

# RHODE ISLAND PUBLIC TRANSIT AUTHORITY

## BOARD OF DIRECTORS ORIENTATION

### MINUTES OF Monday, September 29, 2014 ORIENTATION

**Board Members Present:** Mayor Scott Avedisian, Chairperson; Jerome Williams; Steve Durkee, Director Lewis, Maureen Martin, Peter Ginaitt and Mark Susa.

**Absent:** Margaret Holland McDuff

**Also Present:** Raymond Studley, CEO; Todd Gleason, Outside Counsel; Benjamin Salzillo, In-House Legal and Marie DiToro, Recording Secretary.

#### Agenda Item 1: RIPTA Orientation and Legal Update

Mr. Williams calls the meeting to order. Mr. Williams turns the meeting over to Mr. Gleason to facilitate the Board Orientation. Mr. Gleason states that in addition to a review of the pertinent legal requirements applicable to RIPTA, this is also a great opportunity for the Board to discuss RIPTA as an organization, including its goals, mission and vision. This is an important refresher and it is also required by statute for all new members of the Board, such as Mr. Susa.

Mr. Gleason begins with the PowerPoint presentation and notes the topics that will be covered in today's meeting:

- Board of Directors-Scope of Governance
- Duties of Directors (State and Common Law)
- Quasi-Public Corporations Accountability and Transparency Act-RIGL 42-155
- Open Meetings Act-RIGL Chapter 42-46
- Ethics-RIGL Chapter 36-14
- Access to Public Records Act-RIGL Chapter 38-2
- Communication Protocols (Press, Management)
- SWOT Session(Strengths, Weaknesses, Opportunities and Threats)
- Mission/Vision Statements
- Q&A

Director Lewis asks for the vintage of the Mission Statement and Mr. Gleason responds that it comes from the Enabling Statute, but may have been more recently updated. Mr. Durkee mentions that it changed with the Mobility Management concept years ago; however most of the language is still the same.

## Board of Directors-Scope of Governance

- Mr. Gleason states that the responsibility under the enabling legislation-RIGL Chapter 39-18 provides that the Board of Directors' role is:
  - To administer duties faithfully and impartially.
  - To avoid conflicts of interest; which really would be under this context interests in other transit companies, for example
  - Action by Resolution at General or Special Meetings; these are the actions the Board takes at the meetings and the votes that the Board passes.
  - Submit Annual Report of Activities within 90 days of RIPTA's fiscal year end.
  - Submit budget requests to RI DOT, which administers funds appropriated to RIPTA per motor fuel tax proceeds.
  - Reduce the barriers to transportation for individuals with disabilities.
  
- Mr. Gleason states that the following responsibilities are set forth under the Amended and Restated by-Laws dated November 15, 2010. The By-Laws were developed from the statutory authority and a little more specific on how the Board governs and manages itself.
  - The Board of Directors is required to manage the affairs of RIPTA consistent with RIPTA's purpose, including, the obligation to:
    - Provide public transit services to meet the needs of people in Rhode Island
    - Increase access to employment opportunities
    - Connect different modes of transportation
    - Promote community design that features public transit services
    - Facilitate energy conservation in the transportation sector
    - Mitigate traffic congestion; enhance air quality
    - Own the passenger transportation system
    - Manage vehicle maintenance
  
- Mr. Gleason moves on to the Structure/Other Provisions under the Amended and Restated By-Laws
  - 8 members: 7 appointed by the Governor, 1 is Director of DOT or his designee.
  - Officers include a Chair, Vice Chair, Secretary and Treasurer.
  - Chief Executive Officer has all powers and duties of a General Manager-responsible for the day to day operations of RIPTA pursuant to policies and limitations set by the Board. Statute provides for a General Manager; however the CEO is a current term for an organization like this. The By-Laws gives the flexibility to make title changes like that.
  - Regular Meetings and Special Meetings to be held pursuant to Open Meetings Act.
  - 4 members constitute a quorum; that is very unlike most Boards which require a majority of the Board to constitute a quorum. However, on this Board, 4 will make a quorum.

- Committees permitted.
- Indemnification-Directors not personally liable except for breaches of duty of loyalty, bad faith, or transactions for improper personal benefit.
- Must comply with RI Code of Ethics.

