

City of Delray Beach
Police and Firefighters' Retirement System
Minutes of
February 18, 2009

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

Steve Cypen, Board Counsel
Karen Schell, Pension Coordinator (Finance)
Anne Woods, Plan Administrator

Guests: Mike Welker, Bogdahn Consulting; Maya Saxena, Saxena White PA; Milena Walinski, Asst. Finance Director; Scott Baur, Tegrit; Terrill Pyburn, Asst. City Attorney; Mark Dagnan, Fire Department

Off. Jeroloman, Chairman, called the meeting to order at 2:14pm. Roll call was taken of members and guests.

1. Approve Meeting Minutes of January 14, 2009:

The minutes were review and grammatical changes were made to the original. Mr. Sacharow made the motion to approve the minutes. Mr. Frankel seconded the motion. None opposed.

2. Unfinished Business:

a. Off. Jeroloman – Update on Ordinance Changes: Pop Up Provision and Seven (7) Year DROP Plan:

Pop Up Provision – Mr. Cypen stated that his office provided the two (2) redrafted ordinances. The change to the Pop Up Provision was that it reverts to a straight life as opposed to the normal form of benefit.

DROP Plan – Mr. Cypen stated that ordinance is to extend the period of time from 5 years (60 months) to 7 years (84 months); not to exceed 32 years of continuous service; and to include a grandfather clause that permits currently enrolled participants to participate.

Mr. Sacharow made the motion to recommend the adoption of the DROP Plan ordinance. Chief Giaccone seconded the motion. Roll call vote: Jeroloman-Yes, Myers-Yes, Phillips-Yes, Liguori-Yes, Tabeek-Yes, Giaccone-Yes, Sacharow-Yes, Frankel-Yes, Smith-No. Motion passes 8-1.

Mr. Sacharow made the motion to adopt the Pop Up Provision ordinance. Lt. Tabeek seconded the motion. None opposed.

3. New Business:

a) Karen Schell-Discuss/Clarification of Aaron Maltzman Distribution: Ms. Schell stated that she was contact by Mr. Maltzman's wife who requested the refund of his pension contribution monies that total \$16,466.34 plus non-compounding interest.

Mr. Cypen stated the following: a) that over the last 5 to 6 years he has been contacted numerous times by Mr. Maltzman's attorney regarding this issue and each time he has been give direction. b) Mr. Maltzman's attorney is requesting that the Board pay him attorney fees, which was refused. c) Agreed that the refund check would be made payable to both parties.

Mr. Cypen stated that the Board could take the position that interest on the monies should be paid through the date of the first request for a refund on 2/8/2007. He stated that the original attorney fee was \$12,000, and the Board compromised to \$5,000. The attorney fee should be taken from the total refund amount prior to calculating the interest; and the check made payable to both Mr. Maltzman and his attorney. Mr. Cypen requested that Mr. Maltzman be notified, in writing, that he has a responsibility to resubmit current paperwork indicating what method he wants used for the disbursement of the pension contribution. Since Mr. Maltzman's attorney has no standing with the Board, if a rollover is requested the Board cannot deny the request.

b) Off. Jeroloman-5 Year Cost Projection (Requested by the Finance Department and City Manager): Off. Jeroloman stated that on January 21, 2009 an email was sent to the Plan Administrator from Joe Safford, Finance Director. The purpose of the email was to request that Board agree to authorize Foster & Foster prepare a 5 year projection of City contributions.

Mr. Cypen stated that normally the Board cooperates with the City, and could request that the City agree to a contract and incur the cost charged by the actuary. The City would be responsible with providing the Board with a copy of the billing invoice.

Lt. Liguori stated that no one can predict future investment returns and the study could put the Board in a precarious situation with the City. He stated that he had spoken to Brad Heinrichs (Foster & Foster) and was told that the projection would only be a guess based on the assumptions and a disclaimer would be added stating such.

Mr. Smith stated that an email he received from Joe Safford stated that due to the downturn in investment returns the City is trying to estimate costs, and the projection study would be helpful when preparing future budgets.

