

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

**Minutes of
October 15, 2008**

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

Steve Cypen, Board Counsel
Karen Schell & Milena Walinski, Finance Department
Anne Woods, Plan Administrator

Guests: Mike Welker, Bogdahn Consulting; Susan Ruby, City Attorney; Don West
and Tom Judge, P.D. Retirees

Off. Jeroloman, Chairman, called the meeting to order at 2:08pm. Roll call was taken of members and guests.

Off. Jeroloman suggested that the agenda should be amended to add the following:

Agenda Item #3 -- Off. Jeroloman, Ordinance #33.60, Continuous Service

Add Agenda Item #5 -- Mr. Smith, Customer Service Duties

Add Agenda Item #4 -- Mike Welker, Portfolio Review Quarter 9/30/08, Review
Quadrant Portfolio, International Growth Manager Presentations and Further Discussion -
FISCO

Warrant 1207 -- Josias Emilcar, Refund of Pension Contribution \$2,327.44

Correction to Warrant 1195 -- Holland & Knight \$250 (from \$1,050)

Other Business -- Approve out of State Travel for Brady Myers (San Francisco)

Mr. Sacharow made the motion to approve the amended agenda. Chief Giaccone seconded the motion. None opposed.

1. Approve September 17 & 19, 2008 Minutes:

The minutes were reviewed and approved as submitted. Mr. Sacharow made the motion to accept the minutes. Capt. Phillips seconded the motion. None opposed.

2. Steve Cypen -- Status of Pending and Potential Litigation Matters:

Customer Service -- Mr. Cypen stated that he received a memorandum from Jim Linn, dated October 10, 2008, regarding the description of functions the Finance Department would be providing the plan. He responded by saying he agreed with the statement of law but not with the conclusions. After further conversation with Mr. Linn, he agreed that the functions being provided by the City (Finance Department) are not fiduciary functions.

Pending/Potential Litigation:

Smith Barney – The final draft complaint has been approved, and the plan is to file it in one week. There had been no contact with the Smith Barney legal team.

Overtime – The Summary Judgment is scheduled for January 12, 2009 (2 hour hearing).

Certification – Still waiting for the Foster & Foster calculations.

Extension of Effective Date of Normal Retirement Age Regulations for Government Plans – The Pension Protection Act of 2006 which was passed on August 2006. For the first time, in May 2007, the IRS mandated regulations in terms of definable retirement date. The IRS regulations provide that a normal retirement age of 62 or later (or age 50 or later, in case of a plan in which substantially all participants are qualified public safety employees) is deemed to satisfy the requirement, and a normal retirement age lower than 55 is presumed not to satisfy the requirement unless the Commissioner of Internal Revenue determines otherwise on the basis of facts and circumstances. Whether a normal retirement age that is at least 55 but below 62 satisfies the requirement is based on facts and circumstances.

Mr. Cypen stated that the IRS originally intended to enforce the regulation as of January 1, 2009, but due to pressure extended the date to January 2011. He stated that he did not foresee it getting by NCPERS.

Don West (Retiree) – Service/Hire Date (letter dated 5/21/2008) – Mr. West stated he was requesting the Board to address the issue of the effective date of his benefit enhancement. He stated that he retired in May 2005 with 22 ½ years of creditable service. He was hired as a police officer on January 3, 1983, than in November of 1990 he was involved in a police shooting and terminated by the City June 1991. After a federal arbitration hearing and ruling he was reinstated in February 1992 to his former position, served a five (5) month suspension, and was reinstated as whole (receives benefits pertaining to his position). At that time, he purchased only a portion of his service time because the City delayed his back pay for more than 90 days. Mr. West stated that per the wording of the pension ordinance, he met the 25 years of service in January 2008.

