

**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, November 17, 2005 2:30 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, November 17, 2005 at 2:30 p.m. for a regular meeting with the following members present:

Marc Hamlin, Chairman	Sharon Fox
Patrick Lynch, Vice Chairman	Jimmy Meier
John Moors, Secretary	Cynthia Miller
Mark Bogush	Tracy Walker

Also present were Mark Lenker – Nobles, Decker, Lenker & Cardoso, James B. Loper – Board Counsel, Dr. James Hillman - Medical Director, and active and retired plan members.

1. Welcomed new trustees Mark Bogush, TFR and Sharon Fox, City appointee.
  - a. Noted receipt of letter dated 9/16/2005 from Mayor Iorio appointing Sharon Fox for the remainder of the three-year term ending 10/31/2007, replacing Ron Ibarra who retired.
  - b. Noted receipt of letter dated 9/16/2005 from Mayor Iorio reappointing John Moors for three-year term ending 10/31/2008.  
**It was moved by Ms. Miller, seconded by Mr. Lynch and by unanimous vote to receive and file item 1.**
2. Election of Officers of Board of Trustees
  - a. Chair – **It was moved by Mr. Lynch, seconded by Mr. Walker and by unanimous vote to nominate and elect Marc Hamlin as Chair.**
  - b. Vice Chair – **It was moved by Mr. Moors, seconded by Mr. Hamlin to nominate and elect Patrick Lynch as Vice Chair. Upon voting, motion carried by a vote of 7-1, with Mr. Bogush, Ms. Fox, Mr. Hamlin, Mr. Lynch, Ms. Miller, Mr. Moors, and Mr. Walker in favor of the motion, and Mr. Meier opposed to the motion.**
  - c. Secretary – **It was moved by Ms. Miller, seconded by Mr. Walker and by unanimous vote to nominate and elect John Moors as Secretary.**

Minutes

3. Approval of minutes of September 22, 2005 Regular Board Meeting. **It was moved by Ms. Miller, seconded by Mr. Lynch and by unanimous vote to approve the minutes of the September 22, 2005 regular board meeting as written.**
4. Approval of minutes of August 23, 2005 Rock Creek Center Committee meeting. **It was moved by Mr. Lynch, seconded by Mr. Moors and by unanimous vote to approve the minutes of the August 23, 2005 Rock Creek Center Committee meeting as written.**

5. Approval of minutes of October 21, 2005 Executive Session regarding litigation. **It was moved by Mr. Lynch, seconded by Ms. Miller and by unanimous vote to approve the minutes of the October 21, 2005 Executive Session 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 6 – 14] **It was moved by Mr. Lynch, seconded by Ms. Miller and by unanimous vote to approve the consent agenda, items 6-14.**

6. Ratified pension benefits
7. Admitted Tampa Fire Rescue members to pension fund effective 10/24/2005 contingent upon: 1) furnishing a list of all medical providers and authorizations to obtain such medical records; and 2) passing a complete medical examination:
- Lamar M. Carter
  - Edwin J. Colon
  - Steven J. Darrey
  - Stephen J. Dean
  - Keith J. Evans
  - William T. Harrison
  - Dennis M. Haywood, II
  - Daniel B. Humenick
  - Jason B. Leary
  - Sergio L. Leon, Jr.
  - William D. Mayville, III
  - Sergio Ortiz, Jr.
  - Michael W. Saul
  - Timothy R. Seaton
  - Jonathan C. Shuster
  - Emanuel Sims, Jr.
8. Admitted Tampa Police Department member to pension fund effective 10/24/2005 contingent upon: 1) furnishing a list of all medical providers and authorizations to obtain such medical records; and 2) passing a complete medical examination:
- Michael R. Flynn
9. Noted receipt of Bowen, Hanes & Co. investment management report for the fiscal year ending 9/30/2005, investment return of +18.9% for the fiscal year ending 9/30/2005, total market value of *investments* as of fiscal year ending 9/30/2005 \$1,348,936,381.
10. Approved payment to James B. Loper for legal services rendered during September and October 2005 in the amounts of:
- a. \$4,441.69 for general counsel services
  - b. \$72,640.90 for retiree's litigation
11. Approved payment to Womble, Carlisle for legal services rendered during September 2005 in connection with Rock Creek Center in the amount of \$3,694.26.

