

**Town of Hull
Building Committee Meeting
Thursday, December 10, 2009**

In attendance:

Cathy Bowes/Committee Member
Paul Dunphy/Committee Member
Bill Dwyer/Committee Member
Patrick Finn/Committee Member
Jay Meschino/Committee Member
John Reilly/Committee Member
Charlie Ryder/Committee Member
Dr. John Silva/Committee Member

Kathleen Tyrell/Committee Member
Dave Walsh/Committee Member
Debbe Bennett/Support Staff
David Twombly/Support Staff
Jim Lampke/Support Staff
Peter Lombardo/Support Staff

Absent:

Phil Lemnios/Committee Member
Kevin Richardson/Committee Member
Jim Tobin/Committee Member

The Building Committee meeting was held in the Selectmen's meeting room at Town Hall and the meeting was called to order by John Reilly at 7:00pm.

1. **Approval of Today's Agenda:** *Dr. Silva made a motion to approve the agenda. Pat Finn seconded the motion. All approved.*
2. **Approval of Minutes:**
 - **Thursday, June 18, 2009:** *Bill Dwyer made a motion to approve the June 19, 2009 minutes. Charlie Ryder seconded the motion. All approved*
3. **Architect's Report:**
 - **TLT Payment Requisition #30**
 - **Change Order #12** – Troy Randall noted Change Order #12 is the final Change Order, which was sent to the committee through e-mail. Change Order #12 contains four items dating back almost a year.
 - The first item is to furnish and install pipe insulation where it was removed during abatement in the amount of \$1,149. That was primarily in the cafeteria/kitchen area.
 - The second item is to remove and replace existing piping, which was in poor condition and interfered with new work in the amount of \$9,029. This work was primarily in the

music room and also some in the kitchen area to accommodate new steel and the piping is for the roof drain work and insulation of the drain.

- The third item is for asphalt material escalation costs due to unforeseen oil price increases in the amount \$27,504.00. Troy said this is something that we at Ai3, PMA and the Town have gone back in forth over for a year, since September 2008. It was originally \$48,000. It is a condition where they identified it as an unforeseen condition due to the market price increase. Technically it is something that the Town is not contractually obligated to pay, however it is a reasonable request based on how the project has gone. It is a reasonable adjustment in cost due to doubling of oil prices. We would recommend it for approval. This was previously sent to Town Manager and Town Counsel for review and consideration. This item is in the amount of \$27,504.
- The last item is for revised door hardware at the exterior door in the amount of \$4,404.
- The total for final Change Order #12 is \$42,086. They have reviewed it with PMA and many of the items have been on the table for some time.

Dr. Silva said he doesn't agree with the recommendation to pay for the asphalt. When a company makes a bid, they have to take into consideration possible cost escalation and if they don't they have to bite the bullet. It is part of what you factor into the business. David Walsh said whether it is reasonable or not, he doesn't care. The fact is he does not think anyone associated with the project lost money and if they had to eat this \$27,000 it wouldn't make them lose money. He said he works in the home construction business and this happens frequently when material costs double. His company cannot go back to the homeowner for additional costs. This is not going to make or break any of these companies. It is something they should have been prepared for.

Pat Finn said he sees it all the time in his job. They used the MassHighway pricing and it looks like Aggregate's contract with TLT had a clause for escalating costs. "Due to the uncertainty of asphalt, diesel fuel and gasoline prices, MassHighway uses special provisions on selected projects to make contract adjustments to account for asphalt and fuel prices in effect at the time the work is performed." Pat Finn said it is an up front cost and you know you will get an adjustment if it goes higher. You cannot call this an unforeseen condition. Usually it is a latent field condition (e.g. underground) but everyone knows the price of asphalt fluctuates. It might be an unfair practice to pay for it if we are not obligated to.

