

MINUTES

OF THE

SPECIAL TELEPHONIC MEETING OF THE

BOARD OF REGENTS

OF

THE TEXAS A&M UNIVERSITY SYSTEM

HELD IN

COLLEGE STATION, TEXAS

February 24, 2009

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**MINUTES OF THE
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CONVENE

Chairman Bill Jones convened a special telephonic meeting of the Board of Regents of The Texas A&M University System, at 10:36 a.m., Tuesday, February 24, 2009, Board of Regents Meeting Room, Memorial Student Center, on the campus of Texas A&M University (TAMU), College Station, Texas.

The following members of the Board were present by telephone:

Mr. Bill Jones, Chairman
Mr. John D. White, Vice Chairman (*departed meeting at 11:45 a.m.*)
Dr. Richard Box
Mr. Morris Foster
Mr. Lupe Fraga
Mr. Erle Nye (*departed meeting at 11:28 a.m.*)
Mr. Gene Stallings
Ms. Ida Clement Steen
Mr. Jim Wilson
Mr. Anthony Cullins (Student Regent)

After calling the roll, Chairman Jones announced that a quorum was present. He said this special telephonic meeting had been posted with the Secretary of State and in accordance with the Texas Government Code, that allows governing boards to meet by telephone, each party to the conference call must clearly identify himself/herself prior to speaking. The posted purpose of this meeting was to consider and take action on two items: 1) Presentation and Action on the Governance of Research Park Land, TAMUS; and 2) Naming of the Finalist(s) for the Position of Director of the Texas Engineering Experiment Station and Appointment of Interim Director for this Position, TAMUS.

Chairman Jones asked Chancellor Michael D. McKinney to present Item 1. Chancellor McKinney said the approval of this item would basically make the research park subject to the same policies and regulations as all other system property. It would also confirm the authority of the chancellor to assign system land and improvements to members according to the use of the property, included in Policy 41.01, which delegates authority to the chancellor to manage and maintain all system real property subject to the powers retained by the board. Chancellor McKinney said this was an outgrowth of a taskforce assembled by a memorandum issued August 18, 2008, by Dr. Elsa Murano, President of TAMU, and himself. The original charge said the final recommendation was due to the chancellor and the president by August 31, 2008. An extension was requested and the date was changed to October 1, 2008, and the report was issued a few days before this meeting. Regent Stallings asked the reason it took so long to get the report.

Chancellor McKinney explained that Dr. Teresa Maldonado, Interim Vice President for Research, said she was doing all the work herself and it took longer than anticipated.

Regent Nye said it was his understanding with this change and given whatever else was in the rules, that Texas A&M would continue to have the primary management of the research park and the president would have the primary responsibility of managing the research park. The only change would be for certain kinds of actions -- the president would have to come to the chancellor and/or the board for approval. Chancellor McKinney responded in the affirmative. He said they would have to get the chancellor's approval for leases above \$200,000, and the board's approval for leases above \$300,000. Regent Nye asked if he was comfortable with the report. Chancellor McKinney replied in the affirmative.

Regent Nye asked Dr. Murano if she was comfortable with this item. Dr. Murano said she agreed with the chancellor, with the issue that the property in the research park needed to be treated the same way throughout the system. She said the taskforce did an exceptional job and the reason it took so long was because it was a very complicated issue and there had been a tremendous amount of confusion as to the metes and boundaries of the park itself. Dr. Murano said she agreed with the report and the recommendations were sound. She said the report highlighted that each of the ten buildings in the park have been managed differently. She said 85 percent of the residents of the park are internal (university or system members). She said this was okay, but successful research parks throughout the country have a majority of the park occupied by companies that can work shoulder-to-shoulder with research faculty. She said her question, just for clarification, by requiring the research park to abide by the same policies as the rest of the System, she assumed meant that any land being assigned in the research park or anywhere else, would always have to go to the board. Dr. McKinney said the policy states that the chancellor could make a decision on behalf of the board. Regent Nye asked if the resolution could be modified to state that the decision would come to the board.

