

WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: DPW - SPECIAL MEETING TO DISCUSS THE CORINTH ROAD PROJECT

DATE: NOVEMBER 28, 2007

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COMMITTEE MEMBERS PRESENT:

SUPERVISORS BELDEN  
BENTLEY  
STEC  
GERAGHTY

COMMITTEE MEMBERS ABSENT:

SUPERVISORS HASKELL  
MASON  
MERLINO

OTHERS PRESENT:

REPRESENTING THE DPW DEPARTMENT:

WILLIAM LAMY, DPW SUPERINTENDENT  
JEFFREY TENNYSON, DEPUTY SUPERINTENDENT OF  
ENGINEERING  
LISA PENISTAN, JR. TRANSPORTATION ANALYST

REPRESENTING R.K. HITE, INC.:

RICH HITE  
TOM HITE  
BOB HITE

REPRESENTING CLOUGH, HARBOUR & ASSOC., INC.:

RAY RUMINOWSKI  
KEVIN ANGELS

WILLIAM THOMAS, CHAIRMAN

NICOLE LIVINGSTON, DEPUTY CLERK OF THE BOARD

JOANN MCKINSTRY, DEPUTY COMMISSIONER OF  
ADMINISTRATIVE & FISCAL SERVICES

SUPERVISORS CAIMANO  
F. THOMAS

AARON FRANKENFELD, ADIRONDACK-GLENS FALLS  
TRANSPORTATION COUNCIL

CHARLES FIEGL, *THE POST STAR*

AMANDA ALLEN, LEGISLATIVE OFFICE SPECIALIST

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Mr. Belden called the special meeting of the DPW Committee to order at 1:30 p.m.

Subsequent to a round of introductions, privilege of the floor was extended to William Lamy, DPW Superintendent. Mr. Lamy advised that the special Committee meeting had been called to discuss the status of the Corinth Road Project and the issues that required attention in order to proceed with it and he asked Ray Ruminowski, of Clough, Harbour & Associates, Inc. (CHA), to begin discussion with respect to this matter.

Mr. Ruminowski apprised that although everyone was anxious to move forward with the project, there were issues that needed to be resolved before they could proceed. He reminded the Committee that over a year ago plans had been developed to detail everything that would be included in the project and since that time they had been working on the ROW (Right of Way) acquisition portion of the project, which was still ongoing. Mr. Ruminowski advised that the project required acquisition of over 90 parcels, which made the process quite lengthy. He noted that they had also been working diligently with the utility companies to gain agreements for overhead line work for the western portion of the project and also with the Town of Queensbury to straighten out the utility undergrounding issues for the eastern portion. As it was his area of expertise, Mr. Ruminowski asked Rich Hite, of R.K. Hite, Inc. (RKH), to advise the Committee on the status of the ROW portion of the project.

Mr. R. Hite apprised that there were essentially two aspects of the highway portion of the Corinth Road Project which were the reconstruction of the roads and sidewalks and the utility needs, the current concept for which was to underground the electric, telephone and cable, primarily on the eastern portion of the Project. He said that their focus had been primarily on the County highway portion of the ROW acquisition process and he apprised that a total of 93 maps had been developed, one for each parcel being acquired, which described the area that was required for highway purposes. Mr. R. Hite added that to date agreements for sale had been made with the property owners for 68 of these parcels, and of those 68, requests for funding had been submitted to acquire 51 of them. He stated that the remainder of the parcels desired were still undergoing a process to ensure that the County received a clear title for each upon acquisition.

Mr. Stec asked if they were awaiting funding from the County to purchase these properties and Mr. R. Hite replied affirmatively, adding that his company frequently received calls from property owners questioning when they might expect payment. Mr. Stec noted that the Town of Queensbury also received calls of this nature.

Mr. R. Hite advised that of the 93 maps, approximately 25 were still in various stages of agreement. He explained that of the 25 parcels in question, they were confident that agreements for 15 could be reached, leaving 10 that they were unsure of. Mr. R. Hite noted that in most of these 10 cases the issue was that the owner felt the parcel desired had a significant impact on the Project and was worth more than the County was willing to pay. He stated that although they were making every attempt to reach acceptable agreements in these cases, they were required to use a specific value detail for acquisition of properties because the project was Federally funded. Mr. R. Hite added that because the Project was being reviewed closely, on both a Federal and State level, and was subject to audit at any time, it was very important that they follow the guidelines provided for the project.

