

**City of Wimberley**  
City Hall, 12111 Ranch Road 12, Ste. 114  
Wimberley, Texas 78676  
**Minutes of Regular Meeting of City Council**  
September 3, 2009 at 6:30 p.m.

City Council meeting called to order at 6:30 p.m. by Mayor Tom Haley.

Mayor Haley gave the Invocation and Councilmembers led the Pledge of Allegiance to the United States and Texas flags.

Councilmembers Present: Mayor Haley and Councilmembers Charles Roccaforte, Bob Flocke, Bill Appleman, Steve Thurber, and John White.

Staff Present: City Administrator Don Ferguson, City Attorney Cindy Crosby and City Secretary Cara McPartland.

### **Citizens Communications**

Mayor Haley advised of procedures for speakers and stated that Agenda Items 4B and 4C would not include another public hearing. No citizen comments were heard.

#### **1. Consent Agenda**

- A. Approval of minutes of the regular City Council meeting of August 20, 2009
- B. Approval of the July 2009 Financial Statements for the City of Wimberley
- C. Approval of the appointment of Rob Pitzer to the Wimberley Economic Development Commission (*Place Four Councilmember Steve Thurber's nominee*).

City Administrator Ferguson pulled Consent Agenda Item 1B and noted the following coding corrections: \$3,250 in the current expenditures should be moved from 631.1 *Administration/Capital Outlay-Technology* to 832.1 *Public Safety-Capital Outlay-Technology*, along with certain "total" amounts. Councilmember Flocke moved to approve all remaining Consent Agenda items as presented. Councilmember Appleman seconded. Motion carried on a vote of 5-0.

After discussion and clarification of specific line item corrections by City Administrator Ferguson, Councilmember Thurber moved to approve Consent Agenda Item 1B. Councilmember Roccaforte seconded. Motion carried on a vote of 5-0.

#### **2. Presentation**

Presentation by Hays County Subdivision Coordinator on the recently approved *Hays County Development Regulations* (Clint Garza).

Mr. Garza presented information on new Hays County development regulations including effective date, purpose, terms, consolidation of departments, and codification of numerous ordinances into one comprehensive document. Highlights included development of a consolidated set of definitions, increased public participation/advance notification, tax status verification, updated minimum lot size requirements, priority groundwater management areas, adoption of expiration dates for dormant projects, and parkland dedication provisions.

Additional requirements were outlined for wells/water availability, sizing for rainwater collection systems, coordination with applicable groundwater conservation districts, addition of “urbanized local roadway” category to roadway standards, building line setbacks, water quality, runoff rate/volume, and erosion/sedimentation control. Under the new regulations, no homeowner maintenance of on-site sewage facilities (OSSFs) would be allowed, pending Texas Commission on Environmental Quality (TCEQ) review and approval. Also updated were provisions relating to separation distances, prohibition of commercial OSSF spray dispersal, recertification, grandfathering of systems, and conservation development.

### **3. City Administrator Report**

- Status report on the search for a City Marshal

City Administrator Ferguson reported approximately twenty applications have been received in response to the City’s published notice.

- Status report on the operation and development of *Blue Hole Regional Park*

City Administrator Ferguson reported on the early closing of the Park due to low water levels and season close-out statistics for attendance/revenue, with a complete report to be presented to Council at a later date. He reported on last week’s productive meeting of the Blue Hole Development Task Force and the recent reception held for project consultants.

- Status report on activities of the Wimberley Municipal Court

City Administrator Ferguson reported that the Court’s first scheduled jury trial did not occur due to the entry of a guilty plea by the defendant’s legal counsel.

- Status report on activities of the City Marshal

City Administrator Ferguson reported on upcoming *National Night Out* activities scheduled for Tuesday, October 6, 2009 to be held in the Wimberley Square.

### **4. Public Hearing and Possible Action**

- A. Hold a public hearing and consider approval of an ordinance approving an application for a conditional use permit submitted by Wimberley Independent School District to permit the construction and use of one wireless communications tower structure on approximately 32.116 acre tract of land, known as 100 Carney Lane, Wimberley, Texas zoned Public Facilities (PF); and providing for findings of fact; amendment of the zoning district map; repealer; severability; effective date; proper notice and meeting; and providing for certain conditions (*Wimberley ISD, Applicant*).

City Administrator Ferguson reviewed the application including current/proposed zoning, subject property/tower location, tower height, and reasoning for allowance of construction on a temporary basis pending conditional use permit approval. No formal opposition to the tower has been received by staff.

