

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
July 23, 2012**

Mayor Domingo Montalvo, Jr. declared a Regular Meeting duly open for the transaction of business at 7:00 P.M. Councilmember Don Mueller led the opening devotion and led the pledge of allegiance.

Councilmember's present were: Mayor Domingo Montalvo, Jr., Councilmembers Al Bryant, Russell Machann, Don Mueller, and Karen Schulz.

Councilmembers absent were: Councilmembers Jeff Gubbels and Terry David Lynch.

Staff members present were: City Manager Andres Garza, Jr., City Attorney Paul Webb, Finance Director Joan Andel, City Secretary Paula Favors, Building Official Ronnie Bollom, Public Works Director Carter Miska, and Assistant to City Manager Jackie Jansky.

Visitors present were: David Schroeder, Executive Director of Wharton Economic Development Corporation, Keith Magee, Managing Editor of the Wharton Journal Spectator, Travis Pecht, City of Wharton Intern, Joe Barker, Joyce Barker, Emily Jansky, Timothy Muzyka, Brenda Muzyka, Joe Rodriguez, Jerry Maldonado, Joni Maldonado, and Denisse M. Rodriguez.

The second item on the agenda was Roll Call and Excused Absences. After some discussion, Councilmember Don Mueller moved to excuse Councilmembers Jeff Gubbels and Terry David Lynch. Councilmember Russell Machann seconded the motion. All voted in favor.

The third item on the agenda was Public Comments. No comments were given.

The fourth item on the agenda was Wharton Moment. City Attorney Paul Webb stated James "Kirk" Kuykendall, former president of Mid Coast Title Company and former Boardmember of the Wharton Economic Development Corporation Board and the Wharton Regional Airport Board, passed away July 20, 2012. Mr. Webb expressed his condolences to the family of Mr. Kuykendall.

The fifth item on the agenda was to review and consider the City of Wharton Financial Report for the month of June 2012. Finance Director Joan Andel presented the financial report for the month of June 2012. Mrs. Andel stated that the total ad valorem taxes collected were \$12,445.92 and the sales tax for the month of June 2012 was \$113,122.24. She further stated that the TexPool balance for June was \$164,101.16 with an average monthly yield of 0.14%. She said the Prosperity Bank balance for June 2012 was \$6,552,572.76 with an average monthly yield of 0.15%. Mrs. Andel further stated that other investments included \$2,683.88 at TexasGulf Federal Credit Union in the debt fund. After some discussion, Councilmember Al Bryant moved to

approve the City of Wharton Financial Report for the month of June 2012. Councilmember Don Mueller seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider a request by Timothy & Brenda Muzyka, Property Owners, for City Council to consider abandoning the alley located behind 708 Walnut/508 Avenue A; Barbee, Block 6, Lot 1. City Manager Andres Garza, Jr. stated Mr. and Mrs. Timothy Muzyka were requesting the City Council to consider abandoning the alley behind their property located at 708 Walnut/508 Avenue A. City Manager Garza said Mr. and Mrs. Muzyka had spoken with Building Official Ronnie Bollom and City Attorney Paul Webb regarding the proposed alley abandonment. Mr. Timothy Muzkya stated that part of the alley had been taken in by neighboring property owners who had erected fences. Mr. Muzkya said he was requesting the abandonment of the alley in order for him to also extend their property. City Manager Garza stated the City of Wharton Code of Ordinances, Section 82-127 – Parking in alley, states that no person shall stop, stand or park a vehicle in an alley or in such a manner as to block or impede vehicular traffic. Mr. Joe Rodriguez, the property owner of 704 Walnut stated he opposed the proposed alley abandonment because he used the alley to access the rear of his property and his home did not have a front yard driveway. City Manager Garza presented a copy of Mr. Rodriguez's letter dated July 19, 2012 providing his opposition. City Manager Garza further presented the following documents:

