resolution. So, Chip, do you think they need to be approved separately?

County Attorney Chip Killian: I think, probably ought to explain them a little bit and then I think you could take one vote and... This resolution deals with all the documents in mass as part of one resolution. So if you'd like for me to just explain a little bit about the various documents that are involved in this entire scenario and then we could come back, perhaps and vote on, adopt the resolution that would approve them.

Chairman **Kirkpatrick**: I would like to for you to go through the resolution before we vote on it. I would also like to hear from Dr. Johnson and if the Commissioners have any questions of her prior to that. This has been an issue that has been discussed over, for quite some time and there's still some outstanding issues that I think that we have that we'd like to ask her about as well. But if you could go through the documents, Chip.

County Attorney Killian: Well, let me say first that this has been a rather complicated transaction and there are about six different law firms involved in various aspects of this. So, there's been a lot of going back and forth. I have not been the person drafting these documents, but I've been responding to all of them as rapidly as I could and, and there's still some minor things involved. But, for the most part, I'm pretty satisfied with all the documents. You have first the deed to the County. That's, then you're going to have a lease. The lease is mentioned in the resolution, leases back to the Community College. There's an agency agreement to sign that deals primarily with the process of constructing improvements. Then the Community College will have a sublease for the roofed off in certain other areas for the solar, to the solar developer. That's not part of this resolution. That's something that really happens after the loan. And then there's a financing agreement, that's primarily been prepared by our public finance law firm, Parker Poe. And that's mentioned in this resolution. And then a deed of trust and that's a fairly traditionally deed of trust where the County is actually mortgaging the property. And there's a subordination non-disturbance and a toroman agreement, which basically deals again with the solar aspects. It's very complicated. The documents that this resolution addresses are the ones that are necessary and the ones that are of interest and concern to the Local Government Commission. That's the primary purpose of it. And the first one under section two is the agreement. That's the Installment Financing Contract. That describes, pretty well, all aspects of the financing itself. It's like a loan agreement that you would have under a traditional, traditional commercial loan context. The next thing is the deed of trust, which is the mortgage of the property, the improvements are going to be constructed upon. The third things is the

agency agreement that basically says, okay, the County, while the County is the owner, the County is depending on the Community College to, to manage the project through their architect that they select, but the County is always at the table, has a seat at the table as input, but is primarily the, the purview of the Community College's to manage the project through their architects and the contractors that are ultimately selected. So, that's the third document under section four and the fourth one is the lease. And that's essentially the lease back to the Community College from the County from which the sublease will follow for the solar aspects of this. A lot of the work that we've done, up to this point, has been to try to satisfy the concerns or interests of the lender, and the solar developer to carve out some of these things. Because the solar equipment is not going to be part of the collateral for this loan. It will be separately financed, not, neither paid for nor encumbered by the County's loan. So we've been, we've had to be careful to do that in such a way that the solar developer and their lender is satisfied and that the bank, who is doing the, now we know is Bank of America, doing the construction lending so that they're satisfied and understand that those, that those assets are not part of the collateral. So that's kind of a general overview of what these documents consist of. I will say that it's been fluid and the Community College's knows that, Board knows that and staff knows that better than anybody does. There could still be some minor changes in these documents. We're reviewing them on a daily basis, but I am generally satisfied with them as they stand now and I would hope that the Board would see fit to authorize the Chairman and the County Manager and myself to approve any minor changes in these documents, but if anything, if there's anything of real substance or significance in our collective judgment, we would probably ask for a special meeting to come back. But hopefully, everything's in good shape, at least for the application to the Local Government Commission, which I think needs to be done by tomorrow.

Chairman **Kirkpatrick**: Chip, do you have the agency agreement and lease?

County Attorney Killian: Yes.

Chairman **Kirkpatrick**: Okay, I don't know that we have that.

County Attorney Killian: It was in the agenda packet. Was it not?

Chairman **Kirkpatrick**: I don't have it listed as an attachment.

County Attorney Killian: What number is it?

Chairman **Kirkpatrick**: I see the deed of trust.

County Attorney Killian: Was it not in there?

County Manager **David Cotton**: No. We didn't have that delivered, we didn't have that delivered by the time we sent the agendas out.

County Attorney Killian: I'll have copies brought back. I didn't realize that wasn't in the agenda package.

Chairman **Kirkpatrick**: If we could do that.

County Attorney Killian: I was doing some changes as late as last night. So...

