

City of Wimberley
 City Hall
 221 Stillwater
 Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
 January 21, 2016 at 6:00 p.m.

City Council meeting called to order at 6:00 p.m. by Mayor Steve Thurber.

Mayor Thurber gave the Invocation and Councilmembers led the Pledge of Allegiance to the United States and Texas flags.

Councilmembers Present: Mayor Steve Thurber, Councilmembers Bob Dussler, Cindy Anderson, Mac McCullough, Pam Showalter, and John White.

Staff Present: City Administrator Don Ferguson

Citizens Communications

To alleviate any concerns that people may have, M.F. Johnson stated that she has permission from the Hays County Sheriff to wear an empty holster. She spoke of a church shooting incident in South Africa that was ended by a church member who was carrying a gun.

Noland Martin read a press release (*full text attached to these minutes*) issued by the Wimberley Democrats Steering Committee expressing appreciation for Council's recent affirmative vote on the first reading of an ordinance to restrict the possession of firearms from the City of Wimberley's public meetings in order to foster a safe and healthy environment for public discourse. Mr. Martin urged Council to reaffirm its decision on the second and final vote this evening.

South River resident Connie Maverick echoed Mr. Martin's comments and said she wants to feel safe when coming to a public meeting. She appreciated Council's position working toward not having guns in a public meeting and said she would not support businesses that allow open carry.

1. Consent Agenda

- A. Approval of minutes of the Regular City Council meeting of January 7, 2016
- B. Approval of December 2015 Financial Statements for the City of Wimberley

Councilmember McCullough moved to approve Consent Agenda items, as presented. Councilmember Anderson seconded. Motion carried on a vote 5-0.

2. City Administrator Report

- Status report on the Central Wimberley Wastewater Project

City Administrator Ferguson reported that the City's loan application to the Texas Water Development Board (TWDB) is expected to be considered at the Board's March 2016 meeting. He provided details on the conversion process for the City's current wastewater treatment plant in coordination with Texas Parks and Wildlife Department.

- Status report on the update of the City of Wimberley Comprehensive Plan

City Administrator Ferguson reported that the Planning and Zoning Commission plans to make a recommendation on the Plan update at its January 28th meeting.

- Status report on 2015 Flood Recovery

City Administrator Ferguson reported that several volunteer groups were in Wimberley recently to provide help with property clean-up. He stressed the importance of registering with FEMA for federal assistance by the January 25th deadline (for the October flood) and provided details on the registration process. He reported that siren testing occurred last week to determine how sound travels before making decisions on installation. He advised that updates will be provided on possible sources of mitigation funding for the siren system. He noted that the long-awaited Blanco River gauge system is fully funded and is anticipated to go online in the next few days. It was also noted that other gauges will be installed at Fischer Store Bridge and several other area bridges. He detailed associated funding of both river stream flow and rainfall gauges.

- Status report on Short-term Rental Compliance Project

City Administrator Ferguson reported on efforts to educate short-term rental property owners of the need to comply with City regulations for such rentals, including documentation of pre-existing, non-conforming (or "grandfathered") properties, proper zoning, and hotel occupancy tax collection.

3. Public Hearings and Consider Action

- A. Hold a public hearing and consider action regarding an ordinance approving an application for a conditional use permit submitted by Bob and Pam Drake to allow a secondary residential building on property located at 209 Flite Acres Road, Wimberley, Hays County, Texas, zoned Rural Residential 1 (R-1), and imposing certain conditions; and providing for findings of fact; amendment of the zoning district map; repealer; severability; effective date; proper notice and meeting; and providing for certain conditions. (*Bob and Pam Drake, Applicants*)

City Administrator Ferguson recommended continuance of this item due to rescheduling of the Planning and Zoning Commission's public hearing from its January 14th meeting to its January 28th meeting, due to lack of a quorum.

Councilmember Showalter moved to continue this item, as recommended by City Administrator Ferguson. Councilmember Anderson seconded.

