

# Minutes Tempe Police Public Safety Personnel Retirement System Board Meeting July 5, 2012

Minutes of the Tempe Police Public Safety Personnel Retirement System Board meeting, held on Thursday, July 5, 2012, 3:00 p.m., Tempe City Hall, third floor conference room, 31 E. 5th Street, Tempe, Arizona.

### **Board Members Present:**

Todd Bailey Joe Brosius Jeff McHenry

### **City Staff Present:**

Brigitta Kuiper, City Clerk Tim Mattix, Assistant City Clerk Lynna Soller, Human Resources representative

### **Board Members Absent:**

Mark W. Mitchell, Mayor Penny Higginbottom

#### **Guests Present:**

Cynthia Kelley, Legal Counsel David Niederdeppe, Legal Counsel

Joe Brosius called the meeting to order at 3:02 p.m.

### ITEM I - Consideration of Meeting Minutes

Motion by Jeff McHenry to approve the executive session minutes of the special meeting of June 12, 2012 and the special meeting minutes of June 12, 2012; second by Todd Bailey. Motion passed unanimously on a voice vote 3-0.

### ITEM III - New Members (This item was taken out of order by the Board.)

Motion by Jeff McHenry to accept the new membership application of **Blake Dunn**; second by Todd Bailey. Motion passed unanimously on a voice vote 3-0.

## ITEM II – Motion to Adjourn to Executive Session, if necessary, pursuant to A.R.S. §§ 38-431.03(A)(2) and 38-431.03(A)(3)

Motion by Todd Bailey to adjourn to Executive Session; second by Jeff McHenry. Motion passed unanimously on a voice vote 3-0. The Board convened into Executive Session at 3:03 p.m.; the Board Meeting was called back to order at 3:33 p.m.

### ITEM IV - Initial Hearing for Ordinary Disability Benefits

Motion by Jeff McHenry to continue the hearing on the ordinary disability application of **Joseph Jaen** to the August, 2012 Board meeting and direct the Board's Legal Counsel to proceed as discussed in Executive Session; second by Todd Bailey. Motion passed unanimously on a voice vote 3-0.

### ITEM V – Initial Hearing for Accidental Disability Benefits

Motion by Jeff McHenry to send **James Quill** for an Independent Medical Examination (IME), noting that the application for accidental disability presented to the Board met the requirements to proceed with an IME; second by Todd Bailey. Motion passed unanimously on a voice vote 3-0.

### ITEM VI - Hearing for Accidental Disability Benefits

Joe Brosius asked for opening statements on the hearing for accidental disability benefits of **Daniel Masters**. Dale Norris, representing Mr. Masters, stated that he did not have an opening statement; however, some witnesses were present to testify. The Board asked Mr. Norris to proceed.

Mr. Norris called Derrick Williams to testify. Mr. Williams stated his name for the record, and that he is a Captain on Engine 203 with the Mesa Fire Department. He stated that he was called in on a first alarm assignment to the fire at Casa di Grigio Apartments. The testimony provided by Mr. Williams follows.

Derrick Williams: Upon arrival we gathered our tools and equipment on the south side. I started my 360 of the building, made my way around to the north side. As I turned back to look at the roofline of the building, I saw Officer Masters ascending the stairwell, the exterior stairwell in between the units. And I believe he was on the second, going to the third floor. And I yelled at him to ask him what he was doing. He said there was a dog on the third floor and he was going to attempt a rescue. And I told him to get out of there because the firefighters were already on the third floor and the roofline was unsafe. And we were in the process of pulling some people out of that area. And as I yelled at him to do that, he turned to look at me, and you know, a 4 X 8 piece of drywall and some various ceiling and roof debris came down on top of him. So I immediately went to call on the radio to get my guys to go up and perform a rescue. Before I was able to do that, he was able to self-extricate himself from the rubble. He leaned over the third-floor balcony and was coughing and gasping for breath. I yelled at him again to basically get the hell out of there. And he was able to make his way down the stairway, and my crew met him at the base of the stairway, and we extricated him from the hot zone and over to the medical sector.

The Board had no questions for Mr. Williams.

Mr. Norris called Stephanie Richmond to testify. Ms. Richmond stated her name for the record, and that she is a Detective with the Tempe Police Department. The testimony provided by Ms. Richmond follows.

Stephanie Richmond: I responded to a fire call. I was across town and I heard Sergeant Masters on the radio. He had already been on the scene for a while when I had gotten there. The Fire Department had already set up and perimeters were setting up. I went towards a back building and I noticed Sergeant Masters outside of the building. And I remember being surprised when I saw him because he was wet. His uniform was wet. He had debris all over him. There were like white flakes on him, on his head, on his outer carrier. And I asked him what happened and he told me the roof had fell on him. And I could tell that adrenaline was going; he was speaking rapidly, having a hard time breathing. So one of the supervisors told me to stand by with him. And at that time we were moving towards the back of the building. So I walked with him towards the back and met with the fire department. They had given him oxygen and he had the oxygen mask on him. We weren't there very long; we were told to move everybody towards the front of the building. So I walked with him towards the front. And he didn't have the mask on then; we had to move over to the front, and he was still having a hard time breathing, or catching his breath and still coughing. Just trying to talk with him to get his vest off, and maybe help with him, just to breathe and to calm down and people were still running around so we went towards the front. And I stood by with him. We were trying to get him to sit down, and at that time another officer was at the front. There were several that he, that stood by with him. And I went back into the building to assist with evacuations.

