



**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**

### **March 18, 2013**

The Board of Directors of the Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority met at 9:42 AM on March 18, 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  
Seth Corwin  
William Daly  
Joseph Eade  
Terry Everetts  
Adam Gorczyca  
John Foels  
Jay Gould  
John Margeson  
Jerry Scott

#### **Representing**

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

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

James Griffin\*  
Timothy O'Grady  
Vacant  
Vacant

#### **Representing**

Steuben County  
Allegany County  
Seneca Nation of Indians  
Steuben County

#### **Others Attending**

Thomas Barnes  
Carl Belke  
Eugene Blabey  
Lucas Brewer  
Ray Martel  
Richard Zink

#### **Representing**

STERA Secretary  
WNYP RR  
WNYP RR  
WNYP RR  
WNYP RR  
STERA CEO

\* present via telephone speaker phone – did not vote and was not counted for quorum purposes

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

Chairman John Margeson called the meeting to order at 9:42 AM. He welcomed Jerry Scott, who is the new Southern Tier West Regional Planning and Development Board representative on the STERA Board, replacing James Cooper. Introductions were made of those present.

## **2. Reading and Approval of the Minutes of the December 3, 2012 Meeting**

The Board adopted a resolution approving the minutes of the December 3, 2012 Board Meeting (Gould, Corwin, passing unanimously).

## **3. Communications**

It was noted that a communication had been received from:

- Southern Tier West Regional Planning and Development Board appointing Jerry Scott as its representative for a three year term, replacing the retired James Cooper.
- Tom Ryan, representative of Steuben County, who has resigned from the Board effective immediately.
- John Margeson, representative of Allegany County, who has resigned from the Board effective March 31, 2013.

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

### **A. February 28, 2013 Treasurer's Report**

Mr. Zink distributed a Treasurer's Report for February 28, 2013. For the year to date ending February 28, 2012, STERA had a net income of (\$8.44) on revenues of (\$8.44). As of February 28, 2013, STERA had net assets of \$5,817,659.76 on assets of \$6,295,368.51, with a cash balance of \$8,172.62. Accounts payable as of February 28, 2013 were \$477,708.75, and accounts receivable as of February 28, 2013 were \$618,921.96. The accounts payable balance reflects the WNYP construction financing for the FEMA project; once the final draw for the FEMA project has been received, it will be used to retire the construction financing. The accounts receivable balance refers to the FEMA project funds that will be used to retire the interim financing.

The \$40,000 annual payment from WNYP to STERA is not shown as a receivable.

At the recommendation of the Audit Committee, the Board adopted a resolution approving the Treasurer's Report for February 28, 2013 (Foels, Eade, passing unanimously).

The Board also adopted a resolution authorizing payment to Harris Beach in the amount of \$8,000.94 for legal services (Daly, Foels, passing unanimously).

## **Reports of Committees**

### **5. Audit Committee**

Mr. Zink reported that the Audit Committee had met earlier that same day, and had discussed the Treasurer's Report, the Audit and Management Letter, Internal Control procedures, and its Self-Evaluation Report and Charter Review Report.

#### **A. Presentation of Audit and Management Letter**

Edward Bysiek (Bysiek CPA, PLLC) presented and discussed the audit for the year ending December 31, 2012, and the accompanying management letter. The audit indicated an unqualified opinion. The management letter identified no deficiencies in STERA's internal controls. The auditor indicated that the revised internal control policies and procedures adequately addressed (a) the separation of duties issue and (b) the need to identify and minimize risk, including risk related to the development of interim financial statements. After discussion, and at the recommendation of the Committee, the Board adopted a resolution recommending approved the audit for the year ending December 31, 2012 and the accompanying management letter (Foels, Everetts, passing unanimously).

#### **B. Review of Reports**

Mr. Zink noted that the Audit Committee had reviewed the Audit Committee Self-Evaluation Report for Calendar Year 2012 (which showed no deficiencies), the Audit Committee Charter Review\_Report (which indicates that no revisions of the Charter are recommended at the current time), and the Organizational Assessment of the Effectiveness of Internal Controls Report (which indicates that no internal control revisions are recommended at the current time), and had adopted a resolution recommending that the Board approve these three reports, with no changes to be made to the Audit Committee Charter or the Internal Controls Procedure Policy. After discussion, and at the recommendation of the Committee, the Board adopted a resolution approving the three reports, with no changes to be made to the Audit Committee Charter or the Internal Controls Procedure Policy (Brisky, Gould, passing unanimously).

### **6. Governance Committee**

Mr. Eade reported that the Executive Committee had met earlier that same day, and had reviewed and discussed STERA's current policies, the draft reports for the year ending December 31, 2012, and STERA's structure, governance, and operating activities.

