

Tompkins County Legislature

August 19, 2008

Public Hearing – Informing the Public and to review the public use to be served by the proposed acquisition of property for the Emergency Communications (Tower) Facility on a portion of Tax parcel No. 2.-1-7 in the Town of Enfield, between Tucker Road and Podunk Road and the impact on the environment and residents of the locality where the proposed acquisition will take place

Chairman Koplinka-Loehr called the public hearing to order at 5:30 p.m. and asked if anyone wished to speak concerning “Informing the public and to review the public use to be served by the proposed acquisition of property for the Emergency Communications (Tower) Facility on a portion of Tax parcel No. 2.-1-7 in the Town of Enfield, between Tucker Road and Podunk Road and the impact on the environment and residents of the locality where the proposed acquisition will take place.

Richard Stumbar, Esq., local attorney, said he was asked by the County to provide representation concerning disagreements with regard to a lease that houses one of the communications towers in the Town of Enfield as well as the eminent domain proceeding.

He said the County was served with papers approximately one hour ago by representatives of the property owner. The problem is getting access to the site. He also said it has always been the County’s position to try to work with landowners. In those efforts a lease was negotiated by Jonathan Wood, County Attorney, and the property owner rather than immediately moving to an eminent domain process. The papers that were served upon the County today make assumptions that the issue is about a 12½ ft. gap that was left out of the lease when the property in question was leased. He said the County only found out about that gap on July 30, 2008, a significant time after litigation has begun on this matter and not a part of the issue.

He said the basis of this proceeding is the contentiousness between the landowners and the County from the beginning the problem is getting access to the site. There have been a series of arguments and disagreements from the beginning that has culminated in the County bringing forth the action and getting a temporary restraining order with respect to access to the site. Mr. Stumbar said the lease arrangement is not working out and he and Mr. Shurtleff believe it poses too much of a risk to the County to continue in this lease-hold arrangement. The County should take property by eminent domain and also pay a fair and reasonable price to the landowner for it. A copy of the order to show cause outlines several incidents in which access to the property was denied. Mr. Stumbar said the County cannot be sure that it will have access to the site in a crisis and no access to the site in an emergency situation could mean a total disruption in the County’s communications system. He also said there are disagreements regarding how much damage was done to the road, what it will cost to repair is now pending in the Supreme Court. At this time the County needs to be assured access in the meantime to the site and the only way to do that is to obtain full and complete title to the property. He said the public purpose is a broad issue of safety and communications within Tompkins County and there is no question of the importance of that purpose.

Lee Shurtleff, Director of the Department of Emergency Response and Project Manager for the Communications System project, made the following comments for the purpose of explaining the issue in order to understand how the system works.

The site in Enfield and its associated facilities are one of ten sites that has been constructed by Tompkins County government between 2006-2008 for the purpose of a Countywide public safety communications system. The design that was used for technology was for that of a trunked simulcast voice and data radio system for two-way radio communications, responder paging, and transmission of

data in the future. He stressed that because a facility is sited at any one particular location does not mean it impacts solely on that immediate area. Because of the simulcast nature of the system, all ten sites broadcast simultaneously when a message goes out for the purpose of creating Countywide saturation of radio coverage.

The Enfield site not only serves a great portion of the western side of the County, but also sends signals across the lake to areas that cannot be covered by towers on the east side of the County. All ten sites working together create the simulcast nature. The Communications Capital Project Committee established a number of goals when this project began in the late 1990's: to create interoperability among the public safety agencies and other governmental entities that would be using radio communications systems. Those include law enforcement, fire, emergency medical services, public health, public works, and local governments. The goal was to create Countywide radio coverage that was accessible to all, used the least number of towers at the lowest possible heights, at the least cost, and with the least environmental impact. A copy of the Environmental Impact Statement (EIS) that was adopted in 2005 is on file. Mr. Shurtleff said he would place on file other information with the Legislature that shows the area and the land towers were built upon.

With respect to the construction preference, the Legislature directed staff to find existing landowners who were willing to lease property to the County and to also put the facilities together in environmentally non-sensitive areas. With respect to Enfield and the west side of the County, at the time there were no existing communications sites in that general area that were identified that could be used in the propagation studies being worked on. On the site there is a 180' self-supporting steel tower, a 12x36' shelter, generator, propane tank, fenced compound, roadway access, and utility extensions. He said they are looking at a 100x100' leased area with an access driveway. Initially they looked at a site one-half mile to the south.

The area under discussion this evening was offered to the County by the Kinney family in a phone call to Mr. Shurtleff several years ago when they became aware the County was looking to put a site in the area. Questions were raised as to what it would entail and what the County would potentially pay. He stated he took this information to Jonathan Wood, County Attorney, and he and others went out and examined the site. They found the site to be preferable to the one that the County had been looking at putting an option on previously. The land itself is a large former chicken farm with a number of abandoned buildings, roadways throughout the complex, and far away from any other housing or facilities. For the most part the land is unused farmland as opposed to an area that was closer to homes and would require the opening of fields and removal of trees.

Mr. Shurtleff said a number of radio propagation studies were conducted to confirm the coverage and enhance the radio penetration throughout the County. Height and location played into the system as well because of being able to link into other projected sites. The Town of Enfield was brought into the process and participated in environmental impact studies, the visual surveys, and determined there wasn't a significant impact to the Town. Mr. Shurtleff met with the Town and provided an overview prior to moving forward with the property. A full EIS was conducted in 2005 for all of the impacted sites at a cost exceeding \$300,000. The towns provided their comments at the time and the County complied as they requested. Factors included in the EIS were land use, visual impact, cultural and historical significance, and system needs and alternatives. All were explored and a negative declaration was accepted by the Legislature in 2005 to move the project forward to construction.

