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Approved October 1, 2002

BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Minutes of Executive Session
Thursday, September 26, 2002

Committee Members Present: Chairman David R. Morrow, John A. Davis, Faith M. Lane, Esq., Donald K. Lange, Neal B. Mitchell, Jr. and George S. Murray.

Also Present: Jeanne A. Gould, Administrative Assistant.

Pursuant to a roll call vote on a Motion by John A. Davis to adjourn the Open Meeting to Executive Session for the purpose of discussing matters which might lead to litigation, not to return to Open Meeting, Chairman David R. Morrow called the Executive Session to order at 9:25 P.M. on Thursday, September 26, 2002 in the Conference Room at the Northbridge High School, and declared the presence of a quorum.

Voting in the affirmative on Mr. Davis' Motion were David R. Morrow, John A. Davis, Faith M. Lane, Donald K. Lange, Neal B. Mitchell, Jr. and George S. Murray. There were no negative votes cast.

Northbridge High School Project

Suit Against Tappe' Associates, Inc.

The Chairman reported on his conversations with Counsel Edward F. Vena, Esq., that Tappe's Insurer is refusing to sign the Stand-Still Agreement on the Statute of Repose. Mr. Vena requested authorization to file a Civil Action in the Worcester Superior Court against Tappe' Associates, Inc. tomorrow morning, in order to preserve the Town's rights for claims arising from Tappe's performance of their duties as Design Architect for the Northbridge High School Project. Negotiations with Tappe' could still continue, and if an Agreement is reached, the suit can be withdrawn. Tappe' would not be served for up to 90 days, after filing.

It was the consensus of the Committee that it had an obligation to heed the advice of Counsel and to do whatever was necessary to preserve the Town's rights.

On MOTION OF MR. DAVIS, duly seconded, on a roll call vote with all members present voting, it was unanimously

VOTED: That Edward F. Vena, Esq., Special Counsel to the Building, Planning and Construction Committee of the Town of Northbridge in connection

with the Northbridge High School Project, be and is hereby authorized to file a Civil Action in the Worcester Superior Court by the Town of Northbridge, acting by and through its Building, Planning and Construction Committee, against Tappe' Associates, Inc. for claims arising from Tappe's performance of their duties as Design Architect for the Project.

Voting in the affirmative were David R. Morrow, John A. Davis, Faith M. Lane, Donald K. Lange, Neal B. Mitchell, Jr. and George S. Murray. There were no negative votes cast.

The Chairman will call Joseph Montecalvo, Chairman of the Board of Selectmen, tomorrow to inform him of the Committee's action. Mrs. Lane will inform the Town Manager. Both will be informed of the necessity to keep this action from being made public, as it would seriously hamper the efforts of the Committee and its Counsel to negotiate a settlement outside of litigation.

Doors. Mr. Mitchell has gone to great lengths to gather information on wood doors and metal frames and the industry standards which govern their installation. Mr. Murray, Mr. Lange and Mr. Mitchell, using a tool made to exact specifications, have measured all of the frames on the 3rd floor, and none of the frames meet the published standards of the metal door industry. Every door is smaller than the specified width.

Mr. Mitchell stated that it is obvious that the jig for the fabrication of the door frames was wrong. The frames are all too small by any industry standard. They are also not square. He noted that Jackson's problems are big on this problem. Tappe' may also have exposure, if they didn't clearly specify the frame size.

Mr. Murray reported that a representative from Jackson was in this week, with the same tools which were used before, and measured the doors.

Mr. Murray requested permission to remove a few doors and to remove the padding of the hinges to see if the doors will close. He found one frame that had been hit with a 2 X 4 in Century Drywall's attempt to make the doors close in the frames, with a crease in the center of it which it will be impossible to straighten. The Committee concurred with his request.

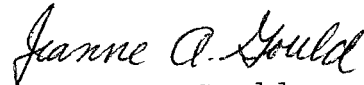
On MOTION OF MR. DAVIS, duly seconded, on a roll call vote with all members present voting, it was unanimously

VOTED: To adjourn the Executive Session and the Meeting.

Voting in the affirmative were David R. Morrow, John A. Davis, Faith M. Lane, Donald K. Lange, Neal B. Mitchell, Jr. and George S. Murray. There were no negative votes cast.

The Executive Session and the Meeting adjourned at 9:50 P.M.

Respectfully submitted,



Jeanne A. Gould,
Administrative Assistant

DISTRIBUTION:

Committee Members
Edward F. Vena, Esq.

BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Minutes of Executive Session
October 04, 2002

Committee Members Present: Vice Chairman Peter Barbadora,
John A. Davis, Faith M. Lane,
Esq., Neal B. Mitchell, Jr. and
George S. Murray.

Also Present: Committee's Counsel, Edward F. Vena, Esq.

Jeanne A. Gould, Administrative Assistant.

Pursuant to a roll call vote on a Motion by John A. Davis to adjourn the Open Meeting to Executive Session for the purpose of conducting the business of the Sub-Committee for Close-out of the High School Project, which involves the discussion of matters involving litigation, and to return to Open Meeting to conclude any unfinished business on the Agenda and to adjourn the Meeting, Faith M. Lane, at the request of the Vice Chairman, called the Executive Session to order on Friday, October 04, 2002 at 9:25 A.M. in the Conference Room at Northbridge High School and declared the presence of a quorum. Mrs. Lane presided.

Voting in the affirmative on Mr. Davis' Motion were Peter Barbadora, John A. Davis, Faith M. Lane, Neal B. Mitchell, Jr. and George S. Murray. There were no negative votes cast.

Strategy Session with Counsel Edward F. Vena

Door Frames. Mr. Vena reported that in a telephone conference, Jackson's Attorney Tony Starr told him that he can find tolerances for metal doors, but that none exist for frames for wood doors. Committee members stated that the tolerances for metal frames should govern. Mr. Vena is attempting to get Jackson to commit to numbers on the issues in question.

Matrix. Mr. Vena has prepared a matrix which he proposes to 1) Define expenses; 2) Define the funds which remain uncommitted; and 3) Define the issues and what needs to be done to resolve them.

H feels that we are getting to a point of constructive negotiation, if the issue with the doors can be settled.

Suit against Tappe'. Mr. Vena distributed copies of the suit filed against Tappe' in the Worcester Superior Court. He explained that this was necessary to protect the Town's rights when Tappe' agreed to sign the stand-still agreement,

but their insurer would not. In researching the Committee's records and correspondence, Mr. Vena has established October 05 as the date on which the Court would probably hold the Committee accountable. The Statute of Repose, therefor, would run on October 5th. Mr. Vena stated that he has 90 days to serve Tappe' and can use the intervening time to continue to try to negotiate a settlement. He will not wait until the 90 days is up, though, because he wants to be sure that service is timely. Holding off service gives the Committee a lot of flexibility to negotiate. Mr. Morrow was going to call Jeff Davis at Tappe' to alert him that a suit was to be filed.

In response to questions, Mr. Vena explained that Architects operate under a Statute of Repose, which carries more stringent time limitations than a Statute of Limitations. There are actually 2 time limits: The Statute of Repose runs 3 years from when a Committee knew or, with due diligence, should have known; the Statute of Limitations runs 3 years from the Date of Substantial Completion; In this case, this means a 3 year limit within a 6 year limit.

