

City of Wimberley
City Hall, 221 Stillwater
Wimberley, Texas 78676
Planning & Zoning Commission
Minutes of Regular Meeting
July 11, 2013 at 6:00 p.m.

Meeting called to order at 6:00 p.m. by Chair Tom Haley. Present were Commissioners Beth Mitchell, Charles Lancaster, Steve Klepfer, Lance Cawley, and Rick Burleson. Commissioner Tracey Dean was absent.

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

Citizen Communications:

No citizen comments were heard.

1. Consent Agenda

Approval of minutes of the Regular Planning & Zoning Commission meeting on June 13, 2013.

Commissioner Klepfer moved to approve the minutes, as presented. Commissioner Cawley seconded. Motion carried on a vote of 5-0. Commissioner Mitchell abstained.

2. Public Hearing and Possible Action

- A. Hold a public hearing and consider making a recommendation to City Council regarding Case No. CUP-13-007, an application for a conditional use permit to allow for the sale of beer and wine for on-premise consumption at a sit-down eating establishment located on a tract of property zoned Lodging 2 (L-2), located at Unit 110, 111 River Road, Wimberley, Hays County, Texas. (*Leaning Pear, LLC, Applicant*)

City Administrator Ferguson requested that this item be continued until the July 25th meeting of the Commission to allow for presentation of an amendment to the City's Zoning Code to include the sale of beer, wine and alcohol as a conditional use for sit-down eating establishments located in areas zoned for lodging.

Commissioner Klepfer moved to continue this item until the Commission's meeting on July 25, 2013. Commissioner Mitchell seconded. Motion carried on a vote of 6-0.

- B. Hold a public hearing and consider making a recommendation to City Council regarding Case No. CUP-13-008, an application for a conditional use permit to allow for the operation of a vacation rental on an 8.03 acre tract of land zoned

Residential Acreage (RA), located at 501 Little Ranches Road, Wimberley, Hays County, Texas. (*Randall Smith, Applicant*)

City Administrator Ferguson reviewed the subject property's location/addressing, current/proposed zoning and uses, existing residential structures, maximum occupancy, access, and parking. After receiving a recent noise complaint, the City discovered the subject homes were being rented on a short-term basis through a local accommodation booking agent. He stated that the applicant believed the property was outside of city limits from information obtained by his booking agent and was unaware of the requirement for a conditional use permit (CUP) to operate a vacation rental.

It was noted that there are two (2) existing, properly functioning on-site septic systems (OSSFs) and that the applicant will limit occupancy to no more than four (4) persons in the main home and no more than three (3) persons in the guest home, in accordance with the City Sanitarian's review of the OSSF.

City Administrator Ferguson read a list of City staff-recommended list of conditions to be made part of the requested CUP, if approved.

It was noted that at the time of agenda packet preparation, City staff has received one (1) inquiry from a property owner in the area of the proposed CUP, but no opinion was offered on the CUP request. Since that inquiry, one (1) neighboring property owner has met with the applicant and is present to speak on the requested CUP.

City Administrator Ferguson stressed that septic capacity is limited and did not recommend exceeding the maximum occupancy limits in accordance with the City Sanitarian's review of the subject property.

Chairman Haley opened the public hearing.

Terry Sones of 211 Little Ranches cited problems with noise stemming from vacation rental activity at the subject property over the last three years. She stated that local law enforcement and the booking agent were twice notified of excessive noise within the last eighteen (18) months, but there was no resolution of noise issues by either agency. She expressed opposition to a commercial operation of this size in the center of a strictly residential area. She noted the proximity of her house to the subject property and explained how easily noise travels. Ms. Sones acknowledged measures recently taken by the applicant to mitigate her concerns, including the removal of speakers in the outdoor hot tub and implementation of rules limiting outside evening activities. She expressed concerns regarding the permanent nature of CUPs as zoning actions that remain in place, as long as the CUP is active and compliant, regardless of ownership changes. She noted the management company advertises the subject property as capable of accommodating up to fourteen (14) guests. Ms. Sones' prior conversation with the applicant indicated that he might add a third septic system in order to increase the maximum occupancy limits, which she feared may lead to the future possibility of a small hotel operation.

City Administrator Ferguson reiterated CUPs as zoning actions that remain with the property, unless revoked for non-compliance or removed at the request of the property owner. He explained that under State law, an affirmative super majority vote of City Council would be required to approve the requested CUP, if owners of twenty percent (20%) or more of the notified properties (or 20% or more of the area in the 200-foot notification area) have expressed written opposition. He stated that Ms. Sones' has not yet submitted written opposition to the requested CUP and estimated that her property represents approximately ten percent (10%) of the notified area.

