

City of Wimberley
City Hall, 221 Stillwater
Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
September 1, 2016 at 6:00 p.m.

City Council meeting called to order at 6:00 p.m. by Mayor Mac McCullough.

Councilmember Craig Fore gave the Invocation and Mayor McCullough and Councilmembers led the Pledge of Allegiance to the United States and Texas flags.

Councilmembers Present: Mayor Mac McCullough, Councilmembers Craig Fore, Sally Trapp, Gary Barchfeld, and John White. Councilmember Bob Dussler was absent.

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

Proclamation

Proclamation of the City Council of the City of Wimberley, Texas, proclaiming the month of September 2016 as Hunger Action Month in Wimberley, Texas

Mayor McCullough presented the proclamation to Hays County Food Bank representative Karen Morris.

Mayor McCullough administered the Oath of Office to newly appointed Parks and Recreation Advisory Board member Gary Pigg.

Citizens Communications

Deborah Koeck read from a statement (*full text attached to these minutes*) relating to professional ethics and conflict of interest issues involving Mayor McCullough.

1. Consent Agenda

- A. Approval of minutes of the Regular City Council meeting of August 18, 2016
- B. Approval of minutes of the Special City Council meeting of August 19, 2016
- C. Approval of minutes of the Special City Council meeting of August 23, 2016

Councilmember Trapp moved to approve all Consent Agenda items, as presented. Councilmember Barchfeld seconded. Motion carried on a vote 4-0.

2. City Administrator Report

- Status report on the Central Wimberley Wastewater Project including but not limited to design, easements and project management

City Administrator Ferguson reported that responses to the City's Request for Qualifications (RFQ) for wastewater impact fee studies are being evaluated and anticipated a recommendation to Council on September 15, 2016. He advised that responses to the City's RFQ for project management are due on September 8, 2016 at 2 p.m. at City Hall. He noted that cost estimates for an effluent pond are nearing completion. He stated that the City's EDA grant application is progressing.

- Status report on downtown pedestrian safety signage

City Administrator Ferguson reported that TxDOT has approached the City about taking down the pedestrian crosswalk signs that the City installed to enhance safety. After TxDOT's site visit, it was agreed to allow the signs to stay in place with a change in the wording on the signs to remove "stop" and replace with "yield." He noted that TxDOT also plans to do some pavement markings and evaluate other signage.

- Status report on operation of the Blue Hole Regional Park

City Administrator Ferguson reported the season is winding down and total attendance/revenue figures are being finalized. Maintenance crews are wrapping up rain-related trail repairs and bids are being sought for construction of the maintenance building. He noted that plans are underway for upcoming Christmas events at the Park.

- Status report on the La Buena Vista Drive Improvement Project

City Administrator Ferguson reported that Lone Star Site Work has been contracted to complete the project at a cost of \$69,597. He advised of project scheduling and mobilization and anticipated the project to be completed in approximately two weeks.

- Status report on 2015 Flood Recovery

City Administrator Ferguson reported on extension of the deadline to spend emergency relief funds, which were intended to provide for the City's matching requirement related to the curbside debris collection program. He advised preliminary bill estimates were received from Hays County, but felt it likely that the City's portion will be offset by the amount of volunteer hours. He reported on final stages of FEMA's issuance of new flood maps, including a hydrology study that may help refine numbers for the new maps, which are expected to be released to the public at the end of the year. Details were provided on development of an interior flood notification alarm program and other possible options for warning systems. He reported on removal of a large tilted tree in the Hidden Valley low water crossing area.

3. Presentation

Presentation from the City of Wimberley Transportation Advisory Board regarding a proposed wayfinding signage program. (*Bert Ray, Transportation Advisory Board*)

Transportation Advisory Board representative Bert Ray presented details on the 3-phase program, including maps of sign locations and examples of proposed signage:

- Phase I – Signage located on the entrance highways leading into Wimberley that guides visitors to public destinations of regional interest
- Phase II – Signage within the City which will provide more detailed directions to secondary destinations
- Phase III – Merchandising or commercial signage

The presentation ended with questions and answers and included discussion of budgeting for the signage and history of the City-initiated program.

