

MINUTES  
OF  
CITY OF WHARTON  
REGULAR CITY COUNCIL MEETING  
JULY 10, 2006

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, Domingo Montalvo, Jr., and Ray Linseisen.

Councilmember absent was: None.

Staff members present were: City Manager Andres Garza, Jr., Finance Director Joyce Vasut, City Secretary Lisa Stavena, Assistant to City Manager Jackie Jansky, Planning Director Prudencio Arriaga, Sr., Police Chief Tim Guin, Community Services Director Jo Knezek, Building Official Ronnie Bollom, Public Works Director Phil Bush, Municipal Court Judge Mary Garcia, and City Attorney Paul Webb.

Visitors present were: Benjamin Sharp with Wharton Journal Spectator, David Schroeder, Lewis Fortenberry, Carlos Cotton, and Mr. Joseph Abraham.

The third item on the agenda was Public Comments. Councilmember Domingo Montalvo, Jr. stated that Channel 11 would be showing a program at 10:00 p.m. on Water Wars. No action was taken.

The fourth item on the agenda was Wharton Moment. Councilmember Ray Linseisen publicly commended Councilmember David Samuelson and his wife, Becky Samuelson for all their hard work and contributions toward the Habitat for Humanity project. Councilmember David Samuelson publicly commended the 200 donators and approximately 80 volunteers for their hard work and contributions toward the project. He stated that construction on the second home would begin in September 2006. 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 June 12, 2006 and June 26, 2006 and the special meeting held June 5, 2006. After some discussion, Councilmember V. L. Wiley, Jr. made a motion to approve the Wharton City Council minutes of the regular meetings held June 12, 2006 and June 26, 2006 and the special meeting held June 5, 2006 as presented. Councilmember Don Mueller seconded the motion. All voted in favor.

The sixth item on the agenda was to review and consider the recommendation by the Planning Commission for City Council consideration of a request by Mr. James Jackson to construct a 37' x 42' home over an interior property line located at 507 Outlar; Elizabeth Branch, Lots 6 & 7 for the Special Needs Grant. City Manager Andres Garza, Jr. presented a copy of the memorandum dated July 7, 2006 from Planning Commission Chairman A. J. Rath recommending the City Council consider approving a request by Mr. James Jackson to construct a 37' x 42' home over an interior property line located at 507 Outlar; Elizabeth Branch, Lots 6 & 7 under the Special Needs Grant. Planning Director Prudencio V. Arriaga, Sr. stated that the project would be completed by the end of the year. After some discussion, Councilmember David Samuelson made a motion to approve the request by Mr. James Jackson to construct a 37' x 42' home over an interior property line located at 507 Outlar; Elizabeth Branch, Lots 6 & 7 under the Special Needs Grant. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

The seventh item on the agenda was to review and consider the Southern Pacific Railroad Depot Restoration Project:

A. Resolution: A resolution of the Wharton City Council accepting the Bill of Sale and Severance Agreement for the Southern Pacific Railroad Depot property between the Texas Mexican Railroad Company and the City of Wharton and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. presented a copy of the draft resolution approving the Bill of Sale and Severance that was required for the Southern Pacific Railroad Depot property. He stated that currently, the City of Wharton had a 25-year lease agreement with the Texas Mexican Railway Company for the depot building and property. He said that since the restoration project was nearing completion, Kansas City Southern Railroad Company had notified the City that only the depot building could be donated to the City and would not include the land due to liens against the land. City Attorney Paul Webb stated that he had reviewed the Bill of Sale and Severance documents and recommended that City Council take no action, since the bill of sale reflected only the building. He stated if the City would accept the building without the land, then Texas Mexican Railway Company could make the City remove the building. No action was taken.

B. Resolution: A resolution of the Wharton City Council accepting a ground lease between the City of Wharton and the Texas Mexican Railway Company for the Southern Pacific Railroad Depot property and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. presented a copy of the draft resolutions approving the Ground Lease agreement that was required for the Southern Pacific Railroad Depot property. City Attorney Paul Webb stated that he recommended the City Council take no action. No action was taken.

C. A & A Constructors, Inc. – Change Order No. 1.

City Manager Andres Garza, Jr. presented a copy of the Change Order No. 1 submitted by A & A Constructors, Inc. for the construction of the depot. After some discussion, Councilmember Ken Freese made a motion to approve Change Order No. 1 in the amount of \$7,258.00 and the contract time to be changed by 101 days. Councilmember Ray Linseisen seconded the motion. All voted in favor.

