

**Town of Hull
Building Committee Meeting
Tuesday, February 13, 2007**

In attendance:

Cathy Bowes/Committee Member
Paul Dunphy/Committee Member
Patrick Finn/Committee Member
Chris McCabe/Committee Member
John Reilly/Committee Member
Kevin Richardson/Committee Member
Dr. John Silva/Committee Member
Dave Walsh/Committee Member

Debbe Bennett/Support Staff
Jim Griffin/Support Staff
David Twombly/Support Staff
Jim Lampke/Support Staff
Peter Lombardo/Support Staff
Judi Saide/Support Staff
Scott Dunlap/Ai3
Troy Randall/Ai3
Phil Lemnios

Absent:

Paula Delaney/Committee Member
Bill Dwyer/Committee Member
Jay Meschino/Committee Member
Charlie Ryder/Committee Member
Jim Tobin/Committee Member

The Building Committee meeting was held in the Selectmen's Office at Town Hall, and the meeting was called to order by John Reilly at 7:39pm.

John Reilly noted the meeting is to discuss the high school project but there is one quick item he would like to address first. He said David Twombly has an update on TLT and the modular trailers.

- 1. Approval of Today's Agenda: *Kevin Richardson made a motion to approve the agenda. Dr. Silva seconded the motion. All approved.***

David Twombly informed the Committee he received a letter from Chris Cormier of TLT and they are willing to credit us \$12,000 to move into the modular classrooms. They would remove their trailers from the site and that would speed up the landscaping and increase the recess area. David Twombly noted we would have to pay the electrical and it is electric heat and air conditioning. John Reilly noted the School Building Committee discussed in the past that they should do that to allow the drainage project to move forward and also allow additional staging and playground area in that space as well as a time savings. David Twombly said it is not just a monetary value, there are other benefits associated with this move. Paul Dunphy asked if we still own remediation. David Twombly said yes, we still own it and they will do a light cleaning and turn them back over to us when complete. Chris McCabe asked if David Twombly talked to John MacLeod about a second meter. David Twombly said he did call him but did not connect, he missed his return call. John Reilly

asked if there is any idea of the cost to heat or air condition. David Twombly noted they need to be heated anyhow. David Twombly said he doesn't remember off the top of his head but not that high. ***Pat Finn made a motion to move forward with the plan and to put TLT into the modularity. Dr. Silva seconded the motion.*** John Reilly asked whether it would be better to clean them up now or afterwards, he thinks afterwards. He said if they are used elsewhere in town that children will be in there, we want some type of certification that they are safe. If they (TLT) are willing to take them as is we should put off cleaning them until after they are done with them. ***All approved the motion.***

John Reilly noted Bob Garrity is here to update the Committee on the bonding company. He said much of the meeting will be in Executive Session due to possible litigation. John Reilly asked Bob Garrity to update the new members of the committee on the ongoing saga over the last several years. He said it is important to update people on how we got into this position as well as the reasons we took certain actions.

- 2. Robert P. Garrity:** Mr. Garrity informed the Committee that Jackson Construction was the original general contractor on the Hull High School project. The project moved along and there were a lot of problems with Jackson and it turned out they were financially distressed. We had a lot of issues with Jackson when we were not getting responses and work pretty much ground to a halt. We terminated the contractor. The bonding company came in and said they would complete the work. We negotiated a takeover agreement for them to step into the shoes of Jackson Construction. They guaranteed they would complete the contract. This is sometimes easier said than done because when you get a contract, in a certain stage of completion, it is hard to determine what remains to be completed, the status of payment, the status of pending Change Orders and punch list, etc. We sat down with the bonding company over the period of a couple of months and hammered out a takeover agreement. The takeover agreement was signed by the Town and the surety and in the agreement we outlined the mutual terms by which USF&G would complete the project. The takeover included a very extensive punch list that was monetized and prepared by Ai3. It included a number of disputed issues between ourselves and the contractor with a listing and allowance that the Town would keep \$700,000 from any payments to the Bonding Company for security for the back charges accrued and we executed the takeover agreement. The surety commenced performance of the takeover agreement. Most of the work is punch list issues and the surety hired a contractor who completed a large portion of the punch list items. Bob Garrity noted Troy Randall could update the Committee on the status of the punch list work completion. When the surety is done with the punchlist items then we will have a completed the project and we will do a final accounting with the surety and the Town to decide who owes who what. The biggest problem has always been the roof. The bonding company is required to comply with the original contract requirements regarding construction of the roof. Jackson Construction, thru Dumas Roofing and another roofing company, performed roofing work. As it turned out, it was not acceptable at the time it was performed and was never accepted by the architect. When Jackson Construction went out of business and the Surety took over, that was a big item on the punch list. The biggest roof problem was the upper

