

## **FINAL REPORT**

of the

### **Ad Hoc Committee on Mineral Rights in *In Rem* Proceedings**

**April 30, 2009**

Submitted by:  
Stephen D. Herz, Legislator, District 9  
Chair of the Committee



AD HOC COMMITTEE ON MINERAL RIGHTS IN *IN REM* PROCEEDINGS  
FINAL REPORT

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AD HOC COMMITTEE ON MINERAL RIGHTS IN *IN REM* PROCEEDINGS  
FINAL REPORT

**I. Background Information**

**A. Formation**

The Ad Hoc Committee on Mineral Rights in *In Rem* Proceedings (hereinafter “the committee”) of the Broome County Legislature was formed under the Rules of the Broome County Legislature by Chairman of the Legislature, Daniel D. Reynolds, on January 22, 2009. The Chairman created the committee in response to an issue raised following certain county tax foreclosures wherein the County conveyed the subject parcels to the prior owner after the granting of a hardship waiver but subject to a reservation by the County of mineral rights including oil and gas rights. (See Appendix 2)

**B. Resolution 375 of 2008**

Specifically, this issue came to the attention of the Legislature as a result of Resolution No. 375 of 2008 entitled “Resolution Approving Sale of *In Rem* Foreclosure Properties to Former Owners,” which authorized the Legislature to sell back foreclosed parcels to 12 former owners. The final deeds for three of the parcels retained mineral rights for the County of Broome. This action was based on the policy of the Office of Real Property Tax Services that when a conveyed parcel is five acres or greater, the County retains the mineral rights. (See Appendix 1)

**C. Existing Authority**

Resolution 352 of 1974 sets out the procedures to be followed in the sale of County owned properties. Section 4 vests in the Director of Real Property the power to sell parcels in *In Rem* proceedings.

**D. Purpose**

The committee was formed to study the advisability of having a policy in place regarding the County’s retention of mineral rights in conveyance of tax foreclosed property and to give a policy recommendation to the full legislative body for its consideration.

**E. Members**

The following legislators were appointed as voting members of the committee:

- Mr. Stephen D. Herz, District 9 (Chair)
- Mr. Timothy P. Cleary, District 2
- Mr. Marchie Diffendorf, District 7
- Mr. Ronald L. Keibel, District 11
- Mr. Mario M. Nirchi, District 16

The committee also included the following non-voting members:

- Senior Assistant County Attorney Robert Behnke
- Director of Real Property Tax Services Kevin Keough
- Chairman of the Legislature Daniel D. Reynolds (ex officio)

## **F. Meeting Dates**

The committee met on the following dates and the agendas and minutes of these meetings are attached:

February 6, 2009  
February 13, 2009  
February 20, 2009  
March 12, 2009  
April 14, 2009

## **G. Definitions**

- *In Rem* Proceedings - Refers to the tax foreclosure proceedings under Article 11 of the Real Property Tax Law. These tax foreclosure proceedings are only against the property and there is no personal liability to the property owner.
- “Hardship” sellback – As used by the county it refers to the county’s agreement to sell a property foreclosed on by the county to the prior owner due to extraordinary circumstances which in the county’s estimation would result in a significant hardship to the prior owner.
- “Improved” property – All parcels other than vacant property and includes parcels that have one or more structures.

## **II. Options Considered for the Sale of Tax Foreclosed Properties**

The committee discussed three main areas of concern regarding tax foreclosure properties: hardship sellbacks, sale of vacant properties at auction and the sale of improved properties at auction. Listed below are the various options considered in the three areas.

### **A. Hardship Sellbacks**

During foreclosure proceedings, owners are given multiple notices and opportunities to pay their uncollected taxes. Once the final date of redemption has passed and the uncollected taxes have not been paid, the property is submitted to the Court who awards title to the County, pursuant to Real Property Tax Law. In some cases, owners will then submit a hardship letter stating why the taxes were not paid, usually catastrophic or mental incapacity, and request that the property be sold back to them. If the Director of Real Property approves the hardship request, he then submits to the Legislature for its approval a resolution approving the sale of *In Rem* foreclosure properties to the former owners. These properties include innate mineral rights and the value of these rights has escalated in the last year. As a result, the Director of Real Property, after informal consultations with certain officials, initiated a policy that when a conveyed parcel was five acres or greater, the County would retain the mineral rights. The following are options considered by the committee to address this situation: (See Appendix 1, 4, 5, 9)

1. Reserve all oil and gas rights in the deed back to the former owner, regardless of hardship.

Rationale: Once the owner has lost ownership to the County, the County is authorized to sell back all or any part of the subject parcel or not sell it back at all and proceed to auction.

2. Retain oil and gas rights on parcels over a certain acreage, e.g. five acres.
3. Return every parcel approved for a sellback to the previous owner with all surface and subsurface rights intact. The County would reserve no oil and gas rights in its conveyance back to the former owner.

### **B. Vacant Property**

Vacant property is a parcel that has no improvements on it and therefore, in most cases, does not have any maintenance requirements or liability issues. Vacant properties outside of the residential areas of Broome County, are often larger parcels that could provide significant oil and gas lease royalty payments in the event that the gas was extracted from below the parcel. The committee analyzed the pros and cons of the different options available to address the sale or retention of vacant parcels and listed below are the different courses of actions discussed: **(See Appendix 5, 11, 14)**

1. Impose a 12 month moratorium on the sale of all vacant parcels that do not require significant maintenance or have a significant liability for the County.  
Rationale: Presently, the County does not have a “handle” on the value of the subsurface rights. After the moratorium period, the County will be in a better position to assess its value. The downside of this policy, stated by Mr. Keough to the committee, is that the County will not realize the proceeds which would have been derived from the auction of this land.
2. Retain all vacant foreclosed properties over a certain acreage e.g. five acres.
3. Split larger improved properties into a “farmstead” parcel that contains the improvements and a vacant parcel with no liabilities. As mentioned above, once the County receives title, it can sell all, or any portion of the parcel.
4. Sell at auction all vacant properties *without retaining* any oil and gas rights. It was discussed that this has the potential of realizing maximum proceeds as sale. However, it is unknown whether there will be a material difference in selling price with or without the oil and gas rights
5. Sell at auction all vacant properties *and retain all* oil and gas rights. It was discussed that this has the potential of creating a long term revenue source for the County from future royalty payments and signing bonuses if and when a gas lease is signed. **(See Appendix 6)**

