



**MASS TRANSPORTATION AUTHORITY  
MINUTES FROM THE SEPTEMBER 18, 2008 BOARD MEETING**

**PRESENT:** Paul Newman, Chairman, Richard Abrams, Paul Luttenbacher, Rose Bogardus, Mike Zelle, John Northrup, Carolyn Sims (Arrived at 8:05 A.M.)

**STAFF:** Robert Foy, Suzanne Shepherd, Ed Benning, Jerry Ragsdale, Charlene Kowalski

**GUEST:** Ted Williams, CHMP Inc., Suzanne Kayser, John Florshinger, City of Flint, Greg Hernacki, General Motors, Tom Greyerbiehl, ASFCME Council 25, Warren Franklin, Chief Stewart Local 3437, Michael Joliat, Attorney, Mohamed El-Sayed, Kettering University

**ABSENT:** Darryl Buchanan

Chairman Newman called the meeting to order at 8:02 A.M.

**Comments of the Public**

Greg Hernacki, General Motors stated that he was here in regards to the discussion on the transportation to Oakland County. During the discussion, if anyone had any questions he would be available.

**Discussion on Methane Gas Program Sponsored by City of Flint**

Mr. Foy stated that Suzanne Kayser, who is with the Economic Development Department of the City of Flint, is here to discuss the bio-gas project. Mass Transportation Authority is not directly involved with the project but is considered to be the possible recipient of the end product.

Suzanne Kayser, City of Flint stated that she came from General Motors after thirty-five years in the engines, transmissions and casting plant. She has been with the City for about five months. John Florshinger is her partner. John is an electrical engineer and works at the Waste Water Treatment Plant.

Ms. Kayser stated that they have both been to Sweden where they had the opportunity to see the bio-gas production. It is driven in Sweden by an absolute need for recycling. The country has almost 95% recycling of everything. There is no system in place in Sweden to deliver natural gas to homes so they have to be very creative in recycling to come up with innovative ways. They have become very proficient at alternative energy and recycling.

Upon their return, Ms Kayser came to see Mr. Foy in regards to taking bio-gas and putting it in buses. Although they do not have a partner yet, they have an organization, Swedish Bio-gas Company that is very interested in being a business partner. They are still developing their vision for the use of this gas and she feels that the Swedish Bio-gas Company will have a large say in what transpires here.

Mr. Florshinger stated that it is a fairly simple process to create the gas. They are just finishing up the feasibility study and are getting ready to do RFP's and start construction.

Mr. Northrup stated that there must be some kind of energy input to accomplish this. What is the relationship of input/output? It has to be pretty efficient.

Mr. Florshinger stated that they are still determining the efficiency. It is basically as you put the sludge into the tank you have to heat the tank to a certain degree. It usually takes an input of about 30% to heat the sludge to generate the output that you receive.

Mr. Zolley asked how the gas would be used?

Mr. Florshinger stated that this would be very similar to natural gas. According to consumers, natural gas is 94-95 percent methane. The bio-gas will be 97% methane but it will have a little bit lower BPU so it can be used in every natural gas application.

Mr. Zolley stated that he is curious as to how the bio-gas initiative fits in with all the other work that Kettering is doing on fuel cell etc.

Mohamed El-Sayed, Kettering University stated that the CNG, itself, can reduce the emissions in the buses. We can also take the methane that is being produced and produce hydrogen. By producing hydrogen we can run fuel cells, which is the plan that we have. Since fuel cell buses are still expensive to build, we can take a portion of the hydrogen and mix it with the methane and create a substance called hydrate. The hydrate is about 80-20 ratio that will improve the efficiency of the buses by 30%.

Mr. Zolley asked if this bio-gas would fuel the hydrogen station?

Dr. El-Sayed stated that we can actually take the methane and produce hydrogen from it right away.

Mr. Zolley asked if the City had a financial interest in the project?

Ms. Kayser stated that the City would spend no money on this. It is actually being funded by MEDC. It is very similar to the Department of Energy for Sweden and they are funding it also. It's kind of a collaborative thing between Sweden and the MEDC.

Mr. Foy stated that the amount of methane that would be created through this process will not be enough to satisfy our total CNG requirement to operate our total fleet of buses. We would have to buy additional natural gas from Consumers Energy.

