

REGULAR COUNCIL MEETING - December 7, 2010

The Waelder City Council met for their regular monthly meeting on December 7, 2010 at Waelder City Hall. Those present were Mike Harris, Robert Tovar, Annie Jackson and Becky Ayala. (Dora Ramirez absent) Mayor Roy Tovar did preside.

The meeting was called to order and a quorum was established.

A motion was made by Mike Harris to approve the minutes with a second by Robert Tovar. The vote was unanimous and the motion was passed.

A motion was made by Mike Harris to approve the payment of the bills with a second by Annie Jackson. The vote was unanimous and the motion was passed.

A motion was made by Robert Tovar to approve the Financial Reports with a second by Annie Jackson. The vote was unanimous and the motion was passed.

Open Forum: None

Mike Harris moved to appoint Norma, Angie, Mrs. Jackson and Dora for the Christmas Committee with a second by Robert Tovar. The vote was unanimous and the motion was passed.

The Council convened to Executive Session at 7:05 p.m. according to Texas Government 551.074: Personnel Evaluation: Police Chief (Larry D. Stamps)

Chief Stamps: It's gonna be open.

Mayor Roy Tovar: Okay, for the record, the police chief wants it on open.

Attorney Tom Robinson: Chief. Are you going to sit back there?

Chief of Police: Yes, Sir. Till I'm called to come forward.

Attorney Tom Robinson: I'll see if, I can get another chair here. So, the council can hear you better. Would you like to come up here?

Chief Stamps: Mr. Robinson, you filed against me on August 29th. It was filed improperly by the Mayor of the City of Waelder, Mr. Roy Tovar. We did this, he violated a couple of things, uh and he also, continued that violation to have this meeting tonight, which your apparently chairing, on this particular agenda item, so let me sight you Texas Local Government Code Chapter 22, Texas Local Government Code Chapter 614, Chapter, uh

Attorney Tom Robinson: Do you want to have a seat? It's not your turn yet.

Chief Stamps: 521

Chief Stamps: Well, you just ask to come over here

Attorney Robinson: Yeah, do you want to have a seat?

Chief Stamps: No, Sir. I'm trying to let you know that you are conducting an illegal meeting, and this proceeding is not standard according to the policies and procedures of the City of Waelder and the laws of the State of Texas.

Attorney Robinson: Are you not going to partake in it.

Chief Stamps: Well, Mr. Tovar brought this complaint, Mr. Robinson. Now, in a court of law or civil proceeding the person that brings the complaint, needs to sit here in this chair first, if there's a legitimate complaint. Am I right?

Attorney Robinson: Well, were fixing to have a hearing.

Chief Stamps: Yes, sir. Am I right or am I wrong?

Attorney Robinson: We're fixing to have a hearing.

Chief Stamps: Well, then get on with it.

Attorney Robinson: Do you want to have a seat up here?

Chief Stamps: Let's get on with it.

Attorney Robinson: Do you want to have a seat up here?

Chief Stamps: No, Sir. I'll sit right up here.

Attorney Robinson: You've not going to partake?

Chief Stamps: I did not say that I would not partake. I said, what I'm not going to do, is to allow.

Attorney Robinson: When did you become Chief of Police of Waelder?

Chief Stamps: Uh, it's on the record, if you don't know you might want to ask the Mayor.

Attorney Robinson: Do you recall when became Chief of Police?

Chief Stamps: Oh, I recall it, yes. Sir.

Attorney Robinson: And, when was that?

Chief Stamps: January 5th of this year, sir.

Attorney Robinson: Of 2010? When did you first become knowledgeable of the Valentine Mendez case?

Chief Stamps: We're not going. I'm telling you, Mr. Robinson, you're making a huge mistake. If you want me to answer the questions, I'll answer them at the City's peril, O.K. Seriously, I'm not playing games here!

Attorney Robinson: When did you first become knowledgeable of the Valentine Mendez case?

Chief Stamps: Uh, I believe in November of last year.

Attorney Robinson: Of 2009?

Chief Stamps: Yes, Sir.

Attorney Robinson: That was before you became Chief of Police.

Chief Stamps: Yes, Sir.

Attorney Robinson: O.K., and did you fill out a probable cause affidavit with Judge David Bird, the County Judge on April 19, 2010 against Valentine Mendez.

