

**MINUTES
OF
CITY OF WHARTON
SPECIAL CITY COUNCIL MEETING
FEBRUARY 11, 2008**

Mayor Bryce D. Kocian declared a Special Meeting duly open for the transaction of business at 4:00 P.M. Councilmember V. L. Wiley, Jr. 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., Ken Freese, and Don Mueller.

Councilmember absent was: David Samuelson, Domingo Montalvo, Jr. and Ray Linseisen.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, Assistant to City Manager Jackie Jansky, Deputy City Secretary Theresa Wittig, Planning Director Prudencio Arriaga, and City Attorney Paul Webb.

Visitors present were: David Schroeder with Wharton Economic Development Corporation, Carlos Cotton, Larry Sitka, I.O. Coleman, Jr., C. B. Coleman, Wilma Destin, John Logan, Bill Kincer, Sam Harrell, Taylor Carroll, D. R. Carroll, and Alan Prigge.

The second item on the agenda was Roll Call and Excused Absences. Councilmember Don Mueller made a motion to approve the absence of Councilmembers David Samuelson, Domingo Montalvo, Jr. and Ray Linseisen from the Special City Council meeting held February 11, 2008. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

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

The fourth item on the agenda was Wharton Moment. Councilmember V. L. Wiley, Jr. stated that February was designated as Black History Month. No action was taken.

The fifth item on the agenda was a proclamation proclaiming February 2008 as Black History Month. Mayor Bryce D. Kocian presented the proclamation, which read as follows:

WHEREAS, February has been designated as Black History Month, and will be observed in our community with a series of special presentations and exhibits; and,

WHEREAS, this observance affords the special opportunity to become more knowledgeable about the black heritage, and to honor the many black leaders who have contributed to the progress of our nation; and,

WHEREAS, such knowledge can strengthen the insight of all our citizens regarding the issues of human rights, the great strides that have been made in the crusade to eliminate the barriers of equality for minority groups, and the continuing struggle against racial discrimination and poverty; and,

WHEREAS, Special Recognition should be extended to two citizens, Ms. Iola Coleman Johnson for her service to the community by providing RN Nursing and Head Nurse Supervisor for Gulf Coast Medical Center. And, to Mr. Paul Kearney for providing his mentoring abilities by being the 4th – 6th Grade Coach at Dawson Elementary School before his retirement and, currently, to Sivell’s Elementary School by mentoring the Behavior Management Program and for their dedication and efforts to promote Black History Month.

NOW, THEREFORE, I, Bryce D. Kocian, by the authority vested in me as Mayor of the City of Wharton, Texas, do hereby proclaim February 2008 as Black History Month and urge all residents to join together in making this a period of rededication to the principles of justice and equality for all people.

IN WITNESS THEREOF, I have set my hand and caused the seal of the City of Wharton to be affixed this 11th day of February, in the year of our Lord two thousand eight A.D.
No action was taken.

The sixth item on the agenda was a proclamation proclaiming February 24 – March 1, 2008 as Severe Weather Awareness Week. Mayor Bryce D. Kocian presented the proclamation, which read as follows:

Whereas, Severe Weather Awareness Week is February 24, 2008 through March 1, 2008; and

Whereas, Each year brings the potential for violent weather to Texas; and

Whereas, Large portions of our State, including the City of Wharton, can be devastated by flooding, tornadoes, hail, windstorms and other emergencies; and

Whereas, The Governor’s Division of Emergency Management, the National Weather Service and the Federal Emergency Management Agency (FEMA) have joined together urging all citizens to prepare for severe weather events and to educate themselves on safety strategies; and

Whereas, Governor Rick Perry has declared the week of February 24, 2008 through March 1, 2008 as Severe Weather Awareness Week in Texas.

Now, Therefore, Be It Resolved, I, Bryce D. Kocian, Mayor of the City of Wharton urge everyone in our community to learn and to participate in severe weather preparedness activities available through the City of Wharton, Texas.

Therefore, In Official Recognition, I, the undersigned do hereby proclaim

February 24, 2008 through March 1, 2008

As

**Severe Weather Awareness Week
in the City of Wharton, Texas.**

IN WITNESS THEREOF, I have set my hand and caused the seal of the City of Wharton to be affixed this 11th day of February, in the year of our Lord two thousand eight A.D.
No action was taken.

