

**CITY OF PONTIAC MICHIGAN
GENERAL EMPLOYEES' RETIREMENT SYSTEM
BOARD OF TRUSTEES MEETING**

A regular meeting of the Board of Trustees was held on Wednesday, May 25, 2022 at City of Pontiac General Employees' Retirement System, 2201 Auburn Rd, Suite B, Auburn Hills, MI 48326. The meeting was called to order at 8:47 A.M.

TRUSTEES PRESENT

Sheldon Albritton, Chair
Darin Carrington, Secretary
Robert Giddings, Vice-Chair
Tim Greimel, Mayor *arr 8:57 A.M.*
Lisa King
James Miriani
William Parker Jr., City Council *arr 8:55 A.M.*
Billie Swazer
James Walker
Patrice Waterman (electronically) – Washington, D.C.
John White

OTHERS

Louise Gates, Gabriel, Roeder, Smith & Co.
Linda Watson, Retiree
Cynthia Billings-Dunn, Asher Kelly
David Lee, Dahab Associates
Mizuki Kanno, Executive Assistant
Deborah Munson, Executive Director

AGENDA CHANGES: NONE

CONSENT AGENDA

- A. Approval of the Minutes of the Regular Board Meeting held on March 30, 2022.
- B. Approval of the Minutes of the Special Board Meeting held on March 31, 2022.
- C. Approval of the Minutes of the Regular Board Meeting held on April 27, 2022

RESOLUTION 22-047 By Swazer, Supported by King

Resolved, that the Board approves and ratifies actions described in the Consent Agenda for May 25, 2022.

Yeas: 10 – Nays: 0

CONSULTANTS: NONE

REPORTS

GERS Transition

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Proposed Escrow Agreement and Board Summary
Escrow Agreement Legal Opinions and Review
Revised Proposed Escrow Agreement (May 17, 2022)
Correspondence from CPREA Attorney RE: Proposed Escrow Agreement

Chairman Albritton pointed out that this escrow agreement is being continuously changed and asked what is the pleasure of the Board.

Miss Munson noted that Escrow Agreement Review Meeting Follow-Up was sent to Mayor Greimel and CPREA last Friday which was promised at the last meeting and that no response or comments have been received from either party as of now.

Ms. Billings-Dunn stated that there is no liability issue from this Board's perspective and that GERS is a participant in this escrow agreement for two reasons: the old GERS to transfer the money into the escrow account; and the new GERS to agree with the City, CPREA and VEBA as to the final disposition of the assets. She explained that VEBA - who has been just added to the agreement - is in the same situation as the new GERS and that the only thing they have to do with this escrow agreement is to agree on the final disposition of the assets. She stated that the escrow agreement, as it has been revised by Comerica, is a terrible agreement for the City. She explained that when an employer terminates a pension plan, they must fulfill all of the liability obligations of that plan by law. If there are any excess assets, those must revert to the employer by law. In this case, the City and CPREA negotiated and agreed to settle the lawsuit by putting assets into a new pension plan and the new VEBA instead of having the assets revert to the City. This is the reason why the assets are going to the new GERS and VEBA. Now the City and CPREA are looking into negotiating a change to that settlement agreement which is prefunding and making permanent the \$400 pension increase.

Ms. Billings-Dunn continued that the parties have agreed to set the assets remaining in old GERS aside during this negotiation in order to get the money out of the old GERS and that it should have gone out by March 31, 2022. It is necessary to show the IRS that we are in the process of getting the assets out of old GERS. She stated that if the City and CPREA agree to prefund the full \$400 and make it permanent, the Ordinance will be amended, and the City will be required fund that benefit. She also stated that, hopefully, the money will still be in this escrow account. If the money disappears because someone was negligent at Comerica, it is the City that will be responsible for paying for that benefit because - once a benefit is given it cannot be taken away under the Michigan Constitution and state law. The City has an absolute obligation to pay that required contribution to make sure that benefit is paid.

Ms. Billings-Dunn expressed her concern about the escrow agreement on behalf of the City because Comerica has a gross negligence standard meaning if they are negligent and they flip a switch thinking they were doing the right thing and if half the money disappears, Comerica isn't liable. The City would still have to make up that contribution to the Retirement System to fund the benefit. Gross negligence standard is very high standard under the law and is very difficult to prove. She explained that the GERS does not have a gross negligence standard in any of its' contracts. Comerica has written things into this escrow agreement; they have put a lien on anything that they feel that they own and there is a blank check for their attorney fees just for negotiating this escrow agreement. They will deduct everything they

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think they are owed out of that escrow account. She expressed her concerns that those should be dealbreakers from the City's perspective.

