

**MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
JANUARY 22, 2007**

Mayor Bryce D. Kocian declared a Regular Meeting duly open for the transaction of business at 7:00 P.M. Councilmember Don Mueller 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., David Samuelson, 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, City Secretary Lisa Stavena, Assistant to City Manager Jackie Jansky, Building Official Ronnie Bollom, Planning Director Prudencio Arriaga, Sr., Public Works Director Phil Bush, EMS Supervisor Frank Giesie, and City Attorney Paul Webb.

Visitors present were: Benjamin Sharp with Wharton Journal Spectator, David Schroeder with Wharton Economic Development Corporation, and Lewis Fortenberry.

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

The fourth item on the agenda was Wharton Moment. Councilmember Domingo Montalvo, Jr. publicly commended the Public Safety Employees, which included Police, EMS and Fire. He stated that those employees went beyond their call of duty to insure safety for all persons traveling during the severe weather on Wednesday, January 17, 2007. 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 December 2006. Finance Director Joyce Vasut presented the financial report for the month of December 2006 and stated that the fiscal year was at 25%. Mrs. Vasut stated that the general fund revenues were at 18.76% and the expenditures were at 25.41%. The total ad valorem taxes collected were \$332,711. The sales tax for the month of November 2006 was \$153,007 with \$102,005 to the City and \$51,002 to WEDCo. The TexPool balance for November 2006 was \$222,515.13 with an average monthly yield of 5.2780%. TexPool balance for December 2006 was \$165,399.53 with an average monthly yield of 5.2859%. After some discussion, Councilmember David Samuelson made a motion to approve the City of Wharton Financial Report for the month of December 2006. Councilmember Ken Freese seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider the Planning Commission recommendation for City Council consideration of the following:

- A. Request by Ms. Heather Chappell, Mid-Town Interests on behalf of Buc-ee's, Ltd. for a height variance to place an 80 feet freestanding commercial sign to be located at FM 102 Road and US Highway 59 service road, A20034 Abstract 34, Tract 69 South.

City Manager Andres Garza, Jr. stated that the Planning Commission met January 16, 2007 and discussed the request by Ms. Heather Chappell, Mid-Town Interests on behalf of Buc-ee's, Ltd. for a height variance to place an 80 feet freestanding commercial sign to be located at FM 102 Road and US Highway 59 service road, A20034 Abstract 34, Tract 69 South. He then presented a copy of the memorandum dated January 17, 2007 from Planning Commission Vice-Chairman Mike Wootton providing the recommendation from the Planning Commission. He stated that the City ordinance allowed 50-foot height on signs. He stated that the Planning Commission was recommending the City Council consider approving the variance to place the freestanding commercial sign as requested. He also presented a copy of the Planning Commission Communications from the meeting. Planning Director Prudencio V. Arriaga, Sr. stated that Ms. Heather Chappell would be closing the real estate transaction by the end of the month and requested the variance to install a 80 feet sign instead of the 50 feet sign as required by the City Ordinance. After some discussion, Councilmember David Samuelson made a motion to approve the request by Ms. Heather Chappell, Mid-Town Interests on behalf of Buc-ee's, Ltd. for a height variance to place an 80 feet freestanding commercial sign to be located at FM 102 Road and US Highway 59 service road, A20034 Abstract 34, Tract 69 South. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

- B. Request by Mr. Eric Muegge, A20038 Abstract 38, Tract 64A RR, Acres 3.5279, for the following:

1. Approval for 5-foot setback variance from the required 15-foot rear building line setback and a 10-foot setback variance from the required 35-foot front building line setback.
2. Approval of a preliminary/final re-plat of A20038, Abstract 38, Tract 64A RR, Acres 3.5279.

