

# MINUTES OF THE 489th MEETING OF THE OHIO TURNPIKE COMMISSION

February 10, 2003

Pursuant to the bylaws, the Ohio Turnpike Commission met for a meeting at the Commission's Administration Building at 10:02 a.m. on January 21, 2003, with members of the staff: Jerry Pursley, Deputy Executive Director; Daniel Castrigano, Chief Engineer, James Steiner, CFO/Comptroller; Tim Ujvari, Maintenance Engineer; Rob Fleischman, Asst. Chief Engineer, Sharon D. Isaac, Director of Toll Operations; Dick Morgan, Manager, Information Systems; Dave Miller, Chief Auditor; Kerry Ferrier, Traffic Engineer; William Keaton, Telecommunications Manager; Richard Lash, Director of Safety Services; Lauren Hakos-Dehrmann, Manager, Public Affairs, Heidi Jedel, Crickett Jones, Tracy Cowley and Diane Pring.

The Chairman then called the meeting to order and requested the Asst. Secretary-Treasurer to call the roll.

A vote of ayes and nays was taken and all Members present responded to roll call as follows:

Ayes: Chairman Greenwood, Mr. Wilkins, Mr. Strnisha, Mo Darwish; Mr. Dixon (*arrived 10:19 a.m.*)

Absent: Senator Armbruster and Rep. Buehrer

Chairman Greenwood stated that The Ohio Department of Transportation's Director, Gordon Proctor, is not here today but Deputy Director Mo Darwish is here and authorized to vote for him. I think Senator Armbruster is on his way and Mr. Dixon is on his way, too. We have a number of guests here today, so I'd like everyone to introduce themselves as we customarily do:

Eric Erickson, Fifth Third Securities; Lt. Derr, OSHP; Bobby Everhart, Mike Burgess, URS; Matt Stuczynski, Nat City Investments; Tony Yacobucci, HNTB; Gil Brindley, Dick Corp.; Mike Farley, OH/Kentucky Concrete Construction Assoc.; Stefan Holmes, First Merit Bank; Floyd Jeffries, Kenny Triplett, Steve Mayor, Steve DeLong, Operating Eng. Local 18; Joe Disantis and Joe Bernardo, Legal Department; Tom Travis, HMS Host, Mike Farley, OCCA; Bob Martell, Hardee's; Mike Redden, Gladioux Corp.; Kristin Yarborough (Elyria Chronicle).

This is the 489th meeting of the Ohio Turnpike Commission, and we are meeting here in the Commission's headquarters as provided for in the Commission's Code of Bylaws.

The Chairman stated that various reports will be received, and we will act on several resolutions draft copies of which have been previously sent to Members and updated drafts are also in the members' folders. The resolutions will be explained during the appropriate reports.

Chairman Greenwood said I think you have all been sent copies of the Minutes from the last meeting for January 21 – may I have a motion to adopt those Minutes? Mr. Wilkins moves and Mr. Darwish seconds. Any discussion regarding additions or deletions to the Minutes? If not, please call the roll.

Roll: Mr. Wilkins- yes; Mr. Darwish-yes; Mr. Greenwood-yes; Mr. Strnisha-yes. The Minutes are adopted.

If there are no questions, I'd like to proceed with the report from the Secretary-Treasurer.

Mr. Strnisha said the following items have been sent to the members since the last regularly scheduled meeting of the Commission on January 21, 2002:

1. Minutes of the January 21, 2003 Commission Meeting
2. Traffic & Revenue Report, December, 2003 (*revised*)
3. Traffic & Revenue Report, January, 2003 \*
4. Total Revenue by Month & Year, January, 2003 \*
5. Investment Report, January, 2003 \*
6. OTC Budget Report (12 months in 2002)

7. OTC Financial Statements, December 31, 2002
8. Various News Releases

*\* in Commission Members' folders*

Chairman Greenwood asked if there were any questions for Mr. Strnisha. Thank you for your report. Financial and budgetary matters, Mr. Steiner?

Mr. Steiner reported that after another record-setting year for traffic in 2002, we are off to a very good start in 2003. Passenger car traffic during January of 2003 totaled 2,565,000 vehicles surpassing the prior record established in 2002 by 23,000 cars or 0.9%. Commercial traffic during January totaled 688,000 vehicles exceeding the prior year's total by 19,000 vehicles or 5.2% and falling short of the all-time January record set in 2001 by less than 5,000 vehicles or 0.7%. Total traffic during the month of January totaled 3,254,000 vehicles surpassing the previous records set in 2002 by 42,000 vehicles or 1.3%.

This past Friday (February 7) our auditors from Deloitte & Touche completed the major portion of their field work. They will be continuing to review the records from their offices and they will be preparing their reports over the next several weeks. From my prospective the audit has been going exceedingly well and we are certainly on-schedule to issue our Comprehensive Annual Financial Report by the April 1 due date. Mr. Chairman, that completes my report and I'll be happy to respond to any questions.

Any questions for Mr. Steiner? No.

The Director inquired if bond counsel be giving a report today? Mr. Steiner replied that our financial advisor, Eric Erickson will be giving a brief report. Any other questions for Jim? Thanks.

Senator Armbruster has joined us (10:08 a.m.). Staff reports – our Executive Director, Mr. Suhadolnik.

Mr. Suhadolnik said this will be a short report as it's has been less than three weeks since the Commission met, but the first thing I need to mention and you are probably a little bit saddened, but we received a letter that Mr. Strnisha will be resigning as a member of the Commission effective

February 28<sup>th</sup>. I think he deserves a round of applause for his dedicated service. I understand he was appointed on August 13, 1999 and the Commission has been better served because you have been a member of it. I thank you for that good service.

I continue to visit editorial boards. We visited the Youngstown Vindicator a couple weeks ago. We have meetings scheduled this week with the Elyria Chronicle, The Toledo Blade. In future weeks – the Lorain Journal. We tell folks what we are doing and try to get some favorable press for the Ohio Turnpike Commission.