After further discussion Mr. Foy stated that the primary goal is to find another source of fuel other than diesel. The ability to be able to buy natural gas on the marketplace is such that it is anticipated that the total needs of the United States for transportation and everything has more than a 20-year supply. We have a lot of natural gas to be able to cover 100% of the requirements here within the United States. We want to reduce the amount we are buying from foreign sources.

**Minutes of the August 21, 2008 Regular Board Meeting**

Mr. Zellely moved, supported by Mr. Abrams to approve the minutes of the August 21, 2008 Regular Board Meeting. Motion passed unanimously.

**Resolution #08-51 by the Board of Directors of the Flint Mass Transportation Authority to endorse the Genesee County Complete Streets Draft Policy Statement and to establish membership in the Complete Streets Coalition.**

Mr. Foy stated that the concept of Complete Streets is to make sure that we can make the improvements that are necessary to encourage walking, bicycling and transit use while promoting safe operation for all the users within the county. Genesee County has developed a policy statement with regard to Complete Streets. We, in the Mass Transportation Authority, would like to request that the Board endorse the Complete Streets Policy because we feel it is in the best interest of the people in Genesee County.

Mr. Zellely moved, supported by Mr. Northrup to approve Resolution #08-51. Motion passed unanimously.

**Resolution #08-52 by the Board of Directors of the Flint Mass Transportation Authority to borrow the sum of not to exceed \$2,000,000 from JPMorgan Chase Bank, N.A. (the "Bank"), to finance working capital expenditures of the Authority through September 30, 2009.**

Mr. Northrup moved, supported by Mr. Abrams to approve Resolution #08-51.

Jerry Ragsdale, MTA Assistant General Manager-Administration stated that this is the annual line of credit request for having access to \$2 million through Chase Bank. During the year we also bring to the Board, in October or November, the request for a \$2 million advance from the State. For the last two years we have not had to draw it down because of the developing fund balance. This year we have had to draw down from the Bank \$1.2 million and we will pay this off in the next month or two. As we continue to build fund balances we expect to have to be less and less dependent for the advance from the State and Chase Bank. We have had this agreement ever since it was Genesee Bank many years ago.

Motion passed unanimously.

**Oakland County Transportation**

Mr. Foy stated that at the last meeting we had a discussion about a concept we were investigating to provide transportation to individuals that want to go excessive distances from Genesee County for work. We have a request for transportation coming from fifty-six (56) General Motor's employees to provide transportation to Warren, which is 65 miles away. To drive a bus down there it takes about 1½ hour and then we have to bring the bus back empty. Then in the evening they would have to turn around and go back to Warren with no one on the bus to bring the employees back to Genesee County. This is a very costly way of trying to provide this transportation. We are investigating the possibility of training a rider from General Motors to drive the vehicle. MTA would buy a used vehicle and maintain it and allow them to drive it down to Warren, park it during the day, and then drive it back. The cost to the General Motors employee would be the cost of a normal pass. From a cost effective point of view it could more than cover the cost of the operation of the vehicle. We would not have a cost associated with the driver because it would be one of the employees and their compensation would be that they would have free transportation going back and forth to work. We are looking at this concept and when we brought it to you at the last meeting you identified many areas of concern. One being the liability, another the relationship with General Motors, parking of the bus and whether we would be able to plug it in and also reaching an agreement with the Union.

Ed Benning, MTA Assistant General Manager-Services stated that since our last meeting we have had discussions with Greg Hernacki who is the representative from the group at General Motors. Grey has done some work with the General Motors management. Because General Motors would not be subsidizing this, they feel there is no liability. They have given us the name of their legal council and we referred him to Michael Joliat. In addition, they have identified an area where we can park the bus, which is a fenced in area. The plug in for the bus is something we have to continue to work on because the current voltage in the area is much higher than what would be needed. That effort would come once we have actually made the decision to provide the transportation. We have 56 individuals who have signed a commitment form to actually ride for the next year and pay the appropriate charge.

Michael Joliat, MTA Attorney stated that General Motors doesn't think that they would have any liability. MTA obviously has liability or exposure just like we do on every bus that is on the road. Every bus that is on the road, whether it is driven by one of our operators or by a volunteer operator, we are responsible for no fault benefits for any passenger that is on our bus that is injured if they do not have their own household car insurance.

Mr. Zelle asked if there would be any unique liabilities concerning the fact that we would be using non-MTA drivers, were out of our service area etc?

