

**OFFICE OF THE CITY COUNCIL**

117 WEST DUVAL STREET, SUITE 425

4TH FLOOR, CITY HALL

JACKSONVILLE, FLORIDA 32202

904-630-1377

**Special Committee on the Potential Sale of JEA Meeting Minutes**

**March 15, 2018**

**3:30 p.m.**

**Topic:** Potential sale of the JEA

**Location:** City Council Chamber, 1st floor, City Hall – St. James Building, 117 West Duval Street

**In attendance:** Council Members John Crescimbeni, Danny Becton, Anna Lopez Brosche, Garrett Dennis, Joyce Morgan

**Also**: Council Members Jim Love, Matt Schellenberg, Lori Boyer (arr. 3:58), Al Ferraro (arr. 4:04), Greg Anderson (arr. 4:23), Reggie Brown (arr. 5:15); Jason Gabriel, Peggy Sidman, Stephen Durden, Gayle Petrie - Office of General Counsel; Kyle Billy and Phillip Peterson - Council Auditor’s Office; Cheryl Brown – Council Secretary/Director; Staci Lewis and Mia Richardson – Legislative Services Division; Jeff Clements – Council Research Division; Sam Mousa – Mayor’s Office; Paul McElroy - JEA

**Meeting Convened**: 3:31 p.m.

Council Member Crescimbeni called the meeting to order and the attendees introduced themselves for the record. He announced that public comment would be taken at the end of the meeting.

Council Member Dennis asked whether the speakers would be sworn in to testify under oath. Deputy General Counsel Peggy Sidman summarized a legal memorandum issued yesterday by the Office of General Counsel regarding the procedures for the special committee to issue subpoenas through action of the full City Council and to enforce subpoenas and testimony under oath and to refer violations to the State Attorney. General Counsel Jason Gabriel recommended that the Council and its committees exercise the power of oaths and subpoenas very judiciously. He said that oaths are typically administered in quasi-judicial proceedings to preserve or obtain evidence for further judicial proceedings and rarely used in policy setting roles. He said that subpoenas must be focused and specifically targeted to business relevant to the council’s inquiries and jurisdiction. He cautioned that requiring testimony under oath may not have its intended effect of getting to a free flow of truthful information, instead causing persons giving testimony to be extremely cautious and circumspect, to seek the assistance of legal counsel, and to decline to definitively answer questions in which there may be any question of doubt or interpretation for fear of being charged with perjury. In response to questions from several council members about whether the importance of the issue in question (the potential sale of the JEA) rises to a level that would make oaths advisable, Mr. Gabriel said that it is a policy call to be made by the Council, but reiterated his caution that the power should be exercised very judiciously. Council President Brosche reiterated her comment from the last meeting that the policy regarding oaths should be set at the outset of the process and applied equally throughout.

**Motion** (Dennis/2nd Brosche): the special committee will adopt a policy to swear in all persons testifying before the body from the podium –

Council Member Becton agreed that any policy regarding oaths should be applied uniformly to all testimony from the beginning, to which Council Member Morgan agreed for purposes of fairness. Council Member Schellenberg cautioned that the pace of testimony may be slowed considerably

The Dennis motion was **approved 5-0**.

Called to answer questions posed at the last meeting, Chief Administrative Officer Sam Mousa declined to take the oath and was excused. Mr. Gabriel explained the process for compelling testimony from a reluctant witness by means of a subpoena.

Jason Gabriel explained two memoranda issued by his office in the last month. Regarding the RFP for financial-related services issued by the Finance Department in December, Mr. Gabriel affirmed that the RFP was appropriately issued by the department and that similar RFPs have been issued by the department in the past. In response to a question from Chairman Crescimbeni about whether there is a requirement for RFPs or procurement solicitations to be posted on the City’s web site and otherwise made available to the public, Mr. Gabriel said that is not a requirement, particularly in the area of acquiring financial advisory services. Council President Brosche asked for further information on how many times that process has been used by the Finance Department and for what types of services.

