

**CITY OF PONTIAC MICHIGAN  
GENERAL EMPLOYEES' RETIREMENT SYSTEM  
BOARD OF TRUSTEES MEETING**

A special meeting of the Board of Trustees was held on Friday, May 13, 2022 at City of Pontiac General Employees' Retirement System, 2201 Auburn Rd, Suite B, Auburn Hills, MI 48326. The meeting was called to order at 2:00 P.M.

**TRUSTEES PRESENT**

Sheldon Albritton, Chair  
Darin Carrington, Secretary (electronically) *arr 2:04 PM*  
Tim Greimel, Mayor *arr 2:02 PM*  
Lisa King  
James Miriani  
William Parker Jr., City Council *arr 2:06 PM*  
Billie Swazer  
James Walker (electronically) – Pontiac, Oakland County, Michigan  
Patrice Waterman  
John White

**TRUSTEES ABSENT**

Robert Giddings, Vice-Chair - excused

**OTHERS**

Jane Arndt – Retiree  
Louise Gates, Gabriel, Roeder, Smith & Co.  
Matt Henzi, Asher Kelly  
Steven Roth, Dahab Associates  
Mizuki Kanno, Executive Assistant  
Deborah Munson, Executive Director

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**AGENDA CHANGES: NONE**

**PROPOSED ESCROW AGREEMENT**

Chairman Albritton stated that a draft of the escrow agreement was received two weeks ago for the Board to thoroughly review. Another draft was received last night which included a lot of changes that do not correspond with the first draft. He voiced his concern that the Board reviewed one document and was then provided with another one the night before the Board was expected to agree and sign off on it. He also stated that there is some language which takes this Board completely out of the mix giving Comerica discretion to do whatever they want to do. His understanding was that today's meeting would be to either accept or not accept the document which was received a couple of weeks ago. However, the document which was provided last night is substantially different which makes it difficult to have the Board sign off on it.

Trustee Greimel stated that - from the City's perspective - the changes are mainly be driven by CPREA and by City's attorney's responses. He said that one of the changes was that CPREA, the new VEBA and the new GERS were added as parties to it. He stated that Chairman is absolutely right that the Board needs

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time to review it and - if the Board has concerns about some of those changes - the City would like to hear them. He pointed out that the GERS attorney has been included in the discussions and that the attorneys for all the groups (City, CPREA, VEBA, old GERS, and new GERS) have been at the table. He stated that he does not pay attention to the day-to-day changes and relies on the advice of the attorneys. He continued that it does not mean the Board should not review everything thoroughly when it comes time to sign off on the agreement. He explained that he directed City's attorney to work through all other attorneys to figure out what is agreeable to bring it back to all the parties to see if it is agreeable or not.

Chairman Albritton reiterated that there was one document from a couple of weeks ago which all the Trustees had an opportunity to take home and digest it then another document was received the night before this meeting. He pointed out that these documents have so many changes that these look like two different documents. He stated that he understands the Board relies on the attorney's opinions, however it is the Trustees' responsibility to make sure to understand what the Board is agreeing to.

Trustee Waterman raised a concern that it looks like the whole agreement was redone.

Trustee Greimel stated that his assumption is that the vast majority of the changes were driven by Comerica. He also stated that the escrow account could have been set up with Northern Trust which seemed to be clear-cut and straight way forward. The issue was that Northern Trust could not enter into a relationship with two clients, and they wanted one client which they thought should be the City. CPREA insisted that it be co-client and - since Northern Trust could not do that - Comerica would. He explained that this drastically delayed the process and we are still waiting on Comerica to see if they are agreeable to this because they have not signed off yet. He expressed his frustrations with CPREA including their insistence on using Comerica. He asked for Mr. Henzi's input.

Mr. Henzi stated that the principal delay was CPREA's requirement to use Comerica as escrow agent. Comerica sent a revised version of the escrow agreement with red-line changes on around May 2, 2022. He explained that some of the changes are City's or CPREA's but mostly Comerica's. He continued and stated that the one attached to the agenda accepts all of Comerica's changes, and it shows George Contis' changes on behalf of the City. He also explained that he asked Mr. Contis to fix Section 3 (to which Mr. Contis agreed), however Comerica still has to sign off on the correction.

Chairman Albritton asked how the Board would like to proceed with this. He stated that it looks like Comerica had an opportunity to add whatever they wanted to.

Trustee White stated that the Board should wait until the document is final before giving any opinions. He pointed out that Dahab has been scratched out on the latest draft and the reason is not clear. He reiterated that the attorneys of all parties have to say this is final, and Dahab has to accept their role as outlined before it comes back to this Board.

Trustee Waterman asked if May 31, 2022 is the deadline.

