

**POLICE OFFICERS' PENSION BOARD
MEETING
SEPTEMBER 19, 2019**

MEMBERS PRESENT: Dylan Renz, Chairman
Sam Kiburz, Gerald O'Halloran,
Chris Salsman

OTHERS PRESENT: Kerry Richardville, AndCo Consulting
Board Attorney Scott Christiansen
Kristin Simeone, Finance Director

CALL TO ORDER/ANNOUNCEMENTS

- A. Roll Call
- B. Next Scheduled Meeting
- 1. December 19, 2019

CITIZEN COMMENTS ON AGENDA ITEMS ONLY

- There were none.

APPROVAL OF MINUTES

- A. June 20, 2019
- Mr. Kiburz MOVED, Mr. O'Halloran SECONDED approval of the June 20, 2019, minutes.
MOTION CARRIED UNANIMOUSLY.

NEW BUSINESS

- A. Introduction of New Board Member
 - Mr. Renz announced Mr. Harry Bartell had resigned from the Board.
 - Mr. O'Halloran provided a brief introduction.
 - Mr. Kiburz stated he spoke with two applicants interested in filling the current vacancy, noting he had recommended same to City Council.
- B. Approval of Budget & Administrative Expenses
 - Mr. Renz drew attention to the proposed Fiscal Year (FY) 2019/2020 Budget as well as the Administrative Expenses for FY 2018/2019 located in the agenda material.
 - Board Attorney Christiansen explained the State required an estimate of administrative expenses approved by the Board to be submitted each year, adding a report of actual expenses could be approved at the next meeting.
 - Mr. Kiburz MOVED, Mr. O'Halloran SECONDED to approve the budget. MOTION CARRIED UNANIMOUSLY.
- C. AndCo Consultants Report
 - Ms. Kerry Richardville, AndCo Consulting (ACC), drew attention to ACC's Performance Review/Period Ending June 30, 2019, commenting positively on market performance in

general. She stated the Plan had finished the quarter at \$18,282,315. She then reviewed asset allocations as outlined on pages 10 and 12, noting the Fund remained in alignment with its policy target allocations. She summarized Total Fund Performance, as delineated on page 15, as follows: quarter, 3.83% (6th percentile); 1 year, 7.62% (15th percentile); 3 year, 9.11% (40th percentile); 5 year, 6.33% (35th percentile). She then provided an overview of individual investment managers' performance as compared to the benchmark as denoted on pages 16 and 17. She next drew attention to the Investment Performance Review/Period Ending August 31, 2019, included in the agenda material, stating market performance was poor for the period. She noted Total Fund Performance of -0.63% for the month and 3.79% for the FY to date. She offered to answer any questions.

Note: Mr. Salsman arrived at 1:43 pm.

- Mr. Kiburz requested Ms. Richardville comment on Vanguard Real Estate Index versus ASB Real Estate.
- Ms. Richardville explained the Vanguard Real Estate Index was the largest Real Estate Investment Trust (REIT) Exchange-Traded Fund and was market capitalization weighted, commenting favorably on its performance over the year. She noted separate real estate investment, such as ASB Real Estate, was lower volatility than REITs, opining both produced similar long-term returns. She acknowledged the Vanguard Real Estate Index had performed better than ASB Real Estate on a one-year basis (12.12 to 7); however, ASB Real Estate had outperformed Vanguard on a three-year (6.20 to 4.02) and five-year basis (9.25 to 7.69). She pointed out Vanguard was less expensive.
- Mr. O'Halloran inquired as to the Fund's international weighting.
- Ms. Richardville replied asset allocation analyses were performed to determine same, explaining the Plan's allocations were not altered frequently due to the Plan's long life.
- Mr. Kiburz spoke in favor of continuing to monitor the real estate investments, opining past performance did not necessarily predict future performance.
- Ms. Richardville next drew attention to the update on public pension plan return assumptions included in the agenda material, stating return assumptions had diminished. She noted the median return assumption for open and closed pension plans was 7.28%, stating actuaries for the State of Florida were looking at return assumptions of approximately 7%.
- Discussion ensued regarding trends in return assumptions and the process for the Plan's return assumption to be lowered.

- Ms. Kristine Simeone, Finance Director, noted the City would begin its budgeting process prior to March 2020, explaining the Comprehensive Annual Financial Report, which had to account for any changes to the return assumption, was due March 30, 2020.
- Board Attorney Christiansen stated a special meeting could be scheduled to discuss return assumptions.
- Consensus was to schedule a special meeting in October 2019.
- Ms. Richardville then presented the Asset Allocation Analysis, beginning with a review of long term asset allocation model assumptions (p. 9) and historical performance versus the assumptions (p. 11), noting the expected rate of return going forward was 5.55% with a standard deviation of (9.2%). She displayed the current and alternative asset allocations (p.12), explaining the purpose was to illustrate various options for the Board's consideration.
- A brief discussion ensued regarding the asset allocation analysis and the Plan's expected rate of return.
- Ms. Richardville continued her presentation, concluding plans were unlikely to achieve an actual rate of return of 7.5% over the next 10 to 15 years.
- Ms. Simeone noted the City's other pension plans had reduced their expected rate of returns gradually, suggesting the Board consider doing so as well.

