



MINUTES

NEW YORK STATE CANAL CORPORATION

BOARD MEETING NO. CC-163

September 16, 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.

The meeting began at 11:50 a.m.

There were present:

**Chairman John L. Buono
E. Virgil Conway, Board Member
Erin M. Crotty, Vice Chair
Donna J. Luh, Board Member
Kevin J. Plunkett, Board Member
Brandon R. Sall, Board Member
Richard N. Simberg, Board Member**

Constituting all of the members of the Canal Corporation Board.

In addition, there were present the following staff personnel:

**Michael R. Fleischer, Executive Director
William Estes, 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
Thomas Pericak, Division Director, Buffalo Division
William Rinaldi, Division Director, Albany Division
Ted Nadratowski, Division Director, New York 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
Thomas Fitzgerald, Director, Office of Human Resource Management
Tony Kirby, Director, Office of Real Property Management
Harry Lennon, Senior Investigator, Audit and Management Services
Tracie Sandell, Assistant Counsel
Joanne Riddett, Director, Information Technology
Daniel Gilbert, Chief of Staff
David Malone, Director, Office of Accounting and Disbursements
Dorraine Steele, Director, Office of Fiscal Audit and Budget
Cathy Sheridan, Manager, Canal Capital Program
Douglas Elson, Information Technology
Also in attendance:
John Armstrong, Assistant Television Engineer, NYN
Thomas Benware, Staff, Senator Dilan's Office

Chairman Buono noted that he, Mr. Conway, Mr. Crotty, Ms. Luh, Mr. Plunkett, Mr. Sall and Mr. Simberg 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-162

On the motion of Mr. Plunkett, seconded by Mr. Conway, without any objections, the Board approved the minutes of Meeting No. CC-162 held on June 25, 2009 which were made available to the Board Members as part of the Agenda.

Item 2 by Mr. Fleischer (Appendix B)
Report to Canal Corporation Board for Personal Service Contracts Up to \$150,000 for the Period April 1, 2009 through June 30, 2009

Mr. Fleischer submitted as Exhibit I a listing containing Personal Service Contracts up to \$150,000 for the period of April 1, 2009 through June 30, 2009.

After full discussion, on the motion of Ms. Crotty, seconded by Mr. Plunkett, without any objections, the Board accepted Mr. Fleischer's report.

Item 3 by Ms. Mantello and Mr. Bryan (Appendix C)
Authorizing: Lease of Approximately 1.03± Acres of Canal Land in the Town and Village of Herkimer, Herkimer County to the Village of Herkimer

Ms. Mantello apprised the Board that a bill has passed both houses that would take away the exception for transactions under fair market value but it has not been delivered to the Governor yet. Chairman Buono stated that the legislation would impact a number of the Corporation's transactions. Mr. Fleischer concurred, adding that staff would not proceed with the transactions until the issue is resolved one way or another. Ms. Sall questioned if the Board should table the Item until more is known about the status of the bill. Ms. Mantello responded that the Village has received a TEA-21 Grant that would be in jeopardy if this transaction were delayed. Staff held a conference call with the Village and Department of Transportation (DOT) and DOT has stated that the grant cannot be applied to a project where no property interest exists. This action would provide the required interest and allow the Village to move forward and begin advertising for a spring letting. Mr. Fleischer added that the Rye ball fields and Perinton project are also a part of this quandary, the issue with tabling the Item today would be timing. Mr. Bryan stated that staff would not be able to finalize a lease for this property until long after this gets resolved between the Legislature and the Chamber due to the fact that the lease still has to be put together and go to the State Comptroller's office for approval.

Mr. Plunkett inquired how the Village can move forward and asked if the DOT grant would be in jeopardy if the Governor were to sign the legislation six months from



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

Authorizing: Lease of Approximately 1.03± Acres of Canal Land in the Town and Village of Herkimer, Herkimer County to the Village of Herkimer (Continued)

now. Mr. Bryan responded that if the Federal funds are to be allocated to this project the Village has to have a property interest. DOT told the Village that knowing this legislation is in the wings, moving forward now is a good faith effort to show the Corporation's support of the project.

