

Economic Development Transcript 3-3-2022

SPEAKERS

Steve Bulger, Blue Neils, Jason Kemper, Michael Hartnett, Matt Veitch, Joe Grasso, Jenniffer McCloskey, Kevin Veitch, Kevin Tollisen, Several Supervisors, Mark Hammond

Kevin Tollisen

Good afternoon, everyone. Welcome to Economic Development on this beautiful Thursday afternoon. Attendance has been taken. First item on the agenda is approval of the minutes of the February 3 2022 meeting.

Matt Veitch

I'll make the motion.

Kevin Tollisen

Supervisor Matt Veitch. Is there a second. The other Veitch.

Joe Grasso

Joe Grasso, second.

Kevin Veitch

Second.

Kevin Tollisen

Supervisor Kevin Veitch.

Matt Veitch

He's older, so he's really not the second.

Kevin Tollisen

Oh boy. I will move right along. Any further discussion? All in favor?

Several Supervisors

Aye.

Kevin Tollisen

Any opposed? Motion is carried. All right, the next item on the agenda, our director Ms. McCloskey requesting a resolution to accept grant funding.

Jenniffer McCloskey

Hi, everyone. So this agenda item is to accept additional funding for a grant that we were awarded back in 2020. It was an emergency grant from the New York State Department of Labor for those employees

laid off or affected by COVID. We were originally given about \$43,000. Every area in the state was awarded money and not everyone spent theirs. So they recaptured and redistributed. And so we are accepting around \$74,000 for Saratoga, Warren and Washington Counties. Of which \$38,811 will stay here in Saratoga County.

Kevin Tollisen

Sounds like good news.

Jenniffer McCloskey

It is.

Kevin Tollisen

All right. Any questions for the Director? Not it could have a motion to approve.

Mark Hammond

So moved.

Kevin Tollisen

Supervisor Hammond. Is there a second?

Kevin Veitch

Second.

Kevin Tollisen

Supervisor Kevin Veitch. Any further discussion? All in favor.

Several Supervisors

Aye.

Kevin Tollisen

Opposed? Motion is carried.

Jenniffer McCloskey

Thank you.

Kevin Tollisen

Thank you. The next item on the agenda is authorizing a three year agreement with Cornell Cooperative Extension. I'll turn this over to Director Kemper.

Jason Kemper

Thank you, Chairman. I'll just introduce it quickly. And then also Blue Neils is here from the County Stormwater Management Program. So Cornell, Saratoga County contracts with Cornell Cooperative Extension for the County's MS4 Stormwater Program. Typically, this was a three year agreement prior to the pandemic, then in 2021, we did a one year extension at the current rate. Because of the

pandemic it was extended for those reasons. We are looking to extend this back to a three year agreement. This money is provided for in the Planning Department budget. The numbers are outlined below in the memo, it's \$194,441.58 for 2022. And then there's a one and a half percent escalation clause for 2023 and 2024. This is used as a match to the DEC Stormwater Program and those grant funds. So I'll end with that. And I'll turn it over, there was a couple of attachments that were sent out to the Board of Supervisors today from Blue, so I'll let him expand on those. Unless there's any questions for me.