At this point, STERA Board member James Griffin joined the meeting via telephone speaker phone. Because he was not present in person, Mr. Griffin did not participate in any votes held during the meeting.

#### **A. Review of Current Policies**

After discussion, and with the recommendation of the Governance Committee (and, in the case of the Audit Committee Charter and the Internal Control Procedures Policy, also the Audit Committee), the Board adopted a resolution making a finding that STERA was in compliance with all of the current policies and applicable laws and that the policies should not be revised (Daly, Eade, passing unanimously). These policies are as follows:

Audit Committee Charter  
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  
Internal Control Procedures  
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  
Procurement Guidelines (Contract and Procurement Policy)  
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 NYS ABO requires STERA to have in place a Personnel Policy and a Use of Discretionary Funds Policy. The Personnel Policy is perhaps moot, as STERA has no employees, although a draft policy currently is being developed, and STERA currently is awaiting the potential revision of the NYS ABO requirement for the Use of Discretionary Funds Policy before developing the policy, although a draft policy currently is being developed. Mr. Daly indicated that he would forward a template for developing a Use of Discretionary Funds Policy that had been prepared by Harris Beach, which he suggested should be used by STERA's for developing the policy.

**B. Review of Reports**

After discussion, and with the recommendation of the Governance Committee (and, in the cases of the Audit, the Management Letter, the Audit Committee Charter Review Report March 2012, the Audit Committee Self-Evaluation Report, and the Organizational Assessment of the Effectiveness of Internal Controls, the Audit Committee; and in the case of the Executive Committee Self-Evaluation Report, the Executive Committee), the Board adopted a resolution approving these reports (Eade, Daly, passing unanimously). These reports are as follows:

Annual Report  
Audit  
Audit Management Letter  
Audit Committee Charter Review Report March 2013  
Audit Committee Self-Evaluation Report March 2013  
Board Self-Evaluation Report per NYS ABO Policy Guidance 10-05  
Board Member Attendance Evaluation Report

Budget for 2013  
Executive Committee Self-Evaluation Report  
Four Year Financial Plan for 2013 to 2016  
Governance Committee Charter Review Report March 2013  
Governance Committee Self-Evaluation Report March 2013  
Investment Report  
Management (Corporate Officers) Evaluation Report  
Management Report: Financial Disclosures and Ethics Report June 2012  
Organizational Assessment of the Effectiveness of Internal Controls  
Organizational Self-Evaluation Report  
Organizational Compliance Evaluation Report  
Procurement Report  
Property Disposition Report  
Property Listing Report  
Records Management Program Report

The Board noted that the following reports were discussed and approved at the October 15, 2012 Board meeting:

Budget for 2013  
Four Year Financial Plan for 2013 to 2016

The Board noted that the following report was discussed and approved at the June 18, 2012 Board meeting:

Management Report: Financial Disclosures and Ethics Report June 2012

**C. Review of structure, governance, and operating activities**

The Governance Committee has responsibilities for reviewing STERA structural, governance and operating policies and activities. Many of the policies and governance practices practiced by STERA derive directly from the cornerstone principles (transparency, independence, accountability, fiduciary responsibilities, and management oversight) prescribed by the State Legislature and NYS ABO, and from model practices recommended or mandated by the NYS ABO.

In this regard, the Committee discussed the report on the Board Member Self Evaluation process, and discussed whether the Board may wish to make any changes so as to improve STERA's performance. There actually were improvements in the Board's sense that it was functioning effectively in many of the survey question areas. In fact, there was improvement from the previous year in the percentage of positive responses to several questions. However, there was a decline in the percentage of positive responses to several questions, and additionally, several problem areas exist, including:

- Question 5: The Board sets clear and measurable performance goals for the Authority that contribute to accomplishing its mission.
- Question 8: Board members are knowledgeable about the Authority's programs, financial statements, reporting requirements, and other transactions.
- Question 12: Board members have sufficient opportunity to research, discuss, question and prepare before decisions are made and votes taken.

The Governance Committee indicated that it might be good for an occasional set aside of time at Board meetings with light agendas for discussion of these topics.

The Governance Committee also discussed:

- the Competencies and Personal Attributes Required of Board Members Policy and the New Member Orientation Process Policy, and noted that it had reviewed and approved these policies at this meeting and recommended no changes. It was also noted that the New Member Orientation Process Reference Document has been updated and is now current.
- the number and structure of STERA Committees, and noted that it had reviewed and approved this issue at this meeting and recommended no changes in the number and structure of committees. STERA does not have a Finance Committee, but is not required to have one as it has not issued any debt.
- Board and staff compliance with NYS ABO training requirements, and noted that staff is in compliance but that several Board members still need to take the required training.
- the compensation and benefits for the managing director and other senior Authority officials, and 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, and recommended no action in this matter by the Board.

