

**REGULAR MEETING**

**CITY COMMISSION**

**HARLINGEN, TEXAS**

**OCTOBER 20, 2010**

A Regular Meeting of the Harlingen Elective Commission was held on Wednesday, October 20, 2010 at 5:30 p.m. in Town Hall, City Hall, 118 E. Tyler Street, Harlingen, Texas. Those in attendance were:

**Mayor and City Commission**

Mayor Chris Boswell  
Joey Trevino, Mayor Pro Tem  
Gustavo C. Ruiz, Commissioner District 1  
Robert Leftwich, Commissioner District 2  
Kori Marra, Commissioner District 3  
Jerry Prepejchal, Commissioner District 4

**Staff Present:**

Carlos Yerena, 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/PLEDGE OF ALLEGIANCE/WELCOME**

Commissioner Prepejchal delivered the Invocation and the Pledge of Allegiance followed.

**BOARD MEMBER RECOGNITIONS**

Commissioner Ruiz presented a certificate of special recognition to Samantha Darrow, incoming board member to the Community Development Advisory Board.

Commissioner Leftwich presented a certificate of special recognition to Frank Hale for his service on the DID Board and to Dorothy Romans, also for her service on the DID Board.

Commissioner Marra presented a certificate of special recognition to Dominic Consiglio for his service on the DID Board.

**SPECIAL RECOGNITION – ‘2010 FIVE-STAR LOCAL REGISTRAR VITAL REGISTRATION AWARD’**

No action was taken on this item due to the Director’s absence.

**CLOSED EXECUTIVE SESSION PURSUANT TO CHAPTER 551, SUBCHAPTER D., V.T.C.A. GOVERNMENT CODE, SECTION 551.07 TO DISCUSS PERSONNEL MATTERS INVOLVING THE DISMISSAL/REMOVAL OF CURTIS BONNER, UTILITY TRUSTEE, FROM SERVING ON THE UTILITY BOARD OF TRUSTEES ALSO KNOWN AS THE HARLINGEN WATERWORKS BOARD. PURSUANT TO THE TEXAS OPEN MEETINGS ACT, THIS AGENDA ITEM MAY BE HEARD IN OPEN SESSION IF CURTIS BONNER REQUESTS THAT IT BE HEARD IN OPEN SESSION.**

Curtis Bonner stated that he did not view this as a personnel issue. He is a volunteer appointed to a Board and he did not think it was appropriate to have this item conducted in an executive session and he would agree to having this issue in open session.

Commissioner Ruiz asked if the City Attorney could explain, for the public's benefit, how this item is on the agenda.

Mayor Boswell asked that the City Attorney explain the removal process for a Utility Trustee.

Ms. Cotroneo explained that the Texas Open Meetings Act exists to provide notice to the public what is happening on the agenda of governmental bodies. It is an important Act and it a flexible act in that it provides that the more important the subject matter is the more specific the agenda language should be. She explained that in the City of Harlingen there are numerous boards. In some boards the members serve at will which means the City Commission can remove them at any time without reason. There are other boards whose members must be removed for a reason. Under the City Charter, the Harlingen Waterworks also known as the Utility Board of Trustees it states that the City Commission may remove a Board member under three different reasons: 1) unexcused substantial absences from regular meetings; 2) conflict of interest or 3) conduct reasonably construed to be or become damaging to the public and efficient operation of the water and sewer system

Ms. Cotroneo stated that the Utility Board of Trustees is a very important board that has management and operation oversight of our water and sewer system. It became apparent that it was important for the City Attorney's office to place this item on the agenda with the specific language to apprise the public on what the City Commission was going to consider today. She explained that the boards that have board members at will may be removed by the majority of the City Commission. But boards that have board members such as the Harlingen Waterworks, the City Charter specifically states that a 4/5ths vote of the City Commission is required for the removal of a Utility Trustee. Ms. Cotroneo stated that as indicated earlier this item could go into Executive Session. While Mr. Bonner is not considered a personnel employee, he is considered a public official that has more than just advisory capacity but actually has management and oversight control of the Harlingen Waterworks board as a member. Mr. Bonner has requested this item be held in open session, and therefore, the Commission will follow the Open Meeting Act and proceed accordingly.

Mayor Boswell asked Commissioner Leftwich under which provisions of the Charter was he going to proceed on.

Commissioner Leftwich replied that he believed that the conduct (by Bonner) has met the threshold that city fathers intended to be used to declare somebody's conduct detriment to the ratepayers and the citizens of Harlingen.

At this time Commissioner Leftwich proceeded with a power point presentation. **A copy of that presentation has been made a part of these minutes and is attached).**

Commissioner Leftwich in starting out with this power point presentation explained the City's organizational chart showing that foremost at the very top are the citizens of Harlingen, the Mayor and City Commission and the Utility Board of Trustees falls under the Mayor and City Commission, and therefore, has authority over it. Going over the power point presentation Commissioner Leftwich referred to an article in the newspaper that was published in July 12, 2008 that stated that Commissioner Leftwich's job is not to be an advocate for the public. This statement in itself conflicts with the organizational chart and shows the disconnect for his own position as a trustee of the Harlingen Utility Waterworks; the fact is that when you look at the damage that type of behavior has caused the citizens of Harlingen reason I will going into charts because it shows the significance of being insensitive to the Charter and your positions as a board member for the benefit of the public and not for the benefit of the bureaucracy. Referring to the charts, Commissioner Leftwich indicated that prior to the 2006 multi rate increase aging accounts were averaging 600 to 1000 monthly. Once the multi year rate increase was adopted, to date now as of August 31 there are up to 3,488 residential accounts in arrears. averaging \$167,000 total arrears on a monthly basis. Commissioner Leftwich commented that this attitude has caused the citizens of the Harlingen in terms of being able to provide basic services and the quality of life for individuals throughout the

community. We are now at an average of \$359, 172 a month in arrears – your neighbors in the community. Commissioner Leftwich then referred to non-residential accounts for businesses prior to rate increase were low of 66 to 150 a month and now there are 500 businesses as of August 31 that pay in arrear. Commissioner Leftwich commented that when you look at the construction report, these are all predicated off the rates, which he considered to be driven off of errant spending and mismanagement of the utility.

Commissioner Leftwich noted that new resident permitted sales in 2004 were \$40,790,617 and in 2009 \$13,816,360. A difference of \$51,000,000 in residential permits that were not sold because of additional costs that were added by the multi-year increase to cover the bailout by Waterworks. This equates to \$295,800 annual loss to City Hall in property taxes from new residences due to higher construction costs due to Waterworks. This trend affects jobs from new home construction and other spending for household goods and other items.

Everybody is down in their business over the last four years except Waterworks. Commissioner Leftwich stated that the fact is that the first increase in 2005-06 budget. Their operating revenue was \$13,121,000 the first year the rates brought in new revenues of \$3.6 million to the utility. Commissioner Leftwich stated that to date, up to \$15.7 in new revenue and felt that when you have these kinds of circumstances there needs to be people of impeccable integrity running the operation. People who do what they say and say what they do. That increase in revenue for the utility was with fewer water sales. He commented that the fact is if you look at the numbers 3,488 accounts are past due as of end of August. These are Sr. citizens, veterans, and Commissioner Leftwich indicated that we cannot tolerate any kind of mismanagement or lack of integrity to operate this utility with the belief that what they are doing is right when it is not right. Commissioner Leftwich noted that the City had to cut over \$1,000,000 from its budget because of lack of revenue and Waterworks has \$15.7 million in new revenues and he stated that the fact is that their operation expenses were still under \$13 million and for 2008-09 the revenue was \$18 million.

Commissioner Leftwich showed the sewer rate comparison with other cities, Brownsville, Edinburg, Mission McAllen and showed that Harlingen has the highest rate (\$3.71 per 1,000 gallons) in residential sewer prices compared to comparably sized water/wastewater systems.

Commissioner Leftwich continued and referred to a newspaper article of October, 2007 that disclosed that the Harlingen CISD was seeking a \$110,000 refund from Harlingen Waterworks system for years of sewer overcharges. At that time the Waterworks Board refused it and then it came back on and they reconsidered it. Commissioner Leftwich pointed out that the school district just recently assessed a \$.10 increase to cover some funding that they want to do. Commissioner Leftwich was of the opinion that as another entity (Waterworks) owned by the citizens of Harlingen they would want to be prudent in the way they charge the School District.

