

AGENDA ITEM 3-b

MINUTES OF A SPECIAL MEETING OF THE NEW SMYRNA BEACH UTILITIES, CITY OF NEW SMYRNA BEACH, FLORIDA, HELD MONDAY, FEBRUARY 27, 2023, AT 2:30 P.M., AT 200 CANAL STREET, NEW SMYRNA BEACH, FLORIDA

Chairman Davenport called this Special Meeting of the New Smyrna Beach Utilities on February 27, 2023 to order, adding this was regarding our General Manager, pay raise and so forth.

Roll Call:

Chairman Davenport then requested Mrs. Simmons to call the roll please.

A roll call was taken, all NSBU Commissioners were in attendance as follows:

Chairman James Davenport
Commissioner Richard Hawes
Commissioner Lawrence Kelly, Jr.
Commissioner James Smith
Commissioner Lillian Conrad

Others in attendance at the beginning of the meeting were as follows: J. Bunch, General Manager/CEO; E. Chavez, Vice President/CFO; M. Spellers, Sr. Help Desk Technician; L. Green, Help Desk Technician; H. Carrizales, Sr. Mgr. H.R./Support Services; D. Simmons, Exec. Mgr./ Recording Secretary; and General Counsel Thomas Cloud, Esquire – Gray|Robinson Attorneys at Law. There were no members of the public in attendance on site.

Chairman Davenport then commented everybody's here.

(1) General Manager/CEO Merit Reward Determination:

(1-a) Opening Comments – Vice President & CFO:

Chairman Davenport then stated all right, item number one on the agenda, General Manager/CEO Merit Reward Determination for Fiscal Year 2022 Performance. Number a., opening comments by our Vice President & CFO, Efren Chavez.

Mr. Chavez stated okay, thank you, how is everybody. Okay, so what we wanted to do was have a discussion around our CEO's performance as well as what the recommendation, the recommended increase would be for this year. So at this measure, at this point we probably would ask Mr. Bunch if he wanted to, we'll come back and get you in a few minutes.

Mr. Bunch stated would you like to call me?

Chairman Davenport added we'll excuse you.

Mr. Chavez stated yes, we'll call you.

Mr. Bunch stated okay.

(1) General Manager/CEO Merit Reward Determination (cont.):

(1-b) General Manager/CEO Excused from Meeting:

After confirming roll call had been completed, Mr. Bunch left the meeting room.

(1-c) NSBU Commissioner Discuss RE: Performance and Potential Merit Reward:

i. Annual Performance Review Process Contractually Required

Chairman Davenport stated all right, Mr. Chavez.

Mr. Chavez stated okay, so what we wanted to do first was have a discussion similar to what we did last year. Adding Mrs. Simmons will chime in if I miss anything, but just around Mr. Bunch's performance and such for the year. Then what we could do is wrap it up with a conversation around the salary or the merit increase. One thing, Mr. Cloud and I talked this morning and what we were thinking as well would be in subsequent evaluation periods what we would do is instead of having a discussion on where we should give the CEO an increase, we would make it, assuming that his performance would deserve it, that his merit would be the average of what the employees are receiving. Of course that's always under the basis that his performance justifies it, that we're still on track overall. So Mr. Cloud anything else to add on that.

Mr. Cloud stated well if, the contract, just so you know what the contractual basis says, that there will be an annual review. And then it lists a couple of things, you can look at merit, cost of living, but it gives you a significant amount of flexibility to do what you want to do. And I know Mr. Bunch can speak to this, I think he believes there's some value in meeting annually because he can get feedback on the overall organization. But if you want to implement what Mr. Chavez has suggested, which I think is completely legitimate because of his, just his overall, Mr. Bunch's overall performance is superlative and we're lucky to have someone with his experience and ability. Is it you do a motion to approve an annual salary increase for the CEO equal to the annual increase to the remaining NSBU employees. And that would be the wording that I would suggest. I thought about if, you know if nobody wanted to do the annual thing you could just provide some kind of process to short circuit it, but Mr. Bunch believes it's important. I suspect you all feel the same way and so you don't have to mess with that, you can just leave the contract alone and just pass a motion to approve an annual salary increase for the CEO equal to the annual increase to the remaining employees.

