

BOARD OF TRUSTEES
Regular Meeting
Friday, February 9, 2007, 12:00 p.m.
Retirement Fund Conference Room

MINUTES

DEFINED BENEFITS

I. ATTENDANCE, QUORUM, AND CALL TO ORDER

After determining a quorum was present, the Retirement Fund Board of Trustees Regular Meeting for the Defined Benefits Plan was called to order at 12:15 p.m. Friday, February 9, 2007, in the Retirement Fund Conference Room. Chairman Joe T. San Agustin officiated.

Board of Trustees Present:

Joe T. San Agustin, Chairman
Wilfred P. Leon Guerrero, Vice-Chairman
Gerard A. Cruz, Treasurer
James J. Taylor, Secretary
George A. Santos, Trustee
Katherine T.E. Taitano, Trustee

Staff Present:

Paula Blas, Director
Diana Bernardo, Controller
Rosalia Bordallo, General Accounting Supervisor
Mike Perez, Great West Retirement Services
Jackie Blas, Recording Secretary

Public Present:

Joseph Guthrie, Active Member
Mark Heath, Metropolitan West Capital Management
Mana Silva and Charlene Calip, ABC7
Clint Ridgell, KUAM
John Camacho, Active Member

Chairman San Agustin informed the Board of Trustees that Trustee Anthony Blaz submitted his resignation to Governor Felix Camacho on December 31, 2006. Mr. Blaz is currently employed at the Governor's Office. Mr. Blaz's employment was effective February 2, 2007.

Chairman San Agustin called for an amendment on today's meeting agenda to include Resolution No. 2007-001 under New Business.

Trustee George Santos, seconded by Trustee Katherine Taitano, moved to amend the February 9, 2007 Board Meeting Agenda to include Resolution No. 2007-001 under New Business. Without objection, the motion passed.

II. REVIEW AND APPROVAL OF BOARD MINUTES

A. September 8, 2006, September 15, 2006 (Continuation of September 8, 2006), October 20, 2006 and January 5, 2007 Regular Meetings; October 10, 2006 and October 17, 2006 Special Meetings

Secretary James Taylor stated that he has reviewed the minutes of September 8, 2006, September 15, 2006, and January 5, 2007 Regular Meetings.

On motion of Secretary James Taylor, seconded by Trustee George Santos, and without objection, the Minutes of September 8, 2006, September 15, 2006 (Continuation of September 8, 2006) and January 5, 2007 Regular Meetings were approved, subject to corrections. Motion passed.

Secretary Taylor stated that he will review the minutes of October 10, 2006 and October 17, 2006 Special Meetings and the minutes of October 20, 2006 Regular Meeting. The minutes of the October 2006 meetings will be presented at the next Board meeting.

Secretary James Taylor, seconded by Trustee George Santos, moved to defer approval of the Minutes of October 10, 2006 and October 17, 2006 Special Meetings and the Minutes of October 20, 2006 Regular Meeting. Without objection, the motion passed.

III. CORRESPONDENCE

A. December 29, 2006 Letter to Governor Felix Camacho from Anthony C. Blaz Regarding Resignation as a Member of the Retirement Fund Board of Trustees

Chairman San Agustin stated that he had mentioned at the beginning of the meeting that Anthony Blaz had submitted his resignation effective December 31, 2006. Mr. Blaz is currently employed at the Governor's Office. Mr. Blaz's employment was effective February 2, 2007. Chairman San Agustin stated that Mr. Blaz's presence at the January 5, 2007 Board Meeting is valid.

B. Memorandum from Joseph Guthrie Regarding Why the Contribution Rate is 22.65%, not 22.94%

Chairman San Agustin stated that the memorandum from Joseph Guthrie regarding why the contribution rate is 22.65%, not 22.94%, will be incorporated into the discussion on Resolution No. 2007-001 under New Business.

IV. INFORMATIONAL ITEMS

A. Investopedia Articles

Chairman San Agustin stated that he provided, at this meeting, Investopedia.com articles regarding information on investment portfolios.

