

City of Wimberley
City Hall, 221 Stillwater
Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
July 20, 2017 at 6:00 p.m.

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

Councilmembers Present: Mayor Mac McCullough, Councilmembers Steve Thurber, Craig Fore, Allison Davis, Gary Barchfeld, and Roberta Holland.

Staff Present: Interim City Administrator/City Secretary Cara McPartland

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

Citizens Communications

Paradise Valley resident Monica Michelle spoke of the long-running wastewater issues and Wimberley's exemplary flood recovery. She spoke of the huge responsibility of protecting the Blanco River and post-flood rebuilding efforts. She said any effluent threatens the Blanco River and asked Council to do what is best for the quality of the Blanco River, which is a direct reflection of the quality of our community.

Judy Thompson questioned how we will pay the loan back and said "we should not do it." She said it "affects the rest of us in property taxes." She said a property tax will stigmatize Wimberley.

Paradise Hills resident Pam Kirkland asked how additional sewer costs will be paid and said Council never voted on a city-owned system but chose "to proceed behind closed doors." She said there was no discussion about "how you plan to pay without additional taxes being required." She said elected officials are expected to discuss all costs, cited a list of specific costs, and questioned if funds are available for the cited expenses. She predicted financial disaster and said no creek pollution by businesses on the Square has been proven.

Paradise Valley resident Steve Jagers spoke of the reclaimed water agreement on tonight's agenda and questioned contract language. He felt it is a sham and cited average reclaimed water rates and explained his calculations on the value of the water. He referenced Attachment 2 of the agreement and asked that Council be transparent. He said "it's a \$15,000 economic value for the reclaimed water" and at least a \$185,000 taxpayer subsidy for the project.

Downtown property owner Deborah Koeck spoke on three major issues: debt, discharge, and disagreement, with multiple sides to each. She felt excessive debt results in excessive taxation and a means by which city governments oppress the people, and questioned the amount of subsidy and number of users. She said any discharge is unacceptable. She spoke of her

“passionate plea” and asked what this will cost her. She asked Council to figure out “how much it’s going to cost not just me, but Natalie and the other residential property owners downtown.”

Tom Talcott recalled his time on Council with a good group of people who got things done and did not divide the city. He said this vote will “mark the city.” He said 75,000 gallons could potentially be put into the Blanco River and said City of Blanco could put 175,000 gallons into the river. He said we are creating a cesspool of something that is beautiful. He referenced past studies on pricing and options and said this project will lead to property taxes. He encouraged Council to not vote for the sewer system as it is and favored other options.

Casey Craig expressed her main concern as discharge and feared spills could occur. She read a list of some concerns from Wimberley Valley Watershed Association on effluent discharge, discharge location, and negative effects. She asked Council to abandon a discharge plan and not risk a single drop of discharge into the Blanco. She said Council’s vote should protect Wimberley’s environment and not a “privileged few.”

Allison Schwabe (speaking on Agenda Item 7G) asked for Council’s support of her business plans to operate two food trucks at 411 FM 2325.

1. Consent Agenda

- A. Approval of minutes of the Regular City Council meeting of July 6, 2017
- B. Approval of the June 2017 Financial Statements for the City of Wimberley
- C. Approval of the appointment of Toni Jenkins to the Parks and Recreation Advisory Board. *(Place Five Councilmember Roberta Holland’s nominee)*
- D. Approval of the appointment of Jimmy Alan Hall to the Water Wastewater Advisory Board. *(Place Five Councilmember Roberta Holland’s nominee)*
- E. Approval of the appointment of Richard Hentges to the Building Code Board of Review. *(Place Five Councilmember Roberta Holland’s nominee)*
- F. Approval of the appointment of Rebecca Minnick to the Planning and Zoning Commission. *(Place One Councilmember Steve Thurber’s nominee)*
- G. Approval of an appointment (TBA) to the Planning and Zoning Commission. *(Place Four Councilmember Gary Barchfeld’s nominee)*

Interim City Administrator McPartland requested that Council pull Consent Agenda Items 1B and 1G.

