

MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
AUGUST 27, 2007

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

Councilmembers present were: Mayor Bryce D. Kocian, Councilmembers, David Samuelson, Ken Freese, Don Mueller, and Domingo Montalvo, Jr.

Councilmember absent was: V. L. Wiley, Jr., and Ray Linseisen .

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

Visitors present were: Benjamin Sharp with Wharton Journal Spectator, David Schroeder with Wharton Economic Development Corporation, Carlos Cotton, Andy Morris, Frank Giacacone, Merrell "Doc" Barfield, Jr., Les Krancher, Doug Ward, and Glen Dryer.

The second item on the agenda was Roll Call and Excused Absences. Councilmember David Samuelson made a motion to excuse the absence of Councilmembers V. L. Wiley, Jr. and Ray Linseisen from the Regular City Council meeting on August 27, 2007. Councilmember Ken Freese 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 Domingo Montalvo, Jr. presented a DVD from Lower Colorado River Authority regarding the flood event response on June 26th and June 27th that took place in the upper Colorado River basin. 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 July 2007. Finance Director Joyce Vasut presented the financial report for the month of July 2007 and stated that the fiscal year was at 83%. She stated that the general fund revenues were at 80.92% and the expenditures were at 85.08%. The total ad valorem taxes collected were \$1,808,700. The sales tax for the month of June 2007 was \$164,358 with \$109,572 to the City and \$54,786 to WEDC. The TexPool balance for June 2007 was \$2,884,061.42 with an average monthly yield of 5.2760%. The Franklin Bank balance for June 2007 was \$375,185.36 with an average monthly yield of 5.250%. After some discussion, Councilmember Ken Freese made a

motion to approve the City of Wharton Financial Report for the month of July 2007.
Councilmember Don Mueller seconded the motion. All voted in favor.

The sixth item discussed on the agenda was to review and consider the City Manager's submission of the City of Wharton, Texas, Proposed Budget for the Fiscal Year October 1, 2007 to September 30, 2008. City Manager Andres Garza, Jr. presented a copy of the proposed budget for the City of Wharton fiscal year October 1, 2007 to September 30, 2008 to the City Council. He stated that the budget was prepared by the Finance Department in compliance with State laws. He stated that HB 3195 required additional publication information. No action was taken.

The seventh item discussed on the agenda was to review and consider setting a Public Hearing date for the City of Wharton, Texas, Proposed budget for fiscal year October 1, 2007 to September 30, 2008. City Manager Andres Garza, Jr. stated that under Article VI, Section 53 of the City of Wharton Charter the City Council shall set a time and place for a public hearing. He then presented a copy of the City's Charter Section pertaining to the budget. He stated that the City Staff would publish the Notice of Public Hearing in the Wharton Journal Spectator. He stated that he was recommending the public hearing be set for the September 10, 2007 Regular City Council Meeting, which complied with Section 53 of the Charter. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve September 10, 2007 as the Public Hearing date during the Regular City Council Meeting and authorize the City Staff to publish the Public Hearing Notice in the Wharton Journal Spectator. Councilmember Don Mueller seconded the motion. All voted in favor.

The eighth item on the agenda was Public Hearing: Proposed annexation of land described in Wharton County Texas: A tract of land at least 1,000 feet wide being wider than 1,000 feet at some points parallel and adjacent to US 60 Highway beginning at the City of Wharton corporate limits to the southernmost corner of the land owned by Navasota Energy. City Manager Andres Garza, Jr. stated that during the regular July 23, 2007 Wharton City Council meeting, the City Council approved the Ordinance 2007-14, which established the required public hearing dates for the proposed annexation of approximately 148.87 acres of land located in the Randall Jones ½ League Abstract 36 and the James Tumlinson ½ League Abstract 63. He then presented a copy of the Notice of Public Hearings that was published in the Wharton Journal Spectator August 15th and would also be published a second time on August 29th. He also presented a copy of the letters dated July 24, 2007 to the property owners notifying them of the proposed annexation. He stated that this would be the first of the two required public hearings in accordance with State law.

