

City of Wimberley
City Hall, 221 Stillwater
Wimberley, Texas 78676
Planning & Zoning Commission
Minutes of Regular Meeting
October 13, 2011 at 6:30 p.m.

Meeting called to order by Acting Chair Tom Haley. Present were Commissioners Beth Mitchell, Jean Ross, Charles Lancaster, and Rick Burlison. Chair Tracey Dean and Commissioner Steve Klepfer were absent.

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

Citizen Communications:

Eagle Rock resident Dwain York asked for clarification on his subdivision's boundaries and cautioned against allowance of commercial uses such as assisted living facilities in residential areas, citing lack of adequate infrastructure (such as roads) and concerns over increasing interest in similar commercial activities in the future. Referring specifically to Agenda Item 3, Mr. York felt that allowance of home health facilities in residential areas would open up a "Pandora's box" of issues.

Commissioner Ross and Acting Chair Haley provided clarification on tonight's Agenda Item No. 3 and stressed that discussion of said item does not pertain to pre-existing uses or specific properties, but relates to an amendment of the Zoning Code in general. City Administrator Ferguson provided background information on a property-specific complaint, which explained the reasoning for consideration of the proposed amendment as stated in Agenda Item No. 3. Clarification was provided on conditional use permit application procedures and notification requirements. Subsequent discussion among the Commission, staff, and various audience members addressed roles and responsibilities of the City and property/home owners associations (POAs or HOAs), as related to uses allowed under conditional use permits and deed restrictions, respectively.

1. Consent Agenda

Approval of minutes of the Regular Planning & Zoning Commission meeting on September 22, 2011.

Commissioner Ross moved to approve the minutes as presented. Commissioner Mitchell seconded. Motion carried on a vote of 5-0.

2. Public Hearing and Possible Action

Hold a public hearing and consider making a recommendation to City Council regarding Case #ZA-11-008, an application for an amendment to Ordinance No.

2009-042 which amended the development regulations for a Planned Unit Development (PUD) located at 14835 Ranch Road 12, Wimberley, Hays County, Texas in order to revise certain development regulations relating to the maximum building square footage, the total project square footage and parking. (*John McCrocklin, Applicant; this case was continued from the September 8th and 22nd meetings of the Planning and Zoning Commission at the request of the applicant*)

Commissioner Mitchell recused herself from the meeting at this time.

City Administrator Ferguson reviewed the original PUD, 2009 amendments, and most recently requested amendments, including those received today from the applicant's architectural firm (attached to these minutes). Requested amendments to the concept plan include specific reductions in building/project footprints and square footage, total maximum building footprint, total project square footage, and total number of parking spaces. The applicant has indicated that overall impervious cover for the development will not exceed 70%. The rest of the development will include space for offices, a restaurant, and a bank (with drive-through). Centralized wastewater treatment and water will be provided by Aqua Texas and Wimberley Water Supply Corporation, respectively. Wimberley Fire Department has found no issues of concern and only slight modifications in location were made relating to drainage. It was noted that the applicant will have five years to submit a site development plan for approval. Upon site plan approval, the applicant will have one year to begin work on the development. No changes were made to traffic access points, setbacks, landscaping, drainage, or sign requirements.

Discussion among the Commission, staff, and the applicant's architect, Andy Dodson of Dodson Civil Group addressed questions about impervious cover for the proposed development.

Acting Chair Haley opened the public hearing.

In response to an unidentified audience member's question, City Administrator Ferguson explained that strict architectural standards must be met under the development agreement. Janet Scudder spoke of the need for assisted living facilities in Wimberley.

Commissioner Ross moved to recommend approval of the item, as presented.

In response to an unidentified audience member's question, Acting Chair Haley stated that Wimberley Water Supply Corporation's engineers are satisfied that water is available for the development.

Hearing no further comments, Acting Chair Haley closed the public hearing.

Commissioner Lancaster seconded. Motion carried on a vote of 4-0.

Commissioner Mitchell rejoined the meeting at this time.

