

MINUTES OF THE MEETING

BOARD OF PILOT COMMISSIONERS

**Hampton Inn & Suites
19 South Second Street
Fernandina Beach, FL 32034
January 23, 2007 - 9:00 a.m.**

CALL TO ORDER

Commissioner Phipps called the meeting to order at 9:01 a.m.

Commissioner Phipps thanked Commissioners Robas and Bryson for the dinner last night.

Members Present

Commissioner Phipps, Chair
Commissioner Bryson, Vice-Chair
Commissioner Buffington
Commissioner Buford
Commissioner Fernandez
Commissioner Frudaker
Commissioner Hiers
Commissioner Molitor
Commissioner Robas
Commissioner Sweeney

Others Present

Robyn Barineau, Executive Director
Elise Rice, Government Analyst
Drew Winters, Prosecuting Attorney
Mary Ellen Clark, Board Counsel
Joe Brown, FSPA, St. Johns Bar Pilots Association
Allen Thompson, Tampa Bay Pilots Association
Tony Hogg, Docking Masters, Jacksonville
Brian Seuter, Cumberland Sound Pilots Association
John Atchison, St. Johns Bar Pilots Association
David de la Parte, Florida State Pilots Association
Gretchen Rayborn, Florida State Pilots Association

APPROVAL OF THE MINUTES OF THE MEETING

September 29, 2006

MOTION: Commissioner Buffington made a motion that the Board approve the September 29, 2006, minutes as submitted.

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

PROSECUTING ATTORNEY'S REPORT – DREW WINTERS

Mr. Winters informed the Board that the Probable Cause Panel heard nine cases and 13 cases had been sent out to consultant/expert.

Mr. Winters informed the Board that there were six cases in Legal that were a year old, and he asked to be allowed to continue to proceed with these cases.

Following discussion, the following action was taken.

MOTION: Commissioner Buffington made a motion that the Board authorize Mr. Winters to proceed with the six cases.

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

REQUEST FOR STATE PILOT EXAMINATION

William Wetzel – Ft. Pierce

Commander Dunton informed the Board that a letter had been received from Captain David Leech requesting that Captain Wetzel be allowed to take the state pilot examination. Captain Wetzel has completed the training and all requirements for the examination.

MOTION: Commissioner Fernandez made a motion that the Board approve Captain William Wetzel to sit for the state pilot examination for the Port of Ft. Pierce.

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

REQUEST FOR TWO-YEAR CERTIFICATE

Travis Bacon – Tampa Bay

Captain Allen Thompson, Executive Director, Tampa Bay Pilots Association, was present at the meeting. He informed the Board that Captain Bacon was issued his temporary license on issued February 20, 2006, and he reported to work on February 20, 2006. He stated that in June 2006, Captain Bacon applied for his coast guard license and begin training. On October 10, 2006, a deputy pilot advancement conference call was conducted and Captain Bacon was approved for advancement. On January 3, 2007, the next deputy pilot advancement conference call was conducted and Captain Bacon was approved to advance to Level 3. Captain Thompson stated that the Tampa Bay Pilots Association request that the Board issue Captain Bacon's deputy license.

MOTION: Commissioner Buffington made a motion that the Board approve the issuance of a two-year certificate for Captain Travis Bacon with an effective date of February 21, 2007.

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

REVIEW OF FT. PIERCE OPERATIONAL GUIDELINES

Commander Dunton stated that the operational guidelines was provided by Ft. Pierce for Board review and approval.

Following discussion the following action was taken.

MOTION: Commissioner Buffington made a motion that the Board approve the maximum allowable draft be 20 feet based on existing conditions.

SECOND: Commissioner Robas seconded the motion.

Commissioner Sweeney questioned if the Board just takes the pilots' word on this information, and if that was the proper avenue to handle this matter.

Commissioner Frudaker responded that this was based on the Army Corp of Engineers soundings. It would not be based on Captain Leech performing the soundings and he felt this was acceptable.

Following discussion, the Board asked Commander Dunton to research these issues in the future, and report his findings to the Board. There being no further discussion, the motion passed unanimously.