- a. Letter dated July 18, 2012 from Timothy and Brenda Muzyka, Property Owners, requesting the City Council to consider abandoning the alley located behind 708 Walnut/508 Avenue A; Block 6, Lot 1.
- b. Letter dated July 18, 2012 from City Attorney Paul Webb to Mr. & Mrs. Muzyka informing them that the alley had not been abandoned by the City of Wharton and that the adjoining property owner, Mr. Joe Rodriguez (704 Walnut) was reluctant to construct a front yard driveway. Mr. Webb also indicates that they could submit a formal letter (Item A above) requesting to address the City Council concerning their request.
- c. Letter dated April 19, 2012 to Mr. Muzyka from Building Official Ronnie Bollom informing Mr. Muzyka that the alley had not been abandoned by the City and that the alley could be used as access by neighboring property owners.
- d. Special Warranty deed and survey plat of 708 Walnut Street/508 Avenue A establishing Mr. and Mrs. Muzyka as the property owners of 708 Walnut Street/508 Avenue A.
- e. A drawing indicating the property owners in the area; photographs of the alley access; copies of plats that indicate the location of the alley.
- f. A copy of the City of Wharton Code of Ordinances, Section 82-127 – Parking in Alley.
- g. A copy of the Special Warranty Deed establishing Mr. Joe Rodriguez as the property owner of 704 Walnut Street.

After some discussion, Councilmember Karen Schulz moved to table the item until further information regarding the distance between the houses located at 708 Walnut and 704 Walnut could be presented. Councilmember Russell Machann seconded the motion. Councilmember Don Mueller, Karen Schulz, and Russell Machann voted for the motion. Councilmember Al Bryant voted against the motion. The motion was approved.

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The seventh item on the agenda was to review and consider the Cloud Street Elevated Storage Tank Rehabilitation and/or Dismantling – Proposal Utility Service Company. City Manager Andres Garza, Jr. stated the City Council had taken action to authorize the dismantling of the Cloud Street Elevated Storage Tank; however, the City Staff had been informed by Mr. Carlos Cotton, P.E. of Jones & Carter, Inc. that additional work had to be undertaken to remove the tank. City Manager Garza presented a copy of his letter indentifying the potential additional costs to connect the wall to the distribution system. City Manager Garza said that in May 2000, Jimmy Dunham, P.E. of Dunham Engineering made a preliminary inspection of the tank and identified that it should not be rehabilitated; however, after his inspection of June 2011, his recommendation was that the tank could possibly be rehabilitated for approximately \$450,000.00. City Manager Garza said that in the City Staff's discussion with Mr. Cotton, he recommended that a more thorough inspection of the tank be made to insure that it could be rehabilitated. City Manager Garza said that during the July 9, 2012 City Council Finance Committee meeting, he recommended to the Committee Members that the proposal from Utility Service Company be considered to obtain a more thorough inspection of the tank and once that was completed, then a formal recommendation on the status of the tank could be made to the City Council. City Manager Garza said the Finance Committee Members voted to recommend the City Council consider authorizing a more thorough inspection be conducted on the elevated storage tank. City Manager Garza presented a copy of the memorandum dated July 9, 2012 from the Committee Members providing their recommendation. After some discussion, City Manager Andres Garza, Jr. stated the City Staff would present the City Council with additional information on the rehabilitated at a later date. No action was taken.

The eighth item on the agenda was to review and consider a resolution of the Wharton City Council approving an amendment to the Lease Agreement between the City of Wharton and Bagley Pecan House and authorizing the Mayor of the City of Wharton to execute the contract amendment. City Manager Andres Garza, Jr. presented a copy of the Extension to Amended Lease Agreement between the City of Wharton and Bagley Pecan House, which was due to expire on August 31, 2012 and a copy of the letter dated June 19, 2012 from Mr. Adam Bagley, Corp. Secretary for R. B. Bagley & Sons, Inc. requesting to renew the lease agreement with a five (5) year term. City Manager Garza stated the City Council Finance Committee met on July 9, 2012 and voted to recommend the City Council consider extending the lease for the requested five (5) year period beginning September 1, 2012 and expiring August 31, 2017. City Manager Garza said the Finance Committee Members were recommending that a rate increase be implemented into the contract extension. City Attorney Paul Webb stated the lease rate would remain the current rate for the first year and then increase 5% each year thereafter. City Manager presented a copy of the memorandum dated July 9, 2012 providing the Finance Committee's recommendation. After some discussion, Councilmember Don Mueller moved to approve City of Wharton Resolution No. 2012-09, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2012-29**

