

MINUTES OF THE MEETING

BOARD OF PILOT COMMISSIONERS

Sea Turtle Inn
One Ocean Boulevard
Atlantic Beach, FL 32233
January 10, 2003

CALL TO ORDER:

Commissioner Robas called the meeting to order at 9:05 a.m.

MEMBERS PRESENT:

Victoria Robas, Chair
J. Michael Buffington
Richard Frudaker
John Hiers
David Leech
Cheryl Phipps
Eugene Sweeney
James P. Winegeart

MEMBERS NOT PRESENT:

Manual Alonso, Vice-Chair

OTHERS PRESENT:

Anthony Spivey, Executive Director
Elise Rice, Government Analyst
Rivers Buford, Board Counsel
Galen Dunton, Board Consultant
Margaret Mathews
David de la Parte

Commissioner Robas thanked the St. Johns Bar Pilots Association for the excellent reception last night.

Commissioner Robas informed the Board that the Board would follow an amended agenda at this time as the Port Security Committee had arranged for someone to give the Board an update on security in the Jacksonville area.

Commissioner Winegeart introduced Don Lewis the Executive Director of the Jacksonville Marine Transportation Exchange.

Mr. Lewis informed the Board that the Exchange was the coordinating and umbrella agency for the Port of Jacksonville. They had established a committee with the Coast Guard even before 9/11 and expanded port security after 9/11. Mr. Lewis informed the Board that they had several committees and that Commissioner Robas co-chairs one of the committees. He stated that their primary challenge was to define the vital goals that they could work toward. One was how to meet the mandate coming from the state and federal government. They established one committee to help the stakeholders meet and comply with the rules. There was a sub-committee to keep track of all of the requirements. Mr. Lewis stated that their first goal was to make sure everyone knew what they had to comply with; second was what had to be done; and third was designed to be an intelligence committee and communications to share information.

Mr. Lewis informed the Board that their idea was to provide a centralized location where information is kept so you don't have to go to several different locations to obtain the information. The biggest challenge was to get ready for the federal requirements. Mr. Lewis stated that the Coast Guard was to implement a security act for the maritime. He informed the Board that Jacksonville has the opportunity to participate with the Coast Guard in these meetings, they are one of seven different ports throughout the nation. Commissioner Winegeart stated that the meeting will be on February 7. Mr. Lewis stated that it was a tremendous amount of work and research that had to be done prior to the meetings.

Mr. Lewis stated that ports all around the nation have started taking action and in Jacksonville he was amazed at how much had been done and the alliances they have formed. He stated that they were moving ahead to meet the needs and assess what else needs to be done.

Commissioner Robas thanked Mr. Lewis on behalf of the Board for attending the meeting.

APPROVAL OF THE MINUTES OF THE MEETING:

September 13, 2002

MOTION: Commissioner Sweeney made a motion that the Board approve the minutes as submitted.

SECOND: Commissioner Leech seconded the motion and it passed unanimously.

Commissioner Robas stated that the Board would now hear the two hearings. She stated that the recused members were Commissioner Winegeart, Commissioner Phipps and Commissioner Robas. She asked Commissioner Leech to Chair the meeting since she served on probable cause.

Commissioner Leech stated the Board had two cases and the voting members would be Commissioner Hiers, Commissioner Sweeney, Commissioner Leech and Commissioner Frudaker. Commissioner Buffington would participate in the 2nd hearing.

WAIVER OF RIGHT:

Michael Buffington, Case No. 2002-00013:

Captain Buffington was present and sworn in by the court reporter. Margaret Mathews, Esquire was also present.

Ms. Short informed the Board that an administrative complaint was filed with two (2) counts, excessive speed and unacceptable standards of safe piloting. She stated that the Department filed and served the administrative complaint. The Respondent elected to waive his rights. Ms. Short stated that the Department recommended that the Board adopt the findings of fact and conclusions of law and impose a penalty within the guidelines.

MOTION: Commissioner Hiers made a motion that the Board adopt the Findings of Fact and Conclusions of Law as set forth in the Administrative Complaint.

SECOND: Commissioner Sweeney seconded the motion and it passed unanimously.

Discussion followed regarding a letter from the Coast Guard that was contained in the information provided to the Board. Ms. Mathews informed the Board that she objects to the letter from the coast guard being included in the record and it was not the letter that Captain Buffington received, it was a draft. She stated that the letter was not issued in that form to Captain Buffington.