Councilmember Thurber moved to approve all remaining Consent Agenda Items, as presented. Councilmember Fore seconded. Motion carried on a vote of 5-0.

2. Mayor/ Assistant City Administrator / Park Manager Reports

- Status report on the Central Wimberley Wastewater Project

Mayor McCullough stated there is nothing new to report at this time as the project engineer has been out on vacation for the last couple of weeks.

- Status report Hidden Valley Low Water Crossing Reconstruction Project

Randy Myers of Myers Concrete Construction spoke of Council's previous vote on a change order, said it should be turned into the insurance company to "just let them decide," and not the Council's decision.

Councilmember Thurber recused himself from the meeting at this time.

Randy Myers said he was asking for a 3% increase and said he would appreciate staying with the 4-0 vote we had last time. Mayor McCullough noted that only certain items on the subject change order were questioned and TML would be contacted.

Councilmember Thurber rejoined the meeting at this time.

- Status report on Blue Hole Regional Park operations

No report was given on this item.

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

Interim City Administrator McPartland reported the City's July sales tax check, representing May collections, totaled \$70,396.83, which is a 9.06% increase from the same period last year, and running well ahead of budget. She reported YTD collections of \$515,810.59 are up 2.56% from last year.

- Status report on Fiscal Year 2018 Budget Preparations

Interim City Administrator McPartland reported on Council's goals and priorities workshop held last Monday and asked for citizen input on the proposed budget. She advised that there will be a budget-related agenda item on every Council agenda until the final budget is adopted by the end of September.

3. Presentation

Presentation by Planning Technician Sandy Floyd on the upcoming FEMA workshop on proposed flood maps for Hays County

Sandy Floyd provided details on the open house planned by FEMA to be held at the Wimberley Community Center from 2-7 p.m., which will allow residents and business owners to review the newly released preliminary flood maps.

4. Public Hearings and Possible Action

- A. Hold a public hearing and consider approval of the first reading of an ordinance of the City of Wimberley, Texas amending Title XV (Land Usage), Chapter 155 (Zoning),

Section 155.005 (Definitions) and Section 155.078 (Supplemental Regulations) of the City of Wimberley Code of Ordinances; and providing for the following: findings of fact, a savings clause, a repealing clause, a severability clause, and effective date, and proper notice and meeting. (*Interim City Administrator*)

Interim City Administrator McPartland advised that the Planning and Zoning Commission voted to continue this item until July 27th to allow further information to be provided on certain ordinance language and to hear from Lions Club Building and Facilities Manager John Stark on specific types of planned improvements.

Councilmember Thurber moved to continue this item until August 3, 2017. Councilmember Fore seconded. Motion carried on a vote of 5-0.

- B. Hold a public hearing and consider approval of the first reading of an ordinance of the City of Wimberley, Texas amending Title XV (Land Usage), Chapter 155 (Zoning), Sections 155.035 (Residential Acreage; RA), 155.036 (Rural Residential 1; R-1), 155.037 (Single-Family Residential 2; R-2), 155.038 (Single-Family Residential 3; R-3), 155.039 (Single-Family Residential 4; R-4), 155.040 (Two-Family Residential (Duplex); R-5), 155.041 (Multi-Family Residential 1 (Triplex/Quadriplex/Apartments); MF-1), 155.042 (Multi-Family Residential 2 (Apartments); MF-2), 155.043 (Mobile Home; MH), and 155.076 (Accessory Building and Use Regulations) of the City of Wimberley Code of Ordinances to include a contiguous property under the same ownership provision under Accessory Building and Use Regulations; and providing for the following: findings of fact, savings, severability, repealer, effective date, and proper notice and meeting. (*Interim City Administrator*)

Interim City Administrator McPartland reviewed current regulations that would require a property owner to subdivide their own property in order to put an accessory building on a tract that does not contain the primary residence. She noted that the proposed ordinance would allow accessory buildings on tracts that do not contain a primary residence, if the tracts in question are under the same ownership. She advised that on July 13th the Planning and Zoning Commission unanimously recommended denial, as concerns were expressed that only a few individuals would be affected, density might be increased, and financial hardship was the primary basis for the proposed ordinance.

