

**CITY OF FORT PIERCE RETIREMENT AND BENEFIT SYSTEM  
MINUTES OF MEETING HELD  
September 20, 2018**

Summarized Minutes of the regular meeting of the City of Fort Pierce Retirement and Benefit System September 20, 2018 2:00 p.m., in the 2<sup>nd</sup> Floor Conference Room at City Hall.

Present:

Comm. Tom Perona  
Keith Stephens, Vice -Chairperson  
Johnna Morris  
Brian Avilla

City Commission Member  
U.A. General Member  
Director of Finance  
Police Officer Member

Attorney Jim Walker  
Christina Paz

Attorney for the Retirement Board, Advisory  
Retirement Clerk

Shade Meeting Attendance:

Attorney Douglas Miller

Absent:

Nina Penick

U.A. Board Appointee

Late:

Caleta Scott  
Commissioner Reginald Sessions

General Member (10 minutes late)  
City Commission Member (15 minutes late)

Recording:

Queen Thompkins

Executive Assistant to the Director of Finance

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**ITEM NO. 1 & 2 ~ ROLL CALL**

**Comm. Perona** called the meeting to order at 2:02 p.m., the first item on the agenda being the “Roll Call”.

**ITEM NO. 3 ~ COMMENTS FROM THE PUBLIC**

**Comm. Perona**, the next item on the agenda was comments from the public. There were no comments from the public.

**ITEM NO. 4 ~ APPROVAL OF SUMMARIZED MINUTES OF AUGUST 16, 2018**

**Comm. Perona**, the next item was the approval of the summarized minutes of August 16, 2018, and the Board asked if there was a motion to approve the minutes. **A motion was made by Mr. Brian Avilla and seconded by Mr. Keith Stephens to approve the summarized minutes of August 16, 2018.**

**All those in favor of the motion signified by saying aye. A poll was done of each Board member. There was no opposition and the motion was carried unanimously.**

**ITEM NO. 5 ~ ATTORNEY’S REPORT**

**Attorney Jim Walker** said there’s nothing to report; will entertain any questions the Board may have.

**ITEM NO. 6 ~ PUBLIC HEARINGS ON BENEFIT APPLICATIONS**

**Comm. Perona** opened up the public hearing for comments on the request for Retirement from John D. Wilkes with 10 years and 1 month of service with the City of Fort Pierce. He asked if there was anyone here who would like to publicly comment on this request. Seeing none, Comm. Perona closed the public hearing. Comm. Perona opened up the matter for the Board. **A motion was made by Ms. Johnna Morris and seconded by Mr. Brian Avilla to approve the request for retirement from John D. Wilkes.** Comm. Perona asked for any questions or comments on this request before the motion was called. **All those in favor of the motion signified by saying aye. A poll was done of each Board member. There was no opposition and the motion was carried unanimously.**

**ITEM NO. 7 ~ OLD BUSINESS**

- a. **APPROVAL OF THE SECOND READING OF THE ORDINANCE FOR PURPOSE OF MAKING RECOMMENDATION TO COMMISSION REGARDING AMENDMENT TO CODE ON SUBJECT OF VESTING REQUIREMENT**

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**Comm. Perona** said this is the second reading and asked the Board if they've read the Ordinance. He said after this, the Ordinance goes to the Commission for their approval. Comm. Perona asked for a motion to approve the second reading of the Ordinance. **A motion was made by Ms. Johnna Morris and seconded by Ms. Caleta Scott to approve the second reading of the Ordinance for purpose of making recommendation to Commission regarding amendment to code on subject of vesting requirement.** Comm. Perona asked for any questions or comments on this request before the motion was called. **All those in favor of the motion signified by saying aye. A poll was done of each Board member. There was no opposition and the motion was carried unanimously.**

**ITEM NO. 8 ~ NEW BUSINESS**

**a. DISCUSSION ON ORDINANCE AMENDMENT FOR CODE SEC. 13-27**

**Mr. Walker** said he finds himself wondering whether the Board might gain any insights respecting this motion through hearing the presentation and recommendations of defense counsel in the Shade Meeting. I'm thinking it might be appropriate for the Chairman to exercise its discretion by pushing this down in the agenda following the Shade Meeting.

