

**City of Wimberley**  
City Hall  
221 Stillwater  
Wimberley, Texas 78676  
**Minutes of Regular Meeting of City Council**  
May 16, 2013 at 6:00 p.m.

City Council meeting called to order at 6:10 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 Tom Talcott, Mac McCullough, Matt Meeks, Steve Thurber, and John White.

Staff Present: City Administrator Don Ferguson and City Secretary Cara McPartland

### **Citizens Communications**

Flite Acres resident Holly Wilson stated her opposition to any proposed striping on Flite Acres Road, asked which person requested the striping, and questioned how such striping would be paid for. Mrs. Wilson expressed concerns that a possible future central wastewater system could pollute the Blanco River if effluent is discharged into a non-recreational portion of the river and stated that all residents along Flite Acres with river frontage use the Blanco River for recreational purposes. Mrs. Wilson understood the need for sewage treatment for the Square, however, she opposed paying to clean up after those who are dumping sewage into the river or “paying for the right to swim in the treated effluent.” She questioned cost estimates for a central wastewater system, cited the lack of infrastructure, and feared irresponsible growth that could “destroy the waterways that made this place special.”

#### **1. Consent Agenda**

- A. Approval of the minutes of the Regular City Council meeting of May 2, 2013
- B. Approval of the minutes of the Special City Council meeting of May 2, 2013
- C. Approval of the minutes of the Special City Council meeting of April 29, 2013
- D. Approval of the April 2013 Financial Statements for the City of Wimberley

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

#### **2. City Administrator Report**

- Status report on the proposed creation of the Needmore Ranch Municipal Utility District

City Administrator Ferguson reported that the amended bill has been approved by the Texas House and Senate and is awaiting the governor’s signature.

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

City Administrator Ferguson reported that May's sales tax check representing March sales totaled \$70,624.79, which is down six percent (6%) from the same time last year, reflecting the impact of the loss of sales tax receipts from Ace Hardware. He noted that all efforts are being made to expedite the rebuilding of Ace Hardware.

- Status report on issues relating to the new trees planted on the Wimberley Square

City Administrator Ferguson reported that the trees are going through an oxygen deprivation process due to overly wet compacted soil. Measures have been taken to increase oxygen exchange and improve the condition of the trees, which were purchased by the City and installed per Texas Department of Transportation (TxDOT) standards.

- Status report on central Wimberley water quality issues

City Administrator Ferguson reported that recent water quality testing showed increases in E. coli counts in certain areas, including downtown and locations upstream. Ongoing dye tests of specific septic systems found no surfacing of dye. He reported on a recent monitoring visit with a Texas Commission on Environmental Quality (TCEQ) representative, who was given a tour of central Wimberley, accompanied by the City Sanitarian. TCEQ's representative suggested super saturation of aging septic fields as a possible source of pollution and offered his agency's assistance to help the City address the concentration of septic systems downtown.

- Status report on the operation of the Wimberley Municipal Wastewater Treatment Plant

City Administrator Ferguson reported that the plant is operating well within permit limits.

City Administrator Ferguson added that Blue Hole Regional Park is currently open on weekends and will be open daily beginning Memorial Day weekend. He displayed the new T-shirt design and noted that shirts are available for purchase at the Park.

### **3. Election Matters**

Complete and issue Certificates of Election to the Place 1, Place 3 and Place 5 councilmembers-elect

Mayor Flocke presented the Certificates of Election to the Place 1 Councilmember-elect Tom Talcott, Place 3 Councilmember-elect Matt Meeks, and Place 5 Councilmember-elect John White.

