

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

Mayor Pro-Tem Don Mueller declared a Regular Meeting duly open for the transaction of business at 7:00 P.M. Councilmember V. L. Wiley, Jr. led the opening devotion and then Mayor Pro-Tem led the pledge of allegiance.

Councilmembers present were: Councilmembers V. L. Wiley, Jr.,
David Samuelson, Ken Freese, Don Mueller,

Councilmember absent was: Domingo Montalvo, Jr., Ray Linseisen, and Mayor Bryce
D. Kocian.

Staff members present were: City Manager Andres Garza, Jr., Public Works Director Phil
Bush, Building Official Ronnie Bollom, EMS Director John
Kowalik, Police Captain Richard Coleman, Community
Services Director Jo Knezek, Public Works Secretary Amy
Owens, Emergency Management Coordinator Jim Cooper,
and Assistant City Attorney Amy Rod.

Visitors present were: Benjamin Sharp with Wharton Journal Spectator, David
Schroeder with Wharton Economic Development
Corporation, Carlos Cotton, Brandi Dougherty, Diane
Matula, Jim Cockrell, Walter Garrett, Robert Ripple, Jack
Moses, Bob Whitley, Julia Moses, Rick Scholwin, Jr.,
Ludvik Matula, Raymond Fisher, and Agnes Wagner.

The second item on the agenda was Roll Call and Excused Absences. Councilmember David Samuelson made a motion to excuse the absence of Councilmembers Domingo Montalvo, Jr., Ray Linseisen and Mayor Bryce D. Kocian from the Regular City Council meeting held March 12, 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 Ken Freese publicly commended the City Staff on the Santa Fe Trail. He stated that he had been receiving positive comments. No action was taken.

The fifth item on the agenda was a proclamation proclaiming April 2007 as Fair Housing Month in the City of Wharton, Texas. Mayor Pro-Tem Don Mueller presented the proclamation, which read as follows:

WHEREAS, Title VII of the Civil Rights Act of 1968, as amended, prohibits discrimination in housing and declares it is a national policy to provide, within constitutional limits, for fair housing in the United States; and,

WHEREAS, The principal of Fair Housing is not only national law and national policy, but a fundamental human concept and entitlement for all Americans; and,

WHEREAS, The thirty-ninth anniversary of this National Fair Housing Law, during the month of April, provides an opportunity for all Americans to recognize that complete success in the goal of equal housing opportunity can only be accomplished with the help and cooperation of all Americans.

NOW, THEREFORE, I, Bryce D. Kocian, by the authority vested in me as Mayor of the City of Wharton, Texas, do hereby proclaim April as Fair Housing Month in the City of Wharton and do hereby urge all the citizens of this locality to become aware of and support the Fair Housing Law.

IN WITNESS THEREOF, I have set my hand and caused the seal of the City of Wharton to be affixed this 12th day of March in the year of our Lord two thousand seven A.D.
No action was taken.

The sixth item on the agenda was to review and consider the reading of the minutes from the regular meetings held February 12, 2007 and February 26, 2007. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve the Wharton City Council minutes of the regular meetings held February 12, 2007 and February 26, 2007 as presented. Councilmember Ken Freese seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider an update by Mr. Walter Garrett regarding the Caney Creek Conservation Foundation. City Manager Andres Garza, Jr. presented a copy of the letter dated March 8, 2007 from Mr. Walter Garrett, Director of the Caney Creek Conservation Foundation requesting to be placed on the City Council agenda in order to provide an update concerning the efforts made by the foundation to preserve Caney Creek at the location the foundation leased from the City of Wharton. He stated that the Board of Directors for the foundation included Mr. Walter Garrett, Mr. Robert Ripple and Mr. Carter Miska. Mr. Walter Garrett addressed the City Council and stated that the brush had been removed by Wharton County Commissioner Mickey Reynolds. He publicly thanked the City Council for allowing the development of the park site. Mr. Robert Ripple addressed the City Council and presented T-Shirts to the City Council. He stated that the site became a Science Project for Wharton, El Campo, Boling, Tidehaven, Van Vleck, and Palacios. He stated that the sponsors included Gulf of Mexico Foundation, Texas Transportation Institute, LCRA, Hartz Chicken, South Texas Nuclear Operating Company (STP), Caney Creek Conservation Foundation, TCEQ, Valero, United States Environmental Protection Agency, Tidehaven I.S.D., Mc Donald's and Boys & Girls Clubs of El Campo & Palacios. No action was taken.