D. Approval of Summary Plan Description

- Board Attorney Christiansen presented the update to the Summary Plan Description, explaining the State required same to be updated every two years.
- Mr. Kiburz MOVED, Mr. Salsman SECONDED to approve the Summary Plan Description as amended. MOTION CARRIED UNANIMOUSLY.

E. Discussion on Pension Plan Administrator RFP

- Mr. Renz stated three firms had submitted proposals, requesting members' feedback.
- Board Attorney Christiansen explained a Plan Administrator would provide benefits such as improved continuity when members' terms ended.
- Discussion ensued regarding the proposals, with members and staff commenting favorably on Foster & Foster.
- Mr. Kiburz MOVED, Mr. O'Halloran SECONDED to hire Foster & Foster as the Plan Administrator and to authorize Board Attorney Christiansen to draft a contract for same. MOTION CARRIED UNANIMOUSLY.

UNFINISHED BUSINESS

A. Investment Policy Discussion

- Mr. Renz drew attention to the current Investment Policy for the Fund, confirming members had no comments at this time.

B. Discussion on Investment Evaluation RFP

- Mr. Renz drew members' attention to the proposals from investment consultants.
- Mr. Kiburz stated he had reviewed the proposals, noting Vanguard's costs were lower than ACC; however, Vanguard would not perform certain functions currently fulfilled by Salem Trust. He spoke in favor of requesting ACC and Vanguard provide presentations to the Board.
- Mr. Kiburz MOVED, Mr. O'Halloran SECONDED to have ACC and Vanguard provide presentations at a future meeting. MOTION CARRIED UNANIMOUSLY.

Note: the John Kennedy Disability Pension Hearing was heard following Staff Comments.

C. John Kennedy Disability Pension Hearing

- Board Attorney Christiansen announced the Board would conduct the initial disability hearing for Mr. John Kennedy, reviewing related procedures and criteria for granting or denying the claim as well as the actions the Board could take this date and their consequences. He advised the standard of proof for this quasi-judicial proceeding was a preponderance of evidence, then reviewing the Plan's disability provisions. He noted State Statute established a presumption that a disability was incurred in-line of duty for an officer who became disabled as a result of certain conditions, including hypertension and heart disease, and who did not have evidence of such a condition in the officer's pre-employment physical; however, the Plan stated "any condition or impairment of health of a Member caused by hypertension or heart disease shall be presumed to have been suffered in line of duty unless the contrary is shown by competent evidence, provided that such Member shall have successfully passed a physical examination upon entering into such service, including a cardiogram, which examination failed to reveal any evidence of such condition." He explained the Plan's provision meant Mr. Kennedy could not receive the benefit of the presumption if a pre-employment physical or cardiogram was not completed. He then provided a history of Mr. Kennedy's employment and health, noting Mr. Kennedy was medically terminated by the City on May 2, 2019 with approximately 17 and 1/3 credited years of service. He stated the City did not have a pre-employment physical for Mr. Kennedy; therefore, an echocardiogram (EKG) was not available. He drew attention to the records collected for members' consideration, drawing attention to the independent medical evaluation which indicated Mr. Kennedy was totally and permanently disabled so that he cannot perform the duties of a police officer due to his risk of atrial fibrillation and which also indicated no treatment was available to prevent recurrence of the condition. He pointed out the doctor who performed the independent medical evaluation stated there was no direct evidence Mr. Kennedy's atrial fibrillation resulted from performance of his duties as a police officer.

