

MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
FEBRUARY 12, 2007

Mayor Bryce D. Kocian declared a Regular Meeting duly open for the transaction of business at 7:00 P.M. Councilmember Ken Freese 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, Don Mueller, Domingo Montalvo, Jr., and Ray Linseisen

Councilmember absent was: David Samuelson.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, Assistant to City Manager Jackie Jansky, Police Chief Tim Guin, Public Works Director Phil Bush, Planning Director Prudencio Arriaga, Sr., Building Official Ronnie Bollom, Building Official Assistant Lori Jaquez, Community Services Director Jo Knezek, Airport Manager David Allen, and City Attorney Paul Webb.

Visitors present were: Benjamin Sharp with Wharton Journal Spectator, David Schroeder with Wharton Economic Development Corporation, Carlos Cotton, Wayne Neal, Cecelia Jedlicka, Frank Jedlicka, Ernest Joe Macha, Doris Brandes, Barnaby Evans, Sammy Wisnieski, Jim Cockrell, Sharon Joines, Betty Ford, Homer Humphrey, Agnes Wagner, Kelly Chumchal, Sandra Chumchal, Ginger Morgan, Dr. Clark Spears, and Al Bryant.

The second item on the agenda was Roll Call and Excused Absences. Councilmember Don Mueller made a motion to excuse the absence of Councilmember David Samuelson from the Regular City Council meeting held February 12, 2007. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The third item on the agenda was Public Comments. Ms. Doris Brandes addressed the City Council and stated that the Trans Tex Corridor Rally was scheduled for Friday, March 2, 2007 in Austin at the State Capitol. She stated that charter buses would be available. No action was taken.

The fourth item on the agenda was Wharton Moment. Councilmember Ken Freese stated that the Wharton Tigers Boys & Girls were in the playoffs. He stated that the boys division had won first place.

Councilmember Domingo Montalvo, Jr. publicly commended Chili's on the Grand Opening and training sponsorship.

Mayor Bryce D. Kocian presented a proclamation to Ginger Morgan, which read as follows:

WHEREAS, Family, Career and Community Leaders of America, the national career and technical student organization for family and consumer sciences students through grade 12, helps youth assume their roles in society through family and consumer sciences education in areas of personal growth, family life, vocational preparation and community involvement; and

WHEREAS, the organization extends classroom learning through chapter projects that develop leadership and initiative and helps young men and women learn how to plan, make decisions and carry out and evaluate programs of action as they work with other youth and adults in their school and community; and

WHEREAS, Family, Career and Community Leaders of America, offers members an opportunity to work together for common purposes for the improvement of themselves, their families and their communities; and

WHEREAS, the week of February 11 through 17, 2007, has been designated **NATIONAL FCCLA WEEK** with the theme, *FCCLA: "LOL :)Live Out Loud!"*

NOW, THEREFORE, I, Bryce D. Kocian, hereby proclaim the week beginning

February 11th as NATIONAL FCCLA WEEK

in Wharton, Texas, and urge all citizens to acquaint themselves with the activities and values of Family, Career and Community Leaders of America, to show interest in it and give help and encouragement to these young men and women who are working to achieve knowledge and experience that will help prepare them for future responsibilities as active and concerned adult members of society.

IN WITNESS THEREOF, I have hereunto 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 and seven A.D.

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 January 8, 2007 and January 22, 2007 and the special meeting held January 3, 2007. After some discussion, Councilmember Ray Linseisen made a motion to approve the Wharton City Council minutes of the regular meetings held January 8, 2007 and January 22, 2007 and the special meeting held January 3, 2007 as presented. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The sixth item on the agenda was a report by Mr. Wayne Neal, Texas Mid-Gulf Cablevision.

City Manager Andres Garza, Jr. stated that the City Staff had begun to receive cable customer complaints regarding the notice on the cable billing statements that Fox Sports Network would no longer be provided to the Wharton customers. He then presented a copy of the complaint received from Mr. Bernard Morris, 518 Lily Lane, regarding the discontinued service. He also presented a copy of the email dated February 2, 2007 from Ms. Sharon Joines regarding a petition that could be submitted to the Fox Sports Network regarding continued service. He stated that Mayor Bryce D. Kocian and himself met with Mr. Wayne Neal manager of Texas Mid-Gulf Cablevision on Tuesday, February 6, 2007 to discuss the change in service. He stated that Mr. Neal indicated that the channel was being discontinued due to the cost Fox Sports Network offered the cable company to pay for the sports channel. He stated that should Texas Mid-Gulf pay the new higher cost to provide the channel, then the cost would be handed down to the cable customers. He stated that Mr. Neal also stated that the cost was higher since the City of Wharton was within a 75 mile radius of the broadcasting facility. He stated that he had requested Mr. Neal to attend the meeting to provide a report to the City Council concerning the cable company and the service that was being provided. He then presented a copy of the email dated February 7, 2007 informing Mr. Neal of the meeting. He stated that unfortunately, the City does not have any authority to dictate to the cable company what channels it should carry, nor has any control of the costs for the service. He stated that under Senate Bill 5 of the Texas Legislature, as soon as the current contract with Texas Mid-Gulf expires February 8, 2010, the franchising authority would transfer to the State of Texas. He stated that Mayor Bryce D. Kocian and himself felt the City Council needed to be informed in order to answer the citizens questions.

