ATHLETIC COMPLEX BUILDING COMMITTEE SPECIAL MEETING

TUESDAY, OCTOBER 23, 2018 – 7:00 P.M.

DERBY CITY HALL – JOAN WILLIAMSON ALDERMANIC CHAMBERS

MINUTES

Chair Keith A. McLiverty called the special meeting to order at 7:00 p.m. All rose and pledged allegiance to the flag.

Roll Call
Present: Keith A. McLiverty, Tom Abel, Rob Hyder, John Netto, Dennis O'Connell, Anthony DeFala, Kenneth Marcucio, Sr.

Absent: Jim Benanto (Excused) Paul Mengold (Excused), Ron Sill (Excused), Peter M. Olenoski, Jr., Chantal Gerckens

Also: Dr. Matthew Conway, Superintendent of Schools
Ed Arum, Arum & Associates
Eric Roise, Kaestle Boos Associates (KBA)
Vincent Marino, Corporation Counsel

PUBLIC PORTION
Mr. McLiverty asked if anyone wished to address the committee.

John Netto, 141 Park Avenue, Derby, CT
I am one of the persons who suffered damage to their basement and I contacted DEEP. DEEP has two permits out on the site and both permits are taken out by the City of Derby (inaudible) and the permit numbers are right here so I just don't understand why the City's attorney (inaudible.) Mr. McLiverty asked if this would be permits for the project. Mr. Netto said yes. The general permit and registration for the discharge of storm water and water – waste water in construction activities. Mr. McLiverty asked if this would also include the Field House. Mr. Netto said when he first called them they only had one permit that they found and emailed to me. They called back later and said there are actually two permits - one is the Payden project and one is our project. I just don't know which is which. He said their opinion is that the City would be responsible because anything over five acres would be DEEP and anything under five acres would be the City.

There was then a discussion regarding the permit process and the role it plays regarding coverage under insurance policies. Atty. Marino said the permit is not really germane to the issue of coverage under the insurance policies. There is no dispute that this happened on City-owned property. It was noted that Travelers Insurance has sent a letter out to those affected (attached to minutes.) It is City-owned property and the claimants have suffered damages as a result of an activity taking place on the property. Atty. Marino said they fully believe that the liability lies with the agent of the City, which is Turco Golf. He said we do not feel or believe that you as claimants should

suffer the pains of going through multiple layers of paperwork to get the result of remediation for the damage. Atty. Marino said they want to employ a practice through the City's carrier that would simplify the process for everyone. He stated that the City did get some pushback from Travelers on a contractual basis because unfortunately the question is where is the liability of the City? The City did nothing to cause the damage – the City's agent did. He said when you get into issues of liability and issues of insurability and coverage those facts matter. Atty. Marino said when he saw the conversation going in that direction he reminded the agent from Travelers that relationships were driven through business conversations and we all know if you don't get the resolve that you so deserve that you do have civil recourse and the City would be a defendant to that proceeding and Travelers would be obliged under our policy to provide us with a defense. He said under the contract with Turco there is an indemnification prohibition and that simply states that Turco has a contractual obligation to indemnify and hold the City harmless through any claims that result out of Turco's actions. That means in the event that a claim arises out of an activity done by Turco that causes damage to an unrelated third party Turco is obligated by contract, as well as Turco's insurance carrier, to pay out on those claims and defend the City against those claims. Atty. Marino said he told Travelers as a business they want to retain a good working relationship with the City as a customer. Travelers should go over and beyond to try to accommodate your concerns. He said that caused Travelers to generate the letter of October 19th which was sent out to Turco's carrier stating that Turco is negligent and the claims coming at the City should be properly paid by Turco's carrier and if they fail to address these claims in a meaningful immediate way then Travelers reserves the right to bring a claim against them as Turco's insurance carrier to compel their action. Atty. Marino said while Turco's agent did not have the specific authority to commit, he said he would run it up the flagpole and strongly recommend that Travelers proactively bring a lawsuit against Turco's carrier if there's a failure to address the issue to compel the insurer to pay or to cover these claims.

Atty. Marino said it may not feel like it gives you what you want but the wheels of justice are slow. He said this could accelerate the process exponentially. Atty. Marino said the reason why Travelers is not paying these claims in order to trigger our coverage under this policy there has to be negligence on the part of the City. It is the City's and Travelers position that they did nothing negligently wrong. It was the contractor's actions that were negligent.

