A Special Meeting of the Board of Trustees of the Firemen's Pension Fund of Peoria, Illinois, was held this date at City Hall, 419 Fulton Street, Room 404, Peoria, Illinois, at 10:01 A.M. with proper notice having been given, for the purpose of conducting regular Firemen's Pension Fund business.

ROLL CALL

Roll Call showed the following Board Members present: Ball, Nichting, Phillips, Troglio, President Nieukirk – 5. Absent: None.

Others present: Applicant, Michael Brooks; Attorney Gordon Fiddes of Stephens Fiddes McGill on behalf of the Applicant; Attorney Ken Snodgrass of Hasselberg Grebe Snodgrass Urban & Wentworth on behalf of the City of Peoria; Attorney John Dundas of Hasselberg Grebe Snodgrass Urban & Wentworth on behalf of the City of Peoria; Risk Manager Ed Hopkins from the City of Peoria Human Resource Department; Attorney James Dobrovolny of Reimer, Dobrovolny & Karlson, LLC; Chief Deputy City Clerk Stefanie Rice; and Court Reporter Cheryl Zeone of Sivertsen Reporting Services.

INVOCATION

President Nieukirk requested a moment of silent prayer or silent reflection in remembrance of those Firefighters who lost their lives while serving their community.

REGULAR BUSINESS

ITEM NO. 1 PUBLIC HEARING to Discuss and Consider an APPLICATION for DISABILITY – LINE OF DUTY for ENGINEER MICHAEL BROOKS to become Effective the Day after the Last Day Paid by the City of Peoria based on his Salary (including 8% longevity), which will be Determined Following a Final Vote by the Board, and with a Request to Issue a Check for the Appropriate Amount After the Meeting, and with a Request to Receive and File the Letter to Deduct Monthly Insurance Premiums from his Monthly Benefit Check at the Appropriate Time. Recommendation: Board to Take Action as Deemed Appropriate.

Attorney James Dobrovolny said the Public Hearing was pursuant to Article 4 of the Illinois Pension Code to determine the disability claim of Applicant Michael Brooks. He identified those who appeared on behalf of the City of Peoria as follows: Risk Manager Ed Hopkins and Attorneys Ken Snodgrass and John Dundas of Hasselberg Grebe Snodgrass Urban & Wentworth who appeared pursuant to the City’s Petition to Intervene.
PETITION to INTERVENE on BEHALF of the CITY of PEORIA

Attorney Dundas remarked that the Illinois Pension Code provided that the Board had discretion to allow parties to intervene when a party had an interest. He said the City of Peoria had two interests. First, he said Illinois Supreme Court Case of Village of Vernon Hills v. Heelan, 2014 IL App (2d) 130823 made it clear that the decision of the Board had a direct interest effect on any sort of claim made pursuant to the Public Safety Employee's Benefit Act (PSEBA). He said the City of Peoria would be bound by the determination made by the Firemen's Pension Fund Board of Trustees. He said the City had a direct interest in this matter on how the Board determined Mr. Brooks' pension. He said it was proper for the Board, at its discretion, to allow the City to intervene and express its interest in the case. Second, he said the City had a duty under the Statute to fund the pension, noting that the number of Firefighters who received pensions had a direct effect on that mandate. Because of this, he said the City had an interest to ensure the statutes were interpreted correctly in determining whether to award a line of duty pension for Mr. Brooks.

In response to President Nieukirk's question as to the City's interest in this matter, Attorney Dundas said the City wanted to ensure that the Board had the proper determination to award Mr. Brooks' pension, which would have a direct effect on a claim for PSEBA. He said if the Board afforded a line of duty pension, the City would be bound by that determination as far as PSEBA. He said one of the factors the City had to determine was whether the Board granted a pension; therefore, he said the City had an interest to ensure the Board made the proper determination. He said any decision had a direct effect on the City's duty to fund the pension.

Attorney Fiddes said he objected to the Petition to Intervene stating that the City's obligation under the PSEBA was a separate matter, and he remarked that he was confident with the Board's interpretation of the Pension Code.

