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Money Train Page All

Critics Complain That UTA Cronies Keep Taking Taxpayers For A Ride

By: Katharine Biele – May 29, 2013

For years, Liesa Manuel took the bus and train from her home in Rose Park to her job at a credit union on Highland Drive—10 miles away. If everything went smoothly, it took her an hour. But it rarely went smoothly.

"I had just had a surgery, and UTA was—no joke—changing schedules every three months," Manuel says. "I was dealing with the schedule changes, getting bad information from their call center, and then I was standing across the street in the rain and I just couldn't physically take it anymore."

She bought a car.

Back in 2005 at a Utah Transit Authority trustee meeting, then-Salt Lake County Mayor Peter Corroon asked John Inglish, the general manager of the Utah Transit Authority, to consider a no-fare system or at least reduced fares for the poor. "UTA is not a social service agency," Inglish said in response. "We are not in the business of identifying what people's incomes are."

But, interestingly, UTA is in the business of business—for its board members and top staff—despite years of bad publicity and ongoing, very public problems. As it opened its $350 million airport TRAX line recently, UTA saw a new round of dissatisfaction. The excitement was palpable, but the disappointment is inevitable, and the reality problematic.

Rep. Brian King, D-Salt Lake City, was "excited to park at work and take the Green line to the airport until I realized that my flight leaves at 6 a.m. in the morning—too early for TRAX to get me there—and arrives home at 12:25 a.m. the next morning—too late for TRAX to get me back."

King says he's looking forward to another attempt at the end of the month when his flight schedules will allow him to take TRAX, but he'll still have to walk or transfer trains to get to the airport.

"UTA presents all of its critics as being anti-transit," says Zach Frankel of the Utah Rivers Council. "And the problem is, some liberals believe it. It's not enough to just like clean air and transit. Anyone who cares about transit needs to look at the need for reform in UTA." Frankel is an accidental detractor; his dealings with UTA over water and wetlands soured him on the agency.

Whether you're giddy about the prospect of mass transit or not, there are factors to consider. UTA is neither convenient nor affordable and, sadly, the clean-air promise is lacking foundation. A 2008 legislative audit found UTA to be a net polluter. And while steps are being taken, not even increased ridership of light rail will help in the near future.

Ridership and pollution, however, are only part of the problem. While UTA is serving only a small percentage of travelers, it is lining the pockets of developers while organizing tours to exotic locales on the premise that there will be a public benefit.

"Since around 1970, the modern rail-transit boom has led American cities to spend close to $100 billion building, and billions more operating, new rail-transit lines," wrote public-policy analyst Randal O'Toole in a Cato Institute paper called "Defining Success, the Case Against Rail Transit," published in 2010.

This analysis indicates that these new lines almost always waste taxpayer dollars. Instead of providing cost-effective transportation, rail transit mainly transfers wealth from taxpayers to rail contractors, downtown property owners and a few transit riders who prefer trains to buses.

In 2011-12, UTA spent $610,840 on travel to such transit-oriented countries as, ahem, Cuba, according to a Salt Lake Tribune investigation. And while, according to an MSNBC nationwide comparison of government officials, its chief executive has been one of the most overpaid in the United States, the agency itself was in debt to the tune of $1.8 billion at the end of 2010. Since taxpayers, through local sales tax and federal subsidies, are on the hook for the mounting costs of mass transit, critics decry UTA's cronyism, arguing that these deals on wheels are taking taxpayers for a ride.

When It's OK to Rob a Bank

"Doing transit badly is in no one's interest," Frankel says. "If it's corrupt, you're going to get bad service."

To understand the charge of corruption, you first have to understand transit-oriented developments (TODs) and the role they play in UTA's planning and expansion. So, we'll start with the controversy surrounding the Galena site in Draper, which goes back to 2000. That was when the Utah Legislature passed a law placing a conservation easement on 252 acres of the state-owned lands on the Jordan River.

Turns out, this is one of the few undisturbed archeological sites in the valley that is 3,000 years old. To the naked eye, it just looks like a lot of dirt, rocks and brush. But 50 centimeters below ground, there is evidence of shallow pits and the growing of maize, as well as 30,000 artifacts. The site became interesting to archeologists because it helped answer a hotly debated question of when agriculture developed in the Great Basin. It was apparently interesting enough to divert Bangerter Highway south around the site in its path west. In 2000, the Legislature even protected the land as open space.