He feels that the 90% Estimate contained some ambiguity. It is not clear that the amount carried for ledge was for both the building site and the fields, or just the building site. Again, he will not push the full 90 days for service, to make sure that it is served in time, to avoid having to ask permission of the Court to re-institute the suit for service after 90 days have run.

Tappe' Matrix. Invoices are being held from Tappe' for reimbursables 1/10/02 in the amount of \$92,917.00, and additional work post substantial completion 3/21/02 in the amount of \$80,418.00. These two amounts roughly total the \$173,000 sought by Tony Tappe' in the late summer of 2001, in a letter in which he stated that his consultants' costs had exceeded the amounts he carried in his base fee due to Jackson's delay on completion of the Project. The \$7,500 fee for compiling the chronological report on ledge has been paid. Tappe' has estimated the amount to complete the Project at \$36,000 on 3/21/02. Approximately \$18,000 has been paid to date. Additional Invoices have been received for June through September 2002. Tappe's claims total approximately \$217,731.00 for additional services to date.

The Matrix contained possible claims for Northbridge in the amount of \$500,000± for failure to raise the building to avoid ledge. Costs for remediation of the soccer field and Infiltration Basin are unknown at this point.

Mr. Vena explained that claims for errors are covered by Tappe's Insurance, but the Town will still have to pay their fees. If the insurer makes the Town whole, then the Town has an obligation to make the Architect whole. Theoretically, the fees would offset the errors. The Law of Offset gives the Architect incentive to settle.

The Committee's Assistant was instructed to get a copy of Tappe's original letters for additional consultants' fees to Mr. Vena.

Mr. Davis suggested that CRJA should be paid the fees which the Committee guaranteed for additional work. Mr. Vena stated that paying these fees would not necessarily offset their errors or negligence.

Mr. Davis made a Motion to pay CRJA what was promised, and his Motion was seconded. Mr. Barbadora said that he would like to see what they are going to do to correct the soccer field before authorizing any more payments. Mr. Vena expressed concern about making any payments, and suggested that dates can be checked for the Statute of Repose on CRJA's design errors. The Motion was withdrawn by Mr. Davis and the seconder.

1) Ledge Elevation. Mr. Vena noted that he has run the issue of raising the building to avoid ledge by several professionals, and all agreed that with that much ledge suspected, they would raise the building. This issue would come into play if the Town is sued by Jackson/Pytko. The \$500,000 which is carried in the Matrix is the delta of what was paid extra for ledge removal at the building site. One of the reasons which Mr. Vena offered for not agreeing to pay Pytko \$100,000 for the ledge claim, is that Tappe' could then argue that the Town agreed and bought on to Pytko's claim. The Committee needs to work on off-setting costs; value, if any, that would have accrued by raising the building.

2) Soccer Field. The main issue, Mr. Vena stated, is what can be done to fix the field and bring it into compliance with standards, and how much will it cost. Tappe' has already surfaced the argument that it was designed that way to save money because of additional ledge removal required. Mr. Mitchell noted that the 2nd soccer field is graded the same way, and questioned whether there were peaks of ledge on both fields. Mr. Vena said that TAI's argument will be that it would have cost more to it right initially, so the cost of correcting it now will offset. Mr. Vena declared this to be very much an open issue.

3) Infiltration Basin. Mr. Vena said that it is time to send Tappe' a letter. On July 18th, at the walk-through with Dave Taglianetti, he agreed to have GSI do test pits to determine if there is ledge underneath the basin. They have not done this, and should be asked what TAI intends to do. They should be given a warning: fix it or we do and back-charge. Mr. Vena will compose the letter and fax it to Mrs. Gould to prepare for the Chairman's signature. He suggested that the Committee request TAI to come to an Executive Session to discuss the issues and try to get them engaged in serious discussion of where we go from here. The letter and discussions should also include the Soccer Field, and how they propose to

remediate it. Mr. Vena hazarded the guess that they probably spent more blasting than they needed to, when they could have used fill.

4) Windows. Mr. Murray stated that the windows are not what the Committee wanted, and specified from the very beginning. The Committee, especially Mr. Murray, was adamant about the need to have windows that tilt in for cleaning. The windows which were delivered and installed were not what the Committee wanted. It is a monumental task to remove them for cleaning, and can only be done by unscrewing the frames and taking the windows out. Consequently, the School Department must pay approximately \$3,000 per year for a cleaning company to wash the windows, and it takes a maintenance man 1 1/2 weeks to remove the screens for the window washers. It is costing the School Department approximately \$5,000 per year because TAI didn't spec the tilt-in window as they were instructed to do. Mr. Vena replied that a cost analysis must be done, but that it should be put on the list of errors. While the Committee might not want to litigate this cost, it can be used as a bargaining tool.

Jackson Issues

Doors. Mr. Mitchell explained that Mr. Lange manufactured 3 bars to test the width of the door frames. The 3 foot bar doesn't fit any frame. The bar which meets the manufacturers' tolerance of 36" -1/32" was used and not one frame passed. The third bar, 36" -1/8", was tried and approximately 50% failed to pass. Mr. Vena stressed the importance of testing every door frame, stating that not every frame can be off. Mr. Mitchell asked what tolerance should be used, and Mr. Vena replied the metal door tolerance: 36" -1/32".

1) If all are out of spec, even under normal swelling/shrinking, the doors are not going to work.

2) In winter, with lower humidity, some will work. Mr. Murray interjected that because the butts have been thrown in an effort to make them work, if they are put back in the original position, the doors won't work.

3) What is the scope of remediation. He asked if 305 frames are not conforming, but some doors work during part of the year, is the Committee ready to accept this. Mr. Mitchell stated emphatically that we want new doors. The top of the frames invariably failed. Some spread out at the bottom, and some are binding at the middle. In throwing the butts, they played with them. He noted that it appeared that in fabricating the frames, all are wrong at the top. If all were made on the same jig, it is a manufacturer's error in setting up the jig. Because the moisture problem is the greatest at the top of the doors, although within tolerance, having the frame smallest at the top is compounding the problem.

Mr. Murray noted that they threw the butts after complaints of doors sticking. The discrepancy is so great, though, that it won't work. Mr. Mitchell agreed that some butts are thrown top and bottom, but not in the middle, which is placing the doors under stress. Because of the incorrect swing on the door, the screws will pull from the butts. This fix is ruining the butts and the drywall around the frames, causing maintenance problems long-term. He insisted that it is the frames, not the doors which are the problem, stating that they didn't find a door that would not have fit if the frames had been jigged to correct tolerance.

Mr. Vena asked if a Contractor should, knowing that the doors would swell, have installed the frames to a maximum tolerance because of expected humidity. Mr. Mitchell responded that the specs said 36"+. The frame has to be manufactured exactly. With a wood stave door, in areas of high humidity, you have to expect a few to stick at some time, and there is no adjustment that can be made in the frames. He, Mr. Lange and Mr. Murray couldn't find any frame 36" or over; they were all under 36".

Mr. Mitchell termed the Kern Report useless. He should have recorded the humidity when measuring. When he and Mr. Murray measured the doors, with humidity still running high, they found nothing wrong with the doors; all were within tolerance.

