

**MINUTES OF THE REGULAR
MEETING OF THE BOARD OF ALDERMEN
TOWN OF BAYVIEW, TEXAS
104 S. San Roman, Bayview, Texas
August 6, 2015 6:30 pm**

General

In the absence of Mayor Pro-Tem Deason due to a family emergency, Alderman Lowder moved that Alderman Mullendore take over and act as Mayor Pro-Tem until Mayor Pro-Tem Deason could resume his duties. Alderman Stachowiak seconded. All voted in favor.

1. The Regular meeting was called to order at 6:30 p.m. Those present were Aldermen Mullendore, Lowder, Lewis, and Stachowiak, and Bonnie Gibbons. The meeting was promptly adjourned so the Town Council could go into Executive Session to interview applicants for the position of Town Secretary.

Open Meeting

3. Alderman Mullendore reopened the meeting at 7:11 p.m. and led those present in the Pledge of Allegiance.

4. He thanked those present for attending.

5. Alderman Mullendore asked for any public comments.

a) Bob Steenbock said, "it would be a convenience to extend the burn permit longer than one week."

b) Mike Wallace wanted the permit to be longer than one week.

Action Items:

Old Business:

6. The Board then, in a blind vote, selected a Town Secretary. The vote was unanimous for Julie Reber.

Alderman Mullendore thanked those who applied and said they all were very qualified.

7. Alderman Lowder reported on contractors who submitted quotes to select a contractor to provide windstorm certification allowing the Town to obtain windstorm coverage from the TML Risk pool for the Town office building. He recommended South Texas Civil Engineering, since they had done work for the contractor who the Town used to build the office building and lay the foundation. The engineer was very familiar with the contractor's work. Alderman Lowder was impressed with STCE and the information they provided in a timely manner even though their bid was the middle one

submitted. They also had done a lot of work for Royal, which is the company that built the office building.

Alderman Lewis reported on a note Mayor Pro-Tem Deason left about using Los Fresnos Volunteer Fire Department's engineer, Manuel Flores, to do the windstorm certification for the fire department and the Town. Mayor Pro-Tem Deason recommended waiting until Manuel Flores submits his quote to decide. Discussion followed. Alderman Stachowiak suggested waiting to hear that quote in hopes of getting a lower price since the Town would jointly engage the engineer with the LFFVD. All agreed.

New Business:

8. Approval of the Consent Agenda:

- a) Minutes of the June 18 meeting.
- b) Minutes of the July 16 meeting.
- c) Invoice from True Solutions in the amount of \$95.00. Alderman Lowder questioned the bill from True Solutions. Alderman Lewis described issues with undeliverable e-mail that the Town has, thus the reason for the service call. Susan Heinz mentioned that the bill involved service when the computer would not boot up as well as for checking the e-mail issue. Alderman Lowder expressed concerns about approving the bill since he had not seen a cash flow statement.
- d) Invoice from The Los Fresnos News for \$168.

Alderman Lewis moved to approve all items in # 8. Alderman Stachowiak seconded. Three voted in favor. Alderman Lowder was opposed. Motion carried.

9. Discussion and possible action on setting the Order of the election for the unexpired term of Mayor and appointing an election Judge to supervise the election on November 3, 2015. Alderman Mullendore said the first day to submit an application for a place on the Ballot is August 21, 2015 and the last day is September 2, 2015.

Applications are available at www.sos.state.tx.us or in the Town office. Alderman Lowder moved to accept the order. Alderman Lewis seconded the motion. All voted in favor. Motion passed.

Alderman Lewis said, "by law it is required that the Town Secretary act as Election Judge during early voting but may not act as Election Judge on Election Day... No Town officer may work or assist on Election Day." Alderman Lewis moved that Bonnie Gibbons act as Election Judge on Election Day and assist the Town Secretary during elections since she had experience. Alderman Stachowiak seconded the motion. All voted in favor. Motion carried.

10. Discussion and possible action on reviewing and possibly extending the Burn Ordinance permit time period. If approved the amendment would go to a public hearing before the regular meeting on September 20, 2015.

