

Town Council Meeting Minutes

April 11, 2019

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Phil Rubin called to order the meeting of the Town Council of the Town of Hideout at 6:00 p.m. for executive closed meeting and open meeting at 6:30 p.m. Meeting location is 10860 North Hideout Trail, Hideout, Utah. The Pledge of Allegiance was led by Mayor Rubin at the start of the open meeting.

2. ROLL CALL

Mayor Rubin conducted the roll call. The following were present:

Mayor: Phil Rubin

Council: Chris Baier, Kurt Shadle, Hanz Johansson, participating by telephone - Jim Wahl.

Also attending: Town Clerk - Lynette Hallam, Kent Cuillard – Public Works, Dan Dansie – Town Attorney, Bruce R. Baird, Bill Bartlett, Nate Brockbank, Melyssa Davidson, Jerry Dwinell, Jared Fields, Will Pratt, Vytas Rupinskas, Kira Slawson, Ron Spratling, Joel VandenAkker and Matthew Weller

3. MINUTES – Consideration and approval of Minutes for Regular Meeting of March 14, 2019

Council Member Chris Baier motioned to approve the minutes of the regular meeting of March 14, 2019 with changes made by Kurt Shadle (language, grammar, and identify speakers). Council Member Shadle second the motion and the motion was unanimously passed with affirmative votes from Councilors Wahl, Bair, Shadle and Johansson.

Council Member Kurt Shadle asked the Council members to review and feedback comments on Council meeting minutes before Town Council Meetings in teams for the future meetings to save time.

4. PUBLIC HEARING – Discussion and Possible Approval of Ordinance Defining Design Standards for Telecommunications Equipment within The Town of Hideout

Jerry Dwinell, Planning Commission Chair, spoke about the design standards approved by the Planning Commission and the modifications the PC made from an earlier draft, and specifically mentioned that the PC is recommending in the new version to adopt UDOT's design standards.

The design standards ordinance states that telecommunications provider must adhere to these design standards. If they cannot, the ordinance specifies a number of conditions that need to be met in order to gain approval. If above ground, telecommunications equipment must be landscaped and maintained. Landscaping is required in order to preserve the pristine beauty of Town.

Council member Chris Baier asked if telecommunications equipment, except junction boxes, will be underground. Jerry Dwinell responded that the standards require at ground or lower. Steep slopes have other standards.

Attorney Dan Dansie spoke, noting changes made were largely regarding the landscaping requirements (give flexibility in section 2 of ordinance, removed requirement for landscaping to be “irrigated” (telecom provider may not have access to water). Also modified provision C, termination of agreement. New language will extend a notice of termination of franchise agreement before automatic termination. A link to UDOT standards is in the ordinance appendix.

A provision requiring a professional landscaper was modified to say “approved by planning commission” to allow for flexibility. Jerry Dwinell said the PC will make sure not to abandon all standards in place.

MAYOR OPENS THE FLOOR TO THE PUBLIC.

No comments.

MEETING NOW CLOSED FOR PUBLIC INPUT

Council Member Kurt Shade made a motion to approve the Ordinance Defining Design Standards for Telecommunications Equipment. Council Member Jim Wahl seconded.

Councilors Johansson, Baier, shade, and Wahl voted unanimously for approval.

5. ACTION ITEM – Discussion and Possible approval of a Franchise Agreement between The Town of Hideout and All West Communications, Inc. Regarding Construction Access for Telecommunications Infrastructure

Dan Dansie presented an agreement that was worked between Town after a number of drafts working with Council Member Kurt Shadle and Planning Commissioner Jerry Dwinell from the Town, and All West and their council. The document strikes a balance, allowing All West to exercise their rights under their certificate of public necessity to provide telecommunications within town and also protects the Town in terms of disruption of rights of way and how to mitigate and remedy these.

Most recently, Ryan Taylor, new Town engineer, gave suggestions to the agreement- these were presented to All West and many of his suggestions were approved by All West.

Dan Dansie recommended that the proposed agreement be approval by the council.

Councilor Shadle asked “what did All West not accept?” Dan Dansie responded that a handful of suggestions Ryan proposed were declined by All West declined as their position was that the suggestions exceeded the scope of what the Town can permissibly regulate. The Mayor stated that he saw the list provided by Ryan and understood that a few of the Engineer’s requests his requests may not be accepted. The Mayor then stated that he felt the items rejected by All West were in the realm of reason and the Mayor felt the rejected items did not pose a risk for the Town.

