

September 2020

Fact Finding Investigation

Results

**Prepared for Mayor Mary Parr & City Council,
City of Eagle Lake, Texas**

c/o Art Pertile III, Olson & Olson, LLP.



**Complainant: Victor Shimek, City Inspector -
Code Enforcement Officer**

Subject: Carlos Gonzalez, Councilman

Prepared by Brye Consultants, LLC.

Gary M. Brye, Investigator

September 15, 2020

Mary Parr, Mayor
City Council
c/o Art Pertile III, Olson & Olson LLP.
City of Eagle Lake, Texas
P.O. Box 38
Eagle Lake, Texas 77434

Dear Mayor Parr:

Pursuant to my conversations with Brian Begle and Art Pertile with the law firm of Olson & Olson LLP; I was retained to conduct a fact finding investigation into the allegations raised by Victor Shimek in his letter dated July 31, 2020. The subject of the complaint was Councilman Carlos Gonzalez.

Based on our conversations, the work product developed pursuant to their request stipulated that I review documentation (Complaint, Policies, Ordinances, etc.), conduct interviews with those individuals having information about the issues contained in the complaint, review additional documentation as needed, determine the validity of the allegations, and identify any other similar instances or occurrences that could be investigated at a later date should Council decide to do so.

All available work that could be conducted as of this date has been completed. It should be noted that after numerous attempts were undertaken to make contact with Councilman Carlos Gonzalez in order to schedule an interview or speak with him pursuant to this investigation, this investigator has yet to be able to make contact with or receive a return call from the Councilman. As such, this report includes no direct communications from Councilman Gonzalez. However, the information obtained during this investigation does allow this investigator to make a determination as to the validity of the allegations.

The following report includes an executive summary with general findings, the body of the report, specific findings, and conclusion.

Should you have any further questions, please do not hesitate to contact me.

Sincerely,

Gary M. Brye

Gary M. Brye
Investigator

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Executive Summary

The formal complaint filed by City Inspector - Code Enforcement Officer Victor Shimek against City Councilman Carlos Gonzalez is multifaceted. As a result, these allegations will be broken down into two distinct areas:

1. Inappropriate conduct relating to Councilman Carlos Gonzalez's direct involvement in City operations as it relates to the Code Enforcement Officer's duties and responsibilities in the interpretation and enforcement of applicable ordinances and policies.
2. Councilman Carlos Gonzalez's inappropriate and incorrect statements made to an Eagle Lake business owner, as well as his interference with the permitting process, caused the business owner to abandon his desire to erect a new building in the City.

Based on the information gathered from the interviews conducted with three current employees, an interview with an Eagle Lake business owner, a review of the City Ordinances governing Building and Code Enforcement, City Council Meeting Minutes, and numerous items of additional documentation utilized in an attempt to confirm or refute the allegations, this Fact Finding Investigation has determined:

The allegations of inappropriate conduct relating to Councilman Carlos Gonzalez's direct involvement in City operations as it relates to the Code Enforcement Officer's duties and responsibilities in the interpretation and enforcement of applicable ordinances and policies are corroborated by the evidence obtained during this investigation. Information obtained during the interviews verified that Councilman Gonzalez went beyond his scope and role as a member of Council. Councilman Gonzalez moved outside his scope and role of a "policy maker as a member of Council" to one of administrator and direct involvement in City operations. This will be explained in further detail in the Fact Finding and Results section of this report.

The allegations of inappropriate and incorrect statements made by Councilman Carlos Gonzalez to an Eagle Lake business owner, as well as his interference with the permitting process caused the business owner to abandon his desire to erect a new building in the City are corroborated by the evidence obtained during this investigation. Mr. Victor Shimek and business owner John Delgado are in agreement that the information provided by Councilman Gonzalez caused him to abandon his plans on erecting a new building. Not only did Councilman Gonzalez inject himself into the building process that resulted in the decision not to build a new building, he gave incorrect information as it relates to the Ordinances governing the subdivision of property. This will be explained in further detail in the Fact Finding and Results section of this report.

NOTE: It should be noted that after numerous attempts were undertaken to make contact with Councilman Carlos Gonzalez in order to schedule an interview or speak with him pursuant to this investigation, this investigator has yet to make contact with or be contacted by the Councilman. Councilman Gonzalez was repeatedly notified of this investigator's desire to meet with him and obtain information relevant to this inquiry. These notifications were met with negative results.

