

**(Draft) MINUTES (Draft)**

Citizen's Review Board Meeting  
Old City Hall, 510 Greene Street

**Monday, October 27, 2008  
6:00 p.m.**

1. CALL THE MEETING TO ORDER

2. ROLL CALL

BOARD MEMBERSHIP/AGENTS PRESENT:

Trice Denny  
Mike Driscoll  
Bryan Green  
Virginia Altobello  
Robert Cintron, Attorney for the Board  
Stephen Muffler, Executive Director of the Board

ADDITIONAL ATTENDEES:

Addie Unuvar  
Suleyman Unuvar  
Bob Kelly  
Alfred Vazquez  
Lt. David Smith  
Officer Paul J. Cavanaugh  
Attorney Curran (by phone only on behalf of S. Unuvar)  
Marty Leeshaw (court reporter)

3. PLEDGE OF ALLEGIANCE

After the Pledge of Allegiance the Chairman Green welcomed Stephen Muffler as Executive Director and Jenny Virginia Altobello to the Board for her first meeting concerning review of files.

4. APPROVAL OF MINUTES

Executive Director Muffler informed the Board that Amanda Willet-Ramirez will draft up the prior minutes for the prior meetings. Mrs. Willet-Ramirez was delayed due to her school work, her new position with the city attorney's office and she had computer problems over the past week. However, she will get them to the Board ASAP. Executive Director Muffler stated he will do all the minutes from this meeting forward.

5. CONTINUED OR NEW BUSINESS

a. **Suleyman “Sal” Unuvar – CRB# 07-006**

Chairman Green explained the procedural posture of the file and that the allegation was SUSTAINED by the Board at a previous meeting. Chairman Green explained the time element relative to the file and the passing of the 180 day time frame. Chairman Green requested attorney Robert Cintron to explain to the Board their options in light of the time issue.

Attorney Cintron briefed the Board on his legal memorandum contents and recommendations. He explained to the Board its options in light of Florida law (Officer’s Bill of Rights) and the Union Bargaining Agreement relative to the Unuvar file and the 180 time limit. Mr. Driscoll questioned who holds the Key West Police Department (KWPD) accountable to make sure they meet the 180 day period so the Board can adequately participate in the disciplinary recommendations. Chairman Green explained that all the pending files tonight are outside the 180 days and pointed out that the KWPD was still taking interviews in the Unuvar investigation even after the 180 day time limit had lapsed.

Chairman Green suggested that the Executive Director Muffler make proposals to the Board at its next meeting as to how to address this 180 day period and how the Board can force the KWPD compliance to the 180 limitations period.

Attorney Cintron suggested that he be directed to write the Florida Attorney General on one of the exceptions to the 180 day requirement (tolling of 180 days while a criminal case is pending) and secure an advisory opinion to clarify when this exception applies.

Lt. Smith, stated that the KWPD’s policy is that if there are criminal matters pending against the complainant, then the IA closes out the file. They will open up a new investigation after the criminal case is completed against the complainant and that starts the 180 day time period. Lt. Smith does not agree with Attorney Cintron’s interpretation of the exception to the 180 time period tolling found in the “Officer’s Bill of Rights” but an Attorney General’s Opinion would be helpful in clarifying this issue.

Mr. Driscoll felt that the Board should proceed with addressing all the pending issues now and not wait for the other Board members being present, as this is a scheduled meeting and if the other Board members are missing, that should not delay our discussion at this meeting.

**Motion to have Attorney Cintron to write the letter to Attorney General Requesting Interpretation of the 180 day tolling provision by Chairman Green and Seconded by Mr. Driscoll.**

**Roll Call Vote:**

**Trice Denny: Yes**

**Chairman Brian Green: Yes**

**Virginia Altobello: Yes**

**Mike Driscoll: Yes**

**Passes Unanimously**

Mr. Driscoll feels that the Board should decide if the Unuvar file should be referred to the State Attorney to investigate if there was a purposeful delay by the KWPD to purposefully miss the 180 day deadline. Chairman Green felt that the Board should give Chief Lee the opportunity to explain in writing before proceeding on such a motion or course of action.

Chairman Green suggested that he write a letter to Chief Donnie Lee on this matter. There is no objection to Chairman writing a letter to Chief Lee requesting an explanation the apparent delay in Unuvar investigation by the KWPD and to also specifically mention the other two files set before the Board at this meeting.

