

**Minutes**  
**Board of Trustees Special Teleconference Meeting**  
**University of Central Florida**  
**February 12, 2019**

Chairman Robert Garvy called the special teleconference meeting of the Board of Trustees to order at 9:02 a.m.

Garvy reminded the board that the meeting was covered by the Florida Sunshine Law and that the public and press were invited to attend.

**WELCOME**

Garvy welcomed the board members and called on Grant Heston, Associate Corporate Secretary, to call the roll. Heston determined that a quorum was present.

The following board members attended the meeting in person: Chairman Robert Garvy, Joshua Boloña, Beverly Seay, and David Walsh.

Trustees Kenneth Bradley, Joseph Conte, Danny Gaekwad, John Lord, Marcos Marchena, Alex Martins, William Self, John Sprouls and William Yeargin attended via teleconference.

**PUBLIC COMMENT**

There were no requests for public comment.

**NEW BUSINESS**

Garvy had one item of new business to discuss: the approval of an out-of-cycle election for the board Chair and Vice-Chair.

**BOT-1      Approve an out-of-cycle Board Chair election**

Garvy stated that in a normal nominating process an election of a new Chair and Vice Chair would occur after July 1 of this year. However, due to the critical issues facing the university regarding the misallocation of E&G funds, and the controversy and questions that have arisen from it, the Board of Governors (BOG), the Florida Legislature and the stakeholders of the university want this issue dealt with now. To do that efficiently and effectively, the full attention of a board chair is required to move through this process, and the purpose of today's meeting is to accelerate the election process.

Garvy asked the trustees to thoroughly consider their nominations and outlined the requirements he would like a new chair to possess: significant audit and compliance experience, the confidence of the BOG, the BOG staff, as well as this board, and the available time to perform the extensive duties of the Chair.

Garvy asked Scott Cole, Vice President and General Counsel, to outline the nominating process.

Cole stated that the nominating process is outlined in section 4.2 in the Board of Trustees Bylaws and to accelerate the nomination of a Chair and Vice Chair, the board will need to suspend this section of the bylaws. He said this suspension is allowed as per section 8.5 of the bylaws, which states that any provision of these bylaws may be suspended in connection with the consideration of a matter before the board by an affirmative vote of not less than two-thirds (2/3) of the members of the board.

Cole stated that today's action would be a board agreement to modify the nominating process and to authorize the Nominating and Governance Committee to modify their process to accelerate the timeframe for selection of the Chair and Vice Chair. He said the process other than the time frame would remain the same. The process would be for the Nominating and Governance Committee to request nominations from the trustees, the committee compiles the nominations and in their committee meeting votes on a recommendation for Chair and Vice Chair. All nominations received will be sent to the full board for action, so that although the committee will make a recommendation, the full board will have the option to select any nominated Chair and Vice Chair.

Garvy clarified that a suspension of the bylaws is used in extraordinary circumstances but affords the board flexibility when it is needed. Cole was asked to clearly state the process that the Nominating and Governance Committee would follow:

- A notice is sent to trustees requesting nominees for Chair and Vice Chair.
- The Nominating and Governance Committee meets for discussion of the background and biographical information of the nominees. The committee will vote and recommend a Chair and Vice Chair to the full board.
- The nominees must be members of the board of trustees.

Garvy asked for a motion to suspend section 4.2 of the bylaws for the election of the Chair and Vice Chair with an initial term beginning on the date of election and terminating on the first board meeting of 2021. A motion was made by Boloña, with a second from Conte. The motion was unanimously approved by the board.

Garvy asked for a motion to authorize the Nominating and Governance Committee to modify the time frame and accelerate the nominating process of electing the Chair and Vice Chair. A motion was made by Boloña, with a second from Walsh.

Further discussion followed, and highlights are as follows:

- Gaekwad asked if a trustee on the Nominating and Governance Committee can nominate themselves. Cole responded Nominating and Governance Committee members can nominate themselves and if the nomination is declined, they can participate in the committee's selection process. If a Nominating and Governance Committee member

accepts the nomination, they are not able to participate in the committee's selection process.

