

AGENDA ITEM 2-b

MINUTES OF A SPECIAL MEETING OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, HELD MONDAY, JUNE 9, 2010, AT 10:30 A.M. AT 200 CANAL STREET, NEW SMYRNA BEACH, FLORIDA

Chairman Allen opened the Special U.C. meeting and stated we'll begin with an invocation as we stand, and then Commissioner Diesen will lead us in the pledge.

Chairman Allen then requested for a roll call to be taken and all of the Commissioners were in attendance as follows:

Commissioner William H. Reynolds
Commissioner Oscar Zeller
Chairman Walter Allen III
Commissioner Jeanne K. Diesen
Commissioner William E. Hall

Others in attendance were as follows: R. Mitchum, Acting General Manager/ CEO; T. Beyrle, Director of System Ops. & Generation; J. White, Director of Engineering; P. Di Chiara, Director of H.R.; D. Hoover, Director of Water Resources; B. Bilinski, Controller/Budget Supervisor; B. Keehn, Administrative Support Specialist; D. Simmons, Exec. Adm. Offices Mgr./Recording Secretary; W. Preston, U.C. Legal Counsel; Mayor Barringer (arrived at 11:00 a.m.); Bob Tolley a member of the public.

(1) Next Steps for CEO/General Manager Search:

Chairman Allen stated our first item is Next Steps for CEO/General Manager Search and this has kind of been, kind of a loose ended general opening, and we'll see where we proceed from here. He stated it's open for discussion.

Commissioner Diesen stated Mr. Chairman I would like to say a few words about that. After we had our last meeting I came over here and went through all the applications, I had not done that originally. I went through all of the applications, a second time for the top 25, and as they've been coming in. I've been thinking a lot about this and I believe the one thing that we're looking for on this Commission, as well as skills and abilities, is a factor of trust. I think that's what this is really about is we want some leadership that we can trust and that will instill trust in our partners. Instead of having said that I think sometimes things, I know things happen for a reason, and I believe that we have someone in place now that's able to lead us and is moving us forward and we have the whole mechanism there with Mr. Rodi being on contract if we need his advice and help, and with Mr. Preston. I would like to suggest to this Commission that maybe what we should do is look closer to home and look at Mr. Mitchum as continuing on in an interim position for a while and let him decide if at that point, or some point, he would like to be a candidate for the new CEO permanently. And that's what I would like to put on the table.

(1) Next Steps for CEO/General Manager Search (cont.):

Commissioner Hall stated I'll second that one and add a few things to it. A couple of details, we probably want to define the time limit as to when a decision has to be made.

Commissioner Diesen stated well, could we ask Mr. Mitchum how he might feel about that since he's here with us.

Mr. Mitchum stated I'm willing to continue on. As far as set time limit, I hadn't thought of that, you know I can do whatever the Commission feels is needed. I'm willing to continue forward and see where it comes out. I'm trying to get a little feel for the job here, it's been a pretty good two weeks, or three weeks, going on three weeks. So as far as a set time limit, I don't think it would take that long, maybe by September.

Commissioner Diesen stated if we chose to revisit it in September, you will then know what the new Commission looks like, or the old Commission, however it might be. And you will have had an opportunity to get into the budget cycle and have a general feel for everything. I don't think it's a matter that we can find anyone that has anymore background than you do, and that's what we've been looking for. You have 30 years with this utility, you certainly know it backwards and forward. I guess the one thing that I, that really strikes a cord with me is that you're not political, you are what you are and you do what you say. And I think that's, we need that kind of continued leadership and I think that you would be a good person for the position but I also think that would give you an opportunity if we say we revisit it in September. And I would like to make that in a form of a motion, however you want it to be.

Chairman Allen stated okay, Commissioner Diesen just made that in the form of a motion, do we have a second.

Commissioner Hall stated I'll second it.

Chairman Allen asked if there were any other questions or comments.

Commissioner Hall stated yes, I have a question, does that mean we're still going to accept applications. Are we still going to be advertising or are we going to drop that until September, what was your thinking on that.

Commissioner Diesen stated my thinking on that would be that we kind of cool our jets for awhile. I think we've gone through this cycle, I think we've gotten the applications, you know I've been looking at the last few coming in, you know they're kind of way off based. Let's take a rest from it if that is acceptable to the rest of the Commission and let's see how this works. You know I think sometimes, as I've said I think things happen for a reason, and we have an opportunity here with somebody and let's sit back and work through this and leave the applications. Let's close, let's not re-advertise, I think we were planning to. My suggestion would be let's not do anything for awhile.

