

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

City Council meeting called to order at 6:05 p.m. by Mayor Mac McCullough.

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

Councilmembers Present: Mayor Mac McCullough, Councilmembers Bob Dussler, Craig Fore, Sally Trapp, Gary Barchfeld, and John White.

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

Mayor McCullough administered the Oath of Office to newly appointed Transportation Advisory Board member Gary Callon.

Citizens Communications

Robbie Walker of Hills of Texas Lodging and member of the Wimberley Valley Tourism and Lodging Association Board spoke on the issue of vacation rental properties and the thinking of some community residents that such properties are unseemly or unlawful, and rented by people the community does not want here. He said these are the people who have been coming here for thirty-plus years and are a big part of what supports this city. He depicted renters as grandparents, parents, and children, and noted specific lodging choices that do not allow children. He said the City has a Hotel Occupancy Tax (HOT) to help bring tourism into Wimberley and said vacation rental property renters are good, law-abiding people for the most part, just like regular residents here. Out of the thousands of renters each year, Mr. Walker stated the number of problems reported is very insignificant. He said great families throughout the State of Texas come here to stay and support our artists, our shops, merchants and our city.

Sarah Dishman spoke on the issue of “single family” zoning and asked if Council would mind if she rented out rooms in her house, with two or three people in each room. She asked Council to consider differences in “single” versus “multi” family zoning and the impact of changing the decades-long, peaceful, quiet nature of her neighborhood.

Phil Collins reiterated his support for Council taking action on wastewater treatment. He said we have studied this for thirty-plus years and favored not spending any more time and money on this issue. He did not care which solution is selected, as there are a lot of smart people to figure this out, but said the community needs it and asked Council to get it done. On the topic of Conditional Use Permits (CUPs), Mr. Collins advised he owns five properties on Flite Acres Road, with one used as vacation rental for ten years, one used as his permanent residence, and the other three properties as long-term investments. He favored short-term rental CUPs as bringing added value to the area. He said improvements made to his vacation rental property

increases values for everybody. For those who complain about people in the Blanco River, Mr. Collins stated you cannot control that whether your neighbor has a CUP or not. He cited statistics on his vacation rental property which show that over a period of about 1,900 nights, only one guest was charged a \$75 security deposit, which he said is a good indicator that things are taken care of. He stated Wimberley wants and gets a good class of people.

Madonna Kimball read from an email on increased recreational use of Cypress Creek from City Administrator Don Ferguson to Wimberley Merchants Association President Traci Ferguson requesting input from Merchants Association members on the impact of such use on their businesses in recent weeks and possible development of plans to address growing concerns, such as parking issues. Mrs. Kimball asked if “everybody knows about this letter and agrees that this letter needed to go out to the businesses?” Mrs. Kimball said she heard this was in reference to Ozona Bank’s parking and problems with employee parking. She asked if this was an Ozona Bank problem and not a City problem. Mrs. Kimball stated the previous Council closed down Las Flores because people complained, then later opened it up again, because it was ridiculous. She said now we are talking about regulating who can stay in a person’s home. She stated we have a HOT tax to bring people to Wimberley and now we are going to question who is a shopper and who is not for the purpose of parking. Mrs. Kimball said she is having a real problem with the direction that Wimberley seems to be taking and did not favor “all the rules and regulations.”

Referencing the aforementioned email, Mayor McCullough stated the City is trying to get input from the merchants and community as a whole. Mayor McCullough noted the City did not take a position in the email and advised he has gotten an enormous number of complaints. He said with changes at 7-A Resort, day swimmers have sought other venues for water recreation, triggering complaints from merchants and property owners. He asked that the City be given a chance to work things out with upset owners whose land is being used for public access to water and with merchants experiencing parking issues. Mrs. Kimball said the City should stop promoting its river/creeks when people come here and cannot find a place to get in the water. Mayor McCullough said there is a lot of balancing to work though and appreciated Mrs. Kimball’s comments.

Dr. Deborah Koeck, speaking as a concerned downtown property owner, read a list of questions (*full text attached to these minutes*).

Chris Webre of 2205 Spoke Hollow said he is in the process of rebuilding a home lost in the flood and expressed concerns regarding procedures at last week’s Planning and Zoning Commission meeting. He said it seemed some of the Board members are new to the process and did not really know what to take into account to approve or disapprove a CUP, which he felt led to a more subjective way of looking at things. He noted in the process that some of the Board members knew the applicant’s family and others in attendance and questioned at what point members should recuse themselves. Mr. Webre stated many people have seen hard times and we should have sympathy, but we need to take a long-term look at what is at stake for the City. He said part of Wimberley’s appeal is “knowing your neighbors,” which you do not get living next to short-term renters. He stated the City needs to look at the CUP process as a whole, not just on a case by case basis. He asked if we want to continue to have a strong community where we help

each other or if we want to become a renter's haven and have absentee ownership. Although Mr. Webre said his building permit is pending, he is putting a hold on construction, as this house must be right for his family, including in a financial sense. He said home is more than just a roof and walls; it is family, friends, and neighbors. He asked Council to help protect his neighborhood and community.

Craig Reitz spoke of his neighbors (the Bremmers), who live in New Braunfels, but own a second home here on Smith Creek. He said the Bremmers stopped coming to their second home because vacation rentals across the creek were causing problems such as noise, drinking, and foul language late into the night. Mr. Reitz said that the Bremmers expected peaceful use of their home for their family, but the Bremmers sold their house. Mr. Reitz stated that last year's Council started a reckless and disastrous program of granting CUP requests for vacation rentals to people who had been illegally renting their second homes, which he said was due to a quest for increased sales tax and Hotel Occupancy Tax (HOT) money. Mr. Reitz said the granting of these CUPs to out-of-town property owners is destroying the fabric of our city. He felt these owners do not contribute, volunteer, help with clean up, or care about the neighborhoods. He said these owners are here for their own economic gain. Mr. Reitz stated vacation rentals cause property values to fall in the rest of the community. He asked how many Council members have vacation rentals next to their properties. He requested that Council stop granting these types of CUPs in residential communities and protect those who live here full-time and call Wimberley home.