Regent Foster said it needed to be consistent with what the board already has in place; that all university lands are managed alike. Regent Nye agreed and said the policy says, "it shall be governed by the policies of the board and regulations promulgated by the chancellor." Regent Nye said the term "promulgated by the chancellor" is awkward. He suggested that it might say "this delegation shall be consistent with the delegation that is already contained in the rules." Chairman Jones suggested a phrase might be utilized at the end of the passage language that says "subject to board rules and regulations on real property." Mr. Scott Kelly, Interim General Counsel, said the last sentence of the proposed minute order could be deleted to read "in accordance with the policies and regulations of the system." He said the regulations would have to be consistent with board policies. It is part of the policy hierarchy and what they have now is simply to confirm that this land that is denominated "research park" is subject to the same policies and regulations as any other land under the control and responsibility of the board and A&M System.

Regent Nye said the board would always want the resident president to have some involvement in a recommendation that might go to the chancellor and then to the board on the assignment of land on his/her campus.

Chairman Jones said the proposed minute order would put the ultimate responsibility of the lands in the research park back in the hands of the system and the board. He said in the past, when those things were given to the president, there had to be other things that had to be passed to accommodate the president's ability to decide what happens. The taskforce reported that over the years, things had not been managed particularly well and he wanted to focus the discussion on making sure the research park lands were back where other lands owned by system universities were with regard to ultimate responsibility and approval for what happens on those lands.

Regent Nye agreed and said getting Minute Order 305-93 rescinded was essential and deciding that all lands and improvements in the research park shall be governed by the policies of the board, as is all other land. He said his problem comes with the chancellor having the authority to assign system land and improvements to system members based on the use of the property. Regent Nye asked if this would be giving the chancellor authority that he already has. Mr. Tim Coffey, Assistant General Counsel, said in December 2008, the board adopted a new policy on real estate (41.01), which said that the chancellor has authority to manage and control all of the property of the system, except in certain instances. He said it authorizes the chancellor to manage the property subject to certain things that have to be approved by the board, i.e. sales of real property, certain leases and easements -- so to an extent the board didn't retain authority, it granted that authority to the chancellor. Mr. Coffey said the chancellor already has the authority to manage and control all system property subject to those exceptions. The regulation being referred to (41.05.03) is a regulation the chancellor adopted several years ago and is undergoing review. All of the regulations are undergoing review and depending on the outcome of this discussion and others, the regulations will be revised accordingly. He said Policy 41.01 did not specifically address assignments of property, so there is no board policy on assignments.

Regent Nye asked if this resolution would accomplish what the Chairman had just recited -- if the last sentence was deleted and the minute order passed with the first two sentences. Mr. Kelly answered in the affirmative. Regent Nye said he would support approving the first two sentences and deleting the last sentence.

Chairman Jones asked if the chancellor currently has the authority to assign system land improvements to system members based on the use of the property. Regent Nye said the key is that the board retains certain authority with respect to that, which is why the last sentence is confusing. He said the chancellor has substantial authority to assign system land subject to certain limits as to amounts and other things, i.e. right-of-ways, easements, etc.

Chancellor McKinney said in the research park, the Texas Transportation Institute (TTI) has the Gilchrist Building and they are building another building. He said one might use that as an example of the question and the research park as a whole is assigned to TAMU. He asked if someone has authority to assign that property to TTI without the

last sentence. Mr. Kelly said under current board policy, that authority resides with the chancellor. The last sentence would merely confirm the existence of what already is the case in that policy. Regent Nye said the board should have a part in designating land into perpetuity. He said the board acted on that when they authorized the TTI building and when they authorized the second addition. Regent Nye said he was concerned if we are saying that the chancellor can do that without any approval by the board.

Chairman Jones asked as of today, does the chancellor have the authority to assign system land and improvements to system members based on the use of the property. Mr. Kelly replied in the affirmative. Chairman Jones asked if this pertained to the research park as well. Mr. Kelly said there was confusion because of MO 305-93. Mr. Jones asked as of today and assuming that this minute order passed, does the chancellor have the authority to assign system land and improvements to system members based on the use of the property without board approval. Mr. Kelly answered in the affirmative, because that has already been ceded to the chancellor by the board in Policy 41.01.

