

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

CARLA BURKHART and HERRICANE)
GRAPHICS, INC.,)
Plaintiff,)
v.)
EDGAR COUNTY WATCHDOGS, INC., KIRK)
ALLEN, ADAM ANDRZEJEWSKI, KATHY)
HAMILTON, and CLAIRE BALL,)
Defendants.)

Case No. 15 L 001244

Hon. Judge Sutter

REPLY IN SUPPORT OF MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-619.1

Defendants EDGAR COUNTY WATCHDOGS, INC. and KIRK ALLEN (collectively, “Watchdogs”) for their Reply in Support of Section 2-619.1 Motion to Dismiss, state as follows:

INTRODUCTION

College of DuPage (“COD”) Trustee Dianne McGuire—who served as COD’s liaison to the COD Foundation board to which Plaintiff Burkhart was politically appointed—explicitly labeled as “having the appearance of pay to play” any COD contract awarded to a Foundation board member where the contract is not shown to be “competitive with other similar service providers.”

As the unchallenged facts recited throughout this brief show, the contracts awarded to Plaintiffs fit precisely McGuire’s “pay to play” label, *eg*:

- Since Burkhart joined the Foundation board, her company (Plaintiff Hurricane) has collected at least \$630,000 in COD contracts. *Each of them was “no-bid”, ie*, no competitors were invited to bid.
- The first of these no-bid contracts was awarded to Plaintiffs on the very same day—literally, *at the very same COD board meeting*—that Burkhart was appointed to the Foundation board.
- In this regard, Burkhart and her company joined a very exclusive and fortunate club: since 2010, Foundation board members have been awarded nearly *\$200 million in no-bid COD*

contracts. The awarding of these no-bid contracts was interspersed with the board members' required extensive financial and service contributions to the COD Foundation.

- No evidence has ever been offered—either to this Court, or at the time the no-bid contracts were awarded to Plaintiffs—that those contracts were, in Trustee McGuire's words, "competitive with other similar service providers."

The danger of no-bid contracts is the very reason why they are necessary topics of public discourse: the people paying for all of this (the taxpayers) have the right to question whether they are paying more than necessary to political insiders, and indeed to question whether the insider's service was even necessary at all. Under McGuire's intimately informed, and common-sense, definition, Plaintiffs' no-bid contracts obviously appeared to be "pay to play". Thus, when the Watchdogs said the same thing McGuire did—*ie*, these appear to be "pay to play" contracts, and indeed cited McGuire when saying so—they were not defaming anyone. They were affirming that Plaintiffs' indisputably no-bid contracts matched McGuire's "pay to play" definition. In this regard, the Watchdogs said nothing different than, *eg*, the *Chicago Tribune*, which had written a detailed expose of COD insider contracting, and cited Trustee McGuire just as the Watchdogs did.

Plaintiffs' statement to this Court that "under no scenario" was Plaintiffs' no-bid contract linked to Burkhart's status as a Foundation board member (Response at p. 6)—despite the fact that the two occurred *on the very same day*—mocks our intelligence, and confirms the need for Constitutional protection for those (like the Watchdogs) who bring this practice to the public's attention. First Amendment law is clear: because the label used by the Watchdogs (and McGuire) to describe Plaintiffs' no-bid contracts was more than reasonable, their statements are not actionable, and the fact that Plaintiffs disagree with this label, or would offer a competing label, is irrelevant.

ARGUMENT

I. Only the Watchdogs Have Submitted Evidence in this Controversy, and This Court Must Disregard Plaintiffs' New, Unsupported, and Uncited "Facts."

Plaintiffs provided no counter-affidavit to the Watchdogs' detailed affidavit in support of their motions and indeed provided no competent evidence at all to contradict the Watchdogs' evidence.¹ This failure alone is fatal to the Complaint. *See, e.g., Kessler v. Zekman*, 250 Ill. App. 3d 172, 191 (1st Dist. 1993) (in defamation action, when "affidavits are not contradicted by counter-affidavits, this court must accept as admitted those facts averred in the affidavit").

Without evidence, Plaintiffs attack the Watchdogs' brand of investigative journalism, labeling it, among others things, bullying, and harassing, intimidating, and designed to manufacture hysteria.² Response at p. 1. This claim is unsupported; it is untrue; and it is irrelevant. Plaintiffs have no response for the case law cited in the Watchdogs' motions, *ie*, that even if the Watchdogs' *sole* motivation was to limit or even eliminate Burkhart from the political sphere, their conduct is protected by the Constitution. *Goral v. Kulys*, 2014 IL App (1st) 133236, ¶ 63. Moreover, the vast majority of the "facts" in Plaintiffs' Response are not even those alleged in the Complaint at all. Most importantly, without a counter-affidavit, Plaintiffs' misguided version of the facts in their Response brief carries no weight whatsoever. *Kessler*, 250 Ill. App. 3d at 191.

II. Plaintiffs Have Engaged in What Can Reasonably Be Described as "Pay to Play", and Therefore, They Cannot Assert a Defamation Action as a Matter of Law.

Critically, Plaintiffs do not deny—because they cannot deny—that they received significant no-bid contracts from COD, nor can they contest that they received the first of these no-bid contracts at the very meeting in which Burkhart joined the Foundation board.

¹ Watchdogs incorporate herein by reference their Reply in support of their Motion to Dismiss Pursuant to the Act.

² Plaintiffs simply misunderstand the law of defamation. Even statements "designed to generate fear and anger"—if substantially true—are not actionable as a matter of law. *Maag v. Illinois*, 368 Ill. App. 3d 844, 852 (5th Dist. 2006).

A. COD itself calls this “pay to play”.

In their Response, Plaintiffs rely on several selective and truncated dictionary definitions of the phrase “pay to play”. While Plaintiffs’ contracting may accurately be described as “pay to play,” even under their own definitions³, a far more compelling definition of “pay to play” vis-à-vis Plaintiffs’ generic dictionary definitions has already been advanced by COD. As early as December 2013—*ie, two years* prior to the time Plaintiffs alleged the Watchdogs first used the term—and again in writing in October 2014, COD Trustee McGuire labeled no-bid, uncompetitive contracts with Foundation board members as having the appearance of “pay to “play”. *See* Exhibit 4 to Allen Affidavit, at p. 2. Plaintiffs’ contracts fit McGuire’s label precisely: Burkhart was a Foundation board member whose company received significant no-bid contracts, and Plaintiffs have never presented any evidence or even attempted to argue that their services were competitive to other vendors’. Moreover, in the January 1, 2015 article cited in Plaintiffs’ Complaint (at ¶ 30), the Watchdogs’ cited McGuire’s definition of the phrase when opining that Plaintiffs’ contract “appears to be one big pay-to-play between COD and its Foundation board member, *just as Trustee McGuire showed concern over.*” *See* Exhibit 2 to Allen Affidavit (emphasis added).

Because the Watchdogs’ interpretation is reasonable—COD’s use of the exact same label proves it—the Court’s inquiry must end. *Chicago City Day Sch. v. Wade*, 297 Ill. App. 3d 465, 475 (1st Dist. 1998) (because there is no balancing of reasonable constructions, a “nondefamatory interpretation must be adopted if it is reasonable”); *Harte v. Chicago*, 220 Ill. App. 3d 255, 261-

³ Plaintiffs argue that, because they claim to have never directly paid money to COD in exchange for a contract, they could not have engaged in “pay to play” under their selective definitions of the phrase. However, according to the expanded definition from the very dictionary cited by Plaintiffs, “pay for play” does not always involve a direct monetary payment, but may instead involve “an indirect or undercover payment.” And, Plaintiffs’ other definition of “pay to play” specifies that the “play” often involves the payer receiving no-bid contracts. *See, e.g.,* https://en.wikipedia.org/wiki/Pay_to_play (noting that the payer often “receives political or pecuniary benefit such as no-bid government contracts”). As explained below (*see* Section II(B)), even under Plaintiffs’ own definitions, they engaged in “pay to play” by donating time and money to the COD Foundation and receiving a significant no-bid contract on the very day Burkart joined the Foundation board.

