

*City of Lake Mary Firefighters' Retirement System*  
*Meeting of August 13, 2010*

**I. CALL TO ORDER**

Division Chief Rick Fudge, Chairman, called the meeting to order at 7:05 a.m.  
Those persons present included:

TRUSTEES

Rick Fudge, Chairman  
Helene Ritchey-Beeler  
Karen Gudinas  
Jeff Koltun

OTHERS

Scott Baur, Pension Resource Center  
Scott Christiansen, Christiansen & Dehner  
Frank Wan, Burgess Chambers & Associates  
Jackie Sova, City of Lake Mary (7:27 AM)  
Ryan Cooper, Member (Mr. Pinter, Counsel)

**II. APPROVAL OF MINUTES**

The Trustees reviewed the minutes of the meeting of March 11, 2010.

**Karen Gudinas made a motion, seconded by Rick Fudge, to approve the minutes of March 11, 2010. The motion passed 4-0.**

Rick Fudge inquired to Scott Christiansen, counsel to the Board, whether he could make motions. Scott Christiansen advised the Trustees that the Board was not subject to operation by "Roberts Rules of Order". The Chairman could therefore make or second a motion for consideration.

**III. REPORTS**

Mary Howell did not attend the meeting on behalf of Eagle Asset Management, although the administrator did receive quarterly reports to review the portfolio. Ms. Howell did notify Frank Wan, the investment consultant, that she had a conflict with the meeting.

**Frank Wan, Burgess Chambers & Associates**

Frank Wan reported that the equity indices were down 10-15% for the quarter ending June 30, 2010. He reviewed the market environment during the quarter. The portfolio returned a net of -4.6% for the quarter, compared to -5.5% for the benchmark. The plan had total assets of \$6,874,398 as of June 30, 2010. The Eagle Small-mid Portfolio outperformed the corresponding benchmark, along with the fixed income portfolio managed by Eagle. The overall performance placed the plan in the top 3% for the manager peer group for the quarter and top 21% for the trailing five year period. Mr. Wan did not recommend any changes to the existing managers.

Mr. Wan noted that the economic recovery appeared very slow, while volatility in the market was increasing. The consultant believes the market will continue to move sideways for the near term. Frank Wan then introduced a new asset class for consideration by the Board. He discussed an investment into convertible bonds, bonds that include options to convert to common stock. The plan could invest in the asset class through mutual funds or commingled funds. The convertible bonds often provide equity-

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like returns with bond-like risk characteristics. The convertible bonds capture 68% of the equity market downside, compared to 85% of the market upside. Mr. Wan recommended that the Board consider allocating 20% of the plan assets to convertibles. He stated that he would review the Investment Policy and provisions contained in the ordinance related to the recommended allocation. Scott Christiansen advised the Board that the Ordinance currently allows the Board to invest in convertible bonds, but only through mutual fund or commingled products through state or national banks. Frank Wan recommended that the Board take the recommended allocation to convertibles from the current allocation to equities.

The Board briefly discussed that Eagle Asset Management did not attend the meeting, and the manager appeared to devote less attention to the plan since the Board made the allocation to the small-mid portfolio managed by Eagle. The large cap equity portfolio managed by Eagle underperformed the benchmark, but the Trustees previously reallocated the position to an S&P 500 Index ETF.

**Rick Fudge made a motion to direct the investment consultant to bring additional information on an investment in convertible bonds to the next quarterly meeting. Helene Ritchey seconded the motion, approved by the Trustees 4-0.**

Scott Christiansen inquired if the Board should rebalance the asset allocation. Frank Wan discussed the allocation to cash with the investment managers, along with the need to hold cash for distributions related to payment of benefits.

**Rick Fudge made a motion to rebalance the cash and the asset allocation, incorporating the \$165,000 expected from the state premium tax distribution. Karen Gudinas seconded the motion, approved by the Trustees 4-0.**

The Trustees further considered the cash and the need for the managers to allocate assets to cash.