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

- A. Hold a public hearing and consider approval of Case No. C212-12-005, an application for *The Resubdivision of Lot 6, establishing Lots 6A and 6B, Revision of Lots 5 and 6, Trail's*

*End Ranch Subdivision* and a related variance from the City's requirement pertaining to lot frontage. (*Paul & Donna Whitelock, Applicants*)

City Administrator Ferguson reviewed the subject property's location in the City's Extraterritorial Jurisdiction (ETJ), which requires compliance with both the City of Wimberley and Hays County subdivision regulations. He explained the need for a dual subdivision review process, due to the lack of an interlocal agreement between the City and Hays County, which is currently undergoing draft revision. The proposed plat creates Lot 6A with an area of 25.23 acres and Lot 6B with an area of 25.20 acres. Lot 6A has access to and contiguous frontage on the Allison Lane cul-de-sac, a private road easement with a right-of-way width of sixty (60) feet. Lot 6B has access to and frontage on the same cul-de-sac via a thirty (30) foot wide shared access easement. Both lots will be served by individual water wells and wastewater service will be on-site sewage facilities (OSSF) permitted by Hays County.

The applicant is seeking a variance from Section 154.063(D)(1) of the City Code, requiring lots to have contiguous frontage on a usable, dedicated road right-of-way. Although Lot 6B's frontage is obtained through a thirty-foot (30') wide shared access easement, which does not meet the City's frontage requirements, it does comply with Hays County's subdivision standards for lot frontage and access. City staff recommended approval of the resubdivision and associated variance to allow the use of a shared access easement to meet frontage requirements. It was noted that the Planning and Zoning Commission held a public hearing and unanimously voted to recommend approval of the proposed plat with the requested variance at its meeting on May 9, 2013.

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

Councilmember Talcott moved to approve the item, as presented, which includes the requested variance. Councilmember White 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 (CUP) submitted by Richard and Sharon Whipple to operate a vacation rental facility on an approximate 5.06 acre tract located at 201 Panorama, 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. (*Richard & Sharon Whipple, Applicants*)

City Administrator Ferguson reviewed the subject property's location, current/proposed zoning and uses, and existing two-story residential structure. He stated that the applicants propose to use the home as a vacation rental and agree to a maximum occupancy limit of four (4) people, as recommended by the City Sanitarian. A driveway on the property will provide adequate space for required off-street parking.

City Administrator Ferguson read a list of the applicants' house rules and recommended inclusion of a list of additional conditions to be made part of the requested CUP. It was noted

that one (1) email opposing the proposed CUP was received from a notified property owner expressing concerns about gate code security and possible increased noise and traffic stemming from the vacation rental. On May 9, 2013, the Planning and Zoning Commission held a public hearing and unanimously recommended approval of the proposed CUP, with inclusion of the abovementioned conditions, as read by City Administrator Ferguson.

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

Councilmember Thurber moved to approve the item, as presented, which includes the aforementioned conditions as listed by City Administrator Ferguson. Councilmember Meeks seconded. Motion carried on a vote of 5-0.

- C. Hold a public hearing and consider approval of an ordinance of the City of Wimberley amending Ordinance No. 2012-004, which granted a conditional use permit (CUP) to allow a sit-down eating establishment with the sale of beer and wine for on-premise consumption for real property located at 500 River Road, Wimberley, Hays County, Texas, in order to modify the restrictions to permit the sale of alcohol for on-premise consumption; and providing for the following: findings of fact; severability; effective date and proper notice and meeting. (*Daysi Flores, Applicant*)

City Administrator Ferguson reviewed the subject property's location, current/proposed zoning and uses, and existing restaurant operation. He noted that the applicant recently opened a Mexican food restaurant and is seeking to amend the existing CUP to allow for the sale of alcohol, in addition to beer and wine, for on-premise consumption. City staff received no comments or inquiries about the requested CUP amendment. On May 9, 2013, the Planning and Zoning Commission held a public hearing and unanimously recommended approval of the CUP amendment, as proposed.

