

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
OCTOBER 13, 2003**

Mayor Bryce D. Kocian declared a Regular Meeting duly open for the transaction of business at 7:01 P.M. Reverend Eddie Brinkley led the opening devotion and then Mayor Bryce D. Kocian led the pledge of allegiance.

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

Councilmember absent was: None.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, Deputy City Secretary Lisa Stavena, Assistant to City Manager Jackie Jansky, Building Inspector Ronnie Bollom, Community Services Director Jo Knezek, Fire Chief David Copeland, and City Attorney Paul Webb.

Visitors present were: Benjamin Sharp with Wharton Journal Spectator, Lewis Fortenberry, I.O. Coleman, Jr., Jim Cockrell, Carlos Cotton, Larry Sitka, David Schroeder, Sam Harrell, Carol Miller, Anthony Rachunek, Johnnie Lee Roberts, Eddie Brinkley, Bernice Jackson, Coby Frankum, Colton Frankum, Andrew Garza, Marvin Dunn, Terry Freese, Skip Holman, Willie Welch, Steven Ward, Kathe Warren, and Saim Eriskin.

The third item on the agenda was Public Comments. Ms. Carol Miller addressed the City Council and stated that the Riverbend Apartments has had a mosquito problem since the last rain.

She stated that she called Facilities Maintenance Director Bob Baker and the area still has not been sprayed. She was requesting the area be sprayed for misquotes since the West Nile virus was found in El Campo.

Mr. I.O. Coleman, Jr. addressed the City Council and stated that the street light project had started; however, Center Point was digging holes in the ditches and not filling the holes. He stated that this would prevent proper drainage. He then stated that the City of Wharton had not filled the Emergency Management Coordinator position and he was recommending Chester Houston.

Ms. Kathe Warren addressed the City Council and stated that she was praising Garland Novosad for his comments to the Wharton Journal Spectator Sounding Board. No action was taken.

The fourth item on the agenda was the Wharton Moment. Councilmember Ken Freese stated that Intergovernmental Meeting was held in El Campo on October 10, 2003 and both cities would benefit from the continued effort. No action was taken.

The fifth item on the agenda was to review and consider reading of the minutes from the regular meetings held September 8, 2003 and September 22, 2003 and the special meeting held September 15, 2003. After some discussion, Councilmember Don Mueller made a motion to approve the minutes from the regular meetings held September 8, 2003 and September 22, 2003 and the special meeting held September 15, 2003 as written. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider a request by Mr. Malvin Dunn to address the City Council regarding the City of Wharton Boat Ramp and Parking Area. City Manager Andres Garza, Jr. presented a copy of the letter dated September 18, 2003 from Mr. Malvin Dunn requesting to address the City Council regarding the City of Wharton Boat Ramp and Parking Area. He then presented a copy of the letter dated October 6, 2003 informing Mr. Dunn that he should attend the meeting in order to answer any questions. Mr. Malvin Dunn addressed the City Council and requested to use the boat ramp parking lot to park his tractor-trailer truck. He stated that he had been parking there for twenty years, and during that time he had maintained the lot and kept the lot mowed. He stated that he had also assisted people out at the boat ramp on occasions. Mr. Dunn stated that since the last flood approximately four months prior, the City had to remove the sand from the boat ramp. He stated that he was advised, at that time, he could not park his truck in the parking lot. He stated that since that time, the lot had not been mowed and the trash had not been picked up. He stated that there was plenty of parking space, since he parked along the fence. Councilmember Ken Freese stated that a portion of the parking lot could be designated as truck parking. Councilmember Darryl Darnell asked if the City of Wharton received a grant from the Texas Parks & Wildlife for the Boat Ramp. Mr. Malvin Dunn stated that the Boat Ramp was constructed in 1977-1978 and completed in 1981-1982. After some discussion, Councilmember Ken Freese made a motion to designate a truck parking space at the parking lot contingent upon the Texas Parks & Wildlife restrictions. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider a request by Ms. Mary Jane Dawson for City of Wharton water service at 415 Margaret Street and to become a party to a contract with Mr. and Mrs. Albert Barnes. City Manager Andres Garza, Jr. presented a copy of the letter dated September 30, 2003 from Ms. Mary Jane Dawson requesting City of Wharton water service at 415 Margaret Street. He stated that Ms. Dawson was also requesting to be made a party to the contract with Mr. and Mrs. Albert Barnes and the City of Wharton. Mr. Garza stated that City Attorney Paul Webb was preparing an amendment to the contract to add Ms. Dawson. City Attorney Paul Webb presented the amendment including Ms. Dawson to the contract between Mr. and Mrs. Albert Barnes. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the request by Ms. Mary Jane Dawson for City of Wharton water service at 415 Margaret Street and to become a party to the contract with Mr. and Mrs. Albert Barnes. Councilmember Don Mueller seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider a request by Mr. Reginald Clay for City of Wharton Water Service at 437 Maude Street. City Manager Andres Garza, Jr. stated that Mr. Reginald Clay, 437 Maude Street, was requesting water service. He stated that Mr. Clay's property was outside the City limits and therefore approval from the City Council was required. He would be serviced from the 12" water line installed on Maude Street. Mr. Garza then stated that Mr. Reginald Clay would also be responsible to pay for the tap fees. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the request by Mr. Reginald Clay for City of Wharton Water Service at 437 Maude Street. Councilmember Ken Freese seconded the motion. All voted in favor.