- Mr. Paul Kelley, claimant's attorney, stated Mr. Kennedy was a 46 year-old police officer who began employment with the City on January 2, 2002. He reviewed documentation related to Mr. Kennedy's employment with the City, drawing attention to records related to a Florida Department of Law Enforcement (FDLE) Physician's Assessment and a healthcare assessment which were part of a pre-employment physical and which indicated Mr. Kennedy did not have pre-existing hypertension or heart disease. He asserted Mr. Kennedy met the four criteria for disability, specifically: (1) he was a police officer, which was a covered class; (2) he had hypertension and heart disease, both of which were covered conditions; (3) he had a pre-employment physical with no evidence of those conditions; (4) his covered conditions resulted in disability. He then reviewed the details of medical episodes on January 26, 2012, October 15, 2012, January 27, 2018, and July 17, 2018, as well as Mr. Kennedy's treatment for atrial fibrillation, heart disease and hypertension. He acknowledged Mr. Kennedy was treated for a brain mass on September 29, 2015, noting Mr. Kennedy subsequently returned to full duty. He noted Mr. Kennedy was placed on sedentary work September 6, 2018, and then no work on October 17, 2018. He drew attention to a letter from Dr. Paul Popper on April 23, 2019, which stated Mr. Kennedy was permanently and totally disabled. He stated the independent medical evaluator agreed Mr. Kennedy was totally and permanently disabled, noting the independent medical evaluator had indicated he could not determine whether the conditions resulted from Mr. Kennedy's duties as a police officer. He concluded Mr. Kennedy was terminated as of May 2, 2019, as he ran out of leave under the Family Medical Leave Act and was unable to return to full duty, requesting the Board grant Mr. Kennedy in-line of duty disability pension.
- Board Attorney Christiansen noted a pre-employment physical with an EKG was required, questioning if Mr. Kelley had the EKG.
- Mr. Kelley replied in the negative; however, he had evidence from FDLE which indicated Mr. Kelley had a physical with an EKG. He noted the Plan's requirement did not state the EKG had to be produced, pointing out the record he had did not indicate any abnormalities were discovered. He emphasized the City was the keeper of such a record and appeared to have misplaced or lost same. He noted a judge had determined Mr. Kennedy met the criteria for Worker's Compensation, which had the same criteria as claiming a disability pension.
- Discussion ensued regarding Mr. Kennedy's weight and the relationship of weight to cardiovascular health.

- Board Attorney Christiansen advised discussion should focus on the evidence provided this date. He then inquired as to the status of Mr. Kennedy's Worker's Compensation claims.
- Mr. Kelly replied same had gone to trial and each claim was determined to be work related and compensable, adding mediation was recently held to discuss settling the claim in its entirety; however, the tentative settlement had not yet been finalized.
- Board Attorney Christiansen stated same was not dispositive of the Board's issue but was evidence.
- Mr. Kiburz MOVED, Mr. O'Halloran SECONDED to find Mr. Kennedy was totally and permanently unable to perform useful and efficient service as a police officer, and none of the exclusionary factors in the Plan applied. MOTION CARRIED UNANIMOUSLY.
- Board Attorney Christiansen then questioned whether the evidence reflected an in-line of duty or not-in-line of duty disability. He explained in-line of duty could be established under the presumption previously discussed or else by presenting direct evidence the condition resulted from his service as a police officer. He opined the Worker's Compensation claims were likely presented to establish the condition was work related and therefore in-line of duty, questioning whether the members believed there was direct evidence Mr. Kennedy's disability was in-line of duty without using the presumption.
- Mr. Salsman opined the evidence directly established an in-line of duty disability.
- Mr. O'Halloran stated the disability could have resulted from previous conditions, pointing out the independent medical evaluation indicated "the stress of the job and the politics" had given Mr. Kennedy anxiety.
- Mr. Kelley explained the anxiety resulted from Mr. Kennedy's fear of having an atrial fibrillation event while working as a police officer.
- Mr. Salsman MOVED, Mr. Kiburz SECONDED to find the disability was in-line of duty.
- VOTING AYE: Kiburz, Renz, Salsman.
- VOTING NAY: O'Halloran
- MOTION CARRIED.

Note: Staff Comments were heard following the Discussion on Investment Evaluation RFP.

STAFF COMMENTS

- Board Attorney Christiansen announced all members had submitted their Financial Disclosure Forms, adding Mr. Bartell was required to submit a Final Financial Disclosure Form. He confirmed State money was received and available in the Plan's custodial account. He then questioned if the following Board meeting dates were acceptable: March 19, 2020, June 18, 2020, September 17, 2020, and December 17, 2020.

- Mr. Kiburz MOVED, Mr. O'Halloran SECONDED to approve the Board's meeting dates. MOTION CARRIED UNANIMOUSLY.
- Board Attorney Christiansen then announced the Plan's membership needed to decide whether they wished to distribute certain State funds equally or based on years of credited service, noting he had not received a response from members.
- Mr. Renz stated he had provided that information to the Police Benevolent Association (PBA) for review but had not yet received a response.
- Board Attorney Christiansen requested Mr. Renz follow up with the PBA so that he could draft an ordinance for distribution of those funds. He then announced Mr. Lee Coel's court case was scheduled for trial on October 22, 2019, explaining he would not have the right to claim disability if he were convicted of a felony. He provided a brief history of Mr. Cole's disability claim, concluding resolution of the trial would determine how Mr. Cole's disability claim proceeded.

Note: A 10- minute break was called at 2:41 p.m.

CITIZENS' COMMENTS

- None.

ADJOURNMENT

- Meeting Adjourned: 3:49 p.m.

Dylan Renz, Chairman

Leah Pues, Recording Secretary