

City of Wimberley
 City Hall
 221 Stillwater
 Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
 November 7, 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, Steve Thurber, and John White. Councilmember Matt Meeks was absent.

Staff Present: City Administrator Don Ferguson, City Secretary Cara McPartland and City Attorney Brad Young

Citizens Communications

No citizen comments were heard.

1. Consent Agenda

- A. Approval of minutes of the Regular City Council Meeting of October 17, 2013
- B. Approval of minutes of the Special City Council Meeting of October 17, 2013
- C. Approval of minutes of the Special Joint Meeting with the Planning and Zoning Commission of October 30, 2013
- D. Approval of the September 2013 Financial Statements of the City of Wimberley

Councilmember Thurber moved to approve Consent Agenda Items 1A, 1B, and 1C, as presented, and to approve Consent Agenda Item 1D, as revised. Councilmember McCullough seconded. Motion carried on a vote of 4-0.

2. City Administrator Report

This item was heard after Agenda Item 3.

Prior to reporting on the following items, City Administrator Ferguson advised that the City's November sales tax check (representing September sales) was the largest in City history, up three percent (3%) from the same period last year.

- Status report on The Central Wimberley Wastewater Project

City Administrator Ferguson reported on meetings of the stakeholder committee, including its progress on collection system recommendation and upcoming discussion of treatment systems

and financing options. He stated that the committee may hold an additional meeting, if needed, prior to its final scheduled meeting on November 22, 2013.

- Status report on Cypress Creek water quality issues

City Administrator Ferguson reported that after the recent flood event, bacteria levels remain in the 200-range in the area of the Square. He noted that flooding typically causes some elevated levels, such as those seen at Blue Hole Regional Park, Jacob's Well, and along Cypress Creek locations.

- Status report on the designation of a truck route in the City of Wimberley

City Administrator Ferguson reported that Texas Department of Transportation (TxDOT) has assigned the project for truck route designation, which is slated for completion in the near future.

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

City Administrator Ferguson reported on off-season regeneration of the swimming area and increased rental activity.

- Status report on the October 2013 Flood in the City of Wimberley

City Administrator Ferguson reported on an extreme rainfall event that occurred on the evening of October 30, 2013, resulting in significant flooding along area creeks and rivers, road closures, mandatory evacuations on portions of Cypress Creek, flood-damaged homes, and use of the Wimberley Community Center as a shelter. Photographs and statistical data were provided on the flood and comparisons were made to historical events. Damages to public infrastructure were noted, including road wash-outs, low water crossings/bridges, drainage structures, debris loads, trees, and parts of Blue Hole Regional Park. He advised that State of Texas damage assessment teams will be touring the area and that dumpsters will be placed in Lions Field specifically for flood debris. He reminded that any structural repair work, site development, or septic system work needs to be coordinated with the City to ensure that the proper permit/inspection procedures are followed. Hays County and Wimberley Fire/EMS first responders were commended for their outstanding emergency management efforts. City Administrator Ferguson provided damage estimates and timeframe for infrastructure repairs, including possible availability of flood assistance relief funds. Mayor Flocke commended City staff and Hays County officials for their assistance throughout the flood and expressed pride in Wimberley's community spirit.

3. Presentation

Presentation by Hays County Precinct Three Commissioner Will Conley regarding the recent decision of Hays County to enter into a water-reservation supply agreement with Forestar USA Real Estate, Inc. (*Commissioner Will Conley*)

This item was heard after Consent Agenda Item 1.

Commissioner Conley distributed a handout to Council prepared by Hays County Precinct Four Commissioner Ray Whisenant and provided background information on Hays County's role and efforts to date to find regional solutions for alternative water resource(s) in order to achieve long-term sustainability for water utility users, well owners, agricultural/ranch property owners, and for our natural resources. He highlighted the importance of water resources in fast-growing Hays County and the need to strike a balance that protects and preserves our heritage, history, and environment. He noted significant reservoir depletion, despite recent rainfall, and reviewed the County's reservation of water from Lee County via a contractual agreement with Forestar USA Real Estate, Inc. as one of multiple tools used by Hays County to help meet future water needs. Commissioner Conley detailed specific contract provisions included as measures to help protect Hays County taxpayers. He favored proactive planning as the best and most cost-effective method of meeting water needs, rather than trying to secure water resources in an emergency situation. Referencing the aforementioned handout, Commissioner Conley addressed concerns regarding any detrimental effect on Lee County's ability to meet the needs of its own citizens by citing statistics on available water resources. He stressed the economic importance of water to Hays County and favored development of a long-term regional solution. Discussion included various state/federal funding opportunities for large-scale water projects, and rainwater harvesting/distribution initiatives and incentives. Mayor Flocke commended the Hays County Commissioners Court for taking a proactive stance by entering into the water-reservation supply agreement.