B. Saipan Tribune Article – “House Kills Bill Altering Retiree Benefit”

Chairman San Agustin stated that he provided, at this meeting, a Saipan Tribune article, for the Board’s information, regarding the CNMI’s Retirement Fund activities. Chairman San Agustin stated that the article stated: “The House of Representatives killed a bill that would have altered benefits for the future retirees and make it more difficult to increase retirement benefits.” “The intent of the bill was to address CNMI government’s unfunded obligation to the Retirement Fund, which currently amounts to \$470 Million or about \$58,500 for each of the 8,029 participants in the Defined Benefit Plan.”

C. Cantor Fitzgerald Debt Capital Markets – Interest Rate Trading

Chairman San Agustin stated that he provided, at this meeting, a Cantor Fitzgerald Debt Capital Markets article showing information on interest rate trading.

D. NAGDCA – Fiduciary Responsibility for New Products & Services

Chairman San Agustin stated that he provided, at this meeting, a NAGDCA article, for the Board’s information, regarding fiduciary responsibility for new products and services.

E. Saipan Tribune Article – “Fund Assets Grew By \$23 Million in 2006”

Chairman San Agustin stated that he provided, at this meeting, a Saipan Tribune article, for the Board’s information, regarding the CNMI Retirement Fund’s assets which grew by \$23 Million in 2006.

Chairman San Agustin stated that there was a separate article in the Saipan Tribune regarding the firing of Gabelli, one of the Investment Fund Managers. Chairman San Agustin stated that the article specified that although they had indicated progressive improvement to CNMI’s Retirement Fund in the past two years, they are not meeting the authorized benchmark. Chairman San Agustin stated that a great bulk of the Fund’s current Investment Managers are not meeting the benchmark. Chairman San Agustin stated that this is something the Investment Committee should look into.

V. DIRECTOR’S REPORT - EXECUTIVE SUMMARY

I. *William Don Parkinson vs. Government of Guam, Guam Memorial Hospital Authority (GMHA) and Guam Public School System (GPSS)* – Director Paula Blas stated that this case remains status quo.

2. ***Candelaria Rios, et al. vs. Joseph Ada, et al. (Special Proceeding Case No. SP206-98)*** – Director Blas stated that the Office of the Public Auditor (OPA) and Deloitte and Touche (Deloitte) are currently auditing the COLA calculations and the procedures used in determining the COLA. This was requested by the Department of Administration (DOA). Vice-Chairman Wilfred Leon Guerrero asked whether the OPA has the authority to overrule a judgment by the Court. Director Blas replied, “no.” Director Blas stated that the OPA is trying to understand the methodology that took place. Chairman San Agustin stated that the OPA is not challenging the Court Order. Vice-Chairman Leon Guerrero stated that the OPA is questioning the amount. Director Blas stated that DOA requested for the OPA to have an audit conducted over the COLA calculations since the General Fund will be paying the COLA amounts. Secretary Taylor asked who called for Deloitte to conduct the audit. Director Blas stated that Deloitte conducts the audit for the General Fund.
3. ***Organic Act / Trust Agreement*** – Director Blas stated that the amendments to the Trust Agreement are pending Secretary Taylor’s review.
4. ***Request for Proposal (RFP): Custodial Bank Services*** – Director Blas stated that the RFP for the Custodial Bank Services closed on January 23, 2007. There were 25 firms who picked up the RFP and 5 proposals were submitted. The proposals have been sent to Mercer for their analysis. Chairman San Agustin stated that he will be assigning the RFP Panel.
5. ***Request for Proposal (RFP): Real Estate Investment Trusts (REITS)*** – Director Blas stated that the RFP for the Real Estate Investment Trusts closed on January 29, 2007. There were 23 firms who picked up the RFP and 9 proposals were submitted. The proposals meeting the RFP requirements will be sent to Mercer for their analysis.
6. ***Request for Proposal (RFP): U.S. Domestic Small Capitalization Core Equity*** – Director Blas stated that the RFP for the U.S. Domestic Small Capitalization Core Equity closed on January 29, 2007. There were 36 firms who picked up the RFP and 16 proposals were submitted. The proposals meeting the RFP requirements will be sent to Mercer for their analysis.
7. ***Request for Proposal (RFP): Transition Management Services*** – Director Blas stated that the RFP for the Transition Management Services closed on January 29, 2007. There were 17 firms who picked up the RFP and 6 proposals were submitted. The proposals meeting the RFP requirements will be sent to Mercer for their analysis.
8. ***Request for Proposal (RFP): Study Related to Alternative Options for Investing in Real Estate in Guam*** – Director Blas stated that the RFP for the Study Related to Alternative Options for Investing in Real Estate in Guam closed on January 16, 2007. There were 6 firms who picked up the RFP and 1 proposal was submitted. Director Blas stated that the Investment Committee will serve as the Selection Panel.
9. ***Request for Proposal (RFP): Medical Consultant Services*** – Trustee George Santos stated that the RFP for Medical Consultant Services is still in progress.