### Duties of Directors (State Law)

- Mr. Gleason states that Directors are obligated to act in good faith with the care an ordinarily prudent person in a similar position would exercise under similar circumstances and in a manner he or she believes to be in the best interests of the Authority. Essentially this is the guiding principal for every decision the Board would make.
- Directors are entitled to rely, unless unwarranted, on information, opinions, reports, or statements (including financial statements and other financial data) if prepared or presented by:
  - An officer or employee of the Authority the Director believes to be reliable and competent in the matters presented.
  - Legal counsel, public accountants, or other persons as to matters the Director reasonably believes are in the person's professional or expert competence.
  - A committee of the Board of which he or she is not a member if the Director reasonably believes the committee merits confidence.

### Duties of Directors (Common Law)

- Duty of Loyalty
  - Corporate opportunities are opportunities that would reveal itself to a director and not necessarily other directors and which would need to be disclosed. This has a lot to do with conflict of interest, notes Mr. Gleason.
  - Self-dealing is a higher level of conflict of interest. Deals between the Authority and another business in which Director has an interest- there is a need to disclose all facts, no vote and must be fair and reasonable.
  - Conflict of Interest is broader than self-dealing, any personal benefit, not only financial. Other benefits could be political, social or other personal benefit. In some cases it could be family members that benefit.
- Duty of Care
  - Act in good faith because there is no breach of duty of loyalty, no blind eye with knowledge so no tunnel vision if you know there is a problem or an issue.
  - Prudent level of Care and reasonable inquiry which means attending meetings, participate, due diligence, informed decision, reasonable inquiry and asking questions may involve a higher level.
  - Acting in the best interest of the Authority with decision making function, oversight, independent judgment.

- Preserve assets, sound business practices, delegate authority but not responsibility.

Mr. Gleason states that the Business Judgment Rule means that Directors do not have to be perfect or mistake-free. Decisions must be made with the following criteria; in good faith, no conflicts, reasonably informed and with a rational belief that the decision is in the Authority's best interest. Mr. Gleason gives the example of Blockbuster Video's decision to stay in rental DVD business.

#### Quasi-Public Corporations Accountability and Transparency Act-RIGL42-155

- Takes effect January 1, 2015.
- Goal is to exemplify commitment to transparent, accountable and effective government.
- Board Members required to:
  - Execute oversight of the Authority, the CEO, and other management in effective and ethical management.
  - Understand, review and monitor the implementation of the fundamental financial and management controls and operational decisions of the Authority.
  - Adopt a code of ethics.
  - Adopt a mission statement.
  - Perform duties in good faith and with that degree of diligence, care and skill which an ordinarily prudent person in a like position would use under similar circumstances, and apply independent judgment in the best interest of the Authority, its mission and the public.
  - Adopt and periodically update indemnification policy in the Authority's by-laws.
- Board is required to establish and maintain the following written policies and procedures:
  - Internal accounting and administrative controls.
  - Travel.
  - Grants, charitable and civic donations, and/or contributions.
  - Credit Card use.
  - Employee reimbursement
  - Personnel.
  - Marketing Expenses
  - Lobbyists' expenses

Mr. Studley states that many of these policy and procedures are in place. It is just a matter to have the Board approve them per the statute.

Mr. Ginaitt asks if there is a phase in over time or is the effective date of January 1, 2015. Is this something that can be achieved by January 1, 2015? He would like to see RIPTA be compliant within the first week of January. Mr. Studley does not see this to be a problem. Mr. Salzillo states that there are a lot of things that need to be done and took it as more directory than mandatory. These things need to be done over a period

of time. Mr. Ginaitt states that he is comfortable so long as RIPTA is heading in the right direction and showing effort that these policies are being worked on prior to January.

Mr. Gleason states that there could be some inconsistency with the Administrative Procedure Act in terms of how policies and procedures are actually approved. There is a disconnect between the new Transparency Act and the Administrative Procedures Act on this piece and he will speak to Mr. Salzillo about this off line. The Administrative Procedures Act applies to only a certain number of rules and policies and not others. Some require a hearing and others do not. Under the Transparency Act certain Policies require approval at an Open Meeting. A policy under the Administrative Procedures Act is, however, deemed a rule – so there is some overlap between the two statutes, noted Mr. Gleason.

Mr. Ginaitt asks who the sponsor was for this Transparency Act. Mr. Studley responds that he thought it was the Legislature.

In the interest of caution some Policies/Rules should go to a hearing per the APA and then brought back to Open Meeting per the Transparency Act and approved in that forum as well to cover the disconnect between the two Acts, recommended Mr. Gleason.

The Authority's required reports under the Transparency Act would be turned into the Chief of the Bureau of Audits.

