

City of Wimberley
 City Hall, 221 Stillwater
 Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
 October 20, 2016 at 6:00 p.m.

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

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

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

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

Citizens Communications

No citizen comments were heard.

1. Consent Agenda

- A. Approval of minutes of the Regular City Council meeting of October 6, 2016.
- B. Approval of minutes of the Special City Council meeting of October 7, 2016.
- C. Approval of minutes of the Special Joint City Council-Planning and Zoning Commission meeting of October 4, 2016.
- D. Approval of the reappointment of Jimmy Lee to the City of Wimberley Building Code Board of Review. (*Place Two Councilmember Craig Fore's nominee*)
- E. Approval of the reappointment of Charles Savino to the City of Wimberley Planning and Zoning Commission. (*Place Two Councilmember Craig Fore's nominee*)
- F. Approval of the reappointment of John Dunn to the City of Wimberley Ethics Commission. (*Place Three Councilmember Sally Trapp's nominee*)

Councilmember White moved to approve all Consent Agenda items, as presented. Councilmember Trapp requested the following typo correction on page 8 (*see italics*): "Councilmember White suggested a two-week timeframe, rather than the aforementioned thirty (30) day period." Councilmember White restated his motion to approve all Consent Agenda items, as amended. Councilmember Fore seconded. Motion carried on a vote 5-0.

2. City Administrator Report

- Status report on the Central Wimberley Wastewater Project

City Administrator Ferguson reported TCEQ is finalizing the City's Chapter 210 permit application (for irrigation) and TWDB's staff review continues on the City's collection system/treatment plant design. He noted water use data for the service area has been submitted

to the City's water rate consultants. He advised the parkland conversion process is in its final stage of review by the National Parks Service.

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

City Administrator Ferguson reported the City's October check totaled just over \$62,000, up 12.5 percent from the same period last year, and continuing an upwards trend. He noted that collections to date are running ahead of budget. He provided a breakdown of local tax rates by governmental entity.

- Status report on the Community Electronic Message Board Project

City Administrator Ferguson reported on the history of the project and ongoing discussions with Pedernales Electric Cooperative (PEC) and Wimberley ISD (WISD) on possible joint partnership opportunities. WISD installed power and data lines for the project; however, PEC advised the deadline for requesting funding assistance for the electronic sign has passed and would not be extended. He stated that WISD is interested in asking PEC to reconsider its decision on the funding request. City Administrator Ferguson requested Council input on this issue before resuming discussion on this matter. Discussion included possible reinstatement of an over-the-road or pole-mounted banner program and associated cost projections and concerns. City Administrator Ferguson stated that cost estimates could be updated and WISD Superintendent Dwain York could speak to Council on the Project.

- Status report Hidden Valley Low Water Crossing Reconstruction Project

City Administrator Ferguson reported that execution of the contract with Myers Concrete Construction is underway and temporary construction easements are being secured along both sides of the Blanco River. He anticipated construction to tentatively begin later this month. He advised a Special Council meeting is planned to accept right-of-way dedication for the Project, to approve additional funding for site inspection work, and also to approve an ordinance intended to address safety concerns at all low water crossings.

- Status report on CDBG Flood Recovery Funding

City Administrator Ferguson reported on statewide allocation of federal funds, including \$7,400,000 to Hays County, criteria to receive funding, types of eligible projects, including flood mitigation, associated match requirements, and project ranking process. He said a request will be submitted to Hays County for \$518,000 to help the City meet its match requirements.

3. Presentation

Presentation by Aqua Texas President Robert Laughman regarding possible options for the provision of wastewater service to central Wimberley. (*Aqua Texas President Robert Laughman*)

Aqua Texas President Robert Laughman described his company's role as providing additional options to the City to evaluate and consider as it goes through a challenging, decision-making process. He said this will be the fourth option Aqua Texas has presented to the City, with the other options to include the provision of wholesale service; to accept excess effluent to avoid the possibility of discharge; to become the retail provider of all wastewater service in Wimberley Valley, and to pay for all of the infrastructure necessary to provide that service. He stated under the retail scenario the City would break away a portion of its Certificate of Convenience and Necessity (CCN) to Aqua Texas, which would provide retail service to the rest of the community and for the entire Wimberley Valley. He recognized there are a lot of variables to the retail option, including the construction requirements in the downtown area to put in a collection system. He stated Aqua Texas would need to partner with the City because Aqua Texas does not have eminent domain rights. Mr. Laughman advised this is a straightforward proposal that simply makes Aqua Texas the retail provider of wastewater services to the Wimberley Valley.

Councilmember Dussler asked for details on the CCN process. Mr. Laughman defined CCN and summarized the City of Wimberley/Aqua Texas partnership, which would request from the Texas Public Utilities Commission (PUC) the right to transfer an agreed-upon portion of CCN, and outlined PUC's approval process.

Councilmember Fore asked for clarification on the CCN transfer as being for an agreed-upon portion and not for the entire service area. Mr. Laughman said he suggested to prior Councils that the CCN would be defined and the City would have the opportunity to treat the effluent to a higher discharge capability for Blue Hole and that area.

Councilmember Barchfeld read the PUC's definition of a CCN, which gives the CCN holder the exclusive right to provide retail water and/or sewer utility services to an identified geographic area and requires the CCN holder to provide continuous and adequate service to the area within the CCN boundaries. He continued that municipalities and districts are not required to have a CCN, however some municipalities and districts do have a CCN. Councilmember Barchfeld said his definition of a CCN is a monopoly that provides water or sewer to a specific area. He said if there is capacity they must grant individuals the right to connect. He stated that a CCN can expand its capacity in service areas and a CCN may, but not always, help to restrict growth. Councilmember Barchfeld felt the best way to restrict growth is through the Mayor, the City Council, Planning and Zoning, and our ordinances. Councilmember Barchfeld asked for a tentative timeframe, should the City give up its CCN to Aqua Texas. Based on recent PUC action timeframes, Mr. Laughman hoped that the process improves, estimated it might take about 8 months, but said right now the timeframe is 12 months, if uncontested. Mr. Laughman said that Aqua Texas's parent company could offer construction financing to the City and envisioned the City paying negotiated financing costs to construct, if needed, and upon receipt of the CCN, every dollar the City spent on that CCN would be reimbursed immediately through Aqua. Councilmember Barchfeld asked to read a statement at the end of Council discussion.

