

VILLAGE OF PALM SPRINGS GENERAL EMPLOYEES' PENSION FUND
MINUTES OF MEETING HELD
August 4, 2020

An electronic meeting was called to order at 2:01 P.M. Those persons present were:

TRUSTEES

Patti Waller
Ed Horton
Richard Reade
Mariana Ortega-Sánchez

OTHERS

Bonni Jensen, Fund Counsel
Margie Adcock, Administrator
Jennifer Gainfort, Monitor
Chad Little, Actuary
Rebecca Morse, Finance Director
William Davis, Participant
Craig Boudreau, Attorney for William Davis
David Miller, Village Attorney
Ellie Neiberger, Deputy Village Attorney
Jane Worth, Village Clerk

MINUTES

The Board reviewed the minutes of the meeting held May 5, 2020. A motion was made, seconded and carried 4-0 to approve the minutes of the meeting held May 5, 2020.

WELCOME NEW TRUSTEE RICHARD READE

It was noted that an Ordinance was recently passed that changed the Board composition. The Ordinance replaced the position previously held by the Finance Director with that of the Village Manager or his designee. The Board welcomed Richard Reade to the Board. The Board thanked Rebecca Morse for her many years of service to the Plan and the Participants. Ms. Jensen clarified that the position of the Village Manager or his designee on the Board is a singular position and either the Village Manager can sit on the Board as a Trustee, or a designee can sit on the Board as a Trustee but the position cannot be changed at random back and forth or to multiple people.

NEW BUSINESS

Discussion by Bonni Jensen Outlining the Duties of the Board

Ms. Jensen outlined the duties of the Board. She stated that the duties are very broad. She stated that the Trustees have a fiduciary duty to act in the best interests of the beneficiaries and participants of the Fund. She stated that the Board must elect a Chair and a Secretary. The Trustees have a duty of care, duty of loyalty, and a duty of good faith and fair dealing. The Board has the responsibility of providing an agenda, notice, meeting packets, minutes of meetings, an audit, valuation, holding quarterly meetings and approving benefits. The Board is responsible for making sure the Plan is being followed, that the rules are followed and decisions are documented appropriately. Ms. Jensen reviewed the Sunshine Law, voting requirements, and Public Records Law. She discussed

the education requirements for the Trustees and the various educational opportunities available. She discussed the liabilities and penalties that could occur as well as the insurance that covers the Board for certain acts. Ms. Jensen discussed the Attorney's responsibilities to the Board. She stated that she prepares RFPs, letters to Participants, legal updates and Ordinances. The Administrator is responsible for drafting the minutes from meetings and for communication with the members and service providers as necessary.

There was discussion on the vacancy in the position of the 5th Trustee. Ms. Jensen stated that many times the position is posted by the clerk to get the word out. The Administrator is not usually charged with seeking applications for this position. Sometimes the other Trustees might know of a qualified candidate and bring it to the attention of the rest of the Board. She suggested that the Village could put a notice in with the Village water bill, put something in the Village Newsletter or post in Village Hall. Once a candidate is found, they would file a resume for the Board to consider and then appear at a Board meeting to discuss their qualifications. It was noted that the new Ordinance now requires Village Council's approval of the 5th Trustee.

Letter from the Village Attorney Dated July 22, 2020

The Board was provided with a letter from the Village Attorney dated July 22, 2020. The letter explains the new Ordinance amendment and the changes to the Board composition. It explains the requirement that the Chair must approve the Agenda and the meeting materials must be provided a week before a meeting.

Discussion and Action of Benefit Forfeiture – William F. Davis, Jr.

Ms. Jensen noted that William Davis and his attorney were present. She reviewed Section 112.3173, Florida Statutes. She stated that the Board needs to determine whether it has reason to believe that Mr. Davis' benefits are subject to forfeiture. She stated that the Board's decision today can result in a hearing to get evidence to make a determination of whether his benefits should be forfeited. She stated that if the Board determines that Mr. Davis' benefits are subject to forfeiture and a hearing should be held, the Board can hold the hearing itself or have DOAH hold the hearing. She stated that DOAH is a broad administrative hearing entity that makes recommendations to agencies. She stated that the Board is mandated to follow Section 120 but is not mandated to use DOAH. Ms. Jensen stated that the first thing the Board has to decide is whether there is reason to believe his benefits should be forfeited. She provided the Board with an updated memorandum to include the most recent information. She suggested that before making a decision the Board should hear from Mr. Davis' attorney. The Board should allow him to make a presentation and answer any questions.

Ms. Jensen stated that this matter first started in 2017 when her office was provided with a plea sheet that showed Mr. Davis pled guilty to two felonies. She stated that the Board held off on making a decision at that time because Mr. Davis maintained a post-conviction relief asking that his pleas be overturned. The Board held off action waiting for a final decision from the Court. His appeal was recently denied by the Court. Ms. Jensen reviewed her Memorandum dated July 24, 2020. She stated that the basis on which a benefit can be forfeited is a conviction of a "specified offense". The Board

reviewed the Exhibits. The Exhibits show that Mr. Davis pled guilty to a felony under Section 838.016, which is a specified offense.