**Comm. Perona** asked if he meant afterwards rather than prior to the Shade Meeting.

**Mr. Walker** said yes. A formal motion is not necessary. You do have the discretion to rearrange the order of the agenda in this case should you find that appropriate.

**Comm. Perona** said he understands. As Chairman, I am going to change the order of the consideration of this new business and I will put it at the end of the agenda.

**ITEM NO. 9 ~ CONSENT AGENDA**

**Comm. Perona** said the next item is the Consent Agenda. **A motion was made by Ms. Caleta Scott and seconded by Mr. Keith Stephens to approve the refund of member contributions.**

**All those in favor of the motion signified by saying aye. There were no opposition and the motion carried unanimously.**

**ITEM NO. 10 ~ CONSIDERATION OF ABSENCES**

**Comm. Perona** acknowledged the excused of Nina Penick. **A motion was made by Ms. Caleta Scott and seconded by Mr. Brian Avilla to approve the excused absence of Ms. Nina Penick.** Comm. Reginald Sessions did not called concerning his absence from the meeting.

**ITEM NO. 10 ~ BOARD MEMBER COMMENTS**

**Ms. Scott** asked what date will the vesting change be put on the Commission agenda.

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**Ms. Morris** said we just had the second reading so we are now moving forward.

**Ms. Scott** said she will not be at the Retirement Board meeting next month, October 18. The 19<sup>th</sup> of October is her birthday so she will be taking off.

**Comm. Perona** acknowledged Comm. Sessions just getting to the meeting and said the Board is now at final comments for the regular Board meeting. He asked Comm. Sessions if he had any comments. Comm. Sessions said he had no comments. Comm. Perona said we will bring the New Business back to the meeting after the Shade Meeting. We are recessing the Retirement Board meeting and will resume after the Shade Meeting. Comm. Perona ask for a motion to recess the Retirement Board Meeting and resume the meeting after the Shade Meeting. **A motion was made by Ms. Johnna Morris and seconded by Mr. Keith Stephens to recess the Retirement Board meeting and resume the meeting after the Shade Meeting.** Comm. Perona asked for any questions or comments on this request before the motion was called. **All those in favor of the motion signified by saying aye.**

**Comm. Perona** called to order the Shade Meeting by roll call. Any staff member that is not to be in attendance for the Shade Meeting is asked to leave.

**Mr. Walker** said would like the record to reflect that Douglas Noah is here as well as counsel for the Board.

**[Shade Meeting Ended]**

**Comm. Perona** said it is now 2:44 p.m.; the recess of our original Retirement Board Meeting is over and we are going to continue on with the agenda. I have reconfigured the agenda and we are now talking about New Business.

**ITEM NO. 8 ~ NEW BUSINESS**

**b. DISCUSSION ON ORDINANCE AMENDMENT FOR CODE SEC. 13-27**  
**(Discussion reconvenes)**

**Mr. Walker** said everybody has a copy of the proposed draft. Code Sec. 13-27 of the Ordinance regulates credit for intervening military service and it imposes certain conditions; subparagraph 1 through 4. The first condition is the member makes application within one year after release from being under honorable conditions. This subsection did not service particularly well. The claim of Robert Creswell; it would be recalled that the gentleman came back to the City and for over a year nothing happened. There was no awareness of any interest in his part claiming military service and well after a year had gone by. As he was approaching retirement, I guess he then expressed interest in having credit and at that point the City said you didn't make application within one year. That, among other reasons is why his claim was denied. There has been a bit of discussion here about communication; process of communication could take place that might eliminate or head off any