Furthermore, notice was given to Councilman Carlos Gonzales in an e-mail from the City Administrator dated August 10, 2020 informing him he had an opportunity to respond to the City Council by 5:00pm. on August 13, 2020 concerning the contents contained in Mr. Shimek's letter. The City Administrator advised this investigator that no response was ever received from Councilman Carlos Gonzales.

Therefore, this report includes no direct communications from Councilman Gonzalez and includes no information that Councilman Gonzalez would deem beneficial to this investigation.

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Limitations of the Fact Finding Investigation

Purpose & Methodology

PURPOSE

The purpose of this investigation was to conduct a fact finding review of written allegations made against City Councilman Carlos Gonzalez by the City Inspector - City Code Enforcement Officer Victor Shimek, to wit:

1. Review written complaint/allegation(s) made against the City Councilman.
2. Coordinate the fact finding review process by and through the office of Olson & Olson, LLP.
3. Conduct personal interviews with Members of City Staff, current and past employees as appropriate, and citizens as needed to assist in verifying or refuting the information contained in the written complaint/allegation(s).
4. Review written documentation to include the City's policies, procedures, or ordinances, as needed to assist in verifying or refuting the information contained in the written complaint/allegation(s).
5. Prepare a Final Report detailing the findings from this investigation.
6. Attend City Council and/or City Administrative Meetings as needed.
7. Deliver all written reports developed under this work product to the City's legal counsel, Art Pertile III, Olson & Olson, LLP.

METHODOLOGY

As stipulated in the Executive Summary, this investigation covers alleged inappropriate conduct exhibited by Councilman Carlos Gonzalez. Not all interviewees were able to provide all information relevant to the allegations being made against Councilman Gonzalez. *Furthermore, this investigator was not afforded the opportunity to meet with or speak with Councilman Gonzalez in an attempt to obtain information the Councilman thought would be relevant to this investigation. Numerous attempts were made to contact Councilman Gonzalez. All attempts resulted in no contact being made and no responses being received by Councilman Gonzalez. [See Below]*

As a result, the fact finding investigation process utilized additional documentation whenever possible in making the final determinations contained herein.

This investigator solicited assistance from City Staff in an attempt to obtain numerous additional documents that could be utilized in an attempt to confirm or refute the allegations. The additional documentation requested/used during this fact finding process included:

Policies and Procedures, Governing Legislation:

City of Eagle Lake Code of Ordinances:

Ordinance No. 2020-03 Providing for and pertaining to City Administrator

Chapter 3: Building Regulations

Sec. 3.01.003 Code Enforcement Officer

Chapter 10, Exhibit A: Subdivision Ordinances Section 4

Definitions – City Manager

Subdivision Exceptions

Chapter 10, Exhibit A: Subdivision Ordinances Section 16

Authority of the City Engineer or the City Manager

City Council Agendas and Minutes

February 25, 2020

Back-Up Documentation:

1. July 31, 2020 letter from Victor Shimek to City Administrator Melissa Landin.
2. August 10, 2020 e-mail to Councilman Gonzalez from City Administrator Melissa Landin; providing him with a copy of Mr. Shimek's letter and a notice that he had an opportunity to respond by 5:00pm. August 13, 2020.
3. August 10, 2020 e-mail to City Council from City Administrator Melissa Landin; providing notification of two complaints and discussion for Council Meeting.
4. Notes from August 11, 2020 telephone call between City Administrator Melissa Landin and building owner John Delgado referencing Mr. Shimek's letter.
5. Building Permit 27922 – Repair shop located at 405 FM 3013.
6. E-mail (July 27, 2020) from Councilman Gonzalez to City Administrator Melissa Landin referencing a report received from the Texas Department of State Health Services concerning an inspection report identifying asbestos at a remodeling site belonging to Mr. Vargas..
7. E-mail (July 27, 2020) from Councilman Gonzalez to City Administrator Melissa Landin regarding a request that the Code Inspector contact Mr. Vargas concerning his construction job.

Attempts to contact Councilman Carlos Gonzalez to obtain information:

1. Telephone attempts:
 - a. September 1, 2020 1:30pm left message
 - b. September 2, 2020 (two calls) voice mailbox full both attempts
 - c. September 3, 2020 8:50am. left message
2. E-Mail attempts – City Council e-mail address
 - a. September 1, 2020 3:12pm.