Councilmember Trapp thanked Mr. Laughman for his time and asked him to explain how the south side of the creek (Cypress Creek) would be different from the north side of the creek. Mr. Laughman said it would not be different and development of the north side has been driven by the City and not Aqua, which he said has only accommodated and provided the service after City

Council approval. He stated there are two reasons “that make it almost a throw down,” namely that Aqua already has a plant built and it has regional rates. He explained that the value of a regional approach is that costs are regionalized and through regionalization, Aqua has avoided having to go through another rate case. Mr. Laughman stated that methodical growth coupled with regional rates stabilize existing rates. Councilmember Trapp asked if the north side’s rates would increase due to infrastructure being placed downtown and Mr. Laughman replied negatively. Mr. Laughman said providing service from an existing facility helps Aqua spread costs and generate more revenue. He recognized that dealing with the capital associated with putting in the collection system is a big number, but said there is a larger customer base for the spreading of costs. He committed to holding rates the same for the next five years, if the City’s collection system costs are anywhere near being correct.

Councilmember Trapp and Mr. Laughman discussed Aqua America’s (Aqua Texas’s parent company) ability to offer financing, including the understanding that Aqua America’s conservative lending policy would require the loan to be collateralized in such a way that Aqua America is not left holding something that is of zero value. He noted that the loan would be of zero value if the CCN did not transfer to Aqua Texas.

Discussion continued on the following topics:

- Aqua Texas’s acceptance of existing engineering estimates
- Possibility of a contested case hearing if the City of Wimberley and Aqua Texas file a joint application for CCN transfer and associated impact on project timeframe
- Aqua Texas’s protection of financial and contractual interest in the event of a newly elected Council that may wish to pursue a different option
- In addition to its earlier stated regional approach, Aqua Texas’s offer to provide interim services to help with collection and treatment
- Possible Aqua Texas loan interest rates

Councilmember Barchfeld read a statement of his position stating it is incumbent on Council members to review all feasible solutions to this long-existing downtown sewer problem. He believed to make the best decision for our community that he must remain neutral in his stance on any wastewater treatment solutions until we have complete data for analysis. He did not think it fair to make a major decision based on preconceived ideas and prejudices, whether his own or others. He appreciated input from friends, colleagues, and residents, but said in the end he must remain neutral in order to make a decision that is fact-based and not emotional. He stated when we have all the numbers worked from Aqua Texas’s proposal, along with numbers from the wastewater treatment plant bids, Council can make analytical, not emotional, decisions. He said we must have an open mind to pick the best alternatives for our wonderful city. He stated anything less than an open-minded analysis is being unfair to our community. Councilmember Barchfeld said if we do not study the alternatives and assign risk reward analysis to the process, we are being fiscally irresponsible. He noted we now have two alternative solutions from Aqua Texas and to tell you one way is more expensive than the other without direct comparison is wrong and misleading. He said that type of decision making promotes personal agendas and is not an objective resolution of this issue. As a duly elected Council member, he felt honored to represent citizens, and stated he will do his best to make decisions that are good for the entire

Wimberley Valley, but his loyalty is to the citizens of Wimberley, as the decision on the wastewater treatment plant is about the citizens of Wimberley. He noted it is these citizens, not those who live outside the city, who will be financially affected. He stressed that fairness to the entire community is important. He said he ran on the issue of “no discharge” and an affordable wastewater treatment plant, and believed that both of those promises can be satisfied now with one of our two options. Councilmember Barchfeld stated it is important to go into the decision making process with all the available data to make a fair and sound choice on value rather than prejudging an issue based on external pressures. Lastly, Councilmember Barchfeld recognized the sewer has been thought by many minds or many years and thanked everyone for their efforts, but said he is one of five people sitting at this dais that get to vote on it. He said he must in good conscience review all the alternatives before signing documents to go with either Aqua Texas or build our own sewer plant. He closed by repeating he will remain neutral, open-minded, and face his decision with hard numbers and the probability of success.

4. Public Hearing and Possible Action

Hold a public hearing and consider approval of the first reading of an ordinance of the City of Wimberley, Texas, amending Title XV (Land Usage), Chapter 155 (Zoning), Sections 155.005 (Definitions), and 155.059 (Participant Recreation - High Impact; PR-2) of the City of Wimberley Code of Ordinances to add a conditional use for limited duration/on-premise alcohol sales; and providing for the following: findings of fact, savings, severability, repealer, effective date, and proper notice and meeting. (*City Administrator*)

City Administrator Ferguson advised that the operators of the *Wimberley Players Theatre* have sought permission to serve alcoholic beverages in conjunction with their performances. He noted that the subject property is zoned PR-2 and on-premise sale and consumption of alcoholic beverages is not a permitted or conditional use in that zoning district. He stated the current Zoning Code allows the on-premise sale and consumption of alcoholic beverages on commercially zoned properties with a CUP, in conjunction with certain uses, such as sit-down restaurants. After review of available options, City Administrator Ferguson advised that an amendment to the City’s Zoning Code could be made to add the limited on-premise sale and consumption of alcohol as a conditional use in the PR-2 zoning district. He noted that alcohol sales would be limited to the duration of the event and shall not occur more than one hour before and after the event. He provided reasoning for including a requirement that no more than seventy-five percent (75%) of gross revenue could be derived from the on-premise sale of alcoholic beverages. He noted that on October 13, 2016, the Planning and Zoning Commission held a public hearing and voted unanimously to recommend approval of the ordinance.

Councilmember White moved to approve the ordinance on first reading, as presented.

Mayor McCullough opened the public hearing.

Wimberley Players Board member Terri Burney-Bisett stated that plans are to sell beer and wine only. City Administrator Ferguson noted the ordinance amendment is for alcoholic beverages,

but advised when the CUP application is received it can be limited to requesting on-premise sale and consumption of beer and wine only.