Mr. Netto asked if Travelers is at least saying there was negligence on Turco's part. Until someone accepts negligence we're at a standstill. Atty. Marino said whether or not we as the City, whether or not Travelers as our carrier says they were negligent is not relevant because unless the party we claim is liable admits liability and negligence then you cannot compel that except through a lawsuit. He said in the Travelers letter it says we Travelers and the City of Derby believe that you Turco were negligent in the failure to protect these berms from runoff. Mr. Netto asked whose perspective is that from – a site engineer. Atty. Marino said that's from a site control maintenance perspective that the contractor was in control of the site and had the responsibility to protect that site from erosion control. He said the permit is issued to the City because the City is the property owner. The agent of the City is the contractor who is employed to do the work and under the contract in order to protect itself the City in that contract has a provision

that says you must have insurance (they do) and to the extent to any claims that arise as a result of your actions on our property you agree to indemnify and hold us (the City) harmless.

Mr. McLiverty asked if they were given an estimated turnaround time for a response. Atty. Marino said the short answer is there is no stated turnaround time. The letter was sent out by regular mail on October 19th. He would expect anywhere from two weeks to 30 days. Atty. Marino said he would be in touch with our contact at Travelers in two weeks in order to keep the pressure on Turco's carrier. Mr. Marcucio said at the last meeting Mr. Turco said his carrier was going to come to the site and he wondered if they have ever contacted anyone. Mr. McLiverty said he believes their representative went to the site but did not meet with the homeowners.

The question of why isn't the City suing Turco was raised. Atty. Marino said from a process standpoint it has been submitted to the City's carrier. He said the City can sue Turco to recover damages suffered by the City; we cannot sue Turco to recover damages suffered by an unrelated third party as we have no standing to assert their claims as a matter of law. Atty. Marino said he could bring a lawsuit for a Declaratory Judgment where he gets the court to say Turco is liable. That doesn't mean that stops the next step. How does that transcend into the claimants being paid. That is an evolution of then who's going to serve a claim – claims have been filed. He said if that Declaratory Judgment proceeding is brought and won does Turco then turn around to avoid the expense of various litigation (inaudible) and start paying out of the claim.

Atty. Marino said if Travelers does not advance the Declaratory Judgment action he would then come back to this committee who can then take a vote to make a recommendation to the full Board of Aldermen/Alderwomen that the City bring action and sue Turco seeking Declaratory Judgment. He understands how much time everyone has endured but realizes this process takes time. Atty. Marino said he hopes there is a response by November 1st. Mr. McLiverty asked if there would be a downside if we were to ask the Aldermen at their meeting this Thursday if there is no answer by November 1st to empower you to take action. Atty. Marino said at this committee's next regularly scheduled meeting all you have to do is take the action to make a recommendation to the full Board of Aldermen/Alderwomen to pursue a lawsuit against Turco for failure of filing claims of the residents. The committee agreed to take that action at the next meeting. Atty. Marino said the only thing that would need to be explored is whether or not we would have to go to the Board of Apportionment and Taxation (BOAT) for appropriation for the lawsuit - not sure if it would come out of the legal budget line item.

Mr. Marcucio asked Atty. Marino if he's had any conversations with Turco. Atty. Marino said he has not had direct communication with Turco nor would he as he would not want to compromise anything that our insurance carrier is doing. Once something is turned over to the carrier it's the carrier's initial responsibility to handle the matter. Atty. Marino said he has no other information to support that anyone else is responsible for this other than Turco. He said when he was at the last meeting he advised Luke McCoy to make sure KBA's carrier was also put on notice as he is not closing the doors on any carrier. Atty. Marino said to the extent that there's a design defect then it could be

borne by the architect, to the extent that it's a site maintenance issue it could be borne by Turco to the extent that it's a combination of two it could be borne by both. Mr. DeFala asked if Turco Golf has been informed as to how Travelers have come to the conclusion that it is their fault. Atty. Marino said a letter was sent to Turco's insurance carrier. He said Turco can turn around and say it was a design issue, etc...we don't care. We just want these claims to be paid. Those parties would have to resolve those issues amongst themselves. Atty. Marino said he just wants to get this resolved by the quickest means possible.

