

Minutes
Town of Hideout
Town Council Regular Meeting
August 27, 2020

The Town Council of Hideout, Wasatch County, Utah met in Regular Meeting on August 27, 2020 at 6:00 PM via electronic virtual meeting due to the ongoing COVID-19 pandemic.

Regular Meeting

I. CALL TO ORDER

Mayor Phil Rubin called the meeting to order at approximately 6:05 pm.

II. ROLL CALL

Present: Mayor Philip Rubin
Council Member Chris Baier
Council Member Jerry Dwinell
Council Member Carol Haselton
Council Member Bob Nadelberg

Staff Present: Town Attorney Dan Dansie
Town Administrator Jan McCosh
Town Clerk Alicia Fairbourne
Public Works Director Kent Cuillard
Town Engineer Ryan Taylor
Town Planner Thomas Eddington
Town Treasurer Wesley Bingham

Others Present: G. Crane, Bubba Brown, Mike Stokes, Jared Fields, Gwen Wetzel, Polly McLean, Hannah Tyler, Brent Ventura, Linda Smith, Scott DuBois, Dan Mouthaan and others who may not have made their names known via Zoom or did not sign in otherwise.

III. APPROVAL OF COUNCIL MINUTES

1. Approval of June 11, 2020 Meeting Minutes
2. Approval of June 25, 2020 Meeting Minutes
3. Approval of July 9, 2020 Meeting Minutes
4. Approval of July 23, 2020 Meeting Minutes

There was no feedback from Council as it pertained to all minutes. Council consented to approve all sets of minutes.

Motion: Council Member Dwinell moved to approve minutes from June 11, June 25, July 9, and July 23, 2020 meetings. Council Member Baier made the second. Voting aye: Council Members Baier, Dwinell, Haselton and Nadelberg. None opposed. The motion passed.

IV. PUBLIC INPUT - FLOOR OPEN FOR ANY ATTENDEE TO SPEAK ON ITEMS NOT LISTED ON THE AGENDA

At 6:13 pm, Mayor Phil Rubin opened the floor to public comment.

Council Member Chris Baier reported she had received multiple reports of water running down the trail in the State Park. The water was a result of the construction in Shoreline Phase Two, which pushed water down the trail and caused flooding at the bottom. She stated the trails were State owned and managed through the Federal Government. Studies had been done prior to constructing the trails which were designed to protect the environment. She noted a natural spring in the area was disrupted by the developments and the State Park was aware of the disruption. She asked what the possible remediation would be. Mayor Rubin addressed the issue and stated the Town would look into remediation.

Town resident Gwen Wetzel asked for a status update on the contract with Wasatch County Sheriff's Office and when additional patrol from them could be expected. Mayor Rubin stated it was still in negotiation and would be discussed during a future council meeting.

There being no further public comment, Mayor Rubin closed the public comment portion at 6:19 pm.

V. AGENDA ITEMS

1. Resignation of Council Member Kurt Shadle and Public Notice of Open Vacancy

Mayor Rubin announced the resignation of Town Council Member Kurt Shadle and discussed the requirements required of any persons interested to fill the vacancy.

2. Introducing Polly McLean - Hideout Town Attorney

Mayor Rubin acknowledged the outstanding service the Town Attorney Dan Dansie had provided for the Town, and stated Mr. Dansie was also working for a law firm in the Salt Lake Valley. He would be taking on more responsibilities at the firm and would not be able to manage the added responsibilities at the firm and provide the service the Town needed, and therefore had informed Mayor Rubin of his resignation from the Town. Mayor Rubin thanked Mr. Dansie for his service to the Town. He introduced Polly McLean as the new Town Attorney and provided Ms. McLean's qualifications. Mr. Dansie and Ms. McLean would work together to ensure a smooth transition.

3. Public Hearing - Consideration and possible adoption of an Impact Fees Facilities Plan Establishing Service Areas Within the Town of Hideout

Mr. Dansie presented information regarding the Impact Fees Facilities Plan (IFFP) and addressed why the Town should adopt an ordinance establishing the fees. The IFFP was a plan which identified public infrastructure within the Town which constituted system improvements. It established the cost of the infrastructure and a pro rata share for contributing to the cost of that infrastructure which landowners pay in connection with the development activity.

