

City of Wimberley
 City Hall
 221 Stillwater
 Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
 July 19, 2012 at 6:00 p.m.

City Council meeting called to order at 6:05 p.m. by Mayor Bob Flocke.

Mayor Flocke gave the Invocation and Councilmembers led the Pledge of Allegiance to the United States and Texas flags.

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

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

Citizens Communications

No citizen communications were heard.

1. Consent Agenda

- A. Approval of the minutes of the Regular City Council meeting of July 5, 2012
- B. Approval of the minutes of the Special City Council meeting of July 5, 2012
- C. Approval of the minutes of the Special City Council meeting of July 9, 2012
- D. Approval of the June 2012 Financial Statements for the City of Wimberley
- E. Approval of the appointment of Marilee Wood to the consensus position on the City of Wimberley Parks and Recreation Board representing the Friends of Blue Hole. (*Nominee from the Friends of Blue Hole*)

Councilmember Thurber moved to approve all Consent Agenda items, as presented. Councilmember Meeks seconded. Motion carried on a vote of 5-0.

2. City Administrator Report

- Status report on the development and operation of Blue Hole Regional Park

City Administrator Ferguson reported on a recent Park closure due to heavy rainfall and on strong attendance figures for the Park's swimming area, with revenues running ahead of last year. Phase 2 construction is in its final stages and very near completion.

- Status report on the operation of the Wimberley Municipal Wastewater Treatment Plant

City Administrator Ferguson advised that flows are running at constant levels with no problems to report. He thanked Council for its attendance and support at the Texas Water Development

Board's (TWDB) hearing earlier today relating to the City's funding application for development of a wastewater treatment plant to serve downtown. He anticipated a final decision from the TWDB within the next three to four weeks. It was noted that Council will hold a joint workshop meeting with the Wimberley Central Improvement Area (WCIA) at 5 p.m. on Monday, July 23, 2012. Consulting firm Water Resources Management is expected to present feasibility study results to Council in late August.

- Status report on sales tax collections for the City of Wimberley

City Administrator Ferguson reported that the City received its largest ever July check (representing May sales) in the amount of \$42,385.22.

- Status report on planned improvements to Packsaddle Pass in the Saddleridge Subdivision

City Administrator Ferguson noted reports of deteriorating road conditions and needed repairs, in part attributed to increased traffic resulting from recent construction. He also advised that Hays County has approved its leg of the truck route around the downtown area, which is being submitted to the Texas Department of Transportation (TxDOT) for consideration.

- Status report on the Sign Ordinance Review Task Force

City Administrator Ferguson reported that the first meeting of the Task Force is tentatively set for July 30, 2012 and reminded Council to submit any needed appointments.

3. Public Hearing and Possible Action

- A. Hold a public hearing and consider approval of an ordinance of the City of Wimberley, Texas, approving an application for a conditional use permit submitted by Monta and James Lane to permit operation of a personal care home on a tract of property located at 39 La Toya Trail, Wimberley, Hays County, Texas, zoned Single Family Residential 2 (R-2); and providing for findings of fact; amendment of the zoning district map; repealer; severability; effective date; proper notice and meeting; and providing for certain conditions. (*Monta & James Lane, Applicants*)

City Administrator Ferguson reviewed the subject property's current/proposed zoning and uses, location in Planning Area II, details on the existing personal care home operation/care providers, septic system, and parking. Should Council approve the conditional use permit (CUP), City Administrator Ferguson read a list of staff-recommended conditions that must be included in the CUP. He noted that five (5) written objections have been received to date from property owners within the two-hundred foot (200') notification zone. As a result of those written objections, Council must observe the "Twenty-Percent (20%) Rule" stating that if 20% of the 200' notification area has filed a written objection to the proposed zoning, approval would require a super majority vote by Council. After considerable discussion at its July 12th meeting, the Planning and Zoning Commission voted 5-1 to recommend denial of the CUP.

