LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE

The Legislative, Finance, and Administration Committee meeting was held on June 27, 2011 at 5:53 p.m. with Chairman McGlumphy presiding. Members present were Mr. Anderson, Dr. Jones and Mr. Shevock. Mr. Hare was absent. Members of Council present were Mr. Bonar, Mr. Hutchison, Mr. Lynn, and Council President Leary. Mayor Carey was also present.

AGENDA ADDITIONS/DELETIONS

Mr. Shevock moved for approval of the agenda, seconded by Mr. Anderson and unanimously carried.

Discussion - Elimination of Medicare Part B Reimbursements for Current Non-Bargaining Employees *(Tabled June 13, 2011 in Order to Obtain Legal Opinion)*

During their meeting of June 13, 2011, members considered the elimination of Medicare Part B reimbursements for current non-bargaining employees as a cost-saving measure. After much discussion, members tabled the matter and requested that a legal opinion be sought from the City Solicitor to determine the legality of eliminating Medicare Part B reimbursement for non-vested, non-bargaining employees in light of Council's action related to this matter on July 27, 2009 and that the matter be scheduled for reconsideration at a subsequent meeting.

Mr. Anderson moved to remove the matter from the table, seconded by Dr. McGlumphy and unanimously carried.

Dr. McGlumphy noted the receipt of a legal opinion from Deputy City Solicitor Pepper indicating that the City could legally eliminate Medicare Part B reimbursement for non-vested, non-bargaining employees.

Mr. Anderson questioned if the Committee's recommendation should be reworded to remove any mention of the word "vesting" and that time frames be specified. Dr. McGlumphy explained that the Committee's recommendation cannot reference "vesting" since it is not a vested right but can reference "years of service."

Responding to Mr. Shevock, Dr. McGlumphy stated that, to his knowledge, this matter has not been reviewed by the Health Benefits Committee. Dr. Jones felt that, due to the seriousness and complex nature of this matter, it should be reviewed by the Health Benefits Committee prior to the Legislative, Finance, and Administration Committee's consideration.

At the request of Mr. Anderson, Ms. Denise Devine, Assistant City Clerk, stated that during the Committee meeting of June 13, 2011, a motion was made by Mr. Hare and seconded by Dr. McGlumphy to maintain Medicare Part B reimbursement for all employees who are vested as of June 27, 2011; however, after further discussion, the motion was withdrawn.

Mr. Shevock moved to recommend that the matter be forwarded to the Health Benefits Committee for their review and brought back to the Committee for a recommendation by September 1, 2011, seconded by Dr. Jones.

Mr. Anderson explained the critical issues involving Medicare, as noted in the President's Debt Commission's Report. He stated that there will be substantial changes to Medicare which the City will have no control over and which will cause a severe financial liability to the City. He suggested that members move this matter forward to City Council for consideration.

For clarification, Dr. McGlumphy advised members that the Committee reports to City Council and, as such, the Committee's recommendation will be forwarded to City Council at their next meeting. Council will have the option to accept the Committee's recommendation or take other action at that time.

Dr. McGlumphy referred to emails he received regarding the issue referencing "fairness." He questioned "fairness" to whom: the new employee; employees with 10, 20, or 30 years of service; taxpayers; etc. He noted that members have been provided statistical projections for Medicare Part B reimbursements with inflationary costs that indicate significant sums of money that will affect the City as a whole. He reminded members that this issue is not a benefit but rather a subsidy, and that the projected amount is over $600,000.

Responding to Mr. Hutchison, Ms. Devine indicated that the Health Benefits Committee does not have regularly scheduled meetings and that their meetings are held on an "as needed" basis.

With regard to "fairness," Mr. Lynn stated that it would be fundamentally unfair to take a "right" or "subsidy" away from a group of individuals who have no voice to speak for themselves, are not unionized, are not banded together, and cannot come before City Council by and through a union representative to voice their opinions. It was his hope that members would forward the matter to the Health Benefits Committee and that it would not be submitted for any further consideration by City Council.

Concurring, Mr. Bonar reiterated his opposition to taking benefits away from either current or retired employees. It was his feeling that the City's "word" is the City's "bond." Understanding that financial situations change, he felt that the City should acquire the necessary funding.

Council President Leary reminded members that the membership of the Health Benefits Committee includes representatives for all major bargaining units, non-bargaining employees, senior staff, and two (2) members of Council (Mrs. Williams and Mr. Hare).

