

**MINUTES OF THE TOWN OF PALM BEACH RETIREMENT SYSTEM
FIREFIGHTER BOARD OF TRUSTEES
February 17, 2012**

I. Call to Order

Chairman Ross called the meeting to order at 9:05 A.M. at Town Hall, 360 S. County Road, Palm Beach, Florida 33480.

II. Roll Call

In Attendance:

TRUSTEES:

Wilbur Ross, Chairman
Jayson French, Secretary
Michael Hays, Chairman Pro Tem
Carol Simmons, Trustee

ALSO PRESENT:

Bonni Jensen, Attorney
William Hanes, Administrator
Gerri Duvall, Staff
Walt Maxwell, Rampell & Rampell
Sean Higman, Prime Buchholz
Clement Johns, GSK
Sam Ellington, Wells Fargo
Sharleen O'Toole, Wells Fargo
John Cuomo, Fireman

Mr. Sergio de Araujo was absent from the meeting.

III. Approval of agenda

Ms. Simmons approved the agenda as presented. Mr. Hays seconded the motion. The trustees unanimously adopted the agenda.

Mr. Hanes stated there are a couple of requests for items to be taken out of order. Mr. Ross asked that Mr. Peter Elwell, Town Manager, make his presentation.

V. Presentation by Town Manager Peter Elwell

Mr. Elwell discussed the processes and timing of actions to be taken by Town Council leading up to a newly created board and plan. He discussed the several resolutions and ordinances that will need to be enacted by Town Council prior to implementation of the changes. He discussed that the current public employee boards will be eliminated and replaced by one consolidated board on April 1, 2012, made up of 5 appointed resident trustees, three elected employees from the employee groups, and the Town Manager who will serve as a voting ex officio trustee.

**MINUTES OF THE TOWN OF PALM BEACH RETIREMENT SYSTEM
FIREFIGHTER BOARD OF TRUSTEES
February 17, 2012**

Mr. Elwell discussed that a new 401(a) defined benefit plan will be created, and there will be a repeal of the Town's participation in Chapter 175 and 185 of state statutes. He stated that the defined benefit plan changes, with a freeze of the member's accrued benefit and the creation of a new lower benefit plan for service accrual after that date will become effective on May 1, 2012.

Mr. French asked Mr. Elwell who will serve as the new board attorney. Mr. Elwell answered it will be the Town Attorney or his designee. Mr. French asked if there will be a summary of changes provided to members. Mr. Elwell discussed that the members can refer to the collective bargaining proposals, the diagram he has presented previously, or the draft of the ordinance that will soon be available and will be provided to Town Council for passage.

Ms. Simmons asked Mr. Elwell whether there will become a single service provider for various services instead of the current situation of several service providers. She discussed the inefficiency of the current duplicity of service providers and stated that she applauds the Town Council for the changes that should create more efficiencies. Mr. Elwell discussed that the timing for these changes with service providers will initially be under the control of the new board.

Ms. Jensen discussed with Mr. Elwell matters of transfer of plan assets from the Firefighter fund to a fund under the control of the new board. Mr. Elwell agreed that the new board will inherit the assets currently managed by the three boards on April 1, 2012. He stated that he envisions a transitional audit occurring later, after the handoff to the new board. He discussed that the responsibility to show members the frozen benefits will be with the new board. He discussed that it was determined that members who are eligible to retire on May 1, 2012 will be grandfathered into current benefits, and that those members will continue to accrue benefits at the current level.

IX. Fiduciary Insurance and Fidelity Board

Mr. Sam Ellington and Ms. Sharleen O'Toole presented matters of the renewal of the board's fiduciary insurance and fidelity bond for March 1, 2012. Mr. Ellington discussed that the fiduciary policy is proposed for a \$10 million aggregate limitation, with a \$250,000 deductible. He stated the premium bid is the same as the expiring policy at \$17,794. He discussed that Wells Fargo proposes that the board renew for a one year period, and that it is the intent that on April 1, 2012 a policy will be written for the new board based on the combined plan, and the Firefighter board's policy will be cancelled and the premium reimbursed based on a pro rata return of premium. He discussed that tail coverage is available for 150% of premium to cover one year, 175% of premium to cover two years, and 200% of premium to cover for a three year period.

