

SPECIAL MEETING

CITY COMMISSION

HARLINGEN, TEXAS

MAY 10, 2010

A Special Meeting of the Harlingen Elective Commission was held on May 10, 2010 in Town Hall, City Hall, 118 E. Tyler Street, Harlingen, Texas. Those in attendance were:

Mayor and City Commission

Mayor Chris Boswell
Robert Leftwich, Mayor Pro Tem
Larry Galbreath, Commissioner District 1
Kori Marra, Commissioner District 3
Jerry Prepejchal, Commissioner District 4

Absent:

Joey Trevino, Commissioner District 5

Staff Present:

Gabriel Gonzalez, Interim City Manager
Roxann P. Cotroneo, City Attorney
Sylvia R. Trevino, City Secretary

Mayor Boswell called the meeting to order and stated that notice of the meeting had been duly posted according to law.

INVOCATION - The invocation was delivered by Mayor Boswell and the Pledge of Allegiance followed.

BOARD MEMBER RECOGNITIONS – None

With the consensus of the Commission, Mayor Boswell proceeded with Item 6 on the agenda.

PROPOSAL FROM RIKE OGDEN FIGUEROA ALLEX ARCHITECTS, INC. FOR ADDITIONS AND ADDITIONAL SERVICES FOR PENDLETON PARK APPROVED

Gabriel Gonzalez explained that the architects are seeking additional payment for Pendleton Park renovations. During the design phase of construction after all plans had been submitted and approved, AEP requested that the tennis courts be moved out of AEP's easement. The original plans had to be redesigned along with other technical services to accommodate this request. The architectural firm ROFA first submitted a proposal for \$101,024.00 and staff negotiated with ROFA for the proposal of \$40,965.00. Staff recommended approval. Mr. Gonzalez also stated that the cost would be covered at mid-year.

Commissioner Galbreath made a motion to approve staff recommendation. Commissioner Marra seconded the motion and it carried unanimously.

CITIZEN COMMUNICATION

Jerry Moore stated he was here tonight to discuss the 7th & Vinson property. He read into the record Article 5, legislation on ordinances and resolutions, Section 5 that refers to adoption of ordinances and motions to be adopted and when an ordinance is declared for an emergency measure, the enactment of ordinances, abstentions from voting when a conflict of interest exists. He further read into the record the letter he received from the City Secretary in response to his open records request regarding minutes, copies of tapes from April 21, 2010 City Commission meeting. He had requested copies of any conflicts of interest filed with regards to the property. Mr. Moore stated that the City Secretary had responded that there were no documents responsive to this part of the request. Mr. Moore informed the Commission that an ethics complaint was filed and he has heard nothing but the complaint

was accepted with merit. He indicated that they have requested that the City Attorney review and take action concerning the recent sale of city property to Armando Elizarde, President of the Development Corporation of Harlingen. Mr. Moore stated that it was brought to their attention that the purchase of the city property by Armando Elizarde, a developer/builder and current President of the Development Corporation, President of Town & Country Homes, President of ACE Development and appointed positions that he now or may have previously held which relate to his involvement with city property and violate this ordinance-the ethics policy. Mr. Moore stated that this is a conflict of interest and he asked that this matter be thoroughly investigated by the City Attorney in all boards and assure that all citizens are protected from ethical misconduct by Mr. Elizarde and any others who contributed to this action and promoted Mr. Elizarde and others to attempt to do the same. Mr. Moore stated that their Commissioner contacted them by phone around March 25 and stated that the sale price of \$70,000 was posted on the sign on 7th and Vinson but Mr. Moore stated that this was not true because he walked the property every day and there was never a sign with a price on it---maybe this would have helped. There was only a telephone number and Mr. Moore stated that several of his neighbors had told him that the price was in excess of \$100,000 so why bother? Mr. Moore stated that their Commissioner in Precinct 1 nominated Armando Elizarde to the Economic Development Board at the March 17 Commission meeting, once again creating another conflict in this property. Mr. Elizarde began work on February 2010 even though the land was still considered not zoned and undesignated. The Valley Morning Star later reported that water and sewer lines were extended to the property. Mr. Moore stated that it had already been commented to the Commission that already work had started on the property even though Mr. Elizarde had no paperwork to authorize the action.