10. Public Law 28-38 – Director Blas stated that monthly interest payments for Guam Public School System (GPSS) and Guam Memorial Hospital Authority (GMHA) are current. The Fund continues to process applications for retirement for GMHA eligible employees. Director Blas stated that the Fund is not accepting applications for retirement for GPSS eligible employees until current contributions are paid. Director Blas stated that payment is due on Monday, February 12, 2007.

11. Government Retirement Contribution Rate for Fiscal Year 2007 – Director Blas stated that a copy of Senator Edward Calvo’s letter and a copy of the letter from the Director of the Bureau of Budget and Management Research are provided, at this meeting, regarding their explanation of why the contribution rate should be 22.65%. Director Blas stated that this matter will be taken into consideration under New Business.

12. Funding and Management Review – Director Blas stated that she provided, at this meeting, a copy of the status report on the recommendations that were done by Milliman based on the audit recommendations of Fiscal Year 2005. Director Blas stated that Management’s goals were established to address the audit recommendations identified during the 2005 Financial Statement Audit. Chairman San Agustin stated that this is based on getting the statutory amendments. Director Blas stated that Bill Nos. 398 and 400 were signed into law. Director Blas stated that Bill 398 which is Public Law 28-188 will allow the Board to have authority to approve and execute all contracts for the procurement of professional services associated with the operation of the Fund. Bill No. 400 which is Public Law 28-189 will allow the Board to employ an attorney to assist and represent the Fund in all civil matters including civil litigation matters which concerns the Board.

Vice-Chairman Leon Guerrero requested an in-depth discussion on the status report on the recommendations that were done by Milliman. Vice-Chairman Leon Guerrero stated that he is concerned with the Management team. Director Blas stated that these recommendations were listed in Milliman’s report. Chairman San Agustin stated that there probably should be a special working committee to review this matter. Director Blas stated that the Board could establish a working committee. Vice-Chairman Leon Guerrero agreed that there should be a working session with the Board. Director Blas stated that she will work with Vice-Chairman Leon Guerrero on scheduling a work session.

13. Century 21, Realty Management Company, Inc.: Parking Lot Use Agreement – Director Blas stated that a draft copy of the Parking Lot Use Agreement between First Hawaiian Bank (FHB) and the Fund is included in today’s meeting packet. Director Blas stated that she just received an email from the Fund’s Legal Counsel that FHB’s attorneys are looking for an alternative parking site. Director Blas stated that FHB has requested for an invoice from the Fund for the period October 2005 to present. Director Blas stated that she will send the invoice to FHB.

Financial Report

1. Contributions – Director Blas stated that all agencies are current with their Fiscal Year 2007 employee and employer contributions except for the Guam Public School System (GPSS) and the General Fund.

2. ***Financial Statement / Fiscal Year 2006 Audit*** – Director Blas stated that the auditor will release a draft of the Fiscal Year 2006 audit by next week Friday, February 16, 2007. Director Blas stated that the books for the month ending January 2007 will be closed today, February 9, 2007. Chairman San Agustin mentioned that the Audit Committee Chairmanship position is vacant. Treasurer Gerard Cruz volunteered to chair the Audit Committee.

3. ***Fiscal Year 2007 Retirees' Supplemental Benefits*** – Director Blas stated that the supplemental benefits for retirees and survivors for the month of January 2007 were paid.

4. ***Medicare Reimbursements*** – Director Blas stated that the Fiscal Year 2006 Medicare reimbursements are still pending from the General Fund. The allotments for Fiscal Year 2007 continue to be received monthly and are processed accordingly.

