

HIDEOUT, UTAH  
10860 N. Hideout Trail  
Hideout, Utah 84036  
TOWN COUNCIL MEETING  
January 9, 2020  
6:00 p.m.

TOWN COUNCIL SPECIAL 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 6:01 p.m. on January 9, 2020 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 Jerry Dwinell  
Council Member Vytas Rupinkas

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

Others Present: Jared Fields, Carol Haselton, Kevin Hughes, Karleen Callahan (by telephone), Don Blumenthal (by telephone), and others who did not sign in or whose names were illegible.

**1. Swearing in of the Town's new members of the Council: Jerry Dwinell, Vytas Rupinkas and Kurt Shadle**

The Town Clerk administered the oaths of office to the new Council Members, Kurt Shadle, Jerry Dwinell and Vytas Rupinkas.

**III. APPROVAL OF COUNCIL MINUTES**

*Council Member Shadle moved to approve the minutes of the December 18, 2019 meeting. Council Member Baier made the second. Voting Aye: Council Members Baier, Shadle, Dwinell and Rupinkas. Voting Nay: None. The motion carried.*

#### IV. AGENDA ITEMS

##### 1. Public Hearing - Continued discussion and possible adoption of an Impact Fee Facilities Plan

Mayor Rubin briefly reviewed the last public hearing and what transpired since. He then turned the discussion over to Dan Dansie. Mr. Dansie reviewed that he and Mustang's legal counsel, Jared Fields, met with Brent Bateman, former Utah State Property Rights Ombudsman, now in private practice, who agreed to provide his impartial assessment. Mr. Bateman walked through each of the concerns raised by Kirton McConkie ("McConkie"), counsel to Solstice Development and Western State Ventures in their written submission and discussed at the last meeting. Mr. Dansie felt two or three of the points of concern warranted some attention this evening to provide context, summarized below:

Issue #1) Recoverable Costs Portion. McConkie argued that recoverable costs (specifically as to road width) should be based on the delta between what one would consider a project improvement portion and the system improvement; in this case it was 10 feet or 25% of the overall width.

Brent Bateman agreed with Mr. Dansie's conclusion that the foregoing was not how the Impact Fees Act should be interpreted. Mr. Dansie offered the following concept to explain: a project improvement is something the Town requires a developer to put in at the developer's expense, but the Town is not required to impose that on the developers; it could pay for all the roads in the Town if it chose to do so via tax increases, etc. Any obligations the Town requires of a developer are termed "exactions," a form of a taking with certain legally imposed limits. Requiring a developer to bear the cost of installing project level roads is an exaction that is proportional and reasonable, but there is no requirement that the Town do that. The premise posited by McConkie that the developer is obligated to put in the referenced 30-foot road is not correct under the Act. Further, the Town can designate roads as system roads without respect to whether they happen to benefit adjoining properties. The Act defines a system improvement as one that serves the community at large, as opposed to a discrete portion of the community. Further, nothing in the prohibition set out in the Act concerning collecting impact fees provides that only the delta between a 30 or 40-foot road can be claimed; rather, it is simply a prohibition on recovering more than the excess capacity provided by the system improvement. Mr. Dansie said he communicated the foregoing analysis to McConkie, who expressed their disagreement with that analysis in a written response communicated earlier today.

A short discussion followed concerning Mr. Bateman's experience as the Property Rights Ombudsman, and his qualifications and expertise in rendering an unbiased opinion. It was noted Mr. Bateman was involved in the legislation concerning the Impact Fee Act. Mr. Dansie advised that Mr. Bateman's opinion was not an official "Ombudsman Opinion" filed with the State; it was contained in a written email communication.

In response to McConkie's suggestion that the Town solicit input from Jodi Hoffman, Mr. Dansie walked through the detailed review process already employed on the Town's behalf and incorporated into the May draft, using third party expertise (attorney Gary Lane, Zion Finance Susan Becker, developers' and Town engineers). Those resulting comments and input were

incorporated and presented to Brent Bateman for his analysis and opinion. Thus, Mr. Dansie felt confident in Mr. Bateman's opinion as a qualified, respected source whom he trusts.

Discussion next focused on credits to developers for system improvements they construct that qualify for offset or reimbursement. Mr. Dansie explained that State law (and the proposed ordinance) provides that the developers would be entitled to offsets. He directed the Council to page 21 of the Impact Fee Facilities Plan ("IFFP"), and explained that neither Deer Waters, Deer Springs or KLAIM were included in Table 7-3, because those roads were not considered system level roads. Table 7-3 consists of a cost calculation that estimates future construction cost at \$178/linear foot, thus forming the basis for any reimbursement or offset.

