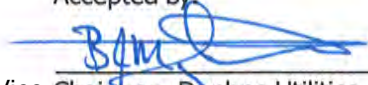


Accepted by:

Vice-Chairman, Daphne Utilities



APPROVED MINUTES

Utilities Board Meeting

Council Chambers, Daphne City Hall ♦ February 28, 2018 ♦ 5:00 p.m.

I. Call to Order

The regular February 2018 Board meeting for the Utilities Board of the City of Daphne was held on February 28, 2018 at 5:00 p.m. in the Council Chambers at Daphne City Hall and called to order by Chairman Randy Fry, proceeded by the Roll Call:

II. Roll Call

Members Present: Randy Fry, Chairman
Billy Mayhand, Vice Chairman
Selena Vaughn, Secretary/Treasurer
Mayor Dane Haygood, Board Member
Robin LeJeune, Board Member

Members Absent:

Others Present: Jerry Speegle – Board Attorney - arrived at 5:07 pm
Danny Lyndall – General Manager
Bobby Purvis – Operations Manager
Kelly DeLaney – Customer Service Supervisor
Teresa Logiotatos – Finance Manager
Samantha Coppels – Communications Manager
Lori May-Wilson – Executive Assistant
Melinda Immel – Volkert & Associates
Joe Asarisi – Asarisi & Associates
Ray Moore – HMR

Others Absent: Drew Klumpp – Administrative Services Manager

III. Pledge of Allegiance

The Chairman led the Board and meeting attendees in the Pledge of Allegiance.

IV. Approval of Minutes

A. Utilities Board Meeting Minutes January 31, 2018

B. Utilities Board Special Meeting Minutes February 8, 2018

The Chairman announced a request to delay the approval of the minutes until the March regular Board meeting.

V. OLD BUSINESS – None

The Chair re-arranged the agenda to accommodate the Board attorney's arrival.

VI. FINANCIAL REPORT

Teresa Logiotatos examined the financials with the Board, reviewing the Summary information, the gas revenue chart, the monthly cash payments and the check history report. She offered to answer questions from the Board.

VII. GENERAL MANAGER'S REPORT

A. GM Report

With the equipment malfunctioning for his presentation, Danny Lyndall announced he would postpone his presentation on our lift stations as part of the wastewater collection systems until the March board meeting. He then discussed the Daphne Utilities Mission Statement and explained that the principles, along with the strategic plan, had been in development for more than a year by the management staff. Mr. Lyndall pointed out examples of these principles throughout his report.

Mrs. Samantha Coppels introduced Daphne Utilities' new employees and also mentioned Daphne Utilities' participation in the Chamber of Commerce's Youth Leadership Program Workforce Development graduation.

B. Operations Report

Mr. Bobby Purvis gave more detail on new employee Geoff Wilkins' background and the new energy he brings to Daphne Utilities as well as the understanding of the communication level between the collection system and the wastewater treatment plant. He described Johnny Grimes as energized and enthusiastic.

Mr. Purvis highlighted some operational activities: several point repairs in the wastewater collection system; Mr. Art Anderson as the outside contractor inspector and liaison with City inspections; Yancy Branch lift station upgrades; and upcoming smoke testing in the Canterbury subdivision.

C. Engineering & Consulting Reports

Ray Miller with Volkert had nothing to add to the submitted report and offered to answer any questions.

Ray Moore with HMR updated the Board regarding the CDBG Grant.

Joe Asarisi with Asarisi & Associates had nothing further to add to his submitted report and answered questions from the Board.

VIII. Public Participation – At 5:21 pm, the Chairman announced public participation for anyone who would like to address the Board to state their name and address.

With no participants, the Chairman closed Public Participation at 5:21 pm.

IX. BOARD ATTORNEY'S REPORT

Mr. Speegle had nothing additional to include in his report and offered to answer questions that are not related to any pending litigation or any topic that is not confidential attorney/client privilege.

X. Executive Session

Mr. Speegle then requested the Board convene to Executive Session and certified the purpose of the Executive Session to discuss with Board attorneys the legal ramifications of and legal options for pending litigation, controversies not yet being litigated but imminently likely to be litigated and, as referred to in the agenda, proposal for settlement of imminent litigation although not filed yet.