The ninth item on the agenda was to review and consider a resolution of the Wharton City Council designating a City of Wharton Representative to serve on the Wharton County Central Appraisal District Board of Directors for the January 1, 2004 – December 31, 2005 Term. City Manager Andres Garza, Jr. presented a copy of the letter dated October 1, 2003 from Wharton County Central Appraisal District (CAD) Chief Larry Holub requesting the City of Wharton designate a representative to serve as a Director on the CAD Board. He stated that the term would be January 1, 2004 – December 31, 2005. Mayor Bryce D. Kocian was currently serving as the City's designated representative. Mr. Garza then presented a draft resolution designating a City of Wharton representative to the January 1, 2004 – December 31, 2005 term. After some discussion, Councilmember Ken Freese made a motion to approve Resolution No. 2003-93, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2003 -93**

**A RESOLUTION OF THE WHARTON CITY COUNCIL DESIGNATING A CITY OF WHARTON REPRESENTATIVE TO SERVE ON THE WHARTON COUNTY CENTRAL APPRAISAL DISTRICT BOARD OF DIRECTORS FOR THE JANUARY 1, 2004 – DECEMBER 31, 2005 TERM.**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WHARTON, TEXAS** that Mayor Bryce D. Kocian be, and is hereby designated as its Representative to serve on the Wharton County Central Appraisal District Board of Directors for the January 1, 2004 – December 31, 2005 Term.

**THAT**, the Chief Appraiser of the Wharton County Central Appraisal District be notified of the designation of the hereinabove named representative.

**Passed, Approved, and Adopted** this 13<sup>th</sup> day of October 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 tenth item on the agenda was to review and consider Wharton Economic Development Corporation:

A. Budget Amendments for Fiscal Year 2003-2004. City Manager Andres Garza, Jr. presented a copy of the amended budget for the Wharton Economic Development Corporation (WEDCo) Fiscal Year 2003-2004. He then presented a copy of the memorandum dated October 7, 2003 from WEDCo Executive Director David Schroeder requesting to be placed on the agenda. Wharton Economic Development Corporation Executive Director David Schroeder addressed the City Council and stated with the legislative change, the budget needed to be amended to reflect the change in the law. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the Budget Amendments for Fiscal Year 2003-2004 as presented, reflecting Revenues in the amount of \$1,215,000 and Expenditures in the amount of \$1,168,683. Councilmember Don Mueller seconded the motion. All voted in favor.

B. Year End Statements of Revenues and Expenditures for Fiscal Year 2002-2003. City Manager Andres Garza, Jr. presented a copy of the Statement of Revenues and Expenditures for Fiscal Year ending September 30, 2003. He then presented a copy of the memorandum dated October 7, 2003 from WEDCo Executive Director David Schroeder requesting to be placed on the agenda. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve the Year End Statements of Revenues and Expenditures for Fiscal Year 2002-2003 as presented which reflected Revenues in the amount of \$872,613, and Expenditures in the amount of \$1,738,819. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The eleventh item on the agenda was to review and consider the recommendation by the Mayor's Local Committee on People with Disabilities for City Council approval to draft a local ordinance(s) regarding the enforcement of the American with Disabilities Act. City Manager Andres Garza, Jr. presented a copy of the letter of recommendation dated October 8, 2003 from Chairman Skip Holman of the Mayor's Local Committee on People with Disabilities. He stated that the Committee met on September 25, 2003 and voted to recommend the City Council provide approval for the Committee to draft a local ordinance(s) regarding the enforcement of the Americans with Disabilities Act. Chairman Vasaar "Skip" Holman addressed the City Council and stated that Cindy Counts with the State of Texas Mayor's Local Committee provided city ordinances for the Committee's review. He stated that the Committee's goal was to pursue and educate the public. He then publicly invited City Attorney Paul Webb to attend the next Mayor's Local Committee on People with Disabilities meeting. Mr. Holman stated that the community needed to be brought up to the minimum ADA requirements. Councilmember Domingo Montalvo, Jr. asked if all the businesses were notified. Mr. Holman stated that all the businesses were mailed an information packet and some businesses had been contacted. He stated that the response from the businesses was that they would comply when it became

