

**City of Wimberley**  
City Hall, 221 Stillwater  
Wimberley, Texas 78676  
**Minutes of Regular Meeting of City Council**  
June 16, 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 Tom Talcott, Mac McCullough, Matt Meeks, Steve Thurber, and John White.

Staff Present: City Administrator Don Ferguson, City Secretary Cara McPartland, and City Attorneys Cindy Crosby and Brad Young

Immediately after the Invocation, Mayor Flocke presented a proclamation to representatives of *Youth Taking Charge* in recognition of the organization's efforts in providing after-school programs.

### **Citizens Communications**

Carmen Polhemus spoke of the need for a public cemetery. She stated that no lots are currently available and requested that the City appoint a representative to work with a stakeholder group to develop a public cemetery. She volunteered her time and asked for Council's support, guidance, and leadership.

### **1. Consent Agenda**

- A. Approval of the minutes of the Special City Council meeting of June 2, 2011.
- B. Approval of the minutes of the Regular City Council meeting of June 2, 2011.
- C. Approval of the appointment of Charles Lancaster to the City of Wimberley Planning and Zoning commission. (*Place One Councilmember Tom Talcott's nominee*)
- D. Approval of the appointment of Mark Bursiel to the City of Wimberley Parks and Recreation Advisory Board. (*Place One Councilmember Tom Talcott's nominee*)
- E. Approval of the reappointment of Jean Ross to the City of Wimberley Planning and Zoning Commission. (*Place Five Councilmember John White's nominee*)
- F. Approval of the reappointment of Thad Nance to the City of Wimberley Parks and Recreation Advisory Board. (*Place Five Councilmember John White's nominee*)

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

## **2. Presentations**

- A. Presentation by Wimberley resident Stan Starrett on wastewater issues relating to the Wimberley Square

This item was heard after Agenda Item 5C.

Stan Starrett, 100 CR 1492, presented information on his professional background as a developer and experience dealing with wastewater issues. He provided statistical information on various area water samples taken at certain times and State standards for safe levels of particular contaminants. He cautioned Council about the City of Wimberley's contractual relationship with Guadalupe Blanco River Authority (GBRA) and GBRA's projected costs for a centralized wastewater system. Mr. Starrett expressed concerns about levels of pollutants that he feared would cause downtown businesses to close to the detriment of the local economy. He cited specific concerns with the City's current agreement with GBRA, including cancellation provisions, and proposed various options for Council to consider.

- B. Presentation by Wimberley E-M-S on compression-only C-P-R

This item was heard after Agenda Item 3.

Mayor Flocke announced that this presentation will be continued until Council's meeting on July 7, 2011.

## **3. City Administrator Report**

This item was heard after Agenda Item 2A.

City Administrator Ferguson reported that this afternoon the City of Wimberley received a favorable Texas Attorney General opinion regarding the City's authority to regulate the discharge of firearms within city limits.

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

City Administrator Ferguson reported on the June 11<sup>th</sup> opening ceremony, attendance figures, reservations for events (to be held at the Park outside of normal operating hours), staff, parking, and trespassing issues.

- Status report on the City of Wimberley sales tax collections

City Administrator Ferguson reported on April sales tax collections of approximately \$41,000, which indicate an upward trend. Calendar year-to-date collections are about three percent (3%) ahead of last year and within budget.

- Status report on water quality testing results for the Blanco River and Cypress Creek

City Administrator Ferguson reported on generally satisfactory test results. Although Blue Hole yielded good test results, concerns were expressed about future decline in depth due to possible prolonged drought conditions, with careful monitoring to continue. Specific results were presented on various locations along the Blanco River and Cypress Creek.

- Status report on planning for the upcoming Wimberley City Council Goals and Objectives Workshop

City Administrator Ferguson requested input from Council on a prospective date and discussion agreed to hold the workshop on Saturday, June 25, 2011 at the Way Family Ranch.