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

Councilmember Trapp seconded Councilmember White's previously stated motion. Motion carried on a vote of 5-0.

Discussion established that the proposed ordinance would allow mixed beverages; however, CUP applications may be limited to beer and wine only.

5. Discussion and Possible Action

- A. Discuss and consider possible action authorizing the city administrator to negotiate a service agreement with Aqua Texas relating to the acceptance of effluent from the City of Wimberley Wastewater Treatment Plant to reduce the potential of effluent discharge.
(*City Administrator*)

City Administrator Ferguson reviewed prior Council discussions on reducing or eliminating the possibility of discharge from the proposed wastewater treatment plant. He noted that Aqua Texas President Robert Laughman has indicated a willingness to accept treated effluent hauled from the City's plant, as needed, at the Aqua Texas Plant off FM 2325. He said that Laughman indicated that Aqua Texas would charge the City a fee per 1,000 gallons of effluent delivered. It was noted that TCEQ approval may be necessary for such an arrangement. City Administrator Ferguson felt that the need to truck excess effluent will be very rare, if at all, but said this is an alternative to ensure we have a zero-discharge facility. He noted the City would be sending higher quality Type I effluent to a plant that produces Type II effluent. Once drafted, the negotiated agreement will be presented to Council for approval.

Mayor McCullough said this is a solid solution based on multiple group efforts.

Councilmember Fore stated his understanding there are at least four options for excess effluent (the bypass, holding pond, extra storage tank, and the option to haul to Aqua Texas). As we have gotten estimates on these options, Councilmember Fore questioned why we are negotiating this agreement, if we do not know where we want to go yet. City Administrator Ferguson said we do not lose by entering into an agreement, as the service may not be needed at all. Councilmember Fore said we have not decided how we are going to get rid of excess effluent and asked why negotiate that now. City Administrator Ferguson advised having an agreement in place as a back-up, even if Council exercises another option.

Councilmember Dussler spoke in favor of authorizing negotiations and said this is a huge step in eliminating the possibility of discharge and satisfying the desires of many in the community. He stated he is also in favor of accepting the \$1,000,000 U.S. EDA grant for development of the Central Wimberley Wastewater Treatment Project, which is an enormous accomplishment for Wimberley and has been under study for decades. He said we can finally clean up the Blanco River and Cypress Creek and eliminate serious pollution. He stated design work is essentially

complete and is under review by TCEQ, the City has received its TCEQ permit and TWDB loan, and we will have our \$1,000,000 EDA grant to allow moving ahead with the bid process and construction. He said the \$1,000,000 EDA grant means a 20% savings on plant cost and is money we do not have to borrow and pay back over 20 years with interest. He stated this is a great benefit for the City and users. In addition, Councilmember Dussler said we will meet our commitment to provide irrigation to Blue Hole Park and complete the final development phase of this great community asset. He stated Wimberley will remain in control of the project and its own destiny, accountable to its own citizens, and not the shareholders of a large public company with a constant need to improve its stock price by continually raising service rates. He said despite all of this, there are some in the community still interested in turning over the entire project to Aqua Texas. He noted his strong opposition to Aqua Texas and referenced statements made at City Council meetings about Aqua Texas. Councilmember Dussler highlighted the following key issues regarding Aqua Texas:

- BBB rating of “D-“
- Deplorable customer service
- Experiences with numerous pipeline leaks, including leaking raw sewage, which has happened at the Wimberley High School six times
- Aqua Texas is being sued and has been sued by a number of customers for poor performance
- Disastrous experiences by our neighboring cities of Woodcreek and Kyle
- A business model that buys water/wastewater systems and hikes rates
- Regular rate increases and surcharges on system improvements are necessary to continue Aqua Texas’s revenue growth
- No effluent would be available to irrigate Blue Hole Park, breaking a commitment from the City to the Park
- If Wimberley turned over its wastewater project to Aqua Texas, we would lose our permit, our \$5,500,000 loan, and our \$1,000,000 grant, but would still be responsible for building a collection system, which would cost approximately \$3,000,000 and we would have no financial resources to build that system.

Councilmember Dussler said the most serious concern is the loss of our CCN, which gives the holder the exclusive right to provide water and sewer service to an identified geographic area. He stated Wimberley’s CCN includes downtown and along Ranch Road 12 to the Junction, with a market value of \$5,000,000 to \$10,000,000. He said if Wimberley abandoned its CCN, we would no longer be able to control development in the area, which is the key item Aqua Texas is interested in. Councilmember Dussler stated this could spur big development in that area such as big box retailers, chain motels, fast food franchises, and perhaps a large-scale condominium development. He said Wimberley would have no control over this development and noted Wimberley’s Comprehensive Plan is strongly opposed to those big box type of developments. He stated that you need to follow the trail if you are wondering why Aqua Texas is so interested in Wimberley and why some Wimberley residents are interested in Aqua Texas, and that trail leads to the CCN. Councilmember Dussler stated in his opinion that this is a bad idea for Wimberley and its citizens and this is why he is opposed to Aqua Texas.

Councilmember Trapp stated that we have worked for months to eliminate discharge into the Blanco River and this provides that, however, as Councilmember Fore said, we have got a number of options (such as tanks and trucking of effluent). She felt at Council's last meeting, we got into a gray area by taking the Hotel Occupancy Tax funding applications as a group instead of considering one by one, resulting in chaos. Referring to this agenda item (5A), Councilmember Trapp believed that Mr. Laughman made compelling arguments for his services in his presentation on the retail option. She favored postponing action on this item until Council can go over all of these options and vote on them together. In response to Councilmember Dussler, Councilmember Trapp respected his comments, but found it interesting that Aqua Texas's "F" BBB rating is referenced, as the City's existing plant contractor Severn Trent also gets an "F" rating from the BBB. She said it is worth it to do your due diligence because information is not always what it appears to be.

