

City of Wimberley
City Hall, 221 Stillwater
Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
December 1, 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

Mayor McCullough announced certain changes in order of agenda items and moved this item after Agenda Item 4B. No citizen comments were heard.

1. Consent Agenda

This item was heard after the Pledges to the United States and Texas flags and before Agenda Item 4B.

- A. Approval of minutes of the Regular City Council meeting of November 17, 2016
- B. Approval of minutes of the Special City Council meeting of November 3, 2016
- C. Approval of minutes of the Special Joint City Council-Planning and Zoning Commission meeting of November 9, 2016
- D. Approval of minutes of the Special Joint City Council-Planning and Zoning Commission meeting of November 15, 2016.

Councilmember White moved to approve all Consent Agenda items, as presented. Councilmember Barchfeld 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 the latest water quality test results showed elevated levels on Cypress Creek at the Square and noted testing will be conducted again after Market Days.

- Status report on River Road Riverbank Restoration Project

City Administrator Ferguson reported the contractor is ahead of schedule and anticipated completion in about two weeks, weather permitting.

- Status report Hidden Valley Low Water Crossing Reconstruction Project

City Administrator Ferguson anticipated issuance of the sand and gravel permit from Texas Parks and Wildlife within the next few days.

- Status report on City of Wimberley Buyout/Elevation Funding Application

City Administrator Ferguson reported the City's application is currently under review by the State.

- Status report on law enforcement-related issues

City Administrator Ferguson reported positive discussions were held with incoming Hays County Precinct Three Constable Ray Helm on possible use of off-duty officers to help out in school zones when the city marshal is not available. He noted that the special law enforcement committee will be convening on potential expansion of services with Hays County law enforcement representatives and possible modifications to the existing interlocal agreement.

- Status report on Wimberley City Council Parliamentarian Project

City Administrator Ferguson anticipated developing a rotation schedule of several volunteer parliamentarians, hoped to bring a list of names to Council in January, and spoke on Council training available through the Texas Municipal League.

- Status report on 2016 Blue Hole Christmas

City Administrator Ferguson that 2016 Blue Hole Christmas has been cancelled due to threat of inclement weather.

3. Ordinance

Consider approval of the second and final reading of an ordinance of the City of Wimberley, Texas, amending Title VII (Traffic Code), Chapter 70 (Traffic Regulations) to add a new Section 70.06 (Low Water Crossings); providing for findings of fact, repealer, savings, severability, proper notice and meeting, and an effective date. *(This item was continued from November 17, 2016 City Council meeting; City Administrator)*

City Administrator Ferguson recommended approval of the second and final reading of the ordinance, which includes addition of language to §70.06 recommended by Council at its November 17th meeting, as follows: "(C) *Exception.* The prohibitions in this section do not apply to a person who is portaging a watercraft or otherwise crossing a low water crossing from one portion of the river to another, so long as that person does not stop, stand, or park upon the low water crossing."

Mayor McCullough entertained public comments.

Joanna Booth of Woodcreek North said friends allow her family river access and said there is no public water access for her children to swim. She felt this is sad and “not Wimberley.” She cited public water access in New Braunfels and asked where her child can go to swim. Ms. Booth said that she used to drop people off at the 7A Resort low water crossing and then pick them up later.

Deborah Koeck echoed the previous speaker’s concerns about public access to the navigable Blanco River and asked how the City plans to enforce this ordinance. She said the City does not have enough enforcement for school zones and it is disingenuous for the City to enact an ordinance it is unable to enforce. She said this ordinance will bring about mayhem and conflict. She stated her experience that the sheriff and constable do not come, if called. She felt this would cause more problems and not be helpful at this time.

Gary Zupancic agreed with Ms. Booth and Dr. Koeck. Speaking as a private citizen, he spoke of all the historical locations that are now closed for access or are prohibitively expensive options. He said losing water access takes away one of his biggest enjoyments of living here and takes it in stride when he has to stop to wait for kids to run across the bridge. He said not having any entrances to the river takes a lot away from locals and visitors. He stated his taxes go to pay for the bridge and would like to be represented and have someone looking out for his rights. He noted the devastation of the 2015 floods and said that those who live on the river and received help from the community now want to keep out those people out. He questioned how the ordinance would be enforced and clarified he was speaking specifically about the CR 1492 bridge. He felt it unfair to ask people to pay \$10 for water access. He favored leaving the CR 1492 crossing out of the ordinance, as there is no parking allowed on either side of the street.

Madonna Kimball, speaking as someone who has promoted Wimberley for 27 years, noted limited options for water access, as Blue Hole and Jacobs Well are often at capacity, and cited issues with Cypress Creek and 7A Resort. She said there is no place for people to access the river unless the City has a park where people can get in and swim.

Pam Mitchell, who manages Montesino Ranch near the Little Arkansas low water crossing, spoke of the neighborly way she deals with people on the bridge. She said when police are called about cars in her driveway, they will not write warnings or tickets. She did not want to pull police officers from more important duties and questioned why the City would want an ordinance it cannot enforce. She said if someone is walking on the crossing, she just slows down and said people should “chill out.”