Mr. Chavez stated and this way then its you know based on of course the overall performance but then it's tied to what our employees are so this way then our CEO's compensation increases inline with the average of all the employees.

Chairman Davenport stated what if we don't have a...

Mr. Cloud simultaneously stated so you're saying, directed to Mr. Chavez. Then stated pardon me for the interruption to Chairman Davenport, I did not say that, but I want to make sure. So there are different increase percentages?

(1) General Manager/CEO Merit Reward Determination:

(1-c) NSBU Commissioner Discuss RE: Performance and Potential Merit Reward (cont.):

Mr. Chavez stated well its not different increases, we would come up with an overall, the overall of all the employees.

Mr. Cloud stated so the motion would, instead of saying the annual increase to the remaining employees, it would be the annual average increase to the remaining NSBU employees.

Mr. Chavez interjected bingo.

Mr. Cloud continued, forgive my interruption but I just wanted to make sure I didn't misstate it.

Mr. Chavez stated no, that's a good point.

Chairman Davenport stated I, what if we're not so fortunate to have a Mr. Bunch.

Commissioner Kelly stated I was just going to go there.

Chairman Davenport continued, and what if his performance is not as such and he reads that in. I personally like it the way it's been and if we can't spend 30 minutes or 45 minutes on discussing an issue, we all know what we're going to do. I mean we don't know what all of us are going to do here obviously, but I certainly don't like the fact of making it okay, 4% a year, 3%, whatever everybody else gets, because this is an entirely different level, that's just my opinion.

Mr. Cloud stated and that was exactly what I said to him this morning. And his response was classic Joe Bunch, and it was you know I really don't feel comfortable getting more. I'm very well paid, that's what he said, and I feel better about moving forward with the organization with this. And he and I both agreed that if something happened, the board would always have the ability to fix it, if things got out of kilter. But that's what he told me Chairman, this is actually, this is his idea.

Commissioner Kelly stated right, and Mr. Chairman too if I can, and Mr. Chavez, it's like going at that level, when you're paying executive pay right, percentages grow into larger numbers.

Mr. Chavez yes, they do.

Commissioner Kelly continued, and that's probably where Mr. Bunch probably feels that uncomfortableness, you know.

Mr. Chavez stated yes.

Commissioner Kelly stated we know what people working with us are making, so a 3% to them is a little bit, but 3% on, you know...

(1) General Manager/CEO Merit Reward Determination:

(1-c) NSBU Commissioner Discuss RE: Performance and Potential Merit Reward (cont.):

Mr. Chavez interjected that's it exactly.

Commissioner Kelly continued, it's a bigger jump, even though it's the same percentage exponentially, dollar-wise its rate is much more. But more important, but I would like to have a standard, almost to Chairman Davenport's point if we don't have a Joe Bunch.

Mr. Chavez stated yes, and then it would be different, and I think subsequent to that the way to, well I guess let's address the first point. So to your, I think the, its in the spirit of hey, I don't because 4% or even 3% or whatever it may be on his salary is a substantial number compared to 3% on a much lower one, to your point.

Commissioner Kelly stated right.

Mr. Chavez stated I think what he wanted to do was, and it made sense from a conservative, we don't want to get out of kilter. I mean you know executive compensation in the private world becomes a very hot topic because the CEOs of major corporations make substantially more proportional to somebody on the line or a manufacturing line. So I think this is what, it was two-fold, to stay inline with what the rank and file is receiving, yes, 3% would be higher, or 4% would be higher on his salary, but its not like we're recommending 7%, 8%, 9%, 10%. But to the Chairman Davenport's point we know that Mr. Bunch is preferring not to have this, you know have this discussion around the pay but if the Chairman would want to keep it this way we can.

