

**City of Ann Arbor Employees' Retirement System
Minutes for the Regular Meeting
July 19, 2012**

The meeting was called to order by Jeremy Flack, Chairperson, at 8:35 a.m.

ROLL CALL

| | |
|------------------|--|
| Members Present: | Clark, Crawford, Flack, Hastie, Monroe |
| Members Absent: | Heusel, Nerdrum, Powers, Rogers |
| Staff Present: | Kluczynski, Walker |
| Others: | Michael VanOverbeke, Legal Counsel Craig DeVoogd, City Retiree Mike Van Dam, City Retiree Michael Dortch, City Employee/AAPD David Diephuis, City Resident |

AUDIENCE COMMENTS - None

A. APPROVAL OF REVISED AGENDA

A revision to the agenda includes the following item:

- F-2 FOIA Request & Current FOIA Policy

It was **moved** by Hastie and **seconded** by Clark to approve the agenda as revised.

Approved

B. APPROVAL OF MINUTES

B-1 June 21, 2012 Regular Board Meeting Minutes

It was **moved** by Clark and **seconded** by Crawford to approve the June 21, 2012 Board Meeting minutes as submitted.

Approved

C. CONSENT AGENDA

C-1 Authorization for Conference/Training – 2012 Fall MAPERS Conference, September 9-11, 2012

WHEREAS, the Board of Trustees (Board) of the City of Ann Arbor Employees' Retirement System (Retirement System) is vested with the authority and fiduciary responsibility for the administration, management and operation of the Retirement System, and

WHEREAS, the Board of Trustees is required to act with the same care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar aims, and

WHEREAS, the Board of Trustees acknowledges that the Retirement System has evolved in complexity such that the circumstances prevailing that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of a similar enterprise with similar aims requires continuing education, training, and oversight of its advisors, and

WHEREAS, it is necessary, appropriate and incumbent upon Board trustees and/or Retirement System staff, from time to time, to participate in continuing education, training, and/or conduct due diligence trips in relation to their oversight of Retirement System advisors to ensure that Retirement System participants receive the best possible service, benefit and representation from these responsible persons, and

WHEREAS, Jeremy Flack, Terry Clark, David Monroe, and Nancy Walker have requested the Board of Trustees' authorization for conference/training in Mackinac Island, Michigan, at Retirement System expense, estimated at \$4,918.40 (collectively), to attend the 2012 Fall MAPERS Conference, to participate in continuing education in their responsibility as Retirement System Trustee and Staff, and in keeping with Board policy, therefore it be

RESOLVED, the Board of Trustees authorizes the conference/training request of Jeremy Flack, Terry Clark, David Monroe, and Nancy Walker to travel to Mackinac Island, Michigan, at Retirement System expense, estimated at \$4,918.40 (collectively), to attend the 2012 Fall MAPERS Conference, to participate in continuing education in their responsibility as Retirement System Trustee and Staff, and

FURTHER RESOLVED, that Jeremy Flack, Terry Clark, David Monroe, and Nancy Walker comply with all travel and reporting requirements as contained in the Board of Trustees previously adopted Travel and Training Policy and Procedures.

It was **moved** by Monroe and **seconded** by Clark to approve the Authorization for Conference/Training – 2012 Fall MAPERS Conference, September 9-11, 2012 as submitted.

Consent Agenda Item(s) Approved

D. EXECUTIVE SESSION: Executive Director Evaluation

It was **moved** by Hastie and **seconded** by Crawford to postpone the Executive Director Evaluation until the August 16th regular meeting in order for additional Trustees to be present.

Approved

E. ACTION ITEMS

E-1 Presentation of Reformatted Investment Manager Fee Schedules

Ms. Walker stated that the submitted manager fee schedules have been reformatted as requested by Mr. Crawford so that Trustees are able to see what the System actually has to pay out of pocket as opposed to what is included in the net returns of the various managers. Mr. Crawford has also requested that the list include a listing of asset classes with the managers, so the listing will require further updating. Mr. Crawford agreed and suggested that this item be referred to the Investment Policy Committee for further review and discussion. The Board agreed to refer this item to the IPC for further review.

E-2 Proposed Investment Agreement for SKY Harbor Capital Management

Ms. Walker stated that the proposed Investment Agreement with SKY Harbor has been reviewed by legal counsel and included in the agenda packet for the Board's review and approval. Ms. Walker asked if there were any comments or concerns from the Board, and being none, the Board agreed to approve the Agreement as submitted.

