

**City of Wimberley**  
City Hall  
221 Stillwater  
Wimberley, Texas 78676  
**Minutes of Regular Meeting of City Council**  
July 18, 2013 at 6:00 p.m.

City Council meeting called to order at 6:00 p.m. by Mayor Pro-tem John White.

Mayor Pro-tem White gave the Invocation and Councilmembers led the Pledge of Allegiance to the United States and Texas flags.

Councilmembers Present: Mayor Pro-tem John White and Councilmembers Tom Talcott, Mac McCullough, Matt Meeks, and Steve Thurber. Mayor Bob Flocke was absent.

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

### **Citizens Communications**

Publisher & Editor Dale Roberson thanked Council for designating the *News-Dispatch* as the City's official newspaper. He reported on increased subscriptions in the Wimberley area as a result of a recent subscription drive, dedicated coverage of Wimberley City Council meetings, and the availability of digital editions online.

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

- A. Approval of the minutes of the Regular City Council meeting of June 20, 2013
- B. Approval of the June 2013 Financial Statements for the City of Wimberley

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

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

- Status report on the City of Wimberley's loan from the Texas Water Development Board (TWDB) to fund the planning and design of a central Wimberley wastewater system

City Administrator Ferguson reported that the TWDB approved the City's request to modify loan term modifications in accordance with Council's direction to utilize issuance of tax notes, rather than certificates of obligation. He stated that loan closing is scheduled for September 12, 2013. He advised that Statements of Qualifications are due tomorrow, July 19, 2013 by 10 a.m. for review. Interviews will be scheduled and Council is anticipated to select an engineering firm on August 15, 2013.

- Status report on the development of appointment options for the independent stakeholder group that will participate in the planning and design phase of the Central Wimberley Wastewater Project

City Administrator Ferguson reported that City staff will present several options to Council at its August 1, 2013 meeting relating to the appointment of an independent stakeholder committee.

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

City Administrator Ferguson reported that the July sales tax check, representing May sales tax collections, totaled \$45,073, which is up approximately six percent (6%) from the same period last year. Year-to-date collections are up approximately four percent (4%) from the same period last year and running about six percent (6%) ahead of budget.

- Status report on central Wimberley water quality issues

City Administrator Ferguson reported that the City's wastewater treatment plant continues to run within permit levels. Follow-up water quality testing yielded higher bacteria levels and testing locations upstream from downtown indicated several "hot spots." Bacteria advisory signage has been placed in several locations and letters have been mailed to notify property owners along Cypress Creek of the placement of such signage. Dye testing continues, as well as target testing both upstream and downstream from the Square area. At least three (3) downtown businesses had to restrict restroom usage over the busy Fourth of July weekend.

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

City Administrator Ferguson reported on record attendance to date this season, recent Park closures due to inclement weather/capacity issues, and public notification of closures. Texas Parks and Wildlife Department has sent the final close-out documents relating to grant funds used to develop the Park. Staff will be meeting with production scouts tomorrow, July 19, 2013, to discuss use of the Park as possible shooting location. Master naturalists recently conducted two (2) successful weekend "weed-pulls" at the Park and are planning future volunteer events. Brief discussion addressed reasoning for Park closures during periods of heavy rainfall, including grounds preservation and water quality issues.

### **3. 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 Leaning Pear, LLC to allow for the sale of beer and wine for on-premise consumption at a sit-down eating establishment located on a tract of property zoned Lodging 2 (L-2), located at Unit 110, 111 River Road, Wimberley, Hays County, Texas, and imposing certain conditions; providing for findings of fact; amendment of the zoning district map; repealer; severability; effective date; proper notice and meeting; and providing for certain condition. (*Leaning Pear, LLC, Applicant*)

City Administrator Ferguson requested that this item be continued until Council's meeting on August 1, 2013 to allow for the presentation of an amendment to the City's Zoning Code to include the sale of beer, wine, and alcohol as a conditional use for sit-down eating establishments located in areas zoned for lodging. The proposed amendment and subject conditional use permit (CUP) application will be presented to Council for review and consideration at its August 1<sup>st</sup> meeting.