### **C. Improved Property**

Improved property is everything other than vacant property and includes parcels that have one or more structures. With the improvements comes maintenance requirement and liabilities which the County would have to address on properties that have been conveyed through the tax foreclosure process. Once the properties are conveyed to the County, they are removed from the tax rolls until they are sold at a county real estate auction. These

properties also have the potential for royalty payments resulting from the extraction of natural gas. The committee analyzed the pros and cons of the different options available to address the sale or retention of improved parcels and listed below are the different courses of actions discussed: **(See Appendix 5, 14)**

1. Sell all improved properties at auction in their entirety without retaining any oil and gas rights.
2. Sell all improved properties at auction and retain oil and gas rights on all parcels. The committee discussed a potential downside in the prospect of increased administrative costs associated with keeping track of all such properties. However, the Nirchi memorandum **(See Appendix 6)** shows that even small parcels may eventually be unitized and yield substantial benefits.
3. Sell all improved properties at auction and retain oil and gas rights on parcels greater than five acres and retain no oil and gas rights on parcels less than five acres.
4. Sell all improved properties at auction and retain a percentage of future signing bonuses and royalty payments in a deed out to the buyer.
5. Sell all improved properties at auction and retain the oil and gas rights on parcels greater than five acres and retain a percentage of future signing bonuses and royalties in a deed out to the buyer on parcels less than five acres.
6. Retain all foreclosed improved properties.

#### **D. Other Options Available**

The committee discussed the possibility of giving the Director of Real Property some flexibility when it comes to making decisions on the sale of County owned property. The pros and cons of the idea below were discussed: **(See Appendix 14)**

1. Give the Director of Real Property Tax Services discretion to do any combination of the above with regard to tax foreclosure properties to satisfy the state mandate to market foreclosed property to the best advantage of the County.  
Rationale: Mr. Keough stated that it is his responsibility to maximize the benefit to the County in the sale of County owned properties, and that there are unique parcels and situations that may influence his decision to sell a parcel with or without a reservation of rights, and that his preference is to be given some discretion and not to be “hamstrung” by an inflexible policy.

### **III. Recommendations of the Committee**

After due deliberations, the committee makes the following recommendations to the full Legislature for its consideration.



1. Hardship sellbacks on tax foreclosure properties: **(See Appendix 5, 9)**
  - a. When a hardship sellback is approved by the Director of Real Property Tax Services and receives legislative approval, the parcel should be returned to the prior owner in its entirety to include all surface and subsurface rights regardless of size or use once the uncollected taxes and \$1,000 administrative fee have been collected.
2. Vacant tax foreclosure properties: **(See Appendix 5, 11, 14)**
  - a. Impose a 12 month moratorium on the auction of all vacant parcels that do not require substantial maintenance or have a substantial liability. This policy would be revisited in the first quarter of 2010.
3. Improved tax foreclosure properties: **( See Appendix 5, 14, 15)**
  - a. When feasible, the Director of Real Property should split larger improved parcels into a “farmstead” parcel and a vacant parcel. The “farmstead” parcel along with all surface and subsurface rights will be sold at auction with no reservation of oil and gas rights. The remaining parcel and acreage will be considered a vacant parcel and will fall under the vacant parcel moratorium recommendation.
  - b. Smaller improved parcels that cannot be feasibly separated into a “farmstead” and a vacant parcel should be sold with all surface and subsurface rights at auction. The County will not reserve mineral rights in its conveyance.
4. Sale of tax foreclosure properties at the May, 2009 auction: **(See Appendix 13, 15)**
  - a. One parcel in the Town of Colesville and one parcel in the Town of Nanticoke should be sold twice at the May, 2009 auction; once with mineral rights and once without, with the higher of the two bids being the one accepted. The purpose of these sales is to provide information to the Director of Real Property regarding the value of oil and gas rights in Broome County once they have been separated from the surface rights.
  - b. 22 properties in the City of Binghamton should be sold at auction with all surface and subsurface rights at the May, 2009 auction. The County will not reserve oil and gas rights in these sales.

#### **IV. Conclusion**

This report is being submitted to the Clerk of the Legislature and requires no further action for its acceptance. The committee recommends that this Report be forwarded to the Legislature and that a resolution be drafted to accompany the report providing for certain amendments to Resolution No. 352 of 1974 as set forth in the above recommendations.

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Appendix 1

Resolution No. 352

By Finance and Property Committee and Hon. Joseph B. Svoboda who move its adoption. Seconded by Mr. Mullen.

RESOLUTION establishing additional policies and procedures for the sale of County-owned real property.

WHEREAS, the County of Broome, from time to time, acquires certain real property through foreclosure of the tax liens by action In Rem, and additionally acquires certain Old Age Assistance properties under the Social Services Law, and also, from time to time, pulls property no longer necessary for County use or purposes, and

WHEREAS, pursuant to the applicable statutes and laws, the County has heretofore and presently sold such In Rem, Old Age Assistance and un-needed properties through a procedure of sealed bids, the property being sold to the highest bidder providing such bid is deemed sufficient and appropriate by this County Legislature, and

WHEREAS, your sponsors suggest that, in addition to advertising and soliciting sealed bids for the purchase of such properties, the County and the citizens of this community may be better served by using a final procedure of public auction for the disposition of such properties as hereinafter set forth, and

WHEREAS, it is further deemed advisable that the Finance and Property Committee be authorized to set a minimum or upset price on each such parcel of real property to be sold, now therefore be it

RESOLVED, that the following additional procedures and guidelines are hereby established for the sale of County-owned property as aforesaid:

1. The Director of Real Property Tax Services shall continue to advertise in the usual manner for sealed bids for In Rem properties or other County owned properties which may be for sale. Said advertisements shall include, but not be limited to a brief description of said property, including the Broome County Tax Map number, and the minimum upset price established by the Finance and Property Committee of the Broome County Legislature. Any sealed bid received will be opened prior to the auction sale hereinafter authorized and the highest sealed bid so received, provided that such sealed bid meets or exceeds the minimum upset price, shall be considered as the minimum opening bid for the said public auction.
2. Prior to the advertising for sealed bids and prior to the public auction for the sale of any such County-owned property, the Finance and Property Committee will meet with the Director of Real Property Tax Service for the purpose of establishing upset minimum prices on all such County-owned property to be sold. Said Finance and Property Committee will also review and establish a list of properties requested to be withheld from auction by Broome County for future use or projects of Broome County, and such list will be available to all County Legislators and will be filed with the Clerk of the Broome County Legislature for reference by that Body and by the public.
3. Following the final time established for the receipt of sealed bids on such property, the Director of Real Property Tax Services shall prepare for and shall hold a public auction of each of said properties to be sold, by the Director of Real Property Tax Services, and the Finance and Property

Committee of the Broome County Legislature, said properties to be sold to the highest bidder on each such parcel, providing that such bid is over the minimum highest bidder on each such parcel, providing that such bid is over the minimum upset price established for such parcel, and further subject to any limitations or rejections authorized by the County Legislature.