gym roof, which blew off and the surety came in and finished that roof which now has a small punch list on it.

Lately, we have been engaged with the bonding company and Gale Engineering to determine the scope of the repairs or replacement of the classroom roof. This area of roof was also installed by Dumas and this was not accepted and was also damaged during the same storm when the gym roof blew off. When Ai3 looked at the damage it was apparent that it had not been constructed properly. It was not a complete failure, it was partial. The town then got a proposal from the bonding company to fix the classroom roof. That could mean a total replacement or a reasonable fix to the roof which will give us an as good a roof as if Jackson Construction had performed correctly in the first place. The dispute has been what the fix is.

During the fall, we went back and forth on one proposal when Vertex orchestrated the completion of the punch list, and at one point they proposed putting metal strips and mechanically fasten them through 3,000 roof penetrations. Ai3 was not fond of that solution for obvious reasons. In order to break the log jam, the Town hired a roof expert, Gale Engineering, and they looked at that fix and also did testing of the roof to confirm exactly what was under the roof. Some problems you can see just by looking at it and others you can't. As part of Gale's process, they did infrared testing because during the destructive testing they did notice there was no insulation in places where there should have been. The infrared test revealed a strip in the middle of the classroom roof that does not have any insulation and in order to get insulation on that roof now, it is no easy task. Mr. Garrity said we provided this information to the bonding company and told them to come back to the Town with a proposal for the Town and Gale to review and decide what the solution will be because they are still required to fix the roof in a manner that is acceptable to the Town. Again, what that fix will be -- whether a repair or replacement -- we are still waiting to hear. He noted it has slowed down over the last couple months. He was asked to contact the bonding company a few weeks ago to find out why they have not provided a plan. Bob Garrity said the surety responded and the good part of the response is they are still agreeing they are going to fix the roof. They did have some legitimate reasons why they have not given this to us yet. The original roofing material company was bought out by another company (Genflex/Firestone) and there were some squabbles over warranty issues. Mr. Garrity said he believes a gentleman was supposed to be coming out from the bonding company to confirm something or other. Mr. Garrity said he suspects we will get a plan shortly that we can look at to decide what we are going to do. Since it is the winter, we are not going to do work now anyhow but we need to know if we are going to have an acceptable fix or replacement in time, just in case the bonding company decides, and he has no reason to believe so, but if they decide to back out, we still have to take care of it ourselves which would probably be during the summer. We will need to have the money to do it. Mr. Garrity said it seems like now we should give the bonding company a little more time. They know we are unhappy. Mr. Garrity suggested that after tonight the Committee consider directing him to contact them and tell them how to proceed and what the deadline should be for filing a plan and what we expect it to say. If they say they will replace the roof, all the better, but if they say it's a repair it will be subject to scrutiny by Gale and Ai3.

John Reilly said even knowing all the details, it was a tough time frame to follow and it is still very frustrating. Obviously it is winter time and any repairs or replacements we want done in optimum conditions. However, we have strong concerns that with a leaking roof everything underneath will get damaged. If it gets into the electrical, the insulation, ceiling tiles, etc. all these things can be catalogued. But who knows what will come down the road as a result. John asked how they would respond to that. Bob Garrity said to the extent that there are a bunch of leaks, you have to figure out where they are and what the source is. He said he thinks absolutely they are responsible for it. Under the takeover agreement we have the right to back charge them and we can go beyond what is in the agreement. We can make a demand on them over the \$700,000. It all flows from the failure of the original principle, Jackson Construction, to put the roof on correctly. John Reilly asked what is happening with the leaks. Bob Garrity said he is not sure about leaks but he has seen some correspondence about them. John Reilly said they are scattered leaks but it is not just a matter of mopping up the water, everything from the roof down is affected. Jim Lampke said at the staff meeting last week, Troy Randall addressed the issue to make sure they were aware of our concerns about further damage and notification to them about that. Troy Randall said the bonding company has been aware of the leaks throughout the process and has addressed a majority of the leaks. He said he is only aware of one leak at this point, which is located at the gym corridor and they are aware of that as well. They are trying to schedule a meeting next week on site to look at that and the damage in the corridor, which is a pretty isolated area. They will discuss it further next week.

