

Village of Wimberley
City Council Meeting Minutes
City Hall, 14500 RR 12, Suite 22
Thursday, December 20, 2001, 7:00 p.m.

Mayor Linda Hewlett called the meeting to order at 7:00 p.m.

Pastor Eddie Blakely of Cypress Creek Church offered the Invocation.

Mayor Linda Hewlett led the Pledge of Allegiance.

Dell Hood, acting for City Secretary Adelle Turpen, conducted Roll Call. Present were:

Mayor Linda Hewlett
Council Member Walter Brown
Council Member Steve Klepfer
Council Member Martha Knies
Council Member Matt Manis
Council Member Tony McGee.

1. Consent Items

Minutes of the December 6, 2001 City Council Meeting were approved as presented.

2. Presentations of Citizens

None.

3. New Business

A. Consider & Act on Inter-Local Agreement with Hays County to accept \$20,000 contribution toward acquisition and construction of the nature trail:

City Administrator Steve Harrison said the Hays County Commissioners Court voted unanimously on Tuesday (December 18) to enter into an Inter-Local Agreement with the Village to contribute \$20,000 toward purchase and development of the Cypress Creek Nature Trail. Six thousand dollars would be available tomorrow (December 21) and the remainder at a later date. Commissioners felt the Nature Trail was consistent with the goals of the County Park Plan. Councilwoman Knies moved to approve the Inter-Local Agreement and accept the funds, Councilman McGee seconded. Councilman Brown pointed out an inconsistency - all previous descriptions of the tract say it has 7.24 acres, but the Inter-Local Agreement says it contains 7.19 acres. Councilman McGee explained that a survey was completed yesterday (Wednesday, December 19), and the tract the city is buying is in fact 7.19 acres. A small strip of land at the top of the rock bluff which is not usable for the City's purposes accounts for the discrepancy and is not included in what the City will acquire. Councilman Brown asked if the City could act on documents with the 7.19 acre description; Mr. Harrison said it can. Councilman Brown noted that the Parks and Recreation Board did not have time to review the matter. The motion passed 5-0.

B. Consider & Act on giving the Mayor authority to sign necessary documents to close on purchase of the Cypress Creek Nature Trail & Preserve, to include:

- Conservation Easement;
- Promissory Note in the amount of \$200,000, payable to sellers before 8/1/02;
- Deed of Trust that secures payment of the Note with contract purchased;
- Closing Statement;
- Other incidental closing documents.

Councilman McGee moved to approve authorizing the Mayor to sign a Promissory Note in the amount of \$200,000, a Deed of Trust to secure the Note, and the Closing Statement; Councilwoman Knies seconded.

Citizen Comments:

1. Patrick Cox, President of the Board of the Wimberley Valley Watershed Association (WVWA), spoke in favor of the Preserve and said his Board has passed a resolution agreeing to hold the Conservation Easement.
2. Liz Sumter said there is no contractual agreement by LCRA to provide the \$200,000 grant which was recommended by LCRA staff, and that changing economic conditions may affect LCRA budgeting decisions. She asked Council to consider how it would repay a loan if LCRA does not award its grant.
3. Clint Frankman asked what escape clause the City has from the purchase contract in case expected funds are not available, and said the Council is putting the City at risk for \$200,000.

Councilman McGee introduced Mike Stephens of Hays County Abstract Company who explained the documents before Council. Mr. Stephens said the real estate lien will be executed as a seller-financed note in the amount of \$200,000, with an interest rate of 9%. He has checks totaling \$10,000 as a contribution to the City for the interest. Principle and interest are payable within three days after LCRA's payment of its grant, but no later than September 1, 2002; the due date is extendable to one year from date of closing at the same rate of interest if necessary. Councilman Brown asked where the City's money would go if LCRA funds do not come through; Mr. Stephens referred to the extension available to the City and said he thought the community would respond. In the event of a total failure of funding, the City would lose the \$247,000 of donated funds. Councilman McGee asked Eddie Gumbert if he agreed to the time extension; Mr. Gumbert said yes. Councilman McGee asked Mr. Gumbert if the sellers would agree to take the land back if LCRA does not award its grant and would not expect the city to pay them \$200,000; Mr. Gumbert agreed.

