

*Approved January 22, 2007
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BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Minutes of Executive Session
January 08, 2004

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

Also Present: Town Manager Michael Coughlin.

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 pending litigation, not to return to Open Meeting as all other business on the Agenda had been completed.

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

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

The presence of a quorum was declared.

Northbridge High School Closeout Litigation

The Town Manager was invited to sit in on the Executive Session to inform him of the results of Mediation in the litigation concerning the General Contract, Site Sub-Contractor and Surety. The Chairman presented a recap of the two mediation sessions held to date.

The Mediator, John Spignesi, Esq., meets with each group individually, going from room to room, to present the offers and arguments of each party to the other parties. Mr. Barbadora said that Mr. Spignesi has been very helpful in giving everyone the other parties' positions.

The Chairman distributed a worksheet detailing the position that the Owner has taken on the issues under consideration. He recapped Jackson's rebuttal, and in some instances, compromise position. The following issues are on the table.

Punch List: The monetized value of the Punch List being

carried by Northbridge is \$37,283.00, which Jackson has agreed to buy out. This is agreeable to the Committee.

Warranty Issues: The value of warranty issues, or work which the Committee has been forced to hire a contractor to complete because of the failure of JCC or its Sub-Contractor, KMD Mechanical Corporation, to respond and complete or correct deficient work, currently stands at \$63,625.00. JCC is offering to pay \$22,000.00 for this corrective work.

Watering Fields: \$7,526.00 has already been reimbursed to the Northbridge School Department by the Committee from the School Building Account for watering the Athletic Fields, which was done at the direction of the Site Sub-Sub, Franny's Landscaping, in order to get the grass to grow. It is the Committee's position that the watering was owned by the Contractor who was supposed to furnish an acceptable stand of grass and the watering to accomplish that result. A subsequent study showed that the amount of water which Franny's called for was in fact overwatering and contributed to the problems with the grass. JCC is denying that the watering was the Contractor's responsibility. Specs are ambiguous.

Salmon's Replacement of Three Doors. The Committee is attempting to recoup the sum for \$2,722.00 for the three doors removed and replaced, in order to have forensic testing done on the doors, when neither JCC or its Surety conducted comprehensive testing to determine the problem with the doors.

Jackson has now agreed that there is a problem with the doors/frames, and has offered to have \$30,000.00 held back until they fix the doors. Payment to JCC would be contingent on the following conditions: 1) JCC would present a proposal for fixing the doors; 2) the doors would be fixed mid-summer, during the period of high humidity; 3) the warranty on the doors would be extended (labor) for a period of one year (the doors carry a lifetime guarantee); 4: JCC would present assurance from the manufacturer that any corrections or work performed on the doors would not effect their warranty.

Jackson doesn't feel that any warranty issues claimed by the owner are in fact warranty issues; he is claiming that they are maintenance issues.

Consultants' Fees: The Committee is pressing for reimbursement of \$12,271.00 for GSI's extra work occasioned by the failure of Pytko to conform to the specifications. The Committee is also claiming reimbursement is owed, per the Contract by and between the Town of Northbridge and Jackson Construction Company, for the services of CMS after the date of Substantial Completion, 9/1/01, in the amount of \$76,685.00, and for Tappe's services after the expiration of their Contract on 01/02/02 in the amount of \$68,060.00. The Committee is claiming the cost for the testing on the doors by Simpson,

Gumpertz & Heger in the amount of \$27,897.00, which the Committee had performed to prove that the problem was the frames, not the doors as JCC claimed. JCC and its Surety failed to perform any testing.

A total of \$511,000 is being held on Jackson's contract. The Committee proposes to hold back \$296,069.00 for the items listed above, leaving a difference of \$214,931.00. Of this amount the Committee proposes to hold back the amount of \$30,000.00 until JCC has fixed the doors to close properly within the frames, and \$20,000.00 which it is estimated will be needed to repair the boiler which has failed. The maximum amount available for a settlement with JCC would be \$164,931.

This figure does not factor in the Pytko suit. The Committee's position is that no money is owed because of Pytko's failure to adhere to the specifications and notify the Owner of excavation in a timely manner in order that amounts could be verified.

It is the position of the Committee that any settlement be a global settlement, with all of the necessary hold harmless agreements.

Pytko Suits. Pytko was sent home after the first day of mediation because the two sides were too far apart. It is the Committee's position that Pytko's issues are with JCC, and they need to settle with Pytko. The Committee, through its attorney, Edward F. Vena, Esq., has initiated a Motion for Summary Judgement on behalf of the Town, and stands on its position that no additional funds are owed to Pytko.

The Chairman stated that any global agreement would require the Surety to back it up.

Mr. Morrow said that it is his understanding that a 93A suit would only apply if agreement is reached and there is not enough money to pay Jackson. He feels that the Mediation is moving in the right direction. He noted that JCC, in arriving at the figures it is proposing for consultants' fees, is coming from the position that it should only own 1/3 of the cost (building), and Pytko should own 2/3 because of their delays (site). JCC's position on the SGH fees is that SGH is our consultant, so we should pay. The one year extended warranty on the labor would come from Jackson; the lifetime warranty on the doors comes from the manufacturer.

The Chairman said that Atty. Vena thinks that the case against Tappe' is our ace in the hole. His expert estimates that the ledge issue - Tappe' should have raised the building to eliminate much of the ledge - is worth \$280,000 after backing out compensating costs.

Mrs. Lane and others thanked the Committee's Chairman and

Vice Chairman for their efforts in solving these closeout problems.

The next Mediation Session will take place on Friday, January 16.

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 were adjourned at 9:00 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
January 22, 2004

Committee Members Present: 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, duly seconded, it was unanimously voted to Adjourn the Open Meeting to Executive Session for the purpose of discussing pending litigation and mediation, with the provision that the Session 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. Barbadora, Mr. Davis, Mrs. Lane, Mr. Lange and Mr. Murray. There were no negative votes cast.

The Meeting adjourned to Executive Session at 8:00 P.M. and the presence of a quorum was declared.

Northbridge High School Closeout - Mediation with Jackson

The Chairman reported on the Mediation Session held between the Town and Jackson Construction Company, at which he and Jack Davis were present, along with the Counsel for the Project, Edward F. Vena, Esq. He informed Committee members that he and Mr. Davis had agreed to a settlement with Jackson Construction Company in the amount of \$511,300, the amount being withheld. He had hoped that Mr. Vena and Mr. Starr would have the terms of the Agreement prepared for this meeting.

The Chairman announced that the agreement is a global agreement, with JCC indemnifying the Town against any action by Pytko, and against outstanding Demands for Direct Payment. Jackson will fix the doors and the boilers. They will be paid \$511,300, with \$30,000.00 to be withheld until the doors are fixed, and \$20,000.00 to be withheld until the boilers are fixed. After the doors are fixed, \$25,000.00 will be paid, with \$5,000.00 to be retained.

Mr. Murray and Mr. Lange asked what happened to the figure of \$164,000 which was discussed as a settlement figure at the last meeting, which might climb to \$200,000 - \$250,000.

The Chairman replied that the figure of \$164,000 was a best case scenario. Mr. Murray expressed the opinion that the figure of \$511,300 was the worst case scenario, and that the Committee could have saved a lot of time and legal fees by just paying that amount 2 years ago. He and Mr. Lange felt that the Committee was led to believe that there was a good chance of winning in litigation, that the facts were in the Town's favor. Mr. Davis interjected that he did not interpret the previous meeting as a consensus to settle for as close to \$164,000 as possible, and judged the mood of the Committee that it just wanted to settle and end it. He said that the Mediator, whom he judged to be impartial, indicated that it was in the best interest of the Committee to settle; he said that our Counsel is paid to give us the best slant, but that the Mediator is neutral.

Questions were asked by Mr. Murray and Mr. Lange as to whether the Attorney, after painting a good picture of our chances, advised the settlement. The Chairman on many occasions stated that the Attorney can't be blamed for the settlement, that it was a decision made by him and Mr. Davis. The Attorney, he said, was not in favor of the settlement. The Chairman agreed that the settlement figure is different from the figures presented last week, but it would cost more money to litigate. He said that he got the feeling that Mr. Vena wanted to go to court, but that he and Mr. Davis wanted a global settlement. They felt that they could get the legal fees from the Town. He said that Mr. Vena insists that the Pytko case was a slam-dunk, and that we would win in a court case. He was not very happy with the decision to settle, the Chairman said.

Mrs. Lane wondered why our attorney waited so long to file for Summary Judgement against Pytko. The Chairman indicated that there were other things that had to happen first.

Mr. Murray asked if this would effect the reimbursement from SBAB. The Committee's Assistant replied that when Mr. Davis told her on Saturday what the settlement was, that she anticipated such a question, and felt that it needed to be spelled out for the Committee. She listed those costs which would, in all probability, (almost certainly) be cut from the final approved cost by SBAB. Because the State only reimburses for a judgement, not for a settlement, the legal costs, mediation costs, reproduction of documents, and consulting fees for Simpson, Gumpertz & Heger and TASA Group would be cut. Renaud HVAC & Controls costs for the corrective work done on the HVAC systems will not be reimbursed, because by paying the full amount withheld from JCC, it would constitute a double payment. Reimbursement to the School Department for watering would be denied because the watering was to be provided by the contractor, according to the specs. All payments to Tappe' after 01/02/02, to CMS after 09/01/01, and to CMS for overtime caused by the JCC/Pytko delay would be

cut from the final approved cost of the project. These figures amount to a cut of \$368,345.24 from the Grant, which would also mean a like cut in the approved reimbursement for interest on the bond issue. The reduction in reimbursement, at 83% could amount to \$610,453.10. Settlement within the amount available also knocks out the 93A claim against the Surety. SBAB's argument on cutting consultants' costs would be that the Committee failed to enforce the contract.