Chairman Allen recognized Commissioner Reynolds to speak.

(1) Next Steps for CEO/General Manager Search (cont.):

Commissioner Reynolds stated a couple of things, I agree with what you say. We've got hurricane season coming up and of course, Mr. Mitchum is currently doing two jobs. Somehow we need to give him some latitude there if he feels like he needs someone you know on a day-to-day basis doing what you were doing there. Maybe Mr. Mitchum could come up with some recommendations on how you would like to do that.

Commissioner Diesen stated I agree with that, I think we should give him the authority to do what he needs to do with the understanding he's the CEO, we can call it Interim but it's to the point that we and he sit down and make a decision together if he wants to do it on a permanent basis or he wants to be an applicant. But surely with hurricane season coming he would know if we need any additional, and I think we should give him that authority.

Commissioner Reynolds stated yes, because as you know that will require a lot of cooperation with the City, the County, and he's going to be awful busy doing those kind of coordination meetings and stuff like that. And even though he's Interim, he still has the authority vested in him as a Director to do what he thinks is necessary, to make sure that the job is done properly.

Commissioner Diesen stated does that meet with your approval Mr. Mitchum.

Mr. Mitchum stated yes.

Commissioner Zeller stated I think that's, I'll go along with that, I don't think we need to rush into anything and let time develop.

Chairman Allen confirmed there were no further questions or comments and then requested for a roll call vote to be taken.

Commissioner Diesen's previous motion then passed unanimously as a roll call vote.

After a few comments, Chairman Allen stated as item 1. is taken care of for the moment, we'll come back and visit in September, let's look at item number 2. CEO/GM candidates expenses.

(2) Travel Expenses for CEO/GM Candidate- Finalist Interview – James Gregory
and

(3) Travel Expenses for CEO/GM Candidate- Finalist Interview –Michael Keyser

Chairman Allen added and the item 3 also, as we look at these expenses.

Commissioner Reynolds stated I would like to ask our CFO, the expenses that you're to pay, are those within the frame work of our rules and regulations.

(2) & (3) Travel Expenses for CEO/GM Candidates (cont.):

Ms. Klinkenberg answered yes. I looked up our normal travel expenses policy that applies to employees only, and they're not employees and it was within reason, it's about \$90 if you combine both of them. It's about \$90 more than we would have paid for an employee.

Commissioner Reynolds made a motion to approve Mr. James Gregory's travel expenses in the amount of \$2,893.89 and to approve Mr. Michael Keyser's travel expenses in the amount of \$938.71. Commissioner Zeller seconded the motion and it passed unanimously on a roll call vote. (During the Special UC Meeting held 5-3-10, a motion was made to approve reasonable travel expenses for two finalists and their spouses for a final, in-person public interview at the May 10, 2010 Regular Meeting.)

(4) Possible Other Business – Time for Commissioners:

Chairman Allen went to item 4. Possible Other Business – Time for Commissioners, and asked if there were any comments from Mr. Preston.

Mr. Preston stated I'd like to raise one point if I could, a letter was written to Chairman Allen by Johnny Bledsoe (City Clerk) on June 1, 2010 regarding an action taken by the City Commission to create an Economic Development Advisory Board, and that letter informed Chairman Allen that the resolution creating that board mandated that the Utilities Commission appoint one of its own to serve on that board. He stated and I reviewed the resolution just from a legal perspective and just had a couple of issues that I would suggest that you give me latitude to inquire about with the City regarding the resolution. He stated not challenging the relationship but just a couple of issues in the resolution itself.

Mr. Preston stated to highlight those, for example, the resolution calls for a four year term for the Commissioner to serve whereas your terms here are three year terms. He stated so it is possible that we pick one of our own, who is no longer our own, sitting the last year. He stated so maybe resolve that difference somehow.

Mr. Preston stated secondly, the board is asking for one member from this Commission to sit on the board, and in order for decisions to be made that one member would need to come back to the full board to get approval, whether it's consensus or not, to any decision before votes, or decisions can be made on that economic board. So establishing some process with that Economic Development Board, such that Commissioner can come back, so the idea whatever it may be out to all of you and then come back to the board for determination or vote.

