

TOWN OF LLOYD TOWN BOARD

SPECIAL MEETING

AUGUST 15, 2012

Present: Supervisor Paul Hansut
Councilmember Kevin Brennie
Councilmember Herbert Litts
Councilmember Michael Guerriero
Councilmember Jeffrey Paladino

Also Present: Sean Murphy, Attorney
Rosaria Peplow, Town Clerk
Kate Jonietz, Secretary

6:00 PM – Supervisor opened the Special meeting and led the Pledge of Allegiance.

Supervisor said that he attended a meeting of the Ulster County Transportation Council today and noted that some changes were discussed at that meeting.

Supervisor introduced Dennis Doyle, Director of the Ulster County Transportation Council, and asked those present to allow Mr. Doyle to finish speaking before asking questions; he asked those who would like to pose a question to raise their hand, stand, and state their name and address.

Dennis Doyle said that he was also the Planning Director of Ulster County; the Transportation Council is a federal creation to do the planning work for use of transportation funds in Ulster County. The Council also programs federal funds for use by federal aid projects. This is the fund source for the Tillson Avenue interchange.

Current funding levels for the Transportation Council are limited and Congress just passed a bill called Map 21, Progress and Transportation for the 21st Century, which takes effect October 21 and continues a lot of the funding sources at about the same funding level that we have, which means that we are really straining to make sure that we can be able to maintain the system. In addition to using federal funding sources most transportation projects are also funded with state funding. The state funding program is known as Marchiselli funds and the funding levels are established at 80% federal, 15% state and 5% local and that is how the Tillson Avenue project is funded. The state is looking at its ability to continue to fund transportation projects with Marchiselli funds to provide that match and so have developed 'Preservation' and 'Beyond Preservation'. Those projects which don't have enough information to be 'preservation' and may be considered 'beyond preservation' have been asked to provide additional information with respect to its ability to access Marchiselli funds. There are several projects in Ulster County that are going through that and the Tillson Avenue project is a project that the state has asked the Town to provide additional information. It does not mean that it will not get Marchiselli funds. Federal aid projects are funded by phase: preliminary design, detailed design, right-of-way acquisition and then construction. You don't have to worry about recapturing money that was spent at the time that the Town goes through the design process and the decision is made as to what it wants to do. You can go through the design process and choose an alternative that fits the community and fits the funding level; you can choose the 'no-alternative' and go through the entire design process, look at what is available, look at the alternative and decide that given all of the things that are of concern and the issues that you do not want to do the project at all. As long as your design process and your design document matches your chosen alternative the federal government will fund it.

Brennie interjected that is a very important point as that is the first time that has been said.

Doyle said to look at the master contract that the Town probably has, one of the things that has to be analyzed is the 'no-alternative' which is what happens if nothing is done.

Brennie said that the Town was told that the taxpayers would have to reimburse the money that has been spent on the project if it does nothing.

Doyle explained that at the conclusion the design document has to match what you are willing to do. If the conclusion in the design document for a lot of different reasons and justifications says that it was decided to do nothing the federal government and state will say that they accept that conclusion and you will be paid to go through the design process. A number of communities are having that discussion given where they are financially; some of the projects had progressed over substantial amounts of time. If the decision is made not to proceed with the project, the question is asked if the federal government has to be paid back. The money does not have to be paid back if 'no-alternative' is the choice. The other thing is where we are in the funding levels; there has been some discussion with the federal government by NYSDOT with federal highway about being lenient in recovering these funds. We do not have an answer to that but it has been discussed with respect to that because as we look at our ability to fund, we keep pushing projects further

back on the funding timeline and the willingness of local governments to move forward and continue becomes less and less because project costs increase more the longer you wait. The Council is extremely sensitive and aware of local governments caught in this design process and funding process to move forward. We have offered to assist governments in trying to make the 'beyond preservation' discussion and have offered to assist governments in looking at what alternatives to choose so that they are not faced with recapturing.

The Council has moved to provide additional design money for the Tillson Avenue project in response to the Town's concerns in the amount of work that needed to be done in respect to right of way and the additional design concerns in looking at the options that were available which were a normal intersection or a modern roundabout. Where we are now in the justification for beyond preservation is of some concern. It is his understanding that the design process is close to being done.

Tom Baird, Barton & Loguidice, said that the preliminary design report has not as yet been submitted; there is a lot of study that goes into the roundabout so they held off on the preservation.