Construction began in late summer, 2006. At that time papers were taken to Mr. Kinney's son that provided the full site plan, diagrams, surveys at the time, as well as information on how construction was to proceed and introductions were made to the project manager for the contractor's project management firm. Mr. Shurtleff noted that significant utility extension was done on the property. There were some problems that arose through construction and disagreement that delayed over one-year in time

from receiving an easement from the property owners that would allow the County to extend utilities onto the site. One of the things that was a benefit of the site when it was first looked at was the number of telephone and electric poles that were throughout the property that would have made for an easy extension. The family requested that the County explore alternatives that wouldn't cause them to have many more of these facilities on site. An underground arrangement as well as an extension from the Tucker Road area to the east side of the premises was looked at. Mr. Shurtleff said at the request of the Kinney family at the time he agreed that the County would extend it from the Tucker Road instead of across the farm as originally intended at an extra cost of \$10,000 to the County and several additional months of negotiations. Construction had commenced and while the County was waiting for the easement to occur the system itself and all the other sites came on line and in order for the project to continue on time and online and be able to test the technology the site was run for several weeks on generator power until Motorola was able to prove that the system was operating completely.

Mr. Shurtleff reiterated comments made by Mr. Stumbar earlier with regard to some difficulty that happened between the contractors that were working on-site and a feeling there was damage to the roadways. This remains a point of discussion and an issue they continue to address. On one occasion there was a stop work order given verbally by the property owners and contractors sent away from the site; and twice since that time vendors that had been working on the site doing property installations have been ordered off the premises. The vendors indicated they felt intimidated at the time and would not return to the site if there was not an escort from the Department of Emergency Response or law enforcement agency in the future. Since that time, a staff member from the Department of Emergency Response has gone there and he has asked that the Sheriff's Office be familiar with the site in case there are difficulties that arise.

In late April/early May Mr. Shurtleff said debris was found throughout the site and across the access point to the location, posted signs, and yellow "scene" tape strewn around the western boundaries around the roadway. This was reported by the County Attorney's Office; at which point discussions were had among legal counsel for the agencies.

Mr. Shurtleff said that now the communications system is being brought online and there have been full acceptance testing with Motorola and public safety agencies are being deployed. The coverage that was projected has exceeded requirements and he expects the system to be fully operational within the next few weeks. One thing that the Town of Enfield requested at the time the site was being looked at was to make the site possible for co-location use. He noted there are no co-locators at the site and an arrangement has not been pursued because of the inability to provide security to people who may want to look at the site. He said he is not comfortable in encouraging someone to develop or add to the site until the situation is resolved.

Mr. Shurtleff said alternatives to the parcel are difficult to assess without potential alternative locations. To do so would require extensive studies, environmental and public review, and town and neighborhood input. All of this could be done but the impact on the overall system would be present. He said for any one site or transmitter to be moved within the simulcast system would mean that the entire system would have to be reengineered. Mr. Shurtleff said he would not recommend a movement of the site, not only because of the financial reasons, but also the impact on the coverage the system is now providing. The financial impact of such a move could be \$1 million or more.

Lastly, Mr. Shurtleff spoke of the impact of this site on a 24x7 operation and said the County has to be able to get into that site, and all sites within the system at all times during the year. Based on the hostilities and difficulties that have been experienced, he doesn't feel the needed relationship can be established for the life of the system.

Jonathan Wood, County Attorney, said he arranged for the acquisition of all ten sites referred to by Mr. Shurtleff. Nine have gone well but he said there has not been good co-existence at this site. Landlord and tenant and said the papers that were submitted today explain why the entrance was blocked off on the most recent occasion. He said the County was under the assumption that this blockage was due to a disagreement relating to the amount of damages done to the property by the contractor. However, the documentation received today claims that there is 12½ feet gap between the access road and the County's site that the County doesn't have a right to. Mr. Wood said this shows the lack of communication and lack of good co-existence that needs to happen if the County is to lease the site. He recommends the County take action to own the site.

Mr. Douglas A. Foss of Harris Beach, Attorneys At Law, distributed copies of a letter dated August 19, 2008, with regard to the public hearing on eminent domain. Mr. Foss said his client negotiated a lease, paid to negotiate a lease, wants the lease, and is happy to co-exist with the County on the property in question. Mr. Foss spoke of points contained in his letter below and affidavits presented to the Tompkins County Legislature:

“Dear Sir/Madam:

“Please be advised that we represent J. William Kenney and the John William Kenney Revocable Trust (hereinafter “the Trust”). The Trust owns the property that would be acquired by the County through the exercise of eminent domain and desires to make a record of the issues property before this body under article 2 of the eminent Domain Procedure law (“EDPL”). We have submitted for the Legislature's consideration materials associated with certain litigation commenced by the County against our clients relating to the cell tower located on the Trust's land. These materials include:

- the lease Agreement between J. William Kenney and Tompkins County for premises constituting a 100' by 100' Telecommunications site, Tucker Road, Enfield, New York
- Affidavit of J. William Kenney dated August 19, 2008, together with exhibits,
- The Affidavit of William S. Kenney dated August 19, 2008, together with exhibits, and
- The Answer with Counterclaims.

“Section 203 of the Eminent Domain Procedure law sets forth the aspects required of any determination to proceed by eminent domain. It requires every condemnor to specify “the public use, benefit or purpose to be served by the proposed public project”. Further, every condemnor must specify “the approximate location for the proposed public project” and the reasons for the selection of that location”. Section 203 imposes additional requirements governing this hearing, and it requires the condemnor to outline the purpose, proposed location and alternate locations of the public project. It also allows interested persons the reasonable opportunity to present oral and written statements concerning the proposed project.

“The present proceedings are uncommon in that they do not involve a proposed project; they involve a completed one. The County has a cell tower on leased property that already is operational. In this sense, there is no proposed project at all.

“You have before you the Lease Agreement for the cell tower site. It affords the County control of the site, on which the County already has erected a cell tower and related improvements. You have before you the affidavits of our client and his son, together with pertinent exhibits. They demonstrate that the brush and signs placed in the vicinity of the cell tower were placed there based on a mistaken understanding of the lease derived from the County Attorney, Jonathan Wood, and were removed once that Mr. Kenney learned that the County had an issue with them. The affidavits also demonstrate that Mr. Kenney, through his counsel, has twice informed the County that he has acted to assure that there are no disruptions in the future. Indeed, Mr. Kenney's affidavit demonstrates that there was in fact no

meaningful interference with the cell tower site or its operations. The brush that ostensibly provokes this meeting was in location for nearly four months before Mr. Wood brought it to Mr. Wheeler's attention, and the photographs demonstrate why it took so long to make that call. The County was not impaired in the operation of the cell tower.