**A RESOLUTION OF THE WHARTON CITY COUNCIL AMENDING THE LEASE AGREEMENT BETWEEN THE CITY OF WHARTON AND BAGLEY PECAN HOUSE,**

**SETTING AN EFFECTIVE DATE AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE CONTRACT AMENDMENT.**

- WHEREAS,** R. B. Bagley & Sons, Inc., owners of the Bagley Pecan House, wishes to extend the lease agreement for the property located at 902 North Richmond Road, Wharton, Texas 77488 for an additional five (5) years; and
- WHEREAS,** The Wharton City Council wishes to extend the contract between the City of Wharton and Bagley Pecan Warehouse for five (5) additional years beginning September 1, 2012 and ending August 31, 2017; and
- WHEREAS,** The Wharton City Council wishes to extend the lease agreement with the provision that a rate increase be incorporated in the lease agreement to state for the first year the lease rate will remain at the current rate and for years two through five there shall be a 5% rate increase for each additional year; and
- WHEREAS,** the Wharton City Council wishes to set an effective date of September 1, 2012 for the amended contract; and
- WHEREAS,** the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute all documents related to the contract.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS that:**

- Section I.** The Wharton City Council hereby approves to extend the contract between the City of Wharton and Bagley Pecan House beginning September 1, 2012 through August 31, 2012.
- Section II.** The Wharton City Council wishes the rate to increase by 5% beginning in Year Two (2) of the five (5) year extension for each additional year.
- Section III.** The Wharton City Council approves the effective date of the contract to be September 1, 2012.
- Section IV.** The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute all documents related to the contract.

**Passed, Approved, and Adopted** this 23<sup>rd</sup> day of July 2012.

**CITY OF WHARTON, TEXAS**

By: \_\_\_\_\_  
**DOMINGO MONTALVO, JR.**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**PAULA FAVORS**  
City Secretary

Councilmember Karen Schulz seconded the motion. All voted in favor.

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

- A. Beautification Commission.
- B. Building Standards Commissions.
- C. Electrical Board.
- D. Holiday Lighting Chairman.
- E. Youth Advisory Commission.
- F. Municipal Court Judge.
- G. City Council Committees:
  - 1. Annexation Committee.
  - 2. Finance Committee.
  - 3. Housing Committee.
  - 4. Intergovernmental Relations Committee.
  - 5. Legislative Committee.
  - 6. Public Health Committee.
  - 7. Public Safety Committee.
  - 8. Public Works Committee.
  - 9. Telecommunications Committee.
  - 10. Wharton Economic Development Corporation Board of Directors.

Assistant to City Manager Jackie Jansky stated that two vacancies remained on the Beautification Commission. Mrs. Jansky also said the City of Wharton ordinance creating the Electrical Board required that one position on the board be filled by the City of Wharton Fire Marshal/Inspector. She said that City Manager Andre Garza, Jr. was recommending that Fire Inspector Todd Johse be appointed to fill the last remaining vacancy on the Electrical Board. She further stated that the City Council Selection Committee for the Wharton Economic Development Corporation Board of Directors met at 6:30 p.m. and voted to recommend the following procedure for appointing members WEDC Board of Directors for the terms beginning October 1, 2012 through September 30, 2014:

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1. Notify by letter the WEDC Board of Directors whose terms are expiring September 30, 2012 and providing them an opportunity to resubmit an application for consideration if they wish to renew their terms.
2. Authorize the application period to be opened to the public and to place the application on the City of Wharton website.
3. Publish an article in the Wharton Journal Spectator informing the public that said application period shall be opened.

After some discussion, Councilmember Don Mueller moved to appoint Fire Inspector Todd Johse to fill the City of Wharton Electrical Board Fire Marshal/Inspector position and to approve the procedure for appointing members to the WEDC Board of Directors for the terms beginning October 1, 2012 through September 30, 2014 as presented by the City Council Selection Committee for the Wharton Economic Development Corporation (WEDC) Board of Directors. Councilmember Karen Schulz seconded the motion. All voted in favor.

The tenth item on the agenda was to review and consider in Executive Session: City Council may adjourn into an Executive Session in accordance with Section 551.074 of the Government Code, Revised Civil Statutes of Texas. Final action, decision or vote, if any with regard to any matter considered in Executive Session shall be made in Open Meeting.

