

REGULAR BOARD MEETING - BLOOMINGTON PUBLIC TRANSPORTATION CORPORATION (BPTC) JANUARY 14, 2014 5:30 P.M.

In the Edward J. Kuntz Board Room of the Bloomington Transit Operating Facility, 130 W. Grimes Lane, Chairman McConn convened the regular meeting of the Board of Directors of the Bloomington Public Transportation Corporation.

ROLL CALL

Board Members present: Chairman McConn, Vice Chairman McDaniel, Secretary Cartwright, Board Member Hasler and Board Member Obermeyer. Also present were Lewis May, General Manager, Brenda Underwood, Human Resources/Marketing Administration, Christa Browning, Controller, and members of the public Barbara McKinney, City of Bloomington Legal Services and Michael Bergstrom, SPEA Fellow – Marketing and Communications for Habitat for Humanity.

PETITIONS AND COMMUNICATIONS

There were no Petitions and Communications from the public.

MESSAGES FROM BOARD MEMBERS

Vice Chairman McDaniel said January 23 is Public Transit Day at the State House. He said it is a rally and a lot of people from central Indiana for the Indy Connect Now initiative will be there. He said it is an opportunity for people to come and meet with their legislators after the rally to discuss transit issues, particularly the need for reliable and stable funding for transit.

Vice Chairman McDaniel noted that INDOT has considered a 3 percent cut to PMTF funding and then they bumped it back to a 1.5 percent reduction. It could have been worse as he heard INDOT used highway money to make up the difference in the 3 percent cut that we got this year. He said that turned out not to be the case as the Governor's Office moved money from the PMTF and told INDOT to replace it with highway money. He said INDOT didn't like this and that the highway lobby is upset as well.

MESSAGES FROM THE MANAGER

Mr. May noted first on the agenda is the appeal from Habitat for Humanity relative to bus advertising. He said Michael Bergstrom a representative from Habitat for Humanity is here tonight. Mr. May said he enclosed samples of Habitat for Humanity's proposed ad. He reviewed the proposed ad and turned it down on the basis that in his opinion it did not represent a commercial transaction which is primary requirement under our advertising policy. He stated he did not see an interest free mortgage as advertised by Habitat as a commercial transaction. He noted that he views a commercial transaction as an exchange of goods or services for something of comparable value. He said according to our policy the advertiser has the right to appeal and Michael Bergstrom is here with Habitat for Humanity and he will make that argument on their behalf. Mr. May stated that ultimately it is up to the Board to decide whether to grant or deny

that appeal and under New Business there is an action item on the appeal request. Michael Bergstrom explained that in his view it is a commercial transaction as Habitat is selling these homes to families in exchange for the interest free mortgage. Mr. Bergstrom explained that Habitat is a 501 (c) (3) non-profit organization and the funds paid to Habitat by the home buyer are then recycled to fund future homes. Mr. Bergstrom argued that they are exchanging the asset of the home in return for the equity the purchasers invest and the fees associated with the transaction. Board Member Obermeyer asked if some of these clients are also contributing labor to the effort as well and whether they actually purchased building materials such as drywall. Mr. Bergstrom replied yes. Ms. Obermeyer said it was her opinion that that these transactions represented a commerce and as such the advertisement should be allowed. She said the definition does not have the word profit in it anywhere. Mr. May said there is no definition in our policy and he thinks that we need to revisit our policy to include a definition of the term as well as include language that the primary theme of the proposed ad should represent a commercial transaction rather than it being just a secondary theme. Mr. May said it is important that the Board be very cautious in accepting advertisements that could be judged by a court as not representing a commercial transaction. According to Mr. May, such a finding by a court could lead to litigation against BPTC and significant costs. Vice Chairman McDaniel said he would be interested in hearing Barbara McKinney's response to the Habitat argument that the home purchase represented a commercial exchange. Ms. McKinney said as much as everybody loves Habitat for Humanity it is a slippery slope. She noted that if you say yes to this how can you say no to WFIU because they give away tote bags whenever you make a donation. Board Member Obermeyer said she does not mind saying yes to WFIU and she did not mind saying yes to the volunteer tax preparation services. Board Member Obermeyer said in terms of definition what is to stop a hate group from selling something that didn't violate our policy. Ms. McKinney said that such groups never have in the past. Board Member Obermeyer said you are assuming that they won't and if they do then by this idea that it is a commercial transaction. Mr. May said a hate group could not sell anything that constituted hate speech because our policy specifically bans commercial transactions where the product or service being sold included hate speech. Board Member Obermeyer said what if they sold a tote bag. Mr. May said they probably could sell a tote bag that didn't include hate speech but they could not sell a book about their philosophy because that philosophy would presumably contain hate speech. Board Member Obermeyer said what if Barnes and Noble said we have a new book about a hate group. Mr. May said it important to remember that we can restrict commercial speech, however, if we allow non-commercial speech it cannot be restricted. Board Member Obermeyer said that in her opinion there is a business transaction going on here and that she disagrees that it is not commercial. Mr. Bergstrom said he agrees that they consider it a commercial transaction. He added that Habitat works with local banks, Title I, and that families pay their mortgages with Habitat having the ability to foreclose on the homes for nonpayment. Board Member Obermeyer said she disagrees and is not going to be swayed by the arguments presented that this is not a commercial transaction. Ms. McKinney advised that one must be very careful not to say "I like this message" and as such I'm going to allow it. Mr. May stated that in his opinion you can't take liberties with the term "commercial transaction" and for him it's difficult to see how the proposed advertisement represents a bonafide commercial transaction. Mr. May strongly encouraged the Board to defer to legal counsel's judgment on this issue given counsel's knowledge and expertise on the matter and given the risk for future litigation and costs. Board Member Hasler noted she believes the proposed advertisement represents a commercial transaction.