The eighth item on the agenda was to review and consider the request by Mrs. Brandi Dougherty for City of Wharton assistance with the Wharton County Farmers Market to be held May 17, 2007 through July 7, 2007 as follows:

- A. Closure of either or both Fulton Street and Houston Street from the hours of 8:00 a.m. – 1:00 p.m.
- B. Provide solid waste disposal containers with liners.
- C. Use of Riverfront Park Restrooms and signage to indicate location.
- D. Authorization to place a Market Banner at the City of Wharton entrance sign structure located near Nan Ya Plastics on FM 102.

City Manager Andres Garza, Jr. presented a copy of the email dated March 1, 2007 from Mrs. Brandi Dougherty on behalf of the Wharton County Farmers Market requesting Items A through C needed for the Wharton County Farmers Market to be held May 17, 2007 through July 1, 2007. He also presented a copy of the email dated March 6, 2007 from Ms. Dougherty requesting City Council authorization to place a Market Banner at the City of Wharton entrance sign structure located near Nan Ya Plastics on FM 102. Mrs. Diane Matula stated that she was the Chair of the Farmers Market Committee and stated that the season would begin in May 2007. She requested City Council approval for the closure of the street, solid waste disposal containers, and the use of the restrooms along with signage for the duration ending July 1, 2007. Mrs. Dougherty addressed the City Council and requested approval for placement of a banner on the City of Wharton entrance sign structure. She stated that when the Wharton Freedom Fest would be held, the banner for the Farmers Market could be removed in order to advertise for the Wharton Freedom Fest. After some discussion, Councilmember Ken Freese made a motion to approve the request by Mrs. Brandi Dougherty for City of Wharton assistance with the Wharton County Farmers Market to be held May 17, 2007 through July 7, 2007 for the closure of either or both Fulton Street and Houston Street from the hours of 8:00 a.m. – 1:00 p.m., solid waste disposal containers with liners, use of Riverfront Park Restrooms and signage to indicate location, and authorization to place a Market Banner at the City of Wharton entrance sign structure located near Nan Ya Plastics on FM 102. Councilmember David Samuelson seconded the motion. All voted in favor.

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

- A. Request by Mr. Faisal Zakaria, Vice President, Champs Food, LLC for a preliminary/final re-plat of Wm. Kincheloe, Block 65, Lots 4A, 3A-1.

City Manager Andres Garza, Jr. stated that the Planning Commission met March 5, 2007 and discussed the item. He presented a copy of the memorandum dated March 6, 2007 from Planning Commission Chairman A. J. Rath providing the Commission's recommendation for City Council consideration to approve the request. Building Official Ronnie Bollom stated that the re-plat consisted of subdividing into two other lots. City Manager Andres Garza, Jr. stated that Lot 3A-1 would have access on Richmond Road and Lot 4A would have access on N. Fulton Street. After some discussion, Councilmember David Samuelson made a motion to approve the request by Mr. Faisal Zakaria, Vice President, Champs Food, LLC for a preliminary/final re-plat of Wm. Kincheloe, Block 65, Lots 4A, 3A-1. Councilmember V. L. Wiley, Jr. seconded the motion. Councilmember Ken Freese abstained. The motion carried.

B. Request by Mr. Bob Whitley, Idlewood Homes; Hawes 4th Addition, Block 19, Lot 14 of unrecorded subdivision and Hawes 5th Addition, Block 26, Lots 7 through 12 and Block Block 40, Lots 1 through 19, an unrecorded subdivision:

1. Approval of a ten (10) feet variance from the required sixty (60) feet minimum lot width.
2. Approval of a preliminary/final re-plat.