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

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

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

- A. Discuss and consider possible action regarding the use of an exemption from the notice requirements relating to the issuance of certificates of obligation by the City of Wimberley to close on the \$650,000 Texas Water Development Board (TWDB) loan recently approved for the planning and design of a central Wimberley wastewater system. (*City Administrator*)

City Administrator Ferguson explained current loan requirements calling for issuance of Combination Tax and Revenue Certificates of Obligation (COs) and stressed that the purpose of the loan is for planning and design of a wastewater system. Although the City was required to

submit a preferred option as part of the loan application, it is during the planning and design phase of the project that extensive public discussion will be held on which system offers the best solution. He advised that a public stakeholder process could be initiated utilizing an impartial mediator to address all concerns, but cautioned that such a process cannot happen if the City does not move forward on closing of the loan. Concerns were expressed about delayed loan closing, including the cost of holding a bond election (if required by submission of a valid petition from the required number of registered voters), as well as the possibility of the City having to pay a higher interest rate on the loan.

To avoid a delay in loan closing, City Administrator Ferguson advised that the City may forego the notice requirements relating to the issuance of the COs pursuant to Section 271.049 of the Texas Local Government Code, which does not require notice publication, if the COs are being issued for the purpose of contracting for professional services, as is the case with the City's loan for planning and design of a central Wimberley wastewater system. It was noted that the Texas Attorney General would have to approve of the exemption, if Council chose to authorize such an approach. After repeated attempts over the years to secure financing through the TWDB, City Administrator Ferguson cautioned against the possible negative impact of delayed closing on the loan.

Mayor Flocke pointed out specific misinformation contained in a flyer distributed by the Citizens for Community Stewardship and stressed that the public process involving citizen input on the best system option cannot happen unless the City closes on the loan for the planning and design phase of the project. He stated that any option ultimately chosen will be voted on before plant construction takes place.

City Administrator Ferguson explained that if the City were required through the petition process to hold a bond election that TWDB would have to grant an extension on the loan. Additionally, the City could possibly face having to re-apply for the loan, causing further delay as bacteria levels continue to rise and legal action is threatened unless water quality is improved. He stated that the public stakeholder process as part of project planning and design will engage as many members of the community as possible, particularly those who have not been involved to date.

Mayor Flocke stressed that the City has adequate revenues to repay the loan and that ad valorem taxation would only be implemented in the unlikely event of default, and only then as a minimal one-time tax spread over a large tax base.

Henry Ault spoke of long-standing sewage problems, including his inability to fully develop property he owns on Old Kyle Road, due to lack of adequate wastewater service. He felt that wastewater service should be available to all citizens and not limited to central Wimberley. Mr. Ault recognized septic system problems downtown and asked that we all get along to find solutions.

Mary Kate Brown of 250 Cedar Hollow thanked Council for undertaking its responsibilities as local government officials and putting aside personal issues to look at the bigger picture. She felt disheartened by blatant disrespect shown over the past several months and hoped for conflict resolution through roundtable discussions with mediation to allow the best solution to prevail,

rather than the one aligned with the most active group or charismatic leaders. Ms. Brown reminded that concerned citizens carry the burden of addressing problematic situations in the interest of health, safety, and morals and stated that she will always speak when she feels those interests are being sacrificed.

Dr. Deborah Koeck of 1 Spalding Circle questioned the City's possible use of an exemption from the notice requirements and felt that citizens of Wimberley would be denied the opportunity to vote on debt incurred by the City. She stated that citizens have the right to ask for an election, if a valid petition is presented within an approved timeframe. Dr. Koeck did not feel that the City is allowed under law to use the notice exemption for contracting for personal or professional services and believed that the City's use of the notice exemption would require the existence of an emergency or calamity situation. She said the stated intent of the TWDB is to allow for the petition process, so that citizens have the opportunity to vote in an election. Dr. Koeck urged Council to reject use of the exemption from notice requirements and said it is time for all to work together.

