

CITY OF FLINT EMPLOYEES' RETIREMENT SYSTEM

BOARD OF TRUSTEES REGULAR MEETING

A regular meeting of the Board of Trustees of the City of Flint Employees' Retirement System was held on Tuesday, December 20, 2005, at 1:00 p.m. in the Flint City Hall Council Chambers Committee-of-the-Whole Room, with the following in attendance:

TRUSTEES & ALTERNATES Daniel Hall – Chairperson, Douglas Bingaman, Robert Erlenbeck, Ehren Gonzales, Janice Kehoe, Sandra Kidd, Amy Lindman, Alvern Lock, Donald Phillips, Robert Rosenberger, Georgia Steinhoff, Cass Wisniewski

ABSENT Daniel Coffield, Peggy Cook, Peter Dobrzeniecki, Kerry Nelson

ALSO PRESENT Habeeb Ghattas, Attorney for the Retirement Board
Gwelda Swilley-Burke, Consultant, Gray & Company
Harland Abraham, Custodian, Northern Trust
I'Lanta Robbins, Assistant City Attorney

1. CHAIRPERSON CALLS THE MEETING TO ORDER

Chairman Daniel Hall called the meeting to order at 1:02 p.m.

2. MEMBERS OF THE PUBLIC WISHING TO ADDRESS THE BOARD

There were no members of the public who wished to address the Board.

3. APPLICATION FOR DUTY AND NON-DUTY DISABILITY RETIREMENT

**Alkin Vanderson
HMC/PSPO**

Age: 54 Years
Service: 24 Years, 1 Months

The medical report and summary of Disability Determination dated November 16, 2005 from Dr. Victor Roth, Medical Director, does certify that Alkin Vanderson is totally and permanently disabled. Georgia Steinhoff noted that the Professional Services Committee agrees with Dr. Roth's recommendation.

Motion made by Georgia Steinhoff, and supported by Alvern Lock, to concur with Dr. Roth’s report that Alkin Vanderson is totally and permanently disabled, and should be granted a disability retirement.

Discussion followed.

Upon being put to a vote, the motion carried unanimously.

4. OPTIONS PICKED BY DEFERRED AND NON DUTY DISABILITY RETIREMENT
(for information only)

Deborah Bayer/City	Option B w/pop-up \$3,308.55
Patricia Carrington/HMC	Option Straight Life \$400.55

5. UPCOMING CONFERENCES

- 5.1 MAPERS, In Search of Alpha – Thinking Outside the Box, February 16, 2006. Ypsilanti, MI. (On file in Retirement)

A motion was made by Georgia Steinhoff, and supported by Amy Lindman, to add the stated conferences to the list of authorized conferences.

Upon being put to a vote, the motion carried unanimously.

6. COMMUNICATIONS RECEIVED (All items were placed on file in the Retirement Office; if noted, a copy was enclosed in the Board Members’ agenda packets also.)

- 6.1 Intercontinental Real Estate Corporation, Letter to Daniel Hall re: Distribution, December 2, 2005.
- 6.2 Babson Capital, The Babson Staff Letter, November 11, 2005.
- 6.3 Babson Capital, The Babson Staff Letter, December 9, 2005.
- 6.4 Northern Trust, Strategy, Newsletter, December 2005.
- 6.5 Northern Trust, Viewpoints, Newsletter, Fall 2005.

- 6.6 Gabriel, Roeder Smith & Co., IRS Regulations for Minimum Distributions, November 30, 2005. (Enclosed)
- 6.7 Resolutions appointing Ehren Gonzales as Trustee and Kerry Nelson as Alternate on the City of Flint’s Retirement System Board of Trustees. November 28, 2005 (Enclosed)
- 6.8 Habeeb Ghattas, Letter to Barry Keller re: Colleen Belanger, December 6, 2005. (Enclosed)
- 6.9 Letter to the Retirement Board from Kathleen Robinson re: Copies of Medical Reports, December 9, 2005. (Enclosed)
- 6.10 Letter to Kathleen Robinson from Robert Erlenbeck re: Copies of Medical Reports, December 14, 2005. (Enclosed)

A motion was made by Georgia Steinhoff, and supported by Amy Lindman, to receive the communications and place them on file.

