

Village of Wimberley **City Council Meeting Minutes**

City Hall, 14500 RR 12, Suite 22

Thursday, June 21, 2001 – 7:00 PM

1. **Call to Order:** Mayor Linda Hewlett called the meeting to order at 7 p.m.
2. **Invocation** was delivered by Reverend Otha Aishman, Trinity Chapel.
3. **Pledge of Allegiance** was led by Mayor Linda Hewlett.
4. **Roll Call** Present: Mayor Linda Hewlett
Council Member Walter Brown
Council Member Steve Klepfer
Council Member Martha Knies
Council Member Matt Manis
Council Member Tony McGee
5. **Consent Items**
 - a. **Minutes** The minutes of the June 7th and the special meeting of June 18th were approved as presented.
6. **Presentations of Citizens:**
 - a. **Presentation of Petition from Cypress Creek Neighborhood Association regarding proposed City park.**

Malcolm Harris presented a petition on behalf of residents and citizens who had misgivings about the park as proposed. The signatures total 394 with more petitions being circulated in the community. He noted that persons objecting to the park were not only citizens of Wimberley but persons from around the state who objected to the public park at the Cypress Creek location. He suggested a nature preserve on the site and that a non-profit land trust corporation be established to seek grants, public support, and assume the management which would relieve the city government of the responsibility and the costs of preserve operations. He stated the desire that the site be protected from any future political whims that might destroy Cypress Creek.

Eddie Gumbert gave a brief history of how the current group of owners had acquired the Cypress Creek property now under consideration and a brief history of later actions to interest others in the community to purchase the property. He stated that many citizens had expressed to him their opinion that the highest and best use of the property would be as a park. He outlined the discussion the owners had with various local groups, including the county, as to how the park might be put to community use. He stated that in the event the property is not purchased by the city, it will be sold to someone for their particular use, whatever that might be.

Jerry Valadeo stated he signed the petition and that he opposes the park.

John Buvens remarked that while he was not a voter within the city limits, he did back incorporation and the current council members, solely for the protection of the Village of Wimberley, not to have government control, or in any way tell people what they can do or cannot do. He stressed that the council is made up of good people, the purpose for incorporation was good, but he does not want to see over-governance.

Chris Cusak, Chairperson for the Parks and Recreation Committee, gave an overview of the activities of the committee since its inception and stated they had directed their efforts towards building a community coalition to determine parks facilities for Wimberley. In their process of carrying out this mission, the Lions Club came to the city and offered funds to help acquire the Cypress Creek park property in a joint effort with the city, with a substantial portion of the purchase money to develop the park coming from a Texas Parks and Wildlife grant.

David Glenn stated that he wanted to speak to those present as an encourager and enabler to the Council actions that will follow. He said he had become a member of the Planning and Zoning Commission in October 2000. He outlined his cooperative efforts with the members of the Village Council and then expressed his concern about processes that "have seemed rushed and steamrolled without broad public input". He expressed his wish that a re-dedication take place directed towards the principles of an open, constructive, village government that was sought so earnestly through incorporation.

Ken Gruner said he felt it was his letter to the View in August of 2000 that might have started the park project. In looking for property to buy for a park, the Cypress Creek property was presented and that he received many phone calls saying it was a great idea. He expressed his support for the park and his hope the land would be preserved.

Clint Frankemann stated that Wimberley had missed two opportunities to acquire public space and he hoped that people would give this one some thought.

Steve Thurber stated he liked the park idea but believed it needed to be considered more carefully. Although he thanked everyone on the committees who had worked on the project, it was his opinion that that when all the facts are known, it does not seem to be the right place for a park as is currently designed and that he believed it would destroy the creek. He said there were parks in areas where the citizens did not object to them and were accessible to the public; however, he did not think it was Wimberley's responsibility to "open the floodgates" for the whole surrounding area to come to congregate on Cypress Creek; and, although he believes in preserving green space, he did not believe that is the way to do it.

