

**Special Meeting  
Tompkins County Legislature  
June 30, 2010**

**Approved 7-20-10**

**Call to Order**

Chair Robertson called the meeting to order at 5:35 p.m.

**Pledge of Allegiance to the Flag and Roll Call of Members**

Members and guests participated in the Pledge of Allegiance to the Flag.

Present: 14 Legislators. Excused: 1 (Legislator Shinagawa).

**Announcement**

Ms. Robertson thanked staff for their efforts organizing the meeting this evening.

**Privilege of the Floor by the Public**

Bernie Hutchins, 1016 Hanshaw Road, gave the following statement:

“The way you are taking public input in this meeting has the common fault of previous meetings. You let citizen speak, but there is no dialog. Citizens never gets any opportunity to expand, or defend. Then you ask staff to speak, in a dialog, and their statements too often go completely unquestioned by the legislature, and of course, the public has no voice at this point.

“Mr. Wood and Mr. Marx tell you that this D&F is a trivial formality about finding a public purpose for the project, which they feel it already has by definition. Let’s hope they don’t try to tell you this again tonight. It is much more than this, because it represents a foreclosing step against the property owner’s opportunity to present a proper defense; a defense against as yet undefined parameters of the project – the result of inappropriate maps and descriptions given us. This is so “unimportant”, that the NYS Legislature in 2004 passed revisions to the NYS EDPL protecting the property owner against such ED abuse.

“These new provisions, by the way, are being bypassed by the County. At the June 4 F&I, I said there were as many as 20 properties that were not properly notified under the revised law. Mr. Wood said there were “a few” but not as many as I claimed. In fact, following that F&I, John Lampman found 15 properties. With 89 house-containing properties along the project, that’s 1 in 6 not legally notified, not excluded inadvertently, but systematically. So 1 in 6 is just - “a few”. If Mr. Squires found that 1 of every 6 taxpayers didn’t send in a tax payment, would he report to you that there were - “a few?”

“Totally outside the law, County Highway then decided to notify the 15 property owners after the fact, and offer them an opportunity to comment in writing, in lieu of their actual rights.

“This sounds just fine to staff. At the June 4 F&I, Mr. Wood said: What would a person who was not notified have said that would have changed anything? Indeed, what WOULD such a person have said? So why give anyone the opportunity to speak? Well, in a 2006 memo to this legislature, and, on April 20 here, in response to a question from Professor Stein, Mr. Wood expressed the opinion that the property owners had virtually no significant rights.

“So is your vote here tonight just a trivial formality. No, it is the next step, an enabling step, in a process that has traditionally been oppressive, and which the County has handled abysmally. In their defense, they have never worked under the 2004 law before, so that’s an explanation, although when we are talking about citizen’s rights, never an excuse, and their actions will be challenged.

“For the record there are 89 house-containing properties in the Hanshaw Road project plus a gas station, a golf course, a church, and three others.

“78 properties were notified by certified mail of the March 16, 2010 hearing.

“For the record, the following 15 addresses were not notified:

1019, 1021, 1023, 1025, 1034, 1039,  
1041, 1101, 1103, 1105, 1107, 1201,  
1205, 1207, 1211”.

Bruce Levitt, 1002 Hanshaw Road, shared a story of a tailor who made a suit fit by having the man appear to be deformed. He said like the man in the story, the eminent domain process is deformed. He recalled Mr. Wood’s statements that the individuals who had not received notice may not have had anything different to add to the process, however, he can not say whether or not the matter is legally challengeable he finds that ethically dubious. He said where the Legislature is tonight is an “ethical no-man’s land” and is voting on the ability of the County to take people’s land by force if necessary. With that kind of power the process to determine whether the eminent domain procedure has been legal or ethical should not leave questions in anyone’s mind. He asked Legislators to consider not just the legal ramifications of a flawed process but the ethical questions involved in this process.

Mahlon Perkins, speaking for Joseph Roisman, said he submitted written comments regarding the issue. He spoke at the public hearing and submitted comments on behalf of Mr. Roisman. A new easement map was to be prepared for the Roisman’s, however, they were later told it was not necessary. He provided a written letter indicating why he believes it is in error. Mr. Perkins said giving up land is repugnant to landowners, however, if required it is better to be treated fairly and that the County adhere to the law. With regard to the other 27 property owners making up the Hanshaw Road group he is representing, he also submitted a letter with comments for review and asked that property owners be treated respectfully. Mr. Perkins spoke of his interpretation of what is meant with the amount of road used and the Coddington Road decision, noting it is required to be used and maintained. He requested the County stop the process and provide proper easement maps and deal fairly with residents.

Hannah Roisman, 1007 Hanshaw Road, said she was not aware of the design, which could make it more dangerous to enter and exit her driveway. She said repeated requests for maps have not been responded to and that the County is claiming more right-of-way than they should. She said it does not appear the County is willing to change the design to a less invasive one and that it fears loss of Federal funding if the project does not stay on schedule. She does not wish to see the road changed.

Marlene Kobre, 1103 Hanshaw Road, said she was one of the property owners not notified of the initial public hearing. She expressed confusion of whether or not her property would be subject to taking property for right-of-way. She agrees with others that the process is flawed and as a resident, it does not feel like it is a minor portion of property involved. She believes an alternative design with a smaller footprint would be more livable and asked that the Legislature not consider the Federal funding for the project more important than the “right thing to do”.

Randy Wayne, 201 Roat Street, said it would be wonderful to have a sidewalk, however, his self-interest does not trump what is right; eminent domain is just wrong.

