

CORAL GABLES RETIREMENT SYSTEM

Minutes of March 13, 2008

Youth Center – Auditorium

405 University Drive

8:00 a.m.

MEMBERS:

J F M A M J J A S O N D

APPOINTED BY:

Steven Naclerio	P P P	Mayor Donald D. Slesnick, II
Manuel A. Garcia-Linares	P P P	Vice Mayor William H. Kerdyk, Jr.
Tom Huston, Jr.	P P P	Commissioner Maria Anderson
Sal Geraci	P E P	Commissioner Rafael “Ralph” Cabrera
Leslie Space	P P P	Commissioner Wayne “Chip” Withers
Agustin Diaz	P P P	Police Representative
Troy Easley	P P P	Member at Large
Victor Goizueta	P P P	General Employees
Wayne Sibley	P P P	Fire Representative

STAFF:

Kimberly Groome, Administrative Manager
Alan Greenfield, Board Attorney
Donald G. Nelson, Finance Director
Troy Brown, Merrill Lynch

A = Absent

E = Excused Absent

P = Present

GUESTS:

Elba Gonzalez, Fowler White
Marj Adler, Human Resources Director

Chairperson Sibley calls the meeting to order at 8:08 a.m. There was a quorum present.

1. Roll call.
2. Approval of the Retirement Board monthly meeting minutes for February 14, 2008.
A motion was made to approve the minutes of January 24, 2008 by Mr. Goizueta and seconded by Mr. Huston. Motion unanimously approved (9-0).
3. Report of Administrative Manager. (*Agenda Item 4*).

A motion to accept the following items of the Administrative Manger’s report without discussion was made by Mr. Goizueta and seconded by Mr. Huston. Motion unanimously approved (9-0).

1. For the Board’s information, there was a transfer of \$2,900,000.00 from the Northern Trust Cash Account for the City of Coral Gables Retirement Fund for the payment of monthly annuities and expenses at the end of February 2008 for

the March 2008 benefit payments.

2. For the Board's information, the following Employee Contribution check was deposited into the Retirement Fund's SunTrust Bank account (fiscal year spreadsheet attached):
 - Payroll ending date January 20, 2008 in the amount of \$72,676.11 was submitted for deposit on February 28, 2008.
 - Payroll ending date February 17, 2008 in the amount of \$70,897.06 was submitted for deposit on March 4, 2008.
3. For the Board's information:
 - Sonie Silverman who worked for the Parks and Recreation Department as the Sports Shop Attendant for the golf course passed away on January 30, 2008. He retired on January 1, 1993 with No Option. His benefits cease.
 - Elissa Stolzenberg passed away on February 5, 2008. She was receiving pre-retirement survivor benefits which began April 1, 1996. Her benefits have ceased.
4. A copy of the Summary Earnings Statements from the Northern Trust Securities Lending Division for billing period January 1, 2008 to January 31, 2008 is attached for the Board's information.
5. Attached for the Board's information is the Statement of Pending Transactions and Assets as of January 31, 2008 from JP Morgan.
6. A letter dated February 8, 2008 from Julie Browning of the State of Florida Municipal Police Officers' and Firefighters' Retirement Trust Funds is attached for the Board's information regarding the 2006 Annual Report.
7. A letter dated February 14, 2008 from Julie Browning of the State of Florida Municipal Police Officers' and Firefighters' Retirement Trust Funds is attached for the Board's information regarding the 2006 Annual Report.
8. A copy of an article dated February 18, 2008 from Pensions and Investments is attached for the Board's information regarding public pension fund trustees in California and across the country walking out of board votes rather than risk being charged with conflicts of interest.
9. For the Board's information various articles are attached regarding public pension plans.
10. For the Board's information an article is attached dated February 28, 2008 regarding a former UBS Employee admitting to insider trading.

11. An article dated March 7, 2008 is attached for the Board's information regarding the Securities and Exchange Commission warning public pension funds about compliance.
12. An invitation is attached for the Board's information regarding the JPMorgan Asset Management web cast on Rethinking portfolio allocations for the future on Tuesday, March 18, 2008 at 11:00 a.m.
13. An invitation to the 14th Annual Hedge Fund Institutional Investment Conference from April 6 to 8, 2008 in San Francisco, CA is attached for the Board's information.
14. An invitation is attached for the Board's information regarding the JPMorgan 2008 Real Estate and Infrastructure Conference from April 30 to May 2, 2008 at the Biltmore Hotel in Coral Gables, FL.
15. An invitation to the National Conference on Public Employee Retirement Systems (NCPERS) Annual Conference and Exhibition in New Orleans, LA from May 16, 2008 through May 22, 2008 is attached for the Board's information.
16. Copies of the City Beautiful e-News newsletters giving the latest news and information about the City of Coral Gables are included for the Board's information.

4. Employee Benefits:
(The Administrative Manager recommends approval of the following Employee Benefits.)

Retirement Benefits:

Retirement application of Lourdes Cuzan of the Development Department, 21 years, 5 months, Option 1, effective April 1, 2008.

RESOLUTION 3099
A RESOLUTION GRANTING NORMAL RETIREMENT BENEFITS
TO
LOURDES CUZAN

WHEREAS, Lourdes Cuzan Cardona has applied for retirement effective April 1, 2008, and,

WHEREAS, Lourdes Cuzan requests to take Option 1 Retirement with her last working day March 14, 2008.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF
THE CORAL GABLES RETIREMENT SYSTEM;**

That the Custodian of the Coral Gables Retirement System, is hereby authorized to pay Lourdes Cuzan retirement benefits under Option 1 as certified by the Actuary, the first day of every month, beginning April 1, 2008 and continuing as long as the pensioner or beneficiary shall receive benefits in accordance with the conditions of the option selected.

A motion to approve Ms. Cuzan's retirement application was made by Mr. Goizueta and seconded by Mr. Huston. Motion unanimously approved (9-0).