4. The responsibility of advertising for sealed bids, advertising for the public auction and holding the public auction and collecting monies therefrom will be with the Broome County Director of Real Property Tax Services. Said Director of Real Property Tax Service shall further be responsible for the establishment and conduct of the administrative guidelines and procedures for said sales. Based upon the best judgment of the Director of Real Property Tax Services and/or the Finance and Property Committee of the Broome County Legislature, signs will be placed upon such County-owned property as may be deemed appropriate, which signs shall advertise that said property is for sale and shall be of such a size and type and shall contain such information as may from time to time be deemed necessary by the Director of Real Property Tax Services.
5. All sealed bids shall be accompanied by a 5% cash or check deposit, and each successful bidder at the public auction shall also give cash or a check for 5% of the high bid price. Successful bidders, whether by sealed bid or by public auction, shall be required to pay the balance of the purchase price within 30 days from the date of the letter from the Director of Real Property Tax Services notifying such bidder that the County Legislature has accepted his bid. Payments for the balance of such purchase price shall be by certified check or equivalent. If the purchaser shall fail to pay the balance of such purchase price within the 30 day period after notification of his successful bid, the 5% deposit shall be forfeited and shall be retained by the County, and advertisements for sale shall so state.
6. All bids, whether by sealed bid or through public auction, shall be subject to final approval by the Broome County Legislature. Anything to the contrary herein contained notwithstanding, the County of Broome shall maintain the right to reject any and all bids of any kind made should the County become aware of any problem or reason for so doing relative to a particular property before, at the time of or subsequent to the given auction. Lists of successful bidders shall be maintained by the Director of Real Property Tax Services and a copy of such list shall be kept on file with the Clerk of the Broome County Legislature.
7. No persons who owned or held title to a given parcel of property immediately prior to the acquisition thereof by the County of Broome shall be permitted to buy back said parcel, either through sealed bid or at the public auction, at a price less than all accumulated taxes, interests and penalties, plus \$100.
8. At such times as Old Age Assistance or similar properties may become available for sale under the applicable provisions of the Social Services Law, the parcels so available for sale shall be sold in the foregoing manner.
9. All County-owned real property available for sale shall be sold in accordance with the applicable provisions of State and local law.

Appendix 1

And be it

FURTHER RESOLVED, that this resolution shall take effect on November 22, 1974, unless sooner acted upon by the County Executive. At the request of Mr. Somers, RESOLUTION NO. 352 was held over under the rule.

RESOLUTION NO. 352 by Finance and Property Committee and Hon. Joseph B. Svoboda, establishing additional policies and procedures for the sale of County-owned property, which was held over under the rule at the November 6<sup>th</sup>, 1974 meeting at the request of Mr. Somers, was again brought before the Legislature for consideration.

Mr. Somers moved, seconded by Mr. Mullen, to add paragraph 10 to Resolution No. 352, before the last FURTHER RESOLVED paragraph, as follows:

“10. Anything to the contrary herein contained notwithstanding, the Finance and Property Committee of the Broome County Legislature or said Committee’s designee shall have, in its sole discretion, the right and authority to countermand, modify, rescind or change the procedures and directives contained in this resolution, including but not limited to the right to remove any parcel or parcels of land from sales lists or from auction, where, in the judgment of said Committee, an unusual or unique situation or a hardship case is presented which would require further consideration. In any such case where the Finance and Property Committee or its designee shall exercise the authority conferred in this paragraph, it shall forthwith bring said matter and its recommendations thereon before this County Legislature for the latter’s consideration. In the event that the County Legislature shall reject the recommendations of the Finance and Property Committee the parcel or parcels of land under review and consideration shall again be processed for disposition and sale in the manner provided for herein, or in such other manner as this County Legislature may otherwise provide.”

Motion to amend carried by the following roll call: Ayes: 19; Nays: None; Absent: None.

RESOLUTION NO. 352, as amended, carried by the following roll call: Ayes: 17; Nays: Messrs. Niles and Ott, 2; Absent: None.

# Memo

**Date:** January 22, 2009  
**To:** All Legislators  
**From:** Daniel D. Reynolds, Legislature Chairman  
**RE:** Notice of Formation of Mineral Rights Ad Hoc Committee

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## Notice of Formation of Mineral Rights Ad Hoc Committee

Whereas, it has come to the attention of this Legislature that following certain county tax foreclosures in 2008, the County has conveyed the subject parcels to prior owners but subject to a reservation by the County of mineral rights including oil and gas rights, and,


Whereas, the undersigned has determined that any such County policy pertaining to the County's retention of mineral rights should have the imprimatur of the County Legislature and that it is desirable to have an ad hoc committee formed to study whether the existing practices of the Administration shall be ratified by Legislative Approval or shall be discontinued or shall be modified by a policy advanced by this committee,

Now therefore, by virtue of the power given under the Rules for the Broome County Legislature, the Chairman hereby constitutes and forms an ad hoc committee to study the advisability of having a policy in place regarding the County's retention of mineral rights in conveyance of tax foreclosed property, and to give a policy recommendation to the full Legislative Body for its consideration.

In furtherance thereof, the following Legislators are hereby appointed as members of said committee

Mr. Herz (Chair)  
Mr. Cleary  
Mr. Diffendorf  
Mr. Keibel  
Mr. Nirchi

In addition to the above members, the Committee shall also include Senior Assistant County Attorney Robert Behnke, Director of Real Property Services Kevin Keough as Administrative representatives. The Chairman of the Legislature shall also be a member ex officio.