**A. Discussion:** City Manager's Performance Evaluation.

Mayor Domingo Montalvo, Jr. adjourned into executive session at 7:54 p.m.

The eleventh item on the agenda was to return to open session: Action on items discussed in Executive Session:

**A. Discussion:** City Manager's Performance Evaluation.

Mayor Domingo Montalvo, Jr. returned to open session at 8:16 p.m.

Mayor Montalvo, Jr. stated that no action would be taken.

The twelfth item on the agenda was the Status Report on City of Wharton Projects. City Manager Andres Garza, Jr. presented a copy of his memorandum dated July 23, 2012 providing a status report on the ongoing City of Wharton, 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/>.

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The City Staff continues to work with the USACE and Halff Associates in obtaining the required ROE agreements and engineering data. The agreement for the Third and Restated Agreement between the City of Wharton and the Lower Colorado River Authority (LCRA) has been executed. The amendment incorporates Segment 1(a) into the project, which is the extension of the levee along FM 102.

City Staff continues to work with Halff Associates, Inc. to complete the 65% design. This design is for the first phase of levee construction only.

### **DRAINAGE:**

#### 1. Santa Fe Outfall Channel.

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. The City Staff has met with property owners to discuss work that needs to be performed by the City in accordance with the agreements. Recent rains have limited the amount of work that could be performed and have increased erosion activity in some areas.

#### 2. Highway 60 & Old Lane City Road Drainage Improvements

Centerpoint Energy completed relocation of the power poles along Highway 60 at the end of June. AT&T Tx Mid/Gulf Cablevision completed relocation of their utilities along Highway 60 in June as well.

The construction plans call for the installation of two 30 inch culverts underneath Highway 60. The culvert installation will be completed by an outside contractor. City Staff has obtained quotes for this portion of the project which is estimated at \$40,000.00. Other culvert installations will be completed by the City and TxDOT. Work will need to be coordinated with the local TxDOT office. TxDOT will provide a Gradall and operator for excavation and the Public Works Department will provide dump trucks and operators to haul the spoil. Staff planned to have construction underway by the summer of 2012. The amount of rainfall the City received during July will most likely push back the start date.

### **WATER/SEWER IMPROVEMENTS:**

#### 1. 2012 -2013 Water Storage Tank Maintenance Program

The City Staff, with the assistance of Jones & Carter, is re-examining the decision to demolish the Cloud Street elevated storage tank (EST). Removal of the EST may require additional work that could be costly. Further inspection of the tank is required before a final decision can be made. The City Council will be considering a recommendation by the City Council Public Works Committee.

In addition to the Cloud Street EST there are two ground storage tanks at the Alabama Water Plant in need of rehabilitation.

2. Pressure Switches at City Water Plants

Jones & Carter replaced the faulty pressure control switches with new control switches earlier this month. Jones & Carter paid for the switches and the installation. City Staff is closely monitoring the performance of the new switches. The new switches are functioning as designed. Staff will continue to monitor and tweak the switches for optimum performance. These switches are designed to minimize and equalize pumping times, thereby extending the life of the water plants.

3. Energy Efficiency Audit

City Council voted in favor of closing out the State Energy Conservation Office-Energy Efficiency Conservation Grant Program. In addition, Council voted in favor of terminating the letter of intent between the City of Wharton and Siemens Industry, Inc. These actions taking by City Council mark the end of this project.

4. Wastewater Treatment Plant No. 1 Rehabilitation Proposal

City Staff is currently exploring various avenues to fund the rehabilitation of WWTP No. 1. The top priority is the WWTP's clarifier.

5. On-going Water and Sewer Maintenance Program

Soil moisture has remained fairly constant in June reducing the shrink-swell of the soil. This has decreased the number of water leaks and sanitary sewer backups experienced compared to last June's drought. The sanitary sewer line between Texas St and Koehl St is currently being replaced by Public Works. Recent rains and employee turnover have again slowed down progress. Work should be completed by the end of the summer, weather permitting. As a result of the recent fire hydrant testing program, the Fire Department identified a few fire hydrants in need of repair. Public Works is repairing these hydrants as time permits. Due to the age of the City's lift stations, maintenance is becoming a daily issue, specifically with pump failures. Public Works is working to fix or replace all failing lift station components and has recently initiated a more stringent preventive maintenance program.

