

City of Wimberley
 City Hall
 221 Stillwater
 Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
 December 5, 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, Matt Meeks, Mac McCullough, Steve Thurber, and John White.

Staff Present: City Administrator Don Ferguson and 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 November 21, 2013
- B. Approval of the October 2013 Financial Statements of the City of Wimberley

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

2. City Administrator Report

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

City Administrator Ferguson reported that FEMA representatives are in the area to re-evaluate earlier assessments of damage estimates. He noted certain priority infrastructure projects needed to repair flood-related damages along area roads/waterways/trails. He provided information on the Small Business Administration's loan program, which is also posted on the City's website, and encouraged those individuals in need to explore all available options for funding assistance.

- Status report on *The Central Wimberley Wastewater Project*

City Administrator Ferguson reminded that Steve Coonan of Alan Plummer Associates, Inc. will present the Preliminary Engineering Feasibility Report to Council at a Special Workshop meeting scheduled for 6 p.m. on Tuesday, December 10, 2013. He noted that representatives from the Central Wimberley Wastewater Project Stakeholder Committee will be present at the meeting to answer questions.

- Status report on Cypress Creek water quality issues

City Administrator Ferguson reported that water testing will be conducted on Monday, December 9, 2013.

- Status report on the H-E-B Wimberley Planned Development District (WPDD) application

City Administrator Ferguson anticipated the filing of H-E-B's WPDD application on December 6th, with a public hearing scheduled for the Planning and Zoning Commission's meeting of December 12, 2013.

- Status report on the Ace Hardware reconstruction project

City Administrator Ferguson reported that re-opening of the store is scheduled for February 2014, with construction progressing well. He advised that a temporary Certificate of Occupancy may be issued with evidence of a properly functioning fire protection/suppression system, so that stocking of inventory may begin. He thanked Ace Hardware for its donation of the Christmas tree and decorations at the "Y" intersection at Ranch Road 12 and FM 2325.

- Status report on *The Request for Proposals (RFP) for Solid Waste and Recycling Services*

City Administrator Ferguson noted that the response deadline is Friday, December 13, 2013 and that the mandatory pre-proposal conference was held earlier this week. Although participation in solid waste/recycling services is currently not mandatory, he stated that an alternate bid is being requested from respondents to compare rates for services, if mandated.

- Status report on *The Request for Proposals (RFP) for the development of a Central Wimberley Master Plan*

City Administrator Ferguson noted that the response deadline is Friday, December 13, 2013 and that several phone calls have been received from interested parties.

In addition, City Administrator Ferguson reported that the recently acquired portable restroom trailer is now in place on the Square between the Wimberley Café and Marco's Restaurant. He thanked Councilmember McCullough for his offer of space for the trailer. He stated that this is a temporary location and that an operations plan for the trailer will be presented to Council at a later date for consideration. Discussion addressed reasoning for the trailer's anticipated opening date and possible options to help fund restroom operations.

3. Public Hearings and Consider Action

- A. Hold a public hearing and consider approval of an ordinance approving an application for a conditional use permit submitted by Socorro Franco to allow for the sale of beer and wine for on-premise consumption at a sit-down eating establishment on property zoned Commercial – Moderate Impact (C-2), located at 401 FM 2325, 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. (*Socorro Franco, Applicant*)

City Administrator Ferguson reported on the subject property's location, current/proposed zoning and uses, and operating hours of the existing *Durango's* restaurant. He noted that no changes in hours of operation are anticipated and that no comments have been received either for or against the requested conditional use permit (CUP). He advised that the Planning and Zoning Commission unanimously recommended approval at its November 25, 2013 meeting.

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 Thurber seconded. Brief discussion established distance requirements from schools/churches generally and how such distances are calculated. Motion carried on a vote of 5-0.

- B. Hold a public hearing and consider approval of an ordinance approving an application for a conditional use permit submitted by Donald Kuhs to operate a vacation rental facility on a tract located at 2916 Flite Acres Road, 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. (*Donald Kuhs, Applicant*)

Because Councilmember Talcott owns property within the two-hundred foot notification area, he recused himself from the meeting at this time.