Cindy McShirley spoke of her family’s long ownership history and agreed with comments about having fun and enjoying the river. However, she felt Council is not looking at this from the land owner’s perspective. She said 15-20 will people camp out with grills and bring their dogs, which does not allow owners to enjoy their own properties. She said parked cars are a problem at Hidden Valley, but never sees cars parked at the Little Arkansas bridge. She noted that car loads of people come in from Austin, which ruins the owners’ time at properties they pay taxes on. She said people even park in her driveway and go sit on the banks of private property. Ms. McShirley noted it is a public safety issue and she respects other peoples’ properties. She said

she wants people to enjoy the river and that they are not mean people, but feared the new design of the bridge will be even more inviting.

City Administrator Ferguson advised this is a public safety issue and ordinances are not passed with the intent to have law enforcement there “24-7” writing tickets, but are there as a tool for those who will not comply with courtesy warnings to move. He noted signage will be a key part in deterrence. He said it is important to understand that a low water crossing is a piece of public infrastructure that is meant to move traffic, not pedestrians, and is not for river access. He was sympathetic on the need for public water access, but stressed the ordinance is meant to address public safety and liability issues.

Mayor McCullough liked the bridges the way they are and said they are a part of the City’s ambiance. He noted that he once lived at the CR 1492 bridge and never found anyone who was obstinate and would not move. If he were able to vote, Mayor McCullough stated he would not enact this ordinance. Discussion clarified which low water crossings were included in the ordinance.

Councilmember Fore asked whether someone standing on the bridge and blocking traffic is already against the law. City Administrator Ferguson said it is against State law, but the issue is not just walking on the bridge, but laying on it, fishing on it, etc. Councilmember Fore questioned how this ordinance is going to stop people from breaking the law.

Councilmember White noted that people have the right to walk or portage across the bridge and to be in the river under Texas’s right of passage laws. He said nothing will stop people from walking on the bridge and entering the river. He cited his 37 years of experience with 7A and said it is when people come out of the river that they are trespassing. He spoke of the ordinance as aimed at people sunbathing or fishing on the bridge, which blocks traffic, and in particular, those who will not move off the bridge when asked to do so.

Discussion addressed the ordinance as an enforcement tool for those who do not voluntarily comply and move off the bridge. Councilmember Barchfeld said he wanted people to enjoy the river, but the City has to look at liability and Council has to make difficult decisions. He agrees with Councilmember White’s comments, noted the City will not be regularly enforcing this ordinance and ticketing people, and said the City needs the tools to remove someone, if necessary. Councilmember Trapp spoke of the recent moratorium on short-term rentals due to a few “bad apples,” and questioned how big this problem really is. She felt we are creating ordinances just to create ordinances. Councilmember White said he dealt with these situations about 5-6 times per summer. Councilmember Dussler supported Councilmember White and noted that the ordinance does not prohibit people from walking across the bridge and felt a sign will also help deter people. Councilmember Fore did not see how the ordinance would protect property owners or fix the problem. City Administrator Ferguson stated that signage referencing an ordinance would help as a deterrent.

Councilmember White moved to approve the ordinance, as presented, which includes the aforementioned additional language in §70.06(C). Councilmember Barchfeld seconded.

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

4. Discussion and Possible Action

- A. Discuss and consider possible action regarding the proposed 2015 Floods CDBG-Disaster Recovery Fund Allocation Plan for Hays County. (*City Administrator*)

City Administrator Ferguson detailed Hays County's CDBG-Disaster Recovery Fund Allocation Plan and Council's ability to accept all or part of its share under the Plan. He explained that CDBG funding can be used to help match flood mitigation grants awarded to the City for property buy-out or elevation, provided the property to be acquired or elevated meets the low to moderate income requirements set forth in the Plan. He said each home would have to be evaluated on a case-by-case basis to determine whether it meets the low to moderate income requirements. He noted Hays County has allocated significantly more funds to the City of Wimberley than are needed to meet the City's match requirement. Due to the low to moderate income requirements and other specific funding criteria that must be met, City Administrator Ferguson felt comfortable asking for CDGB funding to help match flood mitigation grants awarded for buy-out/elevation.

Discussion addressed specific types of projects that might qualify for funding under the Plan; challenges in meeting funding requirements, including low to moderate income restrictions; and anticipated match amount of approximately \$250,000 to \$300,000.

Councilmember White moved to authorize City Administrator Ferguson to seek matching funds for the flood mitigation grants awarded to the City for buy-out or elevation of flood-damaged properties that meet the Plan's funding criteria and to notify Hays County it may use the rest of the City of Wimberley's allocation in other areas. Councilmember Fore seconded. Motion carried on a vote of 5-0.

- B. Discuss and consider possible action regarding a proposed term sheet relating to the possible provision of wastewater service to Central Wimberley by Aqua Texas and authorizing the City Council Subcommittee on Aqua Texas to request additional information from and continue discussions with Aqua Texas. (*Place Three Councilmember Sally Trapp*)

This agenda item was heard after Consent Agenda Items 1A-1D.

Mayor McCullough entertained public comments on this item and speakers were advised to keep comments to no more than three (3) minutes in length.

