

REGULAR MEETING

CITY COMMISSION

HARLINGEN, TEXAS

SEPTEMBER 21, 2011

A Regular Meeting of the Harlingen Elective Commission was held on Wednesday, September 21, 2011 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
Jerry Prepejchal, Mayor Pro-Tem, District 4
Gustavo C. Ruiz, Commissioner District 1
Robert Leftwich, Commissioner District 2
Kori Marra, Commissioner District 3
Joey Trevino, Commissioner District 5

Staff Present:

Carlos Yerena, City Manager
Amanda C. Elizondo, City Secretary
Roxann P. Cotroneo, City Attorney
Gabriel Gonzalez, Assistant City Manager
Roel Gutierrez, Finance Director

Mayor Boswell called the meeting to order, a quorum was established. He stated a notice of the meeting had been duly posted according to state law and the following proceedings were held.

Invocation/Mayor Pro-Tem Jerry Prepejchal

Mayor Pro-Tem Jerry Prepejchal gave the invocation.

Pledge of Allegiance/Welcome

1) Citizen Communication

Mayor Boswell led the Pledge of Allegiance and welcomed everyone in attendance. He stated he would be changing the order of the agenda. The City Commission would be going into executive session early to discuss some issues due to some of the agenda items that were inter-related. Mayor Boswell then proceeded with the following items:

22) Consider and take action to approve a resolution adopting the Development Corporation of Harlingen, Inc. 2011-12 Fiscal Year Budget. Finance Department

Commissioner Leftwich relinquished his chair and excused himself from the meeting room in order to avoid "an appearance of impropriety" and signed an affidavit, which was presented to the City Secretary.

Roel Gutierrez, Finance Director highlighted the Harlingen Economic Development (EDC) Corporation, Inc. budget and stated the EDC approved their budget on September 13, 2011. The projected revenues were \$8,232,763.00 and expenditures were projected at \$8,232,763.00. This was a balanced budget and staff was recommending approval of the EDC's budget for Fiscal Year 2011-2012.

Motion was made by Commissioner Marra and seconded by Commissioner Leftwich to approve the resolution adopting the EDC's Budget for Fiscal year 2011-2012. Motion carried unanimously.

21) Consider and take action to approve an ordinance on first reading approving a negotiated resolution between the Cities served by the Texas Gas Service ("Cities") and the Texas Gas Service ("TGS") regarding the company's April 28, 2011 cost of service adjustment

("COSA") filing; declaring existing rates unreasonable; adopting tariffs that reflect the rate adjustments consistent with the negotiated settlement; and finding the rates to be set by the attached tariffs to be just and reasonable; providing for the recovery of the Cities' and TGS' reasonable and necessary rate case expenses. (City Attorney)

Roxann Cotroneo, City Attorney stated on April 28, 2011, the Texas Gas Service filed an application with the City of Harlingen and various cities through the Rio Grande Valley for a cost of service increase. Texas Gas Service was requesting an additional 2.5 million dollars to cover their operational expenses. On May 18, 2011 the city agreed to work with the Lower Rio Grande Valley Development Council jointly with other cities in an effort to hire consultants to review the application and negotiate rated increase on behalf of cities. The consultants and attorney were hired to validate that Texas Gas Service did indeed needed an increase. They were able to decrease the amount that Texas Gas Service was requesting from 2.5 to 2.1 million dollars. The purpose of the ordinance was to adopt the new rate that took effect August 1, 2011 as per a settlement agreement. The average cost for residential customer would increase by \$1.05 and for the commercial customer would be \$21.55 per month.

For the record, Ms. Cotroneo read the caption of the ordinance.

Motion was made by Commissioner Marra and seconded by Commissioner Leftwich to adopt and approve the ordinance as presented on first reading.

28) Closed/Executive Session:

b.) pursuant to Chapter 551, Subchapter D, V.T.C.A., Government Code Section 551.071 consultation with the City Attorney to seek legal advice regarding Charles E. Lee vs. City of Harlingen, Civil Action No. B-10-CV-233 in the United States District Court for the Southern District of Texas. Attachment (City Attorney)

At 5:38 p.m., Mayor Boswell announced the City Commission would convene in executive session and declared the meeting closed to the public.

Motion was made by Commissioner Marra and seconded by Commissioner Leftwich to go into executive session to discuss Item 28(b). Motion carried unanimously.

At 6:14 p.m., Mayor Boswell announced the City Commission had completed its executive session and declared the meeting opened to the public. He stated the City Attorney had briefed the City Commission on the status of the lawsuit and no action was required.

25) Discuss, consider and possibly take action to approve an ordinance on first reading repealing certain sections or all of Ordinance No. 08-65 approved by the Harlingen City Commission on November 19, 2008. (This item was requested by City Commissioners: Robert Leftwich and Gus Ruiz)

For the record, the City Attorney read the caption of the ordinance.

Motion was made by Commissioner Leftwich and seconded by Mayor Pro-Tem Prepejchal to approve and adopt the ordinance on first reading repealing certain sections or all of Ordinance No. 08-65 approved by the Harlingen City Commission on November 19, 2008.

Mayor Boswell stated by passage of the ordinance it would de-annex two parcels of lands that were annexed in 2008. This ordinance was handed to the City Commission as they walked into the meeting. He stated he did not have an opportunity to read the ordinance. Mayor Boswell asked Ms. Cotroneo to explain how this annexation would hurt the city due to the pending lawsuit.

Ms. Cotroneo stated that in May, 2010 the city received a petition from registered voters of the newly annexed area requesting to be de-annexed for failure to provide services. Under state law the City Commission had to de-annex this particular area within 60 days. They chose not to do so and took no action. This gave the authority to a petitioner or any petitioner who signed the petition to actually file a lawsuit against the city. Charles E. Lee filed a lawsuit against

the city. The lawsuit was filed in State District Court and the Texas Municipal Risk Pool assigned the law firm of McKamie and Krueger, LLP, experts in annexation law to work on the lawsuit on behalf of the city. Mr. Adolfo Ruiz, Attorney with McKamie and Kruger Law Firm was assigned to the case and the lawsuit was in State District Court and was moved to Federal District Court. The lawsuit was still very active and the city had filed a motion for summary judgment. The city then filed a motion stating that the other side has no evidence to support its cause of action. That motion of summary judgment remains pending in Federal Court and no court had ruled on it and no adverse action has been filed against the city for any annexation that took place. There has been no failure of legal services or failure of arguments on behalf of the city; the lawsuit remains active. Under state law, if any de-annexation occurs then the city could not annex the de-annexed area until ten years later. If the city chose to voluntarily de-annex the area the city could annex the same area within five years. The City Charter required two readings for passage of the ordinance. The ordinance was on the agenda for first reading by the City Commission and the second reading would be on October 5, 2011. If the ordinance was approved it would not be official until approved by the United States Department of Justice and approval could take up to sixty days. After the Department of Justice approved the de-annexation it would be final. This item was inter-related with the redistricting plans and the ordering of the Special Election for District 1.

