

Minutes
Town of Hideout Town Council Special Meeting
Conducted Electronically
10860 North Hideout Trail
Hideout, Utah
June 25, 2020

Present: Mayor Phillip Rubin (excused at 6:09 p.m.)
Chris Baier
Jerry Dwinell
Carol Haselton
Kurt Shadle

Staff: Jan McCosh, Town Administrator
Allison Lutes, Town Clerk
Thomas Eddington, Town Planner
Ryan Taylor, TO Engineers
Kent Culliard, Public Works Director

Others: Nate Brockbank
Bret Rutter
Don Blumenthal
Jim Wahl

I. CALL TO ORDER

Mayor Phil Rubin called the meeting to order at 6:03 p.m.

II. ROLL CALL

All members of the Town Council were present.

Mayor Rubin reported that there is currently an open seat on the Town Council. It is open to any resident of Hideout who has lived in the Town for more than one year and is a registered voter. Those interested were invited to contact send an email to hideoututah@hideoututah.gov.

It was also reported that Town Clerk, Allison Lutes has tendered her resignation effective June 30, 2020.

Kurt Shadle moved to nominate Jerry Dwinell to serve as Mayor Pro Tempore for this evening's meeting. Carol Haselton seconded the motion. Vote on motion: Carol Haselton-Aye, Chris Baier-Aye, Jerry Dwinell-Abstained, Kurt Shadle-Aye. The motion passed unanimously with one abstention.

Council Member Dwinell assumed the Chair.

Mayor Rubin was excused from the remainder of the meeting

III. AGENDA

1. Public Hearing - Deer Waters Phase 1: Discussion and Possible Approval of the Preliminary and Final Plats.

Chair Dwinell confirmed that the above plat amendment that was heard by the Planning Commission the previous week. At last week's hearing, neither the Engineering Department nor the Planning Department had issues with the plat amendment. The Planning Commission voted to recommend the amendment to the Town Council.

The plat amendment addresses an additional access to the Lakeview subdivision, which was requested by the Planning Commission and the Town Engineer. The additional access is proposed in Deer Waters, Phase 1. The existing road, which was a hammerhead, is being replaced with a thru-road. The developer requested the ability to put one additional unit where the hammerhead was previously. This will not change the density of the total project. Deer Waters Phase 3 reduced its overall footprint by 10 units; therefore, the developer is requesting one additional unit to be added back to Deer Waters Phase 1.

Chair Dwinell opened the meeting up for questions from the Council. He explained that the new access point will be the second into Lakeview Subdivision. The first access is off Shoreline, which serves as the primary point of ingress/egress. The new access point will be a secondary entrance. There are two other entrances to Lakeview.

Chair Dwinell explained that because the single lot is not large enough for a duplex, the new unit will essentially be one-half of a duplex and be a stand-alone unit. Windows and architectural details will be installed on what would have been the shared wall, so it does not look like it is a duplex that was just cut in half. Mr. Brockbank confirmed that there will not just be a blank wall on one side of the home. The home will be the larger 3,600 to 3800 square-foot home plans.

The developer, Nate Brockbank was asked if the homes will be more saleable. He indicated that it is difficult to tell at this time because none of the units will be ready to sell until they record Deer Waters Phase 2. They have sold six of the small and medium units in the past two weeks and everything available for sale is selling quickly.

Chair Dwinell pointed out that the plat amendment will adjust the property line to add a birds mouth into Deer Waters Phase 1 and subtract it from Lakeview.

There were no further Council comments. Chair Dwinell opened the public hearing. There were no public comments. The public hearing was closed.

Council Member Shadle moved to approve the plat amendment for Deer Waters Phase 1. Council Member Haselton seconded the motion. Vote on motion: Chris Baier-Aye, Carol Haselton-Aye, Kurt Shadle-Aye, Jerry Dwinell-Aye. The motion passed unanimously.

