

COUNCIL MEETING, MONDAY, OCTOBER 7, 2013, 6:00 P.M.

The Mayor and City Council met in regular session on Monday, October 7, 2013 at 6:00 p.m. with the following members present: Mayor Diaz, Council Members Rivas, Robinson, Lee, Garcia and Gonzales; City Manager Maner, and City Secretary Raines. City Attorney Defoyd arrived after roll call.

The meeting was opened with Prayer and the Pledge of Allegiance.

A motion was made by Council Member Robinson and seconded by Council Member Garcia to approve the minutes as presented. Vote: 5 For 0 Against

Mayor Diaz called upon the Department Heads for their reports:

Chief Ayala stated that National Night was very successful and thanked everyone for participating.

Chief Squyres stated the fire department participated, it was very nice and they got fed more than they should have, a little bit of everything and he heard more positive comments than he had ever heard before.

Public Works Director, Kyle Reed, advised that public works was doing good, they were spraying for mosquitoes but would not be spraying tonight, they had a little problem with the machine but they were going to keep it on the road as long as they didn't have rain. He advised that last month the guys fixed 27 water leaks, that we had a significant amount of rain and there was still a potential for leaks and if they see one please call them 24/7 so they can get them fixed quick.

Parks and Recreation Director, Ivan Rojas, reminded everyone about the Pumpkin Fest and Community Garage Sale and advised that if anyone needed to get a permit, they could do so at the gym, it was \$10.00 or 10 canned good.

Heritage Hall Director, Cindy Miller, advised that everything was going well and the calendars were out for October, to be sure and pick one up.

Chief Squyres advised that it was National Fire Protection Week, they were in the schools.

Mayor Diaz stated that she thought they were coming to their school the latter part of October with the fire truck and the kids were getting excited about it.

Chief Squyres encouraged everyone to be sure and change out the batteries in their smoke alarms, that it was amazing how many time they go to a house for a fire and the smoke alarm is not working.

**MAYOR'S REPORT:**

Mayor Diaz advised that we did lose one of our citizens, even though he wasn't living here now, he was a citizen for many years and she was sure that they knew that Mr. Larry Schion passed away and he would be missed, that he was here to help anybody, it didn't matter what the issue was he was there to help and ask that we keep his family in Prayers. She advised that there was a viewing today from 5:00 p.m. to 8:00 p.m. at Carter's Funeral Home and the service would be tomorrow at 11:00 a.m., so please just go out and support the family.

Mayor Diaz stated that she also wanted to thank Ivan and Mr. Reed for putting the pumpkin, hay and scarecrow decorations up at the main entrances on Holland and Mercury, that she had already had a few call about it and it was very nice.

**CITY MANAGER'S REPORT:**

City Manager Maner stated that things were going well but he did want to echo what Chief Ayala said, that he did not hear one complaint on National Night Out .

Mayor Diaz stated there was too many, that she couldn't make all the rounds but she heard it was very nice.

Mr. Maner advised that he didn't make all of them but he went and looked at the rest, everything went very well and we were proud of the people who hosted the meetings and were proud of our citizens for participating.

Mayor Diaz stated that she thought she hit all of them and she wanted to thank Ms. Nancy Gosney, she was her driver and made sure she went to all of them and she tried to eat at all of them but there was no way but they did wait for the hamburger at Second Baptist Church. She thanked everyone for participating, that it was very nice.

6. There was no unfinished business.

7. **NEW BUSINESS:**

1. Council action on Variance Boards Recommendation at 1124 Holland Avenue.

City Manager Maner advised that the Variance Board met last week on the application of a Mr. Shoaib Hussain, the owner of the subject property at 1124 Holland, stating that basically his request was that he be allowed to build five feet from the rear setback line, he stated that he was present at the meeting but he was not a member of the board but he was going to attempt to tell them and there were three member here who could correct him if he was wrong, he believed that the decision of the board was based upon the fact

that if he didn't have that five foot setback line on the rear, instead of 20, he would not have a piece of property to build any kind of business on and that five foot setback line combined with the property behind him, who also has a five foot setback will give him a combined distance of 10 feet from anything the other party could ever build on their property and at any rate, the board voted four to none grant the variance, that he did not see Mr. Hussain here but he did see his neighbor.