Planning and Zoning Commission Chair Tracey Dean reported on the difficult decision faced by the Commission. Although the applicant's qualifications as needed care providers were not in question, Chairman Dean noted that the Commission's recommendation to deny was in large part driven by the amount of neighborhood opposition. On behalf of the Commission, Chairman Dean asked that Council consider a way to allow the applicant to continue operations at her personal care home as long as the current sole resident is in need of care.

Mayor Flocke opened the public hearing.

Eagle Rock resident Clint Frankmann (outside of the 200' notification area) expressed opposition to the commercial operation of a personal care home/day care facility in a single family residential subdivision. He asked that Council carefully consider the expressed opposition of surrounding property owners, as well as the Planning and Zoning Commission's recommendation for denial. He spoke of evidence that may be used in possible litigation on this matter. City Administrator Ferguson provided clarification on the "20% Rule," which calculates a percentage of the *area* of the 200' notification zone, not the number of property owners within said zone.

Robert Tate, 28 La Toya Trail (outside of the 200' notification area) expressed opposition to the CUP request and felt that the subdivision's property owner's association should have addressed this issue.

Wray Walker, 5 Palo Pinto Path (outside of the 200' notification area), cited his street as a major thoroughfare for traffic to and from the personal care home and expressed opposition to the CUP request. He did not favor commercial activities in his single family residential neighborhood, which he stated are prohibited by deed restrictions. Mr. Walker noted that the personal care home has operated without proper permitting for several years and asked that Council deny the CUP request.

Mayor Flocke stressed that the City cannot enforce deed restrictions imposed by property/home owners' associations.

Mitch Landry, 7 Palo Pinto Path (outside of the 200' notification area), expressed opposition to commercial uses in a single family residential area. Mr. Landry and City Administrator Ferguson discussed the effect of removing Property #9 on the Notification Map (owned by Trinity Chapel) from the notification area for purposes of calculating the percentage of land area used in order to invoke the "20% Rule."

Mary Mitchell, 8 Palo Pinto Path (within the 200' notification area), spoke of increased traffic attributed to the applicants' personal care home operation and expressed concerns relating to commercial activity in a residential neighborhood.

Applicant Monta Lane cited language from Chapter 123 of the Texas Human Resources Code and stated her intention to apply for an assisted living facility State license. Under such a license, Mrs. Lane stated that she cannot have more than one (1) vehicle per bedroom and cited the statutory definition of "person with a disability" and a list of associated conditions.

Local assisted living facility owner, Janice Breeze, felt appalled by the neighbors' responses to the Lanes' facility and felt it short-sighted to not recognize the need for elderly services that allow family members to reside in residential settings, rather than more institutional environments. She felt overwhelmed by the neighbors' lack of compassion and concern for elderly residents and community needs. Ms. Breeze stated the neighbors' lack of knowledge of the Lanes' personal care home operation for several years contradicts their statements about the negative impact of the home on the residential character of the neighborhood. She felt that Mount Baldy visitation is the greatest source of traffic and questioned the neighbors' certainty about traffic caused by the Lanes' operation. Ms. Breeze also expressed doubts about septice concerns and asked Council to be responsive to the needs of the entire community.

Regarding neighborhood traffic concerns, Monta Lane stated that she counted a total of forty-two (42) vehicles parked at Mount Baldy from 7 a.m. yesterday to 4 p.m. today.

Vina Buse, La Toya Trail/Susha Road property owner (outside the 200' notification area), expressed concerns that approval of this CUP may lead to an increase in future requests by applicants who want to operate businesses in a residential area. She noted the single family residential nature of the subdivision and felt that property values could be negatively impacted, if commercial uses are allowed. She cited increased traffic and wanted the neighborhood to remain a quiet community of nice homes. Ms. Buse stated that the applicant should not be rewarded after operating an unpermitted business for six (6) years and asked that her neighborhood remain strictly residential.

Lynda Lackner, 5 Palo Pinto Path (outside the 200' notification area), asked Council to deny the CUP, cited deed restrictions prohibiting commercial uses, increased traffic attributed to the applicant's personal care home, and an alleged conflict of interest expressed by her property owner's association president. She again asked Council to deny the CUP and stated that the applicant made threatening comments after the Planning and Zoning Commission's public hearing on July 12, 2012.

