

Educating the Board to Act on Construction Claims



 #iasboAC22

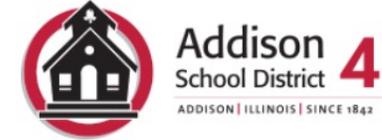
2022 ANNUAL
CONFERENCE

STRONGER TOGETHER. SMARTER TOGETHER.

Introductions

Tim Keeley, Moderator

- *Assistant Superintendent for Business, CSBO*



Terry Fielden, Speaker

- *Vice President/Director K-12 Education, International Contractors, Inc.*

- *Former Board Member Naperville 203 (2007-2019)*



Kenneth M. Florey, Speaker

- *Attorney, Robbins Schwartz*

Robbins Schwartz

Carrie Matlock, Speaker

- *President, DLA Architects, LTD.*



STRONGER TOGETHER. SMARTER TOGETHER.

Board Members are not a Dispute Board

They need to
be prepared for
the worst





Board Members are the School Board



Administration was Planning:

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STRONGER TOGETHER. SMARTER TOGETHER.

**Construction is
not a walk-in
nature**

**Instead, you got
a rocky path
surrounded by
the beauty of
new learning**



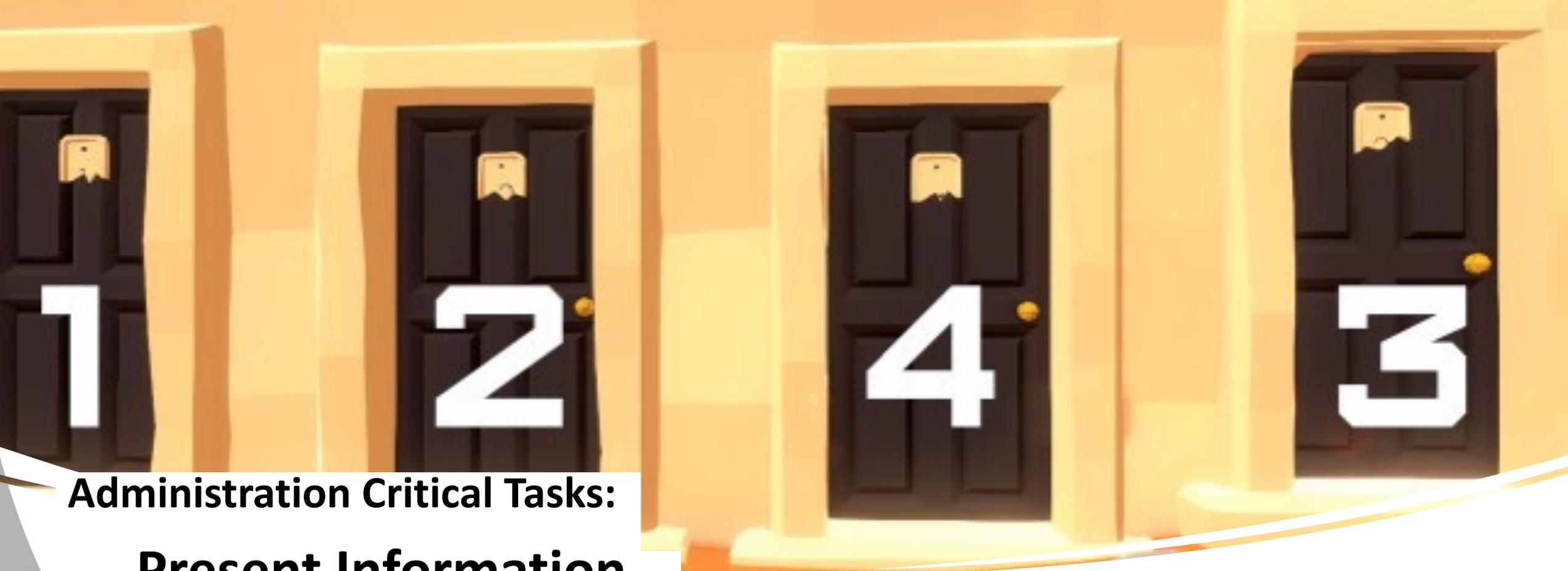
**Critical Tasks:
Listen and Ask
Questions**

**Remember the
kids**

Open School

**Pick up the
check**





Administration Critical Tasks:

**Present Information
Timely**

Gather ALL the facts

**Make a
recommendation to
resolve**



Board must act and decide

1. Pay the cost
2. Reject the cost
3. Redirect Administration
4. Litigate

WHAT
YOU
NEED
TO
KNOW?



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Checklist

- What is a construction dispute??
- Why do disputes happen??
- How are disputes settled?
- How much money?
- When do we litigate?
- Who should I trust to help resolve?
- Other Experts?