Although the ROW process was ongoing, Mr. R. Hite advised, one of the issues they faced was the length of time since the agreements were signed. He noted that the ROW agreements included a notation that they were valid for only 90-days, which was typical in these situations, and a significant number of them had been signed during the prior April, making them over seven months old. Mr. R. Hite stated that because many of the ROW agreements were now outdated there was the potential that the property owner might decide they were invalid, as per the expiration date listed within. He pointed out that even if the funding necessary to begin closing on the properties was received immediately, there was still the chance that some owners might consider their agreement void, thereby requiring additional negotiation to obtain a new agreement. Mr. R. Hite noted that the offers given might also have to be revisited because this was a dynamic market and property values fluctuated regularly. He added that there had been properties sold along the Project route at prices based on the anticipation of increased property values subsequent to the completion of the Corinth Road Project. Mr. R. Hite stated that regardless of the potential for increased value in the future, they were required to compensate for the desired parcels based on current property values, not accounting for future increases.

Mr. Caimano asked why the Project was being delayed and what could be done to advance it and Mr. Lamy replied that the Project was at a standstill due to lack of funding. He explained that the Master Agreement, which identified funding for ROW acquisitions, was being delayed at the State Comptroller's Office and although Federal authorization for the Project had already been granted and documented, they were unable to access funding without the Master Agreement. Mr. Lamy apprised the position of the Treasurer's Office was that until the Master Agreement was received, solidifying the funding promised, there were no monies

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to spend on the Project. He said that in speaking with Mr. Ruminowski prior to the meeting, they had determined that it might be appropriate to contact the appropriate Legislative representatives to seek assistance in acquiring the Master Agreement from the State Comptroller's Office. Mr. Lamy added that this was not the only Master Agreement being delayed, but rather all of the Master Agreements, most of which were for minor amounts of money, were also being held. He said that in light of this, they were experiencing issues with other Federal aid projects. Mr. Lamy pointed out that although the consultants continued to work on minor portions of these other projects, they were now overextending themselves because the County had been unable to forward payment based on a lack of funding which was a direct result of the delay in receipt of the Master Agreement. He stated that in order to advance any of the Federally funded projects, the Committee would need to decide whether the Federal authorization was sufficient to direct the County Treasurer to release funding for the projects or determine a course of action to gain the Master Agreements from the State Comptroller's Office.

Mr. Belden suggested that Chairman Thomas be authorized to forward a letter to Assemblywoman Teresa Sayward and Senator Betty Little with respect to this matter and request their assistance. He said that the project had been ongoing for some time and he wanted to see it move forward. Mr. Stec agreed that a letter, as well as verbal communication, should be forwarded to the parties mentioned by Mr. Belden immediately, as the issue had been ongoing for too long.

Mr. Lamy advised that in the other County projects relating to Master Agreements there were no deadlines to worry about; however, he said, the Corinth Road Project included several deadlines that would require work to be redone if they were not met.

Motion was made by Mr. Stec, seconded by Mr. Bentley and carried unanimously to authorize Chairman Thomas to forward a letter to Assemblywoman Sayward and Senator Little requesting assistance in gaining the Master Agreements being delayed at the State Comptroller's Office.

Mr. R. Hite stated that although they intended to proceed with the property acquisition phase of the Corinth Road Project as if the agreements held were still valid, there was no guarantee that they would be. Mr. Lamy reiterated that if the Committee was comfortable with the fact that authorization from the Federal Government had been received guaranteeing 80% of the ROW acquisition costs, they might consider authorizing the Treasurer's Office to release the funds to allow for payments to be made immediately.

Motion was made by Mr. Stec, seconded by Mr. Bentley and carried unanimously to authorize the County Treasurer to provide \$1,490,120 for the 80% Federal Share of the Corinth Road Project until receipt of the Master Agreement from the State, with the source of funding to be Federal Aid, to begin payments for ROW acquisitions and the necessary resolution was authorized for the November 30<sup>th</sup> Special Board meeting.

Bob Hite, of RKH, addressed the Committee, advising that there were 10 properties that might require condemnation action because agreements could not be reached for acquisition. He said that because the Project was Federally funded, the acquisition process was covered by both State and Federal laws, which although similar, were not identical. Both State and Federal laws negatively impacted the status of the project, Mr. B. Hite added.

