

City of Wimberley
221 Stillwater
Wimberley, Texas
Minutes of Special Meeting of City Council
January 22, 2014 at 5:30 p.m.

City Council meeting called to order at 5:30 p.m. by Mayor Bob Flocke.

Councilmembers Present: Mayor Bob Flocke and Councilmembers Mac McCullough, Matt Meeks, Steve Thurber, and John White. Councilmember Tom Talcott was absent.

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

1. Public Hearings and Consider Action

Hold a public hearing and consider approval of an ordinance approving an application for a conditional use permit submitted by Geno and Susan Baiamonte to operate a vacation rental facility on a tract located at 1402 East Spoke Hill Road, Wimberley, Hays County, Texas, zoned Residential Acreage (RA), and imposing certain conditions; providing for findings of fact; amendment of the zoning district map; repealer; severability; effective date; proper notice and meeting; and providing for certain conditions. *(Geno and Susan Baiamonte, Applicants; this item was continued from the January 16, 2014 City Council meeting)*

Councilmember McCullough stated that he is recusing himself at this time as a Council member, but is not recusing himself from the subject.

Discussion ensued on recusal procedures and Councilmember McCullough’s desire to address Council after stepping down from the Council dais.

Councilmember McCullough moved from his seat at the Council dais to a seat in the audience.

City Administrator Ferguson reviewed the subject property’s location, current/proposed zoning and uses, planning area, and existing structures. He stated the City discovered both the main and guest houses on the subject property were being used as vacation rentals after receiving a traffic complaint from a neighbor. When notified of the City’s conditional use permit (CUP) requirement, City Administrator Ferguson advised that the property owner submitted an application for a vacation rental CUP.

City Administrator Ferguson noted that the applicant is requesting a maximum occupancy of six (6) persons for the main home and four (4) persons for the guest home. He stated that there is adequate space on-site from the required off-street parking.

City Administrator Ferguson stated that there is one (1) existing septic system serving both residences, however, documentation submitted by the applicant did not provide adequate information for City staff to make a determination on maximum occupancy. Should Council

desire to favorably recommend the CUP, he asked that Council designate the maximum occupancy as that determined by City staff after the applicant has provided detailed information on the size of the current drain field and septic tank. He noted that prior to using the residences as vacation rentals, written evidence will need to be provided to the City by the applicant showing that the septic system has been inspected and found to be property functioning and capable of serving the maximum occupancy determined by City staff. In addition to the applicant's series of house rules, City Administrator Ferguson read a list of staff-recommended conditions to be made part of the requested CUP, should Council desire to recommend approval.

City Administrator Ferguson advised that Councilmember McCullough's wife, Robin McCullough, spoke in favor of the requested CUP at the Planning and Zoning Commission meeting of January 9, 2014 and no speakers were present to voice opposition. It was noted that written opposition has been received from four (4) adjacent property owners – three (3) of which are within the two hundred foot (200') notification area. He stated that as of today, two (2) of those expressing opposition may be having second thoughts on their positions, with the remaining two (2) owners still in opposition. City Administrator Ferguson noted that this vacation rental property is an eleven-acre tract in a rural setting. He stated that the Planning and Zoning Commission voted 6-1 to recommend denial of the CUP request, due to concerns about the written opposition received and lack of septic system information provided by the applicant.

Applicant Geno Baiamonte spoke on his intention to retire to the subject property at some point in the future, but said he decided to use the homes as weekend vacation rentals until retirement is possible. He noted large acreage, lack of deed restrictions on use as rentals, and lack of complaints in the past two years regarding rental activity. He stated that the three people who will be affected by the subject property's use as a vacation rental are Mac McCullough, Mike Miller, and Grady Burnette, none of whom have objected to the CUP application, and provided details about private road access. He noted that protests have not been heard from the usually vocal Paradise Hills owners and provided information on his discussions with neighboring property owners who have expressed opposition. Mr. Baiamonte stated that of those who expressed written opposition, only Pete Anderson remains philosophically opposed to any vacation rentals in the neighborhood. Mr. Baiamonte stated the following factors favor use of the subject property as a vacation rental: the tract is large and remote, which allows for a larger number of vehicles to be parked at the site and lack of complaints from neighbors.

Mayor Flocke opened the public hearing.

Adjacent property owner Mac McCullough said that there is no promise, hint, or agreement of any sort between him and Mr. Baiamonte regarding the subject property. Mr. McCullough noted acreages of specific properties owned by himself, the applicant, and Mike Miller. Mr. McCullough said that his own property and Mr. Miller's properties are on the immediate entry from the private street access. Mr. McCullough noted that he has no problem at all with the Baiamonte's use of the adjoining subject property as a vacation rental and that the door-to-door distance from his house to Mr. Baiamonte's is over one-quarter of a mile. He noted some homeowners' concerns regarding ingress/egress in and out of Paradise Hills during times of flooding. He said there is no way in or out of the Paradise Hills subdivision by vehicles during times of flooding due to closure of the low water bridge, as well as lack of emergency vehicle

access. Mr. McCullough stated that during the most recent October 2013 flood event, the only way he could get out of the subdivision was via the Baiamonte's property. Because of ingress/egress issues, Mr. McCullough said he favored the CUP and that the neighbors would like a formal agreement to have access to the gate code that would allow for emergency ingress/egress by neighborhood residents and emergency personnel via Mr. Baiamonte's property.

