

BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Minutes of Executive Session
January 16, 2003

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

Also Present: George S. Murray, ex officio.

Jeanne A. Gould, Administrative Assistant.

Pursuant to a roll call vote on a Motion by Donald K. Lange to adjourn the Open Meeting to Executive Session for the purpose of discussing matters involving litigation, not to return to Open Meeting, the Committee went into Executive Session at 8:55 P.M.

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

The Chairman called the Executive Session to order at 8:55 P.M. and declared the presence of a quorum. Mr. Murray was invited to attend the Session.

The Committee's Assistant was requested to speak with Attorney Ed Vena about the following matters:

- 1) The Request for Public Records from Attorney Starr, Counsel for Jackson Construction Company.
- 2) Advise him that because the Committee has only one set of Plans, which have the Addenda pasted to them, it will be necessary for his Consultant to come out to the Northbridge High School Director of Maintenance's Office to look at them. An area will be set aside for him to study the Plans, and copies of anything he needs can be made.
- 3) Inform him that Gerard R. Goucher, P.E., Senior Engineer, Surety Claims Dept. of St. Paul Surety spent no more than 1 hour at the school today, with Herb Chouinard and Robert Barton, to inspect the doors and frames. Mr. Murray had asked him to look at the doors for paint, indicating sticking, and at the damage to the frames. He offered to accompany them, but they indicated to him that they would do the inspection alone.

- 3) The Committee wishes to know if the door frame measurements and the humidity tests are covered by Attorney/Client privilege.
- 4) Inform him that Mr. Murray has found a stress crack which goes vertically up the wall, then runs horizontally across to a light switch. The dry wall is cracked, and Mr. Murray is of the opinion that it is indicative of a structural defect.
- 5) There appears to be a warranty issue with Sagamore and KMD. One of the heating units can't be used because it draws carbon monoxide back into the building. The unit has only been run 40 hours.

The balancing report on the heating system is not worth the paper it is printed on, according to Mr. Murray. It was noted by Committee members that the Committee wanted to pull it out of the specs, and hire its own balancing company. Jim Byrne of CMS advised the Committee not to do so, because all of the balancers are certified. The Committee accepted Mr. Byrne's advice, and the requirement for a balancing report was left in the specs.

Meeting on Thursday, January 30, 2003 at 7:00 P.M.

litigation
fall
Pending the availability of the Committee's Counsel, a meeting will be held on Thursday, January 30, 2003, to which the Chairman of the Board of Selectmen and the Chairman of the Finance Committee will be invited. The purpose of the meeting is to make the two Chairmen aware of pending ~~legislation~~ and the estimated costs associated with defending the Town's position. A request will be made to earmark a portion of any unexpended arbitrage money earned on the project for these expenses.

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

VOTED: To adjourn the Executive Session, not to return to Open Meeting, thereby adjourning the Open Meeting, also.

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

The Executive Session and the Meeting adjourned at 9:45 P.M.

Respectfully submitted,

Jeanne A. Gould
Jeanne A. Gould,
Administrative Assistant

DISTRIBUTION: Committee Members; Edward F. Vena, Esq.

BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Minutes of Executive Session
January 30, 2003

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

Also Present: Edward F. Vena, Esq.; Joseph Montecalvo,
Chairman of the Board of Selectmen; and Mary
Frances Powers, Chairman of the Finance
Committee.

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 involving litigation, with the provision that the Session return to Open Meeting for the purposes of concluding remaining business on the Agenda and for Adjournment, the Committee went into Executive Session at 7:10 P.M.

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

The Chairman called the Executive Session to order at 7:10 P.M. and declared the presence of a quorum. Mr. Murray, Mr. Montecalvo and Miss Powers were invited to attend the Executive Session.

The Chairman introduced the Committee's Counsel Edward F. Vena to the guests and requested that he apprise them of the situation regarding pending litigation.

Pending Litigation with Tappe' Associates, Inc.

Mr. Vena reported that Tappe's Attorney has indicated a wish to settle matters pending. Attorney Walton still hasn't specified Tappe's claims, but is working on delineating them. It is Mr. Vena's assumption that Mr. Walton has obviously delved into the possible claims, and that this is driving his desire to go to mediation. Mr. Vena informed him that any mediation would involve money coming the Town's way.

Outline of Claims and Counterclaims

Mr. Vena proceeded to outline for the Chairmen of the Board of Selectmen and Finance Committee the possible claims and counterclaims against Tappe' and Jackson, and by Tappe' and Jackson, and the interdependence of the possible claims.

Town's Claims against Tappe'

- 1) Errors and Omissions - Ledge: Failed to perform due diligence in testing in a timely manner, which could have resulted in raising the building, eliminating cost over-run for excessive ledge removal.
- 2) Errors in design of the soccer field, resulting in design of a field which is not in accordance with soccer league specifications and guidelines.
- 3) Infiltration Basin: Faulty design and/or placement of the Infiltration Basin, resulting in a basin which does not function; in addition to the question of the design and siting of the basin, there is also a question of inadequate supervision of the construction of the basin.
- 4) Doors: question of design versus contractor's installation of doors and frames, with TAI claiming that Jackson is at fault and Jackson claiming that TAI is at fault. Meanwhile, the Town must have the doors fixed so that they work properly in all weather conditions.
- 5) Possible spill-over claims by Pytko for ledge removal.

The Chairman outlined the history of Pytko's claims and the Committee's efforts to determine what if any of these claims are legitimate, and whether claims were made in a timely manner in accordance with contract documents.

Tappe's Claims against the Town

Tappe' is asserting a counterclaim against the Town in the Amount of \$200,000 for Consultant Fees and Reimbursables occasioned by the delay in finishing the job, which costs they claim they incurred in excess of the contract amount.

The Chairman outlined the history of these claims and the Committee's defense against them.

- 1) \$200,000 claim: There has been no satisfactory back-up for this claim. A large portion of the amount is for work which was included in the lump-sum Contract amount agreed upon. The basic services were to carry

through to January 1, 2003. Payment for services and reimbursables from January 1, 2003 through May 2003 has been made, with approximately \$35,000 owed for services from June through the present date.

- 2) A large portion of the claims for additional services, 100,000 - 200,000, were for services to redesign and correct errors or omissions.
- 3) The Committee has not received a break-down of the costs for redesign to correct such errors and omissions.
- 4) Doors: Approximately 200 doors are not closing properly for half of the year. The report by Kern Associates, which was commissioned by Tappe' to rebut Jackson's claims that the problem lies with the door which was specified and not the installation, is worse than useless; it is being used by Jackson to bolster their claims.

Town's Claims against Jackson Construction Company

- 1) Doors: 176 doors are sticking and do not close properly for at least half of the year. The Committee is estimating a cost of \$275,000 to fix the doors.
- 2) Ledge: The Committee is contesting costs of approximately \$300,000 for ledge removal. Pytko's requests for payment were not made in accordance with the requirements of the specifications and contract documents: Amounts were not quantified before removal; documentation is false, erroneous and incomplete and was not submitted in a timely manner; and there are claims for ledge removal where it can be proven that no ledge was present.
- 3) Consultants' Fees: Because of Jackson's failure to complete work on schedule, additional costs were incurred by the Town for Architectural and consultant services, and for additional Project Management consultant services, amounting to over \$200,000.
- 4) Punch-list Issues: Work still not completed amounts to approximately \$100,000.
- 5) Landscaping Costs: There is a request for a Change Order in the amount of \$60,000 for corrective work performed by Franny's Landscaping under protest.

Mr. Vena explained the interconnection between Tappe' and Jackson regarding contingent issues. Selectman Montecalvo asked if he were correct in assuming that because Tappe' and Jackson have no Contract, that the Town is in the middle. Mr. Vena verified that this is correct, stating that the Town becomes the third party in any action.

Jackson's Claims Against the Town

- 1) Jackson is looking for reimbursement by the Town for claims which Pytko has made against JCC.
- 2) Jackson is looking for release of money being withheld, claiming that it has completed the Job, with the exception of remaining items on the Punch-List.
- 3) Jackson is looking for a Change Order in the amount of \$60,000 for work performed by Franny's Landscaping under protest.
- 4) Jackson is disclaiming any responsibility for the problem with the doors, stating that it is a design issue, not a construction issue.

Mr. Vena explained that although Jackson has been sued by Pytko for ledge claims and other issues, Jackson has not yet sued the Town.

Mr. Vena described the Statute of Repose for claims against the Architect, and explained why it was necessary to file litigation against the Architect to protect the Town's rights to collect on claims against Tappe'.

Mr. Vena presented a history of the door/frame problems and Jackson's "attempts" to fix these problems. He also reported to the Board Chairmen that he has put their surety on notice, but so far has received just cursory attention from the surety company. A letter dated January 27, 2003 has been received from Jackson, reporting that an engineer from the St. Paul Surety Company accompanied Mr. Barton and Mr. Chouinard of JCC on an inspection tour on January 16, and found all wood doors in the school to be opening and closing properly. Again they quoted the Kern report and the manufacturer's consultant in stating that the problem with sticking during the warm months is due to the door which was specified, not the installation. They invite the Committee to participate in a joint walk-through with its counsel and any door experts the Committee wishes to include. Mr. Murray reported that the "tour" took approximately one hour, making it virtually impossible for all 300+ doors to have been opened, closed and examined.

Mr. Vena advised that the Committee needs to hire a Professional Engineer who 1) has the ability to testify that the problem is not with the wood stave doors which were specified; 2) can perform measurement of the frames which will stand up in court; and 3) can propose a fix for the problem. Then either Jackson fixes the doors or the Committee fixes them with the money being withheld. JCC is simply not addressing the issue, he said. He is ready to make a recommendation to hire CDC (Certified Door Consultants), who are usually manufacturers'

reps. He has a proposal from an Architectural/Engineering Consultant, Simpson and Gumpert. He asked them for a proposal to do 30 or 40 doors and frames, and provide an estimate/opinion on the problem. Then if necessary, the Committee can take it to the next step with S & G. Their report will be presented to Jackson and their Surety. As to the ledge claims, Mr. Vena reiterated that Pytko has sued Jackson, but the Town has not been 3rd parties yet. He feels that within the framework of the Contract documents, the Town is due a considerable portion of the consultant costs. Franny's claim for fixing their own failures is in issue now.

Mr. Vena is very determined that the Tappe' claims and counter-claims can not offset each other and result in a wash. Some money has to come to the Town. They must live by their lump sum Contract. It is also clear that Jackson's Contract calls for responsibility for consultant's costs after Substantial Completion.

Mr. Vena advised [REDACTED]

Mr. Barbadora recapped the budget and expenditures to date:

Total project budget:	28,000,000
Expended to date:	<u>27,289,000</u>
Amount remaining:	711,000
Of the 711,000 remaining,	
Withheld from Jackson:	511,000
Unencumbered:	200,000.

Mr. Barbadora outlined the work to be fixed:

- 1) Doors
- 2) Soccer Fields
- 3) Infiltration Basin
- 4) Punch-List

Total to complete this work is conceivably 800,000.

Mr. Montecalvo questioned whether these issues can be fixed before settling with Jackson. Mr. Vena replied that they can be: we give JCC and their surety an opportunity to fix the problems; if they do not, then the Committee fixes them using the money being withheld. He emphasized that the basin, doors and soccer fields must be fixed. Mr. Montecalvo questioned what the time line for litigation would be, with Mr. Vena responding that in Worcester County it's 2-3 years.