Mr. Cypen stated that he is aware of the Jim Linn opinion, the memorandum written by Joe Safford (Finance Director) and that the City carries a pension start date of June 6, 1985. When he gave his first opinion, he was not aware of the arbitration award that states, "The grievance of Sgt. Donald West is granted in part and denied in part. Sgt. West shall be suspended for a period of five (5) months commencing June 6, 1991, following the conclusion of the suspension; Sgt. West shall be reinstated to his former

position and he shall be made whole as though he had been reinstated effective five (5) months after June 6, 1991”.

Mr. Cypen stated the issue is not the benefit because he did not buy back time, so the memorandum is not the issue. He stated that it is his opinion that Mr. West meets the definition of someone who was hired more than 25 years prior to the benefit adjustment date based upon his hire date (reference Section 33.689). Mr. Cypen stated that Mr. West is not receiving credit for time not bought back.

Mr. Cypen state that with regard to the City’s policy of allowing up to 90 days to purchase service time boarders on the line of being valid. The wording of the state law states ‘at least 90 days’.

Ms. Ruby stated that it is the opinion of Mr. Linn and the City that Mr. West is not entitled to the benefit enhancement because he only purchased a portion of the credited time.

Mr. Cypen stated that when the wording of the ordinance was being formulated he questioned why the City would use the hire date as a measuring stick instead of credited service. Most pension plans use ‘credited service’.

Sgt. Myers made the motion to correct Mr. West’s effective date (25 years) to January 3, 2008, which would make him eligible for the benefit enhancement. The benefit enhancement would be retroactive to that date. Capt. Phillips seconded the motion.

Discussion: Lt. Liguori stated that he was involved in the wording of ordinance that dealt with the eligibility of the benefit enhancement. The requirement of 25 years was due to the 20 year plan. At that time, the goal was to have the benefit enhancement last as long as possible. Sgt. Myers stated that the wording of the ordinance should be changed to mirror the wording in the state law regarding the allowable time for purchasing service time.

Ms. Ruby stated that at the time of reinstatement, Mr. West was made whole and the benefit enhancement was not in place.

Roll call vote of motion: Jeroloman-Yes, Myers-Yes, Tabeek-Yes, Giaccone-Yes, Liguori-Yes, Sacharow-Yes, Smith-Yes, Frankel-Yes, Phillips-Yes. Motion passes

3. Off. Jeroloman – Definition of Continuous Service (Ordinance 33.60):

Off. Jeroloman stated that when members have left the plan and then returned there is a hardship on the amount of time allowed to purchase the prior service time in 90 days.

He stated that when a member chooses to purchase prior military/service time he is given a five (5) year time period to either finance the reimbursement through the City (payroll deduction) or choose an alternate plan to purchase the time. Since state law allows at least 90 days, he suggested that the ordinance should be changed to reflect the same amount of time given (5 yrs.) to purchase lapse in service time. The interest would be based on the plan's assumed rate of return, and the employee would be allowed one (1) opportunity to elect to buyback service time.

When asked, Mr. Cypen gave the opinion that if an employee were to go from one plan to another (i.e. General Employee to Police) it should be treated as an authorized leave of absence, as long as the contribution monies stay in the plan. The Division of Retirement, Trish Shoemaker takes the position that the plan's definition that states that all employees of the City classified as full time sworn police officers (as defined 185.02) – have coverage from day one even if they are not certified (academy/training); they shall receive credit and be part of the system.

Sgt. Myers made the motion to recommend that the ordinance be changed to allow a period of five (5) years to buy back credited service time. Mr. Frankel seconded the motion. None opposed.

Sgt. Myers made a motion to reconsider his prior motion regarding the date Mr. West would be eligible to receive the benefit enhancement. The benefit enhancement would be calculated as of January 3, 2008 and pay the retroactive portion. Mr. Sacharow seconded the motion. None opposed.

Mr. Frankel made the motion to amend the motion to have the date of June 1, 2008 as opposed to January 3, 2008. Sgt. Myers seconded the motion. None opposed.

Lt. Tabeek made the motion to accept the amended motion. Mr. Frankel seconded the motion. None opposed.

Capt. Phillips made the motion to adopt the motion as amended. Mr. Frankel seconded the motion. None opposed.

