

CITY COUNCIL MEETING OF THE CITY OF LEON VALLEY, TEXAS, JANUARY 4, 2011

The City Council of the City of Leon Valley, Texas, met on the 4TH day of January, 2011 at 7:00 p.m. at the Leon Valley City Council Chambers, at 6400 El Verde Road, Leon Valley, Texas, for the purpose of the following business, to-wit:

REGULAR CITY COUNCIL MEETING – 7:00 P.M.

Call to Order, Determine a Quorum is Present, and Pledge of Allegiance.

Mayor Riley called the Regular City Council Meeting to order at 7:00 p.m. and asked that the minutes reflect that the following City Council Members were present: Garcia, Reyna, Baldrige, Dean, and Nelson.

City staff in attendance: City Manager Lambert, Assistant City Attorney Onion, City Secretary Willman, Community Development Director Flores, Economic Development Director Ryan, Fire Chief Irwin, Librarian Trent-Miller, and Police Chief Wallace.

Travis Nelson led the assembly in reciting the Pledge of Allegiance.

Presentations Agenda

Good Neighbor Award to Raymond Diaz for Collaboration in Graffiti Clean-Up. Mayor Riley presented Mr. Raymond Diaz with a Good Neighbor Award for his collaborative efforts to get a business location on Bandera Road cleaned of graffiti on one of the City's most important City and business corridors.

Presentation to City Manager Lanny Lambert. Mayor Riley presented City Manager Lanny Lambert with plaque thanking him for his service to the City. Mr. Lambert thanked the Council for the opportunity.

Regular Agenda

4. **Consider Approval of the Minutes of the Special City Council and Regular City Council Meetings of December 21, 2010. (Willman)**

Motion by Council Member Baldrige and second by Councilman Reyna to approve the Minutes of the Special City Council and Regular City Council Meetings of December 21, 2010. Voting in favor: Garcia, Reyna, Baldrige, Nelson, and Dean. Voting against: None. Mayor Riley announced the motion carried.

5. **Conduct Public Hearing and Consider Action on Zoning Case # 2010-385 with Attached Ordinance – a Request by Kenny Erwin, Agent for Huntington Communities, Applicant, to Rezone Approximately 65.704 Acres of Land in the 6500 Block of Samaritan Drive and along William Rancher, Aids and Grass Hill Drives from R-1 (Single-Family) to R-6 (Garden Home), Being Lot 1, Block 1, CB 4430 C, Good Samaritan Lodge Subdivision and Parcel 1, ABS 399, CB 4429, and Parcels 10B, 10C, 10D, 10E,10F, 10H, 10J,10K, 11, 13, 15, 16, 16A, 18, 19, 21, and 23, ABS 432, CB 4430. On December 28, 2010, the Zoning Commission recommended denial of the request by a vote of 6-1. (Flores)**

Community Development Director Flores presented the case, detailing the history of the property and succession of rezoning requests including the residents' petition efforts to

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make an amendment to the Zoning Code recommending only R1 (Single Family) consideration for undeveloped properties in the area which was later approved, changing the recommendation of the Master Plan. Ms. Flores noted that 146 letters were mailed to property owners within 200 feet of the subject property. It was noted that 14 letters were received in favor from property owners within 200 feet and 19 letters were received in opposition to the request. There were two letters reflecting opposition to the request within the 200 feet boundary that were duplicates. No letters were returned by the Post Office as undeliverable. There were 3 letters received from outside the 200 feet boundary from the business community in favor of the request. Additionally there were 9 letters from outside the 200 feet boundary and 2 letters received from residents (not property owners) in opposition to the request. Ms. Flores noted 2 more letters from property owners in the 200 feet boundary were received before the meeting reflecting being in favor of the change. There were 4 additional letters from outside the 200 feet boundary.

Zoning Chair Claude Guerra addressed the City Council noting that the overwhelming numbers of persons responding were consistent in wanting to keep the area R1 instead of R6. He addressed the matter of increased traffic. The Zoning Commission agreed with the opinion of the City's Engineer that the additional traffic could be handled. He indicated the Zoning Commission's recommendation for denial was based on it not being consistent with the Master Plan which recommended only R1 (Single Family) zoning for properties undeveloped in the Seneca West area. He also indicated the Zoning Commission felt there was a possibility of discussions to find a compromise for the development of R1. The citizens desire some of the amenities that were part of the denial.