Christine Middleton spoke of her personal experience working in a regulated utility (telecommunications) environment when the only choices for local telephone service were Southwestern Bell or some other local telephone company. She said today's sewer system is what was then called a natural monopoly, meaning the cost to build the system precludes

competition. She referenced recent suggestions that investor-owned utilities such as Aqua Texas are subject to an appeals process after being given notice of a rate increase. She said this is true in principle, but stated successfully fighting a large for-profit company with a stable of high-paid lawyers is almost impossible, even with dedicated individuals who refuse to give up and a community willing to support them financially. She spoke of her sister's residence in the City of Woodcreek and recalled yard signs and other details on fighting unfair rates by the Woodcreek Ratepayers Coalition. She spoke of her recent research of Wimberley View archives to better understand the anger that permeated Woodcreek back then. She appreciated Woodcreek's residents' valiant efforts to stand up to Aqua Texas, which was led by a courageous woman who was supported by citizens with both time and money. Ms. Middleton noted that the Woodcreek Ratepayers Coalition actually won their court case, which gave them the right to negotiate with Aqua Texas, but in the end was a "hollow victory." She said Aqua Texas "out-lawyered and "out-moneyed" the small community of 787 households and Aqua Texas slowly but surely wore down the volunteers' energy and the community's ability to support them. She stated that eventually the group was forced to give up. She said we continue to hear complaints from Woodcreek on high water and sewer rates and more recent Wimberley arrivals have indicated they will not consider buying a home in Woodcreek after being told by realtors of Aqua's high rates. Ms. Middleton cited her sister's base sewer rate of \$71.50 and base water rate of \$44.85 and noted this is before anyone turns on a faucet or flushes a toilet. She presented a folder of all Wimberley View articles between 2004 and 2007 and distributed a summary of those articles to Council. She quoted Winston Churchill as saying "those who don't learn from history are doomed to repeat it." She asked that Council please consider this piece of local history before making decisions.

Barbara Hopson stated she is very much opposed to working with Aqua Texas in any form or fashion. She wished the people supporting Aqua Texas would compare apples to apples when comparing Aqua Texas to a City-owned system. She said despite hearing of Aqua Texas as a "no cost" option, there really is not a "no cost" option, as she felt the Aqua Texas option may not cost as much upfront, but will cost more than a City-owned system over many years. She stated that if the City gives up its CCN, it loses its right to control growth by controlling where utilities run. She said once the City gives away its CCN, it will never get it back because it would have to repay Aqua Texas every penny paid involving service it has extended. Ms. Hopson said Wimberley is just one small part of a 16-county rate region of Aqua Texas and every single person serviced by Aqua Texas in a single rate region has to have exactly the same rate schedule as every other entity in that district. As an example, she stated Wimberley has to have the same rate as the City of Woodcreek, Meadow Oaks, and every other Aqua Texas facility in 16 counties. Ms. Hopson said the City is really helping to pay not only for its own City water system, but for any Aqua Texas customer water system in 16 counties, which she felt makes it very difficult to make a comparison, and asked Council to "work out your rate sheets accordingly."

Alan Munde spoke as a citizen of Wimberley who is not against anyone, but said it is the right and proper thing for the City to own its own utilities. He said everywhere he has lived has always had publicly owned utilities, which he felt is the right way to go. He felt Aqua Texas is wanting too much and said one reason to incorporate was to control and manage growth. He

questioned whether the City should un-incorporate, if we are not going to manage things ourselves, rather than turning them over to a for-profit group.

Ino's owner, Tom Keyser, said he is in the proposed service area and has been involved with this project for years. He wanted to address Council on the methods by which wastewater rates are established and customers are protected. He felt much has been said by various groups about the City maintaining control of rates south of the creek (Cypress Creek) and concerns regarding rate increases by Aqua Texas. He referenced two forms (published by the Public Utility Commission of Texas) that were distributed to Council. He said the rates established by a City-owned utility are at the sole discretion of the City Council and are not subject to PUC review or approval and no advance notice to customers is required. He said in an investor-owned utility, that is not the case. He stated customers have no right to dispute the City-established rates with the PUC. He stated this group or any future Council at their sole discretion by majority vote could set that rate at whatever they wanted it to be. He said that we saw last night during the rate meeting that the base rate you will pay here in Wimberley is not far off from what you are paying right now in Woodcreek, and that is with the City's \$200,000 contribution. He said you are going to be paying a base fee ("before you flush a toilet") of \$56 per any household. He said without the City's contribution, "it could go as high as \$220 a month," and asked that Council look at the documents that were presented last night. He stated additionally the Texas Water Development Board will require that sufficient rates be charged for repayment of the loan. He said if the City-owned utility rates are subject to the whims of future Councils it provides no consumer protection whatsoever. He encouraged Council to think about these things as it votes and looks at different rate structures.

Andrew Baccus, who lives in Dripping Springs' extra territorial jurisdiction, noted his service on the Hays Trinity Groundwater Conservation District's Board from 2003 to 2010, including his 4-year tenure as Board president. He spoke of the Board's dealings with Aqua Texas and Woodcreek in their water system permitting. He noted they had a tremendously leaky system and when Aqua Texas was asked why they did not fix those leaks, the answer was that TCEQ regulates on pressure, and does not have a metric for leakage, "so if we just maintain the pressure, then we're good." Mr. Baccus and the Board did not feel that is a wise use of resources and said eventually there was a continuing fight to get Aqua Texas to improve the system. He believed that the Wimberley community should maintain control, as a corporation's prime objective is its responsibility to return value to the shareholders and does not speak to community service. He referenced a documentary titled "The Corporation," which evaluates a corporation based on the DSMV psychological manual. He said if you had to analyze a corporation based on its by-laws, it would be a "sociopath," because all it cares about is returning value to shareholders. He believed it would be a huge loss of control for our community to hand this over to Aqua Texas.