Chief Stamps: On or about, sir yes, sir.

Attorney Robinson: And was he arrested as a result of that?

Chief Stamps: He was.

Attorney Robinson: And incarcerated in the Gonzales County Jail?

Chief Stamps: Yes, sir he was.

Attorney Robinson: Did a grand jury meet in June of 2010?

Chief Stamps: Uh, I have no personal knowledge of that, no.

Attorney Robinson: Did a grand jury meet in August of 2010?

Chief Stamps: Uh, I have no personal knowledge of the grand jury meeting.

Attorney Robinson: Did a grand jury meet in October of 2010.

Chief Stamps: If they did, I do not know what day it was.

Attorney Robinson: Did a grand jury meet last Thursday, December 2, 2010?

Chief Stamps: That, I do know. Yes, Sir.

Attorney Robinson: Sir

Chief Stamps: That I do know

Attorney Robinson: O.K. When did you first refer the case against Valentine Mendez to the District Attorney Office?

Chief Stamps: Mr. Robinson

Attorney Robinson: You said, in your response letter in November.

Chief Stamps: No, I don't believe, I said that

Attorney Robinson: O.K. I happen to have a copy. When did you first refer to the District Attorney Office?

Chief Stamps: Tell me what page and paragraph you're referring to, sir.

Attorney Robinson: When did you first refer it to the District Attorney's Office?

Chief Stamps: Where do you see that? That I referred it to?

Attorney Robinson: Excuse me. Uh, does all the Council have a copy of the original complaint?

Councilman Tovar: Is it in here, Norma?

Chief Stamps: Probably cause it's illegal.

Attorney Robinson: This is a copy of the response. This is a copy of the letter from the District clerk, with dates of the grand jury meetings in Gonzales.

Chief Stamps: Mr. Robinson, this letter that you just passed out to the Council and myself, doesn't have a date. Why not? Mr. Robinson, can you tell me, when you came

in possession of this letter? Mr. Robinson, can you authenticate Sandra Baker name?

Attorney Robinson: I sure can.

Chief Stamps: Is she here to testify to the validity of this letter? Now, all I have is a copy.

Attorney Robinson: And, Ah

Chief Stamps: I ask you. You need to answer some questions.

Attorney Robinson: In your response letter December 3rd.

Chief Stamps: Mr. Robinson.

Attorney Robinson: 2nd page, 3rd paragraph from the bottom. You report, you say, you certainly regret that the D.A. did not have the report until November. You asked me, where that was and that's where it is and its your response, and you signed it.

Chief Stamps: Well, let see here. What page?

Attorney Robinson: 2nd page

Chief Stamps: 2nd page, What paragraph?

Attorney Robinson: 3rd paragraph from the bottom, of the 2nd page.

Chief Stamps: Well, that's obviously typo.

Attorney Robinson: It's your letter.

Chief Stamps: Well, actually, you know what? It's not a typo, your right, your absolutely right. I do regret, they didn't get it.

Attorney Robinson: It was November 18th.

Chief Stamps: O.K. I do regret that.

Attorney Robinson: Cause you report that in the 2nd paragraph on the 2nd page of your letter.

Chief Stamps: So, What's your point?

Attorney Robinson: Is that when D.A. Office got the Valentine Mendez Case?

Chief Stamps: Just when it got hand delivered.

Attorney Robinson: to the District Attorney Office?

Chief Stamps: Yes, Sir.

Attorney Robinson: In the mean time. Mr. Mendez spent 96 days in jail, without a charge being brought against him by the grand jury. Is that correct?

Chief Stamps: I presume so.

Attorney Robinson: Let me show you, your probable cause affidavit that caused the boy to get arrested. He was 17 years old. Or I think he is 18 now. This is probable cause affidavit, the arrest warrant, you signed, you swore to it, April 19, 2010. I presume you have a copy.

Chief Stamps: State your case.

Attorney Robinson: Sir.

Chief Stamps: State your case. You passed out some information for us, what's the

validity of it?

Attorney Robinson: Did you have the? Did your sign that affidavit on, the probable cause affidavit on April 19, before Judge Bird?

Chief Stamps: I believe, I did, Sir.

Attorney Robinson: And was the boy arrested and put in jail?