Ms. Crotty inquired if the TEA-21 Grant can be used for property acquisition. Ms. Mantello responded that this grant was acquired to build the amphitheater and she did not believe that the Village could acquire the property, worth \$140,000, and still make the improvements they planned with the \$1.4 million grant. Ms. Crotty stated if the Village got the grant couldn't some of the planned projects be scaled down to allow them to acquire the property for fair market value if the bill gets signed by the governor. Ms. Mantello responded that staff has not entered into that discussion with the Village yet but that the FHWA ruling with regard to the property interest has put a hamper on many TEA-21 projects. Mr. Bryan stated that normally the Corporation would simply grant the Village a permit. Ms. Mantello concurred that under normal circumstances a permit would have been issued, but FHWA and DOT have said there needs to be a property interest which is why staff moved forward with a lease agreement. In other instances staff has done transfer of jurisdictions to comply with the right of interest but then DOT would hold the property.

Chairman Buono stated the Corporation appears to have a number of projects that will be effected by this legislation and would need to be dealt with. Mr. Sall concurred, stating that he would be comfortable moving forward with this project and seeing what happens with regard to the legislation.

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

RESOLUTION NO. 482

**AUTHORIZING: LEASE OF APPROXIMATELY 1.03±
ACRES OF CANAL LAND LOCATED IN THE TOWN
AND VILLAGE OF HERKIMER, HERKIMER COUNTY
TO THE VILLAGE OF HERKIMER**

**RESOLVED, that approximately 1.03± acres of
Canal land located in the Town and Village of Herkimer,
County of Herkimer are no longer useful or necessary as**



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

Authorizing: Lease of Approximately 1.03± Acres of Canal Land in the Town and Village of Herkimer, Herkimer County to the Village of Herkimer (Continued)

part of the Barge Canal System, as an aid to navigation thereon, or for Barge Canal purposes, and be it further

RESOLVED, that the lease of said 1.03± acres of Canal land is consistent with the Canal Recreationway Plan approved on September 27, 1995 at Meeting No. CC-29, 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 a 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 lease of said 1.03± acres of land to the Village of Herkimer for no monetary consideration be, on the terms described and recommended in this agenda item, be, and hereby is, 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, and be it further

RESOLVED, that the Corporation's Contracting Officer determined that the Property may be leased 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



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

Authorizing: Lease of Approximately 1.03± Acres of Canal Land in the Town and Village of Herkimer, Herkimer County to the Village of Herkimer (Continued)

Management Policy, and the lease of the Property on the terms recommended in the agenda item complies with all provisions of law, relating to disposals of real property, including Article 9, Title 5-A of the Public Authorities Law, and 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 lease, and all other documents necessary for effectuating such interest in the property, and be it further

RESOLVED, that, the Executive Director, or his designee shall be authorized to take all actions necessary to implement this Board action, 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)

Authorizing: Abandonment of Approximately 2.80+ Acres of Canal Land Located in the Village of Baldwinsville, County of Onondaga; and Authorizing Their Sale to the Village of Baldwinsville

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

RESOLUTION NO. 483

AUTHORIZING: ABANDONMENT OF APPROXIMATELY 2.80± ACRES OF CANAL LAND LOCATED IN THE VILLAGE OF BALDWINSVILLE, COUNTY OF ONONDAGA; AND AUTHORIZING THEIR SALE TO THE VILLAGE OF BALDWINSVILLE

RESOLVED, that approximately 2.80± acres of Canal land, including two storage buildings situated thereon, located in the Village of Baldwinsville, County of



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

Authorizing: Abandonment of Approximately 2.80+ Acres of Canal Land Located in the Village of Baldwinsville, County of Onondaga; and Authorizing Their Sale to the Village of Baldwinsville (Continued)

Onondaga (“Property”) are no longer useful or necessary as part of the Barge Canal System, as an aid to navigation thereon, or for Barge Canal purposes, and be it further

RESOLVED, that the Director of Environmental Services’ 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, that a notice of abandonment for the Property shall be published in accordance with the requirements of Section 51 of the Canal Law; such notice will be transmitted to the Canal Recreationway Commission; and the Contracting Officer be, and he hereby is, authorized to determine whether a hearing is warranted, and if a hearing is determined to be warranted, this matter shall be resubmitted to the Board, and be it further

RESOLVED, that if no hearing is determined to be warranted, the Office of Canal Maintenance and Operations shall prepare an Official Order abandoning the Property for Canal purposes, together with a map and description of such Property for review and execution by the Executive Director, 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 order of abandonment, and be it further

RESOLVED, that the Corporation’s Contracting Officer has determined that the Property may be sold to the Village of Baldwinsville by negotiation without public advertising or competition pursuant to Public Authorities



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

Authorizing: Abandonment of Approximately 2.80+ Acres of Canal Land Located in the Village of Baldwinsville, County of Onondaga; and Authorizing Their Sale to the Village of Baldwinsville (Continued)

