From: Gordon Piper
To: Klein, Heather; Flynn, Rachel
Subject: Re: Seeking clarification re Employee Condition on Bentley CUP
Date: Tuesday, March 11, 2014 2:36:19 PM
Attachments: Bentley Employee # Analysis.xlsx

Volume: 1 Issue: 24 Tuesday, March 11, 2014

"What a beautiful campus!" Whether in Lafayette or on the Hiller campus, I've lost count of how many times I've heard those words uttered by visitors to Bentley over the past several years. Three years of catching up on deferred maintenance, including all buildings and the extensive grounds on both school properties allows us to experience the best of Bentley's remarkable facilities each and every day. Our school is a model for a culture of shared leadership. Hiring the right people with the most positive attitudes and work ethics in every position, with the Board of Trustees providing strong role-modeling, we move toward even more robust operations. There is no better example of this philosophy than Andres Nunez who assumed the role of Director of Facilities for both campuses three years ago. Working with trustee and former Bentley parent Dave Hummel (father of Ben, Class of 2012), Andres and his crew have addressed all major concerns of facilities on both campuses taking a proactive approach in planning forward.

Mr. Nunez is responsible for hiring the entire buildings and grounds staff including Axel Perea (who joined as a custodian in 2009 and became a groundskeeper for the Lafayette campus in 2011), Mauricio Alvarado (started working in 2008 as a custodian and is now Head Custodian at both campuses, Hector Munoz (started working in 2012 as a groundskeeper at Hiller), Felipe Gonzalez (is a custodian who started working in 2012), Ramon Becerra (started working in 2012 as a custodian in Lafayette), Noe Hernandez (started working as a custodian in 2012 in Lafayette), and Fabio Rodriguez (maintenance person who works on weekends and started working in 2012).

This remarkably talented and dedicated team can be counted upon to “be there” for Bentley and face the inevitable challenges of older buildings and sprawling grounds. A broken water pipe on a Saturday night, a furnace that refuses to cooperate, or any number of other challenges seem to frequently occur outside of normal hours of operation and our team always manages to do what’s needed for

Bentley- all while keeping a collective eye on the security of our campus, concerned about the welfare of every student.

Last month, our Buildings and Grounds Team took on a new look (see right). If you are visiting the Hiller or Lafayette campuses, watch for our facilities team in their Bentley blue jackets, shirts and sweatshirts. Be sure to say hello and perhaps add your thanks to their list of fans and admirers.

Arlene Hogan

Rachel and Heather:
This is an excerpt from the March 8, 2013 Bentley School Newsletter and you can see they had more than one maintenance employee.

Heather indicates that the Planning Commission considered the list or some list that was provided by the Bentley School that had 71 employees and this included employees that worked part-time on the Lafayette campus and part-time at the Hiller campus, i.e., the Headmaster. The list should have included other employees that worked at both Bentley School campuses. Heather still hasn't pointed out one Commissioner or one vote of the Commission that used the same definition of employees that Heather offered in her March 10 email. I think the reason Heather haven't provided this is because she simply can't show that the Planning Commission or any Planning Commission member had the same definition as the one Heather included in her March 10 email and is now relying on and asking that we accept, instead of the clear indication from the Planning Commission that the School was to have no more than 71 full-time and part-time employees working at the Hiller campus. I am also concerned about the continuing failure to adequately investigate evidence of misrepresentations by the Bentley School in relation to the number of employees that it has at the Hiller campus that constitute a continuing violate the CUP limitation of 71 full-time and part-time employees that the Planning Commission established.

The Planning Department and Planning staff need to do more than to just accept whole cloth as accurate the list of employees provided by the Bentley School in 2012, 2013 and 2014 that do not accurately reflect the number of full-time and part-time employees working at the Hiller campus. This has been like asking the fox to guard the hen house and to report accurately on what is going on there. I request another Planning Department staff member and an investigator with greater expertise, investigative skills, and clear demonstrated neutrality be assigned by the City to promptly and fully investigate and address the continuing violation of the CUP limit on 71 employees at the Hiller campus of the Bentley School.

I will attach for Rachel's understanding a copy of the list that the Neighbors for Safety in Hiller Highlands provided previously in late 2013 to the Bentley School, the CUP Hotline, and Planner Heather Klein that documented some of the many part-time or full-time employees that worked apparently at the Hiller campus in either 2012 and/or 2013, beyond the allowed 71 full-time or part-time employees allowed by the Planning Department. We ask the Planning Department do a thorough investigation regarding these employees, of the misrepresentations relative to lists of employees by Bentley School for the Hiller campus in 2012, 2013, and 2014, and regarding the ongoing CUP violations, and then take appropriate corrective action. For years the Bentley School has made misrepresentations to the City, the Planning Department,

and neighbors first regarding the number of students it had (which violated the previous CUP limit) and now regarding the number of full-time and part-time employees it has at the Hiller campus.

