

MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
JULY 11, 2005

Mayor Pro-Tem Don Mueller declared a Regular Meeting duly open for the transaction of business at 7:02 P.M. Mayor Pro-Tem Don Mueller led the opening devotion and then led the pledge of allegiance.

Councilmembers present were: Mayor Pro-Tem Don Mueller, Councilmembers V. L. Wiley, Jr., David Samuelson, Ken Freese, Domingo Montalvo, Jr., and Ray Linseisen.

Councilmember absent was: Mayor Bryce D. Kocian.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, City Secretary Lisa Stavena, and City Attorney Paul Webb.

Visitors present were: Benjamin Sharp with Wharton Journal Spectator, Carlos Cotton, David Schroeder, Lewis Fortenberry, Louis Edwards, Bill Joines, Jr., Billie Jones, Douglas Dusek, and Coby Frankum.

The second item on the agenda was Roll Call and Excused Absences. Councilmember V. L. Wiley, Jr. made a motion to approve the absence of Mayor Bryce D. Kocian from the Regular City Council meeting. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The third item on the agenda was the Public Comments. Ms. Billie Jones addressed the City Council and stated that Wharton I.S.D. was holding public input sessions regarding the schools in Wharton. She stated that the next scheduled session would be held on July 18, 2005 at 7:00 p.m. at the Administrative Education Support Center Building and requested input from the citizens. She stated that the final decision should be based on public input from all the citizens, not just from the School Boardmembers, and teachers. No action was taken.

The fourth item on the agenda was Wharton Moment. Councilmember Ken Freese publicly congratulated the 11 year old All-Star baseball and softball Teams and also the 16 year old Babe Ruth All-Star Team. Mayor Pro-Tem Don Mueller publicly thanked the coaches and assistants.

Councilmember David Samuelson stated that the Boys & Girls Club Steak & Burger Banquet would be held on July 28, 2005, and encouraged supporting the event.

City Manager Andres Garza, Jr. publicly commended the volunteers on the success of the Freedom Festival held July 1- 3, 2005. No action was taken.

The fifth item on the agenda was to review and consider the reading of the minutes from the regular meetings held June 13, 2005 and June 27, 2005 and the special meeting held June 6, 2005. After some discussion, Councilmember Ray Linseisen made a motion to approve the Wharton City Council minutes of the regular meetings held June 13, 2005 and June 27, 2005 and the special meeting held June 6, 2005 as presented. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider the request by Ms. Sandra Sneed to address the City Council regarding establishing a curfew. City Manager Andres Garza, Jr. presented a copy of the letter the City received June 28, 2005 from Ms. Sandra Sneed requesting to address the City Council regarding establishing a curfew. Ms. Sandra Sneed addressed the City Council and requested the City Council establish a curfew, with an associated fine, at 12:00 midnight in order to control the drug and other problems. She stated that street lights should be installed that would discourage such activity. She stated that the City could also send pamphlets regarding the street walking during the night. She stated that there could be more patrol in the area from midnight until 5:00 a.m. Mayor Pro-Tem Don Mueller asked about a Neighborhood Watch. Councilmember Domingo Montalvo, Jr. asked if the problem was occurring more on the weekends. Ms. Sneed stated that the problem was occurring nightly. Councilmember Domingo Montalvo, Jr. stated that possibly a zero tolerance approach would be a way to address the problem. Mayor Pro-Tem Don Mueller stated that City Manager Andres Garza, Jr. would speak to Police Chief Tim Guin regarding the problems. After some discussion, no action was taken.

The seventh on the agenda was review and consider the requests for Temporary Permits for Possession/Consumption of Alcoholic Beverages at Certain Parks:

- A.** Mr. Leonard H. Hayes for the Hayes Family Reunion to be held at the Central Pavilion at Riverfront Park on August 20, 2005.

