

**POMPANO BEACH POLICE & FIREFIGHTERS' RETIREMENT SYSTEM**

**2335 EAST ATLANTIC BLVD.  
SUITE 400  
POMPANO BEACH, FLORIDA**

**BOARD OF TRUSTEES MINUTES  
REGULAR MEETING  
JANUARY 19, 2010**

The Board of Trustees convened at the Pompano Beach Police and Firefighters' Pension Office, Pompano Beach, Florida. The Chairman called the meeting to order at 3:07 p.m.

**PRESENT:** Chairman Paul D. O'Connell  
Vice Chairman Richard E. Avallone  
Trustee Sharra Aaronian  
Trustee Daniel M. Christophers  
Trustee John P. DeVoe  
Trustee Patrick S. Fletcher  
Trustee Ernest J. Lee, Jr.  
Trustee Peter McGinnis (arrived 4:20 pm)  
Trustee Richard H. Samolewicz

**ALSO PRESENT:** Robert A. Sugarman, Esq. Board Attorney  
Pedro Herrera, Esq. Sugarman & Susskind, P.A.  
Retired Police Chief Gary Morton  
Lindsay Dalton, Deputy Administrator  
Brian Hall, Assistant to Deputy Administrator  
Glenda Rowley, Future Deputy Administrator

**VISITORS:** Duane Mathis, Marcum Rachlin  
Denny St. Romain and Collin Ross, BCOM

**APPROVAL OF AGENDA**

**MOTION:** To approve the Meeting Agenda of January 19, 2010. PASSED 8-0.

	<b>M O T I O N</b>	<b>S E C O N D</b>	<b>V O T E D Y E S</b>	<b>V O T E D N O</b>
O'Connell	X		X	
Avallone			X	
Aaronian			X	
Christophers			X	
DeVoe			X	
Fletcher		X	X	
Lee			X	
Samolewicz			X	

**APPROVAL OF MINUTES**

**MOTION:** To approve the Minutes of the October 19, 2009 Regular Meeting as submitted. PASSED 8-0.

	<b>M O T I O N</b>	<b>S E C O N D</b>	<b>V O T E D Y E S</b>	<b>V O T E D N O</b>
O'Connell			X	
Avallone			X	
Aaronian			X	
Christophers			X	
DeVoe			X	
Fletcher		X	X	
Lee	X		X	
Samolewicz			X	

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<u>APPROVAL OF WARRANT NOS. 3000 THROUGH 3011</u>						
<p><b>MOTION:</b> To approve payment of bills set forth on Warrant Nos. 3000 through 3011 as follows: No. 3000 \$12,757.92, No. 3001 \$10,206.46, No. 3002 \$6,000.00, No. 3003 \$5,650.00, No. 3004 \$2,718.11, No. 3005 \$360.61, No. 3006 \$20,813.52, No. 3007 \$64,796.13, No. 3008 \$1,440.01, No. 3009 \$3,401.88, No. 3010 \$22,954.50, and No. 3011 \$1,482.22. PASSED 8-0.</p>	<p>O'Connell Avallone Aaronian Christophers DeVoe Fletcher Lee Samolewicz</p>	X	X	<p>X X X X X X X</p>	<p>X X X X X X X</p>	
(Detailed listing of Warrants is attached to Minutes)						
<u>APPLICATIONS FOR NORMAL RETIREMENT BENEFITS</u>						
<p><b>MOTION:</b> To approve applications for Normal Retirement effective 01/28/10 and DROP entry 2/1/10 for Firefighter Scott A. Friend and Fire Lieutenant Deborah Zimmerman. PASSED 8-0.</p>	<p>O'Connell Avallone Aaronian Christophers DeVoe Fletcher Lee Samolewicz</p>	X	X	<p>X X X X X X X</p>	<p>X X X X X X X</p>	
<p><b>MOTION:</b> To approve application for Normal Retirement effective 01/28/10 and DROP entry 02/1/10 for Fire Inspector John P. DeVoe.</p>	<p>O'Connell Avallone Aaronian Christophers Fletcher Lee Samolewicz</p>	X	X	<p>X X X X X X X</p>	<p>X X X X X X X</p>	
<p>Trustee DeVoe declared that, on the advice of counsel, he was abstaining from the vote. He signed the "Declaration 8B Memorandum", which is attached. PASSED 7-0 (Trustee DeVoe abstained).</p>						
<u>PRESENTATION OF DRAFT OF AUDITED FINANCIAL STATEMENTS AS OF 9/30/09 BY DUANE MATHIS OF MARCUMRACHLIN</u>						
<p>Mr. Mathis introduced himself as the audit manager for this engagement and presented the draft of the financial statements and accompanying information for the year ended 9/30/09. He noted that the audit was conducted in accordance with generally accepted standards and an unqualified opinion was issued.</p>						
<p>As of September 30, 2009, the net assets of the fund equaled \$167 million, an increase of \$2 million from the prior year. The plan received \$10.6 million in contributions and \$2.9 million in investment income and paid \$11.1 million in benefits and \$476K in expenses.</p>						
<p>The notes to the statements were not reviewed but Mr. Mathis encouraged the trustees to review them later. They provide a summary of significant accounting policies as well as items such as capital assets.</p>						

