

MINUTES
MEETING OF THE SANIBEL BOARD OF TRUSTEES OF
THE MUNICIPAL POLICE OFFICER'S RETIREMENT TRUST FUND
CITY OF SANIBEL, FLORIDA – AUGUST 5, 2009

1. Call to order by Chairman Tomlinson.

Chairman Tomlinson called the meeting to order at 2:00 P.M. The meeting was held in MacKenzie Hall on 800 Dunlop Road, Sanibel. Board members present were Mr. Albert, Mr. Dalton, Mr. Holston, Mrs. McBee and Chairman Tomlinson. Also present were Mr. Burgess Chambers of Burgess Chambers and Associates, Mr. Jon Larsen of SunTrust, Mr. Doug Lozen of Foster & Foster and Attorney Robert Sugarman of Sugarman & Susskind. Guests present were City Council Liaison vice Mayor Kevin Ruane, Administration Director Jim Isom, Finance Director Sylvia Edwards and City Manager Judie Zimomra.

2. Review and approval of minutes of May 6, 2009 meeting.

Motion made by Mrs. McBee to approve the minutes; seconded by Mr. Dalton and the motion passed unanimously.

3. Report on Plan Benefit Options presented by Mr. Doug Lozen of Foster and Foster.

Mr. Doug Lozen presented a study on the pension compensation issues.

The first analysis shows a savings to the city, should city council approve, of 2.7% of payroll or \$50-60,000 per year by lowering the COLA (cost of living allowance) from 3 to 2.2%. The next analysis includes a change in the definition of pensionable earnings using "Involuntary Payments" figures given. Removing these items of pay to determine reduced liability came up with a new requirement of 30.2% of payroll or \$100,000 per year savings by removal of these payments.

The city requested a study increasing the vesting period from 5 to 6, 7 or 10 years. By doing so, it showed it was unlikely that savings would exceed .3% of payroll.

A study showing the maximum benefit capped at 75% of the 5 year average presented no savings here with the current membership.

The final study projected costs for 5 and 10 years down the road. The driving force is the most recent investment losses as they are phased in. The 10 year amortization showed an investment loss of 12% in 2008, 10 % in 2009 and 35.1% in 2010. For the 10 year period it increases from 29.7 to 42.5% or from \$600,000 to \$900,000 for the 2013/14 fiscal year. The 30 year amortization would be 35.2% or \$725,000. Both the 10 and 30 year interest rates are 3%.

Mr. Lozen stressed these studies are all based on assumptions. It is not unusual to see a swing of 2-4%.

Vice Mayor Ruane voiced his concern with the unfunded liability and payroll expense going up and the revenue going down. The plan's unfunded liability as of 2008 is 5.6 million. Mr. Sugarman advised whether the board chooses the 10 or 30 years amortization, the 30 year may not be legally allowed for the entire 30 years if the law or accounting or actuarial standards change during that time, so you cannot count on it.

4. Review Second Quarter 2009 Performance Report from SunTrust by Mr. Jon Larsen.

Mr. Larsen presented the quarterly Performance Report. The quarter had a net change of \$495,225 ending with a portfolio market value of \$6,052,910 on 6/30/09. No significant changes except the board requested the sale of Russell 1000 Index shares and purchase select equity product. Mr. Holston requested a copy of the new fund offering more corporate exposure. Mr. Larsen will send it to Cheryl for distribution. The plan is down 10% which isn't all that bad compared to other plans that are down 15-20%.

Motion made by Mr. Albert to accept SunTrust's quarterly report; seconded by Mr. Dalton and the motion passed unanimously.

5. Review Second Quarter 2009 Investment Performance Monitoring Report from Burgess Chambers & Associates, Inc., presented by Mr. Burgess Chambers.

Mr. Chambers reported the market value of the plan had a 9.6% gain of \$586,350 with an ending balance of \$6,737,582 for the second quarter of 2009. As of today, the plan is right around 0 due to two factors. The first being we carried a higher cash allocation than normal in the first half of the past 12 months. The second is the job well done by SunTrust in preserving the plan in this down period. Currently the asset allocation for domestic equity is about 53%, for international about 7% and about 36% for bonds. This plan did not lose as much as the market did. Other than index funds, the majority of the money is in actively managed products which have a lower risk than the index, nice alpha and very nice ranking.