Wimberley property owner Tim Fulfer commended Council and the Wimberley Central Improvement Association for their efforts to date and encouraged working together to come up with a solution that is acceptable and affordable. He hoped "that we can identify the immediate problem, provide a solution for that problem, install and monitor the effectiveness of the system we develop, and if successful, continue to expand that system to other areas, as needed." He did not favor providing initial sewer system service to the entire downtown area, which he felt would force property owners with acceptable septic systems to unnecessarily connect to a central sewer system. He advocated this approach as a way to solve our wastewater problems for a fraction of the cost currently anticipated. Mr. Fulfer expressed his willingness to listen to all ideas and work with all stakeholders to provide a solution that is acceptable and affordable. He requested that Council oppose the exemption from public notice requirements relating to the issuance of COs and allow for a bond election, should a valid petition be presented to the City.

In response to Dr. Koeck's earlier comments, City Administrator Ferguson advised that the City's legal counsel has reviewed the exemption for the purpose of contracting for professional services and feels it is applicable.

Jim McMeans spoke of the importance of developing consensus within the community through understanding of all of the options and costs associated with this desperately needed infrastructure improvement. He urged Council to move forward to close on the TWDB loan as quickly as possible by approving the exemption in order to facilitate the public planning process and to help solve this long-standing problem of continuing pollution.

Downtown property owner Les Crane spoke of his personal observations of declining water quality in Cypress Creek over many years and favored Council taking whatever action is necessary to solve pollution problems as soon as possible.

Downtown property owner Bert Ray expressed his fears regarding the negative impact to Wimberley's economy if pollution problems caused a drop in tourism. He encouraged Council to vote for the notice exemption in order to avoid further delays in the loan closing process.

Wimberley resident Gail Pigg summarized her letter distributed to each Council member that expressed support for a wastewater system and her concerns over possible expansion of the City's municipal wastewater treatment plant, which she said would be a terrible mistake. She felt that the terms of the TWDB loan called for the process of allowing a petition to force a vote, which she believed would be useful in educating the public. Ms. Pigg urged Council to not approve use of the notice exemption and favored continuation of the petition process. As a way of relieving demand placed on downtown septic tanks, Ms. Pigg suggested the purchase or rental of portable toilet facilities for weekend and other high-density times.

Wimberley resident Rick Millinor spoke of the difficulty of finding a solution that will get unanimous support. He stated that the only point of agreement is that a serious problem exists and that time is not on our side. Mr. Millinor felt that holding a bond election would not be productive without providing the valuable information to be gained during the planning and design process that voters need to make an educated decision. He feared the delay or loss of financing that many worked so hard to obtain, as well as the possibility of detrimental effects from an environmental catastrophe. Mr. Millinor did not see any value in delaying the process and favored the exemption to expedite the loan for planning and design in order to get much-needed answers to citizens' questions.

Relating to Gail Pigg's comments on the TWDB loan terms, City Administrator Ferguson pointed out that the TWDB understands provisions of the law that allow the City to use the exemption and make any necessary loan modifications. He noted that TWDB members' remarks about public involvement at the TWDB's April 18<sup>th</sup> meeting were made in response to concerns raised by some of those in attendance, however, those remarks should not be construed as taking a position for or against the petition process available to citizens. He stated that final remarks by one TWDB member clearly indicated that this is a long-standing issue that the community needs to recognize and solve.

Hearing no further comments, Mayor Flocke opened Council discussion.

Discussion addressed:

- Problems identifying specific sources of pollution, given the concentration of septic systems downtown, aging systems, super-saturation of old septic fields, and area topography
- Planning and design phase of the project needed to develop solution with public involvement and input
- Enforcement of current septic regulations and inability of property owners with pre-existing, non-conforming systems to sell, redevelop, or change uses
- Extensive public meetings held over many years on central Wimberley wastewater service
- City of Wimberley's ability to repay \$650,000 loan over term using existing revenues, with ad valorem taxation only necessary in the unlikely event of default
- Consequences associated with delayed loan closing, should a bond election be required, including costs of holding the election, possible higher interest rates, and potentially negative effect on future TWDB funding applications

- Ability of Council to consider tax notes versus COs, should a bond election be held and the bond issuance fail
- Need for impartial, disinterested party (or parties) to provide factual information and help facilitate public participation during the planning and design phase
- Availability of petition process prior to construction phase
- Removal of Blue Hole Regional Park irrigation from central wastewater discussion
- Consideration of Aqua Texas as a central Wimberley wastewater service provider
- Erroneous public perception that use of notice exemption will negatively affect ability of citizens to voice opinions

