



The Regular Meeting of the Brian Head Town Council
Brian Head Town Hall – Council Chambers
56 North Highway 143 – Brian Head, UT 84719
[www.Zoom.us \(Click Here\)](https://www.zoom.us/j/82782994138)

Via Zoom Meeting ID# 827 8299 4138

TUESDAY, SEPTEMBER 26, 2023 @ 1:00 PM

MINUTES OF THE TOWN COUNCIL

Roll Call.

Members Present: Mayor Clayton Calloway, Council Member Larry Freeberg (by Zoom), Council Member Kelly Marshall, Council Member Martin Tidwell, Council Member Shaun Kelly.

Staff Present: Bret Howser, Town Manager; Nancy Leigh, Town Clerk; Shane Williamson, Town Treasurer.

A. CALL TO ORDER

Mayor Calloway called the regular meeting of the Brian Head Town Council to order at 1:00 pm

B. PLEDGE ALLEGIANCE

Mayor Calloway led the Council and others in the Pledge of Allegiance.

C. DISCLOSURES

There were no conflicts of interest with today's agenda items. Mayor Calloway stated that the disclosure statements are on file with the Town Clerk and are available for public inspection during normal business hours.

D. APPROVAL OF THE MINUTES:

August 22, 2023, Town Council Meeting

Motion: Council Member Tidwell moved to approve the August 22, 2023 Town Council Minutes. Council Member Marshall seconded the motion.

Action: **Motion carried 5-0-0 (summary: Yes = 5 Vote: Yes:** Council Member Freeberg, Council Member Kelly, Council Member Marshall, Council Member Tidwell, Mayor Calloway).

E. REPORTS / PUBLIC INPUT ON NON-AGENDA ITEMS. Public input is limited to three (3) minutes on non-agenda items.

Council Member Kelly commented on the Snowshoe Condominiums entryway sign which he believes is beautifully lit with their design and adheres to the night-sky friendly code.

Council Member Marshall reported that she participated in the Fall Community Hike on September 17, 2023, which had a great turnout of around 11 people this year. Lunch was held at the Aspen Meadows yurt with hamburgers made by the Town Manager and the

1 Mayor. Council Member Marshall reported that those who attended were excited about what
2 is happening with the trails right now.
3

4 **Mayor Calloway** reported he participated in the Fall Town Cleanup with a very poor turnout
5 with only four people attending this year. Mayor Calloway commented that this event needs
6 to be advertised better but noticed that garbage was not that bad around town.
7

8 **Council Member Tidwell** reported that he also participated in the Fall Community Hike and
9 enjoyed the Aspen Meadows Trail and the hike to Hendrickson Lake.
10

11 **Bret Howser, Town Manager**

- 12 1. Aldo Biasi, Public Works Director, was not able to attend the Council meeting today
13 and sends his apologies. Bret reported that Public Works is starting to wrap up some
14 of the public works projects.
- 15 2. He is hoping to meet with the cement company on the paved trail project. Bret
16 reported this is the third cement company for the trail and he is hoping to get them
17 to pour cement for the information kiosk project. The staff is having some challenges
18 in getting someone to pour cement for this project.
- 19 3. Some of the other public works projects are completing the Manzanita Trail Overlook
20 before the weather turns.
- 21 4. Mayor Calloway inquired as to why two sections of the paved walking trail along the
22 Brianwood condominium section were cut out and now pouring concrete in the
23 middle of the trail. Bret explained that the ramp coming off the road was cut out, but
24 he was not sure as to why it was cut. He was aware there had been sections that
25 were cut out and repaved because there were some spots in the trail that did not lay
26 well, and they had to repave them. Mayor Calloway commented that he would
27 contact Aldo for an explanation.
- 28 5. Council Member Kelly inquired if public works are going to be able to complete all of
29 their projects this year. Bret responded they would not be able to complete them all.
30 He and Aldo sat down and reviewed the projects and determined the priorities of
31 what needed to be done. The pavilions will be going in, but there is not one person
32 dedicated to doing the welding. The trash enclosures are another project that is a
33 priority but has not been able to be completed yet. This project may not happen this
34 year unless it is an extended fall season.
- 35 6. The Parowan Sewer Trunk Line project is ongoing and is mostly completed. The
36 project is slated to go to Second Left Hand, and they have one more section to
37 complete. Mayor Calloway commented that the stop light they have for the downhill
38 traffic is located in a dangerous area since is located on a turn and covered by trees
39 and traffic cannot see it until the last minute. The light should be moved back up for
40 safety reasons.
41

