

City of Wimberley
 City Hall, 221 Stillwater
 Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
 April 7, 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 and City Secretary Cara McPartland

Citizens Communications

This item was heard after Agenda Item 2.

Wimberley resident M.F. Johnson wished the Council a "Happy Easter" and expressed appreciation for its time and efforts.

1. Consent Agenda

- A. Approval of the minutes of the Regular City Council meeting of March 17, 2011
- B. Approval of the minutes of the Special City Council meeting of March 31, 2011
- C. Appointment of Ron Freeman to the City of Wimberley Budget Advisory Board. (*Place Three Councilmember Bill Appleman's consensus nominee*)
- D. Appointment of John Urban to the City of Wimberley Budget Advisory Board. (*Mayor Bob Flocke's consensus nominee*)
- E. Appointment of Craig Mooty to the City of Wimberley Budget Advisory Board. (*Place Two Councilmember Mac McCullough's consensus nominee*)
- F. Appointment of Ed Foster to the City of Wimberley Budget Advisory Board. (*Place Two Councilmember Mac McCullough's consensus nominee*)
- G. Appointment of Liz Sumter to the City of Wimberley Transportation Advisory Board. (*Place Three Councilmember Bill Appleman's consensus nominee*)

Councilmember McCullough pulled Consent Agenda Item 1F. Councilmember Thurber moved to approve remaining Consent Agenda Items 1A-1E and 1G, as presented. Councilmember Wood seconded. Motion carried on a vote of 5-0. Councilmember McCullough advised that he will submit another nominee for consideration on Council's next agenda.

2. City Administrator Report

This item was heard after Consent Agenda Item 1H.

- Status report on plans for the annual City Council photograph

Council agreed on scheduling the photo session for Friday, April 22, 2011 at 9:30 a.m. at Mount Baldy.

- 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 on the hiring of Doug Carter as park manager and highlighted his previous experience and qualifications. He advised that soccer fields will utilize Subsurface Type 2 Effluent Drip irrigation, with funding options to be presented to Council at a later date. He reported on \$300,000 raised to date by Friends of Blue Hole (FOBH) and a recent productive FOBH meeting with Brookshire Brothers. Completion of the swimming area of Blue Hole Regional Park is anticipated in early June 2011. Significant site development work is underway and a Council tour of the Park is scheduled for April 21, 2011 at 5 p.m. Photos were displayed of the construction process, including features that provide protection of natural resources at the Park.

- Status report on sales tax collections for the City of Wimberley

City Administrator Ferguson reported on receipt of the April 2011 collections check representing February 2011 sales, totaling approximately \$29,000, which is down five percent (5%) from the same period last year. He noted that February is typically the slowest month for sales tax collections. Fiscal year-to-date collections total almost \$309,000, which is up one and one-half percent (1.5%) from the same period last year.

- Status report on the selection of a new Wimberley Community Center Director

City Administrator Ferguson reported on the hiring of Tracy Calamari and highlighted her experience and qualifications.

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

City Administrator Ferguson reported on the deadline for voter registration and voting/early voting dates and times at the Wimberley Community Center.

- Status report on development activity within the City of Wimberley

City Administrator Ferguson compared October through March of 2010 with the same period in 2011. Increases were noted in residential/commercial building permit activity. Zoning (including conditional use permits) and subdivision activity was down, with decreased zoning applications in part due to completion of recent City-initiated zoning.

3. Public Hearing and Possible Action

- A. Hold a public hearing and consider approval of an ordinance of the City of Wimberley, Texas annexing a 3.92 acre tract of land located at 351 River Meadows Road into the city limits of the City of Wimberley, Texas and extending the boundary limits of said City so as to include said property; directing the City Secretary to file a certified copy of this ordinance with certain authorities; directing that the map of the City boundaries and extraterritorial jurisdiction be corrected to include the annexed territory; providing for the attachment of the service plan and granting to said property and all future inhabitants all of the rights and privileges of other citizens and binding said future inhabitants by all of the acts and ordinances of said City. (*City Administrator*)

Mayor Flocke asked Eagle Rock resident Clint Frankmann, who signed up to speak on this item, if he wished to comment at this time. Clarification was provided to Mr. Frankmann on the total acreage of the proposed annexations as listed in Agenda Items 3A and 3B. Mr. Frankmann made the following comments:

"I'm not here to contest Curt Busk's desire to be annexed into the City of Wimberley. I am here to clear up hopefully some confusion surrounding Mr. Busk's past and possibly his motivation for annexation presently. First of all, not everybody, as reported by Bob Flocke, thought that Mr. Busk was in the city limits when he served in a now-determined illegal position on City Council approximately five years ago."

Mayor Flocke stated that that Mr. Frankmann's comments about past events were not relevant to the present agenda item.

