

**CITY OF PONTIAC VEBA TRUST  
BOARD OF TRUSTEES SPECIAL MEETING  
March 24, 2022**

A special meeting of the Board of Trustees was held on Wednesday, March 24, 2022

**Trustees Present**

Claudia Filler, Chairperson – In-Person  
Linda D. Watson – In Person  
Khalfani Stephens, Deputy Mayor – In Person  
Lon Britton – Sebastian, FL  
NZ Bryant – In Person  
Tim Greimel, Mayor – In-Person  
Walter Moore, In-Person

**Others Present**

Matt Henzi, AsherKelly  
Duane Menter, BeneSys  
Violet Gjorgjevski, BeneSys  
Jennifer Crosby, BeneSys  
Samantha Kopacz, Miller Canfield  
Steve Roth, Dahab  
David Lee, Dahab  
Danielle Winegardner, Nyhart  
John Mallows, Nyhart  
Anthony Guerra, Member

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*Chairperson Filler declared that a quorum was present and called the meeting to order at 1:00 p.m.*

**RESOLUTION by Mr. Moore; seconded by Ms. Watson**

Further Resolved, to grant Trustee Britton’s request for a reasonable accommodation, under the ADA pursuant to recent Michigan Attorney General opinion, to allow Trustee Britton to vote on Motions via Zoom due to immunocompromised illness. Further, for Mr. Henzi to research the matter and draft a policy for future use during such occasions.

Yea – 6      Nay – 0      Abstain – 1, Lon Britton

Discussion took place regarding the Open Meeting Act that is currently in place.

**RESOLUTION by Mr. Moore; seconded by Mayor Greimel**

Further Resolved, to explore the possibilities of challenging the State of Michigan’s requirement for the Board to meet in person according to the current version of the OMA.

Yea – 7      Nay - 0

**AGENDA CHANGES**

**RESOLUTION by Mr. Moore; seconded by Mr. Bryant**

**Further Resolved,** The Board determined to have Nyhart present their Emergency Actuarial Study results at beginning of meeting.

Yea – 7      Nay - 0

**CONSULTANT REPORT**

## **A. Nyhart – Emergency Actuarial Study Results**

Mr. Mallows presented its Actuarial Study to the Board, with four calculation models. Two models assumed the VEBA would receive the approximately \$58M in excess assets currently being held by GERS. This scenario was offered with both a 6.5% and a 7% assumption rate. Two models assumed the VEBA would not receive the approximately \$58M in excess assets currently held by GERS. The second scenario was offered with both a 6.5% and 7% assumption rate. Under scenario number one with the VEBA receiving the \$58M from GERS the VEBA would be 284% and 271% funded respectively. Under scenario number two with the VEBA not receiving the \$58M from GERS the VEBA would be 194% and 185% funded.

Ms. Winegardner discussed Interest Rate Assumptions with the Board and reviewed what other Michigan Employee Retirement systems are using and recommended the Board use the 6.5% assumption rate. Ms. Winegardner and Mr. Mallows discussed that the City's OPEB liability was significantly reduced because of the amount of assets being invested, which are assumed to earn income over time at a rate of 6.5% annually. When Nyhart previously calculated the City's OPEB liability, there were no assets held to pay the retiree health care. Under Michigan law, Nyhart was required to use a very conservative assumption rate of 2.12% for that calculation. Nyhart also explained to the Board that the assumption rate used for valuation purposes of a terminating plan is generally lower than an assumption rate used for a routine, annual valuation report. The reason is that terminating plans require the use of a lower bond rate to be used. Extensive discussion took place regarding the results received from Nyhart. The accuracy of the Census was discussed as well. The Board discussed the GERS FOIA request for names and birthdates of all members enrolled in the VEBA. Mr. Henzi explained that the request was denied because the requested information is individually identifying information which is protected health information and may not be produced. The Board also discussed that the VEBA has requested that the GERS provide the credited service, as of December 22, 2011, for 119 GERS retirees who retired after December 22, 2011 in order to analyze VEBA eligibility. Mr. Henzi recommended the Board negotiate a BAA Agreement in place between BeneSys and GERS so that Census information can be shared freely without concern of violation of members PHI.

### **RESOLUTION by Mr. Moore; seconded by Mr. Bryant**

Further Resolved, to enter into a BAA with service agreement with GERS for purposes of the GERS production of credited service, as of December 22, 2011, for 119 GERS retirees who retired after December 22, 2011 and the VEBA production of unredacted names and birthdates of persons currently enrolled in the VEBA.