12. Congratulated the following trustees and staff who attended the October FPPTA Trustees School and successfully passed the certification testing at the following levels:
  - a. Kimberly Bogush – Basic, now advances to Intermediate
  - b. Mark Bogush – Basic, now advances to Intermediate
  - c. Pat Cooley – Basic, now advances to Intermediate
  - d. Dan Lombard – Intermediate, now advances to Advanced
  - e. Jimmy Meier - Intermediate, now advances to Advanced
  - f. Patrick Lynch – Advanced, now a Certified Public Pension Trustee (CPPT)
  - g. Noted that the following trustees and staff already hold CPPT certification: Jennifer Campbell, Marc Hamlin, John Moors and Tracy Walker.
13. Noted receipt of letter dated 9/14/2005 from Sugarman & Susskind advising that the Pension Board prevailed in the appeal by Robert Crook to the Second District Court of Appeals in the forfeiture of pension benefits matter. The Pension Board's forfeiture was upheld by the court, Per Curium Affirmed.
14. Noted receipt of revised P&P manual table of contents page and updated P&P 307 "Definition of 'In The Service' Pension Coverage" as adopted by the board 9/22/2005. *Please remove and replace in your P&P manuals.*

Financial Presentation by Mark Lenker, Nobles, Decker, Lenker & Cardoso

15. Noted receipt of monthly financial statements prepared by Mark Lenker of Nobles, Decker, Lenker & Cardoso:
  - a. For the month ended: August 31, 2005 – Total market value of *assets* as of 8/31/2005 \$1,339,929,796.
  - b. For the month and fiscal year ended September 30, 2005 – Total market value of *assets* as of 9/30/05 \$1,354,732,598.Mr. Lenker reviewed the annual financial statements and responded to questions from the board. **It was moved by Mr. Lynch, seconded by Ms. Miller and by unanimous vote to receive and file items 15a and 15b.**
16. Board approval of the following DROP statement components as per board policy and procedure:
  - a. Established DROP account investment return. Mr. Lenker distributed the calculation for the DROP account investment return for the fiscal year ended 9/30/05 and reviewed the calculation for the board. **It was moved by Ms. Miller, seconded by Mr. Lynch and by unanimous vote to approve the DROP investment return of 18.49%.**
  - b. Established DROP administrative fee. Mr. Lenker distributed the DROP administrative fee calculation for fiscal year ended 9/30/05 and reviewed the calculation for the board and recommended an administrative fee of .0013 which is 0.13% or also called 13 basis points. **It was moved by Mr. Lynch, seconded by Ms Miller and by unanimous vote to approve the DROP administrative fee of .0013.**

### Medical Disabilities

17. Continued initial hearing for James Zipler, TPD LOD disability applicant. Noted receipt of Medical Board reports, Medical Director's summary, disability application, qualifying letter, notice of injury(ies), pre-employment physical, job description and disability application timeline, and affidavits provided by Mr. Zipler as requested at September 22, 2005 board meeting. Mr. Hamlin and Ms. Campbell provided background information for the new trustees, noting that at the September 22, 2005 board meeting, a motion carried that Mr. Zipler does have a shoulder disability that permanently incapacitates him from the regular and continuous duties of a police officer. The motion on whether Mr. Zipler's disability incurred in the service failed to carry by five affirmative votes at the September 22, 2005 board meeting. Therefore, today's hearing represents a continuation of the initial hearing from September 2005 with additional information requested by the Board of Trustees, with the hearing at the second question of determining if the disability was incurred in the service. Mr. Zipler was sworn in and responded to questions from the board. After discussion, **it was moved by Mr. Meier, seconded by Mr. Walker and by unanimous vote that the disability was incurred in the service. It was moved by Mr. Meier, seconded by Mr. Lynch and by unanimous vote to grant Mr. Zipler a line of duty disability pension for a shoulder injury effective the last date on payroll as per policy.**
18. Authorized referral to Medical Board composed of Dr. Brainard, Dr. Kriz and Dr. Wasyluk as recommended by Medical Director for Matthew D. Smith, TPD LOD Disability applicant. Noted receipt of disability application, qualifying letter, notice of injury, and pre-employment physical. **It was moved by Mr. Lynch, seconded by Ms. Miller and by unanimous vote to authorize referral to the medical board composed of Dr. Brainard, Dr. Kriz and Dr. Wasyluk as recommended by Medical Director for Matthew D. Smith, TPD LOD Disability applicant with the clarification of Mr. Smith's Notice of Injury paperwork provided be put in proper date order.**

### Old Business

19. Retiree's declaratory action. No action requested. For information purposes only due to pending litigation. Noted receipt of the following:
- a. Letters to the Editor from the *Tampa Tribune* dated 9/20/2005.
  - b. Letter dated 9/29/2005 from F. Carrington to J. B. Loper with trial witness list.
  - c. Fax dated 10/3/2005 from F. Carrington to J. B. Loper regarding Retiree's Association Motion in Limine, Motion for Leave to Amend, trial exhibits and draft orders on motions.
  - d. Fax dated 10/3/2005 from F. Carrington to J. B. Loper regarding Retiree's Association Proposed Pre-Trial Conference Order, including witness lists and trial exhibits.
  - e. Letter dated 10/3/2005 from J. B. Loper to court transmitting Trustees' draft of Uniform Pre-Trial Conference Order.
  - f. Trustees' Draft Uniform Pre-Trial Conference Order prepared by J. B. Loper.
  - g. Letter dated 10/3/2005 from J. B. Loper to Clerk of Court transmitting Notice of Hearing on Trustees' Motion for Judicial Notice and Trustees' Motion to Quash Subpoenas, Motion for Protective Order and Incorporated Memorandum of Law.
  - h. Letter dated 10/3/2005 from J. B. Loper to Clerk of Court transmitting Trustees' Motion to Quash Subpoenas or in the Alternative, Motion to Limit Subpoenas, Motion for Protective Order and Incorporated Memorandum of Law.