**STREET IMPROVEMENTS**

1. FM 102 Relocation and/or FM 1301

A. Progress Report on Project.

IDC Inc. continues to work with City Staff in an effort to develop preliminary engineering for the project. The City Staff has obtained the necessary rights of entry agreements for the project.

City Staff held a public information meeting at the Civic Center on May 8, 2012 to address questions the public may have and educate citizens on the progress of the project.



B. Update on status of Advance Funding Agreement (AFA) between the City of Wharton and the Texas Department of Transportation (TxDOT).

TxDOT has agreed to amend the AFA with an increase of \$200,000 making the States total support toward the project \$3,700,000 for construction. City Council passed a resolution accepting this amendment to the AFA. City Council passed a resolution approving Modification No. 3 to the professional engineering services contract between the City of Wharton and IDC Inc. to provide additional environmental services for the Identification and Evaluation of Archaeological Resources and Historic Age Buildings for the extension of FM 1301 from SH 60 to US Hwy 59 and Overpass Project. These adopted resolutions will allow City Staff to have better control over the environmental portion of the project and result in a more timely completion of the final engineering plans.

2. 2012 Street Improvement Program

Public Works Staff began making street improvements the week of May 21, 2012. Staff is repairing the streets approved by City Council for the 2012 Program.

The Interlocal Cooperation Agreement between the City of Wharton and the City of El Campo for use of equipment was renewed on July 9, 2012. This agreement will allow both cities to complete street improvements at a reduced cost through the sharing of construction equipment.

Recent rains have slowed progress. The project is approximately 60% complete. This project should be complete by the end of the summer, weather permitting.

3. Wharton Sidewalk Accessibility and Historic Streetscape Project

The City will run a bid announcement for this project in the newspaper beginning July 21, 2012. Sealed bids will be accepted at City Hall until August 14, 2012 at 2:00 pm. Bids will be publicly opened at City Hall on August 14, 2012 at 2:00 pm. A non-mandatory pre-bid meeting will be held at City Hall on August 7, 2012 at 10:00 am.

4. On-going Street and Drainage Maintenance Program

During July the City received several inches of rain. Public Works staff noted that the Santa Fe outfall ditch performed as intended and helped drain the City more efficiently. In addition, residential ditch cleaning projects have proven worthy. The Public Works Department has several more residential ditch cleaning projects planned. Public Works Staff has completed elevation surveys and developed drainage profiles for over twenty ditch re-grading projects throughout the City. However, recent rains have prevented any excavation on these ditches.

## **WHARTON REGIONAL AIRPORT**

1. Capital Improvement Drainage Project.

Blue Bay Construction and Public Works began construction in mid June. The project is approximately 10% complete. Recent rains have slowed progress.

## **OTHER PROJECTS**

### 1. Fire Hydrant Testing Program

The Fire Department with the assistance of the Public Works Department has begun an annual hydrant testing program. The Fire Department has completed testing on all the City's hydrants. The majority of the hydrants were in good working condition. Those that need attention are being repaired by Public Works Staff. This program will help to improve the City's ISO insurance rating.

### 2. Wharton County Web Map Project

Public Works Staff met with Halff Associates on July 19, 2012 to review the preliminary design for the Web based GIS mapping tool. This tool will help City Staff and City Officials make daily decisions by allowing them to view GIS data files via the Internet. This project is still in the preliminary phase. After some discussion, no action was taken.

The thirteenth item on the agenda was to review and consider City Council, Committee, Commissions, and Boards Reports:

- A. Beautification Commission meeting held July 11, 2012.
- B. Mayor's Committee on People with Disabilities meeting held July 17, 2012.

After some discussion, no action was taken.

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

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

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

The fifteenth item on the agenda was adjournment. After some discussion, Councilmember Don Mueller made the motion to adjourn. Councilmember Al Bryant seconded the motion. All voted in favor.

The meeting adjourned at 8:17 p.m.

**CITY OF WHARTON, TEXAS**

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By: \_\_\_\_\_  
**Domingo Montalvo, Jr.**  
**Mayor**

**ATTEST:**

\_\_\_\_\_  
**Paula Favors**  
**City Secretary**