  
Daniel D. Reynolds  
Chairman of the Legislature

## Memorandum

**To:** Mark Whalen, Chairman; All Legislators  
**From:** Kevin Keough, Director; Real Property Tax  
**Date:** November 19, 2008  
**Re:** Sale of Tax Foreclosure Property

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As Director of Real Property Tax Services, I am responsible for foreclosing on real property subject to unpaid taxes. Occasionally, I ask for legislative permission to sell back to the original taxpayer a foreclosed parcel. These properties include innate mineral rights, and the values of those rights have escalated in the last year. As a result, I decided when a returned parcel was five acres or greater, the County would retain the mineral rights.

During the August session, the Broome County Legislature approved Resolution No. 375 entitled "*Resolution Approving Sale of In Rem Foreclosure Properties to Former Owners.*" This resolution authorized the legislature to sell back foreclosed parcels to twelve taxpayers. The final deeds for three of the parcels retained mineral rights for the County of Broome.

Prior to passage of Resolution 375, I discussed my intent to retain mineral rights on some foreclosed properties with several legislators. But the issue was not discussed in formal committee or on the floor of Legislature. As a result many Legislators were unaware of all the ramifications of Resolution No 375. I should have done a better job of informing all legislators of my intent.

At the October meeting of the Legislature, Resolution No. 375 was recalled. Ostensibly the reason for the recall was so the Legislature can review the propriety of withholding mineral rights on the three properties. This Resolution will now be discussed during the November meeting.

We are dealing with two distinct issues. The first issue involves the communication by my office to the Legislature. The second involves the underlying reasons for retaining mineral rights on these three properties.

First, I understand that certain Legislators were not aware that the deeds would retain mineral rights. The resulting criticism is warranted, and we are taking steps to make sure it does not happen again.

Second, the decision to retain mineral rights was still made in the best interest of the County. All three taxpayers were fully informed of the foreclosure and at closing had an opportunity to review their deed. Their due process rights were protected. As Director of Real Property Tax Services, I am charged by state law to market foreclosed property to the "best advantage" of the County. I believe the standard was followed for all three properties. The taxpayers are allowed

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to stay on their properties, but the County retains the potential of a mineral rights revenue stream.

I do not think that returning the mineral rights is to the "best advantage" of Broome County. I recommend that no changes be made to these transactions.

C; Barbara Fiala; Executive  
Joseph Sluzar; County Attorney  
Robert Behnke; Chief Assistant County Attorney



# MEMO

## REAL PROPERTY TAX

To: Mineral Rights Ad Hoc Committee  
From: Kevin Keough Director; Real Property Tax  
Date: 02/20/09

Re: Hardship criteria

The following are the most common considerations given to former owners for a sellback. It should be noted that these are general reasons and each property and owner has specific and unique issues that should be reviewed on an individual basis. In all cases we require a letter of hardship and an in person meeting with the property owner.

**Incompetence** – This usually involves an elderly person whose family assumes that they are paying their bills and handling their legal commitments but over time with age and health issues forget or do not appreciate the seriousness of the foreclosure. We request documentation from their physician and a letter from a responsible party explaining the situation. If the property is returned we require a third party notification to be set up so a responsible party is paying the future tax bills.

**Notification** – This usually involves matrimonial discord where a spouse is not notified, lender error where a bank or lending institution fails to make a tax payment or legal error where incorrect or inadequate legal advice has resulted in a property owner failing to realize a tax payment is due. We request documentation to support the fact that a divorce proceeding is taking place.

**Catastrophic Health Problems** - This usually involves a situation where because of the serious condition of the property owner's health (cancer treatments, stroke, heart conditions or long convalescence) they were unable to address the tax problem during the redemption period. We request documentation from their physician showing this condition and the time frame involved.

**Catastrophic Financial Situation** – This is the most difficult to assess because each individuals finances and what they feel defines a serious problem can differ from what someone else may consider serious. This is more open to individual interpretation and we request all the information they can provide to substantiate a real and serious situation. This would include loss of employment, medical issues which have drained their savings and overwhelmed their ability to pay other bills and other factors which have prevented them from dealing with their tax bills during the redemption period.

The Director and senior staff (Deputy Director, Receiver of Taxes, Senior Appraiser Property Manager and Senior Assistant County Attorney) review each case and discuss it and then the Director through this process makes a determination.

# MEMO

## REAL PROPERTY TAX

To: Mineral Rights Ad Hoc Committee  
From: Kevin Keough Director; Real Property Tax  
Date: 03/09/09

I have for purposes of discussion broken down the options discussed by the committee so far. This is by no means a final or definitive list but one that reviews the possible impact of the options financially and possible public impressions of the choices involved. The legal issues would have to be reviewed by Bob Behnke for each of the options.

Re: Issues already determined by the committee

- 1) Any property sold back to the former owner will be returned in whole with all rights the county will not retain any portion of the property surface or subsurface.
- 2) All vacant property in the process of being acquired through tax foreclosure will for the next 12 months be held and retained by the county except for the following reasons
  - (A) The property is located in a municipality where maintenance is required such as lawn mowing or public walk maintenance causing a cost to the county.
  - (B) The property incurs a liability to the county which would require a sale to take place as soon as reasonable possible to eliminate that liability.

Re: The remaining issues to be determined

On tax foreclosure properties the county could choose from two basic options.

- 1) Sell the property in whole (without retaining any rights) at auction with out consideration of size, location, or property type vacant or with improvements.
- 2) Retain in some form the gas and mineral rights to all or some of the properties.

**Option #1:** If the county does not retain any gas rights then the process would continue in its current form. Sellbacks due to hardships as discussed at the February 20th meeting will be considered and reviewed by the Director of Real Property under the current criteria and those recommendations would be forwarded to the Legislature for their approval. A former owner would always be advised that they could speak to their Legislator directly but the process for a hardship would initially continue to be assessed by the Director and forwarded by request to that Legislator for their review.

**Option #2:** The choices are: retain gas and mineral rights on all property or retain gas and mineral rights on only vacant property or retain ownership on vacant property over 5 acres or sell all property but retain a percentage of any royalties or retain only gas rights but no other mineral rights.

