

Tampa-Hillsborough County Expressway Authority
Minutes of October 11, 2019 Board Committees as a Whole Meeting
1104 E. Twiggs Street
Tampa, FL 33602

The Tampa-Hillsborough County Expressway Authority held a public meeting at 1:30 p.m. on October 11, 2019, at the Authority's Transportation Management Center, 1104 E. Twiggs Street, Tampa, Florida. The following were present:

BOARD:

Vincent Cassidy, Chairman
Bennett Barrow, Vice Chairman
Danny Alvarez, Secretary
FDOT D-7 Secretary David Gwynn, Member

STAFF:

Patrick Maguire, Amy Lettelleir, Robert Frey,
David May, Sue Chrzan, Rafael Hernandez, Debbie
Northington, Man Le, Max Artman, Brian Ramirez,
Lisa Pessina, Anna Quinones, Judith Villegas,
Diane Stull, Elizabeth Gray,

HNTB-GEC:

Jim Drapp, Al Stewart

INFOTECH:

Karen Herisse

KIMLEY-HORN

Michael Garau, Ravon Braton

PFM:

Hope Scarpinato, Brent Wilder

RBC CAPITAL MARKETS

Tom Carlson

WELLS FARGO

John Generalli

CALL TO ORDER

Chairman Vincent Cassidy called the meeting to order at 1:30 p.m.

I. CONSENT AGENDA

A. Approval of the Minutes of the August 26, 2019 Meeting

B. Task Work Order for Capital Projects

C. Maydell Drive Perpetual Easement

The Chairman called for a motion to discuss, which was made by Mr. Barrow and seconded by Mr. Alvarez. There was no discussion; the vote was called and the motion to approve all items of the Consent Agenda was carried.

II. Planning Committee -Shaun Oxtal, Chairman

Selmon East PD&E Services – Bob Frey, Staff

Mr. Frey stated the purpose of the PD&E was to provide for the SEIR Level PD&E Services, from Whiting St. east to I-75. The funding would come from the Capital Budget. Four firms submitted bids of which Kimley-Horn ranked the highest, with WSP in second. Mr. Frey asked the Board to authorize the staff to negotiate a contract with the top ranked firm, which would be brought back to

the Board for approval in November. If negotiations were not successful, the staff would negotiate with the next highest ranked firm.

The Chairman called for a motion to discuss. Mr. Alvarez so moved, and Mr. Barrow seconded the motion.

The Chairman asked Mr. Frey for clarification as to exactly where the PD&E was to cover. Mr. Frey stated this would be for the Selmon East from I-75 to Whiting St.

With no further questions or discussion, the vote was taken and the motion to authorize the staff to negotiate and execute a contract passed.

III. Operations and Maintenance Committee – Bennett Barrow, Chair

Transportation Management Center (TMC) Renovation – David May, Staff

Mr. May stated the purpose was to prove the architectural services for the refresh and update of the building, the TMC. The staff was previously authorized by the Board to negotiate a contract with Wannamacher Jenson Architects, Inc. to provide the architectural services needed for the renovation. The negotiated amount for the work was \$308,621 with funds available from the Capital Budget. Mr. May then asked the Board to authorize the Executive Direct to execute a contract with Wannamacher Jenson in the amount of \$308,621 for the renovation of the TMC.

The Chairman called for a motion to discuss, which was moved by Mr. Alvarez and seconded by Mr. Barrow.

The Chairman stated this have been in the works for a long time and confirmed the amount mentioned and then thanked Mr. May for not spending more than needed.

With no further discussion, the vote was taken, and the motion passed.