Mr. Vena explained that up-front reports are expensive, but that he feels that he has done well with Simpson & Gumpert whose proposal is \$15,000. With a good report he can go to JCC and their Surety with something to stand on. He was asked what the costs to pursue these issues would be. Mr. Vena estimated that the discovery phase could run 100,000 for legal costs and 100,000 for experts.

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

VOTED: to authorize Attorney Vena to hire expert consultants as are necessary to prepare for the defense of the Town's claims against Tappe' Associates, Inc. and Jackson Construction Company.

JCC's Request for Public Documents

Mr. Vena distributed copies of a proposed reply to Atty. Tony Starr's response to Mrs. Gould's letter of January 18, 2003, estimating the cost to provide the documents requested on January 13, 2003. Mr. Starr's response to the cost estimate, dated January 26, 2003, was both insulting and condescending. Mrs. Gould, with the Chairman's approval, forwarded the letter to Mr. Vena, who subsequently received the Chairman's approval to answer on behalf of the Committee.

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

VOTED: To approve the letter dated January 30, 2003 written by Attorney Vena to Attorney Starr re the FOIA Request, in response to Mr. Starr's issues with the estimated cost to comply with his request for documents, in which Mr. Vena refers to the provisions of 950 CMR 32.00, and to the all-encompassing request for documents.

Mr. Murray reported that he met today with the structural consultants hired by Mr. Vena, to review the plans and the stress cracks which are occurring. He noted that only 3 doors are now sticking - 1 metal and 2 wood doors. Mr. Murray noted that his records of relative humidity in the building over the last 17 days has shown levels of 17 1/2%. With the extreme cold, dry air which we have been experiencing, this is probably the lowest humidity level which can be expected. He would like to take one of the doors on which the butts have been thrown, remove the packing, and put the butts back in the original position to see what happens. Mr. Vena asked that he refrain from doing so until after the original phase of testing has been completed by Simpson & Gumpert. Then some destructive testing can be done. Mr. Murray suggested that with the low humidity, and the butts back in the original position, the doors might not be closing and latching properly.

Miss Powers suggested, with Mr. Montecalvo agreeing, that the Town needs to make sure that the Stabilization Fund doesn't go below \$200,000, in order to insure that funds are available to proceed with litigation, if necessary, to protect the Town's rights. She reported that all arbitrage monies connected with the project have been transferred to the General Fund, so there are no additional funds available from that source. Both expressed approval with the course of action being pursued by the Committee and its Counsel to insure that the Town receives what it is due, and that all problems and issues are resolved to the Town's advantage.

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

VOTED: To adjourn the Executive Session 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, Mr. Lange, and Mr. Mitchell. There were no negative votes cast.

The Executive Session was adjourned and the Committee returned to Open Meeting at 8:30 P.M.

Respectfully submitted,



Jeanne A. Gould
Administrative Assistant

DISTRIBUTION:

Committee Members
Edward F. Vena, Esq.

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BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Minutes of Executive Session
February 27, 2003

Committee Members Present: Vice Chairman Peter Barbadora,
John A. Davis, Faith M. Lane,
Esq., Donald K. Lange and Neal
B. Mitchell, Jr.; 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 discussing matters involving litigation, with the provision that the Session return to Open Meeting for the purposes of concluding remaining business on the Agenda and for Adjournment, the Committee went into Executive Session at 7:30 P.M.

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

The Vice Chairman called the Executive Session to order at 7:30 P.M. and declared the presence of a quorum. Mr. Murray was invited to attend the Executive Session.

Northbridge High School Project

Doors/Frames. Mr. Vena reported on the preliminary findings of Milan Vatovec of Simpson, Gumpertz & Heger, who measured 31 doors at random, as the first phase of the initial engagement of S, G & H to measure 31-40 doors and frames to determine if a trend could be established. Mr. Vatovec found problems with all 31 door frames, not so much with plumbness, as with twist. He reported to Mr. Vena that the doors are quite uniform in size, and are presently at their lowest dimension, due to the extremely low humidity in the building. The preliminary finding is that the frames are out of tolerance, but that the doors do not appear to be out of tolerance.

If the stave core doors are not manufactured of the same species of wood, the problem would still be Jackson's, because the specs called for the same species to be used. The expert will do more research on the Manufacturer's Specs. Mr. Vatovec used a special tool to measure plumbness and twist.

According to the HMMA Specifications being used, every one of the 31 frames tested had one or more deviations in dimensions.

Mr. Vena informed the Committee that he received a letter from Jackson's Surety requesting any testing information which the Committee has. They indicated that they have inspected the doors, and absent any expert testing results from the Committee, they are ready to close the file on the case. Mr. Vena stated that if the results come back as the preliminary examination indicates, he will send the Report to the Surety and Jackson Construction Company and put the onus on the Surety Company to cause the doors and frames to be repaired.

The next step will be the Final Preliminary Report from Mr. Vatovec. With a favorable report, he can make a strong demand on JCC and its Surety. The thrown butts were a real concern to the Engineer. Mr. Murray reported that he removed the butts on 308 and the door won't close - it is hitting the jamb. Mr. Vena said that the evidence to date seems to indicate that the frames are the problem, and now we have to follow the evidence. The firm of Simpson, Gumpertz & Heger carries a lot of weight in legal circles. A good Surety will try to rectify the situation.

After final determination that the frames are the problem, the next step is the fix. The second stage will be to have JCC submit a fix for the Committee to have reviewed by its expert. He feels that we are coming to a point where we have good evidence. He suggested that Jackson should be back-charged for costs incurred by the Town to assemble the proof that JCC improperly installed the frames.

FOIA Request by Jackson's Attorney. Mr. Vena recounted a telephone conversation with Attorney Starr, who appeared to be somewhat chastened and somewhat more reasonable in his request. He is ready to refine his request to include only the Committee's records, not CMS's. He seems to be looking specifically for the Kern Report and anything related to it. Mr. Vena will have to review the records before letting Mr. Starr see them. He has researched the submittals which Tappe' provided to him, and finds nothing about substitution of particle core doors for the stave core doors which were specified.

Tappe' Claims re Raising the Building to Avoid Ledge. Mr. Vena reported that his expert has arrived at the conclusion, generally, that the building could have been raised to avoid the ledge, with a resulting savings in cost. He is now going to do the calculations necessary to determine any off-setting costs of raising the building. He has concluded that it was feasible to raise the building and would have eliminated much of the ledge cost. Attorney Ken Walton of Donovan Hadem wants to take the matter to mediation.

Soccer Fields. Mr. Vena reported that he is having

difficulty finding a soccer field expert. Mr. Mitchell suggested a Professor at UMass who co-authored the book which CRJA is relying on to justify its position. Mr. Vena does have an Architect to testify on "Standard of Care". Once he finds a soccer field expert, he should have the whole Tappe' expert package on board.

Mr. Davis inquired if anyone leaving the Committee could still be called on to testify in any litigation. Mr. Vena replied that certain Committee members might have to serve as witnesses, or could be deposed; former Committee members might still be called.

Infiltration Basin. There is still no comment on responsibility for the failure of the Infiltration Basin. The Surety has been unresponsive, and may claim it is a design issue. The Surety is in a tough place, and seems to be playing a game. They can't just rely on their Principal's declarations, they must conduct a good faith investigation. They don't like to be put in the middle of their Principal and the Oblige. They are constantly asking for more information.

Mr. Barbadora questioned what would happen if the Surety goes onto liquidation. Mr. Vena responded that the policies would then be voided. They are obligated, however, to carry reserve funds. Returns on a claim are in short supply, though, with low yield on a claim, which might take many years to receive.

Next 2 - 4 Weeks:

- 1) The Door Report should be completed.
- 2) Go after the Surety; if someone violates a Contract, they are in material breach of Contract, and guilty of deceptive practice. The Committee can tell them to fix the doors, under protest, reserving their rights, and fight the matter out later.
- 3) Wrap up the Tappe' experts, but not settle until all JCC claims are wrapped up. There is definitely money coming from Tappe'.
- 4) If JCC doesn't fix the Infiltration Basin, the Committee does and back-charges Jackson. Any fix will have to wait until the weather breaks.

Cracks in Tiles in Lobby. Mr. Vena reported that he and Milan Vatovec spoke with Paul Kelly, a concrete expert, about the cracks which are appearing in the Lobby Floor. Mr. Kelly is not terribly concerned, and doesn't suspect structural defects. It could be that expansion control joints in the concrete were not matched with expansion joints in the tile. At some point, the tiles may have to be replaced, where cracked. Mr. Vena said that he could get a study done if the Committee

wants to spend the money. Mr. Murray suggested that the Committee wait and observe what happens.

Punch-List. Mr. Murray reported that Herb Chouinard has been in the building in connection with work on the Punch-List. There have been some leaks in the roof, and Mr. Murray has spoken with Mr. Chouinard about them. They are mainly working on mechanicals and other Punch-List items. There are still problems with the heating units.

Mr. Vena said that while it is O.K. for Jackson and Mr. Chouinard to be in the building to work on Punch-List items, he does not want Mr. Chouinard just wandering about the building.

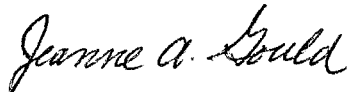
On MOTION OF MR. DAVIS, duly seconded, on a roll call vote, it was unanimously

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

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

The Executive Session adjourned and the Committee returned to Open Meeting at 8:40 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
March 18, 2003

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

Also Present: Edward F. Vena, Esq., 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 discussing matters involving litigation, with the provision that the Session return to Open Meeting for the purposes of concluding remaining business on the Agenda and for Adjournment, the Committee went into Executive Session at 5:25 P.M.

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

The Chairman called the Executive Session to order at 5:25 P.M. and declared the presence of a quorum. Mr. Murray was invited to attend the Executive Session.

Northbridge High School Project Closeout

Mr. Vena reported that he had forwarded the results of the measurements of the doors/frames by Simpson, Gumpertz and Heger to Joseph M. Hendriquez, Claim Attorney Surety, USF&G. SG&H is very concerned about the amount of expansion in some of the doors. He reported to the Committee that he and Mr. Murray had a conversation about waiting until humid weather returns and having SG&H measure the doors under those conditions.

Mr. Vena presented 2 Proposals from SG&H: One proposal was to test doors in the SGH Laboratory now, at a total cost of \$7,029.00; the second proposal is for an additional Site Visit to remeasure the doors during the summer, at a total cost of \$2,996.00.

Mr. Vena shared a Memorandum from Milan Vatovec which

recommends that 3 doors be obtained from the school for destructive testing: at least one from the group that had no sticking problems and at least one from the group with problems. Baseline measurements would be determined prior to placing the doors in various environments in the SGH laboratory. The measurements would start with low relative humidity and increased after equilibrium is reached. They would monitor dimensional change in four stages of humidity (15%, 25%, 50% and 70%) to determine the relative incremental changes in the behavior of the wood. This testing cannot be done in the field with accuracy, because of the inability to control the conditions. After the completion of the moisture tests, which would take approximately one month, SGH proposes to perform destructive tests to determine the door makeup: veneer, crossband, core staves, finishes and whether or not they are sealed, all in accordance with the specifications. Microscopic investigation would be performed to identify wood species, age, and whether all staves are the same species.