Attorney Joliat stated there are two unique liabilities but he can't tell us they are a sure thing. One of the areas is in workers comp. A volunteer bus operator is covered for workers comp by the MTA, which means workers comp is priority over no fault. If a volunteer driver was injured on the bus, the MTA would be responsible for that individuals medical expense benefit. Because they don't receive a wage from MTA, typically the MTA wouldn't be responsible for any wage

loss benefits. However, this person would have dual employment with General Motors and if they were injured while driving our vehicle and no longer able to perform their job at General Motors, they would want workers compensation benefits from someone. General Motors would say that they are not responsible; they weren't injured in service to us. The MTA would say, we're responsible for their medical under the statute but we shouldn't have to pay their wage loss benefits. There's an exception in the statute for volunteers to government agencies. There are not any cases that say where this particular issue ends up on workers comp. Who pays the drivers wage lost benefits? This is an uncertain liability but it is a potential exposure to the MTA.

If a passenger were injured, they would be on the way to work. This is not a company sponsored transportation program so they don't have workman's comp benefits if they are injured between Flint and Warren. They would have wage loss benefits under the no fault act just like any of us if we were injured while driving to work in our car. It would come from their own car insurance company. If one of the passengers did not have car insurance in their household and they are injured on our bus, they would receive no fault benefits from the MTA including wage loss benefits just like they would if they were riding on any bus around town.

The other unusual liability is, if there is a motor vehicle accident and there is property damage or personal injury to another person. The MTA would be responsible for the property damage portion of the no fault. However, the person whose property is damaged is not limited to the option of MTA. If they think they can sue the MTA and the volunteer driver who has his own vehicle insurance, that driver has some potential exposure for that property damage. The volunteer driver could be on the hook for damages to a third person. The Governmental Immunity Act allows the MTA to indemnify, defend and pay money damages when one of their employees is involved in a motor vehicle accident. The Board would have to go through that same decision making process to decide whether they want to indemnify a volunteer who may or may not be immune from liability under the Governmental Immunity Act. The Governmental Immunity Act would give a volunteer driver the same immunity as an MTA employee would enjoy. However, an MTA employee is not immune from liability if they are grossly negligent while driving the bus and neither would a volunteer driver.

Mr. Greg Hernacki, General Motors stated that he has spoken with Gordon Ing, General Motor's Attorney and since he does not carry the correct appropriate insurance he did not want to put anything in writing but he communicated that this is not General Motors sponsored or subsidized so he did not see any liability. In addition, this bus is only to be driven to and from the designated route of the MTA.

Chairman Newman stated that he is not going to support this concept without a recommendation from our legal staff and something in writing so that the Board can understand the liability that MTA is exposed to.

Attorney Joliat stated that he would be happy to provide a written recommendation and try to flush out some of the other issues about an applied contract, the part time scenario, and the contract for passengers who purchase a pass.

Mr. Foy stated that we still have to work out an agreement with the Union. In this particular activity we can probably put our own driver on this route. What we want to solve with the Union is the principal that what if the request for transportation is 80 miles or farther. We are pretty close to this particular activity because its about 65 miles and currently we are providing the service at 53 miles to Delphi and we have a driver on that route. We will keep talking on what if the mileage becomes 80-90 miles.

### **General Manager's Report**

Mr. Foy stated that in the interest of time the General Manager's Report would stand as written. We are continuing to see ridership growth. We have an issue with student transportation. The need for peak period vehicles has met our max. There is a request for a significant growth in the number of students that need transportation. We are continuing to look at that and it will probably be the end of the month before we have it all resolved.

The summer maintenance program has come to a conclusion. The vehicles look in excellent shape and some of them are 23-24 years old. By maintaining a high level of preventive maintenance and our rehab program, it allows us to take that money that we would normally be using for purchasing buses and use the funds for other important infrastructure requirements.

Chairman Newman ruled that the General Manager's Report be received and filed.

### **August, 2008 Income/Expense Statement**

Mr. Ragsdale stated that Mr. Foy's report indicated that we are still dealing with getting our 2008 5307 grant awarded. They did award that yesterday. This will greatly improve our cashflow. We got \$2.4 million in capital dollars that we use for preventive maintenance. We also received an enhancement grant that will allow us to purchase additional bike racks as well as some additional passenger shelters.

