

**MINUTES OF A ROCORI TRAIL CONSTRUCTION COMMITTEE MEETING HELD  
THURSDAY, MARCH 4, 2010 – 9:00 A.M. – ROCKVILLE CITY HALL**

The meeting was called to order. The following members were found to be present:  
ROckville: Rena Weber-Administrator, Duane Willenbring & Jerry Schmitt  
COld Spring: Larry Lahr-Administrator, Mayor Doug Schmitz & Bob Thelen  
Richmond: Dan Coughlin-Administrator, Kevin Mooney & Tim Paczkowski

Others present: Adam Ripple, Heidi Peper, John & Linda Peck, Bob Murphy, Randy Johannes, Scott Schroeder & Peter Theismann.

Introductions were done. Chair Lahr introduced discussion on:

**LEGISLATIVE UPDATE FROM GARY CERKVENIK**

Adam Ripple talked to Gary Cerkvenik about his thoughts of the bonding bill and negotiating with the governor being at a stalemate. There is a 70% chance the trail stays in the bonding bill.

- ◆ Timing of the bill – early to mid-May before approved
- ◆ Governor can veto – then they would start over from scratch
- ◆ Letters of support should be sent to the governor and our representatives
- ◆ Republican representatives especially need to be leaned on
- ◆ Telling the truth is best – without this bonding the project is dead in the water
- ◆ RTCB & County EDA & Chambers should send letters
- ◆ Adam & Heidi will e-mail out certain key points

**REPORT FROM RTCB ATTORNEY – ADAM RIPPLE**

**A. BY-LAW DEVELOPMENT PROCESS-**

Adam Ripple reported the draft of the by-laws is ready and the chairperson format cumbersome as it changes every meeting.

Dan Coughlin questioned whether or not we could have "co-chair responsibility". Adam indicated we would need to amend the by-laws. Getting signatures on applications has also been cumbersome.

Adam questioned if we should have by-laws state that one person will be designated to sign documents annually,

***Motion by Member Willenbring, second by Member Thelen, to have the chair position rotate monthly, alphabetically by city. Motion carried.***

Adam will bring back to next meeting the updated version of the by-laws.

**B. REPORT ON 2/19/10 MEETING WITH ALPHA DEVELOPMENT**

Adam Ripple reported that Roger Schwinghammer –BNSF, stated the abandonment is top priority for him and Susan Odom. The railroad was recently purchased by Warren Buffet so this will slow things down.

- ◆ We will need appraisals – not the typical appraisal
- ◆ BNSF will look at in stretches – where there is commercial the Railroad values the property more
- ◆ Need to pull the deeds which will involve time
- ◆ An Environmental assessment needs to be done on old CS Granite property (right-of-way) as there are solvent and oil issues
- ◆ Negotiate with railroad then

On the engineering side SEH has the bulk of their proposal done and are just waiting for us to move ahead with this process.

Member Schmitz questioned how much money is needed for closing, appraisal, and acquisition. Adam estimated \$10,000 for appraisal of commercial property, survey work \$10,000 to \$20,000 which is not reimbursable. Environmental Assessment – not sure what the cost would be.

Adam indicated the appraisal work should start now. If we start now and the bonding money does not come through the cities would be responsible. There is \$30,000 in engineering cost right now so the cost is \$10,000 to each city right now.

Member Schmitz stated he was not sure Cold Spring would go ahead with the process. Adam Ripple indicated the acquisition cost is over \$500,000 in Cold Spring alone which is split by the three entities.

Heidi Peper reported there is a request for 2.6 million of federal money to assist with completion of the Rocori Trail. We should find out this time next year if the request is granted. Heidi further reported Stearns County has not been asked for any money yet and questioned why they are not seeing this as a significant county trail.

Adam Ripple indicated the County did not like the way the RTCB has gone about this by securing grant money first without securing the corridor.

Linda Peck questioned if you don't proceed now and the bonding money comes through what is the impact to the cities if we have to turn the money back.

Dan Coughlin stated that from a regional standpoint is the burden it puts on the local people. Neighbors across the street are not going to pay anything at all. When times are tough like losing LGA, it is hard to tell people we are going to lose this grant and we have to tax you more.

**C. CORRIDOR TITLE RESEARCH UPDATE** – discussion was tabled on this as it was already done.

**D. UPDATE ON MEMMORANDUM OF UNDERSTANDING WITH STEARNS COUNTY**  
Stearns County did provide Adam with two versions of the memo of understanding. Adam has discussed revisions with various county people.