Blue Neils

Thank you. So does anybody have any questions about the contract? First of all, or the program in general? Okay, good. The second thing I came to talk about, of course, is there as I mentioned in my email, the draft permit that I think all of you, each one of your municipalities is in fact an MS4. unless I'm mistaken and operate under through the Department of Environmental Conservation. This permit has your personnel and myself fairly worried because it has a great deal of requirements in it. That would be new and or duplicative. So meaning, there are three essential impacts that it's going to hit. The first one is, of course, financial, as I indicated in the email, and in the memo that I'd sent out, one estimate has the increase at about \$1.3 million and the equivalent of one and a quarter full time positions over the first five years of the permit. We're still in the process of looking at their spreadsheets they provided from the Town of Patterson and evaluating it. But we are thinking right now it's going to be closer to, for us here in Saratoga County, probably closer to \$1.5 million, and probably somewhere in the neighborhood have round, you know, 2,500 to 2,750 personnel hours, or, you know, roughly one and a half full time equivalents. So that's the first impact that we can see up front, we'll know more as this permit gets implemented through the next five years. The next is sort of the pragmatics of it, right? Meaning, we already know that most of the personnel that we work with at the local level, this is their second, third, sometimes even fourth tier responsibility. So these personnel are clearly already at full time. So adding to that, right, adds to a greater burden on them. And what we feel when you look through the permit, all 170 pages of it, is that when we go to implement these things, something's going to have to be left undone. Because there just aren't that many people, there isn't that much human capacity or technological capacity available to get these items done. I mean, I've been doing this for 20 years, and for the very first time, I can see a way to get all the objectives, right. I know the processes, I know how to get them done. But I can't see a way given our current capacities, how to reach all those goals in a five year time span. So my favorite example of this is the Town of Clifton Park. Okay. When you look at their reporting record, okay, one of the things that they report on annually to the department is how many catch basins they cleaned and or inspected. Okay. In one year, they are always the highest performer in the County, they do more than literally everybody else. And with good reason, as I'll explain. So they're best year, they got about, I think 620 catch basins. They were over 200 catch basins above the next nearest municipality in terms of the work that they did, great they get three gold stars for that for sure. Then we did their inventory of all their catch basins in their urbanized or their MS4 area about a year and a half, two years later, they have over 6,400 catch basins. So in that best year they had, they still didn't hit 10%. Right? So if you do the math, and they're going at that rate, and at that time, they had three full time employees doing the job, now they have two, okay, so their performance curve has come down a little bit, about 33%, it would take them 10 years in order to hit that five year benchmark that the Department has laid out. We think that these things are oneriest requirements and are putting an artificial deadline on work that is already ongoing. Right? Without

getting too deep in the weeds in the details in the permit. There are a number of things in the permit that are duplicative, meaning we've already done them in the past. Or we will have to do them periodically again and again throughout the year. Right? So here's a quote from the 1990 Reauthorization Act. So this is language from Congress says let's see "it is the national policy that to the maximum step possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork, interagency decision procedures, and the best use of available manpower and funds so as to prevent needless duplication and unnecessary delays at all levels of government" Right, that was the top quote, in 2017, when we submitted comments on the permit. That draft permit is the basis for the current draft permit. And we don't feel as though they have addressed this. This brings us to the last impact, which is the legal one. Many of the things that they've done in the permit are new and unique. One of the things they've done that's new and unique. Up until now, the maximum extent practicable, or the MEP standard has been a self-determined standard. So in other words, you the municipality, know what you have, in terms of an objective from the permit, you know what you have in terms of your budgeting, your manpower, your technology and equipment. So you're the one in the best position to determine, I can do this and that gets me X outcome. Or I can do this and that gets me Y outcome. But these other things, I don't have the money for them. Right? To either buy personnel or buy equipment or whatever the case is. So you're doing this sort of balancing test between outcomes and, you know, the benefits and the cost. That's a pretty simple calculation that most folks do on a regular basis right? Now with the permit the way that they've worded the permit itself, what the Department has stated is that the permit itself, because it now includes all these methods and materials to be used, and timeframes and timetables for delivery, that is now the maximum extent practicable. So there's no gray area between the requirements of the permit and the capacity of the MS4's to be able to get this stuff done. Okay. Here in Saratoga County, we've made a large investment and a lot of stuff in stormwater, not least of which is our GIS system, which is not really a map, it's an asset management system. Because it enables you to do a lot of things, it enables you to track your assets, these are your catch basins, stormwater facilities, municipal facilities, active construction sites, your outfalls, and all the rest of that stuff, right? But you can also use it as a record keeping archive. And it's live, and it's in real time. So we feel like we're well positioned to be able to handle a lot of the workload, okay. I'm not hitting the panic button just yet. We'll see how this goes. But I am deeply concerned by the fact that they chose to now define what the maximum extent practicable is, because that automatically takes away your decision making. So what they're saying is that you no longer have the ability to decide that, and the Department is going to decide this for you. This, in my opinion, is a tremendous overreach, when you consider the fact that the Department has no analysis of existing data, no analysis of existing literature or research from academics, or from real world, and since the advent of stormwater as sort of a subset of civil engineering, we have a large body of research from all around the world on these things. They didn't avail themselves of any of that stuff. They did no cost benefit analysis to look at what are the capacities available, versus the actual cost of implementation? And so all these things add up to an arbitrary and capricious decision on the part of the agency, which I'm sure Mr. Tollisen, as a lawyer could tell you, is a no no when it comes to agencies and how they interact and how they implement and enforce the regulations. So we are very concerned about this. There are a number of other groups across the State that we have been in communication with for any number of years. And we recently met just a week ago, to discuss this whole issue. Some of them are rallying their State Representatives to this cause, not so much to put a halt on the DEC's permit or anything, but to give us more time to evaluate the impacts of the draft. So