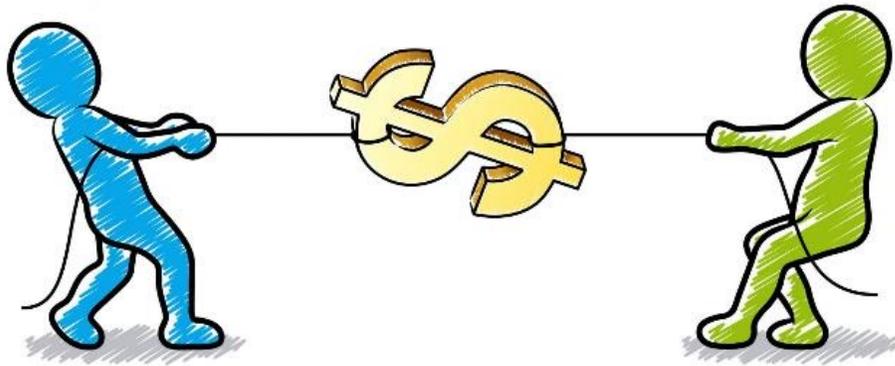
The Power of the D.A.R.C Side

- **Disputes:** are normal.
- **Address:** don't procrastinate
- **Resolutions:** seem distant and costly.
- **Compromise:** saves money/agonny



What is a construction dispute?

Disputes: one side wants **money, time or both**



Disputes may not always involve **money**.