Hilary Atkin, 1041 Hanshaw Road, read the following statement:

“First, I'd like to know if & when you received our comments, for the June 24th deadline from the hand delivered notes addressing ROW; comments from Louise Richards, Marlene Kobre and myself. Was it just minutes prior to this meeting?

“I received comments from John Lampman - via a twice forwarded notice (from Cathy Covert to another neighbor) only last night. I must say, the response was befuddling at first, to read through, scrolling back and forth between - comment # and response # over 4 pages, eventually I got the hang of it.

“Communications; a key factor over the years - has influenced decisions or created a larger gulf in understandings on this issue. Wrongly drawn maps - to measurements / language, that are not easy at times for the general public (I should say myself) to understand. The presentation of the project years ago, had elements or "selling points" about building a stronger neighborhood - creating connections to each other via sidewalks down to Community Corners, safety factors were illuminated; such as bike lanes and traffic calming features; now all this seems to be a partial farce in lieu of how I see this project proceeding - you want this done at all costs; neighborhood be damned.

“I understand that many of my neighbors along this 1.3 mile corridor, have applauded the project. Perhaps we are not that far apart in agreement as to some of the features. Understandably seasonal drainage is difficult, no one disputes the warped bumpiness of the Warren/Hanshaw intersection and the poorly lit shoulders that are a crumbled mess of asphalt between Sapsucker and Warren. As a parent, with a daughter that uses her bike when back from college, I fully grasp the reality of safe bike lanes. Yet I wonder how many will seriously walk or bike with young children along Hanshaw with cars moving far beyond the 30 mph to upwards of 50 mph. None of you here are responsible for the driving habits or lack there-of, of those individuals that will travel Hanshaw; yet you are poised to give the go-ahead to this project. Please think of the dangers that loom - deer and vehicles at 50 mph will have tragic outcomes. Home owners that can only back out of their driveway will find it harder to do so. If you do not keep the 4-way stop sign, this takes away the one 'calming traffic feature' that actually assists the flow of traffic at Warren/Hanshaw. Peak hours with TCAT or school buses, employees at Cornell, workers at the Cornell Tech Park, parents taking their children to the Dewitt Middle School or BOCES, folks heading to the Post Office: we all rely on the fair flow of traffic through that intersection. It won't be easy with a traffic light that does not have a 'left turn arrow.’”

“I stand here tonight with a fresh outlook and the belief, that a viable improvement for Hanshaw Road can be achieved: one that keeps the overall integrity of the neighborhood, landscape features, affords the needed resurfacing, resolves drainage concerns,…”

As she ran out of time, the rest of her statement was submitted for the record:

“... provides a clearly identified bike lane & sidewalk; all of this under the \*existing road footprint/dimensions.\* with minimal disruption to home owners property/existing landscape.

“I thank you for your consideration this evening.

“We know that 'change' is the one constant in life. I ask you to change and rethink your vote on the project.”

Bruce Brittain, 135 Warren Road, spoke of the June 4<sup>th</sup> meeting when Mr. Marx told Legislators they were voting on the determinations and findings that indicate the Hanshaw Road project serves a public purpose, noting it is voting on the 3B design as the best choice and if necessary eminent domain could be used to achieve the project moving forward. He does not believe it is the best that could be done and use the existing footprint. He also spoke of the possible use of context sensitive design and he did not see evidence of it. Mr. Brittain said he noted what he believes to be factual errors in the resolution and

that the list of comments and warrants for a traffic light at Warren Road is not correct. He said the Northeast Transit Study conducted by the Ithaca-Tompkins County Transportation Council was a collaborative process with committees involved. He spoke of this study adopting principles, the key one of maintaining and enhancing livability in areas even if it means commuting time may be longer. He believes a better design is possible, fitting within the existing footprint.

Ron Denson, 1103 Hanshaw Road, said a question is who benefits from the project. He believes there are contradictions within the proposal. It states the portion of road between the Community Corners and Warren Road intersection being an urban minor arterial classification, and key to economic development in Northeast Tompkins County. An equal amount of space is given to the question of safety. He believes the safety record is not in question, and he appreciates changes made in the resolution that now indicate a stop light at the Warren Road intersection is just a possibility. Those living in the area realize a stop light system encourages speeding, and that improvements typically increase speed. Mr. Denson said safety is not congruent with the eminent domain proceeding; if this is partly due to Cornell University putting pressure to have a route to the airport it should be noted the distance from Community Corners to Warren Road is only 1/3 of a mile, meaning only seconds are saved due to traffic. Also, the 14-15 property owners not notified only received notice June 10<sup>th</sup> and were given two weeks to respond. When these individuals asked why they had not been notified they were told their property was not part of those to have rights-of-way taken as of March 10<sup>th</sup>.

Doug Brittain, 135 Warren Road, spoke of the amount of smooth, continuous asphalt that will result from the project, causing an inhospitable pedestrian environment. He offered several different design suggestions that he believed would be acceptable to the Federal government and New York State Department of Transportation. He noted he would like to see mutually acceptable solutions to resolve the problems with design. He requested the County drop the eminent domain proceedings and use the next ninety days being productive in re-designing the project.

Marc Messing, 110 Blackstone, said when he first saw the design that he would enjoy the benefits of a sidewalk and design. He said he has studied and worked on issues of eminent domain in the past and thinks it is a trend for government bodies to increasingly use it is a serious matter. Mr. Messing said it was noted by the Supreme Court it would have a trickle-down effect from national matters to minor levels and are eroding some civil rights. He said the question is whether it is legal or ethical; for him it is whether it is necessary. He believes it is possible to have the road the same size with green space and sidewalk within the 34-35 existing width. He said the County is doing the particular design to spend Federal funding offered, yet the Federal government does not have the money, leaving our children to bear the burden. He believes the project should be scaled down to what it currently is, what the County can afford, and accomplish primary goals of the project. Mr. Messing said any savings could be used to reduce cuts in the health and welfare areas.