Mr. Dansie noted the Town did not concede any fail to perform obligations it had to Mustang Development, but Mustang Development had asserted claims and had threatened litigation if those claims were not addressed. He noted the reimbursement agreement (found later in the agenda) was for the purpose of collecting fees that would be used for the reimbursement to Mustang Development.

Mr. Dansie introduced Brent Ventura, a professional engineer who had prepared the IFFP document. Mr. Ventura reviewed the purpose of the IFFP document, which was a collection of two documents – an impact fee facilities plan and an impact fee analysis. He reiterated the purpose of an IFFP and stated it was for future planning of water lines, sewer lines and roads that were needed with the growth of the Town.

Mr. Ventura noted Chapters 1 through 6 in the IFFP study defined each of the impact fees that existed in the Town. He provided history of the Town's current facility plans, however, when prior administration provided the plans, they were not complete. He noted he and his team were able to complete those records to the best of their ability and were reflected in Chapters 3 through 6. He explained the public infrastructure and system improvements were identified within those chapters and all residents should have been responsible for paying for those fees during construction of their homes. He explained the developer typically paid the fees and passed those fees through in lot costs. He stated the fees in the Plan would be for future development and not charged to residents who's homes were already built.

Mr. Ventura stated there were several factors in which costs were determined. Many of them were based on engineering calculations, however there were some calculations which could be discussed and fees negotiated, which could change some of the intent behind it. He emphasized lawsuits could be avoided by discussion and gathering different points of view.

Council Member Jerry Dwinell asked Mr. Ventura to explain the difference between a system improvement and project improvement. Mr. Ventura explained a system improvement was when a development being established was looped with other existing infrastructure which would affect other residents in the city, versus a project improvement was typically a stand-alone infrastructure which was development on a dead-end street that did not loop into other infrastructure and did not affect other residents.

Mr. Ventura provided information on the variances of the rates provided in the Executive Summary of the IFFP dependent upon each subdivision. He explained each subdivision had a different amount of system and project improvements that had been applied for different reasons. Each of the subdivisions was split up as to what impact each of the lots had on the overall system.

Mr. Ventura provided a background of differences between the draft presented to Council previously and the current draft. He presented the maps of the roads and explained the brown lines illustrated the system improvements which were intended to service the entire community. He also noted the interest rate that was used to calculate the impact fee cost. He explained the previous version was originally analyzed with a 6 percent interest rate, which was an average rate, but discovered it should be raised to 7.5 percent.

Council Member Baier added she had worked closely with Mr. Dansie and Mr. Ventura in providing what she felt was a reasonable plan. Mayor Rubin added impact fees were not unusual for developing communities. Council Member Dwinell reiterated existing homes were not affected by these impact fees and it was for new development going forward. Council Member Baier inquired when the impact fees would be paid, to which Mayor Rubin replied they would be paid at the same time the permit was being paid.

Council Member Dwinell inquired if the impact fees would apply to residents who wanted to add an addition or remodel to their home. Mr. Dansie stated they would not. Further discussion continued regarding what the fees would cover.

There being no further discussion or questions from Council, Mayor Rubin opened the floor to public comment at 6:56 pm.

Scott DuBois spoke on behalf of Mustang Development. He stated he had been involved in the process for approximately three years. After many discussions, he believed the IFFP was fair and reasonable. He thanked everybody who was involved in the process and recognized the work involved. He noted Mustang Development had paid 12 percent interest, which was higher than the proposed 7.5 percent. He felt 7.5 percent interest rate was low, but it had been discussed and an agreement was made.

Dan Mouthaan, a Hideout resident, introduced himself and stated he owned a lot and was building a new residence on Lasso Trail. His building plans were currently in the Design Review Committee (DRC) process which could take approximately three months to a year to complete. He inquired if he was subject to the fees or if he would be grandfathered in since he was already in the approval process. Mr. Dansie provided an explanation of vested rights and explained the date the building permit was complete would be the date in which the fees would be imposed. He also noted the ordinance would not take effect until 90 days after the date it was approved. Mr. Mouthaan asked for Council to take into consideration a grandfather clause for those who were currently in the process of building. Discussion regarding the request continued. A possible work-around would be if the current fees were paid within the 90-day window, the impact fees could be bypassed although the design had not been issued. Legal counsel would research the proposal to ensure the proceedings would be permitted.