Mr. Frankmann continued:

"I would say that his motivation presently is to possibly put him in the position, which is okay with me, if he wants to run for public office, because I don't see any advantage for joining the City."

Mayor Flocke and City Administrator Ferguson advised Mr. Frankmann that his comments relating to Mr. Busk individually are not relevant to the agenda item.

Mr. Frankmann continued:

"However, I do take issue with the City expanding its land base by approximately eight (8) acres comprised of Mr. Busk's and his neighbor's property. The City does not have, nor ever had, the legally required population to support its claimed nine (9) square miles of jurisdiction. The action of the City should consider taking under the situation, this cloud of legal standing, to reduce the land base size by an additional eight (8) acres elsewhere to accommodate Mr. Busk and his neighbors. The deannexation of an equal acreage amount would hold to the present nine (9) acre miles claimed by the City. This would place no burden to the City or to those who would render up eight (8) acres. I assure you abundant volunteers will step forward. Thank you."

Mayor Flocke stated that: "To set the record straight, the City is not restricted to nine (9) square miles. The City can be as large as it grows to. The City can have whatever population it happens to have. The requirements for square mile area and population were only for the act of incorporation. That was not challenged and so it stands." City Administrator Ferguson noted that Mayor Flocke's comments were accurate.

City Administrator Ferguson reported that the subject property was originally thought to be inside the city limits, but was recently removed from the City of Wimberley Boundary Map after evidence was presented to the City Council indicating the tract is contiguous to, but actually located outside the city limits. The subject property owner, Curt Busk, has petitioned the City to have his property annexed into the city limits. City Administrator Ferguson reviewed the service plan and noted that Council needs to adopt the ordinance on its second and final reading in order to annex the property.

Mayor Flocke opened the public hearing. No public comments were heard, beyond those offered earlier by Mr. Frankmann. Mayor Flocke closed the public hearing.

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

- B. Hold a public hearing and consider approval of an ordinance of the City of Wimberley, Texas annexing a 4.01 acre tract of land located at 301 River Meadows Road into the city limits of the City of Wimberley, Texas and extending the boundary limits of said City so as to include said property; directing the City Secretary to file a certified copy of this ordinance with certain authorities; directing that the map of the City boundaries and extraterritorial jurisdiction be corrected to include the annexed territory; providing for the attachment of the service plan and granting to said property and all future inhabitants all of the rights and privileges of other citizens and binding said future inhabitants by all of the acts and ordinances of said City. (*City Administrator*)

City Administrator Ferguson reported that the subject property was originally thought to be inside the city limits, but was recently removed from the City of Wimberley Boundary Map after evidence was presented to the City Council indicating the tract is contiguous to, but actually located outside the city limits. The subject property owners, Todd and Teresa Walther, have petitioned the City to have their property annexed into the city limits. City Administrator Ferguson stated that the same service plan prepared for Agenda Items 3A's subject property at 351 River Meadows Road also applies to this item's subject property at 301 River Meadows Road.

No public comments were heard.

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

City Administrator Ferguson noted that both annexations are subject to U.S. Department of Justice review, which will likely take sixty to ninety days.

- C. Hold a public hearing and consider approval of an ordinance of the City of Wimberley amending Ordinance No. ZA-01-037, which designated the geographic boundaries for a Planned Unit Development (PUD) zoning district classification for real property located at 14068 Ranch Road 12, Wimberley, Hays County, Texas, in order to reflect an approved replat of the property; and providing for the following: findings of fact; severability; effective date and proper notice and meeting. (*Wimberley Senior Citizens Activities Incorporated, Applicant*)

As a result of Council's action on January 20, 2011 approving the replat of Lot 1 into four (4) lots, City Administrator Ferguson noted the need for Council to amend the PUD to reflect the recent subdivision. No change in use or development regulations is being proposed.

No public comments were heard.

Councilmember Appleman moved to approve the item as presented. Councilmember White 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 property located at 109 Mill Race Lane, Wimberley, Hays County, Texas, designating such property from Commercial – Moderate Impact (C-2) to Participant Recreation – Low Impact (PR-1); and providing for the following: delineation on zoning map; severability; effective date and proper notice and meeting. (*Bruce Billingsley/Elizabeth Dibrell, Applicant*)

City Administrator Ferguson explained the application to rezone the subject property in order to facilitate a planned land transaction that will allow for the restoration of the historic home of Zach Wimberley located on Lot 1 of the proposed administratively handled subdivision. The "Zach House" will be used for guided public tours. Parking and emergency/pedestrian access information was displayed. PR-1 zoning is requested only for the small 0.19 acre tract (Lot 1) where the "Zach House" resides, with Lot 2 to retain its C-2 zoning designation. He advised that the Planning and Zoning Commission unanimously recommended approval.

No public comments were heard.