Mayor Bryce D. Kocian opened the Public Hearing at 7:24 p.m.

Andy Morris with Navasota Energy thanked the City Council for the opportunity to address the City Council regarding the proposed annexation. He stated that he was the General Manager of the project. He stated that he had not seen the City of Wharton Service Plan and was requesting that the Service Plan be submitted to Navasota Energy for review. He stated that currently Navasota Energy was providing all the services.

Frank Giacacone with Navasota Energy stated that Navasota Energy was awaiting the City of Wharton Service Plan to comment on. City Manager Andres Garza, Jr. stated that City of Wharton would submit the Service Plan to Navasota Energy.

Mayor Bryce D. Kocian closed the Public Hearing at 7:28 p.m.

The ninth item on the agenda was to review and consider the recommendation by the Planning Commission for City Council consideration of the request by Mr. Raymond Harrison for approval of the Norton Farms preliminary/final plat of Wm. Kincheloe, Abstract 38, 41.71 Acres. City Manager Andres Garza, Jr. stated that the Planning Commission met Thursday, August 23, 2007 and was recommending the City Council consider approving the request by Mr. Raymond Harrison for approval of the Norton Farms preliminary/final plat of Wm. Kincheloe, Abstract 38, 41.73 Acres. He then presented a copy of the memorandum dated August 27, 2007 from Planning Commission Chairman A. J. Rath providing the recommendation. Planning Director Prudencio V. Arriaga, Sr. stated that property was in the City of Wharton's Extra Territorial Jurisdiction that bordered Peach Creek. He stated that plat met the requirements of the City of Wharton and Wharton County. After some discussion, Councilmember Ken Freese made a motion to approve the request by Mr. Raymond Harrison for approval of the Norton Farms preliminary/final plat of Wm. Kincheloe, Abstract 38, 41.71 Acres. Councilmember David Samuelson seconded the motion. All voted in favor.

The tenth item on the agenda was to review and consider the request by Dr. David Samuelson, President of East Wharton County Habitat for Humanity for City of Wharton assistance with the property located at 410 South Sheppard Street, Wharton, Texas. City Manager Andres Garza, Jr. presented a copy of the letter dated August 23, 2007 from Dr. David Samuelson, President of East Wharton County Habitat for Humanity requesting City of Wharton assistance with the property located at 410 South Sheppard Street. He stated that Dr. Samuelson was requesting that the City Council consider waiving the building permit fees and the fees associated with the water and sewer taps, also assistance to request that Waste Management provide a dumpster for the construction debris. Mr. Glen Dryer, Vice President of Habitat for Humanity stated that this was the third house, which the request was the same as the previous two houses constructed by Habitat for Humanity. Councilmember David Samuelson abstained from discussion. Councilmember Ken Freese publicly commended Glen Dryer and Councilmember David Samuelson for their contribution to Habitat for Humanity. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the request by Dr. David Samuelson, President of East Wharton County Habitat for Humanity for City of Wharton assistance with the property located at 410 South Sheppard Street, Wharton, Texas. Councilmember Ken Freese seconded the motion. Councilmember David Samuelson abstained. Councilmembers Ken Freese, Don Mueller, and Domingo Montalvo, Jr. voted for the motion. The motion carried.

The eleventh item on the agenda was to review and consider an ordinance awarding an exclusive franchise contract within the City of Wharton, Wharton County, Texas, to Waste Corporation of Texas, LP for the collection and disposal of solid waste, authorizing the Mayor of the City of Wharton to execute the contract, setting forth general specifications, and establishing rates for the collection of solid waste.

A. Proposal Tabulation.

B. **Ordinance:** An ordinance awarding an exclusive franchise contract within the City of Wharton, Wharton County, Texas, to Waste Corporation of Texas, LP for the collection and

disposal of solid waste, authorizing the Mayor of the City of Wharton to execute the contract, setting forth general specifications, and establishing rates for the collection of solid waste.

