AMENDED MINUTES
ROCKFORD POLICE PENSION BOARD
SEPTEMBER 23, 2013

MEMBERS PRESENT: Jeff Nielsen, President
Marcia Mueller, VP
Matt Williams, Secretary
Mike McDonald, Assist Secretary
Scott Laue, Trustee

ABSENT:

ALSO PRESENT: Roberta Holzwarth – Holmstrom & Kennedy
Al Mezny joined meeting at 9:40 a.m.

GUESTS: Attorney John Rearden
Karen Fysh

STAFF: Ted Dutkiewicz, Finance
Linda Wlaznik, Finance

The September 23, 2013 Rockford Police Pension Board convened at City Hall 425 E. State St., Jeff Nielsen called the meeting to order at 8:02 am.

MINUTES

Motion by Mueller and seconded by Laue to approve minutes of the July 18, 2013 Board meeting as corrected. After discussion Mueller withdrew her motion and Laue withdrew his second.

Motion by Mueller and seconded by Laue to table the approval of the July 18, 2013 Board meeting minutes. APPROVED.

Motion by Mueller and seconded by Laue to approve minutes of the August 15, 2013 Board meeting. APPROVED.

PUBLIC COMMENT

NONE

OLD BUSINESS

Attorney Holzwarth stated that a letter was sent to Karen Fysh reflecting the board's decision to table the matter regarding the overpayment issue that had arisen until today's meeting. Attorney Holzwarth stated that communication from Attorney Rearden stated that he would be representing Ms. Fysh. At this time the Ms. Fysh has received the corrected pension amount, but has not yet been required to start repaying the overpayment.

Representing Karen Fysh, Attorney John Rearden addressed the board regarding the overpayment issue being considered. His letter and attached documents were received by the Board. Attorney Holzwarth and Attorney Rearden provided the following documents to be considered by the board: (1) a calculation report from the Fund's records, (2) the 1992 application of Geoffrey Fysh, (3) the 2000 application of Karen Fysh for survivor benefits, (4) minutes of the board's meetings on August 21, 1992 and September 21, 2000, and a 1099R from 1992. Attorney Holzwarth stated that Attorney Rearden may submit additional 1099Rs after the meeting if he wished to do so. Attorney Rearden stated that he did not believe that the error was subject to correction under the law. Attorney Rearden noted that no error had been made on either Geoffrey or Karen Fysh's part. He argued that Section 3-144.2 of the Pension Code does not apply in this case and that the prior decisions of the Board in approving Geoffrey's initial pension and Karen's survivor benefits are subject to the 35-day deadline for review under the Administrative Review Law. Attorney Holzwarth asked if there was any information that would suggest that the asserted error was something other than an error on the part of the pension fund, such as an intentional interpretation of the Pension Code. Attorney Rearden stated that he had not seen anything to this effect. Attorney Holzwarth asked whether, if the asserted error was not based on an intentional interpretation of the Pension Code, it was it his position that the *Sola* case and the 35-day rule under the Administrative Review law would trump Section 3-144.2 of the Pension Code, or whether Section 3-144.2 and *Sola* can be read in conjunction with each other. Attorney Rearden stated that it was a confusing set of cases on this issue, but that *Sola* is very strong and the pension board there asserted its overpayment was based on an error that could be corrected under Section 3-144.2, and the court disagreed. Other courts have reached the same conclusion, such that it is his opinion that the 35-day rule trumps Section 3-144.2. Attorney Rearden also stated that if there is any error here, it certainly wasn't the type of error intended to be covered by section 3-144.2. Mueller asked if there was any evidence of the calculation having been provided to Geoffrey and asked whether the calculation normally is sent to the pensioner. Wlaznik stated that she was unaware of the protocol at that time. Currently her practice is to give the calculations to the retirees, but she could not speak as to what was done before. Mueller noted that she asked this question because she wished to determine whether the pensioner might have been aware there was a miscalculation of the pension but did not bring the correction forward. Attorney Rearden noted that Geoffrey put on his own application 22 years. Mueller stated noted that was in his application, but since the benefit calculation states 23 years, she was interested in whether Geoffrey might have been aware of the miscalculation and actually took any steps to correct it. Attorney Rearden asked Mrs. Fysh if a calculation was provided. Mueller asked that Mrs. Fysh be sworn before responding. Attorney Holzwarth swore in Mrs. Fysh. Attorney Rearden then asked Mrs. Fysh, "Were you provided these calculations?" Mrs. Fysh stated "No, not that I know of." Attorney Rearden asked "Was your husband provided these calculations." Mrs. Fysh responded, "Not that I'm aware of." Attorney Holzwarth asked, "Is it that you just don't know whether he was or not provided the calculations?" Mrs. Fysh responded, "To my knowledge he was not." Nielsen asked Mrs. Fysh, "At the time of Geoff's death were [you] assisted by someone from the Chaplain's program?" Mrs. Fysh responded, "Yes I was." Nielsen commented that the Chaplain typically helps the spouse work through a lot things to help them move the process along, but he was not sure whether the Chaplain gave the spouses paperwork or not. Mueller stated that another problem is we do not know if [an additional] calculation was given [to Mrs. Fysh] after the first calculation was provided. Attorney Holzwarth stated that the survivor pension is based on the pension that was provided to the retired officer. The 1992 calculation document is the only calculation that was in the Fund's file with respect to the numbers. Attorney Holzwarth recommended that the board table this matter for further consideration so that the board might receive copies of the 1099R as additional evidence from Mrs. Fysh and take additional time to consider the matter at a later date. She also noted that

