

DRAFT

MINUTES OF THE PUBLIC MEETING PUBLIC SAFETY RETIREMENT BOARD TOWN OF CHINO VALLEY

**JUNE 27, 2018
4:00 P.M.**

The Public Safety Retirement Board of the Town of Chino Valley met for a Public Meeting in the Conference Room, located at 202 N. State Route 89, Chino Valley, Arizona, on JUNE 27, 2018.

1) CALL TO ORDER

Chair Jack Miller called the meeting to order at 1:06 p.m.

2) ROLL CALL

Present: Jack Miller, Chair; Vince Schaan, Board Member; Amy Chamberlin, Board Member; Dean Keller, Board Member; Cheri Romley, Board Member

Staff Present: Laura Kyriakakis, Human Resource Director; Tiffany Resendez, Human Resource Analyst; Bill Whittington, Legal Counsel

3) APPROVAL OF MINUTES

- a) (i) Consideration and possible action to accept the March 8, 2018 public meeting minutes.

(ii) Consideration and possible action to accept the March 8, 2018 executive session minutes.

MOVED by Board Member Cheri Romley, seconded by Board Member Vince Schaan to accept the March 8, 2018 public meeting minutes as read.

Vote: 5 - 0 PASSED - Unanimously

Board members reviewed the executive session minutes. Mr. Whittington stated that the (A)(1), and (A)(2) and (A)(3) minutes should be separate.

MOVED by Board Member Vince Schaan, seconded by Board Member Cheri Romley to accept the March 8, 2018 executive session minutes, with the separation of (A)(1), and (A)(2) and (A)(3) minutes into separate documents.

Vote: 5 - 0 PASSED - Unanimously

- b) (i) Consideration and possible action to accept the March 26, 2018 public meeting minutes.
- (ii) Consideration and possible action to accept the March 26, 2018 executive session minutes.

MOVED by Board Member Cheri Romley, seconded by Board Member Dean Keller to accept the March 26, 2018 public meeting minutes.

Vote: 5 - 0 PASSED - Unanimously

Board members reviewed the executive session minutes. They discussed whether or not executive session minutes should be signed. Attorney Whittington preferred that the Chair signed them.

MOVED by Board Member Vince Schaan, seconded by Board Member Dean Keller to accept the March 26, 2018 executive session minutes as separated.

Vote: 5 - 0 PASSED - Unanimously

4) CALL TO THE PUBLIC

Call to the Public is an opportunity for the public to address the Board concerning a subject that is not on the agenda. Public comment is encouraged. Individuals are limited to speak for three (3) minutes. The total time for Call to the Public may be up to 15 minutes per meeting. Board action taken as a result of public comment will be limited to directing staff to study the matter, scheduling the matter for further consideration and decision at a later date, or responding to criticism.

5) OLD BUSINESS

6) NEW BUSINESS

- a) Review and discussion regarding the bill from William R Whittington, of the law firm Boyle, Pecharich, Cline, Whittington and Stallings, PLLC.

Attorney Whittington advised that because the invoice had details regarding employees and medical information, if anyone asked for a copy, staff could provide dollar amounts, but none of the details. If the Town received such a request, staff should send the request to the law firm.

Director Kyriakakis reported that the initial invoice was higher than normal due to Attorney Whittington's time spent on educating the Board, and the second invoice was only \$500.

7) EXECUTIVE SESSION

The Board may vote to recess the Regular Meeting and hold an Executive Session, which will not be open to the public, for the following purposes:

Attorney Whittington related that he was not sure the Board need an executive session on this item. He recommended making a motion on both items, address (A)(3) for both, and then see what else might be needed.

MOVED by Board Member Vince Schaan, seconded by Board Member Cheri Romley to go into executive session pursuant to (A)(1), (A)(2), and (A)(3) in reference to Todd Hyslip, Michael Garcia, Jessica Bannan and Gary Bruso at 1:23 p.m.

Vote: 5 - 0 PASSED - Unanimously

- a) Possible vote to go into executive session for legal advice pursuant to A.R.S. § 38-431.03(A)(3); for personnel matters pursuant to A.R.S. § 38-431.03(A)(1) and pursuant to A.R.S. Section 38-431.03(A)(2) for discussion and consideration of records exempt by law from public inspection with regard to Todd Hyslip, Michael Garcia and Jessica Bannan, regarding acceptance into the Public Safety Personnel Retirement System.
- b) Possible vote to go into executive session for legal advice pursuant to A.R.S. § 38-431.03(A)(3); for personnel matters pursuant to A.R.S. § 38-431.03(A)(1) and pursuant to A.R.S. Section 38-431.03(A)(2) for discussion and consideration of records exempt by law from public inspection regarding Gary Bruso's disability application.

8) NEW BUSINESS RESUMED

After the Executive Session, the Board will reconvene the Regular Meeting.

Chair Miller reconvened the public meeting at 3:42 p.m.

- a) Discussion and possible action to accept Todd Hyslip into the Public Safety Personnel Retirement System.

