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25425 Indian Point
Chaumont, New York, 13622

August 29, 2007

Robert E. Van Vranken, Esq.
227-229 Kingsley Road
Burnt Hills, NY 12027

Re: Town of Charlton and Schmidt & Schmidt, Inc.

Dear Mr. Van Vranken:

In July it was inquired as to my availability to advise you and the Town relative to the Town of Charlton Town Hall project. After consideration, and several discussions between us, I was able to schedule the date of August 2, 2007 for an initial meeting with the project participants. During that visit to the project, observing the state of the work and through on-site interviews with the design, construction and municipal participants I began to develop an understanding of the project challenges and status.

Following this meeting I gathered a number of project records, developing a further understanding of the project through a cost engineering and scheduling effort. Once this was completed, I scheduled the next round of interviews for August 9, 2007. On this day I once again visited the site, as well as attended a bi-weekly project meeting. These interviews, document reviews, engineering analysis and site inspections have informed the basis of the opinions in the assessment that follows.

General

The following report will be presented in a stepwise fashion. It will follow the general outline of

1. What were the assertions of the Contract Documents? In other words what was required of the parties?
2. Were there Changes in those contract requirements – who initiated the changes and, was there a shift in responsibilities as a result of the change?
3. As a result of the change, the cause, effect and the impact of these changes are addressed.
4. The fourth step, once the cause, effect and impact are assessed is to determine the quantification of those impacts, from both a time, and where possible, a cost point of view.

* National Academy of Forensic Engineers
Diplomate - Forensic Engineering

Background and Requirements of the Contract:

The Charlton Town Hall project has been under consideration of some time. In November 2005 the voters of the Town we asked to authorize the expenditure of funds to construct the New Town Hall.

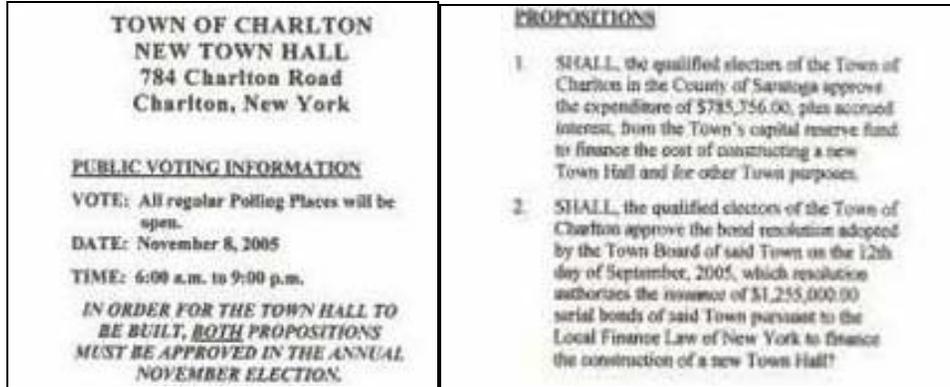


Figure 1 Voter Proposition

In order for the constituency to understand the scope of the proposed project a presentation for the building was captured in the following depiction and included, along with floor plans on the Town of Charlton website.

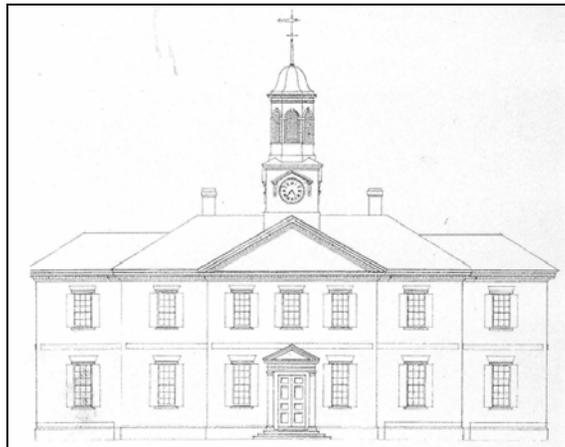


Figure 2 Charlton New Town Hall

The proposition presented to the voters of Charlton was successful and the project moved into the design phase. This news was relayed in the Town's Winter 2006 Newsletter.

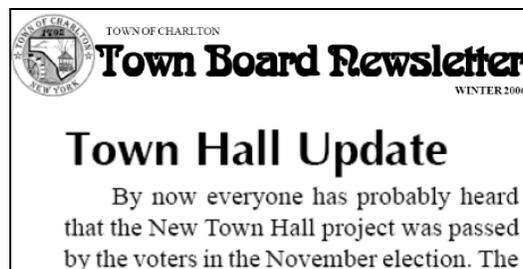


Figure 3 Excerpt

The depiction of the new facility was also captured in the artist's rendering, and is currently displayed on the project site in order to provide to the residents of Charlton a sense of the new building's character.



Figure 4 Artist's Rendering

With these pictures in mind one may begin to envision the nature of the project. The building is a two-story above ground, and one-story below ground building. The basement is to be used primarily for storage, while the first and second floors are to be used for Town office functions. The total area of the building is approximately 15,000 square feet.

The cost to construct the facility was established when the design was complete, and bids for the work received from the prime contractors. Those bids were solicited in the *Invitation to Bid* bound within the Contract Documents, and published in the official newspaper of the Town. The Invitation outlines the basic parameters of the bidding and contract requirements, including the essential need for the bidding contractors to have the full capacity to provide a Performance and Payment Bond for 100% of the value of the Contract. This requirement is repeated elsewhere throughout the Contract Documents.

SECTION 00020 - INVITATION TO BID		
1.0 RECEIPT OF BIDS		
1.1 Scaled Bids will be received, in duplicate at the offices of the Town Clerk, Town of Charlton, 784 Charlton Road, Charlton, NY, until the specified dates and times indicated below and then at said office publicly opened for:		
TOWN OF CHARLTON – NEW TOWN HALL		
<i>Prebid Conference</i>	<i>9:30 A.M.</i>	<i>Tuesday May 2, 2006</i>
<i>Bids Due</i>	<i>1:00 P.M.</i>	<i>Tuesday May 16, 2006</i>
4.0 PERFORMANCE BOND AND PAYMENT BOND		
4.1 Bidders shall include the cost for a Performance Bond and Payment Bond for 100% of the value of the Contract in the Bid.		
5.0 BID SECURITY		
5.1 Bid Security in the amount of 10% of the total bid must accompany each Bid. Bid Security shall be submitted in the form of a certified check made payable to the Town of Charlton or in the form of a Security Bond, written on AIA Document A310, 1970, Bid Bond complete with a certified and current copy of the power of attorney. The successful bidder's security will be retained until the Owner-Contractor Agreement is executed and the required 100% Labor and Materials Payment Bond and 100% Performance Bond is furnished.		

Figure 5 Excerpt from the Invitation to Bid

On May 16, 2006 bids for the work were received by the Town of Charlton.

The bid summary information is shown below, with the general construction information first, followed by the mechanical, plumbing and electrical trades.

Town of Charlton Saratoga County Town Board Special Meeting				
May 16, 2006				
1:00pm				
Bid Opening for New Town Hall Construction				
The Special meeting of the Town Board of Charlton, Saratoga County, New York held at 1:00pm at the Charlton Town Hall, called to order by Supervisor Grattidge.				
Present: Councilman Gardner, Councilman Lippiello, Councilman Salisbury, Councilman Verola, Supervisor Grattidge The sealed bids for the New Town Hall Construction were opened and read as followed.				
Others Present: J. Paul Vosburgh, Architect P.C., Tony Ward, Owner's Representative, AKW Consulting, Inc.				
The sealed bids for the New Town Hall Construction were opened and read as followed.				
Contractor	Bid Bond	Addendum No.1	Lump Sum Contract Price	Add Alternate No. 1
General Contractor				
Bast Hatfield	X	X	\$2,800,000.	\$2,000.
Plank, LLC	X	X	\$2,429,000.	\$3,900.
Schmidt & Schmidt, Inc.	X	X	\$2,477,770.	\$42,000.

Heating, Ventilating & Air Conditioning			
Crisafulli Brothers Plumbing & Heating	X		\$334,200.
Eastern Heating & Cooling Inc.	X	X	\$349,578.
Mazone Plumbing & Heating	X	X	\$355,588.
Lenz Hardware, Inc.	X	X	\$306,900.
Plumbing Contracts			
Collins Mechanical, LLC	X	X	\$175,878.
Crisafulli Brothers Plumbing & Heating, Inc.	X		\$214,000.
Lenz Hardware, Inc.	X	X	\$204,800.
Mazone Plumbing & Heating	X	X	\$192,616.
RF Gordon Mechanical, Inc.	X	X	\$254,235.
Electrical Contracts			
Brownell Electric Corporation	X	X	\$314,800.
Farina Electric, Inc.	X	X	\$338,500.
Harold Clune, Inc.	X	X	\$297,400.
Justin Electrical, Inc.	X	X	\$333,000.
Kasselmann Electric Co., Inc.	X	X	\$406,995.
McBain Electric	X	X	\$325,200.
Northern Instrumentation	X	X	\$484,900.
Phoenix Electricians Co.	X	X	\$318,447.

As shown, the low bidders in each trade group are: Plank LLC, General Construction; Lenz Hardware, Inc. HVAC; Collins Mechanical, Plumbing; and Harold Clune, Inc. Electrical.

As a requirement of the Contract Documents the bidders were to keep their bids open for a period of 45 calendar days from the date of the bid opening. The bid opening was May 16, 2007. The bids were therefore good, and open for the Town to accept through June 30, 2007.

SECTION 00300 - BID FORM - GENERAL CONSTRUCTION	
FOR: TOWN OF CHARLTON - NEW TOWN HALL	
2.	BIDDER accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid Security. This Bid will remain subject to acceptance for <u>45</u> days after the day of Bid opening. Award of contract will be made by the Owner to the lowest responsible Bidder meeting the requirements of the Owner and will be made within sixty (60) days after the opening of the bids. When award is made, the successful Bidder's collateral only, will be retained until the agreement and performance bond have been executed and delivered. Should the award be delayed more than sixty (60) days after the opening of the bid, all Bidders' collateral shall be returned, unless such delay is from causes beyond the control of the owner. BIDDER will sign and submit the Agreement with the Bonds required by the Bidding requirements within <u>10</u> calendar days after receipt of an executed Owner/Contractor Agreement.

Figure 6 Bid Form Excerpt

Once bids were received, a review of those bids began. Plank LLC, the apparent low bidder for the General Construction contract announced that their bid of \$2,429,000 contained a bid error and requested to be released from their contract obligations. It was determined that the claim of a bid error was correct, and the Town of Charlton released Plank from further obligations under the bidding terms.

At about the time that Plank's withdrawal was accepted by the Town, on June 26, 2006 the Town Board passed a resolution to award the General Construction contract to Schmidt & Schmidt. This award was within the allowable 45 day window during which time Schmidt's bid remained open for acceptance.

At this time, after the official award was made, the town approached Schmidt & Schmidt to verify that they would accept the General Construction Contract and enter into a contract with the Town of Charlton. Several exchanges ensued. This is somewhat confounding, in that Schmidt & Schmidt had enjoyed over 40 days from the time of the bid opening to review their bid and to advise if there were an error in their bid – thus, as with Plank, Schmidt might also have been excused. This apparently did not occur, and it was only after the Town's acceptance of the Schmidt bid offer that the contractor sought to impose conditions upon their acceptance.

This is a highly unusual situation, however it may begin to be explained in Walter Schmidt's letter dated July 3, 2006 where it is suggested that if the "conditions" articulated in this letter are not accepted, Schmidt might be relieved of its obligation to perform the contract. The contract had been awarded to Schmidt the previous week, however this somewhat naïve correspondence begins to shed light on what is to come.