Donna Campbell said that the number of citizens turning out for the meeting was proof that the residents cared deeply about the valley and that she was counting on the council to delay the project so the community can decide exactly what type of park is needed and then find the property that "fits that bill."

David Baker cited the recommendation that there should be 25 to 40 acres of parkland per thousand residents, and that the county now has only 15 acres of county parkland for the entire population of 100,000 residents. He asked that the council try to address the need for the parks but said that we must protect Cypress Creek and our quality of life in such a way that does not infringe upon property owner's rights. He asked that the Parks & Recreation Committee complete the master plan and move forward to find some parkland before the feared problems continue to escalate.

Councilwoman Knies stated that the Parks and Recreation Committee had been given the mission to try and listen to people and to formulate ways and means to create some assets in the way of parks and recreation for Wimberley. She referred to the park in Boerne known as River Road Park and that it had been a tremendous asset to that community as had parks in other surrounding communities. She gave credit to the Lions Club for bringing this opportunity to the city. But, she knew that it was never the intention to convert that Cypress Creek property into a generally accepted park. The Parks and Recreation Committee has prepared a statement of what their concept of the creek property is and that is as a nature trail. It is anticipated that it will appeal to Wimberley citizens and to visitors. There is no other public place in the Wimberley community where people who live here can go and observe an area like this. A number of nature park amenities are being considered. These features will make for a family friendly area. A Master Plan will direct overall design and use of the park so that it will be harmonious with the natural environment.

Councilman McGee commented that he was enthusiastic about the park, as a member of the Lions Club, and because of the beauty of the creek area. He felt that this area should be preserved for the community but stated that whomever owned the property has the right to control it and we must recognize that. His position is that this is tremendously valuable land, it should not be destroyed, but it should not be hidden.

Other citizens deferred to agenda items.

7. Reports from Committees. None

Old Business

a. Discussion, public testimony and possible action on amendments and corrections To the Wimberley Comprehensive Zoning Ordinance No. 2001-010 as recommended By the Planning & Zoning Commission.

Councilman Walter Brown called on Curt Busk, Parliamentarian of the Planning & Zoning Commission. Curt stated that not everyone was aware that the Village had passed a zoning regulation on April 7th. It is a work in progress. The committee has been working at least once a week to fill in the ordinances or to correct in-efficiencies in the document. This will not be the last time the committee will come with corrections. They currently have 39 pages of corrections. After explaining and discussing some of these items, Councilman Walter Brown pointed out that it was a two-step process, part of it tonight, and the rest will be taken up on July 5th. The notice for this meeting will carry over because it is being continued. He moved that the corrected items be given to council for review and taken up for final action at the next council meeting for vote. Council Member Brown moved that the public hearing be closed. Seconded by Council Member McGee, the motion was approved 5-0.

This agenda item was revisited at the end of the meeting wherein Councilman Brown outlined the rationale behind items 34 through 38 – changes in amendments to cover items that might need revisions to accommodate local intentions at the time the original documents were formulated. (See attached recommendations.)

Councilman Brown made the motion that the items as discussed in C-2 be approved and then go back to the table of contents and adopt everything (except the impervious cover) and change the language in the districts that were left out last time that are now ready, plus the public facilities, skipping the Village center overlay, and adopting the protective water overlay. Seconded by Councilman Klepfer, the motion passed 5-0.

7. New Business

a. Zoning/Subdivision Cases

(1) App. No. C211-01-005

Applicant – Janet Galloway/Bren Kirschbaum

Agent – Carolyn Nichols

Location – 201 Wimberley Square

Business Name: Kiss the Cook

Proposed Use: Retail Sales

Requested Zoning--From: Unzoned to C-2

No one spoke for or against the request. Council Member Brown moved the hearing close, seconded by Council Member McGee, the motion passed 5-0.