MOTION: Commissioner Buford made a motion that Rule 61G14-15.003(4)(5), Florida Administrative Code, be placed on the next agenda for review and discussion.

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

REVIEW OF DEPUTY PILOT APPLICATIONS FOR THE MARCH EXAMINATION FOR THE PORTS OF JACKSONVILLE AND TAMPA BAY

Commander Dunton reported to the Board that the following applicants were qualified by Board and Department rules, there were no outstanding issues, and they should be allowed to sit for the examination in the respective ports.

Robert Bearden – Jacksonville; Peter Curtis – Tampa; Natalie Edwards – Tampa; Charles Ellis – Jacksonville; Cyril Gittens – Tampa; Joseph Goodwin – Tampa; John Humphreys – Tampa; William Kavanaugh, Jr. – Jacksonville; Kris Kubiak – Tampa; James Luke – Tampa; Greg MacLaren – Tampa; Narrayan Mons – Jacksonville; Robert Moore, II – Tampa; Robert Munchback – Tampa; Igor Nechepurekno – Tampa; Gerard Pannell – Jacksonville; Steven Paquette – Tampa; Martin Poole – Tampa; John Prichett – Jacksonville; Jeffrey Ritter – Jacksonville; Donald Sacca – Jacksonville; Stephen Sottak – Tampa; Francisco Sta Cruz – Tampa; William Swiss – Tampa; Gene Tarzetti – Tampa; John Waldrip – Jacksonville; and Charles Zenter – Jacksonville.

MOTION: Commissioner Buford made a motion that the names read into the record be found to have met the marine experience requirements and be certified to sit for the examination.

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

Commander Dunton read into the record the applicants with pending items and requested he be given until January 31 to collect the required information.

Robert Grove – Jacksonville - was missing educational documents and the drug test which are required by the Department.

MOTION: Commissioner Buffington made a motion that the Board approve Robert Grove for the examination based on his sea experience and meeting the Board requirements provided he submits the documentation required by the Department according to Chapter 455, Florida Statutes.

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

Cameron Kirkconnell – Jacksonville - was shy 101 days of sea time and needed to provide a complete, current radar certificate.

MOTION: Commissioner Buford made a motion that the Board deny the application for Cameron Kirkconnell pending receipt of information required in Chapter 310.071(1)(d), Florida Statutes, Rule 61G14-11.002(2), Florida Administrative Code & Chapter 455, Florida Statutes.

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

Michael Quinn – Jacksonville - was shy 370 days of sea time and was missing Department information.

MOTION: Commissioner Bryson made a motion that the Board deny the application for Michael Quinn pending receipt of proof of his sea time and meeting the requirements of Chapter 455, Florida Statutes.

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

Commander Dunton informed the Board that the following individuals do not meet the requirements and are, therefore, not eligible to take the examination.

John McMillen – Tampa - is a Washington State Ferry pilot and all of the time submitted was as a master/pilot for Washington State Ferry. The rules require

that applicants must be licensed under a regulatory entity and, therefore, he does not satisfy this requirement. Commander Dunton informed the Board that there was correspondence included in the handouts for the Board's information. He stated that the rules do not address inland time and, therefore, there is no category to qualify his time.

Commissioner Buffington commented that the Board had determined in the past that the Washington Ferry System was not a government regulated industry.

MOTION: Commissioner Buford made a motion that the Board deny the application for John McMillen as he failed to meet the requirements of Chapter 310.071(1)(d), Florida Statutes, and Rule 61G14-11.002(2)(g), Florida Administrative Code.

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

Kenneth Wahl – Jacksonville & Tampa - is a master of freight and towing and the only time he submitted was for a mate and tugs which does not meet the requirements.

MOTION: Commissioner Hiers made a motion that the Board deny the application for Kenneth Wahl as he failed to meet the requirements of Chapter 310.071, Florida Statutes, and Chapter 455.213(1), Florida Statutes.

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

Krassimir Zhekov – Tampa - does not hold the proper license and just recently because a United States citizen.

