

**ULSTER COUNTY LEGISLATURE
COMMITTEE MEETING MINUTES**

NAME OF COMMITTEE: Public Works & Capital Projects Committee / Special Meeting

DATE: August 5, 2009

TIME: 5:45 PM

PLACE: Legislative Chambers, 6th Floor
County Office Building

LEGISLATORS PRESENT: Chairman Peter Loughran, Deputy Chairman Dean Fabiano, Chairman of the Legislature David B. Donaldson, Legislators Jon Decker, Roy Hochberg, Kevin Roberts

LEGISLATORS ABSENT: Legislator Frank Felicello

OTHERS ATTENDING: Legislators Shapiro, Gregorius, Zimet, Provenzano, Dart, Bischoff, Briggs, Sheeley, Robert Parete, Rodriguez, Terpening, Daniel G. Heppner (Counsel to Legislature), Lee Cane (LWV), Stephen Finkle (City of Kingston), Jerry Fairbairn (Town of Hardenburgh Supervisor), Anthony C. Bucca (Attorney-Crossroads), David Sheeley (Commissioner of Public Works), Kathy Nolan (Catskills Live!), Richard Schaedle (Catskill Heritage Alliance), Scott Gould (Hardenburgh), John Carney (Hardenburgh), Dietrick Werner (UC Railroad Advisory Committee), Charles Busick (UC Railroad Advisory Committee), Deborah Silvestro (Esopus Councilperson), Julie McQuain (Hardenburgh)

SPECIAL MEETING CALLED TO ORDER @ 5:50 PM

BUILDINGS & GROUNDS DIVISION

- 1) **Draft Resolution Request** - Authorizing The Chairman Of The Ulster County Legislature To Execute A License Agreement With Crossroads Ventures, LLC, For Two Crossing Over County Owned Railroad In The Town Of Shandaken

RESOLUTION TABLED UNTIL THE NEXT MEETING

Motion offered by Chairman Donaldson, Seconded by Legislator Hochberg, All in Favor

Discussion:

Meeting was emotionally charged at the onset and heated debate occurred throughout. Chairman Loughran allowed individuals other than committee members to voice their concerns and opinions on the matter. Legislator Shapiro expressed his displeasure that as Representatives of District 2, neither Legislator Gregorius nor he was aware of the above Resolution. Both Legislator Shapiro and Gregorius along with several of their constituents from District 2 had several questions on the issue. Chairman Loughran stated

that the information on the issue had been out there for a month and everyone has had thirty days to review and to ask questions. Legislator Shapiro felt that it was extremely unprofessional on something of this importance to only give a thirty day review period. Legislator Fabiano disagreed by stating that this issue has been being hashed out for five to six months and that the meetings are open to the public and to any other Legislator that wishes to come. He felt that for Legislator Shapiro to say he knew nothing about it is an unfair statement to make to this committee because there had been numerous correspondence throughout the Legislature on this issue. Legislator Shapiro stated that he had no access to that information nor did his constituents.

Shapiro: Stated that if the sale increases the assessed value of the property, it is the tax payers of the State of New York, our constituents who are paying more for the sale of that property. In the face of a 2.1 billion dollar short fall at the state level, he questions whether we should even be considering this right now? He also raises the questions as to how long this issue has been going on, 6months or 6 years.

Donaldson: Clarified the issue on time. Crossroads approached the Legislature about six years ago looking for an easement. The answer was no and they have continued over the years to try and get an easement, with the answer still being no. Over the last six months they have been trying to get a license instead of the easement.

Shapiro: Stated that since the Agreement In Principle of 2007, that the previously existing request has taken on a new face and has to be included in the States Draft Environmental Impact Statement (DEIS). The DEIS has not been submitted by Crossroads yet and stated that we would be jumping the gun on this without requiring that this be part of their DEIS. He again repeated that we are crazy as a Legislature, with our constituents that are taxpayers in the State of New York to be considering something that would inflate the potential sale of this property to the DEC, when it is our constituents that would be paying the difference.

