

*City of Fort Myers General Employees' Retirement System*

## **Minutes: Meeting of February 15, 2012**

### **1. CALL TO ORDER**

Chairperson Barbara Carlson called a meeting of the Board of Trustees for the Fort Myers General Employees' Retirement System to order at 9:10 AM. The plan administrator called roll. Those persons present included:

#### TRUSTEES

Barbara Carlson, Chair  
Eloise Pennington, Vice-Chair  
Richard Griep, Secretary  
Leif Lustig  
Donna Lovejoy  
Tom O'Malley  
William Mitchell

#### OTHERS

Scott Baur & Linda Runkle, Pension Resource Center  
Debra Emerson, City of Fort Myers  
Scott Christiansen (by phone)  
Mike Seagle, City of Fort Myers

Those persons present recited the Pledge of Allegiance.

### **2. APPROVAL OF MINUTES**

Mike Seagle provided a correction to the spelling of his name. Eloise Pennington clarified that she seconded the motion, made by William Mitchell, nominating Barbara Carlson as the Chair for the Board.

Scott Christiansen joined the meeting by phone. He explained that a Trustee could not abstain from a vote on a motion unless the Trustee had a conflict. Mr. Christiansen began to address the status of the holdover Trustees. The status of Leif Lustig and Donna Lovejoy as Trustees remained in question due to the discrepancies between the Trustee terms tracked by the City and the Board.

**Eloise Pennington made a motion to approve the Minutes for the meeting of January 18, 2012, as amended. Barbara Carlson seconded the motion, approved by the Trustees 5-0. Trustees Leif Lustig and Donna Lovejoy did not vote, but did not abstain, pending resolution of questions regarding their status as current Trustees on the Board.**

Scott Christiansen reviewed an Attorney General Opinion that could apply to holdover Trustees. He explained that the issue traced back to a constitutional provision in Florida. By the earlier Florida Constitution, all public officers continue in office until elected or replaced. When Florida restated the Constitution, the language was subsequently omitted for municipal officers. Mr. Christiansen stated that he would much rather Trustees have timely reelections or reappointments to avoid such questions altogether, but he did find an Attorney General Opinion that allows officers to continue to serve until elected or replaced. Scott Christiansen noted, however, that the Attorney General Opinion does not carry the force of law.

Mr. Mitchell responded that he appreciated the clarification, but he requested that the Board review the rules and procedures to avoid any similar recurrence in the future. The Board does have Operating Rules in place, although the Board cannot necessarily

control the schedule that Council renews or appoints Trustees to the Board. As the Trustees further discussed the terms, Scott Baur noted that the City records the terms for Council appointments as of the date that Council makes the appointment. Mr. Mitchell again requested that the Board review the Operating Rules to make certain that the rules sufficiently address the circumstances. Scott Christiansen stated that, in any case, the Board must update the Operating Rules to reflect the revisions to the Board Composition based on recent action by Council.

Barbara Carlson referred to the 2010 Operating Rules adopted by the Board. She noticed that the Trustee terms all have different starting dates. Scott Christiansen explained that the Operating Rules reflect the terms tracked by the Board. Donna Lovejoy explained that Council does not always act immediately when making appointments to the Board. Mr. Mitchell stated that until recently, Council had not been searching for any candidates to serve on the Board. He wants to make sure that appointments and elections occur in a timely manner, and elections always begin before a term expires.

Richard Griep referred to the long history contained in the minutes of prior Board meetings, where the Board discussed the Trustee terms. He indicated that the Board had made every effort previously to address these issues in a timely fashion, but the presentation for an appointment never made the Council Agenda in the last year. He further stated that the Operating Rules do specifically track the Trustee terms. Scott Christiansen, meanwhile, checks those terms at every meeting that he attends. The Board directed in July that an election should begin for the seat held by Donna Lovejoy in October 2011. Richard Griep clarified that the Administrator retained by the Board should coordinate the future appointments and elections. Scott Baur reminded the Board, however, of the differences between the terms tracked by the City Clerk and the Board. William Mitchell and Donna Lovejoy discussed the discrepancies between the two sets of dates. Richard Griep stated that he believes the Board should adhere to the dates included in the Operating Rules formally adopted by the Trustees. Scott Baur explained that a City employee must green sheet the appointments for the Council agenda. He also explained why, as a result, he adopted the terms tracked by the City Clerk as he attempted to update the information tracked by the Board.