City Administrator Ferguson reported on the subject property's location, current/proposed zoning and uses, existing residential structure, maximum occupancy, parking, and on-site septic system (OSSF) currently serving the subject residence. It was noted that the City Sanitarian has indicated that no more than four (4) persons may occupy the guest home. In addition to the applicant's house rules, City Administrator Ferguson read a list of staff-recommended conditions, should Council desire to approve the CUP request. He advised that written opposition to the CUP request has been received from three (3) individuals based on concerns related to traffic, noise, trespassing, and negative impact on surrounding property values. City Administrator Ferguson stated that after holding a public hearing and considerable discussion, the Planning and Zoning Commission's motion to recommend approval of the CUP with a maximum occupancy not to exceed four (4) persons and four (4) vehicles, and inclusion of a provision to designate natural property line boundaries, failed on a vote of 2-4.

Due to the amount of written opposition received, City Administrator Ferguson reminded that approval of the CUP would require a unanimous vote of Council pursuant to Texas Local Government Code §211.006(d). It was noted that written opposition has been received from notified property owners #1 (Edward & Suzanne Davis), #2 (John & Sharyl Robertson), and #5 (Jenni Marino/Construction Equity, Inc.).

Mayor Flocke opened the public hearing.

Applicant Donald Kuhs described himself as a property rights advocate, provided that exercising those rights poses no harm to others. He noted his family's ownership history, community involvement, and long-term intention to keep the property for continued use by family members. He hoped to rent the subject property on a nightly basis, which he felt was preferable to long-term rentals, and cited recent trends favoring vacation rentals of private homes over hotel stays. Mr. Kuhs stated his previous neighbors rented their residence without securing a CUP and that he could tell no difference between the owners' versus the renters' usage of the property. He felt that neighbors should be able to work out differences among themselves and asked that Council not act on conjecture and hearsay from those in opposition.

Mr. Kuhs stated that he will be responsive to any problems reported by neighbors from rental activity and take positive action to correct such problems. He noted stringent house rules and emphasized that he wants to be a good neighbor. He felt that nightly rentals provided more opportunities to produce income to help maintain and upgrade the subject property. Mr. Kuhs provided scenarios of short-term versus long-term rentals that he felt illustrated the benefits of renting to guests on a nightly basis. He stated that those neighbors in opposition are not long-standing Wimberley residents and are new to the neighborhood. He suggested that the City reconsider its CUP regulations due to concerns that a "vocal minority" can be allowed to tell a property owner what he can or cannot do with his property. Mr. Kuhs felt that Council should approve his requested CUP to allow for rental of the first floor to up to four (4) persons and stated his willingness to install an engineered higher capacity septic system, which would allow for increased future maximum occupancy of up to ten (10) persons. However, Mr. Kuhs clarified that he would not want to proceed with making such a substantial financial commitment without some guidance from the City's Planning and Zoning Commission that he would be allowed to increase the maximum occupancy from four (4) to ten (10) persons. Mr. Kuhs felt that Planning and Zoning should have been able to take action at its November 25th meeting on his request for a maximum occupancy of up to ten (10) persons, provided that he install a new engineered septic system. Mr. Kuhs offered to answer any questions and asked to be given the opportunity to speak again before the public hearing is closed.

Edward Davis of 3000 Flite Acres presented visual depictions of his property illustrating proximity to the subject property, specific features that create confusion over boundary lines, lack of fencing, and trespassing/liability issues, particularly due to certain property features (including a creek and bridge). Mr. Davis did not object to long-term renters who understand existing property boundaries and adhere to them, but was concerned that short-term renters would be attracted to the creek and bridge, which lie entirely on his property. He stated that the Kuhs' property has flooded three (3) times in the past fifteen (15) years, which raises safety concerns. He displayed photos of the driveway and erosion of the creek bank that he felt poses a risk of collapse to the driveway/parking area. Mr. Davis expressed concerns regarding negative impact on his property's value and noise from rental activity, particularly due to the small lot size and proximity of the subject property.

Suzanne Davis took exception to Mr. Kuhs's comments on being new to the community and noted her local work as a master naturalist, Jacob's Well docent, and participation in several

community organizations. She spoke of efforts to meet neighbors and become acquainted with the neighborhood's history and heritage. She also expressed concerns about trespassing by short-term renters due to proximity of the Kuhs' house and confusion over property boundary lines. Mrs. Davis hoped that no hard feelings would result from differing perspectives on preserving the nature of the neighborhood.

