

City of Wimberley
City Hall
221 Stillwater
Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
October 3, 2013 at 6:00 p.m.

City Council meeting called to order at 6:00 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, City Secretary Cara McPartland and City Attorney Brad Young

Citizens Communications

Pedernales Electric Cooperative (PEC) Chief Executive Officer John Hewa provided details on his professional background and introduced PEC Engineering Manager Robert Peterson and District Manager Bob di Fonzo. He spoke on upcoming PEC projects and programs relating to utilization of technology, renewable energy systems/goals, conservation, and facilities maintenance, including a rebuild of the substation near the Junction. In response to Council/audience member questions, Mr. Hewa provided information on PEC's use of renewable energy sources, software/mobile applications to improve customer communications, and tree-trimming operations.

Mary Kate Brown of 250 Cedar Hollow expressed concerns about the water quality data published regarding the Cypress Creek Bridge area and felt that a bat colony roosting in the bridge has negatively impacted water quality at the bridge and downstream. She cited past and current research statistics on water quality and bat colonies elsewhere in Texas and stated test data was skewed for locations between bat colony roost sites and up to 1,000 feet downstream. She said bat colonies have a huge ecological impact on our community, including helping control insect populations such as West Nile virus-carrying mosquitoes. She said there has been a large increase in bat populations within the last five years and that the bats' migration period coincides with Wimberley's tourist season. She spoke of her communication with a bat conservation group about the possible listing of Wimberley as a bat-roosting tourist site, which she felt might boost tourism. Ms. Brown felt that Wimberley should become a "bat haven" and asked if the data point downstream from the Cypress Creek Bridge could be excluded from all water quality conversations in the future and not be tied into failing septic tanks. She offered copies of study materials referenced in her remarks and photos of the bat colony roost and its runoff into Cypress Creek.

Proclamation

A proclamation of the City of Wimberley, Texas proclaiming the month of October 2013 as *Turkeys Tackling Hunger Month*.

Mayor Flocke presented the proclamation to Hays County Food Bank (HCFB) representatives Marsha Cooper and Naomi Narvaiz who thanked Council, and provided information on food bank services and methods of donation. Mayor Flocke encouraged all those present to donate and thanked everyone who contributed.

1. Consent Agenda

Approval of the minutes of the Regular City Council meeting of September 19, 2013

City Administrator Ferguson recommended the following amendment on page 6 (Item 6E) from ~~“... Wimberley Merchants Association \$2,000 initial annual donation to help fund the trailer”~~ to ~~“... possible donation from the Wimberley Merchants Association to help fund the trailer. . .”~~

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

2. City Administrator Report

- Status report on *The Central Wimberley Wastewater Project*

City Administrator Ferguson reported on the Texas Water Development Board (TWDB) loan closing, stakeholder group meetings, and anticipated the final stakeholder meeting to be held on November 22, 2013.

- Status report on Cypress Creek water quality issues

City Administrator Ferguson reported that the City is aware of several area bat populations and stated that discussions with lab personnel indicated test points were sufficiently downstream of the aforementioned bat colony, which is relatively small in population. He noted that tests are not conducted during times of rain, which is typically when droppings come into the stream. He cited a consistent upward trend in bacteria levels, even in times when bats have migrated elsewhere and pointed to multiple possible sources for high readings, including animal waste and failing septic systems. There was brief discussion of testing point locations and Mayor Flocke cautioned the public against the dangers of contact with bats, which are commonly infected with rabies. City Administrator Ferguson stated the last test report contained a significant spike upstream on the Blanco River, with additional test results forthcoming as monitoring continues.

- Status report on the development of a Cypress Creek Watershed Protection Plan

City Administrator Ferguson reported on the timeframe for completion of the Plan and its importance to the community in setting guidelines for future growth and development,

establishing best management practices, and serving as a benchmark for potential funding. He commended the task force for its work in developing the Plan.

- Status report on the search for a manager for the Blue Hole Regional Park

City Administrator Ferguson reported that Laura Shrum has been hired as Park manager, highlighted her background and qualifications, and advised that Ms. Shrum will be introduced at Council's next meeting.