Gordon Piper

On Tue, Mar 11, 2014 at 1:10 PM, Klein, Heather <HKlein@oaklandnet.com> wrote:

> Gordon,
>
> There was a continuous discussion about this issue at all of those meetings where the Commission as whole discussed staff, whose was staff, where could they park, why couldn't they move to Lafayette, who was a vendor, what was the PTA to be etc. The Planning Commission approved the 71 number and defined staff based on the School's employee list for the School. I used that to consider your e-mail and have made an informal determination regarding the Director of IT. Any additional consideration will require you to submit a formal determination letter.
>
> Heather Klein, CGBP, LEED AP BC&D
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> **Please** consider the environment before printing this email
>
> **From:** Gordon Piper [mailto:rgpiper33@gmail.com]
> **Sent:** Tuesday, March 11, 2014 12:52 PM
>
> **To:** Klein, Heather
> **Subject:** Re: Seeking clarification re Employee Condition on Bentley CUP
>
> Can you point to a specific Planning Commission member or that defined the 71 employee-limit in the way you have defined it or any specific vote by the Planning Commission that defined it as more than just 71 full-time and part-time employees on the Hiller campus? Can you point to even one hearing where

some Planning Commissioner defined employees in the same manner as you did in your March 10 email?

It seems you should be able to clarify more precisely how you arrived at the narrow interpretation that you outlined in your recent email. Bentley School at the time that the 71 employee limit was established had more than just the Headmaster who was working part-time on both campuses, yet multiple part-time employees were not listed by the Bentley School including members of the maintenance staff, music staff, athletic department staff members.

I believe there have been misrepresenetations by the Bentley School as to where the IT Director was assigned as he was parking in 2013 every day and working every day at the Hiller campus and not in Lafayette. This would have put the school in violation of the CUP limit of 71 employees. The every-school-day parking and assignment of the IT Director only changed last Fall when Neighbors for Safety in Hiller Highlands pointed out to you and Bentley School the failure of the Bentley School to accurately report the number of full-time and part-time employees that it had working at the Hiller campus. We heard nothing back from you when this was reported, until Bentley School changed where it was saying he was assigned to work and was actually working.

I don't know how you can determine whether the Bentley School considers an employee or a vendor without seeing whether they issue them a W-2 or not, or whether they were issued a 1099. The School has indicated that Strings Academy employees were faculty and I don't believe your evaluation has been thorough enough either relative to the IT Director, the Strings Academy employees, and other part-time employees such as maintenance employees that are working at both campuses.

Bentley's Director of Facilities Andres Nunez himself told me several months back when I saw him working at the Hiller campus that there were three maintenance employees besides himself working regularly at the Hiller campus and not one. Three plus one equals four, not one in 2014. The March 2013 article about the Bentley School maintenance staff in fact indicated that his "crew" of seven other named crew members "addressed all major concerns of facilities on both campuses". Eight maintenance workers that work part-time or full time at the Hiller campus does not equal one in 2013. The School has been in non-compliance with the CUP limitations of 71 full-time and part-time employees I believe in 2012, 2013 and 2014, just as they were for years were in violation of the number of students allowed at the campus.

There is no logic in counting the Headmaster as an employee who works on both campuses and not counting all of the other Bentley School employees that were and still are working on both campuses. Point out something much more specific Heather that backs up your latest interpretation that the Planing Commission indicated only one part-time employee that works on both campuses is to be counted.

It's time for these on-going CUP violations by the Bentley School on the Hiller campus to be adequately investigated and stopped.

Gordon Piper

On Tue, Mar 11, 2014 at 9:47 AM, Klein, Heather <HKlein@oaklandnet.com> wrote:

Gordon,

As mentioned in the letter this issue was discussed many times during the School's CUP hearings. The Planning Commission tapes are available from KTOP. There is a cost for the DVD's. Dates of the hearings that I believe discuss the issue of staff based on the content in the staff reports include the following:

March 3, 2010

April 7, 2010

July 21, 2010

February 16, 2011

Please ask the school for the maintenance staff person's name. It is not required, per the conditions of approval, that the School provide names of their employees or W-2's, only the total number of employees for the Hiller campus. As for the Strings Academy staff, the City is satisfied that the these staff are not to be considered employees but vendors as these staff.