Doyle said that is what he was going to suggest; as it was discussed today at the Council with the Department of Transportation so that he was up to speed in terms of where they are in getting things done. It may be appropriate to pause while this beyond preservation justification is reviewed and clearly if it is not considered beyond preservation moving the project forward is going to be without Marchiselli funds, which is 15% of the funding source. The community would have to make a choice if its wants to move with just federal funds which would be 80% plus the 15% versus the current 5%. If the community decides not to move it forward it could say that it is choosing the no-alternative so justify the no-alternative and then move that forward. He felt the consultants are probably much more familiar with the nuts and bolts of this process but he has a broad sense of knowledge and we work on a regular basis with the DOT in making sure that the projects do move forward. He asked if there were any questions. In the end the community should not, given the right procedural moves, have to pay back money for doing its design work.

Mark Reynolds, Southern Ulster Times reporter, asked how much the Council was willing to provide in additional funds and when the funds would be available.

Doyle said that the Council transferred money through an amendment to the TIP. The Council allows the Council staff working with DOT to make changes to the TIP for administrative amendments for anything less than \$250,000. I believe that the additional money that was requested to look at the additional design and right of way incidental work because you had more properties that were involved in the roundabout option than the original signal option; 10 or 12 versus 4 or 5 to originally.

Baird agreed that it was 4 to start with and 22 properties on 18 new maps.

Doyle said that he believed that the number that they transferred was \$51,000 or \$52,000. They were not 'transferring dollars', they are 'transferring authorization'; so it is an authorization process and once that process starts, you have contractual work that has to get done with DOT to amend contracts in order to do that and obligate the funds.

Baird clarified that if the properties on Tillson Avenue extend over the hill past Smith Terrace they are part of the project whether the project is a roundabout or conventional intersection.

Reynolds asked how long the process would take.

Doyle said that it depends upon how long it takes to get approved at the federal level, how long it takes DOT to review the justification, issue the contract that continue to act to obligate the funds. It could be as short as two months or as long as six or eight.

Supervisor said that the Town was guaranteed funding of \$3.9-million back in 2006, which was 2006 money. We have received all of the information on this project: the input from the community at public hearings; the traffic data; accident data; information provided by our engineers. The previous administration told him when he took office in January not to allow this project to stop; to keep moving it forward or the Town could lose the money or the project could get backed up. The Board discussed the project and voted to go with the roundabout option. The conversation came up about funding the roundabout and concerns about where the extra \$2-million was coming from that was needed for the roundabout and that the taxpayers would be on the hook for that extra money. He asked Doyle if it was correct that the Town was going to pay 5% of whatever we get funded.

Doyle said that it is not that simple. We can say that the taxpayers of this community are 'on the hook' because when you look at transportation funding, it is not guaranteed. The transportation funding is authorized and there are specific time frames to carry out that

authorization. Usually time frames slip; authorizations run on a federal fiscal year which starts October 1. If the project slips, the Council has to reprogram that money. We are now extremely short dollars so in order for the Council to reprogram the money, we have to find somebody to offset the money. If you don't go in the specified time frame and the funding is not obligated when the Town come back to the Council and says its ready, the Council has to respond you are ready now but we have other needs and we need to find other money to replace this. They are called offsets and we look in the region, statewide, or to ourselves. For example, the money that we programmed for the additional funding for design was programmed because the Ulster County Area Transit had a funding source called STP Flex that it didn't need. County Executive, Mike Hein, decided during our discussions that we would be able to authorize the use of that money by several municipalities. We authorized this project, a project in Kingston and one of the County's projects on South Putt Corners Road in New Paltz.

The funding for these projects is not like a grant, they do not roll over from year to year with extensions, these are reauthorizations in a very difficult funding environment. If you miss deadlines we will have to work with you to find the money to allow you to move toward construction. We have been successful in finding that money for applicants who have gone through the process. If you get your beyond preservation authorization in place you are much more assured to move on.

Supervisor asked if we don't get beyond preservation do we go back to the drawing board and see what can be done with the \$3.9-million.

Doyle said if you don't get the beyond preservation authorization you are not going to get the Marchiselli funds which is the 15%. The community may then reevaluate whether it is willing to spend 20% instead of 5% of that cost. If the project does not make the beyond preservation argument, it is going to be extremely difficult for the Council to find money in addition to what is already authorized to do. They would have to fight the beyond preservation fight in addition to asking for additional money to do a project that is highly needed and fits in with the policies of the state and Council. He was not confident enough to say that is what we should do.

Litts asked if we were to build this project before September 30 of this year the \$3.9-million is allocated.

Doyle replied that you need to obligate the funds.

Litts said beyond this fiscal year we would have to look for offsets to acquire the \$3.9-million and anything above.