VI. Staff Reports

Financial/Traffic Review – Amy Lettelleir, CFO

Ms. Lettelleir stated the transaction count for August 2019 was approximately 5.2 million which represented a 1.5% decrease over August 2018. This can be attributed to the closing of Hillsborough County government and schools during the last week of August for Hurricane Dorian preparation. There was also a decrease in transactions for July year-to-year, because transactions for May 2018, which were pre-Go-Live with CCSS, were sent over to CCSS in July 2018. THEA's General and Administrative Expenditures through August 2019 were approximately 87% of the budgeted amount. THEA has several annual payments which are paid in July, so the Operations and Maintenance expenditures were slightly over budget as presented on a monthly basis, but this will smooth out over time. The Chairman asked if the toll revenue being down was due to the shutdown since the revenue typically exceeded budget. Ms. Lettelleir said it was 98.3% of budget and the there was no other issues other than the shutdown due to

Hurricane Dorian. The Chairman asked if tolls were suspended to which Ms. Lettelleir stated no, but traffic was down, and Pinellas County was also closed so that also affected the revenue.

Cash and investments through August 2019 were \$336 million. Actual debt service coverage is at 2.2 times. Ms. Lettelleir continued with the toll revenues broken down by source. Toll revenue for the first two months of fiscal year 2020 was approximately \$15.6 million. The ETAN-THEA toll Revenue was more than double the amount collected in July as the invoicing of the Toll-By-Plate transactions returned from CCSS and is cycling through and being collected.

The Chairman asked what is owed, ballpark figure. Ms. Lettelleir asked Rafael Hernandez, Director of Toll Operations, what was owed and the balance to collect. Mr. Hernandez said that as of last month, \$11 million was owed and \$2 million was collected so good progress was being made. Ms. Lettelleir said this was normal from ETAN at any given time, but the Chairman rephrased and asked what had been owed in the past. Mr. Hernandez said that the information can be provided. Ms. Lettelleir said that at any given time there is approximately \$4 million with CCSS to which the Chairman clarified by asking for an amount earlier in the year. Mr. Barrow said he remembered in the spring something to the effect of \$5-6 million and didn't realize the balance was so high. Per Ms. Lettelleir, ETAN year to year comparisons are difficult as much had not been invoiced as we had stopped and only recently had begun invoicing amounts from CCSS.

The Chairman asked what would be considered a current amount owed, 30 days or 60 days? Does it take 60 days for normal road traffic? Mr. Hernandez stated 60 days. The Chairman then asked for anything older than 60 days. For FY19, revenues were not transferred to collections. The revenues received this year for FY 19 were \$11 million and transferred to collections, which is why Mr. Hernandez wanted to clarify FY19 or FY20. THEA is currently collecting around \$700,000 past due tolls per month for at least three or four months, so we are down from the \$11 million. Mr. Gwynn asked if there was \$9 million due over 60 days and asked to go back two years, and what would normally be the amount for over 60 days for what is not collected. Ms. Lettelleir said that amounts go back three years and are written off each year the amount not collected, but specifics would have to be researched. Mr. Barrow requested a three-year ending quarterly report so pre-CCSS could be reviewed. Mr. Hernandez replied that 20% of the revenue is Toll-By-Plate and of that amount, 50% is recovered in the first 60 days. Mr. Hernandez apologized for the lack of clarity but there had also been other factors impacting the numbers, such as increased traffic, but the numbers would be provided. The Chairman was trying to understand what was never billed and was eventually turned over, what is left. Ms. Lettelleir said she would provide the updates on delayed billing and collected amounts thereof.

V. Executive Reports

A. Executive Director

Ms. Lettelleir, on Mr. Waggoner's behalf, presented the information regarding the Contract Close-Out Report for September 2019. Highway Safety Devices was within budget and RS&H, which was the Selmon East feasibility study, ended under budget. For Contract Renewals, insurance premiums through Arthur J. Gallagher were renewed.

B. General Counsel

Patrick Maguire stated he had good news. In February 2018, Mr. Maguire was authorized to retain in a shade session, outside counsel for the suit of Tropical Trailers challenging the tractor-trailers billing. There were four lawsuits around the state, of which THEA was one. For the first three and a half years, THEA had insurance to cover the defense fees, one of the counts was dropped and the insurance company subsequently dropped THEA. The outside counsel had billed \$86,000 over three and a half years. Mr. Maguire went to the outside counsel and asked them to do nothing but monitor the other cases. THEA spent \$4,600 over the last year and a half. The case was voluntarily dismissed with prejudice so that is good news. That is the last piece of pending litigation THEA has.

