

**CITY OF PONTIAC, MICHIGAN
POLICE AND FIRE RETIREMENT SYSTEM
SEPTEMBER 29, 2011**

A regular meeting of the Board of Trustees was held on Thursday, September 29, 2011 at the City Council Conference Room, Second Level, City Hall, Pontiac, Michigan. The meeting was called to order at 9:59 a.m.

Trustees Present

Leon Jukowski, Mayor
John Naglick, Secretary
Matthew Nye

Others Present

Matthew Henzi, Sullivan, Ward, Asher & Patton
Chris Kuhn, Gray & Company
Ellen Zimmermann, Retirement Administrator
Jane Arndt, M-Administrative Assistant
John Wargel, PFRS Retiree
Larry Lyons, PFRS Retiree
Larry Marshall, GERS Retiree
Jeffrey Hawkins, Deferred PFRS Retiree

AGENDA CHANGES

CONSENT AGENDA

- A. Minutes of Regular Meeting – August 25, 2011
- B. Communications:
 - 1. Correspondence from Loomis Sayles Re: SEC Subpoena
 - 2. Correspondence from Artio Global Re: Fact Sheet
 - 3. Correspondence from Metropolitan Real Estate Re: Real Estate Perspective
- C. Financial Reports:
 - 1. Financial Reports – August 2011
 - 2. Securities Lending- July 2011
 - 3. Accounts Payable – September 2011
 - 4. Q3 A/P (Due from GERS) \$629.73
- D. Capital Calls:
 - 1. Metropolitan RE Fund VII \$120,000.00
- E. Distributions:
 - 1. Metropolitan RE Fund VI \$119,862.00
- F. Remove from the Rolls:
 - 1. Fay Douglas (deceased 09-01-11): survivor benefit of \$998.41/mo. to Wilma Douglas
- G. Application for Service Retirement:
- H. Application for Deferred Retirement
- I. Final Benefit Calculations:

- J. Application for Refund of Accumulated Contributions
 - 1. Robert Ludd – PPOA \$11,087.66
- K. Disability Re-Examination

RESOLUTION 11-058 By Naglick, Supported by Jukowski
Resolved, That the consent agenda be approved as presented.

Yeas: 3 - Nays: 0

Re: Gray & Company

Market Update

Mr. Kuhn distributed the Fund's market values as of September 26, 2011. He reported that August was not a good month and performance was difficult during the summer. Most plans are down approximately 5%. September started out rocky. He told the Board to expect red numbers for the third quarter.

Trustee Naglick questioned how much time it will take to fund the real estate allocations.

Mr. Kuhn said that the core real estate allocation is currently looking for good investments. Metropolitan is doing a good job of finding managers. They are confident that the System is on track with the real estate managers.

Mesirow started out a little rocky with some investments that did not work out at the beginning. They met with the manager last week and they are excited about deals that are currently in the market.

Money Market Recommendation

Mr. Kuhn stated that they are making the same recommendation for this Fund regarding the change in money market funds based on the uncertainty in the Europe based on their debt crisis. He requested that the Board ratify Ms. Zimmermann's signature on the directive to Northern Trust to change the cash sweep from the Collective Short Term Investment Fund to the Collective Government Short Term Investment Fund.

RESOLUTION 11-059 By Naglick, Supported by Jukowski
Resolved, That the Board approve the directive to change the Northern Trust short-term investment vehicle from the Collective Short Term Investment Fund to the Collective Government Short Term Investment Fund.

Yeas: 3 – Nays: 0

REPORTS

Re: Chairman - None

Re: Secretary - None

Re: Trustees - None

Re: Administrator

State of Michigan Pension Tax Implementation

Ms. Zimmermann reported that the new Governor has implemented a tax on pensions starting in tax year 2012. Those retirees age 67 and older are exempt. Tax payers receiving a pension age 66 to 60 will receive a partial tax exemption. There is a \$20,000.00 exemption for single filers and a \$40,000.00 exemption for joint filers. There is also a waiver form that retirees can apply for.

She asked that the Board approve sending a communication to retirees to contact their tax advisors and stating that the Retirement Office can offer no additional assistance or advice. The information from the State will accompany the communication. The correspondence will be sent in October and then again in November/December the correspondence will include a W-4P. She feels that the more communication with the retirees the better.

