

**City of Wimberley**  
City Hall, 12111 Ranch Road 12, Ste. 114  
Wimberley, Texas 78676  
**Minutes of Regular Meeting of City Council**  
April 2, 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, Jeri Xiques, Steve Thurber, and Dick Larson.

Staff Present: City Administrator Don Ferguson

**Presentations of Citizens:**

- Citizen Communications

Mayor Haley outlined procedures for speakers and Councilmember Thurber suggested that speakers comment when Agenda Item No. 5B is called in order to allow dialogue between Council members and speakers. No citizen comments were heard at this time.

**1. Consent Agenda**

- A. Approval of minutes of the regular City Council meeting of March 19, 2009.
- B. Approval of the February 2009 Financial Statements for the City of Wimberley.

This item was heard after Agenda Item No. 5B.

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

**2. Presentations**

Presentation of the quarterly status report from representatives of the Pedernales Electric Cooperative (PEC).

PEC representative, Celestino de Leon reported on PEC's success in meeting minimal outage goals, feeder maintenance, and its *Light the Way* program. He concluded his presentation with a check to the City in the amount of \$24,177.65 in accordance with its franchise agreement. Councilmember

Flocke expressed thanks for PEC's *Light the Way* program contribution on behalf of the Chairperson of the Board of Directors for the Wimberley Chamber of Commerce.

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

- Status report on activities of the PEC Triangle Committee

City Administrator Ferguson reported on ongoing efforts to gather information and public input, including a public notice requesting ideas from citizens.

- Status report on City Committee Review of the proposed Non-Point Source Pollution Ordinance

City Administrator Ferguson reported that selected Planning and Zoning commissioners will be meeting with Water/Wastewater Advisory Board members and staff in anticipation of bringing a recommendation to Council in the near future.

- Status report on 2009 Spring Walk co-sponsored by the Mayor's Fitness Council

City Administrator Ferguson reported on the positive feedback received from parties involved in this popular and successful event which enjoyed the added benefit of perfect weather.

- Status report on 2009 operations plan for the Blue Hole Regional Park

City Administrator Ferguson reported that full-time season operations begin on Memorial Day weekend and run through Labor Day.

- Status report on efforts underway to secure state and federal funding for the Downtown Wastewater Project

City Administrator Ferguson reported that the Water/Wastewater Advisory Board is nearing a decision after holding meeting discussions on rules/priorities and financing details.

- Status report on activities of the Wimberley Municipal Court

City Administrator Ferguson reported that the Court will hold its first trial on Tuesday, April 7, 2009 at 10:00 a.m.

- Status report on activities of the City Marshal

City Administrator Ferguson reported on continued merchant contact and downtown traffic enforcement efforts. He noted that efforts are ongoing to resolve problems associated with the feral hog population and enforcement of other "nuisance" ordinances such as noise regulations.

City Administrator Ferguson concluded his report by noting that the City has been named as a finalist in the Envision Central Texas 2009 Community Stewardship Award competition. Announcement of the award will be made at a reception/luncheon to be held on Friday, May 8, 2009 from 11:30 a.m. to 1:30 pm. at the Hyatt Regency Hotel in Austin, Texas. Mr. Ferguson asked those interested in attending to contact his office.

Councilmember Flocke recounted a recent conversation with a Las Flores Street resident who reported that the amount of speeding has decreased significantly due to increased traffic enforcement by the City Marshal. Councilmember Thurber reported similar reports from neighborhood residents, but noted continued enforcement will help as a future deterrent. Councilmember Roccaforte reported similar approval of traffic enforcement from Paradise Valley residents.

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

Hold a public hearing and consider approval of an ordinance approving an application for a Conditional Use Permit submitted by Gary Callon to operate a bed and breakfast lodging facility on an approximately 1.66 acre tract located at 2410 Flite Acres Road, Wimberley, Hays County, Texas zoned Single-Family Residential 2 (R2), 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 (*Gary Callon, Applicant*).

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

City Administrator Ferguson reviewed details of the application, including existing/surrounding zoning/uses, maximum occupancy, and parking, with no comments received either for or against the application. He noted that Planning and Zoning Commission and staff both recommend approval of the application.