Mr. Davis was very upset with this recitation by the Assistant, saying that if he knew this at the time, he would never have agreed to settle, and that Mrs. Gould should have told the Committee what the ramifications would be. Mrs. Gould reacted by informing Mr. Davis that the costs have been very carefully and fully recapped for the Committee on a regular basis, and that she has harped on reimbursable costs throughout the Project. She said that she never dreamed that there would be a settlement in the full amount; but the figures for charges which were deemed to be back-chargeable were broken out in the Account recaps, very specifically on June 30, 2003, September 30, 2003, and as late as December 31, 2003, with the amount of funds remaining being stipulated in every report of the status of the account.

She listed other costs which she expects to be vulnerable, which she has reminded the Committee about on several occasions. One half of the fees paid to Gadsby & Hannah will be cut; there will be some amount cut from Equipment - principally scientific equipment - because SBAB will deem it to be expendable if it does not have a life expectancy of at least 3 years; and her biggest worry has been the trucks. If the trucks are registered and insured, SBAB considers it to be prima facie evidence that they are not site specific, therefore, not chargeable to a particular project. She does feel that a case can be made by presenting a letter from the Police Chief stating that the trucks could not leave the site for gas, maintenance, or to transport equipment and supplies to the athletic fields at Lasell Field. He has agreed to provide such a letter. Her feeling right along has been that there was an exposure of \$110,777.40 for these items, but that a favorable judgement in the lawsuits could help to make up this amount by adding to the base of \$28,000,000.

Mr. Murray expressed concern about how all of the doors could be fixed for \$30,000, saying that with all of the money in the settlement, they could do a poor job and just forfeit the amount remaining. The Chairman replied that the doors will be sanded down, hardware will be adjusted, and the edges will be sealed.

Mr. Davis noted that JCC has until February 3, 2004 to settle with Pytko or the whole deal is off the table, so it might not happen. Mrs. Lane surmised that JCC will use our money to cut a deal with Pytko.

The Chairman explained that he was just concerned about continuing with legal fees for another year and a half. He and Mr. Davis thought that there had been a commitment from the Finance Committee Chairman to transfer up to \$250,000 to cover the legal costs. It was noted by those present that this commitment was for litigation, and that while the Finance Committee might support it, and the Board of Selectmen might support it, the money could only be transferred by action of a Town Meeting.

Mrs. Gould told the Committee that with the settlement agreed to, the \$511,300 would have to be frozen in the account, leaving a balance of \$4,984.03 in available funds as of this date. She noted that if the Invoice from Renaud is approved tonight for payment, it will leave just over \$1,000. in the account.

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

VOTED: That the Chairman contact Mr. Vena tomorrow to see if the agreement to settle for \$511,300 can be withdrawn.

Mr. Murray expressed his concerns, also, about the on-going problems with the HVAC system, and said there is no money in the School Department budget to keep correcting the mistakes made by the contractor.

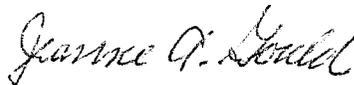
On MOTION OF MR. DAVIS, duly seconded, on a roll call vote, it was unanimously

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

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

The Executive Session adjourned at 9:00 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
February 26, 2004

Committee Members Present: 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, it was unanimously voted to Adjourn the Open Meeting to Executive Session for the purpose of discussing matters pertaining to litigation, not to return to Open Meeting.

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 Meeting adjourned to Executive Session at 6:05 P.M. and the presence of a quorum was declared.

Northbridge High School Closeout - Litigation

Attorney Edward F. Vena was recognized for the purpose of providing an update on the status of litigation involving the Town of Northbridge, Jackson Construction Company and Pytko Construction Corp.

Mr. Vena distributed copies of two documents: The numbers proposed by Attorney Tony Starr for Jackson, dated February 18, 2004; and Mr. Vena's summary of the numbers proposed on behalf of the Town of Northbridge at the close of Mediation, dated February 19, 2004. A copy of Mr. Vena's Matrix, for settlement purposes only, is attached to these minutes.

The issues and proposals of each side are, in essence, as follows:

Punchlist: The monetized punchlist remains at \$37,283.00. Because no work has been done on this list, it is the Committee's position that the entire amount is due and should be deducted from any final settlement payment to Jackson. Jackson is proposing a payment of \$32,125.00, meaning a delta of \$5,158.00.

H2O - Fields. Although the Town has incurred the payment of \$7,526.00 for watering of the fields and has claimed that JCC should be responsible for this amount, the specifications calling for watering are not clear, and the Committee and JCC have both agreed to a \$0.00 payment on this issue.

Salmon/Doors. The Town is seeking reimbursement in the amount of \$2,722.00 for the three doors which were removed and replaced for testing. JCC is not willing to reimburse on this amount, creating a delta of \$2,722.00.

CMS Fees. Fees paid to CMS for extension of their contract after the date of Substantial Completion amount to \$51,958.00. During Mediation Sessions, it was agreed that 1/3 of this amount is chargeable to JCC, with 2/3 being back-chargeable to Pytko. Jackson has agreed to a deduction of \$10,000.00, with the Town's position being that \$17,319.00 is chargeable to JCC. \$34,364.00 would be held in Reserve, pending the outcome of Pytko litigation.

Tappe's Fees. Fees paid and owed to Tappe' amount to \$40,361.00 since January 1, 2002. It was agreed that 1/3 of this amount is chargeable to JCC, with 2/3 being back-chargeable to Pytko. The Town's computation of 1/3 equals \$12,108.00 charged to Jackson, and they have agreed to an amount of \$10,000.00, with \$28,253.00 held in Reserve, pending the outcome of Pytko litigation.

GSI Rework. Cost of work which had to be revisited because of Pytko's performance, or non-performance, amounts to \$12,271.00, which is claimed by the Town; Jackson will not agree to this deduction, but will agree to hold \$12,271.00 in Reserve, pending Pytko litigation.

GSI Additional Work. Additional work by GSI amounts to \$18,942.00, which JCC agrees to place in Reserve, pending outcome of Pytko litigation. It is JCC's position that all GSI work is Pytko related.

CRJA Additional Fees. Additional fees for CRJA, caused by Pytko's delays or failure to perform, amount to \$6,017.00, which Jackson has agreed to place in Reserve, pending the outcome of Pytko litigation.

Kerr/Pine & Swallow Reports. The Town is claiming that it is due \$2,740.00 in consultant costs arising from Jackson's failure to investigate the door and field issues. JCC is denying responsibility for these costs. The delta is \$2,740.00.

Simpson, Gumpertz & Heger Consulting Fees - Doors. The Committee's position is that JCC, because of its failure to investigate the door issue, is responsible for the \$27,987.00 incurred by the Town. Both have agreed to split the amount with a back-charge of \$13,993.00 to be assessed to Jackson.

HVAC Work. The current cost for repairs and remediation of the HVAC system amounts to \$73,625.00, which JCC has agreed to place in Reserve. Attorney Starr has informed Mr. Vena that Jackson wants to bring in Garcia, Galuska & DeSousa, or a HVAC engineer to do a forensic examination of the system, with the Town to choose, and Jackson to pay. Meanwhile, the costs continue to escalate as more problems are discovered.

Mr. Vena was given a copy of a letter from Renaud HVAC & Controls, Inc., which details an investigation conducted by the controls contractor, in which serious defects were identified in the Honeywell E-Bus (Lon Works) communication network, which concludes that it may be less work to run a new E-Bus system than to correct the deficiencies. Included in the Renaud report was the discovery that 94 condensate traps are missing in the vent units.

Boiler. Both sides have agreed to hold \$20,000.00 in Reserve for correction of deficiencies in the boilers.

Doors. Both sides have agreed to hold \$30,000.00 in Reserve for corrections to be made to the ill-fitting doors.

Demand For Direct Payment. The sums involved in Demands for Direct Payment will be held in Reserve, in the amount of \$31,696.00 for Capeway and \$4,866.00 for LeVangie. All other Demands have been taken care of by Jackson.

Contract Balance:	\$541,095.00
(Credits Agreed To):	(71,428.00)
(Reserved):	(266,034.00)

Possible Payment:	\$203,633.00
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Jackson proposes to fix the doors and the boilers, with the money reserved to be held until the next heating season to be sure that the doors close properly and the boilers function correctly.

Mr. Vena reported that he has been contacted by Mr. Starr to determine if the Town would be willing to negotiate a settlement on the consultants, and he asked if the \$511,000. is still on the table. Mr. Vena told him that it is not. Mr. Vena relayed the contents of the taped message from Mr. Starr to the Committee. On the tape, Mr. Starr proposed splitting the difference in the two proposals. Mr. Vena is firm that the Reserve amounts must be settled in a manner that will preserve the SBA Grant. Mr. Starr told him that there is some movement on the Pytko litigation, and asked if the global settlement could be reinstated. If so, he said, it might work to shut down all litigation. In Mr. Starr's conversations with Pytko's attorney, they seem to be coming down in their demands. Mr. Starr is in the process of trying to absorb all proposals.

Mr. Vena reported to the Committee that he has told Mr. Starr that a global settlement has to be a substantially lower number; the Delta could be split, but the Reserves are firm. He said that there is a need to come to some type of decision, because only 6 weeks remain for discovery on the Pytko case. He is prepared to file for Summary Judgement, with or without Jackson, as soon as the discovery period runs.

Mr. Davis asked why we can't have JCC get a deal with Pytko then come back to the Town. Mr. Vena replied that JCC is looking for the Town to pay as large amount as possible, then they pocket the profit over what they have to pay Pytko. In his view, settlement at Jackson's figures of \$425,000 to \$450,000 is totally unreasonable. Mr. Mitchell interjected that it is out of the question. Mr. Murray agreed with Neal, stating that while some issues are marginal, the Town has a good shot at most of the issues. He asked if Mr. Vena could reverse the process and get Jackson to settle with Pytko then come to us. Mr. Davis agreed that a global settlement should only come after knowing what Jackson's deal with Pytko is. Both Mr. Mitchell and Mr. Murray stated there should be no global settlement at this time. Mr. Vena said that the only way to approach a global settlement is for the Committee to decide on a figure.