she expected that the Board would wish to deliberate in closed session, based on the exception that applies to matters where there is an anticipation of litigation.

Motion by Mueller and seconded by Laue to table the matter of determination of the Karen Fysh pension and continuing the hearing on said question. APPROVED.

Attorney Holzwarth stated that the board's actions to date are not a final administrative decision.

Motion to go into closed session pursuant to Open Meetings Act section 2(c) (21) to discuss the Fysh matter was made by Mueller and seconded by Laue at 8:27 a.m.
Ayes: 5
Nays: 0
Absent: 0

The meeting returned to open session at 8:42 a.m. and found the following members present: Jeff Nielsen, Marcia Mueller, Matt Williams, Mike McDonald, Scott Laue and Attorney Roberta Holzwarth.

Motion by Mueller and seconded by Williams to approve the following doctor's: Dr. Graf, Dr. Zelby, and Dr. Hsu to perform the disability evaluations for the Honzel non-duty disability case. APPROVED.
Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

BILLS

Motion by Mueller and seconded by McDonald to approve September City Services of $9,300.00. APPROVED.
Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Motion by Mueller and seconded by McDonald to approve August postage charges of $128.04. APPROVED.
Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Motion by Mueller and seconded by McDonald to approve payment to Holmstrom & Kennedy, P.C. for August attorney fees for general in the amount of $2,475.00. APPROVED.
Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Motion by Mueller and seconded by McDonald to approve payment to Holmstrom & Kennedy P.C. for August attorney fees for the Haske-Whisenand disability matter in the amount of $742.50. APPROVED.
Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Motion by Mueller and seconded by McDonald to approve payment to Holmstrom & Kennedy, P.C. for August attorney fees for the Soria disability matter in the amount of $3,855.00, which includes $855.00 for services and $3,000.00 for disbursements. APPROVED.

Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Motion by Mueller and seconded by McDonald to approve payment to Holmstrom & Kennedy, P.C. for August attorney fees for the Lesmeister disability matter in the amount of $8,580.00, which includes $900.00 for services and $7,680.00 for disbursements. APPROVED.
Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Motion by Mueller and seconded by McDonald to approve payment to Holmstrom & Kennedy, P.C. for August attorney fees for the Drnek disability matter in the amount of $832.50. APPROVED.
Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Motion by Mueller and seconded by McDonald to approve payment to Holmstrom & Kennedy P.C. for August attorney fees for the Honzel disability matter in the amount of $5,089.53, which includes $3,375.00 for services; and $1,714.53 for disbursements. APPROVED.
Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

NEW BUSINESS

Attorney Holzwarth suggested that when approving pension amounts the board state "the board retains jurisdiction of this matter for purposes of enforcing the Pension Code."

Motion by Mueller and seconded by Laue to send notice if affidavits are not returned by the October meeting of the Police Pension Board that their pensions will be withheld. The people are: John Dahlberg, David Dominguez, Peter Luhrs, Dana Smith, and Frederick Wright. APPROVED.

Motion by Mueller and seconded by Laue to approve the retirement application of Patrick Girardi for a monthly pension of $4,794.28, $57,531.32 annually. The board retains jurisdiction of this matter for purposes of enforcing the Pension Code. APPROVED.
Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Motion by Mueller and seconded by Laue to approve the retirement application of Marc Welsh for a monthly pension of $5,529.68, $66,356.16 annually. The board retains jurisdiction of this matter for purposes of enforcing the Pension Code. APPROVED.
Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Counsel will proceed with the duty/non-duty disability application for Sara Ahrens.

