



Chautauqua, Cattaraugus, Allegany & Steuben Counties

Southern Tier Extension Railroad Authority

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"This institution is an equal opportunity organization"
John Margeson, Chairman

MINUTES – January 29, 2007

The Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority met at 9:30 AM on January 29, 2007 at the offices of the Southern Tier West Regional Planning and Development Board, 4039 Route 219, Suite 200, Salamanca, New York. The following persons were in attendance:

Board Members

William Daly
Joseph Eade
Terry Everetts
Karl Kruger
Tom Livak
Fran Lus
John Margeson
Timothy O'Grady
Robert Walrod

Representing

Chautauqua County
Cattaraugus County
Cattaraugus County
Allegany County
Cattaraugus County
Chautauqua County
Allegany County
Allegany County
Chautauqua County

Others Attending

Thomas Barnes
William Burt
Robert Iszard
Brian Schrantz

Representing

Southern Tier West
WNYP
NYS ESDC
Southern Tier West

Call to Order and Introduction of Those Present

Chairman John Margeson called the meeting to order at 9:30 AM. He asked for a moment of silence to honor deceased member Ldon Jamison of Steuben County. Mr. Margeson welcomed newly appointed STERA Board member Terry Everetts of Cattaraugus County. Following this, introductions were made of those present..

Minutes of Prior Meetings

Mr. Margeson noted that at the May 2006 Board meeting, the Board previously had tabled the review of the minutes of the March 20, 2006 meeting, and the full Board had not met since May 2006. He noted that in the absence of a full STERA Board meeting, the Executive Committee had held several meetings to transact business. This business related primarily to the ongoing construction project, Public Authorities Accountability Act compliance, and the Randolph

Foundry Project. Minutes of the following meetings were distributed, and Mr. Margeson noted that he wanted members to have an opportunity to read all of the minutes prior to voting on them. The Board adopted a resolution to waive the reading of the minutes (Kruger, Eade, passing unanimously).

Communications

Mr. Barnes reported on several communications that STERA had received from Harris Beach relating to counsel's opinion on potential conflicts of interest. He noted that the Board had elected a slate of officers at the May 2006 meeting, with Mr. Griffin's election pending satisfactory resolution of a question regarding a potential conflict of interest. Mr. Walrod also had noted a potential conflict of interest. Mr. Barnes had been directed to seek advice on this matter from counsel. He reported that

With respect to Mr. Griffin, STERA received a letter dated July 25, 2006 from Robert Ryan of Harris Beach noting that STERA has an established Standard of Conduct Policy, and noting that Mr. Griffin has a Board membership in STERA, and indicating that Mr. Griffin had disclosed to STERA that he has a WNYP Board seat and receives no salary from WNYP excepting a stipend of \$500 for each WNYP Board meeting attended. Mr. Ryan's opinion letter indicates three opinions:

- First, with respect to STERA's policy, Mr. Griffin does not have an ownership interest in WNYP in which he would be personally benefited from his participation on the STERA Board, and therefore the only potential conflict that could arise would be for an impairment of his independent judgment in his exercise of his STERA duties. He noted that STERA's policy provides that Mr. Griffin could negate any conflict by abstaining or otherwise not acting in any instance of conflict.
- Second, Mr. Ryan indicates that STERA's policy discusses General Municipal Law Article 18 compliance, and he indicates that it appears that Mr. Griffin is not covered by that statute as a municipal officer or employee, but if he were so covered, abstention in any instance of potential conflict would resolve the conflict.
- Lastly, Mr. Ryan indicates that STERA is covered by Section 74 of the NYS Public Officers Law, but that similar to the STERA policy, Mr. Griffin could negate any conflict by abstaining or otherwise not acting in any instance of conflict.

Accordingly, Mr. Ryan's opinion is that Mr. Griffin does not have to resign from the STERA Board provided that he recuses himself from any vote and/or abstains from officially acting with respect to WNYP, and that Mr., Griffin complied with the STERA policy by disclosing the potential conflict.

With respect to Mr. Walrod, STERA received a letter dated August 29, 2006 from Robert Ryan of Harris Beach noting that STERA has an established Standard of Conduct Policy, and noting that Mr. Walrod has a Board membership in STERA, and indicating that Mr. Walrod had disclosed to STERA that he is employed by Monofrax, which is a shipping customer of the WNYP, and that he receives a salary from Monofrax. Mr. Ryan's analysis is similar to that in the opinion letter that he prepared for Mr. Griffin. His opinion letter dated August 29, 2006 indicates three opinions:

- First, with respect to STERA's policy, Mr. Walrod does not have a financial interest in Monofrax based upon Monofrax's operations or performance in which he would be

personally benefited from his participation on the STERA Board, and therefore the only potential conflict that could arise would be for an impairment of his independent judgment in his exercise of his STERA duties. He noted that STERA's policy provides that Mr. Walrod could negate any conflict by abstaining or otherwise not acting in any instance of conflict.