mandatory. City Manager Andres Garza, Jr. stated that the City of Wharton would need to hire personnel to enforce the ordinance. After some discussion, Councilmember Darryl Darnell made a motion to authorize the Mayor's Local Committee on People with Disabilities to submit a draft ordinance regarding the enforcement of the Americans with Disabilities Act for City Council review. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider Request by Mr. Saim Eriskin, Ms. Carol J. Miller, and Ms. Katherine Warren to address the City Council regarding the following:

A. City Charter Sections 15, 18, 19, 23, 26, 30, 33, 41, 43, & 49. City Manager Andres Garza, Jr. presented a copy of the letter the City Staff received October 8, 2003 from Mr. Saim Eriskin, Ms. Carol J. Miller, and Ms. Katherine Warren requesting to address the City Council regarding the City of Wharton City Charter Sections 15, 18, 19, 23, 26, 30, 33, 41, 43, & 49. Mr. Saim Eriskin addressed the City Council and stated that the City Manager's position was more secure than a position at a corporation. He stated that Mr. Garza was provided health insurance, travel, per diem, vacation, and retirement. He questioned how the City Council could approve severance pay for one year. He stated that the City Charter would need to be amended. Mr. Eriskin stated that for a corporation, the severance pay was one week per each year of service and here the severance pay for a municipal government for City Manager Andres Garza, Jr. was one year. City Attorney Paul Webb stated that severance pay was in place in the original employment agreement in 1994. Mr. Webb stated that the severance pay would only be paid out if City Manager Andres Garza, Jr. was terminated without cause; however, if City Manager Andres Garza, Jr. was terminated with cause the severance pay would not apply. Councilmember Darryl Darnell stated that Texas was an at-will state, which no one has to be terminated with cause. Councilmember Darryl Darnell stated that in 1994, the severance pay was not approved for one year. Mr. Eriskin stated that the City Council needed to correct the violation. He then stated that the City Charter allows the City Secretary to act on behalf of the City Manager in his absence. He stated that this authority could lead to the incident as in prior years. Councilmember Domingo Montalvo, Jr. stated that the financial statements had not been reviewed for six months at a time back then, which the financials were reviewed monthly and all funds had been separated. No action was taken.

B. Wharton County Freedom Festival expenditures and profitability. City Manager Andres Garza, Jr. presented a copy of the letter the City Staff received October 8, 2003 from Mr. Saim Eriskin, Ms. Carol J. Miller, and Ms. Katherine Warren requesting to address the City Council regarding the Wharton County Freedom Festival expenditures and profitability. Ms. Katherine Warren addressed the City Council regarding the Freedom Festival and questioned the \$8,000 donation from H.E.B., which the City received and then in turn wrote a check to the Freedom Festival. She also addressed City Secretary Joyce Vasut about the use of the City of Wharton's letterhead for the Freedom Festival. City Secretary Joyce Vasut stated that she did not know if City of Wharton's letterhead was used for the Freedom Festival. Councilmember Darryl Darnell stated that it was not legal to deposit funds in the City of Wharton account without City Council approval. Mayor Bryce D. Kocian stated that Stephenson & Trlicek were the City's auditors and all could be presented during the next audit. Ms. Carol Miller stated that she had been a bookkeeper all her life and the city government was much like a large corporation, which audits should be conducted every month. She then questioned the whereabouts of the money the City received from FEMA. City Manager Andres Garza, Jr. stated

that the FEMA grant was reimbursable, which meant that the City of Wharton had to spend the funds first and then request reimbursement. Ms. Miller then questioned the grant for \$170,000 from the Department of Emergency Management. Mayor Bryce D. Kocian stated that the grant was for equipment. Fire Chief David Copeland addressed the City Council and stated that the grant was applied for Emergency Management supplies and equipment had changed seven times since the City Council discussed the grant and the deadline had been extended. He stated that in regards to shelters, Wharton County was a passed through community, with no shelters. He stated that he was tired of the questions about the Freedom Festival and if she would attend a Freedom Festival meeting, all her questions would be answered.

**Exert of verbatim transcript:**

Councilmember Darryl Darnell

Let me tell you this, Ms. Warren it is not legal to put money in the City bank account and disburse.

Ms. Katherine Warren

Well, I am going to.