Mr. Vena, stating that all or most of the 305 doors need to be fixed, asked for the Committee's position as to the fix. Mr. Murray replied that the doors can't be shaved, because of the laminate finish on the edges which is beveled. They can't be flat planed; they have to be beveled, or the door won't close properly. Any shaving has to be done on the butt side, only. Taking any off the latch side would require the hardware to be moved, ruining the doors. Shaving in any instance, would ruin the laminate on the face of the door.

Mr. Vena would like all frames measured and recorded, so he can tell Jackson that all are undersized, and ask what they intend to do. He commented that Tony Starr told him that Chris who measured for JCC said that he only found a couple of the frames undersized. Mr. Murray answered that Chris used a tape measure with a bent end; the only true measurement is made with a bar milled to the exact size. Mr. Vena will tell Mr. Starr to get the manufacturer of the frames out, and provide the most cost effective solution as to what JCC will do to make the doors right. With verified measurements, he can tell Mr. Starr here's the tolerance - the frames are wrong. Mr. Vena also wants the frames in the A/C areas measured. Mr. Murray said he did, and they are not as spec'd, either. Mr. Murray stated that, where the butts are thrown, even the smallest bar at -1/8" didn't fit. Mr. Vena would like the measurements taken with the -1/32" bar, by Mr. Murray, with Mrs. Gould to record, and Mr. Mitchell to stamp as an engineer.

Mr. Vena said it is time to move this process. He needs to have a controlled meeting of the appropriate people involved. If the manufacturer and Jackson's people are doing measurements on the frames, they need to have either the Committee's bar, or a bar that is precisely milled to measure with. Mr. Vena said it is time to put the ball in Jackson's court. If they refuse to cooperate, then the Committee goes to the bonding company.

Jackson Matrix. Mr. Vena needs the revised bills for Consultant Fees attributable to Jackson and Pytko. The numbers may go up, which doesn't leave much to deal with the doors and the Pytko claim. Mr. Barbadora commented that if JCC is pressing for \$100,000 for ledge versus the Committee's claim of \$150,000 for consultant fees it's pretty much a trade-off. Mr. Vena reported that JCC has indicated that it wants payment of \$100,000 and a release of non-Pytko related back-charges, and it would agree to such a settlement.

Mr. Vena shows a payment to Jackson of \$385,565.00 on his Matrix, which would increase if the \$150,000 for consultant fees are backed out of the equation. Mr. Barbadora suggested that the Committee needs to present enough evidence to Jackson to prove that the door problem is theirs to fix, with warranties. This would cause the total owed JCC to drop, leaving some flexibility to deal with the Pytko issues. Mr. Murray emphasized that he wants doors that work, and that there should be no settlement on that score, even if it takes \$500,000 for JCC to fix the problem.

Mr. Vena presented his view of the dynamics of a settlement: 1) The Committee has a good defense against Pytko's claims; 2) Franny's extra charges for work done under protest is a no pay; and 3) Doors must be settled to the Committee's satisfaction. Mr. Mitchell agreed, stating that the Committee shouldn't settle on anything until the doors are settled. Mr. Vena commented that just assuming a cost of \$190,000 to fix the doors, this leaves no room to deal with the Pytko claims. Mr. Barbadora feels that it is best to have JCC worry about the doors. Mr. Vena will insist that no solution which includes a jury-rigged system of fixing the door problem will be acceptable. They must be long-term warrantied.

Mr. Vena asked if JCC offers \$100,000 for the doors and a release on Pytko, would it be enough, by way of coming up with a negative strategy. Mr. Mitchell suggested that the Committee members be asked if anyone would agree to take \$100,000 for the doors. Committee members all answered no, they won't trade-off on the doors. Mr. Vena remarked that as long as the doors are unresolved, it will be difficult to get a global agreement. Mr. Barbadora raised the possibility that JCC might come back and propose a different door. Mr. Vena, using the figures on the Matrix, stated that if JCC accepts all proposals, that leaves \$190,000 for door issues.

That's where we stand today. He suspects that JCC will back-charge the manufacturer, and will try to lay the cost off on the subs and suppliers.

Mr. Barbadora asked what percentage of the doors are sticking. Mr. Mitchell replied that in winter, with low humidity, most are fitting. In high humidity, only 80% work. Mr. Vena said that the Committee needs to decide what it can live with, noting that damage occurs, even if only in periods of high humidity. Mr. Mitchell replied that we really need to have all doors replaced with doors which are 1/8" smaller. Mr. Vena noted that that is the optimum solution, but is not necessarily what a Judge will accept. Mr. Barbadora suggested that because the building is used all year, the failure of the doors to close properly becomes a code issue. Mr. Mitchell agreed that all doors are fire-rated.

Mr. Vena stated that that means that there is no middle ground. The building must have 305 doors that fit 365 days a year, and that the only real solution is to replace all doors with doors cut smaller to fit the frames. This would call for a 100% fix, with 305 doors @ \$1,000 per door, including hardware and installation. There is not enough money remaining to withhold in order to do the fix. \$190,000 won't get it done. He suggested that we need to set priorities, since the door issue makes the picture not too bright. He said that he would like to engage a door expert to verify that what the Committee's investigation produces, and the methodology that is being used is correct. With a claim he will need an expert witness. He proposed an expert he has used with success on another claim as an expert witness. Mr. Mitchell expressed "no confidence" in the proposed expert. Mr. Vena will seek names of other expert witnesses.

Re-Cap. Mr. Vena recapped the situation and next steps to be taken to reach settlement:

1) Jackson: The figures on the matrix need to be revised and updated; and he will contact Tony Starr re the door issue.

2) Tappe: The figures on the matrix need to be updated; Tappe' should be invited to come in to an Executive Session to negotiate; and he will hold on service of the Civil Action to allow some time for negotiations.

Mr. Davis asked Mr. Vena if he would like the Committee members to refrain from interrupting negotiations with comments or questions. Mr. Vena replied that as to the Consultant issues, they are very subtle issues best handled lawyer to lawyer. But he doesn't object to having the Committee take part in the negotiations at this point in time. He would like to handle the discussion as point person, though.

Substantial Completion. Mr. Vena said that objections

or exclusions after the fact to what was agreed to in order to establish a new date of Substantial Completion are not valid. Mr. Barton's thinking was established in the records and can't be wiped out, even if not spelled out in the Change Order. He can't agree to terms in September to get a change on the Date of Substantial Completion and come back in October and change the agreements upon which it was predicated. There is a mutual difference of thought as to what was understood in the Certificate of Substantial Completion, and a Court would set the date back to June and assess liquidated damages.

Mr. Davis asked if Mr. Vena will tell the Committee members when he needs to take over, and Mr. Vena assured him that he will.

Mr. Vena noted that if Pytko sues JCC, JCC will sue the Town, citing design issues. This type of suit may be beyond the Committee's control. Mr. Barbadora said it would be better then to get a settlement with indemnification. Mr. Vena concurred. Mrs. Lane asked if it is beneficial to have Bob Barton in for any more discussions. Mr. Murray ventured he thought that it is, because his attorney has the opportunity to see how many times Mr. Barton changes positions. Mr. Vena would like to try to continue in a spirit of cooperation. The Committee does a good job of letting him lead the discussion, he said, and he wants to continue to lead the discussion. When he gets to the position where he feels that he is wasting time, he will go to the next step. That is probably soon, he said.

