

**MINUTES OF THE MEETING OF THE BOARD OF TRUSTEES
OF THE
TAMPA FIREFIGHTERS & POLICE OFFICERS PENSION BOARD
3001 North Boulevard
Tampa, FL 33603 (813) 274-8550
Thursday, December 16, 2004 1:30 p.m.**

The Board of Trustees of the City Pension Fund for Firefighters and Police Officers in the City of Tampa met in the Pension Office Conference Room on Thursday, December 16, 2004 at 1:30 p.m. for a regular meeting with the following members present:

Marc Hamlin, Chairman	Dan Lombard
Eric Hull, Vice Chairman	Patrick Lynch
Ron Ibarra, Secretary	Cynthia Miller
Mike Howard	Tracy Walker

Also present were James B. Loper - Board Counsel, Mark Lenker – External CPA, and active and retired plan members.

The Chair presented trustee Michael P. Howard with a plaque expressing appreciation for his service to the board from November 1997 – December 2004. Mr. Howard stated that it had been an honor to serve on the board for seven years and thanked staff for their assistance and support during his tenure.

Minutes

1. Approval of minutes of November 18, 2004 Regular Board Meeting. **It was moved by Mr. Howard, seconded by Mr. Hull and by unanimous vote to approve the minutes of the November 18, 2004 board meeting as written.**

Consent Agenda Items on the consent agenda shall be acted upon in one motion. If an item requires additional discussion, that item shall be removed from the consent agenda for discussion. [Items 2 – 10] **It was moved by Mr. Ibarra, seconded by Mr. Lynch and by unanimous vote to approve the consent agenda items 2 – 10.**

2. Ratified pension benefits.
3. Noted receipt of Bowen, Hanes & Co. investment management report for the month ended 11/30/2004, investment return of +6.0% for this fiscal year, total market value of *investments* as of 11/30/2004 \$1,218,910,318.
4. Noted receipt of financial statements prepared by Nobles, Decker, Lenker & Cardoso for the month ended 10/31/2004. Total value of *assets* as of 10/31/2004 \$1,172,456,467.
5. Noted receipt of Thomson Financial independent performance measurement report for the quarter ended 9/30/2004.
6. Approved payment to James B. Loper for legal services rendered during November 2004 in the amounts of:
 - a. \$2,095.94 for general counsel services
 - b. \$1,054.74 for Mashburn appeal
 - c. \$8,297.22 for retiree's litigation
 - d. \$1,599.00 for Youngblood appeal

7. Noted receipt of letter dated November 30, 2004 from Womble, Carlyle regarding \$7,081.16 in property taxes to be paid by Colonial CNS Company, LLC for property purchased during 2004.
8. Noted receipt of Notice of Special Election for police officer trustee to replace trustee Mike Howard, who is retiring. Elections to be held Wednesday, January 19, 2005 (A cycle) and Thursday, January 20, 2005 (B cycle) from 12:00 noon to 8:00 p.m. at D1, D2 and D3. Deadline for candidate qualification: Tuesday, December 21, 2004 at 5:00 p.m.
9. Noted receipt of the following Policies & Procedures approved at 11/18/2004 board meeting. *Please remove and replace in your P&P manuals.*
 - a. Revised Table of Contents to include deletions, initial adoption date and last revised date
 - b. P&P 105 Distribution of Minutes
 - c. P&P 201 Medical Examination New Pension Fund Applicants
 - d. P&P 205 Certification of Pension Fund Applicants
 - e. P&P 207 Return to Active Membership
 - f. P&P 208 Pregnancy During Probationary Period - delete
 - g. P&P 301 Definition of "Injury" – delete
 - h. P&P 304 Hypertension Reports - delete
 - i. P&P 308 Special Duty Olympic Tournaments
 - j. Delete 13 pages of historical information behind P&P 404 Heart/Respiratory Type Disabilities
 - k. P&P 405 Effective Date of Line of Duty Disability Retirements
 - l. P&P 412 Monies Used to Calculation Pensions - delete
 - m. P&P 423 Right to NLD Disability Benefits and Longevity Benefits
 - n. P&P 504 Disposition of Deceased Member's Contributions
 - o. P&P 505 Benefits to Equal Contributions
 - p. P&P 603 Reimbursement Parking Ticket Fees
 - q. P&P 705 Depository Trust Company – delete
 - r. P&P 804 Holiday Payment as Earnings
10. Noted receipt of bi-ennial report:
 - a. mailed to retirees 11/19/2004
 - b. mailed to actives at home addresses, including SPD, 11/29/2004