The eighth item on the agenda was to review and consider the City of Wharton 2006 Street and Park Improvement Program:

A. 2006 Street and Park Improvement Project:

1. Bid Tabulation.
2. **Resolution:** A resolution awarding the bid for the 2006 Street and Park Improvement Project for seal coating, curbing, asphalt laying and re-striping improvements and authorizing the Mayor of the City of Wharton to execute the agreement.

City Manager Andres Garza, Jr. presented a copy of the bid tabulation for the 2006 Street and Park Improvement Project and a copy of the list of contractors that received a bidder's package. He then presented a copy of the memorandum dated July 7, 2006 from Public Works Director Phil Bush recommending the bid be awarded to Faltisek Paving Partnership, LTD for being the lowest and best qualified bidder for the 2006 Street and Park Improvement Project and a copy of a draft resolution awarding the bid to Faltisek Paving. Public Works Director Phillip Bush stated that two bids were received and he recommend Faltisek Paving be awarded the contract for being the lowest and best qualified bidder for the project. After some discussion, Councilmember Ray Linseisen made a motion to approve Resolution No. 2006-54, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2006 - 54**

**A RESOLUTION APPROVING A CONTRACT BETWEEN FALTISEK PAVING PARTNERSHIP, LTD. AND THE CITY OF WHARTON FOR THE 2006 STREET AND PARK IMPROVEMENT PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID CONTRACT.**

**WHEREAS,** competitive, sealed bids were received on July 5, 2006 for 2006 Street Improvement Project for seal coating, curbing, asphalt laying and re-striping improvements; and

**WHEREAS,** Faltisek Paving Partnership, Ltd. was deemed to be the lowest and best qualified bidder as per bid specifications in the total amount of \$154,457.15; and

**WHEREAS,** the Wharton City Council wishes to authorize the Mayor of the City of Wharton, Texas, to execute an agreement with Faltisek Paving Partnership, Ltd. And the City of Wharton for the 2006 Street Improvement Project for seal coating, curbing, asphalt laying and re-striping improvements; and

**WHEREAS,** the City of Wharton and Faltisek Paving Partnership, Ltd. wishes to be bound by the conditions as set forth in the agreement.

**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 authorizes the Mayor of the City of Wharton, Texas, to execute an agreement with Faltisek Paving Partnership, Ltd. as per bid specifications for the 2006 Street Improvement Project.

**Section. II.** That Faltisek Paving Partnership, Ltd. and the City of Wharton 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 the 10<sup>th</sup> day of July 2006.

**CITY OF WHARTON**

**By:** \_\_\_\_\_  
**BRYCE D. KOCIAN**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**LISA STAVENA**

City Secretary

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

B. Extension of Park Lane Project from Price Drive to Croom Drive.

City Manager Andres Garza, Jr. stated that during the January 9, 2006 regular Wharton City Council meeting, the City Council approved to extend Park Lane from Price Drive to Croom Drive. He stated that since that time, a question had arisen regarding the construction of Park Lane by the developer. He stated that he had asked Mr. Raymond Harrison, the developer's representative, to address the City Council with their concerns. He stated that the City Staff had not begun any work on the street pending City Council action. He stated the City Council Public Works Committee recommended the street be a thoroughfare and City Council approved the recommendation on January 3, 2006. Mr. Joseph Abraham with Heartland Homes addressed the City Council and stated that he nor Mr. Raymond Harrison was notified that a thoroughfare would be constructed in lieu of the requested cul-de-sac. Mr. Abraham stated that he would like the cul-de-sac instead of the thoroughfare. Councilmember Don Mueller stated that the City Council Public Works Committee recommended the thoroughfare due to traffic and emergency services. Mr. Carlos Cotton stated that there would not be a drainage issue with either a cul-de-sac or a thoroughfare. After some discussion, Councilmember Don Mueller made a motion to make the road a thoroughfare. Councilmember Domingo Montalvo, Jr. seconded the motion. Councilmembers V. L. Wiley, Jr., Don Mueller, and Domingo Montalvo, Jr. voted for the motion. Councilmember David Samuelson, Ken Freese, Ray Linseisen and Mayor Bryce D. Kocian voted against the motion.

Councilmember Ken Freese made a motion to approve the installation of a cul-de-sac on Price Drive. Councilmember David Samuelson seconded the motion. Councilmembers David Samuelson, Ken Freese, Ray Linseisen and Mayor Bryce D. Kocian for the motion. Councilmembers V. L. Wiley, Jr., Don Mueller, and Domingo Montalvo, Jr. voted against the motion. The motion carried.