Discussion followed. Chairman Hall stated that Item #6.6 would be discussed under “Other Business” on the Agenda and Item #6.8 was referred to the Professional Services Committee.

Upon being put to a vote, the motion carried unanimously.

- 7. **REPORTS RECEIVED** (All items were placed on file in the Retirement Office; if noted, a copy was enclosed in the Board Members’ agenda packets also.)
 - 7.1 Lynch, Jones & Ryan, Trading Summary as of October 31, 2005.
 - 7.2 Magna Securities, Commission Recapture Report as of October 31, 2005.
 - 7.3 State Street Global Advisors, Account Summary as of November 30, 2005.
 - 7.4 State Street Global Advisors, Appraisal Report as of November 30, 2005.
 - 7.5 Fidelity Investments, Monthly Investment Update as of November 30, 2005.
 - 7.6 Fidelity Investments, Capital Contribution, December 6, 2005.
 - 7.7 JP Morgan Asset Management, Fund Performance as of September 30, 2005.

- 7.8 Intercontinental Real Estate Corp., Capital Call on December 13, 2005, November 18, 2005.
- 7.9 Wellington Management, Our Business and Practices, October 15, 2005.
- 7.10 Wellington Management, SEC Form ADV as of November 3, 2005.
- 7.11 Iridian Asset Management, Quarterly Investment Update as of September 30, 2005.
- 7.12 Brandywine Asset Management, Quarterly Investment Review as of September 30, 2005.
- 7.13 Globeflex Capital, Performance Update as of September 30, 2005.
- 7.14 Merganser Capital Management, Investment Memorandum, 3rd Quarter 2005.
- 7.15 Hartford Investment Management, Asset Allocation and Risk Management for Pension Plans, November 2005.
- 7.16 Northern Trust Reports – October 2005 (Enclosed)
- 7.17 Retirement Fund Employee/Employer Contributions (Enclosed)

A motion was made by Georgia Steinhoff, and supported by Doug Bingaman, to receive the reports and place them on file.

Chairman Hall led a discussion of Item #7.16, noting that there are terminated money managers still on the list. Harland Abraham has stated that he will work with City staff to update the report. A discussion followed regarding Capital BidCo. Chairman Hall stated that he would be attending a meeting with Capital BidCo in Lansing soon.

Upon being put to a vote, the motion carried unanimously.

8. STATISTICAL REPORT OF BENEFITS (for information only)

	<u>2003</u>	<u>2004</u>	<u>2005</u>
Number Retired	3,001	3,002	3,032
Annualized Payroll	\$ 61,357,283	\$ 62,627,143	\$ 64,138,411

9. APPROVAL OF THE JANUARY 1, 2006 PENSION PAYROLL TRANSFER

Chairman Daniel Hall reported that a transfer of \$4,768,300 was needed for the payment of the January 1st, 2006 pension payroll. Gwelda Swilley-Burke stated that they are recommending that \$1,822,569 be taken from the SSgA account to close it out, with the balance of \$925,000 to come from the Northern Trust Russell 1000 Growth Fund.

A motion to approve a transfer for payment of the January 1, 2006 pension payroll, in the amount of \$4,768,300, with the funds to be taken from the SSgA account (\$1,822,569) and the Northern Trust Russell 1000 Growth Fund account (\$925,000), to Citizens Bank, was made by Georgia Steinhoff, and supported by Cass Wisniewski.

Discussion followed.

Upon being put to a vote, the motion carried unanimously.

10. RESOLUTION AUTHORIZING THE TRANSFER OF ALL DATA FOR CERTAIN ACTIVE MEMBERS AND RETIREES OF HURLEY MEDICAL CENTER

Tabled by Chairman Daniel Hall.

11. RESOLUTION AUTHORIZING THE TRANSFER OF RELATED ASSETS AND LIABILITIES FOR CERTAIN ACTIVE MEMBERS AND RETIREES OF HURLEY MEDICAL CENTER.

Tabled by Chairman Daniel Hall.