After discussion, Lt. TabEEK moved that without endorsing the project or supporting any potential need for the project, at the request of the City, the actuary (Foster & Foster), with the appropriate caveat and supervisions prepare a 5 year cost projection. The actuary would provide the Board with a draft for review. The cost is not to exceed \$5,000. Mr. Sacharow seconded the motion. None opposed.

c) Approve Payment of Warrants 1251 through 1261: Mr. Sacharow made a motion to waive the reading and approve the payment of the warrants. Major Phillips seconded the motion. None opposed.

Warrant 1251: Normal Retirement Benefit Enhancements Effective April 2009 – William McCollom (\$7134.83), Robert Musco (\$7689.42), Michael Swigert (\$6444.11), Robert Sylvester (\$2220.96)

Warrant 1252: DROP Retirement Benefit Enhancements Effective April 2009 – Brian Bollan (\$4906.52), Ralph Phillips (\$8412.16), John Tomaszewski (\$8059.54)

Warrant 1253: Refund of Pension Contributions – Jonathan Taylor (\$2158.25) and Josterly Mital (\$3576.72)

Warrant 1254: Commence Normal Retirement Pension Benefit Retro Active to February 1, 2009 to Charles Drummond (\$3918.97)

Warrant 1255: Barry S. Balmuth, P.A. (\$400 – Professional Services Rendered, Invoice #13343)

Warrant 1256: Steven I. Gordon (\$2005 – Progress billing in connection with certified audit of financial statements as of 9/30/2008, Invoice #5529), Tegrit Plan Administrators, LLC (\$265.36 – DROP quarterly invoice for 12/31/2008, Invoice D090014), Foster & Foster (\$9937 – Professional Services Rendered, Invoice #635)

Warrant 1257: Investment Management Fees for Quarter Ending 12/31/2008 – Mutual of America (\$1742.58), Pioneer Investment Management (\$4463.53)

Warrant 1258: Investment Management Fees for Quarter Ending 12/31/2008 – Wentworth, Hauser & Violich (\$4156), Delaware Investments (\$19,769), DG Capital (\$16,569.10)

Warrant 1259: AT&T (\$99.15), Quill Office Supplies (\$648.83), FedEx (Total \$254.70 - \$228.53 Pension account and \$36.17 Finance Department account)

Warrant 1260: Travel Reimbursements for FPPTA Conference, February 1-4, 2009 – Adam Frankel (\$361.08), Mel Sacharow (\$353.62) and Joseph Liguori (\$306)

Warrant 1261: Platinum Plus for Business (\$1705.85 Travel expenses for FPPTA conference registrations (5 at \$400 each) and hotel reservations for Brady Myers and Chuck Jeroloman)

4. Reports:

a) Steve Cypen, Board Attorney:

i. Status of Pending and Potential Litigation Matters –

ii. Further Discussion – Ratification and Approval of Relationship with Law Firms - Mr. Cypen stated that the status of the two (2) pending matters, both of which involve the City are as follows: Division of Retirement (Extra Benefits-COLA) -A Summary Judgment is scheduled for April 29, 2009 at 1:30pm. Certification Pay – The requested documents have been received from the City and will be working on the calculations (Foster & Foster).

Smith Barney - Mr. Cypen stated that since the meetings are in a public forum his preference would be to deal with the present and the future as opposed to the past. He suggested that the Board consider a motion to retain Milberg LLP, in accordance with the letter submitted by Milberg (dated February 17, 2009), and authorize the chairperson to sign the letter and rescind any prior action that was inconsistent. Mr. Cypen recommended that if any board member requested further detail or explanation, a recess could be called giving each member the opportunity to meet with him and Ms. Saxena. The Board could also agree to schedule a shade meeting/executive session for another day. The Board members agreed to a recess at 3:00pm.

Terrill Pyburn, Assistant City Attorney, arrives at 3pm.

The meeting of the Board of Trustees' reconvened at 4:08pm.

