

**MINUTES
OF
CITY OF WHARTON
SPECIAL CITY COUNCIL MEETING
AUGUST 4, 2010**

Mayor Domingo Montalvo, Jr. declared a Special Meeting duly open for the transaction of business at 6:00 P.M.

Councilmembers present were: Mayor Domingo Montalvo, Jr., Councilmembers V. L. Wiley, Jr., Lewis Fortenberry, Jr., Terry David Lynch, Don Mueller, Bryce D. Kocian and Jeff Gubbels.

Councilmember absent was: None.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, City Secretary Lisa Olmeda, Assistant to City Manager Jackie Jansky, Community Services Director Jo Knezek and City Attorney Paul Webb.

Visitors present were: Barry Halvorson- Wharton Journal Spectator, David Schroeder- Wharton Economic Development Corporation, Christine Cerny with CenterPoint Energy, John Trepl, Dennis Kerlick, Eric Johnston, and Tom Lockhart.

The second item on the agenda was Roll Call and Excused Absences. All present. No action was taken.

The third item on the agenda was to review and consider the Planning Commission recommendation for City Council consideration to approve the request by Mr. Bo Phillips, representing the Wharton Tea Party, Inc., for a variance from the City of Wharton Code of Ordinances, Chapter 66, Signs and Advertising, Sec. 66-27 Off Premise Signs, Commercial and Non-Commercial to increase the square footage 138 feet for each of the two (2) signs from the required 150 square feet per sign resulting in a 288 square foot sign (12' x 24') to be located at 292 ½ Hwy. 59 Loop. Assistant to City Manager Jackie Jansky addressed the City Council and presented a copy of the request by Mr. Bo Phillips, representing the Wharton Tea Party, Inc., for a variance from the City of Wharton Code of Ordinances, Chapter 66, Signs and Advertising, Sec. 66-27 Off Premise Signs, Commercial and Non-Commercial to increase the square footage 138 feet for each of the two (2) signs from the required 150 square feet per sign resulting in a 288 square foot sign(s) (12' x 24') to be located at 292 ½ Hwy. 59 Loop. She also presented a copy of the code specific to the request that outlined the size requirement of off-premise signs. She said that the ordinance required that off-premise signs have a total area not greater than 150 square feet. She said that Mr. Phillips had indicated that two (2) signs were being proposed to be erected in a V-style. She then presented copies of drawings indicating the design and style of the signs. She then presented a copy of a drawing that indicated the location of the sign and a copy of a letter dated July 15, 2010 from Ms. Myrtis Outlar, property owner of 292 ½ Hwy. 59 Loop,

providing her permission for the signs to be placed on her property. She said that all setbacks and height requirements of the signs would be met per the City of Wharton Code of Ordinances, Chapter 66 Signs and Advertising. She said additionally, the Wharton Tea Party had contacted the Texas Department of Transportation regarding the State right-of-way requirements. She stated that the State requirements indicated that signs should be 46' from the right of way; however, the signs would be placed 50' from the State right-of-way. City Manager Andres Garza, Jr. stated that the City of Wharton Sign Ordinance regulating political signs. City Attorney Paul Webb stated that there were posting requirements as well as time restrictions for political advertising. He stated that he would provide a recommendation at the regular City Council meeting held on August 9, 2010. After some discussion, Councilmember Don Mueller made a motion to table the item until the regular City Council meeting held on August 9, 2010. Councilmember Terry David Lynch seconded the motion. All voted in favor.

The fourth item on the agenda was to review and consider therequest by Mr. David L. Schroeder, Executive Director of the Wharton Economic Development Corporation for City Council consideration of the following:

- A. Amending the Wharton Economic Development Corporation 2009 – 2010 fiscal year budget.
- B. Approving the 2010 – 2011 fiscal year budget.