Mr. May noted the next item is not on the agenda is the request from Dan Mullis to drop out of the BT employee health insurance program. He said Mr. Mullis left a note this morning explaining that he could not attend the meeting tonight but that he did ask that the Board to decide the issue relative to his request to drop health insurance coverage. Mr. May said at the last Board meeting he shared with the Board an email that he received that included content from SIHO's legal counsel. Mr. May said employees contribute part of the premium equivalent for healthcare insurance and they pay that premium equivalent on a tax free basis. Mr. May said that according to SIHO's legal counsel, if we were to be audited, though the likelihood of such an audit is very small, and it was determined that we are not following our plan in terms of qualifying events, we could lose the tax-free benefit for all employees relative to the portion of their income used to pay their premium equivalent. Mr. May reminded the Board that we follow Section 125 of the IRS Code relative to qualifying events and the condition that Mr. Mullis described is not a qualifying event. Mr. May noted that he talked with Daniel Grundman at the City of Bloomington who was their HR Director at the time he ran this by his benefit staff and his and their opinion this was not a qualifying event. The loss of the tax-free benefit for all employees would be a serious matter that could result in employees collectively having to pay many thousands of dollars in taxes as the result of any unfavorable audit finding against us. He said again Mr. Mullis apologized that he could not be here tonight but he again respectfully asked that the Board provide a decision. Vice Chairman McDaniel said that he is in favor of denying the request and he feels sorry for the difficult situation Mr. Mullis is in but in his opinion he thinks the risk to all employees is too great. Chairman McConn said with his group insurance plan people can drop off occasionally for various reasons. Chairman McConn said he too is sympathetic to Mr. Mullis and his situation. He said if you have private insurance and you don't want it anymore then you stop paying it and there are no consequences other than you don't have any coverage. Chairman McConn recommended that BPTC more specifically include language in the plan documents that better spells out what qualifying events are and that we should do this for the next plan year.

Mr. May said the preliminary fixed route ridership figures show that we finished 2013 carrying 3,455,641 passenger trips for an increase of 1.56 percent over 2012. He noted that it was about 53,000 more passenger trips in 2013 compared to 2012. He said we had an extra week of IU student ridership due to the IU academic calendar going a week longer into December in 2013 compared to 2012. He said January 2014 is likely to be significantly down in fixed route ridership due to the IU academic year starting a week later than in January 2013 as well as the icy cold weather we had on January 6 and 7 when our ridership was suppressed due to weather.

