



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 OF BOARD OF DIRECTORS MEETING

March 5, 2012

The Board of Directors of the Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority met at 9:40 AM on March 5, 2012 in the Conference Room in the office 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 In Attendance

Michael Brisky
Seth Corwin
William Daly
Joseph Eade
Terry Everetts
John Foels
Jay Gould
John Margeson

Representing

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

Board Members Not In Attendance

James Cooper
James Griffin
Timothy O'Grady
Thomas Ryan
Vacant
Vacant

Representing

Southern Tier West RPDB
Steuben County
Allegany County
Steuben County
Chautauqua County
Seneca Nation of Indians

Others Attending

Thomas Barnes
Carl Belke
Lucas Brewer
Edward Bysiek CPA
Richard Zink

Representing

STERA Secretary
WNYP RR
WNYP RR
Bysiek CPA PLLC
STERA Executive Director

1. Call to Order and Introduction of Those Present

Chairman John Margeson called the meeting to order at 9:40 AM. Introductions were made of those present. Mr. Margeson welcomed John Foels, newly appointed Allegany County Board member. Mr. Margeson noted that he has appointed Mr. Foels to membership on the Audit Committee.

2. Reading and Approval of the Minutes of the October 17, 2011 Meeting

The Board adopted a resolution approving the minutes of the October 17, 2012 Board Meeting (Eade, Everetts, passing unanimously).

3. Communications

It was noted that a communication had been received from:

- Chautauqua County indicating that Mr. Euliano had resigned from the STERA Board. Mr. Daly noted that Adam Gorczyca has been appointed by the Chautauqua County Executive, and his appointment was expected to be confirmed by the Chautauqua County Legislature later this month.
- Allegany County appointing John Foels to the STERA Board.

4. Treasurer's Report

A. February 29, 2012 Treasurer's Report

Mr. Zink distributed a Treasurer's Report for February 29, 2012. For the year to date ending February 29, 2012, STERA had a net income of \$123,978.80 on revenues of \$206,542.80. As of February 29, 2012, STERA had net assets of \$3,903,149 on assets of \$3,985,713, with a cash balance of \$303,303. Accounts payable as of February 29, 2012 were \$82,564.

Mr. Zink noted that the revenue flows were attributable to the FEMA project draw-downs, and that there were corresponding checks being drawn to WNYP and LC Whitford for this project. STERA also is disbursing funds to Southern Tier West per the administrative services agreement. The \$40,000 annual payment from WNYP to STERA is shown as a receivable.

The Board adopted a resolution approving the Treasurer's Report for February 29, 2012 (Eade, Everetts, passing unanimously).

Discussion on the internal control procedure relating to review of interim internal financial statements by the Audit Committee was deferred until the Audit Committee and Governance Committee reports.

Reports of Committees

5. Executive Committee

The Board reviewed the Executive Committee Self-Evaluation Report for Calendar Year 2011, which showed no deficiencies. At the recommendation of the Executive Committee, the Board adopted a resolution approving the Executive Committee Self-Evaluation Report for Calendar Year 2011 (Eade, Brisky, passing unanimously).

6. Audit Committee

Changeover of Auditor

Mr. Zink reported that STERA's current auditor (Trussalo) has terminated the multi-year contract for his provision of auditing services. After consultation with Audit Committee Chairman James Griffin, Mr. Zink obtained three quotes for audit services for the year ending December 31, 2011. With the approval of Mr. Griffin, Mr. Zink selected low bidder Edward Bysiek CPA to provide the required audit services, at the same price as had been expected to be paid by STERA to Trussalo for the audit. On March 5, 2011, the STERA Audit Committee approved this process and the selection, and recommended that the Board approve the selection of Mr. Bysiek to provide the required audit services. At the recommendation of the Audit Committee, the Board adopted a resolution approving the selection of Mr. Bysiek to provide the required audit services (Brisky, Gould, passing unanimously).

Presentation of Audit and Management Letter

Mr. Bysiek presented and discussed the audit for the year ending December 31, 2011, and the accompanying management letter. The audit indicated an unqualified opinion. He noted that the financial statements indicated a write off of the \$20,235 uncollected amounts. The management letter indicated there was a deficiency in STERA's internal control as follows:

"Separation of Duties

Effective internal control over financial reporting states that control activities should be selected and developed at various levels of an entity to reduce risks to achievement of financial reporting objectives. Management has not separated incompatible activities of Organization personnel, thereby creating risks to the safeguarding of cash."

