



## **Minutes Tempe Police Public Safety Personnel Retirement Board November 6, 2008**

Minutes of the Tempe Police Public Safety Personnel Retirement Board, held on Thursday, November 6, 2008, 3:00 p.m., Tempe City Hall – Mayor’s Office, 31 E. 5<sup>th</sup> Street, Tempe, Arizona.

**Board Members Present:**

Mayor Hugh Hallman  
Todd Bailey  
Joe Brosius  
Jim Foley  
Joe Schiefer

**Board Members Absent:**

**City Staff Present:**

Jan Hort, Clerk’s Office  
Lourdes Robertson, Human Resources

Mayor Hallman called the meeting to order at 3:26 p.m.

**ITEM I – Consideration of Meeting Minutes**

Motion by James Foley to approve the minutes of October 2, 2008. Second by Todd Bailey. Motion passed unanimously.

**ITEM II – Recognition and acknowledgement of the passing of Earl Kronberg on October 11, 2008**

Acknowledgement was made.

**ITEM III – Executive Session**

Motion to adjourn to Executive Session by James Foley. Second by Todd Bailey. Motion passed unanimously.

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Meeting temporarily adjourned at 3:26 p.m. for Executive Session.

Meeting reconvened at 3:59 p.m.

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**ITEM IV – New Recruits**

Motion by Joe Brosius to approve the new recruit, **William W. Wehmeyer**, with the notation that an Executive Session was held. Second by Joe Schiefer. Motion passed unanimously.

**ITEM V - Retirement Applications**

None

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**ITEM VI – Discussion of Medical Retirement Application for Curtis Baumgarth**

Mayor Hallman noted that a discussion was held in Executive Session. He suggested a discussion on how best to proceed on this matter. Five questions have been addressed, and there is some question as to whether all five necessary tests were met. There would be the option of scheduling a hearing and invite Mr. Baumgarth to appear.

Joe Brosius asked if this could be sent back to the doctor and ask him to specifically answer the five questions.

Mr. Neiderdeppe responded that one question that would remain with the Board and not with the doctor is – what is a “reasonable range” of duties. If the doctor is asked whether this individual can perform a reasonable range of duties, he can state what he can and can’t do. The ultimate conclusion on what he can and can’t do is the Board’s decision.

Mr. Brosius stated that by past history, we have already done that from every other medical retirement the Board has handled. In the past, we have always sent a list of the duties of a police officer and asked whether he can do those duties.

Mayor Hallman asked whether we want to proceed by contacting the physician and request that the five questions be examined and enclose a list of duties? Once we get that information back from the physician, there would be a possibility of a follow-up hearing. Mr. Baumgarth should be sent a letter inviting him to the meeting. A decision will be made at the next meeting about whether a follow-up meeting will be held. He asked Mr. Neiderdeppe to prepare a letter to the physician that includes the questions.

There was a question concerning how a reasonable range of duties is defined. We could say he could do 80% of the duties listed on a job description, but firing a gun may not be one of those, but still that would be an essential duty.

Mr. Brosius clarified that the Board has always gone by the fact that one must be able to do all the duties of a police officer.

Mr. Neiderdeppe added that there is some case law from other jurisdictions about that question, and they tend to say the larger the department, the more likely it is that something could be reasonable that is not full duty. With a smaller department, typically police officers are expected to perform more. Will someone put before the Board records with respect to why the individual left the workforce and is that important to board members at this point?

Mayor Hallman stated that if we get a response from the physician, we perhaps still have to address the question whether medical status should be taken into consideration at all with respect to the termination. Mr. Neiderdeppe might give consideration if the termination was completely independent of medical condition, then why would a medical retirement apply.

Mr. Neiderdeppe agreed that certainly is an issue in this case.

Mayor Hallman asked if the Board could ask Human Resources or the Police Department to supply with records. Do we have the right to get those records?

Mr. Neiderdeppe agreed that with the way the statute is written, yes. If the reason for leaving the workforce is important to board members in making determination of this application, the board has a right to ask why and ask the applicant as well.

Mr. Bailey clarified that there were two investigations completed – one internal and one criminal. He will be responsible for getting those records.

Mayor Hallman stated that this application was made in March and the 90 day process has passed. The application was submitted on March 6, 2008. The Board has adopted procedures that it would do this within 90 days.

Mr. Neiderdeppe clarified that the 90-day rule comes from the statutory mandate about commencing a hearing, but the fact that it is on the agenda, and the discussion was started today, the hearing is commenced.

Mayor Hallman summarized that we proceed and get a response from the physician. He suggested leaving it to Mr. Neiderdeppe whether we will notice a hearing and then a notice will be sent out either for our next meeting or the meeting after that.

Mr. Neiderdeppe clarified that there was a meeting where the applicant was on the agenda and the Board sent to the doctor the formal board action. He thought the hearing was commenced then. The 90 days didn't apply until September 28<sup>th</sup> when the statute went into effect.

Mayor Hallman directed Ms. Hort to create a timeline showing when it first came before the Board because that is when it started. Since we started before statute took effect, we had already complied. He summarized that we will get more information from the physician, records from the Police Department and the Human Resources Department to the extent they exist, and based on that, decide to schedule a hearing or not.

Ms. Hort asked if copies of everything are provided to the applicant?

Mr. Neiderdeppe responded that anything the Board is going to consider would be sent.

Mayor Hallman suggested that the City Attorney's office should look at the materials before they are produced for the Board to verify they can be produced for the Board and that they can be produced for the applicant.

#### **ITEM VII - Future Agenda Items**

Mayor Hallman asked for clarification regarding the Morris transfer. It was put on hold until she returned, and she has not returned. Ms. Hort verified that she has been notified.

Joe Brosius verified that the next meeting would be on December 11<sup>th</sup>. He advised that he would be out of town. James Foley will also be out of town.

Ms. Hort was directed to send copies of all documents to Mr. Baumgarth.

**Meeting was adjourned at 4:15 p.m.**

Prepared by: Connie Krosschell

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Jan Hort  
City Clerk