Candy Spitzer spoke of her business experience with governmental real estate and rights-of way, specializing in water/wastewater lines throughout Texas and the Hill Country. She said the important thing about this project is the CCN and the "use of putting in the pipelines." She stated eminent domain is not a bad thing as long as it is done for the benefit of the public and people understand there are tax benefits. She cautioned that if the City turns over its control to a private wastewater company the City will have a harder time, because the City will have to use

its power of eminent domain to get pipelines put in. She was not sure “how willing the property owners are going to be to allow that under the investor-owned utility.” She felt they might be willing, if it is for the public good and for the City. Mrs. Spitzer said the only way you can control what Wimberley looks like and steer it into a model city (unlike Kyle, Austin, or San Marcos) is with the power of the CCN. She thanked Council and asked to find a compromise among Aqua Texas, the City, and its constituents, and urged the City not to give away its power.

Phil Collins stated he really does not care whether the City goes with Aqua Texas or a City-driven answer, but encouraged Council to please take action and not spend any more money on studies, as Council has a fiduciary responsibility. He also spoke of his support of the City’s Hotel Occupancy Tax, but felt the original process is being circumvented and favored “throwing it back out there for a vote.” He agreed with the 3-minute time limit for speakers and asked that Council be consistent regardless of how excited speakers may be.

Louis Parks reminded that the City of Wimberley has already fought Aqua Texas in a previous court case and provided details on the legal fight that was joined by a small Houston community and its legal team and resulted in Aqua Texas allowing some incorporated communities to get out of their agreements. He pointed to the City of Kyle’s negative experiences with Aqua Texas and asked Council to visit those working within (or formerly within) Kyle’s city government about why Aqua Texas was such a bad partner.

Barbara Clayton spoke of her family’s history, of growing up in the Buda/Kyle area, of her father’s role in founding local school districts, and her own teaching career. She said you can put value on rocks and mountain junipers and spoke of problems faced by the community, including floods that caused people to lose so much due to “a handful of people who made some decisions that were not very good.” She spoke of living off of CR 1492 for nearly 30 years, of her husband’s long illness, and of her continuing real estate career in New Braunfels. She stated her desire to leave her home to her children and said the system that she would pay for would not benefit her or anyone on CR 1492. Mrs. Clayton said she was for incorporation because she thought “we would be protected.” She said “now you are wanting to charge people to cross that bridge” and asked “how the heck does the City own the low water bridges and make decisions as to can walk on it or who can’t.” She felt the community that is dear to her heart is being shred apart by a handful of people who’ve got plans to expand and asked if the flood did not teach anyone a lesson about building “cement, concrete, and asphalt.” She said her house did not get flooded, but “because those ordinances aren’t enforced, my road cost me \$1,000 to fix.”

Judy Thompson expressed concerns about “the money and the loan.” She was worried that the system would cost up to \$10,000,000. She said there are 2,600 citizens and 1,589 households to pay the money back. She felt no option is perfect and stated there is a lot of confusion regarding Aqua Texas acquiring the CCN and controlling all development. She said it would be very helpful if the City could explain why current zoning and development ordinances would not protect the community.

Maurice Guimont said that an agreement that goes on forever makes no sense, as no one knows what the situation will be like in 20-30 years. He asked what would happen if Aqua Texas is sold to offshore owners “who couldn’t care less about us.” He felt contracts should be

renegotiated and updated after 20 years or so. He stated “the idea that Aqua Texas will fix rates for the first 2 years then are free to charge what they want after that is very naïve,” which he said amounts to taxation without representation. He said there should be rules regarding price escalation and there should be some index used that is related to the cost of operating the system. Mr. Guimont said Aqua Texas has no business telling the City that it must limit its zoning or building restrictions and said they are trying to make Wimberley “a company town” like coal companies did to towns in West Virginia and Pennsylvania. He felt Wimberley’s CCN should stay in the City’s possession and to give it away is to give away a method of control over Aqua Texas. He said “lease it to them at an annual rate that is tied to the price they charge the merchants for treating their wastewater or a similar scheme.”

Deborah Koeck of 1 Spalding Circle in the City of Woodcreek stated she owns properties in downtown Wimberley at 250 Blue Heron Run and 136 Henson Road. She suggested that Council ask speakers to state where they live to determine whether they are one of the impacted property owners in the downtown area that will be forced onto this sewer system. She said that will “give us a better perspective on what their thought process is and why they feel the way they do.”

Penny Stone, who lives in Woodcreek North and does not own property in downtown Wimberley, said this issue affects all of us and gets how frustrating it must be for Wimberley residents/property owners to feel they are the ones who have to bear the burden of all this. Ms. Stone questioned how this cost could be spread to a larger audience in Hays County. She said she would be glad to help pay for it if it means our creeks do not get polluted and you do not give away our power to a corporation that has absolutely no interest in anything but making money.

Mayor McCullough concluded public comments.

Councilmember Trapp spoke of the Aqua Texas Subcommittee’s work with Aqua Texas on the proposed term sheet, which contain basic conceptual principles agreed upon by the City and Aqua Texas. She spoke of a meeting held today with Councilmember Barchfeld, City Administrator Ferguson, City Attorney Emily Rogers, and Aqua Texas President Bob Laughman and his legal counsel. She distributed a handout on the term sheet to Council.

