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**Minutes  
Tempe Merit System Board  
September 7, 2011**

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Minutes of the Tempe Merit System Board Meeting, held on Wednesday, September 7, 2011, 8:00 a.m., City of Tempe Council Chambers, 31 East 5<sup>th</sup> Street, Tempe, Arizona.

**Board Members Present:**

James P. Foley, Chair  
Russell Schoeneman  
Penny Higginbottom

**City Staff Present:**

Renie Broderick, Human Resources Director  
Colleen Pacheco, Human Resources  
David Park, Assistant City Attorney  
Assistant Chief Angel Carbajal

**Others Present:**

Jason Giardino  
Dale Norris  
Deborah Gonzalez

**Witnesses Present**

Officer Kevin Kelch  
Dr. Jeffrey Goldstein  
Agent Nick Barabatis  
Commander John Dorsey  
Officer Darin Mowery  
Trent Luckow  
Michelle Hoffman

Chairman James Foley called the Meeting to order at 8:32 a.m. Roll call was taken.

The Witnesses were brought into the room and Chairman Foley asked them not to discuss their testimony with the other witnesses. Witnesses were then excused until called upon later in the Hearing.

Chair James Foley noted that there were four Pre-Hearing Motions:

Both sides made a motion for telephonic appearance; motion approved

Mr. Giardino made a motion for additional Hearing time; motion approved, each side was granted 5.5 hours

Mr. Giardino made a motion in Limine; motion was denied

City of Tempe made a motion to amend their pre-Hearing statement; motion approved

Chairman Foley addressed an additional request that recently arose, Mr. Giardino requested a subpoena for David Park to testify, and the Chairman denied this request stating Mr. Park was not a necessary witness.

Chairman Foley stated that Mr. Giardino requested a Public Hearing. The purpose of the Hearing was to review evidence, take testimony and make a recommendation to the City Manager as to the appropriateness of the disciplinary action taken against Jason Giardino. Chairman Foley read a list of the sustained allegations of violations of Personnel Rules & Regulations and Tempe Police General Orders from the disciplinary termination documents.

The Hearing began at 8:41 a.m. and Mr. Norris declined to give an opening statement. Mr. Park gave his opening statement, indicating that over the past few years there has never been a dispute of the facts of the case, that in September 2007 Mr. Giardino responded to an incident at Four Peaks Brewery where Ms. Danielle Vande-Vegte (henceforth referred to as "the suspect") was arrested, resisted arrest and assaulted Mr. Giardino, and was injured due to his resulting takedown. He stated that Tempe PD's Use of Force policy says no more force than reasonable shall be used and the City believes Mr. Giardino violated that with his takedown maneuver. He stated that the evidence will show that more force was used than was reasonable because Mr. Giardino lost control of his emotions. He stated that Mr. Giardino has a history of this behavior and resulting injury to others and asked the Board to uphold the disciplinary action of the City.

Jason Giardino was called to testify, was sworn in by Chairman Foley and questioned by both Mr. Norris and Mr. Park. Mr. Giardino testified as to his career with the Tempe PD and how he came to be a police officer. He testified that his understanding of discipline was a corrective tool and has always taken responsibility for his actions. He testified as to the happenings the night of September 29, 2007 and that he never had much face to face contact with the suspect, but he believed she was highly intoxicated. Mr. Giardino testified that due to an increasing amount of resistance and aggression against him, his actions were reasonable and necessary to control her. He testified that while the laceration above her eye may have been a result of her thrashing on the ground after the takedown, he does not believe he caused the orbital fracture; rather that she was injured in a fight prior to her arrest.

The Hearing recessed from 10:41 a.m. to 10:51 a.m. for a brief break.

The Board asked clarifying questions regarding his face to face interaction with the suspect, his training in takedown maneuvers and takedown modifications. The Board then excused the witness.

Officer Kevin Kelch was called to testify, was sworn in by Chairman Foley and questioned by both Mr. Norris and Mr. Park. Officer Kelch testified as to his career with the Tempe PD and his involvement with the incident the night of September 29, 2007. He testified that he saw Mr. Giardino perform the takedown maneuver and felt it was reasonable and appropriate considering the suspects behavior, which continued to be out of control even after she was taken to the hospital. He testified that during his IA interview with Lt. Ouimette, he did suggest alternative options (rather than the takedown), but it is after the fact and as a Police Officer you have to make immediate decisions and follow through 100%.

The Board asked clarifying questions regarding his view of the takedown, the takedown itself, and his assessment of the suspect when he left her with Mr. Giardino. The Board then excused the witness.