The Board gave Mr. Davis' attorney an opportunity to speak. Craig Boudreau appeared before the Board. He stated that he was not going to get into the underlying facts but did want to address a couple of issues. First was the issue of the inability of the Village to speed up the issuance of checks. Second, the Board was recently reconstituted by the passing of an Ordinance; however the Ordinance was not filed with the Clerk within four days of the hearing. As such, the Board as constituted today is not legal and not in compliance with the Code of Ordinances. He stated that it needed to be posted five business days before and that was not done. He suggested the Board consider delaying the matter, repassing the Ordinance correctly, and not taking any action today.

David Miller appeared before the Board. He stated that he was not a specialist in government law but the City Attorney opined that the Ordinance was validly passed at second reading and any issue, if one, did not affect the Ordinance. Mr. Miller stated that he was retained by the Village and the position of the Village is that this Board has reason to believe that the payments to Mr. Davis under the Plan are due to be forfeited. He stated that the decision today is to permit the question to go forward to an evidentiary hearing. The Village position is that there is clear reason to believe that forfeiture may be appropriate after an appropriate hearing is conducted because he pled guilty to a specified offense. The Village's position is that an evidentiary hearing should occur.

Ms. Jensen stated that she believes that the information before the Board shows that this should go to a hearing. There is reason to believe Mr. Davis pled guilty to a specified offense. If there are arguments against forfeiture those would be heard at the hearing. There was discussion on a hearing before the Board or before DOAH. Ms. Jensen stated that decision was up to the Board and the comfort level of the Board. She stated that either path the Board takes the Board would have to have an advocate. She stated that she cannot be both an Attorney for the Board and an advocate in the case. She recommended the Board hire an attorney to be the advocate in the case. Ms. Jensen reviewed the benefit forfeiture checklist with the Board. If the answer to both of the questions is yes, the matter should go to a hearing.

Ms. Ortega stated that she has been a Board Member for several years, has been in the Finance Department for 15 years and is proud to work for the Village. She stated that she was very offended by Mr. Boudreau's accusations involving the Finance Department. She stated that she did not think she could be impartial because it is linked to what she does every day. Ms. Jensen stated that the Board was not being asked to decide the truth of the case today, but rather is being asked if he pled guilty, was it a violation of Section 838, and did it happen before his retirement. She stated that the Board's concerns leads her to think the case should be decided by DOAH. There was a lengthy discussion.

Mr. Boudreau stated that Mr. Davis' original attorney did not advise him that he would lose his pension if he pled guilty. He entered into the pleas out of necessity and fear, not necessarily because he did something. Mr. Davis believed that when he entered the pleas he was keeping his pension

Ms. Jensen stated that she wanted to make it clear that Section 112.3173 provides that a person "shall" forfeit their benefit under certain reasons. There is no getting around that.

It is a mandate. There are no equitable reasons to be considered. The only decision today is to determine if Mr. Davis pled guilty and did that offense occur while he was employed. There was further discussion on the terms of adjudication versus conviction. Ms. Jensen stated that adjudication does not matter for purposes of this Statute.

A motion was made, seconded and carried 4-0 to find reason to believe Mr. Davis' rights and privileges are required to be forfeited under the Pension Plan. A motion was made, seconded and carried 4-0 to have DOAH handle the hearing in this matter. Ms. Jensen stated that she would set up the matter with DOAH. She stated that a contract will be entered between the Board and DOAH whereby a standard rate is set. She stated that the Board will need to hire an attorney advocate. She will provide a Notice of Hearing and Notice of Intention to Forfeit which will outline the process. Mr. Reade stated that he would like to move this along as quickly as possible and hold a special meeting prior to the November meeting. He would also like the Village Attorney to be notified of any hearing dates. There was discussion on the cost of the matter. Ms. Jensen stated that cost could be anywhere between \$10,000 and \$20,000.

ACTUARY REPORT

Chad Little appeared before the Board. He stated that FRS adopted new mortality tables so he will include those in the next Valuation. He stated that he used the new tables in one of his other plans and it caused their cost to go down.

Mr. Little stated that he was diagnosed with kidney cancer about a month ago. He stated there has been no delay workwise and he is recovering nicely.

