

# **RHODE ISLAND PUBLIC TRANSIT AUTHORITY**

## **FINANCE COMMITTEE MEETING**

**Minutes of Meeting held Friday, May 8, 2009**

**Finance Committee Members Present: Edward Field, Treasurer, Thomas Deller, and John Rupp.**

**Also Present: Alfred J. Moscola (General Manager); Maureen Neira; Henry Kinch, Mark Therrien and Ellen Mandly and Gerry De Maria of Higgins, Cavahagh & Cooney .**

### **Agenda Item 1: Approval of Minutes of January 16, 2009 Meeting**

**Edward Field called the meeting to order and asked for a vote on the minutes of the January 16, 2009 Finance Committee meeting. Mr. Deller moved that the minutes be approved as presented and Mr. Field seconded the motion.**

### **Agenda Item 2: Recovery Audit**

**Mr. Field raised the issue of an accounts payable recovery audit which was discussed at the April Board meeting and he asked if the audit would be subject to the public bid process. Henry Kinch**

disseminated documents analyzing the issue and a scope of work. RIPTA's objectives, the scope of the work, process assumption, payment schedule and qualifications of potential auditors were discussed. Mr. Kinch said the selection of an auditor must be done via the RFP process and the selected auditor will be expected to document its findings and provide advice regarding payment processes. It is expected that the work will be performed on a contingency basis and the consultant will be compensated as a percentage of the recovered funds.

The Committee discussed the issue at length including the definition of audit and consultant compensation parameters. Ms. Neira described the accounts payable process and saying expenditures total about \$90 million dollars annually plus another \$20 - \$40 million in capital expenditures. Mr. Field asked that the Recovery Audit be added to the May Board agenda for discussion and approval. Mr. Rupp said he had concerns with this issue related to the stimulus funds. Ms. Neira said the annual audit includes capital expenditures and a financial audit and described each of those audit requirements.

Mr. Field said he hopes that the audit proves RIPTA's fiscal responsibility and shows it to be a well run organization. Mr. Field suggested that we move on to agenda item #5 since there was an invited speaker. Before moving on Ellen Mandly stated for the record the Finance Committee's directive that the recovery audit be put on the next Board agenda. Mr. Deller asked that staff ask the Auditor

**General for his opinion on this issue, particularly the method of payment. Mr. Rupp supported his suggestion. Mr. Kinch said he would send a request for opinion to the Auditor General. Mr. Field asked Mr. Kinch to communicate a request for the Auditor General's opinion by phone and by mail before the May meeting.**

#### **Agenda Item 5: Potential Oversight & Accountability Counsel**

**John Rupp introduced Gerry DeMaria an attorney with the firm of Higgins, Cavanagh & Cooney. Mr. DeMaria authored a document at Mr. Rupp's request opining on oversight and accountability requirements in relation to the American Recovery and Reinvestment Act of 2009 (ARRA). Mr. Rupp engaged the services of Mr. DeMaria to have an independent source to vet information.**

**Mr. DeMaria said the document he wrote attempts to succinctly clarify the concept of the ARRA and outline who is responsible for transparency and accountability issues related to the use of ARRA funds. RIPTA must ensure that the funds are used properly and bids are structured correctly. He stressed that RIPTA must not be too general when crafting RFP's to ensure that the bids received are particularized enough and don't require change orders at a later date.**

**Mr. DeMaria said his greatest concern is oversight and discussed page 4 which covers transparency and oversight requirements and**

quarterly reporting. He stressed that the parameters surrounding employees who become whistleblowers are very vague and could leave RIPTA susceptible to disgruntled employees making unfounded accusations. He then outlined the broad and sundry areas available to employees to lodge complaints and remarked that he was particularly concerned about complaints relative to “abuse of authority” pertaining to expenditures under the ARRA because this term is so vague and general. Mr. DeMaria said that the vagueness of the whistleblower provision leaves him concerned about RIPTA’s ability to discipline and/or terminate employee’s who have lodged complaints under this provision of the ARRA, even if the discipline and/or termination is wholly unrelated to the complaint. Mr. DeMaria said RIPTA’s defense options are very limited and force us to prove the employee’s accusations are false with “clear and convincing evidence” which he said is tantamount to beyond a reasonable doubt and very difficult to prove particularly under Rhode Island law.