City Manager Andres Garza, Jr. presented a copy of the City of Wharton application for temporary permit for the possession/consumption of alcoholic beverages in certain parks that was submitted by Mr. Leonard H. Hayes. He also presented a copy of the memorandum dated July 7, 2005 from Police Chief Tim Guin, which indicated that that the application appeared to comply with the City of Wharton Ordinance No. 2002-22. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve the request for Temporary Permits for Possession/Consumption of Alcoholic Beverages at Certain Parks by Mr. Leonard H. Hayes for the Hayes Family Reunion to be held at the Central Pavilion at Riverfront Park on August 20, 2005. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

- B.** Ms. Angela Ybarra Martinez for a Family Reunion to be held at the Central Pavilion at Riverfront Park on July 23, 2005.

City Manager Andres Garza, Jr. presented a copy of the City of Wharton application for temporary permit for the possession/consumption of alcoholic beverages in certain parks that was submitted by Ms. Angela Ybarra Martinez. He also presented a copy of the memorandum dated July 8, 2005 from Police Chief Tim Guin, which indicated that that the application appeared to comply with the City of Wharton Ordinance No. 2002-22. After some discussion, Councilmember David Samuelson made a motion to approve the request for Temporary Permits for Possession/Consumption of Alcoholic Beverages at Certain Parks by Ms. Angela Ybarra

Martinez for a Family Reunion to be held at the Central Pavilion at Riverfront Park on July 23, 2005. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The eighth item on the agenda was review and consider the acceptance of a fifteen feet utility easement from Ms. Loretta Romo; William Kincheloe League, Abstract No. 38, Lot No. 3, Block 14, Hawes 4th Addition. City Manager Andres Garza, Jr. stated that during the March 28, 2005 regular City Council meeting, the City Council accepted a fifteen feet utility easement from Mr. Edward Guajardo to be located on his property described as William Kincheloe League, Abstract 38, Lots 1 and 2, Block 14, Hawes 4th Addition in order to provide better utility service to the surrounding properties and to the property owned by Ms. Loretta Romo. He stated that Ms. Romo had been experiencing sewer problems but in order for the City of Wharton to assist in correcting any problems, the City must have access through her property. He then presented a draft agreement providing a fifteen feet utility easement. After some discussion, Councilmember Ken Freese made a motion to approve the acceptance of a fifteen feet utility easement from Ms. Loretta Romo; William Kincheloe League, Abstract No. 38, Lot No. 3, Block 14, Hawes 4th Addition. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The ninth item on the agenda was review and consider the recommendation by the City Council Public Works Committee regarding the following:

A. The Santa Fe Drainage Outfall Channel Project.

City Manager Andres Garza, Jr. presented a copy of the draft preliminary engineering report for the proposed Santa Fe Drainage Channel that was prepared by Jones & Carter, Inc. He stated that the report outlined two options in which the outfall channel could be constructed. He stated that the City Council Public Works Committee met June 20, 2005 and was recommending that the outfall channel be constructed in accordance with Option 2, Scenario 1A. Mr. Carlos Cotton, P.E. of Jones & Carter addressed the City Council and stated Option 2, Scenario 1A consisted of Alabama Road Crossing, Hodges Crossing, Old Lane City Road Crossing, Highway 60 Crossing, FM 1299 Crossing, Colorado River Control Structure with the estimated cost of \$1,700,000. Mr. Garza stated that Option 2, Scenario 1A would not affect as many residents as the other option. Councilmember David Samuelson asked if the funds were available from the bond issue. Finance Director Joyce Vasut stated that the project would be paid from the allocated 2004 bond funds. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve preliminary engineering report for the proposed Santa Fe Drainage Channel that was prepared by Jones & Carter, Inc. with the outfall channel to be constructed in accordance with Option 2, Scenario 1A. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