Commissioner Sweeney questioned if in the future information from the coast guard should be included? Mr. Buford responded that the normal procedure was to include the entire

prosecuting file. He stated that they are going to find information that should probably not be included at times.

MOTION: Commissioner Sweeney made a motion that the Board impose an administrative fine in the amount of \$500.

SECOND: Commissioner Frudaker seconded the motion and it passed unanimously.

INFORMAL HEARING:

Edward Cray, Case No. 2001-008542

Captain Cray was not present, however Margaret Mathews was present on his behalf.

Ms. Short informed the Board that an Administrative Complaint was filed with two (2) counts, failing to confirm his proximity to the northern channel limit and engaging in practices which does not meet acceptable standards of safe piloting. Ms. Short stated that the Department recommended that the Board adopt the Findings of Fact and Conclusions of Law.

Ms. Mathews stated that Captain Cray would admit to the facts but did not agree with the conclusions of law.

MOTION: Commissioner Hiers made a motion that the Board adopt the Findings of Fact as set forth in the Administrative Complaint.

SECOND: Commissioner Buffington seconded the motion and it passed unanimously.

MOTION: Commissioner Hiers made a motion that the Board adopt the Conclusions of Law as set forth in the Administrative Complaint.

SECOND: Commissioner Buffington seconded the motion.

Ms. Mathews informed the Board that Captain Cray had been piloting for 20 years with no prior discipline, he was once charged, however the state was unable to prove the allegations. Ms. Mathews stated that Captain Cray was not objecting to being too close in the channel but the conclusion that he should have waited is contrary to the safe standards of piloting.

Commissioner Hiers withdrew his motion and Commissioner Buffington withdrew his second.

MOTION: Commissioner Hiers made a motion that the Board adopt the Conclusions of Law in Count 1 as their Conclusions of Law.

SECOND: Commissioner Frudaker seconded the motion which passed unanimously.

MOTION: Commissioner Sweeney made a motion that the Board impose an administrative fine in the amount of \$500.

SECOND: Commissioner Frudaker seconded the motion which passed with Commissioner Buffington voting against the motion.

Commissioner Robas returned to Chairing the meeting at this time.

OPERATIONAL GUIDELINES:

Canaveral Pilots Association

Commander Dunton informed the Board that Canaveral requested that their guidelines be addressed at the next board meeting.

Key West Bar Pilots Association

Commander Dunton presented the information regarding the updated guidelines and stated Key West was requesting approval.

MOTION: Commissioner Winegeart made a motion that the Board approve the operational guidelines as submitted by Key West Bar Pilots Association.

SECOND: Commissioner Leech seconded the motion.

Commissioner Frudaker stated that he did not see any of the work schedules for the pilots. Commissioner Phipps stated they she was uncomfortable approving the guidelines because she felt they were providing too much information that the Board would not be able to approve. She stated that they should send the current maximum draft and the work schedule for the Boards' approval.

Following discussion the Motion by Commissioner Winegeart failed with Commissioner Phipps, Commissioner Frudaker, Commissioner Hiers and Commissioner Sweeney voting against the motion.

Commissioner Robas asked Mr. Spivey to notify Key West Bar Pilots Association that their guidelines had been rejected

MOTION: Commissioner Phipps made motion that the Board send the guidelines back to Key West Bar Pilots Association requesting they submit their guidelines more in line with the Board rules as they relate to the operational guidelines and also provide a more detailed work schedule.

SECOND: Commissioner Buffington seconded the motion and it passed unanimously.

Captain Nadeau informed the Board that he will inform the pilots about the rules and will have every port review their work schedule and redo their guidelines appropriately.

Commissioner Robas stated that Mr. Spivey will send out the letter to the Key West Pilots.

CORRESPONDENCE RECEIVED REGARDING PENSACOLA BAY PILOTS:

Mr. Spivey informed the Board that he had spoken with Leon Walker and Captain McGee. He stated that Captain McGee informed him that he had contacted some of the ships using the Port of Pensacola and they will be using him and Captain McGee stated that he had also notified Captain Schafer of this. Mr. Spivey stated that Mr. Walker asked if the Board would send a letter to the port requesting them to also use Captain McGee's services and Captain Schafer. Mr. Spivey stated that he responded that he did not think that the Board would do a letter and that it would be an uncomfortable position for the Board.