Mr. Vena emphasized the need to determine through lab testing whether the doors are manufactured correctly. It is puzzling that some of the doors work even in frames which are out of tolerance, while some fail to work properly in frames which comply with specifications as to tolerances.

There would be costs involved in removing doors for testing, because there would have to be replacement doors bought and installed. Mr. Vena explained that while the lab testing will cost \$4,000 more than field testing, the results will be much more accurate and more valuable in determining if there is a problem with the doors as well as the frames. The information which he needs is best performed in a lab.

Mr. Murray suggested that the Committee should consider doing both: 1) Destructive testing on 3 doors now, followed by 2) Measurement of all doors in August.

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

VOTED: To authorize Counsel to arrange for Simpson, Gumpertz and Heger to remove three doors for destructive testing immediately, at a cost of \$7,029.00, and to perform testing on more doors as needed.

Mr. Mitchell advocated testing on more than 3 doors, suggesting 10 or 11, but agreed that starting with 3 would establish a pattern which may indicate the need to remove and test more doors. He is concerned that the Specifications might be ambiguous, allowing for different interpretations. Mr. Vena replied that he continues to keep an open mind as to the role of the Architect in the door/frame problems.

Mr. Murray informed the Committee that replacement doors would be needed for the 3 doors removed, because classrooms must be secured. Discussion was held regarding whether to purchase the same type of door (wood stave), particle core or metal. It was determined that the same type of doors should be purchased, and that the doors should be removed without tipping off Jackson Construction Company about what was being done.

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

VOTED: To authorize George Murray to purchase three (3) wood stave doors to replace the doors to be used for testing, or as many additional doors as need to be replaced for additional testing.

Mr. Vena distributed copies of his letter to Attorney Hendriquez, Claim Attorney Surety for USF&G protesting the simplistic examination of the doors performed by the Surety, and informing him of the significant costs being incurred by the Committee to conduct the type of investigation that St. Paul should have conducted. He alleges in his letter that St. Paul has not conducted a good faith investigation and has ceded the field to its principal. Mr. Vena's letter puts St. Paul on notice that failure to measure the doors and frames for compliance with the contract and to repair or replace all doors and/or doorframes that are either incorrectly manufactured or installed will result in unfair and deceptive trade practices in violation of M.G.L.c.176D and c.93A, for which they can be found liable for up to treble damages including treble costs and treble attorneys' fees.

FOIA Request by Attorney Starr (JCC)

Mr. Vena distributed copies of Attorney Starr's response to his letter of March 7, 2003, dated March 17, 2003 relative to his request for public records. Attorney Starr has agreed to allow time for exempted documents to be extracted, but will require a log of documents which are responsive to his request for which an exemption is asserted. It is his intention to come to Northbridge to inspect the documents prior to copying. He also assumes that time spent reviewing and extracting the documents to be exempted will be at Committee expense, not Starr/JCC's expense. Mr. Vena intends to set him straight as to the error of this assumption.

Pytko/JCC Litigation

Mr. Vena distributed copies of a letter which he received from Attorney Thomas W. Heald as Counsel to Pytko, including a summary of the amounts claimed to be due to Pytko, indicating claims which he believes to be pass-through claims to the

Town of Northbridge. Mr. Heald asserts that Pytko in his subcontract with JCC has the right to demand mediation, as does the JCC/Town of Northbridge Contract, as well as the right to consider arbitration of disputes. He requests that Jackson and the Town of Northbridge agree to proceed with mediation/arbitration of the ledge issues on a cooperative basis.

Mr. Vena informed the Committee that Attorneys Heald and Starr had initiated a conference call to him concerning the matter of mediation/arbitration. Mr. Vena responded that while Pytko's contract might include arbitration, JCC's contract with the Town does not, unless the Committee elects to go to arbitration. Neither Mr. Vena nor the Committee will entertain arbitration. Mr. Heald and Mr. Starr broached the subject of mediation in their call to Mr. Vena, who, while he does not advise it, informed the other attorneys that he would bring the offer to the Committee.

Mr. Vena [REDACTED]
[REDACTED]
[REDACTED] Attorney Starr suggested that the Committee free up some money to negotiate a settlement on the JCC/Pytko problem, which Mr. Vena refused to do. He said [REDACTED]

[REDACTED] He informed Mr. Starr that if they 3rd-party the Town, we may file for summary judgement - failure to follow specifications. He also informed Mr. Starr that he would definitely not consider arbitration, and that the offer made last January (pre-door) was no longer on the table.

When confronted with the Infiltration Basin problem, Mr. Starr said that was an easy fix, costing only \$20,000, and that Jackson will take care of it. Mr. Vena has not seen any plan to do so, however. He informed Mr. Starr that the Committee will have it fixed and back-charge Jackson if action is not forthcoming as soon as weather permits.

Litigation Against Tappe' re Ledge

Mrs. Lane asked if the Consultant hired by Mr. Vena has completed his report on the ledge matter, particularly the matter of due care in siting the building. He replied that the Consultant is doing his calculations now to determine what the savings and off-setting costs would have been if the Architect had performed testing in a timely manner and raised the building to avoid excessive amounts of ledge. Mr. Barbadora suggested having the Consultant come to a Meeting to report his findings to the Committee.

Mr. Vena stated that the standard of care can be modified in a Contract. The language in the Town's Contract with Tappe'

might be construed to indicate a higher standard of due care than is normally indicated. This is why he feels that it is necessary to have an Architect Consultant on the case to provide the expertise needed to get over the bar.

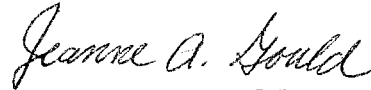
On MOTION OF MR. DAVIS, duly seconded, it was unanimously

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 on Mr. Davis' Motion were Mr. Morrow, Mr. Barbadora, Mr. Davis, Mrs. Lane, Mr. Lange and Mr. Mitchell. There were no negative votes cast.

The Executive Session adjourned and the Committee returned to Open Meeting at 6:15 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
April 24, 2003

Committee Members Present: Chairman David R. Morrow, Vice
Chairman Peter Barbadora, John
A. Davis, Donald K. Lange, Neal
B. Mitchell, Jr. and George S.
Murray.

Also Present: Edward F. Vena, Esq., Committee's 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 discussing matters involving litigation, with the provision that the Session return to Open Meeting for the purposes of concluding remaining business on the Agenda and for Adjournment, the Committee went into Executive Session at 6:12 P.M.

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

The Chairman called the Executive Session to order at 6:12 P.M. in the Conference Room at Northbridge High School and declared the presence of a quorum.

Northbridge High School Project Closeout

Jackson Construction Company Suits. Attorney Vena presented an update on the two suits which have been filed against the Town of Northbridge, acting by and through its Building, Planning and Construction Committee, by Jackson Construction Company. He is puzzled as to why they didn't combine the two suits.

The first suit, dated April 09, 2003 and filed with the Norfolk Superior Court, alleges damages resulting from "Northbridge's breach of contract and failure to pay Jackson certain amounts of money for 1) the work Jackson performed; and 2) the delays and disruptions Jackson experienced, which were caused by Northbridge". In their suit, Jackson claims a balance due of \$598,199.00 and seeks judgment in that amount, plus attorneys' fees and interest thereon.

The second suit is a third-party suit arising out of Pytko Construction Corp.'s action against Jackson Construction Company and United States Fidelity and Guaranty Co. which was filed on September 19, 2002, alleging that Pytko is entitled to payment of over \$793,000 for labor and materials supplied on the Project. On November 27, 2002, Jackson filed its Answer and denied that Pytko is entitled to the damages claimed in their complaint. Jackson's Answer cited Pytko's failure to provide proper written notice of its claim for certain rock excavation work, as required by Article 4.3.2 of the Contract, thereby waiving its claim for payment for such work. Jackson's Answer also cites Pytko's failure to comply with Section 02225 of the Contract by removing rock before the material was cross-sectioned and before it notified the Architect of rock it encountered, thereby waiving its claim for payment. Jackson's third-party suit against the Town of Northbridge, acting by and through its Building, Planning and Construction Committee, asserts that to the extent that Jackson is found liable to Pytko, all of Pytko's claims are pass-through claims to the Owner, making Northbridge liable to Jackson for any and all damages found for Pytko against Jackson and Jackson's surety, USF&G, plus Pytko's attorneys' fees, if awarded, and interest, as well as Jackson's attorneys' fees for defending the instant action by Pytko.

The third-party suit was filed April 17, 2003; obviously Jackson obtained leave of Court to do so, Mr. Vena stated [REDACTED]

In the context of the original Jackson suit, Mr. Vena said that he will probably third-party Tappe'. If Jackson alleges the door problems are a result of Tappe's poor design, Jackson has the burden to prove it is bad design; Tappe' has the burden to prove that the design is good. In any case, he will file a bad faith claim against the Surety regarding the doors.

Referring to Jackson's suit, Mr. Vena noted that JCC in adding claims for delays has opened up the matter of liquidated damages. [REDACTED]

Mr. Vena reported that Jackson's Attorney has asked him if he will accept service on behalf of the Town, and he requested that the Committee decide if he should receive service or if service should go to the Town Clerk.

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

VOTED: To direct Counsel Edward F. Vena to accept service of the Third-Party Suit filed by Jackson Construction Company against the Town of Northbridge, acting by and through its Building, Planning and Construction Committee, arising out of the suit by Pytko Construction Corp. against Jackson Construction Company at his discretion.

Mr. Vena stated that he may not want to accept service. He has just received a copy of the suit and wishes to research it further.

Proposed Suit Against Jackson and USF&G

Mr. Vena will be filing a suit against Jackson and their surety. The Surety took over 30 days responding to claims, constituting an unfair and deceptive practice. Mr. Vena distributed copies of a letter to Joseph M. Henriquez, Esq., Claim Attorney Surety, USF&G, alleging unfair and deceptive trade practices in their failure to respond to his letter dated March 13, 2003, and failure to conduct an independent, timely and good faith investigation of Northbridge's claims, and failure to settle the claim where liability has been demonstrated to be reasonably clear. This second letter, dated April 17, 2003 elicited a response from Mr. Henriquez dated April 24, 2003, which Mr. Vena received via facsimile as he was leaving his office for this meeting. Mr. Henriquez' letter was distributed, and appears to provide insufficient response to the Committee's claims. The lack of independent action and good faith investigation by USF&G, according to Mr. Vena, supports his contention that the Town has a basis for a bad faith claim.

Copies of a letter from Robert B. Barton, Jr., Vice President of Jackson Construction Company to David R. Morrow, Committee Chairman, dated April 16, 2003 (with Mr. Henriquez copied) were distributed to members. The letter "For Settlement Purposes" included a copy of the lawsuit filed April 09, 2003. Quoting the monetary amounts which the Committee listed for withholding in September 2002 as \$349,515.00 (an addition of the figures quoted totals \$330,515.00), Mr. Barton alleges that the total amount being withheld exceeds the agreed upon amounts by \$191,580.00. He indicates that if \$191,580.00 is paid immediately he is willing to sit down with the Committee to discuss resolution of the balance, but otherwise, Jackson will move forward aggressively with their suit.

Mr. Vena will answer this letter on the Committee's behalf. He will add in the deficiencies in the fields, drainage, Infiltration Basin, rear detention pond, the swale at the top of the roadway to the fields, the doors/doorframes, HVAC problems and other items on the list prepared for him by Mr. Murray.