MOTION: Commissioner Buffington made a motion that the Board deny the application of Krassimir Zhekov as he failed to meet the requirements of Chapter 310.071, Florida Statutes, and Chapter 455, Florida Statutes.

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

REPORTS

Chair's Report – Commissioner Phipps

- Committee Assignments

Chair Phipps appointed Commissioner Frudaker as Chair of the Rules Committee and Commissioner Bryson as the Vice-Chair. She stated that she was going to leave the Finance Committee make up as is currently set up.

Chair Phipps reported that the Probable Cause Panel met on January 22, 2007, and considered nine cases. Five cases were closed, two letters of guidance

were issued, probable cause was found in one case, and one case is being returned for more information.

Finance Committee Report – Commissioner Buffington

Commissioner Buffington reported that the Committee met on January 22. He reported that they were in good shape and were preventing their cash from increasing. He stated that based on the first quarter figures, they would not need to change the gross pilotage assessment.

Rules Committee Report – Commissioner Phipps

Chair Phipps stated that Rule 61G14-11.007(1)(a), Florida Administrative Code, would be noticed for rule development and Rule 61G14-15.003(4)(5), Florida Administrative Code, would be placed on the next agenda for discussion purposes.

MOTION: Commissioner Buford made a motion that the Board ratify the actions of the Rules Committee.

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

Board Counsel's Report – Mary Ellen Clark

Ms. Clark informed the Board that on Friday, January 19, she received correspondence on behalf of a former deputy pilot requesting that the Board issue him a permanent certificate, and he requested a hearing. After reviewing the correspondence and discussing it with former Board counsel, Ed Tellechea, and her supervisor, it was her recommendation that an additional meeting should be held prior to the expiration of the temporary certificate on February 20, 2007. This would need to take place in order to comply with the requirements of Chapter 310.071(3), Florida Statutes, which requires that at the end of the period that the certificate has been issued, the Board shall evaluate the deputy pilots performance with suitability to continue training and make appropriate recommendations to the department. Ms. Clark recommended that in the process of evaluating the deputy, the Board ask those pilots that were training the former deputy to give a presentation regarding his performance in comparison with their approved training program so they can then make a recommendation to the department, issue an order to comply with this provision, and also give the deputy a point of entry to review the status of his license.

Commissioner Sweeney asked if he was a deputy pilot now. Ms. Clark responded that he was a deputy pilot, and it was her understanding that he had been terminated from his training program. Commissioner Sweeney asked how he was terminated, was he not recommended for the next level or he was fired. Ms. Clark stated that at this point she had a letter from the former deputy pilots' attorney. Her understanding was that the group of pilots that were training him determined his progress was not satisfactory and terminated his civil contract with them. Ms. Clark stated that the contract was a civil matter and the pilots

were entitled to make that decision. However, the Board has the duty under Chapter 310.071, Florida Statutes, to also look at the actual certificate. Commissioner Sweeney questioned why this was coming up at this time and not when the individual was terminated. Ms. Clark responded that it was coming up now because the attorney has made a demand and the review needs to be completed prior to the end of the year in which the certificate was issued. Commissioner Sweeney asked if she was saying if they had not received this letter his attorney would not have done this. Ms. Clark responded that it would not have been brought to her attention in that fashion.

Commissioner Buffington stated that one of the things that was discussed in the Rules Committee was that the rule basically indicates the obligation of the port that is going to train to submit a request for any advancement to permanent certification. The rule does not make any request that the association make a request for a denial of the permanent certification. Commissioner Sweeney questioned that if it was the absence of approval and required no Board action regarding the deputy.

Ms. Clark responded that action was required. She stated that since this happens so infrequently, the rule was interpreted by the Tampa Bay Pilots Association to only require action when there was approval. Now that they do have a non-approval situation, it is a good time to review the procedures and make sure everyone understands it correctly because the Statute puts the duty on the Board whether there is a recommendation to move forward or not. Ms. Clark stated that it was her recommendation to the Board that they cannot make good on the statutory requirement unless those who trained the deputy pilot come and make a presentation. Otherwise, how are the Board members to thoroughly evaluate that former deputy's progress.