Councilmember Barchfeld felt that the proposed ordinance offers a viable alternative to an expensive subdivision process or a variance request and asked how we can allow a small shed to be built. Interim City Administrator McPartland reminded that Planning and Zoning is an advisory body and Council can vote as it deems appropriate. Discussion addressed past examples of property owners who were required to subdivide to make certain improvements on contiguous tracts all under the same ownership.

Councilmember Barchfeld moved to overturn Planning and Zoning's recommendation and approve the ordinance on first reading.

Mayor McCullough opened the public hearing and provided background information on the

impetus for the proposed ordinance.

Monica Michell questioned the reasoning for the proposed ordinance and any potential harm by relaxing regulations.

Edward Davis of 3000 Flite Acres Road spoke of his home's location and purchase of a neighboring property, which is a separate lot that he would like to build a structure on. He said under existing rules, there would not be an accessory structure allowed on that lot. He noted survey costs could be \$10,000 or \$12,000.

Planning and Zoning Commissioner Rebecca McCullough spoke of her understanding that an ordinance could not be changed solely because of financial burden to the owner. Interim City Administrator McPartland clarified that variances cannot be granted solely on the basis of financial hardship. She cited other discussion points brought up by Planning and Zoning.

LeAnn Bower said she is trying to build a storage shed on one of her lots that would be out of the floodplain. She did not want to have to subdivide and said she would like this to be approved so she could build her shed.

Allison Davis said this ordinance might affect more people than originally thought and felt issues on future ownership changes were addressed.

Mayor McCullough closed the public hearing.

Councilmember Barchfeld said this is about helping people and property rights. Councilmember Thurber provided an example of ownership change and City Attorney Brad Young clarified that if the property owner sold all three lots to another owner, as long as those three lots remained under single ownership, the subsequent owner could keep the structure there. He said if the lot with the residence was sold to one person and the lot with the shed was sold to another, the person who bought the lot with the shed would have to come into compliance.

Councilmember Barchfeld moved to approve the ordinance on first reading, as presented. Councilmember Davis seconded. Motion carried on a vote of 5-0.

5. Resolutions

- A. Consideration and action on a resolution of the City of Wimberley, Texas, removing 1.3 acres of parkland from the boundaries of the Blue Hole Regional Park for use as a wastewater treatment plant. (*Mayor Mac McCullough*)

Councilmember Thurber requested consultation with legal counsel on pending litigation.

Mayor McCullough adjourned Open Session and convened Executive Session at 7:05 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 7:17 p.m. No

action was taken in Executive Session.

Mayor McCullough invited public comments.

Merry Gibson, 23-year resident of 310 Mill Race Lane, spoke on resolution language referring to “feasible and prudent alternatives,” and said Council chose not respond to a prudent and reasonable alternative presented by Aqua Texas. She said the Aqua Texas option would remove any treatment plant from the park and avoid the land swap. She said Council was “capricious and arbitrary” as the Aqua option would bring the entire Valley under a regional plan under one entity. She pointed to Aqua Texas’s service north of the creek and at the Community Center. She urged Council to not approve the resolution.

Casey Craig spoke of the public hearing held on March 21st and her comments, as well as other speakers’ comments. She also spoke of the recent Aqua Texas letter as another feasible alternative that does not take parkland from Blue Hole.

Sally Trapp, also a 23-year resident of Mill Race Lane, spoke against a city-owned discharge plant at a publicly owned park. She said she was on Council during the public hearing and said no Council discussion was allowed. She said the proposed resolution has false statements. She said Council is aware of critical concerns about the City plan, including trenching. She spoke of the Aqua Texas plan as being ignored, of harm to the park, and of measures not taken to minimize harm to the park. She urged Council not to approve the parkland taking.

