

**August 8, 2018**



**POLICE AND FIREFIGHTERS' PENSION BOARD  
REGULAR BOARD MEETING  
888 South Andrews Avenue, Suite 202  
Fort Lauderdale, FL 33316  
Wednesday, August 8, 2018, 12:30 P.M.**

Communications to the City Commission:

1. The Board received the 3<sup>rd</sup> Quarter performance report showing the plan 1.75% for the quarter; 7.54% for one year and 7.63% for five years. The assumed rate of return for the quarter is 7.4%.
2. The Board approved the 2018-2019 operating budget for the plan

**Board Members**

Ken Rudominer, Chair	P
Richard Fortunato, Vice Chair	P
Scott Bayne, Secretary	A
Jim Naugle, Trustee	P
Jeff Cameron, Trustee	P
Dennis Hole, Trustee	P
Derek Joseph, Trustee	A
Lynn Wenguer, Executive Director	P

**Also Present**

Alexandra Goyes, Deputy Director  
 Fred Nesbitt, Board Communication Director  
 Robert Klausner, Board Attorney  
 Ronald Cohen, Retirees Association Attorney  
 Anna Klausner Parish, attorney  
 Linda Logan-Short, Acting Director of Finance  
 Paul DeBold, Retirees Association President  
 Jack Chew, Retirees Association  
 Michael Viveros, fire captain  
 Dean Ferrerio, firefighter  
 Captain Josh Wells, fire captain  
 Kevin Schmid, CAPTRUST  
 Lisa Mudrick, court reporter  
 Jamie Opperlee, Prototype Inc.

**ROLL CALL/CALL TO ORDER**

The meeting was called to order at 12:30 p.m. Roll was called and a quorum was determined to be present.

**PLEDGE OF ALLEGIANCE/MOMENT OF SILENCE**

The Pledge of Allegiance was followed by a moment of silence.

**MINUTES:**

**July 11, 2018 Regular Meeting:**

Mr. Hole noted changes to the minutes.

**Motion** made by Mr. Hole, seconded by Mr. Naugle to approve the Board's July 11, 2018 regular meeting minutes as amended. In a voice vote, motion passed unanimously.

**NEW HIRES:**

Chair Rudominer recognized the new hires.

**BENEFITS: POLICE DEPT.:** New Retiree: (Service) Aridio Gomez

Member Termination: David Polce

**FIRE DEPT.:** New Beneficiary: Debra Sue Clanton  
Retiree Death: Donald R Lassiter

Vice Chair Fortunato noted that Aridio Gomez was returning on October 23 and he could not recall the Board approving retirement so far in advance before. Mr. Fortunato added that date of birth was listed instead of date of hire, which should not be on this public record. Ms. Wenguer agreed to remove the date of birth.

**Motion** made by Mr. Hole, seconded by Mr. Fortunato, to approve payment of the benefits as documented. In a voice vote, the motion passed unanimously.

At 12:35 p.m., the Board conducted a closed session to discuss settlement negotiations and legal strategy related to litigation expenses in the case of Brutus v. Board of Trustees, 17<sup>th</sup> judicial circuit case #17002456. Names of attendees were noted.

**Motion** made by Mr. Hole, seconded by Mr. Fortunato, to go into closed session. In a voice vote, the motion passed unanimously.

At 12:52, the Board's regular meeting reconvened.

**Motion** made by Mr. Naugle, seconded by Mr. Fortunato, to accept the plaintiff's offer to end the litigation and to authorize Mr. Klausner take steps to effectuate it. In a roll call vote, the motion passed 5-0.

**Retiree COLA Letter:**

Ronald Cohen, attorney for the Retirees' Association, had sent a letter to the Board urging them to change their views regarding the COLA. Mr. Cohen recalled the Board's first letter regarding this had been written by Stephen Cypen, the Board's former attorney. In that April 12, 2011 letter, Mr. Cypen indicated that members who retired prior to July 15, 2008, regardless of whether a member began to receive benefits immediately upon separation, were eligible for a COLA. In addition, members who were eligible for normal retirement prior to July 15, 2008 but remained actively employed with the City after that date were eligible for a COLA. Mr. Cohen continued that a sunset provision, which said it would sunset unless readopted, had been inserted in July 1986 but it had been repeatedly extended.