Regarding the process for approving a sale of the JEA, Mr. Gabriel said that the importance of the issue merits a great deal of research and exploration. He outlined the City Council’s authority to approve a sale of more than 10% of the JEA pursuant to the JEA’s charter. Four major areas that need to be explored and understood when making a decision: 1) interlocal and franchise agreements; 2) real estate assets and obligations; 3) regulatory approvals (state and federal); 4) water/wastewater public interest determination required by state law. The consideration would progress through an exploration phase, a market testing phase, a formal proposal phase from potential buyers, and a Council consideration phase, followed by regulatory approvals if a decision is made to sell. In response to a question from Council Member Dennis about whether the Office of General Counsel has the capacity to handle such a sale transaction, Mr. Gabriel said that outside counsel would be retained with expertise in mergers and acquisitions and in large real estate transactions. He said that his office has begun looking at potential law firms with expertise in these areas in the last few weeks but has not engaged any firms as of yet.

Council Member Brosche noted for the record that Mr. Gabriel’s memo seems to interchangeably use the terms “valuation” and “evaluation”, which the Council has learned may have two very distinct meanings. Mr. Gabriel recommended a cohesive, cooperative process among all the interested parties for the ultimate benefit of the process. In response to another question from Ms. Brosche, Mr. Gabriel said that his legal memo utilized a portion of the PFM report for purposes of outlining the 6-phase sale consideration process because it accurately portrayed the needed steps. He said that his office needs to be anticipatory and prepare itself to meet the needs of the process as it progresses, but can’t get too far ahead of the curve in the event one party or another decides to discontinue the process. In response to a question from Council Member Anderson about the role of the JEA board in the process, Mr. Gabriel said that could vary depending on how much the Council wants to manage the process itself versus let the JEA run the exploratory process and then come to the Council for ratification at the end. Since the authority ultimately rests with the City Council, it makes sense for the parties to proceed in a cooperative spirit.

Council Auditor Kyle Billy distributed and discussed a set of questions he posed to the Finance Department regarding the financial advisor RFP issued in December and the responses he received from the department. A pool of qualified firms was identified but no contract has been issued on this RFP to date. Chairman Crescimbeni asked for supplemental information on the two firms that did not provide specific fees in their responses and whether either of those firms made the final pool of 4 qualified firms. Council President Brosche noted that the RFP contained language regarding a prohibition against respondents contacting City Council members during the selection process that, while it has been used previously by the Finance Department in an RFP, is not the Procurement Division’s standard language. Council Member Becton asked for the cost of the December financial advisory services RFP.

JEA CEO Paul McElroy declined to take the oath before his presentation and was excused.

President Brosche discussed the results of a noticed meeting she had with Council Member Becton to draft a scope of services for an independent consultant for the committee. The meeting produced a scope of services with 5 items (item 4 subdivided into 7 items) and a list of 4 qualifications. She indicated that she had received from Chief of Procurement Greg Pease a list of several different procurement methods which range in length from 60-90 days for a formal process to 15-20 days for a less formal process, and also includes a method for the Council to invoke an available exception in the Procurement Code to directly award a contract in an appropriation ordinance. That direct award method would require that a consultant be identified in advance of the ordinance being approved.

**Motion** (Becton/2nd Dennis): accept the consultant cope of services and qualifications developed at the noticed meeting and have Council President Brosche transmit the document to the Jessie Ball DuPont Fund for their approval – **approved 5-0**.