Mr. Henzi is impressed that Ms. Zimmermann brought this issue to the table. It is a hot button issue. He referred to a September 8, 2011 article in the Detroit News in reference to the Michigan Supreme Court hearing arguments on whether this tax is constitutional. One Attorney General argued for and the other Attorney General argued against. In the argument against, the attorney argued that reducing the statutory exemption for public pension income violates the provision in the State Constitution which provides that accrued financial benefits, like a pension benefit, may not be diminished or impaired. The attorney arguing that the tax is constitutional argued that as a governing body of the State, the government has the right to tax pension benefits.

The second argument raised by the attorney arguing that the tax is unconstitutional is that this is a graduated income tax which is illegal. The attorney argued it is not fair to use a measure based on age for phasing out exemptions which is why the delegates drafted the State Constitution this way. This law is projected to go into effect in 2012. Ms. Zimmermann is trying to get ahead of the game. If the Michigan Supreme Court rules that the tax is constitutional, the System will be protected since it will have sent notices to retirees about the tax.

Ms. Zimmermann explained that the setup in the payroll system will be done person by person. The default will be Single with 0 exemptions. This bill was not drafted to make this easy to administer.

Trustee Nye asked if the communication will be sent in November.

Ms. Zimmermann explained that the timing of the correspondence is important. The first notice will go out in October. She explained that people can apply for the waiver. Communications

with the forms will also be sent out in November / December. She does not know enough on how this will work but the information needs to be sent out. There are two pages provided by the State that will be sent out with the cover letter.

Mr. Henzi said that there have been a large number of lawsuits filed regarding the constitutionality of the tax.

There were questions on whether the payroll company can assist in the administration.

Ms. Zimmermann explained that ADP has the ability to withhold taxes but the withholding is determined by what the member claims.

RESOLUTION 11-060 By Naglick, Supported by Jukowski
Resolved, That the Board authorize Ms. Zimmermann to send communications to the retirees regarding the new pension tax that will take effect in tax year 2012.

Yeas: 3 – Nays: 0

Re: Legal

Atheros Communications, Inc.

Mr. Henzi reported that the Defendants were not willing to pay the Plaintiffs compensation in exchange for the Plaintiffs executing a release of liability. After lengthy negotiations the parties agreed to enter a dismissal without prejudice which means that certain claims could be brought in the future, although unlikely. During the next thirty to sixty days legal counsel will file a motion for approval of attorneys' fees. Once that issue is decided the case will be resolved.

Fossil, Inc. Shareholder Derivative Litigation

Mr. Henzi reported that legal was recently notified that the Court has approved the settlement of \$9 million to be paid to the Company to aid in the financial recovery sought through the lawsuit. Changes were made to the Board including five new independent directors being added. Options were re-priced and procedures have been put in place to prevent future backdating. Attorneys' fees were paid entirely in stocks and options. Since this went into effect last fall, the value of Fossil's stock has doubled.

UBS/AG Securities Class Action

Mr. Henzi reported that the Court dismissed the claims of the foreign lead plaintiffs and gave a favorable ruling allowing the Judge to decide where the case will be litigated. They will continue to advise the Board with respect tot his matter.

In Re Gildan Activewear Securities Inc. Securities Litigation

Mr. Henzi stated that there is nothing new to report. They will continue to advise the Board with respect to this matter.

Longtop Financial Technologies Limited Litigation

Mr. Henzi stated that the Court denied the System's Motion for Appointment as Lead Plaintiff. This System had joined with GERS to file for lead plaintiff. The Court appointed a small group of institutional investors with larger losses. Once the litigation is complete a proof of claim will be filed on behalf of the System.

RESOLUTION 11-061 By Naglick, Supported by Jukowski

Resolved, That the Board move to closed session to discuss pending litigation and the status of James Tate's application for duty disability benefit, including a discussion of his confidential medical records.

Roll Call:

Trustee Jukowski – Yea Trustee Nye - Yea
Trustee Naglick – Yea

The Board moved to closed session at 10:37 a.m.

The Board returned from closed session at 11:06 a.m.

Lawsuit Against City of Pontiac – Closed Session

James Tate – Application for Duty Disability – Closed Session

Northern Trust (SWAP/BLBG) – Closed Session

Partial Plan Termination

Mr. Henzi reported that he is still working on this issue. He is waiting for the lay off lists from Human Resources. He contacted Stephanie Sumner for assistance in obtaining the lists.

Trustee Nye asked why the Board is looking into a partial termination.

Mr. Henzi explained that in a partial plan termination all employees are vested within a specific period of time. According to the IRS, it is unfair for a company to terminate a large number of employees where the majority are vested leaving a small percentage not vested. He indicated that the lay off list goes back a long way and he needs to identify what percentage will make the difference. He has to go by the IRS guidelines.

