

HIDEOUT, UTAH
10860 N. Hideout Trail
Hideout, Utah 84036
TOWN COUNCIL MEETING
December 18, 2019
6:00 p.m.

TOWN COUNCIL REGULAR MEETING

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Rubin called to order the meeting of the Town Council of the Town of Hideout at approximately 6:00 p.m. on December 18, 2019 at 10860 N. Hideout Trail, Hideout, Utah, and led the Pledge of Allegiance.

II. ROLL CALL

Town Council Members Present:

Mayor Philip Rubin
Council Member Chris Baier
Council Member Kurt Shadle
Council Member Hanz Johansson

Absent: Council Member Dean Heavrin
Council Member Jim Wahl

Staff Present: Town Administrator Jan McCosh
Town Attorney Dan Dansie
Public Works Kent Cuillard
Town Clerk Allison Lutes

Others Present: Jerry Dwinell, Vytas Rupinkas, Paul Ziegler, Richard Lafayette, Carol Haselton, Tony Matyszczyk, Gino Venturi, Kip Freeman, Bob Hedges, Jared Fields, Tom Checkis, Jessica Rancie, Dan and Mary Mathaan, Steve Allen, Brad Airwet, Rich Fine, Jeff Schiff, Dan Rotan, Brent Ventura (by phone), Karleen Callahan (by phone), Donald Blumenthal (by phone), and others who did not sign in or whose names were illegible.

III. APPROVAL OF COUNCIL MINUTES

*Council Member Baier moved to approve the minutes of the **November 19, 2019** meeting Council Member Johansson made the second. Voting Aye: Council Members Baier, Johansson, and Shadle. Voting Nay: none. The motion carried.*

*Council Member Shadle moved to approve the minutes of the **December 10, 2019** meeting. Council Member Johansson made the second. Voting Aye: Council Members Baier, Johansson, and Shadle. Voting Nay: none. The motion carried.*

IV. AGENDA ITEMS

1. **Public Hearing - Discussion and Possible Adoption of an Impact Fee Facilities Plan**

Mayor Rubin stated the Council was not intending to vote on the issue this evening. Instead, the purpose of this discussion was to give everyone the opportunity to be heard, to consider any input as a result, and to determine whether the plan would need further modifications based on that input. If any modifications are identified, they would be discussed in the January meeting and if not, then the Council would consider moving forward on a vote at that time.

Dan Dansie summarized the purpose for considering potential impact fees, explaining they were common among Utah municipalities of any size. If a municipality has an impact fee plan in place, it is an indication the municipality is trying to address capital improvements and public facilities in a reasonable and responsible way. Items for which an impact fee can be assessed are prescribed by state law and vary by jurisdiction. Impact fees, for the most part, are a part of life in connection with development throughout the state of Utah. State law is rather specific on how impact fees should be used for "system improvements", defined as public facilities that are designed to provide service areas within a community at large. In contrast, "project improvements" are those required for a specific neighborhood.

Next, Mr. Dansie reviewed that for nearly two years, negotiations ensued between the Town and the master developer, Mustang Development ("Mustang"), who asserts that reimbursement obligations exist pursuant to the Master Development Agreement ("MDA"). Mr. Dansie commented that while the Town did not necessarily concur with the accuracy of Mustang's assertions, the Town Council believed it would make the most sense to try and resolve those claims in an amicable and mutually agreeable manner through the use of an impact fee ordinance. Thus, the Town undertook a sizeable project to gather relevant information, retaining Horrocks Engineering to conduct its own investigation. The Town also worked extensively with Mustang, relying on data they provided. The Town and its engineers compiled several drafts of the Impact Fee Facilities Plan ("IFFP"), the numbers for which changed as the Town learned more facts about the infrastructure costs.

Mr. Dansie then recounted the outcome of the May 2019 Council meeting, during which a draft IFFP was presented. Several owners and developers expressed they hadn't been given the opportunity to sufficiently participate in the process or to provide feedback. Consequently, the decision was made to receive additional feedback, which the Town received in the ensuing months. Brent Ventura (Horrocks Engineering), was tasked with assessing, analyzing and implementing as appropriate the feedback received, some of which included: 1) the definition of system improvements was too broad and needed to be narrowed; 2) the IFFP had not accurately identified which neighborhoods received which services; 3) were construction costs accurately stated: were those costs based on 2018-2019 costs as opposed to 2012-2014 costs when the improvements were constructed; and 4) validity for the interest component stated in financing cost.