City Manager Andres Garza, Jr. stated that during the regular July 12, 2010 Wharton City Council meeting, Mr. David L. Schroeder, Executive Director of the Wharton Economic Development Corporation (WEDC), presented the WEDC proposed budget for fiscal year 2010-2011 recommended by the Board of Directors to be considered by the Wharton City Council. He also presented a copy of the proposed budget adjustments for the WEDC fiscal year 2009-2010 budget. He stated that several City Council Members had requested specific information regarding the budget and referred the proposed budget to be considered by the City Council Finance Committee prior to consideration by the full City Council. He then presented a copy of the proposed budget, and the email dated July 21, 2010 from City Councilmember Bryce D. Kocian requesting additional information concerning the proposed budget. He said that Councilmember Lewis Fortenberry, Jr. also requested the additional information. He then presented a copy of the letter dated July 17, 2010 from Mr. Schroeder providing information related to the budget, a copy of the email dated July 21, 2010 providing Mr. Schroeder with Councilmembers Kocian and Fortenberry's requests for additional information and Mr. Schroder's response dated July 22, 2010. Mr. Garza said that the City Council Finance Committee met July 27, 2010 and voted to recommend the City Council consider approving the WEDC 2009- 2010 fiscal year budget amendments and the proposed 2010-2011 fiscal year budget. After some discussion Councilmember Lewis Fortenberry, Jr. made a motion to approve amending the Wharton Economic Development Corporation 2009 – 2010 fiscal year budget, and approving the 2010 – 2011 fiscal year budget.

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

C. Resolution: A resolution of the Wharton City Council amending the Wharton Economic Development Corporation By-Laws Article VI, Section 6.05 Quorum.

Mr. Garza said that the Committee Members also voted to recommend the City Council consider amending the WEDC By-Laws to establish requirements constituting a quorum for the Board of Directors should the number of Directors serving on the Board become less than the required

City of Wharton
Special City Council Meeting
August 4, 2010

seven (7) members. He stated that if the number of the Directors was less than seven (7) then a quorum for the Board of Directors would be established at three (3) Directors. After some discussion, Councilmember Lewis Fortenberry, Jr. made a motion to approve Resolution No. 2010-45, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2010-45**

**A RESOLUTION OF THE WHARTON CITY COUNCIL AMENDING THE
WHARTON ECONOMIC DEVELOPMENT CORPORATION BY LAWS,
ARTICLE VI, SECTION 6.05 QUORUM.**

WHEREAS, the Wharton City Council approved the Wharton Economic Development Corporation By-Laws by Resolution No. 1998-10; and

WHEREAS, the Wharton City Council wishes to amend the Wharton Economic Development Corporation By-Laws, Article VI, Section 6.05 Quorum as follows:

Quorum

6.05. Four (4) directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. If, however, the number of Directors serving on the Board of Directors is less than seven (7) directors, three (3) Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The presence of a director may not be established by proxy. No business shall be conducted, nor shall any action be taken by the Board of Directors in the absence of a quorum.

WHEREAS, Wharton City Council approval is required to amend the By-Laws.

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

SECTION I: That the City Council hereby approves to amend the Wharton Economic Development Corporation By-Laws Article VI, Quorum as aforementioned.

SECTION II: That this resolution shall be effective immediately upon its passage.

Passed, Approved, and Adopted this 4th day of August 2010.

CITY OF WHARTON, TEXAS

By: _____

DOMINGO MONTALVO, JR.

City of Wharton
Special City Council Meeting
August 4, 2010

Mayor

ATTEST:

LISA OLMEDA
City Secretary

**APPROVAL BY THE
WHARTON ECONOMIC DEVELOPMENT CORPORATION**

The amendment was adopted by the Board of Directors at a meeting held on July 19, 2010 at which a quorum was present.

WHARTON ECONOMIC DEVELOPMENT CORPORATION

By: _____
Kent Hill, President

ATTEST:

Secretary

THE STATE OF TEXAS §
 §
COUNTY OF WHARTON §

I, _____ a notary public, do hereby certify that on this the ____ day of _____, personally appeared before me _____, who declared he is the President of the corporation executing the foregoing document, and being first duly sworn, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS THEREOF, I have hereunto set my hand and seal the say and year before written.