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further problem and this proposed amendment is the result of that thinking process. What this would do is, when someone returns to the City, the Human Resources people, as they are processing that intake, give the employee a form and explain their rights and obligations all that Mr. Noah has set out here; make that person aware that within one year, they've got to let us know what he will be doing. I think the problem with the original language in subparagraph (1) is, and it says – “The member has to make application” and there are some ambiguity there. Mr. Noah touched on that. It really doesn't tell us clearly about whether this is the period within which he as to apply; let us know what he's going to do or when he starts paying benefits. What this visualizes is that when he returns, he's made aware that we expect him to do something within one year. You will have a form; it's signed; it lays it out. If this amendment is adopted, such a form would need to be prepared. I understand that even now, a draft is in progress and the draft would be reviewed by the Retirement Board before it was finally given to the Human Resources Department to use in the case of returning employees. So, that's what this is all about. The language that's actually being added in place of subsection (1) is this – “Immediately upon the member's return from active duty to City employment, the Department of Human Resources shall make the returning member aware of entitlement to claim military service credit under this section, and shall inform the member in writing that application for such entitlement must be made to the retirement board within one (1) year following the date such member was released from duty under honorable conditions.” Unless I have misunderstood Mr. Noah's remarks, it's felt that this is fully consistent with what he is saying. Nevertheless prudence requires that we review any form before it enters active use.

**Mr. Stephens** said 99% of the time somebody like this is somebody that went in and did their four years and came back out. That's the way USERRA was designed. It's already going to be 12 years but it's going to be five. That number needs to be something you can adjust in that form. They could go in and do one year and it would be just three in the form. I also want to bring up part (3); it's going to have to be redone too.

**Ms. Morris** said yes, we are just finding out.

**Mr. Stephens** said we know USERRA does not allow for interest being paid, so there's a little more to it. The form that is done has to be flexible anywhere from 5 down.

**Ms. Morris** said we will make a form to whereas it notifies the employee that they have the one year and based on the number of years, a maximum of five years to pay it back.

**Mr. Stephens** asked if that's for City employees.

**Ms. Morris** said it for anybody in our System.

**Comm. Perona** said it needs to reference the rules and regulations set forth by USERRA. Whenever they change, our documents changes with it. We want to make it as flexible as we possibly can. In statement thereof, the Creswell issue; this Board takes the fiduciary responsibility of protecting the System as No. 1 priority. When we have rules and regulations, a lot of times they are very difficult for us to get outside our lane on that. USERRA has created another lane; seems that's the lane we need to be driving down. Maybe we can't consider this at this moment and time

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until we have an opportunity to go through this entire ordinance to make sure that it is conforming to what we've learned here today and to reference the USERRA requirements.

**Mr. Walker** said if that's the consent of the Board, what we want to do is submit a new draft. With the Chairman's permission, I will withdraw this.

**Comm. Perona** said we will task you to amend this whole ordinance which would be Section 13-27 to conform to the relevance of the facts that we have learned today to make sure that this document meets the criteria of USERRA which seems to be the governing authority on this issue. We now have the second part of this New Business which is the settlement that has been given to us through a Shade Meeting.

**Mr. Walker** said it would be his recommendation for public record purposes that the defense counsel briefly state the settlement that we are being asked to approve.

**Mr. Doug Noah** said the material terms of the settlement that I am recommending for approval is, Mr. Creswell will pay into the fund 5.16% contribution on his 3 years of service that he was credited for while he was in the military service and that the Board would make its actuarial calculation to revise the benefit including the 3 years of service and paying Mr. Creswell the back amount not paid to date for his retirement services that he received and adjusting it going forward through his lifespan.

**Comm. Perona** asked the Board if they had any questions.

**Mr. Noah** said whatever the cost of litigation and attorney's fees; other damages to the extent that they exist have been paid for by Florida Legal Cities.