Councilmember Darryl Darnell

Let me finish, without Council approval. It is not appropriate to put any other organization's money into the City's bank account and I don't care who the check is made out to. The check should have been sent back to H.E.B. and they should have been advised of who to write the check to.

Councilmember Domingo Montalvo, Jr.

Councilmember Darryl Darnell be very careful.

Councilmember Darryl Darnell

This was not.

Councilmember Domingo Montalvo, Jr.

You are stating policy for the City and H.E.B.

Councilmember Darryl Darnell

This was not the first.

Councilmember Domingo Montalvo, Jr.

And Mayor I would like to say.

Councilmember Darryl Darnell

This was not the first this happened. Mayor do I have the floor or not.

Councilmember Domingo Montalvo, Jr.

That for now on if we are going to talk about things that does not pertain to Council, that people be sworn to make their statement, there is no reason for making that type of allegations without having some kind of proof and I bent over backwards to tell them that I would be glad to do that, the City's going to it, but Councilmember Darryl Darnell persists and that is fine. If we are going

to make accusations, I want to make sure people are under oath and them understand and that what they are saying they will be held accountable for.

Councilmember Darryl Darnell

O.K., now that I can finish. It does pertain to the City, it went through the City Treasurer. We don't know, I can't tell you where the money went. All I know, I was told there was an \$8,000 check written to the Freedom Festival. Every other disbursement that we had, we have receipts for what that money went to. When I first got elected to Council, it was brought to my attention that Freedom Festival had a history of having money deposited into the City of Wharton banking account somewhere in the neighborhood of \$22,000.00. To answer your question, yes I have seen solicitation for donations on City letterhead. The City Council even received one themselves on City letterhead asking for donations to the Freedom Festival that happened last year. There was no, in last year's transactions, there was no record of what the money went to. I have no idea what the money went to.

Councilmember Domingo Montalvo, Jr.  
Come to the meeting, Councilmember Darnell

Councilmember Darryl Darnell  
I do know this, I do know this.

Councilmember Domingo Montalvo, Jr.  
And we will provide you.

Councilmember Darryl Darnell  
I do know this, that up until December of last year, the Freedom Festival, the Committee had not even filed the proper paperwork with the Internal Revenue Service for State Comptroller's Office to even be accepting donations that would be written off by companies.

Councilmember V. L. Wiley, Jr.  
Are we still, still, we still are not having that are we.

Councilmember Domingo Montalvo, Jr.  
No sir.

Councilmember V. L. Wiley, Jr.  
We are not handling those accounts any more.

Councilmember Domingo Montalvo, Jr.  
No sir.

Councilmember Darryl Darnell  
We just did in May.

Councilmember V. L. Wiley, Jr.  
But that was the last time. The City's.

Ms. Katherine Warren  
But up until then it was legal, right.

Councilmember Darryl Darnell  
But up then, it was questionable.

Mayor Bryce D. Kocian  
It was not illegal, if anything was illegal show me where it is.

Councilmember Darryl Darnell  
Any time you disburse money and you don't have, out of the City budget, you got to have receipts of where that money went.

No action was taken.

The thirteenth item on the agenda was to review and consider 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 on FM 102; Abstract 34, Tract 86D RR, Acres 5.050. City Manager Andres Garza, Jr. informed the City Council that Mr. Larry Sitka's request was presented to the City Council during the regular September 22, 2003 meeting as an appeal to the Planning Commission decision to deny the request. He stated that the City Council deferred the item pending additional information. He then presented a copy of Mr. Larry Sitka's request to appeal to the City Council and a copy of the Planning Commission Communications from the meeting held September 15, 2003. Mr. Larry Sitka addressed the City Council and requested a variance for placement of a billboard. He stated that Wharton Chamber of Commerce Executive Director Billie Jones stated at the City Council meeting held on September 22, 2003 that the billboards were beneficial to the City. He stated that the property belonged to him since he purchased the railroad property. After some discussion, Councilmember Don Mueller made a motion to approve the 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 on FM 102; Abstract 34, Tract 86D RR, Acres 5.050. Councilmember Ken Freese seconded the motion. All voted in favor.