- Status report on the revision of fees and policies for the Wimberley Community Center

City Administrator Ferguson reported that revisions will be presented to Council in early November to help address recovery of certain costs and facility maintenance, including additional security requirements.

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

City Administrator Ferguson reported on the Park's final weekend of this season, with inclement weather necessitating closure of the Park early on Saturday, September 28th and all day Sunday, September 29th. He noted that the swimming area is now closed for the season and off-season restoration work and improvements are underway. He reported on facility rental activity and increased interest in the Park as a filming location.

In response to safety concerns expressed by citizens regarding bow-hunting, City Administrator Ferguson reported that Council's next agenda will contain an item to discuss and consider possible adoption of regulations. Additionally, City Administrator Ferguson provided information on the use of the former Bowen Elementary School campus as a location shoot for a network television show and the possible impact on traffic. He noted that shooting will take place from October 7 -10 and that Texas Department of Transportation permission has been obtained for closure of Ranch Road 12 at certain times. Addressing rumors about the sale of the former Bowen campus by Wimberley Independent School District (WISD), City Administrator Ferguson said that any reports of the property's sale are premature and that WISD has not made a final determination, with questions regarding the property to be directed to WISD Superintendent Dwain York.

There was brief discussion between Councilmember Meeks and City Administrator Ferguson on water quality test indicators and enhanced testing that may help identify specific sources of pollution.

3. Public Hearing and Possible Action

Hold a public hearing and consider approval of an ordinance approving an application for a conditional use permit submitted by Alison Courtney Campbell to allow for a secondary residential building on a 2.05 acre tract of land zoned Single Family Residential 1 (R-1), located at 411 Mill Race Lane, Wimberley, Hays County, Texas, 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. *(Alison Courtney Campbell, Applicant; this agenda item was continued from the September 19, 2013 meeting of the City Council)*

This item was heard after Agenda Item 5C.

City Administrator Ferguson reviewed the subject property's location, current/proposed zoning, existing structures (main residence and pole barn), and intended use of the pole barn as a secondary residential building to house family member(s). It was noted that the pole barn is not currently connected to a septic system; however, the structure is equipped with a composting toilet, along with a shower and sink previously connected to an unauthorized grey water system. He advised that the City has been notified by the applicant that the grey water system has been disconnected and there is no water service to the pole barn structure, which is currently unoccupied.

He stated that access to both the main residence and pole barn is gained from Mill Race Lane via a shared access easement that is currently the subject of litigation between the applicant and an adjacent property owner. City Administrator Ferguson emphasized that the easement is a separate issue and that the requested conditional use permit (CUP) shall not be construed to alter, interfere with, abrogate, or annul any easements, covenants, or other agreements between parties.

City Administrator Ferguson advised that one (1) adjacent property owner, Bill Appleman of Creekhaven LLC, has submitted written opposition based on concerns regarding negative impact on surrounding property values. It was noted that correspondence in support of the CUP request has been received from another adjacent property owner, and two (2) property owner owners in the area of the subject property, along with the previous owner of an adjacent property. He advised that a super majority vote of Council is not needed to approve the CUP, since the area represented by Mr. Appleman's property is under the twenty percent (20%) threshold required to trigger the super majority vote requirement.

City Administrator Ferguson concurred with the Planning and Zoning Commission's recommendation on September 12, 2013, for approval, which included the following conditions:

- Prior to use of the pole barn as a secondary residence, the applicant shall secure the required variance for any setback encroachments relating to the structure.
- Prior to use of the pole barn as a secondary residence, evidence shall be provided to the City that the pole barn is City Code-compliant and suitable for occupancy.
- Prior to use of the pole barn as a secondary residence, the structure shall be properly connected to a water supply so the subject structure has running water service.
- Prior to use of the pole barn as a secondary residence, the structure shall be properly connected to a permitted on-site septic system.
- The pole barn shall never be made available for rent.
- Parking shall be prohibited within the subject property's required building setbacks.