2. Discussion and Possible Approval of a Resolution Amending the Town Fee Schedule.

Town Administrator, Jan McCosh presented the staff report. Ryan Taylor from TO Engineers and Town Planner, Thomas Eddington, prepared the Amended Fee Schedule. The process of amending the Fee Schedule was the result of staff spending a significant amount of time answering questions from developers on pass-through fees. Responding to these questions became very labor-intensive and the Town does not have the staff for pass-through billing. Town Consultant, Jacob McHargue, met with the team and the group came up with the concept of increasing fees to capture funds that cover administrative costs in handling the various processes that they address.

Messrs. Eddington and Taylor proposed a fixed fee with a higher fee being charged to cover fixed fees. If there is an extreme case that requires more time and effort, there is an overage fee. This process benefits the Town because if they end up spending more than the fee, the overage is passed on accordingly. The changes made to the rates were showing in blue on the screen. There are both new fees and changes to existing fees to help cover administrative costs. As an overview, they added a Utility Property Owner Transfer Fee. The Roadway Security Deposit was eliminated because they were having to reconcile the books, which results in more administrative time. In its place, they added a 500-foot construction fee. If the roads are damaged, they can use bond funds, rather than recover it from a security deposit.

Certain fees, like Excavation, are delineated better than they were in the old Code. The Excavation Fee was never in the Fee Schedule and it is separately listed in the Amended Fee Schedule. Grubbing and Grading is a new fee. A financial analysis was conducted, and the new fees will not result in the Town losing money after figuring in time and overhead. Looking specifically at what has changed at the planning level, which is tied into the new zoning, Concept Review is a flat fee of \$2,000, plus overage. Preliminary is \$2,000. The fees for Final are scaled, depending on whether the plans went through Preliminary for a minor subdivision, \$6,500 for a full final subdivision, and a plat amendment is \$1,200.

The Subdivision Construction Fee was described by Mr. Taylor. This item was buried in the old Code but because it was not listed in the Fee Schedule, it was not being applied. By separately listing it in the Fee Schedule, it will start being charged. The 5% Construction Fee is consistent with what surrounding communities are charging. The fee will be paid upfront and replaces and covers all of the pass-through expenses to avoid having to invoice the different developers and chase that money. If something goes seriously wrong, they will ask the developer to post a larger bond. This concept is desirable because it minimizes the time spent by the Town to collect pass-through expenses from developers and makes the Town more efficient. Also, not having to reconcile invoices will be much more efficient. The fee is simply an upfront charge and will not have to be reconciled or invoiced.

Mr. Eddington was asked if the \$3,000 fee for the Conditional Use Permit is the correct amount. He explained that they calculated the fee conservatively and it probably is a little low, however, he thinks that it is fair and that they will be okay. He explained that the Conditional Use Permit is based on their best estimate to be fair to the applicants as well as the Town. They will reassess the fee at the end of the year. The Council was reminded that in the current Code, only the Mountain

Zone supports the issuance of a Conditional Use Permit and there is not a lot left in Town in that zone. Therefore, it was unlikely this would come up in the current Code. The revisions to the Town Code that were being worked through have more possibilities for Conditional Use Permits. Temporary Use Permits are typically for private property applications and items such as temporary tents, temporary banners, and temporary signage for uses that are 60 days or less. A Temporary Use Permit would not apply to construction trailers.

In response to a question raised about General Plan Amendments, Mr. Eddington explained that they are rare but arise when an applicant proposes a development that is not in line with the General Plan. They are typically accompanied by a zone change. Chair Dwinell pointed out that the General Plan does not speak to what the zoning ought to be. If someone owns property outside of Annexation Plan and wants to annex in, they would have to update the Annexation Plan portion of the General Plan. Mr. Taylor pointed out that if the parameters for the use of the land are contained within the General Plan, the land is inconsistent with the specific use sought, and the zoning will accommodate the use, the General Plan would have to be amended followed by a rezone request. Mr. Eddington commented that General Plan Amendments are rare because the Town's General Plan is not specific regarding land use.