Commissioner Leftwich continued to refer to the issue of overcharges to the School District and made reference to public statements made by Curtis Bonner in a newspaper article of July 12, 2008 where he stated that the differences between the Waterworks and the Harlingen CISD had been settled months ago. In a subsequent article, Curtis Bonner stated that Leftwich is misinformed and the ordinance was amended and all those issues were settled.

Commissioner Leftwich indicated that he first brought up the issue in 2007. In 2008 Trustee Bonner knowingly misinforms the public declaring that differences between HWWS and HSICD had been settled. Again, in March 23, 2009 Trustee Bonner again knowingly misinformed the public stating ‘about a year or so ago, the ordinance was amended and ALL those issues were settled’.

Commissioner Leftwich further stated that as of the last City Commission meeting when Mr. Bonner was considered for removal this agreement was not signed. He showed the slide were the agreement reflected a 10/13/10 signature of General Manager Darrell Gunn. Commissioner Leftwich felt that was conduct that does not have the confidence

that anybody in this city should have in a person when you have two years of a person saying that these things were done and now we find out that the only reason is was done was to cover somebody's tracks. He again stated that there are 3,488 accounts in arrears. These people deserve somebody that is going to be honest and open w/them and not somebody that is going to rise to the level of conduct to mislead or misinform the public. Referring to the signature date, Commissioner Leftwich commented that if this is the conduct we can expect then he has no more confidence in this individual to serve on the Utility Board of Trustees.

Curtis Bonner, then approached the podium, and stated that he objected to the Commission going forward because he had asked the City Attorney on Friday what conduct had he committed that would justify his removal. He was told that he was not entitled to that and it seemed to him that due process requires this for him to later reply. He explained that he has served on this board 7 ½ years and he has devoted a minimum of 5 to 6 hours per month and more on special projects. Mr. Bonner stated that the conduct that Mr. Leftwich has alleged is not his conduct. The Board operates and as Chairman of the Board he has no vote and his vote does not count unless there is a tie and there are very few ties. All rate increases and everything they do are by Board vote. He referred to the agenda packets (on the table) that the Commission receives every month and explained that in that book is the financial information for the month, the operations, the amount of water sold, the amount of sewer processed and the resolutions that the Board has addressed or will consider. Every month the Commission receives the packet. He commented that he does not recall any Commissioner ever coming to him to ask him questions.

The rate increase the City commission approved it. Referring to the tanks that Commissioner Leftwich displayed in the power point presentation, Mr. Bonner stated that they were built before he was on the Board in 2003. There has been no significant construction since he has been on the board and he explained that the tanks were built prior and were built because of some agreements with San Benito that they had to have water because they nearly ran out of water. The tank on Rio Hondo Road was put there because of about 1,000 acres of Harlingen owned land and it was put out there to supply water to that land. Mr. Bonner explained that because of that tank they received nationwide recognition and were No. 3 on Boeing's list for the Dreamliner. He explained that he did not participate in that because he was not on the Board at that time.

Mr. Bonner explained that every significant waterworks construction project has to be approved by the City Commission. It is approved at the Trustee level and then turned over to the City Commission. He reminded the Commission that last month the Board and the Commission approved the issuance of \$10 million in bonds to fund the sewer plant renovations. He stated that it would have been nice to have what Commissioner Leftwich displayed in his power point because he could have come up with some rebuttal and he has no idea if the newspaper articles are correct.

Mr. Bonner continued by explaining that the school district issue has been settled for some time and he has no idea why the paperwork has just been signed. That is a staff item.

He commented that he is extremely proud that Hurricane Dolly and Hurricane Hermine and all the other storms that Harlingen has had the last 7 years, Harlingen customers never lost water or sewer service. During the time that there was no working electricity we still had working water and that is because of the dedicated Harlingen Waterworks trustees and the employees. Mr. Bonner stated that since he has been on the Board we (Harlingen Waterworks) did a study to replace the sewer plant, which was built in the early 70's and funded with government monies. Today there are no government monies so it has to be rebuilt. The consultant said it was going to cost \$50 million to rebuild the sewer plant and because of the staff on Waterworks they came up with a plan to replace the sewer plant in incremental stages for \$25 million that is quite an achievement to save \$25 million because of those efforts.

Mr. Bonner stated that at the last meeting the bond counsel was present and they told the Commission that Waterworks was doing an extremely good job and that because of the

staff and the Board of Trustees the rating agencies had raised the rating on the bonds and had saved us considerable amount of interest because of the way we are doing things. He explained that recently they have been looking at a rate increase because the flat sales of water the conservation that people are doing and the rainy season we are not generating enough income. Each of the trustees appointed two persons to sit on a rate study committee it worked 3-4 months and devoted a lot of time to it and now we are now back to what are we going to do with the results of the study and the results of the our consultant.

Mr. Bonner explained that with regards to the delinquent accounts they kept seeing delinquent accounts of over \$500 dollars. Bobby Farris and he talked and decided that they needed to be told about any delinquent accounts and the threshold of \$700. It took them about 9 months and Mr. Bonner stated that he was proud to say that now there are no delinquent accounts over \$500 at Waterworks. That was because of a policy that the Board instituted because we kept getting some surprises and they did not like those surprises.

Mr. Bonner stated that Commissioner JJ Gonzalez appointed him in 2003 to this position and because of the turmoil at Waterworks and because of the resignation and the termination of the General Manager, he accepted the role and his first meeting in 2003 was the first meeting for Mr. Thomas, the former General Manager along with Desi Martinez. They had a tour of the facilities that are required for new board members and the most enduring impression to him was the fantastic and outstanding employees that working for Waterworks. They were solving operating problems with ingenuity, genius, and hard work. Mr. Bonner continued by stating that in 2003 there was a sewer plant that was 30-40 years old that has not been offline. The Dixieland plant was built in the early 70s and has never been offline and needs some revamping. There is a need for water rate increase and sewer increases because there has not been an increase since 1994 – 10 years of inflation without no increases and no business can exist without that. As one of five dedicated board members they solved the problems---they got the sewer done and decommissioned sewer plant #1 by HEB and shifted the operations out east of town. Under Bobby Farris leadership, as a member of the Board, they addressed the cost of employees' retirement because our system could not afford or continue to afford the cost as it was structured. We also reduced substantially the number of employees that Waterworks had and this was done without firing any single individual and did not put anybody out of work.

Mr. Bonner commented that he was puzzled as to why we are doing this today. Waterworks is in better shape since I got on board 6-7 1/2 year ago. He explained some capital plans to make orderly replacements of aging plants. Additionally, they are just about to build a pipeline out west to 'loop' our system and shut Dixieland down for rehab. Otherwise, that plant is going to fail and we cannot afford that.

Mr. Bonner again stated and referred to the agenda packets (on the table) and informed the Commission that they receive those packets every month. He stated that none of this information that Mr. Leftwich has put on the screen and he noted that he requested from the City Attorney what it was he was charged with before and he did not get that and he stated that he did not have a reply to some of those allegations. He addressed the issue on delinquent accounts and stated that the delinquency charges are much less than they were and it is costing 'folks' less.

In addressing the Commission Mr. Bonner stated that none of the Commission called him to discuss these issues. He has not been told by staff that we needed to address any of these issues. He stated that we are a business and it has got to have an adequate amount for operations; a budget. He indicated that the Commission approves each budget on an annual basis. The Commission approves our capital budget on an annual basis; it approves any construction projects on an annual basis. Everything we (the Waterworks) do is transparent and everything the City Commission approves and was approved by Waterworks Board before he got on the board.

Mr. Bonner added that Harlingen Waterworks is in the business of selling water and processing sewer. Harlingen residents and those in Palm Valley, Combes and Primera

depend on us to keep up the level of service that we provide. They expect that when they turn the water on they will get water and they when they flush the commode the effluent will go away and properly dispose into the Arroyo Colorado. All these things have been successfully done. Regarding missed meetings, Mr. Bonner stated that he missed a meeting in May and over the seven years he has missed one or two others.

Commissioner Leftwich interrupted Mr. Bonner and asked if he could ask a question of Mr. Bonner. Mayor Boswell informed Commissioner Leftwich that he would not allow Mr. Bonner to be interrupted and Commissioner Leftwich would get another turn after those that had signed up for public comment but he was not going let anyone cross examine anybody.

Mr. Bonner continued and stated that his term is up in May 2011. He has served diligently and nothing has been presented that would indicate that he has not served in a good manner. Mr. Leftwich can appoint whomever he wants to the Board. Mr. Bonner stated that that he would hope that such an appointment would be a dedicated business man or woman that would be dedicated to continuing the work that has been done at Waterworks; otherwise, you short change the Waterworks customers.