42 **Lester Ross, Building & Planning Official**

- 43 1. Tiny Homes Lights. Lester reported he followed up with the Foreman for the Tiny
44 Homes and informed him that the streetlight located on the property of the Tiny
45 Homes needs to be turned down he reported he would be here this week to address
46 the lights and reported they should be completed by October 15, 2023. Lester
47 explained that technically according to the Town Code, if it has a motion detector, it
48 is allowed, but the motion detector does not work, and it was brought up with them
49 and they are shining directly towards Steam Engine Drive.
- 50 2. The Planning Commission will be reviewing a Schematic Plan for Hidden Springs
51 Subdivision which is located between Pinetree Condos and Elevate Condos. He is
52 currently working with a developer who is hoping to begin construction next spring.
53

54 **F. AGENDA ITEMS:**

1
2 **1. PUBLIC HEARING; FY 2024 BUDGET AMENDMENT.** A public hearing for
3 amendments to the FY2024 Town Budget.
4

5 Shane Williamson, Town Treasurer, gave a brief introduction to the public on the
6 proposed amendments to the fiscal year 2024 Town Budget. Shane reported that the bulk
7 of the amendments are in the General Fund and will bring the fiscal year 2023 surplus
8 forward and identify the annual employee surplus bonuses in the various departments.
9 In the Capital Budget, the amendments will carry forward the fiscal year 2023 projects
10 which include the land purchase, town hall improvements, public art which has now been
11 spent, street projects, streetlighting, Highway 143 corridor project that hasn't started, the
12 Town Trail project, shop equipment and engineering for the cold storage building repairs
13 and the Manzanita Trail projects which will now be identified in the FY2024 budget.
14

15 Mayor Calloway recessed the regular meeting of the Town Council and stated that the
16 Council will not engage the public during the public hearing portion but will answer any
17 questions after the public hearing has been closed. Mayor Calloway opened the public
18 hearing at 1:16 p.m.
19

20 No comments were made, and no written comments were received. Mayor Calloway
21 closed the public hearing at 1:17 p.m. and reconvened the regular meeting of the Town
22 Council.
23

24
25 **2. ORDINANCE AMENDING THE FY2024 TOWN BUDGET.** An ordinance amending
26 the FY2024 Town Budget ending June 30, 2024.
27

28 Shane Williamson, Town Treasurer, presented a draft ordinance amending the fiscal year
29 2024 Town Budget (see attached). Shane reported the following items are identified for
30 an amendment to the FY2024 Town Budget:

- 31 a. Employee Surplus Bonuses.
- 32 b. Capital Project Budget to be brought forward with the following:
- 33 c. Land Purchase
- 34 d. Town Hall Improvements
- 35 e. Public Art
- 36 f. Street Projects
- 37 g. Street Lighting Project
- 38 h. Highway 143 Corridor Project
- 39 i. Walking Trail Project
- 40 j. Shop Equipment
- 41 k. Cold Storage Building Repairs
- 42 l. Manzanita Trail Project

43
44 **Motion:** Council Member Kelly moved to adopt ordinance No. 23-012, amending the
45 fiscal year 2024 Town Budget as presented. Council Member Marshall
46 seconded the motion.

47 **Action:** **Motion carried 5-0-0 (summary: Yes = 5 Vote: Yes:** Council Member Freeberg,
48 Council Member Kelly, Council Member Marshall, Council Member Tidwell,
49 Mayor Calloway).
50

51
52 **3. ASPEN MEADOWS ANNEXATION DEVELOPMENT AGREEMENT.** A review of
53 the Aspen Meadows Annexation Development Agreement.

