

**City of Wimberley**  
City Hall  
221 Stillwater  
Wimberley, Texas 78676  
**Minutes of Regular Meeting of City Council**  
October 15, 2015 at 6:00 p.m.

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

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

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

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

### **Proclamation**

A proclamation of the Mayor of the City of Wimberley, Texas proclaiming the month of October 2015 as *National Domestic Violence Awareness Month* in Wimberley, Texas.  
(*Hays Caldwell Women's Center*)

Mayor Thurber presented the proclamation to Hays Caldwell Women's Center Director of Operations Michelle Ducote who thanked Council and spoke on services offered by Hays Caldwell Women's Center.

### **Citizens Communications**

No citizen comments were heard.

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

- A. Approval of minutes of the Regular City Council meeting of September 17, 2015
- B. Approval of minutes of the Special City Council meeting of October 1, 2015
- C. Approval of minutes of the Special City Council meeting of September 29, 2015

Councilmember McCullough moved to approve the Consent Agenda, as presented. Councilmember Anderson seconded. Motion carried on a vote 4-0. Councilmember Showalter abstained.

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

- Status report on the Central Wimberley Wastewater Project

City Administrator Ferguson reported that settlement documents related to the City's successfully mediated contested TCEQ permit application are being processed and anticipated issuance of the permit within the next 30-45 days. He reported that the City's application for funding submitted to the Texas Water Development Board is expected to be on the Board's December agenda.

- Status report on the City of Wimberley's applications for sidewalk funding from the Capital Area Metropolitan Planning Organization (CAMPO)

City Administrator Ferguson reported on CAMPO's new application process and advised that the City's application did not make the funding cut at this time, but was assured by CAMPO Chair Will Conley that the City will be in the running again in the next 6-8 months. He noted that Chairman Conley and the CAMPO Board are informed of the importance of the Oak Drive project timeframe due to future wastewater system construction.

- Status report on the Transportation Advisory Board (TAB) Community Outreach Project relating to street improvements

City Administrator Ferguson reported that neighborhood meetings were held on October 13 and 14, 2015 for the downtown and Flite Acres areas. He noted that TAB will be holding a community wide meeting, tentatively scheduled for November 3<sup>rd</sup>, for those who were unable to attend their neighborhood meetings.

- Status report on Comprehensive Plan update

City Administrator Ferguson reported that the Comprehensive Plan Review Committee will hold a community meeting on October 28<sup>th</sup> to present update recommendations and receive public input. He advised that the Committee will present its finalized recommendations to the Planning and Zoning Commission and City Council at a joint meeting in mid-November.

In addition, City Administrator Ferguson requested Council input on possible dates for a Council workshop to be held with Pedernales Electric Cooperative representatives on proposed transmission line improvements. Councilmember McCullough suggested that mediators involved in the City's contested TCEQ case hearing be sent a letter of appreciation for a sooner than expected successful outcome.

### **3. Presentation**

*Presentation on the results of the 2015 City of Wimberley Community Survey. (City Administrator)*

City Administrator Ferguson reported that response to the survey far exceeded expectations and noted that results were very similar to the original survey. He provided details on demographics related to respondents' ages and main areas of interest, including maintaining Wimberley's small town feel, traffic/parking concerns, need for senior housing, water/wastewater facilities, managing future development, and importance of the Wimberley Square. Other top concerns

were preserving our natural environment, water and safety issues, and residential growth. He asked Council to carefully read through the results, which will be posted on the City's website. He advised that the Committee felt the survey should be conducted more frequently, with questions possibly rewritten to better target certain issues and be easier to understand. Brief discussion addressed study methodology related to selection of survey recipients residing in the extraterritorial jurisdiction.

#### 4. 2015 Memorial Day Weekend Flood Matters

##### A. Presentation of an update regarding recovery efforts relating to the 2015 Memorial Day Weekend Flood in the City of Wimberley, Texas. (*City Administrator*)

City Administrator Ferguson presented information on the timeframe for completion of the Ranch Road 12 Bridge Repair Project currently underway. He noted that all attempts will be made by the contractor to avoid lane closures and minimize impact on traffic. He encouraged patience during this project and offered CR 1492 as an alternate route.

City Administrator Ferguson also reported on a visit from Swedish emergency responders who were in Wimberley today as part of a larger area tour. Brief discussion confirmed the structural integrity of the Ranch Road 12 Bridge and specific repairs to be made.