- Garvy suggested that the entire board join the Nominating and Governance Committee for their meeting, noting the meeting date will be determined by the Nominating and Governance Chair, and assuming the committee forwards a recommendation to the board for approval, the full board could convene immediately after the committee meeting. Bradley recommended the board have appropriate time to consider the nominations before meeting, and Gaekwad agreed with that recommendation. Garvy suggested that Yeargin take this recommendation into consideration when setting the committee timetable.
- Garvy clarified that the reason for the expedited process is the previously stated critical issue facing the university and not whether he should serve as Chair until July of this year. He restated the characteristics he believes new leadership should have to carry the university through the process and the resolution of this key issue.
- Walsh asked if any board member may decline a nomination or decline to serve. Garvy stated this was accurate.
- Boloña asked if a nominated trustee could vote at the full board meeting. It was clarified that at the board level, every board member has the right to vote on a nomination, even their own nomination.
- Bradley inquired as to the Sunshine Law and the nomination process. Cole confirmed it would not be a Sunshine violation to send a nomination to the Chair of the Nominating and Governance Committee, if it is a simple email with a nomination and not a conversation. Cole further clarified that an email to a university staff member would also not be a Sunshine violation but in either case, it is a matter of public record.

Garvy restated the motion on the floor: to authorize the Nominating and Governance Committee to modify the timeframe and accelerate the process of electing the Chair and Vice Chair. The motion passed unanimously.

### **OTHER NEW BUSINESS**

Walsh asked the board to consider charging the Nominating and Governance Committee with the following:

- Reevaluating Article IV Section 4.5 and have the board secretary be a member of the board, instead of the president of the university.
  - Cole clarified that the provision is required by statute and the board does not have the discretion to change it.
- Clarify the university's Organizational Chart to reflect that the president reports directly to the board, and that the Committee reconsider the dual reporting structure of the General Counsel to both the board and the university.
  - Garvy responded that the university's Organizational Chart does reflect that the president reports to the board. Garvy clarified that the chart shared at the recent Board of Governors meeting was the university's Compliance and Ethics Committee organizational chart. Cole stated it has since been corrected with the

BOG. Garvy stated that the Nominating and Governance Committee would be the appropriate committee to evaluate reporting structure.

Bradley initiated a conversation on reopening the Bryan Cave investigation based on the recent actions of the BOG.

Questions and comments on this topic were:

- Garvy indicated there are two continuing investigations: one, by the BOG, will lead an investigation with Bryan Cave and its report will be received by the BOG; second, the Audit and Compliance Committee is continuing its investigation.
- Walsh asked for a clarification on the scope of our investigation. Seay said the board voted not to continue the investigation with Bryan Cave but there was always the intent to keep Bryan Cave on retainer to support the Legislature and the BOG in its efforts. She stated they have been on retainer since December and if needed, they can be asked to investigate issues as requested by her (as the board member in charge of the investigation). Seay said the Board of Governors are specifically looking at the additional projects beyond Trevor Colbourn Hall (TCH) and she will also assist them, if asked.
- Bradley recommended the board consider reopening the Bryan Cave investigation to be in lockstep with the BOG. Seay stated that if an investigation was reopened by our board, she would need clear and defined objectives.
- Walsh asked for a vote to continue the Bryan Cave investigation. Garvy stated the appropriate process would be for the Audit and Compliance Committee to further evaluate this request.

Walsh made a motion for the Audit and Compliance Committee to consider an evaluation, as quickly as practical, to reopen and continue the Bryan Cave investigation, with Bradley providing a second.

Discussion highlights are as follows:

- Seay requested that trustees be specific in their requests to the Audit and Compliance Committee, so the committee can understand the reasonableness of reopening the investigation.
- Garvy reminded the board that they were presented with the results of this board's investigation with Bryan Cave and that Bryan Cave, specifically Burby, recommended to the board that further investigation would not yield additional results. However, the BOG requested an independent investigation with Bryan Cave and the university and this board are cognizant of their concerns and will fully cooperate with them.
- Seay was asked for the specifics of the BOG's charge to Bryan Cave. She stated Bryan Cave was asked by the BOG to identify all E&G funds transferred into UCF construction accounts since July 1, 2010 to determine the usage or intended usage of those funds, their earnings and the current status of those funds, and additionally to determine how this was done, at whose direction and to what purpose.
- Seay confirmed that although this board is not continuing the investigation, a board member (Seay) is assisting with investigations being conducted outside of this board.