Chairman **Kirkpatrick**: But you have, you've looked at all of those.

County Attorney Killian: Yes Sir.

Chairman **Kirkpatrick**: And you've approved those.

County Attorney Killian: Yes, sir I have. They've been nice enough to furnish black line copies where I could see the changes from time to time. And, all of my concerns have been addressed, I must say, by all legal lawyers who were doing the drafting.

Chairman **Kirkpatrick**: Basically, what's going to happen is the Community College will deed the County the property, the County obtains the loan for the improvements to the property, leases the property back to the Community College and the quarter cent sales tax funds that we receive, based on the bond that was passed will pay for the debt service on the loan.

County Attorney Killian: Yes Sir. I might also say that this, while this whole methodology seems complicated and unusual, we have used it before with the schools. The solar aspect is different. The sublease back, you know for the equipment, for the, so the equipment can be installed on the building to the solar developer, certainly that is different and unique. But the rest of it isn't unique at all. The same law firm that we've used in the past for school financings, Parker Poe, our chosen public finance law firm, prepared these documents, and they prepared them from documents we've used in the past, that the County's used in the past for similar kinds of financings.

Chairman **Kirkpatrick**: Alright, Commissioners, do you have any questions of Chip regarding these documents? Okay. If not, I would ask for, I think Dr. Johnson's here. Dr. Johnson, if you could come up, please.

Dr. **Rose Johnson**: **Mark Bumgarner**, the Board of the Trustees, as well as **Donna Forga**, Vice-Chair are coming with me.

Chairman **Kirkpatrick**: Okay. Dr. Johnson, the, it's my understanding, I believe, that you've had several meetings over the last week with the entire board.

Rose Johnson: Yes. That's correct.

Chairman **Kirkpatrick**: Our Board, some of the concerns that we had were the fact that you had a board that was relatively split in making this request for the financing of this project. Could you bring us up to date? And, actually, I have not spoken to you, I've just heard that this has happened. So, if you could bring us up to date over the meetings you've had the last week.

Rose Johnson: I'd be glad to do so. The board is very committed and actually wanted to keep working through the project until it could bring to you an unanimous decision. So, that's what we're here to do today. The board actually made a decision on August the thirtieth that we would keep our base bid and contingency would be the \$8,397,057, with the contingency at \$627,375 to keep to total of that at the \$9,024,432. Now, this is the building itself, not the other projects. That actually was a unanimous vote of the board that basically is saying to you as County Commissioners, that we are staying at the same loan amount that we had talked to you about before, the same cost figures. That was again, the additional meetings were about value engineering on the project itself to make sure that the board had an opportunity to review and select the items to be deducted from

the project so that it would stay at that cost item. That again was unanimously approved on September the second. **So the board brings to you a unanimous decision to honor the values that we have presented to the Commissioners.**

- **[Editors Note:** Here is the original money line - **Johnson** sets the tone for **Bumgarner** and **Forga** (who is running for District Court Judge in Nov.) by attempting to declare there is unanimous agreement on this “project”, when in fact, there has only been unanimous agreement on the construction costs and the budget request, and the loan request amount.]

Chairman **Kirkpatrick**: Okay. With that statement Commissioners, do you have any questions?

Vice-Chairman **Upton**: Go over those numbers again, if you would.

Chairman **Kirkpatrick**: Go a little bit slower.

Vice-Chairman **Upton**: Yes

Rose Johnson: The, recall at the base budget for construction cost is \$8,397,057. Added to that is the base contingency, which we’re required to have by the State, which is \$627,375, which brings the total construction plus contingency to the \$9,024,432. The other figures added to that, as Julie has all of these figures, the other design contracts and things that we had to do in preparation for this building over the last year and a half, almost two years, brought that, what we call the subtotal loan amount to \$10,265,167. And then added to that would be the cost of the other building, excuse me, the cost of the other projects. The board had voted, also unanimously, to not exceed a loan amount, which we have also transferred to Julie. The total loan amount not to exceed \$10,985,000. We expect that the loan amount is going to be less than that and we’re continuing to be in dialogue with Julie. Because we’re getting in, now, the bids from the other associated projects. But the most important thing is that we have honored the amount that we had consistently told the County we would for the building itself.

Commissioner Ensley: So you start out at \$10.3 million and we’re still at \$10.3 million on the project, \$10,265,000.

