

City of Wimberley
City Hall, 221 Stillwater
Wimberley, Texas 78676
Minutes of Special Meeting of the City Council and
Special Meeting of the Planning and Zoning Commission
November 1, 2016 at 6:00 p.m.

City Council and Planning and Zoning Commission Joint Special Meeting called to order at 6:14 p.m. by Mayor Mac McCullough.

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

Planning & Zoning Commission Members Present: Commissioners Austin Weeks, Natalie Meeks, Charles Savino, Gail Pigg and John Espinoza. Chairman John Urban and Commissioner Rebecca McCullough were absent.

Staff Present: City Administrator Don Ferguson

City Council Agenda:

Participate in a Planning and Zoning Workshop regarding short-term rentals. (A quorum of the City Council may be in attendance at the workshop. City Council members will not take any action on any agenda matter.)

Planning and Zoning Commission Agenda:

Workshop to discuss comments received in recent public hearings regarding short-term rental properties and to discuss possible modifications to the City of Wimberley's short-term rental regulations.

Councilmember Barchfeld advised that the purpose of tonight's meeting is to hold a round-table discussion of public comments received to date and possible modifications to short-term rental regulations. He stressed that there is no intent to shut down short-term rentals and hoped modifications would help everyone co-exist as well as we can. He spoke of his meeting with Commissioners John Urban and Rebecca McCullough and of a letter he wished to read from Councilmember Dussler. Councilmember Barchfeld called upon Planning and Zoning Commission Vice Chair Natalie Meeks to convene the Planning and Zoning Special Meeting. Vice Chair Meeks convened the meeting at this time. City Administrator Ferguson stated there is a quorum present for the Planning and Zoning Commission and that there is not a quorum present for City Council.

Councilmember Barchfeld requested input from Council/Commission members on what types of questions they would like to pose to legal counsel to help them in their decision-making process. To expedite the process, City Administrator Ferguson asked that short-term rental questions be sent to him to forward to the City's legal counsel for review in advance of the next Joint City

Council/Planning and Zoning Special Meeting scheduled for next Wednesday, November 9, 2016. He noted Council/Commission members may still ask questions directly to legal counsel at the November 9th meeting.

Councilmember Barchfeld read the following letter from Councilmember Dussler:

“Gary - Many thanks for leading the vacation rental project. It’s a major undertaking you have been able to corral all the interested parties over the last 3 weeks. I thought the meeting was informative with a good amount of candid comment. As you know, I am opposed to establishing commercial businesses in private residential neighborhoods. The neighbors and property owners bought their homes and properties with the understanding that it was a private residential neighborhood and would remain that way while they lived there. When a commercial business is established, it changes the character of the neighborhood. The pattern has been that other residents in the neighborhood are encouraged to also seek approval to establish more commercial businesses. The neighborhood is no longer a private residential neighborhood. It is now a neighborhood with private homes and commercial businesses interspersed. This is unfair to all residents of the neighborhood and not just those within 200-feet of the commercial business. All residents had the character of their neighborhood changed and all the residents have had their property values impacted. Gary, I know you have heard these comments numerous times at City Council meetings, but some of the Planning and Zoning committee may have not heard them.”

Councilmember Barchfeld said he respects Councilmember’s Dussler’s position and continued reading Councilmember Dussler’s ideas on short-term rental issues:

“These comments relate to CUP applications, not to existing businesses. I thought several comments during the meeting were good suggestions and worthy of discussion. These are in no particular order. While we notify property owners within 200-feet of the proposed business, we might follow up to be certain that they have received the notification, then when the CUP is issued, we might do a follow-up to let those neighbors know of the CUP approval. CUP applications should request the applicant to identify whether or not deed restrictions are in favor or are opposed to commercial businesses in the neighborhood. This would give P & Z in its consideration for the application. While a CUP does not survive the sale of the property, it may be a good idea to have the CUP holder appear before P & Z or Council every two years to give an update on his activity, complaints, problems, or any support he might need from us. Residential realtors should be required to disclose to clients (buyers) the location of short-term rental properties in the neighborhood they are considering. It would be helpful to have a database of vacation rentals and bed and breakfasts with 24-hour contact information. I am not certain where we are receiving notification of complaints and dealing with complaints. There was discussion that the complaints could be called into City Hall and there would be a record of the complaint. After two or more complaints were filed, the CUP holder would have to appear before City Council to discuss how he plans to deal with these complaints. After a number of complaints are filed, Council could rescind the CUP. We need a system to deal with the urgent and immediate complaint. When a call is made to the sheriff or constable, many times they are unable to respond. If these urgent calls are numerous, it might be helpful to engage an off-duty security officer to be available on weekends. Funding for this might come from CUP holders or we might increase CUP fees. Thank you very much.”

Councilmember Barchfeld requested input on specific items, including:

- CUP applications and possible modifications such as:
 - 1) Requiring signatures of property owners within 200-feet of the subject property confirming he/she was contacted by the applicant regarding the proposed short-term rental
 - 2) Requiring the applicant to confirm that they researched any deed restrictions that may exist for the subject property relating to the proposed use
 - 3) Increasing the application fee for a CUP for short-term rental properties
 - 4) Allowing reimbursement of all but \$100 of the CUP application fee if the applicant chooses to withdraw his or her application for consideration prior to the final decision having been made on the application

Councilmember Barchfeld stated the intent is to let Planning and Zoning know that people have done all of their homework and while the City cannot enforce deed restrictions, it should be noted that the applicant has researched his/her deed restrictions. He also felt that if applicants talk to their neighbors about their plans it helps with communication among parties. He said an increased CUP fee may help with management of short-term rental CUPs. Councilmember Barchfeld felt the suggested \$100 refund is a good way to handle withdrawn applications.

