BOARD MEMBERS PRESENT: Frazier, Hamby, Jordan, Clark, Gee, Tarver, Ashby
EX-OFFICIO MEMBERS PRESENT: Rider
OTHERS PRESENT: Allison, Emerson, Serra

Chairman David Frazier called the meeting to order at 11:00 AM and served as the presiding officer.

UPDATE:

Definition of Spouse - Compliance with Supreme Court Decision in Obergefell v. Hodges
Chairman David Frazier provided an update indicating there was a need to review this decision to determine the impact to the Plan. Also, there is a pending request that requires the Obergefell decision to be implemented. He stated discussion will focus mostly on the joint and survivor benefit option. Attorney Ed Emerson researched the issue and provided a written response. The actuarial firm also provided information indicating the options to be discussed would not present a significant cost to the plan. A Plan amendment was necessary to allow retroactive joint and survivor benefits which requires approval from the governing body.

Attorney Emerson stated the Obergefell v. Hodges decision is an add-on to the Windsor decision that requires all states to recognize same-sex marriages after June 26, 2015. The IRS has not provided guidance yet. This issue is on their priority guidance list. In his opinion, it was optional to provide retroactive benefits prior to June 26, 2015. He stated Gainesville is the first to address this issue which could be due to the pending request.

Mr. Emerson stated the Plan must be amended to provide retroactive benefits. The Board needed to determine how to apply the ruling to those legally married on their date of retirement as well as those married after their retirement. The Board should also decide how to handle overpaid benefits. Decisions on these issues will establish the Board's policy.

There was discussion about same-sex marriages occurring before the Windsor decision with emphasis on the ruling that allowed individuals to refile tax returns for open tax years. Coincidentially, ERISA Plans were not required to implement retroactive elections.

The Board discussed potential claim and litigation risks. Mr. Emerson commented on litigation indicating a claim generally must be made against the Plan and administrative procedures must be exhausted before litigation can occur. Upon receiving a claim, the Board can decide whether to honor a retroactive request. This could be in the form of a settlement. Generally speaking, it sets good precedent to apply the same decision to all claims. Mr. Emerson stated the Board could be conservative and consider any written request as a claim for benefits.

Upon inquiry, Mr. Emerson stated the Board could consider June 26, 2015 as the retroactive date and could rely on current IRS guidance.

Board Member Hamby asked if there was any chance that offering retroactive benefits (prior to June 26, 2015) could be viewed as unfair or as an opportunity to change their mind. Mr. Emerson felt there was a difference in that the retiree in a traditional marriage would be changing his mind. A retiree in a same-sex marriage did not have the same benefit options prior to the ruling.

Board Member Gee asked about the financial implications of a retroactive decision. In the absence of firm numbers, $18,000 to $35,000 per retiree was provided as a rough estimate.

Mr. Emerson stated the options for reimbursing the Plan was to request repayment from the retiree, immediately offset future benefits or reduce future benefits over the life expectancy. The latter two were easier from an administrative standpoint but hard to explain.

Ms. Ashby asked if there was a way to estimate the number of people that might be involved.

Mr. Emerson felt, in allowing a retroactive election, the Board's role was to develop a plan that places a same-sex marriage retiree in the same position as a traditional marriage retiree. There was no failure on the Board's behalf. The Board was simply working to comply with the law.

Ex-Officio Board Member Rider felt there would be some cost to the Plan and felt it was important for the Board to recover any excess payments.

Human Resources Director Janeann Allison asked if retroactive benefit coverage would cross over to medical coverage and would the Board's action establish precedent. Mr. Emerson stated there was a risk that the retiree would want medical coverage. He did not have concern about treating them (retirement benefits vs. medical coverage) differently. There was discussion about allowing medical benefits (1) retroactive to June 26, 2015 or (2) effective January 1, 2016 for same-sex marriage situations which led to discussion about the open enrollment period and general practice for selecting post-employment insurance coverage.

There was considerable discussion about offering retroactive benefits and the need to require repayment to the Plan for overpayments. There was specific discussion about setting a timeline for the payback instead of amortization over life based upon actuarial tables.

Ms. Rider suggested that the Board ask the actuary to prepare pay back calculations and to determine the federal taxable income on behalf of the Plan.

There was discussion about the window of time for making an election. Attorney Emerson recommend at least 30 days but no more than 90 days for the election. Then, request calculation for those who respond and provide another 30 days to opt-in.

After considerable discussion, Chairman Frazier expressed a desire to present this matter to the Council as soon as practical. The October 20, 2015 Council Meeting was identified as the target date for Council action.

The Board discussed sample motions before taking the action noted below.

Motion to amend the Plan Document to make the joint and survivor option available to same sex marriages retroactive to the benefit commencement date for those legally married prior to retirement and prior to the June 26, 2015 ruling subject to compliance with IRS guidance with the understanding that overpayments during that period of time will be reimbursed to the Plan.

Motion made by Board Member Ashby
Motion seconded by Board Member Clark
Votes favoring the motion: Frazier, Jordan, Clark, Gee, Tarver, Ashby
Votes opposing the motion: Hamby

There was discussion about the options for refunding the Plan and concerns about calculating taxes on lump sum reimbursements.

Motion to authorize the actuary to calculate a full actuarial reduction for any excess benefit payment due to the election of a joint and survivor benefit as it pertains to the same sex marriage ruling provided that the actuary agrees the methodology is feasible.

Motion made by Board member Hamby
Motion seconded by Board Member Tarver
Votes favoring the motion: Frazier, Hamby, Jordan, Clark, Gee, Tarver, Ashby

Staff was asked to prepare the election letter and the resolution. Attorney Emerson agreed to prepare the amendment. He was also asked to attend the work session to present this matter to the Council.

NOTE: Margaret Ashby left the meeting at 12:50 PM.

There was discussion clarifying all amendments to the Plan Document must be submitted to the Council for approval.

Motion to amend the Plan Document to bring it into compliance with the Obergefell v. Hodges ruling.

Motion made by Board Member Clark
Motion seconded by Board Member Hamby
Votes favoring the motion: Frazier, Hamby, Jordan, Clark, Gee, Tarver
Absent: Ashby

ADJOURNMENT: 1:02 PM

/dj

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David Frazier, Chairman

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Denise O. Jordan, Secretary to the Board