1
2 Bret Howser, Town Manager, gave a brief history of the Aspen Meadows Annexation
3 Development Agreement in which the Town received an official application for a
4 Development Agreement for Aspen Meadows in January/February 2023. The
5 Development Agreement was presented to the Planning Commission for review and a
6 public hearing. The Town Council also held a public hearing on the first draft of the
7 Development Agreement as part of the State's required process.
8

9
10 Bret went on to explain the Planning Commission has not yet made an official
11 recommendation to the Town Council due to the changes over the months and is waiting
12 specifically on the Mountain Zoning portion of the Agreement. The Commission has
13 discussed and forwarded their thoughts on Mountain Zoning which is included in the staff
14 report. Once the Council has a final draft of the Development Agreement, the Planning
15 Commission will review the Agreement and forward their official recommendation.

16
17 This is the fourth draft of the Development Agreement (see attached). Bret reported that
18 he has been working with Flint Decker who represents Gardner Plum who is one of the
19 developers, but reported several other developers are also invested in the Aspen Meadows
20 development. Bret explained that Gardner Plum will not be the name identified on the
21 Development Agreement. Bret gave an outline of the Town's concerns that are identified
22 in the staff report.

23 The Council discussed the following:

24
25 **Fire Station / Medical Clinic**

- 26 1. The scope of the cost estimates on the fire station has changed some. Aspen
27 Meadows is willing to include the cost estimate number that is in the draft
28 agreement that reflects a cost estimate for a different scope of building. Bret
29 reported that there is a bullet point list for the developer for the building:
 - 30 a. 3 acres of land were donated for the fire station.
 - 31 b. 1.8 million dollars total for building construction.
 - 32 c. 10% donated up front for design bid costs.
 - 33 d. The Town starts construction after 150 units are Platted, and the developer
34 pays 1.45 million dollars.
- 35 2. Bret explained that since the fire aspect of the building would primarily serve the
36 Aspen Meadow property owners, the medical clinic would create a facility that has
37 a broader scale benefit since there is not a suitable space within Town for it and
38 the Town appreciates that aspect.
- 39 3. Mayor Calloway commented that he has seen the fire station and Aspen Meadows
40 is on board with the concept of it the Town needs to fine-tune the numbers and
41 increase the footprint of the building to allow for the medical clinic and as a
42 concession, the Town will take over the finishing of that section. Mayor Calloway
43 stated that he would like to see the timing of the fire station begin at 150 platted
44 units and believes it needs to be there as construction is happening and as the lift
45 is opened to respond to any fires and would allow for any medical issues that could
46 be addressed.
- 47 4. Flint reported the lift will be named "Middle Earth". Clayton commented that he
48 would like it tied to the agreement and identified as Stephanie's Lift or Christmas
49 Tree Lift, as long as it is a functioning lift is what it needs to be tied to in the
50 Agreement. Flint reported that they would be glad to entertain that idea in the
51 workshop. The Town will take the lead on the language and present it to Aspen
52 Meadows.

5. Council Member Tidwell suggested including inflationary costs. Bret explained that if it is tied to a lift installation that is tied to next year, there may not be much of an inflationary cost to it.
6. Council Member Kelly commented that he would like to make sure it meets the needs of the service required from Chief Benson. Mayor Calloway commented that he did receive good input from Chief Benson on the fire station.

Public Improvement District (PID)

1. Bret explained this was something that was discussed early on about creating a Public Improvement District. The concept is that some basic infrastructure would be required upfront from the developer in the Development Agreement. A Public Improvement District (PID) gives a non-government entity the ability to levy property taxes to accompany debt service. Bret explained that this would need to be reviewed first since a PID can levy up to 25 mills which is more than what the Town can levy. This may work for the fire station project but would need to be reviewed by legal first and need some limitations on it.
2. Council Member Freeberg inquired who would be the authority for a PID. Eric Johnson, Town Attorney, explained that it is a taxing power and is secured by the property within the district.

