

**THE CITY OF WEST PALM BEACH RESTATED EMPLOYEES' DEFINED
BENEFIT RETIREMENT SYSTEM**

MINUTES OF MEETING HELD

April 24, 2007

A regular meeting of the Board of Trustees was called to order at 1:30 P.M. by the Secretary, Benny Rodgers, in City Hall, Room 519, 200 Second Street, West Palm Beach, Florida.

Those Trustees present were:

Alfredo Lay, Benny Rodgers, Lee Anna Claridge, Patrick Cooney,
William Swisher, and Robert Burd

Also present were:

Scott Baur representing the Pension Resource Center
Denise Clougherty representing the Pension Resource Center

MINUTES

The Board reviewed the minutes for the meeting held on March 27, 2007. A minor typographical error was noted on page one. The Administrator will amend. **A motion was made by William Swisher to approve the Minutes, as amended, for March 27, 2007. The motion was seconded and carried 4-0.**

Alfredo Lay joined the meeting at 1:35 p.m.

STATEMENT OF INCOME AND EXPENSE

The Board reviewed the statement of income and expense of the fund, provided by the Administrator. The Administrator provided explanation of line item 2010 to the Trustees, advising that the 2006 fiscal year has not been closed, as audit entry adjustments have not yet been received from the auditor. **A motion was made by Patrick Cooney to receive and file the Statement of Income and Expense. The motion was seconded and carried 5-0.**

DISBURSEMENTS

The Board reviewed the disbursement list presented. **A motion was made by Alfredo Lay to approve the disbursements beginning with check #2271 and ending in check # 2277. The motion was seconded and carried 5-0.**

BENEFIT APPLICATIONS

The Board reviewed the Benefit Applications provided by the Administrator. **A motion was made by Patrick Cooney to approve the benefit applications presented for William Rivera, Amy Coffin and Ruth Coffin. The motion was seconded and carried 5-0.**

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Lee Anna Claridge joined the meeting at 1:40 p.m.

ATTORNEY REPORT, Adam Levinson of Klausner & Kaufman

Mr. Levinson joined the meeting via teleconference at 1:40 p.m.

Polk

Mr. Levinson addressed the Trustees and commented that per their request, Mr. Scott Baur of Pension Resource Center was present to discuss their concerns regarding the error in benefit payments to Mr. Orville Polk.

Mr. Scott Baur addressed the Board and expressed his distress and regret over the error in the payment of benefits to Mr. Polk. Mr. Baur presented the Board with a response letter to their inquiry on what position the Pension Resource Center, as Administrator, would take regarding responsibility for the error. Mr. Baur emphasized that the Resource Center takes the position that any continuation of the benefit is outside the parameters of the Ordinance. The Pension Resource Center acknowledges the error and takes responsibility for the benefit payments made to Mr. Polk for the partial month of November 2006, the months of December 2006 and January 2007. Mr. Baur feels strongly that any subsequent benefits would not be the responsibility of the Pension Resource Center. Mr. Baur outlined in his letter to the Board the communication and circumstances of the error and identified the issue as a collective failure of procedural controls. He further advised the Board that his office is implementing an internal peer review process to enhance other controls already in place in an effort to mitigate potential errors going forward. Mr. Baur added that this is a significant error.

Mr. Baur offered several options to the Board regarding the settlement of this issue and outlined them in his response letter. He included the possibility of an actuarial equivalent benefit based on an immediate commencement and amounts already paid to Mr. Polk, as well as an offset of the future benefit. He recommended the Board interpret the Ordinance, Section 62-214 regarding Correction Of Errors In Records, prior to making a determination.

Mr. Levinson recommends the Board not attempt recovery of amounts paid to Mr. Polk, but reach a decision regarding benefits going forward. Mr. Polk was sent a letter by the Administrator, advising him of the Board's decision to continue his benefit while they gather information for reaching a determination. The letter was sent by Certified Mail, Return Receipt Requested.

Mr. Levinson continued, advising that the Board has the responsibility to correct errors to avoid windfall benefits to the employee and loss to the fund. Mr. Levinson further explained the legal implications of estoppel. Mr. Levinson advised the Board they had several options to offer Mr. Polk, one being that Mr. Polk could apply to be re-hired by the City of West Palm Beach for a few months, as he does not even have 25 years of

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service. Another option would be to cease the benefit and have Mr. Polk wait until retirement age of 60 to commence an unreduced benefit. Several other options were discussed at length. Mr. Baur remarked that his office had very little communication with Mr. Polk during the application process and does not think Mr. Polk relocated to South Carolina based on the reliance of the Pension Resource Center. Ms. Clougherty advised she would request Mr. Polk's letter of resignation from the city.