Mike Bachers of 280 Old Kyle Road said he will be a new customer of the system. He spoke of the last election as a clear mandate, with well-publicized issues, well-informed voters, and the election was not even close. He said this has been a polarizing issue but the election was a clear indicator that a silent majority is ready to move forward with the city-owned plan and the election was a fair and democratic process. He felt Aqua Texas will continue to be an option of last resort and that it will continue to pursue the City’s CCN as we proceed with our own plant. He noted Aqua Texas submitted an informal letter after private undisclosed meetings with one of the Council members, which was meant to give “shaky grounds” for Scott Johnson to sue the City. He said the ultimate goal of the letter was to be a delay tactic. He said this is bad politics and economics and urged Council to fulfill its duty to citizens and not serve special interests. He favored moving forward with city-owned plan.

Mayor McCullough concluded public comments.

Councilmember Barchfeld read a statement on his unchanged position that advocated a solution with no discharge and affordability. He said the bids that came in caused concerns about debt repayment and have yet to be conditioned, reviewed, or explained by contractors/engineers. He said previous Councils vetted the city plant without real cost numbers and said Council has not voted to move ahead with the city system. He felt that approval of the city plan is being done agenda item by agenda item and said Council should vote on Wimberley’s direction. He was suspect of the design and the costs using the low bid and the engineer who missed his estimate by 86%. He had a problem moving forward with a plan that is not worked out to the fullest detail. He questioned the project’s transparency and criticism that he has held up the forward

movement of this project. He said he was disappointed other alternatives were not considered. He wanted to solve the sewer problem in downtown Wimberley, but not at the cost of an ad valorem tax that benefits a handful of people on the Square and special interest groups. Councilmember Barchfeld cited reasons that he will vote “no” for the Wimberley wastewater treatment system and stated he will do his best for the benefit of this city.

Mayor McCullough read a statement for the purpose of clarifying that Council’s formal action on the parkland conversion is embodied in tonight’s action on the resolution and asked that Council consider a motion to repeal its June 1st action, which did not include the formal resolution that is in front of Council tonight. He referenced the following documents provided to Council, most of which are on the City’s website:

- the 2006/2007 Blue Hole Master Plan;
- Stakeholder opinions;
- Professional engineering reports;
- The “Yellow Book Appraisal” of the two park properties under consideration;
- Various alternative proposals over the years, including proposals from Aqua Texas; and
- the Settlement Agreement Documents relating to the TCEQ permit application.

Mayor McCullough cited specific examples documenting the City’s consideration of clearly enunciated local preferences; whether there are feasible and prudent alternatives to the proposed parkland use; and whether the location of the plant at the new site includes all reasonable planning to minimize the harm to the land as part of the park system of the City of Wimberley. He stated this issue has been studied, considered, vetted, and debated going back at least 10 years. He urged Council to take all comments into consideration when voting on this resolution.

Councilmember Thurber appreciated all comments and input to date and noted all options have been thoroughly vetted by this and previous Councils. He pointed out lack of details in the recent Aqua Texas letter, including any evidence Aqua Texas would be less expensive. He noted the loss of grant funding for any Aqua Texas options, as well as loss of the TWDB low interest loan. He asked Wimberley to come together to get this project done and reminded that no Council members have ever suggested a property tax to pay for this project.

Councilmember Fore stated that the item before Council is not about project costs, but about the resolution on parkland conversion, and nothing else. He said the bond package is for the upgrading and expanding of the existing treatment plant and asked why we need to swap this land if we have room in the present location and can prevent a possible lawsuit. Discussion addressed the location as agreed to as part of the Blue Hole Master Plan and the mediated settlement. Councilmember Barchfeld said the 2012 stakeholder agreement was for Aqua Texas, if bids came in 10% over. He stated the project engineer provided 3 options: to come up with more money, abandon the project, or go with Aqua Texas. Relative to the park getting more land, Councilmember Barchfeld felt that at some point the City is going “to have to drive Blue park, since we own it, as opposed to Blue park always driving the city.” He said we have not fully gone over the alternates. He distributed the most recent letter to Aqua Texas to Council and “numbers worked out by an independent accountant.” He said those numbers show we save

\$5,500,000 over 30 years by going with the Aqua Texas plan. He expressed concerns over city debt and the suffering of our waterways and Blue Hole. He stated he will vote against the land swap.

Councilmember Davis said it is very important to honor all the work that has gone into this and spoke to this issue as taking a piece of city-owned land and switching it with park land. She said the park will be more conducive to recreation with such a switch and supported the land swap.

