



MINUTES
NEW YORK STATE CANAL CORPORATION
BOARD MEETING NO. CC-176
December 12, 2011

Minutes of a meeting of the New York State Canal Corporation, held in the Board Room at the Corporation's Administrative Headquarters, 200 Southern Boulevard, Albany, New York 12209 as well as via video conference at the New York Division Office, 4 Executive Blvd., Suite 400, Suffern, NY 10901.

The meetings of the New York State Thruway Authority and Canal Corporation Boards opened in joint session for the consideration of various matters. These minutes reflect only those items considered by the New York State Canal Corporation Board. The meeting began at 2:47 p.m.

There were present:

Chairman Howard P. Milstein
Donna J. Luh, Vice Chairperson
E. Virgil Conway, Board Member
Richard N. Simberg, Board Member
Brandon R. Sall, Board Member, via video conference
Jose Holguin-Veras, Ph.D., Board Member

Constituting a majority of the members of the Canal Corporation Board.

J. Donald Rice, Jr. was not present at this meeting and did not vote on any of the Items.

In addition, there were present the following staff personnel:

Thomas J. Madison, Jr., Acting Executive Director
John Barr, Director, Administrative Services
Donald Bell, Director, Maintenance and Operations
John Bryan, Chief Financial Officer
William Estes, General Counsel
J. Marc Hannibal, Director, Audit and Management Services
Brian Stratton, Director, Canal Corporation
Thomas Ryan, Chief of Staff
Ted Nadratowski, Chief Engineer
Jill B. Warner, Board Administrator
Dorraine Steele, Director, Fiscal Audit and Budget, via video conference
Jonathan Ehrlich, Special Assistant to the Chairman
Major Robert Meyers, Troop T
Lawrence Norville, Chief Compliance Officer
Kathleen LeFave, Special Assistant to the Chief of Staff
Karen Wilson, Information Technology Specialist
Joe Capovani, Civil Engineer 2, Canal Corporation

Also in attendance:

Steve VanWagenen, New York Network
Murray Bodin, public
Doug Zimmerman, Director, Toski, Schaefer & Co., P.C.
James Screen, public
Diane Yu, public

Chairman Milstein noted that he, Ms. Luh, Mr. Conway, Mr. Simberg, Mr. Sall and Dr. Veras had received and reviewed the Agenda submitted for consideration at this meeting and were prepared to act on each of the Items.

Chairman Milstein called the meetings of the Thruway Authority and Canal Corporation Boards to order. (1:37:22)

Ms. Warner recorded the minutes as contained herein (public notice of the meeting had been given).

Item 1 by Ms. Warner (Appendix A)
Approval of Minutes of Board Meeting No. CC-175 (1:37:22)

On the motion of Chairman Milstein, seconded by Mr. Conway, without any objections, the Board approved the minutes of Meeting No. CC-175 held on September 15, 2011, which were made available to the Board Members as part of the Agenda.

Item 2 by Mr. Bryan (Appendix B)
Approval of Revisions to the 2011 Financial Plan and the 2012 Proposed Budget for the New York State Thruway Authority and New York State Canal Corporation (1:37:22)

On the motion of Chairman Milstein, seconded by Mr. Conway, without any objections, the Board adopted the following resolution:

RESOLUTION NO. 557
**APPROVAL OF REVISIONS TO THE 2011 FINANCIAL
PLAN AND THE 2012 PROPOSED BUDGET FOR THE
NEW YORK STATE THRUWAY AUTHORITY AND
NEW YORK STATE CANAL CORPORATION**

RESOLVED, that the Report on the 2011 Financial Plan as presented in this item be, and the same hereby is, accepted by the Board, and be it further

RESOLVED, that the Chief Financial Officer be, and he hereby is, authorized to make any and all adjustments to the

appropriate funds consistent with this revised Financial Plan for 2011, and be it further

RESOLVED, that the Chief Financial Officer be, and he hereby is, authorized to make any other adjustments based on actual results that are consistent with this projected plan, and report such actions to the Board, and be it further

RESOLVED, that the Authority's proposed Budget for the fiscal year 2012, submitted by the Executive Director and the Chief Financial Officer, be, and the same hereby is, approved and funded in accordance with the attached Exhibit III, and be it further

RESOLVED, that the Executive Director or his designee be, and he hereby is, authorized to make such expenditures as set forth in this Budget, subject to compliance with Authority policies and procedures, and to make such internal adjustments and transfers within the Authority Budget as are necessary and proper, and to make any other adjustment with the concurrence of the Board, and be it further

RESOLVED, that a copy of the Budget approved herein, when printed in final form, be attached to these minutes and made a part thereof, and be submitted to the New York State entities in accordance with Section 2801 of the Public Authorities Law, and be it further

RESOLVED, that this resolution be incorporated in the minutes of this meeting

Item 3 as Amended by Mr. Nadratowski (Appendix C)
Approving the 2012 Thruway and Canal Contracts Programs (1:37:22)

On the motion of Chairman Milstein, seconded by Mr. Conway, without any objections, the Board adopted the following resolution as amended:

RESOLUTION NO. 558
**APPROVING THE 2012 THRUWAY AND CANAL
CONTRACTS PROGRAMS**

RESOLVED, that the 2012 Thruway and Canal Contracts Programs for Highway, Bridge, Intelligent Transportation Systems, Architectural, Canals and related facility projects, full copies of which have been provided to the Boards for review, be, and the same hereby are, approved, and be it further

RESOLVED, that the Chief Engineer be, and hereby is, authorized:

- A. to prepare and approve Official Proposals, Plans and Specifications, Engineer's/Architect's Estimates of Cost and Contract Documents for such projects as are tabulated in the 2012 Thruway and Canal Contracts Programs;
- B. to hold the respective Engineer's/Architect's Estimate of Cost for such contracts confidential until after contracts have been awarded;
- C. to advertise for receipt of bids for those projects which are tabulated in the 2012 Thruway and Canal Contracts Programs: (1) when the final Engineer's/Architect's Estimate of Cost is equal to or less than the project's budget allocations, and (2) when the final Engineer's/Architect's Estimate of Cost does not exceed the project's budget allocation by more than \$75,000 for projects with budget allocations of up to and including \$500,000 or by more than 15 percent for projects with budget allocations that exceed \$500,000 provided confirmation is received from the Department of Finance and Accounts that sufficient funds are available in the 2012 Thruway and Canal Contracts Programs for the final Engineer's/Architect's Estimate of Cost, or (3)

D. to award any such contract to the lowest responsible bidder when it is deemed to be an acceptable bid, and:

1. the low bid is equal to or less than the Engineer's/Architect's Estimate of Cost; or

2. the low bid exceeds the Engineer's/Architect's Estimate of Cost by no more than \$75,000 on contracts up to and including \$500,000, or by no more than 15 percent on contracts over \$500,000 and confirmation is received from the Department of Finance and Accounts that, by virtue of bid savings and/or deferrals, sufficient funds are available for the additional difference between the Engineer's/Architect's Estimate of Cost amount and the low bid; or

3. the low bid exceeds the Engineer's/Architect's Estimate of Cost by no more than \$100,000 on contracts up to and including \$500,000, or by no more than 20 percent on contracts over \$500,000, provided that he receives prior approval of the Executive Director and confirmation from the Department of Finance and Accounts that, by virtue of bid savings and/or deferrals, sufficient funds are available for the additional difference between the Engineer's/Architect's Estimate of Cost amount and the low bid; or

4. the low bid exceeds the limits of (1), (2) or (3) provided he obtains Board authorization for the necessary additional funds;

E. to reject bids for any such contract which are determined to be not in accordance with bid documents and specifications thereof, or not in the Authority's or Corporation's best interests, or which are submitted by bidders determined to be not responsible. In these cases and where no bids are received, he may again advertise for receipt of bids pursuant to paragraph C;

F. to, utilizing the procedure set forth in Executive Instruction 2011-4, Procedure for Declared Emergency Work, prepare and approve Official Proposals, Plans and Specifications, Engineer's/Architect's Estimates of Cost and Contract Documents, including amendments and order-on contracts, award (pursuant to paragraph D) and reject bids (pursuant to paragraph E) for such work being progressed to address a declared emergency, provided that the total of the Engineer's/Architect's Estimate of Cost for any such contract, amendment or order-on-contract does not exceed \$2,000,000; the Board will receive contemporaneous notifications of those actions taken for emergency work;

G. to approve contingent or extra work on construction contracts, when necessary, provided the additional cost shall not exceed the bid price by more than \$150,000 for contracts bid up to and including \$1,000,000, or 15 percent for contracts bid in excess of \$1,000,000, and to approve additional extra work beyond that authorized above with the prior approval of the Executive Director, provided the final cost of the respective contract shall not exceed the total bid price by more than \$200,000 for contracts bid up to and including \$1,000,000, or 20 percent for contracts bid in excess of \$1,000,000; and to adjust and determine disputed contract claims in accordance with contract documents;

H. to enter into, extend, and modify project specific agreements or multi-project agreements with localities, utility companies, railroads, and/or others as may be necessary in order to facilitate the administration, award, progress and completion of such contracts;

I. to acquire and grant such property interests (fee title, easements, etc.), in accordance with the provisions of the Authority's and Corporation's Real Property Management Policies, as may be necessary for implementation of the 2012 Thruway and Canal Contracts Programs, provided that the total amount of acquisitions or the amount of grants for any one project shall not exceed \$150,000 without Board authorization;

J. to execute engineering agreements approved by the Board, or where otherwise authorized by the Executive Director, including amendments thereto, for services relating to projects included in the 2012 Thruway and Canal Contracts Programs;

K. to execute a supplemental agreement for expenditure of additional funds in furtherance of a Board approved engineering agreement, including any Board approved supplemental agreement, provided that the amount of such additional funds does not exceed \$150,000 in the case of agreements up to and including \$3,000,000, or 5 percent of a Board approved agreement including a Board approved supplemental agreement, in the case of agreements over \$3,000,000;

L. to execute, with the prior approval of the Executive Director, a supplemental agreement for the expenditure of additional funds in furtherance of a Board approved engineering agreement, including any Board approved supplemental agreement, provided that the amount of such

additional funds does not exceed 25 percent of such Board approved agreement including a Board approved supplemental agreement and any additional funds authorized in paragraph K; and provided further, when such supplemental agreement includes additional new design or construction inspection tasks, such approval must be based upon a determination that the assignment of the additional tasks is in the best interests of the Authority or Corporation: when considering the proximity of the additional tasks to the ongoing tasks, or to expedite the additional tasks through such assignment, or that significant savings to the Authority or Corporation will result through the assignment of the additional tasks;

M. to exercise all powers reserved to the Authority and Corporation under the provisions of any contracts or agreements executed pursuant to these items, manage and administer any such contracts or agreements, amend the provisions of any such contracts or agreements consistent with the terms of this item and in accordance with other applicable Board authorizations, and suspend or terminate any such contracts or agreements in the best interests of the Authority or Corporation, and be it further

