



MINUTES

NEW YORK STATE CANAL CORPORATION

BOARD MEETING NO. CC-160

April 15, 2009

Minutes of a meeting of the New York State Canal Corporation, held in the Board Room at Administrative Headquarters, 200 Southern Boulevard, Albany, New York 12209 and via video conference from the Authority's New York Division, 4 Executive Boulevard, Suffern, NY 10901.

The meeting began at 11:00 a.m.

There were present:

**Chairman John L. Buono
Frederick M. Howard, Board Member
Donna J. Luh, Board Member
Brandon R. Sall, Board Member, via video conference
E. Virgil Conway, Board Member**

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

Mr. Plunkett and Ms. Crotty were not present at this meeting and did not vote on any of the Items.

**In addition, there were present the following staff personnel:
Michael R. Fleischer, Executive Director**

Sharon O’Conor, General Counsel
John Bryan, Chief Financial Officer
Jill Warner, Secretary and Board Administrator
Christopher Waite, Chief Engineer
Betsy Graham, Acting Director, Office of Public Affairs
William Rinaldi, Division Director, Albany Division
Ted Nadratowski, Division Director, New York Division
Richard Garrabrant, Division Director, Syracuse Division
Kevin Allen, Acting Director, Audit and Management Services
John Barr, Director, Administrative Services
Donald Bell, Director, Operations and Maintenance
Carmella Mantello, Director of Canal Corporation
Major Robert Meyers, Troop T
Wendy Allen, Deputy Chief of Staff
Michael Sikule, Director, Office of Investments and Asset Management
Katherine McCartney, Deputy Counsel
Richard Harris, Deputy Director, Office of Community Development & Land Management
Douglas Elson, Information Technology
Doraine Steele, Director, Office of Fiscal Audit and Budget
Tony Kirby, Director, Office of Real Property Management
Also in attendance:
John Armstrong, Assistant Television Engineer, NYN
Tom Benware, Staff, Senator Dilan’s Office
Jay Gallagher, Reporter, Gannett News Service
Angela Rodell, Senior Vice President, First Southwest Company
Steven Kantor, Managing Director, First Southwest Company

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

Chairman Buono called the meeting to order.

Ms. Warner recorded the minutes as contained herein.

Public notice of the meeting had been given, Ms. Warner said.



Item 1 by Ms. Warner (Appendix A)
Minutes of Meeting No. CC-159

On the motion of Mr. Sall, seconded by Mr. Howard, without any objections, the Board approved the minutes of Meeting No. CC-159 held on March 18, 2009 which were made available to the Board Members as part of the Agenda.

Ms. Luh asked that the Minutes reflect that Ms. Crotty is on maternity leave and as such, has not been available to attend the last two Board Meetings.

Item 2 by Mr. Bryan (Appendix B)
Authorizing the Designation of a Firm to Perform Government Banking Services for the Canal Corporation's General Banking Services and Authorizing the Executive Director to Enter Into a Contract with the Designated Firm for Government Banking Services

Ms O'Connor read the following statement: As the Board knows, during the March 18 meeting Mr. Plunkett voted in favor of Authority and Corporation items designating J.P. Morgan Chase Bank, N.A. ("J.P. Morgan") to perform government banking services for the Authority and Corporation. Promptly thereafter, Mr. Plunkett notified me that his daughter is employed by J.P. Morgan as an entry level analyst. While Mr. Plunkett's daughter has no direct contact with the Authority or Canal Corporation as part of her duties with J.P. Morgan, and Mr. Plunkett had no role in preparing the request for proposals ("RFP"), evaluating the proposals received in response to the RFP or selecting the firm that staff recommended to the Board, in order to avoid any concern that there is an appearance of a conflict of interest Mr. Plunkett advised me that he is withdrawing his previous vote on these items. In light of the fact that there were only 4 members of the Board in attendance at the March meeting, withdrawal of Mr. Plunkett's vote on these items requires that they be resubmitted to the Board at this meeting. On the motion of Mr. Howard, seconded by Ms. Luh, the Board accepted Ms. O'Connor's submission of this statement into the official record.