Steve Stewart of 2105 Spoke Hollow spoke of his objections to the CUP request for a vacation rental at 1824 Flite Acres Road, which were voiced at the Planning and Zoning Commission's July 14th meeting. He said there is a big difference between vacation rentals and bed and breakfasts, as bed and breakfasts require that the owner reside on the property. He agreed that a lot of people who come here are good citizens, but if problems arise, such as loud noise or trash, he said it becomes the neighbors who have to police such activity almost every day. Mr. Stewart researched the Hays Central Appraisal District website to determine how many lots are now vacant due to the May 2015 flood and feared property owners who own some of those lots do not plan to live there, but protect themselves from liability by forming LLCs for future rentals. Mr. Stewart hoped that Council will help protect residents of the community and the future of Wimberley.

Mayor McCullough commented that the City has implemented new regulations for handling complaints against short-term rental CUPs and encouraged impacted neighbors to report problems or complaints to the City, in addition to any reports made to law enforcement.

1. Consent Agenda

- A. Approval of minutes of the Regular City Council meeting of July 7, 2016
- B. Approval of minutes of the Special City Council meeting of July 4, 2016
- C. Approval of minutes of the Special City Council meeting of July 5, 2016
- D. Approval of the reappointment of John Estep to the City of Wimberley Water Wastewater Advisory Board. *(Place Two Councilmember Craig Fore's nominee)*

- E. Approval of Dan Moore to serve as the Wimberley Chamber of Commerce representative on the City of Wimberley Hotel Occupancy Tax Advisory Committee. (*Wimberley Chamber of Commerce*)
- F. Approval of the June 2016 Financial Statements for the City of Wimberley

Mayor McCullough pulled Consent Agenda Item 1F for consideration at Council's next meeting.

Councilmember White moved to approve all remaining Consent Agenda items, as presented. Councilmember Fore seconded. Motion carried on a vote 5-0.

2. City Administrator Report

- Status report on the Downtown Restroom Trailer Project

City Administrator Ferguson reported that delivery and installation of the trailer and connection to PEC service is anticipated to be completed by the end of next week. He provided pricing on pumping an ADA-compliant "porta-pottie," which was in response to a request from Councilmember Trapp, who felt it important to keep the only public handicap accessible facility located in that part of the Square. Discussion addressed which area restroom facilities are handicap accessible.

- Status report on the Hidden Valley Low Water Crossing Reconstruction Project

City Administrator Ferguson anticipated draft construction documents from the contractor tomorrow and reported on a productive meeting with property owners directly adjacent to the crossing. He spoke on additional survey costs associated with creating a true legal description of rights-of-way, including approaches to the bridge, and advised a contract addendum and possible acquisition of a drainage easement will be presented to Council.

- Status report on the River Road Bank Restoration Project

City Administrator Ferguson reported on plans to schedule another neighborhood meeting and a proposal to put in a pre-cast wall structure (as opposed to gabion baskets) at specific locations, with possible backfilling by property owners to further fortify the wall. He noted that a cub option is being looked at for the section with less damage. He advised that insurance will cover project costs. Brief discussion addressed wall location, several design options, and project timeframe.

- Status report on the proposed closure of a portion of Savage Lane

City Administrator Ferguson reported on the possible closure due to concerns regarding the steep incline and advised that the Transportation Advisory Board will hold a public meeting on August 10th at 9 a.m. at City Hall for input on this issue.

- Status report on operation of the Blue Hole Regional Park

City Administrator Ferguson reported on the hiring of an interim park manager, Rebecca Manning, and highlighted her professional and educational background. He noted the Park is at capacity on weekends, and when capacity is reached, Park employees inform visitors of Jacob's Well and Cypress Falls, but do not send visitors to 7-A Resort or downtown.

City Administrator Ferguson reported on public health and safety issues along the Blanco River, such as the amount of trash, pedestrian/vehicle traffic, noise, and parking issues. He spoke on possible directional signage in the public right-of-way and clarified that the City will not be enforcing "no parking" restrictions in the Ozona Bank parking lot.

- Status report on 2015 Flood Recovery

City Administrator Ferguson reported the City is very close to closing out the May 2015 Flood paperwork and said a new FEMA agent is in charge of the October 2015 Flood. He spoke on required emergency training for elected officials and planned updates on the local emergency response plan.

In addition, City Administrator Ferguson reported that the City has collected \$137,877 in Hotel Occupancy Taxes to date. He stressed these funds are kept in a separate fund and the Hotel Occupancy Tax Advisory Committee will be receiving applications for funding through the end of July.

3. Public Hearings and Consider Action

- A. Hold a public hearing and consider approval of an ordinance approving an application for a Conditional Use Permit submitted by Kelvin and Brenda Adams to operate a bed and breakfast facility on property located at 406 Hoots Holler Road, 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. (*Kelvin and Brenda Adams, Applicants*)

City Administrator Ferguson reviewed the subject property's location, current/proposed zoning and uses, and existing residential structures. He stated the applicants are proposing to use the one-bedroom guest cabin as a bed and breakfast. He noted the City Sanitarian has indicated that no more than three (3) people shall occupy the guest cabin and the applicants intend to limit occupancy to two (2) people. He said there is adequate space for on-site parking.

In addition to the applicant's house rules, City Administrator Ferguson read a list of staff-recommended conditions to be included in the requested Conditional Use Permit (CUP), should Council desire to approve the CUP. He noted that one written response was received opposing the CUP request expressing concerns regarding traffic on University Drive. He advised that the Planning and Zoning Commission recommended approval at its July 14th meeting.

Mayor McCullough opened the public hearing.

Applicant Kelvin Adams provided details on the University Drive entrance to the property, which is a private easement owned by Texas State University. Mr. Adams explained he purchased rights to use that easement and pays to help maintain it. He stressed that they will be very particular about who rents the cabin and will always be present when it is rented.

Councilmember Barchfeld questioned Mr. Adams about the possible sale of the subject property and Mr. Adams replied that a “for sale” sign was just put up, however, he did not anticipate selling the property anytime soon, possibly in two or three years.

Councilmember Dussler stated he did not favor establishing commercial businesses in residential neighborhoods, which he felt changes the character of the neighborhood and impacts property values. He said he supported new businesses, but not in private residential areas. He noted these comments apply to all of tonight’s CUP requests.