Ms. Simmons moved that the policy be renewed for a one year period at the current rate. Mr. French seconded the motion. The trustees unanimously adopted the motion.

**MINUTES OF THE TOWN OF PALM BEACH RETIREMENT SYSTEM
FIREFIGHTER BOARD OF TRUSTEES
February 17, 2012**

Ms. Simmons moved that tail coverage be purchased by the board for a three year period. Mr. French seconded the motion. The trustees unanimously adopted the motion.

Mr. Ellington discussed the matter of renewal of the fidelity bond. He discussed that the renewal would be for a three year period at the premium of \$720 and that it can be cancelled with the premium reimbursed pro rata based on the date of cancellation of the bond.

Mr. French made the motion to renew the fidelity bond on the conditions stated by Mr. Ellington. Ms. Simmons seconded the motion. The trustees unanimously adopted the motion.

IV. Comments by Trustees

Mr. French discussed an update regarding previously discussed matters that were communicated to Mr. Elwell. He discussed matters of purchases with pre-tax monies. The trustees agreed that Mr. French should take the matter to Town Council for consideration.

Mr. French requested that the board agree to request from the actuary that a cost analysis be calculated for a pension buy back proposal for members who would be able to elect a lump sum distribution at the time of departure in lieu of collecting pension benefits when eligible. Ms. Simmons discussed that the matter should be referred to Town Council by Mr. French for consideration.

Chairman Ross moved that the board make the recommendation to Town Council that it consider this matter to the actuary for further consideration by Town Council. Ms. Simmons seconded the motion. The trustees unanimously adopted the motion.

VI. Approval of Minutes

Mr. French moved for the approval of the minutes of November 18, 2012. Ms. Simmons seconded the motion. The trustees unanimously adopted the motion.

VII. Financial Report.

Mr. Walter Maxwell presented the financial report to the board. He discussed the statement of plan net assets. He reported total assets at \$57.5 million at the end of December, 2011. He reported total liabilities at \$3.4 million, and noted a prepaid contribution at \$620,000 representing the result of an audit adjustment to the September 30, 2011 statement regarding a law changing the Town's required

**MINUTES OF THE TOWN OF PALM BEACH RETIREMENT SYSTEM
FIREFIGHTER BOARD OF TRUSTEES
February 17, 2012**

contributions. He stated that total net assets as of December 31, 2011 were at \$54.1 million compared to \$56.6 in the prior year.

Mr. Maxwell reported on the statement of changes in net assets and on net investment income. He stated that at the end of the period the net assets stand at \$54.1 million. Mr. Maxwell reviewed the expenses of the plan.

XII. Appeal of Firefighter John Cuomo

Fireman John Cuomo provided testimony regarding his appeal. He reviewed with the board the information he previously had provided the administrator and sent to the trustees. He stated that he wished to refute matters stated in the memorandum that was written by Human Resource Director Danielle Olsen. He stated he had never been told that he was in a non-permanent position and Station Commander, and provided as his evidence what he had received from the Town. He stated that the Town provided him a helmet that is labeled "Captain" and displayed it before the trustees to view. Likewise, he provided the uniform shirt for view that was labeled as Captain. He stated that the Fire Department has never had a classification as Station Commander, and that there are three positions designated as Captain to service each station. He discussed the duties of a Captain. He discussed that the department reinstituted "Captain" as a position once it was clear that not having a station commander in the Fire Department was causing the stations to fail in maintenance. He discussed that he recently learned that the Town had marked station commander on internal documents that he had never seen until recently. He provided for viewing the Firefighter shield provided him by the Town that was designated Captain. He stated that the Town provided him a patch with two bugles, representing Captain status as opposed to the one bugle that is a designation for Lieutenant. He provided for viewing by the board a stack of business cards he stated he had received from the Town that included a Town of Palm Beach logo, his name, and a designation of Captain that he asserted was received from the Town after his promotion to Captain. He stated that he had not requested the cards and did not pay for them, but he was told the cards were mandatory for his use. He provided into view of the trustees a promotional coin with two bugles and a promotional date ascribed to the back with his name "Cuomo."