- Status report on a proposed amendment to the current law enforcement interlocal agreement with Hays County to allow the City to hire off-duty officers to enhance existing traffic law enforcement efforts in the City

City Administrator Ferguson anticipated bringing a draft agreement to Council for consideration at its next meeting on July 7, 2011.

City Administrator Ferguson provided details on the annual Fourth of July parade, including publicity and traffic control.

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

Hold a public hearing and consider approval of an ordinance of the City of Wimberley, Texas approving an application for a conditional use permit to allow for the sale of alcohol for on-premise consumption on a portion of .3279 acres located at 13904 Ranch Road 12, Wimberley, Hays County, Texas, zoned Commercial – High Impact (C-3). (*Taste Buds LLC, Applicant*)

City Administrator Ferguson reported that the Planning and Zoning Commission hearing on this item has been rescheduled for June 23, 2011, due to lack of a quorum for its June 9, 2011 meeting. Due to this delay, Council needs to take action to continue its consideration until July 7, 2011.

Councilmember Thurber moved to continue this item until Council's meeting of July 7, 2011. Councilmember McCullough seconded. Motion carried on a vote of 5-0.

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

- A. Discuss and consider possible action regarding proposed modifications to the construction timeline for various elements in Phase II of the Blue Hole Regional Park Development Project. (*City Administrator*)

City Administrator Ferguson recommended that City Council take action requesting the contractor to stop any further work on Phase II based on the need to raise adequate funding to fully complete Phase II. Discussion addressed reasoning for delaying work until all funding for

Phase II has been acquired, contract provisions allowing for the delay, and Friends of Blue Hole fundraising efforts.

Councilmember Thurber moved to authorize staff to direct the contractor to stop work on Phase II. Councilmember Talcott seconded. Motion carried on a vote of 5-0.

- B. Discuss and consider possible action to reconsider and rescind the effect of City Council action at its meeting on March 3, 2011, regarding the status and ownership of public right-of-way on Mill Race Lane. (*Place Five Councilmember John White*)

This item was heard after the Consent Agenda.

Robert Paver of 13025 Muldoon, Austin, Texas, stated that twenty-one of the twenty-four Mill Race Lane property owners wish to keep Mill Race Lane as a private roadway and do not want the City to spend tax dollars on improvements to Mill Race Lane. He felt that Council should be concerned about engaging in action that is wanted by one individual, when the majority of Mill Race Lane residents are happy with the road the way it is.

Sally Trapp of 300/310 Mill Race Lane was dismayed that Council is again discussing Mill Race Lane, which she maintained is a private road deeded to the property owners for use by owners, residents, and guests. She felt that there is little evidence that the public has consistently and without interruption used the road. Ms. Trapp stated that sporadic, perhaps unintentional improvements have been made in spite of protests from the majority of Mill Race Lane land owners. Referring to documentation disbursed within the last week, Ms. Trapp alleged that it was one-sided, contained numerous inaccuracies, and left out significant pertinent information to see the issue as a whole. She felt the City would be hard-pressed to prove a legal claim of ownership or prescriptive easement. Ms. Trapp cautioned Council about being fiscally irresponsible and asked that Mill Race Lane be kept as unique as Wimberley.

Scott Johnson read a statement dated June 16, 2011 on behalf of Malcolm Harris of 210 Mill Race Lane, which requested that Council defer action “. . . until all parties have had a reasonable opportunity to weigh in on the issue.” The full text of Mr. Harris’s statement, which maintains in part that “Mill Race Lane is a private road easement that has never been acquired by any governmental body,” is attached to these minutes.

Sabino Ranch resident Scott Johnson read his statement dated June 16, 2011, which asserted in part that Mill Race Lane is a private road easement for use by its owners, residents, and guests. He opposed “flip-flopping” by Council on this issue and suggested that Council meet with Mill Race Lane property owners in a non-binding arbitration setting. The full text of Mr. Johnson’s remarks is attached to these minutes.