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

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

- A. Discuss and consider approval of a plan for mobility enhancements for the Wimberley Square (*Transportation Advisory Board*).

General agreement was reached to continue this item until Council's next meeting on April 16, 2009.

- B. Discuss and consider action relating to the possible granting of additional authority to the Hays Trinity Groundwater Conservation District under Chapter 36 of the Texas Water Code (*Mayor Tom Haley*).

At Councilmember Thurber's request, this item was heard before Consent Agenda Item No. 1.

Local League of Women Voters representative, Dorothy Knight, spoke in support of full Texas Water Code (TWC) Chapter 36 authority for Hays Trinity Groundwater Conservation District (HTGCD) in alignment with the management objectives that minimize the effects of groundwater withdrawals, including land subsidence and reduction of spring flows. In response to Councilmember Flocke's inquiry, Ms. Knight replied that the League of Women Voters' statewide support of this issue does not conflict with its traditionally neutral position toward candidates and/or political parties.

HTGCD Wimberley representative, Jack Hollon, spoke of a recent meeting with certain legislators regarding the fairness of financial impact to various water providers' customers versus private well owners. He advised of an upcoming HTGCD meeting to be held April 9, 2009 at 8:30 a.m. at Dripping Springs City Hall and urged public attendance and support. In response to Councilmember Thurber's inquiry, Mr. Hollon replied that he has not yet seen the proposed legislation offered by State Representative Patrick Rose. He closed by urging Council's support for TWC Chapter 36 authority for HTGCD.

Wimberley resident, Jim McMeans, directed Council's attention to the varied political affiliations of those who recently signed a petition in support of groundwater protection as a critical issue for this area. He stated that communications with State Representative Rose indicated less than full support for HTGCD's goal of TWC Chapter 36 authority and the need for affirmation from area groups/governmental entities showing support for proposed legislation. He cautioned against scare tactics relating to HTGCD's potential to impose on property rights and mandate metering. Mr. McMeans asked Council to put politics aside and act in the entire community's benefit to help give HTGCD the standard authorization to protect and preserve groundwater for our citizens, as other groundwater districts currently possess such authorization.

Mayor Haley commented that powers potentially granted to HTGCD under the proposed legislation are mischaracterized as scare tactics because such powers have basis in fact. Mr. McMeans stated that property owners will not lose rights; complaint-driven enforcement allows only reasonable access; and, that metering is an unaffordable option at this time. In response to Councilmember Thurber, Mr. McMeans replied that other Texas groundwater districts have not experienced any complaints related to access of property and that not all districts meter wells.

Wimberley resident, Craig Reitz, cautioned against the creation of a quasi-governmental power that will have the ability to tax, seize property, and regulate wells/water usage. He felt that too much power will lie in the hands of too few people. He outlined potential charges and stated that taxation is by nature a political issue, and that such taxation is unfair in its application. He expressed concerns over losing personal freedoms, property rights, questions of reasonable access, well fees, and problems with defining usage limits. Mr. Reitz questioned the applicability of taxation to those who utilize rainwater harvesting, rather than wells. He noted the evaporation rate from Cypress Creek and the Blanco River and recalled past considerations to create a water source via the

formation of a reservoir (formerly proposed Cloptin's Crossing Dam). Mr. Reitz cautioned against continual well drilling and asked that Council offer a resolution against full TWC Chapter 36 authority for HTGCD as protection for Wimberley's property rights and economic interests. Councilmember Larson recalled that the Cloptin's Crossing Dam project was stopped by opposition from an unnamed Wimberley group.

In response to Mr. Reitz' assertions on the fairness of ad valorem taxation, Councilmember Thurber noted that a property tax is not necessary to fund this mechanism and perhaps a well fee could be imposed as a fair alternative and conservation incentive. Councilmember Thurber noted no complaints of property right infringement by other Texas groundwater districts. Mr. Reitz felt that potential for abuse of power exists whether or not complaints have been registered.

