

MINUTES OF THE MEETING

BOARD OF PILOT COMMISSIONERS Bay Point Marriott Golf Resort & Spa 4200 Marriott Drive Panama City Beach, FL 32408 January 18, 2008

CALL TO ORDER AND INTRODUCTION OF GUESTS

Vice-Chair Bryson, Vice-Chair of the Board, called the meeting to order at 9:00 a.m.

Members Present

Commissioner Bryson, Vice-Chair
Commissioner Bohnsack
Commissioner Brandenburg
Commissioner Buford
Commissioner Fernandez
Commissioner Frudaker
Commissioner Jones
Commissioner Molitor

Members Not Present

Commissioner Phipps, Chair

Others Present

Holly Benson, Secretary, Department of Business and Professional Regulation
Robyn Barineau, Executive Director
Elise Rice, Government Analyst
Ed Tellechea, Board Counsel
Galen Dunton, Board Consultant
Gretchen Rayborn, Florida State Pilots Association
Joe Brown, Florida State Pilots Association
John Atchison, St. Johns Bar Pilots Association
Warren Husband, Florida State Pilots Association
Allen Thompson, Tampa Bay Pilots Association
Tony Cuva, Esquire
Francis Wood, Tampa Bay Pilots Association
Tony Hogg
Jenny Nichols, Court Reporter

Vice-Chair Bryson introduced and welcomed Holly Benson, Secretary of the Department of Business and Professional Regulation.

Secretary Benson commented that it was a treat to join everyone on the tour of the port yesterday and thanked Commissioner Frudaker for setting it up. She

stated that it was an honor to observe the work they do, and she enjoyed talking with everyone last night. She informed the Board that she had toured Tampa Bay with Captain Viso last year and enjoyed that tremendously. Secretary Benson commented that she talked about the differences now with Commissioner Fernandez and the changes that had taken place. She stated that the thing that stuck with her was that it only took a week for Captain Fernandez to start to go to work after he took the exam and now from the time a need is identified, it can take up to a year before the deputy can begin work.

Secretary Benson stated that her challenge to this Board was to see if the process can be streamlined.

Secretary Benson informed the Board that they can take tours of the ports that do not have a lobbyist at no cost. She thanked Commissioner Buford for the kind words about the staff and thanked the Board for the opportunity to meet with them. She asked the members to contact her if they needed any assistance and stated that customer feedback is important to her.

Vice-Chair Bryson introduced Captain Joe Brown, the new Florida State Pilots Association President, and Mr. Warren Husband, the new attorney for the Florida State Pilots Association.

Vice-Chair Bryson stated that Chair Phipps absence was excused due to a family medical emergency.

APPROVAL OF THE MINUTES OF THE MEETING

October 5, 2007

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

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

SETTLEMENT STIPULATION

Captain Francis Wood, Case # 2005-011068

Captain Wood was present at the meeting along with Mr. Tony Cuva, Esquire. Mr. Cuva informed the Board that he was present on behalf of Ms. Margaret Mathews.

Mr. Tellechea explained the procedures to be followed for the Board.

Mr. Winters presented the facts of the case. He stated that the Respondent had agreed to a Settlement Stipulation which called for an 18 month probation, suspension of his pilots' license for 14 consecutive days beginning seven days after the filing of the final order, \$3,516.50 costs, and he had to appear at this meeting to address any concerns.

Mr. Winters stated that this case was brought to the Board to determine if they felt this would satisfy the Board. He stated that the Department asked that the

Settlement Stipulation be accepted, and because of the costs already incurred, give the Board the time to see if this is acceptable.

Mr. Cuva stated that they agreed that the Stipulation should be adopted.

MOTION: Commissioner Fernandez made a motion that the Board adopt the Settlement Stipulation as presented.

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

LICENSURE MATTER INVOLVING CAPTAIN MICHAEL FUNK

Mr. Tellechea informed the Board that material relating to this matter was included in their hand-out folder. He stated that there is also a civil case in this matter, which did not involve the Board, and Captain Funk chose to settle his case with the Division of Administrative Hearings. They are asking the Board to vacate the Notice of Intent to Deny they issued, and he will not continue his training in Tampa Bay. Mr. Tellechea stated that he felt that this was a good settlement and that it should be accepted by the Board. He stated that the Board would not have to go for a hearing, Captain Funk would not get his license, and Tampa Bay Pilots Association can continue to function.

