

HARBOR BRANCH OCEANOGRAPHIC INSTITUTE

FOUNDATION

Minutes

**Annual Meeting of the Harbor Branch Oceanographic Institute Foundation
Board of Directors
Held at the Harbor Branch Oceanographic Institute at FAU
November 8, 2018**

PRESENT: Michael Brown, Sr., Joe Duke, Dr. Joseph Ferro*; Michael Minton; Mike O'Reilly, Chair; John Papa*; Marjorie Raines, Treasurer; William J. Stewart, Esq., Secretary/Legal Counsel; Michael Toner, Vice Chair

ALSO PRESENT: Debbie Dutton, Director of Operations; Katha Kissman, President & CEO; Cyndi Permenter, Administrative Assistant; Dr. Jim Sullivan, Executive Director, Harbor Branch Oceanographic Institute; Dr. Amy Wright, Harbor Branch Oceanographic Institute.

ABSENT: C. Amos Bussmann

*participated virtually

Call to Order

Chair O'Reilly called the meeting to order at 9:00 am.

Consent Agenda

The consent agenda item of approval of the May 22, 2018 Board Meeting Minutes passed unanimously.

Chair's Comments

Welcome

Chair O'Reilly started with a welcome and thanks to all three staff for a successful Board Reception the night before with HBOI Faculty and Staff. He provided a special thank you to President Kissman for her work to manage the Foundation over a particularly difficult few years. He also provided a warm welcome to the now named Executive Director of the Harbor Branch Oceanographic Institute, Dr. Jim Sullivan.

Litigation Update

Chair O'Reilly asked Bill Stewart to provide an update on the litigation. Mr. Stewart reported that the hearing scheduled for December 6, 2018 was in response to FAU's motion for partial summary judgment. FAU is requesting that the Court make a ruling that FAU has the power under the DSO statute and related DSO regulations to approve the Foundation's budget. If successful on its motion, FAU will argue that it has the concomitant power to direct the Foundation on how to spend its funds (operations and grant making).

Even if FAU prevails on its motion for a partial summary judgment, the case is not over. The issue will still remain as to whether FAU's exercise of budget approval power is reasonable. The Foundation will argue that any attempt to direct funding to FAU, or to use the budget to transfer administrative, legal and accounting functions to FAU, would be an unreasonable exercise of budget approval power.

FAU has failed to provide the Foundation with document discovery and depositions despite our repeated requests for it. FAU will not provide a time frame for which they will do so.

Because of the lack of documents and depositions, the Foundation will be filing a motion to continue the hearing until after sufficient discovery has occurred. If the continuance is granted, the hearing will likely be postponed until sometime next spring.

Board Resolution

Chair O'Reilly asked Bill Stewart to read the following resolution for outgoing Board Member Michael Minton:

**RESOLUTION 2018 – 002
OF THE BOARD OF DIRECTORS OF
HARBOR BRANCH OCEANOGRAPHIC INSTITUTE FOUNDATION, INC.**

WHEREAS, the Board of Directors of Harbor Branch Oceanographic Institute Foundation, Inc. (the "Foundation") wishes to express its deep appreciation to Michael D. Minton for his invaluable service to the Foundation which commenced on January 28, 2010 and which continues through December 31, 2018; and

WHEREAS, Michael has served as Chairman of the Audit Committee during the period 2010 through 2014, during which he achieved clean audit reports for the Foundation; served on the Specialty License Plate Review Committee in 2013 and 2014; served as the Vice Chairman of the Board of Directors during the period 2012 through 2015, and as Chairman of the Board of Directors during the period January 1, 2016 through February 10, 2017. Michael was a strong proponent of the ***Love Your Lagoon*** Event to support an annual Indian River Lagoon Symposium, and a passionate supporter of both the Foundation and Harbor Branch Oceanographic Institute in our local community and statewide; and

WHEREAS, Michael consistently gave wise counsel on all matters of importance to the Foundation and, despite his many other responsibilities, never failed to make himself available.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of Harbor Branch Oceanographic Institute Foundation, Inc. that Michael D. Minton receive the Foundation's highest commendation and thanks as a valued Board Member and as an individual who has unselfishly contributed his time, talents and treasure while serving the Foundation in the fulfillment of its mission to support the important work undertaken by The Harbor Branch Oceanographic Institute at Florida Atlantic University.