Passenger fares are exceeding projected figures in all three areas. In fixed route we had almost \$31,000 more than we originally projected. Demand Response is starting to build with the changes in service made there and regional if \$10,500 over projection. We are still short year-to-date in our demand response.

Non-transportation revenue is exceeding projection by \$5600. Dedicated tax revenue, we projected a little over \$10 million. We have actually received over \$10.2 million. State cash grants are exceeding by \$97,000. Federal cash grants are right on with the amount projected. Total revenue is over our original projection by a little over \$1 million.

In expenses we are still experiencing some fluctuation in labor, benefits and material and supplies. Material and supplies is primarily the fuel. Total expenses are about \$737,000 over

budget. We don't expect at this time that we will bring an adjustment to the Board. It will be done in the audit process.

Chairman Newman ruled that the August, 2008 Income/Expense Report be received and filed.

**August, 2008 Ridership Statistic Report**

Mr. Benning stated that ridership for August, 2008 was 467,715 passengers for a 12% increase over the prior year. Year-to-date ridership is 5,573,884, which is up 16%. We have actually exceeded the entire ridership for the prior year by the month of August. It appears that we will be over 6 million passengers for this year. We are showing increases in all areas. We are significantly challenged this year with the increases that we are seeing on the peak period routes. We are working our way through and we feel that through some very creative innovative approaches we will be able to address the entire requirement.

When you compare the months we actually had two less weekdays this year than we had last year.

Chairman Newman ruled that the August, 2008 Ridership Statistic Report be received and filed.

**August, 2008 Complaint Statistic Report**

Mr. Benning stated that we had a total of 33 complaints for the month of August. This is less than one complaint per each 100,000 passenger. The area that we had the highest complaints was with driver conduct. This is an area that we are continuously working on.

Chairman Newman ruled that the August, 2008 Complaint Statistic Report be received and filed.

Attorney Michael Joliat stated that he distributed a confidential memorandum this morning. In the past the MTA and other public bodies have decided to go into Executive Session to consider privileged material under the attorney/client work product document. Mr. Joliat thought that if possible to discuss this in an open meeting, since there are no members of the public here, the minutes would be public but to discuss it in such a way that assuming the Board wants to proceed that the confidentially, the agreement can be resolved. This is a cost benefit situation.

In the mediation process for both days the bus operator and the immediate supervisor were there. The allegations were denied. The context that are shaped for the purposes of advancing this claim are clearly disputed. The mediator constantly brought the MTA representative back to the examples that were most recent here in Genesee County in connection with the sentencing by Judge Ransom that directed a defendant to participate in a faith based probation program and more recently Mayor Williamson's detention of an individual at City Hall. Those two situations involved constitutional claims in Federal Court and one resulted in a judgment of \$150,000. These claims can trigger attorney fee provisions and the prevailing parties are entitled to their attorney fees and MTA would pay attorney fees in defending the case.

The mediation process went on for two days. Probably 7 or 8 hours and the proposed settlement agreement was the result of that.

Mr. Zellely asked why we are not in private session. What is the point in this?

Attorney Joliat stated that this document is confidential. The Open Meetings Act, and the MTA is required to have an Open Meetings Act and a Freedom of Information Act. The exception under the Open Meetings Act is very clear for matters that are pending mediation. This matter went into mediation before the lawsuit was filed so it doesn't qualify for an Executive Session under that provision in the Open Meetings Act. There is another exception that allows Boards to go into Executive Session to discuss matters that are confidential. Attorneys differ on how strongly that applies but the argument is that attorney/client privilege is one of those recognized exceptions. This Board has met privately to discuss a memorandum like this in the past. Other Boards or public bodies will not. A good argument could be made that an Executive Session is appropriate but it can be discussed in an open meeting.

Ms. Bogardus stated that she believes that the public has an attitude that we will sue or threaten a public agency and we will get money and in this case she feels this is harassment of the driver and she has a concern on the effect on our ridership. People are going to be paid off because they ride on a bus and purposely harass other riders and the driver. We are going down a very slippery, dangerous and expensive slope and she doesn't intend to approve this agreement. The examples given of stopping and searching someone for selling a newspaper is ridiculous. You do not have a constitutional right to harass other people.

Mr. Zellely asked if there was case law on this, specifically transportation authority?

