

City of Wimberley

12111 Ranch Road 12, P.O. Box 2027, Wimberley, Texas, 78676

REGULAR CITY COUNCIL MEETING
WIMBERLEY CITY HALL-CITY COUNCIL CHAMBERS
12111 RANCH ROAD 12, WIMBERLEY, TEXAS
MAY 21, 2009, 6:30 P.M.

AGENDA

CALL TO ORDER: MAY 21, 2009 @ 6:30 P.M.

CALL OF ROLL: CITY SECRETARY

INVOCATION

PLEDGE OF ALLEGIANCE/SALUTE TO THE TEXAS FLAG

CITIZENS COMMUNICATIONS:

THE CITY COUNCIL WELCOMES COMMENTS FROM CITIZENS ON ISSUES AND ITEMS OF CONCERN, NOT ON THIS AGENDA. THOSE WISHING TO SPEAK MUST SIGN IN BEFORE THE MEETING BEGINS AND OBSERVE A THREE-MINUTE TIME LIMIT WHEN ADDRESSING COUNCIL. SPEAKERS WILL HAVE ONE OPPORTUNITY TO SPEAK DURING THE TIME PERIOD. SPEAKERS DESIRING TO SPEAK ON AN AGENDA ITEM WILL BE ALLOWED TO SPEAK WHEN THE AGENDA ITEM IS CALLED. INQUIRIES ABOUT MATTERS NOT LISTED ON THE AGENDA WILL EITHER BE DIRECTED TO STAFF OR PLACED ON A FUTURE AGENDA FOR COUNCIL CONSIDERATION.

1. OATH OF OFFICE

ADMINISTER THE OATH OF OFFICE TO THE THREE (3) COUNCIL MEMBERS-ELECT OF THE CITY OF WIMBERLEY CITY COUNCIL.

2. DISCUSSION AND ACTION ON ELECTION RELATED MATTERS

- (A) CONSIDER APPROVAL OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS RECOGNIZING THE PUBLIC SERVICE RENDERED BY JERI XIQUES AS COUNCIL MEMBER OF THE CITY OF WIMBERLEY, TEXAS. (MAYOR TOM HALEY)
- (B) CONSIDER APPROVAL OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS RECOGNIZING THE PUBLIC SERVICE RENDERED BY DICK LARSON AS COUNCIL MEMBER OF THE CITY OF WIMBERLEY, TEXAS. (MAYOR TOM HALEY)
- (C) CONSIDER APPROVAL OF AN APPOINTMENT OF MAYOR PRO TEMPORE FOR A TERM OF ONE (1) YEAR. (MAYOR TOM HALEY)

3. CONSENT AGENDA

THE FOLLOWING ITEMS MAY BE ACTED UPON IN ONE MOTION. NO SEPARATE DISCUSSION OR ACTION IS NECESSARY UNLESS REQUESTED BY A COUNCIL MEMBER OR CITIZEN, IN WHICH EVENT THOSE ITEMS WILL BE PULLED FROM THE CONSENT AGENDA FOR SEPARATE CONSIDERATION.

- (A) APPROVAL OF MINUTES OF THE REGULAR CITY COUNCIL MEETING OF MAY 7, 2009.
- (B) APPROVAL OF MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF MAY 7, 2009.
- (C) APPROVAL OF MINUTES OF THE SPECIAL CITY COUNCIL MEETING OF MAY 15, 2009.
- (D) APPROVAL OF THE APPOINTMENT OF MAC MCCULLOUGH TO THE CITY OF WIMBERLEY WATER WASTEWATER ADVISORY BOARD. (MAYOR TOM HALEY'S NOMINEE)
- (E) APPROVAL OF THE APPOINTMENT OF DAVE ESTEY TO THE CITY OF WIMBERLEY WATER WASTEWATER ADVISORY BOARD (PLACE ONE COUNCIL MEMBER CHARLES ROCCAFORTE'S NOMINEE)

4. CITY ADMINISTRATOR REPORT

- STATUS REPORT ON MAY 2009 GENERAL ELECTION FOR THE CITY OF WIMBERLEY
- STATUS REPORT ON 2009 BLUE HOLE REGIONAL PARK SUMMER OPERATIONS
- STATUS REPORT ON EFFORTS UNDERWAY TO SECURE STATE AND FEDERAL FUNDING FOR THE DOWNTOWN WASTEWATER PROJECT
- STATUS REPORT ON THE DEVELOPMENT OF A *NON-POINT SOURCE POLLUTION* ORDINANCE
- STATUS REPORT ON FOURTH OF JULY FIREWORKS SPONSORSHIP DEMONSTRATION
- STATUS REPORT ON ACTIVITIES OF THE WIMBERLEY MUNICIPAL COURT
- STATUS REPORT ON ACTIVITIES OF THE CITY MARSHAL

5. PRESENTATIONS

- (A) PRESENTATION OF RESULTS OF WIMBERLEY SQUARE SEPTIC SYSTEM SURVEY BY CITY OF WIMBERLEY AND HAYS COUNTY ENVIRONMENTAL HEALTH DIVISION. (CITY ADMINISTRATOR)
- (B) PRESENTATION ON CITY OF WIMBERLEY GOVERNANCE POLICY AND RULES OF PROCEDURE (CITY ADMINISTRATOR)

6. **PUBLIC HEARING AND POSSIBLE ACTION**

HOLD A PUBLIC HEARING AND CONSIDER APPROVAL AN ORDINANCE OF THE CITY OF WIMBERLEY, AMENDING SECTION 155 (ZONING), APPENDIX F, OF THE CODE OF WIMBERLEY, DESIGNATING GEOGRAPHIC BOUNDARIES FOR A PARTICULAR ZONING DISTRICT AND CLASSIFICATION FOR A 0.90 ACRE TRACT LOCATED AT 419 FM 2325, WIMBERLEY, HAYS COUNTY, TEXAS, DESIGNATING INITIAL ZONING FOR SUCH TRACT AS COMMERCIAL LOW IMPACT (C-1); AND PROVIDING FOR THE FOLLOWING: DELINEATION ON ZONING MAP; SEVERABILITY; EFFECTIVE DATE AND PROPER NOTICE AND MEETING. (STEVEN DUNKS, APPLICANT)

7. **ORDINANCES**

- (A) CONSIDER APPROVAL OF AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, AMENDING TITLE XV (LAND USAGE) OF THE CODE OF ORDINANCES CHAPTER 152 (SIGNS) IN ORDER TO ESTABLISH REGULATIONS REGARDING TEMPORARY REAL ESTATE SIGNS; AND PROVIDING FINDINGS OF FACT, A REPEALING CLAUSE, TO PROVIDE A SAVINGS AND SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE. (CITY ADMINISTRATOR)
- (B) CONSIDER FINAL APPROVAL OF AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, REPEALING ORDINANCE NO. 2009-013 REGARDING AQUA TEXAS INC.; AND PROVIDING FOR FINDINGS OF FACT, REPEAL, SAVINGS CLAUSE, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING. (CITY ADMINISTRATOR)

8. **RESOLUTION**

CONSIDER APPROVAL OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS AUTHORIZING THE MAYOR TO SIGN A FRANCHISE AGREEMENT WITH AQUA TEXAS, INC. (CITY ADMINISTRATOR)

9. **DISCUSSION AND POSSIBLE ACTION**

- (A) DISCUSS AND CONSIDER POSSIBLE ACTION PROVIDING DIRECTION TO THE PLANNING AND ZONING COMMISSION ON THE REGULATION OF ALCOHOL SALES IN THE CITY OF WIMBERLEY. (MAYOR PRO-TEM BOB FLOCKE)
- (B) DISCUSS AND CONSIDER POSSIBLE APPROVAL OF A CONTRACT WITH *DESIGN WORKSHOP* TO PROVIDE DESIGN SERVICES FOR THE DEVELOPMENT OF THE BLUE HOLE REGIONAL PARK. (CITY ADMINISTRATOR)
- (C) DISCUSS AND CONSIDER POSSIBLE ACTION SETTING THE DATE FOR A CITY COUNCIL WORKSHOP WITH THE CITY OF WIMBERLEY WATER WASTEWATER ADVISORY BOARD. (PLACE FOUR COUNCIL MEMBER STEVE THURBER)
- (D) DISCUSS AND CONSIDER POSSIBLE ACTION SETTING A DATE FOR A WORKSHOP TO ESTABLISH CITY COUNCIL GOALS AND OBJECTIVES. (CITY ADMINISTRATOR)

- (E) DISCUSS AND CONSIDER POSSIBLE ACTION ON A REQUEST FROM THE WIMBERLEY VILLAGE LIBRARY FOR COMPLIMENTARY DAILY ADMISSION PASSES TO THE BLUE HOLE REGIONAL PARK. (CITY ADMINISTRATOR)

10. CITY COUNCIL REPORTS

- ANNOUNCEMENTS
- FUTURE AGENDA ITEMS

ADJOURNMENT

THE CITY COUNCIL MAY RETIRE INTO EXECUTIVE SESSION AT ANY TIME BETWEEN THE MEETING'S OPENING AND ADJOURNMENT FOR THE PURPOSE OF DISCUSSING ANY MATTERS LISTED ON THE AGENDA AS AUTHORIZED BY THE TEXAS GOVERNMENT CODE INCLUDING, BUT NOT LIMITED TO, HOMELAND SECURITY PURSUANT TO CHAPTER 418.183 OF THE TEXAS LOCAL GOVERNMENT CODE; CONSULTATION WITH LEGAL COUNSEL PURSUANT TO CHAPTER 551.071 OF THE TEXAS GOVERNMENT CODE; DISCUSSION ABOUT REAL ESTATE ACQUISITION PURSUANT TO CHAPTER 551.072 OF THE TEXAS GOVERNMENT CODE; DISCUSSION OF PERSONNEL MATTERS PURSUANT TO CHAPTER 551.074 OF THE TEXAS GOVERNMENT CODE; DELIBERATIONS ABOUT GIFTS AND DONATIONS PURSUANT TO CHAPTER 551.076 OF THE TEXAS GOVERNMENT CODE; DISCUSSION OF ECONOMIC DEVELOPMENT PURSUANT TO CHAPTER 551.087 OF THE TEXAS GOVERNMENT CODE; ACTION, IF ANY, WILL BE TAKEN IN OPEN SESSION.

CERTIFICATION

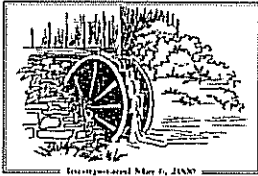
I hereby certify the above Notice of Meeting was posted on the Bulletin Board at the Wimberley City Hall on May 18, 2009 at 5:00 p.m.



CARA MC PARTLAND, CITY SECRETARY

The City of Wimberley is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please contact Don Ferguson, City Administrator, at (512) 847-0025 for information. Hearing-impaired or speech-disabled persons equipped with telecommunication devices for the deaf may call (512) 272-9116 or may utilize the stateside Relay Texas Program at 1-800-735-2988.

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: OATHS OF OFFICE

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☐ Resolution

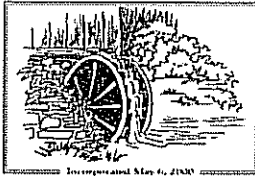
☐ Motion

☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow for newly-elected Council Members John White, Charles Roccaforte and Bill Appleman to be sworn into office.

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: RESOLUTION
HONORING JERI XIQUES

Funds Required:
Funds Available:

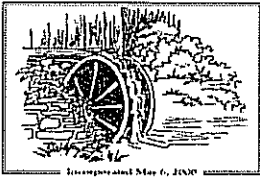
Council Action Requested:

☐ Ordinance
☒ Resolution
☒ Motion
☒ Discussion

Project/Proposal Summary:

Attached is a resolution recognizing Jeri Xiques for her two years of service on the Wimberley City Council.

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: RESOLUTION
HONORING DICK LARSON

Funds Required:
Funds Available:

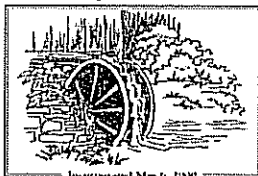
Council Action Requested:

☐ Ordinance
☒ Resolution
☒ Motion
☒ Discussion

Project/Proposal Summary:

Attached is a resolution recognizing Dick Larson for his two years of service on the Wimberley City Council.

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: APPOINTMENT OF A
MAYOR PRO TEMPORE

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☐ Resolution

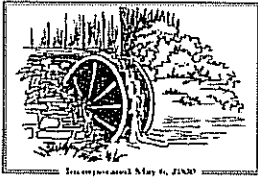
☒ Motion

☐ Discussion

Project/Proposal Summary:

At the first meeting following the regular election, or as soon thereafter as practical, the City Council must appoint one member of City Council to serve as Mayor Pro Tempore for a term of one year.

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: APPROVAL OF MAY 7,
2009 MINUTES OF REGULAR CITY COUNCIL
MEETING

Funds Required:

Funds Available:

Council Action Requested:

- ☐ Ordinance
- ☐ Resolution
- ☒ Motion
- ☐ Discussion

Project/Proposal Summary:

Attached are minutes for the May 7, 2009 Regular City Council Meeting for review and consideration.

City of Wimberley
City Hall, 12111 Ranch Road 12, Ste. 114
Wimberley, Texas 78676
Minutes of Regular Meeting of City Council
May 7, 2009 at 6:30 p.m.

City Council meeting called to order at 6:30 p.m. by Mayor Tom Haley.

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

Councilmembers Present: Mayor Haley and Councilmembers Charles Roccaforte, Bob Flocke, Jeri Xiques, Steve Thurber, and Dick Larson.

Staff Present: City Administrator Don Ferguson, City Secretary Cara McPartland, and Assistant City Attorney Cindy Crosby.

Proclamation

Proclamation recognizing Keep Wimberley Beautiful and the Wimberley Lions Club for organizing the Community-Wide Clean-Up Day on May 16, 2009

Proclamation recognizing the accomplishments of the Wimberley High School Tennis teams

Mayor Haley presented proclamations to Wimberley Lions Club's representative and to attending Wimberley High School team members and coaches.

Presentations of Citizens:

- Citizen Communications

No citizen communications were heard.

1. Consent Agenda

- A. Approval of minutes of the regular City Council meeting of April 16, 2009.
- B. Approval of minutes of the special City Council meeting of April 30, 2009.
- C. Approval of March 2009 City of Wimberley Financial Reports
- D. Approval of the reappointment of Charles Jennett to the City of Wimberley Water Wastewater Advisory Board (*Place Four Councilmember Steve Thurber's nominee*).

- E. Approval of the reappointment of Kyle DeHart to the City of Wimberley Water Wastewater Advisory Board (*Mayor Pro-tem Bob Flocke's nominee*).
- F. Approval of the appointment of Clint Frankmann to the City of Wimberley Water Wastewater Advisory Board (*Place Five Councilmember Dick Larson's nominee*).
- G. Approval of the appointment of Joe Malone to the City of Wimberley Water Wastewater Advisory Board (*Consensus nominee*).

Councilmember Thurber requested to pull Consent Agenda Items 1C, 1F, and 1G. Councilmember Thurber moved to approve the remaining Consent Agenda items as presented. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

Discussion on Consent Agenda Item 1C addressed the timing of certain revenues and expenditures, the possibility of future budget amendments, and the need for careful monitoring of spending and economic trends. Councilmember Thurber moved to approve Consent Agenda Item 1C as presented. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

In response to Councilmember Thurber, City Administrator Ferguson replied that the applications for Clint Frankmann and Joe Malone are available for review. Councilmember Thurber moved to approve Consent Agenda Items 1F and 1G as presented. Councilmember Larson seconded. Motion carried on a vote of 5-0.

2. City Administrator Report

- Status report on "H1N1 Flu" outbreak

City Administrator Ferguson reported that there have been no confirmed flu cases in Hays County and stressed that ongoing emergency preparedness measures are in place to handle any future outbreaks.

- Status report on May 2009 General Election for the City of Wimberley

City Administrator Ferguson provided information on General Election day hours, early voting turnout, and posting of unofficial results. He thanked election workers and advised of the need for a special meeting in order to canvass the election.

- Status report on Blue Hole Regional Park Development Project

City Administrator Ferguson reported that contract negotiations with Design Workshop are nearly complete, with possible consideration and action on Council's next regular agenda.