Where is the RTCB at? Adam reported that we need money for acquisition because Stearns County doesn't want their name attached to this with the possibility of them having to come up with the money.

**MEMO FROM ADAM RIPPLE** – Adam Ripple indicated the Board is in a tough spot. Everything is resting on the bonding bill. (Refer to 3/3/10 Memo attached as Exhibit A.)

The abandonment process is going on which takes a minimum of 180 days. The railroad will publish a map of the corridor where the railroad is being abandoned. There will be delays, but Wenner Gas has agreed to terminate their need. Adam is hoping the railroad will file for abandonment in March.

OPTIONS:

1. Risk associated with moving forward without securing bonding
2. Risk associated with not moving forward until and unless 2010 bonding money is secured
3. Risks associated with abandoning the project and returning the money
  - ◆ SAFETEA LU extension – is not guaranteed

If cities need to go back to their respective councils they should do that. A special RTCB meeting would need to be held soon.

Larry Lahr asked if the letter from Dan Collins to the DNR asking for a one year extension on the SAFETEA LU funding would help. Adam reported this is not a given and they will consider that request next year.

Scott Schroeder asked can the 2008 bonding be amended to include acquisition. No.

Member Mooney stated he felt we need to be cautious in how we proceed. The time line is tight and spooky. He would love to keep plugging ahead, but in the economic times like this he is not sure.

Member Thelen voiced concern that he can't commit on a leap of faith to go ahead. There is another project in Cold Spring that could benefit, but he can't commit the Cold Spring money until they discuss it.

Adam Ripple reported further on the meeting with Reggie Fraley.

- ◆ Roger Schwinghammer reported that he and CS Granite had been in negotiation to purchase all of the excess property, but that fell through. Now there are other people interested. The railroad wants to sell all of it.
- ◆ If Granite Company and 3 or 4 other people are interested in purchasing the excess that would slow things down.
- ◆ To expedite the RTCB could buy all of the excess and sell back – just to keep that process going
- ◆ RTCB could still be holding the bag with the excess property

Heidi Peper indicated the corridor east of the river has not been identified.

Adam Ripple indicated the abandonment is from 178<sup>th</sup> Avenue to east of river and will take out 2 railroad crossings. From there we would hope BNSF would reclassify the railroad, but the short hauler is not keen on that. Adam suggested a special meeting be held soon with consultants present.

Member Willenbring stated he would like to take it back to full council on the 16<sup>th</sup> of March.

Member Thelen asked if CS Granite has info that we could ask for as it would save a lot of money. Do we still need to hold a special meeting or just meet in April as planned?

The following was determined:

- ◆ Go back to respective cities and write letters to legislators
- ◆ E-mail report from Gary Cerkvenik when received

**CONSIDER ELECTION OF CHAIRPERSON** – This was discussed already.

#### **FINAL REPORT ON APO APPLICATION**

Rena Weber and Heidi Peper explained the denial and that the next round of funding is 2015 or 2016. There were too many unknowns on this project for the TAC to feel comfortable.

#### **REPORT FROM GREATER MN REGIONAL PARKS & TRAILS MEETING**

John and Linda Peck did not attend the meeting, but John stated it was basically an organizational meeting. An inventory of parks and trails is needed. Their goal is to secure funding for greater MN trails which are regional trails in addition to state parks.

- ◆ Legacy Money – how it is split 5.7% goes to outstate MN

Heidi Peper reported there is another round of applications due 3/31/10 and asked if we should re-apply. Yes and it was reported that the grant may cover acquisition.

Next meeting 6/10/10 – Little Falls

#### **COMMUNITY OUTREACH** – Chair Lahr reported on:

- A. **DEVELOP SCHEDULE OF EVENTS** –Cold Spring Chamber has developed a list of events which Cold Spring put on their web-site  
People were urged to add to the list  
Tour of Saints – July 10 – 11 Rena and Kevin will look into setting up a table again
- B. **COLD SPRING CHAMBER SHOWCASE** – 3/27/10 – may want to set up a table here

#### **AUTHORIZE PAYMENT OF BILLS**

Weber Custom Printing	\$130.00
Rinke Noonan	\$2028.00

***Motion by Member Willenbring, second by Member Schmitz, to approve the list of bills as presented. Motion carried unanimously.***

**DISCUSS CONTENTS OF NEXT REGULAR MEETING AGENDA**

It was determined that the agenda would be pretty much the same as this agenda.