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 Authority's governance and operating policies and procedures, 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 (Daly, Eade, passing unanimously).

## **7. Executive Committee**

Mr. Margeson reported that the Executive Committee had met earlier that same day, and had discussed its Self-Evaluation Report and Charter Review Report for Calendar Year 2012, which showed no deficiencies, and had adopted a resolution recommending that the Board approve the Executive Committee Self-Evaluation Report for Calendar Year 2012. After discussion, the Board adopted a resolution approving the Executive Committee Self-Evaluation Report for Calendar Year 2012 (Daly, Eade, passing unanimously).

## **Unfinished Business**

### **8. Operating Status Report by Carl Belke, WNYP RR**

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

He discussed proposed upgrades to **the Belvidere Team Track operation** to facilitate several potential opportunities for freight present there.

He noted that the **Sherlock Hollow Road overpass** in Hinsdale has been removed for the installation of a new grade crossing with flashing lights and gates. The County Highway Department's contractor's work will begin there on April 1, 2013, and WNYP will install the new crossing panel during March 2013.

He noted that the **Scio grade crossing projects** will begin in May 2013, and will be done sequentially, the Route 290189 grade crossings will require downgrading the highway to one lane operations for approximately six weeks.

## **9. Status Reports on Current and Proposed Rehabilitation Projects**

### **520 West Second Street (Jamestown)**

At the Board's direction, and with Harris Beach's assistance, STERA wrote a letter to the NYS Attorney General's office explaining its position. WNYP also has had direct discussions with Norfolk Southern on the issue.

Subsequently, WNYP informed STERA that Norfolk Southern had indicated that it is handling the NYS Attorney General's office demand letter for the Jamestown property on behalf of both WNYP and STERA, pursuant to the transaction agreements. Additionally, Norfolk Southern indicated that it has offered a settlement of the matter to the NYS Attorney General's office, and directed WNYP not to separately attempt to handle it with the NYS Attorney General's office. Norfolk Southern indicated that it would provide a status update as to the final resolution.

WNYP had informed Norfolk Southern that it will not be making any separate offer, and it will not be taking any action in the matter without Norfolk Southern's involvement.

WNYP indicated that it had no update from Norfolk Southern on this issue.

### **NYS 2005 Bond Act Bridge Rehab Project**

NYS DOT has approved STERA's scope modification request to reflect additional work proposed to be done on several of the bridges, and less work proposed to be done on other bridges, as a consequence of some of that work having been accomplished through the FEMA project. STERA and WNYP executed the contract for the project construction and related activities on March 1, 2013, and WNYP has commenced the project. The project will be completed in 2013 or 2014.

### **NYS 2005 Bond Act Welded Rail Project / Proposed Bridge Rehab / Track Realignment Project (Falconer)**

NYS DOT has approved STERA's request to re-purposed the NYS DOT award and WNYP match funds that originally had been approved for STERA's rail and tie replacement project in Cattaraugus County, in favor of a bridge project in Falconer, in which the line would be realigned to run across an adjacent bridge, which is in better condition than the bridge currently in service and which is capable of carrying heavier loads. This re-purposing also had to be approved by the Western New York Regional Economic Development Council. STERA and WNYP executed the contract for the project construction and related activities on March 1, 2013, and WNYP has commenced the project.

Mr. Belke indicated that NYS DEC had been in communication with WNYP and had indicated that there are wetlands implications that might affect the project. WNYP is scheduled to meet with NYS DEC on the project on March 19, 2013.

In case it is needed, the Board authorized the Executive Committee to meet to take any actions on behalf of the Board that it felt necessary to advance the project (Corwin, Gould, passing unanimously).

The project will be completed in 2013 or 2014.

**Proposed Tie and Surface Project (Wellsville), Tie and Surface Project (Buffalo Line), Bridge Spalling Remediation Project**

WNYP has proposed that STERA seek NYS DOT funding through the upcoming CFA round for a rehabilitation work involving tie and surface work (Wellsville), tie and surface work (Buffalo Line), and bridge spalling remediation work. WNYP would provide match funding for the project. STERA would combine these three projects into a single NYS DOT CFA project. WNYP anticipates that this project construction will be in the spring of 2014 and be completed during the 2015 construction season. The STERA Board will discuss a more detailed WNYP proposal on the project at its June 17, 2013 Board meeting.

**Proposed Bridge Clearance Obstruction Project (Wellsville)**

At the December 2012 STERA Board meeting, it was agreed that the Dresser Rand siding reinstallation component of the project would no longer be discussed as a current project, but the proposed Weight and Clearance Obstruction Remediation Project would still remain a valid project for STERA to try to develop. Mr. Brewer had indicated that he would work with Mr. Barnes to identify the relevant issues on the line in order to develop a project(s). Subsequently, WNYP has determined that it is a lower priority project than the proposed Tie and Surface (Wellsville and Buffalo Line) and Bridge Spalling Remediation Project.