Rose Johnson: Yes. That’s correct, which includes all the design work and everything. **It’s also important to note that the attorney fees and all of the work being done for the solar development are not in this loan whatsoever. All of that is being paid for with donated money.**

Commissioner **Swanger**: I had spoken with a couple of the trustees and they had indicated to me that the construction costs had been reduced by about a million dollars. Is, during your meetings last week with value engineering as well as discussions with the architect, is that correct?

Rose Johnson: That’s correct. Excuse me. Actually, at the public hearing, if you will remember the architect had shared with you that we were, had the low bid and that we were protecting to reduce that six to eight hundred thousand, but we actually have reduced that \$967,000, a little bit more than that. Almost a million, proposed up to a million. So that we do not, the whole goal of that, that the trustees identified a rank list of items that we could deduct and as all of that is coming in, then we make sure that we do not exceed the \$8.3 million that I shared with you. We’re also required to have multiple inspections for this building. That cost is

included. We were required to have a site survey, a topographical geotechnical report. We've included in that asbestos removal of the building that has to be demolished. Also, post construction road repairs and the design contract. Other things that are, that would be added to the total loan amount, that the board approved would not exceed the \$10.9 million is the water line upgrade and the renovation to the three hundred building. So we're working with different things. We're working with the Creative Arts building itself and that was one of the amounts that I gave you. Then the other amount added to that.

Commissioner **Swanger**: Included in the total amount is the General Education Building upgrades that we had talked about previously.

Rose Johnson: That is correct. That's what we refer to as the three hundred building, General Education upgrades.

Commissioner **Swanger**: Water lines and road and parking improvements.

Rose Johnson: Yes. Water lines and then the upgrades to the roads after the building is completed.

Commissioner **Swanger**: **And your architectural fees are being paid from another source, I understand. The FEMA settlement or...**

Rose Johnson: **No. The architectural fees actually are built into being reimbursed by the loan. We paid up front through other sources. That may be what you're thinking of.**

Commissioner **Swanger**: **One of your trustees had mentioned that the million-dollar FEMA settlement from the buildings in Clyde were going to be used for the architectural fees. Is that not correct?**

Rose Johnson: **No.**

Mark Bumgarner: That was some consideration in terms of getting back to our original construction budget, but in the end we're trying to leave those monies available for potentially some of the other projects that we have coming down the pikes such as hopefully, we can start entertaining with those monies, maybe some of the fire and rescue kinds of projects that we've got on the campus. So, we're trying to preserve those and keep this basically as a project in itself. And then those funds can then be utilized for some of these other high priority items that we do have. **But it was discussed, but, but final is that the design fees and everything are continuing to be in this project in the long...**

Vice-Chairman **Upton**: Of the million, is, were they in the \$10,267,000?

Bumgarner: Yes sir. Yes sir.

Vice-Chairman **Upton**: Were they? Okay.

Commissioner **Swanger**: **There may well be some confusion on the part of some of your trustees about that.**

Bumgarner: **Not at this point in time. In other words, we've met finally on September the second and we**

took that unanimous vote. Everyone understood at that point in time exactly where the sources of funds for this project would be coming from and that was from the loan request that we're making to the Commissioners.

Chairman **Kirkpatrick**: Let me ask you this, in the meetings that you had with your particular board, did they discuss the, the use of additional funds in the future or lack of funds? I mean, this particular building, one of the things I've been concerned about the entire time is, it's not whether this building is needed. Since 2002, these buildings have been discussed at the Community College and the Creative Arts facility's been discussed. And, and I've been walking through that facility since then. So, I understand the need for the facility. I guess my, my concern is one, is, was that a major priority and two, and of course you've answered that continuously yes. And two, did they discuss the fact that these funds which, you know, the total payments range from \$539,404.44 down to \$379,194.76 and that's the last payment, October 1st, 2025. Now we got these funds that were used in the quarter cent sales tax that was approved by the voters. They're there for your use and what I was wanting was for this board to come forward with at least a good majority to say that they want it. And you have that now. But was the discussion had about the fact that you're not going to have other funds for other things that need to be done to the Community College?

Bumgarner: Well, that is one of the reasons I, I do think that we did. Now we have not had extended in specific discussions in regards to the utilization of these additional funds. But in, basically in our informal discussions, this is essentially what, what we have agreed upon through consensus, **not by vote, but basically by consensus.** And so, we do want to try to address other projects in addition to this and I do think that as time goes along and the collection of the quarter cent sales tax monies do, hopefully, increase as we would all anticipate and also as the loan payment that's being made on this particular loan drops. Also, makes some of those quarter cent sales tax dollars available for these other projects.