Additionally, the management letter indicated that there are opportunities for strengthening internal controls and operating efficiency, as follows:

"Risk Assessment

Effective internal control over financial reporting involves the identification and analysis of the risks of material misstatement to the entity's audited financial statements and then should determine how those identified risks should be managed. Management has not identified risks to the preparation of reliable financial statements and as a result has failed to design effective controls over the preparation of the financial statements to prevent or detect material misstatements, including footnote disclosures."

After review, the Board adopted a resolution approving both the audit for the year ending December 31, 2011 and the accompanying management letter, and directed that STERA take the steps discussed to address issues brought forward in the management letter (Corwin, Eade, passing unanimously).

There was a discussion regarding (a) how to address the separation of duties issue and (b) what a workable internal control policy for minimizing risk as regards the development of interim financial statements. The solution developed in discussions between the Audit Committee and the auditor, and recommended to the Board, was that a Board member be appointed as CFO, whereupon the CFO would oversee checks, review the bank statements and interim financial statements, and recommend the approval of the interim financial statements by the Board. This process would be incorporated into a revised Internal Control Procedures Policy. The Board agreed with this proposal. To accomplish these changes, the Board took several actions, which are reported individually below.

Review of Audit Committee Self-Evaluation Report for Calendar Year 2011

The Board reviewed the Audit Committee Self-Evaluation Report for Calendar Year 2011, which showed no deficiencies. At the recommendation of the Executive Committee, the Board adopted a resolution approving the Audit Committee Self-Evaluation Report for Calendar Year 2011 (Brisky, Gould, passing unanimously).

Review of Organizational Assessment of the Effectiveness of Internal Controls

The Board reviewed and discussed the Organizational Assessment of the Effectiveness of Internal Controls. Based on the audit for the year ending December 31, 2011, and the accompanying management letter, the Board decided to amend the assessment to reflect the new internal control function relating to the new role of the CFO (Board member) in the process. After discussion the Board adopted a resolution approving the amended Organizational Assessment of the Effectiveness of Internal Controls (Eade, Corwin, passing unanimously).

Review of Audit Committee Charter Review Report

The Board reviewed the Audit Committee Charter Review Report, and discussed the proposed revisions. At the recommendation of the Audit Committee, the Board adopted a resolution approving the Audit Committee Charter Review Report (Daly, Corwin, passing unanimously).

Proposed Revision of Bylaws to Permit the CEO and Treasurer / CFO to be a Board member and Development of Job Description for the CFO

Report on discussion deferred until Governance Committee report below.

Proposed Revision of the Audit Agreement

This was rendered moot by the discussion regarding internal control policies.

7. Governance Committee

Audit Committee Charter Revision

The Governance Committee had reviewed the Audit Committee Charter Review Report, and discussed the proposed revisions. At the recommendation of the Governance Committee, the Board adopted a resolution approving the proposed revision of the Audit Committee Charter (Daly, Corwin, passing unanimously).

Internal Control Procedures

The Governance Committee had reviewed and discussed the further revision of the Internal Control Procedures beyond that proposed by the Audit Committee at its November 2011 meeting. The further revision would provide that the CFO would review all checks, bank statements, and interim statements, and recommend the approval of the interim financial statements by the Board at its regularly scheduled quarterly meetings. After discussion, the Board adopted a resolution approving this revision of the Internal Control Procedures (Brisky, Everetts, passing unanimously).

Review of Proposed Revised Contract and Procurement Policy

The Governance Committee had reviewed and discussed the proposed revision of the Contract and Procurement Policy, which had been approved by STERA attorney Harris Beach. At the recommendation of the Governance Committee, the Board adopted a resolution approving the proposed revision of the Contract and Procurement Policy (Brisky, Corwin, passing unanimously).

Annual Policy and Report Development and Review; Annual Review of Structure, Governance, and Operating Activities

The Governance Committee had reviewed and discussed STERA's current policies, the draft reports for the year ending December 31, 2011, and STERA's structure, governance, and operating activities.

With respect to the STERA's current policies, the Governance Committee had adopted a resolution making a finding that STERA was in compliance with all of the current policies, that the policies should not be changed, and that the Board should make a similar finding and not change any of the current policies. After discussion, and at the recommendation of the Governance Committee, the Board adopted a resolution making a finding that STERA was in compliance with all of the current policies and that the policies should not be changed (Eade, Daly, passing unanimously). These policies are as follows:

- Bylaws
- Code of Ethics
- Compensation, Reimbursement and Attendance Policy
- Competencies and Personal Attributes Required of Board Members
- Defense and Indemnification Policy
- Equal Opportunity and Affirmative Action Policy
- Governance Committee Charter
- Investment Policy
- Lobbying Policy
- Management Performance Evaluation Standards
- Measurement Standards for Performance Evaluation
- Mission Statement
- New Member Orientation Process
- New Member Orientation Process Reference Document
- Property Disposition Guidelines
- Public Access to Records Policy
- Public Access to Records - Subject Matter List
- Records Management Program
- Travel Policy
- Uniform Tax Exemption Policy
- Whistleblower Policy