I would like to thank you for the opportunity to discuss these contractual properties with you. I am available anytime to answer any questions you may have in regard to these recommendations. In the event that Schmidt & Schmidt is not chosen for this contract, please feel free to contact me if we can be of assistance to you for consultation or any other services we may be able to provide.

Figure 7 Closing Paragraph From Schmidt's July 3, 2006 Letter of Conditions

Nevertheless, several exchanges took place, with conditions and obligations negotiated, thus establishing new terms under which Schmidt & Schmidt would enter the contract with the Town. From the record, I find that there was no compelling reason that concessions would be discussed and negotiated, let alone accepted. By and large the eventual concessions to Schmidt appear to have little meaningful impact on obligations and responsibilities in the contract. An example that will be discussed in detail later, is the elimination of the Liquidated Damages clause. While the "liquidating" of damages through an assigned daily value was eliminated from the contract, it appears that as a matter of common law there has been no elimination of the opportunity for the Town to assess actual damages in the event of an inexcusable delay or contract breach.

When the bid of Schmidt & Schmidt was accepted by the Town on June 26, 2006, and the project architect issued a notice of award to Schmidt & Schmidt on June 30, 2006, the bid had been accepted and the contract, including its schedule for completion would commence.

The overall milestone project schedule was included in Section 00300 of the Contract Document Specifications. This schedule is presented below.

4. Schedule as Follows:

Bid Opening	May 16, 2006
Award Contract	June 12, 2006
Pre-Construction Meeting	June 19, 2006
Groundbreaking	June 26, 2006
Complete Submittals	July 3, 2006
Subbase & Binder	October 1, 2006
Building Enclosure	December 1, 2006
Substantial Completion	May 1, 2007
Final Completion	June 1, 2007

Figure 8 Excerpt of the Contract Milestone Schedule

One of the first changes is the recognition that the project award stretched beyond that initially anticipated, so as a concession [which would prove to be meaningless] the contract completion date was extended to allow for this three week postponement to the Award, from June 12, 2006 to June 26, 2006 [two weeks]. As an early concession to the contractor the new completion date was set for July 13, 2007, a six-week adjustment.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date fixed in the Notice to Proceed issued by the Owner.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

Date of Commencement – July 13, 2006

Date of Substantial Completion – March 2, 2007

Figure 9 Excerpt from Phase I Contract - March 2, 2007 Completion

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

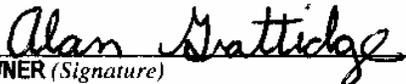
Date of Commencement – March 2, 2007

Date of Substantial Completion – July 13, 2007

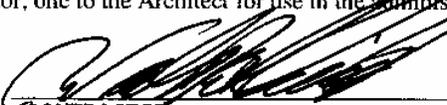
Figure 10 Excerpt from Phase II Contract - July 13, 2007 Completion

Each Contract was executed by both the Town and the Contractor. This data presented above begs the question, why two General Construction contracts. This is addressed later.

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.


OWNER (Signature)

Alan Grattidge, Supervisor,
Town of Charlton
(Printed name and title)


CONTRACTOR (Signature)

Walter R. Schmidt, President
Schmidt & Schmidt, Inc.
(Printed name and title)

The scheduling of the work is one of the three major elements to achieve success on any project. The concept of a successful project being:

1. On Time [Addressed in the Scheduling of the Contractors' work]
2. On Budget [Bids are within the Project Budget]
3. Meeting the Owner's Expectations [Project plans by the Architect address this issue]

Thus for a project to be on schedule, the challenge to do this rests with the overall construction team: the architect, the project representative, however primarily with each of the prime contractors. As a practical matter, the General Contractor, referred to as the lead contractor, often sets the pace for the project work. Therefore his schedule information is critical to this management tool.

As such, it is important that an understanding of the scheduling obligations is established. Clearly as a public construction project, subject to the conditions of multiple prime contracts within the State of New York, certain restrictions for the coordination of multiple prime contractors and project scheduling exist. And it is generally held that there are certain responsibilities for coordination of multiple primes that cannot be delegated from the owner to a single contractor.

However, even though this is the generally accepted standard, there are responsibilities for the schedule production and management that may be assigned to a single contractor, most often the lead contractor, or in other words the General Contractor. Schmidt & Schmidt had requested an expansion of their authority in this arena. Obviously, one cannot receive expanded authority, without a commensurate expansion of responsibilities; it would be naïve to think otherwise.

First let's look at the basic scheduling responsibilities from the specifications.

2.2 CONTRACTOR'S CONSTRUCTION SCHEDULE, GENERAL

- A. Time Frame: Extend schedule from date established for the Notice of Award to date of Final Completion.
 1. Contract completion date shall not be changed by submission of a schedule that shows an early completion date, unless specifically authorized by Change Order.

- B. Activities: Treat each story or separate area as a separate numbered activity for each principal element of the Work. Comply with the following:
1. Activity Duration: Define activities so no activity is longer than 14 days, unless specifically allowed by Architect.
 2. Procurement Activities: Include procurement process activities for the following long lead items and major items, requiring a cycle of more than 60 days, as separate activities in schedule. Procurement cycle activities include, but are not limited to, submittals, approvals, purchasing, fabrication, and delivery.
 3. Submittal Review Time: Include review and resubmittal times indicated in Division I Section "Submittal Procedures" in schedule. Coordinate submittal review times in Contractor's Construction Schedule with Submittals Schedule.
 4. Startup and Testing Time: Include not less than 14 days for startup and testing.
 5. Substantial Completion: Indicate completion in advance of date established for Substantial Completion, and allow time for Architect's administrative procedures necessary for certification of Substantial Completion.
- C. Constraints: Include constraints and work restrictions indicated in the Contract Documents and as follows in schedule, and show how the sequence of the Work is affected.
1. Phasing: Arrange list of activities on schedule by phase.
 2. Work under More Than One Contract: Include a separate activity for each contract.
 3. Work by Owner: Include a separate activity for each portion of the Work performed by Owner.
 4. Work Restrictions: Show the effect of the following items on the schedule:
 - a. Coordination with existing construction.
 - b. Limitations of continued occupancies.
 - c. Uninterruptible services.
 - d. Partial occupancy before Substantial Completion.
 - e. Use of premises restrictions.
 - f. Provisions for future construction.
 - g. Seasonal variations.
 - h. Environmental control.
 5. Work Stages: Indicate important stages of construction for each major portion of the Work.
- D. Milestones: Include milestones indicated in the Contract Documents in schedule, including, but not limited to, the Notice of Award, Substantial Completion, and Final Completion, and all appropriate interim milestones:
- 2.3 CONTRACTOR'S CONSTRUCTION SCHEDULE (GANTT CHART)
- A. Gantt-Chart Schedule: Submit a comprehensive, fully developed, horizontal Gantt-chart-type, Contractor's Construction Schedule within 10 days of date established for the Notice of Award. Base schedule on the Preliminary Construction Schedule and whatever updating and feedback was received since the start of Project.

Figure 11 Excerpt from the Contract Documents on Scheduling Responsibilities

Changes to the Work

Changes to the conditions of the contract started early – even before the contracts were executed. This began within days of Architect Vosburgh's letter to Schmidt advising of the general contract award, notifying him of the Town Board's acceptance of the Schmidt & Schmidt bid on June 26, 2006.

On July 3, 2006 Walter Schmidt, as president of the General Construction firm presented a list of *conditions* and concessions to the Town Board. This is recorded in the July 3, 2006 meeting minutes which follow. In addition, an excerpt of the letter from Schmidt articulating his position is presented below.

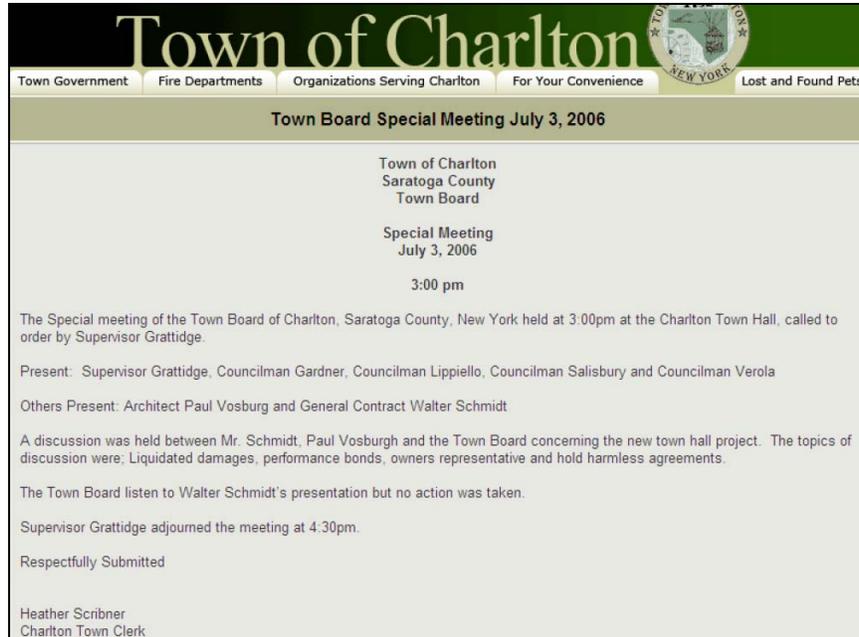


Figure 12 Meeting Minutes

The following is an excerpt from the Schmidt letter of July 3, 2006 asking for a removal of liquidated damages, performance bond and project representation, and the execution of a hold harmless agreement.

Schmidt & Schmidt Inc.
2240 Route 67
Galway, NY 12074
(518) 882-9252 Fax (518) 882-6720

Town of Charlton
C/O Town Board
784 Charlton Rd.
Charlton, NY 12019

July 3, 2006

Page -1-

Re: New town hall general trades contract

Dear Town Board members,

Thank you for the opportunity to discuss the contractual properties of this project. We have spent a great deal of time discussing the new town hall with many area professionals including our insurance agent, surety, architects, and many other local contractors. I would like to request your consideration on the following recommendations:

- 1) LIQUIDATED DAMAGES
- 2) PERFORMANCE BOND
- 3) OWNER'S REPRESENTATIVE
- 4) HOLD HARMLESS AGREEMENTS

Figure 13 Excerpt from July 3, 2006 Schmidt Letter

The matter was discussed among the Town members and a letter of response was issued by the Town Attorney declining the request to remove the project representative, declining the request to waive the bonding and yet a willingness to discuss liquidated damages. In the Town's willingness to discuss the scope of the responsibilities of the project representative, it is reported that these discussions were specifically centered on the duty, responsibility and authority of the General Contractor to provide detailed scheduling and coordination of the work.

Although the General Contractor was bound by the obligations of the bid to accept the contract, along with the terms and conditions of the Contract Documents, Schmidt & Schmidt continued to object, including a specific objection to providing the performance bond – required on a publicly funded project as a matter of law. The problem in securing an adequate bond was captured in numerous exchanges.

A general understanding was reached, and a pre-construction meeting was held on July 13, 2006, kicking off the project construction phase, yet discussions continued about continued the concessions sought by Schmidt & Schmidt.