The current draft presented this evening is the result of the engineer's "top to bottom" review and incorporation of the feedback received. This draft: 1) more accurately addresses the neighborhoods receiving services; 2) reduces the scope of system improvements particularly regarding transportation system improvements; and 3) revises construction cost numbers. With the stated revisions, Mr. Dansie felt the proposed IFFP was continuing to further the Town's goal to produce a plan that was accurate, legally defensible and made sense for the community.

Council Member Shadle inquired about a communication received this afternoon from Jared Fields relating to the Jordanelle Special Service District Bonds and how it could impact the current impact fee analysis. Mr. Dansie responded this issue had been the subject of discussion for the past year, but to date, the team hadn't been able to total the number of dollars paid and its connection to the impact fee analysis. The goal was to evaluate the information in the next month and make the determination whether it would be appropriate to include in the IFFP.

With respect to Soaring Hawk and Golden Eagle, it was noted that those areas were included in the IFFP only as to roads and sewer, for those connect into the Town infrastructure that are deemed system improvements. Any other improvements fall under the district bond. Mr. Dansie commented that the Executive Summary in the IFFP identifies each of the subdivisions and which of the public improvements each was utilizing.

Council Member Johansson solicited comment from Mr. Dansie concerning a letter submitted by a landowner, Mr. Miller, in opposition to the IFFP. Mr. Dansie agreed with the premise of Mr. Miller's letter in that the Town needed to develop a plan that is legally defensible. However, he noted that the *Banberry* case cited in Mr. Miller's letter was a 1981 case, and the statute governing impact fee plans had been revised numerous times since. The statute included in the most recent draft of the IFFP provides a framework for a municipality to comply with the general premise of *Banberry* cited in Mr. Miller's letter.

Council Member Shadle noted that the original impact fee number was far greater than that presented this evening and he felt it important citizens were aware of this, commenting that it was in large part due to Council Member Edgerton's stance on the issue. Further, when the impact fee discussion arose again, the current Council was very concerned with District 1 being financed via a bond, costs for which were part of the second revised IFFP. Those costs are now out thanks to this Council's due diligence.

Mr. Dansie noted Mustang indicated it had litigation on the table that it may undertake, and in its response, the Town would have arguments and defenses to raise per the MDA.

At 6:47 p.m., Mayor Rubin opened the meeting for public comment.

Kip Freeman, (Shoreline) asked how the proposed impact fees compare to other municipalities' fees, and whether they would be detrimental to development. Mr. Freeman also asked whether road maintenance costs would accelerate with more development. Mayor Rubin responded the Town had yet to understand the impact of additional development on the roads. This current proposed IFFP would not preclude the Town's ability to come back and revise it or tax rates; it is possible this would need to be addressed in the future. The currently proposed fees were not grossly different than others in the area: they are a little less than Park City, and a little more than Heber.

Bob Hedges (Soaring Hawk) asked how the fees would be assessed. Mayor Rubin responded anyone pulling a building permit would pay the fees. Existing properties cannot be assessed pursuant to code.

Jerry Dwinell: regarding the JSSD bond, which covers water and sewer, he believed that was already part of the proposed IFFP. Dan Dansie commented he would need to review this issue further; he believed those bonds were a separate issue and not duplicative of those set out in the IFFP.

Jared Fields, Counsel for Mustang: The MDA of 2010 effectively states the Town will not issue permits to those making use of public infrastructure installed by Mustang without ensuring that those parties pay their pro-rata share of the cost of the infrastructure. By its terms, the MDA provides for a very broad reimbursement right as allowed by law, and Mustang believes it is entitled to reimbursement.

With respect to the JSSD bond issue, Mr. Fields stated it had been the subject of discussion for over a year as a potential element of the IFFP, and both he and Mr. Dansie would be continuing their discussions on the matter. In response to Council Member Shadle's question concerning GCD as the developer of Rustler, Mr. Fields stated that GCD was given the developer rights by Mustang at the time it acquired the Rustler property. There was no agreement between the two to share in any potential impact fees.