Applicant Donald Kuhs stated that there are easements on either side of his home and noted that the sports court was built on the property line by the previous owner long before the City incorporated. He stated that noise such as music cannot be heard from the side or front of his house and noted that there is a ten-foot easement from the bank of the Blanco River designated as parkland, which is accessible to the public. Mr. Kuhs cited distances to surrounding properties and reiterated that his request tonight is for maximum occupancy of up to four (4) persons on the first floor of his residence, with the intent to generate extra income for maintenance and upgrades. In response to expressed flooding concerns, Mr. Kuhs stated short-term rentals would be preferable due to the greater inconvenience that potential flooding would cause to long-term renters.

Edward Davis reiterated that he favors property rights, however, he felt that Mr. Kuhs' proposed use as a short-term rental infringes on his property rights and creates potential risks of liability from renters who may trespass on his property.

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

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

Discussion among Council, staff, the applicant, and audience members included:

- House rules for the subject property
- Responsiveness of the applicant and/or management company to complaints
- Ability of Council to revoke the CUP, in the event of non-compliance with applicable conditions
- Planning and Zoning Commission's ability to make recommendations on posted agenda items
- CUP process generally as conducive to maximizing public input on zoning requests
- History of CUP denials in the face of significant neighborhood opposition
- Enforcement of CUP conditions
- Possible effect on surrounding properties' values
- Difficulties associated with finding aesthetically acceptable methods of delineating property boundaries to mitigate trespassing by renters
- Requisite number of complaints needed to trigger CUP revocation procedures, should compliance issues arise
- Planning and Zoning Commission's failed 2-4 vote to recommend approval

Pursuant to Texas Local Government Code §211.006(d), requiring a super majority to affirm the requested CUP, a unanimous (4-0) vote of Council is needed for approval. Mayor Flocke called

for a vote as follows: Councilmember White, aye; Councilmember Thurber, nay; Councilmember Meeks, aye; Councilmember McCullough, aye. Councilmember Talcott recused. Motion failed on a vote of 3-1.

Councilmember Talcott rejoined the meeting at this time.

- C. Hold a public hearing and consider approval of an ordinance approving an application for a conditional use permit submitted by Nancy Chandler to operate a vacation rental facility on a tract located at 14000 Ranch Road 12, Suite C, Wimberley, Hays County, Texas, zoned Commercial – Low Impact (C-1), 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. (*Nancy Chandler, Applicant*)

City Administrator Ferguson reviewed the subject property's location, acreage, planning area, existing structure(s), and current/proposed zoning and uses. He stated that the proposed maximum occupancy for the vacation rental is two (2) persons, with guests utilizing existing on-street parking in the downtown area. He noted that wastewater service would be provided by an older, on-site septic system with limited capacity that also serves at least two (2) small commercial operations located on the property. He advised that the City Sanitarian has indicated that no more than two (2) persons may occupy the vacation rental and that the applicant has agreed to comply with the occupancy limit. It was also noted that there are currently water use restrictions on the subject property due to the limited size and age of the septic system.

In addition to the applicant's proposed house rules, City Administrator Ferguson recommended a list of conditions to be included in the CUP, should Council grant approval. He stated that City staff has received no responses either for or against the requested CUP, however, adjacent business owner Peggy Sherrill submitted written correspondence giving conditional support for the CUP request, provided the applicant adheres to the water usage restrictions. He advised that the Planning and Zoning Commission unanimously recommended approval at its November 25th meeting. Although the subject property had been used in the past as a bed and breakfast and/or vacation rental, it was noted that the applicant was required to submit a CUP application, because there was insufficient evidence of continuous use, making the property ineligible for pre-existing, non-conforming ("grandfathered") status.

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 Talcott seconded. Discussion addressed metering and monitoring of water usage restrictions for the purpose of compliance and enforcement. The applicant spoke briefly on water conservation measures taken to minimize water/wastewater usage by guests. Motion carried on a vote of 5-0.