Mayor Boswell then asked the City Secretary for the first name on citizen communication.

Connie de la Garza, stated that the reason he was here was to give an institutional history of the Waterworks of Harlingen and Harlingen in general. He explained that the institutionalized history of the Waterworks is relevant to what is going on today. The waterworks of the City of Harlingen over the years has always been considered one the best in the Valley. The City of Harlingen owns more municipal water rights than any other city in the Valley---over 22,000 acres. The fact is because we own so much water we can provide for the growth of Harlingen for the next 20 or 30 years but sooner or later the next 40 years the way the growth of the Valley is going we will probably need some more water rights. He stated that we never sell water rights; we lease water rights to McAllen and Edinburg for their municipal system. Referring to the water tanks Mr. de la Garza commented that our forefathers had the foresight to see that if Harlingen was going to grow it needed to have water pressure. Water is the number one issue for the future of Texas---all of Texas. Again, referring to the water tanks Mr. de la Garza explained that they were built to provide adequate growth for the future of Harlingen because Valley Baptist was the largest hospital in town and we knew we were going to have a large taxpaying hospital down the road that was going to have water pressure and they are paying thousands of tax dollars because they are not exempt. He explained how the Harlingen Waterworks was able to help out the City of San Benito when it appeared that they were going to run out of water. He stated that there were 4,000 acres of water rights that became available recently and Laredo wanted to buy all of them but Harlingen Waterworks was able to buy 1,700 of those acres for about 1/3 less than Laredo paid for the other 200 acres. Mr. de la Garza commented that this is the type of people we have serving on our water boards for so many years.

Commissioner Leftwich commented that this was not relevant to the agenda item.

Mr. de la Garza continued and stated that Mr. Bonner has always followed what our forefathers have always done in what is best for the City of Harlingen and let everything fall aside that is not good for the City of Harlingen. He commented that what we have to do is protect our taxpayers and protect our ratepayers. This City Commission has to approve every single water rate increase that the Water Board does and this City Commission has to approve every construction project.

Commissioner Leftwich commented that Mr. de la Garza went beyond his time for public comment. Mayor Boswell explained that this was not citizen communication

Mr. de la Garza concluded by stating that there are people in this city that have always looked forward to making Harlingen better this is all he is asking the Commission to do.

(audience applause)

Yolanda Shoffeitt, P O Box 697 explained her reason for being here tonight and alluded to an experience she had. She stated that she lives on a fixed income but we are in a 3<sup>rd</sup> world country. She stated that the City of Harlingen cannot afford water. The City has all these water rights but yet the citizens cannot afford the water. We do not have enough water affordable to the community. She then referred to a situation she had at the Waterworks where she assisted a man who could not decide whether to pay his water bill, fix his car or feed his family. She stated that she did not understand why people have to run to pay their water bills. She also referred to another issue when she and Mr. Thompson had an argument over her \$100 payment. Ms. Shoffeitt questioned how Mr. Bonner could sit in as Chairman of the Board being that he is also an attorney. She stated that she had brought this up to the former City Attorney. She stated that she had asked for this resignation. She, again, stated that we have a lot of water rights but not affordable water for the people. The City Commission does not have to approve every water right. It is business but it is not for the welfare and the benefit of the people--not here in Harlingen. She stated that we need some kind of probe in to this Waterworks now.

(audience applause)

At this time, David Alex, approached the podium and stated that the last water tank was built to bring 1,000 jobs to Harlingen for the reverse osmosis system and if Mr. Leftwich had researched the facts on that---- the Fruit of the Loom paid a rate schedule to pay off the entire investment that we made there and it created 1,000 jobs in this community for ten years. We created the incentive to create 1,000 jobs and it was paid for by the company that was there.

(audience applause)

Commissioner Leftwich told Mr. Alex that the lesson learned is don't count your eggs before they are hatched. He made a statement about the abundance of Harlingen water rights and he stated that the fact is that McAllen leases water rights from Harlingen and their residents buy their water cheaper than residents in Harlingen.

(audience applause)

David Agrabright, resident of District 3, stated as an observation, that it seems that at first glance the evidence, as presented, bears no resemblance, in his opinion to the job that has been performed by Mr. Bonner. As another observation (addressing Commissioner Leftwich) that he has made over the last years that he has been on the City Commission has exposed an agenda consistently against the Water Board. Mr. Agrabright stated that he does not understand why this is an obsession that keeps going over and over again. He stated that he has also noticed that the City of Harlingen which has more raw natural ability to be the center of the economic Valley, because of infighting, agenda and issues that keep coming up that don't seem to be that important, is being held back where McAllen, Brownsville, even Weslaco is growing.

Commissioner Leftwich stated that he thinks affordable government will get us there but until we get control on our rogue spending and errant spending of the utility we are not going to get there. "We're going to price ourselves out of the market."

Shane Allen, with the Association of Realtors, asked Commissioner Leftwich if he consulted any resources as far as new construction such as the Board of Realtors for any of that information. Commissioner Leftwich replied that all that information came from Waterworks or the City. The source is the City for new permits issuance.

Mr. Allen commented that home sales are down all over and Commissioner Leftwich stated that the downtrend correlates with the cost of the water and the impact fees.

Mr. Allen commented that if anybody ever watched the news all of America is experiencing economic downtown and he has not heard any one person say it is because of water.

Commissioner Leftwich stated that it is not affecting Waterworks. Their revenues are up \$15 million over the same time.

Mayor Boswell explained that he was going to try to do this as orderly as possible and allow those that signed up for public comment to speak. Next on the list was Sam Lozano, however, Mayor Boswell asked if he was going to speak on the Waterworks issue and Mr. Lozano replied no. Mayor Boswell stated that he would come back and allow Mr. Lozano to speak.

Jo Wagner, 3010 Pinehurst, stated that to attack Mr. Bonner was so absurd. She served w/him on the Waterworks two years and no one is more impeccable. He is an extremely intelligent man and addressing Commissioner Leftwich commented that maybe he is the problem instead of the solution.

Commissioner Leftwich then alluded to some economic development from Waterworks in the form of property and a free easement to Ms. Wagner. A verbal discussion ensued between Ms. Wagner and Commissioner Leftwich and a point of order was called for several times. Ms. Wagner stated that she went through the Commission for approval to get the easement and was not part of the Board at the time when she went permission to do that. The easement was just to be able to get some transformers through the property.

Lorraine Woolam, 3014 Cypress, spoke in support of Curtis Bonner and commented that he belongs on the Board and he has done an excellent job. She manages around 20 houses in Harlingen, San Benito and has always had good success with Harlingen and the management of the Water Department. She asked that the Commission keep Curtis Bonner where he is-- serving the citizens of Harlingen.

(audience applause)

Mayor Boswell stated that this is an extraordinary occurrence in Harlingen and he did not think anything like this had ever occurred in the history of Harlingen where an attempt was made to remove a board member from the Utility Trustees. It certainly had not happened in the last 12 ½ years. There are hundreds of people who work on our boards and they do a great job for the City. He felt that it was a terrible thing to think that you would be subjected to having your character assailed and to think that you would be accused of gross mismanagement for doing a volunteer job for the City of Harlingen. He stated that it is going to keep good people from serving on our boards. He mentioned that Mr. Bonner's term is over in five months and Commissioner Leftwich can replace him with whomever he wants but to set this kind of a precedent that we would do this to somebody who has faithfully served the community for a long time is very unfair. Mayor Boswell referred to the letter from Commissioner Leftwich that was printed in the newspaper that outlined examples of mismanagement including the tanks. Mayor Boswell explained that back in 2002 he took on the Waterworks. He looked at their budget initially and looked at a bunch of accusations and a bunch of problems that existed and he identified a number of problems that existed that probably did amount to waste and mismanagement. He criticized the amount of money that was spent on cabinetry at the warehouse, he criticized the waste system; the incinerator system that did not work and he criticized a lot more and also the budget that was submitted in the summer of 2002. He asked a bunch of questions that the budget did not make sense and that the Waterworks were overestimating revenues from the RO system and they were putting impact fees in the wrong place in the budget and the budget was rejected at his existence. And that ultimately led to the change that resulted in a new Director, a General Manager being appointed. Bobby Farris was put on the Board to get in and fix the problems that existed. Eight years later the Waterworks is in excellent condition and shape. Mayor Boswell went on to state the favorable opinions that were issued by Moody's and Standard & Poors. He stated that favorable comments that were issued were that the system has a unique strength compared to other Texas systems meaning the separation and the separate board and the segregation of funds so that funds from Waterworks cannot be siphoned off to fire and police unions, for example or to balance the general fund budget. The monies can be used to run the Waterworks; to clean the water; to provide good water and provide good sewer. The system has a solid history of producing net revenues that supports over 2x coverage. Mayor Boswell continued by



stating that, moreover, both of the rating agencies applauded the amount of water rights that we have and they thought this was significant enough to include in their report which affirmed the strong rating and resulted in a super low interest rate being granted for the capital expansion that is necessary so that we don't have a catastrophic failure of the water or the sewer system.