Councilor Shadle found the unwillingness by All West to define the threshold for them to extend their service to the rest of the town troubling. From the previous meeting (30 minutes of discussion last council meeting), All West stated that they won’t talk with the Town unless have a signed franchise agreement. He found the difference to be the difference between what is mandated between state and federal laws and what two willing parties agree to be a fair and just agreement among both sides.

Mayor asked if there were any other comments from the council? Dan Dansie replied that All West is present and may like to address the council. The Mayor welcomed All West's statement and reminded all that tonight's session is not a public hearing opportunity as the public hearing was held in a prior meeting.

Statement by Matt Weller, president of All West and attorney Kira M. Slawson.

"I think it's a good compromise" regarding the agreement. She encouraged Town to consider passing the agreement and she's open to taking questions.

Councilor Shadle asked whether All West is focusing on one part of town where the growth is occurring.

Matt Weller responded that they are looking to provide service based on growth. For the past ten years, there hasn't been enough growth. Now that the town is exploding, we're looking for anywhere there's growth.

Councilor Shadle asked "Can you define this?" "What is the threshold?"

Matt Weller said All West must consider the distance to build and stated that a mile of fiber costs a lot. As any business, they must consider return on investment. If there's clustering and density, then they consider it seriously.

Councilmember Baier stated she's happy that fiber infrastructure construction is happening. When she moved here there was no service- thrilled that town is now attracting the attention of these providers and fiber is being brought to town. It's something the community wants and the community needs. She thanks All West for coming forward

Councilor Wahl asked if All West was including existing homes

All West's Matt Weller said that would depend upon the cost to get there, going through the rock. They're looking at it all – "we'll stake the whole thing".

The Mayor asked Matt Weller "Is it true that initially in the Rustler area?" Mr. Weller answered that All West anticipates 2 to 3 areas. All West haven't defined these areas yet. They will be finalized depending on where All West can access. He reminded those present that All West has to go through the permitting process with UDOT and get their approval, and that UDOT controls a large swath of ground.

Council member Shadle spoke-

If look at density on this side, it's not a large stretch to incorporate these less-dense areas. If you look at the Town holistically its reasonably dense. The Town would prefer that All West not leave orphans and only serve the denser areas. Councilor Shadle stated that we are concerned that everyone is treated the same.

Matt Weller stated that they have to build prudently. But the long-term goal is the entire Town.

The Mayor asked Councilor Johansson was asked if he has any questions.

Council member Johansson stated that he was disappointed that All West could not define the 2 to 3 areas where they would begin the service and asked that All West inform the Town as soon as they have a plan. The Councilor then asked All West to define "linear" fashion"

When asked to clarify linear staking Matt Weller responded:

1. Franchise agreement
2. Then Staking, which is when All West finalizes costs. All West fiber is on eastside of SR 248 – With UDOT we must decide path that's best to get to the west side
3. Apply to UDOT
4. Then apply to Town for permits, etc.

Dan Dansie- Clarifying for all – The Franchise agreement does not specify when and where All West will provide service, only HOW they'll access the Right of Way. The Agreement documents gives them the right to use the right of way, once they determine when and where they will provide service.

Councilor Shadle asked Mr. Weller how often franchise agreement gets signed, but All West decides not to enter a Town. Mr. Weller stated that he could not think of any situations when they haven't entered a town after signing a franchise agreement.

Mayor Rubin reminded the Council that All West, as a public utility, has a legal right to utilize the ROW. And therefore, recommends that we move forward with the Agreement. Unless there is language there in the agreement that the Council cannot abide, we should sign. The Mayor stated that he believes that if we fail to sign, we will face litigation.

Mayor Rubin asked to move to approve franchise agreement that provides construction access to All West Communications for telecommunications infrastructure between All West Communications and the Town of Hideout.

Counselor Chris moves the motion, council member Hanz Johansson seconded the motion, councilors Wahl, Johansson, Baier, and Shadle voted aye. The motion passed unanimously.

Mayor thanked the efforts of All West, the Town attorney, the Town Council, and the planning commission for taking care of the town. He stated that once he receives the final document it will be signed and delivered to All West.

6. MIDA Agreement -Discussion and Possible Adoption of a Resolution Consenting to Place a Portion of Town within a MIDA Project Area authorizing the Mayor to sign the Interlocal agreement with MIDA

Mayor Rubin stated that he had engaged Zions municipal finance to review the MIDA economics. Ms. Susan Becker is our contact there. The Mayor stated that he will work with her in the next week to get a final review document explaining the economics and will have her present the next time we have MIDA on the Town Council agenda. The Mayor mentioned that Susan Becker has done the validation for other communities and Ms. Becker appears to be a very capable resource for the town. Mayor stated that her engagement is a win for MIDA and a win for the town.