Planning and Zoning Commissioner Jean Ross reported on the Commission's discussion of WISD's delayed application and comments from two notified property owners. She concluded with the Commission's unanimous recommendation for approval.

Mayor Haley opened the public hearing. Hearing no comments, Mayor Haley closed the public hearing.

Discussion addressed the tower's exact location, engineering certification requirements, alternative internet access options, and the tower's purpose to serve overall long-term communication needs. Councilmember White moved to approve the item as presented. Councilmember Flocke seconded. Discussion clarified that lighting is not needed on the tower because it does not meet the height threshold. Motion carried on a vote of 5-0.

- B. Hold a public hearing and consider approval of an ordinance of the City of Wimberley, amending Section 155 (Zoning), Appendix F, of the Code of Wimberley, designating geographic boundaries for a particular zoning district and classification for a 1.367 acre tract located at 600 FM 2325, Wimberley, Hays County, Texas, designating initial zoning for such tract as Commercial - Low Impact (C-1); and providing for the following: delineation on zoning map; severability; effective date and proper notice and meeting (*Kate Brune Tilton, Applicant; item continued from August 20, 2009 City Council meeting*).

Although the public hearing was closed at Council's last meeting, public comments lasting no longer than three (3) minutes will be allowed.

Mayor Pro-tem Roccaforte recused himself at this time due to a possible conflict of interest.

Mayor Haley noted that approval of this item will require a super majority vote in favor.

Based on safety issues, Parkside Hill Country Community School Director Rene Boschert spoke in opposition to the service of alcohol during school hours occurring within three hundred (300) feet of schools. She stressed the importance of adherence to rules and the sacred nature of school zones.

Mayor Haley reminded that this agenda item deals with zoning of the subject property, not the issue of alcohol sales.

Attorney representing Michael Dickey, Joe Malone, requested that conditional use permit (CUP) terms be included in the zoning ordinance.

Brent Pulley spoke of the requested C1 zoning as appropriate for the subject property and expressed concern with incorporating CUP conditions into the zoning ordinance, which he stated is inconsistent with zoning actions for similar properties.

Discussion addressed reasoning for prior inclusion of CUP conditions into the zoning ordinance, uses of surrounding properties, permitted C1 uses, history of the subject property's uses and associated complaints, additional conditions imposed on commercial properties abutting residential areas, neighborhood opposition, Planning and Zoning Commission's consideration, and careful consideration of property rights. Discussion acknowledged that under City-initiated zoning, the subject property would have been slated for C1 zoning designation.

Councilmember Appleman moved to approve the item as presented. Councilmember White seconded. Mayor Haley called for a vote as follows: Councilmember Flocke, aye; Councilmember Appleman, aye; Councilmember Thurber, aye; Councilmember White, aye. Motion carried on a vote of 4-0 (Mayor Pro-tem Roccaforte recused).

- C. Hold a public hearing and consider approval of an ordinance approving an application for a conditional use permit submitted by Kate Brune Tilton to permit an eating establishment: sit-down, including the sale of beer, wine and alcohol for on-premise consumption on an approximately 1.367 acre tract located at 600 FM 2325, Wimberley, Hays County, Texas, zoned Commercial – Low Impact (C-1), and imposing certain conditions; and providing for findings of fact; amendment of the zoning district map; repealer; severability; effective date; proper notice and meeting; and providing for certain conditions (*Kate Brune Tilton, Applicant; item continued from August 20, 2009 City Council meeting*).

Clarification was provided to Councilmember Thurber on this continued item's posting as a public hearing. It was recognized that public comments will be allowed.

General manager-in-residence Paul Tilton spoke in favor of the CUP based on the applicant's goals and vision to operate a family restaurant in full compliance with all City and State regulations, and felt that further restrictions would be unfair.

Rene Boschert repeated her concerns over children's safety due to the subject property's location on a major school corridor. As a school owner/director, Mrs. Boschert expressed concern relating to unsafe traffic conditions, should alcohol be served during school hours. She noted Katherine Anne Porter School's (KAPS) after-care programs and cautioned against approving alcohol sales for properties within school zones during school hours. Councilmember Flocke stated that people tend

to drink less when buying individual drinks as opposed to current "BYOB" conditions, which allows beer and wine to be consumed on-premise without Texas Alcoholic Beverage Code (TABC) regulation. Mrs. Boschert stated that she did not feel that the "BYOB" system currently in place was a safe alternative and was not aware of its existence.

