

City of Wimberley
City Hall, 12111 Ranch Road 12, Ste. 114
Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
July 16, 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 Assistant City Attorney Cindy Crosby.

Citizen Communications

No citizen communications were heard.

1. Executive Session

In accordance with Texas Government Code, Subchapter D the City Council may convene in a closed session. After the executive session discussion on any of the following items, any final action or vote taken will be in public:

Consultation with attorney regarding pending litigation in Cause No. 08-1984, Cyndi Brown, Individually vs. City of Wimberley, Tom Haley, Individually and Don Ferguson, Individually in the 428th District Court of Hays County, Texas

Mayor Haley adjourned to Executive Session at 6:34 p.m. for consultation with legal counsel pursuant to Chapter 551.071 of the Texas Government Code.

Mayor Haley reconvened into Open Session at 6:50 p.m. No action was taken during Executive Session.

2. Consent Agenda

- A. Approval of minutes of the special City Council meeting of June 24, 2009.
- B. Approval of minutes of the special City Council meeting of July 1, 2009.
- C. Approval of minutes of the special City Council meeting of July 2, 2009.
- D. Approval of minutes of the regular City Council meeting of July 2, 2009.
- E. Approval of minutes of the special City Council meeting of July 8, 2009.

- F. Approval of the appointment of Julie Harris to the Wimberley Economic Development Commission (*Place Two Councilmember Bob Flocke's Nominee*).
- G. Approval of the appointment of Jenelle Flocke to the Wimberley Economic Development Commission (*Mayor Tom Haley's Nominee*).
- H. Approval of the appointment of Terrie Bursiel to the Wimberley Economic Development Commission (*Place Five Councilmember John White's Nominee*).
- I. Approval of the appointment of Gary Weeks to the Wimberley Economic Development Commission (*Consensus Nominee*).
- J. Approval of the appointment of Bob Currie to the Wimberley Economic Development Commission (*Place One Councilmember Charles Roccaforte's Nominee*).
- K. Approval of the May 2009 Financial Statements for the City of Wimberley (*City Administrator*).
- L. Approval of the June 2009 Financial Statements for the City of Wimberley (*City Administrator*).

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

3. City Administrator Report

- Status report on proposed amendments to the *Wimberley Transportation Master Plan*

City Administrator Ferguson reported on the public meeting schedule for Planning and Zoning Commission's consideration of recent proposed additions relating to connectivity, mobility, and emergency access.

- Status report on the *Wimberley Square Sidewalk Development Grant Application*

City Administrator Ferguson detailed the City's submitted application, including specifics on funding amounts and locations of sidewalk development.

- Status report on the *Blanco River and Cypress Creek Water Quality Testing Program*

City Administrator Ferguson reported on recent volunteer testing performed as part of Texas State University's Cypress Creek Project with City staff. He listed specific location results for July, with emphasis on E. coli level readings, which require careful monitoring because locations tested are natural bodies of water used for recreational purposes.

Discussion addressed the need for additional testing for other contaminants, fluctuations in readings in natural bodies of water, specific pollutants, current conditions such as low flow, and effects of heavy rainfall/runoff.

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

City Administrator Ferguson reported on grant funds expended on the construction of a rope swing deck, purchase of benches and picnic tables, and landscaping plans. He noted upcoming meetings scheduled with the Blue Hole Regional Park Development Task Force and design consultants, current surveying efforts, and grant funding specifics.

Mr. Ferguson stated that Blue Hole weekday attendance is holding steady, with last Saturday's attendance the second largest number in the Park's history. He reported on the purchase of a misting fan to help employees deal with extremely hot weather conditions and thanked Blue Hole adjacent property owners, Bill and M.F. Johnson for being good neighbors.

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

City Administrator Ferguson reported on recent and upcoming meetings with Texas Water Development Board (TWDB) officials on the City's eligibility/qualifying status and specific funding deadlines. Discussion addressed the need for coordination of wastewater and sidewalk projects should the City receive state and federal funding.