Scott Christiansen advised that the Board and the City should both attempt to track the terms in a consistent manner going forward. Donna Lovejoy expressed concern that based on the City method to track the Trustee terms, the Trustees would not have staggered terms. Scott Christiansen had set the terms specifically to maintain some continuity with the Board over time, avoiding situations where the majority of Trustees could be replaced simultaneously. Richard Griep suggested that the Board should address the Attorney General Opinion and allow holdover Trustees to address the current situation. William Mitchell added that more importantly, openings on the Board should be addressed prior to the expiration dates for Trustees. Barbara Carlson noted that if an election or appointment occurs before the term ends, the Board maintains the continuity of the terms previously established. Scott Christiansen said that the Operating Rules adopted by the Trustees adequately addressed the terms, but the Board did not always adhere to those procedures. William Mitchell asked that language in the Operating Rules insure that elections and appointments for Trustees occur in a timely fashion, before the prior terms expire.

**William Mitchell made a motion to review the Operating Rules adopted by the Board. Richard Griep seconded the motion with the addition that the Operating Rules should recognize and incorporate the Attorney General Opinion regarding holdover Trustees. William Mitchell accepted the amendment to the motion. The Trustees approved the motion 5-0.**

In additional discussion regarding the motion, William Mitchell asked that the Operating Rules should identify the party responsible for monitoring the process. Scott Christiansen indicated that he would bring the requested changes for review by the Board. William Mitchell suggested that the Board should consult with the City Clerk to agree on the Trustee terms. The Trustees then discussed the terms for the Union President and the Union Designee. Tom O'Malley explained that he could not replace Barbara Carlson, the current Union Designee, in the middle of her term when he became Union President. Scott Christiansen explained that the Ordinance states that each Trustee serves a three year term; therefore, the Union President cannot change an appointment at will in the middle of a term. Tom O'Malley further noted that the appointment process was addressed in the By-Laws for the Union.

**Richard Griep made a motion to accept the Attorney General Opinion that Trustees whose terms expired continue to serve as holdover Trustees until reelected or reappointed. William Mitchell seconded the motion, approved by the Board 5-0.**

With this clarification, Leif Lustig and Donna Lovejoy rejoined the meeting already in progress as Trustees.

#### **4. ORDINANCE UPDATE**

Scott Baur reminded the Trustees of the questions from the January 2012 meeting relating to charges by Scott Christiansen to review ordinance changes proposed by the City and the Union. Richard Griep reviewed the minutes from the October 2011 meeting, stating that the Board directed Scott Christiansen to review the Ordinance and the revisions proposed in negotiations. He asked Scott Christiansen if the billing related to the direction given by the Board. Scott Christiansen clarified that, based on the direction provided by the Trustees, he also drafted language for the contract in negotiation since that contract language would subsequently become an ordinance that the Board must administer. He stated that the contract must contain language with sufficient clarity for the Board to administer the resulting ordinance.

**Richard Griep made a motion to approve the legal expenses tabled at the January 18 meeting. Eloise Pennington seconded the motion, passed by the Trustees 7-0.**

Scott Baur explained that, in light of the questions previously raised by the Board regarding charges billed by the attorney, he explicitly gave direction to Scott Christiansen on behalf of the Board between meetings to complete an additional review of the proposed ordinance. Scott Baur indicated that he consulted with the Chair as he took this action. Barbara Carlson questioned the urgency, since Council did not subsequently consider the ordinance as contract negotiations continued. Debra Emerson explained the requirements to green sheet the proposed ordinance dictated the

time frame for the process. The Board discussed who should direct counsel in similar circumstances. In order, the Board reached a consensus that first the Chair, next the Vice-Chair, and finally the Secretary should provide such direction if needed.