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<p>The independent auditors' report, starting on page 29, discussed the internal controls over financial reporting. They did not identify any deficiencies that were deemed to be a material weakness or any instances of non-compliance. However, they did identify a control deficiency related to the fixed asset records and made a recommendation to correct that deficiency. This was already discussed with the pension staff, who prepared a "fixed asset policy" to present to the Board for adoption.</p> <p>Mr. Mathis referred to the letter accompanying the financial statements that was required to be presented to the Board under SAS 14. This explains the responsibilities of the auditors, the scope of the audit, significant audit findings, issues with management, etc. They had no issues to report except for one uncorrected misstatement that was not material to the statements and which was corrected.</p> <p><b>MOTION:</b> To accept MarcumRachlin's draft of the Financial Statements and Accompanying Information for the year ended September 30, 2009. PASSED 8-0.</p>						
<p>Mr. Sugarman recommended that all trustees keep their copy of the final audit report for five years.</p> <p>A draft of the "Fixed Asset Capitalization and Depreciation Policy" proposed by staff was presented for approval. The policy established a \$1,000 threshold for a fixed asset, a depreciation schedule, a procedure for disposal of fixed assets, etc.</p>						
<p><b>MOTION:</b> To accept the Fixed Asset Capitalization and Depreciation Policy, as presented, to be effective on 01/19/10. PASSED 8-0.</p>						
<p><u>SUGARMAN &amp; SUSSKIND, P.A.</u></p> <p>Mr. Sugarman reported on the following items:</p> <p>The IRS mileage rate is 50 cents per mile for 2010.</p> <p>In order to avoid taxes on hotel rooms when attending conferences, the plan's tax-exempt certificate must be presented and the payment must be made directly from the fund.</p>						

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<p>A letter was sent to the auditors reporting that they were unaware of any claims against the fund, which enabled them to issue a clean opinion letter.</p> <p>Mr. Sirico's attorney has filed a motion to extend the period for discovery and a motion to dismiss the case. Mr. Sugarman does not have an issue with the extension since Mr. Sirico is not in pay status. The case they are making for dismissal is based on statutes of limitation, which in Mr. Sugarman's opinion relates to ethics violations. Mr. Klausner will be preparing the brief contesting the dismissal. Mr. Sugarman said he may seek another opinion from the Attorney General once he has reviewed the briefs.</p> <p>They notified the sponsors of the holiday dinner about the state requirements for reporting gifts.</p> <p>Mr. Sugarman referred to correspondence with Trish Shoemaker of the Division of Retirement regarding the question of what might happen to the Chapter 185 monies if the City reinstates the Police Department and puts the newly hired Police Officers into the Florida Retirement System (FRS). Ms. Shoemaker's response was that this would result in the loss of the 185 funds. Under Florida Statutes, the City would be responsible for making up the lost contributions and the City's attorneys have been so notified. This would not impact receipts under Chapter 175 for the firefighters.</p> <p>Mr. Herrera reported that negotiations with Neuberger Berman (NB) for the private equity investment have successfully been completed and they are just waiting for the documents to be signed and returned. Pompano is the first municipal pension fund in the country to participate in this private equity fund. He was successful in negotiating a "claw back" guarantee from NB, which will ensure that, when the private equity fund is terminated, the plan will be entitled to its fair share of the proceeds; i.e. excess profits that might be claimed by NB will be returned to the plan. He also negotiated a most favored nations clause, Florida law and venue and ensured the Board will not be liable to indemnify anyone. He expects everything to be signed by the end of the week. He added that they reviewed and approved of the proposed changes to the investment policy relating to the private equity investment.</p> <p>The October 19, 2009 minutes were reviewed, as were the monitoring reports from Spector Rosen and Motley Rice. No action was being recommended.</p>						
<p><u>PROPOSED REVISIONS TO STATEMENT OF INVESTMENT POLICY RELATING TO PRIVATE EQUITY</u></p>						
<p><b>MOTION:</b> To approve the revisions to the Investment Policy relating to Private Equity based on the recommendation of the Investment Consultant, Graystone. PASSED 8-0.</p>		<p>O'Connell Avalone Aaronian Christophers DeVoe Fletcher Lee Samolewicz</p>	<p>X</p>	<p>X</p>	<p>X X X X X X X</p>	<p>X X X X X X X</p>

