

City of Wimberley
City Hall, 221 Stillwater
Wimberley, Texas 78676
Planning & Zoning Commission
Minutes of Regular Meeting
November 8, 2012 at 6:00 p.m.

Meeting called to order by Chair Tracey Dean. Present were Commissioners Beth Mitchell, Jean Ross, Charles Lancaster, Steve Klepfer, and Lance Cawley (arrived at 6:05 p.m.). Commissioner Rick Burleson 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 October 11, 2012.

Commissioner Ross moved to approve the minutes, as presented. Commissioner Mitchell seconded. Motion carried on a vote of 4-0. (Chairman Dean abstained; Commissioner Burleson was absent; Commissioner Cawley had not yet arrived.)

2. Public Hearing and Possible Action

- A. Hold a public hearing and consider making a recommendation to City Council on Case ZA-12-004, a request to change the zoning from Single Family Residential 3 (R-3) to Single Family Residential 2 (R-2) for property located at 101 Sunrise Circle, Wimberley, Hays County, Texas. (*Kenneth & Lu Russo Ellis, Applicants*)

City Administrator Ferguson reviewed the subject property's location, current/proposed zoning and uses, and pending Amending Plat to combine two (2) .25 acre lots to create one (1) .50 acre lot. The resulting lot must be rezoned due to its size. He noted that the applicant is consolidating the lots to accommodate plans to expand an existing single family residence. No comments have been received on the requested zoning change and staff recommended approval.

Commissioner Ross moved to recommend approval of the item, as presented. Commissioner Klepfer seconded. Motion carried on a vote of 6-0.

- B. Hold a public hearing and consider making a recommendation to City Council regarding an application for an Amending Plat of Lots 39 and 40, Paradise Hills Section 2, located in Wimberley, Hays County, Texas, along with variance

requests relating to the City's lot depth to width ratio requirements and the minimum lot size requirements for lots to be served by on-site septic facilities (OSSF). (*Kenneth & Lu Russo Ellis, Applicants*)

City Administrator Ferguson reviewed the application for the Amending Plat of Lots 39 and 40, both .25 acres in size, to create Lot 39A, a .50 acre lot. He noted that the proposed lot is within the service area of Wimberley Water Supply Corporation and wastewater service is currently being provided by an existing on-site septic facility (OSSF).

The applicant is seeking a variance from §154.063(C) of the City Code, which requires lots to have a minimum 1:5 average depth to average width ratio. The size and configuration of the subject property make it impossible for the applicant to meet the required average depth to width ratio.

In addition, the applicant is seeking a variance from §95.07(B) of the City's OSSF Ordinance, which establishes a minimum lot size of 1.5 acres for lots to be served by an OSSF. While the one (1) lot created in the Amending Plat is smaller than 1.5 acres, there is already an existing and properly functioning OSSF on-site. Staff recommended approval of the proposed Amending Plat and requested variances.

Commissioner Ross moved to recommend approval of the item, as presented, which includes the requested variances. Commissioner Klepfer seconded. Motion carried on a vote of 6-0.

3. Discussion and Possible Action

Discuss and consider action on issues relating to the platting and planning procedures of Chapter 154 Subdivision Control of the City of Wimberley Code of Ordinances. (*City Administrator*)

City Administrator Ferguson presented a revised draft of proposed revisions to §154.026 and §154.027 (*attached to these minutes*), incorporating the following changes recommended at the Commission's last meeting on October 11, 2012:

- Language added to §154.026(H)(1) *Construction of Required Public Improvements* and (I)(2) *Construction of Required Non-Public Improvements* to allow applicants to appeal a determination of deficiency
- Addition of §154.026(H)(4): "No building permits shall be issued by the City for any construction associated with a proposed development prior to the acceptance of the required public improvements by the City."
- Addition of §154.026(I)(3): "No building permits shall be issued by the City for any construction associated with a proposed development prior to the acceptance of the required non-public improvements by the City."
- Language added to §154.027(A)(3) to specify acceptable lending institutions for the purpose of issuing Letters of Credit

- Language added to §154.027(F) relating to one-year extensions of the completion date for a period of no more than five years

Commissioner Klepfer moved to recommend approval of the revised draft, as presented. Commissioner Lancaster seconded. Motion carried on a vote of 6-0.