DROP Benefits:

DROP application of Michael Radley of the Police Department. Effective date March 1, 2008.

A motion to approve Mr. Radley's application for the DROP (Deferred Retirement Option Plan) was made by Mr. Goizueta and seconded by Mr. Garcia-Linares. Motion unanimously approved (9-0).

DROP application of John McRae of the Police Department. Effective date March 1, 2008.

A motion to approve Mr. McRae's application for the DROP (Deferred Retirement Option Plan) was made by Mr. Huston and seconded by Mr. Garcia-Linares. Motion unanimously approved (9-0).

Buy Back of Prior City time, Other Public Employer Service, Military Service Time:

Application of Jonathan Ralph of the Fire Department requesting to buy back 620 days (1 year, 8 months, 10 days) of prior other public employer service time.

A motion to approve Mr. Ralph's application for the buy back of other public employer service time was made by Mr. Goizueta and seconded by Mr. Huston. Motion unanimously approved (9-0).

5. Discussion of recommendation from the Administrative Manager to approve the Non-Service Connected Disability application of Alan Davis of the Police Department.

A motion to approve Mr. Davis' non-service disability application was made by Mr. Goizueta and seconded by Mr. Garcia-Linares.

Discussion:

Ms. Groome reports that there are three different doctor reports regarding Mr. Davis which state that Mr. Davis is unable to continue his position as a police officer due to his disorder. Mr. Davis has requested to go out on non-service connected disability.

Chairperson Sibley asks if the Board has approved this type of disability before. Ms. Groome informs that the Board has approved these types of disabilities in the past.

Motion unanimously approved (9-0).

6. Request from retiree Jeffrey Vance to discuss the repayment of the overpayment made to his DROP account. Mr. Vance was overpaid \$21,588.83 on his final DROP amount in 2002 and began paying the retirement system back \$250.00 per month as of May 2003. Continued from the January 24, 2008 Retirement Board meeting. (*Agenda Item 7.*)

Mr. Vance informs that at the last meeting the Board requested a letter from his accountant as to how much money would have been involved regarding income taxes and early withdraw penalty for the \$21,000. He gives the Board the letter from his accountant. The letter shows the amount of income tax he paid on the \$21,000 when it was withdrawn. It doesn't reflect the income tax he is paying that he already repaid. Mr. Huston states that when he saw Mr. Vance's 1099r forms that the gross is net of the \$250.00 he pays back the retirement system every month. The \$250.00 a month is taken out of the gross before it is taxed. Mr. Vance points out that the Board attorney said that to take the money out pre-tax was illegal. Mr. Huston understands that the \$250 was taken out before the taxes.

Mr. Nelson informs that he reviewed the 1099r forms after the last meeting and it shows that the deduction the retirement system is taking out for the loan is not being taxed therefore Mr. Vance is only being taxed on the net amount of his monthly benefit. The tax issue is a wash. Mr. Vance received a tax neutral loan with no interest on that loan. The only loss is to the Retirement System because it doesn't have the use of the \$21,000 and it is not earning interest on those funds. Mr. Vance basically has an interest free loan. Mr. Vance believes that it is on the repayment but not on the tax that was paid to take the money out. Had the City done their due diligence and found the error within one year of his retirement then they could have pulled that money out of the 401K themselves. They didn't do that. It was found by an outside auditor fourteen to eighteen months later. It wasn't his fault.

Mr. Garcia-Linares asks why Mr. Vance doesn't go back and amend his 2004 return. Mr. Vance explains that some of the funds were pulled out in 2002 and you can't specifically say that the money came out in 2002, 2004 and 2005. He went to the IRS about this and they told him that his tax return could only be amended one year after the overpayment. He hasn't done anything wrong and he is stuck with the bill. He didn't make the mistake. Mr. Huston doesn't think that the Retirement Board had anything to do with the early withdrawal penalty. Mr. Vance asks how else he was supposed to pay. He had to pull the money out. He didn't put the money in there. Why should he get a penalty on money he shouldn't have gotten? He paid income tax and a penalty on money he didn't get. He is paying it back. Mr. Huston thinks the last time Mr. Vance was before the Board that he said it was because of personal reasons he had to take the money out. Mr. Vance responds that it was due to his father's illness. The other taxable money on the income tax is what he has to pay. Mr. Huston states that he would have had to pay it then or now.

Mr. Vance disagrees. He shouldn't have had that money. Mr. Huston informs that the money is being treated as an interest free loan and Mr. Vance could have amended his income tax. Mr. Vance disagrees. He could not have amended it. He asked the IRS and they told him he could not amend it because it was a spread of years from 2001 when the City made the error to 2005. He has a bill from the IRS for \$6,000 that he has to pay in May to pay the money back because Merrill Lynch did not send a 1099 on it. Mr. Huston explains that he was trying to point out that Mr. Vance had come to the Board before and said he was paying income tax on the \$250.00. Mr. Vance responds that he didn't apply for a loan, he didn't make the mistake and he didn't give himself the money. Mr. Huston states that sometimes unfortunate things happen in life. Mr. Vance doesn't think it wasn't an unfortunate thing. It was an error by Mr. Nelson's employee who made the error many times and nothing has been done to correct the errors. He is the one who is suffering for that employee's error. Why should he suffer for the City's mistake? Mr. Huston looks at the situation the Mr. Vance had \$21,000 and paid taxes on it and now he is paying it back and is not being taxed on that part he is paying back. He is trying to understand where Mr. Vance has been hurt. Mr. Vance explains that if he paid back \$21,000 at \$250 a month and he paid income tax on the \$21,000 to take it out how is he not losing that \$7,000. Mr. Huston states that he would have been paying tax on \$250 a month had it not been deducted. Mr. Vance points out that he still has a loss of \$7,000. Mr. Huston explains that he is not being taxed on the \$250 that is being deducted. Mr. Vance thinks that if he was being taxed on the \$250 then it would be additional money. He has already lost \$7,000. Mr. Huston states that if he had been taking the \$250 a month for a period of time it would have been in the 1099r and he would have had to pay taxes on it. It is a question of whether he paid tax in 2004 or paid tax as he went. The \$7,000 is not a dead loss.