It was **moved** by Hastie and **seconded** by Crawford to authorize the Board Chair to execute the Investment Agreement with SKY Harbor Capital Management on behalf of the Board of Trustees.

Approved

E-3 Nomination of Delegates for 2012 Fall MAPERS Conference

It was **moved** by Hastie and **seconded** by Crawford to nominate Mr. Monroe and Mr. Clark as the two delegates, and Mr. Flack as the alternate delegate for the upcoming 2012 Fall MAPERS Conference.

Approved

F. DISCUSSION ITEMS

F-1 Opportunity for Discussion of Appeal – Craig DeVoogd

Ms. Walker stated that this issue was postponed from the May 2012 regular Board meeting, and the legal opinion from that meeting has been included in this agenda packet in order to refresh the Board of Mr. DeVoogd's appeal on what should be and not be included in final average compensation, and also what constitutes pensionable compensation, specifically uniform and meal allowances or cell phone reimbursement. Mr. DeVoogd reviewed his appeal, including a summary of an agreement made after the settlement of a court case between the AAPOA and the City in the late 1980's, and he believes that there are retirement benefits that he is entitled to that were not calculated into his retirement benefit per his contract. Mr. DeVoogd stated that he has reviewed legal counsel's opinion from the May meeting, and does not believe that it is accurate, stating that as it relates to the City Code, it is difficult to track the various revisions that have occurred in the Ordinance through the years. Mr. DeVoogd also does not agree with the Code's current definitions of "compensation" and "final average compensation", which have remained unchanged from the 1960's up until the most recent revision in 2011 which he believes were changed much more drastically and less beneficial to the employees, and based on this pension change agreement that was signed, that he should have a retirement consistent with Chapter 18, which at that time was very specific on its definitions.

Mr. DeVoogd stated that after reading legal counsel's opinion, he is unclear whether or not he is entitled to be granted a retirement based on 1989 language that was consented to, but clearly his retirement has been based on revised language of the new City Code after post-revision, so he would like his retirement to be reflective of the City Code as it read in 1989 as agreed to. Ms. Walker stated that she has researched a number of AAPOA calculations in order to determine the past practices for including pensionable allowances and certain accrued banks, noting that employees hired after 1982 were not allowed to roll in their sick and vacation payouts or uniform allowance. Mr. VanOverbeke stated that retirement benefits in the state of Michigan are a mandatory subjective of collective bargaining, so to the extent that you have a collective bargaining agreement provision, if it conflicts with the Retirement Ordinance provision, the collective bargaining agreement language prevails. It is important to note that if the Ordinance Amendment Restatement had not occurred, and Mr. DeVoogd had applied for retirement, his benefit would have been calculated exactly as it was post-Ordinance restatement. So the calculation of his retirement benefit is not based upon the new Ordinance, and he would be getting the same benefit he is getting today. That exhibit specifically has a provision in it that says, "*Non-covered employees hired after January 1, 1982 and covered employees hired after June 30, 1982 continue to be entitled to payments of accumulated banks at retirement although such payments are not included in final average compensation.*" So the collective bargaining agreement provision spells out exactly what is to occur with those accumulated banks. Even if the Ordinance had said it were to include the banks, the collective bargaining agreement language prevails. Because of his hire date in 1986, Mr. DeVoogd's accumulated banks are not included in his final average compensation pursuant to the expressed provisions of the collective bargaining agreement which all of the parties agreed to at that time.

Mr. VanOverbeke stated that what was not included was language regarding the employer's contribution for the members' 457 Plan and previous to this, there was no specific mention of clothing or phone allowances, and pre-dating 1982, the parties have always agreed that those are

not part of final average compensation, noting that no union has filed a grievance, no one has objected to this procedure, so that past practice has been in place as long as the Plan has been in place, and looking at case law in regards to allowances, it supports the concept that that is not compensation, those are reimbursement for certain expenses. In regards to the more recent employer contributions to employee compensation accounts, there has never been an employee contribution withheld from the employer's contribution to the 457 Plan, so for purposes of collecting employee contributions, it has never been considered compensation and there is no instance that it has ever been included in terms of compensation for FAC purposes. This was clarified in the Ordinance Restatement, but without the Restatement that calculation would have been the same irrespective and that is really a labor issue because it's been around for so long, there is the established past practice, and if the parties disagree as to what their established past practice is, they have the ability to grieve or contest the practice, which has never happened. Mr. VanOverbeke stated that he stands by his opinion that Mr. DeVoogd's retirement benefits were calculated in accordance with the Plan provisions.