Councilmember McCullough questioned the Planning and Zoning Commission's inability to hold the meeting as originally scheduled. Mayor Thurber stated that there is a vacancy on the Commission that is expected to be addressed by Council at its February 4th meeting. Motion carried on a vote of 5-0.

- B. Hold a public hearing and consider action regarding an ordinance approving an application for a conditional use permit submitted by Benjamin Fuchs to allow a secondary residential building on property located at 444 Lomax Lane, Wimberley, Hays County, 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. (*Benjamin Fuchs, Applicant*)

City Administrator Ferguson recommended continuance of this item due to rescheduling of the Planning and Zoning Commission's public hearing from its January 14th meeting to its January 28th meeting, due to lack of a quorum.

Councilmember Anderson moved to continue this item, as recommended by City Administrator Ferguson. Councilmember Showalter seconded. Motion carried on a vote of 5-0.

4. Resolution

Consider approval of a resolution of the City Council of the City of Wimberley, Texas supporting a proposed Merritt Starlight Housing Community for senior citizens; approving an application for low income housing tax credits to finance such project; providing an in-kind contribution for such project and providing an effective date. (*DDC Merritt Starlight, Ltd*)

City Administrator Ferguson highlighted the proposed project and introduced the developer's representative Blake Rue. Mr. Rue stated that the project would be developed on approximately eight (8) acres behind Brookshire Brothers and comprised of eighty (80) units, with forty (40) of those units dedicated for low-income tenants. He noted that the application process for tax credits through the Texas Department of Housing and Community Affairs (TDHCA) requires the developer to provide letters or resolutions showing community support for the project. Mr. Rue defined senior citizens as those fifty-five (55) years of age or older and explained that there will be numerous opportunities to work with the City and obtain input from the community on the project, should the project development proceed as planned.

Discussion between Mayor Thurber and Mr. Rue provided clarification on the timeframe for submission of a site plan and number of rent-subsidized units. Mr. Rue stated criteria for establishing subsidized rental rates and possible maximum rental rates.

Discussion addressed utility costs, comparison of projected rental rates to Twin Mountain Manor, number of low-income units, rules governing housing tax credits, similar area projects by the developer, references from the developer, future zoning action(s) and associated

opportunities for public input on the project, State Representative Jason Isaac's position on the project, and other possible tax abatement options.

Juniper Schneider spoke of his support for this development and expressed appreciation to Lila McCall and others who have helped spearhead the project. Mr. Schneider did not want his comments to be misconstrued as opposition to the project. He said government money would be used to help fund the project, but felt that terms such as "low income" and "affordable" housing are being used in ways that are not true. He questioned the use of Austin's median income as the criterion for rental rates (as opposed to San Marcos), which he said would probably lead to a different level of rent. Mr. Schneider feared that Council will view this project as solving the problem of lack of affordable housing and expressed concern that there would be only four (4) units available for rent at the lowest rate. He referenced pending legal action concerning Twin Mountain Manor and noted the potential loss of forty-five affordable housing units at that facility. Mr. Schneider closed by congratulating everyone who has worked on this project, but said we need to understand that it "is neither low income or affordable – it's below market housing."

In response to Mayor Thurber's inquiry regarding rental rates, Mr. Rue stated that Austin's median income is used as criterion rather than San Marcos due to TDCHA's rules. Mayor Thurber thanked Mr. Rue, as well as Lila McCall and those who have helped with this project. City Administrator Ferguson appreciated efforts by the developer to work through project issues. Referencing Mr. Schneider's earlier comments relating to Twin Mountain Manor, Councilmember McCullough stated that he never envisioned this project as supplanting Twin Mountain Manor.

Councilmember McCullough moved to approve the resolution, as presented. Councilmember Anderson seconded.

Councilmember Dussler commented on the City's strategic objective to increase senior housing options and said this project would solve part of the shortage problem. He felt that approval of this resolution allows the developer to pursue tax credits and hoped that Council will have ample future opportunities to review site plans, address zoning/planning/financial matters, and examine background on the developer, before making a decision. City Administrator Ferguson explained that the developer must come before Council to address zoning and design issues, as part of the WPDD process, and discussion clarified that there is no competition between this project and any other possible similar projects.