City Manager Andres Garza, Jr. stated that the Planning Commission met January 16, 2007 and discussed the request by Mr. Eric Muegge, A20038 Abstract 38, Tract 64A RR, Acres 3.5279 for approval of the listed items. He then presented a copy of the memorandum dated January 17, 2007 from Planning Commission Vice-Chairman Mike Wootton providing the recommendation from the Planning Commission. He stated that the Planning Commission was recommending the City Council consider approving the requested items by Mr. Muegge for the property located at A20038 Abstract 38, Tract 64A RR, Acres 3.5279. He then presented a copy of the Planning Commission Communications from the meeting. Planning Director Prudencio V. Arriaga, Sr. stated that Mr. Muegge would like to replat the Railroad Right-of-way from John Knox and N. Rusk, which was south of FM 1301 located in front of Capital One Bank. He stated that Mr. Muegge was requesting a 5 feet setback variance from the required 15 feet rear building line setback and a 10 feet setback variance from the required 35 feet front building line setback. He stated that each lot would have a building a parking lot, which the parking lot would be joined between two lots. He stated that Mr. Muegge would also have to contact the Texas Department

of Transportation regarding a variance for the odd lot. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve the request by Eric Muegge, A20038 Abstract 38, Tract 64A RR, Acres 3.5279, for approval for 5-foot setback variance from the required 15-foot rear building line setback and a 10-foot setback variance from the required 35-foot front building line setback, and approval of a preliminary/final re-plat of A20038, Abstract 38, Tract 64A RR, Acres 3.5279. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider a resolution of the Wharton City Council approving the Texas Department of Agriculture, Texas Capital Fund Contract No. 726322 for the Buc-ee's Travel Center Infrastructure Improvement Project and authorizing the Mayor of the City of Wharton to execute all documents related to said contract. City Manager Andres Garza, Jr. stated that on December 13, 2006, the Texas Department of Agriculture (TDA) notified the City of Wharton that the City's Texas Capital Fund (TCF) application for grant funds was approved for the Buc-ee's Travel Center Infrastructure Improvement Project. He then presented a copy of the memorandum dated December 18, 2006, which provided a copy of the TDA letter of notification. He then presented a copy of the letter dated January 12, 2007 from Ms. Barbara M. Curry, TDA-TCF Contract Specialist providing the City a copy of the TCF Contract No. 726322. He stated that City Council approval of the agreement was required. He then presented a copy of a draft resolution approving the Texas Department of Agriculture, Texas Capital Fund Contract No. 726322, and authorizing Mayor Bryce D. Kocian to execute the agreement. He stated that Section 22. Special Conditions stipulated the requirements that the City of Wharton would contract with Buc-ee's. He stated that the City of Wharton would have to execute the agreement with TDA; however, the City of Wharton would also execute an agreement with Buc-ee's. Mr. Garza stated that the City would also need to acquire right-of-way for the project; however, the Rust family has agreed to donate the required property to the City. He stated that since the City was using federal funds on the project, then the acquisition would need to meet federal law standards. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2007-05, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2007 - 05**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE TEXAS DEPARTMENT OF AGRICULTURE, TEXAS CAPITAL FUND CONTRACT NO. 726322 FOR THE BUC-EE'S TRAVEL CENTER INFRASTRUCTURE IMPROVEMENT PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID CONTRACT.**

**WHEREAS,** The City of Wharton received a grant award in the amount of \$750,000.00 to conduct infrastructure improvements for the Buc-ee's Travel Center to be constructed along FM 102 and US Highway 59; and

**WHEREAS,** The Wharton City Council wishes to approve the Texas Department of Agriculture, Texas Capital Fund Contract, Contract No. 726322 for the Buc-ee's Travel Center Infrastructure Improvement Project; and

**WHEREAS,** The Wharton City Council and the Texas Department of Agriculture wishes to be bound by the conditions as set forth in the contract; and

**WHEREAS,** the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute all documents related to said agreement.

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

**Section I.** The Wharton City Council hereby approves the Texas Department of Agriculture, Texas Capital Fund Contract No. 726322 for the Buc-ee's Travel Center Infrastructure Project.

**Section II.** The City of Wharton and Texas Department of Agriculture – Texas Capital Fund are hereby bound by the conditions as set forth in the agreement.