Mr. Garcia-Linares asks how much money Mr. Vance pulled out for the personal situation with his father. Mr. Vance responds that it was \$256,000. Mr. Garcia-Linares states that caused the early withdraw penalty. He pulled the money out for a personal reason and now he is paying it back with no interest and no tax on the amount that was put into his account in error. The reason there is an early withdraw penalty is because Mr. Vance needed money for personal reasons. Mr. Vance agrees but the \$21,000 shouldn't have been in his account in the first place. Mr. Huston understands that Mr. Vance had \$21,000 that he was taxed on and now he is paying it back and is not paying tax on it.

Chairperson Sibley asks what Mr. Vance's request is of the Board. Mr. Vance responds that his penalty be deducted from the amount of money he owes the fund.

Mr. Space would like for Mr. Nelson to simplify what happened. Mr. Nelson explains that Mr. Vance was paid \$265,132 and he should have been paid \$243,544. He was overpaid \$21,588.83. That was a lump sum payment that was transferred from his DROP account to an IRA account that he had selected so it was a tax deferred transfer. As Mr. Vance stated he withdrew the money out of his IRA account in order to pay for needed funds to cover his father. When you take money out of an IRA and are under the age of 59-1/2 according to IRS law you are taxed a penalty of 10%. When Mr. Vance withdrew

the money he got a 10% penalty from the IRS and the penalty was assessed when he prepared his taxes because it is an early withdraw from an IRA account. Mr. Space clarifies that he paid the penalty on the \$265,000. Mr. Nelson agrees. Then he was taxed based on the tax bracket at the time of withdraw of the IRA account. He had to pay income tax on the money withdrawn and an early withdraw penalty. This was discovered 18 months after through an audit. How the error occurred was a miscalculation of his DROP amount that was later certified by the actuary. The first amount was not correct. His monthly accrual amount was wrong and therefore he had a larger amount in his account than he should have. The actuary certified the amount and disclosed that it should have been the lower amount of \$21,000 less. The Retirement office contacted Mr. Vance about the overpayment. The issue went to the Board and the Board made an arrangement to pay back that money without interest because an error was made. The tax effect was taken care of by taxing Mr. Vance's monthly benefit net of the amount he was paying back to the fund. He did pay the income tax when he withdrew the money from the IRA and he did pay the penalty however he is not getting the tax effect on the full pension amount he is receiving each year. They are covering the tax effect that he paid up front on the \$21,000 but they are not reimbursing him for the penalty and depending on the tax bracket at the time there may be a differential of what he earned at the time he paid tax on the \$21,000 versus what he is paying in tax today. Mr. Space asks if the actuary checked and approved the amount wouldn't they have some errors and omissions regarding this issue. Mr. Nelson informs that he would have to look at that. Mr. Space thinks they do.

Mr. Naclerio doesn't understand Mr. Vance's calculation. It seems to him that Mr. Vance paid the same penalty that anyone would have to pay. It is only the amount of the penalty on the amount he shouldn't have received that is in question. Mr. Space states that there is a \$2,100 penalty that was paid that the actuary approved. Mr. Nelson believes that the certification came after Mr. Vance was paid his DROP amount and that is when the error was caught. Mr. Space verifies that they were paying money before the actuary certified the amount. Mr. Nelson agrees. It wasn't the actuary's fault in this case. It was the calculation of the estimate of the DROP amount and that amount was transferred to Mr. Vance's IRA. It was certified after the fact and that is when the corrected amount was determined. Mr. Space states that there is \$2,100 in penalties that Mr. Vance paid that he has not been able to recover. On the income tax side because he receives his retirement income less the payment which means he is paying less tax than he did so he is out \$2,100. Is he out more money than the \$2,100? Mr. Huston explains that he is not sure he agrees with the calculation of the 10% penalty because that is a personal decision to withdraw from an IRA. Mr. Garcia-Linares believes that the issue is Mr. Vance withdrew the \$265,000 from the IRA because he needed it for personal reasons. If they had not put the extra \$21,000 then Mr. Vance would have had to go to a bank to borrow that money and he would have had to pay interest on the additional \$21,000 to pay for the personal expense. He thinks the Board has made it as neutral a situation to correct the error as they can make it. Mr. Nelson states that if Mr. Vance had not drawn out the money from the IRA it could have been transferred back to the Retirement System without a tax effect or penalty.

Mr. Easley points out that Mr. Nelson said that Mr. Vance is only taxed on a percentage of his pension to compensate for the error. What amount does that equate up to over the time period of the repayment until Mr. Vance got taxed on his whole pension amount? Mr. Nelson responds that he would have to look at Mr. Vance's income tax because it depends on the amount of his total income. Mr. Garcia-Linares states that they have basically given Mr. Vance an interest free loan until July 2010.

Mr. Naclerio asks Mr. Vance if he was going to get a loan for the \$21,000. Mr. Vance answers negatively. After his father died he paid the bills for his father's nursing home, medical care and everything else. Had the City done the right thing and found the error in a reasonable amount of time they could have taken that money back out of his account and corrected the problem and everything would have been fine. Mr. Goizueta asks how much interest the fund lost on the \$21,000. Mr. Nelson thinks it would have been about \$5,000.