The seventh item on the agenda was to review and consider the reading of the minutes from the regular meetings held January 14, 2008 and January 28, 2008. After some discussion, Councilmember Don Mueller made a motion to approve the Wharton City Council minutes of the regular meetings held January 14, 2008 and January 28, 2008 as presented. Councilmember Ken Freese seconded the motion. All voted in favor.

The eighth item on the agenda was a presentation by the United States Postal Service representative regarding the development process and the proposed construction of a new Wharton Post Office. City Manager Andres Garza, Jr. presented a copy of the letter dated January 23, 2008 from Mr. Kelvin L. Williams of the United States Postal Service informing the City of Wharton of the Postal Service's desire to construct a new post office facility in Wharton. He also presented a copy of the Public Notice that was issued by the Postal Service informing the general public that a presentation would be held by a Representative of the Postal Service to explain the development process and the proposed building and to solicit input from the community and prospective property owners that might have suitable property for this project. Mr. John Logan addressed the City Council and stated the Wharton Post Office was needing a building of approximately 5,000 square feet or a site of 2 ½ acres. He stated that the preferred area would be presented to City Council for consideration and thirty (30) days publication notification. He stated that it would allow citizen's comments on the proposed site. No action was taken.

The ninth item on the agenda was to review and consider a resolution administratively approving an application for tax abatement filed Wharton RP, Ltd. d/b/a Wharton Nursing and Rehabilitation Center. City Manager Andres Garza, Jr. presented a copy of the letter dated January 16, 2008 from Mr. Michael Seale, Attorney from McGlinchey Stafford PLLC providing the tax abatement application on behalf of Wharton RP, Ltd. d/b/a Wharton Nursing and Rehabilitation Center. He stated that the City Council Finance Committee met February 5, 2008 and reviewed the application with the City Staff. He also presented a copy of the memorandum dated February 5, 2008 which indicated the application was found to be administratively complete. He also presented a draft resolution finding the application to be administratively complete. After some

discussion, Councilmember Ken Freese made a motion to approve Resolution No. 2008-13, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2008 - 13**

A RESOLUTION ADMINISTRATIVELY APPROVING AN APPLICATION FOR TAX ABATEMENT FILED BY WHARTON RP, LTD. D/B/A WHARTON NURSING AND REHABILITATION CENTER.

WHEREAS, heretofore previously, the City Council of the City of Wharton did establish and adopt certain criteria and guidelines for review and administrative approval of applications for tax abatements; and

WHEREAS, the City Manager of the City of Wharton has reviewed the application heretofore previously filed and has approved the same by memorandum dated the 5th day of February 2008 a copy of which is attached hereto and marked Exhibit "A".

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

Section I. The City Council of the City of Wharton receives and makes a part of the record the recommendation of the City Manager, dated the 5th day of February 2008, recommending administrative approval in accordance with the Guidelines and Criteria for Granting Tax Abatements as adopted by Resolution No. 2008-08 on the 28th day of January 2008 and directs that said recommendation be filed and maintained among the official papers of the City relating to the proposed tax abatement.

Section II. After review to the extent deemed necessary by the City Council of the City of Wharton, the City Council by this Resolution does administratively approve the application for tax abatement heretofore previously filed by Wharton RP, Ltd. d/b/a Wharton Nursing and Rehabilitation Center on the 16th day of January 2008, and directs, in accordance with the requirements of law, and the heretofore named Guidelines and Criteria for Granting Tax Abatements, that an appropriate agreement be prepared and submitted to the City Council of Wharton, Texas, for final consideration.

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

Passed, Approved, and Adopted this 11th day of February 2008.

CITY OF WHARTON, TEXAS

By:

BRYCE D. KOCIAN
Mayor

ATTEST:

THERESA WITTIG

Deputy City Secretary

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

The tenth item on the agenda was Public Hearing regarding the creation of a Reinvestment Zone to be located at the proposed site of the Wharton RP, Ltd. d/b/a Wharton Nursing and Rehabilitation Center off of Sunny Lane, Wharton, Texas. City Manager Andres Garza, Jr. stated that a public hearing may be held in accordance with the Tax Abatement Policy to create a reinvestment zone in order to grant a tax abatement.

Mayor Bryce D. Kocian opened the Public Hearing at 4:14 p.m.