City Manager Andres Garza, Jr. stated that the current solid waste collection and disposal contract between Waste Management and the City of Wharton would expire on September 30, 2007. He then presented a copy of the letter dated June 6, 2007 from Mr. Thane T. Harrison, Director of Governmental Affairs of Waste Management of Texas, Inc. that indicated Waste Management did not intend to renew the franchise contract with the City of Wharton under the same terms and conditions. He stated that Waste Management requested a 30% increase. He stated that since the receipt of the letter, he had met with representatives from Waste Management, Republic Services, and Waste Corporation of Texas, LP and requested that they submit their proposals to provide the service for the City. He said that Waste Management (WM) and Waste Corporation of Texas, LP (WCA) submitted their respective proposals. He then presented a copy of an analysis prepared by Finance Director Joyce Vasut that showed the current cost for the service and the proposed cost for service for the two companies respectively. He stated that Republic Services declined to submit a proposal. He stated that in conducting the City's due diligence, he had contacted the Cities of Jersey Village, Texas, Searcy, Arkansas and Aztec, New Mexico, who provided outstanding references for WCA. He said that he was still awaiting a response from the Cities of Spring Valley, Texas, and Bloomfield, New Mexico. He said that a meeting had been conducted on Monday, August 27, 2007 with representatives of WCA and the City Staff to discuss mobilization procedures, etc. He stated that WCA could provide service effective October 1, 2007. He stated that during the meeting, there were still some issues that needed to be worked out. He stated that the proposal included that the customers cut and bundle the limbs for pick up and no holiday roll over would be offered. After some discussion, no action was taken.

The twelfth item on the agenda was to review and consider the first reading of an ordinance granting to CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, the right, privilege and franchise to construct, install, extend, remove, replace, abandon, operate and maintain its facilities within the Public Rights-of-Way of the City of Wharton, Texas, for the transportation, delivery, sale and distribution of Natural Gas; Containing other provisions relating to the foregoing subject; providing for severability and providing an effective date. City Manager Andres Garza, Jr. stated that the franchise agreement between CenterPoint Energy for natural gas service for the City of Wharton had expired, which he had been working with Attorney Clarence West and CenterPoint Representative Mr. Les Krancher to develop a new franchise agreement. He stated that the City Council Finance Committee met August 23, 2007 and was recommending the City Council consider approving the ordinance granting a franchise agreement with CenterPoint. He stated that in accordance with the City's Charter, the franchise must be read by the City Council at three separate readings. City Attorney Paul Webb stated that he had been working with Clarence West and recommended approval for an additional 1% increase from the existing 2% for twenty years. Mr. Douglas Ward with CenterPoint Energy Texas Gas Operations addressed the City Council and stated that CenterPoint felt this was a fair agreement. He stated that CenterPoint requested a thirty year agreement; however, the City of Wharton City Charter stipulated a maximum of twenty years. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the Ordinance No. 2007-16, which read as follows:

**CITY OF WHARTON
ORDINANCE NO. 2007-16**

AN ORDINANCE GRANTING TO CENTERPOINT ENERGY RESOURCES CORP., DBA CENTERPOINT ENERGY TEXAS GAS OPERATIONS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, INSTALL, EXTEND, REMOVE, REPLACE, ABANDON, OPERATE AND MAINTAIN ITS FACILITIES WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF WHARTON, TEXAS FOR THE TRANSPORTATION, DELIVERY, SALE AND DISTRIBUTION OF NATURAL GAS; CONTAINING OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF WHARTON:

Section 1. GRANT OF AUTHORITY. Subject to the conditions and provisions of this ordinance, the right, privilege and franchise granted to CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, hereinafter called "Company", to construct, install, extend, remove, replace, abandon, operate and maintain its facilities within the Public Rights-of-Way of the City of Wharton, Texas for the transportation, delivery, sale and distribution of natural gas within the corporate limits of the City of Wharton, as the same are now and as the same may from time to time be extended. The right, privilege and franchise granted hereunder is granted subject to the existing City of Wharton Charter and Ordinances.