The Board noted that the following policies were discussed and approved or revised separately during this meeting:

- Audit Committee Charter
- Internal Control Procedures
- Procurement Guidelines (Contract and Procurement Policy)

With respect to the draft reports for the year ending December 31, 2011, the Governance Committee had adopted a resolution recommending that the Board should approve these reports. After discussion, and at the recommendation of the Governance Committee, the Board adopted a resolution approving the draft reports for the year ending December 31, 2011 (Daly, Corwin, passing unanimously). These reports are as follows:

- Annual Report
- Board Self-Evaluation Report per NYS ABO Policy Guidance 10-05
- Board Member Attendance Evaluation Report
- Governance Committee Charter Review Report March 2012
- Governance Committee Self-Evaluation Report

Investment Report
Management (Corporate Officers) Evaluation Report
Organizational Self-Evaluation Report
Organizational Compliance Evaluation Report
Procurement Report
Property Disposition Report
Property Listing Report

The Board noted that the following reports were discussed and approved or revised separately during this meeting:

Audit
Audit Communications Letter
Audit Committee Charter Review Report March 2012
Audit Committee Self-Evaluation Report
Executive Committee Self-Evaluation Report
Organizational Assessment of the Effectiveness of Internal Controls

The Board noted that the following reports were discussed and approved at the October 17, 2011 Board meeting:

Budget for 2012
Four Year Financial Plan for 2012 to 2015
Management Report: Financial Disclosures and Ethics Report October 2011

With respect to the STERA's structure, governance, and operating activities, the Governance Committee had adopted a resolution recommending that the Board adopt no change in STERA's governance practices with respect to transparency, independence, accountability, fiduciary responsibilities, and management oversight. However, the Committee, and the Board, noted that the results of the annual Board Self Evaluation process indicated that issues remain that should be addressed by the Board. In the past, the Board had decided to set aside some time at each Board meeting for presentations or training sessions on each of the issues raised in the Board Self Evaluation survey, and on other relevant issues relating to the Authority, the Board, and to governance and operations. The Board noted that in June, 2012, the Board would begin to review the history of the initial transaction and abatement to provide a base foundation of knowledge to the Board members, most of whom were not members in 2001. The Board also noted that it had reviewed and approved at this meeting two policies related to governance: the Competencies and Personal Attributes Required of Board Members Policy and the New Member Orientation Process Policy. The Committee also had reviewed the number and structure of STERA Committees, and had adopted a resolution recommending that the Board make no changes in the number and structure of committees. The Committee also had noted that both contract staff persons have received training from State-approved trainers in compliance with NYS ABO and PAAA requirements. However, there still remained several Board members who had not yet received the required training. The Committee had adopted a resolution recommending to the Board that it require Board members to take the State-approved training if they have not yet done so by the end of the calendar year. With respect to the compensation and benefits for the managing director and other senior Authority officials, the Committee noted that the Authority has no direct employees, and accordingly there are no such individuals (Board or corporate officers or other management personnel) receiving compensation and benefits from the Authority. Accordingly, the Committee had adopted a resolution approving notifying the Board that it had reviewed this matter per the requirements of the Governance Committee Charter and recommended no action in this matter by the Board. Finally, the Committee had discussed the general governance and operation of the Authority, with respect to a consideration of any need for any other policies or documents relating to the governance and operation

of the Authority, including rules and procedures for conducting the business of the Authority's Board. In this regard, the Committee considered the results of the Board Self-Evaluation prepared per NYS ABO Guidance 10-05. The Committee made a finding that the Authority's policies and procedures are being effectively implemented and are effective in guiding and controlling the Authority's governance and operations, and recommended to the Board that it make no changes to the Authorities governance and operating policies and procedures. After discussion, and at the recommendation of the Governance Committee, the Board adopted a resolution making a finding that STERA would make no changes in structure, governance, and operating activities, but should address the results of the annual Board Self Evaluation process and should require that all Board members receive the training required by the NYS ABO by the end of 2012 (Eade, Daly, passing unanimously).

Proposed Revision of Bylaws to Permit the CEO and Treasurer / CFO to be a Board Member, Election of John Foels as CFO, and Development of Job Description for the CFO

The Committee discussed the recommendation of Audit Committee and Governance Committee that the Bylaws would be revised to permit the CEO and CFO to be a Board member, and adopted a resolution approving this revision (Brisky, Gould, passing unanimously).

