

**PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM
BOARD OF TRUSTEES SPECIAL MEETING**

March 7, 2014

MINUTES

Present: Mr. Brian Tobin, Chairman, Trustee
Mr. Gregory Ferguson, Vice Chairman, Trustee – Excused at 10:20 a.m.
Mr. Jeff McHenry, Trustee - Excused
Ms. Randie Stein, Trustee
Mr. Richard Petrenka, Trustee
Mr. Lauren Kingry, Trustee
Mr. William Davis, Trustee

Others Present: Mr. Jim Hacking, Administrator
Mr. Jared Smout, Deputy Administrator
Ms. Ivy Voss, Assistant Attorney General
Mr. Marc Lieberman, Fiduciary Counsel, Kutak Rock

1. Call to Order; Roll Call; Opening remarks

Mr. Brian P. Tobin, Chairman

Chairman Tobin called the meeting to order at 9:10 a.m.

Chairman Tobin announced a Call to the Public.

Mr. David Bodney of Steptoe & Johnson LLP representing the Phoenix Newspapers Inc. of which the Arizona Republic is a part addressed the Board of Trustees regarding Agenda item 3.

Mr. Bodney stated that the Board of Trustees did the right thing by disclosing certain records regarding the Desert Troon valuation issue to the public. Those documents included the Majority Report, the Minority Report and the Rebuttal to the Minority Report. He said that the Board's action was in the public interest and the right thing to do. He complained, however, that certain documents that were attachments to the Minority Report were not released. He alleged that the failure to release those attachments does a disservice to the public and sacrifices transparency. He claimed that it is impossible for the public to get a clear understanding if they cannot see the exhibits upon which the Report was based. The Minority Report, in particular, was premised on information contained in those exhibits, so it is impossible for the public to get a full, clear understanding of the Minority Report if we cannot see the exhibits upon which that report was based. The decision to release the main documents was correct, but that action loses meaning if exhibits upon which the report was based are not there for the public to examine and understand.

Mr. Bodney claimed that, last week, when the Board voted to release those records as public records, it waived a privilege that might attach to them. He added that the Minority Report, with approximately twenty exhibits, was not redacted in any way. It refers to the exhibits. It is based on the exhibits and it was released publically. So, it is

his position that there has been a legal waiver of any privilege with respect to the attachments by the release of the Report itself.

If the Board is inclined to reconsider that issue, then any decision to withhold those exhibits ought to be examined very carefully, probably by some independent counsel because there are a number of issues including the waiver. If there were a waiver, how do you put the genie back into the bottle or try to, he asked. If the attorney-client is invoked, has it been rightly invoked? The attorney-client privilege involves more than a lawyer talking to a client or vice versa. He asked whether the documents that have been withheld are genuinely privileged? Did they involve legal advice or did they involve facts that the public has a right to see because this Report was premised on those facts. He added that the reports were referenced specifically in a letter, an open letter, to the Arizona Auditor General. This is a matter of acute public interest. The question raised is, were these real estate valuations inflated in some way to support bonuses and were the procedures properly followed?

Mr. Bodney said that he applauds the Board for making the Majority Report, Minority Report and Rebuttal to the Minority Report available to the public, but for the reasons mentioned, the Board needs to recognize that those exhibits, upon which the Minority Report was based, need to be made available for public examination too. It is a question of waiver, of transparency, and an issue of full disclosure. He said that he has seen the documentation that indentifies the basis for withholding the records. Can a public body enter into a nondisclosure agreement with ORG, CPRG Cushman and Wakeman? If it can, is that a proper basis for withholding the records? Were these various documents referenced really subject to the attorney-client privilege? You have your existing counsel providing advice on that question. If you are really inclined to try to put this genie back in the bottle, I think those are issues that need to be examined very, very carefully, because I think the public interest in seeing those exhibits, upon which the Minority Report is based, is very compelling.

2. Discussion and consultation with legal counsel and Staff, and possible **ACTION** to retain outside counsel to represent the System and/or the Board.