Alderman Lewis presented her rationale for strengthening, lengthening, streamlining, educating and simplifying the current process. She said the greatest problem is not calling the fire department before burning and this needs to be emphasized. Failure to abide by the law would result in the burn permit being revoked. Her recommendation is was to extend the burn permit for one year while removing the requirement to call the Town office before burning. Aldermen Stachowiak and Mullendore liked the one year limit.

Alderman Lowder mentioned the need to create an online retrieval system for burn permits for the convenience of the applicant. He favors a time period of ten days to one month for residences with a special three month permit for clearing large areas. He read Mayor Rodino's statement that said extending the period is a bad idea downplaying the significance of the program, which is mandated by state law. Mayor Rodino recommended a period of no longer than two weeks for the burn permit.

Alderman Lewis countered arguments against her proposal. Alderman Stachowiak reiterated that it comes down to personal responsibility. He again mentioned a convenience fee of \$20 per year for administrative costs to oversee the program with some of the burn permit costs to be applied towards enforcement through the Building and Standards Commission.

Alderman Lowder suggested tabling the item. Alderman Lewis wanted a vote and moved to extend the burn ordinance time period to one year. Alderman Stachowiak seconded. There were no nay votes. Motion passed.

11. Discussion and possible action on employing Pay Smart as the Town payroll service. Susan Heinz reported that Pay Smart did the Town's payroll at a cost of \$25 per month before Konnie Hooten took over that responsibility.

Alderman Lowder clarified that the proposal received was for one year or \$33.89 including tax per month. He thought it was a good service and said Konnie had agreed to assist in and help to put all the information together, free of charge, if the Town decides to go with this program. He moved to have Pay Smart as the Town's accounting service. Alderman Stachowiak seconded the motion. Unanimous vote. Motion passed.

12. Discussion and possible action on the speed humps on N. San Roman. Alderman Mullendore said this was in reference to the speed bumps being abrupt and not being able to drive over them at speeds greater than 10 mph.

Alderman Lowder's investigation found that a speed limit sign needs to be placed under the speed bump warning sign as you approach and give the speed you can traverse over the bumps at both ends of N. San Roman. The engineer from LNV inspected the N. San Roman bumps, confirmed this need, and determined the speed was 10 mph. Steve Hester is installing more signs and ROW deterrents have been put in place to

prevent cars from going around the speed bumps. Alderman Lowder reported a balance of \$198.37 before purchasing two 10 mph speed limit signs .

Alderman Lewis suggested that a speed bump warning sign and speed limit sign be placed south of the intersection of N. Valencia and N. San Roman and at Calle Conejo to warn traffic entering south on N. San Roman. Everyone agreed.

Alderman Stachowiak moved for Alderman Lowder to purchase two additional speed bump signs, four 10 mph speed limit signs, and two posts from the remaining fund balance if within the budget. If the cost is over the hump fund budget (\$198.37), Alderman Lowder would explore getting the additional funds from the Board next month. Alderman Lewis seconded the motion. All voted in favor. Motion carried.

13. Discussion and possible action on an interlocal agreement from Brownsville concerning their ETJ. This was tabled until the next meeting.

14. Discussion and possible action on changing the hours/days that the Town Office will be open. This was tabled since there was no budget.

Discussion Items:

15. Discussion of report from Secretary of State (see addendum) in regard to voting irregularities in the last election. Alderman Lewis gave a history of the 2 pre-marked ballots discovered on May 9, 2015 and the complaint she filed. In her phone conversation with the SOS, the whole voting process was walked through generating multiple complaints. They included: pre-marked ballots, Early Voting Clerk acting as Election Judge, testing of voting machines, early voting ballot boxes, and voter loitering. All were considered irregularities under the Texas Election Code with the exception of the loitering where the SOS determined the information provided was incomplete. Alderman Lowder commented, "corrective actions need to be followed according to the state election code. "

Citizen complaints:

A Sheriff Deputy drove around the speed humps on N. San Roman. Alderman Lowder said T posts have since been installed. North Valencia needs posts as people are detouring to that road and T posts are inexpensive.

