

State of New York
County of Fulton
Town of Caroga

Minutes of an Emergency Caroga Town Board meeting held Thurs February 4, 2010
at the municipal building located at 1840 State Highway #10 at 7:00 pm with the following persons in
attendance by Roll Call:

Supervisor Selmsler - Here
Councilman Ralph Palcovic - Here
Council Member Valerie Scribner - Here
Councilman Robert Sullivan - Here
Councilman Anthony Russitano - Here

There were 19 members of the public in attendance among them were three of the contractors who
had submitted bids on the demolition project and one member of the press.

Following the salute to the flag Supervisor Selmsler announced that this was a special meeting to
address one issue that has been presented to us by NY State Supreme Court Judge. The Supervisor
stated that he spoke to Mr. Herms earlier this morning. Mr. Herms asked if he could speak briefly to
some of the issues. The supervisor responded that he could. Mr. Herms was not in attendance this
evening.

Attorney Sal Ferlazzo emailed to the board a resolution for this evenings meeting. There was an
attachment from the court dated January 29, 2010 signed by Hon. Richard C Giardino J.S.C.. There
was also an agreement handed out to all of the bidders who desired to bid on the demolition and
disposal of the property.

Council Member Scribner put together a summary of what has happened the past couple of weeks.
“There have been 2 court sessions in the past 2 weeks. One was held on January 12, 2010 and I
believe that Judge Giardino asked that the town solicit for 3 – 4 proposals for demolition of the
Herms structure so he would have a ballpark figure as to how much it would cost. We did that. (As I
understand it, the reason that it was not “put out to bid” in the usual manner is because we were
ordered by Supreme Court Judge Giardino to dispense of the bidding process. Also, since we will no
be using town monies, we don’t have to take the towns procurement policy into consideration.

I attended the next court session, on Thursday, Jan. 28, 2010 at 11:00 am in Judge Giardino’s
chambers. Our attorney for this case, Sal Ferlazzo was there, Jim Selmsler our Supervisor, Mike
Heberer, Code Enforcement Officer, Linda Gilbert- Town Clerk, the representative from NGM
Insurance Company and reporters from the Leader Herald and the Daily Gazette. Joe Herms
Attorney, Kalmon Glovin, joined us via speakerphone. At this meeting, Judge Giardino rendered his
decision that the “boathouse structure” be demolished, removed, and disposed of under the
supervision of the town and a contractor of our choice. Also that NGM Insurance Company pay to
the court the sum of \$100,000.00. The Fulton County Treasurer shall pay to the town the entire civil
penalty due, including interest in the amount of \$61,098.50 plus interest. He ordered that all
remaining funds deposited by NGM Insurance Company will be held by the Court to cover the costs
of removal and disposal of the structure.

We received 7 bids for removal. All the contractors were given a copy of the same agreement. The court order “requires that the town select the most qualified, experienced and reasonably priced contractor to safely accomplish the Courts directive on an immediate basis and before the ice on Canada Lake becomes unsafe to accomplish the scope of the work.” The court order states that the town and the contractor, utilizing proper safety precautions and sufficient insurance, be permitted to enter the premises owned by Mr. Herms where the structure is located, and to commence and complete the demolition, removal and disposal of the structure. The contractor will not commence work until he has obtained all insurance required. The contractor will procure and pay for all the permits and licenses necessary. The contractor will be paid upon completion of the demolition and after inspection by the Town.

Supervisor Selmsler drew up a list of questions to discuss with the board and to ask the contractors.

The terms of the agreement for demolition and disposal, do you have any problems with it and do you understand the requirement to have a spill kit on site?

Please state prior work experience similar to this demolition in the winter, and the need to move everything across tan ice covered lake.

What is your action plan? What type of equipment will you need to move across the lake and do you plan to use trucks, tractor, or snowmobiles?

When can you start and how long do you estimate the demolition and disposal will take?

The conditions from the property owners William & Dorothy Fielding, you are in agreement with? Canada Lake Store & Marine 103 Old State Road, Caroga Lake, NY. 12032 Phone 518-835-6069 Fax 518-835-2138 Email clstore@telenet.net 2/4/10

Subject: Demolition of Herms building on the south shore of Canada Lake

To Whom It May Concern:

If properties owned by William & Dorothy Fielding (Canada Lake Store & Marine) are to be used during the removal of materials from the subject demolition site the following conditions must be met:

- (1) Transportation of materials across the lake must be completed by April 1, 2010 if either of our properties are to be used. The only exception to this would be the large steel “I” beams. If our barge is to be used to transport these beams across the lake it can be done over the summer of 2010. The charge for the barge is \$500. per day. This fee will include an appropriate off-loading site.
- (2) If trucks are to be driven across the lake, loaded, driven back across the lake, and debris taken directly to disposal site our boat launch sight makes the most sense. No demolition debris, dumpsters / containers or trucks can be staged at the Canada Lake Marine boat launch.