At this time, Councilmember Barchfeld called upon Hays Caldwell Women’s Center (HCWC) Executive Director Marla Johnson to speak on her organization’s services provided by its family/dating violence program, sexual assault counseling and support, and counseling for abused children. She presented details on the amount of services provided specifically to Wimberley residents and of the need for funding of its programs. HCWC representative Jemm Corona-Morris spoke on educational programs focusing on prevention and provided information on HCWC’s upcoming Wimberley Wellness Fest to help promote a sense of community and raise awareness of the services that HCWC has to offer. Ms. Johnson concluded the presentation with impact statements from her staff highlighting the success of HCWC’s efforts to help its clients deal with trauma.

Mayor McCullough stated that he is an advocate for HCWC’s programs and invited Wimberley Senior Citizens Activities, Inc. (WSCAI) representative Roberta Holland to speak on the need for a local “Meals on Wheels” program, as well as other personal services such as transportation. Ms. Holland cited examples illustrating the need for more efficient service and better quality food for Wimberley residents in need. Discussion followed on the current Meals on Wheels program, outreach to those in need of services, and local match requirements for grant funding.

Mayor McCullough stated that these presentations will be considered as part of Council’s deliberation on development of the Fiscal Year 2017 Budget.

4. Public Hearings and Consider Action

- A. Hold a public hearing and consider approval of an ordinance approving an application for a Conditional Use Permit (CUP) submitted by Carlton Bass to operate a vacation rental facility on property located at 140 Malone Drive, Wimberley, Hays County, Texas, zoned Single Family Residential 2 (R-2), and imposing certain conditions; 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. (*Carlton Bass, Applicant*)

City Administrator Ferguson reported on the subject property’s location, current/proposed zoning and uses, and existing residential structure. Based on a review of the properly functioning and permitted septic system, City staff recommended a maximum occupancy of four

(4) people. City Administrator Ferguson read a list of conditions to be included in the CUP, if approved, and noted that one written response in opposition of the CUP request has been received. He advised that the Planning and Zoning Commission held a public hearing and unanimously recommended denial of the CUP at its August 25th meeting. In addition, he noted that the Commission recommended consideration be given to waiving or reducing the applicant's CUP application fee, should the applicant reapply for the CUP in the future following Council's upcoming review of the short term rental regulations. City Administrator Ferguson highlighted key concerns expressed by the Planning and Zoning Commission on the upcoming short-term rental moratorium consideration.

Mayor McCullough opened the public hearing.

Applicant Carlton Bass spoke of the rebuilding of his residence following the May 2015 flood and offered to answer any questions related to his CUP request. He stressed that he lives across the street from the subject property and will be available to address potential concerns such as trespassing onto neighboring properties and maintaining the subject property. Mr. Bass conveyed his conversation with the neighbor expressing opposition and felt that addition of specific language in the lease agreement has relieved his concerns regarding liability. He noted that Terrie Bursiel's booking agency will be managing the vacation rental. Discussion between Mr. Bass and Councilmember Barchfeld addressed efforts to resolve issues causing concern to neighbors, specifically the Boatrights and Hoffmans, as well as the assurance that the vacation rental will not be marketed for an occupancy of more than four (4) people.

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

Councilmember Trapp moved to approve the CUP, as presented. Councilmember Fore seconded. Motion carried on a vote of 4-0.

- B. Hold a public hearing and consider approval of the second and final reading of a proposed ordinance amending Title XV (Land Usage), Chapter 155 (Zoning), Subchapters 155.105 (Conditional Uses) and 155.077 (Development Plan Review), Section (E) (Approval Process), Subsection (3) (Effect of Development Plan Approval) of the City of Wimberley Code of Ordinances to provide an expiration date for unused conditional Use Permits; and including the following: findings of fact; savings; severability; repealer; effective date; and proper notice and meeting. (*City Administrator*)

City Administrator Ferguson explained the proposed ordinance establishing a "sunset" review for all future CUPs, which would be reviewed two (2) years after they are granted to see if progress has been made toward completion of the project described in the CUP. He noted that on August 18th that Council held a public hearing and voted unanimously to recommend approval.