Mr. Vance states that had the City corrected their error within 12 months from the time they made it they could have gone and taken it out of his IRA with no penalty and no income tax. They would have gotten their money back and he wouldn't have been penalized and taxed on money that was not supposed to be his. Mr. Huston explains that an income tax return can be amended up to three years after it is filed. Mr. Vance points out that they are talking from 2002 to the present. Chairperson Sibley asks when the mistake was found. Mr. Vance responds that he retired on October 1, 2001 and this happened 18 months later. Mr. Garcia-Linares points out that if it is a 2004 tax return that Mr. Vance can amend the return if he wants to. The letter from Mr. Vance's accountant states that the 2004 tax return is when Mr. Vance paid the 10% penalty. Mr. Vance informs that he paid a 10% penalty from 2003 to 2004. The money wasn't pulled out at one time. Chairperson Sibley believes that the letter isn't accurate. Mr. Vance believes that the letter is accurate because in 2004 he pulled out the last of the money.

Mr. Space states that the money was given out prior to the actuary certifying the amount and it was eighteen months later. The thing that bothers him is that this is the second time they have had an issue like this. He doesn't see in his mind that Mr. Vance is out due to the income tax but he does see that he is out \$2,100 in penalties that shouldn't have happened because the procedure the City did to give out money prior to the amount being certified by the actuary.

A motion was made by Mr. Naclerio and seconded by Mr. Space that Mr. Vance receives a credit of \$2,100.00 on the amount he is paying back to the City due to the overpayment.

Discussion:

Mr. Garcia-Linares thinks that before they consider this issue he thinks Mr. Vance's accountant should tell the Board why Mr. Vance cannot amend his 2004 tax return to get credit back for 10% of the \$21,000.00. He doesn't think they should be giving \$2,100 away. Mr. Vance states that the IRS told him that he cannot amend his income tax return. Mr. Huston informs that they can always amend a return. Mr. Vance asks what he would

be amending. Mr. Huston explains that he can take the \$21,000 out and not claim the penalty. Mr. Vance asks how he can take it out when it has to be done within 12 months. Mr. Huston disagrees. It can be done in 36 months. Anytime you file an income tax return you have three years to amend it. Mr. Vance explains that the error was made in 2001. Mr. Huston points out that the income tax return they are speaking about is 2004 according to the letter from Mr. Vance's accountant. Mr. Vance states that 2004 was when he made the last withdraw from his IRA. Mr. Huston explains that if Mr. Vance takes the position that the \$21,000 was the last of the money to come out of his IRA then he can amend his return and would be able to claim a refund. Mr. Vance states that the IRS has told him that he has nothing to amend. Mr. Huston explains that Mr. Vance filed an income tax return for 2004. He can amend that return up to three years and to not put the penalty on the return. Mr. Vance states that it comes in a 1099 from Merrill Lynch and the IRS asked if he took out the money before he was 59-1/2 and he did and the IRS told him that he owed the penalty. Mr. Huston explains that it was a loan. It was not income. Mr. Vance disagrees that it was a loan. It was the City's error. Mr. Naclerio comments that to him the position on the return would be that the money was taken out of the IRA and under normal circumstances there would be a 10% penalty but it turns out that the \$21,000 was not supposed to be in the IRA in the first place so the money is being paid back. He did not have the use of the \$21,000 so therefore the penalty should be taken off and he will owe fewer taxes because he shouldn't have had that \$21,000 in his IRA.

Mr. Diaz thinks they are making Mr. Vance jump through hoops for another error the City has made. Mr. Vance adds that he hasn't even received an apology from the City for this mess. Instead he received a letter requesting the \$21,000 back. Chairperson Sibley informs that they are working on a money issue here and not personalities.

The motion was restated:

A motion was made by Mr. Naclerio and seconded by Mr. Space that Mr. Vance receives a credit of \$2,100.00 on the amount he is paying back to the City due to the overpayment. Motion failed (3-6).

Chairperson Sibley asks Mr. Huston if he could give Mr. Vance some direction as to how he can alleviate this problem. Mr. Huston states that he is not Mr. Vance's accountant, he would not do Mr. Vance's tax return and he is not a practicing accountant anymore. He suggests that Mr. Vance amend his 2004 tax return, take off the amount of withdraw that turned out to be an overdraw and take off the penalty. Chairperson Sibley asks if the City could provide Mr. Vance with a letter stating that there was an overpayment and a mistake made in figuring out Mr. Vance's final DROP amount so Mr. Vance has a hard copy to give to his accountant to present to the IRS. Mr. Garcia-Linares adds to also put in that letter that in 2003 the \$21,000 was a loan that the system gave to him and he is paying back the system so it is now a loan and not income. Mr. Naclerio informs that Mr. Vance indicated he does not have an accountant. Is that the intent that Mr. Vance pay for an accountant to do this for him? Chairperson Sibley comments that if Mr. Vance wants to pay for an accountant to present this to the IRS that would be his option. He thinks that the City should provide him with a letter. Mr. Nelson informs that he will

prepare a letter that clarifies the amount Mr. Vance should have received, the amount he did receive and how it was overpaid and that he is paying it back over time. Mr. Easley asks why the City doesn't try to contact the IRS and resolve this situation for Mr. Vance. Mr. Nelson informs that they can't do that. They will clarify their position so it is clear and Mr. Vance will need to file his individual tax and deal with the IRS.

Mr. Vance would like for Mr. Nelson to explain why this type of situation happened with another police officer for \$28,000 and the Retirement Board agreed to forgive that repayment and explain why he is being forced to pay back the \$21,000. Mr. Nelson informs that he spoke with Ms. Groome and they went back through the records. They found no evidence that the Retirement system forgave a debt that was owed to the system. Administratively they cannot forgive an amount that is owed to the Retirement System it must come to the Board.

7. Discussion and selection of candidates for consulting services: Bogdahn Consulting; Burgess Chambers & Associates; Merrill Lynch Consulting Services; Southeastern Advisory Services; and Thistle Asset Consulting. This item was tabled at the February 14, 2008 Retirement Board meeting. (*Agenda Item 9.*)

A motion was made by Mr. Garcia-Linares and seconded by Mr. Huston to retain Merrill Lynch as the consultant.

