

**JEA BOARD MINUTES**  
**January 28, 2020**

The JEA Board met in regular session on Tuesday January 28, 2020, on the 19<sup>th</sup> Floor, 21 W. Church Street, Jacksonville, Florida. Board members present were April Green, Reverend Fredrick Newbill, Kelly Flanagan, Dane Grey, and Henry Brown. Also present was Lawsikia Hodges and Sean Granat, Office of General Counsel.

**Agenda Item I – Welcome**

- A. The meeting was **called to order** at 9:02am by Chair April Green.
- B. A **Moment of Reflection** was observed by all.
- C. The **Pledge of Allegiance** was led by Chair Green.
- D. **Introductions** were made by board members present and Melissa Dykes, Lawsikia Hodges, and Sean Granat.
- E. **Adoption of Agenda** – The amended agenda was approved on **motion** by Board Member Dane Grey and second by Board Member Henry Brown.

*The agenda was modified to shorten or remove recess based on flow of meeting; motion approved unanimously.*

- F. The **Safety Briefing** was given by DeLisa Johnigarn, Executive Assistant and Sammy Howard, Water/Wastewater Foreman.
- G. **Sunshine Law/Public Records Statement** – Lawsikia Hodges, Office of General Counsel (OGC), stated this Board Meeting is being held in compliance with Florida's Government in the Sunshine Law, §286.011. The complete statement can be found in section I. F. of the Board package.

**Agenda Item II – Comments / Presentations**

- A. **Comments from the Public** –
  - **James Taylor (information on file)** – Expressed his opinion on the need to stop the ITN.
  - **Tim Wing (information on file)** – Expressed his opinions on Mr. Zahn's contract stating that he should be terminating for cause and not receive any money.
- B. **Comments from Council Liaison** – Council Member Becton stated his mission has always been to be objective and unbiased as the liaison. CM Becton stated he filed a Resolution 2020-042, which calls for the council to communicate to Management that in order for the Town Halls to mean something there needs to be a reset back to July 22, 2019. CM Becton stated he always told Aaron Zahn he would support him if he was being honest. CM Becton offered his opinion that Mr. Zahn needs to be terminated with cause.
- C. **Comments from the Public** -
  - **CM Salem (information on file)** – CM Salem comment included six points: 1) Aaron Zahn should be terminated with cause, 2) confirm JEA will move forward as a municipality 3) deal with the employment contracts 4) board move quickly on the process of recruiting a new CEO 5) encouraged Staff to leave as many of the leadership team positions open for the new CEO to craft

a new team and 6) the city council is more than happy to participate in Town Halls in whatever format to help educate the community.

- **David Brutterly (information on file)** - Mr. Brutterly stated he supported the privatization based on a need to transition into a 21<sup>st</sup> century utility to make it much more sustainable system. Mr. Brutterly stated that Aaron Zahn should be terminated with cause.

### **Agenda Item III. A. CEO & Managing Director**

- A. Chair April Green started the agenda item by giving a recap of the directives from the last board meeting for OGC and thanked them for their work. Sean Granat, Office of General Counsel, stated Mr. Zahn countered with three different offers but OGC could not accept them because they were not offers from the Board; Mr. Zahn then decided that he wanted to accept the offer but the deadline of December 30, 2019 had passed. Mr. Granat read a letter from Mr. Zahn and then read the 24 paragraphs of support for termination with cause based on the investigation conducted by OGC. Henry Brown asked for a clarification of gross negligence and simple negligence. Mr. Granat stated that it is an intentional disregard of the harm that could be caused, in this case to JEA. Mr. Brown also asked how to distinguish between the CEO's responsibility to inform the board versus the board's responsibility to ask questions. Mr. Granat stated the Board has an important job to do and should ensure they understand, in this case Mr. Zahn knew the board didn't understand. Mr. Brown asked for a description of the inconsistency in the Compensation material. Mr. Granat answered that Towers Watson stated that it was not their product and they would have never approved it. Mr. Brown asked for clarification on Item 15. Mr. Granat answered there was an email prior to July's board meeting between a former board member and third party law firm, Pillsbury, concerning working as a consultant and discounting his fee in exchange for a success fee in the event of recapitalization; the same board member was present and voted at July's board meeting. Mr. Brown asked for clarification on Item 16 & 17. Mr. Granat answered that Mr. Zahn wanted to revamp the Compensation plan and wanted to include a Long Term Incentive Plan. Towers Watson was against LTI Plans in public utilities. Mr. Zahn changed "uncommon but selectively used" in the presentation to "selectively used". Mr. Granat stated that he did make other changes and noted them in his email to Towers Watson; when asked in hearing on December 16, 2019, Mr. Zahn stated that Towers Watson made the changes and he was not aware of any JEA employees that could make changes. Mr. Brown asked for clarification on Item 19 and Item 2; asked if the agreements were different than what was in the July 23 board package. Mr. Granat clarified they were not different and continued on to state the earliest that the board received materials was the Saturday before the board meeting (timeline is unclear). Mr. Granat also stated that it is uncommon for employees, other than the CEO, to have employee contracts so they should have been called out and explained to the board members.