Chairman Green again reviewed the history of the file and the prior Sustained finding. Chairman Green noted that no matter what decision is had by the Board on this file, it is now past the 180 day time limit. Chairman Green pointed out that this does not preclude the Board from making a recommendation on this file.

Attorney Curran, representing Mr. Unuvar, encouraged the Board to make a recommendation anyway even if the 180 days had lapsed. Lt. Smith declines to make any statement on behalf of the Unuvar file.

Board members Mike Driscoll and Trice Denny were expecting from Attorney Cintron or someone a list of possible sanctions against the officer so they could pick from. Attorney Cintron and Chairman Green stated that there is no "list" per se. Lt. Smith explained there are different degrees of sanction from informal reprimands and written formal reprimands. Written reprimands include suspensions from 1-3, 3-7 day suspensions, or up to 30 day suspensions and termination. Lt. Smith referred to the Board the policy section on sanctions for the KWPD.

Lt. Smith explained that he had no personal recollection of any prior history against the particular officer in the Unuvar file. Lt. Smith stated that this particular officer had been on the force 4 1/2 years or so. Mr. Driscoll felt that the involved officer should be suspended for 2 weeks without pay and given remedial training. Lt. Smith explained that 2 weeks of unpaid leave equates really to 1 month due to KWPD work schedules.

**Motion to give officer remedial training and 2 weeks suspension without pay made by Mike Driscoll. No second. Fails for lack of Second.**

**Motion for counseling and remedial training and three days suspension without pay by Ms. Altobello and Seconded by Mr. Driscoll.**

**Roll Call Vote:**

**Trice Denny: No**

**Chairman Brian Green: Yes**

**Virginia Altobello: Yes**

**Mike Driscoll: Yes**

**Motion passes.**

**b. Linda Kozak – CRB # 08-003**

Chairman Green questioned if KWPD's Internal Affairs Department (IA) had investigated the CRB complaint's allegation or just the violation of the chase policy allegation. Lt. Smith stated that this was no IA investigation because it was handled by the KWPD before a formal complaint was filed with the CRB. Chairman Green did not understand why the CRB complaint was not investigated and IA only investigated the violation of the chase policy. Lt. Smith explained that disciplinary action had already been taken on the violation of the KWPD chase policy issue and thus no further investigation was needed on the CRB complaint.

Ms. Altobello requested information on how the KWPD officers were trained in the Baker Act process and if the officers recognized that Melissa Kozak really exhibited signs of mental issues or if they were reflected of what the officers thought were signs of drug usage.

Chairman Green suggested that the Board first concentrate on the violation of the KWPD chase policy. Lt. Smith stated that KWPD had concluded that the chase policy was violated and sanctions were appropriate and issued. The Board members felt that the actions taken by KWPD and Chief Lee were appropriate.

Chairman Green then moved to address the CRB complaint that the police officers should have reasonably noticed that Melissa Kozak was mentally ill. Chairman Green requested Lt. Smith to explain to the Board how KWPD officers are trained in identifying or dealing with suspects under a mental disability. Lt. Smith explained two (2) courses of action to be taken: 1) If the suspect is acting irrational and are a danger to themselves, they are taken into protective custody and sent to medical facility; 2) If the suspect commits a criminal act, like Melissa Kozak, did in resisting arrest, fleeing etc... then they are under criminal charges now and brought to jail and an "assessment form" is filled out. Lt. Smith explained that this form would be filled out by the officer and the jail operators/staff were under an obligation to take the appropriate action/treatment of the detained individual. Lt. Smith explained that the officer lets the jail operators know how the suspect is acting to adequately inform the jail on how to handle the suspect. Lt. Smith explained that the KWPD is not trained formerly on how to detect and treat mentally challenged suspects. Lt. Smith explained that this is a skill that is acquired by the officers over time and with job experience. Lt. Smith explained that there is an approximate 6 minute general training session periodically by a visiting staff nurse from the community that visits the KWPD. However there is no formal training sessions.

Mr. Driscoll stated that it was the jail that should have acted. He felt that the KWPD officers did properly arrest Melissa Kozak due to her dangerous driving. Chairman Green asked Lt. Smith if the statements made by Melissa Kozak to the arresting officer found on the ICOP video were odd? Lt. Smith said it was odd, but she broke the law. Ms. Altobello stated that it would be a difficult decision for the officers to make a judgment call on the Baker Act that night under these circumstances. Ms. Denny felt that the officers acted reasonable under the circumstances.