Adolfo Ruiz, Attorney stated Mr. Lee alleged due process and legal contingent claim that was filed in State District Court and that was the reason this case was moved to Federal District Court. The allegations on the petition are of private nature and had responded to the Plaintiff's motion for summary judgment. He was very confident that the District Court would rule on the City's motion for summary judgment.

Ms. Cotroneo briefly explained the process that had been in 2008 when the city annexed the above mentioned area. She pointed out by state law the city had to inform the county that these tracts of land were being proposed for annexation. The county was responsible to assigning five representatives to the committee. This Committee was supposed to negotiate services for the annexed areas. The county failed to appoint the five members to negotiate on behalf of newly annexed area. The county's failure was not the city's failure and if the county failed it would have prevailed from the city growing. The City Commission and City Attorney at the time (Brendan Hall) made the decision to move forward with the annexation. As a result, the City decided to go ahead and appoint five members of the annexed area to negotiation services. That initiated an amended service plan. The City made a good faith effort to try to assist the newly annexed area. The city's decision to de-annex was not based on legal failure on behalf of the lawsuit and the City Commission had not done any wrong doing and did not waive any of its defenses in the lawsuit of Charles E. Lee vs. City of Harlingen.

Commissioner Ruiz asked whether the city had followed proper procedures.

Mr. Ruiz stated the annexation procedures had been followed by notifying the public and conducting public hearings.

Mayor Boswell asked for the amount of the cost that was spent on the newly service area.

Commissioner Leftwich requested a clarification that if the city got an unfavorable court judgment the city would not be able to annex that area for ten (10) years. If the annexation was done voluntarily and the city started the process again by doing it correctly then it was a five (5) year waiting period.

Ms. Cotroneo explained it would have to be within the city's five (5) year annexation plan. If it was a voluntary de-annex it could be annexed in five years; however, if it was court ordered it could be ten years.

Commissioner Leftwich stated the city could be at risk of losing this area. If there were other costs of action with respect to non-compliance with the service plan, then this could bring several litigations.

Mayor Boswell asked who was the original attorney who brought the lawsuit on behalf of the Plaintiff, Mr. Lee.

Mr. Ruiz replied David Earl from Earl & Associates.

Mayor Boswell asked if they were still representing the Plaintiff.

Mr. Ruiz replied no, they asked the court to be removed from the case because they were not being paid. The courts granted the motion to withdraw. Jason Mann, a local attorney was substituting in the case and was the attorney on record.

Ms. Cotroneo stated if the city voluntarily de-annexed then in theory the court could be informed that the city has voluntarily de-annexed making the lawsuit moot which meant it did not matter anymore. As a result the court could court ordered the city to pay the Plaintiff's attorney fees.

Mr. Ruiz stated the other side could request that their declaratory actions still proceed forward with the issue of attorney fees, but the litigation might not go away.

Mayor Boswell asked how much has the city incurred in attorney fees.

Ms. Cotroneo stated the litigation could amount to approximately \$60,000 and would come from the city's funds.

Mr. Yerena stated the known cost incurred by the city up to September 21, 2011 City Commission meeting was \$571,870.73.

Commissioner Leftwich stated the city was operating and did know if it was subsidizing the annexation area or whether the citizens were paying their own way. He stated in there were existing areas in town that needed help and why was the city taking on more area to annex. In the November meeting, he voiced a concern for the community regarding funding for public safety. A recommendation by Chief Castillo was to increase the Police Department staff. The City Manager and City Commission chose to move forward with the annexation without even considering the staffing at the expense of risking police officer and citizens safety.

Mayor Pro Tem Prepejchal stated the city was annexing additional land when the city could not even take care of the existing city areas. He stated de-annexation of these areas would bring additional that could be used in the districts for infrastructure.

Chief Whitten briefly explained the ratio of police officers as per the city's population.

Mayor Boswell asked Dan Serna, Public Works Director if this area was de-annexed what would happen to the sanitation services in that area.

Mr. Serna stated the sanitation services would be canceled and they would have to switch to the county services. The county charged around \$30.00 per month for a one pickup. The city offered twice a week pick-up and brush pick-up once a month for \$18.00 a month.

Motion was made by Commissioner Trevino and seconded by Commissioner Marra to end the discussion. FOR: Trevino, Marra AGAINST: Leftwich, Ruiz, Prepejchal. Vote 3-2

Charles Lee spoke in regards to the lawsuit. He stated the lawsuit was still very much alive. He did not appreciate the city having their attorney speak here tonight and then just allowing the citizens only a few seconds to speak. Mr. Lee mentioned he had affidavits where he had paid the previous attorney. He requested to dismiss Earl & Associates from the case and asked that they withdraw from the case. He briefed the Commission on the petition that was filed on the annexation. He was asking the Commission to vote for de-annexation and start over and do what was proper.

Jason Mann spoke with regards to the lawsuit. He stated the lawsuit had multiple parts. Whether the city failed to follow procedures was up to the courts to make that determination. There were viable claims from citizens in this area that the city was not providing the services that they were promised.

Arturo Carmona stated he was happy he was annexed into the city. He did see police officers in the area, but agreed with the city. He hoped that the City Commission would not de-annex the area. The city has done a great job in maintaining the area and he and his wife were satisfied with the services provided.

Yolanda Shoffeitt, 258 Altas Palmas stated the police department was overworked and underpaid. She was for the de-annexation.

Betty Devlin, 16041 Orange Drive spoke in favor of the de-annexation. She stated she was paying too much property tax and was on a fixed income. There had been very little improvements on her street. She rarely saw any police officers in her area.

Juan Ortega, 2401 Ailani Circle stated he was for the annexation area. He stated the item was not properly worded to consider the de-annexation. There were individuals in the community who were not aware that this was going to be discussed. He continued to state that the two commissioners who requested this item probably had a vested interest. Since Mr. Dial Dunkin had funded their campaigns and they should dismiss themselves from this discussion.

Commissioner Leftwich informed Mr. Ortega to refrain from making accusations that were untrue. He had not taken any campaign contributions in 2008 and it had no bearing to whether or not he would support the annexation because Mr. Ortega could find himself in legal problems.

Mr. Ortega stated he was not making any accusations, but only saying that Commissioners: Leftwich and Ruiz should refrain from voting.

Commissioner Leftwich stated he had not taken any money from Dial Dunkin and stated that he had been against the 2008 annexation since the beginning.

Evangeline Franco stated that she and her husband were against the annexation because they were not obtaining the services that they were paying for and were asking that they vote to de-annex the area.

