Herkimer County Legislature
Committee on County Properties and Ways & Means
Committee Meeting
Friday, July 31, 2020
Via Teleconference
Follows Natural Resources and Ways & Means

Persons Attending:
Raymond Johnson (Chairman, County Properties, Ways & Means committee member)
Mark Gaworecki (County Properties committee member)
William Weakley (County Properties committee member)
William Keeler, Sr. (County Properties committee member)
Robert J. Schrader (County Properties committee member)
Ray Donley (County Properties, committee member)
Patrick E. Russell (Chairman of Ways & Means)
Kurt J. Ackerman (Ways & Means committee member)
Raymond Smith (Ways & Means committee member)
Frederick J. Shaw, Jr., (Ways & Means committee member)
John P. Stephens (Ways & Means committee member)
Vincent J. Bono, Chairman of the Legislature
James W. Wallace, Jr., County Administrator
Brandy Serow, Sec. to County Administrator
Lorraine Lewandrowski, County Attorney
Sheri Ferdula, Budget Officer
Jill Schrader, Personnel Assistant
(Non Committee Members signed in)
Legislator Gregory Malta, Sr.
Legislator Bob Hollum
Legislator John L. Brezinski
Legislator Peter F. Manno
Legislator Peter Campione

Absent:
N/A

Mr. Johnson called Properties to order at 9:48 a.m.

Items Discussed:
COUNTY PROPERTIES AND WAYS & MEANS:
1. Award snowplowing contract for the new jail
2. Solar Agreement - TABLED
3. Other

Committee Vote Record
COUNTY PROPERTIES AND WAYS & MEANS:

Mr. Johnson: "First on the agenda is award a snowplowing contract for the new jail. We have some issues I guess, I will let Sheri speak on this."

Sheri Ferdula: "Sure. We went out to bid for a snowplowing contract for the jail. The bid was mailed to the contractors, one of them being Central Paving. The bid was also placed on the County website so people could access it off of there. We did a walk through, only one contractor showed up, which was Art Bass. When the bids came in we received a bid from Central Paving at $1,140 per visit and a bid from Art Bass Concrete at $850 per visit. Those were opened at the time of the bid opening. In that days mail, that morning, we came across another bid which was not clearly marked on the front of the envelope. It was just addressed to Purchasing. So inside of the envelope was the actual bid, it was not opened at the time of the actual bid opening but it was here at the time of the bid opening. That was from Kubecka's Lawn Landscaping at a price of $650 per visit. The issues with this are, the only person that bid this 100% correctly was Art Bass Concrete. They followed the instructions, they read the addendum and they gave us everything that we asked for. Central Paving did not address what was in the addendum which was a time period per visit, they later addressed it after they had seen the bid tab and said that their visit constituted five hours but we can't really accept that information after the bids have been opened. The third and lowest guy, Kubecka's, he also did not address the time. In this situation we have the option of overlooking the fact that the low bidder did not write snow plow bid on the front of it, we have the ability to do that and accept the lowest bid. We can throw that bid out and accept the second lowest bid which was Art Bass Concrete who did follow all of the instructions, or we could rebid it."

Mr. Russell: "What were the bids again?"

Sheri Ferdula: "It was Central Paving at $1,140 per visit, Art Bass Concrete at $850 per visit, and Kubecka's Lawn Service at $650 per visit."

Mr. Johnson: "With an additional $300 for salt and sand on Central Paving, $150 for salt and sand with Bass, and $150 on Kubecka's."

Mr. Schrader: "Mr. Chairman, I think what we need to look at is the hour visit. Sheri did you specifically ask for on the bid package the hour?"

Sheri Ferdula: "In the bid package we did an addendum which is in your packet that you have right there. The addendum specifically asks for a time frame."

Mr. Schrader: "And that was on the website also?"

Sheri Ferdula: "Yes."

Mr. Johnson: "If I could jump in here. My only issue is, we're looking at a completion date now of October 1st. I think it is going to be more November 1st. We're talking seven to eight months turnaround time for transition and all that stuff. I was thinking we bought a new truck for the Sheriff this year with a plow on it, I just can't see jumping into any contract. The facility is not going to be running so if a guy goes over there and plows and takes five to six hours, for this year do we need a plowing contract? I don't see the facility opening until spring. If I'm wrong jump in."

Jim Wallace: "I don't agree but that's me."

Mr. Johnson: "I'm going worst case scenario. Or Sheri, my other thought was Highway but they would have to buy a new piece of equipment. Do we give Highway a new piece of equipment for the summer time, a loader, that they use and need and we use it in the winter time? I am just throwing it out for the Committee, whatever you guys want to do."