At this time, State Representative Jason Isaac presented the "Honor and Remember" flag designed as symbol of homage to those who have given their lives in service to our country. He asked Council to consider adoption of a resolution that would mirror the State's requirements regarding display of the flag under certain circumstances. Representative Isaac explained the significance of specific flag components and all veterans present were photographed with the flag. Representative Isaac spoke briefly on the recent voter approval of Proposition 6, which creates new funding options to provide low-cost, flexible financial assistance for water projects.

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 Sue Jones to allow for a secondary residential building on a tract of land zoned Single Family Residential 2 (R-2), located at 205 Freedom Drive, 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. (*Sue Jones, Applicant*)

City Administrator Ferguson reviewed the subject property's location, current/proposed zoning and uses, existing structures, and access. The applicant desires to remodel the existing detached garage into a one-bedroom guest home for relatives and friends and does not plan on making the secondary structure available for rent. He noted that the new septic system to be installed for the secondary residence would require approval of a variance from the City's on-site sewage facility (OSSF) lot size requirements from City Council. He advised that one (1) adjacent property owner has expressed verbal support for the CUP request. He stated that one (1) notified property

owner had previously expressed verbal opposition to the CUP request based on concerns that the secondary structure could become a short- or long-term rental at some point in the future if the conversion of the structure into a guest home is allowed at this time; however, that owner has not submitted written opposition. Another property owner contacted staff to express verbal opposition, but has since advised that he is no longer opposed to the CUP request. City Administrator Ferguson concurred with the Planning and Zoning Commission's unanimous vote on October 24, 2013, to recommend approval of the CUP, with the condition that the subject structure not be made available for rent.

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

Councilmember McCullough moved to approve the item, as presented. Councilmember Talcott seconded. Discussion established that the scope of the proposed remodel would not expand the structure's footprint or height, or create any new driveway cuts. Motion carried on a vote of 4-0.

- B. Hold a public hearing and consider approval of an ordinance approving an application for a conditional use permit submitted by Aaron Scott to operate a bed and breakfast facility on a tract located at 1861 Flite Acres, Wimberley, Hays County, Texas, zoned Single Family Residential 2 (R-2), 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. (*Aaron Scott, Applicant*)

City Administrator Ferguson advised that the applicant has submitted a written request to withdraw the subject CUP application for a bed and breakfast facility, with the intent to re-submit a CUP application for a vacation rental, to be presented to Council in November.

Councilmember Thurber moved to accept the applicant's request to withdraw the subject CUP application. Councilmember Talcott seconded. Motion carried on a vote of 4-0.

- C. Hold a public hearing and consider approval of an ordinance of the City of Wimberley, amending Section 155 (Zoning), Appendix F, of the Code of Wimberley, designating geographic boundaries for a particular zoning district and classification for a tract of property located at 103 and 107 Oak Drive, Wimberley, Hays County, Texas, designating such property from Single Family Residential 2 (R-2) to Commercial – High Impact (C-3); and providing for the following: delineation on zoning map; severability; effective date and proper notice and meeting. (*Chris Oddo, Applicant*)

City Administrator Ferguson reviewed the subject property's location, current/proposed zoning and uses, and existing septic system. The applicant intends to purchase the subject property and convert two (2) existing vacant homes into retail/office space.

As property owners within the two-hundred foot notification area, Mayor Flocke and Councilmember McCullough recused themselves from the meeting at this time. Mayor Pro-tem White assumed duties as presiding officer.

City Administrator Ferguson advised that prior to commercial use of the structures, the applicant will be required to provide the City with certification that the septic system is properly functioning and capable of serving any proposed commercial use. He noted no comments have been received on the requested zoning change. He reported that on October 24, 2013, the Planning and Zoning Commission voted 5-1 to recommend approval.

Mayor Pro-tem White opened the public hearing. Hearing no comments, Mayor Pro-tem White closed the public hearing.

Councilmember Thurber moved to approve the item, as presented. Councilmember Talcott seconded. Motion carried on a vote of 3-0.

