

Approved Minutes
Pacifica National Board Special Call-In Meeting
Open/Public Session,
Thursday December 14, 2017 – 8:45 PM ET

Audio of the meeting are archived at:
<https://kpftx.org/archives/pnb/pnb171214/pnb171214a.mp3>
<https://kpftx.org/archives/pnb/pnb171214/pnb171214b.mp3>

1. Open/Public Session Call to Order.

Chair Jonathan Alexander called the meeting to order.
Secretary Akio Tanaka called the roll.

A. Roll call

Present: Grace Aaron, Jonathan Alexander, *David Beaton, Jim Brown, Adriana Casenave, Bill Crosier, *Kathryn Davis, Benito Diaz, Jan Goodman, *Sabrina Jacobs, Ken Laufer, Robert Mark, Cerene Roberts, Mansoor Sabbagh, TM Scruggs, *Nancy Sorden, *Alex Steinberg, Akio Tanaka, *Themba Tshibanda, *Andrea Turner, Maskeelah Washington

Absent: Rhonda Garner

[Present: 21]

Arrived after the Roll Call

B. Identify Timekeepers – Mansoor Sabbagh, Akio Tanaka

C. Excused Absences

Point of Order by Adriana Casenave

To ask the Chair to stop the violation of the Pacifica Foundation Bylaws and the California Corporations Code by using a telephonic system of communication that prevents to comply with:

Article Six, Meetings of the Board of Directors, Section 3: Telephonic Meetings

[Amended December 14, 2015]

The Board may hold regular and special meetings by telephone conference, video screen communication or other communications equipment, provided, however, that telephone appearance at meetings scheduled as "in-person" meetings is not permitted. Participation in a telephonic meeting under this Section shall constitute presence at the meeting if all of the following apply:

A. Each Director participating in the meeting can communicate concurrently with all other Directors.

B. Each Director is provided the means of participating in all matters for the Board, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the Foundation.

C. The Board has a means of verifying that the person participating at the meeting is a Director and that all votes cast during said meeting are cast only by Directors.

CORPORATIONS CODE - CORP

TITLE 1. CORPORATIONS [100 - 14631] (Title 1 enacted by Stats. 1947, Ch. 1038.)

DIVISION 2. NONPROFIT CORPORATION LAW [5000 - 10841] (Heading of Division 2 amended by Stats. 1978, Ch. 567.)

PART 2. NONPROFIT PUBLIC BENEFIT CORPORATIONS [5110 - 6910] (Part 2 added by Stats. 1978, Ch. 567.)

CHAPTER 2. Directors and Management [5210 - 5260] (Chapter 2 added by Stats. 1978, Ch. 567.)

ARTICLE 1. General Provisions [5210 - 5215] (Article 1 added by Stats. 1978, Ch. 567.) 5211.

(a)Unless otherwise provided in the articles or in the bylaws, all of the following apply: ...6) Directors may participate in a meeting through use of conference telephone, electronic video screen communication or electronic transmission by and to the corporation (Sections 20 and 21). Participation in a meeting through use of conference telephone or electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting as long as all directors participating in the meeting are able to hear one another. Participation in a meeting through use of electronic transmission by and to the corporation, other than conference telephone and electronic video screen communication, pursuant to this subdivision constitutes presence in person at that meeting if both of the following apply: (A) Each director participating in the meeting

can communicate with all of the other directors concurrently. (B) Each director is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation."

That is why I am asking the chair to stop immediately this illegal telephonic system of communication that violates the rights of Directors to communicate concurrently with all other Directors, propose, or to interpose an objection to any action to be taken by the Foundation.

Action Taken:

Adriana Casenave requested to put the Point of Order in the Minutes.

The Point of Order has been voted on in many previous meetings where the Chair's ruling against the Point of Order was sustained; however, Chair directed Secretary to include the Point Of Order to the Minutes.

--

Point of Order on Contempt Of Court by Benito Diaz

Today, 12/14/17 is the 7th consecutive time that Sharon Brown has not been included in the roll call, whereas Mansoor Sabbagh continues to be included in the roll call as a member of this PNB. As we all know, on 10/26/17, a court in California ruled that Sharon Brown is to be returned as a member of her Los Angeles LSB, and as a member of this PNB; and that Mansoor Sabbagh is to be taken off this PNB and Ismael Parra taken off the KPFK LSB.