Shellye Arnold of 330 Mill Race Lane read her statement dated June 16, 2011 maintaining that Mill Race Lane is a private road for the use of owners, residents, and guests. The full text of Ms. Arnold’s remarks is attached to these minutes.

Erin Longfellow of 551 Mill Race Lane stated that she loves Mill Race Lane as a quiet, country lane and felt that paving the lane any further would increase traffic and change its character. She requested that Council keep Mill Race Lane the way it is.

Former Wimberley Councilmember Bill Appleman read a statement (attached to these minutes) on behalf of former Hays County Commissioner Craig D. Payne, who claimed that Mill Race Lane is a publicly maintained road.

Former Councilmember Bill Appleman of 400 Mill Race Lane continued his comments as follows:

“There are two items we’re discussing tonight. I think the first item isn’t really as much about Mill Race Lane as it is correcting a mistake that I believe was made in interpretation of a vote a couple of months ago, and in my opinion, it really hasn’t changed the status of the road in any way. Mill Race Lane has been a public road for over forty years (probably fifty years). It is still a public road. These are also the opinions of Greg Abbott, our current Attorney General; opinions of John Cornyn, our former Attorney General (now U.S. senator); and several other attorney generals who have written on this subject. We’ve even written - the legislature has even written - a section of the Transportation Code dealing with the determination of county roads with regard to publishing a county road map, which is in the possession of Mr. Ferguson. And the key date for that map - because the law did change with September 1, 1981 – Hays County produced a map with regard to its streets as of April 1981, approved that road map in December 1981, by the judge and all county commissioners, entered into the minutes of the county commissioner containing County Road 177, Mill Race Lane. In any court, that will take two minutes for a judge to look at, declare that it was a public lane, is still a public lane, and it is still the responsibility of this City to maintain and they are liable for anything that is deficient and may cause injury on that lane. The other document that I think is key to the Lane, although it really isn’t needed with regard to the County road map, where an implied dedication did take place, the Transportation Code §258 gives recourse for landowners who feel that it was their private land that was taken. It gives them two years and lays out specifically how they can address and get that action reversed. Nobody has ever done that. In 1992, there was a subdivision created on Mill Race Lane (in the last two properties on Mill Race Lane), where this subdivision was created, and CR 177 was laid out here, and specifies a twenty-five foot (25’) right-of-way. On this CR subdivision it is expressly stated that 3.72 acres out of the land of the Amasa Turner Survey to be known as the End of Race Subdivision in accordance with the plat shown hereon, subject to any and all easements and restrictions, is hereto granted and do hereby dedicate to the public the use of the streets and easements shown hereon. This is an express dedication. I believe that the City has exposed itself to actions that can be taken with regard to lawsuits, with regard to spending public funds to benefit private individuals, it also causes into question our whole public road system and how it’s maintained.”

Hearing no further comments, Mayor Flocke adjourned Open Session and convened Executive Session at 6:30 p.m. pursuant to §551.071 of the Texas Government Code for consultation with legal counsel.

Mayor Flocke adjourned Executive Session and reconvened Open Session at 7:23 p.m.

No action was taken in Executive Session.

Councilmember White stated that he made an error in his previous vote and believes that there is a prescriptive easement on Mill Race Lane. He stressed that the City is not claiming ownership of the land, just the prescriptive easement, giving the City the obligation to maintain that road. He stated that his decision is based on many factors and felt that the City does have a prescriptive easement.

Councilmember White moved to rescind the action taken by Council on March 3, 2011 declaring Mill Race Lane as a private road. City Administrator Ferguson suggested the following clarification to the motion: "to rescind the *effect* of that vote." Councilmember White amended his motion to add the clarifying language as suggested by City Administrator Ferguson. Councilmember Thurber seconded.