Mayor Flocke and Councilmember McCullough returned to the meeting at this time. Mayor Flocke assumed duties as presiding officer.

- D. Hold a public hearing and consider approval of an ordinance of the City of Wimberley, amending Section 155 (Zoning), Appendix F, of the Code of Wimberley, designating geographic boundaries for a particular zoning district and classification for a tract of property located at 516 Flite Acres Road, Wimberley, Hays County, Texas, designating such property from Single Family Residential 2 (R-2) to Rural Residential 1 (R-1); and providing for the following: delineation on zoning map; severability; effective date and proper notice and meeting. (*Michael Gieber & Janice Mullenax, Applicants*)

City Administrator Ferguson reviewed the subject property's location, current/proposed zoning and uses, and need for rezoning due to the recent replat of Lots 8 (1.506 acres) and 9 (1.512 acres) of the Keller Estates Subdivision, which dissolved the center lot line and combined the two tracts to form one (1) 3.02 acre tract. He stated no comments were received on the rezoning request and noted that the Planning and Zoning Commission unanimously voted to recommend approval of the zoning change at its October 24, 2013 meeting.

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

Councilmember Thurber moved to approve the item, as presented. Councilmember White seconded. Motion carried on a vote of 4-0.

- E. Hold a public hearing and consider approval of an ordinance of the City of Wimberley, amending Section 155 (Zoning), Appendix F, of the Code of Wimberley, designating geographic boundaries for a particular zoning district and classification for a tract of property located at 222 Twilight Trail, Wimberley, Hays County, Texas, designating such property from Commercial – Low Impact (C-1) to Public Facilities (PF); and providing for the following: delineation on zoning map; severability; effective date and proper notice and meeting. (*Wimberley Emergency Medical Systems, Inc., Applicant*)

City Administrator Ferguson reviewed the subject property's location, current/proposed zoning and uses, and need for rezoning based on the proposed replat of Lots 34A and 35A of the

Wimberley Heights Subdivision, which dissolves the center lot line and combines the two tracts to form Lot 34R, a 1.763 acre tract. He noted that the portion of the new lot that was Lot 35A is currently zoned Commercial – Low Impact (C-1), while the portion of the new lot that was Lot 34A is zoned Public Facilities (PF). The applicant is requesting PF zoning for the entire acreage, since the intended use of the new lot will be for Wimberley E-M-S operations. He noted that no comments were received on the requested zoning change and advised that on October 24, 2013 the Planning and Zoning Commission unanimously recommended approval.

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

Councilmember Talcott moved to approve the item, as presented. Councilmember White seconded. Motion carried on a vote of 4-0.

5. Ordinance

Consider approval of the first reading of an ordinance amending Title XIII (General Offenses), Chapter 130 (General Offenses), Section 130.03 (Discharge of Firearms Prohibited; Exceptions) of the City of Wimberley's Code of Ordinances to regulate the discharge of a bow and arrow within the city limits; and providing findings of fact, a repealing clause, a savings and severability clause; providing for an effective date; and proper notice and meeting. (*City Administrator*)

Mayor Flocke spoke of complaints received in recent years regarding use of bows and arrows within city limits and asked that staff draft an ordinance prohibiting such use. He asked for Council input on the draft ordinance and suggested discussion of minimum tract size and distance from property line(s) requirements.

Discussion addressed bow hunting as deer population control, possible licensing of bow hunters, designation of bow hunting areas, exceptions from prohibition, wildlife management for large acreage property owners, minimum lot size requirements, enforcement issues, and consistency with Hays County/Texas Parks & Wildlife distance (from structures) requirements.

Councilmember Thurber moved to continue this item until Council's meeting on November 21, 2013. Councilmember White seconded. Motion carried on a vote of 4-0.

6. Discussion and Possible Action

- A. Discuss and consider possible action authorizing the transfer of \$10,000 from the City of Wimberley's General Fund Balance to help fund, with Hays County, the design of improvements to the intersection of Ranch Road 12 and FM 3237, amending the Fiscal Year 2014 General Fund Budget to reflect the transfer and expenditure and authorizing the city administrator to execute any related interlocal agreement. (*City Administrator*)

City Administrator Ferguson explained the importance of having a design in place for improvements to the subject intersection in the event the opportunity arises in the near future to

acquire the right-of-way needed for the desired work. He proposed that the City jointly fund the design work with Hays County, with the City contributing \$10,000 toward funding for the \$26,100 design project. He asked that Council authorize the transfer of \$10,000 from the General Fund Balance and execution of an interlocal agreement with Hays County, if required.

