

DEPARTMENT OF CITY CLERK

CITY HALL

NOVEMBER 8, 1993

The Retirement Board of the Employees' Retirement System meets this day for a Special Meeting in the Chamber of the City Council, City Hall.

Present: Chairman D'Amico, Vice-Chairman Patterson, Councilman Dillon, Mr. Quattrocchi, Mrs. Jackson, Mr. Day, Mr. McDonald, Dr. Crowley and Mr. Chiodo - 9.

Absent: Mayor Cianci and Mr. Mendillo - 2.

(Helen Gibbons Vieluf, Assistant Clerk).

Also present is David Salvatore from the Law Department and Pension Administrator Lynch.

(Helen Gibbons Vieluf, Assistant Clerk).

REPORT OF SPECIAL COUNSEL FRANK J. WILLIAMS, ESQ.

Mr. Frank J. Williams, Esquire is present this day and submits his report as Special Counsel re: City of Providence Retirement Board \$12.5 Million Dollar Loan to Birnam Woods Limited Partnership. (Received by all members and made part of this record).

Mr. Williams informs "we attempted to look at this situation as objectively as we possibly could, we had no interest in involving ourselves in political or legal squabbles and we were looking at this strictly on the merits as a point of view from the legal point of view as to what the City Ordinances called for, what the practice would be in such loans from the Retirement Board and with that in mind there were certain things we found. One is that we thought the Retirement Board had acted in good faith to make a loan that was going to bring an adequate return to the Fund that would pay your retirees. With that said, there were certain things missing that troubled us, that probably ought to receive your attention and one of them is that there was no opinion rendered by lenders counsel, that's the Retirement Board and believe me when I tell you, if I were on the other side borrowing this money, I would want an opinion that such loan was authorized by Ordinance and why is that important? That gets to an overview problem that doesn't just affect this loan but any other investment. As my report

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indicates, the power to make the investment rests in this Retirement Board. I am not unaware of the litigation that is presently existing but let's take it that right now the Retirement Board can make investments. The problem is and this is the real irony is that the power to make the investments is limited to a 1923 Ordinance that hasn't been changed that limits your investment at least by law to bonds, municipal and state bonds, Commissioners of the Sinking Fund....that's the bottom line".

Mr. Day: If that's the bottom line then the Ordinance itself the one now drafted from that Act this is an Ordinance, would cause this Fund if the Board were to operate in that manner, to cause the City's contribution to raise substantially by probably 15 to 20 million dollars due to the actuarial assumptions that are also in place and that have been changed since the 1923 enactment of the Act. The Ordinance and the Act itself calls for 8 1/2 % rate of return on all investments as an...total. If they were strictly to operate in bonds and T notes you would have a dramatic dip below anywhere near the return that this Board has performed with over the last ten years and if they were to operate and adopt that today as a policy, they would have to go and reset the actuarial rate to a much more rate in tune with reality....thereby causing the City a conservative estimate of \$20 million dollars due next year for that short fund that you won't get with theequities and Birnam Woods Project..."

Mr. Williams states that he agrees with Mr. Day but it is the Law and the Ordinance and "one of my recommendations is that this Board and the Council work out an investment strategy that changes the Ordinance to permit the very current economic factors that you spoke about. The real problem is that I mentioned ERISA in my report, use of the Federal Statute, at least certain parts of it, certain parts of it are not applicable to municipal retirement standards and investments because municipalities are a unique creature.

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But let's assume what Mr. Day says that if you were to adopt or the Council were to adopt ERISA guidelines for investment purposes, and not change the statutes/ordinance on investment and bonds, the City would be in violation of the ERISA guidelines because that kind of narrow investment violates a portion of the ERISA guidelines. My recommendation and this is up to you or the Council is that those guidelines that can be used to assist in raising the investment in cementing the fiduciary duties and obligations in the use of a qualified plan asset manager be looked at by the City in an effort to assist in increasing the portfolio which is what this is all about."

Mr. Quattrocchi states relative to the Sinking Fund...
...say effective tomorrow only those investments...obviously Stephen makes a very valid point that you are going to have actuarial assumption problems, number 1. Number two, you are going to have problems with the fact that once atax exempt fund....what are they doing investing in tax exempt bonds and tax exempt entities because it says that you are supposed to buy Cities, towns and other New England Communities'....so immediately you have a problem right there. Take a tax free fund and invest in tax free incomes. To me it seems that this whole item here is obsolete and outdated and therefore, what you are saying is while it maybe so, no one has corrected the problem...."