- Status report on activities of the Wimberley Municipal Court

City Administrator Ferguson advised that there is nothing new to report relating to court activity.

- Status report on activities of the City Marshal

City Administrator Ferguson thanked City Marshal Bill Robinson for his time and efforts over the Fourth of July holiday weekend.

4. Presentations

Presentation by City staff on the City of Wimberley Mayor's Fitness Council (*City Administrator*)

City Administrator Ferguson reported on the Mayor's Fitness Council's history, membership composition and representation, vision/mission statements, fitness survey results, and development of goals. Presentation specifics included:

- Branding efforts, with thanks to graphic artist Mary Owen for her logo design
- Tri-fold informational brochure promoting an active lifestyle
- Spring fitness walking events and participation
- Inventory of commercial/non-commercial fitness facilities and activity centers in the Wimberley Valley
- Press releases including local media recognition of walk participants
- Sponsorship of the *Wimberley 4 Run* supporting Wimberley High School's *Project Graduation*

- Partnership with Wimberley Independent School District's *Fit Faculty Program*
- Networking with area medical service providers, including Central Texas Medical Center
- Future goals include: Mayor's Fitness Challenge, fitness website design/creation, promotion of healthy restaurant menus, distribution of community nutrition/menu guides, safe walk to school program, fit workforce program, health screening events, and neighborhood walking clubs

Mayor Haley and Council thanked Mr. Ferguson for his presentation.

5. 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 RR 12 LLC to operate a bed and breakfast lodging facility on an approximately 5.4 acre tract located at 10460 Ranch Road 12, Wimberley, Texas, zoned Residential Acreage (RA), 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 (*Wimberley RR LLC, Applicant*)

Planning and Zoning Commissioner Jean Ross reviewed the subject property's history/location, noted one neighboring property owner's comment relating to architectural design, and recommended approval based on the Commission's unanimous vote. Discussion addressed the subject property's current RA zoning, surrounding uses, proposed structure(s), and specifics relating to maximum occupancy, parking, topography, and bed and breakfast conditions.

Mayor Haley opened the public hearing.

In response to concerns over possible architectural styles, subject property owner Phil Collins stated his hope to locate and renovate an old "Texas-style" home compatible with surrounding properties.

Hearing no further comments, Mayor Haley closed the public hearing. Discussion addressed wording specific to off-street parking spaces. Councilmember Thurber moved to approve the item as presented. Councilmember Roccaforte 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, amending Section 155 (Zoning), Appendix F, of the Code of Wimberley, designating geographic boundaries for a particular zoning district and classification for a 0.365 acre tract located at 13590 Ranch Road 12, Wimberley, Hays County, Texas, designating initial zoning for such tract as Commercial – Moderate Impact (C-2); and providing for the following: delineation on zoning map; severability; effective date and proper notice and meeting (*Wimberley RR 12 LLC, Applicant*).

Planning and Zoning Commissioner Jean Ross reported on the Commission's unanimous recommendation for approval, noting the subject property's location and prior/proposed uses as

appropriate for the requested zoning. City Administrator Ferguson displayed subject property information, including placement of parking. He noted that no responses were received from notified property owners.

Mayor Haley opened the public hearing.

Subject property owner Phil Collins stated that architectural plans for the house will return it to a more period-specific look.

Hearing no further comments, Mayor Haley closed the public hearing. Councilmember White moved to approve the item as presented. Councilmember Appleman seconded. Motion carried on a vote of 5-0.

- C. Hold a public hearing and consider approval of the second and final reading of an ordinance of the City of Wimberley, Texas amending Chapter 155 (Zoning) of the Code of Ordinances, certain subsections of Section 155.23 (Districts Established; Designation and Review) in order to add the "Scenic Corridor (SC)" as a base zoning district, create Planning Area VII, and revise the planning areas accordingly; and providing for the following: findings of fact; repealer; severability; effective date; and proper notice and meeting (*City Administrator*).

City Administrator Ferguson reviewed the amendments in accordance with the recently updated Comprehensive Plan, including Councilmember Appleman's previously recommended revisions to parking requirements noted in tonight's draft ordinance.