RESOLVED, that any powers granted to the Executive Director by the Board to approve expenditures or to increase expenditures for contracts and agreements shall be in addition to those powers granted under these resolutions and any action taken pursuant thereto shall be deemed to be authorized under this resolution, and be it further

RESOLVED, that in accordance with the other powers delegated herein, the Chief Engineer shall be, and hereby is, authorized to make all necessary decisions pursuant to the State Environmental Quality Review Act (SEQRA) with relation to

the 2012 Thruway and Canal Contracts Programs, and be it further

RESOLVED, that quarterly reports shall be submitted to the Board by the Chief Engineer on: all awarded construction contracts; approved additional funds for construction contracts over and above the contingency funds; and all engineering agreements and supplemental engineering agreements, approved pursuant to the provisions of these resolutions, and be it further

RESOLVED, that the Chief Financial Officer be, and he hereby is, authorized:

- A. upon award of such contracts to return such funds budgeted for such projects in the respective 2012 Budgets which are otherwise not required for expenditure during 2012 to the proper fund in accordance with acceptable budgeting and accounting procedures;
- B. to monitor total cash expenditures for the 2012 Contracts Programs to insure that they do not exceed \$286,274,354 for the Thruway Authority and \$52,185,349 for the Canal Corporation during the 2012 Fiscal Year;
- C. to return bid checks submitted for such contracts to unsuccessful bidders, and to make necessary adjustments in the respective 2012 approved Budgets as required by implementation of any part of this Resolution, and be it further

RESOLVED, that the provisions of this resolution shall be deemed to supersede all other inconsistent Authority and Corporation policies and procedures to the extent necessary to implement the approved 2012 Thruway and Canal Contracts Programs and for no other purposes, and be it further

RESOLVED, that these resolutions be incorporated in the minutes of this meeting

Item 4 by Mr. Estes (Appendix D)

Rescinding the Employee Non-Revenue Pass Program for Managerial/Confidential Authority and Corporation Employees and Employees of Troop T (1:37:22)

After full discussion, on the motion of Chairman Milstein, seconded by Mr. Conway, without any objections, the Board unanimously adopted the following resolution:

RESOLUTION NO. 559

RESCINDING THE EMPLOYEE NON-REVENUE PASS PROGRAM FOR MANAGERIAL/CONFIDENTIAL AUTHORITY AND CORPORATION EMPLOYEES AND EMPLOYEES OF TROOP T

RESOLVED, that the portion of Resolution No. 1552 adopted at Meeting No. 290 on April 23, 1973 which authorizes the provision of free travel privileges on the New York State Thruway system to active Authority Managerial/Confidential employees is rescinded, and the provisions affording active Authority Managerial/Confidential employees free travel privileges on the New York State Thruway System set forth in the fourth Resolved of Resolution No. 5441 adopted at Meeting No. 643 on August 5, 2005 are rescinded, and be it further

RESOLVED, that the portion of Resolution No. 35 adopted at Meeting No. CC-11 on January 26, 1994 authorizing the provision of free travel privileges on the New York State Thruway system to active Corporation Managerial/Confidential employees is rescinded and the provisions affording active Corporation Managerial/Confidential employees free travel privileges on the New York State Thruway system set forth in the fourth Resolved of

Resolution No. 348 adopted at Meeting No. CC-133 on August 5, 2005 are rescinded, and be it further

RESOLVED, that the provision affording active State Police Troop T employees free travel privileges on the New York State Thruway system set forth in Resolution No. 5707 adopted at Meeting No. 670 on November 18, 2008, is rescinded, and be it further

RESOLVED, that the Executive Director is authorized to modify applicable administrative policies and procedures to implement this resolution, and be it further

RESOLVED, that this resolution be incorporated in the minutes of this meeting

Item 5 by Mr. Nadratowski (Appendix E)
Authorizing Funding for Tropical Storms Irene and Lee Recovery Contracts in the Albany Division (1:37:45)

Mr. Nadratowski reported that on Sunday, August 28, 2011, Tropical Storm Irene passed through New York State bringing with it torrential rains that resulted in historic flooding throughout the State and on its heels on September 8, Tropical Storm Lee followed, pouring more water onto an already saturated Northeast. Parts of the Erie Canal system sustained serious flood damage. In fact the damage was so extensive and severe that part of the Erie Canal had to be closed for three months between Lock 8 and Lock 17 while emergency repairs were undertaken to ensure that the dams would be functional and out of the water by winter.

It is expected that 75 percent of all contract work will be eligible for reimbursement by FEMA with the remaining 25 percent funded with Canal capital money, there are sufficient funds allocated in the 2011-2012 Budgets. Chairman Milstein asked if staff knows whether or not FEMA has the money because eligibility for the funds does not guarantee receipt of them, he asked if they are paying for these kinds of issues right now considering the tight budget situations in Washington. Mr. Nadratowski stated that is always a risk but FEMA will pay even if the funds are slow coming in.