Sonja Strader stated it was difficult for her to sale her property and was being asked to move her water meter from the eastside to the westside, build sidewalks, resurvey her property and other items that Planning & Zoning had asked her to do.

Mayor Boswell stated staff would be glad to sit down and meet with her regarding these issues. He asked her to give him a call. Mayor also informed the citizens that there are seven more people signed up to speak and if possible, please make it brief to allow everyone the opportunity to speak.

Dial Dunkin stated he agreed that they should be de-annexed and agreed with Chuck Lee on what he said.

Rev. Richard Duhamel stated he was under the opinion that this annexation was a joke. He stated he and his family were not allowed to vote because they were told that they were not in the city. Mr. Duhamel felt the city did not allocate the funds properly to provide the services and also stated that he was 100% disabled and preferred to be de-annexed.

Mayor Boswell informed the citizens that the county had announced that they would be laying off twelve officers and the city did not do any lay-offs; therefore, the county would increase their taxes.

Sherwood Hamilton stated that he was in agreement that they be de-annexed and commented on the services provided by the Police Dept.

Bruce Miller stated that he was against the annexation and stated that there were very few police officers in his area. Mr. Miller stated that he had been robbed several times and did not even bother to call the Police Department.

David Argabright stated that he had resided in Harlingen for 20 years and was of the opinion that they were so polarized, that every where they turned, there was an ethics complaint being filed.

Joe Rubio stated that 1996, Mayor William Card set up a program for Police staffing in certain areas and those numbers were increased. Mr. Rubio also stated that when he purchased his home area with the hopes that he would never be annexed and it was.

Peter Rettenhaler stated that his house burned down to the ground because there were no fire hydrants.

Carla Summers stated that she was very happy to be annexed and felt she had obtained the city services.

Jerry Moore stated that he agreed with the de-annexation. He felt that if the citizens did not want to be annexed then they should not be forced.

Commissioner Marra stated that we were all government and we were all paying taxes. The issue tonight was all about de-annexing. She wondered how the city would grow if the citizens did not agree because they did not want to pay more taxes. Whatever was decided tonight would affect Harlingen for years to come. If the vote was to de-annex, then not only those people would be affected, she felt that all of Harlingen would pay the price. Commissioner Marra also stated that Commissioner Trevino had been attacked by being told that he was not looking out for his District. She also felt that Commissioner Trevino was keeping a look-out for the entire city not just his district.

Mayor Boswell stated that he supported the annexation of this area so that the city could help control the security. If it was de-annexed, he felt that the safety and security would be in jeopardy. He mentioned that he was in agreement with Mr. Ortega's point because he would have not been able to tell what the item was unless city staff had told him. The item did not say de-annexation and it did not describe the area to be de-annexed.

Motion carried as follow: FOR: Mayor Pro-Tem Prepejchal and Commissioners: Leftwich and Ruiz. AGAINST: Commissioners: Marra and Trevino. Vote: 3-2

4) Consider and discuss proposed redistricting plans and possibly create new redistricting plans for the City of Harlingen's single member districts as required by federal law and using the 2010 United Census Data. (City Attorney)

a) Public Hearing

Rolando Rios stated after the final approval de-annexation ordinance, it would require approval from the Department of Justice (DOJ). The earliest it could be approved by the DOJ would be around December. He recommended that the City Commission approve one of the redistricting plans since the city would be conducting an election in December. Once the plan was approved by the city it would be submitted to the Department of Justice. It would take an estimated 60 days for the plan to be approved by the DOJ. The plan would be ready for the December Special Election. He highlighted each of the plans.

Mayor Boswell asked if the plans would have to be changed if part of the District was removed.

Mr. Rios responded the city would be deleting approximately 2,000 in population from District No. 5 and the plans would have to be re-drawn. However, this change would not affect the special election.

Mayor Boswell declared the hearing opened to the public.

Ron Lozano stated he did not understand how the city could conduct the election in December when the DOJ took 60 days to approve the redistricting plan.

Mr. Rios stated if the redistricting plan was approved tonight; the plan could be mailed to the DOJ after the meeting to meet the sixty day deadline.

Roxann Pais Cotroneo, City Attorney stated the Texas Constitution mandated the special election to be held within 120 days from the date of the resignation. By law the city had to conduct a special election before December 31, 2011.

Yolanda Shoffeitt, P. O. Box 697 stated as long as everything was legal and the plan included all races then everyone should be happy.

Tudor Uhlhorn, 1010 Stack Circle stated he preferred Plan "B" because it maintained the neighborhoods and boundaries without causing any wild de-ranged shapes like the other plans. Plan B kept natural dividing lines on major thoroughfares and the neighborhoods together to make it easier for individuals to go vote. He questioned if the Commissioner elect for District 1 would have to be removed out of his own district, if the city would redistrict again. He didn't quite understand.

Mr. Rios replied it was not mandatory, but the majority of the Mayor and Commission had the power to remove the commissioner out of the district.

Joe White, 1605 Walnut Court stated his neighborhood was small and conservative. He could not picture his neighborhood to be in the Treasure Hills District and was against Plan A because he did not want to be with Treasure Hills.

Commissioner Ruiz stated his constituents had a concern about the redistricting. He mentioned they had communicated with them through email and phone; however, he preferred that they communicated with the City Commission as a whole whenever they had concerns about agenda items.

Jerry Moore, 709 Town Lane questioned if the districts could be balanced by appraised value.

Mr. Aldolfo Ruiz replied the redistricting was based on the equal protection clause, which required equal population and had nothing to do with property value.

Curtis Bonner, 1818 N. 17th Street urged the Commission to re-draw the redistricting plans.

David Argabright, 2701 Cypress Drive stated the City Charter had not been changed to reflect the single member district residency requirement. He stated the charter still read Commission at Large.

Ron Lozano spoke with regards to alterations on the redistricting plans.

Chuck Lee, 15834 Palm Vista Drive stated for the record the Bass Pro Shop was not in the annexed area along with the new dealership on Altas Palmas Road.

Yolanda Shoffeitt stated the Department of Justice had the last word, so it had to be equal.

Danielle Altenberg with the Valley Morning Star stated it had been mentioned earlier that a candidate had to reside in the district for six months. She asked if the six months would apply for the old plan for District 1 or the new redistricting plan.

Mr. Aldolfo Ruiz replied there was a "waiver" on the residency requirement after the redistricting. One could not move into the new district and use the waiver.

Ken Benton, 402 W. Taylor asked about the decision criteria that the City is going to use in changing or eliminating any of the plans.

There being no further comments, Mayor Boswell declared the public hearing closed.

- 5) Consider and take action to adopt a new redistricting plan for the City of Harlingen's single member districts as required by federal law and using the 2010 United States Census Data and to authorize legal counsel to submit the adopted plans to the United States Department of Justice for approval.