Developers Kenny Erwin and Fred Ballard were present. Mr. Ballard addressed residents' concerns during the presentation to the City Council. The project would be a combination of R1 and R6, provide trails which could connect to the City Park as well as other aspects of a "green" development. There was some discussion about a proposed home owner association and how it would function.

Mayor Riley asked if there is any way to incorporate the "green" features of R6 into an R1 development area. Mr. Ballard indicated a formula for incorporating "green features" has not been found. The economics of R1 would not fund the "green features." There was a question about how development agreements work and how they guarantee consistency in development.

Council Member Nelson asked if the parcels in Section 12 are listed as switching from R1 to R6. She asked if that got added to the ordinance as an oversight. Staff and the developers indicated that it was an oversight. Ms. Nelson asked for clarification of the parcel numbers. Staff indicated a check would be made.

Council Member Garcia asked about the total investment in Leon Valley. The response was \$30 million. There was a question raised about the market for R6 versus the market for R1. It was noted there are pockets of active adult lifestyle subdivisions in Austin, Dallas, and up and down the west coast of California.

Council Member Baldrige asked about design of the homes. Mr. Ballard indicated there are about 22 different designs. She asked about the homeowners association (HOA). Mr. Ballard indicated they would set up an HOA during the construction period.

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Councilman Dean noted he likes the plan. He stated he has very little confidence with the way the developers came into town. He referenced the situation based on meetings with two City Council people with no one else on the City Council being contacted. He noted the need for stability and public integrity to be demonstrated before proceeding. He stated he realized the City needs the development. He noted that the developers went to the public before going to the Zoning Commission. He said he would like to see the area developed but that the plan needs more work.

Council Member Nelson asked what real estate professionals in San Antonio are saying about the market in Leon Valley. Mr. Ballard said about 2/3 are saying smaller, less maintenance for young professionals or 55 plus. She asked about the higher quality in an R1. Mr. Ballard noted it boils down to price per square foot, with the price points being what they are regardless of the product. He said the business model they use makes sense for the way they do business.

Councilman Garcia asked to address the question about the process that Councilman Dean raised. Mr. Garcia indicated that when the project first came on board that the developers were aware that the project had been rejected by the citizens. One of the big complaints from the citizens is that they always got the word at the last minute. He shared that when he was in Washington, he learned of a process in which one goes to the community first to get community input. He detailed how the formalized process works. Mr. Ballard said that is the process being used now in Austin. Mr. Dean said that process is not what is used in Leon Valley.

Councilman Reyna addressed Councilman Dean saying there is not anything immoral, unethical, or illegal about the developers or any of the people sitting here who want to come talk to the elected officials duly elected to represent the people of this City. If you have a specific allegation, please state it, if not don't mislead the public about the fact that these guys tried to talk to our community. Councilman Dean took offense because he felt it was a little unethical that all of the City Council was not informed of the first meeting. He continued that he found it exceptional that Rudy (Councilman Garcia) is defending what the City's standard procedure has been since Councilman Dean has been on the City Council.

Councilman Reyna indicated that at one of the meetings the developers hosted they stated they would be willing to be bound and he asked about the documents binding them. He cited this as a point of agreement with Councilman Dean.

Council Member Baldrige recommended that the Council try to find a way to meet with the developers and submit the Council's questions and try to work with them to develop something comprehensive enough to address both of the issues; maybe something between R1 and an R6 that would incorporate some of the features of both. She asked about making changes to the drainage, the parks, and other features and still come out with R1.

Councilman Dean asked for strong commitments and controls about how the process is done.

Mrs. Flores commented that parcels 10B, 10C, 10D, 10E, 10F, 10G, 10J, 10K, 18, 19, and 21 that should not have been included.

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Council Member Nelson indicated that the Council had been told by a previous city attorney that it cannot do a development agreement. She noted the Council was informed it could not impose restrictions on the developers using a development agreement, that whatever the Council wants the developers to do would have to be part of R6 zoning rules. She asked Mr. Onion for information. Mr. Onion said under Chapter 212 of the Local Government Code, the Council can pass an ordinance creating a development agreement for this particular property. He noted that the Council can amend the R6 to have that particular type of distinction that she is talking about. Mr. Ballard discussed different options for binding the developers using development agreements. Mr. Onion asked if the developers own the land. Mr. Ballard indicated they have the option to purchase.