Law Section 2897 (6) (c) (iv) and Section IV.H. of the Canal Real Property Management Policy, and the sale of the Property on the terms recommended in the agenda item complies in all other respects with applicable law, including Article 9, Title 5-A of the Public Authorities Law and the Canal Real Property Management Policy, and be it further

RESOLVED, that the sale of the Property to the Village of Baldwinsville on the terms described and recommended in this agenda item, be, and hereby is, approved, subject to such other legal, financial, engineering and other terms as may be determined 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, 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 Chief Engineer, or his designee, be, and he hereby is, authorized to sign the SEQRA Environmental Assessment and issue a 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 Executive Director, the Director of Canals, the Contracting Officer, and General Counsel be, and the same hereby are, authorized to take all actions necessary to implement this Board action, and be it further



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

Authorizing: Abandonment of Approximately 2.80+ Acres of Canal Land Located in the Village of Baldwinsville, County of Onondaga; and Authorizing Their Sale to the Village of Baldwinsville (Continued)

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

Item 5 by Ms. Mantello and Mr. Bryan (Appendix E)

Authorizing Withdrawal of Canal Corporation Board Resolution No. 269 Adopted at Meeting No. CC-93 held on July 31, 2001, which Authorized the Lease of 1.18± Acres of Canal Land Located in the City of Cohoes, County of Albany to Thomas White

Ms. Mantello notified the Board that the Corporation's Real Property Office is preparing a list of Canal and Thruway properties in a similar situation to this one, approved prior to the Public Authorities Accountability Act, and intends to bring those Items before the Board at its next meeting to be withdrawn.

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

RESOLUTION NO. 484

AUTHORIZING WITHDRAWAL OF CANAL CORPORATION BOARD RESOLUTION NO. 269 ADOPTED AT MEETING NO. CC-93 HELD ON JULY 31, 2001, WHICH AUTHORIZED THE LEASE OF 1.18± ACRES OF CANAL LAND LOCATED IN THE CITY OF COHOES, COUNTY OF ALBANY TO THOMAS WHITE

RESOLVED, that the Board hereby authorizes and ratifies the withdrawal of prior Canal Corporation Board Resolution No. 269 adopted at Meeting No. CC-93 held on July 31, 2001 which authorized the lease of 1.18± acres of Canal land located in the City of Cohoes, County of Albany to Mr. Thomas White, and be it further

RESOLVED, that the Board hereby ratifies and approves staffs previous action pursuant to Canal Corporation SOPs and Technical Manual in declaring the prior permits for 401 Saratoga Street revoked and cancelled and in declaring that the pending Lease project be deemed



Item 5 by Ms. Mantello and Mr. Bryan (Appendix E)
Authorizing Withdrawal of Canal Corporation Board Resolution No. 269 Adopted at Meeting No. CC-93 held on July 31, 2001, which Authorized the Lease of 1.18± Acres of Canal Land Located in the City of Cohoes, County of Albany to Thomas White (Continued)

abandoned and cancelled at that point as a project which could no longer be progressed, and be it further

RESOLVED, that the Executive Director be, and he hereby is, in conjunction with the Director of the Canal Corporation and the General Counsel, authorized to take any and all operational and legal steps required to complete the removal of all private property still remaining at the 401 Saratoga Street premises such that the premises are free for operational needs or future potential development, and be it further

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

Item 6 by Mr. Barr (Appendix F)
Authorizing the Executive Director to Execute a Contract With Energetix Corporation to Provide Drug and Alcohol Testing Services for Thruway Authority and Canal Corporation Employees

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

RESOLUTION NO. 485

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT WITH ENERGETIX CORPORATION TO PROVIDE DRUG AND ALCOHOL TESTING SERVICES FOR THRUWAY AUTHORITY AND CANAL CORPORATION EMPLOYEES

RESOLVED, that the Executive Director be, and hereby is, authorized to execute an agreement with Energetix Corporation to provide U.S. Department of Transportation, U.S. Department of Homeland Security and U.S. Coast Guard mandated drug and alcohol testing



Item 6 by Mr. Barr (Appendix F)

Authorizing the Executive Director to Execute a Contract With Energetix Corporation to Provide Drug and Alcohol Testing Services for Thruway Authority and Canal Corporation Employees (Continued)

services for both Thruway Authority and Canal Corporation employees (“Agreement”), and be it further