Mr. Monroe stated that he believes the issue regarding the inclusion of employer contributions to the 457 Plan is inconsistent, that those contributions should be included in final average compensation, and the 457 is not reimbursement for an expense, so it is not consistent with reimbursement for phone, car, or uniform allowance; it is not defined specifically in court rulings that it is excluded, the Ordinance indicates that deferred compensation is included, so he does not know what else to call it other than compensation for services rendered, and when you're eventually paid out for your deferred income, it is income that was deferred that you are eventually responsible for taxes on, also, there is nothing excluding it in the contract. Mr. VanOverbeke stated that the case law supports its exclusion, and if comparing an employer contribution to the 457 Plan, he would say that it is more in the nature of a benefit or "perk" much like health or dental insurance, or the retirement benefit itself. The employer's contribution to the Pension System isn't part of compensation and the employer puts a lot of money into the Retirement System on behalf of the employees which is not considered compensation for purposes of the employees any more than the employer's expense of all the other benefits.

Mr. VanOverbeke stated that he believes that where the confusion comes in with the 457 Plan is when discussing that it is a form of deferred compensation, and the 457 is the only provision under the Code where an employee has an option of taking money and putting it in their pocket or deferring the payment of tax on the money and putting it into the 457 Plan. In the eyes of the IRS, that is called a Cash or Deferred Arrangement (CODA). When an employer makes a contribution to a 457, it is not a deferral, so it shouldn't be viewed as compensation but rather an employer contribution to a retirement program that you will receive at some point in the future. Mr. VanOverbeke added that since 1998 the employer has been making that contribution, so there is also the concept of established past practice. When there's been no objection, no grievance, or anything filed on this matter, it is his opinion that the established past practice of the parties is given great deference in terms of how we would interpret this provision.

Mr. Monroe questioned how longevity can be added in terms of compensation, and reiterated that the Ordinance includes deferred compensation; he still believes that most of the information is in support of the employee. Mr. DeVoogd stated that one of his final pay statements from the City indicates that his 457 match from the City is listed as earnings and compensation, and that no benefits are listed on the statement, only earnings. Mr. VanOverbeke stated that the definition of compensation includes amounts deferred under a deferred compensation plan and any amount deferred in accordance with the 125 Plan or under the VEBA, so the employer is not deferring compensation when they contribute to the 457 Plan; the only amount that is deferred is made by the employee. After further discussion, the Board decided to make the following motions:

It was **moved** by Hastie and **seconded** by Flack to follow legal counsel's opinion to deny Mr. DeVoogd's appeal on the following items:

1. Payout of accumulated sick time at retirement;
2. Payout of accumulated vacation time at retirement;
3. Uniform allowance compensation paid.

Approved

It was **moved** by Monroe and **seconded** by Crawford to postpone the fourth item, "*Employer contributions to the 457 Plan*" until the September 20th regular Board meeting with the hopes that a larger quorum will attend for further discussion.

Approved

Mr. DeVoogd and Mr. Dortch departed at this time.

F-2 FOIA Request & Current FOIA Policy

Ms. Walker stated that after a recent FOIA request was made to the System, Mr. Heusel had inquired as to whether all requests should be forwarded to the Board of Trustees, and she had explained that per the current FOIA Policy, all Board members are to be copied and made aware of all FOIA requests, but the Board has the option of revisiting or revising the Policy if it wishes. In addition, so that the Board is aware, a recent request was made by an intern of Robert Pollock's (a former Board member) investment firm, for which Mr. Pollock indicated that the request was not FOIA-related. Ms. Walker stated that she believes that any request for information from the System that requires any effort by Staff is considered a FOIA.

Ms. Walker stated that this item is on the agenda in order for her to 1) determine if all Board members wish to be copied on all FOIA requests, and 2) how staff should deal with this particular request. Mr. Crawford asked what was requested, and Ms. Walker stated that the firm is asking for all quarterly investment summaries for the Retirement System going back to 2005, which would entail a fair amount of staff time to go into each quarterly report and pulling out those investment results. Ms. Walker added that in the last few months the System has had a few instances with responding to FOIA's and not getting reimbursed for them, and she believes that going forward, the current policy should require that a deposit or full payment be made up front before providing any FOIA response. Mr. VanOverbeke stated that when the Board is copied on a FOIA request, it is more of a notification, and not necessarily a request for responses or comments; once information is provided to the public it cannot be retrieved, so a conservative approach is taken before responding to the request. Mr. VanOverbeke added that in regards to any request for information, he would encourage the Board not to make a distinction that some are FOIA and some are not. Whether it is a request from the employer, bargaining unit, a citizen, or the media, all should be treated uniformly and once you start making distinctions it becomes very difficult to differentiate between groups.