I continue to visit facilities - I think now I have visited about 30% of the facilities – I made it to Westgate. I've seen old service plazas, new service plazas, old toll facilities, new toll facilities and some of our maintenance facilities.

In terms of the Rt. 58 project, I think we'll hear a little more about that when we have our Legal report. We have acquired more property and we are making a concerted effort to acquire the remaining property so we can move forward on that project.

Exit 71 in the Toledo area, we are going to get another appraisal of the personal property so we can consider moving that project forward.

I think there was some communication with Commission Members with the possibility of changing the regular date of our meetings in the Bylaws. At Jim Steiner's request – I'm not trying to blame him, but his request I understand it's difficult to compile all the financial data for his reports depending upon how that second Monday falls. Sometimes it's difficult to get all the financial data together in time and when he races to get it together, you – the Commission Members – have no time to review that information. It might be in the best interests of the Commission to move the meeting date to the third Monday instead of the second Monday. I'm not asking for any action on that but I'm asking you to think about it and if it makes some sense we might consider changing that date to the third Monday so there is more time to prepare the data and that you have a reasonable amount of time to look at it so it makes some sense to you.

The last thing, we will have a new Personnel Director, Anne Fornshell, will be coming on board effective February 17<sup>th</sup>. She is currently the Director of

Human Resources for ODOT in Columbus. I think it will be good change for the Commission and you'll get to meet her at the next Commission Meeting.

Overall, several of the projects that the Commission has been working on, and I think the various individuals will tell you more about them when they give their reports.

Chairman Greenwood asked if there were any questions for Mr. Suhadolnik. The Chief Engineer, Mr. Castrigano -

Mr. Castrigano said the first thing I'd like to address is the Commission resolution awarding our first resurfacing project of the season. You should have in your packet a resolution entitled, "Resolution Awarding Contract No. 59-03-02 (Part A and B). This resolution is for resurfacing the Turnpike's mainline roadways, both eastbound and westbound, from Milepost 143.08 to 144.40 in Erie and Lorain Counties, Ohio. This project allowed the contractor to bid on either Part A (westbound roadway) or Part B (eastbound roadway) or a combination of both parts. We received four bids in response to our invitation and the apparent low bid was submitted by Gerken Paving, Inc. from Napoleon, Ohio as a combination bid for both parts A and B in the amount of \$4,887,760.65. Myself and the Engineering Dept. have reviewed this bid. This contractor has performed projects of this nature successfully in the past for the Commission and the total amount bid is below the engineer's estimate. If General Counsel will read the Resolved, please:

"RESOLVED that the combination base bid of **Gerken Paving, Inc.** of Napoleon, Ohio, in the amount of \$4,887,760.65 (using crushed slag in the surface course), for the performance of Contract No. 59-03-02 (*Part A and B*) is, and is by the Commission, determined to be the lowest responsive and responsible bid received for the performance of said contract, and is accepted, and that the chairperson and executive director, or either of them, hereby is authorized (1) to execute a contract with said successful bidder in the form heretofore prescribed by the Commission pursuant to the aforesaid bid; (2) to direct the return to the other bidders of their bid security, when appropriate, and (3) to take any and all action necessary or proper to carry out the terms of said bid and of said contract; and

FURTHER RESOLVED that Project No. 59-03-02 is designated a System Project under the Commission's 1994 Master Trust Agreement."

Mr. Castrigano said I would further recommend that the Commission adopt this resolution.

Chairman Greenwood said I'll entertain a motion to adopt the resolution before we have a discussion. Mr. Wilkins moves and Mr. Darwish seconds.

Discussion on the motion or any questions for Mr. Castrigano before we go. Hearing none, will you please call the roll.

Roll: Mr. Wilkins-yes; Mr. Darwish-yes; Mr. Greenwood-yes; Mr. Strnisha-yes.

Mr. Castrigano said he also had a very brief construction update – obviously we have not done a lot of work on the roadway with the winter weather and the conditions we have been having on the road over the winter, however, work has proceeded on the Cuyahoga River Bridge. All of the precast concrete girders are now in place on the new westbound structure and the contractor will continue to form the westbound bridge deck through the remainder of the winter as the weather permits.

A couple of other items I'd like to cover, the Executive Director, Asst. Chief Engineer and myself have recently attended meetings of the Ohio Contractors Assoc. We have attended their Forecast Nights providing the construction programs for 2003 to the member contractors of OCA. On January 30<sup>th</sup> we attended the Cleveland meeting in Independence and on January 23 was the Akron meeting and February 20<sup>th</sup> we'll be attending the Youngstown Chapter meeting.

Late last year the American Road and Transportation Builders Assoc. recognized the top 100 American transportation projects in the 20<sup>th</sup> century in the entire country. There were two construction projects in each state awarded and recognized as a "top" construction project. The original construction of the Ohio Turnpike back in the early 50's was one of the two projects in the state to receive this recognition. Interstate 70 was the other project. We received a plaque and this plaque recognizes the construction of the original Turnpike within 18 months back in the early 50's.

Finally, I'm sure everybody has heard on the news the snowfall, weather, salt shortages that various communities have been having – fighting the storms throughout the past winter. Just to give you a little information, where we stand with our program – the Cleveland area – we have already surpassed the entire amount of snowfall for the winter of 2001-2002 by approximately 40%. Toledo – we have surpassed it by 80%. Snowfall is

greatly increased and the temperatures have been extremely low which relates to increased overtime, increased salt applications we have applied through last weekend – we have exceeded our salt, snow & ice expenditures, salt applications by almost three times over the last years. I don't have up to date budget numbers on the actual costs, but I have checked with our Maintenance Dept. Obtaining salt is not a problem. We have been able to keep the domes relatively full and we will continue to fight the storms as they come to us. I know we are expecting more snow this week and Tim I'd like to express my appreciation to the Maintenance Dept. for the work they have been doing to keep the roadway clear during this tough winter. That completes my report, Mr. Chairman.

Chairman Greenwood said thanks and any questions anyone might have? Our financial advisor, Mr. Erickson.