Both Mr. Mitchell and Mr. Murray stated that the Committee should support the advice of Mr. Vena. Mr. Vena commenting on the \$100,000 in consultants' fees, said that the Committee might want to cut a deal on this, possibly 50/50, with \$50,000 paid immediately. Renaud's costs, however, must come out of JCC's retainage. He informed the Committee that he will be away for a week on vacation, but will keep abreast of developments. Mr. Murray suggested that when he speaks with Mr. Starr tomorrow, he tell him that if there is no settlement with Jackson the day he gets back from vacation, there will be no more talks. Mr. Mitchell also suggested that Mr. Vena have Jackson's attorney tell Pytko that we are going forward with litigation. On reflection, Mr. Vena said

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Mr. Vena noted that on scanning the report from Honeywell, if the figure is high to fix the problem it changes the dynamic significantly. He needs to see the order of magnitude. Mr. Murray reported that these problems did not just surface in this, the third year of occupation of the school; they have been present since day one. He said that the sub and sub-subs have not responded to repeated requests to fix the problems, and it is time for a forensic examination of the system. Mr. Vena will tell Mr. Starr that the Committee wants to hire a consultant of its choice, at Jackson's cost, to do a forensic examination.

The Chairman expressed the opinion that there is no way to get a settlement with these HVAC problems; even \$150,000.00

doesn't leave enough money to correct the problems.

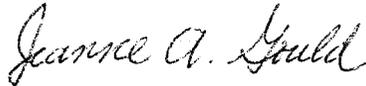
Mr. Vena will inform Pytko that all bets are off and the Committee will litigate the case. In response to Mrs. Lane's questions about discovery and summary judgement in the Pytko case, Mr. Vena said that he will initiate a call to Harry Weatherbee to begin the discovery. When the 6 weeks for discovery have run, he will then file for summary judgement.

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

VOTED: To adjourn the Meeting and the Executive Session.

The Meeting and the Executive Session adjourned at 6:55 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 11, 2004

Committee Members Present: Chairman Peter Barbadora, Vice Chairman David R. Morrow, 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 George S. Murray, duly seconded, it was unanimously voted to adjourn the Open Meeting to Executive Session for the purpose of discussing matters pertaining to litigation, with the provision that the Session return to Open Meeting for the purposes of concluding any remaining business on the Agenda and for Adjournment.

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

The Meeting adjourned to Executive Session at 7:00 P.M. and the presence of a quorum was declared.

Northbridge High School Closeout - Litigation

Attorney Ed Vena reported on the status of discussions with Attorney Tony Starr, and of Jackson's counter-offer to the Committee for settlement purposes. The Chairman informed the Committee that he had received a call from Robert Barton who seemed eager to come to some type of settlement. Mr. Vena has the impression that Pytko is pretty close to cutting a deal with Jackson, and that he might be willing to take \$100,000 and walk away. Mr. Vena informed Mr. Starr that the global concept is not on the table, and that he had been told this by the Committee. He did tell Mr. Starr that he felt duty bound to inform the Committee of JCC's proposal. He assured the Committee that if the HVAC problems are more than the amount currently being withheld in reserves for the needed corrections, the Surety will stand behind any additional expenditures to make the system work.

Mr. Vena distributed copies of Jackson's Proposals, dated 3/11/04. Jackson would be willing to settle for \$485,000 subject to items being reserved, other than consultants' fees. It is JCC's position that Pytko is responsible for 2/3 of the fees for CMS and Tappe'. He feels that the figure of \$485,000

is clearly a negotiable figure. The negotiations in the last few weeks have been very intense, indicating a real desire on Jackson's part to settle. An immediate settlement according to JCC's proposal would include a guaranteed reduction of \$64,431.00. Town's cost for Punchlist, Watering Fields, Salmon/Doors, CMS and Tappe' (10,000 for each of the total costs of \$51,958.00 and \$40,361.00, respectively) the Kerr and Pine & Swallow Reports and the Simpson, Gumpertz & Heger fees re the doors amounts to \$76,738.00. Jackson's offer for these costs amount to \$52,125.00, creating a delta of \$24,613.00 which JCC proposes to split.

Jackson proposes reserves of \$34,364.00 and \$28,253.00 for Pytko's share of CMS and Tappe' fees, respectively; \$12,271.00 for GSI Rework, \$18,942.00 for GSI services, and \$6,017.00 for CRJA which JCC feels are chargeable to Pytko; \$73,625.00 for HVAC, with the provisions that for any excess amounts the Town will be able to recover from Jackson and its surety, and the additional provision that Galuska or another HVAC engineer be brought in to evaluate the entire HVAC system and the existing charges to determine whether the problems are construction or maintenance related, with JCC agreeing to entertain a proposal to split the cost with the Town; \$20,000 will be reserved to correct problems with the boilers, to be done by Jackson, to be released when the boilers are fixed; \$30,000 to fix the doors, again, with the provision that the money be released to Jackson when they have satisfactorily completed the corrections; and money for Demands for Direct Payment from Capeway in the amount of \$31,696.00 and LeVangie in the amount of \$4,866.00. The total amount which Jackson agrees to reserve is \$266,034.00. This would result in the following, if the JCC Proposal were to be accepted:

Balance being withheld:	541,095.00
Reserved Funds	(266,034.00)
Credit (splitting delta)	(64,431.00)

Immediate Payment to JCC: 210,630.00

The Jackson Proposal includes the provision that the Town and Jackson will cooperate with each other in the Pytko lawsuit and the consultant fees will be litigated in the Pytko case. The settlement of \$485,000 would be subject to reserves for doors, boiler, Capeway, LeVangie and HVAC (subject to the conditions above) with the sums for the boiler and doors being the same as those set forth in the mediation offer of settlement. Jackson, in return for Northbridge's cooperation in the Pytko case, will dismiss its third part complaint in the Pytko case, and indemnify Northbridge from any Pytko claims. Jackson's surety will assent to and agree to be bound by either of the settlement proposals.

The Chairman said that if we settle with Jackson in

accordance with their proposal, it would mean an immediate payment of \$210,630 to JCC, with the Town retaining approximately \$300,000. After Jackson fixes the doors and boilers, the split of the money being withheld would be roughly \$250,000 to the Town and \$260,000 to Jackson.

Mr. Vena agreed, stating that the Town would then go to Pytko, with JCC, for the rest of the reserves, and meanwhile would be pocketing 1/3 of the consultant's fees. He said that to litigate with Pytko for \$100,000 might cost the Town \$75,000 in litigation fees. He feels that there is a strong possibility that JCC will negotiate on the \$485,000 and agree to reserve money for HVAC.

The discovery period is up April 12 for the Pytko case, and he is prepared to file for Summary Judgement before the time expires, probably early summer, but the earliest a decision could be expected is September/October. Even with the Summary Judgement, we will still have to litigate for the consultants' fees. Mrs. Lane asked if Jackson would still negotiate for the fees if the Town goes forward with Summary Judgement. Mr. Vena thinks they might, but the Town would litigate to get them.

The Chairman asked if the members would favor making a proposal for a global settlement with Jackson and going after Pytko for the consultants' fees. Mr. Vena said that JCC has agreed to split the fees, and only need the paperwork. The only decision is whether the Committee wishes to advance toward a global settlement. Mrs. Lane questioned whether Pytko should be pursued for placing the wrong material in the Basin after they over-excavated the natural material. Mr. Vena replied that he is going after Tappe' for that, because it is either a design failure or a failure to supervise. He said that JCC is giving a credit of \$56,000, so that, in essence, the Town would be trading Consultant's fees for \$56,000, instead of \$64,431. If the settlement figure can be knocked down to \$460,000, it would bring the figure down below the split fees.

Mr. Murray asked what Mr. Vena would advise the Committee to do. He replied [REDACTED]

[REDACTED] If the settlement can be lowered to \$460,000, it eliminates additional legal fees, lets the Town pocket \$80,000, subject to trading \$100,000 to Pytko for the Consultants' fees. The bond will stay in place and the surety will back up the HVAC.

Mr. Murray reported that he, the Chairman and Paul Halacy, Director of Maintenance met with Ed Galuska today. Ed took the position that because commissioning of the building was not called for in the specs, he went with a balancing report. He did indicate that some of the equipment is not up to his standards. But he thinks that KMD could say that when

they left things were working properly, and that while Renaud did things to make the system work, they were not necessarily as designed. He did mention that he might be willing to commission the building and get KMD and Brunnell back in to make the corrections. Mr. Murray stated that he had no complaints on the maintenance of the system; he did not tip his hand, and those representing the Town didn't either. According to Mr. Galuska, KMD was supposedly going to replace the faulty rooftop unit; this was news to Mr. Murray. He was asked if the Committee should continue to have Renaud make corrections in order to keep heat in the building, and Mr. Galuska said to go ahead and use Renaud.

The Chairman noted that Mr. Galuska indicated that he didn't want to be a party to back-charging or litigation. Mr. Vena commented that he has to be willing to make a report in order for Jackson to back-charge KMD. The Chairman said that the Town might have to pay Ed Galuska, and \$25,000 was mentioned, but not KMD or Brunnell. Mr. Mitchell interjected that it is pretty bad for the Town to have to pay Galuska to straighten out a job that was probably designed improperly. The Chairman said that he indicated that the controls seem to be the major problem. Mr. Murray repeated that Mr. Galuska said that the units did not seem to be manufactured properly. He didn't even take Renaud's work sheets to analyze the problems uncovered by Renaud, though.

Mr. Vena said that whether it is done through Galuska or some other HVAC engineer, two things must be done: 1) We have to get the system working properly at no cost to the Town; and 2) We need a report validating Renaud's work. The Chairman repeated that Mr. Galuska said that the specs didn't call for commissioning and didn't pay for it. He suggested that the Committee get a proposal from Ed Galuska and look at it. Mr. Mitchell suggested that the Committee also get proposals from a couple of other HVAC engineers and have all of them in for interview the same night. Mr. Vena said

[REDACTED]

Mr. Mitchell proposed that Mr. Vena go back to JCC with a global proposal of \$435,000. Mr. Vena agreed to bring back the counter proposal and suggest to Mr. Starr that Bob Barton has to move. He will look for \$430,000, with the HVAC reserved. If a split is negotiated, it will result in a global in the neighborhood of \$460,000. He will report back.