Actuarial Presentation by Jose Fernandez, actuary with Mellon

11. Status report/update on 20 year asset/liability / cash flow forecast study currently underway. Mr. Fernandez reported that the 20 year asset/liability study approved by the board is underway and is anticipated to be completed by approximately February 2005, including input from the investment manager.
12. Presentation of remarriage after retirement study with three options set forth. Noted receipt of study dated October 2, 2004. Mr. Fernandez reviewed the results of the actuarial study recently completed for the possible benefit enhancement of allowing remarriage after retirement. Mr. Fernandez reviewed the three options set forth, two of which would have no actuarial cost to the plan. **It was moved by Mr. Howard, seconded by Ms. Miller and by unanimous vote to**

receive and file the actuarial study just presented, to send the study to the City and unions, and to refer the study to Committee #2.

13. Brief review/explanation of actuarial equivalence / optional forms of payment. Actuarial equivalence is one of options set forth in remarriage after retirement study.
 - a. Noted receipt of excerpts from PowerPoint pre-retirement workshop presentation on optional forms of payment.
 - b. Noted receipt of “Optional Forms of Payment Frequently Asked Questions” as detailed reference material.
 - c. Noted receipt of sample actuarial equivalence calculation for John Q. Pensioner containing three scenarios: current spouse, fourteen year old joint annuitant, and ten year old joint annuitant.
 - d. Noted receipt of sample actuarial equivalence calculation for example in remarriage after retirement study.

Ms. Campbell reviewed the handouts, items 13a-13d from today’s addendum, briefly explaining the optional forms of payment as requested by Mr. Hull at a previous meeting. **It was moved by Ms. Miller, seconded by Mr. Howard and by unanimous vote to receive and file item 13.**

14. Noted receipt of COLA information for 2005 prepared by actuary received 12/3/2004. Noted receipt of sample Class 1 and Class 26 letters (most senior class and most junior class eligible to draw COLA benefits). **It was moved by Mr. Lynch, seconded by Mr. Ibarra and by unanimous vote to receive and file item 14.**

Medical Disability

15. Authorized referral to replacement cardiac medical board member Dr. John Dormois as recommended by Associate Medical Director for disability applicant Duwayne Smith, TPD as requested by board at October 28, 2004 board meeting. **It was moved by Mr. Howard, seconded by Mr. Hull and by unanimous vote to authorize referral to replacement cardiac medical board member Dr. Dormois as recommended by the Associate Medical Director.**
16. Authorized referral to orthopedic medical board composed of Dr. Fishalow, Dr. Kriz and Dr. Wasylik as recommended by Medical Director for the following two disability applicants:
 - a. James Bowers, TPD
 - b. Hubert Sampson, TFRNoted receipt of disability application, qualifying letter, notice of injury(ies), pre-employment physical, job description and disability application timeline for both applicants. **It was moved by Mr. Lynch, seconded by Mr. Ibarra and by unanimous vote to authorize referral to orthopedic medical board composed of Dr. Fishalow, Dr. Kriz and Dr. Wasylik as recommended by the Medical Director for Mr. Bowers and Mr. Sampson.**
17. Noted receipt of disability application process displayed graphically with status of seven applicants currently in process. **It was moved by Mr. Howard, seconded by Mr. Lombard and by unanimous vote to receive and file item 17.**

Old Business

18. Noted receipt of Order Denying Petition for Writ of Certiorari dated 12/7/2004 in B. Youngblood appeal. **It was moved by Mr. Ibarra, seconded by Mr. Lombard and by unanimous vote to receive and file item 18.**

[agenda item 19 taken out of order due to scheduling]

20. Retiree's declaratory action. No action requested. For information purposes only due to pending litigation. Noted receipt of letter dated 11/22/2004 from J. B. Loper regarding assignment of case to Judge J. D. Arnold, Division A. **It was moved by Ms. Miller, seconded by Mr. Ibarra and by unanimous vote to receive and file item 20.**