Heather Klein, CGBP, LEED AP BC&D

Planner III

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Please consider the environment before printing this email

From: Gordon Piper [mailto:rgpiper33@gmail.com]
Sent: Tuesday, March 11, 2014 1:24 AM
To: Klein, Heather
Subject: Re: Seeking clarification re Employee Condition on Bentley CUP

Could you clarify what you base your contention that the Commission in any vote or comments in establishing the limit of 71 full-time and part-time employees limiting the counting of the employees to those that worked solely on the Hiller campus or had offices on the Hiller campus? Is there any tape recording that supports this was a position taken or communicated by any Planning Commission member at its meeting at which the CUP limitation was discussed and approved? If so, can you please make the tape or a transcript of the specific comments that you are basing your understanding of the definition of "employee" which you have underlined in your email. I don't recall that have been discussed or indicated as a definition that was to be used by Bentley School or staff, and would like to see how you arrived at this understanding. I look forward to promptly receiving clarification as to how you arrived at this definition and understanding. If you are aware of some other writing from all Commission members that

indicated this was the definition of employee to be utilized, could you provide a copy of this document/writing?

Could you also clarify the name or names of the one maintenance employee at the Hiller campus in 2012, 2013, and 2014?

I also would like to know if in your research regarding the Strings Academy learning whether you determined whether any of three Strings Academy employees received W-2's that might further support the indications made in writing by the Bentley School that these were faculty and instructors, and not "vendors". Do the Strings Academy instructors receive W-2's or 1099's in 2011,2012, and 2013? Did the Jazz Band Teacher receive a W-2 or a 1099 in 2012 and 2013?

Gordon Piper

On Mon, Mar 10, 2014 at 2:49 PM, Klein, Heather <HKlein@oaklandnet.com> wrote:

Susan and Gordon,

I received your e-mails and voicemails regarding staffing at Bentley School. I had a chance to discuss the issue of the Director of IT and the Strings Academy staff with the School. Furthermore, I reviewed the previous list of employees that was approved by the Planning Commission in 2010, the version from 2012 and the most recent submittal. As I have discussed at the multiple Planning Commission meetings and in e-mails to the neighbors, City staff did not want to be in the position of constantly determining staff which could be fairly fluid depending on the needs of a school.

It is the Department's understanding that the Commission defined staff as those persons, aside from the Head Master whose house is located on the Bentley campus, who were solely associated with the running of the Hiller Campus or whose offices were located at the Hiller campus. Specially, this meant all Bentley K-8 faculty, administrators, maintenance staff, and childcare staff and is consistent with the lists that the School has submitted. Currently, there are 45 faculty, 17 administrative staff, 8 childcare workers, and 1 maintenance staff for a total of 71 employees. In 2012, there were 44 faculty, 14 administrative staff, 7 childcare workers, and 1 maintenance staff for a total of 66 employees. In 2010, there were 47 faculty, 8 childcare workers, 3 maintenance staff and 13 administrative staff for a total of 71 employees.

The Director of IT 's office is in Lafayette. He occasionally needs to come to the Hiller Campus to discuss IT related situations with Bentley staff such as the Technology Associate . However, he was not considered part-time staff for the Hiller campus at the time that the Planning Commission approved the staffing list. Therefore, City staff consider him a vendor. Vendors are not considered full or part time staff. The Strings Academy staff is a vendor providing musical instruction and is similar to athletic coaches or tutors. They are not faculty.

As previously discussed in the City's letter dated April 5, 2012 and attached to this e-mail, City staff outlined the process by which the neighbors could request a formal determination from the City which could be appealed. If you wish to file a determination regarding the Director of IT or the Strings Academy, please submit a letter to the Zoning Permit counter with an initial fee of $300.65. City staff will review your request and provide you the Department's formal response. Any party may then appeal that decision to the full Planning Commission.

I hope this clarifies your concerns regarding the IT Director and the Strings Academy staff.

Best,

Heather Klein, CGBP, LEED AP BC&D

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Please consider the environment before printing this email

From: Susan Piper [mailto:susangpiper@gmail.com]
Sent: Friday, February 28, 2014 12:40 PM
To: Klein, Heather
Cc: Gordon Piper
Subject: Seeking clarification re Employee Condition on Bentley CUP

Hi Heather,

Can you please explain how the Planning Department defines part-time employees with respect to the Bentley CUP?

There are Bentley employees based in Lafayette who come to the Hiller Campus several times a week as part of their jobs (for example. the IT Director, some Lafayette-based faculty who serve as coaches or music instructors, etc.).

The CUP doesn't directly address this-- it just limits the total number of full and part time employees on the Oakland campus.

We would appreciate hearing your rationale, so that we can understand how the Planning Department interprets this situation in relation to the CUP employee limit.

Thanks.

Gordon and Sue Piper

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