Ms. Morse stated that she needed to have the Fund raise \$250,000 for the payment of benefits and expenses. A motion was made, seconded and carried 4-0 to raise \$250,000 in cash for the payment of Fund benefits and expenses

INVESTMENT MONITOR REPORT

Jennifer Gainfort appeared before the Board. Ms. Gainfort reviewed the market environment for the period ending June 30, 2020. She stated that it was a much better quarter than the prior one. There were strong gains across the global markets. A majority of the reversal came early in the quarter due to the economic stimulus. At the end of the quarter there was some optimism as there was a slow down with COVID cases and a resurgence of employment. She stated that it has been one of the most substantial recoveries the market has seen in history. The S&P 500 was up 20.5% which was the strongest return since 1998. Ms. Gainfort stated that growth outperformed value. There was an outperformance in technology where there was a lot of online shopping and Zoom meetings. International was strong but not as high as domestic. Interest rates stayed low and will stay low into 2021. Looking ahead it seems like a great recovery but it is too soon to tell for sure. COVID will continue to dominate headlines. What is needed is a reduction in the number of cases and a vaccine. There is definitely a lot of uncertainty involved. Another consideration is the level of support the government continues to provide. Finally, there is the election coming up in November. She stated that there are clear winners and losers along the way as the market continues to adapt to the new normal. The first quarter was rough but the recovery has been equally as strong in the second quarter.

Ms. Gainfort reported on the performance of the Fund for the quarter ending June 30, 2020. The total market value of the Fund as of June 30, 2020 was \$27,802,412. The asset allocation was 50.3% in domestic equities; 9.2% in international; 24.7% in domestic fixed income; 3.7% in global fixed income; 9.3% in real estate; and 2.8% in cash. Ms. Gainfort stated that there was no need to do any rebalancing.

The total portfolio was up 12.89% net of fees for the quarter ending June 30, 2020 while the benchmark was up 13.20%. The total equity portfolio was up 21.90% for the quarter while the benchmark was up 21.06%. The total domestic equity portfolio was up 21.76% for the quarter while the benchmark was up 22.03%. The total international portfolio was up 22.77% for the quarter while the benchmark was up 16.30%. The total fixed income portfolio was up 3.93% for the quarter while the benchmark was up 3.01%. The total domestic fixed income portfolio was up 4.46% for the quarter while the benchmark was up 2.13%. The total global fixed income portfolio was up .36% for the quarter while the benchmark was up 7.40%. The total real estate portfolio was down 1.51% while the benchmark was down 1.27%.

Ms. Gainfort reviewed the performance of the managers. The Anchor All Cap Value portfolio was up 15.54% for the quarter while the Russell 3000 Value was up 14.55%. MFS Growth Fund was up 24.68% and PRIMECAP Odyssey Growth Fund was up 23.61% while the Russell 1000 Growth was up 27.84%. The Vanguard Mid Cap portfolio was up 24.95% for the quarter while the Russell Mid Cap was up 24.61%. The Vanguard Total Stock portfolio was up 22.07% for the quarter while the Russell 3000 was up 22.03%. The Garcia Hamilton Fixed Income portfolio was up 4.46% for the quarter while the benchmark was up 2.13%. The Templeton Global Fixed Income portfolio was up .36% for the quarter while the benchmark was up 7.40%. The Europacific Growth portfolio was up 22.77% for the quarter while the benchmark was up 16.30%. The Principal portfolio was down 1.51% for the quarter while the benchmark was down 1.27%.

Ms. Gainfort discussed Templeton. She stated that they have had a bit of a struggle. They do not manage very close to the Index but their ranking in the 100th percentile across the board is concerning. They still feel confident in the strategy over the long term but are looking at it on a client to client basis to see whether the client is comfortable with their volatility. She stated that the Fund has had this strategy since 2014. She recommended the Board take a look at other global fixed income options to see what else is out there. She stated that she would bring a manager comparison of Templeton with three other global fixed income managers to the next meeting so see if Templeton is still the best fit for the Fund.

CUSTODIAN REPORT

It was noted that Comerica advised that they were unable to attend the meeting today. They will be added to the November meeting.

ATTORNEY REPORT

Ms. Jensen provided a proposed Amendment to the Ordinance required by the SECURE Act. She stated that she added discretionary language that will allow the Fund to keep the Plan in compliance via Policy rather than having to keep amending the Ordinance. A motion was made, seconded and carried 4-0 to send the proposed Ordinance to the Village.

ADMINISTRATIVE REPORT

Ms. Adcock presented the disbursements. A motion was made, seconded and carried 4-0 to pay all listed disbursements.

Ms. Adcock advised that the Fiduciary Liability Insurance is due to expire on November 1, 2020. A motion was made, seconded and carried 4-0 to renew the Fiduciary Liability Insurance with the cost not to exceed \$2,500.

PUBLIC COMMENTS

There were no public comments

OTHER BUSINESS

There was further discussion on the position of the 5th Trustee. It was noted that perhaps the Clerk's office might be able to help if they receive any residents that have expressed an interest in serving on a board. There was discussion on whether the 5th could be a company that does business with the Village. Ms. Jensen stated that she would need to look into that further. It was noted that just because the Village has a relationship with a vendor does not mean that the Board would. It would need to be determined on a case by case basis.

Ms. Jensen stated that the Board will need a special meeting to select an attorney advocate regarding the Davis matter. She stated that she would provide information on the attorneys she would recommend. The Board stated that they would like to see at least 2-3 options.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Patti Waller, Chair