MOVED by Board Member Vince Schaan, seconded by Board Member Cheri Romley to accept Todd Hyslip into the Public Safety Personnel Retirement System, effective his first day of employment to Chino Valley Police Department, subject to any pre-existing issues in the pre-employment medical questionnaire and subsequent doctor evaluations.

Vote: 5 - 0 PASSED - Unanimously

- b) Discussion and possible action to accept Michael Garcia and Jessica Bannan into the Public Safety Personnel Retirement System; which should be conditioned upon being actively employed with the Town of Chino Valley and becoming AZPOST certified. (Anticipated graduation date 12/13/2018.)

Lt. Schaan related that Ms. Bannan was being employed as a reserve officer, and although there was potential for her to be hired, it was premature for her to be accepted. He preferred that no action be taken until she became eligible, as she could still be entitled to certain benefits if killed in the line of duty. Director Kyriakakis clarified that the agenda item stated that acceptance was subject to being actively employed and certified. Ms. Bannan could not receive benefits if she was not an employee or PSPRS member. As a volunteer, she would only be eligible for workers comp. Lt. Schaan still preferred to delay taking action.

MOVED by Board Member Vince Schaan, to accept Michael Garcia into the Public Safety Personnel Retirement System, effective 20 weeks after date of employment on July 9.

Director Kyriakakis pointed out that PSPRS rules had changed and new hires could not be members until they were certified. Mr. Garcia, as a Tier 3 member, will need to graduate, wait 90 days, then make a selection between defined contribution or defined benefit. The 90-day waiting period will start before the 20-20 kicks in.

MOVED by Board Member Vince Schaan, seconded by Board Member Dean Keller to restate his motion to accept Michael Garcia into the 90-day waiting period for PSPRS, effective 20 weeks after date of hire with the Town of Chino Valley, conditioned upon any pre-existing condition in his pre-employment physical and subsequent doctor's report, and upon becoming AZPOST certified.

Vote: 5 - 0 PASSED - Unanimously

Chair Miller stated that by consensus, the Board will postpone action on Jessica Bannan.

- c) Discussion and possible action regarding Gary Brusos's application for disability.

MOVED by Chair Jack Miller, seconded by Board Member Vince Schaan to adopt the P5 findings issued by Dr. Parker in conjunction with the application for disability retirement filed by Gary Brusos, and the findings on the conclusions of Dr. Parker as set forth in the IME prepared by Dr. Parker and dated May 18, 2018.

Lt. Schaan stated that he supported Dr. Parker's findings, as Dr. Parker had received more records and information than all the prior contributors; he had used all those reports and information in his conclusions and findings; and the others had some contradictory findings due to having limited materials. Dr. Parker referenced all the supporting documents in his report, bullet pointing them up to #36. Lt. Schaan noted that Dr. Parker stated under #1 (of page 18 in Dr. Parker's IME report) that the disability was not total and permanent, preventing Mr. Brusos from performing. By way of example to demonstrate Dr. Parker using the totality of information from Dr. Parker's report:

- "Mr. Brusos's depressive condition is likely to respond to treatment. He told me he became somewhat depressed about eight years ago, related primarily to his marriage and records indicate the development of a depressive condition in the context of his deteriorating marriage. A substantial quantity in the medical records describes the struggle with the end of that relationship. Mr. Brusos has received some psychotherapy and a single anti-depressant, Paroxetine, which is insufficient to determine that his depression is not treatable. His major depression is likely to improve with the appropriate anti-depressant, manipulations, and psychotherapy."
- "Mr. Brusos endures symptoms of Post-Traumatic Stress Disorders on CAPS-5 past-month version, but these symptoms are likely to improve. On this instrument, his PTSD severity was 24 out of 80 and he endorsed 13 of the possible 20 symptoms. According to the January 19, 2018 progress notes by Susan Carlson, LPC, "Homicide and shaken baby were not on mind nearly as much prior to the EMDR. This indicates that Mr. Brusos's PTSD is likely respond to treatment and therefore is not permanently disabling."

Lt. Schaan added that Dr. Parker also stated under #2 (of page 18 and 19 in Dr. Parker's IME report) that Mr. Brusos had no evidence of any substantial psychiatric problems prior to his date of service. Dr. Parker was not saying it was necessarily pre-employment, but the struggle with depression worsened during the demise of Mr. Brusos's marriage, which did occur while he was an employee.

Chair Miller commented that Mr. Brusos did not agree with the sentence stating: "Mr. Brusos appears to

have made a decision while on FMLA that he does not want to return to law enforcement. However, it is more likely than not that his condition would be treatable and he will be capable of returning to a reasonable range of duties within the job classifications.” He also read Dr. Parker’s response on page 19 #3 to the question: “Do you believe Mr. Brusio’s disability condition of injury was incurred in the performance of Mr. Brusio’s duty as a police officer?” to which Dr. Parker responded: “His PTSD is of mild character and is likely to improve with treatment. His depression does not relate substantially to his time as a police officer.”