Hill Country Premier Lodging owner Dan Sturdivant spoke on the history of bed and breakfast/vacation rental facilities in the Paradise Hills subdivision and noted that there is not any organized opposition from Paradise Hills homeowners, who would be present at tonight's meeting, if they had objections to the CUP application. He noted significant distances to surrounding properties from the subject property. He disclosed that Hill Country Premier Lodging manages rental of the subject property, screens potential renters, and has full-time staff readily accessible to address any rental-related complaints.

Hearing no further comments, Mayor Flocke closed the public hearing.

Discussion addressed the amount of opposition expressed by those inside and outside of the notification area; clarification that written opposition has not been formally withdrawn; subject property's main entrance from Hilltop and back entrance from Anderson Ridge; possible continuance of this item; traffic generated by rental activity; prohibiting renters from using back entrance; abandonment of the old stone fire pit on the subject property; rebuilding of the patio area with a stone retaining wall and a new small fire pit; required septic system documentation; determination of maximum occupancy; and lack of objections raised by Paradise Hills property owners.

City Administrator Ferguson commended the applicant on his willingness to discuss allowing emergency ingress/egress via the back entrance to the subject property, however, he stressed that the issue before Council is one of land use, and that any potential formal agreement between the applicant and neighbors regarding such access is a separate matter.

Councilmember Meeks moved to approve the item, as presented, which includes the applicant's house rules and aforementioned list of staff-recommended conditions, as read by City Administrator Ferguson. Councilmember White seconded. Motion carried on a vote of 3-0. (Councilmember McCullough recused.)

Councilmember McCullough returned to his place at Council's dais at this time.

2. Ordinances

Consider approval of an ordinance of the City of Wimberley, Texas granting Texas Disposal Systems, Inc., its successors and assigns certain rights to operate and maintain solid waste and recycling collection and disposal routes and services within the City of Wimberley for a period of five (5) years with renewal provisions, providing an exclusive franchise, prohibiting the operation of any other residential or commercial solid waste and recycling collection business or entity, providing for certain rights, duties, terms, and

conditions, providing for payment of franchise fees of ten (10) percent of grantee's gross revenues, civil and criminal penalties not to exceed \$2,000, effective dates, severability and other provisions related to the grant of a solid waste and recycling franchise. *(City Administrator; this item was continued from the January 16, 2014 City Council meeting)*

City Administrator Ferguson noted certain revisions to the draft agreement relating to measurement of performance standards, frequency of reports on customer relations/customer complaints, and immediate termination provisions. He noted that this draft agreement contains a higher level of standards to be met by TDS and is more comprehensive than the previous franchise agreement between the City and TDS. He stated that under the draft agreement, the starting residential rate is lower than under the previous agreement, and would be frozen for two (2) years. He highlighted service improvements in the draft agreement, including an increase in bulky waste collections from twice yearly (with the option to pay for extra pick-ups) to once per month, two (2) community events per year to be designated Council, allowance of annual rate increases only upon City Council approval, and greater City control over the renewal process. Prior to Council's second reading of this ordinance, he noted that a Table of Contents will be added to the agreement, as well as a specific reference to the base residential rate in the agreement's rate schedule attachment. City Administrator Ferguson recommended approval of first reading of the ordinance and agreement, as presented, including the aforementioned revisions. He advised that service will continue under the existing franchise agreement until such time the new agreement is executed, with no lapse in service to customers.

Councilmember McCullough moved to approve the item on first reading, as presented. Councilmember Meeks seconded. Motion carried on a vote of 4-0.

3. Discussion and Possible Action

- A. Discuss and consider possible action regarding a proposed operating plan for the recently acquired portable restroom trailer. *(City Administrator; this item was continued from the January 16, 2014 City Council meeting)*

City Administrator Ferguson requested that Council direct staff to enter into discussions with the Wimberley Merchants Association in order to negotiate a possible cost-sharing agreement. He said operating costs are being updated as needed to reflect slightly higher pumping costs.

Councilmember White moved to direct staff to negotiate with the Merchants Association to work out a cost-sharing agreement. Councilmember Thurber seconded. Motion carried on a vote of 4-0.

- B. Discuss and consider possible action regarding a proposed policy relating to commercial photography in the Blue Hole Regional Park. *(Wimberley Parks Board; this item was continued from the January 16, 2014 City Council meeting)*

City Administrator Ferguson presented the Wimberley Parks Board's recommendations for commercial photography fees at the Blue Hole Regional Park swimming area as follows:

- \$40 permit fee per each hourly session
- \$200 annual permit fee with unlimited number of hourly sessions

It was noted that all sessions would be scheduled through the Park office and sessions will not be allowed to conflict with swimming area operating hours. Photography in the rest of Blue Hole Regional Park would not be subject to fees.

Discussion addressed reasoning for the fee amounts, consideration of resident versus non-resident status, requiring proof of insurance from commercial photographers, and setting maximum number of sessions allowed annually (versus unlimited number of sessions per year), defining “commercial” photography as a for-profit venture, and enforcement of unpermitted commercial photography.

Councilmember Thurber moved to approve the commercial photography policy, as presented, with the following revisions: \$50 permit per hourly session (rather than \$40); \$250 annual permit fee (rather than \$200) with unlimited number of hourly sessions; and additional requirement that commercial photographers provide the City with proof of adequate liability insurance. Councilmember McCullough seconded. Motion carried on a vote of 4-0.

Adjourn

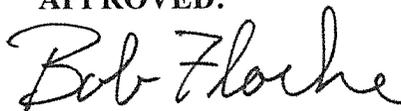
Mayor Flocke called the meeting adjourned at 6:37 p.m.

Recorded by:


Cara McPartland

These minutes approved on the 20th of February, 2014.

APPROVED:



Bob Flocke, Mayor