Commissioner Buffington stated that he talked to Mr. Porter, Port Director, on Wednesday and was told that he and Mr. Walker were working on a plan to advise the agents of a rotation schedule for Captain McGee and Captain Schafer. Commissioner Buffington stated that he was informed that the port authority was trying to develop a plan to try and keep track of who handles what and it would be a rotation basis. He stated that this would probably resolve a lot of the problems and will put Captain McGee practicing his profession more. Commissioner Buffington stated that Mr. Porter informed him that they will evaluate the situation and one thing they might want to do, when this is presented, is perhaps have a board member to be present at the port authority meeting. Commissioner Buffington stated that he would like to take the position that the Board will aide in whatever it can to insure there is adequate piloting services in Pensacola.

Following discussion, Commissioner Sweeney stated that it appeared that they really only needed 1 pilot in the port. Commissioner Frudaker responded that the initial request for a deputy came from Panama City and thought the Pensacola port authority requested the opening for the Pensacola Port.

Commissioner Robas stated that a letter had been sent to the Port Authority previously.

Captain Nadeau informed the Board that Captain McGee had gone to all of the agents selling himself. He stated that one agent agreed to use him however, 2 agents were reluctant to commit. Captain Nadeau stated they were reluctant to commit because they want to make a call and they get a pilot like they do in other ports. He was not sure another letter from the Board would help.

Commissioner Robas reminded the Board that they only approved Captain McGee's guidelines for the Port of Pensacola.

Mr. Buford informed the Board that if a pilot violates the rules of the Board they are subject to discipline.

Commissioner Buffington asked if it would be possible to have a member or the consultant available at the meeting to be able to clarify the powers of the Board and the Department. Commissioner Robas responded that she would like to go through another meeting and if they aren't successful then the Board could address it at the meeting. She stated that she would like for them to resolve this on their own. Commissioner Frudaker stated that the letter that was sent previously should be sent to the port authority as that will give them information that may be beneficial. Commissioner Sweeney suggested attaching a copy of the operating guidelines to the letter.

Commissioner Robas stated that Mr. Spivey would write to Mr. Porter in memorandum form informing him that he was sending this at the request of the Board and refer him to the letters that were previously sent and a copy of the operational guidelines were enclosed.

Commissioner Hiers commented that he thought this is a waste of time, as they already knew the information that was being provided.

ADVANCEMENT OF TEMPORARY CERTIFICATES TO DEPUTY PILOT CERTIFICATES:

Timothy McGill - Jacksonville

Douglas Brown - Canaveral

Commander Dunton informed the Board that Captain McGill and Captain Brown were working on temporary certificates which will expire prior to the next meeting and they need to receive their certificates.

MOTION: Commissioner Leech made a motion that the Board advance Timothy McGill of Jacksonville and Douglas Brown of Canaveral.

SECOND: Commissioner Sweeney seconded the motion and it passed unanimously.

DISCUSSION REGARDING THE DEPUTY APPOINTMENT PROCESS:

Commissioner Robas stated that she asked for this to be on the agenda and in the correspondence section of the agenda are the letters that have been done regarding the appointment process. She stated that she had asked for assistance to this process and has not heard much back on this.

Captain Nadeau commented that in March 2002 the examinations were held for Miami and Everglades. Once the grades were finalized and the list submitted to the Secretary, the Department decided to do background checks. The Secretary had them go through an FDLE check. The deputy appointment for Miami was made on December 1 and the appointment for Everglades on January 5. Captain Nadeau informed the Board that the deputy for Miami had to have an operation for a pinched nerve and they will have at least three (3) months without a deputy. He stated that they will have him assessed before take him on board.

Captain Nadeau stated that he hoped the Board will make a request to the Department and include the requirement for the fingerprint cards in the requirements.

Mr. Spivey stated that he will present it to the Department to have the fingerprint cards as a part of the application. Mr. de la Parte suggested requiring the fingerprint cards but wait and see who top 5 are before submitting for processing. Commissioner Robas stated that she would like a letter from the Pilot Association requesting that this be done and that would give Mr. Spivey more information to present.

APPROVAL OF APPLICANTS FOR THE DEPUTY AND STATE PILOT EXAMINATIONS:

Commander Dunton stated that Captain Thomas Grimison was eligible and recommended by Canaveral Pilots Association to take the state pilot exam. Captain James Harhart was also eligible and recommended by Biscayne Bay Pilots Association to take the state pilot exam

MOTION: Commissioner Phipps made a motion that the Board approve Captain Grimison and Captain Harhart for state pilot exam.