Mr. Granat stated that it is OGC's opinion that Mr. Zahn should be terminated for cause. Mr. Granat explained the next steps is for the Board to terminate with or without cause. If Mr. Zahn is terminated without cause his contract offer would remain if Mr. Zahn and his attorney are still willing to accept. If terminated with cause all pay and benefits would stop except for Cobra coverage (which Mr. Zahn is responsible for the cost) and he has the right to appeal the decision. If arbitrator was in favor of JEA, that would be the end. If the arbitrator was in favor of Mr. Zahn he will receive full contract benefits. Kelly Flanagan asked who would be responsible for legal cost. Mr. Granat stated that Mr. Zahn's contracts has both provisions and could be awarded attorney fees. Chair Green asked if OGC could represent JEA in arbitration. Mr. Granat stated that JEA should seek

outside counsel as some members of OGC could be called as witnesses. Reverend Newbill asked if there is a possibility of cost for arbitration exceeding what would be paid in the offer to Mr. Zahn. Mr. Granat replied that this a risk. Mr. Granat stated there is a provision for Mr. Zahn to terminate his own contract, and he has done so. Mr. Granat recommended that JEA responds to notice of good reason and deny that good reason has occurred.

On *motion* by Kelly Flanagan and second by Henry Brown, the Board of Directors voted to terminate Aaron Zahn with cause and for OGC to respond to Mr. Zahn's counsel. Motion passed unanimously.

*5 minute recess (Adjourned at 10:03am – Meeting reconvened at 10:08am)*

#### **Agenda Item IV – Operations (Discussion/Action)**

- A. **Consent Agenda** – used for items that require no explanation, discussion or presentation and are approved by one motion and vote. On *motion* by Board Member Kelly Flanagan and second by Board Member Brown the consent agenda was unanimously approved.

**Appendix A: Board Meeting Minutes December 17, 2019** – approved

**Appendix B: Special Board Meeting Minutes December 24, 2019** – approved

**Appendix C: Monthly Financials Statements** – information only

**Appendix D: Monthly FY19 Communications & Engagement Calendar and Plan Update** – information only

**Appendix E: Corporate Campus Update** – information only

**Appendix F: Sole Source & Emergency Procurement/Procurement Appeals Board Report** – information only

**Appendix G: Ernst & Young FY2019 External Audit Report** – information only

- B. **Monthly Financial and Operations Dashboard** – Kerri Stewart, Chief Customer Officer, began by stating the presentation was based on questions from Board Members on JEA's current initiatives. Ms. Stewart stated that the JD Power metric decreased but the employee volunteer metric has increased. Ms. Stewart closed her portion of the presentation by stating that staff is working to increase JD Power scores, make the Customer Service Center Self-Service, and expanding development opportunities. Caren Anders, VP/GM Energy Systems provided highlights of the electric system's metrics and providing examples of the various initiatives, such as the limestone project, to reduce cost. Deryle Calhoun, VP/GM Water/Wasterwater Systems, highlighted the water/wastewater metrics and water/wastewater Staff initiatives. Shawn Eads, Chief Information Officer, highlighted the metrics added to the Dashboard for technology services and technology services Staff's initiatives, including working with Black Belts on process improvements.

In discussion, Chair Green asked about the details of the customer satisfaction decline. Ms. Stewart stated that it was largely due to the controversy at JEA. There was further discussion amongst Board Members and Staff including sales drivers, behind the meter opportunities, and how the Board can help push things forward.