MOTION: Commissioner Buford made a motion that the Board prior to February 20, 2007, hold a meeting in Tampa, Florida for the purpose of considering whether the deputy pilot shall be recommended for renewal of his temporary certificate.

SECOND: Commissioner Molitor seconded the motion and following discussion, the motion passed unanimously.

Chair Phipps stated that the Board would meet on February 12th at 9:00 a.m., in Tampa. Ms. Clark stated that the training pilots will need to give a presentation and the former deputy will have the right to be present and give his own side of the issue. She stated that an order will result from this meeting. If it were to be a denial of the certificate, this still has the right to be challenged. Ms. Clark stated that the Board is not there to determine facts, but they are there to evaluate and make its recommendation to the Department at the February meeting. She stated that if there was a challenge of the order, that is when the matter would be go before the Division of Administrative Hearings. She stated that witnesses would be required and an independent Administrative Law Judge would then be

tasked with determining the facts. Ms. Clark stated after discussion, that if there was a hearing before the Administrative Law Judge, she would probably call Commander Dunton as a witness as the Board members would not be witnesses.

Following discussion, Captain Allen Thompson made the following comments: "Madam Chair, I would like for the record to show that at the teleconference call on 10/10/2006 for the Deputy Pilot Advancement conference call that was held for the Board of Pilot Commissioners Deputy Pilot Advance Program that consisted of Madam Chair, Government Analyst, Executive Director, Pilot Board Consultant, the Board attorney, Captain Carolyn Kurtz, Tampa Bay Pilots Association Deputy Pilot Training Coordinator and myself. At that meeting, this group was informed that the contract between the Tampa Bay Pilots Association and Deputy Pilot Michael Funk was terminated effective October 20, 2006, and at that meeting also, I was going to give some specifics as to why that contract was terminated because his name was withdrawn for advancement, nothing else was required. There was notice of this particular action."

Commissioner Molitor requested that Captain Thompson's comments be verbatim in the minutes.

Vice-Chair Bryson chaired the meeting at this time as Chair Phipps had to leave the meeting.

Ms. Clark stated that the actions of the Deputy Pilot Advancement Committee should be ratified by the Board at their regularly scheduled meeting. Ms. Clark requested that the meeting minutes be prepared for Deputy Pilot Advancement Committee meetings and included in the full Board meeting agendas.

Executive Director's Report – Robyn Barineau Announcement of New Department Secretary, Holly Benson

Ms. Barineau stated that she was pleased to announce that Holly Benson was now the Secretary of the Department. She is a former legislator from the Panhandle and was elected to the House in 2000.

Board Membership

Ms. Barineau stated that the Department was always soliciting for consumer members for all boards. She asked that if any member knew of anyone interested in serving, to have them contact her or the Governor's Appointments Office.

Port Security – Commissioner Molitor

Commissioner Molitor stated that information was provided for informational purposes.

ANNUAL REVIEW OF EXECUTIVE DIRECTOR, BOARD CONSULTANT AND PROSECUTING ATTORNEY

Vice-Chair Bryson stated that this would be continued until the next meeting.

CORRESPONDENCE

This was provided for informational purposes.

NEW BUSINESS

Commissioner Buford stated that he received a goodie basket during his recent illness and informed everyone that he really appreciated their thoughtfulness. He stated that he filed a report with the Ethics Commission that he received the gift.

OLD BUSINESS

Commissioner Sweeney inquired as to the make-up of the committees. Vice-Chair Bryson responded that the committees were a committee of the whole Board at this time.

Ms. Barineau stated that the Probable Cause Panel consisted of Chair Phipps, Commissioner Fernandez and Commissioner Hiers.

Vice-Chair Bryson reported that Chair Phipps was on the Deputy Pilot Advancement Committee. Commissioner Frudaker was Chair of the Rules Committee, and he was the Vice-Chair of the Rules Committee.

PROPOSED BOARD MEETING DATES

May 3 & 4, 2007 – Miami

July 12 & 13, 2007 – Canaveral

October 4 & 5, 2007 – Palm Beach

BOARD MEMBER TRAINING

This was postponed to a future meeting.

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 11:30 a.m.