

City of Wimberley
City Hall, 221 Stillwater
Wimberley, Texas 78676
Minutes of Joint Special Meeting of the City Council and
Planning and Zoning Commission
October 11, 2016 at 6:00 p.m.

City Council and Planning and Zoning Commission joint meeting called to order at 6:00 p.m. by Mayor Mac McCullough.

Council Members Present: Mayor Mac McCullough and Councilmembers Bob Dussler, Craig Fore, Sally Trapp, Gary Barchfeld, and John White.

Planning & Zoning Commission Members Present: Chair John Urban, Commissioners Austin Weeks, Natalie Meeks (arrived at 6:02 p.m.), Charles Savino, Rebecca McCullough, Gail Pigg and John Espinoza.

Staff Present: City Administrator Don Ferguson

Mayor McCullough spoke briefly on the purpose of tonight's meeting and noted the divisiveness of this issue for cities, specifically the City of Austin.

1. Presentation of Overview of Short-Term Rental Review Project. (Place Four Councilmember Gary Barchfeld)

Councilmember Barchfeld thanked everyone for attending and stated Council's goal to unite a divided community to work cohesively as a community. He noted the moratorium in effect for short-term rentals and highlighted the meeting schedule with specific groups, with tonight's meeting to focus on non-property owners of short-term rentals. He posed the question: "Should short-term rentals be a part of the landscape here in Wimberley, and if so, where should we have them?" He asked for public comments on not only short-term rental problems, but possible solutions to those problems. He outlined meeting/speaker procedures.

2. Presentation of Overview of Short-Term Rental Industry and Local Regulations. (City Administrator)

City Administrator Ferguson provided an overview of the short-term rental industry, including:

- Definitions of the two types of short-term rentals, which are vacation rentals and bed and breakfasts, and the differences between the two types
- Significant role of short-term rentals on the local economy and City revenues
- Approximately 66 short-term rentals currently exist in the City, including a breakdown of vacation rentals versus bed and breakfasts, and grandfathered status of some existing rentals
- Twenty-six percent (26%) of short-term rentals are located on Flite Acres Road
- Thirty-one percent (31%) of short-term rentals are located along or near the Blanco River

or Cypress Creek

- Remaining short-term rentals are scattered throughout City
- Short-term rentals require approval of a Conditional Use Permit (CUP) or grandfathered status (pre-existing, non-conforming use)
- CUPs as zoning actions that “go with” the subject property, regardless of changes in ownership
- Compliance issues such as enforcing CUP conditions and complaint procedures

3. Public Hearing

Hold a public hearing to gather input relating to the operation of short-term rental facilities from those who do not own, operate, and/or serve as reservation agents for short-term rental facilities.

Mayor McCullough stressed that tonight’s meeting only allows for speakers who do *not* own or operate short-term rentals. He noted that he has re-ordered the speakers names on the sign-in sheet, which will not be called in the order as originally listed.

Mayor McCullough opened the public hearing.

Bill Zinkgraf of 306 Summit Loop spoke of increased traffic on his privately maintained neighborhood roads and cited recent costs of about \$4,000 incurred due to wear and tear that has occurred. He said he is a proponent of property rights, except when it encroaches upon his peace or goes against neighborhood covenants. Mayor McCullough stated the City does not enforce deed restrictions, which Mr. Zinkgraf was aware of. Mr. Zinkgraf spoke of his wife’s history as a Wimberley resident and presence of permanent residents after the flood who helped each other out, as opposed to short-term rental owners who were not around after the flood. He did not feel money should be made off the back of his neighborhood and the hard work residents have put into it, with no benefits. As the father of three daughters, he said having a “rotating frat party” creates traffic and noise. Although an advocate of property rights, he did not feel the activities next door are conducive to an environment he wants live or raise children in.

In response to Mayor McCullough’s inquiry about complaints on Summit Loop, City Administrator Ferguson replied that the City has taken enforcement action on some complaints.