Recap of next steps to be taken:

- 1) Get new adjusted numbers for the matrix.
- 2) Establish the position that JCC owns the doors. Let JCC/TAI duke it out as to responsibility.
- 3) He will call TAI's attorney to get something going there in the way of negotiations.

Mr. Barbadora would like to see a payment made to GSI for their additional services regarding the ledge claim, in the approximate amount of \$17,000. Because the Committee has no contract with GSI, they can't be paid directly. The Committee's Assistant was instructed to check Tappe's Invoices to see what has been paid to Tappe' for GSI services.

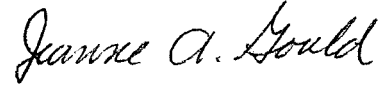
On MOTION OF MR. DAVIS, duly seconded, it was, on a roll call vote, unanimously

VOTED: To adjourn the Executive Session and return to Open Meeting for the purposes of concluding any unfinished business on the Agenda and for Adjournment.

Voting in the affirmative were Peter Barbadora, John A. Davis, Faith M. Lane, Neal B. Mitchell, Jr. and George S. Murray. There were no negative votes cast.

The Executive Session adjourned at 12:30 and the Committee returned to Open Meeting.

Respectfully submitted,



Jeanne A. Gould
Administrative Assistant

DISTRIBUTION:

Committee Members
Edward F. Vena, Esq.

BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Minutes of Executive Session
October 31, 2002

Committee Members Present: Chairman David R. Morrow, Vice
Chairman Peter Barbadora, John
A. Davis, Donald K. Lange and
George S. Murray, ex officio.

Also Present: Edward F. Vena, Esq., Committee Counsel;
Jeanne A. Gould, Administrative Assistant.

Pursuant to a roll call vote on a Motion by John A. Davis to adjourn the Open Meeting to Executive Session for the purpose of conducting the business of the Sub-Committee for Close-out of the High School Project, which involves the discussion of matters pertaining to litigation, with the provision that the Meeting return to Open Session for the purposes of concluding any remaining business on the Agenda and for Adjournment, Chairman David R. Morrow called the Executive Session and Meeting of the Sub-Committee for Close-out to order at 8:50 A.M. on Thursday, October 31, 2002 in the Conference Room at Northbridge High School. The presence of a quorum was declared.

Voting in the affirmative on Mr. Davis' Motion were David R. Morrow, Peter Barbadora, John A. Davis and Donald K. Lange. There were no negative votes cast.

Mr. Morrow recognized Mr. Vena and requested that he lead the discussion of matters pertaining to the close-out of the High School Project and possible litigation.

Door Frames

Mr. Vena reported that HMMA 861-44 Manufacturer's Standard provides two tolerances for metal door frames:

1) The manufacturing standard allows for a tolerance of $-1/32"$ to $+1/16"$ on the jambs.

2) Installation tolerances are ambiguous, in that the text and the drawings provided are different. The written text stipulates $+1/16"$ while the diagram carries a tolerance of $\pm 1/16"$

He noted that HMMA 960 Installation Standard is almost the same. In all cases involving the written text for standards, tolerance buildup is prohibited. He said that Mr. Mitchell has spoken to the person who wrote the standards,

who agreed there is ambiguity, and subsequently wrote a paper which the HMAA Committee agreed to consider.

Mr. Vena reported that Attorney Starr's interpretation of the standards is that there can be $-1/16'$ on each side, for a total of $-1/8"$. He noted that this would violate the text regulating tolerance buildup. It would also be unworkable in high humidity situations, given the acceptable expansion of the wood doors.

Mr. Vena's interpretation of the standards is that the tolerance is no more than $-1/16"$ less than the width of 36".

Mrs. Gould noted some of the observations made by Mr. Mitchell, Mr. Lange, and her as they measured the frames. Almost without exception, the frame at the header is exactly as specified. In most cases the bottom of the frame is also within the $-1/16"$ tolerance. Most of the door frames, however, have a bulge from 6"-12" down from the top, through the middle section, to within 6"-12" from the bottom. Where large expanses of drywall are adjacent to the frames, the frames tend to be off more than in those frames abutted by a narrower section of drywall.

Mr. Murray stated that he would still like to remove the padding behind a few of the door hinges, hang the door as it is meant to be, and see what has happened to the door.

Mr. Vena asked Mr. Barbadora what his experience in the field is with the installation of metal door frames. Mr. Barbadora replied that a shipping spreader is most often used so that the frames arrive in plumb. He rarely sees a wood spacer used in installation today. In his own experience, though, he is careful to choose a good man to install the frames. Mr. Vena asked how the frames are installed. Mr. Barbadora replied that a heavier gage stud is used on both sides of the door, or two studs are screwed together for strength. There are 3 anchors on each side of the frame, and screws are used to attach these anchors to the frame, screwing in from the back of the stud to the frame.

Mr. Vena questioned whether the middle anchors might not have been screwed in on some of the frames. He noted the pattern of the bulge in the middle of the frames, and said it seemed logical that if screwed in at the top and bottom the frame would meet standards there, as they do in most cases, but would bow out at the middle. This appeared to make sense to the Committee members. Mr. Vena asked how this could be checked. Mr. Barbadora and Mr. Murray agreed that the only way to check would be to cut into the wall, which would seriously damage the wall and be almost impossible to repair satisfactorily. Mr. Murray feels that the only acceptable solution is replacement of the doors. This begged the question of whether squared doors would fit if there is tolerance deviation on both sides of the frames, causing the frames to be out of square.

Mr. Vena recommended that Jackson be given 1 week to come in and cure the problems. After 1 week, if Jackson has not responded, then their Surety would be notified. The Surety will most likely send in an expert to assess the problem and stipulate the fix. If they do not, and simply rely on JCC's opinion, this constitutes an Unfair and Deceptive Insurance Practice, which leaves them liable for treble damages, legal fees and the Town's costs. Following this course of action will most likely generate a lawsuit by Jackson, which will include the ledge issues, precluding a settlement.

Mr. Vena stated that the Owner will have to live by the standard referenced by the Architect, in effect at the time the work was done. He agreed with Mr. Barbadora that the HMMA Committee Chairman could be called to testify regarding the prohibition of tolerance buildup.

Mr. Barbadora stated that if Jackson is to be given an opportunity to fix the problem, the Committee needs to know up front what they intend to do, and when they intend to do it. The Committee will insist on a plan. Mr. Vena replied that Jackson is probably going to refuse to fix the problem. If so, then a letter will be sent to the Surety demanding they fix it or face treble damages, law fees and the Town's costs. Mr. Barbadora stated that in his experience the contractor always tries to fix the problem, rather than involve the Surety. He suggested that JCC be asked to recommend a procedure and provide a warranty: e.g., plane the hinge side and provide new hardware. He did not see a likelihood of JCC providing new doors. Mr. Vena commented that the Court wouldn't sanction economic waste. If Jackson can provide a cheaper solution, backed by a warranty which is in turn backed by a performance bond, this should be considered as an acceptable solution. Mr. Vena cautioned that the Committee go forward in as reasonable a way as possible, so as not to kill any ledge deal. He suggested that a letter be sent to JCC, requesting that they come to us with a plan: 1) solution as to the cause of the problem; 2) what can be done to fix it; and 3) a time frame. Otherwise the ball is in the Committee's court. He would like to continue in a spirit of cooperation before becoming litigious.