Eric Erickson said every year we like to take a look at the existing debt outstanding just to see if there are any opportunities for refinancing and as you are aware in 1998 and 2001 the Commission has undertaken to advance refund or refund some of their existing debt. I just wanted to review with you where we are with the debt outstanding in terms of whether it is economically feasible or advisable to refund any of it. (He distributed copies of a booklet to Commission Members entitled, "Bond Issue Refunding Information.")

*Mr. Dixon arrived at 10:19 a.m.*

If you turn to page 2, there is a spreadsheet that shows the various series of debt that represents the total debt outstanding for the Ohio Turnpike Commission. I'd like to call your attention to the 1998-A and 2001-B. Both of those were refunding issues. They were refinancings of the Commission's existing debt. Those two currently by law cannot be advance refunded. The IRS allows one advance refunding per issue outstanding. That's not to say you can't do that for current refunding, but as long as the bonds are non-callable, you cannot issue a new series of bonds to replace that existing series.

So the ones that we took a look at were the 1994-A, 1996, 1998-B and 2001-A issues and I have tabs in each one of these. I'd just like to walk through briefly and share with you either the savings or lack there of. If you turn to the first tab in 1994, this issue could conceivably be current refunded in the fall of 2003. However, based on today's interest rates which are very, very attractive you can see that the savings on the bottom of page 5 is only 2.4%

of present value. What does that say? The GFOA has determined that 3% present value savings is sort of fair-minimum savings that you would need to really proceed with an advance refunding. Some state agencies like closer to 5%. In the past the Commission has looked at two things – not only the actual percentage of present value savings but the nominal dollars being saved. In your prior issues, it was little over 3% and there were several million dollars of savings that accrued from the advance refunding. You can see in this particular one, there is an only present value savings of \$290,000. I would clearly not at this point recommend advance refunding or currently refunding this particular issue.

If you turn to tab 1996, there is a comparison schedule in there on page 10. You can see that in only one of the years there is an actual savings. If you look down at the bottom you see a present saving of .05%. With today's interest rates and the existing issue, this obviously does not make economic sense.

What could change to really make this make more sense from an economic standpoint? I know this sounds kind of backwards, but if interest rates go up this may work. What does that mean? If you recall I said that a lot of these issues except for 1994 are not callable. What happens with an advance refunding is a new issue of bonds is sold. The proceeds of which are deposited to an escrow fund. The escrow fund is invested in short-term, U.S. government securities. If those interest rates go up, the economics of this could change and it could change overnight. So sometime over the next year or so, as interest kick-up a little bit on the short end of the yield curve these may make more sense. That's why we continue to look at these on an ongoing basis.

Proceeding further in 1998-B looking at the comparison schedule on page 15, you can see that's deep in the mega in terms of the savings. Now, this says as well that when you actually issued those bonds in 1998 you got very good interest rates. Again, all your debt outstanding is still under 5%. It was 4.92% was the overall TIC of your debt which will be reported in your Annual Report this year. Again, proceeding with tab 2001-A and going to page 22, the comparison on the bottom that still does not make economic sense. There are more schedules in here that I provided you so you have in your file a total analysis of each individual issue. This doesn't necessarily imply that there couldn't be some advance refunding based upon a derivative concept. That is to say – replacing fixed debt with variable rate debt. We



are continuing to look at those ideas, but that's a different leap if you will. Currently we have certainty with this debt whereas obviously if we switched to a variable rate we'd have some uncertainty. That would require a policy change of the Commission. We'll continue to bring you ideas and concepts as we go forward, but on an annual basis, I just wanted to take a look at this and bring you up to date on the advance refundings. Any questions? Thank you.

Chairman Greenwood asked for OSHP report – Lt. Derr?

Lt. Derr reported that Capt. Ferguson wanted to apologize that he was unable to be here today, but he had a scheduled vacation in Florida – much deserved.

Since the last meeting we have had two fatal accidents that occurred on the Ohio Turnpike. The first one occurred on January 19<sup>th</sup> at 9:30 p.m. involving students traveling westbound on the Ohio Turnpike near MP 25. They were in the passing lane, attempted to move to the right lane, lost control, went off into the median and struck a guardrail with the right rear side of the car. A 22-year old female from Michigan was killed in that accident.

On February 3 at approximately 6:30 p.m. a vehicle was traveling on the Ohio Turnpike near MP 175. It was driven by a 54-year old lady from Aurora, Ohio. As she was traveling eastbound a vehicle approached her from the rear, struck the vehicle. Her vehicle traveled off the right side of the roadway and turned over several times and ejected her at that time. The vehicle that did strike her left the scene of the accident and was located approximately 5-1/2 hours later. We have charged that subject, a 29-year old male with vehicular homicide and felony leaving the scene of a crash.

Did you have any questions about the crisis that we have had?

Director Suhadolnik asked if we have had two in total for the year?

Lt. Derr said those are for this year – January 19 and Feb. 3. Then on February 7, Governor Bob Taft announced that the Ohio terror strength level was raised. What that does to us is it increases our security around state office buildings, also increases our patrols around the larger cities such as Cleveland, Columbus, Toledo, those areas. It means we are more involved

with vehicles that are transporting hazardous materials or fuels that could be used in terrorist attacks. We are at a heightened level of security at this time. That's going to keep us busy. Any questions?

Senator Armbruster asked, how does that affect the Turnpike? I believe we fund the OSHP as the Turnpike's officers. Has that impacted our facilities?

Lt. Derr said what it does is that we have motor carrier inspectors assigned here on the Turnpike – 7 of them. What they will be doing is performing more hazardous inspection on hazardous loads, make sure they have the correct drivers, that the vehicles are not stolen, make sure that all the shipping papers are correct, and they match up with all the other papers that are involved with that particular load and make sure it is not terrorist threat or vehicle's been stolen.

Senator Armbruster asked – those 7 that are assigned to the Turnpike, how is that in relationship to the rest of the state close to us – like 18, 224? I go back to the same questions – getting truckers back on the Turnpike rather than off the Turnpike. So are we more secure than they are down on 18 or 224?

