

**MINUTES
OF
CITY OF WHARTON
REGULAR CITY COUNCIL MEETING
MARCH 10, 2008**

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

Councilmember absent was: Ray Linseisen.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, City Secretary Lisa Olmeda, Assistant to City Manager Jackie Jansky, Building Official Ronnie Bollom, Police Captain Richard Coleman, Community Services Director Jo Knezek, Emergency Management Director Jim Cooper and Assistant City Attorney Amy Rod.

Visitors present were: David Schroeder with Wharton Economic Development Corporation, Carlos Cotton, Lewis Fortenberry, Larry Sitka, Bruce Williams, David Copeland, Jim Cockrell, and Alan Prigge.

The second item on the agenda was Roll Call and Excused Absences. Councilmember Don Mueller made a motion to excuse the absence of Councilmember Ray Linseisen from the Regular City Council meeting held March 10, 2008. Councilmember David Samuelson seconded the motion. All voted in favor.

The third item on the agenda was Public Comments. Mr. Bruce Williams invited the City Council to attend the Chamber Mixer to be held on Thursday, March 13, 2008 at Texana on Alabama Road, which was hosted by ARC of Wharton. No action was taken.

The fourth item on the agenda was Wharton Moment. Mayor Bryce D. Kocian stated that he attended the State Tennis Tournament in Waco, which Wharton received 4th place in State. No action was taken.

The fifth item on the agenda was to review and consider the Reading of the minutes from the special meetings held February 11, 2008 and the regular meeting held February 25, 2008. After some discussion, Councilmember David Samuelson made a motion to approve the Wharton City Council minutes of the special meetings held February 11, 2008 and the regular meeting held

February 25, 2008 as presented. Councilmember Ken Freese seconded the motion. All voted in favor.

The sixth item on the agenda was a report: Update by Emergency Management Coordinator Jim N. Cooper regarding the Regional Radio Equipment/Tower. City Manager Andres Garza, Jr. stated that during the November 14, 2007 City Council Public Safety Committee meeting, the Committee heard a presentation by Mr. James N. Cooper, Emergency Management Coordinator and Mr. Chuck Rogers, Emergency Management Coordinator from Colorado County regarding a Regional Radio Tower System that would include participation of the City of Wharton, Wharton County, the City of El Campo and the Texas Department of Public Safety. He stated that the Committee Members made a motion to continue the cooperative discussions with the various entities concerning the system. Mr. Cooper stated that in 2007, Fort Bend County received a grant to construct a 400 feet communication tower in Wharton County in order to improve radio coverage. He stated that this would allow all agencies in Wharton County to join the regional radio system. He said that Fort Bend County would turn the ownership of the tower and the building to the Department of Public Safety in Pierce; however the ownership of the equipment and infrastructure would be turned over to the City of Wharton, City of El Campo, and Wharton County. He stated that the costs would be divided among the City of Wharton, El Campo and Wharton County costing approximately \$27,000.00 per year. After some discussion, no action was taken.

The seventh item on the agenda was to review and consider a resolution of the Wharton City Council amending the Emergency Management Coordinator Agreement between the City of Wharton and Mr. James N. Cooper and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. stated that the City Council Public Safety Committee met on Monday, March 10, 2008 at 6:00 p.m. to discuss the request by Mr. James N. Cooper, the City of Wharton Emergency Management Coordinator for the City Council consider increasing his hours of compensation from 70 hours per month to 104 hours per month at a rate of \$20.00 per hour, totaling \$2,080.00 per month. He then presented a copy of his letter dated February 28, 2008 providing his request, and a revised draft agreement, and a draft resolution approving the contract amendment. Councilmember Ken Freese stated that this item should be addressed in the Budget Workshop, since the additional hours were not budgeted. Councilmember Domingo Montalvo, Jr. stated that Mr. Jim Cooper has worked on the Tower Project and other projects for the City and should be compensated for the time. He said that he felt that this was top priority. He stated that Mr. Cooper has worked beyond the time he was requesting. Mr. Jim Cooper stated that the increase would account for three 8 hour days. He stated that he has worked 4 – 5 days a week plus weekends. He stated that he also attended training seminars lasting 28 hours in Austin. He said that he has been working on a number of projects, which were time consuming. He stated that he was also the HGAC Delegate. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2008-18, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2008 - 18**

**A RESOLUTION OF THE WHARTON CITY COUNCIL AMENDING THE EMERGENCY
MANAGEMENT COORDINATOR AGREEMENT BETWEEN THE CITY OF WHARTON**

AND MR. JAMES N. COOPER AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

WHEREAS, The Wharton City Council to amend the agreement with Mr. James N. Cooper to provide the City of Wharton Emergency Management Coordinator Services; and

WHEREAS, The City of Wharton and Mr. Jim N. Cooper wishes to be bound by the conditions of the amended contract; and

WHEREAS, The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute the contract.