Councilor Shadle says he found it difficult for MIDA to focus when worked with them - when they were needed, they weren't to be found. The Mayor said Mr. Shadle's concern is something to think about as well as any other risks that Susan Becker may described to the Town.

The Mayor stated that if MS. Becker's work is ready, we may suggest that the Council have a special meeting (before the next regular council meeting) to review the presentation.

Councilor Baier reminded the Mayor that there are changes needed in the interlocal agreement as well. The Mayor said the whole agreement will come before the Council for review prior to finalizing the arrangement.

7. TEMPORARY LAND USE REGULATION - Possible Moratorium UNDER 6 mos. UTAH CODE 10-9A-504

At request of Council, Dan Dansie shared documents (using zoom to share with Councilor Johansson)

Dan Dansie presented a power-point document describing the purpose and basis for a temporary land use regulation (Mayor stated he will distribute the presentation with all council members after the meeting).

Planning commissioner asked if they can ask questions. The Mayor stated they can speak when we open the floor to public input.

Dan Dansie continues presentation on Temporary Land Use 10-9-5A-504

A moratorium is used when there's a legally sufficient basis, legally sufficient scope, and be of a limited duration.

When imposing a moratorium, it doesn't go to planning commission first for a recommendation (moratorium is a device to address a pressing public interest and need and therefore a legislative body needs to make a finding).

The counterbalance to not going through the Planning Commission nor having a Public Hearing is that there is a higher standard for adopting a temporary land use regulation. The key provision for a temporary land use regulation is that there must be a compelling countervailing public interest on an issue that presents substantive risk to the public's health, safety or welfare. It is not used to make a policy shift.

Mr. Dansie stated that in reviewing cases where a moratorium was being considered some jurisdictions utilized the State Property Rights Ombudsman whose purpose is to address Utah citizens and advise on their property rights and governments can go to them as well for advice.

Mr. Dansie then went on to cite a number of examples of how a moratorium has been utilized by other municipalities.

Summary of Moratorium Impact on Development:

A moratorium can prohibit construction, reconstruction of any structure or building and hold any subdivision from progressing with approvals. Does NOT affect previously approved development. Cannot be extended.

Jerry Dwinell asked what the council's purpose was for considering a moratorium

Councilor Baier responded that the council is trying to understand the mechanisms the Town has to influence or control land use and development

Mr. Dwinell asked the Council if this presentation was simply to gain information or is there something pressing that needs to be addressed?

Councilor Baier responded: We now have a substantially different general plan and the Town codes need to be revised to align with the General Plan. The Town has a lot of work to do.

Mr. Dwinell stated that he didn't think anything stated by the Council would satisfy the requirements for a temporary land use restriction (moratorium)

Councilor Shadle stated that when he was the Planning Commission leader, the PC discussed a number of items that concerned them regarding land use, but that as the concerns were for previously approved development activity, the idea of a moratorium would not be helpful.

Council member Baier asked Mr. Dansie to better define what constitutes the "public". Is it everyone in the Town, some subset, etc. She then cited as an example that suppose there was a part of the town where due to topography, there were some slides of dirt that collapsed on a slope. Would that constitute a public safety risk.

Mr. Dansie cited one of his earlier examples where a municipality cited two independent studies that suggested that there were some stability issues and therefore the municipality needed to take action. In Ms. Baier's example, he suggested that unless the Town's engineer came forward with concerns, or until the Town had studies done, there would not be a case for a complete moratorium. The Town might stop work until an engineer's opinion could be obtained but her example would not justify a moratorium in his view.

Council member Johansson was asked for his perspective. Mr. Johansson stated that he sees this the same way as Mr. Dwinell. Mr. Johansson said it's good that we know about this mechanism, but he does not see it applying to any current issue the Town is facing.

Bruce Baird asked to speak, he represents developers. Mr. Baird cited his considerable experience on both sides regarding implementing moratoriums. He said that they are complicated and often costly from a legal standpoint for all parties. He stated that 6 months is a limited time and many times the result of a moratorium is a six-month delay in a project but no real change to the project intent. He suggested that the better use of municipal funds would be to hire the best people the Town can find and get their codes, etc. updated vs. spending the money on legal challenges to a moratorium. He also said that in one case he worked on, the moratorium did not apply to developments requests that were aligned with where the Town was headed in their code updates.

Ron Spratling, Jordanelle Summit, asked to speak. He owns two parcels. 18 acres and another 5 acres. He asked if the Town adopted a moratorium, would that affect his ability to be annexed into Hideout.