The motion to recommend that the matter be referred to the Health Benefits Committee for their review by September 1, 2011, and subsequently brought back to the Committee for a recommendation was carried, with Mr. Anderson voting no.

Proposed Ordinance #2011-15 - Appendix A - Subdivisions - Regarding Homeowners' Association Responsibilities *(Deferred June 13, 2011 Due to Time Constraints)*

Members were provided proposed Ordinance #2011-15, which would amend Appendix A - Subdivisions, regarding homeowners' association responsibilities. Mrs. Ann Marie Townshend, Director of Planning and Community Development, reminded members that the proposed ordinance

was developed as a result of a report provided to the Utility Committee regarding defunct subdivisions, incomplete subdivisions. She assured members that the proposed amendment addresses the Committee's concerns regarding stormwater and passive open space not being maintained.

Mrs. Townshend explained that the proposed amendment would clarify the requirement that developers of subdivisions with common open space, including active recreation areas, woodlands, and stormwater management, form homeowners' associations with mandatory membership. This would allow the City to perform work that the homeowners' association is responsible for if such work is not performed in accordance with code requirements. Such work would be billed to the property owners on their tax bill and would include an administrative charge. The proposed amendment would require that homeowners' associations with management responsibility for common open space submit a listing of officers of the association annually. The proposed amendment also clarifies that these requirements are retroactive to all subdivisions with common open space in existence prior to adoption of the ordinance.

Responding to Mr. Lynn regarding those situations where the developer has vacated a subdivision and it is not in a position to be turned over to the homeowners' association, Mr. Scott Koenig, Interim City Manager, Public Services Manager/Director of Public Works, stated that in those instances, at some point, there will be a purchaser of that property and at that time, the City will require the same conditions as if it were a new subdivision.

In response to concerns relayed by Mr. Anderson, Mrs. Townshend stated that the proposed amendment would apply only to properties where there was a condition of a homeowners' association for approval of the subdivision and where the association has management responsibilities for the land. She assured members that legal documents are required during the development process and each of the property deeds includes a requirement for the owner to be a member of the homeowners' association. She explained that the problem is with those homeowners' associations that have become inactive and noted that in several instances, the homeowners' association is actually an incorporated body that has become inactive. Although the City would not force homeowners to pay dues, Mrs. Townshend stated that if the City is required to incur several thousand dollars during the year to maintain the open areas and stormwater infrastructure, the proposed amendment would allow the City to recover the costs by billing the property owners through their tax bill or a special assessment. In all cases where this would apply, she stated that this provision would have been included in the deed and recorded documents associated with the subdivision.

Dr. Jones felt that the amendment would be difficult to enforce from a leadership and management standpoint. She questioned if the builder has any responsibility for maintaining the stormwater management areas prior to turning them over to an association. Responding, Mrs. Townshend confirmed that the developer does have that responsibility and stated that the Kent Conservation District conducts an inspection prior to the stormwater management being turned over to the homeowners' association and continues to conduct annual inspections.

Referring to Line 13 of the proposed amendment, Mr. Bonar suggested that the word "should" be replaced with "shall." Referring to the word "must" in Line 30 of the proposed amendment, Mr. Bonar relayed his opposition to requiring all property owners to be members of the homeowners' association. Responding, Mr. Koenig explained that if membership is not required, property owners would opt out, and the costs would either be spread among a few members of the association or the City would bear the costs. He noted that in those subdivisions where there are common property and future maintenance issues, the "must" is necessary. Should an individual object to the requirement, he suggested that they acquire property in a different location.

Mr. Bonar suggested that the Committee refer the matter back to staff to address the concerns relayed by members prior to submitting a recommendation to City Council.

Mr. Anderson stated that he is open to the concept; however, he requested that information be obtained regarding homeowners' bill of rights and suggested the inclusion of free speech rights for property owners.

Reiterating comments of Mr. Shevock, Mr. Lynn stated that when an individual purchases property, the attorney conducting the closing is required to provide a copy of deed restrictions so there are no surprises. In addition, he stated that at the closing, a prorated share or a year's share of homeowners' association dues are collected. Mr. Lynn voiced his concern regarding a potential situation involving a developer who has not completed a subdivision and has claimed bankruptcy. The property owners could then be required to form a homeowners' association during a time when the developer is supposed to be responsible, forcing a few homeowners to be responsible for mowing an entire neighborhood, etc. Responding, Mrs. Townshend felt that the proposed amendment would not affect such property owners in that way, explaining that for those subdivisions that have not been dedicated, the land remains under the ownership of the LLC, including the common areas.