12. FERS TO MERS TRANSITION

Chairman Hall distributed a draft of a letter intended to give direction to the two actuaries, Gabriel Roeder Smith and Actuarial Services, for the transfer calculations. Discussion followed regarding appropriate modifications. The letter will be signed by Daniel Coffield and Peter Dobrzeniecki. It was noted that there are several issues with deferred retirements that must be addressed prior to the completion of the transfer. Chairman Hall stated that there are many issues and changes that need to be addressed when the Retirement Ordinance is modified.

13. RECEIVING OF THE 60TH ANNUAL ACTUARIAL VALUATION (June 30, 2004)

Per Chairman Daniel Hall, a resolution to receive the final 60th Annual Actuarial Valuation Report will be presented at the January meeting. Larry Langer will be in attendance at that meeting. Chairman Hall noted that a discussion was held at a Finance Committee Meeting regarding the authorization of Larry Langer and Peter Dobrzeniecki to work together, along with the Committee, on the draft valuation each year. Currently, the Finance Department provides data to the Actuary but has no knowledge of the numbers contained in the actuarial report until a draft is presented to the Board. Discussion followed. The Board also discussed the need for greater input into and understanding of the budget process for the System's budget, including the allocations for City services.

14. EMPLOYER CONTRIBUTION RATES – HURLEY MEDICAL CENTER

Per Chairman Daniel Hall, a resolution to adopt the contribution rates from the 60th Annual Actuarial Valuation will be presented at the January meeting.

15. EMPLOYER CONTRIBUTION RATES – CITY OF FLINT

Per Chairman Daniel Hall, a resolution to adopt the contribution rates from the 60th Annual Actuarial Valuation will be presented at the January meeting.

16. AUDIT COMMITTEE REPORT

Tabled by Chairman Daniel Hall.

17. INVESTMENT COMMITTEE REPORT

Chairman Daniel Hall reported that the Committee met and the agenda included:

- 1) Discussion of a drawdown account to cover pension payroll for a six month period.
- 2) Gray & Company's recommendations for a drawdown for the month of January.
- 3) Milberg & Weiss' third quarter report regarding securities litigation.

Discussion followed.

18. PROFESSIONAL SERVICES COMMITTEE REPORT

Georgia Steinhoff reported that the Committee met on December 12. They reviewed the outstanding disability retirement applications (approximately 15) that are in various stages of the application and approval process. Two applicants, Patricia Amos & Patricia Rutherford, missed their cut-off date of December 17th for submission of their paperwork and will have to reapply. Bob Erlenbeck noted that Jill Higgerson's application falls into the gray areas in the contracts and Ordinance regarding the cut-off for retirement service credits and final average compensation. Further research is needed. Colleen Belanger is a member of one of the bargaining units that voted to transfer to MERS; therefore, they have advised her (see Communication #6.8) to contact MERS if she wishes to further pursue a disability retirement. She has continued to refuse to take an allergy test to confirm her latex allergy. Chairman Hall stated that Habeeb Ghattas' contract would be discussed under "Legal Counsel Updates."

19. FINANCE COMMITTEE

Chairman Daniel Hall noted that the Finance Committee will be involved in planning the MERS transfer. They are currently in discussions with the Consultant and the Custodian. Discussion followed.

Chairman Hall stated that there is \$15,000 in the travel budget, which will allow for attendance at the NCPERS Legislative Conference in February in Washington, D.C.

Georgia Steinhoff and Robert Rosenberger left the meeting at 2:20 p.m.

The Board recessed for a break at 2:20 p.m.

Chairman Daniel Hall called the meeting back to order at 2:27 p.m.

20. RETIREMENT ORDINANCE REVISION COMMITTEE

Chairman Daniel Hall stated that the Committee Members would be Ehren Gonzales, Committee Chair, Donald Phillips, Robert Erlenbeck, and Daniel Hall.

22. LEGAL COUNSEL UPDATES

Attorney Ghattas reported that, in the Claude Miller class action lawsuit (26-27 pays dispute), the Circuit Judge has ruled against the Class. The Board of Trustees, as well as the City of Flint, was dismissed from the lawsuit. The Plaintiff had sought reconsideration and no action has been taken by the Circuit Court on that petition.