Mr. May said the first Board meeting of each year we traditionally review accomplishments and successes from the past year and then look ahead to the new year identifying goals and objectives. He said 2013 was a year of significant success and accomplishment for Bloomington Transit. He presented a PowerPoint presentation and highlighted some of the notable accomplishments in 2013 that included the following:

- Ridership Increase of 1.56 percent
- Downtown Passenger Transfer Facility Construction Progress
- Voice Annunciator Installation
- Bus Tracker Installation
- BT Access Van Award

- Small Bus Award
- Two New Hybrid Buses Placed in Service
- New Freedom Grant Award and Program Development
- Garage Exhaust Rehabilitation Completion
- Garage Lift Rehabilitation Completion
- Library Employee Bus Pass Program
- Completion of Facility Painting
- Development and Submission of a new Title VI Program
- A Successful Triennial Review with Minor Findings

Mr. May identified a number of goals and objectives for 2014 that included the following:

- Downtown Passenger Transfer Facility Completion in Late Spring
- Continued Ridership Growth
- Downtown Routing Changes Coinciding with the New Transit Center
- Mobile Website Development and Implementation
- New Small Bus Delivery and Ordering an Additional Vehicle
- New BT Access Vehicles Delivery and Ordering Two Additional Vehicles
- New Passenger Shelters
- Mobile Lift
- On/off Data Collection Study
- Downtown Facility Bus Tracker Technology Installation
- Mobility Management Program Including Vouchers and Consumer Education
- Completion of Collective Bargaining Negotiations
- Continued Dialogue with INDOT Relative to Unification and Possible Additional PMTF Funding

Mr. May asked the Board if there were any other goals or objectives that they would like to see the organization pursue in 2014. The Board congratulated the staff for a successful 2013 and concurred with the goals and objectives identified by Mr. May.

MESSAGES FROM THE CONTROLLER

Controller Browning noted that Resolution 14-01; a resolution authorizing the filing of applications with the Federal Transit Administration, an operating administration of the United States Department of Transportation, for Federal transportation assistance authorized by 49 U.S.C. chapter 53, title 23 United States Code and other Federal statutes administered by the Federal Transit Administration is on the agenda for the Board's consideration and approval.

MINUTES

The minutes for November 19, 2013 were presented for approval by Board Member Obermeyer and seconded by Secretary Cartwright. The minutes were approved unanimously.

The minutes for December 03, 2013 were presented for approval by Board Member Obermeyer and seconded by Secretary Cartwright. The minutes were approved unanimously.

The minutes for December 17, 2013 were presented for approval by Board Member Obermeyer and seconded by Secretary Cartwright. The minutes were approved unanimously.

CLAIMS

The claims for January 14, 2014 were presented for approval by Board Member Obermeyer and seconded by Secretary Cartwright. The claims were approved unanimously.

OLD BUSINESS

Under Old Business Vice Chairman McDaniel moved to deny a request from Dan Mullis to drop out of the BT employee health insurance program. Chairman McConn asked for a second to the motion. The motion failed for a lack of a second from any Board Member. Chairman McConn asked for a motion to grant a request from Dan Mullis to drop out of the BT employee health insurance program. No motion was made from any Board Member. As such, Chairman McConn noted that the Board deferred to Mr. May to make the decision on this matter.

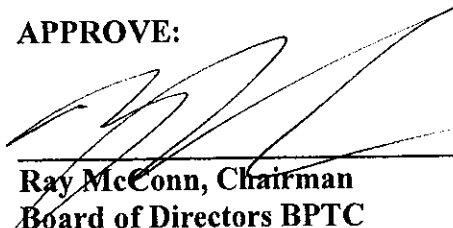
NEW BUSINESS

Under New Business, Secretary Cartwright moved to approve Resolution 14-01; a resolution authorizing the filing of applications with the Federal Transit Administration, an operating administration of the United States Department of Transportation, for Federal transportation assistance authorized by 49 U.S.C. chapter 53, title 23, United States Code and other Federal statutes administered by the Federal Transit Administration. The motion was seconded by Board Member Hasler. Resolution 14-01 was approved unanimously by all Board Members.

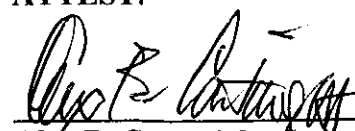
Under New Business Board Member Obermeyer moved to grant the appeal by Habitat for Humanity to allow bus advertising. Board Member Hasler seconded the motion. The motion was approved by Chairman McConn, Board Member Obermeyer, and Board Member Hasler. Secretary Cartwright and Vice Chairman McDaniel abstained.

ADJOURNMENT

APPROVE:


01-28-14
Ray McConn, Chairman
Board of Directors BPTC

ATTEST:


01-28-14
Alex B. Cartwright, Secretary
Board of Directors BPTC