"We have researched the issue of whether a condemnor can acquire real property over which it already has secured control by lease. The cases suggest that condemnors do not have the power to unilaterally abrogate the existing arrangements for the public use. Matter of Wa-Wa-Yanda, Inc. v. Dickerson, 18 AD2d 251, 256 (2d Dep't 1963) ("courts should not...enable a municipal corporation to disavow its just commitments or obligations, or to conduct itself respecting them in a manner violative of fair dealing, which they would not sanction were natural persons the parties involved").

"Based on the foregoing law, and in view of the facts set forth in the affidavits, the County's exercise of eminent domain could never be lawful and justified with respect to property encompassed by the existing Lease Agreement. It seems obvious from the papers that these proceedings and all attendant time and expense arises from the fact that the County's surveyor staked the wrong location and that the cell tower and its facilities have encroached upon our client's land outside the described lease parcel. Perhaps in somewhat different circumstances, it might be a public purpose to acquire real property on which the County has been unlawfully trespassing, as such property would be outside the area encompassed by the Lease Agreement. The strictures of EDPL article 2 require the County to confine its taking to property to which it does not already have use under lease.

"Further, we wish to inform you that the Trust is perfectly willing to expand the Lease Agreement to encompass the additional square footage utilized by the County as a result of its surveyor's error. The County has made not the slightest effort to discuss this prospect. Rather, the County initiated these proceedings without even securing a statement of interest from the landlord. We question how, without even having investigated the prospects to extend the description in the Lease Agreement, the County can find that there is a public purpose to be served by exercising the power of eminent domain.

"The County should proceed cautiously in these circumstances. It risks proceeding without a valid public purpose, which would generate significant litigation under EDPL Section 207. If it determines that the public purpose arises from the existing trespass, then it leaves itself liable for the ongoing trespass and damages associated with it. Further, the exercise of the sovereign power of eminent domain potentially generates claims against the County for consequential damages, which are beyond the damages awardable in a valuation proceeding under EDPL article 5. We have asserted such a claim on behalf of our client as a counterclaim in the enclosed Answer. Our client much would prefer to preserve (and modify) the existing Lease Agreement to encompass the encroachments as opposed to litigating damages issues for the next couple of years. A condemnor has 90 days within which to make determinations under EDPL article 2. Perhaps the County should instruct its representatives to ascertain whether they can solve the perceived issues informally and through agreement.

"Thank you for your consideration. We look forward to appearing before you this evening."

A copy of the additional documents submitted by Mr. Foss are on file with the Clerk of the Legislature. Mr. Foss concluded his comments and asked that the County direct its representatives to speak with Mr. Kenney. He expects the issues could be resolved and any lack of effort to do that would only undercut the public purpose argument altogether.

Pledge of Allegiance to the Flag

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

Present: 11 Legislators. Excused – 4 (Legislators Hattery, Mackesey, Randall, and Robertson.)

Report from County Staff

Susan Cook, Chair of the Criminal Justice Advisory/Alternatives-to-Incarceration Board, introduced Nancy Andino of the New York State Department of Criminal Justice Services and Correctional Alternatives. Ms. Andino is Tompkins County's representative from the Department of Probation and Correctional Alternatives (DPCA). She spent today meeting with advisory board members and staff from various County departments on data-sharing initiatives and measuring Tompkins County's programs that receive DCPA funding. Ms. Andino said it is refreshing to see all of the work being done in Tompkins County. She said a tremendous amount of work is being done and the County has done what the DPCA is asking counties to do in a way to meet the needs of those in the system while also addressing recidivism.

Privilege of the Floor by the Public

Lincoln Adams, Town of Caroline, read and submitted the following statement:

“In the last three years, my assessment has risen over 40%. If this continues, there will be a point where I will no longer be able to afford the taxes. I have unsuccessfully appealed each time. I and every other person I have talked with feel the same way; that the whole process is flawed! It penalizes real property owners, who as in my case, tried to achieve the American dream by building their own homes with their own sweat and labor. I built what I thought to be a retirement home two miles up a dirt road on a plot of land. I know the real value of my home because I bought every board and nail. Other homebuilders I know own homes that are now assessed at twice the building cost. In addition, by taxing us more as we improve our properties, the system does not encourage real property owners to make improvements.

“I also feel that the current system penalizes families that have owned property for many years. Take, for example, those families that bought along the lake many years ago. They can no longer afford the taxes and are forced to sell!! Or consider the many people on fixed incomes who've owned property and are being squeezed financially due to the tax burden.

“The current system is broken and needs to be changed!! It is clearly not following the rules. Assessment is supposed to be tied to the real estate market. I have data from the Ithaca Board of Realtors which showed housing sales from 2006 to 2007 down from 886 to 837, a decrease of 5.6%, while the average price increased from \$195,586 to \$204,720, an increase of 4.6%. so why has my property increase in market value 17% and gone from 85% to 100% of its value, resulting in a total increase of 32%?

“Also, is there any other system where you were assumed to be guilty and must prove your innocence, and the accusers don't have to provide the information used to arrive at their conclusions? When I compared my neighbor's assessments, I found there was a large range, from 5% to 28% increase in property value. None of us knows why our assessment went up by the amount it did.

“The entire appeals process was painful, and I felt that they weren't going to do anything – which is exactly what happened. I believe this is an abuse of power!

Solutions:

- Make an equitable assessment and do not change it until the property is sold or major improvements are done. The assessment stays as assigned, period! This helps protect long-term owners and families on fixed incomes. Given that Tompkins County needs revenue to run, the County should institute a means of getting that revenue from a consumer (increased sales tax) and/or income-based system. This system allows for the “damage” to be spread over a larger population with a more equitable distribution. For example, a person’s assessment won’t exceed five percent of their income.
- Cornell University and other tax exempt organizations need to ante up more money!
- New York State is causing much of this problem by passing many things on to the local counties. Our legislators need to receive the same message. When I compare where I live, and I do love it here, to other states I’ve visited, someone needs to explain to me why it costs us so much more. How is it that we have the dubious distinction of being one of the highest taxed states in the nation?!

“This is an extremely important issue, not only to me but to all other of your constituents. I have become a single-issue voter and a reluctant activist. We will be watching, and if progress is not made, we will vote for someone who can get this fixed.