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

Section I. The Wharton City Council hereby authorizes Mayor Bryce D. Kocian to execute the amended agreement with Mr. James N. Cooper to act as the City of Wharton Emergency Management Coordinator.

Section II. The City of Wharton and Mr. Jim N. Cooper 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 10th day of March 2008.

CITY OF WHARTON, TEXAS

By: _____
BRYCE D. KOCIAN
Mayor

ATTEST:

LISA OLMEDA

City Secretary

Councilmember David Samuelson seconded the motion. Councilmembers V. L. Wiley, Jr., David Samuelson, Don Mueller, and Domingo Montalvo, Jr. voted for the motion. Councilmember Ken Freese voted against the motion. The motion carried.

The eighth item on the agenda was to review and consider an application submitted by Mr. Douglas Dahmann of Devon Energy Production Company, L.P. to obtain a permit to drill, complete and operate an oil and/or gas well within the City limits of Wharton, Texas:

A. Public Hearing on Application.

Mayor Bryce D. Kocian opened the Public Hearing for Public comments at 7:28 p.m.

No comments were given.

Mayor Bryce D. Kocian closed the Public Hearing at 7:29 p.m.

- B. City Council action regarding the Devon Energy Production Company, L.P. request for approval of the application for a permit to drill, complete and operate an oil and/or gas well within the City Limits of Wharton, Texas.

City Manager Andres Garza, Jr. stated that during the regular February 25, 2008 Wharton City Council meeting, the City Council reviewed the letter dated February 1, 2008 from Mr. Douglas Dahmann of Devon Energy Production Company, L.P. and the application submitted by the company for an oil and/or gas well drilling permit. He then presented a copy of the letter and application. He said that during the City Council meeting, the City Council set the required public hearing date in accordance with the City of Wharton Code of Ordinances, Chapter 50, Article II Permit to be held March 10, 2008 at 7:00 p.m. He then presented a copy of the legal notice of public hearing that was submitted to the Wharton Journal Spectator. He said that once the public hearing was held, the City Council may take action regarding the approval or denial of the permit. After some discussion, Councilmember Don Mueller made a motion to approve the application submitted by Mr. Douglas Dahmann of Devon Energy Production Company, L.P. to obtain a permit to drill, complete and operate an oil and/or gas well within the City limits of Wharton, Texas. Councilmember David Samuelson seconded the motion. All voted in favor.

The ninth item on the agenda was to review and consider the 2007 Annual Report regarding the City of Wharton Resolution No. 2001-67, Racial Profiling Policy. City Manager Andres Garza, Jr. presented a copy of the Wharton Police Department Annual Contact Report that had been submitted in accordance with the City of Wharton Resolution No. 2001-67, Racial Profiling Policy. Police Captain Richard Coleman stated that no complaints were received. He stated that citations by race or ethnicity reflected:

Caucasian/White	951	47.3%
Hispanic	549	27.3%
Black	485	24.1%
Asian/Pacific Islander	20	1.0%
Unknown	5	0.2%
American Indian/Alaskan	2	0.1%

After some discussion, Councilmember Ken Freese made a motion to approve the 2007 Annual Report regarding the City of Wharton Resolution No. 2001-67, Racial Profiling Policy as presented. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The tenth item on the agenda was to review and consider an ordinance amending the City of Wharton Code of Ordinances, Chapter 34, Health and Sanitation; Article II. Cleanliness and Sanitation of Premises; Litter; Section 34-51 Accumulation or Growth of Weeds or Brush through Section 34-55. Same—Performance by City; Providing that a violation of the ordinances or any part of the code as adopted hereby shall constitute a penalty upon conviction of a fine; providing for severability and setting an effective date. City Manager Andres Garza, Jr. stated that during the regular November 26, 2007 Wharton City Council meeting, the City Council reviewed proposed amendments to the Code of Ordinances, Chapter 34 Health and Sanitation; Article II. Cleanliness and Sanitation of Premises; Littering. He then presented a copy of the minutes from the meeting that indicated the item was deferred pending clarification of certain