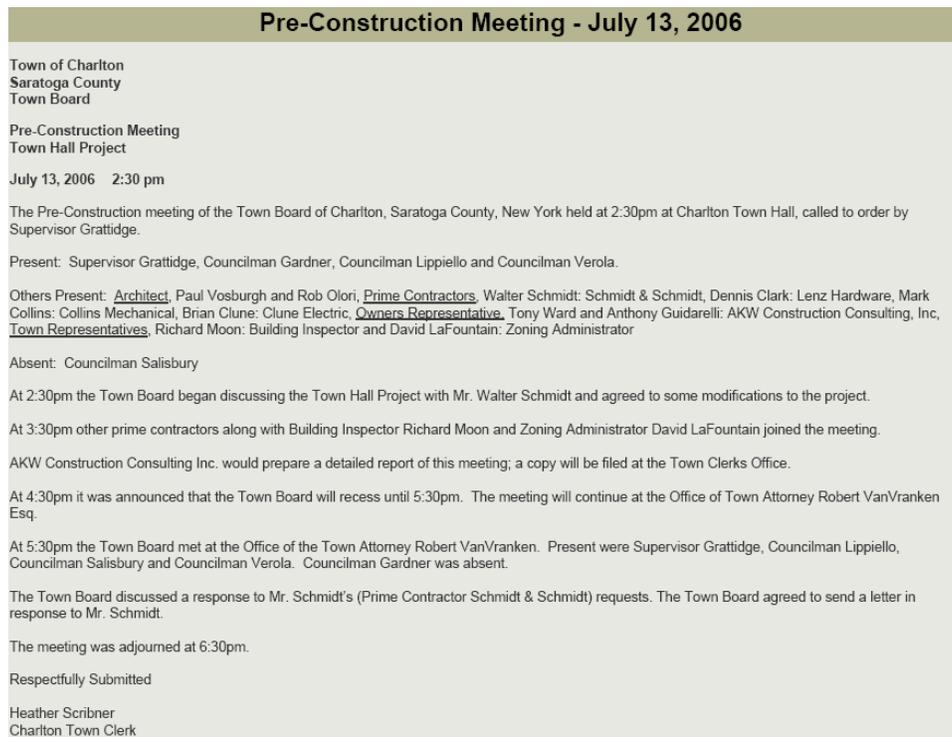


Figure 14 Town Meeting Minutes - Pre-construction Meeting

Let's take Schmidt's requested changes to the contract obligations one at a time.

Liquidated Damages versus Damages

Liquidated damages were set, as a condition of the contract at \$1,200 per day for each day the contract completion date extended beyond the date set by contract, in this

case originally June 1, 2007. The idea objected to by Schmidt is that the contractor would be required to pay to the Town a fixed daily recovery amount, relieving the owner of having to calculate and prove actual damages in the event of late completion. It is not unusual that certain contractors view a liquidated damages clause as a penalty, as it wraps up, or liquidates all damages within this set amount [\$1,200 per day].

In this case the General Contractor makes the following statement in his “conditions” letter:

1) LIQUIDATED DAMAGES

We would like to request waiving the liquidated damages called out in the proposed contract. We feel this project will be completed ahead of schedule. However, if we run into in climate weather as we have thus far in 2006, hitting this deadline may be difficult. Also with a multiple prime contract project before us, nailing one contractor as responsible for delay in completion, should we run over, with divide a team that really needs to be together to complete this project successfully. We would like to request your trust in us to complete this project as quickly as possible without sacrificing the quality of the work to meet a speculated completion date.

Figure 15 Excerpt from Mr. Schmidt's July 3, 2006 Letter

The position that the imposition of a liquidating damage clause for late completion would divide a team is inelegant to say the least. If the project is late, it more than likely will cost everyone money, thus the team would most assuredly be divided. However, as a concession to Mr. Schmidt, the liquidating nature of the damages clause was eliminated, as captured in Attorney VanVranken's letter of July 5, 2006.

3. The Town Board is willing to consider an amendment to the liquidated damages clause currently set forth in the AIA contract as related to general construction services for the Town Hall project (response to request 2 in your letter of July 3).

Figure 16 Mr. VanVranken's Response

This is reiterated in the Town Supervisor's letter of July 14, 2006.



Town of Charlton
784 Charlton Road
Charlton, New York 12019
Telephone: 518-384-0152
Fax: 518-384-0385

#4477 P.06E/L05

INFORMATIONAL
COPY

July 14, 2006

Walter R. Schmidt, President
Schmidt & Schmidt, Inc.
2240 Route 67
Galway, NY 12074

Re: Charlton Town Hall General Construction Agreement

SUPERVISOR
Alan R. Graftidge

TOWN BOARD
Bruce S. Gardner
Robert Lippello
Douglas A. Salisbury
Sandra Verola

TOWN CLERK

Dear Walt:

This letter follows the meeting among the Town Board, Town Architect and you during the afternoon of yesterday, July 13, 2006. The Town Board convened a special meeting early last evening to discuss the issues and concerns considered and regarding your comments as related to the General Construction Agreement. The Town Board received counsel from the Board Attorney and did review in detail all open issues that need to be concluded immediately. The result of those discussions are enumerated in this letter and which are as follows:

1. Subsequent to your receipt of the Town Attorney's letter of July 5, 2006, you did provide the architect with a Notice of Award. Your response to that request is appreciated
2. The Town Board is not able to waive a performance and payment bond for this project. The Town Attorney has advised that the Town is also unable to pay for such bond on your behalf.
3. The Town Board is willing to eliminate the liquidated damages provision of the current proposed Agreement. The completion date will remain as presented. The expectation is that you will keep the Town advised relative to your schedule of completion and request relief at the appropriate time, if necessary, so that such request may be considered in a fair and timely manner. The Town Board will work with you on this issue, but you must keep the Board advised so that if the need for extended time occurs, the Board will have been fully informed along the way.

Figure 17 Letter Waiving Liquidated Damages

However, it is my opinion that neither of these letters addressing elimination of Liquidated Damages says anything as to the assessment of actual damages. In fact, the clause that captures the Town's authority to assess actual damages is presented below in an excerpt from the Contract.

§7.6.18 TOWN'S EXPENSE – The Contractor shall pay the Town all costs and expenses, including reasonable attorney's fees (whether "in-house" counsel or outside counsel is retained), the Town may incur in enforcing any of the terms, conditions or provisions of this agreement.

§7.6.19 SET-OFF RIGHTS – The Town shall have all of its common laws, equitable and statutory rights of set off. These rights shall include, but not be limited to, the Town's option to withhold for the purpose of set-off any monies due to the Contractor under this agreement up to any amounts due and owing to the Town with regard to this agreement, any other agreement with the Town or any of its departments or agencies. This right of set-off includes any agreement for a term commencing prior to or subsequent to the term of this agreement. The right of set-off shall include any amounts due to the Town for any reason, including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

Figure 18 Excerpt from General Construction Contract

Performance and Payment Bonds

The second area of change is in a request to completely eliminate the requirement for the performance and payment bond. This request is obviously an area where Schmidt & Schmidt demonstrate little experience in the public bidding market.

2) PERFORMANCE BOND

The monies that would be spent on the performance bond, we would like to request, be directed back into the project. In the last 13 years, Schmidt & Schmidt has never failed to complete a project or had to active a performance bond to complete a contract. You have my assurance that this project will be completed to your satisfaction.

Figure 19 Schmidt & Schmidt Request to Eliminate Performance Bonds

The Town was unable to waive the bonding requirement as expressed in Attorney VanVranken's response.

2. The Town Board is unable to waive a Performance and Payment Bond, due to statutory requirements under Section 137(1) of the State Finance Law (response to request 1 in your letter of July 3).

Figure 20 Attorney VanVranken's response

Unfortunately these discussions continued, and the Town eventually agreed to allow the General Contractor to be awarded two separate contracts – one referred to as Phase I, for approximately \$1.78 million, and a second contract for approximately \$700,000.

Patrick M. DiCesare
Spataro Insurance Agency, Inc.
850 Saratoga Road
Burnt Hills, NY 12027

Via Fax Only 399-4159

Re: Town of Charlton New Town Hall
General Construction Contract - Schmidt & Schmidt, Inc.

Dear Mr. DiCesare:

As a follow up to our recent telephone conference regarding the above-referenced matter and following consultation with the Town Supervisor and the Town Architect, J. Paul Vosburgh, please be advised of the following:

1. The Town is requiring a performance and payment bond with respect to the above-referenced agreement between Schmidt & Schmidt, Inc. and the Town of Charlton.
2. The Town is willing to divide the general construction contract into two separate phases. The first phase will have a value of \$1,777,212.00 and the second phase will have a value of \$700,558.00.

Please advise the necessary parties of the Town's position in this matter and when verification of the bonding requirement may be expected.

Figure 21 Mr. VanVranken Letter July 17, 2006

Currently the Phase I work is fully bonded, while the Phase II work is currently un-bonded, thus in a sense, not yet authorized. In the following excerpt from the General Contractor's Phase II Contract the bond will be issued at 70% completion of Phase I work.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Seven Hundred Thousand Five Hundred and Eighty-Five Dollars (\$700,585.00), subject to additions and deductions as provided in the Contract Documents. Included in the total bid is an amount of Seventy-Five Thousand Dollars (\$75,000.00) to be used for Owner approved contingencies. This money will not be used unless a Change Order signed and approved by the Architect and Owner is issued. The unused portion of the Contingency will be returned to the Owner at the completion of the work.

The Contract II General Construction Work Performance and Payment Bond shall be issued at 70% completion of Contract I General Construction Work.

Figure 22 Performance Bond Due at 70% Complete on Phase I

control by the General Contractor over the coordination among prime contractors, and to allow Schmidt to set the pace for the project and direct when the other contractors would perform their work. The specific request is presented below.

3) OWNER'S REPRESENTATIVE

After talking to many local contractors who have worked with your proposed owner's representative, we would like to request elimination of this contract. Schmidt & Schmidt will pick up the services and duties of this contract at no additional charge to the owner. If any of these duties being performed by S&S cause a conflict of interest, we would like to see J. Paul Vosburgh, or Ronnie and/or John from the town complete these limited tasks.

Figure 25 Request to remove the Project Representative

As a concession the contract was written to allow Schmidt greater authority in the scheduling duties on the project.

July 14, 2006
page 2

4. The architect has provided a new provision to the proposed Agreement, assigning to your company the responsibility for scheduling and coordination of all four prime contractors. The Owners Representative will retain all other responsibility as defined in the Project Manual. The Town Board believes that your company and the Owners Representative can develop a positive working relationship that will mutually benefit all parties.

Figure 26 Mr. VanVranken's response

The fact is that the current state of the project has seen little if any real coordination among the primes. According to the As-Planned schedule prepared in this analysis, the project is currently where it should have been on January 15, 2007 when little work by the other primes had been anticipated. The project is over 7-months delayed. This is shown in the following figure – highlighted in blue.

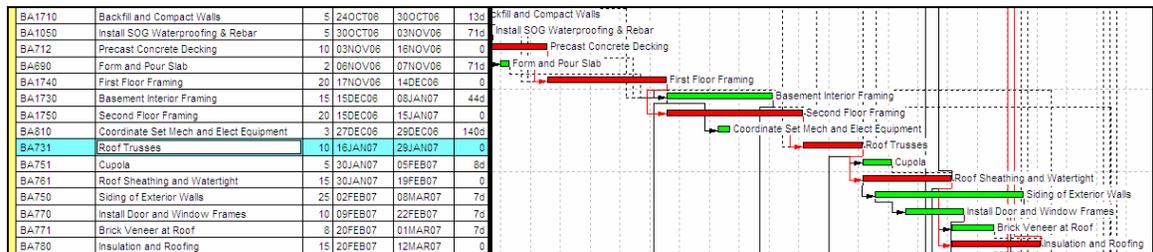


Figure 27 As-Planned Schedule for Roof Trusses

The General Contractor, in his July 3, 2006 “conditions of acceptance” letter suggests that in accepting the contract he is given the authority to schedule the work. However, during my recent interview with Mr. Walter Schmidt on August 2, 2007, he stated unequivocally that he accepted the obligation of “coordination of the prime contractors” – not scheduling; a position that may provide responsibility distance from the current state of the work.