62 (1st Dist. 1991) (affirming grant of motion to dismiss when, “according to plaintiff’s *own* definition of the word, defendants’ statement...can reasonably be innocently interpreted”).

B. Even under their own definitions of “pay to play”, Plaintiffs and COD participated in what may reasonably be described as “pay to play”.

In their Response, Plaintiffs claim—again, without any evidence—that they “never paid a dime to anyone connected with the COD to obtain a contract...” Response at p. 2. As an initial matter, Plaintiffs do not, and cannot, deny that Burkhart was a Foundation board member who “billed more than \$630,000 [to COD] over the past four years without submitting a single competitive bid....” See Exhibit 4 to Exhibit A to Motion to Dismiss Pursuant to the Act. Nor do Plaintiffs deny, nor could they deny, that they “donated” at least \$5,000 per year to COD (*id.*), as well as “contributed” Burkart’s time to help COD raise money. As a result, even under Plaintiffs’ own definition, this behavior is reasonably described as satisfying both the “pay” and “play” components of “pay to play”.

However, it is the incredible timing of the donations and the initial award of a no-bid contract which clinches the reasonableness of the use of the “pay to play” label here. In their Response, Plaintiffs advance (without evidence) an invented timeline of Burkhart’s involvement with COD, namely that she “did not begin volunteering with the COD Foundation until June 2012” and that the Architecture Contract was awarded earlier, in April 2012. See Response at p. 6. Just two pages later, Plaintiffs take a different tack, claiming that the Architecture Contract “was not executed until December of 2012.” Response at p. 8.

The true timeline is much simpler: Burkhart’s appointment to the Foundation board and the awarding of the initial no-bid contract occurred *on the very same day*, and in the *very same meeting*. See April 19, 2012 COD Board of Trustee meeting minutes, attached hereto as Exhibit

1 and incorporated herein by reference, at pp. 9 and 14.⁴ This supports a “pay to play” label under any definition, and it is the exact newsworthy concern on which the *Daily Herald*, *Chicago Tribune*, *Washington Times*, and the Watchdogs reported.

Plaintiffs attempt to distance themselves from having the “pay to play” label attached to their first no-bid contract by arguing that “[u]nder no scenario” was Burkhart’s appointment to the board related to that contract. Notwithstanding the fact that Plaintiffs’ argument is unsupported by evidence and requires this Court to believe in a truly unbelievable coincidence, Plaintiffs cannot distance themselves from later contracts and change orders which were awarded to Herricane much later after Plaintiff was appointed to the board, such as a 2014 contract—likewise awarded without competitive bidding. Therefore, whatever the timing of the first no-bid—and the evidence shows it was “pay to play,” by McGuire’s definition—Plaintiffs have no answer at all for the work they were awarded post-April 2012.

The bottom line is that Plaintiffs gave a *direct benefit* to COD by donating to the Foundation and an *indirect benefit* to the college by joining the COD Foundation board. In the same meeting in which she joined the board, Plaintiff’s company received a significant *no-bid contract* from COD. Under any definition of the phrase, this is reasonably described as “pay to play.”⁵ The media has the right to report on it, and the public has a right to read about it. And because the Watchdogs’ labeling of this relationship was reasonable, this Court’s inquiry must end. *See, e.g., Wade*, 297 Ill. App. 3d at 475.

⁴ The Court may take judicial notice of this publically-available document.

⁵ An alternative definition which highlights both the indirect and sometimes legal nature of “pay to play” notes that “[p]aying to play may involve outright bribery, but *it usually refers to more subtle payments*... Paying to play is often in a *legal gray area*.” *See* <http://financial-dictionary.thefreedictionary.com/Pay-to-play> (emphasis added).

C. Plaintiffs ignore the well-settled case law in the Watchdog's Motion.

The Watchdogs cited numerous cases in which allegations of “cronyism” and secret deals are protected opinion speech. In *Horowitz v. Baker*, 168 Ill. App. 3d 603 (3d Dist. 1988), a newswriter was sued for defamation for publishing an article which criticized a transaction between the plaintiff and a municipality. The writer accused the plaintiff of unlawful bidding and “pull[ing] a fast one” by being a part of a “secret” deal with the mayor in which he received a “benefit not available to others,” thereby “rip[ping] off” the municipality. *Id.* at 605-606. The *Horowitz* Court rejected the plaintiff’s assertion that the use of the foregoing phrases implied that plaintiff obtained property in an unlawful manner, noting that the plaintiff failed to use “the proper forum” to refute the criticism, *ie*, the press. *Id.* at 608, 610.

In the instant case, Plaintiffs have no response to, and do not even attempt to differentiate, any of the other cases cited by the Watchdogs wherein allegations similar to “pay to play”—which can, but do not always, imply criminal activity—such as “cheating the city”; “blackmail”; “extortion” and corruption, **were all found to be nonactionable**.⁶ The Watchdog’s “pay to play” accusations do not necessarily impute the commission of a crime.⁷ Plaintiffs’ reliance on *Tuite v. Corbitt*, 224 Ill. 2d 490, 504-05 (2006) is unavailing, because in that case, there was no reasonable or natural alternative interpretation of the challenged statements. The *only* interpretation of the phrase used by the defendant was that the plaintiff made a criminal bribe; defendant’s proposed alternative explanations were “strained and unreasonable”. *Id.* at 512. Here, the Watchdogs’ characterization of Plaintiffs’ relationship with COD is certainly reasonable and well-supported by evidence. Because this interpretation is reasonable, the Court’s inquiry must end. *Wade*, 297

⁶ See, e.g., *Garber–Pierre Food Products, Inc. v. Crooks*, 78 Ill. App. 3d 356, 360 (1st Dist. 1979); *Schivarelli v. CBS, Inc.*, 333 Ill. App. 3d 755, 761-62 (1st Dist. 2002).

⁷ Interestingly, in their Response, Plaintiffs never identify a single statutory provision which criminalizes “pay to play”. This is because “pay to play” is plainly not illegal in all circumstances—just corrupt. See Section II(A) above.

Ill. App. 3d at 475 (because there is no balancing of reasonable constructions, a “nondefamatory interpretation must be adopted if it is reasonable”).

III. It Was Reasonable for the Watchdogs to Say that Plaintiffs Violated State Law By Holding Themselves Out as Architects.

In their Response, Plaintiffs admit that “COD should have used another form document” instead of the “Standard Form of Agreement Between Owner and Architect.” Response at p. 2. While Plaintiffs do not explain *why* they believe another form document *should* have been used, the reason is clear: Plaintiffs hold themselves out as architects in the agreement and it is unlawful for a non-architect to do so. Indeed, the best evidence of the reasonableness of the Watchdogs’ characterization of the contract is Plaintiff Burkhart’s own statement to her lawyer, in which she confesses to understanding why the Watchdogs wrote that she violated the law.⁸

Plaintiffs argue that it is “absurd” for the Watchdogs to label the agreement as an “Architecture Contract” because—notwithstanding hundreds of references to Plaintiffs being architects and performing architecture services—buried on page 39 of 43 of the agreement, one sentence purports to exclude “architecture, geotechnical, survey, construction layout, construction testing, structural engineering, and any LEED design or submittal requirements.” See Exhibit 1 to Motion to Dismiss, at p. 39. This argument misses the mark in two ways: (1) the single sentence does not negate the 38 pages before it, in which Plaintiffs agreed to provide architecture services, and (2) the point is not whether Plaintiffs actually provided architecture services, it is whether they held themselves out as architects. And they did.

The contract is an American Institute of Architects document; it is entitled a “Standard Form of Agreement Between Owner and Architect”; and it plainly and indisputably identifies

⁸ See Plaintiffs’ Group Exhibit A3, at p. 237; full text of underlying email highlighted and attached hereto as Exhibit 2 and incorporated herein by reference.

