

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
SEPTEMBER 22, 2003**

Mayor Bryce D. Kocian declared a Regular Meeting duly open for the transaction of business at 7:01 p.m. Councilmember Ken Freese led the opening devotion and then Mayor Bryce D. Kocian led the pledge of allegiance.

Councilmembers present were: Mayor Bryce D. Kocian, Councilmembers Darryl Darnell, Ken Freese, Don Mueller, Domingo Montalvo, Jr., and Ray Linseisen.

Councilmember absent was: V. L. Wiley, Jr.

Staff members present were: City Manager, Andres Garza, Jr, Finance Director Joyce Vasut, Deputy City Secretary Lisa Stavena, Assistant to City Manager Jackie Jansky, Community Services Director Jo Knezek, and Building Official Assistant Lori Jaquez, Fire Chief David Copeland, Public Works Director Phillip Bush, and City Attorney Paul Webb.

Visitors present were: Benjamin Sharp Wharton Journal-Spectator, David Schroeder with WEDCo, Carlos Cotton, Larry Sitka, Lewis Fortenberry, I.O. Coleman, Jr., Georgina Ybarra, Johnnie Lee Roberts, Billie Jones, Jerry Fink, Caroline Miller, Bernice Jackson, Anthony Rachunek, Velma Manuel, Jeremy Curtis, Kamal Rasheed, Joyce Woodard, Eugene Maretka, Amelia Maretka, Sarah Ray, Earnestine Brown, Costella Hahn, Shirley Hatton, Charron Shakers, and Thelma Craft.

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

The fourth item on the agenda was the Wharton Moment. Councilmember Domingo Montalvo, Jr. stated that he attended a Flood Conference at Texas State University. Councilmember Montalvo publicly commended Public Works Director Phillip Bush and his staff for addressing a complaint, which was taken care in a timely manner. Councilmember Ken Freese stated that Share, a non-profit organization, held a food drive last Saturday. He stated that Share was open Mondays and Thursdays. He stated that the organization provides food, clothing and funds to citizens. 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 August 2003. Finance Director Joyce Vasut presented the financial report for the month of August 2003 and stated that the fiscal year was at 92%. Mrs. Vasut stated that the general fund revenues were at 95.18% and the expenditures were at 91.10%. The total ad valorem taxes collected were \$1,723,646. The sales tax for the month of July 2003 was \$101,645 with \$67,763 to the City and \$33,882 to WEDCo. The TexPool balance for August 2003 was \$1,700,012.08 with an average monthly yield of 1.0568%. After some discussion, Councilmember Ray Linseisen made a motion to approve the financial report for the month of

August 2003 as presented. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider an ordinance adopting the Fiscal Year 2003 – 2004 Annual Budget for the City of Wharton, Texas; Appropriating the several sums established therein; and directing the City Secretary to file copies as required by law. City Manager Andres Garza, Jr. informed the City Council that during the regular August 25, 2003 City Council meeting, under separate cover a copy of the proposed budget for the City of Wharton, Texas, Fiscal Year October 1, 2003 to September 30, 2004 was presented to the City Councilmembers. He stated that during the regular City Council meeting held September 8, 2003, the City Council held the public hearing to receive public input regarding City of Wharton Annual Budget for Fiscal year 2003 – 2004. He then presented a draft ordinance adopting the Fiscal Year 2003-2004 Annual Budget for the City of Wharton, Texas. After some discussion, Councilmember Ken Freese made a motion to change the 2% cost of living and the 1% merit increases to a 3% cost of living increase; approve Ordinance No. 2003-09, which read as follows:

**CITY OF WHARTON, TEXAS
ORDINANCE NO. 2003-09**

**AN ORDINANCE ADOPTING THE FISCAL YEAR 2003-2004 ANNUAL BUDGET FOR
THE CITY OF WHARTON, TEXAS; APPROPRIATING THE
SUMS ESTABLISHED THEREIN; AND DIRECTING THE
CITY SECRETARY TO FILE COPIES AS REQUIRED BY LAW.**

WHEREAS, the City's budget for the fiscal year ending September 30, 2004, which is attached hereto, was duly prepared and filed with the City Secretary more than thirty (30) days prior to September 30, 2003.

WHEREAS, a public hearing was duly called and held on said budget not less than fifteen (15) days after the date of such filing with the City Secretary and prior to the time the City Council of the City of Wharton levied taxes for such current fiscal year, public notice of such hearing having been duly given as required by law; and

WHEREAS, all parties desiring to participate and be heard at said public hearing having been heard until no more evidence was offered, and such hearing having been concluded, and the City Council of said City having made such changes in such budget as in its judgment the law warrants and the best interest of the taxpayers of the City of Wharton, Texas, demand, said budget with such changes being attached hereto, as aforesaid.

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

Section 1. **THAT** the findings set out in the preamble of this ordinance are true and correct.

Section 2. **THAT** the budget of the City of Wharton, Texas for the fiscal year ending

September 30, 2004, be and the same is hereby, in all respects, finally approved and adopted including any changes approved by the City Council; and the same shall be and is hereby filed with the City Secretary of the City.

Section 3. **THAT** the General Fund is hereby established to account for resources associated with traditional government activities, which are not required legally or by sound financial management to be accounted for in another fund. The General Fund is hereby approved with \$3,501,000 estimated revenues and \$3,673,550 in appropriations and with transfers-in approved at \$450,000, and transfers-out approved at \$277,450. The amounts are specified for departmental purposes named in said budget and they are hereby appropriated to and for such purposes at the departmental level.

Section 4. **THAT** the Hotel Motel Fund is created to account for the occupancy tax levied on hotel rooms within the City as adopted by city ordinance and consistently with Chapter 351 of the Texas Tax Code. The Hotel Motel Fund is hereby approved with \$50,200 in estimated revenues and \$26,450 in appropriations and transfers-out approved at \$23,750 with beginning fund balance of approximately \$671.