MOTION by Selena Vaughn to convene to Executive Session to discuss the proposal for settlement as certified by attorney Jerry Speegle for approximately 30-45 minutes; Seconded by Billy Mayhand.

AYE: Fry, Mayhand, Vaughn, Haygood, LeJeune

NAY:

ABSENT:

ABSTAIN:

MOTION CARRIED

The Board adjourned to Executive Session at 5:22 pm.

The Board reconvened the meeting at 6:36 pm.

XI. NEW BUSINESS –

A. Motion to accept settlement agreement (Board Action: MOTION)

MOTION by Mayor Dane Haygood to reject the settlement agreement listed under New Business, Item A, on the Agenda.

AYE:

NAY:

ABSENT:

ABSTAIN:

The Motion failed due to lack of a Second.

Chairman Fry called for any additional Motions.

MOTION by Selena Vaughn to approve and accept the settlement agreement and allow the Chairman to execute any and all document necessary; Seconded by Billy Mayhand.

AYE: Fry, Mayhand, Vaughn, LeJeune

NAY: Haygood

ABSENT:

ABSTAIN:

MOTION CARRIED

XII. Board Comments

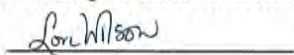
Mayor Haygood commented that although the action taken was not detailed due to legal ramifications involved, he expressed satisfaction with healthy discussion between the Board and Board attorneys. Mayor Haygood emphasized his impression of a PR issue occurring with the public and for him, that issue out-weighs the benefits of this proposed settlement.

XIII. Adjournment

The meeting adjourned at 6:40 pm.

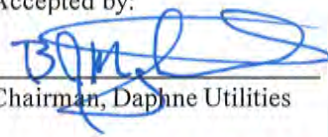
MOTION by Billy Mayhand to adjourn.

Preceding minutes submitted to the Daphne Utilities Board by:



Lori Wilson, Executive Assistant, Daphne Utilities

Accepted by:


Vice-Chairman, Daphne Utilities



APPROVED MINUTES

Utilities Board Special Meeting

Council Chambers, Daphne City Hall □ February 8, 2018 □ 5:00 p.m.

I. Call to Order

A Special Meeting of the Utilities Board of the City of Daphne was held on February 8, 2018 at 5:00 p.m. in the Council Chambers at Daphne City Hall and called to order by Chairman Randy Fry, proceeded by the Roll Call:

II. Roll Call

Members Present: Randy Fry, Chairman
Billy Mayhand, Vice Chairman
Selena Vaughn, Secretary/Treasurer
Mayor Dane Haygood, Board Member
Robin LeJeune, Board Member

Members Absent:

Others Present: Jerry Speegle – Board Attorney
Danny Lyndall – General Manager
Bobby Purvis – Operations Manager
Drew Klumpp – Administrative Services Manager
Teresa Logiotatos – Finance Manager
Lori May-Wilson – Executive Assistant

Others Absent:

III. Pledge of Allegiance

The Chairman led the Board and meeting attendees in the Pledge of Allegiance.

IV. Approval of Minutes - None

V. OLD BUSINESS – None

VI. NEW BUSINESS –

A. Presentation of work performed at Daphne Utilities Water Reclamation Facility

General Manager Danny Lyndall arranged a presentation to update the Board and public on the status of our wastewater treatment plant and collections system over the past several months.

Mr. Lyndall advised that our water reclamation facility is currently permitted by ADEM to treat 4.17 million gallons on an average daily flow; our current average flow of 3.1 million gallons per day. He noted that in 2008 and 2010, our peak capacity was increased to 9 million gallons per day at our headworks and outfall facility, clarifying that we can hydraulically push up to 9 million gallons per day of flow through the plant on a temporary

basis. He advised that over the last 10 years, we have spent over \$10million in upgrades at our wastewater treatment facility and that \$14million of upgrades are included in the CIP (Capital Improvement Plan) for the next 10 years.