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

Councilmember Barchfeld asked if existing CUPs will be affected by this ordinance and City Administrator Ferguson replied that the ordinance would only apply to future CUPs.

Councilmember White moved to approve the ordinance on second and final reading, as presented. Councilmember Trapp seconded. Motion carried on a vote of 4-0.

- C. Hold a public hearing on the Proposed *Fiscal Year 2017 City of Wimberley Budget*. (*City Administrator; no action will be taken on this item*)

City Administrator Ferguson stated the requirement to hold a public hearing prior to adoption of the Fiscal Year 2017 Budget, which is scheduled for action at Council's September 15th meeting.

Mayor McCullough opened the public hearing.

Gail Pigg, speaking on behalf of the Blanco River Cypress Creek Water Association (BRCCWA), thanked Council for its support of a "no-discharge" option for the central Wimberley wastewater system. She asked whether water quality monitoring would be covered in the proposed Budget and City Administrator Ferguson replied affirmatively.

Casey Craig spoke on the need for an arrow in the center turn lane through the Square to enhance safety for vehicles turning left. City Administrator Ferguson advised that TxDOT plans include re-striping and removal of arrows pointing toward the "Do Not Enter" signs. Ms. Craig enjoyed the earlier presentation on signage, but stated she is not a fan of putting signs all over Wimberley, and would rather see money go to causes such as Roberta Holland's earlier proposed program.

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

No action was taken.

5. Discussion and Possible Action

- A. Discuss and consider possible action on issues relating to the development of the Proposed *Fiscal Year 2017 City of Wimberley Budget*. (*City Administrator*)

City Administrator Ferguson provided clarification on an expenditure related to completion of a drainage study to Councilmember Trapp.

Councilmember Barchfeld understood the need for social service funding and read the following statement: "I am in support of donating to charitable organizations. My wife Martha and I are supporters of several local, state, and national charitable organizations. I think charities provide services to communities and individuals that are not provided by the government. I firmly believe the job of the City government is to provide services to its citizens with the money it collects. In today's economy, with such limited funds and so many needs for these funds, I do not see it as fiscally responsible for the City to involve itself in funding charitable organizations. We need to use this money we collect in taxes and fees to provide City services to our

community. In fairness, I cannot support dedicating City of Wimberley budgeted funds to social service donations.”

Discussion addressed Council’s willingness to negotiate the amount of proposed social service funding, budget needs, and decisions on where to trim the budget in other areas (such as capital expenditures) in order to provide social service funding. Other topics included the City’s expenditures for storage space and possible alternatives; past Councils’ positions on using Fund Balance for social service and capital expenditures; cutting expenditures to avoid using Fund Balance for the City’s \$100,000 annual contribution to help fund the central Wimberley wastewater system; landscaping/maintenance costs for downtown (as opposed to other areas) and possible cost-sharing with the Merchants Association or Keep Wimberley Beautiful; cost-effective options for provision of radios for Council members; possible expansion of the city marshal’s position from part-time to full-time; possible addition of a reserve deputy marshal position; existing interlocal agreements with Hays County law enforcement agencies, which do not include enforcement of City ordinances; establishment that certain legal expenses related to Mill Race Lane have already been paid for; and separate budget development for the wastewater system upon loan approval.

Additional discussion of social service funding addressed possible contribution amounts, the City’s role and responsibility to its citizens, and difficulty in choosing which organizations are most deserving of funds.

Audience member Juniper Schneider spoke of Council’s past discussion of a decorative wall on River Road to please wealthy homeowners and lack of objections to its cost. He said when the topic of the poor comes up it is always about money and “where we have to stop.” He asked if Wimberley’s abused women and children and seniors in need of meals should be told to go to places such as churches or local businesses for help. He questioned why the City keeps praying before its meetings, if this is the kind of Wimberley we are.