Section 5. **THAT** the Narcotics Seizure Fund is created to account for the resources and uses of assets seized in illegal narcotics activities. The uses are limited to law enforcement activities. The Narcotics Seizure Fund is hereby approved with \$2,500 in estimated revenues, \$10,000 in appropriations, \$3,500 in transfers-out with beginning fund balance of \$11,740.

Section 6. **THAT** the D.A.R.E. Fund is hereby created to account for resources and uses associated with providing drug education to students. The D.A.R.E. Fund is hereby approved with \$38,500 in estimated revenues, \$56,051 in appropriations and transfer-in approved at \$7,500 and a beginning fund balance of approximately \$21,241.

Section 7. **THAT** the Debt Service Fund is hereby created to account for the accumulation of resources collected for Interest and Sinking requirements and for the disbursement of those resources for debt requirements. The Debt Service Fund is hereby approved with \$354,156 in estimated revenues and \$354,156 in appropriations, estimated beginning fund balance of \$388,764.

Section 8. **THAT** the Capital Improvement Fund is created to account for infrastructure improvements authorized by the City Council. The Capital Improvement is approved with \$101,500 in estimated revenues and \$100,000 in appropriations.

Section 9. **THAT** the Water and Sewer Fund is created to account for the resources and uses associated with the delivery of utility services to citizens of Wharton as an enterprise fund. The Water & Sewer Fund is hereby approved with

\$1,968,677 estimated revenues. Water and sewer is approved with \$1,518,677 in appropriations, which includes a franchise fee of 5% of water and sewer sales or \$94,000, and transfers-out approved at \$450,000.

Section 10. **THAT** the Solid Waste Fund is created to account for the financial activities of the City's solid waste collection contract and delivery to citizens of Wharton as an enterprise fund. The Solid Waste Fund is approved with \$1,036,000 in estimated revenues and \$1,036,000 in appropriations.

Section 11. **THAT** the Emergency Medical Services Fund is created to account for the financial activities of the emergency medical services provided to the city and surrounding areas as an enterprise fund. The Emergency Medical Services Fund is approved with \$599,018 in estimated revenues and \$714,018 in appropriations and transfers-in approved at \$145,000 and transfers-out at \$30,000.

Section 12. **THAT** the Civic Center Fund is created to account for the financial activities of the Civic Center as an enterprise fund. The Civic Center is approved with \$65,700 in estimated revenues and \$174,400 in appropriations and transfers-in approved at \$108,700.

Section 13. **THAT** the Airport Fund is created to account for the financial activities of the Wharton Regional Airport as an enterprise fund. The Airport Fund is approved with \$119,963 in estimated revenues and \$78,544 in appropriations.

Section 14. **THAT** the City Secretary shall file copies of this Ordinance and of such budget with the County Clerk of Wharton County, Texas.

PASSED AND APPROVED by a favorable majority of the members of the City Council of the City of Wharton, Texas, in council meeting, this 22nd day of September 2003 duly assembled in accordance with Article VI of the Charter of the City of Wharton, Texas by the following vote:

Bryce D. Kocian, Mayor	Voted	Yes
V. L. Wiley, Jr., Councilmember District 1	Voted	Absent
Darryl Darnell, Councilmember District 2	Voted	Yes
Ken Freese, Councilmember District 3	Voted	Yes
Donald Mueller, Councilmember District 4	Voted	Yes
Domingo Montalvo, Jr., Councilmember at Large Position 5	Voted	Yes
Ray Linseisen, Councilmember at Large Place 6	Voted	Yes

Separability

If any court of competent jurisdiction rules that any section, subsection, sentence, clause, phrase, or portion of this ordinance invalid or unconstitutional any such portion shall be deemed to be a separate, distinct, and independent provision, and any such ruling shall not affect the validity of the remaining portions hereof.

CITY OF WHARTON

By: _____
Bryce D. Kocian, Mayor

ATTEST:

Joyce Vasut, City Secretary

APPROVED FOR ADMINISTRATION:

Andres Garza, Jr., City Manager

APPROVED AS TO FORM:

Paul Webb, City Attorney
Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

APPROVED FOR FUNDING:

Joyce Vasut, Finance Director

The seventh item on the agenda was to review and consider an Ordinance: Levying a Tax Rate for the City of Wharton, Texas for the Tax Year 2003; directing the Tax Assessor-Collector to assess, account for and distribute the taxes as herein levied; and providing repealing and severability clauses. City Manager Andres Garza, Jr. presented the draft ordinance levying a tax rate for the City of Wharton, Texas for the Tax Year 2003; directing the Tax Assessor-Collector to assess, account for and distribute the taxes as herein levied; and providing repealing and severability clauses. Finance Director Joyce Vasut stated that the tax rate would remain the same as the 2002-2003 fiscal year. After some discussion, Councilmember Don Mueller made a motion to approve Ordinance No. 2003-10, which read as follows:

**CITY OF WHARTON, TEXAS
ORDINANCE NO. 2003 - 10**

AN ORDINANCE LEVYING A TAX RATE FOR THE CITY OF WHARTON, TEXAS, FOR THE TAX YEAR 2003; DIRECTING THE TAX ASSESSOR-COLLECTOR TO ASSESS, ACCOUNT FOR AND DISTRIBUTE THE TAXES AS HEREIN LEVIED; AND PROVIDING REPEALING AND SEVERABILITY CLAUSES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS:

Section 1. **THAT** there be and is hereby levied for the year 2003 on all real and personal property within and all real and personal property and mineral royalties owned within the city limits of the City of Wharton, Texas for the year 2002, except so much thereof as may be exempt by the constitution and of the State of Texas and of the United States, the following:

General Fund Operations	.46707/\$100 valuation
For Debt Service Requirements	.11844/\$100 valuation
Total Tax Rate	.58551/\$100 valuation

Section 2. THAT the Tax Assessor-Collector and/or Finance Director is hereby directed to assess, extend and enter upon the certified tax rolls of the City of Wharton, Texas, for the current taxable year, as provided by the Wharton County Appraisal District, the amounts and rates as herein levied, to keep correct amount of same, and when collected, to be distributed in accordance with this ordinance.