Mayor Diaz ask if he would like to address the Council and he stated that he was fine with the recommendation.

There was discussion on whether the building was going to be torn down even though it was too close to the side of the house and City Manager Maner advised that it was going to be 10 feet away from the house as required and 5 feet away from the rear property line.

Ms. Daily stated that as one of the voters, she reluctantly voted for it and the reason she voted for it was because she had the faith in Richard to make them walk the line and do what was required but they did have to go back and forth on it a little bit.

There was discussion as to whether it was going back as a resale shop or something else.

The neighbor stated that he had not spoken to him at all about what was going to be there and he would actually like to see no building there at all due to the proximity of the two homes that he owns, he owned the one on the corner and the one behind the business and he understood that it was not going to be torn down but it was going to be completely rebuilt.

City Manager Maner advised that it was going to have to meet the requirement of the Zoning Ordinance and the Building Code and in his opinion it was going to have to be torn down but that wasn't part of what the board considered, the board only considered the setback lines.

Council Member Garcia stated that she tried to look at it as both a win, win. She tried to understand both parties situations and she thought that if we accepted the recommendation of the committee that it was a win, win. She discussed the suggestion of someone at the meeting who talked about some sort of a wall but if the building were to be rebuilt would the wall closed to the home be a fire wall.

City Manager Maner stated that he didn't believe any code required a fire wall did it and Chief Squyres stated there was not and went on to explained what situations called for a fire wall.

There was discussion on Mr. Hussain having to tear down the building or not and that there would be regular inspections to be sure that he was following the code and if there were any violations it would be turned down.

Chief Squyres stated that the code said that where you had charring from a fire, if the charring of any structural member is more than 1/8" thick or deep, that member has to be torn out so vertically all the lumber has to go and that would probably dictate tearing the building down probably and also they were dictating that he move the wall on the north side back 10 feet and there was nothing under that foundation to support a new load bearing wall there and went on to discuss the foundation as well.

Mayor Diaz ask if he understood the building would more than likely have to be torn down and Mr. Squyres advised that they made him aware that there would be some hoops that he would have to jump through and that he would have to co-ordinate each step of that through the city.

Council Member Garcia questioned if this was three small business or just one and discussed a door on the back that would need to be replaced. She was advised that right now it was multiple businesses, that he had divided it up into two or three small businesses and went on to explain how the fire code addressed this.

A motion was made by Council Member Garcia to accept the Variance Board's recommendation and approved the variance at 1124 Holland.

Council Member Rivas ask Chief Squyres if there was any other location such as that where a home was next to a business.

Chief Squyres advised that not off the top of his head, there were many on Holland and Mercury Drive where there are homes actually attached to businesses, we did have a few of those here but they were grandfathered, they had been around forever and a day but it was an opportunity when something like this happens, as tragic as it is, the grandfather goes away on it and we get to hold them to the new code and that was what we were doing here.

Council Member Rivas stated but in those that were grandfathered, the people were aware of the possibility of a fire breaking out and it could destroy both home and business. Lon advised they were and too the best of his knowledge, they were both owned by the same person, in fact when they did their inspections they ask if they can also inspect the homes so they can give ideas as to correction and they had just had some corrections make to one on Mercury Drive.

Council Member Garcia again made the motion to accept the recommendation of the Variance Board for 1124 Holland Avenue, the motion was seconded by Council Member Gonzales. Vote: 4 For 1 Against (Rivas)

