



## City of Foley, AL

The City of Foley Public  
Athletic & Sports Facilities  
Cooperative District  
407 E. Laurel Avenue  
Foley, Alabama 36535

### Meeting Minutes - Final

#### Public Athletic and Sports Facilities Cooperative District

Public Cultural and Entertainment Facilities Cooperative District

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Thursday, August 25, 2016

7:00 AM

Conference Room

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**PASFCD & PCEFCD MEETINGS WILL BE HELD AT THE SAME TIME.**

#### Call to Order

Chairman Floyd Davis called the meeting to order at 7:05 a.m.

#### Roll Call

All members were present with the exception of Mr. Keith Newton. Others present: Vickey Southern, Mike Thompson, Jeff Rouzie, Britton Bonner, Matt Denaburg, and James Adams.

**Present:** 4 - Floyd A. Davis, Charles J. Ebert. III, J Koniar and Mark Welytok

**Absent:** 1 - Keith Newton

#### Approval of the Minutes - PASFCD

[16-0495](#) 04-05-2016 PASFCD MINUTES

**Attachments:** [04-05-2016 PASFCD MINUTES FINAL.pdf](#)

The April 5, 2016 Public Athletic and Sports Facilities Cooperative District Minutes were approved unanimously on motion by Mr. Koniar and seconded by Mr. Welytok.

#### Approval of the Minutes - PCEFCD

[16-0493](#) 06-29-2016 PCEFCD MINUTES

**Attachments:** [06-29-2016 PCEFCD FINAL.pdf](#)

A motion was made by Member Mark Welytok, seconded by Member John Koniar, that the June 29, 2016 Public Cultural and Entertainment Cooperative District Minutes be approved. The motion carried by an unanimous vote.

[16-0494](#) 07-14-2016 PCEFCD MINUTES

**Attachments:** [07-14-2016 PCEFCD MINUTES FINAL.pdf](#)

A motion was made by Member Mark Welytok, seconded by Member John Koniar, that the Public Cultural and Entertainment Cooperative District Minutes be approved. The motion carried by an unanimous vote.

## **New Business**

### 16-0496

#### Updates on Sports Fields and Event Center

Mr. Thompson reported there will be three topics being reported on as follows:

1) Matt Denaburg (HPM) will give the Board a current update on the Event Center; 2) Don Staley will give the Board an update on the tournaments over the course of this Fall; and 3) Mike Thompson and Britton Bonner (City Attorney) updates on the Sports Fields project.

1) Matt Denaburg (HPM) will give the Board a current update on the Event Center

Mr. Denaburg sent out the Weekly Report yesterday that Mrs. Southern will send out today. Event Center: Dunn has immobilized to the site; there is a big auger and they are placing auger cast piles; there is a well on site for irrigation and construction water; Riviera has the permanent power across Pride Drive and transformers are being placed today.

Last week HPM received the final bid documents for the entire project. The paving package is due today and they will likely call a meeting next week to award the bid because Don Staley needs the north paving done prior to the tournaments starting in September. They are looking at bidding out the remaining packages over the course of September so that hopefully everything will be completed within the next couple of weeks.

Mr. Thompson asked about the site work in terms of the event center pad. Mr. Denaburg reported the building pad is at elevation to pour the slab. The two side parking areas have a little bit of grading to do and it is part of the package that is being done today. Ultimately, they left it as a haul off job so they don't have to bring in or pay for dirt for any reason. They had Martin take off dirt without creating an issue without bringing in any dirt.

The stormwater ponds are dug. There was some talk a week ago about how they were going to relieve those ponds and get all the water off the City's site and working well with CIEDA with their hotel pad and with their south pond as well. They still have work to do on the ponds and the site package, which is putting in all the other underground storm drainage that will tie into the ponds throughout the parking areas and ultimately seed and sod. Today they have four people that are bidding the project.

At this point Mr. Charles Ebert arrived at 7:20 a.m.