**Section III.** The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute all documents related to said agreement.

**Section IV.** This resolution shall become effective immediately upon its passage.

**Passed, Approved, and Adopted** this the 22<sup>nd</sup> day of January 2007.

**CITY OF WHARTON, TEXAS**

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

**ATTEST:**

\_\_\_\_\_  
**LISA STAVENA**

City Secretary

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

The eighth item on the agenda was to review and consider a resolution setting a date, time, and place for a public hearing on the proposed annexation of a certain property, owned by Katherine Whorton Harrell, by the City of Wharton, Texas, and directing the City Secretary to publish notice of such public hearing. City Manager Andres Garza, Jr. stated that on January 16, 2007, the City Council Annexation Committee reviewed the attached Petition for Annexation that the City received from Ms. Katherine Whorton Harrell. He stated that Ms. Harrell was requesting the City annex approximately 312.62 acres of land situated in the Alexander Jackson Timber and Prairie Leagues, Abstract No. 34, in Wharton County, Texas. He stated that the annexation petition was placing a condition that the annexation occurs only if the land was sold. He then presented a copy

of a map outlining the property that was being petitioned for annexation. He stated that he had requested Mr. Rob Kolancy, Surveyor, to review the metes and bounds to insure it was adjacent to the City limits. He stated that the Annexation Committee was recommending that the City Council consider approving the annexation of the property with the stipulation that if Ms. Harrell withdrew her petition, the City would cease annexation proceedings. He then presented a draft resolution establishing the required public hearing dates as mandated by the City Charter and State Law. He stated that the public hearings would be held during the regular February 12, 2007 and February 26, 2007 City Council meetings. He also presented a draft copy of the Notice of Public Hearings. City Attorney Paul Webb stated that the annexation process was 45 days in accordance with the City of Wharton Code of Ordinances. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2007-06, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2007-06**

**A RESOLUTION SETTING A DATE, TIME, AND PLACE FOR A PUBLIC HEARING ON THE PROPOSED ANNEXATION OF CERTAIN PROPERTY, OWNED BY KATHERINE WHORTON HARRELL, BY THE CITY OF WHARTON, TEXAS, AND AUTHORIZING AND DIRECTING THE CITY SECRETARY TO PUBLISH NOTICE OF SUCH PUBLIC HEARING.**

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

**SECTION 1.** On the 12<sup>th</sup> day of February 2007 at 7:00 p.m. o'clock and on the 26<sup>th</sup> day of February 2007 at 7:00 p.m. o'clock, in the City Council Chambers of the City Hall of the City of Wharton, Texas, the City Council will hold a public hearing giving all interested persons the right to appear and be heard on the proposed annexation by the City of Wharton, Texas of the following described property, to-wit:

A 312.62 acre tract of land, situated in the Alexander Jackson Timber and Prairie Leagues, Abstract No. 34, being the 313.04 acres tract of land described as "First Tract" in a deed from Doris Cox Hudgins to Mary Hudgins Jones, dated August 24, 1960, recorded in Volume 323, Page 476 of the Wharton County Deed Records, of Wharton County, less the 0.42 acre tract of land conveyed by Mary Hudgins Jones et. Vir. John T. Jones to the State of Texas by deed dated March 7, 1963, recorded in Volume 347, Page 65 of said deed records.

**SECTION 2.** The City Secretary of the City of Wharton, is hereby authorized and directed to cause notice of such public hearing to be published once in a newspaper having general circulation in the city and in the above described territory not more than twenty days nor less than ten days prior to the date of such public hearing, in accordance with the Municipal Annexation Act.

**PASSED AND APPROVED** this the 22<sup>nd</sup> day of January 2007.

**CITY OF WHARTON**

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**BRYCE D. KOCIAN**, Mayor

**ATTEST:**

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**LISA STAVENA**, City Secretary

Councilmember Don Mueller seconded the motion. All voted in favor.

The ninth item on the agenda was to review and consider Santa Fe Drainage Outfall Channel Project:

- A. Resolution:** A resolution of the Wharton City Council rescinding Resolution No. 2006-23 approving a contract between the City of Wharton and Houston Pipe Line Company, LP.

City Manager Andres Garza, Jr. stated that during the February 27, 2006 regular Wharton City Council meeting, the City Council approved Resolution No. 2006-23 approving a reimbursement agreement with Houston Pipe Line Company, LP to lower the pipeline that crosses the Santa Fe Drainage Outfall Channel. He stated that since that time, construction costs had escalated and the City had been working with Houston Pipe Line Company to negotiate a revised contract, which had been a successful effort; however, the City Council must rescind Resolution No. 2006-23 prior to approving a new agreement. He then presented a draft copy of the resolution rescinding Resolution No. 2006-23. City Attorney Paul Webb stated that since the placement of the pipes were changed to underground, the Resolution would need to be rescinded. Mr. Garza stated that the agreement required the City of Wharton to pay an inspector. He stated that the cost could be approximately \$625 per day paid by the City. After some discussion, Councilmember Ken Freese made a motion to approve Resolution No. 2007-07, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2007 - 07**