right now, Monday is the deadline for submittal, okay, for any comments, and they'll go into a finalization, where they'll summarize comments received, and then they'll make the permit enforced in effect, right? What we want is a simple stay for about 45 days, April 15, to give us that additional roughly four to five weeks that we need to look at the permit all the way through, think through all the measures that they are laying out, and then provide them with comments that we feel as though can guide them to a more successful outcome. It's not like we're trying to stop the permits. But at the same time, you know, the objectives of the stormwater program have always been sort of the same thing. That's to make both sides happy. In other words, we've worked with the DEC in full and good faith efforts for 18 years now. Right? Through education and training programs, providing venue space, so they could get workshops together, on technical trainings and all the rest of that stuff. But we have worked hardest with them on these permits. Right? And they don't seem to be listening to us right now. So in my mind, in my opinion, the only way to get them to actually listen, is to have State Representatives reach out to the Commissioner of DEC and say, hey, you should be a little bit more contemplative about this, and follow a little bit more common sense, which is not trying to jam this permit through in 45 days. But to give the MS4, the regulated community that's interested and willing to put in two cents worth on it. And all the time it takes to go through 170 pages of materials, plus the fact sheet, which is 47 pages. One of my colleagues said that's not a fact sheet, that's a deposition, which I thought was pretty interesting. Because it actually is.

Kevin Tollisen

Just a quick question on this.

Blue Neils

Please.

Kevin Tollisen

Not to interrupt, but

Blue Neils

No, not at all.

Kevin Tollisen

So I just want to be clear here what we're doing. So I'm going to look at the Director as well. So for this resolution, this doesn't affect our agreement with Cornell Cooperative Extension, right?

Jason Kemper

No. The county several years ago chose, rather than municipalities to when MS4 first started, rather than the municipalities to undertake this process on their own, we offered County support and Blue was a lead in that so that we could assist the municipalities in this process. This is solely a contract today, for Cornell Cooperative Extension to be paid to assist the municipalities in the management of their MS4 program.

Kevin Tollisen

Okay, so we need to pass this Cornell Cooperative Extension agreement today. And then we need to get to the more this part of the issue secondly, right? They're related but they're

Jason Kemper

They're related.

Kevin Tollisen

But they're separate for.

Jason Kemper

One involves my Department, one does not. So the contract is administered through the Planning Department budget and is placed in every year's budget. And I handle the payment to Cornell Cooperative Extension, and work with the Auditor to get that paid and make sure that all the services that were outlined in their agreement are provided to the municipalities in the County. Blue wears a separate, Blue's hat is speaking or making the municipalities aware of the issues surrounding the new MS4 Permit.

Kevin Tollisen

Okay. But who is going to have the impact of the extra one or one and a half employees? Is it the County?

Jason Kemper

Every single municipality that is an MS4 community?

Blue Neils

All permittees. That's correct.

Kevin Tollisen

Okay. So we need to take that resolution first. The second part of it is, I want to delve into this a little further, are you looking, so I saw your email earlier. And when I saw your email I, you know, went through it, perused through it, and to be honest with you didn't understand every part of it. Your explanation is crystal clear here, which helps make me understand it better. But I because of this sensitivity and timeline, it sounds like are you looking for something from the Committee today? Or are we looking to, you know, I forwarded your email to the Chairman of the Board and thought that probably the discussion with our Senators and Assembly people, etc. would be better coming from the Chairman, who's our collective voice in this, and kinda just shot that email out to him thinking, you know, maybe this should come from him. But is that the track we're looking for is to try to reach out by Monday, which seems like a very short timeline?

