

Plainville High School Track Mediation Summary December 4, 2017

A Mediation Session was held before Retired Superior Court Judge Jonathan E. Silbert on December 1, 2017. Attending the Mediation on behalf of the Town of Plainville were Robert E. Lee, Michael Mastrianni and Dennis Cavanaugh from Robinson & Cole. Representatives and counsel from LaRosa Earth Group, LLC, Kaestle Boos Associates, Inc., BSC Group, Inc. and TJL Industries, LLC d/b/a Dalton Track and Tennis were also in attendance. The Mediation session commenced at approximately 10:00 a.m. and concluded at approximately 8 ½ hours later at 6:30 p.m.

The Mediation was held pursuant to a Dispute Resolution Agreement negotiated between the parties subsequent to the discovery of the defective track work. Pursuant to the Dispute Resolution Agreement, the parties agreed to cooperate to remove and replace the High School track in order to remediate the track resurfacing portion of the project and it established a claim resolution process calling for mediation and, if necessary, arbitration. In early September, **all remedial work set forth in the Dispute Resolution Agreement was completed to the satisfaction of the Town.**

The disputes arise out a construction project known as the “Plainville Field and Track Improvements Project at Plainville High School, Plainville, Connecticut.” The project was part of a larger scope project undertaken by the Town, which project was known as the “Plainville Community Schools Capital Improvements Project Study, Design and Construction 2 Administration, Plainville, Connecticut.” KBA provided the design services for the project and BSC was retained as a subconsultant to KBA to design of the athletic field and track area. LaRosa was the General Contractor for the field and track improvements and LaRosa had a subcontract with Dalton to furnish and install the track resurfacing.

The parties’ positions regarding the dispute were as follows:

- LaRosa and its subcontractor sought recovery of approximately \$275,000, excluding legal costs and expense. The \$275,000 represented approximately \$137,500 charged by Dalton Track for labor and material to install the new track and an additional \$137,500 which was incurred by LaRosa for the removal of the defective track and the milling and repaving of the asphalt base for the new track.
- KBA was seeking the sum of \$70,000 for additional architectural and construction administration fees incurred as a result of the track remediation.

The contractors and designers disagree as to the cause of the problems with the installation of the running track in 2015. The contractors contend that the asphalt base of the track lacked the necessary strength to accommodate the track surfacing material that was installed. The contractors also allege that the original project design was defective because it failed to require that the old asphalt base be tested before the commencement of construction or replaced as part of the original design. In contrast, the design team contends that the asphalt

base was sufficient to accommodate the latex track surfacing material and that the defects were caused by the contractors' improper installation of the surfacing material and/or the contractors' use of a material that had not been specified by the Architect. **Notwithstanding the issue of causation, there seems to be some consensus regarding the added longevity for the track surface now that a new asphalt base has been installed as a result of the remediation plan.**

Following a very lengthy and extended negotiation between the parties **and based upon the recommendation of the Mediator**, the parties reached a contingent agreement to settle all claims regarding the installation of the original track and all costs relating to the remediation effort for the lump sum payment to LaRosa in the amount of \$60,000. (LaRosa was originally seeking \$275K +) Of that amount, the Town would contribute \$43,334, KBA agreed to contribute \$8,333 and BSC agreed to contribute an additional \$8,333. In addition, **KBA agreed to write-off and release the Town from its claim for \$70,000 for additional architectural services related to the remediation effort.** The contingent agreement required approval of the Town Council. If the Town Council failed to approve the contingent settlement, the next step would have been to proceed to an arbitration process.

On December 4, 2017, the Town Council met in Executive Session with Attorney Michael Mastrianni and Town Manager Robert Lee to discuss the results of the Mediation Session and the proposed contingent agreement between the parties. The Town Council subsequently came out of the Executive Session and voted unanimously to approve the Settlement Agreement & Release regarding the Plainville High School Track.

In making their decision, the Town Council took note of the following:

1. The contemplated settlement amount represents approximately one-fifth of the contractors' remediation hard costs.
2. The remediation design is at no cost to the Town.
3. The new asphalt base provides a betterment and extension of the useful life of the High School track. (Town portion would pay for 1/3 cost of the milling & re-paving)
4. If the claims were arbitrated, the Town would likely incur legal fees in excess of the contemplated settlement payment by the Town.

The Town Council noted that the \$43,334 payment from the Town to LaRosa will come from remaining funds in the Turf Field Account.