Dr. Silva said he is concerned with a couple things. The first is we have been going back and forth on this issue for one year now. We heard tonight that because we refused to accept their solution, based on Ai3's recommendation, we hired Gale. Dr. Silva said he has the letter from the bonding company and, with all due respect, it seems there is a bit of hedging. It says you can't do any repairs in the winter. Then it says repairs can't begin until March or April, but March is two weeks away and we still have not received a proposal. They say prior to March they will propose an alternative reasonable solution, therefore, there is no reason to place unreasonable deadlines. Dr. Silva asked if they are under the impression that their proposal will be accepted by this Committee because it could be rejected. Now we may be into June or July and we still have no action on the roof and that is a problem. It is now two weeks before March 2007 and we should have at least received that alternative reasonable solution and we haven't. He said we need to articulate our displeasure. To him they have done nothing but delay, delay, delay. They accuse us of delaying because we did not take any action between September and November 2006 and the reason we did not take action was because we hired Gale and were doing our due diligence so it was not an unreasonable delay. Dr. Silva asked when the solution is coming because in order to meet their own deadline, it better be in the next week or two.

Bob Garrity said he doesn't disagree. He said where he would like to be after this meeting is with direction, short of terminating them. Tell them the committee wants a plan by a certain deadline or else. He suggested giving them a little flexibility and added he read more

positives than negatives in the letter. He said it is important to note they said they were going to do it. Financially we should be made whole.

David Walsh referred to the same letter and said it is encouraging that Bob Garrity is using the term "replacement", because the terms repair and possible replacement has been used in past. David Walsh said he has a problem with repair and reasonable fix because we never got a roof that was remotely done properly. If we are having these problems now with the roof, why aren't we talking more about replacement. If the bonding company backs out of the agreement are we due a credit -- is there a number they are responsible for giving back to the Town. John Reilly noted that is a conversation that would be appropriate for Executive Session.

Paul Dunphy said on the same letter, there is one sentence -- it is the last sentence of the first paragraph, and he asked Mr. Garrity to respond to. Paul Dunphy said it seems the lawyer is under the impression that we have a secure roof. We need them to know we have leaks and we are in defense mode by putting plastic up over the interior wiring. That last sentence reads, "as a consequence of that delay, Vertex has borne the expense of additional temporary measures it took to maintain a secure roof." Paul Dunphy said they may be under the impression that we are tight but we are not. He said he is referring to what he saw in that gymnasium corridor and the signs of water/leaks. Bob Garrity asked for clarification of where the leaks are. Troy Randall responded the corridor between the locker rooms and adjacent to the gym. Paul Dunphy said they should at least secure that area but agreed there is some positives to take away from this letter. Paul added we want to maintain a good working relationship with them as long as we can.

Pat Finn said he is looking at the same letter and in the second paragraph, second sentence it says, "as you know as a result of USF&G diligence, with the exception of the issues with the roof, all of the punch list items at the project are complete." Pat Finn said that is a red flag to him, because that is not the reality because the roof is still an issue. He asked if all the punch list is complete. Troy Randall stated 96% of the punch list items are complete, excluding the gym high roof and supplemental punch list. John Reilly noted it also excludes warranty items. Troy Randall said there are three or four items that are warranty related and a couple are significant. Bob Garrity said in that case we need to point out the discrepancies in their letter. John Reilly noted every month that goes by is costing us money for attorney fees, architect fees and support staff. We are spending our own money and they are dragging their feet. They had last summer, last fall and the summer before that. It is hard to be patient because this is the third or fourth time we have heard that we are going to have a plan. It goes back to when Jackson was still here and Bob Barton would stand up and promise the world. Over the months we have spent over \$100,000 on additional fees because of how they are dragging their feet. He is surprised they don't want to get it done and get out of here. There is additional damage we have to deal with in the future, a sub standard roof and electrical or structural damage and the continuing additional costs of keeping this project open and going. We are lucky we have a school we can use right now considering where it

was. John Reilly said, with all due respect, he does not want to pay Attorney Garrity to write a letter or negotiate -- he would rather pay him to be in court trying to get what is due us.