If dumpsters / containers or trucks are to be staged at the North shore of Canada Lake and the demolition material transported across Canada Lake, our site at the Point Breese makes the most sense.

A combination of both sites can be used.

- (3) As soon as the project is complete, weather permitting, the sights must be restored to as good or better than then it was before the project began.
The site at Point Breeze must be graded so there are no ruts or holes to collect water and 10 to 15 yards of rubble spread over the finished grade. The site at Point Breeze is owned by a total of four families. All of the families have granted permission for the use of their properties to expedite this project.
- (4) Snow removal is the responsibility of the contractor at both sites.
- (5) Any damage to any buildings on either site caused by the contractor is the responsibility of the contractor and must be repaired by the contractor.
- (6) There will be no additional charges due from the contractor other than what is stipulated above.

William & Dorothy
Canada Lake Store & Marine

The 3 contractors present were given the list of questions drawn up by the supervisor and the list of conditions from William & Dorothy Fielding.

Doug Allen of Beecher Creek LLC 127 Spring Rd. Scotia, NY 12302 was asked to respond to the issues and questions from the Supervisor, and his agreement to them.

He stated that he understood question #1 from the supervisor. His prior work experience was included/attached to his bid. He listed demolition projects* in 1985 at Whiteface Inn Lake Placid NY, 1988 Mirror Lake Inn Lake Placid NY demo due to fire, and in 1993 the Lake Placid Club Lake Placid NY demo a 200 room hotel, * and many others. He has not done a demo over the ice. He does have a barge and has worked on water on the Sacandaga. His action plan is to have a crew of men with a generator, saws alls, and chainsaws dump into a small one-ton dump truck in front of the deck. He would also have a 6 x 6 Polaris utility work wagon, which would tow a skid box full of debris over to the staging area, and there would be an excavator with a grapple on it to transfer the debris into 30-yard containers and have the container hauled to a legal sandy landfill. If awarded the contract he could start next week as soon as all of the certificates of insurance and the contract is in place. He stated that he did read the conditions of William & Dorothy Fielding. He noted that they seemed to be cooperative. He had not talked to them personally.

Ralph Hayner of Hayner's Construction PO Box 311 Caroga Lake NY 12032 was next to discuss the project. He stated that he did not really have any input. He was just going to tear it down the way he has taken down other buildings down with demolition saws, chainsaws, carbide tip blades. He has a dumpster, he owns a dump truck; he has four wheelers with some

trailers. “As far as disposing of it to a landfill, it’s all wood so you don’t really have to. Since this thing has come about I’ve had about 15 people call me up that have outside wood burning sources. And 15 of them said they would be more than glad...there’s no shingles on this thing or siding its all wood. Nails don’t hurt.” He said he could take care of the concrete piers and steel. Council Member Scribner stated that what’s important is that this is removed, demolished & removed. What they do with it...after they bid it... Councilman Palcovic wanted proper environmental disposal. Mr. Hayner noted that people could burn the wood in an outside burning device. He has not been over there in a long time. “I know there’s no shingles on it, there may be some tar paper on it.” He takes everything to MOSA not Mud Road.

Chris Rizzo of Chris Rizzo Trucking Inc. 63 Second St. Gloversville NY 12078. “We don’t have a problem with the spill kit. We’ve torn barns down before, nothing across the lake like this.” He will be dragging 20-yard dumpsters across the lake loading them up and bringing them back after dumping in a roll off container. He has disposed of four houses in the Fulton County landfill. He will jack hammer out the concrete piers. He has not been on the Fielding property so he does not know if its OK. He does not see a problem getting the structure down onto the lake. He has done hauling from the other side where the Ruby’s place is. One concern he had was with the power. It is still hooked to the building. It was not known if the power was still on. Supervisor Selmsler said we would have to coordinate that. Mr. Hayner stated “start in the middle – and cut in the middle and you won’t get shocked.”

Supervisor Selmsler asked the board if they wanted to get Mr. Heberer on the phone to discuss the proposals. The supervisor noted that he did talk to our attorney both Sal and his assistant and both felt that as long as all the contractors got the same specs. – they had opportunity to bid based on the specs. even though there were some verbal requests earlier. It was stated that some of the earlier bidders changed their bid. There was no concern about accepting additional contractors bids.

Council Member Scribner - “We need to remember that we bid on the best, not because of price but because of the best way to get it down and off of the lake and safely.”

Supervisor Selmsler –“I don’t know if discussing with Mike would clarify any of that?”