**Rick Fudge made a motion to remove the restrictions on the investment managers to hold cash positions. Helene Ritchey seconded the motion, approved by the Trustees 4-0.**

Helene Ritchey inquired about the likely cost to the portfolio to reallocate equities to a convertible portfolio. Frank Wan explained that, since the Board maintained a current allocation to an ETF, the transition cost should be minimal. Jeff Koltun observed that volatility in the market historically increased during the months of September and October.

**Scott Christiansen, Christiansen & Dehner**

Scott Christiansen noted that all the Trustees filed the required annual financial disclosure. He also reported that the Division approved the Annual Report, and the Retirement System should receive \$164,559 from the state premium tax distribution.

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Scott Christiansen said that his firm was in the process of looking into options for the filing of a letter of determination from the IRS. The IRS traditionally has ignored governmental pension plans, but recently expressed a renewed interest in providing a greater level of assistance to these plans. The IRS at a recent conference strongly recommended that governmental plans apply for a letter of determination, and the service would be more tolerant of any issues if plans voluntarily seek to comply with regulations. Plans later found to be out of compliance would not receive such lenient treatment. Christiansen & Dehner will provide recommendations to the Board for the process to obtain a determination letter. Helene Ritchey discussed the process and the IRS review cycle. Jackie Sova stated that the IRS targeted fringe benefits for public employees as well, in line with the current interest in providing greater assistance to public benefit plans. Jeff Koltun, who also has experience with the IRS process, discussed the allowance made by the IRS to make any required changes.

**Scott Baur, Pension Resource Center**

Scott Baur reported that he had many of the plan records in transition from the City, although he was still trying to work out a format to receive updates of member information and payroll. He stated that the City was very helpful in assisting with the transition process. The members in the DROP received their first quarterly statements for the DROP Accounts as well.

He then provided the Board with the renewal on the fiduciary liability insurance. The premium for the policy changed only slightly from the prior year to \$2,709.23.

**Karen Gudinas made a motion to approve the renewal of the fiduciary liability insurance policy with Travelers. Rick Fudge seconded the motion, approved 4-0.**

**IV. Discussion**

The Trustees had no separate items for discussion.

**V. NEW BUSINESS**

The Trustees had no other new business.

**VI. Plan Financials**

The Trustees reviewed the invoices presented for payment.

**Rick Fudge made a motion to approve the warrant dated August 13 with invoices for payment. Jeff Koltun seconded the motion, approved by the Trustees 4-0.**

There were no other benefits for approval at the meeting. The Trustees took a brief recess before the disability hearing scheduled to commence at 8:30 AM.

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**VII. Disability Hearing: Ryan Cooper**

Scott Christiansen indicated that he would first review the procedures for the disability hearing, then the provisions in the plan for approval of a disability pension benefit, and finally the records related to the application for benefits submitted by member Ryan Cooper. Mr. Christiansen stated that the application provided by the member must include an opinion from the doctor that the member is totally and permanently disabled to perform the substantial and gainful duties of a firefighter.

His office then sends interrogatories to all the related parties to gather the necessary records. Once his office receives the records, the member is scheduled for an independent medical examination. The Board holds an initial hearing to determine if the evidence is sufficient to grant the disability benefit. The Board can find that the evidence is sufficient to establish each of the criteria necessary to grant a benefit; one or more of the criteria were not sufficiently established; or additional information is required to make a determination.

Based on the medical records received for this applicant, Scott Christiansen noted that his office did not schedule an IME in this case. His office did not schedule the IME since Ryan Cooper already used one of the physicians normally engaged to perform the reviews on behalf of the Board. Furthermore, the physician provided a clear opinion that regarding the status of Mr. Cooper's medical condition, the total disability that resulted, and the permanent nature of the disability. Mr. Christiansen noted that relatively few physicians had the same expertise as the physician providing the medical opinion. He also stated that the Board could choose to rely on the available evidence for the disability of Mr. Cooper, or the Board could direct staff to engage the services of additional medical specialists to further review the case if the Trustees felt that the medical information was not clear or sufficient to make a determination.

