

**TOWN OF JUPITER POLICE OFFICERS' RETIREMENT FUND**  
**MINUTES OF MEETING HELD**  
**April 24, 2003**

Chairman Nick Scopelitis called the meeting to order at 1:25 P.M. at the Town Council Chamber, Jupiter, Florida. Those persons present were:

**TRUSTEES**

Nick Scopelitis  
Paul Agruso  
Peter Alfele  
James Feeney

**OTHERS**

Bob Sugarman, Sugarman & Susskind, Fund Counsel  
Scott Baur, Margie Adcock, & Nick Schiess, Pension Resource Center  
Burgess Chambers, Investment Monitor  
Mike Simmons, Town of Jupiter  
Brigid Saia, Town of Jupiter

**PUBLIC COMMENTS**

Nick Scopelitis opened the meeting with inviting those present to address the Board with public comments. There were no public comments.

**MINUTES**

The Board reviewed the minutes of the meeting held March 26, 2003. A motion was made, seconded and passed 4-0 to approve the minutes of the meeting held March 26, 2003.

**JILL ROSCO DISABILITY APPLICATION**

Louis Pfeffer, legal council for Jill Rosco, appeared before the Board. Sugarman reminded the Board that notice was not previously provided of the hearing at which Ms. Rosco's Disability Application was to be considered. The Board decided to do the whole thing over again and will be looking at it as if it was a fresh case. Mr. Sugarman noted that there were only 4 Trustees present and Ms. Rosco is entitled to have her Disability Application considered by a full Board. He advised Mr. Pfeffer that they can wait for a full Board or go forward with the hearing now. Mr. Pfeffer took a few moments and spoke with Jill Rosco. He advised the Board that after consulting with his client, they would like to wait for a full Board.

The Board asked if they could question Mr. Pfeffer on a couple matters to help them determine the timeline on which this matter came about. The timeline of Ms. Rosco's disability and termination was recapped for the Board. It was noted that Ms. Rosco was injured in the line-of-duty on August 30, 2000. She was then terminated by the Town for the inability to perform the duties of a police officer in October 2001. Mr. Pfeffer stated that Ms. Rosco applied for a disability in a timely manner before her actual termination.

However, the former Administrator lost the paperwork and she had to reapply. Mr. Pfeffer then discussed the medical records that were apart of Ms. Rosco's Disability Application. Mr. Sugarman noted that Ms. Rosco was terminated for her inability to perform her job. He stated that there was very little for the Board to decide. When the Town discharges an employee for the inability to perform their job, the Board is estopped from denying the disability. There was then discussion on whether this was a service connected disability. It was noted that the only difference between a service connected disability and a non-service connected disability is the taxability of the payments. The Board took a brief recess to obtain Ms. Rosco's personnel file. Mr. Sugarman noted that the letter from the Town terminating Ms. Rosco states that she is being terminated because she is currently unable to perform her job. It does not say that she is permanently unable to perform those duties. However, the Board has records before them that deal with the matter. Dr. Lichtblau performed a medical functional capacity test. Also Dr. Theofilis stated that while she was able to work, she had to avoid lifting up to 100 pounds on an occasional basis. Mr. Sugarman advised the Board that if they feel they have enough information to make a positive decision, then it is unnecessary for Ms. Rosco to have to wait for a full Board. There was then a lengthy discussion of the medical records before the Board. A motion was made and seconded to grant Jill Rosco's Disability Application as she is not able to work due to an on-the-job injury. There was then a discussion on the disability review process. Mr. Sugarman stated that the Board should do a yearly review of all the disability applicants. He then reviewed the opinions of Dr. Lichtblau who stated that Ms. Rosco could not return to the job as a police officer and Dr. Theofilis who stated that Ms. Rosco could work as a police officer but has to avoid lifting up to 100 pounds. He noted that the real issue was whether her disability was permanent. None of the doctors have said that she will get any better or promised her any chance of recovery. It was noted that Ms. Rosco could have asked for a reasonable accommodation from the Town. However, the Town does not have other job descriptions that are different than the one that was presented. The motion was called and passed 4-0.

There was then discussion on when her disability pension payments would begin. There was a lengthy discussion regarding this matter. It was noted that it takes at least 2 to 6 months to get medical records from the doctors which is no fault of the Participant. Mr. Pfeffer submitted that the pension payments be effective August 1, 2003 as that is when her long-term disability payments will cease. There was further discussion on the long-term disability plan. It was concluded that Mr. Pfeffer would provide Mr. Sugarman with a copy of the long-term disability plan and the matter will be considered at the next meeting.