Roxann Pais Cotroneo informed the Commission that at the next meeting there would be resolution presented with the plan that was adopted as an attachment.

Motion was made by Commissioner Leftwich and seconded by Commissioner Ruiz to adopt "Plan B". Motioned carried unanimously.

- 6) Consideration and take action to approve a resolution accepting Valley International Airport's amended mid-year capital improvement budget for Fiscal Year 2010-2011. (Mayor)

Commissioner Trevino excused himself from the meeting in order to avoid "an appearance of impropriety" and signed an affidavit, which was presented to the City Secretary.

Commissioner Leftwich asked if the Commission would be listening to the citizens that had signed up under citizen communication with regards to the "aquatics" issue.

Mayor recessed Item No. 6 to allow Mr. John Tucker to speak on the aquatics issue.

Mr. Tucker stated the new scheduled hours at the city pool had affected many of the school activity programs and asked the City Commission to reconsider this issue.

Mayor Boswell returned to Item 6 and informed everyone that this item was discussed at great length at the last City Commission meeting and wished to keep the discussion on this item short. He recommended approval of the resolution before the FAA's determination was announced which was under legal review at the present time.

Commissioner Ruiz stated he was pro-growth and pro-business and wanted for the record to show that he supported Sun Valley Aviation. He wanted for them to operate an FBO in Harlingen. In the past months, he had been trying for Gulf Aviation and Sun Valley Aviation to reach some type of compromise. Commissioner Ruiz stated Gulf Aviation had two hangers. He would like for Gulf Aviation to re-negotiate and operate one hanger and for Sun Valley to operate the other hanger. For Gulf Aviation and Sun Valley to reach an agreement and have the same lease terms.

Bonnie Villarreal, past Airport Board member stated everyone needed to move forward and there were so many citizens who had so much respect for the community and the airport. They needed to look at the Valley International Airport as a great entity.

Mayor Boswell asked as past Chairman of the Airport Board was she and the other board members recommending and supporting the amendment to the airport budget.

Ms. Villarreal replied yes.

Mayor Boswell stated the city would be getting an unfavorable ruling from the FAA.

Commissioner Ruiz asked Mr. David Garza if he was willing to negotiate the agreement on the hangers.

David Garza with Gulf Aviation replied he was willing to negotiate with the Airport Board to resolve the issue and that everything was negotiable.

Commissioner Ruiz asked if he was willing to give up one of his hangers in a formal mediation.

Mr. Garza answered it would have to be done in good faith.

Motion was made by Commissioner Ruiz and seconded by Commissioner Leftwich to table the item and direct the Airport Board to hold a formal mediation with all parties. Motion carried unanimously.

- 7) Consider and take action to support the Veterans' Memorial Project and direct staff to prepare and submit an application for funding from the 4B Development Corporation.
(Mayor)

At 9:01 p.m., Commissioner Trevino returned to the meeting.

Mayor Pro Tem Prepejchal asked Gabriel Gonzalez, Asst. City Manager how much funding did the 4B Board would receive every month.

Mr. Gonzalez replied approximately \$100,000 per month. He stated the 4B Board had to approve a project and their recommendation would then come before the City Commission for approval. Once approval was granted from the City Commission the 4B Board would undertake the project. Even though the board had not received all the funds; funds would still be allocated from the General Fund then reimbursed.

Art Cohen stated they had discussed this issue with the City Commission and the 4B Board before. The balance over the last year or so was at \$15,000. The committee had raised almost \$50,000 over the past four years.

Mayor Pro Tem Prepejchal asked Mr. Cohen if the committee had their project ready to present to the 4B Board.

Mr. Cohen replied yes, the project architect had already presented it to the 4B Board.

Mayor Boswell instructed staff to prepare a proposal to present to the 4B Corporation to substantially complete the project and per the intention of the agenda item.

Carlos Yerena, City Manager stated the city would have to take control of the project since they would have to comply with bidding regulations.

Motion was made by Commissioner Leftwich and seconded by Commissioner Ruiz to support the Veterans Memorial Project and direct staff to prepare a proposal for the 4B Board. Motion carried unanimously.

Ken Benton, 402 W. Taylor stated at one time \$250,000 had been allocated for the project and he had not seen any movement on funds. He would like a memorable place created for Veterans in the City.

Ron Lozano stated the project was on city property. He would like to see that no one got excluded from this project and for everyone to be informed on what was legal and what was not.

- 20) Consider and take action to approve Amendment No. 1 to the Ambulance Service License and Contract for Services with South Texas Emergency Care Foundation, Inc.
(Assistant City Manager)

Randy Whittington highlighted Amendment No. 1 to the Ambulance Service License and Contract for services with South Texas Emergency Care Foundation (STECF) ground services. His stated STECF would not be renewing the services with its helicopter provider when the contract expired October 31, 2011. The existing contract with STECF had one year remaining and they would like to extend the contract for an additional five years through September 30, 2017, with an option to extend the contract for another five years through September 30, 2022, all with no subsidy from the city during the contract periods.

A brief discussion was held regarding the services that STECF provided and the type of equipment that they had. Mr. Whittington asked for the city to enforce the city ordinance to keep other people who are not licensed to operate in the city. These private companies were picking up patients and transporting them in and out of the city. Charging the patients a lot more than them and taking the profits to their own companies in Hidalgo County or elsewhere. He stated

they had asked in the amendment that the city send a letter on an annual basis to the various ambulance companies advising them that the city had an ordinance that prohibited them from operating without a license. He pointed out they had been operating the helicopter at a loss for several years and the loss had been increasing on an annual basis. The contract had a provision that if anyone who wished to challenge it they would take care of the expense. All the member cities were now in a five (5) a year contract. They also served as the 911 Center for Cameron County which was equipped with the latest technology to respond to the 911 calls. They were adding another location in Harlingen and it would be opened as soon as the Federal Communication Commission finalized the license for the broad ban communication.

Motion was made by Mayor Pro Tem Prepejchal and seconded by Commissioner Leftwich to approve the amendment to the Ambulance Service License and Contract for Services with South Texas Emergency Care Foundation. Motion carried unanimously.

- 2) Approval of Minutes
 - a) Special Meeting of August 11, 2011
 - b) Regular Meeting of August 17, 2011
 - c) Regular Meeting of September 7, 2011

Mayor Boswell referred to the Verbatim, Exhibit A, and Pg. 4 and stated he would like to make a change in the minutes to read as follows: "Mayor Boswell stated he did not have a conflict of Interest"

Motion was made by Commissioner Marra and seconded by Commissioner Leftwich to approve all sets of minutes as presented with the noted correction made by Mayor Boswell on Page 4 of the Verbatim, Exhibit A. Motion carried unanimously.

