

**New Hampshire Rail Transit Authority
December 19, 2008
Meeting Minutes**

Members Present: Peter Burling, David Preece, Mark Brewer, Nancy Larsen, Jack Ferns, Jay Minkarah, Mike Izbicki, Steve Williams, Malcolm Taylor, Ron O’Blenis, Kit Morgan, Tim Moore, Kathy Hersh

Others: David Hilts, Attorney General’s Representative

I. Call to Order

Williams called the meeting to order at 10:10am. The chair determined that there was not a quorum. There was an agreement by members present that the group would act as a committee and report via detailed notes to the full Board at the January meeting. Kathy Hersh agreed to take notes.

II. Reports by Committees

A. Bylaws

The first item to be discussed was the by-laws. Moore said he was not able to incorporate changes discussed at the last meeting due to the power outage. Williams asked Moore to begin with section 7.0 in the by-laws, he said corridor descriptions should align with DOT’s transportation corridors, which are established for all modes of transportation.

Mark asked if a corridor needs to include rail and transit. Taylor said the new federal legislation references high speed rail corridors and we should be consistent with that. FRA has a map that identifies the high speed rail corridors. Hersh asked if corridors should be in the by-laws at all? Burling said it is all about train rides. He commended the work Moore has done on the by-laws and said we need to make sure the by-laws allow a quick response to opportunities, especially given the discussions about a stimulus package. He likes what is currently in the by-laws. Minkarah wants to make sure it is clear that the Capitol Corridor goes through Nashua and Manchester. Moore wants to keep the Seacoast Corridor reference.

MOTION by Minkarah, seconded by Izbicki to change 7.1.1 by replacing “..., from points north and south of the capitol” with “to Boston through Nashua and Manchester.” And to strike 7.1.2. Discussion on the motion ensued. O’Blenis expressed concern that it sounds like we are only doing one or two corridors. Moore said each corridor has a number of projects. Izbicki said the NHRTA probably should meet with DOT to define details of corridors. Hersh said section 7.0 in its entirety should not be in the by-laws. Minkarah rescinded the motion.

Burling then suggested that the bylaws should indicate that “as provided by statute, NHRTA can designate corridors.”

MOTION by Hersh, seconded by Taylor to remove 7.0 from the by-laws.
Motion passed.

Preece said maybe the by-laws should include procedures to accept new corridors, as authorized by State law. Williams suggested that be considered later, since there is no text to review at this time.

Minkarah said a corridor has meant a specific project but today people are changing the definition. We need to define corridor. If someone wants to revisit with respect to inclusion in the by-laws, we need to have corridor defined first. It was agreed that members would research examples from other parts of the country and send those examples to David Hilts and Michael Izbicki.

The discussion moved on to Section 8.0 Committees of the by-laws. Brewer noted that the executive director position is a member of the executive committee and asked if they have a vote. Hilts said ordinarily no. Since Izbicki is a volunteer and a member of the Board of Directors, we may want to handle it differently. Preece clarified that the executive director is staff to the executive committee.

MOTION by O’Blenis, seconded by Brewer that the executive director is a non-voting member of the executive committee. Motion passed.

MOTION by Minkarah, seconded by Taylor to strike 8.1.1.8.

Discussion on the motion ensued. O’Blenis said maybe there are too many people on the executive committee. Williams pointed out that there are 27 or 28 people on the Authority. Minkarah said there would be 9 voting members if the motion passes. Williams called the question and the motion passed.

Williams noted that the treasurer position is not part of the executive committee.

MOTION by Minkarah, seconded by Hersh to change “up to 11” to “up of up to 9”, to add the treasurer to the executive committee, and to change 8.1.1.9 from “Three other directors as appointed” to “No more than two as nominated”. Motion passed.

Preece suggested the Board may want provisions for emergency situations if the executive committee does not have a quorum. Williams said at this point the by-laws say a quorum of the executive committee present at the meeting is required to hold the meeting. Izbicki distributed and reviewed the Roles and Responsibilities with respect to the executive committee.

MOTION by Preece, seconded by Hersh to incorporate the language from the Roles and Responsibilities with respect to the executive committee into the by-laws. Motion passed.

MOTION by Preece, seconded by Minkarah to strike section 8.2. Motion passed.

A discussion then occurred regarding the makeup of the Public Relations committee. Everyone concurred that currently Taylor, Christine Walker and Sharon Wason are on the Public Relations (PR) committee. Brewer noted that the Board needs to expand the responsibilities of the PR committee. It is not just brochures, but the web site as well.

Williams recognized Barbara Pressly from the public. Pressly requested the Board consider adding opportunity for the public to input at the Authority's meetings. Williams said this is a good idea, but not part of the PR committee.

MOTION by Preece, seconded by Brewer to change in 8.3 "distribution of a brochure" to "all print and electronic materials" and to delete 8.3.1 and 8.3.2. Motion passed.

Izbicki said the composition of the finance committee (8.4) should include one expert. Minkarah suggested a five-person committee, including someone from DRA, the Board treasurer and three Board members nominated by the chair and approved by the Board. Moore thought membership would be the result of the chair asking for Board members interested in serving on the committee. Minkarah agrees for most committees, but not for the finance committee. Burling said the finance committee should be recommending the auditors, etc. and working with financial advisors. He also commented that the board might want to consider how the finance committee relates to the State finance person.

By common consent it was agreed to table the issue and Izbicki and Brewer will work on a recommendation to the Board.

MOTION by Taylor, seconded by Morgan to change in 8.6 "shall" to "may" in both places. Motion passed.