Mr. Cohen felt there had been a change in that opinion, as evidenced by one of Mr. Klausner's letter in which he indicated it had been sunsetted, so re-adoptions did not matter.

Mr. Klausner had most recently addressed the question of the sunset in a June 2, 2015 letter. He stated the COLA did not have a sunset and he had expressed the opinion that anyone who was a participant and either not eligible to retire or retired as of the date the sunset provision was enacted lost the right to the COLA. Anyone who was either eligible to retire or retired in 1986 when the sunset provision was entered remained eligible for a COLA, based on the City's 1972 ordinance C-72-94.

Mr. Klausner described cases in Baltimore, Maryland and Gastonia, North Carolina on which he had based his opinion that once the sunset provision was added, some members were entitled to a COLA unless the sunset came to pass. The City had renewed the provision for years but in 2008 had exercised its option on the sunset.

Mr. Hole recalled the Board agreeing with Mr. Cypen's opinion and that when Mr. Klausner became the Board's attorney, Mr. Hole had confirmed that Mr. Klausner agreed with that opinion. Mr. Klausner stated his opinion had changed, based on subsequent jurisprudence.

Mr. Cohen did not disagree that a municipal government could add a condition to a right, but clarified that the language in the sunset provision indicated that the COLA "sunsetted and you're not entitled to it

unless it's re-adopted" and this condition had always come to pass.

Chair Rudominer asked what action Mr. Cohen wished and Mr. Cohen said the retirees were entitled to know the Board's position on the matter. Mr. Hole noted the Board had not discussed this or changed their position since Mr. Cypen's letter. Mr. Klausner said this was his opinion and the Board was free to accept or reject it.

Mr. Klausner stated the question before the Board was: "Does the right to a COLA between '86 and 2008, does it vest, so that even if it eventually goes away - which everybody agrees that it did in 2008 - that if there is a future COLA, that those people who vested in it during those years between '86 and '08 would still be in the 'you get it' group." Mr. Klausner's view was that it vested subject to the condition that if the sunset came to pass, the vesting no longer applied.

Mr. Klausner said the second question related to the ability to grant a COLA based on investment gain alone, or on investment gains *and* losses. Per State law since 1994, if a COLA was paid on investment gains alone, they must project forward the actuarial costs and pay it. Mr. Klausner said it was not good practice to pay a benefit for which they did have funding. The City of Hollywood had not received State premium tax monies for five years because it was embroiled in three lawsuits over the payment of a COLA that the City had refused to pay because it was not based on the investment gains *and* losses.

Mr. Klausner stated Fort Lauderdale could stand to lose \$10 million per year in premium tax money and he doubted this was a fight they wanted to start. If the retirees believed the COLA could be paid, he believed the appropriate action was for them to file a declaratory relief action in the circuit court and he would advise the Board not to waste money defending it because the City was the real party in interest.

Mr. Hole agreed with Mr. Cypen and Mr. Cohen's opinion regarding the group eligible for the COLA but objected to Mr. Cohen's desire to change the benchmark in the funding. Mr. Klausner explained that they first needed to determine if there had been a true gain in the plan from all actuarial factors, and then determine who was eligible for a COLA, those eligible for retirement from 1986 back or from 2008 back.

Mr. Cohen reported the retirees had no desire to sue the Board but they "may be left with no choice." Regarding Hollywood, Mr. Cohen said, "We're all taking the position, yes, it can be paid." Mr. Cohen asked the Board to confirm that eligible retirees were anyone who had retired prior to 2008. He said this would prevent litigation of the sunset provision.

Chair Rudominer wished to discuss this next month and wanted to hear from their actuary, Brad Heinrichs, about how they accounted for and paid a COLA.

Mr. Klausner stated his concern was if the Board changed their interpretation of what triggered a COLA from just investment return to all actuarial factors, this would "start a fight that's only going to benefit a select group of lawyers."

Mr. Naugle recalled that while Mayor, he had assumed that anyone employed before 2008 would get a COLA if the returns ever justified paying it. He felt the retirees should get an item on the City Commission's agenda and ask if they would fund a COLA. Chair Rudominer suggested they wait until they discussed it with Mr. Heinrichs next month. He informed Mr. Cohen the Board would work to determine who they believed was eligible.

#### Buyback Discrepancies

Ms. Wenguer had spoken with Mr. Heinrich and he suggested a workshop to explain how the calculations were done.