Plaintiff Hurricane as an architecture firm.⁹ Agreement at p. 1. It provides that Plaintiffs were awarded “the professional design services required herein because of [their] character, experience and qualifications in dealing with the design, construction and renovation of major institutions of higher education and commercial buildings” and requires Plaintiff to fulfill “Architect’s Responsibilities” using skills “consistent with the skill, judgment and care and experience and qualifications of design professionals with a national reputation for performing professional services in similar projects.” Agreement at Article 2.1 and 2.2.

The complained-of statements are factually true: Plaintiffs held themselves out to COD, and to the public, as being licensed to engage in architecture work—and they are not architects. In Plaintiffs’ own words, a different contract “should” have been used, precisely because Plaintiffs are undisputably not architects, and yet held themselves out as such. It was therefore reasonable for the Watchdogs to say that Plaintiffs violated Illinois law. 225 ILCS 305/36 (violation of state law for non-architects to use the title “architect”).

IV. Plaintiffs Have Not Pled Sufficient Factual Support in Favor of their Conclusion that the Watchdogs Acted with Actual Malice.

Plaintiffs have no counterargument to the case law in Illinois which requires a plaintiff to plead more than “the bare allegation that a defendant acted maliciously and with knowledge of the falsity of the statement; the plaintiff must allege facts from which actual malice may be inferred.” *Davis v. John Crane, Inc.*, 261 Ill. App. 3d 419, 431 (1st Dist. 1994). In their Response, Plaintiffs even admit that they pled only that the Watchdogs “acted recklessly and, at times, with actual malice in making false and defamatory statements...” Response at p. 9. This is the exact mere legal conclusion rejected in *Davis*.

⁹ Indeed, Plaintiffs admit that the “the term ‘architect’ was used as a defined term and intended to mean [Hurricane Graphics].” Response at p. 8.

Realizing their mistake, Plaintiffs perform an about-face and argue that—despite having attempted to plead actual malice in their Complaint (at ¶¶ 57; 64)—they don’t actually need to plead and prove actual malice. However, once a matter goes “beyond mere public interest” and “reache[s] the level of public controversy”, Plaintiffs’ continued involvement with COD during the well-reported scandals are sufficient to make Burkhart a limited public figure for purposes related to the COD pay-to-play scandal. *Jacobson v. CBS*, 2014 IL App (1st) 132480, ¶ 32.

V. Plaintiffs’ Misappropriation Claim Fails Because There is No Evidence that the Watchdogs are Not a News Agency.

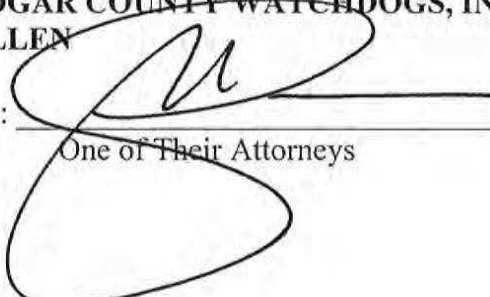
Incredibly, Plaintiffs’ sole argument to counter the Watchdog’s clear law which bars misappropriation claims when photographs are used for news purposes is that “ECWI is not a news agency.” Response at p. 10. To the contrary, the only evidence is that the Watchdogs are investigative journalists (Allen Affidavit at ¶¶ 6-14), just like the reporter in *Schivarelli v. CBS, Inc.*, 333 Ill. App. 3d 755, 764-65 (1st Dist. 2002) (affirming dismissal, in defamation lawsuit, of misappropriation claim based on use of photograph by newspaper). This Court should reject Plaintiffs’ unsupported and conclusory argument and dismiss all remaining claims in this lawsuit as well, which rise and fall on the alleged defamation.

CONCLUSION

WHEREFORE, Defendants pray that this Honorable Court grant their Motion, and award such other relief as this Court deems equitable and just.

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Respectfully Submitted,
EDGAR COUNTY WATCHDOGS, INC. and KIRK ALLEN

By: 
One of Their Attorneys

**BOARD OF TRUSTEES OF COMMUNITY COLLEGE DISTRICT NO. 502
COUNTIES OF DuPAGE, COOK AND WILL,
STATE OF ILLINOIS**

**MINUTES
THURSDAY, APRIL 19, 2012
HELD ON CAMPUS IN SSC-2200, GLEN ELLYN, IL**

CALL TO ORDER

At 7:03 p.m., the Organizational Meeting of the Board of Trustees was called to order by Chairman Carlin.

ROLL CALL

Present: Trustees Erin Birt, Dianne McGuire, Allison O'Donnell, Kim Savage, Nancy Svoboda, Joseph Wozniak, David Carlin and Student Trustee Lydia Whitten.

Also Present: President Dr. Robert L. Breuder, Legal Counsel Respicio F. Vazquez of Franczek Radelet P.C., staff members, representatives of the press and visitors. (Minutes prepared by Carol Blotteaux, Administrative Assistant, Office of the President.)

APPROVAL OF AGENDA

Chairman Carlin called for a motion to approve tonight's Agenda. Vice Chairman Birt moved, Trustee Savage seconded the motion. On voice vote, the Board of Trustees approved the Agenda for the Organizational Board Meeting of April 19, 2012. The motion carried unanimously.

OUTGOING STUDENT TRUSTEE

Chairman Carlin read a Resolution of Appreciation for Student Trustee Lydia Whitten noting her outstanding and distinctive service during her term as Student Trustee from April 2011 through April 19, 2012.

Vice-Chairman Birt noted two books will be presented to the College of DuPage Library on behalf of Student Trustee Whitten in recognition of her efforts in support of the students and the College during her term as Student Trustee 2011-2012. The books are *Following the Equator: A Journey Around the World*, by Mark Twain; and *Long Walk to Freedom – the Autobiography of Nelson Mandela*. Ms. Whitten thanked all the members of the Board, Dr. Breuder, Mary Ann Millush and Monica Miller for their help this past year, the administration and her teachers, who were very flexible during the past year.

STUDENT ELECTION RESULTS

Chairman Carlin announced the results of the Student Leadership Council Election of March 20-21, 2012: Student Trustee, Olivia Martin; SLC President, Henry Gordon; and, SLC Vice-President, Tim Ziman.

Chairman Carlin asked Miss Martin to come forward. Secretary O'Donnell administered the Oath of Office and Miss Martin was seated at the Board table.

NOMINATION AND ELECTION OF BOARD CHAIRMAN

Chairman Carlin indicated he would turn the meeting over to Dr. Breuder, who would act as Chairman Pro Tem until the election of the new Board Chairman. Dr. Breuder called for nominations. Trustee Svoboda stated that there is already a majority support for the present officers of the Board. Valuing the spirit of unity among the members of the Board, Trustee Svoboda moved, Trustee McGuire seconded, they consider the three officers as a slate and vote unanimously for: Chairman David Carlin, Vice-Chairman Erin Birt, Secretary Allison O'Donnell. Chairman Pro Tem Breuder called for a voice vote. Student Trustee Martin's preference is for the motion. Voting yes, Trustees Birt, Carlin, McGuire, O'Donnell, Savage, Svoboda, Wozniak. Motion passed unanimously. Chairman Carlin thanked the Board members for their support. He noted that they are a unified Board, each of them having one vote. They come to their positions as Trustees for the community to do what they perceive is in the best interest of the College and the community.

APPOINTMENT OF TREASURER

Vice-Chairman Birt moved, Trustee Wozniak seconded, a motion to appoint Tom Glaser, Senior Vice President Administration/Treasurer, to serve as Treasurer from April 19, 2012 until the next Organizational Board meeting in 2013. Student Trustee Martin's preference is for the motion. Voting yes, Trustees Birt, Carlin, McGuire, O'Donnell, Savage, Svoboda and Wozniak. Motion passed unanimously.