Mr. B. Hite explained that under State law, they were required to hold a Public Hearing notifying certain parties of the Project, which had been done in 2004. He advised that they had satisfied all requirements of

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the State law by publishing the Notice of Public Hearing, meeting as a group to allow for public comment and publishing the Determination of Findings. Unfortunately, Mr. B. Hite advised, a few months after these requirements were satisfied, a Federal Appeals Court in New York City had imposed an additional requirement not included in the State law, for a different sort of notification. He said that because of this, the validity of what had been done in the Hearing process was called into question. Mr. B. Hite advised that when he began looking at the properties for condemnation purposes, a question had been raised and he had reviewed the Hearing process to determine if it had satisfied all of the State and Federal requirements and also to determine if everything was in place to address Federal issues to move forward. He said it was at this point that he had discovered the issue with the notice and he had contacted Mr. Ruminowski to further discuss the matter and notify him of the findings.

In discussing the matter with Mr. Ruminowski, Mr. B. Hite apprised, they had discovered another issue in that the law stated all acquisitions had to be completed within three years of the Public Hearing, a time frame which had expired approximately one week ago. He added that although State law did not require that landowners be paid at the time of condemnation, Federal regulations did. Mr. B. Hite said that because funding was not available, due to delays with the Master Agreement, they were not in a position to acquire properties and pay the required amounts. He advised that if a condemnation process was required, which he felt would be, they would have to conduct another Public Hearing and go through that process again, publishing the varying notices as per State law.

Mr. B. Hite stated that because the project had been expanded in the Town of Queensbury to account for the undergrounding of utilities and also to add the water and sewer aspects, additional easements would be required. He said that it would be his recommendation to conduct a joint hearing with the Town of Queensbury and the Board of Supervisors publishing separate notices with respect to the Hearing. Mr. B. Hite said that it would make sense to do this because they would not run the risk of having not given adequate notice, because neither the underground utilities or water and sewer were addressed in the Public Hearing initially held.

Mr. B. Hite advised that the last issue for discussion was with respect to the Mobil station located on the Project route. He noted that there was some petroleum contamination on site, leaving the property subject to a remediation order with NYSDEC (New York State Department of Environmental Conservation). Mr. B. Hite said that NYSDEC would have to be consulted to determine whether or not the Corinth Road Project would have an impact on the remediation program in place. If there was an impact, he said, NYSDEC might require some changes, making the owners of the Mobil station responsible for them, regardless of the actions of the County. Mr. B. Hite stated that it was his feeling that the Mobil property would be one requiring a condemnation act because he anticipated differences in agreement over the value of the property.

Returning to the topic of the Public Hearing, Mr. Stec questioned the timing and announcement of the Hearing, cautioning that they should be careful in notifying of such as they did not want to confuse those property owners with whom they already held ROW agreements. He said that the notice of Public Hearing for condemnation purposes might deter the property owners from completing the ROW acquisition process and he asked if it would be wiser to proceed with completion of the ROW acquisition process prior to announcing and holding the Hearing.

Mr. B. Hite replied that Mr. Stec had a very legitimate concern; however, he advised, they were in no hurry to hold the Public Hearing. He said that if the funding to facilitate the ROW acquisitions was forthcoming they would most certainly proceed with the closings to acquire the necessary properties prior to holding the

necessary Hearing. Although, Mr. B. Hite stated, they might still experience ROW acquisition issues within the Town of Queensbury, in light of the need for additional easements to appease the Town's requirement to underground the utilities along the Project route.

Mr. Stec stated that in order to avoid confusion issues with those citizens already holding ROW agreements they might consider holding a Hearing involving only those property owners that would be involved in the condemnation actions. Mr. B. Hite responded that he and Mr. Ruminowski had discussed this matter quite extensively and decided that in order to be sure that every single aspect of the State and Federal statutes were appeased, being over-inclusive rather than under-inclusive was the best course of action. Therefore, he added, he would not advise that any Public Hearing be limited by invitation, especially in light of the fact that they were aware of at least one attorney who was watching the project very closely to be sure that all the necessary steps were being taken to comply with these statutes. Mr. B. Hite stated that if issues were raised in respect to statutes not being followed the project would be delayed further.