Tappe' Suit

Copies of the following documents prepared by Mr. Vena and sent to Kenneth B. Walton, Esq., Attorney for Tappe' were received and distributed to Committee members:

- 1) Response of the Plaintiff, Town of Northbridge, to the First Request for Production of Documents of the Defendant to the Plaintiff Town of Northbridge;
- 2) Plaintiff's First Set of Interrogatories to the Defendant Tappe' Associates, Inc.; and
- 3) Plaintiff's First Request for the Production of Documents to the Defendant Tappe' Associates, Inc.

Mr. Vena presented the Committee with a letter from Attorney Walton claiming that the Town of Northbridge currently owes the Design Team a total of \$213,652.12 in outstanding fees and expenses, excluding interest. Accompanying the letter were two volumes of back-up documents to support their claim, which were turned over to the Committee's Assistant to separate, organize and itemize by category. Mr. Barbadora reminded Committee members and Counsel that Tappe' was bound to provide services through January 1, 2002 without additional compensation or reimbursement for expenses. Mr. Walton, in his letter indicated that the Design Team remains open to meeting to discuss a potential resolution of this matter or to non-binding mediation.

Expert Witnesses

Mr. Vena reported that he is still trying to tie down the soccer field expert from the University of Massachusetts. Mr. Mitchell offered his assistance, if necessary. Mr. Vena noted that Simpson, Gumpertz & Heger is coming out for the three doors to be tested on Monday. He wants one door which has not had any problems with sticking. The new doors are ready to be installed.

Mr. Vena reported that discovery is underway on the Tappe' suit. Answers are being prepared for interrogatories

from Tappe'. He is preparing Discovery questions for Tappe' to answer.

Mr. Murray asked if he should stay with KMD for corrections and repairs to the HVAC units, in spite of their failure to make corrections to date. Mr. Vena advised that they be given a chance to come out and make corrections; if they fail to do so, then Mr. Murray can seek someone else to provide the necessary work. In this event, Jackson will be back-charged.

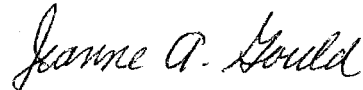
On MOTION OF MR. DAVIS, duly seconded, on a roll call vote, it was unanimously

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 on Mr. Davis' Motion were Mr. Morrow, Mr. Barbadora, Mr. Davis, Mr. Lange, Mr. Mitchell and Mr. Murray. Mrs. Lane had arrived just prior to the Motion to adjourn the Executive Session and refrained from voting. There were no negative votes cast.

The Executive Session adjourned and the Committee returned to Open Meeting at 7:05 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
May 13, 2003

Committee Members Present: Chairman David R. Morrow, John A. Davis, Faith M. Lane, Esq., and George S. Murray.

Also Present: Edward F. Vena, Esq., Counsel; Uniscribe - Jeffrey L. Tassi and Nick Soter.

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 involving litigation, with the provision that the Session return to Open Meeting for the purpose of concluding remaining business on the Agenda, the Committee went into Executive Session at 8:20 A.M.

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

The Chairman opened the Executive Session at 8:20 A.M. and declared the presence of a quorum.

New Northbridge High School Closeout

Town of Northbridge v. Tappe' Associates, Inc.
C.A.No. 02-2055C.

Mr. Vena reviewed the answers to Tappe's Interrogatories which he prepared on behalf of the Town of Northbridge. Copies had been distributed to members for review and input.

1) It was agreed that the Chairman, David R. Morrow, would sign the answers to the interrogatories.

2) The individuals who assisted in preparing the answers to the interrogatories are: Chairman David R. Morrow, Vice Chairman Peter Barbadora, George S. Murray and John A. Davis, as to all interrogatories.

3) As to calculation of damages alleged to have been caused by Tappe', Mr. Vena advised that Northbridge is still in the process of calculating its damages. Not all calculations are available from the ledge expert. He also spoke with Nicholas Dines, co-author of the book which CRJA and TAI

quote as their source for the design of the athletic fields, and reports that Mr. Dines is willing to advise on remediation, but not yet sure he wants to testify as an expert witness. Mr. Vena will continue to try to convince him to serve as the Town's expert witness. Mr. Dines estimates that it will cost approximately \$100,000 to fill and remediate the Soccer/Football field. He thinks that the drainage might be saved, but the irrigation will have to be replaced. The final plans and specs show the Soccer/Football fields as "Regulation" fields, which means that NCAA specifications apply.

Mr. Vena notes that Northbridge will supplement the answer to No. 3 in accordance with Rule 26(e) of the Massachusetts Rules of Civil Procedure.

4) Mr. Vena's answer to Interrogatory No. 4 is that the information requested is immaterial and is not likely to lead to admissible evidence. He considers all of Tappe's consultants to be Tappe'.

5) Mr. Vena [REDACTED] The answer states that Northbridge is still in the process of calculating its damages, therefore it cannot answer this interrogatory at this time, and will supplement the answer as noted in No. 3.

6) In answer to Interrogatory No. 6, Mr. Vena cites references to the Contract.

Paragraph 5.2: Tappe' was required to (furnish appropriate competent professional services for each of the phases to the point where detail checking and reviewing by the Awarding Authority will not be necessary."

Paragraph 5 of Attachment A: "5. Prepare preliminary cost estimates during the schematic phase and a final cost estimate on the construction documents prior to bidding. These estimates shall be used to guide the BPCC in making sure the project budget is maintained."

Further, the Contract includes references to Tappe's obligation to provide "cost estimates" in several paragraphs, including paragraphs 2.1, 6.1.1, 6.2.1, 6.2.2 and 6.2.3.

The Contract required Tappe' to design the entire project in such a way as to not incur unnecessary cost. Throughout the design process, Tappe' met with the BPCC on several occasions and discussed the positioning of the building to, among other things, minimize rock excavation because of the cost.

Documents responsive to this interrogatory, including the meeting minutes and contract provisions referenced

above will be provided pursuant to Rule 33(c) of the Massachusetts Rules of Civil Procedure.

7) Mr. Vena's answer to Interrogatory No. 7 is that the cost estimate produced on or about May 7, 1999 was with on 50% of the drawings and designs, and only for the building site, not athletic fields.

8) In answer to No. 8, Mr. Vena quotes Contract language, which states that Tappe' was required in Paragraph 5.2 to:

"furnish appropriate competent professional services for each of the phases to the point where detail checking and reviewing by the Awarding Authority will not be necessary."

Professional services are detailed and defined throughout the Contract, including Paragraph 3.5:

"Drawings and/or specifications needed to obtain survey or subsoil information, and any other soils engineering shall be prepared by the Designer as part of the basic fee. The Designer shall then analyze and evaluate such surveys and tests and make his design conform to the results of such evaluation."

The rock excavation estimate included in the May 7, 1999 Design Development Estimate represents the kind of information envisioned by Paragraph 3.5 of the Contract, and as such, Northbridge was entitled to rely on the contents of the estimate.

Further, Mr. Vena states, under the Contract, the use of sub-contractors and consultants does not obviate Tappe's professional responsibility with regard to the accuracy of the work of such sub-contractors and consultants (See Contract Paragraphs 2.1 and 5.1.) Northbridge relied on Tappe's services and representations.

It is Mr. Vena's opinion that the language in the Contract places the burden on the Designer to provide professional services, and, furthermore, elevates the "Standard of Care".

9) The answer to Interrogatory No. 9 states that according to a letter dated January 23, 2002 to Tappe' from GSI:

"December 21, 1999 - As requested by Tappe Associates, Inc., GSI completed an estimate of bedrock excavation required for the building and site area."

This estimate concluded that 20,000 cubic yards of open bedrock and 3,000 cy of trench rock would have to be removed from the building site. As the Project was put out to bid in November, 1999, this information came too late to consider other options for siting and elevating the school building

that might have been more cost-effective.

Members of the Committee were concerned about the presence of rock ledge and the impact on building placement and siting as early as March, 1999. This concern was recorded in the minutes of the Committee meetings, and on March 11, 1999, at a meeting attended by Tappe' representatives Alan B. DeHaan and Kevin A. Latady, the rock ledge issue was discussed:

"The geotechnical survey shows ledge on the hill and probably some in the classroom area. The area near the front of the building does not appear to have ledge. Definitive answers as to site and depth of ledge will be available after borings are done next week. Mr. Barbadora requested data re: ledge - cost to remove and feasibility of shifting the siting of the building to allow for more parking. Mr. Latady suggested that because of the wetlands and topography, any shift in the building would probably not gain very much in parking. Once the survey is finished, the impact of streams and rivers will be known."

Later in the same meeting, Mr. Latady discussed his belief that it is better to consider all design options early in the design process, as costs for changes increase as the project evolves:

"Mr. Barbadora felt that basics need to be met first with add-on alternates if money is available. Mr. Latady suggested that from a design point of view, it is better to consider all options at the outset, because it is easier to delete items than to add on in some cases."

The issue was brought to the attention of Tappe' again at a Committee meeting that took place on April 1, 1999, at which Mr. Tappe', Mr. DeHaan and Mr. Latady were present, and cost estimates were discussed:

"The preliminary cost estimates are within budget for the school and the school site, but do not include fields. The \$2.2 million listed for site development is for development of the school site, not fields. Because the preliminary borings show ledge at 8', and \$70,000.00 is being carried for ledge, the \$2.2 million is considered conservative by the Designers. Mr. Murray questioned why the borings were not done sooner, and Mr. Latady and Mr. DeHaan replied that the building must be sited before final borings are done. Preliminary planning to site the building precedes borings, according to Mr. DeHaan. Results should be completed in a couple of weeks."

Tappe' was represented by the same three people at the

April 19, 1999 meeting, when the issue of re-siting the school came up again:

"(Jim Byrne) asked the architects if the preliminary borings indicated a possibility of moving the building back and to the left, to utilize more of the site and to increase the buffer zone with the neighbors. Mr. DeHaan replied that the building is now sited where the Architects feel it should go. The preliminary borings show refusal at 2-4 feet...Mr. Barbadora wants to make full use of the 75 acre site, and felt that if money can be spent to remove ledge, the building can be moved. He felt that the buffer zone with the neighbors is a serious concern, and a decision should be made based on the borings. Mr. DeHaan stated that the programmatic considerations are as important a factor as the borings..

Mr. Davis stated that he has no displeasure with the design of the building, but feels that the borings have come so late that the building cannot be moved. Mr. DeHaan told the Committee that the borings have borne out what the Architects believed they would find when they designed the site."

Northbridge specifically reserves the right to supplement this answer pursuant to Rule 26(e) of the Massachusetts Rules of Civil Procedure. Further documents responsive to this interrogatory, including meeting minutes referenced above, will be provided pursuant to Rule 33(c).

Mr. Vena argues that Tappe's failure to produce documents on schedule created a situation where there was not enough time to alter and re-design the building and still permit the schedule to be met. He noted that slippage in the schedule had already impacted the time for construction in order to meet the May 2001 scheduled completion date.

10) In answer to the "timely manner" of production of rock calculations, Mr. Vena answered that if Tappe' had directed GSI to perform and complete an estimate of required bedrock excavation early in the design process, the position, elevation, and/or location of the building could have been altered to avoid ledge. By the time Tappe' did a rock quantity calculation, the Project had gone out to bid and could not be re-bid because of the limited construction schedule.