2. Mr. Byron Barker, 10209 Palestine, to address Mayor and Council concerning the Condition of his street.

Mr. Byron Barker, 10209 Palestine, stated that he had an issue on his street when the asphalt was breaking up real bad, it wasn't replaced back when they did all of the roads due, he guessed, to his road humps he had put in but he had an issue where every time he leaves his driveway he bangs his trailer hitch and stuff onto the road and on his driveway also. He stated that with his children riding their bikes, his little girl had actually fallen off her bike and slid into one of the cracks in the road and broke her glasses and her nose. He stated that every time it rains he has a puddle that is six foot across in front of his house to his neighbors house. He stated they had a maintenance crew come in and they had scratched the asphalt out of the drainage, he guessed to make it a better drainage and he guessed after complaints from his neighbor they came in and put a 2" stainless steel pipe across her drive and asphalted across that and while they were doing that, he ask them to come and do his also, he showed them the incidents and said that would be no problem, they would drop some asphalt in there, that they didn't have a pipe on them so they couldn't do the pipe so they dropped the asphalt down and left, the asphalt wasn't packed and it didn't even span his driveway, only half of his driveway so he went out there and checked it and you could just scratch an inch of asphalt with your hand like it was pebbles so he called the city back and told them that if they weren't going to pack it they needed to come and pick it up because it wasn't going to stay and wasn't going to work and when they came back to pick it up he ask them if they could put the pipe in like they did the neighbors and put asphalt on it and he guessed that after he made an issue on it, they went to Galena Park and borrowed their little vibrating packer and came back and packed hers and they just picked his up and he talked to the supervisor on hand and ask if there was any way they could come back and do the same thing and he assured him that they could, that it might not be the next day but they would get to it and he told them he wasn't in a hurry or anything and it would be great if they would do that for him. Mr. Barker stated that a total of two weeks went by and nothing happened, the third week he saw them working up here on something at city hall so he walked over and talked to the supervisor, the same supervisor that was at his house and he ask him what the deal was, were they going to come to his house and do this and he told him that Jack had told them to hold off ( City Manager Maner advise that he was Jack and he wasn't aware of this, there was confusion from Mr. Barker who stated they specifically told him it was Jack that told them to hold off and he was sorry.

Council Member Lee stated that when he talked to him he said it was Kyle Reed.

Mr. Barker stated that he thought it was Kyle, he had the face mixed up and he apologized, but anyway they told him that you said to hold off so he had been sitting back waiting to figure out what was going on, if they were going to eventually do it or not and he was still dealing with 6 foot across of water that refuses to drain off, that has to be sun dried in order for it to vacate his property, he was not having any kind of drainage, he was having a huge mosquito problem at his house and this issue needs to be dealt with whether they are going to fix the street or just come in and do the patch work in front of his driveway, whatever needs to be done he needs to get an answer on it somehow, that he had just been thrown off to the wastebasket and forgot about and it didn't make him happy. Mr. Barker stated that he had a video of the water, a video of everything on there.

City Manager Maner stated that before he showed that and he was certainly welcome to show it, and his talking would not count against his time. Mr. Maner advised that he lived the next block over and he knew where, right on the corner of Mercury and Wiggins and he drove his street a whole lot just because it was there and he had been by there several times since he got his e-mail and thanked him for that and he would hear him say almost every week that if you have a problem to let us know about it and we appreciate that but he would tell him that he noticed today, when he drove by, there was no water there today and he knew that. Mr. Barker agreed there was no water there today. Mr. Maner stated that yesterday, when he drove by, there was a little water and he drove around the block and there was that same amount of water standing in front of his house.

Mr. Barker stated that he had a video of his street where there was no water anywhere on his street except in front of his house, the rest of the street was completely dry.

Mr. Maner stated that Mr. Barkers was the worst on the street, he could see that.

Mr. Barker stated that his and his neighbors to the left of his house was the worst.

Mr. Maner stated that he would say that he had lived in Jacinto city since he was seven years old, he grew up here and he would tell him that was more than ten years and he made trips and he looked and he was giving him his personal opinion, that was all that it was, water stands all around and the guys call them birdbaths because it is a little bit of water and he literally saw nothing wrong with his street about cracking and buckling up, it was better than most streets in town, that he ask Chief Ayala to go by there (Mr. Barker ask Mr. Lee if he would like to speak on that and he stated when Jack was through) and look at it and he ask Kyle Reed to go by and look at it and give him their opinions and they could state them here tonight if they wanted too but basically both them just echoed that they didn't see a problem with the condition of the street and Mr. Reed tells him that the placement of a pipe won't solve his problem.