City Manager Andres Garza, Jr. stated that the Planning Commission met March 5, 2007 and discussed the item. He presented a copy of the memorandum dated March 6, 2007 from Planning Commission Chairman A. J. Rath providing the Commissions recommendation for City Council consideration to approve the request. Building Official Ronnie Bollom stated that Mr. Whitley was requesting a 10 feet variance from the required 60 feet minimum lot width for Lots 1-19, and Lots 7-12. After some discussion, Councilmember David Samuelson made a motion to approve the request by Mr. Bob Whitley, Idlewood Homes; Hawes 4th Addition, Block 19, Lot 14 of unrecorded subdivision and Hawes 5th Addition, Block 26, Lots 7 through 12 and Block Block 40, Lots 1 through 19, an unrecorded subdivision for a ten (10) feet variance from the required sixty (60) feet minimum lot width, and the preliminary/final re-plat. Councilmember Ken Freese seconded the motion. All voted in favor.

C. Request by Ms. Ana Quintero, property owner to construct a residence over a property line located at 1208 Kingston Drive; Briargrove, Block 5, Lot 11.

City Manager Andres Garza, Jr. stated that the Planning Commission met March 5, 2007 and discussed the item. He presented a copy of the memorandum dated March 6, 2007 from Planning Commission Chairman A. J. Rath providing the Commissions recommendation for City Council consideration to approve the request. Building Official Ronnie Bollom stated that Ms. Quintero owned Lots 11A & 11B and requested to construct a resident over the property line. After some discussion, Councilmember David Samuelson made a motion to approve the request by Ms. Ana Quintero, property owner to construct a residence over a property line located at 1208 Kingston Drive; Briargrove, Block 5, Lot 11. Councilmember Ken Freese seconded the motion. All voted in favor.

The tenth item on the agenda was to review and consider the request by Mr. Ron Wittig, Coastal Warehouse, for City Council approval to construct a screw conveyor across Sorrell Street to connect the two (2) existing grain warehouses. City Manager Andres Garza, Jr. stated that the City Council Public Works Committee met March 6, 2007 and discussed the request by Mr. Ron Wittig of Coastal Warehouse regarding the construction of a screw conveyor across Sorrell Street to connect two existing grain warehouses. He then presented a copy of the fax dated March 1, 2007 providing Mr. Wittig's request. He also presented a copy of the diagram of the proposed conveyor and a map that indicated the location of the two existing warehouses. He stated that the Public Works Committee was recommending the City Council consider granting a 10 feet aerial easement to allow the conveyor to be constructed. He stated that the easement agreement, which was being prepared by Jones & Carter, Inc., would include provisions of who would be responsible for the dismantling of the conveyor upon termination of its use and/or deterioration. Councilmember Ken Freese requested that a requirement for maintaining the conveyor, while in use, should be added to the agreement. After some discussion, Councilmember David Samuelson made a motion to approve the request by Mr. Ron Wittig, Coastal Warehouse, for City Council

approval to construct a screw conveyor across Sorrell Street to connect the two (2) existing grain warehouses. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The eleventh item on the agenda was to review and consider an ordinance amending the City of Wharton Code of Ordinances, Chapter 18 Building and Construction, Article VI Flood Damage Prevention by amending Section 18-302 Definitions; Section 18-304 Administration, Item D Variance Procedures by Adding Sub-Item 12, Expiration Date for Approved Variance Applications; and Adding Section 18-305 Provisions for Flood Hazard Reduction Item (b)7 Appurtenant (Accessory) Structure; Providing that a violation of the ordinance or any part of the code as adopted hereby shall constitute a penalty of a fine upon conviction; Providing for separability and setting an effective date. City Manager Andres Garza, Jr. stated that the City Council Public Works Committee met March 6, 2007 and discussed the draft ordinance. He stated that the Committee was recommending the City Council consider approving the ordinance. Building Official Ronnie Bollom stated an expiration date was added for six months and one extension for a period not more than 90 days for a justifiable cause. He stated that Planning Director Prudencio Arriaga used FEMA as a model for the amendment to the Ordinance. City Manager Andres Garza, Jr. stated that the accessory structure should not exceed 600 square feet. He stated if the accessory structure would be more than 600 square feet, then an elevation certificate would be required to be submitted and the structure elevated. After some discussion, Councilmember Ken Freese made a motion to approve Ordinance No. 2007-06, which read as follows:

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

AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 18, BUILDING AND CONSTRUCTION, ARTICLE VI FLOOD DAMAGE PREVENTION, BY AMENDING SECTION 18-302 DEFINITIONS; SECTION 18-304 ADMINISTRATION, ITEM D VARIANCE PROCEDURES BY ADDING SUB-ITEM 12, EXPIRATION DATE FOR APPROVED VARIANCE APPLICATION; AND ADDING SECTION 18-305 PROVISIONS FOR FLOOD HAZARD REDUCTION ITEM (b)7 APPURTENANT (ACCESSORY) STRUCTURE; PROVIDING THAT A VIOLATION OF THE ORDINANCE OR ANY PART OF THE CODE AS ADOPTED HEREBY SHALL CONSTITUTE A PENALTY OF A FINE UPON CONVICTION; PROVIDING FOR SEPARABILITY AND SETTING AN EFFECTIVE DATE.

BE IT ORDAINED by the City Council of the City of Wharton, Texas, that Chapter 18, Building and Construction, Article VI Flood Damage Prevention, Section 18-302 Definitions; Section 18-304 Administration, Item (d) Variance Procedures; and Section 18-305 Provisions for Flood Hazard Reduction Item (b) be amended as follows:

Sec. 18-302 Definitions.

APPURTENANT (ACCESSORY) STRUCTURE – means a structure (such as a garage or a storage shed) which is on the same parcel of property as the principle structure and the use of which is incidental to the use of the principal structure.

Sec. 18-304 Administration.

(d) Variance Procedures:

(12) EXPIRATION DATE FOR APPROVED VARIANCE APPLICATION

- (a) The expiration date for an approved variance application will be six months from the date of approval of the variance. If construction has not commenced within that six-month period, the applicant must re-apply for the variance.
- (b) One extension, for a period of not more than 90 days after the expiration of the six-month period, may be allowed. The extension shall be requested in writing and justifiable cause demonstrated. When a request for an extension is approved, the floodplain administrator shall grant the extension in writing. Any person or persons aggrieved by the decision of the floodplain administrator may appeal such decision to the Appeal Board.

Sec. 18-305 Provisions for Flood Hazard Reduction Item (b)7 Appurtenant (Accessory) Structure.

- (7) Appurtenant (accessory) structure - The construction of such structure must satisfy all the following standards in Special Flood Hazard Areas:
- (a) Structure is low valued and represents a minimal investment.
 - (b) Structure shall not exceed 600 square feet in size.
 - (c) Structure shall be detached from the principle structure.
 - (d) Structure shall be unfinished on the interior.
 - (e) Structure can be used only for parking and limited storage.
 - (f) Structure shall not be used for human habitation (including work, sleeping, living, cooking or for restroom areas).
 - (g) Electrical appurtenances and service equipment must be elevated to 12 inches minimum above the BFE or floodproofed.
 - (h) Structure is constructed and/or placed on building site so as to offer minimum resistance to the flow of floodwaters.
 - (i) Structure is designed to have low flood damage potential i.e. constructed with flood resistance materials (metallic or preservatively treated) to at least 12 inches above the BFE.
 - (j) Structure is firmly anchored to prevent flotation, collapse and lateral movement.
 - (k) Openings (one square inch opening per square foot of floor space) to relieve hydrostatic pressure during a flood shall be provided below the BFE.
 - (l) In addition, structure must meet all other applicable construction codes.

Fine and Penalty for Violations

Sec. 18-145. Penalties. Any person violating any of the terms or provisions of this article shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than \$100.00 nor more than the maximum provided in section 1-5 for each offense. If the terms or provisions of this

article are violated by any corporation or firm, the officers and agents actively in charge of the business of such corporation or firm and the person actually performing the work for such corporation or firm shall be subject to the penalties provided in this section.