Lt. Derr replied yes, I would say we are. We do more checks of rest areas and buildings here on the Turnpike than you probably would in a rural area where you may not have the amount of officers to keep track. Here, on the Turnpike we keep an eye on all the buildings, make sure they are secure, make sure there isn't any vehicles that appear to be out of place or that we would consider suspicious – that would definitely be checked out to a higher degree than would possibly be in other places.

Chairman Greenwood asked if there were any other questions? Thank you.

Chairman Greenwood advised the Trustee has no report today. General Counsel, your report?

Noelle Tsevdos said good morning. I have provided you with a report of my activities since taking the position of General Counsel on January 21<sup>st</sup> and it outlines a number of administrative changes that I have implemented since taking over focusing on our use of outside counsel and the structure of those relationships. I'll be happy to answer any questions. I have identified some of the firms that I have met with along with Deputy Executive Director,

Jerry Pursley, who is a lawyer and he has been very helpful in assisting us in making decisions with regard to outside counsel. Our primary focus is adding more structure to our relationships and implementing contracts for all the outside firms we use and negotiating rates for their use which more closely match the Attorney General's rates for special counsel. I'm happy to answer any questions regarding those administrative changes.

Chairman Greenwood said I have a couple questions. I can't remember from looking at the statute, does the change in counsel require Board action?

Ms. Tsevdos said I don't believe so.

Chairman Greenwood said if not, what criteria was followed for instance – you decided to terminate the relationship with the Climaco firm. What was the reason for that?

Ms. Tsevdos said my primary reasoning was – it was my understanding they were retained to attend Commission meetings. I didn't feel in my judgment that we needed to have outside counsel based upon my background with the Attorney General's Office. I felt comfortable that I could handle representation and any questions from the Commission at the Commission meetings. They weren't handling any other particular matters, and there was nothing ongoing that they were handling for us at this time.

Chairman Greenwood – I see Roetzel & Andress interview – relating to Workers' Compensation. Who was handling the Workers Compensation matters prior to?

Ms. Tsevdos said there were a couple of firms primarily Millisor & Nobil. They had done a very good job and we may continue to use them in the future. We had a number of cases that were scheduled in the short-term that we had to get sent out right away. Roetzel & Andress I felt was appropriate because they have offices throughout Ohio including Toledo, Youngstown, Cleveland, Akron. One of the decisions I made in consulting with the Executive Director was that I didn't feel it was necessary for us to pay outside firms for travel time. The benefit of using Roetzel & Andress is because they have locations in cities where we have hearings we are not paying for that additional travel time.

Chairman Greenwood, has that been occurring prior?

Ms. Tsevdos said yes.

Chairman Greenwood said what were the circumstances – has someone from –

Ms. Tsevdos said we were using Millisor & Nobil who has offices exclusively in Independence so we were paying travel time to Toledo and Youngstown. Two sets of hearings that we had that had to be sent out immediately were in Toledo and Youngstown.

Chairman Greenwood and your meeting with Calfee, Halter & Griswold?

Ms. Tsevdos – correct, one of the resolutions that is before you today is with respect to a real estate matter involving reconstruction project at the Norfolk Southern Railroad Bridge at MP 182. I did consult with somebody in the Real Estate/Litigation Dept. regarding that matter to give us advice regarding what our best course of action was.

Chairman Greenwood said who is handling that – that has been going on for a while hasn't it? Who was handling it before?

Ms. Tsevdos said that was being handled in-house.

Chairman Greenwood said I also read something about labor –

Ms. Tsevdos said correct – on January 31<sup>st</sup>, the Teamsters Local 436 filed a Unfair Labor Practice Charge against the Commission in relation to a change in the payroll processing. What had happened was after the Union contract was ratified the union contract modified the work week for the Maintenance workers. As a result of that change in the contract, the Commission did implement a change with regard to payroll processing. The Union had filed a grievance and now they have also filed a Unfair Labor Practice Charge.

I had represented the State Employment Relations Board (SERB) in an open meeting act case and because of that I am precluded from representing the Commission in that matter. Our Position Statement is due on February 13<sup>th</sup>. Gary Johnson of Johnson & Angelo has been handling labor negotiations and labor matters for the State of Ohio for several years. He has a very good reputation and after interviewing him, his firm also has prior experience

working with the Teamsters, Local 436. We felt comfortable that Gary was the right attorney to handle this particular matter.

Chairman Greenwood inquired who we had for the contract negotiations?

Mr. Castrigano replied we did the majority of the negotiation in-house with our staff and Dave Millstone from Squire, Sanders & Dempsey came in at the end and helped us wrap it up.

Chairman Greenwood said Dave is more of a negotiator as opposed to dealing with grievances?

Ms. Tsevdos said I think he is a full-range labor attorney. He was charging the Commission \$350 an hour and I'm sure he is very good but one of my goals is to review more closely the rates that we are being charged and the structure of our contract with outside counsel.

Chairman Greenwood said so that was what drove your decision to change labor counsel – primarily financial?

Ms. Tsevdos – yes and experience in dealing with this particular local.

Chairman Greenwood said I thought Millstone had a lot of experience in dealing with Local. I thought he negotiated a lot of contracts that's why we got him.

Mr. Castrigano said Squire, Sanders & Dempsey has typically assisted us and has been the lead negotiator with our bargaining unit – regardless of who the representative was. I don't know first-hand how much experience David had at Squires with 436.

Chairman Greenwood said I remember when the Teamsters won the election, I remember one of my emphases was and what I emphasized at the time was we retain legal counsel to assist us in the negotiations and that counsel should be experience in negotiations with the Teamsters. I was told Mr. Millstone had extensive experience with the Teamsters.