BE IT FURTHER RESOLVED, that this Resolution be incorporated in the Minutes of the meeting of the Board of Directors held on the 8th day of November, 2018.

Said resolution was signed by all Board Members and will be presented framed to Michael Minton.

Committee Reports

Minutes and supporting documentation for all Committee Reports were distributed in advance to Board Members for their review via the Board Portal.

Audit Committee

Chair Papa reported on the Audit Committee meeting of October 9, 2018 at which BDO presented the Audit Wrap Up Report and an unmodified opinion for the organizational audit and an unmodified opinion with regard to compliance for the SLP single audit. There were also no corrected or uncorrected misstatements that BDO brought to the attention of management. In addition, the 2018 Form 990 was presented and reviewed. Chair Papa reported on the fine work of the Staff through the audit process noted by the Committee in a private session with the auditors without staff present.

President Kissman noted that this was the first time the Foundation included a "Management Discussion & Analysis" with the audit Financial Statement. The benefit to having accompanying notes of explanation for outside readers was primarily due to the numbers resulting from the Foundation's November 2016 Board-approved SLP Process change. The new SLP process change required the Foundation to discontinue forwarding all State funds immediately upon receipt to FAU to put into their plate holding accounts until project expenditure. Rather, the Foundation now holds these funds until project expenditure. A further requirement was that FAU use the already stockpiled funds from their plate holding accounts first against expenditures of awards to exhaust these accounts.

Due to the decrease in SLP grant payments to FAU from FY17 to FY18 as a result from the November 2016 Board-approved change in SLP processing; she cautioned that this may appear misrepresented in the about to be released HBOI Annual Impact Report. Kissman also noted that the MD&A noted \$38,000,000 payments to FAU since 2007. Said payouts were quantified by checks made payable to FAU during that period via QuickBooks.

In addition, Chair Papa noted that the Audit Committee discussed re-engaging with BDO as their current 3 year contract has come to an end. President Kissman reminded the Committee that there had been a private consensus poll and all Committee members agreed that it made sense to continue with BDO rather than do an RFP (email dated August 17, 2018). The motion to authorize President Kissman to begin negotiations with BDO on a re-engagement of services for an additional five years (FY19-FY23 Audits), with a required lead audit partner rotation within BDO beginning with the FY21 Audit was approved unanimously.

President Kissman asked BDO to provide a proposal which has now been received and will be discussed at the next Audit Committee meeting December 12, 2018.

The motion to accept the Audit Committee's report passed unanimously.

President Kissman noted that the Form 990, due November 15, 2018, would be filed following this meeting.

Finance Committee

Chair Raines provided a report from the Committee noting that two meetings had been held since the last Board Meeting. The Investment Portfolio has outperformed its CPI+5% benchmark in the third quarter and YTD, 2018. The outperformance for the third quarter was attributed primarily to asset allocation with the Investment Portfolio rebalanced slightly in October to meet cash needs of the Foundation. The Committee made a shift of 5% equities to short-term fixed income to balance market volatility and take advantage of rising interest rates.

In addition, based on a historical analysis provided by ACG, the Foundation portfolio has outperformed 90% of comparable US foundations year to date and outperformed 96% of comparable foundations over the past year.

Chair Raines reported on the Committee's decision to transfer custodianship of the Foundation's 401K plan from Paychex to the Leyda Kanner Group of Morgan Stanley. The current plan was restated as such with a concurrent decision to enter into a new Safe Harbor Plan as of January 1, 2019.

