

City of Wimberley
City Hall, 12111 Ranch Road 12, Ste. 114
Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
November 19, 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 Secretary Cara McPartland and City Attorney Cindy Crosby.

Proclamations

Proclamation recognizing the Wimberley Lions Club

Mayor Haley read the proclamation issued to Lions Club representatives Lane Hartsock and Frank Williams who thanked the many volunteers who have contributed their organization's success.

Citizens Communications

River Meadows Property Owners Association (RMPOA) President Dr. Curt Busk reported on voting results of recent RMPOA meetings and formation of a subdivision subcommittee to study "flood road" solutions, which the RMPOA deems a subdivision (not City) issue. He stated that RMPOA vehemently opposes the City taking over Leach Lane in any way for either a "flood road" or especially for a "connector road." Dr. Busk advised that he will keep Council updated on these matters.

1. Consent Agenda

- A. Approval of the minutes of the special City Council meeting of November 13, 2009.
- B. Approval of the minutes of the regular City Council meeting of November 5, 2009.

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

2. City Administrator Report

- Status report on the efforts to secure state and/or federal funding for the development of a centralized wastewater system for downtown Wimberley

City Administrator Ferguson reported on the ninety (90) day loan submission period, finalization of the Preliminary Engineering Report (PER), Guadalupe Blanco River Authority (GBRA) costs analysis, and scheduling of upcoming meetings in order to meet Texas Water Development Board (TWDB) submission deadlines. Discussion addressed involvement of Wimberley Water Wastewater Advisory Board and Wimberley Economic Development Commission in this process.

- Status report on the preparation of a development plan for property donated to the City of Wimberley by the Pedernales Electric Cooperative

City Administrator Ferguson anticipated a task force recommendation by the end of 2009. Due to lack of funds, the task force recognizes the need for community involvement and has developed several models for this project.

- Status report on the development of Blue Hole Regional Park

City Administrator Ferguson reported that Council will be briefed in December on the consultant's work to date. He noted the role, composition, and upcoming meeting schedule of the Blue Hole Regional Task Force and preliminary design deadlines.

- Status report on the upcoming Christmas parade and holiday festivities

City Administrator Ferguson reported on scheduled events, lighting specifics, and the installation of a twenty-one (21) foot Christmas tree at the "Y" intersection property at Ranch Road 12 and FM 2325. He noted the Christmas parade date/time, route, and street closures. He stated that the City's role is to provide traffic control for the parade and commended Brenda Samford for her organizational efforts.

3. Public Hearing and Possible Action

- A. Hold a public hearing and consider approval of an ordinance of the City of Wimberley, amending Ordinance No. ZA-06-013, which designated the geographic boundaries for a Wimberley Planned Development District (WPDD) zoning district classification for real property located at 14100 Ranch Road 12, Wimberley, Hays County, Texas, in order to allow the sale of alcoholic beverages for on-premise consumption for a designated portion of Parcel One and subject to certain conditions; and providing for the following: findings of fact; severability; effective date and proper notice and meeting. (*Brookshire Brothers, Ltd, Applicant*)

City Administrator Ferguson reviewed the Wimberley Planned Development District's (WPDD's) history, including prior amendments, specific parcels of the subject property, and details of the application that have been modified per subsequent agreement via discussions between City staff and the applicant. Agreement was reached that on-premise consumption of beer/wine will be limited to inside the store located in Parcel One, except for special events subject to Council approval. It was also agreed that beer will only be sold by the bottle and wine by the glass for on-premise consumption. It was noted that no opposition to the application has been received.

Planning and Zoning Commissioner Jean Ross reported that the Commission voted unanimously to recommend approval and noted discussion of certain concerns, including parking lot safety, and configuration/access of the deli area, which has an emergency exit door that will trigger an alarm if opened.

Discussion addressed the frequency of special events, the additional requirement of Council approval for special events, reasoning for restricting beer sales to glass bottles and wine by the glass only, and the impact of alcohol consumption on parking lot safety.

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

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

- B. Hold a public hearing and consider approval of an ordinance approving an application for a conditional use permit submitted by Linda Allen Catering to permit an eating establishment: sit-down, including the sale of beer, wine and alcohol for on-premise consumption on an approximately 1.711 acre tract located at 500 FM 2325, Wimberley, 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. (*Linda Allen Catering, Applicant*)

City Administrator Ferguson reviewed the conditional use permit (CUP) application including the subject property's location, current/proposed zoning/uses, existing natural buffering, and proximity to Katherine Anne Porter School (KAPS). He advised that staff has received no opposition to this application and recommends approval. It was noted that one property owner's notification was returned to the City and the owner's representative, Michael Dickey, was personally contacted by phone. Mr. Dickey did not express any objections to the proposed CUP.