Sewer Treatment

1. Bret reported there is language in the agreement that the developer will be responsible for their share of the sewer treatment.
2. The challenge is that the Town does not know what the sewer treatment is going to be, and the State does not know, and it could be a year or more before the Town knows. The language of the Development Agreement identifies that Aspen Meadows would be responsible for their share, but they could build a certain number of units. In the draft Development Agreement, the developer is proposing one-half of the density units, but the Council was uncomfortable with density units and identified 250 units and possibly a little more.
3. Bret explained Council then explored the option of trading the sewer treatment facility for a public works facility since the existing public works facility is located on Forest Service property and Aspen Meadows would provide a public works facility on Aspen Meadows property, but it was later determined it would not work for Aspen Meadow and now the Town is back to discussing sewer treatment.

Bret explained that there are two scenarios the Council may consider:

Scenario "A" Option

"Prepaid Sewer Impact Fees"

Bret reported that Aspen Meadows is now proposing a new concept, Prepaid Sewer Impact Fees. Bret explained that impact fees cannot be used since there are state regulations that surround impact fees, but for the sake of today's discussion, he will use the term "prepaid sewer impact fees". The proposed idea is to allow 150 units at \$10,000 per Platted unit which will provide 1.5 million dollars that Aspen Meadows would fund towards a sewer treatment facility. With 300 Platted units, it would fund 300 million dollars towards a sewer treatment facility. Bret explained that instead of charging an impact fee as they are built, the Town would credit the impact fee. Bret explained there are some issues with this concept that they do not get to declare \$10,000 for an impact fee since impact fees are calculated by statute and it would be a different number. Bret explained it could be a payment for sewer treatment and in return, the Town would not charge an impact fee for any of the units which accomplish the same thing. Bret explained that something similar could be proposed in the agreement. Bret explained that he doubts that three million dollars is the number but does not know what the number would be for constructing a

sewer treatment facility. The concept being proposed could work; the Council would need to identify a number that would be the Developer's obligation that would come in payments at certain times.

Scenario "B" Option

Predetermined Payment to the Town

Bret explained that an alternative to scenario "A", would be legal language in which the Developer pays their proportionate share of the fee. A predetermined payment to the Town and they would be entitled to a certain number of density units. The question becomes what the number of units they would be allowed to be platted before a sewer treatment solution is in place. The Council previously discussed a number of 250 units, but Flint is asking for 300 units.

Scenario "C" Option was presented later in the meeting.

Mayor Calloway suggested a modification to the existing sewer lagoons to gain capacity such as 25% which would result in 350 units. This could be attributed to the new growth of the town. To allow Aspen Meadows to move forward, the Town could allow them to build 175 platted units, which is one-half of the capacity that the Town gains. Mayor Calloway reminded the Council that he is using random numbers for this example. Mayor Calloway commented that possibly only 25 units would be built in that period and by then the Town would know what the solution would be, and those payments could be applied to the solution. If the developer does not want to participate, then the Town can withhold any future platted development. The Town would share some of the capacity that we have. Eric Johnson, Town Attorney, commented that something could be drafted to accommodate that certain commitment today in bite-size chunks and somewhere tomorrow an additional commitment. Eric explained that the Town could say it will not approve any plat if they are up against capacity limitations. Eric explained that a provision could be drafted so that consequences could be spelled out down the road.

Flint reported that Aspen Meadows Developers would be open to Scenario "C" in which they would see the lift investment made early on and they are committed to the development.

4. Bret explained that his direction from the Council was to get an agreement that protects the Town and does not result in the existing residents taking on funding the infrastructure for Aspen Meadows. Bret reported the current plan is to build out over 30 years, but it could take longer for the market absorption and if the sewer treatment is allowed to be required later, then the risk is on the Town.
5. Bret explained that if the developer sells off and walks away and does not fulfill any other obligation of the Development Agreement, then they would not be entitled to any other units, but it now becomes the Town's problem. The Town needs to figure out the sewer treatment. Bret reported that he wanted to be clear that the more the Council pushes off, the more risk the Town takes on. The Town is being asked to share in the risk and if the Town is willing to take the risk of allowing 250 – 300 units before any sewer treatment is triggered.
6. Mayor Calloway polled the Council on any questions or concerns regarding the development itself and not the language in the Development Agreement:
 - a. Council Member Freeberg had none on the project.
 - b. Council Member Marshall had none on the project.
 - c. Council Member Kelly commented that what he hears and what he reads in the agreement are not the same and believes the Town will take on more of the bill than what we are planning to do.
 - d. Council Member Tidwell inquired on the last page of the exhibit "Golf Park" which shows a lot of water in the drawings but doesn't reflect on the water