The PNB is hereby ordered by the court. If this PNB doesn't want to be held in contempt of court, it would be wise to reseal Sharon Brown and unseat Mansoor Sabbagh. Accordingly, Mansoor's name is to be taken off of the roll and substituted with that of Sharon.

I know that our IED, Mr. Crosier, and a Pacifica lawyer, Mr. Greene, decided to appeal the court's decision. However, let me make clear to those who don't already know it that in the 2011 Bernstein case, the court ruled that an appeal doesn't stay the execution of a court order. Several of the members of this current PNB were also on the PNB at that time and are well aware of this court ruling. The rest of you can follow their lead if you want to, but you do so at your own risk.

Furthermore, let me also remind this PNB that Mr. Crosier and Mr. Greene had no authority to file this appeal since the PNB wasn't even made aware that they wanted to take such action; much less did we vote to approve it.

In addition, Article 11, Sections 1, 2 and 9 of the Pacifica Bylaws make crystal clear that directors will not be indemnified if they willfully violate a court order. I sent you the wording of these 3 Bylaw sections shortly before the 11/2/17 OPEN meeting. Here is the wording again:

Article Eleven, Indemnification of Directors, Officers, Delegates, Employees and Other Agents, Section 1: Non-Liability of Directors, Officers & Delegates

Directors, Officers and Delegates shall not be personally liable for the debts, liabilities, or other obligations of the Foundation and private property of such individuals shall be exempt from Foundation debts or liabilities, subject to the applicable provisions of California's Corporation Code, unless said debts, liabilities or other obligations are the direct result of intentional misconduct by a Director, Officer or Delegate. The personal liability of Directors, Delegates and Officers shall be eliminated to the fullest extent permitted by California law.

Article Eleven, Indemnification of Directors, Officers, Delegates, Employees and Other Agents, Section 2: Definitions: Agents, Proceedings, and Expenses

For the purposes of this Article 11, "agent" means any person who is or was a Director, Officer, Delegate, employee or agent of this Foundation; "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative, or investigative; and "expenses" includes, without limitation, attorneys' fees and any expenses of establishing a right to indemnification under Section 3 or Section 4 of this Article.

Article Eleven, Indemnification of Directors, Officers, Delegates, Employees and Other Agents, Section 9: Limitations

No indemnification shall be made hereunder, except as provided in Section 5 and Section 6(B) of this Article, or as otherwise required by law, in any circumstance where it appears: A. That it would be inconsistent with a provision of the Articles of Incorporation, the Bylaws, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid which prohibits or otherwise limits indemnification; or B. That it would be inconsistent with any condition expressly imposed by a court in approving a settlement."

B. That it would be inconsistent with any condition expressly imposed by a court in approving a settlement."

Therefore, unless you want to be held in contempt of court, and/or risk jail time, I suggest that this PNB obey the court order. I will furthermore remind the PNB that if there is any doubt as to the accuracy of this Point of Order

they should review what happened to Summer Reese and Carolyn Birden in the case of Dan Siegel a few years ago.

Finally, I request that the Secretary provide Ms. Brown with the appropriate call-in information; that Mansoor be instructed to get off the call and his contact discontinued; and that we recess this meeting while we wait for Sharon to join us on the call.

Action Taken

Chair: ruled that we will continue as we have been doing until the end of the appeal; and that we will not take a vote on his ruling since we have done so several times before and we all know what the result will be.

Benito: challenged the ruling of the chair and requested that his Point Of Order be put into the minutes in its entirety.

Chair: instructed the Secretary to include the Point Of Order in the minutes of the OPEN Session in its entirety; and separately, of the CLOSED Session.

2. Report from Deputy Attorney General - Charitable Trust

3. Agenda Approval

Motion: Move Up Item 10 on Affiliates to After Minutes Approval by Cerene Roberts

Yes: Grace Aaron, Jim Brown, Adriana Casenave, Benito Diaz, Jan Goodman, Robert Mark, Cerene Roberts, Nancy Sorden, Alex Steinberg, Themba Tshibanda, Maskeelah Washington

No: Jonathan Alexander, David Beaton, Bill Crosier, Sabrina Jacobs, Mansoor Sabbagh, TM Scruggs, Akio Tanaka, Andrea Turner,

Abstain: Kathryn Davis, Ken Laufer

[11Y – 8N – 2A: Motion passes]

Agenda Approval as Amended

Yes: Jonathan Alexander, David Beaton, Adriana Casenave, Bill Crosier, Sabrina Jacobs, Cerene Roberts, TM Scruggs, Akio Tanaka, Andrea Turner,

No: Grace Aaron, Jim Brown, Kathryn Davis, Benito Diaz, Jan Goodman, Ken Laufer, Robert Mark, Mansoor Sabbagh, Nancy Sorden, Alex Steinberg, Themba Tshibanda, Maskeelah Washington

[9Y – 12N: Motion fails]

Motion: Time Certain Adjournment of 10:00 PM by Jan Goodman

Motion withdrawn.