Vice-Chair Bryson questioned that if the Board accepted this agreement were they admitting that their actions were in error in this matter. Mr. Tellechea responded that the Board acted properly in this case. There being no further discussion, the following action was taken.

MOTION: Commissioner Buford made a motion that the Board adopt the consent agreement as presented.

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

PROSECUTING ATTORNEY'S REPORT – DREW WINTERS

Mr. Winters provided the Board with a copy of his report. He reported that the probable cause panel considered eight cases yesterday and one case was tabled. There were a total of 19 cases in Legal of which four cases were a year old. He stated that one was addressed today, Captain Woods and one was handled in probable cause which left two cases that were a year old. Mr. Winters asked that he be allowed to continue with the year old cases.

MOTION: Commissioner Molitor made a motion that the Board authorize Mr. Winters to proceed with the year old cases.

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

REVIEW OF APPLICATIONS FOR DEPUTY PILOT OPENING FOR THE ST. JOHNS BAR PILOTS ASSOCIATION

Commander Dunton provided a list of the applicants to the Board. He stated that the first applicant voluntarily relinquished his license, went into treatment, and his

license was reinstated. He stated that he wanted the Board to be aware of this in case there was an issue.

Vice-Chair Bryson commented that this was not a trafficking issue which would be a violation.

Vice-Chair Bryson stated that Nathan Cook, Peter Curtis, Anthony DiMattia, William Kavanaugh, James Luke, Sean Morrissey, Igor Nechepurekko, Michael O'Brien, Martin Poole, Jeffrey Ritter, Donald Sacca, Christopher Weigler, and James Williams all applied and were qualified to sit for the examination.

MOTION: Commissioner Bohnsack made a motion that the Board approve the above named candidates for the March 2008 examination.

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

Vice-Chair Bryson stated that Dennis Badaczewski had a DUI, his license was voluntary surrendered, and then reinstated.

MOTION: Commissioner Fernandez made a motion that the Board approve Dennis Badaczewski for the March 2008 examination.

SECOND: Commissioner Frudaker seconded the motion.

Commissioner Bohnsack asked about the Coast Guard program. Commander Dunton described the treatment program. Following discussion, the motion passed unanimously.

Vice-Chair Bryson stated that Robert Bearden had a suspension for six months for DUI. Commander Dunton informed the Board that Captain Bearden holds a current active license for the Coast Guard and has been approved previously for examination by the Board.

MOTION: Commissioner Frudaker made a motion that the Board approve Robert Bearden for the March 2008 examination.

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

Commander Dunton informed the Board that Kevin McNutt's deficiency was a Department issue as he had not provided proof of his high school diploma.

MOTION: Commissioner Buford made a motion that the Board approve Kevin McNutt as he meets the Board requirements.

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

Vice-Chair Bryson stated that Cyril Gittens was missing his drug test. Commander Dunton informed the Board that the drug test results had been received.

MOTION: Commissioner Molitor made a motion that the Board approve Cyril Gittens for the March 2008 examination.

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

Vice-Chair Bryson informed the Board that Sean Morrissey had a DUI.

MOTION: Commissioner Buford made a motion that the Board approve Sean Morrissey for the March 2008 examination.

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

REPORTS

Chair's Report – Commissioner Phipps

Commissioner Phipps was not present.

Finance Committee Report – Commissioner Bryson

Vice-Chair Bryson reported that the Committee met yesterday and reviewed the first quarter results. He stated that the current trend in revenue and fees are down, but with the current cash balance on hand and the uncertainty of revenue, the Committee did not recommend changing the gross pilotage assessment rate at this time. Vice-Chair Bryson stated that the Committee will re-evaluate the assessment rate at the April meeting.

Rules Committee Report – Commissioner Frudaker

Commissioner Frudaker reported that the Committee met yesterday. He stated that the gross pilotage assessment rule was effective on January 1, 2008, and that rule development was in place in case changes were needed in the future. Commissioner Frudaker reported that the Committee did not have any recommendations to bring before the Board today.