Privilege of the Floor by Legislators

Ms. Chock, District No. 3 Legislator, thanked Robert DeLuca, Commissioner of Mental Health Services, for providing her and Legislator Burbank with an orientation and tour of the Department. She said mental health services is an area that often remains hidden but noted Tompkins County’s Mental Health Department serves over 2,200 people each year. Ms. Chock spoke of gas exploration and new methods for drilling in the County, and said she would like to take a comprehensive look at this. There could be many positive and negative implications that are still unknown, such as the tax base, transportation, water quality, and environment. She asked that the County Attorney look at ways in which the County could locally regulate some areas rather than leave it to the State.

Mr. Sigler, District No. 6 Legislator, said this week the County is going to be buying some billboards; he said although he was a salesman involved in this he will not benefit in any way from this sale.

Mr. Dennis, District No. 15 Legislator, commended Caryn Davies and Andrew Byrnes, graduates of Ithaca High School who received gold medals in the men’s and women’s 8 teams for rowing in the 2008 Summer Olympics.

Mr. Proto, District No. 7 Legislator, also commended Ms. Davies and Mr. Byrnes for the accomplishments in the Olympics. He suggested a formal commendation by this Legislature would be appropriate for consideration. Mr. Proto said he continues to work on the Universal Fund, and said he has made arrangements to do an op-ed piece in the Ithaca Journal. Mr. Proto asked that a copy of Mr. Adams’ statement be included in the minutes.

Ms. Kiefer, District No. 10 Legislator, said people may recall that New York State has had very strict requirements for the testing of touch-screen voting equipment and is presently under a court order because it has failed to comply with requirements to use them. She stated recently Bo Lipari, League of Women Voters representative on the State Committee, reported machines are failing the tests in New York State. This sounds like bad news but it is good news because they are failing before New York has bought and used them, unlike other states.

Mr. Burbank, District No. 12 Legislator, said he was delighted to learn that Chairman Koplinka-Loehr and his son, Sam, are riding in the AIDS Bike Ride. He encouraged others to ride, volunteer, or make a donation to this worthwhile cause.

Approval of Resolution(s) Under the Consent Agenda

It was MOVED by Mrs. McBean-Clairborne, seconded by Ms. Herrera, and unanimously adopted by voice vote by members present to approve the following resolution(s) under the Consent Agenda.

RESOLUTION NO. 159 - AUTHORIZING AGREEMENT FOR TOURISM VISITOR PROFILE STUDY

MOVED by Mrs. McBean-Clairborne, seconded by Ms. Herrera, and unanimously adopted by voice vote by members present under the Consent Agenda.

WHEREAS, the Tompkins County Tourism Program has supported strategic initiatives that promote economic development and enhance the quality of life in the county, and

WHEREAS, the County's Strategic Tourism Planning Board (STPB) has recommended continuing that promotion and enhancement through marketing and product development to contribute to the growth in Tompkins County tourism, and

WHEREAS, the lodging supply has increased in recent years with the opening of a variety of national chain properties as well as independently operated establishments, and

WHEREAS, the Tompkins County Tourism program has historically tracked economic impact and visitor profiles using data compiled from state or regional level research that is unable to capture the unique characteristics of our local economy, and

WHEREAS, in order to continue to make informed decisions supporting the tourism sector and the county overall, the STPB recommends that the County engage a consultant to assist with developing a comprehensive visitor profile and establishing a viable, focused, and on-going visitor profiling program, and

WHEREAS, the County issued a request for proposals for consulting services for profile of visitors to Tompkins County and received five responses, and

WHEREAS, the STPB carefully reviewed the responses and interviewed two candidates, and recommends that the County enter into a contract with Chmura Economics & Analytics from Richmond, Virginia, to provide the consulting services for profile of visitors to Tompkins County for an amount not to exceed \$60,000, and

WHEREAS, the Tompkins County Tourism Program has \$40,000 and the Convention and Visitor's Bureau has \$10,000 budgeted in the 2008 budget for the consultant, and the STPB has recommended an additional \$10,000 in the 2009 budget for the consultant, now therefore be it

RESOLVED, on recommendation of the Planning, Development, and Environmental Quality Committee, That the County Administrator or his designee be authorized to enter into an agreement with the Chmura Economics & Analytics to implement the visitor profile study in an amount to not exceed \$60,000,

RESOLVED, further, That the County Administrator or his designee be authorized to amend the Tompkins County Chamber of Commerce's contract to provide local resource coordination for the consultant for an amount not to exceed \$2,000,

RESOLVED, further, That the County Administrator or his designee be authorized to execute any documents related to this project.

SEQR ACTION: TYPE II - 21

RESOLUTION NO. 160 – AUTHORIZING THE COUNTY TO ENTER INTO A CONTRACT FOR VANPOOL SUBSIDY CONTRACTS AND TAKE OTHER ACTIONS TO ENCOURAGE A NEW TOMPKINS CONSOLIDATED AREA TRANSIT (TCAT) VANPOOL PROGRAM

MOVED by Mrs. McBean-Clairborne, seconded by Ms. Herrera, and unanimously adopted by voice vote by members present under the Consent Agenda.

WHEREAS, the use of vanpools helps to reduce vehicular congestion, gasoline consumption, and air pollution, and

WHEREAS, private companies currently provide, operate, and administer vanpool services for commuters in New York State, and

WHEREAS, Tompkins Consolidated Area Transit (TCAT) has proposed a vanpool subsidy program which will provide partial subsidies for eligible vanpools in order to lower the cost to commuters who participate in vanpooling and thereby increase the attractiveness of vanpooling as a commuting option, and

WHEREAS, such subsidies will facilitate a travel alternative in geographical locations where traditional public transit has not been available or feasible to operate, and

WHEREAS, TCAT initially will be reimbursed for such subsidies by Cornell University and after a period of time TCAT anticipates Federal funding will be received by Tompkins County as a recipient of Federal Transit Administration (FTA) grants, and that such grants pass through to TCAT to supplement and replace Cornell University funding, now therefore be it

RESOLVED, on recommendation of the Planning, Development, and Environmental Quality Committee, That the County Administrator or his designee is hereby authorized to execute vanpool subsidy contracts, applications for aid, and any other documents needed to implement and promote the vanpool subsidy program.