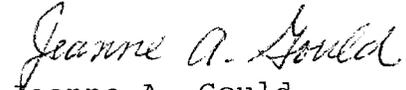
On MOTION OF MR. MURRAY, duly seconded, on a roll call vote, it was unanimously

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

The Executive Session adjourned to Open Meeting at 8:15 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
March 25, 2004

Committee Members Present: Chairman Peter Barbadora, Vice
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, it was unanimously voted to adjourn the Open Meeting to Executive Session for the purpose of discussing matters pertaining to litigation, not to return to Open Meeting.

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

The Meeting adjourned to Executive Session at 6:20 P.M. and the presence of a quorum was declared.

Northbridge High School Closeout - Litigation

Mr. Barbadora reported on his conversation with Robert Barton, Vice President of Jackson Construction Committee, in which the counter-proposals for a settlement were discussed. At the Executive Session on March 11, 2004, Attorney Edward F. Vena presented a Proposal from Jackson's Attorney, Tony Starr, for a global settlement of \$485,000, with reserves to be held in the amount of \$266,034.00 pending completion of work on the doors, boiler and HVAC system and settlement of litigation with Pytko for consultant fees. Jackson was looking for an immediate payment of \$210,630.00.

The Committee at that meeting authorized its attorney to present a counter-proposal of \$435,000, subject to the same reserves. The Chairman reviewed the items contained in the Proposal of 03/11/04 with Mr. Barton, and Mr. Barton agreed to the following provisions of a new Jackson Proposal of \$450,000 for a global settlement:

- All items previously agreed to remained in place;
- Reserves would include the following:
 - Doors - \$30,000;
 - Boiler - \$20,000; (both to be paid upon completion of repairs)
 - Demands for Direct Payment: Capeway - \$31,696;
 - LeVangie - \$4,866.00;

HVAC Repairs - \$73,625.00, pending a review of the system and allocation of the costs between correction of deficiencies and maintenance issues. This review is to be done either by Ed Galuska or an independent HVAC consultant. Although the matter of payment was not defined by JCC either at the meeting on 03/11 or in the Chairman's conversation with Mr. Barton, JCC's attorney had indicated to Atty. Vena on March 11 that they might entertain splitting the cost;
CMS and Tappe's fees of \$34,364.00 and \$28,253.00 would be reserved pending the outcome of litigation with Pytko, as Pytko's share incurred by their delay, in addition to \$12,271.00 for GSI rework, \$18,942.00 for GSI services and \$6,017.00 for CRJA.

Mr. Barton agreed that Jackson would dismiss the 3rd. Party action and indemnify the Town against the Pytko claim in return for the Town's cooperation in back-charging Pytko. Jackson would agree to a deduct Change Order in the amount of \$100,000 for consultants' fees and an add Change Order in the amount of \$100,000 for additional ledge removal.

Mr. Barton agreed that Jackson would sign such a global proposal, and that their Surety would sign, also. He also indicated that the Surety would cover any additional claims for HVAC corrective work which might be necessary as a result of a review.

Mr. Barbadora said that the main issue which is hanging out there is the status of the HVAC system and reimbursement for costs incurred already, or to be incurred by the Town.

The Chairman circulated worksheets which KMD sent to him, at his request, for alleged unpaid Invoices for additional work. The Invoices are for work done during the period which would either be covered under the punch-list or warranty periods. The worksheets appear to confirm Mr. Murray's contention and Renaud's subsequent reports, that equipment was defective, installation was incorrect, parts were missing and wear and failure should have been covered by warranty. There was no indication in the worksheets provided by KMD that maintenance was the cause of failure of the system to operate properly, and that these failures started in January of the first year of operation of the school.

Mrs. Lane asked why the Chairman spoke directly with Mr. Barton, rather than through the Attorneys. He replied that Attorney Starr was on vacation, and Mr. Barton was anxious to resolve the matter and wanted to speak with the Committee. Mrs. Lane asked why he didn't talk with his Attorney. It was the consensus that the Committee has good reason not to put much faith in Mr. Barton's promises or verbal agreements. The Chairman responded that the Attorney's will work out the details of the Agreement. He said that Mr. Barton did agree

to everything which the Committee agreed on at the meeting on March 11, and that they went through the list item by item.

Mr. Barbadora reported that he has also spoken with Ed Galuska, who indicated that he doesn't want to get put into a position between the Town and KMD. He repeated that he doesn't owe commissioning to the Town. Mr. Galuska expressed the opinion to the Chairman that everyone shares the responsibility for the failure of the system: 'Tappe' and CMS, who should have been providing supervision, and KMD. Mr. Murray asked if money for the forensic study is still on the table with Jackson, and Mr. Barbadora responded that he doesn't remember agreeing on that with Mr. Barton.

The Chairman reported that he has spoken with Robert D'Alfonso of Halliwell, requesting a proposal for a forensic examination of the HVAC system, and that Mr. D'Alfonso wants a set of plans. Mr. Murray will see that a set is sent to him. Mr. Mitchell suggested having a letter sent to Galuska requesting the name of GG&D's Insurance Company. It was agreed that the Chairman ask Mr. Vena to handle this. Mr. Morrow suggested putting together a package, including KMD's and Renaud's Invoices for the Review, and that the review should cover installation, start-up, balancing and controls.

Mr. Murray reported that the roof-top units are running 24 hours a day, seven days a week, because if they are shut down they can't be started again without going up on the roof to manually turn on the switches. He noted that one day the temperature registered 42° in the Auditorium. He also noted that it cost \$17,000 last month for the gas to run the units 24/7, and that there simply isn't money in the budget to cover this kind of cost. He said that while the heating season is almost over, the next problem will be with the air conditioning. Last year the A/C couldn't be run without glycol leaking on the floors. This is a dangerous situation and a risk which the School Department can't take of someone slipping and getting injured, or damage to the floors occurring. He stated that Honeywell was out again today, and they have concluded that the roof-top units are wired wrong.

The Chairman suggested that it would make sense to have Attorney Vena send letters to 'Tappe', Galuska, KMD and JCC, saying that we intend to get to the bottom of the problem and back-charge all costs. We may need to get JCC to indemnify against KMD/HVAC charges, he said, where Jackson is holding money for KMD. Mr. Barton indicated that money is being withheld for Demands for Direct Payment.

Mr. Barbadora reported that Mr. Vena is in the process of getting expert witnesses together for the 'Tappe' case, including reports and depositions.

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

VOTED: To adjourn the Executive Session and the Meeting, there being no further business on the Agenda.

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

The Executive Session and the Meeting adjourned at 6:50 P.M.

Respectfully submitted,

Jeanne A. Gould

Jeanne A. Gould,
Administrative Assistant

DISTRIBUTION:

Committee Members
Edward F. Vena, Esq.

15

BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Minutes of Executive Session
6:00 P.M. Meeting
April 15, 2004

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

Also Present: Board of Selectmen - Charles Ampagoomian,
Chairman, Russell Collins and Joseph Montecalvo;
Finance Committee - Mary Frances Powers, Chair-
man, and Andrew Todd; Town Manager Michael J.
Coughlin; and 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 litigation, not to return to Open Meeting.

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

The Meeting adjourned to Executive Session at 6:25 P.M. and the presence of a quorum was declared.

Northbridge High School Closeout - Litigation

The Chairman thanked the members of the Board of Selectmen and the Finance Committee and the Town Manager for attending this meeting to discuss the contents of a proposed Settlement Agreement in the Civil Action relating to Jackson Construction Company, Inc. and Pytko Construction Corp.

Mr. Morrow explained the long arduous negotiations and mediation leading up to this proposed settlement. He noted the reasons for the Committee's insistence on a global settlement which would correct construction deficiencies and make the Town whole on expenditures incurred by Jackson's failure to complete the work in a timely and acceptable manner.

Mr. Murray related some of the problems with the HVAC system which became evident during the first year the school was in operation, and are on-going. He noted the efforts to make corrections when Jackson and its sub, KMD, refused to

return to the school to address the problems and make the necessary corrections to the system. Renaud HVAC & Controls was brought in to do corrective work, and to catalog the deficiencies in the system. Their costs will be passed on to Jackson Construction Company, and held in reserve pending a forensic review of the system by an independent consultant.

Mr. Vena arrived at this point and the Chairman requested that he walk those present through the points of the proposed Settlement Agreement. He noted, and explained the following provisions of the Agreement:

1. A deduct Change Order in the amount of \$91,000 for incomplete and non-conforming work, and for extended consultant and architectural costs incurred by Northbridge related to the building. The final contract amount would become \$22,051,853. Northbridge has paid Jackson \$21,601,758, leaving an unpaid, final contract balance of \$450,095.

a. Deduct Change Order in the amount of \$100,000 for costs incurred by Northbridge related to the Project exterior including extended consultant and architectural fees and costs associated with the failure of Jackson to complete the Project site work and athletic fields within the contract time, fees for inspection and evaluation of site work claims passed through Jackson to Northbridge, and costs associated with non-conforming work.

b. Add Change Order in the amount of \$100,000 for unforeseen trench rock excavation.