Mayor Boswell that what the rating agencies say if you look at the combined water and sewer rates that they are low. What was shown on the slides was only the wastewater rate. One of the other slides showed the downturn in new residential construction, which is true and is true nationwide. The information that was not shown was that the construction on the commercial side is up and has been up the last 2 to 3 years.

If you look at what rating agencies are telling us on how the system has been operating and the fact is that nobody on the board or at the management level eight years ago is there now. He commented that it is extraordinarily troubling that this would be brought up now that those that are there now have worked hard to fix the problems. He alluded to the last meeting where no one argued with one another or made any accusations until the end of the meeting where an attempt was made to remove Mr. Bonner from the Board. Mayor Boswell addressed the Commission that told them that we need to be working on the medical school and bringing the health science center to Harlingen and that we continue to support the Veterans Center. We need to continue to tear down the dilapidated buildings, which are graffiti magnets; continue to develop the community justice center and we need to make sure the retail project happens.

Mayor Boswell commented that we do not need to be working on settling political scores. He stated that he wished more hours were spent talking on other issues and advancing other issues such as Gutierrez Park; the Veterans Memorial, the Theatre---all of the things that were discussed at the retreat. This is a distraction to moving the city forward which is our job. It would be a real mistake to support this action and it would be a real mistake to find that Curtis Bonner has met the threshold of damaging the public or the efficient operations of the Waterworks because that is not what two nationally respected authorities in the financial world say is going on at the Waterworks.

Jerry Moore, 709 Town Lane, thanked Commissioner Leftwich for his courage to bringing this issues forward. He stated that maybe Mr. Bonner is not at fault, he does not know but the cleansing that this opportunity has given the citizens is huge. He stated that this is an eye opener and the fact that Harlingen Water Works is separate only leads to suspicions and Mr. Leftwich brought up many that need to be further recognized. Mr. Moore brought up a previous issue and spoke about the impact fee waiver that the former EDC President had requested for his apartment complex at the expense of the ratepayers. He stated that he hopes that others would have the courage to come forward and undo the things there are plenty of people in this room that cannot afford their water bills.

Frances de Leon commended Mr. Leftwich and commented that Mr. Leftwich is trying to help the citizens here and he is the only one that is trying to do something for the city. She stated if the rest of the Commission does not try to help the citizens they might not be there next time around.

Sam Lozano commented that what is going on makes him sick. He stated that last week he was going to make a comment in regards to a headline that he did not know whether to take issue with Commissioner Marra or the Valley morning Star but what it does is you lose faith in the only means of communication that people get and half of that information is not for the betterment of Harlingen. Addressing Commissioner Marra, he stated that for a Commissioner to sit there and make comments about a person that had been on the job a few days and make a comment that he was not deserving of the salary that was offered to him.....she made the statement that she would not resign. Mr. Lozano stated that he is still on a board and he was first elected in 1962 and served as Commissioner and as a Mayor and served for 20 years. Mr. Lozano made further comments about VMS again taking sides, as was obvious who was for Curtis and Commissioner Leftwich. Going back to the comments that he earlier exchanged with Connie (de la Garza) he asked what could they. He stated that he has only attended about 10 meetings and it was always when staff was making mistake and it had to do

with the Golf Course and also convinced the Commission to put on the agenda as far as the water rates go. Another time it was about the task force and he felt like it is doing its job but you've got the wrong people there. The last time was in regards to appointments of people that were not capable and did not know the history of Harlingen and the burden was placed on the City Commission as well as on staff. Mr. Lozano alluded to two staff people that are overpaid and he felt it was high time that to address some of the work that is being done in different departments. He then referred to the newspaper article with regards to high taxes that are paid in District and he commented that she (Commissioner Marra) should be talking about the potholes in the district at her district meetings. Concluding his comments, Mr. Lozano stated that the City has an excellent City Manager if you give him an opportunity. He is a strong advocate of the City Manager form of government and that has helped Harlingen get where it is.

Commissioner Leftwich stated that he would like to conclude by stating since he did not get the opportunity to give Mr. Bonner the opportunity to clarify his intent and his responsibility as the Chair with respect to fulfilling the obligation to the School District in making sure that he followed through on the repayment of the money. If he wants to come up and clarify some things he would welcome that. If not, he would conclude that the fact is that when you have people in the community whose livelihoods are affected by a city component like the Waterworks, credibility has a lot to do with it. You heard tonight the Mayor say that Moodys and S & P gave the utility an excellent credit rating but we have heard for the last four years that we have aging and failing infrastructure and we need more and more money. The fact is that their credit ratings are predicated on the amount of money that they can extract from the citizens not whether the system infrastructure is structurally sound. We hear two things from Waterworks: aging and failing infrastructure and we need more and more money as we heard from Curtis Bonner tonight and then we hear that it is in the best shape financially of any or more so than most utilities in the nation. The fact is that the ability for it to extract money as a monopoly is what gives it its credit rating not the condition of the infrastructure and every time we get ready for a rate increase we are going to see the same 4-5 year old presentation that we saw in 2006 that says if we don't do this now and spend the money and raise the rates we are going to have a catastrophic failure. He has been hearing the same argument for the last five years and on the other hand we have good credit ratings and we can go borrow tons of money with low interest rates but the fact is that if we watch what we were spending we would not need to go borrow the money.

Commissioner Leftwich reiterated the fact he did do the research when he was evaluating whether we had enough water rights. We have leased, in the past, water rights but the fact is McAllen residents pay lower combined water and sewer rates than we do and we are the ones that own all of the water rights. He commented that this makes no sense to him and to him it says that we don't need to spend any more resources when we've got this potential catastrophic failure fixing to happen when we don't need to be buying any more water rights. You can make money leasing those water rights when as a citizen owned business--- are we going to reap the benefit of all this value that the utility has? A stockholder/stakeholder in a business gets repaid through lower rates or dividends. Our dividends should be a lower rate if we are an asset rich utility. Commissioner Leftwich commented that we should be seeing that in lower rates and we should have lower rates because, as we have been told, we are in the best financial shape and have the most water rights than any other city in the Valley. The fact is it is more than just taking water from the Rio Grande. Brownsville is not leasing as much water as Harlingen because they are investing in a desalinization plant. He stated that the fact is we need to manage this and not every purchase of water rights makes sense especially as we heard tonight we have potential catastrophic components in our infrastructure that could cause us to go down. Commissioner Leftwich stated that the fact is that if we had the money we could be repairing those infrastructure items with cash and not have to go out and borrow the money. The fact is--- the bottom line is that it comes down to credibility. If someone says that issues got taken care and they are not taken care of two or three years down until someone pushes for it then how do we accept the fact that when we are approached with a list of capital improvements how do we know that the credibility of the list that is there. We have to on the faith of the person presenting it. He stated that the fact is that we have a leadership position that affects not only businesses in Harlingen but residents in Harlingen and it must be held to a higher level of integrity. Concluding his statements, Commissioner Leftwich commented it all comes down to credibility.

(audience applause)

Commissioner Marra stated that regardless this has gotten out of hand. All these things that Mr. Bonner has no control over the City Commission in the end makes the final vote. The City Commission just voted to approve to the capital improvements. Moodys and Standard & Poors came and talked to us and we all approved that and Mr. Bonner and everyone on the board is appointed to watch over those funds but in the end they still come back to the City Commission and we have the final say so. For the last eight years it has all been voted on. The question tonight is not about whether we think the waterworks should be under the City Commission. That is not what is on the agenda item tonight. What we are discussing tonight is if there a reason for us to remove Mr. Bonner as a trustee who, under a different charter, is not an at will member. She asked if there is sufficient reason to remove him for the reasons of 1) unexcused absences 2) conflict of interest or 3) damaging and public and efficient operations reasonably construed to be damaging behavior. She asked if Curtis Bonner at any stretch demonstrated damaging behavior to the City of Harlingen and the Waterworks board.