Wimberley resident, Tom Huth, spoke in favor of aggressive policies to protect groundwater, but felt that specific changes to onerous wording of certain TWC Chapter 36 sections would alleviate fears of its application. He noted concerns with taxation, property rights/eminent domain, and broad powers granted under TWC Chapter 36. Mr. Huth stated that a large source of water usage could be alleviated by the elimination of a sizeable percentage of ash juniper (commonly referred to as cedar) trees. Because of his previously stated concerns, Mr. Huth recommended that Council not support this version of TWC Chapter 36 authority for HTGCD.

Texas River Systems Institute representative, Jason Pinchback, spoke in support of full TWC Chapter 36 authority for HTGCD. He highlighted his organization's Cypress Creek project and noted scientific results showing that Cypress Creek, Jacob's Well and the Trinity Aquifer are all interconnected. He stated the importance of sustainable groundwater management, particularly during times of drought, when there is danger of "mining" the aquifer. He felt that HTGCD and the community should be empowered with the ability to better grasp the science in order to better manage the aquifer. Compared to the Edwards Aquifer, Mr. Pinchback stated that the Trinity Aquifer has less capacity to hold water and maintain low levels of pollution and is more susceptible to contamination and drought conditions. He closed with his organization's expression of support for full TWC Chapter 36 authority for HTGCD.

Wimberley Planning and Zoning Commissioner David Glenn, speaking as a non-partisan metaphorical drop of water, identified water as the most precious critical resource for the Wimberley Valley. He hoped to cool down the rhetoric on this issue and focus on solutions for key issues and realities. He acknowledged pressures on Council and equated those pressures with those placed on the Trinity Aquifer and the equitable allocation of its water resources. Commissioner Glenn referred to Kyle Mayor Mike Gonzalez' comment on water as a basic right and noted that western Hays County has the most legislatively flawed and handicapped groundwater district in Texas. Commissioner Glenn commented on a proposal by State Representative Patrick Rose asking the highly regarded HTGCD's Board to place an inequitable, two-year surcharge on Wimberley Water Supply and Aqua Texas customers to be used for research only. Commissioner Glenn stated that viable mediation and equitable allocation is needed in order to settle disputes over water resources and supported granting full TWC Chapter 36 to HTGCD. He reminded of the powers that voters have in electing HTGCD Board members and thanked Council for its time and consideration.

In response to Councilmember Thurber's inquiry, Commissioner Glenn replied that he is not an HTGCD Board member and clarified that the proposed surcharge is restricted for research purposes for a period of two years only. Discussion between Councilmember Thurber and HTGCD representative, Jack Hollon, addressed the quality scientific and geological/hydrological research that HTGCD has received recognition for by various entities.

Wimberley resident, Susan Nenney, cited U.S. Census data on Hays County growth and stated the need for water conservation and education, such as cedar removal programs. Due to the fast area growth rate, Ms. Nenney cautioned on the vulnerability of Hays County as a critical risk. She felt that HTGCD should not be the weakest groundwater district in Texas supported by "wimpy" legislation. Ms. Nenney stated that we cannot afford to wait until the last drop of scientific data is reported to act and noted that imposition of an ad valorem tax must be approved by voters. She questioned why State Senator Jeff Wentworth, State Representative Patrick Rose, and Council would want the weakest district in Texas and urged Council to strongly support TWC Chapter 36 authority for HTGCD.

Wimberley resident, Louis Hart, stated that he utilizes rainwater harvesting and warned against use of scare tactics such as taxation and loss of personal liberties. He cautioned that lack of water will harm Wimberley's beauty and property values. He provided the analogy of the fire department's right to enter properties as an example of the perspective needed when understanding potential impact on property rights by groundwater districts in efforts to prevent abuse of groundwater resources. Mr. Parks emphasized that Council's decision could have a long-term impact on the entire community and hoped that Council will be able to look back with pride for its decision to support TWC Chapter 36 authority for HTGCD. Mr. Parks closed by stressing Council's long-term decision-making impact and asked that it not let down the community.