Discussion continued concerning reasonableness of fees and how Mustang calculated them over time, and potential infrastructure constructed by other developers. Mr. Dansie stated that other than Shoreline Drive, other developers' projects wouldn't be considered system improvements. Additionally, the Town didn't have any other agreements with other developers that would be a catalyst for a request for reimbursement by the Mustang MDA. The parks in Deer Springs were specifically negotiated as part of an annexation agreement and not within the scope of the IFFP.

Mr. Fields commented that Mustang was not satisfied with the current proposal, and that it did not satisfy the obligation of providing the maximum reimbursement under the law. He didn't want the issue to be perceived as "Mustang getting its way". Mustang started at what it viewed as a compromise position and after a number of public comments, the Town whittled it down to the current draft, which does not satisfy Mustang's demand for fees. He indicated the parties were still negotiating and would hope to come to an agreement, however there was a possibility that Mustang would have an unfulfilled obligation and would then seek legal remedy.

Tom Checkis, counsel for Solstice and Western Ventures, stated that Western Ventures would be constructing over half of the roads in the current IFFP that are subject to impact fee reimbursement, and they wanted to get as much reimbursement as possible. Solstice, on the other side of the road, would have no impact fee reimbursement. Mr. Checkis prepared and distributed to the Council his calculation with respect to roads. He walked through his calculation in further detail, noting the IFFP did not appear to include actual costs. His analysis concluded that his client, which would be installing 1800 linear feet of roadway, would be reimbursed \$178 per linear foot in today's dollars, but Mustang would be reimbursed nearly twice that amount, for installing roads in 2009 and 2014, and this was not equitable. Mr. Checkis stated that in his experience working with many municipalities over the years, the initial default position concerning impact fees was that the improvements were classified as project improvements and not subject to reimbursement. He then proceeded through a discussion concerning road width. The Town has 30 and 40-foot road widths. Because the width is reduced by 1/4, that would be the system improvement, with the remaining 3/4 being a project improvement because that was what was needed for a specific subdivision, completely independent of any excess capacity. The calculation would result in reducing the ERU 75% from \$3,675 to \$575 per ERU.

Dan Dansie commented that the Council should take all comments this evening under consideration. Further, he spoke with Brent Ventura about the disparity between the upper and lower portions of the roadway cost calculations. Mr. Ventura pointed out there were a number of areas in the Town's upper section that required retaining walls and blasting, whereas those issues were not as prevalent in the lower section, which may account for part of the cost disparity.

Dan Rotan (resident of Forevermore who also owns two lots in Glistening Ridge) inquired why the impact fee on Glistening Ridge of \$11,500 was so much more than some of the others. Mayor Rubin responded that the big cost delta related to the storm drain because of the nature of the pipe and routing, due to a sloped area.

Brent Ventura discussed the elements considered in the calculations and the reasoning regarding the higher prices in the Forevermore, Glistening Ridge and Rustler subdivisions and the service areas. Those three developments were the only ones contributing to that specific service area, thus the per unit cost is higher.

Discussion continued regarding project vs. system improvements and the rationale used in creating the proposed IFFP. Brent Ventura commented that pursuant to statute, because the Town population is less than 5000 people, the IFFP need only to meet a "reasonable requirement" He went on to explain the various reasons for certain systems and reasonable costs of infrastructure.

Karleen Callahan and Donald Blumenthal (Soaring Hawk via telephone): inquired regarding system allocation for Soaring Hawk and asked why other entities weren't considered as a tie-in system. Mayor Rubin explained those other developments tied in directly to the JSSD lift station not into the Town's sewer system. Additionally, Ms. Callahan asked about the definition of "development activity" and whether retroactive or proactive. Dan Dansie explained the statute definition of "development activity" in the statute. The statute contemplates that an impact fee plan is a prospective looking process. An enactment of an impact fee imposes a 90-day window before the municipality can collect it. In the Town's case, there were a few developers that waived that window.