Passage and Approval

PASSED AND APPROVED by a favorable majority of the members of the City Council of the City of Wharton, Texas, in a council meeting, this 22nd day of September 2003, duly assembled in accordance with Article VI of the Charter of the City of Wharton, Texas by the following vote:

Bryce D. Kocian, Mayor	Voted	Yes
V. L. Wiley, Jr., Councilmember District 1	Voted	Absent
Darryl Darnell, Councilmember District 2	Voted	Yes
Ken Freese, Councilmember District 3	Voted	Yes
Donald Mueller, Councilmember District 4	Voted	Yes
Domingo Montalvo, Jr., Councilmember at Large Place 5	Voted	Yes
Ray Linseisen, Councilmember at Large Place 6	Voted	Yes

Separability

If any court of competent jurisdiction rules that any section, subsection, sentence, clause, phrase, or portion of this ordinance invalid or unconstitutional any such portion shall be deemed to be a separate, distinct, and independent provision, and any such ruling shall not affect the validity of the remaining portions hereof.

CITY OF WHARTON

By: _____
Bryce D. Kocian, Mayor

ATTEST:

Joyce Vasut, City Secretary

APPROVED FOR ADMINISTRATION:

Andres Garza, Jr., City Manager

APPROVED AS TO FORM:

Paul Webb, City Attorney
Councilmember Ken Freese seconded the motion. All voted in favor.

APPROVED FOR FUNDING:

Joyce Vasut, Finance Director

The eighth item on the agenda was to review and consider a resolution authorizing signators on the City's Texas Local Government Investment Pool (TEXPOOL) accounts. City Manager Andres Garza, Jr. informed the City Council that during the regular June 23, 2003 Wharton City Council meeting, the City Council approved Resolution No. 2003-56 authorizing signators on the City's Texas Local Government Investment Pool (TEXPOOL) accounts. TEXPOOL, however indicated that additional language was needed to be inserted into the resolution. He then presented a draft copy of the resolution requested by TEXPOOL with the additional language highlighted. After some discussion, Councilmember Ray Linseisen made a motion to approve Resolution 2003-86, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2003 - 86**

WHEREAS, the City Council of the City of Wharton, Texas (the "Participant") is a local government of the State of Texas and is empowered to delegate to a public funds investments pool the authority to invest funds, to act as a custodian of investments purchased with local investment funds; and

WHEREAS, it is in the best interest of the Participant to invest local funds in investments that provide for the preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act; and

WHEREAS, the Texas Local Government Investment Pool ("TEXPOOL"), a public funds investment pool, was created on behalf of entities whose investment objective in order of priority are preservation and safety of principal, liquidity, and yield consistent with the Public Funds Investment Act.

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

Section I. That the individuals, whose signatures appear below, are authorized representative of the Participant and are each hereby authorized to transmit funds for investment in TexPool and are each further authorized to withdraw funds from time to time, to issue letters of instruction, and to take all other actions deemed necessary or appropriate for the investment of local funds.

Section II. That an Authorized Representative of the Participant may be deleted by written instrument signed by all remaining Authorized Representatives provided that the deleted Authorized Representative (1) is assigned job duties that no longer require access to the Participant's TexPool account or (2) is no longer employed by the Participant; and

Section III. That the Participant may by Amending Resolution signed by the Participant add an Authorized Representative provided the additional Authorized Representative is an officer, employee, or agent of the Participant:

List of the authorized representatives of the Participant. These individuals will be issued P.I.N. numbers.

1. Name: **Bryce D. Kocian** Title: **Mayor**

Signature _____

2. Name: **Andres Garza, Jr.** Title: **City Manager**

Signature _____

3. Name: **Joyce Vasut** Title: **Finance Director**

Signature _____

List the name of the Authorized Representative listed above that will have primary responsibility for performing transactions and receiving confirmations and monthly statements under the Participation Agreement.

Name: Joyce Vasut

Section IV. That this resolution and its authorization shall continue in full force and effect until amended or revoked by the Participant, and until TexPool receives a copy of any such amendments or revocation.

Passed, Approved, and Adopted this 22nd day of September 2003.

CITY OF WHARTON, TEXAS

By: _____

BRYCE D. KOCIAN
Mayor

ATTEST:

JOYCE VASUT

City Secretary

Councilmember Ken Freese seconded the motion. All voted in favor.

The ninth item on the agenda was to review and consider Chamber of Commerce & Agriculture:

A. Presentation.

B. **Resolution:** A resolution authorizing the Mayor of the City of Wharton to execute a contract with the Wharton Chamber of Commerce and Agriculture for Visitor and Convention Bureau Services for October 1, 2003 to September 30, 2004 Fiscal Year. City Manager Andres Garza, Jr. presented a draft resolution authorizing the Mayor of the City of Wharton to

execute a contract with the Chamber of Commerce and Agriculture for Visitor Convention Bureau Services for October 1, 2003 to September 30, 2004 Fiscal Year. He then presented a draft contract. Chamber of Commerce & Agriculture Executive Director Billie Jones and Chairman Art Schulze made a presentation, which consisted of: Staff, Membership, Budget, Task Teams, Source of Funds, Usage of Funds, City of Wharton Promotion, Tour Group Escorts, Interstate 69 Planning, International Business, Leadership Wharton County, and Local Luncheons. Billie Jones then publicly thanked the City Councilmembers for what they do for the Chamber of Commerce & Agriculture and what they do for Wharton. After some discussion, Councilmember Don Mueller made a motion to approve Resolution No. 2003-87, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2003 - 87**

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF WHARTON, WHARTON COUNTY, TEXAS TO EXECUTE AN AGREEMENT WITH THE CHAMBER OF COMMERCE AND AGRICULTURE FOR VISITOR AND CONVENTION BUREAU SERVICES FOR OCTOBER 1, 2003 TO SEPTEMBER 30, 2004 FISCAL YEAR.