Trustee Greimel stated that March 31, 2022 was the deadline because of the IRS. The original thought for the May 31, 2022 deadline was to give CPREA and the City two months to come to an agreement on pre-funding the permanent pension increase. If this document still says May 31, 2022, that is a problem

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because these things should have been agreed to within two months. The agreement should indicate that it expires two months from the day this it is signed by all parties.

Trustee Parker reiterated that this still requires an opportunity for the Board to review and digest it. The Board should wait for the final copy which cannot be changed prior to voting to approve it.

Trustee White asked Mr. Henzi if he has any idea on the chances that Comerica would agree to the changes and how long it may take.

Mr. Henzi stated that he anticipates Comerica would agree with pushbacks, and it should not take more than a couple of weeks from now.

Trustee Greimel pointed out that Comerica will want to put in a language saying that none of the parties can sue them if they screw up, and that City's attorney is concerned that Comerica might insist on that. He stated that the advantage on this is that Northern Trust does not insist on that provision and it can be suggested to the parties to go back to Northern Trust.

Trustee Walker asked why CPREA would agree to that the language Comerica is requesting.

Chairman Albritton asked Mr. Henzi if CPREA members are legally allowed to be in control over public funds.

Mr. Henzi stated that CPREA is an unincorporated association with no assets and no insurance. He also stated that he would have to check to determine whether it is legally permitted for CPREA to have control over public funds.

Trustee Swazer raised her concern about putting a private entity over \$60M when they do not have to follow any laws or rules.

Chairman Albritton stated that the Board could be held liable by signing off on something like that.

Trustee Greimel asked what the issue was that CPREA wanted to use Comerica instead of Northern Trust.

Mr. Henzi responded that they wanted to be co-owners or co-signatories on the accounts. He explained that there would be four accounts at Comerica tied to this escrow agreement: Xponance; Loomis; Sawgrass and Kennedy. He also explained that the accounts had originally been open for the purpose of the assets which were to be transferred into the new VEBA, but there is no money in those accounts. What CPREA is currently requesting is that the money be transferred to those accounts at Comerica and that they be co-owners of each of the account.

Trustee Swazer asked how CPREA would get access to the accounts.

Mr. Henzi responded that CPREA would get access to the accounts only through this escrow agreement.

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Miss Munson referred to Section 9, "The authorized representatives of the City and CPREA will be the individuals set up as authorized users on the Escrow Agent's online banking platform." She pointed out that - although she does not know Comerica's system the System moves money using Northern Trust's online platform.

Trustee Greimel stated that the Board should clearly indicate which provisions in the agreement are not acceptable and communicate to CPREA what the escrow agreement should look like.

Mr. Roth referred to Section 8, "the Escrow Agent is authorized to deposit with the arbitrator...funds held in escrow" and asked Mr. Henzi whether that would be a taxable event and whether it is an issue.

Miss Munson followed up by stating that these assets are taken out of GERS and not put into VEBA which means they are no longer plan assets. She asked Mr. Henzi whether this is a taxable distribution or if it is considered a distribution.

Mr. Henzi responded that putting into an escrow is not a taxable event.

Chairman Albritton stated that there are so many unknowns and that we do not know if it is legal to put a private entity over these funds. He additionally said it is hard to sign off on an agreement that can be changed at a whim. He suggested wait until the final document which all parties have signed off on before this Board signs off on anything. The most important thing is that the Board needs to get legal counsel to see if it is even legal to put CPREA over these funds where they have access to them. It is necessary to make sure to protect this Board.

Trustee Walker pointed out that it was originally proposed that when the money went into the escrow account, nothing could be done with the money unless GERS, CPREA and the City all agreed. He also pointed out that it is contradictory that this is negated by other provisions with CPREA being the co-owners of the account. He also asked why GERS is dealing with CPREA, not VEBA even though CPREA does not handle any money. If the money is not going to be given back to the retirees, it goes to VEBA. He asked why CPREA is even involved.

Trustee Greimel explained that the settlement agreement between CPREA and the City says that all funds in excess of 130% have to go to VEBA and that CPREA could sue the City if that does not happen unless they are parties to this escrow agreement and ultimately signed off on where the money ends up.

Mr. Henzi added that VEBA is the recipient fund who does not direct where the money goes.

Trustee Swazer stated that all of this is triggered by dates and that there is a date that it goes to arbitrator if the agreement is not done. The only way the City can stop it is to go to court.

Chairman Albritton stated that the big question at hand is whether the funds can be legally transferred and giving CPREA control over public funds. The Board needs the answer to this.