Councilmember Barchfeld was pleased that Robert Laughman said Aqua Texas would take our discharge to avoid dumping into rivers or creeks here. He said he would like to see the rate negotiated as he felt we could get a better rate than Mr. Laughman originally gave us. With respect to Councilmember Fore, Councilmember Barchfeld said he would wait until we get a little closer to summing things up to vote on negotiation.

Councilmember White said he sees no reason not to go ahead with authorizing negotiations, as this is just one of five options, and what Council has been working toward is "no discharge." He noted we may never use this option and it does not cost anything to go ahead and put it in place.

Mayor McCullough asked for speakers on this agenda item (5A).

Grady Burnette said he keeps hearing about the tremendous value of the CCN because it helps the City control growth. He stated there is a flip side and that when you control the CCN and provide wastewater service within that geographic area, you are obligated to provide service to anyone who applies. He said by law you must have a plan in place to expand capacity so that you do not run out of capacity. He asked how you use the CCN to control growth and directed his question to Mayor McCullough and Councilmember Dussler. Mayor McCullough said this is Mr. Burnette's opportunity to share his thoughts and Mr. Burnette challenged Councilmember Dussler's statement regarding the CCN's monetary value. Mayor McCullough said there is a common misperception that a citizen can ask for sewer service and the City is required to provide that service; however, it was pointed out by City Administrator Ferguson that the citizen would pay to get the service to him. He noted that a cost estimate was provided to someone who wanted to connect to the City's existing plant, and that if the City is unable to provide service, the law allows the citizen to petition another provider, who will also require payment to connect to their service. Mayor McCullough clarified that the City is not obligated to come to the citizen requesting service. City Administrator Ferguson said Aqua Texas would also make the requestor pay to extend the line, which is not uncommon. Mr. Burnette referenced the fear of big box developments and asked why there are none on the north side of Cypress Creek.

Linda Lang spoke of her excitement of moving to Wimberley many years ago and her concerns about its rivers and creeks for a long time. She supported the City's efforts to resolve its wastewater problem and speaking as a 10-year citizen of Woodcreek and as an Aqua Texas

customer, she would not use Aqua Texas “in any large form.” Ms. Lang spoke of her testimony at a natural resources committee in Austin, which was specifically about Aqua Texas, which she described it as a company that buys up small water systems that are really bad and then they do not fix them. She spoke of water leaks and odors and said Aqua Texas is not a good steward of our water.

Casey Craig thanked Council and the Ad Hoc Wastewater Review Committee for consideration of all the options and said now with presentation of the retail option Council has a decision to make. She asked Council to consider the following: cost for Aqua Texas to the community is zero; no subsidy, no long-term loan, no ad valorem tax, and no discharge; it would keep all wastewater customers equal and not create a special class of subsidized customers downtown; the Community Center and Mill Race Lane residents as “happy customers” of Aqua Texas; concerns that the City’s permit could allow discharge; environmentally risky location of lift station; zero discharge with Aqua Texas; fiscally irresponsible to water soccer fields and plants at Blue Hole Regional Park; convert existing Deer Creek plant to Type I effluent and use its effluent for Park irrigation, with CARD and Friends of Blue Hole to raise funds to achieve this; the CCN does not control growth and development, but is done through City Council/Planning & Zoning, with citizen input. She hoped that Council will decide Aqua Texas is the better solution for the Square and allows our money to be spent on concerns for all of us, not just a few. She said the City of Wimberley is more than the Square and building and subsidizing a plant that will only serve about 4% of our population is wasteful and unnecessary. She believed the community would overwhelmingly support the Aqua Texas option if it were put to a citizen vote. She said Council represents all of Wimberley and urged it to make a decision that is financially, environmentally, and ethically best for all of us.

Haidar Khazen of 300 Mill Race Lane thanked Council for its due diligence and for inviting Robert Laughman from Aqua Texas to explore a sewer solution fair to all citizens of Wimberley. He said his extended family and neighbors live and work in houses and buildings like those in the downtown area and face the same septic issues. He stated that one would think not much separates them except for being on opposite sides of Cypress Creek and Ranch Road 12 Bridge. However, he said we are about to be separated by more than geography. He stated we are about to be separated by fairness. He spoke of Aqua Texas’s recent efforts toward providing service for Mill Race Lane and found discussions with Aqua Texas to be extremely professional. He said “our family has committed to \$20,000 to help run a sewer line and our neighbors have committed to similar sums.” He noted this amount does not include the cost of current system abandonment, pumps, tanks, pipes, and anything else needed to connect our properties to the new line. He said “we are bearing the cost ourselves and no one else is paying for us, nor are we asking them to.” He asked that Council keep an open mind and ultimately decides not to divide Wimberley by giving special treatment and financial consideration to some and not to others.

Bryan Ferrar of 303 CR 1492 cautioned against giving an exclusive monopoly to a private corporation over one of the core subsistence items in the community – our water and our sewers. He noted that Mr. Laughman mentioned his driver is revenue and he promised to keep rates fine for five years, but after that five years, questioned what recourse customers would have. He spoke of Aqua Texas’s “D-“ rating in the City of Woodcreek and does not know anyone in Woodcreek who likes Aqua Texas’s service. He said there are a great many unknowns about this

proposal and felt Councilmember Dussler accurately captured the sentiment of many who are concerned about that sort of monopoly coming in and the type of control it would have. He noted reasons for wanting to move to Wimberley and of his 5-year search for a house here and was concerned about private monopolies coming in to take over our natural resources. He said it feels like opening a door to more development, which was what he wanted to move away from.