Ruth Mintz, former owner of 39 La Toya Trail, spoke of her relative's negative experiences and conditions in an assisted living facility in another city. She compared the Lanes' patient to caregiver ratio to the lack adequate staff in nursing homes and asked Council to consider what kind of care they would like to receive for themselves and loved ones.

Wray Walker stated that those opposed to this CUP request are not against home health care, but stressed that the focus should be on the facility's location in an established single family residential area.

Ruth Mintz stated that Monta Lane was not aware of any City zoning regulations prohibiting her business and cited State laws relating to home health providers. She questioned Mayor Flocke's attendance at a 2006 ribbon cutting for the applicant's care home and the lack of objections raised at that time.

Clint Frankmann cited the purchase price of the Lanes' property and questioned why (as new owners), the Lanes' did not educate themselves on deed restrictions. He objected to the location

of the facility in a residential setting and feared that other commercial uses may be allowed in the future, should Council approve this CUP request. He felt that the applicant could sell her residence and operate a personal care home at a more appropriate location.

Mayor Flocke closed the public hearing and opened Council discussion.

Councilmember White acknowledged the difficult decision before Council, recalled a prior CUP denial that faced significant neighborhood opposition, and recognized the City's inability to enforce property owners' association deed restrictions.

Councilmember Thurber stated the City's longstanding policy of requiring a CUP in order to provide opportunities for public input. He acknowledged the City's inability to enforce deed restrictions and asked if the City's legal counsel and staff could find a way to allow the single remaining 100-year old resident to stay in the home for as long as needed, should the CUP be denied.

Councilmember Meeks acknowledged the hard choice before Council and the need for sensitivity, as well as the strong opposition from surrounding property owners, and the Planning and Zoning's recommendation to deny. He found it regrettable that the property owners' association was unable or unwilling to enforce its own deed restrictions.

Councilmember McCullough spoke of the need to be sensitive to the needs of the single remaining resident of the Lanes' personal care home and did not want the City to become an arbitrator between the applicant and the property owners' association. Discussion between Councilmember McCullough and City Administrator Ferguson reviewed the history of septic complaints at the subject property (and resolution of those complaints), approval of an ordinance to create "Personal Care Home" as a conditional use in specified zoning districts, and the need for the Lanes' to apply for a conditional use permit in order to continue operating their existing personal care home. Councilmember McCullough felt that the CUP process, which requires public hearings and invites input, works as intended.

Councilmember Talcott received clarification on the State's "20% Rule," which requires a super majority vote of Council to approve, should 20% or more of the notification area object in writing to the requested zoning. Discussion established that a unanimous vote of Council would be needed to approve the CUP request and that the City's CUP requirement is in compliance with State regulations. Councilmember Talcott understood the need for the services provided by the Lanes and agreed with earlier comments to accommodate the single remaining resident's need for care for as long as needed, should the CUP be denied.

Mayor Flocke stated that the existing operation did not qualify for "grandfathered" status, since it began after the City's incorporation. Mayor Flocke clarified (in response to Monta Lane and Ruth Mintz) that he attended the ribbon-cutting for the Lanes' personal care home in 2006 as a Chamber of Commerce member, but was not aware at that time of the need for zoning action.

In response to Councilmember White's inquiry about motion language, City Administrator Ferguson suggested that any motion to deny include direction to staff to work with legal counsel

to arrive at an arrangement that would allow for the care of the single remaining resident until such care is no longer needed.

Councilmember Thurber moved to deny the CUP, as presented, including the abovementioned language relating to the remaining sole resident, as suggested by City Administrator Ferguson. Councilmember McCullough seconded. Mayor Flocke called for a vote as follows: Councilmember White, aye; Councilmember Thurber, aye; Councilmember Meeks, aye; Councilmember McCullough, aye; Councilmember Talcott, aye. Motion to deny carried on a vote of 5-0.

