Minutes[*]

Senate Committee on Finance and Planning
Tuesday, April 20, 1999
3:15 – 5:00
Room 238 Morrill Hall

Present: Stephen Gudeman (chair), Jean Bauer, Charles Campbell, Catherine French, Cynthia Gillett, Wendell Johnson, Gerald Klement, Eric Kruse, J. P. Maier, Terry Roe, Charles Speaks, Susan Carlson Weinberg

Regrets: Jane Phillips, Peter Robinson

Absent: Terrence O'Connor, Richard Pfutzenreuter, J. Peter Zetterberg

Guests: Vice President McKinley Boston, Associate Vice President Ronald Campbell (Student Development and Athletics); Vice President Christine Maziar

[In these minutes: Aramark and Coke contracts; recommendations about building costs; intellectual property policy]

1. The Food Service

Professor Gudeman convened the meeting at 3:20 and welcomed Vice President Boston and Associate Vice President Campbell to follow up on their earlier visit with the Committee about the food service and the contracts with Aramark and Coke.

Dr. Boston thanked the Committee for the opportunity to visit it, and began by relating that he had been involved in a number of discussions since the last meeting about the unhappiness with the food service on the Twin Cities campus. Aramark senior executives have visited the campus, and the printed copies of the emails sent earlier by members of the University community were given to them. Dr. Boston said he told the Aramark executives that he wanted this relationship to work, and charged Associate Vice President Campbell to work with Aramark to that end. Progress has been made.

Mr. Campbell noted that a number of issues and questions had been raised at their last meeting with the Committee; he distributed handouts and said that he wished everyone to have the same information and facts. He emphasized that the DAILY editorial contained a number of errors, and said that Aramark did NOT earn anywhere near $2 million at the University.

Mr. Campbell pointed out the provisions of the summary that was presented to the Board of Regents in December, 1997, before the contract with Aramark was signed, including the financial assumptions that lay behind the contract. Net revenues were expected to be about $590,000, with additional expenses to be incurred, so there was to be about $200,000 - 300,000 to go to student-directed initiatives (which was part of the agreement). Asked what happened, Mr. Campbell explained that the first year was a split operation, with the University running food services for the first half and Aramark

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taking over the second; the University will learn this year how things work out. The operation showed a surplus in February for the first time; there were higher-than-expected costs, but Mr. Campbell said he believed the University would be better off than it was before.

It was noted that the student government received a lot of complaints about the food service once the change to Aramark was made; has there been any improvement? Mr. Campbell said that Aramark has made significant improvements and has worked with programs to establish employee accountability. Aramark was asked to review best practices for food and quality standards, and has produced a draft document outlining improvements to be made. Aramark met with a lot of groups (student, staff, faculty) to gain a strategic overview of issues and what it needs to do to get its operation up to its own best practices. It has brought in a rapid response team to help accomplish this goal.

Aramark has acknowledged that its operation at the University does not meet its own standards, Dr. Boston added, and has said it did not recognize the complexity of running a food service at the University. It intends to address the problems.

Asked about price comparisons contained in the DAILY, Mr. Campbell said it was not fair to compare on-campus and off-campus organizations, because on-campus operations face different constraints, and off-campus franchises of national organizations can achieve efficiencies that the on-campus operations cannot. In addition, the on-campus operation is expected to make contributions to the University, which off-campus vendors are not. Aramark and the University are also not ignoring the fruit fly problem. In terms of quality of food, as far as can be learned, the same products are being bought as were purchased before, and Mr. Campbell said he did not believe food quality was being sacrificed.

Mr. Campbell also pointed out that there are mechanisms for employees to complain. The University, in addition, has not brought onto campus an organization that will take away all the money and give nothing to the University. There is a contract provision that if Aramark is extremely profitable, part of the money is to be returned to the University.

Two strong points in the original proposal were that the food on campus would be competitive with local vendors, and that the dorm food would improve. What has happened on those two issues? Mr. Campbell said there is recognition that some prices are above the market, and Aramark is looking at ways to improve competitiveness. In the residence halls, part of the problem is the equipment, and there may have been less budgeted on that score than was needed. The equipment must be improved if the food is to be improved, and there are plans to improve the offerings as well as the flexibility of residence hall dining opportunities.