This presentation was received for information only.

- C. JEA's Procurement and Jacksonville Small and Emerging Business (JSEB) Programs Report** – John McCarthy, Chief Supply Chain Officer and Rita Scott, Manager, JSEB, provided the background of the JSEB program, highlighted the JSEB Summit and monthly outreach. Vice Chair Newbill asked what is the average time it takes for a business to get qualified and then start actually doing business. Mr. McCarthy answered that there is no metric for that but there are 15 new businesses during FY19. Vice Chair Newbill personally commended Mr. McCarthy and his team on their work with the JSEB program.

This presentation was removed for information only.

- D. Recruitment for Permanent CEO and Interim CEO Contract** – Jon Kendrick, Chief Human Resource Officer, provided next steps for recruitments. Mr. Kendrick recommends using a search firm and advised that the process could take several months. Chair Green stated that the process should start sooner rather than later and the Compensation Committee should also handle CEO Search. Mr. Kendrick stated that JEA has a current contract with ZRG and have had successful hires with them. Chair Green stated that the Compensation Committee should handle CEO Search (and come back to the board with initial findings), the Interim CEO contract, and have OGC a part of those meetings.

This presentation was removed for information only.

- E. Committee Assignments** – Chair Green stated that there are positions to be filled for the following committees: Nominating Committee, Compensation Committee, Finance & Audit Committee, and Governance & Transparency Committee. Lawsikia Hodges, Office of General Counsel, stated that an example of the reason there is a need for the Governance Committee is review the By Laws; they have not been reviewed in 10 years and there are some inconsistencies. Chair Green stated that the Finance and Audit Committee structure will remain the same.

- **Finance and Audit Committee** – Chair Kelly Flanagan, April Green, and Henry Brown

Chair Green filled the committee positions as follows:

- **Compensation/CEO Search Committee** – Chair Camille Lee-Johnson, April Green, Dane Grey
- **Nominating Committee** was moved under the **Governance & Transparency Committee** with the following structure:

Chair Henry Brown, April Green, Dane Grey

Ms. Hodges recommends that the Governance & Transparency Committee work with OGC to determine some best practices. Chair Green advised CM Becton that he has an open invitation to all committee meetings.

- F. Changes Implemented Since December** - Melissa Dykes, outlined the changes being made to restore trust and improve transparency. She highlighted the Public Records process and the organizational structure focused on operations. Board member Flanagan had a question about a media story concerning fees for Public Records. Ms. Hodges informed her that the public records statute allows for the agency to charge fees. Ms. Dykes stated fees are waived for ITN and PUPs request.

- G. Rating Agency Update** – Joe Orfano, Interim Chief Financial Officer, shared that he addressed Ryan Wannemacher's departure and his appointment as the Interim CFO with the rating agencies (S&P, Moody, and Fitch) in a meeting on January 6, 2020. There has been no rating agency action taken due to Senior Leadership changes. Mr. Orfano

addressed Board Member Dane's question concerning ratings on the Dashboard, stating that it was due to JEA challenging the validity of lawsuit around October 2018.

- H. Senior Leadership Contracts** – Chair Green recommends that the renegotiations be handled by the Compensation Committee with OGC involvement. Board Member Grey asked if the contracts were the same as Mr. Zahn's and if the Board was aware. Ms. Hodges stated that they were the same and approved at the July 23 board meeting. Board Member Grey expressed his concern of the perception of the Board setting a precedent of trying to get out of contracts. Chair Green does not believe so and stated that employees do not have to negotiate. Ms. Hodges reviewed all of the options the board can take concerning the employee contracts. CM Becton, commented that his Resolution addresses the issue with the employee contracts. CM Becton stated that he believes getting rid of the contracts will regain the trust of the community.

On *motion* by Board Member Flanagan and second by Vice Chair Newbill the Office of General Counsel is directed to draft a new employment agreement, based on the OGC recommended terms presented to the Board today to the contract. Commence discussions with and request all non-CEO Senior Leadership Team members to execute a new employment agreement, based on the OGC recommended terms, subject to the mutual consent of the parties and authorizing the Interim CEO to execute the new employment agreements and any amendments thereto.

With one opposed vote, motion passed.