Tommy Hayden of 614 W. Summit is a realtor who spoke of clients interested in property to use as a short-term rental until they can retire permanently to Wimberley. He noted a shortage of properties within Wimberley that have obtained an existing vacation rental CUP. He expressed concerns that the moratorium would last longer than three months, which would prevent his clients from making timely decisions on buying properties. City Administrator Ferguson advised the moratorium is scheduled to end in early December 2016 and an extension is not planned at this time. Councilmember Barchfeld said the intent is to not extend the moratorium past the end of the year and suggested waiting to submit any CUP applications, in the event changes are made to the application form. City Administrator Ferguson provided clarification on the City’s boundaries and regulatory authority in the ETJ.

Mike Crowley of 413 Hidden Valley Crossing spoke in opposition to approval of short-term

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rental CUPs based on his belief that when he signed the contract on his house that short-term rentals were not allowed and his investment was protected. He questioned why the City would want to get involved in this type of thing and whether the City has obtained legal advice on this issue. He spoke of his rights as a property owner and said approving CUPs seems counterintuitive to the American way of self-government. He asked Council to consider what Wimberley wants and questioned enforcement of CUP compliance with one city marshal to handle complaints. Mr. Crowley said there is plenty of commercial space for hotels.

Chris Webre of 2205 Spoke Hollow pointed out that long-term rentals are still a possible option for property owners. Mr. Webre and his wife oppose short-term rental CUPs for previously stated reasons, including negative impact to property values. He said a recent property owners meeting was held and not one person in the group favored short-term rental CUPs, as they wanted to keep the area as a neighborhood.

Jim Randall of 1530 FM 3237 expressed his objections to short-term rental CUPs and cited his interest in protecting his investment, which he said does not include having vacation rentals next door. He said if had known vacation rentals would be allowed he would not have bought his property.

Judy Bass of 208 Summit Loop appreciated the opportunity to speak and said Summit Loop has a privately owned and maintained road and water system, which is a lot of responsibility placed on the shoulders of twelve homeowners. She said short-term renters are extremely taxing on the road and water system and cited instances of up to 20 guests per weekend. She cited lack of street lights, secluded location, and undesirable activities by renters that are hard to enforce. She said complaints to homeowners and the sheriff's office resulted in no responses. She stated there is constant noise and disturbance of her peace and quiet. Ms. Bass referenced positions taken by Texas Attorney General Ken Paxton and the City of Austin on short-term rentals and asked "what about our rights as property owners?" Ms. Bass asked what benefits she gets as a property owner from having short-term rentals in our community. She regretted not speaking in opposition at the Board of Adjustment's meeting when statements were made that short-term rentals help property values and said she knows of no one who agrees with that statement. She cited problems with maintenance and upkeep of short-term rental properties. Ms. Bass invited Council and Commission members to visit her deck on Summit Loop on weekends to personally experience the negative impact of renters.

Dick Adams of 202 River Bluff Lane spoke of previous visits with Council and City Administrator Ferguson on problems with nearby renters and was disappointed that short-term rental CUPs had subsequently been issued. He said the property owners association has voted against rentals three times, including the most recent vote conducted by written ballot. He noted the deed restrictions against short-term rentals will be filed with Hays County within 90 days, regardless of the City's issuance of CUPs or grandfathered status. He advised that the association will actively pursue legal action for those in violation of the aforementioned deed restrictions.

Greg Douglas of 513 Summit Loop agreed with earlier comments by Bill Zinkgraf and Judy Bass and added there is a serious problem with the narrow, winding roadway with several blind spots. He said now there is a caravan of cars coming up and down a road drivers are not familiar

with and make turns too fast. He also noted that with weekend rentals it is likely renters will be drinking alcohol which exacerbates traffic safety problems, as speed and recklessness increases.

