Utah Risk Management Agency

BOARD MEETING MINUTES

December 14, 2023, 12:00 p.m.
Draper City Hall
1020 Pioneer Rd., Draper, UT 84020

Members Present:	Alex Jensen, Chairman (Layton); Brant Hanson, Vice Chairman (Centerville); Derek Oyler (Brigham City); Paul Bittmenn (Cedar City); David Dobbins (Draper); Cory Branch (Mapleton); Mara Brown (Ogden); Keri Rugg (Orem); Seth Perrins, (Spanish Fork); Duane Huffman (West Bountiful); Eric Bunderson (West Valley City)
Absent:	Adam Bowler (Enterprise); Brigham Mellor (Farmington); Kyler Ludwig (Kanab)
URMA Staff Present:	David Petersen, Executive Director; Brandon Crowther; Jason Davis; Jordan Rapp; Elizabeth Christensen; Ann Nielsen; Shianne Wadley; Libby Lowther (Lowther & Associates)
Others Present:	Gary Ogden, Robert Oldroyd (Moreton & Company); Sarah Pearce (Park City, Deputy City Manager), Margaret Plane, (Park City, City Attorney)

1. **LUNCH**

2. **WELCOME** – Alex Jensen, Chairman

MINUTES

Mr. Jensen called the meeting to order. He expressed appreciation for the organization of URMA, the unity and association of good people, how it helps him with his responsibility as a city manager, especially from a safety perspective. He requested attendees introduce themselves, which they did. He welcomed Sarah Pearce and Margaret Plane from Park City and welcomed Brandon Crowther as the new URMA claims and litigation attorney.

3. **MOTION** – Approval of Minutes - Board Meeting August 4, 2023

MINUTES & MOTION

Mr. Jensen asked if there were any questions or changes regarding the minutes. There were none. He asked for a motion to approve the minutes. Motion to approve by Mr. Perrins. Second by Mr. Bunderson. Voting was unanimously affirmative to approve the minutes from August 4, 2023 Board Meeting.

4. **CONSENT AGENDA**

4.1. QUARTERLY FINANCIAL REPORT

MINUTES & MOTION

Mr. Perrins motioned to approve the consent agenda, seconded by Mr. Oyler. Voting was unanimously affirmative to approve the consent agenda.

5. **SCHEDULED ITEMS**

5.1. DISCUSSION/MOTION – POTENTIAL OF EXTENDING URMA MEMBERSHIP TO PARK CITY

MINUTES

Mr. Jensen said he and Mr. Petersen met with Park City staff and were very impressed with Park City's organization and commitment to risk management. He invited Mr. Petersen to say more.

Mr. Petersen said after meeting with Park City, reviewing with them the founding principles of URMA and its vision, he believes Park City is a good fit for URMA's model. Mr. Petersen said Park City has a larger transit system than is currently addressed in the JPP, but Park City already has insurance for their transit system outside of URMA's program. Mr. Petersen said the Board received a letter from the Park City manager, expressing its desire to participate in URMA pending its City Council approval this evening. One of the terms Mr. Petersen recommends is Park City's transit system be independently insured outside of URMA, until underwriting criteria and operational changes can be made; this will allow the URMA Board the opportunity to review transit coverage in the JPP. He said he spoke with Mr. Ogden to discuss how to implement Park City joining URMA mid-year and it is workable.

Mr. Ogden said Park City has been a client of Moreton for several years and has very good loss experience, good risk management programs, and good performance. He said the feedback he got from meeting with URMA and Park City is the partnership would be a good fit for both, but would require a hybrid transition period, with Park City participating *in liability coverage with Great American and pooling in other areas, but maintaining its property, bus, and bus physical damage coverage with Liberty Mutual at this time. He explained Park City has a fleet of million-dollar electric buses for which it is difficult to find coverage. (He later explained Liberty Mutual would not continue to insure Park City's buses unless Park City also maintained their property coverage through Liberty Mutual.)*

Ms. Pearce apologized their city manager, Matt Dias, could not attend due to a major matter on their city council agenda this evening. She said she was impressed by what URMA is doing and believes URMA and Park City's philosophies align, and Park City would like to be part of a community which is proactively seeking ways to minimize risk. She said their departments are very risk conscious; they train and have programs to minimize potential risks, and their mayor and city council are supportive in infrastructure improvements where safety is concerned.

Ms. Plane said she thinks URMA's program is a good balance between self-insurance and regular insurance, and she appreciates the opportunity to pool, work on risk mitigation, loss reduction, and the ability to continue to work with Moreton, making partnership between URMA and Park City a really great fit. She said Park City was on the leading edge of innovation with the electric buses which has brought insurance challenges which Moreton is helping them work through. She offered to answer questions about Park City.