After full discussion, on the motion of Mr. Conway, seconded by Ms. Luh, without any objections, the Board unanimously adopted the following resolution:

RESOLUTION NO. 560
AUTHORIZING FUNDING FOR TROPICAL STORMS
IRENE AND LEE RECOVERY CONTRACTS IN THE
ALBANY DIVISION

RESOLVED, that the informal action by Corporation Board Members authorizing an additional \$16,500,0000 for TAA 10-2C (D213874), Rehabilitation of Movable Dam 9 at Lock E-13, be, and the same hereby is, confirmed, and be it further

RESOLVED, that the revised contract value for TAA 10-2C (D213874) be \$32,014,331.25, and be it further

RESOLVED, that the informal action by Corporation Board Members authorizing an additional \$6,000,0000 for TAA 11-48B (D214111), On-Demand Steel Repairs to Damaged and Deteriorated Bridge, Sign and Canal Structures in the Albany Division, be, and the same hereby is, confirmed, and be it further

RESOLVED, that the revised contract value for TAA 11-48B (D214111) be \$6,361,000, and be it further

RESOLVED, that the informal action by Corporation Board Members authorizing \$3,000,000 for contract work completed on the Canal system under New York State Department of Transportation's statewide emergency repair contract D261604, be, and the same hereby is, confirmed, and be it further

RESOLVED, that an additional sum of \$25,500,000 be, and the same hereby is, allocated toward contracts TAA 10-2C (D213874), TAA 11-48B (D214111) and D261604 from funding that is in 2011 and 2012 Contracts Programs, and be it further

RESOLVED, that the Executive Director or his designee shall have the authority to exercise all powers reserved to the Corporation under the provisions of the contracts, manage and administer the contracts, amend the provisions of the contracts consistent with the terms of this Item and other Board authorizations and suspend or terminate the contracts in the best interests of the Corporation, and be it further

RESOLVED, that this resolution be incorporated in the minutes of this meeting

Item 6 by Mr. Bryan (Appendix F)
Authorizing the Chief Financial Officer to Approve Certain Disposals of Real Property Interests Appraised at \$15,000 or Less and to Take All Steps Necessary to Implement Same (1:39:54)

Mr. Bryan reported that under the current statute any property with a fair market value equal to or less than \$15,000 can be disposed of via negotiation, and in most instances these disposals are to people who have some sort of home or garage encroaching on Authority property. In many cases these encroachments go back quite a few decades. Approving this change would greatly accelerate the amount of time in which staff can complete these smaller disposals that would both benefit both the Authority and the buyer. All below fair market value disposals and disposals where the fair market value is greater than \$15,000 would continue to come to the Board, and Mr. Bryan would be required to report to the Board every quarter any authority taken to dispose of property under this resolution.

Chairman Milstein requested confirmation that this would not be a delegable authority, that Mr. Bryan personally must negotiate it. Mr. Bryan replied that the Public Authorities Accountability and Reform Acts require the Authority to have a Contracting Officer. That title has been deemed to be the CFO and as such Mr. Bryan is the one responsible for ensuring that the fair market value is obtained. The negotiation is loosely used here because staff has to take fair market value. The Authority/Corporation gets an independent appraisal in most cases and occasionally does an in-house appraisal for smaller transactions, and that is the price. Chairman

Milstein stated that when you do an appraisal you get a range of values, there is the low end of the range, the middle of the range and the top of the range, which is why he is suggesting that there is a negotiation because unless staff only accepts the highest number permitted by law, there could be a negotiation. Mr. Bryan responded that the Authority/Corporation has staff internally that can review appraisals. Mr. Milstein clarified that negotiating is a different skill than reviewing an appraisal. He stated that the Board is comfortable delegating the negotiations to Mr. Bryan. If there is no negotiation because staff has selected the highest price in the range that the Authority is legally allowed to charge, then Mr. Bryan would not have to attend the negotiation. However, if there is going to be an actual negotiation where there is a range of outcomes, the Board would want its best negotiator there and that would be Mr. Bryan. Chairman Milstein inquired as to how often that might occur. Mr. Bryan stated that it is rare.

Mr. Sall stated that on these smaller transactions the Authority/Corporation loses money to pay for the appraisals and various other things. He inquired as to whether or not staff is taking any steps to try to minimize the amount of money lost on each of these transactions. Chairman Milstein stated that the Authority/Corporation is permitted to sell these properties at the appraised value and inquired if it is possible to sell them for more than the appraised value. Mr. Bryan replied that the Authority/Corporation must ask for at least the fair market value. Chairman Milstein stated that part of the negotiation would determine whether the Authority/Corporation gets a higher price or whether the Purchaser absorbs the costs.

There are a slew of transactions that the Authority/Corporation has been dealing with the last several years involving the misrecording of deeds and lot lines on people's homes. In those cases where the Authority/Corporation is giving up land for a nominal consideration due to an error, Chairman Milstein has asked staff verify that there is nothing unusual about the transaction nor was there any plot to take advantage of the Authority/Corporation. The Board wants to be more than fair with people who have to get their lot lines in order to have a saleable piece of property. Putting that group aside, there is now the group of cases where the Authority/Corporation has excess property, somebody wants it, they have land adjoining it and they want to make an offer. Staff should be mindful that the appraised value may be much less

than it is worth to the next door neighbor and that is why Mr. Bryan will be there negotiating for the Board.

Then the other question arises as to whether or not to ask for certain cost reimbursement for legal and other fees. Chairman Milstein asked if Mr. Sall had a recommendation as to how this should be handled in the context of the fact that there will be a negotiation that ends in a certain price result. Should staff let the Purchaser know that there will be some kind of a processing fee of "X" and that it will, in many cases, just get added on to the negotiation but in some cases the parties will take that into account. Mr. Sall responded that staff should come up with what the actual cost is, in terms of manpower, to implement whatever the Purchasers want, and staff should just have them pay that amount as part of the cost and additionally, they should reimburse the Authority/Corporation for any expenditure. The Authority/Corporation is giving away property for a couple thousand dollars when it might cost more in time and effort to do it.

