ATHLETIC COMPLEX BUILDING COMMITTEE SPECIAL MEETING

TUESDAY, DECEMBER 4, 2018 – 7:30 p.m.

DERBY CITY HALL – JOAN WILLIAMSON ALDERMANIC CHAMBERS

MINUTES

Chair Keith A. McLiverty called the special meeting to order at 7:30 p.m. All rose and pledged allegiance to the flag.

Roll Call
Present: Keith A. McLiverty, Tom Abel, Paul Mengold, James Benanto, Dennis O'Connell, Rob Hyder, John Netto, Anthony DeFala

Absent: Chantal Gerckens, Ron Sill (Excused), Peter M. Olenoski, Jr., Ken Marcucio, Sr.

Also: Ed Arum, Arum & Associates
Dennis Turco, Turco Golf
Luke McCoy, Kaestle Boos Associates (KBA)
Eric Roise, Kaestle Boos Associates (KBA)

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

Rich Smith, 40 E Street, Derby, CT
Mr. Smith was looking for an update on the hill. Mr. McLiverty said the committee would be providing an update.

Mr. McLiverty asked if anyone else wished to speak. Hearing no requests…

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

UPDATE ON FLOODING – TURCO GOLF, KAESTLE BOOS ASSOCIATES (KBA) DISCUSSION/POSSIBLE ACTION
Mr. Turco said he received an email from his insurance company. Mr. McLiverty read the email into the record:

December 4, 2018 – 9:26 a.m.

Dennis,
As discussed we have retained the services of CED Engineering to provide us with an expert opinion as to the cause of the damages sustained by the various homeowners. We have received some opinions from them and we have also made a copy of our file available to the law firm we hired to represent you (Howard, Kohn, Sprague & Fitzgerald, LLP.) They are in the process of reviewing this matter and once that is complete, we will be providing a formal response to the various homeowners regarding

their damages. Thank you. Skip Blair, Senior Claims Representative – American National Insurance Company.

Mr. McLiverty asked if this is the original reply. It was noted that it isn't – it's an update. This just states that they're going to hire an independent engineer. It was also noted in the email that the insurance company has hired a law firm to represent Mr. Turco.

Mr. McLiverty then read the letter from ESIS AGL Claims to Turco Golf, Inc. ESIS AGL Claims represent Turner Construction. The letter stated:

Please be advised that ESIS, Inc. is the third party administrator handling claims on behalf of Turner Construction. The purpose of this letter is to place you on notice of this claim as a homeowner, John Netto, has presented a claim for personal property damage due to a run off of water, mud and silt. Turner Construction was working on the baseball field for Derby High School at 75 Chatfield Street in Derby, CT. It is our understanding that Turco Construction was performing work at the adjacent football field. Based on our investigation Turner Construction did not have any water failures. All sewers, water drains, silt fences, etc. were operating at peak capacity with no overflow at all cascading off the property. We ask that you notify your insurance carrier of your potential liability in this matter. Thank you for your prompt attention. If you have any questions please contact me. Melissa Jurado.

Mr. Turco distributed photos of the site to the committee members to review. Mr. McLiverty questioned why is the committee only seeing these photos this evening? He said if there was water coming from Turner's site onto Turco's and there was photo evidence we should have already seen these. Mr. Turco said he didn't produce them because he assumed both his company's insurance and Turner's insurance would work together. He's showing them now that Turner is stating that they will not take any responsibility.

Mr. Netto said it's a site plan – why do we care where the water came from? The site covers the entire project. Mr. Turco said his insurance only covers his portion. Mr. Netto said the water plan project that was submitted to the state covered the entire project. It shouldn't matter if the water came from Site A or Site B – the plan is for the entire project. That's for other people to argue – the water came from one project. Mr. Turco said it's his insurance company – he can't force them to pay out. They'll do an investigation and decide who is liable.