Councilmember Barchfeld introduced the term sheet put together in good faith negotiations and took turns reading the document with Councilmember Trapp. (*The full text of the Aqua Proposal to Provide Wastewater Treatment Service to the Wimberley Downtown Business Area is attached to these minutes.*)

Councilmember Barchfeld stated that bids received on the Wimberley sewer system will be turned over to Aqua Texas, in order for Aqua Texas to determine what rates we would pay and then Council can compare bids to make an intellectual, economical, and environmental decision on this subject.

Councilmember Trapp clarified that Aqua Texas’ rates have already been stated, but the City’s rates will have to be evaluated. Councilmember Barchfeld said that effectively we will have the same rates as north of Cypress Creek, with a five-year cap on those rates.

Mayor McCullough opened Council discussion and noted that the City's legal counsel, Emily Rogers, is present to answer questions.

Mayor McCullough adjourned Open Session and convened Executive Session at 6:56 p.m., pursuant to Section 551.071 of the Texas Government Code for consultation with legal counsel.

Mayor McCullough adjourned Executive Session and reconvened Open Session at 7:36 p.m.

No action was taken in Executive Session.

Mayor McCullough requested Council direction on this item and said significant long-term decisions have to be made. He asked what the key "tripping points" are for going with Aqua Texas.

Councilmember Trapp replied: Fairness; as the City-owned system creates a special class of citizens, and our whole Village is paying for this district to have sewer service," which she described as being handed "a golden ticket." She said assets would be taken out of the budget every year that could be spent on roads and bridges and we would be spending it on sewer. She stated the City is even offering to hook up private properties from the house to the main and no one else in town gets that. Affordability; Aqua Texas versus the City's plan. She said that Aqua Texas rates, that have been published and agreed to, are extremely reasonable and very affordable.

Discussion addressed phased versus non-phased development of the collection system under the Aqua Texas proposal. Councilmember Trapp favored the phased approach; Councilmember White favored the non-phased approach; Councilmember Fore said "it depends" and said with the phased option "you have less money invested in the first phase before the CCN is transferred." Councilmember Barchfeld stated his goals are to get the creek cleaned up and affordability, and noted Aqua Texas's preference for not phasing system development. He felt all the data is needed to make a decision. Discussion between Mayor McCullough and Councilmember Barchfeld addressed possible project bid amounts and Councilmember Barchfeld stated that Mr. Laughman expressed concerns that the City's estimates were low and did not want to make a commitment until bid numbers are in. Councilmember Barchfeld said this has always been about having two options so Council can pick the best one. He did not want pollution or spending more money than we have to, or trigger the need for an ad valorem tax. He said there are approximately 2,600 voters in this community that we need to treat fairly. He noted many people do not care about the sewer, but want a decision made, which requires complete fact-finding and comparison of options.

Mayor McCullough said he is getting a strong sense that the Aqua Texas option is the preferred route and Councilmember Barchfeld noted angst regarding costs, those who may or may not receive benefits from the system, the City's contribution, and possible need for an ad valorem tax if all alternatives are not examined.

Councilmember Dussler stated he has a huge issue with Aqua Texas as a company and great issues with giving away our CCN, which he described as a "deal breaker." He agreed with

Councilmember Barchfeld that we need a detailed proposal from Aqua Texas and our own bids to make a thoughtful, unemotional decision and do what is right. He noticed that on the term sheet, the item regarding Aqua Texas's request that the City limit its restrictions on future growth, was missing. Councilmember Trapp said the intent of Mr. Laughman was to request that the City not impose any moratoriums in order to justify Aqua Texas spending "this amount of money in your community." She said Mr. Laughman knows the City's regulations are stringent and was not asking that they be relaxed, but he did ask that moratoriums not be placed on building.

Councilmember Fore expressed his long-term concern is debt. He did not know if Aqua Texas is better than the City's plan, but with the City's plan, he sees the City going deep in debt and does not know how much debt there will be until bids are in. He spoke of paying back the loan amount, operating costs, and other unidentified costs.

Councilmember White said bids are needed and may be higher than anticipated, but asked Council to think back as to why we started discussion of a sewer system many years ago, which is pollution from unknown source(s). He stated the need to have collection system bids in hand in order to make a comparison with Aqua Texas's offer. He stated agreed-upon goals to clean-up the river/creek and have no discharge. He pointed out there will also be maintenance costs for the system as it ages. He reserved his judgment until he has looked at final figures.

Mayor McCullough favored getting bid numbers as soon as possible. City Administrator Ferguson said the engineers are waiting for final paperwork from TxDOT and hoped to have that information by the middle of next week. Discussion favored scheduling a special meeting of Council on Wednesday, December 7, 2016 at 6 p.m. and the need to expedite the bidding process. Discussion addressed possible issues or questions regarding Aqua Texas's proposal, including potential benefits of the proposal to Aqua Texas.

Councilmember Barchfeld stated he would like to make a motion to approve the term sheet and request that Aqua Texas submit a proposed contract based on certified cost estimates for both phases.

Councilmember White moved to authorize discussion between the Aqua Texas subcommittee and Aqua Texas to develop a formal agreement, with a deadline to be determined at Council's special meeting on December 7th. Councilmember Trapp seconded. Motion carried on a vote of 5-0.

- C. Discuss and consider possible action regarding a proposal to develop a multi-faceted approach towards the management and allocation of Hotel Occupancy Tax proceeds to replace the City of Wimberley Hotel Occupancy Tax Advisory Committee. (*Mayor Mac McCullough*)

This item was heard after Agenda Item 4A.

