

NEW YORK CITY TRANSIT RIDERS COUNCIL
MINUTES OF APRIL 17, 2008

A meeting of the New York City Transit Riders Council (NYCTRC) was convened at 12 noon on April 17, 2008 in the 5th Floor Board Room, 347 Madison Avenue, New York City. The following members were present:

Andrew Albert	Edith Prentiss
William K. Guild	Sharon Santa Maria
Thomas Jost	Michael Sinansky
Trudy L. Mason	Burton M. Strauss, Jr.

The following members were absent:

Shirley Genn	Jessica Lila Gonzalez
Toya Williford	Marisol Halpern
John Hunter	

In addition, the following persons were present:

William A. Henderson	-PCAC Executive Director
Jan Wells	-PCAC Associate Director
Ellyn Shannon	-PCAC Transportation Planner
Karyl Berger	-PCAC Research Associate
Deborah Hall-Moore	-NYCT
Henry Ferlanto	-Concerned citizen
Henry Nass	-Concerned citizen
Kay Dunham	-Concerned citizen
Matt Shotkin	-Concerned citizen
Meg Reed Mian	-Concerned citizen
Alan Flacks	-Concerned citizen

Approval of Agenda and Minutes

The agenda for the April 17, 2008 meeting was approved. The minutes of the March 27, 2008 meeting were approved with amendments to page 3 replacing the word "downtown" with the word "uptown" in the discussion with regards to the Mosholu Station.

Trudy Mason also asked for a correction to the minutes on page 3, requesting that the minutes reflect that the letter Ms. Mason requested to be sent to Lee

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Sander was expressing concern about service improvements being necessary in order to contribute to the MTA's sustainability efforts.

Chair's Report

The Chair's Report is attached to these minutes.

Andrew Albert reported on the President's Forum which was held the night before at 2 Broadway. There were 25 members of the public that spoke at the event and between 40 and 50 people attended the forum.

Board Report

Mr. Albert reported that this month the NYCTRC meeting was held before the MTA Board meetings and thus there would be no Board report.

Old Business

Tom Jost asked if the meeting with Bill Wheeler on Fulton Street that was mentioned in the Chair's report was a public meeting. Bill Henderson said that it was a public hearing held by the NYC Council Transportation Committee. He said that the hearing discussed the possibility of moving the performing arts center planned for the World Trade Center site to the Fulton Street Transit Center site. Mike Sinansky said that he was surprised that the LMDC was looking at the option. Bill Henderson said that the World Trade Center site for the Performing Arts Center will need to be used as a staging area for the building of the towers and will take several years. He said that the relocation was being proposed as a possible means to get the Center built more quickly.

Matt Shotkin asked that the advertisements for Congestion Pricing in bus shelters be taken down. Andrew Albert said they will likely be removed when the contract for them expires.

New Business

Tom Jost asked if anyone knew anything about the "Green Tea" proposals that are being discussed for the next federal transportation funding legislation. Trudy Mason suggested that Ernest Tollerson be asked to speak on the topic at a NYCTRC meeting. It was also suggested that Chris Boylan might be an appropriate person to speak on the topic.

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Henry Nass, a member of the public, spoke at length requesting the NYCTRC to examine the merits of a pneumatic tube subway service. Mr. Naas suggested that instead of building the currently designed Second Avenue Subway it might be more cost effective to build an elevated subway using a pneumatic tube system. Ms. Mason noted that the MTA had a long history of considering pneumatic tube subway service and had found that it would be extremely problematic. Andrew Albert stated he would anticipate a large backlash against any suggestion of creating an elevated subway on Second Avenue.

Alan Flacks said that the NY Board of Elections releases uncertified results, and asked why the Council will not release minutes that are not approved. Mr. Flacks also said that the southbound M104 bus at 98th Street did not have a bus stop sign, causing confusion as to where the bus will stop. Mr. Flacks also wanted to know why there was no Customer Service Agent at the Broadway entrance at the 168th Street station. Mr. Flacks ended his comments asking why other systems were able to supplement alternative transportation service when work was being done but the MTA was not able to do so.

NYCTRC member Edith Prentiss asked where NYC Transit stood with regard to the number of key stations being brought on line this year. Jan Wells replied that the PCAC staff is meeting with NYCT next week to discuss the topic and that she would like to meet with Edith to get her questions and input prior to the meeting with NYC Transit. Ms. Prentiss said that she has been stopped several times by the MTA Police and prevented from getting on the Grand Central - Times Square Shuttle. The police have stated that it is too dangerous to wheel her chair onto the train due to the gap between the platform and train.