Applicant Kelvin Adams stated the City has an ordinance allowing CUPs for private residences and said it seems Councilmember Dussler’s problem is with enforcement of the ordinance itself, regardless of the individual CUP application. He felt this might be grounds for recusal. He said citizens pay money in good faith for CUPs that are allowed in City Code and said “either get rid of the ordinance or give us some guidelines so that we know before we spend money, time and energy doing this.”

Robbie Walker cited recent case law and provided information on a Texas Supreme Court ruling affirming that a vacation rental property is not considered a business and denying the homeowners association a review of the case.

In response to Mr. Walker’s comments, Craig Reitz said the aforementioned Supreme Court ruling applied specifically to homeowners associations, not to City ordinances. City Administrator Ferguson stated in the world of zoning, it is a commercial establishment.

Mr. Adams reiterated his application is for a bed and breakfast for two (2) people, and not a for a vacation rental.

Mayor McCullough closed the public hearing.

Councilmember Fore asked Mr. Adams if he would object to including a condition in the CUP that states “if you sell the property that the CUP goes away.” Mr. Adams said he had no problem with that condition.

Councilmember Fore moved to approve the CUP, with the additional condition that if Mr. Adams sells the property, the CUP automatically goes away. Councilmember Trapp seconded. Motion carried on a vote of 4-1. Councilmember Dussler voted against.

After Agenda Item 3B, City Administrator stated that Council will need to reconsider the previous discussion and action on this item, as the additional condition relating to sale of the subject property is not allowed by law.

Following Agenda Item 3D, Councilmember Fore moved to reconsider the previous action taken on Agenda Item 3A. Councilmember White seconded. Motion carried on a vote of 5-0.

Councilmember Fore moved to approve the ordinance, as presented (*deleting the abovementioned additional condition*). Councilmember Trapp seconded. Motion carried on a vote of 4-1. Councilmember Dussler voted against.

- B. Hold a public hearing and consider approval of an ordinance approving an application for a Conditional Use Permit submitted by Chris and Karen Lawrence to operate a vacation rental facility on property located at 2660 FM 3237, Wimberley, Hays County, Texas, zoned Single Family Residential 2 (R-2), 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. (*Chris and Karen Lawrence, Applicants*)

City Administrator Ferguson reviewed the subject property's location, current/proposed zoning and uses, and existing residence, which the applicant proposes to use as a vacation rental with a maximum occupancy of four (4) people. Based on a review of the septic system and proposed use, City staff recommended a maximum occupancy of three (3) people. He advised that guests would be required to park on the subject property.

City Administrator Ferguson read a list of staff-recommended conditions to be included in the requested Conditional Use Permit (CUP), should Council desire to approve the CUP. He noted that the Planning and Zoning Commission recommended denial on a 3-2 vote at its July 14th meeting. He advised two written responses have been received in opposition to the CUP request.

Mayor McCullough opened the public hearing.

Applicant Karen Lawrence spoke on her history as a thirty-plus year Wimberley resident and property owner and recognized the importance of keeping our town and creeks pristine. As her daughters have graduated from Wimberley High School, Mrs. Lawrence and her husband anticipated becoming "empty-nesters" and recently purchased the subject property with the intent to downsize, but in the meantime looked forward to using the property as a short-term vacation rental. She noted their property consists of four lots totaling approximately 2.5 acres and pointed out the aerial map to Council, which shows the distance of the proposed rental to surrounding properties and structures. She referred to objections expressed by a neighbor at the Planning and Zoning public hearing and stated the previous absentee owners were not there full-time, therefore the home sat vacant for several months, which she did not feel is her fault. Mrs. Lawrence questioned concerns expressed at the Planning and Zoning meeting regarding increased traffic on the shared access road, as the short-term rental would be limited to a maximum occupancy of three (3) people and create less traffic than a long-term rental. Mrs. Lawrence pointed out that CUPs have rules, and if broken, the CUP may be revoked. She felt it is only fair that they be given the chance for a short-term rental, which would be professionally managed by a local company available "24-7" to handle complaints. Mrs. Lawrence noted that she and her husband live 15 minutes away and can also be notified, if there are problems. She stated her adjacent neighbor, Jeremy Trahan, is in the process of building a home, and is present to speak in support

of the requested CUP. Mrs. Lawrence thanked Council and hoped to meet her neighbors soon, regardless of the outcome of tonight's meeting.

Jeremy Trahan of 2670 FM 3237 felt comfortable with City ordinances that are in place to protect him as a homeowner. He stated the management company has had very few issues over the years. He spoke of his desire to raise his family here in Wimberley and noted he cannot see the applicant's home from his property due to the many trees. He did not see how 2-3 people renting short-term would impact his life and pointed out there is no process in place if Mr. and Mrs. Lawrence rent their property long-term. He said law enforcement is available for issues such as noise and complaints to the City could result in the CUP being pulled. He did not see how Council can deny the application without giving the Lawrences a chance and asked where visitors who support this city are supposed to stay. Referring to earlier statements during Citizen Communications, Mr. Trahan said as an emergency first responder he knows of many people who came from across the region, the state, and the U.S. to help Wimberley and saw this town come together.

Johannes Grijzen of 230 Arrowlake said he bought his house for its peaceful and tranquil setting on the water, which he acknowledged is attractive for tourists. He did not want to have to call somebody in the event of problems and said his deed restrictions prohibit businesses of any kind. Acknowledging that the City is not bound by deed restrictions, Mr. Grijzen said he would have to spend money to fight this in court, if Council approves the CUP. He felt a bed and breakfast would be less objectionable, due to the requirement the owner reside on the property to enforce rules.

Rocky Springs' resident Craig Reitz spoke on the Planning and Zoning Commission's recommendation by a 3-2 vote to deny the requested CUP and said this is another slippery slope toward converting residential communities into commercial properties. He questioned whether Wimberley needed more rental space and said we need existing rental owners to double their prices and see what the market will bear. He cited problems such as lack of parking in the City and not enough recreational water areas for people to use as evidence that there are too many vacation rentals here. Mr. Reitz said there is far more need for long-term (more than 30 days) rentals than for weekend rentals.

Mayor McCullough closed the public hearing.