Attorney Ghattas noted that the Board had previously raised concerns regarding a requested change in investment style by one of the System's real estate managers, Fidelity Management. Fidelity has issued a report outlining the types of investments they are making through their fund. In his review with Gray & Company, questions were raised that he will discuss with Fidelity.

Attorney Ghattas stated that David Bergman, an attorney with Milberg Weiss, contacted Chairman Hall, and Attorney Ghattas followed up with Mr. Bergman, regarding questions and concerns about a particular investment in which Mr. Bergman believes the System may have suffered a loss of approximately \$100,000. Attorney Ghattas noted that Milberg Weiss is the legal firm retained by the Trustees, at no charge to the System, to monitor potential fraud class action litigation in which the System may have experienced financial loss. They are providing this service in conjunction with Northern Trust, as the Custodian. In the event that the System has suffered such a significant loss that they might be inclined to take lead action status in a class action, then the Board would consider retaining them for that purpose. However, a \$100,000 loss is not sufficient for the System to have lead plaintiff status. Milberg Weiss will be sending the class action suit information to Northern Trust for processing through their normal channels.

Attorney Ghattas stated that the Michigan Supreme Court has issued an order regarding the Board's lawsuit seeking a determination from the Court as to whether or not the Board has the authority to hire legal counsel independent of the office of City Attorney. Although the City Ordinance is clear in providing that the Chief Legal Officer serves as the Legal Advisor to the Board of Trustees, in retaining him as Legal Counsel the Board was acting according to its understanding of its authority under State Law. However, the City Attorney has taken the position that, under the Ordinance, she serves as Legal Counsel to the Board and should represent the Board in all lawsuits. The Circuit Court, through Judge Yuille, ruled that the Ordinance was not superceded by State Law and concluded that the City Attorney should serve as Legal Advisor to the Retirement System absent from any conflict of interest with regard to the essential functions of the Retirement System and the Board of Trustees. The Board exercised their right to appeal to the Michigan Court of Appeals. As part of that process, the Board's Legal Counsel requested of Judge Yuille that entry of his order be stayed pending resolution in the Court of Appeals. Judge Yuille granted that order and the Board continued to have its own Counsel. The Court of Appeals eventually affirmed the Circuit Court's opinion. Their

conclusion was that City Code Section 35-13, providing that the City Attorney is to represent the Board of Trustees, does not violate State Law (quoting from the opinion), "...absent a finding that independent legal services are necessary to the conflict of the Retirement System in a particular situation." The Court of Appeals did not address the issue of a conflict specifically, but stated that independent counsel could be retained "...where the Board of Trustees determines that it is necessary for the operation of the System." Under State law, as determined by the Court of Appeals, the Ordinance cannot be superceded totally by giving the Board the authority to hire General Counsel for all purposes. The Board would be limited to those instances of conflict where the retention of independent counsel is deemed necessary. Attorneys Ghattas and Spender then recommended to the Board that the issue be appealed to the Michigan Supreme Court for better guidance on the matter. They were optimistic that the Supreme Court would be willing to address the issue and issue a ruling so as to avoid what Judge Yuille had referred to as a "potential morass," a situation where there are constant disputes that cannot be resolved, creating the necessity to file additional lawsuits. As the Board's Legal Counsel, they believe that, under the authority of State law, the Board's fiduciary responsibility to protect Trust assets should give the Board the authority to hire Counsel independent of the office of City Attorney and that the Ordinance should be superceded by State law. After the Court of Appeals' ruling, the Board authorized an Application for Leave to Appeal to the Supreme Court, which was filed in February 2005. However, Attorney Stephen Spender received the following Order on December 5th: "On order of the Supreme Court, the Application for Leave to Appeal of the February 24th, 2005 Judgement in the Court of Appeals is considered and it is denied because we are not persuaded that the questions presented should be reviewed by this Court." As a result, the decision of the Court of Appeals stands and the Board has the authority to hire Counsel only where it feels it necessary to resolve a conflict. The last sentence in the Court of Appeals' decision states, "Whether independent legal counsel is necessary for the conduct of the affairs of the Retirement System at issue is a determination to be made by the Board on a case-by-case basis." Now that the appeals process is exhausted, Attorney Ghattas is working with the City Attorney and her staff to review and transfer pending issues so that she can proceed as Legal Counsel for the Retirement System. He is recommending that the Professional Services Committee meet, with the input of the City Attorney and his (or other Counsel's) input to discuss when independent services are necessary for the Board, rather than wait until problems develop.

