

**West Palm Beach Police Pension Fund
2100 North Florida Mango Road
West Palm Beach, Florida 33409**

Minutes

**May 15, 2012
8:15 AM**

CALL THE MEETING TO ORDER

Mr. Mitchell called to order the West Palm Beach Police Pension Fund Meeting on May 15, 2012 at 8:15 AM, in the conference room of the Palm Beach County Police Benevolent Association.

Present at the meeting: Edward Mitchell, Chairman, Jonathan Frost, Board Secretary, Chris Fragakis, Board Trustee & Troy Marchese, Board Trustee.

Also present: _____, Active Member; Earnest George, Retired Member; Mark Rickabaugh & Robert Croce of Anchor Capital; John McCann of Thistle Asset Consulting Group; Bonni Jensen, Board Attorney, Law Offices of Perry & Jensen, LLC; and Dave Williams, Plan Administrator.

APPROVAL OF THE MINUTES

Mr. Mitchell asked if there were any changes required to the minutes of April 13, 2012. Mr. Frost made the motion to approve the minutes, which was seconded by Mr. Marchese. All Trustees voted yes, and the motion was passed 4-0.

APPROVAL OF DISTRIBUTIONS

New Warrants were presented for review and execution. Warrants approved at the last meeting were presented to the Board in spreadsheet format, in addition to the activity outlined in the administrative report by Mr. Williams. Mr. Frost made the motion to approve the foregoing, which was seconded by Mr. Marchese. All Trustees voted yes, and the motion was passed 4-0.

ATTORNEY'S REPORT

Mrs. Jensen outlined the requirements for the trustees to complete the Commission on Ethics - Form 1. A memorandum was provided to assist the Trustees. The deadline for filing is July 1, 2012.

Mrs. Jensen distributed a memorandum on state and tax laws which will be inserted into this record.

Further Mrs. Jensen created new affidavits to be utilized by the plan administrator as a result of HB 401. Mr. Frost made the motion to approve the forms, which was seconded by Mr. Fragakis. All Trustees voted yes, and the motion was passed 4-0.

Mrs. Jensen also provided an updated version of an existing form entitled "Application to Elect Earnings Method". The form was revised as a result of the revision to the special act. Mr. Frost made the motion to approve the form, which was seconded by Mr. Fragakis. All Trustees voted yes, and the motion was passed 4-0.

**INFORMAL DISABILITY HEARING –
(Tabled April 13, 2012)**

The Board of Trustees considered the request of claimant, _____, for a disability pension, having received the written representations of _____ and having reviewed the records, medical and otherwise, and the independent medical evaluation of Jeffery Worth, MD and having a quorum, determined the following:

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- A. _____ is physically unable to perform the duties of a police officer to which she was assigned.
- B. Given the _____ medical condition, the City of West Palm Beach does not have a position for her as a certified police officer; therefore she is unable to render useful and efficient service as a police officer to the City.
- C. The physical injury occurred in-the-line-of-duty and is total and permanent.

Pursuant to Section 15 of the Special Act of the West Palm Beach Police Pension Fund, that:

- 1. Claimant _____ is entitled to a duty disability pension.
- 2. Based on the foregoing, the disability pension shall be payable effective May 11, 2012 or the date that the _____ stops receiving pay from the City of West Palm Beach, whichever is later.
- 3. The pension is subject to offset for workers' compensation payments to the extent that the total of the pension and the workers' compensation benefits exceed _____ average monthly wage.
- 4. Upon _____ reaching age 55 and if she is still receiving a disability benefit, the pension may be converted to a normal retirement pension at her option.

The foregoing was put in the form of a motion by Mr. Frost, which was seconded by Mr. Fragakis. All Trustees voted yes, and the motion was passed 4-0.

The matter of subrogation was also acknowledged by _____ after being advised by Mrs. Jensen.

Mrs. Jensen reviewed local, state and federal law as it pertains to the definition of marriage. The matter was reviewed due to _____ marriage from the State of New York. After considering the foregoing, Mr. Frost made a motion to recognize the marriage of _____ from the State of New York, which was seconded by Mr. Fragakis. All Trustees voted yes, and the motion was passed 4-0.

ADMINISTRATOR'S REPORT

Mr. Williams advised that the annual pension member survey will be presented at the next meeting.

Mr. Williams updated the Board that the mid-year audit by Davidson, Jamieson & Cristini was underway and will be presented upon completion.

