

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
March 28, 2011**

Mayor Pro-Tem Don Mueller declared a Regular Meeting duly open for the transaction of business at 7:00 P.M. Mayor Pro-Tem Don Mueller led the opening devotion and led the pledge of allegiance.

Councilmember's present were: Councilmembers Terry David Lynch, Don Mueller, Jeff Gubbels, and Bryce D. Kocian.

Councilmember absent was: Mayor Domingo Montalvo, Jr.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joan Anandel, City Secretary Paula Favors, Assistant to City Manager Jackie Jansky, Civic Center Director Jo Beth Knezek, and Assistant City Attorney Paul Webb.

Visitors present were: John Mercurief II with Wharton Journal Spectator, David Schroeder with Wharton Economic Development Corporation, Carlos Cotton, P.E. with Jones & Carter, Inc., Jim Cockrell, Lloyd Shoppa, Ray Linseisen, Damon Parker, Betty Shoppa, J.L. Roberts, Curtis Evans, Greg Barnes, Carely Mitchell, Chester Houston, Paul Sherland, and Lewis Fortenberry.

The second item on the agenda was Roll Call and Excuses Absences. Councilmember Terry David Lynch moved to excuse Mayor Domingo Montalvo, Jr. Councilmember Bryce Kocian seconded the motion.

The third item on the agenda was Public Comments. Mr. Paul Sherland addressed the City Council and informed them that a new committee was formed on the Wharton Economic Development Board named the Marketing Working Committee. Mr. Sherland advised the City Council that after researching the City of Wharton via the internet he found that there was negative information about the City of Wharton's demographics that could hinder new business interest in the community. Mr. Sherland added that the Marketing Committee would be focused on bringing a positive light to the City of Wharton and help to bring new businesses to the City. Mr. Jim Cockrell addressed the City Council with his concerns on the FM 102 Relocation and Overpass Project. Mr. Cockrell made the request for the City Council to hold public hearings to hear the concerns of citizens. Mr. Cockrell addressed his concerns with the major gridlock that took place during Hurricane Ike and not wanting the same occurrence in the future. No action was taken.

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The fourth item on the agenda was the Wharton Moment. No comments were made. No action was taken.

The fifth item on the agenda was to review and consider the City of Wharton Financial Report for the month of February 2011. Finance Director Joan Anandel presented the financial report for the month of February 2011. Mrs. Anandel stated that the total ad valorem taxes collected for the month were \$409,892.89 and the sales tax for the month of February 2011 was \$121,906.43. She further stated that the TexPool balance for February was \$2,367,299.99 with an average monthly yield of 0.15%. She said Prosperity Bank balance for February 2011 was \$1,787,915.03 with an average monthly yield of 0.15%. She further stated that other investments included \$2,657.08 at TexasGulf Federal Credit Union in the debt fund, and \$255,062.69 at Capital One Marketing at a rate of 2%. After some discussion, Councilmember Bryce D. Kocian moved to approve the City of Wharton Financial Report for the month of February 2011. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The sixth item on the agenda item was a proclamation declaring April 2011 as Fair Housing Month in the City of Wharton, Texas. Ms. Jo Beth Knezek, Director of Community Services, stated that it was a requirement of Texas Department of Housing and Community Affairs grant guidelines that the City support their housing efforts. She said that the City proclaims the month of April each year as Fair Housing Month as a way to meet that requirement. Mayor Pro-Tem Don Mueller then presented a Proclamation declaring April 2011 as Fair Housing Month in the City of Wharton, Texas, which reads as follows:

**CITY OF WHARTON
OFFICE OF THE MAYOR
PROCLAMATION**

WHEREAS, Title VII of the Civil Rights Act of 1968, as amended, prohibits discrimination in housing and declares it is a national policy to provide, within constitutional limits, for fair housing in the United States; and,

WHEREAS, The principal of Fair Housing is not only national law and national policy, but a fundamental human concept and entitlement for all Americans; and,

WHEREAS, The thirty-ninth anniversary of this National Fair Housing Law, during the month of April, provides an opportunity for all Americans to recognize that complete success in the goal of equal housing opportunity can only be accomplished with the help and cooperation of all Americans.

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NOW, THEREFORE, I, Donald Mueller, by the authority vested in me as Mayor Pro-Tem of the City of Wharton, Texas, do hereby proclaim April as Fair Housing Month in the City of Wharton and do hereby urge all the citizens of this locality to become aware of and support the Fair Housing Law.