- Status report on changes to the Entrance Corridor development regulations

City Administrator Ferguson reported that the Planning and Zoning Commission has reached general consensus on setbacks, outlined the upcoming meeting schedule, and stated the timeframe for future actions.

- Status report on Envision Central Texas Community Stewardship Awards

City Administrator Ferguson noted the City of Wimberley's status as a finalist and confirmed the number of Council members attending the awards presentation to take place on Friday, May 8, 2009.

- Status report on efforts underway to secure state and federal funding for the Downtown Wastewater Project

City Administrator Ferguson reported on some delays encountered with data input and anticipated a finalized report at Council's next regular meeting.

- Status report on the development of a *Non-Point Source Pollution* ordinance

City Administrator Ferguson reported on a very productive subcommittee meeting and anticipated bringing recommendations to Council in the near future.

- Status report on activities of the Wimberley Municipal Court

City Administrator Ferguson reported on the timeframe for installation of recently purchased court management software.

- Status report on activities of the City Marshal

City Administrator Ferguson reported on the acquisition of video equipment donated by the City of Deer Park and pursuit of grant funding for law enforcement software.

3. Public Hearing and Possible Action

- A. Hold a public hearing and consider approval of an ordinance approving an application for a Conditional Use Permit submitted by Charles and Taako Parker to operate a bed and breakfast lodging facility on an approximately 1.502 acre tract located at 151 Loma Vista Drive, Wimberley, Texas, zoned Single Family Residential 2 (R2), and imposing certain conditions; and providing for findings of fact; amendment of the zoning district map; repealer; severability; effective date; proper notice and meeting; and providing for certain conditions (*Charles and Taako Parker, Applicants*).

City Administrator Ferguson reviewed the subject property's location, current/proposed zoning/uses, maximum occupancy, parking, and water access conditions. He concurred with Planning and Zoning Commission's unanimous recommendation for approval.

Mayor Haley opened the public hearing. Hearing no comments, Mayor Haley closed the public hearing. Councilmember Larson moved to approve the item as presented. Councilmember Xiques seconded. Motion carried on a vote of 5-0.

- B. Hold a public hearing and consider approval of an ordinance of the City of Wimberley, amending Section 155 (Zoning), Appendix F, of the Code of Wimberley, designating geographic boundaries for a particular zoning district and classification for a particular 0.873 tract located at 101 River Bend Road, Wimberley, Hays County, Texas, designating such tract from Single Family Residential 3 (R-3) to Single Family Residential 2 (R-2); and providing for the following: delineation on zoning map; severability; effective date and proper notice and meeting (*Jesslyn Bordine, Applicant*).

City Administrator Ferguson reviewed the application, which was necessary due to an error made in the subject property's zoning designation during City-initiated zoning in 2003. He advised that the requested zoning is in accordance with lot size requirements and concurred with Planning and Zoning Commission's unanimous recommendation for approval.

Mayor Haley opened the public hearing. Hearing no comments, Mayor Haley closed the public hearing. Discussion addressed past zoning actions and problematic aspects of determining lot sizes in the subject property's subdivision.

Councilmember Xiques moved to approve the item as presented. Councilmember Roccaforte seconded. Motion carried on a vote of 5-0.

- C. Hold a public hearing and consider approval of an ordinance approving an application for a Conditional Use Permit submitted by Jesslyn Bordine to allow for a secondary residential unit on a residential tract of land located at 101 River Bend Road, Wimberley, Hays County, Texas, and imposing certain conditions; and providing for findings of fact; amendment of the zoning district map; repealer; severability; effective date; proper notice and meeting; and providing for certain conditions (*Jesslyn Bordine, Applicant*).

City Administrator Ferguson reviewed the application and noted the subject property's existing/proposed structures and uses. Several public inquiries were made relating to the potential use of the property as a bed and breakfast facility. Discussion established that present and future property owners would need to apply for a conditional use permit should any change in use occur. He concurred with Planning and Zoning Commission's unanimous recommendation for approval.

Mayor Haley opened the public hearing. Hearing no comments, Mayor Haley closed the public hearing. Councilmember Roccaforte recused himself from the meeting at this time due to possible conflict of interest. Brief discussion addressed area deed restrictions. Councilmember Flocke moved to approve the item as presented. Councilmember Xiques seconded. Motion carried on a vote of 4-0. Councilmember Roccaforte rejoined the meeting.

- D. Hold a public hearing and consider approval of an ordinance of the City of Wimberley, amending Section 155 (Zoning), Appendix F, of the Code of Wimberley, designating geographic boundaries for a particular zoning district and classification for a particular 3.31 acre tract located at 2005 Hilltop Drive, Wimberley, Hays County, Texas, designating such tract from Rural Residential (R-1) to Single Family Residential 2 (R-2); and providing for the following: delineation on zoning map; severability; effective date and proper notice and meeting (*Linda Webb, Applicant*).

City Administrator Ferguson reported that this zoning change was requested in order to accommodate a subdivision application that is dividing the 3.31 acre tract into one 1.77 acre lot (Lot 1) and one 1.54 acre lot (Lot 2), with the proposed lots meeting R-2 lot size requirements. He concurred with Planning and Zoning Commission's unanimous recommendation for approval. Mr. Ferguson noted that the applicant's companion subdivision application (#C212-09-002) is administratively complete and contingent on approval of the subject property's requested zoning.

Mayor Haley opened the public hearing. Hearing no comments, Mayor Haley closed the public hearing. Councilmember Flocke moved to approve the item as presented. Councilmember Larson seconded. Motion carried on a vote of 5-0.

4. Discussion and Possible Action

- A. Discuss and consider possible action on a request for "Slow Children at Play" signage on Las Flores and La Buena Vista streets (*Mayor Pro-tem Bob Flocke*).
- B. Discuss and consider possible action on a proposed ordinance modifying the requirements relating to steep slope development (*Place One Councilmember Charles Roccaforte*).

Mayor Haley announced that Councilmembers Flocke and Roccaforte requested to pull Agenda Items 4A and 4B, respectively. No action was taken.

- C. Discuss and consider possible action regarding the future operation of the Wimberley Community Center (*City Administrator*).

City Administrator Ferguson reported on the recent workshop held to discuss future operations and asked for Council input providing direction to staff. He outlined various staffing options such as outsourcing management, addition of City personnel, or a combination thereof.

Discussion addressed Community Center revenues/expenditures, possible future uses (including space for City Hall operations), maintenance costs, and personnel needs. City Administrator Ferguson stressed the importance of input from Council on the Community Center's role and functions. Council direction to City Administrator Ferguson requested more detailed cost comparisons of outsourcing versus City staffing of positions and all available funding options. No vote was taken on this item.

- D. Discuss and consider possible action on the proposed expenditure of City funds on a Wimberley Fourth of July fireworks show (*City Administrator*).

City Administrator Ferguson asked for Council input on the possibility of obtaining joint funding in light of recent concerns over City revenues. Mr. Ferguson stated that a local vendor has expressed interest in staging an abbreviated demonstration fireworks show at the vendor's cost.

Discussion addressed possible fireworks demo/show locations, the City's portion of costs, length of fireworks show, and other funding options, including private donations from community members or merchants. Mayor Haley recommended spending no more than \$500 given the City's concerns over revenues in today's economic climate. Audience member Charles Patterson stated that he would be willing to contribute \$500.

Councilmember Xiques moved to approve the expenditure of \$500 of City funds to be combined with a community-wide funding effort toward a Wimberley Fourth of July fireworks show. Councilmember Roccaforte seconded. Motion carried on a vote of 5-0.

- E. Discuss and consider possible action on a request from the Wimberley Chamber of Commerce to utilize the Blue Hole Regional Park for the annual Fourth of July Jubilee on July 3, 2009 (*City Administrator*).

This item was heard after Agenda Item 4F.

City Administrator Ferguson reviewed event plans including specific locations/times of certain activities and accommodations/fees for parking. Mr. Ferguson noted that swimming will not be allowed during the event due to anticipated crowds. Discussion addressed concerns over closure of the park for this event, potential impact on those holding season passes for normal use of the park (particularly on a busy holiday/Market Days weekend), alternate venue options, and use of lifeguards. Discussion agreed on the need for enhanced public information efforts to sufficiently notify season pass holders of this special event temporarily precluding normal use of Blue Hole Regional Park.

Councilmember Flocke moved to approve the item as presented. Councilmember Roccaforte seconded. Motion carried on a vote of 5-0.

- F. Discuss and consider possible action on a request for a variance from the City of Wimberley sign regulations for Southerland Communities located at 9670 Ranch Road 12 in Wimberley, Texas (*City Administrator*).

This item was heard after Agenda Item 4D.

City Administrator Ferguson detailed the sign variance application and noted that the requested signs (two 32 square foot "For Lease/Sale" signs) would be erected temporarily and removed upon

lease/sale of the subject property. Due to the large acreage and temporary nature of the requested variance, Mr. Ferguson advised of staff's recommendation for approval.

Discussion addressed the temporary nature of the signs, modification of the sign ordinance to allow temporary signage as an alternative to granting of variances, and size/location of the proposed signage. Councilmember Roccaforte moved to approve the sign variance based on affirmative findings per City Code §152.14(B). Councilmember Xiques seconded.

Councilmember Thurber requested a friendly amendment to the motion, adding language that the signs are to be removed upon sale/lease of the property. Councilmember Roccaforte accepted Councilmember Thurber's friendly amendment. Councilmember Xiques seconded. Mayor Haley called for a vote on the amended motion providing for removal of the sign upon sale of the property. Motion carried on a vote of 5-0. Mayor Haley called for a vote on the motion to grant the variance as requested. Motion carried on a vote of 5-0.

G. Discuss and consider possible action regarding the authority of the City of Wimberley to regulate issues relating to non-point source pollution in its extra territorial jurisdiction (*City Administrator*).

Mayor Haley announced that Council is retiring to Executive Session pursuant to Chapter 551.071 of the Texas Government Code at 7:53 p.m.

Mayor Haley reconvened into Open Session at 8:06 p.m. No action was taken during Executive Session.

Councilmember Flocke moved to authorize legal counsel to seek an Attorney General's opinion on issues relating to regulation of non-point source pollution in the City's extra territorial jurisdiction (ETJ). Councilmember Thurber seconded. Mayor Haley called for a vote as follows: Councilmember Roccaforte, aye; Councilmember Flocke, aye; Councilmember Xiques, aye; Councilmember Thurber, aye; Councilmember Larson, aye. Motion carried on a vote of 5-0.

5. City Council Reports

- Announcements
- Future Agenda Items

As a future agenda item, Councilmember Xiques requested a status report on feral hog activity. Councilmember Thurber requested a status report on the Guadalupe Blanco River Authority's grant application for sewer system funding. Councilmember Thurber requested that Council schedule a workshop with Water Wastewater Advisory Board as soon as possible.

Hearing no more announcements or future agenda item requests, Mayor Haley called the meeting adjourned.

Adjournment: Council meeting adjourned at 8:13 p.m.

Recorded by:

Cara McPartland

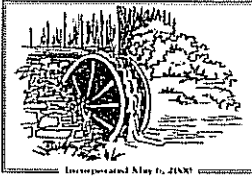
These minutes approved on the ____ of May, 2009.

APPROVED:

Tom Haley, Mayor

DRAFT

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: APPROVAL OF MAY 7,
2009 MINUTES OF SPECIAL CITY COUNCIL
MEETING

Funds Required:

Funds Available:

Council Action Requested:

- ☐ Ordinance
- ☐ Resolution
- ☒ Motion
- ☐ Discussion

Project/Proposal Summary:

Attached are minutes for the May 7, 2009 Special City Council Meeting for review and consideration.

MINUTES
SPECIAL CITY COUNCIL MEETING
MAY 7, 2009 – 12:15 P.M.

The City Council of the City of Wimberley, Texas met for the purpose of participation in National Day of Prayer activities, located at 14068 Ranch Road 12, Wimberley, Hays County, Texas on Thursday, May 7, 2009 at 12:15 p.m.

Those present were: Mayor Tom Haley, Presiding; Council Members Charles Roccaforte, Bob Flocke, Jeri Xiques, and Dick Larson.

Members of the City of Wimberley City Council attended the special meeting for the purpose of participating in National Day of Prayer activities. No action was taken during the meeting that began at 12:15 p.m. and ended at 1:15 p.m.

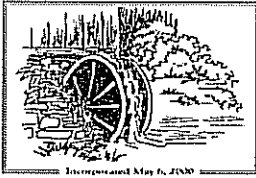
DATE APPROVED: May __, 2009

Tom Haley, Mayor

ATTEST:

Cara McPartland, City Secretary

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: APPROVAL OF MAY 15,
2009 MINUTES OF SPECIAL CITY COUNCIL
MEETING

Funds Required:
Funds Available:

Council Action Requested:

- ☐ Ordinance
- ☐ Resolution
- ☒ Motion
- ☐ Discussion

Project/Proposal Summary:

Attached are minutes for the May 15, 2009 Special City Council Meeting for review and consideration.

City of Wimberley
City Hall, 12111 Ranch Road 12, Ste. 114
Wimberley, Texas 78676
Minutes of Special Meeting of City Council
May 15, 2009 at 10:00 a.m.

City Council meeting called to order at 10:00 a.m. by Mayor Tom Haley.

Councilmembers Present: Mayor Haley and Councilmembers Charles Roccaforte, Bob Flocke, Jeri Xiques, Steve Thurber, and Dick Larson.

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

Discussion and Action on Election Related Matters

A. Canvass returns of General Election of May 9, 2009.

Councilmember Flocke moved to declare the canvass of returns of the General Election of May 9, 2009. Councilmember Thurber seconded. Motion carried on a vote of 5-0.

B. Discuss and consider approval of an ordinance of the City Council of the City of Wimberley, Texas, declaring the canvass and result of an election held on May 9, 2009, to elect City Councilmembers for Places 1, 3 and 5; containing a savings clause; and declaring an effective date.

Councilmember Flocke moved to approve the ordinance as presented. Councilmember Larson seconded. Motion carried on a vote of 5-0.

C. Complete and issue Certificates of Election to the three (3) Councilmembers-elect.

Mayor Haley signed and presented Certificates of Election to Councilmember-elect Roccaforte and Councilmember-elect White. Councilmember-elect Bill Appleman will be presented with his Certificate of Election at Council's next regular meeting.

Adjournment: Council meeting adjourned at 10:05 a.m.

Recorded by:

Cara McPartland

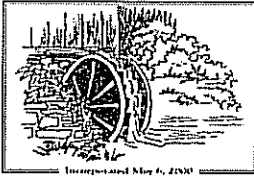
These minutes approved on the ____ of May, 2009.

APPROVED:

Tom Haley, Mayor

DRAFT

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: APPOINTMENT OF MAC MCCULLOUGH TO THE WATER WASTEWATER ADVISORY BOARD

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☐ Resolution

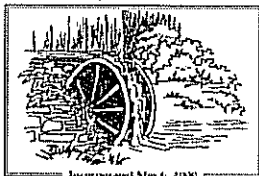
☒ Motion

☐ Discussion

Project/Proposal Summary:

This item was placed on the agenda at the request of Mayor Tom Haley to allow City Council to consider the appointment of Mac McCullough to the City of Wimberley Water Wastewater Advisory Board.

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: APPOINTMENT OF
DAVE ESTEY TO THE WATER WASTEWATER
ADVISORY BOARD

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☐ Resolution

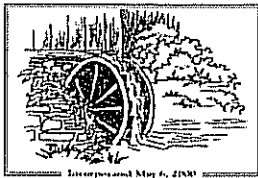
☒ Motion

☐ Discussion

Project/Proposal Summary:

This item was placed on the agenda at the request of Place One Council Member Charles Roccaforte to allow City Council to consider the appointment of Dave Estey to the City of Wimberley Water Wastewater Advisory Board.