Jared Fields expressed his gratitude to Mr. Dansie and Mr. Ventura for the amount of work that went into the Plan. He emphasized Mr. DuBois' statement regarding the mutual negotiations and exchanges between developers and the Town. He addressed Mr. Mouthaan's concerns and stated it should be negotiated with on a case-by-case basis with each owner or builder.

Town resident Mike Stokes spoke and asked for clarification regarding the impact fees for the storm drain pertaining to the Forevermore development. He stated the map did not show the storm drain in Forevermore, and questioned why the development would be subject to the storm drain impact fee. Mr. Ventura explained the water would run down the curb and gutters of the street and be collected at the end of Forevermore. That water would then be transported to the storm drain facilities, which warranted the fees.

There being no further comment from the public, Mayor Rubin closed public comment at 7:19 pm and asked Mr. Dansie to address the next steps. Mr. Dansie reiterated the Plan had been discussed and negotiated on by several parties, including a mediator for both the Town and developers. He stated the Plan was reasonable and was defensible under the Impact Fee Act. Mayor Rubin expressed his gratitude for all the work which had been done to make the Plan reasonable and accurate. Council Member Dwinell reiterated the vast majority of developers in the town had contributed to the Plan. Mr. Dansie confirmed Council Member Dwinell's statement.

There being no further comment, Mayor Rubin asked for a motion to adopt the Impact Fee Facilities Plan as presented and dated August, 2020.

Motion: Council Member Dwinell moved to adopt the Impact Fee Facilities Plan as presented and dated August, 2020. Council Member Haselton made the second. Voting Yea: Council Members Baier, Dwinell, Haselton. None opposed. Abstaining: Council Member Nadelberg. The motion passed 3-1.

4. Public Hearing - Consideration and possible adoption of Ordinance 2020-09 regarding Impact Fees

Mayor Rubin read Ordinance 2020-09 in its entirety and asked for any questions from Council. Council Member Dwinell inquired about Section 9 and asked what would make a developer eligible for credits. Mr. Dansie explained what criteria would need to be met in order to be eligible for the credits, which was determined in the IFFP.

Council Member Dwinell inquired how the credit would be calculated. Mr. Dansie explained the cost of construction of the road is included in the IFFP. It was explained when the developer pulls the permit and the Town collected the impact fee, the developer could choose to pay the impact fee or apply any credit to offset the impact fee cost. The developer would earn credit by the cost of the number of linear feet of roadway multiplied by 178 dollars (*number of linear feet of roadway x \$178*).

There being no further questions from Council, Mayor Rubin opened the floor to the public at 7:42 pm. There was no public input. At 7:44 pm, Mayor Rubin closed public input and asked Council for a motion to adopt Ordinance 2020-09 (*Clerk's correction: Should be numbered 2020-08*).

Motion: Council Member Haselton moved to adopt Ordinance 2020-08 adopting an Impact Fee Facilities Plan, establish service areas within the Town of Hideout and enacting impact fees. Seconded by Council Member Dwinell. Voting Yea: Council Members Baier, Dwinell, Haselton and Nadelberg. None opposed. The motion passed.

Mayor Rubin thanked the public for their comments and thanked those who worked on the Plan.

5. Discussion and possible approval of a Reimbursement Agreement with Mustang Development, LLC, related to public infrastructure within the Town of Hideout

Mr. Dansie presented a reimbursement agreement made between the Town and Mustang Development, LLC regarding the impact fees. The document was intended to resolve claims from Mustang Development and remove the threat of litigation from the developer. It would also provide a mechanism for the developer to receive a portion of the cost of constructing the infrastructure identified in the IFFP. He noted the document had been negotiated between various lawyers as well as a mediator who represented both parties. He addressed a question which was asked earlier by Council Member Nadelberg regarding any warranties on the infrastructure and noted a provision which stated this was a representation and warranty from the developer which, when constructed, was done so by licensed contractors and was free of defects upon construction. He also stated the document addressed the mechanism for reimbursement, noting the newly adopted Ordinance (2020-08) would be the driver for the impact fees to be collected. Mr. Dansie continued to review the document and gave a brief summary of each section.