CONSENT AGENDA

- 3a) Second and final reading of Ordinance to approve and adopt the City of Harlingen's Budget Fiscal Year 2011-2012. (Finance Department)
- b) Second and final reading of Ordinance to approve and adopt the 2011 ad valorem tax rate for Maintenance and Operation for Fiscal Year 2011-2012. (Finance Department)
- c) Second and final reading of Ordinance to approve and adopt the 2011 ad valorem tax rate for Interest and Sinking for Fiscal Year 2011-2012. (Finance Department)
- d) Consider and take action to approve a refund of property taxes to Pop, Gray, & Hutcheson, LLP C/O Harlingen Board of Realtors Account No .15-0000-0950-0110-00 in the amount of \$819.80 due to an adjustment for an absolute exemption for exemption for the year "2010" as per an agreed judgment. (Finance Department)
- e) Second and final reading to approve an ordinance for the issuance of a Specific Use Permit ("SUP") to allow a Bar/Lounge in the Light Industry ("LI") District, located at 1926 N. 77 Sunshine Strip, bearing a legal description of 0.4379 acres out of Block 143, Harlingen Land and Water Company Subdivision. Applicant: Maria Villagran. (Planning and Development)
- f) Consider and take action to approve the final plat on the proposed Green Meadows Subdivision located approximately 450 ft. south of Briana Circle on the west side of Tucker Road, bearing a legal description of 5.80 acres of land out of Block Seven (7), F.Z. Bishop Subdivision, Survey 39. Applicant: Brown, Leal and Associates, c/o Olga Garza. (Planning and Zoning)
- g) Consider and take action to approve a request from the Immaculate Heart of Mary Catholic Church to close "C" Street between Polk and Tyler Streets beginning 12 noon, Thursday, October 6, 2011 thru midnight, Sunday October 9, 2011 for their 20th Annual Fiesta. (Police Department)

- h) Consider and take action to approve a request from St. Anthony's Church to close East Van Buren Avenue between 10th and 11th Streets on Saturday, November 5, 2011 from 4:00 p.m. to 11:00 p.m. and Sunday November 6, 2011 from 10:00 a.m. to 9:00 p.m. for their Annual Festival. (Police Department)

Motion was made by Commissioner Marra and seconded by Mayor Pro-Tem Prepejchal to approve the consent agenda as presented. Motion carried unanimously.

- 8) Consideration and approval of Resolution in support of the Rio South Texas Planning Consortium (RSTPC) 2011 Sustainable Communities Regional Planning Grant Application and commitment/designation of City of Harlingen staff member to serve as voting member.

9)

Ken Clark, Planning and Zoning Director stated the purpose of the resolution was to support the efforts that were being made in regards to the grant program. Gabriel Gonzalez, Assistant City Manager would be the voting member and there was no cost to the city. It would promote regional planning efforts in the area.

Motion was made by Mayor Pro-Tem Prepejchal and seconded by Commissioner Trevino to approve the resolution as presented and appoint Gabriel Gonzalez as the voting member. Motion carried unanimously.

- 9) Consider and take action to approve a substantial amendment to the City of Harlingen's 2008-09 One Year Action Plan in the amount of \$21,900.00; 2009-10 One Year Action Plan in the amount of \$49,226.42; and 2010-11 One Year Action Plan in the amount of \$6,000.00. (Community Development)

Tammy DeGannes, stated as recipient of the CDBG funds the city had to comply with the Citizen Participation Plan. One of the requirements was whenever there was an amendment to the one year action plan which included the addition of an activity or an elimination of an activity or the amount of \$50,000.00 an amendment was required. A public hearing was held on August 11, 2011 by the Community Development Advisory Board. Their recommendation called for eliminating Year 14 Program Home Funds that were targeted for the tenants based on rental assistance for \$21,000. These funds would then go to Harlingen Community Development Corporation (HCDC), Affordable Housing Provider and the elimination of Year 15 Home Tenant Based Home Rental Assistance Activity in the amount of \$10,800 to an existing activity with HCDC Affordable Housing Program. Unexpanded administrative funds for program year 35 would be allocated to the target area neighborhood investment Program which was located in Census Tract 110 for \$38,426.42. Lastly it would eliminate a program funded to the family crisis center in this program year for \$6,000.00 and funds would be allocated to the Casa and the Boys and Girls Club. The approval of the amendment was important because the CDBG Program could not exceed the 15% allocation to public services and the funds had to be spent by September 30, 2011.

Motion was made by Commissioner Marra and seconded by Mayor Pro-Tem Jerry Prepejchal to approve the substantial amendment as presented. Motion carried unanimously.

- 10) Consider and take action to approve the Keep Harlingen Beautiful/Harlingen Proud Budget for Fiscal Year 2011-12. (Keep Harlingen Beautiful Executive Director)

Motion was made by Mayor Pro-Tem Prepejchal and seconded by Commissioner Marra to approve the budget as presented for the Keep Harlingen Beautiful. Motion carried unanimously.

- 11) Consider and take action to grant a variance request to the City of Harlingen Subdivision Ordinance No. 07-28, Section 4.1.6 with regards to the 5 ft. sidewalk required on Vinson Avenue on the proposed Adam's Treasure Subdivision located on the north side of Vinson Avenue east of 7th Street. Applicant: JNH Surveying Company, c/o Armando Elizarde. (Planning and Zoning)

Joel Olivo, Planning and Zoning Manager stated the applicant was requesting a variance to the required sidewalk that was required on Vinson Road. The Planning and Zoning Commission recommended approval of this request.

Commissioner Prepejchal stated the only question he had about this request and the reason he was not going to support it was because it had to do with the sidewalk. If someone developed a piece of property they had to build sidewalks. The other variances that were on the agenda he did not mind considering.

Mr. Olivo stated that Mr. Armando Elizarde was proposing a 5 foot sidewalk on 7th Street. Mr. Elizarde was asking for a variance on Vinson Road. Mr. Olivo referred to the area of the proposed property here which was about 70% developed, there was no sidewalk. There was a commercial business that installed a sidewalk with brick pavers which was approximately 400 ft. from the subject property.

Commissioner Leftwich stated there was a school across the street and there was a lot of foot traffic from the school students.

Mr. Olivo stated there was an alternative school across the street and Long Elementary approximately 300 ft. away. Mr. Olivo stated the foot traffic was mostly from Long Elementary School and the Alternative School was entirely for the whole school district and not all the students lived in that area. The applicant was proposing to put a sidewalk along 7th Street to connect to the existing sidewalk located on the Town & Country Subdivision as well as Windfield Subdivision. There was a sidewalk that started on 7th Street on Matz Street and ended on Vinson Road. There was a sidewalk on the west side in front of Long Elementary and the church, but there was no sidewalk in front of the Alternative School.