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: CITY ADMINISTRATOR'S REPORT

Funds Required:
Funds Available:

Council Action Requested:

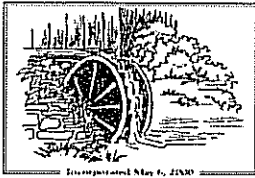
- ☐ Ordinance
- ☐ Resolution
- ☐ Motion
- ☒ Discussion

Project/Proposal Summary:

The City Administrator will present a report on the following items:

- Status report on May 2009 General Election for the City of Wimberley
- Status report on Blue Hole Regional Park Summer Operations
- Status report on efforts underway to secure state and federal funding for the Downtown Wastewater Project
- Status report on development of a *Non-Point Source Pollution Ordinance*
- Status report on Fourth of July Fireworks Sponsorship Demonstration
- Status report on activities of the Wimberley Municipal Court
- Status report on activities of the City Marshal

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: PRESENTATION ON
WIMBERLEY SQUARE SEPTIC SYSTEM
SURVEY

Funds Required:

Funds Available:

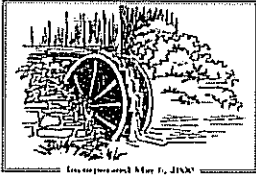
Council Action Requested:

- ☐ Ordinance
- ☐ Resolution
- ☐ Motion
- ☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow City staff to brief City Council on the results of a recent survey of septic systems on the Wimberley Square.

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: PRESENTATION ON
CITY OF WIMBERLEY GOVERNANCE POLICY
AND RULES OF PROCEDURE

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☐ Resolution

☐ Motion

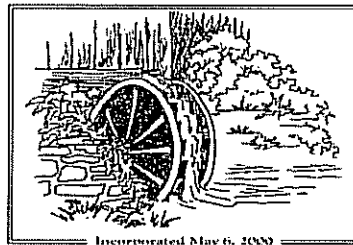
☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow City staff to brief City Council on the *City of Wimberley Governance Policy and Rules of Procedure*.

City of Wimberley

Governance Policy and Rules of Procedure



July 2007

COUNCIL GOVERNANCE POLICY AND RULES OF PROCEDURE

SECTION I INTRODUCTION

The City of Wimberley City Council is the governing body for the City of Wimberley, Texas. Therefore, it must bear the initial responsibility for the integrity of governance.

The Council shall determine its own rules and order of business. The Council is responsible for its own discipline and its own performance. The development of this policy is designed to ensure effective and efficient governance.

This policy addresses Mayor and Council relations, Council and City staff relations, Council and media relations, roles and meetings. By adopting these guidelines, we, as members of the City Council acknowledge our responsibility to each other to our professional staff and to the public.

This policy will be reviewed and adopted on an annual basis.

COUNCIL GOVERNANCE POLICY AND RULES OF PROCEDURE

SECTION II MISSION

In order to ensure proper discharge of duties for the improvement of democratic local government, members of the Wimberley City Council will display behavior that demonstrates independent, impartial review of all matters addressed by them, and be duly responsible to the citizens of Wimberley and each other in their relationships.

COUNCIL GOVERNANCE POLICY AND RULES OF PROCEDURE

SECTION III INFORMATION

On major policy issues, the City Administrator shall provide briefing material to the Council in advance of Council consideration of the policy alternatives. Whenever possible, the management report shall be distributed more than a week in advance of Council policy consideration.

COUNCIL GOVERNANCE POLICY AND RULES OF PROCEDURE

SECTION IV ROLES

- 4.1 The Mayor shall preside at meetings of the City Council and shall be recognized as head of City government for all ceremonial purposes and by the Governor for purpose of military law but shall have no regular administrative duties. The Mayor may participate in the discussion of all matters coming before the City Council. The Council shall elect, from among the Council members, a Mayor Pro-tem who shall act as Mayor during the absence or disability of the Mayor.
- 4.2 As head of City government for ceremonial purposes, the Mayor may issue and present proclamations and recognitions and attend other ceremonial functions on behalf of the City of Wimberley. City Council members may initiate, through the Mayor, or by a majority vote of the Council, similar items of recognition. Major community events sponsored by the City shall be a policy decision of the Council.
- 4.3 The Mayor shall preserve order and decorum and shall require City Council members engaged in debate to limit discussion to the question under consideration.
- 4.4 The Mayor is the spokesperson for the City Council on all official positions taken unless absent, at which time, the Mayor Pro-tem or the Mayor's designee will assume the role.
- 4.5 The Mayor will encourage all City Council members to participate in Council discussion and give each member an opportunity to speak before any member can speak again on the same subject

COUNCIL GOVERNANCE POLICY AND RULES OF PROCEDURE

SECTION V MEETINGS

5.1 Regular Meetings

The Council shall meet regularly, at such times, as prescribed by ordinance but no less frequently than once each month and the regular meetings will begin at 6:30 p.m., unless postponed or canceled for valid reasons.

5.2 Special Meetings

Special meetings may be held on any day of the week to consider items that require action prior to the next regularly scheduled meeting and may be called upon the request of the Mayor.

5.3 Executive Sessions

The City Council may meet in executive session in compliance with the Texas Open Meetings Act. A final action, decision or vote on a matter deliberated in an executive session will be made in an open meeting for which proper notice is provided. All discussions in executive session shall remain confidential.

5.4 Public Notice

The agenda for all regular meetings, special meetings and the notice listing items to be considered shall be posted on the City's official bulletin board, in accordance with the Texas Open Meetings Act, and on the City's website.

5.5 Attendance

City Council members are expected to attend all meetings and stay in attendance during each meeting. No member shall leave a meeting without advising the presiding officer.

5.6 Conflict of Interest

A City Council member prevented from voting due to a conflict of interest shall leave the meeting during the debate, shall not vote on the matter, and shall otherwise comply with the state law and City ordinances concerning conflicts of interest. Any Council member filing a conflict of interest affidavit on an executive session item shall not confer with City staff, the City Attorney, Council members or the Mayor regarding the item.

5.7 City Council Members

- (a) During City Council meetings and work sessions, Council members shall assist in preserving order and decorum and shall, neither by conversation or otherwise delay or interrupt the proceedings nor refuse to obey the rules of the City Council.
- (b) A City Council member desiring to speak shall address the chair, and upon recognition by the presiding officer, shall confine discussion to the question under debate, avoid discussion of personalities, inappropriate language and refrain from personal attacks and verbal abuse.
- (c) A City Council member, once recognized by the chair, shall not be interrupted while speaking except for the following reasons:
 - Called to order by the presiding officer
 - A point of order is raised by another member
 - The speaker chooses to yield to questions from another member

If a City Council member is called to order while speaking, that Council member shall cease speaking immediately until the question of order is determined. If ruled to be in order, the member shall be permitted to proceed. If ruled to be not in order, the member shall remain silent or make additional remarks so as to comply with the rules of the City Council

- (d) When there is more than one speaker on the same subject, City Council members shall delay their comments until after all speakers on the subject have been heard.
- (e) The chair shall state all questions submitted for a vote and announce the result. If the vote is not unanimous, the chair shall announce the names of members voting in favor and in opposition to the motion.

5.8 Administrative Staff

- (a) Members of the administrative staff and employees of the City shall observe the same rules and decorum applicable to members of the City Council.
- (b) Although the presiding officer has the authority to preserve decorum in meetings, the City Administrator is responsible for the orderly conduct and decorum of all City employees under the City Administrator's direction and control.

- (c) The City Administrator shall take such disciplinary action as may be necessary to ensure that decorum is preserved at all times by City employees in meetings.
- (d) All persons addressing the City Council, including the City Administrator, shall be recognized by the presiding officer and shall limit remarks to the matter under discussion.
- (e) All remarks and questions addressed to the City Council shall be addressed to the City Council as a whole and not to any individual member.

5.9 Citizens and Visitors

- (a) Citizens and visitors are welcome to attend all public meetings of the City Council and will be admitted to the Chamber or meeting room up to the fire safety capacity of the room.
- (b) Everyone attending the meeting will refrain from private conversations while the City Council is in session.
- (c) Citizens and visitors attending City Council meetings shall observe the same rules of propriety, decorum and good conduct applicable to members of the City Council. Any person making personal, impertinent, profane, or slanderous remarks or who becomes boisterous while addressing the City Council or while attending the meeting shall be removed from the room if so directed by the presiding officer. The person shall be barred from further audience before the City Council during that session. If the presiding officer fails to act, any member of the City Council may move to require enforcement of the rules, and the affirmative vote of a majority of the City Council shall require the presiding officer to act.
- (d) Unauthorized remarks from the audience, stamping of feet, whistles, yells and similar demonstrations shall not be permitted by the presiding officer who may direct the removal of offenders from the room. In case the presiding officer shall fail to act, any member of the Council may move to require enforcement of the rules, and the affirmative vote of the majority of the Council shall require the presiding officer to act.
- (e) No placards, banners or signs will be permitted in the City Council Chamber or in any other room in which the City Council is meeting. Exhibits, displays and visual aids used in connection with presentations, however, are permitted.

- (f) The City Administrator or his designee shall act as sergeant at arms for the City Council and shall furnish whatever assistance is needed to enforce the rules of the City Council.

5.10 Agenda

The Mayor and/or City Administrator shall set the agenda. Any City Council member may request an item be placed on a future agenda during the item on the agenda for that purpose.

5.11 Speakers

- (a) A person wishing to address the City Council must first sign the Speaker Registration Form. The following information must be provided on the form:
 - Name
 - Residence Address
 - The subject matter to be addressed
- (b) Speakers must address their comments to the presiding officer rather than to individual City Council members or staff.
- (c) Speakers must keep their remarks specific to the item being considered by the City Council. If the speaker is addressing the City Council under Citizens Communications, the speaker may address any item not slated for discussion on the agenda.
- (d) A person who registers to speak on an item listed on the agenda will be called on after the chair gains agreement to do so by the City Council. A person who registers to speak under Citizens Communications will be called on at that time. The chair may determine the order in which speakers are called.
- (e) All speakers will have a maximum of three(3) minutes to address the Council. A majority vote of the Council will be required to extend the time limit. The chair may impose more restrictive time limits if a large number of persons register to speak.
- (f) For called public hearings, the applicant will be allowed a maximum of ten (10) minutes to make a presentation.
- (g) In accordance with the Texas Open Meetings Act, the City Council will not discuss or consider any item addressed during Citizens Communications. City Council members will not interact with the public

during the time allotted to speakers unless a non-debatable motion approved by the City Council allots a specific amount of time.

- (h) Whenever it is necessary for a speaker to use an interpreter to translate comments to the City Council, the time required for the translation will not be counted against the designated time allotted for the speaker to address the City Council.

5.12 Motions

- (a) No motion may be moved or suggested until all City Council member discussion is complete and the Mayor calls for the motion. A motion made and seconded will be considered the main motion. Any City Council member may move to amend a motion. The amendment must receive a second before it may be discussed and must be voted on prior to voting on the main motion.
- (b) A motion may be withdrawn or modified by its mover without asking permission until the motion is voted upon. If the mover modifies the motion, the City Council member who seconded the motion may withdraw the second.
- (c) At any time after a motion has been made and seconded, a City Council member may call the question which will have the affect of stopping the debate and requiring the City Council to immediately proceed to vote on the motion to call the question.
- (d) A motion to reconsider any action of the City Council must be made no later than prior to the conclusion of the next regularly scheduled meeting of the City Council. Such a motion may only be made by a City Council member who voted with the prevailing side. The motion to reconsider may be seconded by any member. No question shall be twice reconsidered except by unanimous vote of the City Council, except that action relating to any contract may be reconsidered at any time before the final execution thereof.
 - (i) If a motion to reconsider is made at the same meeting at which the matter was acted upon, the motion may be heard and voted upon and the original action on the matter is set aside. Deliberation may then resume on the matter at that same meeting.
 - (ii) If a motion to reconsider is made at the next meeting after the matter was acted upon, the motion to reconsider may be heard and voted upon and the original action on the matter is not set aside. Deliberation may not resume on the

matter but it shall be placed on the next available agenda for deliberation.

5.13 Suspension of Rules

Any provision of these rules not governed by City ordinance, State or Federal law may be temporarily suspended by a majority vote of the members of the City Council present. The vote on any such suspension shall be taken by yeas and nays and entered upon the record.

5.14 Amendment of Rules

These rules may be amended or new rules adopted by a majority vote of the members of the City Council

5.15 Failure to Comply

A failure to comply with these rules does not invalidate any otherwise lawful act of the City Council.

COUNCIL GOVERNANCE POLICY AND RULES OF PROCEDURE

SECTION VI PUBLIC CONTACT MEDIA RELATIONS

Representative government is only successful when the citizens are kept informed and educated about the issues facing their municipality. Consequently, it is imperative that the media play an important role in the Council-Administrator-Media relations. It is through an informed public that progress is ensured and good government remains sensitive to its constituents.

These guidelines are designed to help ensure positive relationships with print, radio and television reporters. The Mayor, City Council and the City Administrator recognize that the news media provide an important link between the City Council and the public. It is the City Council's desire to establish a professional working relationship to help maintain a well informed and educated citizenry.

- 6.1 During the conduct of official business, the City shall designate adequate space for the news media.
- 6.2 All reporters will receive an agenda in advance and will be furnished support material needed for clarification, if requested.

COUNCIL GOVERNANCE POLICY AND RULES OF PROCEDURE

SECTION VII PLANNING

The Mayor and Council are responsible for establishing a vision for the City of Wimberley and planning for its future.

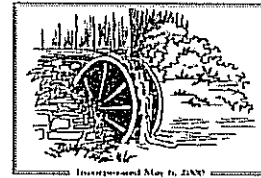
- 7.1 On an annual basis, the Mayor and City Council shall hold a minimum of one (1) strategic planning session wherein they set priorities, goals and objectives. The goals and objectives shall address short-term and long-term needs of the City.
- 7.2 Policy direction shall be consistent with the strategic goals and objectives. Sufficient time and consideration should be given to policy alternatives to ensure that decisions are made consistent with the long term vision.

COUNCIL GOVERNANCE POLICY AND RULES OF PROCEDURE

SECTION VIII COUNCIL STAFF RELATIONS

- 8.1 The role of the City Administrator and the relationship of staff with City Council is addressed in City ordinance.
- 8.2 The City Council shall direct comments, correspondence and concerns about City services to the City Administrator. Citizens concerns, comments and correspondence regarding City services received by City Council members shall be forwarded to the City Administrator for appropriate staff action and a timely response.
- 8.3 Documents provided to one (1) City Council member shall also be distributed to all other members of the elected body. The City Administrator shall prepare and submit to the Council, as of the end of the fiscal year, a complete report on the finances and administrative activities of the City for the preceding year. The City Administrator shall keep the City Council advised of the financial condition and future needs of the City and make such recommendations that may seem desirable.
- 8.4 In order to ensure proper presentation of agenda items by City staff, questions arising from City Council members, after receiving their information packet, should be, whenever possible, presented to the City Administrator or the Administrator's designated assistant for City staff consideration prior to the City Council meeting. This allows time for City staff to address the City Council member's concerns and provide all Council members with the additional information.

Report for Initial Zoning ZA-09-013



Summary:

An application for initial zoning of Commercial Low Impact (C-1) for tract of land located at 419 FM 2325.

Applicant Information:

Applicant:

Steven Dunks
9999 Mt. Sharp Rd
Wimberley, Texas 78676
Steven Dunks

Property Owner:

Subject Property:

Legal Description: A0365 Benjamin Page Survey
Location: 419 FM 2325
Existing Use of Property: Restaurant
Existing Zoning: None
Proposed Use of Property: Restaurant & Storage Shed Sales Office
Proposed Zoning: C-1 Commercial Low Impact.
Planning Area C
Overlay District

Surroundings:

Frontage On: FM 2325

Area Zoning and Land Use Pattern:

	Current Zoning	Existing Land Use
N of Property	Unzoned	Vacant
S of Property	Unzoned	Volunteer Fire
E of Property	C2	Library
W of Property	Unzoned	Commercial

Legal Notice

200' Letters 4/23/09
Published 4/29/09
Sign Placement 4/24/09
Responses none

Comments:

The applicant is seeking to zone a presently unzoned tract of land located at 419 FM 2325 as Commercial Low Impact (C-1). The subject property is located in Planning Area C which allows Commercial Low Impact zoning.

Currently, *Miss Mae's Bar-B-Q* is located on the subject property. The applicant is proposing to add a storage shed retail sales office on the property. Both the retail business and restaurant are permitted uses in the C-1 zoning district. It should be noted that the retail office is expected to have limited operating hours. There is adequate parking space on the subject property for both businesses.