Mayor Haley opened the public hearing.

Wimberley resident Dr. Curt Busk expressed objections to proposed minimum setbacks, which he felt are significantly too small along the Scenic Corridor (SC). He also objected to the maximum allowed signage (64 square feet) and proposed parking requirements as being inconsistent with the spirit of the Comprehensive Plan. He spoke on the public hearing process to date, including Comprehensive Plan Review Commission and Planning and Zoning Commission meetings resulting in recommended setback amounts. Dr. Busk felt that public comments given before the Comprehensive Plan Review Commission (CPRC) were completely discounted, with more weight given to selective testimony heard at Planning and Zoning's meetings. Dr. Busk objected to giving the same testimony at CPRC, Planning and Zoning, and City Council meetings and felt that City government is not friendly in carrying forward information. He read excerpts from the Comprehensive Plan's vision statement relating to purpose and appearance along entrance corridors. He provided specifics on setbacks for existing business locations in order to illustrate certain setback amounts. Dr. Busk stated that the minimum fifty (50) foot proposed setback should be reconsidered by Planning and Zoning, which needs to hear additional testimony from citizens other than affected property owners. He also requested reconsideration of the proposed allowance of sixty-four (64) square feet of signage and percentages of parking allowed at the front and/or back of properties.

Ranch Road 12 property owner Phil Collins spoke in support of the proposed setbacks as sufficient in preserving scenic views given the unique topographical challenges along the Scenic Corridor.

M.F. Johnson questioned the reasoning for buying property that is too small to build on and wanted to keep people coming to Wimberley to enjoy its attractive views.

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

Councilmember Thurber stated that the variance and Wimberley Planned Development District processes are available to property owners whose properties do not fit certain zoning requirements. He felt that Agenda Items 5C and 5D are contrary to the mandate of the Comprehensive Plan and agreed with Dr. Busk's requests to reconsider setbacks, parking, and signage requirements. He distributed information on two existing entrance corridor properties as positive visions of commercial development.

Councilmember Appleman commented on the limited number of affected properties and questioned the City's original lack of incorporation of properties along certain sections of Ranch Road 12. He stated that his proposed parking language was meant to encourage deeper setbacks and more buffering. Councilmember Appleman felt that topographical limitations are not conducive to urban sprawl along the entry corridor.

Councilmember Flocke disagreed with Councilmember Thurber and stated that the Comprehensive Plan is meant to guide, not mandate, Council action. He believed that original incorporation was sought to deter *any* development along the entrance corridors (other than residential). He felt that this proposed ordinance corrects overly restrictive regulations affecting entrance corridor property owners, especially given the lack of suitability for residential building along Ranch Road frontage.

Councilmember Roccaforte stated that each property will be examined on a case-by-case basis, taking into consideration its unique topography and associated challenges. Discussion clarified current/proposed signage requirements relating to entrance corridor properties

Mayor Haley stated that the Comprehensive Plan is not a mandate. Discussion between Councilmember White and City Administrator Ferguson clarified the type/size of signage allowed under the proposed ordinance. Councilmember Thurber noted use of the word "shall" in the Comprehensive Plan as Council's mandate to consider the Comprehensive Plan in its decision-making process.

Councilmember Flocke moved to approve the item as presented. Councilmember White seconded. Motion carried on a vote of 4-1. Councilmember Thurber voted against approval.

- D. Hold a public hearing and consider approval of the second and final reading of an ordinance of the City of Wimberley, Texas amending Chapter 155 (Zoning) of the Code of Ordinances Section 155.093 Entrance Corridor Overlay District (EC) in order to revise the setback requirements and add requirements related to construction type and materials, landscaping

and signage; and providing for the following: penalty; findings of fact; repealer; severability; effective date; and proper notice and meeting (*City Administrator*).

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

City Administrator Ferguson stated that the same earlier noted revisions suggested by Councilmember Appleman related to parking percentages are included in this draft ordinance.