**Retain gas and mineral rights on all property:** Retaining rights on all properties would require additional staffing to accurately account for leases, royalty payments and property management of any activities taking place on those properties. The question of what activities would be allowed on property sold at auction would also have to be clear at the time of the sale (can drilling take place on the property) so bidders could determine what price they are willing to pay. There is the reasonable assumption that bid prices would be lower due to the county retaining the rights and the revenue which has historically been above average at county auctions would be negatively impacted.

We could assume that if we retained rights to multiple lots in the city or a village that at some point in the future with advances in technology gas could be extracted and therefore royalties which could continue for many years. The question is do the negatives of cost and liability of long term county involvement in multiple properties with reduced revenue at time of sale outweigh a possible revenue at some point in the future. There is also the impression the public may or may not have regarding the counties involvement in retaining rights to a property and keeping profits from a lease.

**Retain gas and mineral rights on only vacant property:** Retaining rights on all vacant property of any size and any location except where a cost (maintenance) is incurred. This would require additional bookkeeping and property management responsibilities as mentioned above. The large parcels could provide income from wells physically on the property plus all properties could have possible royalties. Having multiple lots in the city or villages in highly populated areas could be seen as a county land grab and the question of what to do with the surface of the property over a long period of time is a question plus we would be putting the properties in the exempt section of the roll reducing the taxable property in those municipalities.

**Retain ownership of vacant property over 5 acres:** Retaining ownership of large parcels five acres or more would be easier as far as recordkeeping and accounting for gas royalties. Keeping the larger vacant parcels provides the possibility that gas companies would negotiate to drill on them and the additional monies that this could provide the county. Most of these parcels would be in rural unpopulated areas and the issues of the effect on neighboring properties would be much less than in a populated area as is the case with retaining the smaller parcels.

**Sell all property but retain a percentage of royalties:** Selling all property including the gas and mineral rights would provide better auction sales than if we held onto the rights. Selling all property avoids the obvious negatives associated with county ownership, it puts the properties in the taxable section of the roll it relieves the county of any liability and eliminates the impression that the county is banking land for its own purposes. Retaining a percentage of the royalties provides possible revenue to the county while offering property to the public at auction with a minimum of restrictions assigned to it. This would allow the owner to negotiate a lease and any restrictions they choose without county involvement.

## Environmental & Economic Gas Issues Q & A

### 1. What is a drilling Unit?

A designated area of land where gas wells can be drilled. In NYS a unit generally consists of 1 square mile (640 acres). Broome County is comprised of 715 square miles and could therefore be divided into **715 units each 1 square mile in size**. All of the property owners in a unit share in the royalties in proportion to the land that they own in the unit.

### 2. How many horizontal wells can be drilled in a Unit?

Present regulations allow 16 vertical wells per unit and DEC is determining the spacing for horizontal wells. It's possible that they would allow **4 – 6 horizontal wells per unit**. DEC has generally allowed the applicant to drill additional wells if they can show that more wells are needed to recover all of the gas in the unit.

### 3. Will DEC's SUPPLEMENTAL GENERIC ENVIRONMENTAL IMPACT STATEMENT (dSGEIS) address all of the issues?

The document will provide a general roadmap but will not address site specific issues. Each well in a unit can have specific issues that must be addressed as the permit is issued. A well could be near a drinking water source or major aquifer where a closed system should be required. It could be in the Towns of Kirkwood or Conklin, upstream from the City's water intake, where spill containment and chemical storage would need to be stressed so as to prevent a spill from entering the City's drinking water. (Drilling near: parks; lakes; schools; or populated area etc.)

### 4. Will DEC and Broome County need additional staff?

Yes, both the DEC and the **County will need additional staff**. We will need additional legal expertise to guide and protect our interests. We may need additional staff in our Health Department to respond to complaints and make sure that the DEC considers all of the potential environmental impacts. Special conditions unique to each well should be added to permits where necessary. We may need additional staff in Public Works to document road damage and use along with planning experts to address potential economic/industrial expansion and impacts.

### 5. How long will the drilling last?

The speed at which the gas is recovered will depend on many factors: world demand/price – quantity/quality – number of companies etc. It's likely that we will see a ramp up to maximum production that could last **20 to 30 years or more**. An interesting possibility is, that once the Marcellus gas is recovered, the same wells could be extended and begin to tap into the Trenton-Black River formation for many more years.

Memo from Legislator Mario Nirchi, District 16

## 6. What is the potential economic impact of this new industry?

The initial signing bonuses and long-term royalty payments will provide a significant new income stream to many of our landowners and governments. The area could attract gas dependent industries (glass, cement, electric power plants etc.) that could save the gas transmission costs by locating near the gas wells. **Co-location of industries** that will use our gas and provide local jobs is something that we could be marketing now.

## 7. What's the County's potential income?

### Initial Signing Bonuses

We have read where landowners have been offered \$2,500 - \$3,000 an acre or more as signing bonuses. We then could possibly receive from **\$1.6 to \$2.0 million/unit**. If we had enough land to lease the equivalent of 10 units, we could get as much as **\$16 to \$20 million/10 units**. I believe that we budgeted \$5 million in income for this year.

### Annual Royalty Payments

The royalty payments are based on the royalty percentage (12% or 15% or 18%) together with the well head price of gas multiplied by the quantity of gas produced. If we negotiated a contract that included a 15% royalty when gas was selling for a \$6 well head price and the unit produced 4 million cubic feet of gas per day our unit's yearly royalty would be **\$1.3 + million/unit/year**. If we had a total of 10 producing units **the total annual income would be more than \$13 million/10 units/year**. We would get more if the well head price were to increase and less if the daily flows were to decrease over each of the next twenty years. The gas pressure will decrease over time, like letting the air out of a tire, so estimating an average 20 year production rates is very difficult now, but the estimates will get better in the future as the wells prove themselves.

Another thing to keep in mind is that **a royalty is only paid when the gas is pumped and sold**. A capped well or proven unit can be sold for many millions of dollars, but will not pay royalties until the infrastructure is constructed to bring the gas to market. **The above preliminary general income estimates are intended to provide a basis for discussion and are not solid budget projections.**

## 8. What's the potential annual royalty income from a 1-acre lot?

With the same assumptions as above a 1-acre lot could produce an income of more than **\$2,000/year**. (1/2 acre lot \$1,000 etc.). The owner of a 1-acre lot has the rights to 1/640 of the unit's income. You can go to this link to make your own calculations.