VI. LEGAL COUNSEL'S REPORT

A. Bernstein, Litowitz, Berger & Grossmann LLP (BLB&G) Portfolio Monitoring Quarterly Report

Chairman San Agustin stated that a copy of the Portfolio Monitoring Quarterly Report is provided, at this meeting, from the Law Firm of Bernstein, Litowitz, Berger & Grossmann (BLB&G) of New York. The report is structured with the following components:

- details on the most noteworthy cases initiated during the quarter and Fund-specific details on losses or activity in securities related to current filings;
- updates on client's active litigation where applicable;
- a listing of settled cases with pending filing deadlines for use by the Fund's custodian or other administrative partner to assist in prompt claims filing.

Vice-Chairman Leon Guerrero asked why it shows that BLB&G is getting information from Bank of Hawaii. Director Blas stated that it was a grammatical error; it should show First Hawaiian Bank. Chairman San Agustin stated that a list of securities litigation initiated during the past quarter was included in the report. Chairman San Agustin asked whether the Fund is involved in any of the litigations. Director Blas stated that she would check on this.

VII. TREASURER'S REPORT OF FINANCIAL STATUS

Treasurer Cruz reported that there is a recovery from the WorldCom class action settlement in the amount of \$2.3 Million. Treasurer Cruz stated that this matter will be discussed in the Investment Committee's Report. Vice-Chairman Leon Guerrero asked whether the net recovery and the actual recovery rate been determined. Controller Diana Bernardo stated that she is trying to find out what that amount is. Vice-Chairman Leon Guerrero asked Mark Heath from Metropolitan West Capital Management if he knew the amount. Mr. Heath stated that he is not sure. Chairman San Agustin asked whether the Fund has received any amount on Enron. Rosalia Bordallo, General Accounting Supervisor, replied, "not yet."

VIII. STANDING COMMITTEE REPORTS

A. Members and Benefits Committee

Trustee George Santos reported to the Board of Trustees on his Committee's January 2007 end of the month report. Chairman San Agustin asked whether there is anyone retiring from the line agencies whose contributions are not up to date. Trustee Santos replied, "no."

Trustee George Santos, seconded by Trustee Katherine Taitano, moved to approve the recommendation of the Members and Benefits Committee contained on Pages 4 through 7, including the attached Annuity Worksheets, based on the Committee's review and findings during their meeting of January 17, 2007 and subsequent meetings thereafter. Without objection, the motion passed.

B. Investment Committee

Vice-Chairman Leon Guerrero reported that the Investment Committee meeting was held on January 26, 2007. The following was discussed and approved by the Investment Committee for Board action.

1. Board Action

a. *Proceeds from WorldCom – Class Action Settlement* - Vice-Chairman Leon Guerrero stated that the Fund received \$2,305,801 from the WorldCom Class Action Settlement. Vice-Chairman Leon Guerrero stated that the Investment Committee recommends that the Board authorize Management to drawdown the \$2,305,801 to meet the Fund's daily cash flow needs. Chairman San Agustin asked whether the proceeds from WorldCom are in a money market account. Mrs. Bordallo replied, "yes." Vice-Chairman Leon Guerrero stated that the Managers are waiting to hear from the Fund on what to do with the proceeds from WorldCom. Chairman San Agustin asked what the impact of the drawdown schedule is of having the \$2.3 Million. Mrs. Bordallo stated that a drawdown may not be needed. Director Blas stated that because Guam Public School System (GPSS) is behind in their contributions, a drawdown may be required.

Vice-Chairman Wilfred Leon Guerrero, seconded by Treasurer Gerard Cruz, moved to authorize Management to drawdown the \$2,305,801 to meet the Fund's daily cash flow needs. Without objection, the motion passed.

b. *Due Diligence Meeting* – Vice-Chairman Leon Guerrero stated that the Investment Committee will be conducting a Due Diligence Meeting on March 7-9, 2007.

c. *Fourth Quarter 2006 Income Distribution from Capital International Emerging Market Growth Fund (EMGF)* – Controller Bernardo stated that she requested from Mercer an explanation of the transactions reported on the fourth quarter 2006 reports from EMGF. Mercer's explanation is as follows:

- August 4, 2006: The Fund holds 470,421 units, each valued at \$77.59 for a market value of \$36,500,000 not including embedded long-term capital gains.
- December 15, 2006: The Fund receives a \$10,716,201 long-term capital gain distribution. The Fund holds 470,421 units, each valued at \$69.18.