Craig Reitz of 504 Rocky Springs Road objected to the grandfathered vacation rental next to his home. He said this is an important issue for permanent, full-time residents and cited the advent of “airbnb” and “vrbo” as causing problems nationwide with rentals. He noted differences between vacation rentals and bed and breakfasts and cited legal definitions that he felt categorize vacation rentals as “boarding houses.” He referred to the City of Austin’s position on vacation rentals. Mr. Reitz compared full-time residents to absentee owners and described a community of residentially-zoned neighborhoods as being for residents, not for commercial businesses. Mr. Reitz noted that the City denied a CUP that would have allowed *The Hog Pound* to serve alcohol, while “the guy next door to me is serving liquor to the people that are there.” He said it is always about following the money and said he does not get any services for the \$200,000 revenue generated from short-term rentals. He spoke of the economic gain to short-term rental owners who run a business. Mr. Reitz cited the City’s ordinance regarding grandfathering of pre-existing short-term rentals and said when the Hotel Occupancy Tax was enacted people were caught operating illegally and those without a CUP were given an opportunity to apply for grandfathered status under a newly adopted policy. Mr. Reitz said the City grandfathered 24 short-term rentals with minimal or no documentation and felt it needs to be reconsidered and modified. He did not feel the yellow signs placed on properties with pending CUP applications and letters sent to surrounding property owners provided adequate public notification. He questioned why CUPs are allowed to operate when properties change ownership without review and why grandfather applications are reviewed and approved only by the city administrator. Mr. Reitz did not believe that CUP complaints can be effectively investigated or enforced and felt there should be an annual review. He said that turning residential units into commercial units increases the property’s value. He understood that renters want to have a good time on vacation, but did not feel there is adequate protection for neighbors who deal with issues such as noise and foul language.

Barry Tyler of 100 Sunrise Circle spoke of the long-standing battle against short-term rental CUPs waged by well-organized Paradise Hills residents who were able to get two of three CUP applications denied. He referenced a letter sent to all Paradise Hills residents surveying their feelings on short-term rentals and noted 95 percent of the letters returned were against issuance of CUPs. He stated that it would take about \$150,000-200,000 in legal fees to change his neighborhood’s deed restrictions; therefore, neighborhood organization was favored over legal action. Mr. Tyler said he intends to remain in his home, despite traffic problems created by a nearby bed and breakfast. As a citizen of Wimberley, he stated this is a community intended for homeowners and not businesses.

Lee Ann Bower of 3020 Flite Acres Road spoke of flood damage to her home and plans to rebuild a new home on one lot, while using the existing house as a bed and breakfast. She said they would be there all the time to monitor guests. She recognized problems with some existing Flite Acres short-term rentals and cited her history of complaint reporting. She did not want Wimberley to have areas of nothing but rentals as is the case in certain parts of Fredericksburg. She did not feel CUPs should continue when properties are sold and felt this encourages areas made up exclusively of short-term rentals. Ms. Bower felt the “commercial vultures” came swooping down after the flood to buy up river properties to turn into commercial rentals.

Jenni Marino of 2908 Flite Acres spoke of her new job policing nearby short-term rentals and cited problems with having to confront renters who speed, litter, and trespass. She said there is a whole section of Flite Acres that is all short-term rentals, but noted that renters wander up and down the river and cause problems. She spoke of liability incurred from people trespassing on her property. She stated noise is also an issue, as well as diminished property values. Ms. Marino agreed with earlier comments to create “term limits” if a short-term rental property is sold and would not allow the CUP to continue under a new owner.

Barbara Reitz of 504 Rocky Springs expressed appreciation for the opportunity to speak on common problems for the betterment of our community as a whole. She said this issue has turned neighbor against neighbor. She stated there are eight homes on her one way in/out street. Mrs. Reitz said they now have a grandfathered situation that should never have been allowed. She spoke of strangers coming in and out every 3-5 days, new cars, trash problems, and said these homes are now businesses, with management companies making money managing multiple properties. She said the yard is not maintained as well as it would be by a permanent resident. Mrs. Reitz felt that every single CUP should be judged by each subject neighborhood, cited her neighborhood’s deed restrictions, and asked about her property rights compared to someone who lives out of town. She also asked short-term rental owners if they want to keep Wimberley a high-end, sought-out place to be or if they want it to become just a rental. Mrs. Reitz did not blame renters, but stressed she lives here full-time and cares about her neighbors and community. She feared that Wimberley will become a transient place if short-term CUPs continue to be allowed.

Sandy Dunn of 466 Flite Acres Road spoke of her experience with Flite Acres rentals and said she found most properties improved by having vacation rentals. She said some of the smaller neighborhoods may need to be reviewed as appropriate locations and complaints need to be addressed and possibly revoked if there is going to be a problem with the community. Ms. Dunn observed the divisiveness around this issue and thought that after the major flood disaster the community is still hurting. She believed we need to look at each individual case and feared that if CUPs are removed there will be unregulated short-term rentals with no oversight or recourse. She favored coming up with a plan to address CUP-related issues, such as possible revocation, if needed. She noted that people do not come here to stay in hotels and that they want to stay in a place on the river. She felt that properly maintained rentals can improve the properties and benefit our community.