Mr. Dansie explained the pulling of a building permit triggers the application of an impact fee on the improvements. Mr. Blumenthal inquired regarding fees already being paid for Soaring Hawk and asked how those fees were considered. Mr. Rubin explained that Soaring Hawk, Golden Eagle and Reflection would be assessed to their connection to downstream systems (sewer, main roads) in the Town and not because of the investment of all the ground in those areas, which were paying pursuant to a bond.

Jessica Rancie, Counsel for Western Ventures and Solstice added a clarification to a prior comment this evening regarding how to assess system or public improvements. She cited Utah State Code Section 11-36a-202, Prohibitions on Impact Fees, that provides a municipality can only recoup costs actually incurred for excess capacity. She added this was pretty common. Mr. Checkis added the default classification would be project improvement unless there is excess capacity, then it would be classified as a system improvement. He noted one must consider the prohibitions section of the Act to understand the definitions section of the Act and the interplay between the two. In his opinion, he offered two conclusions: 1) there is no system improvement because there is no excess capacity; or 2) the absolute broadest interpretation

would be to take the total cost and reduce it by 3/4. He believed it was the maximum defensible position under the Act.

With no further public comments, Mayor Rubin closed the public hearing at 8:00 p.m.

Council Member Shadle moved to continue the discussion on this item to January 9. Council Member Baier made the second. Voting Aye: Council Members Baier, Johansson and Shadle. Voting Nay: None. The motion carried.

2. Public Hearing - Review and Possible Approval of the Final Plat for the Venturi subdivision located at approximately 11378 N. Shoreline Dr., Hideout, UT

Jerry Dwinell, Chair of the Planning Commission, provided a short procedural background concerning Mr. Venturi's application, and advised that the Planning Commission recommended approval of the final application. The Council had no questions or comments for Mr. Dwinell.

Gino Venturi appeared for questions; none were posed by the Council.

At 8:04 p.m., Mayor Rubin opened the hearing for public comments. With no comments forthcoming, the Mayor closed the public hearing.

Council Member Shadle moved to approve the final plat for the Venturi subdivision, located at approximately 11378 N. Shoreline Drive, Hideout, Utah. Council Member Johansson made the second. Voting Aye: Council Members Baier, Johansson and Shadle. Voting Nay: none. The motion carried.

3. Ordinance 2019-09 Providing for Adoption of Jordanelle Special Service District Standard Drawings and Specifications for Water and Sewer Public Works Construction and Maintenance

Mayor Rubin gave a short background statement regarding the need to adopt the JSSD and APWA standards and working with the Town Engineer to create an ordinance for that purpose.

Council Member Baier moved to adopt Ordinance 2019-09, providing for adoption of Jordanelle Special Service District Standard Drawings and Specifications for Water and Sewer Public Works Construction and Maintenance and American Public Works Association (APWA) Utah Chapter 2017 Standard Drawings and Specifications for all Other Types of Public Works Construction and Maintenance. Council Member Johansson made the second. Voting Aye: Council Members Baier, Johansson and Shadle. Voting Nay: None. The motion carried.

4. Ordinance 2019-08 - An Ordinance Establishing a 2020 Regular Meeting Schedule for the Meetings of the Town Council of Hideout, Utah

There was a short discussion concerning the Council Members' confirmation of availability for the upcoming 2020 meeting schedule.

Council Member Shadle moved to adopt Ordinance 2019-08, establishing a 2020 meeting schedule. Council Member Baier made the second. Voting Aye: Council Members Baier, Johansson and Shadle.

Following the vote, it was noted the Town Clerk inadvertently omitted the agenda item concerning public comments. Accordingly, Mayor Rubin solicited the floor for public comments on any items not listed on the agenda. No comments were forthcoming.

V. CLOSED EXECUTIVE SESSION

Council Member Johansson moved to enter into Executive Session. Council Member Baier made the second. Voting Aye: Council Members Shadle, Baier and Johansson. Voting Nay: None. The motion carried.

At 8:12 p.m., the regular meeting was adjourned and the Executive Session was convened.

VI. MEETING ADJOURNMENT

At 8:45 p.m., the Executive Session was adjourned.

Allison Lutes, Town Clerk

APPROVED