

WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: PUBLIC WORKS

DATE: MAY 1, 2018

COMMITTEE MEMBERS PRESENT:

SUPERVISORS SIMPSON
MERLINO
DICKINSON
LOEB
HYDE
WILD

OTHERS PRESENT:

KEVIN HAJOS, DEPUTY SUPERINTENDENT OF PUBLIC WORKS
TIM BENWAY, DIRECTOR, PARKS, RECREATION & RAILROAD
RYAN MOORE, COUNTY ADMINISTRATOR
MARY ELIZABETH KISSANE, COUNTY ATTORNEY
AMANDA ALLEN, CLERK OF THE BOARD
FRANK THOMAS, BUDGET OFFICER
SUPERVISORS BRAYMER
GERAGHTY
HOGAN
TRAVIS WHITEHEAD, TOWN OF QUEENSBURY RESIDENT
RICHARD LUCIA, SUPERVISOR, TOWN OF CORINTH
ROBERT HAFNER, LEGAL COUNSEL, TOWN OF CORINTH
SUE WILDER, REPRESENTING HADLEY BUSINESS ASSOCIATION
DON LEHMAN, *THE POST STAR*
SARAH MCLENITHAN, DEPUTY CLERK OF THE BOARD

COMMITTEE MEMBERS ABSENT:

SUPERVISORS FRASIER
DIAMOND
MAGOWAN

Please note, the following contains a summarization of the May 1, 2018 meeting of the Public Works Committee; the meeting in its entirety can be viewed on the Warren County website using the following link: <http://www.warrencountyny.gov/gov/comm/Archive/2018/works/>

Mr. Simpson called the meeting of the Public Works Committee to order at 1:30 p.m.

Copies of the Parks, Recreation & Railroad Agenda were distributed to the Committee members, and a copy of same is on file with the meeting minutes.

Mr. Simpson introduced Richard Lucia, *Supervisor, Town of Corinth*, to Messrs. Wild and Loeb, whom, he noted, were the newest members of the Public Works Committee, as well as Tim Benway, *Director, Parks, Recreation & Railroad*, and Kevin Hajos, *Superintendent, Department of Public Works*.

Commencing the Agenda review, Mr. Simpson stated the first item on the Agenda pertained to a request for a new contract with Nixon Peabody, LLC, to provide legal counsel regarding the Saratoga and North Creek Railway, LLC, contract for a term to commence on a date to be determined and to be terminated by either party for an amount not to exceed \$40,000.

A motion was made by Mr. Wild and seconded by Mr. Loeb to approve the request for a contract with Nixon Peabody, LLC as outlined above.

Mr. Dickinson questioned what they were hoping to accomplish with this contract, advising that the hourly rate appeared to be quite high. Mary Elizabeth Kissane, *County Attorney*, stated the estimate was based on reviewing all of the options the County might have with the railroad; however, she noted, if the Committee could narrow the scope of what they would be reviewing Nixon Peabody, LLC could reduce their expenses. She continued, since Nixon Peabody, LLC was unsure of how the County would like to proceed at this point they provided the County with a high estimate. Mr. Dickinson asked whether the Committee was aware of what they wanted Nixon Peabody, LLC to accomplish. Mr. Simpson apprised the focus of today's meeting was on the contract with SNCR (*Saratoga and North Creek Railroad*), as there was an immediate need to deal with that. He said he believed Ms. Kissane required this as a resource for some of the implications of federal transportation laws, state laws and county laws.

Mr. Loeb asked if they needed to determine a scope of service before they approved the contract and Mr. Simpson replied in the negative. Ryan Moore, *County Administrator*, explained the scope of service would be to review where the County was with the current SNCR contract and review what the County's options might be. He continued, Nixon Peabody, LLC would provide the County with advice based on their expert knowledge of the federal railroad laws, as well as any other laws that were applicable and to get guidance from the Committees as to how the County could narrow that scope of services.

Mr. Merlino apprised he believed Nixon Peabody LLC would be looking into the restrictions contained in the grants which were awarded to the County a number of years ago totaling around \$12 million for the purpose of starting the railroad, and to assist with determining what the County could do with the railroad. He added all of this occurred before the County contracted with SNCR for railroad operations. Mr. Moore remarked he felt the spirit of this was "look before we leap" which meant prior to making decisions it was necessary for them to fully understand the implications of those decisions so the County did not have to pay for them in the long run.