##### B. Discuss and consider possible action regarding the status of short-term rental facilities that were damaged or destroyed by the 2015 Memorial Day Weekend Flood in the City of Wimberley, Texas. (*City Administrator*)

City Administrator Ferguson requested Council guidance on a proposal to amend the City's Zoning Code to provide relief for those vacation rental/bed and breakfast operations that were damaged or destroyed in the 2015 Memorial Day Weekend Flood. He reviewed the City's regulations relating to continuous use requirements for properties with conditional use permits (CUPs) and to "grandfathered" status of pre-existing, non-conforming properties. He noted that the proposed extensions of these requirements are intended to provide affected rental operations with the time needed to repair, reconstruct, and reopen. If Council chooses to approve an extension period, he asked that its direction include a specific length of time for those extensions. Discussion offered possible timeframes for extending continuous use requirements.

Councilmember McCullough moved to direct staff to draft an ordinance to allow for a temporary extension of non-conforming ("grandfathered") status and continuous use requirements (for operations with a CUP) until January 1, 2017 for short-term rental facilities damaged or destroyed by the 2015 Memorial Day Weekend Flood, with a provision that an additional extension may be requested, if needed. Councilmember Showalter seconded. Motion carried on a vote of 5-0.

##### C. Discuss and consider possible action regarding the Advisory Base Flood Elevation Maps developed by the Federal Emergency Management Agency (FEMA) for the Blanco River and Cypress Creek in the City of Wimberley, Texas. (*City Administrator*)

City Administrator Ferguson explained the purpose of this item and reviewed the City's participation in the National Flood Insurance Program (NFIP) dating from 2002, which obligates the City to adopt and enforce flood prevention standards that are intended to reduce flood risks to property and lives, including adoption of a Flood Insurance Risk Map (FIRM) to ensure that new floodplain development is properly elevated in relation to the effective Base Flood Elevation (BFE). He stated the initial FIRM adopted by the City was slightly modified by FEMA in 2005 and that an updated, more accurate FIRM is anticipated in late 2016/early 2017, based on updated flood analysis data. With delivery of a new Wimberley FIRM approximately one year away, he noted that FEMA has decided to produce Advisory Base Flood Elevation (ABFE) maps to support post-flood reconstruction that is based on more accurate data. He advised that the recently released ABFEs are in most cases higher than the BFEs shown on the current effective FIRM. He noted the key difference between ABFE adoption versus FIRM adoption, is that FIRM elevations are subject to an appeals process, while ABFEs are not. City Administrator Ferguson advised that the USGS has rated the Memorial Day Weekend Flood as a "100-150 year" flood, with "125-year" as the most likely option. Following release of the ABFE maps, FEMA held public informational meetings attended by more than three hundred (300) affected property owners, and provided free FEMA-sponsored webinars, including a searchable website where property owners can locate and compare BFE/ABFE data for their properties.

City Administrator Ferguson stated that public reaction has been mixed, with some property owners questioning the reliability of ABFEs and others indicating a desire to elevate to their respective ABFEs. He noted that sample site tests reflected ABFEs as generally accurate with a few variations found at the end of Flite Acres Road and outlined the methodology used to account for the variations. He explained reasoning for the differentials in ABFEs listed along River Road versus Flite Acres Road.

City Administrator Ferguson advised that Council is not required to adopt the ABFE maps and that if it chooses not to, property owners seeking to rebuild their flood-damaged homes would have the choice of building to their effective BFE or ABFE. Those property owners choosing not to build to their ABFE would be required to sign an affidavit acknowledging that ABFE data was provided to them and their decision was to not follow the ABFE, which may impact future insurance requirements/premiums and future flood risks. He noted that current flood insurance premiums are not affected by release of the ABFE maps and that premiums are based on the effective FIRM. He also pointed out that adoption of ABFE standards do not change the current flood zones, which are only subject to change when the FIRM map is updated in late 2016/early 2017.

