



## Minutes

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<b>Meeting:</b>	TriMet Board of Directors Regular Board Meeting	<b>Date:</b>	January 22, 2014
		<b>Time:</b>	10:00 a.m.
<b>Presiding:</b>	Bruce Warner	<b>Location:</b>	City of Portland Building 1120 SW Fifth Avenue Room C Portland, Oregon
<b>Board Members Present:</b>	T. Allen Bethel Joe Esmonde Craig Prosser Consuelo Saragoza Travis Stovall Bruce Warner	<b>Board Members Absent:</b>	

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### 1. Board Committee Reports

- A. Committee on Accessible Transportation (CAT)** – T. Allen Bethel reported that the Committee met on January 15, 2014 and that a memo summarizing the meeting was distributed to the Board. Dr. Bethel stated that the Committee received updates on the transit police activity, the pedestrian safety project and the FY15 budget and CAT priorities. CAT will submit its list of budget priorities by February 21<sup>st</sup>. Discussions continue on accessibility issues and concerns for the entire Portland community.
- B. Metro Policy Advisory Committee (MPAC)** – Craig Prosser stated that MPAC met two weeks ago and continues to discuss the Climate Smart Communities scenarios. The goal is to identify the best set of strategies to help us meet the Climate Smart goals set for this region by the legislature. MPAC received a briefing from Metro on updating the Regional Growth Management Plan which ultimately could lead to adjustments in the Urban Growth Boundary. This will be a two year process and include a series of briefings to MPAC to understand the analysis and elements that impact the proposed changes. Metro also provided a briefing on the regional economy and growth projections.

**C. Finance & Audit Committee** -- Craig Prosser reported that the Committee met on January 8, 2014 and received the following reports:

- **Budget Kickoff – State of TriMet** – Neil McFarlane reviewed his annual budget development kickoff meetings. This year TriMet teleconferenced in all work locations and over 200 employees were able to receive an update on the FY15 budget and an opportunity for questions and answers.
- **State Audit Update** – Neil McFarlane reviewed the timeline for completing the Secretary of State’s audit of TriMet. The work is progressing well and is on schedule to meet the end of January deadline. This is a Secretary of State audit and will be released by the Secretary of State’s office. There will be a link on TriMet’s website to the Secretary of State’s website to access the report and TriMet’s response.
- **Pension Funding Plans** – Dave Auxier discussed how recent pension accounting guidance (GASB 68), industry best practices and other factors such as bond rating agencies are leading TriMet to adopt pension funding plans. These plans would layout how TriMet plans to bring its two closed defined benefit plans to fully funded status. Dave discussed possible amortization schedules and contribution smoothing techniques. The Committee asked staff to prepare a briefing for the full Board in February.
- **Fund Balance Policy Update** – The Committee discussed possible changes to TriMet’s current Board adopted Fund Balance and Contingency Policy. The Committee reviewed a model that demonstrated how TriMet’s fund balance behaves during economic downturns and what it takes to rebuild fund balance coming out of a recession. Because all members of the Board have expressed opinions on reserve levels the Committee asked staff to prepare a briefing for the full Board on this subject.
- **Investment Policy** – The Committee discussed TriMet’s annual update to the investment policy. Staff’s proposed changes are very minor this year. The proposed changes have been forwarded to the State Treasurer’s office. They have determined the changes are minor and do not require a formal review by the Oregon Short Term Fund Board. The most significant policy change is increasing the amount of the portfolio that can be invested in CD’s and savings accounts from 15% to 30% and per issuer maximum is increased from 5% to 10%.

**D. Transit Equity Advisory Committee (TEAC)** – Consuelo Saragoza reported that TEAC did not meet in January, but there will be a full report for February’s meeting.

**2. General Manager Report**

**A. GM Comments** – Neil McFarlane, General Manager, reported on:

- **Ridership** – The WES Commuter line continues to see ridership gains. During the fall quarter (September through November), WES set a new record with weekly ridership jumping 17 percent compared to the same period in 2012. System-wide our ridership dipped 3.2 percent to roughly 24.3 million rides in the last quarter. Weekday bus ridership was down 3.6 percent and MAX ridership was down 2.6 percent. We projected these declines due to the elimination of the free rail zone and the increase in the ticket price. We also took a look at December’s numbers to see if the trend was continuing, and there was a bright note. December ridership is trending in the right direction with weekly MAX ridership up 3.1 percent and system-wide ridership up 1.2 percent. Peak ridership in December was also up on both bus and rail. Lastly, WES ridership for December continues reaching new milestones with weekly ridership up nearly 20 percent. We are closely monitoring our numbers and looking at ways to continue to build ridership – frequent service restoration being one of them.
- **LTK Review** – As announced in December, there is an effort under way to take a more comprehensive look at our rail maintenance needs and what that means for next year’s budget and the budgets ahead. Our contractor, LTK, who is familiar with our system will begin assessment next week to:
  - Assess the state of repair of all of these major elements
  - Perform spot checks of selected equipment
  - Review maintenance records and service reliability data

We will be looking for recommendations on our:

- Maintenance procedures
- Training programs
- Staffing levels
- And what systems repairs and upgrades are needed.