Councilmember McCullough requested the following friendly amendment to Councilmember White's motion: "Would you be amenable with your action - a friendly amendment - to where we could table the effect of your motion and give the larger group and Mr. Appleman a chance to mediate this, to meet and talk about it and see if there's not enough common ground that we could move this forward (with a trite expression - 'a win-win') for both sides. It would require that Mr. Appleman attend and probably that the other group designate one or two persons (I don't know how we'd work out the nuances of that), but I'm reluctant, I'm adamant that I don't want to see this go without one more chance for these two groups to try and make something positive come out of this. And that would mean putting your motion in abeyance for a period of time, until these two groups could meet."

Discussion followed about clarifying Councilmember McCullough's suggested friendly amendment and which course of action best meets Councilmember McCullough's intent to require mediation. Based on this discussion, Councilmember McCullough moved to table Councilmember White's motion. Councilmember McCullough's motion died for lack of a second.

Councilmember Thurber stressed that the City is not claiming any ownership of Mill Race Lane and that Councilmember White's motion simply states that the City owns an easement on that street to be used as a public street that the City maintains. He favored productive meetings among the parties involved, but did not feel that mediation should be mandated.

Councilmember Talcott favored meetings on specific road improvements in order to allay property owners' concerns about what type of changes might occur on Mill Race Lane and stated that the issue at hand for action is to determine whether or not a prescriptive easement exists. Mayor Flocke stated that the City always invites neighborhood input and involvement when any street improvements are planned.

Councilmember McCullough called the question.

Mayor Flocke called for a vote as follows: Councilmember Talcott, aye; Councilmember McCullough, nay; Councilmember Meeks, aye; Councilmember Thurber, aye; Councilmember White, aye. Motion carried on a vote of 4-1.

Councilmember White moved to declare Mill Race Lane a public road with a prescriptive easement. Councilmember Talcott seconded.

Mayor Flocke called for a vote as follows: Councilmember McCullough, nay; Councilmember Meeks, aye; Councilmember Thurber, aye; Councilmember White, aye; Councilmember Talcott, aye. Motion carried on a vote of 4-1.

- C. Discuss and consider possible action to declare Mill Race Lane as a public right-of-way and direct City staff to take all necessary action to ensure the public's use of Mill Race Lane and establish the public right-of-way status of Mill Race Lane, including the development of plans for maintenance and improvement of the roadway and related budgets. (*Place Five Councilmember John White*)

Councilmember White moved to direct City staff to proceed with maintenance and improvements in accordance with plans as previously discussed with Mill Race Lane property owners, which would keep the subject street as a "country lane." Councilmember McCullough seconded. Mayor Flocke opened Council discussion and Councilmember McCullough called the question. Councilmember Talcott requested discussion on the motion and Councilmember McCullough rescinded his calling of the question. Councilmember Talcott reiterated that things can be done to keep Mill Race as a "lane," such as creating a turnaround at the end of the road and taking protective measures against speeding vehicles.

Councilmember Thurber hoped that all property owners can hold productive meetings to resolve this issue and agree on what Mill Race Lane should look like.

Discussion between Councilmember White and City Administrator Ferguson clarified Councilmember White's motion as direction to staff to proceed with plans as discussed in previous meetings with Mill Race Lane property owners and present back to Council staff's findings on any planned improvements/maintenance.

Councilmember Talcott requested a friendly amendment to the motion to involve only Mill Race Lane property owners in any discussions of improvements. Councilmember McCullough seconded. Councilmember White asked for clarification on the friendly amendment requesting that discussions be limited to Mill Race Lane property owners. It was confirmed that only Mill Race Lane property owners would be giving input on improvements. Councilmember White did not object to the friendly amendment.

Motion on the friendly amendment carried on a vote of 5-0.