Darenda Mallard felt that it is ridiculous to allow alcohol sales across from KAPS and questioned Council's consideration of the waiver request for the three hundred (300) foot distance requirement. She stated that waivers are routinely granted and felt that Planning and Zoning summarily dismissed alcohol issues based on prior precedent-setting alcohol-related zoning actions (specifically the Diamond Shamrock service station/convenience store location). Mrs. Mallard stated that WISD does not oppose alcohol sales because it seeks property tax revenues for funding. She compared Diamond Shamrock's operations to the subject property's proposed use, location, and proximity to existing and future school sites. She expressed concern with KAPS students crossing the street to buy alcohol at the subject property.

In response to Mrs. Mallard, Planning and Zoning Commissioner Jean Ross clarified that the Commission did not summarily dismiss alcohol issues and that discussion with legal counsel established that prior Diamond Shamrock zoning action(s) did not set precedent for future Planning and Zoning decisions, which are determined on a case-specific basis.

Planning and Zoning Commissioner Lila McCall felt that the Tilton's right to make a living must be protected and stated that the proposed restaurant will generate sales tax revenue. She noted that KAPS receives funding from the Lions Club, which plans to apply for a permit to sell beer and wine at Market Days. Commissioner McCall pointed out that a similar conditional use permit was approved for Mima's Kitchen at 701 FM 2325, with no opposition. She felt adequate safeguards are present via TABC regulations of alcohol sales. Due to new expressed opposition, Commissioner McCall stated that this matter should have been referred back to Planning and Zoning for further consideration and closed her remarks by asking for Council's approval.

Michael Dickey's attorney, Joe Malone, spoke of common ground shared by the applicants and neighboring property owners, including agreement on closing time, music confined to the existing structure on Friday nights only, and eight-foot solid fencing. He felt that discussions with the applicant and her attorney Brent Pulley have been productive and yielded successful compromises.

Despite these compromises, Brent Pulley felt that opposition will continue in some form no matter how much the Tiltons concede. He noted that Mima's Kitchen was recently approved for beer/wine sales with no opposition and that other restaurants in immediate proximity to the subject property already allow alcohol under the "BYOB" system. He felt that having a restaurant under TABC control is preferable to the "BYOB" policy and stated that some common-sense flexibility exists regarding the three hundred (300) foot distance requirement. Mr. Pulley asked that Council approve the CUP and assured that all alcohol regulations will be strictly adhered to.

KAPS Board President Rocky Boschert, stated that safety should be considered first and suggested that the proposed restaurant only serve alcohol after 6:00 p.m. on Wednesdays/Thursdays and only after 4:00 p.m. on Fridays. Mr. Boschert noted that KAPS is not within three hundred (300) feet of

Mima's Kitchen, and therefore unable to exert any opposition to its CUP approval. He offered a hypothetical situation that he felt would draw WISD opposition and summarized his position that allowing alcohol to be sold and consumed within three hundred (300) feet of KAPS would be a safety hazard. He pointed out that there are no sidewalks for pedestrians on FM 2325. Mr. Boschert closed by asking Council to make its decision as if its members had school-aged children and strongly recommended denial of the CUP application.

Darenda Mallard stated that discussions occurred between attorneys Joe Malone and Brent Pulley without involving her or most other neighboring property owners. Mayor Haley clarified that the City does not control outside meetings and is not responsible for notification for such outside meetings.

Mayor Haley opened Council discussion. Councilmember Flocke favored approval of the CUP, with conditions as recommended by the Planning and Zoning Commission. After some discussion of pre-existing, non-conforming status, Councilmember Appleman cautioned against arbitrary restrictions and stressed the importance of fairness in application of regulations. Councilmember Thurber commended the parties for compromising on issues and asked for clarification on the effect of denying the three hundred (300) foot distance requirement waiver on the CUP, should it be approved. Clarification was also provided to Councilmember Thurber on the subject property's existing sign, which is considered pre-existing, non-conforming, as long as the sign is not modified (other than text changes to the existing sign).

Councilmember White stated acceptance of all agreed-upon changes, with the exception of the restriction of the music venue to one night only. City Administrator Ferguson clarified language related to operating hours, noting that the applicants wish to cease all restaurant operations by midnight, with the last patrons to be seated between approximately 10:30 p.m. to 11:00 p.m., and all employees out by midnight.

Councilmember Flocke agreed with Councilmember White and moved to approve the item with the following conditions: music shall end no later than 11:00 p.m. (with all restaurant operations to cease no later than midnight) and fencing shall be eight (8) feet in height. Councilmember White seconded.