Loughran: Stated that this is very simple. If Crossroads Ventures decides to sell, then that land becomes forever wild. You either want it to become forever wild or you do not. The agreement that is reached between those two entities is between them. We were asked to provide an easement; I said no, we will do a license which is revocable dependant on the sale to the State. If the sale to the State does not go through, than neither does the License.

Donaldson: Stated that there are different arguments on the issue and you need to understand that if they do sell it to the DEC then it stays forever wild. The Chairman then asked Daniel Heppner to give a brief synopsis on the license agreement.

Heppner: It has been drafted as a license; Schedule A is completely devoid of any description of metes and bounds or survey map. As Chairman Loughran has indicated he has couched this so that it is only effective legally if and when a sale takes place to the State of New York. The State of New York is the party involved and is only personable to the State of New York; it would not be available to anyone else. It is revocable upon thirty days written notice either by the State and/or the County. The State has to provide protections to the County for indemnification and insurance. This is an agreement that Mr. Heppner drew up and is based on what Chairman Loughran and he discussed.

Note: Legislator Gregorius spoke on a previously proposed Crossing Agreement from Crossroads and/or their Attorneys. The Agreement that was on the table to be voted on was a new Agreement that was put forth by Legislative Counsel. They are two entirely different Agreements.

Gregorius: Agrees with Legislator Shapiro. Why are we here? Crossroads is asking us to do it, not the State. He makes reference to the wording described in Schedule "A". It makes reference to a permanent easement or right of way one hundred feet in width for ingress and egress, why so much? It asks for the underground installation of utility lines, pipes and wires and other associated apparatus across the bed of the Railroad, for what purpose? It states the term of seventy-five years, why so long? He speculates that Crossroads may have a different motive. He states that one of the issues that are being talked about is what is the value of the particular license/easement as was presented?

Loughran: Reminds Legislator Gregorius that the license is revocable.

Gregorius: Understands that it is revocable but wants everyone to understand what is being talked about. If it is possible to be revocable he still wants to know where the holes in the proposal are. He talks about unintended consequences. He questions the valuation. Crossroads gets a 100 ft. right of way; you can put pipes, electric and utilities all underground. The total value of the property, the 14.5 acres that it serves goes up from 156 to 159 thousand dollars. Three thousand dollars for all of those rights does not seem right to him. He states that if a project of this potential and magnitude were proposed in your district, would not all of you want to know the potential impacts? Right now, I do not think we know that information. He also added that the Legislature would be in danger of setting a precedent in this County whereby anyone that has a private piece of land and wants a license across County property to increase the value of the land, are willing to do this? He again reiterates why are we willing to do this, and why are we not dealing with the State?

Chairman Donaldson made a motion to move to the late Resolutions, then to go back to the discussion on the Crossroads Ventures Resolution, Seconded by Legislator Fabiano, All in Favor.

LATE RESOLUTIONS

- 2) **Draft Resolution Request** - Amending Capital Project No. 242 - Elimination And Replacement Of Two Bridges, Carrying Old New Paltz Road (CR159) Over The Abandoned Conrail Right-Of-Way, In The Town Of Lloyd (Highway Bridge Replacement And Rehabilitation) PIN 8755.14, BIN 3224270 And BIN 3224280 And Providing For The SPDES Permit

Motion offered by Chairman Donaldson, Seconded by Legislator Fabiano, All in Favor

Discussion: None

- 3) **Draft Resolution Request** - Authorizing The Chairman Of The Ulster County Legislature To Enter Into A Renewal Agreement Of County Contract C08-00740 And Any Future Renewals To Said Contract With The New York State Unified Court System

Motion offered by Chairman Donaldson, Seconded by Legislator Fabiano, All in Favor

Discussion: None

RESUMING CONVERSATION

Bucca (Attorney for Crossroads): Has been working with Crossroads since its conception. To clarify for the record, Crossroads is now only seeking a license, not an easement. He wanted to clarify that the

agreement that Legislator Gregorius was speaking about was an earlier agreement, an agreement for when they were seeking an easement. Crossroads has withdrawn all requests for underground utilities and pipes. Using language like ingress and egress, and utilities is stock language that goes along with every easement that he draws up. He states that he has no hidden agenda and that he represents that to the Committee. From the beginning starting with then, County Attorney Josh Koplovitz, the granting of whatever rights might be granted to Crossroads was absolutely conditional on the title being transferred to the State of New York.

