

October 9, 2023

Leet Township QVSD and Leetsdale Pennsylvania

Re: Land Development for QVSD project and PA Planning Code #247

Dear Leet Township Supervisors, QVSD Board and Council Members:

Over the past few months, I have attended meetings in Leet and Leetsdale concerning the land development for the proposed QVSD High School off Camp Meeting Road, the school's project which straddles Leet and Leetsdale Boro.

I have lived in Leetsdale for over 40 years and was the chairman of Leetsdale's Planning Commission for 25 years. My business background is risk management and I hold credentials in risk management, liability prevention, environmental management and safety and health. I am in favor of a new high school for Quaker Valley, just not at the selected site.

If the proposed high school is constructed at the Camp Meeting Location we must ensure all best-in-class safety measures are used, and Leet Township, Leetsdale, the school district and all residents directly affected are protected from risks, hazards and potential liability created by the project. At the urging of others in the community I was asked to prepare this missive from your review and study.

Pennsylvania Planning Codes

Under the Pennsylvania Planning Code Act 247 and 483 the stated purpose of a planning commission/code is: ***"it is the intent, purpose and scope of the Act to protect, promote safety and health and morals"***¹ This provision has been adopted by Leetsdale and Leet by establishment of their Planning and Zoning Ordinances and with the School District's Mission Statement.

The planning commissioners have the duty, in a sense, to be ***"the eyes and ears of the community"***. Their duty is to use their knowledge of the community, the environment and local knowledge to identify critical risks and manage these legal and practical risks through regulatory compliance, contract provisions and good loss prevention.

Unexpected Emergencies

Not managing risk and safety issues properly can result in unwanted consequences. Liability claims and lawsuits tarnish reputations to say nothing of the bottom line. Increases in insurance premiums or lowering of insurance coverage lessen customer and goodwill, and problems with government agencies can also result. Unexpected site/project emergencies; project site subsidence, landslides, collapse,

¹ Land Development and Pennsylvania Planning Code 247 and 483

explosions, unanticipated water from extreme weather and rainwater runoff from defective retention/detention and drainage systems, etc. are real possibilities.

Sovereign immunity under state law provides some immunity from lawsuits and claims against community and school officials, however, it also identifies exceptions to the protective sovereign immunity provisions. Some of these exceptions deal with ‘dangerous conditions’ and another with “dangerous real estate”² also known as, “willful misconduct” and “negligent design”.³

While not all risks can be prevented, schools districts and municipalities need to proactively apply good risk management techniques to achieve their community safety objectives.

This type of risk management approach injects into the design aspects of the project’s policies, procedures for safety and environmental management to be used by contractor personnel that are familiar with the issues and ways in which the potential for liability risk can be minimized or reduced. This approach also helps to create a defense if there is a problem, and the safety of the project is challenged by plaintiffs or government agencies.

As Leet Township and Leetsdale move forward with decisions about QVSD development agreements the recommended actions by engineers and legal counsel will certainly require hold harmless agreements in the contract documents from all those involved in the project (architects, general contractors, sub-contractors, owners). However, with large construction projects pose significant risk if the contractor and owners insurance programs are insufficient. (see appendix).

Construction Insurance

QVSD’s contractor for the proposed high school will probably propose an insurance approach for the district. This approach will come from the contractor and its insurance broker. This approach will allow the contractor to control the insurance program and all claims. Allowing the contractor to control the insurance program may be a major mistake by QVSD. (CCIP).

QVSD has had past successful construction projects (OCIP) with insurance offered by PSBA. This is an owner-controlled construction program designed for school district construction projects. In the selection of insurance programs, the developer’s obligation is to indemnify QVSD, Leet Township, Leetsdale and citizens property needs to be protected and emphasized. Typical wording in developers agreements (hold harmless wording) demonstrates the need for appropriate project insurance coverage, liability prevention / protection with key specific endorsements with any coverage and appropriate hold harmless language.

Construction claims and allegations can be exasperating over the amount of time and money that it takes to resolve construction injuries, property damage and/or construction defect claims. The total amount of money spent on insurance premiums is a significant portion of the costs of construction.

Contractual Hold Harmless Clauses

Hold harmless Agreements (aka, *Release of liability or Waiver of Liability*) between two parties. The hold harmless agreements are the negotiated terms designed to protect one party (the indemnified or

² Pa, Political Subdivision Tort Claims Acts, 42 PA c.s.8542 (a).

³ Northbrook Insurance Co. vs. Kuljian Corp. 690 F.2d, 368 (3rd cir.1982).

protected) party from legal liabilities and financial responsibility in case of accidents injuries or other unforeseen events. Financial responsibility is then demonstrated through selected insurance coverage to back the guarantees of the contractual agreements. Proof of liability and other insurance financial responsibility (proof of insurance coverage) is demonstrated by the contractor providing certificate of insurance (COI) and specifically required endorsements.