Discussion:

Mr. Space states that at the last meeting he presented a paper from the actuary showing what the present status is with the retirement shortfall. Back in the 2000 to 2003 timeframe they had a perfect storm. They had a combination of an actuarial assumption of 9%, a risky portfolio that was designed to obtain the 9%, an excessive amount of overtime slanted toward the retiring personal and a stock market downfall. Those four things together created a situation where they had a \$121 million actuarial shortfall in the system. To pay that off it turns into a 30 year mortgage. To pay off the \$121 million it is over \$300 million over 30 years which they have paid on between three and five years. In addition to the \$121 million hit, since then the actuarial shortfall has jumped to \$161 million and \$161 million over 30 years ends up being \$400 million that all of the citizens of Coral Gables end up paying in their taxes. Every time they have a shortfall it ends up being a 30 year mortgage. They have not made their actuarial assumptions year to year and if any of the assumptions are wrong it can give the plan a shortfall year to year. The Board's responsibility in addition to their administrative duties is to invest the retirement funds to give them the highest returns as possible while being conservative, risk adverse, cost conscious, informed and pragmatic. From time to time he has asked various consultants what they can invest in just to educate the Board. He is not looking to invest in derivatives for example. The results they have had since 2003 have been mediocre. Merrill Lynch has brought to them month to month the plan's returns and they are always in the middle. The same people that are giving them information are sitting in Jacksonville making more money than the plan is. They have four independent consultants trying to show better results for the plan and in the past three years have made

2% or better in returns in a conservative way with no lawsuits than this plan has year to year.

Mr. Space continues. They are involved in too many lawsuits. They are suing UBS and he doesn't know what they are going to get. Looking at UBS itself in the Wall Street Journal dated February 15, 2008 they wrote down \$18.4 billion and they have \$70 billion of bad paper to write down in the future. They may not have any money to give them anything if the plan wins the suit. They are talking about trusting people in New York who are writing off bad mortgages they never checked on. He thinks it is better not to be in lawsuits and get together with a company that is not being sued. He checked the references himself of the independent consultants they are looking at. He didn't wait for Ms. Groome to do it for him, he did it himself. He talked to Tallahassee Hospital and they have had Thistle for 20 years with no lawsuits. In his mind the people in charge of large companies worry about their salaries. The big companies have proven to be a bad idea for this fund based upon the results of the fund. Who has brought new ideas in investment strategies forward from the big companies they have had? It was the Board members who have brought up new ideas. When you look at smaller companies you look at dealing with the principal. The principal has to make payroll. Their month to month is based on serving the customer and making payroll. They have to be customer focused because that is where their money comes from. They have one line of business which is investment consulting. All four companies they are talking about have a line of business which is managing money and focusing on the fund.

These firms are representatives at the FPPTA. They are teachers. He read an article about Countrywide. Countrywide canceled their annual ski trip at the Ritz Carlton in Colorado. It turns out that they have a four hour seminar in the morning, the go skiing, eat \$150 meals and stay in \$400 rooms. When you go to an FPPTA seminar you sit six and a half hours in class. You do homework overnight. You interface with actuaries from other parts of the United States. You have the opportunity to sit with your actuary and understand what is really going on. It is not tea, coffee and golf. It is a serious teaching seminar of three courses and that is what goes on at the FPPTA seminar that Chairperson Sibley always talks about. You have people from all over Florida, Georgia and Alabama. It is an actual educational seminar. You have access to the small companies and access to the CEOs of the small companies. They have the same data as the big companies because they subcontract it. They have focused brainpower by senior associates toward the fund's well being. They get better returns. The better returns they get now can fund this program for future employees. Every year these independents have beat the fund's returns by at least 2%. His choice is a tie between Thistle, Burgess and Bogdahn with Southeastern closely following. But in the final analysis because of better returns and better service his vote is anybody but Merrill.

Mr. Naclerio asks if the City decided to fully fund the pension would the City have to borrow from somewhere else to compensate for the money they put in the pension. Mr. Nelson answers affirmatively. Currently they have \$161 million of unfunded liability. The assets are under funded compared to the liabilities. If they were to stop the plan right now they would need \$161 million to continue to operate the pension plan for the current

retirees and current employees. That is funded over 30 years. Out of the City's \$23.5 million annual contribution payment, \$13 million pays the past debt. The other \$10 million goes to pay for the current cost. They had a discussion before about going out and issuing a bond and taking those funds and paying a level debt payment and investing. That is one approach. The other approach is what they are doing now. Back in 2001 they were 100% funded. It was a result of the market. Mr. Naclerio believes that if the City decided to fully fund the pension it would have to get the money from somewhere. They will have to go out and borrow money from some place to do that and there are going to be costs associated with that. They can't look at the fact that if they want to pay off the mortgage that they have to look where they are going to get that money. It looks to him that the money is being used by the City for City purposes and as a financial officer Mr. Nelson has decided that this is the best way they can manage it. Mr. Nelson agrees. The City can go out and borrow \$161 million and pay it back over 25 years and a rough estimate would be about an \$11 million payment versus \$13.5 million now. The negative is you take that \$161 million and put it in investments and the investments go down and now they would have the guaranteed debt. That fluctuates. Over the long run between 25 and 30 years their anticipation is to earn an actuarial return of 7.75% which is the assumption rate. Historically they have earned a 9.4% in the plan since inception. If they borrow \$161 million they would pay about 5.5% interest rate and lock it in for 25 years with the assumption that they would earn more than that over the next 25 years. The \$161 million doesn't go away without paying it back somehow and someway. Their anticipation is if they keep the plan as it is now, do not increase benefits and do not increase the plan provisions that actuarially it would take 30 years to pay it off.

Mr. Space thinks that the problem is year to year since the \$121 million hit the number has been going up. It is up from \$121 million to \$161 million because the returns they have been making since 2003 have not been sufficient to cover the actuarial numbers each year that amount grows. Mr. Huston asks if they lower the assumption rate further what would that do to the actuarial shortfall. Mr. Nelson replies that the City's contribution would be higher to fund the difference because you are assuming a lower return on the plan assets. You would have to fund more to make up the difference. The Board is trying to hire a consultant that can give the plan out performance and get into the upper quartile consistently.