Mayor Flocke called a brief recess at 7:11 p.m.

Mayor Flocke reconvened the meeting at 7:18 p.m.

B. Hold a public hearing and consider approval of an ordinance of the City of Wimberley, Texas amending Chapter 155 (Zoning) of the Code of Ordinances as follows:

1. Amending subsection (B) of the following sections: §155.035 (Residential Acreage; RA), §155.036 (Rural Residential 1; R-1), to add “one secondary single-family residential building built onsite, provided the secondary residence is not used for short- or long-term rental” as a permitted use; and
2. Amending subsection (C) of the following sections: §155.035 (Residential Acreage; RA), §155.036 (Rural Residential 1; (R-1), to delete “one secondary single-family residential building built onsite: as a conditional use;

providing for the following: findings of fact; repealer; severability; effective date; and proper notice and meeting. (*City Administrator*)

City Administrator Ferguson summarized the current ordinance and provided reasoning for the proposed ordinance, which would allow secondary residences to be built on RA and R-1 zoned properties as permitted (rather than conditional) uses, provided the secondary residences are not used as short- or long-term rentals. The proposed ordinance amendment was unanimously recommended for approval by the Planning and Zoning Commission on July 12, 2012.

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

Discussion addressed:

- RA and R-1 acreage requirements
- Unchanged square footage/setback requirements for primary and secondary residential structures
- Potential detrimental effect to adjacent property owner, particularly on R-1 lots
- Provision in proposed ordinance prohibiting use of secondary residential structure as a short- or long-term rental

- Possible change to neighborhood character in subdivisions consisting of smaller acreage tracts (such as R-1)

Planning and Zoning Commission Chairman Dean provided reasoning for the Commission's unanimous recommendation to approve the proposed ordinance, which he stated would serve the greater good of the community. Discussion addressed variance and "grandfathering" procedures and the need for public education on City zoning and permitting processes.

Councilmember Talcott moved to approve the item on first reading, as presented. Motion died for lack of a second.

Councilmember Thurber moved to approve the item on first reading, as presented, with the following changes:

1. Amending subsection (B) of the following sections: §155.035 (Residential Acreage; RA), ~~§155.036 (Rural Residential 1; R-1)~~; to add "one secondary single-family residential building built onsite, provided the secondary residence is not used for short- or long-term rental" as a permitted use; and
2. Amending subsection (C) of the following sections: §155.035 (Residential Acreage; RA), ~~§155.036 (Rural Residential 1; R-1)~~; to delete "one secondary single-family residential building built onsite: as a conditional use;

Councilmember White seconded. Motion carried on a vote of 4-1. Councilmember Talcott voted against. It was noted that Council will hold the second reading of this ordinance at its next regular meeting on August 2, 2012.

4. Ordinances

- A. Consider approval of an ordinance of the City of Wimberley, Texas, providing for payment of fees or costs by credit card or electronic means; and providing for findings of fact; savings; severability; repealer; an effective date; and proper notice and meeting. (*City Administrator*)

City Administrator Ferguson explained the need to expand the City's credit card payment plan to include acceptance of credit card payments for building permit fees, Community Center rental fees, and municipal court fines and costs. Discussion established that the City will not impose a convenience fee for credit card payments.

Councilmember Meeks moved to approve the item, as presented. Councilmember Thurber seconded. Motion carried on a vote of 5-0.

- B. Consider approval of an ordinance amending Title VII (Traffic Code), Chapter 70 (Traffic Regulations) of the City of Wimberley's Code of Ordinances to amend Section 70.03(E) (Traffic Control Devices) to create a presumption that the registered owner of a vehicle is the person who stopped, stood, or parked the vehicle at the time and place that

an offense occurs with respect to that vehicle; and providing findings of fact, a repealing clause, a savings and severability clause, and effective date, and proper notice and meeting. *(City Administrator)*

City Administrator Ferguson recommended approval of the proposed ordinance to add language to the City Code stating that it is assumed that the registered owner of an illegally parked vehicle is the person who stopped, stood, or parked the vehicle. The additional language was recommended by the City prosecutor to help facilitate the prosecution of future parking tickets issued by the City Marshal.