Commissioner Diesen stated I thought it was ex-officio and non-voting.

Mr. Preston stated well, it is and that's item number four, and that is it is labeled as an ex-officio position, being an ex-officio member does not mean a no vote position, it is

(4) Possible Other Business – Time for Commissioners (cont.):

simply a position where you serve because of the position you serve. He stated for example a President of a corporation might serve as ex-officio member of a group of Presidents of other organizations simply because he or she is serving as President, not because they were appointed individually or elected individually. He stated but it doesn't mean you don't have a vote. He stated but it's commonly understood that an ex-officio member doesn't have a vote. Mr. Preston stated so one of my items is we want to make it clear that we have a vote, or not, but we want to make it clear. He stated because there is the assumption by many that there is no voting power in an ex-officio membership so we just want to make it clear.

Mr. Preston added, and then the other item that I had some concern with, one of the whereas clauses in the resolution made reference to the 100 Day Plan, and my question more than any, is that a plan that has been formally adopted in its entirety by the City, because it's referenced occasionally, and that's just a query, because if it is I think we need to take some direction as Utilities Commission, if it isn't maybe not.

Mr. Preston stated so I guess the bottom line is with those legal pending issues, maybe give some time before we can reply affirmatively or not to the City to get some resolution to how we can work together.

Commissioner Reynolds stated can I make a motion that you and Chairman address those issues and submit a letter back to the Commission.

Commissioner Zeller stated I'll second that.

Chairman Allen stated so we have a motion (by Commissioner Reynolds) and a second by Commissioner Zeller; any other questions.

Commissioner Hall stated yes, who drafted that resolution, Attorney Gummey.

Mr. Preston stated there was no authorship signed to the actual resolution itself, but my assumption is based on the fact that I'm sure that all resolutions are referred to and reviewed by legal counsel, that there was final editorial powers with the City Attorney.

Commissioner Diesen stated and it was not an invitation to participate was it, it was a command and demand.

Mr. Preston stated the language of the resolution itself in particular, section three deals with the composition of the board itself and it says, each City Commissioner except the Mayor shall nominate one regular board member for appointment by the City Commission to serve on the Economic Development Advisory Board who shall either reside in New Smyrna Beach or run a business in the City. He stated the Utilities Commission of the City of New Smyrna Beach shall nominate one member of its

(4) Possible Other Business – Time for Commissioners:

governing board by appointment by the City Commission to serve as a board member ex-officio.

Commissioner Diesen stated so the way that's worded then, we can send the name but they don't have to accept it, they can reject it and name another one right.

Mr. Preston stated that's correct and actually another issue that I had was that the terminology of the resolution is such that if that should occur, if we make nomination of one of our own to serve on that board, and assume that the City appoint that person, the City retains the authority to voluntarily resign that person, and then appoint one of its own choosing. He stated which means that then it is unclear as to if the City in fact fires one of our Commissioners from that Economic Development Board, does it come back to us for nomination of another or not, and it also it is not clear that the City even has to appoint a Utilities Commissioner to replace the Utilities Commissioner. So there is some ambiguity in the language of the resolution that just needs some clarification.

Commissioner Diesen commented what a surprise.

Mr. Zeller stated you can lawyerize it.

Mr. Preston asked I can what.

Mr. Zeller reiterated you can lawyerize it.

Mr. Preston stated lawyerize, yes, thank you.

Chairman Allen stated one of my concerns was after reading the letter is you know as a Commission we function together, not as individuals but as a body, for making sure the Commission as an oversight functions for the betterment and for all the ratepayers of the Utilities Commission. I have a problem trying to think through, is a Commissioner going to sit on that group as a, understanding what's taking place, or are they looking at then us, a person to sit there in a decision making manner, and as an individual we cannot make a decision. He stated the other thing I see is there's a perception that the Utilities Commission runs, the Utilities Commission body runs the Utilities Commission which is not a fact, and to be able to sit and understand what they're striving to do looking outward, and then to understand the actual infrastructure and what the needs are, and to see all that, it should not be one of us sitting there to see and understand, because it's going to have to end up coming back to staff to know and understand all the issues. He stated you can put infrastructure in the ground and figure it's going to be there 50 years and then all of sudden you size that infrastructure for what you know and understand the planning was for that general area and then all of a sudden you have, somebody comes in and says I want to add 800 new units beyond what your infrastructure is, and expect you to sit there and make a decision so, just the letter and the way its laid out and everything it's just kind of, it's a real issue as far as I'm concerned.