Discussion addressed use of the General Fund for unbudgeted expenditures, need for improvements in accordance with the Hays County Transportation Master Plan, and most effective means of right-of-way acquisition.

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

- B. Discuss and consider possible action regarding a request to reimburse Place Two Councilmember Mac McCullough for legal costs incurred relating to his recent defense against conflict of interest allegations. (*Place Two Councilmember Mac McCullough*)

Councilmember Talcott requested continuing consideration of this item until Councilmember Meeks could be present. Given City Attorney Brad Young's availability to attend tonight's meeting, Mayor Flocke did not favor continuance. Councilmember McCullough read his letter to Council requesting reimbursement for legal expenses personally incurred to defend against conflict of interest allegations. (*The full text of the letter is attached to these minutes*).

Discussion addressed possible recourse against those who make false allegations, Councilmember McCullough's stated reasons for non-recusal on previous agenda items, and lack of sufficient evidence for conflict of interest allegations resulting in the Hays County Grand Jury's return of a "no-bill" decision.

Councilmember McCullough recused himself from the meeting at this time.

City Administrator Ferguson directed Council's attention to a resolution distributed to Council in support of reimbursement (with amount of reimbursement to be determined), should Council wish to approve Councilmember McCullough's request.

Discussion addressed reimbursement as serving the public interest, difficulties associated with finding candidates willing to run for public office, threat of legal action to intimidate Council members, individual choice of Council members on recusal matters, setting policy on reimbursements for legal expenses versus case-specific findings of fact, and recommended addition of resolution language requiring Councilmember McCullough's reimbursement to the City of any potential future restitution that he may receive, should he seek recourse for false allegations.

Councilmember Thurber moved to approve the resolution to reimburse Councilmember McCullough in the amount of \$18,058.00, with the abovementioned additional recommended language. Councilmember White seconded.

Mayor Flocke called for a vote as follows: Councilmember White, aye; Councilmember Thurber, aye; Councilmember Talcott, aye. Motion carried on a vote of 3-0.

Councilmember McCullough returned to the meeting at this time.

- C. Discuss and consider possible action regarding a proposal that the City of Wimberley assume maintenance of the Ranch Road 12 roadside picnic area. (*Wimberley Parks Board*)

City Administrator Ferguson stated that Texas Department of Transportation (TxDOT) has formally notified the City it is considering closing the Ranch Road 12 roadside picnic area due to maintenance and funding issues. TxDOT has offered the City the opportunity to maintain the picnic area, while TxDOT retains ownership of the subject property. He explained responsibilities of TxDOT and the City under the maintenance proposal. He advised that on October 17th, the Parks Board recommended acceptance of the TxDOT proposal and partnership with local service organization(s) to help perform the required maintenance.

Discussion addressed the roadside area as a community asset and “gateway” property, recent lack of TxDOT maintenance, estimated costs to City, and possible partnerships with local service organizations.

Councilmember Thurber moved to accept TxDOT’s proposal and enter into a partnership agreement with local service organization(s) to perform required maintenance at the roadside picnic area. Councilmember White seconded. Motion carried on a vote of 4-0.

7. City Council Reports

- Announcements
- Future Agenda Items

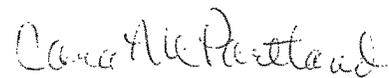
City Administrator Ferguson reported that a Request for Proposal (RFP) is being drafted for development of a downtown master plan.

Councilmember Talcott requested that the City move expeditiously on completing a drainage assessment.

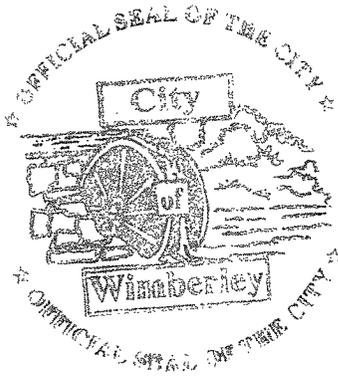
Hearing no further announcements or future agenda items, Mayor Flocke called the meeting adjourned.

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

Recorded by:


Cara McPartland

These minutes approved on the 21st of November, 2013.