- Second, Mr. Ryan indicates that STERA's policy discusses General Municipal Law Article 18 compliance, and he indicates that it appears that Mr. Walrod is not covered by that statute as a municipal officer or employee, but if he were so covered, abstention in any instance of potential conflict would resolve the conflict.
- Lastly, Mr. Ryan indicates that he reviewed the standards contained in STERA's own policy, Title 28-AA of The Public Authorities Law, the Public Authorities Accountability Act of 2005, Section 74 of the NYS Public Officers Law, and other such statutes and documents that he considered appropriate, and indicated that Mr. Walrod could negate any conflict by abstaining or otherwise not acting in any instance of conflict.

Accordingly, Mr. Ryan's opinion is that Mr. Walrod does not have to resign from the STERA Board provided that he recuses himself from any vote and/or abstains from officially acting with respect to WNYP with respect to any matter that affects Monofrax as a rail user. Mr. Walrod complied with the STERA policy by disclosing the potential conflict.

In both cases, determining when recusal is necessary may be difficult and will need to be done on a case by case basis. One could argue that every decision or official action by either would have an indirect effect on WNYP or Monofrax and should result in recusal; however, Mr. Ryan indicated that he believes that such a position is unnecessarily strict and goes beyond the intent of the applicable conflicts policies. However, where certain STERA actions that will result in a material impact on the users of the rail or on WNYP are under consideration by STERA, Mr. Griffin and Mr. Walrod are required to recuse themselves in order to avoid the conflict of interest.

There was no other correspondence, other than that correspondence held for discussion later in the course of this meeting.

Treasurer's Report

Mr. Barnes noted that Mr. Zink had not provided a Treasurer's Report. The Board adopted a resolution to waive the review of the Treasurer's Report until the next meeting (Eade, Lus, passing unanimously).

Audit

Mr. Barnes noted that Mr. Zink had researched audit requirements. There will be a statutory requirement in 2007, but there is not otherwise a requirement for an audit until then per STERA's federal grant contracts or other state statute.

Old Business

Status of WNYPRR Operations / Current Rehabilitation Projects / Southern Tier Extension Agreement Proposal and North-South Line Proposal

The Board entered into executive session to discuss a particular topic on the railroad line (Daly, Kruger, passing unanimously).

The Board re-entered the meeting from executive session (Eade, Lus, passing unanimously).

Mr. Margeson noted that Mr. Burt had made a presentation to the STERA Board detailing companies benefited by rail service, past and current rehabilitation work, the status of the current rehab project, prospective rehabilitation projects, and WNYP's current and projected financial situation.

Mr. Margeson noted that Mr. Barnes had distributed a draft journal of significant events over the course of the ongoing rehabilitation project.

Mr., Margeson noted that Mr. Burt had made two proposals to STERA:

- (1) WNYP requested that STERA extend the east west line abatement through 2017, with the PILOT due in 2009, 2010 and 2011 being shifted to 2015, 2016, and 2017, at 33%, 66%, and 100% of taxes as reduced by the Statewide real estate tax reduction.
- (2) WNYP requested that STERA enter into a sale and leaseback transaction with Norfolk Southern on the north south line between Machias Junction and the Pennsylvania state line, with an abatement through 2017, with a PILOT in 2015, 2016, and 2017 at 33%, 66%, and 100% of taxes, under the condition that Norfolk Southern enter into a long term sub-lease of that line with WNYP.

Mr. Margeson noted that Mr. Burt had presented reasons why STERA should approve these two proposals, including the impact on the overall railroad initiative, the potential for economic development, and the costs versus benefits of the proposals.

Mr. Margeson noted that in the January 25, 2007 STERA Executive Committee meeting, Mr. Eade had offered a motion recommending that the full STERA Board approve these two requests. Mr. Margeson noted that although he himself also was in favor of approving these two requests, there wasn't a quorum present at the Executive Committee meeting to enable the Executive Committee to take action on this motion. He did, however, inform the full STERA Board of the sense of the Committee. However, he noted that the Board felt that it needed time to digest the proposals, and he indicated that the Board would re-visit the proposals at its upcoming February 12, 2007 Board meeting.

Mr. Livak requested that STERA issue a press release detailing the proposals.

NYS Public Authorities Accountability Act (PAAA) Compliance

STERA noted a communication from Robert Ryan of Harris Beach recommending actions to be undertaken to comply with STERA's authorization legislation and the PAAA. Mr. Barnes discussed the need to adopt bylaws, modify officer positions, and adopt certain other policies, etc. He distributed a draft resolution containing all of these actions for review by the Board. He also distributed copies of proposed policies and draft bylaws. Mr. Margeson indicated that the Board would take this up at the upcoming February 12, 2007 Board meeting.

