



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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Gerard Fitzpatrick, Chairman

STERA Executive Committee Teleconference Meeting September 12, 2006

Minutes

Present: John Margeson (Chairman, presiding), Joseph Eade, James Griffin, Robert Walrod

Others present: Thomas Brady, Thomas Barnes

The STERA Executive Committee met by teleconference committee on September 12, 2006 at 11:15 AM.

1. Call to Order

Mr. Margeson called the meeting to order at 11:15 AM.

2. Rehab Contract

The STERA Executive Committee approved Change Order Number 1, contingent on NYS DOT approval of Change order Number 1 (Eade, Walrod, passing unanimously).

The STERA Executive Committee approved the Notice to Proceed, contingent on receiving notification from CHA that the contractor has met the submission requirements and also contingent upon NYS DOT approval of Change Order Number 1 (Griffin, Walrod, passing unanimously).

3. Randolph Foundry

Mr. Barnes reported that a title search has been done, and no leases or licenses were found to have been recorded. WNYP also has a CD of all of Pennsylvania Lines' real estate transactions, and WNYP's staff has searched this CD and has not found any leases or licenses. The Village of Randolph recently has condemned the building and has issued a demolition order.

Mr. Brady has talked with County reps (Dennis Tobolski). NYS DEC, the grant making agency providing funds for the remediation/investigation/characterization project, requires that STERA be a co-applicant, as it is title to some of the property (including some of the acreage on which the building sits). Brady indicated that if STERA agrees to be a co-applicant, there would be building demolition, and investigation of whether there is additional site contamination. The County has already done some test borings, and it appears that there is some additional site

contamination, but it also appears that this contamination is “not terrible contamination.” However, there are no guarantees about potential future contamination on the site. So, if STERA agrees to be a co-applicant, it opens some doors, and if STERA refuses to be a co-applicant, then the doors still will open. Further, as NYS DEC is aware of the issue and the identity of the real estate owners (i.e., the County and STERA, with NS also in the chain of title), NYS DEC also could bring in EPA. Would STERA be protected by the innocent purchaser defense? Perhaps, but the railroad (Conrail, NS, etc.) has owned the property for a long time, and the contamination has been there for a long time, so someone in the title chain at some time should have seen the real estate encroachment and done something about it. Brady recommends that STERA be a co-applicant in the County’s ERP project, and also suggested that STERA might want to prepare a letter in which it agrees to be a co-applicant, sending the right signal to DEC and EPA.

Mr. Griffin asked whether it might be possible that STERA could convey the property in question back to NS, and have NS be the co-applicant. Mr. Brady said that the sale-leaseback documents do not provide that STERA has any direct right to do this. STERA could ask NS to agree to this strategy, but this would take time, and the delay could jeopardize the NYS DEC grant.

Mr. Eade proposed a motion, seconded by Mr. Margeson, that:

- STERA act as co-applicant on the County’s ERP project,
- STERA provide the County a resolution to apply for ERP grant and designate Cattaraugus County as lead party in matters of reimbursement,
- STERA authorize the resubmission of the County’s ERP application with STERA as co-applicant.
- STERA provide the County proof of ownership, and
- STERA provide the County certificate of ownership,

Discussion ensued.

Mr. Griffin indicated that he would like to investigate the possibility of conveying the building and property to the County, either in a lease or in a fee title basis with reversion to STERA after the ERP project was completed. Mr. Brady indicated that this approach would require additional approval by NS, as STERA doesn’t have ability to do this under its lease. Mr. Barnes noted that STERA would have to approach Bill Burt first as rep of NS. WNYP has certain abilities to make real estate decisions itself per its sub-lease with NS.

Mr. Barnes and Mr. Brady reiterated that if STERA were to act as a co-applicant on the County’s ERP project, this would not expose STERA to any additional liability beyond that which it already faces as titleholder in the chain of ownership.

Mr. Griffin noted that his IDA conveys title to property to beneficiary firms and has language in the transfer agreements in which the acquiring firms agree to hold the IDA harmless with respect to any liability for future remediation. He agreed that this does not stop NYS DEC from suing the IDA, but at least gives the IDA some protection because it relies on the resources of the

acquiring firm. He asked whether similarly STERA could convey the property to NS and obtain a hold harmless clause from NS in the process.