Chief Stamps: I think, he was. I didn't make the arrest, but

Attorney Robinson: Who made the arrest?

Chief Stamps: Officer Brad Heiman.

Attorney Robinson: O.K., and did he then spent 96 days in jail before he made bond?

Chief Stamps: Disputing that portion of the, he spent the time there; it's on the record, Sir.

Attorney Robinson: Right.

Chief Stamps: O.K.

Attorney Robinson: I brought the record with me.

Chief Stamps: Good. O.K.

Attorney Robinson: O.K. So, April 19. Why didn't you take the case against Mr. Mendez to the District Attorney Office, when one, two, three, four grand juries went by? This boy was charged by you with indecency with a child. He was let out on a writ of habeas corpus by the district judge, because the D.A.'s office never indicted. Never taken to the grand jury, because they didn't have any case. So, we either have a defendant charged with indecency with a child out on the streets of Waelder or we have someone that did not do it in jail for 96 days because you didn't take that case to the District Attorney Office. Is that correct or not?

Chief Stamps: It's incorrect ?

Attorney Robinson: Why is it incorrect?

Chief Stamps: Because, if you read my response, which is what your leaving out to try to bolster your position.

Attorney Robinson: We can let the Council make that determination.

Chief Stamps: Well, we see what's happening right now. I'm just pointing out what you're doing. When I came to Waelder Police department the procedure was to drop off at the Clerk's Office in a brown envelope. At that time, it was set in a box for the D.A.'s Office, until a member of the D.A.'s would come and get it. I dropped it off there. I thought what worked at the time, until I realized, that when I came back from Huntsville. That the D.A. office did not have the case, so at that time, I made sure, that they got hand delivered to them.

Attorney Robinson: This a letter dated today from the Dist. Clerk.

Chief Stamps: O.K.

Attorney Robinson: You might want to read it.

Chief Stamps: So, what does it say?

Attorney Robinson: You're asking me, what it says?

Chief Stamps: Tom, your

Attorney Robinson: It's basically says that the statements in your letter concerning the drop off at the District clerk's office are false. That's what it says.

Chief Stamps: So your alleging that I'm lying, is that what you alleging, Mr. Robinson? It doesn't say that it's false. This letter does not say that my assertion if the contention in my position that I dropped that case over there is false. It says I know of my own personal knowledge, here and now, that this office does not have a mail box. I dropped it off there and I explained to the clerk just I did with the other package, containing other cases, that some how inadvertently got shifted over to Count Attorney Office, that this is what I was told to do with it and they took it and that's what they did with it.

Attorney Robinson: Who did you give to?

Chief Stamps: That I don't know and one of the mistakes or one of the falsies that I corrected was I now have a receipt that when any time a report leaves our office I take that receipt with the case report or the file and I get that person, whoever I drop it off to, they sign for it, I sign for it. Its dated and timed, it's got the name and case number.

Attorney Robinson: Where is this at?

Chief Stamps: Where's, what sir?

Attorney Robinson: Where do you take the case?

Chief Stamps: To the prosecutor.

Attorney Robinson: Oh.

Chief Stamps: That were the cases generally go once there completed here. Then what happens is

Attorney Robinson: Who

Chief Stamps: Hey I'm not done yet. What happens is I bring that back, and I stick it back in that file, so that anybody comes to me and says, by the way, we didn't get that case. Well, ladies and gentlemen or Prosecutor/Ms. Prosecutor, guess what I have a receipt in here and this is what takes care of that. Part of being good leader and a good manager and a good supervisor is finding situations that aren't working properly and you put those, you evaluate them. Then you take that information and evaluation and then you change it so it doesn't get broke again. I've done that, I think I have done a lot of things for the police department. I've made a lot of good strides in this department. A lot things that you and maybe a couple of the council members don't understand. I've corrected a situation, Mr. Robinson.

Attorney Robinson: I'm sorry. What situation?

Chief Stamps: The situation of insuring that the case report gets to the prosecutor, not only in a timely manner, but in an efficient and effective manner. So, that we won't

have this situation again. I am very, very disappointed in the system, in which Mr. Mendez was caught in. That was never an intention on anybody's part, it's regrettable, but it happens. Far more times, with sold out neglect, Mr. Robinson and you know this. You've been, how long have you been an attorney?