2. Escrowed Funds:

a. Doors: \$30,000 retained from the adjusted contract balance for repair work to be performed on doors which are sticking, with the repairs to be approved by the manufacturer and not effecting any warranties, with a 1 year warranty on the repairs. Work will be done during the period of highest humidity (summer months), with latches to be checked during the period of lowest humidity and replaced if not closing properly. Of the \$30,000, \$25,000 will be paid when the work is done, and the remaining \$5,000 released upon confirmation that all door latches hold. Written guarantees will be provided from the door manufacturer stating that the corrections are an acceptable procedure and will not effect the warranty.

b. Boiler Repair or Replacement: \$20,000 retained from the adjusted contract balance for repair or replacement of the damaged boiler, with work to be done during the months of July and August, when school is not in session. Upon acceptance by the Town, it shall release the \$20,000 to Jackson.

c. HVAC: \$73,363 will be retained from the adjusted contract balance for claims with respect to the HVAC

system. Both parties agree to endeavor to resolve the issues, and that Northbridge may assert additional claims against Jackson with respect to the HVAC system. If unable to resolve the dispute, it will be resolved by litigation in Norfolk Superior Court. The parties agree that this action will not be barred by a Stipulation of Dismissal, filed in accordance with paragraphs 7 and 8 of the Agreement.

d. Northbridge shall retain the sum of \$31,696 with respect to the demand for direct payment filed by Capeway, to be released upon receiving a letter from Capeway to Northbridge, withdrawing its demand for direct payment, or as ordered by a Court.

e. Northbridge shall retain the sum of \$4,866 with respect to the demand for direct payment filed by LeVangie, to be released upon receiving a letter from LeVangie to Northbridge, withdrawing its demand for direct payment, or as ordered by a Court.

3. Immediate Payment: Upon execution of this Agreement and all documentation attached herewith, Northbridge shall make an immediate payment to Jackson of \$290,170.

4. Jackson shall execute and deliver a Release of Northbridge in the form attached as Exhibit A. Northbridge shall execute and deliver a Release of Jackson and its surety St. Paul in the form attached as Exhibit B.

5. Preservation of Escrowed Funds: Funds will be held in escrow pursuant to Section 2 and will i) be held in reserve by Northbridge; ii) will remain available for payment to Jackson in accordance with this Agreement; and iii) will not otherwise be encumbered or used by Northbridge in any way, except that Northbridge will have the right to disburse funds pursuant to an Order of the Court (2(d),(e)).

6. Indemnification: Jackson will indemnify the Town against any subsequent claims by Pytko or any other subcontractor which relate to or arise out of the Project.

7. Dismissal of Action: Jackson will dismiss with prejudice its Third Party Complaint against Northbridge in C.A No.: 02-01549.

8. Jackson and Northbridge shall dismiss without prejudice the claims and Counterclaim, C.A. No.: 03-00615, which may be reopened only for the purpose of litigating HVAC issues.

9. St. Paul agrees to be bound by this Agreement, and agrees that it will keep its payment and performance bonds in place for the applicable period of limitations, and consents to the Settlement Agreement and to payment of all sums hereunder.

10. Northbridge agrees to cooperate and assist Jackson in closing out claims with its subcontractors including Pytko Construction and KMD, including making available documents and other information as reasonably requested by Jackson.

The remaining clauses are standard clauses to protect the interests of the Town.

Mr. Vena stated that Northbridge has spent over \$73,000 on the HVAC system to date, and someone has to pay: either Jackson if the errors are construction related, or Tappe' if it proves to be design related. This agreement reserves the rights to go back to Jackson and their Surety has agreed to reserving these rights, even if the suit is dismissed. He commented that the Surety has a problem with #9, and wants to insure that this document doesn't add to their coverage.

Tappe' Litigation. Mr. Vena briefly described the issues in the Tappe' litigation: 1) Failure to test in a timely manner for ledge, and subsequent failure to modify the design to minimize ledge removal, such as raising the building; 2) failures in the design of the Athletic Fields; and 3) possible failure in the design of the retention basin. If the forensic exam of the HVAC System determines a failure in the design of the system, this will be added to the Tappe' claim. Tappe', for their part, is claiming that money is owed for extended consultant services and supervision caused by Jackson/Pytko's failure to complete the project on time, and for failure to notify (and perform) work when consultants needed to be present, causing wasted site visits and extra site visits.

Mr. Vena explained that there will be a continued need for legal and consultant services to complete the Jackson litigation/settlement, and the follow up - HVAC forensic examination, and to continue with the Tappe' litigation.

Mrs. Gould was asked what the balance in the account for the school project is. She explained that her figures differ from the balance shown by the Town Accountant by a considerable amount. Mr. Collins asked what is being done to reconcile these figures, and Mrs. Gould replied that she will sit down with Theresa Cenedella, Town Accountant, on next Thursday to try to determine why there is such a large discrepancy.

Miss Powers, Chairman of the Finance Committee recommended that the Committee request a transfer from the Reserve Fund in an amount up to \$75,000, and request the Board of Selectmen to schedule a Special Town Meeting on the night of the Annual Town Meeting to provide an additional amount by way of a transfer from the Stabilization Fund to enable the Committee to continue to pursue the legal course necessary to make the

Town whole on these deficiencies. Mr. Collin asked what would be needed to be able to sign this agreement. Mrs. Gould replied that, if the Town Accountant's figures are correct, the deficiency would be approximately \$60,000.00 as of 12/31/04, the last date for which she has the Town Accountant's figures. She will request updated figures and continue to look for the discrepancy.

Mr. Vena suggested that Jackson might agree to do a letter of agreement with the understanding that the funds needed to escrow the agreement are to be sought at a Special Town Meeting.

The three Selectmen present were in agreement that this would be the course to follow, and that they would agree to call a Special Town Meeting. Mr. Coughlin appeared to disagree with the position taken by the Selectmen, and reminded them that they would be approving the proposed Settlement Agreement and very pointedly reminded Mr. Ampagoomian that it would be his signature on the document. He stated that the Committee needs to come before a meeting of the Board of Selectmen on April 26, to discuss the Agreement more fully in Executive Session, then return to Open Meeting for any vote to be taken publicly. Members agreed to meet as suggested, with Mr. Vena to attend, also, with a finalized Agreement.

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

VOTED: That this Committee request the Board of Selectmen to call a Special Town Meeting preceding the Annual Town Meeting to be held on Tuesday, June 8, 2004, for the purpose of acting on an Article to be submitted by the Building, Planning and Construction Committee, which will request that the Town of Northbridge vote to transfer a certain sum of money from the Stabilization Fund to the School Building Account to pay for litigation costs, including consultant costs, in Civil Actions involving Tappe' Associates, Inc. (the Architect) and Jackson Construction Company, Inc. (the General Contractor) in connection with the design and construction of the new High School.

Voting in the affirmative were Mr. Barbadora, Mr. Morrow, Mr. Davis, Mrs. Lane, Mr. Lange, Mr. Mitchell 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: That this Committee request the Finance Committee to transfer a sum of money, as

needed, up to \$75,000.00 from the Reserve Fund to the School Building Account between this date and the date of the Special Town Meeting to be held on Tuesday, June 8, 2004, in order to enable the Building, Planning and Construction Committee to meet its obligations to preserve the integrity of the High School Building Project, on-going litigation costs, consultant costs and correction work of an emergency nature.

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

HVAC Resolution. Mr. Vena reported that he had spoken with Dick Como, an HVAC specialist, to determine if he would be available to perform a forensic examination of the HVAC system, but that Mr. Como would have a conflict of interest. A price of \$25,000 has been quoted by Ed Galuska to perform the commissioning of the system. Halliwell Engineering Associates has submitted a proposal for a design review and on-site investigation at a cost of \$18,000.00, with an hourly rate for any additional services. The proposal, dated April 6, 2004, would include a report of HEA's findings, observations, conclusions and recommendations, including recommendations for further investigations if found to be necessary.

Mr. Vena suggested that if we can get Galuska to come in and correct the design work, and get KMD and Brunell in for free to perform the corrective work, it might be the least expensive way out. Mr. Murray emphatically asserted that he does not want Galuska back. He feels that the Town has received nothing but lip-service from him, and that he has a serious problem with paying Galuska anything to correct his design work, for which he has already been paid. Mr. Morrow concurred, opting for an independent review, then going back to Galuska with the report. Mr. Vena will call Halliwell and arrange for the consulting services, to be hired through him.

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

VOTED: To authorize the Committee's Counsel to hire Halliwell Engineering Associates to perform a preliminary design review, on-site investigation and a report of its conclusions, with the proposal to be restructured to allow HEA to be hired as a consultant through Mr. Vena in order to maintain attorney/client privilege, with the cost to be reimbursed by the Town.

Athletic Fields. Mr. Vena reported that John Wagner was unable to attend this evening, due to a prior commitment.

He said that Mr. Wagner has concluded that the most cost effective way to correct the regulation soccer field/practice football field is to raise the corners, and raise the sprinkler heads. He will need a decision by the Committee as to which fields of the 4 need to be regulation, suggesting that 1 and 4 might be corrected to meet regulations for high school, and 2 and 3 to meet middle school regulations. Field 1, which meets college field dimensions will need less fill. He said that Mr. Wagner is preparing various scenarios for the Committee to consider. The Committee might even want to ask for all 4 fields to meet regulation, after seeing where the figures fall.

Ledge. Mr. Vena reported that everyone who has reviewed the information provided by Pytko has concluded that it is indecipherable. This is the only information available because Pytko didn't do grids and didn't follow the specs. After reviewing Pytko's documents, Mr. Vena felt that there was nothing there.

Mr. Vena asked to meet with the Committee on Monday, prior to the meeting with the Board of Selectmen. He needs Committee feed-back on interrogatories and John Wagner needs to meet with the Committee. Mrs. Gould will check with the Town Manager to determine the approximate time of the Executive Session with the Board of Selectmen, then schedule the meeting with Mr. Vena and Mr. Wagner for 5:00 or 6:00 P.M., depending on the Agenda for the Selectmen's meeting.

(Members of the Board of Selectmen left prior to the votes, but after the discussion of the need for transfer from the Reserve Fund and the request to call a Special Town Meeting, as did the Town Manager.)

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

VOTED: To adjourn the Executive Session and the Meeting as there was no remaining business on the Agenda.

The Executive Session and the Meeting adjourned at 7:40 P.M.

Respectfully submitted,

Jeanne A. Gould

Jeanne A. Gould
Administrative Assistant

DISTRIBUTION:

Committee Members
Edward F. Vena, Esq.

