

City of Miami

*City Hall
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Miami, FL 33133
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Meeting Minutes

Tuesday, January 8, 2013

10:00 AM

Commission Chambers

Civil Service Board

*Gerald Silverman, Chairperson
Sean Moy, Chief Examiner
Lillie Harris, Board Member
Christine Gomez, Board Member
Javier Baños, Board Member*

PLEDGE OF ALLEGIANCE

The meeting was called to order at 10:03 a.m. The roll call at the commencement of the meeting was as follows:

Present: Chairperson Silverman, Chief Examiner Moy, Member Harris, Member Gomez and Member Baños

A. APPROVING THE MINUTES OF:

Regular Meeting of December 11, 2012.

The Board entered a motion to APPROVE the minutes of the December 11, 2012 meeting which resulted as follows:

Motion by Member Harris, seconded by Member Baños, to APPROVE. PASSED by the following vote.

Aye: Silverman, Moy, Baños, Gomez and Harris

B. PERSONNEL MATTERS

- B.1** Notice of Withdrawal from Mariano V. Fernandez, P.E., Director/Building Official, Building Department, concerning the request to extend the probationary period of Anthony Hatten, Electrical Inspector III, for 12 months beyond the end of his term as Union President. (NOTIFICATION)
Tabled from the meeting of December 11, 2012.

NOTIFIED

C. MILITARY LEAVES OF ABSENCE**D. DISCIPLINARY MATTERS**

- D.1** Copy of a Judgment from the City Manager concurring with the Board's findings concerning the Appeal Hearing of Ansonia Chatfield, Emergency Dispatcher, relative to her 120-hour suspension, effective July 7, 2011. It is ordered and adjudged that the decision of the Chief of Police to suspend Ms. Chatfield for 120-hours is hereby sustained. (NOTIFICATION)

NOTIFIED

- D.2** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Damian Simmons, Police Officer, of his 200-hr suspension, effective December 18, 2012 and a copy of a request to appeal from Officer Simmons. A hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

- D.3** Copy of a letter from Chief Manuel Orosa, Director, Department of Police, notifying Darlene Jones, Police Officer, of her 20-hr suspension, effective December 23, 2012 and a copy of a request to appeal from Officer Jones. A

hearing will be scheduled in accordance with Civil Service Rules and Regulations. (NOTIFICATION)

RECEIVED AND FILED

- D.4** Copy of a Memorandum from the City Manager concerning the Grievance Hearing of Frank Rodriguez, former Building Inspector I, pursuant to Rule 16.2, alleging a violation of Rule 12.1, accepting the recommendation of the Board to reinstate Mr. Rodriguez to the position of Building Inspector I. (NOTIFICATION)

NOTIFIED

- D.5** Copy of a Memorandum from the City Manager concerning the Grievance Hearing of Alejandro Pascual, former Building Inspector I, pursuant to Civil Service Rule 16.2, concerning a violation of Rule 12, accepting the recommendation of the Board to reinstate Mr. Pascual to the position of Building Inspector I. (NOTIFICATION)

NOTIFIED

E. GENERAL ITEMS

- E.1** Copy of a Report concerning the Grievance Hearing on behalf of Ricardo Novas, Broadcast Engineer, pursuant to Rule 16.2, concerning a violation of Rule 12, Layoff, Resignation, and Reinstatement. (DISCUSSION)

Deferred from the meeting of December 11, 2012.

Following consideration of the Findings of Fact, the Board entered a motion to APPROVE the report as amended. The motion resulted as follows:

Motion by Member Baños, seconded by Member Harris, that this matter be APPROVED. PASSED by the following vote.

Aye: Silverman, Moy, Baños, Gomez and Harris

- E.2** Possible Rule or Procedure Manual Amendment (DISCUSSION)

Deferred from the meeting of December 11, 2012.

Member Harris stated that she wanted to make sure the Board Members had an opportunity to review the [proposed Manual of Procedures section revision] entitled, "Exchange of Information".