3. Discuss and Consider Action

Discuss and consider possible action regarding a proposal to amend the City of Wimberley Zoning Code to allow, as a conditional use, home health facilities in residentially zoned areas. (*City Administrator*)

City Administrator Ferguson explained that this proposal stems from the recent discovery of an adult care home in a residentially zoned area on the City's north side. He noted that the State recently enacted legislation regarding municipal regulation of boarding houses, in response to increasing numbers of these types of facilities. He highlighted key elements of the draft ordinance (attached to these minutes), which would allow "home health facility" as a conditional use in certain zoning districts and clarified the conditional use permitting process in general.

Acting Chair Haley invited public comment.

Richard Barnett of 103 Overlook Circle spoke in support of allowing home health facilities in residential areas and cited positive personal experiences with a specific pre-existing facility where his wife resided until her death.

Wray Walker of 5 Palo Pinto Path did not object to professionally managed, licensed, and inspected care facilities, but did not favor commercial activities such as home health facilities in residential neighborhoods.

After making initial comments, Eagle Rock resident Clint Frankmann was advised to not comment on specific properties. He expressed concerns that the City's consideration of this item weakens property owners' legal positions on deed restrictions that disallow such uses. He warned of other possible uses such as drug rehabilitation or halfway house facilities that may follow and suggested that the City conduct an informal poll of homeowners before expending a lot of time and effort on this issue, which he stated could result in political backlash.

Lynda Lackner of 5 Palo Pinto Path expressed concerns regarding state licensing/inspection requirements and whether security measures, such as special fencing, are needed for Alzheimer's patients. She cited state regulations applicable to facilities meeting certain minimum patient-threshold requirements and feared lack of regulatory oversight.

In addition to previously stated issues, Mary Mitchell of 8 Palo Pinto Path expressed concerns about the effect of the proposed Zoning Code amendment on residential property values, problems faced by HOAs relating to enforcement of deed restrictions, and knowledge that there is a home health facility operating in her neighborhood, despite deed restrictions on commercial activity.

Monta Lane of 39 La Toya Trail provided information on her professional background in health care administration and nursing. To allay concerns about oversight, she stated that doctors and nurses check on residents on a regular basis. She detailed daily operations, including meals/snacks, and other care provided. Mrs. Lane clarified state licensing requirements on private care homes and explained why she continuously runs an advertisement for her facility in the local newspaper. She invited any interested parties to visit her home at any time.

City Administrator Ferguson clarified local regulations on commercial activities in residential areas versus state laws. He stressed that when looking at City ordinances and property owners' deed restrictions, the strictest regulation applies.

Discussion addressed:

- determination of conditional use permit requirements
- City's position on deed restrictions versus City ordinances
- reporting of facility conditions
- public process for conditional use permit applications
- home health licensing/reporting concerns
- property owners' rights
- right of community to voice input via the public hearing process (as part of conditional use permitting) versus total prohibition in residential areas
- need for adult care in Wimberley
- allowance of adult care facilities versus other types of commercial operations in residential areas, such as bed and breakfasts
- commercial uses in residential areas generally
- impact of commercial uses on residential neighborhoods
- current ordinance provisions
- ability to adequately enforce regulations at local and state levels

During discussion, Monta Lane distributed a letter of support to Commission members (attached to these minutes).

Commissioner Ross moved to recommend approval of the proposed ordinance, pending additional conditions and requirements to be discussed later. City Administrator Ferguson suggested that the motion state that the Commission would like to proceed with the process of considering approval of this proposed ordinance. Commissioner Ross agreed to restate her motion in accordance with City Administrator Ferguson's suggestion. Brief clarification was provided on care for non-relatives in private homes at no charge and for pre-existing, non-conforming uses. Commissioner Lancaster seconded. Motion carried on a vote of 4-1. Commissioner Burleson voted against.

City Administrator Ferguson advised that this issue will be on the Commission's next agenda for discussion. Possible public hearing dates were discussed.

4. Staff and Commission Reports

- Announcements
- Future Agenda Items

City Administrator Ferguson reported that the Commission will begin its review of the Zoning and Subdivision Codes at its next meeting. Existing plans and various planning efforts were discussed, including downtown master planning.