On May 14, 2009, the Planning and Zoning Commission held a public hearing on the zoning request. Afterwards, the Commission voted unanimously to recommend approval of the zoning request.

155.047 COMMERCIAL - LOW IMPACT; C-1.

(A) *General purpose and description.* The C-1, commercial 1 district is established as a limited retail category intended for the purpose of supplying day-to-day needs and personal services. Establishments may include small, free-standing retail structures, and personal service establishments.

(B) *Permitted uses.*

(1) Administrative and professional office:

(a) Insurance, real estate, attorneys, accountants, architects, investment services, travel agencies;

(b) Photography studios, doctors, dentists;

(c) Non-profit organizations (with certain restrictions);

(d) Civic uses (such as City Halls);

(e) Research services: limited; and

(f) Office.

(2) Religious assembly;

(3) Retail sales and services: limited;

(4) Business support services;

(5) Child care center;

(6) Repair services: consumer;

(7) Eating establishments: sit-down;

(8) Animal sales and services: grooming;

(9) Convalescent services;

(10) Arts and crafts sales and instruction;

(11) Commercial/single-family residential;

- (12) Adult day care facility;
- (13) Private primary educational services;
- (14) Private secondary educational services;
- (15) Medical services: limited;
- (16) Personal services: limited;
- (17) Bank and savings and loan;
- (18) Accessory uses to the main use; and
- (19) Single-family residence.

(C) *Conditional uses.*

(1) A drive-through or drive-in facility otherwise allowed in any permitted use in this district shall be allowed only with a conditional use permit;

(2) Bank and savings and loan (drive-through);

(3) Bed and breakfast lodging;

(4) Telecommunications towers, commercial antennas, and broadcast towers, subject to all applicable city regulations; and

(5) Eating establishments: fast food with drive-through order windows.

(D) *Development regulations.*

(1) Minimum lot size: 5,000 square feet.

(2) Maximum building height (as defined in § 155.005):

(a) Primary buildings: not more than 2 stories and not more than 28 feet or 35 feet with gable roof;

(b) Accessory buildings: not more than 18 feet and not more than 1 story;
and

(c) Decks: not more than 12 feet including a railing only or 18 feet including a roof.

(3) For minimum setbacks, no construction, including buildings, parking areas, and driveways, except entry driveways, and no placement or display of commercial material and equipment shall be allowed in the setbacks. The minimum setbacks shall be the larger of the dimensions in § 155.078(A), Table A, or the following:

(a) Dominant street: 10 feet;

(b) Secondary street: 10 feet; and

(c) Interior side or rear yard: 10 feet, 20 feet when adjacent to a residential district and the building is more than 1 story.

(4) Maximum impervious cover: 70%. Impervious coverage shall be calculated as a percentage of the net site area and shall be the lesser of the percentage specified above in this district description or the percentage for the average lot slope in § 155.078(M), Table C.

(5) Maximum building coverage: 60%. Building coverage shall be calculated as a percentage of the net site area.

(6) Maximum building footprint: 11,500 square feet.

(7) Maximum floor area: 15,000 square feet.

(E) *Special requirements.*

(1) Open storage is prohibited.

(2) For site plan requirements, see § 155.077.

(3) Recreational vehicles, travel trailers, or motor homes may not be used for on-site dwelling or non-residential purposes.

(F) *Other regulations.* As established in §§ 155.075 *et seq.*, development standards.

(G) *Parking regulations.* As required by § 155.075, off-street parking and loading requirements.

(Ord. 2001-010, § 26, passed 4-1-2001; Am. Ord. 2003-006, passed 7-3-2003; Am. Ord. 2004-017, passed 8-5-2004) Penalty, see § 155.999

FOR OFFICIAL USE ONLY

APPLICATION DATE: 4/21/09 FILE NO. 2A-09-013
TENTATIVE P&Z* HEARING: May 14 TENTATIVE CC** DATE: May 21
CITY INITIATED: ☐ YES - ☒ NO PLANNING AREA: C ZONING REQUESTED: C1
ZONING FEES: \$ 336 DATE PAID: 4/21/09 RECEIPT NO. 19211

**APPLICATION FOR ZONING
RESIDENTIAL—NON-COMMERCIAL**

STREET ADDRESS OF
PROPERTY TO
BE ZONED: 419 FM 2325 Wimberley, Texas HAYS COUNTY CENTRAL
APPRAISAL DISTRICT
PROPERTY ID#: R17212 **

* New street addresses can be obtained by calling (512) 393-2160
** You may obtain this from your property tax statement.

PLEASE PROVIDE DIRECTIONS TO YOUR PROPERTY:

Located At The light on FM 2325 Between
Green Acres Dr and Rhodes Ln,

NOTE: Please clearly mark your property so it is easily identifiable.

1. OWNER'S NAME: Steven P. Dunks HOME PHONE: (512) 847-7016
BUSINESS PHONE: (512) 847-9808
FAX: () _____
E-MAIL: Steve @ missmaesbbq.com

OWNER'S CURRENT MAILING
ADDRESS 9999 Mt Sharp Rd CITY Wimberley STATE TX ZIP 78676

2. HEARING REPRESENTATIVE
NAME: Steve P. Dunks PHONE: () _____

REPRESENTATIVE'S MAILING
ADDRESS: Steve P. Dunks CITY _____ STATE _____ ZIP _____

3. NAME OF REAL ESTATE COMPANY INVOLVED: _____

PROPERTY INFORMATION

0.90
4. TOTAL AREA TO BE ZONED: ACRES 0.98 (OR) SQ.FT. _____ TOTAL NO. of TRACTS: 1

5. PLANNING AREA(S): C 6. PROPOSED ZONING: C-1

EXISTING ZONING CLASSIFICATION(S) AND USES (if applicable): _____

6. EXISTING STRUCTURES: Restaurant, Smoke house, Storeroom, Greenhouses Frames

PROPOSED STRUCTURES/USE: Business selling Storage sheds

7. LEGAL DESCRIPTION

Subdivision: _____ Lot(s) _____

Block(s) #365 Benjamin Plat Book: _____ Page Number: _____
page survey

8. DEED RECORDS: (REFERENCE OF DEED CONVEYING PROPERTY TO THE PRESENT OWNER):

VOLUME: _____ PAGE: _____ OF COUNTY PLAT RECORDS

9. OTHER PROVISIONS

A. IS PROPERTY IN AN OVERLAY DISTRICT? YES ☒ NO _____ UNKNOWN _____

TYPE OF OVERLAY ZONE(S) (if applicable) Entertainment Corridor

B. FLOOD PLAIN (What, if any, flood zone does your property occupy?): None

C. ELECTRIC UTILITY PROVIDER: Pedernales Electric Coop

WATER UTILITY PROVIDER: Wimberley Water Supply Corp.

WASTEWATER UTILITY PROVIDER: _____

HAYS COUNTY SEPTIC PERMIT NUMBER (if applicable): 20022210

SITE INSPECTION AUTHORIZATION

Applicant/owner, or Applicant's authorized agent, hereby authorizes the Village of Wimberley representatives to visit and inspect the property for which this application is being submitted.

Date: 4-20-09 APPLICANT SIGNATURE Steve P. Danks

WHEN APPLICABLE:

Date: _____ AGENT SIGNATURE _____

ACKNOWLEDGMENT OF EXISTING Subdivision Plat Notes, Deed Restrictions Restrictive Covenants and/or Zoning Conditional Use Permits

I, the Applicant herein, have checked the subdivision plat notes, deed restrictions, restrictive covenants and/or zoning conditional use permits prohibiting certain uses and/or requiring certain development restrictions (for example, height, access, screening) on the property now being zoned on my behalf and located at: 419 FM 2325, Wimberley TX, and more particularly known as Lot 2265, Block _____ of the _____ Subdivision. Page 2 of 2

If a conflict should result with the request I am submitting to the Village of Wimberley due to subdivision plat notes, deed restrictions, restrictive covenants and/or zoning conditional use permits it will be my responsibility to resolve it. I also acknowledge that I understand the implications of use and/or development restrictions that are a result of subdivision plat notes, deed restrictions, restrictive covenants and/or zoning conditional use permits.

I understand that if requested, I must provide copies of any and all subdivision plat notes, deed restrictions, restrictive covenants and/or zoning conditional use permit information, which may apply to this property.

Date: 4-20-09 APPLICANT SIGNATURE Steve P. Danks

WHEN APPLICABLE:

Date: _____ AGENT SIGNATURE _____

SUBMITTAL CHECKLIST

- ☒ Complete Zoning Application.
- ☒ Provide a plat map of the property to be zoned, showing scale.
- ☒ Provide a plat map of all properties within 200 feet of any portion of Applicant's property and indicate Applicant's property on such map. Map must clearly indicate scale of map, streets and main arteries leading to property.
- ☒ Provide names and addresses of property owners within 200 feet of any portion of Applicant's property.
- ☒ Provide a legal description of the property to be zoned.
- ☒ Sign/date Submittal Verification form.
- ☒ Sign/date Site Inspection Authorization form.
- ☒ Sign/date Acknowledgement Form.
- ☐ Pay Zoning Fee (this fee is based on the cost of services incurred by the Village of Wimberley in reviewing, processing and recording the zoning request).
- ☒ Applicant agrees to attend Planning & Zoning Commission hearings scheduled for Applicant's proposed zoning (or sign waiver below).
- ☐ Sign/date Submittal Verification and/or Waiver of Appearance form.
- ☒ Applicant agrees to attend City Council hearing scheduled for Applicant's proposed zoning.

SUBMITTAL VERIFICATION AND/OR WAIVER OF APPEARANCE

- (✓) My signature attests to the fact that the attached application package is complete and accurate to the best of my knowledge. I understand that Village review of this Application is dependent upon the accuracy of the information provided and that any inaccurate or inadequate information provided by me, my firm, or agent, may delay the review of the Application.
- () I hereby waive my right to appear before the Village of Wimberley City Council at the public hearing to be held concerning the zoning of my above-referenced property. I understand that my failure to appear allows the Council to consider my zoning request; however, if questions are raised that cannot be answered, the matter will be continued.

Date: 4-20-09

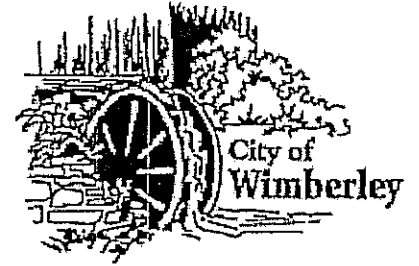
APPLICANT SIGNATURE Steven P. Daniels

WHEN APPLICABLE:

Date: _____

AGENT SIGNATURE: _____

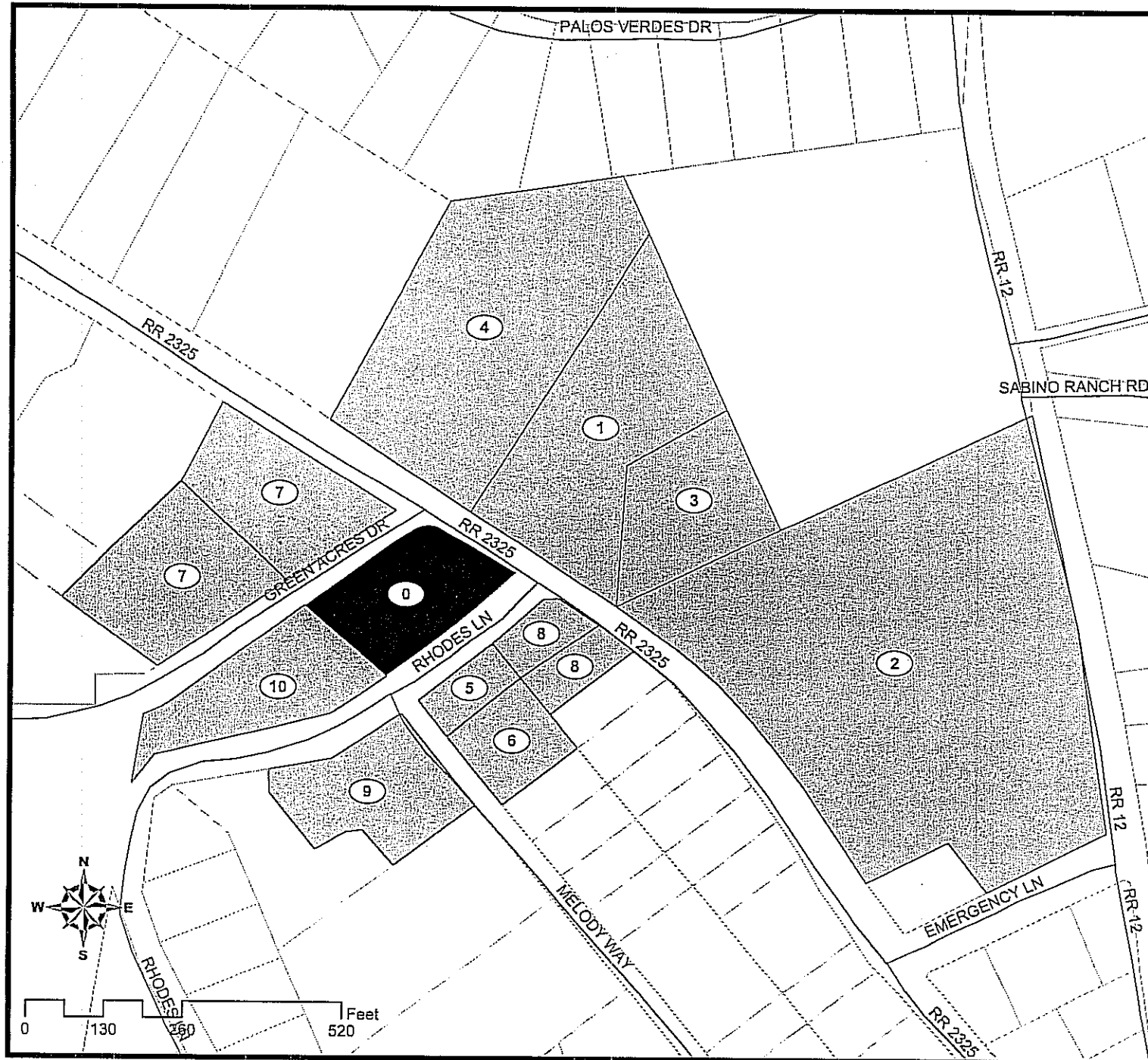
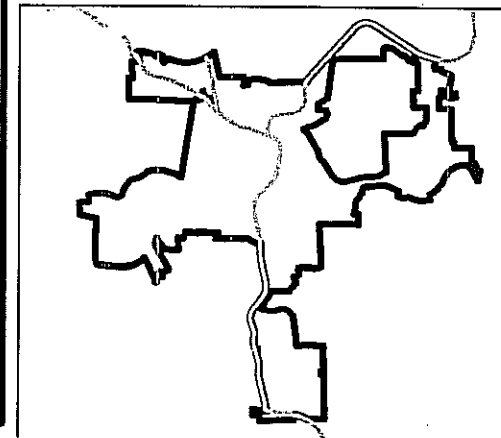
Notification Map for ZA-09-013



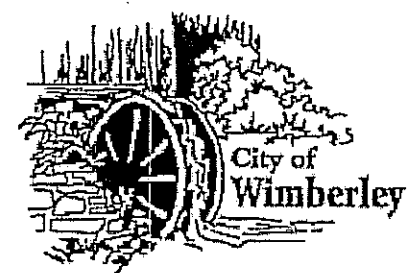
P.O. Box 2027 • Wimberley, Texas 78676

-  0, SUBJECT PROPERTY
-  1, JOHNSON, WM PARKS
-  2, WIMBERLEY ISD - TRUST PROPERTY
-  3, VILLAGE LIBRARY OF WIMBERLEY IN
-  4, WILLETT, BOYD
-  5, ADAMS, AARON H
-  6, FLOCKE STEVE & LONA
-  7, TRINITY, CHAPEL INC
-  7, TRINITY, CHAPEL
-  8, ODELL, ODIE
-  9, SUMTER ELIZABETH A & TERRY
-  10, WIMBERLEY RURAL FIRE PREVEN

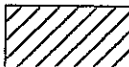
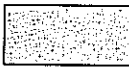
Location Map