Hearing that all Board Members reviewed the proposed amendment, Chairman Silverman responded that he had a few comments to make on the matter. He went on to say assuming the Board proceeds with the proposed amendment, a public hearing would have to take place on this matter. The Executive Secretary responded that a public hearing was not required because what Member Harris is asking for is a revision to the Board's Manual of Procedures (and not the Civil Service Rules.) Chairman Silverman stated even if a public hearing was not required, he would suggest that a public hearing take place in order to invite the attorneys so that they can offer their comments on the proposed amendment. He further stated that he did not think the Board had authority to issue sanctions as stated in the proposed language on page 1, paragraph 3 of the document which states in part, "The Board may enter orders to

effectuate the exchange of information, including compulsion or protective orders, and orders imposing sanctions for failure to comply." Chairman Silverman further stated the Board no longer uses a court reporter which is a savings to the budget; however, there is language on page 3, first paragraph of the document that states, "All hearings shall be recorded by a court reporter." He stated these were the only two comments he had and asked if any other Board Member wished to comment on the proposed amendment.

Member Moy responded that he was not in favor of the proposed amendment because he felt it would only delay the hearing process. He went on to say the proposal calls for discovery by both parties but at the end, he still feels this will delay the process according to information he read in a document that he would like to share with the Board, but he needed a moment to locate it.

Member Harris stated while Member Moy is looking for the information, she would like to respond to his comment about discovery. She went on to say the reason the proposed amendment is not entitled "Discovery" is because unlike discovery that compels both sides to present documents, her proposal is more of an encouragement for both sides to exchange information. Member Harris further stated if this is practiced, neither side is hit with a shock factor of not knowing about the information if provided prior to the hearing and they would also have an opportunity to prepare a defense. She stated from her perspective, the intent of her proposal is to speed up the hearing process, have an efficient process, and maybe in some instances spark a settlement between the parties if either side is able to see information that they may not have realized existed or was going to be used in the hearing. Member Harris went on to say that one of the things she has noticed in many of the hearings brought before the Board is that there seemed to be something missing (i.e. information not presented that would be important to the Board when having to make decisions.) She further stated if anyone were to think about it, the decisions the Board makes affect the future of the City of Miami totally, so by introducing the proposed amendment, she thought it would be a better way for a more efficient, transparent process.

Following discussion, Chairman Silverman instructed the Executive Secretary to schedule this matter for a public hearing and to invite the attorneys that conduct business with the Board.

DISCUSSED : Public Hearing date to be determined.

E.3

Copy of a Report concerning the Grievance Hearing on behalf of Lewis Mahoney, Park Manager II, pursuant to Rule 16.1, Abuse of Power by his Supervisor, Donald Lutton, Superintendent, Parks and Recreation Department and 16.2, Complaint by Employee. (DISCUSSION)
Deferred from the meeting of December 11, 2012.

Chairman Silverman asked if Mr. Mahoney or his attorney was present. The Executive Secretary responded in the negative. She went on to say that Mr. Mahoney and his attorney were advised twice that this matter would be on today's agenda, but she has not heard from either of them.

Chairman Silverman asked if there were any comments from Board Members before voting on this item. Member Harris responded in the affirmative. She stated although the Board found that the City did not violate any Civil Service Rules and Regulations, the Board recommended to the City Manager that the Workplace Violence Policy be thoroughly followed. Member Harris went on to say that the Board's recommendation to the City Manager is a general statement, so she is suggesting to add more verbiage to make the recommendation more specific to the policy. She further stated in the Workplace Violence Policy, it talks about management's role so she would like to