Due to the unplanned requirement to change the location of Love Your Lagoon from the HBOI campus by FAU, Chair Raines reported that this will prompt a revision of Love Your Lagoon budget income/expense in the Mid Year Budget Revision in January. The only other major change anticipated will be due to the SLP Marketing Budget to reflect this function coming in-house.

Additional report items:

- There were un-substantive changes made to the Financial Policies and Procedures Manual to bring it current.
- Issues with regard to FAU's ability to meet our 10th of the month following the quarter deadline for invoices have been resolved.
- It was noted by the Committee that the Foundation was never provided an answer as to where the interest went on the FAU SLP Holding Accounts or where it may go for cash on hand held in the individual FAU Award Accounts funded in advance of use.
- The Committee reviewed the Foundation's Financial Capacity and Efficiency Metrics Benchmarking. Benchmarks were taken from the AFP IRC workshop "Tax and Accounting Implications for Nonprofits" on May 10, 2018. While certain benchmarking was not directly applicable to the Foundation, the benchmarking of the FY17 Audited Financial Statements and the FY18 Draft Financial Statements showed the Foundation to be within the benchmarks for the nonprofit sector.

President Kissman and Finance Committee Members provided an overview of the Foundation's Investment and Spendable Policy for Dr. Sullivan's benefit. In addition, Secretary Stewart provided a reminder of the history of Foundation's Endowment corpus:

- In the early 2000s the Foundation/Institution's Endowment corpus principal was down to about \$21 million.
- Expenses were outpacing income. While the Foundation/Institution was not in danger of folding, it had a cash flow problem

- The Foundation/Institution entertained various options to ensure future sustainability. The Foundation/Institution considered a mixed used commercial development. It was also presented with an opportunity to transfer assets to a state university (FAU, with whom there were already some collaborative educational efforts).
- The State of Florida provided \$24,040,488 million to acquire Foundation/Institution land. The price for the land, which could arguably have been much higher, was non-negotiable according to the state officials involved at the time for the deal to proceed.
- While the Foundation was paid for that land, it transferred the largest, privately held deep water channel in the State, the “Institute” itself with all intellectual capital and the buildings and equipment were given to FAU for free. FAU received title to a parcel of property on the campus.
- In 2007, the Endowment corpus of the Foundation was then approximately \$45 million.
- Today, through careful and diligent stewardship, the Endowment corpus of the Foundation’s portfolio at September 30, 2018 was \$78,017,100 while the Foundation has been able to make distributions totaling \$38,000,000 (Discretionary grants, SLP grants, and other) to FAU since 2007.

Grants Committee

Chair Toner noted the Committee had not met since the last Board Meeting but reminded the Board of the Discretionary Grants made for this fiscal year: Bridge Funds Pool, Florida Center for Coastal and Human Health, and the Faculty Promotion & Retention. These grants are one-year grants with the opportunity for renewal based on evaluation and performance.

President Kissman noted that the Grants Policies had been revised to include process and procedure and clarification of reporting requirements for HBOI. This was required due to the termination of the SLP MOU with FAU on July 6, 2018.

President Kissman also reviewed the FY15 Grants Committee’s determination, confirmed by the Board of Directors, to focus its funding to HBOI as follows:

- To support the goals of a Harbor Branch Oceanographic Institute Strategic Plan
- To fund high impact projects or initiatives
- To provide maximum visibility and raise the profile of HBOI
- To be used to maximize or leverage Discretionary Fund grant dollars to HBOI to obtain funds from other funding sources
- To fund projects that may not meet the criteria or have the opportunity for timely funding from other funding sources, including FAU

This was further clarified in FY18 to include a preference away from multi-year grants due to the tying up of spendable that may or may not be required in a given fiscal year. She suggested that the Board look at dedicated time at an upcoming Board Meeting to review grant making focus and opportunity through a facilitated generative discussion

with an outside consultant. Following discussion, the Board agreed and she will try to arrange this for the January 2019 meeting.