4. Ordinance

Consider approval of the second and final 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 use 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*)

City Administrator Ferguson reviewed the proposed ordinance, which was revised on Council's first reading to amend the minimum acreage limitation from ten (10) to four (4) acres.

Councilmember Talcott moved to approve the item on second and final reading, as presented, which includes the revised minimum acreage limitation provision. Councilmember Meeks seconded. Motion carried on a vote of 5-0.

5. Discussion and Possible Action

- A. Discuss and consider possible action amending the Fiscal Year 2014 City of Wimberley General Fund and Wastewater Fund Budgets to incorporate revenues and expenditures relating to the planning and design of a central Wimberley wastewater system into the subject budgets. (*City Administrator*)

City Administrator Ferguson explained that due to the closing of the Texas Water Development Board (TWDB) loan to fund the planning and design of a central Wimberley wastewater system, there is a need to amend the General Fund and Wastewater Fund Budgets to reflect the loan proceeds and planned expenditures. He proposed the following amendments:

General Fund Budget

- Elimination of the \$96,889 (rounded) Wastewater Debt Service expense
- Elimination of the \$9,399.76 Transfer-in from the Wastewater Fund
- Addition of a \$87,489.24 Transfer-out to the Wastewater Fund

Wastewater Fund Budget

- Addition of \$650,000 in revenue, representing TWDB loan proceeds
- Addition of a \$96,888.19 Wastewater Debt Service expense
- Addition of \$650,000 in Capital Outlay expense, representing planning and design costs for a central Wimberley wastewater system
- Addition of a \$87,489.24 Transfer-in from the General Fund
- Elimination of the \$9,399.76 Transfer-out to the General Fund

Discussion established that the elimination of \$96,889 in Wastewater Debt Service expense from the General Fund Budget and addition of \$96,888.19 in Wastewater Debt Service to the Wastewater Fund Budget would yield a difference of \$.81 to be added to Fund Balance.

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

- B. Discuss and consider possible action authorizing the transfer of \$2,704 from the General Fund Balance to fund delivery of a previously purchased portable restroom trailer and amending the Fiscal Year 2014 General Fund Budget to reflect the transfer and expense.
(*City Administrator*)

City Administrator Ferguson explained that Council originally authorized City staff to pick up the restroom trailer and bring it back to Wimberley, however, inclement weather and negotiation of a reasonable delivery cost made it more practical to have the trailer delivered by the transportation contractor. Therefore, City Administrator Ferguson recommended approval of the transfer and budget amendment in the amount of \$2,704. He noted that total project costs for the restroom trailer came in under the \$35,000 originally approved by Council.

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

6. City Council Reports

- Announcements
- Future Agenda Items

City Administrator Ferguson reminded that a Special Workshop meeting is scheduled at 6 p.m. on Tuesday, December 10, 2013 to discuss the Preliminary Engineering Feasibility Report to be presented by Alan Plummer Associates, Inc. representative(s).

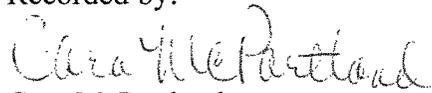
City Administrator Ferguson advised that a Special Council meeting is scheduled for Thursday, December 19, 2013 at 5:30 p.m. for discussion and possible action on Executive Session Items A and C, continued from tonight's Special 5:30 p.m. meeting.

As a future agenda item, Councilmember Meeks requested more information on estimated costs of the restroom trailer operations. City Administrator Ferguson requested input from Council on operating policies/procedures for the restroom trailer.

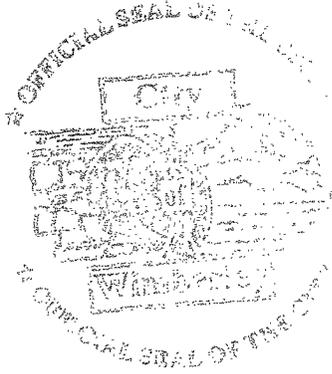
Hearing no further announcements or future agenda items, Mayor Flocke called the meeting adjourned.

Adjournment: Council meeting adjourned at 7:37 p.m.

Recorded by:


Cara McPartland

These minutes approved on the 19th of December, 2013.



APPROVED:

Bob Flocke

Bob Flocke, Mayor