

# **MINUTES OF THE MEETING**

## **BOARD OF PILOT COMMISSIONERS Palm Beach Marriott Singer Island Beach Resort & Spa 3800 North Ocean Drive Singer Island, FL 33404**

**January 29, 2010**

### **CALL TO ORDER**

Chair Phipps called the meeting to order at 9:15 a.m.

### **Members Present**

Commissioner Phipps, Chair  
Commissioner Bohnsack  
Commissioner Bryson, Vice-Chair  
Commissioner Buford  
Commissioner Fernandez  
Commissioner Frudaker  
Commissioner Molitor

### **Members Not Present**

Commissioner Jones

### **Others Present**

Robyn Barineau, Executive Director  
Elise Rice, Government Analyst  
Michael Flury, Board Counsel  
Diane Moore, Prosecuting Attorney  
Galen Dunton, Board Consultant  
Dan Ramsey, Florida Docking Masters  
Warren Husband, Florida State Pilots Association (FSPA)  
John Atchison, St. Johns Bar Pilots Association (SJBPA)  
Gretchen Rayborn, FSPA  
Joe Brown, FSPA  
Margaret Mathews, Akerman Senterfitt  
Allen Thompson, Tampa Bay Pilots Association  
John Teems, SJBPA  
Mike Cunningham, Port Everglades Pilots Association (PEPA)  
Andy Edelstein, PEPA

Chair Phipps informed the board that Commissioner Jones had been excused from the meeting and Commissioner Brandenburg had resigned from the board due to a possible conflict with his service as co-manager of the Tampa Bay Pilots Association.

## **APPROVAL OF THE MINUTES OF THE MEETING**

**October 2, 2009**

- MOTION:** Vice-Chair Bryson made a motion that the board approve the minutes as submitted.
- SECOND:** Commissioner Bohnsack seconded the motion and it passed unanimously.

## **SETTLEMENT STIPULATION**

**Captain Jonathan D. Nitkin, Case # 2007-063534**

**(PCP: Phipps, Frudaker, Molitor)**

This matter was pulled from the agenda due to a lack of a quorum. It will be presented at the April meeting.

## **PROSECUTING ATTORNEY'S REPORT – DIANE MOORE**

Ms. Moore informed the board that she currently has nine pending cases and there are 11 cases currently being investigated, for a total of 20 cases. She informed the board that there are currently three cases that are over a year old.

- MOTION:** Vice-Chair Bryson made a motion that the board authorize the prosecuting attorney to continue processing the year-old cases.
- SECOND:** Commissioner Buford seconded the motion and it passed unanimously.

## **TRANSCRIPT OF TAMPA HEARING – COMMISSIONER BRYSON**

Vice-Chair Bryson stated that a transcript from the rate hearing for the Tampa Bay Pilots Association had not been requested, and he would like the board to request a copy of the transcript. He stated that the board needed to review the transcript as there are issues that the board needs to be aware, statements that need to be reviewed, and the contents need to be understood.

Ms. Barineau informed the board that the estimated cost is approximately \$4,000 for the transcript.

- MOTION:** Commissioner Fernandez made a motion that the board authorize the funding of the transcript.
- SECOND:** Chair Phipps seconded the motion.

In discussion, Commissioner Frudaker asked what they would do with the transcript. Vice-Chair Bryson responded that while the Pilotage Rate Review Board (PRRB) is separate from this board, this board funds the PRRB. In discussion, Mr. Flury stated that the board can make their opinion known, however, they do not have any input. Vice-Chair Bryson commented that they will be able to have opinion that they can express in the proper fashion. There being no further discussion, the motion passed unanimously.

## **REQUEST FROM CAPTAIN TIMOTHY MCGILL REGARDING CROSS-LICENSURE FOR THE PORT OF PENSACOLA**

Chair Phipps stated that Captain McGill was requesting that the examination requirement be waived. Commander Dunton informed the board that in 1994 Captain McGill passed both the local knowledge and the chart examinations for the Port of Pensacola.

Commissioner Buford commented that if Captain McGill has demonstrated knowledge, he should not have to retake the examinations. In discussion, it was noted that he will have to get his first class license for Pensacola, make 12 round trips, and do the chart work for the Coast Guard.

**MOTION:** Vice-Chair Bryson made a motion that the board accept the application from Captain Timothy McGill for the Cross-licensed Deputy Pilots License for the Port of Pensacola.

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

### **REVIEW OF DEPUTY PILOT APPLICANTS FOR THE MARCH 2010 EXAMINATION FOR THE KEY WEST BAR PILOTS ASSOCIATION**

Commander Dunton informed the board that the following applicants were fully qualified to take the examination: Elmo Cerise, Nathan Cook, Peter Curtis, Alejandro Gonzalez, Christopher Kincaid, Curtis Lakowski, James Luke, Robert Moore II, Michael Parr, Martin Poole, Joseph Purcell, Julian Stubbs, Charles Zenter. Commander Dunton stated that they had met all the requirements, and he recommended they be approved for March 2010 examination.