Councilmember Thurber moved to approve the item, as presented. Councilmember Talcott seconded. Motion carried on a vote of 5-0.

5. Discussion and Possible Action

- A. Discuss and consider possible action authorizing the city administrator to execute a contract with COPsync to provide law enforcement information and reporting software services for the city marshal. *(City Administrator)*

City Administrator Ferguson explained the need for software to be used by the City Marshal for report writing and information access from the field, which will maximize the amount of time spent on patrol duties. Discussion addressed specific costs and hardware/software features, including annual/monthly license and support fees.

COPsync representative Chris Chaney answered questions relating to longevity of hardware devices, software maintenance/updates, information access, and typical down time. City Administrator Ferguson recommended approval of the following italicized change to the proposed contract under Section 9 (Termination): “Within *90 30* business days after termination, we shall provide you a copy of the foreground data stored in our data bases in XML format stored on CR ROM library.”

Councilmember Talcott moved to approve the item, as presented, with the abovementioned recommended change to Section 9. Councilmember McCullough seconded. Motion carried on a vote of 5-0.

- B. Discuss and consider possible action regarding a proposal to change the regular meeting dates of the City of Wimberley Planning and Zoning Commission. *(Planning and Zoning Commission)*

Planning and Zoning Commission Chair Tracey Dean provided reasoning for the Commission’s proposed reduction in its schedule from two (2) regular meetings per month to one (1) regular meeting per month to be held on the second Thursday of each month, for a temporary trial period of ninety (90) days. The Commission will revisit this issue after the ninety (90) trial period and discuss making the change permanent. He stressed that the Commission is committed to serving the public in a timely manner and will call any additional special meetings on the fourth Thursday of the month, if needed.

Councilmember Thurber moved to approve the item, as presented. Councilmember Talcott seconded. Discussion established that the Commission unanimously voted to recommend approval of this meeting schedule change. Motion carried on a vote of 5-0.

- C. Discuss and consider possible action regarding the development of a historic preservation program. (*Mayor Bob Flocke*)

Mayor Flocke pulled this item from consideration to be continued on a future agenda.

- D. Discuss and consider possible action on a proposal that the City of Wimberley partner with the owners of the Wimberley Ace Hardware relating to the future development of City-owned property located at the intersection of Ranch Road 12 and FM 2325. (*City Administrator*)

City Administrator Ferguson advised that the owners of Ace Hardware have recently acquired the property located between their store and a City-owned tract commonly known as the “Y” property, which is slated for future use as a small park. As part of its site demolition of existing buildings to allow for increased parking, Ace Hardware owners have approached the City about assisting with some land clearing and minimal site development on the adjacent City-owned tract, possibly at no cost to the City. Previously presented plans for the prospective park space were reviewed and it was noted that future City Christmas trees will continue to be placed on the subject property.

Councilmember Thurber moved to direct staff to continue discussions with Ace Hardware owners on their partnership proposal and to update Council on the results of those discussions. Councilmember Talcott seconded. Motion carried on a vote of 5-0.

6. City Council Reports

- Announcements
- Future Agenda Items

Councilmember Meeks announced that the Hill Country Recreation Association will be holding its 2012 HCRA Jamboree and BBQ Cook-off fundraising event this weekend.

Hearing no further announcements or future agenda items, Mayor Flocke called the meeting adjourned.

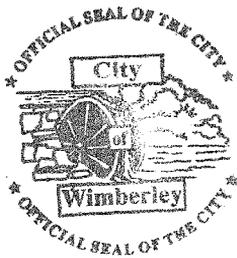
Adjournment: Council meeting adjourned at 8:04 p.m.

Recorded by:



Cara McPartland

These minutes approved on the 2nd of August, 2012.



APPROVED:

A handwritten signature in black ink that reads "Bob Flocke". The signature is written in a cursive style with a large, prominent "B" and "F".

Bob Flocke, Mayor