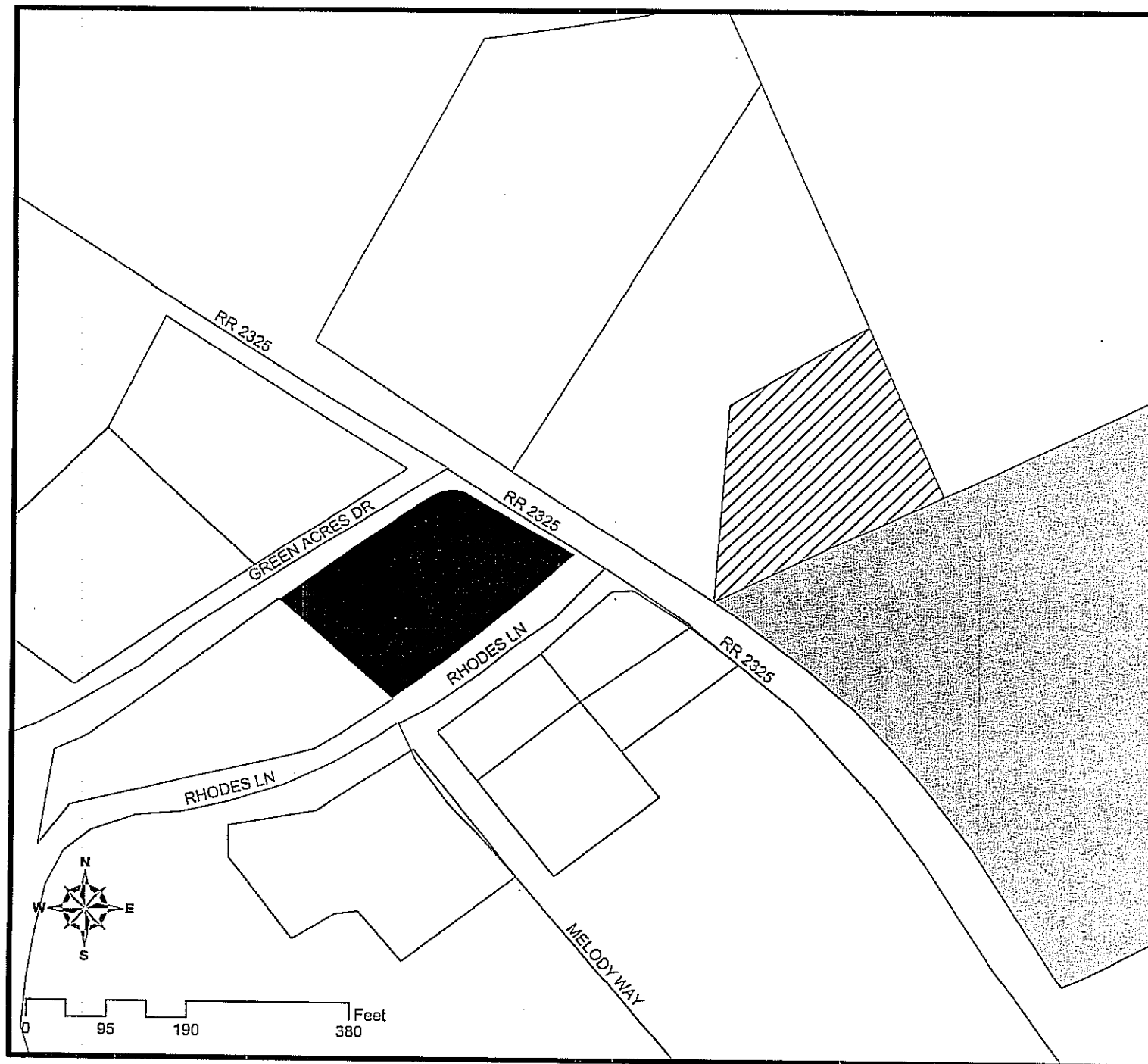
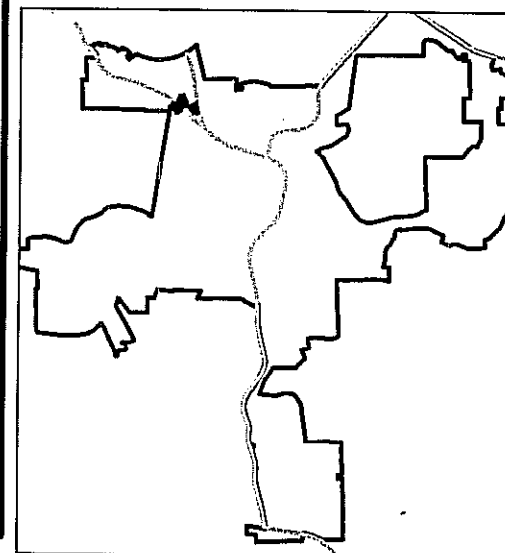
Zoning Map for ZA-09-013



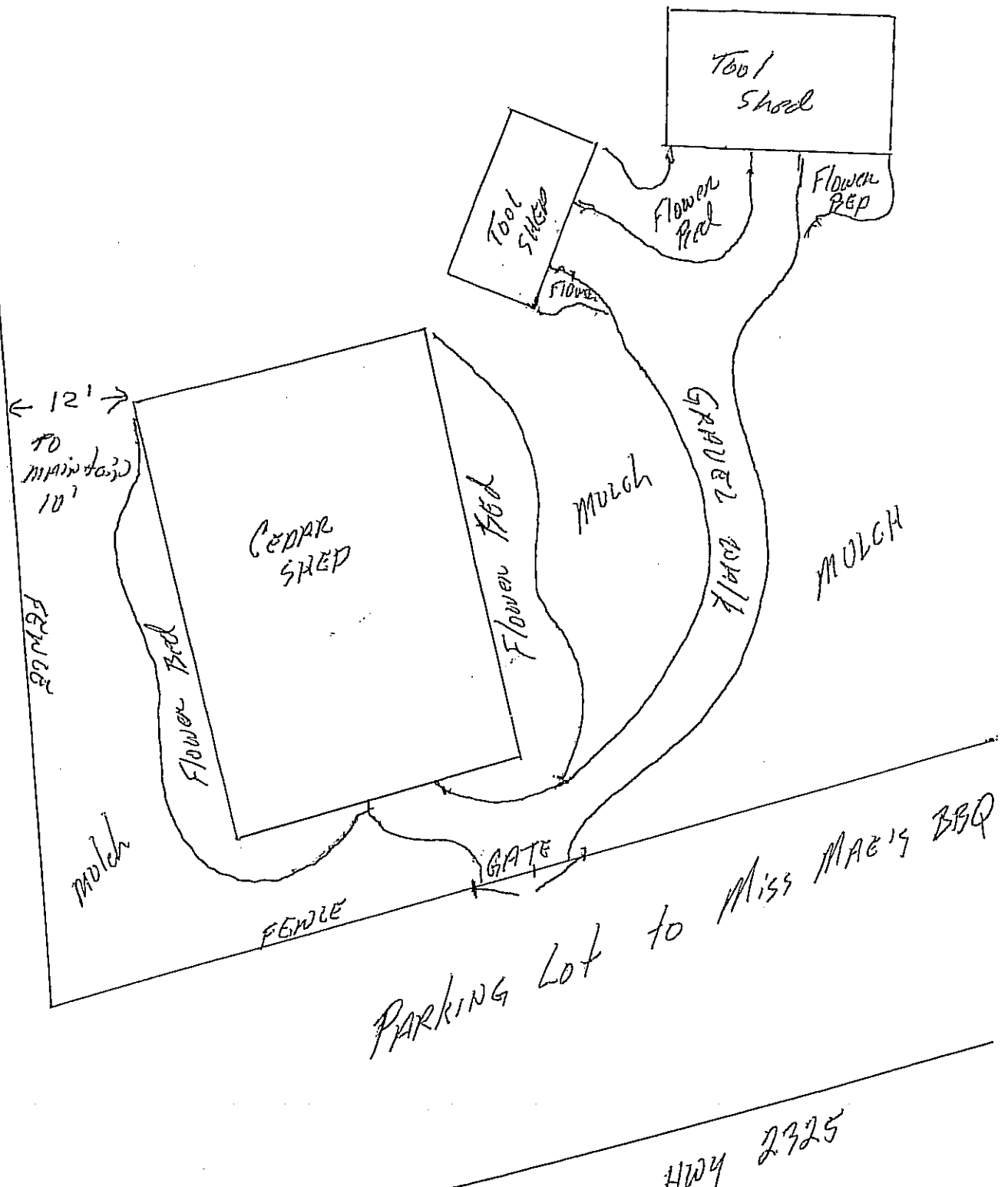
P.O. Box 2027 • Wimberley, Texas 78676

-  SUBJECT PROPERTY
-  UNZONED
-  COMMERCIAL 2
-  PUBLIC FACILITIES

Location Map



General Layout
May vary slightly



Miss Mae's Bar-B-Que
419 FM 2325
Wimberley, TX 78676
512-847-9808

May 7, 2009

Wimberley Planning and Zoning Committee
Wimberley City Council

Re: New business, Wimberley Cedar Sheds

To Whom It May Concern:

I agree to share Miss Mae's Bar-B-Que parking and bathroom facilities with Wimberley Cedar Sheds.

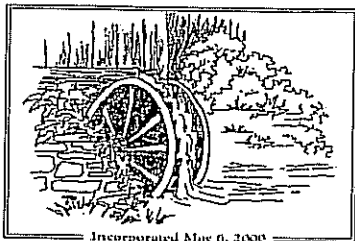
Sincerely,

A handwritten signature in black ink, appearing to read "Steve P. Dunks". The signature is fluid and cursive, with a large initial "S" and a stylized "P.D." in the middle.

Steve Dunks

Owner

Miss Mae's Bar-B-Que



City of Wimberley

12111 Ranch Road 12 (P.O. Box 2027), Wimberley, Texas 78676

Phone: 512-847-0025 Fax: 512-847-0422

Email: village@anvilcom.com Web: www.vil.Wimberley.tx.us

Tom Haley, Mayor - Bob Flocke, Mayor Pro-tem

Council Members - Charles Roccaforte, Jeri Xiques, Steve Thurber, Dick Larson
Don Ferguson, City Administrator

April 23, 2009

NOTICE OF PUBLIC HEARING

Re: **File No. ZA-09-013**

419 FM 2325

An application for initial base zoning of Commercial – Low Impact (C1) on the subject property.

Dear Property Owner:

You are receiving this letter because you own property within 200 feet of the above-referenced location.

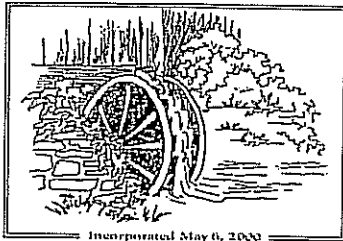
Steven Dunks has applied for initial base zoning of Commercial – Low Impact (C1) for a property located at 419 FM 2325.

The City of Wimberley Planning & Zoning Commission will consider this request at a public hearing on **Thursday, May 14, 2009 at 6:30 p.m.** in the Wimberley City Hall, 12111 Ranch Road 12. Upon a recommendation from the Commission, City Council will hold a Public Hearing to consider the same request on **Thursday, May 21, 2009, at 6:30 p.m.** in the Wimberley City Hall.

Because the granting of this request may affect your property, you are encouraged to participate in the zoning process. The public will be given an opportunity to speak during the hearing. If you wish to comment but are unable to attend, written comments may be submitted to the City Administrator prior to the meeting.

Additional information regarding the proposed zoning is available for public review at City Hall during normal business hours. Should you have questions, please contact the City Administrator at 512-847-0025.

CITY OF WIMBERLEY



City of Wimberley

12111 Ranch Road 12, P.O. Box 2027, Wimberley, Texas, 78676

Phone: (512) 847-0025 - Fax: (512) 847-0422

E-mail: Wimberley@anvilcom.com - Web: www.vil.wimberley.tx.us

NOTICE BY SIGN POSTING

Zoning No: ZA-09-013

Owner Steve Dunks

Date 4/24/09

To: Code Enforcement/Public Works

Please place a Proposed Zoning Sign on the following property

() Project Site Address 419 FM-2325

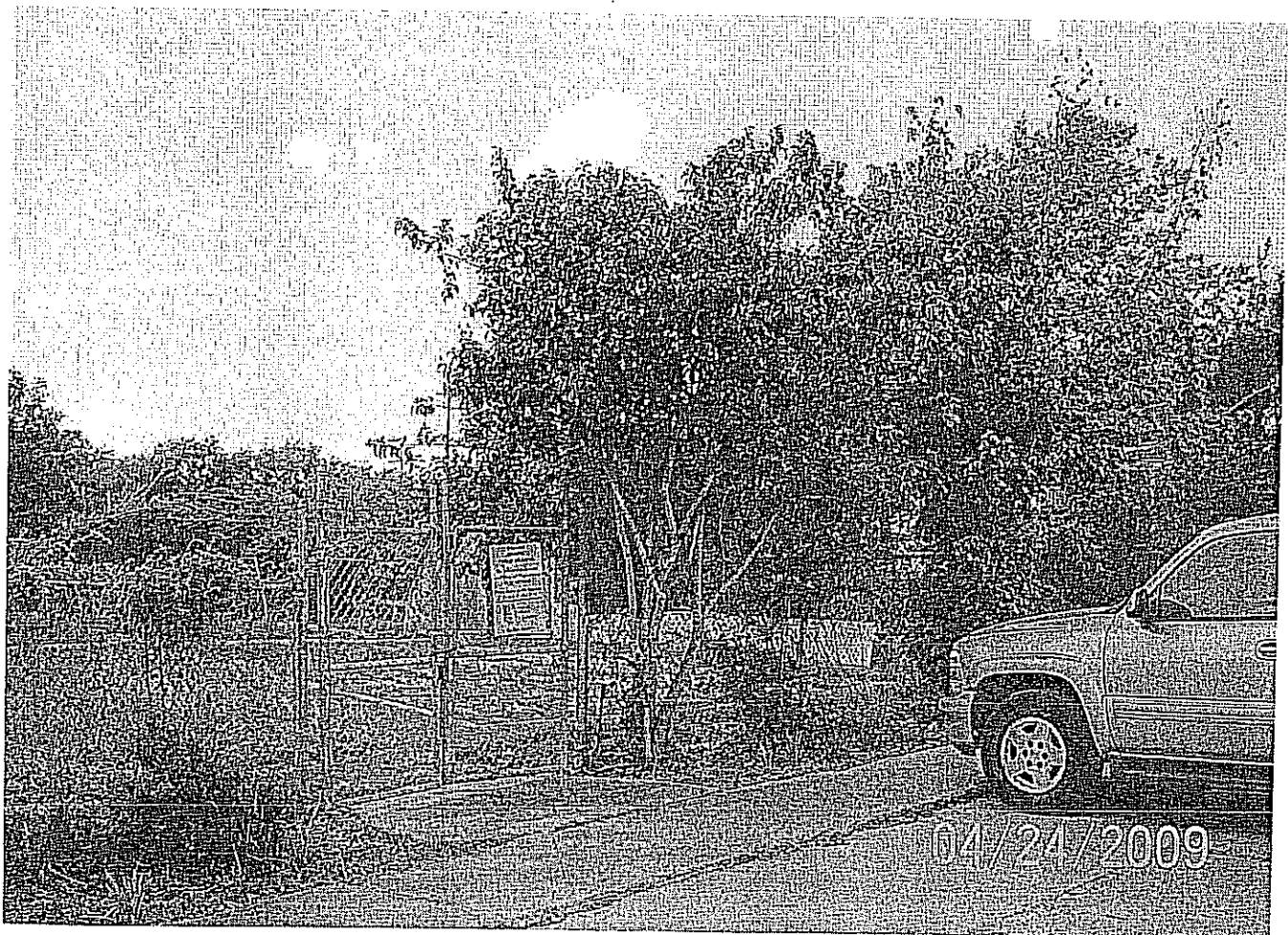
which is located 1211-2325

Bill Bowers
Asst. Public Works

Note: The above-referenced sign was placed on the subject property on

4/24/, 2009


Signature



THE CLASSIFIED

Wednesday, April 29, 2009

Email your ads to: classifieds@wimberleyv

LEGAL & PUBLIC NOTICES

NOTICE OF PUBLIC SALE

Of property to satisfy landlord's lien. Sale is 10:00 a.m., May 29, 2009, at 3000 E. HWY 290, Dripping Springs, TX. Property will be sold to highest bidder for cash. Seller reserves right to withdraw property from sale for any reason. Deposit may be required. Property includes contents of spaces with following tenants: CAROL R. CAMPBELL, books, decorations, golf clubs, misc. items. (03666226/35)

NOTICE OF PUBLIC SALE

Wimberley, TX. Mini Storage, 506 Malody Way. Landlord's lien sale. May 14, 2009, 9 a.m. 10111 State Misc. Household Goods. Tenant: Mark T. Esensen. (04722226/36)

NOTICE OF PUBLIC HEARING

(Request for Zoning) Notice is hereby given that the Planning & Zoning Commission of the City of Wimberley will hold a public hearing at the Wimberley City Hall on Thursday, May 14, 2009, at 6:30 p.m., to consider the following: ZA 09-013, an application for initial base zoning for Commercial A-2 (low impact) (C) at 49 FM 2325, upon recom-

mendation of the Planning & Zoning Commission. The City Council will also hold a public hearing on Thursday, May 21, 2009, at 6:30 p.m. Comments on this request from any member of the public may be presented in person or by mail (P.O. Box 2027) at City Hall prior to the hearing. The public will be granted an opportunity to speak at the hearing. Additional information concerning the proposed action is available for review at the Wimberley City Hall, 12117 Ranch Road, 12, Wimberley, Texas. (04722226/34)

ORDER OF CANCELLATION FOR THE CITY OF WOODCREEK GENERAL ELECTION

AN ORDER DECLARING UNOPPOSED CANDIDATES IN THE MAY 9, 2009 GENERAL CITY ELECTION ELECTED TO OFFICE, CANCELING THE ELECTION, PROVIDING A SEVERABILITY CLAUSE, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS the City of Woodcreek, Texas is a live, free, and general law municipality located in Hays County, operating in accordance with the provisions of the local Government Code and was scheduled to conduct a

General Election on May 9, 2009, for officers to the positions of Mayor and Alderman and

WHEREAS the City Secretary has certified in writing that there is no proposition on the ballot that no person has made a declaration of intent to write in a candidate and that each candidate on the ballot is unopposed for election to office, and

WHEREAS under these circumstances Section 2.053(a) of the Texas Election Code authorizes the City Council to declare the candidates elected to office and cancel the election.