Chairman Davenport stated I'd like to see it stay the way it is now just because of what was said here. A former Commissioner, our Commissioner here, Larry Kelly, and just get on with the other part of let's talk about where we feel about where he is as of today and what has he done and then we can address this. I think annually it should be addressed and we all have our time to sit and think and fill out our questionnaire and look at who's done what and how they're doing it. And we know he's, we couldn't find a better person I don't think than what we've got right now.

Mr. Chavez stated I think what we can do based on that, Mr. Cloud you and I can take it offline and have a discussion or what would you...

Mr. Cloud stated well, first of all when I heard you discussing this my initial reaction was, we're not setting a precedent, either for Mr. Bunch or for future CEO's, because this is purely in the context of his contract.

Commissioner Kelly stated okay, because he's a contractor.

Mr. Cloud stated and if you set this at this number today, it's still's subject to annual review every year, because the contract doesn't change.

Mr. Chavez stated of course.

(1) General Manager/CEO Merit Reward Determination:

(1-c) NSBU Commissioner Discuss RE: Performance and Potential Merit Reward (cont.):

Commissioner Kelly stated okay.

Mr. Chavez stated the performance is still evaluated every year.

Commissioner Kelly stated right.

Commissioner Hawes stated I guess maybe I have a slightly different look at it. I think its exactly the right thing to do and part of the reason for that is it gives us a guideline.

Commissioner Kelly stated correct, yes.

Commissioner Hawes stated and we could argue that is too high, too low or too something else. We then can alter that if we chose to from what I would understand.

Mr. Cloud stated that is correct, up or down.

Commissioner Hawes stated yes, up or down, and I think the other piece of this is we're not a public company where everybody's disclosed in the proxy, but we are a public entity.

Mr. Chavez commented oh yes.

Commissioner Hawes continued, and so I think it's really important that we stay, sort of for lack of a better word within justifiable bounds not just with the outside but also on the for lack of better word sort of on the inside. And so I think, I think that's what I see and in just kind of hearing you Mr. Cloud describe that through Mr. Bunch's words, that's kind of what comes through to me. So I, I don't remember the exact motion, but I would like to make that motion because I feel that that's the right thing to do with the understanding that we have the right Chairman, to go in look at this and decide whatever we want to decide.

Mr. Cloud stated well, he and I believe you would expect to continue to have this annual review as a meeting set up exactly the same way with a discussion regardless of what decision you ultimately make, there's a default position you can go to if it's a typically good year, which is the average annual percent increase to the remaining employees. But if the Commission feels he's done a better job, you're still free to give him a higher amount. The only thing you're doing today is really you're setting a base for the increase, that's all you're doing.

Chairman Davenport stated okay.

Mr. Cloud added and it's at a base that you can ignore every year.

Commissioner Kelly stated and Chairman I wanted to clarify too I think its good and legally, structurally sound to have that base, so that you know you always hear that board members paying CEO's and what did you base that off of, well they based it off of what the board thought at the end of the day.

(1) General Manager/CEO Merit Reward Determination:

(1-c) NSBU Commissioner Discuss RE: Performance and Potential Merit Reward (cont.):

Mr. Chavez stated no, you're right.

Commissioner Kelly stated to go out and get a Joe Bunch out on the street today, I think it would be surprising what, if you could find one, what that would cost you. So I do think, and that way Mr. Bunch can feel good about what he's doing too, and with his nature.

Chairman Davenport stated so, we need a motion...

Commissioner Conrad stated I'll second.

Chairman Davenport stated excuse me.

Commissioner Kelly stated yes, I'll second, then yes, she did.

Chairman Davenport stated oh, we've got a motion, we got a second, okay.

Mr. Cloud stated do you want me to re-read the motion.

Chairman Davenport stated I think we've all got it.

Mr. Cloud stated okay.

Mr. Chavez stated now I guess the only thing is do you need time to draft it and we ratify it next time.

Mr. Cloud stated no, I've drafted it right here.