**Mr. Stephens** asked do we vote on this now or do we need to post it and vote on it at the next meeting.

**Mr. Walker** said we do have the agenda that was issued here.

**Ms. Morris** said it's not on our regular agenda.

**Mr. Walker** said we are due to have the second agenda where the attorney-client session having been concluded this meeting is hereby reopened and this subject matter was the settlement negotiation.

**Comm. Perona** said that is not a public meeting and the question on the table right now is can we make a motion one way or the other without the public having prior information about what this Board is going to do. Any issue that is in front of this Board has to be advertised prior to this meeting, if I'm not misunderstanding.

**Mr. Walker** said your understanding is correct. He asked Mr. Noah if he thinks Mr. Creswell and his attorneys might be made to understand if approval were not formally forthcoming at this meeting.

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**Mr. Noah** asked how long it would take to get the issue in front of the Board again.

**Comm. Perona** asked Ms. Thompkins how soon we could get a Special Meeting advertised in the newspaper.

**Ms. Thompkins** said we could do it; we have enough time to get it posted before the meeting.

**Ms. Morris** said in terms of notification we could do 2 days before the meeting because it wouldn't be a Shade Meeting or anything like that. As long as we advertise 2 days before the actual meeting, we are good.

**Comm. Perona** said tomorrow would be day 1 Monday would be day 2 and Tuesday we could have a Special Meeting.

**Ms. Morris** said yes.

**Comm. Perona** asked Mr. Noah if this was okay with him. There's no way we could have anticipated us having this issue in front of us today without having the Shade Meeting and going through that deliberation since we had not documentation to support it that we could put out to the public.

**Mr. Stephens** asked if it will be September 25 because Tuesday is the 25<sup>th</sup>.

**Comm. Perona** said the 25<sup>th</sup> is the earliest we could have the meeting. He told Ms. Thompkins she would have to work on getting it done by Tuesday. Check everybody's schedule for availability.

**Mr. Avilla** said he will not be in town. He will not be back until late Tuesday night.

**Comm. Perona** asked if Wednesday would be better for everyone. The Board members said yes. The meeting will be set for Wednesday, September 26<sup>th</sup> at 2:00 p.m.

**Ms. Morris** asked if there was a timeframe Mr. Creswell has to pay.

**Mr. Noah** said they were silent on that. I knew I wasn't too worried because your obligation doesn't start until Mr. Creswell does something, so I don't think I really negotiated it for that particular thing.

**Comm. Perona** asked when Mr. Creswell retired.

**Ms. Morris** said November of last year.

**Comm. Perona** asked when did Mr. Creswell come back from service.

**Ms. Morris** said it was 2011.

**Comm. Perona** said we do have to come up with on the condition that full payment within a certain amount of days. He asked Ms. Morris to negotiate that.

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**Ms. Morris** said she would.

**Comm. Perona** said we are not in a Shade Meeting anymore; that's probably going to come up Wednesday I'm guessing.

**Mr. Noah** said you need a date by when they are going to pay the money into the System.

**Ms. Morris** said he has to pay by a certain date.

**Mr. Noah** asked if there was a particular date.

**Ms. Morris** said 30 days.

**Comm. Perona** said there being nothing further to discuss, meeting is adjourned.

**ITEM NO. 12 ~ ADJOURNMENT**

The next item was next month's meeting. The next meeting is scheduled for October 18, 2018 at 2:00 p.m.

**All those in favor of the motion signified by saying aye. There was no opposition and the motion carried unanimously.**

The meeting was adjourned the meeting at 3:05 p.m.

ATTEST:

\_\_\_\_\_  
Secretary/Treasurer

\_\_\_\_\_  
Chairperson

Note: These minutes are not verbatim, only important issues and motions are reproduced in writing for the benefit of the Fort Pierce Retirement and Benefit System members. The recording itself is the official record for the meeting. The meeting tape/cd is available.

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