Our overall goal is to improve the reliability of the MAX system. Bob Nelson, our interim Deputy General Manager, will give an update at the February Board briefing.

- **Bridge Naming** – Last week we announced to the community the ‘finalists’ names for the bridge we’re building for the Portland-Milwaukie Light Rail Project that continues to be on time and on budget. The final names are:
  - Abigail Scott Duniway Transit Bridge
  - Cascadia Crossing Transit Bridge
  - Tillicum Crossing Transit Bridge, Bridge of the People
  - Wy’east Transit Bridge

In the week since the announcement we have had over 1,800 comments and we will continue taking comments through the first of March. The comments will help inform the committee when they reconvene one more time. The committee will then forward this recommendation to TriMet -- many thanks to Director Stovall for serving on that Committee.

- B. **Safety & Security Certification Program** – Neil McFarlane introduced Kurt Wilkinson, Manager, Construction of Safety & Risk Assessment, who is in charge of the Safety & Security Certification for every new or major remodel project on our system. The Portland-Milwaukie project is the key focus right now and Kurt will provide an update to show the process we go through to make sure our new assets are safe.

Kurt Wilkinson provided a brief overview of the Safety & Security Certification Program as a whole focusing on Portland-Milwaukie Light Rail Transit Project as well as talking about how we have adopted this mandated process on federal projects over to all of our major construction projects that are taking place along our alignment. Safety and security certification is a process to assure that safety and security concerns, vulnerabilities, and hazards are adequately addressed prior to the initiation of service. Mr. Wilkinson went through a PowerPoint presentation as outlined below and answered Board questions:

- Safety and Security Certification Elements
- Integrated Testing
- Current Projects
- Steps in the process
- Role of Safety and Security Committee

- C. **Quarterly Finance Report** – Dave Auxier reported on the financial highlights for the quarter ending December 31<sup>st</sup> and the net results reflected in the financial statement and answered Board questions.

**D. Limited English Proficiency (LEP) / Cultural Competency – Neil**

McFarlane stated that at previous meetings the Board has heard how the demographics are changing in TriMet's district and how we as an agency need to increase our ability to interact and be effective with riders and the communities we serve. Being inclusive is in our values. We say that we do the right thing by being responsive, inclusive and accountable. Today, we will hear from Martin Gonzalez, Manager of Multicultural Programs, on our efforts to be even more inclusive with the communities we serve – particularly communities whose primary language is not English. We will also get an update on our efforts to increase our staff skills to be more culturally competent, keeping in mind that becoming culturally competent is more of a journey rather than a destination.

Martin Gonzalez provided an update on the ongoing efforts and next steps of the LEP program and indicated that TriMet continues its commitment to provide meaningful access to programs, services and benefits for persons with limited English proficiency.

Mr. Gonzalez provided an update on the ongoing efforts and next steps of the cultural competency program and explained that the agency continues to focus on providing employees with enhanced training and additional skills to be proficient and effective working within a diverse workforce and service environment.

Mr. Gonzalez provided examples of customer service information posted in multiple languages and answered Board questions.

**3. Consent Agenda**

Action: Travis Stovall moved adoption of the consent agenda items listed below; Craig Prosser seconded the motion. The motion was approved unanimously.

Resolution directing that all ordinances shall be read by title only

Approval of Minutes for December 11, 2013

Resolution 14-01-01 Adopting a Revised Investment Policy

#### 4. Resolutions

Neil McFarlane introduced the following resolutions:

**Resolution 14-01-02 Authorizing a Contract with Modern Railway Systems, Inc. for Design, Furnish and Install Services for the Westside Express Commuter Rail Positive Train Control Project**

Board Discussion: Board member Bethel asked what additional safety aspects this system would provide to the current safety system in place on WES. Neil McFarlane explained that this would upgrade the existing train control system (the Automatic Train Control System and a Centralized Traffic Control System) to meet the remainder of the new FRA safety regulations. This contract is to design, furnish and install a PTC-compliant system.