Chairman Davenport stated why don't you read it again there, Mr. Cloud please.

Mr. Cloud stated okay, motion to approve an annual salary increase for the CEO, equal to the annual average increase for the remaining NSBU employees.

Chairman Davenport stated simple.

Commissioner Hawes stated and I do, before we do vote...

Mr. Chavez interjected including, oh, Mr. Cloud, including non-union.

Mr. Cloud stated it's all remaining NSBU employees.

Mr. Chavez stated okay, then we're good.

Commissioner Hawes stated and I want to thank you, and I'm not sure who all put this together, but I really appreciate and I'm sure the rest of the board does as well, because this is

(1) General Manager/CEO Merit Reward Determination:

(1-c) NSBU Commissioner Discuss RE: Performance and Potential Merit Reward (cont.):

always a tough thing. You want to do the right thing you want to make sure its justified and this is very helpful.

Mr. Chavez stated yes, it does, because it does allow the latitude for the board, for the Commissioners to go up or down, I mean it works both ways. So I thought for the next portion of this if we could go through just a quick summary since we only have fifteen minutes, to go through his performance Commissioner by Commissioner. And then we can talk about the recommended percentages if that's acceptable to you.

Chairman Davenport stated yes, that's what we want to do.

Commissioner Conrad stated could we have a roll call on the final, on this motion.

Mr. Chavez stated yes, do the final vote on this.

Chairman Davenport stated yes, what we want to do here, what we want to do is do just what Commissioner Conrad said, we want to have this vote.

Mr. Chavez stated okay.

Chairman Davenport stated and then we'll proceed with each Commissioner speaking up, giving pros and cons and then move forward.

Mr. Chavez stated sounds good, okay.

Chairman Davenport then asked any more discussion.

Commissioner Kelly stated no.

Chairman Davenport then requested Mrs. Simmons to call the roll please.

Commissioner Hawes motion, as re-stated by Mr. Cloud, to approve an annual salary increase for the GM-CEO, equal to the annual average increase for the remaining NSBU employees; and seconded by Commissioner Conrad. This motion then passed on a roll call vote with a majority of the Commissioners voting yes, Commissioner Smith voted no.

Chairman Davenport stated okay, that being said let's go to what Mr. Chavez was just going over there, performance, potential. Let's talk about his reviews and who would like to start out with that, speaking about pros and any cons you might see with Mr. Bunch. Do you want to start with us, Commissioner Conrad please.

Commissioner Conrad stated yes, I will I'm being vocal today.

Chairman Davenport stated thank you, good, we need a female being vocal.

(1) General Manager/CEO Merit Reward Determination:

(1-c) NSBU Commissioner Discuss RE: Performance and Potential Merit Reward (cont.):

Commissioner Conrad stated having read thoroughly his comments, there's not much more to say. An immense amount has been achieved. I don't know what more I could say than he says about the completion of the work, it stands on its own. And I believe everything that Mr. Bunch has said in his self-evaluation is probably under-stated to some extent. But overall I don't know what more needs to be said.

Mr. Chavez stated okay.

Commissioner Conrad continued, so I think he's the right person, I'm glad he's here, I'm glad he wants to stay here, and I think that's all I need to say about it.

Mr. Chavez stated okay, thank you. Who's up?

Commissioner Kelly stated I would agree with you on that, and I do think you know integrity in this job and in this field, and where Mr. Chavez is at, I mean we are board members but we're not deep diving everyday into every bit of business. And being on a couple of boards outside of here, just seeing it not run as smoothly. So I do think his team warrants this and he's done this. I do, to Commissioners' point caution about just being a, and its in the reading, happen every year, its just an annual thing and it clicks. I don't want any of us to be on the page of oh, well we like this guy Joe Bunch, we're just going to do what we want, we're the board members. And technically you can to a certain extent, but I think it's a good plan, it has a base, it has a structure to it. So we, at the end of the day if somebody came out accusation-ally we can structure it and say this is what we do across the board and we're compliant in that aspect. So, I mean I just think the whole team and Joe Bunch is, the integrity oozes from it and for those of us who have been here a long time, not saying people didn't have integrity before but the operation was very old Florida-ish in my mind, you know how things operated; there wasn't accountability, so.