Discussion addressed reasoning for the City's position on deed restrictions, lack of homeowners association in the subject property's area, possible civil actions between property owners, close 3-2 vote by the Planning and Zoning Commission (with 5 of 7 commissioners present), possibility of sending this case back to the Commission for further consideration, Council's general support of the Commission's recommendation of denial, and level of experience of voting commissioners.

Councilmember Barchfeld moved to deny the requested CUP. Councilmember White seconded. Motion carried on a vote of 5-0.

City Administrator Ferguson notified Council of the need to reconsider Consent Agenda Item 3A, as the additional condition regarding sale of the subject property (406 Hoots Holler Road), cannot legally be added as a condition, as the CUP remains with the property, regardless of ownership.

- C. Hold a public hearing and consider approval of an ordinance approving an application for a Conditional Use Permit submitted by Robert Weber to operate a vacation rental facility on property located at 1824 Flite Acres Road, Wimberley, Hays County, Texas, zoned Single Family Residential 2 (R-2), 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. (*Robert Weber, Applicant*)

City Administrator Ferguson reviewed the subject property's location, current/proposed zoning and uses, and existing residence, which the applicants intend to use as a vacation rental with a maximum occupancy of ten (10) people. Based on a review of the septic system and proposed use, City staff recommends a maximum occupancy of six (6) people. He noted guests would be required to park on the subject property.

City Administrator Ferguson read a list of staff-recommended conditions to be included in the requested Conditional Use Permit (CUP), should Council desire to approve the CUP. He advised that due to the amount of written opposition from notified property owners, the so-called "Twenty-Percent Rule" is in effect, therefore, a super majority vote is needed to approve the CUP, regardless of the Planning and Zoning Commission's recommendation. City Administrator Ferguson reported that the Planning and Zoning Commission recommended approval on a 3-2 vote at its July 14th meeting. He explained that a motion to approve would have to pass on a super majority vote by five (5) members of Council.

Mayor McCullough opened the public hearing.

Robbie Walker acknowledged people have differences of opinions and disputed earlier comments made about properties owned by "LLCs" and whether the individuals who formed those LLCs are involved in the community. Mr. Walker said it appears that there is a homeowners association on the other side of the Blanco River that does not allow rentals. He stated Flite Acres has no such restriction and there are rentals up and down Flite Acres. He asked how Council can explain to the Webers they cannot be a rental when the properties on either side are rentals.

Chris Webre of 2205 Spoke Hollow said Flite Acres may be different from Spoke Hollow, but said that not all of the notified property owners expressing opposition are on the Spoke Hollow side of the river. He noted that his neighbor, Steve Henry, owns property across the Blanco River from 1824 Flite Acres, and read a letter from Mr. Henry strongly opposing the CUP due to concerns relating to commercial activity in a residential area, turnover of persons of unknown character, potential increase in crime and disturbances, and lowering of surrounding property values. Mr. Weber cited Mr. Henry's request to Council to not allow a very small minority to infringe on the rights of the majority of the property owners.

Charles Lancaster of 1700 Flite Acres spoke of his history as Wimberley resident since 1999. Since the flood, he said the Webers have had to rebuild and due to their age have been residing in an assisted living facility near Houston and relatives. He stated the Webers need the rental income to help offset the assisted living facility's cost. He said the house would mainly be used by relatives and seldom rented. Referring to the two-hundred foot (200') notification requirements, he felt strongly that if the subject property is divided from some of the surrounding properties by a public waterway, he did not feel "that one side of the river should justify what they do on the other side." He noted that 7-A (7-A Resort) is now pretty inaccessible to the people of Wimberley who have used it for years because it changed hands, not because the old proprietors wanted it that way, but because of the people on the opposite side of the river. He said 7-A is now under new ownership and people are getting driven to other parts of the river. He stated people now access the river from lots along Flite Acres that used to have houses on them, which should not happen. Mr. Lancaster said we have rules and guidelines for vacation rentals and ask people to adhere to them, but said when you have a private residence there are no rules. He stated since 1999 the house across from him was a constantly rented bed and breakfast and noted problems with noise and foul language, including a couple of times that law enforcement intervened. He also said the management company was called once and promptly dealt with his complaint. Mr. Lancaster stated he wants to be a good neighbor to people across the river, but felt people should be able to use their property how they want to. He said if there are not enough hotels or RV parks for visitors to stay in, they will leave and not spend money here, which is what keeps Wimberley going.

Kathy Stewart of 2105 Spoke Hollow spoke on the applicant's responsibility to address those families objecting to the CUP request and asked Council to consider the "Twenty Percent Rule" and written letters of opposition in its deliberation.

Cathy Weber Biediger, the applicant's daughter, respected everyone's feelings, but said this is something they have to do to keep the property in the family. She does not want strangers in their house, but said this needs to be done. She understood the feelings of the people across the river, but noted when they first came to Wimberley, that they probably rented a place to stay before buying property here. She spoke of her parents' ownership history and said the residence has grown into a 5-bedroom home. She said they love Wimberley and do not want to leave, but this is something that they do not want to do, but need to do.

Louise Faulkner, who has lived in Wimberley since 1979, spoke of the Webers as her former neighbors and as good people who will take care of any problems if rules are not followed. She spoke about her history as a bed and breakfast owner, with few problems over fourteen years. She stated a higher rental price ensures a better quality renter. She suggested giving the Webers a chance because they need to do this and noted the CUP could be pulled if there are problems. She noted the Webers have a large family who will be using the subject property very often and it would not always be rented.

Dr. Deborah Koeck felt that Council should follow the Planning and Zoning Commission's recommendation and be consistent. She did not know the Webers, but had great feeling for their loss and situation.

Steve Stewart of 2105 Spoke Hollow spoke of the nine property owners who have taken the time to express opposition. He stated the “Twenty Percent Rule” needs to be considered and said Council has to be forward thinking for the future of Wimberley and be conscious of what local residents want for their property. He asked that Council not disregard the letters of opposition.

Andrew Weber spoke in support of the CUP request, noted the super majority vote required for approval, and acknowledged that despite their friendship, Councilmember Dussler may cast the vote that would deny the CUP. He asked that Council listen to all voices, follow the Planning and Zoning Commission’s recommendation, and approve the CUP.

