

**City of Wimberley**  
City Hall, 221 Stillwater  
Wimberley, Texas 78676  
**Planning & Zoning Commission**  
Minutes of Regular Meeting  
March 10, 2011 at 6:30 p.m.

Meeting called to order by Chair Tracey Dean. Present were Commissioners Beth Mitchell, Jean Ross, Lila McCall, David Glenn, and Rick Burleson. Vice Chair Steve Klepfer was absent.

Staff Present: City Administrator Don Ferguson

**Citizen Communications:**

No citizen comments were heard.

**1. Consent Agenda**

Approval of minutes of the Regular Planning & Zoning Commission meeting on February 24, 2011.

Commissioner Glenn pulled the minutes and requested the following underlined amendment to page 3, as recommended by City Administrator Ferguson:

- Possible interpretations of "*highest attached component of the structure at that point*" ~~and examples that are not in accordance~~ could possibly not meet the intent of the current definition wording

Commissioner Glenn moved to approve the minutes, as amended. Commissioner McCall seconded. Motion carried on a vote of 6-0.

**2. Discussion and Possible Action**

- A. Discuss and consider possible action regarding a proposal relating to the preparation of a master plan to regulate development in the area of the Wimberley Square. (*City Administrator*)

City Administrator Ferguson reviewed past discussions pointing to the need for guidance on this issue and introduced Freese & Nichols' Urban Planning Group Manager Dan Sefko.

Mr. Sefko provided background information on his firm's experience; office locations; his personal knowledge and expertise; master planning specializations; current/past projects; and education. He stated that broad language used in the City's Comprehensive Plan could be made more specific, in order to better guide

development. He advised that a steering/advisory committee would be needed to forward recommendations to Council, which could be the Planning and Zoning Commission or a separately created body. Mr. Sefko stated the need for stakeholder input, with three anticipated public meetings to identify issues, including a visual character survey, polling devices, and visioning exercises. Based on such input, recommendations could be made regarding land use/zoning, desired land uses, and how such uses should look. Recommendations documented in the final report to Council could deal with areas and sub-areas, with each area's "look and feel" specifically addressed, which would help guide the development process. Mr. Sefko displayed examples of his planning work with other Texas cities and a proposed downtown Wimberley study area.

Discussion among Mr. Sefko, Commission members, and City Administrator Ferguson included:

- Scope and detail of the report
- Possible re-zoning of subject area
- Appropriate uses and how those uses should look
- Importance of the central, downtown area to Wimberley's sales tax-based economy
- Highest and best use for property owners and citizens
- Public involvement, including focus group/stakeholder meetings with property owners
- Overview of the City's planning/zoning efforts to date and future challenges
- Comprehensive Plan (from its development through revisions to date)
- Effect of a centralized wastewater system on downtown growth and development
- Lack of downtown parking
- Different development standards for various possible "sub-areas" of central Wimberley
- Concerns over creating an unintended "cookie cutter" look
- Problems with gathering diverse input and reaching consensus in an effective time period
- Cost estimates to be enumerated in the contract for services, if approved, and the City's budget limitations
- Scope of central area to be defined
- Broad nature of Comprehensive Plan language

Rio Bonito Resort property owner Cindy Meeks offered comments relating to her family's long-term ownership of a significant amount of property located in central Wimberley. Mrs. Meeks stated that she has trouble dealing with people who get organized and are "really vocal and really mad and they control my future." She spoke of her family's history of community support, including generating revenue for the City. She stated: "We are a retirement and a resort community and we are not looking to jeopardize this community, but we also do not want to be zoned out of business." Referring to a recent zoning request, Mrs. Meeks expressed disappointment over her neighbors' accusations and lack of direct communication of environmental concerns.

