

WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: LEGISLATIVE & RULES

DATE: JULY 10, 2013

COMMITTEE MEMBERS PRESENT:

SUPERVISORS MONROE
BENTLEY
MONTESI
GIRARD
SOKOL
WOOD
FRASIER

OTHERS PRESENT:

KEVIN B. GERAGHTY, CHAIRMAN OF THE BOARD
PAUL DUSEK, COUNTY ADMINISTRATOR
JOAN SADY, CLERK OF THE BOARD
FRANK E. THOMAS, BUDGET OFFICER
SUPERVISORS CONOVER
MASON
STRAINER
TAYLOR
WESTCOTT
WAYNE LAMOTHE, COUNTY PLANNER
JULIE PACYNA, PURCHASING AGENT
DON LEHMAN, *THE POST STAR*
CHARLENE DIRESTA, SR. LEGISLATIVE OFFICE SPECIALIST

Mr. Monroe called the Legislative & Rules Committee meeting of the to order at 10:44 a.m.

Motion was made by Mrs. Wood, seconded by Mrs. Frasier and carried unanimously to approve the minutes of the previous Committee meeting, subject to correction by the Clerk of the Board.

Copies of the agenda packet were distributed to the Committee members; *a copy of the agenda packet is on file with the minutes.*

Commencing the agenda review, Mr. Monroe stated the first item on the agenda was a referral from the Economic Growth & Development Committee regarding the Executive Order requiring that 10% of all contracts awarded through New York State be granted to women-owned businesses and another 10% be granted to minority-owned businesses or risk forfeiting 20% of the grant funding award.

Wayne LaMothe, County Planner, distributed copies of Article 15-A of The New York State Executive Law to the Committee members; *a copy of same is on file with the minutes.* Mr. LaMothe said he found it interesting that Article 15-A had been enacted by Executive Order and not by Legislation. He explained the Executive Order called for a percentage of participation in contracts by Minority and Women-Owned Business Enterprises (MWBE). He noted Article 15-A was an amendment enacted in 2010 by then Governor David Paterson. He opined Article 15-A arbitrarily set goals of 10% for Women-Owned Business Enterprises (WBE) and 10% for Minority-Owned Business Enterprises (MBE) for any contract utilizing grant funding awarded through New York State. Previous to Article 15-A, Mr. LaMothe continued, it was required that the percentage of contracts awarded to MWBE be equal to the minority population of the County which was less than 5% for Warren County. He added the low minority population in Warren County had previously meant that we were exempt from ensuring a certain percentage of the contracts were awarded to MWBE.

Mr. LaMothe commented the enactment of Article 15-A in 2010 meant contracts awarded in 2011 and 2012 for the Flood Hazard Mitigation Project and the Local Waterfront Revitalization Program put 20% of the grant funding award in jeopardy. He noted the funding awards for the two projects totaled approximately \$1.1 million which meant approximately \$100,000 in contracts was required to be awarded to WBE and another \$100,000 granted to MBE.

Mr. LaMothe stated he had requested Julie Pacyna, Purchasing Agent, to attend the meeting because it was necessary to include the criteria to meet this requirement in the Requests for Proposals (RFP's). Referring to the copy of Article 15-A of The New York State Executive Law, Mr. LaMothe pointed out Section B of the document established the contract goals. He informed that Ms. Pacyna had released an RFP, for materials to enclose the platforms at the railroad stations, to 584 local vendors of which 25 vendors had requested a full set of specifications and no minority or women-owned businesses had participated in the proposals. He said they had contacted the Department of State as the grantor of the funding and had been informed that failure to award the contracts according to Article 15-A would result in a loss of 20% of the grant funding.