There was no more discussion regarding retaining Merrill Lynch and the question was called.

Vote:

Mr. Diaz – No

Mr. Geraci – No

Mr. Naclerio – Yes

Mr. Easley – No

Mr. Goizueta – Yes

Mr. Sibley – No

Mr. Garcia-Linares – Yes

Mr. Huston – No

Mr. Space – No

Motion fails (3-6).

Ms. Groome gives an update regarding the consultant finalists. In the Board's packages is an email from Mr. Bogdahn which explains the bigger funds their firms has. She also

spoke to Mr. Swanson of Southeastern about his Wells Notice and he informed that there is an agreement in principal with the SEC and it will be approved in April. Once it is approved Mr. Swanson can release the specifics in the agreement. Mr. Swanson also informed that the reason why he received the Wells Notice is because of administrative issues with Merrill Lynch. Because Mr. Swanson was part of the marketing group with Merrill and his name was on their Requests for Proposals. When the Requests for Proposals were sent out they did not match Merrill Lynch's disclosure statement and that is why the SEC sent the Wells Notice to him because of that. Mr. Goizueta informs that he also spoke with Mr. Swanson and he told him that same thing. He told Mr. Swanson about his concerns with the liability issues and Mr. Swanson informed that Southeastern can meet any insurance they ask them to have.

Mr. Space respects everyone's opinion on this Board. They are all trying to make the best decision for the fund. Of all the groups out there he likes Thistle the best and the reason why is because of the 20 year relationships they have with their clients and the great reports from their references. Their fees are \$60,000 less than the other finalists.

A motion was made by Mr. Space and seconded by Mr. Huston to hire Thistle Asset Consulting as the fund's consultant.

Discussion:

Mr. Geraci informs that he is not convinced of the three candidates Mr. Space recommended. He personally doesn't have enough information to settle on one. He went through the minutes and has gone over the information given by the finalists. He has read through all the references of each company. He would feel more comfortable if they had an opportunity to narrow this down to two firms and have them come back in and let the Board address the questions they may have. He knows some of the Board members were concerned about the back offices of these firms and if they really have the tools to do the job that a bigger company does. Rather than making a decision at this meeting he would like to pick two out of the four finalists and have them come back in and make another presentation to the Board. He would feel better personally as doing their due diligence on this and he knows in the past the other Boards must have ached about doing these type of decisions as well. He would like to break this down further. From the 15 responses down to the four finalists he would like to look at the two best out of the group instead of making a decision on one firm.

Mr. Naclerio offers an amendment to the motion. A condition of the retention the firm they choose must carry liability insurance in the amount of the perspective damages they are claiming from UBS/Paine Webber which is \$25 million. If they have a situation like what they have with UBS/Paine Webber in the future he would like to be assured that a smaller consultant firm has a fund available to satisfy the fund.

A motion was made by Mr. Space and seconded by Mr. Huston to hire Thistle Asset Consulting as the fund's consultant and that they have liability insurance in the amount of \$25 million.

Discussion:

Mr. Space states from a business point of view he asks himself how he could avoid a lawsuit in the first place. He doesn't know what the right amount would be for liability insurance to impose on the cost side for the people they are trying to hire in the first place. Mr. Huston thinks that the firms will pass it back to the fund and charge a higher fee. Mr. Naclerio believes that for future Board's they can't put themselves in a situation where if they have a consultant and the consultant gives them poor advice and they lose money on it they will have to recover what that amount is.

There was no more discussion regarding hiring Thistle and the question was called.

Vote:

Mr. Diaz – No	Mr. Easley – No	Mr. Garcia-Linares – No
Mr. Geraci – No	Mr. Goizueta – No	Mr. Huston – Yes
Mr. Naclerio – No	Mr. Sibley – No	Mr. Space – Yes

Motion fails (2-7).

Mr. Garcia-Linares thinks they have to make a decision on whether or not they are going to require the \$25 million for insurance. If the answer is yes then the Board should require it. He thinks they are better off going back to the consultants and ask whether they can carry the insurance and pay the cost before they pick one of those firms.

A motion was made by Mr. Garcia-Linares and seconded by Mr. Goizueta that whoever the Board hires should have at least \$25 million in insurance at their expense.

Discussion:

Mr. Diaz thinks they have delayed this decision long enough. They keep adding amendments and this has been going on for four to five months. He doesn't have a problem with requiring the insurance.

Vote:

Mr. Diaz – Yes	Mr. Easley – Yes	Mr. Garcia-Linares – Yes
Mr. Geraci – Yes	Mr. Goizueta – Yes	Mr. Huston – No
Mr. Naclerio – Yes	Mr. Sibley – Yes	Mr. Space – No

Motion approved (7-2).

Chairperson Sibley agrees with what Mr. Diaz stated that there have been too many delays in making a decision. Ms. Groome informs that she can contact the finalists and see how much they would be willing to pay for the insurance and then bring that to the Board. Mr. Garcia-Linares asks Mr. Greenfield if he thinks it is reasonable that the Board require \$25 million insurance from the consultant. Mr. Greenfield responds that it is not unreasonable but whatever the Board decides they have to make certain that each of the finalists are asked the same question and are told the same thing. Mr. Goizueta

asks Mr. Nelson if he thinks \$25 million insurance is adequate. Mr. Nelson believes that \$25 million liability insurance coverage would be the minimum requirement.

A motion was made by Mr. Geraci and seconded by Mr. Space that the Board contact the three remaining finalists; Bogdahn, Burgess and Southeastern; and ask them to come in and make a presentation to the Board at a special meeting and in the interim contact them and explain the need to have the \$25 million liability insurance and that a decision will be made at the special meeting. Motion unanimously approved (9-0).