It was noted that it takes 3 years for the wood stave doors to reach equilibrium. Mr. Barbadora commented that the study being done by the Committee does not deal with the fire doors or double doors. Mr. Vena replied that these might ultimately have to be measured also, and would obviously be more complicated.

In Mr. Vena's opinion, the fact that Mr. Chouinard raised the issue of particle core doors being more stable than stave core doors, Jackson should have been aware that extra care was needed in installing the frames when stave core doors were to be installed. He said it all comes down to an installation issue, not a manufacturing or design issue.

Tappe' Issues

Mr. Vena outlined the issues concerning the suit against Tappe':

- 1) Infiltration Basin
- 2) Design of soccer fields
- 3) Consultants' fees
- 4) Ledge - subsidiary of Jackson/Pytko claim
- 5) Doors - their defense of the choice of doors.

In respect to the matter of the additional ledge costs incurred because of Tappe's failure to raise the building or site it differently, Mr. Vena reported that he has an expert on foundation installation who he has used in the past. He would like to hire him to provide an analysis of what savings could have been realized by raising the building, taking off-setting costs into account. Mr. Morrow suggested that there is enough expertise on the Committee to provide these estimates. There was no decision made at this time regarding Mr. Vena's request.

Mr. Vena stated that he would use the Jackson/Pytko ledge claim to leverage Tappe' to achieve the following:

- 1) Remediation of the soccer field;
- 2) Remediation of the Infiltration Basin;
- 3) Remove Tappe's fees from the table.

Mr. Morrow suggested that the Committee meet with Tappe' and lay out the order of magnitude of the Committee's claims. If they do not want to come to a settlement, then the Committee has to go to the next step. Mr. Barbadora reminded Mr. Vena of another issue regarding Tappe'. The design of the detention basin at the rear of the maintenance garage has problems with bubbling in the liner.

Mr. Vena will set up a meeting with Tappe' and their attorney for November 7 or November 14, preferably at 6:00 P.M. Committee members will be notified.

Site Issues

Mr. Murray reported that there is still a problem with drainage in some areas, and JCC still hasn't cleaned out the detention basins at the fields. The maintenance department has drained the irrigation lines, but the contractor needs to, blow out the lines.

Mr. Morrow suggested that the cheapest way to correct the grades on the soccer fields would be to bring in fill to build up both ends, and raise the irrigation system. He said the Landscape Architect will probably advise scraping off the high point and putting in layers of sand and loam. Mr.

Vena asked if the Committee had a guess as to the cost to remediate the field, and Mr. Barbadora's guess was \$100,000 to \$150,000.

It was reported that the tests have been done on the Infiltration Basin by VHB, but that the results have not been received. Mr. Morrow commented that, for whatever reason, the Committee has a basin that doesn't work.

Mr. Vena summarized that the soccer field remediation and the Infiltration Basin remediation are a dollar on dollar case, while the ledge issue can be used for leverage.

Technology

It was reported that Mrs. Langille, Technology Director, has complained that drops are different from the drawings. She has been talking with Tappe' and their consultant EdVance, but has not received any response or resolution. Mr. Murray did not see this as an issue. He said that all drops are clearly marked, in accordance with the specs.

Mr. Vena will write a letter to JCC putting them on notice to solve the door frame issue, with a deadline, after which he will contact their Surety. He will also set up the meeting with Tappe' and their attorney.


On MOTION OF MR. DAVIS, duly seconded, on a roll call vote, it was unanimously

VOTED: To adjourn the Executive Session and the Sub-Committee for Close-out Meeting and return to Open Meeting of the posted Committee Meeting for the purpose of concluding any unfinished business on the Agenda and for Adjournment.

Voting in the affirmative were David R. Morrow, Peter Barbadora, John A. Davis and Donald K. Lange. There were no negative votes cast.

The Executive Session and the Sub-Committee for Close-out Meeting were adjourned at 10:25 A.M. and the Committee returned to Open Meeting.

Respectfully submitted,


Jeanne A. Gould,
Administrative Assistant

DISTRIBUTION:

Committee Members
Edward F. Vena, Esq.
George S. Murray

BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Minutes of Executive Session
Sub-Committee for Close-out
November 20, 2002

Committee Members Present: Chairman David R. Morrow, Vice
Chairman Peter Barbadora, John
A. Davis, Faith M. Lane, Esq.
and Neal B. Mitchell, Jr.

Also Present: Committee Counsel Edward F. Vena, Esq. and
his partner George Deptula, Esq.; Tappe'
Associates - Jeffrey Davis and Michael
Harrison; Tappe's Counsel Kenneth Walton;
Design Team Members: VHB - David Taglianetti;
CRJA - Randy Sorenson and Kyle Zick.

Jeanne A. Gould, Administrative Assistant.

Pursuant to a roll call vote on a Motion by John A. Davis to adjourn the Open Meeting of the Building, Planning and Construction Committee to Executive Session for the purpose of conducting the business of the Sub-Committee for Close-out of the High School Project, which involves the discussion of matters pertaining to litigation, with the provision that the Meeting return to Open session for the purposes of concluding any remaining business on the Agenda and for Adjournment, Chairman David R. Morrow called the Executive Session and Meeting of the Sub-Committee for Close-out to order at 5:50 P.M. on Wednesday, November 20, 2002 in the Conference Room at Northbridge High School. The presence of a quorum was declared.

Voting in the affirmative on Mr. Davis' Motion were Mr. Morrow, Mr. Barbadora, Mr. Davis, Mrs. Lane and Mr. Mitchell. There were no negative votes cast.

Representatives of the Design Team and their Counsel were recognized and welcomed. The Chairman recognized Mr. Vena and requested that he lead the discussion of matters pertaining to the close-out of the High School Project which concern the Design Team, and possible litigation.

Mr. Vena outlined the three major matters which he and the Committee wished to discuss:

- 1) The Infiltration Basin and its failure to perform;
- 2) The non-conforming grading of the soccer field; and
- 3) The ledge issue: close to \$600,000 has already been paid in overage for ledge.

Attorney Walton interjected that Mr. Vena neglected to mention the issue of additional fees, stating that Tappe' is holding \$122,000 out there in additional fees, which they would like to discuss.

Mr. Vena suggested that the discussion of fees be taken up after the other issues were discussed. As to #1, he stated, the Committee wants it fixed; as to #2, the Committee wants it fixed; as to #3, the Committee wants to know what Tappe' proposes to do.

A fourth issue, the doors was brought up by Mr. Vena, who stated that although it seems to be a construction issue, the Committee may need Tappe's input to defuse Mr. Chouinard's claim that it is a design issue. Mr. Jeff Davis reminded Mr. Vena that a report had been prepared by Kern regarding the doors. Mr. Vena dismissed the report as being worse than useless, stating that, if anything, it gives ammunition to Jackson.

Mr. Vena introduced his partner to the members of the Design Team. He verified that Mr. Walton is Tappe's Surety Attorney, and will be representing Tappe' in any claims, also.

Mr. Vena commented that the purpose of this meeting is to try to resolve the issues without having to litigate them.

