

**PALM BAY POLICE AND FIREFIGHTERS' PENSION PLAN
BOARD OF TRUSTEES
Special Meeting 11-17**

Held on the 21st day of October 2011 at Robert J. Conlan Professional Center, 1501 R. J. Conlan Blvd., NE, Suite 260, Palm Bay, Florida.

This meeting was properly noticed pursuant to law; the minutes are on file in the Office of the City Clerk, City Hall, Palm Bay, Florida.

Richard B. Adams, Chairperson, called the meeting to order at the hour of 11:53 a.m.

ROLL CALL:

PRESENT

Richard B. Adams, Chairperson, Board Appointee
Timothy W. Lancaster, Vice Chairman, Police Elected
Guillermo William Capote, Sr., Trustee, City Councilmember
James W. Brock, Trustee, City Council Appointee

EXCUSED

Douglas R. Smith, Secretary, Fire
Elected

Also in attendance was Ms. Kathy Adams, Board Administrator; Mr. Stephen H. Cypen, Board Attorney; and Mr. Gregory Miller, Attorney, Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A. Ms. Linda Logan, Assistant Finance Director, arrived at 11:55 a.m.

Motion by Mr. Lancaster, seconded by Mr. Capote to excuse Mr. Smith's attendance. Motion carried with members voting as follows: Mr. Lancaster, Yea; Mr. Capote, Yea; Mr. Brock, Yea; and Mr. Adams, Yea.

AGENDA REVISIONS:

Motion by Mr. Lancaster, seconded by Mr. Capote to add Business Item No. 4. Pension Office Lease and to table Item No. 3. Actuarial Services & Projects: Foster & Foster, Inc.-City of Palm Bay & The Palm Bay Professional Firefighters, IAFF, Local 2446-Ratified Contract; Draft Ordinance; Impact Statement. Motion carried with members voting as follows: Mr. Lancaster, Yea; Mr. Capote, Yea; Mr. Brock, Yea; and Mr. Adams, Yea.

CONSENT AGENDA:

There were no consent items for consideration.

BUSINESS:

1. Report of Counsel re: City of Palm Bay Police and Firefighters Pension Fund Board of Trustees v. Merrill Lynch Pierce Fenner & Smith, Inc., in the United States District Court, Middle District of Florida, Orlando Division, Case No. 6:11-cv-01268-GAP-GJK.-The gavel was turned over to Vice Chairman Lancaster. Mr. Cypen said he does not believe the failure to disclose in public all the potential terms of the settlement runs afoul of the Sunshine Law. In most instances in a litigation setting, a governmental entity is expending public funds to resolve litigation (i.e., the governmental entity is a

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defendant) and the Sunshine law is primarily designed to ensure that the expenditure of public funds occurs in the open and not behind closed doors. That is not the situation we currently encounter as we are attempting to recover funds on behalf of a governmental entity (i.e., the governmental entity is a plaintiff) and a least currently for mediation/settlement purposes this governmental entity along with 23 others must approve the settlement prior to it becoming a binding on any governmental entity. In other words, we may be willing to settle for the offered amount; however, the actions of another governmental entity may prevent us from accepting the settlement. Thus, until all 24 governmental entities act it is impossible to determine if our action of accepting the settlement proposal would be "final" action. Unfortunately, if the settlement is not consummated on these terms because one or more of the other governmental entities rejected the settlement it would place us in an awkward situation in attempting to negotiate a higher settlement number from Merrill Lynch as we have effectively shown Merrill our hand. Also, this may be considered a continuation of the mediation as the mediator has not declared an impasse and has recently made a mediator's proposal for settlement (which is the basis for current settlement proposal.) The Attorney General of Florida has consistently read that the government in Sunshine Law has a specific exemption for litigation and that exemption is to insure that governmental entities are placed on "equal footing" with other parties in litigation until the litigation is concluded. Accordingly, in our opinion under the current situation we encounter we believe it is appropriate not to make all amounts/conditions/terms of the potential settlement public at this time as we are not certain that this will conclude the litigation and doing so would subvert the purpose of the statute.

2. Discussion/Action re: settlement of City of Palm Bay Police and Firefighters Pension Fund Board of Trustees v. Merrill Lynch Pierce Fenner & Smith, Inc., in the United States District Court, Middle District of Florida, Orlando Division, Case No. 6:11-cv-01268-GAP-GJK.-Mr. Adams said litigation counsel has briefed us in a Shade Meeting on the status of the litigation with Merrill Lynch, what occurred at the two-day mediation in Orlando last month, the continuation of that process of the last two/three weeks and the settlement proposal that Merrill Lynch has made as of this date along with the mediator's proposal. Such settlement proposal is currently conditioned upon all twenty-four Plans that participated in the mediation accepting the settlement. Litigation Counsel and our Plan Counsel have also provided us with their recommendation relating to that settlement proposal whether to accept it, reject it, or counter is as a part of the mediation. Mr. Cypen said all twenty-four governmental entities must act and if not, will place us in an awkward position in negotiations. Mr. Lancaster asked if there were any other comments and there were none.