somehow emphasize to the City Manager the importance of management's role once the employee makes it known there is an issue of a hostile working environment. Member Harris stated the reason for her suggestion is based upon part of what she found after listening to witness testimony. Member Harris stated that during the hearing, Mr. Mahoney repeatedly said he brought his concern (of harassment and abuse he experienced through Mr. Lutton) to the attention of his superiors and he did file a (police) report regarding same. She went on to say she also felt Mr. Lutton was subjected to a hostile working environment by Mr. Mahoney, the person who actually filed the abuse of power claim. Member Harris further stated that although she did not feel Mr. Mahoney proved his case in terms of his alleged abuse of power claim, she did feel it very important that the City Manager continue to reinforce the need for zero tolerance of violence in the work place. She stated there was also the mention of several instances of this type of behavior and honestly she felt that management did not do enough to address the issue. Member Harris went on to say although the department did generate documents and put things on paper, she felt sufficient action was not taken especially when there is specific information in the Workplace Violence Policy regarding the reporting process of such actions and management's role .

Chairman Silverman stated that the Board was here today to consider the findings, but he wanted to know from Member Harris if she wanted to defer this item for the purpose of getting with the Board's Special Counsel to add comments to the findings or if she wanted to adopt the findings today. Member Harrison responded that the Board could adopt the findings today; however, she just wanted to speak on the matter of the Board's recommendation because it is very general. She went on to say that she would suggest an amendment to the Board's recommendation so that it reads, "The Board recommends to the City Manager that the Workplace Violence Policy (APM 1-99) be thoroughly followed specific to the reporting process and management's role.

Member Banos stated that he would abstain from voting on the findings because he was not present when the hearing took place.

Chairman Silverman asked if anyone had an objection to Member Harris' suggested amendment to the Board's recommendation. Hearing none, the Board entered a motion to APPROVE the report as amended. The motion resulted as follows:

Motion by Member Gomez, seconded by Chief Examiner Moy, that this matter be APPROVED. PASSED by the following vote.

Aye: Silverman, Moy, Gomez and Harris

Abstain: Baños

E.4

Notice of a Request to Continue from Jon M. Kreger, Attorney, Ronald J. Cohen, P.A., concerning the Appeal Hearing of David Anderson, Police Officer, of his 20hr suspension, effective June 28, 2012. (DISCUSSION)
Hearing of appeal is scheduled for January 22, 2013.

Attorney Kreger stated that this case is scheduled for the meeting of January 22, 2013; however, he requested a continuance due to documentation he requested but had not received.

Chairman Silverman asked opposing counsel for her position on the continuance request. ACA Richard responded that she had no objection to the continuance. Chairman Silverman asked if there were any comments from Board Members on this item. Member Banos responded that he was appreciative that Attorney Kreger requested the continuance with some degree of time in that he asked for the continuance prior to the scheduled hearing.

Following discussion, the Board entered a motion to APPROVE the employee's request for a continuance of his hearing which resulted as follows:

Motion by Member Baños, seconded by Member Gomez, that this matter be APPROVED. PASSED by the following vote.

Aye: Silverman, Moy, Baños, Gomez and Harris

F. REPORTS

F.1 The 2012 Annual Board Report to the City Commission. (DISCUSSION)

Chairman Silverman stated that the Executive Secretary did an outstanding job as she normally does and asked if anyone wished to comment on the report. Hearing none, the Board entered a motion to ADOPT the Annual Report which resulted as follows:

Motion by Member Baños, seconded by Chief Examiner Moy, that this matter be APPROVED. PASSED by the following vote.

Aye: Silverman, Moy, Baños, Gomez and Harris

F.2 The 2012 Annual Report reflecting Board action on Hearings, Administrative Activities, and Outstanding Judgments. (NOTIFICATION)

PRESENTED

F.3 Pending Hearings as of January 8, 2013. (NOTIFICATION)

PRESENTED

G. REQUESTS FOR HEARINGS

H. TODAY'S HEARINGS

H.1 Hearing of Appeal on behalf of Stanley Mike, Police Officer, relative to his 80-hour suspension, effective September 1, 2012.