Based on the agreement reached by Mr. Malone and Mr. Pulley, Councilmember Thurber felt that music should be restricted to only one night per week. Discussion addressed limitation of the music venue, the CUP process in general, Council's consideration of Planning and Zoning's recommendations, and agreements made between certain property owners and the applicant.

Darenda Mallard expressed an objection for not being allowed to speak outside of the time already allowed for public comment.

Should Council approve restriction of music to one night only, Councilmember White questioned the process for the applicant to request future expansion of the music venue. Discussion established

that the applicant would have to apply for a CUP amendment and go through the same process as with the original CUP application.

Hearing no further discussion, Mayor Haley called for a vote as follows: Councilmember Appleman, aye; Councilmember Thurber, nay; Councilmember White, aye; Councilmember Flocke, aye. Motion failed on a vote of 3-1 (Super majority required).

Councilmember Flocke moved to approve the item with the prior motion's stated conditions and the additional condition that music be limited to Friday nights only. Councilmember White seconded.

Mayor Haley called for a vote as follows: Councilmember Thurber, aye; Councilmember White, aye; Councilmember Flocke, aye; Councilmember Appleman, aye. Motion carried on a vote of 4-0.

- D. Hold a public hearing and consider approval of a waiver of the 300-foot distance requirement relating to the sale of beer, wine and alcohol at 600 FM 2325, Wimberley, Hays County, Texas (*Kate Brune Tilton, Applicant; item continued from August 20, 2009 City Council meeting*).

City Administrator Ferguson reviewed the waiver request and Mayor Haley opened the public hearing.

Darenda Mallard emphasized that alcohol will be consumed on-premise and felt that despite the applicant's best efforts, some people will likely leave in their vehicles after drinking too much. She noted KAPS' schedule on standard and non-standard school days and felt that drivers may not realize that they are entering/exiting the subject property within a school zone. She cautioned that teen drivers and inebriated drivers are not best equipped to gauge time and distance. Mrs. Mallard wondered why restrictions exist if Council routinely grants waivers for such restrictions. She quoted Benjamin Franklin regarding the importance of investment in knowledge and stated that it is in KAPS' best interest to deny this CUP application. She stressed the importance of every Council decision to the community. Mrs. Mallard spoke of the permanent nature of zoning actions, which remain with the property, regardless of changes in ownership.

Rocky Boschert stated that restaurant workers cannot check everyone who has consumed alcohol before leaving the premises. He reiterated that compromising on limited hours for alcohol sales will not harm the business and stated that the sale/consumption of alcohol in Wimberley needs to be based not just on moral grounds, but on objective child safety and community health concerns. While commerce and free market add to prosperity, Mr. Boschert stated that unfettered liquor sales can be risky if economic values compromise our young people's safety and our community's integrity. Mr. Boschert stated that his comments are for all the children traveling on FM 2325, not just KAPS students.

Mayor Haley closed the public hearing and opened Council discussion.

Discussion addressed CUPs and waivers in general, revocation of CUPs, complaint/enforcement process, lack of TABC oversight under the "BYOB" system, recognition of traffic/pedestrian safety, the public hearing process, the primary purpose of the business as a restaurant (rather than bar), and TABC enforcement.

Councilmember Appleman moved to approve the item as presented in accordance with the following findings. Council may waive the distance requirements if Council finds that enforcement of the distance provision:

- is not in the best interest of the public
- constitutes waste or the inefficient use of land or other resources
- creates an undue hardship on an applicant
- does not serve its intended purpose
- is not effective or necessary
- for any other reason the Council, after consideration of the health, safety, and welfare of the public and the equities of the situation, determines in the best interest of the community.

Councilmember Flocke seconded. Mayor Haley called for a vote as follows: Councilmember White, aye; Councilmember Thurber, nay; Councilmember Appleman, aye; Councilmember Flocke, aye. Motion carried on a vote of 3-1.

Mayor Haley called a ten-minute recess at 8:30 p.m. Mayor Haley reconvened at 8:40 p.m.

- E. Hold a public hearing on the Proposed City of Wimberley Fiscal Year 2010 Budget (*City Administrator*).

Mayor Pro-tem Roccaforte rejoined the meeting at this time.

Mayor Haley opened the public hearing.