Wimberley Valley Watershed Association Executive Director David Baker spoke of his former service on a committee in the 1990's on the downtown sewer issue. He noted a ton of work on the current plan, and supported Aqua Texas's acceptance of excess effluent to prevent discharge. He spoke of numerous contested cases with Aqua Texas and fights to keep Aqua from discharging into Cypress Creek and Wilson Creek. He said one of the issues with lifting that water to the upper watershed is that the area they (Aqua Texas) have to spray is directly above Jacob's Well, which has lots of karst formations and sinkholes, allowing it to infiltrate back into the groundwater and come out of the Cypress Creek. He said this simply moves the problem upstream from Blue Hole and the areas we are trying to protect. He noted that Aqua Texas is a private utility with about 1,700-2,000 customers, \$4,000,000 in annual revenue, and \$600,000 in operating costs, which means \$120,000,000 leaves this community over a 30-year period. He said it sticks in his craw that we are allowing that revenue to be bled off of this community. He stated economy of scale is an issue and said Mr. Laughman's pumping of wells in Woodcreek North causes Cypress Creek to drop proportionately to what they pump, which is a huge economic issue for the Valley. He feared negative economic impact if such pumping continues and draws down and/or pollutes Cypress Creek. Mr. Baker said the City needs to move forward with its City-owned plan, including the option to send excess effluent to Aqua Texas, as the best environmentally sound decision. He stated that going with Aqua reduces the water quality immensely from the quality fought for in the current permit. He said the City has done all it can, including the \$1,000,000 grant improving affordability, and fiscally for the long-term we have to get control of their (Aqua Texas's) CCN and not let them take ours.

Peter Way spoke as a third generation property owner who started coming here and 1945 and bought family property in 1969. He spoke of his deep love for the Hill Country and his purchase of Blue Hole property to be held until Friends of Blue Hole could raise funds and buy back the property at Mr. Way's cost. He noted that he is the largest individual contributor to Friends of Blue Hole to help develop the Park and is very proud of what has been accomplished. In the Park's planning stages, he noted pollution of Cypress Creek from human waste in the downtown area had been increasing each year. He spoke of the opportunity taken to replace the old Deer Creek plant to reduce pollution. He said that before development, the Park was mostly caliche and cedar; however, with water from the treatment plant, it could be green and verdant. Mr. Way stated that every year E coli levels in the Creek have increased and this past summer was 2-5 times past the safe amount for swimming. He said his family lives beside the creek downstream from Wimberley's center and the City's pollution flows past his home into the Blanco River. He said there are very few days when it was safe for his family to get in the water. It was amazing to him that people are allowed to swim in Cypress Creek behind Inoz when the City knows E coli levels are over 5 times the safe level and feared that someone will get very sick. Mr. Way said he plans to do everything he can to protect people in Cypress Creek, including his friends and family. He stated he has hired a very experienced legal team ready to file a federal lawsuit if the Council continues to dither in taking care of this problem. He asked to imagine what the first

meeting with the federal judge would be like, when you will have to say under oath you knew about the pollution, had a solution, and turned it down. He stated the process to get the solution has been extensive, inclusive, fair, and unanimously accepted by City Council, but we turned it down. Mr. Way said the design was complete, financing was guaranteed, and we even received a \$1,000,000 grant (20-25% of the total project cost), and we turned it down. He said there is a good chance the judge will be furious enough to say the downtown area must be shut down until this is solved. He noted TCEQ's only reason for not stopping the primary polluters is because the City was working on a solution. He said it is unconscionable that this Council lets this continue. Mr. Way assured that he will file a lawsuit and begged Council not to put the City and the wonderful businesses in the downtown area through this. He also said talking to news reporters will be harder than talking to a federal judge, when Council "kicks this can down the road." Referencing Mr. Laughman's earlier comments, Mr. Way stated "you guys can have Blue Hole, you can treat the water and we'll carve that out of the CCN you give to me," but he did not mention that the City would have to build a plant to treat his Type II effluent to a Type I standard that we could spray on soccer fields and other Park areas. Mr. Way said it has got to be at least \$1,000,000 to build that additional sewer treatment plant. Mr. Way also said Mr. Laughman did not mention that he was not going to give the City \$1,000,000 and believed it would cost the City less to build the plant ourselves.

Bryan Burke said when looking for a home here he was warned not to buy a home in Woodcreek because of the utility bills, which he described as outrageous. He said this is the smallest town he has ever lived in and had never heard of such high water bills. He noted that Aqua Texas is a publicly traded company whose job is to please shareholders, not customers. He questioned privatizing a public service, which he said sounds horrible, as the City will look down the road and say "we made a deal with the devil." He said we will pay, maybe not in the first 5 years, but will eventually.

Mayor McCullough closed public comments and opened Council discussion.

Councilmember Trapp moved to postpone the decision on this item until Council analyzes all the options presented for discharge and the four options presented by Mr. Laughman. Councilmember Fore seconded.

Councilmember Barchfeld said he wants to ultimately get to negotiations to truck water to Aqua Texas.

Mayor McCullough called for a vote as follows: Councilmember Dussler, nay; Councilmember Fore, aye; Councilmember Barchfeld, aye; Councilmember Trapp, aye; Councilmember White, nay. Motion carried on a vote of 3-2.

- B. Discuss and consider possible action approving the terms and conditions relating to the formal acceptance of funding assistance awarded to the City of Wimberley from the U.S. Economic Development Administration for the development of the Central Wimberley Wastewater System. (*City Administrator*)

City Administrator Ferguson reviewed key grant terms:

- This is a reimbursement grant
- Grant money has to be spent on what is in the application, which is for a system/treatment plant that is owned, operated, and maintained by the City (a publicly-owned system).
- The grant will not pay reimbursements if the City does anything that differs from the application and reimbursements cannot be claimed until such time the City closes on its TWDB loan.
- Acceptance of the grant requires that a 20-year lien be placed on the system by the federal government, which is a common requirement.

City Administrator Ferguson noted that legal counsel has reviewed the standard grant application and stressed that this grant cannot be used to fund an Aqua Texas system and the TWDB loan is for a City-owned and operated system. He advised that U.S. EDA has stated the Aqua Texas wholesale option (City builds the collection system and routes waste to Aqua Texas for treatment) would be a significant change in the application and disqualify the City's grant funding. He noted that the City has 30 days to accept the grant and stressed that Council is accepting the conditions and terms of the grant, but no grant money reimbursements will be received until the City closes its TWDB loan and adheres to the plan as presented in the grant application. City Administrator Ferguson recommended accepting the grant, as it reduces bottom-line project costs. He noted this is the second time the City has explored this grant, and the application has gone through an extensive review process by U.S. EDA.

Mayor McCullough opened public comments.