Deborah Cowan, 1022 Hanshaw Road, read the following statement:

“I agree with my neighbors that the Eminent Domain process is irredeemably flawed by failures in notification and failure to provide complete and accurate information to which property owners can raise issues and objections. I would ask you to vote “no” to passing the D&F tonight, and schedule another hearing with proper procedure to be just and fair to the homeowner.

“I have heard that there is consternation on the part of some legislators about various neighborhoods’ opposition to County roadway plans.

“If I may address this, I believe it is because the process is fundamentally flawed and needs to be more truly collaborative. Currently we are experiencing government by staff, and that's never going to work. The Highway Division, as talented as they may be, are all about the asphalt. I believe that they have

done the best job that they could under the circumstances, but they are engineers and roadway people, so their circumstances are defined by the road and traffic. Our circumstances are defined by the livability of our neighborhood. Your job as legislators is to maintain a planning vision to the benefit of all your constituents throughout the County, whether directly in your district or not, and balance vehicular and neighborhood needs, with livability given priority, and to retain and enhance the vibrant and special character of our towns and County.

“I believe your role, as elected representatives, is to reach beyond blanket approval of Highway Division submissions and over-reliance on staff "because we're not highway experts" (as Ms. Robertson has reminded us on several occasions). This is true. You are the representatives of the people in a democratic process. We are experts on our road. We should be able, working together, to create a safer road and preserve the livability of the neighborhood while providing an adequate surface for the movement of traffic to and from Cornell, Community Corners, the airport, and existing businesses further out on Hanshaw.

“Please do not sacrifice this neighborhood in an attempt to facilitate traffic flow by whatever number of seconds it will shave off the trip to Cornell. Once this decision is made you are not going to be able to put it back. Think about where this road goes--you'll either end up turning down Warren Road which will bring you to a steep hill and two one-lane bridges; or you'll continue to Cayuga Heights where you will have to slow down at the Corners; or you will turn into Pleasant Grove Road and again hit that one-lane bridge if you haven't scooted onto campus. My point is, none of these connecting roadways are highways. They are additional small, winding neighborhood roads that don't, and aren't meant, to take you anywhere fast; but can get you there at reasonable speeds while enjoying the view along the way.

“Why can't that be enough?”

### **Comments from Staff**

Ms. Robertson asked Mr. Wood, County Attorney, and Mr. Lampman of the Highway Division to provide relevant information.

### **County Attorney**

Mr. Wood provided an explanation of where the County is in the eminent domain procedure and noted the County is required to adhere to the law. Although many eminent domain proceedings are completed, in the seventeen years he has worked for the County there has not been the need to take real estate. The notice to property owners is required to contain specific language, and inadvertent failure to contact everyone does not negate the proceeding. Additionally, a legal notice is placed in the newspaper to notify interested parties of the public hearing that will take place. The next step is that within ninety days the Legislature would review the determinations and findings to determine if certain elements are contained to warrant eminent domain as well as other items it may wish to include. After adopting the determinations and findings a synopsis would be placed in the newspaper indicating a thirty-day period to challenge it. After all steps, residents are contacted to begin the negotiation process.

Mr. Wood explained the County has determined to pay for the county-use area of property. He explained that in some cases there was an area that the property owner's deed showed ownership stopping before the right-of-way. The County's decision means that some property owners will be compensated for more of an area than originally thought.

In response to a question by Ms. Chock, Mr. Wood said the changes to the State Eminent Domain law is that property owners are to be notified by certified or personal mail and that the content of the

notice contain specific language indicating the need to voice concerns at the public hearing or they could be prevented to do so later.

In response to Mr. Burbank's question on what would happen if no action were taken he was notified it would go beyond the required ninety-day period and the process would need to be started again. Mr. Burbank then asked if it would extend beyond the period to enable funding of the project. Mr. Lampman said although there is the possibility of completing the process within the time period it could delay the acquisition phase late into next year and affecting the construction season. He does not believe the funding itself would be jeopardized since the construction document would be approved by August 2011. He believes to complete the process earlier rather than at a later date would be the better choice.

Mr. Proto asked for clarification on the time schedule. Mr. Lampman said the funding most likely may not be jeopardized but construction would be tight. Mr. Wood noted that if there is a challenge it could extend out to a point in time to jeopardize funding. Mr. Proto then asked what would occur if this action was postponed to consider redesign or Mr. Brittain's suggested designs. Ms. Robertson said that would be answered later in the meeting.

Ms. Kiefer requested a clear statement of what use maps and drawings serve. It is her understanding that the maps are important to property owners at the time permanent or temporary easements are considered, however, they are different than eminent domain use of maps. She said for eminent domain what needs to be reviewed is the project as a whole for public purpose. Mr. Wood said there are two types of maps, maps of the project and maps indicating what the County is contemplating compensation for specific properties. Often the maps are not prepared until after this type of proceeding. What is being reviewed is the project, which has not changed on the map. At this time the project needs to be considered, not what the County may or may not take from individual property owners.

Mr. Stein noted property owners have the essential right to lodge a complaint regarding the project, with the point of notification providing them with the ability. He does not believe that with all notifications that have gone out that there are any property owners not aware of the project and what is happening, therefore, he does not see the need for an additional public hearing. Although people spoke of their rights being trampled, he believes the successive attempts the County has made to let people know what is occurring negates the statements.

