

**JEA BOARD MINUTES
December 17, 2019**

The JEA Board met in regular session on Tuesday December 17, 2019, on the 19th Floor, 21 W. Church Street, Jacksonville, Florida. Present were April Green, Reverend Fredrick Newbill, Camille Lee-Johnson, Kelly Flanagan, Dane Grey, Henry Brown, and Lynne Rhode. Also present was Lawsikia Hodges and Sean Granat, Office of General Counsel.

Agenda Item I – Welcome

- A. The meeting was **called to order** at 9:00am by Chair April Green.
- B. A **Moment of Reflection** was observed by all.
- C. The **Pledge of Allegiance** was led by Chair Green.
- D. **Introductions** were made by board members present and Lynne Rhode.
- E. **Adoption of Agenda** – The agenda was approved on **motion** by Vice-Chair Newbill and second by Board Member Brown.

On motion by Vice Chair Newbill and second by Ms. Lee-Johnson the agenda was modified to place Agenda Item IV. C. and Agenda Item III. A. immediately following the Public Comments and Council Liaison Comment; motion approved unanimously.

- F. The **Safety Briefing** was given by Lynne Rhode, Office of General Counsel (OGC)
- G. **Sunshine Law/Public Records Statement** – Lynne Rhode, Office of General Counsel (OGC), stated this Board Meeting is being held in compliance with Florida's Government in the Sunshine Law, §286.011. The complete statement can be found in section I. F. of the Board package.

Agenda Item II – Comments / Presentations

A. Comments from the Public –

- **Anthony Beeks (information on file)** – Stated that at a meeting Councilman Garrett Dennis said Board Members were receiving payment and made other disparaging comments concerning the board; including the motives of the African Americans on the board and influence on the career of a board member's spouse. In response to his comments Chair Green stated that she nor any of the other board members are getting paid and her spouse's employment has nothing to do with her serving on JEA's board. Reverend Newbill responded to the comments saying that the motives concerning the African American board members are not true and none of the board members are getting paid.
- **CM Salem (information on file)** – Stated that he and Councilman Diamond intend to determine the facts around the long-term incentive plan, PUP. There are still many questions about the origin of the plan, cost, and other issues. Councilman Salem went on to say that they will continue to get answer to questions.

B. Comments from Council Liaison – Council Member Becton stated that he appreciates the contribution of the Board. CM Becton stated that asking the citizens for forgiveness and not permission is bad public policy. CM Becton stated there

should have been open conversations that provide the ability to reach favorable outcomes so that reasonable people can foster results with aspects of compromise and then we can move forward. CM Becton stated that it is his recommendation that the Board have conversations of a restart immediately to determine what that really means; just forgetting the past would not solve the problem. CM Becton went on to say that the citizens feel deceived and they ultimately have the final say so. CM Becton stated that it is his objective to leave his biasness on the sideline but he does not approve anything that compromises transparency or integrity of the process. CM Becton looks forward to hearing what the board thinks is the right course and the remedy to building back the public trust and thanked the Board Chair for allowing him to share his comments.

Agenda Item IV. C. Rescind Resolution 2019-10 Approved by Board of Directors July 23, 2019 (Performance Unit Plan)

Board Chair Green opened the conversation by asking Board Member Kelly Flanagan to provide an update from the hearing held the day before the Board meeting. Ms. Flanagan started her update by commending CM Diamond and CM Salem for looking into this matter and providing the opportunity for the public and board members too gain greater transparency. Ms. Flanagan then went on to explain a condensed timeline of events from the perspective of a board member to give the general public a better understanding of what was going through their minds at various stages. Ms. Flanagan stated that it is important for the public to know that at the time of approval of the plan on July 23rd, she believes that it was a reasonable stated purpose and objective of the plan that had been reviewed by the compensation committee which had legal confirmation that all employees could participate with estimated cost of \$3.4 million annually with maximum targets in the framework of the plan; but what is troubling her is the board did not have a thorough understanding of the calculations and wished she had asked better questions. Ms. Flanagan thinks that they have put themselves in a disadvantage of meeting nearly a month later and having to answer to the public's scrutiny.