Zoning Recommended: C-2

Zoning Granted 5-0

(2) App. No. C211-01-00007

Applicant – Cliff Strickland (will not be in attendance)

Agent – N/A

Location – Lot 38A South River

Business Name: N/A

Proposed Use: Primary Residence

Requested Zoning--From: Unzoned to R-2

Zoning Recommended: R-2

No one spoke for or against the request. Council Member Brown moved the hearing close, seconded by Council Member McGee, the motion passed 5-0.

Zoning Granted 5-0

(3) App. No. C211-01-008

Applicant – James Kothmann

Agent – N/A

Location – 308 Valley Drive

Business Name: N/A

Proposed Use: Primary Residence

Requested Zoning--From: Unzoned to R-2

Zoning Recommended: R-2

**(Motion to close hearing by Council Member Brown, Seconded by Council Member Brown, the vote was 5-0 in favor.
Zoning Granted 5-0**

(4) App. No. C211-01-009

Applicant – Corwin Vansant (will not be in attendance)

Agent – N/A

Location – 501 Saddleridge Dr.

Business Name: N/A

Proposed Use: Primary Residence

Requested Zoning--From: Unzoned to AG

Zoning Recommended: AG

No one spoke for or against. Council Member McGee moved the public hearing close. Seconded by Council Member Brown the motion passed 5-0.

Zoning Granted: AG

b. Financial Report for the Village of Wimberley.

Due to time restrictions, this item was pulled. A report will be given July 5, 2001.

c. Discussion & Possible Action to prohibit (1) fishing and swimming and water access in the proposed city park to be located on a 7.24 acre tract on Cypress Creek.

Council Member Tony McGee stated he wished to place two motions before the council in order to split the decision on fishing and swimming. Council Member McGee made the motion that council state its position that any regulations issued in the future regarding the use of a proposed nature trail and park on a 7.2 acres tract along Cypress Creek shall and must prohibit fishing of any kind within the park and in any event that no fishing will be permitted in the park (the seeming repetition simply means that even with no regulations, there will be no fishing allowed in the park.) Sec-
onded by Council Member Martha Knies. Council Member Walter Brown recommended a friendly amendment that council also add "no impervious pavement of any kind, except to meet ADA requirements and no construction in the 100 year flood zone" – benches and picnic tables to be classed as furniture. Council Member McGee accepted the friendly amendment, Council Member Knies did not accept the friendly amendment. The original motion regarding fishing approved 5-0.

Council Member McGee made the motion that the council state its position that any regulations issued in the future regarding the use of the proposed nature trail and park on a 7.2 acre tract along Cypress Creek shall and must prohibit swimming and any entrance in the water within the park, and in any event no swimming or entry into the water shall be permitted within the park. Seconded by Councilman Water Brown with a friendly amendment, prohibiting impervious pavement, except to meet ADA requirements and to prohibit construction in the flood plain. Council Member McGee accepted the friendly amendment. The motion approved 4-1 and included the friendly amendment.

d. Discussion & Possible Action to set a date for a Public Hearing on the proposed grant application to Texas Parks & Wildlife for acquisition of parkland (preserve), and

to establish a procedure for public review and comment, Council discussions, and Council approval of the application.

Item d. was withdrawn because it was covered in other agenda item actions.

e. Discussion and Possible Action to enact a resolution by the Village of Wimberley City Council to postpone until January 31, 2001, the application to the Texas Parks and Wildlife Department for matching funds to acquire parkland in the Village of Wimberley.

Deferred Citizen Responses:

Scott Weaver told council that his property on Mill Race had been in his family for 44 years, and he would like to see the city take some more time to consider the Cypress Creek Park question. He thanked the council and committees for their work, and that he stated his support for working together, both property owners and the city.

Truett News stated he supported the proposal.

Sally Gibson stated that she supported the proposal.

Dell Hood stated that many acres of land have been lost in the Wimberley community because there was not any organized action and he hoped that in the future there would be no more missed opportunities for Wimberley to acquire open/green space for community use.

