

MINNESOTA VALLEY TRANSIT AUTHORITY
Regular Board Meeting
February 25, 2009 – 4:30 p.m.
Eagan Bus Garage

Board Members Present:

Elizabeth Kautz, Burnsville
Meg Tilley, Eagan
Ruth Grendahl, Apple Valley
Liz Workman, Dakota County
Jane Victorey, Savage
Jon Ulrich, Scott County
William Droste, Rosemount
Wally Lyslo, At Large

Others Present:

Beverley Miller, Executive Director
Michael Abegg, Planner
Glenn Boden, Fleet Maint. Manager
Lois Spear, Finance Officer
Robin Selvig, Customer Relations Manager
Shaun Morrell, Planner
Peter Herlofsky, Farmington
Connie Massengale, Schmitt & Sons
Tom Pepper, TWG
Tom Lovelace, Apple Valley TWG
Barb Ross, Best & Flanagan
Margaret Schreiner
Dan Krom, Dakota County TWG
Laura Adelman, This Week Newspapers

I. Call to Order

The meeting was called to order at 4:28 p.m. by Chair Elizabeth Kautz, with approval of the Board.

II. Public Comments

Waldemar Lyslo of 913 Woodlawn Court in Burnsville addressed the Board regarding inconsistencies in the Joint Powers Agreement as well as questions regarding the selection of a lobbyist by the Suburban Transit Association Providers. He was told that these issues would be addressed during the Board meeting.

III. Approval of Agenda

Motion by Meg Tilley and seconded by Jon Ulrich to approve the agenda. Ruth Grendahl specifically asked that one item be added to the agenda regarding the STA Lobbyist selection under Committee Reports, STA. Roll-call vote on the amendment:

Liz Workman – Aye	Meg Tilley – Aye	Chair Elizabeth Kautz - Aye
Jon Ulrich – Aye	Ruth Grendahl - Aye	
Jane Victorey - Aye	William Droste - Aye	

Motion carried unanimously. Motion by Meg Tilley and seconded by William Droste to approve the agenda as amended. Motion carried.

IV. Consent Agenda

Ruth Grendahl asked that the January Meeting Minutes be pulled from the Consent Agenda. Motion by Meg Tilley and seconded by Liz Workman to approve the remainder of the Consent Agenda. Motion carried.

Ruth Grendahl asked questions about the direction given at the Board meeting regarding the At-large commissioner and alternate positions. She indicated she had heard that there

was direction to the three cities to get together and resolve this issue. The Board minutes accurately reflect that the item was tabled until the February meeting. Motion by Jon Ulrich and seconded by Jane Victorey to approve the January meeting minutes. Motion carried.

V. Old Business

A. Dan Patch Rail Study

Beverley Miller provided some background regarding the Commuter Rail Study and the City of Savage’s request for funding of their portion of the study (not to exceed \$2,500). Jane Victorey indicated that the City of Savage voted unanimously to conduct the study, which would update ridership figures to 2008 levels but does not indicate the Dan Patch line will be constructed. Jon Ulrich indicated that this is the first step to getting a transitway in the southwest section of the Metro and they are simply asking for an update to a study, not for an endorsement of the rail line, which many cities opposed. Liz Workman indicated that Dakota County recently voted to continue its opposition to the line, so she would vote against such a motion. She also indicated that in looking at the study itself, it didn’t recommend a “refresh” or update until after the Northstar Commuter Rail line and the Red Rock Line were operational for a period of time. Motion by Jane Victorey and seconded by Bill Droste to approve an expenditure of up to \$2,500 for the City of Savage’s portion of the cost of a study to update the ridership figures in the Dan Patch Commuter Rail study. Roll-call vote:

Meg Tilley – Aye	Jon Ulrich – Aye	Chair Elizabeth Kautz - Aye
Ruth Grendahl – Aye	Jane Victorey - Aye	
William Droste – Aye	Liz Workman - Nay	

Motion carried.

B. At Large Commissioner

There was then a discussion of the At large Commissioner. Barb Ross provided some background on the evolution of the Joint Powers Agreement and Bylaws, and noted that there are several inconsistencies between the two documents, but the Board has had other things to occupy them so have delayed any updates to the Bylaws. Changes to the Joint Powers Agreement (JPA) require approval by all Cities.

Questions were raised about the MVTA governance and whether we still need the At large position and if we want term-limits on the commissioner. Jane Victorey asked if there were qualifications for the At-Large commissioner. It as noted that there were no stated qualifications but Ruth Grendahl noted that Margaret Schreiner had been a Metropolitan Council representative during the time the MVTA was formed and that Wally Lyslo had been a bus rider. Jon Ulrich asked if the Cities approve the Bylaws and it was noted that they do ratify the Bylaws. Then, he believed that the Bylaws would supersede the Joint Powers Agreement, contrary to the opinion of the Eagan/Apple Valley City Attorney. Ruth Grendahl indicated that if there is an inconsistency between the documents, the Joint Powers Agreement should supersede. Jane Victorey noted that what the MVTA needs is the best governance possible for the Board at this time. Things have significantly changed from when the JPA was first created and most of the growth will continue to be in Savage and Rosemount.

Ruth Grendahl distributed information about the populations of the MVTA cities, noting that 50 percent of the Board’s voting strength covers 70 percent of the population. She indicated that the At-large position was created as a result of population, not for tie-breaking purposes. She also questioned the rationale for having the Counties as voting members of the MVTA.

Liz Workman indicated that she believes the JPA does not serve the MVTA well at this time in its history. She also indicated that the Board should not discount the role of cities where future growth is planned.