DETERMINATION OF REGULAR BOARD MEETINGS, DATES AND LOCATIONS

Secretary O'Donnell moved, Trustee Savage seconded, a motion for the approval of the Regular Board Meeting dates for fiscal year 2013 as presented. Student Trustee Martin's preference is for the motion. Voting yes, Trustees Birt, Carlin, McGuire, O'Donnell, Savage, Svoboda and Wozniak. Motion passed unanimously. Chairman Carlin noted that, if there is a necessity to change any of the dates, modifications will be made with appropriate notification.

CHANGE OF AUTHORIZED BANK SIGNATURES

Vice-Chairman Birt moved, Trustee Savage seconded, that Chairman Carlin authorize Secretary O'Donnell to complete the financial institution resolutions authorizing the signatures listed for College accounts as of April 19, 2012. Student Trustee Martin's preference is for the motion. Voting yes, Trustees Birt, Carlin, McGuire, O'Donnell, Savage, Svoboda and Wozniak. Motion passed unanimously.

ADJOURN, SINE DIE

Chairman Carlin asked for a motion to adjourn the Organizational Board meeting sine die, and move into the Regular Board Meeting. Trustee Savage so moved, seconded by Trustee Svoboda. On roll call vote, the motion passed unanimously.

CALL TO ORDER

At 7:16 p.m., the Regular Meeting of the Board of Trustees was called to order by Chairman Carlin.

ROLL CALL

Present: Trustees Erin Birt, Dianne McGuire, Allison O'Donnell, Kim Savage, Nancy Svoboda, Joseph Wozniak, David Carlin and Student Trustee Olivia Martin.

Also Present: President Dr. Robert L. Breuder, Legal Counsel Respicio F. Vazquez of Franczek Radelet P.C., staff members, representatives of the press and visitors. (Minutes prepared by Carol Blotteaux, Administrative Assistant, Office of the President.)

APPROVAL OF AGENDA

Chairman Carlin called for a motion to approve tonight's Agenda. Trustee Savage moved, Trustee McGuire seconded the motion. On voice vote, the Board of Trustees approved the Agenda for the Regular Board Meeting of April 19, 2012. The motion carried unanimously.

Faculty / Student Showcase

- Faculty Senate President Glenn Hansen presented Dr. Lois Stanciak, Associate Professor of Education. Dr. Stanciak indicated she was happy to note five new courses in education were recently approved. Dr. Stanciak introduced several of her students, who discussed things they learned in the first half of the year and how the College has helped them fulfill their dreams and reach their goals.
- Dr. Breuder introduced David Giuffre, COD Project Coordinator, Cathryn Wilkinson and Stephen Cummins of the Building Committee. Also presenting were Ed Faron, Architectural Project Manager, and Kevin Havens, Designer, of Wight Architects; and, Nathan Welch of Mortenson Construction to give an update on the McAninch Arts Center (MAC) Renovation.

Mr. Faron noted the project consists of major repairs, including a new roof, upgrading the mechanical and security systems, improved access for persons with disabilities, fire alarms, replacing furniture, etc.

Mr. Havens noted that, over twenty-five years ago, Wight & Company was chosen to be the original architect for the McAninch Arts Center. He gave an overview of the plans for the MAC, which he said will bring new life to one of the College's cherished facilities in the area of arts education and performance excellence.

Nathan Welch of Mortenson Construction noted they are moving forward with the final design documents, which will go out to bid for October approval; construction will start in November, with completion expected to be in spring of 2014.

Dr. Breuder thanked Wight and Mortenson personnel for their presentation and acknowledged College personnel who have spent over a year in prepping for this renovation project. He noted next month, there will be a presentation on the Campus Maintenance Center.

STUDENT TRUSTEE'S REPORT

- Student Trustee Martin thanked Lydia Whitten for helping her transition to her place on the Board. Ms. Martin stated she and members of the Student Leadership Council recently went to Springfield to lobby for MAP grants. Each member was able to meet with at least one representative face-to-face. Ms. Martin looks forward to working with the Board of Trustees.

PRESIDENT'S REPORT

Dr. Breuder noted that, while we speak often about the “bricks and mortar” and development of our physical plant which houses all we do, the essence of the College is academic excellence. Dr. Gallisath, Associate Vice President for Academic Affairs, gave a brief overview of the Honors Program, and introduced the Director of the Honors Program, Dr. Helen Feng.

Dr. Feng noted the Honors Faculty Advisory Committee consists of two administrators and eight faculty. Since 2009, they have prepared the Honors course criteria and a course proposal process. The Honors Faculty Ambassadors group was formed, full-time faculty who volunteer to mentor honors students entering COD. From Fall 2010 to Fall 2011, there were 594 students in the Honors Program, and that number increases every year. Honors students completing 15 or more credit hour honors courses while at COD will be recognized as Honors Scholars at an awards ceremony each spring. Having been in the Honors Program will be beneficial to them when seeking employment. Dr. Feng introduced several students who presented their papers at the Honors Council of the Illinois Region Spring 2012 Conference in February. Dr. Feng thanked the Trustees, Dr. Breuder and the administration for continuing to support this program.

Sr. Vice President Tom Glaser introduced Chief Joseph Mullin who recognized the outstanding service of Police Officers Jeffrey Priest and Alfredo Silva. On March 21, the Police Dispatcher was informed there was a woman who had lost consciousness on the first floor of the SRC/SSC/BIC building. Upon responding to the call, Officers Priest and Silva observed a female on the floor having convulsions. Although paramedics were called, the officers responded with quick thinking and professionalism. They learned the woman had suffered a severe allergic reaction to food product. Officer Priest assisted her in locating an epinephrine device, which he administered per his training. The woman responded. When the paramedics arrived, they transported her to the hospital. The officers' prompt response and appropriate action brought about a positive outcome. Mr. Glaser read a citation that was presented to the officers in appreciation and thanks for their service.

Dr. Joseph Collins introduced the person he is recommending for Vice President of Academic Affairs, Dr. Jean Kartje. Dr. Kartje has served as Vice President of Instruction at Kishwaukee Community College for the past five years.

COMMENTS FROM DISTRICT 502 CITIZENS

Professor David Goldberg introduced himself as a taxpayer and a community member, as well as a faculty member at College of DuPage. He spoke about the Honors Program and the Global Education Program at COD. In the past, faculty members received full release time in order to administer those programs, which involved a considerable amount of time to oversee the needs of the students. This has been reduced to one course hour per

semester. Professor Goldberg felt there is a need to put more resources behind these programs, not just in release time, but a larger level of administrative support. Professor Goldberg also spoke of the change in tuition and enrollment over the past three years, referring to 10th day enrollment numbers he said were given in a report to the Illinois Community College Board (ICCB).

Brendan McCormack, a COD student, will graduate in May as an honors student. He referred to the current administration's policy of referring to the students as customers. He said he is a COD customer and supports the Faculty Association.

Kathleen Vega, a student leader, student and resident of District 502, said she found it bothersome to know that the efforts of Dr. Ken Gray, the former Faculty Association Presidents, have gone unheard on the subject of the importance of building trust between the administration and faculty.

COMMENTS FROM COLLEGE OF DuPAGE EMPLOYEES

Faculty Senate and Faculty Association President Glenn Hansen recognized and thanked the outstanding faculty for their service to the students of COD. He went on to question the values shown for the people of COD, and whether everyone is treated equally. He indicated that since March 21, there has been a campaign that he feels has been disrespectful to the faculty and the institution because it is intended to be divisive. He referred to statements in the media and the content of the webpage, which he feels carries a biased view of negotiations. He addressed Chairman Carlin, indicating he had asked in writing and is now asking publicly that these pages be removed from the COD website. He felt the web pages are in conflict with Chairman Carlin's directive to stop the propaganda.

Although Professor Bob Hazard had signed in to speak this evening, when called upon, he declined.