Planning and Zoning Commissioner Rebecca McCullough stated that the Commission does not consider the “Twenty Percent Rule.”

Chris Webre said that at the Planning and Zoning Commission meeting there were commissioners who seemed to be family friends of the Webers.

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

Councilmember White favored following the Planning and Zoning Commission’s recommendation and noted that although the subject property has rental properties on either side, Council must consider applications on a case-by-case basis.

Councilmember Barchfeld stated he was conflicted and has a problem with either accepting or rejecting this CUP, as he has friends on both side of this argument. He said he would like to offer a possible solution to this problem as a future agenda item. He favored staying true to his earlier statement that he respects the Planning and Zoning Commission’s recommendation and stated he will support its decision.

Councilmember Trapp expressed agreement with Councilmember White’s and Barchfeld’s comments, respected the Planning and Zoning Commission’s recommendation, and will follow through with its recommendation. Referencing Councilmember White’s comments on Council’s case-by-case review on zoning, Councilmember Trapp felt Council does have to take into account that there are vacation rentals on either side of the subject property, so she did not know how in good conscience this application could be denied, if there have been no complaints against the neighbors.

Councilmember Dussler stated he is opposed to the CUP request.

Councilmember Fore favored following the Planning and Zoning Commission’s recommendation.

Councilmember Trapp moved to approve the ordinance, as presented. Councilmember White seconded. Councilmember Barchfeld asked if the responsible party, Terrie Bursiel, could provide her phone numbers, so residents in opposition have a number to call in the event of complaints. Mrs. Bursiel provided her phone numbers and City Administrator Ferguson advised that Mrs. Bursiel’s phone numbers get distributed to property owners within 200-feet anyway, as

part of the existing CUP conditions. Motion failed on a vote of 4-1. (5-0 vote required for approval). Councilmember Dussler voted against.

Mayor McCullough called a recess at 8:15 p.m.

Mayor McCullough reconvened at 8:20 p.m.

- D. Hold a public hearing and consider approval of an ordinance approving an application for a Conditional Use Permit submitted by John and Sharyl Robertson to operate a vacation rental facility on property located at 2912 Flite Acres Road, Wimberley, Hays County, Texas, zoned Single Family Residential 2 (R-2), 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. (*John & Sharyl Robertson, Applicants*)

City Administrator Ferguson advised the applicants withdrew their application prior to the Planning and Zoning Commission meeting on July 14, 2016 due to the amount of opposition.

Councilmember Fore moved to accept the withdrawal, as requested. Councilmember Trapp seconded. Motion carried on a vote of 5-0.

- E. Hold a public hearing and consider approval of the second and final reading of an ordinance amending Title XV (Land Usage), Chapter 155 (Zoning), Subchapter 155.107 (Planning and Zoning Commission), Subsection (B) (Creation; Membership; Officers; Rules and Bylaws) of the City of Wimberley Code of Ordinances providing for a three-year term for commissioners and procedures for appointment to the Planning and Zoning Commission; and providing for the following: findings of fact; savings; severability; repealer; effective date; and proper notice and meeting. (*City Administrator*)

City Administrator Ferguson explained the ordinance proposing to extend terms from two to three years, changes in the nomination process, and interim provisions to establish a staggering of future appointments.

Mayor McCullough said he had some uncertainties on the ordinance language relating to appointments. City Administrator Ferguson stated seats would all be at-large appointments, with Council approving commissioners from a group of names. Mayor McCullough stated that is an unintended consequence he does not want and asked if individual Council members can still submit a name for nomination. City Administrator Ferguson stated Council could nominate one person each from a pool of names. He said another approach would be to number the Commission seats to correlate with Council places. Mayor McCullough wanted each individual Council member to have an opportunity to choose a nominee. City Administrator Ferguson said language could be added to the ordinance designating seats on the Commission that correlate with Council place numbers, and with the mayor having an individual appointment, as well as an “at-large” consensus appointment.

Councilmember Trapp moved to approve the ordinance on second and final reading, with an amendment to the language stating that positions on the Commission will be assigned place numbers that correlate with City Council and the Mayor will be responsible for appointing two positions. Councilmember Fore seconded. Motion carried on a vote of 5-0.

4. Ordinance

Discuss and consider approval of an ordinance of the City of Wimberley, Texas, amending Title VII (Traffic Code) of the City of Wimberley Code of Ordinances adding Chapter 73 entitled “Golf Carts, Neighborhood Electric Vehicles and Other Types of Recreational Off-Highway Vehicles”; to allow the limited operation of golf carts and neighborhood electric vehicles on certain permitted streets and locations; providing definitions; requiring safety equipment; providing operational regulations; requiring financial responsibility; providing for a penalty, a savings clause, severability and an effective date. *(Place Three Councilmember Sally Trapp)*

Councilmember Trapp noted certain clarifications to the ordinance language regarding locations where NEVs/golf carts may be operated, as well as addition of a prohibition on rented vehicles. City Administrator Ferguson stressed enforcement will promote public education to enhance safety.

Councilmember Trapp moved to approve the ordinance, as presented. Councilmember Fore seconded. Motion carried on a vote of 5-0.

5. Discussion and Possible Action

- A. Discuss and consider possible action regarding the possible incorporation of a Septic Tank Effluent Pumping (STEP) system into the collection system design for the Central Wimberley Wastewater Project. *(Place Four Councilmember Gary Barchfeld)*

Councilmember Barchfeld referred to the presentation made to Council by Orenco representative Patrick Foley on the STEP system and noted difficulties related to lack of room for placement of tanks. He stated we decided we would move ahead with the current design and put the STEP system “on the back burner” if ever to be visited again. In a follow-up phone call to Mr. Foley, Councilmember Barchfeld said he understood and would be happy to revisit this subject. Councilmember Barchfeld advised he would send Mr. Foley a letter after tonight’s meeting with Council’s thoughts on this issue.

Discussion addressed shortcomings of a STEP system, such as lack of room for tanks and possible sharing of tanks.

Councilmember White moved that the STEP system be removed from consideration for the Central Wimberley Wastewater Project at this time due to the aforementioned reasons. Councilmember Barchfeld seconded.