Mr. Chambers presented the Investment Policy Statement for review. The changes include:

- The total performance changed the benchmark from Russell 3000 and broke it into Russell 1000, mid cap and small cap. Also an increase in International allocation to 15% as the state now allows up to 25%. Pulled REIT down to 5% from 15%. We're moving away from the S & P and we're going to stick with Russell's. The same with the mid cap – to Russell mid cap.
- Recommend to allow the equities ceiling to go from 60 up to 65. The measure of risk is the total allocation based on market.
- Foreign is stepped up to 25 at the maximum.

- Prohibited Investments involves the Protecting Florida's Investment Act and essentially says that the list of companies the State of Florida compiles and publishes every quarter includes companies the state believes we should have removed from our portfolios because they do business with terrorist nations. But if our money is in funds and those funds have some of those underlying issues (like Royal Dutch Shell) we're only being required to ask the managers to divest in those stocks or to create an alternative that we can invest in to be in compliance. But if they can't do that, we're still OK if stay in a co-mingled fund. Mr. Burgess will be writing letters to SunTrust to ask them to comply with this law.
- There is an allocation target we include that in the past has been more general. Now we have a specific target allocation with a mid max range and a discussion here on the fact that it is my responsibility to keep an eye on this, to advise you on occasion and how we should rebalance.

Motion made by Mrs. McBee to approve the revised Investment Policy Statement recommended by Burgess Chambers & Associates, contingent upon receiving the documentation supporting Burgess's opinion, and then it is implemented 31 days after council approves it; seconded by Mr. Dalton and the motion passed unanimously.

Motion made by Mr. Dalton to accept Burgess Chambers and Associates quarterly report; seconded by Mrs. McBee and the motion passed unanimously.

Vice Mayor Ruane suggests Mr. Chambers make the presentation to City Council. Mr. Sugarman will provide the resolution.

5. Report from Attorney Robert Sugarman of Sugarman & Susskind.

Mr. Sugarman rendered an opinion on the compensation for purposes of calculating pensionable benefits. Anything that is cash or can be turned into cash is pensionable compensation.

An inquiry was received wondering if retirees were able to vote in the elections for the police officer elected trustees. The answer is no, as the code clearly says that the police officer trustee is elected by the police officers employed by the city. Although a retiree could be appointed by council to serve on the board.

Mr. Sugarman prepared an ordinance that will do two things. The first is to bring the plan up to date for the Internal Revenue Code and the second will bring the plan into compliance with the new law, Chapter 2009-97. The new law extends your next term (not your current term) for 4 years. It also permits the retirees who selected joint and survivor options to switch their joint annuitant up to two times but makes clear that the change does not require Board permission or the permission of the joint annuitant (whether joint annuitant is in good health or even alive). There is no cost to the plan because the pension will be recalculated at that time. Also we can now deduct from our

pension payments health insurance purchased from someone other than the city for those who move outside of the area or purchase insurance at a lower expense enabling them to take advantage of the Pension Protection Act Provisions that permit them to reduce taxable income by up to \$3000 per year.

Motion made by Mr. Albert to approve and recommend the ordinance; seconded by Mr. Holston and the motion passed unanimously.

The IRS has revised the employee withholding for retirees when the American Recovery and Reinvestment Act passed extended a tax cut to put more money into the economy. The retirees do not get the “Making Work Pay Tax Credit” and run the risk of being under withheld. The IRS realized this and distributed a 3rd tax table applying only to retirees. Mr. Sugarman advised warning members that extra money in pension checks may reflect under withholding. They will need to contact SunTrust and have their withholding increased. Cheryl will contact SunTrust asking if they’ve sent notification to our members and will send out correspondence warning of the tax liability issue and the solution.

Mr. Sugarman encourages attendance at one training session per year.

Educational opportunities:

October 4-7, 2009	FPPTA Trustees School in Bonita Springs
Late October 2009	Police & Firefighter Pension School in Celebration

The Trustees agreed that Mr. Pedro Herrera will attend the November meeting in Mr. Sugarman’s absence.