Troy Randall said Ai3 agrees completely -- they have used the same arguments. Contractually they do not have an argument and they have seen it before. They are responsible for it and no one is arguing that. The only thing we are saying is if the committee considers it, they would be saying the project has gone well and since you incurred additional costs, we are going to help you. It is not a technical argument. Charlie Ryder said he agrees with what has been said. Various lawyers have vetted these contracts and we should stick to the terms. David Walsh said no one is arguing with the job TLT did. They were paid to do

the job a certain way and were paid approximately \$27 million to do it. Paul Dunphy asked if there is any down side to not paying it. Troy Randall responded, no. He said all documentation has been sent to TLT telling them it is not a requirement that the owner pay this. Paul Dunphy said he does not think we are allowed to give money away that is outside of the contract. John Reilly added, if they saved money we would not have seen a credit and it is not our money to give away. Jim Lampke asked when they first notified us that they had incurred the cost increase. Troy Randall said he doesn't have an exact date but over a year ago. Jim Lampke asked when, in relation to them having to spend the money. Did they notify us right way when the cost increase arose? He agrees with everything that has been said and Phil does too. When did they spend the money vs. when they notified us? Troy Randall said the original Change Order request from TLT was for approximately \$47,213. John Reilly asked what happens if this line item is not approved. Troy Randall said the amount (\$27,504) would be deducted from the \$72,000 payment requisition. Pat Finn noted the paving work was done in September when the prices were the highest and Ai3 corresponded back saying we don't have to pay it since you were supposed to do the work in July, not September. Jim Lampke noted there is a December 2, 2008 letter from Daren Sawyer to TLT saying he was not recommending the payment and felt there was a delay within TLT's control that may have contributed to the cost and the quantities appeared to be excessive. The Project Manager indicated that some areas were in excess of thickness and did not feel it was the owner's responsibility. Troy Randall said they have been stating that all along. ***Paul Dunphy made a motion to approve Change Order #12 less the \$27,504 for asphalt. David Walsh seconded the motion. All approved.***

John Reilly said there are still some issues with handicapped access and he asked Jim Lampke for a recommendation. Jim Lampke said there is an issue over addressing the ADA accessibility that could be costly and problematic and he is not sure what TLT's responsibility was for it -- they might have none. The playground equipment safety is still outstanding and asked if that was TLT's responsibility. Troy Randall said TLT was responsible for the installation of the playground equipment.

Pat Finn said we had ADA problems at the high school and we paid \$90,000 to bring it into compliance. There were issues with the elevator entrance and he recommends holding out on closing out the project. He said if it was built according to plan he does not know so he does not know if that is the right thing to do. Dr. Silva asked if we would be wiser to hold back a small amount of money until we settle the playground and ADA compliance issues. If we pay it TLT is free and clear. Troy Randall stated approval of this req would pay off the contractual balance. Dr. Silva asked if we have any recourse. Jim Lampke asked if the contract documents say paying the req is acceptance of all work. Jim Lampke said if they built it according to specifications they have a strong argument that they should be paid unless they knew there was a problem with what they were doing. Dr. Silva asked where that leaves the Town if we paid them. Jim Lampke said we would not have any funds available that relate to their part of the project. He said Debbie Bennett has supplied he and Phil Lemnios with information regarding the ADA issues and it is being evaluated. John Reilly recommended holding off on the vote for now.

4. Fiscal Report:

- Warrant #584 was presented to the Committee containing two invoices totaling \$72,301.19 for the Jacobs School.
 - One invoice from David Reinks in the amount of \$75.00 for videotaping services at the 10/29/09 Building Committee meeting. This invoice will be charged to the Owner's Administrative costs account.
 - One invoice from TLT Construction in the amount of \$72,226.19 for construction services.
- Warrant #585 was presented to the Committee containing three invoices for the High School project totaling \$11,261.25.
 - Two invoices from Garrity and Knisely totaling \$9,573.75 for legal services related to the high school project.
 - One invoice from Ai3 in the amount of \$1,687.50 for additional service during the month of October

Charlie Ryder noted warrant #584 includes a \$75 invoice for David Reinks. *Dr. Silva made a motion to pay the first item in the amount of \$75 on warrant 584. Pat Finn seconded the motion. All approved.*

John Reilly said he heard there was an alarm at Jacobs School. David Twombly said there has been an ongoing leak in room C109 and TLT has been out five times to address it. On this particular occasion, he had been in the room to check it 10 minutes prior to the leak and then it started suddenly. He said it seems to be related to the flashing. John Reilly said we have talked about it before. Do we try to work with TLT or do we go to our roofing contractor. Now the ceiling tiles are out. The alarm was related to a drop in water pressure. Aquarion said there was a change in pressure, which caused the sensor to move and it sent a message to the fire alarm. Phil Lemnios said there was a problem in the sewer department and they had a bad water flow day through the plant that is probably what caused it. The water pressure dropped due to the controls and probably carried along the line to the school.

