

Tioga County Assists Municipalities with Road Preservation Law

by Martha Goodsell

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On March 19 Elaine Jardine, Tioga County Planner, presented the Council of Governments (CoG) a proposed local law for road preservation. When confronted with the additional and heavy traffic associated with gas well drilling, most of the fourteen municipalities throughout the county requested aid in drafting a local ordinance to protect their infrastructure investments. Through the county planning department and the CoG, Jardine heard requests from numerous local municipal officials seeking assistance in developing a road preservation law for their respective towns and villages. But as she researched existing road laws, Jardine realized that road protection from potential damage caused by gas drilling rigs was not a planning issue, it was instead a legal one.

Jardine sought the assistance of county attorney Mark Dixon, who had been regularly meeting with a consortium of other municipal attorneys discussing the impacts of gas drilling in the Southern Tier. Broome County attorney Joseph Sluzar had already begun working on road preservation issues. Sluzar worked with communities where drilling was damaging local roads, studied existing road laws, and requested input from gas companies themselves. The proposed road law that Broome County drafted satisfied Dixon.

Last month, Dixon sent copies of the proposed law to all municipal attorneys. However, it became apparent that not all attorneys shared that information with their supervisors or mayors; neither did they share it with their highway departments or their planning boards. A huge disconnect in information sharing between supervisors or mayors, highway superintendents, planning board chairs and municipal attorneys hindered local progress on road protection.

One of Jardine's objectives was to encourage better communication within and among the Tioga County municipalities. Jardine encouraged outreach to the highway department superintendents. John Schumacher, on Jardine's behalf, attended that meeting with superintendents two weeks ago and explained how the county was trying to help with road issues. Schumacher's message was well received and the superintendents welcomed any assistance the county might be able to provide, including a draft road law.

Jardine also brought up the proposed road law at the March meeting of the county planning board, while Dixon held a municipal attorney consortium - but less than a handful of attorneys attended. Last week Jardine presented Broome County's proposed road law language to the supervisors and mayors in attendance at the CoG.

The language of the proposed law provides that "A natural gas vehicle permit shall be required for use of county roads by certain vehicles with a gross weight in excess of the limitations allowed in the vehicle and traffic law of the state of New York." Under this law all vehicles associated with any drilling activity, including pipeline construction and exploration, would be required to obtain a permit from both the state (for being overweight and over size) and from the local municipality prior to conducting any work. The proposed law would hold the permittee responsible for any and all damages, including any work that was subcontracted out to other parties.

The intent of the law isn't to slap weight limits on trucks, but to consider weight and frequency of traffic during drilling operations and other activities associated with gas exploration and extraction. The driving force behind the law is the unusually high truck traffic required by the gas company during a short period of time, including traffic necessary to transport drill rigs, drilling equipment, fracking equipment, frack water, flowback and wastewater, and miscellaneous items

Some municipal leaders were concerned about the ability of their towns to create such restrictions. Jardine explained that municipalities do have the authority to develop such a law to protect the general health, safety and welfare of their constituents and property. However, singling out an industry because of weight alone is discriminatory and would not hold up in court as it would not apply equally to other heavy trucks that use the roads, such as logging trucks and milk tankers. Jardine noted the importance that the proposed law focus on both weight and frequency of trips.

Jardine also pointed out that the within the proposed law there are four tools for addressing financial concerns: insurance, bonding, escrow and a road remediation account. Municipalities should demand insurance and ask to be an additional insured. Bonds would be required and cancelled only when a well was officially abandoned. An escrow could be used for all repair costs and would be released with the highway superintendent gives his “all clear”. Road remediation accounts should be established to ensure that heavy vehicles pay their share of routine road maintenance costs.

Permittees would be held accountable for damages directly or be forced to pay through bonds or escrows. The permittee would be responsible for maintenance of a road one year from the date of repair; thus ensuring that quality repairs were performed. The proposed law would also allow highway superintendents to issue stop work orders or revoke a natural gas vehicle permit.

Jardine encouraged municipalities to come to an agreement on the tools they wanted to use, and the dollar amounts required to be paid by the gas companies to cover possible damages. She emphasized that uniformity in natural gas road preservation laws across the county would benefit all parties including the municipalities, the county and the drilling companies.

The draft law designates the highway superintendents as the designated permit authority; but Broome County is considering acting as the permit authority for all municipalities in Broome County. Jardine offered such an option to the Tioga county municipalities, noting that an inter-municipal agreement would be needed from the nine towns and seven villages.

CoG members expressed their gratitude in having a proposed road law to work with. Stuart Yetter, CoG chair, laid out the next steps that towns and villages alike should take: As soon as possible, town supervisors (or mayors), attorneys and highway superintendents should review the proposed law. Then town or village boards will address this law at their next official meeting. At that time, superintendents, with support of the town (or village) boards, will direct their municipal attorneys to attend the next upcoming attorney consortium with Dixon. Recommendations from the consortium will be brought back to the towns and villages. At that time, towns or villages may either adopt the plan locally or agree to a Memo of Understanding (MOU) which would designate the county as the permitting agency on behalf of all municipalities. Jardine and Yetter will contact the towns and villages not in attendance at last Thursday’s COG meeting.