IN WITNESS THEREOF, I have set my hand and caused the seal of the City of Wharton to be affixed this 28th day of March in the year of our Lord two thousand eleven A.D.

The seventh item discussed on the agenda was to review and consider a request by Ms. Kelley Rainbolt, represented by Mr. Damon Parker, for an over 50% variance to construct a carport ten inches (10") from the property line located at 718 Meadow Lane, Mayfair Block 4, Lot 14. Mr. Damon Parker, Contractor, presented a copy of the City of Wharton City Council Application for Over 50% Variance submitted by Ms. Kelley Rainbolt, for an over 50% variance to construct a carport approximately ten (10) inches from the property line. Mr. Parker advised the request was made for a four feet (4') two inch (2") variance from the required five feet (5') side yard set back requirement. He stated that water run-off would be to the front of the property and that no water would be shed on adjacent properties. After some discussion, Councilmember Bryce D. Kocian moved to approve the request by Ms. Kelley Rainbolt, represented by Mr. Damon Parker, for an over 50% variance to construct a carport ten inches (10") from the property line located at 718 Meadow Lane, Mayfair Block 4, Lot 14. Councilmember Jeff Gubbels seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider the Planning Commission recommendation for City Council to consider approval of the request by Ms. Brenda Palmerin, Property Owner, for a three (3) foot variance from the required twenty-five (25) foot front property line set back to replace an existing mobile home with a manufactured home twenty-two (22) feet from the property line located at 121 S. East Avenue; Wharton Block 57, Lot 6A. Assistant to City Manager Jackie Jansky presented the City Council with the Planning Commission Application for Variance submitted by Ms. Brenda Plamerin, property owner requesting a 3' variance from the required 25' front property line set back to replace an existing mobile home with a manufactured home 22' from the property line located at 121 S. East Avenue; Wharton Block 57, Lot 6A. Mrs. Jansky stated the City of Wharton Code of Ordinances, Chapter 38 Mobile Homes and Trailers requirements allowed for an existing mobile home to be upgraded with a replacement manufactured home only if the manufactured home was a HUD-code manufactured home. She said the replacement manufactured home would be 48' in length and the rear setback requirement would be maintained at the required 5'; therefore, the request was for a three feet (3') variance to place the manufactured home twenty-two feet (22') from the front property line. Mrs. Jansky stated the Planning Commission voted to recommend the City Council consider approving Ms. Palmerin's request. After some discussion, Councilmember Terry David Lynch moved to approve the request by Ms. Brenda Palmerin, Property Owner, for a three (3) foot variance from the required twenty-five (25) foot front property line set back to replace an existing mobile home with a manufactured home twenty-two (22) feet from the property line located at 121 S. East Avenue; Wharton Block 57, Lot 6A. Councilmember Bryce D. Kocian seconded the motion. All voted in favor.

The ninth item on the agenda was to review and consider Economic Development Agreements:

- A. A request by Mr. David L. Schroeder, Executive Director of the Wharton Economic Development Corporation for the City Council to consider the request by Mr. Phil Stephenson, President of the Wharton Country Club and Mr. Brian K. Bremser, Property Owner, for Economic Development Agreements for fill dirt to elevate the property located at Country Club, Block 1B-6 PT and 663 Sunset Street; Vineyard Block 3, Lot 1.
- B. **Ordinance:** An ordinance authorizing the Mayor to execute an economic development agreement and a related personal property bill of sale, to transfer City surplus fill dirt to Mr. Brian K. Bremser, Property Owner, in support of new development at 663 Sunset Street; Vineyard Block 3, Lot 1, that will increase local sales and property tax bases and create area employment.

After some discussion, Councilmember Terry David Lynch moved to approve an ordinance authorizing the Mayor to execute an economic development agreement and a related personal property bill of sale, to transfer City surplus fill dirt to Mr. Brian K. Bremser, Property Owner, in support of new development at 663 Sunset Street; Vineyard Block 3, Lot 1, that will increase local sales and property tax bases and create area employment contingent upon the acquisition of the required permit. City of Wharton Ordinance No. 2011-07 read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2011-07**

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN ECONOMIC DEVELOPMENT AGREEMENT AND A RELATED PERSONAL PROPERTY BILL OF SALE, TO TRANSFER CITY SURPLUS FILL DIRT TO BRIAN K. BREMSER, IN SUPPORT OF NEW DEVELOPMENT AT 663 SUNSET STREET; VINEYARD BLOCK 3, LOT 1, THAT WILL INCREASE LOCAL SALES AND PROPERTY TAX BASES AND CREATE AREA EMPLOYMENT.