There is a significant upcharge for a zone change in the New Fee Schedule. Mr. Eddington explained that the proposed zone change includes 'plus costs' (engineering and planning) as well. It is more defined as a process and goes both through the Planning Commission and Town Council.

Chair Dwinell inquired about annexation. Under the New Code Amendment that is in process, annexation and zoning are not two separate occurrences. He wanted to ensure that the Town is covered. Mr. Eddington confirmed that it would be under the new zoning ordinance. Annexation requests most often include more than one zone depending on the size of the property. Chair Dwinell explained that annexation makes the City aware of what the landowner and developer have in mind for the property to create the zone map when it is annexed.

Council Member Shadle asked about the rationale for the 40 acres as a delineation point for the annexation fees. It was noted that 40 acres are in the existing Code. Council Member Shadle suggested changing the fee to be commensurate with the acreage. After further discussion, Council Member Shadle proposed that annexations up to 40 acres be a flat \$10,000, and anything over 40 acres be \$20,000 plus \$250 per additional acre over 40 acres. Mr. Eddington concurred that those numbers are fair given what is involved in the process. There was no objection.

Mr. Eddington noted that they did not increase the pre-application fee, which is unchanged at \$5,000. Pre-Application is the point at which an application is reviewed if someone is proposing annexation. They petition the Town to allow Annexation. Pre-application includes engineering and planning review prior to the Council's decision on the petition. Because the pre-application review is conceptual, Mr. Eddington did not believe this fee needs to be set forth on an acreage basis similar to annexation. He suggested that the pre-application fees be set at one fee for 40 acres or less and higher for over 40 acres. Town Attorney, Dan Dansie noted that at the pre-application stage, there typically is not a lot of legal work involved. Most of the legal work typically comes after the application is filed.

The Council agreed to increase the Pre-Application Fee for 40 acres or less to \$7,500 and \$15,000 for more than 40 acres. For Annexation Fiscal Impact Analysis, the Council agreed on a fee of \$5,000 for annexations of up to 40 acres and \$100 for every additional acre over 40 acres. Chair Dwinell calculated the fees for annexation at these levels. An annexation of 40 acres would include a Pre-Application fee of \$7,500, an Annexation fee of \$10,000, and a Fiscal Study of \$5,000 for a total of \$22,500. The Council agreed that this was a very reasonable fee for 40 acres.

The Council discussed the line item for the Modification to the Annexation Agreement. Mr. Dansie explained that in connection with nearly every Annexation that was sought, the Town requires an Annexation Agreement that could be coupled with a Development Agreement. The Annexation Agreement would provide that in exchange for the City's agreement to annex property into the Town, the landowner will meet certain conditions with respect to the annexed property. Chair Dwinell wanted clarity on when a modification requires a fee. Once the document has been finalized, approved, signed, and recorded, any modifications thereafter would fall within this line item. Chair Dwinell suggested calling it an "Amendment to the Annexation Agreement" on the Fee Schedule and point out that it is not an acreage-based fee. Council Member Shadle proposed changing the fee to \$5,000. The Council Members concurred.

Because overage fees require an accounting, Chair Dwinell suggested using the term 'reasonable and customary' to avoid the need for accounting for the overage, which they are trying to get away from. Mr. Taylor explained that this process reduces the amount of accounting the Town must do to account for the overage. He believed that overages will be the exception, so the accounting work will be minimized. Ms. McCosh explained that the accounting burden will be on the service provider since the Town is paying Messrs. Eddington and Taylor a flat fee. They will know at the outset if the project will be extraordinary and be on alert for potential overages. Mr. Taylor explained that if he has an extraordinary fee, it is his job to prove it to the Town. The Town then has the information to share with the applicant.