Trustee Greimel stated that he shared all those concerns, and that Comerica was initially demanding even worse terms giving them total immunity. The latest language of a gross negligence standard is actually an improvement compared to where Comerica started. If Northern Trust can agree to this without any nonsense in it, this Board should tell CPREA that this is the route this Board wants to take. He also stated that Ms. Kopacz had pushed this back to Comerica, however she recused herself from this case due to the conflict she has in that her firm represents Comerica. The City has a new attorney on this job who started working on it a couple of weeks ago.

Chairman Albritton stated that Northern Trust would have been a better custodian over this escrow account and suggested that Northern Trust be the escrow agent.

Trustee Greimel stated that Northern Trust is not willing to do co-clients. CPREA wants Comerica as the escrow agent because they want to be co-clients on the account. He also stated that there is no reason why CPREA needs to be a co-client on the account. The expectation when we went down this road was that the negotiation over the permanent pension increase was going to be one or two-week process which has not been the case. He reiterated that it is because CPREA has been unreasonable in wanting to be a co-client on the escrow account which resulted in moving away from Northern Trust. Comerica has also been unreasonable by layering in all these additional demands. He stated that this has to be pushed back.

Trustee Swazer stated that the Board must act in the best interest of the retirees under Public Act 314. She asked if this escrow agreement falls under this act.

Ms. Billings-Dunn stated that Public Act 314 governs retirement systems. She explained that - once the assets are transferred to the escrow account it is not set up as a retirement system. However, there can still be fiduciary responsibilities in an escrow account. In fact, the escrow agent Comerica - would be a fiduciary over those assets. She explained that it is a different situation going on here because there are two parties- the City and CPREA - who are hiring an investment consultant and investment managers to manage the assets which creates a fiduciary responsibility. It kind of clips Comerica's fiduciary responsibility, but Comerica can certainly not have a gross negligence standard, which is the absolute opposite of fiduciary responsibility.

Chairman Albritton suggested to let the City and CPREA figure out and come up with a better plan, hopefully going back to Northern Trust as the escrow agent. He stated that this has gotten away from what the parties are trying to accomplish, which is prefunding the additional \$400 benefit for the retirees. So much time has spent navigating through this escrow agreement that everyone is losing focus of the main objective which is the permanent \$400 benefit. The additional money spent for this agreement such as for attorney fees could have gone towards retirees and/or healthcare. He reiterated that more than adequate funding has been sent to the VEBA so the retirees can receive their healthcare with a very high funding level. In addition, \$8M was sent so that money was available for those who wanted to opt out. Some of the retirees are now only getting a fraction of a pension when \$400 increase was discontinued and who knows how their lives have been impacted by this.

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Trustee Walker asked if the City agrees with the GERS attorney's position on this and if this will be presented to CPREA via City's attorney.

Trustee Greimel stated that he has presented the legal opinion to Claudia Filler. He also stated that he needs to talk with the City's attorney about the Ms. Billings-Dunn's opinion. The City and GERS are aligned in terms of the desired end result which is that the remaining funds in the old GERS be transferred to the new GERS to fund the permanent pension increase. He said that the City and GERS both share the same desire in terms of what the escrow agreement should look like and which does not give all these liability protections to Comerica so that - if they screw up - there is no recourse against Comerica which means the City's neck is on the line. He expressed his opinion that the problem is that the City entered into a terrible agreement with CPREA four years ago and that he does not know why the City did that. Because of that, there is limited room to maneuver in terms of CPREA being able to potentially pursue a lawsuit to get this money. The whole reason for the escrow agreement is to try to get the money out of the old GERS without giving it to VEBA but also avoiding CPREA filing a lawsuit against the City for violating the settlement agreement if the money is unilaterally transferred to new GERS. To answer the Chairman's question 'where to go from here', he recommended that the City gets with City's attorney and pushes back on CPREA along with some of the recommendations from GERS and try to get CPREA to agree as many as possible and report back to GERS Board.

Trustee White asked if anyone knows what CPREA wants to do about the \$400 permanent increase.

Trustee Greimel stated that Ms. Filler says that they want the \$400 to come out of what is already in new GERS as opposed to out of the additional assets that are still in the old GERS. He also stated that since it has become so obvious that VEBA is dramatically overfunded, CPREA is saying they are open to talk about this. He reiterated that it is obvious that VEBA has plenty of money and the remaining assets should be transferred to new GERS. He suggested to negotiate changes to the settlement agreement to provide for the permanent increase if the escrow agreement cannot be finalized within a week or two because that would be faster than agreeing to the escrow agreement.