Applicant Randall Smith spoke on his ownership history of the subject property, its intended use as a retirement home, and his desire to comply with the City's zoning regulations. He stated most of his guests come to Wimberley for certain family-oriented events, such as weddings, reunions, and anniversaries. In response to noise concerns communicated to him by neighbor, Terry Sones, Mr. Smith disconnected the speakers in the hot tub. He noted that new house rules have been implemented to prohibit all outside activities after 10 p.m. and no "boom boxes" capable of playing loud music will be allowed. To allay concerns about possible future owners, Mr. Smith stated that CUP rules must be followed, regardless of who owns the subject property, and felt he should not be penalized for possible future actions by a subsequent owner. Although there are sleeping accommodations for up to fourteen (14) guests, Mr. Smith advised that the booking agent's marketing materials have been changed to comply with the maximum occupancy limits, as recommended by the City Sanitarian. He noted that Ms. Sones had no issues with noise over the last several weeks during the busy summer season. Mr. Smith stated that he stays at the subject property approximately forty weeks out of the year and is often on-site to address any problems.

Discussion addressed:

- Prior noise complaints
- Measures taken by the booking agent to better screen renters (at the request of the applicant)
- Need to amend the CUP's maximum occupancy limits, if an additional septic system were installed in the future, which would require submission of a CUP amendment application, with public notification and Council approval
- Number of neighbors expressing opposition to date

Wayne McQuaid of 207 Little Ranches Road, which is directly downhill from the subject property, spoke on noise issues that have improved with the recent disconnection of outdoor speakers at the subject property. He favored personal property rights, and had no issues with Mr. Smith, but was concerned that future owners (and their prospective booking agents) may not be as responsible as Mr. Smith.

Discussion addressed:

- Problems with enforcement of certain CUP conditions
- Bed and breakfast versus vacation rental regulations

- The need for an amended CUP, if the owner desired to increase the maximum occupancy beyond stated limits
- Responsibilities of the property owner and booking agent
- Applicant's house rule imposing fines to renters who do not comply
- Specific CUP conditions amenable to the applicant and surrounding property owners
- Prohibition of outdoor music as an additional CUP condition
- Notification provided to City by responsible party within twenty-four hours of any call made by law enforcement to the subject property
- Inclusion of the applicant's house rules to the list of CUP conditions
- Ability of the owner/agent to respond to complaints in a timely fashion
- CUPs as zoning actions applicable to the property rather than the property's owner
- Enforcement procedures and revocation of existing CUPs
- Burden on neighbors to police activity at subject property and file complaints, if CUP conditions are violated
- Explanation of the so-called "Twenty-Percent Rule" triggering the super majority vote requirement of City Council to affirm the requested zoning action
- Placement of the notice of proposed zoning sign
- Enforcement of Condition #3 in the staff-recommended list of CUP conditions ("No guests, other than paying guests, shall be allowed on the property at any time, unless approved in writing, in advance, by the owner or his agent.")
- Ability to impose property-specific CUP conditions, as dictated by public input
- Commission's precedent for CUP denial when a requisite amount of opposition is expressed
- Upcoming public hearing on the CUP request scheduled for City Council's meeting on July 18, 2013

Hearing no further comments, Chairman Haley closed the public hearing.

Commissioner Mitchell felt that the applicant has been responsive to neighbors' concerns by taking appropriate actions to alleviate noise. She expressed disappointment that prior complaints were not dealt with satisfactorily by local law enforcement and/or the property management company, but did not feel that the CUP should be denied.

Commissioner Lancaster favored recommending approval based on the applicant's efforts to comply with City regulations and to address neighbors' concerns about noise, which can be difficult to control. Because the applicant's house rules impose a penalty fine for non-compliant guests, he favored inclusion of the applicant's house rules in the CUP conditions, if approved.

Commissioner Klepfer cited the differences between CUPs for vacation rentals versus bed and breakfasts and noted that enforcement of CUP conditions is inherently more difficult for vacation rentals, since the property owner does not have to be on-site during

the rental period. He felt that many of the concerns expressed could be alleviated if the applicant had applied for a bed and breakfast CUP, rather than a vacation rental CUP. He favored recommending approval if the CUP conditions included the applicant's house rules, specific language prohibiting outdoor speakers, and notice to property owners within the two-hundred foot notification area that written protest from twenty or more percent of them would trigger the requirement for a super majority vote by City Council to approve the CUP.

Commissioner Cawley felt that adherence to City ordinances and equal treatment of applicants are key issues, rather than any precedence set by prior Commission actions. He expressed concerns about the physical location of the zoning notice sign and whether it provided sufficient public notification. He favored recommending approval of the CUP request, if the applicant's house rules are included in the CUP conditions.