Mr. Williams: "That's exactly what I am saying, first of all on the merits I agree with you, it is archane and an anacrynism from the 20's when people were tending to be conservative and it defies reality, and it flies in the face of the ERISA guidelines. So, what do you do about it? I'm not going to presume on the Council's part, the Retirement Board whatever disagreements the Retirement Board has with the City Council I think we can agree that the Retirement Board is not a Legislative Body, in the sense that they can adopt Ordinances. So, you have to change the Ordinance and where do you start? My suggestion, and this is done in a mutuality of interest between the Retirement Board and the City Council and the mission for which you exist, is that and maybe some of this has been done, if it has forgive me for repeating, but you

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probably ought to look again at your investment plan and when I way look at it I mean look at what the liabilities are, the actuarial numbers, the people you are servicing with retirement benefits the people that you are about to service and when, and what that exposure would be and then go into a recommendation to the City Council as to the investment vehicles that the Retirement Board wishes to utilize.....I have appeared before the Finance Committee and the sense that I've gotten from that Committee and correct me if I am wrong is that I don't see that Committee or the City Council wanting to get into a situation where they have to approve everytime you make investment in 100 shares of IBM for example. I don't think and this is my opinion, I don't think that is the purpose of a City Council's role. The City Council is to set policy and to assist in the mechanisms to make this Retirement Board go. "

Councilman Dillon informs the member of the Board that Mr. Williams came to the Finance Committee and made the suggestion that an effort be made between the Retirement Board and the City Council and that is how he came to come before the Board.

He further informs that the Council would not be interested in approving every individual investment and "as the Law reads right now, it is either we invest in certain bonds or the Council approves every single transaction, so we need to find some mechanism for the Council to approve every transaction which would not be practical, or change the Ordinance".

Mr. Williams informs: "Historically, we are not just talking about this Council and this Retirement Board our research revealed that this change in investment philosophy which was more in tune to economic indicators, current indicators really and I use the word global in my report. Global in the sense that it goes back a generation to the early sixties. The fiscal advisor and agent then knew, because we found documents acknowledging the limitation of investments but then, almostthe investments went into other securities other than bonds.

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.....Mr. Williams continues: "I have to tell you not just as a lawyer, that if this is not addressed, you are going to be in trouble. You are going to be in trouble from a legal as well as a political sense and you don't have to be a scientist to know that there will be people that will litigate on this issue and they will attempt to thraught what all of us want to the detriment of the people you serve on this Retirement Board."

Mr. Day: "I think that is clear from what has happened during the last year and a half. The people that we serve have not been the prime focus of any Council initiative, the City has thrown that to the wind, to raid the pension system. It is not only a local thing, I have been to many seminars where this is a National problem..... where the State of California just adopted in 1992 a pension reform act to stop municipalities and governments from gutting the pension funds and taking the profits to offset their budget problems with people's pensions and it went so far as to pass by an overwhelming majority of the voters because they stripped 600 million dollars of funds under the guise that they were jst changing a few actuarial assumptions. It was political control of pension fund dollars anda politician cares about one thing being elected and I am not going to be here in 12 years when there is a major unfunded liability and as David Dillon gave a presentation at the State House, throughout the 1930's, 40's, 50's and 60's the City Council and/or administrations have short funded and stripmined the fund by not putting the money in when they should have. Had that money been put there in 1942, 1948 or 1962, this fund would not be worth 307 million dollars today it would probably be worth 1 billion dollars.....when we came on the Board four years ago, it was 189 million it is now approaching that 307 million dollar figureand that is our major role here, to protect and preserve the fundand unless we can somehow get the Council to understand that and sit down with them and working out the problems versus constant attacks and misrepresentations is not going to do the people that we serve any good whatsoever".

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Mr. Quattrocchi questions whether or not there were any other mortgages found that were made by the Retirement System and why no one could ever address this issue.....before and why this time all of a sudden does everyone come forward and question it.

Mr. Williams: "No we did not find it and we were not commissioned to look at other mortgages and there was another loan that was made

Mr. Quattrocchi: There was another loan made to Columbus Bank which was an unsecured note which was a private placement which was done.....

Mr. Williams informs that their charge was Birnam Woods where "we looked at prudent standards and so on and investigation market studies, opinion letters, documents and we found the fact that somewhere in the 60's the thrust of investments had changed and that was enough for us to be on alert consistent with the present Ordinance and to bring it to your attention as well as the rest of the City's...you are asking for trouble here if for example, this Ordinance is not corrected even seeking approval by the Council for this under the present investment or as part of the legislative package that you proposed to the City Council or doing it as Mr. Day said, together with the Finance Committee. I would recommend that and what's at stake here is..."