Mayor Flocke envisioned community involvement in a public process (not directed by City Council) that may yield a number of different options for citizens to evaluate. He stressed that the \$650,000 loan is needed to fund planning and design and hold the extensive public meetings needed to achieve consensus on the public's preferred option. Although Mayor Flocke did not generally favor exemptions, he felt that delaying loan closing may negatively impact the City's ability to fully engage public participation and noted there is still an opportunity for citizens to initiate the petition process before the construction phase of the project.

Councilmember Thurber moved to direct staff to proceed with the use of an exemption from the notice requirements relating to the issuance of COs by the City of Wimberley to close on the \$650,000 Texas Water Development Board loan recently approved for the planning and design of a central Wimberley wastewater system. Councilmember White seconded.

Mayor Flocke called for a vote as follows: Councilmember White, aye; Councilmember Thurber, aye; Councilmember Meeks, nay; Councilmember McCullough; abstain; Councilmember Talcott, aye. Motion carried on a vote of 3-1, with Councilmember McCullough abstaining.

- B. Discuss and consider possible action adopting the calendar relating to the proposed issuance of certificates of obligation to close on the \$650,000 Texas Water Development Board loan recently approved for the planning and design of a central Wimberley wastewater system. (*City Administrator*)

Given Council's action on the previous item, City Administrator Ferguson requested that no action be taken on this item.

- C. Discuss and consider possible action regarding a request for a variance from the City of Wimberley Sign Ordinance for a business located at 501 Old Kyle Road, Wimberley, Texas. (*Paul C. Breeding, Applicant*)

City Administrator Ferguson explained that the applicant desires to place a sign on the side wall of his chiropractic clinic that fronts Blue Hole Lane, in order to increase visibility of the business. City sign regulations limit wall signage to the front wall, however, the front of the subject business is not visible from a public road. The size of the proposed sign does meet the size requirements for wall signage. He recommended approval and stated that Council may grant a sign variance, if the following conditions are met:

- The variance will not authorize a type of sign which is specifically prohibited.
- The variance is not contrary to the goals and objectives outlined by the City of Wimberley Comprehensive Plan.
- The variance is not contrary to the public interest.
- Due to special conditions, a literal enforcement of the sign ordinance would result in unnecessary hardship. Ordinarily, hardship that is self-induced or that is common to other similarly classified properties will not satisfy this requirement. Financial or economic hardship alone will not ordinarily satisfy this requirement.
- The spirit and purpose of the chapter will be observed, and substantial justice will be done.

Councilmember White moved to approve the sign variance, as presented, including affirmative findings on all conditions. Councilmember Thurber seconded. Motion carried on a vote of 5-0.

#### 6. City Council Reports

- Announcements
- Future Agenda Items

Councilmember Meeks gave a reminder about the upcoming Wimberley EMS Annual Duck Race this Saturday, May 18, 2013.

City Administrator Ferguson advised that Ace Hardware employees have been invited to spend part of tomorrow at the Blue Hole Regional Park.

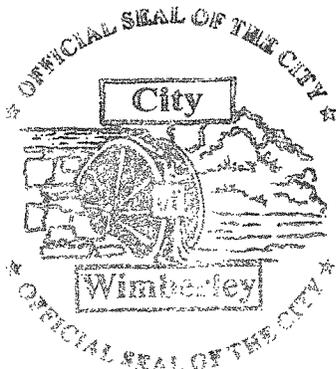
Hearing no further announcements or future agenda items, Mayor Flocke called the meeting adjourned.

**Adjournment:** Council meeting adjourned at 7:42 p.m.

Recorded by:

  
Cara McPartland

These minutes approved on the 6<sup>th</sup> of June, 2013.



**APPROVED:**



**Bob Flocke, Mayor**