Council Member Dwinell felt the developer installed system improvements should be calculated and included in the fee table to know up front the cost and what charges would be incurred after any offset. Mr. Dansie pointed out that the developer could decide to assign those credits to a third party, so it wouldn't necessarily be accurate to apply credits to a particular project. Additionally, the developer could decide which phase of a project it would want to apply those credits to. Mr. Dansie explained the credits would kick in on the back side after construction of the development, when the determination is made whether a developer has a right to offsets, and if so, how much toward a certain permit.

Issue #2) Actual cost for years of installation of the improvement: Mr. Dansie explained that the costs set out in the IFFP are not based on random assumptions, nor were they "numbers pulled out of a hat." He explained Brent Ventura accessed an engineering database of construction industry component costs, thus providing known quantities and multiplying by unit cost. It represents the best estimate based on data available to the Town. Mr. Dansie added that IFFPS are usually prospective looking and calculate costs before anything is built. He noted that if estimated costs are later deemed to be inaccurate, a municipality can revise them.

Issue #3) Interest component: only actual financing for costs for system improvements should be included. Mr. Dansie explained the critique was not so much disagreeing with the interest rate or the methodology used to calculate interest, but rather, is there a factual predicate to acknowledge Mustang incurred interest on these costs and therefore the Town is obligated to pass through that charge. Mr. Dansie commented he didn't think Mustang would agree with the Town on an appropriate interest rate, however based on certain criteria, including Mustang's financing documents from PNC Bank, N.A. (4.5% plus LIBOR) and the Local District One 2014 bonds, the team concluded 6% would be a reasonable interest rate.

Mr. Dansie then explained the Town's authority and responsibilities under the Impact Fees Act: Impact fees must be used for a purpose authorized under the act within six years, or they must be returned. Further, the Act imposes a 90-day waiting period from enactment of an impact fee ordinance to begin collecting those fees. Because some of the Town's developers waived that right, the Town can start collecting fees immediately as to those developers. The Town will have to put those fees in a separate account, and at some point, it is anticipated the Town and Mustang will reach an agreement about how those funds will be used. Alternatively, if Mustang determines it will litigate, then those funds would potentially be available to satisfy a judgment should one be entered against the Town.

Mr. Dansie directed the Council to Sections 8.2 - 8.5 that provide the methodology in arriving at the recommended amount of impact fees. A summary of those fees is set out in Section 8.6

(page 30) It was noted the 6% finance charge, discussed earlier, is included in the impact fee schedule.

Mr. Dansie commented that McConkie felt the Town should consider future improvements in the IFFP as well, however he stated the Town did not anticipate future system improvements at this time. He added however, that an IFFP, once adopted, can be amended if and when there are additional system improvements, or potential annexations that would possibly be using the Town's public improvements.

Council Member Rupinkas commented if the IFFP is adopted, it must be part of the budgetary process. Further, He felt the number of units set out in the IFFP needed to be reviewed annually for accuracy. Council Member Baier felt the Council should adopt the IFFP as is and come back and revise as necessary.

Council Member Dwinell pointed out the sample ordinance did not address the requirement to deposit impact fees in a separate account, and he felt it was important to address that. Mr. Dansie offered to add a provision concerning the separate account.

Mayor Rubin summarized the pending discussion for clarity. The idea would be to pass the ordinance and begin the process to collect the funds which would be held and not transferred until the Town can obtain from Mustang: A) a release confirming Mustang accepts this proposal; and B) all other claims, and concerns have been addressed. He stressed the need to keep detailed records of the impact fees received by the Town. The idea of charging an administrative fee was raised and it was agreed it was something the Town could look into; it would be deducted from any reimbursement and not be added to an impact fee.

At 7:33, Mayor Rubin opened the meeting to public comment.