Kay Dunham raised several questions regarding the B71 bus in Crown Heights saying that it has extremely poor limited stop service.

Introduction of Stanley Grill, NYC Transit Vice President – Materiel

Mr. Grill began the discussion by pointing out that his department is the Materiel Department. He said that he was responsible for all of NYCT purchasing and most of the procurements for the MTA's Capital Construction Company projects that pertain to NYC Transit.

Mr. Grill said that right now there are capital needs that greatly exceed NYC Transit's means. He said that procurement is a highly regulated area and that there is extensive NY State legislation governing how goods costing more than \$15,000 are purchased and how construction projects that exceed \$25,000 are

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procured. Items that fall into these two categories require the MTA and its Operating Agencies to make purchases through a sealed bid process, where awards are made to the lowest responsive and responsible bidder. He described a “responsible” bidder as a bidder that has the technical skill, financial ability and high level of integrity to complete the project. He said that ideally, one would look for a single point of accountability for a project and thus execute a contract for both the materials that will be used in a project and the work involved in completing the project. This arrangement helps to coordinate the different schedules that must be arranged for the project. However, he said that it has been difficult with very large projects to achieve the desired level of competition among bidders, which is why his department has been trying to break the large contracts up into smaller ones in order to achieve greater competition in bidding.

Mr. Grill said that an exception to the law requiring sealed bids is made when competitive bidding may not be in the best interest of the public in terms of completion of the project. He said in those cases they are able to negotiate with one or more of the parties who have been identified and qualified through a request for proposals (RFP) process. This allows them to receive many proposals and accept the best qualifying proposal, although it may not necessarily have the lowest direct monetary cost. Mr. Grill said that there had been more RFPs lately. The MTA Board has the authority to waive the sealed bid process, allowing an RFP to go forward. This increase in the number of RFPs is the result of having more very large projects than ever before.

Andrew Albert said that a downside to the RFP process is that once one bidder is selected, the MTA may be locked into a single contractor for future elements of the system, as was the case with the Siemens projects. Stanley Grill agreed that this can be a disadvantage, but said there have been many successful brick and mortar projects completed through the procurement process. He acknowledged, however, that it helps if you can get a replacement contractor to take over if the original contractor fails to perform. In systems projects, once you’re in, you’re in for good. Mr. Grill said that a systems project is a marriage; the difficulty here is that if the vendor defaults it means starting the project all over again. He said that despite the difficulties in installing the system, Communication Based Train Control works, and that NYC Transit is about to declare beneficial use of the Automatic Train Supervision system. This declaration is expected to occur within a month. MetroCard has been another extremely successful system although it did require “marrying” Cubic, which supplied the proprietary farecard technology.

Tom Jost asked if the Materiel Department is working with TBTA on incentive based contracts. Mr. Grill said they do use incentive contracting on a case by case basis. He said Transit is heavily impacted by general orders on nights and weekends, which can complicate the use of incentive contracts. In addition, once

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a project is underway there are often findings of unanticipated problems, which frequently occur in a subterranean system that is over 100 years old. He said the 53rd Street escalator installation was an example of incentive contracting that went well. The down side of incentives is that often contractors will do everything possible in order to receive the incentives, including taking people off of other NYC Transit projects in order to get the project with the incentive finished more quickly. Mr. Grill said that provisions for liquidated damages are always in place.

Karyl Berger asked what triggers a sole source contract. Mr. Grill said that there are no sole source construction contracts. Only product contracts can be sole source. He used the example of purchasing subway cars where only one manufacturer makes a particular replacement part. They are then locked into using a sole source contract for the part as long as the cars are in the fleet.

He said that the PeopleSoft contract was originally a competitive contract, but as implementation progressed, it became a sole source product because the systems that it impacts have become customized in the process of implementing PeopleSoft.