Mr.. Dansie responded that it would depend on the reasons for a moratorium. The Town could certainly move forward with an annexation during a moratorium, but it would be unlikely that the Town would allow that to happen without understanding what the applicant for annexation planned to do with the land.

Mr.. Spratling concluded with a request to also think about the impact of a moratorium to the developer. And that good development can come forward even if your code is not the way you'd like it to be.

Mike Stuart GCD spoke next. He suggested that one issue for developers face every day is recession. HE believes we will see a slow-down as real estate is cyclical. As a developer, the market is evaluated every day. Determining how much land to improve is difficult as it is hard to foresee the future. And a moratorium makes it more risky for developers. They need to build and sell when the market is asking for product.

Jared Fields spoke next. He represents Mustang Development and affiliated companies. He said there are significant financial implications of a moratorium - market can decline, financial costs to hold property, short building season etc. And that is why developers would likely challenge a moratorium as it can be costly for them to cease work for 6 months.

Chris Ensign- Klaim Development spoke next. He said that if the Town had a valid reason for a moratorium, that they should consider doing it during the slow season to minimize impact to developers.

Mayor closes public input and thanks all. There was no decision to move forward with a moratorium at this time

8. RATIFICATION - Historical Ordinances as follows:

09-11 An Ordinance Approving the Vacation of Drainage Easement and Sewer Easement within Hideout. Canyon Phase 2 and 4; Providing for Severability and Providing for an Immediate Effective Date: 11-02 An Ordinance establishing Sign Regulations for the Town of Hideout, Utah: 14-01 An Ordinance Permitting Rules and Regulations for the Town of Hideout, Utah Providing for Repealer: Providing for Severability: and Providing for an Immediate Effective Date

Mayor Rubin stated that we have identified 3 ordinances that were voted and approved by Town Councils in prior administrations, but were not stamped, signed and put into code. These three ordinances are recorded in minutes but not signed and attested going back to 2009. We have been operating the Town enforcing these ordinances, but only very recently discovered that they had not been signed and attested. Therefore, the Mayor is asking the Council to ratify these ordinances.

Councilor Shadle stated he hadn't had a chance to look at them, so does not want to vote on them.

The Mayor stated that these are existing ordinances that need to be ratified. He stated we have the option to change them as we do with any ordinance or code. He also said that the Town is enforcing elements contained within these ordinances, and if we don't ratify them, then we may open the door for undesired behaviors.

Councilor Baier thanked Vytas Rupinkas for working with Mr. Dansie's office on discovering this issue, and thinks it's important to clean up the code, making changes as needed. Wants to assure town is protected now.

Hideout Public works commented that not ratifying puts them in a difficult place. Now that its known publicly that these ordinances are not ratified, we may be challenged.

Councilor Shadle commented that he feels the ordinances should put back to planning commission to review. Doesn't know if it's the best available statute. Needs to have someone look at the ordinances.

Vytas Rupinkas, as resident, stated that the request to ratify is not the same as "adoption". Ratify means accepting the provisions. Just addressing the administrative law. Take out of the gray area so it can be administered, published, etc. It can be fixed if needed in the future.

The Mayor asked for a vote from council to ratify pre-existing three ordinances (noted in the agenda) or vote not

He requested a motion to ratify and a second and then take a vote.

Jim Wahl makes motion to ratify the three historical ordinances so can be put into law

Chris Baier seconds the motion

Hanz Johansson, Jim Wahl, Chris Baier, voted Aye

Kurt Shadle abstains

Mayor Rubin - Three affirmative votes- The three historical ordinances are ratified.

9. CONTINUED ITEM - Consideration and Possible Approval of Petitions file by Mountain Resort Land Co. for: 1) A Plat Amendment to Combine Six Lots into Three New Lots, Eliminate and Vacate One Lot from the Plat and add an Easement for a Storm Drain Pipe. 2) A Plat Amendment to Combine Six Lots into Four New Lots, Eliminate and Vacate Two Lots from the Plat and Vacate part of the Public Road at the end of Fox Hollow Court (and dedicate a new Cul-de-sac. These changes are in the Soaring Hawk Subdivision.

The Developer's representative, Dave Erichsen, presented his request for changes to the Fox Hollow sub-division

A few minor issues with the plat - three issues raised by the Town Engineer remaining-

- Another valve is required and will be installed
- Stormwater report needed (it's difficult and time-consuming). He asked for a conditional permit.
- Cul-de-sac was platted so it could be 95 feet but showed on plat as 90 ft. Wasatch Co. has a minimum of 45 ft. radius. The agreement is now 95 ft and he will note this on the plans and adhere to this requirement.
- The requested changes will result in reduction of lots from 32 to 25.