Chairman **Kirkpatrick**: I guess I just want to confirm that you, you all have discussed it and you know where we're coming from, from as a Board of Commissioners. And, you know the lack of funds we have for projects for the Community College outside this, this bases of this pool of money.

Bumgarner: Yes.

Chairman **Kirkpatrick**: Which, you know, obviously you're very fortunate to have at the time that we voted, you know, the economy was good and we got a vote as approval for these projects, which they needed to be done. But, but now they, things aren't as good, but you still have that money and that money's set aside.

Bumgarner: Yes sir, that is correct and, and essentially we did, as pointed out, we have worked very hard to keep within the budget that we have described to you, previously. As you know, the actual bid prices came in over what was anticipated with this construction and we've had to cut \$800, \$900, maybe a million dollars worth of cost out of this project. But, that was our soul endeavor. **In other words, we, we could have used these FEMA settlement monies, if you will, to pay for these additional over the budget items, but the board felt tremendously strong that we should stay within our budget as described and then, of course, have these funds continuing to be available for future projects.**

Forga: We were committed to staying within the budget as a building. When we were doing the value engineering, some of the options that were in front of the board were to reduce building size, reducing classroom space. So part of the discussion that we had is to make this building as flexible as possible so that it can address those additional needs. This is not just a productions crafts building. There are classrooms that

are available there. So, hand in hand with the discussion of trying to stay within this budget, we were thinking about long term, how to make this the most easily utilized building we could have and that, we wanted to make sure that we got the most bang for the buck for the students. We wanted to make sure that we had the flexibility within our classrooms to be able to address the needs of the college from now on. Not just on a temporary basis, but, as we were going through our budget and choosing what to eliminate to get within this budget, one of the things that we were not going to do is reduce the class size. Because that was so important to provide that hedge for the future because we would be limiting those funds.

Vice-Chairman **Upton**: Kirk, just to add on to what you're saying, in mulling this over for the last few weeks. You know, we started off with \$70 million in needs. And \$12 million would knock a little bit of a hole in it. So, you know, I'm still concerned fifteen down, years down the road I know Commissioners are going to be hit. It won't be us. Somebody's going to be hit for building needs. So, I, I want to make sure we, we at the college are aware of that, because all these buildings are going to be a lot older in fifteen years. And then, what are the needs going to be then? So, please keep that in mind. In the school system, I always thought my buildings were going to last forever, but they don't. They wear out more quickly now than you realize.

Rose Johnson: I appreciate your comments. We've done an excellent job in the last few years in bringing in our buildings, existing buildings up to standard. I think you would be quite pleased. I know at one point you had asked for a list of things that we have accomplished and we will be providing that to you. We take what you have put forward very seriously. Because as a college we're there not only for the students of today, but the students for tomorrow. And we have, very diligently taken care of our most pressing needs. This building is, this new building is one that is going to help a tremendous amount in moving forward and we've been very careful in looking at alternate funding and different things that we may have available to address, pressing needs as they come forward. So, as the President, I feel very comfortable that, that we as a staff, in supporting the trustees and giving them information that they need to make good decisions that we've done so. And I feel comfortable with the decisions of the board.

Commissioner **Curtis**: Could we review the sales tax income as we have now and a little bit of projections and apply that to the payment of the loan and see... I, I want, I'd just like to know what our sales tax income is and how much, or what percent of that sales tax is going to go to the payment of this building.

Ms. Davis: Currently we're still,

Commissioner **Curtis**: Or for all of the projects, really.

Ms. Davis: We're still looking at about one and a half million per year in sales tax and you'll notice that the loan that we're talking about amortization schedule is coming in around a million a year. So that gives us a little bit of a buffer. If we don't collect as much sales tax, but it also gives the college a little bit extra money on an annual basis. Even as the loan payment is being made.

