

Village of Wimberley Parks and Recreation Board
City Hall, 13210 Ranch Road 12, Wimberley
Minutes of Regular Meeting
December 21, 2005

Meeting called to order at 6:35 p.m. by Board Vice President Horace Wilson. Present were Board members Mark Bursiel, Fred Franz, Dell Hood, Thad Nance, and Horace Wilson, constituting a quorum. Board members Malcolm Harris, Linda Hudson, and Tim Thompson were excused. Board President Jan Fulkerson arrived at 6:47.

Minutes of November 16, 2005, Board meeting were approved as submitted by vote of 5-0.

A. Reports

1. RFQ Process for Blue Hole Master Plan:

Assistant City Administrator Kay Wilkins reported that City Attorney Patty Akers is reviewing the RFQ process to see how it would apply to the Lady Bird Johnson Wildflower Center proposal to develop a master plan for the Blue Hole property. Board members noted the RFQ is meant to qualify a bidder in terms of professional qualifications and is not an actual bidding process.

2. Cypress Creek Nature Trail construction:

Horace Wilson said the public opening of the Nature Trail went well, with a good public turnout. G. Creek is still working at the site, but already skateboarders and bicycle riders are using it, leaving tracks in several places and indicating a potential for damage. Only one pump is working at the water feature now and Joe Waldschmidt is working on the pump problems. Horace volunteered to finish the outside of the pump house. He has talked with Judy Langford about how he can count his hours of volunteer time according to the TPW grant requirements for matching contributions.

Board President Jan Fulkerson arrived at 6:47 p.m. but let Horace continue as presiding officer because of her sore throat.

B. Consider and Act

1. Punch List items for Cypress Creek Nature Trail:

Horace presented an e-mail memo from Roy Mann dated December 19 with Mr. Mann's comments on the state of construction at the Nature Trail. Board members reviewed and discussed Mr. Mann's comments and agreed it is too early to consider it a final review list. Discussion was continued to a later meeting by unanimous consent.

Board members discussed whether the fence along the west side of the entry area should be extended to block the view of the back yards of the properties downstream. Horace said he asked the builders to put the light at the entry area on a time clock instead of on a photo cell so the area could go dark after a given hour instead of being lighted all night.

2. Recommendation for date of Grand Opening of Cypress Creek Nature Trail:

Board members noted the request by City Council member Marilee Wood for a formal grand opening of the Nature Trail in April 2006 and discussed possible dates. Dell said the brass jazz combo of the Hill Country Community Band enjoys opportunities for public performances and might be willing to provide music at an opening event.

Mark Bursiel moved that the Board recommend to Council a Grand Opening of Cypress Creek Nature Trail on Saturday, April 8, 2006, with music by the brass combo if they are available. Thad Nance seconded. Motion approved by vote of 6-0.

3. Review and Consider Recommendation by Sign Subcommittee:

Horace presented a design for the sign at the entrance and said the sign needs to have language acknowledging Texas Parks & Wildlife funding as specified in the grant.

Kay Wilkins presented a list of rules for the Nature Trail for discussion. Board members reviewed the list at length, noting some of them can be combined into one statement and that some of them apply only to the entrance area while others apply to the trail itself. Jan suggested a short introductory statement to the effect the park is a nature trail and asking people to respect its natural quality. Board members agreed the rules should be written to avoid negative statements; they discussed possible places to post them, including near the entrance, in the pavilion, along the inclined walkway, and along the trail.

Board members agreed to continue discussion of the rules and signs to their January meeting.

4. Review and Consider Recommendation of Wimberley Birding Society Agreement:

Dell presented the latest version of a draft agreement between the Village and the Wimberley Birding Society (WBS) for management of the 1.7 acre refuge area behind the Community Center. He noted the agreement has gone through several versions and has been reviewed by City Administrator Steve Harrison and the City attorney. He drew attention to the paragraphs providing that WBS is responsible for developing rules for the Refuge, for signage, and for maintenance and improvements. He noted also that paragraph 6.H asks for Village support for WBS efforts to seek grants and other outside support for the Refuge. Board members agreed the document is an excellent arrangement for the Village.

Jan Fulkerson moved that the Board recommend the agreement as presented to City Council for approval. Fred Franz seconded. In discussion, Mark asked what the role of the Board will be under this agreement. Dell referred to a clause in an earlier version which stated clearly that WBS would relate to the Village directly through the Board, but which is not in this version. He said WBS still expects to go through the

Board on policy matters but may work directly with City staff on issues such as construction.

Motion to approve the agreement with WBS approved by vote of 6-0.