Board member Bethel asked what accounted for the 50% reduction in the amount bid on the project compared to the TriMet estimate. Neil McFarlane responded that this contractor installed the system originally and has vast experience and our estimate did not take into account the experience on the WES system – we benefit greatly from MRS’ background and experience. Thomas Heilig stated that he believes that is correct. Board member Bethel asked that staff take a thorough look at the proposal and report back to ensure that all aspects of the RFP have been included. Neil McFarlane responded that we are diligent in reviewing RFP’s and would be happy to provide a full report.

Board member Stovall asked, if by awarding this contract to MRS, do we still have flexibility and negotiating opportunities for the larger component of the RFP. Neil McFarlane responded yes, and we will still come back to the Board for approval of the contract modification in the fall of 2014.

Action: Joe Esmonde moved approval of Resolution 14-01-02; Travis Stovall seconded the motion. The Board unanimously approved the motion.

**Resolution 14-01-03 Authorizing a Disposition and Development Agreement with Brooklyn NowRuz Development LLC for the Sale of Real Property Located at 4235 SE 17<sup>th</sup> Avenue and 4215 SE 17<sup>th</sup> Avenue in the City of Portland**

Public Testimony:

Michael O’Conner, Brooklyn Action Corps, spoke in support of Resolution 14-01-03 during public forum and submitted written testimony to the Board that was made part of the Board record. Mr. O’Conner asked the Board to ensure that the proposed critical elements of the project are realized in the final design and plan and that the agreement is sufficient to achieve that.

John Charles, Cascade Policy Institute, spoke in opposition of Resolution 14-01-03 during public forum and submitted written testimony to the Board that was made part of the Board record. Mr. Charles expressed concern that giving away a \$500,000 asset is violating the Board’s fiduciary trust and that he feels the benefits do not support subsidizing a project of this size.

Meganne Steel, Metro -- Transit Oriented Development, spoke in support of Resolution 14-01-03 during public forum. Ms. Steel explained the analysis that was done for this project and the public outreach including her participation on the advisory committee and attending neighborhood meetings. Ms. Steel shared the benefits as well as the challenges of this public private partnership and asked the Board to approve Resolution 14-01-03.

Jillian Detweiler, Director of Real Estate, provided a detailed explanation of the how the decision was made and the public process that shaped the transit-oriented development proposed by the developer. Ms. Detweiler indicated that the additional funds for the project will come out of the PMLR project transit-oriented development funds and if the Board approves this project, the next step would be to submit the proposal to FTA.

Board Discussion:

Board member Stovall asked what other uses this parcel could be used for if it was sold.

Jillian Detweiler responded that the appraiser felt that the best use would be apartments and would most likely be of inferior quality compared to what is being proposed here. When we did the Request for Proposal we did not limit what the property would be used for and we did get one proposal for a Day Care Center, and because of the lack of auto access and that it was only one story, we did not feel it was a good use of this site. Generally in this employment zone, you may get manufacturing, but because of the size and limited truck access, industrial type use would be very limited.

Board member Stovall asked for a general overview on transit-oriented development and why subsidies are sometimes needed.

Jillian Detweiler explained that subsidy may be needed because the developer is being asked to do something that the market currently cannot do itself. In this case, the developer is activating the ground floor of the development by bringing in a grocer to the neighborhood which requires additional construction than a four-story box would. The hope is that once the project is on the ground and is financially viable, that it would create a new comparable for the next project to obtain full-financing for a similar development with no subsidy needed.

Board member Stovall stated that what he is hearing is that this would encourage development surrounding some of the transit projects in the region that is desired by Metro, City of Portland and other partners.

Board member Stovall thanked John Charles for the information he provided. Mr. Stovall shared that he lives in a transit-oriented development and has seen first-hand the convenience of taking transit and the significant enhancement to the neighborhood. Mr. Stovall added that he would have appreciated having a grocer in the development, not only for the residents, but for people taking transit along the development.

Board member Stovall asked if there are going to be improvements that enhance the experience of transit. Jillian Detweiler, responded, yes, during the basic PMLR project, they will be rebuilding sidewalks and adding civil improvements consistent with the station area. This development will provide a retail experience that offers activity and conveniences -- bringing people more hours of the day to this station, so you are not confronted with an empty parking lot, which would be the case if we continued the existing employee parking use.

Board member Bethel asked how time critical this is and what contributions Metro and the City of Portland are making to this development.

Jillian Detweiler stated that we do have time to look at this more closely if needed. Ms. Detweiler indicated that the City of Portland contributed millions of dollars to the PMLR project overall and that the partnership works both ways, so when we have an opportunity to help achieve their goals with a modest investment, we want to do that. This is outside an urban renewal area, so there is not an obvious source to tap. Metro supports this project and would fully expect that they would fill the gap if necessary.