David Twombly said the leak is concentrated in C109. He said Del usually responds within 24 hours and asked if we should get our own roofing company out to respond.

Paul Dunphy suggested getting in touch with the sprinkler contractor because that should not happen. Phil Lemnios said Dan Evans told him the delay was at 15 seconds. Paul Dunphy said it should be 60. Phil Lemnios noted it was moved to 30 seconds and he would tell Danny. Paul Dunphy stated the fire officials tend to go on the safe side but that is a major thing to move the kids out of the school.

David Walsh asked about the warranty on the roof. David Twombly said the phase 1 roof was two years. David Walsh said the manufacturer should send an inspector out. Troy Randall said the warranty was provided on the product itself and each phase has a 2-year guaranty for installation but this problem has been documented over time. Troy Randall said they do come on site and sign off on the warranty. TLT or the roofing sub may need to coordinate a site visit. Phil Lemnios said it sounds more like a flashing issue rather than roofing product. David Walsh asked about the contractor the School Department has. David Twombly said it is with Commonwealth Roofing. David Walsh asked if they are on retainage. David Twombly said yes. David Walsh suggested getting them there. David Twombly noted we would have to pay for the repairs. John Reilly asked if the warranty would be voided if another company were called in. Troy Randall cautioned against calling in another contractor and said it would void the warranty. Phil Lemnios said we need to keep TLT's feet to the fire. David Twombly said they have been out there. John Reilly asked how much water came in. David Twombly said it was dry one minute and then raining in the room the next. Troy Randall said they could talk about the condition. David Walsh noted it is not standard practice to put gable end vents on here. David Twombly said he could give TLT more time and call him tomorrow. John Reilly said we might need to make a judgment call if it happens again but hopefully we can get it resolved. John Reilly asked David Twombly to send the committee an e-mail.

John Reilly asked Jim Lampke if the high school bonding company issue is resolved. Jim Lampke responded that it is close to being finalized. There is some language being ironed out going back and forth. He spoke to Bob Garrity and we accepted their final version and he expects it to be resolved over the next week or so.

David Walsh made a motion to approve Warrant #585 in the amount of \$11,261.25. Dr. Silva seconded the motion. All approved.

5. Town Manager Report:

John Reilly informed the Committee that Phil Lemnios has some concerns about closing out the Jacobs School project right now.

6. Superintendent's Report: None this evening.

7. Old Business:

- **Jacobs School**
 - **Punch list update**

Troy Randall noted there is only one item remaining on the architect's punch list and the signage contractor has told him that it will be reinstalled on Wednesday.

David Twombly noted there are some outstanding items. He said Peter Lombardo has issues with the doors and lights and the water that got in the elevator pit months ago. South Shore Elevator came out and recommended replacement of some parts for about \$3,000 and we gave that proposal to TLT but they have not replaced it yet. The cabinet heating units blow out cold air, the fence gate is not cemented in the ground, and the art room exit doors do not close properly. This is an ongoing issue and in high wind conditions they set the alarm off. Troy Randall noted these are all warranty items not construction punch list items for contractual requirements.

David Walsh said one item we are looking at is the sidewalk issue, that is something he does not know about. He asked if the site work is 100%. Peter Lombardo is looking for paperwork that it meets AAB requirements. Troy Randall said Pete is looking for a letter from the consultant, which indicates the work has been installed per the accessibility codes. Ai3 will speak to them and they will submit a letter. Phil Lemnios has discussed this all with Troy Randall. We have the close out documents that it was and he is asking for something more specific saying the flat work walkway and ramps have been installed in accordance with the codes and AAB regulations. He wants to make sure they are in compliance with slopes, etc. John G. Crowe Associates will provide the letter within a few days. He is satisfied with that.