Chairman Geraghty asked if Senator Little had ever been contacted regarding this matter and Mr. LaMothe replied in the negative. Chairman Geraghty stated he had spoken to Senator Little on the matter and the Senator had a different interpretation of the requirements of Article 15-A. He suggested Senator Little and Assemblyman Stec be contacted about the matter and requested to intervene on the County's behalf. Chairman Geraghty advised it was important that our local representatives be informed of the difficulty involved with the requirement to award 10% of the contracts to WBE's and 10% to MBE's.

Mr. LaMothe stated his hope that a resolution opposing Article 15-A be adopted by the Board of Supervisors. He added a referral of the issue to the Intercounty Legislative Committee of the Adirondacks would also be beneficial. He advised some of the RFP's had been re-bid in order to obtain MWBE participation; however, he added, this effort did not result in participation. Chairman Geraghty inquired about the cost to taxpayers involved with re-bidding contracts and Ms. Pacyna responded that for every bid with these requirements, she had expended 24 to 30 hours of work per bid in an attempt to meet the requirements. Mr. Montesi noted the firm selected for design work on the Festival Space was a woman-owned business; however, he pointed out the firm was based in Buffalo, New York.

Mr. Girard asked if the contract would need to be awarded to a MWBE even if the company was not the lowest responsible bidder and Mr. LaMothe replied it was likely that the MWBE's would be awarded the bid in order to meet the requirements of the Executive Order regardless of whether they were the lowest bidder or not. Mr. Monroe commented this was contrary to the competitive bidding laws. Mr. LaMothe mentioned the State had indicated that a County could show good faith effort was put forth and would be eligible to request a waiver to the Executive Order; however, he added, no such waivers had been granted since the enactment of the Executive Order in 2010. He opined the requirement of 10%/10% for WBE/MBE contracts arbitrarily increased the project costs. He stated the issue with the Executive Order in Warren County was that there was little to no minority-owned or women-owned business participation on bids. Mr. LaMothe presented the example of a railroad station project which had been delayed by 3 to 4 months in order to re-bid the RFP in an attempt to meet the requirements. Chairman Geraghty reiterated the issue should be brought to Senator Little and Assemblyman Stec in order to garner their assistance and support. Mr. Montesi volunteered to present the issue to Senator Little and Assemblyman Stec. Mr. Monroe commented it seemed as if the process was currently under the control of the Governor's Office and Mr. LaMothe replied that was his understanding, as well. Mr. LaMothe clarified the first step was to show the agency controlling the funding that a good faith effort had been put forth and the agency would determine the eligibility to submit the waiver. If eligible, he continued, the application for the waiver was submitted to the Governor's Office but no waivers had yet been granted.

Mr. Monroe questioned which portion of the Executive Law had been an Executive Order and Mr. LaMothe replied the 10%/10% MBE/WBE requirement. Mr. Monroe opined the County's efforts

should be directed towards the Governor's Office as the portion that was the issue was the Executive Order. Mr. Bentley suggested a resolution opposing the Executive Order and explaining the North Country's difficulty in complying with same. Mr. Montesi said it was also a significant issue that the County would not always be able to award contracts to the lowest responsible bidder and Mr. LaMothe agreed adding it contradicted the current bidding process. Mr. Monroe pointed out the issue would leave the County vulnerable to lawsuits from the lowest responsible bidders who were not awarded the contract. Mr. Bentley reiterated his suggestion for a resolution and added the resolution should include a request for relief from the Executive Order. Mr. Monroe stated the County would want the Governor's Office to repeal or modify the current Executive Order and to issue waivers to Warren County due to the low minority population. Mrs. Wood suggested the resolution be forwarded to the Intercounty Legislative Committee of the Adirondacks.