Quite frankly, this limited view of Mr. Schmidt may very well be accurate. Mr. Schmidt was required to provide the basic scheduling obligations, as well as the additional requested and expanded scheduling obligations captured and memorialized in the 7.6.21 of his contract. This expansion of duties is shown in the figure below however the project record of performance indicates Mr. Schmidt had little, if any comprehension of a proper construction scheduling.

§7.6.21 SCHEDULING AND COORDINATION – The General Construction Contractor, at the request of Walter R. Schmidt, President, shall be solely responsible with respect to the scheduling and coordination of the four (4) Prime Construction Contracts, at no additional cost to the Owner. The Town's Owner Representative retains all other responsibilities as defined in the Project Manual.

Figure 28 Contract Excerpt ranting Mr. Schmidt's request for expanded Scheduling Authority

The contract signed by Walter Schmidt and the Town would suggest that even though Mr. Schmidt now denies acceptance of greater scheduling authority, the record suggests otherwise. Therefore, it is my interpretation that Schmidt & Schmidt, wanted, requested and received greater authority and responsibility for the project schedule. Regardless of the finite differences in authority and responsibility as modified in the prior contract clause, the general contractor had as a basic contract obligation certain scheduling and coordination responsibilities, none of which appear to have been met. By way of example, the schedule prepared by Mr. Schmidt for use on the project is presented below.

		RECEIVED CHARLTON TOWN HALL Schmidt & Schmidt Inc. Schedule Phase I SEP 21 2006 ARKW CONSULTING, INC. RECEIVED FROM WALTER S. @ PM #4 9/21/06											
Task	30 days	60 days	90 days	120 days	150 days	180 days	210 days	240 days	270 days	300 days	330 days		
Submittals	-----												
Temp Facilities	-----												
Selective Demolition	-----												
Site Work	-----												
Roadway	-----												
Curbs													
Foundation													
Gypsum Underlayment													
Masonry													
Metals													
Rough Carpentry													
Exterior Trim													
Arch. Specialties													
Thermo & Moisture													
Doors & Windows													
Sheetrock													
Exterior Painting	-----												
Interior Woodwork													
Wood Paneling													
Interior Doors & Windows													
Tile													
Ceilings													
Finish Floors													
Signage													
Accessories													
Flagpole Screens													
Blinds													
Elevator													

Figure 29 Schmidt & Schmidt Project Schedule

This schedule is not that which is the industry standard, nor is it a schedule that meets even the most rudimentary requirements of the Contract Documents. A schedule is a management tool that is to guide the project towards a logical and sequential completion. It is to allow the integration of the work among contracts, and it is to reflect the inter-relationships between and among the various contractors. The schedules provided by Schmidt, even when the late submission is overlooked, lack any practical utility.

A proper CPM [Critical Path Method] Schedule is as presented in the following example. While this particular schedule depiction, presented within the body of this report is itself unreadable due to the font sizes, a full printed schedule of this nature is the type of product that guides complex construction projects in the public market today, and is what was required of the contractor on the Charlton project.

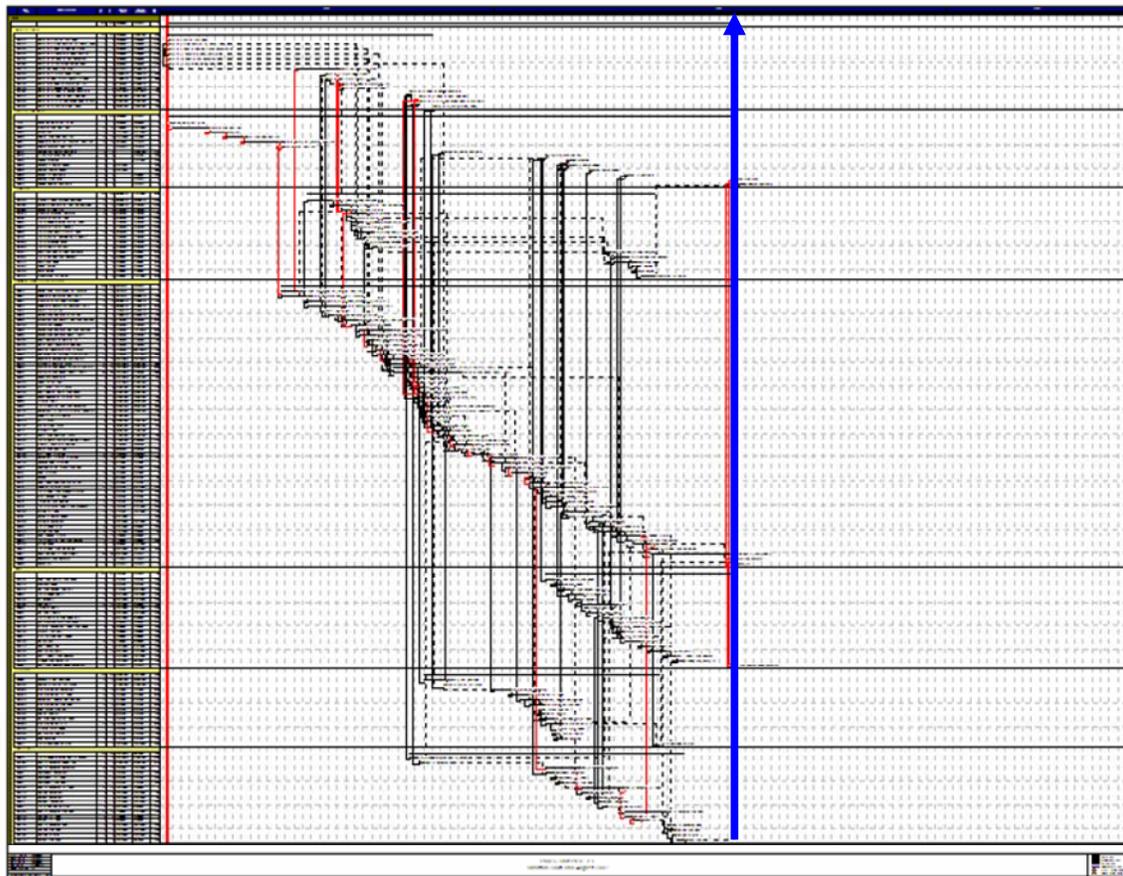


Figure 30 Example Charlton As-Planned Schedule

With such a schedule, the planned labor loading of the project may logically follow. As discussed later in this report, in order to provide a proper workforce to accomplish the work, one should understand the basic concept of a non-linear labor loading expected of any project of this nature.

Presented below are two charts that show the expected labor loading for a typical building project such as in Charlton. From historical records, and from extensive research, by me and by others, the “normal” labor loading of a project can be computed. By way of example, the curves below show a project with 21 periods of work [weeks, months, etc.], and the curves depict the percentage of labor expected in any period [left], and the cumulative labor expected to have been expended through any particular period [right].

From this data we can begin to assess the performance of any particular contractor, at any particular time, and to target periods of failure or interference. These norms show that the beginning of the project has a lower level of man-power assigned, and then ramps up to a peak workforce approximately $\frac{3}{4}$ of the way through the job, when upwards of 8% of the overall work-hours would be expended in one period, dropping back dramatically once over this last push, as the project winds down to a close.

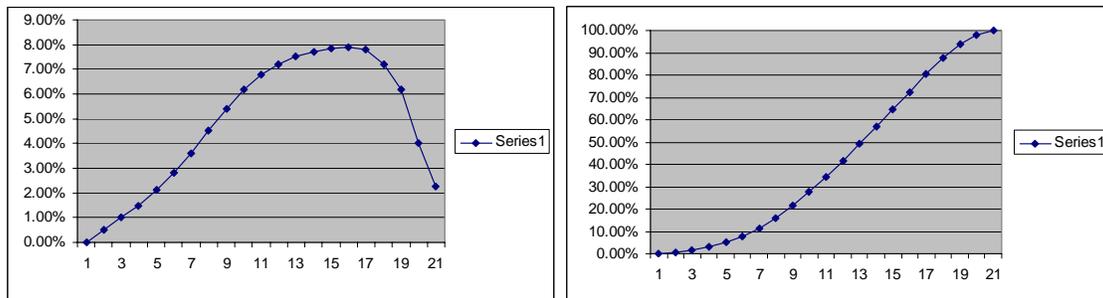


Figure 31 Example Data and Productivity S-Curves

The graph to the right demonstrates the “S” shape of the cumulative labor loading of a balanced and coordinated project.

Period of Project Performance

The bid and the contract required that the work would begin on or about the first of July 2006. The pre-construction conference took place only four weeks later than had been expected, although the overall the project tracking was still within the allowable period of the contract award. As such it would be expected that groundbreaking and the initiation of on-site activities would begin by late July 2006.

Unfortunately, Schmidt remained delinquent in providing bonds and insurance, or signed contracts, even though concessions had been granted to the three major items of his July 3, 2006 letter. The lack of progress is captured in the July 24, Vosburgh letter, and continues throughout a series of correspondences.

July 24, 2006

Mr. Walter Schmidt, President
Schmidt & Schmidt, Inc.
2240 Route 67
Galway, NY 12074

REF: **Town of Charlton New Town Hall**
General Construction Contract
JPV PNO: 143.04.01

Architecture
Design
Management
Planning

208 Middle Road
Rhinebeck, NY
12572
Tel: (845) 758-0708
Fax: (845) 758-9598

721 Madison Avenue
Albany, NY
12205
Tel: (518) 427-1470
Fax: (518) 427-1554

Dear Walter:

We are in receipt of your letter dated July 22, 2006. I will address each of the issues and requests in the same order as written in your letter.

We will forward revised contracts to include the two phases of work as described in the Town of Charlton letter to your firm dated July 20, 2006. Enclosed, please find your firm's lump sum bid breakdown divided into the two phases of work, which will illustrate what is in Phase I and what is in Phase II. We will eliminate the liquidated damages clause from the Contract as indicated in the Town of Charlton's letter to you dated July 14, 2006. The scheduling and coordination issue is already addressed in Article 7.6.21 of the Owner/Contractor Agreement. We will assist Schmidt & Schmidt in reviewing cost control issues, as indicated in the Town of Charlton's letter dated July 14, 2006.

Regarding the project master schedule, we have reviewed your Gantt chart, which is somewhat different from our previous discussions. For example, we have always discussed site work commencing in mid-August with the initial thirty (30) days spent on submittals and shop drawings, which are not included in your Gantt chart. As previously stated in the Town of Charlton's letter dated July 14, 2006, we have extended the Contract date for Substantial Completion to July 13, 2007 however your Gantt chart indicates that the work will not be complete until mid to late-August 2007. Please re-submit your Gantt chart with a Substantial Completion date of July 13, 2007.

Figure 32 Excerpt from Architect's Letter with Documents still missing

On this same date the Town Board met to discuss the status of the project, and the "progress" in establishing final contracts, as well as the completion date.

