



**NEW YORK STATE THRUWAY AUTHORITY  
NEW YORK STATE CANAL CORPORATION**



# **MINUTES**

## **GOVERNANCE COMMITTEE MEETING NO. 2**

**December 19, 2007**

Minutes of a meeting of the New York State Thruway Authority/Canal Corporation Governance Committee, held in the Board Room at Administrative Headquarters, 200 Southern Boulevard, Albany, New York, 12209.

The meeting began at 9:13 a.m.

The following members of the Governance Committee were present, constituting a quorum:

**Present:**

Chairman John L. Buono, Governance Committee Member (ex officio)  
Nancy E. Carey Cassidy, Governance Committee Member  
Erin M. Crotty, Governance Committee Member  
Kevin Plunkett, Governance Committee Member

In addition, the following staff personnel were present:

Michael R. Fleischer, Executive Director  
Daniel Gilbert, Chief of Staff  
Kevin Allen, Unit Supervisor, Audit and Management Services  
Wendy Allen, Deputy Chief of Staff  
John Bryan, Chief Financial Officer  
Kenneth Flood, Director, Real Property Management  
Diane Galuski, Director, Bureau of Management Analysis and Projects  
Richard Garrabrant, Syracuse Division Director  
Harry Lennon, Senior Investigator  
Katherine McCartney, Deputy Counsel

Sharon O'Connor, General Counsel  
Elizabeth Yanus, Special Assistant

Also in Attendance:

Karl Diehl, Production Coordinator, New York Network

## **PUBLIC SESSION**

Mr. Plunkett introduced himself as the Governance Committee Chair and called the meeting of the Governance Committee to order.

Ms. Yanus recorded the minutes as contained herein.

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### **Item 1**

#### **Approval of minutes of Governance Committee Meeting No. 1**

After full discussion, on the motion of Ms. Crotty, seconded by Ms. Carey Cassidy, without any objections, the Governance Committee approved the minutes of Governance Committee meeting No. 1, held April 18, 2007.

### **Item 2**

#### **Review and approve revised Governance Committee Charter for Board action**

After noting that significant changes to the Governance Committee Charter had been made, Mr. Plunkett deferred to Ms. Allen for an explanation of the revisions.

Ms. Allen advised that Exhibit A was the original version of the Charter with the proposed revisions denoted in track changes; Exhibit B was the revised Charter incorporating all changes and for which approval was requested; and Exhibit C was the Model Governance Committee Charter provided by the Authority Budget Office (ABO). Most changes made in the revised Charter track provisions in the ABO's Model Charter. Specific changes include: the elimination of the "Introduction"; modification to the "Purpose" section to reflect the statutory requirements of the Public Authorities Accountability Act of 2005 (PAAA); the addition of the

“Powers” section that incorporates text from the ABO Model Charter; minor revisions to the “Membership” and “Meetings” sections; and amendments to the “Responsibilities” section that incorporate text from the ABO Model Charter and distribute responsibilities from the old Charter throughout the new framework.

Relative to the defined powers of the Governance Committee to obtain information from staff and advice from in-house and outside counsel, Mr. Plunkett asked if it was the responsibility of the Committee to meet with staff at times other than at scheduled meetings. Ms. O’Conor indicated that interaction with staff and counsel is intended to occur at Committee meetings; however, Committee members may request additional information from staff and counsel at any time. Ms. Carey Cassidy inquired if a review of reported ethics violations would be provided at this meeting. She was informed that this topic would be discussed later in the agenda. Ms. Crotty inquired if the footnote on page three of Exhibit A was in the appropriate location. Staff advised that that the placement of that text was just a formatting issue that occurs when using track changes. The clean version of the document (Exhibit B) is correctly formatted showing the footnote at the bottom of the page. Mr. Plunkett asked if there is a comprehensive file of policies that the Committee is required to review. Ms. O’Conor responded affirmatively, advising that all Board-approved policies are contained in the Thruway Authority/Canal Corporation’s Administrative Manual.

After full discussion, on the motion of Ms. Carey Cassidy, seconded by Ms. Crotty, without any objections, the Governance Committee adopted the revised Governance Committee Charter and authorized its submission to the Authority/Corporation Board for consideration.