Councilman Sullivan – “Speaking of Mike, I know that obviously they are all required to have workman’s compensation. If they plow the snow at all going across the lake they need to put reflectors up to warn the snowmobilers of any type of snow banks. All the workers would be required by the town to have floatation devices on. This was a stipulation by the court actually. It was noted that the concrete piers do have to be removed.

Councilman Sullivan read the bids received.

Beecher Creek LLC 127 Spring Rd Scotia NY 12302 (518) 488-0780 \$27,900.00.

Hayner’s Construction PO Box 311 Caroga Lake NY 12032 (518) 835-6831 \$30,000.00.

Chris Rizzo Trucking Inc. 63 Second St. G’ville NY 12078 (518) 773-8416 \$21,500.00.

Prime Property Services 223 Sunnyside Rd Kinderhook NY 12106 (518) 758-6968
\$30,750.00

TSB Contracting Terry Bills 285 Cty Hwy 116 Johnstown NY 12095 (518) 762-5458
\$32,000.00

Dirty Deeds Excavation PO Box 315 Caroga Lake NY 12032 835-2099 Steve Putman Owner
\$34,900.00.

Dan's Excavation Service, Inc. PO Box 419 Johnstown NY 12095 762-0005 \$34,900.00.

Council Member Scribner noted that the two highest bidders did not attach anything to their bid. She did not believe they did their homework. Councilman Palcovic replied correct, and Supervisor Selmsler responded – “I agree.”

Councilman Palcovic noted that the Beecher Creek had some very good references attached of demolition projects. These were done in environmentally sensitive areas. Councilman Russitano noted they went back a ways. Councilman Palcovic noted the experience in the Adirondack setting. He did not think anyone was going to have experience doing demolition on the ice. This has to be taken into consideration. He hoped all of the contractors had given it forethought. There are obvious complications. Supervisor Selmer noted that expedience is an issue but he believed that the weather forecast for the next week sounds relatively cold. Council Member Scribner stated that Prime Property has good references. They submitted more insurance than anyone so far. Councilman Palcovic stated that most of the contractors said they would present the insurance certificates upon... Supervisor Selmsler noted that the town is procuring – based on the direction of the towns attorney an environmental policy to give us a fall back for insurance if there is some unforeseen thing that happens that could damage the lake. This will be charged back to the court for reimbursement.

Council Member Scribner noted, “If the expenses exceed the balance of the bond then he (Mr. Herms) has to come up with the extra money. But if it (the cost) doesn't exceed (the bond) then we give that back to him.”

The Supervisor asked how many resolutions were going to be made this evening. The clerk replied one after reading through the document from Attorney Ferlazzo.

Councilman Sullivan asked about the funds that we were getting back from Mr. Herms were separate from the \$100,000.00? Supervisor Selmsler responded that once the funds are received by the funds then the court will reimburse the town for the fine and any additional fees that are a little over \$60,000.00 – that's an automatic. Council Member Scribner noted that is the bond through the insurance company that he put up for \$100,000.00. The balance will be held until the town submits bills and then the town will be reimburse and then the court will reconcile the difference and dispose of it.

Councilman Sullivan noted that he was looking at the low bid. Councilman Palcovic noted that the town did not have to take low bid. Councilman Russitano responded that it should still be considered. Councilman Sullivan agreed as long as all of the conditions were going to

be met. He did not see any reason to accept one that is higher. Supervisor Selmsler stated that the insurance is satisfactory, workman's comp. policy is supplied. A representative from the company is here addressing concerns that we have.

Council Member Scribner asked how he was going to take it down. Mr. Rizzo responded – “the same way these other fellows were going to take it down. We are going to take it down in big pieces and stack it in a dumpster like cards. We have taken houses down before for companies and that is how they do it. You can't bring an excavator across that lake. We are not even going to attempt that.” Council Member Scribner asked what he was going to bring across the lake. Mr. Rizzo responded “either a 20 or 30 yard dumpster. We own the dumpsters and the trucks to haul these.” He stated he was going to pull them probably with pickup trucks. They know how much weight they can put in their containers from previous demo jobs. Council Member Scribner asked how much weight he could pull in that container on an icy surface. Mr. Rizzo responded it depended on how much cable is in front of it. You only need 75' of cable to pull 8 Ton he thought. Councilman Palcovic asked if he understood the contingencies from Mr. Fielding. Mr. Rizzo has worked for Mr. Fielding before. It was noted that he did not want the C & D coming up the boat ramp, but the other access can be used. He noted the loads would be covered when they come across the lake.

Council Member Scribner asked if the equipment was in good shape so there wouldn't be any spills. Councilman Palcovic stated that would be his problem.