Mayor Flocke asked for clarification on the original motion and his understanding to direct staff to move Mill Race Lane to the top of the priority list for street improvements for the Fiscal Year 2012 and that staff contact the property owners and get input from them on the proposed

improvement plan prior to implementation. Councilmember White clarified his previous motion language that improvements are to be “based on the prior meeting you had on the type of work to be done.” Councilmember White’s original motion carried on a vote of 5-0.

- D. Discuss and consider possible action on a request for a variance from certain provisions of the City of Wimberley Sign Ordinance for the *Physical Therapy and Rehab Concepts Clinic* located at 501 Old Kyle Road, Wimberley, Texas. (*City Administrator*)

City Administrator Ferguson explained the variance request to allow an alternate sign location on the side wall of the business to enhance visibility of the clinic. He advised that City Council has the ability to grant a sign variance if Council finds that the following standards are met:

- The variance will not authorize a type of sign which is specifically prohibited this chapter
- The variance is not contrary to the goals and objectives outlined by the City of Wimberley Comprehensive Plan; Section VII, D-2
- The variance is not contrary to the public interest
- Due to special conditions, a literal enforcement of the chapter 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.

Discussion addressed the possible need to amend the Sign Ordinance versus granting variances and established that no variance is being sought for the size of the sign.

Councilmember Thurber moved to approve the item, as presented, including affirmative findings on all of the abovementioned standards. Councilmember Talcott seconded. Motion carried on a vote of 5-0.

## **6. City Council Reports**

- Announcements
- Future Agenda Items

Councilmember Talcott stated that he will not be able to attend Council’s next meeting on July 7, 2011.

As future agenda items, Councilmember Meeks requested appointments to the Planning and Zoning Commission and Parks and Recreation Advisory Board.

Councilmember Thurber stated that he will be working with City Administrator Ferguson on holding a staff appreciation event.

City Administrator Ferguson reminded Council of a public/stakeholder meeting to be held June 28, 2011 to discuss development of sidewalks on FM 2325 and noted current street-widening work along FM 2325 from the Emily Ann Theatre to Jacob’s Well Road. He announced that a

funding request has been sent to Capital Area Metropolitan Planning Organization for completion of the entire loop of the hike/bike trail.

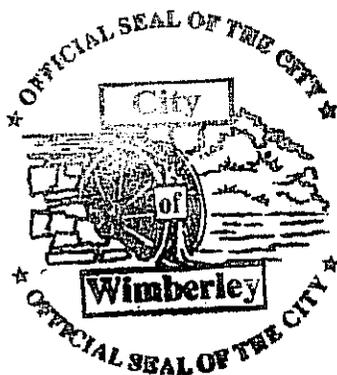
Hearing no further announcements or future agenda items, Mayor Flocke called the meeting adjourned.

**Adjournment:** Council meeting adjourned at 8:34 p.m.

Recorded by:

  
Cara McPartland

These minutes approved on the 7th of July, 2011.



**APPROVED:**



**Bob Flocke, Mayor**

Citizens Communications  
Wimberley City Council Meeting  
June 16, 2011

Good evening.

I have asked Scott Johnson to read a short statement to be entered into public record regarding this evenings discussions relating to Mill Race Lane.

I am currently in the Colorado Mountains without cell or internet availability this week.

I gather something has happened to get bad things on the agenda without much notice.

Mill Race Lane is a private road easement that has never been acquired by any governmental body.

I am prepared to join with other owners to oppose and contest action by the city to take it over without proper steps to acquire it.

I suggest the city council consider that the issue be deferred until all parties have had a reasonable opportunity to weigh in on the issue.

Tabling the whole matter would be a good move.

I reserve the balance of my time to be used by Scott Johnson in his statement.

Respectfully,

Malcolm Harris  
210 Mill Race Lane  
Wimberley, TX

Citizens Communications  
Wimberley City Council Meeting  
June 16, 2011

Good evening.

I am Scott Johnson and I reside on Sabino Ranch which adjoins Mill Race Lane here in Wimberley.

I ask that my statements tonight be entered into public record for tonight's Wimberley City Council meeting.