Blue Neils

It is.

Kevin Tollisen

To talk with our Senators and Assembly people and say, you know, we need some calls made to the Commissioner to delay this. Is that what I'm hearing?

Blue Neils

That is correct. So just to give you a little background and why I'm, what drives me here today to talk about this issue. We've been meeting bi-weekly as a group online. The Saratoga County MS4 has a representative Justin Burwell has been on this, Florida he has been on this, Paul Marlow for you guys Mr. Tollisen. And in the last meeting, which was just a week ago today, they indicated that they wanted me to take this issue to the Board, because they felt that the legal issues are something that the County Board of Supervisors should be interested in and would like to see it go up the chain if they could. This was the first best opportunity I had to do that in person on the record. So that's why I'm here in the Committee.

Jason Kemper

And that was after I had submitted the agenda item for the Board. Put us in a little bit of a predicament.

Kevin Tollisen

No, I have no problem. I just want to make sure that or, you know, we're doing what we're supposed to be doing. So I want to take these one by one, but I just want to make sure where we're going with it. And perhaps I'll ask, you know, our County Administrator's office to try to facilitate discussion with the Chairman, and I can certainly help by getting to our elected representatives. Now. I'm seeing Senator Jordan tomorrow afternoon. So I certainly can relay to her, but I mean, I think we have a number of representatives throughout the County that we would need to get to and there's not really a lot of time. So I just want to zero in, is that what we're looking to do to try to get that at this last minute delayed?

Blue Neils

The consensus with the other organized MS4 communities across the State is to try and rally their state representatives Assembly and Senate to speak out, much in the way that Mr. Englebright did in his letter to the Commissioner. He obviously his letter carries some weight because he's the Chair of the Environmental Conservation Committee, which oversees the operations of DEC for the Assembly. So that's important. I mean, what I thought was, I understand that time is short, it's gonna be hard to get folks in line with this. So, I don't know the best way to proceed. I'm not you know, I'm a technical nerd. I'm not really a politics and politicians type of guy.

Kevin Tollisen

The better term is geek is what I head. I'm kidding.

Blue Neils

You know, I'm a man of a certain age. Kevin. So nerd, I'm still like a nerd. Right? You know, but yeah, no, this is all unfamiliar territory for me, I'm sort of a technical wonk whose job is really to be both bookish and available. Right? So this is a little bit new for me. We have for years, like I said, we've engaged in very good faith efforts with the Department. And this is the first time I feel like, you know, the lights are off, and they're not answering the door, even though they're home. And it's really unusual.

So it seems to me that like, well, the only other place that we can go because they're not listening to us, the people will have to, you know, sort of put this in motion for them. Right? Because here's the weird thing about the MS4 permit and why Congress felt the need to treat municipalities differently than regulated industries. You're not a regulated industry, right? You cannot simply shift supply, or raise price points, or other things that businesses can do to absorb the cost of regulation. You guys have to raise taxes. Now here in New York, that makes it even more complicated, right? Because we've got a 2% tax cap. So where does that money come from? Because if it's too much, you can't do it. Right? So long term, what you need to look at is like, Okay, here's the first five year chunk, what are we going to need in 10 years? What can we plan for in 15 years, and so forth. And nobody's really set up to do that kind of stuff. That's a long term thought exercise, that's really just difficult to do at the local level sometimes. Right? So it in essence, though, makes the local municipality, the partner of the federal government, the EPA, and the DEC, because were they to do this on their own, they do not have the personnel, the capacity, the technical knowledge, or the equipment to get all this stuff done their own. Right? So they rely upon us as partners. And we have made this point to the Department tirelessly over the last 20 years, that we are your regulatory partners in this issue. We are not the regulated community, and you need to be careful about how you treat us. Because each one of these communities is its own sovereign constitutionally, you know, predicated thing, you can't just sort of go in there and say, you're going to do X, Y and Z. And that's the way it is, I don't find that.

Kevin Tollisen

Thank you, I'm gonna ask our Administrator to speak now on this.