Councilmember Trapp responded to Mr. Schneider’s comment on River Road restoration by noting that the project cost was covered by insurance proceeds. She said the City has a \$100,000 deficit and acknowledged the difficulty of many balancing many needs such as pothole repairs and tree trimming with other needs. She sympathized with Mr. Schneider and noted her own volunteer work with Safe Place.

Mayor McCullough asked Council to consider budgeting \$9,500 for social service funding and called for ways to trim the proposed Fiscal Year 2017 Budget to accommodate such funding. Discussion addressed reallocation of the remaining portion of the \$30,000 allocated for social service funding in the proposed Budget; trimming of the Budget to completely avoid borrowing from Fund Balance; projected sales tax revenues; difficulty associated with deciding which social services organizations will receive funds; direction to staff to conduct overall trimming of the proposed Fiscal Year 2017 Budget; and state-mandated deadline to approve the Budget no later than September 30, 2016.

No action was taken.

B. Discuss and consider possible action regarding the proposed Fiscal Year 2017 City Council Goals and Priorities. (*Mayor Mac McCullough*)

City Administrator Ferguson presented the list developed as a result of Council's two workshops. Council agreed on the list, as presented, and Councilmember White said goals are wonderful, but many are a "pipe dream," and may not ever happen.

Councilmember Trapp moved to approve the Fiscal Year 2017 City Council Goals and Priorities, as presented. Councilmember Barchfeld seconded. Motion carried on a vote of 3-1. Councilmember White voted against.

C. Discuss and consider action to revoke the Wimberley Planned Development District ("WPDD") ordinance for 400 Mill Race Lane. (*Mayor Mac McCullough*)

Councilmember Trapp recused herself from the meeting at this time.

Mayor McCullough requested to pull this item from the agenda. Councilmembers Fore and Barchfeld agreed on pulling this item. Former Mayor Steve Thurber asked Mayor McCullough why he is removing this agenda item. Mayor McCullough stated he is satisfied with progress on this issue and does not see a need to consider it at this time. No action was taken.

Councilmember Trapp rejoined the meeting at this time.

D. Discuss and consider possible action regarding the future collection of certain building permit, zoning and subdivision fees relating to properties impacted by the May 2015 Flood in Wimberley, Texas (*City Administrator*)

City Administrator Ferguson reviewed Council's past actions to waive the City's portion of building permit fees for flood-impacted properties and asked for Council's direction on continuation of such fee waivers, as many properties have been rebuilt and some subsequently sold to new owners.

Discussion addressed the amount of fees waived to date and did not favor extending fee waivers if the flood-damaged property has changed ownership (except for heirs/family members).

Councilmember Trapp moved to continue waiving fees for those impacted by the May and October 2015 flood events who are the same owners (as before the floods) or their family members or heirs. Councilmember Barchfeld seconded. Discussion continued on the length of time to continue the fee waivers and addressing future efforts regarding substandard flood-damaged structures. Clarification was provided to establish that Council would reassess continuation of fee waivers at its last meeting in May 2017. Councilmember Trapp restated her motion to continue waiving the subject fees, as originally stated, with Council to conduct a review of fee waiver continuation on May 30, 2017.

Audience member Allison Campbell said she paid for a building permit needed as a result of the 2013 flood, but her plans were not accepted. She did not feel it was right for her to pay again for

permit(s) needed as a result of the October 2015 flood. City Administrator Ferguson clarified that Councilmember Trapp's motion included both the May and October 2015 floods. Discussion resulted in agreement to extend the reassessment date from May 2017 to October 19, 2017. Councilmember Trapp agreed to change the extension of the aforementioned reassessment date to October 19, 2017, as discussed, to her previously stated motion. Councilmember Barchfeld seconded. Motion carried on a vote of 4-0.

- E. Discuss and consider possible action on matters stemming from the second meeting of representatives of Aqua Texas and representatives of the City of Wimberley regarding the potential provision of various wastewater services in central Wimberley. (*Place Three Councilmember Sally Trapp*)

Councilmember Trapp said a second meeting has not been held, but there has been a good dialogue and information exchange between the City and Aqua Texas, and anticipated a meeting to be scheduled for the week of September 19, 2016. No action was taken.