(4) Possible Other Business – Time for Commissioners:

Commissioner Diesen stated am I not correct that the other members who are being appointed are members of the citizenry, who either own a business or must live within the confines of the City of New Smyrna Beach, is that not correct.

Mr. Preston stated that is correct, and it's an advisory board, so it's not a decision making authority.

Commissioner Diesen stated there's something that is out of balance, then command that a member of this Commission serve at a capacity when it's citizens, I don't, is someone from the City on it, is there a City Commissioner, City Staff.

Mr. Preston stated the only, in addition to the appointments right above, by us, the only other position appointment is by the Volusia County Economic Development Department, and that department shall select a staff member for appointment by the City Commission as a non-voting board member. He stated so those appointments including every Commissioner except the Mayor, the U.C. appointment, and then the Volusia County Economic Department, theirs is a staff non-voting.

Commissioner Reynolds stated you know I agree with Chairman Allen in terms of whoever's the representative there, be it an employee of the Utilities Commission or Commissioner would not make a commitment, it's an advisory board, and I can see there, I think if you go back to the rational of why they want this board it's obvious that they're looking to see if they can do a better job of bringing industry into the city, and it seems to me that they're doing it in good faith, by asking us to provide someone who can during the discussions in this meeting, if they said what you've said, they don't want to put in the 10,000 apartment unit, can the U.C. support it, obviously that would come back. So I don't know, I don't see it as anything that would get us in trouble quite frankly, and I think it's a good thing for the City to include us.

Commissioner Zeller stated I think it's a good-will gesture to get us involved with what the City is planning to do, or maybe what they want to plan to do.

Commissioner Diesen stated I don't have a problem with that, I just think it's at the wrong level, I'm thinking if they're having somebody from the County, who's a staff, who can sit there and listen and has a better grasp of some of things that are going on, I think anyone of us would be hard pressed to be the subject matter expert in every area of utilities at the level that this discussion may take place. She stated that's my only concern about it.

Commissioner Reynolds stated well, we've been around long enough to know what would raise a yellow flag with us I think, and we know about the developers agreements, we certainly could get maps of our infrastructure if they want to see that, I guess my point is, I'm just not paranoid about it, I just think that we should appoint one of us and clarify some questions and let's see what happens.

(4) Possible Other Business – Time for Commissioners:

Commissioner Zeller stated I agree with that.

Commissioner Diesen stated I think we need to get the questions answered first.

Commissioner Hall stated I agree with Mrs. Diesen, let's get the questions answered first and then, I agree with you Mr. Reynolds I don't think we need to back away from this, if they had left us off we'd of been PO'ed.

Commissioner Reynolds stated right.

Commissioner Diesen stated I don't know we would have been PO'ed.

Commissioner Hall stated yes, we would have.

Commissioner Diesen stated I have no problem with us being included I think that's great, that's one of the reasons I'm happy that we're able to move forward as we are, with Mr. Mitchum in place, because I think that's a level of trust that's going to come back, but I would like to have those questions answered so we have a better feel for, are we going to be voting, that makes a big difference, if we're voting members even though it's advisory then that has to come back here after each meeting for discussion and a consensus.

Commissioner Zeller stated as it should.

Commissioner Diesen stated correct, but is that going to create a problem, that's my only question.

Commissioner Reynolds stated being on an advisory board which I've been on a couple, basically you're making a recommendation, and that's when it's formally addressed and I think we should start out, we're delighted to participate, we hope that this board is successful in bringing in, we've got a couple of questions we'd like to clarify, one is the resolution of the time on the board, the appointment versus the time we have as appointed as Commissioners here and the other's, and let's sign up and get with it.

Commissioner Diesen stated let's get our questions answered, are you looking for a decision from us today to move forward on.

Commissioner Reynolds stated well, we have a motion and a second that Counsel and the Chairman would come up with a response and ask those questions.

Chairman Allen stated and then hopefully we should be able to address this at our Regular Meeting.

Commissioner Diesen stated that seems reasonable.

(4) Possible Other Business – Time for Commissioners:

Commissioner Hall then stated call the question.

Commissioner Reynolds made a motion to approve Chairman Allen and UC Legal Counsel to address the legal concerns, state in a response letter to the City Clerk. Upon receipt of responses from the City regarding those legal concerns, the item will be considered. At this point in time, expected consideration will be at the next regular UC Meeting. Commissioner Zeller seconded the motion and it passed unanimously on a roll call vote.