A. Open Public Hearing. Mayor Riley opened the public hearing at 8:17 p.m.

Linda Barker, 5811 Grass Hill, mentioned concerns with Homeowners Associations as being in this evening's news; concerns with traffic, on-street parking; that R1 is preferred; indicated understanding that the area needs to be developed noting that the City can work with developers to keep some greenbelt areas.

Pamposh Thusu, 5919 Seneca Drive, thanked the Council for the opportunity to be heard, likes the greenbelt aspects, favors R1 homes, mentioned traffic density concerns, and concerns with HOAs, asking if non-HOA members could enjoy the benefits.

Patty Manea, 6103 Britania Court, mentioned concerns with Homeowners Association inclusion, and indicated the developers can't build quality R1 homes only quality R6 homes. Ms. Manea asked if a policy can be put in place allowing only R1 homes as called for in the City's Master Plan to keep the residents from having to keep petitioning the City Council for R1 development.

Assistant City Attorney Onion responded that to adopt a policy limiting zoning to R1 would be to contract and bind future councils' ability to change zoning and that such a policy would not stand up in a court of law.

Clarification was sought regarding a developer sign purported to bear the words "from the low 100s." Fred Ballard indicated the purpose of the sign is to generate interest. It was noted that the sign wording is "from the upper 100s."

Sharon Hendricks, 6015 Aids Drive, indicated opposition to R6 homes, asking the Council to keep with the Master Plan R1 homes. She mentioned as problematic a web-posted article [authored by Councilman Reyna] regarding the change in process for zoning-related changes. She favors high quality R1 homes with greenbelt areas.

Marion Larkin, 6403 Royalty Point, indicated her preference that the area remains in its virgin state. She indicated that flooding is a serious problem and that more drainage is needed than what is indicated on the developers' plan.

Kathy Hill, 6326 Mary Jamison, indicated she is an alternate to the Zoning Commission, described the character of the neighborhood, reminding the Council that the neighborhood residents have been before the Council to successfully petition to amend the Master Plan to recommend only R1 development for the neighborhood. Ms. Hill indicated that the residents have been consistent in their desire to keep the area R1 and

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that denial of the zoning request should not be a deal breaker. She asked the Council to consider consistency with the Master Plan as part of its deciding factor. She noted that R1 housing and sustainability should not be mutually exclusive.

Dr. John Thom, 6406 William Rancher, indicated a concern with two recent burglaries. He favors that the property in the area remain R1. He indicated his property is zoned R1. He favors development but wants R1.

Thom Hlady, 5915 Seneca, acknowledged that the City needs development. He noted the differences in presenting the numbers of increased traffic versus looking at the overall base traffic numbers with traffic increases. He noted he enjoys his R1 home.

Michael Calloway, 5911 Seneca, indicated the neighbors want R1 housing and that it is not ugly. Also, he emphasized that in terms of traffic increases, attention needs to be paid to the initial R1 traffic count where the traffic increases versus considering only the incremental traffic changes. He noted that he doesn't feel the developers have listened to the neighbors about not wanting R6 housing.

Marcus Semmelman, 5919 Rimkus Drive, addressed concerns with the process used by the developers in approaching the neighbors and two City Council Members instead of going through the normal land-related zoning process using City staff. He referenced advice from a former city attorney about not being involved in zoning before the matter comes before the City Council due to not being able to make an unbiased decision.

Laura Cardenas, 5903 Seneca, stated that she and her husband are against R6. She noted that she doesn't want to be held hostage. Although she didn't attend the first two meetings, she considered the process as tacky with only two Council Members having knowledge about the development process and participating in the process before the matter went before the Zoning Commission. She indicated that the area is going to be green due to El Verde 2020. She asked about having R1 homes built instead of R6 homes.