Agenda Approval as Amended

Yes: Grace Aaron, Jonathan Alexander, David Beaton, Bill Crosier, Kathryn Davis, Jan Goodman, Sabrina Jacobs, Ken Laufer, Robert Mark, Mansoor Sabbagh, TM Scruggs, Akio Tanaka, Andrea Turner

No: Jim Brown, Adriana Casenave, Benito Diaz, Cerene Roberts, Nancy Sorden, Themba Tshibanda, Maskeelah Washington

[13Y – 7N: Agenda Approved]

3. Minutes Approval 12-07-17

Adriana Casenave requested that her Point of Order regarding "Illegal additions to the meeting's Agenda posted at kpft.org" be added to the Minutes. The Chair directed the Secretary to add it to the Minutes.

Vote on the Minutes as amended:

Yes: Grace Aaron, Jonathan Alexander, David Beaton, Bill Crosier, Kathryn Davis, Jan Goodman, Sabrina Jacobs, Ken Laufer, Robert Mark, Mansoor Sabbagh, TM Scruggs, Alex Steinberg, Akio Tanaka,

No: Jim Brown, Adriana Casenave, Benito Diaz, Cerene Roberts, Nancy Sorden, Themba Tshibanda, Andrea Turner, Maskeelah Washington

[13Y – 8N: Minutes approved]

4: Motion re. 2018 Affiliate Director Interviews & Election by Cerene Roberts

Moved that on Thursday, December 21, 2017, beginning at 8:45pm ET, the PNB will conduct 13-minute interviews with the five (5) candidates for its two (2) 2018 Affiliate Director seats.

Considering that candidates may have holiday-related or other plans, by Saturday, December 9, 2017, the PNB Secretary shall notify all candidates of the date and interview time range of 8:45 to roughly 10pm and offer the candidates a choice of time with preference first to those in the Eastern Time zone and then in order of nomination received.

Candidates shall also be notified that they are to be seated by teleconference along with other 2018 Directors on Thursday, January 25, 2018, at 8:30pm.

A Director from the board majority and one from the board minority are asked to volunteer immediately after this motion to jointly prepare 10 questions of which 2 shall be asked of each candidate at the meeting. Those volunteer Directors will also serve as the questioners at the interview meeting on Dec. 21, 2017.

The Secretary shall distribute ballots by 11:45pm ET on Dec. 28 to be completed and returned to teller and 2nd ballot recipient, Terry Goodman and Joseph Davis, respectively, by 11:45 pm ET on Jan. 4, 2017.

Ballot-opening can be witnessed at KPFT on Sat. Jan. 6, 2017 at a time to be announced.

Approved without objection.

5. Motion to Prepare for Bankruptcy by Sabrina Jacobs and Bill Crosier

Whereas, the posting of the judge's decision in the Empire State Realty Trust lawsuit means that Pacifica ("we") has limited time before ESRT will commence execution of its judgment by levying against Pacifica bank accounts and real property, and

Whereas, on Dec. 14, 2017, ESRT filed a Notice of Entry of Judgment for \$1,839,586 in California, which means that after 30 days from then, the court may order that a writ of execution or other enforcement may issue, and Pacifica's money and property in California could then be taken from us without further notice from the court, and

Whereas, similar action may be taken in New York, the District of Columbia, and Texas without the 30-day waiting period required in California, and

Whereas, we already owe several hundred thousand dollars more to ESRT for attorney's fees and additional unpaid tower lease fees since May, with the amount increasing each month, and

Whereas, we do not have adequate funds for other critical near-term obligations, including employee pensions from the last few years (estimated at \$750K to \$1 million), ESB tower lease payments from now until June 2020 (approx. \$2 million), and

Whereas, we owe an additional \$3-5 million to other creditors, and

Whereas, we do not have adequate cash flow to pay for more than a small amount of the above, and