The Hearing recessed from 12:53 p.m. to 1:58 p.m. for lunch.

Agent Nick Barabatis was called in to testify, was sworn in by Chairman Foley and was questioned by both Mr. Norris and Mr. Park. Agent Barabatis testified as to his career with the Tempe PD, his current position with ICE and his involvement with the incident the night of September 29, 2007. Agent Barabatis testified that he interviewed three

witnesses to the incident Mr. Toraya, Mr. Charles, and Mr. Pepper.

The Board asked clarifying questions regarding his view of the takedown and preceding assault on Mr. Giardino and tactical maneuvers. The Board then excused the witness.

Michelle Hoffman was called to testify, was sworn in by Chairman Foley and was questioned by both Mr. Norris and Mr. Park. Ms. Hoffman testified as to her career as a biomechanical engineer and the different ways an orbital bone or eye could be injured. She testified as to her understanding of the case from review of the suspect's medical records and photos and stated that it was unlikely that the suspect's orbital fracture was caused by a flat surface because there would have been nasal injury. She testified that it was most likely that the fracture was caused by a concave object such as a fist and that a punch is a typical cause for this type of injury. She testified that all people shown external signs of injury at a different rate.

The Board asked clarifying questions regarding her career and external signs that may result in a facial trauma. The Board then excused the witness.

Sgt. Trent Luckow was called to testify, was sworn in by Chairman Foley and was questioned by both Mr. Norris and Mr. Park. Sgt. Luckow testified as to his career with the Tempe PD, how he was notified of the September 29, 2007 incident and how he was given names of witnesses to interview. He testified how he interviewed Mr. Charles, Mr. Toraya and Mr. Jirolov over the phone to take their complaints regarding the incident. He testified that Sgt. Good turned this case over to him, and Sgt. Good had deemed Mr. Giardino's use of force reasonable and that he also came to that conclusion after his own investigation. He also testified as to his investigation procedures.

The Board declined to question the witness and excused him.

The Hearing recessed from 3:24 p.m. to 3:35 p.m. for a brief break.

Officer Darin Mowery was called to testify, was sworn in by Chairman Foley and was questioned by both Mr. Norris and Mr. Park. He testified as to his career with the Tempe PD where he is currently a training officer. He testified as to what curriculum Tempe PD teaches and POST instruction with regard to tactical maneuvers and takedowns as relating to this case. He also testified as to the Use of Force Continuum which Tempe PD uses.

The Board asked clarifying questions regarding the Use of Force Continuum and takedowns. The Board then excused the witness.

Commander John Dorsey was called to testify, was sworn in by Chairman Foley and was questioned by both Mr. Norris and Mr. Park. He testified as to his career with the Tempe PD and his general interaction and relationship with Mr. Giardino while at the PD. He testified that he felt the IA investigation performed by Lt. Ouimette was not complete and as a former IA Commander, he would have looked much deeper.

The Board asked clarifying questions regarding the suspect's injuries and the definition of excessive force. Mr. Dorsey was then excused.

Mr. Norris stated that he rested his case.

The Hearing recessed from 4:47 p.m. to 4:52 p.m. for a brief break.

Dr. Jeffrey Goldstein was called to testify, was sworn in by Chairman Foley and was questioned by both Mr. Park and

Mr. Norris. He testified as to his career as a craniofacial specialist and how orbital fractures are caused. He testified that he disputed earlier testimony that an orbital fracture cannot occur from striking against a flat surface, and after reviewing the suspect's medical records and photos stated that could not be ruled out. He testified as to the length of time it takes for external signs of injuries to appear after facial injuries.

The Board asked clarifying questions regarding the speed of external signs of injury appearing when under the influence of alcohol. The Board then excused the witness.

At 5:35 p.m., Chairman Foley stated that the Hearing portion of the meeting is now adjourned for the day and will resume on Monday September 19, 2011 at 8:00 a.m. in City Council Chambers.

Chairman Foley then addressed Agenda Item I, the meeting minutes from August 31, 2011. Dr. Schoeneman moved to approve the minutes with the changes noted. Ms. Higginbottom seconded and the minutes were approved with a voice vote of 3-0.

At 5:37 p.m. Dr. Schoeneman moved to go into Executive Session to discuss Agenda Item I (B). Ms. Higginbottom seconded and the Board cleared the room and went into Executive Session at 5:37 p.m.

The Executive Session adjourned and returned to Open Session at 5:39 p.m.

The meeting was adjourned at 5:39 p.m.



Renie Broderick, Merit System Board Secretary