RESOLVED, that the Agreement shall be for a term of five years, the cost of these services is anticipated to be \$60,886 for each of the years 2010, 2011 and 2012, and \$61,679 for each of the years 2013 and 2014, for a maximum amount payable for the five- year term of \$306,016, and be it further

RESOLVED, that the Agreement shall be on such other terms and conditions as the Executive Director, in consultation with the General Counsel, determines to be in the best interests of the Authority, 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 provisions of the Agreement, to manage and administer the Agreement, amend 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 the Director of Thruway Finance be, and hereby is, authorized to charge expenditures for services rendered under such Agreement to the appropriate funds provided therefore, subject to reallocation and adjustment as determined by final audit of charges, and be it further

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



Item 7 by Mr. Barr (Appendix G)

Authorizing the Executive Director to Execute a Contract With Davis Vision to Provide Vision Care Services for Thruway Authority and Canal Corporation Employees and their Dependents

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

RESOLUTION NO. 486

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT WITH DAVIS VISION TO PROVIDE A VISION CARE PROGRAM FOR THRUWAY AUTHORITY AND CANAL CORPORATION EMPLOYEES AND THEIR DEPENDENTS

RESOLVED, that the Executive Director be, and hereby is, authorized to execute an agreement with Davis Vision to provide Vision Care Services for both Thruway Authority and Canal Corporation employees and their dependents (“Agreement”), and be it further

RESOLVED, that the Agreement shall be for a term of five years, the cost of these services is anticipated to be approximately \$350,000 for each year of the contract term, for a maximum amount payable for the five year term of \$1,765,000, and be it further

RESOLVED, that the Agreement shall be on such other terms and conditions as the Executive Director, in consultation with the General Counsel, determines to be in the best interests of the Authority, 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 provisions of the Agreement, to manage and administer the Agreement, amend 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



Item 7 by Mr. Barr (Appendix G)

Authorizing the Executive Director to Execute a Contract With Davis Vision to Provide Vision Care Services for Thruway Authority and Canal Corporation Employees and their Dependents (Continued)

RESOLVED, that the Director of Thruway Finance be, and hereby is, authorized to charge expenditures for services rendered under such Agreement to the appropriate funds provided therefore, subject to reallocation and adjustment as determined by final audit of charges, and be it further

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

Item 8 by Mr. Waite (Appendix H)

Approving Engineering Agreement D213888 with FRA Engineering & Architecture, P.C. for Design Services Relative to the Rehabilitation of Movable Dam 7 at Lock E-11 in the Albany Division

Mr. Plunkett stated that the 6.6 percent estimate is lower than estimates the Board has previously seen. He inquired if staff are seeing more competition in the design and engineering areas and getting lower estimates for their services. Mr. Waite responded negatively, adding that in this particular case this is FRA's third design and is almost a carbon copy of the previous two. The firm has become efficient at doing rehabilitations on these types of structures making them very competitive. Mr. Plunkett clarified that if the Board were to look at the first dam design from FRA the number would be higher. Mr. Waite concurred.

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

RESOLUTION NO. 487

APPROVING ENGINEERING AGREEMENT D213888 WITH FRA ENGINEERING & ARCHITECTURE, P.C. FOR DESIGN SERVICES RELATIVE TO THE REHABILITATION OF MOVABLE DAM 7 AT LOCK E-11 IN THE ALBANY DIVISION

RESOLVED, that the proposed engineering agreement D213888 with FRA Engineering & Architecture,



Item 8 by Mr. Waite (Appendix H)

Approving Engineering Agreement D213888 with FRA Engineering & Architecture, P.C. for Design Services Relative to the Rehabilitation of Movable Dam 7 at Lock E-11 in the Albany Division (Continued)

P.C., 255 East Avenue, Rochester, New York 14604 for design services to rehabilitate Movable Dam 7 at Lock E-11 in Albany Division, for a Maximum Amount Payable of \$2,000,000, which is provided through the 2009 Canal Contracts Program (Item C172.1), be, and the same hereby is, approved, and be it further

RESOLVED, that the Chief Engineer or his designees shall have the authority to exercise all powers reserved to the Corporation under the provisions of the agreement, manage and administer the agreement, amend the provisions of the agreement consistent with the terms of this item and in accordance with the 2009 Canal Contracts Program Resolution and other Board authorizations, and suspend or terminate the agreement in the best interests of the Corporation, and be it further

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

Executive Session

On the motion of Mr. Plunkett, seconded by Ms. Luh, the Board voted to convene to Executive Session to discuss matters leading to the possible appointment of a corporation.

Adjournment

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

Jill B. Warner
Secretary