Mayor Rubin asked Council if there were any questions. Council Member Dwinell inquired about Section 3 and asked if any public infrastructure had not yet been transferred. Mr. Dansie stated the purpose of the provision was to ensure any infrastructure which may not have been dedicated already, was dedicated as public infrastructure, although he was not aware of any not yet transferred.

Council Member Dwinell asked about Section 5 and how it was determined if a road tied into the infrastructure in the event of annexation. Mr. Dansie provided an example of when a new portion

of land were to require the use of the infrastructure being tied into the public infrastructure. He stated it would be included within the terms of the agreement.

Council Member Dwinell stated in Section 6.2, certain landowners were eligible to receive compensation and asked who would be eligible and why. Mr. Dansie stated it would be landowners in connection with construction of a certain portion of a future Shoreline Road, as identified in the IFFP.

He then asked about Section 6.3 and asked what would constitute “default” under the clause. Mr. Dansie stated the obligations under the agreement were on the part of the Town; however, the developer was now included in terms of collecting and reversing any agreements. There were certain obligations the developer had – some of which were with respect to the indemnification provisions under Section 8, and some of which were the agreement to not dispute the impact fees. He stated if a developer breached any of the obligations under the agreement, it would constitute the breach which was referred to in that Section. Council Member Dwinell pointed out the term would end after forty years or once everything was built out. Mr. Dansie confirmed and noted if the Town were to ever pay the impact fees in their entirety, the agreement would terminate and the reimbursement obligation would be terminated as well. He also noted once the forty year obligation was met, the agreement would be terminated.

Council Member Dwinell inquired why, in Section 6.5, a developer would elect to forego the payment of impact fees. Mr. Dansie stated the developer had the right to opt for credit rather than reimbursement in order to reduce administrative costs.

There were no further questions from the Council. Council Member Baier thanked Council Member Dwinell for providing such a thorough review and asking such detailed questions.

Gary Crane, the mediator between the Town and Mustang Development, LLC, spoke and expressed his appreciation for the amount of work put forth by Mayor Rubin, Mr. Dansie and the Council. He noted there were two signed agreements for licensing, which were funded by the developer, in which he had possession of both. He stated once the agreement and other actions were adopted tonight, it would invoke the license.

Mayor Rubin asked for a motion to approve the Reimbursement Agreement and authorize the Mayor to sign it on behalf of the Town.

Motion: Council Member Dwinell moved to approve the Reimbursement Agreement and authorize Mayor Rubin to sign on behalf of the Town. Council Member Baier made the Second. Voting Yea: Council Members Baier, Dwinell and Haselton. Abstaining: Council Member Nadelberg. Motion passed 3-1.

6. Discussion and possible approval of two public access and use license agreements with Mustang Development, LLC

Mr. Dansie spoke of ways the Town could provide benefits to the community and one thing which was determined was to provide additional public access for the community, particularly on the Longview corridor. He presented two documents regarding public access. The first document proposed a walking path and sitting area adjacent to the pond on the south side. It was noted there would be a number of provisions for pedestrian access only, which included no dogs, bikes, scooters, motor use, et cetera. The Town would agree to install signs indicating it was for pedestrian use only and only by residents of the Town.

Council Member Dwinell indicated there were two license agreements, one of which indicated time-of-year usage restrictions. Discussion ensued regarding the reasons for the restrictions, including the safety of sharing the path with golf carts and other users of the path during the time the golf course was open.

Mayor Rubin presented a diagram of the path while Mr. Dansie provided an overview of the path and sitting area. He stated it would be a 9-foot path within the storm drainage easement, which was a 40-foot wide area. He noted the rest of the 40-foot wide area would not be used for this purpose.

Council Member Baier inquired what the base of the path would be (for example, pavement, gravel, et cetera). Mr. Dansie indicated it would be road base, but no other materials would be used unless the guarantor provided written permission.

Mayor Rubin presented the diagram of the golf cart path and showed how it would extend from Longview on the east to the connection with Lasso on the west. He reiterated the terms of use would be limited to usage being permissible only when the golf course was closed for the season. Mayor Rubin expressed concern of the difficulty in contacting the golf course entity. He asked for a mechanism in the document addressing the golf course must communicate to the residents and Town on when the opening and closing dates were projected. It was agreed to add a provision to provide dates of opening and closing as well as a way to contact the golf course entity.

Mr. Dansie discussed a conversation with the developers' counsel on an agreement for the developer to meet with the Town on a quarterly basis.