Mayor Haley opened the public hearing.

In response to Councilmember Thurber's inquiry, applicant Linda Allen replied that there are currently no plans to expand the music venue outdoors toward the back of the property.

Mayor Haley closed the public hearing. Discussion addressed concerns over potential future owners maintaining existing buffering to protect neighbors from noise and fairness questions related to recent restrictions placed on an adjacent property.

Councilmember Flocke moved to approve the item as presented. Councilmember Roccaforte seconded. Discussion addressed additional buffering restrictions recently placed on the adjacent property (*Kate's Place*), options available to remove those restrictions, and lack of restrictions placed on the subject property. Councilmember Thurber requested a friendly amendment to the motion to add a fifteen (15) foot vegetation buffer along the rear property line. Councilmember Flocke declined the friendly amendment.

Mayor Haley called for a vote as follows: Councilmember Roccaforte, aye; Councilmember Flocke, aye; Councilmember Appleman, nay; Councilmember Thurber, nay; Councilmember White, aye. Motion carried on a vote of 3-2.

- C. 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 500 FM 2325, Wimberley, Hays County, Texas. (*Linda Allen Catering, Applicant*)

City Administrator Ferguson advised of the need for this waiver due to proximity to Katherine Anne Porter School (KAPS), which is located directly across the street from the subject property. It was noted that no opposition to the waiver was received from KAPS.

No public comments were heard.

Councilmember Appleman moved to approve the item as presented. City Administrator Ferguson stated that Council may waive the distance requirement if the Council finds enforcement of the distance provision in a particular case:

- 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, determined in the best interest of the community.

Councilmember Appleman restated his motion to include the previously stated findings. Councilmember Roccaforte seconded. Motion carried on a vote of 5-0.

- D. 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 unzoned real property located north of Old Kyle Road, and along Ranch Road 12 from FM 2325 to the

northern city limits, Wimberley, Hays County, Texas, further described and shown on the exhibit attached to this ordinance; and designating initial zoning for each tract as either Residential Acreage (RA), Rural Residential 1 (R-1), Commercial – Low Impact (C-1), Commercial – Moderate Impact (C-2), Lodging 1 (L-1), Participant Recreation 1 (PR-1) or Public Facilities (PF) as shown on the attached zoning map; and providing for the following: delineation on zoning map; severability; effective date and proper notice and meeting. (*City of Wimberley, Applicant*)

City Administrator Ferguson reviewed the City initiated zoning process to date and detailed relevant maps showing un-zoned properties, City-proposed zoning designations, and alternate zoning requests from five (5) notified property owners, which are reflected in Map #3. Discussion established that staff does not oppose any alternate zoning requests and cited certain case(s) that are to be handled separately.

Discussion addressed the location of several currently zoned C-3 properties, boundary lines of certain properties, the need for clarification of property lines/descriptions, and reasoning for City-recommended zoning. Based on communications with joint property owners, staff recommended RA zoning for Property #32, which is to be zoned separately, and not as part of City initiated Zoning Case #ZA-07-007. In response to Councilmember Appleman, City Administrator Ferguson cited reasons for City-recommended L-1 zoning for Property #8 and specific allowed/grandfathered uses.

Planning and Zoning Commissioner Ross stated that the Commission recommended approval on a vote of 6-1, with Commissioner Wightman's vote against based on concerns over availability of color maps to the public, which she felt warranted postponing action.

Mayor Haley opened the public hearing.

Ryan Willett pointed out the location of his property (#11 on map) and requested less restrictive zoning than RA zoning recommended by the City. Due to surrounding existing/proposed zoning and possible widening of Ranch Road 12, Mr. Willett stated his preference for C-1 zoning. City Administrator Ferguson suggested that Mr. Willett's property be zoned as a separate case. Discussion established that Property #26 does not belong to Mr. Willett.

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

Councilmember Thurber moved to approve the item as presented in accordance with Map #3, except for Property #11 and Property #32. After brief discussion of Property #32, Councilmember Thurber amended his motion to *not* exclude Property #32 from this zoning action, but to change its zoning designation to RA. Councilmember Flocke seconded the amended motion.