Commissioner **Curtis**: Then thing is, well, there's a number of things that bothers me on this, but one thing is, we're looking at a building that's only thirty some odd years of age and we've having to tear it down. I think that shows that through those years the County has not provided the money to take care of the facilities out there. Now, as you know, with the economy the way it is, we have not been able to provide the capital needs that you all have asked for. So, right now, about the only income that you have out there is your sales tax for, for capital expenditures. And there's some confusion there of the voters that said, you know, if we vote one quarter cent sales tax in for capital, that means that we're going to take you out of our general budget. And that

wasn't the way I understood it. As the economy goes forward and effects our budget, you know, I, I would hope that, that the Commissioners in the future would fund the Community College as they do the school system with some capital money. We've got to start taking care of these buildings. **If not, we're going to have situations year after year after year and I'm glad to hear that you got a unanimous decision via your board.** It's tough to go into a project like this and not have a consensus. **You know, it's hard enough to work on a board like that when you got split decisions.** It, it makes it even worse. But, the thing about it is that the people need to know, is what the County is on the hook for. If something were to happen to the sales tax, and it would go south, and the economy stays the way it is and we can't afford anything in the budget that means that the County would have to pick up, out of their ad valorem tax, the payments on this building. So, we want to make absolutely certain that our sales tax, even if we see some bad years, makes payment of this building. And also, I think you need to look at, are we going to have a little bit money left over here to, on our capital needs of what we got for the future, if this economy stays the way it is. Because I don't see where your revenue's going to come from. And personally, myself, I've been weighing all these issues cause I don't want to put the people of the County at risk of having to increase their ad valorem tax if that's the way it has to come out, to take care of something that we didn't do a good job of planning financially. You all see where I'm, you see what I'm saying? Now, that, the Community College board is very qualified board. They've got some people that is capable of making great decisions. Good decisions. And to me, I'm having to rely on those people or what you're bringing me. At the very beginning this thing seems like it was going north. It took forever to get it out of Raleigh. It took forever to get things going and it, it kinda left some feelings of well, were we giving all the information or really, what's going on. And I, I'm kinda still there. I just want make sure of these finances, that what we have.

Rose Johnson: I think it's important that we actually, it's almost been two years since we started collections of the sales tax. And during that two year period has been some of the worst economic times that we've seen. So, when we look at that from our perspective, from the college perspective and the revenue that's been generated even during very bad economic times, I think that gives a fair barometer that we can use in looking at the sales tax proceeds and makes us comfortable from the perspective of being able to move forward. I definite understand and share your sentiments and we have, when I say "we" I mean myself and the board, have looked at that very carefully.

Commissioner **Swanger:** I'd just like to make a comment to follow up on what Kirk and Bill said. You know, I think it's important that, you know, all of us go into this with our eyes wide open. It's very unlikely that anyone of us having this discussion today will be in this position ten years from now. Very unlikely. So, I just want it to be, be certain that it's set forth very clearly in the record that, that you all understand and we understand that there's likely not going to be a funding source available in the next fifteen years for any major construction. So, seven, eight, ten years from now when we have a cast, a different cast of characters and a campaign get under way for, we gotta have a new building. You gotta help us pay for it. You know, I want it very clear in the record that it's unlikely that there will be a revenue source. Can't, we can't find future boards, neither, and neither can the college, but just make sure we're going into this with our eyes wide open and that this is used the lion share of available resource. That, do you understand it that way?

Bumgarner: Yes, Sir.

Commissioner **Swanger:** Okay.

Rose Johnson: I would like to make a comment just to say thank you to the County and all the attorneys that

we've been working with. It's been a very, it's been a learning process for all of us, but it's also been a rewarding process in that I think, I heard the word used earlier that it's been a very fluid process. And it has. There's been a give and take. **Nothing has been hidden.** Everything has been very open with the attorneys and they looking out for the collective best interest have come up with a set of documents that I feel very comfortable with.

- [Editors Note: As I stated in my Public Comments at the 9/20/2010 Commissioners Meeting, The solar thermal project is still under “**Lock Down**”. **No aspects of the design or contract with FLS is available.** It's all under the table. It **has still not** been voted on.”.]

Commissioner **Curtis**: I guess one final question is on the solar, that I have. There's going to be a buyout or a buyback there in what, seven years, I think we heard, possibly or something. Are you going to have the money available to secure that, or the buy back, or if you don't how is it going to affect you? Are you considering all that also in your future needs?

Chairman **Kirkpatrick**: I tell you what, we're really cutting it close on the time on the tapes so I'm going to go ahead and, you can think about the answer to that question. Kind of like Jeopardy. We'll take a commercial break and we'll come back and you can answer that, ok? We'll cut it off right now.

Recess

Chairman **Kirkpatrick** called for a brief recess.

Chairman **Kirkpatrick**: For Skeeter's question, I'll ask **Rose Johnson** to come back up and Mark **Bumgarner** and, you don't have to repeat it. Okay, do you recall the question?