Seems like Déjà Vu all over again.

Recently I ran for Wimberley City Council.

One reason was because the Mill Race Lane disputes had continued without resolution... as it does today.

I believed what was needed was a positive independent influence on the effectiveness of the city council.....

How much money has been spent and will be spent by the Wimberley taxpayers on surveys and road work on private property primarily driven by one individual?

Mill Race Lane is a private road easement owned in undivided interests jointly by 24 adjoining property owners, it does not provide access to any public thoroughway; it does not connect to any public land or park.

Mill Race Lane is used by its owners, residents and guests.

Mr. Mayor (et al)...

What would we be discussing tonight if there was not Mill Race Lane?

Would it be the quality of the water leaving Blue Hole now that Cypress Creek has stopped flowing into it?

Would we have used the time lost on this individually led debacle to resolve our wastewater issues in downtown?.....and yet this continues.

I am very concerned about the damage the Wimberley City Council is making to our community.

Two councilmen have recently resigned and a vote to rescind has surfaced.

Flip-Flopping sends a terrible message to the community who looks to the council for consistent professionalism, to voters relying on past actions or perceived election promises, to city sub-committees like P&Z and TAB, to county agencies working with the City of Wimberley and to businesses now unsure how the "winds" of the city council will change next month. One councilman stated that the vote he wishes he could go back and change was the vote on the Blue Hole Park contractor...now it's Mill Race Lane...what's next.

A terrible precedent could be set tonight driven by miss-management of this issue.

So let's move forward.

Council tonight is considering a vote within a flawed methodology.

Each councilman has by now (hopefully), a good portion of the 480 page "book" recently distributed which is not complete and contains inaccuracies.

I learned of this potential vote last Friday...copies of the "book" were not seen until Tuesday.

Some owners are not able to attend this evening due to the short notice.....

This venue is not conducive for an informed decision by city council.

On November 18, 2011 city council agreed to the idea of meeting with the owners of Mill Race Lane.

The City Council voted 4 to 0 on a motion put forth by Councilman Thurber to "Direct staff to work with all the property owners on Mill Race Lane to prepare and present to council a mutually agreeable solution... Resolving ownership issues was to be part of the solution..."

The meeting was held on January 12, 2011; however, upon starting the meeting the owners were told by Don Ferguson that there would be no discussions on any matters other than road specifications.

This is very interesting because as of Friday there is at least one councilman that believes an agreement was made at that meeting.

This is very problematic to have a city staff not following a public directive of the council.

Mr. Mayor...this was an opportunity lost.

So...in a short time, with incomplete information the city council will hear a few owners' brief comments on what they have learned in the past few days and then be challenged with a decision to make.

I suggest the city council meet with the owners of Mill Race Lane in the arena of what is known as a "non-binding arbitration".

We essentially agree to spend some time together to air-out our view points and positions face to face.

We do not need to hide behind an attorney, but we certainly can use them to counsel us during these discussions.

At that point, the council would have a much better view on the issues and a better foundation on how to move this forward.

If this goes to the lawyers it means we have not done our work and shirked our responsibilities.

We as neighbors and fellow citizens of Wimberley will then have lost another piece of what made this community unique.

...but rest assured that should we fail in these proposed discussions we will all lose in the court actions to follow.

Thank you for your time.

Scott Johnson

Sabino Ranch

Wimberley, TX

**PLEASE INCLUDE IN PUBLIC RECORD FOR THE WIMBERLEY CITY COUNCIL MEETING  
JUNE 16, 2011**

TO: The Honorable Mayor Flocke, Honorable Members of City Council, Administrator Ferguson  
FROM: Shellye Arnold, 330 Mill Race Lane, Wimberley, Texas 78676  
(PO Box 1873, Wimberley, Texas 78676)  
DATE: June 16, 2011  
**SUBJECT: Mill Race Lane – A Private Road**

Mr. Mayor, Members of City Council, Mr. Ferguson,

Thank you for the opportunity to speak to you today. My name is Shellye Arnold. I live at 330 Mill Race Lane here in Wimberley. It is my homestead, and I vote in Hays County.