At this time Mr. Goizueta had to leave the meeting.

8. Investment Issues. *(Agenda Item 8).*

Troy Brown reports on the investments. Merrill Lynch believes that they are in a recession as of the beginning of January and a lot of the numbers are starting to play that out. There hasn't been a recessionary period in which all the inflation of the previous expansion has been removed by the Fed from the market. The new credit facility created by the Fed is taking in non-agency debt as collateral to increase liquidity into the system. If you consider a \$200 billion credit facility and just over \$4 trillion outstanding mortgage debt it is a drop in the bucket. It is not intended to solve the problem it is intended to increase liquidity and that is the issue at this point in the market. It is liquidity within the credit system itself.

Mr. Space asks if there is any way for a fund like this one to be a little more nimble. He knows they aren't supposed to time the market but with all these mortgages going down commodities have been going through the roof. Is there any way for a fund like this to be nimble in that type of investment? Mr. Brown explains that there is a way to invest in commodities but he doesn't think there is a way to be nimble enough to get into those investments when it is moving. He would not advise it. He is a firm believer to have a consistent strategy regardless of market conditions. He thinks the Board should take the time to investigate new ideas like infrastructure and just because you go through the time to understand a new concept doesn't mean it will be right for the fund.

Mr. Brown informs that as of last week the portfolio has the new international funds. There was an issue regarding Thornburg Mortgage on the day their mutual funds were to be purchased. He was reassured that the type of investment they are in has no commingled assets, can't buy the debt of the other and has no impact on the investment company related to Thornburg Mortgage. Because of that they made the purchase of the Thornburg mutual fund. They are fully invested right now. Regarding this Board they have been in a maintenance mode as far as getting the structure to where they want it to be. When he started working with the Board they had an i-share and they needed to find value managers. Then the growth manager started to fall out of favor and Merrill Lynch did the private equity deal and it became more imperative to get rid of that manager. Then they had the people leaving The Boston Company so they had to do that change. He is looking forward to bringing forward diversified fixed income. They have this small

cap and the international exposure that they use to diversify equity. On the fixed income side of the portfolio they are tied to the US yield curve and the non-treasury credits which will widen dramatically. What he thinks is a great idea for this plan whether or not they decide to stay with Merrill Lynch is to look at decoupling some of the fixed income returns from the US yield curve and that means global fixed income investment. He tabled that discussion last time and he knows that Mr. Swanson introduced it when he was with the Board. He thinks that is something the Board should look at and consider. One of the fund's managers, Loomis, has one of the best global fixed income offerings out there in an institutional fund. There are a lot of opportunities on a more traditional level that will enhance the returns and give the fund a more stable return pattern.

Mr. Brown reports on the fund's February performance. Each of the new large cap managers outperformed the benchmark. They are going to see a negative quarter because of the market performance. A couple of months ago the Board approved to move to a target of 20% in international equity from a current target of 15% with an equivalent increase in the investment policy to 20% and increase that range from 15% to 25%. At that time they still had the i-share and the Board wanted to get the i-share funded into the new managers. Now that is done. They will take large cap equity down to 35% and increase international to 20% so there will be a withdrawal from each of the large cap managers as well as \$6 million from fixed income. This is just for informational purposes. It does not need to be approved by the Board since the Board already approved the change to 20% in international equity.

9. Items from the Board attorney. (*Agenda Item 3*).

Mr. Greenfield reports on the UBS/Paine Webber lawsuit. There are nine more depositions that UBS wants to take. They want depositions from former Board members Robert Schreiber and Victoria Siegel, Walt Rogers; former actuaries Wally Wilson and Larry Wilson; Commissioner Withers, Liz Hernandez and his deposition. He thinks this is UBS's way to go to the court and say that they aren't ready for the scheduled trial. He doesn't know if that is the case but he is just guessing. Mr. Garcia-Linares asks if the judge issued a trial date. Mr. Greenfield answers affirmatively. Mr. Garcia-Linares asks if they have agreed on a mediator or mediation date. Mr. Greenfield responds that he is not aware of that. Mr. Naclerio violently objects to any postponement of the trial date due to these depositions. He hopes their attorney opposes this violently. Mr. Greenfield informs that Mr. Carlson has said he is ready to go to trial. Mr. Garcia-Linares states that the judge will not have the case go to trial until the case goes to a mediator so they need to agree on a mediator and get this thing mediated as soon as possible. Mr. Greenfield will update the Board on the progress. Mr. Geraci asks if it is the UBS Company fighting this or is their insurance company fighting it. How does that work? Mr. Greenfield can't specifically answer the question except that the attorneys representing UBS are representing UBS. In some cases you have counsel and you have the insurance company's counsel and in this case they don't have that situation.

Mr. Greenfield reports on the Piñon case. They had oral arguments last week on the Piñon matter. He expects that the appellate court will probably come down with their

ruling in about a month. Their position was argued and Piñon's attorney argued his position. He thinks it went well.

Mr. Greenfield reports on the matter relating to Troy Easley's position on the Board. There is a hearing coming up in the next few weeks relative to the City's motion to dismiss. The City is going to proceed forward with the argument that the Board should be named as a party and therefore the case dismissed until the Board is named a party. Mr. Naclerio thinks he understands what the City is doing with necessary parties but it seems to him that if the City is taking the position that the Board should be in this case and the Board has to hire an attorney to defend or not defend he thinks the retirement system should be reimbursed by the City for whatever those fees might be. Mr. Diaz asks why the City believes the Board should be in this case. Mr. Greenfield informs that it is because they believe whatever relief maybe granted would affect the Board. Since it would affect the Board they believe the Board should be in the case. He doesn't think the Board needs to be in the case and he thinks the Board can tell them with certainty that whatever the Court rules the Board will follow. He has stated that to the City Attorney.

A motion was made by Mr. Garcia-Linares and seconded by Mr. Naclerio that the Board Attorney attend the hearing and make it clear to the Court the Board's position.