In this way other involved parties can be added as an additional insured, resulting in one insurance program for everyone involved. This is typically done on large construction projects with no additional cost from the insured. Being added as a first named insured on the insured's insurance policy gives the School District, Leet Township, Leetsdale, and potentially affected downhill residents additional insured status, giving the school district, Leet , Leetsdale, etc. Gives direct rights to the named insured's liability policies, therefore an immediate defense and immediate claims coverage. In addition to the contractor/developer's agreement and insurance for this project, Leet Township, Leetsdale and named residents should be added as additional insured to QVSD's general liability policies, to assure immediate defense of claims and allegations, via the appropriate COI.

Risk Management

The School District, Leet Township, Leetsdale and affected residents must be added to whatever type of liability insurance program the district selects. There can be serious repercussions if the wrong type of insurance program is selected for the completion of this large project.

There are various types of approaches to risk management, ***(in business) risk management is: the forecasting of reasonably foreseeable events and the evaluation of those financial aspects of the risk together with the identification of procedures/policies/techniques to avoid or minimize their impact.***⁴

The decisions the Township and Boro must include these provisions for basic safety interests supported by appropriate construction project insurance.

There are numerous intricacies involved with assuring the appropriate types of insurance coverage for this construction project. To further understanding these issues, we have appended some key points to your study and review.

We remain available to discuss this information at your convenience.

Sincerely

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⁴ Oxford Language Dictionary.

Appendices

Checklist of key liability insurance items for review with legal counsel during review of developers agreement.

1. Suggested Local Resident Endorsement.
2. COI Checklist

**Checklist of Liability and Insurance Items
for
Discussion with Legal Counsel
Review & Development of Construction Developers Agreements**

- Work to carefully draft contract or agreements with separation of the insurance requirements from the defense and indemnification provisions.
- Work with counsel to assure the correct contractual hold harmless language is used. For example, “to the fullest extent permitted by law the contractor shall indemnify and hold harmless theowner, others...” *endorsed*.
- Generally, additional insured status should be used when only one of the parties is indemnifying the other.
- Why provide others with additional insured status? It protects the other party because of a close relationship with that party and/or close business relationship and it helps to control subrogation.
- Under most situations, a person or organization must be an insured in a liability insurance policy to obtain protection under that policy (contract).
- The named insured are those persons or organizations to whom a liability insurance policy has been obtained to provide protection under that policy.
- Insurance Policy Declarations page should name the additional insured and with the addition *Named Insured Endorsement*.
- Costs are absorbed by the primary named insured.
- Cross Liability Exclusions (*must be avoided*)(by the insurer). These types of exclusions could preclude coverage if one named insured were to sue another named insured.

- ✓ Research/Google: H.A. Kuljian & Company vs. "School District" as an example of a school district alleged that alleged negligent design and construction of a school. The Kuljian Co., was not a party named in this action.
- ✓ The ruling was in favor of the school because they were the only entity named an additional insured. The Kuljian was obligated to pay the insurer the amount sought because the school was a named insurer on Kuljian's policy.
- Lawsuits of all kinds are expensive. Determine if defense costs are inside or outside the limits of liability. Are they eroded in any way?
- Being added as an "additional" insured helps insulate the COI holder's liability insurance from claims. Keep in mind that the COI only affords the liability protection that exists in the policy and additional insured status can be granted by policy endorsement---not a notation on the COI.
- There should be special limitations on an additional insured status. For example, a restriction which ties the additional insured status only to claims arising out of the sole negligence of the contractor or subcontractor, does not confer additional insured status at all.
- What if Owner/Contractor is self-insured? How will financial security be demonstrated?
- Request all named insurers on all the contractors' currently listed projects.
- Insurance renewals are easily forgotten.
- When does the additional insured status cease?
- Policy cancelations often contain words to eliminate: "insurer will endeavor to provide notice of cancellation..." Being an additional insured by endorsement creates a contractual obligation (legal notice) on the insured".

Certificates of Insurance (COI's)

A certificate of insurance is a document from an insurance company, agent or broker that states the types of insurance a business has/carry. The certificate states the name and address of the company's insurance carriers, the policy numbers, limits of and the effective dates of the coverages.

COI's have limitations, key among these is that the certificate is typically issued by an insurer or brokers as a "matter of information only" and does not automatically confer any rights upon the certificated holder. It is simply "evidence" of insurance coverage or evidence from a supplier that required insurance coverages are in place. In some contractual relationships and it is recommended that we (Leet, Leetsdale, specific residents, be "endorsed" onto the contractor's actual policy. This is usually done as an "additional insured" and that specific notice of cancellation of the insurance policy is included.