issues. He said that City Attorney Paul Webb had reviewed the proposed changes. He said that on February 29, 2008, the City Council Public Health Committee reviewed the proposed amendments and was recommending the City Council consider adopting an amendment regarding the hay lot permits. He then presented a draft copy of the proposed amendment to the ordinance. Building Official Ronnie Bollom stated that the changes included that the property owner would be responsible to obtain a permit for a 5-acre tract or more. Councilmember Don Mueller requested the height be increased from 10 inches to 12-14 inches. After some discussion, Councilmember David Samuelson made a motion to approve an ordinance amending the City of Wharton Code of Ordinances, Chapter 34, Health and Sanitation. Councilmember Ken Freese seconded the motion. Councilmembers David Samuelson and Ken Freese voted for the motion. Councilmembers V. L. Wiley, Jr., Don Mueller, and Domingo Montalvo, Jr. voted against the motion. The motion failed.

The eleventh item on the agenda was to review and consider a resolution of the Wharton City Council authorizing the submission of formal comments and recommendations to the Texas Department of Transportation for consideration during the future development of the I-69/Trans Texas Corridor. City Manager Andres Garza, Jr. stated that on February 11, 2008, the Texas Department of Transportation held a Public Hearing at the Wharton High School to receive formal comments from citizens and businesses concerning the proposed I-69/Trans Texas Corridor Project. He said that the City Council Public Works Committee met on Friday, March 7, 2008 and attended a special session of the Wharton County Commissioner's Court held at the Wharton County Annex to discuss the Trans Texas Corridor. He then presented a copy of the resolutions that were adopted by the City of El Campo and Wharton County for submission to the State. He said that the deadline for submitting public comments was March 19, 2008. He then presented a draft resolution. Councilmember Don Mueller stated that I-69 would be built when the road was needed. After some discussion, Councilmember Don Mueller made a motion to approve Resolution No. 2008-19, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2008-19**

A RESOLUTION OF THE WHARTON CITY COUNCIL SUPPORTING THE DEVELOPMENT OF INTERSTATE 69 (I-69) ALONG THE EXISTING U.S. 59 HIGHWAY RIGHT-OF-WAY AND OPPOSING ANY OTHER ALTERNATIVES TO ITS DEVELOPMENT.

WHEREAS, the Trans-Texas Corridor plan is being implemented as a result of H.B. 3588, which granted the Texas Transportation Commission authority to address the State of Texas' growing transportation needs; and

WHEREAS, the Trans-Texas Corridor would dissect rural Texas by creating expansive toll roads not accessible to local public roads; and

WHEREAS, if the Trans-Texas Corridor is built as proposed in Wharton County, its right-of-way would separate farms, homesteads and negatively impact the economy of local communities along its pathway; and

WHEREAS, the City of Wharton, Texas, has for many years supported the I-69 initiative, which is designed to seek Federal Government assistance to transform the U.S. Highway 59 into interstate status, utilizing and/or expanding the existing right-of-way and therefore would minimize the need to acquire new right-of-way; and

WHEREAS, the Trans-Texas Corridor concept with its limited access and alternate route would not be an acceptable substitute to the I-69 initiative and would be opposed by most of the citizens in the City of Wharton.

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

Section I. The Wharton City Council opposes the Trans-Texas Corridor concept and any alternative route for the proposed project except for the utilization of the U.S. Highway 59 right-of-way.

Section II. The Wharton City Council supports the proposed I-69 project along U.S. Highway 59 and encourages the Texas Department of Transportation to make every effort to utilize the existing roadways and rights-of-way and not create new parallel corridors.

Section III. This resolution shall become effective immediately upon its passage.

CITY OF WHARTON

By: _____
BRYCE D. KOCIAN, Mayor

ATTEST:

LISA OLMEDA, City Secretary

Councilmember David Samuelson seconded the motion. All voted in favor.

The twelfth item on the agenda was Execution Session: City Council may adjourn into an Executive Session in accordance with Section 551.072 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: Real Estate matters regarding a called 5.05 acre tract of land, situated in the Alexander Jackson Timber League, Abstract No. 34, in the City of Wharton, Wharton County, Texas, being a survey of that same real property conveyed from KCT Railway Corporation to Larry Sitka.