Trustee Waterman stated that she received a special CPREA general membership notice for a meeting scheduled for June 2, 2022 at 1 p.m. The notice stated there are three items to discuss: to establish a permanent \$400 monthly GERS pension benefit enhancement to be retroactive to February 1, 2022; to define the class of retirees eligible for the new VEBA to include those who had ten years of service by December 22, 2011 and who continued to work for the City after that date; and to possibly include surviving spouses of eligible retirees to qualify for the \$20K one-time buyout in lieu of VEBA health insurance.

Miss Munson asked Trustee Waterman if the notice referenced prefunding of the \$400.

Trustee Waterman responded that the notice did not say anything about prefunding the permanent increase.

Trustee Greimel stated that it sounds great if they also included prefunding as well as CPREA agreeing to transferring all the remaining assets in old GERS to new GERS. The key is for CPREA membership to vote

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to approve on June 2, 2022 as long as it includes the prefunding and agreeing to allow all the assets to go to new GERS.

Trustee Waterman read a passage from the notice, "...City of Pontiac and others to establish escrow account into which the withheld old GERS assets could be transferred while CPREA and the City work out the proposed modifications of the settlement agreement."

Trustee Miriani stated that Police & Fire retirees get to vote on this matter and CPREA is putting them together as a force to vote against GERS even though Police & Fire retirees have nothing to do with GERS.

Chairman Albritton stated that he still does not understand why the City and CPREA were not able to come to an agreement about the \$400 whether or not this escrow agreement was in place. The escrow agreement was not necessarily needed to negotiate on pre-funding the permanent increase.

Trustee Carrington stated that CPREA has been wanting to look at the actuarial report and information about adjusting the people who would be eligible to opt out of the healthcare and what the potential financial impact that would have. Now they have the report and there is now a discussion about adding in some additional people and the impact that would have.

Chairman Albritton stated that GERS has always been transparent in making sure that there is enough funding for healthcare as well as the \$8M for opt-out payouts. He suggested to wait and see what the City and CPREA will do because this Board cannot figure this out today.

Vice-Chair Giddings stated that CPREA's articles of incorporation state that they represent retirees of City of Pontiac for retirement and healthcare. The previous City Council considered an ordinance to include the liabilities for the \$400 in March 2021 valuation and the previous mayor derailed that, therefore it did not get included. The issue here is putting it back in the GERS for the prefunding. CPREA by their own action and the lawsuit eliminated all these other people that they were trying to put in. He continued and pointed out that even though there are VEBA Board members that think they can grant whatever benefits they want, the VEBA trust document states that the Board can only recommend benefit changes. It is ultimately the City Council who can approve the changes. He stated that the only issue here is the \$400 prefunding, and he does not see how all other matters such as enhanced benefits and including other people were added together, which should not be part of the settlement agreement.

Miss Munson stated that the Ordinance that went before the City Council last year granted a permanent benefit increase and that it was separate from the settlement agreement. The reason that was taken off the agenda is because the City attorney said it has not been approved "as to form." She asked why the City cannot adopt a benefit since the settlement agreement does not preclude the City from adopting an additional benefit.

Trustee Waterman stated that it has been said that GERS is holding up some information. She asked Miss Munson if the requests have been responded.

Miss Munson explained that GERS has responded to one request from VEBA three times, and there was another request about surviving spouses. She responded twice letting them know that it will be a project

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for which the VEBA would need to pay and asked if they would like to proceed. She communicated with them twice and they finally responded to proceed with the project just last week. She also explained that they said they sent a list of people with ten years who continued to work after December 2011 which was never sent. What they sent is a list of all deferred members who were deferred at that point. She stated that they said they are going to send the list by the end of this week. They also requested – and she provided – a list of MAPE members.

EXECUTIVE DIRECTOR REPORT

Asset Transition Monthly Update: No Reports

UNFINISHED BUSINESS

RE: Proposed Escrow Agreement

Chairman Albritton stated that the Board will wait for correspondence from the City and CPREA. There is no action needed to take at this time.

NEW BUSINESS: NONE

PUBLIC COMMENT

Linda Watson made a public comment.

The Board reserves the right to enter closed session to review matters in accordance with Michigan Public Act 267 of 1976 (Open Meetings Act).

There was no closed session.

SCHEDULING OF NEXT MEETING/ADJOURNMENT

Regular Meeting: Wednesday, June 22, 2022 8:45 A.M.

RESOLUTION 22-048 By White, Supported by Parker

Resolved, That the meeting of the Board of Trustees of the Pontiac General Employees' Retirement System be adjourned at 9:38 A.M.

Yeas: 10 – Nays: 0

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I certify that the forgoing are the true and correct minutes of the meeting of the General Employees' Retirement System held on May 25, 2022.

As recorded by Mizuki Kanno, reviewed and edited by Legal Counsel and the Executive Director