Mr. Lyndall confirmed that Daphne Utilities operates 200 miles of pipe and 80 liftstations that pump wastewater from the furthest points north and south of our service area back to our single wastewater treatment plant. He informed that a capacity analysis conducted several years ago indicated our collection system has adequate capacity for current and anticipated future growth. He indicated an industry-wide common problem of inflow and infiltration issues due to heavy intense rainfall and noted these problems with gravity sewer systems. He reported that we have spent in excess of \$2million in improvements in the last 3 years and in 2017, we collected, transported and treated a billion gallons of wastewater at our treatment facility.

Mr. Lyndall explained further our particular wastewater treatment process as a biological process, how the recent upsets at the plant happened, and the preventative procedures put in place in response to the upsets. He enlightened the Board regarding his Moonshot initiative relating to issues, which is to predict, prevent, reaction, response and he clarified each.

He concluded in recognizing and thanking the many Daphne Utilities employees that were in attendance.

Mayor Haygood thanked General Manager Lyndall for a great presentation and his overall service of leading Daphne Utilities and I think you've done a wonderful job. The Mayor expressed his concern that the public's confidence in the Utility was in question and that he desired the utility "to respond in a way that instilled confidence back in the public" and the presentation by Mr. Lyndall did just that. Mayor Haygood indicated this was precisely the reason the special called meeting was held and that he wished it could have been presented as the January meeting when the attendance was much higher. He also indicated that we needed to publish this presentation and the information contained within. He also inquired if we had made any progress on evaluating the acceleration of the ten year Capital Improvement Plan.

Some additional discussions and q&a ensued with some specific inquire about Sanitary Sewer Overflow (SSO) and operator certification grades. Daphne Utilities is required by ADEM to have a grade three operator at the WRF eight hours a day, five days a week. [As indicated in the presentation, Daphne Utilities exceeds the minimum requires by having multiple grade four operators and are presently staffing 24 hours a day].

Sewer Mrs. Vaughn voiced positive accolades to Mr. Lyndall and the Daphne Utilities employees.

B. Potentially consider an independent investigation into certain matters

Mayor Haygood indicated his feelings that the board has a duty to investigate and respond to properly to the allegations that have been made against Daphne Utilities that are in the public domain. He also acknowledged that there are pending legal matters before the utility and that the board would not want to do anything to jeopardize those matters. But I think we as board members have a duty to ensure that the environment at Daphne Utilities is a positive one; that the employees are protected; and that the atmosphere is positive and professional.

The Mayor indicated he had performed personal inquiry by talking to employees, other board members, and even the Daphne Utilities outsourced Human Resources consultant that he has "personally become very comfortable" with his understanding of the workplace

environment and that he has “satisfied” himself with many of concerns.

Mayor Haygood indicated that the board agreed to perform an “independent investigation”, and at last week’s board meeting we were provided with the results of the investigation conducted by Mr. Speegle’s firm, which is legal counsel to the Utility Board. While he understands that Mr. Hoffman with Mr. Speegle’s firm conducted the investigation, and did so in an appropriate manner and with the utmost integrity, that the firms existing affiliation with the utility may not be “independent” enough.

Mayor Haygood expressed concerns are over whether or not the existing ties between the firm conducting the investigation and management would somehow affect the employees willingness to fully and openly participate in the investigation and make sure they felt comfortable to speak their mind. “As a board, I think all we want is the truth and the facts”.

Mayor Haygood indicated that at the last meeting when he brought this matter forth, we did not have an internal investigation completed not any expectation of when the board was going to receive that information. A report was provided to the board during executive session at the end of the January meeting and the board delayed action on engaging a third party to conduct an independent investigation after we agreed to call this special meeting. Mayor Haygood indicated he did not feel the matter could wait 30 days until the next regular board meeting and that the board needed take action for independent investigation.

Despite receipt of the report from Mr. Speegle’s firm, the Mayor is still of the opinion that the board should conduct a more independent investigation if for no other reason to remove the cloud that might exist from anybody who wants to point to the investigation and say it wasn't done in an independent manner. He asked that the board consider authorizing and independent investigation related to HR and workforce environment issues that have arisen in conjunction with the Baykeeper allegations that was previously brought up at the last meeting and withdrawn for consideration at this meeting to provide more time for Speegle’s firms investigative report to be reviewed.