Madonna Kimball read the following statement by Hotel Occupancy Tax Advisory Committee member Mark Bursiel: "Good evening, Council and Mayor. To those of you who do not know

me, my name is Mark Bursiel and I am a current sitting member of the City's Hotel Occupancy Tax (HOT) Committee. I come before you tonight not as a friend or as a foe. I come to you as a member of the HOT Committee. Approximately 18 months ago, our Committee was given the task to form a cohesive group with a clear objective, rules, regulations, and guidelines. The only information we were given to perform this task was a mediated agreement formed between two groups – the Wimberley Chamber of Commerce and the WVTLA, which was mediated with the oversight of Scott Joslove and then Mayor Steve Thurber. Since the time this Board was formed of seven volunteers (4 lodging; 1 Chamber; 1 arts; and 1 merchant), we worked many hours to create Board guidelines that not only followed the laws of Texas, but also fit into the City's master plan, maintaining the quaint, small town aura. As you well know, these guidelines have been submitted for Council to review and approve 3 times over the past 18 months. Since the acceptance of the guidelines, we have had our first round of proposals and funding requests. As a result, we have discovered, as we thought, there would be some mistakes that need to be corrected. We are the most transparent Board the City has, with published operating guidelines, a City-approved ordinance, and a mediated agreement. With that said, we have approved 63% of the applications that have been submitted to our Committee. However, we are also the most attacked and oppressed Board this City has. We've been talked about, called names, and publicly put down and berated and belittled by City representatives as well as public representatives. All this has been done in a public setting as well as behind closed doors. We have been given a job to do by the City and I feel that we have been doing the best job we can within the approved guidelines and the laws of Texas. Tonight I'm asking the Council, the Mayor, and City staff, and groups within Wimberley to stop the attacks and name-calling and allow us to do our job. Changing the way the Committee is formed or the way it operates will only derail the progress made, causes more instability, and cause further delays.”

Bob Cook, part owner of Art on 12 Gallery and HOT Committee member, stated he is speaking personally and not on behalf of the Committee. He noted collections of \$254,000 and spending of about \$10,000. He considered this to be the worst of all worlds, because we have incurred the cost and pain of pulling this money out of the lodging sector, but have not put any of it to work to increase tourism and lodging nights. He said we have only looked at events and have figured out there are not that many events in Wimberley that would justify HOT funds that would come close to \$200,000. He felt what we are missing is baseline spending, or spending not related to an event that goes on over a semi-permanent basis, such as billboards, signage, social media marketing, etc. He referenced WVTLA's DMO proposal, which involves hiring a tourist director, and building a department within the City that focuses on tourism. He said this was explained in great detail to the Committee, which voted 7-0 to recommend approval. He noted that Council did not approve the DMO after hearing opposition and the item was tabled. Mr. Cook recommended that Council accept the DMO plan with a stipulation that the Visitor's Center be kept separate from the DMO, so the DMO could not take over or manage the Visitor's Center. He felt there would be a way to develop baseline projects in a manner that would push tourism.

Mayor McCullough reviewed the history of the HOT tax, 3-year review timeline, revenue projections, Committee formation, and turnover among members. He asked if one Council member can help the Committee work together and possibly make the application process less burdensome. Mr. Cook spoke on the shortage of applicants for events and advocated that the

Committee produce a modified application form to help eliminate some confusion and supported the DMO as an ambitious plan with its own revenue sources allocated. He said the DMO is not necessarily asking for HOT funds, but is asking for a line of credit. He favored holding a workshop with the public who could bring forward projects and noted other projects such as rack card programs that other cities have.

Discussion addressed reasons that HOT fund allocations were returned to the City by an event organizer; functioning of the HOT Committee; possible joint Committee/Council meeting; development of a vision for tourism; primarily unanimous recommendations from the Committee to Council; need for Council direction to the Committee; and implementation of the HOT tax. Mayor McCullough did not feel the Committee was unified. Councilmembers Barchfeld and Trapp felt the Committee functioned very well together. Councilmember White referred to a feud between two entities at odds with each other, which has degenerated into a name-calling contest. Councilmember White felt the DMO was too complicated and favored a 3-year period to target advertising to the appropriate people through HOT tax funds. He said the application is daunting and stated his main goal is to get some peace in the Valley. Mr. Cook felt keeping the DMO as a separate entity would alleviate conflict with the Visitor's Center. He said not much is done to sell Wimberley and we need to bring in experts.

Discussion addressed holding a joint Council/Committee meeting; need for the Chamber and WVTLA to work together; the Chamber's lack of application/representation at Committee's meeting; need for a plan to spend HOT tax funds; reasons for Committee turnover; and the HOT Committee's need for clarification on Council's vision before holding a joint workshop. Mayor McCullough envisioned a 3-part organization that would replace the Committee and favored not having the DMO and Visitor's Center as separate locations.

Mayor McCullough announced he is pulling this item and will bring it back to Council later. No action was taken.

- D. Discuss and consider possible action regarding the appointment of members to the newly created City of Wimberley Technology Advisory Committee. *(Place Three Councilmember Sally Trapp)*

Councilmember Trapp presented the following appointments for consideration: Ralph Logan, Haidar Khazen, Christy Degenhart, Tera Villaret, and Jerre Cope. Councilmember Trapp anticipated the Committee's first meeting to be held in January 2017.