Ms. Zimmermann stated that a lot of the members withdrew their contributions.

Trustee Naglick questioned whether this affected the members who purchased service credit.

Ms. Zimmermann explained that the members who purchased service credit did so to reach normal retirement age in order to begin collecting their pension benefit.

Franklin Templeton Global Bond Plus Investment

Mr. Henzi reported that he is working on a Side Letter Agreement. He should have the documents ready to sign before the next meeting.

Request to Purchase Service Credit Within 30 Days After Separation Date

Mr. Henzi reported that this issue was resolved. The Emergency Manager and his attorney acted in a timely manner. This was an urgent issue. The resolution allowed the Retirement Office to deposit the funds received to purchase service credit.

MAP Cost Study

Mr. Henzi reported that he has been trying to contact Neil Dennis and Ed Wertz regarding the payment of this study.

Hiring Retirement System Office Staff

Mr. Henzi reported that at the last meeting the Board voted to move ahead on hiring their own staff. He indicated in order to proceed; the Emergency Manager needs to approve the Ordinance amendment.

He is currently working on a mini employee handbook. The staff would generally transition with the same benefits. If this Board goes alone staff size is an issue that needs to be addressed.

Trustee Jukowski said that the GERS Board will be voting to go along at their next meeting.

Trustee Naglick stated that the Board asked legal counsel to prepare a detailed list for review on how the transition would work including various issues pertaining to employee benefits, the union position and the percentage split.

Trustee Jukowski indicated that the Chairman has the majority of votes.

Ms. Zimmermann stated that at the GERS meeting the trustees indicated that they want everything in writing for the transition. She and Ms. Billings will be working on a comprehensive outline.

Trustee Jukowski said that the trustees want to review the process of how it will transition.

Ms. Zimmermann stated that the Board needs to know the City's position on benefits. It might be better if the staff could remain part of the City's health plan.

Trustee Nye said that it seems there is a lot of work that needs to be done to proceed.

CAP Mortgage LLC

Mr. Henzi reported that there is nothing new to report on this issue. He will continue to advise the Board in respect to this matter.

Additional Monitoring Counsel

Mr. Henzi reported that he obtained the information for monitoring counsel Hagens Berman. They are a securities litigation firm similar in size to Robbins Geller. He told the Board that the Court likes to see Systems with multiple firms monitoring your portfolio because it betters your chances for filing the best cases.

Trustee Nye said that even though two members of the Board are missing he would like to retain this firm. There is no cost to the Board.

RESOLUTION 11-062 By Naglick, Supported by Jukowski
Resolved, That the Board retain Hagens Berman as monitoring counsel for the System.

Yeas: 3 – Nays: 0

Jeffrey Hawkins – Closed Session

In Re: Washington Mutual, Inc. Securities Litigation/Proof of Claim

Mr. Henzi requested that the Board approve the Proof of Claim in the Washington Mutual, Inc. securities litigation.

RESOLUTION 11-063 By Naglick, Supported by Jukowski
Resolved, That the Board approve the Proof of Claim in regard to the Washington Mutual, Inc. Securities Litigation.

Yeas: 3 – Nays: 0

Miscellaneous Articles

Mr. Henzi reported that these articles are for the trustees' information.

- Miller Johnson, August 25, 2011 – *Michigan Legislature Passes Bill Capping Public Employer Health Care Contributions*
- The Detroit News, September 8, 2011 - *Michigan Court weighs whether law creates graduated income tax*
- Robbins Geller – Corporate Governance Bulletin – *3rd Quarter 2011*
- Segal Bulletin – Benefits, Compensation and HR Consulting, August 2011

Legislative Update from MAPERS Fall 2011 Conference

Mr. Henzi referred to his write up in the legal report pertaining to the proposed amendments to Public Act 314.

He said that the State House and the State Senate will be sponsoring an identical version of the bill in each legislative house.

His write up lays out the proposed changes which include increasing the real estate investment allocation to 10% as well as increasing the basket clause. It also puts a cap on travel expenses for trustees at \$30,000.00 per year with a \$150,000.00 per Board. These amounts were increased to accommodate the Detroit Boards.

Service providers to Boards would be required to comply with the SEC's pay to play policy. Service providers are not permitted to make political contributions. There is also a section on how appointed and elected trustees can be removed.

Trustee Nye asked Mr. Henzi to explain pay to play.

