



**Minutes
Tempe Police Public Safety Personnel
Retirement Board
April 9, 2009**

Minutes of the Tempe Police Public Safety Personnel Retirement Board, held on Thursday, April 9, 2009, 3:00 p.m., Tempe City Hall – Mayor’s Office, 31 E. 5th Street, Tempe, Arizona.

Board Members Present:

Mayor Hugh Hallman
Todd Bailey
Jim Foley

Board Members Absent:

Joe Brosius
Joe Schiefer

City Staff Present:

Jan Hort, Clerk’s Office
Lourdes Robertson, Human Resources

Guests Present:

David Niederdeppe
Mark Mignella

Mayor Hallman called the meeting to order at 3:06 p.m.

ITEM III – Consideration of Meeting Minutes: March 5, 2009; Executive Session Minutes March 5, 2009

Motion by James Foley to approve the minutes and Executive Minutes of March 5, 2009. Second by Todd Bailey. Motion passed unanimously.

ITEM V – New Recruits

None.

ITEM VI – Retirement Applications

None.

ITEM VII – Disability Retirement Hearing for Ralph Tranter Jr.

Motion by James Foley to adjourn to Executive Session. Second by Todd Bailey. Motion passed unanimously.

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Meeting temporarily adjourned at 3:07 p.m. for Executive Session.
Meeting reconvened at 3:16 p.m.
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Mayor Hallman summarized that at the last meeting on this matter, the board discussed that it would be helpful to shed light on the question about whether or not Mr. Tranter was terminated by reason of disability and that he would seek information from former City Manager Will Manley. The board has been presented with a letter dated March 4, 2009.

Ralph Tranter stated that at the last meeting he summarized the background of his disability and the circumstances that led up to it. It was mentioned that a discussion was made between he and Mr. Manley and that he had agreed to leave the City. The board asked him to produce a letter to that effect from Mr. Manley.

Mr. Bailey asked if it would be appropriate to request that this be heard next month when the full board would be present.

Mayor Hallman asked Mr. Niederdeppe about any procedural challenges.

Mr. Niederdeppe responded that the board would have the authority, if it chose, to continue this matter to have a full complement of board members present. There is clearly a quorum present today to take action, however, and action today would require a unanimous vote one way or the other.

Mayor Hallman clarified that if the board essentially sought to take action and split the vote in either direction, the matter would have to be continued until at least one more member of the board was present.

Mark Mignella, counsel for Mr. Tranter, stated that he had no objection to continuing this matter until the next meeting. Mr. Tranter had explored that possibility earlier today.

Mayor Hallman asked when it was known that the other two board members would not be present.

Mr. Bailey stated that he had made a phone call this morning about 11:00 and advised Mr. Tranter that Joe Brosius had notified him that he would not be present. He advised that he would make this motion at the meeting if there were only three members present and advised Mr. Tranter that it might not be necessary for him to attend.

Mr. Tranter stated that he had then contacted the Clerk's Office and since it was already on the agenda, he felt it was necessary to attend as he was informed by the Clerk's Office that a 24 hour period is required by statute in order to revise the agenda and there was no indication that a quorum would not be present to decide a course of action.

Mayor Hallman agreed that it might make more sense to continue it. The next meeting will be on May 7th.

Motion by Todd Bailey to continue Item VII to the May 7th meeting. Second by James Foley. Motion passed unanimously.

Mayor Hallman directed that the City Clerk's Office determine the availability of the board members for the May 7th meeting and Jan Hort stated that she would call the members to be sure.

ITEM I – Review of Local Board Newsletter

This item was continued.

ITEM II – Discussion on Procedures of Tempe Police & Fire Pension Board

This item was continued.

ITEM VIII – Undeliverable Notices of Non-Routine Claims – Finality of Actions

Jan Hort summarized that a question was raised regarding the Clerk's Office inability to locate Mr. Baumgarth by certified mail following the board's hearing of his case. The Clerk's Office sent a certified letter to the same address where he had previously accepted a letter prior to the hearing. The letter sent after the hearing was returned as unaccepted. She asked when the 60-day period for rehearing ends if it can't be proven that he ever received the letter.

Mr. Niederdeppe stated that the statute starts the clock running toward finality of a decision in one of three ways: (1) from notification of the local board's action by certified mail, which was attempted unsuccessfully, (2) by the attendance of the individual at a meeting where the action was taken, which didn't happen, or (3) by receiving benefits from the system pursuant to the local board's action. The local board's action was to deny any benefits so the individual has not received any benefits. Whichever of those things occurs first is how the clock starts.

Mayor Hallman clarified that the problem is notification.

Mr. Niederdeppe felt that refusal of certified mail may constitute notice anyway. He didn't know if there was case law on that, however. This letter was "unclaimed."

Mr. Bailey clarified that the only issue is the appeal timeline. It doesn't change the decision process.

Mayor Hallman added that potentially no appeal time is running.

Mr. Bailey added that the meeting minutes were posted on the website, which means public information has been put out, and the applicant was in email communication with board member Schiefer, but has no longer communicated that way since about the same time the hearing occurred.

Mr. Niederdeppe clarified that two things might happen. The individual can conclude that he is not going to make any further headway with the board and he can come to the fund manager and request a return of his contributions. If that happens, he will sign off on paperwork that says he has waived rights to anything else. He could perhaps find employment with one of the other jurisdictions and try to fill in the three years or try to purchase military time or do something to get it to the point where he is entitled to some benefit. Those are unpredictable. He considered having the individual served by a process server as a substitute for the certified notice, but that seemingly places more attention on the matter than maybe should be given. By waiting long enough, the concept of "sleeping on your rights" would apply to the case, but that may take several years.

Ms. Hort advised that the letter has been sent three times. One was sent to a post office box and it did not come back. The certified letter was sent to two different addresses, and one came back as undeliverable, and the other came back marked as "unclaimed."

Mr. Bailey suggested sending the letter to an emergency contact instead.

Mr. Niederdeppe agreed but added that it might not help sending it to a parent for an adult child.

Mayor Hallman agreed that if he then actually receives it, at least there is a chain of witnesses.

Mr. Bailey thought the parent's name and address was on file and he will provide that address to Ms. Hort.

Ms. Hort added that on December 12th Mr. Baumgarth received a certified letter to let him know that the hearing was set. However, right after that, he did not receive the second letter notifying him of the board's actions.

Mayor Hallman suggested trying again to the same address, and trying the emergency address as well. If it at least gets accepted, then we know there is a chain of possible witnesses.

ITEM VI – Future Agenda Items

Mr. Bailey noted that the term for Joe Schiefer expires on June 30th and the Police Department will need to elect for that position.

Mr. Niederdeppe clarified that the statute specifies two elected members and the elected members go on 4-year terms with two years in between the elections so there is always an elected member with two years of service. It does not specify any kind of election procedure.

Mr. Bailey noted that Amanda Bunger, the Police Chief's secretary, will handle it.

Jan Hort asked about Item I - Review of Local Board Newsletter. The State Board asked her to add that item to the agenda and she wasn't sure whether the item should be on each month's agenda. She asked if it should be rescheduled to the May 7th meeting.

Mayor Hallman directed her to verify that with the State Board.

May 7th Agenda items will include:

- Joe Schiefer Term/Election
- Hearing for Ralph Tranter, Jr.
- Discussion on Procedures of Tempe Police & Fire Pension Board (Mr. Niederdeppe will provide a draft to the City Clerk prior to the meeting.)

Motion by James Foley to adjourn the meeting. Second by Todd Bailey. Motion passed unanimously.

Meeting was adjourned at 3: 45 p.m.

Jan Hort
City Clerk