City Administrator Ferguson explained that the subject CUP request is one of several actions being taken by the applicant to resolve Code compliance issues relating to the construction and

occupancy of the pole barn. These Code compliance issues include the lack of a valid building permit for the structure, stop work orders, the encroachment of the structure into an interior setback on the property, and evidence that the structure was being used as a residence. To resolve these concerns, the applicant is seeking the subject CUP, along with a Board of Adjustment variance for the setback encroachment, and is willing to submit evidence of the structure's safety and compliance with City Code. Maps of the subject property were displayed, including location of specific structures on and adjacent to the subject property.

Applicant Alison Campbell distributed photos of the pole barn to Council, spoke on the incrementalist approach taken regarding the pole barn's construction, its artistic features, and its current/proposed use(s). She expressed willingness to comply with City Code requirements.

Councilmember Talcott asked Ms. Campbell to provide reasoning for the lengthy construction period of ten-plus years and eventual CUP request. Ms. Campbell stated that early verbal correspondence with the City indicated permits were not needed and the original building permit file was either missing information or not conclusive as to the sequence of communications/actions by the City or the Campbells. She said that this CUP was requested in order to comply with City Code requirements for use of the pole barn as a secondary residence.

Councilmember Talcott referred to correspondence from 2003 between the City and applicant, the length of the construction period, and the building height of the pole barn. Discussion addressed the validity of a building permit dated 2003, and subsequent communications between the City and the applicant.

Councilmember Talcott favored delaying CUP approval until engineering studies have been submitted on the subject structure's safety and compliance. Discussion followed on location of the subject property's propane tank and certification on structural safety. Regarding possible delay of this CUP consideration and approval, Ms. Campbell preferred to move forward with hooking up the shower, sink, and toilet, as her daughter is anxious to move back into the pole barn structure.

Discussion addressed previous building inspection reports indicating approval/disapproval of certain items, whether disapproved items were corrected by the applicant, prior stop work orders issued, establishing the timeframe for commencement of construction, and incrementalist construction approach.

Mayor Flocke opened the public hearing.

Notified property owner Merry Gibson spoke in support of the CUP request and admired the Campbells' artistic abilities. She said the Campbells have been good neighbors, stewards of the creek, and supportive of the community.

Notified property owner Scott Johnson spoke of his respect for the Campbells as great neighbors, and commended their artistic style and incremental construction process.

Notified property owner Bill Appleman stated there is a lot of contradictory information that has been presented tonight and said that the facts are in front of Council. He appreciated Council's consideration in denying this request and offered to answer any questions.

Gail Pigg of 2214 Flite Acres spoke in support of the CUP request and of her friendship with the Campbells. She spoke of a past severe flood event affecting the Campbells and cited their need for the pole barn as an elevated place to provide safe haven, should another flood occur.

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

Mayor Flocke stated his understanding of the purpose of this CUP request to bring the subject property into compliance. City Administrator Ferguson reminded that this CUP request is regarding land use and not about construction of the pole barn or its location on the property.

Councilmember McCullough moved to approve the CUP application, as presented. Councilmember White seconded.

Discussion addressed construction period timeframe, prior correspondence between the applicant and City administration to resolve zoning/building permit issues, and height of the pole barn.

City Administrator Ferguson reminded the Commission members that they may consider any or all of the following in making CUP recommendations, pursuant to City Code §155.105 Conditional Use Permits (B)(1)(a-g):

B) Conditional use permit regulations.

(1) In recommending that a conditional use permit for the premises under consideration be granted, the city shall determine that the uses are harmonious and adaptable to building structures and uses of abutting property and other property in the vicinity of the premises under consideration, and shall make recommendations as to requirements for the paving of streets, alleys, and sidewalks, means of ingress and egress to public streets, provisions for drainage, adequate off-street parking, screening, and open space, heights of structures, and compatibility of buildings. In approving a requested CUP, the Planning and Zoning Commission and the City Council may consider any or all of the following:

(a) The use is harmonious and compatible with surrounding existing uses or proposed uses, and does not more adversely affect an adjoining site than would a permitted use;