Mr. Netto brought up the DEEP permits and noted that Turco Golf is not on either of the permits. One has Langan, which is under the Payden Project and the other is Kaestle Boos for our project – neither lists Turco Golf. Atty. Marino said once again it's not the permitting process that is relevant to the issue. Mr. Netto said shouldn't the Travelers letter also go to KBA and Langan. Atty. Marino said assuming there was evidence to support a conclusion there was a design flaw, and we don't have any information to form that conclusion.

Mr. McLiverty said for the purposes of public comment it's really public comment not questions. He said understanding the severity of the issue we will open up and have some discretion and allow questions – just don't repeat questions or we'll shut it down. If you have questions we'll open it up to counsel but in fairness to everyone he's answered a number of questions – more than ever before – so if you have a comment please state your name and address for the record and well try and accommodate and answer. Thank you.

John Fitzgerald, 52, 54, 56, E Street, Derby, CT
Can Travelers join - I don't know what the term would be - all of us underneath their umbrella so to speak so you can do what you're doing and we can rest easy for 2 years, 1 year knowing that the town is handling it. How can we go about that – if we can?

Atty. Marino – Let me not give you legal advice but say something that may guide you, ok, because I'm not here to give you legal advice, but let me just suggest to you that every claim carries with it what's called a Statute of Limitations. That means if you don't exercise your rights within that stated window of time your claims are barred as a matter of law. Every claim carries a different statute of limitations. Negligence, (inaudible) two years or three years. Like if you're in a car accident if you don't file a lawsuit within a two year window you're banned. Time periods are different by claims and different by states. Someone may be familiar with the State of New York with respect to their Statute of Limitations and then you come to Connecticut and it's a whole different game. In Connecticut for negligence like this it would be two years from the date of the occurrence. So you know can you rest assured doing nothing – no. In order to truly protect yourself if you don't have resolve within your stated Statute of Limitations and you may have multiple claims that have multiple and various Statute of Limitations you cannot and I'm being totally honest with you rest back for the long term and just because the City is taking action, which maybe in unison with you that therefore protects your interest. Because if its two years and a day and we haven't gotten you your resolve you can't get it on your own. So my soft advice would be to

mark your calendars and make sure if you have not been satisfied – doesn't mean you're made whole but you're satisfied within the specific Statute of Limitations that relates to your claim that you seek independently (inaudible) and search the rights that you have. If you want to wait a year you're fine. If you want to wait a year and a half you're ok. If you want to wait two years you're ejected.

Mr. Fitzgerald – With respect the whole thing is to not muddy your efforts by jumping in with attorneys and all sorts of stuff (inaudible.) Does the City have an engineer on this? Is the City engineer looking at this for the Building Committee?

Atty. Marino – I don't have an answer.

Mr. Fitzgerald – Because quite frankly I can't do anything for myself – I'm a civil engineer but not a professional civil engineer. No one can hire me but I've been advised to get immediately a professional engineer outside to look at all of this because you can pretty much tell from an engineer's point of view what went on. You can see after the fact building of things that were probably, supposed to be – we can get access to the plans I'm sure, but the litany of what that contractor was supposed to do to protect the site even with what the Soil and Erosion Control Plan stated the contractor must do before he starts digging. So it looks like some of that stuff went on after the fact and that could be just because the contractor said well I can build that (inaudible) on top (inaudible) we don't know that. We had the group arguing with Dennis – you know they're doing this. But whatever was on that plan is one thing that the contractor should have followed and we're in here to tell you that but you can't dictate to a contractor – he needs a method once he's on site, correct. So then there's the other problem.

Atty. Marino - And that is the point of a Means and Methods Contract. And therefore he as the architect does not have the authority to direct the contractor how to conduct (inaudible.)

Mr. Fitzgerald – Going back to these guys pointing at each other – fox in the hen house – where someone said you weren't out there when it was raining out. I'm also a contractor so when it rains I'm supposed to be on the site, in the machine and watching the monitor. It doesn't matter if it's seven inches or what. So that's that part of it. You had mentioned meetings to try to ask for two weeks for Travelers to get back to you. Is that going to be our next meeting?

Mr. McLiverty – It will be November 1st I believe.