Mr. Speegle inquired about further discussion on the agenda item prior to a motion being on the floor. Mayor Haygood indicated the he understood Mr. Tom O’Hara from O’Hara and Watkins, LLC was present in the audience and that it was the Mayor’s understanding that Mr. O’Hara would be making a presentation to the board pursuant to the request Daphne Utilities management and the board prior to the agenda for this meeting being created.

Chairman Fry asked for any other board comments and asked for a motion to allow further discussion or allowing a presentation by Mr. O’Hara to be made. Mayor indicated he would be happy to make the motion.

MOTION by Mayor Haygood to hire O’Hara and Watkins, LLC, to perform an independent investigation related to HR and workplace concerns stemming from the Baykeeper allegations; Seconded by Robin LeJeune.

Mr. Mayhand stated that the Motion should have been to hear the presentation instead of conducting an investigation; Mr. LeJeune indicated that he was going to ask if a motion to hear the presentation was needed. Mayor Haygood indicated he would be happy to withdraw the motion in order to hear the presentation but that we seem to be “running in circles”. Mr. Speegle opined that a motion on the floor could indeed be amended or withdrawn with the board members who first and seconded the motion consenting the said amendment or withdrawal. Chairman Fry asked for clarification on whether or not

there could be a presentation without the motion. Mr. Speegle responded with saying that (i) you could have a motion for a presentation or (ii) a motion could be made to amend the current motion, or have a spate motion, to approve the hiring of the law firm conditioned on the presentation. He further indicated the board should hear the presentation if the board was going to consider hiring the law firm and if the board wasn't going to consider that action, then hearing the presentation would not be necessary. Mayor Haygood expressed frustration with the fact the presentation was requested to the in an email to Chairman and the entire board and that all of the back and forth with mechanisms seemed unnecessary and why the presentation was not clearly listed on the agenda to avoid this whole back-and-forth discussion. Chairman Fry acknowledged receipt of the request for Mr. O'Hara to address the board and indicated the presentation was indeed on the agenda but that there the discussion was procedural in nature as to whether or not a motion had to be on the floor prior to hearing the presentation. Mr. Speegle indicated he did not feel a motion had to be made and approved related to allowing the presentation to be made.

The Chairman asked Mr. O'Hara to address the board but before the presentation commenced the Motion and Second on the floor was withdrawn and then Mr. O'Hara was allowed to proceed.

Mr. Tom O'Hara, a partner with the law firm O'Hara Watkins LLC located in Daphne, addressed the Board relating to conducting an independent investigation regarding the boards commitment to a "independent" investigation and that the subject matter would be allegations that arose as part of the Mobile Baykeepers allegations but that were separate from the legal matters associated with that. The focus would be on truly fact-finding mission that for which independence could not be questioned that would involve the subject matters as determined by the board. He answered questions from the Board.

Lengthy discussions ensued on a variety of topics:

A discussion took place regarding the investigation that was being proposed. Mr. Speegle clarified the investigation that was conducted by Speegle, Hoffman, Holman & Holifield LLC.

A conversation transpired relating to different interpretations and legal developments of confidentiality and attorney/client privilege.

Mr. Mayhand commented on the scope and confinement of another independent investigation; Questions as to the time required for the investigation and fee were also discussed.

Mayor Haygood clarified his request involving the scope and intent of his proposal to have an additional independent investigation that would be above reproach and also help provide an additional and third of view that could aid in deciphering between the two differing versions that exist between the Mobile Baykeepers report and the Speegle Hoffman report.

Mr. Speegle advised to the Board to recess to Executive Session before making a Motion to discuss the legal ramifications of this option being considered.

Chairman Fry thanked Mr. O'Hara for his comments and presentation. He expounded on the various allegations, potential future employee grievances and the investigation previously presented to the Board. He suggested to put out an RFP, if another investigation is going to be conducted, and to delay until the regular Utilities Board meeting at the end of the month.

Councilman LeJuene requested that public participation be allowed prior to any motion for convening into executive session.