City Attorney Alan Bojorquez said the city would not violate law by borrowing funds to pay this debt if it was done in one fiscal year and if the City has put the item in its budget and demonstrated intent to meet its obligation. Technically, this would be a loan, and not a debt as viewed by law. If the remaining \$200,000 does not come through, and no other sources of funding can be used, the City's financial obligation would be similar to that of a house mortgage: the property would revert to the seller and the City would lose what it has put down on the note. He said that even though an extension of time to pay would put final payment into another fiscal year, there would be no legal violation if the city has the item in its budget. Councilman Manis asked about amending an

approved budget; Mr. Bojorquez said there is a provision in Section 102 of the Local Government code to do so. If the City has documentation to show it intends to pay the debt, and the deal falls through, the City would not be in violation of law. Mr. Bojorquez said Council could pass a resolution not to "cannibalize other funds" to pay for this project; it would be binding only as a policy statement and not as a legal commitment. Councilman Manis said he wanted the public to understand that the Council would not use general funds to pay this debt.

Councilman McGee amended his motion to include the proviso that no general funds of the City of Wimberley will be used in any manner to acquire the property or pay interest on the note; Councilwoman Knies accepted the amendment. Councilman Brown noted that because the property is being altered by exclusion of 0.05 acres, it will have to go through subdivision. He said there is nothing he can do to stop this deal; the City does not have the funds needed, and the LCRA Board can decide any way it wants. He questioned why the Council is putting the City at risk while the seller is taking no risk, and said there will be a possibility for conflict in the future for the Council, which is borrowing money from a real estate concern that has business before the Council. He said he does not want a vote of no to be taken as a vote against the park; it is not prudent for the City to stick its neck out as it is doing. Motion passed 4-1 (Councilman Brown).

Councilman McGee moved to approve a Resolution drawn up by Attorney Bojorquez authorizing the Mayor to sign a Conservation Easement for the Nature Trail and Preserve, Councilwoman Knies seconded. Malcolm Harris, author of the Conservation Easement, said it has been in circulation for many months, has been examined and approved by the Parks & Recreation Committee and by City Council; by the Wimberley Valley Watershed Association, which has agreed to hold the Easement; by Texas Parks and Wildlife and the Lions Club, and has been supported by each of these organizations. Councilman Brown asked if the Parks Board has considered the document before Council; Councilwoman Knies said the Parks and Recreation Committee had approved an earlier version. Councilman McGee said the changes were a result of consultations by the City Attorney and Mr. Harris and were not substantive. Council discussed conditions under which the Easement could be terminated; Councilman McGee said it could be terminated by action of the State, if some calamity changes its use, and by mutual agreement with the holders of the Easement. Motion passed 4-0, Councilman Brown abstaining.

C. Consider and act on budget amendments to reflect park fund (revenue and expenditures):

City Administrator Steve Harrison presented Council with a "Cypress Creek Nature Trail Budget" and "Cypress Creek Nature Trail Cash Flow Projections", and recommended amendment of the budget to account for grant funds awarded to the City for the Nature Trail. He said funds for this account will be kept as a separate fund balance and in a separate checking account. Councilman Manis moved to amend the budget as proposed by Mr. Harrison, Councilman Klepfer seconded, motion approved 5-0.

D. Consider and act to authorize payment of \$247,432 for partial payment of purchase price for nature trail, plus closing costs to Hays County Abstract:

City Administrator Steve Harrison said the "Cypress Creek Nature Trail Cash Flow Projections" shows the amount available at closing (\$262,825). Councilman Manis moved to authorize payment of \$247,432 plus closing costs, Councilman McGee seconded, motion approved 4-0, Councilman Brown abstaining.

4. Old Business

A. Consider & act to clarify specific circumstances associated with issuance of a building permit for Banister's Creekview Grill - Council Action Item from December 6, 2001:

Councilman Klepfer moved to adopt the resolution as presented, Councilman McGee seconded. Councilman Klepfer said he offered the resolution because it is important to outline why Council made the decision it did and what was involved with this landowner. Councilman Brown suggested two changes, which Councilmen Klepfer and McGee accepted. The amended resolution reads:

Resolution.