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

- E. Hold a public hearing and consider approval of the first reading of an ordinance of the City of Wimberley, Texas, amending Chapter 155 (Zoning), Section 155.005 (Definitions) of the Code of Ordinances to amend the definition of "Height"; and

providing findings of fact, a repealing clause, to provide a savings and severability clause and providing for an effective date. (*City Administrator*)

City Administrator Ferguson explained the need for clarification of the definition and presented current wording and wording as recommended by the Planning and Zoning Commission on March 24, 2011. Both definition versions are listed below.

Current definition:

“HEIGHT. Of a structure, the greatest vertical distance from any point on the established ground level under the structure to the highest attached component of the structure at that point. The established ground level shall be the lower of the natural grade prior to disturbance of the site, or the newly established grade after construction.”

Planning and Zoning Commission’s recommended version:

“HEIGHT. Of a structure, the vertical distance from any point on the established ground level under the structure to the highest attached component of the structure above that point. The established ground level shall be the lower of the natural grade prior to disturbance of the site, or the newly established grade after construction.” The Commission also recommended inclusion of a graphic depiction in the definition.

No public comments were heard.

Discussion addressed:

- Concerns with clarity of the current and proposed wording
- Measurement methods and questions relating to meaning of “highest attached component”
- **Staff’s recommended definition:** “Of a structure, the vertical distance between the existing or finished grade under the structure, whichever is lower, to the highest point of the structure, including chimneys. For a stepped or terraced building, the height of each segment of the structure is determined individually.” Staff’s version eliminated the reference to “highest attached component” and recommended inclusion of a graphic depiction in the definition.
- Intent to make definition as clear to the public as possible
- Planning and Zoning Vice Chair Steve Klepfer’s comments on the Commission’s recommendation and the importance of maintaining the thirty-five foot (35’) maximum height limit, in order to preserve Wimberley’s scale
- Ability to request variances for certain “attached components”
- Concerns over possible impact on slope development and preference for staff’s version to address those concerns and improve clarity generally
- Agreement on inclusion of an illustration in the proposed definition

Mayor Flocke recommended staff’s version and there was brief discussion of “existing or finished grade” language.

Councilmember Appleman moved to approve staff's recommended version of the definition as stated above, which includes a graphic depiction. Councilmember Wood seconded. Discussion addressed the need for clarification, inclusion of a visual depiction, and reasoning for concurring with staff's version. Motion carried on a vote of 3-2. Councilmembers McCullough and White voted against.

- F. Hold a public hearing and consider approval of the first reading of an ordinance of the City of Wimberley, Texas, amending Chapter 155 (Zoning), Section 155.106 (Non-Conforming Uses and Structures) of the Code of Ordinances to add administrative provisions regarding non-conforming uses and structures; and providing findings of fact, a repealing clause, to provide a savings and severability clause and providing for an effective date. (*City Administrator*)

City Administrator Ferguson explained the proposed addition of a subsection to detail what evidence may be presented to the City to help staff determine the pre-existing, non-conforming (grandfathered) status of a land use and to provide a process for appeals to the Board of Adjustment for such determinations.

No public comments were heard.

Discussion among Council, City Administrator Ferguson, and Planning and Zoning Commission Vice Chair Klepfer addressed:

- Specifics of the appeals process
- Standing to appeal and burden on parties to prove such standing
- Notification of neighboring property owners of grandfathered status determinations and associated benefits and/or problems with such notification
- Benefits of clearly stating what forms of evidence shall be accepted to establish grandfathered status of a land use
- Reasoning for the wording recommended by the Planning and Zoning Commission
- Effect of grandfathered status on prospective property buyers

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

- G. Hold a public hearing and consider approval of the first reading of an ordinance of the City of Wimberley, Texas, amending Chapter 155 (Zoning), Section 155.092 (Protected Waterway Overlay District; PW) of the Code of Ordinances to allow for the upgrade or replacement of existing non-conforming commercial septic systems; and require the submission and approval of a site development permit prior to construction or development on property within the PW Overlay District; and providing findings of fact, a repealing clause, to provide a savings and severability clause and providing for an effective date. (*City Administrator*)

City Administrator Ferguson explained the requirements and limitations of the PW Overlay District relating to the upgrade or replacement of commercial septic systems within its boundaries. He noted that the amendment would not allow for expansion, but would only allow for the upgrade or replacement of pre-existing, non-conforming commercial septic systems to resolve health and safety issues. The addition of a site development permit requirement for future development in the PW Overlay District is proposed in order to conform to the provisions of the recently approved Water Quality Protection Ordinance. He advised that both staff and the Planning and Zoning Commission recommend approval of the proposed changes.

Clarification was provided by City Administrator Ferguson to Scott Johnson verifying certain measurement calculations.

No public comments were heard.