Mr. Moore further stated that he had only one (1) conflict of interest on Commissioner Galbreath. At the May 6, 2009 meeting the minutes disclosed the City, Mayor Boswell and Galbreath awarded the land document to Mr. Elizarde. At that time he was President of Economic Development and had full knowledge and intimate details to the purchase, knowledge and history of the land far beyond what any normal citizen would have had.

Gail Moore stated that they are objecting to the rezoning and asked for immediate removal of Mr. Elizarde from the economic development board. She stated that he has violated ethical provisions in the City Charter and proceeded to read the provisions that indicate that no elected official or officials appointed by the local governing body and/or employees of the city or immediate family members interested in the sale and/or purchase of real property with concern to the city or enter into a contract of any kind calls for immediate removal of any elected official or officers or board officials from their posts or positions. She stated that these actions are to be enforced according to the City Charter directly by the City Attorney and executed immediately upon proof of notice.

Ms. Moore, addressing Mayor Boswell, demanded that he reveal his conflict of interest concerning Armando and Debbie Elizarde and that he recuse himself immediately from continuing to violate these ethics ordinances according to the City Charter. She asked that Mayor Boswell remove himself from participating in this matter and asked that the City Attorney investigate this conflict of interest and others that have not been revealed. Still addressing Mayor Boswell she stated that no longer can he ignore the citizens of this city and treat these conflicts as not important and she asked that the Mayor leave the room immediately.

Ms. Moore stated that since Mr. Elizarde purchased the property at 7th & Vinson over a year ago and openly disregarded the ethics ordinance and any official capacity that he was involved in to the EDC after purchasing this land up until today can be overturned because of his direct violation and his participation in any city business can be retroactively reversed. All contracts or purchases must be reevaluated retroactive to the violation of the City Charter.

Addressing Mayor Boswell she indicated that since he conducted the proceedings of the decision to sell this land and as Chairman of this governing body, knowing full well the City Charter prohibits these types of action he condoned and approved the illegal actions by another elected city official, Mr. Elizarde. She pointed out that the Charter states that any elected official aware of an ethical violation concerning another elected official as such in this case has fiduciary responsibility and according to the ethics ordinance in the City Charter

has an ethics responsibility to report any unethical behavior by another elected official or employee. Failure to report such violation puts the parties that were aware in violation of the ordinance.

Ron Lozano spoke on diversity and the electoral victory and addressing the Mayor indicated that the cornerstone of all cooperation is to be sincere and asked that the Mayor keep his word.

Lorraine Woolam expressed concern over the number of foreclosures and delinquent taxes and questioned why the City is not going after those properties. She indicated that she would be glad to volunteer her time to research this matter.

PROCLAMATIONS:

Mayor Boswell presented a proclamation on Motorcycle and Safety Awareness to Troy Allen.

CONSENT AGENDA

- A. ORDINANCE ADOPTED ON FINAL READING TO AMEND THE ZONING ORDINANCE (NO. 07-27), SECTION 15.07 WITH REGARDS TO THE PROHIBITION OF BAR/LOUNGES, LATE HOURS ALCOHOL PERMITS (MIDNIGHT-2 A.M.) AND THE CURRENT 100-FOOT SPACING REQUIREMENT BETWEEN BARS/LOUNGES IN HARLINGEN'S DOWNTOWN OVERLAY DISTRICT. APPLICANT: HARLINGEN CITY COMMISSION.**
- B. ORDINANCE ADOPTED ON FINAL READING TO ISSUE A SPECIFIC USE PERMIT (SUP) TO ALLOW A BAR/LOUNGE IN A 'GENERAL RETAIL (GR)' ZONE LOCATED AT 610 LEWIS LANE, SUITE B BEARING A LEGAL DESCRIPTION OF 0.96 ACRES OUT OF BLOCK 2, LEWIS SUBDIVISION.**
- C. ORDINANCE ADOPTED ON FINAL READING TO ISSUE A SPECIFIC USE PERMIT (SUP) TO ALLOW TWO STORAGE BUILDINGS IN A 'GENERAL RETAIL (GR)' ZONE LOCATED AT 1208 S. COMMERCE, BEARING A LEGAL DESCRIPTION OF LOT 3, AND W ½ OF LOT 4, BLOCK 3, ARROYO INDUSTRIAL SUBDIVISION. APPLICANT: BELLA CONSULTING, INC.**
- D. RESOLUTION APPROVED AUTHORIZING THE SUBMISSION BY THE HARLINGEN POLICE DEPARTMENT FOR FUNDING OF THE 2010 STEP 'CLICK IT OR TICKET (C.I.O.T.)' GRANT BY THE TEXAS DEPARTMENT OF TRANSPORTATION (TXDOT).**