Commissioner Burleson commented on the Commission's record of approving/denying CUP requests based on public input from individual neighborhoods. He stated his belief in personal property rights, but felt that the Commission should err on the side of protecting the rights of full-time resident owners. He preferred that the applicant work with the neighbors to arrive at an acceptable set of rental guidelines.

Chairman Haley favored recommending approval provided CUP conditions include the applicant's list of house rules and that all CUP conditions are enforced. He hoped that noise concerns have been addressed and found the maximum total occupancy of seven (7) guests acceptable. Additionally, he favored inclusion of a condition specifically prohibiting outdoor speakers.

Commissioner Cawley commented on the property owner as being the responsible party for the purpose of verifying whether or not a subject property is within or outside the city limits and whether such lack of determination and/or prior lack of compliance with the City's Zoning Code negatively impact the applicant's CUP request.

City Administrator Ferguson advised that when the City becomes aware of Code violations, the goal is to notify the violator and seek compliance or to require that the violator cease the non-conforming use.

Discussion addressed the applicant's attempts to contact neighbors prior to his CUP application submittal as recommended by City staff, and results of those contacts made to date.

Commissioner Lancaster moved to recommend approval of the CUP, as presented, with the additional condition to include the applicant's detailed list of house rules, which includes penalty fines for non-compliance, and to prohibit amplified outdoor music. Commissioner Mitchell seconded.

Chairman Haley called for a vote as follows: Commissioner Mitchell, aye; Commissioner Lancaster, aye; Commissioner Klepfer, aye; Commissioner Cawley, aye; Commissioner Burleson, nay. Chairman Haley, aye. Motion carried on a vote of 5-1.

Information was provided on notification requirements, the submission of written public comments to staff, and the next public hearing to be held at City Council's meeting on July 18, 2013.

- C. Hold a public hearing and consider making a recommendation to City Council regarding Case No. CUP-13-009, an application for a conditional use permit to allow for a secondary residential building on a .523 acre tract of land zoned Single Family Residential 2 (R-2), located at 100 Donna Drive, Wimberley, Hays County, Texas. (*Glenda Wilcox, Applicant*)

City Administrator Ferguson reviewed the subject property's location, current/proposed zoning and uses, and existing residence. He noted that the applicant desires to construct a one (1) bedroom, one (1) bathroom, 841 square foot secondary single family residence, west of the existing residence, with access gained from Mary Stephenson Lane. Should the CUP be granted, the applicant intends to install a new septic system to serve both residences and a variance from the City's on-site sewage facility (OSSF) lot size requirements would need City Council approval.

City Administrator Ferguson advised that City staff has received written opposition from the owner of two (2) lots within the two-hundred foot (200') notification area, which represents approximately twenty-two percent (22%) of the notification area. This percentage of opposition meets the requisite threshold under State law triggering the requirement that a super majority vote of City Council would be needed in order for Council to approve the requested CUP.

Discussion addressed locations of the proposed secondary residence and new septic system, speculation on reason(s) for opposition expressed to date, and the applicant's intended use of the secondary residence.

Chairman Haley opened the public hearing. Hearing no comments, Chairman Haley closed the public hearing.

Discussion addressed the Commission's desire for more information from the applicant and the property owner expressing opposition to the CUP request, the subject property's small lot size, septic system placement, and access issues.

To allow time to gather more information on the CUP request, Commissioner Cawley moved to continue the item until the Commission's meeting on July 25, 2013. Commissioner Mitchell seconded. Motion carried on a vote of 6-0.

3. Staff and Commission Reports

- Announcements
- Future Agenda Items

City Administrator Ferguson advised that the Commission may soon be considering possible regulations relating to allowing chickens on residentially zoned properties within city limits.

Hearing no further announcements or future agenda items, Chairman Haley called the meeting adjourned.

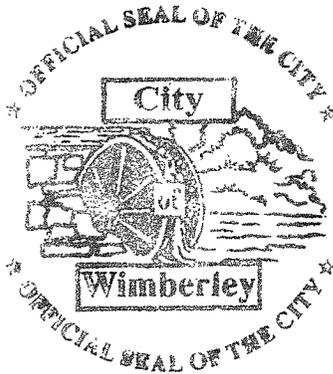
Adjourn at 7:40 p.m.

Recorded by:

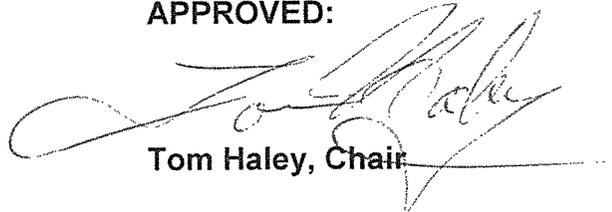


Cara McPartland

These minutes approved the 25th of July, 2013.



APPROVED:



Tom Haley, Chair