Mr. Quattrocchi: "What you are really saying is that the Statute is pretty clear the Act is clear and for whatever reason it is not being adhered to and has not been for literally decades. Therefore, someone should address it because as long as the statute remains on the books or remains on the books as written, there is a problem."

Mr. Qilliams: "I hope this doesn't happen because the City could make out with this but there is some unfinished business here. One is the ratification by the Council which could be part of the legislative package that we are talking about.....you are in the middle of construction up there, have they gotten their last payment?"

Mr. Chiodo: They are to start making principal and interest payments this month.....I haven't seen an amortization

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of the documents I made my own and will present it at the next Board meeting?"

Mr. Williams at this time questions "if anyone has checked to see if there has been any overruns of funds or... has the construction come in within the budgetary amount?"

Mr. Day: "Yes, at the last meeting there was a report given to this Board saying that everything was in total sync and on line and operating".

Mr. Williams informs that he would be interested in knowing whether this whole project has come in within budget, whether all lien and releases have been filed, whether payments are being made to vendors and trade people.

Mr. Quattrocchi mentions the fact that the Board is without legal counsel, and there is no one to monitor same as there was before.

Mr. Day informs that the City Solicitor's Office always sends a different attorney to the meetings and never respond to requests for legal opinions.

Further discussion ensues and Mr. Williams informs that "I did not ask for this job but the Solicitor has asked me to get the construction documents from Mr. Skolnik which I am getting today and to assist the Board and the City in seeing that all of the documents are in order and that the work with Gilbane to the extent that needs to be done is part of my duties as Special Counsel to answer questions that arise and to assist.

Mr. Quattrocchi and Mrs. Jackson both are of the opinion that "it is rather strange that no one ever bothered to notify the Board - nothing from the Solicitor's Office."

Discussion ensues among the members at this time regarding representation or lack of representation by the Solicitor's Office.

Mr. Williams further states that the bottom line is "this has got to succeed or we are going to be in trouble and what I don't want to see is in three years if something should falter on the payment of the mortgage and you go and foreclose and someone argues that you didn't even have the authority to make the mortgage, that's what I'm talking about....."

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Mr. Quattrocchi questions as to there^{being} any problem with the land purchase and Mr. Williams informs that he sees no potential liabilities or involvements but sees more land than what was originally planned to have security interest in.

He further informs "it showed that at least the borrowers were putting in other monies other than what they were getting from this Retirement Board."

Mr. Quattrocchi questions as to other partners, silent partners...?

Mr. Williams informs that all that was seen was what was on file in the Secretary of State's Office the Limited Partnership Certificate.

Mr. Quattrocchi informs that he is desirous of knowing who the attorney is and who is on the list.

Mr. Williams informs the attorney is Marc Greenefield.

Mr. Quattrocchi: "The people who sold the land do they have any interest in the project and is there any interest in the project at all?"

Mr. Williams: You have a first security interest in this project.

Mr. Quattrocchi: What I'm trying to get at is if we went to foreclose with the default whether or not there would be any complications involving ownership of the land?

Mr. Williams: I see none and the evidence of that is the recording of the documents in the City Hall in Cranston and the fact that the title insurance shows you as the first lien holder.

Dr. Crowley questions the importance of the risk issue and Mr. Williams informs....."my whole point is the risk and why you should have used someone like Mr. Hannah, I don't know if he is a QPAM as the ERISA anticipates him to be. His involvement was limited in this from what I understand from the record and thirdly, risk from what I've seen I see no involvement by Mr. Hannah in evaluating this loan..... What you need and what your fiduciary duties are here as members of the Board is to evaluate this with the best possible information marketing study, asset management analysis which I don't think you had. Now, when I say I didn't get into the

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risk I couldn't get into the risk based on the facts that I've just given you. I could give you a sense as a Lawyer that's done a lot of real estate, commercial loan closings that this could be a win situation for the Retirement Board all other things being equal, what makes it that the fact is that I mentioned the report the size of the rents the terms of the leases the return in today's economic marketplace, and what I like very much which is unfinished, is the equity participation agreement. But, you have to work on this equity participation agreement, a fair compromise?. The closing was held without drafting a legal equity participation agreement. You did get a letter from Zammiello which is a sign of good faith but it wasn't adopted by you nor was it converted into a legal document that clearly defined what net profit is."

Mr. Day:if you are going to be involved as Special Counsel now appointed by the Solicitor as his agent to work on this project, through the Chairman, could you set up a meeting with the interested parties, the Retirement Board and the Birnam Woods people and Richard Skolnik, who is very knowledgeable on this, he did most if not all of the documents to go forward and prepare the documents needed".