The City Council finds that:

- a. The site of the Creek Side Grill, by virtue of its natural beauty, its characteristic Wimberley architecture and its long use as a well known restaurant site on the Square, qualifies as a Wimberley Landmark Site.
- b. The economic success of a restaurant in this location will have a positive impact on the collective business of the Square and the Village.
- c. It is in the public interest that the City Council facilitate the renovation of the site and the establishment of a viable business, and no change of use is proposed.
- d. The applicant has submitted an application for initial zoning.

Therefore, considering the economic and cultural importance of the site, the City Council will order the issuance of a building permit to enable renovation work to be done prior to the approval of the required zoning. The applicant shall not be relieved of any other provision of the ordinances of the Village. Construction shall be stopped until the Building Permit has been issued. The business shall not open to the public until the certificate of occupancy has been issued. The certificate of occupancy shall be issued only when all the usual requirements of the Zoning Ordinance, Building Code, County waste water permit and all other Village ordinances have been satisfied.

Motion to approve amended resolution passed 5-0.

5. Zoning

A. Application No. 211-01-027; Dan Murphy, 263 Mesa Drive, Single Family Residence, PUD:

Planning & Zoning Commission Chair Glenn Fryer said this property was handled as a PUD because it involves development on a steep slope, and the applicant has been very cooperative in agreeing to provide appropriate landscaping; Commission vote was unanimous to recommend a PUD. Council vote to approve the terms of the PUD was 5-0.

B. By unanimous Council agreement, the following zoning applications were handled as consent

items:

1. Application No. 211-01-038, Dave & Lee Williams, 200 Winn Valley, Room addition to a single family residence, R-2 zoning recommended by P&Z;
2. Application No. 211-01-042, Adam Hicks, 2620 & 2630 FM 3237, single family residence, R-2 zoning recommended by P&Z;
3. Application No. 211-01-043, Mike & Jan Jones, 303 & 305 CR1492, single family residence, R-2 zoning recommended by P&Z;

Councilman Brown moved to approve zoning as recommended by P&Z Commission for these three applications, Councilman Klepfer seconded, motion approved 5-0.

C. Application No. 211-01-045, John Cabler, 340, 400, & 410 Arrowlake, single family residence, R-2 zoning requested:

P&Z Commission Chair Fryer said this property is in a flood plain, set-back restrictions apply that are unworkable on these already-platted lots, and a Variance is required. The Council convened as the Wimberley Board of Adjustment. Walter Brown moved that the Board approve the Variance, calling Mr. Cabler's attention particularly to Sections 10.6 b.1 and 10.6 c. 1-5 of the Zoning Ordinance; Steve Klepfer seconded. Mr. Klepfer said he did not want Board members to lose sight of their objectives when they set up the restrictions for the Protected Waterway Overlay District. Board voted to approve Variance 5-0. Mayor Hewlett reconvened City Council; Councilman Manis moved to approve the requested zoning, Councilman Brown seconded, motion approved 5-0.

D. Application No. 211-01-046, Matt Manis, 206 Hub Drive, single family residence, R-2 zoning requested:

The Council convened as the Wimberley Board of Adjustment; Mr. Manis recused himself. Mr. Klepfer moved to approve a Variance of the Protected Waterway Overlay District, with attention to Zoning Ordinance Sections 10.6 b.1 and 10.6 c.1-5; Ms. Knies seconded, Board approved 4-0. Mayor Hewlett reconvened City Council, Councilman Manis recused himself. Councilman Brown moved approval of the requested zoning, Councilwoman Knies seconded, Council approved 4-0.

6. Variance Requests

Application No. 211-01-044, Jim Thompson, 220 South River, single family residence, R-2 zoning requested; Variance requested for Protected Waterway Overlay District:

The Council convened as the Wimberley Board of Adjustment. Mr. Brown moved to approve the Variance of the Protected Waterway Overlay District, Ms. Knies seconded, motion approved 5-0. Mayor Hewlett reconvened City Council. Councilman McGee moved to approve the requested zoning, Councilman Brown seconded, motion approved 5-0.