Commissioner Pigg asked if the intent of an increased application fee is to discourage applicants from applying for short-term rentals and there was discussion of possible increased costs to the City to implement suggestions such as hiring off-duty security personnel or data management, which would be intended to cover costs and not to make a profit.

Discussion included:

- The value of short-term rentals to owners
- Fairness issues with increased CUP fees
- License fees versus application fees
- Added costs to the City to enforce short-term rental CUPs
- Possible changes to the city marshal's work schedule to include availability on weekends or adding another marshal position
- Challenges associated with providing enforcement officers every weekend
- Questions regarding use of Hotel Occupancy Tax (HOT) funds to offset short-term rental enforcement costs, which City Administrator Ferguson stated would not be allowed, as HOT funds are to be spent only for specific purposes
- Questions regarding the necessity for a CUP to operate a short-term rental versus a licensing program as an administrative process that would not pit neighbors against neighbors
- Statistics cited on the number of existing short-term rentals operating in Wimberley
- Use of a licensing program that does not carry over to a new owner when ownership changes
- Challenges to use of a "one size fits all" licensing program approach when dealing with land uses as part of the zoning process

- Licensing of an operation versus zoning of land use
- Fines/citations as a possible means to deal with complaints and provide “teeth” for enforcement efforts
- Revocation of CUPs as a possible consequence for problem short-term rentals
- Need to make applicants aware that deed restrictions are legal matters between private citizens and not enforced by the City
- Requiring signatures of property owners within 200-feet of the subject property as confirmation that he/she was contacted by the applicant regarding the proposed short-term rental, but not as an expression of opposition or support for the application
- CUPs as zoning actions that convey with the property, regardless of ownership changes, and differing public comments on the effect CUPs have on property values
- Possible extension of the notification area beyond 200-feet
- Vacation rentals versus bed and breakfasts and fewer problems reported with bed and breakfasts due to owner-residency requirement
- Guidelines/checklist to help Planning and Zoning in its decision-making process
- Possible minimum acreage requirements for short-term rental properties and potential problems with applying different standards for different-sized lots
- Defining “zero tolerance” in terms of complaint enforcement and establishing the validity of complaints
- Identifying short-term rental related problems
- Documentation of complaints and notification of management companies
- Sending the required 200-foot notification letter regarding short-term rental CUP applications via certified mail as opposed to regular mail
- Possible modification of the 200-foot notification letter to include advising property owners of their ability to submit comments via email if unable to attend public hearings
- Creation/maintenance of an online database of properly authorized short-term rentals within city limits
- City notification of property owners within the required 200-foot notification area via certified mail when a short-term rental CUP application has been approved, including contact information for the subject property’s responsible party, and the process for reporting complaints with provision of contact phone number
- Legal requirement for public hearings held by both Planning and Zoning and City Council in order amend the City’s Zoning Code
- Ability of Council to send cases back to Planning and Zoning when new information is received during the time between public hearings before each body
- Differences in the roles and authorities of Planning and Zoning and City Council
- Difficulties associated with setting deadlines to receive and consider public comments
- Lack of general favor for requiring a super majority vote of City Council to overturn any recommendation from Planning and Zoning
- Reasoning for requiring a super majority vote of Planning and Zoning Commission to recommend approval of short-term rental CUP applications when 20% of the notified area is in written opposition to the application, even if all other approval criteria is met
- Conduct a bi-annual performance review of each short-term rental CUP and grandfathered short-term rentals and require notification of property owners within 200-feet of the subject property of the review in order to provide an opportunity to offer

review comments

- Regulation of short-term rentals through permitting rather than zoning actions
- Use of the so-called “20% Rule” as a means to ensure denial of some short-term rental CUP applications and create an insurmountable hurdle to obtain approval
- Consideration given to comments of residents versus non-residents
- Complaint history of certain areas/neighborhoods and burden on property owners/POAs to enforce deed restrictions
- Establish uniform address signage requirements for short-term rental properties; concerns that such uniform signage identifies the property as a short-term rental that may be vacant; and purpose of signage to help guests locate properties
- Require short-term rental properties to have fencing or vegetative barriers on the side and rear property lines and lack of favor for making such barriers mandatory measures to provide screening or define property lines
- Limit short-term rentals as conditional use on residentially zoned properties 2 acres or greater in lot size and on all commercial properties
- Establish a licensing process for short-term rental properties with renewal and transfer requirements in the event of property’s sale
- Require responsible parties for short-term properties to reside within the 78676 zip code
- Modification to enforcement process establishing a telephone hotline/answering service for reporting complaints and determining whether complaints are valid
- Establishment of a zero tolerance enforcement policy and associated difficulties of such a policy
- Conducting courtesy compliance site visits for the purpose of making a visual inspection of the short-term rental property; regular inspections as part of a permitting process to ensure compliance

Discussion generally agreed there are problematic aspects of implementing or enforcing some requirements.

Councilmember Barchfeld requested that each Council/Commission member provide direction on which discussion items he/she liked or did not like and asked them to forward to City Administrator Ferguson three things that they think will help this process.

Councilmember Barchfeld also reminded Council/Commission members to forward any questions they may have for legal counsel prior to the next meeting on November 9, 2016.

City Administrator Ferguson provided clarification regarding upcoming meetings and possible options for action on ordinance modification(s).

Adjournment: City Council/Planning & Zoning Special meetings adjourned at 8:20 p.m.

Recorded by:



Cara McPartland

These minutes approved on the 17th of November, 2016.



APPROVED:

A stylized, handwritten signature consisting of a series of overlapping loops and a long horizontal stroke.

Mac McCullough, Mayor