Of the gross revenues from eating establishments, does all go to operations or is some (e.g., beverages) directed to athletics or other uses, asked one Committee member? All of the food revenues goes back to the operations; the Coke contract is separate, Mr. Campbell said, and those revenues come through vending.

Mr. Campbell distributed a handout showing the distribution of revenues from the Coke contract. Before the Coke contract was signed, vending services bought from Pepsi and the University owned all the machines. The net income from vending went into food services, and was absorbed into the food service operating deficits. He concurred that the food service would have been even more "in the hole" than if the vending revenues had not gone into it. Dr. Boston pointed out that the decision was made to separate the food service, because projections were for yearly deficits of $1.6 million. It was also using up reserves, Mr. Campbell added, so it needed either to be closed or downsized. Vending services were removed, so its income could be used to the benefit of the University. Should the University have directed the approximately $850,000 in Coke revenues into the food service, he asked?

This was at a time the University was retrenching, Dr. Boston recalled, and President Hasselmo was committed to the undergraduate initiative, so units were challenged to do more with less and also to build a sense of community with undergraduates. The vision was to invest the Coke revenues in community-building; it was a way to get new money when the University budget was shrinking. He distributed a small booklet enumerating the projects upon which the Coke revenues have been spent. The decision was made not to subsidize the losing food service, and to outsource food. Only time will tell if the decision was a good one, he concluded.

Committee members inquired about the uses of some of the Coke revenues and made suggestions about how such revenues and expenses should be reported. With respect to the money that goes to athletics, Mr. Campbell and Dr. Boston recalled that athletics did not want to be a part of the contract, believing (probably correctly) that they could make as much or more money by signing their own contract--so the revenues would have been lower had athletics not been a part of the deal. By including athletics, the entire package was more attractive.

Professor Gudeman thanked Dr. Boston and Mr. Campbell for joining the meeting.

This matter is not finished, Professor Gudeman commented after the guests had departed.

One Committee member pointed out that the meeting the next morning, with Aramark executives, included no students. The points on which they felt strongest were the quality of the food and competitive prices. Students supported the contract with the idea that there would be improved market share for a captive audience, and an improvement in residence hall food. Another Committee member observed that "competitive" needed to be defined; it is likely the expectation of many that prices on campus would be LOWER than those off-campus.

2. Building Cost Recommendations

Professor Gudeman turned next to Dr. Gillett for a report from the subcommittee of the Subcommittee on Twin Cities Facilities and Support Services (STCFSS) concerning building costs. He noted that the subcommittee promulgated four recommendations, and they should be discussed, but not yet forwarded.

Dr. Gillett reminded the Committee that STCFSS had two charges this year, support service benchmarks and building costs; this report responds to the second; she served as chair of the subcommittee which developed the recommendations. They met with various University administrators about buildings, especially from Facilities Management, to try to get at cost issues. The recommendations are not in order of priority.

1. The first recommendation is to use the University's bonding capacity for infrastructure needs rather than for proceeding with unfunded projects. Infrastructure needs are not budgeted, and the legislature does not want to fund them, so they tend to be funded from other operating funds or simply not met. The University has significant bonding capacity, and it should be used for this purpose.

There is no legal problem with this proposal, Mr. Kruse confirmed; the problem is how to pay off the bonds, since there would be no revenue stream associated with them.

2. The second recommendation is to initiate a building depreciation fund mechanism to provide for building repair and replacement needs.

In response to a question, Mr. Kruse said he was not aware of any public university that does this, although he believes some private institutions do so.

The theme that runs through all of these recommendations makes good sense, said one Committee member; if there is no legislative money for these purposes, where does the money come from? That is the big question, Dr. Gillett responded. One Committee member recalled that this Committee earlier took the position that for every new building that goes up, another one should come down. Now, however, the administration does not want to tear down buildings. It was noted that the Hasselmo administration did not completely accept that Committee position, and that there is now a new building program at the University.

One problem with establishing reserve funds along the lines suggested by the subcommittee is that they become a temptation for the legislature to use as an excuse not to fund University facility needs.

Mr. Kruse pointed out that the University is tearing down three buildings to build Cellular and Molecular Biology--which will be 2/3 the size of the three buildings it replaces, but nearly twice the operating costs. The principle of replacing one for one can be followed, but the University typically builds a facility to a 100-year standard, so roofs--which have about a 25-year-life--will have to be replaced 3 times. In addition, programs change over time, requiring remodeling, renovations, and changes to the "building system." It is not necessary to amortize the full cost of the building; building systems--mechanical, electrical, shell, etc., need to be covered, but not the structure itself--typically, if the structure has deteriorated, it is probably not worth saving. It might be wise to start now, he said, to build a depreciation fund from this point forward for the facilities we are building or renovating.