Commissioner Marra referred to the Commission meeting of two weeks ago. She stated that at that time Commissioner Leftwich made a motion to remove him (Bonner) and appoint someone else under the motion of appointing someone so obviously this was an illegal move. Tonight this discussion coming up and the City Attorney has indicated that he is not an 'at will' board member. To remove Curtis Bonner because he is under a different charter, there are three things he has to have done. Tonight, Curtis Bonner has been found and has been discussed that perhaps he has done something wrong. She felt this was not right

Commissioner Marra stated that she called a couple of people tonight to serve on boards and both of them commented to her that she could call on them when there is a new Commission.

Commissioner Marra stated that because of the hatred and the distraction there is nothing positive happening. She commented that we need to be doing something positive instead of berating someone, humiliating them, trying to destroy their good name in this community. The fact is that he (Bonner) needed to be removed because someone did not like him. So, therefore, when the move was illegal then we will come up with something else to make him and embarrass him until he is ready to be removed. Commissioner Marra asked is this the type of behavior that we expect from the City of Harlingen? Is this what we want for our citizens? Do we really want to serve? Do I really want to volunteer for \$92.00 month to come up with for this type of behavior? She stated that she is here for a year and ½ left and she does it because she loves the City of Harlingen and the same thing for Mr. Bonner. It is amazing how much money goes out the door when you are volunteering your time. Commissioner Marra apologized to the citizens of Harlingen on behalf of the Commission. She commented that however the vote goes tonight it has to be a 4/5ths vote because we are voting to remove someone for damaging behavior so when the 4/5ths vote happens she would like to apologize in advance but she will not be voting to remove Mr. Bonner.

(audience applause)

Roxanne Cotroneo, City Attorney, stated that in listening to Mr. Bonner it was accused that the City Attorney denied him due process. Due process is a fancy legal term, which means the opportunity to be heard. The City Attorney, using her own authority, placed these items back on the agenda so that the public and Mr. Bonner could be heard about the allegations and Mr. Bonner or the public could be given the opportunity to respond. So the City Attorney believes in a public statement that we have provided due process by providing the allegations and by providing the opportunity to be heard.

Commissioner Leftwich as a last comment stated that he offered Mr. Bonner the opportunity to clarify some of the issues he had concerns with. That opportunity is still available. Mayor Boswell asked Commissioner Leftwich if it would make a difference to him and Commissioner Leftwich replied 'it could'.

Addressing Mr. Bonner, Commissioner Leftwich stated that the fact is in one statement he told him that it was not his job to advocate for the citizens but then when he brought up the overcharges he (Bonner) took the position that he felt it was not for the public.

Curtis Bonner explained that his recollection of that exchange was that Commissioner Leftwich was wanting Waterworks to refund money that the Board of Trustees did not feel was warranted to be refunded to the School District. Addressing Commissioner Leftwich Mr. Bonner stated you are the representative of the owners of the Waterworks and you are not a school district representative. Mr. Bonner stated that he did not remember what Commissioner Leftwich was talking about.

Commissioner Leftwich, to clarify, asked Mr. Bonner that his position is that even though he represents Waterworks that if he has firsthand knowledge of an overcharge that he is not supposed to report? Is that what you are insinuating?

Mr. Bonner replied by stating that was not what he was saying. His remembrance of what he (Leftwich) is talking about was advocacy by him that we turn over money to the school district.

Commissioner Leftwich commented than you are further elaborating that it is not my job to bring up overcharges that I know of. Mr. Bonner replied: I've explained myself.

He continued by explaining that in the last session the Legislature passed a bill that school districts did not have to pay impact fees when they build new schools. Impact fees paid for the expansion of the system. When the TCEQ and Water Development Board look at a water system they look at what the capacity is and impact fees pay for increase in capacity. When you put it a new school with those large size meters it affects the capacity. The Board did not want to waive impact fees because we thought we needed those fees for expansion and so the Board voted not to allow the school district without paying impact fees.

Commissioner Leftwich commented that this was a different issue--nothing related to the overcharges.

Mr. Bonner continued to explain that an agreement was reached with the school district and at the same time Ken Mitchell had brought it up that we had overcharged the school district for water and sewer. So at issue were the impact fees and the charges for water and sewer. Mr. Bonner stated that he believed that an agreement had been reached with the School District that would waive the impact fees and they would have water to construct their school but they would not bring up again the charges for water. Someone at the school district disagreed. Mr. Bonner stated that Mr. Gunn has been working with the school district for 3-4 years. The ordinance was passed in 1980 and apparently everybody--- the school district, the Waterworks ignored that ordinance. Nobody at Waterworks could tell us why the ordinance was not followed. The ordinance was written to reflect a credit to the school district similar to the winter averaging because of the number of water meters that they were putting because the water was going to the grass and not for domestic use. About the time this ordinance was passed the school district starting putting in water meters that were sprinkler meters and it took considerable time for Waterworks staff to go back to the records to come up with an agreement and an agreement was reached. Mr. Bonner stated that he did not know why the agreement did not get signed by Waterworks but that was a staff function but the matter has been resolved and the repayment will be paid in accordance with the agreement.

Commissioner Leftwich stated that the fact is on July 12, 2008 Mr. Bonner declared publicly that it had been settled and this was in response to his bringing it back up to get it resolved. But Mr. Bonner told the public that Commissioner Leftwich was misinformed. Commissioner Leftwich asked Mr. Bonner didn't he think he had the fiduciary responsibility to come back to him as his Commissioner and say that it was not done but that it get done instead of going publicly and attacking his credibility. What about my credibility as a Commissioner? You said in 2008 this was done again in 2009

you did the same thing. Whose credibility are we talking about when you are saying that this was done and saying that I was the one that was misinformed?

Mayor Boswell stated that the point had already been made a couple of times.

At this time Commissioner Leftwich stated he had no further questions.

**ACTION TAKEN TO REMOVE CURTIS BONNER, UTILITY TRUSTEE, FROM SERVING ON THE UTILITY BOARD OF TRUSTEES ALSO KNOWN AS THE HARLINGEN WATERWORKS BOARD FOR CONDUCT REASONABLY CONSTRUED TO BE OR BECOME DAMAGING TO THE PUBLIC AND EFFICIENT OPERATION OF THE WATER AND SEWER SYSTEM UNDER THE PROVISION OF THE HARLINGEN CITY CHARTER.**

Commissioner Leftwich made a motion to remove Curtis Bonner, Utility Trustee, from serving on the Utility Board of Trustees, also known as the Harlingen Waterworks Board for conduct reasonably construed to be or become damaging to the public and efficient operation of the Water and Sewer System under the provision of the Harlingen City Charter. Commissioner Prepejchal seconded the motion and it carried by the following vote:

Aye: Leftwich, Prepejchal, Ruiz, Trevino  
Nay: Marra

Mayor Boswell commented that if we don't have water rights we are going to be in big trouble one of these days and playing chicken with water rights and the water system is not what we need to be doing. The Commission has approved all of the actions that has been taken that Mr. Bonner has been accused of. This is going to set a bad precedent for people wanting to serve on these boards.

The motion carried 4 to 1.

(audience applause)

Mayor Boswell apologized to the actions of the Commission because he felt it was wrong and stated that he did not think that it is a fair way to treat somebody who has served for over 7 ½ years on one of our boards.

**RICHARD URIBE APPOINTED AS A UTILITY TRUSTEE TO THE HARLINGEN WATERWORKS BOARD**

Commissioner Leftwich made a motion to appoint Richard Uribe to the Utility Board of Trustees/Harlingen Waterworks Board. Commissioner Prepejchal seconded the motion and it carried by the following vote:

Aye: Leftwich, Prepejchal, Ruiz, Trevino  
Nay: Marra

The motion carried 4 to 1.

**DISCUSSION HELD AND ACTION TAKEN UNDER THE AUTHORITY OF HARLINGEN CITY CHARTER ARTICLE IV, SECTION 8 TO INVESTIGATE THE FINANCIAL TRANSACTIONS OF THE HARLINGEN WATERWORKS BOARD AND THE ACTS AND CONDUCT OF ANY OFFICIAL AND EMPLOYEE REGARDING WHETHER OR NOT THE WATERWORKS BOARD GOT THEIR BUDGET AMENDMENTS APPROVED BY THE HARLINGEN CITY COMMISSION AS REQUIRED BY THE HARLINGEN CITY CHARTER PRIOR TO SPENDING CITY UTILITY FUNDS IN FY 07-08, FY 08-09 AND FY 09-10 (LEFTWICH/TREVINO)**

Commissioner Prepejchal made a motion to authorize the investigation. Commissioner Ruiz seconded the motion.