WHEREAS, the City of Wharton City Council hereby authorizes Bryce D. Kocian, Mayor to execute an agreement with the Wharton Chamber of Commerce and Agriculture for visitor and convention bureau services; and,

WHEREAS, the City of Wharton and the Wharton Chamber of Commerce and Agriculture hereby agrees to be bound by the conditions as set forth in the contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. That the City Council of the City of Wharton hereby authorizes the Mayor Bryce D. Kocian of the City of Wharton to execute an agreement with the Wharton Chamber of Commerce and Agriculture.

Section II. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 22nd of September 2003.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

JOYCE VASUT

City Secretary

Councilmember Ray Linseisen seconded the motion. All voted in favor.

The tenth item on the agenda was to review and consider a resolution authorizing the Mayor of the City of Wharton to execute a contract with Attorney Paul Webb for Legal Services for the City of Wharton, Texas. City Manager Andres Garza, Jr. presented a copy of the contract for legal services between the City of Wharton and Attorney Paul Webb which was executed October 29, 1993. He then presented a copy of the letter dated April 8, 2003 by Mr. Webb regarding his services. City Attorney Paul Webb informed the City Council that on April 18, 2003, he submitted a letter to City Manager Andres Garza, Jr. regarding an hourly increase from \$125.00 to \$175.00 for his time, and an hourly charge of \$140.00 for Amy Rod's time. Councilmember Darryl Darnell stated that he was requesting the City solicit bids for legal services. He stated that from October 1, 2002, the City paid Paul Webb \$50,000 in fees, which was close to what Wharton County pays their full-time attorney. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the rates schedule as per City Attorney Paul Webb's letter and; approve Resolution No. 2003-88, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2003 - 88**

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE AN AGREEMENT WITH ATTORNEY PAUL WEBB FOR LEGAL SERVICES FOR THE CITY OF WHARTON, TEXAS.

WHEREAS, the City of Wharton City Council hereby authorizes Bryce D. Kocian, Mayor to execute an agreement with Attorney Paul Webb for legal services for the City of Wharton, Texas; and,

WHEREAS, the City of Wharton and Attorney Paul Webb agree to be bound by the conditions as set forth in the contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. That the City Council of the City of Wharton hereby authorizes the Mayor Bryce D. Kocian of the City of Wharton to execute an with Attorney Paul Webb for legal services for the City of Wharton, Texas.

Section II. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 22nd of September 2003.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

JOYCE VASUT

City Secretary

Councilmember Ray Linseisen seconded the motion. Councilmembers Ken Freese, Don Mueller, Ray Linseisen, and Domingo Montalvo, Jr. voted for the motion. Councilmember Darryl Darnell voted against the motion. The motion carried.

The eleventh item on the agenda was to review and consider a claim by Mrs. Thelma Hayes, 125 North Outlar Street. City Manager Andres Garza, Jr. presented a copy of the letter dated September 18, 2003 from Mrs. Thelma Hayes regarding the claim she submitted to the City of Wharton regarding damage to her clothes. He then presented a copy of the Claims Notice and Incident Report which was filed with the City Secretary's office and then forwarded to the Texas Municipal League (TML) Intergovernmental Risk Pool. He also presented a copy of the letter dated September 12, 2003 from TML denying the claim filed by Mrs. Hayes. Mrs. Thelma Hayes addressed the City Council and stated that white clothes have been ruined due to rusty water, since July. She stated that last month, the City crew was repairing a leak on Sunset. She stated that the water was discolored and ruined the white clothes. She stated that she washed the clothes over, but the discoloration could not be removed. Mrs. Hayes stated that since she filed a claim for \$75.00, her utility bill also increased to \$75.00. She stated that her normal utility bill was \$62.00. Councilmember Ken Freese asked if other people were experiencing the same discoloration. Ms. Hayes stated that TML denied their claims also. After some discussion, Councilmember Darryl Darnell made a motion to approve reimbursement to Mrs. Thelma Hayes in the amount of \$75.00 with either cash or a credit on her utility bill. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider Recommendation from the Planning Commission:

- A. Request by Ms. Sarah Ray and Ms. Sharon Ray to replat Wm. Kincheloe League, Abstract 38, Tract 61B-6B, 811 Nelson Lane. City Manager Andres Garza, Jr. presented a copy of the memorandum of recommendation by Planning Commission Chairman A. J. Rath recommending City Council consider approving the request. He also presented copies of the Commission's Communications regarding the request for re-plat. After some discussion, Councilmember Ray Linseisen made a motion to approve the request by Ms. Sarah Ray and Ms. Sharon Ray to replat Wm. Kincheloe League, Abstract 38, Tract 61B-6B, 811 Nelson Lane. Councilmember Don Mueller seconded the motion. All voted in favor.