Atty. Marino – I picked an artificial date. The date of this letter is October 19th from Travelers to General Liability Claims.

Mr. Fitzgerald – To speed up the process if you do get them to push back and say listen the Building Committee is meeting again and the Building Committee is going to recommend to the Aldermen if you were to get that in place for the next meeting so they don't slide.

Mr. McLiverty – If we have to call a Special meeting we will do that.

Atty. Marino – And again the goal here is to get to the – whatever action that we take we're going to go to the Aldermen on November 8th. So the Aldermen will take action or not at the November 8th meeting with respect to authorizing me to take action. That's the best that we can do at this moment because that's the next meeting for the Board of Aldermen.

Mr. Fitzgerald – So we have – some of us have been advised to get a professional in here and maybe they can have access to the documents (inaudible.) That's money out of everybody's pocket and I already have one of my tenants at one of the buildings basically saying we've done "X" and my apartment still smells. Now I want you to make me whole. These are the types of things that are being talked about (inaudible.) Just so everybody knows a month will go by and things will get calm and people will do their own work and we've already cleaned a bunch of properties ourselves. Like you're saying every hour that goes by – we appreciate the fact that you understand that but it is still money out of the renters pockets.

Atty. Marino – The only thing that I can say and again without any – I'm certain no relief on your end is keep a record of every dollar that you spend, keep a record of every dollar you lose. So if a tenant moves out as a result then you have lost rent you need to be able to substantiate that so that is ultimately part of the claim that you will bring.

Mr. Fitzgerald – One last thing – the City engineer is a consulting engineer. Does he come into your board every once in a while and give you updates. Is he employed by you guys?

Mr. McLiverty – He's employed by the City – either Zoning Board of Appeals or Planning & Zoning. We can call them – they actually approved the plans.

Mr. Fitzgerald – Is that Milone & MacBroom?

Mr. McLiverty – Yes.

Mr. Fitzgerald – Is there a lead engineer?

Mr. McLiverty – Ryan McEvoy. He stamped and put the requirements on there.

<u>David Cobaugh (representing Rita McEvoy, 60 E. Street)</u>
Doesn't the City have inspectors that go out and say this site is unfit to continue with construction or put a Stop Work Order on the site?

Mr. McLiverty – If it warrants it, sure they could. They're not out there every day.

Mr. Cobaugh – When they set up all of their site control did someone inspect it? (Inaudible) your silt fence is up but there are no hay bales – you need to fix this before you carry on with the construction.

Atty. Marino – I think in that though the City was relying on its other agent, Luke, who was for a lack of – kind of like Clerk of the Works to say he's there whether it be every day, every week to engage with the contractor (inaudible.)

Mr. McLiverty – True – he's the agent.

Mr. Cobaugh – Is that the term that you use for his having no responsibility (inaudible.)

Atty. Marino – That's different – that is a means and methods. He can't sit there and say you have to do it this way – you have to lay pipe this way. There's meaningful distinction in my mind between you're not protecting the site in accordance with the approved plan, which is not a means and methods issue, compared to you need to put sprinklers on the field and this is how you have to do it. It doesn't have the ability to direct how to lay out (inaudible.)

Mr. Cobaugh – He hasn't been (inaudible) with erosion control.

Atty. Marino – I believe if he sees an issue on site I would take the position as our owner's rep he would have an obligation at a minimum to inform us that he has concerns. I'm unaware of any.

Mr. McLiverty – There was no communication.

A woman in the audience said he was on notice and the City was aware. Mr. McLiverty said the City was not aware. The woman stated that the police were on site and called to the construction site on August 1st when it (inaudible) the first time. To say that the City… Mr. McLiverty said he can say that – the City was not aware – this committee was not aware of the August 1st incident. The woman said then that's a shame that you're not aware of what's going on with your own project – its bullshit. *This now unfortunately turned into a heated discussion going back and forth.*

Mr. Cobaugh asked if Turco's insurance carrier has been at the site and have they submitted any reports to this committee. Mr. McLiverty said they are waiting for their report, which we should have tomorrow and he told Mr. Cobaugh to call Patty Finn tomorrow to get the report. There was a discussion that some of the catch basins are still filled and should there be another rainstorm it's going to create damage again. Mr. Fitzgerald said he feels it's important to have the City's engineer come look at this to see how they can be cleaned out since he believes easements may need to be obtained as you would have to go on private properties.