Chairman Silverman stated that Attorney Kreger has requested a continuance of his client's hearing and asked opposing counsel if she had an objection. ACA Richard responded in the negative.

Chairman Silverman asked if there were any questions from Board Members concerning the continuance request. Member Moy responded in the affirmative and asked Attorney Kreger to provide the Board with his reason for wanting to continue the hearing. Attorney Kreger responded there were some individuals and at least one person from his office that needed to be present. He went on to say that the person from his office did not know until very recent there was a scheduling conflict so he was not able to attend. Attorney Kreger further stated he felt the reason he provided was sufficient for the Board to grant his request.

Chairman Silverman asked if Officer Mike's case ever been continued before. Attorney Kreger responded in the negative. He went on to say this is a very recent case and this is the first time it was scheduled.

Member Harris stated she wants to see the Board move cases along for this new year.

She went on to say she made some resolutions, one of which is she promised herself not to be too hard on the department's attorney when asking for a continuance and maybe a little harder on the opposing side. Member Harris further stated part of the reason the Board is here is for swift justice and closure for both the department and employee, but more importantly, closure for the public. She stated it is also the Board's responsibility to ensure efficient and effective use of the public's funds and services as well as use of the City Commission Chambers. Member Harris went on to say that according to the minutes of the last meeting, there were instances where Attorney Kreger had requested continuances because he was not prepared to go forward, which is not an efficient use of funds that is paid to represent his client. Member Harris stated although she was relating things about Attorney Kreger, it was not only aimed at him because she has seen [requests for continuances] done on both sides. She went on to say she put her thoughts on record because she does not know how tolerant she will be this year with regards to continuance requests.

Member Moy stated that he wanted to address the comment made by Member Harris with regards to continuance requests. He went on to say that [the Board normally does not have a problem with continuance requests from] the general employees when it comes to cases being heard, rather it is the police cases that are normally continued. Member Moy further stated he mentioned this because Member Harris asserted that she planned on not being lenient when it comes to continuances, but it goes both ways. He stated that he has been on the Board for a while and he has seen that it is the police cases that are normally continued double the time general employee cases are continued.

Member Harris stated that she agreed with Member Moy's statements because the facts are that the police department is the largest of all departments and the police officers use the Board more than any other employee group, nevertheless, her position was the same.

Following discussion, the Board entered a motion to DENY the employee's request for a continuance of his hearing. Under discussion on the motion, Chairman Silverman stated he doubted if either of the attorneys was ready because they both agreed to continuing the cases. He went on to say this is the first request for a continuance so he would be in favor of granting the continuance. Following discussion, the motion on the floor to deny the continuance request resulted as follows:

Motion by Member Baños, seconded by Chief Examiner Moy, that this matter be APPROVED. PASSED by the following vote.

Aye: Moy, Baños and Harris

No: Silverman and Gomez

The employee's request for a continuance having been denied, the Board entered into the scheduled hearing of appeal on behalf of Officer Stanley Mike, the Appellant.

Janeen Richard, Assistant City Attorney, represented the Department.

Jon Kreger, Attorney at Law, represented the Appellant.

Both attorneys presented opening statements and all witnesses were sworn in individually. Witnesses for the Department appeared in the following order:

- 1. Luis Valdes, Detective, City of Miami, Department of Police. Questions were posed by Members Silverman, Banos, and Harris during the testimony of Luis Valdes.*
- 2. Jesus Ibalmea, Sergeant, City of Miami, Department of Police.*

3. Jorge Colina, Major, City of Miami, Department of Police. Questions were posed by Member Harris during the testimony of Jorge Colina.

The Department rested its case. The Appellant called no witnesses but entered exhibits into evidence in support of his defense. The Appellant rested his case and the Board proceeded to closing argument, which was presented by both attorneys.