3. Staff and Commission Reports

- Announcements
- Future Agenda Items

City Administrator Ferguson requested input from Commission members to guide upcoming discussions of design standards to provide a vision for future development. Commission members offered feedback on topics such as density, mobility, open space, and incentives, to City Administrator Ferguson and agreed to send additional comments before the Commission’s next meeting.

Hearing no announcements or future agenda items, Commissioner Lancaster moved to adjourn. Chairman Dean seconded. Motion carried on a vote of 6-0.

Adjourn at 6:47 p.m.

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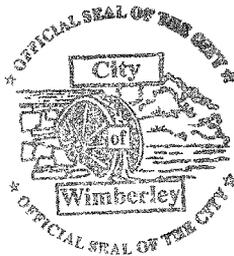
Cara McPartland

These minutes approved the 13th of December, 2012.

APPROVED:



Steve Klepfer, Acting Chair



(G) Construction Procedures

- (1) A site development permit is required from the City prior to beginning any site development-related work in the City or its extraterritorial jurisdiction.
- (2) The City may require that all contractors participating in construction meet for a preconstruction conference to discuss the construction plans prior to the release of a site development or building permit. All contractors shall comply with all applicable provisions of the Code including but not limited to water quality and landscaping provisions.
- (3) Prior to authorizing the release of a site development permit, the City Administrator or his designated representative shall determine if the following conditions have been met:
 - (a) The preliminary plat has been approved by the City Council and any conditions of such approval have been met;
 - (b) All required construction drawings and engineering documents have been completed and approved by the City Engineer;
 - (c) All necessary easements and dedications required for all utilities and City-maintained facilities have been conveyed solely to the City or utility, as applicable;
 - (d) All contractors participating in the construction have been presented with a set of approved plans bearing the stamp of release of the City Engineer. At least one (1) set of these plans shall remain on the job site at all times;
 - (e) A complete list of the contractors, their representatives on the site, and telephone numbers where a responsible party may be reached at all times has been submitted to the City; and
 - (f) All applicable fees must be paid to the City.
- (4) All nonpoint source pollution controls, erosion controls, and tree protection measures and devices shall be in place prior to the start of construction on any property.

(H) Construction of Required Public Improvements

(1) Construction of public improvements shall be completed in accordance with the approved engineering plans and other applicable codes and ordinances. Any change in design that is required during construction shall be made by the licensed professional engineer whose seal and signature are shown on the plans or another licensed professional engineer with prior approval of the owner of the plans. All revisions shall be noted on the plans or documents and shall be approved in advance by the City Administrator or his designated representative. If the City Administrator or his designated representative finds, upon inspection, that any of the required public improvements have not been constructed in accordance with the approved engineering plans and applicable standards, then the applicant shall be responsible for completing and correcting the deficiencies. The applicant may appeal such a determination of deficiency to the City Council. The appeal shall be submitted in writing to City Council who shall review and rule on the appeal within ten (10) days of its submission.

(2) The City shall not consider public improvements as satisfactorily complete until the improvements have been completed and inspected by the City Engineer and applicant's engineer or surveyor has submitted "as-built" drawings of the property and the improvements to the City Administrator or his designated representative. The "as-built" drawings shall certify completion of the improvements and contain the following:

- (a) A complete set of sealed record drawings of the paving, drainage, water, sanitary sewer and other public improvements, showing that the improvements are in accordance with the approved engineering plans;
- (b) Detail of all changes made in the plans during construction;
- (c) An "as-built" stamp on each page bearing the signature and seal of the licensed professional engineer and the date.

Upon determining that the above-mentioned requirements have been met, the City Administrator shall recommend the City Council deem the improvements satisfactorily complete. Once the City Council makes such a determination, the City Administrator shall issue the Letter of Acceptance.

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- (3) Acceptance of the public improvements shall mean that the applicant has transferred all rights to all the public improvements to the City for use and maintenance.
- (4) No building permits shall be issued by the City for any construction associated with a proposed development prior to the acceptance of the required public improvements by the City.