Mr. McLiverty said Turner's site is at a higher level than Turco's. He asked Mr. Turco if his preventative measures should have taken into account the fact that Turner's site was above his and water would come down off that site. Mr. McLiverty asked Mr. Turco what they should tell the homeowners as an update. Mr. Turco said it's stated in the email that was read into the minutes. Mr. McLiverty said it states they have retained the services of CED Engineering – when will they begin and instructed Mr. Turco to get an exact date.

Mr. DeFala asked the engineers if the silt fences, hay bales, etc...were installed properly based on the specifications. Mr. McCoy said it was installed per the DEP sign off on the

permit for Erosion (inaudible.) Mr. DeFala said that's not what I'm asking. He's asking on the plan that was submitted to Turner was the plan followed when they installed the silt fences. Mr. McCoy said you can't just go by the plan – it also goes by the (inaudible) manual. Mr. DeFala said he doesn't see any controls in place in any of the photos that Mr. Turco has provided.

Mr. McLiverty asked the committee if there were any questions. Mr. O'Connell said at the last meeting he mentioned how he was concerned about the number of agents that we have up at the site. There seems to be no oversight and that's how he feels why we're in this position. Mr. Hyder said he agrees as does Mr. Mengold.

A MOTION was made by Mr. Benanto with a second by Mr. Mengold to have Corporation Counsel, Vincent Marino, schedule a meeting within the next ten days with Turner Construction, Turco Golf, their insurance carriers and legal counsel and to have any photos and evidence at that time pertaining to the flooding incident made available. ***Mr. Netto abstained. Motion carried.***

Mr. McLiverty asked Mr. Turco to email the photos to Patty Finn with the date and time so we would have them on record.

The question was raised if there are photos from Turner's site. Mr. McCoy said the City requested insurance from us and all of our sub-consultants, which they turned over in addition to field reports from KBA and both civil engineers as well as meeting minutes. Patty Finn is the keeper of that information and Dr. Conway is responsible for the Payden project.

FIELD UPDATE – DISCUSSION/POSSIBLE ACTION

Mr. McCoy said the sub-surface drainage has been put in. Curbs between the track and field are currently being poured. Sanitary work is done. The retaining walls are currently in construction. The excess soil and rock that came of out that trenching is almost all off the site. Footings for the goals and the netting have also been installed.

Mr. McCoy said we received Change Orders 1 & 2 signed by the Mayor. Change Order #3 still needs to be signed. The scoreboard graphics were submitted for your review. The turf was then reviewed. He said we need to know what direction the City wants to go. Should it be broken out or kept in as part of the contract. Mr. McCoy said they have not executed their contract. Mr. McLiverty asked if Astro Turf file bankruptcy. Mr. McCoy said that was years ago after a lawsuit. The background regarding the turf field was briefly reviewed. Mr. McLiverty said he will contact Corporation Counsel to discuss this.

The committee began reviewing the flood issue again. Mr. Netto just wants to make sure that all photos from that event are made available to all the insurance companies for their review. He said that the City hired Kaestle Boos to do a job and then we hired Turco – how come there is a disconnect between both of you on this issue. Mr. Netto said he is asking the same question to either party and he's getting different answers. Mr. McCoy said the City has a contract with both parties and they are completely independent of each other. Mr. Netto asked who is ultimately responsible to make sure