Ms. Pryor has reservations regarding returning to the design process. She noted at least four different alternatives and other statements show a serious attempt to consider them. Mr. Brittain's suggestions include a ten foot lane, which doesn't seem advisable, one has a twelve foot lane, and the third a 10 foot lane. Two of the three have a four foot sidewalk, however, she said individuals with disabilities need a five foot sidewalk for ADA compliance. She does not feel it would be practical.

Ms. Robertson spoke of construction taking place on Ellis Hollow road that will begin in July. She lives on the road and spoke of Mr. Lampman coming to her home to review the plans and determine necessary amendments. She is assured this type of contact is part of the process, which she has also heard from many residents. She stressed that the Legislature action is on the overall project.

Ms. Kiefer referred to Ms. Atkins asking if Legislators had read the additional comments from residents and considered the responses. It was noted the comments were included in materials given to the Legislature; Mr. Lampman provided the reference for the new comments.

A further discussion occurred, during which it was clarified that although the County is acting upon the ability to use eminent domain, in the 17.5 years that Mr. Wood has worked for the County it has not been necessary. Legislators expressed their displeasure that the State requirement of language that

implies property owners would not have a right to address concerns if they do not speak at the hearing. It was noted that the eminent domain process is a tool for the County to fall back on if necessary.

### Highway Manager

Mr. Sczesny said the Hanshaw Road Reconstruction began in 1999 and the design phase did not begin until 2005. Since the program began four informational meetings and preliminary design meetings were held. Comments were considered and the design was fine-tuned to minimize the impact on individual property owners. Next will be the consultants will meet with the property owners and show the easement maps of what would be needed, if any, for the project. This will include a review of what will happen, landscaping, and other aspects specific to their property for either a temporary or permanent easement. The professional consultant will assess the value of the land needed for the project and will be shown on site. When the easement is certified the same process of having the individual in charge on site with the property owner to discuss and make adjustments as needed. Mr. Sczesny has been in the construction field for 33 years and has not seen eminent domain used to take property.

Mr. Dennis was excused at this time (6:56 p.m.).

At this time, Mr. Sczesny anticipates the right-of-way maps to be completed by late August. In mid-September there will be another informational meeting with the final maps, and in mid-November the appraisal process should be complete, with right-of-way purchase offers occurring in December 2010. The rights-of-way will require certification by the New York State Department of Transportation as the Federal representative. When this is complete the project would go to bid with an anticipated award in July. A pre-construction meeting will take place Mid-July with the public and in August 2011 the project should start.

Mr. Proto said Mr. Sczesny's timeline provided an answer to his earlier question.

In response to Mr. Burbank's question about other design alternatives not chosen, Mr. Sczesny said there was a 24' option in the New York State Department of Transportation manual, however, the Syracuse office informed him they no longer construct roads using that design.

### Recess

Upon request to review the revised determinations and findings, Ms. Robertson called a recess from 7:09 p.m. to 7:24 p.m.

### Presentation of Resolution(s) from the Facilities and Infrastructure Committee

#### **RESOLUTION NO. 101 - ACCEPTING THE DETERMINATION AND FINDINGS RELATING TO THE PROPOSED PUBLIC PROJECT (PIN 3753.25) TO RECONSTRUCT HANSHAW ROAD, CR 109, IN THE TOWNS OF ITHACA AND DRYDEN AND VILLAGE OF CAYUGA HEIGHTS**

It was MOVED by Ms. Kiefer, seconded by Mr. Lane.

Mr. Stein said he has spent a great deal of time listening to constituents about their concerns and has tried to understand their complaints, what they would like, and what is the right thing to do. Certain things were repeated such as the morality or ethics of using eminent domain and seizing of land from property owners not willing to sell it. He recognized that each spoke with emotion and were deeply concerned. Mr. Stein spoke of a personal experience driving between Ithaca and Boston within a six-hour period; fifty years prior, the same trip took twelve hours. He said the interstate highway was the reason

the trip did not take as long and, although property owners did not like it when land was taken to complete the project, it clearly was for the public good. He said part of his job is to weigh the positive and negative; having known three individuals who lost their lives trying to share the roadway he would be hesitant to pass anything that does not have adequate width. Although he does not believe the alternatives suggested by Mr. Brittain are adequate he will look into the matter.

Mr. Stein then spoke of hearing a great deal of concern regarding current and potential increased speeds upon completion of the project. He believes it is a situation to be dealt with, including additional enforcement. He noted speeding deteriorates the quality of bicycling, which is something that is valued highly in the County.

Ms. Kiefer noted that it is her understanding that there will be flexibility and adjustments could be made as the project proceeds. She asked staff to carefully review the design since it has been three years since it was approved. Ms. Kiefer also said the context sensitive process began in 2007, and will be pursued as the project moves forward.

Ms. Robertson said there has consistently been tension between the pavement design and speed; she believes a balance can be found. She noted road reconstruction does not occur often and that the County will continue to work on reducing single-occupancy motor vehicles as well as considering safety for pedestrians and bicycles. Although the County does not have authority to amend the speed limit in this area it may be possible to study the problem of speeding Countywide.

Ms. Kiefer said discussions are being focused on design, however, the action is for the ability to invoke eminent domain. Although she would not want to take property in this manner, both the Highway Manager and County Attorney informed the Legislature that in their history it has never required taking of land for a project. She heard tonight that residents viewed the process as not legal or following procedure; she disagrees with those statements.