Mayor Bryce D. Kocian adjourned into Executive Session at 8:08 p.m.

Mayor Bryce D. Kocian returned to Open Session at 8:44 p.m.

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

A. **Review & Consider:** Real Estate matters regarding a called 5.05 acre tract of land, situated in the Alexander Jackson Timber League, Abstract No. 34, in the City of Wharton, Wharton County, Texas, being a survey of that same real property conveyed from KCT Railway Corporation to Larry Sitka.

Mayor Bryce D. Kocian stated that no action would be taken on this item.

The fourteenth 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. stated that during the special February 11, 2008 City Council meeting, Mr. Larry Sitka requested the items concerning variances to the City of Wharton Code of Ordinances, Chapter 66 Signs and Advertising. He then presented a copy of the letter submitted by Mr. Sitka to the City Council and a copy of maps indicating the locations of the placement of the proposed signs. He said that the City Council did not take action on Mr. Sitka's request pending the submission of additional information concerning a survey of the property. He said that the City had received the needed information, and the Public Works Committee was recommending that the City Council consider the request. Councilmember Don Mueller asked Larry Sitka if the sign could be centered on FM 1301 making the variance request 35 feet instead of 25 feet. Mr. Sitka stated that the sign could be centered. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve 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:

35 to 40 feet from the property line setback from the required 50 feet along FM 1301 between Fulton and Rusk Street, and 360 feet sign setback from the required 500 feet along FM 102 near Hendon Street with waiver of variance fees in exchange of obtaining the easements for the streets located on the property owned by Mr. Sitka on FM 102.

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

The fifteenth item on the agenda was to review and consider the City of Wharton Sunny Lane Utility and Roadway Extension Project:

A. Bid Tabulation.

B. **Resolution:** A resolution of the Wharton City Council awarding the bid for the Sunny Lane Utility and Roadway Extension Project and authorizing the Mayor of the City of Wharton to execute the agreement.

City Manager Andres Garza, Jr. stated that the bid opening for the City of Wharton Sunny Lane Utility and Roadway Extension Project was scheduled for Monday, March 10, 2008. He then presented Mr. Carlos Cotton, P.E. of Jones & Carter, Inc. recommendation, and a draft resolution awarding the project. Mr. Carlos Cotton stated that five bids were received with the lowest qualified bid was from Economic Construction, Inc. for the amount of \$147,082.39, which he

recommended approving. Mr. Garza stated that the City received \$115,500 from Wharton RP towards the project and the City would notify Wharton RP of the bids received and request the excess of the \$115,500.00 for final award of the contract. After some discussion, Councilmember David Samuelson made a motion to approve the bid contingent upon receiving the remaining funds from Wharton RP and approve Resolution No. 2008-20, which read as follows:

**CITY OF WHARTON
RESOLUTION NO. 2008 - 20**

A RESOLUTION OF THE WHARTON CITY COUNCIL AWARDING THE BID TO ECONOMIC CONSTRUCTION, INC. FOR THE SUNNY LANE UTILITY AND ROADWAY EXTENSION PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.

- WHEREAS,** On March 10, 2008, the City of Wharton received bids for the City of Wharton Sunny Lane Utility and Roadway Extension Project; and
- WHEREAS,** the Wharton City Council wishes to award the bid to Economic Construction, Inc. in the amount of \$147,082.39 as per bid specifications; and
- WHEREAS,** the City of Wharton and Economic Construction, Inc. wishes to be bound by the conditions set forth in the agreement; and
- WHEREAS,** The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute the agreement; and
- WHEREAS,** this resolution is passed in accordance with the quotes provided.

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 awards the bid to Economic Construction, Inc. in the amount of \$147,082.39 as per bid specifications for the City of Wharton Sunny Lane Utility and Roadway Extension Project.
- Section II.** That the City of Wharton and Economic Construction, Inc. are hereby bound by the conditions set forth in the agreement.
- Section III.** That the Mayor of the City of Wharton is hereby authorized to execute the agreement.
- Section IV.** That this resolution shall become effective immediately upon its passage.

Passed, Approved, and Adopted this 10th of March 2008.

CITY OF WHARTON, TEXAS

By:

BRYCE D. KOCIAN

