

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

**Minutes**

**May 6, 2016  
8:30 AM**

**CALL THE MEETING TO ORDER**

Mr. Frost called to order the West Palm Beach Police Pension Fund Meeting on May 6, 2016 at 8:36 AM, in the main conference room of the Ernest George Building of the Palm Beach County Police Benevolent Association.

Present at the meeting: Jonathan Frost, Board Chairman, Troy Marchese, Board Secretary, Joseph Ahern, Board Trustee and Craig Kahle, Board Trustee.

Also present: Ernest George - Retired Member, William Lynch & Hung Hoang, New Amsterdam; Brendon Vavrica & Brad Hess, The Bogdahn Group; Bonni Jensen, Board Attorney, Klausner, Kaufman, Jensen & Levinson; Dave Williams, Plan Administrator.

**PUBLIC COMMENT**

No comments provided

**APPROVAL OF THE MINUTES**

Mr. Frost asked if there were any changes required to the minutes of April 8, 2016. Mr. Frost's observations were duly noted. Mr. Kahle made the motion to approve the minutes of April 8, 2016, which was seconded by Mr. Ahern. 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 detailed activity outlined in the administrative report by Mr. Williams. Mr. Marchese made the motion to approve the foregoing which was seconded by Mr. Ahern. All Trustees voted yes, and the motion was passed 4-0.

**ATTORNEY'S REPORT**

Mrs. Jensen reviewed a memo concerning the annual budget, mutual consent as per SB 172 and public records requests.

Graham Matter: Mrs. Jensen presented medical providers to the Trustees to consider. After review and discussion, Dr. Worth & Dr. Harris were selected via a motion by Mr. Ahern which was seconded by Mr. Marchese. All Trustees voted yes, and the motion was passed 4-0. Mrs. Jensen is developing a timeline of the history of events. The Trustees concurred.

Accumulated Leave: Mrs. Jensen reviewed the tax advice relative to city leave payout limitations. The letter (attached hereto) concluded that the SHARE and DROP Accounts are not subject to limitations in IRC 415(b). Mrs. Jensen will share this information with the city representatives. Will be posted to the Announcement page of the web by Mr. Williams.

<http://www.wpbppf.com/docs/announcements/LetterRegardingAccumulatedSickAndVacationLeaveTransfers.pdf#zoom=100>

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Summary Plan Description (SPD): The SPD was presented to the Trustees for consideration. Mr. Frost's comments were duly noted regarding required minimum distributions (RMD).

Based on the foregoing, Mr. Marchese made a motion to approve the 2016 SPD, which was seconded by Mr. Ahern. All Trustees voted yes, and the motion was passed 4-0. Will be updated to the web by Mr. Williams.

### **ADMINISTRATOR'S REPORT**

Mr. Williams indicated that he is continuing to assist Mr. Cristini from Davidson Jamieson and Cristini on the financial statements for March 31, 2016. Further details to follow as warranted. Report anticipated for the June meeting.

Mr. Williams informed the Board that all of the required disclosures approved to date have been posted to the web as required.

### **NEW AMSTERDAM – SMID CAP MANAGER**

Mr. William Lynch & Mr. Hung Hoang appeared before the Board to review the March 31, 2016 investment report. Mr. Lynch & Mr. Hoang provided an organizational update, noting that the firm is 100% employee owned. The investment team and the process was emphasized. How they as a firm identify the 40-45 positions to invest in, from a pool of 10,000 companies was detailed. The pair also discussed the sell discipline. Portfolio sector weights and characteristics were reviewed as they compare to the Russell 2500.

As of March 31, 2016, New Amsterdam Account returned -4.20% for the quarter vs. 0.39% for the benchmark (R2500). On a rolling one year basis through March 31, 2016, portfolio returned -7.3% which was in-line with the same benchmark. Since inception (August 19, 2014) the portfolio returned 2.14% vs. -0.01% for the same benchmark through March 31, 2016. Mr. Hoang felt the companies in the portfolio have more positive earnings revisions and positive earnings surprise than the broad market. Mr. Hoang reflected that the portfolio remain consistent with the New Amsterdam discipline. Moderate 2016 GDP growth is forecasted. Continued low inflation tame with risks to downside. Interest rates may increase twice this year depending on data. Employment and housing improving. Corporate profits to grow in the low to mid-single digits.

### **INVESTMENT MONITORING REPORT**

Mr. Vavrica & Mr. Hess appeared before the Board and presented the March 31, 2016 investment report. Additionally an asset allocation analysis was presented, along with a large cap core equity manager search.

Asset Allocation: As of March 31, 2016 the fund had 49.9% in domestic equities, 9.5% in international equities, 22.8% in fixed income, 10.6% in real estate and the balance in cash.