Councilmember Thurber pointed out that this is all city-owned land and that what we are doing is increasing the size of the park by roughly 2 acres. Councilmember Thurber moved to rescind and repeal Council's previous action taken on June 1, 2017 relating to Item 4F (*Discuss and consider possible action regarding issues relating to the City's parkland conversion process and associated deadlines*). Councilmember Davis seconded. Discussion followed on whether or not this action is within the scope of tonight's agenda item.

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

Councilmember Thurber moved to approve the resolution of the City of Wimberley, Texas, removing 1.3 acres of parkland from the boundaries of the Blue Hole Regional Park for use as a wastewater treatment plant, as presented. Councilmember Davis seconded.

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

- B. Consideration and action on a resolution concerning a principal forgiveness agreement with the Texas Water Development Board in the approximate amount of \$243,005; accepting the terms of the financial assistance from the state agency; and, authorizing officials of the City to execute the agreement. (*Mayor Mac McCullough*)

City bond counsel David Mendez explained the TWDB's offer of assistance in the amount \$243,005 in principal forgiveness subject to issuance of the revenue bonds. He noted the agreement specifies how the money is handled once the grant is received by the City, including draw-down requirements. In response to Mayor McCullough's inquiry, Mr. Mendez clarified the principal forgiveness commitment remains in place even with deletion of a portion of the project's "purple pipe" component.

Discussion addressed computation of the principal forgiveness amount and its contingency on issuance of bonds.

Councilmember Thurber moved to approve the resolution concerning a principal forgiveness agreement with the Texas Water Development Board in the approximate amount of \$243,005; accepting the terms of the financial assistance from the state agency; and, authorizing officials of the City to execute the agreement, as presented. Councilmember Davis seconded.

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

6. Ordinance

Consider approval of an ordinance authorizing the issuance of City of Wimberley, Texas Sewer System Revenue Bonds, Series 2017; approving additional agreements; and other matters in connection therewith. (*Mayor Mac McCullough*)

Mayor McCullough introduced Jennifer Ritter of Specialized Public Finance, who noted this is a revenue bond, with no taxes pledged to this whatsoever, and completely supported by the utility system itself. She stated the term as 30 years and average annual payments of \$243,000. She advised that because this is a revenue bond, with no taxes pledged, the TWDB has asked for a debt service reserve fund sufficient to make one year's payment. She said TWDB is providing an average subsidized interest rate for 30 years of 2.02%. If the City were able to seek open market funding, which would be difficult without a bond rating, she noted that an open market interest rate would likely be double. She said the loan commitment has been extended until October 31, 2017. She noted a 10-year call option that would allow the City to pre-pay the loan, if desired. Discussion addressed history of the City's TWDB loan application; extensions granted; procedural matters relating to issuance of bonds; 10-year call on bonds allowing for refinancing later if interest rates drop further; system revenues and reuse agreement; and debt service reserve. Mr. Mendez said the next step is to get Attorney General approval before closing. Discussion addressed the City's average annual loan payment amount, the City's team consisting of engineer, financial advisor, and bond counsel; and updated rate analysis to show coverage to Attorney General;

Councilmember Thurber moved to approve the ordinance authorizing the issuance of City of Wimberley, Texas Sewer System Revenue Bonds, Series 2017; approving additional agreements; and other matters in connection therewith, as presented.

Councilmember Fore said he had a problem with proceeding without seeing all the documentation regarding to TWDB submissions, bids, and updated rates. Councilmember Barchfeld agreed with Councilmember Fore. Subsequent discussion established that the TWDB will demand certification of sufficient funds to construct the entire project before starting construction.

Mayor McCullough entertained a second to Councilmember Thurber's previously stated motion. Councilmember Davis seconded. Mayor McCullough called for a vote as follows: Councilmember Holland, aye; Councilmember Barchfeld, nay; Councilmember Davis, aye; Councilmember Fore, abstain; and Councilmember Thurber, aye. Councilmember Thurber questioned Councilmember Fore's ability to abstain. Councilmembers Fore and Thurber disagreed on whether there are issues with transparency and Councilmember Fore reiterated his abstention. Motion carried on a vote of 3-1-1.