Councilmember Flocke moved to approve the item as presented. Councilmember Roccaforte seconded. Motion carried on a vote of 4-1. Councilmember Thurber voted against approval.

- E. Hold a public hearing and consider approval of the second and final reading of an ordinance amending Chapter 155 (Zoning) of the Code of Ordinances to allow bars and taverns in Commercial High Impact (C-3) zoning districts with a conditional use permit; liquor stores in Commercial Moderate Impact (C-2) and Commercial High Impact (C-3) zoning districts with a conditional use permit, and prohibiting the use within the Village Center Overlay District; allowing the on-premise consumption of alcohol in restaurants in Commercial Low Impact (C-1), Commercial Moderate Impact (C-2) and Commercial High Impact (C-3) zoning districts with a conditional use permit; creating and revising related definitions and deleting references to private clubs; and providing for the following: penalty; findings of fact; repealer; severability; effective date; and proper notice and meeting (*City Administrator*).

Mayor Haley opened the public hearing.

Wimberley property owner Phil Collins requested clarification on the requirement for conditional use permits in the Scenic Corridor, which City Administrator Ferguson explained is included in the prior ordinance just approved by Council (see Agenda Item 5C) that allows alcohol consumption as a permitted use with a conditional use permit.

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

City Administrator Ferguson noted language on page 5 excluding establishments that solely serve and sell wine for on- and off-premise consumption.

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

6. Resolutions

Consider approval of a resolution of the City Council of the City of Wimberley, Texas encouraging water purveyors in the Wimberley Valley to implement the most restrictive

stage in their respective drought management plans in response to the current drought condition (*Place Four Councilmember Steve Thurber*).

Mayor Haley and Mayor Pro-tem Roccaforte recused themselves at this time (7:58 p.m.) due to possible conflict of interest. Councilmember Flocke assumed duties of presiding officer.

Councilmember Thurber thanked Mayor Haley and Mayor Pro-tem Roccaforte for Wimberley Water Supply Corporation's successful efforts in reducing pumping and informing customers about conservation measures. He spoke of the need to conserve, provided specific drought statistics, and encouraged approval of the resolution. Councilmember Appleman felt that recused Council members could provide valuable input on this resolution and expressed reservations over inclusion of the last paragraph. He questioned the need for mandating specific stages given the existing roles and responsibilities of various entities with expert knowledge of water issues and suggested delaying action until such expert advice could be obtained.

Discussion addressed the authority of appropriate bodies to encourage and/or mandate specific drought management plan stages. Councilmember Flocke stated that both area water purveyors have drought management plans in place and listed specific trigger events for each stage. He outlined conservation measures put in place by Wimberley Water Supply Corporation, noted water supply well levels at certain times and locations, and disagreed with the necessity for this resolution.

Discussion generally agreed on the need for general public awareness of conservation, but did not support specific language in the last paragraph on drought stage restrictions best left to those with expert knowledge.

Councilmember Thurber moved to approve the resolution with the deletion of the last paragraph. Councilmember Appleman seconded. Motion carried on a vote of 4-0.

Mayor Haley and Mayor Pro-tem Roccaforte rejoined the meeting at this time (8:15 p.m.). Mayor Haley resumed duties as presiding officer.

7. Discussion and Possible Action

- A. Discuss and consider action amending the Fiscal Year 2009 City of Wimberley General Fund and Blue Hole Budgets for the purpose of accounting for actual and anticipated expenditures, and declaring the adjustments as a necessity (*City Administrator*).

City Administrator Ferguson explained the need to account for anticipated differences in actual expenditures and revenues compared to budgeted expenses, including those related to acquisition of real property, reclassification of certain personnel expenditures, use of a temporary receptionist early in the year, sidewalk engineering, and the City wide zoning project. Also included are revenue category adjustments due in part to the recent economic downturn.