- B. Request by Mrs. Margaret Flourney to replat Hawes 3, Block 7, Lots 1, 2, 3; 2702 North Fulton Street. City Manager Andres Garza, Jr. presented a copy of the memorandum of recommendation by Planning Commission Chairman A. J. Rath recommending City Council consider approving the request. He then presented copies of the Commission's Communications regarding the request for re-plat. Mr. Garza stated that Lot 2 would be to split in half in order to enlarge Lots 1 and 3. After some discussion, Councilmember Ken Freese made a motion to approve the request by Mrs. Margaret Flourney to replat Hawes 3, Block 7, Lots 1, 2, 3; 2702 North Fulton Street. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The thirteenth item on the agenda was to review and consider Appeals to the Planning Commission's decisions regarding the following requests:

- A. Request by Mr. Larry Sitka for a 20 feet front setback variance, 27 feet rear setback variance and a variance of 10 square feet from the required 150 square feet area for the placement of two off premise advertising signs. City Manager Andres Garza, Jr. presented a copy of the letter dated September 16, 2003 from Mr. Larry Sitka requesting to appeal the decision of the Planning Commission. He stated the Planning Commission met September 15, 2003 to consider Mr. Sitka's request, which was denied. He then presented a copy of the Commission Communications from the meeting. Councilmember Don Mueller questioned if the property was 102' or 110' wide and the width of Hendon Street. Councilmember Domingo Montalvo, Jr. requested this item be deferred until the next City Council meeting to be held on October 13, 2003. The item was deferred.

- B. Request by Mr. Eugene Maretka for a front yard setback variance for the construction of a 18 x 21 feet carport at 1316 Kelving Way; Linwood, Block 2, Lot 8, 9A. City Manager Andres Garza, Jr. presented a copy of the letter dated August 26, 2003 from Mr. Eugene Maretka requesting to appeal the decision of the Planning Commission. He stated the Planning Commission met August 18, 2003 to consider Mr. Maretka's request, which was denied. He then presented a copy of the Commission Communication's from the meeting. Mr. and Mrs. Eugene Maretka addressed the City Council and stated that they purchased the residence at 1316 Kelving Way and desired to construct a carport being 17' 4" from the front property line, and 18' from side property line. Councilmember Don Mueller said the curb to property line was 16', which the requirement was 25'. He stated that six residents had closed in the garage and constructed carports in the back of residence due to the deed restriction requirements. Councilmember Ken Freese stated that he was in the Real Estate business, and there would be an impact on the other residents. Councilmember Don Mueller requested Mr. & Mrs. Maretka reconsider construction of the carport at an alternate location on the property. After some discussion, Councilmember Don Mueller made a motion to deny the request by Mr. Eugene Maretka for a front yard setback variance for the construction of a 18 x 21 feet carport at 1316 Kelving Way; Linwood, Block 2, Lot 8, 9A. Councilmember Ken Freese seconded the motion. Councilmembers Ken Freese, Don Mueller, Domingo Montalvo, Jr., and Ray Linseisen voted for the motion. Councilmember Darryl Darnell voted against the motion. The motion carried.

The fourteenth item on the agenda was to review and consider the request by Mr. & Mrs. David & Valerie Cheatham for City of Wharton Water Service at 120 Maude Street. City Manager Andres Garza, Jr. presented a copy of the application for utility service by Mr. and Mrs. David & Valerie Cheatham who reside at 120 Maude Street. He then presented a copy of a map indicating the location of their home. He stated that City Council approval was required to provide City of Wharton water service outside the City limits. Councilmember Domingo Montalvo, Jr. requested the City Staff to conduct a new survey of the residents in order to determine whether utility service would be desired by other residents. City Manager Andres Garza, Jr. stated that the City Staff would conduct a survey of the residents. Fire Chief David Copeland addressed the City Council and suggested a 6" or 8" line be placed on Margaret. Mr. Garza stated that Anthony Rachunek with Anthony Rachunek & Associates designed the layout and recommended a 6" line, and a 12" service line. After some discussion, Councilmember Darryl Darnell made a motion to approve the request by Mr. & Mrs. David & Valerie Cheatham for City of Wharton

Water Service at 120 Maude Street. Councilmember Don Mueller seconded the motion. All voted in favor.

The fifteenth item on the agenda was to review and consider the request by Enlightened Word Ministries, Inc. for the submission of a Community Development Grant Application under the Office of Rural Community Affairs (ORCA) Housing Infrastructure Program. City Manager Andres Garza, Jr. presented a copy of the letter dated September 16, 2003 from Ms. V. L. Manuel, Executive Director of Enlightened Word Ministries, Inc. requesting the City of Wharton submit a Community Development Grant application on behalf of Enlightened Word Ministries, Inc. to the Office of Rural Community Affairs (ORCA) under the Housing Infrastructure Program. He then presented copies of several schematic design layouts of the proposed housing development provided by Enlightened Word Ministries. Kamal Rasheed addressed the City Council and stated that Enlightened Word Ministries, Inc. was requesting the City Council to submit a grant application for housing infrastructure on FM 1299. He stated that Enlightened Word Ministries, Inc. would be on the project from start to completion. Jeremy Curtis addressed the City Council and stated that any profit from the project would be put back into the housing project. Councilmember Don Mueller asked about roads. He stated that it showed 28' or 30' street, which needed to be 32' to 36'. Jeremy Curtis stated that the Civil Engineer would look at widening the streets. City Manager Garza stated that the City Council could submit an application to Office of Rural Community Affairs to fund infrastructure. After some discussion, no action was taken.