Approved May 13, 2004 *[Signature]*

13 A

BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Minutes of Executive Session
April 26, 2004
6:00 P.M.

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

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 litigation, 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. Barbadora, Mr. Davis, Mrs. Lane, Mr. Lange and Mr. Mitchell. There were no negative votes cast.

The Chairman called the Executive Session to order at 6:15 P.M. and declared the presence of a quorum.

Northbridge High School Project Close-out

Mr. Vena reported that he spoke with Attorney David Doneski (Town Counsel) about the proposed Settlement Agreement with Jackson Construction Company on Friday and again today. He told Mr. Doneski that it was his impression that the Board of Selectmen were only requesting a review of the Agreement by the Town Counsel as to form, not substance. Mr. Doneski informed him that he has to take his direction from the Town Manager, and that he wants a substantive review. At 3:00 P.M. today, Mr. Doneski told Mr. Vena that the Agreement looked like a good deal for the Town and was very well written, but that it was his understanding that nothing will be decided until May 10th. Mr. Vena shared his concern with Mr. Doneski that a delay might negatively impact Jackson's willingness to sign the Agreement, but Mr. Doneski reiterated that his instructions from the Town Manager were to conduct a review as to substance.

Mr. Vena said that on Friday Mr. Doneski seemed to understand the Agreement and thought that the Change Orders were a good idea to preserve the SBA reimbursement. He doesn't

understand what Mr. Doneski needs to make a decision. Mr. Davis and Mr. Mitchell both suggested that we ought to ask Mr. Coughlin exactly what he is looking for. Mr. Vena said that Mr. Doneski requested copies of the pleadings, which were hand delivered to him, but that to bring him up to speed on the nuances and details of the Agreement, the Mediation, and the negotiations which have been held over the past year and a half would take months.

Mr. Mitchell, Mr. Davis and Mrs. Gould reported on their efforts to find the \$90,000.00 discrepancy between the records kept by Mrs. Gould for the Committee and the Town Accountant's records. Both Mr. Mitchell and Mr. Davis came up with the same balance in the account as Mrs. Gould, with the exception of a 50¢ mistake in addition. Mr. Mitchell did find the \$90,000 discrepancy in print-outs which he finally received from the Town Accountant. The question now is how to have the funds restored to the Account in order to be able to execute the Settlement Agreement and escrow the funds involved.

The three matters of greatest concern to the Committee are:

- 1) The consequences of waiting until May 10 to execute the Settlement Agreement; Jackson needs to have the money to pay his subs in order to prevent further litigation, in which the Town would most likely be third-partied.
- 2) Settling the accounting difference of \$90,000.00.
- 3) Having the Selectmen call a Special Town Meeting preceding the Annual Town Meeting on June 8, 2004 for the Committee to submit two articles: a) One to restore the \$90,000.00 to the Account; and b) Transferring a sum of money to the Account to enable the Committee to pursue its litigation against 'Tappe', pay for the necessary consultants, pay for continued repairs to the HVAC System, and pay for the continuing legal fees.

A letter was prepared subsequent to the Committee's vote in Executive Session to request the Board of Selectmen to call the Special Town Meeting, and was delivered to the Town Manager, together with a Certificate of Vote and proposed Warrant Article calling for the transfer of funds to meet these obligations, on April 16th.

A request was also made for a transfer from the Reserve Fund, up to \$75,000.00, to meet the continuing obligations until the funds can be voted at the Special Town Meeting.

These matters will be discussed in Executive Session at the Meeting of the Board of Selectmen this evening, to which the Committee members, Mr. Vena and the Finance Committee Chairman have been invited.

Tappe' Litigation

Mr. Vena reported that he is working on Interrogatories and Depositions in the Tappe' suit, along with Supplementals. He noted that the Chairman can sign for the Committee. It is probable, he said, that the case will be in Mediation before the summer is over.

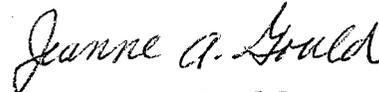
On MOTION OF MR. DAVIS, duly seconded, on a roll call vote, it was unanimously

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. 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 7:05 P.M.

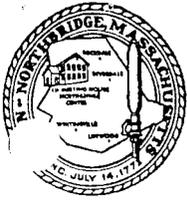
Respectfully submitted,



Jeanne A. Gould,
Administrative Assistant

DISTRIBUTION:

Committee Members
Edward F. Vena, Esq.



BUILDING, PLANNING AND CONSTRUCTION COMMITTEE

TOWN OF NORTHBRIDGE, MA

APR 22 PM 3:50

TOWN HALL
7 MAIN STREET
WHITINSVILLE, MASSACHUSETTS 01588
(508) 234-2095
FAX (508) 234-7640

TOWN CLERK
DOT

COPY

AGENDA
Monday, April 26, 2004

1. Open Meeting 6:00 P.M.
2. Review Minutes of Meeting 04/15/04
Review Minutes of Executive Session
04/15/04 and 6:00 P.M. Meeting
3. Review Warrants and Invoices
4. High School Project Closeout 6:10 P.M.
Executive Session - Litigation
Edward F. Vena, Esq.
Johannes Wagner, Weston & Sampson
5. Streetscape/CDAG Projects - Update 6:40 P.M.
6. Aldrich School Roof Project - Update 7:00 P.M.
Gale Associates - Contract Status
Front-end Review - Status
7. Unfinished Business
8. Open Discussion
9. Adjournment

Approved May 13, 2004 JLB

13

BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Executive Session with Board of Selectmen
April 26, 2004
8:00 P.M.

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

Also Present: Edward F. Vena, Esq.;
Members of Board of Selectmen: Chairman Charles Ampagoomian, Timothy Boucher, Russell Collins and Robert Mellor;
Finance Committee Chairman Mary Frances Powers;
Town Accountant Theresa Cenedella; and
Town Manager Michael Coughlin.

Jeanne A. Gould, Administrative Assistant.

Members of the Building, Planning and Construction Committee met with the Board of Selectmen in Executive Session at 8:15 P.M. on Monday, April 26, 2004 in the Selectmen's Meeting Room at Town Hall.

The purpose of the Meeting was to discuss the proposed Settlement Agreement between the Town of Northbridge and Jackson Construction Company, Inc. regarding the Northbridge High School construction project.

The Chairman explained to the Board that the Committee has been trying to settle out the General Contract with JCC for over 1 1/2 years, with Attorney Edward F. Vena acting as its Counsel and Special Counsel for the Town in this matter. He distributed copies of the Settlement Agreement and introduced Mr. Vena to answer any questions which the Board might have.

Before getting to the Agreement, Selectmen Collins asked where we stand on the \$ value discrepancy between the Town Accountant's figures and the records kept by the Committee's Assistant. Mr. Barbadora replied that Mrs. Gould met with the Town Accountant last week to try to resolve the difference, and was told that the Accountant's figures were right and she needed to have two other people check her figures. Two members of the Committee did check Mrs. Gould's figures and found only one error in addition in the amount of 50¢. One member requested and was finally given additional print-outs from the Town Accountant of her figures for the School Building Account. He verified that there is a discrepancy of \$90,000.00 in the account in FY 2002. Mrs. Gould's figures

indicate that the balance in the Account is \$461,593.13, with the Town Accountant showing a balance of \$371,593.13. Both Mrs. Gould's record of expenditures, which were checked against invoices, and the Town Accountant's record of expenditures are exactly the same. The starting amount in the account is \$28,000,000.00, so with the expenditures agreeing, the balance should be the same. The question now is to find where the \$90,000.00 went and how to get it back. Mr. Collins asked the Town Manager if the Board can be comfortable that the money can be recouped.

The Town Manager replied that the Town Accountant has called the Town's Auditor, Tom Scanlon, and that the money will be accounted for and the error found. He said the question remains as to where we can come up with it. He wants to be sure that the Settlement Agreement will take care of all issues.

Mr. Barbadora stated that the \$75,000.00 transfer from the Reserve Fund will go a long way to recoup money from the Architect for errors and omissions.

Mr. Collins asked why the HVAC system doesn't work. Mr. Barbadora replied that it works, but it has a lot of bugs, and has to be controlled manually instead of automatically.

Mr. Barbadora listed the major items of design being contested with the Architect: 1) More ledge had to be removed than would have been necessary if the tests were done earlier while the building could still have been moved or raised to mitigate the amount of ledge to be removed; 2) the Architect did a poor job of grading the athletic fields; and 3) the Architect did a poor job of designing the Infiltration Basin. A major portion of the ledge has already been paid for, and the remaining claims would be dealt with to the Town's advantage in the proposed Settlement Agreement. He noted that there should be money left over from a Settlement with Tappe', or judgement, if litigated, after the repairs are made to the areas which are deficient.

Mr. Vena explained that if the ledge quantities were done earlier, the consultants say that \$240,000 could have been saved by moving the building or raising the building. The crest is wrong on the soccer fields, and money is being sought to remediate them. The recharge basin was located on ledge, and money is being sought to remediate this, also, he said.

Mr. Vena explained that this Settlement Agreement resolves two suits: 1) Consultant Fees necessitated by the delay in the completion of the job; and 2) Pytko's third-party claim against the Town for excavated ledge, materials and delays.

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Vena noted that while JCC has claimed that the problem with the doors is a design issue, the consultant has concluded that the doors are performing to spec, but that the frames are improperly installed in over 180 cases. There are also some technical issues regarding the Pytko suit.

Three days of mediation served to bring out the facts on the issues, with the supporting reports of the consultants. Mr. Vena said that at this point the Committee is looking to solve the three major issues concerning Jackson: 1) it wants the doors/frames fixed; 2) it wants the boiler fixed or replaced; and 3) it wants the ledge issues settled.

Jackson has finally agreed to a global settlement with indemnities which will resolve these issues and which will be a good deal for the Town. They will fix the doors during the summer. \$30,000 will be held for this purpose, with \$25,000 released when the work is completed, and the remaining \$5,000 released when it is evident that the latches will hold in periods of low humidity. JCC has a warranty extension from the Manufacturer.

