



**Chautauqua, Cattaraugus, Allegany & Steuben Counties**

# **Southern Tier Extension Railroad Authority**

Center for Regional Excellence, 4039 Route 219, Suite 200, Salamanca, New York 14779  
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**"This institution is an equal opportunity organization"**  
**John Margeson, Chairman**

## **MINUTES OF BOARD OF DIRECTORS MEETING**

### **May 16, 2013**

The Board of Directors of the Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority met at 11:00 AM on May 16, 2013 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  
William Daly  
Joseph Eade  
Terry Everetts  
Adam Gorczyca  
James Griffin  
John Foels  
Jay Gould  
Timothy O'Grady  
Jerry Scott

#### **Representing**

Cattaraugus County  
Chautauqua County  
Cattaraugus County  
Cattaraugus County  
Chautauqua County  
Steuben County  
Allegany County  
Chautauqua County  
Allegany County  
Southern Tier West RPDB

#### **Board Members Not In Attendance**

Seth Corwin  
Vacant  
Vacant  
Vacant

#### **Representing**

Steuben County  
Seneca Nation of Indians  
Allegany County  
Steuben County

#### **Others Attending**

Thomas Barnes  
Carl Belke  
Lucas Brewer  
Richard Zink  
Stephanie Kiyak

#### **Representing**

STERA Secretary  
WNYP RR  
WNYP RR  
STERA CEO  
Southern Tier West RPDB

### **1. Call to Order and Introduction of Those Present**

Vice Chairman Joseph Eade called the meeting to order at 11:00 AM. Introductions were made of those present.

## **2. Reading and Approval of the Minutes of the March 18, 2012 Meeting**

The Board adopted a resolution approving the minutes of the March 18, 2012 Board Meeting (Scott, Gould, passing unanimously).

## **3. Communications**

It was noted that a communication had been received from the City of Jamestown, which noted that it had received the deviation notice and requested that the PILOT agreement be copied to it.

## **4. Treasurer's Report**

The Board adopted a resolution to waive the reading of the Treasurer's Report until the June 17, 2013 Annual Meeting (Griffin, Scott, passing unanimously).

## **5. Reports of Committees**

There were no Committee meetings held since the last meeting, hence no Committee reports.

## **6. Unfinished Business**

### **A. Proposed Tie Replacement and Grade Crossing Repair Project (Buffalo Line)**

Carl Belke discussed WNYP's proposed project, which would involve the replacement of 8,000 cross ties and the rehabilitation of four grade crossings on the section of the Buffalo Line between Olean and the Pennsylvania State Line. The project will be a \$1,345,630.56 project. WNYP proposes that STERA seek \$1,076,504.45 of grant funding from the New York State Department of Transportation Passenger and Freight Rail Assistance Program (PFRAP, at 80%), and WNYP will provide \$269,126.11 of cash match funding (20%) for the project.

Previously, STERA had been under the impression that the next NYS DOT Notice of Funding Availability (NOFA) would come through the Consolidated Funding Application (CFA) Process, but since the most recent STERA Board meeting, STERA has learned that the next NYS DOT NOFA (i.e., for the PFRAP funding program) would not come through the CFA process, but would rather involve the submission of an application directly to NYS DOT outside of the CFA process, with application submissions due May 20, 2013.

Mr. Belke noted that previously, WNYP also had been considering replacement of ties on the Southern Tier Extension Line and the remediation of concrete spalling on several bridges on the Southern Tier Extension line, but those components have been removed from the proposed project scope.

Mr. Belke anticipates that if the project is funded, construction will begin in the spring of 2014 and be completed during the 2015 construction season. WNYP proposes to be STERA's agent for the project, providing design, construction, and inspection services.

After discussion, the Board adopted Resolution 13-01, which (1) authorizes STERA to appropriate and accept the state share funds of \$1,076,504.45 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) authorizes STERA to appropriate and accept the local share funds of \$269,126.11

from the WNYP and pay these funds 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, the STERA Board shall convene as soon as possible to appropriate said excess amount immediately from WNYP, and contribute such funds to the project, upon the notification by NYS DOT thereof, (4) authorizes STERA Executive Director Richard T. Zink and the STERA Board Chairman 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, and (5) authorizes STERA Executive Director Richard T. Zink and the STERA Board Chairman 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, and (6) authorizes STERA Executive Director Richard T. Zink and the STERA Board Chairman 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) provides that STERA shall provide for the administration of the project, and shall utilize \$1,076,504.45 of funding from NYS DOT and \$269,126.11 of funding from WNYP for the project, and shall utilize funding from WNYP to pay for all costs of the project in excess of \$1,345,630.56, and (8) authorizes 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, Scott, passing unanimously, Griffin abstaining).

After discussion, in which the Board reviewed a draft SEQR Environment Assessment Form (EAF) for the project and noted that the project is a repair project that should not have any environmental impact or require any further environmental impact studies, the Board adopted a resolution authorizing the designation of STERA as lead agent for SEQR review, the issuance of the 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 (Gould, Daly, passing unanimously, Griffin abstaining).

Accordingly, and with the assumption that NYS DOT eventually will approve funding the project, the Board approved a resolution, consistent with the STERA procurement policy, making a determination that the public interest is best served by making a purchase of goods and services from WNYP related to the project without competitive procurement, finding:

- a) that WNYP is qualified to perform the work required or provide the commodities, equipment, goods or services required,
- b) that WNYP is responsible and reliable,
- c) that the price to be set for the procurement is likely to be either the lowest price if a competitive procurement were followed or a fair market price for the goods and 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, to include but not be limited to public safety, public health, and timeliness,

and therefore, to authorize entering into a contract with WNYP for the completion of the rehabilitation work per the NYS DOT contract for the project (Foels, O'Grady, passing unanimously, Griffin abstaining).