Donaldson: Addressed Mr. Bucca and asked why does Crossroads want this? What is its purpose? After our Attorney drew this up; it is very clear that nobody is getting it unless the State takes it. What are you getting out of this by us voting to approve this License Agreement?

Bucca: An Agreement, a handshake was made between Crossroads and the State of New York that this land would be purchased and would become forever wild. What you have to realize is that the Comptroller has to approve this, the land has to appraise to Fair Market Value, and the increased access would enhance the opportunity for that to happen. He stated that Crossroads has been very upfront from the beginning, members of the press have attended these meetings and that it has not been a secret.

Shapiro: States that there is Fair Market Value without having this license in place and then there is Fair Market Value with the license in place. With the license in place the Fair Market Value increases the worth of the property and thus the sale price to the people of the State of New York.

Bucca: Stated that when the appraisals came in it was shown that there was no difference in the Fair Market Value with or without the license in place.

Donaldson: Asked Mr. Bucca that if there is no difference in the Fair Market Value then why do you want it?

Bucca: Replied that we paid our five hundred dollars as part of the program to apply for the license. He stated that he had intended on asking this committee what the justification is for the three thousand dollars. He said he was slightly underwhelmed with what the County was offering, it is really nothing; it is a revocable license and it sites numerous obligations that the State of New York is going to be asked to impose upon itself.

Bucca: Also stated that he would argue that the granting of these licenses for the railroad has been common place throughout the history of this County. Crossroads is like anybody else, despite the controversy associated with the development, are still taxpayers and are asking to be treated the same as anyone else.

Donaldson: Agreed with Mr. Bucca that it has been common practice in Ulster County.

Loughran: Stated if we want that land to remain forever wild, then we want that land to be sold to the State of New York. He also stated that it is not his job to get in the middle of the State of New York and Crossroads. Legislator Shapiro refuted that this is absolutely what we are doing.

Bucca: Stated that even from the beginning there were members that were not in favor of this project at all, but were motivated entirely by the prospect of this land being made forever wild. This land is environmentally sensitive; it is in pristine condition and is adjacent to other state land. There was a huge benefit from the Congressman from this district, right on down to various environmental groups and certain

members from this Committee, despite their lack of approval for the project were very much in favor of the opportunity to have this land forever wild.

Powers: Asked for clarification on the following issues:

- Compares a letter written by David Lenefsky dated July 10, 2009 and statements made tonight by Mr. Bucca. He feels what Mr. Bucca stated tonight about the fact that the appraisal shows that there is no difference in the Fair Market Value with or without the license contradicts what Mr. Lenefsky states in his letter on the same issue.
- He has a map showing at least one of the two proposed sites and this parcel essentially butts a property of land that is owned by former County Legislative Chairman Ward Todd. He asks if there is any relationship between the Todd land holding's and this easement. Mr Bucca replied absolutely not.
- Is the second proposed easement adjacent to the Rosenthal Well parcel? Mr. Bucca replied yes.

Rodriguez: Asked Mr. Bucca to explain clearly and concisely, why he needed this? Legislator Rodriguez summed it up by saying that potentially the bottom line is money.

Bucca: Stated that you can be guaranteed if the State does not buy this land, we have to devote this land for development purposes.

Rodriguez: Asked if the granting of this license is holding up in any way the sale to the State of New York? Mr. Bucca replied no it is not. Asked is the State of New York still interested in buying this property with or without the license? Mr. Bucca replied yes.

Schaedle: Asks what good is a license to someone that does not even own the land? He stated that he does not understand the rationale for this request.

