CITY OF PORT ORANGE
FIRE AND RESCUE PENSION BOARD OF TRUSTEES QUARTERLY MEETING
MINUTES
Monday, August 24, 2015, 4:30 P.M.

Members Present:	Jim Reardon Bob Ford Rick Gherlone Josh Moore Rhett Wilgers
Members Absent:	None
Plan Administrator:	Sheila Hutcheson
Plan Attorney:	Scott Christiansen
Consultant:	Frank Wan, Performance Monitor (BCA)
Plan Members:	Joe Wulfing, Justin Adams, Chris Taylor
City Staff:	Alan Rosen, Interim Assistant City Manager

CALL TO ORDER/ DETERMINATION OF A QUORUM

The meeting was called to order at 4:31 p.m. by Secretary Josh Moore. There was a quorum with four members present at the beginning of the meeting. Chairman Gherlone arrived at 4:34 p.m.

APPROVAL OF MINUTES - Quarterly Meeting - May 18, 2015

Member Ford made a motion to approve the minutes of the quarterly meeting on May 18, 2015; Member Wilgers seconded the motion, which passed unanimously.

REPORTS (ATTORNEY/CONSULTANTS

Frank Wan, BCA, Performance Monitor

Mr. Wan opened by discussing the serious downturn in the market in the past few days. He then began his discussion of the June 30, 2015 report. The return was negative 0.8% for the quarter, net of fees. The fund had $23,768,178 on March 31, 2015 compared to $23,621,480 on June 30, 2015. The return for the fiscal year to date is 5.7%; for the past year, it was 3.7%. The average return for the past four years was 7.1%/year. All returns are net of fees. He discussed the four-year smoothing of returns that helps when there is a single negative year. The allocations are in relation to the targets in the IPS. The individual managers' returns were detailed from the report.

The report continued with Mr. Wan's discussion of the convertibles investment, which has provided a "hybrid" return, exceeding what bonds would have achieved. American EuroPacific has worked well in that it is one investment that handles many options for good returns (without separate transaction fees for many different investments). The American Real Estate investment has been an excellent addition to the portfolio and is making roughly a 6% yield, and has gained 14% for the past one year. American Realty's properties currently have an occupied status of over 90%.

The consultant concluded by advising that, in the long run, the fund will be in good standing; the short term will be a tough environment. Member Wilgers asked if any part of the portfolio concerns BCA. The mid-cap investment is one aspect that might be reviewed at some point. Mr. Wan advised that the specific allocations/managers are reviewed periodically by BCA. There are no recommendations for change at this time. Member Reardon commented on some of the positive aspects of the economy, which remain strong and bode well for the future.

Sheila Hutcheson, Plan Administrator

- PNC retiree death audit for the quarter ending 6/30/15 - no deaths reported by PNC.
- Ratification of interpretation of Plan's benefits (based on 2012 changes by the City) by Pension Attorney & Actuary: confirmation email from City Attorney on 7/2/15

The City Attorney and the City's Pension Attorney have both confirmed that the interpretation of the current ordinances by the Plan's Attorney and Actuary is correct. The resolution of the issues/concerns of our members will hopefully be addressed via the current labor negotiations, which would reinstate certain benefits for members employed before 2012.

Ms. Hutcheson detailed information in this regard and said that Member Wilgers would discuss the members' concerns with regard to the clarity of the ordinance. Trustee Wilgers asked the Board to consider obtaining an additional legal opinion of the interpretation of the ordinance by other qualified pension attorneys. He said that the members feel that more clarification is needed. Member Ford said that both the Actuary and the Pension Attorney have reviewed the ordinance and rendered an interpretation, with which the City's attorneys have agreed. Mr. Ford continued that the pension plan changes were imposed through the labor negotiations process in 2012. Therefore, those imposed benefits are what the Plan has at this time. Attorney Christiansen "pored through" the ordinance based on the particulars of the members who asked its impact on their benefits. The Attorney said that the frustration is that members may think that the Board and its Attorney are responsible for the ordinance that was written by the City's Pension Attorney (Jim Linn). Member Ford said the issue was whether or not the ordinance did, in fact, include the negotiated (imposed) changes. Mr. Christiansen noted that his request to the City was to ask them to review the Board's/his interpretation and advise if it was correct. He further had said to the City that, if the interpretation was correct, but was not what the City intended (i.e., if it was not what was negotiated/imposed), then the Plan would operate under that interpretation until the ordinance was changed to accurately reflect what was intended. Since both City Attorneys (Margaret Roberts and Jim Linn) confirmed the interpretation and the accuracy of the ordinance with respect to the imposed pension provisions, the action that can resolve this issue is the current labor negotiations to restore some of the pension benefits for members employed prior to the 2012 changes. Chairman Gherlone asked if Attorney Christiansen had prepared the pension ordinances in the past, and this was confirmed. The City began to have Attorney Jim Linn prepare the ordinances (for the Police Pension Plan too); this is in the purview of the City, not the Board/Plan. Member Ford said that our issues are not the first time that ordinances prepared by Mr. Linn/Ms. Roberts may have affected the Plan (positively and negatively). Mr. Ford continued by stating that his goal is to find a way to resolve this issue. Trustee Wilgers said that some members have lost confidence in the interpretation, and that was the reason to consider obtaining another legal opinion. He said this was no lack of confidence in or respect for Attorney Christiansen. The Attorney said that this matter is personal to him as a professional, and Member Wilgers said that different attorneys could have different opinions. Member Ford asked the Board what would be accomplished when Mr. Christiansen's interpretation is confirmed. He said the resolution to this issue is to renegotiate the imposed pension benefit changes, and the labor negotiations' process is underway at this time. The