**Motion for NOT SUSTAINED as to the charge that the officers' failed to reasonably notice Melissa Kozak mental state made by Chairman Green and Seconded by Mr Driscoll.**

**Roll Call Vote:**

**Trice Denny: Yes**

**Chairman Brian Green: Yes**

**Virginia Altobello: Yes**

**Mike Driscoll: Yes**

### **Motion Passes Unanimously**

**c. David Millette – CRB # 08-001**

Chairman Green felt that the Board should not address, or try to judge the legality of the “goped” as it was for the courts and the lawmakers to do that. Attorney Cintron explained that the complainant felt that he was being harassed with all the tickets. Attorney Cintron explained the law surrounding “gopeds” and other devices which does not allow for the operation of the “goped” anywhere but private property. Attorney Cintron explained that Mr. Millette did get one citation dismissed against his operation of his “goped” but that was a different issue and the court based its ruling on different grounds that were not relevant to this situation of operating a “goped” on the streets. Chairman Green stated that the “truthfulness” allegation really is a matter pending before the courts in the traffic infraction case and the Board could not proceed on that at this time. However, the other two allegations of Harassment & Traffic Violation could be disposed of via a proper motion.

**Motion for NOT SUSTAINED as to the charges of Harassment & Traffic Violation against the officer made by Ms. Altobello and Seconded by Trice Denny.**

**Roll Call Vote: Passes Unanimously.**

### **6. COUNSEL’S REPORT**

Attorney Cintron explained that the 180 day rule is causing concerns because of the Unuvar case and the Board has the right to be upset about the lack of time to do anything. Attorney Cintron suggested that the Board needs to come up with procedures to act on their own to meet these deadlines so that if there are any delays by KWPD, then the CRB should be able to move forward to avoid another Unuvar situation. Attorney Cintron suggested that the Board needed education on the disciplinary process outlined in the police union contract to fully understand the time frames involved in the grievance procedure. Then the Board could adequately address its internal policies and procedures to avoid the lapse of the 180 day time period.

### **7. CHAIRMAN’S REPORT**

Chairman Green explained that a Vice Chair is needed due to his possible future travel plans. Chairman Green recommended that Executive Director Muffler solicit from members directly if they are interested in Vice Chair position and have a nomination list proffered at the next meeting.

Chairman Green and Mr. Driscoll feel that the present conference room is not workable and that the Board should use the large room either with the table or its present set up.

### **8. BOARD MEMBERS REPORT/GENERAL COMMENTS**

Mr. Driscoll requested copies of a prior letter sent to the city manager addressing a neglected file and this letter should have been circulated to the members and it was not. Mr. Driscoll wanted the record to reflect that he objected to the hiring process of the new Executive Director because this decision was made at a meeting that was not properly scheduled to allow him to participate. Mr. Driscoll wanted the record to reflect that he never missed a meeting and wanted to participate in this selection process and was not allowed to do so.

#### 9. EXECUTIVE DIRECTOR'S REPORT

Executive Director Muffler explained that the current approved budget was not adequate to reasonably sustain the CRB's ongoing responsibilities and would report to the Board with more specifics at a future meeting. Executive Director Muffler informed the Board members that the CRB packets were now online and demonstrated the updated CRB city web page and links to access these materials. Executive Director Muffler explained that the member's packets will be delivered in the future via this online service unless a Board member specifically requests hard copies. Executive Director Muffler laid out his 90 day action plan and goals to be accomplished in this period of time.

#### 10. PUBLIC INPUT

Lt. Smith stated he has cleared out the back log of the files at IA since he took the position in January 2008. Lt. Smith believes he can move the files through the investigative process within the 180 day period and intends to timely do so unless there is an applicable exception to the time table in the Officer's Bill of Rights. Lt. Smith reported that one (1) internal investigation was generated during his current tenure that resulted to disciplinary action against the subject officer. Lt. Smith explained that he shares Chief Lee's commitment to hold everyone accountable and address issues before they become problems. Lt. Smith apologized for the lack of timely completion of prior files by IA in the past which was under other supervisors control and prior to his appointment to the position. Lt. Smith assured the Board that he will do his best that the KWPD is in compliance with the 45 days and the 180 day time tables.

Chairman Green thanked Lt. Smith and KWPD for I-COP training as it was very useful and encouraged more inter-department training.

#### 11. MEDIA AND PRESS QUESTIONS

None.

#### 12. ADJOURNMENT