The Board discussed the recommendation of the Audit Committee that John Foels be elected CFO, to succeed Richard Zink in that position, and adopted a resolution electing John Foels as CFO (Brisky, Eade, passing unanimously).

The Board also noted the indication of Audit Committee Chairman James Griffin that he would work with staff to develop a job description for the CFO, and indicated that the Audit Committee and Governance Committee would review any such draft job description that was developed. It was noted that the CFO will now review checks, bank statements, and interim financial statements and recommend their approval by the Audit Committee and Board.

Proposed Revision of the Audit Agreement

Discussed above.

Proposed Revision of STERA-STW Contract for Administrative Services

Jim Griffin had indicated that when he made the suggestion that STERA create such an agreement, he was unaware that there already was one in place. He indicated that he would revisit and possibly revise the agreement, asked the Board to hold off on any action, and offered that he, Richard Zink, and Thomas Barnes would work to craft a revised agreement sometime in the future. The Board agreed to postpone discussion until a proposed revision was made available.

Unfinished Business

8. Operating Status and Proposed Rehabilitation Projects (report by Carl Belke, WNYP RR)

Operating Status

Carl Belke, President & Chief Operating Officer of the WNYP RR, provided a detailed Management Report to the STERA Board. The Management Report covered the areas of Safety and Security, Financial Status of WNYP RR, Operations and Customer Service, Marketing and Freight Business, Mechanical Issues, Engineering and Maintenance of Way, Bridges and Culverts, and Other Projects.

Mr. Belke noted that STERA's repair of storm washouts in Allegany County to be funded through a FEMA/NYS OEM grant (WNYP match funds) began in fall 2011 and will be completed in 2012. Mr. Brewer provided a PowerPoint presentation on the FEMA project.

WNYP is hoping that the 2012 construction season will see four additional construction projects:

- WNYP's rail, tie replacement, surfacing, and bridge repair project to be funded by a US DOT FRA RRIF loan to LAL (note: WNYP is considering downsizing the RRIF loan request in an attempt to obtain the FRA loan award);
- STERA's repair of three bridges to be funded through a NYS DOT 2005 Bond Act grant (WNYP match funds);
- STERA's rail and tie replacement project in Cattaraugus County to be funded through a NYS DOT 2005 Bond Act grant, using WNYP match funds (note: this project may be delayed until 2013; NYS DOT has not awarded this contract to STERA yet); and
- WNYP's repairs to the Farmer's Valley Branch line in Pennsylvania to be funded through a PENNDOT grant.

The STERA projects mentioned above also were discussed separately from Mr. Belke's report. These STERA project discussions are reported later in these minutes.

Mr. Belke noted that:

- Certain customer freight volumes have increased or are projected to increase, while others have decreased. Most of the projected increases in freight volume are associated with Pennsylvania customers on the Buffalo line.
- Overhead coal traffic continues to be down, a consequence of macro-economic conditions resulting in a decrease in demand for electricity generated by coal-fired generating plants, the closure of certain coal-fired electricity generation plants, the changeover to gas-firing of a number of electricity generating plants, and NS's labor issues with respect to lowering costs of maintaining and utilizing train crews to operate overhead coal trains on the Southern Tier Extension.
- Traffic related to Marcellus shale gas operations continues to be down, owing to the continuing lack of permitting of drilling in western New York (which WNYP expects to continue until at least 2013), slowdowns in drilling operations in Pennsylvania due to environmental concerns, and a lowering of natural gas prices to a point where additional exploration is not viable.

Mr. Belke noted that:

- The signals at Lebanon Road (Steamburg, Cattaraugus County) have been upgraded, and the May Road (Steamburg, Cattaraugus County) grade crossing will be closed this spring.
- The Sherlock Hollow Road overpass highway bridge (Hinsdale, Cattaraugus County) has been closed, and a detour developed on existing local roads; this structure will be replaced with a grade crossing. This grade crossing project is being held up pending NS provision of land availability for the project.
- The NYSDOT-funded highway/grade crossing project on Route 19 in Scio (Allegany County) is planned for 2012. WNYP is working with NYS DOT to develop a plan for the project to keep Route 19 open while the grade crossings are being rebuilt.

Proposed Bridge Rehabilitation Project – Proposed Application for NYS DOT Funds

Mr. Barnes asked STERA to consider applying for NYS DOT grant funds in the next CFA round, which is expected sometime this year. Mr. Belke suggested a CFA bridge project that would include (a) the replacement of Bridge SA-29.26, Falconer, NY and (b) the undertaking of safety-based masonry repairs and concrete re-facing of rail bridges over highways in Alfred, Wellsville, Olean, Salamanca and Jamestown. The total project would be in the \$1.5 to \$2.0 million range, with match to be provided by WNYP.