Mr. Jensen said the transition period provides time to work through details, and he expressed confidence solutions are within reach. He invited questions for Park City or URMA staff.

Mr. Huffman said he thought Park City would be a wonderful addition to URMA. He remarked Park City has a small population but budget and services which exceed cities 3-4 times its size and asked Mr. Petersen how that dynamic would fit with URMA's structure, especially in weighted voting, where Park City would pay more than other cities its size, and probably should have more weight in voting than the current structure.

Mr. Petersen said the structure is based on population and budget; Park City would pay more in contribution than other group 1 cities based on the 1985 model. Mr. Petersen said the Board could discuss a change if they choose to. Mr. Perrins said other cities have this issue because they provide city utilities, which increases their budget and their contribution and their vote.

Mr. Petersen asked Ms. Christensen's input. Ms. Christensen said the vote calculation is directly related to contribution amount; a city with a larger contribution will have a higher vote.

Mr. Huffman reiterated he thinks Park City will be a great addition to URMA and he thinks their uniqueness might cause a question of some of the traditional organizational dynamics, which should be resolved before conflicts arise, which will be good for URMA.

Mr. Petersen said he agreed with Mr. Huffman that the Board may need to revisit some things like limiting small transit, to meet the needs of all members. He said other cities may wish to increase transit services in the future and adjustments will need to be made.

MOTION

Mr. Bunderson said he has worked with Ms. Plane for years and has great faith anything she is in charge of will be well run. Mr. Bunderson motioned for URMA membership to be extended to Park City. Mr. Bittmenn seconded the motion.

Mr. Oyler asked why property and commercial auto coverage were temporarily left out of Park City's group coverages. Mr. Ogden explained Affiliated FM, which is URMA's property carrier, has accepted Park City for coverage, and the problem is the buses - Liberty Mutual has said they will only cover the buses if they also provide the property coverage.

Ms. Plane said million-dollar electric buses come with federal and state grants which obligations need to be fulfilled, and they are looking for a glide path either through insurance alternatives, group alternatives, or adjustments to the business they are doing to get there. Mr. Petersen confirmed it is insurance availability for the electric buses which is the issue.

MOTION AMENDMENT

Mr. Huffman suggested including in the motion that URMA and Park City extend good faith effort toward a solution on transit. Mr. Jensen was concerned this might be interpreted as hesitation on URMA's part and wanted to make it clear URMA welcomes Park City without reservation. Mr. Bunderson and Mr. Bittmenn agreed.

VOTE

Mr. Jensen asked for a vote on the motion to approve the request of Park City to join membership in URMA. Voting was unanimously affirmative. Mr. Jensen congratulated Park City on the Board approval. Ms. Plane thanked the Board and said they are looking forward to the association. Mr. Perrins reiterated the group is good to work with and he looks forward to affiliation with Park City.

Ms. Plane and Ms. Pearce were excused to return to Park City to prepare for their evening meeting.

5.2. PRESENTATION – INSURANCE MARKET UPDATE – Moreton & Company

MINUTES

Mr. Ogden said he has worked with Park City for a very long time and Ms. Plane is very good to work with.

Mr. Ogden reported Workers Compensation rates are down; Moreton is seeing significant reduction in rates. Cyber has softened, and they expect to see small increases through the 2024 renewal. He said auto is running warm for URMA due to a couple of large vehicles going down, but is relatively stable, and he does not expect any issues. Mr. Ogden said property continues to be difficult. He said the 10-year annual average for catastrophic loss from 2012-2022 is $18 billion dollars; as of June this year, the market is experiencing $38 billion in losses, prior to hurricane and tornado season, making it a really rough year. He said Affiliated FM is not paying all of those losses, their reinsurance markets are. He expects property will get expensive for everyone. He also said Affiliated FM is not the only game in town; Liberty is anxious to quote URMA's property program and they will be providing an option and think they can put up the earthquake limits which is a challenge.

Mr. Ogden said Moreton will reach out for updates for up-coming renewal in mid-February. July 1 is the second most popular renewal date of the year; carriers are inundated with applications. Mr. Ogden said they are optimistic about the upcoming renewal, better than the last couple of years.

Mr. Ogden said Draper had a really bad flood during the last URMA conference, three inches of rain in 70 minutes, 500-year storm, and biggest snow year Draper has ever had. He does not think anything was paid, maybe a minor amount on flooding, which is remarkable considering the snowpack statewide. Two years ago, Affiliated FM was trying to reduce flood limits, but Moreton pushed back, and they did not make changes to premiums or limits.

Mr. Ogden asked for questions. Mr. Perrins talked about the preparations and expense of his city to prepare for and prevent flooding during the snow runoff.