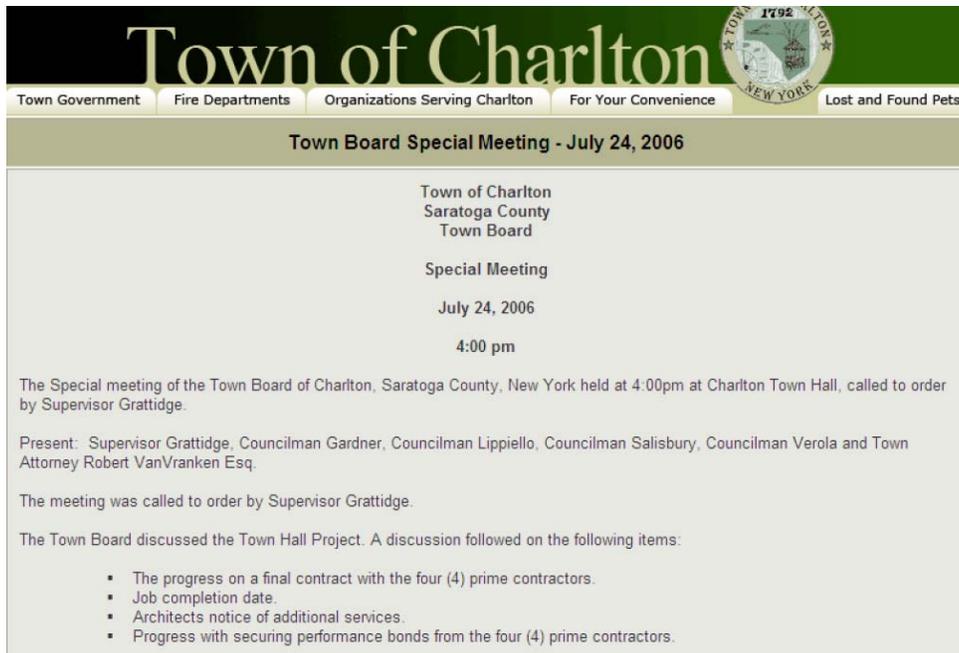


Figure 33 Town Board Meeting Minutes

Three days later at the project progress meeting of July 27, 2006 Schmidt & Schmidt announced that they would mobilize, but that they were busy until the end of August with other commitments, and “buried” with school work. This is the first major delay in the work which we will refer to as Delay No. 1.

DATE: Thursday, July 27, 2006
PLACE: Charlton Town Hall, Charlton, N.Y.
TIME: 3:10 PM – 4:15 PM
IN ATTENDANCE: See Sign-In Sheet
ATTACHMENTS: PM#1 Agenda / Revised Project Directory /SSI Prelim CPS

- **MOBILIZATION & START-UP:** WS was not clear on when he intends to start work on site except to say that his site man will probably start mobilizing on site in a couple weeks time. WS stated he is buried with school work through the end of August. TW expressed concern with the late start as it is going to make it very difficult to get out of the ground with the structure up & enclosed by the start of the heating season. (GC responsible for providing temp heat through winter months in order to protect structure and to continue with interior work).

Figure 34 PMM July 27, 2006

As seen in the following correspondence, Mr. Schmidt continued to delay in providing the requisite paperwork [Agreements, Bonds and Insurances], triggering yet another letter from Architect Vosburgh.

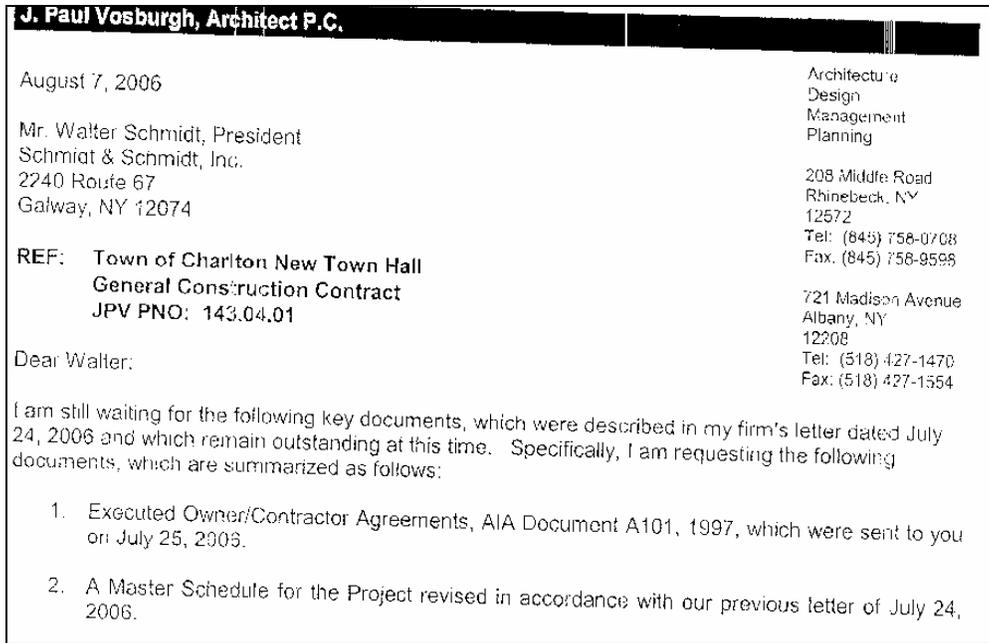


Figure 35 Continued Delinquency in Agreement and Bonds

This initial delay continued through the next project meeting of August 25, 2006, when Schmidt indicated that he would begin work right after Labor Day.

DATE: Thursday, August 25, 2006
PLACE: Charlton Town Hall, Charlton, N.Y.
TIME: 10:00 AM – 11:00 AM
IN ATTENDANCE: See Sign-In Sheet
ATTACHMENTS: PM#2 Agenda /SSI Prelim CPS with Primes

- **MOBILIZATION & START-UP:** WS states he intends to gear up begin site prep prior to the next meeting and to hit it hard immediately following Labor Day weekend. Moving trailers into place and getting them blocked and outfitted should happen before the next PM. Walt has called for UFPO prior to starting excavation. He is scheduling for phone lines to the trailers as well.

Figure 36 Continued Start-up Delay No. 1

The work was to have started in July, and now in September the project was yet to be mobilized. The daily reports show that the first day on-site for Schmidt was September 7, 2006, and for a week nothing more than setting up a project trailer was accomplished, at which time no further work was reported to have been done until October 2006.

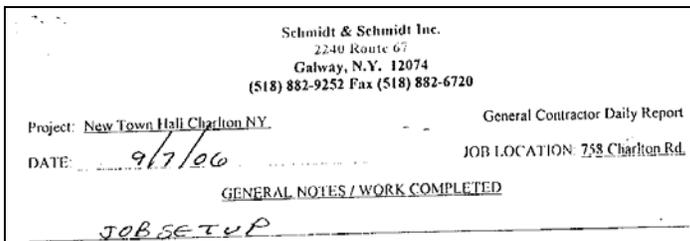


Figure 37 First Daily Report and Newsletter Report of the Town Board

The Town issued their Fall Newsletter advising the residents that the project was underway, and with 10 months to go the new facility would be completed soon.

Schmidt & Schmidt Inc. 2240 Route 67 Galway, N.Y. 12074 (518) 882-9252 Fax (518) 882-6720	
Project: <u>New Town Hall Charlton NY.</u>	General Contractor Daily Report
DATE: <u>9/14 - 10/3/06</u>	JOB LOCATION: <u>758 Charlton Rd.</u>
<u>GENERAL NOTES / WORK COMPLETED</u>	
<u>NO WORK</u>	

Figure 38 Project Delay No. 2

Building Elevation Adjustment

Now that the start-up delay had passed, there was a second delay. This delay was the recommendation by Schmidt that they wanted to raise the building by some two feet. The logic was to “get out of the water table” however, as will be seen later they misunderstood the building’s requirement to be fully waterproofed, including under the slab.

Regardless, this is an area where it is the Architect’s primary responsibility for the performance of the design, and the contractors’ refusal to build the facility as shown caused further delay, with little or no benefit to the project. The only intuitively obvious benefit was to save a relatively minor amount of contingency money lowering a manhole due to the Site Engineering notational error. Under any normal project the solution for rectifying this minor error is not to raise a building two feet, but to lower the manhole, since the underground utility work was yet to be fabricated and constructed. This is a classic example of the “tail wagging the dog” and lacks clear logic. Although there are two sides to every story, from the record, and from my interviews, the core reason for this request of the General Contractor has not been cogently articulated.

One reason for wanting to raise the building could have been to avoid additional excavation costs, but even that would have been a minor amount in comparison to the overall project.

The delay associated with this issue, which seems to have begun at the next project meeting in September, went on for some time, with Schmidt’s refusal to continue work. The project was essentially shut down until October.

DATE: Thursday, September 21, 2006
PLACE: Charlton Town Hall, Charlton, N.Y.
TIME: 10:00 AM – 11:00 AM
IN ATTENDANCE: See Sign-In Sheet
ATTACHMENTS: PM#4 Agenda /SSI Prelim CPS

- REQUESTS FOR INFORMATION:** Informed all Primes again that questions and/or clarifications must be formally submitted in written form via a numbered RFI. PVA made up an RFI template for Schmidt to use. We reviewed both open and answered RFI's. Two outstanding RFI's discussed were: GC-001: Building Elevation: This RFI answer was provided on 9/13/06 by Paul V. PVA has confirmed with CT Male that the civil drawings are designed to the lower basement slab elevation of 490-6.5" and correctly to the first floor elevation so the grading works as designed. (However, MH#1 needs to be lowered slightly to accept footing drains via gravity. PVA/CT Male to provide new inverts for MH#1). However, in response to Walt S. Sr's request at the meeting held on 9/14 that we allow the elevation to remain approximately one foot higher than the 290-6.5" per the architectural's O/A agreed to entertain this request. Paul V. reported today that CT Male believes there may have to be a significant amount of additional fill added re-grading to make the site work properly at the higher elevation. This will mean possible site re-engineering adding time and potential expense to the project Upon further discussion it was agreed by all that Schmidt will continue to excavate to the 290-6.5" elevation per the architectural drawings. The second open

Figure 39 Raise the Building Request

This issue remained a discussion item into the next month. Schmidt proposed the change as depicted in their sketch of September. The architect and construction manager's acquiescence is noted, dated October 6, 2006.

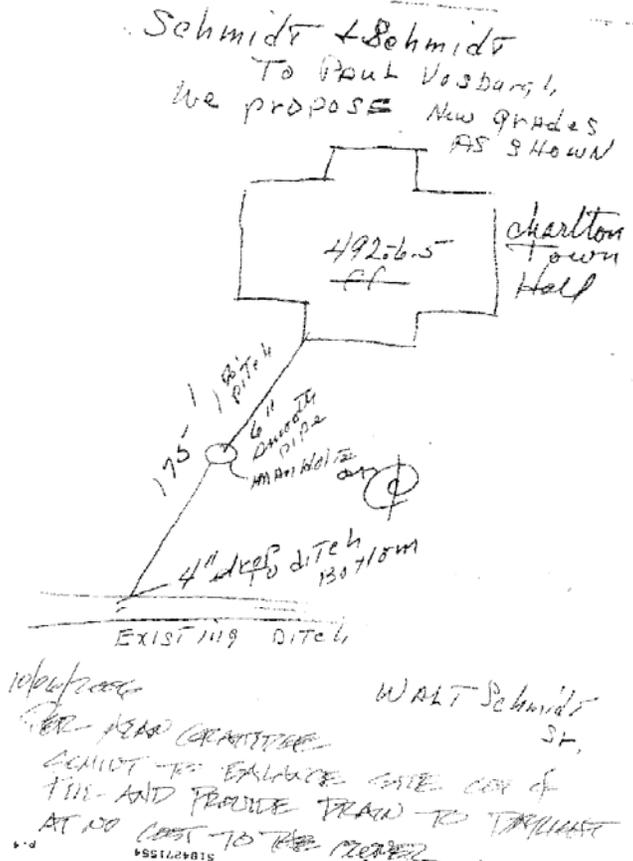


Figure 40 The "Plan" Proposed by Schmidt and the Record of acceptance

The discussion continued into the October project meeting and is captured in the meeting minutes.