Chairman Davenport commented very old.

Commissioner Hawes stated I think from my standpoint, and I don't know that this is necessarily a comment on Mr. Bunch's performance in 2021, but just kind of looking over the last few years and seeing what's happened. The thing that I see that's probably the most impressive are a couple of things. One is Joe Bunch has a unique ability in my mind to get the right kind of talent here, and they follow a, I don't want to say you are kind of imprinted out of the same mindset, but it seems like often times people often see things in a very practical and realistic manner; that's a very big thing. Another piece of this Mr. Chavez and I know you've been very involved even though this is Mr. Bunch's review, but what was presented at the last board meeting with all of the red and green, whatever the heck you call it.

Mr. Chavez stated oh, the key performance indicators.

Commissioner Hawes stated the KPI's, yes, key performance indicators, that's the kind of thing that means a tremendous amount to all of us because we can kind of see what's going on relatively quickly. I just have to give him, you and frankly everybody else credit for this and

(1) General Manager/CEO Merit Reward Determination:

(1-c) NSBU Commissioner Discuss RE: Performance and Potential Merit Reward (cont.):

that stems right from Mr. Bunch all the way through. So that's huge to me and as Commissioner Kelly said, that's a piece of integrity to this and it helps me and I'm sure it helps the rest of us feel confident about what we have going on here.

Mr. Chavez stated thank you.

Chairman Davenport then stated Commissioner Smith.

Commissioner Smith stated well, I just want to comment on the very old Florida way, I would prefer that over the very old New Jersey way.

Commissioner Kelly stated that's correct, I will agree with you there.

Mr. Chavez stated that is a very good comment.

Commissioner Smith stated as far as Mr. Bunch is concerned, I think he's done a great job. He has set an excellent example for his employees. I think that's what leadership is all about, is by example, and I think he's done an excellent job.

Chairman Davenport stated okay, you know you mentioned the word there, integrity, and you sit back, and you look, and I see the transparency that's been put up before all of us here, that I've questioned that in the past. And I questioned the right reasons and when things came out there wasn't transparency and that was very disturbing to me.

Mr. Chavez stated yes.

Chairman Davenport continued but I undoubtedly, unequivocally feel so comfortable with Mr. Bunch and you Mr. Chavez, that like I said we have a lot of people we answer to and we don't want any misconception.

Mr. Chavez stated exactly.

Chairman Davenport stated and we want it to be done the right way, and the right way is the way we're doing it. So I'm very proud of that for all of us by the way. So that being said, we highly, I highly, we all do, recommend an increase so if we could maybe just go ahead and jump to that matter since we agree that he deserves one.

Mr. Chavez stated okay.

Chairman Davenport continued, and now figure that part out and then we can move on to the next meeting. So you're going to be doing a lot of talking as you said today, maybe our accountant could maybe start this out here, Commissioner Conrad.

(1) General Manager/CEO Merit Reward Determination:

(1-c) NSBU Commissioner Discuss RE: Performance and Potential Merit Reward (cont.):

Mr. Chavez stated well I guess, let me, what I'll do is I'll give you the information. So based on the average of the NSBU employees, other than the CEO, the average increase was slightly over 4%, so what we did was 4% which makes, that's what the current recommendation is, so.

Commissioner Conrad stated well then in my opinion I believe that's where we need to be because we don't want it higher or lower.

Mr. Chavez stated exactly.

Commissioner Conrad continued, if we want it to be the same as everybody's getting, that's what we pretty much voted on.

Mr. Chavez stated yes.

Chairman Davenport stated so you're saying higher than the 4% or ?

Commissioner Conrad stated no, I'm saying at the 4%.

Chairman Davenport stated at the 4% okay. Okay, so there you go, Commissioner Kelly.