Miss Munson referred to Section 2 (b) "The Escrow Agent shall not be deemed to be bound by the provisions of any agreement among the other parties hereto". She explained that the escrow agreement

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anticipates that there will be a written side agreement that says CPREA, the City and Comerica all agree. This clause is saying that Comerica is telling is not bound by that agreement. She also referred to Ordinance 2391 "the excess assets shall be transferred to an escrow account until the City, CPREA and the Board agree in writing" and pointed out that it was CPREA who requested that VEBA be added to this escrow agreement which is not a provision of the City Ordinance that the City Council adopted.

Chairman Albritton raised his concern that Comerica does not have to agree anything, so once the money gets there, they can do whatever they want to do, and they are not going to be held liable. It is a problem for the Board to put money in an account where Comerica could do whatever they want to do. He stated that the Board is not going to accept this. He also stated that it is necessary to find out whether the money can be moved and a private entity put in control of it.

Mr. Henzi stated that he will work on getting that answer right away.

Trustee Greimel stated that it would be helpful to know what the dealbreakers are so those can be conveyed to CPREA to make sure those provisions are not included in the escrow agreement which will be brought back before this Board. He also stated that Section 2 (b) is part of the language that Comerica wanted to put in saying that they cannot be held responsible or accountable if they violate the agreement or screw up in some way.

Miss Munson pointed out that once all parties come to a deal, the escrow agreement does not require that the document signed off by all parties be provided to Comerica. Comerica does not have to verify the accuracy of the direction provided to it nor do they have to verify that those who are notifying them have the authority to do so. She asked if this Board would be willing to accept Comerica's terms if they come back and say this is not negotiable.

Chairman Albritton stated that it would be a dealbreaker.

Trustee Parker stated that this got away from the original City Ordinance that the Council approved in the first place and that we do not want to put someone in control of money without being held accountable.

Trustee White reiterated that the Board has come to an agreement to not agree to this. He stated that the next step is to have GERS attorney to find out whether the money can be in an escrow with CPREA in control of it. If CPREA cannot be in control of it, they do not have a say of who the custodian should be because they cannot even be responsible by law. In the meantime, the Board needs to let all parties know that Comerica is not acceptable for GERS as the escrow agent with the way they want to be treated in this agreement. He stated that this needs to be made known before the escrow is finalized that the GERS Board is not in agreement with Comerica.

Trustee Greimel asked for clarification whether Comerica is not acceptable at all, or Comerica's desired language is not acceptable.

Trustee White responded that it is their desired language that is not acceptable. He also stated that if the attorneys come back and say CPREA cannot be in control of the assets, the Board should have a counter for that with which the Board would be in agreement, and that can be put in the final escrow agreement.

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Trustee Walker stated that if it turns out that CPREA has no say in it, we should go back to Northern Trust at that point, which was originally the plan.

Trustee White stated that would be ideal, and the Board should counter with going back to Northern Trust.

Chairman Albritton asked why there was not a legal opinion on whether it is legal for the City to put a private entity in control of public funds prior to the drafting of the escrow agreement.

Mr. Henzi responded that this is due to the fact that the original escrow agreement that he drafted indicated that the City would enter into the investment agreements.

Trustee Greimel added that it was only a couple of weeks ago when CPREA began pushing to have them included as co-owners.

Trustee Waterman clarified that the opposition is not from CPREA members it is the CPREA Board that is responsible for the delays.

Miss Munson asked Mr. Henzi who is the beneficial owner of the funds after they are transferred out of the GERS and prior to them being transferred to the new GERS or the VEBA. Who is the beneficial owner while they are in the escrow account, the City or CPREA.

Trustee Greimel responded that it depends on how the escrow agreement is written which is why he does not like the idea of CPREA being co-signatories on the account.

Mr. Henzi said it should be the City.

Trustee Greimel and Mr. Henzi confirmed that they are still public funds, in any case.

Chairman Albritton stated that he will provide the detailed response to bring back to CPREA, and the most important thing is to find out if this is feasible or legal to put CPREA in control of the assets.

There was additional discussion.

The Board agreed that Chairman Albritton will provide a response with the Board's concerns with the escrow agreement to the City and CPREA.

**SCHEDULING OF NEXT MEETING/ADJOURNMENT**

**Regular Meeting: Wednesday, May 25, 2022 8:45 a.m.**

**RESOLUTION 22-046** By Parker, Supported by Waterman

**Resolved**, That the meeting of the Board of Trustees of the Pontiac General Employees' Retirement System be adjourned at 2:56 P.M.

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Yeas: 9 – Nays: 0

I certify that the forgoing are the true and correct minutes of the meeting of the General Employees' Retirement System held on May 13, 2022.

*As recorded by Mizuki Kanno, reviewed and edited by Legal Counsel and the Executive Director*