



## M E M O R A N D U M

**TO:** Richard Weber, Deputy Director, Regulatory Programs

**FROM:** Tracy J. Darrah, Environmental Programs Specialist

**DATE:** July 5, 2012

**RE:** Town of Webb TOBIE Phase II Bridge Variance  
P2012-21

### INTRODUCTION

The applicant, the Town of Webb, seeks a variance to install a non-motorized pedestrian/bicycle/cross country ski bridge over the Middle Branch of the Moose River, a designated recreational river under the New York State Wild, Scenic and Recreational Rivers System Act.

The proposed bridge will be located at the site of the previous railroad bridge which was removed sometime prior to 1973. The bridge site is located in the Town of Webb, Herkimer County, on or near Spruce Drive/Hemlock Lane, on the shoreline of the Middle Branch of the Moose River in an area designated as Hamlet on the Adirondack Park Land Use and Development Plan Map. The applicant also proposes to install wooden railings along the side of the trail and pavement within the trail located within the former railroad corridor leading up to the bridge site. The applicant also requires an Agency permit for reconstruction of the existing bridge abutments involving wetlands. The purpose of this memorandum is to summarize the facts from the record (especially the public hearing) that are relevant to the Agency's consideration of the requested variances.

The proposed bridge (Exhibit 16B) rendering is shown below:

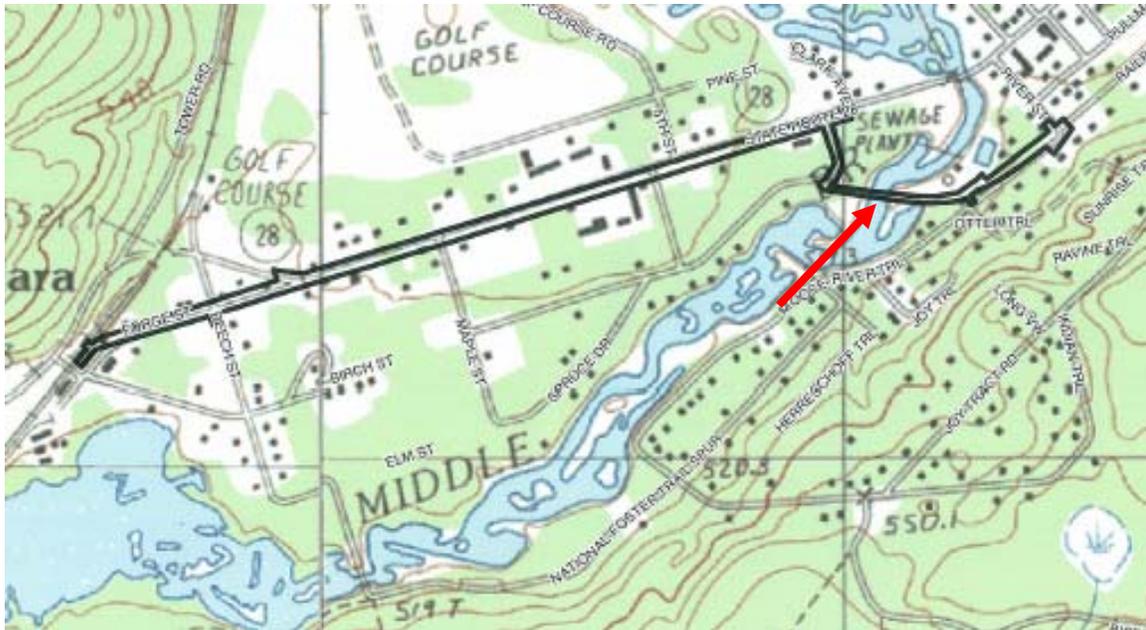


A photo of the existing Route 28 bridge (Exhibit 18H) is shown below:



\*Note the location of the abutment for the proposed pedestrian/bicycle bridge in the distance

The location of the 1.33 mile section of the TOBIE Trail to be completed between Old Forge and Thendara and the location of the variance site [Hearing Exhibit 8] are depicted on the map below:



A photograph (Exhibit 7) of the existing bridge abutments is shown below:



## PUBLIC HEARING

On June 22, 2012 at the Town of Webb Town Office, Old Forge, NY, APA Hearing Officer Keith McKeever conducted a hearing pursuant to APA Act § 806 and 9 NYCRR 576.5. Todd Phillips and Charles White from Barton & Loguidice, P.C., the authorized representative for the applicant, made a presentation on behalf of the applicant.

Charles White noted the lack of a bridge crossing over the Moose River that would comply with New York State Department of Transportation standards for a multi-modal trail, which the TOBIE Trail is proposed to be. He stated that the two nearby existing bridges on NYS Route 28 and Green Bridge Road were determined to be too costly to rehabilitate to meet these standards.