Chris McCabe noted Genflex was supposed to come out by February 14 and asked if that is the meeting Troy Randall was talking about. Troy Randall said no. Chris McCabe asked what is the latest from Genflex. Troy Randall said Genflex was purchased by Firestone and they were supposed to be onsite prior to the 14th and it would take two weeks to issue a revised proposal to the Town. To his knowledge they have not been on site yet.

Judi Saide said when they had the staff meeting a couple weeks ago we talked about just one leak in the gym area but just so every one knows, the water has saturated the cable trays and in a small area they threw some plastic over it but that is still problematic for us. She said if that water travels down those cables and hits the electronics on the other end we are potentially at risk of loosing thousands of dollars of equipment. We have narrowed it down to one leak in the gym area. There are problems in the walls and ceilings and she thinks we have got to fix that last leak. The other area we did not talk about, that is still a problem, is in Peter Seitz's cable TV area -- he has two rooms and we made Tom Gould aware of it. The day after Thanksgiving it leaked so much in that area that the ceiling fell in inside one of those rooms. There is ceiling and wall damage and the rugs had to be replaced. In that particular area we determined it was coming in underneath a door from the mechanical room above. At the least, we know we have two serious problematic areas and risk further damage in the next rain storm so we need to make a decision and fix that. We can't keep throwing plastic up and taking ceilings down. In those two areas we have an obligation to deal with the problem or risk more damage.

John Reilly said this is another example of us spending our money and hoping to recoup it or wait for the bonding company to step up and make the repairs. It makes no sense to replace rugs if it is going to leak again. John Reilly said it is a viscous circle that we have to break out of. He said Mr. Barton said he was going to take care of it four years ago. Bob Garrity said for any work that we should be doing for leaks, then we should be spending the money and deducting it from the amount of the takeover agreement. He said he would be happy to send notices telling them we are spending the money. We do have the money and we have control of it and the mechanism to tell them we are exercising self help because they are not showing up.

Athletic Field: John Reilly said we rejected the athletic field, we have proof, took pictures of them putting it down in mud. But in order to use the field we took our money and did a quick fix to get the field used and now it is not standing up and now we are hearing we may loose out on the credit for the field. Bob Garrity said he knows the fields were originally an issue on the punch list and was under the impression they were still supposed to fix the field.

Dr. Silva said in light of what Judi Saide said, at the least tonight we need to make a motion. ***Dr. Silva made a motion to immediately set forth to repair those leaks in lieu of the serious damage it will cause elsewhere and deduct the cost from the money we are obligated to the***

bonding company. Pat Finn seconded the motion. John Reilly asked what is the proper mechanism, if we bring in another party to do repairs how does that put us in a position with Vertex. Jim Lampke said the first thing that needs to be done is find out what needs to be done to repair the leaks and then decide the best course of action. Will it impact the replacement of the roof or other aspects of work needed to prevent further leaks in the area Judi is describing. The architect and engineer need to look at it. Jim Lampke said we need to know what is causing the damage, who is responsible for it and what can be done to fix it. Dr. Silva said we have been talking about this for months and he thinks we should just fix it. Jim Lampke said he is not disagreeing that it should be fixed, just that we first need to find out what is needed to fix it. Chris McCabe said he thinks, and according to Gale Engineering, the only fix is to replace it. He asked if we are talking about patching it while waiting for a replacement. Bob Garrity said it looks like any replacement would be over the classroom wing. Chris McCabe said a question that needs to be addressed this evening is if we should do patchwork while waiting for the next decision from the surety.