SEQR ACTION: TYPE II-20

RESOLUTION NO. 161 - INCREASE OF HOURS – SENIOR ACCOUNT CLERK/TYPIST AND FORENSIC COUNSELORS – TOMPKINS COUNTY MENTAL HEALTH DEPARTMENT

MOVED by Mrs. McBean-Clairborne, seconded by Ms. Herrera, and unanimously adopted by voice vote by members present under the Consent Agenda.

WHEREAS, the Tompkins County Mental Health Department has reorganized the Billing and Records Units within its Administration as well as the Forensic Unit of the Mental Health Clinic, and

WHEREAS, this reorganization requires the increase of hours in one (1) Senior Account Clerk/Typist, position number (568) Labor Grade I (9), and two (2) Forensic Counselors, position numbers (617 and 604) Labor grade P (16), from 35 hours per week to 40 hours per week, and

WHEREAS, due to departmental reorganization, no new monies are needed to fund these position changes, now therefore be it

RESOLVED, on recommendation of the Health and Human Services and the Budget and Capital Committees, That the positions of Senior Account Clerk/Typist, position number (568) Labor Grade I (9), and Forensic Counselor, position numbers (617 and 604) Labor grade P (16), be increased to 40 hours per week effective immediately.

SEQR ACTION: TYPE II-20

RESOLUTION NO. 162 - AWARD OF BID – CUSTOMER SERVICE PERSONNEL (AIRPORT AMBASSADORS) CONTRACT – ITHACA TOMPKINS REGIONAL AIRPORT

MOVED by Mrs. McBean-Clairborne, seconded by Ms. Herrera, and unanimously adopted by voice vote by members present under the Consent Agenda.

WHEREAS, the Finance Department advertised a Request for Proposals for a three-year contract, with an option to renew for a further two years, with costs to be negotiated, to provide customer service and security services at the Ithaca Tompkins Regional Airport, and four proposals were received, and

WHEREAS, the proposal deemed to be most suitable and in the best interests of the airport was received from Fairweather Enterprise of Ithaca, New York, and

WHEREAS, the cost of the three-year contract, commencing on September 1, 2008, will be as follows:

Year One	\$ 149,900.54
Year Two	\$ 149,900.54
Year Three	\$ 149,900.54

, now therefore be it

RESOLVED, on recommendation of the Facilities and Infrastructure Committee, That the contract be awarded to Fairweather Enterprise of Ithaca, New York, and that the County Administrator be and hereby is authorized to execute said contract.

SEQR ACTION: TYPE II-20

RESOLUTION NO. 163 - AWARD OF BID – CR 105, CORTLAND-McLEAN ROAD RECONSTRUCTION AND BRIDGE REPLACEMENT (BIN 3314250) PHASE 3 - PIN 3754.50, TOWN OF GROTON

MOVED by Mrs. McBean-Clairborne, seconded by Ms. Herrera, and unanimously adopted by voice vote by members present under the Consent Agenda.

WHEREAS, Resolution No. 324 of 2001 approved a project to replace the bridge carrying County Road 105, McLean-Cortland Road, also known as School Street, over Fall Creek, P.I.N. 3754.50, in the Town of Groton, and WHEREAS, The Department of Finance - Division of Purchasing has duly advertised for bids for the project, and

WHEREAS, five (5) bids were received and publicly opened on July 28, 2008, and

WHEREAS, the bids for the project exceeded the project budget of \$861,000, but the New York State Department of Transportation has indicated that the Federal share of the project should still pay for eighty percent of the bid cost, now therefore be it

RESOLVED, on recommendation of the Facilities and Infrastructure Committee, That the bid be awarded to Economy Paving Company, Inc., of Cortland, New York, lowest, responsible bidder, in the amount of \$1,076,974.20, pending approval and confirmation of funding levels by the New York State Department of Transportation,

RESOLVED, further, That the Highway Division be authorized to implement this bid on behalf of the County, funds to be provided from the McLean-Cortland Road Capital Account (HZ 5103.59239.53.02) and Road Maintenance Program Capital Account (HZ 5105.59239.51.05).

SEQR ACTION: TYPE II-2

RESOLUTION NO. 164 - INCREASE OF HOURS - PARALEGAL TO THE COUNTY ATTORNEY- TOMPKINS COUNTY'S OFFICE OF THE COUNTY ATTORNEY

MOVED by Mrs. McBean-Clairborne, seconded by Ms. Herrera, and unanimously adopted by voice vote by members present under the Consent Agenda.

WHEREAS, the Paralegal to the County Attorney has had an increase in workload due to Criminal Justice Advisory/Alternatives to Incarceration (CJA/ATI) Board work, creating a need for additional hours, and

WHEREAS, this requires an increase of hours from 37.5 hours to 40 hours per week, and

WHEREAS, the County Attorney's budget can cover the cost for this year but in future years it is desirable to have a separate budget line created, now therefore be it

RESOLVED, on recommendation of the Government Operations and the Budget and Capital Committees, That the position of Paralegal to the County Attorney, budgeting unit number 1420.51000312, be increased to 40 hours per week effective August 25, 2008,

RESOLVED, further, That no new monies are needed in the current year to fund this position change.

SEQR ACTION: TYPE II-20

Appointment(s) Approved Under the Consent Agenda

It was MOVED by Mrs. McBean-Clairborne, seconded by Ms. Herrera, and unanimously adopted by voice vote by members present, to approve the following appointment(s) under the Consent Agenda:

Advisory Board on Indigent Representation

Heather Bissell – At-large representative; term expires December 31, 2010

Julia Dietrich – At-large representative; term expires December 31, 2009

Greg Stevenson – Legislator; term expires December 31, 2009

Will Burbank – Legislator; term expires December 31, 2009

Workforce Diversity and Inclusion Committee

Mary DeSouza – Community member representative; term expires December 31, 2009

Presentation – Lifelong/Office for the Aging Feasibility Study

Holt Architects made a presentation concerning the Feasibility Study, which is on file with the Clerk of the Legislature. The purpose of the Study was to address the following: Lifelong's client-base is expanding and that agency is not able to accommodate client needs in its current space and the County's Office for the Aging is also working in constrained space and needs to find alternative space. Mr. Gillespie reviewed the Feasibility Study and how these two entities can co-exist at one site. The study also addresses future space requirements in anticipation of the demographic shift reflecting an increase in the population of senior citizens in Tompkins County. Current use of Lifelong programs and facilities is outstripping the available space to adequately provide services. The Feasibility study process was guided by a joint Lifelong/County Building Task Force comprised of: Dan Winch, Building Task Force Chair; and Lifelong Board of Directors: William Hawley, Lifelong Executive Director; Charles Brodhead, Lifelong Board of Directors; Noel Desch, Lifelong member, Ron Havard, Lifelong Board of Directors; Robert Matyas, Lifelong member; Mark Macera, Longview/Ithacare Executive Director; Ed Marx, Tompkins County Commissioner of Planning and Public Works; and Arel Lemaro, Tompkins County Facilities Division Director.