Meanwhile, UTA was looking for a site for a Transit Oriented Development for FrontRunner, its train from Salt Lake City to Provo. In October 2007, it selected 14000 South as one of several alternatives. After all, it was just south of Bangerter Highway, well outside the Galena property, and could spur development in the prison area for both Bluffdale and Draper. Also, Doug Clark, then managing director of business growth for the Governor's Office of Economic Development, says he was negotiating to donate the land to UTA. In a 2011 Tribune story, Clark said he was fired for refusing to assist with the site development favored by then-Speaker of the House Greg Curtis. Other state employees were also dismissed after being involved in the TOD deals.

What happened over the next few years is a study in perplexity. UTA abandoned the 14000 South site even though Draper and Bluffdale had both endorsed it. The agency then bought 35 acres at 14600 South for $6.5 million.

In 2009, then-Speaker of the House Greg Curtis, admitting he could "wear the lawyer hat and the speaker's hat," persuaded the state against signing an easement for the Galena property. Curtis, who also lobbies for UTA, wanted to swap public for private land so his client, Woodside Homes, could benefit from the FrontRunner development, according to numerous media accounts.

In Utah, conflicts of interest are a way of life and, many say, inevitable. State ethics laws, therefore, focus on disclosure rather than recusal. "As long as I disclose I'm going to rob the bank, it's OK," Frankel quips.

Then suddenly, UTA decided to go for a third alternative—one within the Galena property itself, at 13500 South.

In 2008, UTA flew members of the Draper City Council to Texas for a tour, after which they returned in favor of the Galena site. UTA attorney Bruce Jones discussed the conflicts of board members Curtis, developer Terry Diehl, and Gregory Simonsen. Simonsen, who represented Woodside Homes, ultimately resigned.

Diehl said he would abstain from decisions related to the site, but then was listed as a contact person for development of the TOD. Rep. Janice Fisher, D-West Valley City, requested an audit of the agency and its conflict-of-interest policies.

In 2009, Gov. Gary Herbert signed the easement that protected the Galena property and sent UTA to a fourth site at 12800 South. The high-speed FrontRunner train already would be stopping at 10600 South, not even four miles away—a six-minute train ride.

The 2010 legislative audit requested by Fisher found nothing to substantiate claims that Diehl had interfered with the site selection: "Allegations that one trustee had used his influence to steer the site selection of the Draper/Bluffdale FrontRunner stop proved to be unsupported. In addition, we were unable to identify any information that the same trustee improperly used nonpublic information."

But the audit also said that Diehl may have violated the Public Transit District Act—which, "depending on the interpretation of the law ... may constitute a class B misdemeanor"—and recommended that the violation be sent to the Attorney General's Office for investigation.

Two years later, the Attorney General's Office investigation "is still ongoing," says spokesman Paul Murphy.

"Sometimes. investigations are very complicated and have a lot of moving parts," Murphy says.

It's more cut-and-dried for Frankel, who calls it cronyism. "UTA selected the cadre of developers, and we got nothing out of it from a transit perspective," he says.

Why not benefit developers? Because if you're focused on the developer, you lose sight of the public. It drives decisions, says citizen advocate Claire Geddes. "And they aren't always the best decisions. The Draper station is a complete example of that. If it was just the best location, it would have been somewhere else."

Robert Huefner, retired director of the Public Administration Program at the University of Utah, is a longtime advocate of mass transit, but even he questions UTA's financial direction. "Transit-oriented development is essential. It must not be compromised, either in fact or perception, by personal financial interests. Those with personal financial interests should be heard by, but not be part of, agencies using our public funds and public powers."

Fiscally Insane

There is a compelling dichotomy between the desire for good transit and the reality of it. The Cato Institute, a conservative think tank, has long researched the issue.

"The agencies that spend taxpayer dollars building these lines almost invariably call them successful even when they go an average of 40 percent over budget and, in many cases, carry an insignificant number of riders," the institute's Randal O'Toole wrote in his 2010 paper. "The people who rarely or never ride these lines but will have to pay for them should ask, 'How do you define success?' "

Good question for UTA, whose total debt increased to $1.8 billion, according to the 2012 legislative audit. Salt Lake City began its rail experiment in 1999, but by 2005, still only had a 1.2 percent share of motorized passenger traffic, according to the Federal Transit Administration.