DATE:	Thursday, October 5, 2006
PLACE:	Charlton Town Hall, Charlton, N.Y.
TIME:	3:30 PM – 5:00 PM
IN ATTENDANCE:	See Sign-In Sheet
ATTACHMENTS:	PM#5 Agenda

- **BUILDING ELEVATION:** Long discussion with Walt Jr. & Sr. regarding the basement floor elevation. Discussion started during the meeting and was continued after the regular PM was adjourned. Walt Sr. questioning the design and recommending that the town seriously consider redesigning the building to get it fully out of the water table, even so far as to suggest abandoning the basement and doing a slab on grade. He proposed adding the lost basement SF to the rear of the building at the first floor level at no additional cost to the Owner for the physical work (not the design side). This was discussed and rejected due to the costs and time impact for redesigning the town hall (building would have to be put off until the spring) plus the town's desire to have a full basement for storage purposes. Discussion then moved to raising the level of the basement floor a full two feet to get it fully out of the water table. Schmidt proposed, at their cost, of ceasing further excavation (with the exception of the elevator pit), bringing two feet of stone (stone type to be approved by Dente Engineering with a submittal on the material and a sample taken by Dente for sieve analysis) and installing footings at that revised elevation. Discussion regarding trying to make a gravity drain work from that elevation out to the DOT swale on Charlton Rd. Also discussed leaving the first floor at the established elevation and lowering the basement walls by 6". Net effect will be to raise the building 1'6" up from the original design elevation. Schmidt will also provide additional fill if necessary to make the grades work per the drawings. Paul V. needs to check with his engineer to make sure this can be accomplished while maintaining min 7'6" ceilings required by code and not effecting ductwork or any other components. All agreed Schmidt will get the excavation squared up and take shots. We will get Dente out to review the field conditions and make recommendations on the subbase.

Figure 41 Continued Discussion of Raising the Building

The building was raised, however the implications of who is responsible for the ripple effect of the change is open to debate. However, it is my opinion that the initiation of the raising the building was at a time when the project had been delayed for over two months through the General Contractor's postponement of mobilization, putting the work off until fall, when the good weather left in the construction season was waning.

Then the issue of raising the building was opened. Part of this acceptance was Schmidt's acceptance of responsibility for the impact of the change. It soon became apparent they had no intention of accepting that responsibility, and other delays flowed from this behavior, one was the issue of waterproofing that will be discussed as an example.

Waterproofing

Through my interview of Walter Schmidt on August 9, 2007 it was clear that he now understood the waterproofing under the slab-on-grade was an item specified in the Contract Documents. However he reported to me that when he did his quantity take-off of the work during the bidding of the project he relied solely on the drawings, and did not read the Specifications. The excerpt from the Specification is shown below detailing the requirement for a waterproofing system encompassing the both walls, and the area beneath the slab. Possibly, had Schmidt understood at the time of the building height adjustment debate that the entire building sub-structure was to be waterproofed, raising the building may have been moot?

- B. Below Structural Slabs-on-Grade: Place waterproofing sheets on compacted substrate with woven geotextile side up with ends and edges lapped and stapled.
 - 1. Install a layer of waterproofing sheets under footings, grade beams, and pile caps; or continue waterproofing through key joints between footings and foundation walls, and extend a minimum of 8 inches (200 mm) up or beyond perimeter slab forms.
- C. Concrete Walls: Starting at bottom of wall, apply waterproofing sheets horizontally with primary backing side against wall. Secure with powder-actuated fasteners or case-hardened, steel-cap masonry nails; spaced according to manufacturer's written instructions. Extend to bottom of footing, grade beam, or wall and secure as recommended in writing by manufacturer.

Figure 42 Waterproofing Specifications

Regardless, the matter of the waterproofing under the slab ended up having a continuing ripple effect on the progress of the work, including a time period in the spring of 2007 that Schmidt refused the place the slab-on-grade concrete until the roof was in place and the building watertight. The logic in this was that if the waterproofing material were placed, and it rained before the concrete could be placed, it could be ruined. This however was impacted by the fact that Schmidt had not yet submitted any approvable set of shop drawings for the roof system including the trusses and the cupola.

As a result, the basement slab-on-grade placement was delayed. This is a case without a meaningful project schedule from the General Contractor, the implications of postponing the slab, integrating that with the truss delivery, leaves management blind. The expression – *“if you don't know where you are going, anywhere will do”* seems particularly applicable in this instance. The slab placement was put off, waiting for the roof, yet if Schmidt had a schedule in place he would have known the roof was a long way out.

Nevertheless, eventually the under-slab waterproofing was placed and the slab-on-grade was installed, as the project continues to await the fabrication and delivery of the roof trusses.

Other Delaying Events

The project has been plagued, from the initial acceptance of the Schmidt bid with one postponing delay after another. Once actual on-site construction began there have been individual delaying events that can, and have been analyzed discretely. Those delaying events are captured in the following listing. Certainly there can be other events in addition to these, but as the project meeting minutes are reviewed these are the delays that seem to be contributing factors to the current state of the project. Some are integral with others, and amount to only days, while still others have impacted the project in a way that can best be comprehended in months.

Delaying Events	
BA1770	1. PMM #2 Delay Site Prep.
BA1850	2. PMM # 11 Truss Delay Stock
BA1780	3. PMM # 4 Delay in Excavation Ins.
BA1790	4. PMM # 5 Building Elevation Delay
BA1970	5. PMM #22 Sitework Delay
BA1810	6. PMM # 6 Water Tap Delay
BA1820	7. PMM # 8 & #9 Elevator Pit Conc. Delay
BA1830	8. PMM # 8 Delay in Footing Stone
BA1860	9. PMM # 11 Concrete Delay Elevator
BA1840	10. PMM # 10 Delay in Placing Concrete
BA1880	11. PMM # 12 & 13 Continuing Delay in Wall
BA1960	12. PMM #22 Roof Truss Submittal Delay
BA1870	13. PMM # 12 Delay in Vault Footings
BA1950	14. PMM # 15 Waterproof Delay
BA1940	15. PMM # 15 Waterline Boring Delay
BA1930	16. PMM # 14 Delay in Slab Placement

Figure 43 Major Delaying Events

The analysis that has been conducted to determine where the responsibility rests for the current state of the project was done under what is referred to as a “*but-for*” analysis. The concept is that each event that has contributed to the delay can be evaluated individually, and in sequence. Thus, as the project moved through its evolution, the time associated with each delaying event is entered in to the scheduling program’s *As-Planned Schedule*, absent all subsequent events, and the impact on the completion date determined. Thus the term *but-for*; but for this particular delay the project could have been completed by *date X*; but with the delay we will not be completed now until *date Y*.

The As-Planned summary is shown below. The important schedule feature to note is that the schedule once it is linked in logic will predict the completion date. This is designated in the Early Finish Date cell in the lower right side of the panel. In this case you will note that the early finish date and the must finish date of 17JUL07 are the same. This is the date used to fix the As-Planned schedule to, and the date to which we will compare all delays.

The screenshot shows a software window titled "Project Overview" with a blue header. Below the header, the "Project directory" is set to "C:\STWIN\PROJECTS". The main area contains several fields: "Project name" is "CHAP", "Planning Unit" is "Days", "Number/Version" is empty, and "Activity count" is "158". "Project title" is "Charlton Town Hall August 2007" and "Company name" is "Paul G. Carr Ph.D., P.E.". "Project start" is "14APR06", "Target finish date" is empty, "Data date" is "14APR06", "Early finish date" is "17JUL07", and "Must finish by" is "17JUL07". At the bottom, it shows "0% completed" and "0% expended", followed by a "Comments" field with a scroll bar.

Figure 44 As-Planned

An example of this evaluation is in the Delay in Site Preparation – or in other words Schmidt’s plan to start the work after Labor Day in 2006 rather than right after contract award.

This is shown in the following figure, where PMM # 2 refers to Project Meeting Minutes No. 2, and per the As-Planned schedule this work could have begun on July 28, 2006, yet per Schmidt’s plan was delayed until September 6, 2006. This represents a 29 working day delay in the start of this work, which would push the project end date.

Delaying Events				
		267	28JUL06	09AUG07
BA1770	1. PMM #2 Delay Site Prep.	29	28JUL06	06SEP06

Figure 45 Delay No. 1

The new finish date, after the delay of 29 work days from a July start to a September 6, 2006 start can be computed. This is shown in the following figure.

The screenshot displays a project management software interface. At the top, a Gantt chart for 'Phase I General Construction' shows a total duration of 348 days from 14APR06 to 20AUG07, with a -24d impact. Below this, a 'Delaying Events' table lists various activities, with event BA1770 (1. PMM #2 Delay Site Prep.) highlighted in blue, showing a 29-day delay starting on 28JUL06 and ending on 06SEP06, which results in a -24d impact. The 'Project Overview' window is open, showing project details for 'Charlton Town Hall August 2007' managed by 'Paul G. Carr Ph.D., P.E.'. Key dates include a project start of 14APR06, a target finish date of 20AUG07, and a must finish by date of 17JUL07. The project is currently 0% completed and 0% expended.

Figure 46 Delaying Event No. 1 Impact

So in this case, the first delay of 29 work days, had an impact of 24 days of project delay, as shown in the blue highlighted line on the right side of the previous figure, designated -24d. The new completion date is estimated to be 20AUG07 as indicated in the Early Finish Date cell.

The delays continue, and the analysis shows that with all of the delaying events, the estimated completion date is March 7, 2008. This is predicated on the project starting up as it should once the trusses arrive, and there are no more delays.

Phase I General Construction			
		488	14APR06 05MAR08
Delaying Events			
		267	28JUL06 09AUG07
BA1770	1. PMM #2 Delay Site Prep.	29	28JUL06 06SEP06
BA1850	2. PMM # 11 Truss Delay Stock	113	18AUG06 25JAN07
BA1780	3. PMM # 4 Delay in Excavation Ins.	11	07SEP06 21SEP06
BA1790	4. PMM # 5 Building Elevation Delay	10	22SEP06 05OCT06
BA1970	5. PMM #22 Sitework Delay	217	06OCT06 09AUG07
BA1810	6. PMM # 6 Water Tap Delay	117	19OCT06 * 03APR07
BA1820	7. PMM # 8 & #9 Elevator Pit Conc. Delay	25	17NOV06 * 21DEC06
BA1830	8. PMM # 8 Delay in Footing Stone	1	30NOV06 * 30NOV06
BA1860	9. PMM # 11 Concrete Delay Elevator	23	22DEC06 25JAN07
BA1840	10. PMM # 10 Delay in Placing Concrete	8	02JAN07 11JAN07
BA1880	11. PMM # 12 & 13 Continuing Delay in Wall	35	19JAN07 08MAR07
BA1960	12. PMM #22 Roof Truss Submittal Delay	138	26JAN07 08AUG07
BA1870	13. PMM # 12 Delay in Vault Footings	1	06FEB07 06FEB07
BA1950	14. PMM # 15 Waterproof Delay	17	21MAR07 12APR07
BA1940	15. PMM # 15 Waterline Boring Delay	30	04APR07 15MAY07
BA1930	16. PMM # 14 Delay in Slab Placement	1	21MAY07 * 21MAY07

Project Overview

Project directory: C:\STWIN\PROJECTS

Project name: CHAP Planning Unit: Days
 Number/Version: Activity count: 158

Project title: Charlton Town Hall August 2007
 Company name: Paul G. Carr Ph.D., P.E.