the job gets done. Mr. McCoy said the City is the one that holds the contract. KBA is overseeing to make sure that it's done to the plans and specifications that were put out and doing what we can to make sure it's done in the time schedule that was allotted. Mr. McLiverty asked Mr. McCoy what is his role. Mr. McCoy said they're overseeing the contract. Mr. McLiverty said then we're going to turn to you, correct? Mr. McCoy said they only have limited control, which is why we have building committee meetings to get your approval. We can't make decisions in the field and spend the project money. Mr. McLiverty said that's correct; however you can update us when something's not right. Mr. McCoy said we do. Mr. McLiverty said you never told us that Turner was responsible until these pictures came out tonight - don't tell me that you told us a month ago that you agree that Turner was at fault. Mr. McCoy said you've had all the reports. We're not here to point the finger – we submitted the reports. Mr. McLiverty said you're telling us you told us that Turner was responsible? When we had all those bloodbath meetings you stood up and said we agree Turner has liability here. That's not in any of your reports. Mr. McCoy said their reports aren't to tell you who has liability – it's to give you a report of what the field conditions are. Mr. McLiverty said let's not play coy – let's be direct – tonight you said you agree with those pictures that Turner was at fault. Mr. McCoy said if that's from Turner then that's not the way that erosion control is supposed to be set up. Mr. McLiverty said that's not what you just said a few minutes ago. Mr. McCoy said it is – I just said that's not what's supposed to happen to erosion control after a storm. Mr. McLiverty said there was no if – you didn't say if before – we can play it. You said Turner – that's Turner, you didn't say if – and there's none of your reports that say Turner was responsible. It doesn't say it in any of your reports. So don't say to us we give you reports – read them – because we read it. Tonight is the first time we're hearing on the record.., Mr. McCoy said and that's the first time that we've seen those photos that point that. Mr. McLiverty said that's it – but you just said it's in your reports – that we should have seen it in your reports. Now you're agreeing that it's not in your reports – let's be careful here. Mr. McCoy said you're twisting. Mr. McLiverty said I'm not twisting anything. At this point both parties were talking over each other.

Mr. McLiverty said Mr. DeFala asked you if you saw that when you were out there. Mr. McCoy said he did on our side of the project and it's in there. Mr. McLiverty ok it's in your report – we're going to find the report you gave us that says you did a site visit and Turner's retention. Mr. McCoy said no I just said on our project – this project here. Mr. McLiverty said yet you're on their project too. Kaestle Boos is on the Field House too. Mr. McCoy said that is correct. Mr. McLiverty said so you're on both projects. Mr. McCoy said that's right. Mr. McLiverty said so if you're saying if you're on this project and you're saying Turner didn't put enough erosion control and you're on their project too did you note it in your record to the Payden Field House that the sub for their project didn't have erosion control. Mr. McCoy said no because I just saw the photos now - when our reports were done by our engineer that erosion control was fixed.

Mr. DeFala said just so I'm clear after that storm event that pulled all that erosion control down and we had all this wash out, my understanding is that Turco was there, you were there shortly after that storm and you didn't see any of this? Is that what you're telling me? You didn't see any of that in front of the Field House?

Mr. McCoy said he did not see it right after the storm. He said when the engineers for the Field House were on site the next morning after the event the silt fence was not there. Mr. Turco said he can vouch for that. He said he also has a photo of when Turner put the silt fence back up – they had a tremendous amount of people out there very early in the morning repairing their silt fences. Mr. Turco said that photo was taken at 6:47 a.m. and he also has a photo after Turner has all the silt fences up. Mr. McLiverty said that is an important picture.

Mr. DeFala asked if the erosion control that is in place now was in place when the storm event occurred would we have had this issue. Mr. Turco said without drainage in the field yes you would have. Now we have drainage in the field. When the event occurred there were two sites without drainage. It was noted that Langan did a report for Brennan, which is on file that has photos. Mr. McLiverty said we will need to get a copy of that report to see whether or not the fence was up or down.

INVOICES

A MOTION was made by Mr. Hyder with a second by Mr. Abel to approve for payment Turco Golf Application #4 in the amount of $58,549.53. ***Mr. Netto abstained. Motion carried.***

A MOTION was made by Mr. O'Connell with a second by Mr. Hyder to approve for payment Turco Golf Application #5 in the amount of $98,770.74.

DISCUSSION ON MOTION

There was a discussion regarding holding back payment for erosion control measures. It was noted there is nothing on these applications, just prior applications that can't be modified as they have already been paid.