In 2009, Salt Lake was tied for sixth among the 10 best cities for public transportation, ranked by U.S. News & World Report, but that was based on ridership, safety and government spending. "For the cost they're putting into this, we could probably hire limousines to move people," Geddes says.

O'Toole has studied the Utah phenomenon as well. In 2011—the last year for which federal data was available—UTA spent $208 million on operating its system. A quarter of that came from the federal government. It spent $445 million on capital improvements—in other words, for every dollar of operating costs, UTA spent $2 on construction.

"UTA has been in a phase of expansion, and our enabling statute provides for that to be financed though bonding, not unlike other governmental entities," UTA spokesman Remi Barron says. "Bonds were issued to build new rail lines and add bus service to outlying areas. While we do carry debt, the service on our bonds is just 20 percent of our annual revenues for 2013, not unlike a mortgage for a typical household. With the opening of the Draper line this summer, our 2015 construction plan will be completed two years ahead of schedule and $300 million under budget. Our debt is not out of line given UTA's rapid expansion."

An example of UTA's spending priorities can be seen in the construction of two $25 million parking garages at the West Jordan TRAX station—both of which stand empty, awaiting 2030, when they are projected to be needed. They were built now to qualify for federal funding. And they are empty because some planned apartments, scheduled to start construction this fall, fell victim to a bad economy.

UTA's now-retired chief executive officer, John Inglish, earned $348,929 a year between his salary and bonuses. As of May 2012, General Manager Michael Allegra was making a total compensation package of $319,360, according to UtahsRight.com. UTA says the salaries, compared with other transit agencies, are justified. And Barron says that Allegra, in 2012, made $74,000 less than Inglish, which would be $274,929.

Meanwhile, UTA's fares are among the highest in the nation, according to a 2012 survey by the American Public Transportation Association.

While UTA is expanding its infrastructure, it's shrinking operations. The system has already experienced cuts in bus service. Portland, Ore., often seen as a model for Utah's future, is suffering the consequences of this kind of planning.

Tri-County Metropolitan Transportation District of Oregon built its first line in 1986. TriMet instituted cuts in transit service in 2012 while still building more trains. The regional transit agency—which, like UTA, runs buses, commuter rail and light rail—has had more than $43 million in service cuts since 2009, plus fare hikes, the elimination of the Free Rail Zone, longer commute times and overcrowded buses and trains, according to the TriMet website. And the worst might be yet to come—70 percent cuts by 2025, with the loss of 63 bus lines.

"Salt Lake City has built all these light-rail and commuter trains, and it's just fiscally insane," O'Toole says in an interview. "It's taking a huge obligation from taxpayers for maintaining it in the future … and they're cannibalizing bus service to operate it."

In San Francisco, Bay Area Rapid Transit (BART) ridership is stagnant; Atlanta has seen its population triple and its per-capita ridership decline by two-thirds, O'Toole says.

"It was so bad in Los Angeles that the NAACP sued the L.A. transit authority for cutting service to low-income neighborhoods," O'Toole says. The courts required restoration of service for 10 years.

In fact, it is minorities and the poor who suffer with light rail, which focuses on getting people out of their cars. "New riders are not bus riders," O'Toole says.

Low-income advocates Crossroads Urban Center conducted a May survey of 272 food-pantry clients and found that 58.6 percent of them had not used public transit in the past month because of price. But 42 percent rode transit at least four times a week, compared to 5.8 percent of Salt Lake City residents in general. "When you look at who rides public transit, UTA is pursuing a mythical set of other riders," says Bill Tibbitts, Crossroads associate director.

"Ridership data suggest that light rail pirated many passengers away from buses; rail carried 6.1 million riders in its first full year of operation, while buses carried 6.3 million fewer riders that year than in the year before light rail opened," O'Toole wrote in his 2010 paper for the Cato Institute.

And, O'Toole concludes, while overestimating rail ridership by 20 percent, UTA was also "cooking the books" so that adding rail operations would make economic sense. "A federal oversight body has questioned the accuracy of UTA's passenger counts," the 2008 audit concluded. And it said staff has "knowingly reported incorrect data to the National Transit Database." There has been no public follow-up.

Forced Urban Living

This brings us back to TODs. The idea is twofold—to provide development and therefore economic benefit from residential and retail establishments, and to concentrate commuter population around the development. "The goal of a TOD program is to hope [residents and commuters] use mass transit," says Christina Oliver, UTA's former TOD manager who has since moved to Salt Lake County government. "We're not against vehicles, but we're hoping that discretionary trips are people who go to work and don't have a lot of meetings in between."