B. U.S. 59 / FM 102 Interchange Upgrade and FM 1301 Extension Project.

City Manager Andres Garza, Jr. stated that Mr. Carlos Cotton, P.E. of Jones & Carter, Inc. and himself had held discussions with the Texas Department of Transportation (TxDOT) representatives regarding the U.S. 59 / FM 102 Interchange Upgrade and FM 1301 Extension Project. He said that the TxDOT representatives had indicated that the State was proposing that signals be installed at the U.S. 59 / FM 102 interchange and that a two way road be constructed in front of Nan Ya Plastics and J & M Manufacturing instead of the dead end. He stated that in turn, the State would consider assisting the City of Wharton with the extension of FM 1301 from Richmond Road to U.S. 59. He said that the City Council Public Works Committee met June 20, 2005 and discussed TxDOT's recommendations regarding the projects, which the Committee

was recommending that the City Council consider pursuing both projects in accordance with TxDOT's recommendations. He stated that the FM 1301 project was estimated at \$12 million. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve the U.S. 59 / FM 102 Interchange Upgrade and FM 1301 Extension Projects. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The tenth item on the agenda was Executive Session: City Council may adjourn into an Executive Session in accordance with Section 551.071 and 551.072 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: HL & P Litigation.

B. Discussion: Acquisition of real estate from Mr. Edward Guajardo and Wife, Lydia Guajardo, for the Ahldag Addition Drainage Outfall project.

C. Discussion: Acquisition of real estate for the Santa Fe Drainage Outfall Channel project.

Mayor Pro-Tem Don Mueller adjourned into Executive Session at 7:38 p.m.

Mayor Pro-Tem Don Mueller called the meeting in Open Session at 8:25 p.m.

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

A. Review & Consider: HL & P Litigation.

Councilmember Domingo Montalvo, Jr. made a motion for the City of Wharton to approve the mutual release and settlement agreement, and to pay the portion of court cost along with Pasadena and Galveston in regards to the HL & P litigation case. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

B. Review & Consider: Acquisition of real estate from Mr. Edward Guajardo and Wife, Lydia Guajardo, for the Ahldag Addition Drainage Outfall project.

Mayor Pro-Tem Don Mueller stated that no action would be taken.

C. Review & Consider: Acquisition of real estate for the Santa Fe Drainage Outfall Channel project.

Mayor Pro-Tem Don Mueller stated that no action would be taken.

The twelfth item on the agenda was review and consider an ordinance declaring a public necessity for the acquisition of fee simple title to Lots 5, 6, & 7, Block 40, Hawes 5th Addition, City of Wharton, Wharton County, Texas, as conveyed to Mr. Edward Guajardo and Wife, for a public purpose, namely the acquisition, improvement and maintenance of the Ahldag Addition Drainage Outfall Project; and authorizing the City Attorney and the Law Offices of Davidson & Troilo, A Professional Corporation, to file eminent domain proceedings; Ratifying and Affirming all prior acts and proceedings done or initiated by Attorneys and Employees of the City to acquire such property; Authorizing all other lawful action necessary or incidental to such acquisitions or eminent domain proceedings. City Manager Andres Garza, Jr. presented the public purpose ordinance for the acquisition of this property. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Ordinance No. 2005-06, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2005-06**

AN ORDINANCE DECLARING A PUBLIC NECESSITY FOR THE ACQUISITION OF FEE SIMPLE TITLE TO LOTS 5, 6, & 7, BLOCK 40, HAWES 5TH ADDITION FROM MR. EDWARD GUAJARDO AND WIFE, LYDIA GUAJARDO, FOR A PUBLIC PURPOSE, NAMELY THE ACQUISITION, IMPROVEMENT AND MAINTENANCE OF THE AHLDAG ADDITION DRAINAGE OUTFALL PROJECT; AND AUTHORIZING THE CITY ATTORNEY AND THE LAW OFFICES OF DAVIDSON & TROILO, A PROFESSIONAL CORPORATION, TO FILE EMINENT DOMAIN PROCEEDINGS; RATIFYING AND AFFIRMING ALL PRIOR ACTS AND PROCEEDINGS DONE OR INITIATED BY ATTORNEYS AND EMPLOYEES OF THE CITY TO ACQUIRE SUCH PROPERTY; AUTHORIZING ALL OTHER LAWFUL ACTION NECESSARY OR INCIDENTAL TO SUCH ACQUISITION OR EMINENT DOMAIN PROCEEDINGS.