Mr. Baur concluded by advising that he very much regrets the error and values the relationship with the plan and is willing to work together with the Board to find the best possible solution to this issue.

Mr. Levinson advised the Board that at the current time, the trustees have no protection under the errors and omissions policy. The Pension Resource Centers has full coverage for errors and omissions with a \$10,000 deductible and one million dollar cap. Mr. Levinson advised that there has not yet been the consideration of a claim against the administrator. Mr. Levinson believes Mr. Polk needs the full range of procedural benefits and to have all records available to him. Mr. Levinson is recommending to not suspend the benefit at this time, as it is only one month prior to Mr. Polk's formal hearing, however, made it clear to the Trustees that Mr. Baur believes they are improperly paying the benefit. It would be useful to the Board to know what Mr. Polk is willing to do regarding a compromise. Mr. Levinson believes the Board has the flexibility to take into account all of the circumstances, including the potential for a law suit against the plan.

A motion was made by Benny Rodgers to NOT suspend the benefit for the month of April, but wait until after the formal hearing in May. The motion was seconded.

There was discussion on the Motion. Mr. Baur feels very strongly that the Board and the Pension Resource Center do not have the authority to go outside the ordinance, and pay a benefit that Mr. Polk is not due. He does not agree that the Pension Resource Center continues to have a liability for payment of a benefit not described in the ordinance. Patrick Cooney believes the Board should adhere strictly to the ordinance language.

The vote on the Motion failed 0-6.

A motion was made by Bill Swisher to suspend Mr. Polk's benefit payment until the Board receives sufficient information for a determination after the Hearing scheduled for May 14, 2007. The suspension would be effective immediately (April 27, 2007). The motion was seconded and carried 6-0. The Administrator will send a letter to Mr. Polk notifying him of the suspension and the date of the Hearing, inviting him to attend.

A motion was made by Lee Anna Claridge to authorize the Actuary to calculate an actuarial equivalent, optional benefit, commencing May 1, 2007, with the understanding that the Actuary would work with the Attorney and Administrator to obtain information needed to calculate the benefit. The motion was seconded and carried 5-0.

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The Board of Trustees selected May 14, 2007 at 1:30 p.m. as the Formal Hearing date for both Mr. Polk's issue and Mr. William Rivera's appeal to the Board's decision to deny his disability benefit. The Attorney will be present for this Formal Hearing. The Board discussed the possibility of having a court reporter present. Mr. Baur reminded the Board that their meetings are ordinarily recorded each month as a matter of procedure. Mr. Levinson added that the responsibility of transcripts is with the member, not the Board. The Board agreed that the member could attend by telephone, as long as the member takes an oath and have a notary or police officer with him to swear him in at the beginning of the Hearing. Mr. Baur advised that the notice regarding his payment and notice of hearing to Mr. Polk would go out immediately following the meeting, subject to review by the plan's attorney, Mr. Levinson.

The Board discussed investigating whether or not the city would allow Mr. Polk to return to work until he has met his 25 years of service. Mr. Cooney noted that Mr. Polk could certainly apply for any job within the city. He added that there is an opening in Utilities for a maintenance mechanic but he is unsure if they would hold it open for Mr. Polk.

Mr. Levinson advised the Board that it was brought to the attention of the Administrator that a retiree of the plan has been using the incorrect social security number since employment with the city. A letter has been sent to the retiree and the Board will be updated on the issue.

Mr. Levinson departed the meeting at 3:20 p.m.

ADMINISTRATIVE REPORT

The Administrator advised the Trustees that registration has begun for the FPPTA Conference in Naples, Florida June 24 – 27, 2007. Mr. Cooney advised he would be attending.

William Swisher departed the meeting at 3:23 p.m.

OTHER BUSINESS

Alfredo Lay provided the Trustees with a copy of a letter he received from a recent retiree regarding her pension benefit. He advised that the issues have been addressed to the retiree's satisfaction.

There being no other business, and the next meeting having been scheduled for May 15, 2007, the meeting was adjourned at 3:30 p.m.

Benny Rodgers, Secretary