O'Toole calls this something like forced urban living. It's a myth of urban planning, he says, that as baby boomers retire, they will move into higher-density housing. "Urban planners long believed that more people want to live in multifamily housing than people who want to live in single-family homes. But people don't move to Utah to live in higher densities. How do we force more Americans to live in places they don't want to live?"

The answer, he says, is to build TODs. O'Toole disses University of Utah professor Arthur Nelson, who, in a recent Chicago Tribune article, asserts that people in their late 60s will begin selling off their homes and start renting. He calls it the Great Senior Sell-Off and believes that the demand for high-end rentals will surge. O'Toole maintains there's not good research behind this assertion, but developers and real-estate executives have certainly bought into the idea, creating a kind of urban-planning debate.

It has been playing out in Clearfield, where the city has been hashing out plans for a TOD since 2009. Clearfield has gone through three developers, the latest being Thackeray Co. "One of the proposals had 3,000 multifamily units on that 70-acre site, and subsequently that proposal didn't move forward," says Clearfield Mayor Don Wood.

Wood said he understands that TODs are historically sites of a large number of multifamily units, but his community had concerns about that kind of density. They've compromised with UTA to add commercial and light industrial developments to the site.

All that's left now is for the developer to pursue tax-increment financing, which would exempt the development from taxes for a number of years.

"Tax-increment financing (TIF) takes property taxes that would otherwise go to schools, fire, police and other essential services and spends it subsidizing development," O'Toole wrote in a 2007 analysis of Portland, Ore. And while Portland spent hundreds of millions of dollars to subsidize development along the streetcar line and near light-rail stations, the development would have happened with or without rail, he says. But without subsidized development, nothing happened. "The subsidies, not the rail, are what attracts development," O'Toole says.

The first two developers for the Clearfield TOD appear to have been connected to Diehl, who got a pass from his former UTA board to continue making deals. For Diehl, the board voted in a closed meeting to waive the one-year prohibition on former board members to do business with UTA.

Diehl filed a Chapter 11 bankruptcy in 2012, saying he owes $43 million to creditors. But in 2011, a legislative audit showed he made millions (less than $24 million, according to a Salt Lake Tribune records request) from work on the Draper FrontRunner site. Still, the UTA board has managed to profit from the TOD there. Former board member Greg Haws is representing Draper Holding as it continues to develop the site.

Diehl must have had hopes for the Clearfield site, too. The first developer, Lee Conant, was known to work with Diehl's company, Wasatch Pacific. Conant, according to Wood, sold his interests to the second prospective developer, Wasatch Pacific. But profit isn't illegal.

Diehl's attorney has said he needed only to disclose his conflict, and that he resigned from the board after a decade so he could go after TODs. And he has done just that.

In fact, it appears that only a handful of developers are considered to work on these TODs. While Oliver said there was no need for a public "request for quotation," Barron says that's untrue and the Clearfield TOD was subject to a public procurement process.

Clearing the Air (Not)

While UTA is concentrating on development around TODs, it's cutting back on service connections and doing very little to clear the air.

Nationally, cities have taken two tacks to deal with increasing air toxicity. One, a technical strategy, has made strides toward improving air quality, according to O'Toole. Traffic speeds have been increased and emissions from exhaust greatly reduced. The other is behavioral, and its results have been a dismal failure.

"Per capita driving in urban areas has more than doubled since the 1970s, and no city has managed to reduce per capita driving by even 1 percent, except for short periods of time when gas prices were high," he says.

According to a 2008 legislative performance audit of UTA, "if light rail were to double ridership and carry 4 percent of all commuters instead of the 2 percent currently carried, the effect on reduced air emissions would be minimal at only 3.4 tons, or 0.01 percent of the total NOx emitted in the four counties served by UTA."

Here are the facts, from the 2008 performance audit: While light rail and vanpools reduce nitrogen oxide (NOx), light rail in Utah gets its power from coal-fired plants, and that means more NOx and CO2. Vanpools consolidate trips, but bus emissions outweigh those benefits because many of UTA's buses are old. And finally, the only real way to reduce NOx will come from technological improvements in automobile engines, the report says.