Attorney Robinson: 38 years, I believe.

Chief Stamps: Well, have you ever been a prosecutor?

Attorney Robinson: Or pretty close.

Chief Stamps: Have you ever been a prosecutor?

Attorney Robinson: Yes, I have.

Chief Stamps: Then you understand and your service is admirable. You understand, Mr. Robinson that sometimes the wheels of justice and sometimes the spokes on those wheels do not always turn, efficiently and effectively. Now, is that true? By your own personnel knowledge. Is that true?

Attorney Robinson: I want to know why

Chief Stamps: Just answer the question

Attorney Robinson: Why this boy spent 96 days in jail?

Chief Stamps: Answer the question.

Attorney Robinson: While you did not take that case to the District Attorney Office.

Chief Stamps: I took it to the District Clerk Office by procedure of what. Don't you dare interrupt me! Do not interrupt me!

Attorney Robinson: November 18th

Chief Stamps: I took it to the District Clerk Office with honorable intentions of making sure

Attorney Robinson: I'll interrupt you if I want to.

Chief Stamps: Well, I not going to listen to you. Now, I did what I thought had worked in the past until I found out it didn't then by grabs, I changed it. It's gonna cost us a little gas to drive to Seguin, but I not going to have this happen anymore, okay. Not under my watch and not in my department.

Attorney Robinson: Have what happen, again?

Chief Stamps: Anyone sitting in jail with out the proper paperwork to back it up with.

Attorney Robinson: But, you had the proper paperwork. You had a probable cause affidavit and an arrest warrant.

Chief Stamps: Mr. Robinson, your twisting, your twisting the facts.

Attorney Robinson: No, I'm not you had it.

Chief Stamps: Mr. Robinson

Attorney Robinson: What I want to know is, why didn't it go to the grand jury? Why didn't?

Chief Stamps: You ask the District Attorney that. Why don't you go back and ask the

District Attorney, why did it take him 96 days to ask the Waelder Police Department for a case report. Why don't you do this? Why don't you go back and ask the District Attorney, why it took you guy since April 19th until November 18th for somebody from your office to pick up the phone and say chief were looking for a report, would you mind getting it to us. Which would suspect, clue, here, Boom, I need to go over there and get this report cause obviously I thought it was there. I didn't realize it wasn't until I got back from training. Once, I realized it, I got the paperwork to them and unfortunately, it was after the 90 days. That's a miss fortune. However, had they called me. Had the County Jail called me. You don't have a letter from them. You don't have a letter from the District County Office saying that they called me, do you? No, you don't and you know, why? Because they dropped the ball just the same as anybody else in this situation.

Attorney Robinson: How would the District Attorney's office known to have called you? They had no report until November 18th?

Chief Stamps: Mr. Robinson, how dumb do you think we are? The District Attorney's office and the County Attorney's office get the names of the inmates that are brought to jail. If there felonies, on a felony charge the District Attorney is sent that information to the District Attorney's office, the county, oh I'm sorry the Sheriff's office sends that information to the District Attorney's office. If it's a misdemeanor, think about it, you know this. The misdemeanor arrest are notified to the County Attorney's office, if you sit there and say they ain't, you're a liar. So, don't try that. You know, as well, you've been a prosecutor for, well an attorney for 38 years, not a prosecutor, you know this, so don't try to spin this any other way, this is not going to work. I corrected a situation, I did what was right, unfortunately the gentlemen had to sit in jail and I hate that. I don't want to see anybody in jail that don't need to be in jail and it breaks my heart. I've only put one person, arrested one person in my entire life that has ever, that normally I found out was innocent. I charged him with aggravated kidnapping, aggravated sexual assault and a couple other things and I put him in the hoosegow. And he's standing naked in front of me while the medic is doing a rape exam on him, and swearing to God he didn't do it, and I'm like okay, whatever. He said did you talk to the other girl and you know what Mr. Robinson from that point forward that investigation took a 180 degree turn and I got that guy out of jail and I never, ever looked back, I even went to his parole hearing with him.

Attorney Robinson: I don't think I have anything further, I don't know what this has to do with this case?

Chief Stamps: I has to do with, Mr. Robinson, it has to do with honesty, integrity and doing the right thing. That's what is has, that's exactly what I did right here, in this situation. Now, if you want to dispute further, you knock yourself out. I going to have a

seat over here in this cold chair and wait for this to be done.