Pat Finn said that is a great idea and that way John G. Crowe Associates is responsible. If something comes back it is on Crowe. Peter Lombardo said they have the ultimate responsibility for verifying that the work was done correctly. Pat Finn asked about all the site work. Troy Randall said all of the certifications have been provided by the engineers, what Phil Lemnios is looking for is specific to the ramp.

Jim Lampke asked if you are being asked to approve this prior to final inspection. John Reilly said this is just a punch list update. Troy noted they are actually warranty items.

o **Jacobs Entrance ADA Compliance:**

David Twombly said about a year ago Austin Design came out to do analysis of all town buildings and created a document. They identified several items at the Jacobs School and the biggest was the entrance. Now there is a lift to the left of the entrance, which takes people up to the first floor. Austin Design says that does not meet ADA accessibility requirements but we do have a letter dated April 25, 2007, from the ADA indicating that it did meet requirements. We have to make a determination if it is compliant or not. If not, we will need to do remediation. John Reilly said some of the items are based on today's regulations, which have changed over the last few years. Peter Lombardo said this report was done based on ADA standards, which are national civil rights standards. The school was build under AAB regulations and the building code refers to the AAB. Paul Dunphy noted this was a consultant's (Austin) report and asked if there have been any complaints filed. Dr. Tyrell said not to her knowledge. Paul Dunphy said then let's leave it alone. David Twombly asked if we

find out a year from now that it has to be redone and this committee is dissolved, who would be responsible. Dr. Silva asked whom the letter is from. David Twombly said it is an advisory opinion. He added the consultant has indicated a ramp is needed not an accessible lift. Peter Lombardo added the pull side issues have been corrected to be in compliance. He said when he had a discussion about it; it was about a woman with a stroller who had no ramp or walkway to get up the stairs. Peter Lombardo said there was access to it. The lift entrance is the first entrance you see from the handicapped spot. He said they have reviewed the procedure and the issue appears to be that there was not an immediate response from the secretarial area. However, it is the same response time as when someone walks up to the front door and they have to wait to be buzzed in. This door is set up the same way. Peter Lombardo said the problem is they may have to wait, depending upon the staffing.

Jay Meschino asked if the survey was particular to the ADA or the AAB because they reviewed it to a different set of guidelines than it was not built to. The bigger issue is it is not going to change who is responsible for paying for any potential change down the road. David Twombly said the School Building Committee should resolve it with the money is under their control rather than wait 2-3 years and then the School Department is stuck with the bill. Someone should contact the AAB and get an official determination. Paul Dunphy said he doesn't think they work that way. Troy Randall said the process by which the letter was received was exactly how it should have been. A letter was sent to the MAAB identifying the options and the MAAB made a determination on what the direction should be to proceed. That is a document from a government body overseeing the code saying it is proper. If further documentation were needed, they would not have been given an opinion. You have an official letter from the governing body vs. a consultant's opinion.

Dr. Tyrell clarified the staffing issue - when someone pushes the buzzer, the secretary leaves the office and has to take the lift down to the lower level. It is cumbersome. Then the secretary has to go around and enter through the door because only one person can fit in the lift. David Twombly said it is not technically the same for everyone. If they have to wait, it is not different. Dr. Tyrell said it is a longer wait because the staff has to ride it down first.

Paul Dunphy said there is not a problem here. The operation does not require two people and there should be a key to turn on. The lift should be left down at the lower level. Jim Lampke said the reality is it appears we are also subject to the federal ADA requirements, which are more civil rights issues. Jim Lampke said the issue is whether that access is in compliance with the federal requirements. The concern that he, Phil and David have is once a complaint comes in, we will have to deal with it vs. deal with it now. It is fair to say that it is likely that there is going to be a complaint. This is not an easy matter to assume we don't have to do it. Phil is advocating getting an official determination from the access board. That process does not appear to have been followed. The letter is not an official decision of the board. The concern is this could be a costly item. John Reilly asked if we could get a variance for the lift. Peter Lombardo