The fourteenth item on the agenda was to review and consider recommendations from the Planning Commission:

- A. Request by Mr. and Mrs. James Calhoun for a front yard setback variance for construction of a porch located at Mayfair, Block 4, Lots 7 and 8; 815 Merry Lane. City Manager Andres Garza, Jr. presented a copy of the letter of recommendation dated October 8, 2003 from Planning Commission Chairman A. J. Rath recommending the City Council consider approving the request by Mr. and Mrs. Calhoun for a front yard setback variance for the construction of a porch located at Mayfair, Block 4, Lots 7 & 8, 815 Merry Lane. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the request by Mr. and Mrs. James Calhoun for a front yard setback variance for construction of a porch located at Mayfair, Block 4, Lots 7 and 8; 815 Merry Lane. Councilmember Ray Linseisen

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

- B. Request by Ms. Maria Carmen-Martinez and Mr. Frank Munoz for a variance to place a manufactured home at Washington Homes, Block 1, Lots 17B and 18B; 404 Washington Avenue. City Manager Andres Garza, Jr. presented a copy of the letter of recommendation dated October 8, 2003 from Planning Commission Chairman A. J. Rath deferring the request by Ms. Maria Carmen-Martinez and Mr. Frank Munoz for a variance to place a manufactured home at Washington Homes, Block 1, Lots 17B and 18B; 404 Washington. City Attorney Paul Webb requested the City Council defer until he could meet with Ms. Maria Carmen-Martinez, Frank Munoz and Building Official Ronnie Bollom. After some discussion, the item was deferred. No action was taken.

The fifteenth item on the agenda was to review and consider a request by Mr. Kevin Svatek for an interior side and rear yard setback variance for the construction of a 30 x 40 feet storage building located at 323 Milburn Street; Wm. Kincheloe, Block 64A-1A, Wharton. City Manager Andres Garza, Jr. presented a copy of the memorandum dated October 6, 2003 from Building Official Ronnie Bollom regarding the request by Mr Kevin Svatek for a 6.5 feet interior side and rear yard setback variance for the construction of a 30 x 40 feet storage building located at 323 Milburn Street; Wm. Kincheloe, Block 64A-1A, Wharton. He then presented copies of the supporting documents for the request. Building Official Ronnie Bollom informed the City Council that the abutting property was a hay field. After some discussion, Councilmember Ken Freese made a motion to approve the request by Mr. Kevin Svatek for an interior side and rear yard setback variance for the construction of a 30 x 40 feet storage building located at 323 Milburn Street; Wm. Kincheloe, Block 64A-1A, Wharton. Councilmember Don Mueller seconded the motion. All voted in favor.

The sixteenth item on the agenda was to review and consider a request by Mr. Walter Garrett, representing Macedonia Baptist Church, for a rear yard setback variance for the construction of a 25 x 53 feet addition to the church located at 1019 Spanish Camp Road, Wm. Kincheloe, Block 63, Lots 107, 108, 109, 109A, and 110. City Manager Andres Garza, Jr. presented a copy of the memorandum dated October 6, 2003 from Building Official Ronnie Bollom regarding the request by Mr. Walter Garrett, representing Macedonia Baptist Church, for a zero foot rear yard setback variance from the required 10 feet rear yard setback for the construction of a 25 x 53 feet addition to the church located at 1019 Spanish Camp Road, Wm. Kincheloe, Block 63, Lots 107, 108, 109, 109A, and 110. He then presented copies of the supporting documents for the request. Mr. I.O. Coleman, Jr. addressed the City Council and stated that Macedonia Baptist Church was requesting a variance for construction of a Fellowship Hall addition. Councilmember V. L. Wiley, Jr. stated that he looked at the project with Andres Garza, Jr. and Ronnie Bollom. After some discussion, Councilmember Ray Linseisen made a motion to approve the request by Mr. Walter Garrett, representing Macedonia Baptist Church, for a rear yard setback variance for the construction of a 25 x 53 feet addition to the church located at 1019 Spanish Camp Road, Wm. Kincheloe, Block 63, Lots 107, 108, 109, 109A, and 110. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The seventeenth item on the agenda was to review and consider authorization by the City Council to solicit bids for the sale of City owned property located at 404 North Richmond Road (Business 59), Wharton, Block 29, Lots 7A, 7B, 7F, and 8A. City Manager Andres Garza, Jr. informed the City Council that on April 10, 2000, the City of Wharton acquired the property located at 404 North Richmond Road (Business 59), Wharton, Block 29, Lots 7A, 7B, 7F, and 8A from the five taxing entities which include: Wharton County, Wharton ISD, Wharton County Junior College, and the Wharton County Rural Fire District #1. He stated that the property had been foreclosed on because of tax liens and was entrusted to Wharton County. After receiving the property, the City conducted a Brownsfield Site Assessment and the necessary environmental assessments, which have been accepted by the Texas Natural Resource Conservation Commission, now the Texas Commission on Environmental Quality. Mr. Garza stated that in June 2001, the City had the fuel storage tanks removed from the property and had recently demolished the building. The property was ready to be placed back on the tax rolls. The City Staff had received several inquiries regarding the property; the City Staff was requesting City Council approval to solicit bids to sell the property. An appraisal would need to be done to establish market value. He then presented a copy of a map indicating the location of the property. Councilmember Ken Freese stated that the minimum bid for the property should be at the appraised value. After some discussion Councilmember Domingo Montalvo, Jr. made a motion to authorize the City Staff to obtain an appraised value and to solicit bids for the sale of City owned property located at 404 North Richmond Road (Business 59), Wharton, Block 29, Lots 7A, 7B, 7F, and 8A. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The eighteenth item on the agenda was to review and consider a request by Mr. Steven Ward for the lease/purchase of City owned property located at Wharton, Block 57, Lot 14. City Manager Andres Garza, Jr. presented a copy of the letter dated October 1, 2003 from Mr. Steven Ward requesting to lease/purchase Wharton, Block 57, Lot 14 from the City for a petroleum distribution business. He stated that the City Charter required the City to advertise the property for lease. He said the City's old swimming pool was previously located on the property. Mr. Garza then presented a copy of a map indicating the location of the property. Mr. Steven Ward addressed the City Council and stated that he was requesting to locate a petroleum distribution business on 708 E. Milam Street. He stated that he would like to lease/purchase the city owned property in order to provide a safety issue for the transport trucks. City Attorney Paul Webb stated that the City Council would have to bid the property for lease/purchase. Councilmember Darryl Darnell questioned the safety concern of the trucks turning into a residential street. Mr. Ward stated that the trucks would be empty when turning on the residential street. After some discussion, Councilmember Ken Freese made a motion to approve the solicitation for bidding lease/purchase of City owned property located at Wharton, Block 57, Lot 14 contingent upon any restrictions for lease or sale. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The nineteenth item on the agenda was to review and consider amendments to the City of Wharton Subdivision Ordinance. City Manager Andres Garza, Jr. presented a copy of the City's current Subdivision Ordinance. He stated that as discussed in the City Council Strategic Planning Workshop in February 2003, the City's ordinance was outdated and was in need of revision. For example, the ordinance required streets in new subdivisions to be concrete and while it would be a great plan to have concrete streets, this could be a great hindrance to