rights. Flint Decker responded that it is a small modification where it is a small golf course with two holes per green and is a beginner course and is a concept they are considering and identified as a design concept on their list but whether or not it is in the plans is currently tentative at this point. Flint explained that if it is included, they would update the water usage since they have ample water to accommodate the Golf Park.

7. Council Member Marshall inquired with the sewer if it would be possible to do something similar to a PID to fund the infrastructure for the sewer treatment to collect along the way from the property owners in Aspen Meadows. Bret reported he would need to research it first but could issue a GO bond for the sewer. There are similar mechanisms that could be used such as a Special Assessment Area, but a PID would be the most secure way because it is associated with debt levy.
8. Council Member Marshall inquired if the Town is weighing the risk to the Town with the units and if there is a balance in collecting the fees from the units as they are coming on. Bret responded that it sounded like Scenario "A" situation, with a \$10,000 per unit as they are Platted as part of approving the plat. Council Member Marshall inquired if once the 300 units are Platted it ends or continues. Flint responded that it would continue until full build-out and would be authorized by the Town and could be subject to change and other parties would be aware of what the regional sewer solution would be and what each entity's obligation would be. The total spread would be recalculated and assessed among all of the users as a fair equation from the beginning. Council Member Marshall commented that Scenario "A" seems reasonable to her.
9. Mayor Calloway summarized the two scenarios "A" and "B" in which scenario "A" would have the Town take funds upfront but have the option to give the money back. Scenario "B" is built on good faith and would build on a certain number of units. Bret explained that in Scenario "B," the risk to the Town depends on the strength of the legal language and would identify they will pay their portion of their share, depending on what solution they come to. Bret explained the Town needs to think about the future.
10. Bret explained that the idea of having payments happen as the units are platted could create areas where the future Town gets more potential for legal disputes. Bret explained he is not sure which one would be better but would like the opportunity to workshop Scenario "A" and if the Council is not satisfied with it, then he would workshop Scenario "B".
11. Council Member Tidwell commented that the Development Agreement drafted now, shows a \$10,000 impact fee over 1,467 units with a cap of three million dollars and what the intent is and if the Town should keep collecting after the three million dollars. Flint responded the fees would continue and anyone who overpaid would receive a rebate.
12. Council Member Tidwell commented that Aspen Meadows should not be unduly burdened for growth in the existing town that has undeveloped lots which would require infrastructure as well. Bret responded that the Town's Capital Facility Plan (CFP) identifies the projection of how many lots and how many units could be coming online and provides for continued growth. Parowan City is currently looking at a potential annexation and is also looking at their numbers.
13. Council Member Tidwell inquired if the impact fees identified in the Development Agreement could be wordsmith since there is a six-year requirement per state regulations tied to impact fees. Eric Johnson, Town Attorney, explained that with impact fees, the Town could bond for a project such as a sewer treatment facility plant and use impact fees to incur debt which meets the state's guidelines for impact fees. Bret responded the Town has faced challenges in receiving sufficient impact fees to cover debt service obligations and if the Town goes into debt, user

1 rates have to be set to cover the debt. The lender will also require user rates to
2 cover the debt and will not identify the impact fees.

3 14. Eric Johnson, Town Attorney, explained that once someone connects to the Town's
4 sewer system, the Town has a way to extract funds to continue to operate the
5 system. The challenge becomes if trying to upsize the system today for another
6 1,000 units that are not connected to the infrastructure, the burden is on the
7 users. Bret commented that a PID could work in this scenario, or the Town could
8 do something in the realm of Scenario "A" and use the Development Agreement
9 where the Aspen Meadow property owners would agree to pay certain fees even if
10 the developer were no longer involved in the development. Council Member
11 Freeberg commented that the Town could build a sewer treatment facility for pre-
12 designed expansion for future users.