Project start: 14APR06 Target finish date:
 Data date: 14APR06 Early finish date: 07MAR08
 Must finish by: 17JUL07 0% completed 0% expended

Comments:

Figure 47 All Delaying Events In Place - Completion March 7, 2008

As the delays were occurring the Town Board met on several occasions with Mr. Schmidt, only to be reassured that the project would be on-time, and on-budget. A record of one such meeting is below:

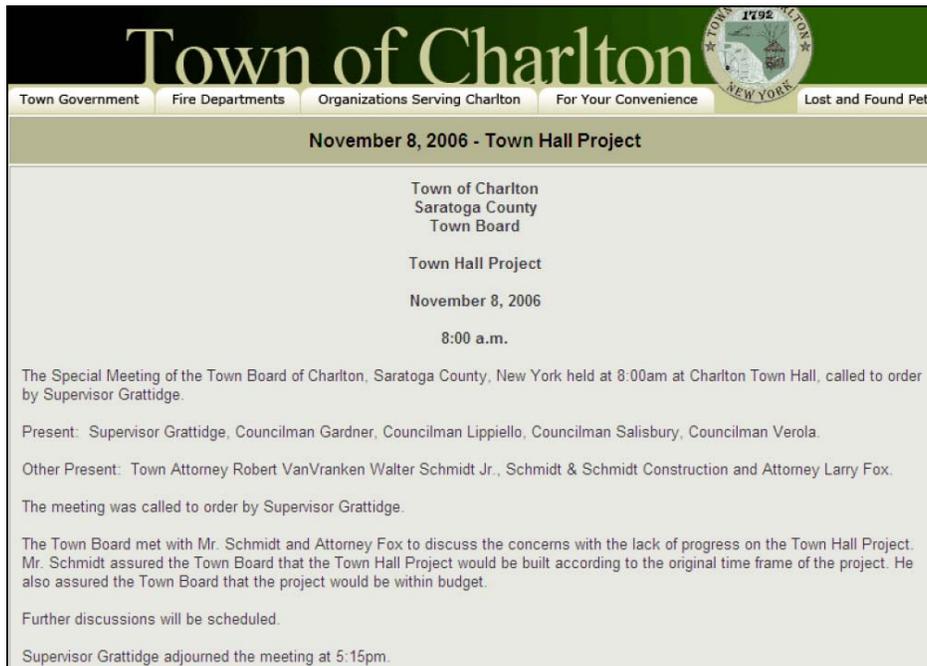


Figure 48 Town Board Meeting of November 8, 2006

This type of event was repeated a month later, again with reassurances that the project would be completed on-time.

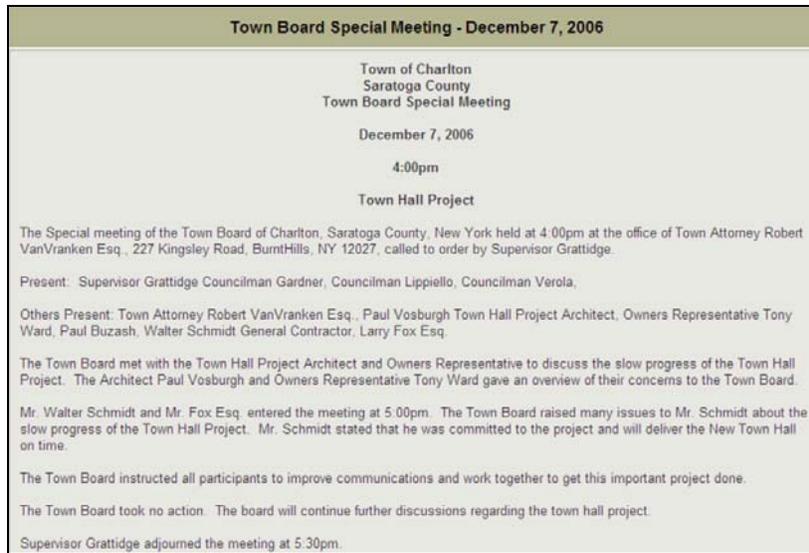


Figure 49 Town Board Meeting December 7, 2006

However, there is an interesting event that drives all others. In fact this is a concept known as concurrent delay. Even though certain events may have impacted the projected completion date in their own discrete manner as the project progresses, they may not be events that control the overall completion date.

In other words, there may be a multitude of delaying events, which individually could have impacted the completion date, however once analyzed, only a few discrete events actually controlled the project completion date. This simplifies the assessment of responsibility for the project delay.

The roof trusses are in that category. The next section focuses on the roof trusses.

Wood Trusses

The roof trusses are an integral part of the main structural frame of any building. As such they are a critical item that should receive the attention of an experienced contractor as the plan for the facility construction moves forward. From the record we know that the roof trusses did not get adequate attention from Walter Schmidt until January 2007, months later than this should have been addressed.

During my August 2, 2007 interview with Mr. Schmidt on this issue, he seemed to recognize the criticality of these structural envelope members, however when pressed as to why he waited until January to begin the process on the roof trusses the answer was, “I just didn’t get around to it”; an honest response.

From the record we know that the roof truss Shop Drawings were first submitted for review in January 2007. At that time there was no information on the loads transmitted downward from the cupola onto the roof truss girders, and there was no New

York State Professional Engineer's review, calculations or seal; thus they were marked Revise and Resubmit on February 9, 2006.

The specifications require that these engineered units are designed by a New York State registered Professional Engineer. This is a common design delegation of responsibility when the contractor is providing unique structural members, such as roof trusses. The specification sections pertinent to this issue follow.

SECTION 06176 - METAL-PLATE-CONNECTED WOOD TRUSSES

- A. This Section includes the following:
 - 1. Wood roof trusses.
- 1.3 SUBMITTALS
- B. Shop Drawings: Show fabrication and installation details for trusses.
 - 6. For installed products indicated to comply with design loads, include structural analysis data signed and sealed by the qualified professional engineer responsible for their preparation.

Figure 50 Specification for the Roof Trusses

These structural elements have their own unique structural connections that must be carefully engineered by a Professional Engineer fully familiar with the nature and grade of lumber being used, the connection materials, and the method and sequence of fabrication. The depiction of a truss for this facility is shown below:

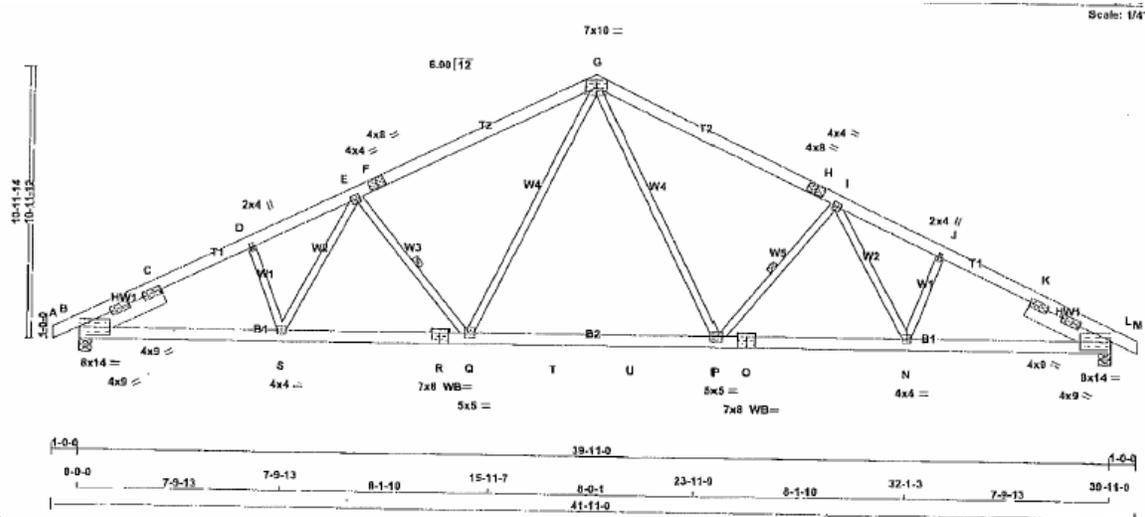


Figure 51 Roof Truss Depiction

Likewise, when a critical structural element such as the cupola which attaches to the roof trusses is required on a project, its structural evaluation also is subject to a design delegation. The Cupola specification is shown below. Logically the cupola would have to be engineered before the trusses, since the loads from the cupola must be known, and must be carried by the roof trusses. This implication seems to have not received its proper attention from the General Contractor.

SECTION 06610 ARCHITECTURAL FIBERGLASS SPECIALTIES

1.02 SUMMARY

A. This section includes Architectural Fiberglass Specialties, including the following:

1.05 1. Cupola
DESIGN REQUIREMENTS

A. Installed architectural fiberglass specialties and fastening systems to building structure shall be designed, engineered, fabricated, and installed to conform to the Building Code of New York State and the Architect's design and shall be stamped by a Professional Engineer registered in the State of New York.

1.06 SUBMITTALS

A. Shop Drawings: Include plans, elevations, sections, profiles and details. Illustrate dimensions, adjacent construction, materials, thickness, fabrication and attachment details, required clearances, field jointing, tolerances, colors, finishes, methods of support, integration of components and anchorages. Detail all corner sections, unique sections, termination sections, and all joint locations. Shop Drawings shall be stamped by a Professional Engineer registered in the State Of New York and shall include all of the required design loads.

Figure 52 Cupola Specifications

Apart from the cupola, an issue unto itself, the roof trusses were not resubmitted until March 27, 2006, almost two months after the Revise and Resubmit action on the first submission. Again these shop drawings were missing critical items. Although these truss drawings had been stamped by an Engineer Marvin Strzyzewski No. 67102, there were no calculations, and there was no allowance for the cupola loads. These were returned Revise and Resubmit on April 12, 2007.

Another three months passed before Schmidt resubmitted the trusses for approval on July 19, 2006. Although there were several questions that arose during the review, including the coordination of the loadings from the cupola, these shop drawings were reviewed and approved for fabrication on August 8, 2006. The trusses are due for delivery in late August or early September 2007.

The interesting implication of this particular element of the project is that regardless of all of the other delaying events. When you take the delay periods of each of these events to -0- days; "*but-for*" equals -0- or no impact, this only leaves the period of the truss delay, the project finish date is the same as if all of the delays had occurred, 07MAR08: March 7, 2008.

This is shown in the following figure, and it means that the single element controlling the completion date of the project is the delay in the critical path item; the roof trusses. This delay in itself controls when the project will once again move forward.

Phase I General Construction				Project Overview		
		490	14APR06	07MAR08		
Delaying Events						
		340	14APR06	08AUG07		
BA1820	7. PMM # 8 & #9 Elevator Pit Conc. Delay	0	14APR06	13APR06		
BA1830	8. PMM # 8 Delay in Footing Stone	0	14APR06	13APR06		
BA1860	9. PMM # 11 Concrete Delay Elevator	0	14APR06	13APR06		
BA1930	16. PMM # 14 Delay in Slab Placement	0	14APR06	13APR06		
BA1770	1. PMM #2 Delay Site Prep.	0	28JUL06	27JUL06		
BA1780	3. PMM # 4 Delay in Excavation Ins.	0	28JUL06	27JUL06		
BA1790	4. PMM # 5 Building Elevation Delay	0	28JUL06	27JUL06		
BA1970	5. PMM #22 Sitework Delay	0	28JUL06	27JUL06		
BA1850	2. PMM # 11 Truss Delay Stock	0	18AUG06	17AUG06		
BA1960	12. PMM #22 Roof Truss Submittal Delay	250	21AUG06	08AUG07		
BA1840	10. PMM # 10 Delay in Placing Concrete	0	28SEP06	27SEP06		
BA1870	13. PMM # 12 Delay in Vault Footings	0	05OCT06	04OCT06		
BA1880	11. PMM # 12 & 13 Continuing Delay in Wall	0	05OCT06	04OCT06		
BA1950	14. PMM # 15 Waterproof Delay	0	17OCT06	16OCT06		
BA1810	6. PMM # 6 Water Tap Delay	0	19OCT06 *	18OCT06		
BA1940	15. PMM # 15 Waterline Boring Delay	0	19OCT06	18OCT06		

Project directory: CASTWIN\PROJECTS	
Project name: CHAP	Planning Unit: Days
Number/Version: []	Activity count: 158
Project title: Charlton Town Hall August 2007	
Company name: Paul G. Carr Ph.D., P.E.	
Project start: 14APR06	Target finish date: []
Data date: 14APR06	Early finish date: 07MAR08
Must finish by: 17JUL07	0% completed 0% expended
Comments: []	

Figure 53 Only the Truss Delay - Through August 8, 2007 – Early Finish Date 07MAR08

The critical nature of the trusses missing on the project not only have caused a delay that is clearly unrecoverable, but have left the structure, in its incomplete form, wholly exposed to the elements. The pictures that follow demonstrate the unfinished and exposed nature of the existing building.