***APPROVAL OF MINUTES 12/3/09 & 2/4/10 – Motion by Member Mooney, second by Member Thelen, to approve the minutes of 12/03/09 & 02/04/10 as presented. Motion carried unanimously.***

***ADJOURNMENT – Motion by Member Willenbring, second by Member Mooney, to adjourn the meeting at 10:46 a.m. Motion carried.***

Submitted by:  
Rena Weber  
Administrator/Clerk  
City of Rockville

# Rinke Noonan

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## Office Memorandum

**To: ROCORI Trail Board**  
**From: Adam A. Ripple**  
**Direct Dial: 257-3868**  
**Re: Project Status**  
**Our File: 21977.001**  
**Date: March 3, 2010**

As you know, Phase 1 of the ROCORI Trail project (and the success of all future phases) is under a very tight time line, and meeting the time line relies on several critical things happening. The federal money (SAFETEA-LU) for the project requires the Board to purchase right of way for the trail by April 2011. If the right of way is not secured by that date, the SAFETEA-LU funds will be lost. In order to purchase the right of way, the Board needs the Legislature to appropriate money in the 2010 bonding bill. The bonding bill may not be approved until May. The Board currently has no funds that may be used for acquisition. Failure to get bonding funds, failure to purchase the right of way on time, or loss of the SAFETEA-LU funds will likely kill the ROCORI Trail project. There may be long-term consequences for member Cities if the state and federal money needs to be given back.

The Board needs to decide if it should continue to move forward with the acquisition process by hiring an appraiser, preparing title work, having the rail corridor surveyed, conducting an environmental assessment, and negotiating with the railroad in order to try and meet the tight time line for acquiring the property. The risk in doing so is that the bonding money may not be appropriated, which would leave the member Cities on the hook for all acquisition costs.

The other option is to put the acquisition work on hold until the outcome of the Legislative Session is known. This minimizes the risk that member Cities may have to pay for acquisition work. The risk with this option is that it compresses an already tight time line.

I have worked with SEH to develop a time line of the actions that will be required in order to complete Phase 1 of the ROCORI Trail. I have also prepared a summary of the funding situation. Once the Board is comfortable that both the timing and funding issues are understood, it needs to decide on one of the two options listed above. If representatives on the Board are uncomfortable making the decision without conferring with their entire council, I suggest they do so because the member Cities ultimately bear the financial risk for decisions of the Board.

impact of abandoning the project with their lobbyist Gary Cerkvenik.

### **RISK ASSESSMENT**

The Board faces a difficult decision. It must either move forward with the project knowing that funding for land acquisition has not yet been secured or it must wait to see if the 2010 bonding money is awarded, knowing that it will then be very difficult to meet the time lines to be eligible for the SAFETEA-LU funds. In order to make that decision, the Board must weigh the risks associated with (1) speculative funding for right of way acquisition versus (2) the tight time lines that must be met in order to prevent the loss of SAFETEA-LU funds.

#### ***OPTION 1: The risks associated with moving forward without having 2010 bonding money secured.***

The Board has no funds currently allocated for the acquisition of right of way. Local funds could be used to pay for acquisition, but it is my understanding each City's funds have been earmarked to be applied toward the local match requirement of the grants. The only foreseeable money available for acquisition is the \$800,000 requested in the 2010 bonding bill. While the bonding bills from the House and the Senate both contain the RTCB's request, the bill will not be approved by the Governor in its current form. The risk with relying on the 2010 bonding money is that if the Board continues to move forward with acquisition related items (appraisal, title work, survey, environmental, etc), and then the 2010 bonding money does not materialize, the three Cities will be stuck paying for those acquisition related items and the cost of acquiring the right of way.

#### ***OPTION 2: The risks associated with not moving forward until and unless the 2010 bonding money is secured.***

As shown in the time line above, the Board faces a very tough schedule in order to complete everything by April 15, 2011. If the April 15, 2011 deadline is not met, the SAFETEA-LU funds will be lost, the project will likely fail, and the three Cities would then be responsible for all costs incurred by the RTCB. The toughest and most expensive part of the deadline will be securing the railroad right of way, since a lot of leg work needs to be done on the front end and the acquisition is contingent on the abandonment process going smoothly and quickly.

#### ***OPTION 3: The risks associated with abandoning the project.***

If the Board were to abandon the project, either now or after a legislative decision to not award the 2010 bonding money, the Board would have to return the bonding money and SAFETEA-LU funds. The member Cities would also be responsible for all costs incurred to date, plus any costs that are incurred in winding up the project. The member Cities may also be 'black-listed' by the Legislature and funding agencies as a result of the abandoned project and returned funds.