Mr. Sugarman reminded all present that privacy laws prohibit the discussion of the details of Ms. Rosco's disability after this meeting and that all medical records should be destroyed except one original copy to be kept by the Administrator.

### **INVESTMENT MONITOR REPORT**

Burgess Chambers appeared before the Board. Mr. Sugarman advised that he has reviewed the pending contracts with the new prospective investment managers. He stated

that the contract with Private Capital Management was finalized. He reminded the Board that at that last meeting the Board decided not to go forward with a contract with Westwood. The Board was then going to enter into a contract with Caterpillar until it was decided against since they would not sign on as a fiduciary. Mr. Sugarman noted that the manager before the Board for consideration now was Evergreen who will provide a mutual fund. He noted that Evergreen was owned by Wachovia who would sign on as a fiduciary. Mr. Chambers reported that Evergreen runs the international portfolio and noted that Wachovia was not the manager. There was then a lengthy discussion by the Board on their strong objections to Wachovia.

Mr. Chambers discussed the Investment Policy that includes investment in international markets in order to diversify. Additional discussion ensued with regards to international mutual funds and the difficulty of finding an international investment manager that would also sign on as a fiduciary. Due to the uncertainty in the international climate right now, Mr. Chambers noted that it would be acceptable to defer further international discussion at this time. When he feels it is time for the Fund to get into international equities, he will readdress the matter. A motion was made, seconded and passed 4-0 to defer implementation of international investments until such time as Mr. Chambers recommends that it is appropriate.

Mr. Chambers reviewed a preliminary investment report with the Board. He stated that the total market value of the Fund as of April 23, 2003 was \$11,085,646. Private Capital had \$5,969,569 with about \$3,468,000 in cash that they were holding for the international investments. Mr. Chambers stated that he would tell Private Capital to invest the \$2 million that was being held. Mr. Chambers stated that Sawgrass had \$4,549,557.

Mr. Sugarman reported on the latest round of contract negotiations with Lend Lease Rosen. He noted that they have been very difficult negotiations and provided the Board with a history of the negotiations. He stated that they reached an acceptable agreement but then sent a subscription agreement along with the investment agreement. Mr. Sugarman had never seen the subscription agreement. Mr. Sugarman stated that they have apparently worked out their differences and he is waiting to see the final documents. Mr. Chambers reported on their investment performance and fund characteristics. A motion was made, seconded and passed 4-0 to authorize the Chairman to sign the contract and authorize Burgess Chambers and Pension Resource Center to transfer the cash into Lend Lease Rosen once the contract has been signed.

Mr. Chambers reported that as of yesterday, Invesco did not have any money of the Fund. A question arose to whether or not the Invesco account would be checked for additional dividends that may occasionally come in. Mr. Chambers stated that Salem Trust as the Custodian would routinely check on that.

Burgess Chambers departed the meeting.

## **ATTORNEY REPORT**

Mr. Sugarman reported on the status of the disability applications still pending. He stated that he was receiving the medical records in for both and could be sending them for an IME.

Mr. Sugarman then reported on the issue of two employees who were trying to opt in to the Plan. The Board was provided with a memorandum from Michael Simmons on the matter. It was noted that a deadline was set back in 1995 and was set 10 days before the deadline was to expire. Mr. Sugarman noted that the deadline was made public notice and that the opportunity to opt in was closed. Although sympathetic to the employees' circumstances, Mr. Sugarman stated that it is very clear that the Board's responsibility was to uphold the Ordinance as written. As of now, the Board can not grant the request as there is no discretion here when the Plan clearly states that the window closed in 1995.

The Board directed the Administrator to draft letters to the employees to advise that the Board has denied their request because it specifically contravenes the express provision of Section 15-218a of the Ordinance which set forth a deadline of March 31, 1995 for reentry into the Plan.

Mr. Sugarman discussed the definition of compensation for disability benefits. He noted that Mr. O'Connor and others have sued the Board claiming that disability benefits were calculated only on base pay and no other compensation. The Ordinance states that a disability pension benefit is based on sixty percent (60%) of compensation at the time of disability, but there is no definition of compensation in the Ordinance. Mr. Sugarman advised that when something is not defined in the Ordinance, it falls on the Board to define it. The Board has previously discussed this issue in a regularly scheduled meeting on May 10, 2002 and had approved a motion to include overtime pay in pensionable earnings for the purpose of calculating a disability pension. No appeal was taken to that Board action. Now the Board needs to make sure that it is paying in accordance with that definition. It was noted that an audit was done to confirm that disability pensions and pensions of current retirees were paid in accordance to the Ordinance, although that might have been before compensation was defined. There was a lengthy discussion with regards to defining the amount of compensation at time of disability, defining the date of the disability, and defining the date when the payment should commence. It was agreed that the Board needed information from the Actuary to determine how disability pensions are calculated. It was determined that the Actuary should be invited to attend the next meeting to discuss this issue and present the Valuation.