Mr. Brady indicated that he felt that this approach wouldn't put STERA in a better position than it would have in its status as co-applicant on the County's ERP project. He suggested that STERA send a letter to NYS DEC indicating that STERA is agreeing to participate but STERA is not admitting to any responsibility for liability or exposure to cleanup at all. He further suggested that Mr. Griffin's experience with his IDA might be that NYS DEC shies away from his IDA because of its shallow pockets, and STERS also is similarly situated with respect to its financial resources available to fund a potential large remediation project.

Mr. Griffin asked whether the County would agree to provide STERA a hold harmless letter in return for STERA agreeing to act as a co-applicant on the ERP project. Mr. Brady indicated that he would expect the County would not agree to provide such a letter, but he felt that there would be no harm in asking for such a letter.

Mr. Margeson asked whether STERA could pursue a strategy under which STERA agreed to be co-applicant on the County's ERP project, and then moved quickly to convey to Cattaraugus County a lease or title-with-reversion-to-STERA. Mr. Brady indicated that STERA would still be in the chain of title, so there would be no impact on exposure. The conveyance would not affect STERA's exposure to potential liability for future remediation.

Mr. Eade called the question. Mr. Margeson asked for a roll call vote.

Mr. Eade: Yes
Mr. Griffin: Abstain
Mr. Margeson: Yes
Mr. Walrod: Yes

The motion is approved 3-0, with one abstention.

STERA asked Brady to ask Mr. Tobolski for the hold harmless letter, and alternatively, for an opinion on the lease or conveyance with reversion strategies, with the understanding that he is empowered to indicate that STERA has approved the co-applicant strategy even if the County does not approve either the hold harmless or lease or conveyance strategies. Mr. Brady was told not to indicate that STERA has approved going forward until after he has heard whether the County would provide the hold harmless letter or lease or conveyance strategies, and he agreed to do so.

4. Adjournment

The Executive Committee adopted a resolution to adjourn at 12:00 PM (Eade, Walrod, passing unanimously).



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Resolution

WHEREAS, New York State Department of Conservation (NYS DEC), which is the grant making agency providing funds for a remediation/investigation/characterization project (the "Randolph Foundry Project") for a parcel of land, which is partially owned by Cattaraugus County and partially owned by the Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority (STERA), requires that Cattaraugus County and STERA be co-applicants for funding for the Randolph Foundry Project, and

WHEREAS Cattaraugus County has requested that STERA agree to become co-applicant on the Randolph Foundry Project, and

WHEREAS, STERA has come into title on the real estate in question as an innocent purchaser purely for the economic development purpose of redeveloping the railroad operations and not for any other purpose, and

WHEREAS, STERA did not know of the encroachment of the Randolph Foundry operations and building onto the property that STERA acquired in fee from Norfolk Southern in 2001 for a period of years, with reversion to Norfolk Southern after the passage of that period of years, and

WHEREAS, as the property in question was one of many dozens of such properties in question, and

WHEREAS, there is no indication recorded of any license or lease or other transaction to any third party for any use of the property in question by the Randolph Foundry or its predecessors or successors, and

WEHEREAS, STERA wishes to participate in the proposed remediation/investigation/characterization project but states that it is not admitting to any responsibility for liability or exposure to cleanup at all, and

THEREFORE BE IT RESOLVED that STERA adopts a resolution that

- STERA act as co-applicant on the County's NYS DEC ERP project,
- STERA provide the County a resolution to apply for the NYS DEC ERP grant and designate Cattaraugus County as lead party in matters of reimbursement,

- STERA authorize the resubmission of the County's ERP application with STERA as co-applicant.
- STERA provide the County proof of ownership, and
- STERA provide the County certificate of ownership,

This is a true copy of a resolution
adopted by the Chautauqua, Cattaraugus,
Allegany and Steuben Southern Tier
Extension Railroad Authority
on September 12, 2006.

Donald R. Rychnowski
Executive Director

Date