- b. September 2, 2020 10:25am.
 - c. September 2, 2020 3:45pm.
 - d. September 3, 2020 9:02am.
3. U.S. Postal Service Letter Attempts Mailed September 5, 2020
- a. Three separate letters sent regular mail – home, work, City Hall
 - b. Three separate letters sent Certified Mail, Return Receipt Requested
 - i. Home
 - ii. Work – **Return Receipt signed for September 8, 2020**
 - iii. City Hall
4. Notice was given to Councilman Carlos Gonzales in an e-mail from the City Administrator dated August 10, 2020 informing him he had an opportunity to respond to the City Council by 5:00pm. on August 13, 2020 concerning the contents contained in Mr. Shimek’s letter. The City Administrator advised this investigator that no response was ever received from Councilman Carlos Gonzales.

A copy of the aforementioned documents are available upon request and are maintained in the documentation files for the City of Eagle Lake September 2020 Fact Finding Results Report completed by Brye Consultants, LLC.

Fact Finding Investigation and Results

COMPLAINT ACKNOWLEDGEMENT

Confirmation was provided to ensure that the subject of this investigation, City Councilman Carlos Gonzalez, had received a copy of July 31, 2020 complaint letter submitted by City Inspector Victor Shimek:

August 10, 2020 e-mail from City Administrator Melissa Landin to City Councilman Carlos Gonzalez with the letter attached.

Copy of complaint letter was shown to this investigator by business owner John Delgado. Per John Delgado, this letter was delivered/given to him by City Councilman Carlos Gonzalez.

FACT FINDING PROCESS AND RESULTS

Inappropriate conduct relating to direct involvement in City operations:

The allegations of inappropriate conduct relating to Councilman Carlos Gonzalez's direct involvement in City operations as it relates to the Code Enforcement Officer's duties and responsibilities in the interpretation and enforcement of applicable ordinances and policies.

DISCUSSION

City Inspector - Code Enforcement Officer, Victor Shimek, stipulates that the inappropriate conduct relating to Councilman Carlos Gonzalez's direct involvement in City operations as it relates to the Code Enforcement Officer's duties and responsibilities in the interpretation and enforcement of applicable ordinances and policies can be summed up by the following:

- There is no provision in the City of Eagle Lake Code of Ordinances for an individual City Councilman to issue or deny permits. The Code of Ordinances assigns that job to the Code Enforcement Department and/or the City Inspector or Building Official.
- The City Manager has the authority to subdivide a property into 4 (four) or less properties without consulting Planning and Zoning, City Council, or individual Councilmen.
- The Planning and Zoning Commission would have jurisdiction in subdividing a property, not the Board of Adjustment.

Information gathered during this investigation showed that Councilman Carlos Gonzalez did in fact have direct involvement in City operations as it relates to the decision by Mr. John Delgado to either build a new building or remodel an existing structure.

Mr. Shimek informed this investigator that earlier this year he and then City Manager Mr. Boraz met with Mr. Delgado and informed him on what needed to be done for him to build his new building after acquiring additional land and subdividing it. Based on the information provided, there would be no need to go before Planning and Zoning for a variance. Mr. Shimek stated it was inappropriate for Councilman Gonzalez to take the action he did in relation to Mr. Delgado's building project.

Mr. Delgado informed this investigator that Councilman Gonzalez came by his business sometime in late June or early July to get some work done on his (Gonzalez's) vehicle. While there, Mr. Delgado asked Councilman Gonzalez if he could help by having Victor (Mr. Shimek) move the process along so he could build his new building. Councilman Gonzalez told Mr. Delgado that the process would take approximately two to three months. Councilman Gonzalez stated City Council had to convene, there would have to be a special committee meeting (Mr. Delgado thought Councilman Gonzalez stated Board of Adjustment) before it could move on.

Mr. Shimek informed this investigator that on a later date he saw Mr. Delgado at a restaurant and inquired about the status of the building project. Mr. Delgado reportedly informed Mr. Shimek of the discussion that took place with Councilman Gonzalez concerning the process taking two to three months and the process that would have to be followed. Mr. Shimek informed this investigator that he then told Mr. Delgado that the information given by Councilman Gonzalez was incorrect, that there is an exception to having to go to Planning and Zoning (not Board of Adjustment) stipulated in the City Ordinances when subdividing land into four or fewer parts (Code of Ordinances Chapter 10, Exhibit A, Section 4, Exceptions).

This investigator reviewed the audio recording of the telephone call between City Administrator Melissa Landin and business owner John Delgado concerning the July 31, 2020 letter submitted by Victor Shimek. The City Administrator informed Mr. Delgado she thought the concern Mr. Shimek had was that Councilman Gonzalez did not have the authority to tell Mr. Delgado the information that he did and that the information he relayed was incorrect. Mr. Shimek had informed Mr. Delgado that he did not have to abandon constructing a new building and that Councilman Gonzalez had told Mr. Delgado "a falsehood". Mr. Delgado informed the City Administrator that he told Mr. Shimek he thought Councilman Gonzalez would have the correct information, "was in the know", because he was on City Council and would know what was going on. Mr. Delgado informed the City Administrator that if he would have known the information was incorrect, he would have done things differently.