Mayor McCullough called a recess at this time (8:30 p.m.). Mayor McCullough reconvened at

8:37 p.m.

7. Discussion and Possible Action

- A. Consideration and action on an intradepartmental agreement regarding the purchase of reclaimed water. (*Mayor Mac McCullough*)

Councilmember Thurber said that it is likely the City will not need to purchase \$200,000 of reclaimed water and asked City Attorney Brad Young if language could be changed to read “up to \$200,000.” Mr. Young replied affirmatively. Discussion addressed the history and reasoning behind the City’s purchase of reclaimed water and the City’s 0% tax rate associated with the TWDB planning and design (PAD) loan to the City.

Councilmember Thurber moved to approve the intradepartmental agreement regarding the purchase of reclaimed water and to amend the language to add “up to” \$200,000. Councilmember Davis seconded.

Discussion among David Mendez, Jennifer Ritter and Councilmember Thurber did not indicate adding such language would be a problem with the TWDB or the Attorney General. Discussion between Councilmember Barchfeld and David Mendez clarified that the tax notes issued to pledge the City’s 7-year PAD loan are not callable (cannot be prepaid).

Mayor McCullough called for a vote as follows: Councilmember Thurber, aye; Councilmember Fore, nay; Councilmember Davis, aye; Councilmember Barchfeld, nay; and Councilmember Holland, aye. Motion carried on a 3-2 vote.

- B. Discuss and consider possible action to authorize legal counsel to negotiate a grant agreement for the \$1,000,000 donation from Peter Way for construction of the Central Wimberley Wastewater Project. (*Mayor Mac McCullough*)

Mayor McCullough stated the need for the agreement to be in place and City Attorney Brad Young anticipated bringing such an agreement before Council at a future meeting.

Councilmember Thurber moved to authorize legal counsel to negotiate a grant agreement for the \$1,000,000 donation from Peter Way for construction of the Central Wimberley Wastewater Project. Councilmember Holland seconded.

Councilmember Fore said it bothered him that there are strings attached to the grant and was concerned that if grant conditions are not followed the City would not receive the money. Discussion followed regarding the Way family, its role in helping the City acquire Blue Hole, publicly stated correspondence between Mayor McCullough and Mr. Way, and arriving at an agreement acceptable for funding agencies, the City, and Mr. Way.

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

- C. Discuss and consider possible action authorizing the City’s legal counsel to intervene in Public Utility Commission Case No. 47192-51, an application of Pedernales Electric Cooperative, Inc. to amend a Certificate of Convenience and Necessity for the Highway 32 to Wimberley Transmission Line Rebuild and Upgrade Project in Hays County and to hire outside counsel for such action, if needed. (*Interim City Administrator*)

Interim City Administrator McPartland explained that approval of this action would allow for the hiring of outside counsel, as recommended by City Attorney Brad Young, to represent the City in the event intervention becomes necessary. She noted that the City’s motion to intervene was filed with the PUC by the July 17th deadline, as previously requested by Council.

City Attorney Brad Young recommended a letter of engagement with Alfred “Freddy” Herrera for such representation, if needed. Several unidentified audience members offered comments on PEC’s proposed line upgrade and discussion included the possibility of approaching PEC on the project details such as utility pole locations and line routing. Bob Bullock spoke of his service on a committee that met for nine months on this project and provided some historical background. Councilmember Barchfeld volunteered to accompany Mayor McCullough on any visits with PEC.

Councilmember Thurber moved to authorize the hiring of outside counsel, as recommended by City Attorney Brad Young, to intervene in Public Utility Commission Case No. 47192-51, an application of Pedernales Electric Cooperative, Inc. to amend a Certificate of Convenience and Necessity for the Highway 32 to Wimberley Transmission Line Rebuild and Upgrade Project in Hays County, if needed. Councilmember Fore seconded. Motion carried on a vote of 5-0.