NOW, THEREFORE, BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF WOODCREEK

Section 1. The following candidates who are unopposed in the May 9, 2009 general city election are declared elected to office and shall be issued certificates of election following the time the election would have been canvassed:

Alderman Jeff Rasco
Alderman Brent Pulley
Mayor Eric Eskeland

Section 2. The May 9, 2009 general city election is canceled and the City Secretary is directed to cause a copy of this order to be posted on Election Day at each polling place that would have been used in the

election.

Section 3. It is declared to be the intent of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this order are severable and if any phrase, clause, sentence, paragraph, or section of this order is declared invalid by the judgment or decree of a court of competent jurisdiction, the invalidity shall not affect any or the remaining phrases, clauses, sentences, paragraphs, or sections of this order since the City Council would have enacted them without the invalid portion.

Section 4. This order shall take effect upon its final passage and it is so ordered. (04722226/37)

PASSED AND APPROVED ON THE 8TH DAY OF APRIL 2009.

GLORIA WHITEHEAD, Mayor

PIETER SYBESMA, City Administrator

ORDEN DE CANCELACION PARA LA ELECCION GENERAL DE LA CIUDAD DE WOODCREEK

UNA ORDEN DECLARANDO SIN OPOSICION PARA LA ELECCION GENERAL DE LA CIUDAD LOS ELEGIDOS A CARGO CANCELANDO LA ELECCION, PROVEYENDO

CLAUSULA DE DISTINCION Y PROVEYENDO UN FECHA DE VIGENCIA

MIENTRAS QUE la Ciudad de Woodcreek, Texas es una municipalidad tipo A, gobernada por sí, localizada en el Condado de Hays, operando en acuerdo con las provisiones del código Gubernamental Local y que iba tener una elección general el 9 de mayo 2009 para elegir un alcalde y dos concejales para el consejo de la ciudad y

MIENTRAS QUE la secretaria de la ciudad ha certificado por escrito que no se encuentran en la boleta que ninguna persona ha hecho una declaración de candidatura por escrito y que cada candidato en la boleta está sin oposición para elección a cargo y

MIENTRAS QUE bajo estas circunstancias, Sección 2.053(a) de Código de elección autoriza al ayuntamiento para declarar a los candidatos elegidos a cargo y cancelar la elección.

AHORA, POR LO TANTO, SEA ORDENADO POR EL AYUNTAMIENTO DE LA CIUDAD DE WOODCREEK:

Sección 1. Los candidatos siguientes que están sin oposición para la elección general de la ciudad del 9 de mayo 2009:

están declarados elegidos a cargo y se les suministrarán certificados de elección después del tiempo que la elección se había terminado se solicitan Vocaciones

Concejal Jeff Rasco
Concejal Brent Pulley
Alcalde Eric Eskeland

Sección 2. Esta elección general de la ciudad del 9 de mayo 2009 está cancelada y la secretaria de la ciudad está obligada a causar que una copia del resal orden y este pueste en cada lugar de votación donde hubiera usado en el día de elección.

Sección 3. Esta declaración que es el intento de celebrar un tambo que frases, cláusulas, oraciones, párrafos y secciones de esta orden son separables y si cualquier frase o cláusula o sección de esta orden es declarada inválida por el juicio de una corte de jurisdicción competente, la invalidez no afectará ninguna de las frases, cláusulas, oraciones, párrafos o secciones que permanezcan por el ayuntamiento podrá haber promulgado esto sin la porción invalidada.

Sección 4. Esta orden tomará efecto sobre su pasaje final y están ordenados:

PASADO Y APROBADO EL 8 DIA DE ABRIL 2009.
GLORIA WHITEHEAD, Alcalde
PIETER SYBESMA, Administrador

ORDINANCE NO. 2009-_____

AN ORDINANCE OF THE CITY OF WIMBERLEY, AMENDING SECTION 155 (ZONING), APPENDIX F, OF THE CODE OF WIMBERLEY, DESIGNATING GEOGRAPHIC BOUNDARIES FOR A PARTICULAR ZONING DISTRICT AND CLASSIFICATION FOR A 0.90 ACRE TRACT LOCATED AT 419 FM 2325, WIMBERLEY, HAYS COUNTY, TEXAS, DESIGNATING INITIAL ZONING FOR SUCH TRACT AS COMMERCIAL-LOW IMPACT (C-1); AND PROVIDING FOR THE FOLLOWING: DELINEATION ON ZONING MAP; SEVERABILITY; EFFECTIVE DATE AND PROPER NOTICE AND MEETING.

WHEREAS, the regulations established by Section 155 (Zoning), as amended, (the "Code") are specifically designed to lessen congestion in the streets; secure safety from fire, panic, and other dangers; promote health and general welfare; provide adequate light and air; prevent the overcrowding of land; avoid undue concentration of population; facilitate the adequate provision of transportation, water, sewers, schools, parks, and other public facilities; and

WHEREAS, in the course of adopting the regulations established by the Code, the Planning and Zoning Commission and City Council gave careful consideration to the unique qualities of the City, including the demographics of its inhabitants, the community's history, geography, natural resources, existing structures, property values, workforce, education levels, commercial base, surrounding communities, public facilities and infrastructure; and

WHEREAS, the regulations established by the Code have been adopted with reasonable consideration, among other things, for the character of each district and its peculiar suitability for the particular uses; with a view of conserving property values and encouraging the most appropriate use of land in the City; and

WHEREAS, the regulations established by the Code are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City; and

WHEREAS, the following enactments are a valid exercise of the City's broad police powers and based upon the City's statutory regulatory authority, including but not limited to Texas Local Government Code Chapters 51, 52, and 211; and

WHEREAS, the City Council and Planning and Zoning Commission have carefully reviewed the requirements of the City's Code of Ordinances and have concluded that the requested zoning designation is consistent with established City policy and in the public interest; and

WHEREAS, parties in interest and citizens have had an opportunity to be heard at public hearings conducted by the Planning and Zoning Commission and City Council, notice of which was published in the City's official newspaper before the 15th day before the first public hearing and agendas for each hearing were posted at City Hall more than seventy-two (72) hours prior to the respective hearing.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, HAYS COUNTY, TEXAS:

ARTICLE I. AMENDMENT

Section 155 (Zoning) of the Code of Wimberley is hereby amended by adding the following language to Appendix F to read as follows, which shall be incorporated into and made part of Section 155 (Zoning), and given full weight and effect:

Appendix F: Zoning District Designations

The City Council of the City of Wimberley has divided the City into the zoning districts as follows. The applicable use, height, area and development regulations adopted by the City shall apply to each district. The following geographic boundaries of the zoning districts for the properties listed below are hereby established as follows:

The 0.90 acre tract described as part of the A0365 Benjamin Page Survey, and more particularly described by metes and bounds in the attached Exhibit "A" incorporated by reference, in Wimberley, Hays County, Texas, commonly known as 419 FM 2325, is hereby designated initial zoning of Commercial-Low Impact (C-1) designation.

Except as expressly amended herein, Appendix F shall remain in full force and effect.

ARTICLE II. ZONING DISTRICT MAP

The official Zoning District Map shall be revised to reflect the zoning district boundary established by this Ordinance.

ARTICLE III. SEVERABILITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

IV. EFFECTIVE DATE

This ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

ARTICLE V. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code, and the Standard Zoning Enabling Act, Chapter 211 of the Texas Local Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

PASSED AND APPROVED this _____ day of _____, 2009, by _____ (Ayes) to _____ (Nays) _____ (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY

BY: _____
Tom Haley, Mayor

ATTEST:

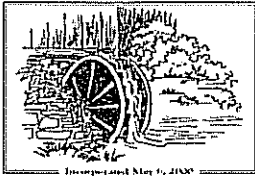
Cara McPartland, City Secretary

APPROVED AS TO FORM:

Carolyn J. Crosby, Assistant City Attorney

DRAFT

City Council Agenda Form



Date Submitted: May 18, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: CONSIDER ORDINANCE
AMENDING SIGN REGULATIONS RELATING TO
THE SIZE OF CERTAIN REAL ESTATE SIGNAGE

Funds Required:
Funds Available:

Council Action Requested:

☒ Ordinance
☐ Resolution
☒ Motion
☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow City Council to discuss and consider a proposed ordinance amending the City's sign regulations to allow temporary 32 square foot (4'x8') for lease/sale signs on properties larger than two acres which front FM 32, FM 3237, Ranch Road 12, FM 2325.

Currently, the City of Wimberley Sign Ordinance restricts the size of real estate to eight square feet. In recent years, numerous property owners have complained that City's current sign limitations for real estate signs require the text on such signs to be too small for motorists traveling on the City's rural highways to read, thus creating a traffic safety hazard. The proposed ordinance attempts to address these concerns.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS, AMENDING TITLE XV (LAND USAGE) OF THE CODE OF ORDINANCES CHAPTER 152 (SIGNS) IN ORDER TO ESTABLISH REGULATIONS REGARDING TEMPORARY REAL ESTATE SIGNS; AND PROVIDING FINDINGS OF FACT, A REPEALING CLAUSE, TO PROVIDE A SAVINGS AND SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Wimberley, Texas (the "City") seeks to provide for the health, safety and welfare of its citizens, and provide for the orderly development of land within its corporate limits and its extraterritorial jurisdiction; and

WHEREAS, the City has the authority to regulate signage pursuant to Texas Local Government Code Chapters 51, 52 and 216; and,

WHEREAS, the City wishes to permit temporary signage on larger tracts of land that front certain thoroughfares in order to permit increased visibility so long as the signs are temporary in nature and are removed after certain events; and,

WHEREAS, the regulations established by the Code are in furtherance of the public interest, for the good government, peace, order, trade and commerce of the City and necessary and proper for carrying out the power granted by law to the City; and

WHEREAS, parties in interest and citizens have had an opportunity to be heard at public hearings conducted by the Planning and Zoning Commission and City Council, agendas for each meeting were posted at City Hall more than seventy-two (72) hours prior to the respective hearing; and,

WHEREAS, the City recognizes its responsibility and authority to impose ordinances and controls that are necessary for the government of the City, its interest, welfare, and good order of the City as a body politic.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WIMBERLEY, TEXAS, THAT:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Amendment.

A. THAT the City of Wimberley Code of Ordinances, Title XV (Land Usage), Chapter 152 (Signs), § 152.05 (Definitions.) is hereby amended to add the following definition in alphabetical order:

"TEMPORARY REAL ESTATE SIGN. A temporary sign placed upon a premises fronting Ranch Road 12, FM 32, FM 2325 and FM 3237, advertising that property for sale, rent

or lease. The sign may display the identification of a real estate agent or broker or of the owner of the property.”

B. THAT the City of Wimberley Code of Ordinances, Title XV (Land Usage), Chapter 152 (Signs), § 152.09 (Signs Requiring a Permit.) is hereby amended to add subsection (D) to read as follows:

“§ 152.09 SIGNS REQUIRING A PERMIT.

(D) *Temporary Real Estate Signs.*

(1) In addition to the requirements of this chapter, temporary real estate signs shall comply with the following requirements:

(a) signs are only permitted on property which are two acres or greater in size and front Ranch Road 12, FM 32, FM 3237, and Ranch Road 2325, regardless of the current zoning classification of the property;

(b) no more than one sign shall be permitted;

(c) sign area shall not exceed thirty-two (32) square feet;

(d) sign height shall not exceed ten feet;

(e) illumination is not permitted; and

(f) shall only be for the purposes of sale, lease or rent of the property and shall be removed within fourteen days of sale or lease of the property.”

Except as expressly amended herein, the Code of Ordinances shall remain in full force and effect.

Section 3. All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed, but only to the extent of any such conflict.

Section 4. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Ordinances as a whole.

Section 5. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provide.

Section 6. Open Meetings. That it is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act, Chapt. 551, Loc. Gov’t. Code.

PASSED AND APPROVED this ____ day of _____, 2009, by a vote of ____ (Ayes) to ____ (Nays) ____ (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY, TEXAS

Tom Haley, Mayor

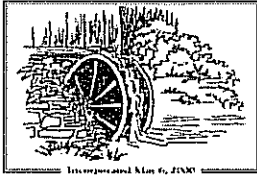
ATTEST:

Cara McPartland, City Secretary

APPROVED AS TO FORM:

Carolyn J. Crosby, Assistant City Attorney

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: CONSIDER APPROVAL
OF ORDINANCE REPEALING AQUA TEXAS
FRANCHISE ORDINANCE

Funds Required:

Funds Available:

Council Action Requested:

- ☒ Ordinance
- ☐ Resolution
- ☒ Motion
- ☒ Discussion

Project/Proposal Summary:

In March of this year, the City Council approved a proposed ordinance granting a 10-year non-exclusive franchise to Aqua Texas for the operation of a retail wastewater system in Wimberley. Following presentation of the approved ordinance to Aqua Texas, the utility provider indicated a desire for the franchise to be written as a formal agreement authorized by City Council resolution rather than in the form of an ordinance.

It is the position of the City's legal counsel that the requested change in format does not alter the original intent and enforceability of the proposed franchise. As such, City staff has drafted a resolution granting a non-exclusive franchise to Aqua Texas for consideration later in this meeting. In order to consider the resolution, there is a need for City Council to approve the attached ordinance repealing the previously approved Aqua Texas franchise ordinance.

ORDINANCE NO. 2009-

**AN ORDINANCE OF THE CITY OF WIMBERLEY, TEXAS,
REPEALING ORDINANCE NO. _____ REGARDING AQUA TEXAS
INC.; AND PROVIDING FOR FINDINGS OF FACT, REPEAL, SAVINGS
CLAUSE, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.**

WHEREAS, on _____, 2009, the City of Wimberley, Texas (the "City") approved Ordinance No. _____ to permit Aqua Texas Inc. to use the City's rights-of-ways and establishing the terms and conditions for use of same; and,

WHEREAS, the parties have drafted an agreement which conforms substantially to the same terms and conditions cited in Ordinance No. _____; and,

WHEREAS, the City wishes to repeal Ordinance No. _____ in its entirety.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF WIMBERLEY, TEXAS:**

SECTION I. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Wimberley and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

SECTION II. REPEAL

THAT Ordinance No. _____, passed by the Wimberley City Council on _____, 2009, is hereby repealed in its entirety.