Chairman Allen asked if Commissioner Hall had any comments.

Commissioner Hall stated yes, did we ever get the Coronado Elementary School problem straightened out, I've never seen so many letters in all my life.

Mr. Preston stated we did and I think that we handled it very well, it's an issue that, there was, is an individual, the PTA Chair, who is dedicated to the project and the education of the children and it's admirable. He stated she is taking a product that was installed at the Coronado School years back.

Commissioner Hall stated I think it was installed when I was Superintendent, my first year as Superintendent.

Mr. Preston stated is that when it was.

Commission Hall stated yes.

Commissioner Diesen commented that's a long time ago.

Mr. Preston stated which has been non-functional and now trying to engage in a solar demonstration project for those who haven't kept up, as an education tool for the children. He stated she had researched and there had been a project that had been started at a school at the northern part of the County, Hinson with Florida Power & Light, having had a fund available at that point to help them establish this solar education program and she would have liked to have seen that here, but there was and is no such fund available. He stated so we helped work with her on presenting ideas that she could use in maintaining that project on campus, having the solar cells generate power for on campus products, fans, lights or otherwise. He stated she was also interested in a computer modeling system to show the demonstration of the power and so forth. He stated I don't mean to usurp but Mr. Mitchum has been active with getting people connected with the school and resolving, there was some misunderstandings because there was a connection with the U.C. at the early stages to a light pole and there was a misunderstanding as to the disconnection of that, people being on the campus and so forth. He stated but I believe that it's been handled and handled in a good way, and I think as far as public relations are concerned everything that wasn't smoothed is now, hope so, appears that way.

(4) Possible Other Business – Time for Commissioners:

Mr. Mitchum stated Ms. Levy is now talking to her vendor to decide just what they want to install there so we're on bored with them working with it, and it will be an interconnect agreement signed by the school, but that's moving along very well there, they are all very happy, also deciding exactly what they want installed.

Commissioner Hall stated okay, thank you.

Chairman Allen then asked Commissioner Diesen if she had any comments.

Commissioner Diesen stated I think I've said everything I need to say, I'm thrilled that we are moving forward with Mr. Mitchum in place, and hopefully it's going to continue on, not to put any pressure on you Mr. Mitchum.

Commissioner Reynolds commented watch out Mr. Mitchum.

Chairman Allen then asked Commissioner Zeller if he had any comments.

Commissioner Zeller stated I have nothing.

Chairman Allen then asked Commissioner Reynolds if he had any comments.

Commissioner Reynolds stated yes, I do have something. He stated within our Charter we are authorized to operate and maintain the natural gas system in our area, and I'm going to recommend that we do a study to see if that's something feasible for the Utilities Commission to consider and if it turns out to be feasible then I think that we should take a hard look at taking that system over. He stated I do it for two reasons, number one natural gas is going to be in the next ten, twenty, thirty years a very important product for not only cities but businesses to develop and use, as well as vehicles. He stated and I just think it's something that we should take a look at, I'm not suggesting that we jump into it wholeheartedly but I think that we have the resources to do an appropriate study to see if this is something that fit's the U.C.'s character and will it assist, if not better the service that it's provided natural gas customers.

Chairman Allen stated I have one question on that as you share there, do you feel that we have in-house abilities to do that study.

Commissioner Reynolds stated no, I'm not saying we do, and to do it in-house might be a mistake, I think we need someone who's looking at it from the standpoint of a somewhat of a neutral position.

Chairman Allen stated okay, thank you. He then stated I have no comments other to say Mayor Barringer came in, it's good to see you this morning.

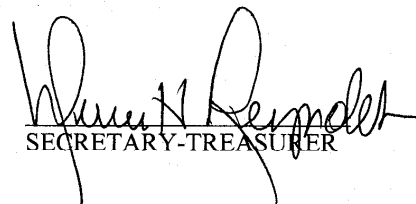
(4) Possible Other Business – Time for Commissioners:

There being no further business to come before the Commission, Chairman Allen closed the Special U.C. meeting at 11:01 a.m.

APPROVED:


CHAIRMAN

ATTEST:


SECRETARY-TREASURER

These minutes were formally approved by the Utilities Commission at their
July 19, 2010 meeting