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(I) Construction of Required Non-Public Improvements.

- (1) The City Administrator or his designated representative shall inspect all required non-public improvements, including all fences and landscaping, to ensure compliance with City requirements and the approved construction plans. The inspection shall occur within ten (10) working days upon notification by the applicant. A report on the inspection shall be issued within ten (10) working days of the date of inspection.
- (2) When all required improvements have been satisfactorily completed, the City Administrator or his designated representative shall either accept, in writing, the improvements as having been satisfactorily completed, or shall issue a punch list to the applicant identifying the items to be completed. The applicant may appeal a determination of deficiency to the City Council. The appeal shall be submitted in writing to City Council who shall review and rule on the appeal within ten (10) days of its submission.
- (3) No building permits shall be issued by the City for any construction associated with a proposed development prior to the acceptance of the required non-public improvements by the City.

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§ 154.027 Alternatives to Completing Improvements

- (A) At the time of final plat approval, the City Council may waive the requirement that the applicant complete all improvements required by this Chapter. That waiver shall be contingent upon the City securing from the applicant a guarantee, as provided for by this section, for completion of all required improvements, including the City's cost for collecting the guaranteed funds and administering the completion of improvements in the event the applicant defaults. This guarantee shall be satisfactory to the City Attorney and shall take one of the following forms:

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- (1) *Performance bond.* The applicant shall post a performance bond with the City, as set forth herein, in an amount equal to 110% of the estimated construction costs for all remaining required improvements, using the form found on file with the City.
- (2) *Escrow account.* The applicant shall deposit cash or other instrument readily convertible into cash at face value, either with the City or in escrow with a bank or savings and loan institution. The use of any instrument other than cash shall be subject to the approval of the City. The amount of the deposit shall equal 110% of the estimated construction costs for all remaining required improvements. In the case of any escrow account, the applicant shall file with the City an agreement between the financial institution and the applicant guaranteeing the following:
 - (a) The funds of the escrow account shall be held in trust until released by the City and may not be used or pledged by the applicant as security in any other matter during that period;
 - (b) In the case of a failure on the part of the applicant to complete the improvements, the financial institution shall immediately make the funds in the account available to the City for use in the completion of those improvements; and
 - (c) The escrow account agreement shall be prepared using the form on file with the City.

- (3) Letter of credit. The applicant shall provide a letter of credit from a reputable bank. The Letter of Credit shall be issued by a commercial bank acceptable to the City and (1) that is chartered under the laws of the United States, any State thereof or the District of Columbia, and which is insured by the Federal Deposit Insurance Corporation; (2) whose long-term, unsecured and unsubordinated debt obligations are rated in one of the four highest categories by at least two of Fitch Ratings Ltd. (Fitch), Moody's Investors Service, Inc. (Moody's) and Standard & Poor's Ratings Services (S&P) or their respective successors (the Rating Agencies) (which shall mean AAA, AA+, AA, AA- from Fitch, Aaa, Aa1, Aa2, Aa3 from Moody's and AAA, AA+, AA, AA- from Standard & Poor's); and (3) which has a short-term deposit rating in the highest category from at least two Rating Agencies (which

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shall mean F1 from Fitch, P-1 from Moody's and A-1 from S&P] (collectively, the Letter of Credit Issuer Requirements). If at any time the Letter of Credit Issuer Requirements are not met, or if the financial condition of such issuer changes in any other materially adverse way, as determined by the City in its sole discretion, the applicant shall within five (5) days of written notice from the City deliver to the City a replacement Letter of Credit which otherwise meets the City's requirements and that meets the Letter of Credit Issuer Requirements. This letter shall be submitted to the City and shall certify the following:

- (a) The creditor does guarantee funds equal to 110% of the estimated construction costs for all remaining required improvements;
- (b) In the case of failure on the part of the applicant to complete the specified improvements within the required time period, the creditor shall pay to the City immediately, and without further action, those funds as are necessary to finance the completion of those improvements, up to the limit of credit stated in the letter;
- (c) This letter of credit may not be withdrawn, or reduced in amount, until approved by the City; and
- (d) The letter of credit shall be prepared using the form on file with the City.