Senator Armbruster I agree with that. In my previous life as Mayor of the City of North Ridgeville, I had extensive experience with Squire, Sanders and David personally and have had conversations and know that he has

involved with the Teamsters and all other negotiations, ASME, Police & Fire, and actually was our counsel for the City of North Ridgeville for over 6 years. I guess – not suggesting that Mr. Johnson is better or worse – I’m just suggesting that Squire, Sanders has a complete practice in negotiating and I think in this case, from my understanding, he was not involved in the negotiations until the end and truly was brought in I think at the request of our General Counsel or the Commission. And when you do something like that it is very, very difficult understanding the negotiations that I went through in sitting on the negotiation team for those six years to even get some changes or the negotiations are completed, we just want to wrap them up at that point and get them completed. I think the Turnpike Commission was under the gun to get them done.

Chairman Greenwood said my only comment would be I’d be interested to know if the Board has to review the decision on hiring outside counsel and secondly, being a lawyer myself, I’m not telling you how to your job but there are very few lawyers that I know that you can’t negotiate. So maybe it’s too late, maybe it’s been done, but if the concern is solely with price, I would and you’re satisfied with the product, it might be a good idea to go back and talk to him and ask him if he could do it for a lesser rate.

Ms. Tsevdos replied that it is not a done deal. I was apprising you of activity. We have not entered into a contract with the exclusion of the Workers’ Compensation matters that had to be sent out right away. I am happy to review it or take any input from the Commission.

Mr. Dixon I think, without getting into a discussion about pricing and this sort of thing and since we don’t have that much information, I think some of the things that are on the memo from Counsel are policy matters and policy matters come before the Commission. The Commission sets policy for this organization and I think we should be and I’m surprised that you were not made privy to some of the things on here and this is the first time you have reviewed this memo. Is that correct?

Chairman Greenwood said yes.

Mr. Dixon said I think there needs to be a presentation from the head of Legal to the Commission on changes that she wants to make – not necessarily in changes of firms because I trust her decision but as far as routine and policy, I as a Commission Member need to know the way this

decision process is made and I need to set policy on it so it becomes standard and we don't make this up as we go along.

Mr. Darwish said I think this is what General Counsel is telling us now – informing us. Am I correct?

Ms. Tsevdos – correct.

Mr. Darwish said you haven't made any changes, you are bringing it to our attention now to talk about it. I just wanted to make sure no decision has been made.

Ms. Tsevdos replied, correct.

Mr. Dixon said it doesn't say on here, "informing of" it says "operational changes." To me that's something that has been changed. Correct me – maybe it should be "proposed operational changes." If we add that word, I would happy to receive this paper and we can go forward have a discussion on it. Should it be "proposed operational changes"?

Ms. Tsevdos, well with respect to the one matter – the Workers' Compensation hearings – we did have to send that out right away – due to the timeframe of the hearings. I'm happy to make a presentation or develop a policy for the Commission's review with regard to our use of outside counsel.

Director Suhadolnik said I need to speak up here for a moment myself – I have spoke previously with counsel and new General Counsel, we went through the various projects that were somewhat in process and I think there was a little hesitancy and some uncertainty that some of the projects were stuck in neutral and I thought it was important that we get some of these projects going involved needs that we had to complete the third-lane and other things that were happening.

It's no secret that we hired a new legal counsel and I guess I understood and I'm not trying overstep my authority or step on the Commission Members, I thought that the legal counsel had the right to hire counsel, as necessary. It was the understanding that I had with previous legal counsel. I was not aware that he had brought any of those firms before the Commission so I didn't' think we were doing anything that was above and beyond our

bounds. There are a couple of items that we were going to ask the Commission to approve or we were going to take some action - on eminent domain or something of that nature – so were going to bring those kind of policy matters before the Commission, but in terms of who we hired to carry those out, I thought that was a decision up to our legal counsel with discussions here, but we can talk about that.

Mr. Dixon, this is within your boundaries, but as far as a relationship and there are a lot of new faces on this Commission, OK. As far as a relationship and understanding the chain of information, I think something as major as changing a law firm, I think the Chair should have been in the loop – not necessarily even as far as helping to make the decision, but informationally putting it before him for the first time and if he decided the rest of the Commission needed to know about this, he would make that phone calls to the Commission Members to make us aware that these changes have been made. The policy part, though, I'm really kind of protective of my territory and the policy part does belong before this Commission and that should be presented as a proposed change for the Commission's approval and I think that the Bylaws will hold me up on that.

Senator Armbruster said, I guess the question I have do we have contracts now with?

Ms. Tsevdos said there are no contracts in place.

Senator Armbruster said, did I hear you say there are going to contracts?

Ms. Tsevdos said correct – there is a standardized contract that I have drafted for the use of outside counsel which defines the relationship and the obligations of both parties and corresponding to the contract is a letter of assignment which assigns each particular matter to the firm and negotiates a specific rate and a budget for each matter so there is more accountability as far as what we are spending on outside counsel.

There are some immediate things that do need to be sent out with respect to the Workers Comp. and the labor matter before SERB. We need representation on that right away.

Senator Armbruster said Mr. Chairman, I guess – would it have been to absolutely have a contract?



Ms. Tsevdos said I believe based upon my own background that because we have a budget that we are confined to in the Legal Dept. that it is necessary to have a contract and also a rate established and boundaries of how much you are going to be charged by the outside firm. I think that it just good accountability. That would be my recommendation. The contract itself does not obligate us to use that firm exclusively. It merely sets up the arrangement between the Commission's Legal Dept. and the firm as far as if they are assigned matters, those are the terms and conditions under which the arrangement will be met.

Senator Armbruster said specifically then if we sign a contract – are these long-term or short-term?

General Counsel said no, they are short-term. They expire at the end of each calendar year. The contract itself, and I'm happy to submit it to all the Commission Members does not obligate us to use any particular firm or to guarantee any amount of work during that year. It merely sets forth the arrangement so that there is specific term and conditions and as far as file, information, how the matters will be reported, how often, billing, invoicing – it mirrors the Attorney General's special contract agreement. I know from my experience in the Attorney General's Office any time you spend something out to an outside firm, you do have an agreement.

Senator Armbruster said there is a difference between an agreement and a contract. I would assume that an agreement is you will complete it and it's all inclusive. A contract is specific to the words in it. I'm not an attorney but I know if I wrote a contract and I didn't cover something and if I have an agreement it's all inclusive as far as I'm concerned – spoken or not spoken to.