Mr. Anderson moved to table the matter for further study, seconded by Dr. Jones and carried with Mr. Shevock voting no.

Responding to Mrs. Townshend, Dr. McGlumphy suggested that staff meet with the individual members of Council that have concerns and that the matter be brought back to the Committee during their next meeting (in two (2) weeks).

Amendment to Personnel Policy - Retirement Notification Requirement

Mr. Scott Koenig, Interim City Manager, Public Services Manager/Director of Public Works, reviewed proposed amendments to Article XI - Sick Leave, Section 5 - Sick Leave - Retirement Credit for Accumulated Sick Leave; Article XIII - Other Types of Leave, Section 1 - Terminal Leave; and Article XV - Separation, Disciplinary Action and Reinstatement, Section 2 - Resignation, of the Personnel Policy (Employee Handbook). He noted that, if approved, a new Section 5 - Retirement would be created and the current Sections 5 through 13 would be renumbered.

Members reviewed the proposed amendments with regard to retirement notifications. Mr. Koenig advised members that employees who retire and who are entitled to receive either a lump sum payment of their accumulated sick leave or to use it for terminal leave, will be required to provide a 30 calendar day notice. The employee's department head may waive the notice requirement for retirement; however, notification for the payment of accumulated sick leave cannot be waived. The notification guidelines cannot be enforced on employees who will not be receiving a lump sum payment for accumulated sick leave or will not be utilizing it for terminal leave. He noted that if the recommended changes are adopted, they cannot be fully implemented until the labor unions agree to them.

Members were advised that the change in policy is being requested for financial and workload planning as well as to create uniformity for all retirement requests. It was noted that payment or utilization of sick leave is not a matter that is covered by Delaware Labor law (Title 19 Labor, Chapter 11 Wage Payment and Collection); therefore, the City has the ability to develop and enforce specific notification guidelines for accumulated sick leave. The changes are being sought to assist in promoting a productive workforce. Employees who are forced to continue working because of notification requirements can be counterproductive, detrimental and/or a hazard to the work environment. There may also be unforeseen reasons why an individual may need to retire immediately (i.e., health and family care considerations). Mr. Koenig stated that each department head should have the ability to make a decision based upon their knowledge of the specific employee and the operations associated with their department to determine if the notification guidelines should be modified.

Mr. Anderson moved to recommend approval of the proposed amendments to the Personnel Policy (Employee Handbook), as recommended by staff *(Attachment #1)*. The motion was seconded by Mr. Shevock and unanimously carried.

Campus Community School Request to Purchase the Pear Street Warehouse

Mr. Scott Koenig, Interim City Manager, Public Services Manager/Director of Public Works, advised members that the City has received a request from Campus Community School (CCS) to purchase the Pear Street Warehouse, located at 370 Pear Street, from the City of Dover. He noted that this is the warehouse building (formerly the ILC site) that the City of Dover bought in the late 1990s. The warehousing area includes 24,312 square feet of inside storage area and the yard area consists of 15,704 square feet of outside storage area. In 2002, Campus Community High School was established adjacent to the City Warehouse, and these buildings share a common wall. CCS is seeking a new location for its Elementary School, which is currently located at 21 North Bradford Street on the Wesley College campus.

Mrs. Patricia Hermance, Head of School for CCS, read a statement into the record ***(Attachment #2).***

Dr. Andrew Lloyd, Vice-President for CCS, read a statement into the record ***(Attachment #3).***

Mr. Koenig reviewed the City's Procedure For Sale and Distribution of Real Property. In accordance with the policy, he advised members that staff conducted an internal analysis of whether the City could move its material to another location, vacate the current building, and sell it to CCS within the requested time frame. Members reviewed a detailed internal analysis which revealed that this is not feasible. Currently, staff has determined that there is not enough room to relocate the stock material on the remaining City property. In addition, there is not enough time to find another adequate adjacent location and prepare it for occupancy. Securing a remote site would increase the City's operating costs due to manpower constraints and fuel usage to service a remote site. Based on the detailed internal analysis, staff determined that 370 Pear Street cannot be declared "excess in nature" and believes that the disposal of this property would not be in the best interest of the City of Dover. The warehouse is currently operating at below 2002 staffing levels. Mr. Koenig advised members that staff is willing to entertain additional discussions regarding other options that may be mutually beneficial to the City and CCS, provided such action does not have a detrimental effect on the City's budget or operations.