Chair Green opened up discussion for the other board members. Board Member Grey did not provide comment because he was not a board member at that time but stated that the process that took place the day before the board meeting was very enlightening for him just as a citizen and he thanked the Council for doing that. Board Member Brown also stated that he was not a board member at the time, but when he saw it he called CEO Aaron Zahn to try and get some background on the plan. Mr. Brown stated that he told hold him it was a good thing it was being cancelled. Mr. Brown asked the other board members what the discussion was at the July board meeting and was there presentation. Board Member Flanagan explained that they received explanation but would characterize the financial impact of recapitalization on the plan as ambiguous. Board Member Brown asked if there was ever a number given on payout or investing amount or is there a number now. Chair Green and Vice Chair Newbill stated that there wasn't a number provided. Chair Green went on to say that the numbers she is aware of come from media but has never received any from management. Chair Green stated that her approval was based on \$3.4 million and that it had been vetted by outside Counsel, outside auditors, and OGC.

Kevin Hyde, Foley & Lardner, (outside Counsel) stated that they engaged as special counsel to JEA on this plan. Mr. Hyde stated that they reviewed the plan but did not develop it; the plan was developed by Pillsbury. Mr. Hyde explained that there primary role was to look into issues surrounding Florida Law.

Board Members Lee-Johnson and Newbill did not have any comments.

On *motion* Board Member Newbill and second by Board Member Flanagan Resolution 2019-17 was unanimously approved.

A RESOLUTION RESCINDING PREVIOUSLY ADOPTED RESOLUTION 2019-10

Agenda Item III – Personnel Matters

- A. CEO & Managing Director/Executive Management** - Board Chair Green made a statement expressing her disbelief and disappointment in the leadership of the organization and that they have lost a great deal of trust because they did not exercise transparency to the community. Ms. Green stated that there were three instances in which CEO, Aaron Zahn, exercised inappropriate personal and professional misconduct: providing misleading communications concerning the performance unit plan, not disclosing the hiring of a former board member's firm, and his inability to properly document secondary employment per his employment contract. Due to those reasons, Chair Green asked for a motion to terminate Mr. Zahn's employment agreement with cause. Jon Kendrick, VP/Chief Human Resource Officer, provided the layout of Mr. Zahn's contract and stated if terminated without cause Mr. Zahn would be paid \$842,925.43. Sean Granat, Office of General Counsel also provided further explanation of Mr. Zahn's contract.

After discussion, Board Member Henry Brown made a motion to reduce Mr. Zahn's contractual period to one month, second by Board Member Newbill. The motion was opened for discussion.

Chair Green called a recess at 10:38am.

Chair Green called the meeting back to order at 10:49am.

Walette Stanford, Ethics Officer, joined the conversation and gave a prepared statement to ensure that she provided all of the facts being asked about. Ms. Stanford stated she was initially told to hold off on her investigation by her boss, but was then given permission to do so. Ms. Stanford explained it (the land trust jointly owned by Mr. Zahn) would be considered secondary employment because it was listed as secondary income on his Form 1. Ms. Stanford went on to state that discipline for all employees for not disclosing secondary employment is up to/including termination and Mr. Zahn would have had 10 days to complete the form but was not asked to do so.

Chair Green opened the meeting to public comment to address the motion on the table.

Public Comment

- **Alicia Grant (information on file)** – Ms. Grant stated that she supports termination without cause to limit the liability.
- **Reverend Anthony Beeks (information on file)** – Does not support termination with cause. Reverend Beeks stated that Mr. Zahn's business decision should not be a crucifixion.
- **James Taylor (information on file)** – Mr. Taylor stated that he recommends administrative leave for Mr. Zahn.
- **Andy Johnson (information on file)** – Mr. Taylor recommends termination with cause and feels all board members should resign.
- **CM Carlucci (information on file)** – CM Carlucci suggest a grand jury investigation, termination with cause, and thinks JEA needs to restart.

On *motion* by Board Member Brown to amend previous motion to remove retention agreement; to move forward with termination without cause with continued negotiations and an outstanding

issues as to the consulting agreement of Mr. Zahn's employment agreement; second by Board Member Newbill. The motion was opened for discussion. Motion passed unanimously.

Board Chair called a recess at 11:25am.

Board Chair called the meeting back to order at 11:41am.

After Office General Counsel was advised that Mr. Zahn and his attorney would not negotiate today. The Board discussed Mr. Zahn being placed on paid administrative leave indefinitely. Over the next seven days, OGC was directed to negotiate an amended employment contract with Mr. Zahn with the following changes: He would be terminated without cause effective immediately upon the amendment. The consulting agreement would be reduced to one-month period and he would be ineligible for the retention agreement. OGC would be directed to move forward with an investigation and the Chair would be given the authorization to execute any and all documents to effectuate the motion.