City Administrator Ferguson highlighted the pros and cons of adopting and/or rebuilding to ABFEs as follows:

- Reduce the future flood risks to property and lives
- Potentially decrease the cost of flood insurance as well as the potential cost to recover from future flooding events (lower long-term costs)
- Will not increase current flood insurance premiums, which are based on FIRM data
- Will not change the current flood zones, which are based on FIRM data

- Per FEMA, ABFEs (with minor modification) will be included in the new Wimberley FIRM to be presented to the City for approval in late 2016/early 2017
- Higher initial cost of rebuilding to the ABFE
- Possible lifestyle changes due to elevation (such as stairs/elevator)
- Streetscape and aesthetic concerns regarding elevated structures

City Administrator Ferguson stressed that staff's recommendation to adopt the ABFE Maps developed by FEMA for the Blanco River and Cypress Creek is advisory only, and the decision to approve (or not approve) rests with Council. Should Council choose to approve the ABFE Maps, he said it is imperative that there be a specified grace period for implementation of ABFE requirements to allow for those who have already submitted plans and are in the permitting process. He summarized the City's responsibility to safeguard public health, safety and welfare and to ensure that our community is less vulnerable to loss of life and property from future flood events.

Wimberley resident and owner of multiple area properties, Phil Collins, spoke of his personal flood-related losses and favored the implementation of a grace period, if Council chooses to adopt the ABFE Map. He said that right now available contractors are very hard to find, particularly local contractors. Referring to "grandfathered" short-term rental operations, he asked that Council "clean up all these people that are bootlegging" and "push them to get the CUP." Referring to his property at 1838 Flite Acres Road, Mr. Collins said that he would have to elevate eight (8) feet to get to current flood levels and an additional six (6) feet, if he elevated to his ABFE level, with the piers at the back of the property well over twenty (20) feet. He felt that such elevations will be "huge mistake" that would look horrible. As a long-term investor in the community, Mr. Collins expressed concerns that elevating structures along Flite Acres Road will be unattractive to potential buyers and rental guests and will cause the area to become a bad investment. He did not believe that people will feel safe staying in elevated structures. Mr. Collins stated that he is willing to build to current flood levels and felt heavy debris loads particular to the Memorial Day Weekend Flood were a significant factor in his Flite Acres property's level of damage. He asked that Council give people a choice, and if ABFE Maps are adopted, to allow him time to get his plans approved and permit issued to build at the current BFE. He feared that Flite Acres will look completely changed and resemble New Braunfels, if Council adopts the ABFE Maps.

In response to Mr. Collins' statements about elevations along Flite Acres Road, City Administrator Ferguson stressed that elevations are going to vary depending on each individual site and that the biggest visual impact will be the taller piers located toward the back of properties that face the water.

Mayor Thurber opened Council discussion and noted all of the issues that Council needs to consider before making a decision.

Discussion addressed the grace period for implementation (if ABFEs are adopted), choice of individual property owners to elevate to ABFE levels or current BFE levels; the City's obligations as a participant in the NFIP; potential liability to the City in future flood events (if ABFEs not adopted); concept of ABFEs to minimize future property losses and negative impact

to downstream properties; opportunity for property owners to appeal FIRM elevations; balancing the general welfare of the public against individual property rights; risk of future flooding; disclosure to future property owners of former owner's decision to not elevate to ABFE levels; 90-day grace period for implementation (if ABFEs adopted); concerns relating to uncertainty surrounding ABFE map modifications, which may benefit some owners, but not others; homeowner's right to make decisions on elevation based on his/her own risk assessment and tolerance for risk.

Mayor Thurber stated Council should consider the rights of all citizens, including the rights of owners of flood-damaged properties and those living up/downstream; safety concerns; aesthetics of elevated structures; and balance multiple issues before making this difficult decision. He reminded that FEMA has advised the ABFE Maps will be included in the updated FIRM to be presented to Council in late 2016/early 2017.

Councilmember McCullough moved to not approve the ABFE Maps, as developed by FEMA for the Blanco River and Cypress Creek. Councilmember White seconded.

Discussion established that those persons applying for building permits who choose not to build to the ABFE will be required to sign an affidavit of acknowledgement to be included in the applicant's building permit file and that upon sale of the property, owners are legally required to disclose same to future buyers.

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

Councilmember Anderson spoke of her oath as an elected official to act in the entire community's best interest and explained her reasoning for originally abstaining before voting against the motion to not approve adoption of the ABFEs. Councilmember Anderson stated she only supported the ABFE Maps for those who have not yet applied for a building permit or are already under construction. She stressed that she favored the 90-day grace period, as she did not want to interfere with anyone's current plans.