development. There were other alternatives that could be less expense yet just as effective. The ordinance could also be strengthened in other areas such as drainage, water and sewer system improvements and floodplain development criteria. He stated that he was seeking City Council authorization to proceed with developing updated criteria and working with the Planning Commission on the upgrades. After some discussion, Councilmember Darryl Darnell made a motion to authorize City Staff to proceed with developing updated criteria and working with the Planning Commission on the upgrades for the City of Wharton Subdivision Ordinance. Councilmember Don Mueller seconded the motion. All voted in favor.

The twentieth item on the agenda was to review and consider a request by City Staff to conduct emergency repairs to the City of Wharton Wastewater Treatment Plant No. 2 Inflow Sewer Line. City Manager Andres Garza, Jr. stated that on September 24, 2003, the inflow sewer line located at the Wastewater Treatment Plant No. 2 began to show signs of a collapsing line. He then presented photos. He stated that the City Staff with the assistance of Mr. Anthony Rachunek, P.E. of Anthony Rachunek & Associates, Inc. sought a proposal from Mercer Construction Company to conduct the emergency repairs, since Mercer Construction Company had been awarded the Wastewater Treatment Plant No. 2, Sewer Rehabilitation Project from the City on September 22, 2003. Mr. Garza then presented a copy of the proposal from Mercer Construction Company in the amount of \$39,750.00 to repair the inflow sewer line. He stated that on October 6, 2003, Public Works Director Phil Bush had the line video taped and found where the line had begun to collapse. The trunk line was a 24 inch clay pipe that was installed when the wastewater plant was constructed in 1985 – 1986. The film showed other areas where the line was cracked and repairs could be necessary in the near future. He stated that Mr. Rachunek would present some alternatives to address the whole line. Mr. Garza stated that he had instructed Mr. Rachunek to contact Mercer Construction Company to place the shoring to ensure that it would not affect the outfall line next to it. He stated that the City Staff was requesting the City Council to declare an emergency and to contract with Mercer Construction Service in the amount of \$39,750.00 to conduct the necessary repairs to the Wastewater Treatment Plant No. 2 inflow sewer line. Anthony Rachunek with Anthony Rachunek & Associates addressed the City Council and stated that the 24" pipe had severe filtration problems causing a cavity, and collapsing the bottom line. He stated that the City of Wharton had three options: Option #1 Perform point repair immediate repairs in the amount \$39,750.00 with \$81,000 to slip line with Inituform Liner for the next budget year, Option #2 Slip line the existing line with Poly Liner using point repair pit for entry point for the amount of \$94,500, Option #3 Replace pipe using the pipe bursting process in the amount of \$160,000. He stated that he recommended Option #1, which would allow \$81,000 for repairs for next budget year. City Manager Andres Garza, Jr. stated that there was still monies in the 2000 Bond Fund that could be paid towards the project. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to declare an emergency for repairs to the City of Wharton Wastewater Treatment Plant No. 2 Inflow Sewer Line. Councilmember Don Mueller seconded the motion. All voted in favor. After some discussion, Councilmember Don Mueller made a motion authorizing the City Staff to enter into an agreement with Mercer Construction for Option #2 for the amount of \$94,500.00. Councilmember Darryl Darnell seconded the motion. All voted in favor.