PROFESSIONAL ADVISORS REVIEW COMMITTEE REPORT AND CONSIDERATION OF BOARD ATTORNEY LEGAL FEES

As a result of Mr. Sugarman's request for a retainer increase effective for 2010, the Professional Advisors Review Committee met to consider the proposal and make a recommendation. Mr. Sugarman and Mr. Herrera chose to exit the meeting while Chairperson Samolewicz presented the Committee's recommendation, which was to offer Mr. Sugarman a retainer for the first 35 hours of work each month and hourly rates for Mr. Sugarman and Mr. Herrera for hours in excess of 35, according to the following schedule:

	<u>2010</u>	<u>2011</u>	<u>2012</u>
Monthly Retainer	\$5,000	\$6,000	\$7,000
Hourly Rate for Mr. Sugarman	\$200	\$225	\$250
Hourly Rate for Mr. Herrera	\$175	\$185	\$200

The proposed retainers would be an increase of 177% in 2010, 233% in 2011 and 288% increase in 2012 over the current retainer of \$1,800. The proposal also stipulated that future monthly retainers would be negotiated for reduction based on future referral fees Mr. Sugarman might earn on litigation cases.

The Committee arrived at this recommendation after considering work hours reported by Sugarman & Susskind for the last couple of years, the amount of fees Sugarman & Susskind received as a result of security litigation settlements (\$566K), the possibility of future settlement fees from ongoing litigation and the trustees' fiduciary responsibilities to the members. It was important to note that no one was dissatisfied with the work performed by Sugarman & Susskind and everyone agreed they were deserving of an increase.

During discussion, a question was raised about why the hours spiked in November 2008 and 2009. Also, Mr. Sugarman will be asked to provide a breakdown of all hours in excess of 35 and who performed the work. An additional hourly rate may need to be developed for work performed by paralegals and office staff. In addition, clarification is needed for what is and is not included in the retainer, whether meeting attendance by both Mr. Sugarman and Mr. Herrera would be treated as one person and is attendance at the entire symposium included in the 35 hours. There was also discussion of whether they could attend by teleconference.


Mr. Sugarman and Mr. Herrera returned to the room, at which time Chairman O'Connell presented them with the above offer. Although Mr. Sugarman wanted time to consider the offer, he noted that the requirement to share litigation fees is prohibited by the Florida Bar. The rest of the discussion was deferred while BCOM made their presentation and Mr. Sugarman considered the offer.