Councilmember Thurber moved to approve continuance of this item until Council's meeting of August 1, 2013. Councilmember Meeks 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 submitted by Randall Smith to operate a vacation rental facility on an approximate 8.03 acre tract located at 501 Little Ranches Road, Wimberley, Hays County, Texas, zoned Residential Acreage (RA), and imposing certain conditions; providing for findings of fact; amendment of the zoning district map; repealer; severability; effective date; proper notice and meeting; and providing for certain conditions. (*Randall Smith, Applicant*)

City Administrator Ferguson reviewed the subject property's location/addressing, current/proposed zoning and uses, and existing residences. He noted that a recent noise complaint from a neighbor resulted in the City's discovery that the subject homes were being rented on a short-term basis through a local accommodation booking agent. When notified of the City's CUP requirement for vacation rentals, the property owner submitted an application for a vacation rental CUP and stated he was unaware of CUP requirements based on information obtained from his booking agent that the subject property was outside city limits. Adequate space exists on-site for the required off-street parking. Based on a review of the existing, properly functioning on-site septic by the City Sanitarian, City Administrator Ferguson recommended that no more than four (4) guests may occupy the larger main home and no more than three (3) guests may occupy the smaller guest home. Should the CUP be approved, he stressed that the applicant may not increase septic system capacity and exceed the stated recommended occupancy limits in the future without applying for a CUP amendment, which requires the same public notification as the original CUP application.

City Administrator Ferguson read a list of conditions to be made part of the CUP, if approved, as recommended by a 5-1 vote of the Planning & Zoning Commission at its meeting on July 11, 2013, which included maximum occupancy limits, inclusion of the applicant's house rules, and a prohibition on amplified outdoor music.

It was noted that to date City staff has received written opposition from the owners of three (3) of the tracts located within the two hundred (200) foot notification area, representing thirty-six percent (36%) of the property in the notified area. City Administrator Ferguson explained that due to the amount of opposition received, a super majority vote of Council would be needed to affirm the zoning change. He noted that two (2) letters of support have been received to date from property owners within the 200-foot notification area, as well as two (2) property owners outside of the notification area.

In addition to the aforementioned list of CUP conditions, City Administrator Ferguson recommended the following additional requirements to help address opponents' concerns: (1) the applicant shall reside on-site in one of the houses on the subject property, during any periods when the other house is occupied by renters; and (2) the applicant must notify the City within twenty-four (24) hours of any complaint being received by the property owner, management representative, or law enforcement.

Mayor Pro-tem White opened the public hearing.

Applicant Randall Smith presented Council with a handout on the subject property detailing his ownership history, improvements (a swimming pool and hot tub), reliance upon advice of his realtor that the subject property was in the City's extraterritorial jurisdiction (ETJ), use of two (2) different rental agencies, average length of rentals (primarily on weekends), efforts to comply with the City's CUP requirement, and specific actions taken to help address concerns expressed by neighbors, including disconnection of the hot tub speakers and prohibition of amplified outdoor music. He asked for Council's approval based on the subject property's size, distance to neighbors' houses, buffering effect of heavy vegetation, stringent house rules that impose fines for certain violations, monitoring of rental activity via surveillance system, and improved complaint response measures. He noted past communications with certain neighbors, lack of previously expressed objections, and letters of support from several surrounding property owners. Mr. Smith felt his vacation rental helps improve the local economy and that he should be given the opportunity to prove that he can continue to be a good neighbor and "go the extra mile in meeting the requirements of the City of Wimberley." He directed Council's attention to a survey showing house dimensions and distances from opponents' houses, letters of support, and photos showing various aspects/views of his property. Mr. Smith closed by asking for Council's approval in order to continue use of the subject property as a vacation rental for a few more years until he can retire to live there full-time.

Discussion addressed the history of complaints, fine system for non-compliance, house rules, enforcement of CUP conditions, the applicant's lack of knowledge about the subject property's location within the City's jurisdiction, and permitting for past improvements.

Terry Sones of 211 Little Ranches presented information on the distance from her home to the subject property's main house and expressed opposition based on issues with noise, which she said have worsened over the last several years, with several calls made to law enforcement. She spoke of Mr. Smith's offer to install double pane windows in one of her bedrooms, build a rock wall, grow vegetative buffers, and ban boom boxes. She noted the proposed CUP condition prohibiting amplified outdoor music, but questioned the applicant's house rules stating small radios are allowed. She felt enforcement would be difficult, whether or not there is surveillance in place or the applicant is staying on the property during rental periods. Ms. Sones questioned the applicant's commitment to be a good neighbor and cited differing representations of the rental facilities' square footage measurements, as well as distances from surrounding neighbors. She felt the subject property has been overbuilt for the neighborhood and that a vacation rental marketed for up to fourteen guests (if all beds in both houses were filled) is inappropriately sized. She did not feel the neighbors should be responsible for enforcing noise violations on the subject property by having to make calls to Mr. Smith, the management company, or law enforcement in

the middle of the night. Ms. Sones stated she felt intimidated by Mr. Smith's threats of legal action, if the CUP is not approved. She closed her remarks by asking Council to deny the CUP request.