UTA, however, touts its efforts to upgrade buses. "In 2010, UTA partnered with Utah Clean Cities Coalition to purchase 20 hybrid-electric clean-diesel buses," a UTA report says. "Today, over 50 percent of UTA's transit bus fleet are clean-diesel buses, as defined by the EPA, which reduces UTA's emissions of PM and NOx by more than 60 percent."

UTA points to a more complimentary 2011 audit that shows it's been steadily reducing emissions by more than half since 2007. "One way we have accomplished that is through our anti-idling campaign for our buses," Barron says.

Salt Lake City Councilman Soren Simonsen dismisses the pollution problem. "Every person is a net polluter," he says. "If you flush your toilet, you pollute. All are byproducts of simply living in Utah."

O'Toole notes that in Portland, most of the electricity comes from hydropower. In Salt Lake, electricity is generated largely from fossil fuels.

In Minneapolis-Saint Paul, the city built a light-rail system while moving to hybrid-electric buses. "Hybrid-electric buses are ... 3.5 times more cost-effective at reducing greenhouse gases than light rail," O'Toole wrote. The city also began using a 20 percent biodiesel mix of fuel in its buses—which, O'Toole found, was 25 times more cost-effective at reducing greenhouse gases than light rail.

"If Utah wants to clean the air still further, it should adopt the PZEV standard that has been adopted by 13 others states," O'Toole says. "A 'partial zero emission vehicle,' PZEV has improved catalytic converters and a sealed fuel system so that gasoline vapors don't escape into the atmosphere. These things add about $200 to the price of a new car but cut toxic emissions in about half—some reports say by as much as 70 percent."

UTA is beginning to use a biodiesel mix in its buses, but had only three hybrid buses in operation at the time of the 2008 audit.

In the 2013 session, the Utah Legislature passed Senate Bill 275, ostensibly to begin a modest effort at cleaning the air by constructing more natural-gas fueling stations. In essence, the bill allows gas corporations (Questar) to spend up to $5 million to construct these stations to convert vehicles to natural gas, and allows the possibility of adding to the rate structure if more are needed.

Claire Geddes believes it's a sneaky way of adding costs to ratepayers, since the small number of conversions would barely affect pollution counts. Whether true or not, it shows desperation on the part of lawmakers to ameliorate the poor air quality in Utah.

And, critics say, if you cloak an idea in terms of better air quality, you can get away with almost anything.

Privatize This

But it's not easy being a critic. "If you speak out against mass transit, you're a leper," Geddes says. "My own legislator won't even return my calls."

Frankel thinks the time has come to end the charade. "If you're a businessman appointed to the UTA board, you're above the law," he says. "UTA doesn't make good transit decisions. They make them for wealthy developers, and cronyism is expensive. Good transit projects pay for themselves."

Simonsen, who's a longtime supporter of UTA, sees funding as the biggest problem facing the agency, but also thinks UTA could offer free transit service. It's not much of a stretch, he says, considering that farebox revenues—$35 million in 2010—provide only a small portion of overall funding.

"In 2010, fares paid by transit users covered 20 percent of UTA's operating costs, an improvement from 17 percent in 2006," the 2012 audit says. "Farebox recovery is important because costs not covered by transit users are subsidized by taxpayers."

UTA plans to up farebox recovery to 30 percent by 2020. But, the audit says, "while UTA's planned changes are promising, the ability to implement them remains unclear ... it seems reasonable for users to pay more of UTA's transit costs, [but] their willingness to do so is not yet clear."

Frankel didn't start out to dog the agency. His group had an interest only in protecting certain lands that had developers salivating. Now, however, he thinks UTA should either be folded into the Utah Department of Transportation (UDOT) or privatized.

Privatization, in fact, is what the Cato Institute recommends—sort of. As UTA is highly subsidized, it currently has no profit motive. "While privatization of transit could improve the efficiency of transit service, it is unlikely that even private operators would ever choose to build rail-transit lines in the United States," O'Toole wrote. "Once existing lines were worn out, they would probably replace most of them with buses."

Frankel sees privatization as one solution. “This fourth branch of government, quasi-governmental, with nonprofit status, taking sales tax money—some from the state, some from the feds, but saying they’re private, so ‘screw you,’ isn’t working,” he says.

If not privatized, then UTA should be placed under the UDOT, where there’s at least some accountability, Frankel says.

“The UTA experiment needs to be extinguished,” he says. But until the incentives change, that is unlikely to happen.