Chairman Tomlinson expressed concern over Foster & Foster issues. He sees two distinct differences on the reports by Mr. Lozen. One is actually a change in benefits which requires a different level and different standards of action by the city than rectifying the involuntary portion of the cafeteria benefits. This board, in Chairman’s opinion, shouldn’t delve into what the city council should or shouldn’t do, and this is a negotiable issue based on what I’ve heard and believes the city is taking steps to discuss these issues with the applicable union. Chairman Tomlinson believes the part of the job of having the studies done are completed and has satisfied of what we need to do at this point.

Vice Mayor Ruane has a difference of opinion. The info received has significant number in dollar amount for the current year but one might draw a conclusion that this has been a component of prior conversation. The adjustment that Mr. Lozen referred to is \$104,000 a year and has taken place for the past 11 years. One might come to the conclusion that part of the unfunded liability would be lower if we followed the interpretation of Mr. Lozen’s letter to be the lower number and if you funded it every year.

To clarify, Chairman Tomlinson’s interpretation related to pensionable compensation, it is the city’s decision whether it was a mistake or not, to determine what the pensionable compensation is – it’s not been this board’s decision to do that. A question for Mr. Lozen- whether the unfunded liability would be higher or lower with or without this pensionable compensation?

Chairman Tomlinson hopes there is not a feeling that members of the pension plan that have contributed dollar on the dollar that has been considered pensionable didn't participate in their obligation to fund that portion of their pension because all members did contribute their 8% of whatever the considered pensionable compensation was.

Mr. Ruane recommends the board have another meeting prior to the November 2009 meeting. The rate the unfunded liability has grown over the past two years is a large concern as is the decrease in revenue. Even though there have been no pay raises – this isn't enough. Mr. Sugarman suggests a workshop among city council, trustees and stakeholders.

The next regular board meeting is on November 4 at 2 PM.

Mr. Jim Isom, Administrative Services Director, spoke as he understood the legal opinion; we are currently violating our ordinance so some action is necessary. Either we change our ordinance to include this as pensionable income or we follow our ordinance and we do not include the involuntary payments as pensionable income. The board, in his opinion, needs to weigh in on where they want to go.

Chairman Tomlinson advised there are no ordinance changes relative to pensionable compensation in front of the board. It is incumbent upon the city to follow the ordinance. Mr. Isom reports the city has a contract with the FOP that requires the city to discuss the impact of changes anytime we make a change to the retirement plan.

Mr. Sugarman advises you have his opinion that these involuntary payments to the employee benefit plan are not pensionable income. First you need to see if the city and the union believe that this was the intent of the pension plan and the intent of the way that they put involuntary payments in. Assuming that the city and the union agree that the involuntary payments are not pensionable, and then prospectively we need to:

- Stop taking out pension contributions for those amounts from our members.
- Have the actuary stop including them in the pensionable pay in figuring the city's contribution.
- For the future retirees – stop including them when we calculate their pension.
- For current working members – revise their benefit statement to reflect their new pension.

Retroactively the impact bargaining has to take place for:

- Go back and return money to members.
- Determine what we do with the retirees.

Motion made by Chairman Tomlinson requesting the city to recalculate the pensionable compensation of all police officers (active, terminated and retired) based upon the legal opinion retroactively and determine how much contributions were made by the police officers based upon the amount that should not have been

included (over compensation) employee by employee and pay period by pay period, and give this information to the actuary who will tell us: 1) Does it change the pension fund's liability? 2) Does it change the city's contributions? 3) Does it change the pension of anyone who has retired? And 4) if yes to any of the above 3, by how much; seconded by Mr. Dalton and the motion passed unanimously.

6. Other business.

The next meeting is on Wednesday, November 4, 2009 at 2 PM in MacKenzie Hall at 800 Dunlop Road, Sanibel.

7. Public Comments and inquiries.

There was no public present.

8. Adjournment.

There being no further business, the meeting was adjourned at 4:11 P.M.

Approved: _____

Date: _____

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