WHEREAS, the City of Wharton and the Wharton Economic Development Corporation work jointly to foster private area developments that increase local sales and property tax bases and create employment opportunities; and

WHEREAS, Brian K. Bremser of Wharton, Texas, has approached the City and WEDC for forms of public assistance to develop commercial property, together with related supporting facilities AT 663 Sunset Street; Vineyard Block 3, Lot 1; and

WHEREAS, the City has ownership of large quantities of excess spoil fill dirt from various recent drainage excavation projects, and Brian K. Bremser needs the fill dirt to develop the tract intended for its retail development.

NOW THEREFORE, BE IT ORDAINED BY THE WHARTON CITY COUNCIL THAT:

1. The City hereby declares that not-to-exceed 100 cubic yards of fill dirt is surplus City personal property, now able to be sold to Brian K. Bremser for Ten Dollars (\$10.00) and other valuable consideration, in support of the development of its retail restaurant facility that is reasonably anticipated to generate and enhance the local sales and property tax bases and create area employment.

2. The Mayor is hereby authorized to execute an Economic Development Agreement and related Personal Property Bill of Sale Agreement with Brian K. Bremser, substantially in the form of the agreements attached hereto for reference.

3. The City Manager and legal counsel for the City are hereby authorized to coordinate with the WEDC and Brian K. Bremser to finalize, implement, and administer the additional subsidiary activities and documents related hereto to foster the creation of the anticipated private development that will enhance the area sales and property tax bases, while creating area employment opportunities, in furtherance of the public interest and for the benefit of area citizens.

PASSED AND APPROVED THIS 28th DAY OF MARCH 2011.

CITY OF WHARTON

Don Mueller
Mayor Pro-Tem

Attest:

Paula Favors
City Secretary

Approved as to Form:

Paul Webb
City Attorney

Councilmember Jeff Gubbels seconded the motion. All over in favor.

C. **Ordinance:** An ordinance authorizing the Mayor to execute an economic development agreement and a related personal property bill of sale, to transfer City surplus fill dirt to the Wharton Country Club in support of new development at the property located at Country Club, Block 1B-6PT that will increase local sales and property tax bases and create area employment.

After some discussion, Mayor Pro-Tem Don Mueller requested the item be deferred until additional information was made available. No action was taken.

The tenth item on the agenda to review and consider a request by Mr. David L. Schroeder, Executive Director of the Wharton Economic Development Corporation (WEDC) request for City Council approval to amend the WEDC fiscal year budget for 2010 – 2011 to include the following:

- A. \$100,000 allocation to Denny's for creating jobs and making a capital investment in the City of Wharton.
- B. the refinance for ten (10) years of existing bond debt of \$590,000 (principal balance) and secure an additional \$600,000 for road improvements.

Mr. David L. Schroeder presented the proposed Wharton Economic Development Corporation 2010-2011 Budget amendments as stated above. After some discussion, Councilmember Jeff Gubbels moved to approve the request by Mr. David L. Schroeder, Executive Director of the Wharton Economic Development Corporation (WEDC) request for City Council approval to amend the WEDC fiscal year budget for 2010 – 2011 for the \$100,000 allocation to Denny's for creating jobs and making a capital investment in the City of Wharton, and the refinance for ten (10) years of existing bond debt of \$590,000 (principal balance) and secure an additional

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\$600,000 for road improvements. Councilmember Bryce D. Kocian seconded the motion. All voted in favor.

The eleventh item on the agenda was to review and consider a request by Mr. Lloyd Shoppa to address the Wharton City Council relating to the importance of having public hearings on the roadway and overpass scheduled to be built to Highway 59. Mr. Lloyd Shoppa addressed the City Council with the request of consideration for public hearings on the roadway and overpass project that was scheduled to be built to Highway 59. Mr. Shoppa asked the City Council to hear the view of citizens before moving forward on the project. City Attorney Paul Webb advised the City Council that there were no requirements for public hearings to be held with regard to the City's FM 102 Relocation and Overpass Project; however, the City Council could choose to grant the requested Public Hearing. No action was taken.