Jared Fields, Counsel for Mustang presented Mustang's position regarding the interest calculation. Mustang believes 6% is low relative to the cost of financing actually available when the improvements were constructed. For example, local district bonds were approximately 8%. However, he acknowledged that there didn't seem to be a willingness by the Town to revise the stated 6% number, but he stated he would continue to advocate for a higher interest rate. Council Member Shadle asked whether Mustang could provide actual interest rates incurred. Mr. Fields responded he could, however it had been made fairly clear that the Town reached its conclusion that 6% would be a reasonable interest cap. He commented that some of Mustang's financing included a 12% interest rate with an 8% origination fee; banks weren't lending at that time and it required approaching hard money lenders with egregious terms. He added the PNC loan Mr. Dansie referenced earlier was indeed 4.5% plus LIBOR, but it also required a giant amount of cash collateral on deposit with PNC bank. Some loans also included a personal guarantee. Mustang had not perceived an actual interest in getting into what was the full amount of Mustang's interest expense and added it would be challenge, not only in compiling all the information, but it would expose all of Mustang's business records. He estimated the full cost of capital at that time would average 15%.

Dan Dansie commented Mustang did provide a lot of interest rate information in general for the time frame, and in fact some of the rates were as high as 20%. He pointed out that the obligation was to determine what was reasonable, given several factors; accordingly, he concluded 6% was a defensible and reasonable interest rate.

Kevin Hughes [Rustler]: felt litigation seemed to be a real concern and asked for the names of Western States' and Mustang's legal counsel. Mayor Rubin responded that McConkie represented Western States at the last meeting, and Jared Fields responded he represents Mustang. Mr. Hughes asked what would happen if other developers that had installed roads were named in a lawsuit, would it lead to a financial hardship rendering them unable fulfill their obligations to maintain the roads. Council Member Dwinell responded that the issue did not relate to maintenance of the roads, rather it relates to the initial installation of those roads; the Town maintains the public roads. Regarding the mentioned credits, Mayor Rubin clarified the credits relate to a developer adding to the backbone road leading to Ross Creek entrance. The developer would still be entitled to the credit.

Karleen Callahan and Don Blumenthal (via phone) [Soaring Hawk]: inquired which developers had waived the 90-day wait period. Mayor Rubin couldn't definitively respond without reviewing the records however he was fairly confident Western States, with respect to the Deer Springs development, and possibly GCD for Shoreline were the two. Ms. Callahan commended the Council for their diligence and work on this IFFP.

With no further comments, Mayor Rubin closed the public hearing at 7:55 p.m.

Mr. Dansie reviewed the new paragraph (#7) he added to the Ordinance entitled, Segregation of Impact Fees: *The Town shall retain impact fees collected pursuant to this ordinance consistent with applicable State law. Unless otherwise required under State law, impact fees collected will be held in a separate or segregated account or escrow fund. The Town will retain records of all parties paying in impact fees for a minimum of six years. Impact fees will be disbursed, if at all, pursuant to Utah Code §11-36a-602 for eligible purposes.*

Following a brief discussion, Council Member Shadle suggested this item be continued until the next Council meeting to address questions that had been raised and to allow the new Council members the opportunity to more fully consider the issue. Council Member Dwinell commented the only piece that hadn't been fully fleshed out is the 6% interest component. He added the Town needed to start somewhere and if, at a later date, the interest rate needed to be adjusted, the Town could amend the IFFP to reflect a new rate. Given the discussion thus far, he felt the Town had a good starting point.

Council Member Rupinkas agreed regarding the interest rate and the cost details, however he was concerned with discussions on the implementation after adoption of the ordinance. He felt it would be beneficial to discuss the implications and strategies going forward. Additionally, he felt it would be helpful to understand discussions that had occurred in the prior executive sessions that neither he nor Mr. Dwinell could attend.

*Council Member Shadle moved to continue this agenda item to the next meeting on January 23, 2020. Council Member Baier made the second. Voting Aye: Council Members Baier, Shadle, Dwinell and Rupinkas. Voting Nay: None. The motion carried.*

## **2. Discussion by Jerry Dwinell regarding transition from the Planning Commission and appointment of Carol Haselton to the Commission**

Council Member Dwinell briefly reviewed the suggested structure of the Planning Commission for Mayor Rubin's consideration, given his and Mr. Rupinkas' transition to the Town Council:

Carol Haselton: New Voting Member  
Tony Matyszczyk: Move from Alternate to Voting Member  
Ralph Severini: Voting Member  
Bruce Woelfle: Voting Member  
Sara Goldkind: Voting Member  
Jerry Dwinell: Alternate Member, but will still chair meetings until the Mayor deems otherwise, or should another Commissioner desire to chair. Will vote only if a voting member is not present, or if there is a tie.  
Kurt Shadle: Alternate Member

A question arose as to whether one could be both an alternate and chair a meeting. Dan Dansie reviewed the law and determined it was allowed.