Peggy Sidman will draft an ordinance appropriating an unspecified amount of money and awarding a consultant contract to an unspecified consultant for introduction at the next City Council meeting,

Peggy Sidman explained the process for the special committee issuing a subpoena to compel testimony by the persons who earlier declined to take the oath before testifying. The subpoena needs to contain specifics about what testimony is required and a specific date and time to appear. The process of drafting and service will take at least a week, so the testimony could probably not be scheduled for next week’s meeting. President Brosche suggested that the committee meet earlier in the day to provide sufficient time for the testimony to take place. Council Member Becton felt that a subpoena was not necessary for Mr. Mousa’s information but was justified for Mr. McElroy’s participation. Chairman Crescimbeni asked for details about the wording of the subpoena and whether a subpoena could be issued for multiple meetings should the length of the testimony and questions and answers exceed the length of the next noticed meeting. Ms. Sidman said that the subpoena would need to be specific in regard to dates and times that appearance is required and would need a general statement of the type of matters upon which testimony is being required; the greater the specificity of the statement, the better the respondent will be able to prepare. In response to a question regarding whether the special committee could cancel or revoke an issued subpoena, Ms. Sidman said that the committee could subsequently vote to revoke a subpoena. Stephen Durden of the General Counsel’s Office explained the process for a subpoena duces tecum (subpoena for the production of evidence) which compels a witness to produce certain existing documents or other physical evidence, but cannot compel the production of a document that does not exist.

**Motion** (Dennis): the special committee directs the Council Secretary to issue a subpoena to JEA CEO Paul McElroy to appear before the committee on March 29th at 2 p.m.to present facts and answer questions relating to the potential sale of the JEA and to answer questions about the PFM consultant report – **approved 5-0**.

**Motion** (Dennis/2nd Morgan): the special committee directs the Council Secretary to issue a subpoena to City Chief Administrative Officer Sam Mousa to appear before the subcommittee at 2 p.m. on May 10th to present facts and answer questions relating to the potential sale of JEA and to make the presentation he had prepared to give at this meeting -

After further discussion, the **Dennis motion was** **withdrawn**.

Chairman Crescimbeni distributed the JEA board’s meeting notice for a workshop next week on consideration of the sale of the utility.

Public comment

Al Safer, a retired 60-year JEA employee, opposed the sale. He believes the general public has no idea what is going on with regard to this issue.

Raymond Olan said that the failure of the invited speakers to testify under oath indicates that they have something to hide. The JEA is the city’s greatest asset and shouldn’t be sold.

John Lindemood said that the public is in the dark about what’s going on. Failure to take the oath indicates that something is being hidden.

Valerie Gutierrez, business manager of IBEW 2358 thanked the committee for diligently seeking the truth. The refusal of the two speakers to testify under oath sends a bad message to the Council and to the general public. JEA employees feel that senior leadership is being held to a different standard than rank and file employees.

Jack Caulkins commended the committee on the requirement to testify under oath. The city lacks transparency and depends on the City Council to get to the truth. A private buyer will not care about fulfilling promise made to eliminate septic tanks and install sewer lines.

**Motion** (Dennis 2nd Morgan): the committee determines that the general public is not to be required to take an oath to provide public comment – **approved 5-0**.

Action items

* Council Auditor Kyle Bill will email all attachments to the Mike Weinstein email regarding the Finance Department’s request for proposals for financial advisor services to the committee
* Mr. Billy will provide information on which 2 companies responding to the Finance Department RFP did not provide cost information and whether those companies made the final pool of candidates; he will also provide the cost of issuing the RFP
* Peggy Sidman will draft an ordinance for the City Council to appropriate funds and contract with a consultant to advise the Special Committee on JEA sale-related issues
* Council President Brosche will send a letter to the Jessie Ball duPont Fund transmitting the consultant scope of services and qualifications discussed earlier and requesting a funding amount
* The Office of General Counsel will prepare the Paul McElroy subpoena for issuance and will keep the committee updated on the progress of its preparation and issuance.

**Motion** (Becton/2nd Dennis): amend the JEA subpoena to include a request for information on JEA’s charitable giving and employee volunteerism over the past 5 years – **approved 5-0**

Next meeting – March 22nd at 3:30 p.m.

**Meeting Adjourned**: 5:56 p.m.

Jeff Clements, Council Research Division

3.20.18 Posted 2:00 p.m.