Commissioner Ruiz stated there was no sidewalk from 7th Street to 13th Street on Vinson Road.

Mr. Olivo responded that was correct with the exception of the brick pavers by the commercial business. Sidewalks were required as per the Subdivision Ordinance on collector streets.

Commissioner Leftwich stated in 2003 the city had a capital improvements bond approved by the voters approximately 1.5 million dollars with some matching funds. He recommended sticking with the plan that required the developer to do it. The next time an issue came before them not to require the developers to install fire hydrants because there were no houses in the area. They knew that if it was going to be done later on down the road, the rest of the taxpayers would be footing the bill. That had been the experience of what had been done before which was a large portion of the capital improvements bond that the city was still paying debt on sidewalks aligned on Business 77. He guaranteed that there was plenty of pedestrian and bicycle traffic as well as other streets that fed into downtown that the taxpayers paid for the sidewalks.

Commissioner Ruiz asked it was a typical practice to grant a variance like this.

Mr. Olivo stated the board recommended approval of the variance and their position was that there was no connection at this point for a sidewalk.

Commissioner Ruiz and Commissioner Trevino asked if the city had been granting variance in other parts of the city.

Mr. Olivo stated the last variance that had been granted was on Ed Carrey Drive for a commercial business.

Mr. Yerena stated the difference in this situation was that there was a school in the area.

Commissioner Leftwich stated that due to the fact that there was student foot traffic in that area they needed to continue with the installation of the sidewalk.

Mayor Boswell stated this was a piece of property that the city had sold to Mr. Elizarde and was not allowed to develop some apartments. He was coming back to subdividing the property and now some commissioners were making it hard for him to do what he wanted. The sidewalk would not hook up to anything because there was nothing on Vinson Road. He was installing the one on 7th Street that hooked up with the rest of the area.

Commissioner Trevino stated their concerns were based on public safety.

Motion was made by Commissioner Marra to grant the variance. Motion was seconded by Commissioner Ruiz. The vote carried as follows: FOR: Commissioners: Marra and Ruiz; AGAINST: Mayor Pro-Tem Prepejchal and Commissioners: Leftwich and Trevino.

- 12) Consider and take action to grant a variance request to the City of Harlingen Subdivision Ordinance No. 07-28, Section 4.1.3. (K)(2) with regards to the 100 ft. of right-of-way required for a minor arterial street on 7th Street for the proposed Adam's Treasure Subdivision, bearing a legal description of 0.953 acre tract of land situated in and a part of Block 120, Harlingen Land and Water Company Subdivision located on the northeast corner of Vinson Avenue and 7th Street. Applicant: JNH Surveying Company, c/o Armando Elizarde. (Planning and Zoning)

Mr. Olivo stated the item was in regards to the same subdivision as mentioned in the previous item and the applicant was requesting a variance of 10 ft. to the required 20 ft. of addition right-of-way on Vinson Road. He stated most of Vinson road was developed and part of the road went into the applicant's property. The engineer reviewed the request and had no objections to granting the variance. The Planning and Zoning Commission along with the staff were recommending approval of the request.

Motion was made by Mayor Pro-Tem Prepejchal and seconded by Commissioner Marra to grant the variance as presented.

Commissioner Trevino recommended for staff to present an amendment to the whole Thoroughfare Plan to avoid piece milling at a time.

Mr. Olivo stated this was a collector street and it was already paved since 2007 and it had been widened to 42 ft. street and 48 ft. at the street intersection.

Motion carried unanimously.

- 13) Consider and take action to grant a variance request to the City of Harlingen Subdivision Ordinance No. 07-28, Section 4.1.3(K) (3) with regards to the 80 ft. of right-of-way required for a major collector street on the proposed Adam's Treasure Subdivision, bearing a legal description of 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: JNH Surveying Company, c/o Armando Elizarde. (Planning and Zoning)

Mr. Olivo stated this item was in regards to the previous items and the applicant was requesting a variance of 10 ft. to the additional right-of-way requirement on Briggs Coleman Road. He was dedicating a required walk, similar right-of-way to the subdivision to the north as well as to the one to the south side and to the one further south which was Windfield Estates which was granted a variance in 2004. Mr. Olivo stated the applicant was basically aligning his subdivision with what currently was in the area. The engineering had no objections to granting the variance. The Planning and Zoning Commission along with the staff was recommending approval of the variance.

Motion was made by Commissioner Leftwich and seconded by Mayor Pro-Tem Prepejchal to grant the variance as presented.

Jerry Moore, 709 Town Lane, stated for the applicant to acquire a variance knowing full well that he was involved in the original development. He stated he was only expressing his frustration. This was a complete developed neighborhood and it was still being bucketing with sidewalks.

Motion carried unanimously.

- 14) Consider and take action to grant a variance request to the City of Harlingen Subdivision Ordinance No. 07-28, Section 4.1.7 with regards to the street lights required on the proposed Robert C. Vackar Subdivision, bearing a legal description of Blocks 13 and 16, Stuart Place Subdivision Survey 139 located on the south side of Expressway 83 between Altas Palmas Road and Tamm Lane. Applicant: Gilbert Gracia, c/o Robert C. Vackar. (Planning and Zoning)

Mr. Olivo stated the applicant was requesting a variance for the installation of five street lights. The Public Works Department was requesting not to approve the request. Staff along with the Planning and Zoning Commission recommended denial of this request. Mr. Olivo stated a 4/5 vote was required to overturn the recommendation of the Planning and Zoning.

Motion was made by Commissioner Marra. There being no second to the motion it died because of a second.

- 15) Consider and take action to grant a variance request to the City of Harlingen Subdivision Ordinance No. 07-28, Section 4.1.6 with regards to the 5 ft. sidewalk required on Expressway 83 & Frontage Road and on Altas Palmas Road on the proposed Robert C. Vackar Subdivision, bearing a legal description of 30.196 acre tract of land out of Block 13 and 16, Stuart Place Subdivision Survey 139 located on the south side of Expressway 83 between Altas Palmas Road and Tamm Lane. Applicant: Gilbert Gracia, c/o Robert C. Vackar. (Planning and Zoning)

Mr. Olivo stated the applicant was requesting a variance to the five foot sidewalk that was required along the frontage road and Atlas Palmas Road. The City Engineer had reviewed the request and had no objections in granting the variance. Staff along with the Planning and Zoning Commission recommended approval of the request.

Commissioner Trevino asked if the city was requiring sidewalks along the frontage road with other developments.

Mr. Olivo stated the city was requiring them, but most of the developments in the area were in the county and were grandfathered. This was the reason many of the existing businesses did not have them. He stated that from Bass Road to Spur 54 there were no sidewalks. However, if there were any future developments the city would require the sidewalks.