Audience member Phil Collins suggested that Council put guidelines in place advising people who are rebuilding to securely bolt their houses to their foundations to prevent houses from floating down the river and tearing up their neighbors' properties.

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

- A. Discuss and consider possible action regarding the proposed establishment of a Ranch Road 12 Sidewalk Design Task Force. (*City Administrator*)

City Administrator Ferguson presented the Transportation Advisory Board's (TAB's) recommendation to establish a five (5) member task force to develop and recommend design concepts for the sidewalk project proposed for both sides of Ranch Road 12 from the Wimberley Square to the Ranch Road 12 Bridge over the Blanco River. The task force would consist of one

(1) Council member, one (1) downtown property owner, one (1) Wimberley Merchants Association member, and two (2) TAB members.

Brief discussion favored TAB's recommendation, as presented, and supported the inclusion of Councilmember Anderson and TAB member Bert Ray on the task force.

Councilmember McCullough moved to approve the establishment of a Ranch Road 12 Sidewalk Design Task Force, as presented, with Councilmember Anderson to serve in the designated Council member position. Councilmember Dussler seconded. Motion carried on a vote of 5-0.

B. Discuss and consider possible action approving plans for the *2015 Wimberley Alive Celebration* scheduled for October 23-25, 2015. (*City Administrator*)

City Administrator Ferguson presented plans for the 3-day arts and music festival to be held in the downtown business district. The event includes live music stages, artist villages, food vendors, and refreshments. He noted that festival organizers have secured law enforcement and event liability insurance. No street closures are required for the event.

Discussion established that alcohol sales will only be through downtown businesses licensed to sell alcohol, estimated possible attendance figures, and confirmed that adequate restroom facilities will be available.

Councilmember White moved to approve the plans, as presented. Councilmember Showalter seconded. Motion carried on a vote of 5-0.

C. Discuss and consider possible action regarding revised plans for *A Walk of Remembrance and Gratitude* scheduled for October 22, 2015. (*City Administrator*)

City Administrator Ferguson reviewed Council's previous action to approve the original plans for this event, which was expected to have 150 to 200 participants. However, event organizers now believe that more than 500 to 1,000 people will take part in the walk and are asking approval for a temporary closure of Ranch Road 12 from FM 3237 to River Road from 6:15 p.m. to 7:15 p.m. on October 22, 2015. The temporary closure would allow event participants to walk across Ranch Road 12, with the walk ending at the Wimberley Christian Church.

Councilmember Showalter provided clarification that the brass band will be driven in the back of a truck, while participants will walk behind the truck to the Wimberley Christian Church. The closure was anticipated not to exceed fifteen minutes in duration.

Councilmember White moved to approve the revised plans, as presented. Councilmember Showalter seconded. Motion carried on a vote of 5-0.

D. Discuss and consider possible action modifying the property owner approval requirements for special events held on the Wimberley Square. (*City Administrator*)

Councilmember McCullough noted that this will be the ninth year to hold the annual Winter's Eve on the Square, cited past instance(s) of a single merchant who did not favor approval, and felt that one person should not be able to shut an event down, particularly for an established annual event. He stated that many year-round volunteer hours go into planning this event and having to appease a single disapproving merchant at the last minute puts the Merchants Association in a difficult position. As such, he asked that Council consider dropping the 100-percent approval requirement for special events on the Square.

Discussion addressed the original Winter's Eve event and reasoning for Council's adoption of the original policy, the Wimberley Merchants Association's event planning process, and Council's role in approving event plans, with Council's preference to abandon the policy and allow the Merchants Association to deal with member issues.

Councilmember McCullough moved to abandon Council's previously approved policy regarding property owner approval requirements for special events held on the Square. Councilmember Anderson seconded. Motion carried on a vote of 5-0.

## 6. City Council Reports

- Announcements
- Future Agenda Items

As a future agenda item, Councilmember Showalter requested consideration of drafting an ordinance to implement changes in the City's Code reflective of comments made earlier tonight by speaker Phil Collins related to securing of structures to foundations.

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

**Adjournment:** Council meeting adjourned at 7:40 p.m.

Recorded by:

  
Cara McPartland

These minutes approved on the 5<sup>th</sup> of November, 2015.



**APPROVED:**

  
Steve Thurber, Mayor