Yea – 6      Nay – 1, Ms. Watson

### **RESOLUTION by Mr. Moore; seconded by Mr. Bryant**

Further Resolved, upon the request of the City, to permit the City to retain and pay Nyhart to complete an Actuarial Cost Study of the financial impact to the VEBA if eligibility is expanded to include 50<sup>th</sup> District Court Retirees, with no cost borne by the VEBA.

Yea – 7      Nay – 0

### **RESOLUTION by Mr. Moore; seconded by Ms. Watson**

Further Resolved, to adopt the recommendation by Nyhart to utilize a 6.5% assumption rate to be used for the completion of Nyhart's Actuarial Valuation Report.

Yea – 7      Nay – 0

**PUBLIC COMMENT - None**

**CONSENT AGENDA**

**A. Invoices for Payment**

- a. AsherKelly Invoice – March 2022 - \$11,969.50
- b. BCBS MA – March 2022 - \$76,371.40
- c. BCBS Pre-65 – Feb-Apr 2022 - \$262,577.15
- d. BCBS Vision – Feb-Mar 2022 - \$4,619.32
- e. BCBS Vision – April 2022 - \$2,922.56
- f. BeneSys – February 2022 - \$13,458.11
- g. Delta Dental – April 2022 - \$19,947.18
- h. GERS Invoice – March 2022 - \$170.96
- i. Lon Britton – Zoom Expenses Oct 2021 – Apr 2022 - \$108.19

**RESOLUTION by Mr. Moore; seconded by Deputy Mayor Stephens**

Further Resolved, to approve the Consent Agenda as presented with payment being made for corrected BCBS Pre-65 invoices presented today.

Yea – 7      Nay - 0

**CONSULTANT REPORTS**

**B. Investment Consultant - Dahab Associates, Inc. – Market Update**

Mr. Roth and Mr. Lee updated the Board with the Preliminary Market Values as of March 22, 2022, for assets transferred from GERS on both January 1, 2022 and February 1, 2022. They discussed doing a rebalancing once the P&F VEBA funds are transferred.

**REPORTS**

**A. CHAIRPERSON**

Chairperson Filler updated the Board that at the meeting held between the City of Pontiac, GERS, CPREA and the VEBA, CPREA agreed to establish an escrow account for the \$58M to allow for the termination of the old GERS by the deadline of March 31, 2022. Once all actuarial studies are completed and reviewed the matter will be discussed again.

**B. SECRETARY**

Secretary Lon Britton updated the Board regarding the Meeting between the City of Pontiac, GERS, CPREA and the VEBA on March 22, 2022. The parties met with the intent of coming to an agreement regarding the remaining \$58M in the old GERS because the old GERS needed to close no later than March 31, 2022, per the Settlement Agreement. It was discussed that the \$58M could be placed in an Escrow account pending the results of the Nyhart Emergency Actuarial Study. No agreement has been reached yet.

**C. TRUSTEE COMMITTEES - None**

**D. LEGAL REPORT**

## **Nyhart Actuarial Valuation Report**

Attorney Henzi addressed this matter for the Board in the Attorney Report.

## **Enrollment Data**

Attorney Henzi addressed this matter for the Board in Attorney Report. Legal counsel previously sent correspondence to the Trustees, upon information provided by BeneSys, that there are 972 individuals enrolled in the VEBA and PF VEBA. Further, there are 326 persons who are deferred vested or eligible but not enrolled in the VEBA or PF VEBA.

## **Correspondence with GERS regarding Actuarial Valuation Report**

Attorney Henzi addressed this matter for the Board in the Attorney Report. At its February 23, 2022 meeting, the Trustees resolved to retain Nyhart to calculate the VEBA's liabilities and to provide an actuarial analysis of the financial impact to the VEBA if membership is expanded to include persons who retired after December 22, 2011. BeneSys produced a report evidencing that there are 119 GERS members who retired after December 22, 2011, who are not deferred and who are not eligible but not enrolled. However, the data that BeneSys possesses is incomplete because it does not identify whether these 119 persons had 10+ years of service as of December 22, 2011. Legal counsel sent correspondence to the GERS' Executive Director asking to provide this information so that the number of persons similarly situated to those who presented an appeal on this issue at the February 23, 2022 meeting could be identified and supplied to Nyhart. Correspondence between legal and the GERS' Executive Director was provided.

## **GERS FOIA Request and Response**

Attorney Henzi addressed this matter for the Board in the Attorney Report. On March 16, 2022, the GERS, issued a FOIA request seeking the names of all persons, including PFRS, enrolled in the VEBA as well as their birth dates. Legal counsel sent correspondence on March 21, 2022 denying the request on the basis that it requested protected health information, which the VEBA is not permitted to provide.

