

POMPANO BEACH POLICE & FIREFIGHTERS' RETIREMENT SYSTEM

**50 NE 26TH AVENUE
SUITE 302
POMPANO BEACH, FLORIDA**

**BOARD OF TRUSTEES MINUTES
REGULAR MEETING
MAY 16, 2022**

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 3:00 PM.

PRESENT: Chairman Paul O'Connell
Vice-Chairman Richard Samolewicz
Trustee Sharra Aaronian
Trustee Vincent Femia
Trustee David Hall
Trustee Patrick Hanrahan
Trustee Peter McGinnis
Trustee Jorge Rossi

ABSENT: Trustee Daniel Christophers

ALSO PRESENT: Robert Sugarman, Board Attorney
Debra Tocarchick, Executive Director
Maureen Femia, Deputy Director
Christopher Christmas, Fire Captain
James Spears, Esq., Attorney for Mr. Christmas
Eddie Beecher, City HR Manager
Cindy Lawrence, City Risk Manager
Daniel Thorpe, City Claims Adjuster II
Cheryl Nelson, City Claims Adjuster I
Beth Leahy, Esq., Walton, Lantaff, Schroeder & Carson
Fabiola James, Esquire Court Reporter

VISITORS: John Balaod, Journalist – WITH.Intelligence (via Zoom)
Jackson Louis-Charles, Firefighter (via Zoom)

AUDIENCE TO BE HEARD

None

CONSENT AGENDA ITEMS

- a) Approval of Agenda of Regular Board Meeting on May 16, 2022
- b) Approval of Minutes of Educational Symposium and Regular Board Meeting on April 28-30, 2022
- c) Ratification and Approval of Warrant Log

The Chairman asked if any Trustee wished to move an item from the consent agenda to the regular agenda for separate consideration. Seeing none, the Chairman called for a motion.

**M
O
T
I
O
N**

**S
E
C
O
N
D**

**V
O
T
E
D
Y
E
S**

**V
O
T
E
D
N
O**

<div> <div>Board of Trustees Minutes</div> <div>May 16, 2022</div> <div>Page Three</div> </div>	TRUSTEES	M	S	Y	N
<p>medical improvement (MMI).</p> <p>In April 2022, Dr. Linson conducted an IME of Mr. Christmas and rendered a detailed report. The results of the exam concluded that Mr. Christmas is totally, permanently and continuously disabled from rendering useful and efficient service as a Fire Captain. Dr. Linson answered the five questions above in full detail in the affirmative on behalf of Mr. Christmas' service incurred disability application. Mr. Spears advised the Board he is asking that a service-incurred disability be approved for Mr. Christmas and welcomed any questions.</p> <p>Under discussion, the Trustees were given the opportunity to ask questions which were answered by Mr. Christmas and his attorney.</p> <p>When asked why it was nearly two years between the October 2018 injury and the September 2020 surgery, Mr. Christmas responded that he tried to go through worker's comp for treatment but they weren't doing anything so he went to his own surgeon who immediately performed the surgery.</p> <p>Ms. Beth Leahy, outside counsel representing the City of Pompano Beach in the worker's compensation claim, was present to answer questions. Ms. Leahy confirmed a worker's compensation case was accepted from the City for the incident which occurred in 2018 and medical care was provided. Mr. Christmas filed a petition seeking surgery which was denied due to discovery in the case that indicated Mr. Christmas had a serious automobile accident in 2015 that left him with substantial medical issues. From that accident and then from a 2017 at-home aggravation, he had severe back pain, numbness in both extremities and a host of other issues. He underwent a fusion in May 2017 related to the personal automobile accident. In the worker's compensation claim, he claimed he was better after the fusion but the medical records indicated he was not better after the fusion and he continued to have medical issues.</p> <p>When Mr. Christmas made the request for surgery in his worker's compensation claim, he was given medical care by Dr. Schechter. Dr. Schechter reviewed the medical history and determined the 2017 fusion procedure had been poorly done, and the hardware needed for the issues from the 2015 personal car accident needed to be repaired. Dr. Schechter concluded that the need for surgery was not related to the 2018 compensable lifting incident but was just a bad result from a poorly done surgery. Mr. Christmas went ahead and had the surgery. He sought additional surgery after that and Dr. Schechter found that need was not related to the 2018 compensable accident but rather a need related to a pre-existing condition from 2015 automobile accident and the 2017 event.</p> <p>Mr. Christmas sought the opinion of his personal physician, Dr. Hall, who opined he needed the surgery and it was related to his 2018 worker's compensation accident. However, Ms. Leahy contended Mr. Christmas had told Dr. Hall that all his problems were resolved before the 2018 incident. He had also told Dr. Schechter all of his problems were resolved before the 2018 incident which was not the case as evidenced by the medical records.</p>					