On *motion* by Board Member Newbill and second by Board Member Brown the motion passed unanimously.

Chair Green called Melissa Dykes, Chief Operating Officer to the table; a motion was called by Chair Green to make Ms. Dykes Interim Managing Director/CEO.

On *motion* by Board Member Newbill and second by Board Member Brown, the motion was opened to discussion and public comments.

Public comment

- **Mr. Johnson (information on file)** - who stated that he was against the motion and Melissa Dykes should be given the permanent position.

Motion passed unanimously.

Ms. Dykes stated she is humbled that the Board put their trust in her to lead during this time and she will work to restore trust with the community. Ms. Dykes went on to say that she will work with the Board to ensure that they have a common set of priorities and goals through the interim period. In the meantime she encourages employees to continue to focus on safety and continue to do great work.

Agenda Item III – Operations (Discussion/Action)

- A. Consent Agenda** – used for items that require no explanation, discussion or presentation and are approved by one motion and vote. On *motion* by Vice-Chair Newbill and second by Board Member Brown the consent agenda was unanimously approved.

Appendix A: Board Meeting Minutes October 22, 2019 – approved

Appendix B: Real Estate Optimization – Deerwood Water Treatment Plant– approved

Appendix C: Fiscal Year 2020 Operating Budget Line Item Transfers to Continue Star Plan – approved

Appendix D: Monthly Financials Statements – approved

Appendix E: Monthly FY19 Communications & Engagement Calendar and Plan Update – information only

Appendix F: Corporate Campus Update – information only

Appendix G: Financial Operations Detail – information only

Appendix H: Monthly Financial and Operations Dashboard – information only

- B. FY2019 Annual Disclosure Approval** – Ryan Wannemacher, Chief Financial Officer, introduced Joe Orfano, Treasurer, who walked through some of the key points of our disclosure policy and the process to prepare the ADR each year. At the completion of Mr. Orfano’s presentation, Mr. Wannemacher recommended that the Board approve and authorize the release of the 2019 Annual Disclosure reports for electric and water systems as authorized by the Interim Managing Director/CEO in consultation with OGC and bond counsel to make additional corrective and clarifying changes as necessary.
- On *motion* by Vice Chair Newbill and second Board Member Lee-Johnson, motion passed with a 5 – 1 vote.
- C. Rescind Resolution 2019-10 Approved by Board of Directors July 23, 2019 (Performance Unit Plan)** – Agenda Amended; Resolution approved.
- D. Discussion of Mayor’s Recommendations Regarding the ITN Process and JEA’s Future** – Chair Green requested that this conversation be deferred to the next meeting and opened it up to discussion. After discussion amongst board members on the advantages/disadvantages of deferring the conversation, suspending the strategic planning process (all scenarios), and a discussion including Robert Hosay, Foley & Lardner, on how pausing the ITN could be harmful to the process, the Board proposed a motion on direction for Ms. Dykes and management to present Scenarios 1-5 at January’s Board meeting.
- Board Member Camille Lee-Johnson excused herself from the meeting at 12:44am (prior to the vote on the motion).*
- On *motion* by Vice Chair Newbill and second by Board Member, motion passed unanimously.

Agenda Item V – Strategy

N/A

Agenda Item V – Subject Matter Exploration (Opportunities & Risks – Presentations)

N/A

Agenda Item VI – Committee Reports

N/A

Agenda Item VII – Other Business

- A. Old Business** – N/A
- B. Other New Business** – N/A

C. Open Discussion – N/A

D. Managing Director/CEO’s Report – N/A

E. Chair’s Report – Chair Green apologized on behalf of the Board to the employees of JEA, who may feel uncertainty by the discussions taking place in the community. Ms. Green stated they should have done a better job of shepherding the process and discussion and thanked everyone for their time.

Agenda Item VIII – Closing Considerations

A. Announcements – Next Board Meeting – January 28, 2020

B. Adjournment

With no further business claiming the attention of the Board, Chair Green adjourned the meeting at 12:50 p.m.

APPROVED BY:

SECRETARY

DATE: _____

Board Meeting recorded by:

Madricka L. Jones, Executive Staff Assistant