Councilman Sullivan asked if everyone was in agreement with Rizzo? The board reviewed the documents attached to his bid. Council Member Scribner asked if he could start right away. Mr. Rizzo did not know the conditions of the lake. He stated that he has pulled loads from the pt breeze boat launch before. He did state that the project would be completed by February 26, 2010. Councilman Russitano asked if the conditions are correct when could he start. Mr. Rizzo stated late next week or the following week. If he can get 40-yard containers across the lake he figured three loads – three days. He could use smaller dumpsters if necessary too – they have 115 ton. He is not concerned with staging. Supervisor Selmsler was told today that an ice fisherman measured 20 inches deep where he was.

Mr. Hayner stated that you could drive a tractor-trailer across the lake. Council Member Scribner was concerned with the edges. Councilman Palcovic noted the water level is down.

A member of the public asked if the ice rescue would be on standby? Two board members who are part of that team responded that they are always on standby – equipment is always ready.

Mr. Hayner – “I think you ought to award him the bid. He bid the lowest and he's a real reputable guy so... he's got all the insurance qualifications and I have known him for years. If you are going to give it somebody else I think you're stupid.”

Councilman Sullivan then made the following:

RESOLUTION to hire a contractor to demo the Herms “Boathouse”

#2010- 017

WHEREAS, the Town of Caroga (“Town”) was authorized pursuant to an Order of Judge Giardino dated January 29, 2010 (attached), to enter the premises on Canada Lake (“Lake”) owned by Joseph Herms, Tax Map Number 52.18.1.1 (“Herms”) to commence and complete the demolition, removal, and disposal of the “boathouse” structure (the Scope of Work”) which was the subject of an action in the New York State Supreme Court, County of Fulton; and

WHEREAS, the Town, having been directed to undertake Mr. Herms' obligation to demolish, remove, and dispose of said structure, needs to hire a contractor to perform the Scope of Work while the ice on Canada Lake is sufficiently frozen to provide for safe access to the structure; and

WHEREAS, the Town received numerous Proposals to undertake the demolition, removal and disposal of the Herms structure in response to requests by the Town and in response to inquiries from the public; and

WHEREAS, the Town has determined that the emergency nature of the Court's order and the dependency on weather for safety in the removal process requires that the Town dispense with the bidding process and select the most qualified, experienced and reasonably priced contractor to safely accomplish the Court's directive on an immediate basis and before the ice on Canada Lake becomes unsafe to accomplish the scope of work herein; and

WHEREAS, the Town Board held a meeting on February 4, 2010 at 7pm to review all proposals and to vote on the retention of a contractor; and

WHEREAS, the Town Board has received and considered seven (7) proposals from various contractors.

NOW THEREFORE, the Town Board hereby finds and resolves as follows:

1. That pursuant to the provisions of General Municipal Law Section 103(4) the Town does hereby find and determine that a public emergency exists in the Town arising out of the an unforeseen occurrence/condition whereby circumstances affecting the life, safety and property in the Town require immediate action to comply with the Terms of an Order of the Supreme Court which cannot await competitive bidding and the Town needs to retain a qualified Contractor to comply with the terms of the Court Order attached hereto and
2. The Town awards the firm of Chris Rizzo Trucking, Inc. 63 Second Street Gloversville NY 12078 ("Contractor") a contract to perform the Scope of Work ordered by the Supreme Court for the sum of \$21,500.00, as identified in its Proposal to demolish, remove, and dispose of all of the Herms structure as identified in the Order.
3. The Supervisor is authorized to execute the contract between the Town and the Contractor in a form satisfactory to the Town Attorney or Special Projects Attorney Salvatore Ferlazzo.
4. The Town and the Contractor shall, pursuant to the Order of Judge Giardino, enter the premises owned by Mr. Herms where the subject structure is located for the purpose of commencing and completing the demolition, removal, and disposal of the structure as soon as weather permits and under the supervision of the Town Code Enforcement Officer.

5. The Town shall, on notice to Mr. Herms' counsel, submit the costs of demolition, removal, and disposal of the structure and other costs attributable to the enforcement of the Court's Order to the Court for reimbursement.

The foregoing Resolution, offered by Councilman Sullivan and seconded by Councilman Palcovic, was duly put to a roll call vote as follows:

Councilman Russitano – yes
Supervisor Selmsler – yes
Councilman Palcovic – yes
Council Member Scribner – yes
Councilman Sullivan – yes

Supervisor Selmsler hearing no other business before the board this evening – entertained a motion for adjournment. Councilman Palcovic made a motion to adjourn, Council Member Scribner seconded the motion. All board members were in favor of the motion at 7:37 pm.

Respectfully Submitted,

Linda M. Gilbert – RMC
Caroga Town Clerk