Mr. Cypen requested that the Board agree to a motion authorizing and directing the chairperson to sign the letter dated February 17, 2009 for Jerome M. Congress of Milberg, and rescind any prior action that might be inconsistent with that act.

Lt. Liguori made the motion authorizing and directing the chairperson to execute and deliver the letter dated February 17, 2009 from Jerome M. Congress of Milberg; and to rescind any prior action that might be inconsistent with that action. Lt. Tabeek seconded the motion. None opposed.

b) Mike Welker, Bogdahn Consulting:

iii. Update-BNP Paribas Product – Mr. Cypen stated he is still in the process of examining the 69 page document; and is still waiting for Sun Trust (issuer of the CD) to provide a written overview of the product. He recommended that the Board consider seeing what the Stimulus Bill makes available in the way of investments. A bill introduced in the Congress called the Public Retiree Investment Act of 2009 was designed to encourage pension boards to invest in banks offering a guaranteed return of 8½% the first year on preferred stocks that are guaranteed by the federal government. The reset rate would be for each one (1) year period thereafter adding together the yield at the close of business on the

date of the termination on a 10 year certain and the difference between the 8½%. The only stipulation is a three (3) year commitment. (Refer to HR710-Public Retiree Investment Act of 2009)

Mr. Welker stated that the underlying investment is not nearly as risky as it seems. The process is to buy a call option on an index that is traded daily on a national exchange. This specific fund has \$700 million invested, and other cities are invested directly in an index product with an inherent volatility. The BNP product is structured to offer pension boards some sort of upside potential in an equity product that provides protection by wrapping it into a CD. Sun Trust offers a CD paying 3% interest; the difference between the 3% and the 1% offered through BNP is that the 2% would be the monies used to buy five (5) call options. The options expire yearly and if the index goes up based on the format of 100 than the Plan earns the split. Should the index goes down the Plan earns the spread minus the 1% guarantee.

Mr. Cypen stated that his concern deals with the complexity of how the product is structured, and the inability to dispute, repeal or recalculation. He stated that his responsibility is to review the legal documents, and if necessary make his concerns known prior to the Board.

Lt. Liguori stated that members of Board, as well as Mr. Welker, are not unfamiliar with the complex nature of the BNP product; and he appreciated Mr. Cypen's concerns. He stated that the Board had already listened to a presentation and voted 7 to 2 in favor of purchasing this product.

Mr. Cypen stated that he had already requested that Mr. Welker check with Sun Trust to confirm the following: a) Willingness to agree to the standard form of the investment agreement. b) Assure that they are going to post the collateral (100% of free and clear federal securities) to protect the Board in case they go out of business. c) Assure that the FDIC insurance would pass through to the number of beneficiaries.

Mr. Welker stated that at the time the investment would be purchased, the actuary would have to calculate the present value of accrued benefits for each retiree and current persons in the system. He stated that once the percentage of the largest value was determined then the decision would be made on the amount of the investment.

Mr. Cypen suggested that Mr. Welker provide the Board members with a copy of the BNP Paribas document for review

The Board agreed to table this item for further discussion (March 18, 2009).

Mike Welker, Bogdahn Consulting:

iv Revised Investment Policy Statement – Mr. Welker stated that Mr. Cypen had reviewed the IPS and approved the modifications. The Board reviewed the modifications and Mr. Sacharow made the motion to accept the IPS as submitted. Lt. Tabeek seconded the motion. None opposed.

i. Performance Review – Tabled to the March 18, 2009 meeting.

ii. Portfolio Rebalancing – Tabled to the March 18, 2009 meeting.

RFP for Securities Monitor: After discussion and reviewing a list of eight (8) firms the Board agreed to send a letter requesting a presentation to the following three (3) firms: Grant & Eisenhofer P.A., Abraham Fruchter & Twersky LLP and Coughlin Stoia Geller Rundman & Robbins LLP. Lt. Liguori made a motion to table any further discussion to the March 18, 2009 meeting. Mr. Sacharow seconded the motion. None opposed.

The meeting adjourned at 4:55pm.