At this time, Ms. Cotroneo referred to Item No. 14 and stated Commissioner Marra had made a motion to approve the variance, but due to second it died. She asked if there was a motion to deny the variance.

Motion was made by Commissioner Marra and seconded Commissioner Ruiz to reconsider Item No. 14. Motion carried unanimously.

Motion was made by Commissioner Leftwich to follow staff and Planning and Zoning's recommendation to deny the variance for Item No. 14. Motion was seconded by Commissioner Ruiz and it carried as follows: FOR: Commissioners: Leftwich and Ruiz. AGAINST: Commissioners: Marra and Trevino. Motion died because of a lack of a 4/5 votes.

Mr. Olivo continued with Item No. 15 and stated staff and the Planning and Zoning Commissioner were recommending approval of the variance request.

Motion was made by Commissioner Marra and seconded by Commissioner Leftwich.

Commissioner Leftwich pointed out that the car dealer was way out of the country and there was no pedestrian traffic in this area.

Commissioner Trevino asked if any funds were allocated for sidewalks along the frontage road in the 2003 Series Bonds.

Mr. Leftwich stated funds had been allocated for Business 83

Motion carried unanimously.

- 16) Consider and take action to grant a variance request to the City of Harlingen Subdivision Ordinance No. 07-28, Section 4.1.8 with regards to the fire hydrant required on the proposed Pearson Subdivision, bearing a legal description of 4.94 acre tract of land out of Blocks 104, 105 and 106 Adams Garden Subdivision B & C located on the southwest corner of McLelland Road and Arroyo Drive. Applicant: David Wolf, c/o Cara Lynn Pearson. (Planning and Zoning)

Mr. Olivo stated the applicant was requesting a variance to the fire hydrant requirement for the proposed three lot subdivision. Mr. Olivo briefly explained the size of the water line and the distance to the proposed area. The Fire Marshal along with the staff recommended disapproval of the request and the Planning and Zoning Commission recommended approval of the variance request. Mr. Olivo stated the property was located outside the city within the three and half mile ETJ. This area was being serviced by Harlingen Water Works and the existing home was being service with a two inch water line and the eight inch water line was twenty-one hundred feet away from the subject property.

A short discussion was held regarding the distance, the size of the water line and the fact that there was no water pressure. Mr. Olivo stated staff was recommending disapproval due to safety issue and there was no hardship in this case. This was a financial hardship and as per the Subdivision Ordinance a financial hardship was not considered as a hardship.

Motion was made by Commissioner Leftwich and seconded by Commissioner Trevino to grant the variance. Motion carried unanimously.

- 17) To consider a request rezone from Light Industry ("LI") District to General Retail (GR) District for Lots 1 and 2, Block 1, Asbury Subdivision: 2.0 acres out of Anderson Subdivision, Lots 187-190, 231, 233A and 233B, Block 1, Lots 132, 133A, 133B, 134A, 134B, 135A, 135B, 183A, 183B, 184, 185, 185B and 186, Block 2, Lots 69, 70, 71A, 71B, 72A, 72B, 129, 130A, 130B, 131, Block 3, Lots 1A, 1B, 2A, 2B, 3A, 3B, 4, 5A, 5B, 6A, 6B, 7A, 7B, 8A, 8B, 9A, 9B, 61A, 61B, 62A, 62B, 63A, 63B, 64A, 64B, 65, 66, 67, 68, Block 4, Avondale Subdivision, 1.726 acres out of Block 61, David and Stevenson Subdivision, Lot 1, Block 1, and Lot 1, Block 2, Hick Subdivision, Blocks 3 and 4, part of Block 5, Blocks 6-9, 12-14, and 29, Highway Addition, Lots 1-7, Resubdivision of Block 11, Highway Addition, o.57 acres out of Lot 12, and Lots 24-30, Johnson Subdivision, and Lot 1, Block 1, R A Billups Subdivision, all properties generally located on the east side of Business 77, north of Shirley Street to Loop 499. Applicant: City of Harlingen Planning and Zoning Commission. (Planning/Zoning)

Mr. Olivo stated staff proposed to the Planning and Zoning Commission to rezone the above mentioned properties for the general retail to be consistent with land use plan and the future land use plan. Mr. Olivo stated the property owners residing with the 200 feet radius were notified and no objections were received. The Planning and Zoning Commission along with the staff recommended approval of the zone change request.

a) Public Hearing

Mayor Boswell declared the public hearing opened to the public to speak for or against the item. There being no comments for or against the zone change request, Mayor Boswell closed the public hearing.

b) Consider and take action to approve and adopt the ordinance on first reading for the above mentioned rezone request.

Ms. Cotroneo read the caption of the ordinance.

Motion was made by Commissioner Leftwich and seconded by Commissioner Marra to adopt and approve the ordinance on first reading. Motion carried unanimously.

- 18) To consider a Specific Use Permit ("SUP") to allow a performing arts center along with an existing school in a Residential, Multi-Family (M-2) District located at 3205 Wilson Road, bearing a legal description of Lot 1, Block 1, Wilson Road School Subdivision. Applicant: Harlingen CISD, c/o Oscar Tapia. Attachment (Planning and Zoning)

For the record, Mayor Boswell stated he was abstaining from Item No. 18.

Motion was made by Commissioner Marra and seconded by Commissioner Trevino to elect Commissioner Leftwich as the Mayor Pro-Tem as per the City Charter. Motion carried unanimously.

Mr. Olivo stated the Harlingen School District was requesting a specific use permit to allow a performance arts center along an existing school on the property where Gutierrez Middle School was located. The proposed center would be located on the west side of the school property. The required city department reviewed the request and there were no objections. A public hearing was conducted. The Planning and Zoning Commission along with the staff recommended approval of the permit.

a) Public Hearing

Commissioner Leftwich declared the public hearing opened to the public to speak for or against the item. There being no comments from the public, Commissioner Leftwich closed the public hearing.

b) Consider and take action to approve and adopt an ordinance on first reading for the above mentioned Specific Use Permit.

Ms. Cotroneo read the caption of the ordinance.

Motion was made by Commissioner Trevino and seconded by Commissioner Marra to approve the request as presented. Motion carried unanimously.

For the record, Mayor Boswell returned to the meeting and continued presiding the meeting.

- 19) To consider a Specific Use Permit ("SUP") to allow a Bar/Lounge in Light Industry ("LI") zoning district located at 1510 N. Commerce Street, bearing a legal description of Lot 1, Block 1, out of Harlingen Casa Blanca Subdivision. Applicant: Juan Zavala. (Planning and Zoning)

Mr. Olivo stated Juan Zavala, applicant was requesting a specific use permit to allow a bar on the above mentioned property. The existing property had been a bar for the past couple of years. The request was reviewed by the required departments and had no objection to the request subject to complying with all the city codes. A public hearing was conducted by the Planning and Zoning Commission and recommended approval along with the staff subject to meeting all the required city codes and conditions noted in the executive summary.

a) Public Hearing

Mayor Boswell declared the public hearing opened to the public to speak for or against the request. There being no comments from the public, Mayor Boswell declared the public hearing closed.

b) Consider and take action to approve and adopt an ordinance on first reading for the above mentioned Specific Use Permit.