Separability

If any court of competent jurisdiction rules that any section, subsection, sentence, clause, phrase, or portion of this ordinance is invalid or unconstitutional, any such portion shall be deemed to be a separate, distinct, and independent provision, and any such ruling shall not affect the validity of the remaining portions hereof.

Effective Date

This Ordinance shall become effective on the 23rd day of March 2007 at 12:01 a.m.

Passage and Approval

PASSED AND APPROVED by the City Council of the City of Wharton, Texas, on the 12th day of March 2007.

CITY OF WHARTON, TEXAS

By: _____

DON MUELLER

Mayor Pro-Tem

ATTEST:

LISA STAVENA
City Secretary

APPROVED AS TO FORM:

PAUL WEBB
City Attorney

Published in the Wharton Journal Spectator on Wednesday, March 14, 2007 and March 21, 2007. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The twelfth item on the agenda was to review and consider an ordinance amending the City of Wharton Code of Ordinances, Chapter 18, Building and Construction, Article III Construction Codes by the addition of Section 18-78, Exterior Building (Façade) Design Standards; Providing that a violation of the ordinance or any part of the Code as adopted hereby shall constitute a penalty upon conviction of a fine; Providing for separability and setting an effective date. City Manager Andres Garza, Jr. stated that the City Council Public Works Committee met March 6, 2007 and discussed the draft ordinance. He stated that the Committee was recommending the City Council consider approving the ordinance. Building Official Ronnie Bollom stated that the façade requirement would apply to all new structures or when 20% of the building was altered or repaired. He stated that the façades that would face or would be adjacent to any roadway would

be built with any approved building materials other than metal. City Manager Andres Garza, Jr. stated that ordinance would allow the City to develop a criteria and establish a standard. After some discussion, Councilmember Ken Freese made a motion to approve Ordinance No. 2007-07, which read as follows:

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

AN ORDINANCE AMENDING THE CITY OF WHARTON CODE OF ORDINANCES, CHAPTER 18, BUILDING AND CONSTRUCTION, ARTICLE III CONSTRUCTION CODES BY THE ADDITION OF SECTION 18-78, EXTERIOR BUILDING (FACADE) DESIGN STANDARDS; PROVIDING THAT A VIOLATION OF THE ORDINANCE OR ANY PART OF THE CODE AS ADOPTED HEREBY SHALL CONSTITUTE A PENALTY UPON CONVICTION OF A FINE; PROVIDING FOR SEPARABILITY AND SETTING AN EFFECTIVE DATE.

BE IT ORDAINED by the City Council of the City of Wharton, Texas, that Chapter 18, Building and Construction, Article III Construction Codes be amended as follows:

Sec. 18-78. Exterior Building (facade) Design Standards.

- (a) The standards and criteria contained within are deemed to be minimum requirements and shall apply to all new structures. A Facade Design Plan of the entire project shall be submitted with the site plan review documents.
- (b) The standards and criteria contained within are deemed to be minimum requirements and shall apply when a cumulative twenty (20%) percent or more of the structure's exterior wall square footage is altered or repaired. A Facade Design Plan of the entire project shall be submitted when applying for the building permit.
- (c) Building materials:
 - (1) Exterior front walls (front facades) shall be a minimum twenty-five (25%) percent transparent in order to promote personal safety by permitting visibility between building occupants and outdoor pedestrians and drivers.
 - (2) Exterior front walls, exterior side walls and exterior rear walls (front, side and rear facades) that face or are adjacent to any roadway, shall be built with any approved building materials other than metal.
 - (3) All exteriors (facades) of buildings in a shopping center or in other business developments shall have similar architectural design and materials.
- (d) Exemptions:
 - (1) Single-family detached dwellings may be exempt from such compliance.
 - (2) Painting the exterior of a structure shall not be considered an alteration or repair for the purposes of this section.

Secs. 18-79.--18-95. Reserved.