Mr. Brian P. Tobin

MOTION: 2 – 3/7/14	At 10:35 a.m.
Motion:	I move that we allow Dennis Carpenter, Chief Counsel for the Employment Section of the Attorney General's office to review the Melanie Pate report in the presence of a board member and Ms. Pate as long as this can be done without waiving attorney- client privilege, releasing the report, or making copies thereof. This is, of course, subject to the agreement, permissions, and hiring of Ms. Pate for this purpose.
Moved by:	Ms. Stein
Seconded by:	Mr. Petrenka
Discussion:	None.
In Favor:	Unanimous – Mr. McHenry and Mr. Ferguson were excused.
Motion:	Passes

MOTION: 3 – 3/7/14	At 10:37 a.m.
Motion:	To have counsel continue their search for outside counsel, as discussed, in conjunction with the Administrator, and to bring recommendations back to the Board.
Moved by:	Mr. Petrenka
Seconded by:	Mr. Davis
Discussion:	None.
In Favor:	Unanimous – Mr. McHenry and Mr. Ferguson were excused.
Motion:	Passes

3. Discussion and possible **ACTION** to clarify a motion that was approved at the Board of Trustees meeting on February 26, 2014, and to make clear the scope of the documentation that the Board, by its approved motion, released to the public.

Mr. Brian P. Tobin

MOTION: 4– 3/7/14	At 10:39 a.m.
Motion:	At the February 26, 2014 meeting, after discussion in executive session with its counsel, the Board voted in open session to waive attorney-client privilege with respect to certain documents; and, to permit the release of some of the attachments to those documents, because those attachments are otherwise public records. To clarify the Board's vote, I move to waive the attorney-client privilege with respect to the Desert Troon valuation issue Majority Report only and not to its attachments which, pursuant to ARS § 38-848(U) are not public records. I move to waive the attorney-client privilege with respect to the Desert Troon valuation Minority Report and the following attachments which are public records: B, C, D, E, I, J, K, P, Q, S and Z. The remaining exhibits are either subject to attorney-client privilege or ARS § 38-848(U) and that privilege is not being waived by this motion. I move to waive the attorney-client privilege with respect to the Desert Troon valuation issue Rebuttal Report, the final signed Majority Report, attached to the Rebuttal Report and the following attachments: the April 17, 2013 letter from Desert Troon Companies to Beazer Homes Holdings Corp.; the April 30, 2013 letter from Lennar to Citadel Land Advisory Group; and, the April 22, 2013, Letter of Intent from Avatar Properties, Inc. to Citadel Land Advisory Group, LLC. The last attachment to the Rebuttal Report is privileged and not subject to this waiver motion.
Moved by:	Mr. Davis
Seconded by:	Mr. Petrenka
Discussion:	None.
In Favor:	1 abstention; 1 no; 3 yes. Mr. McHenry and Mr. Ferguson were excused.
Motion:	Passes

4. **The Board of Trustees may vote to go into Executive Session (which will not be open to the public) to discuss matters pursuant to A.R.S. §§ 38-431.03(A) (2), (3) & (4), as applicable, including to obtain legal advice from the Board's attorneys on any matter listed on the agenda, including:**
- a. Discussion and consultation with legal counsel and Staff regarding the retaining of outside counsel to represent the System and/or the Board, pursuant to A.R.S. §§ 38-431.03(A) (2), (3) and (4).
 - b. Discussion with legal counsel to clarify a motion that was approved at the Board of Trustees meeting on February 26, 2014, and to make clear the scope of the documentation that the Board, by its approved motion, released to the public, pursuant to A.R.S. § 38-431.03(A) (2), (3) and (4).
 - c. Discussion with legal counsel regarding determination letters, ongoing litigation (including Seldin, Wright, Fields & Orlich cases), reported investigations and representation of the Board and/or System with respect to same, pursuant to A.R.S. § 38-431.03(A) (2), (3) and (4).

MOTION: 1 – 3/7/14	At 9:18 a.m.
Motion:	To recess Open Session and enter Executive Session.
Moved by:	Ms. Stein
Seconded by:	Mr. Davis
Discussion:	None.
In Favor:	Unanimous – Mr. McHenry was excused.
Motion:	Passes

Open Session was resumed at 10:33 a.m.

5. Adjournment.

The meeting was adjourned.

Brian P. Tobin, Chairman

Gregory Ferguson, Trustee,
Vice Chairman

Randie A. Stein, Trustee

Excused

Jeff Allen McHenry, Trustee

Richard J. Petrenka, Trustee

Lauren Kingry, Trustee

William C. Davis, Trustee