### **Agenda Item V – Strategy**

- A. Municipal Ownership** – Chair Green opened the discussion by stating that it's time to look to the future and agrees that the utility should remain a municipality. Chair Green stated that she was not sure if there should be a Resolution, but wanted to open it to discussion. Board Member Kelly Flanagan stated that this a great opportunity to get feedback from what our community would like. Vice Chair Newbill stated that there was some information that should have gotten out to the community that didn't and that there are some good and bad aspects of Scenario 3. Reverend Newbill also addressed the Septic Tank Phase Out issues. Reverend Newbill stated that based on feedback he received from the community, they did not truly understand the facts surrounding privatization. Reverend Newbill also stated that the current Board should not tie the hands of future Board members by making a permanent decision. Board Member Henry Brown stated that JEA is owned by its stakeholders, the City of Jacksonville, and it's up the Board to represent the City. Mr. Brown stated ultimately the decision if JEA remains a municipality should not be up to the Board, employees, or Senior Leadership but should come from the City itself. Mr. Brown stated that the City has made it clear that JEA should be remain a municipality and provide the best service under its current structure. Board Member Dane Grey agreed with Mr. Brown's opinion on that JEA should remain under its current structure because it is what the City wants. Chair Green concluded that the Board has their direction from the City and JEA will remain under its current structure for the foreseeable future.
- B. Rescind Resolution 2019-07** – Lawsikia Hodges, Office of General Counsel, began by recapping the circumstance surrounding the approval the Resolution 2019-07 at the July 23<sup>rd</sup> Board meeting.

On *motion* by Reverend Newbill and second by Board Member Brown Resolution 2020-01 to rescind Resolution 2019-07 was approved unanimously.

**Public Comment –**

- **David Brutterly** – supports empowering the Staff to make changes by looking outside of the box to generate revenue. Mr. Brutterly would like to see a Resolution that removes privatization but keeps innovation.

**Agenda Item V – Committee Reports**

- A. Finance and Audit Committee** – Committee Chair Kelly Flanagan, reviewed the content of the December 9, 2019 committee meeting. Joe Orfano, Interim CFO, explained the Investment Policy Revisions being requested. Mr. Orfano and staff is requesting the elimination of restrictions of having money in the Wells Fargo account on April 1<sup>st</sup> and October 1<sup>st</sup>.

On *motion* by Dane Grey and second by Reverend Newbill the motion to eliminate restrictions of having money in the Wells Fargo account on April 1<sup>st</sup> and October 1<sup>st</sup> is unanimously approved.

**Agenda Item VI– Other Business**

- A. Old Business** – N/A
- B. Other New Business** – N/A
- C. Open Discussion** – N/A
- D. Interim Managing Director/CEO’s Report** – Melissa Dykes, Interim Managing Director/CEO highlighted Staff’s focus on safety and stated JEA currently has its best safety performance in 15 years. Ms. Dykes thanked the Senior Leadership Team for their hard work during this difficult time and the tremendous work being done to save customer’s money and improve performance. Based on feedback she received from employee Town Hall meetings, Ms. Dykes outlined her plans to include employees on the planning for the future of JEA. Ms. Dykes stated that JEA will focus on three keys areas: safety, customers, and operational excellence.
- E. Chair’s Report** – Chair Green extended her apologies to Senior Leadership for all the scrutiny and hope that they truly understand their value to JEA. Ms. Green stated that it has been her pleasure to serve her community and believes that JEA has some of the best employees. Chair Green accepts her responsibility and stated she remains available to future investigation and will be helpful in any way, but she will be resigning as the Chair of the JEA Board of Directors. Ms. Green stated that there will continue to be challenges until we understand who we are in the community. She will submit her resignation to Mayor Curry and will discuss staying on the Board, until her position is filled, with him.

**Agenda Item VIII – Closing Considerations**

- A. Announcements** – Next Board Meeting – February 25, 2020
- B. Adjournment**

*With no further business claiming the attention of the Board, Chair Green adjourned the meeting at 12:13 p.m.*

APPROVED BY:

\_\_\_\_\_  
SECRETARY

DATE: \_\_\_\_\_

Board Meeting recorded by:

\_\_\_\_\_  
Madricka L. Jones, Executive Staff Assistant