- Requirements of the Transparency Act:
  - Quarterly financials, operating budgets, strategic plans, and mission statement, among other information, must be available to public and posted on website. This must be posted on RIPTA's website.

Mr. Williams agrees with Mr. Ginaitt that having this in place for the New Year is important. He would like to know where the Board stands on all these things that are requirements and would like to know what is not done so if something comes up it can be addressed.

Director Lewis agrees that there appears to be nothing on this list that cannot be accomplished by January 1, 2015.

Mr. Salzillo states that if they look at the Board Agenda item for today that there is a task list of what still needs to be done with back up paperwork. He feels that RIPTA is in good standing on many of these items already.

- Executive Compensation
  - Must establish a committee on executive compensation comprised solely of Board members, which shall:

- Recommend compensation packages to the full Board for executive officer/senior management based on comprehensive analysis of comparable compensation of similar officers of state government.
- Prepare clear, written job descriptions and expectations of job performance for executive officer/senior management.
- Conduct job performance review of executive officer at least annually.
- Negotiate employment contract of executive officer, which shall be approved by full board during an open meeting.

Mr. Gleason states that the committee should have no more than three members of the Board and generally it generally only deals with the terms of employment for the CEO and then the CEO handles the other senior management.

- Audit Requirement
  - Every five years the Authority shall be subject to a performance audit conducted by the chief of the bureau of audits in conformance with RIGL 36-7 (“Post Audit of Accounting”)
    - Initial audits of quasi-public corporations shall begin in January 2015 and chief of the bureau of audits shall establish rotating schedule identifying year in which each quasi-public corporation shall be audited.
  - Authority is responsible for the costs associated with the audit-not to exceed \$75,000.
  - Results of audit are to be made public and posted on RIPTA’s website.
  - “Performance audit” means an independent examination of operations and management systems to assess whether economy, efficiency and effectiveness are being achieved.

Mr. Ginaitt asks if a small performance audit can be completed every year then collectively take each year to compile a five year audit. Mr. Ginaitt thinks that each year would ensure that RIPTA is consistent and heading in the right direction and would be nervous to wait five years and find that RIPTA is “off the mark”.

Mr. Studley responds that RIPTA currently has an auditor come in yearly and is on the Agenda to present today.

Mr. Williams states that any comments in the financial audit should help to flag to RIPTA that this could affect performance levels.

Mr. Gleason states that this may be a good task for a committee of the Board to meet on or to be composed to handle.

#### Open Meetings Act-RIGL Chapter 42-46

- Public Policy: It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.
- Meeting:

- Convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.
- RIPTA is deemed a public body under RIGL 42-35-1(2).
- Must be properly noticed and conducted under Open Meetings Act.
- If there is a quorum, then it is a meeting.
- Meetings include workshops and working sessions and committee meetings.

Mr. Williams asks if committees can convene in Executive Session if necessary and Mr. Gleason responds yes.

If the need exists to go into executive session in a committee, this must be posted on the agenda with the appropriate reasons listed, just like for a regular Board meeting, noted Mr. Gleason.

- Notice requirements:
  - Annual-Dates, times and places provided at beginning of the calendar year.
  - Supplemental-48 hours before, contents of notice (date, time, place, nature if business discussed).
  - Adding items permitted for informational purposes-unless immediate action required.

Director Lewis asks if there is any allowance for an emergency and Mr. Gleason responds that he believes there are some circumstances, however Minutes must still be submitted to the Secretary of State website unless they may be sealed as confidential/closed session minutes under OMA provisions

Items can be added or omitted as needed for informational purposes; however this Board does not have a need to do this very often.

The posting is on the Secretary of State Website, RIPTA website and internally outside the conference rooms.

- Quorum
  - Four (4) members per RIPTA Enabling Act-affirmative majority vote required.
  - Rolling Quorum-OMA does apply to meetings conducted by “rolling” or “walking” quorum.
    - Need to avoid public business-related discussions or actions taken by less than a simple majority of the members of the Board.
    - Less than a quorum encounters should not be used to avoid the convening of a public meeting.
    - A meeting may be convened, and a “rolling quorum” created, when members collectively discuss and/or take action via telephone or email.

The *Loparto v. Lincoln Town Council* case back in 2005 was in violation of the OMA for a rolling quorum issue.

Mr. Studley states that getting information to all Board Members can be difficult, however so long as the email is defined as “For Informational Purposes Only” only and

the Board members refrain from an email chain discussing said matters then RIPTA would be in compliance. This does not happen very often and is only used when absolutely needed.