Attorney Dundas stated that the City had a direct interest in this case pursuant to the Village of Vernon Hills v. Heelan, and he said the City had information to assist the Board in its decision.

Attorney Ken Snodgrass said the Board had subpoenaed all of the City's file regarding the medical records for Mr. Brooks. He said he was uncertain as to what part of those files would be made part of the record for the disability proceeding. He remarked that there may be some additional exhibits dated 2005 that the City would like to be made part of the record. He said he had not anticipated calling any additional witnesses other than having the opportunity to cross examine Mr. Brooks, should the Board allow the City to intervene.

Trustee Phillips moved to deny the City's Petition to Intervene, noting that he understood the City had a vested interest in this matter. He remarked that the Trustees were well-trained fiduciaries to the Fund. He said he agreed with the City observing the Public Hearing wherein they could make a comment during the Citizens' Opportunity to Address the Board of Trustees portion of the agenda.

Trustee Troglio seconded the motion.

In response to Trustee Nichting's question on the grounds needed to allow a Petition to Intervene, Attorney Dobrovolny said that it had to be demonstrated that the Board's decision would adversely impact the tax levy, that the City had a financial interest in the Board's decision and coupled with a secondary interest that would impact the City. He remarked that those two
elements were met and that the Board had discretion to allow the City to intervene. He said the intervention could be a full intervention as though the City was a party to the case, or a restricted intervention to present documents or an argument.

Discussions were held regarding Village of Vernon Hills v. Heelan, which was noted that it directly dealt with Public Safety Employees Benefit Act, not disability matters.

Attorney Dobrovolny said, in response to Trustee Nichting regarding the legislative intent of a Petition to Intervene, that it was not by Statute that the right to intervene arose, but that the Board had the power and duty to control and manage the pension fund. Because of that, he said the courts stated in an appellate decision that it anticipated the Board could allow parties to intervene, but there was no specific provision stating they could intervene on a specific instance. He said there were two elements that had to be proven in order for PSEBA benefits to be awarded: 1) catastrophic injury and 2) emergency response. He said the Board would not make the determination about an emergency response.

Attorney Snodgrass said if the City was not allowed to intervene, then they would argue that they would be denied due process.

Trustee Phillips said his point indenying the Petition was because the Board had an attorney and the Board had a set of procedures it followed pursuant to the Pension Code. He said the City could sit through the Public Hearing and could address the Board under public comments, which would then be taken under advisement by the Board when it went into Executive Session.

Attorney Dundas remarked that the Board allowed the City to intervene in similar cases.

Trustee Phillips said the City’s due process would not be taken away in this matter, noting that the City had the right to appeal the Board’s decision.

In response to Trustee Phillips’ statement regarding due process, Attorney Dundas said the City would not have the right to appeal the Board’s decision of disability other than on the Petition to Intervene, if denied.

Attorney Fiddes remarked that if Mr. Brooks made an application under the PSEBA, there would be a separate process in which the City would fully participate and file a procedure and make their determination independently. He remarked that Mr. Brooks would need to receive a favorable decision in this matter in order to proceed with a PSEBA.

Attorney Dobrovolny said the Board’s decision, should it afford a line of duty disability, satisfied the first element of two for an award of PSEBA.

Discussions were held regarding PSEBA and how that would be determined.

Attorney Dobrovolny said the Board was bound by due process by providing notice and giving the applicant the opportunity to be heard. He said the definitions or statutory terms as to what constituted active duty or non-duty had to be applied and the Open Meetings Act further guided the Board with respect to how the proceedings were conducted. He said doctors were selected by an outside agency, not directly by the Board. He said the Board made a determination of disability through the Independent Medical Examiner reports along with any testimonial evidence and other documentary evidence.
Discussions were held as to whether to allow the City to introduce its additional evidence prior to the Board voting on the Petition to Intervene.

Attorney Snodgrass said there was a difference in terms of the non-duty related pension versus a duty related pension and what a person received, which would impact funding. He said it was this fact that caused the City to have an interest in this matter.