<http://geology.com/royalty/>

AD HOC COMMITTEE ON MINERAL RIGHTS  
MEETING MINUTES  
FRIDAY, FEBRUARY 6, 2009

The Ad Hoc Committee on Mineral Rights of the Broome County Legislature met on Friday, February 6, 2009 in the Legislative Conference Room, Sixth Floor, Edwin L. Crawford County Office Building, Binghamton, New York.

Members Present: S. Herz (Chair), T. Cleary, M. Diffendorf, R. Keibel, M. Nirchi

Members Absent: None

Others Present: K. Keough, RPTS; R. Behnke, County Attorney's Office; G. LaBare, J. Marinich, D. Reynolds, E. Denk, M. Hanbury, C. Hall, Legislature

The Committee meeting was called to order by the Chairman at 12:40 pm.

Mr. Reynolds formed the Ad Hoc Committee on Mineral Rights to study the advisability of having a policy in place regarding the County's retention of mineral rights in conveyance of tax foreclosed property and to give a policy recommendation to the full Legislative Body for its consideration.

Mr. Keough stated when the topic of mineral rights came to light, a decision was made that the County would keep the mineral rights on parcels of five acres or more. Mr. Keough went over the procedure of foreclosure. He stated that there is a final date of redemption where if the taxes are not paid, the properties are submitted to the Court which awards title to the County, pursuant to Real Property Tax Law. Mr. Keough stated that some previous owners will then submit a hardship letter stating why the taxes weren't paid, usually catastrophic or mental incapacity, and request that the property be sold back to them.

Mr. Keough stated that there are presently 271 properties in the foreclosure process. Mr. Keibel requested a breakdown of how many of those properties are greater than five acres.

Mr. Cleary asked about the procedure for other County's. Mr. Keough stated that Tioga County does not keep mineral rights but Stuben and Chemung do.

Mr. Herz asked the members to submit any questions or issues for the next meeting agenda. It was determined that at the next meeting, the committee will continue to focus on the procedure for properties sold back to former owners prior to auction.

The next meeting is scheduled for Friday, February 13, 2009.

There being no further business to come before the Committee the meeting adjourned at 1:15 pm.

**AD HOC COMMITTEE ON MINERAL RIGHTS  
AGENDA  
FEBRUARY 13, 2009  
1:30 PM**

1. CALL TO ORDER
2. REMARKS FROM CHAIRMAN HERZ
3. PROPERTIES SOLD BACK TO FORMER OWNER
  - A. Mineral Rights Stay With The Land
  - B. Mineral Rights Are Retained By The County
4. PROPERTIES TO BE AUCTIONED
  - A. Mineral Rights Stay With The Land
  - B. Mineral Rights Are Retained By The County
  - C. Minimum Opening Bid
5. ADJOURNMENT

AD HOC COMMITTEE ON MINERAL RIGHTS  
MEETING MINUTES  
FRIDAY, FEBRUARY 13, 2009

The Ad Hoc Committee on Mineral Rights of the Broome County Legislature met on Friday, February 13, 2009 in the Legislative Conference Room, Sixth Floor, Edwin L. Crawford County Office Building, Binghamton, New York.

Members Present: S. Herz (Chair), T. Cleary, M. Diffendorf, R. Keibel, M. Nirchi, D. Reynolds, Legislature; K. Keough, RPTS; R. Behnke, County Attorney's Office

Members Absent: None

Others Present: R. Blythe, County Clerk; N. Maxwell, Budget; M. Marinaccio, Town of Dickinson; M. Kennerknecht, Assemblywoman Lupardo's Office; G. LaBare, E. Denk, C. Marion, G. Regensburg, C. Hall, Legislature

The Committee meeting was called to order by the Chairman at 1:32 pm.

Mr. Cleary made a motion, seconded by Mr. Nirchi to accept the February 6, 2009 meeting minutes. Motion carried.

Mr. Keibel stated that in rem means against a property, not a person. Mr. Keibel discussed some of the options he felt the committee could consider.

1. retain all foreclosed parcels
2. retain all vacant foreclosed parcels.
3. retain all foreclosed parcels over a certain acreage
4. retain all vacant foreclosed parcels over a certain acreage

Mr. Keibel made a motion, seconded by Mr. Cleary that all mineral rights stay with the all property regardless of the type of sale. Mr. Reynolds hoped for more discussion and stated that the motion was premature. Mr. Keibel withdrew his motion, Mr. Cleary withdrew his second.

The County Attorney Mr. Behnke went over the County's tax foreclosure procedure and stated that once the last date of redemption has passed and the County takes title to a property and the property is deeded to the County, the former owner may submit a hardship letter to the Director of Real Property Tax Service stating their hardship of why the taxes were not paid. The Director of Real Property Tax Service then makes the decision if the property will be sold back to the former owner before the property goes to auction and submits his recommendation to the Legislature for approval.

There was discussion on the criteria used for hardship cases. Typically they are unique and unusual circumstances. It was suggested that maybe there should be better guidelines for determining hardship cases, possibly a form to be completed by the former owner. Ms. Maxwell indicated she was against the use of a form, as unique and unusual circumstances may not fit that kind of format. Mr. Keough will provide the committee with the current criteria and stated that there hasn't been a problem in the past in determining hardship cases that this has come to light because of the topic of mineral rights.



It was the consensus of the committee that the whole property in its entirety will be sold back on all residential and agriculture parcels to owners who were granted hardship.

It was also the consensus of the committee that the whole property in its entirety will be sold back on all parcels to owners who were granted hardship regardless of zoning or use given that these matters would be addressed in the hardship application process.

Mr. Keough stated that to date there are 203 properties in the foreclosure process with 25 of them having 5 or more acres.

The next meeting is scheduled for Friday, February 20, 2009 with discussion to focus on properties sold at auction.

There being no further business to come before the Committee Mr. Cleary made a motion to adjourn, seconded by Mr. Keibel. The meeting adjourned at 3:00 pm.