Motion was made by Mr. Bentley, seconded by Mrs. Wood and carried unanimously to authorize a resolution opposing the Executive Order requiring that 10% of all contracts awarded through New York State be granted to businesses owned by women and another 10% be granted to minority-owned businesses or risk forfeiting 20% of the grant funding award and requesting a waiver to exempt Warren County from the Executive Order based on the fact that less than 5% of the population was minority. *The necessary resolution was authorized for the July 19, 2013 Board meeting.*

Referring to the pending items, Mr. Monroe said items nos. 1 and 2 should be deleted from the pending items list. Concerning item no. 3, pertaining to an assessment of beaver dams and potential hazards which could develop, Mr. Monroe informed the Beaver Dam Task Force would provide a report at the next Legislative & Rules Committee meeting. In the meantime, he reported a beaver dam had caused a flood in Chestertown a few nights prior. He added an onslaught of water had washed out one of the Town roads and the Chestertown Board had taken action under Highway Law 147 to remove the remaining portion of the beaver dam. He explained discussions with Jeffrey Tennyson, Superintendent of the Department of Public Works (DPW), and Martin Auffredou, County Attorney, resulted in agreement that there was legal authority for Town Highway Superintendents to remove obstructions to water flow from private property. He noted the problem was identifying the location of the obstructions (beaver dams) before they became an issue. Mr. Monroe said he had been informed there was terrain software available which would allow the County to analyze aerial photographs or satellite imagery from different time periods to detect changes which would assist in the process of identifying the location of possible obstructions. He suggested the possibility of applying for grant funding to purchase the terrain software. Once the location of a beaver dam was known, he continued, the County DPW could authorize or direct the Town Highway Superintendent to take action and remove the obstruction.

Mr. LaMothe stated he could look into the cost and application of the software; however, he pointed out the most recent aerial imagery was from 2010 and prior to that was from 2004, 2007 and 2008, making the comparison data at least three years old. He advised that Steve Ovitt, a retired Forest Ranger with over 30 years of experience, could be enlisted to assist the County. He said Mr. Ovitt would know where most of the beaver dams would likely be located and could inform where issues had been located in the past. Mr. Monroe pointed out the same location in the Chestertown had caused an issue twice in the past 8 years.

Mr. LaMothe commented if an area was identified as a potential hazard, the terrain mapping feature of the GIS (Geographic Information System) Program could be used to determine where to look in the area for possible beaver dams. Mr. Monroe mentioned beaver dams which were visible from the road were easier for the Town Highway Superintendent to deal with but dams which could not be seen from the road were still a hazard as their existence was not known.

Discussion ensued.

Mr. Girard suggested the County could work in conjunction with the New York State Department of Environmental Conservation (NYS DEC) to coordinate periodic helicopter searches to locate beaver dams which could be potential problems. Mr. Monroe commented that would be the only effective way to deal with the issue as once the problem was identified there were laws in place to allow the Towns to remove the obstruction. He stated Highway Law 147 gave Mr. Tennyson the authority to direct the Town Highway Superintendent to take action by removing the obstruction to a waterway from private property.

Mr. Mason asked if the action which could be taken by the Town Highway Superintendent included trapping the beaver, as well as removing the dam. Mr. Monroe responded there were several sections to Highway Law 147 and it stated the County DPW Superintendent could direct action to the Town Highway Superintendent to remove obstructions to the free flow of water in a waterway and any hazards to the roads. He said the obvious solution when dealing with a beaver dam was to remove the dam and the beaver to ensure a new dam was not constructed. Mr. Bentley stated the Town of Horicon dealt with approximately 20 to 30 beaver dams per year. Mr. Monroe said the beavers not only constructed dams upstream but also blocked the culverts and excessive rain caused the roadway to act as a dam which they were not designed to do.

Mr. Monroe commented this item would remain on the pending item list until after the presentation by the Beaver Dam Task Force at the next Committee meeting. In the meantime, he said he planned to talk to the NYS DEC about the issue to determine their willingness to cooperate with helicopter searches.

As there was no further business to come before the Legislative & Rules Committee, on motion made by Mr. Montesi and seconded by Mrs. Frasier, Mr. Monroe adjourned the meeting at 11:13 a.m.

Respectfully submitted,
Charlene DiResta, Sr. Legislative Office Specialist