Clint Frankmann spoke against expenditures related to the City Marshal and felt that replacing the outgoing City Marshal should be postponed. Mr. Frankmann stated that Hays County provides adequate law enforcement staffing for the City and reminded that citizens pay Hays County taxes. He stated the City Marshal's services are unwarranted, redundant, and superfluous, with funds better utilized for items such as road repair and maintenance. He cited specific roads in need of repair. Mr. Frankmann stated that the largest employers in Wimberley do not provide fully funded health insurance for employees and felt that it is not prudent for the City to do so. Mr. Frankmann questioned the statutory need for a city limits survey and asked what purposes would be served by having such a survey completed. He implored Planning and Zoning to revisit the City's slope requirements and considered such restrictions as infringement on property rights.

David Prasifka spoke of the original incorporation mandates to control development and street improvements. He felt that City government has gone far outside of its original purpose by spending in many other areas. Mr. Prasifka stated that the City's biggest priority should be street

maintenance and cited specific problem areas. He estimated savings over ten years that could be realized by discontinuing the City Marshal's position and relying on Hays County for law enforcement for as long as the City is allowed to do so.

Mayor Haley closed the public hearing. No action was taken on this item.

## **5. Discussion and Possible Action**

- A. Discuss and consider issues relating to the development of the Fiscal Year 2010 Operating Budget for the City of Wimberley (*City Administrator*).

Discussion addressed:

- City Marshal's salary
- Information on employee health insurance cost estimates, compulsory participation, and survey of employees to determine desire for health benefits
- Effectiveness of City Marshal in addressing citizen complaints regarding speeding in specific areas
- Possible postponement of city limits survey in order to add road improvement funding
- Requiring employees to share costs for health insurance
- Need for large capital outlay expenditures for streets, with limited revenue sources
- Costs/benefits of City Marshal's position and associated expenditures
- Budget areas to cut in order to fund street improvements such as Municipal Court and records management
- Ways to reduce costs for the city limits survey and need to utilize a certified surveyor, at least in a supervisory capacity
- Use of Wimberley Community Center for meetings in order to reduce rent at City Hall's current space
- Prioritization of road improvement projects by City staff and Transportation Advisory Board (TAB)
- Personal responsibility of individuals to provide their own health care
- Need to postpone action on the outgoing City Marshal's replacement

Mayor Haley noted street improvement priorities recommended by TAB and asked for comments from legal counsel relating to the City's obligation to complete a survey of its boundaries.

City Attorney Crosby stated that legal challenges may be raised such as issues related to voting/residency status and annexation. The primary issue is that the City has not been in compliance with State law since incorporation.

Mayor Haley felt strongly that the survey needs to be completed and that the fund balance needs to be preserved. He suggested budgeting \$50,000 and taking \$50,000 out of fund balance in order to pay for the costs of a city limits survey.

Discussion addressed the length of time to complete a survey, project phasing, use of more than one engineering firm to expedite the process, and benefits derived from having the city limits surveyed.

No action was taken on this item.

- B. Discuss and consider scheduling a special City Council meeting on Tuesday, September 22, 2009 to approve the Fiscal Year 2010 Operating Budget for the City of Wimberley (*City Administrator*).

Discussion reached agreement to hold a special meeting on Tuesday, September 22, 2009 at 6:00 p.m. Councilmember Thurber moved to approve the agreed-upon date and time. Councilmember Roccaforte seconded. Motion carried on a vote of 5-0.

- C. Discuss and consider approval of an agreement with Ozona National Bank to serve as a bank depository for the City of Wimberley (*City Administrator*)

City Administrator Ferguson detailed the bid submitted by Ozona National Bank (ONB) and noted certain provisions related to third-party agreements with ONB's safekeeping institution. He stated that the City is comfortable with safeguards for the City's pledged securities and pointed out that ONB will offer the City money market checking at the current interest rate of one-half percent (1/2%). Mr. Ferguson stated that this proposed ONB depositor agreement is not exclusive and that the City may have more than one depository bank.

Councilmember Thurber moved to approve the item as presented. Councilmember White seconded. Motion carried on a vote of 5-0.

- D. Discuss and consider issues relating to the existing Community Center use agreements for the Wimberley Lions Club, Meals on Wheels, and the Wimberley Senior Citizens Activities, Incorporated (*Place Three Councilmember Bill Appleman*).

It was agreed that Council should adjourn into Executive Session in order to discuss this item.

M.F. Johnson questioned the need for retiring to Closed Session and City Attorney Crosby advised of the City's right to maintain attorney-client privilege. Councilmember Appleman thanked M.F. Johnson and Wimberley Senior Citizens Activities, Inc. (WSCAI) for its work and vision, but noted the importance of historical review and input from legal counsel. Councilmember Flocke reminded that no action will be taken in Executive Session and Mrs. Johnson requested that Council report on what was discussed in Executive Session. She urged Council to remember how the Community Center was started with "handshake" agreements, rather than formalized contracts.