Fireman Cuomo referred to the paper work that had been provided to the administrator by Ms. Olsen, and that had previously been provided the trustees, and stated that he never received it, and asserted "everything they ever told me was that I was a Captain." He referred to a 1997 memo from Mr. William Crouse, Human Resource Director that does not mention Captain, but only discusses a "PIO" as an "incentive position."

Ms. Jensen introduced Ms. Kennie Wells from the Division of Human Resource, and referred to exhibits provided the trustees. Mr. Hanes discussed with the trustees the manner in which the issue emerged during Fireman Cuomo's meeting for the completion of his application to participate in DROP. He discussed matters of the pay codes used by the Town, and stated that he understood that the Town's practice at the

**MINUTES OF THE TOWN OF PALM BEACH RETIREMENT SYSTEM
FIREFIGHTER BOARD OF TRUSTEES
February 17, 2012**

time was to exclude the particular pay code "insp" used in Fireman Cuomo's case from pensionable wages. Mr. Hanes stated that he asked Ms. Wells to appear to explain the Town's position regarding the appeal.

Ms. Wells explained that in the past, everything (non-pensionable) was lumped into an "insp" code, and that the Town has since broken it out so that the Town knows who is receiving what. She stated that Fireman Cuomo was receiving income under that code. She stated that he (Fireman Cuomo) is right in that the position Captain was at one time a position recognized by the Town, but in 2004 the Town eliminated it and the position became an incentive. She stated that it was at that time that the position became non-pensionable.

Ms. Simmons asked Ms. Wells whether there was an announcement made by the Town at the time. Ms. Wells stated that she does not know because she was not here. She stated that she did not know if there was an announcement made to everyone, but that it did become an incentive, and therefore it was not pensionable and was grouped into the same category as PIO.

Fireman Cuomo stated that he believed that the reason it was not announced was because the Captain position was eliminated in order to get to the battalion chief's spot. He said he guessed the Town administration must have felt it had to give up something, and so it gave up the Captain spot. He stated that it wasn't until a couple of years later that they (Town) realized the stations were not being taken care of and when they came across that problem they decided to reinstitute the position. Ms. Wells stated that the Town did not reinstitute the position, but that the position became an incentive or assignment like the PIO.

Ms. Simmons stated that the board will need something in writing to show that the Town disseminated the information, and stated "otherwise if you just keep it in your drawer then the people doing the work are not going to know." Ms. Wells stated "I would need to go back and see if they have something from that time." Ms. Simmons asked if it is fair to say that Mr. Cuomo could have been operating on the assumption that the compensation related to all of his duties was pensionable? Ms. Wells replied "if he was told, and there was a ceremony, and he got all of this stuff, then I guess you can assume it." Ms. Simmons stated "it was on his hat, on his cards, and on his shirt." Ms. Wells stated "I guess so."

Ms. Wells stated that the memo from Bill Crouse from 1997 states that incentives are not pensionable. She acknowledged that it does not mention a specific position. Ms. Simmons asked "how is the Firefighter to know it?" Ms. Wells stated "at the time, in 1997 when the memo was written, Captain was a position, so it would not have been included in the memo." She stated that she believes the memo speaks generally to incentives, and just because it doesn't mention "Captain" or a position specifically, it is saying that all incentive positions are not pensionable.

**MINUTES OF THE TOWN OF PALM BEACH RETIREMENT SYSTEM
FIREFIGHTER BOARD OF TRUSTEES
February 17, 2012**

Chairman Ross asked Ms. Wells if the Town ever told anyone who is a captain after the time when it was being reinstated that it is not pensionable? Ms. Wells stated "that is what I will need to go back and see, whether there was a memo written somewhere." Ms. Simmons asked Fireman Cuomo how long this has been going on, and Fireman Cuomo answered "months." She stated, "if Ms. Wells doesn't have it with her today then the board cannot even look at it as evidence." She discussed, "the Town has had the opportunity to look for this paper and if the Department is claiming that everybody knew and there was a paper that laid this out, then we (trustees) should have had it so we could have looked at it before today."