Jerry Edwards stated he supported the resolution.

Kay Edwards stated that she supported the resolution.

Ashley Gibson stated that she felt the community needed time to do what was right.

Curt Busk supports the resolution because it gives us a better chance to buy the park.

Frank Austin stated he did not want to speak for or against the park project but wanted to speak in favor of Councilman Manis' resolution because there needs to be time to resolve many issues, parking, merchant concerns; possibility of grant from TP&W and he wanted to make sure the city had money to cover the costs of park operations after it was acquired. He stated that this issue has been a very divisive one for the community and that by waiting, a better location may be found that will be supported by all of the citizens.

GeorgeAnn Moseley stated that she strongly supported the resolution.

John Hollingsworth spoke in support of the resolution.

Thad Nance stated he supported the resolution.

Mavis Woolsey stated that she supported the resolution.

Dorothy Kerbow said that since not enough people were able to speak to the park proposal and the Community Center project had been in the works for over eight years, it was her opinion that the park project should wait.

The public hearing on the resolution was closed and the motion was addressed. Councilman Manis read into the minutes a petition by 61 business persons who endorsed passing of the resolution and that asked the city take time to consider all of the issues surrounding the park on Cypress Creek.

Councilman Manis outlined his opinion of why he thought the application to the Texas Parks & Wildlife for a matching fund grant to acquire parkland should be postponed. He stated that the council must always listen to the will of the people and never forget that they were servants of the people. He also stated that after talking to members of the TP&W

staff at the Bamberg Park gathering, he felt that the city's chances were not all that good to obtain the grant funds. In addition, he stressed the costs of ADA requirements.

He said that he presented this resolution because he had many phone calls and verbal statements made to him by citizens of Wimberley inquiring about council actions in this matter and this prompted him to present this resolution. He implored the council to reconsider their positions on this matter and postpone it so everyone can step back, get together, and come to a conclusion. He asked that everyone involved set aside their personal wants and goals, to pull together for the good of Wimberley - the greatest community in Texas, stating that many good things can be done when people work together. He expressed his desire that the council view this an opportunity to work together and commended their work on this project. However, he stated that it was his opinion that if the city did lose this property, there would be other ones, possibly just as good – or better. He expressed his major concern was that there was not enough public input on the matter.

Mayor Hewlett stated that she felt the property spoke beautifully of Wimberley and her past business experience led her to take advantage of opportunities expeditiously. She pointed out that the council was not made up of seasoned politicians and there will be mistakes. She stated she had heard the citizens and she wants to support this resolution. There are two reason she wants to postpone the park application, 1) she and the council had committed to hearing the citizens and giving them every opportunity to hear the vision from the Parks and Recreation Committee and then respond, and 2) she is committed to the community center and has contributed financially to that project. She stated that in a meeting with some members of the WSCAI board and city officials, the results of sample scorings of both projects by Elaine Dill (TP&W) had shown that each application scored extremely high; and Ms. Dill's comment was that both projects were outstanding. However, one of the scoring criteria is determined by "where you are" on the Village Master Park Plan, i.e., being number one means more points. Dill stated that even so, both projects would probably score high enough to win. However, the mayor opined that the community center project deserves all the support possible and she felt we should put off the park matter. She commended the Lions Club for their vision in wanting a park for the community, having voted last week to commit \$100,000 towards this nature trail. TP&W personnel commented that this contribution was unique coming from a private community organization. Mayor Hewlett thanked the Lions Club for their leadership.

Council Member Knies stated that while the meeting with TP&W was encouraging, she and her husband had long supported the community center, that it was a magnificent undertaking, and she wants to give them every opportunity; that a member of the Parks & Recreation Committee was at the meeting and substantially supports the project. Efforts are being made to unite the community in bringing about the center, which will serve all the people of Wimberley. Those who have opposed this park are invited to visit with her about the park and the process. She stated she was happy to delay the application.