Council Member Baier asked about the fees involved in the annexation of already developed land and used Deer Mountain as an example. This type of situation is possible and presents a different standard because there are many property owners, as opposed to the typical annexation where there was one. Council Member Baier questioned whether fees to annex land that is already developed would be fair, given that structures are already built. It was agreed that there would be a fiscal impact, which would likely be the bulk of the fee that is related to such an annexation. The question then becomes who pays the fee. It could be the HOA or the homeowners as a collective.

The Council then discussed whether there should be a differentiation between annexation fees for raw land versus developed land. Chair Dwinell used Deer Mountain as an example. While the subdivisions are platted, they are not built out, so the question is what the Town needs to do to ensure that the existing infrastructure is up to Code and whether what is platted meets the Town standards. Mr. Eddington raised the point that there could be a significant amount of work-related to zoning because there would have to be an assessment of every existing property to be annexed to ensure that there is a proper zoning designation that allows for their setbacks. Zoning work will be required to ensure that there are no non-conforming uses in the new zone. Council Member Shadle asked if, under the scenario where developed land is sought to be annexed, there is the opportunity to waive the fees or mitigate them. If a provision for waiving fees is not in the

ordinance, Mr. Dansie stated that that is something that could be added by amendment to the ordinance. The Council agreed to come back to the issue of a waiver at a later date.

Concerning fees for Special Meetings, the Council agreed to a fee of \$750 per meeting, which includes Planning Commission and Town Council meetings.

Chair Dwinell asked if they should change Subdivision Construction Review [line 82] (not included in the changes), which is a deposit they have to account for. He suggested keeping this as is goes against their desire to get away from accounting functions. Ms. McCosh did not know if, historically, they have ever collected this fee. Mr. Taylor explained that the intent behind the \$5,000 deposit is that it be credited to the 5% Construction Fee. Therefore, if the applicant backs out before construction, the Town is covered for the time it took to get the permit issued. This line item is intended to cover professional services performed after final and prior to construction. To simplify the process, they could eliminate this line item and stick with the 5% Construction Fee. Ms. McCosh suggested leaving the line item in and analyzing how it has been utilized in the past. It was noted that this should be a fee, not a deposit because the work as part of the Construction Review is different than the work performed as part of Construction. Therefore, it should not serve as a credit on the 5% fee. The line item should be a \$5,000 fee plus overage costs for Construction Review rather than a deposit.

The Council next discussed the Infrastructure Inspection Fee. Mr. Taylor explained that it is part of the 5 percent Construction Fee of the developers' construction budget for inspections, etc. It is redundant and can be removed as a separate line item. For Infrastructure Construction Fees, Mr. Taylor was comfortable with a fee of 5 percent of the construction estimate and a bond of 100 percent of the construction estimate for what they are building with respect to infrastructure. He commented that it would be easier to administer. Chair Dwinell was not opposed to this and was in favor of updating Line 83 to be re-worded later. The Council Members agreed.

Council Member Shadle stated that line item 95 needs to be deleted as previously requested. Because they do not want any sexually-oriented businesses in Town, they will not be licensed, so there is no need to have this line item in the Fee Schedule. Mr. Dansie raised the issue that Title 4 of the Code currently allows sexually-oriented businesses under certain conditions. Therefore, this raises Constitutional issues. There is a reason every city has provisions regulating sexually-oriented businesses. There are limits as to what zoning regulations can and cannot exclude. The rationale is that if they cannot eliminate conduct, it is better to regulate the time, place, and manner in which the activity takes place.

Chair Dwinell stated that there is no zoning in Town that would support a sexually-oriented business. Within the proposed commercial zone, a sexually-oriented business is not a permitted use. Since there is no place a sexually-oriented business could apply for a permit it is not necessary to include it in the Fee Schedule. Council Member Baier agreed. After further discussion, Chair Dwinell proposed removing the fee from the Fee Schedule. Council Member Baier supported taking the advice of the Town's Legal Counsel. There was further discussion with Mr. Dansie regarding possible hypotheticals, including having someone apply for zoning to permit such a business. The Council agreed to leave the line item in and address it later.