Once funding is in hand, Mr. Barnes will work with WNYP to develop a letter agreement for the construction contracting services.

**B. Property Tax Abatement Provided by STERA to Norfolk Southern**

On March 18, 2013, the STERA Board had adopted a resolution approving the extension of the 100% abatement for a 15 year term beginning after 2013 (i.e., 2014 through 2028), with no PILOT to be due during the 15 year term.

Mr. Barnes noted that he had reached out in writing via phone and email to NYS DOT and asked whether NYS DOT wants to be a party to the process for extending the abatement, including potentially a new MOA, as the Board had indicated that it would be good to have a new agreement, which would combine the existing four agreements into a single agreement while extending the abatement term. NYS DOT had not responded to the inquiry.

Subsequent to the March 18 meeting, STERA CEO Richard Zink had contacted Harris Beach seeking its legal opinion if the abatement extension was in conflict with the STERA's Uniform Tax Exemption Policy.

In response, Harris Beach had indicated that the extension of the PILOT on the railroad property for an additional 15 years is not in conflict with STERA's Uniform Tax Exemption Policy. However, Harris Beach had indicated that it believes that it is a deviation from the standard abatement since the same "project" will ultimately have a (cumulative) PILOT term longer than 20 years (i.e., 2001 through 2028). STERA's Uniform Tax Exemption Policy requires that all affected tax jurisdictions be notified in writing of the deviation and outlining the need for the deviation. Harris Beach also indicated that each affected tax jurisdiction must be provided an opportunity to provide comment either in writing or in person. (A public hearing apparently is not required, but could be held at STERA's option.) Harris Beach recommended mailing each affected tax jurisdiction a letter explaining the deviation and providing them with a certain (unspecified) time frame to mail in comments or to schedule an appointment to present their comments in person. The approved deviation would not take effect until this notification and comment period expires. At STERA's request, Harris Beach drafted a template letter, which STERA modified. Staff then developed a list of affected taxing jurisdictions to mail the deviation notice to.

The deviation notice that STERA developed from the Harris Beach template indicated that STERA had deviated from its policy with respect to the PILOT Agreement term based upon a list of considerations (as specified in the Uniform tax Exemption Policy), each of which was discussed in the deviation notice. The deviation notice further indicated that STERA was providing the deviation notice to the recipient taxing jurisdictions in order to notify them of the deviation and to provide an opportunity for them to submit comments in writing or in person by June 15, 2013. Then, unless otherwise modified by STERA (at the June 17 Board meeting), the resolution authorizing the extension of Norfolk Southern Railway Company's PILOT Agreement would take effect upon the expiration of the comment period provided for. Staff provided the draft deviation notice to the STERA Board for review, and STERA issued the deviation notice to the affected taxing jurisdictions on May 13, 2013.

Mr. Daly indicated that he had been contacted by Southwestern School for information on the deviation notice.

Mr. Griffin asserted that the abatement should take place upon the approval date in March, not after the 30 day comment period indicated in the deviation notice letter.

Harris Beach has indicated that STERA should enter into a written PILOT modification agreement with NS amending the term of the PILOT, and has offered its assistance with drafting the PILOT

modification agreement. The Board authorized utilizing Harris Beach to draft the PILOT modification agreement. Mr. Belke will work with Norfolk Southern to get the PILOT modification agreement executed by Norfolk Southern.

The Board discussed whether it wished to have a new agreement to combine the existing four agreements and extend the abatement term, and decided that it would not develop such a master agreement to replace the existing four agreements, and instead would proceed with the more simple PILOT modification agreement.

**C. Other Old Business**

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

**7. New Business**

**A. Proposal of WNYP to Petition FRA to Abandon Signals Controls on Portion Of Buffalo Line**

Mr. Belke indicated that WNYP wished to propose to the Federal Railroad Administration (FRA) that WNYP be allowed to remove automatic signal controls on 6 miles of the Buffalo Line. WNYP removed the automatic signal controls on the balance of this line about 3 years ago. He indicated that the proposed removal of the automatic signal controls on the remaining six miles of the Buffalo line would have no impact on safety and would save WNYP considerable maintenance and operating expense.

The FRA required that STERA, as owner of the line, provide a letter by May 13, 2013 indicating that it was made aware of the request and approves the removal of the controls. Mr. Zink had reached out to the STERA Board via email and had apprised the Board of the circumstances, and had received reply emails back from a majority of STERA Board members indicating that they now were aware of the request and approved the proposed removal of the controls. Accordingly, STERA sent the requested letter in a timely fashion. After discussion, the STERA Board adopted a resolution ratifying this action (Gould, Scott, passing unanimously, Griffin abstaining).

**B. Other New Business**

There was no other new business discussed at the meeting.

**8. Public Comment**

There was no public comment.

**9. Next Meeting Date and Agenda for Next Meeting**

The following are the dates for the regularly scheduled meeting of the STERA Board for the remainder of 2013: June 17, October 21, and December 16. Special 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.

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 2013. 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 other regular Executive Committee meetings are scheduled for 2013; the Board will call special meetings of the Executive Committee as needed.

**10. Adjournment**

The meeting adjourned at 11:35 AM (Daly, Griffin, 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: May 16, 2013