Fireman Cuomo stated that the memo only addresses the PIO and is addressed to Cheryl Somers from Pam Russell, and that the Firefighters never received anything like the memo. He stated that it was not sent to the Fire Department. He stated that the only reason he has it is because he asked specifically. He stated that initially Ms. Olsen, Human Resource Director, was in favor of the appeal. Ms. Wells stated that Ms. Olson was not in favor, but she stated "it appeared that way and that she would have to look into it." Ms. Wells stated that she (Ms. Olsen) said it in the memo she wrote to Mr. Hanes.

Ms. Simmons stated she sees nothing in Mr. Crouse's September 3, 1997 memo to Cheryl Somers that mentions the topic that board was discussing on that day. She asked Ms. Wells if she can point to any place in the memo that talks about Station Commander or Station Captain. Ms. Wells referred to number 6 on the second page. Ms. Simmons stated "it is a Public Information Officer, but where does it say anything about Station Commander or Station Captain?" Ms. Wells stated it would not be in the memo. It was mentioned that there were other participants who were also paid under the same pay code. Ms. Simmons stated "if it is not in the memo then no one would know it." Ms. Wells stated "at the time the PIO was the position, so it would not have been in the memo."

Ms. Simmons inquired about what the total liability is regarding the issue. Mr. Hanes stated that he would not know specifically, but with regard to Mr. Cuomo it would be the remainder of his life and with a 75% survivorship to his wife if Fireman Cuomo predeceases his wife. He stated it is based on his mortality, so that if he has 40 more years regarding his mortality, then it would be \$124 a month for 40 years plus his survivorship payments. He stated it would be an actuarial determination based on two people and two life spans and ages. Ms. Simmons stated that she is not an expert in any of these matters, but if it has been going on since June, 2011, or 8 months, she is ready to make the motion.

Ms. Simmons stated that she is ready to make the motion that Fireman Cuomo's pay be considered pensionable as opposed to kicking it back to the Department. She noted that the Department has had eight months and produced a letter written in 1997 that does not have anything to do with his position and only talks about a PIO position, and

**MINUTES OF THE TOWN OF PALM BEACH RETIREMENT SYSTEM
FIREFIGHTER BOARD OF TRUSTEES
February 17, 2012**

yet Fireman Cuomo is walking around with double bugles and captain hat, captain shirt, and captain on his cards, then it looks like he is a captain.

Ms. Simmons made the motion that the hours that Fireman Cuomo worked in this position (Captain) be considered pensionable and that he receive the benefit. Mr. French seconded the motion. The trustees unanimously adopted the motion.

Ms. Simmons thanked Fireman Cuomo for his services to the Town of Palm Beach.

VIII. Audit

Mr. Clement Johns, GSK, presented the audit ending September 30, 2011. He reviewed the opinions from the independent audit report. He stated that in GSK's opinion the audit is clean and unqualified. He stated that the net assets of the plan and the changes in net assets of the plan in the fiscal year ending September 30, 2011 are fairly stated in all material respect based on generally accepted accounting principles. Mr. Ross asked why it is labeled preliminary, and Mr. Johns answered that once the board accepts the report then it is no longer preliminary.

Mr. Johns discussed the management discussions and analysis from the report. He referred to the financial statements and discussed. He reviewed the statement of plan net assets. He reported total assets of \$55,381,000 and liabilities of \$3,071,000, leaving net assets at the end of the year at \$52,309,000. He reported that the plan experienced a net decrease over the year of \$4,531,000.

Mr. Johns reviewed the statement of plan net assets, or the income statement of the plan. He reported the total additions (revenue) over the year at \$3,281,000. He stated that the total deductions were \$4,812,000.

Mr. Johns discussed that a major change during the plan year was that contributions are calculated differently than in the past.

Mr. French made the motion to accept the audit report. Ms. Simmons seconded the motion. The trustees unanimously adopted the audit report.

X. Investment Report

Mr. Sean Higman provided the investment report to the board. He discussed that the only manager in the lineup that would draw the attention to trustees is CRM, and that Prime Buchholz is watching them, but with no recommendation. He asked that the trustees have patience.

Mr. Higman discussed performance of the international managers, and noted that as an asset class that for the month they were above their benchmarks.

**MINUTES OF THE TOWN OF PALM BEACH RETIREMENT SYSTEM
FIREFIGHTER BOARD OF TRUSTEES
February 17, 2012**

Mr. Higman discussed that the flexible capital was a positive note, being down on the year, but up on a relative basis. He reminded the board that Archstone is a conservative fund.