Council Member Dwinell stated there had been a lot of public comments received over the last year regarding the golf course. He wondered when those issues could be legally addressed. Mr. Dansie provided clarification the issues were related to the status of the pond, to which he noted the walking path and golf cart path agreements would allow residents to take advantage of that amenity. He stated the discussions with the developer had been positive, and there was a commitment from everyone involved to rectify the pond situation. He expressed his appreciation to Mr. DuBois for engaging Mustang Engineer and facilitating dialogue and substantive engagement between Mustang's Engineer and the Town's Engineer. He addressed Council Member Dwinell's question and stated the Town would want to raise those issues in the ongoing discussions with Mustang Development. Council Member Dwinell highlighted the status of the pond was of the utmost importance with the Council on finding a resolution. Town Engineer Ryan Taylor provided a status update on the issue with the well, and stated they would be working on it early next week.

There being no further questions from Council, Mayor Rubin asked for a motion to approve the two public access agreements.

Motion: Council Member Chris Baier made the motion to approve the two public access and use license agreements with Mustang Development, LLC subject to a correction of the legal description in the recital to be consistent with the graphics presented during the meeting on a pedestrian walkway, and to insert into the Golf Path Agreement a commitment to communicate opening and closing of the golf course season. Council Member Haselton made the second. Voting Yea: Council Members Baer, Dwinell, Haselton and Nadelberg. None opposed. The motion passed.

Mayor Rubin called for a recess at 8:51 pm.

At 8:58 pm, Mayor Rubin announced the meeting was in session and asked for a roll call.

Present: Mayor Rubin
Council Member Chris Baier
Council Member Jerry Dwinell
Council Member Carol Haselton
Council Member Bob Nadelberg

- 7. Discussion and possible approval of Cooperative Emergency Access Agreement Between UDOT and the Town of Hideout; MP 7.42, SR-248**
- 8. Discussion and possible approval of Cooperative Maintenance Agreement Between UDOT and the Town of Hideout; SR-248 Access Improvements at MP 7.33 and 7.42**

(Clerk's note: Items seven and eight were discussed and voted on together.)

Mayor Rubin presented information regarding the Emergency Access Agreement between the Town of Hideout and Utah Department of Transportation (UDOT). He stated the development known as KLAIM had been working with the Town and UDOT to provide an entrance to the development. The agreement had taken approximately a year to get to the point it was currently at. In order to progress further, two documents would need to be signed by the Town. Mayor Rubin provided a brief overview of the agreements and noted one agreement described the need for a second entrance for emergency purposes. It also described what portions were managed by UDOT versus the Town. Mr. Dansie added SR-248 was a limited access highway, which meant any entrances had to be approved through UDOT, and as part of their approval process, these agreements were necessary to establish maintenance agreements.

Council Member Baier asked what was being built in relation to these agreements. Mr. Dansie stated there was a lot of information in the design package submitted to UDOT, which included what the Town's obligations were going forward as well as plans for a deceleration and acceleration lane. He noted those things were already submitted to UDOT for review and were not subject to Council approval. He also noted anything constructed would be pursuant to approved UDOT safety standards.

The two agreements were discussed and Mayor Rubin and Mr. Dansie provided clarification on the agreements. The first agreement ensured a gate was to be installed by the developer, and an emergency access road was to be constructed which would result in improvements made to the road. The second agreement stated the developers would improve the entrance to meet UDOT standards. Mr. Dansie provided content regarding the entrances to the development.

Council Member Dwinell observed a potentially dangerous situation regarding the turn-in from SR-248 to the Soaring Hawk Development. He highlighted there was no turn lane for drivers going eastbound on SR-248 to turn into the development. He asked if there were plans to have a left-turn lane leading into both KLAIM and Soaring Hawk. Mr. Dansie stated the specifications would come from UDOT.

Council Member Dwinell asked if there were design plans for trees or lights for the entryway to the development. Mayor Rubin stated it was determined by the Home Owner's Association (HOA). He added there was a small parcel that may be the Town's responsibility, but the final design had not been reviewed.

There being no further questions from Council, Mayor Rubin asked for a motion to authorize the Mayor to execute the agreements.

