

**City of Wimberley**  
City Hall, 221 Stillwater  
Wimberley, Texas 78676  
**Minutes of Regular Meeting of City Council**  
March 3, 2011 at 6:00 p.m.

City Council meeting called to order at 6:00 p.m. by Mayor Bob Flocke.

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

Councilmembers Present: Mayor Bob Flocke and Councilmembers Marilee Wood, Mac McCullough, Bill Appleman, Steve Thurber, and John White.

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

**Citizens Communications**

No citizen comments were heard.

**1. Consent Agenda**

- A. Approval of the minutes of the Regular City Council meeting of February 17, 2011
- B. Approval of the minutes of the Special City Council meeting of February 24, 2011

Councilmember Thurber moved to approve both Consent Agenda items as presented. Councilmember Appleman seconded. Motion carried on a vote of 5-0.

**2. Presentations**

- A. Presentation by Wimberley E-M-S representative(s) on emergency preparedness

Wimberley E-M-S Community Education Coordinator Richard Kay presented information on the Disaster Preparedness Fair 2011 to be held on Saturday, March 26, 2011 from 10 a.m. to 2 p.m. at Johnson Field. He outlined exhibitors and activities, including event publicity and food/entertainment. He specifically requested from Council: the issuance of a proclamation designating the fourth Saturday of each March as "Wimberley Disaster Preparedness Day"; permission to place event-related signage in certain areas; and dunking booth participants. City Administrator Ferguson noted that the City and Texas Disposal Systems will be donating the old 18-gallon recycling bins for use in disaster kit preparation.

- B. Presentation by Friends of Blue Hole representative(s) on the financial donation from Christine and James Byrne to help fund certain planned improvements at the Blue Hole Regional Park

Representing Friends of Blue Hole, Councilmember Wood spoke of the Byrnes' commitment to Blue Hole Regional Park and commended their \$4,500 donation toward a bench for the park. City Administrator Ferguson also highlighted the Byrnes' dedication to Blue Hole and noted Christine Byrne's service on the Wimberley Parks and Recreation Board.

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

- Status report on the 2010 Census for the City of Wimberley

City Administrator Ferguson reported key 2010 Census results, including total population of 2,626; housing units; age/demographics; and, historical Census data. He stated that more detailed 2010 Census information will be released over the next twelve to eighteen months.

- Status report on the possible development of a sidewalk along River Road

City Administrator Ferguson provided background information on sidewalk discussions, including Transportation Advisory Board's (TAB's) recommendation to postpone any sidewalk development until talks have been held with potential developers. He stated that encouraging feedback has been received from the Carson family on making the area as pedestrian-friendly as possible. Councilmember Appleman requested a future agenda item to further discuss this issue.

- Status report on the preparation of a new franchise agreement with the Pedernales Electric Cooperative

City Administrator Ferguson reported that the City's current franchise agreement has expired, and that an interim extension is in place pending City staff negotiations with PEC for a new agreement, which will be presented to Council in the near future. He invited Council's input on issues to address during negotiations.

- Status report on the development of the Blue Hole Regional Park, including but not limited to, the acquisition of the required development permits, soccer field irrigation plans, employment of park staff and fund raising

City Administrator Ferguson reported that the Texas Commission on Environmental Quality (TCEQ) has issued the needed permits and that site development work is underway. He reported on an upcoming meeting with Guadalupe Blanco River Authority (GBRA) to resolve issues related to soccer field irrigation and on the search for a full-time Blue Hole Regional Park Manager, with interviews anticipated for the week of March 14, 2011. He noted park completion deadlines and ongoing fundraising and stressed that the park is off-limits during construction.

- Status report on preparations for the May 14, 2011 City of Wimberley General Election

City Administrator Ferguson reported on key deadlines for candidate filing, voting/early voting at the Wimberley Community Center, applying for ballot by mail, and voter registration.

- Status report on the proposed interlocal agreement between the City of Wimberley, Hays County, and Wimberley ISD (WISD) relating to food service inspections at WISD campuses

City Administrator Ferguson reported that the City of Wimberley has entered into an interlocal agreement with Hays County allowing Hays County officials to provide food service inspections for the WISD at no cost, including the City's agreement to accept inspection reports issued by Hays County.

#### 4. Ordinances

- A. Discuss and consider approval of the second and final reading of an ordinance of the City of Wimberley, Texas, amending Title XV (Land Usage) of the Code of Ordinances to create a new Chapter 156 entitled "Water Quality Protection", in order to establish and adopt water quality protection regulations; providing for a penalty as provided in Section 10.99 of the Code; and providing findings of fact, a repealing clause, to provide a savings and severability clause and providing for an effective date. (*Planning & Zoning Commission*)

City Administrator Ferguson stated that no changes have been made to the draft ordinance, except for the possible inclusion of a definition for *livestock containment area*, which is provided for Council's consideration as follows: "An area such as a corral, barn, or pen used to contain livestock for the purpose of management and providing care."