### **Item 3**

#### **Review and approve for Board action: Thruway and Canal Real Property Management Policies; Thruway and Canal Real Property Standard Operating Procedures (SOPs); and Thruway and Canal Personal Property Disposal Policies**

Mr. Bryan requested the approval of the Governance Committee to advance to the full Board for consideration: Thruway and Canal Real Property Management Policies and SOPs; and Thruway and Canal Personal Property Disposal Policies. The PAAA requires that the Board review and approve these items annually. No changes have been made to the Real Property

Management Policies since they were approved by the Board in 2006. The SOPs were revised to reflect the formation of the Office of Real Property Management. The Authority's and Corporation's real property functions were consolidated into a single office that is staffed by both Authority and Corporation employees. Ms. Crotty requested clarification of the permit process regarding subdivisions. Mr. Bryan explained that the organization created a moratorium on the issuance of occupancy permits relative to subdivisions (or enclaves) of real property, consisting predominantly of Canal parcels. Ms. O'Connor added that if the subdivision property is currently under permit, the permit can be transferred to another individual. Problems exist with Canal properties that are not under permit, but on which structures have been built.

Ms. Crotty asked from whom the Director of Canals is required to request the exception approval when a permit is to be issued in advance of a contemplated disposal. Ms. O'Connor and Mr. Bryan advised that the Executive Director would grant this approval. Mr. Plunkett clarified that the requested Committee action would be to approve the previously-approved and unchanged Real Property Management Policies and the revised SOPs.

After full discussion, on the motion of Ms. Carey Cassidy, seconded by Ms. Crotty, without any objections, the Governance Committee authorized submission of the following to the Authority/Corporation Board for consideration: Thruway and Canal Real Property Management Policies; Thruway and Canal Real Property Standard Operating Procedures; and Thruway and Canal Personal Property Disposal Policies.

#### **Item 4**

##### **Review and approve Intranet ethics webpage**

Ms. Allen advised that the Governance Committee's approval was being sought for a webpage that will communicate ethics-related information to staff via the Intranet. She referenced an icon on the proposed development site that will provide a link to all policies, publications and videos concerning ethics. Ms. Carey Cassidy asked if this information will be available to vendors. Staff responded negatively, advising that it was intended for internal use only as a resource for staff to understand the rules and regulations relating to ethics. In a subsequent question, Ms. Carey Cassidy asked if a link to this information could be added to the Authority's external website. Mr. Fleischer informed her that vendor information is provided in

the “Business” section of the Authority’s website. He wasn’t certain if ethics information was included, but offered to add it if it is not. Ms. O’Conor indicated that the Authority/Corporation’s website has information posted related to vendor responsibility. Mr. Plunkett reiterated that this link would be for internal use to advise staff of ethics policies. He asked when the site would be implemented if approved. Ms. Allen advised that it was ready for immediate implementation.

After full discussion, on the motion of Ms. Carey Cassidy, seconded by Ms. Crotty, without any objections, the Governance Committee authorized the posting of an ethics webpage on the Authority/Corporation Intranet website.

### **Item 5**

#### **Review and discuss outside counsel; update on ethics-related publications; ethics violations, if applicable; conference call with Authority Budget Office; and Governance Committee 2008 Draft Work Plan**

##### **Outside Counsel**

Ms. O’Conor reported that at its previous meeting the Governance Committee requested staff to obtain proposals for governance-related advice, counsel and services from outside counsel with whom the Authority already has existing contracts. Staff believes that two firms that submitted proposals have strong qualifications: Holland & Knight and Whiteman, Osterman & Hanna. Holland & Knight has significant experience with corporate governance and could provide a private sector perspective. Whiteman, Osterman & Hanna has significant experience with the PAAA and its implementation by public authorities, including conducting statewide Board training on this topic. Staff proposed that both firms be kept available and relied upon for specific expertise; it will be particularly useful to have two firms available in the event one is conflicted out on a particular issue. Ms. Carey Cassidy asked if Holland & Knight had an Albany office. Ms. O’Conor responded negatively, advising that the firm is based in New York City.

After full discussion, on the motion of Mr. Plunkett, seconded by Ms. Carey Cassidy, without any objections, the Governance Committee authorized the assignment of work to Holland & Knight and Whiteman, Osterman & Hanna as appropriate and as needed.

### Ethics-related Publications

Mr. Fleischer reported that the Governance Committee, at its April 18, 2007 meeting, requested that the Executive Director continue to issue governance-related Instructions to staff as needed, but include a standing item at each subsequent Governance Committee meeting to report on new Instructions issued. The Committee also asked him to consult with the ABO to confirm that the policies and guidance issued to employees were comprehensive and complete. In response, the Authority submitted all of its governance-related publications to the ABO for review. In September, the ABO told Authority staff that the Authority's policies were comprehensive, clear and consistent with the corporate governance practices advanced by the PAAA, and commended the Authority's efforts. Regarding new Instructions, Mr. Fleischer noted that six new Instructions were issued to staff since the April Governance Committee meeting: "Inappropriate Lobbying Influence in Authority/Corporation Procurements"; "Use of Authority/Corporation Resources"; "Code of Ethics"; "Commuting Use Value of Authority/Corporation Provided Vehicles"; "Assignment and Use of Thruway Authority Vehicles"; and "Acceptance of Gifts." Five of these Instructions were simply re-issuance reminders. Revisions to Board Member assignments and select titles were made in the "Assignment and Use of Thruway Authority Vehicles" Instruction prior to re-issuance. Mr. Fleischer offered to provide copies of updated Instructions to the Committee members. Mr. Plunkett reiterated that the ABO reviewed the policies, determined them to be sufficient and appropriate, and that no further action was necessary.