An unidentified audience member commented that she sees this project as one that is not intended to primarily target low income people, but rather for those who would like to stay in the community and have a range of affordable options.

Councilmember Showalter encouraged defining terms such as "affordable housing," "below market," and "subsidized housing" and using the term that is most appropriate, rather than going back and forth between these slightly different and somewhat interconnected terms.

Councilmember Anderson stated her understanding of this project as a mix of different affordability levels. Mr. Rue said that according to TDHCA, forty units would be considered affordable at different levels and described these types of projects as mixed incomes.

Hearing no further discussion, Mayor Thurber called for a vote on the motion to approve the resolution, as presented. Motion carried on a vote of 5-0.

City Administrator Ferguson advised that Mr. Rue will make a presentation to the Planning and Zoning Commission on February 11, 2016 to brief them on the project before applying for an amendment to the subject property's WPDD agreement. He thanked Lila McCall for her time and efforts on this project.

5. Ordinances

- A. Consider approval of the second and final reading of an ordinance amending Title XI (Business Regulations) of the City of Wimberley's Code of Ordinances to add a new Chapter 114, providing hours for door-to-door sales and "No Soliciting" properties; and providing findings of fact, savings, severability, repealer, effective date, and proper notice and meeting. (*City Administrator*)

City Administrator Ferguson reviewed provisions added per Council's direction on first reading to clarify where signs may be posted on individual properties and relating to signs posted at subdivision entrances by property/homeowners associations prohibiting solicitation. He noted that associations must adopt a resolution specifically prohibiting solicitation before installing "no solicitation" signage.

Discussion addressed electioneering activity as exempt from solicitation prohibition and examples of specific sign language.

Councilmember Dussler moved to approve the second and final reading of the ordinance, as presented. Councilmember Showalter seconded. Motion carried on a vote of 5-0.

- B. Consider approval of the second and final reading of an ordinance amending Title XIII (General Offenses), Chapter 130 (General Offenses) of the City of Wimberley's Code of Ordinances to add a new Section 130.21, prohibiting the possession of certain firearms on City property; and providing findings of fact, a repealing clause, a savings and severability clause; providing for an effective date; and proper notice and meeting. (*City Administrator*)

City Administrator Ferguson presented the ordinance, which includes the following change to §130.30(D) per Council's direction on first reading: "All persons are hereby prohibited from carrying a firearm in the Wimberley City Hall or in a city park unless specifically allowed under state or federal law."

Councilmember McCullough questioned the need to act at this time and favored waiting for a ruling from the Texas Attorney General and obtaining legal advice on this issue. He feared that

Council's approval might pose the risk of inviting a "nuisance lawsuit." Councilmember Showalter asked Councilmember McCullough to define the term "nuisance lawsuit" and he offered an example of a scenario that might create such a risk. Councilmember Showalter stated that it could be reasoned that any decision by Council could pose a risk of legal action.

Mayor Thurber stated that Council is not rushing to action, that legal counsel has been consulted, and noted that the City will abide by any future ruling from the Texas Attorney General.

Councilmember Dussler reiterated his remarks from Council's last meeting that he is a gun rights advocate, however, did not see any reason that it would be appropriate or necessary to bring a gun to a City Council meeting. Councilmember Anderson stated that there are firearms in her home, but agreed that guns do not belong in the forum of City Council or in a courtroom. Councilmember White said he did not fear a lawsuit but felt that gun-free zones are a target. Councilmember Showalter stated that this is a free speech issue and felt strongly that openly armed audience members would inhibit her ability to speak freely. She noted the aforementioned correspondence sent to Council from "WimDems" (Wimberley Democrats) confirming this perspective that open carry would inhibit free speech. Councilmember Showalter stood by her previous comments as recorded in Council's last meeting minutes. Councilmember McCullough said Council has never had to deal with that type of experience (someone brandishing a firearm), but if it did occur, he supposed that Council would "close the meeting and go home."