Mr. Wayne Neal addressed the City Council and stated that the reason for discontinuation of the Fox Sports Network channel was due to a price increase. He stated that the cost of the channel had increased nine times or 21% over the past two years, with 15% towards programming. He stated that Texas Mid-Gulf Cablevision was still negotiating with Fox Sports Network. He stated that the cities that were inside the 75 mile radius were paying 72% more then the cities outside the 75 mile radius. Councilmember Don Mueller asked if another channel could be offered, such as the Victoria channel. Mr. Neal stated that Texas Mid-Gulf Cablevision could look at other options. Mayor Bryce D. Kocian stated that there could be a possibility of having customers switch to satellite service. Mr. Neal stated that it was a business decision to discontinue the service. He stated Texas Mid-Gulf Cablevision felt it was unfair for the customers who did not watch sports to be charged for the service, since Fox Sports Network was charging 35% more than any other channel. He stated that the contract with Fox Sports Network and Texas Mid-Gulf Cablevision would expire on December 31, 2007; however Texas Mid-Gulf Cablevision has different terms for each city, which the service for the City of Wharton would discontinue as of February 28, 2007. After some discussion, no action was taken.

The seventh item discussed on the agenda was to review and consider the City of Wharton Santa Fe Trail Electrical Improvement Project:

- A. Penner Electric, Inc. – Change Order No. 1.
- B. Penner Electric, Inc. – Pay Request No. 4.

City Manager Andres Garza, Jr. presented a copy of Change Order No. 1 and Pay Request No. 4 submitted by Penner Electric, Inc. for the Santa Fe Trail Electrical Improvement Project. Mr. Barnaby Evans with Fatter & Evans Architects, Inc. stated that the electrical services were

changed from overhead to underground, electrical wiring was laid for the fountain, and lighting and outlets were installed in the pump shed. He stated that Facilities Maintenance Director Bob Baker and himself had conducted a walk through inspection. After some discussion, Councilmember Ken Freese made a motion to approve Change Order No. 1 for the amount of \$5,595 and Pay Request No. 4 for the amount of \$70,205. Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

The eighth item discussed on the agenda was Public Hearing: Proposed annexation of a certain 312.62 acre tract of land situated in the Alexander Jackson Timber and Prairie Leagues, Abstract No. 34, owned by Ms. Katherine Whorton Harrell, by the City of Wharton, Texas. City Manager Andres Garza, Jr. stated that during the regular January 22, 2007 City Council meeting, the City Council approved Resolution No. 2007-06 establishing the required public hearing dates for the proposed annexation of the 312.62 acres of land owned by Ms. Katherine Whorton Harrell. He then presented a copy of the letter dated January 23, 2007 to Ms. Harrell informing her of the public hearing dates and provided her with a copy of the resolution and public hearing notice. He stated that a public hearing may be held in accordance with the resolution.

Mayor Bryce D. Kocian opened the Public Hearing at 7:30 p.m.

Doris Brandes addressed the City Council and stated that she was in opposition of the annexation of the land. She stated that Mr. George Ingram was arrested. She asked who signed the earnest money check for the property. She asked if a financial statement was given. She asked if the 370 jobs were guaranteed. She stated that a petition was presented to Wharton County regarding the operation of the water bottling company. She asked the City Council to think about her questions. Mr. Ernest J. Macha addressed the City Council and stated that he did not want the city in the county. He stated that he was worried about the water availability, which the company would need to drill larger wells to be effective. He stated that he would oppose the city obtaining a grant for the proposed water bottling company. He stated that he would go to Plan B, which included contacting television stations regarding the water bottling company should the city continue with the annexation.

Mayor Bryce D. Kocian closed the Public Hearing at 7:38 p.m.

The ninth item discussed on the agenda was to review and consider the City Council Finance Committee Recommendation for City Council consideration to on the following for Champs Food, LLC:

A. Public Hearing: A Public Hearing regarding the request for Tax Abatement by Champs Food, LLC for the Taco Bell/KFC Project.