Mr. Vena noted that the HVAC system has not worked properly, causing heavy repair charges. JCC is claiming that the repair work is due to faulty maintenance. \$73,000 is to be retained until a forensic study has been completed, and JCC has agreed that if bad construction or unnecessary warranty work have caused the problem, the money paid for Renaud HVAC's corrective work will be returned to the Town. JCC will be held responsible for any additional work and their surety will back the claims.

The Town will receive the necessary indemnification and both the Jackson and Pytko suits will be dismissed. The HVAC issues will be left open. Mr. Vena [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Ampagoomian asked if Jackson will have a problem with a delay, to which Mr. Vena responded that he doesn't know. He already has Jackson's signature on the Agreement.

Mr. Collin asked why the Board is just now hearing about the shortfall of funds in the account. Mrs. Gould explained that in the past, she has only received a report of expenditures on the Account from the Accountant. Last week, when she received the trial balance print-outs, she noted the discrepancy

in the balance remaining in the Account. She then requested trial balances since the inception of the Project. She checked Invoices against her recap figures, then checked her figures against the expenditures on the detail printouts provided by the Town Accountant. It was only in following the trial balances that the discrepancy of \$90,000 was discovered. When the Town Accountant informed her that her figures must be wrong and that she should have a couple of people check her recap figures, she approached Mr. Davis and Mr. Mitchell and requested them to independently check the figures. They agreed with the Committee's figures (with a 50¢ correction which they both found), and Mr. Mitchell requested more information from the Town Accountant in an effort to pinpoint the time and reason for the deficiency. She had noted proceeds of the bond issues in the amount of \$29,530,000 had been credited to the account, but no record of where the \$1,530,000 above the \$28,000,000 budgeted for construction went.

Mr. Mitchell also noted this credit, and pressed for more information as to what it represented and when and how it was disbursed. He thinks that he knows what might have happened, but can't confirm it without cooperation from the Accountant.

The Finance Committee Chairman stated that she is extremely disturbed that there is no item on this evening's Agenda to call for a Special Town Meeting preceding the Annual Town Meeting, even though the majority of the members of the Board of Selectmen had agreed when they met with the BPC to place it on the Agenda for this meeting. Restoration of the \$90,000 will require action of the Town Meeting. The Finance Committee has agreed, she said, to transfer up to \$75,000 to the High School Account, subject to presentation of Warrants, to enable the Committee to continue with the pursuit of the Tappe' suit, and to meet other obligations until funds can be transferred at a Special Town Meeting. Mrs. Gould reported that she had spoken with John Lalor of SBA, who assured her that any portion of the \$75,000 to be transferred from the Reserve Fund would be reimbursable provided that it is well documented with copies of the FinCom Minutes and a Certificate of Vote.

Miss Powers reiterated that she is very disturbed that no Special Town Meeting is on the Agenda. She reminded the Board that it is very expensive to call a Special Town Meeting on a separate night, and that it is much more sensible and prudent to call it on the night of the Annual.

The Town Manager stated that he doesn't see why a decision can't wait until Mr. Doneski investigates the proposed Settlement. He said that he is always suspicious of looking for a fast decision and it causes him to wonder what is being hidden.

Miss Powers responded with outrage. She reminded the Board that she sat before this Board when it authorized the BPC to hire Special Counsel to represent it and the Town.

She finds it unbelievable that the Board wants to hire two lawyers to do one job. She stated that the Town Manager's remarks are an insult to Mr. Vena, to the Committee and to all concerned. She said that this Committee was entrusted with \$28,000,000 to build the School, and that if the Board doesn't trust the Committee, they should remove the members it appoints.

Mr. Vena stated that Mr. Doneski does seem to have a feel for the deal. He noted that the Agreement can't be substantially changed at this time, since the Committee and JCC have agreed upon its terms. Mr. Collins questioned the need for Mr. Doneski to attend the meeting, saying that as far as he's concerned, he could notify the Board by fax or e-mail that he's allright with the Agreement. Mr. Mellor agreed, that Mr. Doneski could just send written approval.

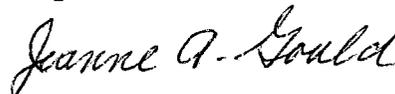
The Town Manager persisted in his argument for a couple of weeks for him to get a comfort level from the Town Counsel. He said no one should take offense, it is just part of the process. Mr. Barbadora explained that the BPC let the then Town Manager and the Chairman of the Board of Selectmen and the Chairman of the Finance Committee know over a year ago that litigation was likely, and that every effort was being made to settle out of court. This Agreement has just happened suddenly, he said, after long negotiations.

The members of the Board of Selectmen agreed to call a Special Meeting of their Board on May 4 at 6:00 P.M. for the purpose of acting on the proposed Settlement Agreement and to call a Special Town Meeting preceding the Annual Town Meeting on June 8, 2004.

The Town Manager said that whatever it takes to resolve the missing \$90,000 they will do.

The Executive Session adjourned at 9:40 P.M.

Respectfully submitted,



Jeanne A. Gould,
Administrative Assistant

DISTRIBUTION:

Committee Members
Edward F. Vena, Esq.

Approved July 01, 2004 JCC

12

BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Minutes of Executive Session
June 24, 2004
6:00 P.M.

Committee Members Present: 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 to adjourn the Open Meeting to Executive Session, for the purpose of discussing pending litigation, not to return to Open Meeting, the Meeting adjourned to Executive Session at 6:50 P.M.

Voting in the affirmative on Mr. Davis' Motion were 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 6:50 P.M. on Thursday, June 24, 2004 in the Conference Room at Northbridge High School and declared the presence of a quorum.

Northbridge High School Closeout

Jackson Litigation - Terms of Settlement Agreement.

Mr. Vena reported that Attorney Tony Starr will work with Jackson Construction Company to set up a time to come in to fix the doors. They will also arrange for KMD to work on the HVAC system. Mr. Murray expressed concern that KMD might just try to cover up its own mistakes, and he felt that JCC had agreed to split the price of an independent review.

Tappe' Associates Litigation.

Mr. Vena reported that Tappe's attorney wants to set up a time for 30 B(6) depositions for both Tappe' and CRJA. Mr. Vena needs the Committee to designate 1 or more Committee members to testify for the Committee. He said [REDACTED] Decisions to be made include A) Who the witnesses will be; and B) Designation of which area each witness will testify in. The first step is to set up a schedule, then he will need to prep the witnesses. In addition to Committee members, Mrs. Gould might have to testify as to financial matters.

Mr. Davis suggested that the Chairman and Vice Chairman

be designated to testify for the Committee. Mr. Vena distributed copies of the Notice of Deposition, which contains the areas in which Tappe's Attorney will question the witnesses. Mr. Vena needs to know by next Tuesday, who will be testifying in each instance. He said that the third week in July would be ideal, in that it would give him time to prepare the witnesses; however, that is the week of the Democratic National Convention and would present problems for anyone trying to get into or out of the city. He will probably try to schedule the depositions for the 4th week in July or the 1st week in August. The Chairman will speak with Mr. Morrow tomorrow to determine which areas each will testify in.

Mr. Vena feels that Tappe' really wants to settle, but they also want to do their due diligence. Mr. Vena will also depose Tappe' and CRJA under 30B(6), and possibly Daedalus, depending on Tony Tappe's deposition. In any case, he would like to get the case wrapped up this summer. He anticipates that the depositions will take one day, although it could go longer.

Mrs. Lane asked if Mr. Vena could give the Committee any idea of what the fees will be to complete this case. He said that he has to finish cataloging documents, weeding out areas not to be questioned, and then has to prepare for the depositions. He estimates fees of \$15 to \$20 thousand. We should have all of the consultants' bills in now.

Mrs. Lane asked if a HVAC forensic study is still planned. Mr. Vena replied that we have to allocate funds held to make sure that the Town gets its money's worth. Mr. Lange asked if there has been a report from Weston & Sampson regarding the athletic fields. Mr. Vena answered that he has a verbal report, but has held back on having the written report produced because he doesn't want to have to disclose it at this point. Mr. Lange said that people want to know when they can use the fields, and the School Committee needs to know what to tell them. Mr. Vena replied that the matter is a subject of the litigation. The Town could remediate the fields themselves, but there is not money available. The School Committee can always decide to just use them for practice fields, but he would advise against it. He said that once leagues are allowed to use the fields, it will be difficult to tell them at some point that they can't be used if there is to be remediation. Mr. Davis asked if it is better not to use them, and Mr. Vena replied [REDACTED]

[REDACTED] Mr. Murray agreed that he would rather not give permission for anyone to use the fields until they are fixed than to have to relocate play when the work is being done.

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

VOTED: To adjourn the Executive Session and the Meeting.

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

The Executive Session and the Meeting were adjourned at 7:20 P.M.

Respectfully submitted,



Jeanne A. Gould,
Administrative Assistant

DISTRIBUTION:

Committee Members
Edward F. Vena, Esq.

Approved July 12, 2004

BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Minutes of Executive Session with the
Board of Selectmen

July 12, 2004

Committee Members Present: Chairman Peter Barbadora, Faith M. Lane, Esq., Donald K. Lange and Neal B. Mitchell, Jr.

Also Present: Jeanne A. Gould, Administrative Assistant.

The Committee Members were invited into Executive Session in the Selectmen's Meeting Room at Northbridge Town Hall on Monday, July 12, 2004 at 8:30 P.M. to discuss the litigation pertaining to the Northbridge High School Project.

All members of the Board of Selectmen were present, as was the Town Manager.

Mr. Barbadora provided an update on the status of the Tappe' litigation. The process is now at the stage where depositions are being taken. The Committee had been scheduled to be deposed on Monday, July 19, 2004, but had to be postponed because Tappe's attorney is scheduled to appear in Court on a trial on that date. The depositions will probably take place in August. Depending on the outcome of depositions, the next step might be Mediation to see if a settlement can be reached. If not, the case will proceed to trial.