**Lister Street Project (Jamestown)**

Mr. Belke noted that WNYP and STERA continue to research funding options for closure of the Lister Street (Jamestown) grade crossing, and the potential installation of a siding at that location to serve Suit-Kote. WNYP has not yet discussed economic impact with the shipping firm.

STERA has provided this project budget estimate information to Jessica Jeune, Cathy Young's Chief of Staff in Albany, for assisting with identifying funds for the project. Ms. Jeune had investigated the possibility of funding for the project, and had suggested that STERA meet with NYS ESD Buffalo in advance of the next CFA round. Mr. Zink and Mr. Barnes meet with NYS ESD Buffalo on January 30 and discussed the project.

The ultimate solution might be to involve the City of Jamestown in the project.

**Proposed Multi-Modal Freight Transfer Facility and Manufacturing Center Project (Olean)**

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

STERA has received communication from a potential developer's agent indicating some interest in developing the project, but the developer has not made any progress toward moving the project forward.

**Site Development Project Status**

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

## **10. Future Status of the Property Tax Abatement Provided by STERA to Norfolk Southern**

Mr. Margeson noted that the Board previously had discussed the possibility of negotiating with Norfolk Southern concerning extending the abatement period. The Uniform Tax Exemption Policy adopted by STERA will be an element of any such extension. The Board previously had adopted a resolution authorizing Mr. Margeson and Mr. Zink, with the assistance of Mr. Barnes, to contact Norfolk Southern regarding a potential extension of the abatement term.

Mr. Barnes noted that Mr. Zink had met with WNYP to develop STERA negotiating points, and had begun developing a draft Memorandum of Agreement (MOA) to replace the 1998, 2001 and 2007 agreements and the 2001 Sale/Leaseback agreement. He noted that he had reached out to NYS DOT and asked whether NYS DOT wants to be a party to the new MOA. The Board indicated that it would be good to have a new agreement to combine the existing four agreements and extend the abatement term.

Chairman Margeson welcomed Eugene Blabey, Chairman of WNYP RR, and indicated that he had invited Mr. Blabey to the meeting to provide WNYP's perspective on the prospective extension of the abatement term. Mr. Blabey told the Board that WNYP currently is not able financially to make PILOT payments, and does not anticipate being able to make them when they begin to be owed in 2014. He did indicate that he feels that the WNYP ultimately will become a profitable operation. However, he indicated that he felt that Norfolk Southern has no interest in the two rail lines, and that Norfolk Southern would have no interest in responding positively to any STERA negotiating points. He asked the STERA Board to consider extending the abatement term.

Mr. Griffin indicated that he felt that STERA had no negotiating leverage with Norfolk Southern, and the choice was "basically between no taxes and an operating railroad and no taxes and no railroad." He said that if STERA approved the extension of the abatement, STERA would not be legally required to hold a public hearing, as the abatement term being discussed was within the standard abatement term length permitted in STERA's Uniform Tax Exemption Policy, but STERA still may want to hold a public hearing. However, he indicated that STERA would be legally required to notify the affected taxing jurisdictions about its decision to extend the abatement term. He indicated further that it would be good for STERA to approve the abatement now, so that the various taxing jurisdictions would have an opportunity to factor the abatement and the removal of the currently scheduled 2014 - 2016 PILOT into their budgetary development processes.

After discussion, the STERA Board 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 (Eade, Brisky, passing unanimously).

## **11. 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.

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

### **Training Sessions – now online**

Several current members (Mr. Brisky, Mr. Gorczyca, and Mr. O'Grady) have not yet completed NYS ABO's PAAA compliance training sessions. (Jerry Scott, the member recently appointed by Southern

Tier West, is scheduled to take this training this month.) 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. The Board previously had indicated that all members must receive the required training by the end of 2012. Mr. Barnes indicated that he had emailed information on the online training sessions to the appropriate members.

#### **Discussion of Any Desired Policy Modifications**

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

### **13. Other Old Business**

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

#### **New Business**

### **14. Nominating Committee**

Mr. Margeson appointed Mr. Corwin, Mr. Everetts, Mr. Gould, and Mr. O'Grady to a Nominating Committee to present a slate of nominees for the Board and Corporate officer positions at the June 17, 2013 meeting.

### **15. Other New Business**

There was no other new business discussed at the meeting.

### **16. Public Comment**

There was no public comment.

### **17. 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.

**18. Adjournment**

The meeting adjourned at 11:53 AM (Daly, Corwin, 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 18, 2013