Robert Hafner, *Legal Counsel for the Town of Corinth*, requested that the Town of Corinth be notified prior to the County making any decision since they were partners with Warren County in the SNCR contract.

Mr. Simpson called the question and the motion to approve the request for a contract with Nixon Peabody, LLC as outlined above, was carried unanimously and the necessary resolution was authorized for the May 15th Board meeting. *A copy of the resolution request form is on file with the minutes.*

Continuing, Mr. Simpson stated the next item on the Agenda pertained to a as outlined in the agenda attachment.

Mr. Hajos advised a request was presented at last month's Public Works Committee meeting to amend the fee schedule for Up Yonda Farm associated with the school and public programs which included the incorrect fees; he added that an amendment to Resolution No. 181 of 2018 was required in order to correct them.

Motion was made by Mr. Dickinson, seconded by Mr. Merlino and carried unanimously to approve the request and the necessary resolution was authorized for the May 15th Board meeting. *A copy of the resolution request form is on file with the minutes.*

Concluding the Agenda review, Mr. Simpson apprised it was necessary to discuss the contract with SNCR. He informed there were numerous breaches with the contract including past due payments due to the County originating from 2017 and 2018. He said he had sent Ms. Kissane a few questions that required answering at this meeting, one of which concerned whether Warren County would be obligated to allow SNCR to operate on the County's railroad tracks. Ms. Kissane informed the County would have to enter into a trackage right agreement with Iowa Pacific Holdings LLC following which the agreement would have to be approved by the Surface Transportation Board. She said the County could charge a reasonable fee for this use which would also have to be approved by the Surface Transportation Board. Mr. Simpson advised this meant if they were to end the contract today with SNCR they would have to negotiate a trackage right agreement with SNCR which would then have to be approved by the Surface Transportation Board.

Mr. Wild stated he thought today they would be discussing strategy in terms of how they approach several issues, some of which would have to be discussed during an executive session to ensure the County's strategies were not being broadcast to SNCR. Mr. Simpson advised he would like to keep as much of the meeting as possible in open session to answer some of the questions that were asked.

In regards to the inquiry regarding insurance, Ms. Kissane informed the attorney from Nixon Peabody, LLC had suggested if the County was concerned about the maintenance and insurance on the railroad currently provided by Iowa Pacific Holdings that they moved forward with taking over the maintenance and obtaining insurance on the railroad. She said this would prevent the County from having concerns with liability as a result of the railroad not insured. She added they also suggested that the County take over the maintenance on the railroad to prevent it from going into a state of disrepair.

Mr. Dickinson asked whether Ms. Kissane had an estimate as to how much it would cost to insure the railroad and Ms. Kissane replied in the negative. Mr. Dickinson reminded them one of the benefits the County received from the contract with SNCR was that they had expended millions of dollars to maintain the railroad tracks. He remarked it was necessary for them to determine what the cost would be for the County to insure and maintain the railroad, as he believed it may prove to be very costly. He added he was unsure how much equipment the County owned that was used for the purpose of maintaining the railroad tracks. Mr. Hajos advised the DPW had sold all of the equipment used for this purpose when SNCR assumed railroad operations.

Mr. Wild asked what liability exposure the County would have if there was no traffic on the railroad and Ms. Kissane responded she was unsure and would have to look into this. She added her instinct was that there would be none since there was no traffic; however, she noted, she was unsure if SNCR was still hauling trains over the tracks or whether they had insurance and were continuing on with the maintenance. Mr. Dickinson stated the other issue involved the road crossings because if they were no longer maintaining the tracks and there was an accident at one of the road crossings it could result in a major issue. Mr. Wild questioned whether the County would be liable if SNCR was running trains along the tracks without maintaining them or carrying the required insurance and Ms. Kissane replied in the affirmative. She explained since the County owned the railroad she believed they would be liable in some way.