Discussions were held regarding a PSEBA determination and the medical records that were subpoenaed from the City that would be placed into evidence at the Public Hearing.

Trustee Troglio said he would agree to the City providing additional exhibits for the Board to consider, but would not agree to the City cross-examining the witness.

Discussions were held regarding the motion on the floor and the exhibits that would be introduced into evidence. It was determined that the City’s additional exhibit was already included in the exhibits presented for the Public Hearing.

Attorney Snodgrass said he wanted to clarify the Petition to Intervene noting that it was not just for the purpose of introducing medical records, but to be able to cross-examine Mr. Brooks as a party to the proceedings.

Attorney Dundas said he wanted the record clarified that if the City was denied the Petition to Intervene, he said the City would have to be acquitted that they would not be a party to this at all.

Discussions were held regarding the subpoena issued by the Board to Hasselberg Grebe Snodgrass Urban & Wentworth requesting any and all medical records for Michael Brooks.

Discussions were held regarding the burden of proof, noting it was the applicant’s burden to prove the case. Attorney Dobrovolny said the Board had a duty to obtain all the documents pertaining to the case in order to ensure a complete record.

Trustee Ball remarked that the applicant signed a Release of Records upon submitting an Application for Disability.

Trustee Troglio said the document the City wanted as part of the record was already included as an exhibit pursuant to the subpoena previously issued by the Board to the City’s attorney.

Attorney Dundas said if the City was not allowed to intervene, there would be no other records to submit. He said if the City was not allowed to cross-examine, then it would be proper to deny the Petition to Intervene and say that the City was a non-party to the matter, which needed to be clearly stated. He said there was no reason to allow the City to intervene as a limited party.

Motion to deny the City’s Petition to Intervene was approved by roll call vote.

Yea: Phillips, Troglio, President Nieukirk – 3;
Nay: Ball, Nichting – 2.
APPLICATION for DISABILITY – LINE OF DUTY for ENGINEER MICHAEL BROOKS

Attorney Dobrovolny, as Hearing Officer, advised Michael Brooks of the process and procedure used for the Hearing and what his rights were regarding the presentation of evidence and of appeal.

Attorney Fiddes acknowledged receipt of the Notice of Hearing and confirmed that he and Mr. Brooks were ready to proceed.

Evidence was presented and heard on Michael Brooks' Application. Attorney Dobrovolny introduced the following into evidence:

Board Exhibit No. 1 Disability Application of Michael Brooks and documents received from Applicant

Board Exhibit No. 2 Documents received from the City of Peoria Human Resources Department

Board Exhibit No. 3 Documents received responsive to Subpoena issued to Hasselberg, Grebe, Snodgrass, Urban & Wentworth

Board Exhibit No. 4 City of Peoria Fire Engineer Job Description

Board Exhibit No. 5 Joshua M. Alpert, M.D., Independent Medical Evaluation Curriculum Vitae and IME Instruction Letter

Board Exhibit No. 6 Michael S. Lewis, M.D., Independent Medical Evaluation Curriculum Vitae and IME Instruction Letter

Board Exhibit No. 7 James B. Stiehl, M.D. Independent Medical Evaluation Curriculum Vitae and IME Instruction Letter

Board Exhibit No. 8 Notice of Hearing and Agenda

Attorney Fiddes acknowledged receipt of the exhibits as outlined and there were no objections to the documents being considered by the Board.

Attorney Fiddes provided an opening statement on behalf of the Applicant. He provided background as to Mr. Brooks' time with the Fire Department and his current disability. He said if the Board reviewed the National Fire Protection Association Guidelines on health conditions, an artificial joint was classified as a Category 8 condition, which prevented a Firefighter from performing his essential task of a Firefighter. He said the cause of the disability came from working as a Firefighter for 24+ years. He said Section 4-110 of the Illinois Pension Code provided for the award of a line of duty disability pension under two circumstances: 1) if the disability resulted from an act of duty, which he remarked that it was clear the disability resulted from an act of duty that being a specific accident on July 16, 2015, at the training tower, and 2) if the disability resulted from the cumulative effects of acts of duty. He said Mr. Brooks worked as a Firefighter for 24+ years, and he said it was their assertion and they maintained that it was the cumulative effects of that job in addition to the specific injury which led to his disability. He said
based on these things, they respectfully requested of the Board to grant the Application for Line of Duty Disability Pension.