1) Infiltration Basin

David Taglianetti of VHB was asked to report on the findings of GSI's tests performed on the Infiltration Basin on October 10, 2002. Additional soil borings, test pits and observation wells were dug. The results of these tests showed the following:

a) The native soils perk at 1'-5' per day. The groundwater was observed at 3'-4' below the bottom of the basin, which would eliminate high groundwater or the inability of native soils to perk.

b) The specifications called for 4" of loam, which would include some sand mixture, to be spread in the bottom of the basin, on top of the native soils, then seeded.

c) Hand dug pits in the basin revealed permeability of .01'-.03' per day. The contractor obviously over-excavated the basin, then filled in with imported material, which is basically impermeable. He estimated that the basin was over-excavated between 18" and 22".

d) The methods and means of construction and the imported materials used seems to be causing the failure of the basin to recharge the water. There is also some compaction, which adds to the problem.

Mr. Barbadora asked if the crushed gravel and imported material used to fill in the over-excavation is Mr. Taglianetti's conclusive judgement as to the problem with the basin. He replied that there is a notable difference in the permeability of the imported and native material. He suggested that the Committee ask Jackson if there was any inspection of the material that was used. Mr. Morrow stated that no material should be used without testing. Attorney Walton commented that there is a big difference between .03' per day and 1'-5' per day, and between 4" of loam and 18"-20" of imported material.

Mr. Taglianetti stated that they did not hit ledge in amounts and depths sufficient to make a difference in perking. Mr. Morrow noted that the basin was constructed early in the project, and that runoff material from the site could have caused construction sediment to build up in the basin before it was seeded. Mr. Taglianetti agreed, but said that the Contractor should have cleaned the sediment out before seeding. Mr. Sorensen interjected that he reported sediment in the swale, but that the Contractor didn't clean it out and nothing was done. Mr. Morrow asked if the Committee is in any way responsible for not picking up on it, to which Att'y Walton replied that the Contractor is ultimately responsible for means and methods of construction. Mr. Vena suggested that the Architect bears some responsibility, also, for oversight. He said that this was a significant over-excavation. Mr. Sorensen commented that with such a thick layer of imported material, it has the same effect as lining the basin with plastic.

2) Ledge cost over-runs

Mr. Jeff Davis stated that he is at a loss on how to respond to the suggestion that Tappe' is responsible for the cost over-run on the amount of ledge removed from the building site. Mr. Vena replied that had the amount of ledge been calculated prior to final design, the building could have been raised. Mr. Morrow commented that the Committee spent a lot of time trying to determine why the cost for ledge was so high. During the design phase, he said, there was no indication that the ledge issue would be such a factor. The design progressed to the 90% estimate stage, and the ledge factor was not made evident until the project was ready to go to bid. At the 90% stage Tappe' had not done an estimate of ledge volume.

Mr. Vena noted that a huge difference is noted between the 50% estimate of 4,000 cy and the 90% estimate of 18,000 cy. GSI did extensive sub-surface examination, but no quantification until the bids were out. He reminded the design team that Tony Tappe' was quoted in a local paper as saying that the estimate for ledge was arrived at by comparing a similar building on a similar site. Mr. Vena noted that the ultimate calculation in December by GSI of the testing which was done in April (1999) was almost identical to what has been paid

for ledge removal to date.

Mr. Sorensen stated that the quote attributed to Mr. Tappe' might have been caused by his comments to Mr. Tappe' about the ledge. He said that the original GSI report noted a lot of glacial boulder. Having walked the site and observed it, he said to Mr. Tappe' that it was similar to a job CRJA had worked in Hopkinton, where the glacial boulders, when dug, proved to be much greater than the testing indicated. CRJA then began to look at how their estimated amount of ledge on the fields site could be balanced out on the lower site. The gymnasium area, he said, contained very wet material which could probably be classified as marginal wetland, although the Conservation Commission did not classify it as such. The borings and soil tests did not indicate the amounts of ledge which were found. He stated that any consideration of raising the building would have meant constructing retaining walls on the condo side, which would have been very expensive. So raising the building was not considered feasible because the test reports didn't show that much ledge. He said that CRJA presented 3 scenarios to the Committee on the fields site, because they didn't agree with GSI's report, feeling that there was more ledge than estimated. This was the reason, Mr. Sorensen stated, that the final total overall amount was proposed in December 1999.

Mr. Vena commented that CRJA's estimate of ledge in the fields was good. GSI's estimate for the building, however, was way off: 4,000 cy to 18,000 cy in the 50% and 90% estimates. Mr. Sorensen argued that CRJA's estimate on the site was ignored, and was cut in half by the Committee for the site. Mr. Morrow disagreed, saying that if the Committee had known the ledge quantities they would have insisted that the building be raised, saving hundreds of thousands of dollars on ledge removal. Mr. Vena suggested that Tappe' read GSI's calcs dated December 19, 1999, which were not based on new borings, but on the April borings, which are almost exactly what was removed. He asked why GSI hadn't been requested to supply their calculations before the design was completed and could still be changed by raising the building 1'-2'. Mr. Morrow assured Jeff Davis that the Committee hasn't been laying in wait to raise this issue at the end of the job. In spite of the frustration of the Committee with the cost of the ledge, if the job had come in under budget, he would probably never have had to raise the issue, he said.

Mr. Sorensen emphasized that he is not a geotechnical engineer, but that he did question the ledge estimates on the upper site because of his experience. Mr. Vena stated that sometime between the 50% and 90% estimates, someone did calculate a quantity estimate. Mr. Barbadora explained that the 90% estimate included the fields for the first time.

3) Soccer Field

Mr. Zick reported that the Committee has indicated a disagreement with the grade and direction. He presented sketches which purport to meet the requirements for High School soccer fields. Mr. Vena argued that the grading and the direction of the grading is not consistent with NCAA and MAA rules and regulations.

Mr. Sorensen stated that he had presented 3 schemes for the layout of the fields, and that CRJA was directed to take the more conservative route: raising the competitive soccer field by 3 feet. He said that grading 2% to the ends would have been an enormous amount of additional rock to be removed. The Chairman commented that the direction of grading is the issue, not the amount of ledge removed, and the fact that the Athletic Director has stated that the field is not usable for League competition. He agreed that it was necessary to work with the ledge, but estimated that by using fill at the ends and corners and grading from the center line to the sidelines would probably have cost less than designing a field in a pyramid shape. As an engineer, he said, he can't find any rationalization for the design of the field.

Mr. Vena agreed, stating that calculations show that more ledge probably was removed by grading to the ends rather than to the sidelines. At this point, he said, the Committee would rather have remediation than litigation, with the end product a regulation field. Mr. Mitchell stated that both soccer fields have the same pyramid design, and found it unlikely that both sites would have the same ledge formation at the center of the field.

Mr. Sorensen argued that there is more than one way to grade a field, and that it was not supposed to be competition fields, just practice fields. He agreed that one way is probably best, but that these are just High School fields, not college, so NCAA and MAA regulations don't apply. He said he can show many different schemes for designing soccer fields, but they did the best they could with the money available. Attorney Walton agreed with Mr. Sorensen that NCAA and MAA regulations are applicable to colleges but not to high schools. Mr. Vena noted that his research shows that there are different ways to grade a field, but all are from the spine, not the way these fields are graded.

Mr. Vena asked if it is Tappe's position that this is the Committee's problem to deal with. Mr. Walton replied that they will not disclose their position at this time.