Ms. Cotroneo read the caption of the ordinance.

Motion was made by Commissioner Trevino and seconded by Commissioner Marra to approve the request as presented. Motion carried unanimously.

- 23) Consider and discuss whether or not the City should draft an ordinance that prohibits a driver from reading, writing, or sending a text message, instant message or email message while driving within the city limits of the City of Harlingen, Texas. Attachment (This item was requested by Mayor Pro-Tem Jerry Prepejchal and Commissioner Gus Ruiz)

Mayor Boswell stated he was in favor of drafting an ordinance.

Ms. Cotroneo stated the bill was passed by the Texas House and Senate and was veto by the Governor. It was left to the cities to decide whether or not to pass local legislation.

It was the consensus of the City Commission to direct staff to draft the ordinance.

- 24) Presentation and discussion on developing a City of Harlingen land use plan for revitalization and economic renewal to include but not be limited to the downtown Harlingen area and F Street corridor. (Presentation by Kenneth Benton and Bill DeBrooke) (This item was requested by Mayor Pro-Tem Jerry Prepejchal and Commissioner Robert Leftwich)

Mr. Kenneth Benton stated he would like for the City Commission to appoint a committee to discuss the original town site and its future. There were a lot of things that the Planning Department brought before the City Commission at this meeting and the one thing he thought about was the comprehensive plan. The city had a comprehensive plan and the zoning ordinances and zoning decisions should be pursuant to that plan and based on achieving a vision. He asked the City Commission to consider appointing a committee and the Planning and Zoning Director to work with stakeholders within Districts 3 and 4. He stated the Jo Wagner and Reese Projects were good projects that had begun to change the dynamics, but if there was no plan we could not help achieve the vision and without the consensus among the stakeholders.

Mayor Boswell stated he did not totally agree with some of the comments. He stated a plan had been prepared by Danny Villarreal Architects. He added there was a plan and the city could look at it again and the item would be brought back to consider appointing a committee.

- 26) Consider and take action to approve and adopt a resolution to order: (1) a Special Election to be held on December 16, 2011 between the Hours of 7:00 a.m. and 7:00 p.m. Central Standard Time for the purpose of electing one City Commissioner for the City of Harlingen District 1; (2) appointing the City Secretary as custodian of the records for the District 1 Special Election and Early Voting Clerk; (3) establishment of election precincts; (4) the Special Election Calendar; (5) the creation of the Official Ballot; (6) the use of Voting Machines; (7) a Presiding Judge, Alternate Presiding Judge and Polling Clerks for the Polling Place; (8) Publication and Posting of Notice of the Special Election; (9) early voting dates, times and polling place; (10) Early Voting Ballot Board; and (11) canvassing of votes. (City Secretary)

Amanda C. Elizondo, City Secretary highlighted the resolution through a PowerPoint presentation and stated the Special Election would be held on December 16, 2011 to elect one member to the City Commission to fill the unexpired term of City Commissioner District 1. She announced the filing dates and dates for Early Voting by Personal Appearance and other dates relative to the conduct of the election.

Motion was made by Commissioner Marra and seconded by Commissioner Ruiz to approve the resolution as presented. Motion carried unanimously.

- 27) Board Appointments

Discussion and possible action regarding membership on any of the following listed board/entity:

- a. Airport Board
- b. Animal Shelter Advisory Committee (3)
- c. Audit Committee (3) (Annual Appointments as per Ordinance 08-38)
- d. Civil Service Commission (Mayor) (1)
- e. Community Development Advisory Board (2)

- f. Construction Board of Adjustments (8)
- g. Convention & Visitors Bureau (1)
- h. Development Corporation of Harlingen, Inc.
- i. Downtown Improvement District Board (2)
- j. Golf Course Advisory Board
- k. Harlingen Community Improvement Board (3)
- l. Harlingen Housing Authority Board (0)
- m. Harlingen Finance Corporation
- n. Harlingen Proud Advisory Board (4)
- o. Library Advisory Board (1)
- p. Municipal Auditorium Advisory Board (2)
- q. Museum Advisory Board (2)
- r. Parks Advisory Board
- s. Planning & Zoning Advisory Board
- t. Senior Citizens Advisory Board (1)
- u. Tax Increment Finance Board (1)
- v. Tennis Advisory Board
- w. Utility Board of Trustees
- x. Veterans Advisory Board (2)
- y. Zoning Board of Adjustments (5)

Specifically, appointment or discussion and possible action to include appointment and/or removal of any position subject to appointment or removal by statute, ordinance, or bylaws.

Mayor Boswell stated there were no board appointments.

Mr. David Garza inquired about Commissioner Ruiz's position as a commissioner being that he had announced for candidacy for State Representative for District 43.

Ms. Cotroneo stated the city had to rely on the Texas Constitution and on the City Charter. Pursuant to the Texas Constitution there was an article and section number that mentioned when an elected official that included the City Commissioner decided to announced their candidacy to become a candidate to the elected office it meant that they automatically resigned their position. However, the Texas Constitution further stated that all officers including city commissioners shall continue to perform their duties until their successor was elected. A vacancy of a city commissioner could not be appointed, but shall be elected by the majority of the qualified voters residing in the district and must be done within 120 days from the date of his announcement.

28) The following items will be discussed in Closed/Executive Session:

- a) pursuant to Chapter 551, Subchapter D, V.T.C.A. Government Code Section 551.071 consultation with the City Attorney to seek legal advice regarding *City of Harlingen vs. Theatre Council Productions*, Civil Action No. 2009-08-4744-D in the 103rd District Court of Cameron County, Texas. (City Attorney)

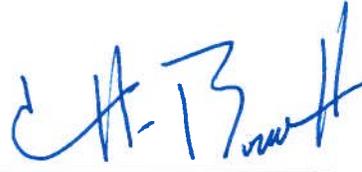
At 10:24 p.m., Mayor Boswell announced the City Commission would convene in executive session to discuss Item 25 (b)

Motion was made by Commissioner Leftwich and seconded by Commissioner Trevino to go into executive session. Motion carried unanimously.

At 10:34 p.m., Mayor Boswell announced the City Commission had completed its executive session and announced the staff had provided an update report on the above mentioned case. No action was taken.

There being no further business to discuss the meeting was adjourned.

City of Harlingen



Chris Boswell, Mayor

ATTEST:



Amanda C. Elizondo, City Secretary