Blue Hole budget amendments reflect additional staffing, mowing, utilities costs, and capital improvement costs. Blue Hole's amended budget also reflects the first installment of grant funding from Hays County and a projected gate revenue increase. City Administrator Ferguson reminded that final budget amendments will take place in September, prior to approval of the Fiscal Year 2010 Budget. He noted that \$1,000 proposed for Parks Research & Development is reduced to \$500, with an additional \$500 allocated for law enforcement supplies.

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

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

City Administrator Ferguson explained the process for a "needs" budget that will undergo extensive input and review, resulting in a draft budget for Council consideration. Specific costs, expenditures, and possible revenue sources were discussed and a timeframe was provided for future Council action. Discussion included the following priorities: roads survey; citizens survey; Community Center operations; city boundaries survey; street improvements; health safety and welfare costs such as health inspections/sanitarian, and sidewalks along school walking routes. No action was taken on this item.

- C. Discuss and consider action regarding a request from the Texas Department of Transportation (TxDOT) to spray herbicides to control the vegetation growth in TxDOT right of ways located in Wimberley, Texas (*City Administrator*).

M.F. Johnson spoke in opposition to spraying herbicides due to problems encountered by those with extra sensitivity and/or compromised immune systems. She suggested putting up warning signs should spraying occur and obtaining a list of people who are sensitive.

As a food science professional, Dr. Curt Busk spoke in opposition to the spraying based on long-lasting effects of herbicides and negative effect on aquifers. While spraying herbicides may be a money-saving option for TxDOT, Dr. Busk stated that this is a life and death issue for residents in this area.

City Administrator Ferguson stated that TxDOT is reducing its mowing program to cut costs and is seeking permission from the City to reinstate an herbicide spraying program to control vegetation along roadways in Wimberley. He noted past successful efforts by local residents to stop TxDOT's spraying program and provided information on specific products used to control vegetation.

Discussion addressed the impact of spraying on residents (particularly those with extra sensitivity), TxDOT's budget problems, and generally agreed that herbicide spraying along Wimberley roadways is not in the best interest of residents.

Councilmember Thurber moved to deny TxDOT's request to spray herbicides anywhere and in any form along Wimberley right-of-ways. Councilmember White seconded. Motion carried on a vote of 5-0.

- D. Discuss and consider possible action relating to the development of a new City Hall facility for the City of Wimberley, Texas (*Mayor Tom Haley*).

Wimberley Senior Citizens Activities, Inc. Board member Dr. Curt Busk stated that there is a rumor that the Board voted in favor of moving City Hall to the Wimberley Community Center property. He informed Council that the Board has never voted on this issue and results of a straw poll of Board members resulted in unanimous disapproval of moving City Hall to the Community Center property. He stated that grant requirements prohibit the use of the property for City administrative office space.

Jimmie Robinson noted that past mayors had signed Community Center contracts with the usage stipulations as specified in Texas Parks and Wildlife Department agreements. She asked that Council not consider violating contracts that were legitimate from inception of the Community Center.

Hearing no more comments, Mayor Haley adjourned to Executive Session at 8:44 p.m. for consultation with legal counsel for the purpose of discussion about real estate acquisition pursuant to Chapter 551.072 of the Texas Government Code.

Mayor Haley reconvened in Open Session at 9:07 p.m. No action was taken during Executive Session.

8. City Council Reports

- Announcements
- Future Agenda Items

Councilmember Thurber requested an update relating to Pedernales Electric Cooperative power line issues and status of the water quality ordinance. Councilmember Roccaforte requested consideration of issues relating to the City's steep slope requirements. Councilmember White requested a status report on Ethics Commission membership. Councilmember Flocke requested discussion of census-related issues. At City Administrator Ferguson's suggestion, discussion of a "sunset provision" for City ordinances was agreed upon as a future agenda item.

Hearing no further announcements or future agenda item requests, Mayor Haley called the meeting adjourned at 9:09 p.m.

Adjournment: Council meeting adjourned at 9:09 p.m.

Recorded by:

Cara McPartland

Cara McPartland

These minutes approved on the 6th of August, 2009.

APPROVED:

Tom Haley
Tom Haley, Mayor