Discussion:

Mr. Naclerio would like to communicate to the City that if this Board has to get involved they would like to be reimbursed for attorneys fees. Mr. Diaz agrees. They should follow whatever the Court says in whatever decision they make.

Motion unanimously approved (8-0).

Mr. Greenfield talks about two things that Ms. Groome included in her Administrative Report. In an article, there was a question about the Board's culpability in self dealing and that particular instance it was in Alabama. They were financing a company and the company they were financing was going to be acquiring another company. The Board went out and bought stock in the company that was going to be acquired and made a profit on it because they knew the deal was going to go through because the Board was doing the financing. The court said that was self dealing. This Board doesn't have that type of investment and they don't engage in that type of activity so that particular article has no relevancy to this Board. The article that has some relevancy is the article that deals with the conflict of interest that Board members may have. In his opinion he doesn't believe the Board has a conflict of interest. However this article reports that there was a benefit that went to a person because the person was on the Board and the person was also a member of City management. The Board voted on items dealing with reimbursement to the City or making the City pay for whatever shortfall there was and the Court said in Louisiana that the person who voted on it had a conflict of interest because it was to their benefit. That specific item isn't really relevant to this Board because they have no person of high City management that is on the Board that would rule on something like that. Mr. Nelson is the Trustee and not a Board member so there

is no conflict of interest. The decision is under appeal and it could have other affects on Boards throughout the country. For example if the Board should vote on a matter that would affect the employee contributions to the plan that would be a conflict. The contributions are based on a percentage of the employees' salary and not a percentage of contributions. In the makeup of this Board he doesn't believe they have any potential conflict of interests and he feels confident that he can advise this Board under these instances that there is no conflict he perceives.

Mr. Huston asks if Mr. Greenfield could comment on the California case, Lexin vs. Superior court. Mr. Greenfield explains that Cathy Lexin was on the Board and was the City Human Resources Director. She was charged with violating fiduciary responsibilities because of repeatedly allowing the City to under pay their contributions to the plan. Ms. Lexin was a ranking member of management that made managerial decisions on behalf of the City and on the other hand she was a board member voting on that particular instance. It would have been better for her to walk out of the meeting without having to vote on that issue. If it appears to be a conflict of interest you can't vote on something that may be a conflict. This Board has no high ranking member of management sitting on this Board and making decisions that would be in conflict.

Mr. Garcia-Linares understands that the US Supreme Court came out with a ruling that individual participants of a retirement plan can sue trustees directly and before they had to sue on behalf of the plan. He doesn't know if it affects this plan but it is something they need to take into consideration. He wants to know if that case affects the Board members. If that is the case do they have enough coverage? Mr. Greenfield informs that he read the case and doesn't believe that it affects this plan. It was an ERISA case and it was one where it was a self directed 401K. They said if someone has a 401k they have a right to self direct and as fiduciaries they had to follow that direction. Mr. Garcia-Linares would like for Mr. Greenfield to look into it and at the next meeting report to the Board whether that ruling affects this Board, if the Board members can be individually sued and if they have enough coverage if that should happen. Mr. Space would like to see the errors and omissions paper that tells them what type of insurance they have and what is covered so they can have a good conversation as to what they really have. Mr. Huston remembers that some time ago Mr. Nelson reported to the Board that the City had agreed to indemnify Board members. The indication was that the Board would have the City hold harmless against individual citizens. Mr. Space wants to see the document. Chairperson Sibley informs that at the next meeting they would like nine copies of that document. Mr. Garcia-Linares adds that they are asking for the indemnity agreement and the errors and omissions insurance policy. Mr. Greenfield informs that he will check that ruling again and report back to the Board.

10. Old Business.

Ms. Groome states that a couple of months ago they invited Commissioner Cabrera to the Board meeting. Does the Board want to continue inviting the Commissioners and Mayor to their meetings? The Board indicates that it would like to continue the invitations. Mr. Space informs that he will invite Commissioner Withers to the next meeting. Mr.

Naclerio comments that he would like for the Commission to know that he would still like to have a workshop between the Board and the Commission.

Ms. Groome reports that they had an issue regarding a disability retiree Tim Clark who was going to be reduced from 75% to 66-2/3% about a year ago but they didn't reduce him because he had an issue with the City regarding his workman's compensation. That issue has been dismissed as of July 2007 and she will be sending Mr. Clark a letter asking him if he wants to come before the Board again to state his reasons why he should stay at 75% and not be reduced.

11. New Business.

Ms. Groome informs that she has a copy of the Strategic Property Report for the quarter from JP Morgan if anyone wants to look it over. The Board members informed that they already receive that document from JP Morgan.

Mr. Diaz asks Mr. Nelson if the firefighters are getting their contributions returned for the 16 months that they didn't have a benefit. Mr. Nelson explains that the calculations were done for the firefighters for the period May 24, 2003 through September 30, 2005. The individual amounts and interest have been calculated and they are waiting for the union president and City administration to sign off on the agreement. The checks are sitting on his desk waiting to be released. It is the same calculation that the police received and the same rate of interest. The only difference is the amount of months. The refunds are coming out of the General Fund. Mr. Diaz thinks they may have a problem with one other class of employees. The police aren't contributing and now the firefighters for that time frame. They have some police majors that were contributing and are not getting their refund back. Mr. Nelson informs that is an issue between the police union and the City administration. Mr. Diaz informs that the police majors are not represented by the union. Chairperson Sibley thinks they may need to come before the Board and state their case. Mr. Nelson informs that the administration is dealing with that issue.

Meeting adjourned at 10:49 a.m.

Set next meeting date for Thursday, April 10, 2008 at 8:00 a.m. in the Youth Center Auditorium.

APPROVED

WAYNE S. SIBLEY
CHAIRPERSON

ATTEST:

KIMBERLY V. GROOME
RETIREMENT SYSTEM ADMINISTRATOR