- i. Fax dated 10/4/2005 from T. Carrington to J. B. Loper in response to Trustees' Motion to Quash Subpoenas.
- j. Motion for Protective Order for Charles Slavin dated 10/4/2005 prepared by R. Button, Department of Management Services.
- k. Fax dated 10/6/2005 from F. Carrington to R. Button withdrawing subpoena for trial for Mr. Slavin.
- l. Letter dated 10/4/2005 from S. Hamilton to F. Carrington regarding subpoena.
- m. Notice of filing dated 10/5/2005 prepared by F. Carrington regarding minutes and audiotape of legislative delegation meeting of 12/17/2003.
- n. Letter dated 10/6/2005 from T. Carrington to J. B. Loper withdrawing subpoena for J. B. Loper.
- o. Fax dated 10/6/2005 from S. Kaufman to J. B. Loper transmitting Notice of Hearing to quash or limit subpoenas, and Motion for Protective Order for K. Durkin, T. Walker and R. Klausner.
- p. Notice of hearing dated 10/4/2005 prepared by F. Carrington on outstanding motions: Emergency Motion of Mayor Pam Iorio for Protective Order and to Quash Subpoena, Trustees' Motion to Quash or Limit Subpoenas and Motion for Protective Order, Trustees' Motion for Judicial Notice, Plaintiffs' First Motion in Limine, Plaintiffs' Motion for Leave to Amend.
- q. Letter dated 10/6/2005 from J. B. Loper to Clerk of Court transmitting Trustees' Trial Memorandum.
- r. Trustees' Trial Memorandum prepared by J. B. Loper dated 10/6/2005.
- s. Plaintiff's Trial Brief prepared by Carrington & Carrington dated 10/6/2005.
- t. Letter dated 10/7/2005 from J. B. Loper to F. Carrington requesting dates and times for subpoenaed trustees to appear at trial.
- u. Fax dated 10/10/2005 from J. B. Loper to client transmitting Emergency Motion of Mayor Pam Iorio for Protective Order and to Quash Subpoena filed on 9/29/2005.
- v. Letter dated 10/26/2005 from J. B. Loper to witness list regarding attempting mediation, draft final judgment, and trial continuation dates should mediation not result in a resolution acceptable to Plaintiff's Association or the Board of Trustees:
  - Wednesday, December 28, 2005
  - Thursday, December 29, 2005
  - Monday, January 9, 2006
  - Wednesday, January 11, 2006
- w. Fax dated 11/3/2005 from J. B. Loper transmitting counter-proposal prepared by F. Carrington.
- x. Letter dated 11/4/2005 from J. B. Loper to F. Carrington regarding counter-proposal and 13<sup>th</sup> check.

**It was moved by Ms. Miller, seconded by Mr. Meier and by unanimous vote to receive and file item 19 a-x.**

- 20. Rock Creek Center Committee Chair report
  - a. Noted receipt of fax dated 10/5/2005 from Dennis McNames of Womble Carlyle regarding sale of entire property south of the interstate for a net amount of \$10,442,741.09 after commissions, taxes, revenue stamps, etc.
  - b. Noted receipt of fax dated 10/4/2005 from M. Hendren regarding Portrait Homes requesting extension of option until 11/4/2005.
  - c. Noted receipt of July, August, September 2005 quarterly report from M. Hendren.



April 27, 2006	1:30 p.m.
May 25, 2006	1:30 p.m. – Ms. Fox noted that she would not be attending the 5/25/06 meeting
June 22, 2006	1:30 p.m.
July 27, 2006	1:30 p.m.
August 24, 2006	1:30 p.m.
September 28, 2006	1:30 p.m.
October 26, 2006	1:30 p.m.
November 16, 2006	1:30 p.m. *early due to holidays
December 14, 2006	1:30 p.m. *early due to holidays

- b. Ms. Campbell asked the board if they wished to reconsider the election of Vice Chair, as having both the Chair and Vice Chair from police represents a substantial break from long-standing tradition. Ms. Campbell noted that during her tenure as well as from reading historical minutes that the offices of Chair and Vice Chair are typically held by one police and one fire, occasionally alternating. Mr. Moors explained why he nominated Mr. Lynch as Vice Chair, due to his efforts, enthusiasm and excellent work as Rock Creek Center Chair, and advised that he was unaware of that tradition. Ms. Miller asked if any fire trustee was willing to serve as Vice Chair, and after no response, the election of Mr. Lynch as Vice Chair was not reconsidered by the board and stands.

The meeting was adjourned at 3:40 pm.

#### 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.

**December 15, 2005 board meeting: It was moved by Mr. Lynch, seconded by Mr. Bogush and by unanimous vote to approve the minutes of the November 17, 2005 board meeting as written.**