Next he discussed page 8 which deals with affirmative action needed to abate the appraisal, meaning correcting the wrong allegedly done to the employee who lodged a whistleblower complaint by giving them their job back or rescinding the discipline. Mr. DeMaria stressed his concern over provisions for back wages, benefits, and especially compensatory damages for things such as pain, suffering, disability, emotional distress, etc. and any expenses related to litigation and expert witness fees. He noted that RIPTA could be held responsible for actual fees, not reasonable fees, which is an

important and disconcerting distinction. Additionally, RIPTA could be forced to pay punitive damages and interest of 12% per year on any award.

Mr. DeMaria discussed various defense options in some detail then asked for questions. Mr. Rupp stated his concern over the ability of an employee to bring an unsubstantiated challenge due to an overly general RFP. He said procedures and human resources requirements must be rigidly enforced so that we do not inadvertently create a group of employees who cannot be disciplined until whistleblower claims are fully investigated. Mr. Rupp voiced concern that the director & officer insurance currently in place may not be sufficient to protect himself, his fellow Board members or RIPTA management.

Mr. Deller said as a government employee he has been sued many times but he has only been party to one whistleblower complaint which was ultimately thrown out. He asked if engaging Mr. DeMaria to handle this issue was due to a real concern on Mr. Rupp's part that an employee may make allegations using the provisions contained in the ARRA to make allegations, or if he is taking the better safe than sorry approach. Mr. Rupp replied it's much more than better safe than sorry because he, and Bob Batting have both received many complaints from employees over the years and he is concerned that employees may use the whistleblower provision as a method of job security.

**Mr. Deller said most complaints he has received are individual and anonymous. Mr. Rupp said we need to have a robust way of taking complaints to ensure that employees know their rights. Mr. Deller asked the current mechanism for filing complaints. Mr. Moscola responded that complaints should be made to the employee's superior and if their superior cannot handle the problem, they should come to him and Andrew Prescott, Steve Richard and Lori Silveira are available for consultation. Mr. Deller said if an employee is alleging gross mismanagement they likely would not complain to their superior or the General Manager and asked if there was a process by which an employee could complain to legal counsel directly. Mr. Moscola said there is not.**

**Mr. Therrien said the ARRA whistleblower provisions appear to be similar to those for 13C. He said that 13C requires that a whistleblower practice be posted on the employee bulletin board and FTA has a policy but does not require that it be posted. Mr. Therrien said that if we create a posting to comply with the ARRA requirements, we must also create an official procedure for accepting complaints. Mr. Moscola said most employees' make complaints directly to the unions. Mr. Rupp said he would prefer that Gerry DeMaria and/or Andrew Prescott be the first point of contact for reviewing the merits of complaints.**

**Those present discussed potential employee complaints, employee discipline and whistleblower retaliation allegations and the method**

for processing complaints. Mr. Field summed up the discussion saying the whistleblower procedure needs to be put in writing, reviewed by counsel and be published. Mr. Kinch asked if RIPTA is required by law to adopt a policy and Mr. DeMaria said no, but he would recommend creating a policy to report abuse. Mr. Field said RIPTA has an obligation to inform its employees of their rights. Mr. Deller asked if the 13C policy is posted and Mr. Therrien said it is. A discussion was held on updating the policy.

Mr. Moscola summed up the discussion by saying we need to post a general whistleblower policy which informs employees of their rights and how to make a complaints and we need a second policy which deals specifically with ARRA complaints relative to the spending of stimulus funds. Mr. Field agreed and said that both policies should be reviewed by legal counsel and he suggested that RFPs, proposals and staff summaries generated as a result of ARRA should also be reviewed by legal counsel. Mr. Kinch stressed that all policies be consistent.

Mr. Field asked who would spearhead the creation of the policies and Mr. Moscola said he would take the lead with the assistance of legal counsel. Mr. Rupp suggested Andrew Prescott and Gerry DeMaria as counsel and asked that Mark Therrien assist Mr. Moscola.

**Agenda Item 3: Planning Committee**

**Mr. Deller said that recent discussions on forming committees had lead to the recommendation of the creation of a planning committee to discuss issues such as Transit 20/20 and hybrid bus purchases. He said a planning committee could guide staff in these and other areas and then make recommendations to the full board. The planning committee could be particularly useful in vetting projects under Mark Therrien's purview. Mr. Rupp commented that a strategic planning committee would also be useful and Mr. Deller agreed.**

**Mr. Moscola said such a committee could be helpful when staff seeks guidance from the Board as they did recently when locking in fuel prices. Mr. Moscola then discussed recent fuel prices and locking in prices going forward. A discussion of future fuel price locks was discussed and following this discussion the finance committee members asked that this issue be put on the May Board agenda.**