The City Administrator informed this investigator that she had a follow-up personal meeting with Mr. Delgado the next day after she talked with him by phone. She stated during that

meeting the discussion was “very consistent” with the content of the telephone call the day before. She stated that Mr. Delgado believed Councilman Gonzalez was trying to help him. Mr. Delgado informed the City Administrator that he was concerned about putting the City and Council at odds. The City Administrator informed this investigator that she believes that Councilman Gonzalez’s actions (informing Mr. Delgado about the delay, etc.) were improper. The City Administrator stated there are no committee assignments where Council members are assigned or where they preside over Board or Committee meetings. There are no department liaisons (Council Member liaison with oversight of departments).

During the February 25, 2020 City Council Meeting, City Attorney Art Pertile provided the Council with an overview of their duties and responsibilities. Councilman Gonzalez was present during this overview.

Mr. Art Pertile stated the Mayor is charged with the administrative type responsibilities in the City. By ordinance, there is an Administrator that is there to help the Mayor administer the Mayor’s duties. He stated City Council sets policy, gives general direction on where they want the city to go. He stated it is the job for Council to make decisions during Council meetings “from the bench right here”, not out there talking individually with citizens. The Council sets policy and Mayor runs the City. The Mayor is the administrator. He informed the Council if a council member begins to interfere too much in the day to day operations of the City, they lose their immunity. Council members have legislative immunity for legislative acts.

Code of City Ordinances, City of Eagle Lake, Chapter 3, Building Regulations, Article 3.01 General Provisions stipulates that the Code Enforcement Officer (Sec.3.01.003) shall be the designated authority charged with the administration and enforcement of this article..... Furthermore, the Code Enforcement Officer can act as an advisor to the city council, planning and zoning commission..... There is no provision for an individual City Councilman to act in any capacity such as administering or enforcing building code ordinances.

FINDINGS:

Therefore, the allegations of inappropriate conduct relating to Councilman Carlos Gonzalez’s direct involvement in City operations as it relates to the Code Enforcement Officer’s duties and responsibilities in the interpretation and enforcement of applicable ordinances and policies are corroborated by the evidence obtained during this investigation. Information obtained during the interviews verified that Councilman Gonzalez went beyond his scope and role as a member of Council. Councilman Gonzalez moved outside his scope and role of a “policy maker as a member of Council” to one of administrator and direct involvement in City operations.

Inappropriate and incorrect statements caused business owner to abandon his desire to erect a new building in the City:

The allegations of inappropriate and incorrect statements made to an Eagle Lake business owner by Councilman Carlos Gonzalez, as well as Councilman Gonzalez's interference with the permitting process, caused the business owner to abandon his desire to erect a new building in the City.

DISCUSSION

City Inspector - Code Enforcement Officer, Victor Shimek, stipulated the inappropriate and incorrect statements made by Councilman Gonzalez that resulted in a business owner abandoning his desire to build a new building in the City can be summed up by the following:

- By Carlos Gonzalez interfering and injecting himself into the permitting process, the City has missed the opportunity to have a new building in our City.

In addition to the aforementioned information previously reported concerning Councilman Gonzalez's inappropriate conduct relating to his direct involvement in City operations, this investigation has revealed the following as it directly relates to the decision not to build a new building.

Business owner John Delgado informed the City Administrator and this investigator on separate occasions that the comments made by Councilman Gonzalez caused him to decide not to build a new building and resort to renovating the old one.

Councilman Gonzalez told Mr. Delgado that the process would take approximately two to three months. Councilman Gonzalez stated City Council had to convene, there would have to be a special committee meeting (Mr. Delgado thought Councilman Gonzalez stated Board of Adjustment) before it could move on.

Mr. Delgado informed this investigator that the specific subject of "permit" was not discussed during his conversation with Councilman Gonzalez. Even though the specific subject of permit had not been discussed, Mr. Delgado informed the City Administrator and this investigator that by Councilman Gonzalez saying what he did, he changed from constructing a new building to renovating and old building.

Mr. Shimek informed this investigator he told Mr. Delgado that the information given by Councilman Gonzalez was incorrect. There is an exemption to having to go to Planning and Zoning (not Board of Adjustment) stipulated in the City Ordinances when subdividing land into four or fewer parts (Code of Ordinances Chapter 10, Exhibit A, Section 4, Exceptions).