5. Review and Consider Recommendations on tables/benches/trash cans at Nature Trail:

Kay Wilkins presented several catalogs of park and outdoor furniture for Board discussion. Board members discussed what type (concrete or wood), design and number of benches and tables should be used at the Nature Trail and where they should be put. Horace suggested building a bench into the high wall at the back of the pavilion; Board members agreed this is a good idea. Board members agreed by consensus the benches and tables should be concrete, and there must be one table space available for wheelchair use. They agreed there should be a sign near the entrance with the symbol for handicapped use pointing to the wheelchair ramp.

Mark Bursiel left the meeting at 7:30 p.m.

Board members discussed how skateboard and bicycle use could be controlled or eliminated in the entry area, without conclusion.

C. Work Session

Plant Maintenance Plan for Cypress Creek Nature Trail:

Board members noted the proposal by Martha Knies of Keep Wimberley Beautiful to water the plants in the entry area only once a month, and agreed this is not frequent enough. Jan Fulkerson noted how dry the soil is now and the need for new plants to have enough water to establish their root systems. She said she spoke with Martha and said the watering should be done once a week.

Horace said he would mount a hose hanger on the back side of the pumphouse, where a hose could be stored permanently. It would be inconspicuous and should be safe.

D. Announcements & Requests for Future Agenda Items

Dell said the Hays County Master Naturalists have been asked by Commissioner Will Conley to work on a project to replant the Wimberley by-pass right-of-way with grasses and wild flowers after construction is completed.

E. Adjournment: Board meeting adjourned at 8:00 p.m.

Recorded by Dell Hood.

Accepted Jan. 18, 2006
Dell Hood

Approved by
Jenkins
12-21-05

License Agreement

The Village of Wimberley, a Texas general law Type A municipal corporation, ("Village"), and the Wimberley Birding Society, ("WBS"), enter into this License Agreement ("Agreement") on ____, 2005, upon the terms and conditions set forth below:

- 1. Premises.** The Village grants WBS the right to use an approximately 1.87 acre tract, roughly adjacent to the Winters-Wimberley House and the Wimberley Community Center as shown on the attached and incorporated Exhibit A ("Property Description"), ("Licensed Property"), commonly known as "The Refuge" Nature Area and Bird Habitat and referred to in this document as "The Refuge".

The Village makes this grant solely to the extent of its right, title and interest in the Licensed Property, without any express or implied warranties.

- 2. Purpose.** The Village desires to formalize a relationship with the Wimberley Birding Society (WBS) in order to continue their longstanding and excellent stewardship of "The Refuge" Nature Area and Bird Habitat. That stewardship has previously been accomplished through a verbal agreement with the Wimberley Senior Activities, Inc., the previous owner and donator of the property. The Village grants WBS permission to use the "The Refuge" solely to develop, operate and manage a nature area and bird habitat as a haven for local and migrating birds, other wildlife, insects, and native plants of the Wimberley area. In addition, WBS shall develop, operate and manage the "The Refuge" for the people of Wimberley, both residents and visitors, to enjoy the tranquil beauty of the Hill Country in the heart of the Village. In addition, WBS shall develop, operate and manage the "The Refuge" as an outdoor classroom and living laboratory used to educate the public about the unique natural history of the Texas Hill Country and to demonstrate responsible stewardship of the Village's natural resources.
- 3. Consideration.** No annual fee is required. If the Village causes damage to or destruction of WBS's Improvements, WBS covenants not to sue the Village, or pursue other methods against the Village to recover costs of repairing or replacing the Improvements, as additional consideration for being granted this License Agreement.
- 4. Term.** This Agreement shall commence on the execution date and shall continue in full force and effect for a period of one (1) year, provided that the "The Refuge" is used solely for the purposes set out in Section 2 Purpose. This Agreement shall be automatically renewed annually for successive one (1) year terms without the necessity of any action by the parties, subject to earlier termination as set out in Section 9 Termination.
- 5. Limits on License.** The existence of this Agreement is expressly subordinate to the present and future right of the Village to use this property in any manner authorized by law. This Agreement is also subordinate to any easements, utility easements, rights of way, or other property interests recorded and associated with the property.

The Village may enter the "The Refuge" without giving notice and without incurring any obligation to WBS and remove the Improvements or any alteration thereof. Such removal will occur only if the City Administrator deems it is necessary: (a) in order to exercise the Village's rights or duties with respect to the "The Refuge"; (b) to protect persons or property; or (c) for the public health or safety with respect to the "The Refuge".