7. Subdivision Cases

Application No. 212-01-004, Steve Brown, 405 Flite Acres Road, request to subdivide 10.839 acres into three lots of 1.5, 1.5, and 7.839 acres for single family residences:

Interim City Engineer Joel Wilkinson said he has reviewed the issues of concern to the Planning & Zoning Commission, and presented his findings. Issues include deficiencies and drafting errors in the subdivision plat, not all of which have been addressed. He and Council discussed corrections to the plat with applicant. Councilman Brown moved to approve the final plat contingent on the noted plat deficiencies being corrected, Councilman McGee seconded, motion approved 5-0.

8. New Business (Continued)

E. Consider and Act on retaining the financial management and accounting services of Freemon, Shapard & Story to handle accounting and bookkeeping needs of the Village, and to Amend Budget Bookkeeping Item by increase of \$3,150:

City Administrator Steve Harrison introduced Mr. Jack Clark from the Freemon, Shapard & Story firm, and said recommended he handle the City's bookkeeping and accounting matters. Mr. Clark will also provide consulting services in the financial area, especially concerning changes in state law. In response to a question from Councilman Klepfer about a possible conflict of interest in doing the City's audit and in providing consulting services, Mr. Clark said his consulting will be strictly advisory and there would be no conflict of interest in doing both financial management and audit services; he does similar functions for the City of Bastrop. Councilman Manis moved to take \$3,150 from unexpected revenue in the City Budget and to retain the firm of Freemon, Shapard & Story for financial management and accounting services, Councilman McGee seconded, motion approved 5-0.

F. Consider and Act on accepting proposal from Freemon, Shapard & Story to conduct the audit of city finances for fiscal year 2001:

Councilman Manis moved to the accept the proposal by Freemon, Shapard & Story to audit the City's finances for fiscal year 2001, Councilwoman Knies seconded. Council discussed the fact that no local firms were interested in bidding for the contract. Motion approved 5-0.

G. Consider and Act on proposed Amendment to Lighting Ordinance No. 2001-025 to permit Pedernales Electric Cooperative Inc. area lighting under certain circumstances, as recommended by Planning & Zoning Commission:

P&Z Commission Chair Glenn Fryer said PEC will not have replacement bulbs that meet current Lighting Ordinance requirements in the foreseeable future. The amendment is needed to allow PEC to use lower-intensity sodium bulbs to replace mercury bulbs for area street lighting. Councilman Brown moved approval of the amendment, Councilman Manis seconded, motion approved 4-0, Councilman Klepfer abstained.

H. Discussion about long-term goals and Council focus for 2002:

Councilman Klepfer continued this item to next Council meeting.

9. City Administrator's Report:

Administrator Steve Harrison said he will be getting his own e-mail address. He will periodically provide e-mail to Council members on what's coming up, perhaps on a weekly basis. He wished Council members Happy and Safe Holidays and said he is enjoying his position.

10. Announcements:

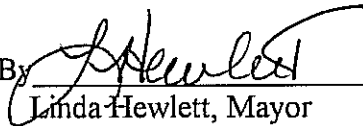
Councilman Klepfer said the amendment to the Certificate of Convenience and Necessity for Aqua Source to provide waste water service to Brookshire Brothers was approved by TNRCC over the objections of six entities in the county. Part of the CCN was denied, that part from Wimberley High School to the Aqua Source plant, because Aqua Source did not properly provide public notice. However, Aqua Source will be able to go over Cypress Creek with its waster water line. He said the City has applied for a Certificate of Convenience and Necessity for the entire Village area, and TNRCC could in fact approve dual certifications.

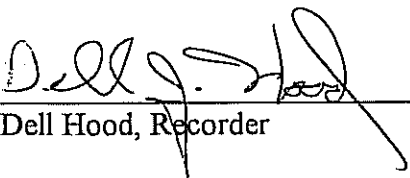
Councilman Manis said the sales tax payment to the City for October amounted to \$22,389.

Mayor Hewlett said she is leaving for a week in New Mexico.

11. Council adjourned at 10:10 p.m. by unanimous consent.

VILLAGE OF WIMBERLEY

By 
Linda Hewlett, Mayor


Dell Hood, Recorder