Atty. Marino said he did make an argument to the Travelers that there was an earlier event trying to trigger coverage but Travelers keeps going back to this indemnification provision in Turco's contract. He did make every effort to try to trigger it just so we could – figuring that Travelers could pay – you guys could be made whole and then we would deal with Turco because now it would be our right of subrogation, meaning that our carrier paid and now we can go after his carrier for purposes of making our carrier whole and Travelers wasn't too interested. Mr. Marcucio asked why that didn't happen. Atty. Marino said it's because he is not a voting member of the Travelers

Board of Directors. Mr. Marcucio said the City should pay them and then the City should go after Turco. Atty. Marino said you can argue to the Board of Aldermen that they should pay the claims and the City should sue Turco and if the Board of Aldermen wants to do that that's up to them and the BOAT. Since our insurance carrier is denying coverage I would not have an ability to make a credible argument to the client (the City of Derby and any of the boards that they would control) that there's liability that should cause the City, meaning the Taxpayers, to pay these when it should be borne by Turco. I appreciate the significance of time – I'm very sensitive to that and I could not imagine – but I can imagine having a similar situation that I had to deal with on my own so I understand living in a state of a mess – but beyond being apologetic for it it is outside our control from a payment standpoint unless we want to gratuitously pay and the City doesn't do that for the reason that there are claims that are all over the City (not like this) and the City would be financially bankrupt if it paid out claims like that. Ultimately what would happen is we may have no chance or recovery or we go bankrupt and if their carrier is not going to pay us then the taxpayers have paid out hundreds of thousands of dollars and paid legal expense and have no resolve and recourse because Turco could simply go bankrupt. So the right way of managing this from a financial perspective is to work with our carrier and compel his carrier to pay because his carrier is not going to go bankrupt.

Joann Welsh, 40 E Street, Derby, CT
So because of that contract the City is not liable – Travelers is saying that the City is not liable.

Atty. Marino said that's correct. If you were to bring a lawsuit you would go out and hire a lawyer, the lawyer is going to sue the City and Turco and possibly the architect. The City is going to make a cross claim against those parties saying to the extent that we are found liable it's your fault and you should pay. The concern with courts is it's a long, expensive proposition. Although time is passing we are remaining cautiously optimistic that by employing this process while it may take weeks and months it will hopefully get everyone the resolve that they deserve. Mr. McLiverty said the intent is to streamline it so you're out less time and money than you would be if you took a different approach. We think it's the best approach and we think it's the right thing. Every day is too long but it's better than what it could be. Atty. Marino said you don't have to stay on with this process. Mr. McLiverty said you can still sue us if you want. Atty. Marino said he is encouraging everyone to pursue their rights and not sit back. He said if you choose to sit back this is the process that we've employed because it's the only process that we can. There is no other process other than aggressively bringing a lawsuit and before we start incurring expense to the taxpayers at large we owe it to the taxpayers at large to exhaust these remedies that are available. Mr. McLiverty said also to get Turco to come to the table without litigation – that is the intent here. We're trying. He said he would rather go down swinging then before we get in the batters' box and do a lawsuit and everyone runs to their corners and nobody benefits from it. Mr. McLiverty said he knows every day is long and what everyone is going through but we're trying to take the best course of action to get everyone made whole as soon as possible with the least amount of money out of your pocket – that's that we're doing. But as counsel said if you don't like this course you're free to do what you have to do but we are trying.

A gentleman from the audience asked if anyone has been monitoring the site from the time of the occurrence until now to see what happened and what steps have been taken since then. He asked if there is an independent person doing this as the architect may also be held responsible he feels there should be a person from the City reviewing this. The City should have their own set of eyes on the project since the parties involved at the site have been pointing fingers at each other.

Atty. Marino said he doesn't have any information as corporation counsel what the day-to-day activity on the site is. I would say at the end of the day if I'm in court regardless whether the City has on-site day-to-day or not we have a contract that has an indemnification provision that says to Turco if there's damage that is caused as a result of the activity regardless of what it is they indemnify and (inaudible.)

Atty. Marino presented the letter from Travelers to Mr. McLiverty, which will be attached to these minutes.

Mr. McLiverty asked three more times if anyone wished to address the committee. Hearing no requests...