Hearing no further announcements or future agenda items, Acting Chair Haley moved to adjourn. Commissioner Lancaster seconded. Motion carried on a vote of 5-0.

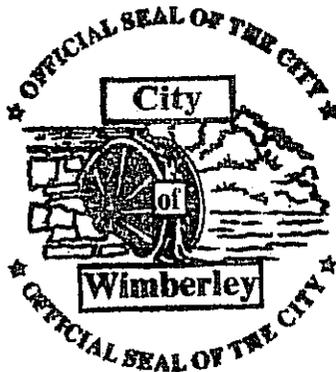
Adjourn at 7:58 p.m.

Recorded by:



Cara McPartland

These minutes approved the 27th of October, 2011.



APPROVED:



Tracey Dean, Chair

Bob and Jerre Atkinson

2600 Addison Ave., Austin, TX 78757-2315

512.350.3801

October 6, 2011

To whom it may concern:

My mother will die in the excellent gentle care provided by James and Monta Faye Lane. Mom is physically and mentally helpless, yet still aware of herself and her surroundings.

She has lived with Monta Faye and Jim for nearly three years now. **What a blessing!** Never has she had to lie for hours in her own waste, had to live in putrid or antiseptic air, or had to feel lost and unsafe as she had at Deer Creek. Instead, because she lives with the Lanes, she has a real home surrounding her; excellent food, superior diagnostic and nursing care skills from the Lanes themselves; and the agreeable ambiance of a moderate level of ordinary life activity around her.

Better care for the demented and terminally aging does not exist!

The Lanes' impact on their neighborhood would be exactly the same without their business of caring for the aging. The occasional visitor, the rare turn-over of clientele, is no more impact to neighbors than the arrival and departure of family members of an ordinary home. The Lanes make us family in their home too! We do not even need to knock. Neighborhood impact is minimal and utterly benign.

Wimberley has many elderly. The luckiest among those who need dementia and dying care, will be the ones who receive care in the Lane's home!