BE IT ORDAINED BY THE WHARTON CITY COUNCIL:

SECTION 1. A public necessity is hereby declared for the City of Wharton to acquire fee simple title to certain privately owned real property; located at Lots 5, 6, & 7, Block 40 Hawes 5th Addition from Mr. Edward Guajardo and Wife, Lydia Guajardo, for the purpose of drainage improvements for the City of Wharton's Ahldag Addition Drainage Outfall Project located in District 2 of the City of Wharton, Wharton County, Texas. Said parcel is generally described as follows:

at Lots 5, 6, & 7, Block 40 Hawes 5th Addition, City of Wharton, Wharton County, Texas, see "Exhibit A".

SECTION 2. In the event that the City staff is unable to acquire the property by negotiation by reason of its inability to agree with the owners thereof as to the value of the parcel, or is unable to acquire the parcel for any other reason, the City Manager, through the City Attorney and/or designated special counsel under the direction of the City Attorney, are hereby authorized and directed to institute and prosecute to conclusion all necessary proceedings to condemn the property. The City Attorney is hereby authorized to retain the services of the law firm of Davidson & Troilo, P.C. as special counsel as may be needed from time to time and to pay for the services rendered from any appropriations as may be made for the purpose.

SECTION 3. The prior actions and efforts of City Officials to negotiate the purchase of the necessary right-of-way and the steps taken to initiate and prosecute acquisition of the property are hereby ratified and affirmed.

SECTION 4. It is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public, and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this Ordinance, was given to all as required by the Texas Code Annotated, as amended, Title 5, Chapter 551, Government Code.

SECTION 5. If any part, section, paragraph, sentence, phrase, or word of this Ordinance is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or

limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this Ordinance shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid, or ineffective.

SECTION 6. This Ordinance shall be effective on Friday, July 22, 2005 at 12:01 a.m.

PASSED AND APPROVED this the 11th day of July 2005.

CITY OF WHARTON

By: _____
DONALD MUELLER
Mayor Pro-Tem

ATTEST:

LISA STAVENA
City Secretary

APPROVED AS TO FORM:

PAUL WEBB
City Attorney
Councilmember David Samuelson seconded the motion. All voted in favor.

The thirteenth item on the agenda was review and consider an Update on the Home Elevation Project. City Manager Andres Garza, Jr. stated that Village Foundation Repair had completed the elevation of the homes located at 1908 MLK Blvd. and 515 Wilkes to one foot above base flood elevation. He stated that Village Foundation Repair was currently completing the construction of the ramps, making the utility connections and anchoring the structures. He stated that the project should be completed on or before schedule. After some discussion, no action was taken.

The fourteenth item on the agenda was review and consider the Travel Reimbursement for City Manager. City Manager Andres Garza, Jr. presented a copy of the travel reimbursement request dated July 11, 2005. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the Travel Reimbursement for City Manager Andres Garza, Jr. for the period June 1, 2005 to June 14, 2005 in the amount of \$735.01. Councilmember David Samuelson seconded the motion. All voted in favor.

The fifteenth item was on the agenda was adjournment. After some discussion, Councilmember Ray Linseisen made a motion to adjourn. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

City of Wharton
Regular City Council Meeting
July 11, 2005

The meeting adjourned at 8:29 p.m.

CITY OF WHARTON, TEXAS

By: _____
DON MUELLER
Mayor Pro-Tem

ATTEST:

LISA STAVENA
City Secretary