Rose Johnson: No, I don't. I'm sorry.

Chairman **Kirkpatrick**: Do you recall, I could...

Commissioner **Curtis**: Can you tell us what the subject was.

Chairman **Kirkpatrick**: Oh! I know. What is your plan on the, as far as the solar system, there's a buyout.

Commissioner **Curtis**: Yeah.

Chairman **Kirkpatrick**: Buyback option in seven years. And so, I guess, Skeeter's question was, have you prepared to come up with the funds to, to purchase that back, the solar system?

Rose Johnson: Yeah.

Bumgarner: Well, yes, there is a buyout. The buyout, and of course, this is still being, to a certain extent, negotiated, but it will start the buyout would start at seven years and then roll forward. And that'll all be in the contract when we finally decide then. It's my understanding that the buyout will be based upon a quote, unquote fair market value. That fair market value will be determined upon the cash flows that are generated and if you remember there are actually two parts to this solar. There's the solar thermal part that basically's going to be

providing hot water and heat and air for our facility itself. And that's the, that's the main part of the solar. The second part, which is the photovoltaic, which is essentially are going to be just like the Evergreen farm out here. You'll have the photovoltaic cells on the roof, basically generating electricity and the developer's going to be selling that electricity to Progress Energy, Duke Energy, wherever they basically negotiate with the power company to do that. And we'll be generating a little bit of revenue from the roof lease as we call it, the sublease that we'll have to the solar developer. And then he'll give us a little bit of profit share off of that, but not very much. But at the end of this seven, ten whatever number of years that it is, if we buy this out, we'll also be buying this photovoltaic system. We'll also, of course, be buying the actual solar thermal system. Okay, so one, if we buy the solar thermal, essentially that means that our, instead of us paying the developer for our energy consumption, the hot water, so to speak, we'll be, we won't have to make that payment. So, we'll be saving in terms of paying for energy at that point. Secondly, then on the photovoltaic, we, as a college, will be able to sell that electricity to the power company. And so, therefore, we will have some stream. Now, I'm not standing here to tell you that it's going to pay for 100%. Because we don't know those numbers as we speak, but there are, there are cash flows that are involved that will help offset the cost down the road.

Rose Johnson: The only thing that I was going to add is that in the, the agreement that's being negotiated with the solar developer is that the future board will have an option to purchase, but it does not have to purchase. So, it can actually chose to let the solar developer continue to operate that system at no cost to the college over many, many years. So, even though we're looking at revenue streams of putting into a fund to, for a future board to be able to purchase the system if it so chooses, it would not be obligated to do so.

Chairman **Kirkpatrick:** Okay. Any other questions.

Vice-Chairman **Upton:** Just to follow up on the solar thermal, there's no money in the money that we're borrowing, there's no money in there for the solar thermal. Right?

Rose Johnson: No, there is not.

Vice-Chairman **Upton:** Okay.

Rose Johnson: And as I said earlier, the attorney work being done for the solar contracts is being paid for with a donation. None of that's being paid for with County fund.

Vice-Chairman **Upton:** **As the building is being built, is it built where it can operate without this completed, if everything falls through and your negotiations, can the building operate as is?**

Rose Johnson: Yes. I actually confirmed with the Director of State Construction. His name is Greg Driver. And, I confirmed with him on August the 25th, on August the 25th, that the building as it is designed to meet Senate Bill 668 as you have been informed, has the two, has the dual systems. It has the traditional system that the building can operate on and it has what is solar systems that allow us to meet Senate Bill 668 and the building will function if everything happened to fall apart. It will function. **We would not meet Senate Bill 668, but we would have a functioning building.**

Commissioner **Curtis:** Am I to understand that this has to be done within the next two days? Is that what you said, Chip?

County Attorney Killian: I believe the application, which has to include copies of all these documents that are itemized into your resolution has to, they have to be delivered to the Local Government Commission by tomorrow.

Ms. Davis: I'm going to try to get them by tomorrow. They needed a month before they...

County Attorney Killian: Thirty days before the meeting and the meeting would occur in August, the first meeting October, when they approve it. Right?

Commissioner **Curtis**: What would it do to the cost if any, if this was delayed or looked at some more? What, would there be an additional cost?

Bumgarner: Well, a delay from which aspect, I suppose would be my question.

Commissioner **Curtis**: Well, from your contract.

Bumgarner: Okay.