(b) The architecture, facade, and signage designs of the use are traditional hill country designs and are harmonious with those of adjacent uses. In the case of chain establishments, they shall not include or simulate the signature designs of those establishments beyond the absolute minimum necessary to identify the establishment;

(c) The use requested by the applicant is set forth as a conditional use in the base district;

(d) The nature of the use is reasonable;

(e) The conditional use does not adversely affect the safety or convenience of vehicular or pedestrian circulation, including reasonably anticipated traffic and uses in the area;

(f) The conditional use does not adversely affect an adjacent property by its resulting traffic through the location, or its lighting, or its type of sign; and

(g) Any additional conditions specified, if any, ensure that the intent and purposes of the base district are being upheld.

City Administrator Ferguson reminded that the pertinent issue is the CUP application's requested use and the impact of that use on the area.

Discussion addressed how to best resolve compliance issues in a fair and non-punitive manner; consistency in application/enforcement of City regulations; review of recommended CUP conditions; comparison to prior CUP requests; possible continuance of this item until applicant has submitted requested documents; possible imposition of a deadline for submission of those documents; and need for approval of variance(s) to satisfy CUP conditions.

After discussion of specific deadline options, Councilmember Thurber requested a friendly amendment to include a deadline of March 1, 2014 for submission of requested documents by the applicant, with ability to extend the deadline once for just cause. Councilmember White accepted Councilmember Thurber's friendly amendment.

Mayor Flocke called for a vote on the motion, as amended: Councilmember Talcott, nay; Councilmember McCullough, aye; Councilmember Meeks, aye; Councilmember Thurber, aye; Councilmember White, aye. Motion carried on a vote of 4-1.

4. Ordinance

Consider approval of the second and final reading of an ordinance of the City of Wimberley, Texas, amending Title IX (General regulations) of the Code of Ordinance of the City of Wimberley to add Chapter 98 (Keeping of Chickens); providing for findings of fact, a repealing clause, savings and severability clause, and effective date. (*City Administrator*)

City Administrator Ferguson reviewed current regulations, Planning and Zoning Commission's recommendation for approval, and proposed regulations, including minimum acreage requirements (single family residential properties two acres or greater in size), prohibition on roosters/slaughtering of hens, and location of enclosures to allow for specific setbacks from adjacent properties.

Councilmember Talcott moved to approve the ordinance on second and final reading, as presented. Councilmember Thurber seconded. Motion carried on a vote of 5-0.

5. Discussion and Possible Action

Agenda Items 5A, 5B, and 5C were heard after Agenda Item 2.

- A. Discuss and consider possible action on a proposal that the City of Wimberley provide daily admission passes to the swimming area at the Blue Hole Regional Park and limited use of certain facilities at the Park at no cost to select participants in a new *Friends of Blue Hole* membership program. (*Laura Kistner, Executive Director of the Friends of Blue Hole*)

City Administrator Ferguson highlighted the incentive package for the proposed membership program and introduced the new Executive Director of the *Friends of Blue Hole* (FOBH), Laura Kistner.

Ms. Kistner explained details of the program intended to provide value to its members, including funding goals, and specific features such as free swimming area passes, member recognition, invitation to *Friends of Blue Hole* events, a special “early entry day,” and free use of certain amenities. City Administrator Ferguson summarized the Park’s admission/rental use fees and felt there will be a favorable return on the City’s provision of passes/rentals at no cost.

Discussion addressed retention rate of free passes/facility use rentals and favored approval of the membership program.

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

- B. Discuss and consider possible action accepting financial contributions from the *Friends of Blue Hole* and Mike Stude to help fund certain improvements at the Blue Hole Regional Park, in accordance with the Friends of Blue Hole – City of Wimberley Partnership Agreement and Blue Hole Element/Amenity Naming Policy, and authorizing the mayor to execute any necessary documents relating to said donations. ((*City Administrator*))

City Administrator Ferguson reviewed the City’s donation/naming policies and FOBH Executive Director Laura Kistner spoke on recent successful fundraising efforts resulting in donations of \$85,000 from Friends of Blue Hole and \$50,000 from Mike Stude to help fund certain Park improvements. It was noted that the subject improvements will carry the following names: *Friends of Blue Hole Children’s Play Area* and *Entry Garden – Given in honor of Anita Stude by her husband, Mike Stude*.