Dale Dugger said that Councilmember Dussler told his story, asked everyone to read the local newspaper, and confirmed his support for accepting the grant.

Alan Munde of Mountain View spoke in favor of accepting the grant as it is the right and proper thing to do for a City to operate its own utilities and not be beholding to a private entity located in New Jersey or wherever this group happens to be.

Jim McMeans spoke of his history as a Wimberley property owner and retired engineer with water/wastewater experience. He said he has been involved in many wastewater discussions and observed early on that Aqua Texas violated many state standards and cited frequent sewer overflows in Woodcreek North that went unrepaired for days. He noted that reported water line leaks went unrepaired for months, with multiple complaints about poor service, and system leaks resulting in Aqua Texas losing over 40% of precious groundwater it pumped. He recalled Commissioner Conley's 2010 convening of the Wimberley Valley water talks, which invited Aqua Texas to participate in discussions. He said as a result of those meetings, Aqua Texas agreed to undertake repairs to its Woodcreek/Woodcreek North water systems to reduce water losses to less than 15%, and pledged to spend \$5,000,000 over a 5-year period to reach that goal. He said that to date Aqua Texas has only completed two projects, one in Woodcreek North and one in the City of Woodcreek, with their water losses still exceeding 30% (double the state standard). Mr. McMeans expressed his opinion that Aqua Texas's word means nothing. He said the message here is that Aqua Texas cannot be trusted to do what they pledge to do and are part

of a giant, for profit, corporation that only cares about profit. He stated Wimberley now has the means and responsibility to solve the pollution problem in the Cypress Creek and Blanco River caused by outdated and leaking septic systems. He said the City has known about this problem for 30 years and finally has developed a plan that is affordable, fair to all future customers, and environmentally acceptable. He said this is a win-win for Wimberley and ready to build. He described a deal with Aqua Texas as a lose-lose proposition and the City would be subject to higher initial costs, a 2-year or more delay, have no irrigation water for Blue Hole Regional Park, and no control over the future cost of wastewater service. Mr. McMeans urged Council to unanimously accept the \$1,000,000 EDA grant and say “no” to Aqua Texas.

As a point of clarification, City Administrator Ferguson explained that the City’s first inquiry about applying for the EDA grant indicated the City would not qualify and that this is the City’s first formal application.

Shannon du Plessis of Shade Road said when moving here in 2010, she was also warned not to move to Woodcreek. She said water is vital and necessary for life, not optional, and turns to those she trusts. She stated she does not outsource help from outsiders who may not have her best interests above their own desire for profit. She understood that acceptance of the \$1,000,000 grant from the EDA eliminates the option to outsource, which she said may seem scary, but felt this grant is giving the City a vote of confidence to do this. She implored Council to accept this vote of confidence and \$1,000,000 grant and felt the sewer system will help the heart of Wimberley (the Square). She recognized comments made about two classes of people, but said the Square does generate substantial sales tax revenue that does benefit all of us. Ms. du Plessis noted her shirt, which says “a little piece of heaven,” and asked Council to please not make this shirt a lie.

Wimberley property owner Mike Bachers expressed his support for moving ahead with the City-owned wastewater treatment plant, made more appealing by \$1,000,000 EDA grant offer. He said much time has been spent on this polarizing issue and all can find common ground about what makes Wimberley a special place to live. He said those affiliated with VOW have more than fulfilled their obligation to that PAC and vetted every option carefully. He stated the only logical path forward is to accept this grant and to allow our city administrator to begin negotiations in earnest. He stated “your duty is to choose the best option for all of the citizens of Wimberley, and not just for special interests.” He noted this decision will impact generations to come and said please do not make the historic mistake of negotiating what may appear to be a comparable deal with Aqua Texas, when such an incredible win-win opportunity is on the table. He stated Aqua Texas specializes in closing deals with small communities like Wimberley, but that this is the beginning of a slippery slope with a very slippery corporation. He said the argument repeated ad nauseam against a publicly owned facility is based on the political stance that government is always bad and that the free market solves everything. He stated that approach does not hold water at the local level when you are talking about long-term contracts and permanent infrastructure. He asked how many other bids from other private companies was the City able to solicit and said free market economics are not in play here. He asked what makes any member of this Council think they can negotiate a contract with Aqua Texas that puts Wimberley in a better position than every other small town that has made that mistake of signing up. Mr. Bachers said you are dealing with a powerful water corporation with an obligation to its

shareholders to turn a profit and grow its margins year after year into perpetuity. He believed Council is assured that early numbers would make their own tenures on Council look fiscally responsible, but this system will be in the ground long after each member has moved on, long after VOW has dissolved, and long after Aqua Texas would have any obligation to those who opened the flood gates in 2016. Mr. Bachers said the best and only choice for the future of Wimberley is to own and control its own facility and to ensure its elected Council members are willing to enforce its regulations around growth and expansion.

Former Mayor Steve Klepfer displayed a July 1974 newspaper clipping from the *Village Crier* with an article titled “Growth May Limit Septic Tanks in Area.” He said the article continued on creek pollution and the need to address it immediately. Mayor Klepfer praised and congratulated Council for where we are right now. He stated you have completed a sanitary sewer design for a system that will begin to solve environmental and business problems. He said the collection/treatment plants/effluent reuse options are designed, TCEQ is in final review of construction plans, and the project is shovel-ready. Mayor Klepfer congratulated Council for a job well done after a fair and thorough process. He said we have a TCEQ permit in hand with all parties in the contested case agreeing on the plan, which he noted is a better plan because of the contested case hearing, as terms were added to the permit that made it safer for this town. Mayor Klepfer said the plan is further improved by contracting with Aqua Texas for acceptance of possible excess effluent to eliminate discharge. He was disappointed that Council decided to delay negotiations with Aqua Texas on the matter of accepting excess effluent. He stated the \$5,500,000 TWDB loan at 2.2% interest is waiting for construction, money was already borrowed for the design, a \$300,000 grant was received for “green” portions of the project; and now the City has obtained a \$1,000,000 EDA grant. He said all 15 prior City Councils tried, but this Council has successfully reduced the project cost and rates can now be set that “don’t make people gag.” Mayor Klepfer was proud of this Council for finally completing the hard work that prior Councils and citizens have done for over 40 years.