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

RESOLUTION NO.476
AUTHORIZING THE DESIGNATION OF A FIRM TO PERFORM GOVERNMENT BANKING SERVICES FOR THE CANAL CORPORATION'S GENERAL BANKING SERVICES AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A CONTRACT WITH



Item 2 by Mr. Bryan (Appendix B)

Authorizing the Designation of a Firm to Perform Government Banking Services for the Canal Corporation's General Banking Services and Authorizing the Executive Director to Enter Into a Contract with the Designated Firm for Government Banking Services (Continued)

THE DESIGNATED FIRM FOR GOVERNMENT BANKING SERVICES

RESOLVED, that the Board authorizes the designation of J.P.Morgan Chase Bank, N.A. ("J.P.Morgan") to perform government banking services for the Canal Corporation for all funds deposited and disbursed (via check and electronic transfer), to monitor and report on the deposit and disbursement of such funds, and to provide electronic-cash management system services and the same is hereby approved, and be it further

RESOLVED, that the Executive Director is authorized to enter into a contract with J.P.Morgan to perform government banking services for the Canal Corporation related to the funds deposited and disbursed on such terms and conditions as are deemed to be in the best interests of the Canal Corporation, and be it further

RESOLVED, that the Agreement shall be for a term of five years for a maximum amount payable of \$850,000, and be it further

RESOLVED, that the costs of such services will be funded via a compensating balance arrangement or by direct payment, at the Canal Corporation's option, and that the funding of such costs be, and the same hereby is approved, and be it further

RESOLVED, that the Chief Financial Officer or his designee is authorized to compensate the bank for services rendered under such agreement via compensating balance arrangement, or by direct payment, and be it further



Item 2 by Mr. Bryan (Appendix B)

Authorizing the Designation of a Firm to Perform Government Banking Services for the Canal Corporation's General Banking Services and Authorizing the Executive Director to Enter Into a Contract with the Designated Firm for Government Banking Services (Continued)

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

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

Item 3 by Ms. Mantello and Mr. Bryan (Appendix C)

Extending Authorization Under Resolution No. 350 : Declaring Surplus to Canal Corporation Needs 0.20± Acres of Canal Land, Located in the City of Syracuse, County of Onondaga and Authorizing Its Exchange for Approximately 0.68± Acres of Land Owned by the City of Syracuse Located in the City of Syracuse, County of Onondaga

Ms. Mantello stated that this exchange will confirm the realignment of Kirkpatrick Street by the City and improvements to the Syracuse Inner Harbor property completed by the Canal Corporation. This exchange initially stalled and was unable to be finalized before the Board authorization expired because of title concerns with the City parcel. Those concerns were addressed by a recent title abstract completed by the Attorney General's Office. Chairman Buono stated that this piece of land will make the Inner Harbor project complete. Ms. Mantello concurred.

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

RESOLUTION NO. 477

EXTENDING AUTHORIZATION UNDER RESOLUTION NO. 350: DECLARING SURPLUS TO CANAL CORPORATION NEEDS 0.20± ACRES OF CANAL LAND, LOCATED IN THE CITY OF SYRACUSE, COUNTY OF ONONDAGA AND AUTHORIZING ITS



Item 3 by Ms. Mantello and Mr. Bryan (Appendix C)

Extending Authorization Under Resolution No. 350 : Declaring Surplus to Canal Corporation Needs 0.20± Acres of Canal Land, Located in the City of Syracuse, County of Onondaga and Authorizing Its Exchange for Approximately 0.68± Acres of Land Owned by the City of Syracuse Located in the City of Syracuse, County of Onondaga (Continued)

EXCHANGE FOR APPROXIMATELY 0.68± ACRES OF LAND OWNED BY THE CITY OF SYRACUSE LOCATED IN THE CITY OF SYRACUSE, COUNTY OF ONONDAGA

RESOLVED, that the expiration of provisions previously authorized by Resolution No. 350 be, and the same hereby is, extended to April 15, 2010, and be it further

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

Item 4 by Ms. Mantello and Mr. Bryan (Appendix D)

Confirming and Extending Authorization Granted Under Resolution No. 309 Declaring Surplus to Canal Corporation Needs Approximately 0.14± Acre of Canal Land, Located in the Town of Fort Edward, County of Washington; and Authorizing Its Sale to Kenneth and Annette Carner

Ms. Mantello stated that the completion of the transaction was delayed due to the need to procure an acceptable survey, and the enactment of a revised policy and procedures in order to comply with the Public Authorities Accountability Act of 2005. She added that since adoption of Resolution Number 309, Corporation staff was advised that “Annette Honegger-Carner” is the legal surname that should be substituted for “Annette Carner,” and this new item and resolution is revised to reflect this fact.