**MOTION:** Vice-Chair Bryson made a motion that the board approve Elmo Cerise, Nathan Cook, Peter Curtis, Alejandro Gonzalez, Christopher Kincaid, Curtis Lakowski, James Luke, Robert Moore II, Michael Parr, Martin Poole, Joseph Purcell, Julian Stubbs, Charles Zenter to sit for the March 2010 examination as recommended.

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

Commander Dunton asked for the board to give him an additional five days in order to receive the drug test for Ryan White as he met all other requirements. He stated that Captain White had been at sea and was unable to get the drug test performed earlier.

**MOTION:** Vice-Chair Bryson made a motion that the board approve Ryan White for the March 2010 examination pending receipt of the drug test.

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

Commander Dunton stated that Dennis Badaczewski meets the board requirements, however, in 1999 he had a DUI and a charge of possession of

marijuana. He stated that he completed a rehab program and has been clean ever since. He was approved in 2008 for examination.

MOTION: Vice-Chair Bryson made a motion that the board deny the application of Dennis Badaczewski.

SECOND: Commissioner Frudaker seconded the motion.

Mr. Flury informed the board that they can deny an application if there is a reason that would constitute discipline. He stated that this was nine years ago and if the denial went to a hearing, he was not sure he would prevail.

Vice-Chair Bryson stated that he made the motion as he did not want a candidate thinking he would be competing for the opening, and then the Secretary could possibly make a different appointment. Mr. Flury responded that these offenses do not preclude him from the right to being chosen, but that it is at the discretion of the Secretary to make the selection.

Following discussion, a vote was taken on the motion which failed with Commissioner Bohnsack, Commissioner Buford, Commissioner Fernandez, Commissioner Molitor and Chair Phipps voting against the motion.

MOTION: Commissioner Fernandez made a motion that the board approve Dennis Badaczewski to sit for the March 2010 examination.

SECOND: Commissioner Molitor seconded the motion which passed with Vice-Chair Bryson and Commissioner Frudaker voting against the motion.

#### **REQUEST FOR STATE PILOT EXAMINATION**

##### **Gregg MacLaren – Tampa Bay Pilots Association**

Captain Allen Thompson informed the board that Captain MacLaren is presently at Level 8 of the training program which will be completed March 1, 2010. At that time, he will be at Level 9, the final phase of the training program. The association approves this request and asked that he be allowed to take the state pilot examination in March.

MOTION: Vice-Chair Bryson made a motion that the board approve Gregg MacLaren to take the state pilot examination in March.

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

#### **REVIEW OF PORT EVERGLADES PILOTS' ASSOCIATION DEPUTY PILOT TRAINING PROGRAM**

Captain Andy Edelstein was present at the meeting. Captain discussed the changes that were made to their deputy pilot training program.

MOTION: Vice-Chair Bryson made a motion that the board approve the training program for Port Everglades as submitted.

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

### **PROPOSED WORK HOUR DEFINITIONS – COMMISSIONER BRYSON**

Vice-Chair Bryson stated that this was provided to the FSPA and the pilot associations. He stated that they reviewed Commander Dunton's definitions and the statutes, and they came up the following which they felt was sufficient for the purposes of the board.

#### **PROPOSED WORK HOUR DEFINITIONS**

*In evaluating a requested change in pilotage rates, the Pilotage Rate Review Board must consider a number of factors, including the "amount of time each pilot spends on actual piloting duty and the amount of time spent on other essential support services." Fla. Stat. §310.151(5)(b)5.*

*To this end, any application for a change in pilotage rates must include a "schedule indicating the amount of time the applying pilot spends on actual piloting duty and the amount of time spent on other essential support services." Fla. Admin. Code R. 61E13-2.005(4).*

*To ensure greater uniformity in evaluating requested rate changes, the maritime consultant to the Board of Pilot Commissioners and the Pilotage Rate Review Board (Galen Dunton) has suggested the need to define the statutory terms "actual piloting duty" and "other essential support services." Fla. Stat. §310.151(5)(b)5.*

*These definitions, of course, must take into account the varying conditions that exist across all of Florida's ports. In consultation with local pilot associations across the state, there appears to be consensus that the following definitions would fully capture all the work performed by pilots as they seek to fulfill their legal obligation under chapter 310 to provide safe, modern, and dependable piloting services:*

*"Actual Piloting Duty" means the time elapsed from when the pilot leaves his or her home, office, or other location for the purpose of providing pilotage to a vessel until the pilot returns to that point of origin, or to a closer alternative location of his or her choosing, plus any additional time needed to document the piloting services performed for billing purposes.*

*"Other Essential Support Services" means the time spent by pilots, and by their agents, representatives, and employees, in performing tasks that contribute to the provision of safe and efficient piloting services, to include time spent on training, business operations, securing and maintaining adequate infrastructure, and interaction with both governmental authorities and private parties involved in port operations and port security.*

Following discussion, the following action was taken.

