

**City of Wimberley**  
City Hall, 221 Stillwater  
Wimberley, Texas 78676  
**Planning & Zoning Commission**  
Minutes of Special Meeting  
November 25, 2013 at 6:00 p.m.

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

Staff Present: City Administrator Don Ferguson

**Citizen Communications:**

No citizen comments were heard.

**1. Consent Agenda**

Approval of minutes of the Regular Planning & Zoning Commission meeting on October 24, 2013.

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

**2. Public Hearings and Possible Action**

- A. Hold a public hearing and consider making a recommendation to City Council regarding Case CUP-13-013, 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 on property zoned Commercial – Moderate Impact (C-2), located at 401 FM 2325, Wimberley, Hays County, Texas. (*Socorro Franco, Applicant*)

City Administrator Ferguson reviewed the subject property's location as the existing site of *Durango's Restaurant*, its current/proposed zoning, planning area, and operating hours. No changes are anticipated in the restaurant's hours of operation. No comments either for or against the conditional use permit (CUP) have been received.

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

Commissioner Dean moved to recommend approval of the item, as presented. Commissioner Cawley seconded. Brief discussion addressed possible addition of specific restrictions on operating hours. Motion carried on a vote of 6-0.

- B. Hold a public hearing and consider making a recommendation to City Council regarding Case CUP-13-014, an application for a conditional use permit to allow for the operation of a vacation rental facility on property zoned Single Family Residential 2 (R-2), located at 2916 Flite Acres Road, Wimberley, Hays County, Texas. (*Donald Kuhs, Applicant*)

City Administrator Ferguson reviewed the subject property's location, acreage, current/proposed zoning and uses, planning area, overlay district, existing residential structure, and parking. He advised the applicant is proposing to use the home as a vacation rental with a maximum occupancy of ten (10) persons, however, the City Sanitarian's review has indicated that no more than four (4) persons may occupy the vacation rental facility.

Should the Commission desire to recommend approval, City Administrator Ferguson suggested that, in addition to the applicant's house rules, CUP conditions include a requirement that prior to occupancy the City be provided with written evidence that the septic system serving the subject residence has been inspected and found to be properly functioning and capable of serving the proposed maximum capacity. Although the applicant is willing to comply with a four-person maximum occupancy limit, Mr. Kuhs has requested that the CUP include language that would allow for a future maximum occupancy of ten (10) persons, should the existing septic system be replaced with one that can meet the increased capacity requirements.

City Administrator Ferguson stated that the Commission has the ability to recommend approval of the CUP with a maximum occupancy of ten (10) persons, if at some point in the future, the applicant installs a new engineered septic system capable of handling the increased capacity. City Administrator Ferguson did not favor such a recommendation, and preferred requiring the applicant to amend an existing CUP, which would trigger public notification requirements as part of the CUP application process. He also expressed concerns that increasing the maximum occupancy to ten (10) persons may generate excessive traffic/noise.

Discussion established that to date City staff has received written opposition from notified property owners #1 (Edward & Suzanne Davis of 3000 Flite Acres), #2 (John & Sharyl Robertson of 2912 Flite Acres), and #5 (Jenni Marino/Construction Equity, Inc. of 2908 Flite Acres), which would require an affirmative super majority (unanimous) vote of City Council to approve the requested CUP.

Chairman Haley opened the public hearing.

Applicant Donald Kuhs spoke of his family's lengthy ownership history and community contributions, provided details of his property's boundaries, location of the existing residence, and proximity to neighbors. He felt it important to note that his neighbors are not full-time residents, are "all relatively new to our neighborhood," and stated his opinion that there's a difference between a permanent resident and a weekender. He noted house rules for the vacation rental and his intention to remove a backyard

speaker system. Mr. Kuhs stated that he does not want to offend his neighbors and stressed that he has no intentions to sell the subject property and wishes to keep the property in his family forever. He felt that short-term vacation rentals are preferable to long-term rentals because long-term renters “may or may not care about how that property looks and operates.” He stated that the high value of the home dictates a certain high standard from short-term renters, with rental income going toward maintaining and improving the subject property. Mr. Kuhs stated that neighbors might be stuck with problematic long-term renters, whereas with short-term renters, neighbors might only experience occasional, short-lived problems. He felt that using vacation rental income is the best way to provide revenue to upgrade and improve the property, which he stated would increase property values. He also stated that short-term renters would increase the City’s tax revenue and possibly generate interest in renters considering becoming permanent Wimberley residents.

Edward Davis of 3000 Flite Acres Road stated that he has owned his property for three and one-half years and spoke of his family’s community involvement and volunteer work. He gave a presentation highlighting his reasons for opposing the requested CUP, including concerns about his house’s proximity to the subject property, confusion renters may have over certain property features/boundary lines that may cause trespassing issues, noise generated by renters, known flood history, driveway/parking area erosion, and decreased surrounding property values.

Jenni Marino of 2908 Flite Acres Road expressed opposition to the CUP request and noted that noise is a problem from existing area rental properties. Ms. Moreno stated that she is a full-time Wimberley resident who plans to occupy her house by the end of April 2014. Based on crowded conditions around her property and complaints received about traffic generated from the construction of her own house, she felt that added traffic from the applicant’s proposed vacation rental will create problems for the neighborhood.