Mayor Haley adjourned Open Session and convened Executive Session at 9:18 p.m. for consultation with legal counsel pursuant to Chapter 551.071 of the Texas Government Code.

Mayor Haley reconvened into Open Session at 9:46 p.m. No action was taken during Executive Session.

**6. City Council Reports**

- Announcements
- Future Agenda Items

As future agenda items:

- Councilmember Roccaforte requested discussion of slope/height requirements.
- Councilmember Thurber requested an update on the water quality ordinance and a copy of the City's lease agreement.

Mayor Haley reported on Wimberley Water Supply Corporation's reduced pumpage as a result of implementation of Stage III water rationing.

Hearing no more announcements or future agenda item requests, Mayor Haley called the meeting adjourned at 9:48 p.m.

**Adjournment:** Council meeting adjourned at 9:48 p.m.

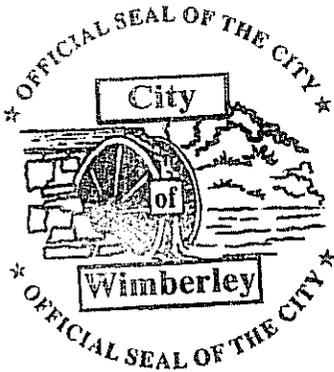
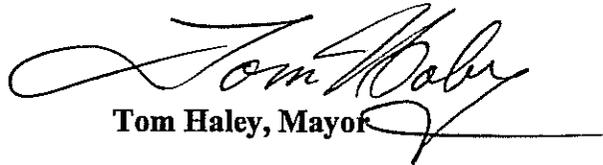
Recorded by:



Cara McPartland

These minutes approved on the 17th of September, 2009.

**APPROVED:**

Tom Haley, Mayor

**City Administrator**

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**From:** yana bland [yanadevere@hotmail.com]  
**Sent:** Wednesday, August 12, 2009 5:59 PM  
**To:** don ferguson  
**Subject:** KAPS View - thanks Don

August 12<sup>th</sup> 2009

Dear Planning and Zoning Committee,

Case: CUP-09-008

The Katherine Anne Porter School staff and faculty are concerned about the fact that the sale of beer, wine and alcohol could be allowed right across from our high school. Teenagers are naturally rebellious as they explore the limits to their independence. They are prone to take risks. Our duty at KAPS is to fulfill our mission: to foster individual interests, to nurture a love for learning, and to enhance community service. The consumption of alcohol detracts from the fulfillment of KAPS mission. The consumption of alcohol increases risky behaviors and also tends to deepen depression and disinterest.

Please reconsider the allowance of a variance in this case due to the proximity to educational institutions. Whilst we realize the financial benefits that would accrue to the new owners, we thank you for taking our opposition seriously.

Sincerely yours,

Dr. Yana Bland  
Superintendent

Neal Mallard  
15 Palos Verdes  
847 - 5438

August 19, 2009

To the Wimberley Mayor and City Council:

My name is Neal Mallard. My wife Darena and I have lived at 15 Palos Verdes since 1996. I regret that I cannot attend tonight's meeting in person but I have a prior commitment. Please allow me to share my concerns with you. The proposed CUP at 600 FM 2325 abuts the property line of our back yard. I am the ultimate NIMBY (Not In My Back Yard).

I certainly harbor no ill will towards the Tiltens. I would oppose this business plan regardless of who was proposing it. As a resident there is no upside whatsoever. One can only hope to blunt the downside. Imagine your neighbor is now a restaurant featuring alcohol and outdoor music. Now imagine trying to sell your home under similar circumstances as well as all of the obvious potential lifestyle disruptions. It is hard to imagine that anyone would want such a thing if given a choice.

I cannot attest with certainty as to the history of this particular property but I believe that the building has been there less than ten years and the Tiltens will have the sixth incarnation of a restaurant there. And while I wish them great success as restaurateurs, whatever they do there will not be the final chapter of that property. Some sort of a neighborhood will remain. What you decide here tonight will certainly have a tremendous impact on the quality of life that neighborhood will have to offer its residents.