A voice vote on the resolution resulted as follows: Ayes – 9 (Legislators Chock, Kiefer, Lane, McKenna, Proto, Pryor, Robertson, Robison, and Stein), Noes – 4 (Legislators Burbank, Herrera, Mackesey, and McBean-Clairborne), Excused – 2 (Legislators Dennis and Shinagawa).  
**RESOLUTION ADOPTED.**

WHEREAS, County Road 109, Hanshaw Road, is a Urban Minor Arterial between Pleasant Grove Road and Warren Road and an Urban Collector between Warren Road and Sapsucker Woods Road in the Town of Ithaca and is key to the continued economic development of northeastern Tompkins County, and

WHEREAS, Hanshaw Road is part of the critical link between the Cornell Community and the Ithaca-Tompkins Regional Airport and other commercial/industrial entities on Warren Road, and

WHEREAS, Hanshaw Road directly serves the Village of Cayuga Heights, Community Corners, Cornell University, the Tompkins County SPCA, the Cornell Lab of Ornithology, and other enterprises, employers, and attractions as a primary collector from New York State Route 13, and

WHEREAS, Hanshaw Road is a commuter route linking the center of Tompkins County with its northeastern rural areas, and

WHEREAS, Hanshaw Road is a highly multi-modal road and passes through a residential area west of Sapsucker Woods Road whose surroundings have undergone extensive development in recent years, and

WHEREAS, Hanshaw Road is owned by the County of Tompkins and is maintained by the Tompkins County Highway Division between the Cayuga Heights corporate boundary and Sapsucker Woods Road, and

WHEREAS, the Tompkins County Highway Division, upon assessment of pavement and drainage conditions, identified the need to initiate a project to address deficiencies with Hanshaw Road to

ensure continued service of the roadway as a link in the County transportation system and to improve safety on Hanshaw Road, and

WHEREAS, in 1999, an Initial Project Proposal (IPP) prepared by the Tompkins County Highway Division was approved by the State of New York for inclusion in the Statewide Transportation Improvement Program (STIP), and

WHEREAS, on January 18, 2005, Resolution No. 9 of 2005 authorized an agreement between Tompkins County and the State of New York Department of Transportation to fund design of the reconstruction of County Road 109, Hanshaw Road, between the Cayuga Heights corporate boundary and its intersection with Sapsucker Woods Road, and

WHEREAS, a preliminary examination of the aforementioned section of Hanshaw Road identified locations with non-standard and non-conforming features that do not meet current geometric design criteria in terms of shoulder widths, stopping sight distances, and roadside ditch cross-sections, and

WHEREAS, serious structural pavement deterioration and failure was found to be too advanced to provide a safe and acceptable riding surface with routine maintenance activities, and

WHEREAS, the intersections of Pleasant Grove Road and Warren Road have accident rates that were found to be higher than the statewide average rate for similar-type intersections and will not provide acceptable levels of service under the 20 year projected traffic volumes with anticipated growth, and

WHEREAS, there are localized areas of flooding, the closed drainage system is in poor condition, and the capacity of the system is inadequate for the flows, and

WHEREAS, the pedestrian, bicycle, and transit accommodations were found to be insufficient and not providing adequate safety and mobility, given the setting and residential character of the area, and

WHEREAS, the Tompkins County Highway Division concluded that the above-stated deficiencies provided a basis for reconstruction of the aforementioned section of Hanshaw Road and established objectives based thereon to analyze the feasible alternatives and guide the design process, and

WHEREAS, the project objectives include: restoration of the pavement to a good condition using techniques that will minimize future maintenance costs and repairs; enhancing safety by using cost-effective accident reduction measures; accommodating pedestrian, bicycle, and transit users in a cost-effective manner; providing a structurally and hydraulically adequate drainage system; providing a cost feasible project given the available funding; and minimizing negative impacts to aesthetic features and character of the corridor, and

WHEREAS, the Tompkins County Highway Division implemented a program to incorporate public involvement which included 4 public information meetings held at the DeWitt Middle School or the Cayuga Heights Fire Hall on February 17, 2005, September 29, 2005, December 1, 2005, and March 27, 2007, as well as a series of on-site meetings with the Fisher Associates design team at residents' properties in October 2005, and

WHEREAS, the purpose of the public meetings was to solicit input from the local residents and to present design alternatives, and

WHEREAS, following consideration of public input, the Tompkins County Highway Division and its consultant did incorporate mitigation measures into the project design to address stated concerns where warranted, and

WHEREAS, the Tompkins County Highway Division and its consultant prepared and periodically revised a project design approval document to accomplish reconstruction of the aforementioned section of Hanshaw Road, which included the development and consideration of various preliminary alternatives, and

WHEREAS, based on the analysis of data gathered by the Tompkins County Highway Division and its consultant and comments of the public, Alternative #3B - Pavement Rehabilitation (Resurfacing and Full-depth Reclamation) with Centerline Shift at Village Line was deemed to be the preferred alternative for Final Design Approval, and

WHEREAS, the reconstruction of Hanshaw Road was classified as an Unlisted Action under the State Environmental Review Act (SEQRA), and

WHEREAS, on September 4, 2007, by Resolution No. 166, the County of Tompkins issued a

"Negative Declaration of Environmental Significance" in accordance with SEQRA, requiring no further environmental review, and

WHEREAS, on September 4, 2007, by Resolution No. 167, the County of Tompkins granted Design and Right-of-Way Plan Approval of the subject project finding that the individual and cumulative impacts of right of way acquisition to be considered total de minimis in nature, and

WHEREAS, the Preferred Alternative would require the County of Tompkins to acquire real property rights (permanent and/or temporary easements) from approximately ninety-nine (99) properties within the proposed public project area, and