Bucca: Stated we would rather have it and not need it than need it and not have it. His recommendation to this Committee is if anyone is interested in this property becoming forever wild then you have to hold your nose if your opposed to this and allow this process to go forward and give Crossroads a chance. If the property does not sell to the State of New York then it will be developed.

Zimet: We all seem to be in agreement that it be sold to the State. Her suggestion is to take it from a reverse perspective; she proposes that if and when the State buys this land, we as a County Legislature will then be more than happy to grant a license.

Bucca: Stated that we have an opportunity to protect this land and to make it forever wild. It is a one time opportunity; this land is an assemblage of maybe twenty parcels that we put together at enormous expense for the purpose of our project. We have agreed to scale the project way back, but we have to do something with this land, we can log it, develop it, sell it off as five acre parcels. This is an unusual opportunity for the County to make something good happen. It can be a win win situation for everyone and asks the Committee to consider the request.

McQuain: Asked the following questions:

- Her question was who in the State has asked for this license? She was asking Mr. Heppner because he has made contact with the State and has not heard back. Mr. Heppner replied that in all fairness, it was only last week and that the person could be on vacation.
- Stated to Mr. Bucca that it is still unclear whether or not it is or is not going to give negotiating power with or without the license.

Loughran: The bottom line is do you want the land to remain forever wild? He feels that it is not up to him to tell the State how to do an appraisal. The State is well aware of the value of that property. It comes back to the same thing; do you want the land to remain forever wild or not? If the answer is no, then we will continue to go down this path and constantly be at odds (over development). Again he states, the agreement is contingent on the sale to the State.

Zimet: Question was to our Counsel, Mr. Heppner, do we have to vote on this at the next meeting or can we wait for the following: (1) wait for the questions to be answered from the State and, (2) have Mr. Heppner sit down with all of us at Caucus and review it all step by step.

Dan: Just a follow up, Ms. Judith Enck, Deputy Secretary for the Environment mediated this arrangement; she stated (by phone) that this is an integral part of the whole deal that was arranged and with out this happening the whole deal may fall apart.

Provanzano: It is pretty simple. The State is not just going to buy that property, it is contingent on us giving them the license. You either give them the license or you do not.

Shapiro: Stated then why is it not in the DEIS. There are layers to this which even put the County at risk of being involved in a contentious matter. If we approve this it is not in the DEIS. The DEIS has not even been submitted yet.

Gregorius: Stated to the Committee that he feels that the issue should not be voted on tonight until all the questions have been answered.

Loughran: Poled the Committee and after discussion the Committee agreed to table the Resolution until the next meeting.

Bucca: Reiterated to the Committee and to everyone that there is one way to skin this cat and that is to hold your nose and see that the developer gets the money he needs to make this deal go through to the State. You have to realize that this is a business and they have an enormous investment in this land. If it does not go to the State then it will have to be marketed.

Nolan: Asked the following question that she feels are still unclear:

- Would like to know for sure that Crossroads owns the land that they are seeking the license for.
- If this is all being tied in with the Agreement In Principle you should be sending notice that your considering this permit to all the other involved agencies and they have to have a coordinated review of this.

Powers: Raises questions on the appraisal and also adds that it is a huge assessment issue for everyone in Ulster County. You have a tax base throughout rural Ulster County which states rural land is worth X amount and you set a precedent to say it is worth three times X, you then change the entire economic picture of the County. Chairman Donaldson & Chairman Loughran replied that it is not our decision to make.

Fairbairn: Stated to the Committee that he would think that you would want a signed document from New York State stating that they want this. He stated that he particularly does not trust the developer. He would like it duly noted that he did not appreciate the disrespect that Chairman Loughran gave to Legislators Shapiro and Zimet.

Loughran: So noted

Donaldson: Addressed everyone that still had concerns and/or questions to put them in writing and give them to our Counsel or Chairman Loughran to be addressed.

Motion to adjourn @ 7:00 PM

Motion offered by Chairman Donaldson, Seconded by Legislator Fabiano, All in Favor

Respectfully submitted,

Tammy Wilson

Senior Legislative Employee