Mr. Keeler: "Worst case scenario, I think maybe we should reconsider the bids, maybe eliminate all three and start over. That's the worst case scenario."

Mr. Schrader: "Mr. Chairman, I would like to make a motion to rebid."

Mr. Donley: "I feel that the guy that did it right, why would we punish him? Everybody had the same instructions. If one guy did it right and two guys did it wrong why would you punish the guy that did it right?"

Jim Wallace: "Trying to get the best deal for the taxpayer."

Mr. Donley: "I understand that but if you put it out to bid and you put it out for a Ford and they send you a Chevy, you're not going to take the Chevy."

Mr. Weakley: "I agree with Ray. This submitting the bid problem wasn't any fault of the County. The problem would be if we rebid it because now we're looking like the voting issue. You know, we act so fast and change the rules. I did like your input on the County doing it this year to see how it goes. It's not a bad idea. We might want to think about that a little bit more. I don't think we need to rebid this. I think the bid that was properly submitted should be considered and that is my opinion on that."

Mr. Johnson: "Mr. Schrader, you had made a motion."

Mr. Schrader: "I'm in agreement with you holding off on the whole contract, but if we are going to do it then we should rebid it."

Mr. Russell: "How much is this going to cost us do we figure?"

Mr. Johnson: "For $1,000 per visit give or take. My question to Sheri is, it bothers me who calls the guy to snow plow? I don't want a guy and I don't mean to slam anybody but you don't want the Sheriff on second shift, who doesn't want to walk to his car because he doesn't want to walk through two inches of snow, so he calls up whoever and says come down and salt the parking lot. You could rack up $2,000 to $3,000 per day."

Mr. Russell: “How many inches do they come and so forth?”

Mr. Johnson: “Two inches or more, right Sheri?”

Sheri Ferdula: “Three inches or more and if there was a situation where it needed to be plowed that would be at the Sheriff’s discretion to decide who makes that call.”

Mr. Russell: “This is going to be expensive.”

Mr. Johnson: “That’s why I thought if we did it ourselves we could get a better handle this year.”

Mr. Malta: “Mr. Chairman, I think that is a good way to go this year.”

Mr. Smith: “I’m not on the Committee but I agree with Ray and Bill that punishing the guy that did it right is wrong. They all got the bid packets and they had the opportunity to do it right and they did it wrong. Those bids should be thrown out.”

Mr. Keeler: “I agree with Ray myself but if we decide to not take any bids, what would it cost us to upgrade to be able to do it ourselves?”

Mr. Johnson: “Well if we have our truck that we already bought for $30,000 and put a plow on it, but we won’t have inmates there constantly so if it takes the guy longer, there are no inmates there. So you’re going to keep it plowed and well maintained for who? We’re in transition. We don’t know the time of transition. Jim was told two months, we’ve talked seven or eight months.”

Mr. Bono: “At full capacity there’s going to be a two to three month time where we have to tweak everything. At the latest I’m figuring the end of the year that we would be fully occupied. We can’t control this year’s snowfall with next year’s snowfall, no one has any idea. We don’t know what is going to fall this year versus next year. I like the contract because they come. They know they have the job, they come. With us, we have to pick up the phone, call someone in for overtime, they take their time to get there, we have fire issues. Even though it might be empty for a few short months our insurance could say you have to have it plowed in case the fire trucks have to get in. A lot of people have snow contracts. I agree with Ray we shouldn’t punish anyone for doing it correctly. Give it a shot at the $850 for a year, $1,000 with salt and sand and maybe we can have the Sheriff use his discretion on when it’s going to be plowed.”

Mr. Johnson: “Or we could bump the inches up for the first year, maybe make it four and a half to five inches.”

Mr. Bono: “The contract is the way to go guys. Certain things we can do, certain things we can’t. We can’t compare this with any other given year.”

Mr. Stephens: “Jim just made basically the same statement I was going to say. Some of us didn’t consider that might have to be open for emergency services even if there isn’t an inmate. Even if you have a medical emergency with a staff member, that is still going to have to be opened up. The whole facility is going to have to be opened up. I agree I don't think we should punish the one bidder that did it properly. I think we should go that route for this year and see what happens."

Mr. Gaworecki: "I agree with what Jim and John said but I would also like to ask, like mentioned, can we increase the inches for when the contract comes and maybe we do it less than that and also put a stipulation on when they salt and sand. For instance, if they come and we know there is still going to be a foot of snow coming why put the salt and sand down?"