WHEREAS, in accordance with Article 2 of the Eminent Domain Procedure Law, the oral presentation and comment phase of a public hearing was held on March 16, 2010, beginning at 5:30 PM at the County Courthouse at 320 North Tioga Street, Ithaca, New York, for the purpose of informing the public and reviewing the public use to be served and public benefit to be obtained by the aforementioned proposed public project and to consider all other matters appropriate to that project, and

WHEREAS, during the course of the aforementioned oral presentation and comment phase of the public hearing, all matters required by the Eminent Domain Procedure law and appropriate to such public hearing were identified and explained to persons then in attendance, and such persons in attendance were given an opportunity to, and did, speak and comment on the proposed public project and examined documents available at an informal open house prior to the public hearing, and

WHEREAS, seventeen (17) speakers from the public presented oral comments on the proposed public project during the aforementioned oral presentation and comment phase of the public hearing, and

WHEREAS, at the conclusion of the oral presentation phase of the aforementioned public hearing, the hearing was adjourned until the opening of the Tompkins County Legislature's meeting at 5:30 PM on April 6, 2010, for the purpose of allowing the submission of additional written comments and their inclusion in the official record of the hearing, and

WHEREAS, fifty-eight (58) written comment submittals on the proposed public project representing forty-one property owners (41) were received from the public from the opening of the public hearing until the hearing was adjourned, and

WHEREAS, the proceedings of such public hearing were transcribed and made available, together with the exhibits and other documents, if any, which were identified or made available during the oral presentation phase thereof, for inspection and examination by the public at the offices of the Tompkins County Legislature, the Tompkins County Clerk, and the Cayuga Heights Village Clerk, and

WHEREAS, additional written public comments regarding the proposed public project were accepted until 5:30 PM on April 6, 2010, and said comments were incorporated into the record of the aforementioned Eminent Domain Procedure Law Public Hearing, now therefore be it

RESOLVED, on recommendation of the Facilities and Infrastructure Committee, That the following constitutes the determination and findings of the Tompkins County Legislature with respect to the Reconstruction of Hanshaw Road, County Road 109, in the Towns of Ithaca and Dryden and the Village of Cayuga Heights, Tompkins County, New York:

1. The public use, benefit, or purpose to be served by the proposed public project is the reconstruction of County Road 109, Hanshaw Road, in the Towns of Ithaca and Dryden and the Village of Cayuga Heights. It will include:
  - a) retention/reuse of the existing pavement structure in the travel lane areas using several rehabilitation techniques (by milling and resurfacing approximately 28%, by full-depth reclamation of 63%, and by reconstruction of 9%);
  - b) full reconstruction of shoulder areas due to lack of asphalt and poor sub-base conditions;
  - c) two 3.3 meter (11-foot) travel lanes with 1.2 meter (4-foot) wide paved shoulders;
  - d) a walkway along the north side of the road from the western project limit, where it will connect to existing sidewalks in the Village of Cayuga Heights, to the intersection of Sapsucker Woods Road;
  - e) a new closed drainage system utilizing a shallow swale or concrete gutter, landscaping features, and signing and striping where needed;and it may also include a traffic signal at the Warren Road intersection, colored shoulders, and/or

- other components to increase vehicle and pedestrian safety.
2. The proposed public project objectives are to: restore the pavement to a good condition using techniques that will minimize future maintenance costs and repairs; enhance safety by using cost-effective accident reduction measures; accommodate pedestrian, bicycle, and transit users in a cost-effective manner; provide a structurally and hydraulically adequate drainage system; provide a cost-feasible project given the available funding; and minimize negative impacts to aesthetic features and character of the corridor. More specifically, the benefits to be obtained and purposes to be served by the proposed public project area as follows:
    - a) Restore the Pavement to a Good Condition. The proposed public project will improve the pavement condition of Hanshaw Road by reclaiming and reconstructing the pavement structure.
    - b) Enhance Safety. The proposed public project will enhance the safety of Hanshaw Road by several accident-reduction and traffic-calming techniques. The sub-standard stopping sight distance at the curve on the Cayuga Heights village line will be improved. Non-conforming roadside ditch cross-sections will be eliminated by extension of the storm sewer system, as needed. Uniform-width paved shoulders will be provided. Possible installation of a new traffic signal at the intersection of Warren Road could benefit pedestrian safety at that location. By providing perceptual cues that should calm traffic, including preservation of tree canopy, proximity of landscaping to the road, possible inclusion of colored shoulders, and the presence of an adjoining walkway, an existing vehicular speeding problem will be addressed.
    - c) Accommodate Pedestrian, Bicycle, and Transit Users. The proposed public project includes the construction of a walkway on the north side of the road to accommodate persons with disabilities and other pedestrians. The walkway width will be typically 1.5 meters (5 feet) but will widen to a maximum of 2.1 meters (7 feet) when the walkway is adjacent to the shoulder gutter to accommodate signage or mailboxes. The provision of 1.2-meter (4-foot) paved shoulders will accommodate bicycles out of the traveled way. Buses will also have adequate width for stopping on shoulders for pick-up and discharge of passengers and width of traveled way to mitigate encroachments into the opposing lane.
    - d) Provide a Structurally and Hydraulically Adequate Drainage System. The proposed public project will construct a new closed drainage system from the eastern project limit to the termination of the existing Village storm sewer. Based upon preliminary hydraulic analyses and due to age, location, condition, and hydraulic capacity of the existing system, it will be entirely removed, upgraded, and extended. Shallow grass swales or concrete gutters with inlets will channel water to the new closed system. Standing water behind the walkway will be avoided through re-grading, if needed to yard drains. Existing sub-surface drains from residences will also be connected to the new system. Near its east end on the south side of the proposed public project the existing open drainage along the agricultural field will be retained.
    - e) Provide a Cost-Feasible Project. The proposed public project is the only alternative that will address the project objectives and not significantly exceed the available funding.
    - f) Minimize Negative Impacts to Aesthetic Features and Character of the Corridor. The proposed public project will include re-establishment of all disturbed areas with permanent stable materials that will blend into the natural environment. It will provide landscape mitigation where existing trees, hedges, and shrubs must be removed to accommodate walkway construction. Plantings will be used to establish a consistent treatment along the corridor, providing visual cues to drivers of a traffic calming effect. To the greatest extent possible, the existing tree canopy and landscaping proximate to the road will be preserved.
  3. The proposed public project is located on Hanshaw Road, County Road 109, between its intersections with Pleasant Grove Road and Sapsucker Woods Road, a distance of 2434 meters