In response to a query, Mr. Kruse explained that operating costs are higher in new buildings because of heating and ventilating systems, energy demands (e.g., for fume hoods), and the cost of technology support and maintenance.

3. The third recommendation from the subcommittee is that there be a required system of escalation/inflation in all capital building or improvement budgets expected to extend beyond one year from the original cost estimate. This is an attempt to get at cost over-runs, Dr. Gillett explained, because cost estimates are often made much earlier than the time when construction begins. There should be a REQUIRED escalation factor in building projects.

The subcommittee reported that "projects do not go to Regents for approval unless there is a pre-design plan and "accurate cost estimate". The latter is done in current dollars but there exists an inflation/escalation factor which has been calculated by consultants from the State. The use of this factor in cost estimating is not consistent, however. Approximately one half of the budget amendments taken to the Regents for approval are due to unplanned inflation and escalation costs. Accountability for the cost estimate exists only by virtue of post-project review and discontinued use of cost consultants which provide inaccurate estimates. Two cost estimates are occasionally obtained and compared to reach a more accurate estimate, but that adds on total costs to the project.

"One problem inherent to the system that results in building costs being higher than anticipated is that projects are making budgets and requesting funds based on cost guesstimates, not actual bid costs. It is inherent to the system because, in general, projects aren't going to spend all the money on preliminary design and cost estimates and programming needed to go to bid, unless the project is already funded. And projects don't get the funding without having provided a cost guesstimate which becomes the funding target or cap even though it was not based on actual bids."

Mr. Kruse affirmed that it would be possible to implement this recommendation. He told the Committee that some of the projected building costs provided to the Regents are placeholders and some are good estimates. The University uses external firms to estimate building costs.

One Committee member pointed out that if the recommendation is followed, and costs are escalated, the University will not have as many construction projects going on at the same time; who loses? Mr. Kruse agreed that the University would probably have fewer projects going on, but likely the same dollar level of activity. It would also mean fewer "taxes" across the University, added another Committee member. Mr. Kruse pointed out that cost estimates change for many legitimate reasons, one of which is "program creep." For example, the Molecular and Cellular Biology was originally planned to have 60 Principal Investigators; now the plan is for 70.

4. The fourth recommendation was to initiate a life cycle investment program, analogous to the Energy Conservation Program, wherein investments in infrastructure and materials that cost more initially but save money in the long run, can be made and tracked. Dr. Gillett commented that this just makes sense; spend more money in the beginning to reduce maintenance costs. But programs which are not paying for ongoing building costs don't want to incur the additional initial costs to the "building systems"; they usually want the money to go into program needs. Dr. Gillett recalled that the UBEEP program saved the University a lot of money.

Asked which of the four recommendations would be most difficult to implement, Mr. Kruse said that the question with all of them is the source of funds. The money needs to come from somewhere, and redirecting it from elsewhere would mean less of something else.

One Committee member inquired if the design-build process could be used more frequently, in order to save money. In some cases it could, Mr. Kruse said, but not on facilities like Cellular and Molecular Biology, which are extremely technical. It could be used for renovation, although the architectural community will oppose this, because it takes control of the project away from the architect and typically gives it to the general contractor, and may reduce the fees that architects can charge. It is a very effective project delivery method when used in the right situation.

One Committee member suggested that rather than acting on, or forwarding, these recommendations, the Committee allocate time at a future meeting to discuss them further and decide then what to do with them. The Committee concurred.

Professor Gudeman thanked Dr. Gillett for her report.

3. Intellectual Property Policy

Professor Gudeman next welcomed Vice President Maziar to the meeting to discuss the Intellectual Property policy which has been placed before the Senate for discussion.

Dr. Maziar began by reporting that this is the fourth draft of the policy, and represents the work of the Intellectual Property working group. She distributed copies of PowerPoint slides that she and Professor Kuhi (chair of the Senate Research Committee) had used in presenting the policy to the Regents, and said she wanted to present the proposal to the Committee in order to be sure that all appropriate groups see the policy and that consultation is widespread.