Attorney Joliat stated that this claim is not brought under because it is public transportation or public accommodation, it is because the operator in following the procedure that he did triggered the arrest of this person, even though momentary, constituted a violation of his constitutional rights. He was given a pat down search and then he was allowed to reboard the bus and continue on his way. Certainly different from the two examples. Those were examples that were used in the facilitation to show that in other cases involving first amendment that substantial verdicts or judgments are entered. This triggers the attorney fee provision for not just your attorney but also the plaintiff's attorney to advance the case and if he were to be successful the cost could be who knows.

Ms. Bogardus asked if the MTA has a policy for handling a customer who is harassing him or other passengers?

Attorney Joliat stated that when the disturbance is reported to dispatch, dispatch dispatches our security or the police. In this incident the operator requested the police. The dispatcher contacted the police and the police were dispatched. Our policy does not require the dispatcher to call the police; he could dispatch our security. This incident happened at 10:00 on a Friday

night and he did not know if our security was deemed not to be the best alternative and that is why the dispatcher called the police.

Mr. Foy stated that the driver has the responsibility to report the disturbance. He doesn't have the right to say how it is going to be dealt with. The dispatcher makes that determination and either sends out our security, determines what has to be done if anything. The driver in this particular incident asked for the police. The dispatcher was wrong and should have ignored that and made the determination in accordance with the policy. Clearly the driver does not have to put up with abuse. The issue always is, is the activity taking place such that the driver cannot operate the vehicle in a safe and effective manner. That is something only the driver can determine.

Mr. Northrup stated that each of us looking at the initial presentation of facts in this manner, say this is ridiculous. However, you have to go beyond that. The concept of logic. The logic of judges and jury. They don't have the same logic as we because they go further into it. In case of a court situation they will get a lot more facts or arguments that they have to look at. We have to look at what is its potential of harm.

Mr. Zellely stated that he is hearing recommendation of this from legal and a couple Board members who were present in the mediation. At the risk of sounding too far to the left, there is also public reaction on this overkill to the incident. There are civil right questions that we should not take likely.

Mr. Abrams stated that one of the considerations we have is the adverse publicity that would come against the Authority. There was already a sympathetic article in the Flint Journal regarding this incident. We looked at it in the business since, the fact that the cost of litigation would probably be more than what we are talking about here.

Chairman Newman asked that if the Board approves this settlement, does it remain confidential?

Attorney Joliat stated that was correct. The plaintiff did not want the publicity, his attorney doesn't want the publicity and the MTA certainly never wants publicity like this. That is part of the reason why this process was used. It would remain confidential.

Ms. Sims stated that this seems like this is a civil rights issue simply because he was singing a religious song. If he had been singing something else, would we be in this position?

Attorney Joliat stated that it certainly would not be a first amendment claim at that point. It would be a question of rather you can deprive a passenger of a public accommodation by kicking the passenger off the bus. But that is a whole different procedure and process. We did not think this was a first amendment case. A different series of viewpoints came out at the facilitation that led to the lengthy discussion and settlement. By the time the bus operator made the call to the dispatcher there were a number of passengers on the bus that were siding with the plaintiff. His position being right and our bus driver over reacting.

Ms. Sims asked what happens if the Board rejects the settlement?

Attorney Joliat stated that if the Board rejects the settlement the plaintiff would be free to file a suit.

Ms. Sims asked if anyone considered the fact that the bus drivers have to control their environment. If there is an issue, he is the only person that can respond and take care of it. Do we even know if security was available? If security is not available, what is the other alternative?

Attorney Joliat stated that the alternative is eventually either a supervisor or the police. It depends on how far the incident has escalated.

Mr. Northrup moved, supported by Mr. Abrams to approve the recommendation.

**Roll Call Taken:**

Paul Newman, John Northrup, Richard Abrams, Mike Zelle, Paul Luttenbacher voted in the affirmative. Rose Bogardus and Carolyn Sims voted in the negative. Recommendation was approved.

**Comments of Board Members**

Ms. Sims congratulated Ms Bogardus on her election and asked if she was going to remain on the Board.

Ms. Bogardus stated that she was on the Board as the chairs designee so she wasn't sure how much longer she would be there.

Mr. Foy stated that he included in the packet a copy of the recent millage renewal. Out of 230 precincts in Genesee County, 227 passed the millage. Of the other three involved, two of them went down by one vote only and the other was by five votes.

**Adjournment**

Meeting was adjourned at 9:55 A.M.