In further answer, and in the spirit of transparency, legal counsel sent the demographic information regarding VEBA members, both enrolled, deferred vested, and eligible not enrolled.

Ms. Munson has stated that the number of deferred vested GERS retirees should be 17, not 49. Since eligibility for these individuals can only be confirmed by the two administrative offices sharing information, legal counsel recommends that the VEBA propose to enter into a Business Associate Agreement, for a limited time and scope, with the GERS. This will allow for the sharing of confidential and protected health information that does not violate FOIA or HIPPA.

## **Asset Transfer**

Attorney Henzi addressed this matter for the Board in the Attorney Report. The excess GERS' assets have to be transferred to the VEBA, under IRS rules, before March 31, 2022. That date is one year following the termination date of the Old GERS which was March 31, 2021.

There are two sources that will fund the VEBA: certain excess GERS assets that have been previously defined and which total approximately \$150M and 100% of the PF VEBA assets (approximately \$50M) when the IRS approves the VEBA/PF VEBA Merger. The VEBA received approximately \$10M from the excess GERS transfer on January 3-4, 2022. On December 21, 2021, the GERS also transferred \$8M to a special fund so the City could comfortably fund the payment of all \$20,000 opt-out elections.

On January 31, 2022, CPREA's counsel contacted me to advise that CPREA was agreeable to explore the possibility of modifying the Settlement Agreement, under certain conditions.

The bargaining parties did not reach an agreement on these issues. The bargaining parties agreed to initiate

discussions that could possibly lead to modifying the Settlement Agreement. Consequently, the asset transfer is on hold.

### **City of Pontiac/ PF VEBA/VEBA Merger Agreement**

Attorney Henzi addressed this matter for the Board in the Attorney Report. On February 10, 2022, a representative from Hon. Brenda Lawrence's Office contacted legal to advise that the IRS has approved the Merger Agreement. As previously communicated to the Trustees, Armend Topllari from Hon. Brenda Lawrence's Office contacted legal to advise that the IRS has not approved the Merger Agreement. Rather, the matter is being reviewed by IRS attorneys. The original communication was attributed to a miscommunication between Hon. Lawrence's Office and the IRS taxpayer advocate who had been assisting them. Samantha Kopacz has conducted discussions with counsel for the IRS about this process. We obtained Powers of Attorney (Form 2848), executed by the Chair of the VEBA and the PF VEBA, permitting Ms. Kopacz to discuss the Merger Agreement on their behalf. The matter remains pending. Once the written notice of approval is received, the PF VEBA members will be enrolled in the VEBA effective the first day of the following month. Illustratively, if the IRS sends its written notice of approval on May 10, we anticipate that PF VEBA members will be enrolled in the VEBA effective June 1, 2022.

### **Trustee Terms and Elections**

Attorney Henzi addressed this matter for the Board in the Attorney Report. Trustee Britton's term expires May 30, 2022. According to the Rules and Regulations, a Notice of Election is required to be issued to eligible Police & Fire members by March 1, 2022. Legal counsel has met with BeneSys to discuss this issue.

At the last meeting, the Board directed BeneSys to initiate the process of an election for Trustee Britton's term. The Notice of Election and corresponding documents were sent to Police & Fire members eligible to vote in this VEBA election.

### **VEBA Request for Miscellaneous Determination, Form 8940**

Attorney Henzi addressed this matter for the Board in the Attorney Report. Legal counsel prepared a Form 8940 on behalf of the VEBA and requested that Hon. Lawrence's office assist in expediting IRS approval. IRS approval is pending.

### **RFP for Auditing Services**

Attorney Henzi addressed this matter for the Board in the Attorney Report. At the December 15, 2021 meeting, the Board resolved to initiate the process of hiring an auditing firm. Legal counsel prepared an RFP, which was provided. Following Board discussion, it was agreed that Legal will issue the RFP to four auditing firms.

### **Legislative Update**

#### **House Bill 5427**

Attorney Henzi addressed this matter for the Board in the Attorney Report. This Bill, which was only recently introduced, appears to serve as a replacement to HB 4934. HB 5427 would allow for retirement boards to meet remotely, for any reason. It was referred out of Committee without amendment. It underwent a second reading on November 11, 2021.

#### **House Bill 5467**

Attorney Henzi addressed this matter for the Board in the Attorney Report. This recently introduced Bill would amend the Open Meetings Act to allow members of public boards to attend remotely and participate in meetings, but not to deliberate or vote during the meeting. The Bill was referred to Committee on October 21, 2021.