Mr. Grill said they certify companies as Minority and Women-Owned Enterprises (MWBEs). First, firms are certified, and then NYC Transit sets MWBE goals for each contract. In most cases, the certified firms do not bid on the overall contract, but a prime contractor has to select certified subcontractors to meet the goals that have been established. The dollar amount of contracts that are being fulfilled by MWBEs is higher than ever, but the percentage of the total procurements that involve MWBEs is low because of the megaprojects and car procurement projects, in which it is difficult to increase MWBE participation. Trudy Mason asked if Mr. Grill makes an effort to reach out to MWBE's. He said that they do so. He said that they advertise, offer training courses, and host contractor events. Ms. Mason also wanted to know how they encourage the prime contractors to bring in subcontractors to meet MWBE goals. Mr. Grill said that the Department of Civil Rights looks at the work to be performed to determine the number of minority firms that are capable of performing the work and using this information sets the applicable MWBE goals. At this point, the contractor must submit a plan for the achievement of the goals. The contractor is monitored monthly for compliance with the plan.

Mike Sinansky asked if they were subject to Wicks law, which requires that some construction projects be divided into a number of contracts by trade. Mr. Grill said they were not.

Mr. Grill proceeded to explain what is involved with the change order process.

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He said before a change order is accepted, it must be determined that the work does not lie within the original scope of the contract. If it is determined to not be in the scope of work, the contractor must submit a new scope of work in a proposal and the schedule and estimate for the new scope. A schedule and estimate is also prepared internally and submitted to the Materiel Department. Then the contractor and Materiel negotiate to resolve the difference between the proposal submitted by the contractor and the internally prepared document. The analysis is very detailed, and the contracts are sent to audit to examine elements. Change orders for Capital Program Management projects amount to only 1 percent of the total expenditures. Many change orders are in the range of \$5,000, and the Board only sees change orders that are more than \$250,000. The most common change order results from field conditions that were unknown at the time that bids were solicited.

Karyl Berger asked if the Materiel Department actively does outreach to construction companies. Mr. Grill responded that they do so especially on large projects. The companies competing to undertake these projects must have the capacity to be bonded and to float the payroll. Design firms reach out to contractors and NYC Transit uses magazine ads. When you do lots of big jobs, which compete with each other and with other large ventures for a small number of contractors who are capable of undertaking sizable projects, one way to increase competition is to break up jobs into smaller pieces. Dividing projects into more manageable pieces tends to stretch the schedule and duplicate costs, but may also increase competition. Fulton Street Transit Center was structured in large contracts because of time constraints that came from the FTA.

Burt Strauss asked if there are buy America provisions. Mr. Grill said that in some federally funded project the Federal government requires 60 percent American content, which is established by a pre-award audit and monitoring throughout the period of performance of the contract.

Edith Prentiss said the only subway car she can get her wheelchair on without great difficulty is the R 142 model. Mr. Grill said that his department does not do car design, but he understands that Capital Program Management designed the cars with outreach to the disability community.

Mr. Grill conceded that the installation of elevators at West 4th Street was a mess and said that there are so few elevator contractors that getting a new contractor to take over the job can be very problematic. NYC Transit is doing outreach to get new elevator and escalator vendors, but there are only three major manufacturers.

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He said that he did not have a good answer for the total amount of liquidated damages that had been assessed and that liquidated damages are not tracked in the system. However, they are a component of all contracts. He said the damages are based on the amount of harm that delays impose upon the public and the MTA.

Mr. Grill stated that project schedules get adjusted as part of the change order process. If the change is out of the control of the contractor, the time frame of the contract is modified. In the end, his department will take liquidated damages only if the delay is the responsibility of the contractor. The contractor often reaches an agreement with the MTA to resolve any liquidated damages. These settlements may include a financial settlement or an increase in the value of the product supplied, as was the case where a bus manufacturer agreed to increase the number of buses it would manufacture under a contract at no additional cost to NYC Transit.

Mike Sinansky asked about the Fulton Street Transit Center. Mr. Grill said that right now Fulton Street is in phase one. He didn't know if phase one was going to be completed late. The first contract has been expanded to include secant pile work, which would have to be done in a later phase of the project. It is likely that this change will result in a modification of the time frame of this contract, which will probably negate liquidated damages for delay in completion of this phase.

Mike Sinansky asked if Mr. Grill could identify projects where NYC Transit received liquidated damages. Mr. Grill said he would put a list together and send it on to the Council. Mike Sinansky also wanted to know if there was a report that showed costs and schedules. Mr. Grill referred him to the information in the independent engineer's reports that Carter Burgess compiles.

Ellyn Shannon said that the new elevator in Times Square took several years to finish and asked if liquidated damages were taken in connection with this project. Mr. Grill said he did not know that specific project but would look into it.