Abraham Diaz, 6014 Kinman Drive, indicated the reason the developer cannot develop R1 homes at the same rate as R6 homes is because of the infrastructure cost. He noted that the infrastructure cost on an R1 home is much higher than on an R6 home which means the lots have to be sold at a much higher cost which is passed on to the homebuilder. The homebuilder cannot put the amenities in because of higher costs. He recommended that the City work with the developers to incentivize the project allowing the City to reimburse the builder for his infrastructure costs. He explained that one of the incentives requires a project plan and a development plan. The project plan shows the number of homes that are to be built, the number of pocket parks, and what the layout of the homes is going to be. He continued that the project plan and development plan have to be adopted by the City Council with enforcement through the adopting ordinance.

Henry Dekker, 6114 Britannia Court, shared that the market should support R1 homes. He talked about the problem with developers going bankrupt and not being able to complete a proposed development. Then he indicated that subsequent builders would be bound by very restrictive requirements imposed by a Council adopted project and development plan, saying there is not much of a guarantee with using incentivized plans.

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Monica Alcoser, 5985 Aids Drive, indicated the neighborhood would benefit from drainage improvements. She did not like that the developers were told and eventually informed the residents that R1 is an ugly plan. She expressed her opinion the two Council persons who participated in the neighborhood meetings should recuse themselves from voting because they were involved in this without knowledge. She indicated the builders informed the residents that R1 could be built but they would be ugly as a penalty for rejecting the R6 plan.

Mayor Riley asked Assistant City Attorney Onion to opine on whether or not the two Councilmen who participated in the neighborhood meetings are required to recuse themselves. He stated they are not required to recuse themselves from a vote unless they have a substantial pecuniary interest in the project. He noted that there is nothing to prevent them from recusing themselves for any reason but they are not required to do so.

B. Close Public Hearing. There being no other speakers, the Mayor closed the Public Hearing at 9:02 p.m.

C. Council to Consider Action on Attached Ordinance. Motion by Councilman Dean and second by Council Member Nelson to deny the rezoning as presented by the Zoning Commission.

Councilman Reyna asked the Assistant City Attorney which would be the better solution if the City Council is interested in working with the developers; to deny the rezoning or to postpone it.

Mr. Onion asked Community Development Director Flores if there is some prohibition to bringing the case back before the Zoning Commission within a certain period of time. Ms. Flores confirmed there is a six month period that must elapse before the case can be brought back before the Zoning Commission. Mr. Onion indicated that if the Council denies the re-zoning request, there might be enough time to get a development agreement with which everyone is comfortable. He noted that he would not speculate on that.

Mr. Onion recommended that the City Council change its motion to just postpone it when the Council finally votes on the matter. Councilman Reyna indicated that based on the notes in the agenda packet that there is a date in June by which the developers must act to purchase the land. His second comment was to the neighbors regarding his participation and the article written on the case. He noted that he could understand they want R1 housing. He stated he has no financial interest in the case and that anyone interested may check with the City Secretary for documents showing he has no financial contributions from the developers. There is no connection there. He continued that he hopes the residents are not serious when they say they don't like it when people talk to them or that when people talk to the Council Members as elected officials who are supposed to make the residents' lives, including those present, better in this City. He continued that he talks to elected officials as a part of his regular job adding that before he was a City Councilman he was another elected official. He noted that there is no communication that is really bad even when there is disagreement. He referenced the comment about the R1 being ugly as coming after the first meeting when he informed the developers that the City has El Verde by 2020 and the AIA-SDAT Sustainability Plan, all of which are

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part of the Master Plan, incorporating higher density, connectivity trails, and the parks. He stated that how the developers do their business is not the City Council's business. He further noted that telling the developers how much profit they should make is not the City Council's job. He continued that he doesn't know how the developers are impacted by making these changes and that they may not be able to share that information as it is proprietary information. The plan the developers created is what was brought back. He concluded his remarks saying he is sorry if the developers and residents can't listen to each other and heed the concerns and the wishes of each other. He suggested that the Council at least consider postponing this matter if it is serious about being interested in wanting to work with the developers based on Ms. Flores' timeline. He reiterated that his remarks are only comments, not an amendment.

Councilman Garcia inquired as to Council Member Baldrige's motion before the public hearing. Mayor Riley indicated that there was no motion, just a recommendation to follow-up with the second recommendation made by the Zoning Commission.

Mayor Riley stated the Council should not allow the opportunity to go by; it is a tremendous opportunity to work with developers that get the sustainability aspect. She emphasized the drainage infrastructure cost as being too high for the R1 as the primary reason the property has never been developed. She concluded the Council should at least try to find a workable solution; that the Council owes it to the citizens and the City of Leon Valley. She noted the City needs this development.