Scott Christiansen noted that the most recent draft of the proposed ordinance had changed again already. Donna Lovejoy discussed the clarification of purchased time incorporated into the proposed ordinance, a clarification previously requested by the Board. Since the Union was never asked about the clarifications proposed by the Board during negotiations, the Trustees considered whether the Union could address the buyback procedures for members upon termination of employment. Richard Griep stated that he does not believe the Trustees must consider enhancing the plan for members in their role as fiduciaries. Donna Lovejoy explained that the situation previously arose because the Ordinance did not adequately address a particular situation that came before the Board. The Board ultimately denied a benefit to a member terminated by the City, although the member could have become eligible with the purchase of additional time as allowed by the Ordinance. Mr. Mitchell indicated that the proposed clarification should get presented to Council if truly cost neutral, but the City would still need to get the Union to bargain the issue or waive bargaining.

**Eloise Pennington made a motion to designate the Administrator to present the recommendations by the Board to the City. Richard Griep seconded the motion.**

The Trustees discussed the pending motion. The Board considered the procedures to communicate the suggestions by the Board to the City, and Mr. Mitchell indicated that the City would consider such suggestions from the Board. Leif Lustig noted that the Board does not take responsibility for changes to the ordinance, since the Board administers the plan. Mr. Mitchell agreed with Mr. Lustig regarding enhancements to benefits. The Board ultimately concluded that no such prohibition exists for the Board to request needed clarification to the language in the Ordinance, and in fact, the Board would typically make similar suggestions for other necessary changes from time to time such as compliance with tax codes and requirements. Scott Christiansen also reminded the Board that the Union did not always negotiate pension benefits with the City, so the Board historically even made proposals regarding benefits in the absence of negotiations.

**The Trustees approved the motion 7-0.**

The Trustees discussed the procedures for the pending election for the seat currently held by Donna Lovejoy. Barbara Carlson indicated that she could obtain permission from IT to send an email City-wide. Scott Baur also explained that he would need the names of the non-Union members of the plan, which he would obtain from payroll at the City. The Trustees considered the procedures used during previous elections. The Board addressed both non-Union and exempt members. The Ordinance specifically refers to the "nonunion" members, although the Trustees considered that the Union ultimately represents non-bargaining unit members of the plan. The Trustees ultimately concluded that the Board should follow a procedure for the election consistent with prior elections for the non-Union seat, which the Trustees construed to mean those members exempt from the bargaining unit.

**Richard Griep made a motion to go with the historical ordinance interpretation, clarifying that nonunion members consisted of only exempt members.**

On discussion of the motion, Debra Emerson and Donna Lovejoy disagreed with this interpretation. Debra explained that the payroll distinguishes between union and nonunion members by assignment of payroll codes. While Tom O'Malley agreed that nonunion members meant exempt members, the actual payroll codes likely reflected those members not paying union dues. Because Finance generated the eligibility list based on payroll codes, the Trustees concluded that the election must proceed based on similar eligibility to the lists previously generated by Finance.

**Richard Griep withdrew his motion.**

#### **5. ADMINISTRATOR REPORT: Scott Baur (Pension Resource Center)**

Scott Baur reported that he distributed the summary of the plan recently created by Department of Management Services to the Trustees. He stated that the DMS summary was a precursor to the database mandated by the Florida legislature comparing various measures for local public plans based on common assumptions. Given some recent controversial studies that included the Ft Myers General Employees' Pension Fund, he felt that the Board should have any information regarding the plan published and available to the public.

Mr. Baur then reported that he forwarded the most recently completed SSAE-16 Audit completed by his company to the Trustees. The SSAE-16 Audit was formerly known as a SAS-70 Type II Audit Report, a reference to the accounting standards that govern the audit. The audit reviews and documents the internal controls and procedures in place at the organization. Mr. Baur explained that typically only larger financial institutions complete the SSAE-16 Audit, due to the time and expense involved in the process. He finds the audit adds considerable value to the plans administered through his office, however, since the process also brings an unbiased external review of the firm operations.