Commissioner Kelly stated I agree with that and I do want to make sure and being new to the board that it goes back to that discussion is that you know when I first got on it, I was like hey, this is a serious board, this isn't Parks and Recreation, we're managing millions of dollars. And we're lay people with skills in that area that are demanded, so it was pleasing to me that meeting you (Mr. Chavez) and Mr. Bunch and having that integrity going forward in that. So I don't want to sound in any way that I'm detracting from the job that anybody's doing, but 4% I'm absolutely fine.

Chairman Davenport stated good, Commissioner Smith.

Commissioner Smith stated what is the current inflation rate.

Commissioner Hawes stated about 7%.

Commissioner Kelly stated almost, yes.

Mr. Cloud stated yes, I think its 6.9%.

Commissioner Smith stated that's my comment.

Mr. Chavez stated but, we've had a similar discussion as it relates to all of our employees.

Commissioner Conrad stated exactly.

Commissioner Kelly stated that's where the, yes.

(1) General Manager/CEO Merit Reward Determination:

(1-c) NSBU Commissioner Discuss RE: Performance and Potential Merit Reward (cont.):

Mr. Chavez stated we as, and Ms. Carrizales can weigh in this more, is that we compared to our peers our overall compensation package for every employee is pretty good. So you know this is where the average is 4% so despite the inflation because let's face it, there's been ten plus, I couldn't tell you how many years that inflation barely scratched 2.5%.

Commissioner Kelly stated right.

Mr. Chavez continued, it's only within the last COVID, post-COVID maybe that it's hit, you know to these astronomical or higher, much higher inflation.

Chairman Davenport stated okay.

Commissioner Hawes stated I'm in agreement with everybody.

Chairman Davenport stated you want that for the record.

Commissioner Hawes stated yes, that's just an agreement.

Chairman Davenport stated he's agreeing with everybody else. Well, based on that Vice Chairman, I'm in agreement with you and everybody else. So based on that if I can get a motion for that 4% and the salary range would be...

Mr. Chavez stated so 4% would bring him to \$286,000.

Chairman Davenport reiterated \$286,000.

Commissioner Kelly stated I'll make a motion to increase 4%. Specifically approve a 4% merit reward for GM-CEO Joseph Bunch's FY2022 job performance, equating to an \$11,000 salary increase or \$286,000 annual salary, implementation to coincide with NSBU's exempt employees – retroactively to the first pay period to include February 1, 2023.

Commissioners Hawes and Conrad simultaneously stated second.

Chairman Davenport stated okay, we've got a motion on the floor and we've got a second by Commissioner Hawes. Any more discussion. Okay, Mrs. Simmons call the roll please.

Commissioner Kelly's prior motion then passed unanimously on a roll call vote.

Mr. Chavez stated the only other question, Mrs. Simmons did we miss anything, we've gotten everything.

Chairman Davenport stated we've got everything except Mr. Bunch back in the room, I think.

Mr. Chavez stated we'll, I will go grab him.

(2) Conclusion of Special Meeting:

*(*Final Public Hearing and Regular NSBU Meeting Commences at 3:00 P.M.)*

Commissioner Conrad then stated do we adjourn this meeting.

Chairman Davenport stated we're going to adjourn this meeting. Are we going to adjourn it now or when he gets back in here.

Mr. Chavez stated yes, what's the protocol.

Mr. Cloud stated whatever your pleasure is.

Chairman Davenport stated right now, I adjourn this meeting.

There being no further business to come before the Commission, the Special NSBU Meeting closed at 2:55 p.m.

{NOTE – Effective at the U.C.'s 3-22-21 Regular U.C. Meeting, commencing with the minutes for Two Final Public Hearings and Regular U.C. Meeting Held 2-22-21, the Commission will start approving annotated minutes within the agenda package. These detailed, near verbatim minutes will still be prepared for reference, electronic searches, and will additionally be posted on the U.C.'s website – ucnsb.org.}