Mr. VanOverbeke advised that the most recent request be treated as a FOIA, and in accordance the investment firm be advised that we do not have this information readily available and it will entail substantial staff time to put the information together as well as a cost. After further discussion, it was determined that all Board members should still be notified of all FOIA requests per the current Policy, and that the Policy be amended going forward to indicate that if a request is going to cost more than \$50.00, an estimate will be calculated and a deposit shall be made before we start doing the work, and if it is under \$50.00, the information will be compiled, determine the cost, and send a letter indicating that the request has been granted and that full payment is required before sending the information. Mr. Hastie suggested that when the Board is copied on future FOIA requests, that staff add a note that it is for information only, but that staff welcomes any comments or objections.

It was **moved** by Hastie and **seconded** by Clark to amend the current FOIA Policy to reflect that to the extent that there is a payment required under the FOIA as discussed above for a request for information, that the payment be made prior to release of the information.

Approved

G. REPORTS

G-1 Executive Report – July 19, 2012

INVESCO

Please note that the Invesco Mortgage Recovery Feeder Fund, L.P. made a distribution on Friday, June 29, 2012 totaling \$3,896,542. The distribution was comprised of \$2,275,243 of return of capital and \$1,621,299 of realized gains. CAAERS' allocable share of distribution: **\$51,872**

BUCK

Data has been populated into the ESS system and it is being tested. Initially the ESS testing revealed a number of basic flaws and gaps, not pertaining to the individual data to Ann Arbor plans. Examples are charts not populating correctly or not refreshing resulting in blank spaces or errors, and programming which resulted in obvious errors in annuity values (failing to divide by 12 to calculate a social security amount, dividing by 12 in calculating an annuity valued from a 457 balance, when the balance already had been converted to a monthly amount).

These issues have been continuously communicated to Buck, via the task manager application and tracking system, and Larry Langer has been copied. Peter Abma, the project manager, acknowledged the flaws and stated that additional resources are being devoted to quality control and review, as this system should not have been released to Ann Arbor with these types of errors and issues. Errors are being corrected by Buck and reviewed by the Retirement Staff.

VEBA IRS LETTER

The IRS has requested additional information for the System's request for the reinstatement of qualified status for the VEBA. As background, the Retirement System in correspondence in past years has advised the IRS of its exempt status as a public plan; however, the IRS has never acknowledged this correspondence. The IRS agent in charge of the review sent a letter dated 7-3-2012, with a response date of 7-3-2012. Board legal counsel has responded to this likely error in due date. The agent is out of the office until the 16th, and legal counsel has requested an extension for the System to supply additional requested information, which includes copies of all the bargaining unit **contracts**.

ACTUARIAL DATA

A kickoff meeting has been scheduled for Monday July 16, including Kelly Beck of AA Benefits. Much of the actuarial census, as well as a summary of plan changes over the last year, are complete and will be submitted as soon as the requirements are confirmed by Buck.

FOIA REQUEST

The System received a FOIA request from Ryan Stanton of AnnArbor.com regarding pension information for Barnett Jones, former Police Chief. A letter was emailed to Mr. Stanton on July 13th stating that his request would be granted upon receipt of the appropriate reimbursement for this current request, plus reimbursement for his last FOIA request, which was never received by the System. The System was advised by the City Clerk's Office that the City's practice is to require payment before releasing records even for nominal amounts.

GASB UPDATE

GASB has adopted extensive revisions of Accounting Standards for Public Retirement Systems, some effective as early as June 2013. The director and staff will be working with Buck over the next months to fully understand the implications of these new regulations for Ann Arbor ERS. According to a Buck white paper, it is likely that the new regulations will entail significant additional disclosure about the discount rate used in calculations. This includes assumed future cash flows, asset allocations, real returns on asset classes, and the effects of using a discount rate that is different than that developed in accordance with the requirements of the new standards, if applicable.