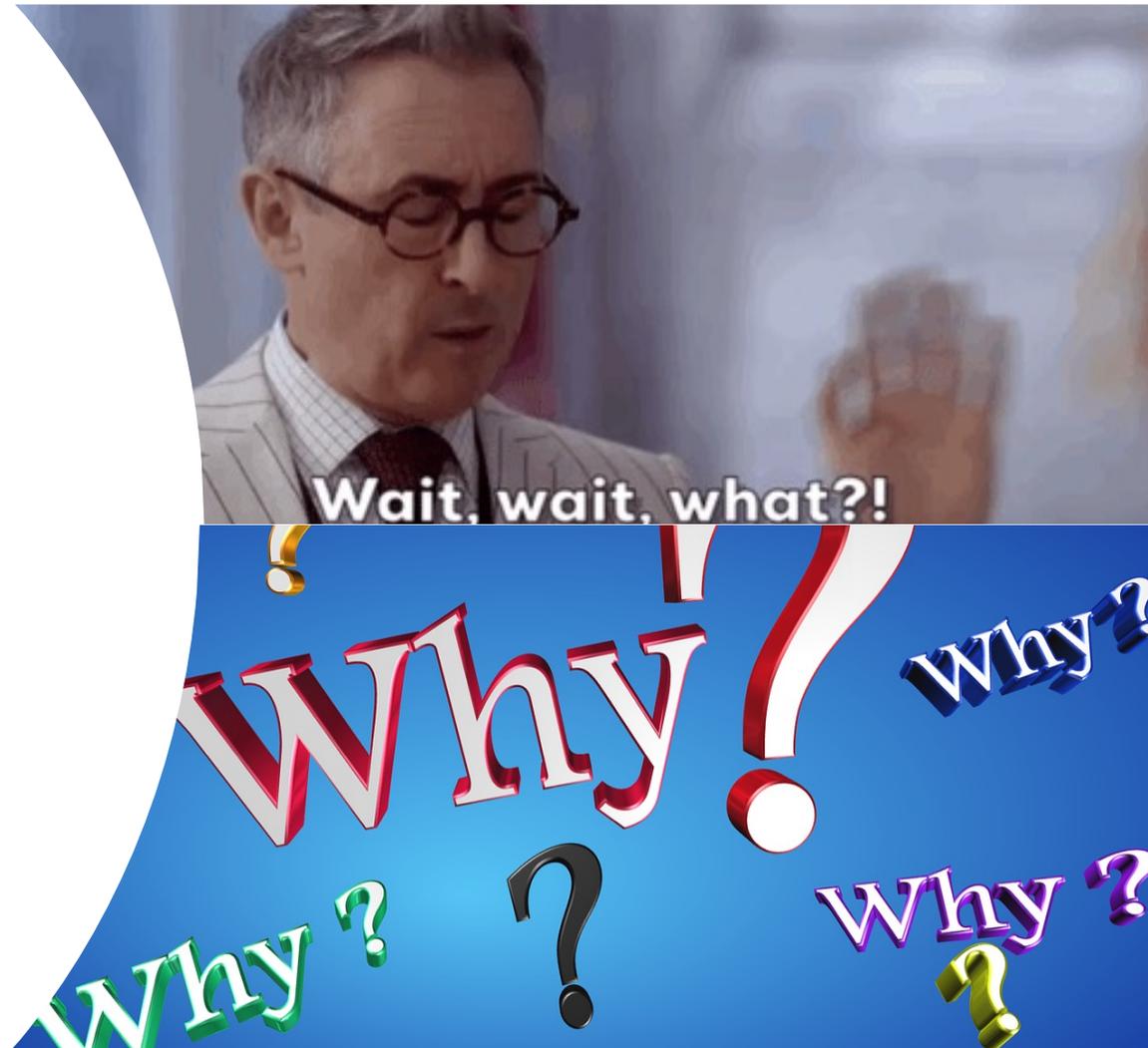


BE
READY
MAKE A PLAN

**Educate the
Board on
claims**

**Board Role:
Pay the bill**

Budget: contingency money to resolve



Because The District
can be financially
responsible to resolve
the disputes

Administration's role:
open the school



Types of Disputes

Change Order

Failure to Complete on Time

Extras Claim

Defects Claim

Delay Claim

Warranty Claim

Change Orders



Contractor wants more money, time or both.

District driven scope changes

Unforeseen conditions are discovered

Plans/specifications: missing or incorrect information.

Dispute: actual cost of the work versus owed as part of bid

Change Orders

Appoint staff to review,
approve and report

Let them do their job



**Plan: Assign a Board Authorized
responsible gate keeper**

**Responsibility: review all changes
present to Board for Action**

Change Orders

*Could you do me
a favor?*

scope changes during construction

Plan: Assign a Board Authorized responsible gate keeper to make changes

Responsibility: make sure that there is budget money

Change Orders



Unforeseen conditions are always discovered

Explain to Board: Assume they are present and need to be paid

Plan: ensure budget includes allowance

Responsibility: settle rapidly to avoid delays

Change Orders

My bad.

Plans/specifications: missing or incorrect information.

Missing is not free

Missing is still needed

Plan: ensure budget includes contingency

Responsibility: settle rapidly to avoid delays

Common Disputes

Weather



Contractor
Lead time
Errors



Industry/Economic Force
Majeure



Owner added
extra scope.



Weather

Weather delays can be legitimate

Costly as well



Contractor Lead Time Errors



JANUARY 30, 2000 / RAMS VS TITANS

- **Generally rejectable**
- **Unless another entity dropped the ball**



Formally a unicorn claim

Until COVID

“Force Majeure” My Attorney will write the magic



Understand the notice timeframe



Demand back-up



Actively follow shop drawing approvals



Demand proof of material ordering



Demand proof of manufacturer delays



Situations are not “precedent setters”



Risks????!!!

Plan: explain Force Majeure to Board

Responsibility: ensure there is contingency

“Force Majeure” Paying as follows:

material is
verified
“available”

on
presented
merit



school will not
open otherwise

Students First



Owner Added Scope

**Change
your mind
and open
the wallet**

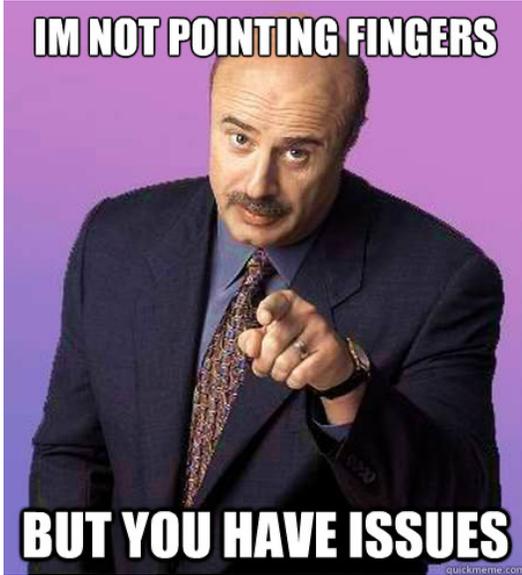


Plan: Stick to the plan

Responsibility: pay the bill

Architect “Design Errors”

Rare and very infrequent



Must always be addressed and paid by the District

Negotiate some settlement

Plan: not an expectation, listen to explanation before going to Board

Responsibility: Explain to Board that they must pay the bill

Contractor Error

District hired the contractor

District can litigate-perhaps best to settle??



Plan: Contractor problem is your problem

Responsibility: litigation takes time and energy

Extras Claim – Unresolved by Change Order

Who is responsible to pay for the claim?

Bond Company

Insurance Company

Owner

Architect

Contractor

Construction Manager

All the above

Plan: hire strong consultants

Responsibility: bring in third party if necessary



Change Orders:

What did you learn?

Or

What did we not teach?



**Audience Responsibility:
Discuss options**

Change Orders:

Board did not choose color of the bricks
Delaying the project.

Contractor: extended schedule, additional supervision, acceleration costs

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Responsibility:
Contractor problem is your problem



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Change Orders:

Boiler missing from documents

Contractor: extended schedule, additional supervision, acceleration costs



Responsibility:
Contractor problem is
your problem

Change Orders:

Administration changed paint color

Contractor: extended schedule, additional supervision, acceleration costs



Responsibility:
Contractor problem is
your problem



Questions and Answers

We thank you for your time!

Panel Information:

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