Meg Tilley indicated that at minimum, the retiring “At-large” Commissioner(s) should have been recognized for their years of service if they were no longer going to serve the MVTA.

Jane Victorey suggested that each city look at the MVTA’s governance documents and how they might be changed at this point in the agency’s history. Then, she suggested that the Board hold a worksession to discuss these changes and decide on a course of action with recommended changes to the governance documents to be taken back to the cities for approval. Ruth indicated that the city of Apple Valley is not interested in changing the JPA, nor is she available to work on MVTA issues on a full-time basis. She is not interested in participating in a worksession. Bill Droste indicated that the Board needs to work together to address a long-range plan to deal with transit in the region. Meg Tilley stated that the Board needs to take action now regarding the At-large commissioner.

Ruth Grendahl moved that Wally Lyslo be the “At-Large” Commissioner and that Margaret Schreiner be the alternate. Given that this is the decision of the three largest cities and Meg Tilley agreed with the choice, Elizabeth Kautz said if this was what Ruth and Meg wanted, essentially she would not block the appointment. No motion is necessary.

Motion by Jane Victorey and seconded by Bill Droste that the MVTA Board members take the MVTA governance documents back to their respective Councils and Boards for a review and then that the MVTA Board schedule a worksession to review input from the Cities and Counties and make recommendations for changes in the governance documents. Roll-call vote:

Meg Tilley – Aye	Jon Ulrich – Aye	Wally Lyslo - Aye
Ruth Grendahl – Aye	Jane Victorey – Aye	Chair Elizabeth Kautz - Aye
William Droste – Aye	Liz Workman - Aye	

Motion carried.

VI. New Business

None

VII. Committee Reports

STA

Ruth Grendahl distributed an e-mail dated November 12 regarding a meeting on Nov. 14 to discuss the selection of Leonard Street and Deinhard as the lobbyist for the Suburban Transit Association (STA). As an entity governed by the public Open Meetings law, she believes this was not sufficient notice of the meeting. Further, Ruth Grendahl called for an independent review of the awarding of the contract for the Suburban Transit Association. Elizabeth Kautz indicated that the minutes from the STA meeting are available and that while she did not attend all of the interview sessions, she did raise questions about a potential conflict of interest with Leonard Street and Deinhard. Ruth Grendahl asked if potential conflicts with other proposers were reviewed or only with the one firm. She restated her request for an independent review of the process and how the contract was awarded. Elizabeth Kautz said she would bring this up to STA at the meeting the next day.

VII. Adjournment

The meeting was adjourned at 5:40 p.m.

Minutes Prepared By: Robin L. Selvig

Next Regular Meeting Scheduled: March. 25, 2009, 4:30 p.m. Eagan Bus Garage, 3600 Blackhawk Road, Eagan.

All regularly Scheduled Board Meetings will be held on the **FOURTH** Wednesday of the month at the posted time and location unless otherwise notified.

Approved by: _____ Date: _____

**SEVERSON, SHELDON, DOUGHERTY
& MOLEND, P.A.**

TO: Tom Hedges, City Administrator
FROM: Michael G. Dougherty, City Attorney
DATE: February 4, 2009
RE: MVTA At-Large Commissioner

In response to the request by Council member Tilley, I have had an opportunity to review the Amended and Restated MVTA Joint Powers Agreement and the Amended and Restated Bylaws of the Minnesota Valley Transit Authority and offer the following opinion.

FACTS

The cities of Apple Valley, Burnsville, Eagan, Rosemount and Savage executed a joint powers agreement establishing the Minnesota Valley Transit Authority (MVTA). The joint powers agreement (JPA) is authorized pursuant to Minn. Stat. §471.59. The JPA creates a governing Board for the MVTA that consists of eight voting commissioners. Each city appoints one commissioner to the Board. The Dakota County Board of Commissioners appoints one member to the Board and the Scott County Board of Commissioners appoints one member to the Board. The eighth and final Board position is an at-large commissioner.

The JPA states, in Article 5, that the appointed commissioners from the cities of Burnsville, Eagan and Apple Valley shall collectively appoint one commissioner and one alternate (the at-large commissioner). This at-large commissioner shall be appointed annually at the January meeting. The JPA also states that the commissioners' terms of office shall be determined by the party making the appointment.

Article IV of the Bylaws contain a provision with respect to the Board of Commissioners. Therein, it is stated that the terms of the commissioners are set by the cities that have appointed them, except the at-large commissioner shall be limited to serving four consecutive one-year terms.

OPINION

The Bylaws create an inconsistency with the JPA by placing a restriction on the term of the at-large commissioner. It is our opinion that such restriction is unenforceable and ineffective. The JPA clearly provides for the annual appointment of the at-large commissioner by the commissioners from the cities of Burnsville, Eagan and Apple Valley. Elsewhere, the JPA confirms that the terms of office of commissioners shall be determined by the party making the appointment (i.e. as to the at-large commissioner, the cities of Apple Valley, Burnsville and Eagan). Since the member cities establishing the MVTA have provided for the term of office in the authorizing document, the Board has no authority to alter, modify or otherwise limit the term. Essentially, the commissioners do not have the authority to abrogate the terms of the JPA which have been established by the city councils.

It is our opinion that the JPA is unambiguous and that the commissioners from Apple Valley, Burnsville and Eagan shall each January appoint the at-larger commissioner (and alternate). The appointment is made by means of a

majority vote (at least two out of the three votes). These appointments are for a term of one year and there is no restriction on how many years an appointee may serve.

If you have any questions, please give me a call.

MGD/jlt