Councilmember Trapp did not want the STEP system to be ruled out entirely should it need to be considered a year from now. Mayor McCullough advised that Councilmember Barchfeld's communication with Mr. Foley left the option open to revisit this subject.

Councilmember White clarified his motion was meant to not include a STEP system into the collection system design for the Central Wimberley Wastewater Project. Motion carried on a vote of 5-0.

- B. Discuss and consider action regarding the possible addition of a second effluent storage tank for the Central Wimberley Wastewater Project to reduce the potential of effluent discharge. (*Mayor Mac McCullough*)

Mayor McCullough felt the addition of a second effluent tank would go a long way toward reducing the potential of discharge and favored inclusion of the cost of \$300,000 as a bid option. He said this does not require engineering or impact the Project's timeline.

Discussion addressed the number of days it would take to fill up two tanks (approximately 40 days); bid alt for the cost of a 500,000 gallon effluent storage tank; lack of need for "purple pipe" to downtown; and amount of water needed for irrigation.

Councilmember White moved to request a bid alt for the possible addition of second 500,000 gallon effluent storage tank for the Central Wimberley Wastewater Project. Councilmember Fore seconded. Motion carried on a vote of 5-0.

- C. Discuss and consider action regarding the possible development of an effluent-trucking plan for the Central Wimberley Wastewater Project to reduce the potential of effluent discharge. (*Mayor Mac McCullough*)

Mayor McCullough favored acquiring cost information on using trucks to haul effluent when storage tank(s) are full and it is too wet to irrigate to help reduce the potential of discharge. He said it does not put a burden on the costs or timeline of the existing plan.

Councilmember Barchfeld thanked Mayor McCullough, Council, and City Administrator Ferguson for the opportunity to discuss "no discharge."

Councilmember Trapp moved to direct staff to prepare a proposal to develop an effluent-trucking plan for the Central Wimberley Wastewater Project to reduce the potential of effluent discharge. Councilmember White seconded. Motion carried on a vote of 5-0.

- D. Discuss and consider possible action regarding the possible development of an agreement with Aqua Texas to accept effluent from the Central Wimberley Wastewater Project to reduce the potential of effluent discharge. (*Mayor Mac McCullough*)

Mayor McCullough said it is time to either act on this item or rule it out. Councilmember Fore said this appears to be in addition to the cost of "purple pipe." Mayor McCullough stated there are a lot of attendant costs with this option, which involves engineering design costs for building

a line to get effluent to Aqua Texas. Mayor McCullough explained that the City would be buying capacity from Aqua Texas, which would have to agree to accept effluent from the City's plant with little notice.

Councilmember Dussler read the following statement: "I want to express my opposition to engage Aqua Texas under any circumstances. If you are a private citizen and you are planning a major project on your home and you consider a firm to complete that project and in your due diligence you learn that the company has a grade "F" from the Better Business Bureau; has deplorable customer service; is and has been sued by a number of customers for poor performance; experiences numerous pipeline leaks, including leaking raw sewage; you might be stupid enough to engage that company because you are a private citizen, you have a private home, and that's your right. But as an elected official, you don't have that right. You're elected to represent the citizens of Wimberley, and do what's best for the community. By deliberately engaging Aqua Texas in a long-term agreement with the knowledge of its poor performance and ratings, you're not just being derelict in your duties, because that's passive, you're actively committing, in my opinion, a flagrant abuse of your position. I received 44 emails opposing Aqua Texas and none in favor. Many of the emails describe experiences in Woodcreek, and Mac (Mayor McCullough) can relate some of the stories of Kyle and Woodcreek and what a disaster it's been in those communities. I don't believe it's proper or fair to burden the users with all the issues we've learned about Aqua Texas. In addition, we'd be breaking a commitment to the Blue Hole Park if we are unable to receive and use Type I effluent for irrigating the Park. So for all these reasons, I do not believe Aqua Texas is a viable or desirable alternative for Wimberley. In fact, I feel strongly enough about the issue that I'd like to make a motion to prohibit the City of Wimberley from engaging or doing business with any company that has a grade "D" or "F" with the Better Business Bureau."

City Administrator Ferguson advised Councilmember Dussler that he could place such an item on a future agenda for discussion and possible action.

Mayor McCullough stated the City of Kyle's mayor cannot discuss Aqua Texas under the terms of its settlement agreement with Aqua Texas. Mayor McCullough advised that the Aqua Texas lift station at the Wimberley High School leaked and caused a significant mess this week. He said this incident is probably the sixth time this particular lift station has malfunctioned. Mayor McCullough said he did not favor consideration of this item and supported Councilmember Dussler's comments.

Councilmember Trapp respected Councilmember Dussler's comments, but said the Ad Hoc Wastewater Review Committee's recommendation was to bring Aqua Texas to the table to simply find out what the options are. She said she did not understand how Council can in good conscience vote for a plan if we do not have all of the information. She favored appointing an independent representative, along with some Council members, to negotiate all the aspects of dealing with Aqua Texas.

Councilmember Barchfeld concurred with Councilmember Trapp to begin negotiations with Aqua Texas and said this would in no way delay the project. He felt Council would be derelict in its duty to not examine every aspect, if the plant comes in at \$9-10 million.

Mayor McCullough respected investigating all of the alternatives but said there is no reason to exaggerate the costs.

Councilmember White questioned whether Aqua Texas could negotiate with us in good faith, noted the attendant engineering costs of getting the effluent to Aqua Texas, the City's commitment to Blue Hole Regional Park, and the high cost of CIAC fees. Mayor McCullough concurred.

Councilmember Trapp felt that the City should at least get numbers from Aqua Texas to lay on the table for all kinds of scenarios (such as wholesale, retail, keeping/abandoning the City's CCN). Councilmember White and Mayor McCullough felt that considering all those options would back up the whole project timeline and come with significant attendant costs.

Councilmember Fore stated that we are just talking about what it costs to send excess effluent to Aqua Texas, if we decide to go that route, which he described as nothing more than a bid alt.

Councilmember Dussler said what we are asking Aqua Texas is to guarantee capacity to the City, which may or may not be needed, but pointed out that the City would be paying for that capacity whether or not any effluent is sent to Aqua Texas. He felt costs would be outrageous and was very suspect about getting an honest bid from Aqua Texas and stated the City should not get involved with this company based on its history. An unidentified female audience member said the City already is involved with Aqua Texas (referring to the Wimberley Community Center as a customer). Councilmember Dussler said he was not here when the City committed to that business with Aqua Texas and noted he does not favor any future business with Aqua Texas.