Mr. Vena argues that, if the calcs were done at 50%, the building could have been re-designed and still met the schedule. In May/June of 1999, the building could have been elevated or shifted. He notes that there certainly was a lot of discussion about siting the building, as evidenced in the Minutes.

11) In answering Interrogatory No. 11, Mr. Vena notes that the building was already sited on April 19, 1999, according to Tappe's representatives.

Mr. Vena also allowed that while the building might be sited in the optimum location, it is not raised the optimum height. His expert is doing the calculations on what raising the building would have saved in ledge costs.

The Chairman commented that fill is \$4.00 per cy, as opposed to rock excavation at \$40.00 per cy.

12) In answering Interrogatory No. 12, Mr. Vena [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr. Vena merely states that the standard design for a soccer field is to grade the field for drainage with the spine running from goal post to goal post, and the drainage to the sidelines. Tappe' designed the field in a manner consistent with open space, not for a soccer or football field, with the spine generally running from sideline to sideline, thus sloping down from the mid-field towards each goal, creating problems with visibility of the other side of the field from the goal on one end.

13) In responding to Interrogatory No. 13, stating the basis for design of the soccer field in accordance with NCAA rules and/or regulations, Mr. Vena cites Contract documents and designs, including "Drawing LS5.1 - Athletic Fields Materials and Layout Plan" dated 11/24/99, which refer to the field in question as the "Regulation Soccer/Football Field". The three other fields on the plans are referred to as "Soccer/Football Practice Fields". The NCAA rules for the design of athletic fields are the standard used for high school fields.

Mr. Vena asked if the Committee wished to expand the soccer field claim to include practice fields. After speaking with Mr. Dines and Committee members, he assumes that more money was spent with the design as presented than would have been spent had the fields been designed correctly. It was the consensus of the members present that if one field is being challenged, then all should be challenged.

Uniscribe Presentation

Mr. Jeffrey L. Tassi and Nick Soter of Uniscribe had been invited by Mr. Vena to come to the School this morning to assess the documentation in order to prepare a Proposal for transferring all documentation to a CDROM. He informed the Committee members that there will be numerous requests for documentation by opposing attorneys which will require an enormous amount of time to copy manually. Once the CD is burned, it will eliminate hand-searching and copying.

Mr. Tassi explained that one of the features will be OCR (Optional Character Recognition) which will allow rapid search of documents for legal purposes. Further, the documents can be coded, such as document type, author, cc's, correspondence to and from. DV Searchworks is available along with images and data base.

Mr. Vena asked for a recess in order that he might take Mr. Tassi and Mr. Soter up to the receiving area for a visual assessment of the documents stored there.

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

VOTED: To declare a recess in the Executive Session and to return to Open Meeting for the purpose of concluding any remaining business on the Agenda, with the provision that the Meeting return to Executive Session for the purpose of concluding discussion of the Answers to Interrogatories and for the purpose of Adjournment.

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

The Meeting recessed to Open Meeting at 9:15 A.M.

Pursuant to a roll call vote on a Motion by Mr. Davis to adjourn the Open Meeting and return to Executive Session for the purpose of concluding discussion of the Answers to Interrogatories, not to return to Open Meeting, the Committee returned to Executive Session at 9:30 A.M. Voting in the affirmative on Mr. Davis' Motion were Mr. Morrow, Mr. Davis, Mrs. Lane and Mr. Murray. There were no negative votes cast.

The Chairman declared the return to Executive Session and reaffirmed the presence of a quorum at 9:30 A.M.

Resumption of Discussion of Answers to Interrogatories

13) Mr. Vena reported that Mr. Dines told him that baseball fields usually are graded to drain from the outfield toward the infield, and from the infield out toward the outfield, then off to the side. Mr. Dines did say that the field can be designed to drain out toward the outfield, as 'Tappe' did. Mr. Davis questioned the matter of visibility for outfielders because of the steep drop-off in the outfield.

14) Answers the same as Answers to Interrogatories No. 12 and 13.

15) Answers the same as Answers to Interrogatories No. 12, 13 and 14.

16) Answers the same as Answers to Interrogatories No. 12, 13, 14 and 15.

17) Mr. Vena's answer to Interrogatory No. 17 is that the recharge basin was intended to collect rainwater and other run-off, and recharge it by allowing it to seep into the ground and join the underground water table. As designed and built, the water collects in the basin and does not recharge. Rather, the water stagnates, and has been the source of complaints by neighboring property owners, as well as investigation by the Northbridge Board of Health.

Northbridge is still looking into the causes of the problems with the recharge basin, and will supplement this answer in accordance with rule 26(e) of the Massachusetts Rules of Civil Procedure.

18) See Answers to Interrogatories 6-17.

19) See Paragraphs 45, 46, and [48] of the Complaint.

20) Northbridge has not yet identified the witnesses it intends to call at trial of this matter. Northbridge will supplement this answer in accordance with Rule 26(e) of the Massachusetts Rules of Civil Procedure.

21) Northbridge will provide documents responsive to this Interrogatory in accordance with Rule 33(c) of the Massachusetts Rules of Civil Procedure. (Communications regarding soccer field and basin)

22) (Communications between Northbridge and Jackson concerning ledge removal, recharge basin and/or soccer field) Northbridge will provide documents responsive to this Interrogatory in accordance with Rule 33(c) of the Massachusetts Rules of Civil Procedure.

23) (Failure to compensate Tappe' fully) Northbridge has not failed to compensate Tappe' fully for services properly rendered, and therefore, this interrogatory is based upon an incorrect assumption.

The Answers to Interrogatories by Tappe' will be completed for signature by the Committee Chairman at the meeting on Thursday, May 22, 2003.

Jackson Litigation

Mr. Vena informed the Committee that Jackson has subpoenaed Simpson, Gumpertz & Heger in the 3rd Party Suit and Mr. Vena has advised [REDACTED]

CMS's Jim Byrne has also been subpoenaed to produce any documents in its possession. Mr. Byrne advised Mr. Vena that the only documents which he has not turned over to the Town are correspondence between CMS and the Committee. Mr. Vena noted that there is a Federal Tort Law that an Agent for a Government employer has the same immunity as the Government Agency.

Consolidation of Suits and Counterclaims

Mr. Vena is drafting a motion to consolidate Jackson's suits, bring them into the Tappe' suit, and move the jurisdiction out to Worcester Superior Court.

As to Jackson, he will file counterclaims against JCC and Third Party Pytko. He will also counterclaim the Surety. He will possibly Third Party Tappe' on the Door/Frame issue.

In the counterclaim against Jackson's Delay Claim, he will claim liquidated damages. The Town still does not have substantial completion on the fields.

Mr. Vena stated that the Surety is obviously accepting Jackson's representations concerning the door/frame issue, and is also relying on the Kern Report and Shier's Report (Manufacturer's Representative) and is not addressing the issue of improper installation of the doorframes. They have claimed good faith by sending out an investigator in January who performed a very perfunctory, surface investigation, but they have conducted no independent testing and have failed to fulfill their responsibilities.

The Committee will meet at 6:30 on Thursday, May 22, 2003, and will view the athletic fields before the 7:30 P.M. meeting.

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

VOTED: To adjourn the Executive Session and the Meeting.

The Executive Session and the Meeting adjourned at 9:50 A.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
May 21, 2003

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

Also Present: Edward F. Vena, Esq., Committee's Counsel;
Weston & Sampson Engineers, Inc. - Johannes
Wagner, RLA.

Jeanne A. Gould, Administrative Assistant

Pursuant to a roll call vote on a Motion by Donald K. Lange to adjourn the Open Meeting to Executive Session for the purpose of discussing matters involving litigation, with the provision that the Session return to Open Meeting for the purposes of concluding remaining business on the Agenda and for Adjournment, the Committee went into Executive Session at 6:45 P.M.

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

The Chairman opened the Executive Session at 6:45 P.M. and declared the presence of a quorum.

New Northbridge High School Closeout

View of Athletic Fields. Committee Members, Attorney Vena, Mr. Wagner and the Committee's Assistant conducted a site review of the status of the Athletic Fields. Mr. Wagner was present in the role of consultant to the Counsel. Although the grass is growing, it is not yet at the stage where the fields are usable.

Mr. Wagner expressed his opinion as a Landscape Architect on the layout, grading and design of the fields. He stated that the grading and design are not acceptable, and that he has never seen fields designed in the manner that these fields are designed. He disagreed with Tappe'/CRJA's interpretation of the standards for regulation fields, and found the fields not even acceptable for practice fields. He will study the drawings and specifications and then meet with Mr. Vena to compile a report and recommendations for the Committee to consider.

The tour of the fields lasted from 7:00 P.M. to 7:45 P.M., after which all parties returned to the Conference Room in the High School to continue the Meeting.

Doors. Mr. Vena reported that Simpson, Gumpertz & Heger have taken the doors and are doing the testing. JCC still contends that it is a design issue.

Uniscribe. After reviewing the documents in the Committee's possession, the representatives from Uniscribe have reported that it would be cost prohibitive to reproduce all of the documents which would be relevant to litigation. They estimate that there are 35-40 thousand documents. The most relevant documents would probably number 5,000.

Infiltration Basin. Since Jackson has made no effort to remediate the problems with the Infiltration Basin, Mr. Vena advised [REDACTED]

[REDACTED] The cost will be taken out of the money which is being withheld. There is ample justification to move forward: it is a health hazard, and has been judged so by the Board of Health; in addition, it has caused serious issues with the neighbors.

Franny's Landscaping. A communication has been received from Jackson, with documentation presented by Franny's Landscaping to bolster its claim that it has finished the job and is due the money for work performed under protest. The Punch-List has not been reviewed by CRJA, however, and there are trees which were supposed to be replaced but have not been. Mr. Vena suggested that the trees be replaced and the amount will be back-charged against money owed to Franny's.

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

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

Jeddy
05/29/83 Voting in the affirmative were Mr. Morrow, Mr. Barbadora, Mr. Davis, ~~Mrs. Lane~~, Mr. Lange, Mr. Mitchell and Mr. Murray. There were no negative votes cast.

The Executive Session adjourned at 8:00 P.M. and the Committee returned to Open Meeting.

Respectfully submitted,

Jeanne A. Gould
Jeanne A. Gould,
Administrative Assistant

DISTRIBUTION:

Committee Members
Edward F. Vena, Esq.

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BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Minutes of Executive Session
June 05, 2003

Committee Members Present: Chairman David R. Morrow, Vice
Chairman Peter Barbadora, John
A. Davis, Faith M. Lane, Esq.,
Donald K. Lange 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 pertaining to pending litigation, not to return to Open Meeting, the Committee went into Executive Session at 9:00 P.M.

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

The Chairman called the Executive Session to order at 9:00 P.M. and declared the presence of a quorum.