C. Traffic Lane Reconfiguration of U.S. Business 59 from FM 102 to Burleson Street.

City Manager Andres Garza, Jr. stated that during the September 27, 2004 regular Wharton City Council meeting, the City Council authorized the City Staff to request the Texas Department of Transportation (TxDOT) to consider traffic lane reconfigurations along U.S. Business 59 from FM 102 to Burlison. He stated that the reconfigurations would consist of a realignment of the lanes to create a center continuous left turn lane with one lane going in either direction. He then presented a copy of the letter dated October 4, 2004 to TxDOT regarding the request. He stated that since that time, Mayor Bryce D. Kocian had requested the City Council reconsider its recommendation. Mayor Bryce D. Kocian stated that he was informed that TxDOT had not recommended the reconfiguration of the four lanes to three lanes. Councilmember Don Mueller stated that Glenn Dvorak, Area Engineer had recommended the reconfiguration; however Mr. Dvorak had been transferred to the Yoakum Office. Councilmember Domingo Montalvo, Jr. stated that a complaint was received from Mr. and Mrs. Charles Roades residing at 516 N. Richmond in regards to the traffic issue with accidents occurring on their property. Mr. Carlos Cotton stated that the carrying capacity was approximately 8,900; therefore the reduction of the four lanes to three lanes would not affect the carrying capacity. He stated that once the carrying capacity reached 12,000, then the lanes would need to be expanded. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve the traffic lane reconfiguration of U.S. Business 59 from FM 102 to Burlison Street from four lanes to the realignment of the lanes to create a continuous left turn lane with one lane. Councilmember V. L. Wiley, Jr. seconded the motion. All voted in favor.

D. Traffic Lane Reconfiguration of Alabama Road from FM 1301 to Highway 60.

City Manager Andres Garza, Jr. stated that during the June 12, 2006 regular Wharton City Council meeting, the City Council considered the recommendation by the City Council Public Works Committee to consider reconfiguring the traffic pattern of Alabama Road to consist of a three lane road with a continuous turning lane from FM 1301 to Highway 60. He stated that the City Council instructed the City Staff review the reconfiguration of Alabama Road to determine if re-striping the road to the recommended configuration was in the best interest of the City. He stated that he had met with TxDOT representatives and Carlos Cotton, P.E. to review the traffic lanes. Mr. Carlos Cotton addressed the City Council and stated that as far as an engineer point of view, the road could remain four lanes or reduced to three lanes. After some discussion, Councilmember Ken Freese made a motion to approve that the traffic lane reconfiguration of Alabama Road from FM 1301 to Highway 60 remain four lanes. Councilmember Ray Linseisen seconded the motion. Councilmembers David Samuelson, Ken Freese, Ray Linseisen, and Mayor Bryce D. Kocian voted for the motion. Councilmembers V. L. Wiley, Jr., Don Mueller, and Domingo Montalvo, Jr. voted against the motion. The motion carried.

The ninth item on the agenda was to review and consider Appointments to the City Council Annexation Committee. City Manager Andres Garza, Jr. stated that the City Council Annexation Committee Members needed to be appointed for the July 1, 2006 to June 30, 2007 term. He stated that the Committee Members previously consisted of Mayor Bryce D. Kocian, Mayor Pro-Tem Donald Mueller, and Councilmember At Large Ray Linseisen. He stated that a recommendation may be made to appoint the members of the Annexation Committee. After some discussion, Councilmember David Samuelson made a motion to re-appointment Mayor Bryce D.

Kocian, Councilmembers Don Mueller and Ray Linseisen to the City Council Annexation Committee. Councilmember Ken Freese seconded the motion. All voted in favor.

The tenth item on the agenda was Executive Session: City Council may adjourn into an Executive Session in accordance with Section 551.072 and 551.074 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:** Acquisition of real estate from Mr. Richard Matz for the Santa Fe Drainage Outfall Channel Project.
- B. **Discussion:** City Manager Performance Evaluation.

Mayor Bryce D. Kocian adjourned into Executive Session at 7:46 p.m.  
Mayor Bryce D. Kocian returned to open session at 7:56 p.m.

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

- A. **Review & Consider: Resolution:** A resolution of the Wharton City Council approving the acquisition of real estate from Mr. Richard Matz for the Santa Fe Drainage Outfall Channel Project and authorizing the Mayor of the City of Wharton to execute all documents related to said acquisition. Councilmember Ken Freese made a motion to approve Resolution No. 2006-55, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2006 - 55**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING THE ACQUISITION OF REAL ESTATE FROM RICHARD MATZ FOR THE SANTA FE DRAINAGE OUTFALL CHANNEL PROJECT AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE ALL DOCUMENTS RELATED TO SAID ACQUISITION.**

**WHEREAS,** The Wharton City Council, by City of Wharton Ordinance No. 2005-16 effective December 13, 2005, declared a public necessity to acquire a 0.393 parcel of land out of the 2.00 acre tract in the Randal Jones ½ League, Abstract 36, Wharton County, Texas, conveyed to Richard Matz, for a public purpose, namely the acquisition, improvement and maintenance of the Santa Fe Drainage Outfall Channel Project; and