Professor Tom Carter, who teaches physics at the College, presented his credentials. He stated he came to College of DuPage to teach, because he believes the key to this nation's future is education. He stated he continues to strive to improve his teaching methods and expand the education provided his students and can only progress if this College community works together in a spirit of trust and respect.

Professor of Political Science, Chris Goergen, addressed the Board regarding information on the COD website. He compared faculty and administrators' salaries to those of others in Illinois and across the nation. He stated the average COD faculty salary may seem high compared to other counties; however, when adjusted for the significantly higher cost of living in DuPage County, faculty salaries at COD are only slightly higher than the national average.

The following faculty members spoke. They detailed their credentials, degrees and awards. Each faculty member ended their comments with the following statement: "The district and faculty deserve a fair contract."

- Deb Adelman, Professor of English
- Cheryl Jackson, Professor of Health Information Technology
- Helen Feng, Professor of History
- John Bangel, Associate Professor, Motion Pictures/Television

- Jane Ostergaard, Architecture Coordinator and Professor of Architecture
- Kathy Horton, Professor of Accounting
- John Kovach, Professor of Accounting
- Dilyss Gallyot, Assistant Professor of Nursing
- Nancy Stanko, Professor of Office Technology Information

Kathleen Vega is the Student Leadership Council Vice President. She detailed how she has grown over the past three years at COD, as a student and student leader, and thanked everyone who supported her and members of the SLC. She stated the lessons she has learned at COD are the values of a lifetime.

Chairman Carlin touched on some of the comments made at this meeting. He noted words like trust, respect and integrity were used frequently. While this Board recognizes the tremendous ability of the faculty, they must also look out for the interests of the one million people in this community they represent and the 6,000 people who are currently struggling with foreclosure in DuPage County. Negotiations are difficult. These words – trust, respect and integrity – probably wouldn't be used lightly if the Board just rubber stamped everything for which one constituent group at the College is asking. This Board hasn't placed ads in the newspaper with misinformation; hasn't held up signs; hasn't encouraged students to come to the Board meetings to support them. Chairman Carlin asked everyone to remember there is a lot that needs to be discussed in negotiations, and the Board will look after the fine faculty, students and District 502 taxpayers.

Trustee Savage stated that, last month, the Board requested no further information be placed in the newspaper. The next morning, there was an ad in the paper. She requested that neither side debate this issue in the newspapers. She respectfully asked that the information on the website that is offensive to the faculty be removed. Trustees McGuire and Svoboda concurred. Trustee Svoboda mentioned her concern that it was said the students were coerced by the faculty to attend Board meetings showing their support for the faculty.

Chairman Carlin noted he would like to correct the record. More than one student has brought it to the attention of the Board and administration that faculty members have asked them to participate in rallies and show up at protests and Board meetings. Individual Board members shouldn't be receiving emails saying they wouldn't work with them professionally because of the way they treat the faculty. This Board serves as volunteers. They are people of integrity who want to serve their community and work hand-in-hand with the faculty to make sure we have some of the most highly educated students in the state. None of them have agendas. None of them want to treat people disrespectfully or operate with a lack of integrity, so to have people stand up at the podium and do that, I won't stand for it. I won't let them badger the administrators because they are trying to do what is in the best interest of the College and the community.

Trustee Savage stated she agrees we have excellent faculty and want to keep them. She again requested the information be removed from the website.

Chairman Carlin noted there were Board members who wanted this information removed, but he didn't want to do anything that would not allow the Board and faculty to share information with the District constituents. He noted the 100 or more faculty who were at the

meeting, and also noted there weren't many community members there. Chairman Carlin then requested community members to come to the next meeting and tell the Board what they want the Board to do to represent the community's interests. He asked that everyone operate in a manner that is respectful...one that treats all people involved in the negotiations in a way that is fair, professional and respectful.

Chairman Carlin noted there is not a formal motion to remove negotiation information from the website. Trustee Savage moved to have the information removed. The motion was seconded by Trustee McGuire. On roll call vote, Student Trustee Martin's preference is for the motion. Those voting yes were Trustees McGuire, Savage and Svoboda. Voting no were Trustees Birt, Carlin, Wozniak and O'Donnell. Motion failed.

COMMENTS FROM CITIZENS AT-LARGE

There were no comments from citizens at-large.

CONSENT AGENDA

Trustee Savage moved, Board Secretary O'Donnell seconded, that the Board of Trustees approve the Consent Agenda consisting of the following items:

- A. The following items for BOARD INFORMATION only:
 - 1) Gifts and Grants Report
 - 2) There were no Governmental Consortium/Cooperative Purchases this month.
 - 3) Financial Statements consisting of Schedule of Investments, Operating Funds – Budget and Expenditures

- B. The following items for BOARD APPROVAL:
 - 1) Minutes of the March Board Meeting:
 - a) 3/15/12 Board Meeting
 - 2) Financial Reports
 - a) Treasurer's Report
 - b) Payroll and Accounts Payable Report
 - 3) Bid Items:
 - a) The Board of Trustees awarded the bid for Network Equipment & Supplies to the lowest responsible bidders as follows:

<u>Bid Item</u>	<u>Vendor</u>	<u>\$ Amount</u>
1,2,3,4,5,6,7,8,9	Communications Supply Corp. 200 E. Lies Road Carol Stream, IL 60188	\$ 26,302.10
10,11,12	Dell Marketing LP One Dell Way Round Rock, TX 78682	\$ 37,228.84
	For a total expenditure of:	<u>\$ 63,530.94</u>

- b) The Board of Trustees awarded the bids for Landscaping Bid Package #2, to the lowest responsible bidders as follows:
- Irrigation work to Central Lawn Sprinklers, 239 King Street, Elk Grove Village, IL 60007, for the base bid total of \$198,990.00;
 - Landscaping work to Landworks. Ltd., 751 N. Bolingbrook Drive, Bolingbrook, IL 60440, for the base bid total of \$1,060,222.35, and Alternate #3 for \$ 3,600.00, for a total of \$1,063,822.35;
 - Electrical work to Thorne Electric, 26W501 St. Charles Road, Carol Stream, IL 60188, for the base bid total of \$236,616.80;

For a total expenditure of \$1,499,429.15.

- c) The Board of Trustees rejected all bids received for BIC Phase 2 Post Construction Cleaning Services due to a change in bid specifications.

d) SRC South Lobby Electrical Work.

- a) The Board of Trustees awarded the bid for SRC South Lobby Electrical Work to the lowest responsible bidder, American Electric Construction Company, 620 Pratt Avenue, Schaumburg, IL 60193, for a subtotal of \$476,900.00;

- b) The Board of Trustees approved the increase in the contract amount with Mortenson Construction Company, 25 Northwest Point Blvd., Elk Grove Village, 60007, for the contracts related to SRC South Lobby Electrical Work, in accordance with the contract terms, for the following fees:

- General Conditions at 4.58% for a subtotal of \$21,842.00;
- Insurance at 0.95% for a subtotal of \$4,738.00;
- Trade contract costs at 2.2% for a subtotal of \$11,077.00;

for a subtotal of \$37,657.00;

for a total expenditure of \$514,557.00.

- e) The Board of Trustees awards the bid for HSC Acute Care Simulation Lab Audio Visual Equipment to the lowest responsible bidder, Advanced Communications, 201 Woodcreek Drive, Michigan City, IN 46360, for a total expenditure of \$115,593.00.

4) Requests for Proposals:

- a) The Board of Trustees approved a contract for Actuarial Services with Clarity in Numbers, 125 S. Wacker Drive, Chicago, IL 60606, at a cost of \$14,900.00 per year, for fiscal years ending 2012, 2014, and 2016, for a total expenditure of \$44,700.00.