## **Senate Bill 705**

Attorney Henzi addressed this matter for the Board in the Attorney Report. This recently introduced Bill would amend the Open Meetings Act to temporarily extend the sickness option available for public board members allowing them to attend remotely, through March 31, 2022. The Bill was referred to Committee on October 26, 2021.

## **TRUSTEE COMMENTS**

Ms. Watson requested for additional information to be included in the Consent Agenda which BeneSys will put into place for each regular Board Meeting.

### **RESOLUTION by Mayor Greimel; seconded by Deputy Mr. Moore**

Further Resolved, to approve for VEBA eligibility those retirees who had at least 10 years of credited service by December 22, 2011 and who also had entered into an employment or separation agreement with Emergency Manager Schimmel that stated they would have health care upon retirement, pending confirmation by the bargaining parties, if necessary, of whether an amendment to the settlement agreement is required.

Yea – 7      Nay - 0

## **PUBLIC COMMENTS**

Member 2747683915 appealed to the Board that previously he was mistaken as to his deferred date and that the actual deferred date for him was July 31, 2011. This was confirmed by BeneSys. Member will be enrolled in VEBA effective May 1, 2022.

## **UNFINISHED BUSINESS**

### **A. Previously Tabled Appeals**

#### **a. 2684822459**

The Board determined to keep this Appeal tabled pending additional information from either the member or the City of Pontiac.

#### **b. 2747683915**

The Board determined to approve this Appeal and enroll member into VEBA effective May 1, 2022.

#### **c. 2813959750**

The Board, according to previously made motion, tentatively approves this Appeal pending agreement by the Bargaining Parties.

#### **d. 2845931904**

The Board, according to previously made motion, tentatively approves this Appeal pending agreement by the Bargaining Parties.

#### **e. 3990506972**

The Board determined to keep this Appeal tabled.

## **NEW BUSINESS**

**A. Transfer of Assets Meeting – City, GERS, VEBA Trust and CPREA**

This matter was discussed during the Chairperson and Secretary Reports.

**RESOLUTION by Mayor Greimel; seconded by Mr. Moore**

Further Resolved, upon consideration of the Nyhart Valuation Report made earlier during this meeting, that the VEBA approves and recommends to the parties to the settlement agreement and GERS to transfer all remaining assets of the Old GERS to the New GERS.

Yea – 4      Nay – 2, Ms. Watson & Ms. Filler      Abstain – 1, Mr. Britton

**B. New Appeals**

**a. 0139159276**

**RESOLUTION by Mr. Moore; seconded by Deputy Mayor Stephens**

Further Resolved, to table this Appeal

Yea – 7      Nay – 0

**b. 2692662515**

The Board determined to keep this Appeal tabled pending additional information from either the member or the City of Pontiac.

**c. 2711982088**

**RESOLUTION by Mr. Moore; seconded by Mr. Britton**

Further Resolved, to approve this Appeal and allow member to receive the Opt-Out.

Yea – 7      Nay – 0

**d. 2720020668**

**RESOLUTION by Mayor Greimel; seconded by Mr. Moore**

Further Resolved, to approve this Appeal and allow member to receive the Opt-Out.

Yea – 7      Nay – 0

**e. 2725817182**

**RESOLUTION by Ms. Watson; seconded by Mr. Britton**

Further Resolved, to approve this Appeal Deny this Appeal, member does not have 10 years of service and no employment agreement with Emergency Manager Schimmel.

Yea – 7      Nay – 0

**f. 2733786003**

**RESOLUTION by Mr. Moore; seconded by Mayor Greimel**

Further Resolved, to table this Appeal pending additional information.

Yea – 7      Nay – 0

**g. 2754925324**

The Board, according to previously made motion, tentatively approves this Appeal pending agreement by the Bargaining Parties.

**h. 3564859393**

**RESOLUTION by Mr. Moore; seconded by Deputy Mayor Stephens**

Further Resolved, to table this Appeal pending additional information.

Yea – 7      Nay – 0

**i. LR**

**RESOLUTION by Deputy Mayor Stephens; seconded by Mr. Bryant**

Further Resolved, to Deny this Appeal, active employee is not a member of the class determined in the Settlement Agreement.

Yea – 7      Nay – 0

**CORRESPONDENCE**

**A. MAPERS Spring Conference 2022**

**NEXT MEETING DATE:** April 20, 2022, at 9:00 a.m.

**ADJOURNMENT**

**RESOLUTION by Mr. Moore; seconded Ms. Watson**

Further Resolved, that the meeting be adjourned at 5:42 p.m.

I certify that the foregoing are the true minutes of the City of Pontiac VEBA Trust on March 24, 2022.

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*As recorded by BeneSys*