Michael Viveros, fire captain, had created a comparison of his and a few other firefighters' buyback costs and noted his cost was much higher than other members with similar salary, age and service.

Mr. Hole recalled that Mr. Kaufman had indicated that the Board was not obligated to have the calculation reviewed by another actuary. But he did want Mr. Heinrichs to explain the calculations so

they all understood it. Mr. Klausner agreed that Mr. Heinrichs owed them an explanation. Ms. Wenguer agreed to invite Mr. Heinrichs to their next meeting to discuss the COLA and buyback calculations. Mr. Klausner believed Mr. Heinrichs should attend the meeting without charge.

<b>BILLS:</b>	Lazard	\$63,022.86
	Vaughan Nelson	\$46,647.09
	Eagle	\$46,551.90
	Agincourt	\$42,387.57
	Boyd Watterson	\$39,370.00
	Sawgrass	\$30,542.65
	Rhumblin	\$15,628.00
	Intech	\$13,223.89

Ms. Wenguer recalled they had excluded \$7,500 from Foster and Foster's bill last month and requested a breakdown of the charge. Foster and Foster had subsequently provided a breakdown, which totaled \$8,100, and Ms. Wenguer asked the Board to amend the list of bills to include the \$7,500 from last month.

**Motion** made by Mr. Hole, seconded by Mr. Fortunato, to approve payment of the bills, adding \$7,500 from last month for Foster and Foster. In a voice vote, the motion passed unanimously.

#### **COMMENTS FROM THE PUBLIC/ACTIVE & RETIRED POLICE OFFICERS & FIREFIGHTERS**

Mr. DeBold thanked the Board and Mr. Klausner for listening to Mr. Cohen's presentation. He reported two members had died in the past month.

#### **ATTORNEY'S REPORT:**

Ms. Wenguer recalled Mr. Bayne had inquired about the Wide Open West lawsuit. Mr. Klausner stated there were two securities cases the firm recommended. The first was examining books and records, which Mr. Klausner agreed with performing. The other was a securities fraud case, but as their loss was only \$75,000, he felt this was too small to warrant proceeding as lead plaintiff.

**Motion** made by Mr. Cameron, seconded by Mr. Hole to authorize Mr. Klausner to proceed with a books and records investigation regarding U.S. Bank Corp. and to take no action on Wide Open West. In a voice vote, motion passed unanimously.

#### **CAPTRUST:**

Kevin Schmid

##### **Quarterly Investment Review**

Mr. Schmid provided a brief capital market review. He reported there had been a positive rebound this quarter in the U.S. equity market after a negative quarter. Big name tech and consumer stocks were driving the market. There had also been a rebound in energy with oil and gas prices remaining high. Mr. Schmid said for July, the U.S. equity market was up over 3.5% and international equities were up 2.5%.

Mr. Schmid reported for the quarter, the fund was up 1.75% and up 1.26% for the year. For the fiscal year to date, it was up 4.26%.

For the quarter, Mr. Schmid said, Aristotle was slightly ahead of benchmark but double the benchmark for the fiscal year. InTech was over 2% behind the S&P for the quarter. Sawgrass was behind 1.4% for the quarter and 4% behind for the fiscal year. Eagle was up almost 9% for the quarter and 18.5% for the fiscal year. Vaughn Nelson was up 3.5% versus the benchmark of 8.3%. Lazard was slightly behind for the quarter and Dodge & Cox was significantly behind for the quarter, because they were overweight in financials and emerging markets.

In fixed income, Mr. Schmid stated returns had been flat for the quarter. Boyd Watterson had preserved more value than the benchmark. Mr. Schmid explained that the Federal Reserve raising interest rates had brought the income yield up approximately 3% on this portion of the portfolio. He said real estate was up 6.3% for the fiscal year to date. American Strategic Value was up 2.8% for the quarter. EnTrust Special Opportunities Fund was up 2.9% for the quarter and he hoped they would continue to see this as EnTrust monetized assets.

Mr. Schmid referred to an insert in the report describing scenarios for fixed income alternatives. They still had \$50 million they had discussed putting into alternatives.

Regarding options they had discussed, Mr. Schmid said the government real estate, Boyd Watterson and USAA, was less economically sensitive. Mr. Schmid thought Bloomfield would be an option for investing the funds coming in from the EnTrust Special Opportunities Fund. The Board should discuss if they wanted to invest in government real estate and/or Stone Ridge.