Notary Public in and for the State of Texas

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

The fifth item on the agenda was to review and consider a resolution by the City of Wharton, Texas, ("City") responding to the application of CenterPoint Energy Houston Electric, LLC (CenterPoint) for authority to change rates and adopt certain rate riders; Suspending CenterPoint's proposed effective date; Determining that the meeting complied with the Texas Open Meetings Act; Making such other findings and provisions related to the subject; and declaring an effective date. City Manager Andres Garza, Jr. presented a copy of the draft

City of Wharton
Special City Council Meeting
August 4, 2010

resolution responding to the application of CenterPoint Energy Houston Electric, LLC for authority to change rates and adopt certain rate riders, suspending CenterPoint's proposed effective date and determining that the meeting complied with the Texas Open Meetings Act. He also presented a copy of the information sheet regarding the resolution providing by the City's legal counsel, Herrera & Boyle, PLLC. City Attorney Paul Webb stated that the suspension would be for 90 days. After some discussion, Councilmember Terry David Lynch made a motion to approve Resolution No. 2010-46, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2010-46**

**A RESOLUTION BY THE CITY OF WHARTON TEXAS, ("CITY")
RESPONDING TO THE APPLICATION OF CENTERPOINT ENERGY
HOUSTON ELECTRIC, LLC (CENTERPOINT) FOR AUTHORITY TO
CHANGE RATES AND ADOPT CERTAIN RATE RIDERS;
SUSPENDING CENTERPOINT'S PROPOSED EFFECTIVE DATE;
DETERMINING THAT THE MEETING COMPLIED WITH THE TEXAS
OPEN MEETINGS ACT; MAKING SUCH OTHER FINDINGS AND
PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN
EFFECTIVE DATE.**

WHEREAS, on or about June 30, 2010, CenterPoint Energy Houston Electric, LLC (CenterPoint) filed with the City Secretary an application for authority to change rates and to adopt certain rate riders ("the application"); and

WHEREAS, on or about June 30, 2010, CenterPoint also filed a similar if not identical application with the Public Utility Commission of Texas ("PUCT" or "Commission"), which has been docketed as Docket No. 38339; and

WHEREAS, CenterPoint is requesting an increase in its retail transmission and distribution rates of approximately \$76 million, and wholesale transmission rates of about \$18 million; and

WHEREAS, as part of CenterPoint's application, CenterPoint also requests approval of several rate riders, including the "Rider DCRF" (distribution cost recovery factor); and

WHEREAS, CenterPoint's request for approval of its Rider DCRF and other riders raises several legal, policy, and substantive issues; and

WHEREAS, CenterPoint did not identify in its application a specific proposed effective date for its proposed changes in rates; and

WHEREAS, the earliest effective date CenterPoint may propose under the Public Utility Regulatory Act (PURA) is August 4, 2010, based on a filing date of June 30, 2010; and

WHEREAS, on July 19, 2010, CenterPoint notified the Public Utility Commission of Texas that CenterPoint intended to propose an effective date of August 6, 2010; and

City of Wharton
Special City Council Meeting
August 4, 2010

WHEREAS, the City has been participating as a member of the Texas Coast Utilities Coalition of Cities (TCUC), a coalition of similarly situated municipalities; and

WHEREAS, the City has benefitted from its participation in the coalition through the sharing of costs and expertise; and

WHEREAS, given the complexity of determining the reasonableness of CenterPoint's current and proposed rates and proposed rate riders, a determination of the reasonableness of CenterPoint's application and its various proposed changes in rates cannot be made before expiration of August 6, 2010; and

WHEREAS, given the complexity of determining the reasonableness of CenterPoint's current and proposed rates and proposed rate riders, the City requires more time to carry out its duties as the local regulatory authority with exclusive original jurisdiction within the City;

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

Section 1. That the statements and findings set out in the preamble to this resolution are hereby in all things approved and adopted.

Section 2. The City does hereby suspend the effective date of CenterPoint's proposed rate changes for a period of 90 days, which results in a suspension to November 4, 2010.

Section 3. The meeting at which this resolution was approved was in all things conducted in strict compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 4. This resolution shall be effective immediately upon passage.