A motion was made by Commissioner Marra to approve the consent agenda. Commissioner Leftwich seconded the motion and it carried unanimously.

ACTION TAKEN TO APPROVE A SECOND CORRECTION WARRANTY DEED FOR A 0.417 ACRE TRACT OF LAND SITUATED IN AND PART OF BLOCK 179 OF THE SAN BENITO LAND AND WATER COMPANY SUBDIVISION, HARLINGEN, CAMERON COUNTY, TEXAS AS SHOWN BY MAP OF RECORD IN VOLUME 1, PAGE 6, OF THE CAMERON COUNTY, TEXAS DESCRIBED BY DEED OF RECORD IN VOLUME 106, PAGE 185 OF THE CAMERON COUNTY, TEXAS DEED RECORDS

Gabriel Gonzalez explained that Exhibit A was inadvertently not attached to the Warranty Deed that was executed on June 1, 1995 by the Dioceses of Brownsville. He explained various dates on which errors regarding the correct legal description occurred and noted that this 'Second Correction Warranty Deed' will correct the mistake and will supersede the original Deed filed and will also supersede the "First Correction Warranty Deed".

This property is located on Treasure Hills Boulevard on the property owned by the University of Texas where the ambulatory surgical center is being constructed for the Veterans Administration. Staff recommended approval and Mr. Gonzalez pointed out that the deed received legal approval as well.

A motion was made by Commissioner Galbreath and seconded by Commissioner Marra to approve the "Second Correction Warranty Deed". The motion carried unanimously.

ORDINANCE ON FIRST READING TABLED TO REZONE FROM 'NOT DESIGNATED (N)' ZONE TO 'RESIDENTIAL, MULTI-FAMILY (M-2); A 0.953 ACRE TRACT OF LAND SITUATED IN AND PART OF BLOCK 120, HARLINGEN LAND AND WATER COMPANY SUBDIVISION LOCATED ON THE NORTHEAST CORNER OF VINSON AVENUE AND 7TH STREET. APPLICANT: ARMANDO ELIZARDE (TABLED FROM 4/21/2010 MEETING)

(Commissioner Galbreath stated that he had filed a conflict of interest to avoid the appearance of impropriety regarding this item and left the meeting at this time).

The City Attorney requested that an executive session be held for two separate items regarding Agenda Item No. 5: 1) conflict of interest issue regarding this particular application and 2) legal advice regarding this application. She asked that the City Secretary identify who is in the two separate executive sessions.

A motion was made by Commissioner Prepejchal to go into executive session for the two reasons as stated by the City Attorney. Commissioner Leftwich seconded the motion and it carried unanimously.

The Executive Session convened at 5:55 p.m. and concluded at 6:15 p.m. Present during the two Executive Sessions were: Mayor Boswell, Commissioners Leftwich, Marra, Prepejchal. Commissioner Trevino was not present. Also present were: Roxann P. Cotroneo, City Attorney and Gabriel Gonzalez, Interim City Manager.

Returning back into open session, Commissioner Prepejchal made a motion to table the ordinance on first reading. Commissioner Leftwich seconded the motion and it carried unanimously.

There being no further business the meeting adjourned at 6:16 p.m.

Chris Boswell, Mayor

Attest:

Sylvia R. Trevino, City Secretary