- b) The Board of Trustees awarded a Guaranteed Energy Savings contract for the TEC Energy Conservation & Guaranteed Energy Cost Savings Program to Schneider Electric, 17475 Palmer Blvd., Homewood, IL 60430, for a total cost not to exceed \$372,881.00 for equipment and building automation system upgrades, with guaranteed energy savings of \$71,590.00 per year.
 - c) The Board of Trustees awarded a contract for HSC Retro-Commissioning Services to Rubicon Professional Services, 107 Tindall Road, Middletown, NJ 07748, for a total expenditure not to exceed \$109,400.00.
- 5) Purchase Orders:
- a) The Board of Trustees approved the purchase of Testing Center Forms from ACT, 500 ACT Drive, Iowa City, IA 52243 for a total expenditure of \$36,300.00.
 - b) That the Board of Trustees approves a contract with Shaker Advertising, 1100 Lake Street, Oak Park, IL 60301, for a two-year contract term, expiring April 30, 2014, for an estimated two-year expenditure of \$134,000.00.
 - c) That the Board of Trustees approves the purchase of Voice Telecommunications Equipment from AT&T Global Services, PO Bo 8102, Aurora, Illinois 60507, for a total expenditure of \$131,305.49.
 - d) That the Board of Trustees approves the purchase of a Chemistry Lab Electronic Data Collection System from Measure Net Technology, Ltd., 4240 Airport Road, Cincinnati, OH 45226, for a total expenditure of \$25,695.00.
 - e) That the Board of Trustees approves a Signage Design Contract with Hurricane Graphics, 1275 W. Roosevelt Road, Suite 112, West Chicago, IL 60185 for a total expenditure of \$90,340.00.
- 6) The Board ratified the following Personnel Actions:
- a) Ratification of Administrator Appointments
 - b) Ratification of Faculty Appointments
 - c) Ratification of Managerial Appointments
 - d) Ratification of Classified Appointments
 - e) Ratification of Managerial Promotions / Transfers
 - f) Ratification of Classified Promotions / Transfers
 - g) Ratification of Classified Resignations / Terminations
 - h) Ratification of Faculty Retirements
 - i) Ratification of Classified Retirements

C. For Information: Construction-Related Items

- 1) Monthly Construction Project Summary

D. For Approval:

1) Ratification of Construction Change Orders

• Referendum-Related Projects

- **2012 SITE & GROUNDS PROJECT (SRC SOUTH PLAZA) – A. HORN #01: CREDIT (\$47,675.54).** This is a unit-price contract for the SRC South Plaza Seat Wall Resurfacing Bid Package #4 masonry work. This change is a credit for unit adjustments made to the contract to reflect the final number of units utilized for project completion. *This is an Owner-Requested Scope Change.*
- **2012 SITE & GROUNDS PROJECT (SRC SOUTH PLAZA) – A. HORN #02: \$33,858.04.** This change is to furnish and install precast caps over the existing east concrete seating wall and to furnish and install Chilton weather edge face stone. The stone will be approximately 1" thick and will match the color, size and texture of the natural stone in the MAC courtyard. *This is an Owner-Requested Scope Change.*
- **2012 SITE & GROUNDS PROJECT (SRC SOUTH PLAZA) – A. HORN #03: \$51,992.16.** This change is to furnish and install Chilton weather edge seam face stone over existing west concrete planter/seating wall. The stone will be approximately 1" thick and will match the color, size and texture of the natural stone in the MAC courtyard. *This is an Owner-Requested Scope Change.*
- **2012 SITE & GROUNDS PROJECT (SRC SOUTH PLAZA) – A. HORN #04: \$16,368.00.** This change is to furnish and install precast caps over existing west concrete planter/seating wall. The stone will be approximately 1" thick and will match the color, size and texture of the natural stone in the MAC courtyard. *This is an Owner-Requested Scope Change.*
- **2012 SITE & GROUNDS PROJECT (SRC SOUTH PLAZA AND MAC COURTYARD) – PIRTANO #01: CREDIT (\$131,195.14).** This is a unit-price contract for SRC South Plaza and MAC Courtyard Bid Package #4 utility work. This change is a credit for unit adjustments made to the contract to reflect the final number of units utilized for project completion. *This is an Owner-Requested Scope Change.*
- **2012 SITE & GROUNDS PROJECT (POND ONE MODIFICATIONS) – PIRTANO #02: \$55,005.00.** This change is to furnish and install all labor, materials and equipment to reconfigure the existing storm sewer system as part of the Pond One improvements. *This is an Owner-Requested Scope Change.*
- **2012 SITE & GROUNDS PROJECT (PRAIRIE DRIVE) – PIRTANO #02: \$4,582.00.** This change is to furnish labor, materials and equipment required to perform pothole utility locating services along Prairie Drive. *This is an Owner-Requested Scope Change.*
- **2012 SITE & GROUNDS PROJECT (MAC COURTYARD) – MARTAM #01: \$61,838.03.** This is a unit-price contract for MAC Courtyard Bid Package #4 concrete work. This change order is the result of unit adjustments made to the contract to reflect the final number of units utilized for project completion. *This is an Owner-Requested Scope Change.*
- **2012 SITE & GROUNDS PROJECT (MAC COURTYARD) – MARTAM #02: \$63,999.00.** This change is the cost to remove and dispose of the BIC tunnel concrete wall. *This is an Owner-Requested Scope Change.*
- **2012 SITE & GROUNDS PROJECT (BIC WEST COURTYARD) – LANDWORKS #01: \$1,839.34.** This is a unit-price contract for BIC West Courtyard Bid Package #2 landscape work. This change order is the result of unit adjustments made to the contract to reflect the final number of units utilized for project completion. *This is an Owner-Requested Scope Change.*
- **2012 SITE & GROUNDS PROJECT (BIC EAST COURTYARD) – LANDWORKS #02: \$4,022.26.** This is a unit-price contract for BIC East Courtyard Bid Package #2 landscape work. This change order is the result of unit adjustments made to the contract to reflect the final number of units utilized for project completion. *This is an Owner-Requested Scope Change.*

- **2012 SITE & GROUNDS PROJECT (SRC SOUTH PLAZA) – BREEZY HILL #01: \$30,511.71.** This change is the cost to furnish and install eight evergreen trees. This also includes the cost for clearing, grubbing and under-drainage work. This is an Owner-Requested Scope Change.
- **2012 SITE & GROUNDS PROJECT (MAC COURTYARD) – BREEZY HILL #02: \$63,708.89.** This change is the cost to furnish and install ornamental guardrail at MAC staircase and BIC tunnel. *This is an Owner-Requested Scope Change.*
- **2012 SITE & GROUNDS PROJECT (SRC SOUTH PLAZA) – BREEZY HILL #03: \$32,180.00.** This change is the cost to furnish and install 28 outcropping stones at the SRC South Plaza and the MAC Plaza. *This is an Owner-Requested Scope Change.*
- **2012 SITE & GROUNDS PROJECT (POND 2) – BREEZY HILL #01: \$86,504.00.** This change is the cost to furnish and install additional landscaping, mulch and under-drains. *This is an Owner-Requested Scope Change.*
- **2012 SITE & GROUNDS PROJECT (MAC COURTYARD) – BREEZY HILL #02: \$83,344.50.** This change is the cost to furnish and install additional landscaping, mulch and under-drains. *This is an Owner-Requested Scope Change.*
- **BIC/SRC – BOYER ROSENE #01: \$68,143.13.** Additional move services were required on the BIC/SRC project beyond the original scope. These services included packing items in a POD storage unit, packing and storing SLEA plaques, moving office furniture, moving filing cabinets off-site to be painted, moving additional boxes, speed packs and dolly loads. *This is an Owner-Requested Scope Change.*
- **BIC/SRC – LOEBL, SCHLOSSMAN & HACKL #38: \$1,645.00.** During demolition in the SRC Building, a concrete beam was found to be supported by a masonry wall. The wall, supporting this beam, was scheduled to be demolished. This cost is to design structural supports for the concrete beam. *This was an Unforeseen Field Condition Scope Change.*
- **BIC/SRC – MORTENSON #123.4: \$31,905.00.** Conflicts with the overhead door motor and steel beams, hollow metal frames and column covers, and the fire shutters were discovered during installation. Due to these conflicts, several items needed to be changed on the fire shutters in the SSC. Also included in this change order was relocating the key switches for better visibility when the key pads are being operated. *This is an Errors and Omissions Scope Change.*
- **BIC/SRC – MORTENSON #151.1: \$60,248.00.** There are several locations where interior walls tie into the exterior of the building. This cost is to install sound insulation on end walls to reduce the noise in offices and classrooms. *This is an Errors and Omissions Scope Change.*
- **BIC/SRC – MORTENSON #165.3: \$94,630.12.** During user meetings for the SRC Learning Commons area, minor changes were made to the layout. Additional costs were incurred for additional walls, door frames and electrical. The majority of this cost was due to revisions required to the lighting. During demolition, it was discovered the perimeter walls of the space do not go to the deck above. Approximately \$35,000 of this cost is to extend the drywall to the deck above. *This is an Owner-Requested Scope Change.*
- **BIC/SRC – MORTENSON #167.1: \$53,004.00.** During user review meetings for the Computer and Internetworking Technology area, changes were requested to the drawings. Additional power and data, along with the capability to tie into local and C.O.D. networks, was requested. The users also requested additional lighting and closets for storage to accommodate racking equipment for the Academic program. *This is an Owner-Requested Scope Change.*
- **BIC/SRC – MORTENSON #180.1: \$67,787.00.** During user review meetings for the Physics Labs, additional items were requested to meet their current requirements. These changes included adding countertops with power and data around the perimeter of the space to accommodate computer workstations. *This is an Owner-Requested Scope Change.*
- **BIC/SRC – MORTENSON #193.1: \$4,379.00.** Coordination between the electrical drawings and the fire protection drawings required additional flow and tamper switches be installed on the sprinkler system. *This is a Design-Related Scope Change.*