- Closed/Executive Session
  - By open call, meeting may be closed to the public upon a majority vote.
  - Statement required specifying nature of business to be discussed and entered into minutes.
  - Limited to matters allowed to be exempted from open discussion.
  - Votes can be taken in closed session, but must be disclosed once session is reopened (unless it would jeopardize any strategy, negotiation or investigation regarding the closed session matter.)

Mr. Durkee asks if Mr. Gleason would be the one to make that decision on whether it was something that would jeopardize an ongoing matter. Mr. Gleason responds that he would advise on that decision, but would confer with Mr. Salzillo as necessary in formulating his advice.

- Closed/Executive Session-Purposes
  - Job performance, character, or physical or mental health of a person (advance notice requirements to person affected).
  - Collective bargaining or litigation.
  - Discussions regarding matters of security.
  - Investigative proceedings re: allegations of misconduct, either civil or criminal.
  - Discussions re: acquisition or lease of real property for public purposes or disposition of publicly held property where advance notice would be detrimental to the public.
  - Discussions related to a prospective business or industry locating in the State of Rhode Island.
  - Investment of public funds where premature disclosure would adversely affect public interest.
  - Hearings on grievances filed pursuant to a collective bargaining agreement.

Director Lewis asks if RIPTA has eminent domain powers and Mr. Gleason responds no he does not believe so, but would have to check the enabling act to confirm.

- Open Forum
  - Public comment portion of an open meeting to permit citizens to address comments to the public body relating to matters affecting public business.
  - Intended to be comments, not questions-members of the Board can clarify comments for informational purposes.

Mr. Gleason states that in one or two cases the Mayor has made corrective comments to get on record the correct information out there.

Mr. Ginaitt notices that the public seems frustrated that no one responds to them. He thinks that there should be a response given to them in a reasonable amount of time. He thinks the public should be encouraged to get it in writing to warrant a response from RIPTA.

Director Lewis responds that maybe something should be written up and posted in the conference room that explains what exactly Public Comment is.

Mr. Durkee states that the public goes through unbelievable things to travel to the meetings to speak and the Board just sits there and listens and they must feel very frustrated when no one responds.

Mr. Studley states that social media is used very aggressively and complaints and questions are funneled through to the appropriate department to handle or address. He also mentions that they have been working with Brian Daniels from OMB on Customer Service performance.

Mr. Ginaitt thinks there should be a public comment portal on the website.

Ms. Martin states that she has had this very conversation with Mayor Avedisian on the public comment portion of the Board Meeting and how to move forward to defuse the negative attitude about RIPTA.

Mr. Williams states that the Mayor does a great job stating at every meeting that this is for informational purposes and not to be responded to, however so long as Mr. Williams knows that someone at RIPTA is getting back to the people who speak during public comment in response to their comments, he is comfortable with this approach.

Mr. Studley states that RIPTA could document a response based off of public comment and present it at the following Board Meeting.

Mr. Gleason then moved into Minutes requirements.

- Must contain:
  - Date, time and place of meeting.
  - Members present and absent.
  - Votes taken by each member on each issues.
  - Any items members of the Board wish to be noted in the Minutes.

Mr. Ginaitt asks how it is currently presented and Mr. Gleason responds that it is simply stated present or absent on the top of the minutes now.

Director Lewis states that there is ample opportunity to see if someone attends on a regular basis or not.

- Must be filed with Secretary of State's office and available to the public within 2 weeks of votes taken.

#### Ethics-RIGL Chapter 36-14

- Empowered to carry out and enforce the Code of Ethics rules and regulations.
- Provides education (state of RI website and Guide to the Code of Ethics are very helpful educational resources.)
- Investigative powers (oral and written evidence) and adjudicatory powers, including issuance of orders and removal.
- Who is covered?
  - All Rhode Island public officials and employees, including elected and appointed officials and employees.
- What is prohibited?

- Conflicts of interest- i.e., public officials and employees may not have interests, financial or otherwise, which are in substantial conflict with the proper discharge of their public duties.
  - Includes family members, business associates, or any business the official or employee may represent.
  - Conflicts must be disclosed when they arise.
  - Public officials and employees must disqualify themselves.
- The Guide to the Code of Ethics provides helpful advice regarding additional specific issues, including nepotism/favoritism, gift/tickets, and honoraria, confidential information restrictions, outside employment, revolving door restrictions and contract awards.