21. Appeal of forfeiture of pension benefits – R. Crook.

- a. Noted receipt of Notice of Administrative Appeal received 11/23/2004 from attorney R. McCabe. **It was moved by Mr. Lynch, seconded by Mr. Ibarra and by unanimous vote to receive and file item 21a.**
- b. Noted receipt of Acknowledgment of New Case from Second District Court of Appeal received 12/3/2004. **It was moved by Mr. Lynch, seconded by Mr. Ibarra and by unanimous vote to receive and file item 21b.**
- c. Noted receipt of Order of the Court received 12/7/2004 regarding Notice of Appeal's failure to comply with Florida Rule of Appellate Procedure 9.110(d). **It was moved by Mr. Lynch, seconded by Mr. Ibarra and by unanimous vote to receive and file item 21c.**
- d. Board authorization for Special Counsel to handle appeal as necessary at hourly rate of \$250.00 per fee quote and scope of services dated 1/20/2003. Mr. Loper advised that the board had three alternatives to consider in this matter: have Sugarman Susskind prepare the file for the court, have Mr. Loper prepare the file for the court, or to have Ms. Campbell prepare the file for the court. Ms. Campbell recommended that Sugarman Susskind be authorized to prepare the file and index since they handled the forfeiture hearings and since it is a legal matter. There was discussion regarding incomplete records provided by Sugarman Susskind in a previous forfeiture proceeding wherein the board took a recess so that complete copies could be made. Ms. Miller advised that she has confidence that the Plan Administrator could prepare the complete and accurate records with only a review by Sugarman Susskind. **It was moved by Mr. Hull, seconded by Mr. Lynch and by unanimous vote to have the plan administrator prepare the file and index for the court and to have Sugarman Susskind review prior to submission.**
- e. Noted receipt of letter dated 12/13/2004 from Sugarman & Susskind regarding appeal process and deadlines. **It was moved by Mr. Lynch, seconded by Mr. Ibarra and by unanimous vote to receive and file item 21e.**

New Business

22. Request for direction from board regarding Income Deduction Order signed 3/21/2002 in the matter of Taylor vs. Sloan – uncertainty as to the validity and applicability of IDO.
- a. Noted receipt of copy of IDO signed 3/21/2002 hand delivered to pension office by B. Taylor 3/25/2002 – no reference to pension fund, Taylor so advised.

- b. Noted receipt of copy of same IDO signed 3/21/2002 hand delivered to pension office by B. Taylor 4/24/2002 – note that “City of Tampa Payroll Dept.” and “City of Tampa Pension Fund for Firefighters and Police Officers” have been typed in at bottom left.
- c. Noted receipt of certified copy of same IDO signed 3/21/2002 obtained directly from Pinellas County Clerk of Court 10/28/2004 – no reference to pension fund at bottom left.

Ms. Campbell requested board direction regarding the Income Deduction Order(s) in the matter of Taylor vs. Sloan as there is uncertainty as to the validity and applicability of the IDO. Ms. Campbell advised that a certified copy had been obtained directly from the Pinellas County Clerk of Court as recommended by Mr. Loper, and that the certified copy made no reference to the pension fund. Ms. Campbell asked that the board authorize Mr. Loper to investigate/research this matter to determine the following: the validity of the IDO, the applicability of the IDO, what the civil or criminal penalties that may be associated with altering an IDO after being filed with the court. Ms. Campbell advised that the pension contract is clear on attempts to defraud the pension fund and the board’s authority to purge the rolls in those cases; however, IDOs are not specifically addressed in the pension contract. Ms. Campbell noted that it may not be able to be determined with any certainty when and by whom the IDO may have been modified between being filed with the court and being provided to the pension fund office. Mr. Loper raised several issues that he believes should be researched: who prepared this form, was it prepared by Ms. Taylor’s attorney, or is it a Pinellas County form, is it a broad/universal form intended for judicial economy to cover not only this job but also all future jobs so additional IDOs don’t have to be issued? **It was moved by Ms. Miller, seconded by Mr. Ibarra that the board authorize Mr. Loper to research this matter and report back to the board in January.** Mr. Hamlin noted that the pension office is not to comply with the IDO at this time since the F&P pension fund was not specified in the certified copy from the court, and Mr. Lynch confirmed with Ms. Campbell that it is not an immediately pressing issue as Mr. Sloan is still active and not eligible to draw until/if he separates from service and makes a retirement election. It was agreed by consensus that there is no immediate action to be taken by staff on this matter until a determination is made by the board after Mr. Loper’s research is complete. **Upon voting, motion carried by unanimous vote.**