Cole asked to have the motion restated. It was confirmed that the motion was for the Audit and Compliance Committee to consider an evaluation, as quickly as practical, to reopen and continue the Bryan Cave investigation. A roll call determined that the motion did not pass, with eight oppositions.

<u>Yes</u>	<u>No</u>
Bradley	Boloña
Conte	Gaekwad
Martins	Garvy
Self	Lord
Walsh	Marchena
	Seay
	Sprouls
	Yeargin

Marchena stated that we have a reporting responsibility to the BOG and if they determine that it is appropriate for the investigation to look deeper into the transfer and misallocation of E&G funds for that period of time, perhaps the board should consider a vote that recognizes that we support that further investigation to show, as Bradley indicated earlier, that we are in lockstep with what the BOG is choosing to do. Garvy agreed that it is incumbent upon us to have the BOG understand that we are cooperating to thoroughly examine these matters and supported Marchena's comments.

Bradley made a motion to reopen the investigation with the information already received and to request Bryan Cave review the one matter which the BOG has asked us to do, which is to report back to the Board of Trustees and BOG if there are any additional transfers of E&G funds for construction. Garvy questioned if the board had already done that. Marchena suggested the motion may be stated such that the board endorses the BOG's directive for further investigation into any other E&G payments or transfers and we request Bryan Cave to also conduct that investigation on behalf of our board.

A discussion regarding the wording of the motion followed:

- Boloña said that from a student perspective, two separate investigations would limit the administration's time for student questions and slow down key partnerships between students and the administration.
- Walsh stated the board should not establish a precedent on supporting specific BOG initiatives, as UCF should always support BOG initiatives. He would support the first wording of the motion but does not believe an endorsement of what the BOG is doing is necessary.
- Seay stated her understanding of the January 24 board meeting was that after she presented her findings on the additional projects, the board voted to not continue to have the Bryan Cave firm investigate these additional projects. However, the vote did not limit her, as the board member in charge of the investigation, to continue to investigate these projects and any ancillary issues that may be uncovered. She believes that is the

confusion that has proliferated to the BOG and others. Seay restated a decision was made in December to keep Bryan Cave on retainer to support any further investigation needs from her, the legislation or the BOG.

Garvy asked Bradley to restate his motion after this discussion.

Bradley moved that the UCF Board of Trustees continue to investigate the one matter which has been requested by the BOG, and that is whether or not any additional transfers of E&G funds were sent to construction projects. Seay stated that Bryan Cave has the data and it is available for the BOG to use. Garvy asked if Bradley wanted to clarify his motion based on this information.

Bradley said that his motion may not be clear and asked to explain his position again. He said the BOG has asked for the investigation to continue and his understanding is that our action on January 24 was to cease the investigation. He believes we should be investigating, as a board, the very same issues that the BOG is pursuing.

Bradley moved for the UCF Board of Trustees to continue the investigation as outlined by the BOG's investigation. Walsh provided a second to this motion.

Discussion followed:

- Garvy questioned how this motion would interfere with the BOG investigation, specifically that the BOG is the client of Bryan Cave and Bryan Cave is conducting an independent review and report for the BOG.
  - Cole stated there are two ways to approach this: a parallel investigation through our Audit and Compliance Committee or another independent firm be brought in. In either case, the Bryan Cave firm should not be engaged.
- Gaekwad stated he believes the board should wait for the results of the BOG investigation. He believes Seay conducted a complete investigation and we submitted the results.
- Garvy restated his concern that the BOG requested an independent investigation and if we involve ourselves in a parallel investigation, we may give the impression that we are involving ourselves in the BOG's independent investigation.

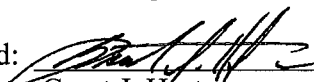
Bradley withdrew his motion stating that he never intended to interfere with the BOG investigation.

#### **ADJOURNMENT**

Before adjournment, Yeargin recognized former Chair Marchena and thanked him for his service, which was fully endorsed by Garvy and other board members.

Garvy adjourned the board meeting at 10:42 a.m.

Respectfully submitted:

  
Grant J. Heston

Associate Corporate Secretary

Date: 4/1/19