Following final argument, Member Harris stated so that the record is clear, she did not say she thought the department's scientific method (for calculating the officer's rate of speed) was incorrect but what she said was she wished there was live, expert testimony to support the department's science. She went on to say this is a tough case, a slippery slope by all accounts, and one of the main reasons being is that police officers are held to a higher standard. Member Harris further stated during witness testimony, many questions came up about how citizens are dealt with as it relates to traffic laws. She stated she believed the question in this case was whether the Appellant was afforded the same type of justice but the truth of the matter is, it comes back to the result that police officers are held to a higher standard. Member Harris went on to say that she felt Officer Mike was speeding and while everyone has the right not to testify, it was suspect to her that Officer Mike did not testify. Member Harris went on to say her thought concerning hearings is that witnesses are to be heard for the purpose of clearing their name. She reiterated that she felt Officer Mike was speeding and that the Police Chief had to do something because if not, he would not have been taking care of his responsibility that the City owes to the public. Member Harris went on to say she believed the Police Chief did the best with what he had and she also felt that the Internal Affairs team did the best with what they had to work with when dealing with this matter of officers speeding. Member Harris stated that she has worn different hats such as working in Internal Affairs, serving as a police lieutenant wherein she signs off on disciplinary actions and the hat she wears today as a Board Member, so she has to base her decision on proven facts regardless of whatever other emotions maybe going on inside of her. She went on to say that she can recall when she came on the police force, she would speed in her police vehicle, but her level of speed was not to extent of what is before the Board today. Member Harris further stated (the speeding incidents) is a cry out to the police department that officers need to grow up, accept responsibility, and make better decisions. She stated if officers were to think of their police vehicle as a billboard representing the City of Miami, they would act responsibly when driving their police vehicle and by the same token when an officer stops a speeding driver. Member Harris went on to say for officers to speed and at the same time stop drivers when they speed is hypocritical, especially when it is a police officer's duty to serve and protect the public. She further stated that she hopes this case will act as a notice to officers as to the role they play (when placed behind the wheel of a police vehicle.) Member Harris reiterated that she wished there was expert testimony presented to corroborate the department's science because without it, there was doubt to suggest the department's case was proven.

Member Banos stated with each case the Board is expected to give each side its expectation as to what the Board believes should be presented. He went on to say the same way the Board has been tough on the City Attorney and Attorney Kreger about continuances, the Board should also be clear as to what its expectations are with each party that has the burden of proof. Member Banos further stated specifically with regards to Exhibit C which is the document the department relied upon as a confirmation from Sunpass, it was a blank page with no insignia coming from Sunpass as an official document. He stated the document included a message that quite frankly supported more the position of Officer Mike than the department to some degree. He stated that he could have at least appreciated the document if the top of the document illustrated that the source data was information from Sunpass and used by the department to

calculate speed. Member Banos went on to say that he would like something as simple as an affidavit in order to create a foundation in his mind that the source data was from Sun Pass and that would have met the burden of proof. Member Banos went on to say that contrary to what the employee said, the Internal Affairs team did a superb job and that he was quite satisfied with their presentation in that the information provided to the Board was accurate. He further stated his problem was "garbage in/garbage out", in that the source data was not the perfect foundation to illustrate the way Sunpass does its calculations. Member Banos stated it was presented to the Board in this fashion and unfortunately the Board is limited to whatever is presented. He went on to say just because the Board may know from its own practices that Sunpass' timing is pretty much accurate, that is not necessarily important in this situation so his feeling is that the department has not met its burden of proof. Member Banos stated this is not in any way, shape, or form endorsing the behavior of the officer; that he believed that Officer Mike was probably speeding and some form of disciplinary action should be administered. He went on to say that he hoped the entire situation, as unpleasant as it may have been, served as that form of reprimand, but the department had not met its burden in his mind. Member Banos further stated this was not to say that his vote would not be consistent in other cases that are brought before the Board and that it could be different in the subsequent case even though the facts are similar. He stated there should be an expectation from the department as to what it is going to bring up because this was not enough in his opinion.