Figure 54 Exterior Condition August 2, 2006



Figure 55 Interior Conditions Stairwell Framing - Interior Drywall

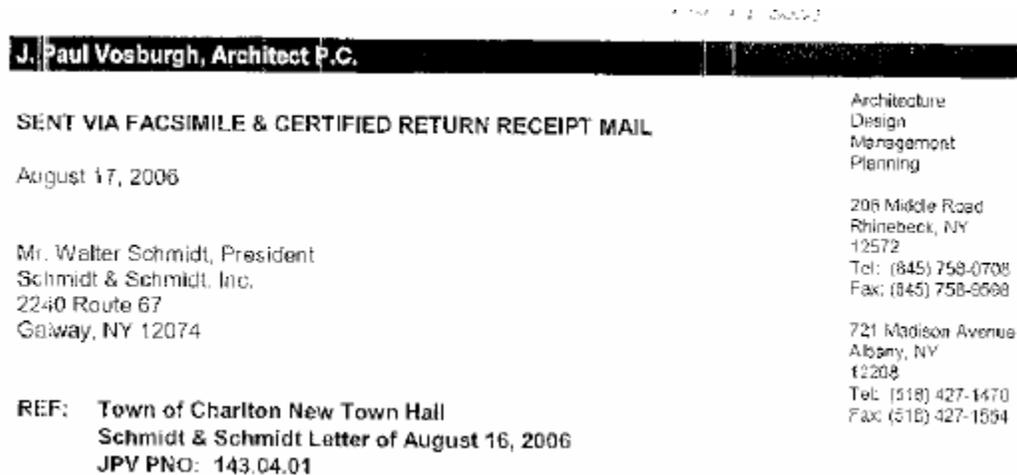


Figure 56 August 2, 2006 Mechanical System Being Installed

From the photos above it is obvious that until the roof is in place the building is exposed to the elements, and a significant expenditure already made by the Town is “at-risk”. As such, until such time as the roof trusses are delivered, and the Town of Charlton’s investment is secured, the value of the work in place would be impossible to appraise.

Damages

There have been damages incurred at a result of this project delay. These damages are not quantifiable at present, however from the earliest part of the project Mr. Vosburgh has warned of the potential for damage claims from the other prime contractors who have since submitted formal notices of claim for compensation due to the project delay.



In summary, Schmidt & Schmidt, Inc. has failed to comply with the requirements of the Contract Documents with respect to delivery of executed agreements, bonds and insurance and this failure of performance has caused the Town additional expense and opens the door for claims of delay against the Town and its agents by the other three (3) Prime Contractors, for which your firm is solely responsible. I request that a meeting be scheduled between the Town, Schmidt & Schmidt and the Architect, with appropriate legal counsel, to be held as soon as possible.

Figure 57 Letter warning of potential delay claims

Alternative Resolution Options

The Contract allows for the notification of the Contractor and the intent to Terminate for cause if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

Figure 58 Excerpt from the Contract Documents

Taking just the first cause of failure, an inadequate workforce, and we can begin to see a pattern of performance failures. When one looks at the certified payroll records of the Schmidt & Schmidt the manpower loading can be plotted. It can be seen that the workforce was essentially non-existent on the Charlton project until into December 2006, at just about the same time as Schmidt's meeting with the Town Board along with his attorney, Mr. Fox.

With a retrospective view of the project, the failure is also captured in the downward trend in the manpower curve. If the project were at its close you would expect this. However this project is less than 50% complete, the slope of the curve should be upward, although the project is essentially being de-mobilized as a result of Schmidt's inability to coordinate the delivery of critical materials.

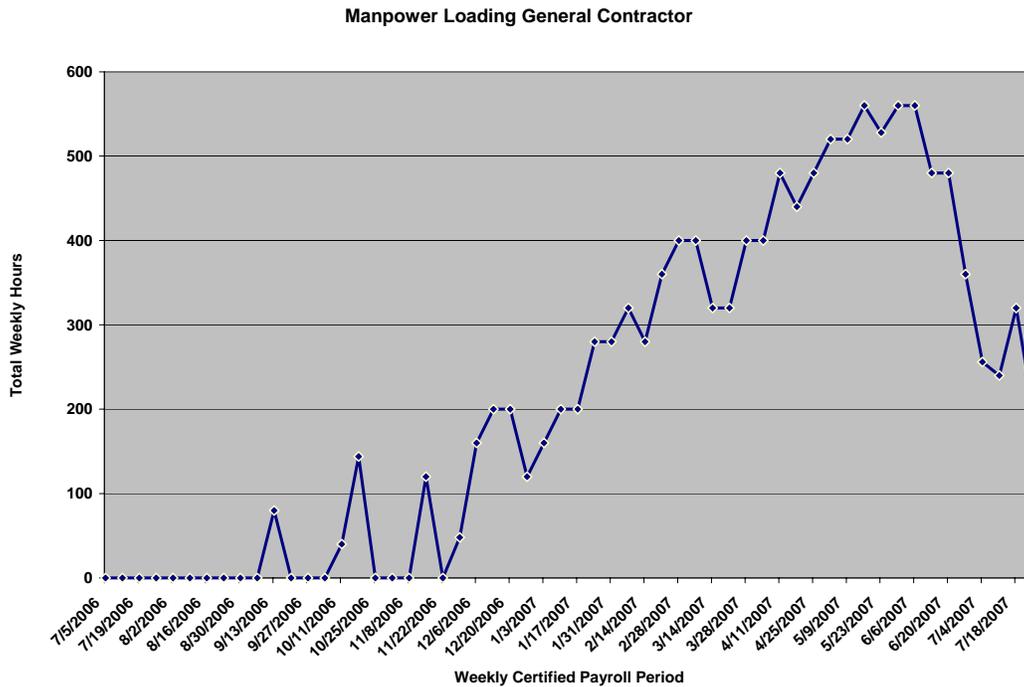


Figure 59

The following figure represents an estimate of the labor that should have been dedicated to the project over the last 12 months, [the upper line], while the actual cumulative labor of Schmidt [lower line] is shown to be less than ½ that which should have been provided.

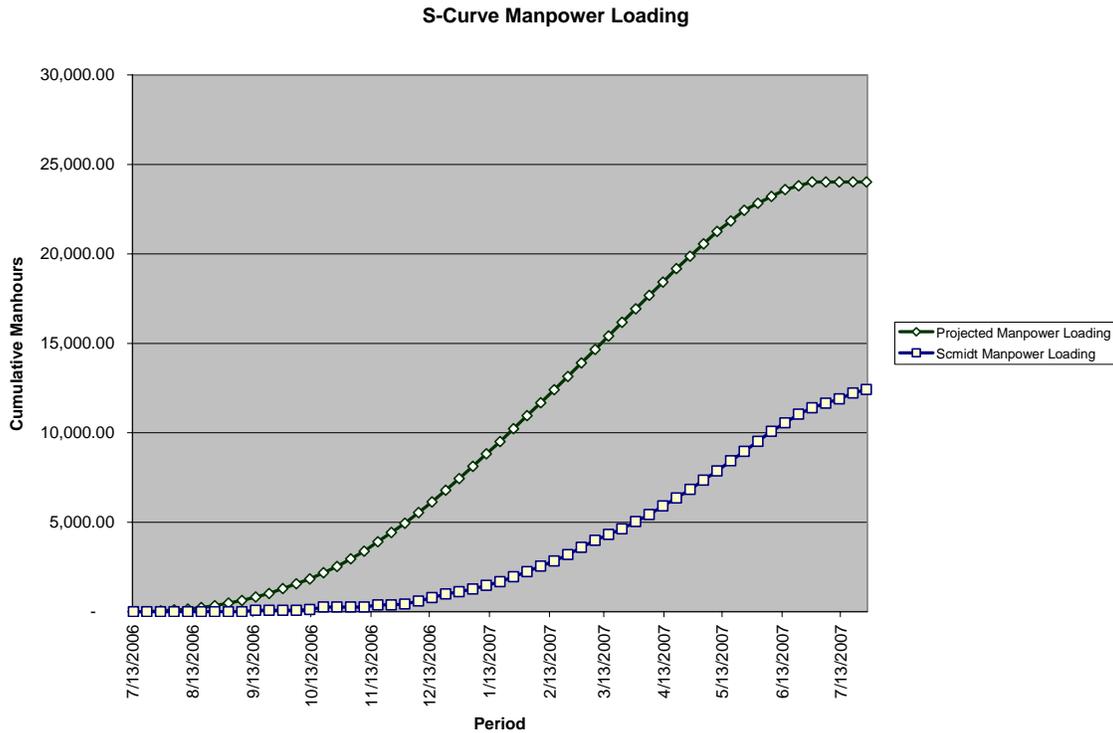


Figure 60 Cumulative Labor Curves

When the contractor persistently fails to meet his obligations to complete the work in essential conformance with the Contract Documents, he is in material breach of the contract. The obligation of Schmidt was to complete Phase I of the work by March 2, 2007. This work is far from complete, even now. The roof is not in place, the work that has been completed and paid for remains exposed and subject to deterioration. The project is at a standstill with no recovery plan yet offered by the General Contractor.

In the event of a determination of breach, and a declaration of default, notice to cure these conditions is required. I would suggest an immediate meeting with Schmidt's bonding company, fully prepared to issue the mandatory seven-day notice of termination for cause. This must be in accordance with the terms of the Contract, and may be subject to further restrictions and requirements of the specific project bond. This document should be consulted. Obviously any action in this regard requires the involvement of the Architect, therefore he should be consulted and his opinion of the project status obtained.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Section 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

Figure 61 Contract Document Excerpt

It is possible that a notice to cure the deficiencies on the project may be met with a strong and logical recovery plan.

Conclusion

From a review of the record, site visits and observations, and through interviews with the project participants, it is the conclusion of this report that a heavy burden of responsibility for the current state of the Charlton New Town Hall Project rests with the General Contractor, Schmidt & Schmidt, and their failure to perform in accordance with terms of their contract.

As unfortunate as it may seem, the options for the resolution of this project's current state of failure are limited. The first course of action, given the concept of this Report's development, is to share its findings with the General Contractor and their representatives, and seek immediately from them a Plan of Recovery, thus providing them with an opportunity to cure the current failures.

Once that meeting has taken place it should be clear to the officials of the Town of Charlton which way the project should move forward; to continue with the current construction contractor, or find Schmidt & Schmidt in default and move to terminate. At that juncture the Town, possibly working with the bonding company, would move to find a replacement contractor to immediately secure the construction in place, and establish a plan to complete the work.

Questions will arise. I will schedule a meeting with the Board to discuss this analysis, and its conclusions in person.

In addition, this report is admittedly prepared with a partial record of the project, obtained over recent weeks, and it is possible additional conflicting information may be discovered; therefore the analysis and conclusions of this work may be subject to revision as the resolution of this dispute evolves.

Very truly yours,

Paul G. Carr, Ph.D., P.E.