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

Discussion among Commission members, staff, the applicant, and audience members addressed:

- Amount of opposition expressed to date requiring super majority vote of City Council to approve the CUP pursuant to the so-called “Twenty-Percent Rule” under Texas Local Government Code §211.006(d)
- Applicant’s meetings/correspondence with neighbors regarding his intention to use the subject property as a vacation rental
- Noise concerns, particularly if the vacation rental’s maximum occupancy is approved for up to ten (10) persons
- Short-term vacation rentals versus long-term rentals and concerns associated with each option
- Inability to upgrade existing septic system (in the event of failure) for increased capacity under current regulations

- Applicant's willingness to install a new engineered septic system, should he be granted approval for a maximum occupancy of up to ten (10) persons
- Parking concerns related to adequate space for projected number of cars, configuration of driveway, lack of turnaround for vehicles, and erosion
- Requirement that applicant provide written evidence to the City that the septic system for the subject residence has been inspected and found to be properly functioning and capable of serving the proposed maximum occupancy
- Neighbors' liability concerns regarding trespassers on their properties
- Concerns related to maximum occupancy, relative to the subject property's 0.561-acre lot size
- Commission's consistent history of recommending denial when significant neighborhood opposition has been expressed
- Concerns regarding the impact of vacation rentals on surrounding property values
- Difficulties in delineating the subject property's boundaries to avoid trespassing by renters
- Possible measures such as fencing or designating natural boundaries to address potential trespassing issues, along with proper education of renters by the applicant on the subject property's boundaries
- Easement along back of subdivision properties extending ten-feet (10') from Blanco River bank which allows access by the public

Hearing no further discussion, Chairman Haley entertained a motion. Hearing none, he stated the Commission's recommendation for denial. City Administrator Ferguson clarified that the Commission needs to vote to make a recommendation to approve or deny the CUP request.

Chairman Haley entertained a motion. Commissioner Cawley moved to recommend approval of the CUP, as presented, with a maximum occupancy of four (4) persons and a maximum number of four (4) cars, including the condition that the septic system is certified as functioning properly and capable of handling such capacity.

Commissioner Mitchell asked if the applicant could be required to define natural boundaries on the subject property and educate guests not to trespass beyond those boundaries when accessing the water. City Administrator Ferguson advised that the CUP condition related to water access can be modified to clarify that guests may not trespass onto neighboring properties for the purpose of entering or exiting any adjacent river or creek and that the applicant would be responsible for educating renters on the subject property's boundary lines.

Commissioner Cawley included City Administrator Ferguson's abovementioned modified CUP condition in his motion. Commissioner Mitchell seconded.

Chairman Haley called for a vote as follows: Commissioner Mitchell, aye; Commissioner Dean, nay; Commissioner Lancaster, nay; Commissioner Burleson, nay; Commissioner Cawley, aye; Chairman Haley, nay. Motion failed on a vote of 2-4.

Chairman Haley called a five-minute recess at this time.

Chairman Haley reconvened the meeting.

- C. Hold a public hearing and consider making a recommendation to City Council regarding Case CUP-13-015, an application for a conditional use permit to allow for the operation of a vacation rental facility on property zoned Commercial – Low Impact (C-1), located at 14000 Ranch Road 12, Suite C, Wimberley, Hays County, Texas. (*Nancy Chandler, Applicant*)

City Administrator Ferguson reviewed the subject property's location within the Village Center Overlay District, current/proposed zoning, acreage, and planning area. He stated the applicant is proposing to use the existing apartment above the retail space as a vacation rental with a maximum occupancy of two (2) persons utilizing existing on-street parking in the downtown area.

It was noted that there is an existing older on-site septic system with limited capacity that serves at least two (2) other small commercial operations on the subject property. The City Sanitarian has indicated that no more than two (2) persons may occupy the vacation rental and the applicant has agreed to comply. City Administrator Ferguson also noted that there are currently water use restrictions on the subject property due to the limited size and age of the septic system.

City Administrator Ferguson read a list of staff-recommended conditions to be included in the CUP, in addition to the applicant's house rules, should the Commission desire to recommend approval.

Chairman Haley opened the public hearing.

Applicant Nancy Chandler distributed handouts and directed the Commission's attention to photographs of renovations, septic inspection report, and correspondence regarding continuous use of the subject property as a vacation rental, and water usage restrictions.

City Administrator Ferguson explained that there was not sufficient evidence proving continuous use of the subject property as a vacation rental, therefore, a CUP application was necessary for use as a vacation rental by the applicant.

Chairman Haley closed the public hearing.

Commissioner Dean moved to recommend approval of the item, as presented, which includes the list of conditions as read earlier by City Administrator Ferguson. Commissioner Mitchell seconded.

Discussion addressed prior use of the subject property as a bed and breakfast without proper permitting and documentation on continuous use of the property as a bed and breakfast/vacation rental.

Motion carried on a vote of 6-0.

### 3. Staff and Commission Reports

- Announcements
- Future Agenda Items

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

**Adjourn at 7:35 p.m.**

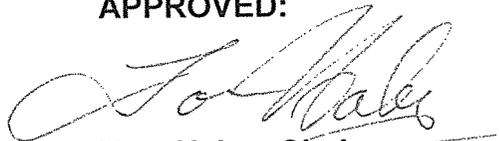
Recorded by:



Cara McPartland

**These minutes approved the 12<sup>th</sup> of December, 2013.**

**APPROVED:**

  
**Tom Haley, Chair**