Mr. Barker stated that the placement of the pipe on his neighbors yard was actually hindering his problem, that it actually becomes a dam during rain storms. He stated that he was not happy with what they did over there but it was an elderly lady and they did take quite a bit out of that drainage and he understood that bump was not well for her so he would deal with that but every time he leaves his driveway he is banging his truck, he was banging the driveway leaving and the street coming in, when he pulls his boat out of his driveway he bangs his boat every single time no matter what angle he takes it, its has gotten to where it is damaging his property every time he leaves his property and there was 1" raising of the street compared to the street right beside it and it was a 6' long crack with a good inch between the crack and like he said, his daughter riding her bike trips over and slides into it and broke her nose, that he didn't try to sue the city over that or any thing, he didn't try to cause an incident, he just took her to the hospital and dealt with it, that was months back and his street was getting worse and it was not the whole street, it was an area in front of his house and it was mainly because of a tree there that was sucking the ground dry and causing it to lower but it was not his tree, it was his house, it was his driveway and his road in front of his house and he would like to get it fixed.

Council Member Lee ask to address this, stating that he did go look and he drove up and down that part of Palestine and he didn't see any cracks anywhere on the street except in front of his house and he was no expert but his opinion was that those two big oak trees in his neighbors yard are sending roots out into the street and it causes the street to buckle and we can't go tell that man to cut his trees.

Mr. Barker stated that he loved those trees too.

Council Member Lee stated that may be the problem, he didn't know but he didn't really think the culvert in front of his neighbors house was displacing much water anyway and with the type of rain we had the other day that street drained pretty quickly.

Mayor Diaz ask Mr. Reed if he had something to say.

Mr. Reed advised that piece of pipe was not put there for drainage, it was put there because the elderly lady was having problems, his understanding was that she had a wheel chair, that he had to take every problem we have and assess them and that was the best way to fix that at the time that he intended on doing some work over there and he would tell him, just like the City Manager told him, there were little bird baths with water in them all over the city and before Mr. Barker shows his video, that after the rains falls that we had been getting lately all those street, in front of the city Manager's house, in front of Councilman Gonzales' moms house they back up with water but they are drained off within ten minutes.

Mayor Diaz stated that it did the same thing in front of her mother's house and like he said it drained off fast.

Mr. Reed stated but as for the street cracking, there were cracks on every street in this city and he would tell them that Palestine was one of the best streets in this city.

Mr. Barker stated that walking across the street to his neighbor's house he stubbed his toe.

Mr. Reed again stated that Palestine was one of the best street in the city but he would go look at that crack and if it needed patching, he would patch it, that the drought has everything to do with that and he had never talked with Mr. Barker about this.

Mr. Barker stated that he left a message with the secretary to have her to e-mail (Mr. Reed stated that he had a phone at public works and he could call him.)

The City Secretary stated that she had ask Mr. Barker if he had talked to Mr. Reed and thought he told her he had. Mr. Barker stated that he ask her if she could have them all call him and she said she would e-mail each of them to call him back and Councilman Lee was the only one that ever called him back. She advised him that she had sent out an e-mail.

City Manager Maner advised that each of their e-mail addresses were on the website.

Council Member Robinson stated that he drove by there and he talked with him at National Night Out.

Mr. Barker advised that he did talk to him and Mr. Gonzales at the National Night Out.

There was general discussion concerning the issue.

Council Member Garcia was speaking with Mr. Barker about the pictures on his computer and Mr. Reed was speaking and his comments could not be picked up.

Mayor Diaz stated that she thought it was like Mr. Reed addressed, his neighbor was one of our seniors and she was having trouble with her wheelchair getting in and out and that was one of the reasons that Kyle took care of her due to her handicap.

Mr. Barker stated that he had a \$400.00 prop on the back of his boat and every time he came out of his driveway it banged it.

City Manager Maner ask him if he didn't raise his motor up, he didn't understand.

Mr. Barker stated it had a jack plate that jacked it up, there was discussion about how he raised the prop and he stated that it still hits.

Mr. Reed stated that street on Palestine was probably one of the best transitions going into the driveway, he can't figure what to do to solve the problem.

Mr. Barker stated he had a video of when they put the asphalt in and they said they were going to come back and do that.

Mr. Reed stated that he had never talked to him.

Mr. Barker stated no that the guy that watched over his crews, he couldn't remember his name.

Mr. Reed stated that if he did tell him that, he shouldn't have, that goes through him.

Mr. Barker stated they put down the asphalt the same day that they did the neighbors and they measure for the pipe and told him that as soon as they could get the pipe and asphalt they would get over here and get it done and in his eyes, he was representing the city.