Jim Griffin said before the weather turned Vertex sent out Silktown to address some of the issues over the gym area and make subtle repairs. That has been going on and he is surprised that the attorney was not aware. He said we spent a lot of time documenting what leaks in what areas. We have been very clear and exact when identifying leaks and communicating the leaks to Ai3. Silktown was on site under Vertex's recommendation and they made some repairs. The weather stripping over the library area has been brought to their attention and they did not wrap up that area. The missing weather stripping is the cause of the TV studio damage.

David Walsh said if we are going to put time and energy into bringing someone up here to do patchwork, should it be someone capable of giving us a number for replacement. Chris McCabe said he thinks we have that number. Unfortunately, it is a very high number. Paul Dunphy said if this were our own roof we would up there taking emergency measures and that is what the vote is. He said we may see some leaks with the rain expected tonight and tomorrow but we need to take emergency action. If it were our own homes, we would put up a tarp and sand bags.

Scott Dunlap said that depends on your objective. Certainly Mr. Lampke's comment that either Ai3 or Gale should look at it makes sense but you need to understand that if we see a lot of defects, our job is not to trouble shoot the leaks. It does make sense to use a local person to take care of the leak issue immediately, it is probably just a flashing issue or an incomplete termination, and get it resolved. Dr. Silva said this continual litany of the leaks makes our argument stronger that we need a brand new roof. We paid for a new and need a new roof. Because of defective, shoddy work we are suffering now. Dr. Silva said the motion was to take emergency action to protect our investment and continue to fight for a brand new roof. *All approved.*

- **Finances:**
- **Punch List:**

- **Roof**
- **Athletic Field:** John Reilly said we took emergency action at that time, rejected the field and asked what is our recourse. What steps need to be taken for a resolution. Bob Garrity responded “whatever you want”. Dr. Silva said he helps coach baseball and got a call from the high school baseball coach because the field is unplayable and the season starts March 19, which is about 30 days away. The wrong mix was used for the infield and asked how we go about replacement. He added if JV is forced to play away games we will incur additional costs. He said we did that for football and we can’t keep doing that. We have a baseball field that is, again, the result of defective work by the contractor. Troy Randall said there are two separate topics. One is the infield mix, that issue has been raised to Vertex and in the past several weeks we have communicated with them about a letter sent to them in July 06’ which notified them that the contractor did not provide the specified or approved mix in the infield area. Now, the town will likely receive a credit for that material -- the difference in material cost and labor for the specified product vs. what was received. Troy said based on the discussions, it is not likely they are going to remove and replace it but with the money that is received in a credit, the Town can remove and replace it. Dr. Silva asked if we have received that money. Troy Randall said no. Dr. Silva said so then we would be taking it out of our own pocket. Bob Garrity noted we are holding a lot of money. Dr. Silva asked if we can use that money. Bob Garrity said, absolutely. John Reilly said the problem about the money we are holding is we have spent over \$850,000 out of contingency, which we are back charging and hoping to get back from the bonding company.

Kevin Richardson said from the School Committee point of view, they are trying to level fund but also budget for maintenance of equipment, field, etc. He appreciates what Troy is saying about the field but they either have to cancel JV games or look at away games, which is an added transportation cost. A lot of things the School Committee is trying to budget for next year such as the field, that should have been taken care of. We need a field by March to have JV baseball or we are looking at increased transportation. Kevin Richardson asked how do we do that, do we try to find more money in our budget to do that or do we ask the School Building Committee to pay for it. We have the same issues with the football field, we are budgeting now for next year so come July we will close it for the summer and do work on it. Kevin said they realize there are certain maintenance costs but that is less than what is needed now. We have to have answers on the baseball field in weeks and not keep dragging it on.

David Walsh noted the Town is due a credit for the difference but, in fact, that is not true. Because if we are getting the credit for what the cost was a few years ago for material and labor but the costs have gone up. So the credit we get is really not going to cover it for us to go out and replace it. Troy Randall said the value was based on July 06 – that is the value costs for material from the supplier

and a ballpark labor cost. The material cost was approximately \$20,000 and \$5,000-\$10,000 for installation. Scott Dunlap said that was the estimated value at the time of approximately \$25,000 but if you go out tomorrow and the cost is \$30,000, that is the credit you will see. David Walsh asked if it is a replacement value credit. He was told yes by Ai3.