Wayne McQuaid of 207 Little Ranches also questioned Mr. Smith's distance measurements from his main home to Mr. McQuaid's house, based on figures obtained from Hays Central Appraisal District website. He stated noise issues were disclosed to him by the former property owner, but he was unaware the subject property was a "bed and breakfast" until after he had moved into his home and heard about the rental activity from his neighbors. He felt the CUP application approval process has given surrounding property owners the opportunity to voice their concerns. Mr. McQuaid cited Mr. Smith's offers to mitigate the noise, including building a wall, but felt such measures would not matter, given the area's geography and the typical mindset of renters, who want to enjoy their vacations. Because Mr. McQuaid characterized himself as someone who will tolerate noise violations, rather than complain to responsible parties or law enforcement, he felt the CUP approval process gives him an opportunity to express his concerns and opposition to the CUP request.

Responding to previous comments, applicant Randall Smith stated that he thought issues with Sones and McQuaid has been resolved, since amplified outdoor music would be prohibited, although small portable radios/players would be allowed under his house rules. He maintained the square footage of the main and guest houses per his survey copy, stated that the subject property is marketed as a three-bedroom house, and noted the reference to "fourteen beds" has been removed from marketing materials. Mr. Smith acknowledged the CUP condition proposing a maximum occupancy of seven (7) guests for the both the main and guest houses. Referencing his meeting with Mr. McQuaid, Mr. Smith advised that the only noise issue reported to him by Mr. McQuaid involved fireworks, which are prohibited by house rules and are subject to a \$1,000 fine.

Hearing no further comments, Mayor Pro-tem White closed the public hearing.

Discussion among Council, the applicant, audience members, and staff addressed: complaint history, maximum occupancy limits, total number of bedrooms, size/location of subject property and main/guest homes, CUP procedures allowing for public input, measures taken by the applicant to address opponents' concerns, problems enforcing rules related to noise/occupancy, and amount of opposition expressed to date.

Councilmember Thurber moved to deny the requested CUP. Councilmember McCullough seconded. Mayor Pro-tem White called for a vote as follows: Councilmember Talcott, aye; Councilmember McCullough, aye; Councilmember Meeks, aye; Councilmember Thurber, aye; Mayor Pro-tem White, aye. Motion carried on a vote of 5-0.

- C. Hold a public hearing and consider approval of an ordinance approving an application for a conditional use permit submitted by Glenda Wilcox to allow for a secondary residential building on a 0.523 acre tract of land zoned Single Family Residential 2 (R-2), located at 100 Donna Drive, Wimberley, Hays County, Texas, and imposing certain conditions; providing for findings of fact; amendment of the zoning district map; repealer;

severability; effective date; proper notice and meeting; and providing for certain conditions. (*Glenda Wilcox, Applicant*)

City Administrator Ferguson requested that this item be continued until Council's meeting on August 1, 2013, in accordance with the Planning and Zoning Commission's recommendation to continue the item to allow the Commission to gather more information from the applicant regarding plans for use of the secondary residence and from the adjacent property owner who has submitted written opposition to the CUP request.

Councilmember Thurber moved to continue the item until Council's meeting on August 1, 2013. Councilmember Meeks seconded. Motion carried on a vote of 5-0.

#### **4. Ordinances**

- A. Consider approval of an ordinance of the City of Wimberley, Texas, amending and replacing Chapter 152 (Signs) of the City of Wimberley Code of Ordinances and providing for the following: findings of fact, severability, repealer, and effective date, and proper notice and meeting. (*City Administrator*)

City Administrator Ferguson reviewed the draft ordinance, which includes revisions per Council's direction at its June 20<sup>th</sup> meeting. He spoke briefly on options available to remove billboards along Ranch Road 12 and reviewed key provisions of the revised draft ordinance, including simplified definitions, commercial complex/window signage, daily display signs, illuminated signs, and electronic message board(s).

Discussion addressed development of a comparison chart to aid evaluation of proposed changes, presentation/briefing to Council by a representative Sign Ordinance Task Review Force, two-sided signs, addition of illustrations/pictures of sign examples, "spirit" signs, and approval/denial of sign variances by the Board of Adjustment versus City Council. There was brief discussion of wayfinding sign(s) and governmental flags/flagpoles in residential/commercial areas.

No action was taken.

- B. Consider approval of an ordinance amending Title XIII (General Offenses) of the City of Wimberley's Code of Ordinances to add a new Section 130.30, 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*)

Discussion addressed the scope and purpose of the proposed ordinance, signage, State regulations, and whether there is a need to revise current City Code. Direction was provided to City Administrator Ferguson to publicly post signage in accordance with State laws governing the prohibition of firearms in government meetings, with the exception of possession of firearms by licensed peace officers. No action was taken on the proposed ordinance.