Motion by Mr. Adams, seconded by Mr. Capote that we accept our Counsels' recommendation and agree to resolve this litigation in an amount, paid on conditions and terms no less favorable to us than those recommended by our Counsels which terms and conditions are consistent with the terms, conditions and contingencies which have been discussed as a part of the confidential mediation process. I would further move to authorize our chairperson to execute and deliver any and all documents necessary or desirable to effectuate the aforementioned contingent settlement when appropriate. Motion carried unanimously with the following Roll Call Vote: Mr. Capote, Yea; Mr. Brock, Yea; Mr. Adams, Yea; and Mr. Lancaster, Yea.

Mr. Miller left the meeting at 12:01 a.m. The Board recessed at 12:02 p.m. and reconvened at 12:10 p.m. Mr. Cypen left the meeting at 12:10 p.m. The gavel was turned over to Mr. Adams. Motion by Mr.

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Lancaster, seconded by Mr. Capote to approve the reimbursement of \$246.02 to Mr. Adams for per diem and travel expenses in attending the two-day mediation sessions. Motion carried with members voting as follows: Mr. Lancaster, Yea; Mr. Capote, Yea; Mr. Brock, Yea; and Mr. Adams, Yea.

3. Actuarial Services & Projects: Foster & Foster, Inc.-City of Palm Bay & The Palm Bay Professional Firefighters, IAFF, Local 2446-Ratified Contract; Draft Ordinance; Impact Statement.-
This item was tabled.

4. Pension Office Lease-Mr. Lancaster said there had been discussion on the available space on US#1, but the parking is not feasible and the board is currently on a month-to-month lease. He recommended entering a new lease for the offices down the hallway. None of the other opportunities have been feasible. Mr. Capote said he didn't see the other building. Mr. Adams said neither office in that building seemed to work. He said he looked at potentially buying the building on US#1 but the office space is smaller than what the pension office currently has. He said the building is currently on the market and if the Fund purchased it as an investment Wade Trim has an extended lease for the upper floor, which is a larger space. He personally would not offer more than \$400,000.00 for it. The only space the pension office would fit into would be the space that Wade Trim is currently occupying. He couldn't justify the purchase. There was discussion about Conlan Suites 230 & 240. Motion by Mr. Lancaster, seconded by Mr. Brock to have Mr. Adams start the process for a five (5) year lease and remodeling to include remodeling to meet the board's needs for Suite 230 & 240. Motion carried with members voting as follows: Mr. Lancaster, Yea; Mr. Capote, Yea; Mr. Brock, Yea; and Mr. Adams, Yea. Motion by Mr. Capote, seconded by Mr. Lancaster to retain a moving company when the time comes to relocate. Motion carried with members voting as follows: Mr. Lancaster, Yea; Mr. Capote, Yea; Mr. Brock, Yea; and Mr. Adams, Yea. There was discussion about the AT&T contract expiring on December 20, 2011 and that the building now has cable. Mr. Brock said he would work on that.

Mr. Lancaster said the City wants an opinion that if a member is separated and rehired whether or not they are able to retain the monthly supplemental benefit.

There was discussion about holding a pension workshop with City Council the end of January. Ms. Adams will contact staff to coordinate it.

The board discussed their meeting schedule for 2012. They want meetings moved to the first Friday of each month to accommodate Mr. Capote's new job schedule. Quarterly board meetings could continue to be held the first Wednesday unless the performance and investment managers could change their meeting dates.

INPUT FROM ACTIVE AND RETIRED PLAN MEMBERS:

There was no input from any active or retired plan members at this time.

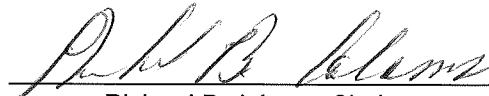
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INPUT FROM THE PUBLIC:

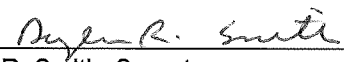
There was no input from the public at this time.

ADJOURNMENT:

There being no further business, the meeting adjourned at 12:34 p.m.


Richard B. Adams, Chairperson

ATTEST:


Douglas R. Smith, Secretary