Mr. Denaburg reported so far everything is on schedule. Mr. Thompson reported there is a package for furniture for the building. Mr. Staley and his staff have been working with Mr. Denaburg on a list of needs in terms of the FF&E and there have been some purchases.

Mr. Ebert asked what the occupancy rating was for the building. Mr. Thompson reported he received an email from Chief Darby stating that it was 3,674 and he

wasn't sure what the determining factor was because the architect was showing a little over 5,000. It could be ingress/egress. He responded to Chief to see if it was the type/size doors. Mr. Denaburg reported Yann was also looking at it this morning. Mr. Ebert also asked about the type of events that could be held in the center because there were some concerns about being able to hold car and boat shows. Mr. Denaburg reported they were on top of it.

Mr. Denaburg reported they are considering add alternates as they go through the bid process that will enable them to have the opportunity to add something in the future or not take something in this bid package if it comes up over budget. The paving package looks like it is high and they will look at it at the end of the day to see where they are at before deciding if they need to cut something. Mr. Adams reported the construction prices are going in the wrong direction and they are having to be creative with their contracting strategies.

Mr. Koniar reported they discussed the colors with CIEDA and they will be moving their headquarters trailers to make room for the ride package. They have the pad area laid out just south of McDonalds.

#### 2) Update from Don Staley - Tournaments

Mr. Staley was in Dallas, Texas and called in to give his report. Beginning September 10th - 11th the tournaments begin with the Publix Super Cup - Girls Youth Soccer event - we will have approximately 80 teams show up. Then September 17th-18th is the Publix Super Cup for the Boys Youth Soccer tournament with about 80 teams. October 8th-9th will be the Third Coast Classic Lacrosse Youth Tournament - they played last year and will have about 40 teams. October 15th-16th they will have the Senior Bowl Flag Football World Championship Tour and anticipate 35-50 teams. November is a monster with the branding. The Sun Belt Women's Soccer Championship Tournament. Troy State University, South Alabama and University of Alabama all came in early August 2015 and trained on our fields and stayed in our hotels. The University of Alabama stayed at the beach but Orange Beach was under water and they used our facility which was a good caveat for us to lure the Alabama coach to do camp here next summer. This is coupled with the ASA Alabama Cup Soccer Tournament the 5th through the 13th. Decatur is not happy because that is where they have been holding it in the past. November 17th - 20th the NIRSA National Championships (Women's Soccer) will be held with 96 teams from all different colleges. TANGER is on hold to bus people in and if it doesn't rain we will have the grass parking available. December 3rd - 4th will finish out the Gulf Coast Regional 3V3 Soccer Tournament. Mr. Staley thinks they are ready and he commented that Angie Johnston has done an amazing job in helping getting this together. They are ready to get started.

#### 3) Mike Thompson and Britton Bonner (City Attorney) updates on the Sports Fields project

Mr. Thompson reported there are a few components of the project they are in disagreement with the general contractor, Killian Construction. Nothing that will keep Mr. Staley from his tournament play but there are topics we think that Killian is not meeting or has not met their obligation in particular. The two major components have to do with: 1) common areas - where they were supposed to seed or sprig those areas and grow that same grass with sod in the fields they were suppose to sprig and grow in our common areas with that same grass and for whatever reason they have not been able to get those

sprigs to grow entirely. There are some areas that have grown and some not that is just dirt. We feel that it is a problem and that they owed us having completely grassed common areas where kids and families are supposed to be sitting and watching their kids play, and it is not there at least not to our satisfaction. 2) The other component has to do with parking and paving. There is one section of parking and paving that has not been completed yet and that section is on the east side of the championship field. They have not completed that parking and paving because they believe that they are owed a certain amount of money to remove what they consider unsuitable soils and our argument is that, first of all, we don't believe they were unsuitable, and if they are not suitable at this point, it is not because it was unsuitable to start, it was created as unsuitable soil by the general contractor. So we have been in negotiations with them to try to resolve these two issues I guess for six weeks, going on two months.