MOTION: Commissioner Molitor made a motion that the board accept the proposed definitions as presented and forward it to the Pilotage Rate Review Board for development.

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

Mr. Flury informed the board that this would be a recommendation to the Pilotage Rate Review Board for their consideration.

## **REPORTS**

### **Chair's Report – Commissioner Phipps**

Chair Phipps did not have a report to give at this time.

### **Deputy Pilot Advancement Committee – Commissioner Phipps**

**October 5, 2009**

Chair Phipps stated this was provided for informational purposes.

### **Finance Committee Report – Commissioner Bryson**

Vice-Chair Bryson reported that the committee met yesterday and reviewed the financial report. He stated that they should overcome the deficit and he will provide a detailed report at the next meeting.

### **Rules Committee Report – Commissioner Frudaker**

Commissioner Frudaker reported that the committee met yesterday. He stated that board counsel informed them that Rule 61G14-19.001, F.A.C., Percentage of Gross Pilotage Assessed, was effective on January 1, 2010, and that it remains open for development. Rule 61G14-16.001, F.A.C., Vessel Movements Requiring a State Pilot, remains open. Commissioner Frudaker reported that the committee discussed the self-reporting document and board counsel will provide more information at the next meeting. They also discussed the probable cause panel makeup and the need to have a former pilot board member available to avoid quorum issues.

Chair Phipps asked Ms. Barineau to contact Captain Gary Maddox, Captain Jay Weingart, and Captain Mike Buffington to see if they are interested in serving on the panel.

### **Probable Cause Panel Report – Commissioner Phipps**

Chair Phipps reported that the panel closed three cases today with no finding of probable cause.

### **Board Counsel's Report – Michael Flury**

Mr. Flury did not have a report to give at this time.

### **Executive Director's Report – Robyn Barineau**

#### **Delegation of Signature Authority for Executive Director**

Ms. Barineau asked that the board make a formal motion that the executive director be delegated as signature authority for orders that are to be signed by the chair.

**MOTION:** Commissioner Fernandez made a motion that the board grant signature authority to the executive director for orders that are to be signed by the chair.

**SECOND:** Vice-Chair Bryson seconded the motion and it passed unanimously.

### **October 2009 Newsletter**

Ms. Barineau stated that this was provided for informational purposes.

### **Port Security – Commissioner Molitor**

Commissioner Molitor stated that this was provided for informational purposes.

### **CORRESPONDENCE**

**E-Mail from Jeffrey Jones dated January 11, 2010**

**Letter to the Pilotage Rate Review Board dated October 1, 2009**

**Letter from the Palm Beach Harbor Pilots' Association dated November 20, 2009**

**Articles Submitted by Commissioner Bohnsack**

**MOTION:** Vice-Chair Bryson made a motion that staff request transcripts from the Tampa, Jacksonville, and Ft. Pierce rate hearings and that they be included in the next agenda.

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

### **Performance Evaluation of Galen Dunton, Robyn Barineau and Michael Flury**

At this time, Chair Phipps asked that Ms. Barineau, Commander Dunton, and Mr. Flury leave the room.

Following discussion, the following motions were made.

**MOTION:** Commissioner Fernandez made a motion that the Chair write a letter to the department expressing the board's approval of Commander Dunton as their consultant.

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

**MOTION:** Commissioner Buford made a motion that the Chair write a letter to the department expressing the board's approval of Ms. Barineau as executive director.

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

**MOTION:** Commissioner Fernandez made a motion that the Chair write a letter to the Attorney General expressing the board's approval of Mr. Flury as board counsel.

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

### **PUBLIC COMMENTS**

There were no public comments at this time.

### **NEW BUSINESS**

Chair Phipps stated that there was a handout from the Sabine Pilots requesting information about how disciplinary issues are handled. Mr. Flury volunteered to respond with assistance from Ms. Moore and Commander Dunton.

Commissioner Fernandez stated that he would like to see the response and asked that it be included in the next agenda.

Commissioner Fernandez asked that there be communication with the appropriate individuals regarding the need of board members. Ms. Barineau responded that Ms. Rice attended a meeting with the Governor's Appointments Office, and they are currently working on appointments.

Vice-Chair Bryson commented that the eligibility of membership on the board has been discussed and service as a local association officer may be an issue. Mr. Husband commented that holding an office with a local association would not preclude someone from serving on the board, however, he did not know if the Senate would approve someone in this situation. He will work the department on this issue.

Captain Brown stated that the OPPAGA report was due to be released very soon. Chair Phipps asked that the department provide the members with a copy as soon as it comes out.

### **OLD BUSINESS**

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

### **ADJOURNMENT**

There being no further business to come before the board, the meeting was adjourned at 10:37 p.m.