Mr. Able Lacerda addressed the City Council and stated that all taxing entities received notice of the public hearing. He stated that a ten (10) month study was conducted regarding the acquisition of the facility. He stated that the facility would be 40,000 square feet, licensed

Medicare/Medicaid, 60 to 120 employees, costing approximately 2.5 million to 5.5 million dollars. He stated that the project should be completed by December 2008.

Mayor Bryce D. Kocian closed the Public Hearing at 4:19 p.m.

The eleventh item on the agenda was Executive Session: City Council may adjourn into an Executive Session in accordance with Section 551.086 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: Request for Tax Abatement submitted by Wharton RP, Ltd. d/b/a Wharton Nursing and Rehabilitation Center.

Mayor Bryce D. Kocian adjourned into Executive Session at 4:20 p.m.

Mayor Bryce D. Kocian returned into Open Session at 4:35 p.m.

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

A. Review & Consider: Request for Tax Abatement submitted by Wharton RP, Ltd. d/b/a Wharton Nursing and Rehabilitation Center.

Councilmember Ken Freese stated that he agreed that the facility was wonderful and needed; however, two issues were addressed: WEDC providing \$109,000 towards the infrastructure improvements on Sunny Lane project for nine years of tax abatement. He said that tax abatements should be used as an incentive, which the current request was not an incentive. Mr. Lacerda stated that the \$109,000 was used to build infrastructure and to build the road, which had no benefit to the Nursing Home. He stated that the project would increase the tax base, thus bringing in tremendous amount of funds. Councilmember Ken Freese made a motion to deny approving the ordinance creating the reinvestment zone. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The thirteenth item on the agenda was to review and consider an ordinance designating certain property as herein legally described, including certain lots and blocks as therein contained, a Reinvestment Zone and Providing that said Reinvestment Zone shall hereinafter be referred to as City of Wharton Reinvestment Zone No. 2008-01; Said property being generally located on the 3.82 acre tract of land located at the end of Sunny Lane, Wharton, Texas, and making other findings and conclusions as required by Law. City Manager Andres Garza, Jr. presented a draft ordinance designating certain property as herein legally described, including certain lots and blocks as therein contained, a Reinvestment Zone and Providing that said Reinvestment Zone shall hereinafter be referred to as City of Wharton Reinvestment Zone No. 2008-01; said property being generally located on the 3.82 acre tract of land located at the end of Sunny Lane, Wharton, Texas, and making other findings and conclusions as required by Law. He stated that should the City Council consider granting the tax abatement request by Wharton RP, Ltd. d/b/a Wharton Nursing and Rehabilitation Center, an ordinance creating the reinvestment zone must be adopted. After some discussion, no action was taken.

The fourteenth item on the agenda was to review and consider an ordinance approving and authorizing the Mayor of the City of Wharton to sign and execute for and on behalf of the City of Wharton, a Tax Abatement Agreement with Wharton RP, Ltd. d/b/a Wharton Nursing and Rehabilitation Center in a form as attached hereto and marked Exhibit "1" and making certain findings of fact in accordance with the requirements of Law. City Manager Andres Garza, Jr. presented a draft ordinance approving and authorizing the Mayor of the City of Wharton to sign and execute for and on behalf of the City of Wharton, a Tax Abatement Agreement with Wharton RP, Ltd. d/b/a Wharton Nursing and Rehabilitation Center in a form as attached hereto and marked Exhibit "1" and making certain findings of fact in accordance with the requirements of Law. He stated that should the City Council consider granting the tax abatement request by Wharton RP, Ltd. d/b/a Wharton Nursing and Rehabilitation Center and created the required reinvestment zone, an ordinance approving the tax abatement application must be adopted. No action was taken.

The fifteenth item on the agenda was to review and consider the request by Ms. Sharon Smith for Pecan Village Apartments for a front building line setback variance for the covered parking construction to be located at 310 University Avenue, Wm. Kincheloe, Block 58A-3, 58A-4, 58A-5. City Manager Andres Garza, Jr. presented a copy of the memorandum dated January 31, 2008 from Planning Director Prudencio V. Arriaga, Sr. provided the request by Ms. Sharon Smith for Pecan Village Apartments for a front building line setback variance for the covered parking construction to be located at 310 University Avenue, Wm. Kincheloe, Block 58A-3, 58A-4, 58A-5. Planning Director Arriaga stated that the variance was for 6 feet from the property line. He stated that it was government housing. After some discussion, Councilmember Ken Freese made a motion to deny the request by Ms. Sharon Smith. Councilmember Don Mueller seconded the motion. All voted in favor.