5.3. REPORT AND DISCUSSION – TASER TRAINING RISKS – Dave Petersen and Jordan Rapp

MINUTES

Mr. Petersen referenced the Taser Training Research Memo. He said in at least one URMA agency officers have been tasing one another during Taser training. Mr. Rapp began researching the risks and liabilities associated with that practice. The findings of the research are Taser training where Tasers are used on officers has no legitimate value in *claims and litigation. Taser International does not recommend it. It appears to be a rite of passage more than a legitimate training opportunity. He said lawsuits have been filed by officers against municipalities due to injuries and any injury would be a legitimate worker's comp claim. Mr. Petersen said the current recommendation is this information is taken back to the law enforcement agencies to discuss modifying or discontinuing the practice.*

Mr. Perrins asked if anyone had strong feelings about continuing the practice. He speculated if he told his police chief their insurance does not want the practice to continue, he would be met with relief. Mr. Huffman said he felt strongly the practice should stop, and asked if the Board would be willing to decide the practice is prohibited.

Mr. Bittmenn said any injury would be covered under worker's comp.

Mr. Huffman said its elimination could be included in the Inspection Program as a penalty. Mr. Petersen said the Board could make that determination. Mr. Perrins said he is not ready to do that today but would like to talk with his police department and revisit this at the next Board meeting. Mr. Jensen said he believes the practice is universal across the state, and, out of respect we should have dialogue with police departments before making that decision. Mr. Petersen suggested redressing it at the April Board meeting. Mr. Perrins said he would like to see that.

Mr. Jensen thanked Mr. Petersen and staff for the information.

5.4. REPORT – DRONE FOLLOW-UP – Jason Davis

MINUTES

Mr. Davis updated the Board on the drone program. He said he has received only positive feedback from the drone operators regarding the changes, the sUAS Guidance Memo and the sUAS Use and Operations Reference Guide. He encouraged cities to have their drone program operators return their 'specific use policies' and 'flight training programs' to URMA, which is required. He explained each department which uses drones should have a specific use policy defining how they use it, what the training is, i.e., engineering will use the drone differently than the fire department will; but a city can have the same training program for the entire city.

Mr. Petersen reviewed the history of the drone program, which was created because a person can be technically licensed without ever having flown a drone. The initial program had requirements which were more difficult to meet. This program allows cities to create their own program while still ensuring pilots have actual flight training, which reduces risk and liability.

Mr. Davis said the Inspection Program includes the city has a specific use policy and has created and implemented a drone program, and he hopes the Board will encourage their drone operators to provide those required documents to him.

5.5. DISCUSSION – ACCIDENT REVIEW COMMITTEES CLAIMS AND LITIGATION CONSIDERATIONS – Dave Petersen and Brandon Crowther

MINUTES

Mr. Petersen said there is a provision in the Inspection Program to have Accident Review Committees determine the cause of an accident, and whether the accident was preventable. He said this was a risk management concept from the late 1990's; but in the last three years the Risk and Insurance Management Society and other organizations have found plaintiff attorneys are using those committee meeting minutes against government organization in claims and litigation, saying, 'We thought you were at fault and your committee confirmed that.' Mr. Petersen said staff has done research and provided a memo with recommendations to avoid that situation. One of the recommendations is to not have the committee determine preventability or fault, but rather discuss the facts which precipitated the event, and discuss mitigating future situations with training or policy changes, or procedural or operational changes. He said additional action with the employee should become a personnel matter where there is some protection from GRAMA. Mr. Petersen said there was speculation regarding whether having an attorney on the committee would create attorney-client privilege, which he asked Mr. Crowther to address.

Mr. Crowther said attorney-client privilege is complicated, it is supposed to be giving or receiving legal advice. He said having an attorney on the committee creates a good faith basis to make the assertion to not expose the committee to GRAMA or discovery, but it can be challenged, and the argument may be rejected.

Mr. Petersen said he would like cities to review the Accident Review Committee Reports memo and see how the recommendations fit with the cities' review committees' practices and implement the recommendations if possible.

Mr. Oyler asked if the intent was to not have anything in writing from the review committee and explained it is their city's policy to have preventable accidents documented in the employee's personnel file. Mr. Crowther said the idea is that a determination of fault is not made by the review committee, but HR can document its findings in the employee's personnel file, which is protected. Mr. Crowther said the intent is for the review committee to discuss facts. Mr. Petersen said our hope is that the supervisor or department head is present with the review committee, and they will be aware if the employee violated policy, or made an error in judgment, but that discussion will not be part of the review *committee's meeting or the committee's decision. The department head or supervisor will then take the information to HR or the city attorney's office to discuss discipline.*

Mr. Perrins said his city has had two occurrences in the last year or two, where the accident review committee did exactly what they were tasked to do, and the city got into a lawsuit and handed over this report which he felt eliminated all of is the defenses. He said it is untenable for them to have an attorney attend every review. Mr. Perrins said good has come from the accident review processes, and some great learning has taken place. Mr. Perrins said it looks like URMA is recommending we eliminate the review.