Motion by Mueller and seconded by Laue to approve the refund request of Anthony Cortez in the amount of $4,505.05. He will no longer be a participant in the Police Pension fund as of September 30, 2013. APPROVED.
Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Motion by Mueller and seconded by Laue to approve the new monthly benefit amount of $3,506.11 to Paula Berglund and a retroactive payment of $67.10 which takes into consideration that she had been repaying an overpayment. The board retains jurisdiction of this matter for purposes of enforcing the Pension Code. APPROVED.

Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Motion by Mueller and seconded by Laue to approve adjustment of benefits all commencing for the August 30, 2013 payment for the new monthly payment and the retroactive amount. The board retains jurisdiction of this matter for purposes of enforcing the Pension Code. APPROVED.

Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Motion by Mueller and seconded by Laue to approve a new monthly benefit amount of $3,506.11 to Paula Berglund and a retroactive payment of $267.10, which takes into consideration Ms. Berglund had been repaying an overpayment. The Board retains jurisdiction of this matter for purposes of enforcing the Pension Code. APPROVED.

Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Motion by Mueller and seconded by Williams to approve the new monthly benefits effective August 30, 2013 and retroactive payments. (listed below). The Board retains jurisdiction of this matter for purposes of enforcing the Pension Code. APPROVED.

Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Pensioner	Old Monthly Benefit	New Monthly Benefit	Retroactive Payment
Barbara Hardin	3,957.70	4,036.83	1,186.95
Mike Holman	5,715.34	5,828.90	879.18
David Hooks	4,799.01	4,992.92	232.69
John Hoshaw	5,468.48	5,577.10	944.99
Frank Ingardona	2,989.04	3,048.80	880.98
DiAnn Krigbaum	3,701.06	3,773.93	1,161.06
Jeffrey Stovall	4,195.08	4,364.54	593.11
Christina Whisenand	4,042.54	4,123.38	695.23

* Effective September 30, 2013
** Deferred pensioner

Motion by Mueller and seconded by Williams to approve the new monthly benefit for Steven Perry of $4,129.67 and retroactive payment of $180.01 effective September 30, 2013. The Board retains jurisdiction of this matter for purposes of enforcing the Pension Code. APPROVED.

Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Motion by Mueller and seconded by Williams to approve the new monthly benefit for Steven Tomasino of $3,881.57. The Board retains jurisdiction of this matter for purposes of enforcing the Pension Code. APPROVED.

Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

PAYROLL

Motion by Mueller and seconded by McDonald to approve the August actual payroll in the amount $145,507.99. The Board retains jurisdiction of this matter for purposes of enforcing the Pension Code. APPROVED.

Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Motion by Mueller and seconded by McDonald to approve the September estimated payroll amount of $1,143,368.91. The Board retains jurisdiction of this matter for purposes of enforcing the Pension Code. APPROVED.

Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Motion by Mueller and seconded by Williams to approve payment to Melodie Gustafson in the amount of $1,661.40, the surviving spouse of Robert Gustafson and a monthly benefit starting in September in the amount of $3,433.56. The Board retains jurisdiction of this matter for purposes of enforcing the Pension Code. APPROVED.

Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

CASH & INVESTMENT REPORT

Motion by Mueller and seconded by Laue to approve purchases and sales. APPROVED.

Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Dutkiewicz stated that for the month the fund was down 1.3%.

A motion to adjourn was made and seconded at 9:40 a.m.

MINUTES
ROCKFORD POLICE PENSION BOARD
SEPTEMBER 23, 2013

MEMBERS PRESENT: Jeff Nielsen, President
Marcia Mueller, VP
Matt Williams, Secretary
Mike McDonald, Assist Secretary

ABSENT:

Scott Laue, Trustee

Motion to go into closed session pursuant to Open Meetings Act section 2(c) (1) and (4) to deliberate was made by Williams and seconded by Mueller.
Ayes: 5
Nays: 0
Absent: 0

The meeting returned to open session 10:55 a.m. and found the following members present: Jeff Nielsen, Marcia Mueller, Matt Williams, Mike McDonald, Scott Laue and Attorney Al Mezny.

Motion by Mueller and seconded by Williams to approve a duty-related disability pension for Amado Soria. The Board retains jurisdiction of this matter for purposes of enforcing the Pension Code. APPROVED.

Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

Motion by Mueller and seconded by Williams to approve benefits commencing today September 23, 2013, however the timing may be dependent on submission of paperwork after the paperwork is signed. The Board retains jurisdiction of this matter for purposes of enforcing the Pension Code. APPROVED.

Ayes: Nielsen, Mueller, Williams, McDonald, and Laue
Nays: None

A motion to adjourn was made and seconded.

4849-5843-8168, v. 2