Commissioner **Curtis**: From your money and architect. Everything you got invested, I mean, is it going, would it cost more money to, I know it'll cost some, but what magnitude would it cost if we delayed this maybe thirty days?

Bumgarner: Well, as we speak, the time table is this, of course, as Julie has described, this information has to go to the Local Government Commission. They need to have that thirty days in advance. So, they'll be taking action around the first of October some time. If we delayed it thirty days that basically means that, that this will essentially be put off. We would send the information hopefully, the first of October, which means that they would then be passing it the first of November. The contract that we will have with our contractor, we stipulated that to go on for a ninety-day period, where normally sixty days is the norm. And so, it would run out on November the 12th. So if we waited another month those two dates, the approval by the Local Government Commission and supposedly the expiration of the contract with the low bidder would come, and I don't know whether one is before the other, which, which way they fall, but it would be very, very close. So, it would be coming right up to the, to the very bitter end. I don't know that there would be a substantial amount of additional cost, if that's what your question is.

Rose Johnson: The, any additional expense would come in near the, probably, fifty percent to seventy-five percent of the construction of the project because we're delaying yet another month in the winter. So, there are contingencies in the agreement with State construction that would allow the contractor and, to extend some cost and oversight if we're entering into more months.

Commissioner Ensley: I just want to reiterate the cost that I've heard, you know, through the public. You know, you and I worked the fairgrounds and there was a lady talked to you Kirk, about the cost. She was real concerned. And I've got a letter, I got a letter dated August 31st, from a fella that's concerned. In fact he says rejecting the proposal for now doesn't mean rejecting it later when we have the funds. Whereas accepting it now eliminates what might be higher priority items in the future. And then I had an e-mail from a fella back in June. He said, talking about the sales tax, he said that's why this sales tax should not have passed. We know the taxes for HCC, the problem is the more that we give the more is wasted. That's what he felt like the project

was. And, I, I hesitate to say this, but I've even heard from several people at the Community College who didn't give me their names, because, I don't blame them, that are concerned about the cost. And, the contractor, you know, when I did my research the cost I came up with on a 36,000 square foot building was around \$6.5 million. Then they said it was 41,000, well that should be about \$7.5 million and we said, **we heard, well, it's because of the senate bill 668. And, but when you read that senate bill it says at the end of it in the summary that these, to achieve the efficiency standards that they wanted shouldn't, wouldn't be very difficult to achieve.** They, you know, and I agree with them. It's not that difficult to achieve. There's very minor things that you could do to derive at those savings. So, I, you know, and then I heard from some contractors, well I've heard coming through the grapevine, contractors, some of them didn't even bid on it. And the ones that did bid on it, the reason the cost was so high, in this economy, was because of the unknowns that were, that they were bidding on. Evidently they haven't done this many projects like this. So they were concerned. And so of course, you're going to bid more because if you've never built something before you gotta make sure. And that's why the bids came in more. This is the first project I've heard of in the last two or three years that was, that came in above the, you know, the estimated amounts. Those are my concerns that I felt like just in capsule, if you will, about the project. So, I can't support it, but I wish I could. But, you know, we're, we are in tough times right now. And people are real concerned, out there. That's all I got to say.

Chairman **Kirkpatrick**: Does anybody else have comments, any questions?

Mr. **Cotton**: Mr. Chairman, just to answer the question about the calendar. The Local Government Commission meets November 2nd.

Chairman **Kirkpatrick**: Well, I, I mean I have my concerns as well and I've had those all along about the project and that, ever since we've been meeting with the college over the years about the particular projects that they wanted to do and the construction and improvements that they've had. And of course, had my concerns about the child development center and it hasn't, it's panned out somewhat well, I suppose. But, there has been some issue with that. **I guess where I come down is, is if you had come in here today and I want to ask you this again to make sure, but if you'd come in today and there was a still a 6 / 5 decision I probably would be in line with Kevin right now because I would feel uncomfortable with the board coming in that you don't have a real good consensus, but you're telling me, Mark, that you all voted on it, or you had the approval. I don't know if there was a vote or not, but you, you looking at me now have the approval of everyone on your board to move forward with this project.**

Mr. **Bumgarner**: **Yes, Sir. We've had eleven board members and they all unanimously agreed that, on the construction costs and the budget request, loan request amount, 100%.**

- [**Editors Note**: This looks like the clincher. So, **Kirkpatrick** asks a direct question, this "project" which includes the solar thermal with your reference to the 6/5 decision, and **Bumgarner** answers a completely different question, and neglects to include anything about the status of the solar thermal project. Who comes off looking worse here? **Bumgarner**?, who avoided answering your simple direct question, or, the County Commissioners?, who didn't realize that **Bumgarner** failed to answer your simple direct question?]