Regent Nye said it was really troublesome to him to have the chancellor making permanent designations of land on any campus without some support by the board. He said to suggest that the chancellor has unlimited authority to sort of zone the west campus or the research park without involving the board...a lot of that land is vacant...surely it would come to the board. Regent Nye said he couldn't imagine that a system would be set up where vast quantities of that acreage could be determined to be used by other members of the system without the board being involved. Chancellor McKinney said the research park with the new survey would come forth at the next meeting designating it as the research park. He said there was some question regarding what it means when the word "assign" is used, because the board holds title to the land, period. Mr. Kelly said the board controls the property and the analysis would be if the board by authorizing the construction of the building to be occupied by the client, that it has already determined the use. The chancellor would not have the authority to make a determination inconsistent with board's direction, which, in effect, you have by the board authorizing a building to be used by TTI.

Regent Wilson said part of the confusion was that Mr. Kelly referred to 41.01, when Regent Nye asked the question about the chancellor's authority. He said when you look at 41.01, it delegates authority to the chancellor relating to the issue of real property, but there is a limitation to it. Paragraph 41.4 states that any leases of property must be approved by the board under certain conditions -- if it exceeds ten years or the total consideration is over \$300,000, so the chancellor doesn't have the ability unless it is less than \$300,000 to do what Mr. Kelly said he could do. Mr. Kelly said that was what he was referring to. He said the question was about the assignment and essentially assignment as responsibility to a particular part of the system for the land. He said the policy starts out "except as otherwise provided in this policy" and leasing the land is clearly one of those "except otherwise provided for" in this policy.

Chairman Jones said bottom line, the Board of Regents has absolute power and authority over all real estate in the system. He said all members of the board have other jobs and cannot be around daily to be in every decision so they conveyed this authority to

the chancellor (41.01). He said that policy has a limitation on it and that limitation is “if the conveyance is too big, too long or too significant” then it has to be brought to the board for approval. Chairman Jones said the board asked the chancellor to promulgate regulations for the administering of that property. He said if there is a hole in the regulation it needs to be corrected. He said his understanding today is to get the research park back in the system office where all the other lands are located.

Regent Wilson asked if pulling the research park back into the system, then the system office of Facilities, Planning and Construction (FP&C) would be a part of any private building that would be built on that land and is that what is wanted. Chancellor McKinney answered in the affirmative. Regent Foster agreed that the system construction group would be involved and that is what the board wants to do system-wide in making sure we are putting in the quality of buildings that we want. Regent Wilson said he assumed part of the taskforce proposals would be to get more aggressive and asked do we want to do that with the cost of the buildings.

Regent Fraga asked if discussion on this subject could be postponed for a regular board meeting. Chairman Jones said Chancellor McKinney had requested this telephonic meeting. He added that this item had been on the agenda for the January meeting and had been pulled. Regent Nye asked if Chairman Jones would entertain a motion to defer this item until the next regularly scheduled meeting as Regent Wilson seemed to have a few questions. Regent Nye said he was ready to act, but there seemed to be a lot of questions.

Chairman Jones asked the chancellor if there was an issue with private funds paying for the building and if we are handicapping ourselves by reinstating system lands where all other system lands are for the research park, both in cost and in time to build. He asked if we found that to be the case in Round Rock which is being built by private funds. Mr. Coffey replied that there is a need to look carefully with FP&C to control the cost of construction in the research park, if FP&C is going to have a greater role. He said there are covenants and restrictions in the research park that cover construction, but they are just general covenants that apply to aesthetics. Mr. Coffey said in the past when FP&C has not been involved, only private parties, the standards of construction may not have been what we would expect on our campuses. He said there is a risk that there could be some higher costs and it is offset by higher quality of construction, more standards than a private party would have. Mr. Coffey said most of the private parties are looking at 30-year construction because of a loan for 30 years and the system is looking at construction that needs to last much longer because at the end of the lease, the building will belong to the system. He said in response to Regent Wilson’s question, there could be some additional costs and that is going to be a challenge.