13 15. Council Member Kelly commented he would prefer Scenario "B" since they would
14 proportionately fund things as they come about. As for the units for trade number,
15 one possible thought would be to take what units that are undeveloped in town
16 and use that number.

17 16. Council Member Kelly commented that he doesn't want to see the Town take on a
18 lot of risk with this development and believes there needs to be more input from
19 the residents who he believes will end up footing the bill. Council Member Kelly
20 inquired if property could be used as collateral and if the other part of the trade
21 would be done in short chunks as they go to reduce the risk on both sides. Council
22 Member Kelly commented that what he reads does not match what he is hearing.

23 17. Eric Johnson, the Town Attorney, raised an issue that if the Town built a sewer
24 treatment facility plant according to the Town's needs today, the risk as a
25 developer is when they want to add 200 units and the Town can't handle the
26 additional units. Predesigning a sewer treatment facility may be the best option,
27 but Aspen Meadows may have to wait until the expansion is there before they can
28 connect. Flint responded that Aspen Meadows will know what their total density
29 will be and will be serviced by a regional sewer treatment facility. Bret explained
30 that Parowan's engineer is currently looking at treatment and conveyance, and
31 most of the facilities/conveyances they are reviewing have a lifespan greater than
32 30 years the information Aspen Meadows has submitted anticipates a buildout
33 over 30 years and they are trying to fit 1,467 units in the lifespan for the full
34 capacity, plus all the existing units in Brian Head and Parowan and what is
35 expected to grow in the next 30 years.

36 18. Mayor Calloway inquired if the Town collects \$10,000 per unit and a Special
37 Sewer District is created and what would happen with the funds the Town
38 collected. Eric explained that an agreement would need to be reached with the
39 Sewer District and the Town would hand over the funds to the Sewer District.

40 19. Mayor Calloway inquired as to how confident Eric would be writing in language to
41 avoid litigation. Eric explained that problems come down the road and recited an
42 experience on which he is currently working. Eric explained that it is difficult to
43 write anything today to prevent anything that can happen tomorrow. Eric
44 expressed his hesitation with prepayments, but at the same time, if the Town
45 designs the treatment plant with 1,400 units and 1,000 units are not built until 10
46 to 15 years from now, the users will be paying for the additional capacity that it
47 was designed for unless there is some agreement with the developer that makes
48 the Town whole and doesn't fall on the shoulders of the users. Eric explained that
49 in earlier discussions, it was the Public Safety building that was the surrogate but
50 now that has been taken off the table and now the Town needs to deal with the
51 issue.

52 **Light Industrial/Snow Removal**

53

1 Council Member Marshall commented that light industrial zoning was mentioned but did
2 not see that in the plan and inquired if Aspen Meadows would be providing their snow
3 removal. Flint responded that it is the same as the Golf Park and the final location and
4 total acreage are yet to be designed, but it would be located on the lower half of Aspen
5 Meadows and would be a donation to the Town near the public works facility.

6 7 **Workforce Housing**

8 Council Member Marshall commented there is legal language on affordable housing and
9 shows that Aspen Meadows is donating land and will be constructing units based on the
10 current Town Code. Flint responded that is true, the value of land with infrastructure
11 improvement that the Town would own and control which becomes advantageous to the
12 Town.

13
14 Council Member Marshall was excused at 2:00 p.m.