At the P & Z hearing this past Thursday night I was surprised and alarmed to hear that the Tiltens are considering expanding the outdoor music beyond Friday nights. In the past the Friday night jamboree has not been a major disruption for us in part because the participants have been generally considerate but largely because that particular property has been vacant far more than it has been occupied. Consequently, the Friday night jamboree has always been a fairly rare occurrence. We could deal with it because it was only an occasional distraction. There was only one instance that was truly awful for us. That was an outdoor beer and music festivity. When my wife called the restaurant to complain the owner assured her that because they had a permit they could do whatever they wanted. Fortunately for us, the Hays County Sheriffs Department disagreed and shut them down.

I ask the Council to exercise their authority to deny the request to grant this CUP on the grounds that would be detrimental to the adjoining neighborhood. I appreciate the budgetary difficulties all municipalities have but perpetually worshipping at the altar of tax revenue is not always good for the community as a whole. Some things are more important. Outdoor public alcohol consumption within 300 feet of schools, churches and neighborhoods is also a fundamentally bad idea. Exceptions will always have unintended consequences.

Thank you for your consideration.

Sincerely,



TO: City of Wimberley Planning & Zoning Commission (Meeting Thursday,  
August 27, 2009)  
City of Wimberley City Council (Meeting Thursday, September 3,  
2009)

From: William H. Wilcox and Glenda Wilcox  
Property Owner: 100 Donna

We own property at 100 Donna Drive located adjacent to the Wimberley High School, and we approve of a Conditional Use Permit for the construction of a telecommunications tower located at the WISD High School (100 Carney Lane). This tower is a very important piece of equipment for the communication between our schools; therefore, we have no objection to the construction of the tower.

Thank you,

Bill and Glenda Wilcox  
112 Overlook Circle  
Wimberley, Texas 78676  
(512)847-8394

## City Administrator

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**From:** Tilton, Ronald G. [rgtilton@utmb.edu]  
**Sent:** Wednesday, September 02, 2009 9:37 PM  
**To:** 'yana bland'  
**Cc:** rocky boschert; 'dferguson@anvilcom.com'  
**Subject:** RE: Kate's Place

Dear Dr. Bland:

Thank you for your email, and it was also our pleasure to visit your school and to meet you and some of your staff. Kate and I both remain very jealous of your rain water collection system, and feel that we could learn a lot from what you have accomplished as we begin a similar process on our property.

We also are pleased that members of the Board of Trustees and the PTSO are looking forward to having another excellent restaurant in our city, and as we have shared with you, we certainly understand the reservation concerning the sale of beer and wine so close to your campus. As we indicated in our meeting with you, both Kate and I would be quite willing to present our vision of what we hope to accomplish across the street from your school to both groups. We firmly believe that clear communication is essential for developing an understanding of our goals and intent, and while your mission is clearly understood by all in our community, we have not had the opportunity to explain what we hope to accomplish.

I remain a little unclear concerning what you are asking below in your email. Based on our conversations with you in your office, I believe you would like us not to serve alcohol until after 6PM on Wednesday and Thursday (your email states Tuesday), and not until after 4 PM on Friday. Both Kate and I have given this considerable thought, and we appreciate very much your willingness to compromise. We believe at this time, we must respectfully decline your generous offer. While there are several practical reasons for our decision, we nevertheless, would like to emphasize the following points.

First, we will be closed on Monday and Tuesday, which represents 40 % of the student week. We will not serve breakfast on Wednesday through Friday. So, on every school day, there will be no activity on our property when students arrive on your campus. The restaurant will open for lunch on Wednesday through Friday around 10:30 – 11 AM, a time when all students should be in class. When students leave your campus – I assume anytime from 3 to 5 PM – there should be very minimal activity in our restaurant. The lunch shift should be finished and the dinner shift not yet started.

Second, our sign will not indicate in any way that alcohol is served in our restaurant. It will not state "bar".

Third, our restaurant sits in the back part of our property, and is mostly not visible from the street. In fact, one "vision" that Kate has is to create a botanical garden on our property – this comes from her Aggie Master gardener background – and when she finishes planting the yard around the home, the restaurant will not be visible from the street. I hope you have noticed the planter we have restored across the front of our property. We are just waiting for the heat to break before we begin planting.

Fourth, Kate and I have raised 5 children – all were teenagers at one time in our house (we still have one teenager who is a sophomore at St. Edwards University in Austin; all the rest are now in their early to mid 20's). Since Kate prepared a "home-cooked" meal every night, we actually had several other neighborhood kids that were permanent fixtures at our dinner table. When it comes to teenagers, we clearly understand them, and I can assure you that Kate and I have a no-nonsense approach with them. There simply is no way that a teenager is going to come onto our property, or into our restaurant, and be served and/or sold alcohol. It simply will not happen!