Kay Rogers felt that the possibility of Council's inaction will exacerbate future lack of available water and acknowledged that despite flaws, TWC Chapter 36 authority works well in other Texas groundwater districts as evidenced by lack of complaints. She questioned why HTGCD should not have full Chapter 36 powers and noted that voters must ultimately decide whether or not an ad valorem tax should be implemented. Ms. Rogers feared running out of water and commented on meters as valuable aquifer monitoring tools for HTGCD. She cautioned against lack of funding for data collection that may impact development in northwestern Hays County, which could proceed unchecked to the detriment of the aquifer. Ms. Rogers stated that Council's obligation is to look at facts (not fears) to decide what will benefit the majority now. She closed by noting that granting HTGCD full TWC Chapter 36 authority should work as well here as for districts in the rest of Texas.

No more public comments were heard and Mayor Haley opened Council discussion. Councilmember Thurber feared disastrous effects from the legislature's failure to act earlier this week by not offering legislation that would expand HTGCD's authority under TWC Chapter 36. He hoped that Council will approve of such additional authority to HTGCD as a sign of support for State officials. Councilmember Flocke spoke in favor of a resolution in support, but stated his understanding that should such a resolution be approved, no action is forthcoming in this legislative

session. He spoke of fear tactics and points of argument on both sides of this issue, and reminded that the voters must approve any potential ad valorem tax proposed by HTGCD. Councilmember Flocke noted the difficulty of gathering support from opponents who feel that this issue has been forced upon them without respect for property rights. He commended the scientific efforts of HTGCD, but stressed to HTGCD's Jack Hollon the importance of finding common ground on a level that addresses fears that are part of human nature. Councilmember Roccaforte concurred with speakers advocating clearing of ash juniper (cedar) trees and recalled higher water levels when ash juniper trees were less prevalent. He also spoke of the fire danger threat that an abundance of juniper trees may cause. Councilmember Xiques favored water conservation, but expressed concern over specific wording in TWC Chapter 36 relating to enforcement. Councilmember Larson felt that more time is necessary before he could cast a vote and stated that some language adjustments may be needed. Councilmember Thurber reiterated that Council's support lends credence to the cause, and felt that some action may still occur during the current legislative session.

Mayor Haley expressed concerns over the "all or nothing" aspect of this issue, without any room for negotiation, as exemplified by an email received by Mayor Haley from HTGCD's president, who advocated charging fire departments for water used to fight fires. Mayor Haley spoke in support of water conservation/regulation, but stated reservations regarding full TWC Chapter 36 authority for HTGCD and felt inclined toward a more moderate stance. Discussion between Mayor Haley and Jack Hollon addressed the accuracy and context of HTGCD's previously referenced email communication and Mr. Hollon stated that such a decision does not lie solely with HTGCD's president and would have to be voted on by the Board.

Hearing no further comments, Mayor Haley entertained a motion. Hearing none, the item died for lack of a motion.

C. Discuss and consider approval of a route for the 2009 Fourth of July Parade route (*City Administrator*).

City Administrator Ferguson reported that the planning process is underway for Fourth of July celebrations and highlighted the advantages of the proposed route starting at Lions Field and ending at the former First Baptist Church site. Councilmember Roccaforte suggested an alternative parade organization (patterned on Lockhart's parade planning) allowing parade participants to view the parade. Councilmember Xiques moved to approve the route as presented with the condition that she participate in the parade as a former Council member. Councilmember Thurber seconded. Motion carried on a vote of 5-0.

## 6. City Council Reports

- Announcements
- Future Agenda Items

Councilmember Flocke requested that City Administrator Ferguson set up the next Mayor's Fitness Council meeting with acting Chair Judy Dunn.

As a future agenda item, Councilmember Thurber requested consideration of action to enhance communication among various boards/commissions and City Council.

Hearing no further announcements or future agenda items, Mayor Haley called the meeting adjourned.

**Adjournment:** Council meeting adjourned at 7:54 p.m.

Recorded by:

*Cara McPartland*

Cara McPartland

These minutes approved on the 16th of April, 2009.

**APPROVED:**

*Tom Haley*  
Tom Haley, Mayor