Councilmember Barchfeld favored opening a dialogue with Aqua Texas in order to examine and compare the options and said we should go to lunch and talk about this in order to move forward. Mayor McCullough stated he is not open to lunch and did not want to take this out of the public's purview.

As an option, City Administrator Ferguson suggested the possible drafting of a letter approved by Council (at its next meeting) detailing specific information needed from Aqua Texas and having Aqua Texas respond in writing within a certain timeframe. Discussion favored proceeding with sending the letter and not delaying by placing on a future agenda and noted the history of previous requests for information from Aqua Texas.

Councilmember Trapp asked if the City is just going to send a letter requesting information or actually engage in a discussion with a negotiating party to negotiate a deal that would be on the table, with the understanding that such negotiations would be in a public meeting.

As a matter of public policy, City Administrator Ferguson cautioned against negotiations in public and said the letter would be a starting point to see if the City is interested in entering negotiations. Councilmember Trapp agreed and said that she was not intending that at all. Mayor McCullough favored getting everything in writing from Aqua Texas to avoid any chance of misunderstanding.

Councilmember White said we should ask Aqua Texas to send an estimate of total costs for sending 30,000 gallons of treated effluent a day, including CIAC fees and reservation of plant capacity, with the understanding that the City will pay year-round whether we send effluent to Aqua Texas or not. Mayor McCullough suggested getting estimates on other amounts such as 40,000 to 50,000 gallons a day. Councilmember White said that “step” figures could be added for comparison and then it could be determined what engineering is required to get the effluent to Aqua Texas. Mayor McCullough supported Councilmember White’s suggestion and said we also have to know the cost to develop a pipeline and transportation system from the wastewater plant to a designated point in Aqua Texas’s system.

Councilmember Barchfeld asked if the City would consider sending raw sewage to Aqua Texas, rather than treated effluent, so the City is not processing it. City Administrator Ferguson stated Aqua Texas can quote both options for either treated effluent or raw sewage, which should involve switching a valve. Discussion addressed the impact of the letter to Aqua Texas on the project’s timeline and the amount of available remaining planning and design funds for additional engineering costs.

Councilmember Barchfeld said his goal was to get a dialogue started and not spend money on engineering by concurrently asking for a rough cost estimate that would not slow down the project. City Administrator Ferguson felt it would be better to get the estimate from Aqua Texas before requesting an engineering cost estimate.

City Administrator Ferguson stated his understanding of Council’s direction as direction to draft a letter to Aqua Texas requesting a detailed total cost estimate on delivery of treated or raw effluent, in 10,000-gallon increments from 30,000 to 60,000 gallons per day, including any costs the City would be responsible for by way of impact fees, design/construction costs (on Aqua Texas side of Cypress Creek), and ongoing costs.

Councilmember White moved to instruct City staff to compose a letter to Aqua Texas requesting those abovementioned costs and a response from Aqua Texas within two (2) weeks.

Former Mayor Steve Klepfer mentioned as a point of order that the motion needs to be germane specifically to what is posted on the agenda, which is treated effluent.

Councilmember White withdrew his motion and said to just write Aqua Texas a letter.

Councilmember Trapp stated Councilmember White could make a motion on Agenda Item 5D and she could amend the motion. Councilmember White stated he withdrew his motion. City Administrator Ferguson advised that Councilmember White can make a motion that includes the topic on the agenda and may to add to that language.

Councilmember White moved to instruct City administration to draft a letter about the possibility of developing an agreement with Aqua Texas and asking Aqua Texas to furnish pricing to give the City a starting point relating to accepting treated effluent and possibly raw sewage. Councilmember Trapp seconded.

To avoid delay, discussion favored sending the letter to Aqua Texas on Monday, July 25th (as opposed to placing approval of the letter on a future Council agenda). Councilmember Trapp asked City Administrator Ferguson to define the motion for clarity.

City Administrator Ferguson stated the motion is to direct staff to prepare and send a letter to Aqua Texas seeking detailed cost information on a potential agreement with Aqua Texas that would accept treated effluent or raw sewage from the City, with the cost proposal to include any and all engineering and development costs that will be required for the delivery of effluent, impact fees, with potential costs based on an incremental format of 30,000 – 40,000 – 50,000 – 60,000 gallons per day. Discussion established that the referenced engineering costs include from the City's delivery point to Aqua Texas's acceptance point, that a response is required from Aqua Texas within two (2) weeks from the date of the letter, and that the City's engineers will concurrently prepare engineering cost and timeline estimates.

Motion carried on a vote of 4-1, with Councilmember Dussler voting against, based on his previously stated opposition to Aqua Texas.

- E. Discuss and consider action regarding the possible development of plans for a roadside effluent irrigation system on Winter's Mill Parkway for the Central Wimberley Wastewater Project. (*Mayor Mac McCullough*)

Mayor McCullough asked for Council's input and expressed concerns about determining costs for this option. City Administrator Ferguson stated that direction could be given to consult with the City's engineer requesting a cost proposal for design and engineering of the extension of "purple pipe" to the bypass (Winter's Mill Parkway) for irrigation purposes and the timeline for design. He said this information would be presented to Council for future action. He said this would be an initial step, with the final step at a future point when Council receives the requested information. He asked Council for input on how far to take the irrigation and on what type (spray or drip) irrigation would be used. City Administrator Ferguson recommended getting the cost/timeline estimates and development of a bid alt to take the irrigation all the way to the Baptist Church. Councilmember Fore questioned running the pipeline two miles, if there is not enough water and Mayor McCullough asked about irrigation on the other side of the bypass. Councilmember Barchfeld said that this item came up as an alternative way of dispersing any additional liquids after watering at Blue Hole and recalled discussion of possible alternative funding, such as grants. City Administrator Ferguson said there might be a very cost effective funding approach, as Hays County has expressed interest in this option. Former Mayor Steve Klepfer said the right-of-way belongs to Hays County, but as TxDOT helped to fund larger rights-of-way, TxDOT could come in and expand the road at some point in the future, therefore, permission would likely be needed from Hays County and TxDOT for the City to do anything in that right-of-way and it may not be a permanent solution. He also said it is a different algorithm if the effluent is not treated to Type I level, as only one small section on the bypass would work for Type II, and the property owner has indicated he is not amenable to that option. He noted there are real issues with bypass irrigation as an extra place to put effluent and said evaluations indicated the Park could accept all of the effluent without any problems.