**AD HOC COMMITTEE ON MINERAL RIGHTS  
AGENDA  
FEBRUARY 20, 2009  
1:30 PM**

1. CALL TO ORDER
2. REMARKS FROM CHAIRMAN HERZ
3. COUNTY TO RETAIN TITLE ON VACANT LAND PROPERTIES
4. PROPERTIES TO BE AUCTIONED
  - A. Mineral Rights Stay With The Land
  - B. Mineral Rights Are Retained By The County
5. ADJOURNMENT

AD HOC COMMITTEE ON MINERAL RIGHTS  
MEETING MINUTES  
FRIDAY, FEBRUARY 20, 2009

The Ad Hoc Committee on Mineral Rights of the Broome County Legislature met on Friday, February 20, 2009 in the Legislative Conference Room, Sixth Floor, Edwin L. Crawford County Office Building, Binghamton, New York.

Members Present: S. Herz (Chair), M. Diffendorf, R. Keibel, M. Nirchi, D. Reynolds, Legislature; K. Keough, RPTS; R. Behnke, County Attorney's Office

Members Absent: T. Cleary

Others Present: M. Whalen, S. Messina, J. Marinich, E. Denk, G. Regensburg, C. Hall, Legislature

The Committee meeting was called to order by the Chairman at 1:35 pm.

Mr. Diffendorf made a motion, seconded by Mr. Keibel to accept the February 13, 2009 meeting minutes. Motion carried.

Mr. Keough provided a memorandum (attached with the minutes) regarding the hardship criteria for sell backs to former owners. He stated that these are general reasons and that each property and owner has specific and unique issues that are reviewed on an individual basis and all cases require a letter of hardship and an in person meeting with the property owner.

Mr. Keough stated that there are 99 properties in foreclosure and 13 of them have 5 or more acres. Mr. Keibel asked how many of the properties are vacant. Mr. Keough did not have that breakdown available at this time.

Mr. Herz suggested that on properties that go to auction there could be deed restrictions so the mineral rights went with the land but the County would receive a percentage of the royalties. The committee did not agree with Mr. Herz's suggestion.

Mr. Nirchi talked about the value of the land and the value of mineral rights. He said at this time it is too complicated a matter and there are too many unknowns. He objects to blindly selling property to speculators and recommends that the County keep the mineral rights on all properties that are sold at auction.

Ms. Messina had concerns about the condition of the land when they are done. It was stated that there can be language in the contracts that requires restoration of the property.

Mr. Keibel stated that it is premature at this time to make a decision and feels the County should hold all vacant land.

It was the consensus of the committee that the County should not sell any vacant land at auction and the County will hold the land as long as the property does not require any substantial maintenance or have a substantial liability. It was also the consensus of the committee to review this decision again in the first quarter of 2010.

The next meeting is scheduled for Thursday, March 12, 2009 at 3:00 pm.

There being no further business to come before the Committee the meeting adjourned at 3:00 pm.

**AD HOC COMMITTEE ON MINERAL RIGHTS  
AGENDA  
March 12, 2009  
3:00 PM**

1. CALL TO ORDER
2. APPROVE MINUTES FROM FEBRUARY 20, 2009
3. REMARKS FROM CHAIRMAN HERZ
4. PROPERTIES SOLD AT AUCTION
  - A. Mineral Rights Stay With The Land
  - B. Mineral Rights Are Retained By The County
5. ADJOURNMENT

AD HOC COMMITTEE ON MINERAL RIGHTS  
MEETING MINUTES  
THURSDAY, MARCH 12, 2009

The Ad Hoc Committee on Mineral Rights of the Broome County Legislature met on Thursday, March 12, 2009 in the Legislative Conference Room, Sixth Floor, Edwin L. Crawford County Office Building, Binghamton, New York.

Members Present: S. Herz (Chair), M. Diffendorf, R. Keibel, M. Nirchi, S. Messina for T. Cleary, Legislature; K. Keough, RPTS; R. Behnke, County Attorney's Office

Members Absent: D. Reynolds

Others Present: R. Blythe, County Clerk; C. Riley, RPTS; M. Marinaccio, Town of Dickinson; M. Kalka, Budget; G. LaBare, J. Marinich, C. Marion, E. Denk, C. Hall, Legislature

The Committee meeting was called to order by the Chairman at 3:04 pm.

Mr. Keibel made a motion, seconded by Mr. Diffendorf to approve the February 20, 2009 meeting minutes. Motion carried.

Mr. Keough provided a memorandum (on file with the minutes) which outlined the decisions made by the committee and provided options for further discussion and how the different options could affect the Office of Real Property Tax Service.

Mr. Keibel stated that in all instance, mineral rights and surface rights should stay together. Mr. Marion reported that some lenders are denying mortgages where mineral rights and surface rights have been split, and real estate agents have seen deals fall through on the recommendation of the closing lawyers. This does not seem to be an issue for appraisers. Mr. Behnke noted that the whole idea is new to the area and those involved are being cautious.

There was discussion on foreclosed properties in the City of Binghamton. Mr. Keough wanted to know how to proceed with these properties. It was the recommendation of the committee to allow Mr. Keough to sell all properties with structures in the City of Binghamton with the mineral rights at the May auction. Ms. Messina and Mr. Nirchi had reservations about selling the properties with the mineral rights and voted against the recommendation.

Mr. Keough stated that there are two properties that have more than five acres that he would like to sell at the May auction. One is in the Town of Nanticoke and the other is in the Town of Colesville. There was discussion on the different options available. The committees recommendation is to sell at the May auction the Nanticoke property with the mineral rights and sell the Colesville property without the mineral rights. Mr. Keibel was not in favor of the recommendation and voted against it.

Mr. Keough reminded the committee that the Legislature can always reject a bid for a property sold at auction.

The next meeting is scheduled for April 23, 2009 at 3:00 pm.

Mr. Herz informed everyone that members of a steering committee of multiple gas coalitions will do a presentation at the April meeting of the Transportation and Rural Development Committee

There being no further business to come before the Committee the meeting Mr. Diffendorf made a motion to adjourn, seconded by Mr. Keibel. The meeting adjourned at 4:15 pm.