C. Chairman

At this time, Chairman Cassidy, invited the staff to engage in conversations with the newly approved vendors. The Chairman then read from a prepared statement with a motion at the end:

“For the last few years, I have asked our leadership team to plan for succession, specifically as it related to the positions of Executive Director and General Counsel. I have asked our leaders to give me a sense of their intentions so we can appropriately plan for succession.

This conversation will relate specifically to the General Counsel position.

Currently, our General Counsel is under a contract that does not have a termination date. Summarizing the contract, the General Counsel can:

- Work;
- Retire;
- Be terminated for cause;
- Be terminated without cause.

As you should be aware, our Agency will be updating its work plan, representing about \$1.2 billion of improvements. This will take considerable effort to plan, finance and build. It will also involve several years to complete the projects. I want to insure we have the talent in place to achieve our objectives.

In conversations with our General Counsel, he anticipates voluntarily leaving employment before the completion of these projects. Since the contract in place does not have a termination date, as long as Patrick continues to perform, he can remain in his position for now, but still decide to leave before the projects are complete. I would prefer we make changes earlier in the process, rather than in the midst of the projects.

To help maintain continuity throughout the projects, Patrick has indicated that he would be willing to accelerate the transition of the General Counsel, subject to the terms of his contract. This means, the Agency would terminate Patrick without cause. In doing so, Patrick is entitled to compensation, which includes salary and benefits.

I have worked with Outside Counsel to come to an agreement with Patrick that meets the terms of the contract. Patrick has agreed to be terminated without cause according to the terms of the contract.

The Value of the Termination will not exceed \$330,000.00.

Following this action, I will work with Joe and Outside Counsel to review our options for legal representation.

May I have a motion for the Chairman to execute a separation agreement, signed by me to terminate our General Counsel without cause for the value noted above, and subject to the terms negotiated and agreed upon with our General Counsel?"

Mr. Alvarez so moved, and Mr. Barrow seconded the motion.

The Chairman asked if anyone would like to discuss what was just mentioned. Mr. Alvarez recapped by asking if this was part of the succession planning. Lots of projects are upcoming with Mr. Maguire not around for completion. What would happen if the person hired did not want to stay, would THEA be in the same situation? The Chairman stated no, because there would not be a contract with a "no termination" fee, again. If someone were to be leaving on their own, would have to find someone to finish and complete the projects, agreeing with Mr. Alvarez. The Chairman continued by saying that THEA would explain to a prospective candidate what is needed and get some assurance the replacement would stay. For many of the upcoming projects, the work of the General Counsel is front ended, so the Chairman didn't think there needed to be a commitment for 10 years, maybe just three or five years.

Mr. Gwynn had a question for counsel, but Mr. Cassidy stated he had asked Mr. Maguire to not be present so everyone could talk. Mr. Gwynn asked if for the vote on this motion, was a majority of Board necessary for the vote to pass, or just a majority of those present. The Chairman stated the majority of the quorum present was needed for the vote. Mr. Gwynn stated he would likely vote no because of the terms of the separation are not similar to what the state employees receive, but had there been more time to consider this, Mr. Gwynn said he might have considered voting yes, but is not sure. At this time, Ms. Lettelleir stated that the contract was negotiated and put into place before the statute was put in place regarding State employees. Mr. Gwynn acknowledged Ms. Lettelleir and added that he didn't want anyone surprised by his vote.

Mr. Barrow asked if that was Florida's government's policies and procedures. The last thing a Board Member wants to do is muddle what is done, since they do not work at THEA, and he does understand the decision. When there is a CFO, General Counsel, Executive Director and other high-level employees, Mr. Barrow thought there should be more notice than just this meeting and would have liked to have had the information 24-72 hours before this meeting to soak in the information. Mr. Alvarez said there are limits due to Sunshine. The Chairman stated he had asked the outside counsel if the message could be sent to the Board by someone other than himself and was told no. Mr. Barrow wanted to clarify if there was any way the information could have been received prior to the meeting and the Board Members were in a

difficult position. The Chairman stated for such a decision, it would have been good to have the time to process the information.