- **BIC/SRC – MORTENSON #196.1: 43,022.00.** During construction, there were several items discovered that required the Student Commons area on the second floor of the BIC to be reworked. A one-hour rated wall was required on the west end of the commons when the old display case was removed. Conflicts with the HVAC and electrical required reworking of the duct work and lighting. *This is an Errors and Omissions Scope Change.*
- **BIC/SRC – MORTENSON #200.1: \$6,092.00.** During a field survey completed of the South Auto Lab, it was discovered that the space is larger than shown on the design drawings. This cost is for additional duct work and water piping. *This is a Design-Related Scope Change.*
- **BIC/SRC – MORTENSON #204: \$1,579.00.** After moving into the new Human Resources offices, it was determined that ten offices needed privacy film installed on the glass in the doors and sidelights. This cost is to add a frosted film on these doors and sidelights. *This is an Owner-Requested Scope Change.*
- **BIC/SRC – MORTENSON #206: CREDIT (\$11,361.00).** This credit is to address the C.O.D. Auditor's comments and contractor allowances for Change Orders from Bid Package #1. *This credit is the result of an internal audit.*
- **BIC/SRC – MORTENSON #207: CREDIT (\$7,363.00).** This credit is to address the C.O.D. Auditor's review of Change Orders 3.1 through 23. The credit is for overcharged labor rates. *This credit is the result of an internal audit.*
- **CAMPUS LANDSCAPING – POWER PCI # 6: CREDIT (\$20,305.00).** This credit is to address the unused Allowances as part of Breezy Hill's landscaping contract. *This credit is the result of unused allowances.*
- **CHC - WB Olson COP #164: \$13,505.00** This change was to furnish and install Masonite floor protection in the corridors during project completion and for protection during COD move-in as requested by COD. This is an *Owner Requested Scope Change.*
- **CHC-WB Olson Credit COP #165: <\$2,584.00>** This change is to adjust the previously issued Change Order Proposals to reflect the College's audit discovery of overages and general conditions correction. *This credit is the result of an internal audit.*
- **CHC-WB Olson Credit COP #167: <\$11,750.00>** This change was to furnish the manpower and materials to correct the glycol concentration in the hot water and chilled water systems to meet design specifications. This change is a back-charge to the mechanical contractor (MG Mechanical). *This is a Design Related Scope Change.*
- There were no Capital Budget Projects.

2) Approval of Construction Change Orders

- **2012 SITE & GROUNDS PROJECT (POND 6) – LANDWORKS #03: \$75,215.20.** This is a unit-price contract for Pond 6 Bid Package #2 landscape work. This change order is the result of unit adjustments made to the contract to reflect the final number of units utilized for project completion. *This is an Owner-Requested Scope Change.*
- **APPROVE SCC – WIGHT #01: \$245,353.00.** Wight Architects will provide additional work for the SCC Renovation project. Wight's Basic Services fee was approved by the Board based on an overall project cost of \$3.7 Million. Additional scope items have been added for an increased project cost of \$6.0 Million. Wight has reduced their fee to 11.0% (from 12.1%) of the construction cost, resulting in an increase to their Basic Services fees of \$245,353. *This is an Owner-Requested Scope Change.*
- **APPROVE MAC – WIGHT #01: \$869,050.00.** Wight Architects will provide additional work for the MAC Renovation project. Wight's Basic Services fee was approved by the Board based on an overall project cost of \$22.9 million. Additional scope items have been added for an increased project cost of \$35 million. Wight has reduced their fee to 9.0% (from 9.9%) of the increased construction cost, resulting in an increase to their Basic Services fees of \$869,050. *This is an Owner-Requested Scope Change.*

- **APPROVE HEC Allowance Credit – Power #0156: <\$141,691.00>** This is a Credit Allowance adjustment to the Homeland Education Center. Credit to the building contracts are a result of unused contract allowances and the College's Allowance and Change Order audit. *This is a Contract Allowance Credit.*
 - **APPROVE CHC-WB Olson COP #166: \$245,000.00** This change was to provide additional general conditions to complete the project and include additional manpower to resolve scope conflicts to completion. This is an *Owner Requested Scope Change.*
 - **APPROVE PARKING-Abbey Paving #33: \$19,511.69** This change will provide irrigation modifications necessary for the 2012 site & grounds projects. This is an *Owner Requested Scope Change.*
 - **APPROVE PARKING-Abbey Paving #37: \$271,377.19** This change will remove existing vegetation on the hill north of the softball field and replace with sod and irrigation. It will remove existing MAC pond 2 cattails and replace with plantings. This is an *Owner Requested Scope Change.*
 - **APPROVE PARKING-Abbey Paving #34: \$142,668.84** This change will provide site & grounds enhancements along the east side of the PE building. This is an *Owner Requested Scope Change.*
 - **APPROVE PARKING-Abbey Paving #35: \$156,376.57** This change will provide PE east parking lot landscape screening. This is an *Owner Requested Scope Change.*
- There were no Capital Budget Projects.

Chairman Carlin asked if any Trustee had a question regarding a Consent Agenda item. Hearing no questions or comments from the Board, Secretary Pro Tem Svoboda called the roll. Student Trustee Martin's preference is for the motion. Voting aye: Trustees Savage, Wozniak, Birt, McGuire, Svoboda and Chairman Carlin. Motion to approve all Consent Agenda items listed above carried unanimously.