Section 2. DEFINITIONS.

- A. "City" shall mean the City of Wharton, Texas, a municipal corporation.
- B. "Company" shall mean CenterPoint Energy Resources Corp., DBA CenterPoint Energy Texas Gas Operations, a Delaware Corporation and shall not mean any of its affiliates and subsidiaries who shall have no right, privilege or franchise granted hereunder.
- C. "Facilities" shall mean pipes, pipelines, natural gas mains, laterals, feeders, connections and attachments and other instrumentalities and appurtenances, used in or incident to providing transportation, distribution, supply and sales of natural gas for heating, lighting, power and any other purposes for which natural gas may now or hereafter be used.
- D. "Public Rights-of-Way" shall mean the areas in, under, upon, over, across, and along any and all of the present and future Streets or streams now or hereafter owned or controlled by City.
- E. "Street" shall mean the surface and the space above and below any public street, road, highway, alley, bridge, sidewalk, or other public place or way.

Section 3. TERM OF FRANCHISE. This Franchise shall become effective upon filing with the City by the Company of the acceptance required herein, and following the expiration of

sixty days after final passage by the City Council and approval by the Mayor and shall be in full force and effect for a term of twenty (20) years.

Section 4. CONSTRUCTION AND MAINTENANCE OF NATURAL GAS DISTRIBUTION SYSTEM. All Facilities installed by Company shall be of sound material and good quality, and shall be laid so that they will not interfere with the artificial drainage of the City or its underground fixtures, or with navigation in or the natural drainage of any stream. All Facilities shall be installed in accordance with applicable Federal, State and City regulations and in the absence of such regulations in accordance with accepted industry practice. Within the Public Rights-of-Way, the location and route of the Facilities by the Company shall be subject to the reasonable and proper regulation, direction and control of the City or the City official to whom such duties have been delegated. Such regulation shall include, but not be limited to, the right to require in writing to the extent provided in Section 15 the relocation of Company's Facilities at Company's cost within the Public Rights-of-Way of the City whenever such relocation shall be reasonably necessary to accommodate the widening, change of grade, or relocation by City of Streets or Public Rights-of-Way, or construction or relocation by City of City utility lines or drainage facilities. The Company and the City shall work together to develop a procedure under which Company shall make available to the City maps showing the location of Company's Facilities within the corporate limits of the City.

Section 5. STREETS TO BE RESTORED TO GOOD CONDITION. Company and its contractors shall give City reasonable notice, of the dates, location and nature of all work to be performed on its Facilities within the Public Rights-of-Way. This Franchise shall constitute a permit to perform all work on Company's Facilities within the Public Rights-of-Way and to park vehicles in the Streets and other Public Rights-of- Way when necessary for the installation, retirement, operation or maintenance of Company's Facilities. Company and contractors performing work for Company shall not be required to obtain any permits in addition to the Franchise or to pay any fee in addition to the franchise fee in order to perform work on Company's Facilities, or park within the Streets and other Public Rights-of-Way. Following completion of work in the Public Rights-of-Way, Company shall repair the affected Public Rights-of-Way as soon as possible, but in all cases Company shall comply with all City ordinances governing time periods and standards relating to excavating in the Public Rights-of-Way. No street, alley, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work.

Section 6. QUALITY OF SERVICE. The service furnished hereunder to the City and its inhabitants shall be in accordance with the quality of service rules of the Railroad Commission of Texas and all other applicable local, state and federal regulations. Company shall furnish the grade of service to its customers as provided by its rate schedules and shall maintain its system in reasonable operating condition during the continuance of this Franchise. An exception to this requirement is automatically in effect, but only for so long as is necessary, when caused by a shortage in materials, supplies and equipment beyond the control of the Company as a result of fires, strikes, riots, storms, floods and other casualties, governmental regulations, limitations and restrictions as to the use and availability of materials, supplies and equipment and as to the use of the services, and unforeseeable and unusual demands for service. In any of such events the