4) Fees

Mr. Walton raised the issue of fees owed to Tappe', stating that they have expended monies above the contractually

agreed fee. He stated that there was a gentlemen's agreement on payment for the extra services provided. Mr. Walton complained that the Committee is withholding large sums of money owed to Tappe' and that there is nothing in the Contract about holding money not in dispute. Mr. Vena interjected that he is exercising the right of Common Law for off-setting claims. Mr. Walton argued that there is nothing in the Contract permitting the right of off-setting claims, with Mr. Vena countering that there is nothing in the Contract prohibiting it. He stated that absent language prohibiting the right of off-setting claims, it is allowed, and he is claiming the right of off-setting claims.

Recap

- 1) Mr. Walton agreed that Tappe' will send the information and report resulting from VHB's assessment of the testing on the Infiltration Basin on October 10, 2002.
- 2) Mr. Walton agreed that Tappe' will send the most current information about fees which they feel are owed to them.
- 3) Mr. Vena requested Tappe's input about the door/frame issue. He said that it is the Contractor's position that because the Architect refused to substitute particle core doors it is a design flaw. He noted that the Contractor has embraced the Kern Report to back up their conviction. Mr. Vena shared the results of the efforts of the Committee to measure the frames, and the apparent conclusion that the installation of the frames, not the doors, is the issue.

The members of the Design Team and their Attorney left at this point in the meeting.

Jackson Issues

A copy of the letter from Mr. Vena on the Committee's behalf to Tony Starr, Counsel to JCC, was distributed. The letter puts Jackson on notice to remediate the problems. The letter, dated November 7, 2002 gave Jackson until November 14 to respond. Mr. Vena reported that he hasn't received a reply from Mr. Starr. He is not aware if Pytko has sued JCC over the ledge claim, yet. In any claims against JCC for delay, only 1/2 of the \$750,000 would apply to this Committee. Pytko may have let the time run on their claim against JCC, because they have to sue on the bond within one year.

The Committee directed Mr. Vena to go to the Surety if JCC doesn't respond on the issue of the doors/frames.

Mrs. Lane left at this point in the meeting.

Mr. Vena explained the right to Off-setting Claims to the Committee in great detail. He noted that our claims are covered by Tappe's insurer, but the fees are the Committee's

responsibility, and any fees owed would off-set the amount to be paid by the insurer.

Mr. Vena informed the Committee that he has an expert lined up. John Ciccarello, who is an Architect/Contractor has served as an expert witness for Mr. Vena on many occasions. He feels very strongly that the Committee's position on the design error made by 'Tappe' in not having the ledge calculations performed in a timely manner, thereby allowing the Committee to cause the building to be raised to reduce the impact of ledge removal, is very valid and he feels very comfortable with litigating the issue.

Mr. Vena feels that the Committee's position relative to the \$220,000 that 'Tappe' is claiming in extra fees incurred prior to January 2nd, 2002 are part of their lump sum contract.


On MOTION OF MR. DAVIS, duly seconded, on a roll call vote it was unanimously

VOTED: To adjourn the Executive Session and the Sub-Committee for Close-out Meeting and return to Open Meeting of the posted Committee Meeting for the purposes of concluding any unfinished business on the Agenda and for Adjournment.

Voting in the affirmative were Mr. Morrow, Mr. Barbadora, Mr. Davis and Mr. Mitchell. There were no negative votes cast.

The Executive Session and the Sub-Committee for Close-out Meeting were adjourned at 8:10 P.M. and the Committee returned to Open Meeting.

Respectfully submitted,


Jeanne A. Gould,
Administrative Assistant

DISTRIBUTION:

Committee Members
Edward F. Vena, Esq.
George S. Murray

BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Minutes of Executive Session
December 20, 2002

Committee Members Present: Chairman David R. Morrow (after 4:30 P.M.), Vice Chairman Peter Barbadora, John A. Davis, Faith M. Lane, Donald K. Lange (until 5:30 P.M.) Neal B. Mitchell, and George S. Murray, ex officio.

Also Present: Edward F. Vena, Esq., Committee Counsel, and George Deptula, Esq.

Jeanne A. Gould, Administrative Assistant.

Pursuant to a roll call vote on a Motion by John A. Davis to adjourn the Open Meeting to Executive Session for the purpose of conducting the business of the Sub-Committee for Close-out of the High School Project, which involves the discussion of matters pertaining to litigation, with the provision that the Meeting return to Open Session for the purposes of concluding any remaining business on the Agenda and for Adjournment, Vice Chairman Peter Barbadora called the Executive Session and Meeting of the Sub-Committee for Close-out to order at 4:15 P.M. on Friday, December 20, 2002 in the Conference Room at Northbridge High School. The presence of a quorum was declared.

Voting in the affirmative on Mr. Davis' Motion were Peter Barbadora, John A. Davis, Faith M. Lane, Donald K. Lange and Neal B. Mitchell. There were no negative votes cast.

The Meeting and Executive Session of the Sub-Committee for Close-out and the Agenda had been posted on the Town Hall Bulletin Board.

Jackson Construction

Demands for Direct Payment. Mr. Vena distributed copies of his responses to the Demands for Direct Payment of LeVangie Electric Co. and Central Ceilings, Inc.

Door Frames. Mr. Vena distributed copies of a letter from Tony Starr, Jackson's Counsel, requesting specific details of non-conforming work concerning the door frames and the standards or industry specifications which the Town feels that JCC has not complied with in the installation of the door frames. The letter, dated December 11, 2002, also alleges that the Architect, not the Town, should be making the complaint.

Mr. Vena, in a response to Attorney Starr on December 18, 2002, expressed extreme displeasure with Jackson's position, citing the Committee's invitation of December 5 to JCC to conduct its own investigation. He noted that the standards used by the Committee to measure the plumbness of the frames was the standard quoted by Bob Barton, using a milled bar 35 15/16" for the measurements. Other standards affecting installation, which add up to buildup of tolerances were not measured. The standards requested by Attorney Starr were provided to him in Attorney Vena's letter of November 13, 2002. Mr. Vena informed Mr. Starr that in light of JCC's refusal to investigate the installation of the frames, and their apparent reversal of Mr. Barton's statement in meeting with the Committee on September 19, 2002 that if the frames were improperly installed that it became Jackson's problem and that Jackson would fix the problem, the Committee had no recourse other than to request the Surety to investigate and remediate the problem under Jackson's performance bond.

David Morrow arrived at this point in the meeting and assumed the chair.

Mr. Vena then distributed copies of his letter to St. Paul Surety Claims Department, demanding that under the performance bond they come in and correct and complete this work. The Demand dated December 20, 2002 included backup documentation of the Owner's repeated requests for remediation by JCC. The letter was mailed today, Certified Mail, Return Receipt Requested, and should be received by St. Paul on Monday.

Mr. Vena noted that if St. Paul does not come out to investigate and cause the remediation to be done, he will file a complaint of deceptive practice. He hopes that they will come out and conduct their own investigation. If so, they will probably say that since more than enough money has been withheld to complete the work, the Owner should have the work performed and then settle. Depending on the costs of the remediation, Mr. Vena will probably have to inform St. Paul that there is not enough money. Attorney Starr wants to settle the Punch-list, and then will probably say that there is enough left to fix the doors. He assumes that JCC will sue the Town at some point for release of the retainage. Mr. Vena said that Pytko has sued JCC, but Attorney Starr hasn't filed a third party suit yet, which puzzles him. Jackson does have different issues with Pytko which don't relate to the ledge issue with the Town. In his opinion, JCC will have to sit, negotiate and settle, at some point, probably as a result of pressure from the Surety. He thinks that the Surety is leery of a bad faith claim, because they were hit hard by a judgment against them recently, and will probably not want to chance another judgment.