Mr. Petersen said we need to adjust, not eliminate, the review. Mr. Crowther said we need to keep the review helpful, while keeping it protected. He said taking measures to prevent a future occurrence is protected. If the review finds trimming trees back further in front of a stop sign would make the intersection safer (not making a determination it would have prevented the accident), that is protected.

Ms. Lowther said members of the review committees can be called in for depositions, or the employee can be asked why they were disciplined and how the discipline was determined. She suggested sticking to the facts and subsequent remedial measures to prevent future accidents. Ms. Lowther also said having committee members who are not trained in exposure and liability write down a report from a layperson's perspective is detrimental. She remarked on the cost of having the employees deposed, preparing for depositions, and the anxiety of it.

5.6. MOTION – INSPECTION PROGRAM UPDATE, ACCIDENT REVIEW COMMITTEE OPERATIONS – David Petersen and Jason Davis

MIINUTES

Mr. Davis reviewed the language in the Inspection Program about the accident review committee, and said the suggestion is to strike it from the Vehicle Safety section and move it to Risk Management. The new wording will say a risk management committee will review incidents and occurrences, policies and procedures, processes and operations, identify risk mitigation options; and policy violations and disciplinary action are to be determined (separately) by the department supervisor and human resources.

Mr. Petersen said this is taking the review process out of the vehicle accident realm and putting it into risk management where there is a review of all incidents regarding reducing and eliminating risk and removing the fault and disciplinary language (which occurs separate from that committee).

Mr. Bittmenn said he likes the idea of broadening the review from only vehicle accidents. He said currently his city looks at all worker's comp occurrences this way and has identified things which can be improved.

Mr. Perrins said he likes the language that says, "Measures to be taken that would have made an earlier event less likely to occur."

Mr. Jensen asked for a definition of "incidents and occurrences." Mr. Petersen said he chose not to define it so each city can determine for itself what necessitates a review. He said a city may decide to review a series of the same type of situations to determine a cause, or review worker's comp claims, or property damage in excess of a certain amount. Mr. Petersen said the inspection score would be based on having a committee, and the committee following its individual charter.

Mr. Jensen expressed concern with the language that says "all" incidents and occurrences are reviewed. Ms. Lowther suggested a risk management committee and policy which is followed is required, which would put the burden on the city to determine both. Mr. Huffman said he preferred not to have an additional policy.

Mr. Oyler said he is concerned with the language that says the committee will review policies and procedures but does not specify the review should focus on policies and procedures related to the incident. Mr. Petersen suggested the language could say, "applicable policies and procedures," so the committee realizes their role is not global policy review but focused on the incident. Mr. Hanson said he wants his committee to be aware of adopted policies and procedures to be able to educate and inform staff.

Mr. Perrins said this is a good change and he wants to see it in effect this spring, not wait until 2025.

MOTION

Mr. Huffman made motion to approve these changes to the Inspection Program which will capture the essence of the discussion, subject to everyone's review. Mr. Perrins seconded the motion. Mr. Jensen asked for questions or additional discussion. There was none. Voting to approve the motion was unanimously affirmative.

Mr. Perrins thanked Mr. Petersen and Mr. Crowther and others involved for bringing this item to the Board, and said it was a timely issue for his city. Mr. Davis said it was an issue brought to the Risk Management Roundtable.

6. **OTHER ITEMS**

6.1. **DATES** for upcoming meetings:

- Risk Managers' Roundtable – May 23, 2024 11:00 a.m. -1:00 p.m., Lunch provided, Draper City Council Chambers, 1020 East Pioneer Rd., Draper
- Summer Conference – July 31-August 1, 2024 – Ruby's Inn, Bryce Canyon
- Annual Board Meeting – August 1, 2024, 12:00 p.m. – Ruby's Inn, Bryce Canyon

MINUTES

Mr. Jensen asked Board members to be aware of the dates on the calendar. Mr. Petersen thanked the Board for their feedback and input. Mr. Jensen asked for any additional questions. Mr. Jensen thanked Mr. Dobbins for the use of the facility and thanked the Board for their time.

7. **ADJOURN**

MOTION

Mr. Oyler made a motion to adjourn the meeting. Meeting was adjourned.

APPROVED THIS 11TH day of APRIL, 2024,

Utah Risk Management Agency

Alex Jensen, Chairman of the Board

ATTEST:

Ann Richey, Secretary