Alan Flacks asked what happens to unqualified contractors. Mr. Grill said that his department goes through a process to review contractors' ability to complete the job. He said the process for approving a contractor is extremely detailed. He said that if NYC Transit does not find qualified firms among bidders for a project, then contracts are not awarded. Mr. Grill said that he is not a fan of the process used by the School Construction Authority where bidders are prequalified before bidding.

Adjournment

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The meeting was adjourned at 2:00 PM.

Respectfully submitted,

Ellyn Shannon
PCAC Transportation Planner

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New York City Transit Riders Council
Chair's Report
April 17, 2008

As you know we had our President's Forum last night at 2 Broadway with NYCT President Howard Roberts and members of his staff. We were able to hear from twenty-five members of the public in two hours since President Roberts limited his opening remarks to give more time to the speakers and the speakers generally kept to their allotted time. The Forum was a very civilized and productive session, in contrast to many public hearings and for that matter our last President's Forum. Thanks to the PCAC staff for helping to make the process flow so smoothly and especially to Jan Wells who coordinated the Forum.

For those of you who weren't able to make it last night, we are planning a bus forum in mid-June at Queens Borough Hall. We will give you more information once all arrangements for the Bus Forum are confirmed. Jan Wells is in the process of finalizing these arrangements. We have not held a bus forum in Queens for six years. As you may recall, the last time we were there the majority of questions and complaints were about the private bus routes, so it will be interesting to hear what is on the minds of these riders now that MTA Bus is running this service.

Earlier this month, Bill Guild testified at a Transportation committee meeting of the New York Council about service on the G line. For years there has been a very active group in Queens who has pushed to have the G extended full time to Forest Hills-71St Avenue, but NYC Transit has continually indicated that this change could not be accomplished any time soon due to years of work planned on the Queens Boulevard line. NYC Transit has indicated that they will increase the number of trains on the G line and will make Court Square the permanent terminal for this line. Our testimony endorsed NYC Transit's proposal as the best solution under the circumstances.

Bill Henderson attended a City Council Transportation Committee hearing on the future of the Fulton Street Transit Center last Thursday. The hearing was largely inconclusive, as the MTA had not yet reached a conclusion on the future of the project, but MTA Director of Planning Bill Wheeler testified that the MTA was seeking to preserve the original design of the project as far as possible within financial constraints. He also said that a proposal to locate a performing arts center on the site was being reviewed, but noted that this would be a major change from the original plan.

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Bill Henderson attended the press conference on Monday held by the MTA and the Governor to announce the interim report of the MTA's blue ribbon panel on sustainability. On Monday evening Jan Wells attended the third forum of the series celebrating the 40th anniversary of the MTA, which focused on the sustainability proposals. The proposals discussed at these events were limited in scope and included projects such as studying energy conservation strategies for NYC Transit, installing more efficient lighting, harnessing wind energy to generate a modest amount of electricity, and installing photovoltaic cells on some facilities.

On Wednesday Bill Henderson attended Tri-State Transportation Campaign's "Buses in the Boroughs" program, which included discussions about both Bus Rapid Transit (BRT) systems around the world and plans for Select Bus Service, which will be the name of the Bus Rapid Transit service to be implemented in New York City. Special attention was given to the Bogotá, Columbia BRT system. Bill also had the opportunity to tour two of the refurbished articulated buses that will be used for the initial BRT route in the Bronx. In comparison to the world systems that were discussed, it is clear that the local BRT effort is minimal in scope and being implemented on a shoestring.

As I am sure you have all read, that the Port Authority is expected to take a greater role in the Moynihan station project. This increases the possibility that the project will move forward, but its final form is yet to be determined. Bill Henderson has spoken to several persons close to the project, and it appears that the current direction is toward a plan that is similar to the original proposal for the project.

Last Friday, Tom Schultze, Project Manager for the Access to the Region's Core came here and met with Bill Guild, Trudy Mason, PCAC staff and me to discuss the latest proposal for the project. It was most helpful to meet with him and gain a greater understanding for how they developed this proposal.

To update you on our station survey, the data have been compiled and our intern, Dan Bianco, is now completing the data analysis. We are following the general outline of our past station condition survey reports and will circulate the draft report to the members when it is complete.

Finally, Bill Henderson spoke to our member John Hunter this morning. John told him that due to his recent job change he will be unable to regularly attend meetings and has decided to resign from the Council. We will miss his thoughtful contributions to our work together.