- December 15, 2006: The Fund receives $\$10,716,201 / \$69.18 = 154,903$ additional units for reinvested distribution.
- December 31, 2006: The Fund holds $470,421 + 154,903 = 625,324$ units, each valued at \$70.92 for a market value of \$44,348,021.

Mercer's response stated that: "Had the Fund not reinvested the long-term capital gain distribution, the market value of the portfolio on December 31, 2006 would have been about \$33,362,257."

Chairman San Agustin inquired about the market value of \$36,500,000 which increased to \$44,348,021 and then decreased to \$33,362,257. Controller Bernardo stated that the \$36.5 Million was the initial investment. \$10,716,201 was reinvested and used to purchase additional shares and the value after capital gain distribution was \$44,348,021. 154,903 units were purchased at the market value of \$33,362,257. Chairman San Agustin stated that the Fund lost \$3.5 Million on the capital gain. Controller Bernardo stated that she is clarifying this matter with Mercer. Chairman San Agustin asked what authority the Fund Manager has cashing in the capital gain contribution and reinvesting it without the approval of the Board or the Investment Committee. Mrs. Bordallo stated that it's in their contract. Chairman San Agustin stated that the Fund may be looking at a possible litigation if it is a violation. Chairman San Agustin stated that the Fund could have used the \$10 Million on the drawdown. Controller Bernardo stated that she received a revised letter with the figures. Vice-Chairman Leon Guerrero stated that this will remain an open item. Vice-Chairman Leon Guerrero further stated that the Law Firm of Bernstein, Litowitz, Berger & Grossmann (BLB&G) was informed of this matter.

2. Informational Items

a. *Investment Committee Minutes* - Vice-Chairman Leon Guerrero stated that the Investment Committee reviewed and approved the minutes of December 29, 2006.

C. Audit Committee

No report was made at this time.

D. Governmental Liaison

1. Bill No. 398 and Bill No. 400 – Status

Director Blas stated that Bill Nos. 398 and 400 were signed into law. Director Blas stated that Bill 398 which is Public Law 28-188 will allow the Board to have partial procurement authority to approve and execute all contracts for the procurement of professional services associated with the operation of the Fund. Bill No. 400 which is Public Law 28-189 will allow the Board to employ an attorney to assist and represent the Fund in all civil matters including civil litigation matters which concerns the Board. The Board may set the terms and conditions of employment for the attorney and his/her compensation.

IX. OLD BUSINESS

A. Reaffirmation of the Board’s Decision at the January 5, 2007 Board of Trustees Meeting

Chairman San Agustin stated that the basis of the reaffirmation of the Board’s decision at the January 5, 2007 Board of Trustees meeting was due to Anthony Blaz’s resignation, but Mr. Blaz’s employment at the Governor’s Office was effective February 2, 2007. Chairman San Agustin stated that the Board’s decision at the January 5, 2007 is legitimate as Mr. Blaz was technically still a member of the Board.

X. NEW BUSINESS

A. Resolution No. 2007-001 (Relative to the Processing of Individual Retirement Applications of Employees Whose Employer Agencies Have Not Made Contributions at the Statutory Contribution Rate and Relative to Public Law No. 28-150:V:3 Providing for the Statutory Contribution Rate for Fiscal Years 2007 Through 2011)

Director Blas stated that there was a disagreement on which contribution rate to use - whether it is the 22.65% or the 22.94%. Director Blas stated that she received a letter from the Director of the Bureau of Budget and Management Research (BBMR), along with a copy of Senator Edward Calvo’s letter clarifying the intent of Section 3, Chapter V of Public Law 28-150 relative to the retirement contribution rate for Fiscal Year 2007. Director Blas stated that Senator Calvo cited Section 3 as follows:

- **“Section 3. Government of Guam Retirement Fund Rate of Contribution.** In accordance with §8137(e) of Article 1, Chapter 8 of Title 4 of the Guam Code Annotated, in each fiscal year beginning with Fiscal Year 2007 and continuing through Fiscal Year 2011, the government’s rate of contribution to the Government of Guam Retirement Fund shall annually increase by *no less than 0.84%* in order to reach the contribution rate of 26% or the actuarial recommended contribution rate.”