- D. Discuss and consider possible action to formally accept Joel Wilkinson’s letter of resignation as the City Engineer. (*Interim City Administrator*)

Councilmember Thurber moved to formally accept Joel Wilkinson’s letter of resignation. Councilmember Fore seconded. Motion carried on a vote of 5-0.

- E. Discuss and consider possible action to formally accept Judge David Garza’s letter of resignation as the Wimberley Municipal Court’s judge. (*Interim City Administrator*)

Councilmember Thurber moved to formally accept Judge Garza’s letter of resignation. Councilmember Fore seconded. Motion carried on a vote of 5-0.

- F. Discuss and consider possible action designating Mayor Pro tempore Steve Thurber as an authorized signatory on the City of Wimberley depository bank account. (*Interim City Administrator*)

Councilmember Fore moved to approve designating Mayor Pro tempore Steve Thurber as an authorized signatory on the City of Wimberley depository bank account. Councilmember Barchfeld seconded. Motion carried on a vote of 5-0.

- G. Discuss and consider possible action regarding a request to operate a food service trailer

at 411 FM 2325 in Wimberley, Texas. (*Allison Schwabe, Applicant: Wimberley Shave Ice*)

Interim City Administrator McPartland reviewed the application proposing to serve shaved ice from a specially equipped trailer 7 days a week, 11 a.m.-9:30 p.m. at 411 FM 2325. She noted the applicant has an approved Mobile Food Establishment Permit from the City Sanitarian.

Councilmember Fore moved to approve the request to operate a food service trailer, as presented. Councilmember Barchfeld said he did not have concerns about Patricia Kelly's (subject tract at 411 FM 2325), but did have concerns about the safety of the "Y" location for food trailers. He favored having a plan for food trucks, felt Council should enact such a plan, and referred to improvements made by Ms. Kelly. Councilmember Davis seconded. Motion carried on a vote of 5-0.

H. Discuss and consider possible action regarding a request to operate a food service trailer at 411 FM 2325 in Wimberley, Texas. (*Allison Schwabe, Applicant: Wimberley Subs and Salads*)

Interim City Administrator McPartland reviewed the application proposing to serve sandwiches and salads out of a specially equipped trailer at 7 days a week, 11 a.m.-9:30 p.m. at 411 FM 2325. She noted that the City Sanitarian has not received application of the planned operation and approval should be conditionally based upon issuance of a Mobile Food Establishment Permit.

Applicant Allison Schwabe stated that this operation would be less seasonal than her shaved ice trailer (see previous Agenda Item 7G).

Councilmember Thurber moved to approve the request to operate a food service trailer at 411 FM 2325 on the condition that the City Sanitarian issues a Mobile Food Establishment Permit. Councilmember Fore seconded. Motion carried on a vote of 5-0.

I. Discuss and consider possible action to reconsider City Council's previous approval of Change Order No. 1 for the City of Wimberley Hidden Valley Low Water Crossing Reconstruction Project. (*Mayor Mac McCullough*)

Councilmember Thurber recused himself at this time.

Mayor McCullough said that the two following items in Change Order No. 1 need to be reconsidered:

- Project manager and office staff due to TPWD issue: \$20,012.51
- Wage raises since 10/2016: \$19,404.00

Interim City Administrator McPartland stated that the two items in questions are not the responsibility of the Owner (the City) under terms of the agreement and pointed out that the contractor did not receive a Notice to Proceed until April 2017. She cited the project engineer's

recommendations, including exhibits, regarding the items in question that concurred with her assessment: “All efforts and costs either performed or provided by the Contractor prior to the Notice to Proceed, and not agreed upon with the Owner first by a Change Proposal, shall not be the responsibility of the Owner (General Condition 11.03.A of Project Manual)”; “It is not the responsibility of the Owner to pay for wage rate increases by the Contractor. The Contractor is responsible to pay prevailing wages per Instruction to Bidders, article 22.01 of Project Manual.”

Councilmembers Fore and Barchfeld questioned procedures and asked why this item is back before Council when it was previously approved.

Councilmember Davis moved to rescind Council’s previous action on Change Order No. 1 and to approve Change Order No. 1, *except* for the two items related to project manager/office staff costs and wage raises. Councilmember Holland seconded.