Mr. Barbadora reported to the Selectmen that the Counsel for the Committee, and the Town in this matter, has informed the Committee that Tappe' and its insurer seem interested in a Settlement Agreement.

The suit was brought to make the Town whole on three principal issues: 1) Remediation of the Athletic Fields which were not designed in accordance with acceptable standards for interscholastic competition; 2) Remediation of the Infiltration Basin, which has failed to perform as designed; and 3) Compensation for the excess amount of ledge which had to be removed because of Tappe's failure to perform testing in a timely manner, which would have allowed for the relocation of the building, or raising the building, to avoid excessive ledge removal costs.

In response to questions by Mr. Montecalvo as to what the suit aims to receive, value-wise, either in litigation or in a Settlement Agreement, the Chairman provided the following possible values to be realized by pursuing litigation:

1) Correction of the deficiencies in the Athletic Fields can run anywhere from \$400,000 to \$600,000, depending on how many of the fields are reconstructed.

2) Remediation of the Infiltration Basin can cost between \$100,000 to \$150,000, depending on the method needed to provide a fully functioning recharge basin.

3) A cash settlement for ledge is worth \$250,000 to \$500,000.

He explained that while all remuneration might not be received from Tappe', their insurance company will have to stand behind them.

The Selectmen seemed to agree that pursuing the suit, with the attendant additional legal fees, is in the best interest of the Town.

The Town Manager also appeared to agree that the costs involved make sense, given the probable outcome. He commented that \$185,000 has been expended for legal fees to reach a Settlement Agreement on the Jackson suit. (Actual figures are: Vena, Riley, Deptula, LLP for legal services regarding both suits to date - \$151,513.29; Costs in connection with production of documents for both JCC and TAI - \$9,414.70; Reimbursements for consultants' fees: SGH (Doors) \$21,669.45, TASA (Ledge and structural) \$29,756.48, and Weston & Sampson (Athletic Fields) \$23,834.03; and American Arbitration Association for Mediation in the JCC suit - \$4,240.50.)

Mrs. Lane fielded questions regarding the expected legal cost for the Tappe' suit. She noted that all consultants' fees have been submitted and paid, and that the only costs expected are for legal services. Mr. Barbadora stated that more funds may be needed to carry the case to its conclusion. He reminded the Manager and the Board members that the Committee had originally requested \$200,000 to complete both suits, but agreed with the Finance Committee to seek only \$75,000 at the STM in June, with the provision that if more is needed, it will be requested at the Fall Town Meeting. By that time, it should be known if a settlement is possible, or if the case will have to proceed to litigation.

The Chairman agreed to keep the members of the Board of Selectmen apprised of the progression of the suit.

The Committee's portion of the Executive Session was concluded at 8:55 P.M.

Respectfully submitted,

Jeanne A. Gould

Jeanne A. Gould, Admin. Assistant

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

BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

Executive Session Minutes of Meeting
October 25, 2004

Committee Members Present: Chairman Peter Barbadora, David Morrow, Faith M. Lane, Donald K. Lange, Neal B. Mitchell, Jr. and George S. Murray
Also present was Attorney Edward Vena.

Pursuant to a roll call vote on a Motion by David Morrow to adjourn the Open Meeting to Executive Session, for the purpose of discussing pending litigation, to return to Open Meeting, the Executive Session opened at 6:35 p.m.

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

The Chairman called the Executive Session to order at 6:35 p.m. on Monday, October 25, 2004, in the Upper Hall at Northbridge Town Hall and declared the presence of a quorum..

Northbridge High School Closeout

The Chairman requested that Attorney Vena brief us on the status of the litigation with Tappe Associates Inc. prior to our meeting with the Selectmen and review what he planned to explain to Selectmen about the history of the litigation with both Jackson Construction Inc. and Tappe Associates Inc. concerning the construction of Northbridge High School.

Attorney Vena reported that depositions are in progress in the Tappe Associates, Inc. litigation. As to the ledge claims, he explained that he has learned some information through the discovery process of how the calculations for ledge came to be so unrealistic. It appears that Daedalus did "guestimates" for Tappe early on. Tappe had contracted with GSI to do bedrock calculations but Kevin Lattady didn't actually assign the work to GSI and instead went with the Daedalus numbers. Tappe warranted the accuracy of the Daedalus estimates. Kevin Lattady also admitted that the BPC Committee was very cost conscious and worked hard to situate the building.

As to the athletic fields, it appears that the deposition statements of Tappe and their subcontractors are consistent, that the athletic fields would not be used for competition and that the lack of parking adjacent to the fields showed that it was the Town's intention not to use the fields for competition. However, BPC Committee meeting minutes of December 15, 1999, noted that Kevin Lataddy and Randy Sorensen came to the meeting and talked about a competition field. July minutes stated that we can also use practice fields for competition. Although Randy Sorensen said in his deposition

that there was a lot of ledge and the fields were designed to minimize dealing with the ledge, he did no specific ledge calculation and couldn't show any records of calculations.

The depositions revealed, as to the infiltration basin, that VHB designed the basin based on April 28, 1999, GSI borings and test pits (only one test pit was done for the infiltration basin, so they just designed it high. However, they designed the basin at 276 feet in elevation and the water table there is 277 feet. VHB did an historic study and never analyzed the soils. The soil is glacial till, impermeable, with ledge beneath. GSI did a soil test after the fact and reasoned that the contractor used wrong equipment and compacted the soil; however, GSI was supposed to be inspecting at the time the contractor was building the basin. All the soil was tested and approved as installed. Water was collecting even before the loam was put in. The fix is to correct that infiltration by making it a detention basin.

Attorney Vena said that his experts are all set to go. VHB deposition is Friday. David Morrow of our committee still needs to be deposed. GSI deposition is November 9. Attorney Vena also noted that we paid Tappe Associates, Inc. \$7500.00 to compile all the ledge information and now it appears that quite a bit of internal communication wasn't disclosed in that compilation. Tappe wants to go to mediation, which Attorney Vena [REDACTED]. The time frame would be December into early January, most likely. We are not trying to prove a point with this litigation, but only trying to get money for the Town to fix the items and compensate the Town for the work that was improperly done. The firm of Donovan Hatem, Tappe's insurance attorneys, never agrees to mediation unless the opposing party, in this case the Town of Northbridge, has a good claim. Insurance companies are looking for a number in mediation, a quick agreement, and we will have a check in a week. The Town needs to go to mediation with individual(s) who have the authority to make the decision to settle. We will ask the Selectmen to appoint one or more of their members to come along so that we won't have the delay that resulted when the Jackson Construction litigation went to mediation.

As to an estimate of attorneys' fees for the remainder of the litigation, Attorney Vena thought that the rest of the depositions, plus one or two days of mediation would be about \$10,000.00, with perhaps a high of \$30,000.00 if we need the experts to be involved.

Discussion then centered around the possible commissioning of the HVAC system at the High School by Galuska for \$18,000.00 and getting a complete fix, rather than getting Fitzmeyer & Tocci to investigate. Attorney Vena noted that [REDACTED]

[REDACTED] Perhaps using Fitzmeyer & Tocci to review Renaud's repair bills and photographs and determining what items were maintenance and what items were repairs would be helpful in resolving the money held in escrow for HVAC in the Jackson Construction settlement. Peter Barbadora might then negotiate the release of most, if not all, of the escrow of \$73,000.00 with Jackson and get that matter finalized.

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

VOTED: To adjourn the Executive Session and return to Open Meeting.
Voting in the affirmative were Mr. Barbadora, Mrs. Lane, Mr. Lange, Mr. Mitchell, Mr.
Morrow and Mr. Murray.

The Executive Session adjourned at 6:55 p.m.

Respectfully submitted,



Faith M. Lane,
Secretary

DISTRIBUTION:

Committee members
Edward F. Vena, Esq.

BUILDING, PLANNING AND CONSTRUCTION COMMITTEE
TOWN OF NORTHBRIDGE

AND

BOARD OF SELECTMEN
TOWN OF NORTHBRIDGE

Minutes of Executive Session Meeting
October 25, 2004

Committee Members Present: Chairman Peter Barbadora, David Morrow, Faith M. Lane, Donald K. Lange, Neal B. Mitchell, Jr. and George S. Murray
Selectmen Present: Charles Ampagoomian, Joseph Montecalvo, Timothy Boucher, Russell Collins, and Town Manager, Michael Coughlin
Also present: Attorney Edward Vena, Attorney Richard Holland

Chairman of the Board of Selectmen, Mr. Montecalvo, called the Meeting to order at 8:10 p.m. on Monday, October 25, 2004, in the Selectmen's Meeting Room, the Board of Selectmen having previously voted to go into Executive Session to discuss pending litigation, and Mr. Montecalvo conducted the Meeting throughout.

The Notice of Meeting and a copy of the Agenda had been posted on the Town Hall Bulletin Board.

Mr. Montecalvo introduced Attorney Richard Holland of Kopelman & Paige. Mr. Montecalvo stated that Attorney Holland was just in the Executive Session to listen.

Mr. Barbadora stated that the Committee had come before the Selectmen with Attorney Vena to discuss the history and the current status of the Northbridge High School litigation. Mr. Barbadora then turned to Attorney Vena for a report to the Selectmen.

Attorney Vena stated that the Jackson Construction suit against the Town of Northbridge for \$1.3 million was settled last Spring, and that since the Selectmen were aware of that part of the litigation and settlement, he would proceed to the suit by Tappe Associates Inc. against the Town of Northbridge. Tappe's claim is for \$303,910.00, which the Town had to defend. Along with the answer to the complaint, Attorney Vena filed on behalf of the Town a counterclaim for \$945,000.00. Our defenses are that Tappe is not entitled to the money stated in their claim because it is mostly for reimburseables, which were not part of the Town's contract, and, further, that the Town was damaged due to the incorrect ledge calculations resulting in higher costs for siting of the building, costs for the athletic fields which were wrongly designed, and costs for the infiltration basin which does not work.

DISTRIBUTION:

**Committee members
Edward F. Vena, Esq.**