Mr. Higman discussed the private equities, and noted there were not any new marks.

Mr. Higman discussed that the Income Research Convertibles have been sold and placed into total bond market (ETF).

Mr. Higman discussed that inflation hedging as a group had a good quarter, and that Guggenheim is practically paid out and will be paid out once the audit is done.

Mr. Higman noted that T. Rowe Price had a strong month, but had a difficult one year primarily in the fourth quarter of 2011 due to natural resource and an overweight to energy, then underweight. He stated that the TAP fund performed well.

Mr. Higman discussed that asset allocation for the plan is less relevant today because of the environment discussed by Mr. Elwell. He discussed the long term forecast of asset classes. He discussed the new assumptions and that the expected return for the portfolio on a real basis (less inflation) drops only 30 bps going forward.

Mr. Higman recommended a change from T. Rowe Price as a manager to Vanek Global Hard Assets Fund. He discussed that it would be a one to one exchange. He stated that T. Rowe Price has a good team, but the lead architect of the team left approximately a year ago and Prime Buchholz became concerned. Chairman Ross discussed that unless it is urgent he would not think the board should do so at the time. Mr. Higman and the other trustees agreed.

XI. Administrator's Report

Mr. Hanes discussed a request made by Ms. Ellen Schaffer regarding a fee increase for program changes effective January 1, 2012. Mr. Hanes noted that Ms. Schaffer has made a request regarding support that is not due to go up until September, 2012, and recommended that the new board deal with the request then. Mr. Hanes recommended that for the current meeting that the board approve a fee increase for programming.

Mr. French made the motion to approve a fee increase for matters of programming to the software calculator to go from \$105 per hour to \$115 per hour. Ms. Simmons seconded the motion. The trustees unanimously adopted the motion.

Mr. Hanes referred the trustees to the report on DROP participants. Chairman Ross noted that there seemed to be a large number of DROP participants.

XIII. Attorney's Report.

**MINUTES OF THE TOWN OF PALM BEACH RETIREMENT SYSTEM
FIREFIGHTER BOARD OF TRUSTEES
February 17, 2012**

Ms. Jensen presented matters of the ethics law. She discussed that the 5th trustee is subject to the gift reporting law, and all trustees are to follow the state law on gift reporting.

Ms. Jensen reported on a case in Hollywood, Florida where the pension board is suing the municipality based on a dispute regarding matters that developed in the course of the referendum.

Ms. Jensen reported on the matter before the legislature regarding plan presumption for disability.

XIV. Disbursements

Mr. Ross made the motion and Mr. French seconded the motion for ratification of disbursements over the past two quarters as presented. The trustees unanimously adopted the motion.

XV. Retirement/Benefits

Mr. Hanes noted that there are no retirements or benefit payments to be ratified at this date.

XVI. Old Business

Chairman Ross noted there is no old business.

XVII. Adjournment

Ms. Simmons made the motion to adjourn. Mr. French seconded the motion. The trustees unanimously adopted the motion.

**NEXT MEETING:
March 30, 2012**

Secretary: _____

Attested by: _____

**THE FIREFIGHTER BOARD OF TRUSTEES OF THE
TOWN OF PALM BEACH RETIREMENT SYSTEM**

IN RE:

JOHN M. COUMO,

Participant/Claimant

ORDER

The Firefighter Board of Trustees of the Town of Palm Beach Retirement System, convened on February 17, 2012, to consider the request of participant, John M. Cuomo, for inclusion of his Captain's pay of \$250.00 per month in the calculation of his final average salary. The evidence presented to the Board was as follows:

From Participant/Claimant

1. Letter from John M. Cuomo dated October 6, 2011
2. A business card printed by the Town of Palm Beach with John M. Cuomo, "Captain" printed on it.
3. A polo shirt from the Town of Palm Beach with J. Cuomo, Captain imprinted on it.
4. A helmet from the Department with the words "Captain" on it.
5. A coin with two bugles (signifying Captain) with John Cuomo and the date he became entitled to the two bugles.
6. A uniform patch with the two bugles.