Buck also comments, and staff concurs, that additional reporting requirements will entail more explanation to members and outside parties.

G-2 City of Ann Arbor Employees' Retirement System Preliminary Report for the Month Ended June 30, 2012

N. Gail Jarskey, Accountant, submitted the Financial Report for the month ended June 30, 2012 to the Board of Trustees:

| | |
|---|----------------------|
| 6/30/2012 Asset Value (Preliminary) | \$402,470,236 |
| 5/31/2012 Asset Value (Audited by Northern) | \$402,368,928 |
| Calendar YTD Increase/Decrease in Assets <i>(excludes non-investment receipts and disbursements)</i> | \$21,034,652 |
| Percent Gain <Loss> | 5.4% |
| July 18, 2012 Asset Value | \$404,032,375 |

G-3 Investment Policy Committee Minutes – No Report

G-4 Administrative Policy Committee Minutes – No Report

G-5 Audit Committee Minutes – No Report

G-6 Legal Report – Verbal Report

Mr. VanOverbeke stated that the Retirement System has finally received the Qualified Plan Determination letter from the IRS. Mr. Crawford thanked Mr. VanOverbeke, stating that it was very helpful for the System to have his assistance through the whole process.

H. INFORMATION (Received & Filed)

H-1 Communications Memorandum

H-2 August Planning Calendar

H-3 Record of Paid Invoices

The following invoices have been paid since the last Board meeting.

| | PAYEE | AMOUNT | DESCRIPTION |
|---|------------|--------|--|
| 1 | DTE Energy | 34.01 | Monthly Gas Fee dated June 14, 2012 |
| 2 | DTE Energy | 297.72 | Monthly Electric Fee dated June 14, 2012 |
| 3 | AT&T | 140.54 | Monthly Telephone Service |

| | | | |
|--------------|--------------------------------------|------------------|---|
| 4 | Staples Business Advantage | 106.41 | Miscellaneous office supplies |
| 5 | Hasselbring-Clark Co. | 36.36 | Monthly copier cost per copy |
| 6 | National IME Network, LLC | 550.00 | Medical Re-Exam & Report – I. Davis |
| 7 | National IME Network, LLC | 800.00 | Medical Re-Exam & Report – W. Mueller |
| 8 | VanOverbeke, Michaud & Timmony, P.C. | 3,570.00 | Legal Services: 10/1/2011 – 10/31/2011 |
| 9 | VanOverbeke, Michaud & Timmony, P.C. | 4,900.00 | Legal Services: 11/1/2011 – 11/30/2011 |
| 10 | VanOverbeke, Michaud & Timmony, P.C. | 6,886.25 | Legal Services: 12/1/2011 – 12/31/2011 |
| 11 | Terry Clark | 714.37 | Reimbursement: 2012 Spring MAPERS Conf. |
| 12 | Nancy Walker | 349.34 | Reimbursement: Investments Institute 4/2012 |
| 13 | Meketa Investment Group | 8,750.00 | Investment Consultant Retainer - June 2012 |
| 14 | AT&T | 55.03 | Monthly Toll-Free Telephone Service |
| 15 | Comcast | 81.66 | Monthly Cable Fee |
| 16 | Fifth Third Bank/Maple Office | 338.69 | Condo association dues – July 2012 |
| 17 | Coverall North America, Inc. | 140.00 | Office Cleaning Services for July 2012 |
| 18 | Postmaster | 243.20 | USPS pre-stamped envelopes |
| TOTAL | | 27,993.58 | |

H-4 Retirement Report

The following employee(s) have completed their paperwork for retirement:

| Name | Type of Retirement | Effective Date | Group | Years of Service | Service Area |
|-----------------|--------------------|-----------------|---------|-------------------------|----------------------------|
| Margaret Alford | Age & Service | August 4, 2012 | General | 8 years, 8.5 months | Housing Commission |
| Steven Johnson | Age & Service | July 14, 2012 | Police | 25 years, 2.5 months | Safety Services/ Police |
| William Tucker | Age & Service | August 17, 2012 | Police | 25 years, 0.5 months | Safety Services/ Police |

I. TRUSTEE COMMENTS - None

J. ADJOURNMENT

It was **moved** by Monroe and **seconded** by Crawford to adjourn the meeting at 10:47 a.m.
Meeting adjourned at 10:47 a.m.



Nancy R. Walker, Executive Director
City of Ann Arbor Employees' Retirement System