## AD HOC COMMITTEE ON MINERAL RIGHTS

### AGENDA

April 14, 2009

3:00 PM

1. CALL TO ORDER
2. APPROVE MINUTES FROM MARCH 12, 2009
3. REMAINING ISSUES- AUCTION SALES OF IMPROVED PROPERTIES
  - A. Sell all properties; retain no oil/gas rights
    1. Pros-
      - a. Maximize auction proceeds
      - b. No staffing issues created for Real Property regarding accounting and recordkeeping on parcels
      - c. Eliminates the impression that the County is banking land for its own purposes
      - d. Avoid potential liability issues resulting from ownership of subsurface rights
      - e. Puts all properties in the taxable section of the rolls
    2. Cons-
      - a. Forfeiting long-term revenues related to royalties and bonuses
  - B. Retain oil/gas rights on all improved parcels
    1. Pros-
      - a. Maximize long-term revenues related to royalties and bonuses
      - b. See Legislator Nirchi's calculations
    2. Cons-
      - a. Additional staffing required to account for leases, royalty payments and property management
      - b. Possibility of a lower bid price at auction
      - c. Cost and liability issues of long-term county involvement in multiple parcels
      - d. Possible mortgage issues for buyers regarding lender policies
  - C. Retain oil/gas rights on improved parcels over five acres; retain no oil/gas rights on improved parcels under five acres (Current policy)
    1. Pros-
      - a. Easier as far as recordkeeping and accounting for royalties
      - b. Gas companies could negotiate to drill on larger parcels providing additional revenue to the County
      - c. Most parcels would be in rural areas alleviating some of the effects on neighboring parcels
    2. Cons-
      - a. Additional staffing required for accounting purposes
      - b. Possibility of a lower bid price at auction
      - c. Cost and liability issues of long-term county involvement in multiple parcels
      - d. Possible mortgage issues



D. Retain a percentage of future royalties and signing bonuses on all improved parcels in a deed out to the buyer

1. Pros-

- a. Buyers of all parcels could negotiate a lease and any restrictions they choose without County involvement
- b. Increase long-term revenues for the County
- c. Would provide revenue to the County while offering property to the public at auction with minimum restrictions assigned to it
- d. Relieves the County of any liability issues
- e. Eliminates the impression that the County is banking land for its own purposes

2. Cons-

- a. Additional staffing required for accounting purposes

E. Retain oil/gas rights on improved parcels over five acres; retain a percentage of future royalties and signing bonuses in a deed out to the buyer on improved parcels under five acres

1. Pros-

- a. Buyers of smaller parcels could negotiate a lease and any restrictions they choose without County involvement
- b. Gas companies could negotiate to drill on larger parcels providing additional revenue to the County
- c. Large parcels would likely be in rural areas alleviating some of the effects on neighboring parcels
- d. Increase long-term revenues for the County
- e. Retaining a percentage of the royalties would provide revenue to the County while offering property to the public at auction with minimum restrictions assigned to it

2. Cons-

- a. Additional staffing required for accounting purposes
- b. Possibility of a lower bid price at auction on larger parcels
- c. Cost and liability issues of long-term county involvement in multiple larger parcels
- d. Possible mortgage issues

F. Give the Director of Real Property Tax Service discretion to do any or all of the above with regard to improved parcels and revisit this policy in 12 months.

1. Pros-

- a. Allows flexibility in decision making

2. Cons-

- b. Nonconformity in transactions

#### 4. PREPARING A REPORT

- A. Sellback due to hardships and existing policy Reso. 352 of 1974
- B. Vacant parcels - Moratorium on auctioning vacant parcels with no liability for 12 months
- C. Improved parcels – List all courses of action considered by the committee and propose a recommended course of action
- D. Timeframe for filing of report with the Clerk of the Legislature – Report will be filed within ten days of April 14, 2009 meeting

#### 5. ADJOURNMENT

AD HOC COMMITTEE ON MINERAL RIGHTS  
MEETING MINUTES  
APRIL 14, 2009

The Ad Hoc Committee on Mineral Rights of the Broome County Legislature met on Tuesday, April 14, 2009 in the Legislative Conference Room, Sixth Floor, Edwin L. Crawford County Office Building, Binghamton, New York.

Members Present: S. Herz (Chair), M. Diffendorf, R. Keibel, M. Nirchi, D. Reynolds, Legislature; K. Keough, RPTS; R. Behnke, County Attorney's Office

Members Absent: None

Others Present: C. Riley, RPTS; M. Marinaccio, Town of Dickinson; G. LaBare, S. Messina, M. Whalen, C. Marion, E. Denk, C. Hall, Legislature

The Committee meeting was called to order by the Chairman at 3:05 pm.

Mr. Cleary made a motion, seconded by Mr. Keibel to approve the March 12, 2009. Motion carried.

The committee then reviewed six options to address the remaining issue of what the County should do regarding mineral rights and auction sales of improved properties. Mr. Keibel recommended that the Office of Real Property could split large properties into two parcels depending on the situation. One parcel, with the improvements and a small amount of land, would be considered a farmstead and the other parcel would contain the rest of the acreage and would be a vacant lot with no improvements. The County would auction the farmstead and the vacant lot would fall under the previously discussed moratorium on sales of vacant lots.

Mr. Nirchi made a motion, seconded by Mr. Keibel that when feasible a farmstead be created on larger parcels and the farmstead with the mineral rights be sold at auction with the remaining acreage and parcel falling under the 12 month vacant property moratorium. It was the consensus of the committee that this be the recommendation for the final report.

Regarding the May auction, the committee re-evaluated the parcels in the Town of Nanticoke and the Town of Colesville. The committee previously agreed to have the Nanticoke property sold with mineral rights and the Town of Colesville property sold without the mineral rights. The committee's recommendation at this time is to have both properties sold first without the mineral rights and then with the mineral rights and the larger of the two bids would be the one accepted.

Mr. Keibel made a motion, seconded by Mr. Diffendorf that mineral rights will stay with properties that don't fall under the 12 month vacant property with no liability sale moratorium. Motion carried. Ayes-3, Nays-2 (Cleary, Nirchi)

Mr. Herz directed Legislative Assistant Chris Marion to complete and file a report of the committee with the Clerk of the Legislature within ten days of this meeting.

There being no further business to come before the Committee, Mr. Cleary made a motion to adjourn, seconded by Mr. Keibel. The meeting adjourned at 4:56 pm.