Mr. Wilkins said I would that maybe at the next meeting General Counsel could review for us the statute and I think it would be nice if we were all clear on who has the authority to retain counsel so that we put that matter behind us and I would like to see the standard contract form, the standard retention form and a standardized rate schedule and then we won't really know if we have to approve it or not until we are in agreement as to what the statute says or the bylaws. And then I think we ought to go ahead and authorize you to proceed with the Workers' Comp. and labor matter in the

meantime until we get a chance to take a look at that. That would be my suggestion.

General Counsel said I'm happy to do that.

Mo Darwish said I'd just like to add we are talking about Legal General Counsel here that we are going to hire and we have to bring it to the Commission, to me this is a consultant basically. What is the difference between this one and bringing a consultant firm that the engineers do? Do we bring this to the Board for approval?

Mr. Castrigano advised no, we don't.

Mr. Darwish said so this is a consulting firm that.

Mr. Castrigano said in the Engineering Dept. we do something very similar. As you know, we send do establish agreements with the particular design consultants, however, those agreements do not as Noelle assign any work to the engineer that is the basis to assign a specific project to a design consultant.

Mr. Darwish said that is my question.

General Counsel said I'm under the impression that Commission vote is not required to hire outside counsel and that historically has been handled by the Legal Dept. without Board resolution. None of these contracts, first of all the entire budget for outside counsel is \$350,000 for the year. So none of these contracts exceed the amount by which the Executive Director's authorized to enter into an agreement.

Mr. Dixon, but what is the amount per incident – is it \$25,000.

Response, I think it's \$500,000 that you can approve without Commission approval.

General Counsel that's right. The particular Workers' Comp. matters there is an established hourly rate of \$125 per hour and the budget for each matter was not to exceed \$3,500. Those contracts and those invoices will most likely come far under.

Mr. Wilkins said I think what we ought to see are the standard contract forms, the standard retention agreement and the rate schedule. I think we should see that on engineers as well. I don't think we ought to approve each engineer but we ought to know what the rules are. That's all.

General Counsel said I'm happy to do that.

Mr. Dixon said with the consultant – this is something that I just do, OK? With the consultants, as a matter of form, that's part of a contract and that contract must be approved by the governing body, is that correct or incorrect?

Mr. Castrigano responded, typically the agreement assigning the design portion of a contract is obviously done prior to the construction documents. The construction contract itself is brought to the Commission – if it's over \$500,000.

Mr. Dixon said so theoretically Mr. Suhadolnik can approve consulting on any project that this organization considers going into – can approve consultants, architects?

Mr. Castrigano said design consultants, engineers, architects.

Mr. Dixon do you want anyone involved in the design of a project up to \$500,000 without the Commission even knowing about it?

Mr. Castrigano said that's correct.

Mr. Dixon said is that a statute or a policy?

Mr. Castrigano responded that is in the Commission's Bylaws, however, that item the \$500,000 limit going to the Commission, was one of the items if you have seen the performance audit by the OAS that was one of the items to bring under consideration to bring to the Commission to revise the Bylaws.

Mr. Dixon said it should. If I was the Executive Director I would not want that responsibility. I wouldn't want to make a \$500,000 decision without having my Commission back me up. When the stuff hits the fan, I want to have some backup there and don't want to stand there by myself. So I really

think that there to be a directive, put that on, I wouldn't want it. You're a tougher guy than me.

Mr. Castrigano said let me follow up on that matter. The engineering design consultant process that is a documented procedure - if Mr. Wilkins would like to see, we could provide that to the Commission. That was one of the things that was reviewed by the Auditor of State in their performance audit. Our procedure is very similar to ODOT's and they were very satisfied with the Commission's procedure for selection of design consultants and that is contained in the performance audit also.

Mr. Dixon, said I understand.

Mr. Chairman said why don't we take this up further as I don't think there is anything that requires action today. Any more on your report, General Counsel?

General Counsel said no I don't.

Mr. Chairman said before we adjourn I think Mr. Strnisha wanted to say a few words.

The Executive Director inquired, don't we have a resolution?

General Counsel said we have two resolutions actually I apologize. One involves the project in the City of Hudson, Stow Road and I believe our Chief Engineer can give the background regarding this project?

The Executive Director said we're giving you the chance as Mr. Dixon said, to back-us up on this one?

Mr. Castrigano as part of the third-lane program, construction of the third lane affected our maintenance, our snow and ice operations and emergency response for the 160 miles containing the third lane. Obviously we built the third lane in the median of the Turnpike - we lost the majority of our cross-overs to facilitate maintenance and emergency vehicles. Also, we cannot turn our heavy show and ice removal equipment in the median any longer. Hence, we thought it necessary to build numerous access points from the Turnpike to the local roadways - these access points are gated, they are used for emergency access for turning our vehicles for snow & ice at the end of

our sections. This resolution provides for appropriating property from the City of Hudson for a maintenance cross-over that is required at Stow Road. That's the operational need for the property.

General Counsel read the resolution as follows:

“FURTHER RESOLVED that the general counsel be, and she is hereby instructed to do or cause to be done all things that may be necessary in the premises in order that proceedings for the appropriation of the property described above may be commenced.”

Senator Armbruster inquired, General Counsel, you have had additional conversations with the City, is that correct?

General Counsel said correct, well we attempted to contact them to inform them that this issue was on the Commission's agenda.

Senator Armbruster said it is my understanding that they have not been –

General Counsel let me clarify – there are two parcels one is owned by the Hudson Township Board of Park Commissioners. The property is being used as a park and the City charter precludes the city of Hudson from selling any park property for any other reason and therefore we were advised by City officials that we would need to proceed with eminent domain proceeding and because of the second parcel is also owned by the City of Hudson. They indicated that we just proceed with eminent domain proceedings on both parcels.

Chairman Greenwood, we have a resolution declaring the necessity of appropriating property and directing that proceedings to effect such appropriation be begun and prosecuted – this is at Stow Road, as explained by General Counsel, is there a motion to adopt the resolution?