Attorney Fiddes moved to admit Applicant’s Exhibit No. 1 – Records from Midwest Orthopaedic Center for 2/24/2016 into record. No objection by the Board. Applicant’s Exhibit No. 1 was admitted to the record.

Attorney Dobrovolsky introduced Board’s Exhibit No. 9 for the record, pre-employment physical related to Mr. Brooks. No objection. Board’s Exhibit No. 9 was admitted to the record.

Mr. Brooks was sworn in and testified on his own behalf. Board Members asked questions of Mr. Brooks regarding his testimony. There were no other witnesses presented or heard. A transcript of the open portion of the hearing will be placed in Mr. Brooks’ file together with all Exhibits at the Hearing.

Attorney Fiddes remarked that Section 4-110 of the Illinois Pension Code stated that an individual could receive a disability pension if the disability resulted from an act of duty and cumulative effects of acts of duties. He said none of the Independent Medical Examiners were asked if Mr. Brooks’ right knee condition was caused by the cumulative effects of his working as a Firefighter for over 24+ years.

It was determined that further discussions should be held in closed session.

**ITEM NO. 2** Request for a Motion to go into EXECUTIVE SESSION to discuss 2(c)4 Evidence of testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined, provided that the body prepares and make available for public inspection a written decision setting forth its determinative reasoning.

Trustee Troglio moved to go into Executive Session to discuss 2(c)4 Evidence of testimony presented in open hearing, or in closed hearing where specifically authorized by law, to a quasi-adjudicative body, as defined, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning; seconded by Trustee Phillips.

Approved by roll call vote.
Yeas: Ball, Nichting, Phillips, Troglio, President Nieukirk – 5;
Nays: None.

The Board adjourned into Executive Session at 12:05 P.M.

**RECONVENING OF THE BOARD OF TRUSTEES**

The Board Meeting reconvened at 12:53 P.M.

Roll Call showed the following Board Members Present: Ball, Nichting, Phillips, Troglio, President Nieukirk – 5. Absent: None.

Others present: Attorney Jim Dobrovolsky; Chief Deputy City Clerk Stefanie Rice; Court Reporter Cheryl Zeone.
Trustee Phillips moved to approve a finding of disability of Mr. Michael Brooks based on the three independent medical evaluations and the evidence presented at the Public Hearing; seconded by Trustee Phillips.

Approved by roll call vote.
Yeas: Ball, Nichting, Phillips, Troglio, President Nieukirk – 5;
Nays: None.

Trustee Phillips moved to approve the Application for Line of Duty Disability of Firefighter Michael Brooks; seconded by Trustee Troglio.

Approved by roll call vote.
Yeas: Phillips, Troglio, President Nieukirk – 3;
Nays: Ball, Nichting – 2.

Attorney Dobrovolny said a temporary order was entered but would not be finalized until a written order was entered. He advised that after entry of the written order, Mr. Brooks would have the right to an Administrative Review within 35 days of entry of that order to be reviewed in the Circuit Court of Peoria County, if he disagreed with the order.

CITIZENS' OPPORTUNITY TO ADDRESS THE BOARD OF TRUSTEES

It was determined there were no citizens to address the Board of Trustees.

ADJOURNMENT

Trustee Phillips moved to adjourn the Regular Firemen's Pension Board Meeting; seconded by Trustee Troglio.

Approved by viva voce vote.

The meeting adjourned at 12:58 P.M.

Beth Ball, MMC, City Clerk
Trustee and Board Secretary,
Firemen's Pension Fund of Peoria, Illinois