Citizens for Responsible Development (CARD) representative Louis Parks said a great solution is finally within our grasp, but at risk of being put aside for a poor solution that will have a major negative impact on Wimberley. He stated we heard a lot of promises from Aqua Texas tonight, but as the conversation continued he heard more and more “asterisks.” He felt that negotiations are not finalized and he did not believe in any gifts promised from Aqua Texas. He cited examples of numerous negative reports on Aqua Texas’s record across the country and its mistreatment of small towns. Mr. Parks felt that Aqua Texas is being considered so a large profit can be made by Aqua Texas and by those few who stand to make big money from the people of Wimberley. He feared runaway growth and development when people no longer have power to control it through their city government. He said thanks to hard work and a good plan Wimberley has been blessed with this \$1,000,000 grant to save a huge portion of the cost of building our sewer system. He stressed the importance of affirming the grant as the deadline is a few days away. He expressed concerns that Council will try to delay voting on the grant, which would be an insult to the people of Wimberley. He said if Council does not accept this grant either by vote or letting it die next week, it is further insulting its constituents both financially and personally and putting at serious risk what they love about this town and the City’s future. Mr. Parks stated that Aqua Texas has been the bane of the City of Woodcreek and is the company the City of Kyle sued in order to end an agreement due to endless fines and pollution

problems. Mr. Parks said he spoke with City of Kyle personnel who wondered why no one has come to speak with them about their experiences with Aqua Texas. He cautioned that Aqua Texas has said they will work strongly to bring major development into Wimberley along Ranch Road 12 south and elsewhere, because their business is to make money for shareholders. He feared that such development would forever change Wimberley for the worse. He stated a few people will stand to profit from the overdevelopment, but most will hate it. Mr. Parks said failure to vote to accept the grant is a vote for Aqua Texas. He advised Council use the following litmus test by asking which system (the City's versus Aqua Texas) will make big profits for a few select people at the expense of the very nature of Wimberley; which system will make no big money for individuals; which system will include savings for sewer customers; and which system will preserve Wimberley's lifestyle. Mr. Parks stated the City still does not know what can be negotiated with Aqua Texas, but said Council needs to accept this grant, whatever plan is chosen. He did not favor postponing this item and letting it die and urged Council to vote to accept the EDA grant today.

Mayor McCullough closed public comments and opened Council discussion. Councilmember White said we need to approve the grant regardless of what decision is made later.

Councilmember Trapp read the following letter: "The grant award letter from the EDA was dated 9/29/16. Council was not informed of the approval until one week later during the 10/6 meeting. The conditions of the acceptance packet were not available until the agenda packet came out one week after that meeting. I have read and re-read both the application and acceptance language and there are a number of points that I would like to have clarified by legal counsel. I have concerns over B.8, B.9, B.10, C.1, C.3, D.2, D.4, lack of form ED-900B, ED-900A and statement about conflict of interest. In addition, I have concerns about the acceptance packet. While some say that the application has been online since June, and I should have questioned it earlier, quite frankly, until we received approval, there was no need to raise my concern. As a member of Council being asked to affirm, which is part of this packet, that all statements are true and facts are correct, and there is even a clause that if any untruths are found in the future, we would have to repay the grant funds. It is good business policy and our fiduciary responsibility that we should review with our legal team. There are still nine days until the deadline, plenty of time for us to schedule a special meeting open to the public to resolve any issues."

Councilmember Barchfeld stated: This EDA grant for \$1,000,000 is only for a city-owned sewer and will reduce the cost of the project approximately 20 percent. It is a grant - not a loan - that is funded after the work is completed. It is a benefit that we reduce the City's subsidy on this project. He said it is helpful in making financial decisions on this project and reduces the City's long-term indebtedness, which is important, in that we would need to go out and borrow money. If no sewer or wastewater treatment plant were built, we don't get the money. We don't have to use it, if we accept it. He stated "Do not misinterpret my vote to accept this \$1,000,000 EDA grant as an automatic vote for the City-owned sewer. This \$1,000,000 is just another arrow in the quiver to help us make the proper decision. So I support going and taking the \$1,000,000 grant."

Councilmember Fore said he respects Councilmember Dussler, but has studied the 38-page grant application and has several questions. He asked for some clarification before moving forward. His questions are in regard to information submitted on the application concerning costs of the project, which do not seem to be correct, and the economic distress numbers submitted, which include two cities in Caldwell County. He said according to the terms of the grant, if any of the information on the application turns out to be incorrect we may be required to repay the grant. He stated the grant is also tied to the \$5,400,000 TWDB loan and the loan must be accepted to receive the grant. He said he had to go to page 28 of the grant application before it became clear to him that the grant is only available if the City owns the entire wastewater treatment plant and collection system, which was not his understanding from the beginning. He said every opportunity was available from the onset to be totally honest and forthright regarding the terms and conditions attached to this grant, but the exact opposite was the case. Councilmember Fore said he was never told this grant was specifically for a City-owned system and when he questioned the wording was told directly that as long as we took care of the sewer problem on the Square we could qualify for the money. He said he voted in favor of the resolution based on those assurances. Councilmember Fore said he pledged to represent citizens with honesty and integrity and said he cannot go back on his word, and for these reasons, cannot support this grant.

Councilmember Dussler favored accepting the grant now as a great accomplishment and gift to Wimberley and said we would look like fools to turn it down.

Councilmember Trapp stated she has always learned that “I would be a fool to sign something until I understood it, so I don’t understand if we have nine days, why we can’t have a meeting to discuss questions.” She said this is the only legal way we get to talk about anything and asked if she was being denied legal counsel. Mayor McCullough asked Councilmember Trapp if she asked for legal counsel earlier, and Councilmember Trapp said she had not. Mayor McCullough asked for City Administrator Ferguson’s comments, who advised that the grant has been reviewed by legal counsel who feels it is legal and the language is very standard and straightforward. He noted that the City is not obligated to use the grant money, if it chooses to do so later, but the City is obligated to accept it within the stated timeframe.

