

MEMORANDUM

TO: Members of the Authority

FROM: Larry Hanover, Senior Public Information Manager

DATE: February 25, 2008

SUBJECT: New Jersey Schools Development Authority (SDA)
February Progress Report

Introduction:

After a five-month formal mediation process, Turner Construction Co. and SSP Architectural Group agreed in February to pay the SDA a total of \$6.5 million for errors attributable to their performance that have contributed to a yearlong delay in the opening of Midtown Community Elementary School in Neptune.

The SDA rejected the proposal offered by Gilbane Building Co., the firm contracted to manage the project for the Authority. The SDA intends to file suit against Gilbane shortly for the remainder of the approximately \$13 million cost associated with the removal of mold from Midtown Community. Moreover, due to fundamental differences that became apparent during the mediation process regarding the role and responsibilities of a Project Management Firm (PMF), the SDA on February 21 began the process to terminate Gilbane from all Authority projects in which the company is currently involved.

Turner has agreed to pay \$4.5 million and SSP will pay \$2 million for their errors that contributed to mold developing in the exterior walls of the main building. Each has worked with the SDA to ensure that Midtown Community, originally scheduled to open in September 2007, meets the revised September 2008 deadline.

“Gilbane, Turner and SSP each failed to meet their contractual obligations to the SDA. More significantly, each company let down the schoolchildren of Neptune and the taxpayers of New Jersey,” said Scott Weiner, CEO of the SDA. “Mistakes happen, but the taxpayers of New Jersey should not have to bear the financial responsibility for these mistakes. I am pleased that Turner and SSP have agreed to accept their financial responsibility and worked to ensure the revised project schedule is maintained.

“We will not be satisfied, however, until all the costs for mold removal are recovered. We will move expeditiously to file suit against Gilbane to recover the remainder of the cost, protecting the interests of the State and its taxpayers.”

The SDA learned of the presence of mold in the exterior walls of Midtown Community in January 2007. The SDA hired experts to assess the conditions and to advise SDA concerning correction of the problem; work was undertaken with the guidance of the Department of Health. The brick façade had to be taken down and the exterior walls replaced to remove the mold. The walls and façade have been rebuilt.

The SDA decided at the outset to fund the work up front to ensure that Neptune's students would not be forced to wait beyond a year. The SDA worked aggressively on a separate track to initiate proceedings to recover costs. The SDA had notified Gilbane, Turner and SSP that they would be held collectively liable for costs associated with the mold situation. As an initial alternative to litigation, the SDA offered to facilitate formal mediation proceedings where the three responsible parties could seek to allocate financial responsibility among them. In early 2007 each of the three responsible parties notified the SDA of its desire to participate in the mediation process.

SDA Chief Counsel, John Clark, and Senior Counsel, Janesa Urbano, led the SDA's facilitation of and participation in the mediation. Retired Superior Court Judge John E. Keefe Sr. acted as the mediator. The mediation proceedings were conducted during a five-month period and concluded this month.

"The outcome was ultimately successful because the parties were as committed to the process of mediating the dispute as they were to performing the reconstruction work," Clark said. He noted Turner, SSP and SDA, and their lawyers, worked together and with Judge Keefe to forge a settlement.

The SDA also issued a Notice of Termination to Gilbane in which the Authority details a series of material breaches by Gilbane. Gilbane has been directed to correct the breaches within seven calendar days or be terminated for cause. The contract covers 17 schools in Neptune Township, Barnegat Township, Asbury Park and Vineland. The SDA has developed plans to ensure the work on each of these projects continues without interruption.

The mediation process revealed fundamental differences between the SDA and Gilbane regarding the role of a PMF. As a result, the SDA has decided to terminate all of its remaining contracts with Gilbane throughout New Jersey. That termination will involve PMF contracts covering five schools in Long Branch, Neptune and Barnegat Township, as well as a Construction Manager contract in East Orange. Gilbane will be asked to work with the SDA on transitioning these projects while new construction managers are hired.

Midtown Community will be a new three-story, 145,200-square-foot building holding up to 700 students in grades pre-K to 5.

Cost Recovery Action:

Attorney General Anne Milgram announced on February 19 that the state has filed a lawsuit in Superior Court seeking to recover the cost of cleaning up and restoring a contaminated property that is the site of a planned school for the arts in East Orange.

Filed on behalf of the SDA, the lawsuit focuses on contamination of an eight-acre property on North Arlington Avenue that once housed a dry cleaning business, Carriage Trade Cleaners. The property is currently the site of construction work on the East Orange school district's Cicely Tyson School of Performing Arts and Fine Arts. An SDA-funded project, the school is scheduled for completion in 2009.