Staff recommended acceptance of the determination that the Pear Street Warehouse is currently not surplus property and that staff continue to discuss options with the CCS Board that are budget neutral to the City of Dover and mutually beneficial to the City of Dover and CCS.

Responding to Mr. Shevock, Mrs. Hermance clarified that CCS is not expanding and that the student body will remain at 600. She explained that CCS is currently located in two (2) separate facilities and now wish to co-locate in one (1) facility in an effort to consolidate operational expenses.

Mr. Anderson relayed concern with staff's recommendation related to the determination that the Pear Warehouse is currently not surplus property, feeling that it would be difficult for this determination to be reversed if further discussions with CCS resulted in a recommendation for the sale of the property. Responding, Mr. Koenig indicated no opposition to eliminating that portion of staff's recommendation so that it would only include authorization for staff to continue to discuss options with CCS.

Mr. Anderson noted that the City's Comprehensive Plan encourages locating educational organizations within the City, and stated that this is a wise plan that promotes economic development. However, he requested that members also consider the needs of taxpayers when considering such projects.

Mr. Shevock questioned the possibility of leasing the building to CCS. Responding, Mr. Koenig stated that, to his knowledge, this option has not been discussed, explaining that staff's recommendation was directly in response to the purchase request.

Mr. Anderson moved to recommend that staff continue to discuss options with the CCS Board that are budget neutral to the City of Dover and mutually beneficial to the City of Dover and Campus Community School. The motion was seconded by Dr. Jones and unanimously carried.

Mr. Shevock moved for adjournment, seconded by Dr. Jones and unanimously carried.

Meeting adjourned at 6:54 P.M.

Respectfully submitted,

William P. McGlumphy
Chairman

WPM/DD/jg/js/ac/tm
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Attachments
Attachment #1 - Proposed Amendments to the Personnel Policy (Employee Handbook)
Attachment #2 - Statement Read by Mrs. Patricia Hermance, Head of School for CCS
Attachment #3 - Statement Read by Dr. Andrew Lloyd, Vice-President for CCS

PROPOSED AMENDMENTS TO PERSONNEL POLICY (EMPLOYEE HANDBOOK)

ARTICLE XI. SICK LEAVE

SECTION 5. SICK LEAVE - RETIREMENT CREDIT FOR ACCUMULATED SICK LEAVE

This payment shall be in a lump sum payable ~~upon retirement~~ in the employee's paycheck immediately following the exhaustion of the 30 calendar day notice of retirement. Shall an employee provide notice that exceed 30 calendar days, the lump sum payment of accumulated sick leave will be included in the employee's final paycheck. The 30 calendar day notice may not be waived. ~~or~~ t[T]he employee may convert his/her accumulated sick leave, not to exceed the maximum indicated, to terminal leave.

The above section is subject to employee labor agreement, when applicable.

ARTICLE XIII. OTHER TYPES OF LEAVE

SECTION 1. TERMINAL LEAVE

In order to qualify for terminal leave, an employee must request terminal leave in writing a minimum of ~~forty-five (45) days~~ 30 calendar days ~~notice~~ prior to the date the ~~employee's retirement date~~ employee intends to begin terminal leave. ~~unless waived by either the Civilian or Police Pension Committee~~. The retiring employee shall give such notice in writing to his/her supervisor, department head and the Human Resources department. The employee's department head may waive the 30 calendar day notice requirement for terminal leave.

ARTICLE XV. SEPARATION, DISCIPLINARY ACTION AND REINSTATEMENT

SECTION 2. RESIGNATION

A minimum of two (2) weeks notice is ~~required~~ suggested of all resigning personnel. For department heads, managers and supervisors, it is recommended that a minimum of four (4) week notice be provided. The resigning employee shall give such notice in writing to his/her supervisor, department head and the Human Resources Department. ~~An employee can not use vacation time as notice for his/her resignation.~~

The City reserves the right to terminate an employee's employment immediately, after receiving an employee's resignation.

SECTION 5. RETIREMENT (Please note: Sections 5 – 13 will be renumbered.)