Neil McFarlane added that Metro also contributed close to \$100 million to the PMLR project.

Board member Esmonde stated that he is in favor of this project, but would like additional information prior to making a decision.

Board member Prosser stated that if it is the will of the Board to wait and get additional information, he is comfortable with that. Mr. Prosser stated that from his past experience, he is in support of subsidizing the project to get the type of development that makes the station, neighborhood and corridor more lively, interesting and pleasant to travel through.

Board member Saragoza asked what the timeline is for making a decision on this project.

Jillian Detweiler indicated that a decision would be needed by the February 26, 2014 to meet timelines, and in the meantime we would begin preparing the FTA concurrence package in the hopes that ultimately this would be approved.

Board member Saragoza stated that she agrees with Board member Prosser that the development would make the neighborhood move lively and active and would expect that the developer would consider some of the neighborhood association expectations and needs to support the neighborhood.

Board member Bethel asked for additional information on the developer, who they are, what they plan on doing for this project, their track record, prevailing wages, and their DBE, MBE, and WBE utilization for consideration.

Board member Esmonde asked if this would be an energy-efficient project.

Jillian Detweiler stated that we will provide that information to the Board.

Board President Warner stated that what he is hearing from the Board is they would like additional information from staff before making a determination. The decision before the Board is if this is what we want on that site versus a straight apartment complex or an industrial type use. Mr. Warner stated that he applauds the developer for this proposal that would invigorate the neighborhood and improve safety in the area. It is important that the Board understand the trade-offs before making this decision.

No action was taken.

**5. Ordinances**

**Ordinance 331 Amending Chapter 14 of the TriMet Code to Revise the Definition of “Net Earnings from Self-Employment” (Second Reading)**

General Counsel Shelley Devine read Ordinance 331 by title only.

Action: Craig Prosser moved approval of Ordinance 331; T. Allen Bethel seconded the motion. A roll call vote was required, and resulted in the following approval.

Joe Esmonde.....	Yes
T. Allen Bethel.....	Yes
Bruce Warner.....	Yes
Consuelo Saragoza.....	Yes
Travis Stovall.....	Yes
Craig Prosser.....	Yes

**Ordinance 332 Extending Transfer Times from Two Hours to Two and One-Half Hours, and Amending TriMet Code Chapter 19 Transfer Provisions (Second Reading)**

General Counsel Shelley Devine read Ordinance 332 by title only.

Board President Warner stated that he was surprised and somewhat disappointed to see the complaint filed by OPAL alleging that our previous action standardizing transfer times violated the federal requirements for transit equity analysis. President Warner asked Shelley Devine to explain the process and the Board’s options before them today.

Ms. Devine explained that several weeks ago we sent each of the Board members a copy of a complaint that we received from OPAL’s counsel that OPAL filed with the Federal Transit Administration on December 27, 2013. The complaint is a formal administrative agency complaint that alleges that TriMet’s standardization of the two-hour transfer had the effect for some riders of reducing the transfer time on weekends and that in turn had a disproportionate burden or impact on low-income and minority riders. The complaint alleges that TriMet should have done a transit equity analysis prior to the standardization under Title VI and therefore was in violation of Title VI. The complaint seeks three remedies from FTA: 1) that TriMet be required to conduct a transit equity analysis; 2) that the FTA place a hold on TriMet’s federal funding until TriMet has conducted a transit equity analysis of its transfer policy; and 3) that TriMet

provide riders with a three-hour transfer on weekends across all bus lines. TriMet has not yet heard from FTA regarding the status of this complaint. Generally, the process unfolds like this: the FTA will review the complaint and will likely request a written response from TriMet. After considering TriMet's response, the FTA can do several different things. It could decide to dismiss the complaint, either on procedural grounds, for example, that the complaint is untimely, or on substantive grounds, for example, that a change in a transfer policy is not a "fare change" under the FTA's Title VI guidelines. Or, the FTA could investigate the complaint further and decide that TriMet should have conducted a transit equity analysis. In that case, it would work with TriMet to determine next steps, which could include requiring TriMet to conduct a transit equity analysis. The complaint process usually takes between 2-6 months, depending on whether the FTA dismisses the complaint early on or requests additional information from the parties.

Ms. Devine stated that the options before the Board today are to: 1) go forward with the Ordinance and vote on it; 2) make a motion to table the ordinance until we get clarification from FTA; or 3) amend the Ordinance which would start the process over.