NYS DOT requires a specific resolution to be approved by the Board. The Board adopted a resolution that (1) authorized STERA to appropriate and accept the state share funds from the NYS DOT pursuant to agreement between STERA and NYS DOT and to pay these NYS DOT funds for work for the project, (2) authorized STERA to appropriate and accept the local share from the WNYP and use this local share for work for the project, (3) that in the event the full state and local share costs of the project exceeds the amount appropriated above, directed the STERA Board to convene as soon as possible to appropriate said excess local share immediately from WNYP, and contribute such local share to the project, upon the notification by NYS DOT thereof, (4) authorized STERA Executive Director Richard T. Zink and STERA Board Chairman John Margeson to execute all necessary agreements, certifications or reimbursement requests for State Aid on behalf of STERA with the NYS DOT in connection with the advancement or approval of the project, (5) authorized STERA Executive Director Richard T. Zink and STERA Board Chairman John Margeson to execute all necessary agreements, certifications or reimbursement requests for local share funds and excess project cost reimbursement on behalf of the STERA with WNYP in connection with the advancement or approval of the project, (6) authorized STERA Executive Director Richard T. Zink and STERA Board Chairman John Margeson to execute all necessary agreements, contracts, and other documents as may be necessary on behalf of the STERA with any contractors or subcontractors as may be necessary and appropriate in connection with the advancement of the project, (7) provided that STERA shall provide for the administration of the project, and shall utilize all funding from NYS DOT and all local share from WNYP for the project, and shall utilize funding from WNYP to pay for all costs of the project in excess of the State contract amount, and (8) authorized transmission of a certified copy of the resolution to be filed with NYS DOT by attaching it to any necessary agreement in connection with the project (Daly, Brisky, passing unanimously).

After discussion, in which the Board noted that the project is a repair project and should not have any environmental impact or require any further environmental impact studies, the Board adopted a resolution that in the case that NYS DOT requires a SEQR process, the Board authorizes the designation of STERA as lead agent for SEQR review, the issuance of a SEQR short form EAF, the making of a finding that the project will not create any significant adverse environmental impact, and the authorization of the issuance of a negative declaration on the project (Daly, Brisky, passing unanimously).

9. FEMA Project

Mr. Barnes reported that the bid opening had occurred on November 9, 2011. STERA had tallied the bids and WNYP had certified the low bidder for each of the 11 project locations. CEO Richard Zink had awarded contract to the lowest responsible bidder on each project repair location. The contractors awarded contracts, and project expense line items, are as follows:

<u>Contractor Amounts:</u>		
LC Whitford	7 locations	\$390,403
CP Ward	3 locations	198,038
WNYP	1 location	<u>39,000</u>
		\$627,441

<u>Other Project Line Items:</u>	
Emergency	\$ 4,500
Initial repairs before declaration	94,516
Flagging (WNYP)	109,500
Engineering (WNYP)	24,000
Administration (STERA)	<u>8,000</u>
 Total Project	 \$867,957

<u>Funding Source</u>	<u>Amount</u>
FEMA	\$650,968
NYS OEM	108,495
WNYP	<u>108,495</u>
 Total Project	 \$867,957

All project contracts have been executed and, as noted above, work on the project began in fall 2011 and will be completed in 2012. STERA will work with the contractors to begin and complete the contract work programs. The construction season for 2012 has already begun and work at 2 of the 11 project locations has already been completed, with construction at an additional 3 of the 11 project locations estimated to be completed in early April 2012.

Because of the competitive bids, the project cost has been reduced from the original engineering estimate of \$1.3 million to \$867, 957, pending the following change order requests submitted by STERA on February 27, 2012 at the recommendation of the contractor and the engineer (WNYP):

- “To minimize future damage to the railroad embankment from a 5 year storm event, STERA proposes to utilize contractual services to place 130 CY of heavy stone fill (65 feet long, 25 feet wide, and 2.16 feet thick) to prevent further erosion along 65 linear feet of embankment immediately upstream of the first of the four (4) rock vanes (also referred to as bendway weirs).” The total cost for the heavy stone fill, delivery & placement is \$17,388.00 as quoted by contractor. After consultation, the engineer and contractor have advised that additional mitigation should be considered at the site in order to protect the work that is being performed in accordance with the contract documents for this project. The area of eroded embankment is 65’ in length. In the original design drawings, this area was not considered as significantly damaged; however, this is not the case.
- “the Applicant (STERA) proposes to construct a gabion basket retaining wall (12 ft high x 24 ft long at its base) on a foundation made up of large rip rap and stone fill”. STERA is requesting that this be amended so that the “foundation made up of large rip rap and stone fill” is replaced with “poured concrete foundation pad,” at no change in price. The PW says under number 6 of the damage description and scope of work that an appropriate material is to be used, which can include concrete. After consultation, the engineer and contractor have advised that a poured

concrete foundation pad be used instead of the gabion basket retaining wall. This should have no impact on project costs.