Carmen Polhemus of 200 Wilson Creek Circle lives within walking distance from the Blanco River and favored taking a pro-active stance on this issue. She thanked bed and breakfast people who “do it right,” and was for anything that would prohibit an ad valorem tax. She recognized the City’s position on deed restrictions, but asked if the City’s CUP application could include information on checking with home/property owners associations regarding covenants and rules and requiring “sign-off” from those associations before approving CUPs. In closing, Ms. Polhemus spoke briefly about the Wimberley Cemetery Association.

Kathy McClain of 301 Rocky Springs Road spoke of a grandfathered vacation rental next door to her property and asked if real estate companies are responsible for telling clients there are vacation rentals nearby. She said neighbors have been pitted against each other and asked why

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the focus has to be “on just the little town” and not on the residents, who create income just as vacation renters do. Ms. McClain said she might have to put up a sign that says vacation rental people are not welcome and says “please go home.” She was fine with vacation renters having a good time, but wanted the rentals to be somewhere else. Ms. McClain thanked everyone for having a public hearing.

Donna Coffman of 2218 Flite Acres Road did not favor any more short-term rentals in her neighborhood. She said she bought her property in the country 25 years ago to enjoy peace and quiet and the privacy of the Blanco River, which she does not have to share with the public. She stated renters are not told by rental people that they do not have free access to the river. Ms. Coffman spoke of her property rights that renters feel they can take away and changes that have come to Wimberley.

River Meadows resident Fred Young spoke of his military background and personal property rights versus constitutional rights. He understood grandfathered rentals and noted one riverfront property in his neighborhood that charges \$1,500/night and does not blame the owners. But he said there should be limitations, as he has heard repetitive gunfire in the middle of the night, which he felt is likely target shooting.

Christine Byrne of 205 Blue Hole Lane spoke of a bed and breakfast/vacation rental across from her on Cypress Creek. She said there are seven people on her one way in/out street and two of them have short-term rental CUPs. She stated she has never had the experiences of some previous speakers and said that rentals on her street have not caused any problems. If there were any problems, Mrs. Byrne said they would take appropriate actions, such as calling the City or law enforcement. She spoke of the close-knit nature of her street and noted that the Aults, who feared returning after flood events, are now able to rent their house and buy another place in Wimberley. She said the Aults can still enjoy their Blue Hole Lane house when it is not being rented. Mrs. Byrne stated there are some positives to short-term rentals.

Edward Davis of 3000 Flite Acres Road spoke of his past comments opposing short-term rental CUPs and expressed the same concerns of previous speakers. He said vacation renters do not have the same reasons for being on the river as those who live here. Mr. Davis stressed that noise travels along the river and visitors have no clue that people can hear them 200 yards away. He did not want his visiting grandchildren to be exposed to certain renter activities and offensive language. He recognized the City does not enforce deed restrictions, but felt a list of neighborhoods with deed restrictions could be maintained and the City could deny CUPs to those applicants with deed restrictions against short-term rentals. Mr. Davis also expressed concerns that those renters unfamiliar with the dangers of flooding can put their personal safety at risk. He said most neighborhoods oppose short-term rentals, particularly those with smaller lots or water frontage, and hoped a reasonable solution could be found.

Phil Collins of 1900 Flite Acres Road spoke of his ownership of 6 residential properties inside city limits, one of which has a CUP in place (2312 Flite Acres Road). In keeping with agenda item language, Mayor McCullough admonished Mr. Collins about speaking from the perspective of a short-term rental owner. Mr. Collins said he has more than a vested interest in the good of the neighborhood than of one single property. As an owner of properties in the extra territorial jurisdiction (ETJ) and commercial properties, Mr. Collins stated he is a long-term investor who

benefits the community. He said his existing permitted short-term rental is on just over 3 acres and has no signage. He made the following suggestions: keep signage to a minimum (or none); have sufficient off-street parking; require privacy fencing/vegetative barriers; no outdoor speakers; limit outdoor lighting; require annual inspections (with fee paid by property owner); clarify the CUP process; have a defined policy on day guests; set minimum age for renters; define a simple grading system to determine how well a certain CUP applicant could be successful and still be friends with neighbors; empower the Planning and Zoning Commission to conduct reviews and honor their recommendations 95% of the time; and more stringent grandfathering requirements. Mr. Collins spoke of his post-flood property acquisitions and building plans that will benefit the community. He asked Council and the Commission to look at the economic impact of their actions and cited statistics showing his personal expenditures bolstering local businesses and favored supporting local vendors.