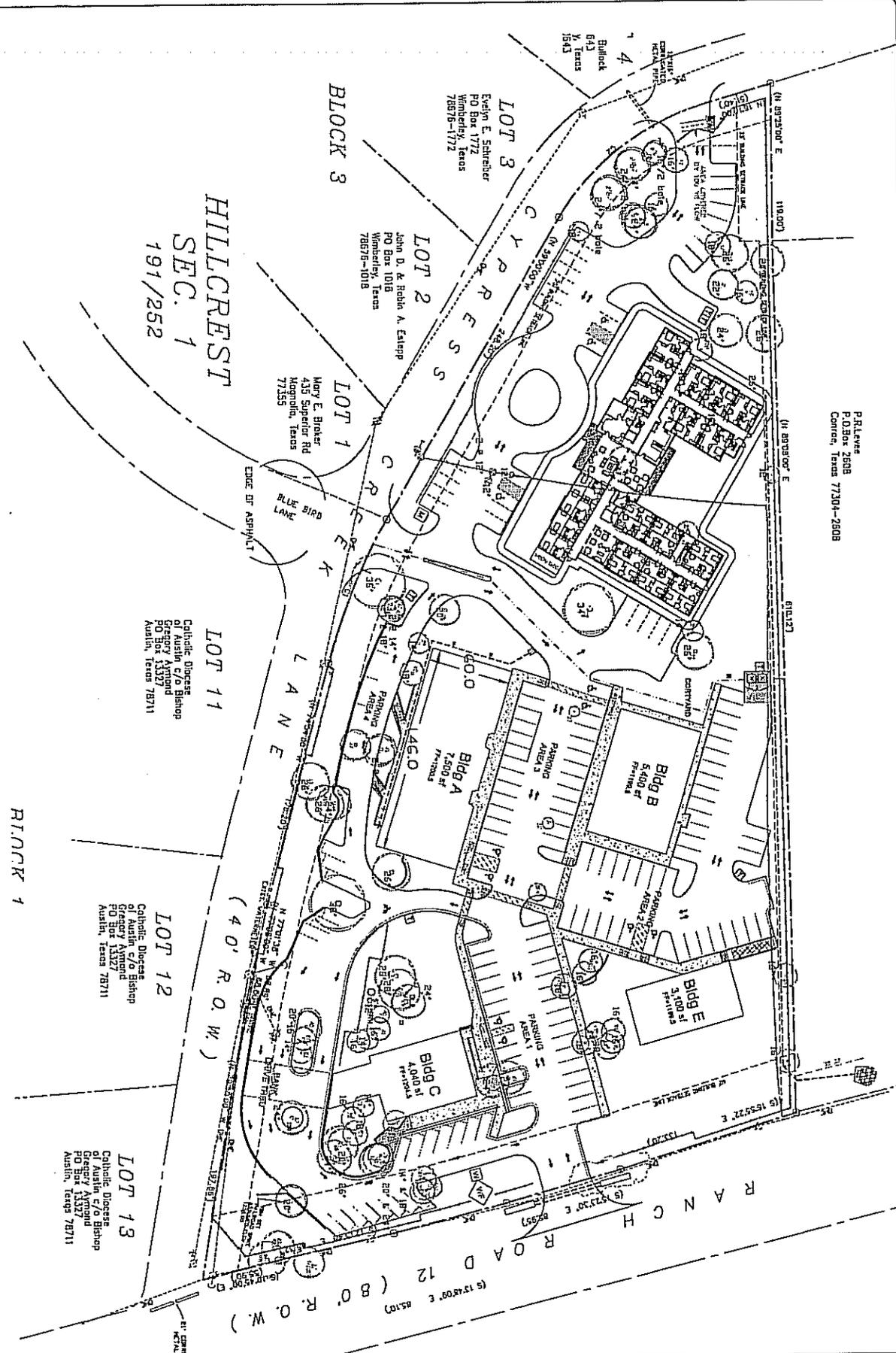
Tragedy and travesty will be avoided, if the Lanes are allowed to continue this work, their high calling.

Respectfully, and prayerfully submitted,



Bob Atkinson

512-350-3801



HILLCREST
SEC. 1
191/252

LOT 3
Evelyn E. Schriber
PO Box 1772
Wimberley, Texas
78076-1772

LOT 2
John D. & Robin A. Estapp
PO Box 1018
Wimberley, Texas
78076-1018

LOT 1
Mary E. Broker
435 Superior Rd
Homolite, Texas
77355

LOT 11
Catholic Diocese
of Austin c/o Bishop
Gregory Aylward
PO Box 1327
Austin, Texas 78711

LOT 12
Catholic Diocese
of Austin c/o Bishop
Gregory Aylward
PO Box 1327
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LOT 13
Catholic Diocese
of Austin c/o Bishop
Gregory Aylward
PO Box 1327
Austin, Texas 78711