From the Town:

1. A Memorandum dated November 1, 2011 from Danielle Olson, Director of Human Resources to William P. Hanes, Fire Pension Plan Administrator.
2. Exhibit A - Two personnel action forms for John Cuomo. One adding incentive for "Station Commander" and one canceling the same incentive.
3. Exhibit B - Fire Rescue Department Budget from 2003 and Compensation Plan amendments showing elimination of 3 Captain's positions.
4. Exhibit C - FY12 Pay Incentives Allowances in Fire Rescue Department.
5. Exhibit D - Memorandum dated September 3, 1997 from Bill Crouse, then Personnel Director to Cheryl Somers, Assistant to the Finance Director providing for the establishment of an additional pay code for "the \$1200 paid

THE FIREFIGHTER BOARD OF TRUSTEES OF THE
TOWN OF PALM BEACH RETIREMENT SYSTEM
IN RE: JOHN M. COUMO, Participant/Claimant

yearly to the Public Information Officer for the Fire-Rescue Department." The memo further provides that the "incentive would be tied into the overtime rate but would not be tied into retirement gross."

6. Email dated July 28, 2011 from Danielle Olson to Bill Hanes outlining the Town's position on the incentives not being part of the pensionable wages.

Having reviewed the records presented by both the Participant and the Town (through its Human Resources Representative) with a quorum present, the Board has determined the following:

1. The Participant was appointed to the position of Captain in October of 2008.
2. At that time, the Participant was provided with a Captain's helmet, uniform shirts, and business cards, all identifying him as a Captain. Additionally, the Participant had a promotional ceremony at which he received a promotion coin and double bugle patch indicating his promotion to Captain.
3. Participant was never informed that his increase in pay when this status change to Captain took place was an incentive that was not pensionable.
4. Pay for the promotion to Captain has always been pensionable.
5. When the Participant entered into the DROP in June of 2011, his calculated pension did not include the pay for the Captain's work.
6. The September 3, 1997 letter from the then Human Resources Director only addresses the PIO (Public Information Officer) incentive as non-pensionable. There was no mention of any other types of pays or incentives.
7. The Town has changed its payroll processes to clarify the type of pay being received and the incentives. The definition of "compensation" does not address incentives at all:

Compensation means the salary or wages paid a member for personal service rendered the town while a member of the retirement system. Compensation shall include base salary or wages; longevity pay; cost-of-living allowances; salary or wages while absent from work on account of vacation, holiday or illness; overtime pay; special assignment overtime pay; shift premiums; educational incentive payments; and the value of housing furnished a member by the town. Compensation shall not include lump sum payments for accumulated

THE FIREFIGHTER BOARD OF TRUSTEES OF THE
TOWN OF PALM BEACH RETIREMENT SYSTEM
IN RE: JOHN M. COUMO, Participant/Claimant

leave paid to or at the direction of a member. Special detail pay shall not be included as compensation.

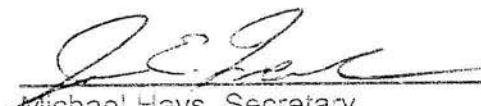
8. The Town did not produce a document which demonstrated that the Participant was provided notice that his pay for the Captain's work would not be pensionable.
9. This decision is limited to the specific facts and circumstances as presented by the Participant.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED, that:

1. Participant, John M. Coumo is entitled to have his Captain's pay treated as pensionable and included in his final average salary calculation effective as of his date of entry into the DROP, provided he makes the employee contributions of 6.82% on all amounts of the Captain's pay regardless of when it was paid.
2. This decision is limited to the specific facts and circumstances as presented by the Participant.

DONE AND ORDERED in Palm Beach, Florida, on the 17th day of February, 2012.


Wilbur Ross, Chairman


Michael Hays, Secretary
Jayson French

If a claim for benefits is denied by the firefighter board, the claimant shall be notified of the denial, in writing, within 30 days of the board's action. The notification shall set forth the reasons for denial. The claimant may appeal the denial and request a hearing before the board. The appeal shall be in writing to the town clerk and filed within 90 days of the board's denial. The request shall contain a written statement of the claimant's position regarding the claim. The board shall schedule a hearing within 60 days of receipt of the appeal.