Vice-Chair Bryson asked the Board to review Rule 61G14-11.002(1), Florida Administrative Code. He stated that the current rule contains an error in that the rule should cite "Section 310.071, Florida Statutes" instead of "310.075" and needs to be corrected.

Mr. Tellechea stated that he would ask the Joint Administrative Procedures Committee if they could do a quick change, however, if this was not possible, he asked the Board to authorize him to do a notice for rule development.

MOTION: Commissioner Buford made a motion that the Board authorize Board Counsel to notice Rule 61G14-11.002, Florida Administrative Code, for rule development, if necessary.

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

Probable Cause Panel Report – Commissioner Fernandez

Commissioner Fernandez reported that the Committee met yesterday. They closed seven cases and tabled one case for further investigation.

Board Counsel's Report – Ed Tellechea

Mr. Tellechea informed the Board that he was originally scheduled to do training on the Sunshine Law, however, Mr. Flury would provide the training at the next meeting.

Mr. Tellechea stated that he and Mr. Flury agreed with the Department regarding the port tours. He just reminded the Board that they were not to address any Board business or potential Board business during the tours.

Captain Joe Brown stated that he understood the Secretary to say that if the Association in a port has a lobbyist, the Board cannot do the tour. Mr. Winters agreed.

Commissioner Fernandez informed the Board that Biscayne Bay Pilots Association has a lobbyist.

Executive Director's Report – Robyn Barineau

Ms. Barineau informed the Board that the Governor reappointed two members to Rate Review Board and appointed two new members.

Ms. Barineau informed the Board that the meeting dates had been set for the remainder of the year as follows: April 3 & 4 in Key West, July 17 & 18 in Ft. Lauderdale, September 29 & 30 in Jacksonville. She stated that a conference call is scheduled for March 12 at 10:00 a.m. in case Jacksonville wants to request additional deputies at the March examination.

Port Security – Commissioner Molitor

Commissioner Molitor stated that he continues to review magazines and forwards the information to Ms. Rice for distribution. He recommended that they read the information.

CORRESPONDENCE

Letter from the National Transportation Safety Board

Vice-Chair Bryson stated that this letter was received in response to Chair Phipps' letter.

Fall 2007 Newsletter

This was provided for informational purposes.

Vice-Chair Bryson recommended that the members read the Bottom Line that is published by the Department and on the web.

OLD BUSINESS

There was no old business to come before the Board at this time.

NEW BUSINESS

Commissioner Frudaker stated that the Secretary mentioned streamlining the exam process to the Board and asked if anyone could foresee anyway to make changes. Commander Dunton responded that the Board looked at this a few years ago. He stated that he will update the timeline he had done and present it at the next meeting for discussion.

Commissioner Fernandez questioned how many scores are changed as the result of challenges. Commander Dunton responded that there were very few.

Commissioner Molitor stated that he would like to see a sample of the questions. Commander Dunton responded that there were sample questions in the Candidate Information Booklet which is on the website. He also described the general part and the port specific parts of the examination. Commander Dunton informed the Board that he had just completed a review of the examinations and was also updating the questions. He stated that they were removing the old questions and inputting new questions which was a time consuming and tedious process and that only the good information was put into the exam bank once it had been validated.

Commander Dunton also informed the Board that he will be in Tallahassee the week following the examination to grade the examination. The candidates then have 75 days for reviews and challenges. He stated that the grades should be completed by the first part of April. Commander Dunton informed the Board that he would contact Steve Allen with the Bureau of Education and Testing to see if a report can be done regarding the number of exam scores that are changed as a result of a review to be presented at the next meeting.

Commander Dunton informed the Board that he will be on a cruise from February 3–9, however, he will provide contact information to staff. Mr. Winters informed the Board that if necessary, he could have an emergency purchase order done for Captain Wigert while Commander Dunton is out. Commander Dunton stated that if there were an emergency, he would return as soon as possible.

Vice-Chair Bryson stated that the Board sent Ms. Barineau and Ms. Rice to the American Pilots Association Convention last year. He asked if the Board wished to send them to the 2008 Convention.

MOTION: Commissioner Molitor made a motion that the Board have Ms. Barineau and Ms. Rice attend the 2008 American Pilots Association Convention.

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

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 10:30 a.m.