### TIMELINE

- Jan- May 17, 2010 -- Legislative Session. RTCB currently has a request for 2010 bonding money. The request is currently in both the House and Senate bills. This would be the only money, other than local funds, that the Board could use for property acquisition. (See attached "Funding Sources and Requirements")
- March 15-31, 2010 -- Tentative approval of agreements with Stearns County. County Board gives final approval, then RTCB approves.
- March 15, 2010 -- Abandonment application by BNSF. This has not yet been filed, and there has been no assurance of when it will be filed other than "soon." The abandonment process can take anywhere from the legal minimum of 6 months to more than 24 months. Since Wenner has agreed to cease rail service at their existing site, and Northern Lines Railway appears to be on board with the abandonment, hopefully the process will be close to the 6 month side of the scale. (See attached "RR Abandonment Schedule")
- March 15, 2010 -- Once the abandonment process has begun, initial acquisition discussions with railroad should start-- typically takes 12 months. Board needs to weigh risks associated with funding sources versus tight time lines.
- April 15, 2010 -- Site visit with MNDOT Cultural Resources Representative. Historical review costs, if MNDOT determines a review is necessary, will be partially RTCB's responsibility (20% of \$10,000 total cost, possibly reimbursable from existing funds).
- May 1, 2010 -- Once the abandonment is filed and the 45 day protest period ends, amend STIP documents if necessary (Amendment of STIP = prorated loss of SAFETEA-LU funds).
- May 1, 2010 -- Once the abandonment is filed and the 45 day protest period ends, begin appraisal work, title work, survey work (estimated cost \$10,000 to \$20,000, part of acquisition cost so not reimbursable from existing funds).
- May 1, 2010 -- Once the abandonment is filed and the 45 day protest period ends, consider possible Phase I Environmental Assessment. Environmental issues are known on the CSG site. Unknown contamination may cause future liability for the Board. Phase I results could trigger Phase II investigation work (boring, soil samples, etc). If contamination is found in Phase II, additional

actions may be required by MPCA. Phase I = 4-6 weeks, Phase II = 6-8 weeks (estimated cost unknown, part of acquisition cost so not reimbursable from existing funds).

- May 17, 2010 -- End of legislative session, result of bonding bill should be known. Result likely determines whether the trail project is still alive or if it dies. Special session is always possible.
- May 17, 2010 -- Once acquisition funds are secured from legislature, begin acquisition discussions with railroad in earnest, relying on appraisal, title work, and environmental information.
- January 1, 2011 -- Signed purchase agreement with railroad. Begin preparing for closing.
- January 1, 2011 -- Begin preparation of Plans and Specs, which requires details of acquisition to be known.
- April 1, 2011-- Submission of Project Memo to MNDOT. SEH has much of it complete already, but is waiting on details (i.e. length of section, MNDOT historical review, abandonment) to be determined before the memo can be finalized. (MNDOT must approve by 4/15/2011)
- April 1, 2011-- Submission of ROW Certificate to MNDOT. Requires railroad acquisition to be finalized. (MNDOT must approve by 4/15/2011)
- April 1, 2011 -- Submission of Plans and Specs to MNDOT. Project memo and ROW Certificate must be approved before MNDOT will sign off on Plans and Specs. (MNDOT must approve by 4/15/2011)
- April 15, 2011 -- All final approvals from MNDOT must be granted in order to secure SAFETEA-LU funds.

## FUNDING

### *Agreement with County*

The SAFETEA-LU and state bonding funds require the use of a fiscal agent. Specifically, the SAFETEA-LU funds designate Stearns County as the grant recipient. The County has provided a draft escrow agreement and a draft project agreement. I am working on a number of provisions in the agreements that need clarification. The County Highway Department and Auditor's Office must sign off on the draft agreements before they are brought to the County Board for final approval. RTCB approval will follow immediately after County approval. Both agreements need to be in place before any SAFETEA-LU or state bonding money can be spent. The agreements will require the three Cities to deposit enough funds to cover the local match requirement of the state and federal funds, estimated at \$101,000. (The County has come up with

a number of \$131,500, which I am working on clarifying.) None of these funds cover acquisition costs. The \$101,000 amount is the local match for the SFAETEA-LU and 2008 bonding money. An additional local match will be required if the 2010 bonding money is secured. The County has expressed concerns about the lack of funding for acquisition. The County is also concerned about the potential negative consequences that would result from the failure of the project, and the impact of those consequences on the County's future ability to secure grants or bonding funds.