Mr. Gwynn said as a state employee, knowing sooner without reviewing the contract would have helped. He understood his vote won't change the outcome and Mr. Gwynn said that he didn't disagree with what was said but doesn't know enough.

Lastly, the Chairman reiterated this would be a termination without cause, but it is not a surprise to Mr. Maguire. This was not a situation where Mr. Maguire has given all these years and would be shoved out the door. Mr. Maguire has agreed to work in transition, tentatively with an early January effective date. Mr. Alvarez asked for confirmation that Mr. Maguire was OK with the agreement. The Chairman stated Mr. Maguire negotiated and it has not been signed and won't be until January. Mr. Maguire also understands his contract affords him these benefits. Mr. Alvarez said that the original contract was bargained in the "open market" before the statute was in place and not bound by the State statute. If there is no termination with cause, the Chairman stated Mr. Maguire was entitled to salary and several benefits and the Board will honor the contract.

Mr. Alvarez stated that he hates to see Mr. Maguire leave as he has been a good guy and very analytical person, and this is not an easy decision. Mr. Barrow says that since he doesn't work with the organization five days a week, it is difficult know what is best. Mr. Alvarez said he would but not be concerned for staff positions, but if THEA were to get a Chief Financial Officer or General Counsel, these are the positions for which the Board is responsible. At this point, the Chairman said the only positions for which the Board is responsible are the Executive Director and General Counsel. The CFO reports directly to the Executive Director. Mr. Barrow stated that in perfect world, this situation would not happen within other Boards, the person would be gone and that would be it. The Chairman said he did not want to put words in Mr. Waggoner's mouth, but this was not the Chairman's decision but a joint decision between Mr. Waggoner and Mr. Maguire. Mr. Gwynn stated that he falls under Sunshine law and in his position on other Boards, he can speak to Board Members so he wondered if Mr. Waggoner would have been able to speak to the Board on this subject. The Chairman stated that the concern was that it might appear as if Mr. Waggoner was carrying a message from the Chairman to the rest of the Board. The Chairman spoke to Outside Counsel who advised, against it.

The Chairman stated the motion was on the floor and would there be any further discussion? The Chairman did acknowledge that it was sudden, and it was appreciated that the Board understood the confines.

At this point there was no further discussion. The vote was taken with the Chairman, Mr. Barrow and Mr. Alvarez in favor and Mr. Gwynn opposed and the motion passed.

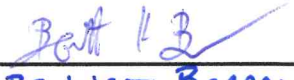
The Chairman will inform Mr. Maguire and will begin working with Mr. Waggoner and outside counsel to make sure there is the correct representation model for THEA. There has been some discussion, with other agencies, about whether there should be a separate counsel for the Board and for THEA. The Chairman restated that he intends to have outside counsel review best practices to advise THEA on the direction for the best representation.

The Chairman then asked Ms. Lettelleir, for her thoughts. Ms. Lettelleir did not think THEA would be as nimble if there was not an in-house counsel, with as much as counsel has to sign and review. As THEA has grown and given the direction for the future, there should be an involved general counsel who does those things that might be expensive on the outside. Mr. Alvarez then said that although he had been an outside general counsel to smaller companies and agencies, there was nothing like working the day-to-day and understanding the organization. There is a different intangible with in-house counsel. Mr. Gwynn said that he would go with the majority and had no opinion one way or the other. The Chairman stated THEA would review best practices regarding counsel for the Board and for THEA. The analysis, with a recommendation, would then be put to the Board.

VII. ADJOURNMENT

There being no further new or old business to come before the Board, Chairman Cassidy adjourned the meeting at 2:04 p.m.

APPROVED: 
Chairman: Vincent J. Cassidy

ATTEST: 
BENNETT BARROW

DATED THIS 18th DAY of NOVEMBER 2019