(approximately 1.5 miles).

4. The following different alternatives were considered:
  - a) Alternative #1 - The No-Build "Null" Alternative. The Null Alternative retains the existing roadway section and geometry with no improvements other than routine maintenance such as patching of potholes or emergency drainage repairs. Walkway construction is not provided.
  - b) Alternative #2 - Pavement Reconstruction (Full-depth Replacement) (2010 cost estimate \$5.5 million). The Pavement Reconstruction alternative consists of full-depth excavation and reconstruction of the pavement for the entire length of the project. The reconstructed pavement would include two travel lanes at 3.3 meters (11 ft.) with 1.2-meter (4-foot) shoulders. The fully reconstructed roadway section would be lowered with curbing provided to accommodate all drainage runoff within the roadway. The centerline of the roadway would be shifted to the south approximately 1.0 meter (3.3-feet) to balance the impacts along the roadside for the construction of a new sidewalk on the north side of the roadway. The walkway will run between the western project limit and Salem Drive, and, cost permitting, extend to Sapsucker Woods Road. In addition, a new closed drainage system, landscaping features, and signing and striping would be provided or replaced where needed. Traffic signal control would be added for the Warren Road intersection.
  - c) Alternative #3A - Pavement Rehabilitation (Resurfacing and Full-depth Reclamation) with Retaining Wall at Village Line (2010 cost estimate \$4.57 million). The Pavement Rehabilitation alternative consists of the retention/reuse of the existing pavement structure in the travel lane areas using several rehabilitation techniques. The shoulder areas would be fully reconstructed due to the lack of asphalt and poor sub-base conditions. In areas where the travel lane pavement structure is adequate but there are localized structural issues and surface deterioration, the pavement would be milled and resurfaced with a new top course of asphalt. Full-depth reclamation would be utilized in areas where the travel lane pavement structure is inadequate in strength due to sub-base deficiencies or inadequacies in the asphalt pavement layers. There would be a limited amount of full-depth reconstruction in areas where adjustments in the roadway profile are necessary. Approximately 28% would be milled and resurfaced, 63% of the travel lane pavement would be full-depth reclamation, and the remaining 9% would be reconstructed.

The rehabilitated pavement would provide two 3.3-meter (11-foot) travel lanes with new full-depth 1.2-meter (4-foot) wide shoulders. A walkway would be provided along the north side of the road from the western project limit in the Village of Cayuga Heights to Salem Drive, and, cost-permitting, extend to Sapsucker Woods Road. The embankment at the north side of the road at the village line would be excavated to provide space for the walkway. A wall would be built to retain the new embankment. In addition, a new closed drainage system utilizing a shallow swale or concrete gutter, landscaping features, and signing and striping would be provided or replaced where needed. Traffic signal control would be added for the Warren Road intersection. A one-way eastbound traffic flow will be maintained during construction with westbound traffic detoured off-site.
  - d) Alternative #3B - Pavement Rehabilitation (Resurfacing and Full Depth Reclamation) with Centerline Shift at Village Line (2010 cost estimate \$4.4 million). This alternative consists of all the elements of Alternative #3A, except the roadway centerline would be shifted 1.2 meters (4 feet) to the south through the narrow section at the village line. This would eliminate the need for a retaining wall on the north side and preserve significant vegetation in that area.
5. The reasons for selecting Alternative #3B include:
  - a) Alternative #1 (Null Alternative) does not correct any of the existing pavement, drainage, and mobility deficiencies. The existing infrastructure would continue to deteriorate at advancing rates until severe impacts on user comfort, mobility, and safety and on