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Mr. Henzi explained that pay to play is when service providers make contributions to members of the Board. The State wants transparency and is requiring lots of reports made public. There are different ways to post the information but most often on a website. The Governor feels that the public has a right to know all expenditures made by trustees, especially related to travel, conferences, etc.

Ms. Zimmermann indicated that the Police & Fire Board has a pay to play policy.

Mr. Henzi questioned whether the Board has an ethics policy.

Ms. Zimmermann stated that the Police & Fire Board does not have an ethics policy.

Mr. Kuhn asked if the issues regarding commingled funds were addressed.

Mr. Henzi said that there are a number of amendments to that section but he was not sure if they addressed commingled funds. There are members coming forward with their own version. The Governor is prepared to sign the bill. They are still working on the details.

Trustee Nye asked about the changes to the pension calculations based on the new law.

Mr. Henzi indicated that the Governor's budget included his proposed reforms pertaining to pension calculations and other issues contained within his "Economic Vitality Incentive Program". The decrease in multiplier for purposes of calculating final average compensation applies to new hires. These reforms are proposed in the budget only and are only enforced for one year. The Governor is trying to redefine how things are done in order to balance the State Budget and distribute revenue sharing.

Trustee Nye asked if Mr. Henzi could describe the new revenue sharing guidelines. He has been planning his retirement for twenty years and questioned whether the new plan is grandfathered in.

Mr. Henzi said that these are the new rules that are being recommended. Mr. Henzi advised that many person or entities would likely challenge the reduction in the multiplier as being an impairment to an accrued benefit and, thus, a violation of the state constitution.

Trustee Nye asked if the State's intent is to change the multiplier. He questioned whether this something that will be negotiated locally or with the Emergency Manager. They will need to have the answers.

Mr. Henzi said that these issues are not really being addressed because this has not been enacted into law. The Governor's reforms came out in March 2011. However, do not mistake that current statewide office holders have made clear that they want to make changes to public employees' benefits. The State recently made drastic changes to the State employees' pay and benefits.

Trustee Nye asked when the Economic Vitality Incentive Program will take effect.

Mr. Kuhn stated that it is in this year's budget and could be included in next year's.

Mr. Henzi said that these are the Governor's suggestion on how to govern the State, distribute revenue and balance the budget.

Trustee Nye asked, if the multiplier changes whether the contributions will be refunded back to the members.

Mr. Henzi stated that this could be considered diminishing or impairing the Fund's assets. The State cannot diminish constitutionally protected benefits.

Ms. Zimmermann stated that once the money goes into the Fund it only goes out to the beneficiaries.

Retiree, John Wargel questioned whether it would be an IRS violation because the assets would become taxable.

Mr. Henzi explained that the Trust was setup to constitutionally protect the members' benefits and trust assets. The legislature is looking for ways to decrease employer contributions and lower the annual contributions. The State is economically distressed due to the reduced property values.

Re: Union Representatives - None

NEW BUSINESS

Re: Ordinance Amendment – Transfers Into PFRS – Refer to Legal

Ms. Zimmermann reported that the Ordinance amendment was executed by Executive Order. The money has been transferred and deposited into the System.

Re: State Tax on Pensions – Refer to Legal

UNFINISHED BUSINESS

Re: Non Payment of City Contributions – Refer to Legal (Closed Session)

Re: Police Representative on PFRS Board

Mr. Henzi reported that the Ordinance change has been done.

Re: Ordinance Amendment – Professional & Clerical

Ms. Zimmermann indicated that the change in the Ordinance allowing the Police & Fire System to set wages has not happened to date.

Re: Actuarial Cost Study MAP – Refer to Legal

Mr. Henzi reported that he has tried to contact Jason Teelander from the Police Union to have them front the cost. The City will not pay for the study.

Re: Rules & Regulations Revision - Table

Re: James Tate – Application for Duty Disability – Refer to Legal (Closed Session)

SCHEDULING OF NEXT MEETING

Regular Meeting – Thursday, October 27, 2011 – City Council Conference Room, Second Level, City Hall @ 9:00 am

ADJOURNMENT

RESOLUTION 11-064 By Jukowski, Supported by Naglick
Resolved, That the meeting be adjourned at 11:53 a.m.

Yeas: 5 – Nays: 0

I certify that the foregoing are the true and correct minutes of the meeting of the Police and Fire Retirement System held on September 29, 2011.

John Naglick, Secretary
As recorded by Jane Arndt