Mayor Boswell asked what is the scope of the investigation? Commissioner Prepejchal it is related to the transactions ---purchase of water rights in 2008.

Mayor Boswell asked the Commission who would conduct the investigation?

Commissioner Prepejchal replied 'the City Auditor'. Roxann Cotroneo stated that the City Charter authorizes the City Auditor and any other officials deemed necessary in the investigation.

Mayor Boswell affirmed the investigation is to be conducted by the City Auditor to audit the three years to determine whether or not there were any expenditures that were not approved by the budget or budget amendments.

Ms. Cotroneo stated the investigation would focus only on the budget amendments.

Without the City Auditor being present, Mayor Boswell commented that if she is unclear as to what she is supposed to do, she would need to come before the Commission to ask what it is the Commission wants her to do.

Voting on the motion carried unanimously.

### **CITIZEN COMMUNICATION**

Gregorio Garcia spoke on the demotion of Luciano Rubio. He stated that Harlingen has come a long way and the City Commissions have made good decisions and bad decisions. He indicated that Sam Lozano (in the audience) was the first Hispanic Mayor in Harlingen. This is a pride for Harlingen. He alluded to Sheriff Lucio when he tried to become Chief of Police but instead a Lieutenant was made Chief. He also commented that Mike Perez was the best City Manager that he has ever known.

Mr. Garcia spoke of Luciano Rubio's credentials and was Assistant Chief for 8 years. He stated that Mr. Rubio has done a good job and he wanted the Commission to say what it was that Luciano did wrong. He stated that all he was asking was for the Commission to pick the right candidate for the position of Assistant Chief. If Chief Castillo demoted Mr. Rubio based on something bad Mr. Garcia felt that the public needs to know.

Joe Rubio, 2309 Hacienda Road, pointed out that the minutes of August 18, 2010 does not reflect that an executive session was held under the Consent Agenda where his brother was discussed. He asked that the minutes be corrected to reflect such. Secondly, he spoke about the former Assistant Chief, his brother. He stated that the City did damage to him about 10 years ago and now it is happening to his brother. Mr. Rubio stated that he had a conversation with Mr. Yerena and he asked that his brother now know he was talking to him because he does not want his brother exposed to stuff like this because he is not political. He stated that his brother devoted 25 years to the Police Department and he was demoted because Chief Castillo was under pressure to fix the PD and is using his brother as a scapegoat. Mr. Rubio pointed that all five Commissioners voted on the decision unanimously instead of asking for an investigation. He stated that he had previously asked how many signatures were required on a petition to get the Commission to change their decision. The City Manager has the final authority whether to demote his brother or not. This is not fair to his brother and he stated that a letter was being circulated to the public that basically is asking for an investigation. There is some possible criminal conduct in the letter. He stated that the Chief knows the man possibly stole time but he wouldn't do anything about it and so now the Commission knows of a potential crime of time theft. He asked that the Commission reconsider and give Mr. Yerena the freedom of being fair to his brother when his grievance comes up.

Mr. Rubio also questioned why the City Commission, the City Secretary feel the need to cater to Tony Chapa who was sitting in the audience who also had nominated him as 'scumbag of the year' award and made some comments regarding Mr. Tony Chapa. Mr. Rubio to an incident that occurred earlier in the afternoon regarding an email from Mr. Chapa to the City Secretary. He questioned why anyone still talks to Mr. Chapa who is an

embarrassing person. He commented that Mr. Chapa is part of the problems of Harlingen.

Yolanda Shoffeitt referred to the City Commission of October 6 where the minutes reflected the comments on the issue of Commissioner Marra at her District 3 meeting. Ms. Shoffeitt stated that she wanted to clarify the minutes by pointing out specifically the individual that she was referring to in the minutes and stated that she was referring to Commissioner Marra. Ms. Shoffeitt referred to comments that were made by Commissioner Marra regarding the new City Manager, Mr. Yerena, his qualifications, and the salary that he was offered. She stated that Ms. Marra had divulged in a public meeting comments on Mr. Yerena that were discussed in executive session. Ms. Shoffeitt continued to make comments on Commissioner Marra but then her allotted time expired and she stopped her public comments.

**MINUTES FOR APPROVAL – SPECIAL MEETING OF OCTOBER 6, 2010 AND REGULAR MEETING OF OCTOBER 6, 2010**

Commissioner Leftwich made a motion to approve both sets of minutes as presented. Commissioner Ruiz seconded the motion and it carried unanimously.

**CONSENT AGENDA:**

- A. ORDINANCE ADOPTED ON FINAL READING TO AMEND SECTION 97.21 OF CHAPTER 97 OF THE HARLINGEN CITY CODE, AS AMENDED, AND PROVIDING THAT QUALIFIED PARKS AND RECREATION ADVISORY BOARD MEMBERS MAY SERVE MORE THAN ONE 3-YEAR TERM.**
- B. REQUEST BY OUR LADY OF THE ASSUMPTION CHURCH TO CLOSE THE 1300 BLOCK OF WEST LINCOLN AT ‘L’ STREET AND ‘M’ STREET ON FRIDAY, NOVEMBER 5, 2010 AND SATURDAY, NOVEMBER 6, 2010 FROM 5:00 P.M. TO 11:00 P.M. FOR THEIR ANNUAL KERMES FESTIVAL APPROVED.**
- C. REQUEST BY ST. ALBAN’S EPISCOPAL CHURCH AND DAY SCHOOL TO CLOSE HIGH STREET AT AUSTIN AVENUE AND BOWIE AVENUE FROM 2:00 P.M. TO 7:00 P.M. ON SUNDAY, OCTOBER 31, 2010 FOR ‘BOOFEST’ APPROVED.**
- D. REQUEST BY THE HUMANE SOCIETY OF HARLINGEN TO CLOSE JACKSON STREET BETWEEN 6<sup>TH</sup> STREET TO ‘A’ STREET FROM 8:30 A.M. TO 10:00 A.M. ON SATURDAY, OCTOBER 30, 2010 FOR THEIR ‘PEDALS FOR PUPPIES KIDS BIKE PARADE’ APPROVED.**
- E. REQUEST BY THE FIRST UNITED METHODIST CHURCH OF HARLINGEN TO CLOSE 4<sup>TH</sup> STREET AT THE INTERSECTION OF HARRISON AVENUE AND VAN BUREN AVENUE FROM 3:00 P.M. TO 8:00 P.M. ON SUNDAY, OCTOBER 31, 2010 FOR THEIR ‘FALL FESTIVAL’ APPROVED.**
- F. RESOLUTION ADOPTED AMENDING THE DEVELOPMENT CORPORATION OF HARLINGEN, INC. BUDGET FOR FISCAL YEAR 2009-10 APPROVED.**

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

**VARIANCE REQUEST TO THE CITY OF HARLINGEN SUBDIVISION ORDINANCE NO. 07-28 SECTION 4.1.3(H) WITH REGARDS TO THE 33’ WIDTH AND THE 100 FT. RIGHT-OF-WAY REQUIRED TO THE TURNAROUND RADIUS FOR A CUL-DE-SAC STREET ON THE PROPOSED REPLAT OF THE FOUNTAIN VIEW SUBDIVISION LOCATED AT THE NORTHEAST CORNER OF DAVIS AVENUE AND SHADOW BROOK CIRCLE APPROVED. APPLICANT: BROWN, LEAL & ASSOCIATES, C/O BRENT MEYER**

Joel Olivo, Planning Manager, stated that the developer is requesting a 3-foot variance to the 33-foot wide pavement requirement and a 10-foot variance to the 100-foot of

turnaround radius requirement for a cul-de-sac street, being that the existing subdivision is 100% developed. This was originally platted as a one-lot subdivision and the developer is proposing to convert the existing one lot subdivision to accommodate the twelve existing residential patio homes. Both the City Engineer and the Fire Marshall have reviewed the request and they have no objection to the variance being granted subject to the applicant removing the islands, which are located on the north and south end of the property. Staff recommended approval.

Commissioner Marra made a motion to approve the variance as recommended by staff. Commissioner Trevino seconded the motion.