	FY2006	FY2007	FY2008	FY2009	FY2010	FY2011
Base Contribution Rate	21.81	21.81	22.65	23.49	24.33	25.17
Incremental Increase of 0.84%		0.84	0.84	0.84	0.84	0.84
Contribution Rate for Each Fiscal Year		22.65	23.49	24.33	25.17	26.01

Director Blas stated that she asked the Fund’s Legal Counsel to review how the provision of the law is read. As a result of a Court Order in 2003, the Fund was ordered not to process any retirement if contributions are not made in full. Director Blas stated that Resolution No. 2007-001 reaffirms the Board’s position that if the Legislature is not going to fully fund the Retirement Fund at the 27.48%, then in line with Public Law 28-150 the Legislature should, at a very minimum, be funding the Retirement Fund at 22.94%. Director Blas stated that Resolution 2007-001 was drafted by the Fund’s Legal Counsel.

Chairman San Agustin stated that all agencies are paying the 22.94% except the General Fund. Vice-Chairman Leon Guerrero asked what the outcome of the Legal Counsel’s review was. Director Blas replied “all agencies should pay the 22.94% contribution rate.” Chairman San Agustin stated that the law says to pay 22.94%. Chairman San Agustin stated that the Legislature is to fund no less than .84%. Treasurer Cruz stated that the intent was to bring the Fund up to the actuarial rate within a certain amount of time. The .84% was the minimum to be used to get the Fund to the actuarial rate of 27.48%. Chairman San Agustin stated that the Fund’s actuary cited the 22.94% for 2007. Director Blas stated that she asked Rich Wright from Milliman to present three scenarios based on fully funding, no phase in, for a period of five years as follows:

Fiscal Year Ending September 30	Contribution Rate No Phase-In	Contribution Rate Phase-In of 0.84%/Yr	Contribution Rate Phase-In of 1.13%/Yr
2006	21.81%	21.81%	21.81%
2007	27.48%	22.65%	22.94%
2008	27.51%	23.49%	24.07%
2009	27.40%	24.33%	25.20%
2010	27.27%	25.17%	26.33%
2011	27.19%	26.01%	27.46%
2012	27.10%	28.12%	27.92%

Vice-Chairman Leon Guerrero asked whether there is anything in writing from Legal Counsel saying the contribution rate should be 22.94%. Controller Bernardo stated that she received an email from Legal Counsel. Chairman San Agustin stated that, to begin with, the actuarial rate should be 27.48%. Chairman San Agustin asked what the auditor is saying about this matter. Director Blas stated that the auditor is saying to book the difference between the actuarial rate and what the actual payment is from the agencies. Chairman San Agustin stated that they are booking it as a liability due to the Retirement Fund. Secretary Taylor asked for a clear and unambiguous statement from the Fund’s Legal Counsel about the amount.

Chairman San Agustin read out loud the email from Legal Counsel: “Following our discussion today, my impression of Public Law 28-150, Chapter V, §3 is that the incremental increase of 0.84% and the actuarial rate of 26% are not ceilings. If the actuarial recommended contribution rate exceeds 26%, the government’s contribution rate should reflect whatever increment would be required for that fiscal year so that by Fiscal Year 2011, the government’s rate would reach the actuarial recommended contribution rate.”

“For example, we discussed that currently the actuarial rate is set at 27.48%, but that the government contribution rate is 21.81%, leaving a difference of 5.67%. Assuming that at Fiscal Year 2011, the actuarial rate is still 27.48%, in order to reach that rate through incremental increases for the next five years, the contribution rate must be increased by 1.13% per year for five years. Although 1.13% is greater than the 0.84% specifically mentioned in the public law, the public law allows the incremental increase to exceed 0.84%.”