Continued discussion addressed:

- Concerns over the number of meetings needed to reach consensus and associated costs
- Problems with reaching consensus
- Scope of services available under limited budget
- Possible bids from other firms for professional planning services
- Need for development of a downtown master plan
- Problems with implementation of existing and proposed master plans
- Fear that "bad" planning will result in a "fake" look lacking authenticity
- Complaints from citizens who feel excluded from the public process, despite numerous types of notifications
- Citizen surveys, in addition to public meetings
- Transportation Advisory Board member Bert Ray's comments favoring the hiring of a planner and stressing the importance of citizen engagement
- Downtown area as the "lifeblood" of Wimberley that attracts tourists
- Preserving Wimberley's character in light of regional growth
- Mr. Sefko's role as facilitator
- Researching available grant fund opportunities
- Additional examples of Mr. Sefko's work for cities similar to Wimberley

The Commission agreed to direct City Administrator Ferguson to research alternative funding sources and obtain from Mr. Sefko additional examples of his work in rural communities. City Administrator Ferguson requested that Commission members communicate any ideas on how to possibly trim down the project's scope. No vote was taken.

- B. Discuss and consider possible action regarding the proposed modification of Section 155.106 (*Non-Conforming Uses and Structures*) of the City of Wimberley Code of Ordinances relating to the determination of pre-existing, non-conforming use status. (*Vice Chairman Steve Klepfer*)

City Administrator Ferguson explained the reasoning for the proposed modifications (see attached draft ordinance). He noted that Vice Chairman Klepfer requested the inclusion of additional draft language requiring City staff to notify all property owners within two-hundred feet (200') of the subject property when a determination has been made on pre-existing, non-conforming (grandfathered) status and that there is an appeals process for such determinations.

Discussion addressed:

- The need for the proposed modifications and whether or not certain issues with specific properties triggered the Commission's discussion and possible action
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- Determination of grandfathered status as a fact-based decision and the benefit of providing evidentiary guidelines in the Code
- Current documentation requirements to prove grandfathered status
- Ability to provide sworn testimony, such as an affidavit, in addition to submission of written evidence [as listed in Sec. 2(C)(1) of the attached draft version]
- Burden of proof on potential property buyer continuing a pre-existing use to document prior use
- Concern over neighbors using the City to exercise vendettas against each other

Commissioner Glenn moved to approve the proposed modification of Section 155.106 (*Non-Conforming Uses and Structures*) of the City of Wimberley Code of Ordinances relating to the determination of pre-existing, non-conforming use status, with the amendment that the evidence for the pre-existing use also include verbal testimony, as it may be presented in a signed affidavit. Commissioner McCall seconded.

Chairman Dean called for a vote as follows: Commissioner Mitchell, aye; Commissioner Ross, nay; Commissioner McCall, aye; Commissioner Glenn, aye; Commissioner Burleson, aye; Chairman Dean; aye. Motion carried on a vote of 5-1.

- C. Discuss and consider possible action regarding the proposed modification of Section 155.092 (*Protected Water Overlay District*) of the City of Wimberley Code of Ordinances relating to erosion control and pre-existing, non-conforming septic systems. (*Vice Chairman Steve Klepfer & City Administrator*)

City Administrator Ferguson explained the needed modification relating to erosion control consistent with provisions of the recently approved Water Quality Protection Ordinance. He provided reasoning for the proposed amendment to allow pre-existing, non-conforming commercial septic systems to be upgraded or replaced (but not expanded) in order to resolve health and safety issues.

Discussion addressed various scenarios involving replacement of failing systems, capacity, and permitting issues, including possible business closure(s) and variance request(s) for businesses requiring larger capacity.

No motion was made and no action was taken on this item.

- D. Discuss and consider possible action regarding the proposed modification of the definition of *height* in Section 155.005 of the City of Wimberley Code of Ordinances. (*City Administrator*)

City Administrator Ferguson reviewed the rationale for the proposed modification to clarify how building height is measured. He explained the concept of an "imaginary plane" to graphically depict the proposed definition:

**HEIGHT:** Of a structure, the vertical distance between the existing or finished grade adjacent to the structure, whichever is lower, to the highest point of the

subject structure, including chimneys. For a stepped or terraced building, the height of each segment of the structure is determined individually.