Under discussion Commissioner Trevino asked who is asking that the fountain and landscape amenities be removed and asked if the owner had any objections. Mr. Olivo replied that staff had requested this to provide the required access for emergency vehicles. He further explained that he visited the site personally. The street is not very wide and there are cars parked on both sides, even a trailer that is parked around the radius of the cul-de-sac and this reduces the access to emergency vehicles.

The motion carried unanimously.

**VARIANCE REQUEST TO THE CITY OF HARLINGEN SUBDIVISION  
ORDINANCE NO. 07-28, SECTION 4.1.3(K) 1 WITH REGARDS TO THE  
ADDITIONAL 10 FT. RIGHT-WAY REQUIRED FOR A MAJOR ARTERIAL  
STREET ON THE PROPOSED MANANA SUBDIVISION LOCATED ON THE  
WEST SIDE OF ED CAREY DRIVE NORTH OF EXPRESSWAY 77/83  
APPROVED. APPLICANT: BROWN, LEAL & ASSOCIATES, C/O JEFFREY  
KELLOGG AND RICHARD H. WELCH**

Joel Olivo explained that the developer is requesting a 10 ft variance to the 120 ft of right-of-way required for Ed Carey Drive which is a state maintained road that requires 120 ft of right-of-way. Currently, it has 100 ft. of existing right-of-way. Per the Thoroughfare Plan 120 ft is required to be dedicated. The developer is responsible for dedicating ½ of the right-of-way so in essence he is asking for a 10 ft variance. There are four lots (existing) and he is proposing to replat them to accommodate each of the buildings on the subject lots.

Mr. Olivo indicated that the City Engineering Department and TxDOT have reviewed the variance request and have no objection to the variance being granted. Staff and Planning and Zoning are recommending approval.

Commissioner Trevino asked when the 120 ft. was established and why. Mr. Olivo replied that this part of the comprehensive plan that requires 120 ft for a major arterial street. It also meets the state's requirements for a major arterial.

Commissioner Trevino suggested that the City Commission review the Thoroughfare Plan for the possibility of amending it.

Commissioner Trevino made a motion to approve the variance request. Commissioner Prepejchal seconded the motion and it carried unanimously.

**CONTRACT FOR SERVICES BETWEEN THE CITY OF HARLINGEN AND  
THE RIO GRANDE VALLEY BIRDING FESTIVAL FOR USE OF  
HOTEL/MOTEL TAX FUNDS APPROVED**

Roel Gutierrez, Director of Finance, stated that during the budget workshops the RGV Birding Festival Board requested and was granted \$33,000 from the hotel/motel funds by the City Commission. The \$33,000 is reflected in the approved budget for fiscal year 2010-11.

Commissioner Leftwich made a motion to approve the contract for services between the City of Harlingen and the RGV Birding Festival. Commissioner Prepejchal seconded the motion and it carried unanimously.



**CONTRACT FOR SERVICES BETWEEN THE CITY OF HARLINGEN AND THE HARLINGEN PERFORMING ARTS THEATRE BOARD OF DIRECTORS FOR USE OF HOTEL/MOTEL TAX FUNDS APPROVED**

Mr. Gutierrez stated that HPAT was granted \$27,000 during the budget workshops. These funds are to be used to promote tourism and the convention and hotel industry within the City of Harlingen by promoting performances and activities held at the performing arts theatre. The \$27,000 is reflected in the approved budget for fiscal year 2010-11.

Commissioner Leftwich made a motion to approve the contract for services between the City of Harlingen and the Harlingen Performing Arts Theatre Board of Directors. Commissioner Prepejchal seconded the motion.

Under discussion, Commissioner Trevino asked if this was the same amount as last year. Mr. Gutierrez replied that they would be bringing an invoice back to the City Commission for additional funding as it relates to the roof repairs.

Commissioner Trevino pointed out that they are supposed to come back before the City Commission to discuss some youth programs and have them involved with the gang task force.

Voting on the motion was unanimous.

**BID ACCEPTED AND CONTRACT AWARDED FOR THE PROPOSED NORTHWEST AREA DRAINAGE IMPROVEMENTS PHASE III UNDER BID NO. 2011-01**

Ponciano Longoria, City Engineer, explained that the City received a grant from the Texas Department of Rural Affairs for \$2,190,384 to fund the construction for the northwest area drainage improvement Project Phase III.

On October 5, 2010 staff received and opened a total of four (4) bids for the project. One of the bidders submitted a completed sealed bid. Leal Construction, Inc. was the lowest bidder for a base bid of \$1,256,359.91. Mr. Longoria explained that Leal Construction submitted an incomplete Conflict of Interest Questionnaire along with their bids. The same day that the bids were opened, Leal Construction submitted a completed CIQ form.

Staff recommended awarding the bid to Leal Construction, Inc. for the low bid amount of \$1,256,359.91.

Commissioner Trevino affirmed that most of the bids were incomplete and asked if most of the time when that happens they are rejected and commented that there's always an issue with the conflicts of interest. Mr. Longoria explained that staff provides bidders with examples of the CIQ and is discussed at the pre-bid meetings.

Mr. Longoria added that from the \$2.1 million there will be about \$900,000 left and staff has added an additional project that will take care of the area at the current Police facility on Eye Street that ties into the Northwest drainage and if the bids for that project come in low, staff will add another project until all funds are used.

Commissioner Trevino asked if staff had done research on the background of the company and checked their references. Mr. Longoria replied yes and this is the first time they do work for the City of Harlingen.

Commissioner Prepejchal questioned the CIQ and asked if the bids were sealed. Mr. Longoria replied yes and Leal was the bid opening.

Roxanne Cotroneo clarified the issue on the conflict of interest. She explained that under State Law Chapter 176 of the Texas Local Government CIQ questionnaires filled out by vendors are given up to 7 days after the bid opening to submit their CIQ in our bid

request we asked that they submit it on that day but technically they have 7 days from the date of the bid opening.

Commissioner Trevino requested that this clarification be pointed out at the bid meetings.

Commissioner Trevino made a motion to accept the bid from Leal Construction, Inc. for the low bid amount of \$1,256,359.91. Commissioner Prepejchal seconded the motion and it carried unanimously.

**CITY OF HARLINGEN AUTHORIZED TO EXECUTE A MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION-OFFICE OF INSPECTOR GENERAL AND THE CITY OF HARLINGEN**

Chief Castillo explained that in 2009 the Texas Legislature enacted a series of reforms to correct instances of abuse, neglect and exploitation at State supported living center. The Texas legislature also approved a settlement agreement with the Department to Justice that now requires the State to provide law enforcement personnel who have specialized training to conduct criminal investigations at State supported living centers involving allegations of abuse, neglect or exploitation. By entering into the MOA, the City of Harlingen is formally requesting and accepting the assistance of the Texas Health and Human Services Commission – Office of the Inspector General in performing investigations into allegation so criminal offenses occurring at the State supported living center located at 1401 Rangerville Road. There is no cost impact on the City of Harlingen by entering into this agreement and accepting the stipulated assistance.

Commissioner Leftwich made a motion to approve the Memorandum of Agreement. Commissioner Prepejchal seconded the motion and it carried unanimously.

**FACILITY USAGE SUBORDINATE AGREEMENT WITH THE HARLINGEN DYNAMO JR's. AND RIO VALLEY YOUTH SOCCER ASSOCIATION-SCORPIONS FOR USE OF THE HARLINGEN SOCCER COMPLEX APPROVED**

Gabriel Gonzalez explained that on September 17<sup>th</sup>, Commissioners Trevino and Commissioner Leftwich met with staff, including representatives from the Dynamo Jr's and the Rio Valley Youth Soccer Association to work out an agreement where both clubs could use both soccer fields. The attached contract calls for joint use. He pointed out a change to Page 3, Section 2 and stated that maintaining goals would be removed because the City doesn't maintain any goals for either of the clubs. Staff recommended approval of the contract.

Commissioner Leftwich made a motion to approve the subordinate facility usage agreement. Commissioner Marra seconded the motion.