Councilmember White moved to approve the appointments, as presented. Councilmember Barchfeld seconded. Motion carried on a vote of 5-0.

- E. Discuss and consider possible action authorizing construction of a proposed maintenance building at the Blue Hole Regional Park. *(Place Three Councilmember Sally Trapp)*

City Administrator Ferguson recommended authorizing construction by the low bidder, Rafter J. Rustic of Wimberley, at a cost of \$23,302.21.

Discussion addressed possible uses for the maintenance building, such as storage space.

Councilmember White moved to approve authorizing construction of the maintenance building at Blue Hole Regional Park by the low bidder, Rafter J. Rustic of Wimberley. Councilmember Dussler seconded. Discussion established that \$25,000 was budgeted for this project and cost overruns are not anticipated. Motion carried on a vote of 5-0.

- F. Discuss and consider possible action regarding a proposal to approach organizers of the Wimberley Farmers Market about the possibility of moving the Farmers Market to the Wimberley Community Center parking lot or to the Blue Hole Regional Park. (*Place Three Councilmember Sally Trapp*)

Councilmember Trapp stated she discussed this matter with the Farmers Market Board president who is receptive to talking with the City about a possible move, but did have some reservations about signage and costs. She asked about getting together a group with some Council/Farmers Market Board members to talk through this proposal. City Administrator Ferguson stated the City would not charge a fee and event signage would be allowed under the City's sign regulations. He felt the Community Center would be a more likely location and has adequate parking.

Councilmember Trapp moved to authorize herself and City staff to meet with Farmers Market Board members in order to discuss moving the Farmers Market to the Wimberley Community Center parking lot or to Blue Hole Regional Park. Councilmember White seconded. Motion carried on a vote of 5-0.

- G. Discuss and consider possible action regarding a proposal to amend the *City Council Governance Policy and Rules of Procedure* relating to decorum and time allotment guidelines for citizen comments at City Council meetings. (*This item was continued from the November 17, 2016 City Council meeting; Place Four Councilmember Gary Barchfeld*)

Councilmember Barchfeld said decorum should go both ways (audience members/speakers *and* Council should maintain civility when addressing each other) and this proposal is not meant to stifle free speech. City Administrator Ferguson noted language drafted by legal counsel that Council might consider as an alternative that addresses freedom of speech concerns: "Comments from speakers should not be directed towards another person, including a member of the City Council or City Staff, in a manner that is derogatory or threatening in nature."

To address concerns that decorum is observed by both Council and audience members/speakers, City Administrator Ferguson recommended the following addition (see italics) to the aforementioned language: "Comments from speakers *and/or members of City Council* should not be directed towards another person, including a member of the City Council or City Staff, in a manner that is derogatory or threatening in nature."

Councilmember Barchfeld moved to approve the amending the *City Council Governance Policy and Rules of Procedure*, as presented, including the abovementioned additional language, as

recommended by City Administrator Ferguson. Councilmember Trapp seconded. Motion carried on a vote of 5-0.

Addendum to Agenda

4. Discussion and Possible Action

- H. Discuss and consider possible action regarding a proposed professional services contract with TRC Engineers, Inc. for project management services relating to construction of the Central Wimberley Wastewater System. (*City Administrator*)

Mayor McCullough stated this item will be continued until Council's Special meeting to be held on December 7, 2016 at 6 p.m.

5. City Council Reports

- Announcements
- Future Agenda Items

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

Adjournment: Council meeting adjourned at 9:54 p.m.

Recorded by:



Cara McPartland

These minutes approved on the 5th of January, 2017.



APPROVED:



Mac McCullough, Mayor

AQUA PROPOSAL TO PROVIDE WASTEWATER
TREATMENT SERVICE TO THE
WIMBERLEY DOWNTOWN BUSINESS AREA

This Proposal represents the basic terms and conditions pursuant to which Aqua Utilities, Inc. dba Aqua Texas, Inc. (“Aqua”) and the City of Wimberley (“City”) agree to Aqua extending its wastewater treatment service across Cypress Creek to serve the business and residential owners in the Wimberley downtown business area as hereinafter defined.

Objective and Scope: The objective and scope of this Proposal is the result of a series of meetings with representatives of the City of Wimberley (“City”), including the City Manager, Place Three Council Member Sally Trapp, Place Four Council Member Gary Barchfeld and City Wastewater Ad Hoc Committee Member John Urban, and provides the framework for further negotiations with the intent to formalize a Proposed Agreement between Aqua and City to provide wastewater services to the designated service area with little or no cost to the City and reasonable and fair fees to future customers.

Certificate of Convenience and Necessity (“CCN”): The City of Wimberley holds a wastewater CCN which includes, but is not limited to, the area generally recognized as the downtown business district bounded by Cypress Creek and Blanco River, and more specifically defined by the Citizens Ad Hoc Committee report. For purposes of this Proposal the service area will be the area defined in that report. With respect to the CCN, it will be necessary for the City to transfer the City’s entire CCN to Aqua as follows:

1. Aqua will assume the responsibility and the cost for filing all necessary documents to secure the transfer of the CCN with PUC or any other entity necessary to complete the transfer.
2. City will cooperate with Aqua in completing the transfer and execute any documents necessary for the transfer.
3. City and Aqua would each be responsible for its own legal fees in securing the CCN transfer, and would include any cost related to any protest filed against the transfer of the CCN. City, however, would not encourage any such protests and would show its support for the transfer.
4. Aqua would remove the Blue Hole Regional Park and Deer Creek of Wimberley from the boundaries of the CCN to be transferred to Aqua.
5. Aqua would not pay the City for the CCN as its assumed value is directly proportional to the savings by the City of annually subsidizing its own treatment plant over a 30 year period.