The twelfth item on the agenda was to review and consider City Council action setting a public hearing for the FM 102 Relocation and Overpass Project. After some discussion, Councilmember Bryce D. Kocian moved to approve the holding of a public hearing during the next regular Wharton City Council meeting to be held, Monday, April 11, 2011 at 7 p.m., to obtain public comments regarding the FM 102 Relocation and Overpass Project and other transportation projects. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The thirteen item on the agenda was to review and consider a resolution of the Wharton City Council to approve a Professional Engineering Services Contract between the City of Wharton and IDC Inc. for the FM 102 Relocation and Overpass Project and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. advised the City Council that the Consultant Selection Committee for the FM 102 Relocation and Overpass Project met Monday, March 28, 2011 at 5:00 p.m. and discussed the proposed professional engineering services agreement between the City of Wharton and IDC Inc. City Manager Garza presented a copy of the memorandum dated March 28, 2011 providing the recommendation from the Committee. After some discussion, Councilmember Jeff Gubbels moved to table the City Council approval of a Professional Engineering Services Contract between the City of Wharton and IDC Inc. for the FM 102 Relocation and Overpass Project until after the public hearing scheduled for April 11, 2011 at 7 p.m. Councilmember Bryce D. Kocian seconded the motion. All voted in favor.

The fourteenth item on the agenda was to review and consider the Alabama Water Well Rework Project – Layne Christensen Company – 4th and Final Pay Request. Mr. Carlos Cotton, P.E., with Jones & Carter, Inc. presented a copy of the letter dated March 21, 2011 from Mr. Tommy L. Vance, P.E., Construction Services Project Manager for Jones & Carter, Inc. providing the 4th and Final Pay Request submitted by Layne Christensen Company in the amount of \$28,413.80 for the Alabama Water Well Rework Project. After some discussion, Councilmember Jeff Gubbels moved to approve the Alabama Water Well Rework Project – Layne Christensen Company – 4th and Final Pay Request in the amount of \$28,413.80 for the Alabama Water Well Rework Project. Councilmember Terry David Lynch seconded the motion. All voted in favor.

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The fifteenth item discussed on the agenda was to review and consider the City of Wharton City Council Boards, Commissions, and Committees:

- A. Wharton Regional Airport Board.
- B. Beautification Commission.
- C. Building Standards Commission.
- D. Electrical Board.
- E. Holiday Light Decorating Chairman.
- F. Mayor's Committee on People with Disabilities.
- G. City Council Committees:
 - 1. Housing Committee.
 - 2. Public Health Committee.
 - 3. Telecommunications Committee.
 - 4. Wharton Economic Development Corporation Board of Directors Selection Committee.

City Manager Andres Garza, Jr. stated that vacancies exist on the afore-mentioned City of Wharton City Council Boards, Commissions and Committees. After some discussion, no action was taken.

The sixteenth item on the agenda was to review and consider the Status Report on City of Wharton Projects. City Manager Andres Garza, Jr. presented copy of his memorandum dated March 28, 2011 to the City Council providing the Status Report on City of Wharton Projects, which read as follows:

FLOOD REDUCTION (LEVEE) PROJECT

The U.S. Army Corp of Engineers (USACE) Lower Colorado River Phase I Report - City of Wharton Flood Prevention Project and Recommended report is located at the Wharton County Library and the office of the City of Wharton City Secretary for viewing or the report may be viewed on line at <http://www.swf.usace.army.mil/pubdata/notices/LowerColorado/>.

On February 1, 2011 the Public Works Committee met to discuss issues with the levee. The group reviewed the possible levee realignment that would tie in with Caney Creek just Southeast of Glen Flora. In addition, the committee reviewed those areas where buyouts and/or relocations may be needed. The discussion focused on whether to avoid the buyouts by building a floodwall or continue with the earthen levee and buyout property owners. The consensus was that it would be more feasible to continue with the earthen levee. Public Works staff is collecting data for Halff Associates to assist in the final design.

I will be attending a meeting with Halff Associates and the USACE on April 6th to discuss the project and the proposed right of entry agreements.

DRAINAGE:

- 1. Santa Fe Outfall Channel.

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The Public Works Department has finished excavation up to Alabama Road. The Public Works Department will now focus on installing grade stabilization structures and installing other best management practices needed to control erosion. Excavation will continue weather permitting.

2. Highway 60 & Old Lane City Road Drainage Improvements

The construction plans have been approved by the TxDOT Yoakum District Office.

City Staff is currently preparing cost estimates on the project and obtaining the necessary right of way needed for the project.