Council Member Nelson indicated she doesn't want the developers to have to wait six months before coming back. She asked the Assistant City Attorney about the effect of having to re-do the zoning process as the ordinance before the City Council is written incorrectly due to some of the parcel numbers being incorrectly included. She asked the Assistant City Attorney to inform the Council as to how the Council will handle the matter. She asked if the ordinance can be corrected and the developers can reach some accommodation with the citizens, if the rezoning process will have to be redone before returning to Council because things in the application and ordinance have been changed.

Mr. Onion indicated that if there is a substantial difference between what has been presented to the City Council and the correct information the City might have to start the procedure all over again. He noted he will have to do some research, but there might be the possibility the Council could come back and agree to waive the six month requirement because this is a Leon Valley requirement, not a State of Texas requirement. He continued that the Council may have to do an amending ordinance or procedure.

Ms. Flores read from information in the Code of Ordinances which addresses the situation: "From the date of recommendation by the Zoning Commission, application must be made for a public hearing before City Council regarding the same matter within 90 days of such Zoning Commission recommendation or the recommendation is void." Indications are that within 90 days that if some sort of action is not taken, despite the public hearing being concluded this evening, the matter becomes void for inaction so it would have to start again at that point. Ms. Flores suggested postponing the matter to a date certain.

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The Council continued its discussion about it having done something similar in the recent past. Councilman Dean asked about his motion which had been seconded by Council Member Nelson. He reminded the Council that there are six members of the Zoning Commission that recommended denial and there is a roomful of people who are against the rezoning because they want R1 housing. He stated his opposition to the way the plan was presented, to the way the matter was handled, and concluded saying he doesn't like anything about the matter except that it could bring in some new revenue off of new housing. He agreed that the Council can come back and waive the six month requirement for a good reason. He concluded that as far as he could see most of the citizens of Leon Valley who are involved don't want it this way. Councilman Dean repeated that his motion is to deny the rezoning.

Mayor Riley asked Council Member Nelson if she had withdrawn her second to Councilman Dean's motion. Mrs. Nelson indicated she was still awaiting Mr. Onion's directions as to the Council's alternatives.

Mr. Onion indicated that the Council could opt to waive the six month requirement for the Trails at Huebner Creek Project with proper notice on the Council's next agenda.

Councilman Reyna asked if Council Member Nelson had withdrawn her second. It was confirmed the second had been withdrawn. Councilman Reyna made a motion to postpone the item to the first meeting in February with Council Member Baldrige seconding the motion.

Council discussion continued along the question about the effect of substantial changes requiring re-hearing before the Zoning Commission. Assistant City Attorney Onion stated the matter would have to come back before the Zoning Commission due what seem to be substantial changes based on the application and ordinance errors.

Councilman Reyna asked if a way can be found to keep R1 housing with all the amenities, and asked if the incentives come before the Zoning Commission or the City Council. He suggested that if another way can be found to make the project plan work, then the City Council could vote against the rezoning in conjunction with voting for the new development plan. There continued to be a question as to whether the matter would have to come back through the zoning process. Mr. Reyna said the item would be posted with everyone in the audience being aware of the date the matter will come back before City Council. In the interim, City staff could continue to work on the mix of incentives.

Mayor Riley asked if the developers are willing to work with the City. She indicated the City needs a commitment from the developers. Mr. Erwin indicated that his attorney could get with the City Attorney in terms of trying to develop a workable plan. Mr. Ballard asked if it would be possible to short track the process. Mayor Riley asked for clarification of the term short track. Mr. Ballard asked if the developers can come up with a figure to make the plan work with fewer homes, with a tax increment financing (TIF) plan, or other entitlements, and if they could speak with Mr. Abraham Diaz because he understands what revenue can be generated through a TIF within the next two weeks. City Attorney Onion asked for clarification as to whether the developers are seeking economic incentives or a zoning change.

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There was some question and clarification about what processes would be followed and which groups or persons would be involved. Economic Development Director Ryan clarified that the Tax Abatement Team consists of Council Member Baldrige, Councilman Garcia, the City Manager, the Economic Development Director, and two members of the Leon Valley Economic Development Corporation Board: the LVEDC President Mike Davis, and Claude Guerra, LVEDC Board Director, and Zoning Commission Chair.