SECOND: Commissioner Sweeney seconded the motion and it passed unanimously.

Commander Dunton stated the following candidates were qualified to sit for the deputy pilot examination: Elmo Albertelli – Canaveral; Thomas Bagan – Canaveral; John Basel – Canaveral & Everglades; Benjamin Borgie- Canaveral; Stephen Buss – Canaveral; Paul Coan – Everglades; Matthew Craven – Canaveral; Kevin Dooney – Everglades; Derik Flint – Canaveral; Michael Funk - Canaveral & Everglades; Cyril Gittens – Everglades; Peter Glynn – Canaveral; Alejandro Gonzalez – Everglades; Dean Grant – Canaveral & Everglades; Reid Hansen – Canaveral & Everglades; William Kavanaugh – Canaveral; William Kennedy – Canaveral; Brendan Lally – Everglades; Mark Lane – Everglades; Luis Lopez – Everglades; David Lyon – Everglades; Gregg MacLaren – Canaveral & Everglades; Joseph Martin – Canaveral & Everglades; Jules Massee – Canaveral; William McCarthy – Canaveral; Brendan McMillin – Canaveral; Bradley Miller – Everglades; Rickie Montoya – Canaveral & Everglades; John Morris – Everglades; Michael Novak – Everglades; James Pelland – Everglades; Martin Poole – Everglades; Thomas Power – Canaveral; Caleb Rallis – Everglades; Jeffrey Ritter – Canaveral; Jeffrey Robben – Canaveral & Everglades; Donald Sacca – Everglades; Mark Saunders – Canaveral; Stephen Sottak – Canaveral; Samuel Stephenson – Everglades; Mitchell Tillyard – Canaveral; Peter Whiting – Everglades; Dana Wirkala – Everglades.

MOTION: Commissioner Buffington made a motion that the Board approve the candidates as read into the record for the March deputy pilot examination.

SECOND: Commissioner Phipps seconded the motion and it passed unanimously.

Commander Dunton stated that the following candidates were not eligible to take the examination:

John Becker – Everglades, has 364 days of service shy 236 days; Edward Morel – Canaveral, only licensed for 100 gross tons; Kevin Voigt – Canaveral, has 521 days of service shy 79 days; William Wade – Canaveral, has 330 days of qualifying time shy 270 days as a Master.

MOTION: Commissioner Buffington made a motion that the Board deny the applications of John Becker, Edward Morel, Kevin Voigt and William Wade due to their not meeting the requirements under Chapter 310.071, F.S. for sitting for the examination.

SECOND: Commissioner Winegeart seconded the motion and it passed unanimously.

Commissioner Sweeney requested that at the next meeting the Board be provided with a breakdown of the minorities for the examination.

Commissioner Sweeney questions if there was a maximum age for applying for the examination and asked that this be on the agenda for discussion at the next meeting. Commissioner Frudaker stated that it would be age discrimination to have an age limit. Mr. Buford stated that it would take legislation to change this.

REPORTS:

Chair's Report – Commissioner Robas:

Commissioner Robas stated that at the request of the Board she had submitted a letter to the former Secretary of Department requesting that Mr. Buford be retained as their Board Counsel. She stated that she hoped the newly appointed Secretary will take the request under advisement.

Board Counsel's Report – Rivers Buford:

Mr. Buford informed the Board that if a penalty to be imposed on a licensee is not in the penalty guidelines it can not be enforced. He provided the Board with a copy of a letter that was received from JAPC.

Rules Committee Report – Commissioner Phipps:

Rule 61G14-15.003

Commissioner Phipps reported that the Committee discussed proposed changes to Rule 61G14-15.003 yesterday. The Committee would like the Board to consider a change to the rule as follows: paragraph (4): "Each association of pilots in each port where such association(s) exists, and the licensed state pilots in each port who are not members of such association shall submit to the Board for its review and approval or rejection of the current maximum allowable draft of vessels calling at the port and restrictions on bottom clearance for each berth and channel..." Paragraph (5): "...and the licensed state pilots in each port who are not members of such association shall annually submit for the board's review and approval or rejection, the current pilot work schedules for the port..."

MOTION: Commissioner Frudaker made a motion that the Board approve the amendment as stated and authorize Mr. Buford to implement rule adoption procedures.

SECOND: Commissioner Sweeney seconded the motion and it passed unanimously.