15 16 **Water / Water Holding Agreement**

- 17 1. Council Member Freeberg commented that the agreement is based on 1,400
18 residential units and inquired about the commercial units with hotels. Bret
19 responded that commercial units are factored in the water rights calculation
20 identified in Appendix H of the Agreement. For sewer, the calculations have not
21 been done yet, but once it is determined what the sewer treatment solution is, it
22 will depend on the number of participating entities. Aspen Meadows numbers may
23 be completed, but the Town is waiting for other entities to submit their
24 information.
- 25 2. Council Member Freeberg suggested an assessment equivalent for a platted
26 commercial area similar to the residential units. Commercial units would be
27 weighted the same as residential units. Curtis Nelson, Ensign Engineering,
28 explained the Agreement breaks it down in the third column that commercial will
29 have the same breakdown with sewer. Bret commented that it could be in line
30 with Scenario "A" with an assessment per density unit, not just residential, but
31 equivalent residential. Council Member Freeberg commented that he would
32 identify it as an assessment instead of an impact fee.
- 33 3. Bret reported that staff will review the definition of the developed density unit for
34 clarification that it will be identified as ERCs. Will be updated in Section 1.4.
- 35 4. Bret reported speaking with Matt Jenson, Water Rights Attorney, who submitted
36 recommendations for the water holding agreement in section 8 of the agreement,
37 his recommendations were good clarifications and were not controversial. The
38 details are in the exhibits that are yet to be presented to the Council. Flint
39 explained they have shared that information and are comfortable with it.

40 41 **Open Space**

42 Council Member Freeberg commented that there is a certain amount of open space for
43 conservation and assumed would be piecemeal out to Aspen Meadows. Flint explained
44 that it is identified as Greenbelt and is similar to other resort projects and will take a
45 portion of the ranch plat to the north and represents one-third maybe 40% of the land, but
46 has not arrived at a decision yet, but is the idea of what they are considering.

47 48 **Other Items**

- 49 1. Mayor Calloway commented that to date, the developer has been moving forward
50 and offered to donate nine (9) acres of land for a public safety building, public
51 works building, and church, and plans to donate multiple lifts to the resort to
52 operate and bringing retail and commercial space and building a public safety
53 building for the Town. Mayor Calloway commented that when thinking about risk
54 vs. reward, he believes there is a carrot for the Town to take on some risk and

1 inquired if the rest of the Council is willing to assume some of the risks in good
2 faith.

3 a. Council Member Freeberg commented that he believes there is good faith, but
4 the Town needs to determine how much good faith is worth and should
5 reciprocate it as well.

6 b. Council Member Tidwell agreed with the Mayor.

7 c. Council Member Kelly commented that the Town wouldn't need all of the
8 above-mentioned items without the development, so he doesn't see it as
9 enough for the Town to assume the risk.

10 2. Mayor Calloway commented that the Town has not received a financial analysis
11 yet for the development, but believes it is safe to say it would be substantial and
12 believes that the Development Agreement is the kindling for a fire that will propel
13 Brian Head into the future.

14 3. Council Member Kelly commented that he has heard from residents of Brian Head
15 that they would like to see Brian Head go back to County status. A lot of people
16 like what the Town is and do not want to be burdened with this development. The
17 ones who benefit from this development are those who want to earn more money,
18 but the ones who live here don't benefit. Council Member Kelly commented that
19 he does not have anything against anyone making money, but believes he
20 represents property owners that believe Brian Head was better when it was small.
21 To have a healthy town with a good culture that does sell, the Town needs to be
22 careful in looking down the road. Mayor Calloway responded that property
23 owners who live here receive the benefit of their property values increasing.

24 4. Council Member Tidwell commented that in the staff it was identified there was a
25 risk that warned the Council about post annexation could change the game for the
26 Town with the Development Agreement still in effect. Bret explained that if there
27 is a different owner of the property of Aspen Meadows, the Development
28 Agreement follows the land, and since they are in the Town they could do
29 individual subdivisions and would not be able to participate in the sewer
30 treatment facility solution. Eric explained that the litigation risk is because the
31 Development Agreement runs with the land.

32 5. Eric explained if the developer left and the property went through a tax sale with
33 the County and fell to the bank and was laundered after time, the Development
34 Agreement would survive until the expiration of the Development Agreement.

35
36 Council Member Marshall arrived at 3:20 p.m.

37
38 6. Mayor Calloway commented that the Town still needs to review the following:

39 a. Financial Analysis

40 b. Sewer Trunkline Expansion

41 c. Water Holding Agreement

42 7. Mayor Calloway commented that the heading of the Development Agreement
43 identifies "GP Ranch, Goliath Properties, and Plumb Investments" but does not
44 list Aspen Meadows on the document. Flint reported he would speak with Eric
45 and Mark Durant about it.