After discussion, the Board adopted a resolution ratifying the change requests to the project scope (Brisky, Everetts, passing unanimously).

With respect to the proposed contracts between STERA and WNYP and between STERA and STW whereby WNYP and STW would provide certain non-construction services to in support of the project (including WNYP's provision of flagging and engineering services), STERA had received a favorable opinion from STERA attorney Harris Beach as to the compliance of these contracts with applicable statutes, and accordingly STERA had executed these contracts.

10. NYS 2005 Bond Act Project Status

STERA has received the executed contract back from NYS DOT for the repair of four railroad bridges to NYS DOT. The project funding is as follows:

<u>Funding Source</u>	<u>Amount</u>
NYS DOT Bond Act	\$805,408
WNYP	<u>89,490</u>
Total	\$894,898

The Board discussed and adopted a resolution making a determination that the public interest is best served by procuring WNYP's services in respect to fulfilling the work program for this project without competitive procurement, finding:

- a. that WNYP is qualified to perform the work required,
- b. that WNYP is responsible and reliable,
- c. that the WNYP contract price is likely to be either the lowest price if a competitive procurement were followed or a fair market price for the services required, that is, the price is likely to be a Best Value, and
- d. that there is some valid public purpose for not undertaking a competitive procurement process.

This resolution was adopted (Gould, Everetts, passing unanimously). In this regard, the Board noted that the proposed procurement from WNYP would not involve either:

- a. a procurement involving an expenditure of more than \$5,000 that is related to a new construction project, or
- b. a purchase involving federal funds of \$100,000 or more.

Mr. Barnes also noted that STERA, at the recommendation of WNYP, had submitted a request to NYS DOT that it approve a contract scope modification to approve the repair of five bridges instead of the four bridges in the initial contract, with no change in contract funding amounts or match requirements. The project initially included repair to four bridges, including two bridges located in Alfred Station (Allegany County). However, since the date of STERA's initial application and work plan submission to NYS DOT, a bridge near one of the two Alfred Station bridges had deteriorated to the point that it now is a higher priority for repair than one of the Alfred Station bridges that it is near that is part of the work plan in the approved project. The contract scope modification adds the repair work on this fifth bridge. After discussion, the Board adopted a resolution ratifying the change requests to the project scope (Corwin, Everetts, passing unanimously). NYS DOT has approved this scope modification.

STERA anticipates that this project construction will be in the spring of 2012 and be completed during the 2012 construction season.

11. NYS DOT Bond Act RFP for Rehabilitation Funding

STERA has been awarded NYS DOT funding in the amount of \$786,850 for installation of approximately 3 miles of welded rail, ties and ballast in a 7.5 mile span of railroad between Carrollton, NY and Salamanca, NY. NYS DOT has indicated that STERA might expect that STERA could receive the contract sometime in March or April 2012. STERA anticipates that this project construction will be in the spring of 2012 and be completed during the 2012 construction season.

The project funding package tentatively is as follows:

<u>Funding Source</u>	<u>Amount</u>
NYS DOT Bond Act	\$ 786,850
WNYP	<u>700,000</u>
Total	\$1,486,850

NYS DOT requires a specific resolution to be approved by the Board. The Board adopted a resolution that (1) authorized STERA to appropriate and accept the state share funds of \$786,850 from the NYS DOT pursuant to agreement between STERA and NYS DOT and to pay these NYS DOT funds for work for the project, (2) authorized STERA to appropriate and accept the local share valued at \$700,000 from the WNYP and use this local share for work for the project, (3) that in the event the full state and local share costs of the project exceeds the amount appropriated above, directed the STERA Board to convene as soon as possible to appropriate said excess local share immediately from WNYP, and contribute such local share to the project, upon the notification by NYS DOT thereof, (4) authorized STERA Executive Director Richard T. Zink and STERA Board Chairman John Margeson to execute all necessary agreements, certifications or reimbursement requests for State Aid on behalf of STERA with the NYS DOT in connection with the advancement or approval of the project, (5) authorized STERA Executive Director Richard T. Zink and STERA Board Chairman John Margeson to execute all necessary agreements, certifications or reimbursement requests for local share funds and excess project cost reimbursement on behalf of the STERA with WNYP in connection with the advancement or approval of the project, (6) authorized STERA Executive Director Richard T. Zink and STERA Board Chairman John Margeson to execute all necessary agreements, contracts, and other documents as may be necessary on behalf of the STERA with any contractors or subcontractors as may be necessary and appropriate in connection with the advancement of the project, (7) provided that STERA shall provide for the administration of the project, and shall utilize \$786,850 of funding from NYS DOT and \$700,000 of local share from WNYP for the project, and shall utilize funding from WNYP to pay for all costs of the project in excess of \$1,400,000, and (8) authorized transmission of a certified copy of the resolution to be filed with NYS DOT by attaching it to any necessary agreement in connection with the project (Corwin, Brisky, passing unanimously).