**WHEREAS,** In accordance with the City of Wharton Ordinance No. 2005-16, the Wharton City Council authorized the City Manager to proceed with the acquisition of said property, who had begun contract negotiations with Mr. Richard Matz; and

**WHEREAS,** Mr. Richard Matz has agreed to convey to the City of Wharton a 0.393 acre tract of land located being in the Randell Jones 1.2 League, Abstract No. 36 being a portion of a called 2.00 acre tract through a fee simple property transfer agreement; and

**WHEREAS,** Mr. Richard Matz has agreed to execute the agreement and consent for survey, entry and possession of said real estate; and

**WHEREAS,** The Wharton City Council and Mr. Richard Matz wishes to be bound by the terms and conditions of the contracts; and

**WHEREAS,** The Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute all documents and agreements related to the acquisition of said real estate.

**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 approves the acquisition a 0.393 acre tract of land located in the Randell Jones 1.2 League, Abstract No. 36 being a portion of a called 2.00 acre tract conveyed to Mr. Richard Matz, for a public purpose, namely the acquisition, improvement and maintenance of the Santa Fe Drainage Outfall Channel Project.

**Section II.** That the Wharton City Council hereby authorizes to the Mayor of the City of Wharton to execute the fee simple property transfer agreement and consent agreement for survey, entry and possession of said real estate.

**Section III.** That the City of Wharton and Mr. Richard Matz are hereby bound by the conditions set forth in the agreements.

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

**Passed, Approved, and Adopted** this the 10<sup>th</sup> day of July 2006.

**CITY OF WHARTON**

**By:** \_\_\_\_\_  
**BRYCE D. KOCIAN**  
Mayor

**ATTEST:**

\_\_\_\_\_  
**LISA STAVENA**

City Secretary

Councilmember Domingo Montalvo, Jr. seconded the motion. All voted in favor.

**B. Review & Consider:** City Manager Performance Evaluation.

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

The twelfth item on the agenda was to review and consider a resolution of the Wharton City Council approving a professional engineering services agreement between the City of Wharton and Jones & Carter, Inc. for the Southbound U.S. 59 access road at the intersection of FM 102 and authorizing the Mayor of the City of Wharton to execute the agreement. City Manager Andres Garza, Jr. presented a copy of a draft resolution approving a professional engineering services agreement between the City of Wharton and Jones & Carter, Inc. for the southbound U.S. 59 access road at the intersection of FM 102. He stated that during the regular June 12, 2006 Wharton City Council meeting, the City Council approved the second reading of Resolution No. 2006-41 that approved the Wharton Economic Development Corporation (WEDC) Resolution No. 2006-01. He stated that the WEDC Resolution No. 2006-01 expressed intent to finance road construction for new and expanding business development and to amend the 2005-2006 budget; therefore, the fees for the services would be paid through the Wharton Economic Development Corporation. He then presented a copy of the agreement. He stated that the base services were \$142,000 with \$5,000 additional services for soil boring and \$5,000 additional services for Environmental Phase I Study, with a total professional engineering service fees of \$152,000. After some discussion, Councilmember Domingo Montalvo, Jr. made a motion to approve Resolution No. 2006-56, which read as follows:

**CITY OF WHARTON  
RESOLUTION NO. 2006 - 56**

**A RESOLUTION OF THE WHARTON CITY COUNCIL APPROVING A PROFESSIONAL ENGINEERING SERVICES AGREEMENT BETWEEN THE CITY OF WHARTON AND JONES & CARTER, INC. FOR THE SOUTHBOUND US 59 ACCESS ROAD AT THE INTERSECTION OF FM 102 AND AUTHORIZING THE MAYOR OF THE CITY OF WHARTON TO EXECUTE THE AGREEMENT.**

**WHEREAS,** The Wharton City Council wishes to engage the services of Jones & Carter, Inc. for professional engineering services for the construction of the southbound U.S. 59 access road at the intersection of FM 102; and

**WHEREAS,** Jones & Carter, Inc. and the City of Wharton wishes to be bound by The conditions of the agreement; and

**WHEREAS,** the Wharton Economic Development Corporation wishes provide the necessary funding for the fees for professional engineering services in accordance with the City of Wharton Resolution No. 2006-41; and

**WHEREAS,** the Wharton City Council wishes to authorize the Mayor of the City of Wharton to execute all documents to the agreement.

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

**Section I.** The Wharton City Council hereby authorizes the Mayor of the City of Wharton to execute a professional engineering services agreement with Jones & Carter, Inc.,