The Board had no questions for Ms. Richmond.

Mr. Norris called Steve Razo to testify. Mr. Razo stated his name for the record, and that he is a Police Officer with the Tempe Police Department. The testimony provided by Mr. Razo follows.

**Steve Razo:** We were one of the first to get there at the apartment complex and we observed smoke coming from that particular building where the fire was at. Sergeant Masters asked me and other officers to try to evacuate the building. And so we began doing that. I'm not sure how long we evacuated people, but once we were told to leave

the building, we left the building and I was standing in the parking lot to the south of the building that was on fire, and Sergeant Masters appeared while I was standing out there and he appeared wet. He appeared to have some type of debris on his back and head and stuff like that. And I, I too asked him what had happened, and he said that the ceiling, or roof, fell in on him.

The Board had no questions for Mr. Razo.

Mr. Norris called Tim Bulson to testify. Mr. Bulson stated his name for the record, and that he is a Sergeant with the Tempe Police Department. The testimony provided by Mr. Bulson follows.

**Tim Bulson:** When I first got there, the flames were shooting out of the roof. I went to the west side of the building that was on fire and assisted with the evacuations. Once we were given the order to leave the building, I then came down and that's where I saw Sergeant Masters on the bottom floor area. He had debris on his shoulder. He had soot on his head, and when I was speaking to him, he just seemed out of it. He was pretty amped up, and I was one of the Supervisors and he was a Supervisor, so I told him that I would take control from the PD's point of view as far as our response. And basically told him that he needed to get medical attention.

Dale Norris: Why did you tell him that?

**Tim Bulson:** Based...based upon his demeanor. Again, he just seemed out of it., he was sweating, he was wet, I wasn't sure if he had a concussion or anything like that. So...

The Board discussed with Mr. Bulson the orders to leave; Mr. Bulson replied that he believed the order was given over the radio by Sergeant Rapp (Tempe Police Department) because the Fire Department was on scene and requesting that Police pull back. The Board also discussed with Mr. Bulson whether he knew the reason that there was soot on Mr. Masters' head, and why Mr. Masters "seemed out of it". Mr. Bulson replied that Mr. Masters told him that the roof had collapsed and that he did not know how he got from point a to point b.

The Board had no further questions for Mr. Bulson.

Mr. Norris stated that Mr. Masters was present; however, he was not going to ask Mr. Masters to testify unless the Board had questions for him. The Board had no questions for Mr. Masters. Mr. Norris stated in closing that the City of Tempe had taken the position that Mr. Masters was not injured at the fire; the City had provided documents to that effect from a workers' compensation hearing. Mr. Norris stated that in today's testimony, the Board heard from an eyewitness that saw the roof collapse on Mr. Masters, as well as from two Police Officers and a Sergeant that testified in direct contradiction to what had been said at the workers' compensation hearing. He asked the Board to follow the opinion of the independent medical examiner and award Mr. Masters the accidental disability.

Motion by Jeff McHenry to accept the accidental disability application of Daniel Masters; second by Todd Bailey. Boardmember McHenry noted the following for the record:

- It was found that there were additional medical records that had not been provided to Dr. Lieberman, the medical board, initially. Those records were later provided to the medical board for review; Dr. Lieberman responded by stating that he had reviewed the additional information and that his opinion did not change.
- The question had come up as to whether the accident occurred on duty. The testimony the Board heard at today's meeting put that to rest.
- The medical board was asked if the claimant has a physical or mental condition which totally and permanently prevents him from performing a reasonable range of duties within his job classification. Dr. Lieberman had been provided the description of duties required for Police Officers and Firefighters to assist in making the determination. Dr. Lieberman answered in the affirmative.
- The medical board was asked if the claimant's disability results from a physical or mental condition or injury that existed or occurred prior to the claimant's date of membership in the Public Safety Personnel Retirement System. Dr. Lieberman answered in the negative.

 The medical board was asked if the disabling condition or injury occurred in the performance of the claimant's duty as a Police Officer or Firefighter. Departmental accident reports and documentation for an on-the-job injury should be provided to the medical board. Dr. Lieberman answered in the affirmative, and the Board heard evidence at today's hearing to confirm that.

Motion passed unanimously on a voice vote 3-0.

### ITEM VII – Public Appearances

None.

### ITEM VIII – Future Agenda Items

Boardmember Bailey had previously notified the Board of his intent to resign from the Board. The Police Department held an election for the replacement; the elected member, Chris McCormick, will be taking over following this meeting. Local Board Secretary Brigitta Kuiper explained that Mr. McCormick has not yet been sworn in, as staff was waiting for the official resignation; Mr. McCormick will be sworn in prior to the next meeting.

### Adjournment

Motion by Todd Bailey to adjourn; second by Jeff McHenry. Opened for discussion.

Boardmember McHenry noted that under future agenda items the ordinary disability application of **Joseph Jaen** will be placed on the next agenda.

Motion passed unanimously on a voice vote 3-0. The meeting adjourned at 3:51 p.m.

Brigitta M. Kuiper, Local Board Secretary