Mr. Russell: "This could be $3,000 per day on a good snowfall."

Jim Wallace: "I would think you would spend about $7,000-$8,000 the whole year on a contract going by our past practice but like what Jim said, who knows, do you get killed this year with snow or don't you get killed with snow? I don't know."

Mr. Johnson: "And if it is a slow year you have to watch out because who makes the call it's three inches? Any snow contractor that's having a bad year can say 'hey there's three inches, I'm over there salting and sanding.'"

Mr. Bono: "Me personally, I let it all fall. Let it all fall, do it once. You could put that in there too."

Mr. Gaworecki: "Who does it if it's less than three inches?"

Mr. Johnson: "I was told originally that's what the truck was purchased for. The Sheriff would keep it clean with the plow truck. Right John?"

Mr. Stephens: "I believe that was part of the discussion, I don't know where it ended but that was discussed."

Mr. Bono: "I make the motion to go with the justified bidder."

Mr. Shaw: "What is the motion Ray?"

Jim Wallace: "To go with the second highest bidder who did everything correctly."

Mr. Schrader: "I will agree with that if we can up the inches. Can we do that, can we put that in the motion?"

Mr. Johnson: "Can I ask one thing, does that change the contract Lorraine?"

Lorraine Lewandrowski: "Yeah I think you would have to stick with the bid specs."

Mr. Weakley: "What are we changing now?"

Mr. Johnson: “When he gets called.”

Jim Wallace: “They’re saying three inches or four inches on the floor.”

Mr. Weakley: “It’s in the contract that its three inches, keep it three inches. Otherwise you are changing the contract.”

Jim Wallace: “That is what Lorraine said.”

Mr. Schrader: “Bill, I’m just saying that due to the unknown of when it is going to be open this year is what I’m saying.”

Mr. Johnson: “Mr. Schrader is talking about raising the inches when #2 would be called. Instead of three inches, taking it to four inches. We have a motion and a second on the floor for three inches per the contract.”

Mr. Russell: “We have the right to reject any and all bids?”

Lorraine Lewandrowski: “Yes, the bid specs always say we can reject all bids and rebid.”

Mr. Johnson: “I have a first and second for three inches of snow.”

Sheri Ferdula: “I just wanted to let you know something, when we did walk around with the contractors and we discussed when we would be open and when there would be inmates, the Sheriff and I talked about possibly blocking off some of those bigger parking lots that we might not need when we don’t have inmates so that could save us in time and save him with plowing if he didn’t have to do all of those big areas. I just wanted to let you know that.”

Mr. Johnson: “Since you brought that up, that is not them cleaning the rec areas right that is still maintenance going in and snow blowing it out right?”

Sheri Ferdula: “No. The snowplow contract will clean out that gated area by the rec yard.”

Mr. Johnson: “Okay.”

Item #1 - On motion of Mr. Bono, seconded by Mr. Donley for the County Properties Committee and on motion of Mr. Stephens, seconded by Mr. Bono for the Ways & Means Committee, Item #1 was voted on, approved and moved for Resolution. Yes: Gaworecki, Keeler, Weakley, Schrader, Donley, Bono, Russell, Ackerman, Smith, Stephens (10). No: Johnson, Shaw (2).

Mr. Stephens: “Just for information, I think the issue with the Sheriff’s Department truck was if they couldn’t get somebody there in time and had an emergency, they would plow. I think that is how it ended up.”

Mr. Johnson: “Next we have a solar agreement. Lorraine?”

Lorraine Lewandrowski: "The College met last night to discuss entering into the purchase of solar credits. The County and the College retained an engineer to review the proposal that was submitted by WMR. The engineer recommended adoption of the agreement. It was calculated that the agreement would result in roughly $50,000 savings for the College's electric bill annually over the next twenty year period. There was some discussion of penalties in the event that the College was to cease operations. However all in all the College Board of Trustees recommended entering into the agreement and they adopted a resolution but it is subject to a stipulation that an addendum be added to the contract that would put in writing that educational opportunities would be provided by the solar developer to the college students such as a live feed showing the electrical output of the facility, opportunities for the students to visit the solar site, copies of the contracted solar materials talking about solar projects in general. I am going to talk with the solar company today to see if they will do such an addendum. So the resolution was adopted by the College requesting that the County approve the College getting into this agreement and then we would also need to approve entering into the agreement for ourselves."

Mr. Bono: "We already had a motion for this."

Lorraine Lewandrowski: "Yes, the committee had approved it earlier when the engineer gave us a report on the three proposals that were submitted but we need a Resolution authorizing someone to sign the contract itself."