Councilor Shadle stated that in the future plat combinations should follow a process that includes the Planning Commission. However, in this case he is in favor of moving forward.

Councilor Baier expressed concern that we have had lot combinations not following regular process and does not want another situation like this one.

Mayor Rubin noted that the Town might have to modify Titles 10 or 11 to make sure the process we want to follow is clearly articulated.

The Mayor stated that the we need a motion to approve the petition to amend of the Fox Hollow plats with the condition that the 3 items noted by the Town engineer and Mr. Erichsen were addressed.

Councilor Shadle motioned to approve. Councilor Jim Wahl second.

H. Johansson, J. Wahl, C. Baier and K. Shadle vote aye

10. DISCUSSION ITEM - Corridor Agreement

The Mayor mentioned that he had been on updating the SR 248 Corridor agreement with UDOT. He stated that we had received input from Dave Erichsen, Nate Brockbank, and Chris Ensign, and that the new Town engineer – Ryan Taylor, was reviewing now. Additionally, Mr. Dansie, the Town Attorney had provided input. The Mayor stated that he was red-lining the draft and would be submitting it back to UDOT in the next few weeks.

Councilor Baier asked if anything in the draft agreement pertaining to parks, trails, open space, or common space. Particularly around utilizing the UDOT easements for paved trails. If not, the Counselor suggested that this be included.

The Mayor stated that he would get a legal opinion if the language Counselor Baier wanted could be added to a corridor agreement vs. some other type of agreement with UDOT

Mayor- needs to get legal view to see if it can be included

Councilor Baier asked if the agreement provides crosswalks at the lighted intersections? She wants to assure crosswalks are included. The Mayor stated that he would query UDOT on this.

Mayor Rubin asked if there were any other comments on corridor agreement?

Counselor Shadle said that he was investigating the possibility adding radar speed signage along SR248 and hoped to have a response within a few weeks.

The Mayor mentioned that he met with Wasatch Co sheriff to look for support for speed enforcement. The sheriff stated that the Town can be empowered to enforce he speed with a vehicle and flashing lights. Can make traffic stops if we want. The Mayor suggested that this is one of the things we could do if we add police services.

Dave Erichsen mentioned that he is pretty sure that we previously ran conduit across SR248 for signal lights, and that may be available to provide power for the signage.

11. UPDATE - Utopia

Councilor Shadle spoke and described the status of the discussions with Utopia. He stated that there continues to be questions with the proposed agreement, especially how it intersects with the MIDA agreement. Mr. Shadle said the team would continue to pursue progress on the agreement over the coming weeks..

12. UPDATE - 2019 General Election

The Mayor stated that there is a notice on website describing the requirements for the general election. He mentioned that the Town has for 3 council seats up for renewal. The notice period starts now, the filing period is early June and he encourages residents of Hideout who will have lived in Town 12 months prior to the election date should come forward if they have interest. Additional information is on the website.

For clarification the Mayor reminded all that Council members Shadle, Hevarin, and Wahl seats are expiring at the end of 2019. The remaining Council members as well as the Mayor have 2 more years left on their term

13. FOLLOW-UP - Open and Public Meetings Act

The council discussed the status of the Public meetings act training. All counselors had completed except Dean at the time of this meeting. Jerry Dwinell stated that the Planning Commission had completed their training, but 2 new commissioners must complete and submit. The Mayor reminded all that this is an annual requirement of everyone.

14. CONSIDERATION & APPROVAL OF BILLS TO BE PAID - Consideration and Possible Approval of Payment of February 2019 bills.

The Mayor opened a discussion regarding payment of the Town bills. He mentioned that the agenda wrongly stated the bills were for February. Actually, the bills needing to be paid are for March 2019.

The Mayor stated that the listing of expenses reflects all March expenses except for the final payment for the General Plan. The mayor stated that the General Plan has been received and is available for the Council to review in the town's share file. The Mayor requested that we go ahead and add the final payment amount to the April listing and approve its payment now vs deferring until the May meeting.

Mayor - would like to go ahead and the additional bill from BYU.

BYU's bill to be approved for payment in addition to the March bills.

Councilor Shadle moved the motion to pay the bills be approved

Counselor Wahl seconded

Councilor Baier, Shadle, Wahl, Kurt, Chris, Jim voted yes

15. PUBLIC INPUT - Floor Opens for Any Attendee to Speak Opens floor for public input

No one in public asked to speak.

Closed public input

16. ADJOURNMENT

Motion to adjourn was moved by Councilor Shadle

Councilor Baier seconded the motion

The entire council voted unanimously to adjourn.

Lynette Hallam, Town Clerk