Board of Trustees Minutes Page Four	May 16, 2022 TRUSTEES	M	S	Y	N
<p>Ms. Leahy advised that in worker's compensation cases such as this where there are two doctors who dispute each other, an expert medical advisor can be appointed whom acts as a neutral appointed by a judge to express an opinion that is deemed binding on both parties unless there is clear and convincing evidence to overcome it. The City asked the judge to appoint this expert medical adviser so they could have a solid opinion. The judge appointed a doctor to act as the expert medical advisor; however, immediately after, Mr. Christmas through his attorney, dismissed his worker's compensation claim, so the City could not proceed with the expert medical adviser due to lack of jurisdiction. This occurred on the heels of a motion that was filed on behalf of the City to amend a pre-trial stipulation because when Mr. Christmas had been deposed in the worker's compensation case, he denied he had any prior back problems from the 2015 automobile accident. He claimed that all of his problems from that accident related to his upper back rather than his lower back and that was not what was shown in the records. The employer carrier in the context of litigation on the surgery asked the court to amend the pre-trial stipulation to raise a fraud defense. Shortly after this motion, the claimant dismissed the claim.</p> <p>Mr. Spears acknowledged that the 2018 worker's compensation claim is withdrawn but a 2020 back injury claim remains open although Mr. Christmas is not asking for treatment on the 2020 claim due to what was just heard. There are no medical malpractice claims or third-party suits pending.</p> <p>Mr. Christmas acknowledged there was a monetary settlement as a result of the 2015 automobile accident. He had substantial medical bills from consulting with an orthopedic surgeon. He did not have a back surgery and was back to work by October 2015 and had no other injuries or complaints until 2017 when he had a personal injury, sought treatment, and ended up needing an L-1-2 surgery. He thought the 2017 surgery looked unaligned on a scan and felt discomfort but another surgeon told him he was fine and only required medication for palliative care. There were no malpractice claims related to the 2017 surgery. He was released back to full duty approximately ten months later in January 2018.</p> <p>A question was raised as to why the City did not provide a letter to the Board indicating Mr. Christmas was disabled and a position was no longer available to him. Further clarification was also sought to understand the litigation on the worker's compensation claim.</p> <p>Risk Management responded that generally their office will provide such a letter when a claimant through worker's compensation reaches MMI with a certain impairment rating. As a result of the worker's compensation case being withdrawn by Mr. Christmas, the City does not have medical records from an authorized worker's compensation physician indicating he is unable to work as a result of his work-related injury.</p> <p>Currently Mr. Christmas is on light duty; however, the City does not have permanent light duty positions. It is uncertain at this time how long the light duty position will be available to him.</p>					