A MOTION was made by Mr. Hyder with a second by Mr. Abel to close the Public Portion. ***Motion carried.***

MEETING SCHEDULE – DISCUSSION/POSSIBLE ACTION

Mr. McLiverty said we need to file a schedule. The committee discussed their calendar and the committee will meet on the 1st and 3rd Tuesday of each month with Special Meetings called on an as needed basis.

A MOTION was made by Mr. Abel with a second by Mr. Netto to have the meeting schedule of the Aldermanic Complex Building Committee be the first and third Tuesday of each month at 7:00 p.m. with special meetings scheduled on an as needed basis. ***Motion carried.***

UPDATE ON FIELD – KAESTLE BOOS ASSOCIATES

After the last meeting the rock removal was approved along with the other Change Orders. The contractor has been working on those as well as moving the corrugated pipe. The rock removal is almost completed. The electrical permit was obtained through the City. They have started drilling the holes for the lights, which should take the remainder of the week. There has been an issue of dust on the site – Turco has taken care of this. Regarding erosion control there has been a number of additional measures and it seems to be stable. If a weather event is predicted Turco's foreman has been staying on the site overnight. The area by the visitors' bleachers is starting to free up with some slight drainage work that needs to still be done.

Mr. McLiverty asked if Turco tied into the pipe that they were laying two weeks ago. It was noted that this work has been done. Turco is also in the process of removing the fill from the site.

Mr. McLiverty asked about the revised work schedule and if everyone had received a copy. It was noted that it has not been received. Mr. McLiverty told Turco to get the schedule to both Patty Finn and KBA tomorrow. There was a back and forth between the committee members regarding the revised schedule. Mr. DeFala said we need to have a copy of that schedule. Mr. McLiverty told Turco to please submit the schedule so that we can give it to Corporation Counsel so he can write the letter. There was then a discussion about the number of workers that Turco has on site.

Mr. Roise said there are a few items that they are waiting for with the first being the wording on the Turf Agreement. It is his understanding that the City was inserting language. Mr. McLiverty said he believes that Turco and the turf company have now come to an agreement and an outside agreement is no longer needed.

Mr. Roise said he believes there was a pricing proposal submitted at the last meeting for $4,400 that we need approval on. He said they need to get rid of that manhole. He said there are also the sign submittals, which there is still time to review. Mr. McLiverty said we have bigger issues to focus on right now other than signs. We need to worry about the turf and flooding first. He then voiced his frustration to Mr. Roise that Mr. McCoy is not at the meeting as it was changed to Tuesday to accommodate him. We have big problems and he's not here. We all changed our schedules to accommodate him and he's not here. Mr. McLiverty said he feels that Luke got all his money from this committee and now all he's worried about is the other project – that's the way it feels. Mr. Roise said there's another issue. Mr. McLiverty said what's that issue? Mr. Roise said KBA hasn't been paid since December. Mr. McLiverty said that is 100% correct and asked the committee if anyone wanted to make a motion to pay KBA. No one offered to make the motion. Mr. McLiverty said there you go – Luke should be in that chair helping us with this project and if he doesn't want to then he can quit or we can fire him – I really don't care anymore. This is wrong he's not here. Mr. Roise said he can't speak on it. Mr. McLiverty said I know you can't and said Luke is free to call him if he has a problem with his comments.

Mr. McLiverty said everybody that is on this job got recommended by Luke and KBA – including Turco. We're getting jerked around and that's from his recommendation. He asked Mr. Roise if he or anyone have visited any of the homeowners and the damage that was done. He said maybe Luke should come down and see the houses and see what these homeowners are going through.

The manhole was once again brought up. Langan did the survey and did not discover the manhole. Mr. McLiverty said he truly doesn't know how this, the rock in front of the bleachers, etc...was missed.

Ed Arum submitted his monthly financial report to the committee. Change Order #3 was reviewed by the committee.

A MOTION was made by Mr. O'Connell with a second by Mr. Abel to approve the removal of the manhole at the Hawthorne Property for a Not to Exceed cost of $4,400.00.

DISCUSSION ON MOTION
The committee again stated their displeasure with Langan. They are totally disgusted that this was also missed in their report.

Mr. Hyder opposed the motion. MOTION CARRIED.