3. Architect Report:

Rhoda Kanet asked who is in charge of arranging for the emergency roof repairs. She was told David Twombly, he will have to get some prices and move forward. David Twombly asked if he should report back to the sub committee or the full committee.

Scott Dunlap said with regard to the field he wants to remind the Committee about the chronological order of events and Troy Randall has put together documentation on that. Scott said on November 15 and December 7, 2004 we notified Jackson Construction that the sod installation on the field was not in compliance with the contract documents. Then on May 5, 2005, we requested Jackson Construction's immediate remediation on the field. On May 11 we provided John G. Crowe Associates report dated May 11 and requested that Jackson Construction take immediate action to repair the sod deficiencies. On May 27 we notified Jackson Construction that the School Building Committee voted to direct Jackson Construction to accelerate the work on the field immediately. On June 8, 2005 Ai3 notified Jackson Construction that the Town would be directing and employing the labors of additional forces as necessary to ensure the completion of the work. Town Counsel was involved in helping to formulate that direction. On June 5, 2005, the Owner's Representative at the time hired Earthlinks to begin remediating that work. We are holding, in the punchlist, specific items related to that field. There may be some debate regarding the fact that you took money, did remediation and utilized the field for a couple seasons, may result in there being some debate about the exact responsibility of the bonding company.

4. Fiscal Report:

- Warrant #469 was presented to the Committee containing five invoices for the high school totaling \$6,412.77.
- One invoice from Ray Sarno Electric in the amount of \$525.00. Although the invoice is for replacement of two light fixtures in the gym, one of the fixtures was necessary because of water infiltration. Tom Gould documented this problem back in March/April and copies are attached for your review. *This invoice will be added to the back charge list.*
- Two invoices from Architecture Involution totaling \$3,132.34 for additional services (\$3,050.00) from January 1 thru January 31 (*This invoice will be added to the back charge list*) and reimbursable expenses (\$82.34).

- Two invoices from Gale Associates totaling \$2,755.43 for Roof Consulting Services as part of the original contract (\$375.43) and additional services (\$2,380.00) during December. *These invoices will be added to the back charge list*
 - Pat Finn asked what Gale did now. David Twombly replied it was part of the roof investigation doing x-rays, infrared testing etc. It was noted this warrant was held over from the February 8, 2007 meeting.
 - *Pat Finn made a motion to approve Warrant #469 in the amount of \$6,412.77. Chris McCabe seconded the motion. All approved Warrant #469 in the amount of \$6,412.77.*
5. **Town Manager's Report:** Chris McCabe noted this would be covered in Executive Session.
6. **Superintendent's Report:** None this evening.

Paul Dunphy said one of the things we need to do this evening is make a decision about the CO detectors at the Jacobs School. Paul said he had some discussions with fire protection people and e-mails with Captain Thomas and we have come down to agree with Captain Thomas's design. Captain Thomas worked closely with the engineers on this. It is more money than originally thought but based on the design of the school it is good coverage. *Paul Dunphy made a motion to go with the proposal of between \$7,000-10,000 for 14 CO detectors.* Paul Dunphy said this will give us good coverage and what we need. He added these are hardwired and monitored so if we do get an alarm we will get a response. *Dr. Silva seconded the motion.* Peter Lombardo noted they are hardwired with battery back up. *All approved.*

7. Old Business:

- **Unresolved High School Technology Issues (Judi Saide):** Judi Saide stated she wanted to bring up the leaks.

Steve Martin asked if this was the second time there was ceiling, wall and rug damage in the TV studio. Judi Saide said it is actually the third time. She said she believes they have narrowed it down to flashing of a door above the mechanical room and they need to get it down. She added he does have substantial damage that needs to be rectified, there is damage to two rooms but in one room the ceiling came down. She said we have been talking about that for months.

Dr. Silva made a motion to go into Executive Session for the purposes of potential litigation and not return to Open Session. Pat Finn seconded. John Reilly said before he calls for a vote he wanted to welcome back Phil Lemnios who is here to get up to

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speed on these issues. He also thanked Dr. Silva for attending the meeting tonight because he mother passed away on Sunday and said this shows his dedication to the project. ***The motion was approved by roll call vote.*** Executive Session convened at 8:50pm.

Respectfully submitted,

Debbe Bennett
Recording Secretary