As regarding the draft bylaws, Mr. Margeson noted that the Executive Committee had reviewed and discussed options for modifying corporate and board offices and placement of staff within

corporate offices. The Executive Committee also had discussed the requirements for Audit Committee and Governance Committee, the composition of such committees, and the appointment process.

The Executive Committee recommended:

- Establishing the Board office of Assistant Vice President
- Establishing the Corporate office of Secretary (may be held by a Board member)
- Establishing the corporate offices of CEO/Executive Director and Treasurer
- Appointing as officer of the Board James Griffin as Assistant Vice Chairman.
- Appointing as officers of the corporation Donald Rychnowski as Executive Director (CEO), Richard Zink as Treasurer (CFO), and Robert Walrod as Secretary.
- Appointing the chief executive officer as the Contracting Officer.

It was noted that Mr. Margeson recommended a policy whereby each county was represented by either a Board officer position or the corporate officer position of secretary.

Mr. Barnes noted that Harris Beach had recommended that STERA re-adopt and re-approve its Code of Ethics (entitled “Standards of Conduct Policy”) and its Procurement Policy (entitled “Contract and Procurement Policy”). He noted that although NYS requires that STERA have its own Code of Ethics, entitled “Standards of Conduct Policy,” STERA also is required to submit an annual “Conflict of Interest and Financial Disclosure Statement” to Cattaraugus County, in which members indicate that they are in compliance with Cattaraugus County’s Code of Ethics. Accordingly, STERA members will be required to adhere to both STERA’s and Cattaraugus County’s Code of Ethics.

The Board received, discussed, and approved by resolution a proposal for a budget for calendar 2007 (Lus, Kruger, passing unanimously).

Multi-Modal Freight Transfer Facility and Manufacturing Center Project

Mr. Barnes noted that Southern Tier West is in the process of selecting a site from those submitted by the counties and the Seneca Nation of Indians. Southern Tier West is also working on a strategy to involve and obtain the support of the Port Authority of NY and NJ.

Other Old Business

There was no other Old Business.

New Business

Randolph Foundry

Cattaraugus County had foreclosed on property in the Village of Randolph in Cattaraugus County, had determined that buildings on the site needed demolition and that the site was contaminated and needed to be remediated. The County had applied for and received an award from NYS DEC from its Environmental remediation Program (ERP). It was then learned that the prior property owners had encroached on adjoining land, which happened to be STERA titled land in the railroad right of way, and had built a portion of their building. NYS DEC required that STERA be co-applicant of the ERP project.

Mr. Barnes described the project circumstances and history, and noted that Norfolk Southern had indicated that STERA could proceed with the project. Mr. Barnes noted that Mr. Griffin had urged caution in the process of reviewing Cattaraugus County's request that STERA act as co-applicant in the NYS DEC ERP project. Most recently, Mr. Griffin had suggested that Robert Ryan of Harris Beach provide advice on participating in this project.

Mr. Barnes noted that the Executive Committee had held a telephone conference call with Martin Doster of NYS DEC on January 25, 2007, in which Mr. Doster indicated that he personally had designed the ERP (investigation/characterization/remediation) project to cover all likely demolition and cleanup, and he felt that there should not be a need for any subsequent cleanup. Accordingly, he felt that NYS DEC would likely be able to provide a signoff on the property after this ERP project. He indicated further that if there was a need for a second subsequent remediation project, NYS DEC would issue a record of decision with proscribed remediation, and would seek the County and STERA to be co-applicants. Should the County fail to act and fail to provide any local share required, NYS DEC would then recognize that STERA was an innocent title holder that was not responsible for the contamination, and NYS DEC would not require STERA to pay for remediation costs. Mr. Margeson indicated that he recommended that STERA participate in the project as co-applicant.

The Board adopted a resolution to undertake the NYS DEC ERP Project as co-applicant with Cattaraugus County, provided that Cattaraugus County provides the required local share match for that project and executes an agreement to that effect, authorized a specific resolution to be included in the application, and authorized executing and submitting an application to NYS DEC for ERP funds and executing all applicable grant award and project contractual documents (Eade, Kruger, passing unanimously).

Proposed NYS Rail Bond Act Project

Following a short presentation by Mr. Burt, the STERA Board adopted a resolution authorizing the submission of a \$4.5 million grant proposal to NYS DOT for NYS Rail Bond Act funds, provided that STERA receive a 2% administrative fee for administering the grant (Livak, Lus, passing unanimously).

Other New Business

There was no other New Business.

Public Comment

There was no public comment.

Next Meeting

The Authority indicated that it will next meet on February 12, 2007 at 9:30 AM to do business.

Adjournment

The meeting was adjourned at 12:00 PM (Eade, Livak, passing unanimously).

I certify that this is an accurate summary of the meeting of the Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority held on the date indicated above.

Name: _____

Office: _____

Date: _____