Key Points about Accepting COI's

- The information on the Certificate shows only what coverage applies as of the dated on the Certificate. It conveys no rights to the certificate holder.
- Many suppliers and contracting partners do not provide renewal certificates in a timely fashion as policies expire. This can mean renewal problems where no coverage is in force. A loss is not the way to find out. Require contractors and suppliers to provide a renewal certificate at least 15 days before expiration.
- The information on the certificate shows only what coverage applies as of the date of the COI.
- The contract number must be on each insurance policy and each COI named by the contractors/subs.
- Unless special policy endorsements apply, aggregate limits of coverage shown in a certificate are the total limits available for all losses from all operations of that contractor (or other named insured) during the policy term. These include any losses from:
 - Other projects of the named insured.
 - All premises rented or owned.
 - Liability coverage contractually provided to other COI holders.

Example COI Checklist

Contractor _____ Contract #: _____
 Type of contract: _____: Construction/Professional/Services, etc. _____

- | A. Coverages | Carrier | Best's Rating
(nothing less than B+) |
|---|---------------|---|
| <ol style="list-style-type: none"> 1. General Liability 2. Workers' Compensation/Employers Liability 3. Automobile 4. Umbrella/Excess Liability 5. Environmental Impairment Liability 6. Builders Risk 7. OCIP, 8. Etc. | | |
| B. Coverage | | |
| <ol style="list-style-type: none"> 1. General Liability 2. Employer's Liability 3. Auto Liability 4. Umbrella/Excess Liability 5. Etc. | Policy Limits | Contract Limits |
| C. General Liability | | |
| <ol style="list-style-type: none"> 1. Occurrence/Claims Made Form 2. Blanket Contractual Liability 3. X, C, U, Exclusions deleted 4. Personal Injury 5. Completed Operations 6. Environmental Impairment 7. Independent Contractors 8. Professional Liability (Arch, Engr. Mgt.). 9. List of all named as an Additional Insured on this policy | | |
| D. Auto Liability | | |
| <ol style="list-style-type: none"> 1. Owned 2. Non-owned 3. Hired/Leased | | |
| E. Cancellation Provisions | | |
| <ol style="list-style-type: none"> 1. Thirty-day notice of cancellation 2. "Endeavor" deleted 3. Expanded to non-renewal, reduction in coverages or limits. | | |

Example: Suggested Wording for and Proposed Manuscript Endorsement for Local Resident Protection.

Manuscript Endorsement Guidelines

- The additional insured should endorse its own policy to provide coverage more than that available in the policies for others.
- The named insured should consider endorsing its policies to avoid providing limits more than those required of it in contracts.
- Think twice about using the phrase ***“as its interest may appear”*** in liability insurance endorsements.
- An endorsement should be developed to automatically include as an additional insured those whom the named insured agrees to add in a written contract or agreement. Consider making this agreement apply only to the specific types of contracts regularly executed by the named insured.
- The additional insured endorsement should clearly limit the additional insured’s coverage to liability arising from the premises or activities which are subject of the underlying contract.
- The additional insured endorsement should clearly specify when additional insured status ends.

Suggested Wording for a Manuscript Endorsement for Local Resident Protection

***THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Additional Insured – Designated Persons; this endorsement modifies insurance provided under the following: General Liability Coverage and Excess or Umbrella Liability Coverages.

Names of Persons/Organizations: (Quaker Valley School District, Leet Township, Leetsdale Boro, Residents with Adjacent Property QVSD High School Construction Project located off Camp Meeting Road in Leet Township and Leetsdale, PA.

WHO IS AN INSURED: (SECTION II) is amended to include as an insured the persons and organizations shown in the schedule, listed below, as an insured but only with respect to liability arising out of _____ General Contractor operations and premises owned by QVSD off Camp Meeting Road.

Schedule of additional Insureds:

Organizations to be additional insureds:

- Quaker Valley School District
- Leet Township, PA
- Leetsdale Borough, Pa

Residents to be additional insureds:

- Mr. & Mrs. William Jasper, Leetsdale, Pa
- Mr. & Mrs. Sev Russo, Leetsdale, PA
- Ms. Katie Liss, Leetsdale, PA
- Mr. & Mrs. Timothy Budacki, Leetsdale, PA
- Mr. & Mrs. Raymond Gallagher, Leetsdale, PA
- Others as needed
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Additional Insured Status Ends: Per PA, Statute of Limitations for Completed Projects.