- maintenance operations would result. This alternative does not address any of the project needs or meet any of the project objectives; therefore, it was rejected as a feasible alternative.
- b) Alternative #2 (Pavement Reconstruction) does satisfy most of the project objectives; however, since the estimated project construction cost significantly exceeds the available project funding, it is not considered feasible. It would also cause more disruption to users and residents than other alternatives.
  - c) Alternative #3A (Pavement Rehabilitation with Retaining Wall) does satisfy all the project objectives, but excavation for the retaining wall adds economic, environmental, and aesthetic costs that can be avoided with Alternative #3B. Alternative #3B was also preferred by the public.
  - d) Alternative #3B (Pavement Rehabilitation with Centerline Shift at Village Line) was selected because all of the project objectives are met, including being a cost-effective solution and, therefore, is considered to be a feasible alternative. It can also be constructed with the least disruption to users. The benefits to be derived from this alternative are more fully set forth in paragraph 2 above.
6. The proposed public project is classified as an Unlisted Action in accordance with 6NYCRR Part 617, State Environmental Quality Review Act (SEQRA), and the County of Tompkins is acting as the lead agency. In accordance with 6NYCRR Part 617.11, the County of Tompkins determined that the proposed public project will not have a significant effect on the environment and has issued a negative declaration to that effect. As a result, further environmental review under SEQRA is not required.
7. It is hereby concluded that the proposed public project to reconstruct the aforementioned segment of Hanshaw Road in the Towns of Ithaca and Dryden and the Village of Cayuga Heights will have, among other things, the following effects upon the residents of the locality:
- a) The proposed public project will have an overall beneficial impact on the residents of the area of the proposed public project. The proposed public project will improve overall public safety and multi-modal mobility. It will remove existing non-standard features, thereby reducing the potential for vehicular accidents.
  - b) The proposed public project will not have any long-term impacts on any highway-related businesses, nor will it require relocations.
  - c) The proposed public project will require strip acquisitions of permanent and temporary easements, but will not affect land use, change travel patterns, or have any permanent effect on local planning.
  - d) The proposed public project will not have a substantial negative impact on the aesthetics of the area. Rather, it will allow people and goods to travel easily and safely on a transportation element that is well integrated into the environment and preserves the character of its setting.
8. The proposed public project was reviewed by the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP) with regard to its effect on historical and cultural resources. The State Historic Preservation Office (SHPO) determined the proposed public project will have No Adverse Effect/Impact upon cultural resources in or eligible for inclusion in the State and National Registers of Historic Places. The Tompkins County Legislature adopts this determination.
9. The Tompkins County Highway Division is hereby authorized and directed to prepare a brief synopsis of the foregoing determination and findings, such synopsis to include those factors set forth in Eminent Domain Procedure Law section 204(B), and, further such synopsis to state that copies of the determination and findings will be forwarded upon written request without cost.
10. The Tompkins County Highway Division is further hereby authorized and directed to publish the aforementioned synopsis of the foregoing resolution in at least two (2) successive issues of the official newspaper designated by the County of Tompkins, said official newspaper being one of general circulation in the project locality.

11. The Tompkins County Highway Division is further hereby authorized and directed to serve, by personal service or certified mail, return receipt requested, a notice of the aforementioned brief synopsis upon each assessment record billing owner (as that term is defined in Eminent Domain Procedure Law section 103(B-1) or his or her attorney of record whose property may be acquired, such notice to:
  - a) include the information required by Eminent Domain Procedure Law section 204(B)(2);
  - b) state that copies of the determination and findings will be forwarded to such individuals upon written request and without cost;
  - c) state that pursuant to Eminent Domain Procedure Law section 207, such individual shall have thirty (30) days from the completion of the aforesaid newspaper publication of the aforementioned brief synopsis, to seek judicial review of the County of Tompkins' determination and findings relating to the proposed public project; and
  - d) inform such individual that, under Eminent Domain Procedure Law sections 207 and 208, the exclusive venue for judicial review of the County of Tompkins' determination and findings relating to the proposed public project is the Appellate Division of the Supreme Court in the Judicial Department where any part of the property to be condemned is located.
12. At the public hearing some property owners indicated that they had been approached by representatives of the County with regard to their individual properties. In some cases the representative indicated that the County's current right-of-way extended beyond existing use in some areas. This was reflected in some right-of-way maps shared with the property owners. The right-of way maps do not alter or define the boundaries of the proposed public project but, instead, define the extent to which the project falls within the current right-of-way and the corresponding need to acquire property that is within the project boundaries but outside current right-of-way. Those maps and discussions concern only the amount of land for which property owners would be compensated; they do not affect the proposed public project (i.e., the design of the road and infrastructure). Some property owners expressed the belief that the County overstated its right-of-way and that the current right-of-way should be limited to current use. While this in no way affects the proposed public project, the Tompkins County Legislature agrees that it would be best to compensate the property owners for all land to be used beyond the current use and hereby directs the Tompkins County Highway Division to compensate property owners for all land needed for the proposed public project beyond the County's existing use. Naturally, this may involve redoing any affected right-of-way maps and corresponding cost estimates. It will not require any alteration or revision of the proposed public project.
13. As a result of the County's recent decision to compensate all adjoining landowners for land use beyond the County's current use (even in cases where the adjoining property owner's legal claim is not certain) the owners of 14 properties who will receive compensation were not served with the original March 1, 2010, notice of the hearing either personally or by certified mail. Service was, however, made by publication, on the County web site, and by a sign conspicuously posted on the road. Also the owners of 84 neighboring properties received certified mail notice. The impact of the project on these 14 properties is minor, and essentially involves a slight change in the grading of the road. The Eminent Domain Procedure Law provides that inadvertent failure to notify a person or persons shall not affect the validity of the County's title. Nevertheless, in order to ensure that these property owners had an opportunity to comment, the County Staff contacted each of these 14 property owners either personally or by certified mail to notify them that any written comments they wished to submit by 4:30 p.m. on June 24, 2010, would be added to the record of the public hearing and considered by the Legislature prior to the consideration and potential adoption of the findings. Furthermore, as all affected property owners should be able to judicially challenge the County Legislature's decision that the project serves a public purpose, the Legislature has directed Staff that a written summary of these findings be served on all property owners to be compensated (including the 14 previously unidentified property owners) along with the required notice informing them of the time and venue to seek judicial review of the County's

Tompkins County Legislature  
June 30, 2010

determination.

**SEQR ACTION:** Unlisted, Negative Declaration Issued (No further action required)

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**Adjournment**

On motion the meeting adjourned at 7:45 p.m.

Respectfully submitted by Karen Fuller, TC Legislature Office