Chancellor McKinney said one of the requirements in his office is that we have to add as much value as we add costs. He said there probably will be some added costs and if that doesn’t improve the product by however much it costs, then it is off. Regent Foster said it is not as simple as saying “here’s one cost without FP&C involvement.” Each needs to be taken as a separate subject and studied separately and brought forward. He said there are a lot of pros and cons that go with that, i.e. short term vs. long term, whether it is quality at the end of the day, who the building belongs to, etc.

He said a group needs to be set up to look at this and come back with a full analysis. Chancellor McKinney said this was done on every project.

Chairman Jones said the president of Texas A&M wants to make sure that the chancellor cannot come in and do whatever they want with the research park without board oversight and that is the big issue. Chairman Jones said the taskforce report is not finished, only the first step. They will look at other research parks to determine best practices and how things are being done successfully and they have not had a chance to do that. He said they have come up with some of the problems, but have not come up with all of the solutions and that is what the board is talking about.

(Secretary's Note: Mr. Nye left the meeting at 11:28 a.m.)

Regent Box asked if the last sentence was deleted from this minute order, would that change the character of the minute order from what we want to do. Mr. Kelly said he does not believe that deleting the last sentence would substantively change the effect of the minute order which does two things: 1) rescinds the 1993 minute order; and 2) simply reaffirms/confirms/asserts that the research park is subject to the same board policies and regulations as all other system lands. Dr. McKinney asked if leaving the last sentence in the minute order would hurt anything. Regent Wilson said it was confusing if left in.

Regent Stallings said he had no problem with the last sentence as long as it goes through the board. Mr. Coffey said for clarification, the current policy does not require the chancellor to go to the board to manage and operate system lands. The last sentence of the minute order only confirms what the chancellor already has under Policy 41.01. If the last sentence is deleted, the effect is the same; the chancellor has the authority to assign property of the system to whoever is using it. Mr. Coffey said the chancellor would not have to go to the board to assign or reassign property, and it is not perpetual. Regent Wilson asked if there was an exception to that in Policy 41.3 (Disposition of Real Property). Mr. Kelly said the chancellor could not transfer or lease the property to a third party unless it was something within his authority. Mr. Coffey said they were talking about assignments within the system and who is responsible to maintain the property, to take care of it, responsible for expenses associated with the property; assignment is not transferring property because the board has title.

Chairman Jones said under current policy, the chancellor can assign system land and improvements to system members based on the use of the property without first coming to the board. He said system policy has been in existence for some time and that policy is not being changed; the last sentence is a restatement of what already exists. Chairman Jones said this policy re-establishes what is already in effect. Regent Wilson asked if the definition of "use" means someone who is already there or could the chancellor assign property in the research park for a new use and could he assign it to someone without talking to the board. Mr. Kelly said if he meant by "use," could he construct a new building that would need to go to the board. Regent Wilson asked what would be an example of "use." Mr. Kelly said the example would be the TTI facility. Regent Wilson said they are already there. Mr. Kelly said the board has established who is using and occupying that building and that is the sort of "use" we are talking about. He

said if a part of the system was going to build a building, the board would have to approve that, but the authority that has been given to the chancellor could then assign the responsibility for that real estate consistent with the board's determination that some part of the system is going to build a building on that property.

Chancellor McKinney said he assumed that all land owned by the system is assigned to somebody for responsibility. Regent Wilson said he would like the policy to stand on its own and not try to add additional sentences to explain it. Chancellor McKinney said he wanted to make sure that deleting the sentence was not misinterpreted. Chairman Jones said they could come back at a later date and discuss Policy 41.01.