Jim Wallace: "Lorraine, what money could we be held liable for?"

Lorraine Lewandrowski: "This contract had a provision for penalties in the event that the entity would cease using this facility. We hired the engineer to calculate what that would be for the College itself. The penalties for the County would be half of the College's. So the penalties, if you were to get out of this contract, I'm not sure under what circumstances the County would ever want to terminate it, but if we did we would be subject to pay them the entire VDER credit for the remainder of the term. For example we did one calculation for the College, if the College got out at year ten the penalty would be $2.5 million dollars. This penalty would diminish over time. I have the chart here, the biggest thing was the penalty on the part of the College and the County's would be half of this. If you got out in year one the penalty is $4.2 million dollars, year ten the penalty is $2.5 million dollars, year 17 is $849,000. That would be a penalty that the College would have to pay if they exited. This question came up with COVID. When we see educational institutions around the country having trouble, you know some of them may not survive. This whole COVID situation where they are not taking in students, the question was asked and the engineer calculated the penalty. Those are some pretty hefty penalties. In the College contract, I did get them to include a clause that the County would not be held responsible for these penalties. This question is coming up around the state, if community colleges were to get in trouble, to what amount of responsibility does the sponsor have towards any issues that the colleges have? There's not much case law on it but some of the attorneys that work with the college system have a little bit of concern in terms of community colleges and their relationship with the sponsor. We did review these penalties last night, the College trustees were willing to move forward in light of the savings which would be about $1 million dollars over a 20 year period, $50,000 per year. If the County were to get out of it, I can't really foresee what it would take for us to want to get out of it unless some better deal came along, we would also face penalties. I guess we have to weigh the potential savings over this risk of these penalties out there. I will add that the RFP that was developed had a clause that there would be no penalties. The two other projects that bid did not have penalties but they were a completely different type of project, they were community solar where you could get in and out, it's in a facility where you are just a small part of the facility. This one is a facility dedicated to us, the College and the County and it is in Herkimer County. The ones that we looked at last year, the facilities were not in Herkimer County. This one is on Shells Bush Road next to the old hydro facility. The Legislators have to weigh the risk of penalty even if it's a slight risk versus what the annual savings could be. Two thirds of this contract goes to the College because they use more power than us. The Board of Trustees had a two hour discussion last night and voted to approve the contract but only if this addendum could be added that education opportunities could be provided to the students."

Mr. Russell: "I have a question. So, part of the RFP was to have no penalties is that correct?"

Lorraine Lewandrowski: "Correct."

Mr. Russell: "So we just decided not to hurt somebody who did it right in Highways and we are finding out that these people did it wrong. So we are approving a contract that has penalties in it despite the fact that we asked for no penalties but in the plowing contract somebody did something wrong, we didn't want to hurt the other individual but in this case it was ok. It's just confusing to me."

Mr. Bono: "I had assumed that there were no penalties based on a conversation two weeks back. That's why I made a motion but this is new to me."

Lorraine Lewandrowski: "The penalties by the College would not have to be paid by the County, I did get them to add a clause saying that the County of Herkimer shall not be responsible for any termination payments, penalties, or other obligations of the buyer, Herkimer County Community College. So the County itself would not be responsible for any penalties that the College could accrue and those are big penalties. They did agree to add that clause saying they would not try to hold us responsible. I did have concerns initially, say if the College closed, hopefully not but you don't know but what if it did, then we would be sitting there even after ten years with a $2.5 million dollar penalty. So they did agree to say they would not go after the County. With that said, they could still try to go after the College for penalties. I did express this concern to the developer and the developer said we could easily sell this contract to other off takers. So I said ok put that in writing. They did agree to put in a clause that says they would make a good faith effort to assign this contract over to someone else and if they did that, that they would then only hold the College responsible for whatever it cost to find a new off taker which would be legal expenses, advertising, or engineering fees. So if the College got out after ten years and this penalty was out there the developer would then try to assign another buyer for the remainder of the term. I can't predict ten years from now if it would be easy to find another buyer or if it would not be. We asked that of the engineer last night and he said he felt this was a good project and that the way things are right now they would be able to find another off taker. This is kind of like the windmills, where they would reassign the project over and over. That is not 100% certain, there is a degree of risk on the penalties. They have put this in writing though that they would try to find another off taker and assign the whole project over to somebody else. I'm not sure if that would be someone in this County or not. This is the best that we've been able to do in terms of dealing with the penalties. The project investors who finance these projects want some assurance that they will always be getting money, whether it's these VDER credits or payment from one of the entities that has entered into the agreement."

