



Duluth Transit Authority

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MINUTES

Special Board of Directors Meeting
Thursday, June 24, 2021
DTA Administration Offices / Board Room
4:00 PM

NOTICE: The DTA Board of Directors will be holding its Board Meeting by other electronic means pursuant to Minnesota Statutes Section 13D.021 in response to the COVID-19 emergency. Board members will be participating through video conference. Due to the COVID-19 emergency and the closure of City facilities, public comment will not be taken in person. However, members of the public can monitor the meeting and provide public comment on agenda items through WebEx Events. All persons interested may monitor and participate in the public hearing by clicking on the following link: <https://us02web.zoom.us/j/83332859494?pwd=VUxLM21yYXMyeFdlUUereUMyK3pKQT09> or by dialing (312) 626-6799; Meeting ID: 833 3285 9494; Passcode: 233585. The public is also encouraged to submit written comment to lpaczynski@duluthtransit.com. Please include "DTA Special Board of Directors Mtg. June 24, 2021 Agenda" in the subject line and include your name, address and the agenda item you are commenting about. Please note that all public comment is considered Public Data.

ROLL CALL (5 min.)

Directors Present: Aaron Bransky, President; Rondi Watson, Vice President; Henry Banks, Secretary/Treasurer; Michael Casey; Edmund Gleeson; Joshua Smerdon; Tom Szukis

Directors Excused: Julie Zaruba Fountaine; Krystal Brandstatter

Directors Absent:

DTA Staff Present: Rod Fournier, Interim General Manager; Mark Horlocker, Director of Operations & Training; Michelle Immerfall, Director of Finance; Chris Belden, Director of Planning & Grants; Dave Clark, Director of Marketing; Nancy Brown, Procurement Manager; Lisa Paczynski, Administrative Asst.; Mike Ahlin, Director of Safety & Security; Jason Arnold, Director of Human Resources; Mark Ness, Director of Maintenance

Others Present: Dennis Jensen

CALL TO ORDER

President Bransky called the meeting to order at 4:01 p.m. Director Smerdon submitted his resignation from the Board of Directors effective June 30, 2021.

PUBLIC COMMENT PERIOD (5 min.)

No public comment.

OLD BUSINESS (1 hr. 45 min.)

- **Withdrawal Liability Update**

The DTA solicited advice from an attorney who specializes in withdrawal liability issues. As per Michael McNally's (Fox Rothschild, LLP Attorneys at Law) memo of June 22, 2021, to avoid triggering the withdrawal liability to Central States Pension Fund ("Central States"), ATE of Duluth must be acquired by an entity that will succeed to the obligations under the Management Agreement and Collective Bargaining Agreement ("CBA") and continue contributions to Central States as required under the CBA. The DTA should maintain alignment with First Transit on this point. It is reasonable to expect that if DTA engages another vendor to replace ATE and the arrangement is structured in a manner that the new vendor acquires ATE's stock, the new vendor would seek a similar contract term in which DTA would be responsible for all withdrawal liability. In that regard, a new vendor may retain some leverage in later negotiations with DTA. It may be appropriate to build in protections in that agreement for DTA to eliminate or mitigate the risk that the withdrawal liability can be triggered by the vendor. Lastly, the ownership of ATE of Duluth (governmental or private entity) raises issues as to whether the bargaining unit employees, or certain classifications therein, would become "public employees" under Minnesota law. This situation warrants further consideration and analysis. President Bransky noted the easiest solution is for ATE of Duluth to continue as the employer, and it doesn't matter who is the stockholder. Basically, the DTA has a safe harbor in the sense that if ATE finds a home, the issues of withdrawal liability are not going to be a problem. As per the City of Duluth's Attorney's office, it is possible for DTA to become the owners of ATE of Duluth. DTA staff asked the State Auditor for a summary of the impact on the Administrative employees' defined contribution plan if they become public employees; a response has not been received yet. President Bransky will ask Mr. McNally if it's possible for ATE of Duluth to become an employee-owned entity.

- **Hiring Procedure for Permanent General Manager**

A **motion** was made by Secretary/Treasurer Banks and **seconded** by Vice President Watson to close this portion of the Board of Directors meeting. President Bransky stated the hiring procedure for a permanent General Manager ("GM") is a Board discussion that must remain open to the public as per the MN Open Meetings Law. This discussion does not include the performance of a particular individual; it is only regarding the procedure for hiring an individual and approving the general job description. Because it has not yet been determined whether to hire from within or externally, a few Board members expressed concerns about the letter of recommendation received from Senior DTA Staff and prior comments made by other Board members. President Bransky reminded everyone that this meeting is to only determine the hiring procedure of a GM and to approve the job description. No specific candidates will be discussed. The motion to go into a closed session fails.

Roll Call Vote:

Yes: Henry Banks

No: Aaron Bransky, Rondi Watson, Michael Casey, Tom Szukis

Abstain: None

Various Board members shared their reasons why they are in favor of hiring someone internally or externally. A **motion** was made by Director Casey and **seconded** by Secretary/Treasurer Banks to initiate the external and internal posting of the GM position consistent with other DTA management positions as soon as possible, with a two-week deadline. Motion carries. Once the candidates have been identified, interviews will be scheduled.

Roll Call Vote:

Yes: Aaron Bransky, Rondi Watson, Henry Banks, Michael Casey, Tom Szukis

No: None

Abstain: None

After additional discussion and comments, a friendly **motion** was made by Director Casey and **seconded** by Secretary/Treasurer Banks to **amend** the original motion by adding that a Board member may request to review the applications at any time. Motion carries.

Roll Call Vote:

Yes: Aaron Bransky, Rondi Watson, Henry Banks, Michael Casey, Tom Szukis

No: None

Abstain: None

Regarding the job description as presented, a **motion** was made by President Bransky and **seconded** by Director Casey to remove the Master's Degree requirement. Motion carries.

Roll Call Vote:

Yes: Aaron Bransky, Rondi Watson, Henry Banks, Michael Casey, Tom Szukis

No: None

Abstain: None

- ATE of Duluth Ownership and Operation Structure - DTA Acquisition or Management Company RFP
President Bransky stated one of the things that became pretty clear is that if a management company is indeed the owner of ATE of Duluth, the DTA Board, the DTA has to have the ability to dislodge that from any management company so as to be able to control that there is not a withdrawal liability issue. One lawyer suggested the concept of a non-profit company owning ATE, or a Management Company to provide a home for ATE and provide management services on an a la carte basis. The DTA will not save a lot of money by not having a Management Company such as First Transit, because there are certain functions that First Transit provided which saved the DTA money. Also, the DTA will be able to utilize its regular legal counsel, Hanfte Fride, to weigh in on some questions that do not revolve around the specialized withdrawal liability issues. President Bransky has asked the City of Duluth Attorney what it means if ATE of Duluth is owned by the Duluth Transit Authority and the supervisory or bargaining unit employees of ATE of Duluth become public employees. In addition, a list of the pros and cons of a public employee vs. private employee has been requested from the DTA's auditor. Additional Special Board Meetings will need to be held to finalize the hiring of a General Manager, to determine the ownership of ATE of Duluth and how that affects liability insurance and the current employees of ATE of Duluth.

ANNOUNCEMENTS (5 min.)

- Next Board of Directors Meeting - Wed., June 30, 2021

ADJOURNMENT

There being no further business, a **motion** was made by Director Szukis and **seconded** by Vice President Watson to adjourn; the motion carried. The meeting adjourned at 6:20 p.m.

Respectfully submitted,

Lisa Paczynski
Recorder

Aaron Tranter - Board President
Signed/Title

8-25-2021
Date