VII. PUBLIC PARTICIPATION - Chairman Fry opened the floor for Public Participation at 6:36

Mr. Rick Fine, 310 Bayhill Drive, Daphne – gave compliments to Danny Lyndall for his report. Mr. Fine advised that he has had big problems at his house for a long time without any resolution. He noted that he is on the water quite often as a kayaker. He gave his opinion regarding the Baykeeper allegations and suggested an independent investigation conducted by someone not in Daphne to investigate the Baykeepers allegations and have it reported to the public; afterward, an independent company needs to come in and make recommendations to the Daphne Utilities system. He expressed that the Mayor lead the community with recognizing the issues and find a solution to pay for it.

Don Ouellette – 7720 Elizabeth Drive, Daphne – noted that he had a lot of concerns when he came to the meeting but Mr. Lyndall's presentation answered a lot of questions. He believed the biggest problem seems to be communication. He stated that nobody seems to know what is going on and it would be beneficial to have a billboard to communicate with the public. He noted that if this presentation had been presented after the issues were broadcast, he didn't think there would have been this much of a problem.

Taylor Norton – 5 St. Charles Place, Daphne – thanked Mr. Lyndall for the presentation. He asked questions about the presentation, specifically when ADEM last approved and inspected. He inquired about the lightning strikes and discrepancy of the amounts of the spill and asked what the definition of "significant" meant in relation to an amount of spill.

Mayor Haygood recommended the public questions be answered at the meeting instead of being answered one-on-one at a later time. Mr. Lyndall answered Mr. Norton's questions.

Pauline Ouellette – Madison Place, Daphne – asked why the low areas are being allowed to be developed to begin with. She also noted that home-buyers should be given Daphne regulations, environmental rules as well as Daphne Utilities' rules. She also asked if Daphne Utilities has any involvement with the Planning Commission or the planning process.

Chairman Fry and Mrs. Willett had some back and forth dialog.

Mayor Haygood attempted to address some of Mrs. Willett's concerns. The discussion including providing an overview the fact that Daphne Utilities is a separate public corporation from the City of Daphne, with separate financials and separate management. The that the Daphne City Council appoints the Daphne Utilities board members in accordance with Alabama law. Regarding the planning concerns, the Mayor Haygood indicated that all subdivisions requests to the city require signoff by all utilities that will serve any proposed subdivision in Daphne, including Daphne utilities. So coordination does happen and any development must meet both the City of Daphne standards that are set forth in the Land Use Development Ordinance as well as

compliance with the Development Requirements set forth by each utility provider .

Mr. Rick Fine – voiced an additional suggestion to have added ADEM water testing sites similar to MayDay Park.

Lori Wilson – employee with Daphne Utilities not only expressed gratitude to be an employee of Daphne Utilities but also proud support for Mr. Danny Lyndall and the leadership he has displayed as General Manager.

The Chairman closed Public Participation at 6:46pm.

VIII. Board Comments –

Mr. Mayhand addressed the Daphne Utilities employees attending that when the Board recesses into Executive Session that the employees are put first and to be patient.

Mayor Haygood inquired to legal about the status of providing the statements of employees, both signed and unsigned, that were referenced as part of the report of investigation by Speegle and Hoffman as they were not included with the report and had not been provided to the board to this point. Mr. Speegle noted that course of action has some consequences in litigation and would discuss with the Board in Executive Session.

Mayor Haygood commented on the notification of meetings.. He indicated that the January meeting had 40-50 members of the public in attendance and that felt the heavy attendance was the concern from the public attending the meeting to hear explanations and the plans from Daphne Utilities in addressing the concerns they heard in the Mobile Baykeeper report. Unfortunately, that meeting did not provide many answers. Tonight's presentation did a great job in addressing those concerns and re-assuring the public but unfortunately tonight's special called meeting was lightly attended. The Mayor indicated he did not see any notices on Facebook or via other social media to alert the public of tonight's meeting. He felt if those 40-50 attendees from the last meeting were present tonight, they would have had a lot of their concerns addressed. He requested that tonight's presentation be put on the Daphne Utilities website and via social media to enable the public to understand the actions being undertaken by Daphne Utilities. He also spoke about an earlier email he sent regarding Strategy and public relations and the fact that the board had not been involved in many key decisions regarding strategy and his concerns over the impact on public relations of Daphne Utilities. He indicated he felt the all parties were making an effort and things were improving. He indicated his appreciation for all the efforts that have been made thus far.