**Mr. Deller suggested that Mr. Therrien write a paragraph describing the objectives of a Planning Committee and that this also be put on the May Board meeting for discussion. The members agreed with Mr. Deller's suggestion. Mr. Rupp suggested that a discussion of the formation of a Strategic Planning committee also be put on the agenda. Mr. Rupp clarified that the committees should be listed separately on the agenda.**

**Mr. Therrien briefly discussed the Environmental Council of Rhode Island. He said this organization is interested in addressing the**

**RIPTA Board and suggested that this may be a good presentation to be heard in a Strategic Planning Committee and Mr. Deller agreed.**

**Ms. Neira noted that the Joint Pension Board is down one member do to the untimely demise of Mr. MacDonald. Mr. Field volunteered to replace Mr. MacDonald on the Joint Pension Board. The Committee asked that this be put on the May agenda.**

#### **Agenda Item 4: Potential General Counsel**

**Ms. Neira disseminated multiple documents addressing the cost savings analysis the Board requested and asked finance committee to address in order to consider the prospect of hiring in-house counsel. Ms. Neira discussed the process used to compile the analysis and current legal issues being handled by outside counsel.**

**Mr. Rupp suggested surveying other quasi public agencies to determine those with in-house counsel. Mr. Kinch replied that staff would do so and then interview those agencies that employ in-house counsel. Mr. Rupp then described various functions which in-house counsel could manage.**

**Mr. Rupp wondered if it would be possible for quasi public agencies to employ one in-house council to advise multiple agencies. Mr. Deller said this prospect was intriguing.**

**Following this discussion Mr. Field asked that the issue of an in-house general counsel be discussed at a Finance Committee meeting to be held the week before the June Board meeting.**

#### **Agenda Item 6: Paratransit Building Change Order Status**

**Mr. Moscola asked that this item be put on the agenda and he asked Ms. Neira to discuss the issue. Maureen Neira reported that the cost of the new paratransit building is \$39 million and the cost of the land is \$2.7 million. Ms. Neira clarified that these figures have not changed and that when the project is discussed the cost of the land is usually not referenced because it was purchased so many years ago. She and Mr. Kinch said that these are well known facts.**

**Mr. Field suggested that since the land was purchased so many years ago, the cost of the land is unchanging and not germane to any construction cost conversations. Ms. Neira explained why the cost of the land became a topic of conversation at the House Finance presentation.**

**Staff and the committee then discussed various change orders in connection with the paratransit building construction. Following this discussion the Committee asked that a detailed report on all change orders including dollar amounts be given at the May Board meeting.**

**Mr. Field asked about solar panels on the roof of the new building and**

**a brief discussion ensued. Mr. Deller will work with Mr. Therrien to gather more information.**

## **Agenda Item 7: Potential Congressional Transportation Appropriations**

**Mr. Therrien explained that this topic normally falls under the SAFETEA-LU Act which is ending in October 2009 and said Congress must create a new bill covering the next six years of transportation projects. He explained that the House is moving quickly while the Senate is months behind. This puts RIPTA in a difficult situation because the House is already asking us to submit our projects for authorization. Mr. Therrien then explained the process of authorization and earmarks. Due to the unusual timing RIPTA is faced with, Mr. Therrien asked for approval for two projects \$28 million dollars for bus purchases over the next six years and \$75 million dollars for a street car line as suggested in the metro transit study. He discussed the street car idea briefly and acknowledged that the idea has not yet been fully vetted, but the funds should be put into authorization regardless. The funds can be reversed at a later date if the project is rejected.**

**Mr. Moscola said the authorization letter was drafted and ready to be sent but he decided to wait and discuss the issue with the Committee before it was sent. Mr. Moscola answered questions on bus purchases and the process for authorizations. Mr. Deller commented**

**that it is normal for potential projects to be submitted for authorization and then refined at a later date.**

**The committee held a brief discussion on trolleys, light rail and streetcars, the associated costs and the success some cities have achieved in using the various modes and the potential costs to implement street cars in Providence.**

**Following this discussion Mr. Moscola asked if the committee wanted to continue the discussion at the Board meeting, or if they were comfortable with Mr. Moscola sending the letter to Congressman Langevin, which is the current practice. The Committee gave Mr. Moscola authorization to send the request letter.**

#### **Agenda Item 8: Adjournment**

**There being no further business a motion to adjourn the meeting was made by Mr. Deller. The motion was seconded by Mr. Field and the meeting was adjourned.**

**Respectfully submitted,**

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**Ellen M. Mandly**

**Recording Secretary**