Discussion addressed:

- Reiteration that systems may not be expanded
- Compliance with State and City OSSF rules
- Consideration of variances
- Mandatory connection to a public wastewater system, when available

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

4. Discussion and Possible Action

- A. Discuss and consider possible action regarding the future development of a sidewalk on River Road. (*City Administrator*)

City Administrator Ferguson made a presentation detailing sidewalk location, signage, crosswalks, traffic controls, sight visibility, materials, drainage, ADA accessibility, and costs. Discussion addressed sidewalk width, materials, ADA compliance, estimated costs, impact of possible future development, and traffic controls. Expressing concerns for safety, Councilmember Appleman reasoned that moving forward with sidewalk construction at this time is preferable to delaying action.

Councilmember Appleman moved to direct staff to proceed with the proposal as presented by City Administrator Ferguson. Councilmember Thurber seconded. Motion carried on a vote of 4-1. Councilmember McCullough voted against.

- B. Discuss and consider possible action regarding the development of a Request for Proposals (RFP) for the contract operation of the Wimberley Community Center. (*Place Three Councilmember Bill Appleman*)

Councilmember Appleman cited historic deficits and felt that consideration should be given to contracting out operations. City Administrator Ferguson advised that the Parks and Recreation

Board will be completing a draft of the RFP and making a recommendation to Council in the near future. He provided details on specific RFP elements, such as operating responsibilities, scope of services (including outreach, recruitment, and marketing), minimum qualifications, award schedule, and bid timeframe.

Discussion addressed:

- Questions about future operating budgets and level of involvement of contracted parties in the budget process
- Cost of providing services and fee structure
- Importance of meeting the community's needs
- Outreach programs
- Impact of possible privatization on newly hired part-time director

No action was taken on this item.

- C. Discuss and consider possible action setting the date for a volunteer appreciation event to recognize members of the City's various boards and commissions and others who have volunteered time to assist the City of Wimberley. (*City Administrator*)

City Administrator Ferguson solicited input from Council on the event and it was agreed to hold the event on Tuesday, May 24, 2011 at the Wimberley Community Center. No vote was taken.

- D. Discuss and consider possible action on a proposal to provide additional restrooms on the Wimberley Square during peak visitation periods. (*Place Two Councilmember Mac McCullough*)

Councilmember McCullough provided examples illustrating the need for increased restroom facilities on the Square. He felt that the City should take on the responsibility for providing enough public restrooms to visitors who bring in sales tax revenue.

City Administrator Ferguson presented options for peak flow times, including porta-cans and more costly specialty trailer facilities. Costs for facilities and servicing were projected for peak visitation periods, which were anticipated to total approximately 18-19 days through the end of this year. He questioned whether the City should be responsible for bearing the full cost or partner with other organizations to share costs. He suggested the possible acquisition of a trailer-type facility could be considered for future needs, given significant rental costs.

Discussion addressed:

- Compromise solutions, including limiting the number of rental days and cost-sharing
- Value of Square merchants to Wimberley's economy in general and sales tax revenues
- The City's level of responsibility for providing public restrooms/sanitary sewer facilities to Square merchants/visitors
- The need to establish communications and discuss cost-sharing with Square merchants
- Trailer facilities versus porta-cans

Councilmember Thurber moved to authorize staff to discuss possible cost-sharing options with the Wimberley Merchants Association. Councilmember McCullough seconded. Motion carried on a vote of 5-0.

5. City Council Reports

- Announcements
- Future Agenda Items

As future agenda items, Councilmember Appleman requested: Discussion of the liability and legal considerations of spending City funds for the benefit of private individuals; discuss and consider the original basis for acceptance of our City roads inventory to determine the status of each road as public or private.

Councilmember McCullough requested a workshop meeting to discuss alternative revenue sources. It was agreed that Council would suggest possible scheduling dates to City Administrator Ferguson.

Addendum to the Regular Agenda

1. Consent Agenda

- H. Appointment of Robin McCullough to the City of Wimberley Budget Advisory Board.
(Place Four Councilmember Steve Thurber's consensus nominee)

This item was heard after Consent Agenda Item 1G.

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

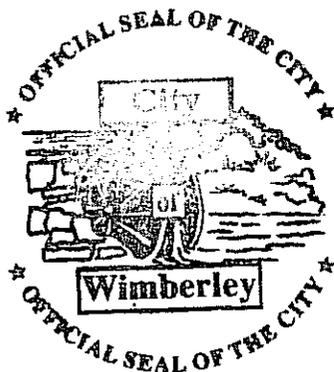
Adjournment: (Hearing no further announcements or future agenda items, Mayor Flocke called the meeting adjourned after Agenda Item 5.) Council meeting adjourned at 8:12 p.m.

Recorded by:



Cara McPartland

These minutes approved on the 21st of April, 2011.



APPROVED:



Bob Flocke, Mayor