PASSED AND APPROVED this 4th day of August 2010.

DOMINGO MONTALVO, JR.
MAYOR

ATTEST:

LISA OLMEDA
CITY SECRETARY

APPROVED AS TO FORM:

PAUL WEBB
CITY ATTORNEY

Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

City of Wharton
Special City Council Meeting
August 4, 2010

The sixth item on the agenda was to review and consider the City of Wharton Ahldag Addition Sanitary Sewer System Improvement Project – TxCDBG No. 728459 – Supak Construction, Inc. – Change Order No. 2. City Manager Andres Garza, Jr. presented a copy of the email dated July 20, 2010 from Mr. Bradley Loehr, P.E. of BEFCO Engineering providing the Change Order No. 2 for the City of Wharton Ahldag Addition Sanitary Sewer System Improvement Project – TxCDBG No. 728459 being conducted by Supak Construction, Inc. He said that the contract had been decreased \$46.00 from \$310,011.00 to \$309,965.00. He recommended the City Council approve the Change Order No. 2 pending the State approval. After some discussion, Councilmember Lewis Fortenberry, Jr. made a motion to approve the City of Wharton Ahldag Addition Sanitary Sewer System Improvement Project – TxCDBG No. 728459 – Supak Construction, Inc. – Change Order No. 2 pending State approval. Councilmember Don Mueller seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider the City of Wharton Alabama Water Well Rework Project – Layne Christensen Company – Pay Request No. 1. City Manager Andres Garza, Jr. presented a copy of the letter dated July 22, 2010 from Mr. Carlos Cotton, P.E. providing the Pay Request No. 1 in the amount of \$38,415.60 for Layne Christensen Company for the City of Wharton Alabama Water Well Rework Project. After some discussion, Councilmember Bryce D. Kocian made a motion to approve the City of Wharton Alabama Water Well Rework Project – Layne Christensen Company – Pay Request No. 1 in the amount of \$38,415.60. Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider the Wharton Regional Airport Jet-A Fuel Tank:

A. Bid Tabulation.

B. **Resolution:** A resolution of the Wharton City Council awarding the bid for the purchase of a Jet-A Fuel Tank and authorizing the Mayor of the City of Wharton to execute all documents related to said agreement.

Mayor Domingo Montalvo, Jr. stated that the item will be deferred until the regular City Council meeting on August 9, 2010.

The ninth item on the agenda was to review and consider a resolution approving a Right of Entry Agreement between the City of Wharton and Enterprise Pipeline and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. stated that on July 27, 2010, he met with Mr. Dennis Kerlick, Right of Way Agent for Contract Land Staff (CLS), representing Enterprise Texas Pipeline LLC, who was requesting the City of Wharton to approve a Right of Entry Agreement for surveying purposes of property located at Peach Creek Subdivision, Lot 1, which was the 17.03 acre tract next to the Wharton Industrial Foundation property near US Hwy. 59. He said that he forwarded the draft survey permission form provided by Mr. Kerlick to Assistant City Attorney Amy Rod for her review and comment. He then presented a copy of a draft agreement that was approved by Ms. Rod and a draft resolution approving the agreement. He said that the company was wishing to conduct the survey to determine the route of a proposed pipeline to be constructed by Enterprise Texas Pipeline LLC. He stated that approval of the resolution would authorize right of entry and the right to conduct a

City of Wharton
Special City Council Meeting
August 4, 2010

survey only. After some discussion, Bryce D. Kocian made a motion to approve Resolution No. 2010-47, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2010-47**

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF WHARTON AND ENTERPRISE TEXAS PIPELINE LLC AND THE CITY OF WHARTON FOR THE 2010 STREET IMPROVEMENT PROJECT.

WHEREAS, Enterprise Texas Pipeline LLC wishes to conduct surveying and other related activities on the City of Wharton property located in the Peach Acres Subdivision, Lot 1, 17.3 Acres; R58681; and

WHEREAS, the Wharton City Council wishes to authorize the Mayor of the City of Wharton, Texas, to execute a right of entry agreement for said surveying efforts; and

WHEREAS, the City of Wharton and Enterprise Texas Partnership LLC wishes to be bound by the conditions as set forth in the agreement.