Motion: Council Member Dwinell made a motion to authorize the Mayor to execute the Cooperative Emergency Access Agreement between UDOT and the Town of Hideout: Mile Post 7.42, SR-248, and the Cooperative Maintenance Agreement between UDOT and the Town of Hideout; SR-248 Access Improvements at Mile Post 7.33 and 7.42. Council Member Nadelberg made the second. Voting Yea: Council Members Baier, Dwinell, Haselton and Nadelberg. None opposed. The motion passed.

9. Continued discussion regarding Todd Hollow eviction notices

Council Member Chris Baier did not have any new information regarding the Todd Hollow eviction notices. Council Member Haselton stated she had received emails from the Christian Center stating residents had received phone calls and were concerned it was an eviction notice. However, she had contacted the apartment manager who stated no eviction notices had been issued and she would do further research to find out where these phone calls came from.

Mayor Rubin asked to continue to the next Council Meeting in order to provide more information. Council Member Dwinell asked if there were Federal funds available for residents who were facing eviction during the COVID-19 pandemic. Town Administrator Jan McCosh stated there were no funds allocated for this to which she was aware of. Discussion regarding potential non-profit organizations who may be able to offer assistance ensued. Mayor Rubin stated it would be revisited at the next Town Council meeting.

10. July 2020 budget review

Mayor Rubin presented the June 2020 financial document while Town Treasurer Wes Bingham provided a recap of the budget. Mr. Bingham stated the total revenues for the Town's year-to-date were \$764,000, and the annual budget with the use of surplus was \$884,000. He stated although the building permits fell short, there was a substantial increase in July. He noted the expenditures indicated \$732,000, which gave the town a net increase of unrestricted equity of \$31,000.

Mr. Bingham had created a document of projected revenue and expenditures. He provided a forecast of fund allocation during different times of the year and provided the document for Council review. The objective was to look at the budget, and project what should be expected for the upcoming year in order to determine when to expect an influx of revenue and an increase in expenditures.

He noted he had allocated funds for the public safety officer, but it could be reallocated elsewhere if needed.

Council Member Dwinell noted there were months to which shortfalls were projected. Mr. Bingham stated there was \$25,000 in debt service which had a significant impact on the financials. There were no projected road fund revenues that month, which impacts it as well. Mr. Bingham informed Council Member Dwinell there was an unrestricted net position in the General Fund.

Mr. Bingham presented the July 2020 financial statements and noted there was a fund balance. He stated there were \$355,000 in unrestricted funds that could be used at the Town's discretion. He stated 25 percent was recommended, and would provide the Town a 90-day cash flow for the typical city or town's operations.

Mr. Bingham proposed a quarterly budget update, which he would provide for review. He discussed the enterprise fund, which was generating a significant amount of cash flow. He suggested in looking to invest some of that money in infrastructure of some point. Mayor Rubin stated it was intended to contract with JSSD (Jordanelle Special Services District). Mr. Bingham asked Council if they had any questions.

There being no questions from Council and no further public business, Mayor Rubin asked for a motion to close the public portion of the meeting and enter into closed executive session.

At 9:39 pm. Mayor Rubin closed the Regular Meeting of the Hideout Town Council and asked for a motion to proceed to executive session.

Motion: Council Member Dwinell moved to go into executive session to discuss pending or reasonably imminent litigation, personnel matters, and/or sale of acquisition of real property as needed. Council Member Haselton made the second. None opposed.

Whereupon, the closed executive session convened.

VI. CLOSED EXECUTIVE SESSION - DISCUSSION OF PENDING OR REASONABLY IMMINENT LITIGATION, PERSONNEL MATTERS, AND/OR SALE OR ACQUISITION OF REAL PROPERTY AS NEEDED

Present: Mayor Phil Rubin
Council Member Chris Baier
Council Member Jerry Dwinell
Council Member Carol Haselton
Council Member Bob Nadelberg

Staff Present: Town Attorney Dan Dansie

At approximately 10:25 pm, the executive session adjourned to open meeting.

VII. MEETING ADJOURNMENT

Council Member Dwinell moved to adjourn the meeting. Council Member Nadelberg made the second. Voting Aye: Council Members Baier, Dwinell, Haselton and Nadelberg. None opposed. The motion carried.

The meeting adjourned at 10:25 pm.



Alicia Fairbourne
Alicia Fairbourne, Town Clerk