MOTION by Minkarah, seconded by Izbicki to strike 8.6.1. Motion passed.

MOTION by Brewer, seconded by Preece to reinstate 'shall' in second sentence of 8.6 and to delete the last sentence. Discussion on the motion ensued. O'Blenis said he is not sure 8.6 says how we get there. Burling asked in time how much of this would be done by staff. Williams thought the provision would keep the board responsible and involved.

AMENDMENT by Minkarah, seconded by Izbicki to change in 8.8 "a project plan" to "project plans and reports." Amendment passed. Motion passed.

MOTION by Preece, seconded by Izbick to strike 8.6.2. Motion passed.

MOTION by Hersh., seconded by O’Blenis to change in 9.0 “staff member” to “executive director”, to change “Committees” in the 6th line to “Committee’s”, and to change “By vote of a majority” to “By vote of two thirds” in line 7. Motion passed.

Williams stated that the board had worked it’s way completely through the original draft bylaws and asked is there were any additional changes?

MOTION by Izbicki, seconded by Preece to add a section under 5.0 identifying a public input period as part of NHRTA meetings. Discussion on the motion ensued. O’Blenis asked where it would go on the agenda. Brewer said he thought it should be at the beginning. Taylor said his planning board has one at the beginning and one at the end.

Motion passed.

Moore suggested a severability clause. Hilts said it couldn’t hurt. He will find some text and bring it to the next meeting.

Burling commented on the location of the meetings. Right now there are no legislative participants. Meeting in the LOB puts the NHRTA in the power sphere of the legislature and gives the legislature ready access to what we are doing. Meeting at DOT is important too. NHRTA should determine where it wants to meet. Williams stated that the reason the meeting was being held at the DOT was that he could not reserve a room in the LOB for today’s meeting because currently there are no legislators on the committee.

Brewer indicated his hopes that the Authority might hold a meeting at the airport and downtown Manchester, and does not want to preclude those options. O’Blenis stated a preference for the LOB. Burling said the Senate president can make sure it is on the calendar even if we end up between sessions with no legislators.

Preece expressed concern about board members acting independently as representatives of the Authority without authorization by the Board, particularly about those whose opinion might be contrary to the majority of the board.

MOTION by Preece, seconded by Izbicki to ask David H. to draft language to address directors acting independently. Discussion on the motion ensued. Burling said indemnification of board members is an issue we need to address. At least the Authority should indemnify members. He thinks the State should indemnify us. Hilts said conflict of interest is also an issue with the potential amount of money coming in. He will look to the State regs for the next meeting. Motion passed.

B. Composition of Executive Committee

Williams noted that the item had been covered as part of the discussion of bylaws and suggested that there was no need for further discussion until the bylaws had formally been adopted. By common consent the board agreed to move to the next item.

C. Contract with Interim Executive Director

Williams asked Hilts to report on other issues he had been asked to work on. Hilts said with regard to the interim executive director he was asked to draft an employment agreement. Because there is no compensation at this time, it is very difficult to draft. He suggested instead a resolution to delegate the executive director duties to the interim executive director. The group agreed by common consent that he should take that approach.

Hilts said there is a question as to whether the Authority is a State agency or an independent body. If it is a State agency, the executive director would be part of the State employee system, etc. If not, then the Authority can set its own employment terms. He has looked at the State laws, and it is not clear. Pease Authority was determined to be a State Agency because the words “separate and apart from State government” was not included in the Pease legislation. Hilts noted that from previous conversations he knew that neither Williams nor Izbicki think the Authority is a State agency. There was a general discussion of the issues related to being a state agency or not. If it is not a State agency, NHRTA would have more freedom, but not have State indemnification and other benefits. It is important to know what the members think the Authority is. Burling said we need to be indemnified by the State now. He is concerned for members. We need a bill to address in this upcoming term. Hilts does not think NHRTA has State indemnification at this time. NHRTA is not entitled to help from the DOJ if individuals are sued. David’s help will not be sufficient for the Authority’s work. He may not be able to help draft legislation.

MOTION by Preece, seconded by Moore to delegate authority of the executive director to Mike for the interim until we have the money to pay Mike, and at such time we will negotiate a contract with Mike as interim executive director.

AMENDMENT by Preece, seconded by Taylor to table. Motion to table passed.

Williams designated a committee of Burling, Williams and Preece to work with Hilts to put resolution together regarding the interim executive director and to address indemnification.

Burling said it should be done as a special bill. Senator Molly Kelly is introducing the bill to change the membership of the Authority. It could be amended to include indemnification. Preece stated that he would volunteer to assist Burling. Burling will get the bill amended. Burling said the Senate

assumed we would be indemnified. Williams noted that he, O'Blenis and Morgan were the primary authors of the legislation and their original intent was for the Authority to be independent. Burling will make calls and report back to Williams. Taylor noted that the federal bill specifically references State rail authorities.

D. Other Business

Williams welcomed Commissioner Campbell. Commissioner Campbell said he intends to sit in on authority meetings when he can. He is pursuing funding from the stimulus package for the Capitol Corridor. He has talked to Congressmen Hodes, Shea Porter and Senator Gregg. A big focus of the federal government is freight and that is good for our project.

Moore reminded everyone that the by-laws state that our annual meeting is in January. Not sure what we want to do since we have not yet adopted our by-laws.

III. Adjourn

MOTION by Izbicki, seconded by Taylor to adjourn at 12:30pm. Motion passed.

Respectfully submitted,
Kathy Hersh