### ***Acquisition***

The project currently depends on the Legislature and Governor approving additional 2010 bonding money that may be used for right of way acquisition. The 2008 bonding money and the SAFETEA-LU funds cannot be used for property acquisition, only design and construction. The Board is therefore relying on the 2010 bonding money as the primary funding source for the land acquisition. If the 2010 bonding money does not come through, there are three options:

- I. The three Cities can finance the purchase of the corridor.** Under the JPA, the costs would be split equally. Using recent sales as an estimate, the cost is approximately \$21,250 per 0.1 mile of 100' wide rail corridor. From 178<sup>th</sup> Ave to just east of the Sauk River is approximately two miles. Using the estimate above, this totals \$425,000. However, BNSF will require all of the excess right of way to be purchased at one time. Within the City of Cold Spring the right of way exceeds 300' in width in several places, so the per .1 mile estimate is probably on the low end. The total cost could easily exceed \$500,000. This figure does not include related costs such as the appraisal, title work, and closing costs. Split three ways, this is \$166,000 per City. These funds would not count towards local match under the federal or state grants.
- II. The Board could seek further extensions of the SAFETEA-LU funds to delay the acquisition deadline of April 15, 2011.** The SAFETEA-LU funds are contingent upon acquiring property by April 15<sup>th</sup>, 2011. Failure to acquire the property by the deadline results in a loss of the SAFETEA-LU funds. An extension could allow the Board time to pursue alternative funding sources or make an additional bonding request in 2012. Unfortunately, MNDOT staff have indicated that such an extension is unlikely.
- III. Prepare to abandon the project.** Each City would remain equally responsible for costs that are incurred up to the termination of the project. Nearly \$30,000 of engineering work has already been performed, but not yet paid for. The risk in abandoning the project is the impact this may have on member Cities' ability to get bonding money from the Legislature in the future, since abandoning the project would require the Board to return 2008 bonding money. Typically the Legislature is reluctant to give additional bonding money to cities when money is returned or a project fails. Grant sources usually take a similar view of returned money or a failed project. The Board may wish to discuss the potential Legislative

The ROCORI Trail Board is vested with the authority to enter into contracts, accept grants, and acquire property. But ultimately, it is the member Cities that may be responsible for acquisition and all other project costs if the 2010 bonding money is not awarded. Therefore, I think it is important for the Board members to consult with their Cities to receive direction and input. I would suggest that the Board first hold a meeting and receive input from all of its consultants (including Scott Hedlund, Heidi Peper, Gary Cerkenik, and myself) so that the Board members are fully informed and have the opportunity to ask questions that may be raised by this memo. A special meeting of the RTCB may be necessary to facilitate a timely decision.

RTCB FUNDING SOURCES AND REQUIRMENTS

	<u>SAFETEA-LU</u>	<u>2008 BONDING</u>	<u>2010 BONDING*</u>	<i>*not approved yet</i>
<b>AMOUNT</b>	\$526,000.00	\$372,000.00	\$800,000.00	
<b>PERIOD</b>	08--'10, extended to '11	?	<i>not approved yet</i>	
<b>RQD MATCH (%)</b>	25%	50%	50%	
<b>(source)</b>	\$131,500.00	\$186,000.00	\$400,000.00	
<b>USE</b>	local funds or state funds construction only	local funds or federal funds construction only	local funds or federal funds construction and acquisition	

Estimated Cost ( 178th to W. side of Sauk River) \$999,000.00 <--does not include ROW cost

Total Grant Funds \$898,000.00

Local Funds Required \$101,000.00

Per City Amount \$33,666.67

## **BASIC SCHEDULE FOR RAILROAD ABANDONMENT PROCESS**

Day -60	Publish updated System Diagram Map showing potential for line abandonment.
Day -30 To -15	Publish Notice of Intent to File Abandonment.
Day -20	Due date for railroad to file environmental and historic reports
<b>Day 0</b>	<b>Application filed, including applicant's case in chief.</b>
Day +10	Due date for oral hearing requests.
Day +15	Due date for Board decision on oral hearing requests.
Day +20	Due date for Notice of Application to be published in the Federal Register.
Day +45	Due date for protests and comments, including opposition case in chief, and for public use and trail use requests.
Day +60	Due date for applicant's reply to opposition case and for applicant's response to trail use requests.
Day +110	Due date for service of decision on the merits.

This is the minimum schedule provided for by federal law. In reality, these time lines are extended to account for publishing deadlines, holidays, schedules of the parties involved, etc.