- 23. Appointment of Chair of Rock Creek Center Committee by Pension Board Chair. The Chair appointed Mr. Lynch as the chair of the Rock Creek Center Committee.
 - a. Approval of 2004 property tax payment pending outcome of appeals requested verbally by Mike Hendren 12/9/2004 3:05 pm.
 - b. Noted receipt of spreadsheet reflecting Guilford County notice numbers, real property descriptions and comparison of 2003 and 2004 property taxes and attached 2004 notices.
 - c. Noted receipt of letter dated 11/23/2004 to Guilford County Board of Equalization and Review requesting hearing on two largest parcels and response dated 12/2/2004 from Guilford County. There was discussion regarding possibly having the Rock Creek Center Committee Chair attend the appeal hearing with Mr. Hendren.
It was moved by Mr. Howard, seconded by Mr. Ibarra and by unanimous vote to receive and file item 23, to authorize payment of the 2004 property taxes as billed, and to have Mr. Hendren continue to pursue the appeals.
- 24. Note receipt of listing of upcoming conferences. Disclosure of planned attendance, if any. Ms. Miller advised that she would not be attending the Opal pension conference in January. Mr. Hamlin advised that he would not be attending the February FPPTA conference but would attend the February NAPO conference instead. Mr. Lombard advised that he may attend the TECS

conference in February. Ms. Campbell disclosed that she planned to attend the FPPTA Trustees School in February, and Mr. Lombard advised that he planned to attend as well. Mr. Hull advised that he would not be attending the FPPTA conference in February, but may attend the FPPTA CPPT trip in April. **It was moved by Mr. Howard, seconded by Mr. Hull and by unanimous vote to receive and file item 24.**

25. Plan Administration.

a. 2005 schedule

January 27, 2005	1:30 p.m.
February 24, 2005	1:30 p.m.
March 24, 2005	1:30 p.m.
April 28, 2005	1:30 p.m.
May 26, 2005	1:30 p.m.
June 23, 2005	1:30 p.m.
July 28, 2005	1:30 p.m.
August 25, 2005	1:30 p.m.
September 22, 2005	1:30 p.m.
October 27, 2005	1:30 p.m.
November 17, 2005	1:30 p.m.
December 15, 2005	1:30 p.m.

- b. Noted that during December 2004 top F&P pension office staff priorities are: COLA letters and programming, DROP statements and rollovers, and census data reconciliation and financial information (including final DROP information) to actuary for valuation. January challenges/priorities will be addressing health insurance coverage/conversions problems from open enrollment – occurs every January, will be more complex this year due to substantial plan design changes and number of changes from Blue Cross Blue Shield to Humana in medicare-eligible plans and out of area participants.

It was moved by Mr. Lynch, seconded by Ms. Miller and by unanimous vote to receive and file items 25a and b.

- c. Ms. Miller noted that in a recent actuarial article that involuntary cash-out rollovers may have different/changing rules for distributions on or after 3/28/2005 that need to be reviewed to see if it affects the DROP and requested that Ms. Campbell, Mr. Lenker and Mr. Loper review, evaluate and report back to the board if a change is necessary. Mr. Lenker noted that the Tampa F&P plan is not an ERISA plan, and Mr. Loper noted that the pension contract specifically granted the authority of the board to adopt policies and procedures to administer the DROP. Ms. Miller advised that she felt the issue needed to be looked into, and Ms. Campbell agreed to do so, coordinating with Mr. Lenker and Mr. Loper. **It was moved by Ms. Miller, seconded by Mr. Hull and by unanimous vote to have the plan administrator, accountant and attorney review the information to determine if any policy/administrative change is necessary.**

[Recess 2:20 – 2:30 p.m.] [agenda item 19 taken out of order due to scheduling]