“The legislative intent appears to aim at having the actuarial rate and government contribution rate match, as opposed to maintaining a government contribution rate of 26% or maintaining the incremental increase at 0.84%. Thus, a reasonable application of Public Law 28-150 would be to assess the difference between the actuarial rate and the contribution rate at the end of each fiscal year, and to determine the contribution rate based on the difference between the rates divided by the number of years remaining before Fiscal Year 2011. For example, if the government rate increases to 22.94% (after adding 1.13% + 21.81%) for this fiscal year, but the actuarial rate decreases to 26% for the following year, the difference would be 4.19%. 4.19% divided by 4 remaining years results in an incremental increase of 1.05%, which added to 22.94%, leaves a government contribution rate of 23.99% for the following fiscal year.”

Secretary Taylor stated that he is concerned with the fudge factors in Legal Counsel’s email: “my impression of” and “appears to aim.” Secretary Taylor stated that he prefers that the Fund does not get legal opinions that include fudge factors. Trustee Katherine Taitano stated that she would like to see a written opinion from the Fund’s Legal Counsel. Vice-Chairman Leon Guerrero suggested for Management to request for a formal written legal opinion from the Fund’s Legal Counsel. Chairman San Agustin stated that the Fund will stand pat on the 22.94% contribution rate. Chairman San Agustin stated that Resolution No. 2007-001 will be tabled pending Legal Counsel’s opinion.

Vice-Chairman Wilfred Leon Guerrero, seconded by Trustee Katherine Taitano, moved to table Resolution No. 2007-001 and to direct Management to request for a formal written legal opinion from the Retirement Fund’s Legal Counsel. Without objection, the motion passed.

Chairman San Agustin recognized Mr. Joseph Guthrie at this time. Mr. Guthrie stated that he is employed at the Attorney General’s Office and that his opinion is his own and not that of the Attorney General’s Office.

Mr. Guthrie stated that the Fund is not allowing employees to retire due to the failure of some agencies not remitting the correct amount of the government contribution as required by statute. Mr. Guthrie directed the Board’s attention to the last paragraph on Page 4 of Resolution No. 2007-001: “Therefore, the Board shall process individual retirement applications related to employment at agencies which have not made employer contributions at the statutory contribution rate, in accordance with Public Law No. 28-150:V:2, provided that the applicable employer remits required amounts including contributions at the applicable statutory contribution rate as interpreted and determined by the Board of Trustees within its authority and discretion.”

Mr. Guthrie stated that Section 2 of Chapter V authorizes the Fund to allow individual employees to retire if their employers have paid all amounts that the individual owes even if that individual’s employer had not paid their contribution. Section 3 of Chapter V is relative to the payment of more than 0.84%. Mr. Guthrie stated that this is exactly the same situation where he filed a lawsuit, along with Odi Bautista, against the Retirement Fund in 2001. Mr. Guthrie stated that Judge Alberto Lamorena had ruled that this is a violation of the fiduciary duties of the Fund. Mr. Guthrie stated that the Fund should bring this matter up to Legal Counsel Joanne Grimes.

Mr. Guthrie stated that he recalls two periods in which employees of Guam Public School System (GPSS) and Guam Memorial Hospital Authority (GMHA) were prevented from retiring due to the fact that their agencies had not paid their contributions. There was one period where the situation was resolved by the Legislature which passed legislation to authorize employees to retire. Mr. Guthrie stated that the period of times were lengthy. The onus of the failure of the agencies to pay their contributions fell on the employees. At least one employee died while waiting to retire. Mr. Guthrie stated that part of the blame is on the Retirement Fund and the Board of Trustees.

Mr. Guthrie cited 4GCA §8137 (h) (1): “Board’s Power to Enforce. The Board of the Government of Guam Employees’ Retirement Fund may file in Superior court a Petition for Writ of Mandate to compel any government official who is so obligated to pay or transfer money to the Retirement Fund for employee or employer contributions to the Fund.” §8137 (h) (2): “Remedies. At the Court’s discretion, failure to comply with a Writ of Mandate issued pursuant to this Section after notice and a hearing shall be subject to contempt of court proceedings.” §8137 (h) (3): “Costs and Attorney’s Fee. If the Board’s petition is granted, the court shall award costs and a reasonable attorney’s fee, which shall be paid from funds of the official’s agency.” §8137 (h) (4): “Dismissal after Payments. If payment of the delinquent amount is made within fifteen (15) days after filing the petition for Writ, the petition shall be dismissed.”