6. Conditions.

- A. Develop, Operate and Manage the "The Refuge".** WBS shall develop, operate and manage the "The Refuge" on the Village's behalf and solely for the purposes listed in **Section 2 Purpose**.
- B. Development of Park Rules and Regulations.** No less than three (3) months from the execution date of this Agreement, WBS shall provide to the Village a complete set of proposed rules and regulations governing the use of the "The Refuge" for consideration and approval by the Village City Council.
- C. Signage.** WBS shall coordinate with the Village on any proposed signage for the area. It is acknowledged that the Village has plans to develop a signage policy that will result in all park signage being compatible with and similar and/or identical to the signs in the rest of the Village's park facilities.
- D. Improvements or Alteration of Property.** WBS shall not construct or locate any structures or other improvements on the property without the prior written permission of the City Administrator. WBS shall not remove or alter any improvement, soil or other material on the property without the prior written consent of the City Administrator. WBS shall be responsible for repairs to the property or its improvements if damage is caused by WBS or its members.
- E. Remove or Modify Improvements.** If WBS is granted written authority to construct or locate a structure or improvement on the property, WBS may be required at its own cost to remove the structure or improvement, at the option of the Village upon termination of this License, or prior to termination upon a determination by the City Administrator that the structure or improvement needs to be removed or modified because the structure or improvement is a hazard to persons or property, that the structure or improvement prevents the Village from using the property for a lawful purpose or because the structure or improvement does not comply with federal, state or local ordinances or this License. All improvements must meet the Villages' ordinances and be compliant with the Americans with Disabilities Act.
- F. Maintenance.** WBS shall maintain the "The Refuge" by keeping the area free of debris and litter on an ongoing basis. Further, WBS must timely and properly maintain the Improvements, if any.
- G. Activities.** WBS shall not operate, manage or conduct any activities, events or operate the "The Refuge" in a manner that would discriminate against any person on the basis of

race, age, religion, disability, national origin, sexual orientation, gender or residence or that would otherwise violate Title VI of the Civil Rights Act of 1964. WBS will not conduct any activities, events, or operate the "The Refuge" in a manner that would cause the Village to be in violation of any deed restrictions, covenants or easements in effect for the property.

H. Grants: The Village, as landowner, may be requested for its support on occasion to obtain outside funding and/or grants. Such support will not be unduly withheld.

7. Termination.

A. Termination by Notice. Either party may terminate this Agreement by delivering written notice of termination to the other party not later than thirty (30) days before the effective date of termination. In the event that the WBS is the terminating party, WBS shall deliver the required thirty (30) day notice of termination to the City Administrator.

B. Termination by Abandonment. If WBS abandons or fails to maintain the "The Refuge", and the City Administrator receives no substantive response within thirty (30) days following written notification to WBS, then the Village may remove and/or replace all Improvements. WBS covenants to pay the Village's actual expenses incurred in connection therewith within thirty (30) days after being billed therefor. All of WBS's Improvements not removed are deemed property of the Village when abandoned by WBS.

8. Venue. Venue for all lawsuits concerning this Agreement must be in the State District courts of Hays County, Texas.

9. Waiver of Default. Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

10. Assignment. WBS shall not assign, sublet or transfer its interest in this Agreement without the prior written consent of the Village City Council. WBS shall provide the Village with a copy of any such proposed assignment or transfer of any of WBS's rights in this Agreement, which must include the name, address, and contact person of the assignee, along with the proposed date of assignment or transfer.

11. Notice. Notice required or permitted to be given in connection with this Agreement must be in writing. Notice may be given by hand delivery or certified mail, postage prepaid, to the recipient at the address for notice set forth below or at the last address for notice that the sender has for the recipient at the time notice is given. If properly addressed and sent certified mail or hand-delivered as provided herein, such notice will be deemed received on the day hand delivered, as evidenced by a written acknowledgment of receipt by the recipient, or on the third day after deposit in the U.S. mail, if sent certified mail, postage

prepaid. Notice given in any other manner will be deemed delivered if and when actually received by the party specified below.

12. **Default.** If WBS fails to comply with the requirements of **Section 6**, or otherwise comply with the terms or conditions herein, then the City Administrator shall give WBS written notice as set out in **Section 11 Notice**. WBS will have thirty (30) days from the date of such notice to take action to remedy the failure complained of, or such lesser period if such is required under the terms of this Agreement, and, if WBS does not satisfactorily remedy the same within that thirty (30) day period, the Village may remedy the default or contract to remedy the default.
13. **Compliance with Laws.** WBS covenants that all construction, installation, repair, maintenance, and removal of the Improvements permitted by this Agreement must be done in compliance with all applicable Village, County, State and/or Federal laws, ordinances, regulations and policies now existing or later adopted.
14. **Interpretation.** This Agreement must, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.
15. **Application of Law.** This Agreement must be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts must be enforced, to the extent possible, consistent with the intent of the parties as evidenced by this Agreement.

Terms and Conditions Accepted on _____, 2005.

LICENSOR:
VILLAGE OF WIMBERLEY

By: _____
Stephen Klepfer, Mayor
Village of Wimberley, Texas

Licensee:
WIMBERLEY BIRDING SOCIETY (WBS)

By: _____
Name: _____
Title: _____