Mr. Wilkins moved, and Mr. Darwish seconded.

Mr. Darwish asked the question, did we try to negotiate and trade property with the City like something else they have with the Turnpike? I know they don't sell – government entities don't sell so you have to take other action. Did we try to trade with them, something else?

Mr. Castrigano responded the only property that we own through the City of Hudson is along our right-of-way. It's not feasible in this instance. We don't have any access property in the Hudson area.

Executive Director Suhadolnik asked to make another comment. I think we have also agreed under any circumstances we would try to do our best to be a good neighbor to put in a gate, limit that access and possibly even shield it in some way, if possible.

Mr. Castrigano said that's correct, Mr. Chairman, basically what we are doing is getting a slice of property along the right of way fence to provide us with an access drive just outside our right of way fence up to Stow Road. The access drive, the location would be a shear drive with the Hudson Park area that does have a gravel drive in that area now. We would improve that drive for the Hudson Park – we would pave that driveway, install a gate between the access point from that driveway to the Turnpike mainline. We would also provide some tree plantings in the area, if required.

Chairman Greenwood asked if there were any other questions.

Senator Armbruster why do we have to take this property by eminent domain? Why can't we just negotiate a settlement with the City and the Park District?

General Counsel responded that we have been in negotiations for over a year and we tried to negotiate a resolution and they indicated to us that they could not sell us one of the properties because it is park property and the second property they decided because we would have to proceed with an eminent domain on the park property that we should just proceed on both parcels. We have made every effort to try and reach an agreement with them.

Mr. Castrigano added I believe there is a deed restriction on this property that can only be used for Park purposes and if that was to be changed it would have to go to a vote to the residents of Hudson.

Senator Armbruster said I would be very concerned with if we are going to make improvements beyond eminent domain, because in normal instances, when we take property by eminent domain, does any enjoyment

go back to the original property owner beyond what they already have? I'm thinking if we are going to add bushes, trees and allow them to use it, does that in fact impact any other eminent projects in the future for this Turnpike Commission as we look at it as to access?

General Counsel said I was not a party to the prior discussions. I think it was more an effort to try and work with them and maintain a good relationship with them.

Senator Armbruster said Mr. Chairman, I agree with that but I'm just wondering how does that impact us in the future when we do have eminent domain involved? Can that be negotiated beyond the eminent domain? By the way you can take this property by eminent domain but we need to do this, this and this.

Mr. Castrigano responded that the actual improvements to the roadway – the paving of the roadway is required for Turnpike operations for our vehicles.

Chairman Greenwood said I think your question is more directed to are we setting a precedent here for future locations where people will say that you need to add the value to the taking the installation of various amenities and is that going to establish a precedent in the future? You probably have one particular in mind that is going on right now that you are aware?

Senator Armbruster said – absolutely. Eminent domain, Mr. Chairman, and again I am not attorney, has a specific purpose with a specific reasoning behind it as to what we can or cannot do based on a government entity. I would certainly caution us as we move forward and nothing against – I think we should have some bushes, trees and whatever – I caution us against the fact as the law is very specific in how we take it and who makes that response. Certainly, do not give the judges the opportunity to go beyond what eminent domain has been established over the last 200 years or how long we have had that ability to do.

General Counsel said the discussion that were had, I believe, we in conjunction with the possibility of an agreement. There is no agreement in place between the City officials and the Commission because we are proceeding with eminent domain. I'm happy to address your concerns. I

don't know if historically we have done that and I'm happy to go back and look at prior practices to see if that was ever done but at this point we don't have an agreement to provide any amenities to the City of Hudson in conjunction with the project.

Chairman Greenwood said I think you can keep those pretty much separate – you can take the property but it's up to the Turnpike to determine if you want to put something in there or not. I think probably everyone here would agree that there ought to be some sort of accommodation to improve relations as long as there is no quid-pro-quo, but I think that addresses the Senator's concerns which is valid. Any other questions on the resolution?

Mr. Darwish inquired what the dollar amount was?

Chairman said I don't know. Normally we do that in executive session so the whole world doesn't know. Do you want to know? We can go into executive session.

Mr. Darwish said well, we are giving authorization here typically when we are dealing with a government entity, we put a dollar amount.

General Counsel said not in these resolutions because the jury decides what the fair market value is.

Chairman Greenwood said any other questions on the resolution? Roll, please.

Roll: Mr. Wilkins-yes; Mr. Darwish-yes; Mr. Strnisha-yes, Mr. Greenwood-yes; Mr. Dixon (out of the room at this time.) There are four affirmative votes.

Chairman Greenwood said is there another resolution in my packet?

General Counsel yes there is a third matter it involves the third-lane expansion at MP 182 and I think our Chief Engineer can give you the background regarding this issue.

Mr. Castrigano said this resolution concerns the Norfolk Southern Railway Bridge located at MP 182.0 in Summit County. When the Turnpike was first constructed the original railroads we did not purchase the right of



way where the railroads crossed the Commission. We were granted easements to operate the Turnpike on the railroad right of way. We constructed a railroad bridge to continue operations for the railroad that goes over the Turnpike roadways. The original structure was constructed with two median piers similar to the Conrail Bridge just west of us here. To facilitate the third-lane expansion project we have to reconstruct that structure with a single, median pier.

Since the original construction of this bridge, the railroad has permitted fiber-optic carriers to install fiber-optic cables in the ballast of the structure. It is not physically attached to the structure, it is however, in the ballast of the structure and that is the responsibility of the Commission to operate, maintain and replace the structure. There are three carriers that cross the structure. Two of the carriers are located on that structure without the consent of the Commission. The original agreement with the Cleveland and Pittsburgh Railroad and PA Railroad Company required permits or prior authorization from the Commission's Chief Engineer to install any electrical communication lines on the structure.

We have been in contact with the fiber-optics carriers. They have been reluctant if not have refused to incur the costs to relocate the cables from the old structure either onto the new structure or underneath the Turnpike. Hence, the requirement to begin legal proceedings.