Northbridge High School

Mr. Murray reported that Attorney Vena contacted him to see if he could provide an introduction to Harry Weatherbee or Richard Bushnell for him in order that he might speak with GSI directly. Mr. Vena's consultant would like to get the calcs and elevations on which GSI's report was predicated in order to calculate comparables for siting of the building as it is, versus raising it. By obtaining the original work product of GSI, it will cut down on the time and expense of the consultant. Mr. Vena asked Mr. Murray to make the contact with GSI to open the door to get the documents without having to subpoena them. When Mr. Murray contacted Mr. Weatherbee, he was not too receptive to cooperating and releasing any more documentation because he feels that he was let down by Tappe' and the Committee, with payment of Invoices amounting to \$17,154.50 still outstanding. He sent copies of these Invoices to Mr. Murray. All of the Invoices in question date from 07/01 through 12/01, the period during which the basic lump sum Contract between the Town and Tappe' was still in force and had been paid in full.

It was the consensus of the Committee that everything possible that can be done legally to make GSI whole should be done.

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

VOTED: To reimburse GSI for technical consulting services rendered from July through December 2001 in connection with the Northbridge High School in the amount of \$17,154.50.

The Committee's Assistant was instructed to call Attorney Vena tomorrow morning to determine how GSI can be compensated for these outstanding Invoices.

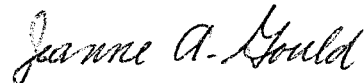
Mrs. Gould reported on her conversation with Mr. Vena on June 04, 2003 regarding the various lawsuits. Mr. Vena asked her to inform the Committee that he hasn't moved to consolidate the lawsuits yet. After Jackson's Deposition, if Mr. Barton admits Pytko's failure to comply with specifications and Jackson's failure to follow up, then he will file for Summary Judgement to knock out the Pytko claims. JCC has subpoenaed Kern's records, and is obviously relying on their report regarding the door/frame case. When he gets Jackson's Answers to the Town's Counter-Claim (and he is anticipating a reply that it is a design issue) then he will 3rd Party Tappe' and file to consolidate the suits in Worcester.

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

VOTED: To adjourn the Executive Session and the Meeting.

The Executive Session and the Meeting adjourned at 9:25 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
June 26, 2003

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: Edward F. Vena, Esq.

Jeanne A. Gould, Administrative Assistant.

Chairman David R. Morrow called the Meeting to order
at 6:10 P.M. on Thursday, June 26, 2003 in the Conference
Room at Northbridge High School.

The presence of a quorum was declared.

On MOTION OF GEORGE S. MURRAY, duly seconded, on a roll
call vote, it was unanimously

VOTED: To close the Open Meeting and adjourn to Executive
Session for the purpose of discussing matters per-
taining to pending litigation, not to return to
Open 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 Meeting adjourned to Executive Session and the presence
of a quorum was reaffirmed.

Northbridge High School

Doors/Frames. Mr. Vena reported on the progress of
testing being conducted by Simpson, Gumpertz & Heger on the
three doors removed from the Northbridge High School. They
have finished testing at 30% and 60% and are now testing at
70% humidity. There was very little expansion between 30%
and 50%, certainly within tolerances. SGH doesn't feel that
they will exceed tolerance at 70%. They have informed Mr.
Vena that the doors are very well constructed, which indicates
that the problem is with the frames. The doors were not
tested at 15%, because it is very expensive and not worth the
extra cost. Milan will come out to the school in mid-August
to do more measurements. Mr. Vena suggested a video be made
of opening the doors, which will document the sticking.

Athletic Fields. Mr. Vena has received a proposal from

Johannes Wagner at Weston & Sampson Engineers, Inc., to serve as a consultant in the matter of the Athletic Fields. He said that, based on his discussions with John, all of the fields seem to be designed the same way. Mr. Vena recommended that the scope of Mr. Wagner's investigation include looking at all of the fields, not just the soccer field, then the Committee can make an informed decision relative to the extent to which it wishes to pursue damages. It was the consensus of the members present that Mr. Wagner be authorized to investigate all of the fields.

Ledge. Mr. Vena reported that he does not have all of the documents needed pertaining to the Scungio/Nyberg/GSI calculations for ledge. He needs information that when Pytko uncovered ledge he had it properly profiled. Mr. Weatherbee of GSI told Mr. Vena that the profiling was not the way they would have done it, but that the amount of ledge removed is consistent with what they originally thought would be there. Mr. Weatherbee has the information which Mr. Vena needs for his consultant, but won't release it until all his bills have been paid. Mr. Vena said that he is not sure that there is a fountain of information available on which to recalculate the ledge quantities. Mrs. Lane asked if there were information available which was clear would it help in the Tappe' suit, and Mr. Vena replied that it would. He said that Mr. Weatherbee told him that the information provided by Scungio and Pytko is not very intelligible.

Mr. Vena advised [REDACTED]

[REDACTED] The Town has taken a position on services owed, and that these bills are Tappe's responsibility. To pay extra, even if it could be done legally, would undercut our position.

Mr. Vena noted [REDACTED]

Mr. Vena stated [REDACTED]

It was the consensus of the members present to hold off on any payment to GSI.

Pleadings. Mr. Vena reported that he has received Answers to the counterclaims from Jackson, and that they are very vanilla; they didn't answer the difficult claims.

Surety. Mr. Vena reported that the bad faith claims against USF&G are outside of their contract with JCC, they have hired special counsel to handle the bad faith claims. He feels that this indicates that there are problems between JCC and their Surety. He has sent SGH's initial report to USF&G, but they haven't responded. If Milan's report says that the problem is not the doors, he may share that information with USF&G to get them moving. The fact that SGH has stated that the doors are very well constructed, and are not expanding beyond tolerance eliminates JCC's argument that the doors are the problem because the excessive humidity in the building is causing them to swell out of tolerance. It is obviously the frames. Jackson in their answers make no reference at all to the doors.

Interrogatories. Mr. Vena has been served interrogatories on the Jackson and Pytko suits. He will rough out Answers for Requests for Documents.

Mr. Vena said that he hasn't consolidated the suits yet, because he might be able to knock Pytko's claims out. He noted that he has asserted a Motion To Dismiss the Jackson claims because they sued under the wrong statute. Attorney Jennifer Stark has apparently been doing most of the work in the case, and he commented that the pleadings haven't been up to what he would expect from Mintz Levin.

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

VOTED: To adjourn the Executive Session and the Meeting.

The Executive Session and the Meeting adjourned at 6:55 P.M.

Respectfully submitted,

Jeanne A. Gould

Jeanne A. Gould,
Administrative Assistant

DISTRIBUTION:

Committee Members
Edward F. Vena, Esq.

BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Minutes of Executive Session
August 07, 2003

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, duly seconded, that the Committee adjourn the Open Meeting to Executive Session for the purpose of discussing litigation, not to return to Open Meeting as all other business on the Agenda had been completed, the Meeting adjourned to Executive Session at 8:40 P.M.

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

The Chairman opened the Executive Session at 8:40 P.M. and declared the presence of a quorum.

The Committee's Assistant briefed the Committee on the gist of a telephone call with the Committee's Counsel for the closeout of the High School Project, Edward F. Vena, Esq.

Mr. Vena asked that the following information discussed with Mrs. Gould on this date be presented to the Committee as an Update on pending litigation.

1) Mr. Vena will be receiving Jackson's production of documents on Monday, August 11. He is hoping that much of Pytko's information will be included in the documents which are disclosed. If they are, he will turn them over to the consultant for the ledge issues, to determine if they are able to be interpreted.

2) Jackson's Attorney has informed Mr. Vena that he will be filing a Motion for Summary Judgement regarding the Pytko claims next week. Mr. Vena will file a piggy-back Motion for Summary Judgement, on the grounds that if JCC gets relief from the Court, then the Town should get relief, also. JCC has issues with Pytko in addition to those issues which the Town has.

3) Simpson, Gumpertz & Heger has finished its examination and testing of the doors, and in its final report will state its conclusion that the doors are performing according

to specifications, and are not exceeding tolerances for swelling. Their conclusion is that the door frames are out of tolerance.

4) Mrs. Gould was asked to set up a time for Mr. Vena, Mr. Murray and Mrs. Ampagoomian to videotape the doors, illustrating doors that stick, doors that do not close, and doors that do close, as well as any attempts by JCC to throw hinges or in any other way to attempt to make doors close. He is particularly interested in doors in close proximity which close, stick or will not close, to debunk the argument that the cause is excess humidity or environmental factors. Mr. Vena will choreograph the video-taping.

5) Mr. Vena reported that Attorney Starr has informed him that Jackson is being pressed by Pytko to agree to mediation, because it is called for in the Contract. JCC is, in turn, pressing Mr. Vena to agree to non-binding mediation. He has made it very clear that he would approach any mediation with no money on the table, and therefore feels that he would not be entering mediation in good faith. Jackson's counsel is very aware of this position, but still urges Mr. Vena to consider sitting down with a mediator. Mr. Vena said that he might agree to do so. If Jackson is willing to put \$50,000 on the table to be rid of the Pytko suit, Mr. Vena might suggest to the Committee that it would behoove the Town to put in \$10,000 to end that litigation. He feels that this would be a cheap buy-out of a potentially costly litigation. The Committee concurred that if Mr. Vena suggests this course of action, it would agree to a \$10,000 buy-out.

Mrs. Gould reported that Dwight Burns, Esq., of Vena, Riley, Deptula, LLP represented the Town at the production of documents today in the receiving area at the High School. Attorney Tony Starr, Attorney Jessica Stark and Robert Barton represented Jackson Construction Company. Eight bankers boxes of materials were taken to be copied for JCC. Mr. Burns will have it copied by a professional copy company, and will make a duplicate set for Counsel's use.

Mr. Lange asked who will pay for Mrs. Gould's services in this production of documents. She will ask Counsel.

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

VOTED: To adjourn the Executive Session and the Meeting.

The Executive Session and the Meeting adjourned at 9:05 P.M.

Respectfully submitted,



Jeanne A. Gould, Admin. Assistant

DISTRIBUTION: Committee Members; Edward F. Vena, Esq.

Approved September 04, 2003 JAH

#25

BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Minutes of Executive Session
August 21, 2003

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

Also Present: Edward F. Vena, Esq.

Jeanne A. Gould, Administrative Assistant.

Pursuant to a roll call vote on a Motion by John A. Davis, duly seconded, that the Committee adjourn the Open Meeting to Executive Session for the purpose of discussing matters pertaining to litigation, not to return to Open Meeting as this was the only item on the Agenda, the Meeting adjourned to Executive Session at 6:35 P.M.

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

The Chairman opened the Executive Session at 6:35 P.M. and declared the presence of a quorum.

Northbridge High School Closeout

Doors. Mr. Vena reported that prior to this meeting, he, Mr. Murray and the Committee's Assistant toured the building with Sharon Ampagoomian for the purpose of video-graphing the doors. Particular attention was given to doors immediately adjacent to or in close proximity to one another which were behaving in a different manner: some closed, some were sticking and some were not able to be closed at all. He noted that on the first floor of the classroom wing, all doors are sticking, while on the third floor most of the doors close. He noted that doors in close proximity to one another that behave differently would suggest that different crews installed the frames. The video will demonstrate the force which is needed to close some of the doors, while an adjacent door closes normally. The inspection bears out the argument that environment is not the cause of the problems with the doors, but that the frames are. Attorney Dwight Burns, an associate of Mr. Vena who is now working on the case with him, was also present to help identify the problem doors.

Mr. Vena reported that Simpson, Gumpertz & Heger is in the process of finalizing its report, and the preliminary

testing leads to the conclusion that the doors are not the problem. Milan said that the doors are growing at a slower pace than expected, and are definitely within tolerance. He indicated that the doors are very well constructed and adhere to specifications. Their conclusion is that the installation of the frames is the problem.