Fifth, if we do obtain a TABC license to serve alcohol, we would like to emphasize that it will be beer and wine only. No other alcohol will be served. It will be served only in the restaurant with food. We have no intention of operating a "bar" on our property, where people will come at all times of the day and night to drink. That option is NOT a part of our vision. If we are granted a TABC license, then we must follow the state rules and regulations, including the licensing of all staff that serve the alcohol. If we are not issued a TABC license, then our restaurant will be operated as a BYOB (as others in Wimberley are), and we will have no control over what and how much is consumed. We much prefer the former where no inebriated people will be leaving our property.

Finally, we understand that you, your staff, the school board, and parents must deal with this issue because of our physical proximity to one another. However, if your concern is philosophical as well, then we are surprised that a restaurant very near your campus (although outside the 300 feet requirement to your campus, but within 300 feet of another Wimberley school) was just granted permission to sell alcohol. Importantly to us, this is a restaurant that directly caters to your students and typically is filled with young people. We, of course, were very surprised that there was absolutely no opposition to this alcohol license despite the fact this restaurant caters to young people.

Regardless of the outcome of this CUP, we intend to be excellent neighbors, and we emphasize that we are in Wimberley long term. We have lived in, and paid taxes in, Wimberley for 10 years, and we will retire in Wimberley. As we discussed in your office, we are spending our money locally, including architects, contractors, sub-contractors, banks, etc. When we start our restaurant, we also will be hiring locally. If you or your staff identify responsible students in need of a job and income, or students that might like an apprenticeship in a kitchen, then we would love to be accommodating. Student art work for sale to benefit scholarships, student musicians playing in front of an audience, etc all are possibilities that we could explore in the future. I am also a teacher and educator, and would be very willing in the future to talk to your students about career choices involving science.

Sincerely,

Ron

Ronald G. Tilton, Ph.D.  
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Division of Endocrinology and Stark Diabetes Center  
Director, McCoy Diabetes Research Laboratory  
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9/3/2009

fax: 409-772-8709

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**From:** yana bland [mailto:yanadevere@hotmail.com]  
**Sent:** Wednesday, September 02, 2009 2:50 PM  
**To:** Tilton, Ronald G.  
**Cc:** rocky boschert  
**Subject:** Kate's Place

Dear Mr. Tilton,

It was a great pleasure to meet you and Mrs Tilton.

Since that time, there has been a Board of Trustees meeting and a PTSO meeting and everyone is very happy that you are investing in a good restaurant.

However, the majority feel concerned about the welfare of KAPS students and would like you to reconsider the option of selling wine, beer and alcohol after 6pm on Wed and Tuesday and after 4pm on Friday. We would withdraw KAPS letter of opposition if your could find a way to meet this request.

Again, whatever the outcome of the meeting, we wish you the very best and look forward to working closely with you.

Sincerely yours

Yana Bland  
Superintendent

9/3/2009

**City Administrator**

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**From:** Brent H Pulley [bhpulley@yahoo.com]  
**Sent:** Thursday, September 03, 2009 12:33 PM  
**To:** Don Ferguson; Joe Malone  
**Cc:** summit@swr-inc.com; mgdickey@austin.rr.com  
**Subject:** Re: MEMO RE: Zoning Change ZA-09-018 and CUP-09-008

Don:

The Tiltens agree to the revised conditions as stated in Mr. Malone's memo. However, we would prefer that this property be granted the same C-1 Zoning that the adjoining properties will have without these conditions. We would prefer that the conditions apply to the CUP.

Nonetheless, we understand that this is the council's decision and will will of course abide by their decision.

Brent H. Pulley  
Attorney & Counselor at Law  
26 Woodcreek Dr.  
Wimberley, TX 78676  
Ph# (512) 847-7360

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--- On Thu, 9/3/09, Joe Malone <joe@stevensmalonelaw.com> wrote:

From: Joe Malone <joe@stevensmalonelaw.com>  
Subject: MEMO RE: Zoning Change ZA-09-018 and CUP-09-008  
To: "Don Ferguson" <dferguson@anvilcom.com>  
Cc: bhpulley@yahoo.com, summit@swr-inc.com, mgdickey@austin.rr.com  
Date: Thursday, September 3, 2009, 10:33 AM

Don:

Attached please find a memo related to the above-referenced zoning change and CUP. Please let me know if you have any questions or concerns.

Thanks,

Joe

Joseph J. Malone  
Stevens & Malone, LLP