(B) A registered professional engineer, licensed to practice in this state, shall furnish estimates of the costs of all required improvements to the City Administrator or his designated representative who shall review the estimates to determine the adequacy of the guarantee instrument for insuring the construction of the required facilities.

(C) The surety shall comply with all statutory requirements and shall be satisfactory to the City Attorney as to form, sufficiency, and manner of execution as set forth in these regulations. All such surety instruments shall be both a payment and performance guarantee.

(D) If the project is located in the extraterritorial jurisdiction, and is subject to the bonding requirements of Hays County for the construction of roadways, then that amount of money shall be reduced from the amount required to be posted with the City,

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provided that the instrument is transferable from the County to the City upon annexation.

- (E) The period within which required improvements must be completed shall be specified by the City Council in approving the final plat and shall be incorporated in the surety instrument and shall not in any event, without prior approval of the City, exceed one (1) year from date of final plat approval.
- (F) The City Council may, upon written request of the applicant, and upon proof of hardship, approve an extension of the completion date set forth in the bond or other instrument for a period of one (1) additional year. Additional one (1) year extensions may be requested by the applicant and approved by the City Council provided the original completion date set forth in the bond or other instrument has not been extended by more than five (5) years. Hardship may include delays imposed due to projects by governmental entities which have a direct impact and impair the completion of the improvements. The written request for an extension shall include an updated estimate of construction costs prepared by a registered professional engineer, licensed to practice in this state in all instances. A surety instrument for guaranteeing completion of remaining required improvements must be filed in an amount equal to 110% of the updated estimate of construction costs as approved by the planning staff.
- (G) The City Council may, at any time during the period of the surety instrument, accept a substitution of principal sureties.
- (H) Final plats shall be deemed to have expired in subdivisions for which no assurances for completion have been posted or the improvements have not been completed within the period specified in this Chapter. In those cases where a surety instrument has been required and improvements have not been completed within the terms of that surety instrument, the City may declare the surety to be in default and require that all the improvements be installed. No development rights, if any, shall vest in a conditionally approved final plat that has expired under this section.
- (I) A surety instrument may be reduced with the approval of the City Administrator upon actual construction of required improvements by an amount equal to the value of the completed improvements, as determined by the City Administrator. Before the City shall reduce the surety instrument, the applicant shall provide a new surety instrument in an amount equal to 110% of the estimated cost of the remaining required improvements. The substitution of a new surety

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instrument shall in no way change or modify the terms and conditions of the performance surety instrument or the obligation of the applicant as specified in the performance surety instrument. In no event shall a surety instrument be reduced below 25% of the principal amount prior to completion of all required improvements.

- (J) The City shall not release a surety instrument unless and until all the improvements have been satisfactorily completed.

§ 154.028 Required Maintenance Bond

- (A) The applicant shall furnish the City with a maintenance bond or other acceptable surety instrument to ensure the quality of materials and workmanship, and maintenance of all required improvements. The bond or instrument shall be furnished to the City prior to the release of any performance surety instrument or the signing of the final plat where subdivision improvements were made prior to the signing and recordation the final plat.
- (B) The required bond or surety instrument shall be in an amount equal to 10% of the cost of the improvements and shall include the City's costs for collecting the guaranteed funds and administering the correction or replacement of covered improvements in the event the applicant defaults. The term of the bond or instrument shall run for a period of one (1) calendar year measured from the date of the release of the performance surety instrument or the recording of the final plat, whichever is later.
- (C) The form, sufficiency, and manner of execution of the maintenance bond or other surety instrument shall be approved by the City Attorney.
- (D) In an instance where a maintenance bond or other surety instrument has been posted and a defect or failure of any required improvement occurs within the period of coverage, the City may declare the bond or surety instrument to be in default and require that the improvements be repaired or replaced.
- (E) Whenever a defect or failure of any required improvement occurs within the period of coverage, the City shall require that a new maintenance bond or surety instrument be posted for a period of one (1) full calendar year *from the date the defect was repaired or replaced* sufficient to cover the corrected defect or failure.