Councilmember Showalter moved to approve the ordinance on second and final reading, as presented. Councilmember Anderson seconded.

Mayor Thurber called for a vote as follows: Councilmember Dussler, aye; Councilmember Anderson, aye; Councilmember McCullough, nay; Councilmember Showalter, aye; and Councilmember White, nay. Motion carried on a vote of 3-2.

6. Discussion and Possible Action

- A. Discuss and consider possible action approving a professional services agreement with *Bury Inc.* relating to the design and construction of the new Hidden Valley Road low water crossing and authorize the City Administrator to execute the referenced agreement. (*City Administrator*)

City Administrator Ferguson requested that Council continue this item until its February 4th meeting to allow time to develop some cost-savings measures to include in the agreement.

Councilmember Showalter moved to approve continuance of this item until Council's meeting on February 4, 2016. Councilmember White seconded. Motion carried on a vote of 5-0.

- B. Discuss and consider possible action regarding the proposed construction of a sidewalk section located at 450 Old Kyle Road. (*City Administrator*)

City Administrator Ferguson reported that the Wimberley Players have secured a grant from the State Commission on the Arts to fund a landscape improvement project along Old Kyle Road in

front of the theatre and have approached the City about the possibility of the City constructing a section of sidewalk in conjunction with the subject project. He noted that the right-of-way exists along Old Kyle Road for the proposed sidewalk section and that the estimated cost of the sidewalk section is \$3,195, which would be funded from the City's General Fund Balance.

Wimberley Players representative Julie Ray spoke on Wimberley's recent designation as a cultural arts district by the Texas Commission on the Arts and noted that the Wimberley Players are the only organization within our cultural district that met all of the qualifications for grant funding. She said the grant funds must be used to help Wimberley businesses and attract visitors, which is an economic advantage. Mrs. Ray expressed concerns that turning vehicles might damage the landscaped improvement without a sidewalk buffer. She envisioned Old Kyle Road as an arts corridor that fits in with the City's long-term sidewalk development plans.

Mayor Thurber congratulated Mrs. Ray and the Wimberley Players and said this is a perfect example of a public/private partnership. Discussion addressed the grant's match requirements, project timeframe, and planning for "purple pipe" installation as part of the City's wastewater system construction.

Councilmember Anderson moved to approve the proposal to construct the subject sidewalk section, as presented. Councilmember McCullough seconded. Motion carried on a vote of 5-0.

7. City Council Reports

- Announcements
- Future Agenda Items

Mayor Thurber recognized visiting Boy Scout Troop 127 members who were attending tonight's meeting to obtain merit badges in "Citizenship in the Community" and "Communication." City Administrator Ferguson and City Council expressed appreciation for community service performed by the Boy Scouts.

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

Adjournment: Council meeting adjourned at 7:15 p.m.

Recorded by:

Cara McPartland
Cara McPartland

These minutes approved on the 4th of February, 2016.

APPROVED:

Steve Thurber
Steve Thurber, Mayor



Press Release:

The Wimberley Democrats steering committee would like to express its unanimous support for the Wimberley city council's recent vote to restrict the possession of firearms from Wimberley's public meetings. In order to foster a safe and healthy environment for public discourse, it is absolutely critical that community members who choose to participate in our local government meetings feel safe. Citizens – and council members alike – must be able to freely discuss and debate ideas without intimidation and fear of retribution when discussions touch on controversial topics. The possession of firearms by anyone other than a highly trained law enforcement official would quite simply serve to restrict the open exchange of such ideas, and we would like to express our appreciation for this common-sense vote. We urge the council to re-affirm its decision on the second and final vote scheduled for this evening.

Wimberley Democrats "The WimDems"

Nerissa Oden – Chair, Precinct 339 Chair
Jacquelin Hyman – Vice Chair, Precinct 333 Chair
Vanessa Akins – Secretary
Larry Calvert – Treasurer
Noland Martin – Registrar
Dana Hartoin – Precinct 335 Chair
David Shepherd – Precinct 337 Chair