WATER/SEWER IMPROVEMENTS:

1. Ahldag Addition Sanitary Sewer Project – TxCDBG Contract No. R729710.

This project is complete. The City has a one-year warranty with AR Turnkee on this project.

2. Water Storage Tank Maintenance Program.

Negotiations with Utility Service Company have been terminated. City Staff will be presenting to the City Council an engineering contract for those improvements.

3. Quick Connect/Transfer Switch Project

Quick connects and transfer switches are being installed at all city lift stations, city water plants, City Hall, the Fire Station, EMS Headquarters, WWTP #1, and WWTP#2. Electrical Automation Controls is approximately 80% complete.

4. Pressure Switches at City Water Plants

This project is complete; however, the Public Works staff continues to monitor the system to insure that it is working properly.

5. Energy Efficiency Audit

City Staff is waiting for the final report from Siemens Industry, Inc.

STREET IMPROVEMENTS

1. FM 102 Relocation and Overpass Project

The Consultant Selection Committee recommended IDC, Inc. as the engineering firm on this

project, which was accepted by the City Council on March 14, 2011. City Staff met with IDC, Inc. and TxDOT at the Yoakum District Office on March 17, 2011. The purpose of the meeting was to discuss the engineering services contract between the City, TxDOT, and IDC, Inc. IDC, Inc. will be finalizing the scope of work for TxDOT's review to insure all project elements were covered in the final contract. IDC, Inc. will finalize the draft agreement for review by the City.

2. 2010 Street Improvement Program

This project is complete.

3. 2011-2012 Street Improvement Program

Public Works Staff is currently identifying and preparing cost estimates for possible street improvements during the next fiscal year.

4. Wharton Sidewalk Accessibility and Historic Streetscape Project

The City of Wharton received the fully executed contract from the Texas Department of Transportation. Finance Director Joan Anandel, Assistant to City Manager Jackie Jansky, and Public Works Director Carter Miska, P.E. attended the Local Government Project Procedures Training held March 8 – 9, 2011. The City Council approved the resolution designating the Consultant Selection Committee for the project on March 14th. Additionally, the City Staff submitted the Public Notice to the Wharton Journal Spectator and to approximately 20 engineering/architectural firms requesting their Statements of Qualifications. The RFQ's are due April 19, 2011.

OTHER PROJECTS

1. Fire Station Expansion Project

Public Works Staff completed the construction of the earthen pad required for the new building foundation on February 22, 2011. A soil testing lab was on-site and verified that all compaction and moisture requirements were met. Public Works is now in the process of providing a sewer tap and water tap for the new building.

Facilities Maintenance Director Bob Baker is the project manager and will be soliciting the necessary quotes and bids to move the project forward. The building has been ordered.

WHARTON REGIONAL AIRPORT

1. Capital Improvement Drainage Project.

The TxDOT has negotiated an engineering contract with O'Malley Engineers to design the Drainage Project for the airport being conducted under the 2010 Capital Improvement Program. The City Staff met with the State and O'Malley Engineers on March 17, 2011 to kick-off the project.

After some discussion, no action was taken.

The seventeenth item discussed on the agenda was to review and consider the City Council Committees, Boards and Commission's Reports:

- A. Wharton Economic Development Corporation meeting held March 21, 2011.
- B. Planning Commission meeting held March 21, 2011.

City Manager Andres Garza, Jr. presented a copy of the reports to the City Council. After some discussion, no action was taken.

The eighteenth item discussed on the agenda was to review and consider the City's Reports:

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| A. City Secretary/Personnel. | I. Municipal Court. |
| B. Code Enforcement. | J. Planning Department. |
| C. Community Services Department
/Civic Center. | K. Police Department |
| D. Emergency Management. | L. Public Works Department. |
| E. E.M.S. Department. | M. Water/ Sewer Department. |
| F. Facilities Maintenance Department. | N. Weedy Lots/ Sign Ordinance. |
| G. Fire Department. | O. Wharton Municipal Pool. |
| H. Legal Department. | P. Wharton Regional Airport. |

City Manager Andres Garza, Jr. presented the reports to the City Council. No action was taken.

The nineteenth item on the agenda was adjournment. After some discussion, Councilmember Terry David Lynch moved to adjourn the meeting. Councilmember Jeff Gubbels seconded the motion. All voted in favor.

The meeting adjourned at 7:45 p.m.

CITY OF WHARTON, TEXAS

By: _____
Don Mueller
Mayor Pro-Tem

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ATTEST:

Paula Favors
City Secretary