Board of Trustees Minutes Page Five	May 16, 2022 TRUSTEES	M	S	Y	N
<p>Ms. Leahy responded that the issue being litigated was not the restrictions Mr. Christmas had but rather what the actual cause of his medical problem was. The expert medical advisor was going to make the determination on whether Mr. Christmas was entitled to surgery under the worker's compensation job-related incident or if the surgery was needed due to the natural progression of a pre-existing condition. There is a deposition existing from the prior 2015 automobile accident case as well as the worker's compensation case deposition.</p> <p>Mr. Spears indicated that no one is disputing that Mr. Christmas had a prior surgery. In terms of the worker's compensation case, the worker's compensation doctor said that the need for surgery was not related to the 2018 compensable lifting incident. Mr. Christmas disputes that because his doctor says it was related. In the meantime, Mr. Christmas was suffering and not getting any relief while there is delay after delay. He became very frustrated with the process and could not continue it because he needed to get something done for his medical issue. Mr. Spears indicated they have been forthright about every incident and issue.</p> <p>Mr. Sugarman indicated they are faced with two problems with respect to the ordinance. One issue is the Board is presented with an actively employed firefighter who is still working and providing a service to the City which is valuable enough for them to continue paying him. The question is whether this is regular and continuous duty as a firefighter.</p> <p>Mr. Beecher responded that the conditions and position Mr. Christmas is working in is considered temporary in nature until he is better under his worker's compensation treatment or until the worker's comp doctor deems him to be at MMI and the City asks him to apply for disability retirement. The quandary is that he removed the worker's compensation arena from the mix. The City does not have full-time light duty positions. They have accommodated him but they would like to have their unrestricted full-time firefighter position back.</p> <p>In response to a question about his claim withdrawal on June 19, 2020, Mr. Christmas indicated that he was advised that the independent third-party doctor's decision could take approximately 8-9 more months. He was in pain and continued to get atrophy in his leg so he sought out a medical doctor who told him he should get the treatment as soon as possible.</p> <p>Mr. Sugarman made reference to the City Ordinance 34.057(E) regarding service-incurred aggravation of non-service incurred condition noting this is the second problem. Mr. Sugarman pointed to the relation between this language and the reference Ms. Leahy made to Mr. Christmas' on duty injury being a result of aggravation of the off-duty incidents.</p> <p>Mr. Spears felt worker's compensation failed Mr. Christmas. He argued that what happened in the worker's compensation arena is not dispositive to this disability process. The IME report clearly supports the disability.</p>					

Board of Trustees Minutes Page Six	May 16, 2022	TRUSTEES	M	S	Y	N
<p>During discussion on Mr. Christmas’ employment status, Mr. Beecher noted that he would continue to be in the light duty capacity if a disability retirement were not granted today; and the Fire Chief would be consulted as to whether he wished to extend the temporary light duty work. However, it is just that – temporary light duty work. The City feels it has been very accommodating to allow Mr. Christmas to get to this point.</p> <p>The Board concluded that additional information was needed and requested the City provide copies of the depositions referred to by Ms. Leahy for the Board and Dr. Linson to review. Additionally, the Board would like feedback from the City as to how much longer Mr. Christmas is expected to remain employed assuming nothing changes.</p> <p>MOTION: To table the application from Christopher Christmas for a service-incurred disability retirement in order to obtain additional information. 8-0.</p> <p><u>SUGARMAN, SUSSKIND, BRASWELL & HERRERA LEGAL REPORT</u></p> <p>Mr. Sugarman reported on the following items:</p> <ul style="list-style-type: none">➤ Reviewed the meeting minutes from the Educational Symposium and Business meeting on April 28-30.➤ The City of Boston will be lead plaintiff in the Ericsson securities litigation case with a loss of \$1.39 million compared to the Plan’s loss of \$260,000.➤ The Trustees were reminded to file their annual Financial Disclosure Form by July 1. <p><u>ADMINISTRATIVE AND MISCELLANOUS ISSUES</u></p> <p>Graystone’s Investment Performance Report as of March 31 was submitted for approval.</p> <p>MOTION: To approve the March 31, 2022 Performance Evaluation Report as submitted by Graystone Consulting. PASSED 8-0.</p>	<p>O’Connell Samolewicz Aaronian Femia Hall Hanrahan McGinnis Rossi</p>	<p>X</p>	<p>X</p>	<p>X X X X X X X X</p>		
	<p>O’Connell Samolewicz Aaronian Femia Hall Hanrahan McGinnis Rossi</p>	<p>X</p>	<p>X</p>	<p>X X X X X X X X</p>		