Killian was supposed to be done Memorial Day Weekend and it is August. Mr. Staley has tournaments starting September 10th. There are two other issues that have Mr. Thompson most concerned because although teams can play on the fields it's not to the level that the City expected to get from Killian. The City is trying to mediate through their attorney's at Adams & Reese. Britton Bonner and Janay, one of his staff, have been working with Killian Construction's attorney to try to come to a resolution.

Mr. Bonner reported there are two issues being mediated: 1) parking and paving, and 2) sprigging and sodding are the issues that are effecting substantial completion and completion of the project. The other two issues are post construction issues and issues that we would expect on any of these projects. Area 2, along the east side of the Championship Field, has not been paved and Area 4, along the west side, has been paved. Area 2 is compacting, rutting, means and methods of construction that we believe caused the problems with the soils and added the \$13,000+ to the project. The bigger issue: the City looked at it, got clarification on it; \$119,000 issue. Underlying points are: there was a berm created on site from the prior ownership group. One of the owner's involved in that was Killian, who is also the principal of Killian Construction. They are two separate legal entities, two separate legal structures involved, not the same ownership group, not the same levels of ownership. Whenever the City turned the property over to them the City owned it with the berm in place, meaning whatever organics were there the City owned them and turned them over in the condition with those organics in place. That is the distinguishing issue. Yes, Killian had prior knowledge of what went on out there because Killian was part of the ownership before but that knowledge doesn't automatically piu to his other construction company as a matter of law. It is a great argument. It may be high ground in a lot of situations especially if we get a favorable group in front of us in Baldwin County but from a legal perspective we are probably in the low end of that. So the attorney's have gone back to them and said ok some of those organics are ours but not all of those organics are ours. Where they left it with them yesterday was a 75/25 split on that issue; hoping and anticipating that the City will probably get to a 50/50 but the attorney's have a 75/25 on both of those and told them they needed to know by the close of business today. The thought process is to get the numbers resolved, have a meeting, perhaps on site with Killian down here, and wrap up all the outstanding issues to get the projects completed and substantial completion issued, turned over and deal with retainage on the remaining issues. That is the parking and paving issue.

Mr. Denaburg reported that there was an existing berm and the reason why HPM believes that Killian created some of the issues themselves is that they have had a BMP pond in this general area. If you ride by even today there is a great lake of water that runs all along Area 4 and it was in their BMP plan from the beginning of the project and they placed the BMP there. Mr. Thompson reported that berm is a mulch berm and it was put along what is call Pride Drive by the previous ownership because when ALDOT was going to build Pride Drive on was identified ALDOT required that the previous owner protect that roadway from infiltrating water. They were deforesting 500+ acres and had a whole lot of mulch and mulch makes a good barrier for water movement. So the previous owner put mulch berms along Pride Drive for the benefit of ALDOT so that is why they were there. It was like a wind row but what Matt is saying is that they chose to put their BMP methodology with water retention pond over there and they dug over there and they adulterated what we believe are suitable soils and adulterated it with the mulch that they knew was there. That is the argument that we are making. Now whether that pays dividends for us when we get to our final negotiated settlement Mr. Thompson doesn't know. The City did buy the property with that on there but it wasn't in the soil. It was a wind row of mulch that they put there. Mr. Denaburg reported they are not having to take the berm out. It isn't in the parking area. It is just in the right of way.

Mr. Ebert asked if there was evidence of larger buried debris. Mr. Denaburg reported there was one tire. Mr. Bonner reported they are trying to get it reduced to a number and CO's and move on.