Mr. DeFala asked Mr. Roise if he's comfortable that we won't have this situation again. Mr. Roise said the situation is a lot better now than what it was. That event was a worst case scenario. Mr. DeFala said he understands that but he wants some assurance that it's never going to happen again. ***There were numerous individuals speaking at once could not make out the response.***

EXECUTIVE SESSION
A MOTION was made by Mr. Hyder with a second by Mr. Abel to go into Executive Session at 8:52 p.m. inviting Dr. Conway and Ed Arum with no action to be taken. ***Motion carried.***

The meeting returned to regular session at 9:20 p.m.

A MOTION was made by Mr. Abel with a second by Mr. Hyder to direct the secretary to send a letter to Luke McCoy at KBA requesting the following items:

1. Copy of the drawing where the borings were performed as requested several weeks ago.

2. Documentation of any and all site visits, noting dates, times and associated photos with those particular visits.

3. Documentation as to what stage the field will be in on Thanksgiving (items completed, items yet to be completed)

4. Copy of schedule submitted to Turco three weeks ago.

MOTION CARRIED.

The tape ended. Meeting adjourned approximately 9:24 p.m.

Respectfully submitted,
Patty Finn
Recording Secretary

THESE MINUTES ARE SUBJECT TO APPROVAL BY THE ATHLETIC COMPLEX BUILDING COMMITTEE AT THEIR NEXT MEETING.

TRAVELERS

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Tender of Defense, Indemnity and Claims
Certified Mail Return Receipt Requested

October 19, 2018

General Liability Claims Department
Farm Family Casualty Insurance Company
1949 Sunshine Street
Springfield, MO 65899

Dennis Turco
Turco Golf, Inc.
212 Orange Avenue
Suffern, NY 10901

Re:
Our Insured: City of Derby, Connecticut
Your Insured: Turco Golf, Inc.
Your Policy Number: 3101X7301
Date of Loss: September 25, 2018
Our Claim Number: FAS3390

Dear Readers:

The Travelers Indemnity Company of America (hereinafter referred to as "Travelers") is the general liability insurer for City of Derby, Connecticut ("Derby"). On or about June 26, 2018 Turco Golf, Inc. ("Turco") entered into a contract with Derby. Thereunder Turco agreed to perform certain construction activities at Derby High School. A copy of this contract is attached as Exhibit A.

Section 5 of the contract requires Turco to indemnify, defend and save harmless Derby for any claims, actions and losses arising either directly or indirectly from the work performed by Turco and/or work performed by any sub-contractors of Turco.

Further, Section 6 of the contract shows Turco's obligation to obtain certain forms of insurance. As evidence of Turco's having obtained the required coverage, Turco provided Derby with a Certificate of Insurance showing Farm Family Casualty Insurance Company is the underwriting entity providing the required coverage. A copy of the Certificate of Insurance is attached as Exhibit B. The contract also required Turco to add Derby as an additional insured under these policies.

I ask that Mr. Turco admit or deny Turco performed in accordance with this obligation and that Derby was, indeed, named as an additional insured under the policy in question.

Facts of Loss

As Turco was performing the construction activities required of them, Turco caused mounds or berms of earth to be placed atop the existing landscape at the construction site. Thereafter, Turco negligently failed to cover these accumulations of earth in such a fashion to hold them in place against natural elements.

On or about September 25, 2018 rain began to fall at the construction site and said precipitation caused the uncovered berms to become a large, thick mass of uncontained mud. This mud was washed from the land of Derby and into the homes of many Derby residents causing what appears to have been extensive damages to the exteriors and/or interiors of their homes. Each of these homeowners has made a claim against Derby seeking to be made whole. Copies of each claim are included herewith as Exhibits C.

As required by the contact Turco is obligated to defend, indemnify and hold Derby harmless with regard to these claims and this letter is a tender of that obligation to both Turco and Farm Family Casualty Insurance Company as insurer for Turco.

Time is of the essence and your immediate attention is sought as all of the effected residents are in need of urgent response. Additionally, Travelers believes each of these claimants have received denial letters from their respective homeowners' carriers. Additionally, these homeowners are living in homes with vast accumulations of mud in and/or on the homes.

Respectfully submitted,

Denny Enoch
The Travelers Indemnity Company of America

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