Councilmember Thurber moved to approve the item, with the inclusion of the previously stated definition of *livestock containment area*. Councilmember Wood seconded. Motion carried on a vote of 5-0.

- B. Discuss and consider approval of an ordinance of the City of Wimberley, Texas declaring the intent of the City of Wimberley, Texas, to annex into the city limits a 3.92 acre tract of land located at 351 River Meadows Road and to extend the boundary limits of said City so as to include said property; providing written notice to the property owners, service providers located in such territory, providing for two (2) public hearings and directing the City Administrator to prepare a service plan providing for full municipal services to the area to be annexed. (*City Administrator*)

City Administrator Ferguson stated that the subject property and an adjacent property were recently removed from the City of Wimberley Boundary Map after evidence was presented to City Council indicating the tracts are contiguous to, but actually located outside the city limits. The subject property owner, Curt Busk, along with the adjacent property owners (Todd and Teresa Walther of 301 River Meadows Road; see next Agenda Item 4C), has petitioned the City to have his property annexed into the city limits. Discussion addressed the statutory annexation process, including public hearing dates and notification procedures. Though discussion related to both Agenda Items 4B and 4C, City Administrator Ferguson requested that Council act on each item separately.

Councilmember Thurber moved to approve Agenda Item 4B as presented. Councilmember Appleman seconded. Motion carried on a vote of 5-0.

- C. Discuss and consider approval of an ordinance of the City of Wimberley, Texas declaring the intent of the City of Wimberley, Texas, to annex into the city limits a 4.01 acre tract of land located at 301 River Meadows Road and to extend the boundary limits of said City so as to include said property; providing written notice to the property owners, service providers located in such territory, providing for two (2) public hearings and directing the City Administrator to prepare a service plan providing for full municipal services to the area to be annexed. (*City Administrator*)

Councilmember McCullough moved to approve Agenda Item 4C as presented. Councilmember Wood seconded. Motion carried on a vote of 5-0.

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

- A. Discuss and consider possible action regarding the ownership of Mill Race Lane and possible improvements to said street as part of the *2011 City of Wimberley Street Improvement Program*. (*City Administrator*)

Councilmember Appleman recused himself from the meeting at this time.

Sabino Ranch resident Scott Johnson was glad to resume communication on this issue and hoped for a resolution. He felt that certain information has been omitted in Council's summary. He stated: "We as property owners were defending our property rights. We don't want and we don't need a government entity to encroach on our rights. We feel like we can take care of these responsibilities ourselves and we don't need a third party to do that for us." He felt that there needs to be a course of action based on definitive researched law that needs to be clear. Mr. Johnson stated that the following information was omitted: written protests by Mill Race Lane property owners to the City over many years; previous opinion from a City-hired surveyor; Hays County Precinct Three Commissioner Will Conley's letter regarding the County's designation of Mill Race Lane; protest of public funds expended for improving private property; maintenance of Mill Race Lane by its owners; cease and desist request signed in October 2010 by a majority of property owners; resolution proposed by Mill Race Lane property owners in November 2010. He closed by stating: "We don't want the City spending our limited tax dollars on private property. We really don't understand why the City is so persistent in doing so and we hope that the answer to some of these questions can be brought to the table and discussed and resolved."

Merry Gibson of 310 Mill Race Lane spoke of the neighborhood's efforts to communicate with the City on the ownership of Mill Race Lane. She agreed with Scott Johnson that there are legal issues that need addressing. She summarized a letter from neighbor, Shellye Arnold (who could not be in attendance tonight) that was faxed to Mayor Flocke earlier today as follows: "It's lengthy, but basically it is talking about the fact that all of us had to notify our title companies when the City began to make a claim. We had a legal obligation to do so. We've also notified our attorney. Shellye's attorney is the one who felt like he needed to make a statement today

before you had your discussion. Scott (Johnson) and I hope tonight that we can reach a resolution without further legal involvement.” Ms. Gibson asked for Council’s consideration and “that you respect our deeds that would be compromised, if we do anything different.”

City Administrator Ferguson presented an overall timeframe on Mill Race Lane’s public road status as reflected in a road inventory list, various filings, and City/Hays County maintenance records. He noted correspondence received from other property owners requesting that maintenance be done on Mill Race Lane and prior survey information showing an access easement. He referred to an independent title opinion sought by the City, which determined that a twenty-five foot (25’) access easement exists, but found no record of an express public dedication. While no evidence of the right-of-way being dedicated to the public has been found, City staff maintains the position that Mill Race Lane is likely a prescriptive easement in a public road as the result of the following:

- Its continuous and open use by the public for close to twenty (20) years
- Its public designation by both Hays County and the City of Wimberley
- Evidence of the expenditure of City and County public funds to maintain the street
- Property owners’ knowledge of the road’s status as a public road

City Administrator Ferguson stated the need for Council to take a position to resolve this contentious issue and recommended that Council vote to reaffirm Mill Race Lane’s status as a public street through prescriptive easement, unless Council believes the road has a different status. He requested that Council retire to Executive Session to consult with legal counsel.