The Board discussed and adopted a resolution making a determination that the public interest is best served by procuring WNYP's services in respect to fulfilling the work program for this project without competitive procurement, finding:

- e. that WNYP is qualified to perform the work required,
- f. that WNYP is responsible and reliable,
- g. that the WNYP contract price is likely to be either the lowest price if a competitive procurement were followed or a fair market price for the services required, that is, the price is likely to be a

Best Value, and

- h. that there is some valid public purpose for not undertaking a competitive procurement process.

This resolution was adopted (Brisky, Gould, passing unanimously). In this regard, the Board noted that the proposed procurement from WNYP would not involve either:

- c. a procurement involving an expenditure of more than \$5,000 that is related to a new construction project, or
- d. a purchase involving federal funds of \$100,000 or more.

12. Status Reports on Proposed Projects

Site Development Project Status

Southern Tier West has not advanced the project at the current time.

Multi-Modal Freight Transfer Facility and Manufacturing Center Project Status

STERA has been unsuccessful to date in obtaining first phase construction funds, but continues to seek funding.

Request of Dresser Rand for Rail Siding (Village of Wellsville)

STERA has been unsuccessful to date in obtaining construction funds, but continues to seek funding. Mr. Everetts indicated that he would check with current management of the Dresser Rand Wellsville facility to determine current priority for this initiative.

The Board discussed and authorized application for NYS funds in the CFA process for funds for the reinstallation of this siding and the approval of a resolution required by NYS DOT that (1) authorized STERA to appropriate and accept the state share funds from the NYS DOT pursuant to agreement between STERA and NYS DOT and to pay these NYS DOT funds for work for the project, (2) authorized STERA to appropriate and accept the local share from the WNYP and use this local share for work for the project, (3) that in the event the full state and local share costs of the project exceeds the amount appropriated above, directed the STERA Board to convene as soon as possible to appropriate said excess local share immediately from WNYP, and contribute such local share to the project, upon the notification by NYS DOT thereof, (4) authorized STERA Executive Director Richard T. Zink and STERA Board Chairman John Margeson to execute all necessary agreements, certifications or reimbursement requests for State Aid on behalf of STERA with the NYS DOT in connection with the advancement or approval of the project, (5) authorized STERA Executive Director Richard T. Zink and STERA Board Chairman John Margeson to execute all necessary agreements, certifications or reimbursement requests for local share funds and excess project cost reimbursement on behalf of the STERA with WNYP in connection with the advancement or approval of the project, (6) authorized STERA Executive Director Richard T. Zink and STERA Board Chairman John Margeson to execute all necessary agreements, contracts, and other documents as may be necessary on behalf of the STERA with any contractors or subcontractors as may be necessary and appropriate in connection with the advancement of the project, (7) provided that STERA shall provide for the administration of the project, and shall utilize all funding from NYS DOT and all local share from WNYP for the project, and shall utilize funding from WNYP to pay for all costs of the project in excess of the State contract amount, and (8) authorized transmission of a certified copy of the resolution to be filed with NYS DOT by attaching it to any necessary agreement in connection with the project (Foels, Brisky, passing unanimously).

In this regard, and noting that the project is a repair project and should not have any environmental impact or require any further environmental impact studies, the Board adopted a resolution that in the case that NYS DOT requires a SEQR process, the Board authorizes the designation of STERA as lead agent for SEQR review, the issuance of a SEQR short form EAF, the making of a finding that the project will not create any significant adverse environmental impact, and the authorization of the issuance of a negative declaration on the project (Everetts, Corwin, passing unanimously).

13. Seneca Nation of Indians Representation on STERA Board

There has been no movement on the appointment of a representative to the STERA Board by the Seneca Nation of Indians.

14. Compliance with NYS Public Authorities Accountability Act (PAAA) and Public Authorities Reform Act (PARA) and Other Statutory and Regulatory Requirements

Organizational Compliance Evaluation Report

The Board noted that the Organizational Compliance Evaluation Report had been reviewed and approved earlier in the meeting. Only one deficiency in compliance had been noted: the failure of several Board members to have obtained the training required by NYS ABO in a timely fashion.