Customer Service – Mr. Smith requested that Anne Woods provide the Board with the list of duties performed in service to the Board.

4. Mike Welker, Bogdahn – Portfolio Review for Quarter Ending 9/30/08, Quadrant Real Estate-Portfolio Review and International Growth Manager Presentations (Baring Asset Management and American Funds-Europacific R5 Share Class:

Mr. Welker stated that members of the plan had requested an overview of the portfolio's positioning and the investment environment. He stated that he prepared a capital market overview that could be distributed to members. The Board agreed to have the information distributed to plan members.

Mr. Welker stated that over the last year, five (5) managers have been funded. Four (4) have done very well, but Quadrant Real Estate is down 40% on appreciation and income. He stated that so far he has no issue with the allocation.

Quadrant Real Estate Portfolio Review – Mike Jett and Kurt Wright:

Mr. Jett stated that the private equity (direct property) and public equity (REIT equity common stock) valuations have partially corrected but remain high. Cap rates continue to increase (valuations are declining). In reaction to the residential subprime-mortgage market fall-out, certain commercial real estate products have undergone a material repricing and offer extremely attractive risk-adjusted returns. Quadrant continues to believe current conditions are temporary and offer historically attractive buying opportunities across several real estate investment sectors.

Mr. Wright stated that the assets in the portfolio are still paying (no defaults), and the quality is still in place. Once stability returns to the market there will be a substantial amount of embedded value in the portfolio.

Performance as of 9/30/08 (after fees): Investment Income 8.45%, Depreciation (40.32%), Total Returns (34.69%). Since Inception: Investment Income (dividend yield) 9.91%, Depreciation (33.77%), Total Returns (26.76%). Portfolio Value as of 9/30/08: \$6,135,978, Distributions \$556,748, Dividend Yield 9.77%.

International Growth Manager Presentation – Baring Asset Management and American Funds, Europacific R5 Share Class: Note: Due to a scheduling conflict, American Funds was unable to attend the meeting.

Baring Asset Management, Michael Brown: Barings is a global investment management firm that manages investment products that deliver risk adjusted returns. Fully integrated research team with over 100 investment professionals. Commingled fund with current assets under management in U.S. \$44.6 billion. Fee 90bps.

Composite Performance as of 6/30/08 (net of fees)

<u>Period</u>	<u>Gross Fees (%)</u>	<u>Net Fees (%)</u>	<u>Benchmark (%)</u>
Latest Qtr.	2.54	2.38	-1.93
YTD	-6.54	-6.84	-10.58
1 Year	0.36	-0.27	-10.15

<u>Period</u>	<u>Gross Fees (%)</u>	<u>Net Fees (%)</u>	<u>Benchmark (%)</u>
3 Years	21.03	20.18	13.34
5 Years	23.61	22.89	17.16
Since Inception	7.71	7.20	4.70

Note: The Wentworth, Hauser & Violich portfolio would be used to fund the new international growth manager account.

FISCO (Update) – Mr. Welker stated since inception FISCO has not had a negative quarter. He stated that due to the present market volatility he is waiting to receive the performance numbers for month ending September 30, 2008.

Mr. Welker informed the Board that he would be scheduling international presentations from Christophe Pochart – BNP Paribas and Christopher Gross – ILM. Also, Delaware Investments would be providing portfolio performance review.

4. Other Business:

-Karen Schell, Finance Department: Benefit Eligibility Review:

Ms. Schell stated that when reviewing the ordinance which states that an individual must complete 20 years of service or age 52, she became aware that Patrick McCulloum who is a terminated/vested member with 10 years of credited service and age 44 and might not have been eligible to receive a pension benefit at this time. After obtaining Mr. Cypen's opinion, it was decided that the adopted practices of the Board must remain consistent. It was determined that Mr. McCulloum is eligible for the pension benefit effective October 1, 2008) because his termination date falls under the terms of the ordinance which states 'employees who retire or terminate employment on or subsequent to October 1, 1989, the normal retirement date would be the first day of the month coincident with or subsequent to completion of 20 years of continuous service'.