A MOTION was made by Mr. Hyder with a second by to go into Executive Session at 8:25 p.m.to discuss invoices, inviting Dr. Conway and Ed Arum. ***Motion carried.***

The meeting returned to Regular Session at 8:30 p.m.

A MOTION was made by Mr. Abel with a second by Mr. Mengold to approve for payment Turco Golf Application #5 in the amount of $98,770.74. ***Mr. Netto abstained. Motion carried.***

A MOTION was made by Mr. Hyder with a second by Mr. Benanto to approve for payment Turco Golf Application #6 in the amount of $257,326.61. ***Mr. Netto abstained. Motion carried.***

A MOTION was made by Mr. O'Connell with a second by Mr. Mengold to approve for payment Kaestle Boos Associates, Invoice #17015.00-8 in the amount of $2,650.00. ***Mr. Netto abstained. Motion carried.***

A MOTION was made by Mr. Benanto with a second by Mr. Mengold to approve for payment Kaestle Boos Associates, Invoice #17015.00-9 in the amount of $2,650.00. ***Mr. Netto abstained. Motion carried.***

A MOTION was made by Mr. Abel with a second by Mr. Hyder to approve for payment Arum & Associates, LLC Invoice A in the amount of $1,560.00. ***Mr. Netto abstained. Motion carried.***

A MOTION was made by Mr. Hyder with a second by Mr. Abel to approve for payment A. Vets Demo, LLC, Invoice #3-FINAL in the amount of $2,446.70. ***Mr. Netto abstained. Motion carried.***

A MOTION was made by Mr. Mengold with a second by Mr. Netto to re-open the Public Portion as item #9 and move adjournment to item #10. ***Motion carried.***

PUBLIC PORTION – (RE-OPENED)

Fred Smith – 20? E Street, Derby, CT
I just wanted to know if the City's attorney is doing anything or do we have to go on our own? (Inaudible) if your attorney is doing anything to help us?

John Fitzgerald, 52, 54, 56 E Street, Derby, CT
My question goes to (inaudible) the two sites maybe you're not confused maybe there is two engineering plans to control the water from one site and another engineering plan that controls the water on the lower site. The coordination of those two (inaudible) if that plan is in place so we can get to the bottom of (inaudible) culpability of all three parties. If this was followed the contractor (inaudible) the waters could be released during construction to the lower site and that was held and that was done properly my question goes to that. If there was a plan in place between the two sites – was there coordination of the two plans, two engineering groups considering the whole site was under construction at the same time.

Joanne Liquigli, 13 Chatfield Street, Derby, CT
I really think that the Town of Derby is responsible. You guys hired (inaudible) it's very disturbing. I've lived in this house for nine years and I've never had water in my basement. Now every time it rains no matter what I get water in my basement. Not a lot – not like a whole foot and a half I got with this incident – but I get water in my basement and it's all coming from the same site – the football field. I don't want to have to deal with this every time it rains. I don't want to wait until someone finally takes responsibility. I need the ball rolling on this to get repairs done. This isn't fair (inaudible) especially with the holidays. It's just taking way too long and we get no answers whatsoever. No one has even come out to look at my property at all. I have to live with my basement like this – there's dirt all in the basement. Do I clean it up – then what's the proof that it happened. All the damaged stuff what do I do with that? It's all sitting in the corner. I mean come on – what do we do? Do we get rid of everything – throw all the stuff away. I can't afford to (inaudible.) I have a $1,500 deductible. I'm not calling my insurance company to take care of this. You're not putting this on my – that's not fair. I didn't ask for this. It's not fair and it's just taking way to long. Where are the lawyers? We're not getting any answers. We just sit here in meetings. Get it done – it's ridiculous and very frustrating.

Hearing no one else wishing to address the committee…

ADJOURNMENT

A MOTION was made by Mr. Abel with a second by Mr. Hyder to adjourn the meeting at 8:41 p.m. ***Motion carried***.

Respectfully submitted,

Patty Finn
Recording Secretary

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