The sixteenth item on the agenda was to review and consider the request by Mr. Larry Sitka for a variance to the City of Wharton Code of Ordinances, Chapter 66 Signs and Advertising for the construction of signs at the following locations:

- A. 25 feet sign setback from the required 50 feet along FM 1301 between Fulton and Rusk Street.
 - B. 360 feet sign setback from the required 500 feet along FM 102 near Hendon Street.
- City Manager Andres Garza, Jr. presented a copy of the letter received February 7, 2008 from Mr. Larry Sitka requesting a variance to the City of Wharton Code of Ordinances, Chapter 66 Signs and Advertising for the construction of signs at the afore-mentioned locations. He also presented a map indicating the location of the signs. Mr. Sitka addressed the City Council and requested the variances. He stated that Hendon Street was part of the property he had purchased from the railroad and that the City was utilizing part of his property as City streets with no easements. After some discussion, the item was deferred to the next City Council meeting pending additional information concerning a survey of the property along FM 102 being submitted to the City. No action was taken.

The seventeenth item on the agenda was to review and consider an ordinance authorizing the issuance of \$665,000 City of Wharton, Texas, Tax Anticipation Notes, Series 2008. City Manager Andres Garza, Jr. stated that during the January 14, 2008 regular Wharton City Council meeting, the City Council authorized the City to finance expenditures incurred during the renovation of the Wharton Police Department/Municipal Court facility located at 1407 North Richmond Road. He then presented a draft ordinance authorizing the issuance of \$665,000.00 of City of Wharton, Texas Tax Anticipation Notes, Series 2008, which would allow the City to finance the expenditures. Mr. Jim Gilley addressed the City Council and stated that three bids were received and was recommending Bank of America with 3%. He stated that interest would be \$13,000 over 6 ½ years. After some discussion, Councilmember Don Mueller made a motion to approve the bid to Bank of America and Ordinance No. 2008-03, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2008-03**

**ORDINANCE AUTHORIZING THE ISSUANCE OF \$665,000 CITY
OF WHARTON, TEXAS, TAX ANTICIPATION NOTES, SERIES
2008**

**THE STATE OF TEXAS §
COUNTY OF WHARTON §
CITY OF WHARTON §**

WHEREAS, the City of Wharton, Texas (the “City”) is authorized to issue notes payable from ad valorem taxes pursuant to Chapter 1431, Texas Government Code, as amended; Now, Therefore

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

- 1. Definitions. Throughout this ordinance the following terms and expressions as used herein shall have the meanings set forth below:

“Act” means Chapter 1431, Texas Government Code, as amended.

“Business Day” means any day which is not a Saturday, Sunday, a day on which the Registrar is authorized by law or executive order to close, or a legal holiday.

“City” means the City of Wharton, Texas.

“Code” means the Internal Revenue Code of 1986, as amended.

“Comptroller” means the Comptroller of Public Accounts of the State of Texas.

“Debt Service Fund” means the Debt Service fund established by the City pursuant to Section 15 of this Ordinance.

“Initial Note” means the Initial Note authorized by Section 5(d) of this Ordinance.

“Interest Payment Date”, when used in connection with any Note, means June 1, 2008, and each December 1 and June 1 thereafter until maturity or earlier redemption.

“Investment Letter” means the letter agreement described in Section 18 of this Ordinance.

“Issuance Date” means the date on which the Notes are delivered to and paid for by the Purchaser.

“Note” or “Notes” means any note or all notes, as the case may be, of the City of Wharton, Texas, Tax Anticipation Notes, Series 2008 authorized in this Ordinance, unless the context clearly indicates otherwise.

“Ordinance” as used herein and in the Notes means this ordinance authorizing the Notes.

“Owner” means any person who shall be the registered owner of any outstanding Note.

“Purchaser” means _____.

“Record Date” means, for any Interest Payment Date, the close of business on the 15th day of the month next preceding such Interest Payment Date.

“Register” means the books of registration kept by the Registrar, in which are maintained the names and addresses of, and the principal amounts of the Notes registered to, each Owner.

“Registrar” means _____, and its successors in that capacity.

2. Authorization. The Notes shall be issued pursuant to the Act in fully registered form, without coupons, in the aggregate principal amount of Six Hundred Sixty-Five Thousand