Board Discussion:

Board member Prosser clarified that the assertion is that TriMet should have done a transit equity study when we standardized transfer times, and if FTA finds that is the case, then TriMet would be required to do a transit equity analysis on the transfer policy change before us as well. If FTA decides it was not necessary to do a transit equity analysis, we could move forward with consideration of this action.

Shelley Devine stated that is correct.

Board President Warner indicated that this is most likely something that FTA has not dealt with previously so the decision they make will set a national precedent.

Shelley Devine stated that our preliminary research indicates this would be an expansion of the interpretation of the term "fare change" as reflected in the documents and information that FTA has provided to transit agencies. That said, FTA can interpret its circular and regulations anyway it sees fit. While we are comfortable that we did the right thing, FTA could conclude that this was a fare change and that we do need to conduct a transit equity analysis.

Board member Stovall asked if there is a standard transit equity analysis that we must perform when it's called for.

Shelley Devine responded yes, it is laid out in the FTA guidelines. For a fare change, all the models and examples that FTA provides, is for an actual direct price point fare change, either a penny up or a penny down which is not what we are talking about with the transfer policy. It would be very challenging to do an equity analysis on a change in transfer policy and is why we would need to seek guidance from the FTA if they did determine we should do an equity analysis on a transfer change to understand what that would look like.

Board member Stovall clarified that we would need direction from FTA on what the transit equity analysis would even look like because this is outside of what historically FTA has defined as a fare change.

Shelley Devine stated that we believe so.

Board member Esmonde stated that it seems this is uncharted territory and a lot of uncertainty involved here, which also leads to uncertainty regarding this ordinance as well.

Shelley Devine indicated that is correct.

Board President Warner restated the options before the Board are: 1) because of the uncertainty and risk of taking action on this today, the Board could make a motion to defer the ordinance until we get clarification from FTA; 2) move forward with the Ordinance and vote on it today; or 3) make changes to the Ordinance and start the process over.

Board member Bethel stated that if the allegations are upheld, we would be in the same situation on the action before us today and therefore would suggest tabling Ordinance 331 until the issue is resolved.

Board member Saragoza indicated that OPAL and TriMet worked hard to get to this point, so it does not make any sense to move forward with a vote on this today, and is supportive of tabling this Ordinance.

Board member Stovall stated that he agrees.

Board member Esmonde said that in the best interest of the agency and the community, it would not be prudent to vote on this today without having certainty.

Board President Warner stated that he agrees and as he said earlier, he is disappointed and surprised about where we are on this, but agrees it is important to wait on making this decision until the complaint is resolved.

Action: T. Allen Bethel moved to table Ordinance 331 until the FTA complaint is resolved; Joe Esmonde seconded the motion. The Board unanimously approved the motion.

### **Ordinance 333 Adopting LIFT Fare Increases and Amending TriMet Code Chapter 19 (First Reading and Public Hearing)**

General Counsel Shelley Devine read Ordinance 333 by title only and Neil McFarlane introduced – no action is necessary.

President Warner opened the meeting for public hearing and the following person testified on Ordinance 333:

Chris Walker spoke to the Board on Ordinance 333 and asked the Board to consider when making LIFT fare changes to keep them in line with the social security market so it does not impact people's living expenses and price them out of transit service.

#### Board Discussion:

Board member Esmonde asked if LIFT service was provided by other agencies across the country.

Neil McFarlane indicated that the Americans with Disabilities Act (ADA) requires all transit providers that provide fixed route service, to provide paratransit service for people with disabilities. The FTA would allow the LIFT fare to be twice as much as the adult fixed route fare because it is a premium costly service with an average cost of about \$31.00 a ride. The Board deliberated in 2011 to phase in a fare increase that would raise the LIFT fare to a maximum of \$2.50 that they felt was fair and balanced. It is something that can be revisited, but right now LIFT ridership growth is stable. It is important to note that although this service is costly, there is great benefit to the population we serve and is incredibly valuable and life-changing to the people that rely on it.

### **Ordinance 334 Amending TriMet Code Chapter 2 Board of Directors Meeting Rules (First Reading)**

Shelley Devine read Ordinance 334 by title only and Neil McFarlane introduced – no action is necessary.

TriMet Board of Directors Meeting  
January 22, 2014

## 6. Other Business

There was no other business to come before the Board.

President Warner adjourned the meeting at 11:50 a.m.

Respectfully submitted,

Handwritten signature of Kelly Runnion in blue ink.

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Kelly Runnion, Recording Secretary

A copy of the full audio-recorded transcript is available for review in the Office of the General Manager.