Nominating Committee

Chair Ferro reported on the Nominating Committee meeting of September 11, 2018. HBOIF Board officers serve for a one-year appointment. 2018 officers are:

Chair	Mike O'Reilly
Vice Chair	Mike Toner
Treasurer	Marjorie Raines
Secretary	Bill Stewart

Chair Ferro reported that President Kissman had confirmed each of the current officers' willingness to serve in 2018. In addition an email had been sent to the full Board indicating the above and inviting additional nominations was sent. There were no additional officer nominations. Therefore, the Nominating Committee presented the above slate for 2019 officer positions.

The motion to approve the slate of officers for 2019 as presented was approved unanimously.

Chair Ferro also reported that the Committee had no recommendations to fill vacant seats at this time primarily due to the current litigation with FAU. He did report the Committee's discussion of three possible candidates for future consideration: Bob Campbell and Jim Seitz (previous Foundation board members) and George S. Frazza, former legal counsel for Johnson and Johnson who has a home in Vero Beach. While none of these individuals have been formally approached, the Committee wanted to go on record as having reviewed their bios.

An additional candidate was mentioned by Joe Duke by the name of Sally Chubb who had previously served on the Woods Hole Foundation and who is relocating to Vero Beach. The Committee will explore this possible nominee further. It was also noted that it may be advantageous to have someone from Brevard County.

At the appropriate time, the Committee will invite additional nominees from the Board.

Long Range Planning Task Force

Chair Ferro reported on two meetings held August 8, 2018 and September 11, 2018. He noted that the minutes provide background about the discussions of the Task Force. No recommendations at this time.

Governance Committee

Chair Bill Stewart confirmed that the Committee had not met since the last Board Meeting and had nothing to report.

Operations Reports

HBOIF

President & CEO Katha Kissman provided a written Operations Report dated October 31, 2018 to the Board in advance of the meeting. She made note of the activities of the office with

respect to the SLP Marketing functions which are now in-house. She also made note of some of the actions taken by the SLP Review Committee to address concerns regarding the Marine Mammal Program at HBOI; this program and associated projects are almost exclusively funded by SLP PWD and PFW funding. Further information will be provided as it becomes available.

HBOI

Executive Director Dr. Jim Sullivan provided a comprehensive verbal report with a supporting PowerPoint Presentation (to be provided to the Board) about the past, present and anticipated activities at HBOI. The presentation included a personnel update including new and anticipated hires, funding sources and information on federal appropriations, elected officials visits and briefings, public lectures, media and outreach, education and community engagement, external science engagement, and new research highlights, including a briefing on HBOI's move to more classified research. In addition to some overview of the new Foundation-funded Florida Center for Coastal and Human Health, Dr. Sullivan noted his recruitment of stakeholders and partners with the Center.

Science Presentation

As the lead scientist, Dr. Amy Wright, PhD. presented more comprehensively on the Foundation-funded Florida Center for Coastal and Human Health. This Center involves over half of HBOI's faculty and associated personnel (lab techs, students).

The Center has developed a system-based approach with five objectives:

Objective 1: Measurement/Observation/Models

Objective 2: Multi-"Omics"

Objective 3: Trophic Transfer of HAB Toxins

Objective 4: Toxins and Toxicity: Assays

Objective 5: Outreach and Engagement

It is anticipated that the outcomes will be: **action plans** leading to **healthy ecosystems** leading to **healthy people** leading to a **healthy economy**

As a reminder, this was a 5 year proposal ~\$7M total submitted to NIH/NSF which was not funded. It was scored within the funding range for NIH, but the NIH appeared to have cut back the amount of centers they decided to fund by 50% and HBOI was apparently not selected. [Jim Sullivan said "apparently" because HBOI never received an official "no" on this. It is anticipated that the Foundation will continue funding for a second and third year subject to review and evaluation.

The .ppt from this presentation will be forwarded to the Board.

Adjournment

There being no further business, the meeting was adjourned at 1:07 pm.

I