- C. Consider approval of an ordinance of the City of Wimberley, Texas amending Chapter 70 (Traffic Regulations) of the Code of Ordinances of the City in order to prohibit through truck traffic through certain portions of the City, and provide for an alternate truck traffic route as described herein; providing for an effective date; proper notice and meeting, severability and repealer. (*City Administrator*)

City Administrator Ferguson recommended approval of the ordinance to consolidate two (2) previously adopted ordinances prohibiting through truck traffic on County Road 1492 and certain portions of Ranch Road 12 and FM 2325, as well as to correct a text error in the provisions relating to County Road 1492 in a previous amendment.

Councilmember Thurber moved to approve the item, as presented. Councilmember McCullough seconded. Motion carried on a vote of 4-0. (Before the vote was called by Mayor Pro-tem White, Councilmember Meeks briefly left the meeting and was not present during voting on this item.)

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

- A. Discuss and consider possible action waiving the City of Wimberley building permit fees for the Wimberley ISD 2013 school bond projects. (*City Administrator*)

Councilmember Meeks returned to the meeting at this time.

City Administrator Ferguson explained that State law allows cities to waive building permit fees in cases where Council makes the determination that waiving such fees serves a valid municipal purpose. He stated that the City has waived building permit fees for Wimberley ISD in the past and noted that if the waiver is approved, Wimberley ISD will still be responsible for paying the City's pass-through review and inspection fees.

Discussion addressed prior actions by Council to waive fees for WISD projects, specific improvements approved in WISD's recent bond election, WISD's community benefits, and whether to continue the item until Council's next meeting.

Councilmember Thurber moved to waive the City of Wimberley building permit fees for the Wimberley ISD 2013 school bond projects and declare that such a waiver serves a valid municipal purpose. Councilmember Meeks seconded. Motion carried on a vote of 3-2. Councilmembers McCullough and Talcott voted against.

- B. Discuss and consider possible action regarding the proposed Fiscal Year 2014 Goals and Priorities for the City of Wimberley. (*City Administrator*)

City Administrator Ferguson requested that this item be continued until Council's meeting on August 1, 2013. Councilmember Thurber moved to continue the item until Council's meeting on August 1, 2013. Councilmember Meeks seconded. Motion carried on a vote of 5-0.

- C. Discuss and consider possible action regarding the proposed calendar for the development of the Fiscal Year 2014 Operating Budget for the City of Wimberley. (*City Administrator*)

City Administrator Ferguson noted one date correction and recommended approval. He highlighted certain calendar items including the issuance of a city-wide call for public input, public hearings/notices, and meetings of the Budget Advisory Board.

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

- D. Discuss and consider possible action regarding the proposed development of an ordinance allowing chickens on all residentially zoned properties within the City of Wimberley. (*City Administrator*)

City Administrator Ferguson explained that current City Code classifies chickens as non-commercial livestock, which are prohibited on residentially zoned properties less than two (2) acres in size. Several homeowners have recently been found in violation of the ordinance and some of those owners have asked the City to consider allowing residents to keep chickens in their back yards. He requested direction on the drafting of an ordinance, should Council desire to proceed.

Discussion addressed specific complaints related to noise and roaming, permitting and associated fees, prohibition on roosters, health and safety concerns, types of enclosures and distances to neighbors, limits on number of chickens allowed, and impact of lot size on the number of chickens allowed. Agreement was reached to refer this matter to the Planning and Zoning Commission to consider making a recommendation to Council. No vote was taken.

- E. Discuss and consider steps to be taken by the City of Wimberley to address wastewater concerns that may arise in central Wimberley during the design and development of a central Wimberley wastewater system. (*City Administrator/this item is posted for discussion purposes only*)

City Administrator Ferguson explained the need for an interim strategy for central Wimberley wastewater concerns during the design and development of a system, including continued monitoring/enhanced testing of water quality, existing/new business wastewater issues, issuance of new septic permits, effects of changes in use that increase septic loading capacity, and need for public restroom facilities.

Discussion addressed ongoing efforts to identify sources of high bacteria levels, development of pumping and hauling policies, and specific aspects of temporary restroom trailers in central Wimberley such as possible locations, fees, amenities, and associated operating costs. Various options will be presented to Council at its August 1<sup>st</sup> meeting for consideration and possible action. No action was taken.

**6. City Council Reports**

- Announcements
- Future Agenda Items

Hearing no announcements or future agenda items, Mayor Pro-tem White called the meeting adjourned.

**Adjournment:** Council meeting adjourned at 8:39 p.m.

Recorded by:

*Cara McPartland*  
Cara McPartland

These minutes approved on the 1<sup>st</sup> of August, 2013.

**APPROVED:**

*Bob Flocke*

**Bob Flocke, Mayor**