General Counsel read the resolution as follows:

"BE IT FURTHER RESOLVED that proceedings be begun and prosecuted to enforce the terms and conditions of the perpetual easement and legal rights granted to the Commission pursuant to the Agreement in effect between the Norfolk Southern Railroad and the Commission dated May 3, 1954;

FURTHER RESOLVED that the general counsel be, and she is hereby instructed to do or cause to be done all things that may be appropriate or necessary, whether by agreement or through legal proceedings, to ensure the removal of the fiber optic cable lines by the respective owners from the bridge in order to ensure the commencement of the Bridge Reconstruction Project. Any agreement reached with the respective parties shall be subject to the approval of the Commission."

Chairman Greenwood asked if there was a motion to adopt the resolution? Mr. Wilkins moves and Mr. Strnisha seconds. Any discussion?

Roll: Mr. Wilkins-yes, Mr. Strnisha-yes; Mr. Dixon-yes; Mr. Darwish-yes; Mr. Greenwood-yes. (Five votes.)

Chairman Greenwood said the resolution is adopted. Is there any further report from General Counsel?

General Counsel said no.

Mr. Dixon said I apologize for having to leave the room, but can I go on record as a “yes” vote for the previous resolution?

Chairman Greenwood said, sure that was the resolution to take eminent domain proceedings? The record should reflect that Mr. Dixon votes in the affirmative. *(Time: 11:11 a.m.)*

Chairman Greenwood said Mr. Strnisha, I received a copy of your letter to Governor Taft from Steve. I think he wanted a few minutes to address the Board and the audience and please proceed.

Mr. Strnisha said thanks, I’ll be brief, this is the end of the meeting. I did want to say a few things. I did send a letter to the Governor at the end of January – my work situations at Cleveland Tomorrow – have actually gotten rather hectic, there are a number of things – some things like the Convention Centers, have gotten into the paper – which we are pretty much in the thick of and it would appear in the near term that it is getting increasingly difficult to devote time to this obligation which I really value and enjoyed. I made the decision that this was the time even when it appeared to be my duties at Cleveland Tomorrow to present my resignation to the Governor --obviously fill it with someone who can fulfill those duties.

I did want to say mainly a few “thank yous” in the three years - there have been numerous staff, but obviously we primarily deal with senior staff here and the three in particular I want to thank and compliment for what I think has been tremendous professionalism that I have seen here and I have seen the quality of their work. I’ll start first with Dan Castrigano and his work. I think by all accounts judged by outsiders, our customers, by me and my family that traveled on the Turnpike last summer and also on other toll roads the third-lane expansion and the service plaza reconstruction are a hit and well received by our customers, are complimented by everyone from the New York Times to others and we have done I think a tremendous job in

making those improvements timely which I have been impressed and have been involved in a number of other construction projects on Boards, etc. and I think the timeliness of how we proceeded and both the results are a credit to the entire organization but particularly the lead – obviously, Dan has overseen on that. Secondly, Jim Steiner, and his staff. I come from an area where my background is financial so I may have given particular scrutiny and input on that but I think it's fair to say that I have very impressed by the financial management of the Turnpike – its stellar with clean audits that the Turnpike has received every year. The bond rating which is the highest for a toll road and I was able to be here and help participate maybe in a modest way with the upgrade about 1-1/2 years or 2 years ago – that the Turnpike received from Moody's. It's a demonstration that the Turnpike is an extremely good financial situation and is extremely well managed in that regard and again I think that is a credit to the whole organization but in particular the leadership in the Finance Dept. that Jim has brought to that. I have been very impressed as a former Finance Director myself.

Finally, to Diane Pring, who probably doesn't get enough compliments – your attention to detail and information to the Commission Members have been very helpful. It's made it a very manageable obligation on my part. I want to personally thank you up to the last cup of coffee you brought me this morning – I appreciate it.

Finally, I want to thank my fellow Commission Members that I have served with. I enjoyed the time together even the long executive sessions. I think while they weren't always pleasant and sometimes, different opinions were expressed, I think there was congeniality and professionalism around the table and I appreciate. I want to particularly compliment the Chairman who I have enjoyed working with – we came on about the same time together and I think we developed a respect and friendship that I hope somehow even though he's in Toledo and I'm here in Cleveland we can figure out some way maintain it at some level. So – that's been great to build that kind of relationship. I thank you for it and I thank you for your leadership on this Commission.

I want to wish the Commission well. I feel really good that at this point with the new leadership, Gary – I wish you well - I appreciate being part of the process that brought you here. There is a lot of new faces around the table which was referenced earlier. I think the thing that has served the Commission well even while it has overcome some challenges over the last

year and I think taken the appropriate steps to deal with that is that the Commission overall has had an extremely strong record of customer focus which is not always something you see in the public sector. I think it's something the public sector strives for a lot but this Commission while it has dealt with some things appropriately, as it should and as it has, has also maintained a very strong and consistent record in serving its public – its drivers, its truckers, people visiting the service plazas and I hope and strongly believe that with your leadership, Gary, will continue that focus because it really is one of the things that gets very high kudos for everyone traveling through the State of Ohio and we ought to obviously continue that because it's a benefit and it's a credit to the State of Ohio that we have this kind of facility and road.

I am confident that will happen and I wish you all the luck and I will patronize it whenever I can myself. Thank you.

Chairman Greenwood stated, Steve, on behalf of the Commission and all its staff, we want to thank you for your years of service and I personally want to thank you. It was always comforting to know that we could count on your analysis and expertise and presence, judgment, foresight during some very difficult times for the Turnpike, and I look forward to connecting with you some time in the future.

Any other comments from Commission Members? If not, let's stand adjourned. We need a motion. Mr. Wilkins moves and seconded by Mr. Darwish. All in favor? Roll, please.

Roll: Mr. Wilkins-yes; Mr. Darwish-yes; Mr. Strnisha-yes; Mr. Greenwood-yes; Mr. Dixon-yes. *(Time: 11:19 a.m.)*

/dsp