PLANNED
P.O. Box 2608
Conroe, Texas 77304-2608

Scale	1" = 20'
North Arrow	
Sheet	1 of 1

CROSSROADS TOWN CENTER
WIMBERLEY, TEXAS

DODSON CIVIL GROUP, LLC.
361 MIDDLE CREEK
BUENA VISTA, TX 78610
(512) 748-3253
TEXAS FIRM # 32517

Sheet

ORDINANCE NO. 2011-_____

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS AMENDING CHAPTER 155 (ZONING) OF THE CODE OF ORDINANCES, SECTION 155.005 (DEFINITIONS) TO ADD THE DEFINITION OF “HOME HEALTH FACILITY”; AND AMENDING SUBSECTION (C) OF THE FOLLOWING SECTIONS: § 155.035 RESIDENTIAL ACREAGE (RA); § 155.036 RURAL RESIDENTIAL 1 (R-1); § 155.037 SINGLE-FAMILY RESIDENTIAL 2 (R-2); § 155.038 SINGLE-FAMILY RESIDENTIAL 3 (R-3); § 155.039 SINGLE-FAMILY RESIDENTIAL 4 (R-4); § 155.040 TWO-FAMILY RESIDENTIAL (DUPLEX) (R-5); § 155.041 MULTI-FAMILY RESIDENTIAL 1 (TRIPLEX/QUADRIplex/APARTMENTS) (MF-1); § 155.042 MULTI-FAMILY RESIDENTIAL 2 (APARTMENTS) (MF-2); § 155.060 PUBLIC FACILITIES (PF); AND § 155.061 NEIGHBORHOOD SERVICES DISTRICT (NS) TO PERMIT HOME HEALTH FACILITY AS A CONDITIONAL USE IN EACH ZONING DISTRICT SPECIFIED HEREIN; AND PROVIDING FOR THE FOLLOWING: PENALTY; FINDINGS OF FACT; REPEALER; SEVERABILITY; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

WHEREAS, the City Council of the City of Wimberley (“City Council”) seeks to provide for the orderly arrangement and regulation of compatible uses within its corporate limits; and

WHEREAS, in the course of reviewing the proposed amendments detailed in this Ordinance, the Planning and Zoning Commission and City Council have given careful consideration to the unique qualities of the City, including the demographics of its inhabitants, the City’s history, geography, natural resources, existing structures, property values, workforce, education levels, commercial base, surrounding communities, public facilities and infrastructure; and,

WHEREAS, not all medical or health facilities are licensed by the State of Texas; and allowing such uses in residential areas should be allowed only upon certain conditions, including application and approval of a conditional use permit; and,

WHEREAS, further the P&Z and Council have considered, among other things, the character of each zoning district and its peculiar suitability for the particular uses; with a view of conserving property values and encouraging the most appropriate use of land in the City; and,

WHEREAS, the regulations established by this Ordinance are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City; and,

WHEREAS, the following enactments are a valid exercise of the City’s broad police powers and based upon the City’s statutory regulatory authority, including but not limited to Texas Local Government Code Chapters 51 and 211; and,

WHEREAS, the City Council finds that the provisions of this Ordinance will serve to promote the public health, safety, morals and general welfare; and,

WHEREAS, parties in interest and citizens have had an opportunity to be heard at several public hearings conducted by the Planning and Zoning Commission and City Council, notice of which was published in the City's official newspaper before the 15th day before the first public hearing and agendas for each hearing were posted at City Hall more than seventy-two (72) hours prior to the respective hearing.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, COUNTY OF HAYS, STATE OF TEXAS:

I. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Wimberley and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

II. AMENDMENTS

- A. THAT the City of Wimberley Code of Ordinances, Chapter 155 (Zoning), section 155.005 (Definitions), is amended to add the following definition alphabetically:

“Home Health Facility” means an establishment that:

- a. a homeowner furnishes in their home or on their residential property lodging to two or less persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage; and
- b. provides community meals, light housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication and/or provision of home health, hospice, or other personal assistance services; and
- c. the ratio of patient to caretaker shall be one to one; and
- d. the owner must reside and occupy the property, and apply and receive a conditional use permit prior to use of the property as a home health facility.”

- B. THAT the City of Wimberley Code of Ordinances, Chapter 155 (Zoning), subsection (C) of the following sections are hereby amended to add “Home Health Facility” as a conditional use, and renumber the remaining subsections accordingly.”

Except as amended herein, the Code of Ordinances of the City of Wimberley shall remain in full force and effect.

III. REPEALER

All ordinances or parts of ordinances in force when the provisions of this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

IV. SEVERABILITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance be severable, and if any phrase, clause, sentence,

paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance, and the remainder of this Ordinance shall be enforced as written.

V. EFFECTIVE DATE

This Ordinance shall take effect immediately upon its passage and publication as may be required by governing law.

VI. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED this ___ day of _____, 2011, by a ___ (Ayes) ___ (Nays) ___ (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY

By: _____
Bob Flocke, Mayor

ATTEST:

Cara McPartland, City Secretary

(SEAL)

APPROVED AS TO FORM:

C. Crosby, City Attorney