Mayor McCullough entertained a motion. Councilmember White moved to approve formal acceptance of the U.S. EDA grant, as presented. Councilmember Dussler seconded.

Mayor McCullough called for a vote as follows: Councilmember White, aye; Councilmember Trapp, nay; Councilmember Barchfeld, aye; Councilmember Fore, nay; Councilmember Dussler, aye. Motion carried on a vote of 3-2.

Mayor McCullough called for a recess at 8:15 p.m.

Mayor McCullough reconvened the meeting at 8:25 p.m.

- C. Discuss and consider possible action awarding a contract for wastewater impact fee preparation services. (*City Administrator*)

City Administrator Ferguson stated that he and Councilmember Fore reviewed the two proposals received and recommended awarding the contract to HDR Engineering, Inc. in an amount not to exceed \$7,194.00. He highlighted the scope of services, which includes creating an advisory committee to work with consultants in developing impact fees.

Councilmember Fore said there were only two applicants and they picked the one they felt was best. He stated the amount of money is minimal and was in favor of the recommendation.

Councilmember Trapp felt Agenda Items 5C and 5D are prematurely on the agenda, as we have just heard the Aqua Texas retail proposal. She said Council voted in June to create agendas one week prior to the meeting to have adequate time to perform due diligence. She stated Council voted at its last meeting to have Council representation during the interview process, but now understands that City Administrator Ferguson and Councilmember Fore met; however, she thought they were going to interview firms and had some more information. She said she did not know if the same process has happened with the project manager position. Councilmember Trapp said we are a working Council who repeatedly states the need for information and involvement with decisions, but it does not appear this is happening. She noted specific times for receipt of notification of the recommended firms for project management and for the impact fee firm. She said the delayed notification is not sufficient notice and not in keeping with our agreed one week deadline. Councilmember Trapp stated she has not been able to vet any information about either the project manager or the rate specialist, nor did she get to see all the submissions. She favored postponing the vote on these items until Council has had time to review them. She respectfully requested that we adhere to our policies and publish a complete agenda one week ahead of time.

Councilmember White moved to approve awarding the contract for wastewater impact fee preparation services to HDR Engineering, Inc., as presented and recommended by Councilmember Fore and City Administrator Ferguson. Councilmember Dussler seconded.

Mayor McCullough called for a vote as follows: Councilmember White, aye; Councilmember Trapp, nay; Councilmember Barchfeld, aye; Councilmember Fore, aye; Councilmember Dussler, aye. Motion carried on a vote of 4-1.

D. Discuss and consider possible action awarding a contract for project management relating to the construction of the Central Wimberley Wastewater System. (*City Administrator*)

City Administrator Ferguson advised that he and Mayor McCullough extensively interviewed the top four firms out of six submissions and recommended awarding the contract to TRC Engineers. He explained the scope of services, to include on-site management at all times when contractors are present, significant reporting requirements, resolving issues, and seeking ways to cut costs. He spoke of TRC's extensive experience in this field and its very good reputation. Mayor McCullough said all four interviews were lengthy and stressed that the project manager will be one and the same person through the duration of the project to provide continuity and the firm will be dogged in how the contract is administered. He offered to share his interview notes with Council.

City Administrator Ferguson noted the project manager will be the face of the City on site and needs to have the best public communication skills with citizens and interfacing with other agencies in the funding process. City Administrator Ferguson said a negotiated contract will be brought back to Council and suggested including Council/Ad Hoc Committee member(s) in contract negotiations that can build in incentives and cost savings.

Councilmember Trapp favored having a project manager and did not doubt the recommended choice, but objected to the timeframe, as more time is needed to look at it.

Discussion addressed anticipated total costs of project management (approximately \$100,000 to \$150,000), ability of project manager to find cost savings, grant condition requiring project management, need to have a project manager on board before bidding the project, and inclusion of a cancellation clause should the City choose an Aqua Texas option. Councilmember Trapp asked when Council will be deciding on a wastewater system option, as money is being spent that is not covered by loan proceeds.

Councilmember Dussler favored moving forward with approval of the contract award.

Councilmember Fore favored having a project manager, but agreed with Councilmember Trapp that none of Council has had a chance to review the information. He had a problem with the wording of the agenda item to award a contract (rather than negotiate a contract) and City Administrator Ferguson advised the motion could be worded to authorize negotiation rather than to award the contract. Councilmember Fore favored postponing action and involving John Urban in the negotiations. Councilmember Barchfeld said he had no problem with postponement.

Councilmember White asked if it is acceptable to make a motion to authorize negotiation of a contract for project management relating to construction. Councilmember Fore did not agree and wanted this item continued until Council's next meeting. Mayor McCullough urged Council to not postpone this item as the contract has yet to be negotiated. Councilmember Fore questioned why the decision has to be made today when it was agreed to have information seven days in advance.

Councilmember Fore moved to postpone action on this item until Council's next meeting on November 3, 2016. Councilmember Trapp seconded. Motion carried on a vote of 4-1. Councilmember White voted against.

- E. Discuss and consider possible action regarding a proposed amendment of the Wimberley City Council Governance Policy to include requirements relating to the change of City Council meeting dates, times and places. (*City Administrator*)

City Administrator Ferguson presented the proposed amendment per Council's prior direction and reviewed the revised language that states "an attempt shall be made to contact all members of the City Council about the proposed change prior to the change being made."

Councilmember Trapp moved to approve the amendment, as presented. Councilmember Fore seconded. Motion carried on a vote of 5-0.

6. City Council Reports

- Announcements
- Future Agenda Items

As a future agenda item, Councilmember Trapp requested an item to discuss implementation of a technology oversight committee. As all the options have been presented by Robert Laughman of Aqua Texas, Councilmember Trapp asked for an item on the next agenda to decide on a wastewater system option.

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

Adjournment: Council meeting adjourned at 8:55 p.m.

Recorded by:


Cara McPartland

These minutes approved on the 3rd of November, 2016.

APPROVED:



Mac McCullough, Mayor