Member Gomez stated that the Internal Affairs team did a great job on its investigation with what it had; however, there were a couple of things missing. She went on to say one of the things she thought the Internal Affairs team could have done was verify the transponder and check the calibration of Officer Mike's speedometer.

Chairman Silverman stated he thought the testimony was overwhelming that Officer Mike was speeding and he believes he is guilty. He went on to say that in his opinion the department continues to overcharge (employees with violations) because in this case, he did not see the reason to cite eight (8) violations on the facts. Following discussion, the Board entered a motion to find the Appellant NOT GUILTY of Charge #1 - Department Order 1.11.6.28.3 - Members to Conform which resulted as follows:

Motion by Chief Examiner Moy, seconded by Member Baños, that this matter be APPROVED. PASSED by the following vote.

Aye: Moy, Baños, Gomez and Harris

No: Silverman

The Board entered a motion to find the Appellant NOT GUILTY of Charge #2 - Departmental Order 1.11.6.56.4 - Operation of Members, which resulted as follows:

Motion by Member Baños, seconded by Chief Examiner Moy, that this matter be APPROVED. PASSED by the following vote.

Aye: Moy, Baños, Gomez and Harris

No: Silverman

The Board entered a motion to find the Appellant NOT GUILTY of Charge #3 - Departmental Order 1.11.6.56.6 - Operator Accountable, which resulted as follows:

Motion by Member Baños, seconded by Member Gomez, that this matter be APPROVED. PASSED by the following vote.

Aye: Moy, Baños, Gomez and Harris

No: Silverman

Order 1.11.6.56.9 - Driving Practice. Under discussion on the motion, Member Harris stated she was glad this departmental order was read into the record because it was in keeping with her previous statement. She went on to say that regarding the first three charges the Board voted on, she felt for her to vote not guilty indicated that the expert testimony was important in her opinion. Member Harris further stated with regards to this charge (#4), she did not feel the expert testimony was important based upon how the departmental order reads when it speaks about evidence of careless operation so she felt the department produced sufficient evidence regarding this charge. Following discussion, the motion on the floor to find the Appellant GUILTY of Charge #4 resulted as follows:

Motion by Chief Examiner Moy, seconded by Member Baños, that this matter be APPROVED. PASSED by the following vote.

Aye: Silverman, Moy, Baños, Gomez and Harris

The Board entered a motion to find the Appellant NOT GUILTY of Charge #5 - Civil Service Rule 14.2(e)(2) - Breach of Proper Discipline. Under discussion on the charge, Member Harris asked if the Board had to find the Appellant guilty of at least one Civil Service Rule in order for the guilty vote to carry. Special Counsel Everett responded that as a practical matter, this Board has done several things over the years. She went on to say that logically Member Harris' statement was correct and when reading the violations, it would lead one to that conclusion, but this Board has made unique findings in the past. Member Harris asked if the motion carries, would the Board be able to move to the penalty phase of Officer Mike's hearing. Special Counsel Everett responded in the affirmative. She went on to say that there were also other pending charges that the Board had not considered as yet. Following discussion, the motion on the floor resulted as follows:

Motion by Member Baños, seconded by Member Gomez, that this matter be APPROVED. FAILED by the following vote.

Aye: Baños and Gomez

No: Silverman, Moy and Harris

The motion having FAILED, the Board entered a motion to find the Appellant GUILTY of Charge #5 - Civil Service Rule 14.2(e)(2) - Breach of Proper Discipline, which resulted as follows:

Motion by Chairperson Silverman, seconded by Chief Examiner Moy, that this matter be APPROVED. PASSED by the following vote.

Aye: Silverman, Moy and Harris

No: Baños and Gomez

The Board entered a motion to find the Appellant NOT GUILTY of Charge #6 - Civil Service Rule 14.2(e)(3) - Loss/Injury to the City, which resulted as follows:

Motion by Chief Examiner Moy, seconded by Member Gomez, that this matter be APPROVED. PASSED by the following vote.