Mr. Sugarman provided the Board with a revised proposed Ordinance to comply with Section 185. He noted that the revised Ordinance incorporates the comments made by the Town's Attorney. A motion was made, seconded and passed 4-0 to approve the proposed Ordinance and authorize the Administrator to send the Ordinance to the Town along with the actuarial impact statement when it is provided by the Actuary.

Mr. Sugarman advised that he sent a letter to the Town to try to settle the case involving Mr. O'Connor. He recommended that the Town approve an Ordinance retroactively that would allow Mr. O'Connor to change his form of pension payment to include a joint and survivor option. He stated that the letter was sent to Town on April 3, 2003. Mr. Simmons stated that the Town would support it and requested that Mr. Sugarman draft the Ordinance. Mr. Sugarman stated that he would have the Ordinance for the next meeting.

Mr. Sugarman reported that he had reviewed and approved contracts between the Board and Salem Trust Company; Pension Resource Center; and a new Retainer Agreement with Sugarman & Susskind, P.A.. It was also reported that a successful recapture agreement was worked out with Lynch, Jones, & Ryan.

Future meeting dates were discussed and tentatively agreed upon for the third Wednesday of the month at 10:00 A.M.

Mr. Sugarman provided the Board with an e-mail from State of Florida stating that public employees on active duty in the military are to be credited for pension service without having to pay their contributions.

Mr. Sugarman discussed the requirement of the Ordinance to perform regular IME's on disability retirees. A discussion ensued regarding developing procedures to review the disability retirees. There were various methods mentioned of review. There was then discussion of the possible discovery of information by a Trustee of those disability retirees who are performing other employment or activities not consistent with their reported injury. Mr. Sugarman stated that the Board could authorize any Trustee to speak to Fund Counsel and allow Fund Counsel in his discretion to make a determination including the hiring of a private investigator for surveillance. There was a lengthy discussion on this matter. The Board determined that they were not interested in this type of surveillance.

Mr. Sugarman discussed the state of the Fiduciary Liability Insurance. He noted that the Fund has insurance through Legion, but Legion is in bankruptcy and deemed unlikely to be able to pay any claims if incurred. The Board directed the Administrator to research other carriers as a replacement. A motion was made, seconded and passed 4-0 to authorize the Chairman to approve a new Fiduciary Liability Insurance Policy as soon as possible.

### **ADMINISTRATIVE REPORT**

Margie Adcock presented the agreements between the Board and Salem Trust; Pension Resource Center; and Sugarman & Susskind for the Board to authorize. A motion was made, seconded and passed 4-0 to approve the agreement with Salem Trust. Ms. Adcock reported that she also needed a new signature authorization form for Salem Trust. A motion was made, seconded and passed 4-0 to have the Chairman, Secretary and the Administrator be authorized signers with either the signature of two Trustees or one Administrator necessary to direct Salem Trust. A motion was made, seconded and passed

4-0 to approve the agreement with Pension Resource Center for administrative services. A motion was made, seconded and passed 4-0 to approve the adjusted retainer agreement with Sugarman & Susskind P.A.

Ms. Adcock advised the Board that she had received calls from two Participants stating that they may be filing a disability application with the Board. The Board questioned the current Application for Disability and whether or not it needs revision. The Board directed the Administrator to provide the Board with the current application that is used.

### **DISBURSEMENTS**

Ms. Adcock reviewed the disbursement list. A motion was made, seconded and passed 4-0 to approve the listed disbursements.

### **OTHER BUSINESS**

The Board briefly discussed the interest rate paid on the DROP believing the assumed interest rate of 8% is too high given the low investment returns of the past few years. The discussion was tabled until the next meeting when the Actuary would be present.

Mr. Agruso noted that his term would be up in September and that he was giving serious thought to requesting to not be reappointed.

There was discussion on the policy for proxy voting. Mr. Sugarman stated that he would send the Board a proposed Proxy Voting Policy for review.

There being no further business, a motion was made, seconded and passed 4-0 to adjourn the meeting.

Respectfully submitted,

James Feeney, Secretary