Following a brief discussion, Mayor Rubin recommended the following: Appoint Carol Haselton as a full voting member; move Tony Matyszczyk from Alternate to Full Voting Member; Jerry Dwinell will serve as an Alternate Member and chair meetings; and Kurt Shadle will remain as an Alternate Member. Vytas Rupinkas offered his resignation as a member of the Planning Commission, effective this evening; Mayor Rubin accepted his resignation.

*Council Member Shadle moved to accept the Mayor's recommendations as stated concerning the Planning Commission. Council Member Baier made the second. Voting Aye: Council Members Baier, Shadle, Dwinell and Rupinkas. Voting Nay: None. The motion carried.*

**3. Discussion regarding the formal process the Town will follow to appoint a candidate to fill Hanz Johansson's Council vacancy and to complete his term.**

Mayor Rubin reviewed that the Town provided notice per Utah Code via the Public Notice website, the Town website, email to residents, and a posting on NextDoor. To date, one resident has submitted a letter of interest and resume. Council Member Shadle commented the Council shouldn't be in a rush to fill the vacancy. In addition, he noted the notices were posted and sent during the holidays. He felt if the response time was pushed out, the Town may receive more responses. Dan Dansie advised that Utah Code provides the seat must be filled within 30 days of the vacancy. If not filled by then, the municipality would need to fill the seat from among the names submitted.

Council Member Rupinkas expressed that it would be highly beneficial to find someone representing Soaring Hawk on the Council. Council Member Baier felt there wouldn't be a lot of applicants, based on the election cycle the Town had recently undergone. Council Member Dwinell commented that the one candidate who responded was unable to attend the January 23 meeting and he felt it was important to hear from that candidate.

Following discussion, it was agreed this item will be continued to the Town Council meeting on February 13, 2020.

**4. Approval of bills to be paid**

Mayor Rubin provided a brief clarification on some specific line items, particularly for the new council members. It was indicated the Town would need to negotiate a better rate with All West. Mayor Rubin stated he had a discussion with All West, who promised to either increase

the service to 1gb or they will reduce the rate. Mayor Rubin asked Jan McCosh to provide the new council members copies of last quarter's financials.

*Council Member Baier moved to approve payment of the bills as presented. Council Member Rupinkas made the second. Voting Aye: Council Members Baier, Shadle, Dwinell and Rupinkas. Voting Nay: None. The motion carried.*

**5. Discussion regarding Open and Public Meetings Act training for 2020**

Mayor Rubin reminded the Council Members of the annual requirement to complete Open and Public Meetings Act training. He asked everyone to complete the online course and send their certificates of completion to the Clerk.

**6. Period for public comments on items not listed on the agenda**

At 8:45 p.m., Mayor Rubin opened the meeting for public comments on items not listed on the agenda.

Carol Haselton: Ms. Haselton expressed her interest in serving on the Council rather than the Planning Commission. It was noted she did not meet the residency requirement to qualify at this time to serve on the Council. Acknowledging the foregoing, Ms. Haselton asked whether she needed to take the Open and Public Meetings Act training as a member of the Planning Commission; the Council advised she would need to complete the training. Finally, Ms. Haselton indicated she was having issues connecting to the Town server and that she was blocked. Town staff will address the issue.

Jan McCosh inquired about starting budget meetings. Mayor Rubin indicated it was one of the priority items to discuss at the January 23 working session of the meeting. Ms. McCosh stated she would start putting together a committee after she finished working on the current audit.

Ms. McCosh suggested adding Council Member Rupinkas to the water advisory board that was currently being formed.

Regarding the finance committee, Mayor Rubin noted the current resident who expressed interest in serving on the Council had finance experience and may want to serve on the finance committee. He indicated another resident also expressed interest in the committee.

Council Member Dwinell stated the construction parking on North Hideout Trail was horrible and needed flagmen for safety. Mayor Rubin stated he fined the contractor over the past two days and would pull their permit if they did not comply. The contractor will need to post two flagmen with orange vests at the location. Kent Cuillard stated either he or Travis Bonner would pull the permit on Friday, January 10 if the contractor is not in compliance.

Council Member Baier offered to look into creating a ZOOM room for Council meetings.

**VIII. CLOSED EXECUTIVE SESSION**

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

At 8:55 p.m., the regular meeting adjourned and the executive session convened.

**IX. MEETING ADJOURNMENT**

At 10:15 p.m., the Executive Session was adjourned.

---

Allison Lutes, Town Clerk

APPROVED