Discussion ensued on convening into Executive Session. Mayor Haygood indicated that he would be happy to make a motion regarding hiring O'Hara Watkins if that was needed since it has been indicated that the Executive Session discussions are predicated on the consideration of such a motion. Mr. Speegle indicated that it did not matter whether or not there was a motion on the floor prior to considering executive session but that he would make his certification.

Mr. Speegle certified that the options being considered and the legal ramifications for the pending litigation, controversies not yet litigated but imminently likely to be litigated, or imminently likely to be litigated if the governmental body pursues a proposed course of action would be the topics of the executive session.

Chairman Fry asked if executive session was necessary to which Mr. Speegle responded that, yes, he felt it would be necessary before a vote on the hiring a firm for and independent investigation. Mayor Haygood indicated we would attempt to make a motion to handle both requests:

MOTION by Mayor Haygood that we obtain independent legal counsel with O'Hara Watkins LLC to conduct the investigation as discussed and to go into Executive Session prior to a vote on that to discuss any potential legal ramification as so certified by the Utilities' attorney; Seconded by Robin LeJeune.

AYE:

NAY:

ABSENT:

ABSTAIN:

Mr. Speegle then indicated all he requested was for a vote to go into executive session. Discussion ensued with an offer to amend the motion by Mayor Haygood to separate the actions into separate motions. Mayor Haygood indicated that the motion on the floor provided allowed the board to enter executive session while allowing the public to fully understand the reason for entering executive session. Mr. Speegle indicated he preferred to only have a motion to enter executive session. To accommodate, Mayor Haygood and Mr. LeJeune indicated they would withdraw the motion on the floor.

The Second was withdrawn.

The Motion was Amended to remove the adjourn to Executive Session.

The Motion was then withdrawn.

XII. Executive Session

MOTION by Mayor Haygood to adjourn into Executive Session as so certified by legal counsel for approximately 15 minutes; Seconded by Robin LeJeune.

AYE: Fry, Mayhand, Vaughn, LeJeune, Haygood, NAY:

ABSENT:

ABSTAIN:

MOTION CARRIED

Adjourn to Executive Session at 6:53pm.

The Chairman reconvened the meeting at 7:21.

MOTION by Mayor Haygood to retain O'Hara Watkins LLC as an independent legal counsel to conduct a study not to exceed 100 hours at the same bill rate as our current legal counsel; Seconded by Billy Mayhand.

AYE:

NAY:

ABSENT:

ABSTAIN

A discussion followed; Mayor Haygood commented regarding the two conflicting reports, noting that Utilities employees are exhausted with the process but feels he has obligations as a Board member to the Utility in seeking the truth with no further delay.

Chairman Fry conveyed that he was not opposed to have an additional investigation but doesn't feel the need to push it through in a rush tonight in spending an additional substantial amount of clients and taxpayers money. He noted he also reviewed the investigation from Mr. Hoffman and is comfortable that he has conducted a thorough and is independent as possible investigation, but open to re-addressing the issue through the process of putting out an RFP.

Mayor Haygood mentioned his conversations he had tonight with employees of Daphne Utilities. who are ready to have these issues behind them and putting out an RFP delaying is of no benefit. He stated this special-called meeting was to give more time to review and suggested another special-called meeting next week, if needed, in order to act on it.

MOTION by Mayor Haygood to retain O'Hara Watkins LLC as an independent legal counsel to conduct a study not to exceed 100 hours at the same bill rate as our current legal counsel; Seconded by Billy Mayhand.

AYE: Haygood, LeJeune

NAY: Fry, Mayhand, Vaughn

ABSENT:

ABSTAIN:

MOTION FAILED

XIII. Adjournment

MOTION by Robin LeJeune to adjourn; Seconded by Billy Mayhand.

The meeting adjourned at 7:26 pm.

Preceding minutes to the Daphne Utilities Board by: