

**City of Delray Beach  
Police and Firefighters' Retirement System**

**Minutes of  
November 18, 2009**

Members: Off. Jeroloman, Chief Phillips, Sgt. Myers, Lt. Liguori, Lt. Tabeek, Chief Giaccone, Commissioner Adam Frankel, Mel Sacharow

Steve Cypen, Board Counsel                      Anne Woods, Plan Administrator  
Karen Schell, Plan Administrator-Finance

Absent: Asst. City Manager Doug Smith

Guests: Mike Welker, Bogdahn Consulting; Robert Friedman, Esq., Holland & Knight; Terrill Pyburn, Asst. City Attorney

Off. Jeroloman, Chairman, called the meeting to order at 2:10pm. A roll call was taken of members and guests.

1. New Business:

- a. Robert Friedman, Esq., Holland & Knight – Pension Protection Act 2006 and HEART Act 2008:

Mr. Cypen stated that Mr. Friedman is in charge of the Employee Benefit section of the firm, and was retained by the Board to file the application for IRS qualification.

Mr. Friedman stated that the IRS has placed more emphasis on governmental plans and bringing them into compliance with the tax law requirements. The IRS wants plans to apply for a determination letter that states that the forms and terms of the plan meet the current tax law requirements and therefore is a qualified plan. A qualified plan means that essentially that the member's accrued benefits are not taxable until they are paid out. Should the IRS determine that the plan fails to meet the qualification requirements, as the benefits are accrued and became vested the members would be taxed.

Mr. Friedman stated that upon review of the existing ordinance he determined that provisions needed to be added to the pension ordinance. On behalf of the Plan, he filed an application with the IRS Voluntary Compliance Area to receive a compliance certificate that would state that the plan was not amended on a timely basis for these requirements, but is now amended and request a compliance statement. Once the compliance statement is obtained it then proceeds to a different area in the IRS for the determination letter review. The IRS determination letter program runs on a five (5) year staggered cycle and governmental plans are in cycle 'C' (February 1, 2008 until January 31, 2009. The Delray plan met the specified date). The IRS compliance office assigned to review the application notified Holland & Knight, and if additional information was required the firm would be contacted.

A draft of the revised ordinance, taken from the last ordinance approved by the City, was submitted to the IRC. Once the IRS determination letter is received the Board can then request the City to approve the suggested amendments to the pension ordinance. The IRS general rule for approval of the revised ordinance is 90 days.

Mr. Friedman stated that recent changes in the tax law that will eventually require the Plan to amend the ordinance were the Pension Protection Act of 2006 and the HEART Act of 2008. The following are some of the changes that are either in effect or would need to be added to the ordinance.

Pension Protection Act:

- Retiree medical premiums for public safety officers. Permits governmental defined benefit pension plans to allow a public safety officer to elect a tax free distribution of up to \$3,000 annually directly to a retiree medical plan or long term care insurance on a pre-tax basis, so long as the public safety officer separates from service either at the plan's normal retirement age or due to his/her disability.
- Purchase of permissive service credits. Effective as of January 1, 1998, participants in the plans established under Sections 403(b) and 457(b) could use their accumulated assets in such plans to purchase permissive service credits in a governmental defined benefit pension plan, provide such purchase was made as a direct plan to plan transfer. The PPA extends these provisions by permitting such purchases to include service credit for periods where no service was actually performed (air time) and permitting such purchases to be used to purchase increased benefits (buy ups).
- Non-spouse beneficiary rollovers. Effective for distributions made on or after January 1, 2007, non-spouse beneficiaries will be able to directly roll over death benefit distributions from a governmental defined benefit pension plan into an IRA.
- In-service distributions for active employees over the age of 62. Effective for plan years beginning on or after January 1, 2007, governmental defined benefit pension plans may make distributions to active employees who have reached age 62, even if the employee has not reduced his work schedule.
- Early distributions to public safety employees. Allows governmental defined benefit pension plans to make distributions after August 17, 2006, to qualified public safety employees over the age of 50 without such employees being subject to the 10% early distribution penalty tax.

HEART Act:

- Differential wage payments as compensation. Effective January 1, 2009, any participant receiving 'differential pay' during 'qualified military service' as defined in the Uniformed Services Employment and Reemployment Rights Act (USERRA) must be treated as active employees for plan purposes and such amounts shall be included as compensation or wages.
- Death benefits during USERRA qualified military service. Effective as of January 1, 2007, if a participant dies while performing qualified military service, a governmental defined benefit pension plan must treat that participant as having died during active employment with the employer for purposes of pre-retirement death benefits available only to participants who die while active employees.
- Accrual of benefits during USERRA qualified military service. Prior to the HEART Act, if a participant performed qualified military service and then, following such service, returned to an employer and resumed participation under the plan, the participant would be entitled to the accrual of benefits during the term of such qualified military service.

Mr. Friedman stated that once the interim amendments are added to the pension ordinance, his firm's responsibility would be to assure that the Plan remains compliant with IRS regulations.

Mr. Cypen stated that the best scenario would be if the IRS would allow the amendments to the pension ordinance be made at the end of the five (5) year cycle, which would be January 31, 2014.

b. Approve and Execute – Wentworth, Hauser & Violich-Hirayama Investments, LLC Addendum: Sgt. Myers made the motion authorizing the chairperson to execute the addendum. Commissioner Frankel seconded the motion. None opposed.

c. Approve the Change of Beneficiary Request made by Dennis Smith (P.D. Retiree) – Ms. Schell reported that Mr. Smith had requested to change his beneficiary and had paid the actuarial fee for the recalculation. Lt. Tabeek made the motion to approve Mr. Smith's request for a change of beneficiary. Mr. Sacharow seconded the motion. None opposed.

2. Reports:

- a. Steve Cypen, Board Counsel

i. Status of Pending and Potential Litigation Matters –  
Smith Barney – Briefs are due in the next 20 days.

99-1 (Overtime) – Briefs are due the first week in December 2009.

Certification – Mr. Cypen stated that the case was argued the second week of November with the decision forthcoming.

b. Mike Welker, Bogdahn Consulting

i. IPS Discussion – Mr. Welker stated that the document has been reviewed and approved by Mr. Cypen.

ii. Lazard Asset Management – Mr. Cypen stated there are two (2) outstanding issues that they would not agree upon – Most Favored Nation clause (The Plan would benefit should they lower fees on similar accounts), and Best Execution (they do not want to guarantee that they would provide best execution. They would agree to the wording ‘efforts to get best execution’). Mr. Cypen stated that Lazard felt it is the Boards responsibility to inform them of violations to the PFIA (Protective Florida Investments Act).

Lt. Liguori made the motion the within the next ten (10) business days if Mr. Welker was unable to resolve the differences with Lazard he is authorized to commence negotiations with TS&W. Mr. Sacharow seconded the motion. None opposed.

iii. Bogdahn Consulting (Fiduciary Liability Insurance) – Mr. Cypen stated under the terms of the agreement they were required to have \$3m insurance with a deductible not to exceed \$50,000. They have increased their insurance to \$5m with a \$150,000 deductible. Mr. Welker stated that every Plan requires different amounts of insurance, in lieu of that fact, Bogdahn decided to obtain the highest amount needed to satisfy these requirements. Based on their responsibility as consultants, they cannot get anything lower than the \$150,000 deductible. Mr. Cypen suggested two (2) options – get a supplementary policy to insure the deductible, or remove the Plan from the current limit. He recommended that Bogdahn consider a policy that has a \$50,000 deductible with a \$100,000 limit. Mr. Welker agreed to contact their broker to see what other options are available.

iv. Investment Policy Statement Discussion – The document had been reviewed by Mr. Cypen’s office. The revised policy reflects the following:

- SB538 change: International Equity Target 15% w/range 10%-25%
- Benchmark Index from MSCI to ACWI (All Country World Index)
- Allow for a limited amount of international exposure for some of the domestic managers through ADR’s.
- Should investments include pooled funds the Board would adopt the prospectus/governing policy of that fund.

- Direct investment in 'Scrutinized Companies' as identified in the periodic publication by the State Board of Administration (SBA List) is prohibited. Any security identified as non-compliant on/before January 1, 2010 must be divested by September 10, 2010. The Board would be notified each quarter, in writing, of the results of the review. However, if securities are identified after January 1, 2010, and divestiture of business activities is accomplished and the company is subsequently removed from the SBA list, the manager can continue to hold that security.
- The Investment Consultant, on behalf of the Board, will send a letter to any pooled fund referring the investment manager to the listing of 'Scrutinized Companies' by the SBA.

Mr. Sacharow made the motion to accept the Investment Policy Statement with noted revisions. Chief Giaccone seconded the motion. None opposed.

v. ICMA/DROP Lineup Options. - Mr. Welker stated that he had received the ICMA list of proposed funds. He stated that after review, he was providing the Board with a list of 15 comparable funds for consideration. The Board requested that Mr. Welker recommend 2-3 additional model portfolio funds.

After lengthy discussion, Lt. Tabeek made a motion to accept the list of funds submitted by Bogdahn Consulting. The performance of each fund would be reviewed on a quarterly basis and at those times investments funds could either be added or deleted. Mr. Sacharow seconded the motion. None opposed.

Lt. Liguori made the motion that the DROP accounts would be transitioned to the Vantage Trust Plus. Lt. Tabeek seconded the motion. None opposed.

vi. Portfolio Performance Review - Mr. Welker stated that based on the new IPS the strategy would be to increase the international allocation to 15% (WHV-Growth and Voyager-Value). The recommendation is to split the growth mandate between two (2) managers. He suggested that the WHV portfolio would remain relatively the same and hire a mutual fund manager to complement WHV and Voyager. The Board requested the list of potential managers ready for discussion at the December meeting. Should the negotiations with Lazard result in an agreement, GTS will monitor the transition.

### 3. Expenditures:

Mr. Sacharow made the motion to approve the payments of Warrants 1350 through 1359. Lt. Tabeek seconded the motion. None opposed.

Warrant 1350: Approve Normal Retirement Benefit Enhancement Effective January 2010 – Veronica Covington (\$4,110.52), Matthew Mitchell (\$4,777.07) and March Woods (\$7,169.57)

Warrant 1351: Approve Refund of Pension Contribution – Jim Bejacmar (\$1,153.08) and Roumy Florvil (\$247.38)

Warrant 1352: FedEx (\$275.16, Account #2107-3951-3), Printing Plus (\$99, Invoice #12751), Platinum Plus for Business (\$7,554.13, Account #1505 – Travel Expenses), Anne Woods (\$19.33 Reimbursement for Postage – ICMA Seminar Notification Letters)

Warrant 1353: Approve Investment Management Fees for Quarter Ending September 30, 2009: Delaware Investments \$21,126, Rigel Capital \$19,109.60, DG Capital \$18,232.71, Voyageur \$11,005.33, WHV \$7,515, Pioneer Investments \$4,950.16 and Mutual of America \$1,709.56

Warrant 1354: Approve Travel Reimbursements – James Tabeek \$258.65 Attended Division of Retirement Conference, Orlando 10/21-23, 2009 – 430 Miles and Tolls), Adam Frankel (\$160.90 – Attended FPPTA, Bonita Springs 10/4-7/ 2009 – 292.54 Miles and Tolls)

Warrant 1355: Approve Travel Per Diem for Brady Myers and Adam Frankel – Attending Institute for International Research Public Fund Boards Forum (IIR), San Francisco, December 12-15, 2009 (\$230.35 each), Approve Reimbursement for Airfare to Attend IIR Forum for Adam Frankel (\$169.20)

Warrant 1356: AT&T (\$99.81 Monthly Services)

Warrant 1357: Barry S. Balmuth, PA (\$12,442.19 Professional Services Rendered, Invoice #13488), Holland & Knight (\$275 Pension Plan Compliance Review - \$100 Invoice #2434352 – September and \$175 Invoice #2447023 – October), Steven Gordon (\$1,510 Audit of Financial Statements as of 9/30/09, Invoice #6083)

Warrant 1358: Approve Travel Reimbursements to Attend IFEBP Conference on 11/7-11/09 Orlando – Ralph Phillips (\$51), Adam Frankel (\$289.56), Brady Myers (\$211.56) and James Tabeek (\$245.45)

Warrant 1359: Approve Travel Reimbursements to Attend IFEBP Conference on 11/7-11/09 Orlando – Chuck Jeroloman (\$161.89), Enterprise Leasing Company (\$181.89)

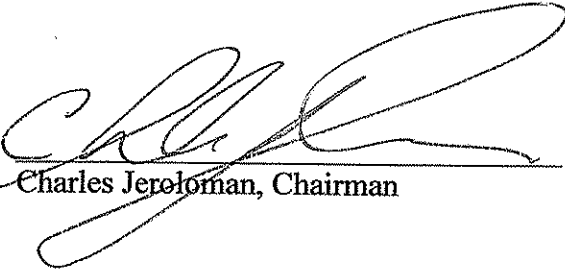
#### 4. Board Member Item:

a. Lt. Tabeek – Responses Received from Retirees Regarding Alive/Well Letter - Lt. Tabeek stated that due to a number of negative telephone calls from F.D. retirees he wanted to make the motion that the Pension Board and not the City-Finance Department should generate future notification letters. Mr. Sacharow seconded the motion. Asst. Chief Phillips voted no. Due to only four (4) trustee votes, motion failed to carry. Lt. Tabeek requested that this item be placed on the December agenda.

Lt. Tabeek made the motion to adjourn the meeting at 4:25pm. Asst. Chief Phillips seconded the motion. None opposed.

City of Delray Beach Police & Firefighters' Retirement System

The undersigned are the Chairman and Secretary of the Police and Firefighters' Retirement System, Board of Trustees, and the information provided herein are the Minutes of the Meeting of said body for November 18, 2009 which minutes are formally approved and adopted by the Police and Firefighters' Retirement System, Board of Trustees on December 16, 2009.



Charles Jeroloman, Chairman

NOTE TO THE READER: If the minutes that you have received are not complete as indicated above, then this means that these are not the official minutes of the Police and Firefighters' Retirement System, Board of Trustees. They will become official minutes only after they have been reviewed and approved, which may involve some amendments, additions or deletions to the minutes as set forth above.

Copies to:      Members of the Board              Asst. Finance Director, M. Walinski  
                         City Commissioners                      Finance Director, J. Safford  
                         City Manager, D. Harden                Human Resource Director  
                         Police & Fire Departments              Asst. City Attorney, T. Pyburn