The sixteenth item on the agenda was to review and consider the request by Mr. Jerry Fink for Temporary Permit for Possession/Consumption of Alcoholic Beverages at City Parks. City Manager Andres Garza, Jr. presented a copy of the application for Temporary Permit Possession/Consumption of Alcoholic Beverages in Certain Parks. He then presented a copy of the memorandum dated September 8, 2002 from Police Chief Tim Guin indicating that the application appears to comply with the City of Wharton Ordinance No. 2002-22. Mr. Jerry Fink addressed the City Council and stated that Nan Ya Plastics would be holding their Annual Picnic on October 11, 2003 at Pleasure Park North and requested approval. After some discussion, Councilmember Don Mueller made a motion to approve the request by Mr. Jerry Fink for Temporary Permit for Possession/Consumption of Alcoholic Beverages at City Parks. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The seventeenth item on the agenda was to review and consider a resolution approving the Texas Department of Transportation Aviation Division Airport Project Participation Agreement, TxDOT CSJ No. 0413 WHRTN for the Wharton Regional Airport - Airport Action Plan; Authorizing the Mayor of the City of Wharton to execute all documents relating to said agreement. City Manager Andres Garza, Jr. presented a copy of the Texas Department of Transportation Aviation Division Airport Project Participation Agreement, TxDOT CSJ No. 0413 WHRTN for the Wharton Regional Airport - Airport Action Plan. He then presented a copy of a draft resolution approving the agreement. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2003-89, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2003 - 89**

A RESOLUTION APPROVING THE TEXAS DEPARTMENT OF TRANSPORTATION AVIATION DIVISION AIRPORT PROJECT PARTICIPATION AGREEMENT, TxDOT CSJ NO. 0413 WHRTN FOR THE WHARTON REGIONAL AIRPORT – AIRPORT ACTION PLAN; AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID AGREEMENT.

WHEREAS, the City of Wharton City Council hereby authorizes Bryce D. Kocian, Mayor to execute the Airport Project Participation Agreement, TxDOT CSJ No.0413 WHRTN with the Texas Department of Transportation Aviation Division for the Wharton Regional Airport – Airport Action Plan; and,

WHEREAS, the City of Wharton and the Texas Department of Transportation Aviation Division hereby agrees to be bound by the conditions as set forth in the contract.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. That the City Council of the City of Wharton hereby authorizes Bryce D. Kocian, Mayor to execute the Airport Project Participation Agreement, TxDOT CSJ No.0413 WHRTN with the Texas Department of Transportation Aviation Division for the Wharton Regional Airport – Airport Action Plan.

Section II. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 22nd of September 2003.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

JOYCE VASUT

City Secretary

Councilmember Ray Linseisen seconded the motion. All voted in favor.

The eighteenth item on the agenda was to review and consider City of Wharton Property & Casualty and Worker's Compensation Bid:

A. Bid Tabulation.

B. **Resolution:** A resolution awarding a bid for Property & Casualty and Worker's Compensation Insurance for the City of Wharton; Authorizing the Mayor of the City of Wharton to execute documents relating to said contract. City Manager Andres Garza, Jr. informed the City Council that on September 15, 2003, the City received bids for Property & Casualty and Worker's Compensation. He presented a copy of the bid tabulation and bidder's

list. He then presented a draft resolution awarding the bid. Mr. Garza stated that the City Staff was recommending the bid be awarded to TML-IRP for the property, casualty and workers' compensation insurance in the amount of 184,616.17. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2003-90, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2003-90**

A RESOLUTION AWARDING A BID FOR PROPERTY & CASUALTY AND WORKERS' COMPENSATION INSURANCE TO TEXAS MUNICIPAL LEAGUE-INTERGOVERNMENTAL RISK POOL (TML-IRP) FOR THE CITY OF WHARTON; AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACT.

WHEREAS, competitive, sealed bids were received on September 15, 2003, for property & casualty & worker's compensation insurance; and

WHEREAS, Texas Municipal League was deemed to be the best and lowest qualified bidder as per bid specifications for property & casualty and workers' compensation; and

WHEREAS, the City Council of the City of Wharton has determined that is in the best interest of the City of Wharton to enter into such agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. That Texas Municipal League-Intergovernment Risk Pool (TML-IRP) is hereby awarded the bid for Property & Casualty Insurance and Worker's Compensation Insurance for the City of Wharton in accordance with the bid specifications.

Section II. That the Mayor of the City of Wharton is hereby authorized to sign any documents relating to the aforementioned contracts.

Section III. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 22nd day of September, 2003.

CITY OF WHARTON, TEXAS

By: _____
BYRCE D. KOCIAN
Mayor

ATTEST: _____

JOYCE VASUT
City Secretary

Councilmember Ray Linseisen seconded the motion. All voted in favor.

The nineteenth item on the agenda was to review and consider City of Wharton 2003 Sewer Rehabilitation Project:

A. Bid Tabulation.

B. **Resolution:** A resolution awarding the bid for the City of Wharton 2003 Sewer Rehabilitation Project; Authorizing the Mayor of the City of Wharton to execute documents relating to said contract. City Manager Andres Garza, Jr. informed the City Council that on September 10, 2003, the City received bids for the 2003 Sewer Rehabilitation Project. He presented a copy of the letter dated September 12, 2003 from Anthony Rachunek, P.E. recommending the bid be awarded to Mercer Construction Company. He then presented a copy of the bid tabulation and a draft resolution awarding the bid. Anthony Rachunek with Anthony Rachunek and Associates informed the City Council that bids were received from three companies, which he was recommending Mercer Construction for being the lowest qualified bidder for the project at \$87,125.50. Mr. Rachunek stated that the project estimate was at \$120,000. After some discussion, Councilmember Ray Linseisen made a motion to approve Resolution No. 2003-91, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2003-91**

A RESOLUTION AWARDED A BID TO MERCER CONSTRUCTION COMPANY FOR THE CITY OF WHARTON 2003 SEWER REHABILITATION PROJECT; AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACT.