- F. Discuss and consider action awarding a contract for professional auditing services. (*City Administrator*)

City Administrator Ferguson presented information on the four (4) respondents to the City's RFP for professional auditing services and recommended awarding of a contract to Armstrong, Vaughan & Associates, P.C. of Universal City, Texas.

Councilmember White moved to award a contract for professional auditing services to Armstrong, Vaughan & Associates, P.C., as presented. Councilmember Fore seconded. Motion carried on a vote of 4-0.

- G. Discuss and consider possible action authorizing the city administrator to seek construction bids for the Hidden Valley Low Water Crossing Reconstruction Project. (*City Administrator*)

City Administrator Ferguson presented an aerial view of the project's design, timeframe for completion, incentives for early completion, and anticipated completion of the project within 120 days.

Discussion addressed approval of a 90-day versus a 120-day substantial completion deadline.

Councilmember Trapp moved to authorize the city administrator to seek construction bids for the Hidden Valley Low Water Crossing Reconstruction Project, with substantial completion of the Project to be within 120 days. Councilmember Barchfeld seconded. Motion carried on a vote of 4-0.

- H. Discuss and consider possible action regarding the Comprehensive Fund Balance Policy and Fund Balance Classification Plan for the City of Wimberley. (*City Administrator*)

City Administrator Ferguson explained the City's obligation to review the Policy and Plan on an annual basis, with no changes recommended. He stated the Policy's primary objective to improve the usefulness and comparability of fund balance information by reporting fund balance in more insightful and meaningful components and the Plan's objective to identify how dollars in fund balance are to be classified. He stressed that Council may change the classifications at any time, with the exception of those funds classified as non-spendable or restricted.

Councilmember Fore moved to approve the Comprehensive Fund Balance Policy and Fund Balance Classification Plan, as presented. Councilmember Trapp seconded. Motion carried on a vote of 4-0.

- I. Discuss and consider action regarding the City of Wimberley Investment Policy. (*City Administrator*)

City Administrator Ferguson explained that State law requires Council to review the Policy on an annual basis, with no changes recommended. Brief discussion addressed current interest rates.

Councilmember Trapp moved to approve the City of Wimberley Investment Policy, as presented. Councilmember Barchfeld seconded. Motion carried on a vote of 4-0.

- J. Discuss and consider action regarding the proposed renewal of the City of Wimberley's existing lease agreement for an off-site storage unit. (*City Administrator*)

City Administrator Ferguson presented details on the revised lease agreement, which reflects a \$25/month increase. Discussion addressed possible alternatives to using the existing storage space, including using part of the planned Blue Hole Regional Park maintenance building for storage, leasing a less expensive unit, and option to terminate the existing lease, if desired.

Councilmember Barchfeld moved to approve the lease agreement, as presented. Councilmember Fore seconded. Motion carried on a vote of 4-0.

- K. Discuss and consider possible action regarding a request from the Wimberley Volunteer Fire Department ("WVFD") for the City of Wimberley to waive a portion of the City's building permit fees for the planned construction of a canopy at the WVFD Fire Station. (*City Administrator*)

City Administrator Ferguson recommended approval of waiving \$153.75, the City's portion of building permit fees, and noted that WVFD would be responsible for pass-through plan review/inspection fees.

Councilmember Trapp moved to approve the request from the Wimberley Volunteer Fire Department ("WVFD") for the City of Wimberley to waive a portion of the City's building permit fees for the planned construction of a canopy at the WVFD Fire Station and that waiving the fees serves a valid municipal purpose. Councilmember White seconded. Motion carried on a vote of 4-0.

- L. Discuss and consider possible action regarding plans for the upcoming 2016 Brewster's Music Fest on Saturday, September 17, 2016.

City Administrator Ferguson presented details on the outdoor music event to raise funds for Wimberley EMS, including event activities and recommended approval.

Councilmember White moved to approve the plans for the upcoming 2016 Brewster's Music Fest on Saturday, September 17, 2016, as presented. Councilmember Fore seconded. Discussion addressed the specific location for the event. Motion carried on a vote of 4-0.