SECTION III. SAVINGS

The repeal of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this ordinance.

SECTION IV. EFFECTIVE DATE.

This ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

SECTION V. NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED this ____ day of _____, 2009, by ____ (Ayes) to ____ (Nays) ____ (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY

BY: _____
Tom Haley, Mayor

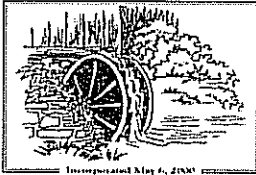
ATTEST:

Cara McPartland, City Secretary

APPROVED AS TO FORM:

Carolyn J. Crosby, Assistant City Attorney

City Council Agenda Form



Date Submitted: May 18, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: CONSIDER RESOLUTION
AUTHORIZING THE MAYOR TO SIGN AQUA
TEXAS FRANCHISE AGREEMENT

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☒ Resolution

☒ Motion

☒ Discussion

Project/Proposal Summary:

In March of this year, the City Council approved a proposed ordinance granting a 10-year non-exclusive franchise to Aqua Texas for the operation of a retail wastewater system in Wimberley.

Following the presentation of the approved ordinance to Aqua Texas, the utility provider indicated a desire for the franchise to be written as a formal agreement authorized by City Council resolution rather than in the form of an ordinance. In addition, Aqua Texas requested a few minor changes in wording to clarify the intent and meaning of the franchise terms.

It is the position of the City's legal counsel that the requested change in format and minor wording changes do not change the original intent and enforceability of the proposed franchise. As such, the City staff is seeking City Council approval of the attached resolution granting the non-exclusive franchise to Aqua Texas and authorizing the Mayor to sign the proposed agreement.

Through the proposed agreement, the City allows the utility to use the City's right-of-way to maintain and upgrade its existing wastewater system infrastructure, move its facilities to make way for new buildings or developments, excavate and replace streets and alleys, and bury pipe. In return, the City is compensated for the use of its right-of-way by a franchise fee, collected from customers, on whose behalf Aqua Texas is operating, maintaining and improving its system. In the first three years of the agreement, Aqua Texas will pay the City an annual fee amounting to two percent (2%) of its gross receipts collected from customers and three percent (3%) for the remaining term of the agreement.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF WIMBERLEY, TEXAS AUTHORIZING THE
MAYOR TO SIGN A FRANCHISE AGREEMENT WITH AQUA TEXAS, INC.**

WHEREAS, on _____, 200__, the City Council approved Ordinance No. _____, which authorized granting a franchise agreement to Aqua Texas, Inc. to use City right-of-way for water and sewer lines; and,

WHEREAS, Aqua Texas, Inc. has requested that the franchise be in the form of a contractual agreement and agrees to all terms and conditions in Ordinance No. _____; and,

WHEREAS, by this Resolution the Mayor is authorized to sign a Franchise Agreement with Aqua Texas, Inc., incorporating the same terms and conditions as stated in Ordinance No. _____; and such agreement is not intended to repeal such ordinance.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF WIMBERLEY, COUNTY OF HAYS, STATE OF TEXAS:**

I. FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Wimberley and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

II. RESOLUTION

THAT, the Mayor is authorized to sign a Franchise Agreement in the form on file with the City Secretary granting Aqua Texas, Inc. a franchise to use City right-of-way subject to the terms and conditions of the Agreement.

PASSED AND APPROVED this _____ day of _____, 2009, by a _____
(Ayes) _____ (Nays) _____ (Abstain) vote of the City Council of the City of Wimberley, Texas.

CITY OF WIMBERLEY

By: _____
Tom Haley, Mayor

ATTEST:

Cara McPartland, City Secretary

FRANCHISE AGREEMENT

This FRANCHISE AGREEMENT dated as of the _____ day of _____, 2009 ("Agreement") by and between the CITY OF WIMBERLEY, TEXAS, a Type A general law municipality incorporated in Hays County, Texas ("City"), and AQUA UTILITIES, INC. DBA AQUA TEXAS, INC., a Texas Corporation, ("Grantee") is effective on the date of the last of the signatures by the parties to this Agreement ("Effective Date").

RECITALS

WHEREAS, Grantee operates a retail sewer system located partially in the corporate limits of the City of Wimberley pursuant to Wastewater Certificate of Convenience and Necessity Number 20453; and

WHEREAS, Grantee is a publicly traded corporation regulated by state authorities with appropriate jurisdiction, including the Texas Commission on Environmental Quality ("TCEQ"); and

WHEREAS, the City may adopt an order, act, law or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the City; and

WHEREAS, the City may adopt ordinances, rules or police regulations that are for the good government, peace or order of the City or for the trade and commerce of the City, and that are necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, based on the City's analysis of the law, it has exclusive control over the public grounds, highways, streets and alleys of the City pursuant to the Texas Local Government Code; and

WHEREAS, based on the City's analysis of the law, an incorporated city or town may make a reasonable lawful charge for the use of a city street, alley, or public way by a public utility in the course of its business pursuant to the Texas Tax Code; and

WHEREAS, Grantee is willing to enter into an Agreement with City in order to avoid a dispute, if any, with City regarding compliance with the law and will pay the fees for customers within City's boundaries in order to exercise the rights stated herein, but is not waiving the right to contest the terms of any City ordinance impacting Grantee's rights under CCN Number 20453 or the original and exclusive jurisdiction of TCEQ over certain matters; the City's remedies described herein are not exclusive, and the City is not waiving any of its rights to seek a remedy available under the law with an entity with jurisdiction over Grantee regarding Grantee's performance under this Agreement; and

WHEREAS, the City Council approved the terms to this Agreement on _____, 200____, by adopting Resolution No. _____, and believes it in the best interest of the City to offer the Grantee a franchise on the terms and conditions enumerated herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties agree as follows:

Section 1. Definitions.

1.1. For the purposes of this Agreement, when not inconsistent with the context, words, used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. Words not defined in this Section 1 shall be given their common and ordinary meaning.

1.2. For the purposes of this Agreement, the following words, terms, phrases and their derivations shall have the meaning given in this Section 1.2.

1.2.1. “City Council” shall mean the governing body of the City of Wimberley.

1.2.2. “City Secretary” shall mean the City Secretary of the City of Wimberley.

1.2.3. “Consumer” shall mean any person or organization within the boundaries of City receiving and using retail sewer service from the Grantee for his or her own appliances or equipment, whether or not the retail sewer service is billed directly to him or her, or to a second party. (As an example, in the case of a rental unit where the cost of utilities is part of the rent, the landlord is a Customer and the tenant is a Consumer.)

1.2.4. “Customer” shall mean any person or organization within the boundaries of City billed for retail and sewer service by the Grantee whether used by him or her, or by others.

1.2.5. “Effective Date” shall mean the last date of the signatures by the parties to this Agreement.

1.2.6. “Emergency” shall mean an occurrence with a potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action.

1.2.7. “Franchise” shall collectively mean this Agreement and all rights and obligations established herein or as it may be amended.

1.2.8. “Grantee” shall mean Aqua Texas Incorporated, a corporation authorized under Texas law to transact business in the State of Texas, its successors and assigns.

1.2.9. “Gross Receipts” shall mean the total amount collected by the Grantee for retail sewer service provided to Consumers by the Grantee within the corporate limits of the City. Gross Receipts shall not include charges for taxes or regulatory charges on services furnished by the Grantee herein that are imposed directly upon any Consumer or Customer by the State, the City or other governmental unit and collected by the Grantee on behalf of the governmental units (including, without limitation, Texas Limited Sales Tax), nor shall it include any amounts refunded to Customers or Consumers.

1.2.10. "Rights-of-Way" shall mean the area on, below or above all publicly owned, dedicated or maintained streets, avenues, easements, alleys, highways, sidewalks, bridges, and other similar means of public access in the City.

1.2.11. "System" shall mean the system of pipes, distribution and transmission lines, pumps and pump stations, storage facilities, equipment, treatment facilities, land, and other appurtenances used or necessary for the provision of retail sewer utility service to/for Consumers or Customers in the City, including, without limitation, those owned or used by the Grantee.

1.2.12. "TCEQ" shall mean the Texas Commission on Environmental Quality, or its successor agency.

1.2.13. "Uniform ROW Management Ordinance" shall mean section 90.01 et. seq., of the City's Code of Ordinances, titled Uniform Right-of-Way Management Subchapter, passed and approved by the City on May 17, 2001, and as may be subsequently amended.

1.2.14. "City" shall mean the City of Wimberley, Texas, a municipal corporation and a political subdivision of the State of Texas; and any area annexed thereto from time to time. For purposes of this Franchise, any annexation shall become effective within sixty (60) days of the City's written notification to Grantee of the annexation.

Section 2. Grant of Franchise and Term.

2.1. There is hereby granted to the Grantee a non-exclusive franchise to maintain, construct, equip, extend, replace, repair, alter and otherwise establish and operate in the City, as constituted as of the Effective Date, or as may hereafter be constituted, works, systems, plants, collection, distribution and transmission lines, treatment facilities and all related facilities (including those now in service and including all parts and portions of the System) necessary or appropriate to sell, collect, convey or otherwise conduct, serve or furnish the inhabitants of the City, and to the City, retail sewer service, and the Grantee is hereby granted passage and rights-of-way in, under, along and across the Rights-of-Way of the City and beneath the surface of same, and the right to occupy and use in any lawful way during the term of this Franchise said Rights-of-Way as they now or hereafter may exist, for every and any such service, use, effect, and lawful purpose as herein mentioned; provided that all such work, activity and undertakings by the Grantee shall be subject to the terms and provisions of this Franchise and the Uniform ROW Management Ordinance. Nothing herein shall be construed to require or authorize Grantee to exceed any rights granted herein or by the TCEQ, or its successor agency.

2.2. The construction, maintenance, and operation of the System and property of the Grantee within the City shall be subject to the terms of this Franchise and all other applicable ordinances, rules and regulations adopted by the City, including the police powers of the City to adopt and enforce ordinances of general applicability necessary to the health, safety and welfare of the public that are not otherwise inconsistent with the terms and conditions of this Franchise.

2.3. In exercising its operations under this Franchise, the Grantee reserves the right to use affiliated entities or third party contractors or subcontractors.

2.4. The Grantee shall be allowed to operate and maintain all lines existing on the Effective Date within City parks, greenbelts, and similar property, or then existing on land hereinafter designated as a City park. Except in an Emergency, the Grantee shall not undertake a replacement of such lines or install new lines within said parks, greenbelts or similar property without the permission of the City Administrator. Such permission shall not be unreasonably withheld or delayed.

2.5. The term of this Franchise shall be for a period of ten (10) years from the Effective Date, unless terminated sooner pursuant to the terms herein; provided that this Franchise shall not be or become effective unless accepted by the Grantee as stated herein. The Franchise may be renewed in accordance with applicable law.

2.6. The Grantee shall have full authority to repair and replace pipes and facilities within any Rights-of-Way existing on the effective date of this Agreement and to expand and enlarge such facilities for the purpose of providing for growth and expansion both within and outside the City, subject to the terms of this Franchise and the Uniform ROW Management Ordinance.

2.7. This Franchise is non-exclusive, and the City retains the right and power, within its jurisdictional authority, to grant any other person, political subdivision, firm, or corporation a franchise to use its streets, highways, Rights-of-Ways, and City parks, greenbelts, or similar property.

2.8. Grantee shall be subject to applicable City ordinances governing rights-of-way construction permits for conducting land disturbing activities in the public rights-of-way, including but not limited to the Uniform ROW Management Ordinance, prior to the commencement of any construction in the Rights-of-Way. Such permits shall be issued only in compliance with applicable City ordinances.

2.9. As Built Plans. Upon the Effective Date of this Franchise, Grantee shall provide, without cost to the City a hard copy and electronic version of the existing System located within the Rights-of-Way. Within sixty (60) days of completion of each new permitted section of Grantee's facilities, Grantee shall supply the City with a complete set of "as built" plans of record for the new permitted section in a format used in the ordinary course of business, but excluding customer specific, proprietary or confidential information and as reasonably prescribed by City, and as allowed by law. The City may, at its discretion, accept any reasonable alternative to as built plans of record which provides adequate information as to the location of facilities in the Rights-of-Way.

Section 3. Use of Rights-of-Way.

3.1. The Grantee is hereby authorized, licensed and empowered to do any and all things necessary and proper to be done and performed in executing the powers and utilizing the privileges herein mentioned and granted by this Franchise, provided the same do not conflict with existing water or sewer lines, electric power lines, telephone lines, cable television lines and other authorized installations, and provided that all work done in said Rights-of-Way by the Grantee shall be done with reasonable diligence, without unreasonable interference to the public or individuals, and in compliance with any applicable City ordinances rules or regulations regarding the Rights-of-Way. In the event of unreasonable interference to the public or Rights-of-Way, such facilities shall be moved by Grantee, temporarily or permanently, as determined by the City Administrator or his

designee upon reasonable notice. The City shall take commercially reasonable precautions to avoid conflicting with Grantee's facilities in such Rights-of-Way. The City shall include as a requirement in all franchises that are granted or renewed after the Effective Date that all other franchised entities occupying Rights-of-Way shall also take commercially reasonable precautions to avoid conflicting with the Grantee's facilities in such Rights-of-Way. It is not the intention of either the City or the Grantee to create any liability, right or claim for the benefit of third parties and this Franchise is intended and shall be construed for the sole benefit of the City and the Grantee.

3.2. The City reserves the right to lay, and permit to be laid, sewer, cable television, water, telephone, electric, and other lines, cables and conduits, and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over or under any Rights-of-Ways or other public place occupied by the Grantee subject to the requirement of proper spacing between lines being laid.

3.3. Grantee shall restore the Rights-of-Way and provide notification of any repairs and Emergency work to the City in accordance with the Uniform ROW Management Ordinance.

Section 4. Modification and Relocation of Facilities.

If, during the period of this Franchise, the City, for a public purpose, use or convenience, reconstructs, improves or changes any Rights-of-Way including, but not limited to, changing the grade or alignment of the Rights-of-Way or any distribution or transmission line, or any overhead or underground structure within the corporate limits of the City, so as to conflict with the distribution or transmission lines, treatment facilities, equipment and appurtenances of the Grantee or the System, the Grantee shall remove or relocate, if requested by the City, as necessary, all of its distribution or transmission lines, equipment, and appurtenances at the Grantee's expense. Designated representatives of the Grantee and the City shall develop schedules for this work. If such representatives cannot agree on the schedules, the City, after consultation with the Grantee, shall establish a schedule which shall accommodate the Grantee's statutory obligation to obtain construction plan approval from the TCEQ, if required, prior to commencing any work. Additionally, if the City's plans require the Grantee to relocate its facilities, the City may, to the extent possible, identify Rights-of-Way to accommodate the Grantee's System.

Section 5. Franchise Fee.

5.1. The Rights-of-Way to be used by the Grantee in the operation of the System within the boundaries of the City as such boundaries exist as of the Effective Date, and as hereafter modified from time to time, are public properties acquired and maintained by the City at expense to its taxpayers. The Grantee will receive and obtain material benefits and operating efficiencies from this Franchise and the Grantee's rights to use the City Rights-of-Way. Without this Franchise, the Grantee would be required to invest in right-of-way cost and acquisition. The City will incur significant and material cost and expense in regulating, administering and carrying out actions necessary to give effect to this Franchise and thus, the Grantee shall, commencing on the Effective Date and continuing through the term of this Franchise, pay to the City a franchise fee based the Grantee's Gross Receipts collected from Customers and Consumers within the corporate limits of the City as a franchise fee. Such franchise fee shall be based on the following percentages of the gross receipts collected from Customers and Consumers within the corporate limits of this City for

the term of the franchise agreement, and paid as provided herein, as follows, two percent (2%) for the first three years, and three percent (3%) for the remaining term of the franchise agreement.