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<p><u>PRESENTATION BY BCOM INVESTMENT ADVISER, LLLP</u></p> <p>Mr. St. Romain and Mr. Ross were present to discuss various aspects of the building, including the appraisal, budget, elevator and construction projects, climate control and a lobby memorial.</p> <p>With the recent cold weather, there were many complaints about the lack of heat. The building does not have a functional boiler so the temperature is controlled through thermafusers and space heaters, which they will provide. Trying to install heating would not only be costly (in excess of \$650K) but would also involve some asbestos abatement. Heat will be included in the construction of the second floor. Tenant Johnson was offered a \$500 reduction in rent for one month.</p> <p>They presented a sample memorial plaque to honor and remember police officers and firefighters who have died in the line of duty, Our Fallen Heroes. Chairman O'Connell noted that if the Board wants to proceed with this, he would suggest unveiling it in July for the 20<sup>th</sup> anniversary of Officer Scott Winter's murder. Sgt. Chris Reyka would also be honored. There was a question about which department patches should be included on the plaque (Pbfd, PbpD, BSO) and it was agreed that BSO would not be included, as it was the intent to honor members of the plan, which also owns the building. It will be made of cast-bronze with dimensions of 32 x 24. There was also consideration of including a little narrative about each person honored. It was suggested that Bank of America and Walgreens be asked to sponsor the plaque; Chairman O'Connell will contact them.</p> <p>Mr. St. Romain spoke of the new management team in place and outlined some proposed building improvements that will help get the building leased. They are working on an application for a \$50,000 grant from the CRA to help fund these improvements. Although the grant money would be used for interior renovations, they will argue that attracting tenants will have an overall positive affect in the area. They plan to have the application submitted to the CRA before their next meeting on February 4.</p> <p>The building was recently appraised at \$3 million. The devaluation was generally related to nationwide economic conditions, but other contributing factors were the decrease in occupancy, which impacted the gross potential rental income, and comparable sales, which were lower than the previous year. Also, the appraiser took off \$572K worth of maintenance projects for the elevators and 2<sup>nd</sup> floor construction, which will be added on next year. He reminded the Board that real estate is a long term deal.</p> <p>Construction of the new elevator is anticipated to start in March. It is now estimated that the current elevator will only be down about 5 days, including a weekend.</p> <p>Two scenarios were presented with regard to the 2010 budget. The first includes just demolition costs for the second floor, which would require \$8K in capital, and the second includes the full estimated cost of demolition and renovation, which would require capital of \$228K. The proposed budget</p>							

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<p>does not include any new tenants. Mr. St. Romain recommended going with the first scenario - demolition only.</p>						
<p>They are aggressively searching for new tenants to lease the available 4,000 square feet of space, which will lead to a positive cash flow. They do not believe build out of the second floor will cause much disruption to the other tenants. The demolition work will be done in the same approximate time period as the elevator. After demolition, there will be no access to the second floor.</p>						
<p>MOTION: To accept Scenario One of the Capital Improvement Budget and Schedule on the recommendation of BCOM. PASSED 9-0.</p>	<p>O'Connell Avallone Aaronian Christophers DeVoe Fletcher Lee McGinnis Samolewicz</p>	X	X	<p>X X X X X X X X X</p>		
<p><u>CONTINUATION OF PROFESSIONAL ADVISORS REVIEW COMMITTEE REPORT AND CONSIDERATION OF BOARD ATTORNEY LEGAL FEES</u></p>						
<p>Having reviewed the Board's offer, Mr. Sugarman said he could agree to most of it. He noted that he assumed the reference to 35 <u>minimum</u> hours really meant <u>maximum</u>. He counter-offered on the proposed hourly rates, requesting that the rates proposed for 2012, \$250 and \$200, be used for all three years, 2010-2012. He felt these rates were justified based on his rates for other clients and the discount he offers because he also represents the firefighters' union. He also asked that the sentences relating to the referral fees, which he clarified were participation fees for work performed, be removed, because it is legally prohibited. However, he will take the amount of these fees into consideration when considering the need for future increases in the retainer, as he has in the past.</p>						
<p>Mr. Sugarman reviewed his invoices for November 2008 and 2009, noting that it was just coincidental that they were busy months, during which they spent considerable hours handling investment contracts and a member's divorce. He noted that they do not normally bill for paralegal or office staff hours.</p>						
<p>Mr. Sugarman and Mr. Herrera again voluntarily excused themselves while the Board discussed the counter-offer.</p>						
<p>Chairman O'Connell stated that there was a need for the Board to discipline itself with regard to work requested of the attorneys. In addition, members should be expected to pay for their own legal fees above the hour allowed by the Board. There is a need for Mr. Sugarman to inform the members of their liability for additional costs. Trustee Samolewicz recommended accepting the change in the hourly rates requested by Mr. Sugarman and ask for detailed billing on who was doing what type of work.</p>						