The Board discussed the scenarios and decided to postpone discussion on Stone Ridge for now. They agreed to increase real estate to 17% and Mr. Klausner said these were actually shares in a partnership that he would not classify as real estate, but as alternative. Mr. Schmid noted their investment policy statement allowed 17.5% in real estate, so it did not require a change. Ms. Logan-Short did not know how auditors would classify this type of investment.

**Motion** made by Mr. Fortunato, seconded by Mr. Hole to move \$30 million from fixed income into Boyd Watterson Government Real Estate Funds. In a roll call vote, motion passed 5-0.

**Motion** made by Mr. Fortunato, seconded by Mr. Hole to approve a 1.75% actuarial rate of return for the quarter. In a voice vote, motion passed unanimously.

## **COMMUNICATION DIRECTOR'S REPORT**

Mr. Nesbitt invited articles for his pension report.

Mr. Nesbitt had been contacted by the L.A. times regarding health benefits for Police Officers that went to the Broward Sheriff's office. Mr. Nesbitt had explained that the retirement system had nothing to do with health benefits and he had directed them to the City and the FOP. Mr. Klausner explained that this was a huge issue in Los Angeles. People were entering the DROP and immediately going on disability, effectively double dipping.

## **EXECUTIVE DIRECTOR'S REPORT:**

### 2018-2019 Annual Budget

Ms. Wenguer alerted the Board that two columns on the report: "Proposed 2018-2019" and "Approved 2017-2018" had reversed titles.

**Motion** made by Mr. Fortunato, seconded by Mr. Hole to approve the 2018-2019 Annual Budget as amended, with the column titles corrected. In a voice vote, motion passed unanimously.

### Travel Policy

Ms. Wenguer updated the form per the Board's discussion at their last meeting.

Mr. Hole asked about the credit card travel points and Mr. Klausner explained that according to the IRS, the points belonged to the cardholder; they were not considered compensation and were not taxable. Cash given back on a cash-back card belonged to the system. Ms. Wenguer said she had not changed the cards because it was not easy to get them. She stated Bank of America was very nice about waiving fees and charges because the City often paid late. Mr. Klausner advised Ms. Wenguer to create an account and pay the bills instead of having the City do it.

Mr. Hole asked if they needed to have a separate travel policy for Board members and staff. Chair Rudominer stated the way they booked and received the per diem was the same for staff and trustees.

The Board needed to decide how many meetings to allow staff to attend. Mr. Klausner recommended including this in the travel policy. Ms. Wenguer agreed to put this on next month's agenda.

Mr. Klausner stated if they had a policy to complete the form, they should enforce it to provide accounting for expenses. Ms. Wenguer said the credit card statement made it easier to track expenses. The Board agreed to table discussion of the form.

#### Board Tablets

Ms. Wenguer reported the City would not support the One Drive account for loading documents. Mr. Klausner agreed to send a copy of Tampa's laptop policy he had created.

Ms. Wenguer discussed paperwork needed to send to each doctor in a disability review and Mr. Klausner recommended he and Ms. Wenguer review their disability procedures and he would recommend ways to streamline them.

Mr. Naugle asked if there was a trend in claiming PTSD in disability claims. Mr. Klausner said there was and jurisprudence was narrow so far.

#### New Administrative Assistant

Ms. Wenguer informed the Board that she would begin interviews the following week.

#### **PENDING ITEMS:**

##### **New Business:**

None

##### **Old Business:**

Schedule A

None

Mr. Hole asked for an update on the ordinance re-write. Mr. Klausner stated he was working on it. He remarked on the number of internal conflicts in the existing document.

Mr. Hole asked about Mr. Klausner's bills for the Brutus case. Mr. Klausner said he had already emailed Mr. Sikking, Mr. Brutus's attorney, and informed him that the Board had accepted the proposal. All that was left to do was write a one-page stipulation for entry of a final judgment, without fees.

There being no further business to come before the Board at this time, the meeting was adjourned at 3:37 p.m.

#### **FOR YOUR INFORMATION:**

**KCG Recapture Statement**

Recapture Summary/June, 2018

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Secretary

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Chairman

Any written public comments made 48 hours prior to the meeting regarding items discussed during the proceedings have been attached hereto

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