City Administrator Ferguson said there may not be a lot of effluent to send elsewhere (besides Blue Hole Park), but felt the bypass option could be workable. City Administrator Ferguson said the bid alt could possibly include the cost of taking the pipe partially down the bypass or all the way to the Baptist Church at Ranch Road 12. Mayor McCullough did not want to incur a significant amount of engineering costs to do this and described “significant” as \$10,000. City Administrator Ferguson stated it would cost more than \$10,000 because the bid alt requires plans and designs. Councilmember Barchfeld agreed with Mayor McCullough’s comments on incurring additional costs.

Councilmember Trapp moved to direct staff to work with the City’s engineering firm to prepare a cost estimate regarding development of plans for a roadside effluent spray irrigation system on Winter’s Mill Parkway running all the way to the Baptist Church. Councilmember Fore seconded. Motion carried on a vote of 5-0.

- F. Discuss and consider action regarding the proposed Fiscal Year 2017 City of Wimberley Goals and Priorities. (*Mayor Mac McCullough*)

Mayor McCullough noted that City Administrator Ferguson prioritized the list of goals and priorities as directed and asked for Council input.

Councilmember Trapp moved to continue this item until Council’s next meeting. Councilmember White seconded. Motion carried on a vote of 5-0.

- G. Discuss and consider action regarding issues relating to the proposed development of the Fiscal Year 2017 Budget. (*City Administrator*)

City Administrator Ferguson asked Council members if there are any specific items to include in future discussions and noted this is an item that will be on every Council agenda until the budget is adopted. Discussion addressed budget procedures and Council’s input on budget items. No action was taken.

6. City Council Reports

- Announcements
- Future Agenda Items

As a future agenda item, Councilmember Barchfeld requested consideration of a 60 to 90-day possible moratorium on short-term rentals, given the recent conflict surrounding vacation rentals and bed and breakfasts. He favored a Council workshop with the Planning and Zoning Commission to help resolve this issue and provide a checklist to the Commission to promote consistency. Audience member Terrie Bursiel said she appreciated Councilmember Barchfeld’s comments.

City Administrator Ferguson said there is a statutory process relating to moratoriums that must be followed, including public notification, and noted the maximum moratorium length allowed.

Mayor McCullough recognized the conflicted feelings that Council members have when making hard decisions and said he did not favor a moratorium, as he felt these types of zoning cases will be tapering off. He stated there is a huge educational curve for the Planning and Zoning Commission due to the magnitude of member turnover and its effect on the Commission's institutional knowledge. Councilmember Trapp said it is incumbent on Commission members to do their jobs and learn policies. Councilmember Barchfeld inquired about training and City Administrator Ferguson advised that training is planned for Commission members. Councilmember Trapp asked about the possibility of mentoring of new members by old members and Mayor McCullough advised there are legal issues with that. Audience member Terrie Bursiel stated that she would like Council, Planning and Zoning, and some lodging representatives to meet to discuss rules for short-term rentals, as this continues to be a divisive issue for the City. City Administrator Ferguson reminded that these items can be placed on a future agenda.

As future agenda items, Councilmember Trapp requested discussion of hiring a project manager (for the Central Wimberley Wastewater Project) and reviewing the contractual liabilities and obligations of the City.

As a future agenda item, Councilmember Fore requested discussion of easement locations and the status of the easement process.

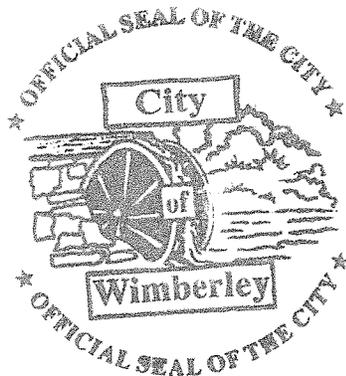
Hearing no further announcements or future agenda items, Mayor McCullough called the meeting adjourned.

Adjournment: Council meeting adjourned at 9:55 p.m.

Recorded by:


Cara McPartland

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



APPROVED:



Mac McCullough, Mayor

July 21,2016

To the Wimberley City Council:

As a concerned property owner in Downtown Wimberley, I have several questions for the Council.

The first questions are in regards to the report from the Ad Hoc Committee commissioned by the mayor to review the City Approved Plan for the WWTP and associated Infrastructure.

1. Has the Council presented the updated numbers to the Texas Water Development Board to verify that the reduced volume of wastewater meets their Proforma used in determining the City's ability to meet the debt service on the loan?
2. Has the Council directed staff to verify that all costs have been identified specifically easement, user connection fees, metering and billing , cost for land acquisition for lift stations, cost for future expansion of the effluent irrigation field and costs to operate and maintain the reuse line and the reuse pump station? Are those numbers available to the public?
3. Has the Council directed staff to schedule regular meetings with downtown customers to inform them of projected rates? The review stated that " Open communication should be established with the downtown customers to keep them informed of all developments and seek their input as the project moves forward."
4. Has the Council directed staff to schedule meetings to explore the various options with Aqua Texas at greater depth during the bidding process to avoid any delay should the project prove not to be economically feasible?

The second question is in regards to the statements that were provided by Council members, former council members and city staff to the Texas Water Development Board in April of 2016 and quoted in the Wimberley View in April of this year. The claim that the Water Quality in Cypress Creek was unfit for recreation and under TCEQ violation with a TCEQ Watchlist citing was used produce an atmosphere of haste due to dire circumstances . This is not true and has not been true for at least a decade, and then only as a low flow footnote.

1. Will the Council with the assistance of the City Manager who has researched this for a Freedom of Information Act request formally state that Cypress Creek at the Ranch Road 12 Bridge is NOT in TCEQ violation with mandated compliance and is NOT on a TCEQ Watchlist now and has not been since 2000?