

A special meeting was held by the Sandy Creek Board of Trustees on August 26, 2019 at 10:00 AM in the Village Office, 11 Park Avenue, Lacona. The purpose of this meeting was to discuss the liquid damage portion of the water tower project. Those attending were Mayor Grant Rohrmoser, Trustees Kenney LaRue and Sharon Turo, and Clerk/Treasurer Jill Mattison. Also attending were Village Attorney Joseph Russell and Village Engineer Jack Dodson.

Mayor Rohrmoser opened the meeting and asked Jack Dodson to describe and explain liquidated damages. The contract, which Caldwell agreed to, stated that the "Contractor shall pay the Owner \$750.00 for each day that expires after the work is completed and ready for final payment". Jack figured there were 201 days. Therefore, $201 \times \$750 = \$150,750.00$. Jack also stated that letters were sent to Caldwell in advance of substantial completion indicating liquidated damages would be charged if the project was not completed on time.

Mr. Dodson spoke in detail that the tower was ready for painting according to the contractor's schedule -mid-July through mid-September 2018 with substantial completion November 15th and final completion December 15, 2018. Final painting did not happen until late April 2019 and finished in May, 2019. Substantial completion occurred June 5, 2019, final completion July 19, 2019. It was agreed by all that if Caldwell could not use weather as an excuse for the delay because the weather was perfect for painting last summer. Caldwell was also told that the weather in northern New York changes rapidly in September and October so it would be very difficult to schedule painting during those months. No one believed that to be a valid excuse because they had every opportunity to meet their obligation.

At the August 13, 2019 construction meeting, liquidated damages were discussed with Caldwell representatives Eric Koetter and David Francis. They agreed that the company did not complete the project on time as per the contract. Mr. Francis stated that the painting subcontractor could not obtain or meet the insurance requirements of New York State due to the state changing their requirements. He further stated that it was difficult to find another contractor in the peak painting season. Mr. Koetter said the project would have been completed if it were not for the insurance issue. Caldwell understands that the Village incurred costs due to the failure of Caldwell to complete on time and were willing to pay the actual incurred costs. (Jack has estimated the actual cost to be \$45,100). Mr. Davis said that if liquidated damages were charged by the Village, Caldwell would request arbitration.

Attorney Joe Russell explained to the board that the Village does not have to prove actual damages because that is the whole point of the liquidated damage provision. He further stated that if the contractor disagrees to the liquidated damages, the issue would be whether the Village contributed to the delay and then it would have to be determined how much of a delay was caused by the Village. At this time, his recommendation was to hold Caldwell to the contractual liquidated damages.