Reports:

- a. EMC : None.
- b. Cameron County Coastal Task Force: None.
- c. Regional Small Cities Coalition: None.
- d. Building & Standards Commission: Alderman Lewis said the citizen led judicial arm of the Board is seeking applicants. The Commission can appoint

and reappoint seven members as there are no term limits. A letter will be sent out in September.

Adjourn:

The regular meeting of the Board of Alderman was adjourned at 8:26 p.m. after a motion from Alderman Lowder, seconded by Alderman Stachowiak. All voted in favor.

Leon Deason, Mayor

Bonnie Gibbons

Addendum: Secretary of State reply to May 9, 2015 election complaint

DIRECT COPIED FROM THE SOS EMAIL:

Christina Adkins <CAdkins@sos.texas.gov>

Jul 22

to
me

Dear Ms. Lewis,

This email is in response to the complaint you submitted to our office regarding the May 9, 2015 election for the Town of Bayview. You raised several issues that we will evaluate below.

1. Pre-marked ballots: You stated that when a voter selected a ballot from the disarranged stack of ballots, the ballot was already filled out. You stated that after investigating the situation, the election judge discovered that one additional ballot that was pre-marked. After speaking to the Town Secretary, it was discovered that that the pre-marked ballots were test ballots that accidentally made it into the election day ballots. None of the facts you provide indicate that any kind of criminal conduct occurred. This situation would constitute an irregularity under the Texas Election Code (“Code”), but is not a criminal act.

2. Early Voting Clerk acting as Election Judge: You indicate in your complaint that the Town Secretary Susan Heinz, served as both the Early Voting Clerk and the Election Day Judge. This was not proper under Section 32.054 of the Texas Election

Code. This provision provides that an employee cannot serve as an election judge or clerk in an election if the person is employed by an opposed candidate on the ballot. Our office has taken the position that the City Secretary does constitute an employee of the city council. Therefore, this would be considered an irregularity under the Texas Election Code.

3. Testing of Voting Machines: You stated in your complaint that you were not aware of when voting system testing took place. The AutoMARK is a ballot marking device that would be required to undergo Logic and Accuracy Testing. The City would be required to post a notice of when their public testing took place. If they failed to do so this would be an irregularity under the Code.

4. Early Voting Ballot Boxes: You indicated in your complaint that the early voting ballot boxes were not properly locked and sealed. Under Section 85.032 of the Code, early voting ballot boxes must have two locks, each with a different key and the box must be designed and constructed so that the box can be sealed to detect any unauthorized opening on the box. It appears from your description that proper procedures were not followed in securing the early voting ballot box. However, you did not allege any facts that indicate this caused a discrepancy in the vote totals or that any criminal activity occurred. Therefore, the failure to properly secure the ballot boxes would constitute an irregularity under the Code.

5. Voter Loitering: You stated that a “non-registered voter” entered the polling place and loitered. Loitering in a polling place would constitute a criminal act under Section 61.003 of the Code. However, you also indicated that the Election Judge asked the individual to leave the polling place which would be a proper action by the Election Judge. There is nothing else in your complaint to suggest that this individual caused any problems after being asked to leave.

Our office does not have the authority to order a new election. If a losing candidate believes that any such irregularity impacted the outcome of the election, an election contest could be filed under Chapter 232 of the Code challenging the result. Under Section 31.006 of the Texas Election Code, the Secretary of State does have authority to forward to the Texas Attorney General allegations of criminal conduct in connection with an election if the Secretary determines that there is reasonable cause to suspect that such activity occurred. While you make allegations of potential criminal conduct with respect to the loitering issue, the information you provided was incomplete. At this time, we will not be referring your complaint to the Office of the Attorney General. If you have additional evidence to support any allegations of criminal conduct, then we suggest you resubmit your complaint with that additional information.

If you would like to discuss your complaint further, please contact us at [1-800-252-8683](tel:1-800-252-8683).

Thank you,

Christina Worrell Adkins
Staff Attorney – Elections Division
Office of the Texas Secretary of State
1019 Brazos Street | Rudder Building, 2nd Floor | Austin, Texas 78701
1.800.252.VOTE (8683)
elections@sos.texas.gov | www.sos.state.tx.us/elections

Leon A Deason, Mayor Pro Tem

Julia Reber, Town Secretary

Date

Date