Todd Phillips stated that the intention of the proposed bridge location for Phase II of the TOBIE Trail was to bring people closer to nature. The proposed location will require minimal grading and disturbance to rehabilitate the former railroad bridge abutments and will serve to remedy an ongoing erosion issue by stabilizing the abutments. He stated that replacing the bridge in this location will not change the character of the area and will have minimal impact on wetlands.

Charles White noted that the bridge is intended to be utilized for non-motorized purposes (other than for emergency measures or maintenance by the Town) and described the proposed bollard and gate system to prevent motor vehicle use of this portion of the trail to be located at each intersection where the TOBIE Trail meets public roads at Hemlock Lane/Spruce Drive, Pullman Street and Railroad Street (Exhibit 20). Regarding the revised Proposed Bridge Rendering (Exhibit 16B), he stated that the abutments will need to be repointed to be properly maintained and that the new stone and refurbished stone would weather over time.

Environmental Program Specialist Tracy Darrah made a brief statement at the hearing describing the variance process and the project. Tracy Darrah stated that Agency staff have reviewed the variance application materials received and the applicant's justification as to how the proposal meets the variance criteria set forth in §576.1 of the Adirondack Park Agency Rules and Regulations. She went through the list of criteria and provided a brief summary of the justification for each of the criteria as provided by the applicant and reviewed by Agency staff. She stated that staff had

conducted a visual assessment and have identified the potential locations from which the bridge and railings would be visible. She explained that the Agency Board has the final decision regarding whether the applicant has demonstrated that the proposal meets the criteria. She provided a general sense of the types of conditions that would be expected to be in a draft order/permit that staff would recommend to the Board for approval.

Approximately 12 members of the public attended and eight people made comments, including Town Supervisor Theodore Reihle, Town Board Member Mary Brophy-Moore, previous Town Supervisor Robert Moore, Tim Quinn, Philip Pepper, Marcia Hardesty, and Paul Mills. Four of the public comments were in favor of these variances. Four of the public comments contained questions about the proposal and/or expressed concerns about specific elements of the proposal.

The Town of Webb Town Supervisor, Theodore Rielhe, expressed that the Town Board is in support of the project.

Mary Brophy-Moore, Town Board member, stated that she is in support of the project, but also believes the size of the gate appears to be too wide.

Previous supervisor Robert Moore stated that he felt that the Adirondack Park Agency has been very objective during the review of the application and that he is in support of the project for the quality of life and economic benefits that it will provide.

Regina Chamberlain asked whether a snowmobile is included in the term "motor vehicle" and expressed concern that snowmobiles would be allowed to use the bridge in the future and about impacts that snowmobile use of the bridge site could have including noise, pollution, and safety issues. She asked how wide the bridge would be (12 feet).

Tim Quinn stated that he felt the color of the natural wood railings on the bridge does not appear to blend in and that wire mesh would be better. He expressed concern about the removal of vegetation and questioned whether vegetation would be replaced so that his residence would continue to be screened from other locations along the River that emit light pollution. He stated that the size of the gate for the proposed bollard and gate system seemed to be too large. He expressed concerns about the railing along the trail hampering a deer crossing.

Paul Mills stated that he is in favor of the variance as a safe alternative for his children to cross the river to go to school. He indicated Green Bridge Road is too isolated and NYS Route 28 is too congested. He stated that the gate should be less than four feet in width. He stated that salvaging the existing abutments would solve an ongoing erosion issue.

Phillip Pepper stated that he believes the bridge is good for pedestrians and children. He expressed concerns about vegetative cutting and replacement of trees that are removed. He indicated he is not sure whether the proposed retaining wall will be located partly on his property or not. He would like the Town to maintain the property such that the appearance of the area remains the same.

Marcia Hardesty expressed concerns about people jumping off the bridge and whether the proposed wooden decking would require spraying of chemicals for maintenance.

#### **OVERVIEW OF VARIANCE(S) REQUESTED**

Ruling J1999-541 dated January 26, 2000, the Agency determined that this proposed bridge would require a variance from the shoreline restrictions of APA Act § 806 (Exhibit 1).

The applicant seeks variances for the following activities and structures within 50 feet of the shoreline, pursuant to §806 of the Adirondack Park Agency Act:

- 1) A 115± foot long, 12 foot wide pedestrian/bicycle/cross country ski bridge on existing reconstructed bridge abutments;
- 2) A four-foot tall wooden railing along both sides of the TOBIE trail leading up to the bridge.
- 3) The addition of pavement eight feet in width along the TOBIE trail leading up to the bridge.