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

RESOLUTION NO. 478
CONFIRMING AND EXTENDING AUTHORIZATION GRANTED UNDER RESOLUTION NO. 309 DECLARING SURPLUS TO CANAL CORPORATION NEEDS APPROXIMATELY 0.14± ACRE OF CANAL LAND, LOCATED IN THE TOWN OF FORT EDWARD,



Item 4 by Ms. Mantello and Mr. Bryan (Appendix D)
Confirming and Extending Authorization Granted Under Resolution No. 309 Declaring Surplus to Canal Corporation Needs Approximately 0.14± Acre of Canal Land, Located in the Town of Fort Edward, County of Washington; and Authorizing Its Sale to Kenneth and Annette Carner (Continued)

COUNTY OF WASHINGTON; AND AUTHORIZING ITS SALE TO KENNETH AND ANNETTE CARNER

RESOLVED, that the Canal Corporation Board hereby confirms the authorization heretofore granted under Resolution No. 309, except that “Annette Honegger-Carner” shall be substituted for “Annette Carner” in such Resolution, and extends such authorization to and through April 15, 2010, and be it further

RESOLVED, that the Executive Director, the Director of Canals and the General Counsel be, and the same hereby are, authorized to take all actions to implement this Board item, and be it further

RESOLVED, that the Canal Corporation’s Contracting Officer has determined that this Board action complies with the Canal Real Property Management Policy, Article 9, Title 5-A of the Public Authorities Law, and all other relevant provisions of law as they relate to real property, and be it further

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

Item 5 by Ms. Mantello and Mr. Bryan (Appendix E)
Authorizing the Abandonment of Approximately 11.43 Acres of Canal Land Located in the Town of Perinton, County of Monroe; and Authorizing Their Transfer to the Town of Perinton Subject to Reservation of Permanent Easements

Ms. Mantello stated that the Town has formally requested the no-cost transfer for the construction of a public road, the construction of a segment of the Canalway Trail, the extension of municipal water and gas, and for the eventual construction of a pedestrian bridge over the Erie Canal. The acquisition of this property will provide the Town with additional space for its Department of Public Works and the relocation of



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Cobbs Lane, both of which currently encroach on Corporation property. The Town has submitted a letter including a packet of supporting letters and memos in which it seeks a no-cost transfer of the Property. Under the Public Authorities Accountability Act (“PAAA”), such uses may be grounds for a less-than-fair-market disposal of the Property with the Town, if the disposal is intended to further the public health, safety or welfare or economic interest of the state or a political subdivision (“Public Benefit”). The Corporation has long identified the need to relocate Cobbs Lane which hugs the bank of the Canal since it is not deemed safe and may eventually obstruct the Corporation’s ability to repair the bank if needed. The Corporation also acknowledges that the Town has received a series of state and federal grants (including a New York State Canal Corporation Greenway grant in the amount of \$225,000) to make the aforementioned public improvements to the Property. Use of the federal grants requires the Town to have an ownership interest in the Property. Section 2897(6)(c)(v) of the Public Authorities Law allows disposals of property to be negotiated without public advertising if the disposal is for less than fair market value and “is intended to further the public health, safety or welfare or an economic development interest of the state or a political subdivision...” An opinion of the Attorney General, Formal Opinion Number 2007-F2, further noted that sales to a municipality for the development of public parks, public recreation and public access to the Canal System, and for necessary municipal infrastructure projects are likely to meet the aforementioned exception. The Contracting Officer has determined the Town’s request fulfills the requirements of the Public Authorities Law related to an exception to the fair market value requirements and is consistent with the Attorney General’s opinion. The Contracting Officer recommends conveyance of the Property to the Town for no monetary consideration, without public advertising for bids, subject to the reservation of the aforementioned easements and the Town’s agreement to provide all of the aforementioned benefits and improvements.