Discussion included Councilmember Barchfeld’s opinion that it is not Council’s job to say what is right or wrong, but to submit this to the insurance company, and let them object to it. He was supportive of “processing this invoice” and said it is the insurance company’s project to look at this and the engineer’s job to sort it out. Discussion addressed items that are included in the contract; requesting payment for any work done on the project prior to being given notice to proceed; and lack of relevance as to whether payment comes from insurance proceeds or from the City’s general fund. Councilmember Barchfeld asked why it is okay to approve concrete cost increases and not the items in question. Interim City Administrator McPartland advised that those cost increases were verifiable, and as such, were recommended for payment by the project engineer. Councilmember Barchfeld said we should ask Myers to substantiate the contested items. Interim City Administrator McPartland advised that she could do that, but questioned the purpose of demanding the contractor to provide support for items that the City, or its insurance carrier, is under no contractual obligation to pay for.

Councilmember Fore stated his preference to not have this issue come up again. Mayor McCullough said this matter came to Council before the engineer had a chance to review it, and the contractor went to individual Council members seeking an advocate, before it was made clear that payment would not be made for anything not allowed under contract.

Councilmember Davis called the question. Councilmember Davis moved to rescind Council’s previous action on Change Order No. 1 and to approve Change Order No. 1 items related to concrete cost increases and environmental consulting, but to *not* approve the two items related to project manager/office staff costs and wage raises. Councilmember Holland seconded. Motion carried on a vote of 3-1. Councilmember Thurber recused.

- J. Discuss and consider possible action regarding Planning and Zoning Commission attendance issues, removal requirements for Commission members, and appointments to fill vacancies. (*Mayor Mac McCullough*)

Councilmember Thurber rejoined the meeting at this time.

Mayor McCullough pulled this item to be continued at a later date.

- K. Discuss and consider action regarding the proposed Fiscal Year 2018 City of Wimberley Goals and Priorities. (*Interim City Administrator*)

Interim City Administrator McPartland requested that this item be continued pending receipt of Council's finalized list of goals and priorities resulting from its workshop held on July 24, 2017.

- L. Discuss and consider action regarding issues relating to the proposed development of the Fiscal Year 2018 Budget. (*Interim City Administrator*)

Interim City Administrator McPartland stated this item will be on every Council agenda until budget adoption. No discussion was held. No action was taken.

8. City Council Reports

- Announcements
- Future Agenda Items

Mayor McCullough requested better acoustics in chambers as speakers are hard to hear.

Councilmember Davis requested the following future agenda item: Discussion of development of a food truck court ordinance based on her research of surrounding entities and a planned meeting with Planning Technician Sandy Floyd and City Sanitarian Kyle DeHart. Brief discussion addressed whether the City could deny all food trailer applications, impose a moratorium, or advise applicants to wait until an ordinance is adopted.

Councilmember Davis requested a future agenda item to allow the City to negotiate with vendors to take treated effluent to avoid the possibility of discharge as previously favored by Council, but action was postponed. She requested a presentation to Council from a beneficial reuse expert. She also requested a presentation by Meredith Miller of the Meadows Center on certain types of bacterial source testing for Cypress Creek above and below the bridge. She also asked for a discussion or report on recent problems with the Woodcreek dam.

Councilmember Thurber requested input on the budget.

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

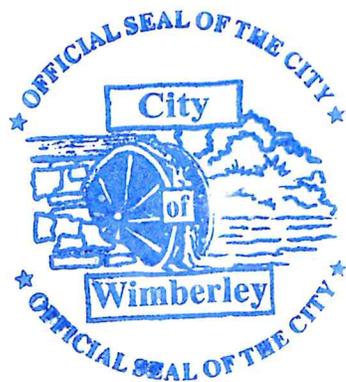
Adjournment: Council meeting adjourned at 10:03 p.m.

Recorded by:



Cara McPartland

These minutes approved on the 3rd of August, 2017.



APPROVED:

A handwritten signature in blue ink, appearing to read "Mac McCullough".

Mac McCullough, Mayor