The current policy has been in place since 1986, but in the meantime there have been changes in federal regulations--and corresponding efforts to revise the University's policy. The most recent has taken place over the last five years. There was an earlier draft of the report that had gone through several committees, but after repeated attempts at revising the language--which in some cases seemed to make it worse rather than better--the entire draft was pulled and the effort began anew.

The next effort drew on the Committee on Faculty Affairs, including graduate student representation, the Senate Research Committee, and the General Counsel's office, and also included Professors David Hamilton (representing both FCC and grants management) and Richard McGehee (for software expertise). The group worked well together, agreed on all major issues, and only had problems identifying the exact language to convey what it is the working group agreed on and what all--those in the humanities, engineering, and the sciences--could understand. Dr. Maziar expressed appreciation to Law Professor Carol Chomsky for her wordsmithing work on the policy.

Dr. Maziar then reviewed the major substantive issues in the policy. One is to whom the policy applies. It applies to all who are connected with the University except those who are visitors (research collaborators, visiting faculty), and in those cases, intellectual property issues will be decided on a case-by-case basis. They wished to avoid setting up a structure that would create barriers to agreements.

As for identifying visitors, Dr. Maziar said the University has no way to identify people who might be working in labs but who are not paid by the University. There is a liability issue which the intellectual property policy does not change, but it does create an incentive to identify those people, to welcome them to campus, and to make sure they know of University policies and procedures.

In general, the University owns all intellectual property created or developed using University resources--with some VERY important exceptions. There are legitimate questions about when an individual's time is faculty time and when it is not, and when someone on a 50% appointment is working for the University and when not, but they are not answered in the policy. Dr. Maziar pointed out that there could not be a policy which would prevent bad actions by people who intend to do bad; what can be adopted is a policy intended to provide guidance to well-disposed people on both the administrative and faculty/staff/student sides. As for using web-based materials to make a profit, Dr. Maziar said that it is generally a violation of University policy to use public resources for private gain, and there is such a ban in the conflict of interest policy.

A major exception to University ownership of intellectual property is that it has no ownership rights in regular academic work products, and the medium does not make a difference (book, CD ROM, or hypertext). There is a provision that the University CAN own regular academic work products, if those products are produced under the terms of a contract with the faculty member whereby the work is commissioned.

Another exception to University ownership of intellectual property is that it has no rights in work created by students for the sole purpose of completing course requirements or an undergraduate degree. The intent is to avoid having courses wherein students are compelled to create intellectual property that would be owned by the University or the instructor. There are some programs in which students work on commissioned projects and the results belong to the faculty (e.g., Architecture); the policy provides that students must be informed about this arrangement in advance. Dr. Maziar said she has to make further inquiries about the possibility of faculty benefiting personally from student academic work, but in general their intent was not to upset long-standing academic practices, such as that in Architecture.

Other exceptions to University ownership of intellectual property can be negotiated, or may be inherent in sponsored research agreements.

Dr. Maziar then reviewed the distribution of income from intellectual property. After out-of-pocket costs are paid, 1/3 goes to the creator, 1/3 to the Office of the Vice President for Research, 25 1/3 % goes to the department/center/unit, and 8% goes to the college. For intellectual property developed outside the academic department or unit (e.g., the Enterprise Systems Project), the income distribution will be at the discretion of the Vice President for Research in consultation with the appropriate administrator for the creator's unit. The funds that go to the Office of the Vice President for Research will be used to support patent and technology marketing, and a large portion will go to support University research. This proposed income distribution parallels that for patents. This changes the allocation for software, because the University's position was anomalous compared to other institutions.

There is also a provision in the policy that if the income to the department would distort its budget (because the amount is so significant), the Vice President for Research, in consultation with the Senate Research Committee, the dean, and the Provost, may adjust the distribution between the department and the college. No fixed dollar amount is set; what is a large amount in one department may not be in another.

In the case of the faculty member on a 9-month appointment, if he/she creates something during the summer, when not on appointment, the intellectual property is owned entirely by the individual if no University resources were used to create it.

In response to a question about finances, Dr. Maziar provided some estimates of revenues based on past experience but observed that one consequence of the policy was to enhance public-private partnerships.

On behalf of the committee, Professor Gudeman thanked Vice-President Maziar and noted how gratifying it was to have such carefully crafted and well conceived work presented to the faculty. He then adjourned the meeting at 5:15.

-- Gary Engstrand

University of Minnesota