Finance Committee Report – Commissioner Buffington:

Commissioner Buffington stated that Ms. Julie Baker, Director, Division of Professions, was in attendance at the Committee meeting. He stated that the Committee expressed their concern with the methodology the Department used to transfer money as directed during the Special Legislative Session last year. The \$52,000 that was transferred was more than the amount made on the money and Ms. Baker said she would check into how this amount was determined.

Commissioner Buffington stated that the Committee directed Mr. Buford to lower the assessment amount to .6% from 1%. The 5-year budget will be done with the proposed reduction.

MOTION: Commissioner Buffington made a motion that the Board adjust and review the gross pilotage assessment fee in Rule 61G14-19.001 and Board Counsel initiate rule making procedures.

SECOND: Commissioner Winegeart seconded the motion and it passed unanimously.

MOTION: Commissioner Buffington made a motion that the 5-year revenue projection and 5-year budget be amended to reflect the reduction in the assessment amount of .6% for 03-04.

SECOND: Commissioner Leech seconded the motion and it passed unanimously.

MOTION: Commissioner Buffington made a motion that the 5-year budget be adopted as amended.

SECOND: Commissioner Sweeney seconded the motion and it passed unanimously.

Probable Cause Committee Report – Commissioner Robas:

Commissioner Robas reported that the Probable Cause Panel heard nine cases and closed all nine cases.

Prosecuting Attorney's Report – Tiffany Short:

Ms. Short provided the Board with a Status of Cases Report.

Commissioner Buffington questioned if the DOAH hearing dates had been established by Mr. Tunncliff. Ms. Short responded that they had not been.

Commissioner Robas stated that the Board may want to consider having Mr. Tunncliff appear at the next meeting to discuss with the Board the delay in the 4 cases that were pending formal hearings. She requested Ms. Short in the meantime pass along to Mr. Tunncliff the Boards' wish that these cases have the hearings scheduled.

Executive Director's Report – Anthony Spivey:

Galen Dunton's Contract

Mr. Spivey stated that at the last meeting the Board asked him to bring back a report regarding Commander Dunton's contract. He stated that when he started Commander Dunton was working under one contract and then it was split into two contracts. Mr. Spivey stated that he had tried to have it merged into one contract but the Department will not do this; the general counsel feels that it is easier to track the two separate contracts. Mr. Spivey stated that there is more money on legal side of the contract and he does have an amendment to be signed.

Commander Dunton stated that he anticipates he will exceed the present contract in mid February. Commissioner Buffington commented that there should be sufficient money to cover the cost.

Correspondence:

This was provided for information purposes.

OLD BUSINESS:

Training for the Port of Tampa:

Commissioner Buffington informed the Board that because of the size of ships coming into port, Tampa decided to amend their training program to limit the length of the ships instead of the previous unlimited lengths. He stated that they thought they should amend the training so as to have progression in draft and length for the deputies.

MOTION: Commissioner Buffington made a motion that the Board approve the changes to the training for the Port of Tampa.

SECOND: Commissioner Sweeney seconded the motion and it passed unanimously.

NEW BUSINESS:

Discussion Regarding Physical Forms:

Ms. Rice informed the Board that the old physical forms had been destroyed and replaced with the new forms. Commander Dunton suggested the Rules Committee adjust Rule 61G14-20.001 to reflect the date of 7/02 on the new physical form that is the most current version.

MOTION: Commissioner Buffington made a motion that the Board amend Rule 61G14-20.001(c)(2) with the most current date on the physical form and Board Counsel initiate the rule making process.

SECOND: Commissioner Frudaker seconded the motion and it passed unanimously.

Commissioner Sweeney stated that the Board in the past Mr. Spivey had provided the Board information regarding staff percentages for the board office and requested Mr. Spivey provide that to the Board at the next meeting. He also requested an updated committee list.

NEXT MEETING DATE AND LOCATION:

April 24 & 25, 2003 in Key West. Mr. Spivey asked the Board to select an alternate site in the event it is cost prohibitive to meet in Key West. Commissioner Sweeney stated that the Board had not gone to Miami and would like to see them go there.

Commissioner Robas stated that Miami would be the alternative site. She also stated that election of officers should be on the agenda for April.

Commander Dunton stated that the Board needed to schedule a telephone conference for March 3 because both Canaveral and Everglades have stated they may need to increase their number of deputy pilots.

ADJOURNMENT:

There being no further business to come before the Board, the meeting was adjourned at 1:00 p.m.