Whereas, we had hoped to get a forbearance agreement with ESRT, to give us time before they move to seize assets to satisfy the judgment, but we still have no such agreement, and

Whereas, efforts have been made and are still being made to secure a loan to allow payment of the judgement and other near-term financial obligations, for which Pacifica does not have adequate cash flow to pay them, but we have no such loan yet and do not know if or when we might be able to get one and do not know if the loan terms would be acceptable, and

Whereas, it will take significant time to finish the advance preparations needed in case we have to file for chapter 11 bankruptcy to stop collection activities by ESRT, and

Whereas, the December holidays mean that Pacifica staff will not be as readily available to work on this and their regular duties later this month, while further delays in preparing for chapter 11 filing may mean that we might not be ready in time to prevent seizure of assets in some of our areas, therefore be it

Resolved, that the Pacifica National Board (PNB) authorizes IED Bill Crosier and CFO Sam Agarwal to complete advance preparations for filing for Ch. 11 bankruptcy and reorganization, including advance preparations for 7 and 14 day reporting requirements that are due after the actual filing, and be it further

Resolved, that the PNB further authorizes IED Bill Crosier and CFO Sam Agarwal to file for Ch. 11 bankruptcy and reorganization, if seizure of assets appears imminent and there is not enough time to have a PNB meeting to authorize such filing.

Point of Order: Object to Item in Open Session by Nancy Sorden

Chair rules item is in order.

Vote on ruling of the Chair

Yes: Grace Aaron, Jonathan Alexander, David Beaton, Adriana Casenave, Bill Crosier, Kathryn Davis, Sabrina Jacobs, Ken Laufer, Robert Mark, TM Scruggs, Alex Steinberg, Akio Tanaka, Andrea Turner

No: Jim Brown, Benito Diaz, Jan Goodman, Nancy Sorden, Themba Tshibanda, Maskeelah Washington

Abstain: Mansoor Sabbagh

[13Y – 6N -1A: Chair’s ruling upheld]

Motion: Extend time by 10 minutes

Yes: Grace Aaron, Jonathan Alexander, David Beaton, Jim Brown, Bill Crosier, Kathryn Davis, Jan Goodman, Sabrina Jacobs, Ken Laufer, Robert Mark, Mansoor Sabbagh, TM Scruggs, Alex Steinberg, Akio Tanaka, Andrea Turner

No: Benito Diaz, Cerene Roberts, Nancy Sorden, Maskeelah Washington

[15Y – 4N: Motion passes]

Motion: Postpone the Item by Grace Aaron

Yes: Grace Aaron, Jim Brown, Adriana Casenave, Kathryn Davis, Benito Diaz, Ken Laufer, Cerene Roberts, Nancy Sorden, Alex Steinberg, Themba Tshibanda, Maskeelah Washington

No: Jonathan Alexander, David Beaton, Bill Crosier, Jan Goodman, Sabrina Jacobs, Robert Mark, Mansoor Sabbagh, TM Scruggs, Aki Tanaka, Andrea Turner

[11Y – 10N: Motion passes]

5. Bylaws Amendment Discussion and Voting [Not addressed]

6. Adjourn

Motion to Adjourn

Yes: David Beaton, Jim Brown, Adriana Casenave, Benito Diaz, Cerene Roberts, Nancy Sorden, Themba Tshibanda, Maskeelah Washington

No: Grace Aaron, Jonathan Alexander, Bill Crosier, Kathryn Davis, Jan Goodman, Sabrina Jacobs, Ken Laufer, Mansoor Sabbagh, Alex Steinberg, Akio Tanaka, Andrea Turner

Abstain: Robert Mark

[8Y – 11N -1A: Motion fails]

Motion to extend time by 20 min

Yes: Grace Aaron, Jonathan Alexander, Bill Crosier, Kathryn Davis, Jan Goodman, Sabrina Jacobs, Ken Laufer, Robert Mark, Mansoor Sabbagh, Alex Steinberg, Akio Tanaka, Andrea Turner

No: Jim Brown, Adriana Casenave, Benito Diaz, Cerene Roberts, Nancy Sorden, Themba Tshibanda, Maskeelah Washington

[12Y – 7N: Motion fails 2/3]

Meeting is adjourned to closed session at 11:00 PM ET.

Akio Tanaka – 12/17/17
PNB Secretary