Chairman Milstein inquired as to what it usually costs to complete one of these transactions. Mr. Estes replied that it is important to point out that staff does pass on appraisal costs and survey costs, as well as charging an application fee. Any time the Authority/Corporation hires an outside consultant to perform something professional in nature it has to be paid for by the applicant who wants to make the purchase. There is attorney time that is spent and there is staff time from John Bryan's department as well. Staff could, potentially, figure out what the hourly rate is, put in overhead, and charge that. However, a lot of these transactions are for less than \$15,000. Chairman Milstein asked if there are enough of these transactions that the Authority/Corporation would have a different staff count than it would otherwise have without these transactions. Mr. Estes responded that there is not. Chairman Milstein stated that there is no incremental cost to the Authority/Corporation, it gets absorbed within the normal work

Mr. Conway stated that the Board has to remember that many of these are good will and public relations matters. If staff is talking about a couple of feet on someone's lot, it is not very important to the Authority/Corporation, but it is very important to them. Chairman Milstein concurred, adding that with the lot line adjustments, the Authority/Corporation should be more

than fair to anybody in this unfortunate situation through no fault of their own, if that is the case. Mr. Bryan stated that the non-encroachment, larger pieces that staff transfers almost always include assemblage value. It is not the standalone value of the property. It is the value of the property and what it means to the adjoining property. In a lot of cases, for one acre, staff may tell them that they owe four or five times the price of what it would cost if someone else just bought that one acre.

Mr. Milstein asked for confirmation that the authorization sought by the Board today is only limited to \$15,000 transactions, if it gets to be more than that, then Mr. Bryan would come back to the Board. Mr. Bryan concurred.

Mr. Sall restated that it is his belief that the Authority/Corporation is losing money on many of these transactions, but asked if this authorization may mean that the Authority/Corporation needs one less lawyer if staff will be dealing with a lot fewer of these transactions. Chairman Milstein asked that the Board be kept apprised if the volume of these transactions is material, necessitating any changes in the staffing levels the Authority/Corporation otherwise would have.

After full discussion, on the motion of Mr. Conway, seconded by Ms. Luh, without any objections, the Board unanimously adopted the following resolution:

After full discussion, on the motion of Mr. Conway, seconded by Ms. Luh, without any objections, the Board unanimously adopted the following resolution:

RESOLUTION NO. 561
**AUTHORIZING THE CHIEF FINANCIAL OFFICER TO
APPROVE CERTAIN DISPOSALS OF REAL
PROPERTY INTERESTS APPRAISED AT \$15,000 OR
LESS AND TO TAKE ALL STEPS NECESSARY TO
IMPLEMENT SAME**

RESOLVED, that the Chief Financial Officer be, and
he hereby is, authorized, based on transactional

recommendation reports and other information prepared by the Office of Real Property Management and other Authority/Corporation staff in accordance with the Thruway Real Property Management Policy and the Canal Real Property Management Policy and the Standard Operating Procedures adopted pursuant to each such policy, to approve the disposal of real property interests valued at \$15,000 or less and leases of real property where total rent is \$15,000 or less, provided that fair market value is obtained in exchange for such disposals and provided further, that all such disposals must comply with all applicable laws, including, but not limited to, Public Authorities Law, Article 9, Title 5-A, as well as either the Thruway Real Property Management Policy or the Canal Real Property Management Policy and the Standard Operating Procedures adopted pursuant to each policy, whichever is applicable, and be it further

RESOLVED, that the Chief Financial Officer, in order to carry out the aforesaid delegation, be, and he hereby is, authorized, with regard to such delegation, to:

A. Determine that barge Canal lands, barge Canal terminal lands or old Canal lands and appertaining structures constituting the Canal system prior to the barge Canal improvement are no longer necessary or useful as part of the barge Canal system, as an aid to navigation thereon or for barge Canal purposes and authorize abandonment of such lands so that they can be sold;

B. Determine that Canal lands have no essential purpose for navigation, so that such lands can be leased;

C. Determine that Thruway Authority real property is not needed for Authority corporate purposes, so that it can be

sold, or determine that it is not needed for present corporate purposes, but needed for the future, so that it can be leased;

D. Determine the method of disposal, e.g. negotiation;

E. Make all determinations that may be necessary in relation to the disposals covered by the delegation, including, but not limited to, making determinations required by the State Environmental Quality Review Act (“SEQRA”) and the Smart Growth Infrastructure Bank;

F. Take, and authorize, all actions needed to progress and effectuate the disposals that are authorized, including, but not limited to, (1) authorizing the Executive Director, or his designee, to execute abandonment orders and maps, contracts of sale, leases, deeds and other documents in accordance with the terms of the disposals that are so authorized and subject to such other terms as may be advised by the Chief of Staff, General Counsel, Director of Canals, Director of Maintenance and Operations and Chief Engineer in accord with such authorizations; (2) authorizing the Chief Engineer, or his designee, to take all actions necessary to implement the SEQRA determinations; and (3) authorizing the Executive Director, or his designee, to exercise all powers reserved to the Authority/Corporation under the provisions of any contracts, leases, deeds or other documents related to the disposal; and be it further

RESOLVED, that the Chief Financial Officer shall report back to the Authority/Corporation Board quarterly on the disposals authorized by the foregoing delegation, and be it further

RESOLVED, that this resolution be incorporated in the minutes of this meeting

Item 7 by Mr. Bryan and Mr. Stratton (Appendix G)
Authorizing the Abandonment of Real Property Reference No. BC070027, Approximately 1.78 Acres of Canal Land Located in the Town of Brighton, Monroe County; and Authorizing Its Sale to Anthony J. Costello and Son Development, LLC (1:52:42)

The Board tabled this Agenda Item pending further discussion.

Item 8 by Mr. Bryan and Mr. Stratton (Appendix H)
Authorizing the Abandonment of Real Property Reference No. AC060037, Approximately 1.127 Acres of Canal Land Located in the Town of Fort Edward, Washington County; and Authorizing Its Sale to The Fort Miller Group (2:01:23)

The Board tabled this Agenda Item pending further discussion.