46 8. Mayor Calloway commented that on Page 12, Section 8.2 of the document it states
47 that Aspen Meadows will have nothing to do with sewer treatment. Bret explained
48 that was put back in when the changes were made and was caught in between
49 approaches and will update it to include the sewer treatment and clean up the
50 document.

51 9. Mayor Calloway commented that the annexation of Aspen Meadows would also
52 include two private properties of 20 acres, otherwise, an island would be created
53 which is not allowed according to the state code for annexations. Bret explained
54 that it did occur to him. Flint reported that they are silent on that, but the

property owners do have easements on their property, which would be defined by legal and would need to be reviewed by legal first. Bret explained that those property owners would be included in the annexation and would also include the Town's property as part of the annexation.

10. Council Member Freeberg inquired as to the Trails that are identified as they relate to pedal, mountain bikes, including e-bikes which are electric motorbikes, and inquired if Aspen Meadows is going to allow e-bikes on the trails. Flint responded they will be taking that under consideration and have not landed on a decision at this time. They are currently working with Mountain Capital Partners, and they see it as an evolving trend. Council Member Freeberg commented that National Parks do not allow e-bikes within their parks.
11. Flint reported that in Section 7.3 the language for the trenching does exist, since it was pointed out to him the other day by the Mayor.

Summary:

Bret reported that he will meet with the Mayor on the details of Scenario "C" and inquired if the Council is interested in taking Scenario "A" and "C" and workshopping those and if that is not working, then draft a Scenario "B" for Council's consideration. Bret explained that with Scenario "B" there is some money coming in. Scenario "C" seems to be somewhere between Scenario "A" and "B" and has some risk to it. Flint asked that the Town draft the language for Solution "C" and bring it to them. Staff will work with legal on the language.

A draft of the Development Agreement will be presented to the Council at a later date with the noted changes from today's meeting.

4. FUTURE AGENDA ITEMS. The Council will discuss potential items for future agendas.

1. Shad Hunter, Brian Head Resort, reported that Marilyn Butler has resigned from the resort and wishes her the best. Mountain Capital Partners will be actively looking for a replacement and have reported they have some candidates. The resort expects to open on November 10th but if possible will open earlier. The resort will open the ski lift chairs in the following order chairs #4, #6, #3, #2, #5, #7, and #8 and all chairs should be open by December 15th. The new snowmaking guns/waterlines have been installed and will have their inspection coming up soon.
2. The Council conveyed their thanks and asked Shad to let Marilyn know that it was a pleasure working with her and she will be missed. Shad reported that the main contacts for the Town will be the department heads: Dan Cusack for Mountain Manager; Jackson Haderlie, Tracey Brown, and Chuck and himself for the operations of the resort.
3. Bret reported that the Planning Commission will be reviewing a Minor Plat Amendment and a Schmatic Plan Review for their October 3, 2023 Commission meeting.
4. The tentative agenda for the October 10, 2023, Town Council meeting currently has the Mall Development Agreement and the Core Beautification Bond Public Hearing.

G. CLOSED SESSION OF THE TOWN COUNCIL to discuss pending or imminent litigation.

Motion: Council member Kelly moved to enter into a closed session to discuss pending or imminent litigation. Council Member Tidwell seconded the motion.

1 **Action:** **Motion carried 5-0-0 (summary: Yes = 5 Vote: Yes:** Council Member Freeberg,
2 Council Member Kelly, Council Member Marshall, Council Member Tidwell,
3 Mayor Calloway).

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6 **H. ADJOURNMENT**

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8 **Motion:** Council Member Kelly moved to adjourn the regular meeting of the Town
9 Council. Council Member Marshall seconded the motion.

10 **Action:** **Motion carried 5-0-0 (summary: Yes = 5 Vote: Yes:** Council Member Freeberg,
11 Council Member Kelly, Council Member Marshall, Council Member Tidwell,
12 Mayor Calloway).

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14 The regular meeting of the Brian Head Town Council was adjourned at 4:03 p.m. on September 26,
15 2023.

16
17
18 October 24, 2023

19 Date Approved

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22 _____
23 Nancy Leigh, Town Clerk