said there were provisions in the building code that allowed this to take place. It was thought out for a long time and there is specific wording in the building code and the Hull Disability signed off on it. Jay Meschino asked how the MSBA could build to MAAB regulations if the federal ADA overrides it. Peter Lombardo said he is not aware of any ADA compliance regulations. Jim Lampke said the feds also have requirements or recommendations on how things should be built. It is a serious issue if there is a complaint made to the Department of Justice. It could affect grants that many departments receive from the federal government. Jim Lampke said the game plan we talked about was meeting the Architectural Access Board and seeing if we can get their approval. If the architectural access board votes this then we are on better ground. David Walsh said this is a major flaw in the state building program. The buildings are MAAB compliant so why wouldn't their complaint be with the MSBA. Jim Lampke said ultimately it is the property owner's responsibility but his and the Town Manager's concern is it might be the Town that has to pay for this so this needs to be addressed. The process appears to have been followed but there does not appear to be any legal authority. David Walsh said the State is opening itself up to lawsuits. Dr. Silva said he has a hard time believing that the State's handicapped laws are not in line with the federal government's. He asked if we could get in touch with the State to find out if their laws comply with the federal laws. Jim Lampke said that is not an easy question for them to answer. We need to have an initial dialog and make sure we are on good ground. Dr. Silva said according to Troy Randall and Peter Lombardo, we have adhered to all requirements along the way. Jim Lampke said the idea is to meet with these people and figure out how to resolve it. John Reilly asked Troy if the MAAB meets with federal ADA guidelines. Troy Randall said many times it is stricter. Peter Lombardo said another aspect of the design was a ramp but it would have been really long. When comparing a ramp to the lift, the lift was a no-brainer. Peter Lombardo said maybe we might want to look into getting a cost to put in a ramp. There is room to put one up above from the front walkway towards the old gym. Paul Dunphy said an advantage to that is the School Department would not have to maintain the lift. Paul Dunphy said let's get a number and take a vote.

Dr. Silva made a motion to get a price to design and install a switch back handicapped accessible ramp that meets ADA and MAAB requirements. Paul Dunphy seconded the motion. All approved. Troy Randall stated the MAAB requires upper and lower handrails. ADA does not require lower handrails. David Walsh said everybody should aware that it is not going to be bulletproof so in a few years, someone can claim this new fix is not accessible.

Jim Lampke said when we have a consultant that brings it to our attention we have to address it. He said Phil Lemnios would contact the AAB to find out what the approval process will be. John Reilly added we need to get all of the proper documentation. The lift is much easier. Jim Lampke said the lift being better is part of the argument.

Charlie Ryder said he recalls we talked about the same subject and the frustration when one of the Memorial lifts was not working six months later. John Reilly said that was the gym lift.

Pat Finn asked if a walkthrough was done with the department of disability. John Reilly said we need more documentation to back up the Town's point of view. He said we could still have Ai3 design the ramp and put it out to bid.