Councilman Walter Brown stated he was 150 percent in favor of acquiring whatever property the city can to put open/green space into the public domain so that we have access to our creek and natural wonders, that every state in the union does this and he feels it is the responsibility of our local government to do this also, and Wimberley will do it but we will now be better equipped to do it in the future, because he will insist that we have a process in place whereby council will entertain offers from property owners – or that we put out an RFP (Request for Proposals) that will bring the opportunities to the city's

attention. He stated that whatever we can do to fund the acquiring of public properties, it must be done because once the land is gone – it is gone. But if the cost is leaving out the public on the higher end, that is too high a cost and he says it will not happen “on his watch.”

Council Member Martha Knies stated that she was sorry that everyone felt left out on this but that she believed many presentations were made that allowed citizens to be aware of the vision of the Parks Committee and she felt that many people had been allowed the opportunity to participate in the process.

Council Member Klepfer stated that he believes the contract on the property is one that can be walked away from and that this project deserves more investigation and he has no problem in taking more time to consider city options.

Councilman McGee stated that the contract was best described as an “option contract” in that \$1,000 had been put down on the contract, but he was in agreement with the resolution to postpone the application because he welcomed more input; he is an enthusiastic supporter of the park but he is willing to listen to the people. He offered to take any citizen down to the property and said he would be delighted to show it to anyone who wished to see it. He said he was very much in favor of the community center and did not want to do anything to jeopardize it, even though the TP&W indicated both projects could be successful.

The vote on the motion to postpone the application was called, and the motion passed 5-0.

- f. Discussion & Possible Action to enact a resolution by the Village of Wimberley City Council to designate the Senior Citizens Activities, Inc. application to the Texas Parks & Wildlife for matching funds to build the Wimberley Community Center as the number one priority in the *Village of Wimberley Master Plan for the Texas Parks & Wildlife July 31, 2001 funding cycle.*

Mayor Hewlett corrected the wording of the agenda item (correction being included in the above resolution in italics).

Councilman Matt Manis asked that the resolution as corrected by Mayor Hewlett be adopted. He also asked that citizens take careful note of any suggestions that mention the inclusion of linear parks into the Village community's master park plan and to be aware of the possible consequences for owners along waterways. Seconded by Councilman Klepfer, the motion was approved 5 – 0.

- g. Discussion & Possible Action to enact a resolution by the Village of Wimberley to require Council review and approval for any city purchase of \$1,000 or over.**

Councilman Matt Manis moved that the agenda item 9g as presented be approved. Seconded by Councilman Steve Klepfer who offered an amendment to insert the wording: “to require council review and approval for any city purchase of \$1,000 or over and any city purchase of \$500 or over that is unbudgeted.” Councilman Manis did not accept the amendment. Councilman Klepfer made the following substitute motion: “That the Village of Wimberley require council approval for any city purchase \$1,000 and over and any city

purchase of \$500 and over that is not currently in the budget.” Seconded by Councilman McGee. In response to Councilman Brown’s query, Councilman Manis stated he felt it would hinder the council more than him in managing budget items.

The first vote being to “separate the motion”, the vote was 3-1 in favor with Councilman McGee abstaining. The motion was separated.

The original motion was called to vote. The vote was 5-0 in favor.

Councilman Steve Klepfer resubmitted his motion that the Village of Wimberley require council review and approval of any city purchase of \$500 or over that is not in the current budget. Seconded by Councilman Walter Brown. It was clarified that this would only be for the remaining period of time left in the current budget and when the new budget is adopted on July 5th, it would apply from that point forward. The motion was approved 3-2.

g. Review of TML Intergovernmental Risk Pool Insurance Rerate Exposure Summary and action to authorize its submission.