Item 9 as amended by Mr. Bryan and Mr. Stratton (Appendix I)
Abandonment of Approximately 10,325+ Square Feet of Canal Land Located in the City of Utica, County of Oneida; and Authorizing Its Transfer to the City of Utica (2:10:45)

Ms. Luh asked if this is the same type of transaction as the one approved by the Board in July. Mr. Stratton responded that is similar but for a much smaller parcel. Chairman Milstein stated that Ms. Luh's point is well taken, when the proposal for Syracuse was raised and it was for substantially less, compared to the appraised value in the tens of millions. The Board amended the resolution so that if the land was not used within a certain timeframe for the purpose intended, then it would revert back to the Corporation. Chairman Milstein requested that staff include the same provision in the resolution. The Corporation should promote the public use and the local need, but if for whatever reason they do not end up using this as an access, then it reverts to the Corporation.

Mr. Stratton asked to make the distinction that unlike Syracuse, which was acquiring the parcels so that the City could resell them, this item is turning 165 feet over to the City to allow public access for parcels on each side, there is no resale of the street. Chairman Milstein stated that while he understands that, he would like staff to find out if there is any public access going on. If this abandonment does not actually give anyone public access, because no one is using the

public access, then the Corporation will take it back. Chairman Milstein stated that it should be a standard provision when the Authority/Corporation sells anything to a public entity that it reverts in the event that it is not used for its intended purpose.

After full discussion, on the motion of Mr. Conway, seconded by Ms. Luh, without any objections, the Board unanimously adopted the following resolution as amended:

RESOLUTION NO. 562

**ABANDONMENT OF APPROXIMATELY 10,325
SQUARE FEET OF CANAL LAND LOCATED IN THE
CITY OF UTICA, COUNTY OF ONEIDA; AND
AUTHORIZING ITS TRANSFER TO THE CITY OF
UTICA**

RESOLVED, that approximately 10,325 square feet of Canal land located in the City of Utica, County of Oneida are no longer useful or necessary as part of the Barge Canal System, as an aid to navigation thereon, or for Barge Canal purposes, excepting however, an easement over the property for the Corporation's ingress and egress needs, and be it further

RESOLVED, that following publication of a notice of abandonment as required by Section 51 of the Canal Law and transmittal of such notice to the CRC, the Office of Canal Maintenance and Operations shall prepare an Official Order abandoning the lands for Canal purposes, together with a map and description of such lands for review and execution by the Director of Canals, provided however, that if negative comments are received in response to the notice, no order shall be prepared until the Corporation Board has been informed, and be it further

RESOLVED, that following preparation of the Official Order of Abandonment, the Executive Director be, and he

hereby is, authorized to execute such orders of abandonment, and be it further

RESOLVED, that the recommendation for issuance of a Negative Declaration based on an environmental assessment of the proposed actions completed in accordance with the provisions of the SEQRA be, and hereby is, approved, and be it further

RESOLVED, that the Chief Engineer, or his designee, be, and hereby is, authorized to sign the SEQRA Environmental Assessments and issue the Negative Declarations, and to distribute any required notices on behalf of the Corporation Board with relation to these actions, and be it further

RESOLVED, that the transfer of approximately 10,325 square feet of land by quitclaim deed to the City of Utica on the terms described and recommended in this agenda item, be and hereby is, approved, subject to such legal, financial, engineering and other terms as may be deemed by the Executive Director, the Director of Canals or the General Counsel, to be in the best interest of the Canal Corporation, and be it further

RESOLVED, that such sale shall be conditioned upon the payment of certain costs incidental to the transfers of real property, and be it further

RESOLVED, that the Corporation's Contracting Officer determined that the approximately 10,325 square feet of land may be sold by negotiation without public advertising because such disposal falls under Section 2897 (6)(c)(v) of the PAL, and Section IV.H. of the Policy, and that the transfer of the property on the terms recommended in the agenda item complies with all applicable provisions of law, including

Article 9, Title 5-A of the PAL, and with the Policy, and be it further

RESOLVED, that, based upon the information provided by the City of Utica and Canal Corporation staff, there is no reasonable alternative to the proposed below market transfer to the City of Utica that would achieve the same purpose of such transfer, and be it further

RESOLVED, that if the City of Utica does not dedicate the Property as a segment of its public road system within two and one-half years from date of delivery of such deed from the Canal Corporation, the title to said land shall revert to the People of the State of New York acting by and through the Canal Corporation, and the Attorney General may institute an action in the Supreme Court for a judgment declaring a reversion of such title; and be it further

RESOLVED, that the Executive Director, or his designee, be authorized to execute the contract of sale, and all other documents necessary for closing of title, and be it further

RESOLVED, that the Executive Director, or his designee, the Director of Canals, the Chief Financial Officer and the General Counsel be, and the same hereby are, authorized to take all actions necessary to effectuate closing of title, and be it further

RESOLVED, that this resolution be incorporated in the minutes of this meeting

Item 10 by Mr. Stratton (Appendix J)

Authorizing the Executive Director to Execute A Joint Funding Agreement with the United States Geological Survey for the Operation and Maintenance of Twelve Streamflow or Stage Stations and Publication of Furnished Records from Two Stations (2:12:08)

Mr. Stratton stated that staff is seeking authorization to enter into a new four-year joint funding agreement with the United States Geological Survey (“USGS”) to provide real time

water level and stream flow monitoring at critical locations across the Canal system. As the Board has seen this past year, real time information at various points along the Canal system is absolutely critical to making early and informed water management decisions. This contract covers continued operation and maintenance of 12 gauges which have been in use in various locations along the Canal for over the past ten years and will lock in the Corporation's costs at 2011 levels.

