

City of Coral Gables City Commission Meeting
Agenda Item I-1
April 8, 2014
City Commission Chambers
405 Biltmore Way, Coral Gables, FL

City Commission

Mayor Jim Cason

Vice Mayor William H. Kerdyk, Jr.

Commissioner Pat Keon

Commissioner Vince Lago

Commissioner Frank Quesada

City Staff

City Manager, Patrick Salerno

City Attorney, Craig E. Leen

City Clerk, Walter J. Foeman

Deputy City Clerk, Billy Urquia

Public Speaker(s)

Jim Linn, City's Pension Outside Counsel

Agenda Item I-1: [Start: 12:17:23 p.m.]

Resolution of the City Commission of the City of Coral Gables, Florida, relating to the Retirement System for City Employees; authorizing the City Attorney to take legal action on behalf of the City and the Retirement Board against The Nyhart Company and Stanley Holcombe & Associates, as actuaries for the Retirement System, to recover damages caused by the actions of The Nyhart Company and Stanley Holcombe & Associates relating to application of the maximum limits on retirement benefits contained in Section 415 of the Internal Revenue Code, and any other claims the City and Board may have; authorizing the City Attorney to engage outside legal counsel to assist in taking such necessary legal action; providing for full force and effectiveness; providing for repeal of conflicting resolutions; and providing an effective date.

Mayor Cason: Let's move onto I-1.

City Attorney Leen: Yes Mr. Mayor. Thank you. Jim could you come up. Item I-1, I'm going to briefly introduce it to you and then Jim Linn, our Outside Pension Counsel is going to speak. Item I-1 relates to a decision by the Commission in the past related to the Pension Board Actuary. You can remember, I think, awhile back when we presented to the Commission the issue of the Pension Board Actuary. What had happened was the Pension Board had rehired him under his contract, there was an appeal – basically the City Commission reviewed that decision and authorized my office to do a review of the Pension Board Actuary with Outside Counsel to come back to the Commission with recommendations. At that hearing, at that Commission meeting, and I'll have Jim Linn speak more about what your actual findings were, but what you determined was that the actuary had committed certain acts that essentially forfeited his right or ability to be the actuary for the City. You reversed the Pension Board action, you directed that he not be the actuary and that they hired another actuary, and then you directed my office to do a review of any potential causes of action that we may have against the Pension Board Actuary. My office prepared a Litigation Report. I spoke to you each individually about that and I then went forward and decided on my own authority to prepare a complaint and to present this item to you; and we have not attached a complaint, more because of legal strategy. We don't want the Pension Board Actuary to know every single count that we are thinking of bringing, but what I would tell you, and of course if any of you want to see it individually, please come by and I'll be happy to show it to you, but what basically the complaint will do is, it asserts against the actuary the whole issue related to 415. All the harm that was caused to the City based on the 415 issue, and as you may remember there were a couple of settlements that were reached, we established a preservation of benefits plan for a temporary time to address some of those issues. We eventually had to amend the Code related to D.R.O.P. and to when people could delay D.R.O.P. There were a lot of attorneys' fees related to that. There was cost related to that. There was the amount of money that we had to pay because of the 415 error, which in our view was the error of the actuary and his judgment, and then there was the future cost, because we are going to have to continue paying these monies until all the 415 issues are resolved; and with that what I'm asking the Commission today is to authorize my office to go forward with that lawsuit and I'd like to turn it over to Jim Linn, who would be the Outside Counsel I would hire to do that. I have great confidence in him. I'd like him to speak a little bit about the matter.

Commissioner Lago: Mr. Linn, how are you?

Mr. Linn: Good. Craig's outlined it pretty well. What this really boils down to is the fact that for a number of years the previous Pension Board Actuary did benefit certifications which were provided to employees at the time they entered the D.R.O.P. and benefit certifications with one exception did not inform any of the employees that their benefit could be affected by the 415 limits, and the actuary was in a position to know about these federal limits on benefits and should have included in the benefit certifications some indication that the benefits were likely to be

reduced, and so we have the one case of the former Assistant City Manager where there was an 80 percent reduction in the benefit that's probably the "poster child" for the damages that occurred and of course the City ended up settling with her and as Craig said, setting up a preservation of benefits plan to essentially make up for the reduction in benefits caused by the application of 415 limits, and in my opinion and in the opinion of the City's actuary the plan actuary should have (a) been aware; (b) put the Board and the individual plan members on notice that these benefit reductions could occur, and because he didn't do that we believe there are several causes of action that the City could pursue against him, against his company, and you may recall in 2011 the actuarial firm was acquired by another company Nyhart, which is a national nationwide actuarial firm.

Mayor Cason: What is the – I assume that the company that we are going to, if we approve this and take legal action has liability insurance?

Mr. Linn: Yes. Well they are required to have liability insurance as a condition of the contract.

Mayor Cason: And how much are we potentially out from the actions of this?

City Attorney Leen: Can I answer that? I've asked Mr. Linn to put together an estimate of the damages. I don't want to limit them by anything I say here, but in my view it's at least \$900,000 that we would sue for.

Mayor Cason: OK.

Commissioner Keon: I'll make the motion.

Vice Mayor Kerdyk: I'll second.

Mayor Cason: Commissioner Keon makes the motion, Vice Mayor seconds it.

City Clerk

Commissioner Quesada: (Absent)

Commissioner Keon: Yes

Vice Mayor Kerdyk: Yes

Commissioner Lago: Yes

Mayor Cason: Yes

(Vote: 4-0)

Mayor Cason: Thank you very much.

[End: 12:23:20 p.m.]