Councilman Tony McGee stated that the insurance for the city must be re-evaluated each year when the policy comes up for renewal. He noted there was one item that did need reconsideration by council, that being the limits of liability on the part of the city, i.e., errors & omissions for Council Members, auto liability, etc. He stated that when the policy was obtained initially, we did not have certain departments and activities were limited. TML stated that the one million dollar liability coverage at that time was adequate. He said that this condition had not changed and he had no strong feeling about the amount of coverage. The errors and omissions policy has a three million limit, with a \$1,000 deductible. Councilmen McGee stated he would find out premium differences and council agreed that he bring this back to council for consideration at a later meeting.

h. Discussion & Possible Action concerning an offer to sell property on the Blanco River to the City. The executive session will precede an open session.

Councilman McGee stated that he had been approached by a person who offered that he had a tract of land he wished to see if the city would be interested in purchasing for a park before it was placed on the open market. He said he saw no reason not to discuss this item in an open meeting and that an executive session would not be necessary. This tract of land is on the Blanco River. Councilman Brown suggested that this item be tabled until council heard from the person who wished to address council regarding the property. At this time, Jim Thompson addressed the council.

Mr. Thompson stated that this green space is in a subdivided, plated area, with restrictions, private streets with commercial and residential owners; it is in the Village entry overlay. He commented that there were several important issues that needed to be addressed before the city could begin to assess the viability of this particular site.

Dorothy Kerbow asked if this purchase would involve eminent domain and if not, why is it so different. Councilman McGee stated that since the city had not even determined if they wanted this property, there was no reason to address the idea of eminent domain. He clarified that every city in the State of Texas has the power of eminent domain to acquire property if it is in the public interest to do so and if it cannot be acquired through reasonable negotiations and/or the price is right, then they are empowered with the right to acquire that land by instituting eminent domain proceedings. When that happens, the landowner and the city come together before a set of three commissioners that are appointed by the county judge and they hear evidence regarding the value and then make a ruling as to what they think the land is worth. If either side decides to disagree with that ruling, then it can be appealed to the county court-at-law and it is brought before a jury in the county where the land is located. Each side gives their evidence as to what they think the land value is – and the jury then makes a decision as to what this land is worth. This ruling becomes a binding decision of the court. If mistakes of law have been made, either side can appeal to a higher court to have the decision reviewed. But basically, it is the jury decision that sets the value – thus protecting both the landowner and the governmental entity seeking an eminent domain decision in the matter – in that the independent group makes the decision as to value.

Councilman McGee asked for a response from the council. Mayor Hewlett stated that she believe that had been a lot of discussion tonight as to the need for process and that the Village council action should start at the lowest level of governance, i.e., the citizens. However, she felt the Parks and Recreation Committee should start the process. Councilman Klepfer made the observation that any acquiring of capital assets should come before the Planning and Zoning Commission. Councilman Brown commented that although final action comes from the council, he would like to see some way to handle the immediate event of someone who might approach the city – and that possibly it should start with the Mayor who would then direct who it should go to next. He opined that steps for the process should be determined before the city attempts its (acquisition) again. The Mayor commented that we should get at least a “statement of interest” from the person making the offer. Curt Busk was asked to work with the mayor and appropriate Council Members to formulate a draft for proposed city process to enable the council to deal with these issues.

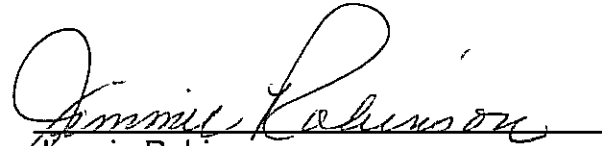
10. Items from Council

Councilman Brown will bring up the items continued and the antennae ordinance. Councilman Klepfer said there would be appointments to the Road Board and Council Members were asked for recommendations from the council.

11. Announcements

Fourth of July Parade. The Mayor will be Float Judge.

12. Adjournment There being no further business, the meeting was adjourned at 10:55 p.m.


Jimmie Robinson
Assistant City Secretary


Mayor Linda Hewlett

Next Council Meeting To Be Held on Thursday, July 5th at 7 p.m. at the City Hall.