City Manager Lambert explained how TIFs work. The City collects taxes from property developed. The City then agrees to take a portion of those taxes and gives the tax money back to the developer to offset the cost of the development according to a mathematical formula.

Mayor Riley called for a Roll Call Vote on the motion by Councilman Reyna and second by Council Member Baldrige to postpone action on the zoning case until the first meeting in February.

Councilman Garcia – Aye
Councilman Reyna – Aye
Council Member Baldrige – Yes
Councilman Dean – No
Council Member Nelson - Yes

Mayor Riley announced that the motion carried with 4 voting yes and 1 voting no. Mayor Riley clarified for the audience what is to happen as a result of the adopted motion. The Tax Abatement Team will work with the City Manager to build an R1 incentive package to help the builders cover their cost for the drainage infrastructure improvements needed including as many of the green amenities as possible. She announced that the City will be in contact with the group of residents.

Mr. Lambert informed the developers that the Tax Abatement Team will need to know the estimate of the R1 lots to be developed so the Team can estimate how much tax incentive would be available to the developers. Mr. Erwin indicated a number can be determined once the plan is re-worked.

Council Member Baldrige asked to ensure the developers understand that the amenities are included at varying levels for different plan options. The developers affirmed their understanding that optimal plans are to be developed with as many amenities as possible.

There was some question about who could attend the meetings. Mayor Riley affirmed that the meetings would be posted so anyone interested in attending could come to the meetings.

6. **Citizens to be Heard.** No citizens came forward to speak.

7. **Executive Session in Accordance with the Texas Government Code.**

The City Council of the City of Leon Valley reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any of the matters listed on the posted agenda, above, as authorized by the Texas Government Code Sections 551.071 (consultation with attorney), 551.072 (deliberations about real property),

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551.073 (deliberations about gifts and donations, 551.074 (personnel matters), 551.076 (deliberations about security devices), and 551.087 (economic development). No Executive Session was held.

8. **Announcements by the Mayor and Council Members.**

At this time, reports about items of community interest regarding which no action will be taken may be given to the public as per Chapter 551.0415 of the Government Code, such as: expressions of thanks, congratulations or condolence, information regarding holiday schedules, reminders of social, ceremonial, or community events organized or sponsored by the governing body or that was or will be attended by a member of the Leon Valley Council or a City official.

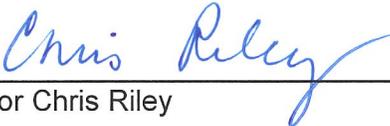
Community Events:

- A. **Bandera Road Site Community Advisory Group (CAG) Meeting, Thursday, January 20, 2011 at 6 p.m. at the Leon Valley Conference Center, 6421 Evers Road, Leon Valley, Texas, 78238.**
- B. **Town Hall Meeting at Leon Valley Conference Center on Saturday, January 29, 2011 from 8:30 a.m. to 12:30 p.m. to Discuss Upcoming Initiatives Related to the City's Strategic Plan (Mayor Riley)**
- C. **22nd Annual Earthwise Living Day, February 26, 2011, Leon Valley Community Center at 6427 Evers Road (Mayor Riley)**
- D. **January 8, 2011, 8:30 a.m., Walk & Talk with Mayor Riley (Rain or Shine), meet at Community Garden for Leon Valley Natural Area Hike.**

Council Member Nelson mentioned a couple of Nelson family milestones this week. Councilman Reyna mentioned personal health improvements.

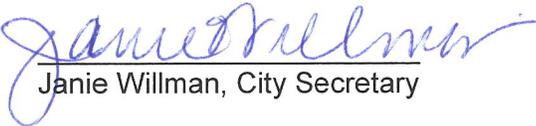
The question was raised about scheduling a special called City Council Meeting to allow for the review of city manager applications. The Council reached a consensus that the meeting will be posted for Thursday, January 13, 2011 at 5 p.m.

9. **Adjourn.** Motion for adjournment at 9:34 p.m. by Councilman Reyna and second by Councilman Dean.



Mayor Chris Riley

ATTEST:



Janie Willman, City Secretary