Chairman Milstein stated that that this agreement is in the amount of \$632,000 of which \$253,000 will be contributed by the USGS and \$378,000 will be contributed by the Canal Corporation for the four-year period ending 2015. He asked how much of this money is used to buy gauges, and how much is used to reimburse the USGS for their services. Mr. Stratton replied that he did not have that answer at this time but that this is a system that the Corporation has used in cooperation with the USGS, not unlike other municipalities around the country that have USGS monitoring devices. This partnership allows the Corporation to better monitor water flow.

Chairman Milstein asked if this relative allocation of cost is standard throughout the USGS system or if it is negotiated with Corporation staff. He could understand if the Corporation paid for all of it, and could understand if the Corporation paid for none of it, but the Corporation paying one particular amount and the USGS paying another amount seems like it has to have some basis. Mr. Stratton responded that it would be consistent with a State and local, Federal partnership. There is a shared responsibility both on the Federal side and on the State side for monitoring the water. The Chairman suggested that the Board approve this item subject to Mr. Estes confirming that this is the de facto or de jure way the USGS does business and that these are the standard percentages applied to such agreements. If it was an individual discussion with Corporation staff then the factors in that discussion should come back to the Board.

Mr. Sall inquired as to what this contract does for the Corporation, the item states that it is for the beautification and maintenance of the Corporation's facilities. Chairman Milstein stated that it allows the Corporation to monitor water levels. The Chairman asked staff if the Corporation monitors water levels in other areas along the Canal. Mr. Bell responded that during

high water events staff goes on to the USGS website and looks live at the water flows as they are coming down the river. In fact, staff has closed the Thruway on a different set of gauges based on water levels coming down the Schoharie Creek, and after staff saw the results of what that water flow did, it was a good thing they closed the bridge. Chairman Milstein asked if these are the only 12 gauges on the Canal. Mr. Bell responded that there are markers on the locks that Canal employees take readings from and track in a book. Mr. Stratton added that these 12 are the only automated, remote sensing gauges.

Mr. Estes stated that he has a concern about the contingency on which the Board is possibly going to approve this contract, because there may be other reasons, besides some sort of federal sharing, that make perfect sense. Chairman Milstein replied that Mr. Stratton's reasoning as to why the Board should do this is that this is the way it is done. If in fact that is true and if there is a percentage, then that is fine, but if that is not true, then there is another set of considerations and the Board should know what those considerations are before voting on it. Mr. Bryan stated that staff is asking for authorization to enter in a contract but that does not mean that the Corporation has to enter into it, the contract is going to continue to be negotiated over a period of time. The Chairman requested that staff gather the facts and circulate it to the Board via email. He suggested that the Board approve the item pending receipt and approval of the explanation from staff.

After full discussion, on the motion of Ms. Luh, seconded by Dr. Veras, without any objections, the Board unanimously adopted the following resolution:

RESOLUTION NO. 563

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A JOINT FUNDING AGREEMENT WITH THE UNITED STATES GEOLOGICAL SURVEY FOR THE OPERATION AND MAINTENANCE OF TWELVE STREAMFLOW OR STAGE STATIONS AND PUBLICATION OF FURNISHED RECORDS FROM TWO STATIONS

RESOLVED, that the Executive Director, or his designee, is hereby authorized to execute a joint funding

agreement with United States Geological Survey/Joint Funding for provision of basic maintenance and beautification services at facilities under the control of the Canal Corporation, and be it further

RESOLVED, that the joint funding agreement will be for the period October 1, 2011 to September 30, 2015, and be it further

RESOLVED, that the Executive Director, or his designee, shall be authorized to take all actions necessary to implement this Board item, and be it further

RESOLVED, that the Executive Director, or his designee, shall have the authority to exercise all powers reserved to the Authority under the agreement, manage and administer the agreement, amend the provisions of the agreement consistent with the terms of this item and other Board authorizations and suspend or terminate the agreement in the best interests of the Authority, and be it further

RESOLVED, that this resolution be incorporated in the minutes of this meeting

Item 11 by Mr. Nadratowski (Appendix K)
Authorizing Execution of Two Agreements (D214108 and D214109) with Two Firms for the Inspection of Canal Structures System-wide (2:33:23)

The Board tabled this Agenda Item pending further discussion.

OTHER BUSINESS (2:41:45)

Chairman Milstein stated that, looking in detail at some of the numbers, and reviewing the engineer budget, it includes at least some of the \$21 out of \$33 million for this coming year, for people who do not design the roads or bridges that are built, but who verify that what was designed and what is being built conforms with the plans. Chairman Milstein asked what the man

hours are for this work at a budget of \$21 million and, as Mr. Sall has raised in the past, does it make sense for the Authority to start doing more of it internally. Mr. Nadratowski replied that Audit and Management Services has been working on a report on this subject.

Mr. Hannibal stated the draft report that is being circulated demonstrates that the cost of a fully loaded in-house engineer is comparable to that of an outsourced engineer. The range for an in-house engineer was somewhere between \$76 to \$105 an hour, fully loaded with fringe benefits and everything else built in. Chairman Milstein asked, if a reviewing engineer is in the \$65-\$75,000 a year range, what would it cost the Authority with benefits. Mr. Barr replied that benefits run the Authority approximately 60 percent on top of the salary. Mr. Hannibal stated that the cost for an outsourced engineer was between \$86 to \$105 an hour.