ANCHOR – MID CAP VALUE MANAGER

Mr. Mark Rickabaugh & Mr. Robert Croce appeared before the Board and reviewed the March 31, 2012 investment report. Mr. Mark Rickabaugh advised that the Anchor Capital Mid Cap Value Account returned 6.29% for the quarter vs. 11.41% for the benchmark (Russell Mid Cap Value).

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Per the Thistle March 31, 2012 Executive Report, that return (on a short term basis) placed Anchor Capital in the 100th percentile. For the fiscal year period (October 1, 2011 to March 31, 2012), Anchor Capital returned 15.17% vs. 26.30% for the same benchmark.

Since inception (May 12, 2003), the portfolio returned a stellar 151.14%. The value of the portfolio at inception was valued at \$7,998,505.00. The market value as of March 31, 2012 was \$17,374,957.

Mr. McCann provided the Board a Morningstar Report outlining the Anchor Capital portfolio. The Board reviewed the document accordingly.

INVESTMENT MONITORING REPORT

Mr. John McCann appeared before the Board and reviewed the March 31, 2012 investment report.

Asset Allocation: Mr. McCann advised that as of March 31, 2012 the fund had 55.9% in domestic equities, 8.4% in international equities, 27.4% in fixed income, 4.9% in real estate and the balance in cash. No rebalancing was proposed by Mr. McCann.

Division of Assets: As of March 31, 2012, Garcia Hamilton held 37.4% of the portfolio (fixed & equity), Valley Forge had 11.2%, Earnest Partners had 9.4%, Oak Ridge had 8.8%, Anchor had 8.3%, Eagle had 5.9%, GW Capital had 5.2%, DFA had 4.5%, WHV had 4.4%, Intercontinental had 4.9%, with the balance in the R&D Account.

The total assets were valued at \$209,912,000. For the quarter, Mr. McCann stated that the total fund returned 7.55% vs. 8.26% compared to the target index. For the fiscal year, the fund return was 15.18% vs. 16.60% compared to the target index. That return placed the Fund in the 97th percentile in the investment universe. On a one year basis, the fund return was 3.03% vs. 6.21% for the benchmark.

For the quarter, Mr. McCann stated that the total equities returned 9.29% vs. 12.43% compared to the target index. For the fiscal year, the fund return was 20.18% vs. 25.02% compared to the target index. That return placed the Fund in the 100th percentile in the investment universe. On a one year basis, the fund return was 1.13% vs. 4.98% for the benchmark.

Eagle Asset Letter: Mr. McCann advised the letter received from Eagle Asset dated April 9, 2012 from Mr. Richard Rossi would have no impact on the portfolio.

OPEN DISCUSSION

No formal discussion ensued

ADJOURNMENT

Being there was no other business; the meeting was adjourned at 9:55 AM.

Next meeting is scheduled for June 15, 2012 at 8:15 AM

Jonathan Frost, Board Secretary

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MEMORANDUM

To: Board of Trustees
West Palm Beach Police Pension Plan

From: Bonni S. Jensen

Subject: State and Tax Law Updates

Date: May, 2012

Both the IRS and the State legislature have taken actions which could impact your pension plan. The IRS has issued a private letter ruling on Retire/Rehire policies and is addressing the Normal Retirement Age issue again. And the State legislature, in addition to the change in the public records law, passed a bill to automatically cancel the designation of the spouse as a beneficiary upon divorce or annulment of the marriage.

INTERNAL REVENUE CODE ISSUES

In a Private Letter Ruling ("PLR") published November 25, 2011, the IRS determined that if an employee "retires" in order to qualify for a benefit, with the explicit understanding with the employer that the employee is not separating from service, then the employee is not legitimately retired. The IRS ruled this in a case involving certain early retirement subsidies that were being eliminated and so many employees "retired" to take advantage of the benefits. The employer allowed the employees to do so and then rehired them into their same position the next day. According to the PLR, such retirements violate Internal Revenue Code §401(a) and could result in disqualification or penalties to a plan.

PLAN OF ACTION: Ensure that retirements are in compliance with this PLR or implement changes to the Pension Plans in accordance with the in-service distribution regulations discussed below.