Doyle said that is a yes and no question. We would have to look for offsets but as of October we have a new transportation bill; the Council is going to be updating its entire transportation improvement program. We start over; there is a negotiation process among everyone and the TIP has to be 'fiscally constrained'. If we do that and there is a wholesale update of the TIP, there will be a wholesale update of the STIP, the State Transportation Improvement Program. Those are done in concert so there is no offset needed; this is how much money the state has and this is what we decided to fund in this fiscal year. The Town could miss its construction window; we could then update the tip. We could ask the communities that have local projects what year are you ready to go and the first two years 2013 and 2014 are the most important years of the TIP. If the Town is going to be ready to go in 2014, you inflate the costs based on inflation factor so it would not be \$3.9-million, it would be the inflated number and we would authorize that and it would be ready to go in that fiscal year.

Litts said to put us in for \$6.7-million on October 1 and we will all be happy.

Brennie said that obviously Doyle has done a lot of these things for different communities and asked both Doyle and Baird if they have seen a situation where a town gets "stuck" with a more than the 5% bill.

Doyle answered that he had and gave the example of the State of New Jersey which spent \$200-million designing the tunnel and Governor Chris Christie decided not to build it so the federal government asked for their money back.

Supervisor asked if there was anything local.

Baird answered never and Litts said that there is one in Dutchess County; Doyle thought there was one in Westchester.

Doyle said if the Town were consistent in where it is in the design process and how it moves forward, there shouldn't be a risk to the community of not getting paid for this.

Supervisor asked Doyle for the benefit of the community members and the media at this meeting, if he believed that the progression the Town Board took last month in picking an

alternative, moving forward with beyond preservation, that the Board is doing what is best for the Town.

Doyle answered yes and also said that the difference in cost between the modern roundabout and the standardized intersection is going to require a much more thorough level of justification in the beyond preservation argument. That is a lot of additional money to fund.

Baird said that the difference between the two alternatives is about \$750,000. In order to reduce the grade coming in from Tillson Avenue which is part of the problem, we are dropping the road up at Smith Terrace to get a better approach grade and added some impact down the hill and there is also a massive amount of utility work that is involved in the project.

Doyle said that he was led to believe that it was more than that. There are other justifications because of the safety issues and an intersection that is extremely dangerous with respect to the number of accidents per the statewide average.

Baird said that the beyond preservation document was pretty thorough.

Supervisor said that the retaining walls on Tillson Avenue are in bad shape and that is why this is one big project so that all of the issues are addressed at one time when the state and federal money is there.

Brennie asked if there was not a federal stipulation that non-motorized bike paths were required.

Doyle answered that NYS has a Complete Street statute so you have to meet that in your design document; there are other federal requirements that have to be met.

Glen Gidaly, Barton & Loguidice, said that his firm's job is to protect the interests of their clients. Doyle has made clear that the Town as the sponsor is going to ultimately decide which alternative to do based on what happened with the preservation issue, whether it is 5% , 15% or 20%. B&L has done over 160 of these projects and no Town has ever gotten stuck. The other issue he wanted to address was that Doyle said that he is going to ask municipalities if they are ready. Ready means that you have a design report that the DOT has approved. It was clear from this morning's meeting that people are not getting replaced at the DOT and they are down staffed. B&L's job is to keep the Town's project in front of the other projects that are on the list. A few years ago as soon as B&L heard of a federal stimulus program we went to everyone of our clients and said to get prepared because at some point the congressman, Dennis, and the DOT, is going to ask for a project that is ready. If the Town is not ready it misses the opportunity. We had a project in Ellenville going through the same process and it was 100% funded and because we were ready we got the stimulus money.

Doyle said they reached out to all of the communities that have projects and suggested that if they were in the process of doing design reports that they complete the design reports.

Gidaly said that he is not anticipating a billion dollar stimulus program in a couple of months but projects fall off the table. For example one supervisor starts a project and the next supervisor says that they are not interested in that project. The Town wants to 'be ready' as soon as a project falls off the table and you are not ready if you do not have a design report or have dealt with the right of ways; our job is to get the Town ready regardless of what you decide to do.

Doyle said that finding offsets at a regional level is not as difficult as you think it is but it is getting more difficult. There have been bridges the DOT cannot get done, other communities that are willing to offset at the region level but you can also look at the state level for offsets.

Charles Meuser, Chodikee Lake Road, said that the Town can still end up paying that 20%.

Doyle explained that currently the Town is going through a process to justify the project as meeting the non-preservation requirements to be eligible for 15% that is a state funding source. It has nothing to do with the federal funding source. That was only for construction and we have not started construction yet. If the Town made the decision not to do construction it does not have to pay the 15%. It doesn't take away the current fund. The authorization for Marchiselli funds comes from the State legislature; NYSDOT puts forth projects to the state legislature. The state legislature authorizes the amount of money that it is going to fund and then the NYSDOT selects the projects that it is going to fund.

Baird said that the state requires an authorization to advertise the project before you put the project out to bid; the state authorization means the money is programmed for construction. The state would not allow the Town to bid the project unless the funds are in place.