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<p>In addition, time estimates for projects should be provided and pre-approved by the Board and there should be a clear understanding of what is and is not covered by the retainer.</p> <p>Mr. Sugarman and Mr. Herrera returned and the foregoing discussion was relayed to them. The Board asked about using teleconferencing to cut down on the time and Mr. Sugarman responded was that it would save their travel time but it would not be the same as face to face interaction. He added that the 35 hour limit was the Board's idea, not his. He is willing to perform all the retainer work at the proposed fee except for the 5 hour limit he proposed for new investments or for recovery of bad investments. As in the past, work not covered by the retainer would include depositions on disability cases, formal contested hearings (forfeiture and disability), lawsuits and litigation, etc. They left the room again while the trustees conferred. When they returned, they were told that the Board would accept his latest proposal. Mr. Sugarman was asked to submit a formal proposal, outlining the details, for review and final approval at the next meeting. The new agreement will be retroactive to January 1, 2010.</p> <p><u>OTHER COMMITTEE REPORTS</u></p> <p><u>Investment Committee:</u> Chairman O'Connell inquired about the itinerary for the upcoming Educational Symposium. Vice-Chairman Avallone said he has not spoken with Mr. Mulfinger yet but he doesn't anticipate many changes compared to last year. He will be meeting with Trustee Christophers to start finalizing plans.</p> <p><u>DEPUTY ADMINISTRATORS REPORT</u></p> <p>Ms. Dalton discussed the successful transition with Ms. Rowley who came on board officially January 4<sup>th</sup>. She reported that she was working on the calculation of the payout of her sick and vacation accruals and distributed a draft to the Trustees. Over the past 20 years she accumulated 942 hours of unused vacation leave and 1609 hours of sick leave. The vacation leave payout was calculated using her current rate of pay but sick leave, which is limited to 840 hours, was calculated based on a 10-year salary average. Chairman O'Connell asked her to finalize the calculations to present at the next meeting for approval. It was noted that City policy includes a 2-year cap on vacation accruals plus what was earned during the employee's final fiscal year. Ms. Dalton explained that over the last few years it was very hard to take time off due to the work load.</p> <p><u>OLD BUSINESS</u></p> <p>Ms. Dalton reported that there have been no new developments with regard to the proposed ordinances. Chairman O'Connell stated that the Sheriff is reluctant to sign the waiver and consent for the additional overtime because the letter from GRS states no cost for the first year and they need assurances beyond that. The waiver and consent for the DROP loan program is on the Sheriff's desk for signature.</p>							

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<p>Chapter 2009-97 was discussed with Ms. Robles of the City attorney's office. Ms. Robles indicated it would be presented to the new City Manager but follow up needs to be done. They seemed concerned about the health insurance.</p>						
<p>Ms. Dalton reported on the plan qualification. Apparently, the City attorney's office was waiting on some other amendment or addition to the plan qualification. They received an amendment for the General Employees' Retirement System that was prepared by their attorney, Ice Miller. Ms. Robles said they want both plans to be consistent and complete. Mr. Sugarman stated that they could look at what Ice Miller sent them to get a feel of what they are talking about.</p>						
<p><u>MISCELLANEOUS</u></p>						
<p>Chairman O'Connell noted that he an introductory meeting with Mr. Beach, the new City Manager, and several of his staff members.</p>						
<p>Ms. Dalton reported that the Munder letter regarding recent management changes was forwarded to Mr. Mulfinger. The agenda package included end of month statements from the fund of funds investment managers and a list of dates for various conferences coming up.</p>						
<p>Ms. Rowley wanted to attend the conference for the Division of Retirement in Tallahassee in May and was informed that any in-state travel did not need approval. Trustee Samolewicz inquired about traveling to NCPERS in Las Vegas. Chairman O'Connell stated that conferences within the 48 states were a reasonable request. A state like Hawaii was another matter. Precedent was set when Trustee Lee went to Hawaii and paid for his own flight and the plan paid for registration and the hotel. Trustees Lee, Christophers and Samolewicz were all interested in attending the NCPERS conference in May.</p>						
<p>MOTION: To approve the attendance for anyone who wants to attend the NCPERS conference in Clark County, Nevada in May. PASSED 9-0.</p>		<p>O'Connell Avallone Aaronian Christophers DeVoe Fletcher Lee McGinnis Samolewicz</p>	<p>X</p>		<p>X X X X X X X X X</p>	
<p>Chairman O'Connell reminded everyone that Ms. Dalton's retirement dinner will be held on January 29 and to send payment to the pension office.</p>						

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<u>ADJOURNMENT</u>		O'Connell			X	
MOTION: To adjourn meeting		Avalone			X	
		Aaronian			X	
		Christophers			X	
		DeVoe			X	
		Fletcher			X	
		Lee		X	X	
		McGinnis			X	
		Samolewicz	X		X	
Meeting adjourned at 6:05 p.m.						
 Glenda Rowley, Deputy Administrator						
Distribution: Board of Trustees Robert A. Sugarman, Esq. J. Stephen Palmquist Charles H. Mulfinger, II City Manager Mayor City Commission MarcumRachlin Webmaster						