Discussion between Mayor McCullough and an audience member asked about the precedent set by allowing Mr. Collins to speak at tonight's meeting, as its purpose is to gather input relating to the operation of short-term rental facilities from those who do *not* own, operate, and/or serve as reservation agents for short-term rental facilities. Mayor McCullough stated he was trying to walk a line that would not be totally rude and keep Mr. Collins from deviating from the agenda item.

Judy Thompson of West Blanco Bend spoke on the possibility of maintaining a database including information such as short-term rental owners, locations, deed restrictions, and complaints. She said that when grandfathered, income-producing properties go on the market they are worth more money and that realtors try hard to inform potential buyers of surrounding short-term rentals.

Mayor McCullough closed the public hearing.

From the audience, Barry Tyler asked a question about Hotel Occupancy Tax (HOT) funding. Mayor McCullough said funding is currently being reviewed. City Administrator Ferguson clarified that HOT funds are to be used for specific purposes such as projects that benefit the lodging industry or put "heads in beds." He stressed HOT funds are to be used for items such as special events or marketing projects, and not for items such as sidewalks. Mayor McCullough noted there is income brought in by renters who spend money at local businesses. In response to Mayor McCullough's inquiry regarding deed restrictions, City Administrator Ferguson explained that cities in general do not get in the middle of deed restriction enforcement because they are particular to specific neighborhoods, subject to change, some are outdated, and some have significant civil rights liabilities.

Craig Reitz felt the City should consider (as opposed to enforce) deed restrictions in deliberations on the approval of CUPs. Mayor McCullough said deed restrictions may be brought up, but not enforced by the City. City Administrator Ferguson stated that CUP applications could be amended to require that the applicant research deed restrictions as part of the process, much like when people apply for building permits. He stressed the City's decision would not be based on deed restrictions but would give the applicant an opportunity to become informed on those restrictions.

Relating to the transferability of CUPs to subsequent owners, City Administrator Ferguson clarified that CUPs are zoning actions allowing for an additional use(s) that go with the property and do not change the base residential zoning. He said there could be performance reviews conducted on a yearly basis, including surrounding property owner notification, which would allow neighbors to provide input on existing short-term rentals. City Administrator Ferguson explained the State's "Twenty-percent Rule" that requires a super majority vote of Council to overturn a Planning and Zoning Commission recommendation of denial.

Discussion included questions and answers on the following topics:

- Limited number of short-term rental complaints received by the City
- Revocation of grandfathered status for one short-term rental due to complaints
- Documentation of complaints and preference for written complaints
- Public education on complaint procedures
- Allowing commercial operations in residential areas
- Code enforcement for CUP compliance

Councilmember Barchfeld thanked audience members for their comments and spoke of Council's intent to be inclusive and fair to everyone. He said we need public input from all stakeholders to improve the CUP process.

Mayor McCullough asked each Commission member on their individual perspectives of tonight's meeting and all agreed that this public meeting process is a valuable tool to use during the moratorium while considering various options. Certain legal questions were brought up for future discussion and Councilmember White said deed restrictions do weigh heavily on his decisions regarding commercial activities in residential areas.

Discussion continued on deed restrictions generally and confusion surrounding the City's position and their role in decision-making by Commission/Council members. City Administrator Ferguson cautioned that taking a deed restriction into account and basing a zoning decision on that consideration would be enforcing a deed restriction. Audience members provided comments on efforts to pursue civil actions against neighbors who have businesses in residential neighborhoods and effect of commercial activities on residents.

Mayor McCullough appreciated all of the comments received tonight and advised more meetings will be held in the coming weeks.

Adjournment: Joint City Council/Planning & Zoning Commission joint meeting adjourned at 8:33 p.m.

Recorded by:


Cara McPartland

These minutes approved on the 3rd of November, 2016.

APPROVED:



Mac McCullough, Mayor