### Access to Public Records Act-RIGL Chapter 38-2

- Purpose is to ensure and facilitate the public's right of access to public records, provided unwarranted invasions of personal privacy are prevented.
- Requires RIPTA to make, keep and maintain written or recorded minutes of all meetings. (Public Meetings)
- Requires RIPTA to establish written procedures regarding access to public records.
- RIPTA has established a document titled Policies and Procedures for Requests for Access to Public Records, which is set forth in each Board Member's Board Manual.
  - In March 2014, this document was updated to (i) attach a sample records request letter; (ii) provide that the public cannot remove records from premises; and (iii) provides that inspection must be observed by Authority personnel.

Mr. Gleason states that the hard copies of the Executive Session minutes should be returned back in for safekeeping at headquarters if the Board Member does not need them any longer.

Mr. Studley states that there is a ten (10) day response time to public records requests even if this request verbally goes to the Board Member as well. Board Members should get this information to Mr. Studley as quickly as possible after being approached for public records.

Mr. Salzillo states that we send people to the website to submit a request to the Public Records Officer, which comes in to Ms. DiToro whom then handles it with Mr. Salzillo and Mr. Pereira.

### Communication Protocols (Press/Management)

- Press-General discussion of method of communicating with the press (CEO, Chairman).
  - Ensure consistency of message.
  - Consider impact on labor or other operational issues.

Mr. Studley mentioned that he has hired a new Public Affairs Officer that would handle communication at RIPTA. She will start in November.

- Management-General Discussion of methods of communicating with CEO and management team.
  - Clerical/routine matters.
  - Performance issues (consider impact on labor issues).

### **Agenda Item 2: Lunch Arrives**

The Board Members break for a few minutes to grab lunch then move on to Agenda Item 3.

### **Agenda Item 3: SWOT Analysis**

Mr. Gleason states that as part of this exercise, we should focus on how weaknesses can be turned into opportunities for improvement. In general, Boards ideally will spend about 60% on strategic matters and about 40% on the day to day. This will be a brainstorming session and we will list out what the Board thinks the strengths, weaknesses, opportunities and threats are, and if there is time, we will come up with some action items.

#### **Strengths:**

- Management
- Labor Relations
- Employee Morale
- Partnership with other agencies, towns and cities
- Clarity on the planning side-newer/fresh thinking
- There is a “team” now
- Project Management implemented now
- Real awareness of what a high quality transportation system needs to be

#### **Weaknesses:**

- Resources
- Funding
- Ticketing Complexity
- Public Perception
- Rapid Growth of Ridership and impact on resources

#### **Opportunities:**

- Positive message- a “*choice*” to use public transportation
- Park n Ride, R-Line, TSP Grants
- Partnerships with other organizations
- Rail Issue-Embrace it

- Sub-Hub
- Concierge service/WiFi/Premium Service
- New technology

**Threats:**

- Kennedy Plaza
- Streetcar
- OPEB Funding
- Funding

**Agenda Item 4: Vision Statement**

**Current Mission Statement:**” To provide safe, reliable and cost effective transit service with a skilled team of professionals responsive to our customers, the environment, and committed to transit excellence.”

RIGL 42-155 (effective January 1, 2015) now requires that the mission statement include the following:

- Purpose and goals of Authority
- Description of the stakeholders and their reasonable expectations
- List if measurements by which performance and achievement of goals may be evaluated.
- Every three years, Authority must public a self-evaluation based on stated measurements.

This mission statement will need to grow and be developed and may require another session to complete this. Mr. Williams states that there seems to be a conflict with this as well because the goals should not be listed within a mission statement. Mr. Gleason agrees that a mission statement should be short and concise. Mr. Williams thinks this may need some more discussion.

Mayor Avedisian states that RIPTA should look back over the long range plan that was completed and update with what has been accomplished and do another report to the General Assembly.

**Vision Statement:** Unlike a Mission Statement, a Vision Statement is a picture of what RIPTA believes it should be in the future.

**Our Vision:**

“Imagine a future in which a wide range of multi-modal, convenient, and attractive transportation choices help promote growth and support thriving, livable communities throughout Rhode Island. As Rhode Island’s Mobility Manager, we aim to achieve this vision in a fiscally responsible manner, working with federal, state, local and private partners to realize the benefits that a modern transit system can provide and to improve the overall quality of life in Rhode Island.”

Mr. Ginaitt suggests adding something regarding the concept of “safety” and /or “security”

**Agenda Item 5: Wrap-up and Adjournment**

Mr. Gleason provides closing remarks and the Orientation Session is adjourned by the unanimous consent of the Board.