Mr. Reed stated that he would talk to Mr. Burns about that tomorrow, that he tells them when we need to do that and that was a year and a half or two years ago when they did that.

Mr. Barker showed the video of the street and driveway he had a problem with.

Mr. Barker stated that he ask them to come back and pack it and they said they didn't have a packing machine and he told them they needed to come back and pick it up because it won't stay in front of his house.

Council Member Gonzales ask Kyle if that didn't need a curing time before it got hard.

Mr. Barker said that was later on that day but they also explained to him that they used their city vehicles to drive over and over them to pack them because they didn't have a packing machine.

Mr. Reed advised that the city did have a packing machine. Mr. Reed advised Mr. Barker that he would like to see that video because that pipe had nothing to do with drainage at all.

Council Member Rivas ask what the purpose of the pipe was and Mr. Reed advised that it was to leave a little bit of an opening to transition her to get into her driveway, trying to fill the drain up. Mr. Reed stated that he thought what Mr. Barker wanted them to do was the same thing they did to the elderly ladies house and it was un-necessary.

Mayor Diaz advised that the reason we did it for her was that she was one of our seniors, she was in a wheelchair and she was handicapped and we try to do the best we can for our seniors.

Mr. Barker stated then you don't do any things for the rest of your citizens.

Mayor Diaz stated we do help the rest of our citizens, she was just saying the reason that we did this for her was because of the wheelchair problem.

Mr. Reed advised that they also intended to do some work over there.

Mr. Barker showed video of his complaint and continued to address the issue.

Mayor Diaz ask Mr. Reed to get with Mr. Barker after the council meeting to see what we could do to help him.

Mr. Reed stated that he would be glad to talk to him or any other citizen, any time, but he had not heard from him.

Mr. Barker stated he might not have gone through the right channels, he was not coming down on anybody at all.

City Manager Maner advised Mr. Barker that if he would call Public Works and leave a message for Mr. Kyle, he would return his call. Mr. Barker stated that he had tried to reach him before and he was in and out of the office every time that he called so he didn't ever get in touch with him.

Mayor Diaz ask him to call Mr. Reed's office and leave a message with the secretary, Maria and ask Mr. Reed to get it touch with him as soon as he could.

#### COMMENTS FROM MEMBERS OF THE PUBLIC:

Donna Dailey, 1701 Chazen, stated that last week while the kinder garden kids were lining up to get on their bus at the corner of Chazen and Cheston Street they were attacked by fire ants. She stated that the ants were so bad that about four of the children were

covered with them and a couple the mothers and she tried to wipe the ants off to keep them from biting the children thus getting bit themselves. She stated that one little boy was crying because of the pain and he was covered with fire ants so much and they were biting him so bad they thought they were going to have to strip his pants off. Ms. Dailey stated that on Wednesday, October 2<sup>nd</sup> after the Variance meeting, she had a talk with Kyle Reed about the fire ant problem and Kyle said he would look into it and she thanked Kyle for doing that. She stated that on Friday afternoon she was standing on the same corner waiting for the bus to arrive and she was discussing this problem with the home owner, Roger Matheny, when Mr. Burley, the city's humane officer, drove by, he passed them up and then stopped the truck and walked back to where they were standing and told Mr. Matheny that he had a complaint against him for fire ants in his yard and she told Mr. Burley that was what they were talking about; Roger jokingly said that he had them there to keep the kids from running through his yard. Ms. Dailey stated that she pointed out that most of the problem that affected the bus riders was around the ditch and to the road and Mr. Burley made a mocking comments, something like he was the dog catcher, not the ant catcher and if he had to take care of the ants at this location he would have to take care of the ants all over Jacinto City and Mr. Burley also stated that the property that was considered an easement and was not Jacinto City's property nor their responsibility. Ms. Dailey stated that she had stood at this podium many times praising our city workers for the job that they do and how they go above and beyond for the citizens of Jacinto City. She stated that she had heard several complaints that Mr. Burley has an attitude with the citizens and she was here tonight to say that she did not appreciate the way he made light of this problem nor did she appreciate his sarcastic attitude, that it was not an attitude that any city employee should display to any citizen, after all, they were paying his wages. She stated that they had been encouraged by council, the mayor and city manager to call if they have any problems, that if we don't let the city know that there is a problem then they can't take care of it. She stated that she knew that mosquitoes carried diseases but fire ants were also another insect that causes pain when you are bitten and many people are allergic them and the city kills fire ants around the parks sprays chemicals around the city to keep citizens safe and she thought they would also care enough about the young children if they knew the problems we were having at the bus stops and if the city can't or will not take care of this, she and the other mothers were willing to buy the chemicals to take care of this problem but she thought since it was called city property or Mr. Matheny's property and since Mr. Matheny didn't take care of it, that she should ask the city before putting any poison chemicals on anybody's property. She stated that she was sure that if anyone of them sitting up there had seen the pain that these ants cause the small children that they would not have any problem taking action and she would like to again thank Mr. Reed for his attention to this matter but maybe the next time he needs to ask somebody besides Mr. Burley to handle that, someone that cares about our children and won't be so disrespectful to the citizens that bring problems to our city leaders.