Mr. Christiansen explained that the claimant can request a formal evidentiary hearing if the Board denies the application at the informal hearing. His office has a fiduciary obligation to the claimant, like the Board. As counsel, Scott Christiansen advises the Board regarding legal issues related to the application or process. He does not act as an advocate either for or against approval of a benefit to the member. Mr. Christiansen stated that the Board must only establish that a preponderance of the evidence supports approval of the application, as opposed to proving the disability beyond a reasonable doubt. Mr. Christiansen referred to Section 8 of the plan, which requires that a member can no longer perform the useful and effective service of a firefighter; the member must also be totally and permanently disabled to receive a benefit. Mr. Christiansen explained that the ordinance also contains exclusions for a disability benefit that may not apply to this case.

Mr. Pinter represented Ryan Cooper at the hearing. The City already terminated Ryan Cooper. Mr. Pinter stated that he reviewed the job description for a firefighter in the City. Mr. Pinter believes that the record is complete for the Board to make a decision. He then reviewed the background for the injuries sustained in the line of duty by Mr. Cooper. On July 10, 2007, a plane crashed into a house locally. Mr. Cooper, off duty but in the immediate vicinity of the accident, entered the burning house and managed to save

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some victims in the accident but not others. A 4-year old girl died in one house, and an infant in another house also died. Mr. Cooper was subsequently diagnosed with reactive airway syndrome from the fire, along with post traumatic stress disorder related to the incident. The physician indicated that Mr. Cooper should no longer perform the duties of a firefighter due to the respiratory issues.

The Board reviewed additional records submitted by Mr. Cooper. A pulmonary function test showed that Mr. Cooper lost about 40% decrease in performance as a result of the injuries that he sustained. Mr. Christiansen again noted that Mr. Cooper did not have an independent medical evaluation because his treating physician was one of the few qualified specialists available to properly assess Mr. Cooper. Scott Christiansen then asked if the Fire Department had any other permanent light duty positions that Mr. Cooper might fill. Chief Fudge confirmed that no such alternative positions existed in the Department. Mr. Christiansen noted that if the City terminated Mr. Cooper for medical reasons, then the Board must also find that Mr. Cooper is disabled. Chief Fudge stated that Mr. Cooper clearly sustained the injuries in the performance of his duties as a firefighter under Florida Statute, since a firefighter is presumed to act in the line of duty when responding to an emergency if that firefighter was not working on that particular day. Mr. Cooper would therefore qualify for a duty disability pension if the Board finds that he was totally and permanently disabled to perform the substantive and gainful duties of a firefighter and paramedic.

The Board further discussed the available evidence. Helene Beeler observed that the record indicated that Mr. Cooper could not wear a respirator, clearly making him unable to perform the duties of a firefighter. The Trustees also stated that the opinion from the treating specialist was very clear regarding the injuries sustained by Mr. Cooper, and the Board determined that a separate Independent Medical Examination was not necessary given the clear medical evidence already available to the Trustees. Rick Fudge summarized, noting that Ryan Cooper clearly sustained his injuries in the performance of his duties; he was totally disabled, having been terminated by the Department; and the treating physician found that Mr. Cooper would not further recover from his injuries.

**Rick Fudge made a motion finding that Ryan Cooper was totally and permanently disabled through the performance of his duty as a firefighter, deferring to the available evidence and finding that an additional independent medical evaluation was not necessary to complete in this particular case. Helene Ritchey seconded the motion, approved by the Trustees 4-0.**

Mr. Baur discussed the calculation of the benefit for Ryan Cooper with the Board. Mr. Cooper went on a leave of absence for medical reasons on April 6, 2010. The City of Lake Mary terminated his employment on July 2, 2010. Mr. Cooper will receive a monthly disability pension benefit based on his current monthly salary at the time of the disability; Scott Christiansen indicated that Mr. Cooper became disabled on July 2, the date of his termination by the City. Because Mr. Cooper took a Family Medical Leave of Absence (FMLA) starting on April 6, his rate of pay as of April 6, 2010, will be used to determine the amount of his disability benefit.

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**The next meeting having previously been scheduled for Friday, November 12, 2010, a motion was made to adjourn the meeting at 9:30 AM.**

Respectfully submitted,

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Ronald Russi, Secretary