The twenty-first item on the agenda was to review and consider a request by Councilmember Domingo Montalvo, Jr. to attend the Summit of Hispanic Elected Local Officials (HELO) in San

Antonio, Texas, October 17-18, 2003. City Manager Andres Garza, Jr. presented a copy of the letter dated September 24, 2003 from San Antonio Mayor Edward D. Garza to Councilmember Domingo Montalvo, Jr. inviting Councilmember Montalvo to attend the Summit of Hispanic Local Elected Officials (HELO). He stated that Councilmember Montalvo was requesting City Council approval to attend the summit. After some discussion, Councilmember Darryl Darnell made a motion to approve the request by Councilmember Domingo Montalvo, Jr. to attend the Summit of Hispanic Elected Local Officials (HELO) in San Antonio, Texas, October 17-18, 2003. Councilmember Don Mueller seconded the motion. All voted in favor.

The twenty-second item on the agenda was to review and consider City of Wharton Hazard Mitigation Grant Program Floodproofing Project.

A. Bid Tabulation.

B. **Resolution:** A resolution awarding a bid for the City of Wharton Water Plants/Wastewater Treatment Plant No. 1 Hazard Mitigation Grant Program Improvement Project.

City Manager Andres Garza, Jr. informed the City Council that four bids were received on October 8, 2003 for the City of Wharton Hazard Mitigation Grant Program Floodproofing Project. He stated that the project would address floodproofing work for the City's Cloud Street and Alabama Road water plants and the Wastewater Treatment Plant No. 1. He then presented a copy of the bid tabulation and a letter of recommendation by Jones & Carter, Inc. recommending the bids be awarded to Nunn Constructors, Inc. in the amount of \$133,527. Mr. Garza also presented a copy of a resolution awarding the bids. After some discussion, Councilmember Ray Linseisen made a motion to approve Resolution No. 2003-94, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2003 - 94**

**A RESOLUTION AWARDED THE BID FOR THE CITY OF WHARTON HAZARD MITIGATION GRANT PROGRAM – FLOODPROOFING PROJECT TO NUNN CONSTRUCTOR, INC.; AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATING TO SAID CONTRACT.**

**WHEREAS,** competitive, sealed bids were received October 8, 2003 for the City of Wharton Hazard Mitigation Grant Program Floodproofing Project; and

**WHEREAS,** the City of Wharton City Council wishes to award the bid to Nunn Constructors, Inc., the lowest, best qualified bidder, in the amount of \$133,527.00; and

**WHEREAS,** Nunn Constructors, Inc. wishes to accept a contract for the City of Wharton Hazard Mitigation Grant Program Floodproofing Project for the total construction cost of \$133,527.00; and

**WHEREAS,** the City of Wharton and Nunn Constructors, Inc. wish to be bound by the conditions as set forth in the contract for the project.

**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 of the City of Wharton to execute all contract documents with Nunn Constructors, Inc. for the City of Wharton Hazard Mitigation Grant Program Floodproofing Project.

**Section II.** That the City of Wharton and Nunn Constructors, Inc. are hereby bound by the conditions as set forth in the contract for the project.

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

**Passed, Approved, and Adopted** this 13<sup>th</sup> day of October 2003.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**BRYCE D. KOCIAN**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**JOYCE VASUT**

City Secretary

Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The twenty-third item on the agenda was to review and consider City of Wharton Construction Projects:

- A. Affiliation Agreement with Panther Pipeline – Additional Costs. City Manager Andres Garza, Jr. informed the City Council that the approved estimate about of \$11,000 was paid, however, the actual cost to lower the natural gas line was \$12,932. He recommended City Council approve authorization to pay the difference of \$1,932. After some discussion, Councilmember Don Mueller made a motion to approve the Affiliation Agreement with Panther Pipeline – Additional Costs in the amount of \$1,932. Councilmember Ken Freese seconded the motion. All voted in favor.
- B. Civic Center Restroom Project – Third and Final Pay Request – Rath Plumbing Company. City Manager Andres Garza, Jr. stated that Rath submitted the third and final payment in the amount of \$16,069.31. After some discussion, Councilmember Ken Freese made a motion to approve the Civic Center Restroom Project – Third and Final Pay Request – Rath Plumbing Company in the amount of \$16,069.31. Councilmember Don Mueller seconded the motion. All voted in favor.
- C. Milam Pump Station – Pay Request No. 2 – Uticon, Inc. Carlos Cotton with Jones & Carter Engineering informed the City Council that the project was 80% complete and recommended approval for Pay Request No. 2 in the amount of \$33,552.63. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve the Milam Pump

- Station – Pay Request No. 2 – Uticon, Inc. in the amount of \$33,552.63. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.
- D. Alabama Road and Nelson Lane Flap Gate Projects – Pay Request No. 3 – Uticon, Inc. Carlos Cotton with Jones & Carter Engineering informed the City Council that the project was 90% complete and recommended approval for Pay Request No. 3 in the amount of \$16,633.68. After some discussion, Councilmember Ken Freese made a motion to approve the Alabama Road and Nelson Lane Flap Gate Projects – Pay Request No. 3 – Uticon, Inc. in the amount of \$16,633.68. Councilmember Ray Linseisen seconded the motion. All voted in favor.
- E. Wastewater Treatment Plant No. 2 Improvement Project – Pay Request No. 10 – JTR Constructors, Inc. Carlos Cotton with Jones & Carter Engineering informed the City Council that the project was 99% complete and recommended approval for Pay Request No. 10 in the amount of \$50,238.75. After some discussion, Councilmember Ray Linseisen made a motion to approve the Wastewater Treatment Plant No. 2 Improvement Project – Pay Request No. 10 – JTR Constructors, Inc. in the amount of \$50,238.75. Councilmember Don Mueller seconded the motion. All voted in favor.

The twenty-fourth item on the agenda was to review and consider an update of the City of Wharton Notice of Intent to participate in the Division of Emergency Management Hazard Mitigation Grant Buyout Program – Disaster Declaration DR-1479 and setting a property owner application submittal deadline date. City Manager Andres Garza, Jr. stated that on August 18, 2003, the City Council authorized the City Staff to submit a Notice of Intent (NOI) under Disaster Declaration DR-1479 – Hurricane Claudette for hazard mitigation grant program funds for a buyout program. The buy-out program would be available to property owners who have been flooded. He stated that this was a 75% - FEMA and 25% - City cost sharing program, which the City would seek its 25% share from other funding agencies such as the Office of Rural Community Affairs (ORCA) disaster relief funds. He stated that the application was due on November 15, 2003, and the City Staff was recommending an applicant deadline of October 31, 2003. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to authorize the City Staff to pursue the applications submittal under Disaster Declaration DR-1479 - Hurricane Claudette for hazard mitigation grant program funds for a buyout program, and publish the Notice of Intent in the Wharton Journal Spectator with a filing deadline of October 31, 2003 for applicants. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The twenty-fifth item on the agenda was Executive Session: City Council may adjourn into an Executive Session in accordance with Section 551.071 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: Litigation – F. W. Walton, Inc.

Mayor Bryce D. Kocian adjourned the City Council into Executive Session at 9:11 p.m.

Mayor Bryce D. Kocian returned the City Council into Open Session at 9:24 p.m.

The twenty-sixth item on the agenda was to Return to Open Session: Action on items discussed in Executive Session:

A. Review & Consider: Litigation – F. W. Walton, Inc.

City of Wharton  
Regular City Council Meeting  
October 13, 2003

Councilmember Ray Linseisen made a motion to accept the payment of \$157,950.11 from F. W. Walton, Inc. for repairs to the Wharton Civic Center. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

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

- A. City Council Youth Advisory Commission meeting held September 20, 2003.
- B. City Council Streets & Drainage Committee meeting held September 18, 2003.
- C. Mayor's Local Committee on People with Disabilities meeting held September 25, 2003.
- D. Wharton Regional Airport Board meeting held October 7, 2003.
- E. Wharton Economic Development Corporation meetings held September 16, 2003 and October 1, 2003.
- F. Planning Commission meeting held October 6, 2003.

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 V. L. Wiley, Jr. seconded the motion. All voted in favor.

The meeting adjourned at 9:25 p.m.

**CITY OF WHARTON, TEXAS**

**By:** \_\_\_\_\_  
**BRYCE D. KOCIAN**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**JOYCE VASUT**  
City Secretary