Production of Documents. Mr. Vena reported that Pytko is going to produce its documents next week. He is most interested in the lack of documentation which he expects to find. He is particularly interested in Change Order #1.

Jackson has produced its documents, and we have produced our documents to Jackson. Mr. Vena found no surprises in the JCC documents. JCC had culled out documents from Pytko regarding the ledge. He did find a letter after C.O. #1 advising them that they didn't follow the specifications. Because GSI said their figures were consistent with what GSI expected, the Committee agreed to pay, but warned Pytko not to let it happen again; they must follow the specifications or they would not be paid again.

The one glitch Mr. Vena noted, contractually, is that the contract between the Town and Jackson, and the Contract between Jackson and Pytko both call for mandatory mediation. Pytko has filed for mediation against JCC and the Town; while the Town has no contract with Pytko, JCC will demand mediation with the Town. Mr. Vena's stance [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr. Vena has received Tappe's documents, and they have filed for ours. At this point, Jackson is trying to make the doors a design issue, and wants the Town to 3rd party TAI. Before making any decision, Mr. Vena wants to see Milan's report.

Ledge Issue with Tappe'. TAI wants to settle the case with the Town. The number on the ledge and failure to raise or relocate the building could be in the 300-400 thousand dollar range. Mr. Vena doesn't think that the fees that TAI is claiming are a real issue. Johannes Wagner is providing information on the fields to the ledge consultant. If negligence is proven, the Insurance Company pays. If they can get Tappe' to waive the fees, it would be good, but that doesn't seem likely to happen.

JCC/St. Paul/Town Suit. Mr. Vena has hit St. Paul with a Request for Production of Documents. He wants to see what their claim files show. If a bad faith judgement is won, St. Paul bears the costs. They have hired their own counsel to defend against a 93A claim and to represent them on the Bond.

Mr. Vena said that when he receives the Simpson, Gumpertz & Heger report, he will probably sit down with Tony Starr and show them what we've got. That, with the video, might move them in the direction of a settlement. The Surety might try to move them, also.

Mr. Vena noted that with the document production completed, it will end a very cumbersome component of the suits.

Mrs. Lane asked what is happening with the claims regarding the Detention Basin. Mr. Vena replied that Tappe' is sticking with the VHB report on the Detention Basin; It will probably get settled. He said that we could ask John Wagner to do a study, but does not feel that it is a big enough ticket item to justify the cost of another expert. The Committee concurred.

Mr. Davis asked if the other parties are also hiring experts, or if we are the only ones bearing this expense. Mr. Vena replied that Tappe's law firm has experts on staff, so they are not doing much. Jackson should have experts in at this time of the year, but no such request has been made. He feels that TAI doesn't have a clue how to deal with the ledge claim. They could be hiring an expert, but he has no indication of it.

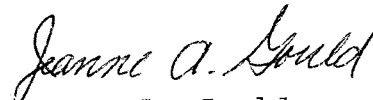
Jackson might be willing to throw some money in to get rid of the Pytko suit, and might ask if we would throw in 10 thousand dollars to end the nuisance suit. He noted that JCC did try to buy Pytko out for 50 thousand (the number which the Committee was using in January 2002), but Pytko rejected it.

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

VOTED: To adjourn the Executive Session and the Meeting.

The Executive Session and the Meeting were adjourned at 7:00 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
September 04, 2003

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

Also Present: Johannes Wagner - Weston & Sampson Engineers,
Inc.

Jeanne A. Gould, Administrative Assistant.

Pursuant to a roll call vote on a Motion by John A. Davis, duly seconded, that the Committee adjourn the Open Meeting to Executive Session for the purpose of discussing matters pertaining to litigation, with the provision that the Meeting return to Open Meeting for the purposes of concluding any unfinished business on the Agenda and for Adjournment, the Meeting adjourned to Executive Session at 8:30 P.M.

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

The Chairman opened the Executive Session at 8:30 P.M. and declared the presence of a quorum.

Northbridge High School Closeout

Soccer Field. Mr. Wagner, who is serving as Consultant to Committee's Counsel on the design of the soccer field and athletic fields, reported that Attorney Vena had asked him to brief the Committee on his findings to date. He illustrated a plan to correct the slope of the soccer field which would save the underground drainage system. The ends would be filled to bring the grade from side to side and end to end up to a 1% grade. Sprinkler heads would be extended. He indicated that there is a lot of work to be done to design remediation at a cost that someone will pay. Ripping out the entire field could cost over \$2 million, which would be out of the question. He and Mr. Vena will keep the Committee apprised of the design and plan for remediation as it develops.

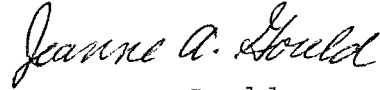
On MOTION OF MR. DAVIS, duly seconded, on a roll call vote, it was unanimously

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 on Mr. Davis' Motion were Mr. Morrow, Mr. Barbadora, Mr. Davis, Mrs. Lane, Mr. Lange, Mr. Mitchell and Mr. Murray. There were no negative votes cast.

The Executive Session adjourned at 8:35 P.M. and 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 16, 2003
6:00 P.M. Meeting

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

Also Present: 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 discussing litigation, not to return to Open Meeting, the Committee adjourned to Executive Session at 6:15 P.M.

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

The Chairman declared the presence of a quorum and presided at the Executive Session.

Mr. Vena reported that he is drawing to a conclusion of what he termed the paper portion of the litigation concerning Tappe' Associates, Inc.

Tappe' Associates, Inc.

Mr. Vena informed the Committee that the 30 B6 deposition will be held next month, probably mid-November. He wants the Committee to designate one or more members to serve as witnesses, who should have extensive knowledge of the critical components of the case: contract negotiations, the back and forth discussions on the ledge issues, and siting of the building. The depositions shouldn't be extensive, and Mr. Vena will prepare the witnesses well beforehand.

Deposed on 30 B6 will be Tappe' Associates, Carol R. Johnson Associates and Daedelus, first, and depending on what is learned, maybe GSI. He will be receiving Pytko's documents next week, so hopefully, he can wrap up the ledge issues in connection with the Tappe' suit.

Johannes Wagner is winding up the investigation of the Soccer Field design and will have recommended options for

remediation, hopefully, prior to the depositions.

Jackson/Pytko/St. Paul Litigation

Doors. Mr. Vena distributed copies of the final report of Simpson Gumpertz & Heger concerning the doors/frames. The same doors were measured, using laser and best scientific testing in February and August. All doors were within tolerance, with none expanding to over 36", even in August.

In the laboratory tests, the test doors were subjected to humidity and grew slowly, within tolerance. The doors are extremely well constructed and are performing as expected. The problem is that the door frames are out of tolerance and the opening is too small to accomodate the normal swelling of the doors, the report concluded.

Mr. Vena has talked with Milan, who is now exploring options to remediate the problem.

1) Control the humidity in the building. This would present long term operational costs, but is being explored in the interest of fairness.

2) Replace all doors which are not closing. This would mean cutting doors to individual sizes for each problem frame.

3) Shave the doors to make them fit. This option is not recommended by the Manufacturer because of the thin veneer and the damage it could cause to the door.

SG&H will continue to explore other options for remediation.

Mediation. Exercising their rights under the contracts, Pytko and Jackson are demanding Mediation. While making known the Owner's no-pay position, Mr. Vena has agreed to Mediation, with the Committee's agreement. Attorney John Spignesi has been chosen to serve as Mediator, and he feels that it would make sense to mediate all claims with all parties at the same time.

The Pytko case is currently on the fast track, and Mr. Vena has put the matter of extending the tracking for 90 days on the table. Pytko has agreed to mediate all issues, as has Jackson, and Attorney Starr feels that St. Paul will probably come in, also. Mr. Vena has reserved November 19 and 20, pending Committee approval, with all claims on the table. Someone from the Committee should attend who would have authority to settle for the Committee. All members are welcome to attend. In the meantime, members should mull over some possible settlement fees.

Mrs. Lane asked if depositions will precede Mediation,

and Mr. Vena replied that he doesn't think it is necessary, because he has enough back-up and the SG&H reports.

St. Paul will be producing their documents on October 27th and want to see ours, probably in early November. Mr. Vena is most interested in seeing St. Paul's file to determine what they have done and whether they have covered due diligence or have left themselves open to a 93A claim.

Mr. Vena informed the Committee that he needs to work on claims for liquidated damages. Jackson is suing for delays, which opens up the matter of liquidated damages. While the Committee agreed to the Certificate of Substantial Completion, there was never an extension granted. The Committee relied on representations made by Bob Barton, which he denies having made. The Athletic Fields are still not available, and the lack of completion and acceptance can be weighed, with over 600 days running at this time.

Mr. Barbadora asked if Mediation will end the disputes, and Mr. Vena replied that if there is no settlement, we then go to trial. Mr. Barbadora asked how the issues with JCC/Pytko effect the litigation with Tappe'. Mr. Vena replied

[REDACTED]

Mr. Barbadora asked about the Infiltration Basin, and who will be charged with its failure. Mr. Vena replied

[REDACTED]

Mr. Vena explained that Mediation is non-binding, just a form of negotiation, and that the Committee can walk away from it. Mr. Barbadora stated that sometime between now and November 19, the Committee will have to sit down with Mr. Vena to prepare for it and talk about money.

Mr. Vena reported that the Mediator has asked for a Mediation Statement, which he will prepare. Mr. Spignesi prefers a bullet type statement, which saves a lot of time. Mr. Vena noted Mr. Signesi's reputation as a top-notch mediator with tremendous experience as a construction lawyer. He can cut through any attempts to muddy the issues. Although Mr. Vena has worked on cases with Mr. Spignesi, the Mediator simply makes a disclaimer statement; he has probably worked with Attorneys Starr and Healey, also, over the years. Mr. Vena is very confidence with the reports and video which will prove that we did extensive testing, and that the video will graphically illustrate that doors within arms reach are not closing the same, eliminating any attempts to blame environmental factors such as humidity. This is why he is so interested

in St. Paul's documents. If they haven't done testing, and the Committee has no knowledge that they have done anything other than a cursory walk through in mid-winter, then they have a potential 93A claim against them.

Mr. Barbadora asked if St. Paul can demand to see the reports from SG&H. Mr. Vena [REDACTED]
[REDACTED]
[REDACTED]

The Doctrine of Spoliation, however, presents destroying evidence, so the reports must be held. He will put JCC on notice, though, that 156 or so doors will be replaced, probably in January. At this point in time, it is a judgement call on whether or not to produce the reports, and he chooses not to do so, yet. Mr. Barbadora asked what the answer will be if they come back and say just plane the doors. Mr. Vena replied that the manufacturer doesn't recommend this.

Mr. Davis asked what will be done about the Warranty items which we have been correcting at Town expense. Mr. Vena replied that he has worked with Mr. Murray on this list, and that all work done by the Town to correct deficiencies is in the claim.

Mr. Vena will confirm the booking for the Mediation, for November 19 and 20; although two days might not be needed, it is better to have the second day available and not have to put off finishing until a new date is agreed upon. There are multiple parties and multiple claims, and it can take time. He has agreed to hold the sessions at the offices of Mintz, Levin, because they will need a large conference room and three break-out rooms. The Mediator shuttles between the rooms. Using Mintz, Levin's offices will result in a cost savings, because we won't have to pay AAA for space rental.