Mr. Lamy asked how the decision on undergrounding the utilities in the Town of Queensbury would impact the eminent domain proceedings and design plans and specifications. Mr. Ruminowski replied that it was his opinion that before the Public Hearing was held, they should reveal all of the project plans to the Town of Queensbury, making clear the intent of the project and what amenities would be included from the Town's point of view, prior to making the information public. He said that he could not determine how the project would proceed because the impact to the property owners would be completely different than to the Town of Queensbury. Mr. B. Hite agreed with Mr. Ruminowski's statement, adding that they should reveal all aspects of the project to the Town, as well as the available alternatives. He added that by doing this, all options would be available to the Town Board when making their determination.

Mr. R. Hite apprised that the only issue he foresaw in this approach was the timing issue. He noted that it would take time to close on the pending agreements and if the Public Hearing was not held until early in 2008 it would be early summer before they could begin acquisitions of necessary easements, as three months were required to develop the determination of findings, subsequent to the Public Hearing.

Mr. Stec said that another issue that might cause delays was turnover on the Queensbury Town Board and also the possibility of a change in the Town's legal representation. He noted that the new Town Board members might have different views than the previous members and because the current legal representation had done most of the work on the project for the Town, the project might suffer delays because of a change there. Mr. Stec stated that it was his interpretation that the Public Hearing process would be fairly straightforward and, as such, the process could be started fairly soon if necessary; however, he pointed out, the last Town Board meeting for 2007 would be held mid-December so the hearing might not be set until January.

Mr. Lamy summarized that the message of the meeting was that the project had come to a halt until some of the ROW acquisition issues could be resolved.

Mr. Stec announced that at the upcoming Queensbury Town Board meeting, the first item on the agenda would be the continuation, and conclusion, of the Public Hearing regarding the undergrounding of utilities along the Corinth Road project route. Although it had not been not required, he apprised, the Town Board felt that the voluntary act to close the Public Hearing on undergrounding utilities was necessary because it was the right thing to do from both a political and policy standpoint. Mr. Stec advised that they had been awaiting information from the Town's consultants, Barton & Loguidice, PC, on estimates for the

undergrounding process and he noted that they should know much more after the close of the upcoming meeting which would serve to end the Public Hearing process and also as an informative update to the incoming Town Board members.

Discussion ensued.

Mr. Belden stated that the project had been in the planning stages for a very long time and he would like to see it proceed as quickly as possible.

Mr. Lamy asked Mr. Ruminowski what actions were necessary on the part of the County and the Town of Queensbury to assist in advancing the project. Mr. Ruminowski replied that the number one item necessary was the funding for ROW acquisitions. Secondly, he said, collaborations with the Town of Queensbury and their consultants were necessary to essentially set a date for the Public Hearing and put together a presentation. Mr. Ruminowski stated that they would also have to be sure that both the County and the Town had fulfilled all legal aspects of the project to be sure that it would not be delayed in the future.

Aaron Frankenfeld, of the Adirondack Transportation Council, asked Mr. Lamy if he was comfortable in his assumption that NYSDOT had done as much as possible to assist in getting the Master Agreements released from the State Comptroller's Office. Mr. Lamy replied that his first call, subsequent to the meeting, would be to NYSDOT to discuss this matter. Mr. Frankenfeld advised that if the assistance of the Adirondack Transportation Council was required to please contact him.

Jeffrey Tennyson, Deputy DPW Superintendent of Engineering, apprised that seven out of eight Federal Aid projects were experiencing issues directly resultant of a lack of Federal funding caused by the Master Agreement being delayed at the State Comptroller's Office. He said that NYSDOT had been very good about tracking the funding to advise at what step in the process the funding was; however, he said, they had not taken any action to expedite the funding or to address the issues with the State Comptroller's Office. Mr. Tennyson stated that he had advised NYSDOT that all other projects could be delayed further but funding for the Corinth Road Project was required as quickly as possible.

Mr. Frankenfeld stated that through the Adirondack Transportation Council they would do what they could to stress the need for the funding, although he said he was not sure what affect this action would have.

Mr. Stec thanked that Committee members and consultants present for the their time and understanding, regardless of the delays caused by issues at the Town level with respect to undergrounding utilities. He said that he hoped the Town Board would be more decisive in regard to the project for 2008.

Mr. Belden thanked everyone in attendance for coming to the meeting and he noted that if more frequent meetings were required to discuss and advance the Corinth Road Project he had no objection.

As there was no further business to come before the DPW Committee, on motion made by Mr. Bentley and seconded by Mr. Stec, Mr. Belden adjourned the meeting at 2:08 p.m.

Respectfully submitted,  
Amanda Allen, Legislative Office Specialist