Each of the variances are displayed on Drawings PL-13 and PL-14, (part of Hearing Exhibit 7), which are attached as Attachment 1. The proposed structures require a variance from the shoreline restrictions because they are structures located within the shoreline setback of 50 feet, are greater than one hundred square feet in size, are not a replacement in kind of the pre-existing structures on the site, and/or do not meet the Agency's definition of dock. By Declaratory

## APPLICABLE LAW

Executive Law § 806 requires that all principal buildings and accessory structures in excess of one hundred square feet in a Hamlet land use area be set back at least 50 feet from the shoreline.

The Adirondack Park Agency may vary the restrictions if the applicant establishes that there are practical difficulties or unnecessary hardships in carrying out the strict letter of the restrictions. Here the applicant's objective is to complete Phase II of the TOBIE Trail to connect the hamlets of Thendara, Old Forge, Big Moose, Inlet and Eagle Bay with a bridge suitable for pedestrians, bicyclists and cross country skiers. The practical difficulty is that the Middle Branch of the Moose River divides the hamlets, and the lack of alternatives to a bridge at this location. The Agency regulations provide that a variance will be granted when "the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the restriction." The purpose of the shoreline restrictions is protection of water quality in the waterbody and the quality of the shoreline.

In balancing these two considerations and determining whether to vary the restrictions, the Agency must consider the following six factors.

**1. Whether the application requests the minimum relief necessary.**

The proposed non-motorized bridge must be 115± feet long to span the river using the existing abutments, and only 12 feet wide for adequate passage. The alternative of rehabilitating the motorized NYS Route 28 bridge is cost prohibitive and the alternative of utilizing the motorized Green Bridge Road bridge was not considered to be feasible.

**2. Whether the variance will create a substantial detriment to adjoining or nearby landowners.**

The adjoining and nearby landowners include the Town of Webb and several private landowners. The proposed bridge will be visually similar to the nearby NYS Route 28 bridge, but will be back dropped by existing vegetation and will be designed to blend in with the natural surroundings. Potential impacts

to adjoining or nearby landowners may occur due to increased use by the public of this already highly utilized area, but should not be substantial. Noise should be minimal since the trail is non-motorized.

**3. Whether the difficulty can be obviated by a feasible method other than a variance.**

At this location a non-motorized pedestrian and bike path cannot cross the river without a new bridge.

**4. The manner in which the difficulty arose.**

The prior bridge was removed prior to passage of the APA Act. Had it been removed more recently, the applicant may have been able to replace it without a variance. The Town of Webb purchased the narrow railroad embankment and abutment property on the west side of the Moose River in 1999 in the early planning stages for the TOBIE Trail with the goal of placing a bridge in this location to connect five hamlets with a safe, non-motorized, improved quality pedestrian and bicycle route for residents and tourists.

**5. Whether granting the variance will adversely affect the natural, scenic, and open space resources of the Park and any adjoining water body, due to erosion, surface runoff, subsurface sewage effluent, change in aesthetic character, or any other impacts which would not otherwise occur.**

The bridge site is located in a Hamlet land use area and the River in this area is developed with two vehicular bridges, an overhead utility line, commercial uses, town facilities, and residential structures. There is currently an overgrown abandoned railroad corridor leading up to the site and concrete abutments at the site.

The proposed bridge will reuse the existing railroad abutments and is designed to blend into the surroundings. The character of the shoreline will not be adversely impacted, since minimum grading and vegetative cutting are proposed and provided that erosion control and vegetative cutting conditions are incorporated into the Variance Order.

Although there will be impacts to 240 square feet of the wetlands, the remainder of these wetlands will be protected during and after construction by conditions described below and in the proposed order.

6. Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects referred to in paragraph (5) above.

The project as proposed is designed to minimize visual impacts and impacts to the adjacent wetlands, and the draft proposed order/permit includes conditions regarding lighting, the use and maintenance of erosion control measures and stormwater management devices during construction, restrictions on vegetative cutting, and landscaping which will mitigate any possible impacts on wetlands and the shoreline and water quality of the River.

#### CONCLUSION

Staff believes that there are practical difficulties in carrying out the strict letter of the shoreline restrictions and that the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the restriction and that the following factors enumerated in 9 NYCRR 576.1(c) weigh in favor of granting this variance. The application requests the minimum relief necessary; the variance will not create a substantial detriment to adjoining or nearby landowners; the difficulty cannot be obviated by a feasible method other than a variance; the difficulty arose because the River divides the Trail at this point; and the requested variance would not adversely affect the natural and scenic resources of the shoreline and the adjoining water body or otherwise result in undue adverse environmental impacts as long as conditions are included to provide for erosion control and control of vegetative cutting.