Collection System: The Collection System would be completed as follows:

1. Given the need to commence this project as soon as possible to relieve any seepage of effluent from outdated septic systems into Cypress Creek, the City would commence construction of the collection system prior to the transfer of the CCN.
2. The collection system would include two phases.
 - a. Phase One would involve the construction of a sewer line across Cypress Creek along with construction of a collection system to serve properties on the Wimberley Square ("Square"), properties on Old Kyle Road between FM 3237 and the Square, properties on Ranch Road 12 between Blue Heron and the Square, properties on Oak Drive between the Square and the City owned parking lot, and properties on Henson Road through the Square.
 - b. Phase Two would include the remainder of the service area and would be completed at one time within three years following the transfer of the CCN.
3. Customers within Phase One would be required to connect to the collection system at the time of construction.
4. Customers within Phase Two would be required to connect to the collection system at the time of construction with the exception of those customers who have recently permitted and installed septic systems. Such customers would not be required to hook up until the expiration of ten (10) years following construction of the collection system.
5. The cost of the collection system for Phase One would be paid for by the City and reimbursed by Aqua as follows:
 - a. Aqua will provide through its sister company the funds in the form of a loan or the City may utilize other alternative competitive financial vehicles necessary to fund the cost of constructing the collection system for Phase One.
 - b. City will oversee the construction of the collection system and will provide necessary easements, inspections, coordination, bidding and other matters related to the construction of the collection system.
 - c. City will obtain any necessary easements for Phase Two of the collection system in order to have those in place prior to the transfer of the CCN.

- d. Upon transfer of the CCN, Aqua would reimburse the City for the cost of the collection system constructed during Phase One and the financing would be paid in full. The interest accrued during the construction of the collection system would also be included as a part of the reimbursement to the City.
- e. Aqua agrees to work with the City on a plan that could result in the reimbursement to the City of planning and design costs related to the collection system, but not the treatment plant, provided such costs do not negatively impact the ability of Aqua to maintain current rates. Aqua would be extended the right to use the plans and designs for the collection system.
- f. Aqua would be responsible for funding the collection system for Phase Two as the system is expanded to take in the remainder of the service area.
- g. If the phase development of the collection system is not agreeable to all parties, Aqua is open to the City constructing the entire proposed collection system prior to the transfer of the CCN, with Aqua reimbursing the City for the construction costs plus accrued interest upon the transfer of the CCN to Aqua. Upon completion of the collection system, Aqua will provide retail wastewater service to the service area.
- h. The City will provide Aqua a final certified construction cost estimates for both the phased or entire collection system prior to final execution of an agreement between the parties.

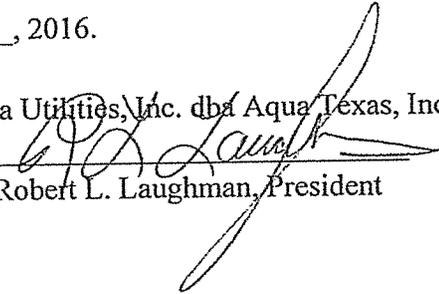
Customer Costs:

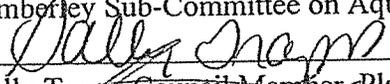
1. Rates in the service area will be the same as those charged to Aqua customers on the north side of Cypress Creek inside of the city. Aqua agrees not to seek an increase in rates for Aqua customers inside the city for a period of five (5) years.
2. Aqua will waive all CIAC fees for all customers who have a mandatory hook up. This provision is subject to final negotiation. This will not apply to customers who choose to delay their hookup because of a recently permitted septic system unless they hook up within one year after the completion of the Phase Two collection system. All customers within Phase One will have a mandatory hook up and will be required to hook up if they are within the Phase One.
3. Private property owners will be responsible for the cost of any service line from the private property owner's structure to the point of connection to the sewer main.

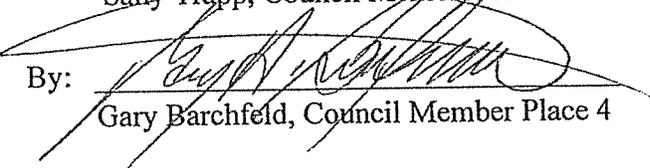
MISCELLANEOUS:

1. This Proposal is for the sole purpose of establishing a framework within which to allow for formal negotiations to take place between Aqua and City. The terms set forth in this proposal are not binding on either party and are subject to further negotiation.
2. This Proposal is intended to be a clear and fair representation of what Aqua and the City are willing to do to provide wastewater services to the service area.
3. Aqua is open to working with the City to further define the scope of the project and to provide an opportunity for the City to complete this project with minimal cost while simultaneously freeing up an annual subsidy that would greatly benefit the City as it seeks to develop the park.

Executed this 1 day of December, 2016.

Aqua Utilities, Inc. dba Aqua Texas, Inc.
By: 
Robert L. Laughman, President

City of Wimberley Sub-Committee on Aqua Texas
By: 
Sally Trapp, Council Member, Place 3

By: 
Gary Barchfeld, Council Member Place 4