Employees requesting a lump sum payment for accumulated sick leave or using accumulated sick leave for terminal leave shall be required to provide a minimum of 30 calendar day notice. The retiring employee shall give such notice in writing to his/her supervisor, department head and the Human Resources department. An employee cannot use vacation time as notice for his/her retirement. The employee's department head may waive the 30 calendar day notice requirement.

June 27, 2011

City of Dover
Dover City Council
15 E Loockerman Street
Dover, DE 19901

Good evening Council members,

Thank you for taking the time to consider Campus Community School's request to purchase the Pear Street Warehouse located on the back portion of our current high school facility. As you may know, Campus Community's Elementary School has been located at 21 N. Bradford Street, the center of Wesley College's campus, for the better part of thirteen years. With Wesley's planned expansion and street closures that location will not continue to be a viable option after June of 2012.

As the school of choice for nearly 400 families and 600 students, a vast majority of which reside in the City, we are determined to find a long term facility solution that keeps us within City limits and within walking distance of Wesley so that we may maintain our valuable working relationship. Wesley's Education majors spend a significant amount of time in our schools as an integral part of their pre-service teaching experience and our teachers consistently collaborate with the Wesley faculty to enhance their professional development.

Additionally, as an employer Campus Community provides full and part time work to close to 70 employees who actively support the Dover community. Our faculty and staff, many of whom are Dover residents, support our efforts to consolidate to one location conveniently located within City limits and tonight's action is an important step to making that a reality.

Over the last year or more we have investigated multiple options for relocation including new construction, renovation of existing sites both in and out of City limits, and the co-location of our operation on Pear Street. The purchase of the Pear Street warehouse was clearly the best long term option identified from both a financial and programmatic perspective. While we fully appreciate the City's need to find a location for the contents currently located in the warehouse, we are eager to work with City staff to determine a solution that makes this option a reality and a win-win for both the City of Dover and Campus Community School.

In our recent work with a commercial realtor we have identified multiple properties that can be considered as options. These locations offer sufficient space to re-locate the warehouse contents and are within close proximity to existing City operations. Having read the recommendation included in the Action Form forwarded to us at the request of Scott Koenig, interim City Manager, I respectfully request that this committee follow through with this recommendation and enable Campus Community to work more closely with Mr. Koenig and his staff to further clarify the details around options that are mutually beneficial. We fully recognize the City's need to investigate in more detail the options that may be available and any financial or operational impact. Once the solution is determined we would ask to return to Council to take the next steps toward the purchase of 370 Pear Street.

In conclusion, in an effort to alleviate any concerns around the timeline of our request I would like to provide some clarification. While we expect to vacate the 21 N. Bradford location in June of 2012 we are cognizant of the need for sufficient time to work through the necessary steps in this process. While we will continue to take measures to move this process along quickly we are acutely aware that inhabiting this new location in June of 2012 is highly unlikely and we are actively seeking an interim facility solution to allow for a more realistic timeline. Again we welcome the opportunity to take this first important step this evening and to working together with City staff to find a solution on a timeline that works for both parties.

Thank you for taking the time to consider our request and for working with Campus Community School to continue to have a positive impact on Dover's citizens and community.

Sincerely,

Patricia S. Hermance

Patricia S. Hermance, Head of School
Campus Community School

June 27, 2011

City of Dover
Dover City Council
15 E Loockerman Street
Dover, DE 19901

Good evening Council members,

Thank you for taking the time to consider Campus Community School's request to purchase the Pear Street Warehouse. As you heard from Ms. Hermance, Campus Community School is diligently working toward finding a long term facility solution that will enable us to continue to have a significant positive impact on our students and the Dover community.

On behalf of the Board of Directors, I can assure you that significant efforts have been taken to determine a solution that will be beneficial to Campus Community both programmatically and financially. We also recognize the City's needs and look forward to determining a solution that benefits both parties.

While Campus gets no additional funding from the state for capital expenses, the Board has taken the necessary steps to allocate funds to this purchase. Having said that, we also fully understand your desire to keep this a budget neutral proposal for the City and look forward to working with your staff to be sure that we enter into a mutually agreeable, fiscally responsible arrangement.

I respectfully ask that you seriously consider the proposal before you and make a decision that allows Campus Community School and the City of Dover to move forward on a project that will directly benefit 600 students, the majority of whom reside within City limits.

Sincerely,

Andrew Lloyd, Phd.
Vice-President, Campus Community School Board