Mr. Koplinka-Loehr noted that a resolution of intent would be forthcoming in September for the Legislature's consideration.

Report from the Chair

Mr. Koplinka-Loehr asked if any Legislator is interested in attending the upcoming NYSAC Conference to let staff know. He also announced a blood drive will be held at the Tompkins County Public Library on August 26 from 9 a.m. to 3 p.m.

Report from the County Administrator

Mr. Whicher reported he received disappointing news from the Statewide Wireless Network last week that the anticipated \$400,000 in funding will not be received by Tompkins County. At this time he does not anticipate any other impacts from the State budget with the exception of shifting out the Health Department Building financing by one year. He said it is important that a united message be sent to the State that State Budget cuts cannot be made at the expense of the counties. This is not a real reduction, but only a shift in cost. Mr. Whicher reported he is close to completing his recommended budget. While the budget he will present will meet the Legislature's three percent goal, there will be many difficult decisions to be made to achieve that. Realistically, if it can stay at under 4.5%, you'll be doing really well.

Report from the County Attorney

Mr. Wood had no report.

Report from the Finance Director

Mr. Squires said tomorrow he will be sending out a \$1 million payment to Motorola, which is part of the acceptance of the communications system according to the contract. Mr. Whicher noted two payments totaling \$1 million from the federal government were received. Mr. Squires reported sales tax is continuing to hold up and is substantially above the current budget estimate.

Mr. Proto spoke of Mr. Adam's earlier comments regarding raising income from other sources. He asked why the income tax did not move forward when it was previously considered. Mr. Squires said only cities are authorized to collect an income tax in New York State. Mr. Whicher noted there would potentially be a shift from income properties such as apartments to residential programs.

Withdrawal of Resolution(s) from the Agenda

Chairman Koplinka-Loehr granted permission to the appropriate committee chair to withdraw the following resolution:

Award of Grant – The Grandmother Project

Addition of Resolution(s) to the Agenda

On motion and duly seconded and unanimously adopted by voice vote by members present, the following resolution(s) were added to the agenda:

Authorization to Accept Public Safety Interoperable Communications Grant, Department of
Emergency Response;
Budget Adjustment – Department of Emergency Response

Report from the Planning, Development and Environmental Quality Committee

Mr. Proto, Member, reported the Committee met and heard a report from Steve Penningroth of the Community Science Institute. The monitoring they have been doing implies that the phosphorus going into the Lake seems to be coming from the tributaries. The Planning Department staff also provided updates on the Flood Hazard Mitigation Program and the Housing Trust and Affordability Fund. The Committee was presented with the Planning Department's Annual Report and Mr. Proto encouraged Legislators to review it. He also reported on the success of TCAT's reduced fares during off-peak hours and stated ridership has been running 31.7 percent ahead. The TCAT Executive Committee discussed carrying this into the fall, but no decision has been made at this time. In reply to Mr. Sigler's questions, Mr. Proto said with the greater use off off-peak lower fares, TCA is only \$14,000 behind instead of the estimated \$20,000. TCAT has also been discussing a regional transit initiative.

Mr. Proto announced the October 9 Committee meeting has been rescheduled to October 8th.

Report from the Budget and Capital Committee

Mr. Shinagawa, Chair, asked Legislators to review and provide comments on the final Expanded Budget and Capital Committee calendar. He announced the next regular Budget and Capital Committee has been canceled.

Report and Presentation of Resolution(s) from the Public Safety Committee

Mr. Stevenson, Chair, reported the Committee met on August 15 and many of the action items from that meeting are reflected on this evening's agenda. The Committee spent a significant amount of time discussing a proposal by County Administration to look at a public defender system versus an assigned counsel system for providing indigent representation services. The Committee took no action at that meeting; however, he expects many more questions will be raised with regard to this issue in the coming months.

Mr. Proto said this issue was looked at twice before and suggested using reports on file in the legislature rather than duplicate past work.

RESOLUTION NO. 165 – APPROPRIATION FROM CONTINGENT FUND – TERMINAL- PAY REIMBURSEMENT – DEPARTMENT OF PROBATION AND COMMUNITY JUSTICE

MOVED by Mr. Stevenson, seconded by Mr. Dennis. A short roll call vote resulted as follows: Ayes – 11, Noes – 0, Excused – 4 (Legislators Hattery, Mackesey, Randall, and Robertson). RESOLUTION ADOPTED.

WHEREAS, the Department of Probation and Community Justice had a Probation Officer resign effective March 4, 2008, and

WHEREAS, the Fiscal Policy of Tompkins County allows for terminal-pay reimbursement from the Contingent Fund, now therefore be it

RESOLVED, on recommendation of the Public Safety and Budget the and Capital Committees, That the Director of Finance is hereby authorized and directed to make the following budget appropriation for 2008:

FROM:	A1990.54400	Contingent Fund	2,472
TO:	A3142.51000585	Probation Officer	1,791
	A3142.58800	Fringes	681

SEQR ACTION: TYPE II-20

RESOLUTION NO. 166 - APPROPRIATION FROM CONTINGENT FUND - REPLACEMENT PAY – DEPARTMENT OF PROBATION AND COMMUNITY JUSTICE

MOVED by Mr. Stevenson, seconded by Mrs. McBean-Clairborne. A short roll call vote resulted as follows: Ayes – 11, Noes – 0, Excused – 4 (Legislators Hattery, Mackesey, Randall, and Robertson). RESOLUTION ADOPTED.