### Ethics Violations

Mr. Fleischer stated that only one case concerning a Corporation employee was referred to the Commission on Public Integrity in 2007 and the investigation remains open. As a result of the investigation, the Authority is establishing controls and assigning oversight responsibilities so that there is a consistent process for recording Class 3 and pool vehicle use. All pool vehicle requests will require supervisory approval in advance, recording of beginning and ending odometer readings, and purposes of trip. Employees with Class 3 vehicle assignments will be required to record daily usage (destination, time out, time returned, odometer readings, etc.) and submit a vehicle use log to their supervisors at the end of each month. Procedural guidance will

be issued by the end of the year. Mr. Plunkett clarified that no action was required of the Governance Committee and accepted Mr. Fleischer's verbal report.

#### Conference Call with the ABO

Ms. Allen provided highlights of a conference call Authority staff had with ABO representatives. The Authority questioned whether or not it was fulfilling the PAAA's statutory requirement to have documented governance principles. The Authority's principles are outlined in various governance-related Board Policies (e.g., Code of Ethics, Whistleblower, Procurement Contracts, Real Property and Personal Property Management, Affirmative Action, etc.); it does not have a have a specific, single document outlining these principles. Although the Authority doesn't have a specific, single document outlining these principles, the ABO determined that a separate document is not necessary and that the requirement to is satisfied by the various existing policies.

Ms. Allen relayed the ABO's suggestion that Board members physically leave the room in cases of recusal in order to avoid any issues of impropriety. Ms. O'Connor noted that a free and open dialog might be discouraged with a recused member present. Ms. O'Connor pointed out that now, due to the fact that meetings are "live" and viewable on the web, a Board member could leave the room and still know how another Board member acted. That being said, it was still the ABO's recommendation that in cases of recusal, Board members physically leave the room. The Committee indicated that this is the current practice and agreed that it should be continued.

Ms. Allen noted that the Authority was statutorily required to develop Board Member qualifications that describe the organization and outline the various skills and expertise that would provide for a well-balanced and effective Board. It is the responsibility of the Governance Committee to create this document. Ms. Crotty asked if this document will be given to the appointing authorities. Ms. O'Connor advised that once completed, it will be submitted to the ABO. Ms. Allen stated that, in addition, when, and if, a Board vacancy occurs, the Authority should apprise the appointing authority of the particular skill set possessed by the departing member and request that a person with similar skills be provided. Regarding the Model Governance Committee Charter, the ABO advised that it is just a model and should be modified to meet the needs of the Authority as appropriate, which the Authority has done.

### 2008 Draft Work Plan

Ms. Allen referenced a 2008 work plan developed by staff that outlines the proposed activities of the Governance Committee for the upcoming year. Tasks defined in the Charter are listed in accordance with quarterly meetings. Ms. Allen advised that the work plan was revised to accommodate certain activities that need to occur at specific times. January is expected to be an ambitious month. This plan assumes that there will be Governance Committee meetings in January, March, May and November. Ms. Crotty asked a process question concerning the presentation of documents to the Board for action. It was her understanding that "GC" stood for General Counsel. Staff clarified that the initials referenced the Governance Committee. Ms. O'Connor explained the process utilized by the Audit and Finance Committee as a reference. She advised that staff typically presents the actual items to the Board on behalf of the Committee, acknowledging that the Committee approved certain actions on specific dates. The Committee Chair provides a report of Committee actions to the Board. Although that process is practiced by the Audit and Finance Committee, the Governance Committee could opt to have the Chair present the items to the Board. Both Ms. Carey Cassidy and Ms. Crotty suggested that the Governance Committee employ the Audit and Finance Committee's process relative to the presentation of items to the Board for consistency.

Mr. Plunkett noted that the work plan suggests that the Governance Committee conduct four meetings in 2008; however it was his recollection that the charter only requires two. Ms. O'Connor confirmed that his understanding was correct. Mr. Plunkett recommended that meetings of the Governance Committee be conducted quarterly, in coordination with Board meetings if possible.

### Adjournment

There being no further business to come before the Governance Committee, on the motion of Ms. Carey Cassidy, seconded by Ms. Crotty, without any objections, the meeting was adjourned at 9:39 a.m.