NEW BUSINESS

- A. For Information Only:
 - 1) One-Semester Non-Teaching Assignment Leaves for the 2012-2013 Academic Year
- B. For Approval:
 - 1) Trustee Savage moved, Trustee McGuire seconded, that the Board approve the Notice of Public Hearing for the FY2013 Budget. On roll call, Student Trustee Martin's preference is for the motion. Voting aye: Trustees Birt, McGuire, Savage, Svoboda, Wozniak and Chairman Carlin. Motion carried unanimously.
 - 2) Trustee Svoboda moved, Trustee Savage seconded, that the Board approve the Revised Board Policy – Tobacco-Free Campus, 10-160. On roll call, Student Trustee Martin's preference is for the motion. Voting aye: Trustees McGuire, O'Donnell, Savage, Svoboda, Wozniak, Birt and Chairman Carlin. Motion carried unanimously.
 - 3) Secretary O'Donnell moved, Trustee Savage seconded, that the Board approve the College of DuPage 403(b) Plan and College of DuPage 457 Plan. On roll call, Student Trustee Martin's preference is for the motion. Voting aye: Trustees Svoboda, Wozniak, Birt, McGuire, O'Donnell, Savage and Chairman Carlin. Motion carried unanimously.

ANNOUNCEMENTS

- ACCT Report
 - Trustee Svoboda noted the ICCTA Lobby Day is May 1 and 2 in Springfield. A number of the Trustees will be attending.
 - Trustee Svoboda asked for the support of the Board in consideration of her running for an ICCTA officer position, probably secretary. Chairman Carlin noted they gave her full support in this matter.

- Foundation Report
 - Trustee Savage noted the Foundation has received a record number of scholarship applications – more than 3,000 – 30% more than last year at this time. Typically, 10% of the applicants receive awards. The Foundation is at 60% of its \$2 million fundraising goal.
 - The Foundation will host a reception in the Homeland Security Center on April 26 for Federal Judge William J. Bauer for whom the mock courthouse was named. This event is a fundraiser for an endowed scholarship in Judge Bauer's name.
 - The Foundation has two new Board members: Carla Burkhart, President of Hericane Graphics, and Richard Felize, a local attorney.
 - The next meeting of the Foundation Board will be on June 12.

- Chairman Carlin advised the next Board meeting will be a regular Board meeting on Monday, June 18, 2012.

- Chairman Carlin asked if the Board felt the necessity to have a meeting in Closed Session. Trustee Svoboda moved, Trustee Savage seconded, that the Board move into closed session at the conclusion of this meeting for the purpose of discussing:
 - The appointment, employment, compensation, discipline, performance or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity.
 - Collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees.
 - Litigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal, or when the public body finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting.

Secretary O'Donnell took a roll call vote. Student Trustee Martin's preference is for the motion. Voting yes: Trustees McGuire, O'Donnell, Savage, Svoboda, Wozniak, Birt, and Chairman Carlin. Motion carried unanimously. Moved into closed session at 9:25 p.m.

At 10:18 p.m., the Board returned to Open Session. Chairman Carlin noted that, if there was no further business to come before the Board, he would entertain a motion to adjourn. Trustee Savage moved, Secretary O'Donnell seconded, that the Board Meeting adjourn.

On voice vote, the motion carried unanimously.

By: Allison O'Donnell
Allison O'Donnell, Board Secretary

Approved: May 10, 2012

By: David Carlin
David Carlin, Board Chairman

From: [Carla Burkhart](#)
To: [Glaser, Thomas](#)
Subject: Re: Question
Date: Sunday, January 04, 2015 4:32:52 PM

I don't know what issues are being raised by Ms. Hamilton, what I can say is that if their argument (the only one I'm aware of) has any validity or merit, than it would fly in the face of every artistic contract let by COD, to include the sculpture, Edge Design(Gaelynn Pippin), etc. I don't believe Gaelynn is a licensed architect either.

I will forward the information I sent to you this morning to Ken?....

Let me know...

Carla

On Jan 4, 2015, at 12:42 PM, Glaser, Thomas <glasert@cod.edu> wrote:

I talked to Ken yesterday and asked him to send something formal to COD to rebut Hamilton's latest claims based on the Kirk Allen article. At some point (hopefully soon) she will say something where she will expose her incompetences.

Sent from my iPad

On Jan 4, 2015, at 10:00 AM, Carla Burkhart <cabadvantage@> wrote:

Happy New Year to you too....

To answer your question; No. I saw the article Kirk Allen ran before the Holiday. Extremely defamitory.

I called you just before the break for this very reason, but your were out. I talked with Dr. Breuder, and he gave me permission to allow my attorney to talk with Ken Florey, which I copied in an email. Ken called me and we talked, basically Ken says there is "0" issue with the dealings between Herricane and COD. Although I trust Ken Florey, I asked my attorney to confirm it over the break. Please see the email thread from my attorney "Josh Feagans" below confirming Ken Florey's position.

Right now, Ken and my attorney have indicated that I SHOULD NOT read these blogs anymore(which I have done, although not easy). We should continue to do business with COD as we have, changing that only supports his claims, unless of course COD is unhappy with Herricane, then that's a

EXHIBIT 2

whole different issue, and COD should do what is necessary in the normal course of business. We are debating moving for an injunction against Kirk Allen, and a defamation lawsuit due to drawing attention to the issue concerning mainstream media. My attorney will continue to monitor the situation and I will keep you informed.

(Josh Feagans)

My review of the Illinois Leaks situation is as follows:

First, with respect to the alleged “no bid” contract, Section 3-27.1 governs contracts under the Public Community College Act. You are correct in that subsection (a) which deals with “contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part” directly applies to your work with the College. The word individual includes corporations as corporations are treated as individuals. The other statutes you mention do not apply to you even though the College must comply with them. **Thus, my opinion is that your contracts with the College are properly awarded without a bid process.**

Second, I find nothing contained in the Public Community College Act or any other Illinois statute, including the Not-For Profit Corporation Act, which would define your role with the Foundation as a conflict in relation to your dealings with the College. As to the Public Community College Act, Section 3-48 talks about conflicts and is limited to community college board members, not Foundation board members. Thus, my opinion is that your work with the Foundation does not present a conflict with your interests at the College.

(Carla Burkhardt)

Josh,

I did some research over the weekend regarding the Illinois Statutes that I believe apply to COD and the purchasing requirements.

30 ILCSS 500 Illinois Procurement Code
110 ILCS 805 Public Community College Act
50 ILCS 510 Local Government Professional Services Selection Act
225 ILCS 305 Illinois Architecture Practice Act 1989

Although I have reviewed these statutes previously, it was always regarding the prompt payment act.

I have no idea how savvy or intelligent Kirk Allen is, but I certainly can review these statutes and understand why he came to the “assumption”

he's coming to. Because the College of DuPage falls under the 110 ILCS 805 statute and not necessarily under the 30 ILCS 500, in reading the requirements under the 110 ILCS 805/3-7.1, "contract provision" there is little to no context matching that of the 30 ILCS 500, "Professional & ARTISTIC" Services language. There is however language (a) that indicates a broad categorization for services performed by "individuals" possessing a high degree of professional skill where the ability and fitness of the individual plays an important role...". The concern here though is the word "individual", because we were contracted as a company and not individually.

The beginning of this statute refers the reader back to two additional statutes, the 50 ILCS 510 and the 225 ILCS 305 which references the definition of how "professional services" are to be defined within 110 ILCS 805, and is limited to Architects, Engineers and Land Surveyors, which we are none of. Thus the reason that Mr. Allen would like to know our credentials. Not to mention that COD is utilizing a standard AIA document for our contract (design and construction management) and this too is leading Kirk Allen.

I also reviewed the University of Illinois purchasing requirements which are online "obfs.uillinois.edu" which lists or charts the categories that fall under services, and graphic design is listed. (TG)

I'm not an attorney. I have a reasonable mind, at least right now. I have to believe the guidelines for "Community Colleges" cannot be more stringent than that of the State. I'm sure these statutes are amended often, and when inconsistent at one level reverts to the higher level.

I look forward to receiving your response, as this obviously concerns me

-----Original Message-----

From: Glaser, Thomas <glasert@cod.edu>

To: Carla Burkhart <cabadvantage@>

Sent: Sun, Jan 4, 2015 9:07 am

Subject: Question

Happy New Year!

Do you have a licensed architect in your employ?

Sent from my Verizon Wireless 4G LTE smartphone