Division of Assets: As of March 31, 2016, Garcia Hamilton & Associates held 30.6% of the portfolio (fixed & equity), Rhumblin had 10.2%, BRC had 9.8%, New Amsterdam had 8.6%, Intercontinental had 5.7%, Eagle Asset had 5.6%, Anchor had 5.1%, JPMorgan had 4.9%, Oakridge had 4.3%, Vanguard (VTRIX) had 4.0%, Rhumblin International had 3.0%, Oppenheimer International had 2.6%, with the balance in the R&D Account.

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As of March 31, 2016, the total assets were valued at \$267,201,649. For the quarter, the total fund returned 0.08%<sup>1</sup> vs. 1.25% compared to the target index. For the fiscal year, the total fund returned 2.90% vs. 4.65% compared to the target index. The median return for public plans was 3.84%.<sup>2</sup>

The domestic & international equity portfolio was valued at \$176,454,430 as of March 31, 2016. For the quarter, the total equity portfolio returned -1.24% vs. 0.50% for the target index. For the fiscal year, the total equity portfolio return was 2.73% vs. 5.51% compared to the target index.

The traditional fixed income portfolio was valued at \$61,162,307 as of March 31, 2016. For the quarter, the traditional fixed income portion of the portfolio returned 2.92% vs. 2.31% compared to the target index. For the fiscal year, the fixed income portfolio return was 2.13% vs. 1.79% compared to the target index.

For the quarter, the Intercontinental real estate portfolio returned 0.83% vs. 2.21% compared to the target index (NCREIF). For the quarter, the JP Morgan real estate portfolio returned 2.66% vs. 2.21% compared to the target index (NCREIF).

At this juncture the asset allocation models were reviewed, in addition to the large cap core manager search results by Mr. Hess. While discussion followed the presentations, no formal action was taken.

### OPEN DISCUSSION

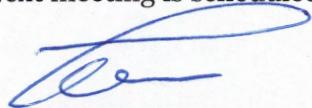
Mr. Frost shared recent educational updates with the Board from the “Impact Investing Forum” and the “SALT Conference”.

### ADJOURNMENT

Being there was no other business; motion to adjourn by Mr. Marchese, which was seconded by Mr. Ahern. The meeting was adjourned at 11:15 AM.

Next special meeting is scheduled for May 23, 2016 at 8:30 AM

Next meeting is scheduled for June 10, 2016 at 8:30 AM



Troy Marchese, Board Secretary

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<sup>1</sup> Net basis reported

<sup>2</sup> Source: The Bogdahn Group

GRAY | ROBINSON  
ATTORNEYS AT LAW

Richard E. Burke, Esq.  
Chairman - Employee Benefits Practice Group  
407-244-5603  
RICK.BURKE@GRAY-ROBINSON.COM

301 EAST PINE STREET  
SUITE 1400  
POST OFFICE BOX 3068 (32802-3068)  
ORLANDO, FLORIDA 32801  
TEL 407-843-8880  
FAX 407-244-5690  
gray-robinson.com

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TALLAHASSEE  
TAMPA

April 12, 2016

Bonni S. Jensen  
Klausner, Kaufman, Jensen & Levinson  
7080 N.W. 4<sup>th</sup> Street  
Plantation, Florida 33317

Re: West Palm Beach Police Pension Fund ("Plan")/Tax Advice  
Client-Matter No. 211580-1

Dear Bonni:

You have requested advice as to whether the contributions of accumulated leave amounts to member DROP or Share Accounts in the Plan are subject to the limitations on "annual additions" set forth in IRC § 415(c). Based on administrative guidelines issued by the IRS National Office in December, 2014, we do not believe these contributions are subject to the IRC § 415(c) limits. Thus, we believe these amounts are added to other benefits provided by the Plan and are subject to the IRC § 415(b) limitations. However, it is possible the IRS could adopt future guidance altering these conclusions.

The Plan is a governmental defined benefit plan intended to satisfy the so-called "qualification" requirements of IRC § 401(a). Pursuant to the terms of the Plan, members otherwise eligible to receive cash payments of accumulated sick leave, accumulated vacation leave, or any other accumulated leave upon separation of employment shall have such leave transferred to the Pension Fund up to the amount permitted by law. These accumulated leave contributions will be transferred to a member's DROP Account or to his/her Share Account.

Under the Internal Revenue Code, defined benefit plans (like the Plan) are subject to the benefit limitations of IRC § 415(b) and defined contribution plans are subject to the annual contribution limits set forth in IRC § 415(c). Pursuant to IRC § 414(i), a defined contribution plan is a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses and any forfeiture of accounts of other participants which may be allocated to such participant's account. Conversely, a defined benefit plan is defined as any plan which is not a defined contribution plan. See IRC § 414(j). With respect to retirement programs having elements of both types of plans, IRC § 414(k) provides that a defined benefit plan which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant shall, for purposes of IRC § 415, be treated as a defined contribution plan to the extent benefits are based on the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan.