Attorney Robinson: Good. Uh, if it pleases the council, uh I think I have enough, the Mendez boy was arrested on April 19th, he was charged with a second degree felony by the chief of police, Judge Bird issued an arrest warrant, he was arrested, he was put in jail, he stayed there for 96 days, the chief never took the offense report over to the District Attorney's office until November 18th. Three, if not four grand juries went by, where Mr. Mendez could have been indicted, if the grand jury felt that he should be, if the grand jury felt he shouldn't be indicted he still spent 96 days in jail, uh, Mr. Houston Munson was appointed to represent him, uh, he filed a writ of, uh, an application for a writ of habeas corpus because if you keep someone in jail for 90 days without them being indicted by the grand jury, there entitled to a personal recognizance bond, the young man did get a personal recognizance bond after 96 days, so since that time, I believe it was July 22nd, he's been, and I don't know anything about him, I've never met him, he's been foot loose and fancy free. I presume in the street of the City of Waelder, so if he did what the chief said he did in his probable cause affidavit, we have 2 serious problems. If he didn't do it, the first serious problem is that he spent 96 days in jail for no reason, if he did do it, the serious problem is that a gentlemen that would have done such a thing has been foot loose and fancy free in Waelder since July 22nd. Without the case ever going to the District Attorney's office, it could not go to the grand jury, if the District Attorney's office did not know about it. The Chief has admitted that the case did not go to the D.A.'s office until November 18th. You've seen his response, you can read that as well as I can. I think that's all I have.

Chief Stamps: All right, I do get my closing argument, as Mr. Robinson pointed out, ladies and gentlemen, what this boils down to is, I got a call on the first week in November about somebody who was, I hate to use the foul word, so I'll say that he was mad about the results of the election and he's trying to blame the results on me, that's what it is, this was the very first thing that came out of the mouth of the person who told me about this, was well there going to say that you railroaded his election, which is a whole big different dill, I just want to let you to know that I know about that, okay, it's no big deal.

Councilman Tovar: Does this have anything to do with these allegations were talking about?

Chief Stamps: Hang on Mr. Tovar, hang on. I appreciate your attention, though. Uh, the situation with this allegation is not as Mr. Robinson said. Yet, yeah, okay, it is true that I did not take the case to the District Attorney's office but I followed procedure that had been established prior to my employment at the City of Waelder and I followed that practice until I realized those policies and practices did not work, I corrected the

situation and I made sure that now we have no chance for it being lost, misplaced, um, and we have the proof that we dropped the case off and if they ever call us, "Hey, we need this case", well we dropped it off to you, back in April, but let us get you another one and then will do another receipt, so we dropped it off twice, ladies and gentlemen, I done nothing wrong, here. This is a witch hunt and I just, and let me reiterate that this is a violation of city policy, it's a violation of the laws of the State of Texas and other jurisdictions, as well. And I'm going to respectfully ask, Mr. Tovar, I'm going to respectfully ask that you withdraw this complaint, without prejudice, so that and be done but there's just no evidence here that says I did anything wrong.

Mayor Tovar: You put somebody in (county) for 96 days.

Chief Stamps: You know why, I did not arrest him on my own, I'm glad you brought that up, the fact of the matter, Mr. Tovar, I took this information, I took it to a judge, a county judge, Judge David Bird, I didn't take it to Lacho Melchor, I didn't take it to any other JP, I took it to a county judge, I took it to his court and I said judge here is the evidence, this is what these people say, this is what we have, it's your option to issue a warrant, Judge Bird read the information in the probable cause affidavit and he signed that warrant showing and it's right here, if you want to look at the probable cause, please look at it, now I want you to look at it, follow it with me. On April 19th this magistrate determination right here at the bottom, ladies and gentlemen, when you go get a warrant for a person, this is going to be here. Magistrate determination of probable cause on the 19th day of April of 2010, I hereby acknowledge that I have examined the foregoing affidavit, which is this portion and the text in front of it and have determined, which is highlighted in bold, that probable cause exists for the issuance of an arrest warrant for the individual accused therein. I did not make a decision to put this man in jail, I carried the information to the judge, I put the information in front of the judge and I said "You know what, you make the call", because I am not going to make, put this guy in jail on my word alone or anyone else's word, you make the decision, ladies and gentlemen, do you not see a David Bird's signature on this page, council ladies, ladies and gentlemen, do you not see David Bird's handwriting in the signature block of this warrant? I've done nothing wrong and I'm respectfully asking for you to dismiss this.