WHEREAS, the Department of Probation and Community Justice had an employee out on disability for greater than two months in the Core Probation Services Program, and

WHEREAS, the Fiscal Policy of Tompkins County allows for replacement pay from the Contingent Fund, not including the first two months of absence, now therefore be it

RESOLVED, on recommendation of the Public Safety and the Budget and Capital Committees, That the Director of Finance is hereby authorized to make the following adjustment to his books for 2008:

FROM:	A1990.54400	Contingent Fund	\$3,600
TO:	A3142.51000585	Probation Officer	\$2,609
	A3142.58800	Fringes	\$991

SEQR ACTION: TYPE II-20

RESOLUTION NO. 167 - APPROPRIATION FROM CONTINGENT FUND - REPLACEMENT PAY – DEPARTMENT OF PROBATION AND COMMUNITY JUSTICE

MOVED by Mr. Stevenson, seconded by Mrs. McBean-Clairborne. A short roll call vote resulted as follows: Ayes – 11, Noes – 0, Excused – 4 (Legislators Hattery, Mackesey, Randall, and Robertson). RESOLUTION ADOPTED.

WHEREAS, the Department of Probation and Community Justice had an employee out on disability for greater than two months in the Core Probation Services Program, and

WHEREAS, the Fiscal Policy of Tompkins County allows for replacement pay from the Contingent Fund, not including the first two months of absence, now therefore be it

RESOLVED, on recommendation of the Public Safety and the Budget and Capital Committees, That the Director of Finance is hereby authorized to make the following adjustment to his books for 2008:

FROM:	A1990.54400	Contingent Fund	\$6,665
TO:	A3142.51000585	Probation Officer	\$4,830
	A3142.58800	Fringes	\$1,835

SEQR ACTION: TYPE II-20

RESOLUTION NO. 168 - AUTHORIZATION TO ACCEPT PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS GRANT, DEPARTMENT OF EMERGENCY RESPONSE

MOVED by Mr. Stevenson, seconded by Ms. Kiefer. Ms. Herrera said while she will support this resolution she does not like adding resolutions to the agenda. A voice vote resulted as follows: Ayes – 11, Noes – 0, Excused – 4 (Legislators Hattery, Mackesey, Randall, and Robertson). RESOLUTION ADOPTED.

WHEREAS, Tompkins County is eligible for funding through the “Public Safety Interoperable Communications Grant Program” (PSIC) to be administered by the New York State Office of Homeland Security, and

WHEREAS, it is beneficial for the County to further enhance interoperable radio communications with neighboring counties, and regional and state entities, and

WHEREAS, such additional regional interoperability can be achieved through the acquisition and installation of a “Moto-bridge” gateway/radio frequency bridging device, compatible and integrated with the Motorola trunked 800 MHz communications system currently being implemented, now therefore be it

RESOLVED, on recommendation of the Public Safety Committee, That Tompkins County accepts a PSIC Grant Award of \$68,000 for the purposes of enhancing the communications system,

RESOLVED, further, That the following accounts be adjusted accordingly:

Department of Emergency Response

Revenue: 3410.43389 (Other Public Safety)

Expense: 3410.52222 (Communications Equipment)

SEQR ACTION: TYPE II-20

RESOLUTION NO. 169 - BUDGET ADJUSTMENT – EMERGENCY RESPONSE

MOVED by Mr. Stevenson, seconded by Mr. Proto, and unanimously adopted by voice vote by members present. Ms. Herrera reiterated comments made during consideration of the previous resolution.

WHEREAS, pursuant to Administrative Manual Policy 05-02, budget adjustments exceeding \$5,000 require Legislative approval, now therefore be it

RESOLVED, on recommendation of the Public Safety Committee, That the Director of Finance be directed to make the following budget adjustments on his books:

Emergency Response

<u>Revenue Acct</u>	<u>Title</u>	<u>Amt</u>	<u>Approp Acct</u>	<u>Title(s)</u>
A3410.43389	Other Public Safety	\$135,303.53	3410.52222	Communications Equipment
A3410.43389	Other Public Safety	\$ 20,000.00	3410.54311	Maintenance

Explanation: Legacy radio frequencies have been reallocated by the Federal Communications Commission to a mobile satellite service necessitating immediate retirement of “old” microwave system components and relocation of radio equipment onto the new microwave system. Tompkins County will be reimbursed for related costs, including an extension at the new microwave system to our backup site and movement of equipment to various new sites.

SEQR ACTION: TYPE II-20

Report from the Workforce Diversity and Inclusion Committee

Mrs. McBean-Clairborne, Chair, had no report.

Report from the Health and Human Services Committee

Mr. Proto, Chair, said the Committee met and received a report on an initiative the Health Department is working on concerning cases of sexually transmitted diseases. The Committee also received the same presentation given earlier on the Office for the Aging/Lifelong co-location. Mr. Proto said Department budget updates were distributed and members were asked to bring them back to the next meeting. The Committee received an update on the Healthy New York program and was informed that due to a glitch at the State level, individuals who for months thought they were eligible for health care

found out eventually that their child was not eligible. Assemblywoman Lifton is helping to work on this. The next Committee meeting will be September 3rd.

Mr. Proto reported on activities of the Board of Health and stated the County policy with regard to what needs to be tested for lead poisoning has been enhanced and the protocols for it. They have also added an additional item to the HIB test and the vaccine policy is being enhanced.

Report from the Facilities and Infrastructure Committee

Mrs. McBean-Clairborne, Chair, reported the Committee met briefly this afternoon and will meet again on August 21st.

Report and Presentation of Resolution(s) from the Human Resources Committee

Mr. Dennis, Chair, had no report. The next meeting will be September 4th.

RESOLUTION NO. 170 – CONFIRMING APPOINTMENT OF TOMPKINS COUNTY ADMINISTRATOR

MOVED by Mr. Dennis, seconded by Mrs. McBean-Clairborne. Mr. Dennis said he served on the first search committee and followed the second search committee closely and is pleased that both groups arrived at the same goal and applauded the efforts of all involved. Mr. Dennis expressed extreme pleasure in the selection of Mr. Mareane. Mr. Whicher said he and County Administration staff are very pleased with the selection of Mr. Mareane and he anticipates a very smooth transition. Mr. Koplinka-Loehr said there will be a transition team and asked that any Legislator indicate their interest to him. A voice vote on the resolution resulted as follows: Ayes – 11, Noes – 0, Excused - 4 (Legislators Hattery, Mackesey, Randall, and Robertson). RESOLUTION ADOPTED.