Chairman Daniel Hall stated, in summary, that he is hopeful that the Board of Trustees will work with the City Attorney's office to avoid conflict and further litigation. He has spoken with all of the attorneys involved and transition meetings will be scheduled. He stated the need to examine how the Board will address conflict in the future and whether a contract is deemed necessary with Attorney Ghattas, who has been working under a 1987 retainer arrangement. Discussion followed.

21. GRAY & COMPANY

Attorney Ghattas reported on the status of the contracts with the new international and small cap managers. The investments with the new international managers, Fischer and LSV, will be in pooled funds. After discussions with these money managers, he believes his concerns have been resolved. He will review his recommendations with the City Attorney, who will be finalizing the contracts. The contracts for the small cap managers, Keeley Asset Management and Allegiant, are almost completed. At the recent Investment Committee Meeting, he noted that fees are sometimes calculated on an inconsistent basis due to different interpretations of “market value.” As a result, he recommends adding language to the contracts (as he has done with previous contracts) stating that any question regarding market value would be resolved with the customary reconciliation procedures of custodians. The next step is the referral to City Council for approval of fees.

Attorney Ghattas left the meeting at 2:50 p.m.

Gwelda Swilley-Burke distributed and reviewed with the Trustees a 2005 performance report through October. Discussion followed.

Ms. Burke noted that Dodge & Cox and ICON were unable to attend the Money Manager Review Meeting and she asked for direction regarding when to reschedule them. Chairman Daniel Hall referred the issue to the Investment Committee, noting that ICON is a top performer and Dodge & Cox is a new manager.

23. DRAFT 2006 RETIREMENT BOARD CALENDAR

The Board reviewed the proposed 2006 meeting schedule and corrected the date of October 18th (Wednesday) to October 17th (Tuesday). The 2006 schedule accommodates the MAPERS and NCPERS conferences. Discussion followed.

A motion to approve the 2006 Retirement Board Meeting Schedule, as amended, was made by Amy Lindman and supported by Donald Phillips.

Upon being put to a vote, the motion carried unanimously.

24. OTHER BOARD BUSINESS

Chairman Daniel Hall asked that reference notebooks be prepared for the City Council President and new City Council representatives on the Board of Trustees.

Chairman Hall asked that all Trustees update their information for the Trustees listing. He stated that the Professional Services Committee would be reviewing the vacancies on the Board, which include representatives for Hurley, General City, and Police & Fire.

Robert Erlenbeck reviewed Item #6.6, a letter in the packets from Gabriel, Roeder Smith & Co. regarding IRS Regulations for Minimum Distributions, dated November 30, 2005. This letter addresses the issue of pension beneficiaries other than spouses. There are issues that need to be addressed if the System is going to allow its members to designate children as beneficiaries. There are percentage guidelines regarding the amount that children can be paid by the Retirement System. The payment is calculated actuarially according to a formula that is based on the age of the retiree and the age of the beneficiary. The IRS regulations affect beneficiaries back to 2002. Mr. Erlenbeck has asked the City Attorney's office to review the issue and he is awaiting a response from them. These regulations must be implemented by the System. Discussion followed.

Mr. Erlenbeck also noted that the DB/DC Conversion is back on track and he will be asking City Council for approval to hire an actuary. Discussion followed.

25. ADJOURNED

There being no further business to discuss, it was moved by Donald Phillips, and supported by Alvern Lock to adjourn the meeting at 3:15 p.m.

Upon being put to a vote, the motion carried unanimously.

Respectfully submitted,

Peter Dobrzeniecki, Secretary