Board of Trustees Minutes Page Seven	May 16, 2022	TRUSTEES	M	S	Y	N
<p>MOTION: To set the net investment rate of return for the quarter ended 3/31/2022 at -4.46% for purposes of the Fund Rate DROP earnings in accordance with Mr. Owen's 5/5/2022 letter of certification. PASSED 8-0.</p> <p>The Executive Director submitted the Deputy Director's annual performance review and recommended that she be moved to the next step of her salary scale.</p> <p>MOTION: To accept the Executive Director's review and salary recommendation for the Deputy Director effective May 6, 2022. PASSED 7-0 (Trustee Femia abstained and filed Form 8B).</p> <p>The Board reviewed a Litigation Report update as of 3/31/2022 regarding Berkley Lights Inc and the Your Pension Matters newsletter.</p> <p><u>COMMITTEE REPORTS</u></p> <p><i>Investment Committee:</i> The Executive Director will provide a draft RFP for Investment Consulting Services to the Investment Committee prior to the June 20 Board Meeting. The Committee will share ideas in July after attending the FPPTA Annual Conference in June.</p> <p><i>Budget Committee:</i> An informal budget variance report as of 3/31/2022 was circulated.</p> <p><u>CHAIRMAN'S REPORT</u></p> <p>The Chairman discussed the appropriate level of voluntary sponsorship contribution from the investment managers going forward. The Executive Director recommended waiting until the June meeting when the Financial Report will be made available detailing the 2022 costs and remaining reserves.</p> <p>Trustee McGinnis will follow up with the Marriott regarding the issues experienced at the venue during the 2022 Educational Symposium.</p> <p><u>EXECUTIVE DIRECTOR'S REPORT</u></p> <p>The Executive Director reported on the following items:</p> <p>❖ Performed semi-annual check to confirm ADA website compliance is up to date.</p>	<p>O'Connell Samolewicz Aaronian Femia Hall Hanrahan McGinnis Rossi</p> <p>O'Connell Samolewicz Aaronian Hall Hanrahan McGinnis Rossi</p>	<p>X</p> <p>X</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>		

Board of Trustees Minutes Page Eight	May 16, 2022	TRUSTEES	M	S	Y	N
<div><div><div>❖ Graystone is working on the items requested at the Symposium. Mr. Owens is not available for discussion due to health issues so he asked that this be tabled. He also stated there was no real sense of urgency and the data doesn't appear to change much.</div><div>❖ Goldman Sachs' 2022 voluntary sponsorship contribution has not been received yet.</div></div><div><div>MOTION: To adjourn the May 16, 2022 Regular Board meeting at 4:21 PM.</div><div>PASSED 8-0.</div></div></div> <div><div>Respectfully submitted,</div><div><div><div>Debra Tocarchick</div><div>Debra Tocarchick, CEBS</div><div>Executive Director</div></div></div></div>		<div>O'Connell Samolewicz Aaronian Femia Hall Hanrahan McGinnis Rossi</div>	<div>X</div>	<div>X</div>	<div>X X X X X X X X</div>	
<div>DISTRIBUTION: Board of Trustees Robert A. Sugarman, Esq. Pedro Herrera, Esq. Lawrence Watts, Actuary City Manager Mayor and City Commission City Clerk Assistant City Attorney City HR Director President IAFF Local 1549 Marcum</div>						