Mr. Guthrie stated that, at no time has the Retirement Fund instructed its Legal Counsel to take action against these agencies under the sections cited above. The Fund is putting the onus on the employees that can not retire. Mr. Guthrie stated that he is asking for the Fund to ask its Legal Counsel to go to court to force the agencies to pay the 22.94% contribution rate. Chairman San Agustin stated that, with the recent passage of Bill 400, the Fund now has the authority to go court without asking for the Attorney General’s designation.

Vice-Chairman Leon Guerrero mentioned that the Attorney General had requested that the Fund lift a lien that was filed with the Department of Land Management on one of GMHA’s Board Member’s personal assets. Director Blas stated that there was a Writ of Mandate that was filed against GMHA for non-payment of contributions, which resulted that a Writ of Mandate from the Court and abstract judgment was filed with the Department of Land Management. Director Blas stated that the individual Trustee’s personal assets were attached to the judgment. Chairman San Agustin stated that the Attorney General wanted to lift that lien.

Secretary Taylor asked Mr. Guthrie what would be his solution of the Fund being underfunded. Mr. Guthrie stated that the section of the 2008 budget law is not a model of clarity. The reference of “no more than .84%” in order to reach the contribution rate of 20% or the actuarial recommended rate refers to the situation where there is a great increase in the value of the funds’ assets. Secretary Taylor asked what the Fund should do under the circumstances where it is not happening. Mr. Guthrie stated that the Fund’s investment decision makers are not making the benchmark rates of return which is causing the Fund million of dollars. Secretary Taylor stated that the experts that the Fund talks to are saying that by current management and law, the Fund has increased the rate of return to appropriate levels given the level of risk allowed by law.

Treasurer Cruz stated that the Board's role is to protect the assets of the Fund. Treasurer Cruz stated that the reality is that the Fund is faced with a Court Order and a Writ of Mandate that the Fund needs to protect the overall assets of the Fund. Treasurer Cruz stated that if the Fund's actuary is saying that this is the amount that needs to be paid and that the Legislature has put in place language to say that the Fund, over a course of five years, will get to the actuarial rate, then the Fund needs to comply with that legislation. Mr. Guthrie stated that the Fund should take action if an agency is not paying the required contribution rate. Mr. Guthrie stated that a Writ of Mandate would be the quickest form of legal relief. Mr. Guthrie stated that he will file his own lawsuit on Monday, February 12, 2007. Mr. Guthrie stated that he will be filing for a complaint for declaratory injunction relief asking for a declaration that the Fund is not entitled to the higher contribution rate.

Chairman San Agustin stated that, in the past, the Board has been allowing individuals to retire without paying their contributions. Treasurer Cruz stated that this has not happened with this Board. Chairman San Agustin stated that this Board is complying with the law. Mr. Guthrie stated that the Board has not been sufficiently active against the non-paying agencies. Treasurer Cruz stated that the onus is on the employer. Mr. Guthrie stated that the onus is on the Board. Chairman San Agustin thanked Mr. Guthrie for his comments.

Chairman San Agustin reiterated that the 22.94% contribution rate stands. Secretary Taylor stated that he finds Resolution 2007-001 quite complex and suggested that the legal arguments should be a separate appendix.

B. Request for Proposal (RFP) for Legal Counsel

Vice-Chairman Leon Guerrero stated that the Fund should issue an RFP for the Fund's Legal Counsel.

Vice-Chairman Wilfred Leon Guerrero, seconded by Treasurer Gerard Cruz, moved to direct Management to issue a Request for Proposal for Legal Services. Without objection, the motion passed.

XI. OPEN DISCUSSION / GENERAL PUBLIC INPUT

None

XII. ANNOUNCEMENTS

None

XIII. ADJOURNMENT

There being no further business before the Board for the Defined Benefits Plan, on motion of Trustee George Santos, seconded by Trustee Katherine Taitano, and without objection, the meeting was adjourned at 1:41 p.m. Motion passed.

I hereby certify that the foregoing is a full, true and correct copy of the Minutes of February 9, 2007 Regular Meeting duly adopted and approved by the Government of Guam Retirement Fund Board of Trustees on March 9, 2007.

James J. Taylor, Board Secretary

RECORDING SECRETARY:

Jackie Blas