Under discussion, Kenny Landrum, 1361 Harrison, stated his disappointment with Commissioner Leftwich. Mr. Landrum explained how one team that took one club from McAllen and they are portraying themselves as Harlingen Dynamos. Mr. Landrum added that everything they are doing is registering in McAllen. What is more upsetting is that they are portraying themselves as non-profit but everything goes to this one individual with the exception of their training fees. However they want to run their business is their business. Of great concern was that we have 74.8 % of our kids who are from the City of Harlingen, 25% of their 40 are from the City of Harlingen and you (addressing Commissioner Leftwich) made the decision to blow us off and, basically, not to listen to us. Mr. Landrum referred to a letter that Commissioner Leftwich received from Mr. Bazan, which Mr. Landrum felt was totally inaccurate. He stated that they have followed the contract precisely and the Dynamos are just running over Harlingen basically. While you can't hold tryouts here, you can't do the tournaments or training yet they come in and do it anyway and that, Mr. Landrum stated, is their concern.

Commissioner Leftwich replied and stated that he has 2 daughters that play in the Arroyo Youth Club. The facility is a taxpayer facility; it does not belong to Arroyo Youth

Soccer. The fact is that there are millions of dollars of debt to pay for that facility. Those people that might register in McAllen live in Harlingen and they pay taxes in Harlingen. The fact is they accommodated the Ranger's schedule and they have a subordinate agreement. Addressing Mr. Landrum, Commissioner Leftwich commented you have the primary scheduling of the facilities, for practice, for games, for lights. He asked Mr. Landrum if he did not think that it's in the best interest of taxpayers to get the ultimate utilization of that facility? Why would you want to exclude another league that services the Harlingen area that keeps kids out of gangs? The fact is that everybody has access to it; nobody has exclusive rights to completely use any park in the City of Harlingen. They get one half of the field on a Monday or Wednesday or whenever you all agreed to it. It was based on the fact that it went around your schedule, your games. They don't play games on a weekend, they don't infringe on your playing time; I told everybody I was going to be fair with everybody. You bring your own toys, you pick up after yourselves, and I don't think that it's unfair to anybody. Commissioner Leftwich stated that the fact is that we need more kids in sports and if you are going to exclude the children of the community because they are not in your organization that is unacceptable to me and I'll make that decision every time.

Kenny Landrum then spoke about the name recognition and stated that he understands and he is fine with the contract but as President of the club, whenever the parents and the club members call him to come out and express their opinion—that is all he is doing. They have not laid one foot on that field on Mondays and Wednesdays and they will continue to stay out of the way.

Commissioner Leftwich again reminded Mr. Landrum that the taxpayers paid for the landscaping contract, they paid for the lights, and the debt on the field and we need to get as much utilization of that facility for taxpayers value as we can.

Mayor Boswell commented that he did not think that was what Mr. Landrum was complaining about but rather that he's complaining about the fact that he felt 'bullied' by Commissioner Leftwich.

Mr. Landrum agreed.

Commissioner Leftwich stated that he was not in the negotiations and he did not bully him to accept any term that he didn't have to.

Mr. Landrum explained that Commissioner Leftwich came in and said that if we did not agree to it that that the City and the Commissioners would make the decision and we agreed to give them (Dynamos) the field. He stated that he was just expressing the comments on behalf of his club.

Commissioner Prepejchal then stated that his son plays soccer at the soccer complex. I have been hearing a lot of things from people that are out there that the teams that are not select teams; that they are complaining because they are not getting time to practice or play or they get shoved over to the other side of the park.

Commissioner Trevino agreed that this is what they are talking about - another select team is coming that is not a part of the Arroyo League.

Commissioner Prepejchal asked if the select team is out there playing is from McAllen and Mr. Landrum replied yes. Some of the kids are from Harlingen and they're registered as Harlingen kids.

Commissioner Leftwich stated that the fact is that you have the primary schedule. You have the main facility usage agreements.

Commissioner Prepejchal questioned whether the select teams are getting better preferences than the regular teams. Mr. Landrum replied yes they are. The select teams always practice later in the evenings because they are older kids. The younger teams come out and practice first because they're tots; they're out in the east side of the park

during daylight. When it gets dark and the lights come up, the select teams come out and they are on the fields. So, yes, they kind of get a preference because they are older. Mr. Landrum pointed out that there are 22 select teams and 100 regular teams. Discussion followed on the teams and it was pointed out that there are two different groups (from McAllen).

Commissioner Prepejchal commented that the taxpayer pays for the soccer field and everybody gets to play whether it is a select team or a regular team.

Commissioner Trevino felt that the important part about this is that we have a usage agreement; everybody has agreed to it, Arroyo Youth is the main group responsible for the scheduling of all the teams that are included. Before it was for whoever was out there first. This is going to alleviate conflicts of parents and coaches that are going to be fighting out there.

Kenny Landrum explained that the coaches are very mad about it and it takes a lot of our time dealing with them. There are roughly 800 kids that are citizens of Harlingen and they have 5 from the McAllen bunch. Who get the most preferential, the 800? Or the 5? . Initially when they first come in and they say they need to practice on field 3 that's where we put them. This way we keep the club separated. Soccer in the Valley is very competitive and they are pulling and recruiting kids. So you have kids coming over and practicing on one spot and then you have another club, which is us, and then they're saying they want one of ours. So they start the walk thru and start calling the parents and the next thing you know, the kids are trying to change clubs and that's going on. But one good thing about it is our select program is going very well.

Mayor Boswell asked how many kids are registered now?  
Mr. Landrum replied 992.

Commissioner Marra thanked Mr. Landrum and apologized for how he was treated.

Mayor Boswell thanked Mr. Landrum and his board for all the work that they do.

Commissioner Leftwich apologized to Mr. Landrum if he felt that he had offended him; if he felt he had been forced into the agreement but it was only in the best interest of the community and the kids.

Kenny Landrum stated that if Commissioner Leftwich had allowed more time for himself at the meeting everybody could have explained the whole situation around it and at least they would have felt better.

Commissioner Leftwich reminded Mr. Landrum who was present at the meeting and he stated that there were a lot of issues that were being brought up and really did not affect the fundamental of what we were trying to do. That is why he was trying to come to some agreement. He commented that he was not present for the negotiations but they did lay some groundwork for all to go by.

Mr. Landrum thanked the Commission for all they do.

Mayor Boswell called the question and voting on the motion carried unanimously.

At this time, Mayor Boswell presented a certificate of special recognition to Lyle Garza for his service on the Harlingen Housing Authority.

Mr. Garza issued comments of appreciation for the opportunity to serve on the Housing Authority Board.

## **DISCUSSION HELD ON THE CREATION OF A JUVENILE/MINOR MUNICIPAL COURT DOCKET**

Roxann Cotroneo gave a power point presentation. She defined the words 'juvenile', 'minor', and 'adult'. She explained that right now all cases are commingled and this is

not the best way for our community to serve the youth. She is proposing to have youth court dockets on the 1<sup>st</sup> and 2<sup>nd</sup> Wednesdays of the month at 1:30 p.m. She cited the number of citations (traffic and non-traffic) issued to juvenile/minors since 2008 and noted that 2010 to date the crime numbers have decreased.

Ms. Cotroneo outlined the top 6 non-traffic offenses as being:

- 1) theft under \$50,
- 2) assault – fighting with another
- 3) assault – threats
- 4) disruption of classes
- 5) minor in possession of alcohol
- 6) minor in possession of tobacco

She spoke briefly on the “Turning Light” program, which offers classes in alcohol and tobacco awareness. She explained how she would be working with TSTC and the United Way to provide and bring resources into the courtroom for the youth.

Ms. Cotroneo spoke about the 2-1-1 information line. This is a computer database that provides any type of services that one may need and she will be meeting with them to see how they can help with the youth docket.

Mayor Boswell commented that this is good thing and get to the end of the year to see how the budget is doing in order to start spending money on these types of programs.

Ms. Cotroneo commented that when the Community Court is ready everyone would show up at the same location.

#### **BOARD APPOINTMENTS**

Commissioner Ruiz appointed Charlie Perez to the Downtown Improvement District.

Commissioner Leftwich appointed Dan Araiza to the Golf Advisory Board and Frank Hale to the Downtown Improvement District.

Commissioner Marra appointed Shane Allen to the Parks and Recreation Board.

Commissioner Prepejchal appointed Ramiro Gonzalez to the Animal Shelter Board.

Mayor Boswell appointed Danny Hoehne to the vacant position on the Civil Service Commission; Martin Segura to replace Joe Villarreal and Page Flinn to the Downtown Improvement Board.

Commissioner Leftwich made a motion to approve the appointments. Commissioner Prepejchal seconded the motion and it carried unanimously.

There being no further business the meeting adjourned at 8:15 p.m.

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Chris Boswell, Mayor

Attest:

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Sylvia R. Trevino, City Secretary