- M. Discuss and consider possible action regarding plans for the *2016 Spirit of Texas Bike Ride* on Sunday, October 2, 2016. (*City Administrator*)

City Administrator Ferguson presented details on the bike ride to raise funds for Wimberley High School Band, including course routes, traffic control, signage, insurance, and anticipated number of riders.

Councilmember Barchfeld moved to approve plans for the *2016 Spirit of Texas Bike Ride* on Sunday, October 2, 2016. Councilmember White seconded. Motion carried on a vote of 4-0.

6. City Council Reports

- Announcements
- Future Agenda Items

Mayor McCullough stated this was a productive meeting and reviewed correspondence between himself and Hays County District Attorney Wes Mau regarding the Mayor's testimony and outcome of a grand jury hearing resulting in a "no-bill" decision. He said nothing has changed and cited his six-year involvement with the sewer system as the context for his statement to "hurry up." He stated he never wanted a discharge and favored the direction of having the cleanest effluent. He said he will continue to move forward and be mayor "and keep this ball rolling."

Councilmember White requested discussion of a recent appellate court ruling on TxDOT's authority to regulate certain highway signage.

Councilmember Barchfeld said it was a good thing that Mayor McCullough sought information from the Hays County District Attorney Wes Mau. Mayor McCullough read from his email to Mr. Mau requesting any available documentation on the grand jury's "no-bill" action or official response or notice of the grand's jury's decision.

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

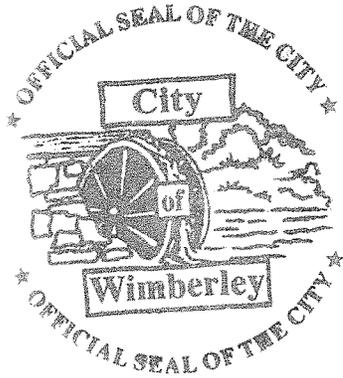
Adjournment: Council meeting adjourned at 9:18 p.m.

Recorded by:

Cara McPartland

Cara McPartland

These minutes approved on the 15th of September, 2016.



APPROVED:

John D. White

John D. White, Mayor Pro Tempore

In the past I have come to you as Dr Deborah Koeck and we have discussed Water Quality. Tonight, I come as Debbie Clayton Koeck to discuss professional ethics. On August 19th, Mayor Mac McCullough stated at the Special City Council Meeting that he wants to " *cut back on the discussion(of the sewer) that so many people here want to weigh in on.... people who have no Dog in the Fight.....no equity... no property. I am really tired of people telling me how to do this.*"

That "Dog in the Fight" coupled with his affidavit filed in February of 2016 for the May election constitutes Conflict of Interest in the State of Texas under Chapter 171. The Mayor claims a substantial interest in the Wimberley Café and as such is not eligible to speak to or to vote on any issues that have economic impact on the Wimberley Square including the Wastewater Project, Downtown restroom trailers and Downtown traffic and parking issues. Chapter 171 states "In the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public, the official shall abstain from further participation in the matter."

I call upon Mayor McCullough to recuse himself from all comments, discussion and voting activities with respect to issues that pertain to his family businesses on the Wimberley Square. I ask the City Council to research and take proper action if Mayor McCullough continues to refuse to recuse himself on any issues in which he has a Conflict of Interest.

Mr. Mayor, that "Dog in the Fight" and the signed affidavit along with your "Property and Equity" legally eliminate your ability to personally "*cut back on the discussion that so many people here want to weigh in on*" and prevents YOU from telling the entire Wimberley Valley "*how to do this*".

References:

Opinion of Ethic Commission – December 2006

<https://www.texasattorneygeneral.gov/opinions/opinions/50abbott/op/2006/htm/ga0446.htm>

Texas Statutes

<http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.171.htm>

City Council

<http://www.cityethics.org/mc/ci/recusal>

Case Law

<http://law.justia.com/cases/new-jersey/supreme-court/2015/a-53-13.html>