Violations of Ordinances were next discussed. Council Member Shadle requested more information before assessing whether the change from \$250 to \$500 per day is reasonable. The proposed increase was inserted at the request of the Mayor. Kent Culliard stated that if the fine is increased from \$250 to \$500, there will be issues with collection. Council Member Shadle proposed that they not address the issue now and determine if they are reasonable before taking any action.

Chair Dwinell noted that the amendment of the Fee Schedule is not a public hearing item and is at the Council's discretion. Don Blumenthal asked if there is any warning before a violation is issued and if there is any time to correct it before the fee is charged regarding that violation. Public Works Director, Kent Culliard stated that they try to give a verbal warning. If nothing is done, they issue a written citation which gives them an additional 24 hours to correct the issue. The fine starts when the second 24-hour period begins and continues until the violation is corrected. Most violations are corrected. It was not known whether this process is codified, but according to Mr. Dansie, enforcement of the Code is an administrative function. As long as the officers are not discriminatory in the way in how they enforce the Code, they can exercise their reasoned discretion in giving warnings, issuing citations, etc. Mr. Culliard stated that historically if someone disagrees with a citation, they can speak with the Mayor. He takes photographs for proof, which are provided to the Mayor. Collection of the fine is not within his purview. For the time being, the fee/fine for Code violations was to remain at \$250.

Jim Wahl asked if fees and penalties for non-compliance apply to Reflection Ridge. Mr. Dansie was unsure if there had been a specific citation issued for Reflection Ridge. A Notice of Violation was issued regarding the maintenance area on the golf course and the notice indicated that fines would accrue. Mr. Dansie was unaware of any other notices issued. Mr. Wahl reported that the 12 to 13 spools of cable are still present but not owned by All West. Mr. Wahl was assured that the Council was working diligently on the issue.

There were no further public comments. Chair Dwinell closed the public hearing.

Council Member Shadle moved to adopt the Resolution Updating the Fee Schedule, with an edit to Line 83 that will be reworded to include the 5% fee plus the 100% bond, as discussed. Council Member Baier seconded the motion. Vote on motion: Chris Baier-Aye, Carol Haselton-Aye, Kurt Shadle-Aye, Jerry Dwinell-Aye. The motion passed unanimously.

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

Council Member Shadle reminded the Council that they agreed to allow public input at the beginning of the meeting. Mayor Pro Tempore Dwinell agreed. Ms. McCosh was instructed to reorder the agenda so that public input comes first. There was no public input.

VI. CLOSED EXECUTIVE SESSION.

Mayor Pro Tempore Dwinell announced that he will entertain a motion to adjourn the public meeting and move to executive session to discuss pending or recently imminent litigation, personnel matters, or sale or acquisition of real property.

Council Member Haselton moved to Adjourn and move to Executive Session to discuss pending or reasonably imminent litigation, personnel matters, or the sale or acquisition of real property. Council Member Shadle seconded the motion. Vote on motion: Chris Baier-Aye, Carol Haselton-Aye, Kurt Shadle-Aye, Jerry Dwinell-Aye. The motion passed unanimously.

At 8:08 p.m. the regular meeting adjourned and the executive session convened.

Present: Council Member Chris Baier
Council Member Jerry Dwinell
Council Member Carol Haselton
Council Member Kurt Shadle

Staff present: Dan Dansie, Town Attorney

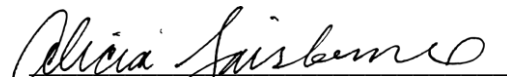
Excused: Mayor Phil Rubin

Motion: Council Member Shadle moved to adjourn to the Regular Meeting. Council Member Chris Baier made the second. None opposed. Council returned to the Regular Meeting at 9:25 p.m.

VII. ADJOURNMENT.

The Town Council Meeting adjourned at approximately 9:25 p.m.




Alicia Fairbourne, Town Clerk