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

Section I. That the Wharton City Council hereby authorizes the Mayor of the City of Wharton, Texas, to execute a Right of Entry Agreement between the City of Wharton and Enterprise Texas Pipeline LLC to conduct surveying and other related activities on the City of Wharton property located in the Peach Acres Subdivision, Lot 1, 17.3 Acres; R58681.

Section II. That Enterprise Texas Pipeline LLC and the City of Wharton are hereby bound by the conditions as set forth in the agreement.

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

Passed, Approved, and Adopted this the 4th day of August 2010.

CITY OF WHARTON

By: _____
DOMINGO MONTALVO, JR.
Mayor

ATTEST:

LISA OLMEDA

City of Wharton
Special City Council Meeting
August 4, 2010

City Secretary

Councilmember Terry David Lynch seconded the motion. All voted in favor.

The tenth item on the agenda was the Budget Workshop: City of Wharton 2010-2011

Fiscal Year Budget:

- A. General Fund.
- B. Hotel Motel Fund.
- C. Narcotics Seizure Fund.
- D. Debt Fund.
- E. Capital Improvement Fund.
- F. Water & Sewer Fund.
- G. Solid Waste Fund.
- H. Emergency Medical Services Fund.
- I. Civic Center Fund.
- J. Airport Fund.

Finance Director Joyce Vasut stated that general fund revenues were \$5,127,155. She stated that the 2010-2011 proposed budget was \$4,755,889. She stated that there was a difference of \$371,266. She stated that the ad valorem taxes – calculation of effective tax rates was \$0.46581, the current tax rate was \$0.48671, and the rollback tax rate was \$0.48300.

She stated that the general fund proposal for expenditures had the following changes:

Decrease expenditures:

Elimination of the three police vehicle	\$63,000
Boys & Girls Club	\$15,000
Just Do It Now	\$15,000
Public Works vacant position	\$40,000
Fire Department Incentives	\$ 6,000
Emergency Management (P/T)	\$28,695
Insurance (Change Plan)	\$43,000
Discontinue \$500 Flex	\$30,000
Uniform Allowance	\$13,550

Increase revenues:

Adopt above effective rate \$0.48	\$68,000
Increase W/S Admin. Transfer	\$25,000
Increase Solid Waste Admin. Transfer	\$25,000

Other Options:

- Reorganize departments
- Consolidate departments
- Incentive to retire
- Reduction in workweek

After some discussion, Councilmember Jeff Gubbels made a motion to approve the following:

Decrease expenditures:

Elimination of the three police vehicle	\$63,000
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City of Wharton
Special City Council Meeting
August 4, 2010

Boys & Girls Club	\$15,000
Just Do It Now	\$15,000
Public Works vacant position	\$40,000
Fire Department Incentives	\$ 6,000
Emergency Management (P/T)	\$28,695
Insurance (Change Plan)	\$43,000
Discontinue \$500 Flex	\$30,000
Uniform Allowance	\$13,550

Increase revenues:

Adopt above effective rate \$0.48	\$68,000
Increase W/S Admin. Transfer	\$25,000
Increase Solid Waste Admin. Transfer	\$25,000

The motion died for lack of second. Councilmember Jeff Gubbels withdrew motion.

After some discussion, Councilmember Jeff Gubbels made a motion to approve the following:

Decrease expenditures:

Elimination of the three police vehicle	\$63,000
Boys & Girls Club	\$15,000
Just Do It Now	\$15,000
Public Works vacant position	\$40,000
Fire Department Incentives	\$ 6,000
Insurance (Change Plan)	\$43,000
Discontinue \$500 Flex	\$30,000
Uniform Allowance	\$13,550

Increase revenues:

Adopt above effective rate \$0.48	\$68,000
Increase W/S Admin. Transfer	\$25,000
Increase Solid Waste Admin. Transfer	\$25,000

With the exception of police vehicles, if excess funds received over the budgeted amount, then the funds would be allocated towards the purchase of the police vehicles.