The other issue is the common areas between fields and sprigging the sodding. Mr. Denaburg reported they have paved asphalt pathways along the east and west runs throughout the soccer fields. It alleviated gross amounts to be sodded or sprigged or grass grown in by Killian. The City have asked for a credit back from them on that. Not all areas need this. There are some areas that Killian's sprigging did take root and has grown and some areas that are completely bare. That is all along the infield areas, along the fenceline, and the north end. They will be sodding around the field house, front, back and width of the building and around the Championship field house and the bleacher area. Not all of the areas but approximately 50% them. Mr. Denaburg reported they came up with approximately 47,000 sq. yards of grass that needed to be grown in but 40% is good. (47,000 sq. yds. x \$1.95 sq. yd. grass x \$1.50 installation = cost) Killian is very anxious to hand over the fields. They proposed to the City if they sod all the common areas would the City be happy. Mr. Thompson told them the City would be happy with all the common areas sodded. They went back to Springfield but what they got approved was to sod around the field house not around the common areas. They want to continue to sprig in those areas. He said in the meeting that they can't get grass to grow in Baldwin County. Mr. Thompson continued to report that Killian is obligated to put in the same bermuda grass that is on the fields in the common areas. Mr. Denaburg reported HPM is obligated to purchase Tifton 419, which is a special blend of bermuda from Woerner. This is what is on the fields and it can't be mixed with other grasses or other bermuda. Woerner Turf has five to nine acres, which is not enough to do all of what we would need but it would be enough to do the major portion, would be possibly 40% - 50% that could be sprigged in to be left to grow in. Mr. Thompson reported Killian's argument is that they need 120 days to grow in and noone is disagreeing with that but they

knew that when they took the job. Their sub's have been running over those areas since they laid them down and they should have cordoned off those areas off when they laid the sprigs down.

The project should have been completed in May but the City did not object to finishing "touches" in June or July if they needed it but the fields had to be completed for the first two tournaments to be played over Memorial Day Weekend. We did play those tournaments. They have been trying to use rain days as excuses for not getting the work done in a timely fashion. When you look in the contract there are two definitions for rain day. "A day of rain is a tenth of an inch." Just because you get a tenth of an inch does not mean you get a rain day. The contract says, "You get a rain day based upon the days of rain versus what is normal for the area". For example, in February we normally get five days of rain and they had seven days of rain. They should get  $(7 - 5 = 2)$  two days of rain. They want to claim that any day that rains in Baldwin County is abnormal to try to extend their deadline. They are afraid the City will claim liquidated damages. Personally Mr. Thompson is worried that Mr. Staley won't be able to play his tournaments. Killian is trying to use the days of rain to justify asking for general conditions for all these extra days to try to offset the City's liquidated damages. None of it has anything to do with Mr. Staley being able to continue with the tournaments but this is after the fact where there is going to be negotiated process where the City is going to get to a point where one offsets the other, but that is where Mr. Thompson see this going as some type of mediation on additional general condition expenses of \$1,300 a day versus liquidated damages of \$3,000 a day. The City cares about a quality product not liquidated damages. Mr. Ebert asked Mr. Bonner from a legal standpoint should Killian see a change in the City's concern about liquidated damages. Mr. Bonner reported the remedy is setup for arbitration. Early on they said they wanted to mediate the issue so Adams & Reese immediately replied back with a list of three mediators and told them to pick one out of the three and were ready to mediate as soon as they were ready. At that point Killian started slowing down the mediation process and privioted to lets talk about this. We'll fly down and talk about this whenever you're ready. Mr. Bonner stated if they were seriously going to pursue general conditions the City will seek liquidated damages but if this is just a negotiation tactic then you need to move on so that we can get this job finished. Since then they have pushed back on all that discussion. They are still documenting all their "rain days" and we are still not accepting them. We've told them the offset is going to be our liquidated damages. They have some arguments to make on the rain days and we have some arguments on the contract. One of the things we were able to negotiate on the front end was pulling out the general overhead dollars that you would normally claim in extended in general conditions. They don't have a whole lot of dollars there at the end of the day. There are 25 days allowed in the contract.

Mr. Bonner reported the other issue is, and they made it very clear, that if the City loses a tournament then the City's liquidated damages are clearly in play plus consequential damages because their failure to perform is causing the City real money, especially since it is the Sun Belt Tournament. There are two tournaments that have a \$100,000 penalty for not providing everything in the contract so \$200,000 is at stake on just two tournaments. The other issue is the costs associated with BMP issues, stormwater runoff, storm water retention and the City's attorney's will deal with that on the back end.