Regent Wilson moved approval of Item 1, with the deletion of the last sentence of the minute order. Regent Stallings asked Dr. Murano and Chancellor McKinney if they were both comfortable with that. Dr. Murano answered in the affirmative. Chancellor McKinney said he was fine with the legal opinion that the authority already exists. Regent Stallings asked if the board was comfortable giving the authority to the chancellor and what was wrong with saying it? Regent Box agreed. Regent Wilson said his issue with it is Policy 41.01 and looking at the exceptions when the chancellor has to come to the board; that should stand on its own, as opposed to having this sentence in a new minute order. Regent Stallings asked who has authority to assign land in the research park right now. Mr. Kelly said it is the chancellor. Regent Wilson said the sentence says "the chancellor has the authority to assign system land and improvements." He said if he looked at the policy, and he thought about significant improvements, then you are talking about a building and there are specific things in Policy 41 that talk about when the chancellor has the authority to do it and when he has to come to the board. He said he felt this gave the chancellor the right to make improvements.

(Secretary's Note: Mr. White left the meeting at 11:46 a.m.)

After further discussion, Regent Box moved for adoption of the item (Item 1) with the last sentence included as in the original minute order. Regent Stallings seconded the motion. Chairman Jones said there would be a vote for the original item which would include the last sentence.

Chairman Jones asked for any discussion and hearing none called each regent's name so that their votes could be properly recorded. The regents voted as follows: Box – yes, Foster – yes, Fraga – no, Nye – absent, Stallings – yes, Steen – yes, White – absent, Wilson – no. Mr. Jones said Item 1 passed with the inclusion of the last sentence as originally presented. The following minute was approved (048-2009):

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**MINUTE ORDER 048-2009 (AGENDA ITEM 1)**

**ACTION ON THE  
GOVERNANCE OF RESEARCH PARK LAND,  
THE TEXAS A&M UNIVERSITY SYSTEM**

Minute Order 305-93 is hereby rescinded. All land and improvements in the Research Park shall be governed by the policies of the board and the regulations promulgated by the Chancellor. The Chancellor has the authority to assign system land and improvements to system members based on the use of the property.

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RECESS TO EXECUTIVE SESSION

Chairman Jones said having convened in open session, the Board would enter into an executive session to consider matters as permitted by Chapter 551.071 of the Texas Government Code, Sections 71 and 74 (included Item 2). He said in accordance with the law, no final action, decision, or vote with regard to any matter considered in the executive session would be made or taken. He asked the following members of the administration to stay for the executive session: Chancellor McKinney, Mr. Scott Kelly and Ms. Vickie Spillers. Chairman Jones said all persons who had not been requested to stay for the executive session were requested to leave the meeting room.

RECONVENE IN OPEN SESSION

Chairman Jones reconvened the meeting in open session at 11:58 a.m. and announced that the Board had met in executive session from 11:53 a.m. until 11:57 a.m. and considered Item 2.

Regent Box moved adoption of Item 2. Regent Stallings seconded the motion. Chairman Jones asked for any discussion and hearing none called each regent's name so that their votes could be properly recorded. The regents voted as follows: Box – yes, Foster – yes, Fraga – yes, Nye – absent, Stallings – yes, Steen – yes, White – absent, Wilson – yes. The following minute order was approved (049-2009):

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**MINUTE ORDER 049-2009 (AGENDA ITEM 2)**

**APPOINTMENT OF DR. G. KEMBLE BENNETT  
AS THE FINALIST FOR THE POSITION OF  
DIRECTOR OF THE TEXAS ENGINEERING EXPERIMENT STATION  
AND APPOINTMENT AS INTERIM DIRECTOR FOR THIS POSITION,  
THE TEXAS A&M UNIVERSITY SYSTEM**

Dr. G. Kemble Bennett is hereby named the finalist for the position of Director of the Texas Engineering Experiment Station of The Texas A&M University System. In accordance with Texas Government Code 552.123, the Board “must give public notice of the finalist(s) being considered for the position at least 21 days before the date of the meeting at which final action or vote is to be taken.”

Dr. Bennett is hereby appointed Interim Director for this position, effective February 24, 2009.

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ADJOURNMENT

On motion of Mr. Stallings, seconded by Dr. Box and by a unanimous vote, the special telephonic meeting was adjourned at 12:00 noon, the same day.

Vickie Burt Spillers
Executive Secretary to the Board
The Texas A&M University System

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