The next steps will be to decide who is going to attend the session for the Committee, for Mr. Vena to prepare the bullet-type Mediation Statement for the Committee, and to meet to prepare and map out strategy. He warned that the sessions will be long, with a lot of down-time, so those attending would be wise to bring work with them to fill the time.

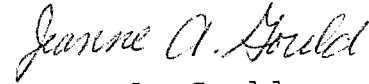
The doors are the main issue. As to the ledge, Mr. Vena [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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

VOTED: To adjourn the Executive Session and the Meeting.

The Executive Session and the Meeting adjourned at 7:00 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
November 06, 2003

Committee Members Present: Chairman David R. Morrow, Vice
Chairman Peter Barbadora, John
A. Davis, Faith M. Lane, Esq.,
Donald K. Lange and George S.
Murray.

Also Present: Edward F. Vena, Esq.

Jeanne A. Gould, Administrative Assistant.

Pursuant to a roll call vote on a Motion by John A. Davis, duly seconded, it was unanimously voted to Adjourn the Open Meeting to Executive Session for the purpose of discussing matters pertaining to pending litigation, with the provision that the Meeting return to Open Meeting for the purposes on concluding any remaining business on the Agenda and for Adjournment.

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

The Meeting adjourned to Executive Session at 6:10 P.M.

The presence of a quorum was declared.

Nothbridge High School Closeout Litigation

Mr. Vena distributed copies of a Confidential Mediation Statement which he prepared as a Brief for the Mediator in the litigation of the JDD/Pytko/USF&G/Town of Northbridge suits.

He prepared a Matrix to summarize the claims of all parties, and the Town's position.

	<u>Jackson</u>	<u>Northbridge</u>
I. Retainage	511,300.00	
Doors		300,000.
Consultant Fees		185,000.
Punch List		66,000.
Liquidated Damages (Building)		36,000.

Liquidated Damages (Fields)		75,000.
Warranty Items		15,000.
TOTALS:	511,300	<u>677,000.</u>
OWED:		166,000.

Northbridge/JCC/Pytko/USF&G.

Mr. Vena explained that he plugged in the figure of \$300,000, based on the draft report from Simpson, Gumpertz & Heger, with remediation measures. They suggested 1) Shaving the stile, or 2) stretching the frames via hydraulic measures. Another option is to completely replace the 156 doors which are not functioning properly.

The figure plugged in for consultant's fees came from old figures used in prior assessments of costs. This could be modified.

The Punch List is carried at 66,000, but in all probability will probably settle out at half that amount, or \$36,000. This does not include the doors.

Liquidated Damages were compiled using the figure of \$500 per day for the building, and \$100 per day for the fields.

The Warranty item for work being done is carried at \$15,000, but it was noted that actual costs exceed that figure. It will be revised.

Jackson's Claims

Mr. Barbadora commented that there is a letter from JCC with a figure for delay claims. Mr. Vena responded that our figure is \$0.00, because the delays were not caused by the Town. Most of the delays were Pytko related.

Franny's costs and JCC's claims for Landscaping amount to \$56,564, but the Pine & Swallow report states that the failure of the fields to produce a good stand of grass was caused by Franny's over-watering.

Pytko's claims passed through JCC for Ledge amount to \$340,000, but based on Glynn v. Gloucester, because Pytko did not adhere to the contract documents, the Town's position is that it does not owe JCC anything for the Pytko claims. In fact, Jackson's position on the Pytko claims is that they didn't comply with the specs. Mr. Vena noted that in a preliminary conference, Pytko's attorney seemed unaware of Pytko's failure to comply with the specs, and since that conference has produced a flurry of requests to Tappe' and GSI for documentation. Mr. Vena is working with JCC's Attorney to prepare a Motion for Summary Judgement on this claim before Mediation. JCC would file v. Pytko, and the Town would file v. JCC. All parties have agreed to extend the tracking order.

St. Paul's Exposure on 93A Claim

Mr. Vena explained that the cost under "a)" of the matrix is arrived at by multiplying the \$166,000 owed to the Town by 3. Because USF&G did not conduct a good faith independent investigation of the claim for the doors, they have left themselves open to a bad faith claim, with significant exposure. Under 93A, USF&G could be assessed "b)" Attorney's fees, estimated at \$150,000. They would also be liable for "c)", expert costs, estimated at \$50,000.

Mr. Vena received the documents from St. Paul's and noted that they are very sparse. The General Contractor indemnifies the surety on a claim, but there is no indemnity on a bad faith claim, so St. Paul's has exposure.

Mr. Vena noted that his document is produced for the Mediator only, and is confidential. He doesn't know what claims JCC has placed before the Mediator.

The Mediation will be held on November 19, and if necessary, on November 20 at the offices of Mintz Levin.

Mr. Morrow noted that there is no mention of the Infiltration Basin in the claims, and Mr. Vena explained that that claim is in the Tappe' suit.

Mr. Vena is very confident in the expert's report on the doors, saying that it is pretty definitive.

Mediation Process

Mr. Vena outlined the procedure for Mediation. All parties initially meet together. The Mediator explains the purpose of Mediation, and the parties make their statements. He has spoken with the Mediator, Mr. Spignesi, who indicated he will probably dispense with the group meeting, and will allow each party to present their cases individually by phone. The parties then break out into separate rooms, and the Mediator will shuttle between the rooms. In the first go-around, he'll try to determine the spread or boundaries. After determining the "brackets", he will ask if any offers of settlement can be made. While Jackson will probably note that the Town previously made an offer of \$150,000, the door problem has changed all that, and the offer is off the table.

Mr. Vena informed the Committee that Bob Barton has convinced JCC's Attorney that the doors are a figment of Ed Vena's imagination, and nothing more than an attempt to try to buy out the contractor.

Mr. Vena will bring the SG&H Reports to share with the Mediator, but not with JCC. SG&H has a solid reputation of being straight shooters, who conduct a thoroughly independent, honest revue, and this will go a long way with Mr. Spignesi to debunk the "figment of the imagination" claim.

The doors effect not only our case with JCC, but also with USF&G because they took their client's word and failed to perform their own good faith investigation. He is sure that the Mediator can work to dispel the "imagination" theory. The doors are definitely the swing issue in the litigation and any possible mediation.

Liquidated Damages

Mr. Vena really wants to go after Liquidated Damages. The Committee and Mr. Barton had an agreement by which the Date of Substantial Completion was extended, in return for which the Town would not seek Liquidated Damages, but Mr. Barton repudiated that deal. There is language in the contract, however, which deals with Liquidated Damages.

Punch List

The Punch List is a valuation issue, Mr. Vena said, and is subject to a difference of opinion as to value. Warranty issues, though, will continue to increase in value for work which is being done to correct deficiencies which the Contractor and/or his subs have failed to correct.

Mr. Vena thinks that there is always a possibility that Pytko will walk away from the trench claim if he figures that he can get something from JCC on his other claims against them.

He does not expect JCC to agree to a wash. It is very unlikely that the surety will subsidize a settlement, but they might put pressure on Jackson to settle. JCC won't want USF&G to write a check, because that puts JCC in a "claims" category and effects future bonding.

Mr. Barbadora expressed his opinion that JCC is going for the whole amount due them, using the argument that the doors are a bogus issue and that they have legitimate delay claims. Mr. Vena [REDACTED]

Mr. Murray stated that he wants doors that work. He feels that shaving the stiles will not be a satisfactory remediation, because there is too little veneer to shave and not destroy the door. He noted that the stiles have already been ripped open on some of the doors in an effort to open or close them. He sees door replacement as the only solution. Expanding the frames will only cause more damage to the walls, tiles and areas surrounding the frames which then have to be repaired.

Mr. Vena stated that we will have to go ahead and fix the doors. He will put everyone on notice. He would like to do the repairs in January. While there is a Doctrine of Spoliation, which prohibits destroying evidence, a notice that the Town is going to fix the doors, test now or lose the opportunity forever, would give fair notice. Other issues can be negotiated, but the doors issue has to be settled for there to be any global settlement.

Mr. Vena asked that someone from the Committee be given authority to act on behalf of the Committee at the mediation. [REDACTED]

The Committee needs to discuss what type of settlement the Town can live with. For instance, would giving JCC \$150,000 and keeping \$360,000 cover the out of pocket expenses to the Town. The leverage against USF&G is a roll of the dice, but it is a good and credible threat. Mr. Vena [REDACTED]

Soccer Field

The Chairman noted that the soccer field is designed at the maximum size. Weston & Sampson wants to know if the Athletic Department would accept a minimum size field on re-design. Mr. Murray asked how much it would cost to bring in fill. Mr. Vena replied that the real problem is extending the irrigation heads, and effects on the sub-drainage.

Consensus of Committee on High/Low of Settlement

<u>Issue</u>	<u>High</u>	<u>Low</u>
Doors	300,000	250,000
Consultants (Use \$80,000 as leverage against JCC & Pytko)	32,000	32,000
Punch List	66,000	33,000
Warranty List	50,000	20,000
Boilers	15,000	0
Infiltration Basin (Add in)	50,000	0
	<hr/>	<hr/>
	513,000	335,000
	(Wash)	(175,00 to JCC)

Mr. Davis asked if Mr. Vena expects any surprises. Mr. Barbadora questioned continuing obligations. Mr. Vena replied that if they admit to continuing obligations - to fix the doors - if they don't fix them by a certain date, then they forfeit the money. If the doors are shaved or fixed in some other way, we will have to go through both high and low humidity seasons to be sure they work. In any case, warranties would have to be made. It would be very hard to define whether they can be planed or must be replaced.

Mr. Barbadora expressed the hope that JCC, through the mediation process, will bring someone out to investigate. He noted that a contractor usually prefers to fix a problem himself and not put money into someone else's pocket.

Mr. Morrow suggested that a courtesy call be made to the Chairman of the Finance Committee to inform her that the matter is going to mediation, and to be sure that money has been put aside for litigation, should mediation fail. He feels that this assurance is needed for the Committee to have authorization to make a decision on behalf of the Town.

Mr. Vena informed the Committee that he will be away next week, but that his Secretary, Soraya, will know how to reach him in case of an emergency.

Mediation will start at 9:30 A.M., and Committee members attending will meet at Mr. Vena's office at 8:30 A.M. The Chairman, Vice Chairman and Mr. Davis plan to attend. Mr. Vena noted that any member is free to attend.

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

VOTED: To authorize the Chairman of the Building, Planning and Construction Committee to speak on behalf of the Committee on any proposals for settlement at the Mediation session in the matter of Town of Northbridge/Jackson Construction Company/ Pytko Corporation/ USF&G, to be held on Wednesday, November 19 and Thursday, November 20, 2003.

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

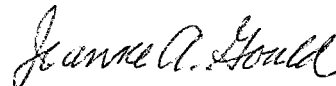
On MOTION OF MR. DAVIS, duly seconded, on a roll call vote, it was unanimously

VOTED: To adjourn the Executive Session and 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, Mr. Lange and Mr. Murray. There were no negative votes cast.

The Executive Session adjourned to Open Meeting at 8:30 P.M.

Respectfully submitted,



Jeanne A. Gould
Administrative Assistant

DISTRIBUTION:

Committee Members
Edward F. Vena, Esq.