Councilmember Thurber gave a reminder about the *FOBH Party for the Blue Hole Park* event to be held October 5th at Blue Hole Regional Park.

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

- C. Discuss and consider possible action approving a new legacy gift opportunity to help fund the *Native Grassland Prairie* at the Blue Hole Regional Park. (*City Administrator*)

City Administrator Ferguson explained the *Legacy Gift* program and Ms. Kistner presented the proposal to name the *Native Grassland Prairie* located in the Park's swimming area parking lot, in accordance with the *Blue Hole Element/Amenity Naming Policy*, which would carry the name of the donor for a \$20,000 contribution.

Councilmember Thurber moved to approve the item, as presented. Councilmember Talcott seconded. There was brief discussion of the location of the *Native Grassland Prairie*. Motion carried on a vote of 5-0.

- D. Discuss and consider possible action regarding the possible development of a general obligation bond issue relating to street and drainage improvements. (*City Administrator*)

This item was heard after Agenda Item 4.

City Administrator Ferguson presented various scenarios on funding street and drainage improvements, including term lengths and associated debt service, tax rates, appraised values, and potential revenue. He stressed the importance of public education/input and timing of the bond issue, which requires a public vote on a general election date in either May or November. He noted the need for a drainage study to help identify and prioritize drainage issues and for an update to the most recent street assessments.

Discussion addressed estimated costs of a drainage study, possible partnerships with other governmental entities, timing of a potential bond issue, and possible inclusion of study costs into the bond issue.

No vote was taken.

- E. Discuss and consider possible action on a proposal relating to the future operation of the mobile restroom trailer recently acquired by the City of Wimberley. (*City Administrator*)

City Administrator Ferguson presented estimated annual costs for disposal, personnel, supplies, utilities, and water usage, as follows:

- Disposal - \$12,600
- Personnel - \$13,700
- Supplies - \$1,900
- Electricity - \$750-780
- Water - \$60-70

Discussion addressed staffing days/times, and various funding mechanisms such as a possible city-wide business license program, user fees, advertising, possible assessment through a limited boundary Public Improvement District (PID), continuing dialogue with the Merchants Association on possible funding contribution(s), and location of advertising signage.

City Administrator Ferguson advised that the restroom trailer is currently in production and will soon be available for pick-up. Discussion continued on development of a token program and various options for sale of tokens.

City Administrator Ferguson advised that detailed token and advertising plans will be presented to Council at a future meeting.

No vote was taken.

- F. Discuss and consider possible action regarding the placement of limitations on the permitting of new commercial establishments in central Wimberley until such time as a wastewater system is in place to serve the subject area. (*City Administrator*)

City Administrator Ferguson stated that a draft ordinance to amend the Zoning Code will be presented to the Planning and Zoning Commission relating to new Certificates of Occupancy (COs) issued for properties within the boundaries of the Protected Water Overlay District (PWOD). Clarification established that the proposed ordinance would require COs for any properties that change ownership or use(s).

Discussion addressed legal issues related to mandating provision of public restroom facilities by private business owners to customers (unless under certain conditions); change in use scenarios; and, determining load capacity under specific uses.

No vote was taken.

6. City Council Reports

- Announcements
- Future Agenda Items

Councilmember Thurber inquired about the number of conflict-of-interest statements submitted by Wastewater Stakeholder Committee members.

Mayor Flocke reminded Council about Texas Municipal League's Annual Conference next week in Austin.

As a future agenda item, Councilmember McCullough requested discussion of employee insurance.

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

Adjournment: Council meeting adjourned at 8:27 p.m.

Recorded by:

Cara McPartland
Cara McPartland

These minutes approved on the 17th of October, 2013.

APPROVED:

John D. White

John D. White, Mayor Pro-tem