Mr. Barbadora commented that, according to Jackson's Requisitions, the Town has supposedly released all retainage and is only holding Punch-list money.

Attorney Vena stated that because Subs have no contract with the Town, and they can't lien public property, their only recourse is to go to JCC's Surety, and that they have only one year to make a claim. He is advising those Subs who have made demand for direct payment to go to the Surety.

Concerning Attorney Starr's contention that the complaint on the doors/frames must come from the Architect, not the Town, Mr. Vena stated that the Architect has already stated his position in writing. The only thing which the Town must do is present its position, and he feels that the Committee has done more than enough to declare Jackson in default. It is now up to Jackson to investigate.

Mr. Mitchell stated that the issue is that JCC is saying that Tappe spec'd the wrong type of door. Mr. Vena responded that that is their issue, which they are free to pursue with Tappe'. He can't understand why Jackson has let it go to their Surety. Most companies do not want claims against their Performance Bond. He noted that this kind of problem in closing out the job is out of the ordinary, given that most awarding authorities do not reach out as much as this one has to Jackson. This Committee has reached out for a year in an attempt to settle, but Jackson has not reciprocated. If it comes to a lawsuit, the Committee will have done everything necessary to try to resolve the issue.

Mr. Barbadora asked what the next steps will be. Mr. Vena replied that 1) If the Surety or Jackson do not respond, the Town performs the work with the money which has been withheld; 2) The Town sues the Surety for unfair and deceptive practices; 3) The Committee hires an expert to determine the best way, and the cheapest way to remediate, documenting work; 4) If repairs do not carry warranty, then the Town must have new doors. He assumes that JCC is trying to lay the problem on their subs. If he can ever get Tony Starr to return his calls, he will ask what they are going to do about the doors. He can't understand JCC's failure to respond. He feels that the Committee has a good paper trail.

Mr. Barbadora asked when the Committee should go to DCAM, noting that if JCC's DCAM status is in jeopardy, they might move. Mr. Vena replied that the Committee has a right to do a DCAM report, but that if one is done, it must be an intellectually honest evaluation. The Committee must be careful about getting in a position where libel comes into play.

Mr. Vena said that the Surety has a duty to make a timely response. He will probably get a letter in 1 week saying that they will notify JCC and investigate. They have a responsibility to investigate. If he receives no response in 2 weeks, he will remind the Surety of their responsibility under law. The Surety will sometimes cede the field to the contractor although they may be reluctant to do so this time because of the recent case which went against them. Hopefully they will

come out and conduct a good faith investigation. Mr. Mitchell stated that a thorough investigation might cost the Surety as much as \$50,000. Mr. Vena replied that they will most likely to a quick and skinny investigation, then determine if there is a problem. A detailed investigation will then follow.

Mr. Morrow asked if the Committee gave permission to assume a Change Order in directing Franny's to do the work under protest. Mr. Vena replied that it was made clear that the work was being done under protest. Mr. Davis asked what happens with the other issues with Jackson. Mr. Vena said that until a court directs otherwise, that it is the Town's money, and they have claims to it.

Infiltration Basin. Mr. Vena reported that the VHB Report indicated that while there is ledge in some places, there is 18" - 24" of impermeable material placed in the bottom of the basin, violating the specifications which called for 4" of native material. The Chairman asked if it was the Committee's duty to have discovered this violation. Mr. Vena

[REDACTED] Mr. Barbadora commented that technically, there are 3 parties involved: the Owner, the Architect and the Contractor; The Owner is responsible for CMS, and that the Architect ultimately is responsible for supervision. He can see Pytko over-excavating the basin, then with 10 or 12 trucks filling it in in one day and compacting it with a big roller. Mr. Vena stated

Tappe' Associates Inc.

Outstanding Invoices. Attorney Walton has informed Attorney Vena that he will send an itemized list of expenses. Mr. Walton's position is that the design was correct, therefore the Town can't withhold money. Mr. Vena responded that the Owner has a common-law right of off-set. There are only two ways to resolve: 1) Indicate a willingness to negotiate in good faith; or 2) If Tappe' won't deal at the table, proceed with litigation.

Mr. Vena informed the Committee that he will have to formerly serve Tappe' on Monday, because the deadline for return of service with the Court is December 26th. In his opinion, Ken Walton is in conflict of interest representing both Tappe' and their Insurer, and he feels that he is trying to get himself out of a bind. Mr. Vena stated that he is going to need expert witnesses: 1) An Architect who can testify that testing wasn't done properly and in a timely manner; 2) An Engineer to determine if the building could

have been raised, and what the off-setting cost would have been; and 3) An expert on how to design soccer fields. The sooner we get their reports, the better. The Architect has a right to request, through interrogatories, who the experts are and what their testimony will be. Mr. Vena noted that he will hire the experts through his office, direct their efforts, and back-charge the Town. His estimates of cost are in the \$10,000 range for an Architect, and in the \$15,000 to \$20,000 range for the Engineers. The Chairman asked if Mr. Vena could put together a schedule of costs, to help the Committee get a handle on the budget. Mr. Vena said [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Mitchell commented that the Committee should provide support for our Counsel and authorize him to get the right experts to win. Mr. Vena noted that with good experts and good reports, the chance of winning goes up exponentially. It is important that the experts work with the Attorney to preserve Attorney/Client privilege. This keeps the Committee members from having to be deposed.

On MOTION OF MR. DAVIS, duly seconded, on a roll call vote, it was unanimously

VOTED: To authorize the Committee's Counsel to engage the necessary and appropriate consultants to prepare the case against Tappe' Associates, Inc.

Voting in the affirmative were Mr. Morrow, Mr. Barbadora, Mr. Davis, Mrs. Lane and Mr. Mitchell (Mr. Lange having left the meeting prior to this Motion). There were no negative votes cast.

Warranty Items. The question of work to be done and repairs made on warranty items was raised. Mr. Vena advised that Jackson be notified that if they won't complete work on warrantied items, then the Committee will cause the work to be done.

On MOTION OF MR. MITCHELL, duly seconded, it was unanimously

VOTED: To authorize George Murray to sent a list of Warranty Items under which repairs are needed to Counsel Edward F. Vena, Esq., to be forwarded to Jackson Construction Company for action.

On MOTION OF MR. DAVIS, duly seconded, on a roll call vote, it was unanimously

VOTED: To adjourn the Executive Session and the Meeting of the Sub-Committee for Close-out of the Northbridge High School Project and to return to Open Meeting for the purposes of concluding any remaining business on the Agenda and for Adjournment.

Voting in the affirmative were Mr. Morrow, Mr. Barbadora, Mr. Davis, Mrs. Lane and Mr. Mitchell. There were no negative votes cast.

The Meeting of the Sub-Committee for Close-out and the Executive Session were adjourned at 5:60 P.M.

Respectfully submitted,



Jeanne A. Gould
Administrative Assistant

DISTRIBUTION:

Committee Members
George S. Murray
Edward F. Vena, Esq.