Mr. Sall asked for clarification regarding the reacquisition rights mentioned in the Item. Ms. O’Conor stated that language was inserted to authorize reacquisition of the property in the event that the Town should cease to use it for the public purposes for which it was originally granted to them. Mr. Sall inquired if that language is included in all Corporation property transactions. Ms. O’Conor responded negatively, adding that when the Corporation transfers property for fair market value it generally does not retain any right to reacquisition. In this particular instance because the property is being transferred for less than fair market value, as well as the fact that it’s



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conditioned upon particular uses for the public purpose, staff determined that it would be in the Corporation's best interest to retain that right. Mr. Bryan added that staff commonly insert anti-flip provisions into similar types of transactions so that there's not speculative gain that can be made in the short term. Mr. Sall asked if the language is put into the deed to protect the Corporation. Ms. O'Connor responded affirmatively, adding that even though this Item is before the Board, staff intends to have further discussions with the Attorney General's office concerning what the appropriate language might be in this instance. Mr. Sall inquired if that language also needs to be in the Resolution that the Board is voting on. Ms O'Connor responded negatively, stating that it will be incorporated into the deed at the time of the actual transfer

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

RESOLUTION NO. 479

AUTHORIZING THE ABANDONMENT OF APPROXIMATELY 11.43 ACRES OF CANAL LAND LOCATED IN THE TOWN OF PERINTON, COUNTY OF MONROE; AND AUTHORIZING THEIR TRANSFER TO THE TOWN OF PERINTON SUBJECT TO RESERVATION OF PERMENENT EASEMENTS

RESOLVED, that approximately 11.43 acres of Canal land located in the Town of Perinton, County of Monroe 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, a permanent easement over an approximately 19 foot wide strip along the Canal for a segment of Canalway Trail and maintenance of embankment; and a permanent easement approximately 0.12 acre at the easterly end of the property for a culvert, as same may be further described by Corporation staff to ensure all Corporation operational needs are met, and be it further



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RESOLVED, the Office of Canal Maintenance and Operations shall prepare an Official Order abandoning the land for Canal purposes, subject to reservation of such easements, and such other terms as may be deemed appropriate by the Legal Department consistent with this agenda item, together with a map and description of such lands for review and execution by the Executive Director, and be it further

RESOLVED, that the Executive Director, or his designee, be, and he hereby is, authorized to execute such order of abandonment, and be it further,

RESOLVED, that the Executive Director, the Director of Canals and the General Counsel be, and the same hereby are, authorized to take all actions to implement this Board item, and be it further,

RESOLVED, that the recommendation for issuance of a Negative Declaration based on an environmental assessment of the proposed action completed in accordance with the provisions of the State Environmental Quality Review Act (“SEQRA”) be, and hereby is approved, and be it further

RESOLVED, the Chief Engineer, or his designee, be, and he hereby is, authorized to sign the SEQRA Environmental Assessment and issue the Negative Declaration, and to distribute any required notices on behalf of the Corporation Board with relation to this action, and be it further

RESOLVED, that the transfer of said 11.43 acres of land by quitclaim deed to the Town of Perinton for one dollar consideration, on the terms described and recommended in this agenda item, be and hereby is,



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approved, subject to such other 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 consistent with the intent of this agenda item, provided that if any adverse comments are received in response to the explanatory statement, this transaction must be submitted to the Corporation Board for further consideration, and be it further

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

RESOLVED, that the Corporation's Contracting Officer determined that the Property may be sold by negotiation without public advertising because such disposal falls under Section 2897 (6) (c) (v) of the Public Authorities Law, and Section IV.H. of the Canal Real Property Management Policy, and that the transfer of the Property on the terms recommended in the agenda item complies with all applicable provisions of law, relating to disposals of real property, including Article 9, Title 5-A of the Public Authorities Law, and with the Canal Real Property Management Policy, and be it further

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

RESOLVED, that the Executive Director, 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



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

Adjournment

There being no further business to come before the Board, on the motion of Ms. Luh, seconded by Mr. Howard, without any objections, the meeting was adjourned.

Jill B. Warner
Secretary