Mayor Diaz stated that she would talk to Kyle and have him address Mr. Burley and we would go from there and ask Kyle to spray for the ants, that she knew they were bad and with all of the rain we have had it has created a lot of ant piles.

Ms. Dailey stated that they took care of it right away but she just didn't like the attitude that Mr. Burley had, that he came walking back just to be a smart aleck and she didn't appreciate it.

Mr. Reed stated that they did take care of those ants over there and Burley was never instructed to do anything about this, that they talked about it at a safety meeting on Friday morning and he would talk with him.

Mayor Diaz ask that he please address it because it was not the first time.

Council Member Rivas stated that he knew the city took care of mosquitoes, dogs and he takes it that if we had wasp or bees they would do the same for that.

Mr. Reed advised that we would if it was on city property.

There was general discussion about this type of problems.

#### COMMENTS FROM COUNCIL MEMBERS:

Council Member Rivas stated that he just wanted to say that he would miss Larry Schion, that he had only known him since May when he started running his campaign, he was there for him and he would be missed.

He stated that he also wanted to say that National Night Out he neighbors did a wonderful job of hosting and he appreciated it.

Council Member Garcia stated that she appreciated everything that our directors do and she thanked people like Donna and Mr. Barker who came up and presented stuff because we can't keep an eye on the whole city but it helps when each and every one of them bring things to our attention and they promised to do whatever they can to help the situation. We were there for the kids and everyone and thanked everybody for being at the meeting.

Council Member Lee stated that he would like to thank everyone for participating in National Night Out, that they had a great time, met a lot of folks, made a lot of contacts and the police department came out and talked with the people and had a great time and after the neighbors loosened up and realized that they could actually talk to the police, he

thought they made a lot of progress, he appreciated our police department and he appreciated all of them that hosted block parties and hoped that we would have an even bigger participation next year.

Council Member Gonzales stated that he would like to say that we had a good time at the City Hall, had a lot of participation and thanks to Joyce, Kathy and everyone that was there.

Mayor Diaz stated that he took the words right out of her mouth, that was exactly what she was going to say, thanks Joyce and Kathy, that we had a very good turn out and it seem to be enjoyed by all.

Council Member Gonzales stated they did a great job as they always did and he wanted to express his sorrow for loosing Larry too. He stated that he grew up with Larry and played a lot of ball with him and Larry, as a child, was the boss, as you would see him up here, he was like that as a child and everybody respected Larry, he had a big heart.

There was general discussion about Larry always being the first to donate to any cause in the city.

Mayor Diaz stated that Larry was here for everybody, it didn't matter if you like him or not, he was here you, it didn't matter who you were and he would be missed and it was good that we could talk about him, that he was very unique.

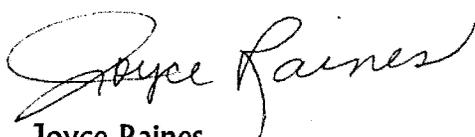
She wished members of council a safe trip to Austin tomorrow.

Council Member Garcia thanked Mr. Garey for being at the meeting, that she knew he didn't live in the city but hoped that he would come back.

Mayor Diaz stated that Larry didn't live here either but he was here for almost every meeting and he lived here for 40 years and he was very involved.

Mayor Diaz adjourned the meeting at 6:50 p.m..

Respectfully submitted,



Joyce Raines  
City Secretary