The Retire/Rehire issue is related to the IRS's ongoing review of Normal Retirement Age in the governmental sector, which the IRS is still actively considering. Notice 2012-29 was released in April of 2012 inviting public comment on:

- (A) The IRS clarification that governmental plans which do not offer in-service

distributions do not need to have a definition of normal retirement age and do not need to have a definition referencing specifically age; and

- (B) Allows the age 50 safe harbor for in-service distributions to public safety officers who participate in larger plans whose members are not all public safety officers and who do not all have a normal retirement age of 50.

Importantly, the effective date for the application of this regulation has been extended until the later of January 1, 2015 or the close of the first regular legislative session of the body with the authority to amend the plan.

PLAN OF ACTION:

- Continue to monitor effective date for governmental plans
- Discussion with Board regarding comments on the Regulation

STATE LAW

At the end of April, the Governor signed HB 401 into law. The law effective July 1, 2012 provides that dissolution or annulment of marriage voids the election of a former spouse as a designated beneficiary. Though this is not specifically a pension issue, it does impact the operations of the Pension Fund and needs to be addressed as a part of the Board processes. Additionally, the City should be made aware of the change.

The bill amends the Florida Statutes by creating a new §732.703. This section voids the designation of the spouse as the death beneficiary/joint annuitant ("beneficiary") as of the date of divorce. This law applies to:

1. Employee benefit plans (except the Florida Retirement System);
2. Life insurance policies or annuities within an employee;
3. IRAs;
4. Payable on death accounts;
5. Security accounts registered in a transfer on death form; or
6. Life insurance policies or annuities held outside an employee benefit plan.

And does **not** apply:

1. To the extent federal law provides otherwise;
2. If the designation of beneficiary is signed after the dissolution or annulment and expressly provides that benefit will be paid to the former spouse;
3. To a will or trust;

4. If the order of dissolution or annulment requires the former spouse to remain the beneficiary;
5. If under the order of dissolution or annulment the decedent could not have unilaterally terminated the ownership of the asset;
6. If the designation of the spouse as beneficiary is irrevocable;
7. If the instrument directing the disposition of the assets is governed by the laws of another state;
8. To an asset in two or more names where the death of one co-owner vests ownership in the survivor;
9. If the decedent remarries the former spouse; or
10. To state administered retirement plans.

The law also provides for some limitation on liability for improper payments under the law, unless the employee benefit plan pays in violation of an order directed to the employee benefit plan and served as required by law.

1. The employee benefit plan is not liable for making a payment in violation of the new statute (FS 732.703) if the beneficiary designation does not explicitly specify the relationship.
2. If the designation of beneficiary clearly identifies the beneficiary as the former spouse, then the employee benefit fund has no liability for paying the former spouse if the death certificate identifies the participant as married to that spouse at the time of his or her death. Alternatively, if the designation of beneficiary clearly identifies the beneficiary as the former spouse, then the employee benefit fund has no liability for paying the secondary beneficiary if the death certificate identifies the participant as not married or is married to another person at the time of his or her death.
3. If the death certificate is silent as to the decedent's marital status at the time of death, then the employee benefit fund is not liable for making the payment to the spouse as the primary beneficiary if the primary beneficiary/spouse completes an affidavit swearing or affirming that the parties were legally married to each other on the date of death. Alternatively, if the death certificate is silent as to the decedent's marital status at the time of death, then the employee benefit fund is not liable for making the payment to the secondary beneficiary if the secondary beneficiary completes an affidavit swearing or affirming that the primary beneficiary and the decedent were not legally married to each other on the date of death. See attached draft Affidavits. The verbiage of the affidavits is set forth in the new law.

The limitations on liability apply even though the employee benefit fund may have known that the person to whom the asset is transferred is different from the person who owns the asset per the designation of beneficiary or the person who would own it if the designation were void by operation of the new law.

The new law does not affect the ownership of interests in assets between the former spouse and any other person who may own it by operation of the new law, including the rights of any purchaser, creditor, insurance company, financial institutions, trustee, administrator or other third party.

This law applies to all deaths occurring on or after July 1, 2012 regardless of when the designation was made.

PLAN OF ACTION:

- Renew efforts to make sure that all beneficiary designations are up to date.
- Implement use of affidavits for payment of all death benefits effective July 1, 2012.
- Develop procedures for gathering records to determine participant's marital status on date of death.
- Ensure that the City and all service providers are aware of the new law.
- Follow up on regulation interpreting the statute, if any.

Please add these items to your next meeting agenda for discussion.