Aye: Moy, Baños and Gomez

No: Silverman and Harris

The Board entered a motion to find the Appellant NOT GUILTY of Charge #7 - Civil Service Rule 14.2(h) - Insubordination, which resulted as follows:

Motion by Chief Examiner Moy, seconded by Member Gomez, that this matter be APPROVED. PASSED by the following vote.

Aye: Moy, Baños, Gomez and Harris

No: Silverman

The Board entered a motion to find the Appellant GUILTY of Charge #8 - Civil Service Rule 14.2(l) - Careless/Negligent, which resulted as follows:

Motion by Member Baños, seconded by Chief Examiner Moy, that this matter be APPROVED. PASSED by the following vote.

Aye: Silverman, Moy, Baños, Gomez and Harris

The Appellant having been found guilty of some of the charges, the Board entered into the Penalty Portion of the Appellant's hearing. The Chairman read into the record the Appellant's personnel file which revealed no disciplinary actions since his employment with the City of Miami on January 26, 2009.

During the penalty portion of Officer Mike's hearing, Major Colina was recalled as witness on behalf of the department. Questions were posed by Members Harris and Banos during the testimony of Major Colina.

The Department rested on rebuttal and the Appellant waived rebuttal. Both attorneys presented closing argument during the penalty phase. Following final argument, Member Harris stated she respected the position of Internal Affairs and that she knew it was difficult to gauge the discipline in this case; however she felt the Appellant's disciplinary profile should have come into play. She went on to say in this case, the Appellant had 21 speeding instances, but she feels that the department has to take some responsibility if it knows that something is going on, the department should stop it from occurring. Member Harris further stated she did not know if it was fortunate or unfortunate, but officers are taught to speed when running emergency calls, but responsibly. She stated officers operate in "adrenaline mode" 24/7 so she feels it is also the department's responsibility to teach the officer how to disengage and not speed. Member Harris went on to say although 21 speeding incidents were reported about the Appellant during the investigation, a better way in issuing discipline would be to factor in the officer's disciplinary profile.

Member Banos stated this is one situation for which he did not think Officer Mike knew this alleged behavior was something that would be looked at by the department in this particular fashion. He went on to say that in no way, shape, or form should the officer's actions be justified if he was in fact speeding, but at least in his perspective, it should be taken into account. Member Banos further stated given the fact Officer Mike has an exemplary record and the fact that from his perspective the department did not meet its burden, a reprimand only would be an appropriate discipline in this case.

Chairman Silverman stated it depends on how one looks at this case with regards to it being either one incident or 21 incidents. He went on to say whether it was an incident of a driving speed of over 90 mph or 21 incidents, an officer does not need to be told that he is not supposed to drive at that high rate of speed nor does an officer need to receive a written document from the Police Chief to say that officers are not to drive over 90 mph because whether we are police officers or not, we know better.

Member Harris stated she thinks a message needs to be sent. She went on to say that she was not excusing the responsibility of Officer Mike but acknowledging that we have a responsibility to tell the officer when he/she is wrong and to correct the behavior as soon as possible.

Following discussion, the Board entered a motion to recommend to the City Manager that Officer Stanley Mike serve a 40-hour suspension in lieu of the 80-hour suspension

ordered by the Police Chief. The motion resulted as follows:

Motion by Member Harris, seconded by Member Gomez, that this matter be APPROVED. PASSED by the following vote.

Aye: Moy, Gomez and Harris

No: Silverman and Baños

H.2

Hearing of Appeal on behalf of Jesus Pedraza, Police Officer, relative to his 80-hour suspension, effective September 8, 2012.

Chairman Silverman asked Attorney Kreger if he was making the same argument for a continuance that he made in the case of Officer Stanley Mike. Attorney Kreger responded that he understands the whole idea about swift justice, but this is not a situation where they are asking for a continuance because a witness is not available, but there is someone that really needs to be here as much as the client. He went on to say that he also understood the general argument that if a case had been sitting around for a number of years that a continuance would not be granted, but this is not the situation in this case.