APPROVED:

Bob Flocke

Bob Flocke, Mayor

To: Honorable Mayor Bob Flocke
and Members of City Council
City of Wimberley
P.O. Box 2027
Wimberley, Texas 78676

Dear Mayor Flocke and Members of City Council:

Over the last year and a half, I have found myself in the unenviable position of having to aggressively defend myself against false allegations of conflict of interest brought against me by a handful of unhappy citizens.

The above-mentioned allegations were thoroughly investigated by the Texas Rangers whose findings were presented to the Hays County District Attorney. On August 21st, 2013, the Hays County District Attorney presented the allegations to the Hays County Grand Jury. After reviewing evidence in the case and hearing sworn testimony from myself and others, the Grand Jury returned a "No Bill", meaning it found that the allegations against me were not supported by any evidence to warrant criminal prosecution.

As you can imagine, the last twelve (12) plus months have been an extremely difficult time for me, as well as for my wife Robin and our children Michele and Marc. My family stood by me throughout this challenging journey, and for that I am extremely grateful.

Also, I am very grateful to my constituents and the Wimberley community at large for their understanding and patience during this very difficult time. It has been no easy task to carry out the responsibilities and duties of an elected official while, at the same time, having to vigorously defend myself, publically and privately, against the referenced allegations.

Not just has this matter taken a toll on my personal and public life, it has also taken a financial toll on my family and me. I was forced into the position of having to hire private legal counsel to handle my defense against the false allegations made against me in the normal course of performing my duty as an elected official. That legal representation has personally cost me \$18,058.00

I am writing this letter to formally request the Wimberley City Council consider authorizing the full reimbursement of the above-mentioned legal fees. Please feel free to contact me should you desire to view the legal bills for which I am seeking reimbursement.

It is my position that state law grants a city council the authority to reimburse the legal expenses of a fellow council member involved in a criminal prosecution if the council finds that the alleged criminal act was performed in furtherance of the council member's legal duties, if the council member's actions were taken in good faith, if the

reimbursement will serve the public interest and not merely the council member's private interest and if the council member is found not guilty. Please see the attached briefing from my attorney relating to the city council's authority relating to the reimbursement of legal expenses.

Your timely consideration of this reimbursement request would be greatly appreciated. Please let me know if you have any questions or need additional information regarding this matter.

Sincerely

A handwritten signature in black ink, appearing to read 'Mac McCullough', with a stylized flourish at the end.

Mac McCullough
Place Two Council Member
City of Wimberley

RANDALL BUCK WOOD

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November 5, 2013

Mr. Mack McCullough
1415 East Spoke Hill Drive
Wimberly, Texas 78676

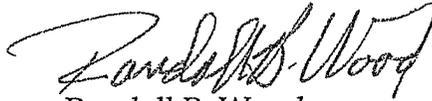
Dear Mr. McCullough:

This letter is written with regard to the authority of a city to reimburse its officials for legal fees incurred in connection with acts undertaken in their official capacity. The courts in Texas "have found that there is a discretionary power to reimburse officials for their legal fees." *White v. Eastland County*, 12 S.W.3d 97, 104 (Tex. App. – Eastland 1999, no pet.); accord *City of Corsicana v. Babb*, 290 S.W. 736, 737 (Tex. Comm'n App. 1927, judgment adopted) (upholding use of city funds to pay legal expenses of criminal trial against city officer and holding that "[i]ndemnification of a city officer against liability incurred by reason of an act done by him in the bona fide performance of his official duties is a municipal function.").

The Attorney General has stated that a city's governing body is authorized "to reimburse a member of the city council for attorney's fees incurred in defending against criminal charges" if it relates to an act "done in the bona fide performance of official duties and that a public interest, rather than a private interest of the individual officer, is served by the expenditure." Op. Tex. Att'y Gen. No. JC-0294 (2000). This would include the decision to "pay private attorney's fees incurred in connection with grand jury investigations of" city officials. Op. Tex. Att'y Gen. No. LO-89-12 (1989). In the present matter, it is clear that the grand jury investigation related to your council votes would qualify for reimbursement from public funds. First, the votes in question were clearly related to an issue of public importance for the city. Moreover, a determination of when council members are permitted to vote on an issue is a matter of public interest for conducting city business and not just a matter of private interest for any particular council member.

Please do not hesitate to contact me if you have any additional questions on this issue.

Sincerely,



Randall B. Wood

RBW:cw