City Manager Andres Garza, Jr. stated that on January 11, 2007, representatives from Champs Food LLC filed an application for tax abatement for the proposed KFC/Taco Bell restaurant. He stated that the City Council Finance Committee met February 1, 2007 and reviewed the tax abatement application and was recommending the City Council consider approving the tax abatement on a maximum value of \$850,000 in accordance with the City's tax abatement guidelines. He stated that the maximum abatement would be 425% over a ten year period as outlined in the City Tax Abatement Policy. He stated that a public hearing must be held in accordance with the tax abatement guidelines and criteria.

Mayor Bryce D. Kocian opened the Public Hearing at 7:40 p.m.

No comments were given.

Mayor Bryce D. Kocian closed the Public Hearing at 7:39 p.m.

B. Resolution: A resolution administratively approving an application for tax abatement submitted by Champs Food, LLC dated the 11th day of January 2007.

City Manager Andres Garza, Jr. stated that a resolution administratively approving the tax abatement application must also be approved. He stated that once those two steps had been completed, the City Council may then consider the ordinance approving the tax abatement agreement. He then presented a copy of the draft resolution administratively approving the tax abatement application. He also presented a copy of the memorandum dated February 7, 2007 administratively approving the application. After some discussion, Councilmember Ray Linseisen made a motion to approve Resolution No. 2007-10, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2007-10**

**A RESOLUTION ADMINISTRATIVELY APPROVING AN APPLICATION FOR
TAX ABATEMENT SUBMITTED BY CHAMPS FOOD LLC DATED THE 11th DAY
OF JANUARY 2007.**

WHEREAS, heretofore previously, the Wharton City Council 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 submitted by Champs Food LLC and has submitted said application to the City Council by memorandum dated the 7th day of February 2007, 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 Wharton City Council receives and makes a part of the record the recommendation of the City Manager, dated the 7th day of February 2007, recommending administrative approval in accordance with the Guidelines and Criteria for Granting Tax Abatements as adopted by Resolution No. 2005-81 on the 28th day of November 2005 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 Wharton City Council, the City Council by this Resolution does administratively approve the application for tax abatement heretofore previously filed by Champs Food LLC on the 11th day of January 2007, 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 12th day of February 2007.

CITY OF WHARTON, TEXAS
By: _____
BRYCE D. KOCIAN

Mayor

ATTEST:

LISA STAVENA

City Secretary

Councilmember V. L. Wiley, Jr. seconded the motion. Councilmember Ken Freese abstained. Councilmembers V. L. Wiley, Jr., Don Mueller, Domingo Montalvo, Jr., and Ray Linseisen voted for the motion. The motion carried.

C. Ordinance: 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 Champs Food, LLC in a form as attached hereto and Marked Exhibit "A" and making certain findings of fact in accordance with the requirements of law.

City Manager Andres Garza, Jr. presented a copy of the draft ordinance and draft tax abatement agreement. He stated that if the value as of January 1, 2008 was not \$100,000 minimum, then the agreement would become void. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Ordinance No. 2007-3, which read as follows:

**CITY OF WHARTON, TEXAS
ORDINANCE NO. 2007- 3**

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 CHAMPS FOOD LLC IN A FORM AS ATTACHED HERETO AND MARKED EXHIBIT "A" AND MAKING CERTAIN FINDINGS OF FACT IN ACCORDANCE WITH THE REQUIREMENTS OF LAW.

WHEREAS, heretofore previously, the Wharton City Council by Ordinance No. 2002-10 did create a Enterprise Zone No. EZ360-091602-WWC upon a certain tract and parcel of property as described in said ordinance on file; and

WHEREAS, an agreement has been reached by and between the City of Wharton and the applicant to enter into a tax abatement agreement; and

WHEREAS, said agreement provides for tax abatement in accordance with certain conditions, restrictions and limitations as therein set out; and

WHEREAS, the Wharton City Council finds and determines that the tax abatement agreement, as attached hereto and marked Exhibit "A" is in accordance with the requirements of law and, therefore, should be approved.

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

Section I. The Mayor, for and on behalf of the City of Wharton, is authorized to sign and execute a tax abatement agreement with Champs Food LLC for the purpose of providing tax abatement with certain conditions, limitations and restrictions as set out in said

agreement and under the requirements of law as specifically set out in Chapter 312 of the Texas Tax Code.

Passed, Approved and Adopted this 12th day of February 2007.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

BY: _____
LISA STAVENA
City Secretary

Councilmember Don Mueller seconded the motion. Councilmember Ken Freese abstained. Councilmembers V. L. Wiley, Jr., Don Mueller, Domingo Montalvo, Jr., and Ray Linseisen voted for the motion. The motion carried.