- **Building Maintenance** – Pat Finn said the committee talked about a joint meeting and the Building Committee has been concerned about the long-term maintenance of the buildings. John Reilly said the School Building Committee was looking into partially funding a maintenance position but discovered it was not legal. Paul Dunphy said the problem does not go away. The taxpayers paid good money to renovate these buildings and they need to be staffed with qualified, licensed individuals. John Reilly said the School Department has the control. This morning the Superintendent and Town Manager talked about this issue. Dr. Tyrell agreed with Paul Dunphy but said we have finite dollars to use and we are in a jam. Paul Dunphy said it is not just the School Department -- the Town Hall is archaic. The new buildings have smart technology that will allow you to save money on operating costs and it bothers him to see it not used to its full potential. You need a fully trained building engineer to run those buildings. David Twombly said they have a contractor who comes in to program the controls at certain times during the year so the temperatures go down at night, during school vacation weeks, etc. We do have an energy management system for each school. John Reilly said there is a lot of technology that was not being utilized. John Reilly asked what the price would be for an engineer. Paul Dunphy said \$50,000-\$60,000 range and they took his salary and put half in their pocket and the other half to a building custodian -- it was not the way to go. David Walsh said the only way for something to happen is if all town buildings come under the town umbrella. It's the only way it will get done. Dr. Silva said Phil brought this up eight years ago and he suggested hiring an engineer for maintenance. It might be a good thing to revisit and to point out potential cost savings. Paul Dunphy said corporate America is into cutting operating costs by saving energy and work with local utilities. Someone should be pursuing this stuff but now David is leaving and he understands what he is talking about so where does that leave the School Department when we loose him. Cathy Bowes said the School Committee fully recognizes the commitment made to the taxpayers and building maintenance is always part of the budget discussion. Unfortunately over the last five years we have been faced with budget cuts. Last week the committee did a 21st century school presentation and maintenance was a very important part of it. She said the School Committee is committed to that and does not take it lightly. We have a finite amount of money to work with and \$3 million of our budget is targeted to special education alone. Paul Dunphy said we are wasting money in operating costs. Dr. Tyrell said she and Phil had a preliminary discussion about this earlier today. John Reilly said when it comes down to it, 90% of the school budget goes to salaries.

Jay Meschino said he thinks we need to talk about the total value of the school and he was searching for a commitment that the school would expand, as a percentage, the money allotted for maintenance. If they were allocating 5% before it needs to be 10% now. John Reilly said the committee could formulate a position with the School

Committee and Board of Selectmen for a Town Meeting statement and says what needs to be done. Dr. Silva said Cathy Bowes is right, you have a finite amount of money and you go with the kids when asked to make a choice. Throw it back to the town in the form of a town article and spell out how much can be saved if we spend \$50,000 to hire the person and X is the potential cost savings. Dr. Tyrell added it works very well with Judi Saide.

- **Terminating School Building Committee**

John Reilly said the School Building Committee could formulate a statement letter to the School Committee, Board of Selectmen and Town Manager to make the maintenance budget a priority during budgeting and maybe an article for money to be set aside to maintain the schools. It would be a shame to disband without knowing this has happened.

Pat Finn said the School Building Committee took on the responsibility to ensure the buildings would be maintained. *Pat Finn made a motion to take the next step and present a recommendation and look into an article for Town Meeting.* John Reilly asked Paul Dunphy to take the lead on this. Paul Dunphy said he would put his thoughts down in narrative form. Cathy Bowes asked him to stand up at town meeting to advocate for it. Paul Dunphy said he would not mind doing that. David Walsh said from day one, the then-superintendent promised that they would set aside money for maintenance. David Walsh said he would advocate putting all town buildings under one umbrella. John Reilly said he would rather the School Committee spend time worrying about educating rather than maintaining buildings. Pat Finn talked about a recommendation for a town-wide maintenance program. Dr. Tyrell said with Judi Saide, there are controls on both sides and it works well. John said if someone were hired for maintenance, most of their time would be spent at the schools.

David Walsh made a motion to approve warrant ##584 containing two invoices totaling \$72,301.19 for the Jacobs School subject to a full reservation of rights and remedies relative to the work, said approval not to be construed as a waiver of rights and subject to final approval of the Town Manager. Bill Dwyer seconded the motion. All approved.

John Reilly entertained a motion that the School Committee develop a position about long-term maintenance of the buildings. *Dr. Silva made a motion that the School Building Committee, as part of the final report to the Town, develop a position about long-term maintenance of the buildings. Paul Dunphy seconded the motion. All approved.*

John Reilly said in addition the board would issue a statement to the School Committee, Board of Selectmen, Superintendent and Town Manager stating our position of properly funding maintenance.

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Dr. Tyrell thanked David Twombly for all of the work he has done for the School Department and School Building Committee. She said he worked so hard and it is a huge loss to the Town. Pat Finn said we lost Jim Griffin and now David Twombly and asked where the investment in the people is

Dr. Silva made a motion to adjourn the meeting. Pat Finn seconded the motion. All approved. The meeting adjourned at 9:04pm.

Respectfully submitted,

Debbe Bennett
Recording Secretary