Training Sessions

Several current members (Mr. Brisky, Mr. Cooper, and Mr. O'Grady) have not yet completed NYS ABO's PAAA compliance training sessions. NYS ABO requires Board members to receive training within one year of becoming a STERA Board member. NYS ABO now makes the required training available online. Board members are encouraged to register for this training, as the limited space available fills up quickly. It was suggested that any members that may be appointed to fill current vacancies may wish to register now. The Board noted that all members must receive the required training by the end of 2012.

Membership Vacancies

The Board noted the vacancy in membership relating to a Seneca Nation of Indians appointee. The vacancy in membership relating to a Chautauqua County appointee is expected to be filled in March 2012. The Board noted that the new appointees need to obtain the training required by NYS ABO within a year of appointment. Mr. Barnes noted that he had transmitted STERA's Competencies and Personal Attributes Required of Board Members Policy to both counties. The new Member Orientation Process and New Member Orientation Process Reference Document would be utilized with respect to these new appointees.

Web Site Updates

Mr. Barnes noted that STERA continues to update its web site on an ongoing basis. He noted the recent inclusion of a "Documents to be Discussed at Upcoming Meetings" page with links to these documents, which provides access to these documents to the Board and the general public. The public's access to these documents is required by the recent revision to the NYS Open Meetings Law, which took effect February 2, 2012. At his recommendation, the Board adopted a resolution making a finding that it would not be practicable to post project applications and supporting documentation and bid proposals to the web site in advance of meetings (Brisky, Corwin, passing unanimously).

Mr. Barnes noted that Board members may wish to review the New Member Orientation Process Reference Document, which provides a basic review of the organization and their responsibilities as Board members.

Ethics Filing

Mr. Barnes noted that Board and staff have received Ethics Filing Forms from the Cattaraugus County Attorney's office. He asked Board members to return the executed forms to him, so that STERA can take a copy of the forms, and he will re-transmit the originals to the Cattaraugus County Attorney's office.

Discussion of Any Desired Policy Modifications

Mr. Margeson encouraged Board members to bring any desired policy modifications forward at any time of the year.

15. Future Status of the Property Tax Abatement Provided by STERA to Norfolk Southern

In the future, STERA may consider extending the abatement period if circumstances warrant. The Uniform Tax Exemption Policy adopted by STERA will be an element of any such extension. At the June 2011 STERA Board meeting, Mr. Griffin had suggested that STERA begin discussions in the near future. Mr. Brisky had requested that a short review of history be provided regarding the abatement process. Mr. Barnes indicated that he has prepared and will provide a handout on the history of the abatement process, and indicated that he also will provide copies of the original documents that together structure the abatement transaction. It had been suggested that STERA might set aside fifteen minutes during a Board meeting for a review and discussion of the process; Mr. Barnes proposed to begin this training process at the June 2012 Board meeting.

16. Other Old Business

There was no other old or unfinished business discussed at the meeting.

New Business

There was no other new business discussed at the meeting.

17. Public Comment

There was no public comment.

18. Next Meeting Date and Agenda for Next Meeting

The Board set the following additional dates for the regularly scheduled meeting of the STERA Board in 2012: June 18, October 15, and December 3. The June meeting would be the 2012 Annual Meeting, with election of Board and Corporate officers. Special Board meetings may also be called as needed. Unless otherwise amended, all meetings will be at 9:30 AM in the Conference Room in the office of the Southern Tier West Regional Planning and Development Board, 4039 Route 219, Suite 200, Salamanca, New York.

Unless otherwise directed by the Board, Chairman of the Board, or Committee Chairmen, there will be Governance and Audit Committee meetings on each of the Board meeting dates to be held at 9:00 AM

immediately preceding the scheduled Board meeting on those dates. Additional special meetings of the two committees may be called as needed during 2012. The meetings of the committees will be held at the office of the Southern Tier West Regional Planning and Development Board in Salamanca, NY.

No regular Executive Committee meetings are scheduled for 2012; the Board will call special meetings of the Executive Committee as needed.

Nominating Committee

Mr. Margeson appointed the following members to a Nominating Committee to propose a slate of Board and Corporate officers for election at the June 2012 Annual Meeting:

- William Daly (Chairman)
- Michael Brisky
- Timothy O'Grady
- Seth Corwin

19. Adjournment

The meeting adjourned at 11:50 AM (Brisky, Everetts, passing unanimously).

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

Name: Thomas M. Barnes
Office: Secretary
Date: March 5, 2012