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Doyle promised that if the Town needs additional money we will work with the Town to try to find it and they have been successful in the past.

Paladino asked what triggers the availability of the Marchiselli funds.

Doyle replied that the state is looking at how it can influence the projects that are done at a local and state level and they have decided that one of the things that they wanted to do was to look at how state money is given to local projects. The Marchiselli fund is named after Senator Marchiselli and it will match federally funded projects at a 15% level. The state is now willing to match certain federally funded projects and those projects deal with preservation. Anything that is beyond preservation must justify the use of Marchiselli funds and the NYS DOT puts those projects before the legislature and the legislature decides the funding level for Marchiselli. If DOT decides not to put the project in local legislators could be lobbied to put it in the bill that funds the Marchiselli program. It is not clear that the rules require that the NYSDOT chooses the project.

Litts asked if there was a movement now to take it out of DOT's hands and let the legislature decide.

Doyle answered that there are 13 NPO's in NYS and a NPO Association. There are three in the Hudson Valley: the Poughkeepsie/Dutchess NPO; Orange County and Ulster County. There has been some discussion among the NPO's about the issues associated with beyond preservation. He did not know if somebody proposes to take it out of their hands. He did not think that anyone was opposed to the idea of using limited resources to do preservation rather than to do projects that are; we want to make sure bridges stay up rather than some of the other issues. We had a gentleman in front of the Council today talking about a bridge that is not R-rated, not deficient; it just does not look nice. In this funding environment, 'it doesn't look nice' is not necessarily a priority.

Baird asked the number one criteria for beyond preservation.

Doyle said that safety and modernization are the two concerns.

Baird said that those two pertain 100% to this project and with an accident rate of 6.8 times more than other intersection in the state he did not think that the safety component of beyond restoration could be ignored. This is the alternative that best proves the objective which is safety.

Supervisor asked if there were anymore questions of the public regarding funding.

Rafael Diaz said that the western expansion of the Rail Trail is another project in Town that is TIP with the same engineering firm consultants. We have been told that if we do not go ahead the \$200,000 that has been spent thus far would have to be returned. He asked if that were true.

Doyle replied that if a design document has been completed and you have design approval and you have been authorized for construction then you chose an alternative, your design document supports that. The community has to move forward with the choice that is supported by the design document. I do not know what your design document says or where you are in that project.

Baird said the difference in the two projects is that this has federal aid and is STIP funded; that project is TEP or Transportation Enhancement Program, once you are given that money and you start spending it, you need to complete the project or give it back.

Doyle agreed that was a different funding source with different matching requirements and once you start, you must finish.

Ethan Jackman said he has questions regarding his own property but he will ask them after the meeting.

Reynolds asked the status going forward today.

Supervisor said that we were going to keep moving forward and do the design plan.

Baird said that the Town submitted the beyond preservation justification form to DOT last Friday, which documented all of the reasons why this project needs to be more than just rehabilitation. He thinks that the Town Board should discuss the options if it is determined that it is not beyond preservation and Marchiselli funds are pulled for construction. He would like to know the time frame for review of that.

Doyle said that he asked the Region this and the Region doesn't know. They could come back and say rather than yes or no, that this portion is and this portion isn't i.e. the intersection portion is and the other design issues are not. Variations of this could happen.

Baird said that being ready was mentioned; with the reduction in staff at DOT we have heard that it takes them a year to review a right of way. It would take about 8 hours for someone to review a design report but they will not get to it for 8 months. Moving the money along to other fiscal years is going to depend upon the reaction from DOT Region 8; we will make the appropriate submissions and we have to wait. He estimates it would be 2 years

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before we have a set of plans that would be acceptable to be reviewed by DOT for bidding because of their review time.

Litts asked Doyle the Marchiselli funds are off the table if the DOT deems the alternate that is picked beyond preservation and then the Town resubmits with an alternate that is less costly and meets the criteria for preservation.

Doyle replied 'no' and said that as a matter of fact, some of the work on roads and bridges may see deck replacements instead of bridge replacements. If we get a decision that says that we should not replace the bridge, we should do something else. A lot of our bridges were built and the federal highway infrastructure was built in the 1960's. That infrastructure is now 50 years old and the life of most bridges is 50 years. The problem is that a lot of the infrastructure is coming due and finding ways to extend the life of the bridges and work with what we have available is in everybody's best interest. We are currently looking at funding levels in 2012 that are pretty much what they were in 2009 and yet the amount of infrastructure that is being asked to maintain is significantly more.

Supervisor thanked Dennis Doyle and said that this has been very informative.

MOTION made by Litts, seconded by Brennie, to adjourn the meeting at 6:45 PM.

Five ayes carried.

Respectfully submitted,

Rosaria Schiavone Peplow
Town Clerk