Chairman Milstein stated that at \$75,000 a year, plus 50 percent in benefits, it would be \$110,000 per person. Using \$100,000 for calculating purposes, it is 10 people per million and at \$21 million that would be 210 people working fulltime for a year. Mr. Nadratowski clarified that the \$21 million is not just for staff, it is for equipment as well. The split would likely be 75 percent personnel and 25 percent equipment. Chairman Milstein inquired as to the kind of equipment reviewing engineers use. Mr. Nadratowski replied that inspection engineers use moves and platforms to inspect from, design engineers would have just their computer.

Dr. Veras stated that he was surprised that the figures came out to be the same, because the overhead for benefits at the Authority may be 60 percent but the firms pay a higher salary and their total direct costs might be 2.5 to 3 times the Authority's. Chairman Milstein added that the firms have the additional cost of providing office space, which the Authority already has. Mr. Hannibal responded that "fully loaded" includes fringe benefits and administrative costs as well as a component for utilization of that person. Authority personnel might not be working fulltime on a particular project, so in order to equate it and get as close as possible to "apples to apples," staff has to inflate that cost by another factor in order to get a calculation that is comparable. Chairman Milstein stated that the Board will take a look at the actual numbers once staff has them, but reiterated 210 people fulltime sounds like a lot of inspecting engineers, which is what the Authority could buy, more or less, with the \$21 million a year. Mr. Sall inquired as to how

many engineers the Authority currently has on staff. Mr. Nadratowski replied that there are approximately 10 per Division for a total of 40 who perform field inspections.

Mr. Madison stated there have been many analyses of this exact topic, and almost none of them have ever been an “apples to apples” comparison; the report that staff did is one of the first. The consulting engineering community will give a compelling argument as to why they are so much more of a bargain, and the public employee unions will do the same thing, not considering the fully loaded costs, or the benefits, or the reallocation of people’s time within the organization. Historically it has been viewed as kind of a wash. Authority staff, by looking at the existing reports and doing some of their own investigations to try to get that “apples to apples” comparison, came to a similar conclusion. Mr. Hannibal added that numbers are based on the Authority’s historic numbers from 2006 through calendar year 2009.

Chairman Milstein asked if the Authority’s in-house engineers basically perform exactly the same work as the engineers who are hired from the outside. Mr. Nadratowski advised that they do. Chairman Milstein stated that it should be very easy for staff to take the number they have and divide by the cost, and figure out what the Authority’s average cost is in order to nail that number down precisely. That number will be divided into what the Authority is actually spending on this, and if the Authority can afford to hire 210 people then that work should probably be done in-house. Mr. Nadratowski concurred, but advised that staff wants to be careful because it is a fluctuating Capital Program. The Authority never wants to be at a point where there are more people on staff than the program can support. Mr. Bryan added that in the winter time there would be a lot of people sitting around. Chairman Milstein advised staff to look at that and to keep in mind that the Capital Plan for the next five years is \$384 million a year.

PUBLIC COMMENT PERIOD (2:50:00)

Murray Bodin, representing concerned grandparents, stated that it was an interesting meeting and that he can only compare it to three months ago when he was at a Port Authority committee meeting and a \$25 million contract came up, and one of the Board Members said maybe staff ought to go back and look at that again. And across the room, the staff’s jaws could

have hit the floor if they were close enough, they were so surprised to hear that. Low and behold two months ago they came back with a report that said instead of \$25 million they can have that done for \$20 million. There was another piece of property transfer similarly done. Last month they came in and everybody had new ideas, everybody looked at things differently. Welcome to the new world, the culture that we have all been living under is gone. The world changed when we weren't looking and we have to look at things in an entirely different way.

Tomorrow he will be at New Jersey Transit talking about displays for bus drivers. They need to be digital, all the bus drivers need is the speed of the bus. They need to have a steering wheel the same size as a little car and they are still using the big ones and that is cultural. There are a whole bunch of cultural things out there that have gone on and on because we did it last year, we did it the year before and we did it the year before that, but the world has changed. Whether it's in Greenberg, or next Monday at the MTA committee meetings or New Jersey Turnpike, he will be there and raising the same issue in every one. The world has changed. We cannot afford to do it the way we have been doing it. We cannot afford to base this year's contract on what we paid last year, because that is what you said, we are repeating our mistakes. We have to look at it in a new way. It's a pleasure to be here. He will be meeting with Mr. Madison, he hopes. David Sampson, Chair of Port Authority, says at every meeting if he needs to talk to somebody, just ask. He is asking. He would like to meet with Mr. Madison regarding a number of issues that have been floating around. Mr. Conway probably remembers when Mr. Bodin used to go to the MTA, he still does, at that time, Mr. Conway was Chair. He met Mr. Madison's predecessor, he worked with John Platt over the Tappan Zee Bridge. It has come a long way and he supports the new Tappan Zee Bridge. He did not support it until a month ago. The thinking of the design has changed, there are a whole bunch of things that have changed. He stated that he would like to make an appointment to meet with Mr. Madison and discuss a number of issues that can be brought up to the standards the Chairman is talking about.

EXECUTIVE SESSION AND ADJOURNMENT (2:53:31)

Chairman Milstein requested a motion to adjourn to Executive Session to discuss the sale of securities to fund the 2012 Capital Plan as well as to seek the advice of counsel regarding the Infrastructure Investment Act of 2011. There being no further business to come before the Boards, without any objections, on the motion of Chairman Milstein, seconded by Dr. Veras, the meetings were adjourned and the Board moved into Executive Session.

Jill B. Warner
Secretary

Note: Webcasts, which include dialogue of Authority/Corporation Board Meetings, are available on the Thruway Authority website 48 hours after such meetings occur and remain on the website for a period of 4 months.