Chairman **Kirkpatrick**: Alright. And with that, you know, I don't feel like it's my responsibility to, to usurp the responsibility of the board when we are acting just as the, the go between in the approval of the, of the loan. Your board's been through this. You've been through the plans, I think over and over again. And you've also had different board members appointed as well. And, so, I don't ever want to be in a position as a

Commissioner to stop a project that another board wants to go forward with when that board is made up of competent people, which some of those people have been appointed by us. I'm not saying that they're more competent than others, but they are. And I know that they've taken this very seriously as well. I have not been privied to all those conversations nor those board meetings, **but if they're all in the consensus now to move forward with the project then I would feel comfortable to approve it. I'm not, I'm comfortable to approve it because of that, not because I'm, I'm sold on it completely,** but it is the Community College project. It's not necessarily the County's project. Anybody else want to make a comment? If not, we'll...

Vice-Chairman **Upton**: Well, Kirk, I, I agree with you. I guess I felt more wishy washy on this than anything I've, I've dealt with. You know, one day you feel this way. One day you feel this way. **But, my big concern was the board was not together.** And I remember as superintendent I was very reluctant to take something before, to the Commissioners without the board being with me. **But, now that the, you have a consensus, I feel a lot better, even though I still have a lot of question. You know, about the thermal and the cost of the project,** but, you know, to me, if we wait thirty days, sixty days, what are we going to solve? I mean, it's almost like we're telling you to go back to the drawing board and start all over. Then you gotta bring it to us again. So, you know, what is we might not like the second time. So, we appoint the boards and you know, if you got a consensus, even though we disagree with a lot of things, we're still not there in the meetings every day to know all the information. **So, I still don't know the difference between ab and ad ductor absorption.** So, maybe I'll learn that at some point in time, but yeah, I'm ready to vote.

- [Editors Note: Upton will never understand the difference between an adsorption chiller and an absorption chiller.]

Chairman **Kirkpatrick**: Okay. Anybody else?

Commissioner **Curtis**: The reason I asked for maybe, looking at it another thirty days, was the fact is that I thought it would be good for the board to meet with us and answer those questions that we have that we still don't know a whole lot about. See how they feel about them. What they're comfortable with. But, if I'm hearing what Mark is saying, they're evidently comfortable with the. So...

Chairman **Kirkpatrick**: Okay. Alright, Chip, if we approve these do we need to approve them one at a time or can I do that, make a motion, or allow a motion to be made collectively?

County Attorney Killian: I think you can make a one motion just to adopt the resolution, because it includes all the approval, approval of all the documents, four documents that are listed in there.

Chairman **Kirkpatrick**: Okay. Alright, I will entertain a motion to approve the resolution which incorporates the remainder of the document set out in "a" thru "e" and as part of that motion I would also request that if there are any minor modifications to said agreement that the County Attorney, myself as Chairman, and the County Manager, and do you want Julie included in that too?

Commissioner **Swanger**: Yes.

Chairman **Kirkpatrick**: And Julie Davis to meet to approve those and if they are not just minor changes they would come back before the Board. Okay. That's a... I'll entertain that motion.

Vice-Chairman **Upton**: I'll make that motion.

Chairman **Kirkpatrick**: Is there a second?

Commissioner **Curtis**: I'll second.

Chairman **Kirkpatrick**: Okay. We got a motion and a second on the floor. Any further discussion? Okay. All in favor indicate by saying "aye".

Commissioners **Swanger, Curtis** and Vice-Chairman **Upton**: Aye.

Chairman **Kirkpatrick**: Those opposed.

Commissioner **Ensley**: Nay.

Chairman **Kirkpatrick**: Alright. It's four to one and that passes. Good luck to you. We really do hope it goes well. We stated our concerns and you are well aware...

Bumgarner: I do appreciate your support. I do know that it's, it is an expensive building. Kevin, I think there's no question about that. And, but I think you're going to be proud in the end and, we, and you will be supporting education especially at the Community College level here in Haywood County. Thank you.

Chairman **Kirkpatrick**: Okay. Thank you Mark.

Monroe A. Miller Jr.,
Haywood County Taxpayer
19 Big Spruce Lane
Waynesville, NC 28786
www.haywoodtp.net