Attorney pointed out that the proposed changes by the Union include the removal of the one-year limit to DROP entry (upon first eligibility), which would solve many issues related to the COLA and supplemental benefits. Member Wilgers asked if there is any type statute that addresses situations like this; i.e., a statute that would allow the plan provisions to be returned to those in effect prior to the imposed changes, while the new provisions are being negotiated. There is no provision that would permit this; the imposed changes will be in effect until changed by the labor negotiations process/resolution. Chairman Gherlone asked if it was correct that although the ordinance language is confusing, does the language, in fact, accurately reflect what was imposed; as this is the key point. It was stated that the City's attorneys had responded that the ordinance language accurately included the imposed pension contract article. It was also noted that labor negotiations are not the Board's responsibility. With regard to the question of accrued benefits being maintained, the language to maintain what was accrued up to the date of the imposed changes is included in the current Pension article. Attorney Christiansen said that some of the confusion with regard to accrued benefits and the changes imposed to DROP may be that DROP is a benefit, but **not** an accrued benefit, like the benefit calculation rate is for the service for those hired before 2012. DROP is a benefit which can be changed, unlike accrued benefits. The changes in the accrued benefits apply going forward, and this is what is correctly included in the imposed provisions and the ordinance that the Attorney reviewed/interpreted. Member Wilgers said that the Board's decision in this regard can be to either accept our Attorney's opinion or request some other legal opinions. He said he is requesting that the Board consider other options and would make a motion to proceed. Member Ford said again that the answer/resolution to this issue is through labor negotiations and/or the filing of grievances. Chairman Gherlone stated that regardless of whether or not other attorneys agreed with the interpretation provided by our Attorney and Actuary (and which has been confirmed by the City's Attorneys), the Board cannot do anything different with the benefits/ordinance in place. Trustee Ford said again that the Board really has no authority to do other than what has already been discussed. In relation to the Chairman's comment, he said that even if another attorney gave a different interpretation, the City's attorneys (who oversee the negotiation of the labor contract and who drafted the ordinance) would re-confirm their concurrence with the interpretation already provided to them by Attorney Christiansen. At this point, Mr. Christiansen stated that he had asked the City's attorneys to revise the ordinance, if the provisions outlined in it did not correctly reflect what had been negotiated and/or what the intention was, pointing out the Board must administer the ordinance as written until and unless the ordinance might be changed. Trustee Wilgers said that he wanted to clarify, definitively, that even if several attorneys said the ordinance is confusing, that opinion would not mean that the City would be required to change the ordinance. Attorney Christiansen said that is correct; the City would not have to make a change in the ordinance based on a finding of confusing language. Member Reardon said the ordinance accurately reflects what the City imposed, so the answer is to renegotiate the language/pension plan provisions; this process is underway.

Member Ford asked that this item of discussion be tabled for now, awaiting resolution through the negotiations process that is occurring now between the City and the Union. Member Moore asked, for the record, if the answer to this issue is the renegotiation of the contract provisions for the Plan, and it was again confirmed that this is the remedy. Trustee Wilgers said he would support a motion to table this discussion.

Member Ford made a motion to table discussion of another legal opinion on the pension ordinance at this time; Member Wilgers seconded the motion, which passed unanimously.

Trustee Ford will said he would contact Union Bargaining Team member Carol Calache to discuss this matter with her and that he would try to persuade the City Council to eliminate the one-year DROP entry window (from date of first eligibility to enter DROP).

The Administrator continued with the remaining items of her report.

- Clarification by Actuary regarding the presentation of the 2014 Valuation (email dated 6/15/15).
- Information requested by Division of Retirement on 8/3/15 for the 2014 Annual Report has been provided by the Actuary (letter dated 8/7/15); notice of approval received from the Division of Retirement on 8/19/15 - the amount of the monies is $390,657.92 and supplemental monies will be $1,053.95.
- Authorization for BCA to prepare a letter of direction to PNC for allocation of State monies when received.