Mr. Williams informs that he has known Mr. Skolnik for many years and has the utmost respect for him and they have met several times regarding the subject matter. He further states that he can commit to the Board that whatever needs to be done in the way of documentation, review, and/or recommendation to the Chairman and the Board he is able to do and it will be done and states that this is strictly a fiduciary obligation to the Fund and is not interested in the politics, litigation, etc.

Mr. Chiodo questions security interests (first) and equity participation agreements how both can be perfected if they are not already?

Mr. Williams states: "I don't think the equity participation agreement is perfected, your mortgage is perfected but my concern about the equity participation agreement, while we have

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a strong argument in law of it becoming in fact so, because of thewe prepare the agreement which I am pleased to do to clearly define the representation which was made in your commitment letter to make the 12 1/2 million dollars to begin with."

Mr. Chiodo: The other thing that startles me going through the documents, I don't feel comfortable as a CPA creating the loan amortization schedule for this program that was done by attorneys, I made one up and will bring it to the Board, we are going into permanent financing next month and that should ^{be} part of the documents that Mr. Skolnik, Mr. Mansolillo and you have and I can't see why I should be making loan amortization schedules and putting it into the minutes it should not be..."

Discussion ensues on who is now the escrow agent Old Stone being replaced by Shawmut until completed construction and now that construction is complete same should be looked into.

Mr. Chiodo: I would like to document the loan amortization schedule and formally put it in the minutes of one of our meetings and on file in the Treasurer's Office and my office and make sure Birnam Woods is paying monthly and on time.

Mr. Williams agrees with Mr. Chiodo and would like to see what he has documented.

Further discussion ensues and Mr. Williams informs that he will report back to the Board with as many questions answered as he can address before the next meeting and also a proposal that may be considered for presentation to the City Council regarding the investment.

Accordingly, on motion of Mr. Day, seconded by Mr. Patterson, it is voted to accept the report of Mr. Williams.

All members in favor.

Mr. Dillon: "Just one more comment Mr. Chairman for the record. As I understand it, correct me if I am wrong, the ERISA standards say that ^{the} pension fund must be operated for the benefit of the fund and the employee and it is not necessary that there be a sinister motive because you indicated there was no incestuousbut if you believe under ERISA to say that we do it because we want to provide jobs to unionpeople or benefits to the City of Providence is....."

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Mr. Quattrocchi informs that was the developer who made that statement that if they used non union labor he could possibly save a million dollars.

Further discussion ensues at this time and the ERISA application to this project.

Mr. Williams excuses himself at this time.

Mr. Dillon questions do we want to set something up, do we want to approve a process, do we want to work together on coming up with an amendment to the Ordinance?

Mr. Day informs that this matter will be in the Investment Sub Committee and all are invited.

Mr. Dillon invites the members to the Finance Committee meeting.

REPORT OF THE CITY SOLICITOR ON THE STATUS OF THE RECOVERY LITIGATION INVOLVING PRESERVATION PROPERTIES.

Mr. Quattrocchi informs that a Request for Legal opinion regarding same was requested of the City Solicitor transmitted by the Assistant Clerk on November 2, 1993.

He questions Attorney Salvatore who is present.

Attorney Salvatore informs that Mr. Mansolillo is out of town and Attorney Riendeau was unable to be contacted this morning.

Mr. Quattrocchi moves that Mr. Lynch, Pension Administrator, be instructed to contact the State of Rhode Island Department of Business Regulation Securities Division to file a complaint against Mr. Anthony Lyons and Mr. Terrence Sullivan^{of Preservation Properties} regarding the possibility that this may have been an illegal investment under the SCC.

This motion is seconded by Mr. Patterson and all members are in favor.

Discussion enuses on who has the authority to do this the Law Department or the Pension Administrator and Mr. Quattrocchi suggests they both work on this to make sure that it is done.

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Mr. Dillon at this time states: "so if we approve trades next week, they will be illegal if you will."

Mr. Day disagrees.

Discussion ensues relative to the Committee on Finance and the Retirement Board getting together for discussion.

REPORT OF THE FIDUCIARY INSURANCE CARRIER.

Mr. Quattrocchi requests Mr. Lynch provide a copy of the binder and the policy to the members of the Board for review.

Mr. Lynch states that we do have insurance and the agent was scheduled to attend but had a prior commitment and is scheduled to appear before the full Board.

At this time Mr. Day states: "Mr. Chairman, I would just like to add that the Solicitor's Office did not have a report ready for this Committee.

Accordingly, on motion of Mr. Day, seconded by Mrs. Jackson, the meeting adjourns at 12:45 o'clock P.M. to meet again on Thursday, November 18, 1993, at 10:30 o'clock A.M.


ASSISTANT CLERK


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