Mayor Tovar: Are you finished?

Chief Stamps: I'm done, sir.

Mayor Tovar: Council you heard the city attorney and Stamps. What is your decision on this item on the agenda?

Councilwoman Ayala: I just want to add, I did do a little bit of homework today on this. I talked to Misty at the D.A.'s office, she's head of the felony department, I asked if there is a procedure for them to receive reports, she said no there isn't. There is not a

procedure for them and there's no penalty or limitation in receiving a report in November or any other time. It happens all the time, that there in jail for 90 days and even if he would have bonded out, he'd been out on the streets today. Even with a bond. And according to the Code of Criminal Procedure this is no limitation on indecency with a child, under the section code _____.

Mayor Tovar: Anything else?

Councilwoman Ayala: You want to pass it down, so that everyone can see. There's no limitation on reports for this offense, indecency with a child.

Councilman Harris: You want to see that Tom?

Attorney Robinson: Not particularly, but I think that's true, I don't understand the point. What is the point?

Councilwoman Ayala: The point is what you are arguing is that he had to have the report there and he didn't have it there in a certain time limit from April 19th and according to Misty at the D.A.'s office there's not a time limit and according to the criminal procedures of the criminal procedure there is not limitation for that offense.

Councilman Harris: I move that Larry Stamps be terminated by the City of Waelder, immediately.

Mayor Tovar: We have a motion

Councilman Tovar: I second the motion

Mayor Tovar: A second, to terminate officer/Chief Stamps immediately. All in favor, show of hands. Opposed? Mrs. Jackson you can not vote on this.

Councilwoman Jackson: I sure can, I have my letter from the attorney and he said that I could vote.

Mayor Tovar: Okay, well then we have 2 to terminate and 2 to reinstate and it's a tie, and only the mayor gets to vote in a tie

Chief Stamps: Sir, your

Mayor Tovar: And I vote to terminate.

City Secretary: You can't do it.

Councilwoman Ayala: Your not allowed to vote according to the

Chief Stamps: We're a Type A city, mayor, you not allowed to vote

City Secretary: We're a Type A, your not able to.

Councilman Harris: I think Type A does allow

Councilwoman Ayala: I talked to TML today and Lauren said we're a Type A city and he's not allowed to vote. And I talked to the AG office, too, this is an attorney, Attorney General and he said she (Mrs. Jackson) was allowed to vote.

Councilman Tovar: Did you get that in writing or did you just talk to them on the phone.

Councilwoman Ayala: I talked to them on the phone, you can call her.

Councilman Tovar: (question/comment inaudible)

Councilman Harris: You have an Attorney General ruling?

Councilwoman Ayala: Yeah, I have his name and number and

Councilman Harris: The city can't get an attorney general ruling, you have to go to the county attorney.

Councilwoman Ayala: No, talking about as far as voting, where she can vote and

Councilman Harris: There still has to be a ruling by the Attorney General. Isn't that correct Tom?

Attorney Robinson: Sure

Councilwoman Ayala: That's right, the Attorney General and I talked to him, Justin

Councilman Harris: You can't get a ruling, the county attorney has to do it.

Councilwoman Ayala: That's what he said.

Councilwoman Jackson: I have my letter from the lawyer.

Councilman Harris: He's no longer our city attorney.

Councilwoman Ayala: He is, he hasn't been

Councilman Harris: He said he resigned.

Mayor Tovar: Let take a vote for the _____.

Councilwoman Ayala: We haven't accepted his resignation.

Mayor Tovar: Okay, you want to put that motion back?

Chief Stamps: The votes already been cast, mayor.

Mayor Tovar: Yeah, your terminated.

Councilwoman Ayala: He can't be, you can't vote

Mayor Tovar: Taylor, can you escort chief out?

Officer Taylor: Certainly.

Chief Stamps: This is your government at work, folks.

A motion was made by Robert Tovar to adjourn with a second by Mike Harris. The vote was unanimous and the motion was passed.