Member Ford made a motion to authorize execution by the Chairman of a letter of direction to PNC for the allocation of the State monies; Member Reardon seconded the motion, which passed unanimously.

- Annual Financial Disclosure Forms were filed timely by July 1, 2015 to the Supervisor of Elections' Office.
- Municipal Police/Fire Pension Conference: Nov. 17 - 19, 2015 (Radisson Resort, Orlando Celebration). Several trustees may attend.
- Pension Fiduciary Insurance renewal application (for 10/5/15 policy) was submitted on 7/21/15; premium expected in September and coverage will be bound.
- Confirmation from City of posting of required documents (6/30/15 email) on the City's website: Section 112.64, Florida Statutes, Compliance Statement (from Foster & Foster); five-year history of investment returns compared to assumptions and investment portfolio asset allocations (2-page charts from performance consultant); and Fire and Rescue Pension Fund - Actuarial Valuation Report as of October 1, 2014.
- Summary Plan Description (SPD) approved 5/18/15 has been distributed to members and the City HR Department for new hires (5/24/15 email).
- Executed Ordinance #2015-7 (adopted 6/2/15) was filed with the Division of Retirement on 6/3/15, Attorney, and Actuary.
- Detailed accounting of prior fiscal year's administrative expenses will be submitted to the Board at the November meeting.
- Benefit Confirmation Forms will be sent to retirees for completion/return by the next meeting.
- The Administrator requested approval of payment of mileage expense in the amount of $112.62 for three meetings with members and City staff in June and July and for any future special meetings.

Member Ford made a motion to approve the mileage expense payment in the amount of $112.62 for the Administrator's three meetings with members and City staff in June and July, and any future special meetings (other than quarterly meetings); Member Wilgers seconded the motion, which passed unanimously.

The report concluded with a reminder that the next meeting date is November 16, 2015 in the Conference Room at 4:30 p.m. Ms. Hutcheson said the City has another meeting in the Conference Room that date that begins at 6:30 p.m., but our meeting should be concluded prior to 6:30 p.m.

Scott Christiansen, Attorney

The Attorney opened by reporting that the recently adopted ordinance contained certain IRS changes; this ordinance had originally also had some "clean-up" language in it that was removed for a separate ordinance. The "clean-up" language included reserve/volunteer service to clarify some conflicting provisions that were in a City ordinance. There were a few other "housekeeping" items in the original ordinance (first submitted to the City in 2014). The City said these issues have to be negotiated, but Attorney Christiansen did not agree, as they are just "housekeeping" changes. The Attorney sent a letter (just before this meeting) to the City Manager (included in the agenda) explaining the background again.

The next item of discussion was that some of the 2012 plan changes have created a situation such that some members' retirement benefits commence at different times, so the Actuary has asked if affected retirees are allowed to select different options for each benefit commencement date. Mr. Christiansen said he recommends that the Board interpret the benefit option decisions in this way for our members, whose circumstances could change between the two benefit starting dates.

Member Reardon made a motion to allow members with two different commencement dates to the "pieces" of their retirement to make separate benefit option decisions; Member Ford seconded the motion, which passed unanimously. The Administrator will notify the Actuary of the Board's decision.

The Attorney then advised the Board that a disability claim has been filed by member Carol Calache. The time limits for the hearing process (outlined in the Board's Rules Manual) will be established when Ms. Calache's signed interrogatories are returned to the Attorney's office. The Administrator said that since the Board will be the "hearing officers" for the claim, they should not have discussions with the claimant on this matter other than at the hearing. The Attorney also asked the Board to ensure that the case files, when sent to them by his office, are kept in a manner to protect the claimant's medical records that will be included.