**A RESOLUTION OF THE WHARTON CITY COUNCIL RESCINDING RESOLUTION NO. 2006-23 APPROVING A CONTRACT BETWEEN THE CITY OF WHARTON AND HOUSTON PIPE LINE COMPANY, LP.**

**WHEREAS,** During the regular February 27, 2006 Wharton City Council meeting, the City Council approved Resolution No. 2006-23 approving a reimbursement agreement between the City of Wharton and Houston Pipe Line Company, LP to lower the pipeline that crosses the Santa Fe Drainage Outfall Channel Project; and

**WHEREAS,** Due to increases in construction costs, the City of Wharton and Houston Pipe Line Company, LP has re-negotiated the terms and conditions set forth in the contract; and

**WHEREAS,** The Wharton City Council hereby wishes to rescind Resolution No. 2006-23.

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

**Section I.** The Wharton City Council hereby rescinds Resolution No. 2006-23.

**Section II.** This resolution shall become effective immediately upon its passage.

**Passed, Approved, and Adopted** this the 22<sup>nd</sup> day of January 2007.

**CITY OF WHARTON, TEXAS**

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

**ATTEST:**

\_\_\_\_\_  
**LISA STAVENA**

City Secretary

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

**B. Resolution:** A resolution of the Wharton City Council approving an encroachment agreement and conditional letter of acceptance with Houston Pipe Line Company, LP for the Santa Fe Drainage Outfall Channel Project; and authorizing the Mayor of the City of Wharton to execute all documents related to said agreements.

City Manager Andres Garza, Jr. presented a draft resolution approving an encroachment agreement and conditional letter of acceptance with Houston Pipe Line Company, LP for the Santa Fe Drainage Outfall Channel Project. He stated that he had submitted the agreement and acceptance letter to City Attorney Paul Webb for his review. Mr. Webb stated that he reviewed the agreement and conditional letter of acceptance and was recommending approval. After some discussion, Councilmember David Samuelson made a motion to approve Resolution No. 2007-08, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2007 - 08**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING AN ENCROACHMENT AGREEMENT AND CONDITIONAL LETTER OF ACCEPTANCE WITH HOUSTON PIPE LINE COMPANY, LP FOR THE SANTA FE DRAINAGE OUTFALL CHANNEL PROJECT; AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID AGREEMENTS.**

**WHEREAS,** The Wharton City Council wishes to approve an encroachment agreement and conditional letter of acceptance with Houston Pipe Line Company, LP for the relocation of a pipeline for the Santa Fe Drainage Outfall Channel Project; and

**WHEREAS,** The City of Wharton and Houston Pipe Line Company, LP wishes to be bound by the conditions of the agreement.

**WHEREAS,** The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute all documents related to said agreements.

**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 approves an encroachment agreement and conditional letter of acceptance between the City of Wharton and Houston Pipe Line Company, LP to lower the pipeline for the Santa Fe Drainage Outfall Channel Project.

**Section II.** That the Wharton City Council hereby authorizes the Mayor of the Wharton to execute the agreement.

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

**Passed, Approved, and Adopted** this the 22<sup>nd</sup> day of January 2007.

**CITY OF WHARTON**

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

**ATTEST:**

\_\_\_\_\_  
**LISA STAVENA**

City Secretary

Councilmember Don Mueller seconded the motion. All voted in favor.

The tenth item on the agenda was to review and consider the City of Wharton Sidewalk/Ramp Improvement Project – Downtown Area:

**A. Resolution:** A resolution of the Wharton City Council approving a professional engineering services agreement between the City of Wharton and Jones & Carter, Inc. for the Sidewalk/Ramp Improvement Project in the downtown area and authorizing the Mayor of the City of Wharton to execute the agreement.

City Manager Andres Garza, Jr. stated that the City's 2006 Bond Program included funding for sidewalk/ramp improvements in the downtown area. He stated that the funding would allow the installation of ADA approved ramps on the four intersections. He also stated that the City had submitted a grant application to the Texas Department of Transportation (TxDOT) under the Statewide Transportation Enhancement Program (STEP) for funding towards a larger sidewalk improvement project, which the bond funds would be used as the City's match toward the STEP