5.2. The franchise fee shall be payable quarterly to the City and delivered to the City Secretary, or successor in function, together with a statement indicating the derivation and calculation of such payment. Each such quarterly payment shall be due on the fifteenth (15th) day of the month following the end of the quarterly period for which said payment is due and shall be based upon the Gross Receipts during that same calendar year period. The statement shall be presented in the form of generally accepted accounting procedures. At all times, the Grantee shall cause accurate books and records of account to be maintained as are necessary to permit the verification of the amount of such franchise fee. For purposes of verifying the amount of such fee, the books and records of account of the Grantee concerning its Customers shall at all reasonable times be subject to inspection by the City and its duly authorized representatives. The Grantee shall file annually with the City Secretary, no later than four (4) months after the end of the Grantee's fiscal year, a statement of revenues attributable to the operations of the Grantee within the City.

5.3. If the franchise fee payment is not paid within seven (7) days after the due date specified herein, an interest charge shall be assessed at the rate of ten percent (10%) per year for each day that the franchise payment is late, and payment for the interest due shall accompany the late franchise fee payment.

5.4. The franchise fee shall be in lieu of any and all other City imposed rentals or compensation or franchise, license, privilege, instrument, occupation, excise or revenue taxes or fees and all other exactions or charges (except ad valorem property taxes, special assessments for local improvements, City sales tax, and such other charges for utility services imposed uniformly upon persons, firms or corporations then engaged in business within the City) or permits upon or relating to the business, revenue, franchise, collection lines, installations and systems, fixtures, and other facilities of the Grantee and all other property of the Grantee and its activities, or any part thereof, in the City which relate to the operations of the System.

5.5. No acceptance of any franchise fee shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim that the City may have for further additional sums payable under this Agreement. All amounts paid shall be subject to audit and recomputation by the City.

5.6. The period of recomputation for recovery of any franchise fee payable hereunder shall be five (5) years from the date on which payment is due from Grantee.

Section 6. Termination of Franchise.

6.1. Either party (provided such party is not then in material breach of this Franchise) may terminate this Franchise upon a material breach thereof by the other party (the "Breaching Party") by giving not less than forty-five (45) days prior written notice of such termination (containing reasonable detail of the material breach) to the Breaching Party; provided, however, in the event that the Breaching Party shall have cured the specified material breach within the above-referenced forty-five (45) day notice period (or, if the material breach is of a type which is not reasonably capable of being cured within such a period, and the Breaching Party has then commenced action to cure such breach), the above-referenced notice shall be of no further force or effect.

6.2. The Grantee may terminate this Franchise at any time upon written notice to the City in the event the Grantee is then no longer providing service to Customers or Consumers as defined herein.

6.3. In the event this Franchise is terminated, easements and real property purchased and acquired by the Grantee, and held in the name of the Grantee, shall be and remain the property of the Grantee, according to the terms, conditions and limitations of the instruments conveying such property and interest in property to the Grantee.

6.4. The City retains the right to terminate this Franchise upon written notification to the Grantee, whenever the Grantee practices any fraud upon the City, or the Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt or a receiver is appointed to it.

Section 7. Severability.

If any section, paragraph, subdivision, clause, part or provision hereof shall be adjudged invalid, illegal or unconstitutional, the same shall not affect the validity hereof as a whole or any part or provision other than the part or parts held invalid or unconstitutional.

Section 8. Captions and Headings.

The use of captions or headings for the various sections of this Franchise are for convenience of parties only and do not reflect the intent of the parties. The rule of interpretation to resolve ambiguities in a contract against the party drafting such contract shall not apply to this Franchise.

Section 9. Open Meetings.

It is hereby officially found and determined by the City that the meeting at which this Agreement was passed was open to the public, and public notice of the time, place and purpose of said meeting was given, as required by the Open Meetings Act, Chapter 551, Texas Government Code.

Section 10. Intentionally Deleted.

Section 11. Endorsements and Records.

The City Secretary is hereby authorized and directed to make appropriate endorsements, for the public records and convenience of the citizens over her official hand and the seal of the City and on the form provided at the conclusion of this Franchise, of the date upon which this Agreement is adopted by the City Council; the date upon which the caption or notice of this Agreement is published in the local newspaper, the date upon which this Agreement shall expire if not first accepted by the Grantee and, if the Grantee shall accept this Franchise, the date of such acceptance by the Grantee.

Section 12. Entire Agreement; Amendments.

This Franchise contains the entire agreement between the parties with respect to the subject matter herein and all prior negotiations and agreements are merged herein and hereby superseded. This Franchise may not be amended or revised except upon agreement of both parties, which agreement shall be in writing signed by the parties after approval and formal action of the City.

Section 13. No Waiver.

13.1. The failure of the City or the Grantee, upon one or more occasions, to exercise a right or to require compliance or performance under this Franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver or compliance or performance, unless such right has been specifically waived in writing.

13.2. Waiver of a particular breach of this Franchise shall not be construed as a waiver of any other breach. No provision of this Franchise shall operate as a waiver by the City or the Grantee of any right guaranteed by the federal or state constitutions or other applicable law.

Section 14. Assignment; Transfer; Sale or Conveyance by Grantee.

14.1. The Grantee shall not assign or transfer this Franchise or any of its rights and privileges granted hereunder to any person, without the prior written consent of the City expressed by Agreement, provided however, that City shall not unreasonably withhold approval of an assignment to any person or entity purchasing System from Grantee when such purchaser accepts in writing all of the obligations under this Agreement, or a new agreement is executed between the City and such purchaser.

14.2. Subject to the provisions in Section 15.1, this Franchise shall be binding upon and inure to the benefit of the City and the Grantee and their respective successors and permitted assigns, and nothing express or mentioned in this Franchise is intended or shall be construed to give any other person any legal or equitable right, remedy or claim under or in respect of this Franchise or any provisions of this Franchise, and conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of such persons and for the benefit of no other person.

Section 15. Notices.

15.1. Any notice, request, instruction or other document deemed by any party hereunder to be necessary or desirable to be given to any other party shall be deemed delivered three (3) days after deposit in the U.S. mail if such written notification is sent by registered mail or certified mail, postage prepaid, with return receipt requested, correctly addressed as follows:

If to City: City Administrator, City of Wimberley
 12111 RR12
 PO Box 2027
 Wimberley, Texas 78676

If to Grantee: Aqua Texas Inc.
 1106 Clayton Lane, Suite 400 W
 Austin, Texas 78723

or to the last address for notice, which the sending party has for the receiving party at the time of mailing. Either party may change its address for notice designating the new address in a written notice served upon the other party in the manner provided herein. Notices or other information delivered in any other manner will be deemed delivered if and when actually received.

Section 16. Force Majeure.

Each party shall be excused for failures and delays in performance of its respective obligations under this Franchise due to any cause beyond the control and without the fault of such party, including without limitation, any act of God, war, riot or insurrection, law or regulation, strike, flood, fire, explosion or inability due to any of the aforementioned causes to obtain necessary labor, materials or facilities. This provision shall not, however, release such party from using its best efforts to avoid or remove such cause and such party shall continue performance hereunder with the utmost dispatch whenever such causes are removed. Upon claiming any such excuse or delay for non-performance, such party shall give prompt written notice thereof to the other party, provided that failure to give such notice shall not in any way limit the operation of this provision.

Section 17. Findings.

All of the recitals are hereby found to be true and correct legislative and factual findings of the City of Wimberley and are hereby approved and incorporated into the body of this Agreement as if copied in their entirety.

Section 18. Insurance and Bond.

18.1. The Grantee shall maintain throughout the term of the Franchise, and thereafter for a period of not less than twelve (12) months, general liability insurance with limits not less than:

- a. One Million and No/100 Dollars (\$1,000,000) primary; and,
- b. One Million and No/100 Dollars (\$1,000,000) umbrella, or other securities as acceptable to the City Administrator or his designee. Insurance policies and certificates must be issued from an insurance company licensed to do business in the State of Texas and acceptable to the City, insuring against claims for liability and damages for the benefit of the City. The insurance shall include the City as an additional insured; however, the policy must provide that insurers shall have no right of recovery against the City and no recourse against the City for payment of any premiums or assessments.

18.2. The Grantee shall maintain through the term of the Franchise the requisite statutory workers' compensation insurance.

18.3. A copy of the insurance policy, or policies, obtained by the Grantee in compliance with this section shall be provided to the City, and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the City Secretary during the term of this Franchise, and shall be changed from time to time to reflect changing liability limits, as reasonably required by the City Council. The City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable requests for deletion or modification of particular terms, conditions, limitations, or

exclusions. If the City determines that a certificate of insurance is acceptable evidence for insurance coverage, a copy of the required endorsement shall be attached to the certificate of insurance.

18.4. The policy shall contain a provision that it may not be canceled, revoked or annulled by the insurer without giving the City ten days' prior written notice. The Grantee shall not surrender or release such policy without filing in lieu thereof another policy complying with the requirements of this section.

18.5. Neither the City or any officer or employee thereof shall be liable for the financial responsibility of any insurer, or in any manner become liable for any claim, act or omission, relating the Grantee's use of the public right-of-way.

18.6. The Grantee shall immediately advise the City of any significant litigation, actual or potential, that may develop and would affect this insurance.

18.7. Grantee shall annually obtain, maintain and file with the City Secretary, a corporate surety bond with a surety company authorized to do business in the State of Texas, and found acceptable by the City Attorney, in the amount of Seventy-Five Thousand and No/100 Dollars (\$75,000), or of the estimated amount of the value of work anticipated to be completed that year, whichever is greater, to guarantee the restoration of the Rights-of-Way in the event Grantee leaves a job site unfinished, incomplete, unsafe or unreasonably delays the completion of the construction. Grantee shall provide this corporate bond within thirty (30) days of the issuance of a permit under this Franchise but prior to commencement of construction. Should Grantee without a bond in place leave a job site in the Rights-of-Way unfinished, incomplete, unsafe or unreasonably delays the completion of the construction, Grantee shall pay the actual cost of restoring the Rights-of-Way, plus any administrative fee to reimburse the City's cost of overseeing any such restoration.

18.8. The rights reserved to the City with respect to the insurance or bond are in addition to all other rights of the City, whether reserved by this Franchise or authorized by law; and no action, proceeding or exercise of a right with respect to such insurance or bond shall affect any other right the City may have.

Section 19. Indemnification and Hold Harmless.

19.1. The Grantee shall, at its sole cost and expense, indemnify, defend and hold harmless the City, board, its agents, officers and employees, against and from any and all claims, demands, causes of actions, suits, proceedings, damages, liabilities and judgments of every kind by or on behalf of any person, firm, corporation or other entity, arising from or due to the Grantee's construction or operation of the System, or arising from any act of negligence of the Grantee, or any of its agents, contractors, servants, employees or licensees, and from and against all costs, attorneys fees, expenses and liability incurred in or about any such claim or proceeding brought thereon, and from any and all claims arising from any breach or default on the part of the Grantee to be performed pursuant to the terms of this Franchise.

19.2. The Grantee shall, at the sole risk and expense of the Grantee, upon demand of the City, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, or otherwise brought or instituted or had by third persons or duly

constituted authorities, against or affecting the City, its officers, board, agents or employees arising out of or due to the Grantee's construction or operation of the System in the City.

19.3. The Grantee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand, rendered made or issued, against the Grantee, the City, its officers, board, agents or employees, for the foregoing; and such indemnity shall exist and continue without reference to or limitation by the amount of any policy of insurance, or other assurance required hereunder or otherwise.

Section 20. Interpretation.

Each of the parties has been represented by legal counsel of their choosing in the negotiation and preparation of this Franchise. Regardless of which party prepared the initial draft of this Franchise, this Franchise shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any party.

Section 21. Governmental Function.

It is the City's contention and belief, that all of the lawful regulations and activities by the City are determined to be governmental for the health, safety and welfare of the general public.

CITY OF WIMBERLEY:

Tom Haley
Mayor

ATTEST:

Cara McPartland
City Secretary

GRANTEE:

AQUA UTILITIES, INC. DBA AQUA TEXAS, INC.

Printed Name: Robert L. Laughman

Title: President

Date: _____

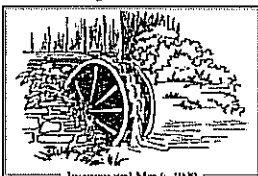
STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of _____, 2009, by Robert L. Laughman, as President of Aqua Utilities, Inc. dba Aqua Texas, Inc.

Notary Public, State of Texas

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: CONSIDER PROVIDING
DIRECTION TO PLANNING AND ZONING
COMMISSION ON REGULATION OF ALCOHOL
SALES IN THE CITY

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☐ Resolution

☒ Motion

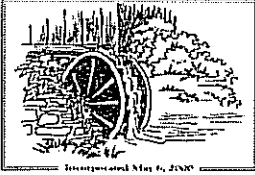
☒ Discussion

Project/Proposal Summary:

Earlier this month, an overwhelming number of residents voted to go "wet" in Wimberley. The approved measure permits alcohol sales in stores, restaurants and bars in the city.

With the approval of the local option, there is a need for the City of Wimberley to review and update its zoning regulations as they relate to alcohol sales. This item was placed on agenda to allow City Council to provide some direction to the Planning and Zoning Commission as it prepares to address the issue of alcohol sales.

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: CONSIDER APPROVAL
OF A CONTRACT WITH *DESIGN WORKSHOP*
FOR DEVELOPMENT OF THE BLUE HOLE
REGIONAL PARK

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☐ Resolution

☒ Motion

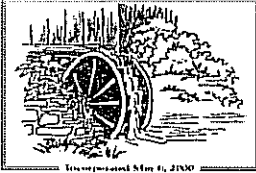
☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow City Council to discuss and consider approval of a contract with *Design Workshop* to provide architectural design, landscape architecture, engineering and construction administration services relating to the development of the Blue Hole Regional Park. The Colorado-based firm, with offices in Austin, was recently recommended for the project by the City's Blue Hole Development Task Force following an extensive review of firms who responded to the recent Request for Qualifications (RFQ) issued by the City.

At the time of production of this packet, City staff was wrapping up contract negotiations and finalizing details of the proposed contract. A copy of the proposed contract for design services will be presented to City Council under separate cover for review and consideration.

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: CONSIDER SETTING A
DATE FOR A CITY COUNCIL WORKSHOP WITH
WATER WASTEWATER ADVISORY BOARD

Funds Required:
Funds Available:

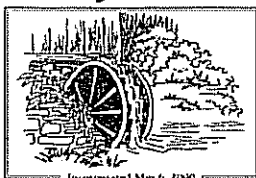
Council Action Requested:

- ☐ Ordinance
- ☐ Resolution
- ☒ Motion
- ☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow City Council to discuss and consider setting a date for a workshop with the City of Wimberley Water Wastewater Advisory Board.

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: CONSIDER SETTING A
DATE FOR A CITY COUNCIL WORKSHOP ON
PROJECTS AND PRIORITIES FOR THE CITY OF
WIMBERLEY

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☐ Resolution

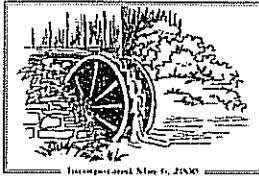
☒ Motion

☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow City Council to discuss and consider setting a date for a workshop to develop long and short term priorities for the City.

City Council Agenda Form



Date Submitted: May 18, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: CONSIDER REQUEST
FROM WIMBERLEY VILLAGE LIBRARY FOR
BLUE HOLE DAILY PASSES

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☐ Resolution

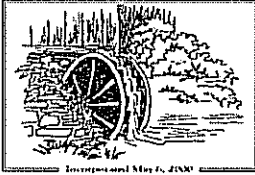
☒ Motion

☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow City Council to discuss and consider action on a request from the Wimberley Village Library for the City to provide ten (10) complimentary daily admission passes to the Blue Hole Regional Park as prizes the Library's Summer Reading Program.

City Council Agenda Form



Date Submitted: May 16, 2009

Agenda Date Requested: May 21, 2009

Project/Proposal Title: CITY COUNCIL REPORTS

Funds Required:

Funds Available:

Council Action Requested:

☐ Ordinance

☐ Resolution

☐ Motion

☒ Discussion

Project/Proposal Summary:

This item was placed on the agenda to allow for reports to be presented by the Mayor and members of City Council and for future agenda item requests.