Legislative update

Mr. Christiansen reported that the proposed legislation and mortality table used by FRS that he had previously discussed were enacted as of July 1, 2015. The mortality table will increase costs as it assumes longer life expectancies. SB172 was considered the year before last, but was not adopted; it changes all the rules on the State monies. Previously, the frozen amount was set at the monies from 1999; any amount over the 1999 monies had to be used for benefit improvements. For our Plan, the City could use all the monies and there was no reserve amount. The new law says that, going forward, the use of any amount in excess of the monies received in 2013 (2012 plan year) will be subject to negotiation between the Union and the City, which now have to agree mutually as to how to use the funds. If the parties do not mutually agree to the usage of any excess State monies, then the City can use the 2013 amount, and any monies that may be over that amount are split 50/50 for use by the City as it deems appropriate, with the other 50% used by the Plan for options such as a share plan. This change does need to be negotiated. Attorney Christiansen said he will prepare an ordinance (with the latest IRS changes) and will add a share plan in the ordinance (regardless of any agreement as to use of the monies). The ordinance will establish the share plan in case it is funded in the future. A share plan for active members sets up an amount for each person's share account, with allocations based on credited service of members in relation of all members' total service. This money stays in the fund and is invested in the same manner as all the assets, and is accounted for by the Actuary. At retirement, a retiree would receive his/her pension check and a one-time distribution of his/her share account as a lump sum cash payment or as a rollover to a tax-qualified investment. The Board can determine the way the share account is set up; using the years of service as the allocation method has been the most used formula. The Board can make that decision at a later date. There is no benefit from the share account for non-vested members who separate service. The language that the Attorney will use in the ordinance will be whatever is decided via negotiations. He was asked to also send the proposed ordinance to the Union. City Interim Assistant City Manager Alan Rosen asked the Attorney about the "Naples Letter" and being able to use the interpretation in it. Mr. Christiansen said the Naples letter can be used until 2018.* Mr. Christiansen said the share plan still has to be in the Plan once the contract is negotiated after July 1, 2015, even if not funded.

Mr. Christiansen addressed SB 172 which requires that an administrative budget for the next fiscal year has to be adopted by the Board. This budget must be provided to the City and the Plan Members. If the approved budget is exceeded, an amended budget must be prepared/approved and submitted to the City/Plan Members. Additionally, after the new fiscal year begins in October, the Board must submit a detailed report of actual expenses from the previous fiscal year; this report must be sent to the City, Plan Members, and the Division of Retirement. Both the administrative budget and the detailed report of actual expenses will be required annually going forward.

***Note:** After the meeting, the Administrator requested clarification from the Attorney regarding the "Naples Letter" and the 2018 date. Mr. Christiansen said that his comment in response to Mr. Rosen's question was to advise that if a City has reduced benefits below the Chapter minimums in reliance on a "Naples Letter," as Port Orange has, then the lower benefits can continue in effect until they are negotiated to a conforming benefit, but no later than October 1, 2018.

NEW BUSINESS - Consideration of administrative budget for submittal to the City and availability to Plan Members (for FY 15/16)

Based on the discussion above by the Attorney regarding SB172, the Board accepted the proposed budget, with amendments to be made if the budget is exceeded in the aggregate (not by line item), and decided that the method of providing it to Plan members would be by posting on Fire Station/Headquarters' bulletin boards, which would also cover new hires.

Member Wilgers made a motion to approve the administrative budget as proposed for submittal to the City and availability to Plan Members (for FY 15/16) by posting on Fire Station and Headquarters' bulletin boards; the budget will be amended if exceeded in the aggregate (not by line item); Chairman Gherlone seconded the motion, which passed unanimously.

OLD BUSINESS - none

RATIFICATION: DISBURSEMENTS/RETURN OF CONTRIBUTIONS and DEPOSITS

- **DISBURSEMENTS**

1. Sheila Hutcheson, Professional Services - **$5,400.00** (quarterly administration fees)
2. Christiansen & Dehner, Professional Services - **$1,629.70, $4,867.32, $1,455.85**
3. PNC fees for custody, quarterly fee, 2nd quarter, 2015 : FMI - **$760.23;** SSI - **$311.70;** MCV - **$228.62**; Real Estate - **$142.32**; International - **$380.20** (total fees: $1,823.07)
4. PNC Asset Management, quarterly fee, 2nd quarter, 2015 - **$5,716.21**
5. Fiduciary Management Inc., quarterly fee, 2nd quarter, 2015 - **$9,884.00**
6. Burgess Chambers, Performance Monitor, quarterly fee 2nd quarter, 2015 - **$11,792.49**
7. SSI, quarterly fee, 2nd quarter, 2015 - **$5,204.00**

8. Foster & Foster, actuarial services - **$8,030.00, $6,155.00**
9. American Core Realty Fund - quarterly fee, 2^{nd} quarter, 2015 -**$3,008.37**
10. Trustee Rick Gherlone, postage for 2014 Annual Report - **$12.39**

- **DEPOSITS** - none

Chariman Gherlone asked the Attorney if he could vote to ratify the payments, as he had received a payment. The Attorney said he could vote, as it was a documented expense reimbursement.

Member Reardon made a motion to ratify the Disbursements, Return of Contributions and Deposits; Member Wilgers seconded the motion, which passed unanimously.

STAFF REPORTS, DISCUSSION, AND ACTION/TRUSTEES' REPORTS, DISCUSSION, AND ACTION /REQUESTS FROM THE PUBLIC/EMPLOYEES PRESENT - none

ADJOURNMENT - There was no further business; the Chairman adjourned the meeting at 6:18 p.m.

Respectfully Submitted:

Sheila Hutcheson, Plan Administrator

Approved:

Richard Gherlone, Chairman