In response to Councilmember Appleman's inquiry, City Administrator Ferguson clarified that current uses of the Harris property (#8 on map) are pre-existing, non-conforming and are allowed to continue provided that the existing use does not expand or change.

Hearing no further discussion, Mayor Haley called for a vote. Motion carried on a vote of 5-0.

- E. 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 unzoned real property located west of Ranch Road 12 and FM 2325, between Cypress Creek and Rhodes Lane, Wimberley, Hays County, Texas, further described and shown on the exhibit attached to this ordinance; and designating initial zoning for each tract as either Rural Residential 1 (R-1), Single-Family Residential 3 (R-3), Multi-Family 1 (MF-1), Commercial-Low Impact (C-1), Commercial-Moderate Impact (C-2), Neighborhood Services (NS) or Public Facilities (PF) as shown on the attached zoning map; and providing for the following: delineation on zoning map; severability; effective date and proper notice and meeting. (*City of Wimberley, Applicant*)

City Administrator Ferguson reviewed the subject area, pre-existing/non-conforming uses, and City-recommended zoning versus alternate zoning requests. He stated that nine (9) affected property owners requested alternate zoning, with those requests indicated in Map #3. Discussion addressed specific properties, current pre-existing uses, and proposed zoning, with reasoning given for applicable alternate zoning requests. It was noted that Planning and Zoning recommended approval on a vote of 6-1, with Commissioner Wightman voting against due to previously stated concerns.

No public comments were heard. Discussion addressed Properties #22, #14, and #37, including existing uses and proposed zoning. Hearing no further discussion, Mayor Haley entertained a motion.

Councilmember Flocke moved to approve the item as presented in accordance with Map #3. Councilmember Appleman seconded. Motion carried on a vote of 5-0.

- F. Hold a public hearing and consider approval of the first reading of an ordinance of the City of Wimberley, Texas, amending Title XV (Land Usage) of the Code of Ordinances to: (1) Amend Subsection 155.005 to delete definitions of "Average Slope"; (2) Amend Subsection 155.078(H) (Steep Slope); (3) Amend portions of Section 155.077 (Development Plan Review); (4) Amend Chapter 151 (Building Regulations; Construction) to create a new Subsection 151.20 entitled "Steep Slope"; (5) Amend Subsection 155.078 (Impervious Cover); and amend a portion of Sections 155.035-.043, 155.045-.061, and 155.091 (Zoning Districts), in order to clarify the steep slope and impervious cover regulations for the City of Wimberley; and providing findings of fact, a repealing clause, to provide a savings and severability clause and providing for an effective date. (*Mayor Pro-tem Charles Roccaforte*)

City Administrator Ferguson highlighted the draft ordinance, which would allow property owners more opportunity to make use of their property provided that certain extra steps are taken. The proposed changes would allow development on lots with a slope greater than fifteen percent (15%) provided the City is presented with a comprehensive development plan including, but not limited to,

detailed topographic information, a sealed geotechnical report, and engineering and construction drawings. Development plans would require approval from various emergency service providers. Mr. Ferguson stated that the proposed ordinance removes the use of slope to calculate impervious cover and noted that under the draft ordinance the net site area of a planned development would be used to calculate impervious cover percentage. He stressed that no changes are being proposed to the City's ridge development prohibition, cut and fill requirements, or the City's landscape requirements for slope development.

Planning and Zoning Commissioner Ross stated that the Commission voted to recommend approval on a vote of 5-2, with two commissioners voting against because they felt more time was necessary for adequate understanding of the proposed ordinance by both the Commission and the public. Commissioner Ross explained that the Commission's decision was in part based on the fact that two more public hearings must be held by City Council in order to pass and approve the proposed ordinance.

Mayor Haley opened the public hearing.

Dr. Curt Busk stated that there was not enough time to review this ordinance due to its complicated nature and felt that his comments tonight should have been made at last week's Planning and Zoning Commission's public hearing. He suggested modifications to language on pages 5 and 9 of the draft ordinance concerning private driveways. Although the draft ordinance states that development plans require approval from various emergency service providers (in particular the fire department), Dr. Busk provided a hypothetical scenario that he felt exemplifies the need for fire department "sign-off authority" in order to stop development that could negatively impact public safety. The example given allowed for some assumption of risk on the property owner's part related to law enforcement/ambulance services, but illustrated how a fire has greater harmful effect on surrounding properties.