Councilmember Bryce D. Kocian seconded the motion. All voted in favor.

Mrs. Vasut stated the Hotel/Motel fund 2011 proposed budget included:

Chamber of Commerce submitted a request for \$47,966, elimination of contributions to festivals, \$20,500 to Civic Center transfer, and the Cash Balance of September 30, 2010 was estimated to be \$5,000.

Mrs. Vasut stated that the Seizure fund 2010 Excess Revenues estimated (\$28,550) and the Cash Balance of September 30, 2010 was estimated to be \$9,650. She said that if revenues were not received, expenses or transfer to the General Fund must be reduced.

City of Wharton
Special City Council Meeting
August 4, 2010

She stated that the debt service requirement for 2011 was \$716,250, which was \$18,439 less than last year's general obligations. She said that the estimated balance as of September 30, 2010 was \$350,000 and the City of Wharton's internal policy was that the Fund balance should be equal to one year debt service requirement.

Mrs. Vasut stated that the Capital Improvement Fund in fiscal year 2009-10, street improvements were funded at \$125,000, the proposed budget included no street program.

She stated that the Water/Sewer fund included:
5% in water and sewer rates.
Decrease personnel by one position.
Remove the transfer to the CIP fund for streets.
Increase transfer to General fund for administration.
Add principal payment of \$139,000.
Reserve fund to improve cash flows.

She stated that the average customer was:

	Current Rates	5% Increase
Water	\$21.85	\$22.94
Sewer	\$22.42	\$23.54

She stated that the increase would be \$2.21 per month/\$26.52 per year, which City Council would have to adopt by August 23, 2010 to be effective on October 1, 2010.

She stated that the Solid Waste Fund for fiscal year 2009-10 would close with a \$0 cash balance and a due to the General Fund of approximately \$130,000. She stated that for 2010-11 fiscal year, the transfer to Capital Improvement Program would have to be eliminated for Street Program, budgeted \$25,000 to reduce the amount due to General Fund. She then stated that the solid waste rates would change effective January 1st based on Consumer Price Index.

Mrs. Vasut stated that the EMS collections were estimated to decrease by nearly \$140,000 from fiscal year 2009 - 2010. She stated that the expenses would remain level. She stated that the capital outlay needs consisted of:

\$67,000 Ambulance match (\$50,000 grant received from Johnson Foundation)
\$108,000 Monitors
\$20,000 EMS vehicle

She stated that the capital needs could be purchased through a 3-year lease purchase, which would add \$62,000 for principal and \$8,000 for interest. She stated that the EMS needed \$739,606 from ESD No. 3 to balance the budget. She stated that the tax rate for \$0.01 was equal to \$138,000, which the current rate was \$0.0425. She said that based on the preliminary values from CAD, the rate would have to be \$0.0532.

She stated that the Civic Center cash balance as of September 30, 2010 was estimated at \$110,000, the transfer of \$90,500 from the Hotel/Motel Fund, and the budget was short \$80,000 from balancing. She stated that \$48,000 was for depreciation and \$32,000 from the cash balance.

City of Wharton
Special City Council Meeting
August 4, 2010

Mrs. Vasut stated that the Airport fund cash balance as of September 30, 2010 was estimated at \$90,000. She stated that there would be minor increases in expenditures and contractual increases in hangar rental fees in accordance with the Consumer Price Index. She stated that \$80,000 was for depreciation and \$53,000 for the \$37,495 principal payment and then an increase to the cash balance by approximately \$15,000. She stated that a couple of hangars were available for rental. She then stated that the fuel sales had increased due to the tenant leasing the large commercial hangar.

The eleventh item on the agenda was adjournment. After some discussion, Councilmember Don Mueller made a motion to adjourn. Councilmember Lewis Fortenberry, Jr. seconded the motion. All voted in favor.


The meeting adjourned at 7:51 p.m.

CITY OF WHARTON, TEXAS

By: _____


DOMINGO MONTALVO, JR.
Mayor

ATTEST:


LISA OLMEDA
City Secretary