Mr. Delgado informed this investigator that if he had known the information Councilman Gonzalez gave him was incorrect, he would not have chosen to renovate his old building. His original desire was to build a new building.

Mr. Victor Shimek informed this investigator that no permit was ever issued for the construction of a new building. The only permit issued relevant to this incident was a remodel/repair permit # 27922 for Mr. Delgado's business located at 405 FM 3013.

FINDINGS:

Therefore, the allegations of inappropriate and incorrect statements made by Councilman Carlos Gonzalez to an Eagle Lake business owner, as well as his interference with the permitting process, thus causing the business owner to abandon his desire to erect a new building in the City are corroborated by the evidence obtained during this investigation. Mr. Victor Shimek and business owner John Delgado are in agreement that the information provided by Councilman Gonzalez caused him to abandon his plans on erecting a new building. Not only did Councilman Gonzalez inject himself into the building process that resulted in the decision not to build a new building, he also gave incorrect information as it relates to the Ordinances governing the subdivision of property.

Conclusion

Based on the information gathered from the interviews conducted with three current employees, an interview with an Eagle Lake business owner, a review of the City Ordinances governing Building and Code Enforcement, City Council Meeting Minutes, and numerous items of additional documentation utilized in an attempt to confirm or refute the allegations, this Fact Finding Investigation has determined:

The allegations of inappropriate conduct relating to Councilman Carlos Gonzalez's direct involvement in City operations as it relates to the Code Enforcement Officer's duties and responsibilities in the interpretation and enforcement of applicable ordinances and policies are corroborated by the evidence obtained during this investigation. Information obtained during the interviews verified that Councilman Gonzalez went beyond his scope and role as a member of Council. Councilman Gonzalez moved outside his scope and role of a "policy maker as a member of Council" to one of administrator and direct involvement in City operations.

The allegations of inappropriate and incorrect statements made by Councilman Carlos Gonzalez to an Eagle Lake business owner, as well as his interference with the permitting process, thus causing the business owner to abandon his desire to erect a new building in the City are corroborated by the evidence obtained during this investigation. Mr. Victor Shimek and business owner John Delgado are in agreement that the information provided by Councilman Gonzalez caused him to abandon his plans on erecting a new building. Not only did Councilman Gonzalez inject himself into the building process that resulted in the decision not to build a new building, but he also gave incorrect information as it relates to the Ordinances governing the subdivision of property.

NOTE:

The scope of this original investigation concerned conducting a fact finding review of the allegations contained in Mr. Shimek's letter dated July 31, 2020. However, part of this investigation was to report on other issues or occurrences that might be similar in content to Mr. Shimek's letter in which City Council might, at a later date, decide to seek further information.

As a result, during this investigation this investigator was provided information that relates to another possible incident involving Councilman Gonzalez and his direct involvement in City operations as they relate to the Code Enforcement Officer's duties and responsibilities in the interpretation and enforcement of applicable ordinances and policies.

This information was in the form of e-mails relating to a building project belonging to Mr. Vargas. The property in question is located at 720 Main Street and is reportedly a proposed tire shop.

The e-mails were dated July 27, 2020. One of the e-mails was sent from “Carlos” to the City Administrator. It contained information in reference to an inspection report of a proposed tire shop located at 720 Main Street. The original information had been sent by an Inspector from the Texas Department of State Health Services to “Mr. Gonzalez” concerning asbestos. In the body of the e-mail Councilman Gonzalez states “He is good to go to open his business”.

The other e-mail was again an e-mail addressed to the City Administrator, sent by “Carlos Gonzalez City councilman”, asking that she have the Code Enforcement Officer call Mr. Vargas and inform him (Vargas) that “all is ok and even though the City has absolutely nothing to do with the situation

Mr. Shimek informed this investigator that the first he had known about this inspection report concerning asbestos at Mr. Vargas’ proposed tire shop was when the City Administrator had given him a copy of Councilman Gonzalez’s e-mails. This investigator asked why a Councilman would have a copy of this report. Mr. Shimek stated he has no idea why Councilman Gonzalez would be receiving this type of report directly from the Inspector and it not being sent to the City for processing. Mr. Shimek stated this was another example of how Councilman Gonzalez injects himself into City business. Mr. Shimek stated this incident is of special importance because of the potential for an existing asbestos problem to develop. Furthermore, by examining the e-mails, it appears that the Councilman is directing City staff on what action(s) should be taken.