According to the state's lawsuit, the property was contaminated over a period of years with tetrachloroethene (PCE), a chemical compound regularly used in dry cleaning, and required extensive clean-up and soil removal work that was paid for by the state. Named as defendants in the lawsuit are former property owners Joseph Marcantuone of Verona and Robert Gieson of Livingston and operator Sang Hak Shin of Paramus.

"We are seeking reimbursement from these defendants for what the state has had to spend to clean-up their property," Attorney General Milgram said. "Public dollars should not be used to clean up and restore properties contaminated by private industry."

Scott Weiner, chief executive officer of the SDA, said the lawsuit is part of an important initiative, launched in late 2006, to recover costs from responsible parties for environmental remediation, as well as for design errors and project delays.

"In collaboration with the Attorney General's Office, the SDA will continue an aggressive effort in 2008 to recover costs that rightfully should be paid by those who bear responsibility, not New Jersey taxpayers," said Weiner.

Funding Status:

New Jersey's school construction program moved a step closer toward additional funding with the announcement by Governor Corzine's administration that it intends to seek passage of legislation that would authorize a minimum of an additional \$2.5 billion. Introduction of that bill is expected to be imminent. The Governor has pledged to seek legislative approval by the end of June. Consistent with his financial restructuring proposal, the legislation will dedicate a portion of existing State taxes to fund the debt service on that borrowing.

With the Authority moving closer to new funding, management is moving forward, in collaboration with the New Jersey Department of Education and the 31 SDA districts, on a new sequencing plan. The plan will map out what additional projects can be built, or be brought to the point of construction bid documentation, with the proposed \$2.5 billion.

The SDA already has committed to the construction of 27 projects deferred in April 2007.

The proposal for a minimum of an additional \$2.5 billion reflects the recommendation of the Governor's Interagency Working Group on School Construction from September 2006. On February 19, 2008, the New Jersey Supreme Court opted to give the Governor and the Legislature time to provide the funding authorization. It rejected a request from the Education Law Center, which represents students in 31 special-needs districts, to set a deadline.

The Corzine administration notified the Court on January 22, 2008 of its intent to seek passage of legislation regarding the bond authorization.

Other SDA news (as of February 25, 2008):

- A ribbon-cutting ceremony was scheduled for March 1 to officially open the **Franklin L. Williams Middle School** at Laidlaw Avenue and Collard Street in the Heights Section of Jersey City. The new facility, formerly known as Heights Middle School #7, will accommodate over 900 students in 6th through 8th grades. The school consists of 36 classrooms and includes a basement, an auditorium, gymnasium, art and science labs. Additional design features include on-grade parking, athletic field and basketball courts, and an entrance plaza.
- The SDA and Neptune school district, along with officials from the New Jersey Department of Environmental Protection, were to mark a major milestone March 4 during a ceremony celebrating **Summerfield Elementary School's** Leadership in Energy and Environmental Design (LEED) Gold certification awarded by the U.S. Green Building Council. Summerfield is the first school in New Jersey to receive the USGBC's highest level of certification. The national non-profit organization, which is dedicated to sustainable building design and construction, certified the Summerfield School for incorporating cost-efficient, sustainable environmental and green building technologies in a 21st century learning environment. The school has seats for 736 students in pre-kindergarten through 5th grade – including essential early childhood instruction for 3- and 4-year-olds. Aside from traditional academic spaces, the 105,000-square-foot, three-story building features a farm-themed design and includes a garden and an open-air amphitheatre at the rear of a cafeteria/auditorium accessible to students and the community alike. All SDA schools are built to LEED guidelines, although seeking certification from USGBC is not required due to the expense.

The Summerfield School also represents the SDA's first venture into the cost- and time-saving design-build approach. With design-build, the process is accelerated as the construction and design overlap and materials are pre-purchased – saving

money and time. Summerfield was designed and constructed within two years. Traditionally, a school design alone takes 12 to 15 months, and construction an additional 22 months, with building materials obtained throughout the process. Patock Construction Co. worked on the school with EI Associates, Architects and Engineers. SSP Architects served as bridging architect for the SDA.

Construction Update:

The SDA currently has **26** projects under construction. Overall, the SDA has completed **41** schools and **28** major renovations and additions, along with nearly 400 health, safety and other projects in Abbott districts. The program also has distributed \$2.2 billion in grants, impacting more than 1,400 suburban schools statewide.

Contractor Procurement

A construction bid was advertised in January for a school project in Newark. (Exhibit A)

Construction bids were advertised in December 2007 for school projects in Camden, Orange and Passaic. (Exhibit B)

Construction Contracts

As of January 31, 2008, the authority has entered into construction contracts totaling \$3,334,730,894 since the inception of the school construction program in 2002.



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