Arguably, the accumulated leave contribution provisions of the Plan could be viewed as a separate account within the defined benefit plan that is subject to the IRC § 415(c) limits because of the requirements of IRC § 414(k). However on December 8, 2014, the IRS National Office issued a memorandum ("Memorandum") that supports the opposite conclusion. In other words, based on the analysis set forth in

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the Memorandum, the accumulated leave contributions under the Plan do not appear to be subject to the IRC § 415(c) limitations.

The Memorandum was issued to provide IRS Employee Plans personnel reviewing governmental defined benefit plans with DROP features guidelines for applying the benefit and contribution limits of IRC § 415 to such plans. The Memorandum describes a typical DROP arrangement (which would include the DROP program set forth in the Plan) and simply concludes that DROP benefit amounts<sup>1</sup> are not subject to IRC § 415(c) limits on “annual additions”. However, the Memorandum also notes that many DROP arrangements permit other employee or employer contributions to be made to the DROP, which are in addition to the DROP benefit amounts. The Memorandum refers to these types of contributions as “Additional Contributions” and indicates that such contributions will only be treated as annual additions subject to the IRC § 415(c) limits in very limited situations.

According to the Memorandum, if a governmental defined benefit plan permits Additional Contributions to a DROP, the IRC § 415(c) limits will **only** apply to these contributions if **all** of the following three conditions are satisfied:

- (1) The DROP consists of “**segregated accounts**” for each participant;
- (2) Earnings on the amounts in the DROP are based **solely** on actual investment earnings (i.e., the DROP does not provide for a fixed or guaranteed rate of return on funds in the DROP); and
- (3) The DROP does not provide for the cessation of the accrual of earnings in the DROP at any time.

Based on the terms of the Plan, the DROP and Share Accounts do not satisfy two of the above-referenced conditions (i.e., (1) and (2) above). First, the DROP and Share Accounts do not appear to be “segregated accounts”. According to the Memorandum, a DROP only constitutes a segregated account if all DROP benefits payable to a participant are paid **only** from the assets in that participant’s DROP account. Conversely, if a participant’s DROP benefits are payable from the general assets of the trust fund (or from the assets of the DROP accounts of all DROP participants), the DROP accounts are not segregated accounts. Pursuant to the terms of the Plan, the DROP and Share Accounts do not appear to be segregated accounts because DROP benefits are payable from the general assets of the Pension Fund (because the DROP Accounts are commingled with Pension Fund assets) and benefits from the Share Accounts are payable from general Pension Fund assets (or from the assets of the Share Accounts of all Share participants, if the Pension Board dedicates a separate investment portfolio for Share Accounts).

In addition, the earnings on DROP and Share Accounts are not based **solely** on actual investment earnings (as defined in the Memorandum). According to the Memorandum, if a DROP participant has a choice between investment options **and one of those options provides for a fixed or guaranteed rate of return** (which for this purpose includes the rate of return on general trust fund assets), earnings are **not** based **solely** on actual investment earnings. Therefore, since at least one of the investment options available

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<sup>1</sup> DROP benefit amounts are the amounts credited to a participant’s DROP account that he/she would have received if she/she actually retired.

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for DROP and Share Accounts under the Plan includes a fixed or guaranteed rate of return, earnings are not based **solely** on actual investment earnings.

As indicated above, according to the analysis set forth in the Memorandum, we believe that accumulated leave contributions to the DROP and Share Accounts are not subject to the annual additions limitation of IRC § 415(c) because the terms of the Plan that apply to both types of Accounts fail to satisfy two of the requirements contained in the Memorandum.<sup>2</sup> In this regard, we recognize that the language of the Memorandum refers to “Additional Contributions” made to **DROP accounts** and does not specifically address “Share accounts”. However, we believe this is a distinction without substance and that the logic and conclusions enunciated in the Memorandum also apply to accumulated leave contributions to member Share Accounts. This is due to the fact that there is no substantive difference between the DROP and Share Accounts in the Plan. Both constitute separate benefit structures which provide supplemental benefits based on the value of such Accounts. In this sense they are the same type of account and we believe the IRC 415 limits should apply in the same manner to both Accounts.

Before closing, we would like to note that the contents of the Memorandum are not law and it specifically states that it is not subject to use, citation or reliance as such. However, notwithstanding this disclaimer, the Memorandum apparently represents the IRS National Office’s current informal position on the issues referenced therein.

As indicated above, based on the terms of the Memorandum, we believe the accumulated leave contributions made to DROP and Share Accounts are not subject to the limitations on “annual additions” set forth in IRC 415(c). Thus, we believe these amounts are added to other benefits provided by the Plan and are subject to the IRC 415(b) limits. However, it is possible the IRS could issue future guidance altering these conclusions.

Very truly yours,



Richard E. Burke, Esq.

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<sup>2</sup> Please note that the DROP Accounts actually fail all three of the requirements of the Memorandum because earnings on such Accounts cease to accrue if the applicable police officer fails to terminate employment by the end of the DROP participation period.