Mayor Flocke adjourned Open Session and convened Executive Session at 6:53 p.m. pursuant to §551.071 of the Government Code for consultation with legal counsel.

Mayor Flocke adjourned Executive Session and reconvened Open Session at 7:17 p.m.

No action was taken in Executive Session.

Mayor Flocke opened Council discussion.

Discussion included:

- Clarification of the term *prescriptive easement*
- Whether a public road has been established and criteria for such determination
- Existence of a 25-foot right-of-way
- Potential legal action and associated costs
- Turning maintenance responsibilities over to Mill Race Lane property owners
- Historical and current use of the subject road by the public
- Implications of change in the subject road’s status on future development
- Establishing a dangerous precedent, should the City “back down” from threats of legal action
- Clarification that the City is not asserting any claim of ownership, but maintaining its position that a prescriptive easement exists
- Questions regarding agenda item wording

Councilmembers White and McCullough did not favor reaffirming Mill Race Lane as a public road nor committing to its continued maintenance by the City. Councilmembers Thurber and Wood believed that a prescriptive easement has been established and favored the City's commitment to continue to maintain the subject road.

Councilmember Thurber moved to claim the prescriptive easement on Mill Race Lane and consider it a City street, with a prescriptive easement on that street. Councilmember Wood seconded.

After discussion among Councilmember Thurber, City Administrator Ferguson, and City Attorney Crosby, Councilmember Thurber restated his motion to reaffirm the status of Mill Race Lane as a public street and to continue the City's commitment to maintain the subject road as it has in the past and will in the future. Councilmember Wood seconded.

Sabino Ranch resident M.F. Johnson asked Council to consider serious issues related to people turning around in privately owned driveways to exit from Mill Race Lane back onto Ranch Road 12. She asked whether there is a right to prohibit people from coming onto private property to turn around.

Scott Johnson believed that Council should base its decision on knowing all the provisions of statutes relating to prescriptive easements, which he stated could be provided to Council via his legal counsel.

Councilmember Thurber called the question.

Mayor Flocke called for a vote as follows: Councilmember Wood, aye; Councilmember McCullough, nay; Councilmember Thurber, aye; Councilmember White, nay; Mayor Flocke, nay. Motion failed on a vote of 2-3.

Mayor Flocke announced that Council has determined that a prescriptive easement does not exist. City Administrator Ferguson stated that Council has determined that Mill Race Lane is not a public street and will not be maintained in the future by the City.

There was brief discussion over future maintenance of Mill Race Lane, should at some point, property owners decide they no longer want to maintain it. It was established that the property owners could ask the City to reassume maintenance responsibilities in the future, if the subject road was brought up to specific standards.

Addressing earlier comments, City Attorney Crosby stated for the record that this agenda item was properly posted.

Councilmember Appleman rejoined the meeting at this time.

- B. Discuss and consider possible action regarding a proposed interlocal agreement with Hays County regarding on-going maintenance of the Hays County-City of Wimberley Regional Hike and Bike Trail. (*City Administrator*)

City Administrator Ferguson presented key terms of the agreement drafted in the interest of uniformity of maintenance, noting one minor modification in order to list the Hays County Precinct Three Commissioner as the point of contact for the County.

Discussion clarified the applicability of Sec. 3.4(4) to the City-owned portion of the Trail, which would allow the City (at no expense to Hays County) to contract with a third party for the maintenance, repair, and/or upgrade of the Trail, if the County is unable to perform the requested work.

Councilmember Wood moved to approve them item as presented. Councilmember McCullough seconded. Motion carried on a vote of 5-0.

- C. Discuss and consider possible action relating to the annual performance review of the city administrator. (*Mayor Bob Flocke*)

Mayor Flocke adjourned Open Session and convened Executive Session at 7:45 p.m. pursuant to §551.074 of the Government Code for discussion of personnel matters.

Mayor Flocke adjourned Executive Session and reconvened Open Session at 8:30 p.m.

No action was taken in Executive Session.

No action was taken in Open Session.

## 6. City Council Reports

- Announcements
- Future Agenda Items

As a future agenda item, Councilmember McCullough requested discussion of implementing a property (ad valorem) tax for the City of Wimberley.

Councilmember Wood requested a future agenda item to discuss problems with parking at certain locations by those using the Hike and Bike Trail.

Mayor Flocke reminded Council of needed board/commission appointments.

Hearing no further announcements or future agenda items, Mayor Flocke called the meeting adjourned at 8:35 p.m.

**Adjournment:** Council meeting adjourned at 8:35 p.m.

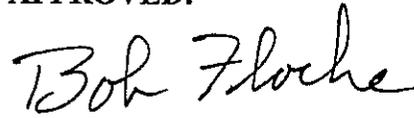
Recorded by:



Cara McPartland

These minutes approved on the 17th of March, 2011.

**APPROVED:**



**Bob Flocke, Mayor**