WHEREAS, the Tompkins County Charter provides that the County Administrator shall be appointed by the Legislature, and

WHEREAS, a search process has been conducted over the last twelve months that included two separate recruitment efforts and rounds of interviews, and

WHEREAS, the search committee for the second recruitment effort, consisting of five Legislators, two Department Heads, a County labor/employee representative, and two community representatives, recommended two candidates to the Legislature for consideration, and

WHEREAS, the Legislature gave due deliberation to the candidates and took into consideration input from Department Heads who also had an opportunity to meet the finalists, now therefore be it

RESOLVED, That the appointment of Mr. Joe Mareane to the position of Tompkins County Administrator is hereby confirmed by the Legislature, effective October 21, 2008, with an employment start date of October 28, 2008, to allow overlap with the existing County Administrator,

RESOLVED, further, That the appointment of Stephen Whicher as Tompkins County Administrator shall terminate effective at midnight on October 27, 2008, with gratitude for the many years of service which he has committed to the public good of all residents in Tompkins County.

SEQR ACTION: TYPE II-20

Report and Presentation of Resolution(s) from the Government Operations Committee

Ms. Kiefer, Vice Chair, reported the Committee met on August 8th and conducted routine business. The Committee heard from the Finance Director good news that there have been more requests for certificate of residency for Tompkins Cortland Community College. He also reported on Tioga

County's recent foreclosure auction in which there were two 200-acre properties that sold for \$.5 million each. Such prices could be due to the great interest in drilling for gas. The total proceeds for Tioga County's auction was \$1.6 million, which is the equivalent to six percent of their tax levy. The Committee began discussing Legislature salaries; this was deferred to the November meeting.

The Committee then adjourned to a joint meeting with the Budget and Capital Committee. Ms. Kiefer said attendance from the two committees at that meeting was not good. The Committees first heard the charge to the Core Performance Subcommittee which this was followed by a presentation by Lee Shurtleff and Julia Mattick of the framework that had been developed over many months. That framework consists of five performance dimensions of Tompkins County government and a list of performance standards and indicators. Ms. Younger then introduced quality assurance briefings, a performance management tool for Tompkins County that would ensure that major actions and major decisions are thoroughly vetted. Greg Potter and Angie White then led the Committees through a complex example of how this would work when it is applied to the ongoing human resource and payroll process. She expects the entire Legislature to receive this presentation in the future.

RESOLUTION NO. 171 – AUTHORIZING A PUBLIC HEARING ON PROPOSED LOCAL LAW NO. 2 of 2008 - A LOCAL LAW PROVIDING FOR ENHANCED PERSONAL-PRIVACY FOR DOCUMENTS RECORDED IN THE OFFICE OF THE COUNTY CLERK, AND AUTHORIZING AN INCREASE IN FEES COLLECTED BY THE COUNTY CLERK FOR RECORDING, ENTERING, INDEXING, AND ENDORSING A CERTIFICATE ON ANY INSTRUMENT

MOVED by Ms. Kiefer, seconded by Ms. Herrera. Mr. Proto questioned why two actions are tied together into one public hearing. Mr. Wood said these are part of one local law and reference one piece of State Legislation. He said this is the standard form of the law that all counties are adopting. Mr. Proto asked if there was any backup information that would pertain to either of these fees. Ms. Herrera referred to discussion that took place at the Budget and Capital Committee meeting concerning the joining of these two and said she is satisfied with the explanations that were provided at that meeting. Mr. Burbank requested further explanations of the costs and if the amounts contained in the local law are truly reflective of those costs. Ms. Chock requested a listing of these fees and what the difference in income is projected to be.

A voice vote resulted as follows: Ayes – 11, Noes – 0, Excused – 4 (Legislators Hattery, Mackesey, Randall, and Robertson). RESOLUTION ADOPTED.

WHEREAS, it is desired to amend the Tompkins County Code to increase fees for recording documents and add a new Article III, Enhanced Personal-Privacy Protection for Recorded Documents Law to Chapter 114, and

WHEREAS, fees for recording documents have not increased since 1983, and

WHEREAS, the instruments affected by the increased fees include but are not limited to deeds, mortgages, easements, land contracts, Powers of Attorney, miscellaneous records, discharges of mortgage, assignments and releases, now therefore be it

RESOLVED, on recommendation of the Government Operations and the Budget and Capital Committees, That a public hearing be held before the Tompkins County Legislature in Legislative Chambers of the Tompkins County Courthouse, 320 North Tioga Street, Ithaca, New York, on Tuesday, September 2, 2008, at 5:30 o'clock in the evening thereof concerning proposed Local Law No. 2 of 2008 - A Local Law Providing for Enhanced Personal-Privacy for Documents Recorded in the Office of the County Clerk, and Authorizing an Increase in Fees Collected by the County Clerk for Recording, Entering, Indexing, and Endorsing a Certificate on any Instrument. At such time and place all persons interested in the subject matter will be heard concerning the same,

Tompkins County Legislature
August 19, 2008

RESOLVED, further, That the Clerk of the Legislature is hereby authorized and directed to place proper notice of such public hearing in the official newspaper of the County.

SEQR ACTION: TYPE II-20

Approval of Minutes of July 15 and August 5, 2008

It was MOVED by Mr. Stevenson, seconded by Mrs. McBean-Clairborne, and unanimously adopted by voice vote by members present, to approve the minutes of July 15 and August 5, 2008, as corrected. MINUTES APPROVED.

Unfinished Business

Mr. Proto inquired about the eminent domain procedures based on the comments made by the property owner's attorney this evening. Mr. Wood said the next step after the public hearing is for the Legislature to make findings and decide on whether to proceed with the eminent domain procedure. The County's attorney will put information together and the Legislature can make a determination at that time. He said action must be taken within 90 day or another public hearing is required.

Adjournment

On motion the meeting was adjourned at 7:55 p.m.

Respectfully submitted by Michelle Pottorff, TC Legislature Office