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME <i>Femia Vincent</i>		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE Pompano Beach Police and Firefighters Retirement System	
MAILING ADDRESS 2335 E. Atlantic Blvd, Suite 400		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:	
CITY Pompano Beach	COUNTY Broward	<input checked="" type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY	
DATE ON WHICH VOTE OCCURRED <i>16 May 2022</i>		NAME OF POLITICAL SUBDIVISION: City of Pompano Beach	
		MY POSITION IS <input type="checkbox"/> ELECTIVE <input checked="" type="checkbox"/> APPOINTEE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting, *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, V Femia, hereby disclose that on 16 May, 2022

(a) A measure came or will come before my agency which (check one or more)

- ☐ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, _____;
- ☒ inured to the special gain or loss of my relative, Spouse M Femia;
- ☐ inured to the special gain or loss of _____, by whom I am retained; or
- ☐ inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

pay increase according to established pay plan

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

16 May 2022
Date Filed

[Signature]
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.

REGULAR MEETING – MAY 16, 2022

CONSENT AGENDA - WARRANT NOS. 5438 THROUGH 5443

Ratified and Approved on 05/16/2022

WARRANT NO.	PAYABLE TO	DESCRIPTION	AMOUNT
5438	Xerox Corp Economic Computers Maureen Femia Daniel Christophers Francotyp-Postalia, Inc	Inv No. 016084982, April lease; \$150.59, excess print charges; \$89.00, Total \$239.59 Annual Maintenance Contract for IT Services; \$2,900.00 Petty cash reimbursement; \$146.00 Board meeting expense reimbursement; \$254.62 Inv No. RI105315623, 05/02/2022 – 08/01/2022 quarterly postage meter lease; \$78.00	3,618.21
5439	Maureen K. Femia Vantagepoint Transfer Agents/401	One-time payroll due to salary increase to be applied to payroll ending 5/31/2022 and retroactive to 5/6/2022, less 10% 401(a) employee contribution; \$3,910.61, 401(a) employee and employer contribution \$869.02, Total \$4,779.63	4,779.63
5440	Maureen K. Femia Vantagepoint Transfer Agents/401	Salary increase to be applied commencing 6/1/2022, less 10% 401(a) employee contributions; \$3,801.98; 401(a) employee and employer contribution, \$844.88, Total \$4,646.86	4,646.86
5441	Bank of America	Debra Tocarchick: Educational Symposium Expense; \$654.28, Telephone & internet; \$360.82, Courier; \$117.91, Publications; \$116.97, Total \$1,249.98 Maureen Femia: FPPTA Annual Conference registration; \$875.00, Educational Symposium expense; \$606.38, Publications; \$22.99, Board meeting expense; \$13.99, Office supplies; \$6.96 Total \$1,525.32 Paul O'Connell: Educational Symposium expense; \$4,946.69, FPPTA Annual Conference registration and hotel deposit; \$1,087.63, Board meeting expense; \$7.65, Total \$6,041.97 Sharra Aaronian: Educational Symposium expense; \$28.88 Daniel Christophers: Educational Symposium expense; \$7,549.80 Vincent Femia: FPPTA Annual Conference registration and hotel deposit; \$1,087.63 David Hall: Educational Symposium expense; \$1,511.53, FPPTA Annual Conference registration and hotel deposit; \$1,087.63, Total \$2,599.16 Patrick Hanrahan: FPPTA Annual Conference registration and hotel deposit; \$1,087.63, Educational Symposium expense; \$340.38, Total \$1,428.01 Jorge Rossi: Educational Symposium expense; \$340.38	21,851.13
5442	Martin Currie Morgan Stanley Allspring Economic Computers	Inv mgmt. fee quarter ended 3/31/2022; \$17,313.24 Investment consulting fee 3/31/2022; \$17,001.82 Investment management fee 3/31/2022; \$25,423.50 Inv No. 8009, BitDefender anti-virus renewal 1/1/2022 – 1/1/2023; \$212.50	59,951.06
5443	Barbara A. Smith	Change in annual installments from DROP account commencing 7/1/2022; \$12,500.00	12,500.00