Lt. Schaan believed that did not mean that Dr. Parker did not think it had anything to do with the job, just not substantially. The records from Dr. Parker and all the records he reviewed did speak highly of the family issues motivating the depression.

Mr. Brusio stated that he was not sure what to say. It seemed everything was hinging on the depression part. He did not deny that depression played a role, but the job was a factor. He believed that he had had no PTSD prior to law enforcement, as there had been no issues, no rage issues, flashbacks, or anxiety. He just wanted to move on. It was not good for his health and he had to take care of himself. He would need to be healthy inside and outside of the job if he were going to stay. It would not be good for himself or the town.

Attorney Whittington advised that the Board might want to discuss items 1-8 on the P5.

Director Kyriakakis explained that the doctor filled out his responses to the questions in the P5 as required by PSPRS. The top section was the employer’s response to certain questions. The Board reviewed the employer’s questions and discussed the responses, indicating that:

1. The application filing was within one year of incident or resignation.
2. Termination was by reason of disability.
3. Termination was not based on disciplinary action.
4. Termination was not based on drop program.
5. Employee was not working currently in his former job classification.
6. Employee did not refuse a position in his job classification.
7. Injury/condition was not prior to PSPRS membership date.
8. Injury/condition did occur during performance of duties. The Board based this response on PTSD alone.

The Board discussed the basis for responding to #7 and #8, as the reports referenced by PTSD and depression. Attorney Whittington advised that #7 was an independent finding that the Board made, not necessarily developed from the medical report and under #7 and #8, it was possible to have an injury or condition that was non-job related after admission into the system. The Board needed to ask if the PTSD condition occurred as a result of performance of his duties, Director Kyriakakis pointed out that the application referenced only PTSD, not depression. The Board believed they answered the questions appropriately.

Director Kyriakakis reported that the Medical Board’s responses to a similar questionnaire indicated that:

1. The employee did have a physical or mental condition that was the basis for the disability application.
2. The injury or condition did not totally prevent employee from performing a reasonable range of duties.
3. The injury or condition did not permanently prevent employee from a reasonable range of duties.
4. The injury or condition did result from an event occurring during performance of duties.

5. During exam of medical evidence, the review did not include other pre-existing issues prior to PSPRS membership date.
6. There were conflicts in the medical evidence.

Attorney Whittington advised that now that the Board had added information to the employer's portion, it might be appropriate to amend the motion to include the new information.

MOVED by Chair Jack Miller, seconded by Board Member Vince Schaan to amend the motion to include the findings of the board on items 1-8 of the Form P5 LB-A.

Vote: 5 - 0 PASSED - Unanimously

The Board approved the amended motion.

Attorney Whittington advised that the Board now needed to take action to award or not award the accidental disability benefits made by the applicant.

Lt. Schaan stated that the decision needed to be made based on PSPRS rules and using the IME. He disagreed with the doctor on #5, which referenced things that happened pre-PSPRS, and maybe the doctor was saying those did not play a role. There were also conflicts between Dr. Parker and prior doctors, but the prior doctors did not have the same information as Dr. Parker. As he felt that he did not have the background or ability to challenge the doctor's findings, and he was the expert, he accepted the findings, which demonstrated that the request did not meet the standards and requirements to approve it.

Chair Miller stated that per the doctor, there was an issue that did happen on duty and there was no pre-existing, but it was not a permanent disability.

Board members discussed the findings with regard to the extent that depression and PTSD were work-related. Lt. Schaan interpreted the findings as being that the doctor found PTSD, which was mild and likely to improve with treatment, was more work-related, and the depression, which was substantial, did not substantially result from the performance of duties. He also believed #4 in the doctor's portion of the P5 referred to PTSD, since the application was based on that. Chair Miller pointed out that the doctor indicated in #2 (on page 18 and 19 of Dr. Parker's IME report) that there was no evidence of any substantial psychological problem prior to January 5, 2009, the date of service. Mr. Brusco had struggled with depression to some extent in the past, which became substantial with the demise of his marriage. Board Member Keller believed the doctor was stating that depression started before the applicant was in law enforcement, and the marriage issues did not help.

Mr. Brusco stated that the assessment was unfair, in that there was no doubt the job had a part in causing depression. He had been depressed previously, but he understood that depression was not part of the decision. He was seeing gradual improvement, but he was unsure how long it would take. Being away from the job helped. His treatment was pretty good at first, but the difficulty came back, and regardless of the outcome, for his health, this was the first time in his life he was putting himself first.

The Board stated that they wanted the best for Mr. Brusco, but they had to act based on the information they had.

MOVED by Board Member Cheri Romley, seconded by Board Member Vince Schaan to disapprove the accidental disability retirement application of Gary Brusco.

Vote: 5 - 0 PASSED - Unanimously

9) ADJOURNMENT

Chair Miller adjourned the meeting at 4:24 p.m.

Submitted: July 16, 2018.

By: *Vickie Nipper, Deputy Town Clerk*

Approved: _____, 2018.