Hearing no further comments, Mayor Haley closed the public hearing. Councilmember Thurber commented on what he considered an obvious and uncharacteristic lack of vetting of the draft ordinance at the Planning and Zoning Commission public hearing/meeting, which he felt required more time to adequately review. Despite his procedural objections, he thanked Mayor Pro-tem Roccaforte, staff, and legal counsel for a job well done on the draft ordinance. Referring to Dr. Busk's hypothetical scenario, Councilmember Thurber stated his view that all emergency service providers should be able to access/exit the property, not just the fire department.

Though non-approval of a development plan essentially denies its approval, City Administrator Ferguson stated that wording can be added to specifically mention "denial," if Council so desires. He suggested that such clarified language include all emergency service providers (ambulance, law enforcement, and fire department).

Mayor Haley suggested approving the first reading and incorporating the recommended language into the draft ordinance for consideration at Council's second reading on December 3, 2009.

Councilmember Flocke moved to approve the item with the previously suggested additional wording that states all emergency service providers may deny approval of development plans. Councilmember Appleman seconded.

Councilmember Appleman noted former Planning and Zoning Commissioner Glenn Fryer's observation that should emergency service providers get stuck at a location due to slope issues, they would be unable to provide services in other areas as needed.

Motion carried on a vote of 5-0.

4. Discussion and Possible Action

- A. Discuss and consider the appointment of members to a City Council sub-committee to assist with the review of responses to the City of Wimberley's Request for Qualifications for professional land surveying services. (*Place Two Councilmember Bob Flocke*)

After additional consideration, Councilmember Flocke did not express any need for action on this item. City Administrator Ferguson detailed the Request for Qualifications (RFQ) process and discussion addressed potential composition of the sub-committee should one be appointed, number of recommendations to Council, and possible need for special meetings. No action was taken on this item.

- B. Discuss and consider approval of a Professional Services Agreement with *Environmental Concepts, LLC* to serve as the environmental health/OSSF inspector for the City of Wimberley. (*City Administrator*)

City Administrator Ferguson provided details of the agreement, recommended certain changes relating to reporting responsibilities (all references to reporting directed to City Administrator, rather than City Secretary), and highlighted policies such as fee structure and office hours. He advised that an ordinance establishing fees will be brought to Council at its next meeting. Discussion established that fees will be "pass-through" in nature and that certain fees will be built into inspection costs.

Councilmember Thurber moved to approve the item with the inclusion of the previously stated recommendation relating to reporting responsibilities. Councilmember Roccaforte seconded. Motion carried on a vote of 5-0.

- C. Discuss and consider approval of a request from the Wimberley Community Civic Club to place directional signs in the City right-of-way for the Wimberley Home Tour on November 20th and 21st, 2009. (*City Administrator*)

City Administrator Ferguson advised that signs will be placed on November 20, 2009 and removed by the end of November 21, 2009. Councilmember Appleman moved to approve the item as presented. Councilmember Thurber seconded. Motion carried on a vote of 5-0.

- D. Discuss and consider approval of proposed changes to the Wimberley Economic Development Commission by-laws. (*Wimberley Economic Development Commission*)

City Administrator Ferguson explained the reasons for changing the commencement of the Commission's business year to the month of October and amending Section Q to reflect that amendments to the by-laws and procedures may be placed on the agenda as a main motion and passed by a majority of the Commission (as opposed to a majority of those members present).

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

- E. Discuss and consider action relating to the possible acquisition of Lot 80 (0.814 acres) in South River Unit One, Wimberley, Texas. (*Mayor Tom Haley*)

Mayor Haley adjourned Open Session and convened Executive Session at 8:17 p.m. for discussion about real estate acquisition pursuant to Chapter 551.072 of the Texas Government Code.

Mayor Haley reconvened Open Session at 8:29 p.m. No action was taken during Executive Session.

Councilmember Thurber moved to authorize staff to enter negotiations as discussed in Executive Session on the acquisition of Lot 80 in South River Unit One. Councilmember Appleman seconded. Motion carried on a vote of 5-0.

5. City Council Reports

- Announcements
- Future Agenda Items

Hearing no announcements or future agenda item requests, Mayor Haley called the meeting adjourned at 8:30 p.m.

Adjournment: Council meeting adjourned at 8:30 p.m.

Recorded by:

Cara McPartland

Cara McPartland

These minutes approved on the 3rd of December, 2009.

APPROVED:

Tom Haley
Tom Haley, Mayor