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

A. Request by Mr. Faisal Zakaria, Champs Food, LLC for approval of a 91 square feet variance from the required 75 square feet to construct a 166 square feet sign at 1406 North Richmond Road, Wm. Kincheloe, Block 65, Lots 4A, 3A-1.

City Manager Andres Garza, Jr. stated that the Planning Commission met Monday, February 5, 2007 and discussed the request. He then presented a copy of the Planning Commission Communications from the meeting and a copy of the memorandum dated February 7, 2007 from Planning Commission Chairman A. J. Rath providing the Planning Commission recommendation for City Council to approve the request. Planning Director Prudencio V. Arriaga, Sr. stated the proposed sign would be 10 feet from Mc Donald's and 35 feet from the front property line of Richmond Road. After some discussion, Councilmember Don Mueller made a motion to approve the request by Mr. Faisal Zakaria, Champs Food, LLC for approval of a 91 square feet variance from the required 75 square feet to construct a 166 square feet sign at 1406 North Richmond Road, Wm. Kincheloe, Block 65, Lots 4A, 3A-1. Councilmember V. L. Wiley, Jr. seconded the motion. Councilmember Ken Freese abstained. Councilmembers V. L. Wiley, Jr., Don Mueller, Domingo Montalvo, Jr., and Ray Linseisen voted for the motion. The motion carried.

B. Request by Mr. Sammy Wisnieski for approval of a preliminary/final re-plat of Brod Acres, Block 16F, 17H-1.

City Manager Andres Garza, Jr. stated that the Planning Commission met Monday, February 5, 2007 and discussed the request. He then presented a copy of the Planning Commission Communications from the meeting and a copy of the memorandum dated February 7, 2007 from Planning Commission Chairman A. J. Rath providing the Planning Commission recommendation for City Council to approve the request. Planning Director Prudencio V. Arriaga, Sr. stated that Lot 17H-1 would be replatted to have the dimensions of 130 feet x 87.34 feet from 130 feet x 87.55 feet. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to

approve the request by Sammy Wisnieski for approval of a preliminary/final re-plat of Brod Acres, Block 16F, 17H-1. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The eleventh item discussed on the agenda was to review and consider the 2007 City of Wharton Election:

- A. **Ordinance:** An ordinance calling for a City Officer's Election, providing for the date, time and place of the election, Notice of the Election, the appointment of Election Officers and Clerks, Accessible Voting System, filing applications, drawing for ballot positions, early voting, and making election returns.

City Manager Andres Garza, Jr. presented a copy of the draft ordinance calling for a Regular City Officers Election of May 12, 2006, Providing for the Date, Time, and Place of the Election, the Appointment of Election Officers and Clerks, Early Voting, Notice of Election, Drawing for Ballot Positions, Filing Applications, and Making Election Returns. Finance Director Joyce Vasut stated that the ordinance calls the election on Saturday, May 12, 2007, Early voting from April 30, 2007 to May 8, 2007 Monday through Friday, and the use of the DRE voting machines being ES&S iVotronic. She stated that paper ballots would be available for provisional and mail out voting only. She stated that the two extended early voting days would be May 1, 2007 and May 8, 2007 from 7:00 a.m. to 7:00 p.m. After some discussion, Councilmember Ray Linseisen made a motion to approve Ordinance No. 2007-4, which read as follows:

**CITY OF WHARTON, TEXAS
ORDINANCE NO. 2007-4**

AN ORDINANCE CALLING FOR A CITY OFFICERS ELECTION, PROVIDING FOR THE DATE, TIME, AND PLACE OF THE ELECTION, NOTICE OF THE ELECTION, THE APPOINTMENT OF ELECTION OFFICERS AND CLERKS, ACCESSIBLE VOTING SYSTEM, FILING APPLICATIONS, DRAWING FOR BALLOT POSITIONS, EARLY VOTING, AND MAKING ELECTION RETURNS.

BE IT ORDAINED by the City Council of the City of Wharton, Texas:

"Section 32 of the City Charter provides that regular city elections will be held annually on the first Saturday in May; however, pursuant to changes in the Texas Election Code, Section 41.001(a), the General Election date has been changed to the second Saturday in May."

"Section 36 of the City Charter provides that any qualified voter of the city who is otherwise qualified to hold elective officer may have his name printed upon the official ballot for the particular office at any election by filing his sworn application and loyalty affidavit as required by the election code of the State of Texas with the city secretary at least thirty (30) days prior to the election day; however pursuant to changes in the Texas Election Code, Sec. 143.007. Filing Period (a) has been changed to the 62nd day before election day and not filed earlier than the 30th day before the date of the filing deadline. Section 143.005(a), Election Code, states that a city does not have authorization in connection with the timely filing of an application, and any charter requirement related to an application's timely filing is superseded by Section 143.007 and other applicable filing provisions prescribed."