Member Banos asked Attorney Kreger who is the witness that he is missing that he needs to present his case. Attorney Kreger responded it was not a witness that he needed to be present but Attorney Cohen wanted to be present and he felt he should be present, but due to a last minute change in scheduling he was not able to attend. He went on to say it is not to say that this case has been sitting around forever because this is the first time the hearing was scheduled so he thinks a continuance is warranted.

Chairman Silverman asked ACA Richard if she was prepared to go forward with her case today. ACA Richard responded in the affirmative. She went on to say that she did not oppose the continuance but if the Board denies the continuance, she is prepared to go forward. Member Banos asked ACA Richard if she was prepared to go forward on (both of) the cases of Officer Stanley Mike and Jesus Pedraza. ACA Richard responded in the affirmative.

Following discussion, the Board entered a motion to DENY the employee's request for a continuance which resulted as follows:

Motion by Member Baños, seconded by Chief Examiner Moy, that this matter be APPROVED. PASSED by the following vote.

Aye: Moy, Baños and Harris

No: Silverman and Gomez

The continuance request having been denied, Chairman Silverman advised Attorney Kreger that the Board can either hold Officer Pedraza's hearing today, the attorneys can stipulate to the testimony from the first case (of Officer Stanley Mike), or both attorneys can get together for the purpose of trying to settle the matter. Chairman suggested taking a break so that the attorneys could decide on the option they preferred to follow.

Following the lunch break, the Board reconvened at 2:32 p.m. concerning the matter of Officer Pedraza's appeal hearing. Assistant City Attorney Richard stated after meeting with Officer Pedraza and his attorneys, they have decided that the hearing will not go forward today.

Chairman Silverman asked Attorney Cohen if she shared the same position that ACA Richard presented to the Board. Ronald J. Cohen, Attorney on behalf of Officer Pedraza responded in the affirmative. He went on to say that without all of the details,

they settled on a reprimand and an agreed amount of hours. Chairman Silverman asked Attorney Cohen if they will take care of the matter of the settlement. Attorney Cohen responded in the affirmative.

SETTLED : Case will be closed and removed from the Board's docket upon receipt of a written agreement or rescheduled in accordance with the Board's Continuance Policy.

H.3

Hearing of Appeal on behalf of Carlos Jimenez, Structural Engineer/Plans Examiner, relative to his 5-day suspension, effective July 26, 2011.

Chairman Silverman asked for the status of Mr. Jimenez' case. Michael Braverman, Attorney on behalf of Carlos Jimenez responded that a settlement was reached in both of Mr. Jimenez' cases relative his 5-day suspension (Item H.3) and grievance hearing (Item H.4). Chairman Silverman asked opposing counsel if she was in agreement with the settlement. ACA Richard responded in the affirmative.

SETTLED : Case will be closed and removed from the Board's docket upon receipt of a written settlement agreement or rescheduled in accordance with the Board's Continuance Policy.

H.4

Grievance Hearing on behalf of Carlos Jimenez, Structural Engineer/Plans Examiner, pursuant to Rule 16.2, alleging a violation of Rule 12.1, as it concerns his layoff effective September 23, 2011.

SETTLED : Case will be closed and removed from the Board's docket upon receipt of a written settlement agreement or rescheduled in accordance with the Board's Continuance Policy.

ADJOURNMENT:

The meeting ADJOURNED at 2:35 p.m. Breaks were taken at 10:33 - 10:37 a.m., 10:42 - 10:53 a.m.; 11:28 - 11:32 a.m., 11:59 - 12:05 p.m., 12:36 - 12:41 p.m. and 1:37 - 2:32 p.m. (LUNCH).

SIGNATURE:

Gerald Silverman, Chairperson

ATTEST:

Tishria L. Mindingall, Executive Secretary