Mr. Baur stated that reports of identity theft, possibly linked to the administration of some public pension plans in South Florida, recently resurfaced. Mr. Baur explained that plan members in certain groups had fast tax returns filed in 2011 for refunds. When these members filed their regular returns, they found a return had already been previously filed. Similar incidents resurfaced recently, likely linked to the identity theft first reported in 2011. While none of the incidents of data theft involved his office in any way, Mr. Baur noted that his firm maintains confidential information internally for all the plan members. He takes the maintenance of that information very seriously, and he updated many controls and procedures proactively. Among other changes, he brought all the IT functions for his company in-house in 2011. His firm is now in the process to upgrade all the web based calculation platforms and information systems used by the members of plans served by his office. The SSAE-16 Audit plays a very integral role in the IT procedures implemented by the Resource Centers.

## 6. PLAN FINANCIALS

Mr. Griep questioned how the Board should be involved in the budget process. The plan has relatively fixed expenses for legal fees and other expenses, although the fees fluctuate based on activity. The Board approves travel related expenses for Trustee education without a clear budget. Donna Lovejoy added that Comerica disburses most of the funds to pay the plan expenses. The City maintains a small budget for incidental expenses related to the plan administration. William Mitchell stated the Board should budget in advance the funds for plan expenses. Richard Griep stated that the budget department at the City previously developed a budget for plan expenses, even if that information was not presented to the Board. Mr. Mitchell requested to see the City budget for the plan expenses. The Board continued to discuss the plan expenses, which lack a clear spending plan. Mr. Griep explained the process where Comerica, the current custodian for the plan assets, disbursed the funds to pay plan expenses on approval by the Board.

Mr. Lustig departed the meeting due to a conflict with another previously scheduled meeting.

**Mr. Mitchell made a motion to complete a draft spending plan for the remainder of the current fiscal year for the Board to review. Donna Lovejoy seconded the motion, approved by the Trustees 6-0.**

The Board briefly considered the need for the Trustees to obtain continuing education by attending classes or conferences. The Trustees discussed ways to save on related travel expenses.

The Board reviewed the warrant for payment of plan expenses and noted corrections to the invoices.

**Eloise Pennington made a motion to approve the Warrant dated February 15, 2012, omitting invoices for Markston and STW. Tom O'Malley seconded the motion, approved by the Trustees 6-0.**

The Trustees discussed the Benefit Approvals. Donna Lovejoy commented that she heard some confusion from the members regarding procedures for processing benefits. Scott Baur stated that his firm mailed letters to each of the plan members individually. Barbara Carlson indicated that the City posted the contact information for the Cape Coral Office of the Resource Centers on the City website as well. Linda Runkle added that many plan members had already begun to contact the Cape Coral Office directly regarding their pension benefits.

The Trustees considered the procedures to pay benefits when a member retires. Debra Emerson explained that a member receives the first monthly benefit check typically about 6-8 weeks following separation from employment. Mr. Mitchell asked if the Board could implement procedures to shorten the processing time. He also asked how other public plans process benefits, and Scott Baur explained various procedures typically implemented by Boards. Barbara Carlson noted that companies often pay sick and vacation time accruals before an employee separates from employment, so private

sector times are often shorter than the public sector. Scott Baur stated that he had already drafted a Question and Answer handout for retiring members to explain the process and establish reasonable expectations. He will forward the handout to the Board again for further review.

#### **7. OLD BUSINESS**

There was no old business for discussion.

#### **8. NEW BUSINESS**

The Trustees discussed the status report issued by the Department of Management Services. The Board considered the health of the plan and the meaning and importance of the funded ratio. Scott Baur observed that the funding status will typically drop when the City adds new benefits. The Plan had a funded ratio in 2010 of 64.3%, however, in comparison to the average funded ratio for plans in Florida of 94.18%.

#### **9. NEXT REGULAR MEETING**

The Trustees previously set the schedule for the next regular monthly meeting on Wednesday, March 21, 2012 at 9:00 am.

#### **10. ADJOURNMENT**

There being no further business, Eloise Pennington made a motion to adjourn the meeting at 11:33 AM, seconded by Barbara Carlson, and passed unanimously by the Trustees.

Respectfully submitted,

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Richard Griep, Secretary