19. M. Mashburn appeals.

- a. Noted receipt of letter dated 11/23/2004 from J. B. Loper regarding Respondent/Appellee's Motion for Costs and Attorney's Fees with Exhibits in connection with Order from Second District Court of Appeals granting entitlement to attorney's fees. Mr. Loper explained that the 1999 amendments to Chapters 175 and 185 (aka Chapter 99-01) clarified the right to attorney's

fees in certain proceedings. Mr. Loper pointed out that the Mashburn claim alleged failure to comply with a portion of Chapter 185—a different situation from a denial of disability application, which is contained in section 7 of the pension contract. Mr. Loper advised that he had preserved the board's right to attorney's fees in this matter under Chapter 185, and that there were two issues to be determined by the court at the conclusion of the appeals: 1) is the board entitled to attorney's fees? – yes per the court order; and 2) how much? –the supporting documentation of which is contained in item 19a of this agenda. Mr. Loper requested that the board schedule an Executive Session to discuss settlement options. Mr. Loper responded to questions from the board, reiterating that the Mashburn proceedings were the first Chapter 185 proceedings by the board—a different situation from an appeal of a denial of disability application, and different from the forfeiture proceedings which were regarding the forfeiture provisions of Chapter 112.3173 and specifically held under Chapter 120 proceeding rules. Ms. Miller asked if the only open issue in this matter is the attorney's fees, and Mr. Loper concurred. Ms. Miller asked Ms. Doering if that was her position as well, and Ms. Doering advised that it was—the dollar amount and the board's choice to pursue or not to pursue, noting that she felt that the board had no obligation to pursue attorney's fees. After further discussion, it was agreed by consensus that this matter was more appropriately handled in an Executive Session of the board, **it was moved by Ms. Miller, seconded by Mr. Lynch and by unanimous vote to schedule and Executive Session of the board in the future with the proper advance notice and posting with an attempt to schedule on the same day as a board meeting. It was moved by Mr. Howard, seconded by Mr. Lynch and by unanimous vote to receive and file item 19a.**

- b. Noted receipt of public records request dated 12/1/2004 from Karen Doering, NCLR. Response to public records request faxed 12/1/2004 and 12/2/2004. **It was moved by Mr. Howard, seconded by Mr. Lombard and by unanimous vote to receive and file item 19b.**
- c. Noted receipt of letter dated 12/8/2004 from Karen Doering, NCLR requesting board dismiss with prejudice its motion for attorney's fees. Ms. Doering addressed the board, noting that while she does not agree with Mr. Loper's analysis, even assuming if he is right, this is the first time that the board has had the opportunity to seek attorneys fees from one of its own. Ms. Doering pointed out that the fund is financially sound and that the board is fiscally conservative, noting that the total value of assets as listed on the agenda in item 4 is \$1,172,456,467. Ms. Doering noted that a \$30,000 judgement against Ms. Mashburn would likely bankrupt her, while the board would not suffer significant financial hardship if they chose not to pursue collection against Ms. Mashburn. Ms. Doering noted that the law doesn't provide for the board to pursue the organization representing Ms. Mashburn, but only to pursue Ms. Mashburn personally. After considerable discussion, **it was moved by Mr. Howard, seconded by Mr. Ibarra that the board waive collecting attorneys fees in this matter.** There was further discussion regarding the board's fiduciary responsibility in this matter, and concerns regarding setting a precedent for not pursuing attorneys fees to which the board may be entitled. The distinction was made between disability denial appeals, forfeiture proceedings and this unprecedented Chapter 185 proceeding. Mr. Howard advised that each situation must be evaluated on a case by case basis as the facts may be different, and called for the question. **Upon voting, the motion carried by a vote of 5 – 3 with Mr. Hamlin, Mr. Howard, Mr. Ibarra, Ms. Miller and Mr. Walker voting in favor of the motion, and Mr. Hull, Mr. Lombard and Mr. Lynch opposed to the motion.**
- d. Request to address the board regarding this matter by Major Jane Castor. Major Castor thanked the board for their consideration in this matter.

The meeting was adjourned at 3:00 p.m.

Notice

Any person who desires to appeal any decision of the Board of Trustees with respect to any matter considered at this Board meeting will need a record of the proceedings and for this purpose, may need to ensure that a verbatim record of the proceedings is made which includes testimony and evidence upon which the appeal is based.

January 27, 2005 board meeting: It was moved by Ms. Miller, seconded by Mr. Walker and by unanimous vote to approve the minutes of the December 16, 2004 board meeting as written.