WHEREAS, competitive, sealed bids were received on September 10, 2003, for the City of Wharton 2003 Sewer Rehabilitation Project; and

WHEREAS, Mercer Construction Company was deemed to be the best and lowest qualified bidder as per bid specifications for 2003 Sewer Rehabilitation Project in the amount of \$87,125.50; and

WHEREAS, the City of Wharton wishes to award the bid to Mercer Construction Company for the 2003 Sewer Rehabilitation Project; and

WHEREAS, the City of Wharton and Mercer Construction Company hereby agrees to be bound by the conditions as set forth in the contract.

WHEREAS, this resolution is passed in accordance with this bid.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. That Mercer Construction Company is hereby awarded the bid for the 2003 Sewer Rehabilitation Project for the City of Wharton in accordance with the bid specifications.

Section II. That the Mayor of the City of Wharton is hereby authorized to sign any documents relating to the aforementioned contracts.

Section III. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 22nd day of September 2003.

CITY OF WHARTON, TEXAS

By:

BRYCE D. KOCIAN
Mayor

ATTEST:

JOYCE VASUT

City Secretary

Councilmember Darryl Darnell seconded the motion. All voted in favor.

The twentieth item on the agenda was to review and consider City of Wharton Wastewater Treatment Plant No. 1 Electrical System Rehabilitation Project:

A. Bid Tabulation.

B. **Resolution:** A resolution awarding the bid for the City of Wharton Wastewater Treatment Plant No. 1 Electrical System Rehabilitation Project; Authorizing the Mayor of the City of Wharton to execute all documents relating to said contract.

City Manager Andres Garza, Jr. informed the City Council that bids were received on Monday, September 22, 2003 for the City of Wharton Wastewater Treatment Plant No. 1 Electrical System Rehabilitation Project. He then presented a draft copy of a resolution awarding the bid. Anthony Rachunek with Anthony Rachunek & Associates addressed the City Council and stated that two bids were received for the project, which he was recommending Penner Electric in the amount of \$55,350.00. After some discussion, Councilmember Don Mueller made a motion to approve Resolution No. 2003-92, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2003-92**

A RESOLUTION AWARDING A BID TO PENNER ELECTRIC, INC. FOR THE CITY OF WHARTON WASTEWATER TREATMENT PLANT NO. 1 ELECTRICAL SYSTEM REHABILITATION PROJECT; AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACT.

WHEREAS, competitive, sealed bids were received on September 22, 2003, for the City of Wharton Wastewater Treatment Plant No. 1 Electrical System Rehabilitation Project; and

WHEREAS, Penner Electric, Inc. was deemed to be the best and lowest qualified bidder as per bid specifications for City of Wharton Wastewater Treatment Plant No. 1 Electrical System Rehabilitation Project in the amount of \$55,350.00; and

WHEREAS, the City of Wharton wishes to award the bid to Penner Electric, Inc. for the City of Wharton Wastewater Treatment Plant No. 1 Electrical System Rehabilitation Project; and

WHEREAS, the City of Wharton and Penner Electric, Inc. hereby agrees to be bound by the conditions as set forth in the contract.

WHEREAS, this resolution is passed in accordance with this bid.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS as follows:

Section I. That Penner Electric, Inc. is hereby awarded the bid for the City of Wharton Wastewater Treatment Plant No. 1 Electrical System Rehabilitation Project in accordance with the bid specifications.

Section II. That the Mayor of the City of Wharton is hereby authorized to sign any documents relating to the aforementioned contracts.

Section III. That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 22nd day of September 2003.

CITY OF WHARTON, TEXAS

By:

BRYCE D. KOCIAN
Mayor

ATTEST:

JOYCE VASUT

City Secretary

Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The twenty-first item on the agenda was to review and consider Utility Easement for the Hinze's Waterline Project Phase III – Hawes Estate. City Manager Andres Garza, Jr. presented a draft copy of the utility easement agreement that was presented to Ms. Joan G. Hawes, Hawes Estate, for the Hinze's Waterline Phase III project. He then presented a copy of the letter dated September 5, 2003 from Ms. Joan G. Hawes indicating that the Hawes Estate would consider granting a 10 feet utility easement. Also, Ms. Hawes was requesting that damages be paid in the amount of \$200.00 to: Joan G. Hawes, Independent Executrix of the Estate of Edwin Hawes III, deceased; Stephen C. Hawes; Lily Ann Hawes, Successor Trustee for Gail Ann Hawes 2/11/75 Trust; Joan G. Hawes, Successor Trustee for Joan G. Hawes 1/4/77 Trust; and Barbara Hawes Morris, Successor Trustee for Barbara L. Hawes 8/17/81 Trust. The total damages paid would be \$1,000.00. City Attorney Paul Webb informed the City Council that the agreement called for a 10' utility easement and installation of two taps at the City's cost. City Manager Garza stated that the City Staff would replace the fence when completed with the project. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the Utility Easement for the Hinze's Waterline Project Phase III – Hawes Estate. Councilmember Don Mueller seconded the motion. All voted in favor.

The twenty-second item on the agenda was to review and consider Recommendation by the City Council Streets & Drainage Committee for the following:

- A. To engage the services of Jones & Carter, Inc. to conduct the preliminary engineering, surveying, and topography required for the Junior College Blvd. Project.