Steve Bulger

Sure, what I'm thinking is, because time is so short, I think the best approach would be to get a letter from the Chairman, and whoever else, we need to have it signed here at the County by tomorrow. So I'm gonna and I want to work with Jason, and Blue on this. So, you know, we're going to have to move fast, and then get that to all six members of our Senate and Assembly delegation no later than Monday. And if we can follow up with some phone calls as well, to make them aware of the urgency of this. Does that sound reasonable, Mr. Chairman and members of the committee?

Blue Neils

Yeah, I can get started on the language for the letter as soon as I'm done here. So I would be able to have you something certainly waiting for you in your inbox in the morning.

Steve Bulger

All right. So I can work Jason, If I can work with you and Blue on that, and coordinate with my team as well. And we'd be happy to do that.

Jason Kemper

Yeah. And we will assist with whatever. And like I said, it's Blue routinely works with all the municipalities. So you know, I mean, this is obviously important to a lot of those municipalities. And this was Blue's first opportunity to get in front of a Committee or a Board to express those concerns. So.

Kevin Tollisen

All right, very good. Thank you.

Blue Neils

Thank you for your time. I appreciate it.

Kevin Tollisen

Please tell Marlo he ain't getting another person so.

Blue Neils

Well, you know, he's young. He needs to learn to like exercise that a little bit. He's kind of funny. We sort of snicker about Paul a little bit because I'm like, the minute I met him and he was, when he was first hired. I mean, he couldn't have been what, maybe 24, 25 26 years old somewhere mid-20s. And I was like, he already seems like a, like an old man already.

Jason Kemper

The is going downhill, I suggest we move forward on the Resolutions.

Kevin Tollisen

I'll actually like this.

Blue Neils

I do like Paul, though, he's very conscientious. And he does do a good job. And whenever he asks questions, he reaches out to us.

Kevin Tollisen

I do want to extend our sincere appreciation and thanks for coming here today. And I know this is a very important issue and thank you for your passion and input in it. So it sounds like we'll try to do everything we can to, you know, get it out to our resources. Thank you very much.

Blue Neils

Thank you. Thank you all.

Kevin Tollisen

Alright, so I do need a motion on that Cornell Cooperative Extension agreement could have a motion please.

Mark Hammond

So moved.

Kevin Tollisen

Supervisor Hammond, is there a second.

Matt Veitch

Second.

Kevin Tollisen

Supervisor Matt Veitch. Any further discussion? All in favor?

Several Supervisors

Aye.

Kevin Tollisen

Any opposed? Any opposed? Motion is carried. I was just checking to make sure they had on the phone, but we do. So any other business to come before this committee?

Matt Veitch

Mr. Chair?

Kevin Tollisen

Supervisor Veitch.

Matt Veitch

Yeah, just a quick question. So as we all were aware of I guess, earlier this week, there was an article in the Business Review regarding the Prosperity Partnership and the future of that organization. You know, I'm in support of the direction that it appears that they want to go, but I actually have a question for I think either the Administrator or the Attorney. The Partnership is I believe an LDC that we created, as well as we have some tax implications in terms of revenue. But what would be the next steps from our perspective as a County in regard to that process? I'm just not familiar with it.

Michael Hartnett

It's a multi-faceted answer. And it involves components such as Home Rule legislation to potentially advocate for a change in the tax law provisions, as well as under the Not for Profit corporation law that provides some implications if that entity is to dissolve, and what would happen to the funding stream in the event of the dissolution in the near term, what I saw the same article, and what I would anticipate is if there's unused revenue that we send to them, and it would be refunded under our current agreements, and with the implication, as I understand it, in my reading of the not for profit corporation law, is that if that money was refunded to the County, it has to be used for the same purpose if it's used by the County, so essentially, for economic development purposes.

Matt Veitch

Alright, thanks. Any answers my questions, appreciate it.

Kevin Tollisen

Anyone else? If not a motion to adjourn?

Kevin Veitch

So moved.

Mark Hammond

Second.

Kevin Tollisen

Supervisor Kevin Veitch, Supervisor Hammond. All in favor?

Several Supervisors

Aye.

Kevin Tollisen

Have a good afternoon, everyone. Thank you for all your hard work.