Ms. Schell stated that there are four (4) individuals (Alexander Batista, Gayl Nye, Stefanie Thompson and Richard Vurchio) who terminated employment after 1999; and the ordinance states 'employees who retire or terminate employment on or after December 31, 1999, the normal retirement date shall also be the first day of the month coincident with or subsequent to age 55 and the completion of 10 years of continuous service'.

The Board requested that Ms. Schell sent a letter to the four (4) individuals in question informing them that they will be eligible to receive their pension benefit at age 55.

-Approve Out of State Travel for Chuck Jeroloman (Boston) and Brady Myers (California): Mr. Frankel made the motion to approve the additional out of state travel. Mr. Sacharow seconded the motion. None opposed.

-Approve Payment of Warrants 1193 through 1207: Sgt. Myers made the motion to approve and waive the reading of the warrants, and approve ratification number 002. Mr. Smith seconded the motion. None opposed.

Ratification #002 – Refund of pension contribution to Andy Zepeda (\$15,761.98)

Warrant 1193: Normal Retirement Benefit Enhancements for December 2008–Julius Mitchell (\$3,075.79), William Berry (\$2,827.57), Mark Davis (\$6,500.69), Selwyn Lee (\$2,693.51), Richard Lincoln (\$4,098.82), Bernard Tillson (\$2,956.89), Douglas Vaughn (\$4,521.94), Gregory Young (\$2,729.50), Allen Lewis (\$4,392.23)

Warrant 1194: DROP Retirement Benefit Enhancement for December 2008–Richard Bush (\$7,215.21)

Warrant 1195: Holland & Knight, LLP (\$250 Professional Services–Invoice #2285912)

Warrant 1196: Foster & Foster Inc. (\$27,921 Professional Services Rendered–Invoice #527)

Warrant 1197: Bogdahn Group (\$11,125 Performance Evaluation and Consulting Services 7/01 through 9/30/08–Invoice #3305)

Warrant 1198: Steven I. Gordon (\$1030 Professional Services Rendered–Invoice #5323)

Warrant 1199: Rigel Capital (Investment Management Fee \$11,400.67, prorated portfolio valuation as of 9/30/08)

Warrant 1200: ICC Capital Management (Investment Management Fees–Fixed \$73,426.06, TIPS \$3,457.53, Growth/Multi Cap \$88,573.70–Total Due \$165,457.29)

Warrant 1201: FedEx (\$95.63 Invoice #292698702), AT&T (\$90.68), Platinum Plus for Business (\$3,271.39)

Warrant 1202: Travel Per Diem (IFEBP Conference, San Antonio on 11/14-20/08 for Chuck Jeroloman \$396.60, Brady Myers \$330.50 and Adam Frankel \$264.40)

Warrant 1203: Commence Normal Retirement Pension Benefit Effective November 1, 2008 to Fredrick Parker (\$4,156.03–Currently in DROP)

Warrant 1204: Approve DROP Retirement Pension Benefits to David Brassard to Commence Retroactive October 1, 2008 (\$6,648.88–total for October & November 2008 = \$13,297.76)

Warrant 1205: Travel Per Diem (\$312.84, Chuck Jeroloman-SPPON Symposium, Boston on 11/09-12/08), SPPON Symposium (\$450, Chuck Jeroloman-Registration Fee)

Warrant 1206 Reimbursement for Travel Expenses for FPPTA Conference, 10/05-08/08 (Chuck Jeroloman \$35.80 gas/tolls, Joseph Liguori \$21.60 miles), Enterprise Auto Rental (Chuck Jeroloman \$150, FPPTA Conference 10/08)

Warrant 1207: Approve Refund of Pension Contribution to Josias Emilcar (\$2,327.44)

Note: November meeting rescheduled to November 13, 2008 at 1pm. Lt. Tabeek made the motion to adjourn the meeting adjourned at 5:15pm. Sgt. Myers seconded the motion. None opposed.