City Manager Andres Garza, Jr. informed the City Council that on September 10, 2003, the City Council Streets & Drainage Committee met and discussed the Junior College Blvd. Project. The City Council had approved the project; however, the City Staff along with Mr. Carlos Cotton, P.E. of Jones & Carter, Inc. reviewed the project construction drawings prepared by the Texas Department of Transportation District (TxDOT) office several years ago and found the design criteria would be very costly to construct. The Committee reviewed the project and voted to recommend that the City Council engage the services of Jones & Carter, Inc. to conduct the preliminary engineering report, surveying, and topography of the project on an hourly basis with an amount not exceed \$20,000.00. The Committee felt that after the preliminary engineering report was prepared, the design criteria could be developed. Carlos Cotton addressed the City Council and stated that the Texas Department of Transportation over designed the intersection of Jr. College Blvd. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to authorize the City of Wharton to engage the services of Jones & Carter, Inc. to conduct the preliminary engineering, surveying, and topography required for the Junior College Blvd. Project on an hourly basis with an amount not exceed \$20,000.00. Councilmember Ray Linseisen seconded the motion. All voted in favor.

- B. To submit a proposal to the Texas Department of Transportation Highway Division for the FM 102/ Hwy. 59 Interchange Project.

City Manager Andres Garza, Jr. informed the City Council that the Streets & Drainage Committee met with TxDOT Yoakum District Office and Wharton area office representatives, Interim District Engineer Lonnie Gregorcyk, Area Engineer Glen Dvorak and Engineer Camille Davis. The Committee discussed the Highway 59 Corridor Improvement Project and focused on the Hwy 59/FM 102 Interchange. Mr. Gregorcyk told the Committee that he felt the project could move forward if the City would commit resources to the project. He said TxDOT has been working with several cities and counties who have contributed towards such projects. He said that contributions ranged from engineering work to monetary funds. The Committee voted to recommend to the City Council that a proposal be developed and submitted to TxDOT District Office for their consideration. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to authorize the City Staff to submit a proposal to the Texas Department of Transportation Highway Division for the FM 102/ Hwy. 59 Interchange Project. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The twenty-third item on the agenda was to review and consider City of Wharton Caney Creek Outfall Ditch Project:

- A. Authorization to place excess fill on property belonging to the Rust Family.

City Manager Andres Garza, Jr. informed the City Council that in the process of constructing the Caney Creek Outfall Ditch, the City of Wharton had provided the excess dirt to Wal-Mart. Wal-Mart had indicated that the fill dirt was no longer needed at the site. The Rust Family had indicated that the City of Wharton could place the dirt on property located near the project location; however, City Council approval was required to place the fill dirt on private property. Councilmember Darryl Darnell asked why the City would be placing the excess dirt on Rust property and not City property in order to use on a levy at a future date or other projects. Carlos Cotton advised the City Council that there was no place to stock pile the excess dirt and that amount would not be enough to complete a levy nor would it be cost effective to transport and stock pile the dirt. After some discussion, Councilmember Ray Linseisen made a motion to

authorize placement of excess fill on property belonging to the Rust family. Councilmember Ken Freese seconded the motion. All voted in favor.

B. Change Order No. 1 for the Caney Creek Outfall Ditch Project - Uticon, Inc.
City Manager Andres Garza, Jr. presented a copy of the Change Order No. 1 for Uticon, Inc. for the Caney Creek Outfall Ditch. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Change Order No. 1 for the Caney Creek Outfall Ditch Project - Uticon, Inc. in the amount of \$87,933.60 in order to excavate additional fill material from ditch and install safety end treatments on pipe at Sta. 49-50 in lieu of the proposed roadside ditch interceptor. Councilmember Don Mueller seconded the motion. All voted in favor.

The twenty-fourth item on the agenda was to review and consider the City of Wharton 2003 Street Improvement Project Pay Request No. 1 – Faltisek Paving, Inc. City Manager Andres Garza, Jr. presented a copy of the Pay Request No. 1 – Faltisek Paving, Inc. for the 2003 Street Improvement Project. Mr. Garza stated that the payment request was reduced by 5% to withhold the retainage fee. He stated that the work was completed at the Wharton Municipal Airport and submitted the request for reimbursement to the Texas Department of Transportation Aviation Division. After some discussion, Councilmember Don Mueller made a motion to approve the City of Wharton 2003 Street Improvement Project Pay Request No. 1 – Faltisek Paving, Inc. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The twenty-fifth item on the agenda was to review and consider Travel Reimbursement for City Manager. City Manager Andres Garza, Jr. presented a copy of the request for Travel Reimbursement for City Manager Andres Garza, Jr. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the Travel Reimbursement for City Manager for the period July 24, 2003 through September 17, 2003 in the amount of \$271.79. Councilmember Don Mueller seconded the motion. All voted in favor.

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

- A. City Council Streets & Drainage Committee meeting held September 10, 2003.
 - B. Beautification Commission meeting held September 10, 2003.
 - C. Wharton Regional Airport Board meeting held September 11, 2003.
 - D. Southern Pacific Railroad Depot Restoration Project Consultant Selection Committee meeting held September 12, 2003.
 - E. Planning Commission meeting held September 15, 2003.
- City Manager Andres Garza, Jr. presented the reports to the City Council. No action was taken.

The twenty-seventh item on the agenda was to review and consider the City Manager's Reports:

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|---|--|
| A. Police Department. | I. Engineer/Planning Department. |
| B. City Secretary/Personnel. | J. Facilities Maintenance Department. |
| C. Municipal Court. | K. Community Services Department/
Civic Center. |
| D. E.M.S. Department. | L. Wharton Municipal Pool. |
| E. Fire Department Incidents/Inspections. | M. Wharton Regional Airport. |
| F. Code Enforcement Department/Weedy Lot. | N. Legal Department. |
| G. Water & Sewer Department. | |
| H. Public Works Department. | |

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

The twenty-eighth item on the agenda was adjournment. After some discussion, Councilmember Don Mueller made a motion to adjourn. Councilmember Ken Freese seconded the motion. All voted in favor.

The meeting was adjourned at 8:53 p.m.

CITY OF WHARTON, TEXAS

By:

BRYCE D. KOCIAN
Mayor

ATTEST:

JOYCE VASUT
City Secretary