Mr. Bono: "So if this one doesn't pass then we would never do a solar project because you are saying that they are all like this?"

Jim Wallace: "No, the other ones were not like this, they would let us get out."

Lorraine Lewandrowski: "Yeah the other ones were community power. Community power lets you get in and get out but you are only a small part of the project, it is not dedicated to you. This one would be dedicated to us. The other two that we talked about last year were in other counties, the facilities themselves. The discussion last year, part of it was that the Legislators wanted a project that was in Herkimer County. I don't think it's possible to escape from these penalties if you are in this type of project which is not the community power where you get in and get out. We still have the unknown, we don't know for sure if they are going to be willing to give us an addendum stating all of the educational things they will do for the students. When I had asked them a couple of months ago they said they didn't want to do that because they like to have their contracts uniform so they can market the project. I was going to get on the phone this afternoon and see if they would do that. The College made it clear that they approve of the contract but only if the addendum is added stating that they guarantee educational opportunities for the students."

Mr. Johnson: "So we have a motion to move forward with that or with no penalties?"

Jim Wallace: "The motion is to accept this agreement as we speak."

Mr. Hollum: "If the College gets penalized, what would happen to the budget with the million dollars because they are handing it out to these people? I still feel like somehow we are going to be penalized. Initially when the Committee voted on this, it was voted on because there was no penalties. I just think it's crazy, they're making money regardless. I obviously like the idea of saving $1 million over the course of 20 years but we could be passing this problem down to other Legislators down the road."

Mr. Russell: "Well the penalties were in there before, it was just the concern if the College went under, who was going to be paying that bill. I didn't want the taxpayers of Herkimer County to have to pay that bill."

Mr. Malta: "Just to add on to what Bob said, the College trustees met last night for a few hours on this, it probably made it a little easier to approve it knowing that if there is a penalty the Legislature has to pay half of that. Am I right?"

Mr. Bono: "Why would the College get out? For what reason?"

Lorraine Lewandrowski: “The question about the College getting out was not so much them voluntarily getting out but if COVID went on for a couple of years and their number of students went way down.”

Jim Wallace: “You’re going from 3,000 FTE’s down to 1,400 FTE’s. You’re seeing colleges go bankrupt every other day.”

Lorraine Lewandrowski: “I did look at community colleges going bankrupt nationwide. In California there have been a couple of community colleges that declared bankruptcy. So that could be a reason that they would have to get out. The engineer said he thought it was very unlikely that they would get out and that all of these types of agreements have this penalty but then some of the conservative members of the trustees were like, we don’t like any penalties at all, but then the other side of it was, well then we will never get into one of these contracts because a lot of them have this unless you went with community power where entities can get in and get out.”

Mr. Russell: “Originally when this was talked about, and Jim Bono is the one who told me because he had talked to the guy, they said that they were going to be doing that with the College. I think this is where all of that came up. They made the statement that this was their plan to do all of this with the College. Then they took it back. Is that a fair statement Jim Bono?”

Mr. Bono: “Yeah, I think early on in the talks that is what they said, I didn’t know that had taken it back.”

Lorraine Lewandrowski: “They didn’t put it in writing. I said can you put that in writing, we would like to draw up a little addendum. So that is what I am going to ask them this afternoon. The trustees approved of this but we need to have this addendum in writing, specifically to protect the interest of the students, like Electrical Engineering majors, that they would be able to go do visits, they would get live feeds, they would have educational opportunities.”

Mr. Schrader: “Can I make a motion to table this until Lorraine finds out?”

Mr. Russell: “Why are we tabling this?”

Mr. Johnson: “For Lorraine to talk to the company about the agreement with the College for the addendum.”

Lorraine Lewandrowski: “Putting it in writing what they will do for the College.”

Mr. Russell: “Does that matter to us?”

Jim Wallace: “They are not going forward if that doesn’t happen.”

Mr. Schrader: “Mr. Chairman, isn’t it true that if we don’t both lock in then we are not good at all? That is what I was told.”

Mr. Russell: “Ok then. So we can either get a motion to vote or get a motion to table.”

Item #2 – On motion of Mr. Schrader, seconded by Mr. Bono for the County Properties Committee and on motion of Mr. Stephens, seconded by Mr. Johnson for the Ways & Means Committee, Item #2 was tabled. Unanimous.

Item #3 – N/A.

On motion of Mr. Keeler, seconded by Mr. Gaworecki, the County Properties committee adjourned at 10:26 a.m.

The Ways & Means committee continued.