Mr. Dickinson questioned whether SNCR was still operating and Mr. Benway replied they had indicated to him they were doing maintenance by train. He added at the last meeting they advised that the contract with the individual who maintained the crossing signals ended today and if they had not taken any action to fully pay this individual and continue on with the contract then the County would have to contract with this individual to have the crossing gates pinned off to prevent trouble calls from occurring.

With regard to liability, Mr. Loeb stated that he felt issues occurring on the tracks when there were no trains running, such as child walking along the tracks falling down, should be covered under the County's current liability insurance since it was County-owned property and Ms. Braymer concurred. Ms. Braymer inquired whether the insurance and maintenance costs could be included in the Trackage Rights Agreement with SNCR, as she was unsure if this would be considered a reasonable cost. Ms. Kissane stated the definition of a reasonable cost as per the Surface Transportation Board was "a rate that did not prevent commerce"; she said she was unsure of anything beyond that.

Mr. Merlino asked Mr. Lucia if the Town of Corinth was carrying insurance on the railroad racks and Mr. Lucia replied in the affirmative. Mr. Merlino inquired whether Mr. Lucia had any idea how much the insurance cost and Mr. Lucia replied he did not, but thought it was rather costly.

Mr. Hajos apprised he felt compelled to point out that if SNCR's contract with the individual who maintained the crossing signals did in fact end today it did not mean SNCR could not run trains on the tracks. He explained SNCR could do manual crossings where an individual was placed on each side of the crossing with flags stopping traffic to allow the trains to pass through.

A discussion ensued during which Mr. Lucia inquired whether Justin Gonyo, *SNCR General*

Superintendent, had been invited to attend today's meeting to which Mr. Simpson replied in the affirmative. Mr. Simpson stated he had received a letter from Mr. Gonyo indicating that Ed Ellis, *President, Iowa Pacific Holdings*, was unavailable to attend any meetings until after May 8th, a copy of which was forwarded to all of the Committee members. He said Mr. Gonyo had been under the impression that he was going to cancel this meeting, but he had notified him that was not the case. Mr. Lucia pointed out Mr. Gonyo would have been able to answer many of the questions that were being asked. Mr. Simpson apprised that he had provided him with the option to attend.

During the discussion Mr. Simpson advised yesterday he received notification that a railroad owned by a Commission in Santa Cruz, California was going through the same issues with their contract with Iowa Pacific Holdings. He asked Ms. Kissane to elaborate on her phone conversation with the individual in charge of the Commission regarding the action they were taking. Ms. Kissane apprised following the county in California's purchase of 31 miles of railroad in 2012 they entered into a contract with Iowa Pacific Holdings LLC. She explained that Iowa Pacific Holdings retained an easement from Union Pacific and owned the land that the railroad tracks were on, but the County owned the railroad tracks and all of the equipment. She informed Iowa Pacific owed this county \$100,000 and had not made any payment; therefore, she said, Iowa Pacific agreed to assist the county with locating a new operator. She said this county was working with Progressive Rail, who was based out of the State of Minnesota. She mentioned during the time in between operators, Iowa Pacific had let the railroad tracks go into a state of disrepair; therefore, she noted, this county had to pay \$150,000 in order to return the railroad tracks to operating condition so they could move forward with a contract with the other operator.

Mr. Simpson called for a motion to enter into executive session to discuss the performance of a particular contractor. The necessary motion was made by Mr. Dickinson, seconded by Mr. Loeb and carried unanimously.

Executive session was declared pursuant to Section 105(f) of the Public Officers Law.

Executive session was held from 2:04 p.m. until 3:21 p.m.

Upon reconvening, Mr. Simpson announced no action was taken during the executive session.

Mr. Wild requested a timeline for when Ms. Kissane would be meeting with Nixon Peabody LLC to get answers to their inquiries and Ms. Kissane responded she would notify them today that the Committee had approved their contract, but she was unsure of their availability to meet with her. Mr. Wild asked if she thought she could have answers within three weeks and Ms. Kissane replied in the affirmative.

There being no further business to come before the Public Works Committee, on motion made by Mr. Dickinson and seconded by Mr. Loeb, Mr. Simpson adjourned the meeting at 3:22 p.m.

Respectfully submitted,
Sarah McLenithan, Deputy Clerk of the Board