Discussion included:

- Commissioner Glenn provided reasoning for the following recommended definition: "Of a structure, the vertical distance from any point on the established ground level under the structure to the highest attached component of the structure above that point. The established ground level shall be the lower of the natural grade prior to disturbance of the site, or the newly established grade after construction."
- To include or exclude chimneys in staff's proposed definition
- Enforcement issues with proposed definitions
- Defining "highest attached component of the structure"
- Need to simplify the definition of *height* as much as possible

Commissioner Glenn moved to proceed with hearing process for the proposed modification of the definition of *height* in Section 155.005 of the City of Wimberley Code of Ordinances to read as previously stated above. Commissioner McCall seconded.

Discussion addressed possible ways to more clearly define the phrase "attached component of the structure at that point," if it is to be retained as in the current *height* definition, which includes such items as chimneys, flagpoles, crosses, or antennas; and inclusion of a drawing, along with the definition's text to better illustrate how height is measured.

Commissioner Glenn called the question.

Motion carried on a vote of 4-2. Commissioners Ross and Mitchell voted against.

Commissioner Glenn responded affirmatively to City Administrator Ferguson's inquiry about inclusion of a drawing in the recommended definition.

### **3. Staff and Commission Reports**

- Announcements
- Future Agenda Items

Hearing no further announcements or future agenda items, Commissioner Ross moved to adjourn. Commissioner Mitchell seconded. Motion carried on a vote of 6-0.

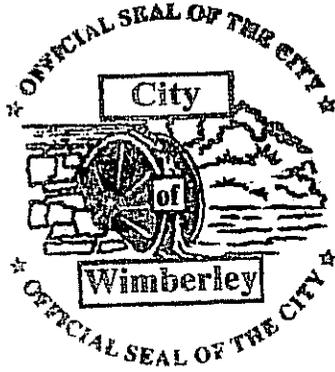
**Adjourn at 9:05 p.m.**

Recorded by:

Cara McPartland

These minutes approved the 24th of March, 2011.

APPROVED:



*Tracey Dean*  
Tracey Dean, Chair

ORDINANCE NO. 2011-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, AMENDING CHAPTER 155 (ZONING), SECTION 155.106 (NON-CONFORMING USES AND STRUCTURES) OF THE CODE OF ORDINANCES TO ADD ADMINISTRATIVE PROVISIONS REGARDING NON-CONFORMING USES AND STRUCTURES; AND PROVIDING FINDINGS OF FACT, A REPEALING CLAUSE, TO PROVIDE A SAVINGS AND SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

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, 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, 52, 211 and 213; 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 numerous 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 15<sup>th</sup> 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, TEXAS, THAT:

Section 1. Findings. 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.

**Section 2. Amendment.**

THAT the City of Wimberley Code of Ordinances, Title XV (Land Usage), Section 155.106 (Non-Conforming Uses and Structures) is hereby amended to insert the following language as subsection (C) and re-letter the remaining subsections accordingly:

“(C) Proof of status; Administrative provisions.

- (1) Evidence. The property owner or user claiming non-conforming status under this section has the burden to prove such non-conforming status by a preponderance of evidence by submission of written evidence to include but not limited to legally filed plats, sales, use, income and occupancy tax records, building and on-site sewage facility permits, construction receipts, or any other information requested by the City Administrator to prove the structure’s or use’s non-conforming status.
- (2) The applicant may appeal a decision of the City Administrator to the Board of Adjustment in accordance with the procedure set forth in section 155.108 (Board of Adjustment; Variances and Appeals).
- (3) Conditions. The Board of Adjustment may adopt any conditions it considers necessary when it issues an order concerning a nonconforming use.”

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

**Section 3.** All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed, but only to the extent of any such conflict.

**Section 4.** Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Ordinances as a whole.

**Section 5.** This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

**Section 6. Open Meetings.** That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act, Capt. 551, Loc. Gov’t. Code.

**PASSED AND APPROVED** this \_\_\_ day of \_\_\_\_\_, 2011, by a vote of \_\_\_ (Ayes) to \_\_\_ (Nays) \_\_\_ (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY, TEXAS

\_\_\_\_\_  
Bob Flocke, Mayor

ATTEST:

\_\_\_\_\_  
Cara McPartland, City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
C. Crosby, City Attorney

DRAFT