



SPECIAL BOARD OF DIRECTORS MEETING MINUTES

Wednesday, March 8, 2023, at 1:00 p.m.

GVB Conference Room and Teleconference - GoToMeeting

<https://meet.goto.com/GUAMVISITORSBUREAU/gvb-board-meeting>

I. CALL TO ORDER

- Chairman Morinaga called the Board's regular meeting to order at 1:02 p.m. with a quorum being present.

II. ROLL CALL

In-Person: Milton Morinaga, Ho Eun, Mary Rhodes, Paula Monk, Joaquin Cook, George Chiu, Jeff Jones, Sonny Ada

Online: Rudy Paco

III. NEW BUSINESS

Welcoming of newly elected Board members and legislative appointees

- Chairman Morinaga welcomed newly elected Board members: Paula Monk, Joaquin Cook, George Chiu, and Jeff Jones. Legislative appointees Mary Rhodes and Ho Eun were welcomed after that. Laura Nelson-Cepeda, the alternate director, is pending Legislative confirmation.

Discussion on Election of Corporate Officers

- Chairman Morinaga sent his agenda items to management on February 27, 2023. The wording on two agenda items was changed on his list: (1) Officer elections and (2) Election of the 12th director; because of the change, actions were not taken to carry out his request at this board meeting.
 - He expressed that as Chairman of the Board, he should've been contacted by management if changes needed to be made, regardless of the accuracy of the legal counsel's opinion.
- According to Legal Counsel Joe McDonald, the agenda was changed due to the proper procedure required by law. The Board would need to discuss the selection of Corporate Officers and the election of the 12th director before any action is taken. After discussion, a resolution would be prepared by management and presented to the Board at the next board meeting for action to be taken to select new officers and the 12th director.

Open Discussions

- Board directors had open discussions about the agenda, future meeting agendas, communication protocol with the Board and Management, legal opinions, resolutions, the next board meeting date, agenda items to be discussed, working sessions, board orientation, and ethics training.

Discussion about the agenda

- Director Ada requested clarification from legal counsel Joe McDonald regarding the necessity to approve the agenda at the start of a board meeting. According to legal counsel, the agenda does not need to be approved before proceeding with a board meeting.
- The Board decided that agenda items for the next board meeting would be discussed at each board meeting and recorded by the management's Board Secretary. The management shall prepare an agenda ad notice for the chairperson's review and approval before publication.
- Previously, the Chairman was instructed to refrain from contacting another board member. Chairman Morinaga asked if it would be the board secretary's job to send the draft agenda to the board on behalf of the chairman or can he directly contact board directors for their approval of the agenda.
- Legal counsel believes the chairman should refrain from contacting other board directors and work with management to agree on a basic format to handle this communication. According to the Open Government Law, communication with other directors outside the board meeting relating to GVB business should not occur. Legal counsel added that all emails and Whatsapp messages would be public records.
- Chairman Morinaga suggested that a section in the meeting agenda should include "Agenda Items for Next Meeting" if the chairman cannot discuss the agenda with other board members outside the meeting.
- Director Rhodes mentioned that the Open Government Law does not state anything about changing the chairman's agenda. Legal counsel said that it was to ensure that the meeting progressed toward an election and further noted that if the vote were taken at the March 8th board meeting with the chairman's original agenda items, the vote would be void.

Communication protocol with Board and Management

- Director Monk inquired whether GVB has an existing board secretary. Chairman Morinaga announced Valerie as management's board secretary and the board's point of contact.
- According to legal counsel, the Board is allowed to speak with Valerie; however, not allowed to direct her what to do unless there is a vote, this is in the enabling act. Legal counsel suggests that the board communicate directly with General Manager.
- Board Directors are not allowed to direct staff. Board Directors should go through General Manager, who would lead his team accordingly.

- Communication was dangerous in the committees because members and non-board members were directing the staff.
 - The Board can form committees
 - committee meetings must be publicly noticed
 - board members cannot direct staff if they are in a working meeting
 - Information from that committee is relayed to management for implementation

Legal Opinions

- All legal opinions are to be sent to the Board of directors
- Director Chiu expressed that the Board is not obligated to follow legal counsel's opinions, whether correct or not; it is up to the board to decide whether they want to or not.

Resolutions

- Directors Chiu and Rhodes debated whether oral resolutions can be made as opposed to written resolutions.
 - The law does not specify that it must be written, whereas the Port of Guam stipulates that it is written
 - Director Chiu questioned why a discussion, resolution, and action could not occur in one meeting.
 - Legal Counsel explained that the private sector has the processes to do so. GVB does not have those processes.
 - It has never been done before
 - The board can get there by the 9015(k) process; if not, GVB is stuck with the enabling act.
 - Suggests taking 9015(k) powers, have regulations that go through triple-A process that gives the board certain powers (powers to meet in a committee, to take action and vote in a committee)
 - Board takes a risk when it votes on action items not in its jurisdiction
- According to legal counsel, resolutions are written Government boards that have powers spend a whole working session creating the verbiage for the resolution to take action. He reminded the board that GVB's board could only give directions.
- For a proper resolution, a healthy discussion should take place among board directors.
 - Board directors decide on the direction in which action is to be taken
 - Management drafts the resolution, the board reviews it, it is presented at the next board meeting, board votes on the resolution
- Sec. 91065 (Enabling Act) - the Board can act only by resolution at a meeting duly held; the vote carries by 8.
- It doesn't specify written; Port of Guam specifies it is written
- Director Jones stated that the statute states that the Board shall act only by resolution at a meeting duly held. It does not specify how that resolution shall be made. However, for accuracy, at some point, it should be written.
- The meshing of Open Government Law and Enabling Act: Legal Counsel McDonald referred to Open Gov Law 8113.1. If the purpose of an agenda item to be discussed is not specified, any action taken on it is void.
 - Suggests that "agenda items" be placed under new business where the board can decide what will be listed as agenda items for the next board meeting.
 - Final decisions for any action to be taken at the following board meeting can be communicated with the GM or legal counsel to formulate a resolution.
 - Resolution to be presented at the following board meeting.
 - The agenda item moves from New Business to Call to Corporate Action.

- Director Rhodes questioned why action would be voided if the topic was on the agenda.
 - Could a motion not be made on the floor to vote for the 12th director or officers?
 - (1) Discussion (2) motion (3) unanimous vote by eight (4) formalize the resolution at the end of the meeting.
 - Director Rhodes read 8113.1 and reiterated that motions and proposals could be executed if there is a unanimous vote to make the resolution offer. Because it doesn't give specifics, she questioned whether the motion could be made and whether the board could vote unanimously.
 - Director Ada stated that he thinks the Board should get its own legal counsel
 - Director Rhodes expressed the need to fire legal counsel
 - Director Ada said that it cannot be addressed because it is not on the agenda
 - Legal Counsel corrected his reference relevant to action voided non-compliance - 8114.1 - matters to be discussed
 - 9106(i) - The board can only act by resolution
 - the decision of the action should be made at the point of the meeting, followed up with the formal document, and recorded as part of the minutes.

Discussion on the selection of the 12th Director

- Director Jones inquired whether eleven (11) directors needed to be sitting to elect the 12th director.
- Statutes state that eleven directors need to be sitting
- Provision for electing the 12th Board Director says that Governor's five (5), Legislature's two (2), and the four (4) elected members shall then choose the 12th; as long as it carries by eight (8) votes

Next Board Meeting Date

- The board discussed and decided to return to the Regular Board of Directors meeting date. The next meeting is to be held on Thursday, March 23, 2023
- There shall be no more online voting to meet quorum. All those voting must be present in person at a Board meeting for their vote to count. The Governor of Guam had removed the executive order, which did away with the in-person meeting. The official language from AG says it has to be in person.
- Chairman Morinaga decided that the board will return to the Regular Board of Directors meeting schedule; on the 2nd and 4th Thursday of each month.
- Director Chiu directed legal counsel to write the resolution to elect board officers and the 12th board member.

Working sessions

- The board can have working sessions but must post what will be discussed in a working session.
- Once a full board is in place, a need to talk about reviewing enabling legislation and updating it for practicality

Request for Board Orientation

- March 15, 2023, at 1:30 p.m., conducted by Legal Counsel
- Director Rhodes requested topics on how to run a board meeting, Open Gov Act, technicalities, etc.

Agenda Items for next board meeting:

- Election of officers
- Election of the 12th member of the Board

- Management's update on the external audit report
- Discussion on how to conduct the annual Performance review of management
 - Rhodes asked Valerie to provide a format and/or sample of the board's Annual performance review of management.
 - It was decided that this would be discussed at the next board meeting because they had never had one.
- Management's plans for the remainder of the fiscal year 2023
- Discussion on Enabling Legislature and Bylaws
- Financial update / Update on the Finance department
- Executive Session

Ethics Training

- Valid for two years
- Decided to wait until a full board is present to arrange the Ethics training

IV. ADJOURNMENT

Motion made by Director Ada, seconded by Director Monk, to adjourn the board meeting at 2:27 p.m.



Jeffrey Jones, Secretary of the Board of Directors



Board Minutes respectively submitted by Valerie Sablan, Executive Secretary