Mr. Thompson reported HPM has gotten quotes for paving on the east side of the championship field; quotes on the sod and installation of the sod, so the City can demobilize Killian and mobilize their own forces to do it. Mr. Thompson agrees with Mr. Bonner that the best solution is to push Killian to finish their project timely.

Mr. Thompson reported the framing for the bleachers are up but not the seats of the bleachers. The field house structure is up but still needs roofing and interior needs to be completed. The scoreboard is up. Killian actually cut some of Riviera's lines and had to redo some of the work. Mr. Denaburg was not sure where it stands.

Killian promised the Championship fieldhouse would be completed by August 28th. They have blocking topped out, trusses on the building, decking installed, and plywood down. Mr. Thompson reported they might get it finished by October, which is fine for Mr. Staley's tournament, but it is pushing it. Mr. Staley reported there is still a drainage issue on the sideline of the championship field. Mr. Denaburg reported they talked with Killian who stated they had those pipes still clogged because they had all that dirt working along the championship bleachers and had a crane where all that dirt was. Mr. Staley reported it was more that just that and let's keep that on the list until we make sure because after talking with Eddie Boy Woerner even when everything is moved they still have an issue with too small of a drain on the sideline. There needs to be a larger drain. Mr. Ebert asked that we listen to Mr. Woerner.

There was a discussion regarding a conditional CO on the remaining fields accepting responsibility so that the City can gain control of the remaining fields to hold the tournaments. The City is holding back \$480,000 under the retainage provisions regardless and that number may go up or depending on how the other issues are handled.

Mr. Welytok asked about the BMP's. Mr. Thompson reported that the original developer went bellyup in March 2015 but not before he had agreed to take care of the BMP's for the whole 550 acres. The City signed the Stipulated Sum in January 2016 so when they agreed to the Stipulated Sum the original developer was no longer a player. If you are a general contractor you are under obligation by state law to do BMP's for storm water and it was in an addendum to it.

Mr. Ebert left at 8:11 a.m. as he had an appointment.

Mr. Thompson summed the event center is on schedule, fields are ready for Mr. Staley to use, and the not so good news is we are in a squabble with the general contractor and he feels good that Mr. Bonner and Janay can represent the City very well. Mr. Thompson wanted to keep the board informed. The general contractor has been very frustrating and he thanks HPM for being present each day saving the City money.

Mr. Thompson recommended the next meeting be next week at HPM's office next to Foreland Farms and take a tour of the facilities after the meeting. Mr. Denaburg reported it will take a week and a half to lay the sod. That decision needs to be made soon.

[16-0497](#)

Amend Resolution 16-0029 PCEFCD CO#1 to Dunn Construction Re: Tuff Wall in Lieu of Precast Wall

Attachments:     [PCEFCD 16-0029 TUFFWALL VS PRECAST.pdf](#)

Mrs. Southern reported there was a lot of conversation during the last meeting and when the numbers were being discussed the \$171,000 was picked up instead of \$198,731 for COR #1 for TuffWall instead of Precast. We didn't get the written COR until after the meeting and that was when Mrs. Southern discovered the difference. She met with Matt and he explained the total dollar amount stayed the same. The COR#1 Building and COR #2 Enabling Works were combined because both were awarded to Dunn. This is just correcting the dollar amount.

Mr. Koniar made a motion to make the correction. Mr. Ebert seconded the motion and the vote passed unanimously.

Enactment No: 16-0035-PCEFCD

## Visitor Comments

There were no visitor comments.

## Adjourn

Mr. Koniar made a motion to adjourn and Mr. Welytok seconded the motion. The vote passed unanimously. This meeting was adjourned at 8:19 a.m.

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Floyd A. Davis, Chairman

ATTEST:

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Charles J. Ebert, III  
Secretary/Treasurer