I would like to address the City's new position on Mill Race Lane claiming prescriptive easement. Formerly, the City of Wimberley claimed ownership of Mill Race Lane. Today, instead, a prescriptive easement is being claimed.

The Attorney General's opinion of May 2002 on page 9, paragraph 2 of the summary states that private landowners affected by the governmental body's determination that a road is public may seek to have their rights judged by a court. In such a lawsuit, the status of the road would be a question of fact.

Mill Race Lane is a private road that serves the property owners, residents and guests. It is not a through road. It does not connect to any public park or public land.

There are 24 properties on Mill Race Lane. Owners representing 20 of these, or 83%, agreed to a Cease and Desist letter to the City opposing any further expenditure of public monies on Mill Race Lane, which is private property. A letter was generated, signed and delivered to the City. Owners representing 3 properties abstained from any participation. **Only one property owner** actively seeks to have Mill Race Lane declared a public easement and to be maintained by the City.

ProTech Surveyors, who were paid by the City, surveyed my property without permission by trespassing.

The City has funded a costly survey for an alleged property boundary dispute between a then-public official and myself.

The City also paid for the paving of this same official's private parking lot and driveways.

The only reason to declare this road a public easement and pave it or expand it is to serve Mr. Appleman and his guests with a bigger, better, faster, nicer and wider road to his business.

The City of Wimberley has plenty of projects that need attention. I ask you to solve real problems of the City of Wimberley and not Mr. Appleman's private business issues.

The City of Wimberley does not need a lawsuit in which facts are questionable and in dispute in order to serve one resident's private business interests.

As a property owner with right of access to Mill Race Lane which is a private road for the use of owners, residents and our guests -- leave our property alone.

The only purpose of a prescriptive easement, and the paving of Mill Race Lane, is to allow for a bigger, better, faster, nicer and wider road to access Mr. Appleman's property.

If the City proceeds to declare prescriptive easement for public access to Mill Race Lane, I will consider my alternatives for the adjudication and challenge of the status of the road as a question of fact.

June 16, 2011

RE: Testimony regarding the public status of Mill Race Lane

I, Craig D. Payne, of 222 Woodacre Drive, Wimberley, Texas, former Precinct Three Hays County Commissioner, during the years of 1981 to 1997, have unique and special knowledge of the roads maintained by the County of Hays.

As the elected road commissioner for sixteen years, it was my duty and obligation to maintain and repair all the publicly maintained roads in the precinct generally known as the Wimberley area. For most of the years that I was Commissioner, I kept a daily log of what roads were worked on by the county crews and I still have those logs books in my possession.

As early as 1981, thirty years ago, I had first hand knowledge of county road crews doing work on Mill Race Lane to the old Ireland Property at the end.

Mill Race Lane, all so known as County Road 177 was given that county road number by the previous commissioner, Jack Oldham, who maintained that road through the late 60's and 70's.

In the early 80's, the county took an official inventory of its roads and published a county wide map showing all county maintained roads and there you will find Co. Rd. 177. If you'll take the time to research, you'll find references to County Road 177, spread across the pages in the Official Hays County Commissioner's Court Minutes.

In my opinion, because the road was in the center of town and was traversed along the Mill Race, the center of commerce, I believe that previous road commissioners for the past hundred years had

maintained the road. If public funds were being used on that road prior to 1981, then it's a publicly maintained road and it doesn't matter who owns the ground under the road. That is the law. As a matter of fact, near 70% of all public roads in Texas are easements and run across people's properties.

Thank you for your time.

Warm regards,

A handwritten signature in black ink, appearing to read "Craig Payne", with a long horizontal line extending to the right.

Craig Payne.